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PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

SENATE—*Monday, September 22, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

All of us will want to be praying this day for Shirley Metzenbaum in intensive care in the hospital after a bike accident, and, Father, we do commend her and her family to Your loving care and pray for her rapid and total recovery. We pray that Your peace will rule in the hearts of the Senator and his family at this time.

"O Lord, our Lord, how excellent is thy name in all the Earth! Who hath set thy glory above the heavens." (Psalm 8:1) "I will praise thee, O Lord, with my whole heart; I will show forth all thy marvelous works. I will be glad and rejoice in thee: I will sing praise to thy name O thou most high." (Psalm 9:1-2) "Preserve me O God for in thee do I put my trust." (Psalm 16:1)

With the psalmist O Lord, we declare Your glory—Your majesty—Your worthiness to receive our worship, our adoration, our praise. With the psalmist, we acknowledge our need of You—our dependence upon You. Deliver us, Lord, from the hypocrisy which professes to believe you and lives as though it does not make any difference. As the Senate enters this week of hard work, may they walk in Your life, and light, and love. In Jesus' name, Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND of South Carolina.

WELL WISHES TO MRS. METZENBAUM

Mr. DOLE. Mr. President, first, I join Chaplain Halverson in sending our every wish for a complete and speedy recovery of Mrs. Metzenbaum and our thoughts will be with her and Senator METZENBAUM.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each, followed by special orders in behalf of Senators COCHRAN, PROXMIRE, PRESSLER, and CHILES for not to exceed 5 minutes each and routine morning business not to extend beyond the hour of 1 o'clock.

It will be the intention of the majority leader to turn to the consideration of the motion to proceed to the product liability bill around 1 o'clock. Rollcall votes will not occur during today's session, but I hope there will be a very healthy discussion of the product liability bill through the afternoon.

Tomorrow we hope to turn to the highway bill, if we can resolve some of the rather controversial differences on the bill.

I still hope we will be leaving here on October 3, I think we can do it, depending on how quickly we can resolve some of the remaining issues.

We are waiting for the House of Representatives to act on the continuing resolution. That is a "must" issue. We are waiting for a House-Senate conference on the debt ceiling extension. That is a "must" issue. In fact it may be necessary to have a temporary debt extension of 4 or 5 days between now and October 3.

We have started, Republicans and Democrats at the staff level, to try to put together a consensus package on the drug enforcement bill. I am not certain, but hopefully we can do that.

There are other bills, the commodity futures trading bill, so-called FIFRA bill, the Superfund conference report, the tax conference report, which the Senate must also address. I may have omitted one or two. One matter that may take a day or two will be the impeachment trial of Judge Claiborne. It is my understanding the special group of Senators, the 12 Senators who are hearing the evidence, should complete their action by tomorrow, if not on Wednesday. We may have the documents in our hands by late this weekend.

I would guess there will be a Saturday session. So, I alert my colleagues to be aware of that if they have other plans they can change. I am not certain how long the impeachment trial will take, but I am advised at least 2 days.

THE PRESIDENT'S SPEECH AT THE UNITED NATIONS

Mr. DOLE. Mr. President, this morning President Reagan addressed the U.N. General Assembly, concentrating in his remarks on the status of our relations with the Soviet Union.

The President made clear at the outset of his speech, though, that one issue, the unjustified arrest and indictment of journalist Nicholas Daniloff, has, to use the President's words, "cast a pall over our relations" with Moscow.

The President said, and I could not agree more, that Moscow will have to bear the responsibility for the consequences if Daniloff is not released unconditionally to return to the United States. As far as I am concerned, one of the consequences, if the Russians continue to stonewall, should be no summit, period. And if that happens, the blame is squarely on Mr. Gorbachev's shoulders.

I may say, in this regard, I also hope the Senate will be able to consider this week the resolution on the Daniloff case introduced on Friday by the distinguished Senator from New Hampshire [Mr. HUMPHREY] and the distinguished Senator from New York [Mr. MOYNIHAN] and a number of cosponsors, including this Senator.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Because of one objection, we were not able to take it up on Friday. But I hope that problem can be resolved.

Getting beyond the Daniloff situation, the President, in his U.N. remarks, also reviewed the status of other major international items on our agenda. He indicated the newest response from Mr. Gorbachev on the President's proposals in regard to the ABM Treaty and SDI is being carefully studied. And, I think implicitly at least, suggested it may offer some hope for progress on that front. That is a critical issue, where we want negotiating progress, but where vital U.S. interests are at stake. We will want to go over any Gorbachev proposal with a fine-tooth comb, to ensure that our interests, the U.S. interests, are preserved and the maximum flexibility is retained in our SDI R&D effort.

The President also took special note of the initial results from the GATT meeting. I am pleased we have succeeded, finally, in getting agricultural subsidies and other vital items on the GATT agenda where they have clearly belonged for a long, long time.

□ 1210

We were told the GATT round may last as long as 4 years. I am not certain many of America's farmers will be around in 4 years.

Mr. President, I urge the attention of my colleagues to these elements and to the others in the President's speech. As usual, as might be expected, he did an excellent job wrapping up and selling America's case on the important international issues we face.

Mr. BYRD. Mr President, may I ask the distinguished majority leader about the appropriations bills. There are seven appropriations bills on the calendar that have been sent over from the House. Six of them have been reported from the Senate Appropriations Committee and placed on the calendar in the Senate—Commerce, Justice, State, the Judiciary; Energy-Water; Agriculture; Treasury; HUD; Foreign Assistance; and Defense.

Why do we not proceed to work on those six and not wait on the continuing resolution?

Mr. DOLE. I would indicate that I have been advised by the chairman of the Appropriations Committee that he would rather not do that. He has been working on the continuing resolution, and that, with nearly every one of those bills mentioned, there are rather serious problems that would take several days. He prefers to wrap them into the continuing resolution.

Mr. BYRD. Well, Mr. President, several of these have been on the calendar—legislative, transportation——

Mr. DOLE. Legislative is done.

Mr. BYRD. Yes; that is done.

Commerce has been on the calendar since September 3; Energy-Water, since September 15; Agriculture, since September 11; Treasury, since August 14.

It seems to me that we are watching the appropriations process atrophy and if we continue in the direction we are going, we are just going to have one big spending resolution every year, one omnibus appropriation bill.

Here are appropriations bills on the calendar. It seems to me, even though there are problems with some of them, and we can fold them into the continuing resolution, the Senate at least ought to take up these appropriations bills, debate them, and work its will thereon before we fold them into the continuing resolution.

It is just a matter that I think we need to think about, and it is troubling. I know there may be some problem in moving to them, but, nevertheless, it seems to me we are going to have to get back on the track of honoring the appropriations process and having the Senate work its will on each appropriation bill rather than just fold them all into one big continuing resolution.

What does the distinguished majority leader have in mind, if he could say at this point, for Friday and Saturday, particularly Saturday? He has indicated there will be a session. I do not see how one can be avoided, for that matter. But it would be helpful if we could have that information.

Mr. DOLE. I guess it would depend on how fast the House acts on the continuing resolution. We are going to move to that as quickly as we can. Hopefully, the House will make it available to us by Friday. If not, we might commence the impeachment trial on Friday.

I do not see how we can avoid it. Unless there is a judgment, we are not going to get out of here on the third.

But we will need probably, I would guess, 2 or 3 days on the drug legislation. Once we have agreed on as much of the bill as we can, I assume there will still be amendments.

So I hope to be in a position to advise the distinguished minority leader about the schedule for the rest of the week by policy luncheon time.

Mr. BYRD. Does not the debt limit expire next Tuesday?

Mr. DOLE. The debt limit expires, I was advised by the Treasury Secretary this morning, probably on the 30th of September. And I am advised by the chairman of the Finance Committee, that as soon as the tax reform conference report is disposed of, he and the conferees on this side will join Chairman ROSTENKOWSKI and try to work out—there are 26 amendments added to the debt ceiling here—try to work out those differences. But it will probably be next week before thay can do that, and that would be about the 30th. That is about the date the present debt ceiling expires. Perhaps we will have to have an extension of 2 or 3 days.

Mr. BYRD. Yes; that is midnight of next Tuesday, I believe, September 30. So we have that expiration date rushing down upon us.

And, in addition to that, of course, we have the beginning of the fiscal year 1987 on the first of October, and the continuing resolution will be on us. That is on Wednesday. So we have two deadlines converging down upon us.

I am just trying to anticipate for our colleagues on this side of the aisle what the Senate will be applying its attentions to—it would seem to me that the continuing resolution and the debt limit, with those expiring dates coming down upon us, if the House gets those measures over here in time, we have no alternative but to give our attention to them.

Does the distinguished majority leader agree with me in that respect?

Mr. DOLE. I think most Members are probably expecting a Saturday session We are not doing it to punish anyone. We are doing it because I think both of us still believe there is a possibility for an October 3 adjournment, with no post-election session. It seems to me that can be done if we really work at it.

Mr. BYRD. I hope the majority leader and anyone else listening does not infer from what I am saying that I am complaining about the possibility of a Saturday session.

Mr. DOLE. No.

Mr. BYRD. I just do not see how it can be avoided.

But what I do want to do, if I can, in this colloquy or in subsequent ones, is to determine, without any peradventure of doubt, that we are going to have business and we are going to have rollcalls and not because I want them, not because the majority leader wants them, but because we are going to be faced with the calendar and the continuing resolution and the debt limit. And I assume that is what the majority leader is saying—if we are going to have to be facing those this weekend, there will be rollcall votes.

Mr. DOLE. I have been advised on the debt limit, the House has yet to appoint conferees. I understand that will happen. They would just like to move the tax reform bill first.

Obviously, we do not want to stay here on a Saturday just to stay here. We do not have any desire to do that.

Mr. BYRD. Oh, no.

Mr. DOLE. But if we are going to be here, there will be business with votes and probably a long day.

Mr. BYRD. If the Senate is going to get out on the third, I do not see any way to avoid our being here. That is the majority leader's decision to make.

Would the majority leader think that the House would more likely send over a clean debt limit?

Mr. DOLE. Well, as the distinguished minority leader knows, they do not like to have debt ceiling amendments on the House side. But there are amendments on it, 26 in all. They may send over a very brief extension, maybe for a couple days, while they work out some of the problems in conference. At least, I am advised that could happen.

Mr. BYRD. Could we, by tomorrow, hopefully, be able to tell our colleagues more specifically what the workload is ahead of us, so that they will be fully aware what the Senate faces before it goes out?

□ 1220

I think we can leave the Saturday business in a kind of maybe in and maybe out. If we are in, we are going to have rollcalls. By tomorrow, hopefully, we could determine what the schedule is going to be, even if we do not get the debt limit.

Mr. DOLE. It would depend in small part on the House acting on the continuing resolution. We have completed reconciliation ahead of the House. I think they can do that this week and go to conference. It is my understanding they will take up the continuing resolution on Thursday. If they can finish the continuing resolution in 1 day, we could have it on Friday.

Mr. BYRD. I heard that it would be on Wednesday.

Mr. DOLE. I hope it is Wednesday. That would mean the Senate would receive it sometime Thursday afternoon. We are prepared to move on the continuing resolution as soon as it arrives. In the interim, we are prepared to do the highway bill.

I am perfectly willing to do other appropriations bills if the chairman would make that recommendation. As I understand, there are holds on some of these bills. We are faced with filibusters on at least two or three of them. A couple of them have not come over from the House.

We will advise everyone as soon as we can, so they can make plans for Saturday.

Mr. BYRD. I have found in my experience that, once the decision is made to go with the bill, some of the Senators with holds on such bills come to the realization that they are going to have to get their amendments ready and get ready to act. I would just hope that we would not let ourselves drift further into a pattern of just folding everything into a continuing resolution and not having acted on appropriations bills. It seems to me the Appropriations Committee has, to a considerable extent, wasted its time. I am a member of the Appropriations Committee. I know the members of the subcommittees have certainly worked hard to get the bills to the floor. I would like to see us start acting on appropriations bills once again like we used to.

I was told by a member of the panel on the trial of Mr. Claiborne that the panel would probably complete its action today.

If that is the case, and it may or may not be the case——

Mr. DOLE. We have had word this morning from Senator MATHIAS that it might be tomorrow.

Mr. BYRD. I thank the distinguished majority leader for his patience. I will work with him in attempting to determine as best we can what the schedule will be in the next few days so that Senators will be fully alerted that we are going to have active days. There is no question but that the work is there. If we really mean business about getting out on the third, if Senators know in their own minds what is ahead, they will plan for it.

I thank the distinguished majority leader.

Mr. President, I suppose I have consumed my time and that of the majority leader. Have I any time left?

The PRESIDENT pro tempore. All leadership time has been used.

Mr. BYRD. I thank the Chair.

RECOGNITION OF SENATOR COCHRAN

The PRESIDENT pro tempore. Under the previous order, the Senator from Mississippi [Mr. COCHRAN] is recognized for not to exceed 5 minutes.

GRAIN MARKETING ACT OF 1986

Mr. COCHRAN. Mr. President, today I am introducing the Grain Marketing Act of 1986, which is a bill directing the Secretary of Agriculture to implement a Marketing Loan Program for wheat, feed grains, and soybeans.

It is absolutely essential that we regain the export markets for agriculture which have been lost in recent years.

The Marketing Loan Program was authorized in the Food Security Act of 1985, and it has proven to be very effective in increasing exports of cotton and rice. Even though the Secretary of Agriculture has the authority to implement the Marketing Loan Program for wheat, feed grains, and soybeans as well, he has not utilized that authority.

One of the leading contributors to the depressed condition of farms in America is the loss of export markets for our agricultural commodities. A strong production agriculture is an essential source of wealth and strength for America and our goal should be to maximize this contribution to the Nation's economy. This objective requires U.S. agriculture to be an effective competitor in world agricultural trade, not merely the supplier of commodities for domestic consumption.

Congress included several provisions in the Food Security Act of 1985 which can be effective in achieving our goal of a strong production agricultural industry, one of which is referred to as the Marketing Loan Program.

This program was made mandatory for rice and cotton and has proven very successful. I compliment the Secretary of Agriculture for his earnest and constructive efforts to implement this new program in a way that allows it to work effectively.

The rice industry provides a good example of how the Marketing Loan Program can increase exports.

U.S. exports of rice fell from 3 million metric tons in 1981 to 1.8 million in 1985. The inflexible price support program in the 1981 farm bill was credited for this decline because it allowed competing countries to easily and accurately set their prices to increase their share of world trade. The United States was forced to continue using large acreage reduction programs while foreign acreage increased.

The result was that U.S. exports of rice fell 1.2 million metric tons while Thailand rice exports increased from 2.7 million tons in 1980 to 4 million metric tons in 1985. But then the Marketing Loan Program was implemented in March of 1986. We have seen a positive series of results, the most dramatic of which includes these: First, forfeitures of the 1985 crop are currently expected to be only 10 million cwt compared to the 28 million cwt predicted by USDA in June 1986; second, during May and June more than 11 million cwt of 1984 rice have been purchased from CCC through the use of generic certificates; third, CCC has lowered its projection of "owned stocks" by 50 percent; fourth, USDA now expects 1986-87 exports to increase by 45 percent compared to 1985-86; fifth, as of July 17, 1986, total outstanding sales reported for shipment next marketing year are up 162 percent; and, sixth, one of the major rice processing companies has fully activated all of their processing plants, increasing employment by 250 people.

The cotton industry is seeing more impressive improvement from use of the Marketing Loan Progam. In the first 2 months of operation, specific examples of positive results include: First, USDA projecting a 300-percent increase in total exports for the 1986-87 marketing year; second, U.S. textile mills are projected to increase consumption by 500,000 bales over last year; and, third, carryover stocks are likely to be reduced by at least a fourth this year.

All of this activity can be attributed to use of the Marketing Loan Program which allows U.S. cotton to effectively

compete with any country on an equal basis regardless of their pricing system.

While all commodities are not likely to experience the same rate of export response, due to differing worldwide conditions, I believe positive impacts are achievable for the wheat, feed grains, and soybean industries because the Marketing Loan Program allows the United States the flexibility to match competing countries' pricing policies.

The cost of regaining lost export markets must be weighed against the benefits generated in terms of stability to the national economy in general, and the agricultural economy in particular. Furthermore, the cost of any market enhancement program will depend on the price at which commodities are traded in world markets. Since implementation of the Marketing Loan Program for rice and cotton, we are beginning to see an increase in the world price. As competing countries assess the risk of marketing increased levels of production under conditions of greater price uncertainty, we will see a reduction in their acreage.

For the first time ever it is not the U.S. farmer that is cutting back production, Mr. President; foreign producers are beginning to reduce their production to bring total world demand in line with total world supply.

There are two consequences which result: First, the United States will regain its fair share of world trade, and second, as total world surplus is brought more in line with total world demand, commodity prices will increase and reduce the cost of the program.

□ 1230

Agriculture is lagging behind other segments of our economy and additional measures are necessary to restore this industry's economic stability. I believe the most effective action available to us today is implementation of a Marketing Loan Program for all the major program commodities.

Mr. President, I urge my colleagues to support this bill as our best hope for restoring prosperity on the farms of the United States.

Mr. President, I ask unanimous consent that there be printed at this point in the RECORD a letter dated August 27 to the President of the United States, signed by the American Soybean Association, the National Association of Wheat Growers, the National Corn Growers Association, the National Sunflower Association, the National Cotton Council, and the Rice Millers Association, all of which indicate support for the Marketing Loan Program.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL CORN GROWERS ASSOCIATION,
Washington, DC, August 27, 1986.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: The economic trauma gripping American agriculture continues. Despite concerted efforts in the Food Security Act of 1985 and in more recent administration initiatives, government-held wheat, feedgrain and soybean stocks are rapidly building to record levels as agricultural export sales continue to slide. This dangerous trend is clearly illustrated in recent announcements of agricultural imports exceeding agricultural exports for a second consecutive month. The United States recorded its first agricultural trade deficit in more than 20 years. To further stress the seriousness of this situation, on August 12, 1986, corn stocks as of August 31, 1986, were projected at more than 4.0 billion bushels, soybean stocks were estimated at 525 million bushels, and wheat supplies are placed at approximately 2.0 billion bushels. In addition, USDA is anticipating large harvests of corn and soybeans as well as other feedgrains this fall—all at a time when commercial and on-farm storage capacity is overflowing and the U.S. share of world crop trade has shrunk from 80 percent in 1979–80 to an estimated 40 percent in 1985–86.

Under recent agricultural and trade policies, wheat, feedgrains and soybeans, as well as other oilseeds, such as cottonseed and sunflower seed, have each experienced a significant loss of total world trade as well as a loss of world market share. These staggering losses are best expressed as follows:

Feedgrains—While world trade has remained relatively steady, U.S. share has dropped from a high of 72 percent in 1979–80 to 45 percent this year.

Soybeans—World trade has remained relatively stable, but U.S. share dropped from over 60 percent in 1982–82 to approximately 40 percent last year before recovering somewhat.

Wheat—In addition to reductions in total world trade in 1985–86, the U.S. share has declined from roughly 50 percent of the market in 1981–82 to less than 30 percent in 1985–86.

Oilseeds—While world trade grew by 25 percent between 1979/80 and 1985/86, the U.S. share fell from 14 percent to less than 5 percent, cutting our exports of seed, oil, and meal in half.

Cotton and rice producers in the United States have faced a similar export crisis. However, through the implementation of a "marketing loan" program in the 1985 Farm Bill, the Nation's cotton and rice producers are enjoying an explosive increase in projected exports of 300 and 50 percent respectively. Under the elastic demand mechanism of the marketing loan, the U.S. cotton and rice are again price competitive in the world marketplace and these industries are regaining world market share while reducing surplus stocks with equally positive domestic benefits. In addition, the marketing loan concept is a more effective allocation of government resources and is the first step toward a more market-oriented farm policy.

The undersigned commodity organizations believe it is time for a bold agricultural trade policy based on "demand management." Specifically, it is time to drastically reduce the floor under our competitor's price levels which have been maintained by U.S. loan rates. For too long, U.S. agricultural policy has encouraged, if not supported, surplus production throughout the world by sending false price signals. As you know, the 1985 Farm Bill provides the authority for subsequent annual reductions in the statutory loan rate; unfortunately, we simply do not have the luxury of time to annually reduce loan rates. Should a demand management mechanism not be implemented, fixed U.S. loan rates will continue to reflect U.S. export prices and will continue to be undercut by foreign competitors.

Given these economic realities, we would strongly urge you, while maintaining nonrecourse loan programs, to immediately implement a marketing loan and/or a marketing incentive program utilizing commodity certificates for U.S. wheat, feedgrain and soybean producers as authorized in the Food Security Act of 1985. The marketing loan option, which is currently operating very effectively for rice and cotton, would provide the appropriate market elasticity of demand for export pricing as well as price equitability for domestic consumers in the 1986–87 feedgrain and soybean programs and the 1987–88 wheat program.

In addition, lower prices for major grains and soybeans have resulted in sharply reduced exports and farm prices for oilseeds, including sunflower and cottonseed. Unless this trend is arrested, the competitiveness of these oilseeds with program crops and foreign exports could well be eliminated in the near future. In order to preserve needed diversity in U.S. agricultural production, we believe oilseed crops require a program combining price support with whatever export-competitive mechanism may be adopted for soybeans for the 1986 and 1987 crops.

As with a marketing loan, a marketing incentive program would offer several advantages over the rigid loan program currently in place for U.S. grains and soybeans. In addition, both the marketing loan and the marketing incentive program would protect farmers' income while providing a competitive advantage to U.S. farm exports to meet the volatile economic trends in world trade. Over time, these policies would alleviate the critical shortage of storage space and offer potentially significant savings in reduced government costs associated with loan disbursements, forfeitures and subsequent storage of commodities under the present agricultural policy. Moreover, under the market incentive option, the federal government could offer certificates to producers who agree not to exercise their right to place commodities under the price support loan program, or redeem commodities under loan at the original loan rate. Should a marketing loan or marketing incentive program not be immediately implemented and vigorously applied, then the current staggering commodity surplus crisis and U.S. and agricultural trade deficit problems will not only continue, but will increasingly become a permanent feature of our agricultural landscape.

Demand management through a marketing loan or marketing incentive concept is not the only answer to the difficulties plaguing American agriculture—but it is an absolutely essential first step.

Action should likewise be taken to fully utilize P.L. 480 and other food assistance programs to stimulate economic growth in developing countries and to build new markets for U.S. farm exports, including value-added agricultural products. We would greatly appreciate and welcome a meeting

with you to discuss in greater detail the specifics of our farm policy proposals.

Sincerely,

David Haggard, President, American Soybean Assn.; Bud Leuthold, President, National Assn. of Wheat Growers; Dain Friend, President, National Corn Growers Assn.; Lloyd Cline, President, National Cotton Council; Larry Kleingartner, Executive Director, National Sunflower Assn.; J. Stephen Gabbert, Executive Vice President, Rice Millers' Association.

Mr. COCHRAN. Mr. President, I ask unanimous consent that a section-by-section analysis of the bill, a description of the major features of the act, and a copy of the bill, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section 2 amends the Agricultural Act of 1949 to mandate the loan and purchase rate for the 1986 and 1987 soybean crops be set at $5.02.

Section 3 amends the Agricultural Act of 1949 to mandate implementation of a "Marketing Loan Program" for Wheat (crop years 1987 through 1990), Feed Grains and Soybeans (crop years 1986 through 1990) with an established minimum loan repayment rate (50% in 1986 and 1987, 60% in 1988, and 70% in 1989 and 1990).

Section 4 amends the Agricultural Act of 1949 to mandate the use of the "Loan Deficiency" payment for production otherwise eligible for a nonrecourse loan for Wheat, Feed Grains, Cotton, Rice, and Soybeans.

MAJOR FEATURES OF THE ACT

Directs the Secretary of Agriculture to establish the loan and purchase rate for 1986 and 1987 crop soybeans at $5.02 per bushel.

Directs the Secretary of Agriculture to implement a Marketing Loan Program for Wheat, Feed Grains, and Soybeans.

The Marketing Loan Payment for Wheat will be for the 1987 through 1990 crop years; Feed Grains and Soybeans for the 1986 through 1990 crop years.

Upon implementation of a Marketing Loan Program, establishes a minimum loan repayment level. These minimum levels are consistent with the current Rice Program (50% of loan rate in 1986 and 1987, 60% of loan rate in 1988, and 70% of loan rate in 1989 and 1990).

Directs the Secretary of Agriculture to implement a Loan Deficiency payment provision for all commodities for production otherwise eligible for a nonrecourse loan.

S. 2847

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Grain Marketing Act of 1986".

SEC. 2. SUPPORT PRICES FOR SOYBEANS.

Effective only for each of the 1986 through 1990 crops of soybeans, section 201(i) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)) is amended—

(1) by striking out paragraph (2); and

(2) by redesignating paragraph (3) as paragraph (2).

SEC. 3. MARKETING LOANS.

(a) WHEAT.—Effective only for the 1987 through 1990 crpos of wheat, section 107D(a)(5) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(a)(5)) is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) for a crop at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the higher of—

"(I) the loan level determined for such crop multiplied by 50 percent for the 1987 crop, 60 percent for the 1988 crop, and 70 percent for each of the 1989 and 1990 crops; or

"(II) the prevailing world market price for wheat, as determined by the Secretary."; and

(2) in subparagraph (B), by striking out "If the Secretary permits a producer to repay a loan in accordance with subparagraph (A), the" and inserting in lieu thereof "The".

(b) FEED GRAINS.—Effective only for the 1986 through 1990 crops of feed grains, section 105C(a)(4) of such Act (7 U.S.C. 1444e(a)(4)) is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) or (6) for a crop at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the higher of—

"(I) the loan level determined for such crop multiplied by 50 percent for the 1986 and 1987 crops, 60 percent for the 1988 crop, and 70 percent for each of the 1989 and 1990 crops; or

"(II) the prevailing world market price for feed grains, as determined by the Secretary."; and

(2) in subparagraph (B), by striking out "If the Secretary permits a producer to repay a loan in accordance with subparagraph (A), the" and inserting in lieu thereof "The".

(c) SOYBEANS.—Effective only for the 1986 through 1990 crops of soybeans, section 201(i)(2) of such Act (as redesignated by section 2(4) of this Act) is further amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following new subparagraph:

"(A) The Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the higher of—

"(I) the loan level determined for such crop multiplied by 50 percent for each of the 1986 and 1987 crops, 60 percent for the 1988 crop, and 70 percent for each of the 1989 and 1990 crops; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.";

(2) in subparagraph (B), by striking out "If the Secretary makes the determination described in subparagraph (A), the" and inserting in lieu thereof "The"; and

(3) by adding at the end thereof the following new subparagraph:

"(C) Whenever a producer is permitted to repay a loan for a crop of soybeans under this subsection at a level that is less than the full amount of the loan, the Secretary shall support the price of each oilseed at such level as the Secretary determines will cause the oilseed to compete on equal terms on the market.".

SEC. 4. LOAN DEFICIENCY PAYMENTS.

(a) WHEAT.—Effective only for the 1987 through 1990 crops of wheat, section 107D(b) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3(b)) is amended—

(1) in paragraph (1), by striking out "may" and inserting in lieu thereof "shall";

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(b) FEED GRAINS.—Effective only for the 1986 through 1990 crops of feed grains, section 105C(b) of such Act (7 U.S.C. 1444e(b)) is amended—

(1) in paragraph (1), by striking out "may" and inserting in lieu thereof "shall";

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(c) COTTON.—Effective only for the 1986 through 1990 crops of upland cotton, section 103A(b) of such Act (7 U.S.C. 1444-1(b)) is amended—

(1) in paragraph (1), by striking out "may" and inserting in lieu thereof "shall";

(2) by striking out paragraph (3); and

(3) by redesignating paragraph (4) as paragraph (3).

(d) RICE.—Effective only for the 1986 through 1990 crops of rice, section 101A(b) of such Act (7 U.S.C. 1441-1(b)) is amended—

(1) in paragraph (1), by striking out "may" and inserting in lieu thereof "shall";

(2) by striking out paragraph (3);

(3) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively; and

(4) in paragraph (4) (as so redesignated), by striking out "shall" and inserting in lieu thereof "may".

(e) SOYBEANS.—Effective only for the 1986 through 1990 crops of soybeans, section 201(i) of such Act (7 U.S.C. 1444e(i)) (as amended by sections 2(4) and 3(c) of this Act) is further amended by inserting after paragraph (2) the following new paragraph:

"(3)(A) The Secretary shall, for each of the 1986 through 1990 crops of soybeans, make payments available to producers who, although eligible to obtain a loan or purchase agreement under paragraph (1), agree to forgo obtaining such loan or agreement in return for such payments.

"(B) A payment under this paragraph shall be computed by multiplying—

"(i) the loan payment rate; by

"(ii) the quantity of soybeans the producer is eligible to place under loan.

"(C) For purposes of this paragraph, the loan payment rate shall be the amount by which—

"(i) the loan level determined for such crop under paragraph (1); exceeds

"(ii) the level at which a loan may be repaid under paragraph (2).".

Mr. COCHRAN. I might add that cosponsors are the Senator from South Dakota [Mr. ABDNOR], the Senator from Iowa [Mr. GRASSLEY], and the Senator from Arkansas [Mr. PRYOR].

● Mr. PRYOR. Mr. President, today, I am again joining with my colleagues to introduce legislation that is designed to help American farmers. Senator COCHRAN and I have been strong advocates of the marketing loan con-

cept since we first proposed it last year. We have been pleased that the marketing loan programs for rice and cotton have proven so successful and are working for the benefit of these two industries. Farmers are now being encouraged to produce for sales, not for forfeiture and storage.

Senator BUMPERS and I have recently introduced two separate bills that, among other things, would also extend the marketing loan to soybeans and all other major program crops. Both those bills offer greater prospects for our farmers in that they stabilize and define Government's support to our producers while at the same time allowing their commodities once again to be price competitive in the marketplace.

American agriculture is still in the throes of a depression. While other segments of our economy have shown recovery, we still see agriculture at record lows.

Congress spent over 11 months last year in debating provisions for a new farm bill. On December 23, 1985, President Reagan signed the Food and Security Act of 1985 into law giving producers a new hope in their struggle for survival. In my opinion, this new farm bill does have some benefits for our farmers. However, I think we should also be realistic and candidly admit some parts are not working and don't offer much hope for working in the future.

Therefore, I think we should, for the benefit of our farmers, make necessary midstream adjustments.

For that reason, Mr. President, I am once again joining with Senator COCHRAN in a bipartisan effort to refine and improve our farm programs. If ever there was a time for a united approach to a problem, it is now. We have only a limited time in which to act before we adjourn this session of Congress. This is not a problem we can save until January. If we try to do so, it will be at the expense of thousands of American farmers who just will not be able to hang on any longer.

Senator COCHRAN and I strongly believe the expansion of the marketing loan to other commodities offers the most effective and efficient solution to the agricultural crisis. It has certainly already proven itself for rice and cotton.

In the long run, the marketing loan concept offers a better, more efficient use of taxpayer dollars by forcing world agriculture to deal with the realities of a competitive supply-demand situation. America needs a strong viable profitable agriculture.

Mr. President, I hope this Senate understands the urgency in addressing agriculture's situation and that we can pass legislation before our adjournment that mandates the extension of the marketing loan to other commodities. I had hoped the Secretary of Agriculture would see the urgency of this situation and use his discretionary authority to implement these programs.

This legislation offers us the perfect opportunity to enact a farm program which encourages redemption and sales—not forfeiture and storage.●

RECOGNITION OF SENATOR PROXMIRE

The PRESIDENT pro tempore. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. I thank the Chair.

WHY SHOULD WE ACCEPT BIG SUPERPOWER NUKE ARSENALS AS PERMANENT?

Mr. PROXMIRE. Mr. President, the latest arms control proposals by the United States sound impressive. Our country calls for an overall reduction of strategic nuclear warheads down to 7,500 by both superpowers.

The Soviet Union has responded with a proposal to cut back to 8,000 strategic nuclear warheads on both sides. The superpowers seem to be moving toward 20- to 25-percent cutback. By itself, that sounds significant. Some would argue that much more significant is the fact that this would bring the two armed-to-the-teeth nuclear powers together in an agreement to begin for the first time an actual reduction in their mammoth nuclear arsenals. I disagree. Why is that not good news—in fact—great good news for peace? Why cannot this mark the beginning of a process that can eventually end the terribly dangerous and cruelly burdensome nuclear arms race?

Mr. President, these nuclear reduction proposals constitute a meaningless minuet. The grim fact is that this is a propaganda numbers game. Consider: How many Soviet strategic warheads would have to strike American cities to destroy this country as an organized society? Answer: According to our most prestigious scientific organization, the American Academy of Science, the answer is not the 10,000 we and the Soviets each have. It is not the 8,000 the Soviets have proposed as their new limit. It is not even a goal of 1,000 that would reduce superpower nuclear arsenals by 90 percent. How many strategic nuclear warheads would it take to destroy this country? The National Academy of Science tells us just 100—that is right, 100—or a bare 1 percent of the Soviet's present strategic nuclear arsenal would finish this country and 1 percent of the present United States arsenal of 10,000 nuclear warheads would finish the Soviet Union.

Now let us become truly optimistic. Let us assume that the current palaver between the United States and the Soviets on reducing nuclear arsenals really starts something. Why could this not begin a process that would eventually reduce both arsenals some day below the 100 level—or even make them disappear eventually? The answer is that neither superpower will reduce its nuclear arsenal below the level that it considers necessary to deter the attack of the other side.

And now, let this arms control advocate shock you, Mr. President. In the judgment of this Senator, neither superpower should reduce its deterrent below the level that would give that deterrence full credibility. Let us not kid ourselves, Mr. President. There has been one reason and only one reason there has been a superpower peace for the past 40 years. It has not been because the Soviet leaders have become Mahatma Gandhis or Mother Teresas. It has not been because the Soviet Union has looked on Americans as peaceloving doves. The Soviet Union has been now and continues to be run by leaders who still espouse the old Marxist theory that communism should rule the world and by force and violence, if necessary.

So why have we not had a superpower war? Because the Soviet leaders know that in this nuclear age, with these appalling arsenals, both sides fully understand that a nuclear war would leave an entire world in ashes—with civilization gone and very possibly mankind pershing from the face of the Earth.

The superpowers dance in this arms reduction minuet. Both strive for propaganda advantage at home and abroad. But neither side should pretend that it means more than that. The most constructive and prudent action the superpowers can take is to recognize that we are in this nuclear world forever. We should not use arms control to pretend that we intend to abolish nuclear arms. We cannot do that. We will not do that. If we somehow accomplished this end to nuclear arms, we would soon suffer a devastatingly destructive conventional war.

We should use arms control to negotiate the most stable and permanent balance of nuclear forces on both sides that we can. We should agree to the Test Ban Treaty—to stop the destabilizing technological nuclear arms race. We should agree that both sides will gradually shift their arsenals into the least vulnerable mode and we should abide by and build on our ABM Treaty that is designed to prevent a defensive nuclear arms race and the SALT II Treaty that would, if extended, stop an offensive arms race. We should, above all, build on the Nuclear Test Treaty limitations to stop nuclear weapons testing and to end the nuclear technology arms race. We should neither try to advance our nuclear arms nor abolish them. We should use what we have to continue the success

of the last 40 years. That is to continue to live in nuclear peace.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, my myth of the day is that better health, better jobs, and a longer life expectancy have resulted in a declining percentage of workers taking early retirement.

The actual situation is that the labor force participation rates for older men has been declining sharply over the past 25 years.

In 1970, more than four out of five males age 60 or 61 were in the labor force. By 1985, only two out of three American males either held a job or were seeking one. The decline is even more striking for males between the ages of 62 and 64. While more than two-thirds of the males in that age bracket were in the labor force in 1970, only 46 percent were attached to labor markets in 1985.

While the decline has been less pronounced, the same general pattern holds for men in their fifties.

In the case of the labor participation rate of older women, any increase in early retirement from long-held jobs is basically offset by the flood of women entering the labor market.

On average, a man who turns 65 in 1983 could expect to live another 15 years. That is about 2½ years longer than his 1940 counterpart. A woman turning 65 in 1983 could expect to live to age 84 or about 5½ years longer than her 1940 counterpart. Clearly, the increase in life expectancy and the decline in labor force participation means the amount of time spent in retirement is increasing dramatically in our society.

Why are people choosing to retire early?

First of all, health problems are certainly not one of the reasons. The proportion of men age 55 and over who cited health or disability as the reason for not working has dropped sharply since 1973.

I believe one of the major factors inducing people to retire earlier and earlier is the increased coverage of workers under pension plans which permit retirement younger than 65 with little or no reduction in benefits.

A growing number of firms have found it advantageous to offer early retirement to their employees. In addition, withdrawal of funds from tax-deferred accounts such as IRA's, Keoughs, and 401(k)'s can begin at age 59½.

The current Federal law which permits the cessation of the accrual of pension benefits for an employee after the age of 65 obviously acts to discourage older workers from continuing in employment.

With workers retiring earlier and the general aging of our population, our society will have to monitor carefully both public and private pension plans to guarantee their fairness and solvency.

Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1240

Mr. PRESSLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WARNER). Without objection, it is so ordered.

RECOGNITION OF SENATOR PRESSLER

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota [Mr. PRESSLER] is recognized for not to exceed 5 minutes.

CREATING A "D" RATING FOR MOVIES GLAMORIZING DRUG USE

Mr. PRESSLER. Mr. President, approximately 54 percent of our children in the 12- to 17-age group go to the movies at least once a month—84 percent go at least twice a year. The messages portrayed in these movies exert enormous influence on our youth who are just beginning to formulate values and ideals which directly affect their thinking for many years.

One of the messages we see more and more frequently in today's movies is the casual and often glamorous portrayal of illegal drug use. This sends a very mixed signal to the youth of our country. For some time, children have been taught of the dangers of illegal drug use—in classrooms, churches, and at home. However, during their leisure time at the movies they may see drug use depicted in a different light.

For this reason, today I am introducing a sense-of-the-Senate resolution calling on the Motion Picture Association of America [MPAA] to adopt, within its current rating system, a subcategory "D," for movies which clearly depict drug use in a benign or favorable light. I am also introducing this resolution in amendment form and will offer it as an amendment to the omnibus antidrug legislation the Senate soon will be considering. This legislation is endorsed by the National Association of Secondary School Principals and the National Parent Teacher Association [PTA].

In November 1968, the Motion Picture Association of America, together with the National Association of Theater Owners [NATO] and the International Film Importers and Distributors of America [IFIDA], voluntarily implemented their own movie rating system. This provided concerned parents with advance warning that some of the subject matter in particular films may not be suitable for children. This bold step recognized the need to preserve the creative freedom of movie-makers while providing parents with a forewarning of the content. According to the Motion Picture Association, nationwide scientific polls have consistently reported that parents find the ratings useful in helping them make decisions about the movies their children wish to see.

Ratings are determined by a seven-member ratings board located in California. The board's criteria include: theme, language, nudity, sex, and violence. Parents have no way of knowing how a movie depicts drug use, or whether this subject matter is included at all. It would be extremely helpful to parents who are already fighting the influence of peer pressure on their children to know if a movie portrays drug use in a glamorous manner.

This resolution does not punish filmmakers for the subject matter they choose for their films. On the contrary, the movie industry, and in particular the Motion Picture Association, should be commended for its voluntary creation of the rating system nearly 18 years ago. The movie industry accepted voluntary ratings primarily to provide parents with the opportunity to make an informed decision. In so doing, they protected the rights of movie makers to create any type of movie they see fit, and made it clear that the ultimate responsibility rests on the parents, not the industry. This resolution simply asks for a slight expansion of the current rating system. By taking this small step, the motion picture industry could become one of the private sector leaders in the war on drugs.

I urge my colleagues on both sides of the aisle to join me in sponsoring this resolution. Mr. President, the Motion Picture Association of America has already demonstrated its ability and willingness to respond to the needs of parents by implementing its overwhelmingly popular rating system over 38 years ago. We need the cooperation and support of this influential industry to successfully fight the war on drugs.

Mr. President, I ask unanimous consent that the text of my resolution be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S. RES. 492

(To express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend)

Whereas the use of illicit drugs has bcome a societal problem of epidemic proportions;

Whereas it is in the interest of all citizens to contribute to the reduction of drug use, paticularly among youth;

Whereas the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts drug use in a benign, even glamorous way;

Whereas the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

Whereas the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system;

Now, therefore be it

Resolved, That it is the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use, in order that parents can make an informed choice about the movies their children attend.

AGRICULTURAL MARKETING

Mr. PRESSLER. Mr. President, this past weekend I had the opportunity to visit rural areas of my State along with the majority leader of the U.S. Senate, Senator DOLE. We had meetings with farmers and ranchers, along with other South Dakota officials. The chief thought expressed to me by farmers and ranchers was the need to find more innovative ways of marketing agricultural products. The marketing of products—domestically and internationally—is a challenge that we face.

It seems our farmers and ranchers realize that in the long run we cannot depend upon subsidies and farm programs, although certainly during the transition period, these are important. We have to find ways, for example, to market more milk. There presently is little incentive for the marketing aspects of milk because the Government buys any surplus, so the wholesalers and the milk processors have really no incentive for market development.

Media reports have also had a great impact on the red meat industry. There has been much said about the impact of beef on cholesterol levels. The fact is that lean beef actually has less cholesterol in it than chichen or pork. That is not well known. We need to get out these facts.

Internationally, we must recognize that some of our greatest competitors are in the Common Market. There is need for a treaty or an agreement with the Common Market on some type of production control. If we have production control in the United States, it will merely benefit European producers, Canadian producers, and Argentine producers.

If just our country enters into production controls, other countries will benefit and produce more. We are living in a very curious world in terms of food production. The Western democracies are producing surpluses and have enormous surpluses. It is going to cost us a great deal to store the upcoming surplus of wheat and feed grains.

There are countries in the world where there are many hungry people, but it is extremely difficult to get the food to them. It is a transportation problem, much more so than the availability of food. Indeed, there may be free food available, but frequently it rots on the docks. So we have this irony.

□ 1250

Also, modern technology regarding agriculture has brought us to a time when India can export food. China is exporting food. Our leading competitors are some of our closest allies.

We have a balance-of-trade problem for the first time, and it is largely because of a decline in agricultural exports.

As I visited farmers and ranchers in my State this weekend, one of the things they said was that if we are to have production controls, Canada, Argentina, and Australia should have controls. They ask if there could be an agricultural agreement similar to GATT.

It may sound far afield, but the Common Market countries are having the same problems we are, as are the farmers of Canada, Australia, and Argentina. An agreement is something for us to pursue.

Also, they emphasize that we should make every effort to develop the markets of small- and medium-sized countries.

Between our budget deficit and our trade deficit, we are in for hard times. We may have to lower our standard of living in the United States, and that is a grim bit of medicine. Unless we can reduce the budgetary deficit and the trade deficit, I feel that we are in for a very difficult 5 to 10 years.

Mr. President, with that, I conclude my statement, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1300

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m. with statements therein limited to 5 minutes each.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business, If not, morning business is closed.

THE PRODUCT LIABILITY REFORM ACT

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

The motion to proceed to the consideration of S. 2760, a bill to regulate interstate commerce by providing for a uniform product liability law, and other purposes.

The PRESIDING OFFICER. Who seeks recognition?

Mr. DANFORTH. Mr. President as I understand it, the question is the motion to proceed to the product liability bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. DANFORTH. That is debatable?

The PRESIDING OFFICER. That motion is debatable.

Mr. DANFORTH. Mr. President, I am at a loss for words. I obviously would like to see the Senate proceed to this bill. I think that we have done good work in the Commerce Committee. We have certainly spent a lot of time on this issue, and I am prepared to move forward with the motion to proceed and then with the bill itself.

I know that some Senators have been working on some amendments to the bill, and I would be very happy to work with Senators on their suggestions to improve the legislation.

So I am here on the floor waiting to do business.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that this not be considered my second speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. I thank the distinguished chairman of our committee.

Mr. President, with respect to product liability, it is very interesting that some of the major participants in the

Challenger disaster consideration by Congress are right here and present and, therefore, all three of us are able to discuss it with a speaking knowledge.

At the time of the *Challenger* disaster, which I consider a foremost product liability case, and I have several others, the very reason that we do not want to proceed at this particular time to this measure—and obviously they are going to proceed if they insist and this Senator does not mean to stand day in and day out just to prevent it—is that I am trying to get full consideration of the bill. We never had a comprehensive hearing on this issue. We have had changes here, and another separate limitation bill, pain and suffering, and then another bill on settlement disposals and another measure that came forward.

□ 1310

There have been so many measures and not once really has there been comprehensive treatment or consideration for the measure itself—so-called tort reform. And this is only consisting, if you please, Mr. President, of a very, very limited part of the fundamental responsibility of the States which, over the past 200 years in their treatment of the common law and their own statutory provisions, have generally done a very, very good job.

And what happens when you do not have a comprehensive approach to it is exactly what is happening here.

In the New York Times this morning, the headline reads: "NASA Had Solution to Key Flaw in Rocket When Shuttle Exploded." I ask unanimous consent that the full article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

NASA HAD SOLUTION TO KEY FLAW IN ROCKET WHEN SHUTTLE EXPLODED

(By William J. Broad)

The key solution proposed by the space agency to the problem that caused the Challenger explosion was devised years before the disaster and was being systematically applied to the entire space shuttle fleet, interviews, documents and testimony show.

The record shows longstanding worry about seals on the shuttle and application of an innovative remedy to generations of booster rockets. It also shows why the solution was unavailable for the Challenger flight of Jan. 28, in which a leaky booster seal touched off an explosion that destroyed the craft and killed its seven astronauts.

To critics, this new history suggests duplicity on the part of the National Aeronautics and Space Administration: While publicly declaring the shuttle safe to fly, these critics say, NASA officials knew the flaw was grave and had quietly embarked on a major program to fix it.

DENIAL FROM NASA

NASA officials vigorously deny this charge, insisting they were unaware of the seriousness of the flaw and were simply trying to increase the booster's margin of safety.

No matter what prompted past action, the fact that NASA has almost five years of experience with the remedy explains how the agency was able to propose a $300 million seal redesign, unveiled Aug. 12, as fast as it did. Both critics and NASA officials agree that the space agency is now following the basic course it set for itself long before the Challenger disaster.

The key element of the redesign was invented in 1981 to lock seals tightly in place by latching down an element of the joint. This capture feature was applied to the design of booster rockets in 1982 and again in 1985.

In July 1985, amid growing fears of seal failure, NASA officials ordered 72 new steel cases so they could install capture features in boosters already in use. These new cases were in production at the time of the Challenger disaster and today they are the basis for the creation of improved boosters.

This history, gleaned from dozens of interviews, hundreds of newly released documents and thousands of pages of testimony, much of it originally kept secret, is sharply at odds with information previously made public. It had been thought that NASA officials were concerned about the booster seals before the Challenger disaster and were searching for a way to fix them. In fact "the solution," as NASA engineers called the capture feature, was already being systematically if slowly applied.

The Presidential commission that investigated the Challenger disaster steered away from this history and the issues it raises. Among them are: Who knew replacement casings had been ordered? Did officials who knew about these casings press to continue flights? Why was the new design being applied slowly?

The commission's chairman, former Secretary of State William P. Rogers, said the panel should deal only with events leading directly to the disaster. But others are investigating deeply in other directions.

Representative James H. Scheuer, for instance, sits on a Congressional committee that recently reviewed the Rogers commission's findings and held hearings on the disaster. "It's remarkable how much NASA knew and how little they did about it," said Mr. Scheuer, a Queens Democrat. "There was no sense of urgency. There was no order or direction that went out. There was no mobilization of forces."

Richard C. Cook, a former NASA budget analyst who warned in 1985 that problems with the shuttle's booster joints might lead to a catastrophe, said: "The capture feature was to be the solution. It was clearly a big step. But it was happening very slowly."

"The engineers knew about the big fix," he said, but until it was carried out, "they held their breath every time the shuttle took off."

John E. Pike, director of space policy at the Federation of American Scientists, called the situation at NASA "shocking."

"They were clearly covering up the magnitude of the problem," Mr. Pike said. "It raises the question of who knew what when. It's one thing to say this was a dinky little problem that a few engineers worried about, and another to embark on a major redesign of the system."

The fact that the space agency applied the "solution" as early as 1982 and again in 1985 will affect litigation over the Challenger disaster, according to a lawyer representing Cheryl McNair, widow of Dr. Ronald E. McNair, one of the Challenger astronauts.

"Why fix the booster if it wasn't broken?" asked Ronald D. Krist, a Houston lawyer who has filed suit in Texas in behalf of Mrs. McNair.

"It makes the fact that they forced this launch all the more reprehensible," Mr. Krist said. "It shows a conscious indifference to the welfare and safety of the astronauts. Rather than postpone a launch, they pressed ahead."

Mrs. McNair has sued the booster maker. In addition, Jane Smith, widow of the Challenger's pilot, Comdr. Michael J. Smith of the Navy, has filed an administrative claim against the Government.

In defending past actions, NASA officials insist the depth of the booster problem was unknown before the Challenger disaster. Casing design improvements, they assert, were part of a wide-ranging effort to make all flight equipment as safe as possible.

"Enhancement of that joint was just one several things we were working on," said James E. Kingsbury, director of science and engineering at the Marshall Space Flight Center in Huntsville, Ala., which has responsibility for design of the booster rocket. "No one recognized the weakness it contained."

Thomas L. Moser, deputy associate administrator (management) for space flight at NASA headquarters in Washington, agreed. "In fairness I don't think you can say NASA was flying with a system it regarded as inadequate," he said. "The design was seen as marginal but adequate. It's just that there was an opportunity to increase the margin of safety."

HISTORY OF JOINT IS A COMPLEX ONE

The history of the capture feature begins in 1974 when the Thiokol Corporation, now part of Morton Thiokol Inc., won the contract to design and build the shuttle's solid-fueled booster rockets. They were to be 12 feet in diameter and 149 feet long. For ease of assembly, the boosters were built in parts, including four steel-walled, 27-foot-long fuel segments. These were cast in Utah and shipped to Florida, where they were bolted to one another with 177 steel pins at each seam. For strength at each joint, a three-inch tongue from one steel case fit snugly into a corresponding groove on the next, locking the segments tightly together. Or that was the plan.

In testing in 1977, the joint was found to be seriously flawed. As the rocket ignited, explosive pressures puffed out its half-inch steel walls. At the same time, the joint, where metal was thicker, resisted this motion. The result was a slight shift or rotation of tongue and groove in relation to each other, creating a gap between them. The design called for this gap to be filled by two rubbery O rings meant to prevent gases burning at 5,900 degrees Fahrenheit from leaking out the rocket. The wider the gap the greater the danger and the joint would not seal.

The discovery of the rotation prompted a series of memorandums at Thiokol in Utah and Marshall in Alabama. The existing tongue-and-groove joint was nonetheless deemed safe enough to fly. Tests showed that at least one of the O rings would hold in each joint. And they did, with few problems, in the first few shuttle flights.

Soon, however, two design changes to improve booster casing made joint rotation worse.

In April 1981, as the first shuttle flew into orbit, NASA engineers were planning two new generations of booster rockets. The

first was to have lightweight steel cases so shuttles could carry heavier payloads into space, making the winged spaceships more cost-competitive. Shaving a few hundredths of an inch of steel from casings would lighten them by 4,000 pounds, or about 4 percent.

The second generation of casings was to replace steel altogether with lightweight carbon filaments and epoxy resins. These filament casings were viewed as critical for impending flights from Vandenberg Air Force Base, Calif., where shuttles would be sent southward into a polar orbit more difficult to achieve than the more equatorial orbit flown by shuttles launched from Kennedy. Vandenberg shuttles had to be as light as possible; filament casings made each booster 33,000 pounds lighter.

But both new casings were more elastic than the old ones, and their walls ballooned even more on rocket ignition, increasing joint rotation.

"We worried about the lightweight steel case," said Kenneth W. Jones, a Marshall booster engineer. "It aggravated the rotation. And the filament would aggravate it even more. So we were looking for a way to reduce it." Alternatives for the lightweight steel casings were limited because it was simply a pared-down version of the old one. No fundamental change could easily be made in its joint. So attention focused instead on the filament casing and its joint, which were altogether new.

ANOTHER COMPANY ENTERS THE PICTURE

In 1981, engineers from Marshall discussed the rotation problem with representatives of the aerospace division of Hercules Inc., in Murray, Utah, and Thiokol, the two companies seeking the contract for the filament casing. Later, in preliminary design studies, both companies sketched joints nearly identical to the steel-case joints. But on Dec. 4, 1981, a Hercules engineer hit on an altogether new idea.

"I'd been mulling over the problem for months," Frederick Policelli, the inventor, recalled in a recent interview. "Finally it just popped into my head. I was on my way out the door, so I sat down and sketched it out." At the time, Mr. Policelli was technical manager of the filament booster program at Hercules. His idea, which he called a "capture lip," came to him as he was leaving a meeting with Marshall officials in Alabama.

The capture feature was envisioned as a one-inch appendage on the tongue that inhibited movement of the opposing groove, which held the pair of critical O rings. The whole joint was to be machined from one solid piece of steel to be tightly bonded to the filament case. The capture feature would give the wobbly joint stability not unlike that of firm handshake.

In early 1982, Thiokol and Hercules submitted rival bids and designs for the filament-cased boosters. Thiokol proposed the same joint as on the steel case. Hercules proposed the capture feature.

"I jumped on it and championed it," said William L. Ray, an engineer at Marshall who had long criticized the booster joint as unacceptable. "There was a lot of opposition."

"People didn't understand" the joint or its problems, Mr. Ray said.

Influenced by the strong advocacy of Mr. Ray and other Marshall engineers, the space agency in May 1982 awarded Hercules the contract to develop filament casings. "The capture feature wasn't the only reason they won it," Mr. Ray said, "but it clearly was a plus."

BITTER FIGHTING BETWEEN COMPETITORS

The capture feature received no patents for originality or awards for elegance. But it did turn a flawed joint into one that was much less susceptible to rotation.

It also injected an element of corporate rivalry into the manufacture of shuttle boosters, one that flared into bitter fights between Thiokol and Hercules. The new joint, after all, could be viewed as an indictment of the old one. Tension ran especially high because Thiokol was still to be in charge of filling the filament casings with fuel and readying them for flight. At one point in late 1982, Thiokol, exerting its influence, stopped Hercules from releasing plans for the filament joint to a forger, the Ladish Company in Cudahy, Wis.

"It came to a showdown," Mr. Policelli of Hercules recalled. "We went to NASA and they supported our side."

A spokesman at Thiokol's facility in Brigham City, Utah, defended the company's unwillingness to add a capture feature, saying that even today there are questions about its effectiveness. "It takes time to learn what changes are necessary," said Rocky Raab, the Thiokol spokesman.

At the time, the future of the filament casings was additionally unclear because NASA officials were unsure whether the new design might become the mainstay of the shuttle fleet, replacing steel casings altogether. Use of the lightweight filament casings would greatly increase the weight of the payload each shuttle could carry into space.

In 1982, the space agency's master plan was to begin using filament casings in Vandenberg launchings by October 1985. At first, these filament casings were to be used once and discarded, unlike steel casings used at Kennedy that were meant to be cleaned, refilled and reflown up to 20 times. But over time, with more research and development, filament casings, too, were to become reusable, which would make them practical for use throughout the shuttle program.

Re-useability "was a goal, not a firm requirement," said a Hercules official in Utah, who spoke on the condition of anonymity. "We were to see if it would work for the program as a whole. And one of the beauties was that it had the capture feature."

PUTTING THE DESIGN INTO PRACTICE

In 1982 and 1983, however, space agency engineers were loath to gamble the program's future on the successful development of re-useable filament boosters. Hedging their bets, they discussed the possibility of creating steel casings with a capture feature, according to Mr. Ray. All it would take was casting new steel casings with an additional three inches of steel around the inside of one end, into which a capture lip could be machined.

Each two-part, 27-foot fuel segment would then comprise one new casing with the capture feature and one old casing, the pair sturdily joined at the factory in Utah. These segments, each with a capture feature at one end, could then be pinned together at the Kennedy Space Center. Alternating new and old casings would mean that, as the shuttle fleet expanded, all of the old metal casings could be used.

But there would be drawbacks as well. Capture features would add about 200 pounds each, or a total of 600 pounds per booster rocket—a small but significant amount. Assembly of segments with a capture feature would also be more complex. Moreover, engineers estimated it would take 27 months for new steel casings to be forged, machined, filled with fuel and readied for flight. Finally, in 1982 and 1983, no one was sure the capture feature was the best solution.

"There was great interest in incorporating the capture feature in the steel case," Mr. Ray of Marshall recalled. "The reason it wasn't done quicker is that we wanted to be sure it worked. That joint looks simple, but it's very complex. You don't want to accidentally make it worse." Marshall decided to wait for results from the testing of the filament case, and then make a decision about using it in new steel casings.

Meanwhile, steel booster performance problems increased, in part apparently because of adoption of the lightweight steel casings. These were first used to boost the shuttle aloft in April 1983 and thereafter became a standard feature of all flights. In 1984, O rings in lightweight steel boosters were found to have been damaged by hot gases on successive shuttle flights in February, April and August.

Fortunately, a rich harvest of data had been gathered starting in late 1984 on the effectiveness of the capture feature. The first full-scale filament test firing took place in Utah in October 1984, and others quickly followed. Moreover, laboratory tests were begun to investigate the dynamics of the capture feature. This testing program ended in the spring of 1985. "We were convinced the capture feature was a good thing," Mr. Kingsbury of Marshall recalled.

PROBLEM IS SEEN WITH THE O RINGS

Then, in June 1985, engineers discovered for the first time that hot gases had gone past a primary O ring on a shuttle flight and had started to erode a secondary ring.

A month later, Marshall officials responded by putting a "launch constraint" on all shuttle flights; from then on, the latest available information on joint problems would have to be discussed in readiness reviews before each flight.

The steel booster program had reached a turning point. In July 1985, more than three years after NASA decided to put the capture feature in the filament casing, Marshall and Thiokol officials acknowledged that the steel boosters needed them, too. They ordered the Ladish Company to begin forging 72 new steel casings for the booster rockets, according to secret testimony recently made public by the Rogers commission and in Congressional hearings.

On Aug. 19, 1985, Thiokol and Marshall officials briefed officials at NASA headquarters in Washington on the erosion of the O rings. Documents prepared for the briefing made reference to the "potential long-term solution," the capture feature. The documents said it could have its "earliest possible implementation" with a shuttle mission then scheduled for August 1988.

The Rogers commission later concluded that O ring erosion information presented at this August meeting had been "sufficiently detailed to require corrective action prior to the next flight." But nothing was altered in the following shuttle missions.

On Jan. 16 and 17 of this year, less than two weeks before the Challenger disaster, NASA engineers and those from Thiokol met at Marshall to review the history of O ring problems and possible solutions. The first item on the agenda was the capture feature, its status in the filament casings, and its future in the steel ones. A briefing

paper prepared for the meeting noted that steel casings with a capture feature were due for delivery by February 1987.

On Jan. 28, the Challenger exploded, killing all seven crew members. According to the Rogers commission, the disaster was triggered when hot gases leaked past O rings through the lower field joint of the right booster rocket.

WORK IS ACCELERATED AFTER EXPLOSION

On Feb. 4, Marshall officials met with shuttle contractors to discuss "acceleration of work on new steel casings, according to documents released by the Rogers commission. The February 1987 arrival date was abandoned for more urgent application of the new design.

Lawrence B. Mulloy, who then headed the booster program at Marshall, told the Rogers panel six days later, "We now will have the first of those parts delivered in 1986, in August of 1986."

Mr. Mulloy's testimony, at the commission's first closed session, contained his first reference to the new booster casings. His remarks troubled the commissioners.

Neil A. Armstrong, former astronaut and panel vice chairman, said he thought the public would not understand why the proposed solution to the booster joint problem had not already been applied.

Mr. Armstrong said: "I am concerned, Mr. Chairman, in looking ahead at the perspective of the audience and the people listening, that we will have demonstrated that there was a concern in this particular technical area, but it wasn't deemed dangerous to fly, it was deemed safe to fly, but it was also deemed that it ought to be fixed and be better, and work was going on, which makes an undestandable story to me, but I am not sure that it will be understandable to everybody else."

"Why was it safe?" he said people would wonder, " 'And if it was, why were you fixing it?' And that concerns me a little bit."

"It concerns us as well," said Jesse Moore, then director of the shuttle program.

Dr. Richard F. Feynman, a Nobel Prize winner in physics and one of the panel's most outspoken members, agreed. "It does look terrible," he said.

Mr. Rogers, the chairman, turned his colleagues away from this line of questioning, saying their investigation should focus on events leading up to shuttle mission 51-L, Challenger's last, rather than on planning that was under way at NASA. Mr. Rogers said: "If you went through all of the things that Larry has gone through and then the last question is, does any of this relate to 51-L, and the answer is no, everybody is going to say, well, why did you spend all of that time on it?"

Although the commissions's final report did not deal with the capture feature's history, much of it is detailed in more than 122,000 pages of documents and 12,000 pages of testimony the panel made public.

In May the first of the new steel cases was delivered to a subcontractor in California for machining, including cutting the capture feature.

On June 6 the Presidential commission issued its final report. The text of the 256-page document made no mention of the capture feature or the 72 new steel casings.

On June 12, L. Michael Weeks, NASA's deputy associate administrator (technical) for space flight, told a Congressional hearing, "The 72 casings were ordered because we knew the rotation problem was serious." The fact that the work got under way in July 1985 "is now saving us six to nine months in the implementation program," he said.

Asked if shuttle flights should have continued in 1985 despite the program to fix the boosters, Mr. Weeks responded that NASA officials believed continued flights were reasonable given their knowledge at the time.

On Aug. 12 at a news conference in Alabama, Marshall unveiled its redesign of the booster joint. The main element was the capture feature.

Well, as a Senator on the committee, necessarily, I could not say I was in any way surprised. And the reason I was not surprised is that I had been earlier surprised when I listened to National Public Radio, just about 2 weeks after this particular tragedy. National Public Radio had the foreseeability and acumen to go out and start interviewing witnesses—something which I asked Chairman Rogers to do, and which he seemed very reluctant to do a thorough job on it. The article this morning points this out.

NPR went to Brigham City, UT, and to the Morton Thiokol plant in Huntsville and they took statements from the engineers at Morton Thiokol. And I was listening to my radio and the interview was from one of the particular engineers who described the scene the morning of the shuttle tragedy. He said he had earlier attested to the situation where the one engineer, Allan McDonald, had objected the afternoon before that the launch conditions were unsafe. And then the story had developed already how they, on that evening, overruled—you see, that is what we are into, product liability—they overruled safety. They overruled the engineers and they very cleverly said, "This is a business decision." Translated, of course, "This is for profit."

Every business properly operates on a profit motive and no one objects to that. But what we have over the 200 years of tort liability law is to make certain that we have an exercise of care and safety and that we are not harmed or injured by business decisions in which, if you read this particular article I referred to, they can measure and compute ahead of time what it would cost for disaster and what it would cost for a new rocket booster. We have run into this in the Ford Pinto case. We have run into it in other cases.

So here we have this development of the law over the 200-year period and we see it come home to roost here in a very dramatic way when the Times reports that NASA had the solution to the key flaw in the rocket when the shuttle exploded.

I said I was not surprised because National Public Radio, in interviewing one witness, said:

We all in that room not a soul would give the go-ahead. There were 12 engineers and they all said it would be unsafe. And so at the time we were saying a prayer because we thought that the rocket and the *Challenger* would explode on the pad.

That is substantially the statement made. "We thought it was going to explode on the pad." Then that particular witness goes and develops further his thoughts and he says:

And I saw it go up and I said, "Thank God, there she goes." Like a piece of cake. I was so happy and then all of a sudden it exploded and everyone in the room knew why.

There you are. They knew why. Why did they know why? Look at the Times article this morning. They had had trouble for several years. They had it as an unsafe situation and as a result had already ordered a so-called fix to it.

I should refer to the article itself.

The key solution proposed by the space agency to the problem that caused the *Challenger* explosion was devised years before the disaster and was being systematically applied to the entire space shuttle fleet, interviews, documents and testimonies show.

Now let me divert from the article and congratulate this New York Times reporter. I have not had the privilege of meeting William J. Broad, but it is quite obvious from this particular article that this gentleman was performing exactly what I said. I told Chairman Rogers, "The New York Times, the Aviation Weekly and all of these other very good periodicals and journalists will be out there as investigative journalists and they will find out. The truth will come out."

I was trying to insist on a bipartisan committee approach, as we used in the Apollo disaster. But we were stonewalled on that score.

Now, Mr. William J. Broad comes after his investigation, and reports, quoting now:

The record shows longstanding worry about seals on the shuttle and application of an innovative remedy to generations of booster rockets.

Let me add as an aside here, that in no place in that 275-page report of the Rogers Commission did you see that. Read it over. No place will you find anything resembling "longstanding worry about seals on the shuttle and application of an innovative remedy to generations of booster rockets."

Yes; we brought that out and the Congress brought that out. Allan McDonald brought it out. NASA said they tested it back in August. They had a seminar here at the NASA headquarters on this same O-ring defect. But it is much, much longer standing than that.

And you will find later on here in this article how Mr. Rogers turned aside from that and said that he did not want to get into that at all. He said he just wanted to stick to the particular little incident right around the time of the explosion, when in reality the incident right around the times goes all the way back to exactly what

they are doing now—the fix. You will find that this fix they came up with some years back is exactly what they then reported to us in the Congress after the disaster and said, "Oh, we are ready now to fix these boosters."

How could they find a fix so quickly? It was because they "found"—past tense—they had "found" a fix and were already developing it. Only they were taking their leisurely time about it.

I refer again back now to the article:

It also shows why the solution was unavailable for the *Challenger* flight of Jan. 28, in which a leaky booster seal touched off an explosion that destroyed the craft and killed its seven astronauts.

To critics, this new history suggests duplicity on the part of the National Aeronautics and Space Administration: While publicly declaring the shuttle safe to fly, these critics say, NASA officials knew the flaw was grave and had quietly embarked on a major program to fix it.

NASA officials vigorously deny this charge, insisting they were unaware of the seriousness of the flaw and were simply trying to increase the booster's margin of safety.

No matter what prompted past action, the fact that NASA had almost five years of experience with the remedy—

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Get that. Five years of experience with the remedy—

explains how the agency was able to propose $300 million seal redesign, unveiled Aug. 12, as fast as it did. Both critics and NASA officials agree that the space agency is now following the basic course it set for itself long before the *Challenger* disaster.

The key element of the redesign was invented in 1981 to lock seals tightly in place by latching down an element of the joint. This capture feature was applied to the design of booster rockets in 1982 and again in 1985.

In July 1985, amid growing fears of seal failure, NASA officials ordered 72 new steel cases so they could install capture features in boosters already in use. These new cases were in production at the time of the *Challenger* disaster and today they are the basis for the creation of improved boosters.

This history, gleaned from dozens of interviews, hundreds of newly released documents and thousands of pages of testimony, much of it originally kept secret—

And some of it is still being kept secret and this Senator will bring that out in due time—

is sharply at odds with information previously made public. It had been thought that NASA officials were concerned about the booster seals before the *Challenger* disaster and were searching for a way to fix them. In fact "the solution," as NASA engineers called the capture feature, was already being systematically if slowly applied.

The Presidential commission that investigated the *Challenger* disaster steered away from this history and the issues it raises. Among them are: Who knew replacement casings had been ordered? Did officials who knew about these casings press to continue flights? Why was the new design being applied slowly?

The commission's chairman, former Secretary of State William P. Rogers, said the panel should deal only with events leading directly to the disaster. But others are investigating deeply in other directions.

Now, Mr. President, let me divert from this article to say if this does not directly apply to this disaster, I do not know what does. NASA knew what the problem was. They called a few days after the occurrence and said the picture showed, and I remember, "an ephemeral poof" of smoke. They were not surprised. They were not surprised at all. The engineers were sitting around wondering why it did not blow up completely at that particular time. But, you know, they were conditioning the Senators and the American public to cover this one up and say, "Well, it just did not happen immediately around the time and there was no connection."

There is a direct connection here and this excellent article makes the connection.

Referring back to the article:

Representative James H. Scheuer, for instance, sits on a Congressional committee that recently reviewed the Rogers Commission's findings and held hearings on the disaster. "It's remarkable how much NASA knew and how little they did about it," said Mr. Scheuer, a Queens Democrat. "There was no order or direction that went out. There was no mobilization of forces."

Two things come to mind. I am diverting from the article to bring up particular points for this Senator. I congratulate Mr. SCHEUER in that his congressional committee has been able to review the Rogers Commission findings. I want to review not only the Commission findings; I want to review the entire matter. I want to get to these events and other allied matters that were not included in the Rogers Commission report. We have not yet been able to do this in our Commerce Committee. They have stonewalled us. They have yet to be able to schedule this important matter for any hearings.

They wanted us to go ahead with the NASA authorization, and then they would go ahead immediately and have a thorough investigation of at least the Rogers Commission hearings themselves. But we were not allowed to do even that.

I am glad Mr. SCHEUER on the House side was allowed to do it.

I am reminded of a point that will come up later this week, perhaps, concerning Dr. Graham, who was NASA's Acting Administrator. He's the one who misled me in his testimony before the Commerce Committee. He is the one who was the administrator at the time of the *Challenger* disaster. Now, unlike the Chernobyl disaster where the Soviets held the person responsible for it, we have a no-fault doctrine from certain political hands here in Washington. In contrast to no-fault, we have a promotion. We are going to make Dr. Graham the National Science Adviser. This Senator has no intention of voting for him, I can tell you that. We are not going to promote that kind of leadership and that kind of responsibility.

Referring back to the article:

Richard C. Cook, a former NASA budget analyst who warned in 1985 that problems with the shuttle's booster joints might lead to a catastrophe, said: "The capture feature was to be the solution, it was clearly a big step. But it was happening very slowly."

"The engineers knew about the big fix," he said, but until it was carried out, "they held their breath every time the shuttle took off."

John E. Pike, director of space policy at the Federation of American Scientists, called the situation at NASA "shocking."

I appreciate that particular reference because someone would think it was political. We never had any political interest in this particular matter. How could one? I had a political responsibility as ranking member of the Commerce, Space, Science, and Transportation Committee. We have been having the hearings and promoting NASA, and I still promote them. I tried for a higher amount in the NASA authorization so we could have the fourth shuttle, the station in space, and everything else, because I do not want the Soviets to get ahead of us. But I thought the best politics was no politics, and what we all ought to do, since we did not know, was to let the chips fall where they may.

Chairman Rogers was nettled by anyone who had the ability to cross examine and get into any facts. They wanted to go off on all these things but when they got into some of the things—as a good old practicing attorney he knew it and was familiar with it—he just led them off. I will come to the part of the article in just a little while.

So when John E. Pike of the Federation of American Scientists called the situation at NASA shocking, I want to say I agree.

Returning to the article:

"They were clearly covering up the magnitude of the problem," Mr. Pike said. "It raises the question of who knew what when. It's one thing to say this was a dinky little problem that a few engineers worried about, and another to embark on a major redesign of the system."

That is not a politician charging coverup. That is a scientist.

The fact that the space agency applied the "solution" as early as 1982 and again in 1985 will affect litigation over the *Challenger* disaster, according to a lawyer representing Cheryl McNair, widow of Dr. Ronald E. McNair, one of the *Challenger* astronauts.

"Why fix the booster if it wasn't broken?" asked Ronald D. Krist, a Houston lawyer who has filed in Texas in behalf of Mrs. McNair.

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Mr. President, I divert again from the article itself to acknowledge, of course with pride, that Ronald NcNair

was a constituent, born and raised in South Carolina. I have stayed away, since I had this official interest in it, from any conversations with Mrs. NcNair other than, of course, attendance at the services and speaking with her and Ronald's mother personally. Ron McNair, a year before this disaster, filled in for me at Spartanburg High School at a particular talk on Space Appreciation Day. I had tremendous admiration for him. But I did not want my concern about the lack of a thorough investigation and the fact that he was my constituent to be involved in any way in bringing suit, selecting a lawyer, or having any conversation at all about it.

I have not had the pleasure of meeting this Mr. Krist, but I can tell you now that he or any other lawyer, under product liability, can and should be able to have an open-and-shut case there.

With respect to all of this conversation about juries with deep pockets—"deep pockets, deep pockets," I would hate to have to sit on a jury myself and make a money determination in this particular case regarding the *Challenger* disaster. But if they do, and they will if it is taken that far, it will put any and every contractor on notice. That is the purpose of this tort system.

How can the little man, Mr. President, ever protect himself in this society of ours up here in Washington? These Washington representatives and lobbyists and attorneys all over this place—tax reform is what they are worried about. They are not worried about individuals or any tort liability.

In fact, they have the bum's rush on. The Chamber of Commerce, the National Association of Manufacturers, and all the other groups around—business groups—are really saying we are going to cut all these deep pockets and these high verdicts. They are saying: "There will be a cap on this one, they will be disallowed to join in several liability, and the injured is going to have to pay the damages."

Can you imagine such a thing in this society? No one suggests it much at the State levels.

We will refer this afternoon to the settlement of cases and how the Federal Government—in particular the Assistant Attorney General—was absolutely negligent in settling the Government's case. Failure to settle a case is the way that the verdict gets to be a large verdict when in fact, it could have been settled many, many times before.

I think the point to be made is that the courts work their will, and the common sense of the American people is found in its jury system. I really, after some 35 or 40 years of practice, have to recognize the fact that on occasion a judge will move in and adjust a jury award.

Under all the States, the trial judge can take and cut back on actual damages or get a new trail so they are not runaway juries. Or in many instances, the trial judge can totally disallow punitive damages. We have not been able to discuss that in the Commerce Committee.

In our committee, the members, generally speaking, did not know the difference between actual and punitive damages. They did not know what was actionable negligence. They did not know that you still had to be found, as a matter of law, culpable in these particular things. They just act like all plaintiffs have to do is fill out a form and get their money. The fact is that the information of safe conduct or due care is within the control of the defendant itself, the particular contractor. Now here comes an enterprising New York Times reporter who finds that the Rogers Commission—with all of their FBI investigators and everything else—did not check this out.

These are national heroes we're talking about. Suppose it was just a regular case like those we have in automobile accident cases. Those individuals have to get an attorney. I would doubt that the *Challenger* case is being handled on a contingency fee basis. I have no idea about it. But there would not be any reason for it because the liability is there and fixed. For the most part, the work is there to be developed and to present a reasonable settlement and disposal of the case.

But imagine the average reasonable, sane, and prudent man coming along without the financial resources, without the fame that these particular astronauts had. He needs a trial lawyer on a contingent basis who is willing to work there and develop the case. You can see how much work is involved in the development of these particular cases.

So, as we study and hear about this particular case, we get a better feel for the reason for the 200-year success of the trial by jury and the requirement, if you please, in the Constitution of the amendments, the seventh amendment.

When the Constitution was drafted and the writers of the Constitution asked for comments on the Constitution itself, every State came back and said, "We demand trial by jury." Only seven of them asked about freedom of speech. But every State said, "We want to make certain in the amendments." So in the seventh amendment, we have included trial by jury.

Here we have an assault with a bunch of anecdotal baloney that they have put into the RECORD and newspaper clippings and that kind of thing. This administration, dedicated to federalism, wants to take away the matter from the States in the sense of putting down Federal guidelines, but not take it away.

We could, sometime, take it away. This Senator has been entertaining that thought. So next year, when we come around and start talking about it, mind you me, just say we never heard of that.

I can tell you here and now that if this is what they really want, let us look into it thoroughly and it may be that it is too much of a burden on the insurance companies to have all the multiplicity of jurisdictions. If that is the case, why do they not complain about the multiplicity of jurisdictions in order to be licensed with the filing of each one of their insurance policies? And every one of them say they do not want a Federal insurance commission. They have, almost to a man, surely said, "We don't want to go too far. In fact, we don't want a cause of action in the Federal courts. What we want in this bill is to be able to cut down the chances of an injured plaintiff recovering some money so we can cut down our costs and make even greater profits."

That is exactly what they say they want. They do not give you a Federal cause of action in this bill.

This bill has more things to be heard about. I do not know how else you get everybody's attention in these closing days, except to take the motion to proceed and begin to work at that point so our colleagues and their staffs can be properly informed and so they have to really study carefully what is being done here.

This is a lynching party. They are going to take over the right of trial by jury and federalize in a sense. They didn't give a cause of action, but instead have the 50 State jurisdictions interpret this particular Federal statute to be enacted, appeal it to their supreme court, and then appeal it to the U.S. Supreme Court. All this in the name of saving money. Heavens above!

The chief justice of the supreme court of the State of Virginia came in and said, "If you want to see bureacracy at its worst, if you want to see litigation costs escalate, this is a prescription for actually doubling the litigation costs and everything else." This bill does not simplify. It has been sold at the chambers of commerce and the rotary clubs around America that this is going to simplify proceedings and we are going to get rid of juries looking for defendants with deep pockets. The deepest pocket I know is the National Football League. A jury recently found them liable in a suit brought by the U.S. Football League. You know the verdict they gave? One dollar. So much for deep pockets. The jury has a lot of sense, and they had to treble that so the USFL got $3.

Let me make the record clear. It was an antitrust suit, so they had treble damages. That was great, wasn't it? A deep pocket verdict.

I remember the young teacher just a few months ago down in the State of Georgia, in Athens, at the university. She just said, "Look, I would like these football players to pass an exam now and again."

"Oh, get rid of her," They said at the university. Out she goes. So she had to struggle her way around with a lawyer, had to fight the whole bureaucracy, and she got what? She got what they are now trying to eliminate. She got a jury. And she said she was surprised herself. The jury came in, if I can remember exactly, with something like $300,000 or $400,000 actual damages and about $2 million in punitive damages. I think it was later settled back down.

But she said she was surprised herself. Why would they take and give a large punitive damage verdict? Because that jury was saying, "We do not like this intentional malicious wrongdoing by the institutions in America. The little man knows that in this big society—big TV and big government and big labor and big business—the individual becomes a lesser and lesser entity. The only way to get at them is to put them on notice with a large verdict and then you will not find the universities and institutions firing people for doing an honest job. The large award in this Georgia football case was not just because they had deep pockets.

So the one with deep pockets, the NFL, really got the $1 verdict. The jury could have given all kinds of money that the league makes from the televising of games because they found an antitrust violation. But the jury did not do that. The jury understands these kinds of arguments, and they do a very good job in the States.

They have been up to the task of considering the so-called tort crisis, the insurance crisis, or whatever else they want to call it. I call it a crisis in insurance company credibility because I keep reading how they are making these billions. We will get into that, too, how they are making the billions and billions of dollars.

One of the best buys on the stock market, too, is Aetna. Go out and get Aetna. I recommend it highly. They are really making a fortune up there, but they are telling you that they have to cancel your policy because they are losing too much money on account of the "deep pocket jury."

Let us get back to this New York Times article because the point is very, very important.

"Why fix the booster if it wasn't broken?" asked Ronald D. Krist, a Houston lawyer who has filed suit in Texas in behalf of Mrs. McNair.

"It makes the fact that they forced this launch all the more reprehensible," Mr. Krist said. "It shows a conscious indifference to the welfare and safety of the astronauts. Rather then postpone a launch, they pressed ahead."

If somebody wonders where the money pressure was from, I believe it was Mr. McDonald who was sent down to Huntsville the week before this particular launch and he talked about the renewal of the contract. And then they went back afterwards to discuss the renewal. So they wanted that contract renewed before a second source. And you will find in this article about a second source breathing on their heels. They wanted to make sure they could get the contract signed. It was a money matter and they weren't making a decision. That is this Senator's view of it. But here it goes on:

Mrs. McNair has sued the booster maker. In addition, Jane Smith, widow of the Challenger's pilot, Comdr. Michael J. Smith of the Navy, has filed an administrative claim against the Government.

In defending past actions, NASA officials insist the depth of the booster problem was unknown before the Challenger disaster. Casing design improvements, they assert, were part of a wide-ranging effort to make all flight equipment as safe as possible.

"Enhancement of that joint was working on," said James E. Kingsbury, director of science and engineering at the Marshall Space Flight Center in Huntsville, Ala., which has responsibility for design of the booster rocket. "No one recognized the weakness it contained."

Thomas L. Moser, deputy associate administrator (management) for space flight at NASA headquarters in Washington, agreed. "In fairness I don't think you can say NASA was flying with a system it regarded as inadequate," he said. "The design was seen as marginal but adequate. It's just that there was an opportunity to increase the margin of safety."

Isn't that neat? It is just an opportunity to get some safety. They wanted to have more safety but they did not find any less safety. How are you going to get more if there is not less?

Referring back to the article:

The history of the capture feature begins in 1974 when the Thiokol Corporation, now part of Morton Thiokol Inc., won the contract to design and build the shuttle's solid-fueled booster rockets. They were to be 12 feet in diameter and 149 feet long. For ease of assembly, the boosters were built in parts, including four steel-walled, 27-foot-long fuel segments. These were cast in Utah and shipped to Florida, where they were bolted to one another with 177 steel pins at each seam. For strength at each joint, a three-inch tongue from one steel case fits snugly into a corresponding groove on the next, locking the segments tightly together. Or that was the plan.

In testing in 1977, the joint was found to be seriously flawed. As the rocket ignited, explosive pressures puffed out its half-inch steel walls. At the same time, the joint, where metal was thicker, resisted this motion. The result was a slight shift or rotation of tongue and groove in relation to each other, creating a gap between them. The design called for this gap to be filled by two rubber O rings meant to prevent gases burning at 5,900 degrees Fahrenheit from leaking out the rocket. The wider the gap, the greater the danger that the joint would not seal.

The discovery of the rotation prompted a series of memorandums at Thiokol in Utah and Marshall in Alabama. The existing tongue-and-groove joint was nonetheless deemed safe enough to fly. Tests showed that at least one of the O rings would hold in each joint. And they did, with few problems, in the first few shuttle flights.

Soon, however, two design changes to improve booster casings made joint rotation worse.

In April 1981, as the first shuttle flew into orbit, NASA engineers were planning two new generations of booster rockets. The first was to have lightweight steel cases so shuttles could carry heavier payloads into space, making the winged spaceships more cost-competitive.

□ 1350

Get those words: "Cost competitive."

Shaving a few hundredths of an inch of steel from casings would lighten them by 4,000 pounds, or about 4 percent.

The second generation of casings was to replace steel altogether with lightweight carbon filaments and epoxy resins. These filament casings were viewed as critical for impending flights from Vandenberg Air Force Base, Calif., where shuttles would be sent southward into a polar orbit more difficult to achieve than the more equatorial orbit flown by shuttles launched from Kennedy. Vandenberg shuttles had to be as light as possible; filament casings made each booster 33,000 pounds lighter.

But both new casings were more elastic than the old ones, and their walls ballooned even more on rocket ignition, increasing joint rotation.

"We worried about the lightweight steel case," said Kenneth W. Jones, a Marshall booster engineer. "It aggravated the rotation. And the filament would aggravate it even more. So we were looking for a way to reduce it." Alternatives for the lightweight steel casings were limited because it was simply a pared-down version of the old one. No fundamental change could easily be made in its joint. So attention focused instead on the filament casing and its joint, which were altogether new.

ANOTHER COMPANY ENTERS THE PICTURE

In 1981, engineers from Marshall discussed the rotation problem with representatives of the aerospace division of Hercules Inc., in Murray, Utah, and Thiokol, the two companies seeking the contract for the filament casing. Later, in preliminary design studies, both companies sketched joints nearly identical to the steel-case joints. But on Dec. 4, 1981, a Hercules engineer hit on an altogether new idea.

"I'd been mulling over the problem for months," Frederick Policelli, the inventor, recalled in a recent interview. "Finally it just popped into my head. I was on my way out the door, so I sat down and sketched it out." At the time, Mr. Policelli was technical manager of the filament booster program at Hercules. His idea, which he called a "capture lip," came to him as he was leaving a meeting with Marshall officials in Alabama.

The capture feature was envisoned as a one-inch appendage on the tongue that inhibited movement of the opposing groove, which held the pair of critical O rings. The whole joint was to be machined from one solid piece of steel to be tightly bonded to the filament case. The capture feature would give the wobbly joint stability not unlike that of firm handshake.

In early 1982, Thiokol and Hercules submitted rival bids and designs for the filament-cased boosters. Thiokol proposed the same joint as on the steel case. Hercules proposed the capture feature.

"I jumped on it and championed it," said William L. Ray, an engineer at Marshall who had long criticized the booster joint as unacceptable. "There was a lot of opposition."

Let me divert for a second. I am saying that in early 1982, an engineer at Marshall named William L. Ray said he had long criticized the booster joint as unacceptable. So we knew for years, back into the mid-1970's, that this was defective, and he had long criticized it. It is good to get his record of criticism, to find out exactly what was done about it. He had long criticized the booster joint as unacceptable, yet it was opposed. Why was it opposed? A man of good will certainly did not have any astronauts in mind at the particular time—certainly nothing against these particular heroes we lost. It was obviously money. They were trying to hold back the cost, which is endemic to the American way of doing business.

All these arguments that we are hearing about being more productive in the United States, really, in the matter of international trade, begins on the floor of the U.S. Senate. We are the ones who set the safety standards. They cost, and that goes into the productivity per unit. You will find out that it lowers the productivity of the individual worker.

Who is responsible as we run around telling them that they have to be more productive and competitive? We in Congress. We put in the Occupational Safety and Health Administration. We put in the laws for a safe working place. We put in the laws for safe working machinery. That comes from the harsh experience of American industry and all the industry in the world that uses slave labor. In the People's Republic, they work for 18-cents an hour. In Bangladesh, they work for 14-cents an hour.

All these economists and financial wizards on productivity are running around. This high cost of productivity is well-founded and agreed upon by both Democrats and Republicans in the national Congress, agreeing that we should have these things. But as indicated here, it is going to cost.

Back to the Times article:

"We worried about the lightweight steel case," said Kenneth W. Jones, a Marshall booster engineer. "It aggravated the rotation. And the filament would aggravate it even more. So we were looking for a way to reduce it."

He goes on and points it out completely. Then Mr. Ray says:

"People didn't understand" the joint or its problems, Mr. Ray said.

Influenced by the strong advocacy of Mr. Ray and other Marshall engineers, the space agency in May 1982 awarded Hercules the contract to develop filament casings. "The capture feature wasn't the only reason they won it," Mr. Ray said, "but it clearly was a plus."

BITTER FIGHTING BETWEEN COMPETITORS

The capture feature received no patents for originality or awards for elegance. But it did turn a flawed joint into one that was much less susceptible to rotation.

It also injected an element of corporate rivalry into the manufacture of shuttle boosters, one that flared into bitter fights between Thiokol and Hercules. The new joint, after all, could be viewed as an indictment of the old one. Tension ran especially high because Thiokol was still to be in charge of filling the filament casings with fuel and readying them for flight. At one point in late 1982, Thiokol, exerting its influence, stopped Hercules from releasing plans for the filament joint to a forger, the Ladish Company in Cudahy, Wis.

"It came to a showdown," Mr. Policelli of Hercules recalled. "We went to NASA and they supported our side."

A spokesman at Thiokol's facility in Brigham City, Utah, defended the company's unwillingness to add a capture feature, saying that even today there are questions about its effectiveness. "It takes time to learn what changes are necessary," said Rocky Raab, the Thiokol spokesman.

At the time, the future of the filament casings was additionally unclear because NASA officials were unsure whether the new design might become the mainstay of the shuttle fleet, replacing steel casings altogether. Use of the lightweight filament casings would greatly increase the weight of the payload each shuttle could carry into space.

In 1982, the space agency's master plan was to begin using filament casings in Vandenberg launchings by October 1985.

At first, these filament casings were to be used once and discarded, unlike steel casings used at Kennedy that were meant to be cleaned, refilled and reflown up to 20 times. But over time, with more research and development, filament casings, too, were to become re-usable, which would make them practical for use throughout the shuttle program.

Re-useability "was a goal, not a firm requirement," said a Hercules official in Utah, who spoke on the condition of anonymity. "We were to see if it would work for the program as a whole. And one of the beauties was that it had the capture feature."

In 1982 and 1983, however, space agency engineers were loath to gamble the program's future on the successful development of re-useable filament boosters. Hedging their bets, they discussed the possibility of creating steel casings with a capture feature, according to Mr. Ray. All it would take was casting new steel casings with an additional three inches of steel around the inside of one end, into which a capture lip could be machined.

Each two-part, 27-foot fuel segment would then comprise one new casing with the capture feature and one old casing, the pair sturdily joined at the factory in Utah. These segments, each with a capture feature at one end, could then be pinned together at the Kennedy Space Center. Alternating new and old casings would mean that, as the shuttle fleet expanded, all of the old metal casings could be used.

But there would be drawbacks as well. Capture features would add about 200 pounds each, or a total of 600 pounds per booster rocket—a small but significant amount. Assembly of segments with a capture feature would also be more complex. Moreover, engineers estimated it would take 27 months for new steel casings to be forged, machined, filled with fuel and readied for flight. Finally, in 1982 and 1983, no one was sure the capture feature was the best solution.

"There was great interest in incorporating the capture feature in the steel case," Mr. Ray of Marshall recalled. "The reason it wasn't done quicker is that we wanted to be sure it worked. That joint looks simple, but it's very complex. You don't want to accidentally make it worse." Marshall decided to wait for results from the testing of the filament case, and then make a decision about using it in new steel casings.

Meanwhile, steel booster performance problems increased, in part apparently because of adoption of the lightweight steel casings. These were first used to boost the shuttle aloft in April 1983 and thereafter became a standard feature of all flights. In 1984, O rings in lightweight steel boosters were found to have been damaged by hot gases on successive shuttle flights in February, April, and August.

□ 1400

Mr. President, that is good information for me. I am learning again there were some more deficiencies and indications of the defect of the O rings. I had heard as early as January 1985 about the cold weather at that time of launch. But here now we are reading—and I am indebted to this particular writer—that in 1984 O rings and lightweight steel boosters were found to have been damaged by hot gases on successful shuttle flights in February, April, and August. Anybody that took over the administration of NASA heard about these things or should have heard about it. The Acting Administrator had time to know something about these things, and with the cold weather certainly should have investigated and gone all the way back at least to the 2 years previously in February, April, and August 1984.

We did not see Dr. Graham doing that. We have not had the benefit of his testimony about what he knew and did not know. We know he should have known it.

Quoting further from the article:

Fortunately, a rich harvest of data had been gathered starting in late 1984 on the effectiveness of the capture feature. The first full-scale filament test firing took place in Utah in October 1984, and others quickly followed. Moreover, laboratory tests were begun to investigate the dynamics of the capture feature. This testing program ended in the spring of 1985. "We were convinced the capture feature was a good thing," Mr. Kingsbury of Marshall recalled.

Then, in June 1985, engineers discovered for the first time that hot gases had gone past a primary O ring on a shuttle flight and had started to erode a secondary ring.

A month later, Marshall officials responded by putting a "launch constraint" on all shuttle flights; from then on, the latest available information on joint problems would have to be discussed in readiness reviews before each flight.

So they wanted to make sure that they discussed it, but then it was not to be acted upon or discussed at the lower level where they were really concerned about it.

The steel booster program had reached a turning point. In July 1985, more than three years after NASA decided to put the capture feature in the filament casing, Marshall and Thiokol officials acknowledged that the steel boosters needed them too. They ordered the Ladish Company to begin forging 72 new steel casings for the booster rockets, according to secret testimony recently made public by the Rogers commission and in Congressional hearings.

You have to go down in the Archives, Mr. President, to find this thing. As a Senator running around here, we are voting early in the morning and voting late at night. We are voting on Saturdays. We are going around the clock. If I had 4 to 5 months I could go down there and start reviewing and find out what was kept secret. Thank Heaven for this New York Times reporter who has taken the time to go find these things out for the American public. It was kept secret in the Rogers Commission, and they had these off-the-record hearings, too. So we are only finding out now that they had an audit of them all the way back in 1985 and the middle of the previous year. So 1½ years before the tragedy, it had already been audited. They had 1½ years to get anything done.

This Government has ground to a halt.

Let me take another aside, Mr. President. I visited Building No. 1 down at Lockheed in Atlanta, GA. It is outside Marietta. I want you all to go look at it because it covers some 73 acres, two floors high, totally air-conditioned, heated, and everything else like that. They broke ground for this latest building in February 1942 and started producing planes in it in March 1943. They could build a building in those days. I was going to try to give an award to the contractor. We found out it was some colonel in the Corps of Engineers. They just told him to go build a building and he built it—acres upon acres upon acres it covered. It was the largest building you ever saw in this country.

Nowadays, engineers want to palaver and study and everything else in the world. I can tell you now if we had conditions like we had back in the early forties in this country we could do some things. Over at NASA, 1½ years goes by and they still had an audit. They audited the Ladish Co. to begin forging 72 new steel casings for the booster rockets, according to the secret testimony recently made public by the Rogers Commission and in congressional hearings.

On Aug. 19, 1985, Thiokol and Marshall officials briefed officials at NASA headquarters in Washington on the erosion of the O rings. Documents prepared for the briefing made reference to the "potential long-term solution," the capture feature. The documents said it could have its "earlier possible implementation" with a shuttle mission then scheduled for August 1988.

Why that? We are going to have it before August 1988 right now. We have it right now before August of 1988. But here back in 1985 it said it will take 3 years to get in space. This country will never catch up with the Soviets if they take 3 years to just get one fix on the mechanisms we have to get into space. But that just shows you how easily they go about. I guess you get more retirement or something the more you hang around.

Let me go back to the article:

The Rogers commission later concluded that O ring erosion information presented at this August meeting had been "sufficiently detailed to require corrective action prior to the next flight." But nothing was altered in the following shuttle missions.

(Mr. CHAFEE assumed the Chair.)

Mr. HOLLINGS. Even the Rogers Commission said with that particular finding that that was sufficiently detailed to require corrective action, but nothing was altered in these shuttle flights.

On Jan. 16 and 17 of this year, less than two weeks before the Challenger disaster, NASA engineers and those from Thiokol met at Marshall to review the history of O ring problems and possible solutions. The first item on the agenda was the capture feature, its status in the filament casings, and its future in the steel ones. A briefing paper prepared for the meeting noted that steel casings with a capture feature were due for delivery by February 1987.

On Jan. 28, the Challenger exploded, killing all seven crew members. According to the Rogers commission, the disaster was triggered when hot gases leaked past O rings through the lower field joint of the right booster rocket.

□ 1410

Now, Mr. President, let me divert again to another important point. When I talked to the present administration at NASA, I had been told on some occasion by one of the military contractors that:

Look, we proposed to make a solid rocket booster and it would not have to be assembled and we would not have to worry about O-rings. We would make them down there in Florida and we would just stand them up on the end. We would have to barge them around.

I think their factory was not located directly at Cape Canaveral, and they could be barged around.

So I asked about it at one of the hearings. They said, "Oh, we would not have enough barges," or something like that. They could not find barges.

I said, "My back yard is full of barges from the war in Vietnam and World War II. We have got them all mothballed."

I could get them all the barges they needed.

I am beginning to feel, Mr. President, that the witnesses realized they had already had a fix and it was not necessary. I forget the contractor's name, they are located in Florida, one of the really responsible military contractors in this country. But I said, "We will give them a chance to make a proposal and make a bid." There was a reluctance.

Now I am beginning to understand what I am finding out in the news. I have not had the advantage of an investigation. I have not had the advantage of hearings. Now I am beginning to understand the sort of foot-dragging on the part of NASA when I was all heated up. Here was a contractor that said they could build them and definitely solve the O-ring problems because they would make them solid, barge them around, and put them in place and let her go. We would not have all of that assembly, making them 2,000 miles away and railroading in the parts. They did not have trouble railroading parts all across the country.

I said that they ought to do it right down there in Florida or require Morton Thiokol or, whoever was going to be the contractor, to have the plants relocated.

I remember specifically getting into this at one of the hearings. I lost a plant to Flint, MI. I hate to have to acknowledge that, but this is modern-day industry. The automobile industry now requires the textile folks, when they make the automobile carpet and upholstery, to have a 4-hour delivery. And you cannot make carpet in Greenville, SC, and deliver it in 4 hours to Flint, MI.

So the J.P. Stevens Co. relocated that particular plant all the way up to Flint. The engineers, the designers, the officials of both the automobile company and J.P. Stevens sat around a table and they agreed to this ahead of time. And it is all computerized. They tell me there are 3,000 to 4,000 variations as to whether it has white sidewalls or whether it has a particular transmission or has this kind of backup light or that kind of particular machinery, there are all kinds of variations. It is all computerized. And if they want this particular color and texture of carpet, they punch the computer, which punches the computer down the row, and it is delivered within an hour. They do not have the cost of warehousing. And, as a businessman, you and I can understand that. That cuts down the costs and that cuts down warehousing. This gives instant service. And so, in order to compete, private industry says, "Relocate you plant."

But not political or government industry. Oh, you come up and tell the politicians and they believe anything you tell them. Well, we will not.

You can say, "Look, if you want to compete on this particular contract, you have to put in there as a cost the plant down there."

That is cheap compared to millions and millions of dollars that we are spending down here. And if that is what is takes, a solid rocket booster, without any joints and without any O-rings, without any of the "poofing" out and everything else, then so be it. Let us build it down there.

Well, I was pretty worked up on that particular score, but I can see why they were not worked up. They already had the solution in mind and did not even need another contractor. They had been working on this thing since 1981–82, 3 or 4 years, and had already given the order and already have the fix.

So, necessarily, they were not worrying about Senator HOLLINGS talking about a solid rocket booster without the joints and without the O-rings. So we now begin to understand.

Referring now back to the article:

On Feb. 4, Marshall officials met with shuttle contractors to discuss "acceleration" of work on new steel casings, according to documents released by the Rogers commission. The February 1987 arrival date was abandoned for more urgent application of the new design.

Lawrence B. Mulloy, who then headed the booster program at Marshall, told the Rogers panel six days later, "We now will have the first of those parts delivered in 1986, in August of 1986."

Can you imagine that?

We now will have the first of those parts delivered in 1986, in August of 1986.

That has already passed.

Mr. Mulloy's testimony, at the commission's first closed session, contained his first reference to the new booster casings. His remarks troubled the commissioners.

This is what I want to go into more thoroughly, because even this story leaves out certain details.

Neil A. Armstrong, former astronaut and panel vice chairman, said he thought the public would not understand why the proposed solution to the booster joint problem had not already been applied.

Mr. Armstrong said: "I am concerned, Mr. Chairman, in looking ahead at the perspective of the audience and the people listening, that we will have demonstrated that there was a concern in this particular technical area, but it wasn't deemed dangerous to fly, it was deemed safe to fly, but it was also deemed that it ought to be fixed and be better, and work was going on, which makes an understandable story to me, but I am not sure that it will be understandable to everybody else."

Mr. Armstrong, I plead guilty. It is not understandable to me and I do not think it should be understood. I do not think it should be understood.

"Why was it safe?" he said people would wonder. "'And if it was, why were you fixing it?' And that concerns me a little bit."

"It concerns us as well," said Jesse Moore, then director of the shuttle program.

Dr. Richard F. Feynman, a Nobel Prize winner in physics and one of the panel's most outspoken members, agreed. "It does look terrible," he said.

So they had found out at the very first hearing what looked terrible and they already had a fix and they knew about it and should have known about it for years.

But let me refer now to the story as it goes on:

Mr. Rogers, the chairman, turned his colleagues away from this line of questioning, saying their investigation should focus on events leading up to shuttle mission 51-L, Challenger's last, rather than on planning that was under way at NASA. Mr. Rogers said: "If you went through all of the things that Larry has gone through and then the last question is, does any of this relate to 51-L, and the answer is no, everybody is going to say, well, why did you spend all of that time on it?"

Can you imagine that? Not wanting to go back to what they knew was wrong right at that particular moment? It looked very serious to them and, asked why it was not done, he is saying the exact opposite. We ought to send Rogers to negotiate for Daniloff.

□ 1420

They are now telling us that Daniloff was a spy and the Soviet Zakharov was the fix; that we had laid it on; that it was a total charade; that we had entrapped him. For exactly what happened to Daniloff, they blame us.

For exactly what should have been done, Mr. Rogers is blaming the Commission. He would be a wonderful negotiator to send on the Daniloff case. He thinks backward. I have never seen such a thing as this.

Mr. President, to repeat:

Mr. Rogers, the chairman, turned his colleagues away from this line of questioning, saying their investigation should focus on events leading up to shuttle mission 51-L, Callenger's last rather than on planning that was under way at NASA. Mr. Rogers said: "If you went through all of the things that Larry has gone through and then the last question is, does any of this relate to 51-L, and the answer is no, everybody is going to say, well, why did you spend all of that time on it?"

Although the commission's final report did not deal with the capture feature's history, much of it is detailed in more than 122,000 pages of documents and 12,000 pages of testimony the panel made public.

In May the first of the new steel cases was delivered to a subcontractor in California for machining, including cutting the capture feature.

On June 6 the Presidential commission issued its final report. The text of the 256-page document made no mention of the capture feature or the 72 new steel casings.

Can you imagine such a thing? The 256-page document—the Rogers Commission report—made no mention of the capture feature of the 72 new steel casings.

On June 12, L. Michael Weeks, NASA's deputy associate administrator (technical) for space flight, told a Congressional hearing, "The 72 casings were ordered because we knew the rotation problem was serious." The fact that the work got under way in July 1985 "is now saving us six to nine months in the implementation program," he said.

Asked if shuttle flights should have continued in 1985 despite the program to fix the boosters, Mr. Weeks responded that NASA officials believed continued flights were reasonable given their knowledge at the time.

On Aug. 12 at a news conference in Alabama, Marshall unveiled its redesign of the booster joint. The main element was the capture feature.

It is not mentioned at all in the Rogers Commission report.

Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from Kentucky and the distinguished Senator from Michigan and that I not lose the floor so that I may resume.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Kentucky.

TORT LITIGATION REFORM ACT OF 1986

Mr. McCONNELL. Mr. President, today I submit the Tort Litigation Reform Act of 1986 as an amendment in the form of a substitute for S. 2760, the Product Liability Reform Act. The time has come for Congress to take affirmative action on tort reform. This body has been delaying far too long. The American people are demanding action. They want it, they need it, and they would like to have it now. But as I have asserted here time after time, it is simply inadequate to move on legislation limited to product liability alone.

Mr. President, according to information published by the Administrative Office of the U.S. Courts, it is quite apparent that we are witnessing dramatic trends in the litigiousness of our society. In 1961, 21,205 tort cases commenced in the Federal courts. By 1985 that figure had almost doubled to 41,593. Those figures represent all tort and personal injury suits filed. If we delete those suits involving motor vehicles and property cases, the figures are even more pertinent. In 1961 there were 10,577 such actions, while in 1986 there were 30,784, almost a threefold increase.

One extraordinary statistic is that while motor vehicle suits actually decreased substantially over that same period of time, from 9,083 to 6,776, that is by about one-third, medical malpractice suits commencing in Federal court went from 385 in 1978 to 1,779 in 1985, an incredible percentage increase of 426 percent.

Similarly, between 1974 and 1984 product liability suits filed in Federal court increased 580 percent. Trends such as this in such areas as medical malpractice, product liability, and municipal liability have also been established by such reputable organizations as the Rand Corp.'s Institute for Civil Justice. These studies point not only

to the increase in the numbers of such actions, but also to the relatively higher damage awards and instances of punitive damages in these types of suits. One illustration as revealed by the institute is that between 1960 and 1979 in Cook County, IL, Chicago, a plaintiff who was injured due to medical malpractice was awarded an amount that was 3½ times the amount awarded to a plaintiff for a similar injury due to an accident on property, such as a slip and fall case.

Product liability, Mr. President, while commendable, does not even begin to address let alone resolve this Nation's liability crisis. It cannot resolve the plight of our municipalities, and thus threatens their ability to provide our citizens police and ambulance service, or cope with liability suits against the public schools and public hospitals or provide basic health, sanitation, and other critical services. Can we afford to close our eyes to these other categories that will be provided no relief? The product liability bill would not address what has become the most glaring and shameful consequence of the liability crisis: The victimization of this Nation's medical profession.

Nor does it relieve from the excesses of our liability system other professionals such as engineers, architects, accountants, and, yes, even lawyers.

A product liability bill cannot grapple with the woes of our Nation's small business community, the service and retail industry. These are not industrial giants who can absorb or pass along the outrageous cost of litiation. That is why this past August, this year, the delegates to the White House Conference on Small Business identified comprehensive tort reform, and not merely product liability reform, as their No. 1 priority. That is, Mr. President, the No. 1 priority of the White House Conference on Small Business was identified as comprehensive tort reform.

A product liability bill cannot reach the needs of the volunteer officers and directors of this Nation's charitable institutions either. It would not help the Boy Scouts. It would not help the Girl Scouts, the Cub Scouts, and the Brownies who must now pay a surcharge to meet the rising costs of liability insurance.

And then, Mr. President, there is the ultimate victim, the American consumer and the American worker. As litigation expenses and insurance costs increase, so do the prices of goods and services. Price increases deteriorate our abilities to compete with foreign products.

□ 1430

There are no winners. Mr. President, it is the obligation of the elected representatives of the citizens of this country to set sound and equitable public policy for all segments of this society and not just for some. If the provisions of S. 2760 are just for those engaged in product liability litigation, they are equally fair for all our citizens.

My substitute would correct this flaw by broadening the scope of S. 2760, and enact comprehensive tort reform across the board at the Federal level.

Mr. President, over the course of this session of Congress, I have participated in and chaired several hearings that focused on the need for tort reform. The message we received was quite clear. As I said earlier, the American public want tort reform now!

This message was brought home by a recent Lou Harris survey. It concluded that: "The American people favor radical change in the laws governing liability suits." It found that two-thirds of those surveyed felt that it is "too easy to sue for damages." Two-thirds felt monetary judgements are "too excessive" and would cap non-medical awards at $150,000.

This is the public talking here, Mr. President, through the Lou Harris polls.

An extraordinary 80 percent listed as a primary cause for this runaway litigation to be, as the poll put it, "Lawyers looking for big contingency fees."

Mr. President, let us not point fingers. Let us not waste our time attributing blame. There is enough blame to go around. It is certainly not fair to single out lawyers as the sole cause for the liability crisis. The rules of ethics require lawyers to zealously advocate the cause of their clients.

Certainly, manufacturers must share the blame, to the extent they produce defective products. Certainly, the insurance industry has to shoulder some blame for its peculiar pricing and underwriting methods. And, I might add, my substitute would ask the General Accounting Office to investigate the relative culpability of the insurance industry in exacerbating the liability crisis.

But, Mr. President, beyond any specific class of citizens, it has been the notorious social welfare mentality, fostered by the New Deal and the Great Society programs, that has inspired our legal system to set out to harness the "deep pockets" of our society to pay the escalating costs of a liability system gone amok.

Our courts and our judges, it is sad to say, have done much to fan these flames and little to extinguish them. But, I must confess, our legislative bodies are equally to blame for failing to shoulder their responsibilities in resolving this societal problem. The time has clearly come for Congress to exercise its constitutional duty to check and balance the flaws and abuses that have developed in our civil justice system.

To this end, I introduce the Tort Litigation Reform Act of 1986 as an amendment in the form of a substitute for S. 2760. This bill is not created out of whole cloth, but rests upon the legacy of other efforts at tort reform.

Earlier this year, I introduced S. 2046, the Litigation Abuse Reform Act of 1986, that represented a comprehensive attempt at tort reform. This substitute builds upon that and, in addition, encompasses many of the laudable provisions of S. 2760 and its predecessor bills—developed in large part by Senators KASTEN and DANFORTH.

I think this would be an appropriate time, certainly, to praise the efforts of both those Senators over the years in the field of product liability.

Mr. President, let me state at this point that my substitute is certainly not cast in concrete. It does not contain any magic formulas for tort reform—only reasonable and equitable proposals. I remain flexible and look forward to working with my colleagues to produce legislation that will effectively address this Nation's ailing civil justice system.

Specifically, this substitute would establish unform rules and standards for most personal injury, tort litigation in this Nation. In addition to product liability, these standards would apply to professional malpractice, common negligence and other personal injury actions, but would explicitly not apply—I repeat, not apply—to loss or damage to a product, commercial loss or quasi-criminal intention torts such as assault, batter, and so forth.

In general, it would preempt all inconsistent State and Federal law, but would not affect areas of the law not covered by this amendment. Furthermore, the amendment specifically does not affect the doctrine of sovereign immunity.

The amendment retains the forum non conveniens provision of S. 2760, as well as the provision limiting Federal court jurisdiction.

The amendment would encourage the use of alternative dispute resolution techniques. Attorneys would be required to inform their clients of the availability of alternative dispute resolution techniques. If the parties and the court fail to agree upon the use of ADR, however, a mandatory mediation procedure would be triggered. This mediation procedure has been successfully used in an increasing number of jurisdictions around the country.

The doctrine of joint and several liability would be modified. A party would be liable for damages only to the extent of such party's proportionate responsibility unless: First, the parties acted consciously in concert; or second, a party is deemed to be over

50-percent responsible for the harm caused.

In other words, Mr. President, a defendant not at least 50 percent responsible could not be assessed 100 percent of the damage.

The collateral source rule would be modified. Any judgment would be automatically set-off by any collateral benefits. This set-off would be modified if the beneficiary contributed—through insurance premiums or payroll deductions, etc.—to the availability of these benefits.

A separate section deals with the offset of worker compensation benefits. This section, in general, follows S. 2760. Worker compensation benefits would be deducted from any third-party judgment. The employer's subrogation lien would be eliminated, as would the third party's right to seek contribution from the employer. An employee could only directly sue the employer for the commission of an intentional tort—such as an assault.

A periodic payment schedule would be determined by the court for any judgments over $100,000. In addition, the amendment would set a cap of $500,000 for noneconomic damages. This generous cap would in no way affect wage loss or medical payments or other economic benefits, nor would it limit the amount of punitive damages that could be awarded to the claimant.

As in my earlier bill, S. 2046, I have included a sliding scale for maximum attorney contingency fees. An attorney fee could be no more than 35 percent of the first $100,000, 25 percent of the next $400,000, and no more than 10 percent of the excess over $500,000.

Punitive damages could be awarded only if the trier of fact determined by clear and convincing evidence that the defendant engaged in conduct constituting an extreme departure from accepted standards of conduct and manifesting a conscious, flagrant indifference to the safety of others. The court would subsequently determine the amount of punitive damages, based upon an evaluation of enumerated criteria. In most cases, there could be no award of punitive damages unless there is a finding of compensatory damages. Punitive damages would be limited to three times the amount of compensatory damages or $100,000, whichever is greater. There would be certain exceptions for which no punitive damages could be granted.

This amendment would establish a general negligence-based standard of liability. However, separate standards are created for the liability of product manufacturers, as well as for retailers and distributors of products.

For manufacturers, a negligence standard would prevail for product design and failure to warn of causes of action. Strict liability would govern defects in manufacture or a breach of an express warranty. Defenses would be created for compliance with Government specifications, state of the art, and for unreasonable or unforeseeable use or alteration of a product. A product that is inherently dangerous could only result in liability to the manufacturer if it is more dangerous than expected and its use results in more harm than utility to consumers.

Products sellers would, in general, only be liable for their own negligent conduct. However, they would be treated as, and held liable as, the product manufacturer if the manufacturer is not subject to service of process or is judgment proof. This section is identical to section 302 of S. 2760.

This amendment would impose sanctions upon attorneys bringing actions in bad faith or who purposefully impede the just, speedy or inexpensive resolution of an action.

This amendment also adopts in full the uniform time limitations dealing with statutes of limitation, statutes of repose and useful safe life periods—including all the enumerated exceptions—contained in section 303 of S. 2760. It also adopts the provision dealing with the evidentiary value of subsequent remedial measures.

□ 1440

Finally, the amendment would eliminate the insurance data collection requirement contained in S. 2760 and offer instead, Mr. President, the following proposal. Instead of the data collections section in S. 2760, I would have the Comptroller General be instructed to conduct a study of the insurance availability and affordability crisis to determine the extent to which the insurance industry itself either caused or exacerbated the liability crisis.

Now, Mr. President, let me say in summary that after working on this issue for over a year, I am increasingly of the opinion that the only way to go, if we are going to have tort reform at the Federal level, is with a comprehensive tort reform proposal.

It makes no sense and does not yield a desirable result to segment out only that portion of our society manufacturing products and say those people are entitled to some relief, some cap on damages, some relief on contingency fees, some change in the collateral source rule. Only those people deserve certainty.

If the tort system in America is truly in a crisis—and if you look at the statistics, Mr. President, in the area of suits against professionals, suits against officers and directors, suits against municipalities, the crisis is being created in the area of charities in terms of getting their work done, the Boy Scouts, the Girl Scouts, those kinds of activities, clearly there is a crisis in America—It is a crisis that cries out for a Federal solution. The State-by-State approach is simply not going to get the job done.

It is an area in which the Federal Government should step in, not to create a new Federal agency, not to create new Federal jobs, but to create standards, standards beyond which any State judge or Federal court judge can go. Parameters, if you will, parameters superimposed over the tort system, which has been allowed to go too far.

It is only with those federally prescribed parameters, across the board in my judgment, that you will have some predictability, some certainty in the system, which will produce the desired result. I think you can do it, Mr. President, without abusing the rights of victims, and I think you can do it in a way that helps a whole other set of victims that the opponents of this kind of legislation do not focus upon. Those other victims are the Boy Scouts, the Girl Scouts, the small businessmen, the little cities.

I might say parenthetically that when I was home in August I had a mayor of a small town in southeast Kentucky say to me, "I have just gotten my liability insurance bill for next year and," he said, "I want you to know it is bigger than my budget. Bigger than my budget."

The little cities in Kentucky are telling me, Mr. President, this is a much bigger crisis than the possibility of losing revenue sharing. They are not happy about that, of course, but this is even bigger. This is even bigger. And so without some predictability throughout the system, not just for the big guy, the product manufacturer, but for everybody else, we will not have the kind of relief from the insurance crisis that we need.

Some people have said, "Well, let's just retain the risk; let's make it easier to retain the risk and not harder." That is fine, make it easier for people to self-insure, and when you do that, they are in the insurance business and they look at the tort system in America and they have the problem, with the unpredictability, with the litigious society, with the whole system running amok.

And so clearly, Mr. President, there is one obvious solution to this problem, and that is comprehensive tort reform at the Federal level, standards to be applied in both Federal courts and State courts throughout the land that will give us a sense of where we are in this field, a field that has changed so drastically in the 20 years since I graduated from law school.

Back when I was in law school and we studied torts, the general feeling was that there had to be some fault before you could be assessed damages. What has evolved over the last 20 years is the notion that if anybody gets hurt for any reason, somebody

must pay. And, of course, who is paying is all of us, because that cost of that is being passed on to the insurance-paying public. It has to stop. It has to come to an end now.

I understand my friends who are plaintiff lawyers do not like this; They benefit enormously from the current system, and we are not here to put them down. They have taken advantage of a system that has evolved that benefits them greatly. I do not blame them. That is the way the adversarial system works, but we are not here in this body to stand up for a system that has broken down, a system in which the transaction costs, Mr. President, in a large percentage of tort cases today—in others words, the cost of the court and the cost of lawyers—is greater than the award that ultimately goes to the plaintiff. Something is obviously wrong.

A lot of my friends who are plaintiff lawyers tell me they like the system the way it is; no change. The system the way it is, no change, means justice delayed. It means justice that is too expensive. It means lawyers in many instances who are being paid far more than they should be paid. And so it is our job here in this body, in the Congress, to set the system right, put it back in balance, and to do it in a way that is fair to both the aggrieved victim and the insurance-paying public. The way to do that Mr. President, is clearly with some comprehensive tort reform at the Federal level. I would like to conclude by asking unanimous consent that the text of my amendment, which will be offered in the nature of a substitute, should we have the opportunity to get to that point, be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. McCONNELL. I yield to the Senator from Missouri.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I would like to express my appreciation for the very clear comments of the Senator from Kentucky, for his initiative in preparing amendments to the bill which we want to place before us, and, above all, for his tireless efforts in the field of product liability. There are very few Senators, maybe two or three, who have spent as much time on this subject as has Senator McCONNELL, and there is no one who spent more time.

Clearly, as the Senator from Kentucky has pointed out, this is an issue that cries out for a solution.

□ 1450

When the small business people hold their White House conference and they are asked what is the most important question before the country and they say product liability, clearly, it is our role to respond. When our constituents buttonhole us at every turn and tell us about one horror story or another, of not being able to buy insurance or having their premiums go up 200 or 300 percent in a year, they are asking us to respond.

Our constituents are not coming to us because they enjoy our company. They are coming to us because they have a real economic problem, and it is the unavailability and the cost of insurance.

The Commerce Committee has addressed the problem of product liability because it is clearly within our jurisdiction. The Senator from Kentucky is on the Judiciary Committee, and his interests have been somewhat broader, substantively broader, than those of us on the Commerce Committee. Yet, it really is the same problem.

I hear it from manufacturers, but I also hear if from charities, from municipal governments, from county governments, from all kinds of business people, from doctors.

One obstetrician came up to me in an airport and said that his liability insurance, malpractice insurance, was over $100,000 a year.

People are leaving the practice of medicine. People are getting out of business because they cannot afford the cost of insurance.

It cries out for a solution. The solution is in our bill. The Commerce Committee's bill is somewhat different from that of the Senator from Kentucky. Wo do not insist, in our bill, on a fault basis system. We tried that a couple of years ago and did not get very far with it. Our idea in the Commerce Committee is that there has to be an economic incentive to settle out of court and that the only way to provided such an incentive is with some system of caps. You get a cap if you are prepared to settle—that is our theory. Maybe there is a better theory.

I absolutely share the comment of the Senator from Kentucky that nothing is written in concrete, but we should move on this, and right now we are not moving. We have a filibuster in the works. We cannot even proceed to a product liability bill. It is absolutely stalemated.

So, when our constituents come to us and say, "We want help; we want relief; we want action; we want Congress to address this problem of insurance," our response now, in the U.S. Senate, is very clear: "Get lost. Go away. No. We're not going to do it. We're going to protect the status quo. We're going to protect the system, in which court costs and lawyers' costs are more than the plaintiffs are getting."

Mr. McCONNELL. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. McCONNELL. Mr. President, I commend the chairman of the Commerce Committee. Had it not been for his efforts, we would not have a bill here. We would not have a bill on the floor of the U.S. Senate to even consider.

Even though I would like to go in a more comprehensive way at the problem, I want to commend the distinguished chairman, because without his efforts, we would not have any bill to consider on the floor of the U.S. Senate. Had we tried to get one out of Judiciary, I say to my friend from Missouri, we would still be waiting.

A lot of my colleagues on the Judiciary Committee say that we cannot go down this road, that this offends notions of federalism. I ask the distinguished chairman of the Commerce Committee if he has had a single businessman over the years come up to him and say, "Senator DANFORTH, I am concerned that acting in this area might somehow offend notions of federalism." I have not received any letters like that, and I wonder if the chairman of the Commerce Committee has.

Mr. DANFORTH. No. The Trial Lawyers Association is opposed to this. They are happy with the status quo.

I can think of a couple of times in recent months when I have been back in my State and there have been meetings scheduled in the morning, 7:30 breakfast meetings. It is very hard for me to get the adrenaline flowing at 7:30. But what is interesting is that at these meetings, they are absolutely sellouts. The room is packed with people, because they want to talk about product liability. They want to hear about product liability.

If you were to go back to Kentucky and announce that you were going to have a breakfast meeting at 7:30 in the morning, 7 in the morning, 6:30 in the morning, on the question of product liability, I guarantee that you would pack that meeting with people who have horror stories.

I think it is going to be difficult for Members of the Senate to go back home after we adjourn and to meet with their constituents and answer the question, "Why didn't you do anything?"

The Commerce Committee did it. We reported out a bill that was not easy. We want to bring it to the floor; and if people have amendments, fine. But the short answer is that we have not acted. The motion to proceed has been filibustered. We cannot proceed on the floor of the Senate. We can do all kinds of things. We can pass sense of the Senate resolutions about terror-

ism, but we cannot pass a product liability bill which really affects people's pocketbooks.

Mr. McCONNELL. I could not agree more with the Senator.

I think our failure to act is inexcusable and inexplicable. The arguments that have been raised against acting at the Federal level—for example, the concept that this somehow violates notions of federalism, which I mentioned a moment ago—are not borne out by the facts. This is a national problem. It cries out for a national solution and for the National Government to act.

I think many people who are arguing that the Federal Government is stepping into an area it should not might recall that 20 years ago, the same kinds of arguments were made against the Federal civil rights law, which was rather tenuously connected to the commerce laws and was thought to be a violation of some notions of federalism, because the Federal Government could step into a mom and pop restaurant in Missouri or Kentucky and tell them they had to serve everyone. No one today would argue that that was an unconscionable Federal intervention with a new Federal standard.

I predict that they will step aside and give the Senate a chance to act a few years down the road, and no one will think they are rewriting substantive tort law of every State in America. That is not what we have done. We have set up standards to be applied in Federal and State courts and said, "In these areas, you cannot go any further."

The situation absolutely cries out for a Federal solution.

Mr. DANFORTH. If a problem that increases the price of every good and every service sold in this country does not fall within the commerce clause, what does?

Mr. McCONNELL. It absolutely cries out for a Federal solution, and it does not violate any notions of federalism and clearly is not unconstitutional.

I thank the chairman of the Commerce Committee for his outstanding leadership in this area. It has meant a lot to us. We will see how this debate unfolds.

□ 1500

Mr. CHILES. Mr. President, I ask unanimous consent that I might proceed for 7 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SALUTE TO SCHOOL VOLUNTEERS DAY

Mr. CHILES. Mr. President, on September 8, I introduced Senate Joint Resolution 407, a measure to designate November 12 as "Salute to School Volunteers Day."

In Florida last year, out of our approximately 2,119 schools, 1,963 of them had volunteer programs.

Golden School Awards were presented to 1,090 of the schools whose volunteer hours more than doubled the number of their students.

A total of 121,359, retirees, business persons, parents, military personnel, and other interested individuals contributed 5,131,211 hours of their time to provide instruction to the students in Florida.

Mr. President, that is an awful high number when you consider those are not PTA's. Those are not people who are assisting in some other programs. Those are actually people who are adding their hours to provide instruction to students in Florida.

If we assign a nominal value of $10 per hour for this report, in Florida alone, the amount exceeds $50 million. I know that you will agree with me that this is an irreplaceable and significant sum in times of budget constraint like we face today.

Mr. President, that is the statistical side. Now, I would like to share with my colleagues, in human terms, some of the volunteer action taking place in Florida. These actions and other actions like them, accomplished by over 4 million dedicated volunteers nationwide, forcefully make the case for such recognition.

Not long ago I saw a video presentation by Bill Moyers on the topic of creativity. Mr. Moyers said that one of the main reasons our country had achieved its leadership position in both international commerce and innovation to benefit mankind was the creative ability of our citizens. But he pointed out that apparently we are falling behind in that capacity, as our output in patent registrations has dropped significantly in recent years. He was challenging our educational system to again provide individual stimulation and call forth that creativity from our population.

One group is heeding that call, our school volunteers. They are doing it in a number of ways and I would like to make you aware of some achievements by both individuals and programs.

My State is unique in a number of ways, but one for which we get instant recognition is our large number of retirees. Of the 50 States, Florida has the largest percentage of its population falling above the age of 60. The majority of these retirees are not native Floridians.

They came down to join us from all parts of the country. But they have invested themselves in our young people in a most giving and unselfish manner.

We talk a lot about senior citizens as an untapped resource. But the Florida Department of Education, our local superintendents, and their volunteer coordinators have established programs to tap the potential of this group.

Five years ago the Broward County Medical Auxiliary, in Ft. Lauderdale, sponsored a pilot program, "Senior Mentors for Creative Students." For many years we had utilized older volunteers in the foster Grandparent and RSVP Programs to work with handicapped and disadvantaged children. But they wanted to develop a program that would assist classroom teachers in drawing upon the wealth of human resources in the retiree community to enrich, challenge, and expand the learning experience for creative and talented students.

As you know, Mr. President, because of the budgetary constraints, we find for our enriched students we usually cannot provide much in the way of money. We try to provide, out of humane reasons, for our handicapped students. But this percentage of talented kids do not get the attention that they should get, and they are the ones who are going to move this country ever upward.

Their idea was to identify both creative students in the local schools and possible senior mentors in the community. They would then match up these above average students one-on-one with these outstanding achievers and leaders who had retired from their chosen fields. These mentors had been artists, writers, musicians, scientists, engineers, medical care providers, business leaders, and others.

The program was such a success in its first year, that the Chevron Corp. provided a $50,000 grant to expand it in the second year.

Our State legislature matched the grant in subsequent years, and this year the program will operate in 22 of our counties across the State. That is about a third of our counties.

Again, while notable, these facts do not reflect the human side of the program. You would have to see:

The 50-page research paper completed on the subject of space law or, the engineering project designing a marine platform for a bird sanctuary, or, the marketable computer program software in mathematics. All of which were achieved by elementary school children. Then you begin to get some feel for the impact of this intergenerational sharing.

There is another program that will be statewide in its application for the first time this year. That program is called "NIKE," not for missiles, nor athletic shoes, but "Neighbors Involved in Kids Education." This is a learning enrichment program for latch-key children after school and over the summers.

Academic enrichment clubs are sponsored by community organizations like the YMCA, sororities, AARP

chapters, the Junior League, or others to tutor our children in the afternoons. One notable development is that classes in our middle schools are now sponsoring NIKE clubs for classes in the elementary schools. While this program began in Florida, I am pleased to announce that in 1986 it will be implemented in 23 other States.

Under the NIKE Program we are able to offer a positive, structured environment for children in their own neighborhoods, while they are not in school and while their parents are at work. In times like these, when drug abuse and child abuse are much discussed and of great concern here in the Senate, I feel that we should recognize what our folks back home are doing to cope with these problems. Another volunteer program is moving in the same direction, that program, the "Listen to Children Program," is a cooperative program between the community health clinics and the schools. Volunteers are trained by the clinic staffs to help troubled elementary students improve their interpersonal relationships and develop a stronger self-image.

Our teachers in most cases just do not have the time to spend one-on-one with a troubled child to become a provider of primary counseling, or to develop a relationship with that child which would allow for an appropriate referral for more advanced treatment in the community clinics. Our volunteers have been able to achieve those objectives, and our children are now getting help in these cases.

No discussion of school volunteers in Florida would be adequate without consideration of the contributions by our business community. It is called the "Business/Education Partnership," and it takes many forms:

Like the Houston Astro's Professional Baseball Team who have their training camp in Osceola County and provide tutorship for the students there in teamwork, self-discipline, and followthrough; or, the Harris Corp., in Cape Canaveral that through a release-time program sends engineers and space scientists into the school system to train teachers and inspire students; or, the Pratt-Whitney Division of United Technology that allows an engineer to bring a $14,000 photo micrometer into a classroom in West Palm Beach to illustrate the solution of engineering problems and how space technology spawned our ability to do arthriscopic surgery; or, the Sperry and Honeywell Corp., in St. Petersburg that through a time-release program expand and enrich the curriculum for the Pinellas County schools; or, like Arnold's Grocery in Julington Creek, FL.

While most of you would recognize the cities I have mentioned before, I doubt that many of you have ever been to Julington Creek. It is a very small community near Jacksonville, comprised of the Julington Creek Elementary School, a few homes and the grocery store run by the Arnold family.

Arnold's Grocery adopted the elementary school for a business/education partnership. The field trips are taken to the different sections of the store, like the butcher's section, and the Arnolds donate the hot dogs for the Halloween carnival, and support other school activities.

From the largest corporations to the small family-owned business they are contributing freely both of their personnel's expertise and their services.

You might say that is to be expected—they should contribute to their communities. But, the activities we are observing go beyond just pro forma actions. I feel they demonstrate an understanding and commitment to enhancing the capacity of our children to again achieve standards of excellence. They do not have to make this contribution, they do it because they care.

In Pensacola, Orlando, and Jacksonville the U.S. Navy has joined with the school districts to establish the "Math and Science Initiative Program." Military personnel give up their time on Saturdays and after school on weekdays to tutor children in math and computer sciences.

Military units have adopted classes in the local schools and take them on tours of the local bases, their ships, and other facilities. When the units are at sea, or overseas in other countries, they communicate with their adopted classes to broaden their understanding of world events and geography. When the servicemen are in the community in Florida, the children take them into their families, thus improving the morale of our servicemen.

Mr. President, many of the people who volunteer in our schools have impressed upon me that this is not a one-way street. While they might not have gone into it with those expectations, they get back as much, or more, than they give.

Our "Outstanding Volunteer of the Year in Florida," who incidentally went on to be named an "Outstanding National School Volunteer," Mr. Don Caster, a 72-year-young man of Cocoa Beach, FL, went to his doctor several years ago after becoming ill. His physician told him he had a degenerative illness which would be terminal. So, Mr. Caster went home, got into bed and prepared to die.

Fortunately, Don's wife wasn't quite ready to give him up, and she badgered him until he agreed to get back up and volunteer 2 hours a week at the local elementary school. From that initial offering of 2 hours a week, he moved up to 4, then 6, and last year he got up to 40 hours per week. Today, he is here with us, still going strong. The prognosis of his demise has been vitiated and he tells me that his continued longevity is due in no small part to his volunteer efforts.

I am not saying that we in Florida have finally discovered Ponce de Leon's "Fountain of Youth" in the School Volunteer Program, but there can be no question of the positive sense of accomplishment achieved by these giving individuals and organizations.

That spirit of giving is also exemplified by Robin Morgan, of Daytona Beach. A professional writer by trade, and a mother of three of our children, Mrs. Morgan responded to a need she perceived while volunteering in her daughter's first grade classroom. She felt that the process of writing needed to be built into the curriculum, that creativity was as important as commas and sentences.

She went home and over the next months developed a whole program for creative writing. While she could have marketed this program for considerable, personal financial gain, she did not. She gave it to the Volusia County school system and the Florida Department of Education. Today that program is used statewide in Florida and again I am proud to say in most of the other 50 States.

Mr. President, time does not permit my sharing with my colleagues all of the individual and organizational achievements that have been, and are today, being accomplished by our school volunteers. In the spirit that made this country what it is today, they are striving to improve the quality of life for individuals, families, our communities, our States and the worldwide status of our Nation. We will be reaping the benefits of their efforts for many years to come.

Mr. President, I ask unanimous consent that the text of Senate Joint Resolution 407 be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 407

Whereas the success of America's schools stems from the competence and dedication of their instructional staffs, combined with the commitment of students, parents, and other community members;

Whereas citizen volunteers are a vital component of an effective educational experience, assisting professional educators to deliver quality instructional services;

Whereas many States and communities have demonstrated that citizen volunteers in the classroom enhance, extend, and enrich student learning as they contribute to the work of dedicated professional educators;

Whereas numerous communities encourage groups, such as business and civic groups, to create mutually beneficial working partnerships with their schools, thus offering positive support from the community

which, in turn, both encourages staff and benefits the students;

Whereas, the Congress recognizes that four million unpaid citizen volunteers in thousands of classrooms coast to coast contribute daily to the enhancement of the quality of instruction in our schools and thus, to the development of an educated citizenry; and

Whereas the magnitude, quality, and selflessness of these contributions of America's citizen school volunteers merit the highest appreciation and gratitude: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That November 12, 1986, is designated as "Salute to School Volunteers Day," and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe such day with appropriate ceremonies and activities.

□ 1510

THE DESIRE FOR A FREE CUBA

Mr. CHILES. Mr. President, in the Cuban American community, last week began with much joy and celebration. One hundred and eleven cuban political prisoners and their families arrived in the United States. They were welcomed at Tropical Park in Miami with a genuine outpouring of emotion and relief. Their first day of freedom found them in the arms of loved ones from whom they had long been separated and in the embrace of an entire community.

This freedom did not come about easily. Through the efforts of numerous private individuals and organizations, interested Members of Congress, the Cuban American National Foundation, and the U.S. Catholic Bishops Conference, the plight of these political prisoners was brought into full view. This combined effort served to eliminate some initial footdragging encountered in Washington. I only wish that the Washington bureaucrats had witnessed the reunions at Tropical Park.

I believe the administration should continue to focus on the plight of Cuba's political prisoners. News that additional political prisoners will soon be arriving indicates that the administration is now pursuing a policy which facilitates, not hinders, their entry into our country. This policy is belated but certainly welcome.

Never again must we pursue a policy which attempts to use political prisoners as leverage in forcing a change in Cuban Government policy. Human beings are not bargaining chips. Never again must we accept a policy which places additional hardship or extends the anguish suffered by Cuba's political prisoners. To these true defenders of democracy our doors must always be open.

The men and women who arrived in the United States come to us victorious. They have triumphed over the regime of Fidel Castro, a government which ranks as one of the world's most violators of human rights. Their battle was not easy, for the years in Castro's gulag included torture and pain, isolation and confusion, starvation, beatings, and humilation. But their strong faith and beliefs proved stronger than the abuses. In the end their abusive prison terms left them physically weak, but their minds remained clear. Their hope for freedom was realized, and their desire for a free Cuba never died.

I was very moved when I heard the story of Ramon Pedor Grau Alsina. Just as Grau was about to be released from Combinado Del Estes Prison, a guard demanded he give up the crucifix that had been his constant companion for two decades. Grau, a nephew of former Cuban President Ramon Grau San Martin, refused the officer knowing full well this action might deny him his freedom. Grau responded to the guard, "you'll have to kill me because this is my soul. You had my body for 21 years, but my soul, never."

Fidel Castro may have had possession of their bodies but not once did he possess their souls.

Amidst the joy and celebration that greets these new arrivals there exists some sadness. Sadness for the ones who were left behind. They continue to live the anguish of a system which holds no respect for the dignity of human life—a regime so mistaken in philosophy that it has to fear the free flow of expression and thought.

There was also a note of sadness when it was learned that political prisoner Juan Mateo Gomez Blanco never got the chance to enjoy the freedom which was so wrongfully denied him. The day before he was scheduled to leave Cuba, Gomez died after suffering a heart attack. To his family I express my deepest condolences. Our consolation is that now we know he is truly at peace and truly free.

Mr. President, we must not forget the prisoners who remain in Castro's prisons. I believe we need to continue to clearly focus on their desperate plight. The reunions witnessed in Tropical Park should continue until the prison cells in Castro's gulag are left empty. We should draw motivation from the examples of the recent arrivals. Even under the most dire circumstances their hope for freedom did not wane. Their desire for liberty never faded, and they persisted in their defiance of Castro's regime. Their long prison sentences only served to reinforce their desire for the freedom of their brothers in Cuba and the desire for a free Cuba.

OUR THOUGHTS AND PRAYERS ARE WITH SHIRLEY METZENBAUM

Mr. LEVIN. Mr. President, first of all, I know I speak for all of our colleagues when I say our thoughts and our prayers are with Shirley Metzenbaum as she struggles to recover in the hospital from a nasty bike accident that she had yesterday. Our thoughts are also with HOWARD, as he attends to Shirley and urges her on in her effort to recover.

□ 1520

THE PRODUCT LIABILITY REFORM ACT

Mr. LEVIN. Mr. President, at this point, I will be giving a speech Senator METZENBAUM had prepared for this debate this afternoon.

I ask unanimous consent that this speech not be considered as my first speech or Senator METZENBAUM's first speech.

The PRESIDING OFFICER (Mr. WILSON). Is there objection? There being no objection, it is so ordered.

Mr. LEVIN. Mr. President, this is the speech and remarks that Senator METZENBAUM was going to give this afternoon relative to S. 2670, the Product Liability Reform Act.

The speech follows:

Mr. METZENBAUM. Mr. President, supporters of S. 2670, the Product Liability Reform Act, maintain that Congress must act because State regulation alone cannot solve the liability insurance crisis. I agree that a serious problem exists. I also believe that Congress can play a role in helping to address that problem.

This bill, however, is not the answer. It sets limits on recovery for pain and suffering that are arbitrary and grossly unfair to seriously injured victims. It offers an alternative approach for settling disputes that is unworkable. Its authorization of regular reporting by the insurance industry is hopelessly inadequate. And its failure to repeal the insurance industry antitrust exemption is deplorable. In short, the bill is a dream come true for the insurance industry that will prove to be a nightmare for consumers and workers.

For months, the American people have been told that the insurance industry is bleeding and bleeding badly from the liability crisis. Skyrocketing liability premiums and canceled policies have fed the cry for action. Cities have closed their playgrounds and curtailed their child care programs; obstetricians have left their field; small businesses have shut their doors, all because liability insurance suddenly has become unavailable or unaffordable.

Although there is no agreement as to the cause for this crisis, critices have been quick to pass around the blame. Some have blamed litigious consumers or their greedy lawyers, others have found fault with the jury system itself; still others have accused the insurance industry of irresponsible underwriting and poor investment decisions.

The liability crisis has no simple answers. But two things are clear. We need facts if we are to legislate responsibly in this com-

plex area. And the insurance industry has failed to give us the facts we need.

To be sure, we have been given mountains of paper, reams of data, all written in jargon that is technical mumbo jumbo to the average American. It should not be that hard to get the relevant facts so that we can decided how best to legislate. Yet the insurance industry, which has come here and demanded relief, has refused to provide those facts.

What facts am I talking about? First, we need to know whether there really is an explosion in liability claims, lawsuits, and payments in this country. Have liability claims really grown, and if so, in what specific areas? What are the premiums collected and the actual claims paid for each classification of business covered by the insurance industry?

Second, assuming—and that is all we can do—that liability claims have substantially increased, will legislation to restrict the civil justice system really reduce or control insurance rates? Now that a number of States have enacted tort reforms, what evidence exists that such changes actually lead to lower insurance premiums?

Even though the insurance industry seeks congressional action, they have not answered these simple questions. What disturbs me most is that the facts we do have undercut much of the industry's claim.

Let us talk about what we know. The bill's sponsors have cited a 758-percent increase in Federal product liability litigation since 1974. But Federal litigation accounts for only 2 percent of the lawsuits filed in this country. The other 98 percent is State court litigation. And the facts are that there has been no real increase in tort litigation in the State courts.

The National Center for State Courts recently completed a statistical study of lawsuits filed in 20 States. Between 1978 and 1984, the number of tort cases filed increased 9 percent, while the population increased by 8 percent over the same time period. That is not a litigation explosion.

The contention that damage claims and awards have soared also flies in the face of what we know. A 1983 study by the University of Wisconsin civil litigation research project found that half of all cases involve claims of $10,000 or less, and barely 1 case in 10 involves a claim for over $50,000.

Even Jury Verdict Research, a source heavily relied on by those favoring tort reform, has found no explosion in product liability awards. The President of Jury Verdict Research, testifying just last month before Congress, stated "It is significant to note that the Product Liability Midpoint verdict, which includes million-dollar verdicts, has remained relatively stationary." Indeed, over the past 20 years, the Midpoint Product liability award has barely exceeded the increase in the Consumer Price Index.

What about punitive damages, which insurance and business groups allege are a leading factor in runaway verdicts? Once again, the facts tell a different story. The American Bar Foundation report on punitive damages, covering verdicts from 1981-84, observed "Perhaps what is most interesting * * * in light of the claims made about the incidence of punitive damage awards, is how low the percentage of punitive awards is" in the sites studied. Only 1.6 percent of verdicts in New York City and 2.2 percent in Cook County, IL, included an award for punitive damages. Moreover, punitive damages are most common in a small set of cases—personal violence, fraud and false arrest—that have little or no relation to product liability. The report concluded that it is "relatively rare" for punitive damages to be awarded in product liability or medical malpractice cases.

In short, we should be suspicious of assertions that product liability claims have exploded across the country. But even if there were a large increase in such claims, we have a right to ask: Are the current insurance problems attributable to this increase? If they are, we should expect to see insurance relief where tort reform has been enacted. But once again, it just ain't so.

In response to insurance industry pressure, the Canadian Province of Ontario adopted broad tort reforms that included caps on compensation for pain and suffering, restrictions on punitive damages, and other provisions aimed at limiting plaintiffs' recoveries. The result of these "reforms" has been premium increases of up to 400 percent, midterm cancellations of coverage, and refusals to provide coverage at any price.

The experience in this country is no different. According to a comprehensive report prepared by the attorneys general of Massachusetts, California, Texas, North Carolina, West Virginia, and Wisconsin, enactment of tort reform has not resulted in any abatement of the insurance crisis. Pennsylvania, Wisconsin, and Florida have had caps on personal injury awards against governmental units for several years. Yet many cities, counties, and villages in those States either have been unable to obtain liability insurance or have experienced the same drastic premium increases as elsewhere.

In addition, a federally funded 1985 study of medical malpractice insurance concluded that "almost all states enacted legislation in response to the rapid rise in [medical] malpractice insurance premiums during the mid-1970's . . . the empirical results of the study presented here give no indication that individual State legislative actions, or legislative actions taken collectively, had their intended effects on premiums."

In sum, as the State attorneys general concluded in their 1986 report, "there is . . . no evidence that narrowing of the civil justice system does avoid skyrocketing premiums and cancellations . . .; the available evidence, in contrast, seem to show just the opposite."

What about the evidence regarding increased insurance costs in particular lines of business? The available facts cast further doubt on insurance industry claims.

In the medical malpractice area, estimated loss and expense payments in 1984 increased by the smallest margin since 1977, yet premiums rose by the greatest margin since 1976.

Even more disturbing are the results of a 1986 survey of over 200 child care providers conducted by the National Association for the Education of Young Children. The survey revealed that over one-third of the child care programs across the country have had their liability insurance cancelled or not renewed in the previous year, and one-third more had their insurance rates doubled.

What grounds existed for shaking the child care business to its roots? An avalanche of claims against insurers? A burst of spectacular damage awards or settlements? Absolutely not. Nine out of ten programs had never had a claim against them since the beginning of their operation. Total claims paid out by the insurers for all claims since they began operating amounted to only 6 percent of the premiums paid by the programs in the 1984-85 year alone.

Thus, the available evidence shows that industry assertions of "uninsurable risks" are dubious. Although insurance companies continues to blame the tort system for their woes, the real explanation lies elsewhere. Even the industry's supporters have recognized this.

In a recent editorial, Business Week—surely no foe of the insurance companies—aptly summarized the causes of the current predicament, and concluded that "mainly the industry shot itself in the foot." The Business Week editorial is worth quoting at some length:

"For many years, insurance carries slashed premium prices and wrote as much insurance as they could get. Many companies abandoned traditional underwriting standards and competed fiercely for premium dollars they could invest in high-yield debt. This so-called cash-flow underwriting is probably responsible for most of the damage to company balance sheets today. The party ended when interest rates declined just as claims began to pour in.

With careful management, these mistakes can be corrected. But instead, the industry has spent most of its time and energy lately mobilizing attacks on the U.S. tort system. Admittedly, damage awards often seem excessive, though appellate courts frequently cut them back. But the industry's charge that more litigation and larger damage awards are the causes of its red ink is, at best, unproved."

The editors go on to suggest that changing the insurance system "is a better way to deal with liability claims than restricting the right of injured people to their day in court."

Despite this sound advice from its friends, the insurance industry persists in running television and newspaper ads that proclaim the industry is in dire straits. But once again, the facts belie the industry's claims. The GAO, which recently reported on the profitability of the property/casualty insurance industry, made clear that the industry is in healthy financial shape and getting healthier all the time:

"Property/casualty companies have used a pricing strategy which sacrificed underwriting profit margins in order to generate cash for investment purposes. As a result of this strategy, the industry has made, depending upon whose estimates are used, between $50 and $75 billion in net gains over the last 10 years. Furthermore, like many other businesses, property/casualty is subject to profitability cycles. While underwriting losses have mounted since 1980, estimated data for 1985 indicates that the underwriting cycle has turned and is now moving in a positive direction. Indeed, the industry itself is projecting substantial net gains over the next 5 years."

What it all boils down to is this. The insurance industry has failed to make its case to Congress or the American people. The available facts strongly suggest that no such case can be made. Those facts show that there is no litigation explosion in the product liability area. They show that there is no link between product liability claims and the rise in insurance premiums. And they show that there is no crisis in the profitability of insurance companies. In short, Federal legislation to rescue the insurance industry by federalizing our system of tort law is totally unwarranted.

Given the absence of facts that would justify large-scale Federal reform it is particularly inappropriate to impose the Federal will in an area that for over 200 years has

been viewed as reserved to the States. I find it ironic, to say the least, that those insisting on Federal intervention here—the business and insurance communities—have worshipped long and ardently at the altar of States rights. They regularly condemn any congressional initiatives to extend worker protections under the Occupational Safety and Health Act, or to regulate the anticompetitive aspects of the insurance industry under the Sherman Act.

These same devout followers of States' rights would have us ignore the fact that since January 1, 1986, 41 State legislatures have enacted laws to address the liability insurance problem. Earlier this month, the National Conference of State Legislatures appeared before the Senate Judiciary Committee to oppose the Product Liability Reform Act precisely because it interferes with these State reform efforts. Representative Edward R. Zuccaro, a Republican from Vermont, testified in some detail about these efforts.

During 1986, 39 States have acted to expand the availability of insurance through joint underwriting associations, self-insurance or improved risk management; 24 States have enacted laws regulating insurance industry practices, including increased data collection, notice and cause requirements for cancellations or nonrenewals, expanded rate review powers, and premium rollbacks. And 40 States have legislated reforms in their tort systems, addressing everything from caps on damages and limits on joint and several liability to collateral source rules and itemized jury verdicts.

Quite frankly, the insurance industry has shown an unwillingness to participate in any solution to the liability problem.

Look at what happened in Florida.

The Florida Legislature passed a bill limiting pain and suffering awards to $450,000. However, the legislature tied this cap to a 40-percent rollback in liability insurance premiums.

How did the insurance industry respond?

Within 2 days, six insurance companies announced they would no longer write new commercial policies in Florida.

The State legislatures, the State Chief Justices, the State attorneys general, are telling us to back off and give these State law reforms a chance to take effect. I believe we should heed their advice. Given how little we in Congress have been able to learn thus far about the real need for Federal action, it would be reckless and irresponsible to preempt the efforts already underway in the States.

Mr. President, that ends Senator METZENBAUM'S statement. I yield the floor.

Mr. HOLLINGS. Mr. President, I join in the hopes and wishes of our colleague, the Senator from Michigan, relative to Shirley Metzenbaum and our colleague, the Senator from Ohio [Mr. METZENBAUM]. I am sure Mrs. Metzenbaum is getting along better now, from what we hear. We are delighted to hear that.

Mr. President, I am awfully mindful of the reputation of lawyers, so often justified. I do not think the Watergate case has helped us any up here with respect to the respect that the public has for the practice involved. I shall never forget that last year, just about this time, there was a big hullabaloo in the Nation's Capital about using animals to test drugs, primates and monkeys, out at Bethesda. There was an issue at hand and someone suggested at that particular time that instead of using these animals, they ought to use lawyers. Lawyers, they said would be better because there is a greater supply and you do not become attached to them. I know that as a lawyer of some 40 years, and I understand it.

I just want to make sure we understand that in this particular case of product liability, the culprit is the defendants' lawyers. They get off with all of the dignity of the country club and the yacht club and everything else of that kind. I know. I have represented both sides. But I am referring specifically to the calculations derived from a 1977 survey conducted by the insurance services offices. For every $1 paid to claimants, insurers paid an average of 42 cents in defense costs. The committee report notes that the claimant pays an average contingent fee of 33 cents to the plaintiffs' attorneys. So anyone who has been at the bar for any amount of time whatsoever would understand that if we are trying to cut down the costs of attorneys who are being blamed, we can go right to these defendants' attorneys.

That brings me to the principal witness of the proponents of the administration bill, the gentleman who represented U.S. Attorney General Meese at the hearings. He was Assistant Attorney General Richard K. Willard. I am referring to an article earlier this year, I think sometime in May, in the Washington Post, entitled "Justice Lawyer's Attempts to Save Money Backfires—$11.1 Million Awarded In Negligence Suit."

This is not unusual. I can go into several cases I have had and handled myself trying to get an offer for settlement or whatever it is. They will not even discuss it with you.

I think at this point, it ought to be understood that after all, the insurance company has a direct interest and they necessarily, then, under the laws of ethical conduct, can go immediately in and contact the injured party, which they invariably do. They know about the particular accident. We know about the charges of ambulance chasing on the side but I can come right down and say if any of that occurred, the insurance lawyers and others would report it. So you can count on about 98 percent of the cases being immediately handled by the company. Whether they are concluded is a different thing.

The point is if you trip up or get run over out there or anything else like that, the plaintiff's lawyer is going to rush down and pick you up. But as to the companies of the automobiles involved, if it is reported to the company within a 24-hour period, the duty of the insurance adjuster is, of course, to immediately contact the family and the injured party and, if they are able to talk, get statements and what have you.

I would say under the normal practice of injury cases where they are talking about so-called deep pockets and high verdicts, the plaintiff's lawyer would not come in in the average period before 3 to 6 months after the particular injury, which is, of course, in a general sense, after a complete recovery or substantial recovery and after the family has had time to talk and discuss it with the adjuster and other friends. What normally occurs is that most of these cases, of course, are immediately followed up and presumably settled.

But it's the heinous ones that they all talk about—the large verdicts. Here is a $11.1 million verdict. Let us read about it. It is by Mr. Morton Mintz, a Washington Post staff writer.

A medical negligence lawsuit on behalf of a 4-year-old boy who suffered severe and permanent birth injuries in an Air Force Hospital may cost the government at least $11.1 million because the Justice Department turned down a settlement by its own trial attorneys for $3.6 million, court documents show.

The settlement was vetoed by Assistant Attorney General Richard K. Willard, who, as head of the Justice Department's Civil Division, has been the administration's point man in fighting the so-called liability crisis. Willard led the administration task force that cited skyrocketing damage awards as a major cause of soaring liability insurance costs and proposed such measures as limiting punitive damage awards and awards for pain, capping attorneys' fees and encouraging alternatives to litigation.

President Reagan has endorsed the recommendations.

The child, Johnathan Scott, was born about six weeks prematurely at the Elmendorf Air Force Base hospital in Anchorage, where his parents David, an Army military policeman, and Karen were living.

Johnathan has spastic quadriplegia, meaning that he has poor control of all four limbs and no expectation of ever being able to walk or feed or care for himself unaided. He has abnormal speech and eye movements, and a limited ability to communicate.

The Scotts sued the government in November 1984, attributing Johnathan's injuries to "negligent acts and omissions," including improper diagnosis and monitoring of Karen Scott during labor and delivery, unnecessary surgery, and failure to provide adequate perinatal and postnatal care to the baby.

The lawsuit sought $35 million in damages. After Willard rejected the $3.6 million settlement, U.S. District Judge Jack E. Tanner of Tacoma, Wash., tried the case without a jury and awarded $11.1 million on May 27.

A spokesman for the Justice Department's Civil Division said that Willard had no comment, but an appeal to the 9th U.S. Circuit Court of Appeals is being considered.

The $11.1 million award included $1 million to Johnathan for pain and suffering over his entire expected 71-year lifespan, $300,000 to Karen for injury to the parent/

child relationship," and $50,000 to David for the same injury.

The Willard task force proposed a $100,000 limit per person for pain, suffering and non-economic damages.

Johnathan has and will continue to experience pain, discomfort, suffering, fears, anxiety, inconvenience and other mental and emotional distress," Tanner said in written findings of fact and conclusions of law.

The mother and father are entitled to awards for "emotional anguish and mental distress" that have "damaged the parent/child relationship . . . and will continue to do so," he wrote.

Tanner orginally set the case for trial last September, but granted—

If you please, Mr. President, listen to that.

repeated requests for delay by trial attorneys from the Civil Division's Torts Branch in Washington.

Now, I divert from the article to touch upon that particular point. It is always thought here with this "deep pocket" argument that plaintiff's lawyers are the ones asking for delay.

Necessarily, Mr. President, if they are on a contingent fee, the quicker they can get to and have that case disposed of, that is the only chance they have for any kind of compensation for their labors. The defendant's lawyer continues to get paid. It fact, if they put the trial off, they get paid more. And if they keep putting it off, they get paid even more. And if they can put it off even further, they get paid even more.

So they keep on an hourly basis and zip that through the computer and add a few hours on and get some more pay and everything else. So they are delighted for those motions, and those meetings, and those conferences, and those depositions, and those interrogatories, and on and on because they are making a good living. That is how the costs run up.

The plaintiff's attorney stands a good chance, if they are not going to settle the case, of not receiving any compensation, because it is contingent on prevailing, on proving his case beyond a reasonable doubt by unanimous verdict with that particular jury or in this case the judge. And it could easily be decided against him.

So there you are with respect to the matter of the delays in cases and the actual costs. That should be emphasized.

With respect to pain and suffering—a $100,000 limit on a 71-year life span? Any lawyer I can think of could get and would receive from a jury, if they prove a solid case, substantially more than that. And, of course, in this particular case there was a million dollars to Johnathan for pain and suffering over his entire 71-year lifespan.

Now I refer back to the article:

The Scotts' trail lawyers, Carl A. Taylor, Lopez and Jane I. Fantel of Seattle, opposed the government's motions to postpone the trial.

They are trying to get some relief for the injured child and the Government is moving for postponement. They must think they are in Congress. Put everything off. We are going to pay the bill someday. We are running over $230 billion in deficits this year and we move to delay on the payment of our bills up here in the National Government. We will pay it some other day.

So that this virus has spread from the floor of the Senate and the floor of the House of Representatives over into the Justice Department. They are ready for a delay, too. They do not want to pay anything. And as long as they can slow it up—as long as there is no settlement or disposal of the case—they just carry it on as added work and a reprieve on having to make any payments.

Referring to the article:

An injured child was involved who would suffer even more injury as a result of delay," Lopez said in an affidavit in November.

"Every day that goes by diminishes the level to which therapy can elevate him. This time of Johnathan's life is critical to his development, and it is being trifled away by the very bureaucracy that hurt him in the first place," Lopez charged.

The Scotts separated about a year after Johnathan was born and subsequently were divorced. The mother, who now lives in a Seattle suburb, provides the constant care that Johnathan requires and also cares for another son who is 7. The father lives in Anaheim, Calif.

Karen "has been unable to work and has no other source of income," Judge Tanner wrote in the findings of fact and conclusions of law.

"Karen and Johnathan Scott have been dependent upon government assistance to pay for the necessities of life and also to pay for physical therapy, occupational therapy, and special equipment," Tanner said.

Johnathan, he added, "will require special equipment, medication, medical therapy, and training for his medical disorders and disabilities for the balance of his life," and will need computer assistance to enhance his speech.

The judge also said that Johnathan is entitled to awards for other causes, principally $8.75 million for "complete impairment of his earning capacity."

In the affidavit, Lopez said that on Sept. 15—the eve of trial—the government said tentatively that it would settle for $3.6 million. Lopez and Fantel agreed to the Justice Department's request that the trial date be canceled "to allow certain higher-ups in the U.S. Attorney General's office to review and approve the settlement."

Lopez said in the affidavit that the Civil Division's attorneys assured him and Fantel that the Justice Department "never had" upset a settlement that its trial counsel had agreed to. Over the next several weeks, Fantel said in an interview, the government's lawyer said that the matter "was going through the channels and that we should sit tight."

Lopez and Fantel said they took for granted that the settlement would hold, and consequently agreed to pull the case from the trial calendar.* * *

But Assistant Attorney General Richard K. Willard could care less. I heard his testimony. How careful he was about testifying. He came up and started talking and giving statistics. And when we examined him closely about the statistics, we found out he got them by compiling newspaper articles. It was nothing but newspaper articles. No findings of fact. Not a report of a story of this kind, but just newspaper articles about this case or that case. They just used newspaper articles. It reminds you of Literary Digest in 1936. We all speak with reverence of our distinguished colleague, Alf Landon, but in his race against Franklin Delano Roosevelt the Literary Digest took a poll by telephone.

□ 1550

Of course, in those Depression years only the people who were well off had a telephone. You could not pay the bills and the phones were removed. So the very basis of the finding of that particular poll was defective and faulted.

They found, of course, that Mr. Landon was going to do right well. And of course he did not in the 1936 race. And the Literary Digest went out of business.

We now are supposed to initiate a particular change in the law as a result of the preponderance of the evidence. And when we asked the Attorney General for the evidence—some kind of study or whatever that was made—he referred to newspaper articles: "Jury Verdict Research System Based Totally on Newspaper Articles." That, just like the poll where the respondents did not have telephones. This research included only the cases that were brought to court—which means that the 97 percent, or whatever percent it was, that were settled by the companies were not included in that.

So you had only the egregious incidents of things like the Pinto case, this case, and other cases that reached the newspapers in the original incidents.

In the majority of times, of course, when the defendant wins, they are hardly carried as an article. It is only when they make that headline and say a million dollar verdict was found for the victim of an airplane crash, or whatever, that a story is reported. So newspaper articles are the last thing you would rely on for findings about cases and the liability crisis and the tort crisis and an insurance crisis.

Here is just exactly the casual nature of the responsibility for a job. I would be embarrassed to be this country's assistant attorney general at a formal hearing of the National Congress and the only support I had was newspaper articles. There you go—

that is the gentleman who is making all the findings.

Mr. President, I do not know how long we have this afternoon. I want to get into the various policies involved. There are various fallacies of the insurance crisis, the litigation explosion, the fallacy of the excessive jury awards, lack of unanimity, liability without fault, liability for unforeseeable injury, the fallacy of litigation costs, the fallacy of expediting product cases, of double recovery windfalls and future damage awards, and so forth.

That will take us a little while, and I am sure we will be debating this throughout the week. We will refer to those things if we have time today.

Right now, to sort of concentrate the mind and correlate the thought, I think we should refer to Consumer Reports magazine of August 1986. It is a publication of Consumers Union, with no advertising, so it does not have a particular bent. Its credibility and continuation as a publication depends upon its acceptance by the consumers. Necessarily, they are not writing for consumers who have been injured or not injured, those with insurance or not with insurance, those who have connection with a company, those who are trial lawyers, those who are defendants' lawyers. They are trying to report the so-called crisis that we have heard about. It is a very interesting article in the August 1986 Consumer Reports entitled, "The Manufactured Crisis":

Liability-insurance companies have created a crisis and dumped it on you.

Imagine that:

Liability-insurance companies have created a crisis and dumped it on you.

I quote from the article:

March 23, 1980, was a bright, beautiful spring day in Gillette, Wyo. So Alta Means thought she would do some cleaning in a cottage she owned. Her granddaughter, nine-year-old Dustina Rhodes, lazily tagged along. Suddenly, the tiny cabin exploded into an orange fireball, engulfing Means in flames and blowing Dustina out the door. The granddaughter survived but suffered severe burns.

A spark had ignited a cottage bloated with propane gas—gas that leaked through a Honeywell V8280 valve on the cottage's room heater. That type of valve, the Consumer Product Safety Commission subsequently said, tended to jam open because of a defect in design and manufacture. The valve was recalled by Honeywell in 1985. Dustina Rhodes and Alta Means' estate sued Honeywell for their losses. They eventually settled for more than $1 million.

Isn't that interesting? There was no deep-pocket jury or anything else of that kind. There was a substantial settlement. And that would not have been reported in Assistant Attorney General Willard's jury verdict research because it wasn't in the newspaper. They did not go to the court records whatsoever. They went just to those cases that were tried and got a distorted version of exactly what is the case.

It makes me think with comfort that the manufacturer had recalled that particular valve in 1985. So, what do we know? We know, by the product liability law and practices in the several States, that a lot of other grandmothers have now been saved because, once having paid out a substantial verdict of that kind, if they kept that product on, the distinguished company, Honeywell, would not be in business. These few cases bring about a degee of care and caution and safe practices in our society.

When we see all these exit signs and landings when we go up steps, they have only been put there as the result of trial lawyers' cases brought about where the companies understand and the owners of property understand that they cannot put up things that are going to fall apart, that they have to look out for the safety of the people.

Similarly, with respect to the products themselves, this is a good lesson. It is well worth the money, even if we have a few bad decisions. Some of them have been referred to. There are exceptions from time to time. We live in a fallible world, so I am not saying that all cases brought should be awarded.

I have lived in communities, as all of us have, and watched cases, watched juries, and I have talked to the judges. I reiterate that in the State of South Carolina, there is no tort crisis. Cases are tried within a year. There are no runaway juries. The trial judge has the power to give a new trial, cut the actual damages, or totally eliminate punitive damages. So I know from my own hard experience what is going on here.

Continuing from the Consumer Reports article:

Now the insurance industry and manufacturers are trying to pass legislation that could make it more difficult to adequately compensate victims like Dustina Rhodes for their injuries. The push for so-called "tort reform" is on at both the state and Federal levels.

Insurers say legislation is needed to fix a "crisis" that has made many types of liability insurance costly—or even impossible to get. The insurance industry has launched a $6.5-million advertising campaign and an intense lobbying and public-relations effort to lay the blame for its financial problems on people who are injured, juries, or lawyers.

It is easy to pick on the lawyers, and juries are faceless. No one knows who served on the last one or who is going to serve on one tomorrow. So you can pick on the juries.

We have been told about the Justice Department's handling of a claim with a particular judge with experience, in which liability was found and there was an award of $11.1 million.

So they are trying to lay the blame and they are paying for advertising, and these Senators jump around like monkeys on a string, and they are all going to talk about "deep pockets" and a "crisis" and it is time to do something.

□ 1600

They have no concept of the constitutional nature of the requirement of jury trial. They have no concept of the 200-year history of the common law and the State treatment of these particular matters. Yet they come up now all running under the banner of federalism and getting the Government off your back and now they want to put the Federal Government on your back.

Referring back to the article:

The current liability-insurance crisis began a little more than a year ago with skyrocketing premiums and cancellations of policies.

In New Haven, Conn., a chain of seven day-care centers affiliated with Yale University saw its liability insurance premium jump from $400 in 1984 to $2400 last year.

In Brooksville, Fla., a general vascular surgeon paid $5000 for malpractice insurance in 1984. In 1985, the rate tripled to $15,000, and this year he is paying $38,000. The doctor is thankful he doesn't practice in Miami, where his rates would top $70,000 a year.

In Hammondsport, N.Y., the Bully Hill Winery has sharply curtailed its free wine-tasting because its insurance premiums have gone from $3000 to $1-million in coverage in 1985 to $8000 for $500,000 in coverage in 1986.

So, they are paying almost three times the premium for one half the coverage.

Aetna Life and Casualty has recently dropped some 400 municipalities from its liability-insurance rolls.

The increasing cost and declining availability of liability insurance affects everyone. Police departments cancel patrols and cities dismantle playgrounds for lack of municipal liability insurance. Many obstetricians are leaving their field. The number of nurse-midwives could shrink as they, too, find it increasingly difficult—if not impossible—to obtain malpractice insurance. Doctors' escalating insurance costs are bound to show up in their bills to patients. Day-care centers could become less affordable as their insurance rate hikes are passed on to working parents. The cost of owning a condominium rises with every bump up in liability-insurance premiums.

In its advertising and in most statements to the press and the public, the insurance industry lays blame for the crisis on lawyers, juries, or victims whose alleged carelessness brought on their own problems. Lawyers use the civil justice system "to right every imagined wrong," cries the Insurance Information Institute, an industry trade group.

A more objective analysis suggests that the "crisis" is of the insurance industry's own making. A Washington state task force concluded last year that the crisis "is mostly a result of poor management practices by the [insurance] companies." In New York, a report of the Governor's Advisory Commission on Liability Insurance said that "the industry's poor recent financial condition largely reflects self-inflicted wounds.

Insurance companies have two major sources of money to cover claims and make profits—the premiums policyholders pay, and the interest the companies can earn on money that isn't immediately needed to pay claims. When interest rates are high, insurance companies try to gain as many customers as possible, to bring in the premium dollars they want to invest. In the early 1980's when interest rates topped 20 percent, insurance companies slashed premiums to sell as many policies as they could.

"The insurance companies did anything they could to get money to put into the money markets," says Dennis Jay, a spokesman for the Professional Insurance Agents trade association. "They did not underwrite the business as well as they should have. [Underwriting is the science of assessing risk and setting an appropriate premium to cover the risk.] But it's very tempting to get the money in today to earn 21 percent interest and worry about the losses later."

In 1981, the property-and-casualty industry suffered a record $6.3-billion in underwriting losses (premiums collected minus expenses and claims paid). Yet there was no "liability crisis." Investment gains of $13.2-billion the same year still created plush net profits.

The "crisis" came when interest rates dropped, showing the rise of investment income. By 1984, the profit/loss picture had reversed itself. Underwriting losses of $21.5-billion exceeded investment income of $17.7-billion. Even so, the industry managed to show a small profit—in large part as a result of the tax benefits described on page 547.

Or later or in this article I should say.

In 1985, underwriting losses were $24.7-billion, and investment income was $19.5-billion. Because of tax benefits, the industry again came out slightly ahead, but profits were weak.

To right inself, the industry has taken two major steps. First, it has jacked up rates for all liability-insurance buyers to levels that not only cover current costs but, some critics charge, recoup losses from mismanagement in previous years. Second, companies have dropped lines of business designated as "high risk."

When pressed, some insurance-industry representatives concede that the effect of the business cycle on interest rates is a major factor in the present crisis. "The fact that premiums are going up at high rates is purely due to the cycle," says Sean Mooney, senior vice president at the Insurance Information Institute. He nevertheless maintains that the "lawsuit crisis" is the reason that some parties can't get liability insurance at all.

The insurance industry is trying to turn its crisis into an opportunity—a chance to press for one of its favorite objectives, "tort reform." In plain words, the industry's version of tort reform means placing limits on the rights of injured people to sue for and recover damages.

The latest round in the industry's long-standing campaign began in early 1985. At that time, insurance-industry leaders already knew that a cycle-borne crisis that would necessitate jarring premium increases was brewing. The industry launched an advertising program aimed at U.S. opinion leaders—politicians, business leaders, executives, and journalists.

In June, 1985, John Byrne, then chairman of the board of Geico, a major insurance company, told the Casualty Actuaries of New York that "the insurance industry should quit covering doctors, chemical manufacturers, and corporate officers and directors." Byrne also said, "It is right for the industry to withdraw and let pressure for [tort] reform build in the courts and in the state legislatures."

□ 1610

See, they are trying to build up the pressure.

By summer of 1985, insurance rates indeed started rising. As the varied group of liability-insurance consumers began to feel the squeeze, they started to complain. Through the second half of last year, a grass-roots coalition of doctors, municipalities, nurse-midwives, manufacturers, day-care centers, and others with insurance problems came together. Many of them believed what the insurance industry was telling them: that greedy lawyers and excessive jury verdicts were to blame for the increasing insurance rates.

In early 1986, the Journal of American Insurance pointed to the tort-reform movement as a superb example of coalition-building by the insurance industry.

This March, the Insurance Information Institute announced a $6.5-million advertising campaign to sell "the lawsuit crisis." This second campaign, still in progress, is aimed at the general public.

Print and television commercials stalk about the possible demise of high-school football and other sports programs and suggest you write to the Insurance Information Institute. If you do write, you get advice on how to influence legislators. Voters, the insurance people hope, will pass the message of panic on to their state and Federal representatives.

Insurance-industry leaders say that the average award in product-liability cases is now more than $1-million.

That figure—and many others used by the industry—is based on statistics compiled by Jury Verdict Research, a firm in Solon, Ohio, that keeps track of such things. The Jury Verdict Research statistics, however, don't reflect reality very well.

The statistics are raw data on initial awards by a jury, and that's usually not the last word in litigation. Cases are often appealed, and the appeals court may reduce the award or overturn the verdict, resulting in an award of zero. To avoid the uncertainty and added expense of an appeal, some plaintiffs and defendants agree to an immediate post-trial settlement, which can be significantly lower than what the jury awarded.

Trial judges also reduce jury awards. Indeed, the very first multimillion-dollar award on record ($3.5-million in damages won by actor John Henry Faulk in 1962 for being blacklisted for his political views in the 1950s) was reduced to $450,000 by the judge. According to one study, done by the Rand Corporation's Institute for Civil Justice, half of the initial jury awards surveyed were reduced after the trial. The largest awards were the ones most likely to be reduced and subject to the biggest reductions.

There are other important reasons why the average verdict numbers are, statistically speaking, extremely "soft." The Jury Verdict Research statistics include only verdicts in favor of the plaintiff. Cases that the defendant wins and that result in an award of zero are not counted. Cases settled before trial aren't counted either.

I may add here that the Jury Verdict Research is, by the testimony before the Commerce Committee, based on newspaper clippings.

One unusually large verdict can skew the numbers by pulling the annual average way up. Such was the case in 1978, when a jury awarded more than $127-million to a man who was seriously burned when a gasoline tank exploded in an accident involving a Ford Pinto. As a result of that one verdict, the average product-liability award in 1978, according to the Jury Verdict Research, hit $1.7-million—up an astounding 285 percent over the previous year's average. But the trial judge later reduced the Pinto award to $6.7-million. Had the statistics accurately reflected that, they would have shown the average award in 1978 to be just 19.5 percent over the previous year, not 285 percent.

It's best to look at median awards rather than average awards. To be sure, the average would provide the best gauge of the industry's costs—if the figures were trustworthy. But, as we've seen, average awards are disproportionately influenced by a few large verdicts—the very ones most apt to be reduced post-trail. Furthermore, it's the median, not the average, that shows how the typical injured person is compensated.

Between 1975 and 1984, according to Jury Verdict Research, the growth in the median initial medical-malpractice award has been less than the rise in inflation.

Very interesting. In that 9-year period, according to their so-called clippings, the Jury Verdict Research reports the growth in median initial medical-malpractice award has been less than the rise in inflation. So they disprove any crisis.

In product-liability cases, the growth rate for median initial awards has exceeded the inflation rate, but not by much.

The Rand Corporation's Institute for Civil Justice has tracked tort action in San Francisco and in Cook County, Ill., which includes Chicago, since 1960. It has found that the median initial award, adjusted for inflation, stayed virtually level.

Mr. President, that is very significant. During that entire time in San Francisco and in Cook County, for the 26-year period, they found that the median initial medical malpractice award stayed virtualy level once adjusted for inflation.

The explosion that claimed the life of Alta Means was real. The so-called "litigation explosion" repeatedly cited by advocates of tort reform is essentially a myth. Under close scrutiny, many of the facts and figures cited by tort-reform advocates do not hold up:

Assertion: The U.S. is in the midst of a "litigation explosion."

Fact: last year, the National Center for State Courts (a nonprofit group funded largely by the courts themselves)

—here is another impartial group, the impartial Consumer Reports, reporting on the National Center for State Court—

analyzed data on tort litigation in 20 state courts for the years 1978, 1981, and 1984. Careful examination of the data "provides no evidence to support the existence of a national 'litigation explosion' in state trial courts during the 1981–84 time period," said Dr. Robert Roper, a project director at the center.

So I hope all the staff and Senators listening will inform themselves of the so-called fallacy of the explosion, tort reform crisis, litigation explosion.

Last year the National Center for State Courts did this study on tort litigation in 20 States for 1978, 1981, and 1984, and found no evidence to support the existence of a national 'litigation explosion' in State trial courts during the 1981-84 time period.

The center's data show that the annual number of tort filings in 17 states studied rose 9 percent between 1978 and 1984. Meanwhile, population in those states rose 8 percent. While court filings in 20 states did rise 14 percent between 1978 and 1981, they fell 4 percent between 1981 and 1984.

The number of liability cases filed in Federal courts has increased significantly. But a single type of suit—damage claims related to asbestos—accounts for much of the increase. Last year, 4239 of the 13,554 product-liability cases filed in Federal courts—31 percent—were asbestosis cases. That's not surprising. Asbestosis and asbestos-induced cancer result from many years of exposure; only in recent years have the consequences of long-term exposure become evident in debilitating illness and death. In CU's opinion, people who are suffering from asbestosis or asbestos-induced cancer (and the families of those who have died) deserve compensation.

Assertion: Plaintiffs win million-dollar verdicts regardless of merit.

Fact: Stories told to provide this point are, at most, isolated incidents, and are often exaggerated to the point of myth.

Insurers like to cite their favorite horror stories—about large awards given to a woman who said she lost her psychic powers after a hospital CAT scan, or to a man who injured himself using a lawn mower to trim a hedge, or to a California vandal who injured himself falling through a school-building skylight.

Such anecdotes typically lose some important details and gain a few embellishments in the telling. Take the case of the psychic. Both United Press International and Associated Press made much of the fact that Judith Haimes was awarded close to $1 million by a Philadelphia jury last March after she said that a CAT scan at Temple University Hospital made her lose her psychic abilities. That's what made the headlines.

Buried at the bottom of both wire-service stories was the fact that Judge Leon Katz told the jury to disregard that issue, and to base the verdict on whether the hospital was negligent in administering a contrast dye into her brain. The procedure allegedly caused Haimes to suffer breathing difficulties, intense headaches, nausea, and incontinence. What the jury really decided was that the hospital had negligently caused Haimes's adverse physical reaction, not that she had lost her psychic powers.

A Crum & Forster ad in 1977 referred to the man who used a lawn mower to trim a hedge, hurt himself, sued the manufacturer, and won. The tale has been repeated dozens of times in support of the notion that consumers injure themselves foolishly and then seek out greedy lawyers to bring groundless lawsuits. But the story was purely apocryphal. Crum & Forster admitted that it had no reliable source for the alleged incident.

And that vandal who fell through the skylight? There's some truth to that one. But the incident isn't as absurd as it first sounds. The skylight was painted the same color as the school's roof. The school district knew that situation was hazardous because a young girl had already been killed falling through a similar skylight at another school six months before.

When a plaintiff receives a large award, it's usually for a very good reason. Jury Verdict Research has on file 2,094 cases in which initial verdicts equalled or exceeded $1 million during the period from 1962 to 1985. Of those, 71 percent were for such damages as paralysis, permanent brain damage, wrongful death, amputations, and burns.

WHAT INSURERS WANT

Several proposals have been put forth by the insurance industry and its supporters in state legislatures.

Limits on awards for pain and suffering.

□ 1620

That is in this bill.

Most industry-backed tort reform proposals do not attempt to limit the amount of recovery for economic losses such as lost wages and medical costs. However, limits are being proposed on compensating victims for the pain and suffering that results from an injury. CU believes that while those harms are difficult to quantify, they are nonetheless real and should not be subject to a fixed, preset limit. A man confined to a wheelchair as a result of someone's negligence but still able to keep working at his regular desk job might suffer no lost wages, but certainty his quality of life would be affected.

Limits on punitive damages.

That is also in this bill.

Punitive damages, as the name implies, are imposed to punish a defendant for acting irresponsibly or with disregard for safety. CU believes punitive damages must be maintained in full force to help deter manufacturers and others from irresponsible behavior.

Elimination of joint and several liability. The legal doctrine of joint and several liability applies when more than one defendant is responsible for causing an injury. If one defendant cannot pay, the burden of payment is transferred to the other parties found to be at fault.

Critics of the doctrine say that it encourages plaintiffs to sue multiple defendants, especially those with "deep pockets," such as large corporations, municipalities, and people who carry a lot of insurance. Why, they ask, should a wealthy defendant that bears only, say, 5 percent of the responsibility for a mishap have to pay for most or all of the damages, simply because the other defendants cannot pay?

The question is a valid one, and the issue a complex one. But CU does not believe the doctrine should be abolished. Without it, there would be no mechanism to make sure victims can recover a fair amount for damages. If the doctrine of joint and several liability were eliminated, victims would be left holding the bag when those defendants able to pay succeed in shifting the blame to those who can't.

Limiting contingency fees. Lawyers who take on a liability or malpractice case typically work on a contingency fee basis: They get a percentage of the damage award, typically about 30 percent of the damages paid. If they lose the case, they get nothing. Such a system allows victims who aren't wealthy to obtain legal representation at little or no initial cost. At the same time, because attorneys are "investing" their own time and money in the case, they have an incentive to weed out frivolous or weak cases. Furthermore, it would create an imbalance if lawyers for injured consumers were subject to a form of price control while corporations and other large defendants were not limited in their legal budget. All in all, CU thinks the contingency-fee arrangement is an acceptable one.

THE WRONG CURE

Clearly, however, the insurance companies' message is getting through. State and Federal legislators have passed or are considering a number of industry-backed tort-reform proposals, most of which would limit compensation to victims.

Maryland, for example, has put a $350,000 cap on pain and suffering damages in personal-injury cases. Missouri set the same limit for pain and suffering awards in malpractice cases.

In June, the New Jersey Assembly passed and sent to the state Senate a bill that would limit pain-and-suffering damages to $5000 for minor injuries, $300,000 for catastrophic injuries. The bill also sets a $500,000 lid on the amount a person could collect from a public entity, such as a county or municipality.

In California, voters recently passed Proposition 51, which eliminated the legal doctrine of joint-and-several liability for pain-and-suffering damages. And the Florida legislature this June passed a bill to limit awards for pain and suffering to a maximum of $450,000. (The Florida legislature, tied the measure to a 40 percent rollback in liability-insurance premiums. Within two days, six insurance companies had announced that they would no longer write new commercial liability insurance in the Sunshine State.)

In New York, the Governor's commission recommended some changes in the tort system, such as modifying the doctrine of joint and several liability. CU's Executive Director, Rhoda Karpatkin, served on the commission and filed a dissent. Nonetheless, a bill incorporating some tort-system changes—undesirable ones, in our opinion—was about to be signed into law as this issue went to press.

The Reagan Administration has proposed a sweeping package that could cover product-liability claims against corporations, Government contractors, and the U.S. Government itself. The Reagan plan, which Attorney General Edwin Meese called a response to "the crisis in tort liability" would impose caps of $100,000 on awards for noneconomic damages such as pain and suffering. Punitive damages would also be capped at $100,000. In addition, the Reagan bill would limit fees that lawyers could charge in product-liability cases.

Such tort-reform measures will not solve the insurance crisis. Indeed, similar measures have been tried in various places—with little if any effect on insurance rates or availability. In Ontario, Canada, lawyers' contingency fees are not allowed and awards for pain and suffering are capped. Nonetheless, liability-insurance rates in Ontario are skyrocketing and the insurance is hard to get—just as in the U.S.

In hearings before state legislatures, insurance-industry representatives have declined to promise that the tort-reform measures they advocate would result in lower insurance premiums. Even if they ended the industry's self-inflicted crisis, however, such measures would still be repressive and undesirable, in our view. Adequate compensation

for injured parties is a part of our system of justice.

THE RIGHT CURE

The lawsuit crisis may be phony, but the insurance crisis is real. Towns, doctors, day-care centers, and others face urgent problems of insurance availability and affordability. What is needed to alleviate the problem is not tort reform but better regulation of the insurance industry. The Governor's Advisory Commission on Liability Insurance in New York has put forward several worthwhile recommendations for strengthening the regulatory system:

Price regulation. Insurance regulators should do more to keep prices on an even keel, discouraging both excessive and artificial cyclical price cuts that endanger the health of insurance companies and excessive price hikes that create hardships for consumers.

The Commission suggested that a state insurance department can achieve this goal in part by setting upper and lower limits on permissible prices that insurers may charge. That practice would help to avoid wild swings, while still giving insurers some flexibility. As in any price-regulated industry, insurance companies could request changes in the permitted price bands from time to time.

Limiting cancellations. The recent crisis atmosphere was created partly because of abrupt cancellations or nonrenewal of coverage by insurers. The Commission proposed that insurance companies be permitted to cancel or refuse to renew coverage only in certain clearly defined circumstances, such as nonpayment of premiums or fraud on the part of the insured. A "major change in the scale of risk" assumed by the insurer would be a valid cause for cancellation or non-renewal. But presumably the insurer would have to demonstrate to regulators that the risk level had indeed become unreasonable.

Providing more resources. The insurance industry is regulated almost exclusively by the 50 states, even though the industry has been nationwide in scope for decades. State insurance regulators are typically understaffed operations that are responsible for more work than they can capably handle.

Federal oversight is needed. But so long as the states have the responsibility, the state insurance departments need more staff, more money, and in many cases more legal authority.

Appointing a consumer advocate. The Commission recommended that an individual be appointed to work full time representing the interests of consumers before the New York State Insurance Department. In light of the strong lobbying presence of the insurance industry in every state, the suggestion is a sensible one for all states to consider.

Letting municipalities pool risks. The Commission suggested creating a structure whereby municipalities and other government bodies could share the risks of liability claims. Since one large claim could severely damage a small town, county, or government body, that suggestion makes sense. It's also consistent with the theory of insurance, in which many parties share the risk of an event that will probably happen only to a few.

In addition to those recommendations, CU also advocates three more.

First, the insurance industry should be subject to both Federal and state antitrust laws (the laws that ban price-fixing), as most industries are. Under the McCarran-Ferguson Act, which Congress passed in 1945, insurance companies are all but exempt from Federal antitrust rules. That makes it harder to stop companies if they act in concert to raise prices for a particular line of insurance.

Second, conflict-of-interest policies for insurance regulators should be made stiffer, in light of a U.S. General Accounting Office study finding that half of state insurance regulators either came from the insurance industry or found employment in it after leaving office.

Third, state regulators should encourage insurance companies to offer economic incentives to corporations and municipalities that follow good safety and risk-management practices.

Mr. President, I think we have had a very successful educational session so far this afternoon.

Mr. President, I understand they have checked this on both sides of the aisle, and I understand that the majority leader is ready to go out for the day. I think the distinguished Presiding Officer is ready to go back to work.

Mr. President, I ask unanimous consent that when I am again recognized to speak on this matter, it not be considered a separate speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1640

Mr. BOSCHWITZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SANDINISTA ANTISEMITISM

Mr. BOSCHWITZ. Mr. President, much has been said about the Sandinistas and how they have treated their very small Jewish population of about 20 to 25 families, some of whom have been in my office in recent months. There has been much dispute about the Sandinistas and their treatment of that small community. A very thoughtful, complete, and I think decisive article has recently been written and appeared in this month's Commentary magazine. I ask unanimous consent that it be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SANDINISTA ANTI-SEMITISM AND ITS APOLOGISTS

(By Joshua Muravchik, Susan Alberts, and Antony Korenstein)

In May 1983, the Anti-Defamation League (ADL), an organization dealing with instances of anti-Semitism worldwide, issued a statement denouncing Sandinista Nicaragua as "a country without Jews, but not without anti-Semitism." The statement set forth the complaints of a number of Nicaraguan Jewish refugees who said that they had been compelled to leave the country on account of threats and harassment by the Sandinistas, that their personal property had been unjustly confiscated, and that their synagogue had been expropriated. The ADL went public with these charges only after having worked fruitlessly behind the scenes for a year-and-a-half to persuade the Nicaraguan government to make restitution of the Jews and to return the synagogue.

The White House quickly invited the ADL's spokesman on this issue, Rabbi Morton Rosenthal, and a couple of the Jewish refugees to address one of the weekly meetings of its Central America Outreach Group, and President Reagan himself was soon echoing the charges of anti-Semitism in speeches defending his policy with regard to Nicaragua.

The Sandinistas were as quick to respond to the ADL's public charges as they had been slow to respond to its private appeals. They vehemently denied that they were anti-Semitic, pointing to the presence of five Jews in leading positions in their own government. As for the synagogue, it had been expropriated, they said, because it was part of the personal property of Abraham Gorn, a wealthy Nicaraguan who had been president of the Jewish community and who was a "Somocista."

As it turned out, the five "Jews" cited by the Sandinistas as evidence of their philo-Semitism may all have had Jewish ancestors, but not one was identified with the Jewish community. The only ones in the group with any religious affiliation at all were practicing Roman Catholics, including Minister of Education (now Ambassador) Carlos Tunnerman and Minister of Culture Ernesto Cardenal. Cardenal, a Jesuit priest, gained worldwide attention during Pope John Paul II's visit to Nicaragua when newsphotos captured the kneeling priest seeking to kiss the papal ring and receiving instead a stern lecture from the pontiff on the duty of obedience to his bishop. Further to the discredit of the Sandinistas' argument, the Jewish refugees produced a deed of ownership to the synagogue, showing clearly that it was the communal property of the congregation and not of Mr. Gorn.

But if the Sandinistas were less than adept at defending themselves against the charge of anti-Semitism, they soon got help from Americans, some of whom were their supporters, others of whom were not. Ironically, the most important help came from the U.S. embassy in Nicaragua. Ambassador Anthony Quainton looked into the allegations and reported, according to newspaper accounts of his leaked confidential cable to Washington, that "the evidence fails to demonstrate that the Sandinistas have followed a policy of anti-Semitism or have persecuted Jews solely because of their religion." Being "a member of the Jewish religion," the cable went on, "is neither a necessary nor sufficient condition to result in . . . persecution" by the Nicaraguan government.

Although no one questioned the diligence of Ambassador Quainton's investigation, he himself agreed in a letter to Rabbi Rosenthal of the ADL that there was an important gap in his research: virtually all the Jews had already fled Nicaragua, and he was unable to interview them. Moreover, despite the fact that he seemed to deny the gravamen of the accusations of anti-Semitism, Ambassador Quainton's conclusion

contained a note of ambiguity, acknowledging as it did that Jewishness could indeed have constituted one contributing factor among several that led to the persecution of Nicaragua's Jews.

Next, Rabbi Marc Tanenbaum of the American Jewish Committee joined the argument, becoming embroiled in a dispute with Rabbi Rosenthal in the pages of the Jewish press. Rabbi Tanenbaum agreed that some "anti-Semitic acts" had been committed, but he maintained that "anti-Semitism, as opposed to anti-Israel foreign policy, was not Sandinist official policy," and that "the real problem with Nicaragua was one of political anti-Israel positions rather than classical theological anti-Semitism, and therefore requires a different response." The quarrel between the two rabbis grew rather heated, but it seemed to be less about the facts of the case than about how to react to them.

The debate over Sandinista anti-Semitism intensified in 1984 when a group called New Jewish Agenda sponsored a delegation to Nicaragua to look into the issue. New Jewish Agenda describes itself as a voice for "progressive" Jews, and takes positions that are often at variance with those of most other Jewish organizations. Domestically, it advocates the use of racial quotas in hiring and promotion; in the Middle East, it calls for the creation of an independent Palestinian state through negotiations between Israel and the PLO.

The delegation's report, signed by eleven of its thirteen members, including Rabbi Marshall Meyer, a prominent former leader of the Jewish community of Argentina, and Hector Timerman, son of Jacobo, said that the group has "searched for any evidence to support charges of anti-Semitism" but that "none were found." The report was rather upbeat about Nicaragua in general, concluding: "It was made abundantly clear to us and confirmed by leaders of the Sandinista government that Nicaragua welcomes Jewish participation as well as participation from any group in the reconstruction of a pluralistic society." The delegation urged Nicaraguan Jewish refugees to "consider taking the government of Nicaragua at its word—that they are welcome back," and it volunteered to "monitor and report on" the treatment of any who returned to Nicaragua.

Despite the claim that no evidence of anti-Semitism could be found, however, the delegation's report itself contained some evidence. It referred to articles in the Sandinista-controlled newspaper, Nuevo Diario, alleging that Jews control world finance, and headlines such as "Jews Bomb Beirut." The report did condemn these expressions, but attributed them to "sloppy journalism" and to Nicaragua's "history of sensationalistic, yellow journalism."

The report also acknowledged as fact the Jewish refugees' assertions that the Managua synagogue had been attacked with an incendiary device during worship services in 1978. But the delegation claimed that it could not "satisfactorily resolve" whether the attack had been conducted by Sandinistas, as the worshippers who witnessed it charged, or "was instead attributable to Somoza provocateurs," as Sandinista supporters now suggested.

Finally, in the words of the report, "the question of whether property was confiscated because of its ownership by Jews, or whether regulations governing confiscation were applied to Jews in a discriminatory manner, lies at the heart of allegations of anti-Semitism." The delegation concluded that the answer to both of these questions was no.

But these were not, in fact, the questions at heart of the charges of anti-Semitism. The heart of the charges was that the Sandinista Front had conducted a campaign of harassment and intimidation aimed at Nicaraguan Jews, which caused them to flee. Astonishingly, the report simply failed to address this issue—even though it had been presented directly to the delegation by three of the refugees who met with the group at the Miami airport as it was en route to Managua. Although the report's introduction contained a paragraph describing this meeting, the body of the report omitted any mention of its substance, merely noting in passing: "It is clear to us that [the Jews who fled], many of whom are refugees from the Holocaust, did feel frightened and threatened by the violence and disorder that accompanied the toppling of Somoza. It is not our purpose or place to judge whether . . . such fear was reasonable or justified." This is all the more astonishing since the refugees themselves had told the delegation that what made them feel frightened and threatened was not the random violence and disorder but specific incidents of Sandinista hostility. And the question of whether their fears were generated by real as opposed to imagined persecution was in fact the central question to be raised.

The one member of the delegation who did address this issue was Rabbi Fancis Barry Silberg of Milwaukee, who refused to sign the group's report and instead issued a public demurrer. In it he said: "While there appears to have been no program of persecution of Jews in Nicaragua, the Sandinistas' actions have certainly created a climate of concern sufficient for the mass emigration of Jews after the 'triumph of the revolution.' These actions include . . . their inability to distinguish between Judaism and Zionism. . . . Subsequent developments . . . confirmed the wisdom of that flight."

While Rabbi Silberg's dissent received scant attention, the delegation's report was covered in the major media, and it was echoed in two articles in Moment, a Left-liberal Jewish monthly, by delegation members Robert Weisbrot, an assistant professor of history at Colby College, and Cynthia Arnson, a congressional aide and a former staff member of the Institute for Policy Studies.

In her article, Miss Arnson charged the Reagan administration with knowing that the claims of anti-Semitism were false. In support of this contention she quoted Ambassador Quainton's cabled doubts that the Sandinistas "have persecuted the Jews solely because of their religion"—but she omitted the word "solely" (without indicating an ellipsis), thus altering the meaning of the passage. She also persented selective quotations from Michael Gale, President Reagan's liaison to the Jewish community, and from Under Secretary of State Lawrence Eagleburger, to argue that these two "representatives of the administration had denied that anti-Semitism was involved in the Nicaraguan saga." In truth, Gale was in the forefront of publicizing the issue of Sandinista anti-Semitism within the administration and Eagleburger, in the very same paragraph from which Miss Arnson quoted, went on to refer to the ADL's allegations. Miss Arnson also reported that a delegation from the State Department's human-rights bureau had visited Nicaragua and investigated the charges of anti-Semitism, finding them baseless. But Elliott Abrams, then the head of the bureau, had denied that such a delegation existed, and Miss Arnson, when challenged, has refused to name its members.

Still more zealous in defending the Sandinistas against the charge of anti-Semitism was Rabbi Balfour Brickner of the Stephen Wise Free Synagogue of New York, a longtime leader in the Union of American Hebrew Congregations (Reform). In 1984 Rabbi Brickner visited Nicaragua; he wrote afterward that it made him feel the way Israel had made him feel "in the late 50's and early 60's," when he liked Israel better than he does today. "Then, Israeli government leaders were as informal and accessible as members of the junta are in Nicaragua today," he wrote. "The inescapable fact," he went on, "is that Israel has been deeply involved in thwarting popular forces for democratic and social change in Latin America, forces similar in ideology to those which brought Israel into existence," and he added: "No wonder she is viewed with sometimes not so quiet resentment and smoldering distrust." As for the Nicaraguan government, not only does it not persecute Jews, "it doesn't persecute Catholics or Protestants either. It does challenge, and sometimes expels, those who, in religious grab, conduct counterrevolutionary activities."

If in this last formulation Rabbi Brickner began to approach the rhetoric of the Sandinistas themselves, a subsequent rumination on the subject went even further toward embracing Sandinista views. Writing in the Washington Post, he said: "If Jews fled Managua after the revolution, it was not because the incoming government was anti-Semitic; it was because that government wanted to isolate and strip power . . . from supporters of the dictator who had been overthrown. Of the few Jews who had remained in Managua after the 1972 earthquake, many were strong supporters of Somoza." Where the New Jewish Agenda report had simply elided the refugees' tales of intimidation and persecution, Rabbi Brickner now took the further step of implying that the persecution was justified by the Jews' own past actions.

How did Rabbi Brickner know that the Jews were "Somocistas" without having interviewed them? Apparently, the Sandinistas told him so. They also seem to have told him they were not responsible for the firebombing of the Managua synagogue. Doctoring Ambassador Quainton's words a la Cynthia Arnson, Rabbi Brickner characterized the allegations of Sandinista anti-Semitism as a "canard," adding: "and we Jews know it."

Rabbi Brickner's version soon achieved the status of received wisdom. When, earlier this year, President Reagan again cited anti-Semitism on his list of Sandinista misdeeds, Rabbi Alexander Schindler, the president of the Union of American Hebrew Congregations, replied that "It is woefully inappropriate for the President to resurrect these discredited canards." Perhaps more significantly, the New York Times relied upon Rabbi Brickner in an editorial criticizing the President: "Of the millions who heard Mr. Reagan describe the 'desecrating and firebombing' of Managua's only synagogue, how many will catch up with the rejoinder, by Rabbi Balfour Brickner . . .? He says the building was abandoned during street fighting in 1978, a year before the Sandinistas seized power. The rabbi's own investigation in Nicaragua failed to sustain Mr. Reagan's

charge of virulent anti-Semitism." On the same day, the Washington Post ran a lengthy "news analysis" column by reporter Joanne Omang. She wrote: "Reagan said 'the entire Jewish community [was] forced to flee Nicaragua.' [But Nicaragua's few Jews closed their synagogue for lack of use, and most who left had backed Somoza. A 1983 State Department inquiry found no evidence of anti-Semitism." Even the Washington Jewish Week dismissed the story of persecution as emanating from the testimony of only two refugees.

Curiously, while various groups and individuals purporting to examine this issue traveled to Nicaragua, where virtually no Jews were left, none sought to track the story to its source—the refugees themselves who were now living mostly in Miami or Costa Rica. In the last few months we have endeavored to do exactly that, interviewing members of each of the refugee families we could locate and who were willing to talk to us. Of the seventeen families that comprised the bulk of the Jewish community prior to the rise of the Sandinistas, we now have accounts from all but two.[1] From comparing individual stories, we believe that we are able to piece together a pretty clear picture of what happened to Nicaraguan Jewry.

Until the Sandinista triumph, the Jewish community comprised approximately fifty individuals. The breadwinners were virtually all engaged in business or commerce, some with small enterprises and some with rather substantial ones. The community maintained a synagogue; although it did not have a rabbi, it conducted regular worship services, and one of its number was always designated as its president. Today, all but two or three individuals live outside of Nicaragua.

Harassment of Jews by the Sandinista Front (FSLN) began during the year prior to its seizure of power. Most Jewish families began receiving abusive and threatening telephone calls, some of them every day, others every few days. The callers identified themselves as Sandinistas, used foul and abusive language, made specific derogatory reference to the Jewishness of their respondents, and uttered death threats both against the heads of households and against their children. In some cases, similar threats and abuse were conveyed in postcards or in graffiti sprayed on Jewish homes and places of business. Some received warnings from friendly employees with links to the Sandinistas, and a few were followed or approached with threatening messages by men on the street whom they did not recognize.

These threats were underscored by an event that occurred during a Friday-night service in December 1978. That night, an incendiary device was hurled at the synagogue, igniting its wooden doors. When some of the worshippers emerged from the building they were confronted by a carload of armed men, recognizable to them as Sandinistas, who pointed guns at them and ordered them back inside. Eventually the assailants fled and the fire was extinguished; the building was not destroyed and none of the worshippers was seriously injured.

Contrary to Rabbi Brickner's assertions, there is evidence to corroborate the victims' claims that the attackers were Sandinistas. Mauricio Palacio, who at the time was employed by one of the Nicaraguan Jews, and is now himself a refugee in the United States after having grown disillusioned with the Sandinistas, has given a signed statement confessing to his part in the 1978 arson attack against the Managua synagogue. The aim of the attack, he says, was not to injure but further to intimidate the Jews. In this it was successful.

As the fighting between FSLN insurgents and Somoza's National Guard reached its climax in the summer of 1979, several Nicaraguan Jews left the country. When the Sandinistas triumphed, these individuals, as well as a couple of others who coincidentally found themselves out of the country on business, had to decide whether to try to return. One who did was the community's president, Abraham Gorn, an elderly businessman and reputed friend of the first Somoza (who had ruled the country until the mid-1950's). Shortly after his return, Gorn was imprisoned by Sandinista authorities for a few weeks, during which time he (like some other prisoners) was compelled to sweep streets. Upon his release he sought refuge in the Costa Rican embassy and secured safe passage out of the country with the assistance of the Costa Rican government.

Another who attempted to go back after the revolution was Sarita Kellerman. (Her husband, Oscar, whom both Kellermans deemed to be in greater danger, remained in the United States.) Night after night, her house was searched by uniformed armed men claiming to look for weapons and pocketing whatever possessions struck their fancy. After a few weeks, she left, not to return.

Some who left the country because of warnings that their lives were in danger never considered returning. Isaac Stavisky was told at gunpoint, "Next time we'll get you, you Jew." Gyula Pinkes and Laszlo Gevurt, business partners, suffered repeated attacks on their homes, during which FSLN combatants shouted, "We know Jews live here." After being warned by a friend whom they took to be well-connected that the FSLN was "coming after the Jews," they fled.

Those who remained after July 1979 suffered a pattern of petty harassment which within a year or two impelled them to leave as well. Against the background of these threats, the large radical Arab presence that soon materialized in revoluntionary Nicaragua seemed particularly ominous.

The Sandinistas had close and longstanding ties with the PLO and Libya. Many, including Nicaragua's Interior Minister Tomas Borge, had received guerrilla training in PLO camps in Lebanon, and some had participated in PLO operations such as the 1970 hijacking of an EL Al airliner. After the Sandinista revolution, these relations became formalized: both the PLO and Libya began providing economic and military aid, including training, and the PLO opened a fully accredited embassy in managua, employing scores of operatives. Borge publicly pledged to Yasir Arafat that "the PLO cause is the cause of the Sandinistas."

Like Jews the world over, Nicaragua's Jews felt a sense of emotional attachment to the Jewish state. One, in fact, had acted as Israel's "honorary consul," or good-will ambassador, to Nicaragua. Since the harrassment experienced by the Jews was accomplished by the shouting of anti-Israel slogans and the daubing of graffiti associating Zionism with "Somocism," the increasingly strong Sandinista-PLO ties and anti-Zionist tirades in the Sandinista-controlled media became a source of fear for the remaining Jews.

To add to their fears, the stragglers received hints of other perils lying in wait. Some were told by acquaintances that Sandinista authorities were looking to arrest them or were intending to arrest their colleagues or relatives if they returned to the country. One Jewish store-owner was told by a customer who worked in the prosecutor's office that there was "a file on everyone in the Jewish community."

Within a few years, virtually all the remaining Jews had left. Almost all had their property confiscated, either under a decree aimed at those who "adhered" to "Somocism," a hopelessly vague accusation rarely applied with anything approaching due process, or under a decree declaring that anyone who remained out of the country longer than six months would forfeit his property rights. In addition, the synagogue was expropriated.'

All in all, the story of the persecution and flight of Nicaragua's Jews is rather a simple one. Why, then, did it become enmeshed in so much confusion and controversy? In part, the answer is that the Sandinistas work hard at presenting their case, and benefit from the assistance of Americans eager to lend their talents and voices in defense of "the revolution." But in part, too, the fact that the main motivation for the Sandinistas' persecution of the Jews seems to have been an intense animus against Israel may have led various observers who were not necessarily predisposed in favor of the Sandinista government to conclude that what was at work here was not anti-Semitism but the distinguishable phenomenon of anti-Zionism.

In truth, however, it was the Sandinistas who were unable to separate their anti-Zionism from anti-Semitism, just as their Soviet and Palestinian and Libyan brethren have been unable to do. Thus, for example, during the war in Lebanon, the Sandinista newspaper, Nuevo Diario, frequently lapsed into explicit anti-Semitism. One story contained the sentence: "Zionists, from Wall Street, the U.S. Congress, and other powerful sectors of the establishment install and depose Presidents [and] determine fundamental aspects of foreign and domestic policy." A week later one could read: "In accordance with the Bible, Israel has committed a capital crime for which she has not yet repented, that is condemning to death and killing the Lord Jesus Christ. . . . Christian revolutionaries are called upon to redouble their efforts against the theology of death." And a week later: "For many years the Jews, who crucified Christ, . . . have used the myth of being God's chosen people to justify massacres of the Palestinian people." Two days after that: "The world's money, banking, and finance are in the hands of descendants of Jews, eternal protectors of Zionism." Perhaps most revealing was the headline, "Jews Bomb Beirut," and the speculation that President Reagan—in view of his pro-Israel policy—must have some Jewish blood in him.

[1] All the interviewing was done by Susan Alberts. Although we have no means of evaluating definitively the accuracy of the details of each of the individual accounts we heard, the stories were all compatible. In their general outlines, and in many specific details, they were mutually corroborating, and in no significant respect were they contradictory. In the past, Sandinista representatives and others have challenged the veracity of one or another individual Jew whose complaints were publicized. We find it impossible to imagine that the various stories we heard from refugees living in different countries and cities could have been fabricated and still be as mutually consistent as these were. Indeed, we found no reason to doubt the veracity of any of the individuals we interviewed.

In other words, although hatred of Israel rather than hatred of Jews per se may have been what motivated the Sandinistas to persecute Jews, persecute them they did—if only because they saw the Jewish community as a whole as an extension of Israel.

The Sandinistas and their apologists now often claim that the Jews were Somocistas, but in fact there is little evidence of this. Abraham Gorn and perhaps one or two others of the wealthiest families did have business and/or social relations with the Somoza clan, but the majority of Jews did not. Moreover, there is little reason to believe that even those who did have ties to Somoza contributed in any material way to keeping him in power, such as by participating in military or political life. The Sandinistas claim to have a letter showing that Gorn made deliveries of supplies to the National Guard, but Gorn was in the textile business, and no one has shown that the supplies in question were anything but clothing.

What is true is that, as a group, Nicaraguan Jews were middle class, and this made them natural targets of Sandinista hostility. Sandinismo, after all, is a variant of Marxism, and along with everything else it has inherited from that ideology it would seem to have inherited a hatred of the middle class and a predisposition to extend that hatred to Jews. It was Marx who wrote: "What is the worldly cult of the Jew? Huckstering. What is his worldly god? Money." In an echo of this, Herty Lewitas, the Sandinista Minister of Tourism, son of a Catholic mother and a Jewish father who separated himself from the Jewish community some decades ago, told the New Jewish Agenda delegation, "I remember when I was growing up that many of the Nicaraguan Jews used to say, 'Our county is the world, and our flag is the dollar.'" It is more likely that Lewitas was "remembering" not something Jews themselves said but something that was said about them.

Whatever the motivations behind Sandinista behavior toward Jews, the essential fact is that a tiny community—some fifty individuals—was compelled to flee. This is not a very big story; it pales in comparison, for example, with that of Nicaragua's Miskito Indians, thousands of whom have also been compelled to flee and hundreds of whom have died. But it is a true story, and a revealing one—revealing about the regime that has perpetrated this evil, and unfortunately revealing as well about those in this country, including some Jews, who have denied or defended it.

AFRICAN NATIONAL CONGRESS

Mr. BOSCHWITZ. Mr. President, I also ask unanimous consent that an article which appeared in the Anti-Defamation League Bulletin of May 1986 entitled "The African National Congress, A Closer Look" also be inserted in the RECORD because it gives, I believe, an objective and straightforward look at the African National Congress in a most direct and unbiased manner.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE AFRICAN NATIONAL CONGRESS—A CLOSER LOOK

(By Nathan Perlmutter and David Evanier)

Discussion of the political scene in South Africa properly begins with the self-evident stipulation that apartheid is racist and dehumanizing.

If you are a black citizen of South Africa, you cannot vote in national elections; you must generally use separate public facilities; you are not allowed to own real estate in 87 percent of your own country; you are told with whom you may socialize, and where you can look for a job. If the government wants to resettle you, it can do so at any time for any reason.

The "homelands" resettlement drive has forced half of South Africa's blacks into overcrowded, unproductive segregated Bantustans, areas with no industrial base that are so overpopulated hardly any viable agricultural land remains. Drinking water is unsafe and sanitation deplorable. Since the Bantustans are little more than detention camps, many Africans migrate to urban centers as "illegals" subject to arrest. Forty percent of black children are estimated to be malnourished and ten percent suffer from kwasiokor (extreme protein deficiency).

In 1984, Pretoria's Constitution granted Parliament chambers to Asian and "colored" communities but not to blacks.

On the positive side, black, colored and Asian trade union membership has grown from 150,000 after legalization in 1979 to 750,000 today and blacks' real income has risen substantially in the last 25 years, higher than in any other African country. The U.S. State Department says that more positive changes have taken place in South Africa in the last five years than in the previous 300.

Hotels, parks and theaters are being integrated, and the pass laws controlling where blacks can live and work were recently revoked. Other reform commitments that are going to be translated into legislation include guaranteeing blacks freehold property rights.

Paul Johnson, British historian and former editor of the New Statesman, recently wrote in Commentary: "There is . . . overwhelming evidence that South Africa has been moving away from apartheid . . . It is quite clear that P.W. Botha . . . is convinced that apartheid has to go and has been dismantling it almost by stealth to avoid panicking the regime's followers."

Nevertheless, apartheid remains in force today. We, as Jews, with a collective memory of centuries in European ghettos and who have experienced the singular evil of racism, feel a special personal responsibility to insist on its dismantling.

But this is not to suggest closing our eyes to what may emerge once apartheid is gone. Political morality demands that the values that see us abhor apartheid also measure the society that will follow. We must distinguish between those who will work for a humane, democratic, pro-Western South Africa and those who are totalitarian, antihumane, anti-democratic, anti-Israeli and anti-American.

It is in this context that the African National Congress (ANC), so frequently discussed as an alternative to the Botha Government, merits a close, unsentimental look.

The question can be fairly asked, what has all this to do with Jews?

As a revolutionary national liberation movement oriented toward Moscow, the ANC has long echoed Soviet attempts to undermine the legitimacy of Israel. Moreover, the ANC is a strident supporter of the Palestine Liberation Organization.

—In 1970, the ANC denounced "Israel's aggressive expansionism" as "supported to the hilt by the ruling circles of the U.S. and their allies" and urged "all peace-loving non-aligned states . . . (to) immediately sever state relations with Israel . . ."

—An article in the September, 1971, issue of Sechaba, the monthly ANC magazine headlined, "Zionism, South Africa and Apartheid—a Paradoxical Triangle," was adapted from a pamphlet with the same title published by the Palestine Research Center, an affiliate of the P.L.O.

—In September, 1980, ANC president Oliver Tambo spoke in Paris at an international Conference on Solidarity with the Struggle of the Namibian People, sponsored by the World Peace Council, a Soviet front. He said:

" . . . I would like to assure our comrades in the liberation struggles . .. and the P.L.O. . . . that their struggle is ours . . . our fight is carried on in the knowledge of the degree of intimacy and political, military and economic alliance that has been developed between racism and Zionism."

—At the 60th anniversary meeting of the South African Communist Party (SACP) in 1981, Tambo stated: "Today, in the anti-imperialist struggle, we have won new allies like the struggling people of Palestine. We have thrown up new enemies of peoples, like those who murder civilians in Beirut."

—In July, 1982, during the Israeli military action against Lebanon-based P.L.O. terrorism, ANC chief United Naitons observer Johnstone M. Makatini denounced Israel for its "flagrant and unprovoked aggression against Lebanon" and its "attempted extermination" of the Palestinian people. He referred to Prime Minister Begin's policy as "Zionist Nazism."

—Witnesses who had been associated with the ANC testified before the U.S. Senate Judiciary Committee Subcommittee on Security and Terrorism in March, 1982, that the ANC cooperated with the P.L.O. and that some members trained in the U.S.S.R. with P.L.O. cadres.

—In 1983, a controversy erupted at the State University of New York at Stony Brook involving Professor Ernest (Fred) Dube, who taught a course on "The Politics of Race." Dube, an ANC representative at the United Nations serving on the ANC's National Educational Council, taught that Zionism is a form of racism and suggested as a term paper theme "Zionism is as much racism as Nazism is racism." Dube spoke at a "Teach-in on Palestine" in New York in December, 1983, sponsored by the November 29 Coalition, a pro-P.L.O. organization of radical leftist and Arab-American groups. In an interview published in the July-August 1985 issue of Palestine Focus, a publication of the now renamed November 29 Committee for Palestine, Dube said that "what the Zionists did to the Arabs in Palestine was exactly the same that the whites did to us" in South Africa.

—At the ANC National Consultative Conference in June, 1985, Oliver Tambo stated: "In 1973, the Arab armies succeeded to inflict a major defeat on Zionist Israel for the first time in a quarter of a century, forcing U.S. imperialism to seek new measures to protect its client state in the Middle East."

—The ANC, the P.L.O. and the South West Africa People's Organization (SWAPO) were observers at the second

annual United Nations North American Regional Non-Governmental Organizations (NGO) Symposium on the Question of Palestine, in July, 1985, under U.N. auspices in New York. The symposium, held to plan an anti-Israel propaganda campaign in the U.S. and Canada, was replete with anti-Israel and pro-P.L.O. declarations that often straddled the fine line between criticism of Israel and its supporters and outright anti-Semitism.

—The ANC and the November 29 Committee for Palestine cosponsored a meeting in New York in April, 1986, on the subject, "Israel-South Africa: The Apartheid Connection? Similar meetings have since been held in many other American cities.

The ANC, which seeks to overthrow the South African government, is a "national liberation movement" that, plainly said, is under heavy Communist influence.

—The ANC has been allied with the South African Communist Party (SACP) for 30 years.

—The ANC is oriented toward the Soviet Union and its East Bloc allies, who have furnished it with arms, funding, military training and other logistic support.

—Oliver Tambo, who has headed the ANC since 1964 when former president Nelson Mandela was sentenced to life imprisonment for acts of sabotage, is a member of the Presidential Committee of the World Peace Council (WPC), a leading Soviet-controlled front organization based in Helsinki. Tambo has been a speaker or guest at various forums sponsored by the U.S. Communist Party.

—The ANC is a member of the Afro-Asian People's Solidarity Organization (AAPSO), described in 1983 by the U.S. State Department as a Soviet-controlled front.

—Sechaba, the ANC magazine, is printed in Communist East Germany.

—Moses Mabhida, General Secretary of the South African Communist Party, speaking at the SACP 60th anniversary meeting in 1981, said: "Our Party . . . fully supports the same program of liberation as the African National Congress for the seizure of power and black majority rule."

—In 1982, seven members of the ANC national executive committee were identified in sworn testimony before the U.S. Senate Subcommittee on Security and Terrorism as SACP members. The 30-member national executive committee now has 12 to 15 members said to be affiliated with SACP.

—The ANC supports the Soviet Union on foreign policy issues. Tambo told the June, 1985, ANC National Consultative Conference: ". . . the democratic, anti-deudal and anti-imperialist revolution in Afghanistan had been saved, with the support of the Soviet Union."

—In a message to the same conference, the SACP Central Committee stated:

". . . The SACP . . . pledges to do its utmost to ensure that your decisions are carried into the field of struggle and implemented."

—ANC spokesmen were featured speakers at banquets sponsored by the Communist Party newspaper, People's World, held this spring in California.

The fall of South Africa to such a Soviet-oriented and Communist-influenced force would be a severe setback to the United States, whose defense industry relies heavily on South Africa's wealth of strategic minerals. If Americ's defense industry were handicapped, our allies' security would also be at peril. A recent Commerce Department report noted that South Africa possesses 83.6 percent of the world's chromium; 80.8 percent, platinum; 70.8 percent, manganese; and 47.7 percent, vanadium.

In the event of a Communist-influenced or controlled revolution, South Africa's dependence on income from the export of strategic metals would perhaps result in continued sales to the West. However, if South Africa's strategic metals were controlled by a regime favoring the Soviet Union, American vulnerability to making political concessions to Moscow would increase substantially.

Moreover, should South Africa be controlled by a regime supportive of the Soviet Union, sea lanes and "choke points" around the Cape of Good Hope through the Red Sea, trade routes to the South Atlantic and Indian Oceans, and from the Persian Gulf would be at risk.

During the last three decades, it has been made painfully clear to the American Jewish community and to all supporters of human rights, that while tyrannies can be overthrown, at times the regimes replacing them may be even worse.

Some examples: In Cuba, the authoritarian Batista was replaced by Castro's Communism; in Iran, the undemocratic Shah's fall brought to power the tyrannical Ayatollah Khomeini; in Nicaragua, the corrupt Somoza's ouster saw the Communist Sandinista regime rise to power. And in Vietnam, the boat people are our times' searing reminder of the spawn of Communism.

As Freedom House has stated, ". . . South Africa bears the major onus for the bloodshed. Oppressed by the system of apartheid imposed on them by the white minority, the Africans are fighting back in whatever ways possible."

The ANC and the South African Communist Party are not root causes of the upheaval in South Africa. Communists exploit and manipulate economic and political desperation and oppression for their own purposes. South Africa is a tinder box; the Communists are poised to strike the match.

Yet there is still time for other agents of change to take hold and a number of them exist today in South Africa. Those partisans of democratic alternatives can take heart at the recent outcome in the Philippines, in such a democratic force, Corazon Aquino, emerged triumphant.

One example of assistance to a democratic alternative is the two-month training program in political, economic and social self-sufficiency for leaders from the black township of Soweto taking place at the Afro-Asian Institute in Tel Aviv, Israel.

Israel's labor federation, the Histadrut, a staunch opponent of apartheid, runs the Afro-Asian Institute. The training program focuses on unionizing South Africa's black workers, developing black civil infrastructures, organizing black women and teaching social work.

Israel has repeatedly condemned apartheid and has expressed its willingness to join other countries in economic sanctions against South Africa.

The writer Thomas Mann wrote at the conclusion of his epic novel, "The Magic Mountain":

"Out of this universal feast of death, out of this extremity of fever, kindling the rain-washed evening sky to a fiery glow, may it be that Love one day shall mount?"

The same question applies to violence-ridden South Africa. The survival of freedom in South Africa will be possible only if the forces of violence on the far left and of racial violence on the far right are defeated by the democratic forces of moderation.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 4:12 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has passed the bill (H.R. 2638) to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes; it insists upon its amendment to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following members as managers of the conference on the part of the House:

From the Committee on Armed Services for consideration of the entire Senate bill and House amendments (unless otherwise restricted): Mr. ASPIN, Mr. PRICE, Mr. BENNETT, Mr. STRATTON, Mr. NICHOLS, Mr. DANIEL, Mr. MONTGOMERY, Mr. DELLUMS, Mrs. SCHROEDER, Mrs. BYRON, Mr. MAVROULES, Mr. HUTTO, Mr. SKELTON, Mr. MCCURDY, Mr. RAY, Mr. SPRATT, Mr. DICKINSON, Mr. WHITEHURST, Mr. SPENCE, Mrs. HOLT, Mr. HILLIS, Mr. BADHAM, Mr. STUMP, Mr. COURTER, Mr. HOPKINS, and Mr. DAVIS.

As additional conferees from the Permanent Select Committee on Intelligence, solely when differences regarding intelligence-related activities are under consideration: Mr. HAMILTON, Mr. STOKES, and Mr. CHENEY.

As additional conferees from the Committee on Foreign Affairs, solely for the consideration of sections 205(f), 952, 1205–1209, 1214–1217, 1228, 1231, and 1233 of the Senate bill and

sections 1024 and 1041 of the House amendments: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. BROOMFIELD, and Mr. GILMAN.

As an additional conferee, solely for the consideration of section 1032 of the House amendments and modifications committed to conference: Mr. SAVAGE.

As additional conferees, solely for the consideration of sections 911 and 936 of the House amendments and modifications committed to conference: Mr. MITCHELL and Mr. BROOMFIELD.

As exclusive conferees, solely for the consideration of sections 109, 203, 205(a)(1), 1210, 1230, and 3114(a) of the Senate bill and sections 123, 128, 208, 215, 1061, 3013, and 3036 of the House amendments: Mr. ASPIN, Mr. PRICE, Mr. BENNETT, Mr. DELLUMS, Mrs. SCHROEDER, Mrs. BYRON, Mr. MAVROULES, Mr. MCCURDY, Mr. SPRATT, Mr. FASCELL, Mr. BROWN of California, Mr. GEPHARDT, Mr. FAZIO, Mr. DICKS, Mr. AUCOIN, Mr. DOWNEY of New York, Mr. MARKEY, Mr. BEDELL, Mr. DICKINSON, Mr. WHITEHURST, Mr. SPENCE, Mrs. HOLT, Mr. BADHAM, Mr. STUMP, Mr. COURTER, Mr. BROOMFIELD, Mr. LAGOMARSINO, Mr. HYDE, and Mr. SOLOMON.

As exclusive conferees, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendments: Mr. MAVROULES, Mr. BENNETT, Mr. MCCURDY, Mr. HERTEL, Mr. SISISKY, Mr. SPRATT, Mrs. SCHROEDER, Mrs. BOXER, Mr. WYDEN, Mr. LEVINE of California, Mr. SIKORSKI, Mr. BRYANT, Mr. COURTER, Mr. DICKINSON, Mr. KRAMER, Mr. KASICH, Mr. BATEMAN, Mr. STUMP, and Mr. HUNTER.

As exclusive conferees, solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendments: Mr. PRICE, Mr. DELLUMS, and Mr. DICKINSON.

As additional conferees, from the Committee on Education and Labor, solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendments: Mr. HAWKINS, Mr. MURPHY, Mr. CLAY, Mr. WILLIAMS, Mr. WALDON, Mr. JEFFORDS, Mr. PETRI, and Mr. BARTLETT.

As exclusive conferees, from the Committee on Education and Labor, solely for consideration of division F of the Senate bill and modifications committed to conference: Mr. HAWKINS, Mr. FORD of Michigan, Mr. KILDEE, Mr. WILLIAMS, Mr. MARTINEZ, Mr. OWENS, Mr. BOUCHER, Mr. PERKINS, Mr. GOODLING, Mr. CHANDLER, Mr. MCKERNAN, and Mr. FAWELL.

As exclusive conferees, solely for the consideration of division B of the Senate bill and division B of the House amendments: Mr. DELLUMS, Mr. MONTGOMERY, Mr. HUTTO, Mr. LEATH of Texas, Mr. HERTEL, Mr. KRAMER, Mr. DICKINSON, and Mr. WHITEHURST.

As exclusive conferees, solely for the consideration of division D of the House amendments and modifications committed to conference: Mr. ASPIN, Mr. NICHOLS, Mr. SKELTON, Mr. MAVROULES, Mr. DICKINSON, Mr. HOPKINS, and Mr. KASICH.

The message also announced that the House has passed the following joint resolutions, with amendments, in which it requests the concurrence of the Senate:

S.J. Res. 202. Joint resolution designating November 1985 as "American Liver Foundation National Liver Awareness Month";

S.J. Res. 263. Joint resolution to designate the week of September 7 through September 13, 1986, as "National Independent Retail Grocer Week"; and

S.J. Res. 405. Joint resolution to designate September 11, 1986, as 9-1-1 Emergency Number Day".

The message further announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 1426. An act to authorize and amend the Indian Health Care Improvement Act, and for other purposes;

H.R. 2482. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

H.R. 4430. An act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national system units;

H.R. 5109. An act to establish a National Special Operations Agency within the Department of Defense to have unified responsibility for all special operations forces and activities within the Department;

H.R. 5548. An act to amend the Export-Import Bank Act of 1945;

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the Space Shuttle Challenger;

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 617 Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week";

H.J. Res. 684. Joint resolution calling for recognition of United Way's one hundredth anniversary;

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week".

The message further announced that the Speaker appoints Mr. JEFFORDS as an additional exclusive conferee, from the Committee on Education and Labor, solely for consideration of division F of the Senate bill and modifications committed to conference, in the conference on the disagreeing votes of the two House on the bill (S. 2638) entitled "An Act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes.".

MEASURES REFERRED

The following bills and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1426. An act to authorize and amend the Indian Health Care Improvement Act, and for other purposes; to the Select Committee on Indian Affairs.

H.R. 4430. An act to require the Secretary of the Interior to conduct a study to determine the appropriate minimum altitude for aircraft flying over national park system units; to the Committee on Energy and Natural Resources.

H.R. 5109. An act to establish a National Special Operations Agency within the Department of Defense to have unified responsibility for all special operations forces and activities within the Department; to the Committee on Armed Services.

H.R. 5548. An act to amend the Export-Import Bank Act of 1945; to the Committee on Banking, Housing, and Urban Affairs.

H.J. Res. 588. Joint resolution commemorating January 28, 1987, as a National Day of Excellence in honor of the crew of the Space Shuttle Challenger; to the Committee on the Judiciary.

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week"; to the Committee on the Judiciary.

H.J. Res. 684. Joint resolution calling for recognition of United Way's one hundredth anniversary; to the Committee on the Judiciary.

MEASURES PLACED ON THE CALENDAR

The following bills and joint resolutions were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2482. An act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes;

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation,

with an amendment in the nature of a substitute and an amendment to the title:

S. 1935: A bill to direct the Secretary of the department in which the Coast Guard is operating to cause certain vessels to be documented as vessels of the United States so as to be entitled to engage in the domestic coastwise trade, and for other purposes (Rept. No. 99-465).

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

S. 2209: A bill to make permanent and improve the provisions of section 1619 of the Social Security Act, which authorizes the continued payment of SSI benefits to individuals who work despite severe medical impairment; to amend such Act to require concurrent notification of eligibility for SSI and medicaid benefits and notification to certain disabled SSI recipients of their potential eligibility for benefits under such section 1619; to provide for a GAO study of the effects of such section's work incentive provisions; and for other purposes (Rept. No. 99-466).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COCHRAN (for himself, Mr. ABDNOR, Mr. GRASSLEY, Mr. PRYOR, and Mr. STENNIS):

S. 2847. A bill to amend the Agricultural Act of 1949 to provide certain agricultural program adjustments, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. METZENBAUM:

S. 2848. A bill to repeal the McCarran-Ferguson Act, and for other purposes; to the Committee on the Judiciary.

By Mr. NUNN:

S.J. Res. 417. A joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PRESSLER:

S. Res. 492. A resolution to express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend; to the Committee on Commerce, Science, and Transportation.

STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COCHRAN (for himself, Mr. ABDNOR, Mr. GRASSLEY, Mr. PRYOR, and Mr. STENNIS)

S. 2847. A bill to amend the Agricultural Act of 1949 to provide certain agricultural program adjustments, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

(The remarks of Mr. COCHRAN and the text of the legislation appear earlier in today's RECORD.)

By Mr. METZENBAUM:

S. 2848. A bill to repeal the McCarran-Ferguson Act, and for other purposes; to the Committee on the Judiciary.

REPEAL OF MC CARRAN-FERGUSON ACT

● Mr. METZENBAUM. Mr. President, today I am introducing legislation to repeal the McCarran-Ferguson Act, the law which provides that the business of insurance is exempt from the Federal antitrust laws.

Why is the insurance industry exempt from the antitrust laws? They're exempt because in 1945 the insurance industry managed to lobby through Congress one of the biggest, most valuable special interest antitrust exemptions in history, the McCarran-Ferguson act. For over 40 years, the insurance industry has been able to avoid Federal laws against price-fixing and many other types of anticompetitive behavior. It has even been able to avoid the Federal consumer protection laws.

The Federal Trade Commission can't sue the insurance industry for misleading consumers except in rare cases because of McCarran-Ferguson. The Justice Department can't sue insurance companies for fixing prices except in rare cases because of McCarran-Ferguson. Private parties who are hurt by anticompetitive practices can't sue either.

What's the justification for this sweeping exemption? The insurance industry will tell you it's because State regulation is adequate. What kind of an answer is that? Every other industry has to live with State antitrust laws, as well as Federal antitrust laws. Why is the insurance industry different? It is not different. The Federal antitrust laws should apply to this industry just as they do to the rest of the economy.

Moreover, State regulation is not adequate. Many State insurance agencies are underfunded, understaffed, and unwilling to stand up to the insurance industry they are supposed to regulate. Even in cases where a State agency may wish to bring an antitrust case, it is faced with the prospect of long and expensive litigation against national companies who are willing to spend millions of dollars in legal fees to avoid an adverse judgment. In these cases, the Federal Trade Commission or the Justice Department should be able to bring an action which will benefit consumers all across the Nation.

The insurance industry argues that it has special characteristics which require it to engage in conduct which would violate the antitrust laws. For example, the industry points to the need to share information in order to compile reliable risk data. I agree that the industry has a legitimate need to pool certain types of information. However, this type of information sharing can be done in a way that is totally consistent with the antitrust laws. The antitrust laws are flexible enough to allow information sharing when it serves legitimate business needs, and on balance, has the effect of promoting competition, rather than reducing it.

The bill I am introducing today totally repeals the McCarran-Ferguson Act. However, in order to give the insurance industry some time to adjust to operating under the scrutiny of Federal antitrust enforcement, the bill provides a 1-year grace period before the antitrust laws apply. In addition, for conduct occurring within 2 years after the bill is enacted, the only relief available in a private case is injunctive relief. Treble damages and criminal penalties would not apply for 2 years. Finally, no relief would be granted for conduct occurring within 2 years of the date of enactment if the defendant relied in good faith on an advisory opinion of the Justice Department.

These provisions provide ample protections for the industry to make the transition from the current legal environment in which it operates to a requirement that it comply with the Federal antitrust laws.

The McCarran-Ferguson Act has been on the books too long. Sooner or later, Congress will have the good judgment to decide that free enterprise should apply to insurance just as it should apply to other industries. When that day finally comes, the public will be better off.

Of course, I recognize that this bill will not pass in this session of Congress. But I am introducing it to make the industry aware that there is a continuing problem with its performance. Unless there is significant new evidence in the coming months demonstrating that there is genuine competition in this industry I believe Congress will enact legislation to repeal or substantially modify the McCarran-Ferguson Act.●

By Mr. NUNN:

S.J. Res. 417. Joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week"; to the Committee on the Judiciary.

NATIONAL PRODUCTIVITY IMPROVEMENT WEEK

● Mr. NUNN. Mr. President, all of us realize our country's economic future lies in its ability to produce quality goods and services which can consistently compete with those offered by other countries. Obviously, this challenge has long demanded and still demands attention of Government, bus-

iness, and industry to numerous factors affecting the economy, but one is more significant than any other. It is productivity improvement.

When the impact of productivity is fully considered, there can be no question that it is a potent and vital weapon in our battle to keep America economically strong and successful.

Productivity is a comparison of output of goods and services with the investment that was needed to create those goods and services. The investment includes costs of energy, labor, raw materials, and equipment. When more output is realized from a given investment, productivity increases. A nation or an industry advances by using less of its resources to turn out more products and services.

America's rise to world productivity leadership can be traced to our citizens having demonstrated their ingenuity in producing more quality goods in less time and with fewer resources. Our people have shown pride and dedication to quality workmanship. Unfortunately, this leadership role has been increasingly challenged for many years now.

At stake in the productivity battle are a vast number of jobs. Additionally, there are adverse effects which can increase inflation. In brief, without a strong performance in productivity our Nation must ultimately face a reduced standard of living.

Despite the tremendous technological advances we have witnessed throughout the workplaces of this Nation, there are still numerous ways in which productivity can be further improved if small as well as large organizations become involved.

Public awareness of the vital need for productivity improvement can contribute to the cause. This is why the nonprofit Institute of Industrial Engineers [IIE] is again sponsoring "National Productivity Improvement Campaign" in January. The year 1987 will mark the eighth consecutive year of this altruistic public information campaign. The 40,000 professionals of IIE will spearhead efforts to help organizations learn more about productivity improvement.

Not only IIE chapters, but also hundreds of companies and other organizations will join in this special period to focus attention on productivity improvement. The message in the drive will be communicated through plant and office bulletin board posters as well as through presentations to community groups. The media will also help explain the importance of productivity.

Today I am introducing a Senate joint resolution to proclaim January 25-31, 1987, as "National Productivity Improvement Week" and invite you to join me in this effort.●

ADDITIONAL COSPONSORS

S. 1026

At the request of Mr. PRESSLER, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1060

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1060, a bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979 by eliminating the disparity—resulting from changes made in 1977 in the benefit computation formula—between those levels and the benefit levels of persons who became eligible for benefits before 1979.

S. 2665

At the request of Mr. SYMMS, the names of the Senator from Oklahoma [Mr. NICKLES] the Senator from Idaho [Mr. MCCLURE], and the Senator from Nebraska [Mr. EXON] were added as cosponsors of S. 2665, a bill to amend the national maximum speed limit law.

S. 2678

At the request of Mr. BENTSEN, the names of the Senator from Arkansas [Mr. PRYOR], and the Senator from Louisiana [Mr. LONG] were added as cosponsors of S. 2678, a bill to provide a comprehensive national oil security policy.

S. 2840

At the request of Mr. STAFFORD, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 2840, a bill entitled the "Superfund Amendments and Reauthorization Act of 1986."

SENATE JOINT RESOLUTION 410

At the request of Mr. WILSON, the names of the Senator from Washington [Mr. GORTON], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Massachusetts [Mr. KERRY], the Senator from Tennessee [Mr. GORE], the Senator from Pennsylvania [Mr. HEINZ], the Senator from North Dakota [Mr. BURDICK], the Senator from Michigan [Mr. LEVIN], the Senator from Mississippi [Mr. STENNIS], the Senator from Utah [Mr. HATCH], the Senator from North Dakota [Mr. ANDREWS], the Senator from Tennessee [Mr. SASSER], the Senator from Hawaii [Mr. INOUYE], the Senator from Illinois [Mr. SIMON], the Senator from Virginia [Mr. WARNER], and the Senator from Michigan [Mr. RIEGLE], were added as cosponsors of Senate Joint Resolution 410, a joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week."

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. STEVENS, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of Senate Concurrent Resolution 145, a concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 492—RELATING TO A RATING FOR MOVIES TO IDENTIFY FILMS WHICH DEPICT DRUG USAGE

Mr. PRESSLER submitted the following resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. RES. 492

Whereas the use of illicit drugs has become a societal problem of epidemic proportions;

Whereas it is in the interest of all citizens to contribute to the reduction of drug use, particularly among youth;

Whereas the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts drug use in a benign, even glamorous way;

Whereas the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

Whereas the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system;

Now, therefore be it

Resolved, That it is the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use, in order that parents can make an informed choice about the movies their children attend.

AMENDMENTS SUBMITTED

OMNIBUS DRUG LEGISLATION

PRESSLER AMENDMENT NO. 2866

(Ordered to lie on the table.)

Mr. PRESSLER submitted an amendment intended to be proposed by him to an omnibus bill related to drug trafficking; as follows:

At the appropriate place insert:

Congress finds that the use of illicit drugs has become a societal problem of epidemic proportions;

Congress finds that it is in the interest of all citizens to contribute to the reduction of drug use, particularly among youth;

Congress finds that the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts drug use in a benign, even glamorous way;

Congress finds that the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

Congress finds that the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system;

Now, therefore be it

Declared, That it is the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use, in order that parents can make an informed choice about the movies their children attend.

PRODUCT LIABILITY ACT

McCONNELL AMENDMENT NO. 2867

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill (S. 2760), to regulate interstate commerce by providing for a uniform product liability law, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Tort Litigation Reform Act of 1986".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds and declares that—

(1) there are serious problems with the civil justice system under which tort claims are filed and resolved;

(2) the cost of litigation has risen at a dramatic rate over the past 25 years and threatens to continue to rise at a similar rate for the foreseeable future;

(3) the size of judgments awarded in tort litigations has increased dramatically and in some cases far exceeds the level reasonably necessary to compensate victims of accidents for the losses they have incurred;

(4) the rising cost of litigation and the increasing size of settlements and judgments in tort litigation have direct and undesirable effects on interstate commerce and on the availability of products and services in commerce;

(5) the potential for unreasonably large settlements and awards for damages in litigation and the lack of predictability of outcomes has greatly contributed to a nationwide crisis in the availability and affordability of insurance;

(6) there is a need for reasonable limits on the potential exposure of individuals and businesses to liability for damages resulting from the sale and use of products, the provision of services, or the ownership and use of property, all of which contribute to the net economic output of the Nation's economy, and to the general welfare; and

(7) because of the interstate nature of the commerce, the several States are unable to provide and maintain a just system of compensation of deserving claimants without threatening to inflict grievous and lasting injury on the economy, thereby diminishing the general welfare of the Nation and of the several States.

(b) It is the purpose of this Act to establish uniform rules of tort law, to encourage restraint in the use of litigation, to provide fair and reasonable compensation for accident or injury, and to promote the free flow of commerce and the availability and affordability of liability insurance.

APPLICABILITY

SEC. 3. (a) Except as provided in subsection (b), (c), or (d), the provisions of this Act shall apply to any civil action against any person, in any State or Federal court, based on any cause of action, including, but not limited to, negligence, strict or product liability, breach of implied warranty, or professional malpractice, in which damages are sought for physical injury or for physical or mental pain or suffering or for property damage other than damage to the product itself.

(b) This Act shall not apply to—

(1) a civil action for loss or damage to a product itself or for commercial loss which shall be governed by State commercial law; or

(2) a civil action for intentionally committed battery, assault, false imprisonment, trespass, or conversion.

(c) The provisions of this Act shall preempt and supersede Federal or State law only to the extent such law is inconsistent with this Act. Any issue arising under the provisions of this Act that is not governed by the provisions of this Act shall be governed by applicable State or Federal law.

(d) Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of chapter 97 of title 28, United States Code, known as the Foreign Sovereign Immunities Act of 1976;

(4) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum, except as provided in section 4 of this Act.

FORUM NON CONVENIENCES

SEC. 4. Any court in which an action subject to the provisions of this Act is commenced shall decline to exercise jurisdiction over such action if the court determines that the convenience of the parties and the interests of justice require that the action proceed in another State or foreign jurisdiction, or that the plaintiff has taken up residence in the State in which the court is located principally for the purpose of invoking jurisdiction of such court with respect to such action. In any such action maintained by a citizen of a foreign jurisdiction which arises out of a transaction which occurred in a foreign jurisdiction, there shall be a presumption, rebuttable only by clear and convincing evidence, that the action should proceed in such foreign jurisdiction.

JURISDICTION OF FEDERAL COURTS

SEC. 5. Notwithstanding any other provision of law, the district courts of the United States shall not have jurisdiction over any civil action subject to the provisions of this Act based on section 1331 or 1337 of title 28, United States Code.

ALTERNATIVE DISPUTE RESOLUTION

SEC. 6. (a) Because the traditional litigation process is not always suited to the timely, efficient, and inexpensive resolution of civil actions, it is the policy of the United States to encourage the creation and use of alternative dispute resolution techniques, to promote the expeditious resolution of such actions.

(b) In any action in which the provisions of this Act apply, each attorney who has made an appearance in the case and who represents one or more of the parties to the action shall, with respect to each party separately represented, advise the party of the existence and availability of alternative dispute resolution options, including extrajudicial proceedings such as minitrials, third-party mediation, court supervised arbitration, and summary jury trial proceedings.

(c) Each such attorney shall, simultaneous with the filing of a complaint or a responsive pleading, file notice with the court certifying that the attorney has so advised his client or clients, and indicating whether such client will agree to one or more of the alternative dispute resolution techniques.

(d) If all parties to an action agree to proceed with one or more alternative dispute resolution proceedings, the court shall issue an appropriate order governing the conduct of such proceedings. The issuance of an order governing such further proceedings shall constitute a waiver, by each party subject to the order, of the right to proceed further in court.

MEDIATION

SEC. 7. (a) If all of the parties to civil action subject to the provisions of this Act do not agree to proceed with one or more alternative dispute resolution proceedings, in accordance with section 6 of this Act, or if the court disapproves of such proceedings, the parties shall proceed pursuant to the provisions of this section.

(b)(1) In any action subject to the provisions of subsection (a), the court shall assign such action to mediation pursuant to this section, no earlier than 90 days after the filing of the answer in such case. Such assignment shall be made by written order.

(2) Such order shall have no effect on the normal progress of the action toward trial.

(c)(1) Cases assigned to mediation shall be heard by a mediation panel composed of 3 individuals.

(2) The procedure for selecting mediation panels shall be provided by court order and may set minimum qualifications for mediators.

(d)(1) The court shall designate the clerk of the court, the court administrator, the assignment clerk, or some other appropriate person to serve as mediation clerk.

(2) The mediation clerk shall set a time and place for the hearing and send notice to the mediators and the attorneys for all parties at least 30 days before the date set.

(e)(1) The court shall establish, by rule, the mediation fee to be paid by parties to the mediation. The mediators shall be com-

pensated only by payment from the fees collected.

(2) Within 15 days after the mailing of the notice of the mediation hearing, each party shall pay such mediation fee to the mediation clerk.

(f)(1) At least 7 days before the hearing date, each party shall submit to the mediation clerk 3 copies of a concise brief or summary setting forth such party's factual or legal positions on all issues presented to the action, and any other relevant document. One copy shall be served on each attorney of record.

(2) Failure to submit such materials or fees to the mediation clerk within the designated time may subject the offending party to contempt of court.

(g)(1) The rules of evidence shall not apply before the mediation panel. Factual information having a bearing on damages or liability shall be supported by documentary evidence whenever possible.

(2) Oral presentations shall be limited to 15 minutes per side unless multiple parties or unusual circumstances warrant additional time. The mediation panel may request and shall receive information regarding applicable insurance policy limits. The mediation panel may inquire about settlement negotiations unless there is an objection on behalf of any party.

(3) Statements by attorneys and the briefs or summaries shall not be admissible in any court or evidentiary proceeding.

(h)(1) Within 14 days after the hearing the panel shall make an evaluation of the claim or claims and notify, in writing, the attorney for each party in the action, of such evaluation. When an evaluation is not unanimous it shall so indicate.

(2) Such evaluation shall separately address each claim, cross-claim, counterclaim, and third party claim. For purposes of this section, all such claims filed by any party against any other party shall be treated as a single claim.

(i) Within 30 days after service of the evaluation, each party shall file, with the mediation clerk, a written acceptance or rejection of the panel's evaluation. Failure to file such acceptance or rejection within such time shall be deemed to constitute acceptance by such party.

(j)(1) If all the parties accept the panel's evaluation, the court shall enter judgment accordingly.

(2) If all or part of the panel's evaluation is rejected, the action shall proceed to trial.

(k)(1) In any action in which—

(A) a party rejects an evaluation,

(B) such case involved proceeds to trial, and

(C) the verdict in such case is less favorable to the rejecting party than the evaluation,

such party shall pay the opposing party for the actual costs of the trial.

(2) For purposes of this subsection, a verdict shall be adjusted by adding to it assessable costs and interest on the amount of the verdict from the date of the filing of the complaint to the date of the mediation evaluation. After such adjustment, the verdict is considered more favorable to a defendant if it is more than 25 percent above the evaluation.

(3) For the purpose of this subsection, actual costs include those costs taxable in any civil action and a reasonable attorney fee, as determined by the court, for legal services necessitated by the rejection of the mediation evaluation.

(4) Costs shall not be awarded under this subsection when the mediation evaluation was not unanimous.

(l) The court may establish additional rules to carry out the purposes of this section, including rules regarding multiparty litigation.

JOINT AND SEVERAL LIABILITY

SEC. 8. (a) Except as provided in subsections (b) and (c), a person found liable for damages in any such action subject to the provisions of this Act, shall be liable for damages only to the extent of such person's proportionate responsibility for the injury and shall not be jointly and severally liable.

(b) Notwithstanding the provisions of subsection (a), any person found liable for damages in an action subject to the provisions of this Act may be jointly and severally liable therefore if such person's proportionate responsibility for the injury is found by the trier of fact to exceed 50 percent.

(c)(1) This section shall not apply to persons acting consciously in concert where the concerted action caused the injury for which such persons are found liable.

(2) As used in this section, the terms "acting consciously in concert" or "concerted action" shall mean the participation in joint conduct by two or more persons who consciously and deliberately agreed to jointly participate in such conduct.

OFFSET OF DUPLICATE PAYMENTS

SEC. 9. (a) Except as otherwise provided in section 10, in any civil action subject to the provisions of this Act, the court shall reduce the total amount of damages awarded to any person by the net amount of any other payment which has been or will be made to such person to compensate for the same injury.

(b) The payments covered by this section are payments made or to be made as reimbursement of loss resulting from claimant's injury—

(1) under any Federal law or the laws of any State (other than as a result of a claim for breach of an obligation or duty); or

(2) under any health or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance or any benefit received or to be received as a result of participation in any prepaid medical plan or health maintenance organization.

(c) The net amount by which an award of damages to a person for an injury shall be reduced under subsection (a) shall be an amount equal to—

(1) the total amount of each payment described in subsection (b), minus

(2) any amount paid by such person or the spouse, parent, or guardian of such individual to secure the right to that payment.

UNIFORM STANDARDS FOR OFFSETTING WORKERS' COMPENSATION BENEFITS

SEC. 10. (a) Notwithstanding the provisions of section 9, in any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, any damages awarded shall be reduced by the sum of the amount paid as workers' compensation benefits for such harm and the present value of all workers' compensation benefits to which the employee is or would be entitled for such harm. The determination of workers' compensation benefits by the trier of fact in a civil action subject to this Act shall have no binding effect on and shall not be used as evidence in any other proceeding.

(b) In any civil action subject to this Act in which damages are sought for harm for which the person injured is entitled to receive compensation under any State or Federal workers' compensation law, the action shall, on application of the claimant made at claimant's sole discretion, be stayed until such time as the full amount payable as workers' compensation benefits has been finally determined under such workers' compensation law.

(c)(1) Unless the manufacturer or product seller has expressly agreed to indemnify or hold an employer harmless for harm to an employee caused by a product, neither the employer nor the workers' compensation insurance carrier of the employer shall have a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller if the harm is one for which a civil action for harm caused by a product may be brought pursuant to this Act.

(2) Paragraph (1) of this subsection shall not apply to any civil action involving workplaces covered by a State-operated worker's compensation insurance fund, if the State had adopted, prior to June 3, 1986, a statute eliminating workers' compensation subrogation liens in cases where the claimant's employer or coemployee has been found to be at fault.

(d) In any civil action subject to this Act in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third-party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee or the exclusive representative of the person who was injured.

(e) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee or the exclusive representative of the person who was injured. Any action other than such a workers' compensation claim shall be prohibited, except that nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

PERIODIC PAYMENTS

SEC. 11. (a) In any civil action to which the provisions of this Act apply, if the court awards an individual damages in excess of $100,000—

(1) the payment of such damages shall be made in such amounts and at such intervals as directed by the court, over a scheduled period of time or over the estimated lifetime of such individual;

(2) such payments shall be made until the total amount of such award is paid to such individual, except that if such individual dies prior to the date on which the final payment is to be made, the party obligated to make the payments shall not be required to make any additional payments to the

heirs or assigns of such individual unless directed to do so by the court; and

(3) the court may require that such periodic payments be made through the establishment of a trust fund or the purchase of an annuity.

LIMITATION ON DAMAGES FOR NONECONOMIC LOSSES

SEC. 12. (a) Notwithstanding any other provision of law, in any civil action to which the provisions of this Act apply, the amount of damages for noneconomic losses resulting from the conduct of the judgment debtor shall not exceed $500,000. If the action is tried with a jury, the jury shall not be informed of such limitation but any award over $500,000 shall be reduced by the court to comply with this subsection.

(b) The limitation on damages set forth in subsection (a) shall be adjusted on the first day of the second calendar year following enactment of this Act, and on the first day of each subsequent calendar year, by an amount representing the change in the Consumer Price Index for the preceding 12-month period ending September 30, as determined by the United States Department of Labor.

(c) "Noneconomic loss" as used in this section, means any loss which is not of money or of rights or property which are exchangeable for money. Noneconomic loss includes pain, suffering, mental anguish, loss of consortium, comfort, or companionship or injury to reputation; but does not include awards subject to section 14 of this Act.

ATTORNEY FEES

SEC. 13. In any civil action to which the provisions of this Act apply, and in which the plaintiff receives a settlement or an award of damages, the amount of payments to the plaintiff's attorney or attorneys shall be determined pursuant to this subsection. If the total award or settlement is—

(1) not more than $100,000, the attorney's fee shall not exceed 35 percent of such amount;

(2) more than $100,000 but less than $500,000, the attorney's fee shall not exceed $35,000 plus 25 percent of the excess over $100,000; or

(3) equal to or greater than $500,000, the attorney's fee shall not exceed $135,000 plus 10 percent of the excess over $500,000.

PUNITIVE DAMAGES

SEC. 14. (a) Punitive damages may be awarded to any plaintiff in any civil action to which the provisions of this Act apply if the plaintiff establishes by clear and convincing evidence that the injury suffered was the result of conduct constituting an extreme departure from accepted standards of conduct and manifesting a conscious, flagrant indifference to the safety of others. A defendant manufacturer's or product seller's failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions, or warnings does not, of itself contitute such conduct. Except as provided in subsection (f), punitive damages may not be awarded in the absence of a compensatory award.

(b) The trier of fact shall first determine whether compensatory damages are to be awarded. After such determination has been made, the trier of fact shall, in a separate proceeding, determine whether punitive damages are to be awarded.

(c) There shall be a rebuttable presumption that a plaintiff's harm was not the result of conduct constituting an extreme departure from accepted standards of conduct if the predominant cause of plaintiff's harm was a product which complied in material respects with standards, conditions, or specifications established, adopted, or approved by the Congress or by an agency of the Federal Government responsible for the safety of the design, formulation, labeling, or performance of a product. This subsection shall not apply to claims subject to subsection (h).

(d) If the trier of fact determines under subsection (a) that punitive damages should be awarded to a plaintiff, the court shall determine the amount of such damages. In making that determination, the court shall consider—

(1) the profitability, to the defendant of the conduct;

(2) the aggregate potential effect of such punishment upon the ability of the defendant to pay damages for economic and noneconomic loss in pending or future claims involving persons similarly situated to the plaintiff;

(3) the nature of the conduct that gave rise to liability for punitive damages;

(4) the total resources of the defendant;

(5) the nature of the harm for which the punitive damage award is assessed; and

(6) the total effect of other sanctions imposed upon the defendant as a result of the misconduct, including any criminal fines, civil penalties, or other sanctions to which the defendant has been or may be subjected.

(e) In considering the factors set forth in subsection (d), the court shall not make an individual award of punitive damages in excess of three times the amount of the plaintiff's compensatory award or $100,000, whichever is greater.

(f) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

(g) As a matter of public policy, no damages or awards arising from the operation of this section, shall be deemed insurable or, in any event, payable under the terms of any liability insurance policy.

(h)(1) Notwithstanding any other provision of this section, punitive damages shall not be awarded pursuant to this section against a defendant that caused the claimant's harm where—

(A) the drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(B) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government information that is material and relevant to the performance of such drug or device.

(2) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft which caused the claimant's harm where—

(A) such aircraft was subject to premarket certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft which caused the claimant's harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft; and

(B) the aircraft was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.).

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Federal Aviation Administration information that is material and relevant to the performance or the maintenance or operation of such aircraft.

LIABILITY STANDARDS

SEC. 15. Except as otherwise provided in sections 16 and 17 of this Act, no person shall be found liable for any damages in any civil action subject to the provisions of this Act unless claimant proves by a preponderance of the evidence that such person was negligent, and such negligence was the proximate cause of the damages sought.

LIABILITY OF PRODUCT MANUFACTURERS

SEC. 16. (a) No manufacturer shall be liable for damages in any civil action subject to the provisions of this Act, for harm allegedly caused by a product unless, claimant proves by a preponderance of the evidence that the manufacturer's product was the proximate cause of claimant's harm and was unreasonably safe because—

(1) the product deviated in a material way from the manufacturer's own design specifications at the time it left the manufacturer's control,

(2) the product would not have been designed or formulated as it was if the manufacturer had been exercising reasonable care for the safety of others,

(3) the manufacturer did not provide warnings or instructions which would have been provided if the manufacturer had been exercising reasonable care for the safety of others, or

(4) the product failed to conform in a material respect to an express warranty of the manufacturer.

(b) A presumption shall arise that a manufacturer exercised reasonable care for the safety of others if the product design, formulation, warning, or instructions conformed, at the time of manufacture, with standards, conditions, or specifications established, adopted, or approved by the Congress or an agency of the Federal Government responsible for the safety of the design, formulation, labeling, or performance of the product.

(c) A manufacturer shall not be liable for damages in a civil action subject to this Act for harm allegedly caused by a product if—

(1) in light of existing scientific, technological, or medical information, knowledge of the unsafe aspect of the product was not reasonably available or obtainable, or the ability to eliminate the unsafe aspect of the product was not technologically or practically feasible,

(2) plaintiff's harm would not have occurred but for an unreasonable or unforeseeable use or alteration of the product oc-

curring after it left the manufacturer's control and without the manufacturer's consent, where unreasonable or unforeseeable use or alteration of the product includes any use or alteration of the product which the manufacturer specifically prohibited or warned against, or

(3) the unsafe aspect of the product that caused claimant's harm either was an inherent characteristic of the product or was necessary to the products' utility and was either a matter of common knowledge or the subject of warnings or instructions adequate to permit an informed decision with respect to product use: *Provided*, That—

(A) the inherently unsafe aspect of the product was not significantly more dangerous than was reasonably to be expected, and

(B) the product resulted in more utility than harm to consumers.

LIABILITY OF PRODUCT SELLERS

SEC. 17. (a) Notwithstanding the provisions of section 16, in any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant;

(B) the product seller failed to exercise reasonable care with respect to the product; and

(C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product;

(B) the product failed to conform to the warranty; and

(C) the failure of the product to conform to the warranty caused the claimant's harm.

(b)(1) In determining whether a product seller is subject to liability under subsection (a)(1), the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this title based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, such seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product, any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with warnings and instructions it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this Act except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) A product seller shall be treated as the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

INJURIES CAUSED BY USE OF ALCOHOL OR DRUGS

SEC. 18. (a) In any civil action subject to the provisions of this Act, a person may assert as a complete defense that the plaintiff was under the influence of an intoxicating alcohol or drug and that such condition was more than 50 percent responsible for plaintiff's injury.

(b)(1) For purposes of this section, the determination of whether a person was under the influence of intoxicating alcohol shall be made pursuant to applicable State law.

(2) As used in this section, the term "drug" does not include a pharmaceutical product prescribed by a physician for use by the plaintiff or permitted by applicable law to be sold over the counter so long as it was used by plaintiff in accordance with the physician's or manufacturer's instructions.

SANCTIONS

SEC. 19. (a) In any civil action in which the provisions of this Act apply, any attorney or other person admitted to practice before the court, whose conduct in the course of the proceeding is determined by the court, after consideration of the circumstances, to have been to delay the proceeding or to impede the just, speedy, or inexpensive resolution of the action shall be subject to pecuniary sanctions by the court. Such sanctions shall not be less than the total amount of court costs, fees, and expenses, including attorney's fees, reasonably attributable to the conduct.

(b) In any civil action subject to the provisions of this Act in which the court finds that the action was initiated without a good faith belief by the attorney initiating the cause of action that there was a reasonable basis in law and in fact for recovery of the relief requested, or that the action was initiated merely for purposes of achieving a monetary settlement where there was no reasonable prospect for an award of damages, then such attorney shall be liable for the total amount of defendant's court costs, fees, and expenses, including double the attorney fees reasonably incurred to respond to or otherwise resist the action.

(c) In any civil action subject to the provisions of this Act in which the court finds that the attorney defending the cause of action denied the substantive averments of the complaint without a good faith belief that there was a reasonable basis in law and in fact for the avoidance of liability for the relief requested, or that the actions taken in defense of the action were intended merely to postpone the imposition of a judgment for damages, then such attorney shall be liable for the total amount of court costs, fees, and expenses, including double the attorney fees reasonably incurred to prosecute the action.

UNIFORM TIME LIMITATIONS ON LIABILITY

SEC. 20. (a) Any civil action subject to this Act shall be barred unless the complaint is filed within two years after the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b)(1) Any civil action subject to this Act shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product.

(2)(A) With respect to any good other than a capital good, a manufacturer or product seller shall not be subject to liability to a claimant for harm caused by a product in any civil action subject to this Act if the manufacturer proves, by a preponderance of the evidence, that the harm was caused after the product's useful safe life.

(B) A manufacturer or product seller may be subject to liability for harm caused by a product after its useful safe life if—

(i) the manufacturer has warranted that the product can be utilized safely for a time longer than the useful safe life;

(ii) the manufacturer intentionally misrepresents facts about the product or intentionally conceals information about the product and that concealment was the proximate cause of the claimant's harm; or

(iii) the harm was caused by exposure to a product, which exposure first occurred within the useful safe life of the product, even though the harm did not manifest itself until after such useful safe life.

(C) In any civil action brought pursuant to this paragraph, there is a presumption that the harm was caused after the useful safe life of the product if the harm was caused more than ten years after the time of delivery of the product. Such presumption may be rebutted by a preponderance of the evidence.

(3) A motor vehicle, vessel, aircraft, or railroad used primarily to transport passengers for hire shall not be subject to the provisions of this subsection.

(4) As used in this subsection—

(A) the term "time of delivery" means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold; and

(B) a product's "useful safe life" begins at the time of the first use of the product following delivery and extends for the time during which the product would normally be likely to perform or be stored, or both, in a safe manner.

(c) As used in this section, the term—

(1) "capital good" means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1954, and which was—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or other similar purposes; and

(2) "toxic harm" means harm which is functional impairment, illness, or death of a human being resulting from exposure to an object, substance, mixture, raw material or physical agent of particular chemical composition.

(d) Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

SUBSEQUENT REMEDIAL MEASURES

SEC. 21. Evidence of measures taken after an event, which if taken previously would have made the event less likely to occur, is not admissible to prove liability in any action subject to this Act, in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

GENERAL ACCOUNTING OFFICE STUDY

SEC. 22. (a) The Comptroller General of the United States (hereafter referred to as the "Comptroller") shall report to the Chairman of the Senate Committee on the Judiciary (hereafter referred to as the "Chairman"), no later than 180 days after the effective date of this Act, the findings and conclusions of a study to determine the causes and the effects upon this Nation's civil justice system of the current liability insurance availability and affordability crisis.

(b) The Comptroller's report shall be limited to responding to specific questions submitted by the Chairman. Such questions shall be prepared and submitted to the Comptroller no later than 30 days after the effective date of this Act.

DEFINITIONS

SEC. 23. (a) As used in this Act, the term—

(1) "claimant" means any person who brings a civil action pursuant to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under the standard of a preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(3) "commercial loss" means economic injury, whether direct, incidental, or consequential, including property damage and damage to the product itself, incurred by persons regularly engaged in business activities consisting of providing goods or services for compensation;

(4) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution and judgment that society expects of its members for the protection of their own interests and the interests of others;

(5) "harm" means any harm recognized under the law of the State in which the civil action is maintained, other than loss or damage caused to a product itself, or commercial loss, with respect to which recovery is available under the commercial or contract law of the State;

(6) "manufacturer" means (A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product); (B) a product seller with respect to all aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or (C) any product seller not described in clause (B) which holds itself out as a manufacturer to the user of a product;

(7) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(8) "preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(9) "product" means any object, substance, mixture, or raw material in a gaseous, liquid or solid state (A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state or as a component part or ingredient; (B) which is produced for introduction into trade or commerce; (C) which has intrinsic economic value; and (D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(10) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(11) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

EFFECTIVE DATE

SEC. 24. (a) This Act and the amendments made by this Act shall be effective on the date of enactment, and shall apply to all civil actions filed on or after such date, including any civil action in which the harm or the conduct complained of occurred before such effective date.

(b) If any provision of this Act would shorten the period during which a person would otherwise be exposed to liability, the plaintiff may, notwithstanding the otherwise applicable time period, bring any civil action pursuant to this Act within one year after the effective date of this Act.

SEVERABILITY

SEC. 25. If any provision of this Act or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and the application of any provision to any other person or circumstance shall not be affected thereby.

KASTEN (AND OTHERS) AMENDMENT NO. 2868

(Ordered to lie on the table.)

Mr. KASTEN (for himself, Mr. INOUYE, Mr. GORTON, Mrs. KASSEBAUM, Mr. STEVENS, and Mr. RIEGLE) submitted an amendment intended to be proposed by them to the bill S. 2760.

Mr. KASTEN. Mr. President, a motion to proceed on S. 2760, "The Product Liability Reform Act," is currently pending before the Senate. While an overwhelming majority of my colleagues support Federal product liability reform, some of them were opposed to proceeding on S. 2760 because of the arbitrary caps on a plaintiff's recovery which are currently in the bill.

However, Senators INOUYE, GORTON, KASSEBAUM, STEVENS, RIEGLE, and I have reached a bipartisan compromise agreement on a substitute to S. 2760 which would completely remove all caps on recovery.

The caps in S. 2760 are contained in the expedited settlement provisions of the bill, and our substitute would replace those settlement provisions with the settlement provisions which originally were adopted by the Commerce Committee by a vote of 16 to 1.

Our compromise not only eliminates a central objection of the consumer groups to this legislation, but it is supported by the National Association of Manufacturers, the Chamber of Commerce, the National Federation of Independent Businesses, the Business Roundtable, and many other business groups and associations. The administration also supports this amendment.

Because of the widespread support which this bipartisan compromise has already gathered, I am confident that it will be overwhelmingly adopted by the Senate when offered. While some of us will seek further amendments to S. 2760 on the floor—Senator LUGAR and I still intend to offer our "fault defenses" amendment, for example—our bipartisan compromise substitute eliminated the most controversial provisions of this legislation. I therefore urge my colleagues to move to the consideration of S. 2760, "The Product Liability Reform Act," without delay.

Enactment of the bipartisan compromise substitute to S. 2760 will help to lessen the pain of the crisis. The statute of repose in this bill will end the "long table of liability" problem which unfairly penalizes, almost exclusively, domestic product sellers and manufacturers.

This legislation provides a uniform Federal fault standard for product sellers and provides that those who only sell products should not be liable

for anyone's negligence except their own. This is only fair, and on the floor of the Senate, I hope we can extend this same fairness to product manufacturers as well. Senator LUGAR and I will offer a uniform fault standard amendment to do this.

This bill also provides a uniform 2-year statute of limitations. Unlike the statutes of limitations in many States, the 2 years do not begin to run until the claimant has had a chance to discover his injury. This is only fair and equitable.

In the legislation before us, we have taken important steps to control the abusive award of punitive damages. We have clarified the standard of proof to be "clear and convincing" evidence and provided that "conscious, flagrant indifference to the safety of persons" should be the standard of liability.

Due primarily to Senator KASSEBAUM's leadership, we have provided a government standards defense for punitive damages which will simply ensure that manufacturers are not punished for following Federal laws.

While the committee did not adopt any amendment to place contingency fees on a sliding scale, we have given judges the power and the mandate to require those who bring frivolous suits to pay the other's full costs and attorney fees, and to punish those who intentionally delay the resolution of legitimate claims for no just purpose. I hope the judges and lawyers in America view this as what it is, a shot over the bow of the legal community warning about abuses which Congress wants corrected. I urge all attorneys to support the judges in their enforcement of these provisions. The filing of frivolous lawsuits has become a form of extortion which can no longer be tolerated.

Mr. President, this bill is, of course, not perfect. In addition to the substitute, I intend to offer an amendment on the floor which I believe will improve the bill, as I did in the committee. Nevertheless, the bill before this Chamber is a good bill which is urgently necessary to help address the tort liability crisis. Our bipartisan compromise substitute amendment will eliminate any caps in recovery in this legislation. I strongly urge my colleagues to vote to proceed to S. 2760, the Product Liability Reform Act.

The text of the amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

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Sec. 401. Product liability insurance reporting.

TITLE I

SHORT TITLE

SEC. 101. This Act may be cited as the "Product Liability Reform Act".

DEFINITIONS

SEC. 102. (a) As used in this Act, the term—

(1) "claimant" means any person who brings a civil action pursuant to this Act, and any person on whose behalf such an action is brought; if such an action is brought through or on behalf of an estate, the term includes the claimant's decedent, or if it is brought through or on behalf of a minor or incompetent, the term includes the claimant's parent or guardian;

(2) "clear and convincing evidence" is that measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established; the level of proof required to satisfy such standard is more than that required under preponderance of the evidence, but less than that required for proof beyond a reasonable doubt;

(3) "collateral benefits" means all benefits and advantages received or entitled to be received (regardless of any right any other person has or is entitled to assert for recoupment through subrogation, trust agreement, lien, or otherwise) by any claimant harmed by a product or by any other person as reimbursement of loss because of harm to person or property payable or required to be paid to the claimant, under—

(A) any Federal law or the laws of any State (other than through a claim for breach of an obligation or duty); or

(B) any life, health or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance or any benefit received or to be received as a result of participation in any pre-paid medical plan or Health Maintenance Organization;

(4) "commerce" means trade, traffic, commerce, or transportation (A) between a place in a State and any place outside of that State; or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(5) "commercial loss" means economic injury, whether direct, incidental, or consequential, including property damage and damage to the product itself, incurred by persons regularly engaged in business activities consisting of providing goods or services for compensation;

(6) for the purposes of title II of this Act, "dignitary loss" means noneconomic loss resulting from harm caused by a product, compensable under State law, in the amount of $100,000, and consisting of pain and suffering or mental anguish associated with (A) the death of a parent, child or spouse; (B) serious and permanent disfigurement; (C) loss of a limb or organ; or (D) serious and permanent impairment of a bodily function;

(7) "economic loss" means any pecuniary loss resulting from harm which is allowed under State law;

(8) "exercise of reasonable care" means conduct of a person of ordinary prudence and intelligence using the attention, precaution and judgment that society expects of its members for the protection of their own interests and the interests of others;

(9) "harm" means any harm recognized under the law of the State in which the civil action is maintained, other than loss or damage caused to a product itself, or commercial loss, with respect to which recovery is available under the commercial or contract law of the State;

(10) "manufacturer" means (A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product) and who designs or formulates the product (or component part of the product) or has engaged another person to design or formulate the product (or component part of the product); (B) a product seller with respect to all aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, or constructs and designs or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another; or (C) any product seller not described in clause (B) which holds itself out as a manufacturer to the user of a product;

(11) "net economic loss", in accordance with subsection (b) of this section, includes—

(A) reasonable expenses incurred for reasonably needed and used medical and rehabilitation care and services;

(B) lost income from work which the claimant would have performed if the claimant had not suffered harm, reduced by any income earned from substitute work actually performed by the claimant or by income the claimant would have earned in available appropriate work which the claimant was capable of performing but unreasonably failed to undertake;

(C) reasonable expenses incurred in obtaining ordinary and necessary services in lieu of those the claimant would have performed, not for income, but for the benefit of the claimant or the claimant's immediate family, if the claimant had not suffered the harm;

(D) lost earnings of a deceased person who suffered fatal harm caused by a product which, if the person had not died, would have been contributed to claimants who are entitled to receive benefits by reason of such person's death under the law of the place where the deceased person was domiciled; and

(E) reasonable expenses incurred by the claimant in preparation and submission of an offer of settlement or a response pursuant to section 201 of this Act, or in resolving a dispute pursuant to section 202 of this Act, including a reasonable attorney's fee,

less the total amount of collateral benefits paid or payable to the claimant by reason of the same harm;

(12) "noneconomic loss" means loss caused by a product other than economic loss or commercial loss;

(13) "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity);

(14) "preponderance of the evidence" is that measure or degree of proof which, by the weight, credit, and value of the aggregate evidence on either side, establishes that it is more probable than not that a fact occurred or did not occur;

(15) "product" means any object, substance, mixture, or raw material in a gaseous, liquid or solid state (A) which is capable of delivery itself or as an assembled whole, in a mixed or combined state or as a component part or ingredient; (B) which is produced for introduction into trade or commerce; (C) which has intrinsic economic value; and (D) which is intended for sale or lease to persons for commercial or personal use; the term does not include human tissue, blood and blood products, or organs unless specifically recognized as a product pursuant to State law;

(16) "product seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce, or who installs, repairs or maintains the harm-causing aspect of a product; the term does not include—

(A) a seller or lessor of real property;

(B) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(C) any person who—

(i) acts in only a financial capacity with respect to the sale of a product; and

(ii) leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor; and

(17) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(b)(1) The lost income taken into account under subsection (a)(11)(B) of this section shall be reduced by the amount of all Federal, State, and local income taxes and any Social Security or other payroll taxes which would be applicable to such income, but which would not be applicable to compensation paid under this Act.

(2) Where harm occurs in circumstances that might entitle a claimant to benefits (including workers' compensation benefits) which would reduce the amount of the claimant's net economic loss in accordance with subsection (a)(11) of this section and it cannot reasonably, within any reasonable extension of such time, be determined whether or in what amount such benefits will be payable, the defendant shall place in an interest-bearing escrow account that portion of the economic loss which the defendant reasonably anticipates the claimant will receive from collateral sources, until the claimant's right to such benefits and the amount of such benefits finally has been determined under applicable law.

(3)(A) The total amount of compensation for economic loss paid or payable to a claimant from any other source shall, for purposes of subsection (a)(11) of this section, be reduced by the amount of legal fees and other costs incurred by the claimant in collecting such compensation.

(B) Attorney's fees may be on a contingent basis but, for the purposes of subsection (a)(11) of this section, shall be calculated solely on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

(4) Except as otherwise provided by any provision of Federal law, no program of compensation, whether public or private, the benefits of which would be deducted from a claimant's economic loss in order to calculate net economic loss under subsection (a)(11) of this section, may make payment of benefits secondary to payment of net economic loss by a defendant under this Act.

PREEMPTION

SEC. 103. (a) This Act governs any civil action brought against a manufacturer or product seller, on any theory, for harm caused by a product. A civil action brought against a manufacturer or product seller for loss or damage to a product itself or for commercial loss is not subject to this Act and shall be governed by applicable commercial or contract law.

(b) This Act supersedes any State law regarding recovery for harm caused by a product only to the extent that this Act establishes a rule of law applicable to any such recovery. Any issue arising under this Act that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(c) Nothing this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) supersede any Federal law, except the Federal Employees Compensation Act;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1602 et seq.);

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) except as provided in section 309 of this Act, affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede any statutory or common law, including an action to abate a nuisance, that authorizes a State or person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief resulting from contamination or pollution of the environment, or the threat of such contamination or pollution.

(d) As used in this section, "environment" has the meaning given to such term in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)).

(e) This Act shall be construed and applied after consideration of its legislative history to promote uniformity of law in the various jurisdictions.

JURISDICTION OF FEDERAL COURTS

SEC. 104. The district courts of the United States shall not have jurisdiction over any civil action pursuant to this Act, based on section 1331 or 1337 of title 28, United States Code.

EFFECTIVE DATE

SEC. 105. (a) This Act shall take effect ninety days after the date of its enactment and shall apply to all civil actions pursuant to this Act commenced on or after such date, including any action in which the harm or the conduct which caused the harm occurred before the effective date of this Act.

(b) If any provision of this Act would shorten the period during which a manufacturer or product seller would otherwise be exposed to liability, the claimant may, notwithstanding the otherwise applicable time period, bring any civil action pursuant to this Act within one year after the effective date of this Act.

TITLE II

EXPEDITED PRODUCT LIABILITY SETTLEMENTS

SEC. 201. (a) Any claimant may bring a civil action for damages against a person for harm caused by a product pursuant to applicable State law, except to the extent such law is superseded by this title.

(b) Any claimant may, in addition to any claim for relief made in accordance with State law, include in such claimant's complaint an offer of settlement for a specific dollar amount.

(c) The defendant may make an offer of settlement for a specific dollar amount within 60 days after service of the claimant's complaint or within the time permitted pursuant to State law for a responsive pleading, whichever is longer, except that if such pleading includes a motion to dismiss in accordance with applicable law, the defendant may tender such relief to the claimant within 10 days after the court's determination regarding such motion.

(d) In any case in which an offer of settlement is made pursuant to subsection (b) or (c) of this section, the court may, upon motion made prior to the expiration of the applicable period for response, enter an order extending such period. Any such order shall contain a schedule for discovery of evidence material to the issue of the appropriate amount of relief, and shall not extend such period for more than 60 days. Any such motion shall be accompanied by a supporting affidavit of the moving party setting forth the reasons why such extension is necessary to promote the interests of justice and stating that the information likely to be discovered is material, and is not, after reasonable inquiry, otherwise available to the moving party.

(e) If the defendant, as offeree, does not accept the offer of settlement made by a claimant in accordance with subsection (b) of this section within the time permitted pursuant to State law for a responsive pleading or, if such pleading includes a motion to dismiss in accordance with applicable law, within 30 days after the court's determination regarding such motion, and a

verdict is entered in such action equal to or greater than the specific dollar amount of such offer of settlement, the court shall enter judgment against the defendant and shall include in such judgment an amount for the claimant's reasonable attorney's fees and costs. Such fees shall be offset against any fees owed by the claimant to the claimant's attorney by reason of the verdict.

(f) If the claimant, as offeree, does not accept the offer of settlement made by a defendant in accordance with subsection (c) of this section within 30 days after the date on which such offer is made and a verdict is entered in such action equal to or less than the specific dollar amount of such offer of settlement, the court shall reduce the amount of the verdict in such action by an amount equal to the reasonable attorney's fees and costs owed by the defendant to the defendant's attorney by reason of the verdict, except that the amount of such reduction shall not exceed that portion of the verdict which is allocable to non-economic loss and economic loss for which the claimant has received or will receive collateral benefits.

(g) For purposes of this section, attorney's fees shall be calculated on the basis of an hourly rate which should not exceed that which is considered acceptable in the community in which the attorney practices, considering the attorney's qualifications and experience and the complexity of the case.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

SEC. 202. (a) In lieu of or in addition to making an offer of settlement under section 201 of this title, a claimant or defendant may, within the time permitted for the making of such an offer under section 201 of this title, offer to proceed pursuant to any voluntary alternative dispute resolution procedure established or recognized under the law of the State in which the civil action for damages for harm caused by a product is brought or under the rules of the court in which such action is maintained.

(b) If the offeree refuses to proceed pursuant to such alternative dispute resolution procedure and the court determines that such refusal was unreasonable or not in good faith, the court shall assess reasonable attorney's fees and costs against the offeree, in accordance with the provisions regarding such fees and costs in section 305 of this Act.

(c) For the purposes of this section, there shall be created a rebuttable presumption that a refusal by an offeree to proceed pursuant to such alternative dispute resolution procedure was unreasonable or not in good faith, if a verdict is rendered in favor of the offeror.

TITLE III

CIVIL ACTIONS

SEC. 301. A person seeking to recover for harm caused by a product may bring a civil action against the product's manufacturer or product seller pursuant to applicable State or Federal law, except to the extent such law is superseded by this Act.

UNIFORM STANDARDS OF PRODUCT SELLER LIABILITY

SEC. 302. (a) Notwithstanding the provisions of section 301 of this title, in any civil action for harm caused by a product, a product seller other than a manufacturer is liable to a claimant, only if the claimant establishes by a preponderance of the evidence that—

(1)(A) the individual product unit which allegedly caused the harm complained of was sold by the defendant; (B) the product seller failed to exercise reasonable care with respect to the product; and (C) such failure to exercise reasonable care was a proximate cause of the claimant's harm; or

(2)(A) the product seller made an express warranty, independent of any express warranty made by a manufacturer as to the same product; (B) the product failed to conform to the warranty; and (C) the failure of the product to conform to the warranty caused the claimant's harm.

(b)(1) In determining whether a product seller is subject to liability under subsection (a)(1) of this section, the trier of fact may consider the effect of the conduct of the product seller with respect to the construction, inspection, or condition of the product, and any failure of the product seller to pass on adequate warnings or instructions from the product's manufacturer about the dangers and proper use of the product.

(2) A product seller shall not be liable in a civil action subject to this title based upon an alleged failure to provide warnings or instructions unless the claimant establishes that, when the product left the possession and control of the product seller, the product seller failed—

(A) to provide to the person to whom the product seller relinquished possession and control of the product any pamphlets, booklets, labels, inserts, or other written warnings or instructions received while the product was in the product seller's possession and control; or

(B) to make reasonable efforts to provide users with those warnings and instructions which it received after the product left its possession and control.

(3) A product seller shall not be liable in a civil action subject to this title except for breach of express warranty where there was no reasonable opportunity to inspect the product in a manner which would or should, in the exercise of reasonable care, have revealed the aspect of the product which allegedly caused the claimant's harm.

(c) A product seller shall be treated as the manufacturer of a product and shall be liable for harm to the claimant caused by a product as if it were the manufacturer of the product if—

(1) the manufacturer is not subject to service of process under the laws of any State in which the action might have been brought; or

(2) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES

SEC. 303. (a) Punitive damages may, if otherwise permitted by applicable law, be awarded in any civil action subject to this title to any claimant who establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a manufacturer's or product seller's conscious, flagrant indifference to the safety of those persons who might be harmed by a product. A failure to exercise reasonable care in choosing among alternative product designs, formulations, instructions or warnings is not of itself such conduct. Except as provided in subsection (b) of this section, punitive damages may not be awarded in the absence of a compensatory award.

(b) In any civil action in which the alleged harm to the claimant is death and the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages regardless of whether a claim is asserted under this section. The recovery of any such damages shall not bar a claim under this section.

(c)(1) Punitive damages shall not be awarded pursuant to this section against a manufacturer or product seller which caused the claimant's harm where—

(A) the drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined under section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(B) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Food and Drug Administration or any other agency or official of the Federal Government information that is material and relevant to the performance of such drug or device.

(2) Punitive damages shall not be awarded pursuant to this section against a manufacturer of an aircraft which caused the claimant's harm where—

(A) such aircraft was subject to premarket certification by the Federal Aviation Administration with respect to the safety of the design or performance of the aspect of such aircraft which caused the claimant's harm or the adequacy of the warnings regarding the operation or maintenance of such aircraft; and

(B) the aircraft was certified by the Federal Aviation Administration under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.).

The provisions of this paragraph shall not apply in any case in which the defendant withheld from or misrepresented to the Federal Aviation Administration information that is material and relevant to the performance or the maintenance or operation of such aircraft.

UNIFORM TIME LIMITATIONS ON LIABILITY

SEC. 304. (a) Any civil action subject to this title shall be barred unless the complaint is filed within two years of the time the claimant discovered or, in the exercise of reasonable care, should have discovered the harm and its cause, except that any such action of a person under legal disability may be filed within two years after the disability ceases. If the commencement of such an action is stayed or enjoined, the running of the statute of limitations under this section shall be suspended for the period of the stay or injunction.

(b)(1) Any civil action subject to this title shall be barred if a product which is a capital good is alleged to have caused harm which is not a toxic harm unless the complaint is served and filed within twenty-five years after the time of delivery of the product.

(2)(A) With respect to any good other than a capital good, a manufacturer or product seller shall not be subject to liability to a claimant for harm caused by a product in any civil action subject to this title if the manufacturer proves, by a preponder-

ance of the evidence, that the harm was caused after the product's useful safe life.

(B) A manufacturer or product seller may be subject to liability for harm caused by a product after its useful safe life if—

(i) the manufacturer has warranted that the product can be utilized safely for a time longer than the useful safe life;

(ii) the manufacturer intentionally misrepresents facts about the product or intentionally conceals information about the product and that concealment was the proximate cause of the claimant's harm; or

(iii) the harm was caused by exposure to a product, which exposure first occurred within the useful safe life of the product, even though the harm did not manifest itself until after such useful safe life.

(C) In any civil action brought pursuant to this paragraph, there is a presumption that the harm was caused after the useful safe life of the product if the harm was caused more than ten years after the time of delivery of the product. Such presumption may be rebutted by a preponderance of the evidence.

(3) A motor vehicle, vessel, aircraft, or railroad used primarily to transport passengers for hire shall not be subject to the provisions of this subsection.

(4) As used in this subsection—

(A) the term "time of delivery" means the time when a product is delivered to its first purchaser or lessee who was not involved in the business of manufacturing or selling such product or using it as a component part of another product to be sold; and

(B) a product's "useful safe life" begins at the time of the first use of the product following delivery and extends for the time during which the product would normally be likely to perform or be stored, or both, in a safe manner.

(c) As used in this section, the term—

(1) "capital good" means any product, or any component of any such product, which is of a character subject to allowance for depreciation under the Internal Revenue Code of 1954, and which was—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, for training, for demonstration, or other similar purposes; and

(2) "toxic harm" means harm which is functional impairment, illness, or death of a human being resulting from exposure to an object, substance, mixture, raw material or physical agent of particular chemical composition.

(d) Nothing in this section shall affect the right of any person who is subject to liability for harm under this Act to seek and obtain contribution or indemnity from any other person who is responsible for such harm.

COUNSEL'S LIABILITY FOR EXCESSIVE COSTS

SEC. 305. (a) In the case of any civil action subject to this title, any attorney or other person who is admitted to conduct cases in any court of the State in which such civil action is pending and whose conduct in the course of such action is calculated to delay resolution of the action, or who is determined by the court (after consideration of the circumstances) not to be in good faith, shall be subject to pecuniary sanctions to be imposed by the court. Any such sanction shall be equal to an amount not less than the total amount of court costs, fees, and expenses (including attorney's fees) reasonably attributable to the conduct.

(b)(1) Notwithstanding any other provision of law, if the court finds that an attorney representing either a claimant or a defendant in a civil action subject to this title acted in the manner prescribed in paragraph (2) of this subsection, such attorney shall be liable for costs, fees, and expenses, including attorney's fees reasonably incurred to respond to, proceed with, or resist such action.

(2) Any such attorney shall be liable as specified in paragraph (1) of this subsection if the court finds that such attorney commenced a civil action subject to this title or maintained a defense in such an action without a good faith belief by such attorney that there was a reasonable basis in law and in fact for the recovery of the damages (including punitive damages, if pleaded) or for such defense.

(3) The provisions of paragraph (1) of this subsection shall not apply if a claim for punitive damages is withdrawn at least thirty days prior to the commencement of trial.

(c) Nothing in this section shall be construed to subject an attorney to sanctions for pursuing a novel but credible theory of law or defense.

RECORD RETENTION

SEC. 306. (a) Any claimant and any person who is a party to a civil action subject to this title who anticipates bringing such an action, or who has notice that he or she may be made a party to such an action, shall retain all material, documents and other data (including, in the case of the claimant, the product alleged to have caused the claimant's harm) within such person's possession, custody or control that are relevant or may lead to the discovery of evidence relevant to the claim or action.

(b) In any civil action subject to this title, if the court determines that a party has willfully disposed of, destroyed, concealed, altered or removed any material, document or data in violation of subsection (a) of this section or any State or Federal rule, regulation or statute requiring the retention of such material, document or data, there shall be a rebuttable presumption that the facts to which the material, document or data relate are established in a manner adverse to the position of the party who has committed the violation. The court shall assess a civil penalty against such party in an appropriate amount not less than $1,000 and order such party to pay the other party's costs, including reasonable attorney's fees, incurred in proving the violation.

(c) In any other civil action subject to this title, in which the court determines that a party has nonwillfully violated subsection (a) of this section or any State or Federal rule, regulation or statute requiring the retention of such material, document or data, and that no other means are available to establish the facts to which the unavailable material, document or data relate, the court may, in the interest of justice, establish a rebuttable presumption that the facts to which the material, document or data relate are, for the purposes of such action, established in a manner adverse to the party who has committed the violation.

UNIFORM STANDARDS FOR OFFSET OF WORKERS' COMPENSATION BENEFITS

SEC. 307. (a) In any civil action subject to this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, any damages awarded shall be reduced by the sum of the amount paid as workers' compensation benefits for such harm and the present value of all workers' compensation benefits to which the employee is or would be entitled for such harm. The determination of workers' compensation benefits by the trier of fact in a civil action subject to this title shall have no binding effect on and shall not be used as evidence in any other proceeding.

(b) In any civil action subject to this title in which damages are sought for harm for which the person injured is entitled to receive compensation under any State or Federal workers' compensation law, the action shall, on application of the claimant made at claimant's sole discretion, be stayed until such time as the full amount payable as workers' compensation benefits has been finally determined under such workers' compensation law.

(c)(1) Except as provided in paragraph (2) of this subsection, unless the manufacturer or product seller has expressly agreed to indemnify or hold an employer harmless for harm to an employee caused by a product, neither the employer nor the workers' compensation insurance carrier of the employer shall have a right of subrogation, contribution, or implied indemnity against the manufacturer or product seller or a lien against the claimant's recovery from the manufacturer or product seller if the harm is one for which a civil action for harm caused by a product may be brought pursuant to this Act.

(2) Paragraph (1) of this subsection shall not apply to any civil action involving workplaces covered by a State-operated worker's compensation insurance fund, if the State had adopted, prior to June 3, 1986, a statute eliminating workers' compensation subrogation liens in cases where the claimant's employer or coemployee has been found to be at fault.

(d) In any civil action subject to this title in which damages are sought for harm for which the person injured is or would have been entitled to receive compensation under any State or Federal workers' compensation law, no third-party tortfeasor may maintain any action for implied indemnity or contribution against the employer, any coemployee or the exclusive representative of the person who was injured.

(e) Nothing in this Act shall be construed to affect any provision of a State or Federal workers' compensation law which prohibits a person who is or would have been entitled to receive compensation under any such law, or any other person whose claim is or would have been derivative from such a claim, from recovering for harm caused by a product in any action other than a workers' compensation claim against a present or former employer or workers' compensation insurer of the employer, any coemployee or the exclusive representative of the person who was injured. Any action other than such a workers' compensation claim shall be prohibited, except that nothing in this Act shall be construed to affect any State or Federal workers' compensation law which permits recovery based on a claim of an intentional tort by the employer or coemployee, where the claimant's harm was caused by such an intentional tort.

(f) Without regard to when the harm giving rise to the claim occurred, the provisions of this section shall not apply to any person subject to or covered by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.).

SEVERAL LIABILITY FOR NONECONOMIC DAMAGES

SEC. 308. (a) In any product liability action, the liability of each defendant for noneconomic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of noneconomic damages allocated to such defendant in direct proportion to such defendant's percentage of responsibility as determined under subsection (b) of this section. A separate judgment shall be rendered against such defendant for that amount.

(b) For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

(c) As used in this section, the term—

(1) "noneconomic damages" means subjective, nonmonetary losses including, but not limited to, pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation; the term does not include objectively verifiable monetary losses including, but not limited to, medical expenses, loss of earnings, burial costs, loss of use of property, costs of repair or replacement, costs of obtaining substitute domestic services, rehabilitation and training expenses, loss of employment or loss of business or employment opportunities; and

(2) "product liability action" includes any action involving a claim, third-party claim, cross-claim, counterclaim or contribution claim in a civil action in which a manufacturer or product seller is found liable for harm caused by a product.

FORUM NON CONVENIENS

SEC. 309. Any court in which an action subject to this title is commenced shall decline to exercise jurisdiction over such action if the court determines that the convenience of the parties and the interests of justice dictate that the action should proceed in another State or foreign jurisdiction or that the plaintiff has taken up residence in the State in which the court in located principally for the purpose of invoking the jurisdiction of such court with respect to such action. In any such action maintained by a citizen of a foreign jurisdiction which arises out of a transaction which occurred in a foreign jurisdiction, there is created a presumption, rebuttable by clear and convincing evidence, that the action should proceed in a foreign jurisdiction.

ADMISSIBLE EVIDENCE

SEC. 310. (a)(1) All relevant evidence is admissible in any civil action brought pursuant to this Act, except as otherwise provided by the Constitution of the United States, Act of Congress, or any other rule prescribed by the Supreme Court of the United States pursuant to statutory authority, or, with respect to any action based on section 1332 of title 28, United States Code, by the Federal Rules of Evidence. Evidence which is not relevant is not admissible in any such action.

(2) Evidence which is relevent may be excluded in any civil action brought pursuant to this Act if—

(A) its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence;

(B) such evidence is inadmissible hearsay under applicable State law; or

(C) the privilege of a witness, person, government, or State under applicable State law provides for the exclusion of such evidence.

(3) As used in this subsection, the term "relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without such evidence.

(b) Evidence of measures taken after an event, which if taken previously would have made the event less likely to occur, is not admissible to prove liability in any action subject to this title, in connection with the event. This section does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS

SEC. 311. (a) In any civil action subject to this Act in which all defendants are manufacturers or product sellers, a manufacturer or product seller may assert in complete defense of such action that the claimant was under the influence of intoxicating alcohol or any drug and that such condition was more than 50 per centum responsible for such claimant's harm.

(b) In any civil action subject to this Act in which not all defendants are manufacturers or product sellers and the trier of fact determines that no liability exists against those defendants who are not manufacturers or product sellers, the court shall enter a judgment notwithstanding the verdict in favor of any defendant which is a manufacturer or product seller if it is proved that the claimant was under the influence of intoxicating alcohol or any drug and that such condition was more than 50 per centum responsible for such claimant's harm.

(c)(1) For purposes of this section, the determination of whether a person was under the influence of intoxicating alcohol shall be made pursuant to applicable State law.

(2) As used in this section, the term "drug" means any non-over-the-counter drug which has not been prescribed by a physician for use by the claimant.

TITLE IV

PRODUCT LIABILITY INSURANCE REPORTING

SEC. 401. (a) The Secretary of Commerce (hereinafter referred to as "the Secretary") shall provide to the Congress before June 30 of each year after the date of enactment of this Act a report analyzing the impact of this Act on insurers which issue product liability insurance either separately or in conjunction with other insurance; and on self-insurers, captive insurers and risk retention groups.

(b) To carry out the purposes of this section, the Secretary shall collect from each insurer all data considered necessary by the Secretary to present and analyze fully the impact of this Act on such insurers.

(c) Within one hundred and twenty days after the date of enactment of this Act, the Secretary shall issue such regulations as may be necessary to implement the purposes, and carry out the provisions, of this section. Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Such regulations shall—

(1) require the reporting of information sufficiently comprehensive to make possible a full evaluation of the impact of this Act on such insurers;

(2) specify the information to be provided by such insurers and the format of such information, taking into account methods to minimize the paperwork and cost burdens on such insurers and the Federal Government; and

(3) provide, to the maximum extent practicable, that such information is obtained from existing sources, including, but not limited to, State insurance commissioners, recognized insurance statistical agencies, the Administrative Office of the United States Courts and the National Center for State Courts.

INDIAN GAMING REGULATORY ACT

PELL (AND CHAFEE) AMENDMENT NO. 2869

(Ordered to lie on the table.)

Mr. PELL (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (H.R. 1920) to establish Federal standards and regulations for the conduct of gaining activities on Indian reservations and lands and for other purposes; as follows:

Mr. PELL. Mr. President, I am introducing on behalf of myself and my colleague, the junior Senator from Rhode Island [Mr. CHAFEE] an amendment to H.R. 1920, the Indian Gaming Regulatory Act. I ask that it be ordered printed and held at the table.

At the end of section 4, add the following new subsection: Nothing in this Act may be construed to permit gaming activities, except to the extent permitted under the laws of the State of Rhode Island, on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act (Public Law 95-395), or on any lands which such tribe may acquire after the date of enactment of this Act.

NOTICES OF HEARINGS

SENATE IMPEACHMENT TRIAL COMMITTEE

Mr. MATHIAS. Mr. President, I wish to announce that the Senate Impeaching Trial Committee, appointed upon the adoption of Senate Resolution 481, pursuant to rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, will meet in the Caucus Room of the Russell Senate Office Building (SR-325) on Monday, September 22, 1986, at 9 a.m., to continue to receive evidence and take testimony in the impeachment trial of the Honorable Harry E. Claiborne.

For further information concerning this meeting, please contact Tony Harvey or Byron Hoover of the Senate Impeachment Trial Committee staff at x40291.

ADDITIONAL STATEMENTS

FEDERAL AID HIGHWAY ACT OF 1986

● Mr. HEINZ. Mr. President, I want to take a few minutes to speak about the highway reauthorization bill we may be considering this week on the floor. Let me say at the outset that I believe that it is vital that the Congress pass this legislation to provide 4 more years of funding for our Nation's highway and mass transit system.

I would also like to voice my strong opposition to Senator SYMMS' amendment regarding use of the mass transit penny for highway purposes. This amendment is ill-conceived and would cause severe damage to our Nation's transportation system. I would want to stress to my colleagues that I would be unwilling to enter into any time or unanimous-consent agreement that would permit this amendment to be offered.

First, this amendment reflects a complete disregard for mass transit needs in this Nation, which are glaring. It also reflects a disregard for our national transportation system, which includes mass transit as well as highways. In many of our major cities, mass transit systems provide an essential means of transportation for millions of citizens every day.

My distinguished colleague from Idaho has argued that mass transit is a local need and a local responsibility, and that completion and maintenance of our Interstate Highway System is a national responsibility. Accordingly, he argues that his amendment promotes national needs over local needs.

I must say, Mr. President, that I disagree strongly with such an interpretation. First of all, mass transit serves the transportation needs of millions of American citizens. Nine out of every ten people in the United States have access to mass transit. Last year, our transit systems carried 8 billion riders—that is 34 trips per year for every American citizen.

According to the Senator from Idaho, mass transit, which is available to more than 200 million Americans, is not a national priority. If this is true, Mr. President, I would have to ask what is a national priority? Furthermore, he argues that the Congress should distribute mass transit moneys based solely on the basis of geography. I believe that this viewpoint has dangerous implications for our national policymaking process.

Let me give a few examples. Last year, after much debate and controversy, the Congress enacted a comprehensive farm bill. According to the U.S. Department of Agriculture, approximately 2.8 million farmers, slightly more than 1 percent of the Nation's population, will participate in our various farm programs this year. These programs will cost a total of $31 billion, more than $1,500 for each participant. Mass transit assistance, which is available to 90 percent of our Nation's population, will cost the Federal Government approximately $3 billion this year, about $15 for every person who can use this service.

Perhaps we should distribute farm program funds on a geographically equitable basis. Let us see how that works for the Wheat Program. The USDA estimates that this year, 7,000 farmers in Idaho and 2,700 farmers in Pennsylvania will participate in the Wheat Program. Idaho has more than twice as many participants as Pennsylvania. But Idaho's population is less than one-tenth as large as that of Pennsylvania. Based on geographic equity, if 2,700 wheat farmers in Pennsylvania are in the program, we should only permit 250 Idaho farmers to participate, without regard to the condition of our agricultural economy.

Let us now turn to the Defense Department. The Southern and Western regions of this country have 56 percent of the Nation's population. Yet they have 67 percent of our military bases, and more than 80 percent of our Nation's 2.3 million military employees. To achieve geographic equity in the distribution of military personnel, we would have to transfer 600,000 military employees out of the South and West, irrespective of the impact that this might have on our national security.

My point, Mr. President, is simply this. We must make decisions to create and provide funding for Government programs based on national needs. Wheat price supports, the placement of military bases, and mass transit systems are each national responsibilities that deserve a national response. They may not be distributed simply so that all Americans and all American communities, regardless of need, receive the same amount of each type of Federal funds.

Having said this, Mr. President, I would like to take a few minutes to discuss the importance of mass transit. Mass transit is a vital component of the transportation network. It enables millions of people to get to work, to schools, to hospitals. Many of these people, I would add, are elderly, handicapped, or poor. For them, mass transit is the only means of transportation.

In my State of Pennsylvania, mass transit plays a very important role. It carries 485 million riders per year, 58 million of whom are senior citizens. Mass transit also supports about 70,000 jobs. Many of these jobs are in areas of my State that have not shared in our national economic recovery, like Johnstown, Erie, Altoona, and Allentown.

Investment in mass transit systems also produces many benefits for those in my State and other States who do not use its services regularly. It relieves wear and tear on our interstate highways and reduces pollution and traffic congestion. These benefits are enjoyed both by residents of cities as well as people from across the Nation who must travel on highways through cities to engage in interstate commerce that is such an important national priority.

During the transit strike this past spring in Philadelphia, the chamber of commerce estimated that the city lost $2 million per day in higher absenteeism and lost retail sales. These losses, which would certainly recur if the Symms amendment became law, were felt by many who do not use mass transit services—shopkeepers, motorists that commute to work from the suburbs, schoolchildren, and many others.

Mr. President, by effectively eliminating mass transit and all of its various benefits, this amendment is shortsighted. In the short term, this amendment will provide more highway funds for smaller States. At the same time, it will dramatically increase highway needs in larger States that rely heavily on mass transit. Under this amendment, the 9 billion transit trips per year I mentioned earlier will eventually become 9 billion more trips on the Nation's roads. As a result, we will have to spend more of our gas tax moneys restoring and building roads in Pennsylvania and other transit-dependent States to accommodate these vast increases in usage. In the not too distant future, this amendment will probably cause a redistribution of highway moneys away from the smaller States into my State and others as transit systems collapse and highway needs increase.

Mr. President, the notion that mass transit is an important component of our Nation's transportation system is not a new one. The Congress recognized this need when it enacted the Surface Transportation Assistance Act of 1982, which required that 1-cent of the 5-cent increase in the gas tax be dedicated for mass transit purposes. I would add that the amendment before us today breaks the spirit of cooperation that enabled the Congress to enact the 5-cent-a-gallon increase. My colleagues will remember well that the Senate would not have passed the increase without support from Members of this body that had significant transit needs in their States.

Let me turn now to the other major argument that has been made by the proponents of this amendment—that an 85-percent minimum return would guarantee equity in the distribution of gas tax moneys. According to the chart that the distinguished Senator from Idaho has produced, his amendment would provide additional Federal funds to a great majority of States at

a large expense to a few States, my own included. This amendment is based on the premise that States should receive funding roughly on the basis of their contribution to the highway trust fund.

I believe that this argument is misleading. Many of the States that would receive additional funds under the Symms amendment already receive highway funds that greatly exceed their contributions to the trust fund through gas tax receipts. Eleven of these States would receive more than $1.50 in highway moneys under this highway bill for each dollar they contributed in gas tax contributions.

The Symms amendment would provide a windfall to States that already receive more than their fair share of Federal highway funds. Under the proposed Senate highway bill, Alaska will receive $4.95 in highway funds for each dollar it contributes in gas taxes. Hawaii will receive $4.88. The State of Idaho does not fare quite as well. It will only receive $1.88 for each dollar it contributes. That, Mr. President, is highway robbery.

In order to achieve a fairer distribution of highway moneys, I may offer an amendment to limit each State's funding to 150 percent of their contributions. Under this amendment, as shown by a chart I submitted in last Friday's RECORD, 39 States would benefit at great expense to 11 States.

Many would likely argue that imposing a cap is inconsistent with the intent of our highway program—to provide funding based on State needs, not their contribution. That is exactly the point we are trying to make with respect to the mass transit amendment.

Mr. President, I want to stress that it is not my desire, nor the desire of others who oppose the Symms amendment, to delay progress on the highway reauthorization bill. All of us have a stake in this legislation. For that reason, I would be pleased to enter into any time or unanimous-consent agreement that would speed our consideration of this bill, provided it would not include the Symms amendment.

I would just add that the Banking Committee, which has jurisdiction over mass transit matters, is preparing legislation to extend our Federal transit programs for 4 years at a funding level consistent with the budget resolution. As in previous years, and as in the House-passed authorization bill, it is our intent to offer this legislation as a title to the highway bill. The Symms amendment is clearly at odds with this committee effort.

It is in everyone's interest to pass the highway bill. In doing so, I and others believe that we should be governed by the principle that we spend funds where they are needed most by our constituents and by the citizens and businesses of this Nation. Those needs include mass transit systems as well as interstate highways. It is my hope that we can pass this bill without this damaging amendment. I would certainly be willing to enter into an agreement with by friend from Idaho under which he would refrain from offering his transit amendment and I would withhold my highway formula amendment. Such an agreement would be true to long-held principles that Federal funds should be spent in areas where they are needed most. If such an agreement is not possible, we may have to debate the amendment at some length.

Mr. President, I urge my colleagues to oppose the Symms amendment, and to work with us to pass this important highway legislation.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal years 1986 and 1987. The estimated totals of budget authority, outlays, and revenues for each fiscal year are compared to the appropriate or recommended levels contained in the most recent budget resolutions, Senate Concurrent Resolution 32 for fiscal year 1986, and Senate Concurrent Resolution 120 for fiscal year 1987. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32 and is current through September 19, 1986. The report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

Since my last report, Congress has cleared for the President's signature S. 1963, conveying certain lands in Socorro County, NM.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986

[Fiscal year 1986—in billions of dollars]

	Current level [1]	Budget resolution S. Con. Res. 32	Current level +/− resolution
Budget authority	1,053.0	1,069.7	−16.7
Outlays	980.0	967.6	12.4
Revenues	778.5	795.7	−17.2
Debt subject to limit	2,095.6	[2] 2,078.7	16.9

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986

[Fiscal year 1986—in billions of dollars]

	Current level [1]	Budget resolution S. Con. Res. 120	Current level +/− resolution
Budget authority	636.3	1,093.4	−457.1
Outlays	737.3	995.0	−257.7
Revenues	845.6	852.4	−6.8
Debt subject to limit	2,095.6	[2] 2,322.8	−227.2
Direct loan obligations	20.4	34.6	−14.1
Guaranteed loan commitments	33.1	100.8	−67.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

FISCAL YEAR 1986 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,957	
Offsetting receipts	−188,561	−188,561	
Total enacted in previous sessions	1,060,679	986,159	777,794
II. Enacted this session:			
Commodity Credit Corporation Urgent Supplemental Appropriation, 1986 (Public Law 99–243)			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99–251)		4	
VA Home Loan Guarantee Amendments (Public Law 99–255)		−51	
Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272)	−4,259	−6,001	765
Department of Agriculture Urgent Supplemental, 1986 (Public Law 99–263)			
Advance to Hazardous Substance Response Trust Fund (Public Law 99–270)			
FHA and GNMA Credit Commitment Assistance Act (Public Law 99–289)		−380	
Federal Employees Retirement Act of 1986 (Public Law 99–335)			−90
Temporary Extension of Certain Housing Programs (Public Law 99–345)		−304	
Military Retirement Reform Act (Public Law 99–348)	−25		
Urgent Supplemental Appropriations, 1986 (Public Law 99–349)	−3,508	475	
Panama Canal Commission Authorizing Act (Public Law 99–368)	18	16	
Total	−7,773	−6,240	675
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action			
Compact of free association	3	3	

FISCAL YEAR 1986 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Special benefits (Federal employees)	14	14	
Family social services	100	75	
Payment to civil service retirement [1]	(37)	(37)	
Total entitlements	118	93	
Total current level as of Sept. 19, 1986	1,053,024	980,012	778,469
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,412	
Under budget resolution	16,676		117,231

[1] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.

FISCAL YEAR 1987 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−163,823	−163,823	
Total enacted in previous sessions	569,735	679,730	843,799
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99–251)		2	
Technical Corrections Amends to Food Security Act (Public Law 99–253)	50	50	
VA Home Loan Guarantee Amendments (Public Law 99–255)		49	
Food Security Improvements Act of 1986 (Public Law 99–260)	−115	−115	
White Earth Reservation Land Settlement Act of 1985 (Public Law 99–264)	10	10	
Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99–272)	155	−3,553	2,503
FHA and GNMA Credit Commitment Assistance Act (Public Law 99–289)		−178	
Federal Employees' Retirement System Act of 1986 (Public Law 99–335)	−150	−1,670	−666
Judicial Improvements Act (Public Law 99–336)	2		
Temporary Extension of Certain Housing Programs (Public Law 99–345)		−85	
Military Retirement Reform Act (Public Law 99–348)	−47	146	
Urgent Supplemental Appropriations, 1986 (Public Law 99–349)	−278	−914	
Panama Canal Commission Authorizing Act (Public Law 99–368)		2	
Omnibus Diplomatic Security and Anti-Terrorism Attack Act (Public Law 99–399)	1	1	
Children's Justice and Assistance Act (Public Law 99–401)	10		
Total enacted this session	−362	−6,254	1,837
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses: Socorro County Land Conveyance (S. 1963)	−1	−1	

FISCAL YEAR 1987 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT U.S. SENATE 99TH CONGRESS, 2D SESSION AS OF SEPTEMBER 19, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payment to the CIA retirement fund	126	126	
Claims, defense	156	150	
Payment to the foreign service retirement trust fund [2]	(173)	(173)	
Range improvements	10	7	
BLM: Miscellaneous trust fund	(1)	(1)	
Compact of free association	42	42	
Administration of territories	35	30	
Payments to air carriers, DOT	32	30	
Retired pay—Coast Guard	370	341	
Maritime, operating-differential subsidies		297	
BIA: Miscellaneous trust funds	1	1	
Social services block grant	2,700	2,538	
Family social services	758	584	
Guaranteed student loans	3,219	2,580	
Higher education facilities loans and insurance	19		
Government payment for annuitants	1,459	1,301	
Retirement pay for PHS officers	83	81	
Medicaid	19,595	19,241	
Medical facilities guarantee and loan fund	20	19	
Payments to health care trust funds [2]	(20,826)	(20,826)	
Special milk program	16	11	
Child nutrition programs	4,212	3,791	
Federal unemployment benefits and allowances	103	102	
Advances to unemployment trust fund [2]	(9)	(9)	
Special benefits (general retirement and Federal employee retirement)	257	257	
Black lung disability trust fund	549	549	
Supplemental security income	7,846	7,846	
Special benefits for disabled coal miners	698	638	
Assistance payments	7,350	7,350	
Child support enforcement	599	583	
Payments to social security trust funds [2]	(501)	(501)	
Veterans insurance and indemnities	5	4	
Veterans readjustment benefits	750	723	
Veterans compensation	10,300	9,360	
Veterans pensions	3,684	3,385	
Veterans burial benefits	138	138	
Salaries of judges	104	103	
Fees and expenses of witnesses	46	37	
Compensation of the President	(1)	(1)	
Payment to civil service retirement trust fund [2]	(4,557)	(4,557)	
National wildlife refuge fund	6	6	
Military pay raises and benefits	1,566	1,539	
Total entitlements	66,855	63,793	
Total current level as of September 19, 1986	636,227	737,267	845,636
1987 budget resolution (S. Con. Res. 120)	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			
Under budget resolution	457,123	257,733	6,764

[1] Less than $500 thousand.

[2] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.

DEATH OF DAVID WINSTON

● Mr. HATCH. Mr. President, it is with great sadness that I speak today about the tragic death 11 days ago of David Winston. He was one of the truly great Senate staff directors, as well as an influential advisor and confidant to President Reagan, three successive Secretaries of the Department of Health and Human Services, and to innumerable Senators and Congressmen. His death is a personal loss to me and a great loss to our country. My heart goes out to his family in this time of sorrow.

David and I arrived in Washington, DC, about the same time: I, as a freshman Senator sitting on the Labor and Human Resources Committee, and he, as the chief committee staffer for our senior committee Republican, Senator Richard Schweiker. I was impressed immediately, not only by his remarkable effectiveness, but also by his openness, honesty, and character, even when the adversity was greatest. He created a presence, even a moral authority, that commanded attention to innovative ideas.

During the years 1977 to 1981, David and I had regular and frequent contact, and my admiration for him grew larger. I was not alone in this—over these years he became highly respected in Washington and throughout the Nation for his professionalism, his proficiency, his graciousness, and, most of all, his integrity. In short, he was the very model of staff leadership that is so integral to congressional policymaking.

I recently remarked to my friend, HHS Secretary Otis Bowen, that David Winston was a "symphony of professionalism." He brought together a consummate knowledge of health policy with a rare political intuition which was stunning in its mastery. One might even say that he showed both Members and staff, and administration leaders, too, that there was an American way, both fair and effective, to conduct our Nation's political business.

Everybody liked dealing with David, whether they were majority or minority, Senate or House, or on either side of an issue. It is not surprising, therefore, that David Winston probably had more friends, well-wishers, and fans than practically anyone I know in Washington. People flocked to him for his vision and for his willingness to share his insights. In this regard, he was ever willing to be an advisor, even to the point of his own inconvenience. And he was a very good teacher. It is fitting then that David's family and friends are establishing a foundation in his memory which will focus on providing opportunities for students to learn more about congressional affairs and health policy development.

While I knew and respected David Winston as a professional, I also appreciated him as a human being and shared insights with him as a religious man. I feel confident that he died as he lived, at peace with God. He also lives on strongly in the memories of

each of us who knew and were touched by this wonderful man.●

EARLY YEARS OF OUR REPUBLIC

● Mr. INOUYE. Mr. President, I wish to bring to the attention of my colleagues a most informative study of public planning policy in the early history of our Republic. Its thesis is that our Founding Fathers envisioned a national government that possessed a strong determination to use national power and resources for national purposes with positive long-term goals. For many years, the traditional view has been that our Founding Fathers viewed government negatively, and favored strictly limited government policies and programs.

This study prepared by Frank Bourgin, a former student of Prof. Allan Saunders at the University of Minnesota and Claremont Colleges in California, views in a new light the public policies of our Nation's first 40 years. I might note that Dr. Saunders, who later taught at the University of Hawaii, was a tremendous influence on my own study of political science and Federal Government.

The paper as reprinted is a condensation of a doctoral dissertation by Mr. Bourgin prepared in the early 1940's. Mr. Bourgin is a recent retiree of the Federal civil service, having served as Regional Director of the Office of Emergency Planning and in the Federal Emergency Management Agency. He has taught in college, in private business, and recently taught at the American University's Institute of Learning in Retirement.

In view of our ongoing legislative debates on the desired role of our National Government in the lives of our citizens, as well as the Bicentennial of the Constitution in 1987, I believe that this paper is most timely and worthy of widespread consideration.

Mr. President, I ask that the study be printed in the RECORD.

The study follows:

HAMILTON, JEFFERSON & CO.: NATIONAL PLANNING IN THE EARLY YEARS OF OUR REPUBLIC, 1787-1829: THE DOGMA OF LAISSEZ-FAIRE DISPUTED

(By Frank P. Bourgin)

The subject of this paper concerns the first forty years of our national history, from the writing of our Constitution through the administration of John Quincy Adams. My thesis is that much of the history handed down to us has been misinterpreted, misunderstood and hence distorted, and much of this due to our predilection for the philosophy of laissez-faire. The thesis is that there existed during the period 1787 to 1829 a strong and positive governmental policy that aimed to use national power and resources for national purposes with long term goals. The thesis is in contradiction with most of the traditional history that from the beginning, our Founding Fathers and early leaders viewed government negatively, with the emphasis on curbing governmental policies and activities.

Lest you think that my paper is merely an intellectual exercise to settle an academic dispute of interest only to historians, be reminded that next year 1987 is the Bicentennial year of the Constitution. Well in anticipation of that date, we already hear the drum beat of what the Founding Fathers intended it to mean. For example, the frequent addresses by Attorney General Meese are a harbinger of more to come. When the Chief Justice of the United States Supreme Court resigns to head the Bicentennial Commission's celebration of the event, you can gauge what may follow.

The historical records of the early period after 1787 have been mined so thoroughly over the past two hundred years that it must take some chutzpah and earnest conviction to challenge a dogma so widely held. I have discovered no new documents of course, and all I have done is to examine data known before and interpret it differently. The meaning of history is what it means to each historian. My study has been in the tradition and logic of Carl Becker, once president of the American Historial Association when he told that body that "Mr. Everyman is his own historian". Is it not natural that each historian selects from the universe of events those particular ones which he or she regards as meaningful and significant? These then become the center of his focus. The others get discarded and may be lost to history. Some of the things I will mention illustrate my point. Professor Edward Channing, a distinguished historian at the turn of the century wrote "The Jeffersonian System" (1809) about the same period of my paper. But you would never guess from it that we both were writing about the same Jefferson. Another example: John Austen Stevens, in the American Statesman series wrote what was then the classic biography of Albert Gallatin. But somehow he forgot to tell about Gallatin's famous Report of 1808 which is the central focus of part of my paper. I hope I have made my point.

Why is this so? There are various reasons why each historian places a particular emphasis (or lack thereof) on events in history. One of them is surely the role and importance of prevailing cultural and social values. Each society is held together to a degree by the cement of commonly held beliefs. As the historian C. Vann Woodward has written, ". . . history has had to serve Americans as a source of the folklore, myth and legend that seems essential to the spiritual comfort of a people in a time of stress". When such symbols and values are under attack, some one is sure to look back to our historical antecedents to defend them. Think back to the depression for example when "Rugged Individualism" was the defending theme.

A part of American folklore and our cherished mythology has been our continuing belief and preference for the ideas of laissez-faire, and its corollary, a diminished role for government—sometimes crudely stated, ". . . the less government, the better". Webster defined laissez-faire as "a doctrine opposing governmental interference in economic affairs beyond the minimum necessary for the maintenance of peace and property rights".

It is my view that laissez-faire did not take hold in this country until after the period I am writing about—after 1829. If space here permitted, I could write another paper of the same length contrasting the period after Andrew Jackson with the one 1787 to 1829. If you doubt this, then I refer you to two authoritative studies—which were published many years after I did my research—but which confirm my views—Leonard D. White's "The Jacksonians", and Arthur Schlesinger's prize history. "The Age of Jackson". During this later period, a feeling of hostility to government was creeping up that was not there before. Remember that around the time of the French Revolution there wass an optimism about the course of human progress, and of hope for a different kind of destiny about the republic in the new world. One of the startling discoveries in my research is that—as I thought about it—I couldn't remember a single instance during this period in which any one questioned whether the government had a right to intervene. Later on . . . yes, with the legalism of states' rights, but not against government per se!

When a scholar comes forth with an analysis that questions the traditional one, you want to know where and how it began. In about 1940, when I was a graduate student at the University of Chicago, I was given an assignment by the chairman of our department Dr. Charles E. Merriam to explore what precedents existed in our early national history for national planning. Merriam, then considered by many, the Dean of American Political Science was active in promoting national planning as one of President Roosevelt's brains trust. The study that I completed is the result of that effort—some 350 pages based on original sources where necessary and fully documented as to its thoroughness and veracity.

When I began the study, I had doubts about any significant findings in our history. I accepted the traditional view that the laissez-faire philosophy had taught me, and that at best I would the government's role to be marginal. But as my research progressed and my interest deepening, I went beyond a narrow focus to trace down all the likely threads, and well beyond what is normally sought in a doctoral dissertation. At the end, I had four chapters on the personna of the planning—the Founding Fathers, Hamilton, Jefferson, Gallatin and J. Q. Adams, and four additional monographs on the subjects of Land Policy, Education, Science and Transportation. This paper is but a condensation of the ideas of my study.

While still engaged in my research, World War II intervened, and its raised havoc with my plans since I accepted a position with the Quartermaster General's office in Chicago. By the time I had finished writing my study, the scene had changed: Dr. Merriam had retired and was no longer active on my committee, and the subject of national planning was no longer of active interest. Being no longer in attendance, my study got pushed aside, with neither agreement or disagreement on its contents, despite Merriam's earlier enthusiasm for my work.

Under the circumstances I accepted my frustration and went on to other pursuits. For over the last forty years the manuscript lay dormant and untouched in my file. One day this past year, as I was reminded about the Bicentennial year, I opened the file and re-read the study. I completed it with the feeling that far from being obsolete, it had a fresher interest now than had it been published during the New Deal.

Now as to *National Planning*: Obviously the phrase was unknown during the early period, so I have given it a meaning that makes sense and fits the circumstances described: (1) involvement necessarily of the

national government; (2) long term rather than short term policy; (3) setting up of goals or objectives supported by scientific knowledge and research; (4) rationalization of the advantages to enhancement of national well being. In short, a rationalization of how to get from here to there.

One of my first explorations was to examine the role of mercantilist thinking at the time the constitution was being drafted. This could tell me something on what the Founding Fathers thought the role of government should be. Under the mercantilist system, each country was free to intervene in the trade practices to provide an advantage to its own commerce by whatever means it chose. There were no absolutes or hard and fast lines as under laissez-faire. When the Constitution was being written, Adam Smith's "Wealth of Nations" (1776) had not yet obtained popular currency. My study showed that while the leaders of the period were not consciously advocating the mercantilist theories per se, as good pragmatists, they were practicing them. They wanted to give every advantage possible to this new national government to promote the growth of the economy, an attitude that implies a rejection of laissez-faire. Hamilton's Report on Manufactures is a lesson in mercantilist practice. Historians have ignored his broader program and had him pegged simply as a protectionist.

Two incidents occurred early in my research that encouraged me to believe I was on to a valid idea. Dr. Merriam was involved in both. In the Fall of 1940 when President Roosevelt was running for his third term, Merriam had returned from Washington where the President's advisors had been discussing what evidence existed in the records of the Convention reflecting on the issue. He called me in one day and asked for a brief, pro and con: would they have favored or opposed it? Since I had been studying Farrand's Records of the Convention, I completed the brief within a few days of intensive study. But until that very time, I had been unable to discern the forest from the trees. The evidence turned out to be so overwhelming—that although the Founding Fathers never discussed a third term as such, it was absolutely clear to me that they were not worried about the length of the President's term of office. They were concerned that the new executive might be as weak as under the Articles, and they were determined that the President must be able to act independently and that he have ample authority. So the election of the President was made independent of Congress, for a fixed term of reasonable length, with no interposition against re-election. Mr. Merriam was pleased with my brief, reporting to his staff that it was one of the best pieces of short term research he had received. But the brief caused me more than ever to ask questions, such as, "Why such a strong President? Presumably they must have had in mind an active role for the office? Conversely, if laissez-faire, why design the office for its opposite?".

But as I next moved to research on Jefferson (I knew that I would have no problem in showing Hamilton to be a planner—but even there I found far more than I had expected.) At length I prepared a draft of my chapter on Jefferson, and this too gave me a surprise. I thought my piece a prosaic one, but reasonably through. I described all of Jefferson's plans from his earliest land policy plans, pausing to explain the switch in his policies under his inaugural address, then I went on to develop his planning for the later period of his second term. I was totally unprepared to hear that Merriam was saying to his staff that my research on Jefferson was "the most original thinking in the last fifty years." This was high praise coming from Merriam, and it assured me that I was on the right track. I would go on to research the period after Jefferson and learn how far into the future the thread of national planning persisted.

Before I begin my chronological summary of the data, I would like briefly to mention that during the forty year hiatus, there have appeared a number of very important research studies all of which—while approaching the subject from a different perspective—confirm and strengthen my thesis. Let me mention them since each was written by scholars at the top of their field. The first is Leonard D. White's three volume history of the Federal administration: The Federalists, The Jeffersonians and the Jacksonians. White's study particularly strengthens my case showing that while Jefferson pursued his political goal of making republicanism forever safe, he did almost nothing to disturb the financial and administrative structure that Hamilton built. That system continued virtually unchanged until Jackson. White then in "The Jacksonians" makes absolutely clear how great was the contrast after Jackson when laissez-faire policies were adopted. What had taken forty years to build in an administrative structure with capability to manage its policies was in shambles within a dozen or more years. The second book by Schlesinger, "The Age of Jackson" while describing in minutiae the politics and intellectual changes of the period, shows clearly the emptiness of the issues and policies when contrasted with the earlier period. The third work, a two volume "Politics and the Constitution in the History of the United States," by W.W. Crosskey of the University of Chicago Law School. His approach is purely from that of constitutional law, and he emphasizes the breadth of scope with which the commerce power was viewed, thus strengthening the authority of the national government.

PLANNING THE CONSTITUTION

There are several propositions that stand out in viewing the Constitution as seen from various perspectives. The first is that the United States is unique in that it began its life by a deliberate act of national planning. It was planning in every sense, or as one contemporary put it, "contriving a new form of government for an extensive empire," overwhelming some of its writers with the immensity of their responsibility for the country's long future. The convention had assembled a collection of many of the best minds, using the latest knowledge of political science, and presenting their work to the country with arguments on why it should be adopted.

That the Constitution has survived through its two hundred years from a small coastal country of a few million to a world power of continental, dimensions with a population of a quarter billion attests to the quality and durability of the planning.

The designing of it can be viewed in different ways. Charles Beard in his "Economic Interpretation of the Constitution" viewed it as a stacked deck that favored the wealthy, and there were plenty of facts to support that case. On the other hand, Charles Merriam has argued that from a world point of view at the time it was written, ". . . it was a revolutionary document of the most disturbing character," and that the framers were "adventurous, experimental, inventive, eager to adjust the forms and procedures of government to actual forces and facts of their time."

With few exceptions, the framers of the constitution were not ideologues, but pragmatists and men of practical affairs. They had come together to overcome the defects of the Articles, to invent a government of strength that could play a positive role in developing the country's resources, a role that was the opposite of laissez-faire.

From my reading of Farrand's Records, I concluded that too much emphasis has been placed on their intent to limit authority by such devices as checks and balances, separation of powers, etc. Instead I saw an overwhelming concern for the need of a strong executive, that the new president not turn out to be a "cypher" comparable to the state governors. The Convention placed their bets on the presidency—having him electd independent of the legislative branch for a 4-year term, subject to re-election, with strong powers listed in the constitution. One must infer from this that they anticipated an active role for the office.

Nor did the Convention slight the authorities given to the Congress as to suggest a different role for that body. The enumerated list in Article I, Section 8 includes 17 specific delegations as compared with two minor ones in the Articles. To leave no doubt as to the extent of the authority conveyed, there was added ". . . to make all laws necessary and proper for carrying into execution the foregoing powers".

One would suppose that developing the list of enumerated powers would have proved one of the most formidable obstacles to getting acceptance by the Convention. Actually, it was one of the easiest and the fastest, being handled by the Committee on Detail. Madison recorded most of the votes as "nem. con.", meaning no one voting against.

However, the real test of what the Constitution would mean would come once it was put into practice. These was little doubt as to what it meant when President Washington named Hamilton his Secretary of the Treasury.

PLANNING BY HAMILTON

Almost from the first, Hamilton displayed eagerness to get on with his planning, asking that as Secretary of the Treasury that he report personally to Congress—unacceptable to that body. During the short period from January 1790 to December 1791, in less than two years, he accomplished the prodigious feat of producing four great planning documents: "For the Adequate Support of the Public Credit", "Report on a National Bank", "Establishment of a Mint and the Coinage System", and finally, "Report on Manufactures".

More than any other person of his time, Hamilton profoundly grasped the meaning of the new economic trends and how to adapt and to manipulate them under the new governmental powers. In each of the above reports, Hamilton was proposing new policies and new structures, all of which must be viewed as part of his total plan.

Since space limitations do not permit an analysis of each plan, I want to offer the following comments on why I believe his planning has not always been correctly understood: (1) Historians have generally viewed each of his reports as separate and disparate programs rather than as integral parts of a single comprehensive planning. Nor have they observed that what Hamilton

was doing was the opposite of laissez-faire. (2) I have already mentioned that his ideas stemmed from mercantilist practices, and this is especially apparent in his great "Report on Manufactures. (3) Similarly, historians have overemphasized his role as a protectionist, and have overlooked his numerous recommendations, such as having a continuous administrative structure to oversee and monitor the economy, selecting items and industries which needed protection or encouragement by various devices—premiums, bonuses etc. (4) Seen in the long term historical perspective, considering the size and nature of the economy, Hamilton's planning represents a degree of government intervention that did not happen again until the twentieth century.

PLANNING BY JEFFERSON

Explaining the ideas of Thomas Jefferson is similar to the difficulties in trying to square a circle: something always gets left out. Over a period of four decades of intense activity, he was involved in so many events, some of which conflicted with different periods of his life. There were inconsistencies surely, and they are also part of what Jefferson thought and did. One is reminded of Henry Adams statement that excepting Alexander Hamilton, "no American has been the object of estimates so widely differing and so difficult to reconcile". As a practical and successful politician, Jefferson was willing and even adept at changing positions on specific issues if necessary to get a half loaf rather than none. While he never ceased voicing opposition to Hamilton's policies, he accepted his financial structure as something beyond his control; and besides, it worked. But on Jefferson's basic thinking, on his ideas of human freedom and equality, on the value of education and science in a republic, on the perfectability of man during this period of enlightenment, on the advantages of agrarian and rural living, on preserving America's resources for the future—on these ideas, he held fast through his life-time.

Considering the above, one should hardly be surprised that Jefferson's ideas are not always consistent with each other. While most historians have chosen to regard his inaugural address as the expression of pure Jeffersonianism, I have viewed that speech as exceptional and hardly representative, as I shall show. It was a special circumstance, and hardly indicative of what he had been engaged in the years earlier and even later.

Considering the importance of what Jefferson achieved in the period that Dumas Malone describes as "the architect of laws", before the Constitution was written, it is impossible to square these with the inaugural position of laissez-faire. The latter implies a free competitive market governed only by supply and demand-sell to the highest bidder in whatever amounts demanded. But in designing the early land policies, Jefferson proposed the opposite. He regarded the vast public lands to the west as a great future resource for the people: at one time, a grant of a plot for each able bodied man; later, he proposed the sale in small parcels on credit terms. In the immediate post-Revolutionary years, he led the way in abolishing rights of property established by primogeniture and entail which kept the land undivided in huge tracts. So too, he led a fight against the existing and extensive land speculation whereby, in some cases, tracts of millions of acres where obtained from state legislatures. Under his influence, the State of Virginia which had title to the largest portion of the western lands did not cede them until Congress gave assurance that they would be disposed of under a policy of common benefit.

When one views the many things that Jefferson did by his plans for America's long future, it is clear that he did not hesitate to use governmental power when he felt it necessary. Instead of allowing the land grabbers to buy and sell land at will, as in free market, he developed a plan which was adopted throughout the nation for the purchase and sale of land: No land could be sold without a prior survey according to a platted discriminate location on a map of a rectangular grid. He hoped to promote orderly settlement by progressive tiers in the surveys. He suggested—unsuccessfully—that the units of land be according to the decimal system.

In support of public school education, following his advocacy, the sixteenth lot of every township was to be reserved for the maintenance of public schools. This was made a fixed and binding policy for the rest of the country during his term, in 1802. So too was Jefferson's original land ordinance establishing a land office in 1785 made the prototype for the later Northwest Ordinance which set forth how the western territories would be divided into States and admitted on an equal basis. Jefferson's "Notes on Virginia" also included his three-fold plan of attack on the removal of slavery, on down-grading southern agriculture reliance on its one-crop tobacco industry, and on developing domestic manufactures.

After reading the above list, one must ask why a person with such antecedents of active governmental activities and planning would propose, now that he was president, to move towards the opposite policy:

"A wise and frugal government which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned."

First, let us admit that much of the effectiveness of his first inaugural was that it was a masterpiece of writing and felicitous phrasing. Henry Adams writes that "it was for a long time almost as well known as the Declaration of Independence", and described it as "a starting point of a powerful political party" which is exactly what its author hoped for it. What more soothing balm than for Jefferson to say in his address, "We are all Federalists, we are all Republicans":

I believe that his inagural address can be explained not by a real change of heart or policy, but by the special circumstances affecting his administration at this particular time. First, Jefferson realized the extremely narrow margin by which he was elected: In the House of Representatives rather than by the electoral college, and that through Hamilton's intervention: Jefferson rather than Burr. Jefferson realized that he needed friends, and as a temporary measure, he must also placate the opposition and propose no disturbing policies.

Secondly, an analysis of the government's fiscal condition at that time allowed him almost no options other than the course he took. The government debt stood at about $70 million, and was being paid off at the rate of about $4.5 million, which when adding the cost of the Departments of War and Navy came to about $8.5 million. With revenues running at between $10 and $12 million (the giant share from customs duties), the margin of a couple of million left to run the government could only mean his announced policy of economy and frugality. In Jefferson's day, deficit financing was unknown, and for Jefferson, raising taxes or borrowing was unthinkable. Jefferson was clearly "boxed in" by fiscal necessity, and he was clever enough in the inaugural to make a virtue out of necessity.

Now if Jefferson, on becoming president had overturned Hamilton's planning by getting Congress to repeal the laws, one would be able to say that national planning ceased to exist during Jefferson's time. Had he really carried out the logic of his inaugural on a long term basis, one would be able to say this. But as I shall show, this was not the case. On his policies relating to the fiscal and administrative structure which he inherited, let me quote Leonard White's book in which he says that although Jefferson believed that "he had saved the Republic * * * by wringing power away from impending monarchy" (i.e. the Federalists) he concludes that "the Republicans brought no revolution in administration".

"They found a system in full order; the people were familiar with its operations; it was well adapted to the work to be done; and it was taken over with hardly a ripple and maintained substantially intact for over a quarter of a century."

Dr. White then goes on to show that even after Jefferson left the presidency that the basic structure of policy and administration did not change until the Jacksonians came into power; and then the changes came on with a vengeance.

And now, we come to explaining those parts of Jefferson's ideas that the historians seem for the most part to have left out. This has to do with the change of policy that came with his second administration.

Jefferson's policy of economy and frugality announced in his first inaugural had two motivations: the first, as indicated was forced on him by fiscal necessity. The second was his hope that by skimping on expenses, the government would be able to pay off its debt and soon have money for accomplishing some of the goals that had always motivated him, mainly education and the advancement of science, and whatever else that would benefit the country.

During his first term, Jefferson won Congress's consent to pledging payment of the debt as taking precedence over all other expenditures. Despite the debt added by the purchase of Louisiana, and by stepping up the annual debt payments to $7.3 millions and holding down government costs to $3 million, considerable progress had been made by the end of the first term. The national debt had been reduced by over 22% or by $18 million. In his second inaugural address, Jefferson was now proposing that Congress consider a new policy:

"Redemption once effected, the revenue thereby liberated may, by a just repartition among the States, and a corresponding amendment to the constitution be applied in time of peace, to rivers, canals, roads, arts, manufactures, education and other great objects within each state."

The pre-conditions that Jefferson listed should be noted: "in time of peace", but all the while, war clouds hovered in the war between England and France that could draw the United States into its vortex; a second condition that a constitutional amendment was suggested; a third, that at that moment, the list of programs was but suggestive—a wide list to choose from when such conditions obtained.

A few words need be said concerning Jefferson's view on amending the constitution.

In his later years after retirement, it is true that he was moving towards a stricter interpretation. However, it should be pointed out that when the territory of Louisiana was offered, although Jefferson would have preferred a constitutional amendment to authorizing the purchase (in fact, he prepared a draft that included a wide range of new powers:). But when Congress dallied and Jefferson feared he might lose the opportunity, he went ahead and resorted to the treaty making power for authorization—without an amendment. Also, during the period of the Embargo from December 1807 to March 1809, when faced with a choice of war or embargoing shipping, Jefferson chose the latter. Obtaining authority from Congress, under the regular authorities in the constitution, all foreign shipping was banned. Both examples confirm that Jefferson was not adverse to using political power, without an amendment when he felt the situation required it.

As progress was being made in the reduction of the debt, Jefferson was moving closer to having to make a choice of policy objectives. Which would it be? Education? Science? or Transportation, then known as internal improvements? The chapters in my manuscript on Education and Science reveal how deeply Jefferson felt about the obligation to promote these. Yet, he was keenly aware of the fact that the attitude in Congress was indifferent to these. This was shown by the fact that when Washington left his Potomac shores to help found a national university, a score years slipped by without Congress taking action. The same situation was repeated thirty years later on the Smithson bequest, and saved only when John Quincy Adams stirred Congress to fund the Smithsonian Institute.

Transportation was a different matter, and it had an inherent interest to Congress. Transportation involved costs, and anything that would reduce freight costs was appealing. Except for water transportation, the cost of shipping was virtually prohibitive. This explains why almost all production facilities which required shipping were located within five miles of water. America was blessed with ample rivers, lakes and bays, some of which could be connected by canals to provide cheap transportation. Capital for building roads and turnpikes was in short supply, hardly an object for long term investment without help from public funding.

Jefferson's choice of transportation was undoubtedly influenced by his Secretary of the Treasury Gallatin, who had already proposed internal improvements in his native state of Pennsylvania. Gallatin manuevered to have the Senate request that the Secretary submit a plan. Gallatin had been working on such a plan for the past year when he presented it in April 1808. It was an exact plan for a network of roads and canals and other river improvements to interlace the country—North, South, East and West. It was a ten year program accompanied by a detailed financial plan that would cost an estimated $20 million. The plan was flexible on how the work of construction would be done: directly by the government in some situations, by private enterprises in others in which the government would own stock. In every case however, engineering surveys and cost estimates would precede decision making and the start of construction.

The Gallatin Report, however great its advantages to the country from the long range, was in fact dead on arrival since the Embargo had already begun four months before, and the anticipated surplus was withering. The Gallatin plan would have to wait, and indeed, it was not until the end of the War of 1812 which had brought the Treasury into even greater debt. The war had demonstrated beyond a doubt the need for better internal transportation since the sea coasts were controlled by the British navy. The cost of shipping war supplies and equipment over primitive roads had risen astronomically. The war did foster a growth of nationalism and one might suppose this would prove favorable to the acceptance of Gallatin's planning. In any case, it was Gallatin's plan that became the basis of internal improvements planning to 1829.

I noted much earlier that the traditional laissez-faire historians and biographers have shown almost total disinterest in Gallatin's plan, sometimes not even mentioning it. Inasmuch as 1986 is also the centennial event marking the publication of Henry Adams' great "History of the United States During the Administrations of Thomas Jefferson and James Madison" it is worthy of observing that Adams regarded the Gallatin report as one of the important events of the period. In fact, it was from Adams' History that I came to place so much importance on Jefferson's planning in his second term, and the subsequent events relating to internal improvements.

Adams felt that it was a misfortune that the Gallatin plan failed in being acted upon by Congress. In his words, it would have combined "satisfying local interests . . . in one great system instead of wasting the public resources in isolated efforts . . . to fix the policy of the government for at least ten years, and probably for an indefinite time . . . as he had already succeeded in regard to payment of debts . . . By thus establishing a complete national system to be executed by degrees, the whole business of annual chaffering and log-rolling for local appropriations in Congress and all its subsequent corruptions and inconsistencies were to be avoided."

In my opinion, Gallatin's report deserves to rank with Hamilton's Report on Manufacturers in its far sightedness and practical vision of serving the national purpose.

POST-JEFFERSON PLANNING TO 1829

Action towards reviving internal improvements for the nation waited until the Treaty of Ghent ended the War and there would be a revived prospect of government funding. Gallatin's plan furnished the pattern of ideas. That time came in Madison's administration when it was proposed that the bonus money paid to the second National Bank be used to continue the construction of the National Road. Who would have guessed that Madison, one of the staunchest nationalists in the 1787 Convention, and Jefferson's Secretary of State would veto the bill? Yet he did so, stating in uncompromising terms that the power to regulate commerce (on which the bill was based) carried no authority to construct roads.

Not long thereafter the internal improvements movement suffered another blow, this time again from a strong nationalist. President Monroe insisted that construction authority was exceeded, and that constructing the National Road by the federal government violated the states' rights.

It is interesting to speculate on how close we came to starting to develop a national transportation network of roads and canals. Except for the unexpected presidential vetoes, the odds favored it happening. As the famous historian Frederick Jackson Turner has written:

"The tide of sentiment in favor of internal improvements was so strong that, to insure its complete success, it would have been necessary only for the executive to have ceased to interprose the checks which Monroe placed upon this movement."

Looking back, here are some of the factors that should have favored internal improvements becoming a reality. a) Henry Adams noted that soon after the Treaty of Ghent, federal finances were turning favourably: for the year 1817, a surplus of $20 million was anticipated. b) It was believed that President Monroe supported the participation of the government in internal improvements. c) Internal improvements then had the enthusiastic support of several leaders, who, combined would have been a powerhouse of support: John C. Calhoun who unequivocally advocated internal improvements as the best antidote to "disunion" and the removal of the "sectional spirit" which was dividing the country; Henry Clay who authored "The American System" plan of combining internal improvements policy with the protective tariff; and no less than Andrew Jackson, then in Congress for his first term and later became the nemesis of internal improvements.

The vetoes came as a surprise; and coming one upon the other emphasizing that the government lacked authority for such programs without a constitutional amendment were a defeat so definitive and complete that despite the election of Adams, a champion for the cause, the movement never really recovered.

At the time that Adams succeeded to the presidency, there may have existed some reason to expect that internal improvements might still have some life in it. Surely there was no more ardent champion than he. He disdained the legalistic thinking of Madison and Monroe and viewed the Constitution as a mandate rather than a barrier. In his mind the arguments for states rights was almost synonymous with those of "state sovereignty"—the same "stubborn unyielding resistance" of those who opposed accepting the Constitution. While from New England—one of the sections with less to gain from internal improvements—Adams saw all issues from a national perspective and national needs. He saw his own responsibility for leadership as even above obtaining a political advantage. While elected to serve conservative Massachusetts, he once opined that while he accorded commerce "the most liberal protection", he cautioned however, "Commerce is the very last interest in the nation upon which I would bestow power". Even then, and long before the nation was split by the arguments over slavery, Adams warned that the union was fragile and that selfish sectionalism could split it apart. He believed that a strong national government, thinking ahead to the country's long term needs could help provide the cement to unity through building a network of transportation facilities—roads and canals in that era. For a time, the prospects for the program were deceiving: more money was appropriated for roads and canals during Adams' four years than in the previous thirty-six of the country's history.

Adams entered the presidency filled with high hopes. In his inaugural address, and in language quaint for this period, proceeded imprudently to lay out the program of his hopes: "laws promoting the improvements of agriculture, commerce, manufactures and cultivation and encouragement of the mechanic and elegant arts, ornamental and profound". With all his intellectual bril-

liance and years of experience in government, he was out of touch with his times. He represented an age that was passing; and by both temperment and intellect, was unable to adapt to the new kind of policies that was emerging.

Adams' presidency had begun under a cloud—a scarce victory by election in the House of Representatives and undermined further by the charge of Jackson supporters that it was won by a corrupt bargain with Henry Clay who became his Secretary of State. The President was never in a position of control. By the middle of his presidential term, the control of both houses had passed to the opposition. For all practical purposes, the movement for internal improvements under long term planning had ended.●

JEFFERSON AS A CENTRAL PLANNER—AS SEEN BY FRANK P. BOURGIN

● Mr. MATSUNAGA. Mr. President, the aphorism that those who forget history are doomed to repeat the mistakes of the past is one that we in this body should always bear in mind. Today's legislative problems are products of the past, and by placing them in historical perspective, we can see their evolution as something not entirely unique to the present moment. Such a perspective would normally reduce the number of errors in the legislative process.

In this connection, when we lift our sights from specific social concerns to general philosophic trends in our political history, we should enlarge the size of our frame of historical reference. These thoughts come to mind in connection with the forthcoming bicentennial of the adoption of that great document we can our U.S. Constitution. And as can be expected, there are a number of organized groups today which fully intend to influence this observance in all its aspects—both from the right and the left of the political spectrum, in addition to the official organization headed by former Chief Justice Burger.

Mr. President, I for one am a little dubious about attempts to justify current governmental policies—whether conservative or liberal—in terms of what our Founding Fathers had in mind for their day, although the drafters of the Constitution certainly designed for the future and their result has met the test of time. In looking to the past for support of our philosophic concepts, rather than insights to present conditions, we are too apt to seize on attractive snapshots and miss the panoramic view—snapshots which can lead to myths in our mind's eye.

Let us, for example, consider the doctrine of laissez faire, as articulated by Adam Smith in "The Wealth of Nations," regarded as the touchstone for free market theories of today. While this work was published in 1776, when the American Revolution broke out, its influence took years to gain intellectual currency at a time when the world was by no means a global village. In fact, its gestation took longer than 11 years in America.

Recently, Dr. Allan Saunders, one of the educational pioneers in my State of Hawaii and, indeed, one of our country's noted political scientists, brought to the attention of Senator INOUYE and myself a paper written in the 1930's by Frank P. Bourgin, then a graduate fellow.

Bourgin was a student of the Farrand Records of the Philadelphia Constitutional Convention of 1787. This work led him to examine the ideas of both Thomas Jefferson, as a cofounder with Andrew Jackson of the Democratic Party, and Alexander Hamilton, their opposite number for the Republicans, as proponents of national planning. Bourgin subsequently became an independent businessman and later an official of the Federal Emergency Management Agency; he retired several years ago.

Mr. President, current interpreters of American history often quote an excerpt of Jefferson's first inaugural address as President to suggest that this great Founding Father—who was not present at Philadelphia in 1886—did not believe in a large role for the Federal Government. Hamilton, on the other hand, is remembered as the successful advocate for a national banking institution. Their visions of the future American society were at odds, as were their guiding philosophies. Today, however, in this bicameral legislature called for in that Constitution of bicentennial observance, we continue to demonstrate the overarching truth of democracy which they both recognized—that people need not share fundamental beliefs in order to work together for national comity. Both Jefferson and Hamilton agreed on the means for achieving quite different societal ends: a central national government capable of carrying out long-range planning.

While Hamilton placed his emphasis on a financial system with which to nurture manufacturing and international trade; Jefferson, in line with his agrarian vision, concentrated on land and transportation planning, doubling the young country's boundaries with the Louisiana Purchase and taking the measure of the North American Continent by commissioning the Lewis and Clark expedition. Such was his breadth, however, that Jefferson was a superb educational architect as well as a philosopher, who later came to recognize the need for industry as well as agriculture in the new Nation.

Because the Bourgin paper on "Hamilton, Jefferson & Co.: National Planning in the Early Years of Our Republic" adds the dimension of accomplishment to the context of inaugural rhetoric, I join with the senior Senator from Hawaii in asking that it be introduced into the CONGRESSIONAL RECORD at this point so that Members and others may gain additional insight into the thinking and objectives of this great figure from our country's earliest history.●

THE CENTENNIAL OF YESHIVA UNIVERSITY

● Mr. MOYNIHAN. Mr. President, this week marks the 100th anniversary of the founding of Yeshiva University. This is the Nation's oldest and largest university which serves as a living testament to the durability of the 3,500-year-old heritage of the Jewish faith and its place in the contemporary world. I am proud to be an honorary alumnus of this university.

The beginnings of Yeshiva University date back to 1886, with the founding of Yeshiva Etz Chaim, a Jewish day school. In 1915, Yeshiva Etz Chaim merged with the Rabbi Isaac Elchanan Theological Seminary. This merger was the beginning of the institution that was to become Yeshiva College and later Yeshiva University. Secular and religious studies from secondary through college level were combined in a program designed to meet the needs of Jewish young people as they began to adapt and contribute their talents to the land in which they had newly settled.

Since then, Yeshiva University has grown from a vision harbored by a small group of immigrants to a prestigious, mutifaceted institution. It celebrates its centennial in 1986 with a well-deserved reputation as a center of learning renowned for educational excellence. But, at the same time, it maintains a concern for the society which it serves, offering a wide range of outreach programs designed to contribute to the overall welfare of its surrounding community and the Nation as a whole.

Today Yeshiva University has five undergraduate schools and colleges, a medical school, a law school, and graduate schools of social work, psychology, Jewish education and Jewish studies. Some 7,000 students—41 percent of them women—attend the university and are taught by a full-time faculty of some 1,300 at four centers in Manhattan and the Bronx, as well as at centers in Israel and Los Angeles.

On Tuesday, September 23, the U.S. Postal Service will issue a commemorative stamp honoring Dr. Bernard Revel, the first president of Yeshiva University. Indeed, it is most appropriate that Dr. Revel be included in the Postal Service's "Great Americans" stamp series.

Dr. Revel was one of the most innovative intellectuals of this century. He came to this country in 1906, and enrolled in the Rabbi Isaac Elchanan

Theological Seminary. The young scholar became fascinated by the rich treasures of scholarship available through American institutions of higher learning. In addition to his impressive achievements in Jewish studies, Revel also pursued courses in law, philosophy, Oriental languages, and economics. In 1909 he received a master of arts degree from New York University.

On September 11, 1912, Bernard Revel became a U.S. citizen. At this time just 6 short years after his arrival to this country, Dr. Revel's scholarship and breadth of knowledge in the arts and sciences, as well as in Jewish studies, had come to the attention of the national Orthodox Jewish leadership. He was persuaded to assume the presidency of the institution which would later evolve into Yeshiva College and finally, Yeshiva University. Dr. Revel served as president throughout the evolution of Yeshiva University until his death on December 2, 1940. His greatest legacy was the creation of the Nation's first liberal arts college under Jewish auspices as well as the introduction of graduate studies, the product of his vision of the synthesis of Jewish and general studies, which led to the establishment of Yeshiva University.

The university's century-old dream which was given life by Dr. Revel—the ideal of maintaining a cultural identity while preparing to serve a multicultural world—lives on in the heart of every new student who is now preparing to face the challenges of the 21st century. I am sure that the entire Senate joins me in congratulating Yeshiva University on this well-deserved honor and for the 100th anniversary of the founding of an outstanding institution.●

DAVID WINSTON REMEMBERED

● Mr. KENNEDY. Mr. President, it is an honor for me to join my colleagues in remembering David Winston, a former adviser to the Senate Labor and Human Resources Committee on matters of health care policy.

David joined the Subcommittee on Health in 1977 and worked with us until 1981. I must confess that my staff and I felt some trepidation when we learned that an official of Ronald Reagan's California Welfare Department—where David was then working—would be joining the subcommittee. We feared that the spirit of bipartisan cooperation and dedication to the health of the American people which had marked the work of the subcommittee might be marred by a more ideological and partisan approach to the issues.

But when David arrived and we got to know him, we could not have been more pleased. David approached all health issues without any partisanship or rancor. The questions he asked were always the right ones: What can we do to improve the health of the American people; what is the best way to achieve our common goals?

It was an exceptional privilege to work closely with David during the 4-year period when he was a staff member and I was the chairman of the Health Subcommittee. I shall miss his wise counsel, his technical competence, and his dedication to the health of the American people.

I would like to express my deepest sympathies to his wife, Susan, and his children, Heath and Shannon. We are all poorer as the result of David's untimely and tragic death.●

ORDER FOR TUESDAY

RECESS UNTIL 9:30 A.M.

Mr. BOSCHWITZ. Mr. President, with respect to the business of the Senate tomorrow, I ask unanimous consent that once the Senate completes its business today, it stand in recess until 9:30 a.m. on Tuesday, September 23.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. BOSCHWITZ. I further ask unanimous consent that following the recognition of the two leaders under the standing order, there be special orders in favor of each of the following Senators not to exceed 5 minutes each: Senators HAWKINS, PROXMIRE, ROCKEFELLER, MURKOWSKI, and BAUCUS.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. BOSCHWITZ. I further ask unanimous consent that following the special orders just identified there be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BOSCHWITZ. At 10:30 a.m., it will be the intention of the majority leader to begin consideration of the highway bill, S. 2405, or to continue consideration of the motion to proceed to product liability. Votes can be expected, the majority leader advises, in relation to these measures.

I might also say by way of an announcement, Mr. President, that the majority leader has not yet decided whether or not the Senate will recess as is customary on Tuesday between the hours of noon and 2 p.m. but that he will announce his intentions in the morning. But at 2 p.m., it is likely that we will once again turn to the highway bill or the motion to proceed to product liability.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. BOSCHWITZ. Mr. President, I move that the Senate stand in recess until 9:30 a.m. tomorrow.

The motion was agreed to, and at 4:47 p.m., the Senate recessed until tomorrow, Tuesday, September 23, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 22, 1986:

DEPARTMENT OF ENERGY

Lawrence F. Davenport, of Virginia, to be an Assistant Secretary of Energy (Management and Administration), vice Martha O. Hesse.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

John Shelton Reed, Jr., of North Carolina, to be a Member of the National Council on the Humanities for a term expiring January 26, 1992, vice Louise Ano Nuevo Kerr, term expired.

SMALL BUSINESS ADMINISTRATION

Charles R. Gillum, of Virginia, to be inspector general, Small Business Administration, vice Mary F. Wieseman.

IN THE ARMY

The following-named officer for permanent promotion in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code, sections 624 and 628:

ARMY NURSE CORPS

To be lieutenant colonel

Diana S. Stepanik, xxx-xx-xxxx

IN THE ARMY

The following-named officers for permanent promotion in the U.S. Army and appointment into the Regular Army as appropriate, in accordance with the appropriate provisions of title 10, United States Code:

MEDICAL SERVICE CORPS

To be major

Alston, Priscilla M., xxx-xx-xxxx
Anderson, Donald R., xxx-xx-xxxx
Arominski, Edward P., xxx-xx-xxxx
Ball, John E., xxx-xx-xxxx
Barnes, Robert D., xxx-xx-xxxx
Bergsagel, Carl E., xxx-xx-xxxx
Berthold, Mark., xxx-xx-xxxx
Black, Carol A., xxx-xx-xxxx
Bogardus, John E., Jr., xxx-xx-xxxx
Bolton, Shirley A., xxx-xx-xxxx
Brown, Kenneth R., xxx-xx-xxxx
Brown, Sheila., xxx-xx-xxxx
Burke, James E., xxx-xx-xxxx
Cain, David M., xxx-xx-xxxx
Caldwell, Daniel J., xxx-xx-xxxx
Carter, David S., xxx-xx-xxxx
Chandler, David W., xxx-xx-xxxx
Chapman, Nancy G., xxx-xx-xxxx
Christal, Gary W., xxx-xx-xxxx
Cintron, Angel E., xxx-xx-xxxx
Collyer, Michael R., xxx-xx-xxxx
Daley, Michael D., xxx-xx-xxxx
Dalton, Raymond P., xxx-xx-xxxx
Desimone, David J., xxx-xx-xxxx
Dodd, Kenneth M., xxx-xx-xxxx
Donnenwerth, Darwyn D., xxx-xx-xxxx
Drury, David K., xxx-xx-xxxx
Dunlap, Paul W., xxx-xx-xxxx

Dunlap, Walter R., xxx-xx-xxxx
Estes, William L., xxx-xx-xxxx
Fairless, James D., xxx-xx-xxxx
Fletcher, James J., xxx-xx-xxxx
Foppiano, Kenneth J., xxx-xx-xxxx
Forkey, Jerry W., xxx-xx-xxxx
Foster, Michael J., xxx-xx-xxxx
Foster, Robert T., xxx-xx-xxxx
Gaines, Kenneth R., xxx-xx-xxxx
Garland, Frederick N., xxx-xx-xxxx
Giambone, Alfred V., xxx-xx-xxxx
Green, Kenneth V., xxx-xx-xxxx
Griffin, Darrell E., III, xxx-xx-xxxx
Gupta, Raj K., xxx-xx-xxxx
Gwyn, Herman L., Jr., xxx-xx-xxxx
Hamilton, Glade R., xxx-xx-xxxx
Handley, Gary W., xxx-xx-xxxx
Hartley, Michael W., xxx-xx-xxxx
Hendricks, Carl E., xxx-xx-xxxx
Herr, Gary E., xxx-xx-xxxx
Hewitt, Douglas, xxx-xx-xxxx
Hildredth, Charles S., xxx-xx-xxxx
Hill, Randall J., xxx-xx-xxxx
Horning, Leonard B., Jr., xxx-xx-xxxx
Hughes, James D., xxx-xx-xxxx
Hyde, Garry R., xxx-xx-xxxx
Illich, Stanley J., xxx-xx-xxxx
Jocz, Richard J., xxx-xx-xxxx
Johnson, Michael G., xxx-xx-xxxx
Jodan, Timothy J., xxx-xx-xxxx
Karwatka, Joseph, xxx-xx-xxxx
Kelsey, Charles T., III, xxx-xx-xxxx
Kinslow, Garland, Jr., xxx-xx-xxxx
Kohler, Paul D., xxx-xx-xxxx
Koskela, David M., xxx-xx-xxxx
Kotulak, John C., xxx-xx-xxxx
Landry, Theodore P., xxx-xx-xxxx
Legrande, Jeffrey N., xxx-xx-xxxx
Lemon, Steven M., xxx-xx-xxxx
Lewis, Larry K., xxx-xx-xxxx
Linthicum, Kenneth J., xxx-xx-xxxx
McArthur, Terry L., xxx-xx-xxxx
McCollum, Jeffery L., xxx-xx-xxxx
McGibony, Charles M., xxx-xx-xxxx
Michaels, Paul G., xxx-xx-xxxx
Miller, Deborah A., xxx-xx-xxxx
Mills, Douglas E., xxx-xx-xxxx
Moonan, David T., xxx-xx-xxxx
Moore, Walter, Jr., xxx-xx-xxxx
Morris, William D., xxx-xx-xxxx
Munger, Duane C., xxx-xx-xxxx
Oney, Gerald L., xxx-xx-xxxx
Parker, Michael W., xxx-xx-xxxx
Pengelly, Michael H., xxx-xx-xxxx
Pieters, John R., xxx-xx-xxxx
Polen, Lloyd L., III, xxx-xx-xxxx
Preyer, George L., xxx-xx-xxxx
Provencher, Marc A., xxx-xx-xxxx
Ramirez, Gilbert., xxx-xx-xxxx
Reilly, Paul M., xxx-xx-xxxx
Robbins, Randolph B., xxx-xx-xxxx
Rogers, Jody R., xxx-xx-xxxx
Rogers, Wessie C., xxx-xx-xxxx
Sanchez, Ramon M., xxx-xx-xxxx
Schilhab, John C., xxx-xx-xxxx
Seal, Lawton A., xxx-xx-xxxx
Semarge, Thomas J., Jr., xxx-xx-xxxx
Shelton, Claudie M., Jr., xxx-xx-xxxx
Sierra, Nestor A., xxx-xx-xxxx
Smith, Gregory P., xxx-xx-xxxx
Smith, Noel L., xxx-xx-xxxx
Smythe, Stuart W., Jr., xxx-xx-xxxx
Spencer, Lanta V., xxx-xx-xxxx
Stafford, Darrel E., xxx-xx-xxxx
Stanley, Clarence, Jr., xxx-xx-xxxx
Tate, Michael G., xxx-xx-xxxx
Templin, Bobby R., xxx-xx-xxxx
Testa, Michael J., xxx-xx-xxxx
Treadway, Steven G., xxx-xx-xxxx
Trent, Neal H., III, xxx-xx-xxxx
Vanderhamm, Dale G., xxx-xx-xxxx
Vandervoort, Peter A., xxx-xx-xxxx
Voetsch, John A., IV, xxx-xx-xxxx
Walker, Thomas S., II., xxx-xx-xxxx
Walsh, James P., xxx-xx-xxxx
Waters, David L., xxx-xx-xxxx
West, Johnny L., xxx-xx-xxxx
Williams, Dennis L., xxx-xx-xxxx
Young, Anthony W., xxx-xx-xxxx
Zauner, Michael E., Jr., xxx-xx-xxxx

ARMY MEDICAL SPECIALIST CORPS

To be major

Benson, Cindy J., xxx-xx-xxxx
Deyle, Gail D., xxx-xx-xxxx
Digilio, Catherine D., xxx-xx-xxxx
Hauret, Keith G., xxx-xx-xxxx
Metzger, Debra J., xxx-xx-xxxx
O'Brien, Valerie J., xxx-xx-xxxx
Obusek, John P., xxx-xx-xxxx

VETERINARY CORPS

To be major

Adamson, Robert V., xxx-xx-xxxx
Bley, John A., Jr., xxx-xx-xxxx
Burris, Jennifer, A., xxx-xx-xxxx
Corcoran, Kevin D., xxx-xx-xxxx
Elkins, William R., xxx-xx-xxxx
Flynn, Bernard M., xxx-xx-xxxx
Fritz, David L., xxx-xx-xxxx
Fritz, Patricia E., xxx-xx-xxxx
Harris, Richard A., xxx-xx-xxxx
Hayward, Isaac J., xxx-xx-xxxx
Jones, Charles E., Jr., xxx-xx-xxxx
King, Alan D., xxx-xx-xxxx
Ragland, Danny R., xxx-xx-xxxx
Rhodes, Lowrey L., Jr., xxx-xx-xxxx
Sneed, James I., Jr., xxx-xx-xxxx
Stanley, Otis L., xxx-xx-xxxx
Stiefel, Steven M., xxx-xx-xxxx
Topper, Michael J., xxx-xx-xxxx
Wempe, John M., xxx-xx-xxxx

ARMY NURSE CORPS

To be major

Allen, Steven D., xxx-xx-xxxx
Aponteoquendo, Margarita, xxx-xx-xxxx
Bagnell, Margaret E., xxx-xx-xxxx
Baller, Patricia M., xxx-xx-xxxx
Beard, Suk K., xxx-xx-xxxx
Bell, Debulon E., xxx-xx-xxxx
Bennett, Dennis L., xxx-xx-xxxx
Bennett, Regina K., xxx-xx-xxxx
Bernard, Cynthia A., xxx-xx-xxxx
Booth, Mary K., xxx-xx-xxxx
Brazil, Ann, xxx-xx-xxxx
Brock, Margo D., xxx-xx-xxxx
Brown, Carol B., xxx-xx-xxxx
Bruce, Marcella J., xxx-xx-xxxx
Bryant, Elizabeth A., xxx-xx-xxxx
Buzzelli, Michael J., xxx-xx-xxxx
Calder, Michael A., xxx-xx-xxxx
Carnovale, Mary P., xxx-xx-xxxx
Carrow, Harold J., III, xxx-xx-xxxx
Choi, Brenda S., xxx-xx-xxxx
Clay, Patricia A., xxx-xx-xxxx
Cobb, Christine E., xxx-xx-xxxx
Dahl, Lynn F., xxx-xx-xxxx
Dahlander, Robert C., xxx-xx-xxxx
Davidson, Laura L., xxx-xx-xxxx
Davis, Lee M., xxx-xx-xxxx
Daze, Susan I., xxx-xx-xxxx
Deeter, Barbara L., xxx-xx-xxxx
Deruvo, Sharon S., xxx-xx-xxxx
Dimeglio, Patricia A., xxx-xx-xxxx
Divelbliss, Debra, J., xxx-xx-xxxx
Doggett, Richard C., xxx-xx-xxxx
Donahue, Patrick J. xxx-xx-xxxx
Donaldson, Robert D., xxx-xx-xxxx
Eagan, Janet R., xxx-xx-xxxx
Edwards, Deborah R., xxx-xx-xxxx
Eitzen, Joan P., xxx-xx-xxxx
Eller, Barbara F., xxx-xx-xxxx
Elrod, Diane C., xxx-xx-xxxx
Etnyre, Annette E., xxx-xx-xxxx
Everson, Larry E., xxx-xx-xxxx
Ewinglonczak, Debra L., xxx-xx-xxxx
Ferro, Kenneth C., xxx-xx-xxxx
Fleshin, Diane J., xxx-xx-xxxx
Fleshin, Richard D., xxx-xx-xxxx
Fleshman, Kathy O., xxx-xx-xxxx
Forestell, Francine E., xxx-xx-xxxx
Forsythe, Melissa A., xxx-xx-xxxx
Frederick, William C., xxx-xx-xxxx
Frizell, Garry G., xxx-xx-xxxx
Gaillard, Gladys M., xxx-xx-xxxx
Gaston, Deborah S., xxx-xx-xxxx
Gebhart, Ellen M., xxx-xx-xxxx
Gibbons, Rosemarie Y., xxx-xx-xxxx
Gilliam, Linda J., xxx-xx-xxxx
Gilreath, Elijah J. Jr., xxx-xx-xxxx
Glenn, Mary A., xxx-xx-xxxx
Gray, Yolanda A., xxx-xx-xxxx
Gruber, Dana, xxx-xx-xxxx
Haas, Richard E., xxx-xx-xxxx
Haley, David L., xxx-xx-xxxx
Hanke, James A., xxx-xx-xxxx
Harden, Howard C., xxx-xx-xxxx
Hart, Betty J., xxx-xx-xxxx
Havas, Kim D., xxx-xx-xxxx
Henry, Jill D., xxx-xx-xxxx
Hinson, Nolan J., xxx-xx-xxxx
Hofman, Dean A., xxx-xx-xxxx
Hudson, Beverly K., xxx-xx-xxxx
Ivey, Donald F., xxx-xx-xxxx
Janny, Stephen J. xxx-xx-xxxx
Jenkins, Tracey L., xxx-xx-xxxx
Jewitt, Maureen, xxx-xx-xxxx
Johnson, Kim M., xxx-xx-xxxx
Johnston, Mary B., xxx-xx-xxxx
Jones, Maudie F., xxx-xx-xxxx
Jones, Theresa V., xxx-xx-xxxx
Jurgensmeier, Leland L., xxx-xx-xxxx
Kanner, Paula A., xxx-xx-xxxx
Karnofsky, Jeannette E., xxx-xx-xxxx
Kuykendall, Deborah K., xxx-xx-xxxx
Lamontagne, Camille, xxx-xx-xxxx
Lansford, Amy F., xxx-xx-xxxx
Laws, Linda S., xxx-xx-xxxx
Leahy, Mary J., xxx-xx-xxxx
Levee, Robert C., xxx-xx-xxxx
Linton, Hyacinth V., xxx-xx-xxxx
Lomax, Debbie J., xxx-xx-xxxx
Ludwig, Sally B., xxx-xx-xxxx
Mahanti, Bijoy K., xxx-xx-xxxx
Manning, Lois J., xxx-xx-xxxx
Martin, Jerry D., xxx-xx-xxxx
Matthews, Patricia A., xxx-xx-xxxx
McAnallen, Kathleen, xxx-xx-xxxx
McNabb, Laurie A., xxx-xx-xxxx
Menter, Kathleen A., xxx-xx-xxxx
Milford, Elizabeth A., xxx-xx-xxxx
Monahan, Peggy L., xxx-xx-xxxx
Murdock, Eugene J., Jr., xxx-xx-xxxx
Mygrant, Brenda I., xxx-xx-xxxx
Newcomb, Shirley I., xxx-xx-xxxx
Odell, Phyllis J., xxx-xx-xxxx
Okubo, Annie A., xxx-xx-xxxx
Olsen, Janice A., xxx-xx-xxxx
Ostmann, Ronald B., xxx-xx-xxxx
Patrick, Roy E., xxx-xx-xxxx
Perkins, Charles B., xxx-xx-xxxx
Pierce, Carol J., xxx-xx-xxxx
Pittman, Constance L., xxx-xx-xxxx
Plemenik, Diane J., xxx-xx-xxxx
Plooster, Lois E., xxx-xx-xxxx
Pritham, Ursula A., xxx-xx-xxxx
Rang, David H., xxx-xx-xxxx
Reagen, Mary S., xxx-xx-xxxx
Reed, Josephine M., xxx-xx-xxxx
Reid, Robert D., xxx-xx-xxxx
Reinhart, Susan I. xxx-xx-xxxx
Ristau, Lydia R., xxx-xx-xxxx
Rizzo, Jeffrey A., xxx-xx-xxxx
Savage, Analiza Y., xxx-xx-xxxx
Schmidt, Anita J., xxx-xx-xxxx
Schreck, Milagros B., xxx-xx-xxxx
Schulte, Daneen T., xxx-xx-xxxx
Schulz, Elaine M., xxx-xx-xxxx
Shanahan, Susan S., xxx-xx-xxxx
Shaw, Gloria B., xxx-xx-xxxx
Silvers, Selah G., III, xxx-xx-xxxx
Simmons, Eddie J., xxx-xx-xxxx

Skipper, Martha J., xxx-xx-xxxx
Slone, Francisca M., xxx-xx-xxxx
Smith, Thomas A., xxx-xx-xxxx
Snyder, Mary E., xxx-xx-xxxx
Sperling, Eileen M., xxx-xx-xxxx
Stowe, Charles E., xxx-xx-xxxx
Talbott, Donna L., xxx-xx-xxxx
Temple, Linda I., xxx-xx-xxxx
Towley, Kristin E., xxx-xx-xxxx
Travnicek, Janet A., xxx-xx-xxxx
Troxell, Mary L., xxx-xx-xxxx
Vanderbilt, Ludie M., xxx-xx-xxxx
Volk, Joseph W., xxx-xx-xxxx
Wade, Patricia R., xxx-xx-xxxx
Walk, Bette L., xxx-xx-xxxx
Wallace, Arthur P., xxx-xx-xxxx
Washington, John E., Jr., xxx-xx-xxxx
Wesley, Heidi L., xxx-xx-xxxx
Wiggin, Huberta S., xxx-xx-xxxx
Williams, Robert E., xxx-xx-xxxx
Williamson, Gail J., xxx-xx-xxxx
Wyatt, Dennis W., xxx-xx-xxxx
Yoder, Linda H., xxx-xx-xxxx
Zager, Larry K., xxx-xx-xxxx
Zunich, Sheryl A., xxx-xx-xxxx

IN THE ARMY

The following-named officers for appointment in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code:

ARMY

To be colonel

Abbott, Michael H., xxx-xx-xxxx
Abrams, John N., xxx-xx-xxxx
Ackels, Alden D., xxx-xx-xxxx
Adam, Leroy A., xxx-xx-xxxx
Adams, Nolan J., xxx-xx-xxxx
Ahrens, Roger W., xxx-xx-xxxx
Aldrich, Clifton H., xxx-xx-xxxx
Alexander, Edward G., xxx-xx-xxxx
Allen, Cary D., xxx-xx-xxxx
Allport, George H., II, xxx-xx-xxxx
Anderson, Cecil T., xxx-xx-xxxx
Andrews, Michael A., xxx-xx-xxxx
Anthony, Henry G., Jr., xxx-xx-xxxx
Appler, Donald E., xxx-xx-xxxx
Applin, Frank M., xxx-xx-xxxx
Armijo, Gabriel C., xxx-xx-xxxx
Arthur, David W., xxx-xx-xxxx
Augsburger, Grayson T., xxx-xx-xxxx
Austin, Andrew L., xxx-xx-xxxx
Avant, Jack B., xxx-xx-xxxx
Azuma, Eric K., xxx-xx-xxxx
Babich, James M., xxx-xx-xxxx
Ball, Michael G., xxx-xx-xxxx
Ballard, Joe N., xxx-xx-xxxx
Banta, Donald J., xxx-xx-xxxx
Barber, Paul F., xxx-xx-xxxx
Barnhill, Jerry R., xxx-xx-xxxx
Bauer, Stephen M., xxx-xx-xxxx
Behler, Gene R., xxx-xx-xxxx
Best, David S., xxx-xx-xxxx
Bettin, Patrick J., xxx-xx-xxxx
Bezek, Robert J., xxx-xx-xxxx
Bickel, Charles W., xxx-xx-xxxx
Bischoff, Robert C., xxx-xx-xxxx
Bishop, Gilbert L., xxx-xx-xxxx
Blacker, Blair K., xxx-xx-xxxx
Blaylock, James R., xxx-xx-xxxx
Blood, George H., xxx-xx-xxxx
Boddie, James W., Jr., xxx-xx-xxxx
Bodelson, Patrick J., xxx-xx-xxxx
Boegler, Kenneth G., xxx-xx-xxxx
Bolin, Daniel H., xxx-xx-xxxx
Boyd, Clinton B., xxx-xx-xxxx
Boyd, Morris J., xxx-xx-xxxx
Braun, Bruce A., xxx-xx-xxxx
Brede, Lawrence, Jr., xxx-xx-xxxx
Briscoe, Charles H., xxx-xx-xxxx
Brock, George R., xxx-xx-xxxx
Brownlee, William R., xxx-xx-xxxx
Buchan, James C., xxx-xx-xxxx
Buchholz, Douglas D., xxx-xx-xxxx
Buford, Alfred E., xxx-xx-xxxx
Buntz, Burke O., xxx-xx-xxxx
Burch, Harold E., xxx-xx-xxxx
Burch, William C., xxx-xx-xxxx
Burckhardt, Marland J., xxx-xx-xxxx
Burnette, Larry R., xxx-xx-xxxx
Burpee, David H., xxx-xx-xxxx
Burtnett, John W., Jr., xxx-xx-xxxx
Bush, John R., xxx-xx-xxxx
Cabaniss, Edward H. V., xxx-xx-xxxx
Cabell, Lawrence C., xxx-xx-xxxx
Caggiano, Anthony F., xxx-xx-xxxx
Cahill, Peter J., xxx-xx-xxxx
Cain, Joel M., xxx-xx-xxxx
Campbell, Douglas B., xxx-xx-xxxx
Carlson, Kenneth G., xxx-xx-xxxx
Cato, Robert B., xxx-xx-xxxx
Cerone, Daniel T., xxx-xx-xxxx
Chantelau, William J., xxx-xx-xxxx
Chapman, Thaddius, xxx-xx-xxxx
Charles, Frederick J., II, xxx-xx-xxxx
Chavez, Juan I., xxx-xx-xxxx
Chessnoe, John M., xxx-xx-xxxx
Christy, William B., xxx-xx-xxxx
Cimral, Ted A., xxx-xx-xxxx
Clark, Asa A. V., xxx-xx-xxxx
Clark, Hugh D., xxx-xx-xxxx
Clark, William B., xxx-xx-xxxx
Clark, William E., xxx-xx-xxxx
Clegg, Ronald W., xxx-xx-xxxx
Clements, Theodore S., xxx-xx-xxxx
Cobb, Douglas H., xxx-xx-xxxx
Cochran, Franklin H., xxx-xx-xxxx
Cocks, Alan R., xxx-xx-xxxx
Coffey, Robert S., xxx-xx-xxxx
Colgan, Eugene D., xxx-xx-xxxx
Concannon, John F., III, xxx-xx-xxxx
Connolly, William J., xxx-xx-xxxx
Conrad, Thomas F., xxx-xx-xxxx
Cook, Jeffrey M., xxx-xx-xxxx
Cook, Joseph L., xxx-xx-xxxx
Corbin, James E., xxx-xx-xxxx
Corcoran, Charles A.P., xxx-xx-xxxx
Cornick, Thomas H., xxx-xx-xxxx
Coughlin, John F., xxx-xx-xxxx
Coverstone, James M., III, xxx-xx-xxxx
Cowan, Charles E., Jr., xxx-xx-xxxx
Craig, Aubrey D., xxx-xx-xxxx
Crawford, Gerald E., xxx-xx-xxxx
Creel, Joe C., xxx-xx-xxxx
Crocker, George A., xxx-xx-xxxx
Crocker, George K., xxx-xx-xxxx
Csoka, Louis S., xxx-xx-xxxx
Cullen, Peter, xxx-xx-xxxx
Curtis, William A., xxx-xx-xxxx
Dahlen, Karl R., xxx-xx-xxxx
Daly, Lawrence T., xxx-xx-xxxx
Davis, Chester H., xxx-xx-xxxx
Dean, Wilbert M., xxx-xx-xxxx
Defrancisco, Joseph E., xxx-xx-xxxx
Dejong, Robert V., Jr., xxx-xx-xxxx
Delisanti, Neal J., xxx-xx-xxxx
Devine, Michael R., xxx-xx-xxxx
Dimsdale, Roger, xxx-xx-xxxx
Donaldson, Charles W., xxx-xx-xxxx
Donnan, Edward F., Jr., xxx-xx-xxxx
Donnithorne, Larry R., xxx-xx-xxxx
Dorsey, Mercer M., Jr., xxx-xx-xxxx
Douglass, David G., xxx-xx-xxxx
Dowden, Russell H., Jr., xxx-xx-xxxx
Dowling, Ted K., xxx-xx-xxxx
Doyle, James T., xxx-xx-xxxx
Dubay, Donald A., xxx-xx-xxxx
Duck, Theodore A., xxx-xx-xxxx
Earp, Edwin L., xxx-xx-xxxx
Ellis, Larry R., xxx-xx-xxxx
Engle, Clifford L., xxx-xx-xxxx
Eyler, Christopher B., xxx-xx-xxxx
Farmelo, Gene R., xxx-xx-xxxx
Farrell, Henry R., xxx-xx-xxxx
Farris, Karl, xxx-xx-xxxx
Featherston, George D., Jr., xxx-xx-xxxx
Featherston, Michael S., xxx-xx-xxxx
Feret, John M. E., xxx-xx-xxxx
Fergusson, Thomas G., xxx-xx-xxxx
Fiebig, Heinz, xxx-xx-xxxx
Finch, Alfred J., xxx-xx-xxxx
Fincke, Dale E., xxx-xx-xxxx
Floca, Samuel W., Jr., xxx-xx-xxxx
Forville, David R., xxx-xx-xxxx
Foster, Garry D., xxx-xx-xxxx
Fousek, Richard J., xxx-xx-xxxx
Fowler, James R., xxx-xx-xxxx
Foy, June M., xxx-xx-xxxx
Fraser, James H., Jr., xxx-xx-xxxx
Frederick, James L., xxx-xx-xxxx
Fry, Michael D., xxx-xx-xxxx
Fuhrman, Russell L., xxx-xx-xxxx
Fuller, Cornell, xxx-xx-xxxx
Fulmer, John A., xxx-xx-xxxx
Galloway, Joseph W., xxx-xx-xxxx
Garraway, Samuel W., Jr., xxx-xx-xxxx
Gass, James M., xxx-xx-xxxx
Genetti, Thomas R., xxx-xx-xxxx
Gerald, Stuart W., xxx-xx-xxxx
Gerlach, Stephen R., xxx-xx-xxxx
Gilmore, Lee R., xxx-xx-xxxx
Ginsberg, Alvin L., xxx-xx-xxxx
Gipson, Arthur J., xxx-xx-xxxx
Goodwin, Lawrence B., Jr., xxx-xx-xxxx
Gorski, Richard V., xxx-xx-xxxx
Goss, Barry W., xxx-xx-xxxx
Gragg, Larry L., xxx-xx-xxxx
Gravois, John M., xxx-xx-xxxx
Green, Gary L., xxx-xx-xxxx
Green, James E., Jr., xxx-xx-xxxx
Greene, Lee F., xxx-xx-xxxx
Greenhouse, Aloysius, xxx-xx-xxxx
Gregg, Steven C., xxx-xx-xxxx
Griffin, Roger A., xxx-xx-xxxx
Gruner, Kenneth A., xxx-xx-xxxx
Guy, Robert A., xxx-xx-xxxx
Hagen, John F., xxx-xx-xxxx
Haight, Rubert Q., Jr., xxx-xx-xxxx
Hair, Dwight E., xxx-xx-xxxx
Halvorson, Colin O., xxx-xx-xxxx
Hardin, James C., xxx-xx-xxxx
Harding, Kenneth W., xxx-xx-xxxx
Harkins, Gerald R., xxx-xx-xxxx
Harley, George E., xxx-xx-xxxx
Harman, Steven C., Jr., xxx-xx-xxxx
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Harris, Bruce A., xxx-xx-xxxx
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HOUSE OF REPRESENTATIVES—*Monday, September 22, 1986*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. HOYER].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 22, 1986.

I hereby designate the Honorable STENY H. HOYER to act as Speaker pro tempore on this day.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Gracious God, we thank You for good people who do good things in service to others. On this anniversary of the Peace Corps, we are reminded of women and men who have sensed that there is more to life than just the things of life, that Your truth is more in the hopes and aspirations of people than in the abundance of possessions. We are appreciative of those volunteers who have given of their time and talents to share with others the gifts of life. We pray, O God, that each of us in whatever responsibility we have, will use our opportunities to strengthen those values that enhance our common humanity and our shared vision of a world of peace. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4345. An act to authorize the Administrator of Veterans' Affairs to establish a national cemetery in or near Cleveland, OH.

MORE AMERICAN HOSTAGES

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, I am sorry to say Nick Daniloff and the American hostages in Lebanon may not be the only United States citizen held overseas.

Incredible as it may seem, the parents of Andrew Kassapis of Detroit believe their son has been held in a Turkish jail for the past 12 years following the illegal Turkish invasion of Cyprus in 1974.

Kassapis, then 17 years old, was taken by the Turkish-Cypriot military and has been missing ever since along with seven other Americans. There are reports that Andrew and his brother-in-law have been kept in a Turkish prison.

I ask Mr. Denktash, the leader of the Turkish-Cypriots: Where is this young man? And where are the other United States citizens who disappeared in that illegal invasion?

It is one thing to have to negotiate with our adversaries for the release of Americans, but Turkey is supposed to be an ally. They are a major recipient of our foreign aid program.

We deserve better treatment from an ally, and the Kassapis family deserves an explanation about the fate of their son.

Mr. Speaker, let's not forget any Americans held illegally on foreign soil.

OMNIBUS DIPLOMATIC SECURITY AND ANTITERRORISM ACT OF 1986

(Mr. MICA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MICA. Mr. Speaker, last Friday, the President held a ceremony in the Oval Office commemorating the signing of H.R. 4151, the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

This action represents the culmination of nearly 3 years of effort by those of us who were appointed by the Secretary of State to serve on his Advisory Panel on Overseas Security—the "Inman Panel."

I have taken the floor today to both congratulate and commend my fellow panelists and the staff of the advisory panel.

Thanks and gratitude go out to Adm. Bobby R. Inman; Senator WARREN B. RUDMAN; Ambassador Lawrence S. Eagleburger; Ambassador Anne L. Armstrong; Lt. Gen. D'Wayne Gray, USMC; Robert J. McGuire; Victor H. Dikeos, executive secretary; John P. Shumate, staff director; Robert Beaudry; David McCabe; Harry Manchester; Mark A. Safford; Nina J. Stewart; Jean M. Blatz; Janet Goldman; Peggy Coyle; Nancy Hall, and Betsey Fountain.

All Americans will be better prepared to cope with the scourge of terrorism due to their effort.

COMMUNICATION FROM HON. OLYMPIA J. SNOWE, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Hon. OLYMPIA J. SNOWE:

HOUSE OF REPRESENTATIVES,
Washington, DC, September 18, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, H-204, U.S. Capitol, Washington, DC.

DEAR MR. SPEAKER: This is to notify you, pursuant to Rule L(50) of the Rules of the House of Representatives, that a member of my district staff in Presque Isle, Maine, Ms. Marion Higgins, has been served with a trial subpoena issued by the Superior Court of the State of Maine. This subpoena relates to an individual who was arrested and charged by local police after failing to leave my Presque Isle office. After consultation with the General Counsel to the Clerk, I will notify you of my determinations as required by the Rules of the House.

Sincerely,

OLYMPIA J. SNOWE,
Member of Congress,
Second District, Maine.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, September 23, 1986.

WHISTLEBLOWER PROTECTION ACT OF 1986

Mrs. SCHROEDER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4033) to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel

practices, and for other purposes, as amended.

The Clerk read as follow:

H.R. 4033

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Whistleblower Protection Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

(3) in passing the Civil Service Reform Act of 1978, Congress established the Office of Special Counsel to provide whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) protection from reprisal.

(b) PURPOSES.—The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices;

(2) establishing—

(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers; and

(B) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals remains the paramount consideration; and

(3) providing that the Office of Special Counsel represent employees, former employees, and applicants for employment with the Federal Government who claim to have been subject to prohibited personnel practices.

SEC. 3. MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; EMPLOYEE RIGHT OF ACTION.

(a) IN GENERAL.—Chapter 12 of title 5, United States Code, is amended to read as follows:

"CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD; OFFICE OF SPECIAL COUNSEL; AND EMPLOYEE RIGHT OF ACTION

"Subchapter I—Merit Systems Proctection Board

"Sec. 1201. Appointment of members of the Merit Systems Protection Board.
"Sec. 1202. Term of office; filling vacancies; removal.
"Sec. 1203. Chairman; Vice Chairman.
"Sec. 1204. Powers and functions of the Merit Systems Protection Board.
"Sec. 1205. Transmittal of information of Congress.
"Sec. 1206. Annual report.

"Subchapter II—Office of Special Counsel

"Sec. 1211. Establishment.
"Sec. 1212. Powers and functions of the Office of Special Counsel.
"Sec. 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.
"Sec. 1214. Investigation of prohibited personnel practices; corrective action.
"Sec. 1215. Disciplinary action.
"Sec. 1216. Other mattters within the jurisdiction of the Office of Special Counsel.
"Sec. 1217. Transmittal of information of Congress.
"Sec. 1218. Annual report.

"Subchapter III—Individual Right of Action in Cases Involving Prohibited Personnel Practices

"Sec. 1221. Individual right of action.

"Subchapter I—Merit Systems Protection Board

"§ 1201. Appointment of members of the Merit Systems Protection Board

"The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals, who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

"§ 1202. Term of office; filling vacancies; removal

"(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

"(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member's predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201.

"(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than 1 year after the date on which the term of the member would otherwise expire under this section.

"(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

"§ 1203. Chairman; Vice Chairman

"(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

"(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

"(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

§ 1204. Powers and functions of the Merit Systems Protection Board

"(a) The Merit System Protection Board shall—

"(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, section 2023 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

"(2) order any agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) and enforce compliance with any such offer;

"(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

"(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

"(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

"(A) issue subpoenas requiring the attendance and presentation of testimony, and the production of documentary or other evidence, by such individual from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

"(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

"(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A), the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

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"(e)(1) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

"(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued, and no payment shall be made out of the Treasury of the United States for any service specified in such order.

"(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).

"(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

"(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

"(A) on its own motion;

"(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

"(C) on the filing of a written complaint by the Special Counsel requesting such review.

"(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

"(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

"(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

"(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

"(4) The Board shall require any agency—

"(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

"(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

"(g) The Chairman of the Board may delegate any of the Chairman's administrative responsibilities under this title to any employee of the Board.

"(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

"(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

"(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

"(l) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

"§ 1205. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

"§ 1206. Annual report

"The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an anlysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

"Subchapter II—Office of Special Counsel

"§ 1211. Establishment

"(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

"(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel shall be an individual who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

"§ 1212. Powers and functions of the Office of Special Counsel

"(a) The Office of Special Counsel shall—

"(1) in accordance with applicable provisions of this subchapter, represent and act on behalf of employees, former employees, and applicants for employment alleging prohibited personnel practices;

"(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

"(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

"(B) file a complaint or make recommendations for disciplinary action under section 1215;

"(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

"(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

"(5) investigate and bring appropriate actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

"(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

"(2) The Special Counsel may—

"(A) issue subpoenas; and

"(B) order the taking of depositions and order responses to written interrogatives;

in the same manner as provided under section 1204.

"(3) Section 1204(c), and the second sentence of section 1204(d), shall apply in the case of contumacy or failure to obey a subpoena issued under this subsection.

"(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

"(c) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Office of Special Counsel, and represent the Office, in any civil action brought in connection with any function carried out by the Office pursuant to this title or as otherwise authorized by law.

"(d)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special

Counsel shall comply with the rules of the Board.

"(2) The Special Counsel may intervene or otherwise participate in an action brought by an individual under section 1221 or in an appeal brought by an employee under section 7701 only with the consent of such individual or employee.

"(3) (A) The Special Counsel may obtain judicial review of any final order or decision of the Merit Systems Protection Board in which the Special Counsel was a party.

"(B) A petition for review under this paragraph shall be filed with such court, and within such time, as provided for under section 7703(b).

"(e) (1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

"(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

"(f) The Special Counsel may prescribe regulations relating to the receipt and investigation of matters under the jurisdiction of the Special Counsel. Such regulations shall be published in the Federal Register.

"(g) The Special Counsel shall not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

"§ 1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters

"(a) This section applies with respect to—

"(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

"(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

"(A) a violation of any law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(b) Whenever the Special Counsel receives information of a type described in subsection (a), the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

"(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b), the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

"(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

"(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

"(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

"(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

"(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

"(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

"(1) a summary of the information with respect to which the investigation was initiated;

"(2) a description of the conduct of the investigation;

"(3) a summary of any evidence obtained from the investigation;

"(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

"(5) a description of any action taken or planned as a result of the investigation, such as—

"(A) changes in agency rules, regulations, or practices;

"(B) the restoration of any aggrieved employee;

"(C) disciplinary action against any employee; and

"(D) referral to the Attorney General of any evidence of a criminal violation.

"(e)(1) Any such report shall be submitted to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in subsection (c)(1)(B), the Special Counsel shall transmit a copy of the information which was received by the agency head to the President and to the Congress, together with a statement noting the failure of the agency head to file the required report.

"(2) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) is referred to the Attorney General—

"(A) the report shall not be transmitted to the complainant; and

"(B) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

"(f) Upon the receipt of any report of any agency head as required under subsection (c), the Special Counsel shall review the report and determine whether—

"(1) the findings of the agency head appear reasonable; and

"(2) the report contains the information required under subsection (d).

"(g) If the Special Counsel does not make a positive determination under subsection (b), or if the information (as described in subsection (a)) is transmitted to the Special Counsel other than by an individual described in subparagraph (A) or (B) of subsection (c)(1), the Special Counsel—

"(1) shall return any information and any other matter provided by the individual who made the disclosure; and

"(2) shall inform that individual of—

"(A) the reasons why the disclosure may not be further acted on under this chapter; and

"(B) any recourse (administrative or otherwise) available under law, rule, or regulation, should the individual wish to purse the matter further.

"(h)(1) Subject to paragraph (2), the identity of any employee, former employee, or applicant for employment who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without the consent of the employee, former employee, or applicant unless the Special Counsel determines that the disclosures of the identity of the employee, former employee, or applicant is necessary in order to carry out the functions of the Special Counsel.

"(2) The identity of any employee, former employee, or applicant for employment whose disclosure (as described in subsection (a)) may not, under subsection (g), be further acted on under this chapter may not be disclosed under any circumstances.

"(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

"(1) specifically prohibited from disclosure by any other provision of law; or

"(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

"(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

"(k) The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to heads of agencies under subsection (c), together with reports by the heads of agencies under subsection (c)(1)(B) relating to such matters. The Special Counsel shall take steps to ensure that any such public list does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

"§ 1214. Investigation of prohibited personnel practices; corrective action

"(a)(1) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

"(2) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of the termination of the

investigation, the findings of fact ascertained during the course of the investigation, and the reasons for terminating the investigation.

"(3) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

"(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

"(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

"(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

"(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

"(2)(A) If, during the pendency of a stay ordered under paragraph (1), the agency does not act to correct the prohibited personnel practice, the Special Counsel shall petition the Board for corrective action.

"(B) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

"(3)(A) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for oral or written comments by the Special Counsel, the agency involved, and any individual who alleges to be the subject of the prohibited personnel practice.

"(B)(i) Subject to clause (ii), the Board shall order such corrective action as the Board considers appropriate if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice has occurred, exists, or is to be taken, by—

"(I) substantial evidence, in the case of a prohibited personnel practice described in section 2302(b)(8); or

"(II) a preponderance of the evidence, in the case of a prohibited personnel practice other than one described in section 2302(b)(8).

"(ii) Corrective action under clause (i) shall not be ordered—

"(I) if the personnel action involved is justified on a basis independent of the prohibited personnel practice referred to in clause (i); and

"(II) if the agency demonstrates, by a preponderance of the evidence, that such personnel action was taken, or is to be taken, solely for the reason under subclause (I).

"(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained—

"(A) by any employee, former employee, or applicant for employment adversely affected by such order or decision; or

"(B) by the Special Counsel.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

"(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding instituted under this subchapter notwithstanding that the alleged violation has been reported to the Attorney General.

"(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

"(1) that the head of the agency has personally reviewed the report; and

"(2) what action has been or is to be taken, and when the action will be completed.

"(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

"§ 1215. Disciplinary action

"(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

"(A) committed a prohibited personnel practice,

"(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

"(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

"(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

"(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

"(B) be represented by an attorney or other representative;

"(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

"(D) have a transcript kept of any hearing under subparagraph (C); and

"(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

"(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

"(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

"(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

"(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

"(c)(1)(A) In the case of an individual under clause (i) or (ii) of subparagraph (B), the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the Federal agency concerned.

"(B) This subsection applies with respect to—

"(i) members of the uniformed services; and

"(ii) individuals employed by any person under contract with an agency to provide goods or services.

"(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

"(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

"(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

"(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

"(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifi-

cally prohibited by law or by Executive order;

"(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

"(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

"(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5) if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

"(c)(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

"(2) If the Special Counsel receives allegations of activities described in subsection (a)(4) or involvement described in subsection (a)(5), the Special Counsel may investigate and seek corrective action under section 1214 and, if appropriate, disciplinary action under section 1215 as if the activities or involvement were a prohibited personnel practice.

"§ 1217. Transmittal of information to Congress

"Notwithstanding any other provision of law or any rule, regulation, or policy directive, the Special Counsel or any employee of the Special Counsel designated by the Special Counsel, may transmit to the Congress on the request of any committee or subcommittee, thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Office, without review, clearance, or approval by any other administrative authority.

"§ 1218. Annual report

"The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

"Subchapter III—Individual Right of Action in Cases Involving Prohibited Personnel Practices

"§ 1221. Individual right of action

"(a) An employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice, seek corrective action from the Merit Systems Protection Board.

"(b)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

"(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, unless the Board determines—

(A) that there is not a substantial likelihood that the individual will prevail; or

"(B) that granting the stay would result in extreme hardship to the agency which would be subject to the order.

"(3)(A) Except as provided in subparagraph (B), a stay granted under this subsection shall remain in effect until a final order or decision is rendered by the Board.

"(B) The Board may modify or dissolve a stay under this subsection at any time upon a showing by the agency involved that a failure to grant the request to modify or dissolve the stay (as the case may be) would result in extreme hardship to the agency.

"(c)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.

"(2) A subpoena under this subsection may be issued, and shall be enforced in the same manner, as applies in the case of subpoenas under section 1204.

"(d)(1) Subject to paragraph (2), the Board shall order such corrective action as the Board considers appropriate if the Board determines that the individual has demonstrated that a prohibited personnel practice has occurred, exists, or is to be taken, by—

"(A) substantial evidence, in the case of a prohibited personnel practice described in section 2302(b)(8); or

"(B) a preponderance of the evidence, in the case of a prohibited personnel practice other than one described in section 2302(b)(8).

"(2) Corrective action under paragraph (1) shall not be ordered—

"(A) if the personnel action involved is justified on a basis independent of the prohibited personnel practice referred to in paragraph (1); and

"(B) if the agency demonstrates, by a preponderance of the evidence, that such personnel action was taken, is or to be taken, solely for the reason under subparagraph (A).

"(e)(1) A final order or decision shall be rendered by the Board within 60 days after the commencement of any proceeding under this section.

"(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

"(f) If an employee, former employee, or applicant for employment is the prevailing party, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other costs incurred.

"(g)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

"(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

"(h)(1) An individual eligible to commence proceedings before the Board under this section or section 7513(d) with respect to a prohibited personnel practice may commence proceedings under either such section, but not both.

"(2) Subsections (a) through (g) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice is involved.".

(b) CONFORMING AMENDMENT.—The analysis for part II of title 5 of the United States Code is amended by striking the item relating to chapter 12 and inserting the following:

"12. Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action 1201".

SEC. 4. JUDICIAL REVIEW.

(a) NAMED RESPONDENT.—Section 7703(a)(2) of title 5, United States Code, is amended to read as follows:

"(2)(A) Except as provided in subparagraph (B), the Board shall be the named respondent in any proceeding brought pursuant to this subsection.

"(B) If the employee or applicant for employment seeks review, on the merits, of a final order or decision issued by the Board under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.".

(b) VENUE.—Section 7703(b)(1) of title 5, United States Code, is amended by striking "Circuit." and inserting "Circuit or a United States court of appeals for the judicial circuit within which the petitioner resides.".

SEC. 5. REPRISALS.

Section 2302(b)(9) of title 5, United States Code, is amended to read as follows:

"(9) take or fail to take any personnel action against any employee or applicant for employment as a reprisal—

"(A) for the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

"(B) for testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

"(C) for cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

"(D) for failing to follow orders to disobey a law;".

SEC. 6. TENNESSEE VALLEY AUTHORITY.

Section 2303(a)(2)(C)(i) of title 5, United States Code, is amended to read as follows:

"(i) a Government corporation (other than the Tennessee Valley Authority);".

SEC. 7. INTERIM RELIEF.

Section 7701(b) of title 5, United States Code, is amended by adding at the end the following: "In the event that the employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision pending the outcome of any petition for review under subsection (e), except that nothing in this sentence requires that any award of back pay or attorney fees be paid before the decision has become final.".

SEC. 8. SAVINGS PROVISIONS.

(a) ORDERS, RULES, AND REGULATIONS.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.

(b) ADMINISTRATIVE PROCEEDINGS.—No provision of this Act shall affect any administrative proceedings pending at the time

such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this Act has not been enacted.

(c) SUITS AND OTHER PROCEEDINGS.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act, shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS; RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

(1) for each of fiscal years 1987, 1988, 1989, 1990, and 1991, $20,000,000 to carry out subchapter I of chapter 12 of title 5, United States Code (as amended by this Act); and

(2) for each of fiscal year 1987, 1988, and 1989, $5,000,000 to carry out subchapter II of chapter 12 of title 5, United States Code (as amended by this Act).

(b) RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.—No funds may be appropriated to the Merit Systems Protection Board or the Office of Special Counsel pursuant to section 903 of the Civil Service Reform Act of 1978 (5 U.S.C. 5509 note).

SEC. 10. TECHNICAL AND CONFORMING AMENDMENTS.

(a)(1) Section 2303(c) of title 5, United States Code, is amended by striking "the provisions of section 1206" and inserting "applicable provisions of sections 1214 and *1221*".

(2) Sections 7502, 7512(E), 7521(b)(C), and 7542 of title 5, United States Code, are amended by striking "1206" and inserting "1215".

(3) Section 1190(a) of the Foreign Service Act of 1980 (22 U.S.C. 4139(a)) is amended by striking "1206" and inserting "1214 or 1221".

(b) Section 3393(g) of title 5, United States Code, is amended by striking "1207" and inserting "1215".

SEC. 11. EFFECTIVE DATE.

The amendments made by this Act shall take effect on October 1, 1986.

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The gentlewoman from Colorado [Mrs. SCHROEDER] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am proud to bring the Whistleblower Protection Act to the House today. This bill makes good on the promise which Congress made to the taxpayers in 1978. We promised to protect civil servants who come forward with disclosures of waste or wrongdoing. By protecting whistleblowers, we would encourage disclosure and, thereby, be well on our way to winning the war against waste in Government.

Our 1978 effort to protect whistleblowers, contained in the Civil Service Reform Act, has failed. It has failed for two reasons. The law was not as strong as it should be. And, the Office of Special Counsel, which we created to investigate and prosecute whistleblower cases, has been a disaster. At first, it was energetic but ineffective. More recently, it has been professional but prejudiced against the people it was intended to protect.

The bill before us today deals with both problems. It deals with the weaknesses in the law by adding a number of new provisions which I will describe in a moment. And, the Whistleblower Protection Act circumvents the problem of bad appointees by giving employees the option of going directly to the Merit Systems Protection Board [MSPB] instead of having to go through the special counsel.

The most important provisions of H.R. 4033 are the following:

First. The bill makes clear that the primary mission of the special counsel is to protect from and make whole employees, applicants, and former employees who have been the victims of prohibited personnel practices.

Second. H.R. 4033 establishes the special counsel as an independent agency. Right now, the special counsel is an independent unit within MSPB. This relationship has led to destructive friction.

Third. The bill provides employees alleging that they have been victims of prohibited personnel practices with a direct right of action to the MSPB. They still can go to the special counsel, if they like.

Fourth. H.R. 4033 changes the burden of proof for proving whistleblower reprisals form preponderance to substantial evidence. This change is made because proving the state of mind of a management official is so difficult. The burden of proof remains a preponderance of the evidence for other prohibited personnel practices. Further, the bill deals with the dual causation case by requiring the agency to prove that the legitimate reason for the action, and not the prohibited reason, was the real reason for acting against the employee.

Fifth. The bill allows both the individual employees and the special counsel to seek judicial review of MSPB decisions on prohibited personnel practice cases.

Sixth. The bill better guards the confidentiality of employees who make protected disclosures through the special counsel. These disclosures can help agencies clean house by themselves, without being subject to unwanted publicity. There are variety of new provisions to ensure that going to the special counsel can not hurt the employee.

Seventh. The bill places the Tennessee Valley Authority under prohibited personnel practice provisions. I have heard a great deal about TVA whistleblowers who have been subject to reprisals for disclosing problems with the TVA's nuclear program. Why should TVA employees have less protection than other civil servants?

Eighth. The bill places both the MSPB and the special counsel under expiring authorizations for fixed sums. This will permit far stronger congressional oversight than has been available up until now.

Ninth. The bill saves money by providing that employees who win before MSPB hearing officers are reinstated pending appeal. Now, they are only reinstated after agency appeals are completed. This means that agencies pay back pay for the time the employee is appealing the decision, plus paying another employee to do the employee's job.

Tenth. The bill restores old law which permits employees to file appeals with the court of appeals where they live, or with the Federal circuit. This will be more convenient both for the employee and the agency.

This legislation is the result of years of intensive oversight by the Subcommittee on Civil Service. We have had weeks of hearings, reviewed extensive General Accounting Office reports, and spoken with scores of employees and their lawyers. It is supported by outside organizations, including employee unions, the Government Accountability Project, and Peter Grace's Citizens Against Waste. I think it is a very good bill which is deserving of your support.

Mr. Speaker, I include for the RECORD a letter from Rudolph G. Penner of the Congressional Budget Office with a cost estimate for H.R. 4033.

The letter follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, September 22, 1986.

Hon. WILLIAM D. FORD,
U.S. House of Representatives, Cannon House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4033, the Whistleblower Protection Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

SEPTEMBER 22, 1986.

1. Bill number: H.R. 4033.

2. Bill title: Whistleblower Protection Act of 1986.

3. Bill status:

As ordered reported by the House Committee on Post Office and Civil Service, September 16, 1986.

4. Bill purpose:

The bill would establish the Office of Special Counsel as an independent agency and would clarify that its primary role is to represent federal employees who claim to be victims of prohibited personnel practices. The bill also would create an individual right of action so employees can seek stays and corrective action directly from the Merit Systems Protection Board (MSPB) without involvement of the Special Counsel. Under current law, the Office of Special Counsel is established as part of the MSPB.

The bill authorizes the appropriation of $20 million to the MSPB for each of the fiscal years 1987 through 1991 and $5 million to the Office of Special Counsel for each of the fiscal years 1987, 1988, 1989. The bill also would remove the permanent, indefinite authorization that is currently in effect for these entities. In 1986, the MSPB received an appropriation of $19.1 million, and the Office of Special Counsel received $4.4 million, both after sequestration under the Balance Budget and Emergency Deficit Control Act of 1985. The President's budget for 1987 includes a request of $20.3 million for the MSPB for 1987 and $4.6 million for the Office of Special Counsel.

5. Estimated cost to the Federal Government:

Because the bill would replace the permanent, indefinite authorization currently in effect for the MSPB and the Office of Special Counsel with a definite authorization that would expire in 1991 and 1989, respectively, the bill would result in no net cost to the federal government. Relative to the CBO baseline estimates for the two activities, the authorizations provided by H.R. 4033 would be about $1 million higher in 1987 and 1988, about the same in 1989 and 1990, and about $1 million less in 1991.

6. Estimated cost to State and local governments: None.

7. Estimate comparsion: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Jim Hearn (226-2860).

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4033, the Whistleblower Protection Act of 1986.

Simply stated, H.R. 4033 improves our system of protecting Federal employees who report wrongdoing within their agencies and departments, and who, as a result of their actions, suffer reprisals. The protections set forth in this bill are important for both Federal employees and our Government. Without adequate safeguards, we cannot expect the Federal work force to be a major force in stopping or reporting instances of waste, fraud, and abuse.

H.R. 4033 reaffirms Congress' support for Federal employees who disclose illegal or wasteful practices and provides added protections from reprisal. Specifically, the bill reestablishes the Office of Special Counsel as an independent agency with an expiring authorization; it clarifies that the principal mission of the Office is to represent employees who claim to be victims of prohibited personnel practices. There has been some confusion as to the exact mission of the Office in recent years.

H.R. 4033 creates an individual right of action so that employees can seek action directly from the Merit System Protection Board. Further, it allows either an individual or the special counsel the option of judicial review by the Federal circuit or the court of appeals where the individual resides. The legislation reduces the evidence test in reprisals to "substantial," rather than "a preponderance of," and it expands the list of prohibited personnel practices to incude reprisals for cooperating with inspectors general or the special counsel, testifying at a proceeding, or failing to obey an order to disobey a law.

Mr. Speaker, I was a principal author of the legislation creating the first as well as the subsequent Offices of Inspector General. I know their importance in improving Government efficiency, and I know the importance they place on input from Federal employees in reporting instances where investigations might be warranted. Some argue that H.R. 4033 gives Federal employees too much protection, that the process established in this bill might be abused by employees seeking to avoid reprisals that might otherwise occur. I don't think this is true. The fact is this: Federal employees we heard in the hearings held by our subcommittee—employees who reported illegalities and suffered reprisals—rarely received support through the current process. That is a tragedy. The hardest thing an employee can do is to report an illegality within his or her department, agency or program. Rather than feel shame for such reporting, as most now do, we ought to afford them protections that preserve their dignity and afford them every opportunity to prove their case. Such a system simply does not work today.

It has been a pleasure working with Chair Schroeder on this issue. She has done an outstanding job in developing this bill, in seeking input from a number of sources, and I join her in support of this bill and would urge its acceptance. Let's give some support to our Federal employees for a change, and put in place a better system to protect those who report instances of waste, fraud, and abuse. Mr. Speaker, I urge passage of this bill.

□ 1210

Mr. Speaker, I yield 1 minute to the gentleman from Virginia [Mr. WOLF].

(By unanimous consent, Mr. WOLF was allowed to speak out of order.)

VOTE TO AMEND THE TAX REFORM ACT TO RESTORE THE 3-YEAR RECOVERY RULE

Mr. WOLF. Mr. Speaker, I wish to address the House on the 3-year annuity basis recovery rule, which is in the tax bill, and I want to ask my colleagues to vote for the motion to recommit, and let me tell you why.

I received a letter today from a woman who works for the Federal Government, who writes as follows:

On the average, women are in the lowest paying jobs. As a result, they will be heavily impacted by the effect of reduced annuities. Many are single mothers who are the sole support of their children. The proposed changes in the retirement recovery provision may contribute to the feminization of poverty. Many of these women are not even aware of the effect these changes will have on their future security.

Not only am I a single woman, but I have a daughter and two grandchildren now living with me. My daughter also recently went through a divorce. She receives little if any support and must work full time to support her family. Without my help, she would not be able to provide for her family. I appeal to you on your compassion.

I would appeal to the Members of this body that, when given an opportunity on the tax bill this Thursday, that they vote for the Archer motion to recommit, to deal with this problem.

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would be remiss if I did not thank the gentleman from New York [Mr. HORTON] for his phenomenal help in moving this legislation and for all the expertise he has brought to the committee from his experience with the inspector general.

Mrs. BYRON. Mr. Speaker, I rise today in full support of the Whistleblower Protection Act of 1986. It is certainly satisfying to see this legislation being taken up by the House at a time when morale among Federal workers is quite low. This bill reafirms our support for those employees who blow the whistle on illegality of waste in the Federal Government.

I am particularly pleased to see language included in this measure which achieves the same end of legislation I introduced at the outset of the 99th Congress. The language provides that an employee who is the prevailing party in an initial decision by the Board shall be granted the relief provided in the decision pending the outcome of any petition for review.

The purpose of this language is to correct what I believe to be an unfair Board policy. Currently, if a Federal employee is either removed or suspended by his agency, he has the right to appeal to the Merit Systems Protection Board. However, even if the employee

is favored in the initial decision, he cannot be reinstated if the agency decides to petition for a review of the initial decision. This policy simply leaves the employee without his job until the Board renders a final decision on the agency's petition.

The review of these petitions by the Board has frequently dragged on for months, sometimes years. I believe that this prolonged delay causes undue hardships on the employee who has already been favored in the Board's initial decision. This is most certainly an obvious case of justice delayed, justice denied.

I want to take this opportunity to thank Civil Service Subcommittee chair, Congresswoman SCHROEDER, and all the members of the House Post Office and Civil Service Committee for recognizing the great need for this legislation. I believe that, through this measure, we are taking important steps toward ensuring that our Federal employees are treated with the fairness and appreciation they deserve.

Therefore, Mr. Speaker, I urge all my colleagues to join me in supporting the passage of H.R. 4033. Thank you.

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 4033, the Whistelblower Protection Act of 1986. One of the stated purposes of the Civil Service Reform Act was to protect whistleblowers and other Federal employees through enforceable rights that would protect the merit system in practice. To accomplish this goal, the Act created categories of illegal retaliation known as prohibited personnel practices. The Act also created an Office of the Special Counsel [OSC] to enforce these rights by investigating the litigating before a Merit Systems Protection Board [MSPB] on behalf of employees, when justified by the facts.

Unfortunately, this section of the law has been a dismal failure. Both the legal provisions and the OSC have lost all credibility with Federal employees. To illustrate, attorneys who specialize in Federal personnel law routinely advise their clients that it would be against their best interest to bring the cases to the OSC. As the Special Counsel's track record has become more well known, fewer and fewer employees have sought help from that Office. During 1979–81, approximately 2,000 employees per year filed prohibited personnel practice complaints with the Special Counsel. In recent years the figure has shrunk to around 1,200. In January 1986 a bipartisan coalition introduced the Whistelblower Protection Act to correct these weaknesses.

H.R. 4033 strengthens rights of civil service employees by:

Expanding the OSC role to act as an advocate for individual whistleblowers—similar to the role of attorney-client—rather than an independent enforcer of the Federal personnel merit system;

Establishing the OCS as an independent agency with authorizations of $5 million in each of fiscal years 1987–89—the current fiscal year authorization is $4.7 million for fiscal year 1986; the President requested $4.4 million in fiscal year 1987; and

Giving whistleblowers the right to bypass OSC and bring their cases directly to the MSPB, and on to court if necessary.

Accordingly, I urge my colleagues to support the bill.

Mrs. SCHROEDER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Colorado [Mrs. SCHROEDER] that the House suspend the rules and pass the bill, H.R. 4033, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mrs. SCHROEDER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on H.R. 4033, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Colorado?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker pro tempore signed the following enrolled bills on Friday, September 19, 1986:

H.R. 1483. An Act to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the institution, and for other purposes.

H.R. 3622. An Act to reorganize the Department of Defense and strengthen civilian authority in the Department of Defense, to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense, to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands and ensure that the authority of those commanders is fully commensurate with that responsibility, to increase attention to the formulation of stragtegy and to contingency planning, to provide for more efficient use of defense resources, to improve joint officer management policies, otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense, and for other purposes.

LAND REMOTE-SENSING COMMERCIALIZATION ACT AMENDMENTS OF 1986

Mr. FUQUA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5229) to amend the Land Remote-Sensing Commercialization Act of 1984, as amended.

The Clerk read as follows:

H.R. 5229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Land Remote-Sensing Commercialization Act Amendments of 1986".

SEC. 2. FINDINGS.

The Congress finds and declares that—

(1) the implementation of the Land Remote-Sensing Commercialization Act of 1984 has begun and some of the major milestones contained in that Act have been met;

(2) Congress remains strongly committed to the guiding principles set forth in that Act;

(3) notwithstanding the accomplishments thus far, the relationships among the involved Federal agencies and the private sector have not yet been adequately defined; and

(4) inasmuch as the technical development and commercial applications of future land remote-sensing systems cannot now be predicted with certainty, it is in the national interest of the United States that the involved Federal agencies and the private sector remain flexible in carrying out their respective responsibilities under this Act.

SEC. 3. PURPOSES.

It is therefore the purpose of this Act to set forth amendments to the Land Remote-Sensing Commercialization Act of 1984 to ensure that—

(1) the original intent of that Act is carried out in the most effective manner consistent with the guiding principles expressed therein;

(2) specific mechanisms for carrying out the original intent of that Act are provided in those cases where none have materialized thus far; and

(3) the working relationships among involved Federal agencies and private sector parties for the purpose of carrying out this Act are fully developed and mutually understood.

SEC. 4. CONTRACTOR EXEMPTION FROM FEDERAL FULL REIMBURSEMENT PROVISION IN THE CASE OF RESEARCH AND DEVELOPMENT AGREEMENTS.

Section 202(a)(4) of the Act is amended by inserting before the semicolon at the end thereof the following: ", except in the case of research and development activities conducted in accordance with section 504".

SEC. 5. DISPOSITION OF ASSETS FOLLOWING THE TERMINATION OF THE SECRETARY'S AUTHORITY.

Title III of the Act is amended by adding at the end thereof the following new section:

DISPOSITION OF GOVERNMENT ASSETS

"SEC. 308. Following the completion of a contract made pursuant to this title, the Secretary may, upon 30 days advance notice to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, dispose of assets (other than real property) under the control of the Secretary in a manner which best ensures the continuation of the contractor's commercial activity.".

SEC. 6. CONSULTATION WITH THE NATIONAL REMOTE-SENSING ADVISORY COMMITTEE CONCERNING THE NATIONAL RESEARCH AND DEVELOPMENT PLAN.

Section 501(e) of the Act is amended by inserting after "National Aeronautics and Space Administration" the following: ", in consultation with the National Remote-Sensing Advisory Committee established by section 501(f),".

SEC. 7. ESTABLISHMENT OF AN INDEPENDENT ADVISORY COMMITTEE FOR RESEARCH AND DEVELOPMENT.

Section 501 of the Act is amended by adding at the end thereof the following:

"(f) Not later than 60 days after the enactment of this subsection, the Secretary and the Administrator of the National Aeronautics and Space Administration shall jointly establish a National Remote-Sensing Advisory Committee made up of representatives of remote-sensing data users, data vendors, technology developers, system operators, system developers, and data processors from Government and from the private sector. Such Committee shall, until the termination of the Secretary's autority under section 307—

"(1) provide advice and policy recommenations to the Administrator of the National Aeronautics and Space Administration and the Secretary on the content of the unified national plan required in subsection (e) of this section that would be responsive to user needs, including sensor technology research and development, data processing and distribution, and data applications;

"(2) provide recommendations to Federal agencies sponsoring research programs on the commercial value of specific experimental data sets and the likelihood that such data would compete with licensees; and

"(3) provide recommendations on the conduct of cooperative test and applications demonstration projects.".

SEC. 8. CLARIFICATION OF THE USE OF EXPERIMENTAL DATA FROM FEDERAL RESEARCH AND DEVELOPMENT PROGRAMS.

Section 502 of the Act is amended to read as follows:

RESEARCH AND DEVELOPMENT ACTIVITIES OF FEDERAL AGENCIES

SEC. 502. (a). Each Federal agency is authorized and encouraged to provide data gathered in experimental remote-sensing space programs to relate research and development programs funded by the Federal Government (inlcuding applications programs) and to cooperative research programs if the Federal agency involved determines that the data will not be used—

"(1) for any commercial purpose, or

"(2) in substantial competition with data available from a licensee under this Act,

except pursuant to section 503.

"(b) In making any determination under subsection (a), Federal agencies shall consult with the National Remote-Sensing Advisory Committee.".

SEC. 9. CLARIFICATION OF THE USE OF NON-FEDERAL DATA FOR RESEARCH AND DEVELOPMENT PROGRAMS.

Title V of the Act is amended by adding at the end thereof the following new section:

RESEARCH AND DEVELOPMENT ACTIVITIES OF SYSTEM OPERATORS

"SEC. 504. Any system operator under title II, III, or IV of this Act, or any marketing entity under section 503 of this Act, may provide data for any research and development programs without regard for the requirements of this Act relating to sales of data on a nondiscriminatory basis if—

"(1) a complete and timely disclosure of the results of such research and development is made in the open technical literature or is otherwise made publicly available;

"(2) the system operator or marketing entity provides to the Secretary an annual report of all research and development data transactions including the nature of any cooperative agreements and the prices charged for data; and

"(3) the data are not used for commercial purposes or in competition with data available from a licensee under this Act.".

SEC. 10. CLARIFICATION OF OPERATOR RIGHTS TO IMPOSE LIMITATION ON REPRODUCTION, DISSEMINATION, AND OTHER ACTIVITIES ON A NONDISCRIMINATORY BASIS.

Section 603 of the Act is amended to read as follows:

NONREPRODUCTION

"SEC. 603. In addition to such other terms and conditions as the system operator may set forth in compliance with section 601 of this Act, the system operator may require that unenhanced data not be reproduced or disseminated by any foreign or domestic purchaser.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. FUQUA] will be recognized for 20 minutes and the gentlewoman from Kansas [Mrs. MEYERS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FUQUA].

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5229, the bill presently being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to support H.R. 5229, the Land Remote-Sensing Commercialization Act Amendments of 1986 and urge my colleagues to join me in voting for this legislation.

This bill would make technical and clarifying amendments to the Land Remote-Sensing Commercialization Act of 1984, Public Law 98-365. That Act provided for a phased commercialization in which a private sector party would be selected to market and operate the Landsat system and then build follow-on satellites to ensure 6 more years of data continuity. That act also provides for the Government to promulgate licensing regulations and to draw up a unified national plan for research and development.

Mr. Speaker, in the 2 years since the passage of the act, progress has been made in many of these areas. However, as part of our oversight function, the Science Committee has solicited the views of the administration and those private sector parties involved on what changes needed to be made to the act if any. We have learned nothing that has caused us to question the original intent of the act or the guiding principles we adopted in passing the act. We did receive many comments that suggested clarifications in the existing language. We also received some comments that required us to look closely at how we intended the act to be implemented, and we have added some provisions to ensure that our intent is fully carried out.

Two such issues that are dealt with in H.R. 5229 are: The ability of the Government and private sector to freely participate in research and development programs; and, the mechanism by which the private sector can make input to the Government concerning its research needs. These changes to the act have been made with the strong recognition on the part of everyone involved that research and development can provide a valuable stimulus to market development by exploring the different ways that data can be used.

I believe that these amendments will have many positive and beneficial effects on the vitality of our research community and will more clearly identify those high-priority research areas that will benefit remote-sensing data users. It is of the utmost importance as we make the transition to the commerical era in land remote-sensing that we maintain a healthy research and development program in order to keep the United States in a worldwide leadership position.

Mr. Speaker, I want to congratulate Mr. NELSON, chairman of the Subcommittee on Space Science and Applications, and Mr. SCHEUER, chairman of the Subcommittee on Natural Resources, Agriculture Research, and Environment for their leadership in bringing this legislation to the floor. I also want to acknowledge the efforts of Mr. WALKER and Miss SCHNEIDER on the other side of the aisle. I believe we have directly addressed some problems which have hindered the implementation of the original Landsat Commercialization Act. I urge my colleagues to join me in support of H.R. 5229.

Mr. Speaker, I reserve the balance of my time.

Mrs. MEYERS of Kansas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the bill, H.R. 5229, the Land Remote-Sensing Commercialization Act Amendments of 1986.

This legislation makes certain technical, clarifying, and perfecting amendments to the Land Remote-Sensing Commercialization Act of 1984.

In the original act, the Congress provided the vehicle to allow the Government to spin off the Landsat system to the private sector. After long negotiations, the Government contracted with the Earth Observation Satellite Corp., known as EOSAT, to transfer ownership and marketing rights of the Landsat products.

Now, based on 2 years of experience, both EOSAT and the Department of Commerce, have identified some minor

technical amendments necessary to allow the original intent of the Congress to be carried out.

We have provided language that will also allow the Secretary of Commerce to transfer any Government title to hardware in Landsat-6 and Landsat-7 to EOSAT, or its successor, at the termination of the contract.

We have also created an advisory committee, at no additional cost to the taxpayer, which will provide a forum in which Federal agency representatives, and a wide spectrum of private users will be able to identify, and encourage, new and innovative uses of Landsat data.

There is technical language in the bill which is intended to address questions of reproduction and dissemination of Landsat data in a manner which should protect the commercial interests of EOSAT, and still encourage the fullest possible use for experimental uses.

One issue which the Committee on Science and Technology addressed in this bill is the exciting possibility that, in the fairly near future, the news media will move toward the regular use of satellite cameras to gather the daily news. The most well known example of the type of coverage I am talking about was the recent nuclear accident at Chernobyl. We want to assure the House that there is no intent on the part of the committee to impose any prior restraint of valid first amendment rights of the media or of any other system operator or data user.

Mr. Speaker, this is a good bill. I strongly support it. The commercialization of Landsat is a success story that we may all take pride in. Mr. Speaker, I urge the House to suspend the rules, and to pass H.R. 5229.

Mr. Speaker, I yield back the balance of my time.

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Mr. FUQUA. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. NELSON], the chairman of the Subcommittee on Space Science and Applications.

Mr. NELSON of Florida. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 5229 the Land Remote-Sensing Commercialization Act Amendments of 1986. This bill will ensure that the intent of the original Landsat Act is fully carried out. I believe this is legislation we can all support.

In 1984, Congress took a bold step in the commercialization of space by setting forth a policy for transferring land remote-sensing satellite operations to the private sector. This was an excellent piece of legislation and it achieved widespread bipartisan support. Now, 2 years later, we are in a position to amend that act with any changes that might clarify its intent and improve its implementation.

Last October, the subcommittee which I chair and the subcommittee chaired by the gentleman from New York [Mr. SCHEUER], solicited comments from a great many parties on what clarifying and technical changes may be needed to the Landsat Act. We held joint hearings on some proposed amendments in early July. Witnesses from both the administration and the private sector supported our draft legislation at that time. On this basis, I introduced H.R. 5229 on July 23 and the bill now has 19 cosponsors.

In addition to some minor clarifying language changes, this bill addresses two types of comments we consistently have heard from both the administration and the private sector. Both classes of comments pertain to the role of research and development in this era of commercialization.

First, H.R. 5229 enables both the Government and the private sector to participate in research and development activities unencumbered by the constraints that are placed on commercial activities. Essentially, the act as amended would not allow licensees to make data grants to researchers in universities, industry, and elsewhere without charging commercial prices.

Second, H.R. 5229 would establish a National Remote-Sensing Advisory Committee whereby various parties involved in remote-sensing can provide input into the Government's overall research and development planning. If we are to maintain our worldwide leadership in this area, it is essential that the Government maintain an active research effort and be responsive to the needs of the private sector operators. We cannot afford to let other spacefaring nations, such as France and Japan, dominate the remote-sensing market by being the first to develop and take advantage of advanced technologies.

Mr. Speaker, H.R. 5229 is a very valuable piece of legislation that will create an environment whereby the Government and private sector can develop the working relationships that will be necessary if commercialization is to succeed. I ask my colleagues to join me in strong support for this legislation.

Mr. SCHEUER. Mr. Speaker, I rise in support of H.R. 5229.

As my colleagues from Florida, Mr. FUQUA and Mr. NELSON, have indicated, this bill contains valuable provisions which will fine-tune the plan to establish an entire new industry in space—the remote-sensing industry. We continue to face tough competition in this arena from both France and Japan. However, favorable action on H.R. 5229 will send a strong signal that the Congress remains committed to a commercial remote-sensing program in the United States.

I would remind my colleagues, however, that this new high-technology industry faces a more immediate crisis than that proposed by its international competitors. The crisis I refer to is budgetary. The *Challenger* accident and subsequent shutdown of the Western Test Range at Vandenberg Air Force Base have reduced launch options for the next generation of remote-sensing satellites. However, the Earth Observation Satellite Corporation [EOSAT]—the entity charged with commercializing land remote sensing—has proposed an innovative and practical plan for working around the current problems associated with scheduling of shuttle launches. EOSAT's plan is contingent upon the Congress providing a level of funding in fiscal year 1987 which approximates the funding contained in the House-passed Commerce appropriations bill.

I urge my colleagues to keep the United States at the forefront of space commercialization, both by supporting H.R. 5229 today and by supporting the House position on Landsat commercialization contained in H.R. 5161.

Mr. FUQUA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Florida [Mr. FUQUA] that the House suspend the rules and pass the bill H.R. 5229, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

INSPECTOR GENERAL ACT AMENDMENTS OF 1986

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3077) to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3077

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inspector General Act Amendments of 1986".

SEC. 2. ESTABLISHMENT OF NEW OFFICES OF INSPECTOR GENERAL.

(a) PURPOSE; ESTABLISHMENT.—Section 2(1) of the Inspector General Act of 1978 (Public Law 95-452; 5 U.S.C. App.) is amended to read as follows:

"(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);".

(b) ADDITION OF DEPARTMENTS OF ENERGY, HEALTH AND HUMAN SERVICES, JUSTICE, AND TREASURY AND FEMA TO LIST OF COVERED ESTABLISHMENTS.—Section 11 of such Act is amended by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) the term 'head of the establishment' means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health

and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency or the United States Information Agency; or the Chairman of the Railroad Retirement Board; as the case may be;

"(2) the term 'establishment' means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Railroad Retirement Board, the Small Business Administration, the United States Information Agency, or the Veterans' Administration; as the case may be;".

(c) TRANSFERS OF EXISTING AUDIT AND INVESTIGATION UNITS.—Section 9(a)(1) of such Act is amended—

(1) by striking out subparagraph (I), relating to the Community Services Administration;

(2) by redesignating subparagraphs (J) through (N) as subparagraphs (I) through (M), respectively;

(3) by striking out "and" at the end of subparagraphs (L) and (M) (as so redesignated); and

(4) by adding at the end thereof the following new subparagraphs:

"(N) of the Department of Justice, the offices of that Department referred to as the 'Audit Staff, Justice Management Division', the 'Evaluation Staff, Justice Management Division', the 'Policy and Procedures Section of the Office of Finance, Office of the Comptroller, Immigration and Naturalization Service', the 'Evaluation and Management Assistance Division, Immigration and Naturalization Service', the 'Office of Professional Responsibility, Immigration and Naturalization Service', the 'Office of Field Inspection and Audit, Immigration and Naturalization Service', the 'Office of Internal Inspection, United States Marshals Service', the 'Evaluations Section of the Inspections Division, U.S. Marshals Service', the 'Financial Audit Section, Office of Financial Management, Bureau of Prisons', the 'Office of Inspection, Bureau of Prisons', the 'Regional Audit Offices, Bureau of Prisons', and, from the Drug Enforcement Administration, the 'Office of Inspections', the 'Office of Professional Responsibility', and that portion of the 'Office of Program Planning and Evaluation' which is engaged in program review activities;

"(O) of the Department of the Treasury, the offices of that Department referred to as the 'Office of Inspector General', the 'Office of Internal Affairs, Bureau of Alcohol, Tobacco and Firearms', the 'Office of Internal Affairs, Customs Service', and that portion of the 'Office of Inspection, Secret Service', which is engaged in internal audit activities;

"(P) of the Federal Emergency Management Agency, the office of that agency referred to as the 'Office of Inspector General'; and

"(Q) of the United States Information Agency, the office of that agency referred to as the 'Office of Inspector General'; and".

(d) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"Inspector General, Department of Justice.

"Inspector General, Department of the Treasury.

"Inspector General, Agency for International Development.

"Inspector General, Department of Commerce.

"Inspector General, Department of the Interior.

"Inspector General, Environmental Protection Agency.

"Inspector General, Federal Emergency Management Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Small Business Administration.".

(2) Section 5316 of such title is amended by striking out each of the following paragraphs:

"Inspector General, Agency for International Development.";

"Inspector General, Department of Commerce.";

"Inspector General, Department of the Interior."; and

"Inspector General, Community Services Administration.

"Inspector General, Environmental Protection Agency.

"Inspector General, General Services Administration.

"Inspector General, National Aeronautics and Space Administration.

"Inspector General, Small Business Administration.".

(3) Title II of Public Law 94-505, section 208 of the Department of Energy Organization Act (42 U.S.C. 7138), and section 23 of the Railroad Retirement Act of 1974 (45 U.S.C. 231v) are hereby repealed.

SEC. 3. EXTENSION OF INSPECTOR GENERAL ACT PROTECTIONS AND REQUIREMENTS TO CERTAIN AUDIT AND INVESTIGATION UNITS.

The Inspector General Act of 1978 is further amended by inserting after section 8A the following new section:

"PROTECTIONS AND REQUIREMENTS FOR CERTAIN AUDIT AND INVESTIGATION UNITS

"SEC. 8B. (a) Any audit unit established in a Federal entity shall be responsible for the conduct of audits and investigations of the programs and operations of such entity in accordance with the requirements of this section. The audit unit director shall be appointed by the head of such entity in accordance with the laws and regulations governing appointments in the civil service. After a date which is six months after the date of enactment of this section, there shall be no more than one audit unit in any Federal entity.

"(b) Each audit unit director shall report to and be under the general supervision of the head of the Federal entity involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such Federal entity. Neither the head of the Federal entity nor the officer next in rank below such head shall prevent or prohibit the audit unit director from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

"(c) If an audit unit director is removed from office or is transferred to another position or location, the head of the Federal entity concerned shall promptly communicate the reasons for any such removal or transfer to both Houses of Congress.

"(d) Sections 4, 5, 6, and 7 of this Act shall be applied to each audit unit, audit unit director, Federal entity, and head of the Federal entity (as such terms are defined in subsection (e)) by substituting—

"(1) 'audit unit director' for 'Inspector General';

"(2) 'Federal entity' for 'establishment';

"(3) 'audit unit' for 'Office'; and

"(4) 'head of the Federal entity' for 'head of the establishment'.

"(e) As used in this section—

"(1) the term 'Federal entity' means an agency (as defined in section 552(e) of title 5, United States Code), other than (A) an establishment (as defined in section 11(2) of this Act) or part of an establishment, (B) the Executive Office of the President, or (C) the agency referred to in section 5102(a)(1)(v) of title 5, United States Code;

"(2) the term 'head of the Federal entity' means the chief executive officer of a Federal entity;

"(3) the term 'audit unit' means a component of a Federal entity which carries out audits or investigations, or both, of the programs and operations of such entity, but does not include a component that carries out audits or investigations only as a part of the conduct of the regulatory or supervisory programs of the Federal entity;

"(4) the term 'audit unit director' means the head of an audit unit.".

SEC. 4. PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF INSPECTOR GENERAL REPORTS.

(a) REPORT INFORMATION REQUIRED ON AUDITS.—Section 5(a) of the Inspector General Act of 1978 is amended by striking out "and" at the end of paragraph (5) and by striking out pargraph (6) and inserting in lieu thereof the following:

"(6) a listing of each audit report issued by the Office during the reporting period and the amounts of ineligible and unsupported costs in each such report, together with a summary of the significant reports;

"(7) a detailed statistical analysis of audit reports, depicting in tables arranged by audit status (as defined in subsection (g)(6)) information concerning—

"(A) the number of audit reports in each audit status;

"(B) the number of such reports for which an audit determination was not made within 6 months of the date of issuance of such report; and

"(C) the amounts of ineligible costs, ineligible costs that were disallowed, unsupported costs, and unsupported costs that were disallowed;

"(8) a summary of each significant audit report for which a determination was not made within 6 months after the date of issuance of such report and an explanation of the reason such determination was not made;

"(9) a description of, and explanation of the reasons for, any significant revised audit determinations made during the reporting period; and

"(10) information concerning any significant audit determination with which the Inspector General is in disagreement.".

(b) REPORT ON AUDIT RESOLUTION.—Section 5 of such Act is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1) The head of each establishment shall, not later than April 30 and October 31 of each year, prepare semiannual reports listing each audit report made by that establishment's Office of Inspector General which was not resolved within one year of the date on which an audit determination was made on such report. Such reports shall include (but need not be limited to)—

"(A) an explanation of the reason such audit was not resolved; and

"(B) the amount of disallowed costs that are under administrative or judicial appeal and the amount of disallowed costs returned or offset by the government.

"(2) The semiannual reports of the head of each establishment shall be transmitted by such head to the appropriate committees and subcommittees of Congress not later than April 30 and October 31 of each year, together with a report by the Office of Inspector General of the establishment containing any comments such Office deems appropriate.

"(3) Within sixty days of the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.".

(c) CONFORMING AMENDMENT: DEFINITIONS.—Section 5 of such Act is further amended by adding at the end thereof the following new subsection:

"(g) As used in this section—

"(1) the term 'ineligible cost' means an incurred cost that is questioned by the Office because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

"(2) the term 'unsupported cost' means an incurred cost that is questioned by the Office because the Office found that, at the time of the audit, such cost was not supported by adequate documentation;

"(3) the term 'disallowed cost' means an ineligible cost or unsupported cost that agency management has concluded, in an audit determination, should not be charged to the Federal Government;

"(4) the term 'audit determination' means the evaluation by agency management of the findings and recommendations included in an audit report and the issuance of a written final decision by management concerning its response, including corrective actions concluded to be necessary, to such findings and recommendations;

"(5) the term 'audit resolution' means the completion of all corrective actions that agency management has concluded, in an audit determination, are necessary with respect to the findings and recommendations included in an audit report, and, in the event that agency management concludes no corrective action is necessary, 'audit resolution' occurs when an audit determination has been reached; and

"(6) the term 'audit status' includes the following four categories:

"(A) audits for which the audit report was issued before the reporting period and for which—

"(i) the audit determination was made before or during such period; and

"(ii) the audit determination was not made by the end of such period; and

"(B) audits for which the audit report was issued during the reporting period and for which—

"(i) the audit determination was made during such period; and

"(ii) the audit determination was not made by the end of such period.".

(d) CONFORMING AMENDMENT TO CHAPTER 35 OF TITLE 31, UNITED STATES CODE.—Section 3512(b)(2) of title 31, United States Code, is amended by adding at the end thereof the following: "Such standards shall include (A) a definition of audit resolution consistent with section 5(g)(5) of the Inspector General Act of 1978, and (B) a standard to ensure that an audit determination will be made on each audit report within six months after the issuance of such report, in the case of an audit performed by a Federal auditor, and within six months after receipt by the executive agency responsible for the program concerned, in the case of each audit performed by a non-Federal auditor. No order, circular, or directive prescribed by the Director of the Office of Management and Budget shall include an inconsistent definition or standard with respect to audit resolution.".

SEC. 5. OATH ADMINISTRATION AUTHORITY.

Section 6(a) of the Inspector General Act of 1978 is amended—

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively, and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;".

SEC. 6. PAYMENT AUTHORITY SUBJECT TO APPROPRIATIONS.

Any authority to make payments under this Act shall be effective only to such extent as provided in appropriations Acts.

SEC. 7. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on October 1, 1986.

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3077, as amended, would, among other things, establish statutory Offices of Inspector General in the Departments of Justice and Treasury and the Federal Emergency Management Agency. It would also strengthen audit and investigative units in agencies without statutory inspectors general by; First, combining their audit and investigative activities; and, second, requiring that the audit unit director report to the head of the agency and to Congress. Further, the bill provides for uniform reporting of audit results, uniform salary levels for statutorily established inspectors general, and authorization for inspector general personnel to administer oaths.

Mr. Speaker, since the establishment of the first statutory Office of Inspector General in the then Department of Health, Education, and Welfare in 1976, the inspector general concept has proven highly successful in improving the use of Government resources. Eighteen additional statutory inspectors general have been established, which, according to administration statistics, pay for themselves many times over in misspent funds recovered, as well as costs avoided. It is important to note that every agency that now has a statutory Office of Inspector General initially opposed its establishment. But I know of no agency that would now advocate abolishing the Inspector General Office.

Legislation establishing Offices of Inspector General in the Departments of Justice and Treasury has been approved by the House in past Congresses, but has never been acted on by the Senate. In the same manner that other agencies initially opposed the establishment of statutory inspectors general, Justice and Treasury are also opposing them. They feel they do not need assistance in making the most efficient use of the limited resources available for the myriad law enforcement and other important functions of their Departments. The establishment of Offices of Inspector General in these two Departments is essential, and even more so in light of current proposals that call for giving them greatly increased funding to strengthen their drug enforcement programs.

H.R. 3077 would also strengthen existing audit units in agencies without statutory inspectors general by extending to them protections afforded statutory inspectors general. In a committee review, we learned that audit activities in these agencies lack necessary independence. Moreover, highly vulnerable agency operations are receiving little or no audit attention.

The bill also provides the tools necessary for uniform reporting by the inspectors general so that their findings can be accurately interpreted, and it requires agency heads to report to Congress on actions that managers have agreed to take in response to audit recommendations.

Mr. Speaker, in these times of fiscal austerity, it is essential that every prudent step be taken to prevent the waste of Government funds. H.R. 3077 would help to accomplish this goal. I urge Members to vote in favor of this bill.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. HORTON. Mr. Speaker, I rise in support of H.R. 3077, the Inspector General Act Amendments of 1986.

H.R. 3077 makes a number of important and necessary changes in the Inspector General Act of 1978, a law which was originated by the chairman of the Government Operations Committee, Mr. BROOKS; our former colleague from North Carolina, L.H. Fountain; and myself.

The IG Act was designed to improve the auditing and investigation of Federal programs so that taxpayers could be better assured that their money was being spent effectively and efficiently. Inspectors general were established in most of the major departments and agencies. They were made responsible to their agency heads, and independent of other officials. Consistent with the act, the roles of IG's have been emphasized and funding for their work has been made more appropriate.

The IG Act, and the efforts of the people who implement it, have been great successes. Inspectors general are today actively rooting out fraud, waste, and abuse in all but two of the major agencies, the Departments of Justice and Treasury.

H.R. 3077 would eliminate this situation by creating independent, statutory inspectors general for those two Departments. The bill would also make several other changes in the IG Act. Principal among them are the extension of the protections and requirements of the act to nonstatutory audit units throughout the Government, and the limitation of one audit unit in each agency which does not have a statutory IG.

The administration has praised inspectors general as key fighters in the war against fraud, waste, and abuse, and it opposes the establishment of these officials in two of the major Departments of the Government.

If an IG is valuable at the Defense Department, why would one not be helpful at the Immigration and Naturalization Service? If the IG at the Small Business Administration does cost-effective work, why wouldn't an IG at the Customs Service?

Passage of the major new drug abuse initiative earlier this month prompts me to ask a further question: How can we responsibly spend vast sums of money on an all-out war against drug abuse, and at the same time not put in place officials who could ensure that the money is properly spent? The two agencies involved here are of course vital to that antidrug abuse effort.

Justice and Treasury appear to be under the misconception that IG's in those agencies would meddle in law enforcement functions, and would subvert the authorities of the agency heads in these areas. I can assure the Members that this fear is completely unfounded. IG's in these Departments would operate like their counterparts in the 19 agencies which already have them—they would scrutinize the effectiveness and efficiency of the operations of the Departments. They would not second-guess prosecution or other law enforcement decisions.

Mr. Speaker, the opposition to H.R. 3077 reminds me of the intense opposition which the Defense Department always brought to bear against our efforts to create an inspector general in that agency. Since we succeeded in overcoming DOD pressure and establishing that IG office, the administration—and especially the Department—have widely praised the DOD IG for his work in saving large sums of money for the Federal taxpayers. I suspect that enactment of the current legislation would bring a similar role-reversal from Justice and Treasury officials.

H.R. 3077 contains needed reforms to an extremely important and useful law. Mr. Speaker, I urge all Members to give it their support.

Mr. GILMAN. Mr. Speaker, I rise in support of the Inspector General Act amendments, H.R. 3077, and I commend my distinguished colleagues, the gentleman from Illinois [Mr. BROOKS] and the gentleman from New York [Mr. HORTON], for their time and work as cosponsors of this bill.

H.R. 3077 establishes offices of inspector general within the Department of Justice, the Department of the Treasury, the Federal Emergency Management Agency, and the U.S. Information Agency. These offices are charged with conducting and overseeing audits and investigations, promoting economy and efficiency, and detecting and preventing fraud and abuse in executive branch operations.

H.R. 3077 also brings the inspectors general of the Departments of Commerce, of the Interior, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, and the Small Business Administration, into conformity with the Inspector General Act. H.R. 3077 additionally places inspectors general in the Department of Energy and the Department of Health and Human Services under the act, while it also eliminates the inspector general office within the no longer operational Community Services Administration.

The first office of inspector general was established in 1976, and in 1978 the Inspector General Act created offices of the inspector general in 12 departments and agencies and provided regulations governing these offices. In total, 18 offices have been established. The House approved legislation to create inspector general offices in the Justice Department and the Department of the Treasury three times before, during the 96th, 97th, and 98th Congresses, but the Senate failed to act on any of these occasions.

The bill takes steps to ensure uniformly reliable inspector general reports by requiring detailed summaries and analyses of audit activity conducted by each inspector general. Additionally, it gives inspectors general authority to administer oaths and subpoena information in the conduct of audits.

Accordingly, I urge my colleagues to support H.R. 3077, the Inspector General Act Amendments of 1986.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 3077, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

FREEDOM OF INFORMATION ACT AMENDMENTS OF 1986

Mr. ENGLISH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4862) to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information, as amended.

The Clerk read as follows:

H.R. 4862

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Information Act Amendments of 1986".

SEC. 2. BUSINESS CONFIDENTIALITY PROCEDURES.

Subsection (a) of section 552 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(7)(A) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying procedures by which a submitter shall be required to designate, at the time it submits or provides to the agency or thereafter, any information that the submitter claims is exempt from disclosure under subsection (b)(4).

"(B) An agency may, by rule issued pursuant to notice and receipt of public comment, designate specific classes of information that shall be treated by the agency as if the information had been designated under subparagraph (A) if the information is obtained from a submitter without an opportunity

for the submitter to designate the information under subparagraph (A).

"(C) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying procedures by which—

"(i) the agency shall notify a submitter that a request has been made for information designated as exempt by the submitter under subparagraph (A) of this paragraph or treated by the agency under subparagraph (B) of this paragraph as if it had been designated, within five working days after the receipt of such request, and shall describe the request and advise the submitter of its right to submit written objections in response to the request;

"(ii) the submitter may, within ten working days of the mailing of such notification, submit to the agency written objection to such disclosure, specifying grounds upon which it is contended that the information should not be disclosed; and

"(iii) the agency shall determine, within ten working days after the date when the submitter's objections are due, whether to comply with the request and shall notify the submitter of any final decision regarding the release of such information.

"(D) An agency is not required to notify a submitter pursuant to this paragraph if—

"(i) the information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to subparagraph (A), if such designation is required by the agency;

"(ii) the agency determines, prior to giving such notice, that the request should be denied;

"(iii) the disclosure is specifically required by a Federal statute (other than this section);

"(iv) the disclosure is required by an agency rule (issued under this section or another Federal statute) that—

"(I) was adopted pursuant to notice and receipt of public comment;

"(II) specifies classes of records submitted to the agency; and

"(III) where appropriate, provides in exceptional circumstances for notice under subparagraph (C) only when the submitter provides at the time of submission written justification that the information is likely to qualify for withholding under subsection (b)(4);

"(v) the information has been published or otherwise made public; or

"(vi) the designation made by the submitter in accordance with agency regulations promulgated pursuant to subparagraph (A) is obviously frivolous.

"(E) Whenever an agency notifies a submitter of the receipt of a request pursuant to subparagraph (C), the agency shall at the same time notify the requester that the request is subject to the provisions of this paragraph and that notice of the request is being given to a submitter. Whenever an agency notifies a submitter of a final decision pursuant to subparagraph (C), the agency shall at the same time notify the requester of such final decision.

"(F) Whenever a submitter has filed objections to disclosure of information pursuant to subparagraph (C)(ii), or whenever an agency has determined pursuant to subparagraph (D)(vi) that a designation is obviously frivolous, the agency shall not disclose any such information for ten working days after notice of the final decision to release the requested information has been mailed to the submitter.

"(G)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing that—

"(I) upon receipt of an application for expedited access to records subject to the notice provisions of this paragraph, the agency shall, within five working days after the receipt of the application, grant the application if the application demonstrates a substantial public interest in expeditious consideration of the request; and

"(II) the agency shall immediately notify the person making the application of its determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination.

"(ii) A requester whose application for expedited access has not been decided within five working days of its receipt by the agency or has been denied shall not be required to exhaust administrative remedies. Whenever a request qualifies for expedited access—

"(I) the agency shall provide notice to the submitter in the most expeditious manner practicable;

"(II) the agency shall process the request ahead of requests not qualifying for expedited access, and

"(III) the time limits in subparagraphs (C)(ii) and (F) shall be reduced to five working days after the submitter has received notice from the agency.

"(H) The agency's disposition of the request and the submitter's objections shall be subject to judicial review pursuant to paragraph (4) of this subsection. No requester shall be required to exhaust administrative remedies if a complaint has been filed under this section by a submitter of information contained in the requested records, and no submitter of information contained in requested records shall be required to exhaust administrative remedies if a complaint has been filed under this section by the requester of such records.".

SEC. 3. JUDICIAL REVIEW.

Paragraph (4) of section 552(a) of title 5, United States Code, is amended—

(1) by striking out subparagraph (B) and inserting in lieu thereof the following:

"(B)(i) On complaint filed by a requester within two years from the date of final agency action or by a submitter after a final decision to disclose submitted information but prior to its release, the district court of the United States in the district in which the complainant resides, or has its principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction—

"(I) to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the requester; or

"(II) to enjoin the agency from disclosing records exempt from disclosure under subsection (b)(4).

"(ii) In an action—

"(I) based on a complaint by a requester, any submitter of information contained in the requested records may intervene as of right in the action;

"(II) based on a complaint by a submitter, any requester of records containing information which the submitter seeks to have withheld may intervene as of right in the action; and

"(III) in which a requester is an intervenor or is joined, the court shall, in ruling on a timely motion by the requester and subject to a contrary showing by the submitter, presume that the interests of justice are best served by transfer of the action to another district court preferred by the requester where the action might have been brought by the requester pursuant to subparagraph (A) of this paragraph, except that if the requester has a competing commercial interest with the submitter, venue shall be governed by section 1404 of title 28, United States Code.

"(iii) The agency that is the subject of the complaint shall promptly, upon service of a complaint—

"(I) seeking the production of records containing information designated or treated as designated under paragraph (7)(A) or (7)(B) of this subsection, notify each submitter of such information that the complaint was filed; and

"(II) seeking the withholding of records, notify each requester of the records that the complaint was filed.

"(iv) Any submitter or requester who is notified of an action under this subparagraph shall be bound by the decision of the court in such action whether or not the submitter or requester intervenes as a party in the act.";

(2) by inserting after subparagraph (C) the following new subparagraph:

"(D) In any case to enjoin the withholding or the disclosure of records, the court shall determine the matter de novo. The court may examine the contents of requested agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section. The burden is on the agency to sustain its action to withheld information and the burden is on any submitter seeking the withholding of information"; and

(3) by inserting "(i)" after "(E)" in subparagraph (E) and by adding at the end of such subparagraph the following:

"(ii) The court shall assess against a submitter reasonable attorney fees and other litigation costs reasonably incurred by a requester in any case under this section in which (I) the submitter is a party, (II) the requester has substantially prevailed, and (III) the court determines that the submitter's reasons for withholding of the record were not substantially justified.

SEC. 4. DEFINITIONS.

Subsection (e) of section 552 of title 5, United States Code, is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end thereof the following:

"(2) For purposes of this section, the term 'submitter' means any person who has submitted to an agency, or provided an agency access to, trade secrets, or commercial or financial information which is privileged or confidential.".

SEC. 5. EFFECTIVE DATE

This Act shall effect on April 1, 1987, except that the authority to prescibe regulations to implement the amendments made by this Act shall be effective upon its enactment and all regulations required to be issued under this Act shall be published not later than April 1, 1987.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Oklahoma [Mr. ENGLISH] will be recognized for 20 minutes and the gentleman from New York [Mr. HORTON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Oklahoma [Mr. ENGLISH].

Mr. ENGLISH. Mr. Speaker, I yield myself such time as I may consume.

GENERAL LEAVE

Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. ENGLISH. Mr. Speaker, H.R. 4862 proposes to make several changes to the Freedom of Information Act for the purpose of assuring due process rights for those who submit confidential business information to the Federal Government.

The history of this legislation dates back to work done by the Government Operations Committee during the 95th Congress. A 1978 committee report found a need for additional procedural protections for submitters and laid the foundation for today's bill.

The basic purpose of H.R. 4862 is to provide those who submit confidential business information to the Government with notice and an opportunity to comment before an agency decides on the possible release of the information under the Freedom of Information Act. This simple procedure will ensure fairness and due process to those who are required to trust the Government with business secrets.

There are also corresponding changes in judicial procedures for lawsuits brought by submitters to prevent disclosure of information by Federal agencies. The procedures for these so-called reverse-FOIA lawsuits are adjusted.

There are four major reasons why the procedural changes in H.R. 4862 are needed. First, it is consistent with basic notions of fundamental fairness and due process for the Government to consult with the submitter of potentially confidential business information before making a decision about disclosure of that information.

Second, in some cases, it is difficult to determine if information qualifies for withholding under the substantial competitive harm test of the FOIA's fourth exemption. Consultation with the submitter will result in better and fairer decisions by agencies.

Third, the strict time limits of the FOIA cannot readily accommodate the additional time that is required by the submitter notice procedures. H.R. 4862 adjusts the time limits for requests requiring submitter notice but leaves unchanged the time limits for all other requests.

Fourth, H.R. 4862 will require a greater degree of uniformity and predictability in the processing of FOIA requests. This will assist those who routinely submit business information to more than one agency.

The case of H.R. 4862 is not based on evidence that trade secrets or confidential business data are insufficiently protected under current law. Instead, the record compiled by the Government Information Subcommittee shows that agencies have been properly protective of sensitive business information. The only need that we found was for minor procedural reform.

I want to emphasize that H.R. 4862 is strictly a procedures bill. It will not permit agencies to withhold any information currently made public. Every document that is required to be disclosed today will continue to be disclosable if H.R. 4862 becomes law. The bill only modifies the procedures used by agencies in making disclosure decisions.

I had hoped to bring before this House a somewhat broader package of FOIA amendments. Much of our effort in this Congress was devoted to working out changes that would make the FOIA better. Both the Justice Department and the requester community proposed amendments, but the differences between the proposals were enormous.

Despite a considerable amount of hard work by all, there was not enough consensus on general FOIA reform. Parties on all sides—including the Justice Department—finally decided to abandon efforts on other changes. With time running out, it became clear that the business procedures amendment was the only change that was supported—or not opposed—by almost everyone.

Other issues will have to wait for another day. I don't mean to suggest by this that the FOIA suffers from any major unaddressed defects. Although sweeping proposals for amending the FOIA have been made over the years, no one should be fooled into thinking that there are any pressing problems that demand immediate legislative attention. In fact, many of the current difficulties with the FOIA require better administration rather than new legislation. The other amendments that were under serious consideration this year were minor adjustments that can wait until later.

In closing, I would like to recognize those whose hard work has contributed to the bill now before the House. TOM KINDNESS, ranking minority member on the subcommittee, has been of great assistance throughout all of our work on the FOIA. I would also like to acknowledge the cooperation and support of JACK BROOKS, chairman of the Committee on Government Operations, and of FRANK HORTON, ranking minority member on the full committee. Finally, I would like to thank JERRY KLECZKA for his efforts and his hard work. JERRY crafted the amendment that struck the final and most important compromise in H.R. 4862.

Mr. Speaker, I urge support of the bill.

Mr. HORTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, enactment of H.R. 4862, the Freedom of Information Act Amendments of 1986, would fulfill recommendations made by the Government Operations Committee 8 years ago. We found at that time that there were problems in the handling of confidential business information, and that the rules governing judicial review of agency decisions to release such information were unsettled in the courts. The bill which is before us today would make procedural changes in the law to remedy those problems.

The fundamental concern of the Freedom of Information Act, as expressed in this committee's original report on the act in 1966, is with the right of the individual to be able to find out how his Government is operating. Government agencies necessarily collect a substantial amount of data from private citizens and businesses. But the purpose of FOIA never was, and is not today, to permit people to use Government files as a vehicle for spying on their neighbors and business competitors. It is not fair that business concerns run the risk of having their competitors obtain data which would give a competitive advantage merely because the firms engage in commercial activities which require the provision of information to the Government.

From time to time we are called to act, not to solve a particular problem, but rather to defend a principle. I believe that that is what we are doing here today. It is only fair that one who is required to submit information to the Government first, be notified that someone has requested the disclosure of that information, and second, have the opportunity to present arguments to the agency as to why the information should be withheld. Then, if the agency is not convinced, the submitter ought to have the right to go to court on the same basis as the person who requested the information.

Unfortunately, some people are not convinced that there remains a need for this legislation. I believe that the subcommittee chairman, the gentleman from Oklahoma [Mr. ENGLISH] clearly stated the reasons for this bill. I would add that the bill has been carefully drafted to deal with the concerns that have been raised over its implementation. Finally, I believe that the provision of de novo judicial review for submitters will reduce most of the procedural haggling which has plagued those few cases which do reach litigation.

I have had the privilege of serving in the Congress longer than the Freedom of Information Act has been on the books. I can assure those who have raised concerns about this bill that the Government Operations Committee does not take amendment of the FDIA lightly. Nevertheless, it does not shirk its responsibility to take action where a legislative remedy is appropriate. Along that line, I would like to pose a couple of questions to the gentleman from Oklahoma:

□ 1235

The gentleman mentioned the efforts of the subcommittee to develop a broader package of FOIA amendments which, unfortunately, died for a lack of consensus. Is it correct to say this bill embodies the only changes in the Freedom of Information Act that you would support at this time?

Mr. ENGLISH. If the gentleman will yield, the gentleman is correct. As I said, I beleive that there are some areas of the act that could be improved by legislation. Reaching a consensus on legislation which properly balances all the legitimate interests involved is, however, very, very difficult. This bill is as much as we could achieve agreement on, and I, therefore, do not support changes to other areas of the act at this time.

Mr. HORTON. Some people opposed this bill because of their fear over what might happen to it subsequently in the legislative process. Could the gentleman speak to that concern?

Mr. ENGLISH. I would simply repeat that other issues will have to wait for another day and, therefore, I would not be able to support changes to other areas of the FOIA at this time.

Mr. HORTON. I thank the gentleman for his responses. I concur with both his reasoning and his conclusions. I want to congratulate him and the subcommittee's ranking minority member, Mr. KINDNESS, and the other subcommittee members for working cooperatively to produce a balanced bill. I support the measure and urge its passage.

Mr. SPEAKER, I reserve the balance of my time.

Mr. ENGLISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. I thank the gentleman for yielding to me.

Mr. Speaker, I want to say that for many years Mr. HORTON and I and others have been interested in the Freedom of Information Act and have worked on it.

Mr. Speaker, I rise in support of H.R. 4862, the Freedom of Information Act Amendments of 1986. The gentleman from Oklahoma, the chairman of our Subcommittee on Government Information, Justice, and Agriculture, has done a superb job in putting together a bill that addresses the longstanding problem of how to handle freedom of information requests in the area of confidential business information.

He told the Members of the House that he was grateful to me as chairman of the committee for working with him and with his subcommittee and I want to say that it is very easy for the chairman of the Government Operations Committee to work with such a distinguished and outstanding subcommittee chairman as GLENN ENGLISH. He follows a tradition of the Government Operation Committee, which has a large number of outstanding subcommittee chairmen, among them, TEDDY WEISS who is sitting right here. Another one of those chairmen of a subcommittee and they do an outstanding job for this House and for this Nation.

The Freedom of Information Act is now 20 years old. It stands as a monument to our commitment to open government in this country. It has weathered many attacks and proven itself over and over again to be of great benefit to this Nation's Government and the people it serves. In the 20 years since its birth, the act has experienced only one major amendment—in 1974, when the Privacy Act was added. The amendment that H.R. 4862, before us today, would make is a fine tuning adjustment and not a major revision in the Freedom of Information Act. This amendment would address the problem of how to handle the disclosure of business information by making a number of procedural reforms so that "confidential" business information can be protected without unduly restricting access to other business information.

The bill represents a careful balancing of the interests of the business community and the public. It had bipartisan support in the Government Operations Committee and has the support of the business community. I urge the Members of the House to support the legislation.

Mr. HORTON. Mr. Speaker, I yield back the balance of my time.

Mr. ENGLISH. Mr. Speaker, I yield 4½ minutes to the gentleman from New York [Mr. WEISS].

Mr. WEISS. I thank the gentleman for yielding me this time.

Mr. Speaker, I want to express my appreciation to my distinguished friend, Chairman ENGLISH, for the excellent job he has done over the years regarding the Freedom of Information Act. He has courageously faced the almost impossible task of balancing the interests of the business communities and the environmental groups, journalists, labor unions, and others who rely on the Freedom of Information Act to protect the health, safety, and rights of the public. He has worked on this bill, in a variety of forms, for several years, and I believe that he has tried very hard to protect the Freedom of Information Act, while addressing these conflicting concerns.

In the original enactment of the Freedom of Information Act, Congress struck a delicate balance among the interests of the many groups who would submit or receive information under FOIA. Unfortunately, the FOIA has become, over the years, an often used business tool by which one company seeks to gain confidential information about a competing business. And now, in an attempt to limit the loss of confidential business information to a competing business, H.R. 4862 offers a solution which, I believe, will seriously undermine this delicate balance.

I believe that H.R. 4862, if enacted, will be manipulated in ways that were not intended. There are many people and organizations that request information through FOIA who do not represent competing commercial interests. In most cases, they do not have the money or resources to wage a full-scale fight against a business or the Government for the right to information. My own experience with FDA, OSHA, NIOSH, and other Federal Agencies suggests that claims of confidentiality, especially of health and safety information, have little to do with the trade secrets that are supposed to be protected under FOIA.

I am very concerned about the ways that the notification procedures, and especially the de novo judicial review provision for submitters, will be manipulated. This could lead to expensive delays when submitters want to restrict the public's right to know.

I agree that the business communities have a valid interest in protecting legitimate trade secrets from competing commercial interests. According to the information that has been made available to me, this is a major use of FOIA, and is the major concern of the business community. It is therefore extremely unfortunate that H.R. 4862 could be used to put public interest groups, and journalists working in the public interest, at a major disadvantage.

In addition, we should not be setting up procedures that are so costly to Federal agencies that they cannot do their job. Many of these agencies are already severely understaffed, and the procedures included in this bill may force them to deny requests for information as a way to avoid costly and time-consuming de novo proceedings on the part of submitters.

I feel strongly that the new de novo review section contained in the bill is unnecessary, and could easily be abused. In their testimony before the subcommittee, a small business association, journalists, and several public

interest groups expressed their concerns about de novo review in very strong terms.

Under current law, submitters are not officially notified of FOIA requests, although many get that information from unofficial channels. Thus, under current law, it is at least arguable that submitters may have only limited time to prepare an argument before the agency to back up their claim of confidentiality. However, under the new notification procedures in this bill, there is no question that submitters will now have adequate time to prepare their arguments against disclosing information at the agency level, before any information is disclosed. This should be enough. There is no evidence that they need de novo review, although it could obviously be abused in ways that would cost Federal agencies a great deal of staff time and money. This burden would also be felt by public interest groups, journalists, and small businesses.

The public interest groups that have expressed their opposition to this bill include the major environmental groups, many journalism associations, as well as several other well respected public interest groups. I am concerned that, if this bill becomes law, these groups will not have the resources to continue their work to help promote the health and safety of the American public.

□ 1255

Mr. Speaker, I know that in case any of these concerns should come to fruition, the distinguished gentleman from Oklahoma [Mr. ENGLISH] will take steps to remedy them.

Mr. ENGLISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in response to the gentleman from New York [Mr. WEISS], let me say at the outset that we both have a common interest in maintaining an effective and useful Freedom of Information Act. Our goals are the same. However, we do not agree about the effects of H.R. 4862.

During my 6 years as chairman of the Subcommittee on Government Information, the FOIA has been under constant attack by those who want to restrict the availability of information. I have fought those who oppose disclosure of public information. I would not be here today advocating H.R. 4862 if I thought that it did any damage to the basic principles of the FOIA.

In drafting H.R. 4862, we were very careful to consider the specific concerns about delay that have been raised. We have reduced time limits as much as possible. We have provided an expedited access procedure that will allow public interest requesters with a pressing and timely need for information to obtain records even faster.

We have also streamlined the judicial procedures as much as possible. Public interest requesters have the choice of venue in reverse-FOIA cases. Also, for the first time, submitters who file lawsuits without substantial justification may be required to pay the attorney fees of the requester. I can't imagine a more important deterrent to dilatory litigation.

I also think that the concerns about the de novo review are misplaced. Only a tiny fraction of all FOIA requests ever reach the courts. For the great majority of requests that are resolved at the administrative level, de novo review is irrelevant.

The bill reduces the administrative process for submitters to the minimum. This was a major objective of the requester community. But it is not fair to submitters if the administrative process and judicial review are both abbreviated. We have to allow an opportunity for careful consideration somewhere.

De novo review does not mean that there need be a lengthy trial in every case. Where there is an adequate record, the courts can and should decide FOIA cases quickly. The committee report discusses this point in some detail. I am convinced that H.R. 4862 will not add any significant new delays to the availability of information under the FOIA.

Let me make one other point. Two years ago, I supported the CIA Information Act. Opponents claimed that bill would allow the CIA to hide information. I said that the bill was fair and that it would speed disclosure of information.

The record shows that the CIA's FOIA backlog has been reduced and processing time has been cut by more than half. We have received no complaints from requesters that the CIA law is not working. I was right when I said that the CIA bill would work, and I am right today when I say that H.R. 3862 will work.

Mr. Speaker, I yield 4 minutes to the gentleman from Wisconsin [Mr. KLECZKA], who has played such a major role in bringing this legislation to the floor. As I stated earlier, the gentleman is responsible for drafting the amendment that made this legislation acceptable.

Mr. KLECZKA. Mr. Speaker, I rise today in support of H.R. 4862, the Freedom of Information Act Amendments of 1986.

I want to commend the Government Operations subcommittee chairman, Mr. ENGLISH, and the ranking minority member, Mr. KINDNESS, for their diligence and patience in working on the FOIA legislation during this term. The bill before us, which they sponsor, is the result of the good job they have done with a difficult set of issues. I would also like to thank Bob Geilman, staff person to the subcommittee, for the long hours and hard work he has devoted to the bill.

When I introduced the Freedom of Information Public Improvement Act (H.R. 3319) in September of last year, I did not expect all aspects of it to pass. However, I did hope putting forward a bill of strengthening amendments to the FOIA would make it more likely that any FOIA legislation voted out of the Government Operations Committee would be a balanced package, with elements of procedural reform to address both the needs of those who request information and those who have submitted that information.

However, serious obstacles arose to comprehensive reform. Needless to say the Justice Department was not interested in any procedural reforms which would favor requesters. This was to be expected since the administration has consistently sought to narrow the FOIA.

Another barrier to a balanced reform package was the lack of consensus among the FOIA community. Those groups most interested in seeing the FOIA strengthened were unable to speak with one voice so that a compromise could more easily be forged.

As a result, the only aspect of FOIA procedural reform with a chance of passing at this time was a more focused package of procedural reforms on behalf of the business community.

The Business Procedures Act, H.R. 4862, reflected a growing concern over a number of years that some businesses were losing control over valuable commercial data that should qualify as trade secrets under the act's fourth exemption.

The crux of H.R. 4862 would require agencies to notify businesses when information they have marked confidential is about to be released under the FOIA. The bill would then permit businesses to show cause for why the information should not be released, and, in case of a continuing dispute, provide de novo review in the courts.

While H.R. 4862 is far different than my bill to strengthen the law for requesters, many members of the subcommittee and businesses expect that this procedural change will lead to a fairer balance between submitters and requesters.

The FOIA now provides requesters with time limits, appeal procedures, judicial review rights and a host of other procedural and substantive safeguards. Submitters have argued that it is only fair that comparable procedural protections be created for confidential business documents.

The substance of H.R. 4862, however, did raise some concerns. Press and public interest groups in particular were concerned that the new procedures could cause unnecessary delays.

Although I would have preferred a comprehensive bill, I agreed to support business procedures reform with the addition of two amendments, each consistent with the spirit of H.R. 3319, the Freedom of Information Public Improvement Act, which Mr. ENGLISH sponsored with me. These two amendments have been incorporated in H.R. 4862.

The first of my amendments allows agencies to use authority granted under the FOIA or under other statutes to define classes of documents that will automatically be subject to disclosure. This amendment will speed disclosure of designated classes of information without risk to exempt business information.

The second of my amendments will make it easier for requesters to qualify for FOIA's expedited access provision. The bill now provides for expedited access when a requester can demonstrate a compelling need. My amendment substitutes a "substantial public interest standard."

Requesters who will meet the substantial test in my amendment include reporters with short deadlines and public interest groups and others who have a special need for information on short notice. If there is any doubt about this, the committee report provides adequate record to demonstate that this is the committee's intent.

As part of my amendment to the expedited access provision, I also proposed language to clearly state that once an application for expedited access is granted, the request will be processed ahead of all requests not qualifying for expedited access.

With the support of the gentleman from Texas [Mr. BROOKS], chairman of the full committee on Government Operations, subcommittee chairman ENGLISH and ranking minority member KINDNESS, both amendments passed at full committee markup and are included in the business procedures bill before the House.

The fact that this bill is a change in procedure, and not a change in the substance of the FOIA, is an admission that the act is working. Not only is it working, it's also saving money.

Testimony before the Government Information Subcommittee has shown that FOIA disclosures have resulted in actual dollar savings.

I believe that if we took the time to track down the actual dollar savings resulting from FOIA disclosures, we would find that the law actually saves more money for the Government than it costs. This is even before we estimate the value of the FOIA as a deterrent to agency waste and mismanagement and before we consider the nonmonetary benefits of fairer and more responsive government, and a better informed citizenry.

During the next term of Congress, I hope to see a different type of FOIA reform come before this body. I would like to see a FOIA reform bill that will address the needs of those who use information requested through FOIA to keep this country's citizenry informed about the operations of its government—whether that government wants them to know or not.

I regard the free flow of information to the press to be one of the most important foundations of our democratic society. We must rely on the broad scrutiny of the press and public to keep our government honest. The FOIA is essential to that scrutiny.

Before concluding, I put forward a challenge to the FOIA community to find the means to speak with one voice on FOIA reform as it affects their interests. I believe this will be necessary to successfully pass legislation to strengthen the FOIA in the future.

I urge the support of my colleagues for passage of H.R. 4862, and once again commend Mr. ENGLISH and Mr. KINDNESS for their efforts which have resulted in the bill before us.

Mr. ENGLISH. Mr. Speaker, I have no further requests for time. I simply urge the adoption of the bill, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Oklahoma [Mr. ENGLISH] that the House suspend the rules and pass the bill, H.R. 4862, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

COMMENDING THE PEACE CORPS ON ITS 25TH ANNIVERSARY

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 546) commending the Peace Corps, on the occasion of its 25th anniversary, for its dedication to the promotion of world peace and friendship.

The Clerk read as follows:

H. RES. 546

Whereas September 22, 1986, marks the 25th anniversary of the enactment of the Peace Corps Act;

Whereas since the inception of the Peace Corps in 1961, more than 120,000 Americans have served as Peace Corps volunteers in over 90 countries;

Whereas the Peace Corps is continuing to fulfill in exemplary fashion its mandate from the Congress to promote world peace and friendship by making available to interested countries the services of Americans willing to provide assistance under conditions of hardship, to help promote a better understanding of the American people on the part of the people served, and to promote a better understanding of other people on the part of the American people;

Whereas this country's knowledge and awareness of conditions of life throughout the world has been immeasurably increased by contributions of former Peace Corps volunteers;

Whereas the Peace Corps serves the United States national interest by building friendship among people around the world;

Whereas 6 former Peace Corps volunteers have been elected to the Congress, and many others serve in other positions of responsibility throughout the public and private sector in this country and around the world;

Whereas the Peace Corps is regarded as an effective ambassador of goodwill and a demonstration of the generosity of the American people, as evidenced by the many tributes honoring its 25th anniversary which have been offered by heads of state and ambassadors of foreign countries which have received volunteers;

Whereas the Peace Corps has proved to be a cost-effective program and has maintained low per-volunteer costs;

Whereas the Peace Corps has continually adapted the services offered by volunteers to the needs of countries in which it operates, changing its focus from an initial emphasis on education to a broader concept of development, including programs in food production, energy conservation, health, foresty, small business and community development, and water resources;

Whereas the American people of all ages and walks of life have consistently shown their willingness to serve as Peace Corps volunteers, with over 200,000 individuals inquiring about Peace Corps service and more than 12,000 applications received in the last year; and

Whereas the Congress in 1985 expressed its support for a continued role for the Peace Corps when it declared that it is the policy of the United States and a purpose of the Peace Corps to maintain, to the maximum extent appropriate and consistent with programmatic and fiscal considerations, a volunteer corps of at least 10,000 individuals: Now, therefore, be it

Resolved, That the House of Representatives commends the Peace Corps, and the many Americans who are now serving or have served as Peace Corps volunteers and staff, on their contributions to international development and mutual understanding throughout the 25 years of the existence of the Peace Corps.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 25 years ago, the Committee on Foreign Affairs and the Congress were very busy in September of 1961. Perhaps one of the most significant and far-reaching of the actions taken at that time was passage of the Peace Corps Act.

We have all watched it with great interest and with pride ever since. House Resolution 546 is a profound thank you congratulating the more than 120,000 Americans who have served as

Peace Corps volunteers in over 90 countries during that past 25 years.

I have never experienced such enthusiasm and such warmth as I have at the meetings that have taken place with regard to the Peace Corps commemorating its 25th anniversary here in Washington.

Those of us who were cosponsors, and I was proud to be one of the original cosponsors of the Peace Corps Act, have the right to say today that everything that we expected out of the Peace Corps was brought about because of the volunteers.

Americans from all across the land, all ages, all colors, all religious beliefs, have demonstrated most dramatically what America is really about, that we are good people with a sincere desire and concern about the rest of the world. Peace Corps volunteers have gone all over the world teaching and helping and making contributions demonstrating their care and concern to show that the heart of America is genuine.

In the process, they brought back to the United States a knowledge, education, and sensitivity that perhaps many Americans do not have and should have, about how most of the world lives.

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They have used that knowledge and experience in returning with a better perspective of their own society, and they continue to make an absolutely incalculable contribution to the welfare of our society.

We do not know, and there is no way to measure, the total contributions the Peace Corps has made over the past 25 years. We do have some idea in terms of human feelings of what a great concept the Peace Corps is and will continue to be.

Therefore, we join Americans, host countries, the staff, the volunteers, the Directors and all the others in celebrating this commemoration on this 25th anniversary and say to all of them, "Thank you for a good job well done."

As part of this 25th anniversary celebration, the Peace Corps has held a series of symposiums around the country. In my own State of Florida, one of the first such conferences took place last December. I would like at this time to insert in the RECORD some of the congratulatory messages which were forth coming at that time.

OFFICE OF THE MAYOR, THE CITY OF CORAL GABLES, FL—PROCLAMATION

The Peace Corps is observing its 25th anniversary year. During that time period, over 120,000 Americans have served in the Corps, of which 2,248 listed their home of record within the State of Florida. Currently, there are 130 Floridians serving, 26 from Dade/Broward Counties, and 392 additional people who have applied this year and who are awaiting assignments.

President Reagan recently signed an authorization bill that calls for the Peace Corps to increase the number of volunteers from the current level of 6,000 to 10,000 by the year 1990.

Peace Corps service is not limited to any particular age groups. Over 400 volunteers are over the age of 50, and the oldest is 82 years old. Senior volunteers are highly respected for their experience and wisdom. The Peace Corps volunteers are to be highly commended for their efforts in countries all over the world, and their accomplishments have been a big factor in the United States' role image in the developing world.

Now, therefore, I, Dorothy Thomson, Mayor of the City of Coral Gables, do hereby proclaim December 9, 1985 as "Peace Corps Day in Coral Gables."

PROCLAMATION

Whereas, the Peace Corps promotes world peace and friendship by working side by side with the people of developing Nations as they strive to meet their basic human needs; and

Whereas, the Peace Corps today has volunteers helping to promote a better understanding of the American people on the part of the people served; and

Whereas, former Peace Corps volunteers and staff have returned to Florida to promote a better understanding of the values and strengths found in the tradition and cultures of other people; and

Whereas, the people of developing countries in Africa, Latin and South America, the Caribbean, as well as the people of the near East, Asia and Pacific countries have welcome Floridians into their communities and homes and shared their traditions and customs; and

Whereas, former Peace Corps volunteers help their communities and businesses better understand their responsibilities and opportunities in an increasingly interdependent world; and

Whereas, the Peace Corps is celebrating its Twenty-Fifth Anniversary, commemorating the contributions volunteers have made throughout the world by providing skills and training in the fields of nutrition, education, farming, health, and development to the people of developing nations;

Now, therefore, I Pedro Reboredo, Mayor of the City of West Miami, Florida, do hereby proclaim December 9th, 1985 as: "Peace Corps Day" throughout the City of West Miami, Florida.

PROCLAMATION—CITY OF MIAMI, FL

Whereas as the famous Scottish novelist and poet Sir Walter Scott once said: The race of mankind would perish if people cease to aid each other," and

Whereas the Peace Corps is an organization founded 25 years ago to provide individual development and leadership to people around the world, and

Whereas since its establishment in 1961, the Peace Corps has contributed in many different and effective ways to improve conditions in underdeveloped nations, and

Whereas local authorities, on behalf of the community, salute the Peace Corps on the occasion of its Silver Anniversary;

Now, therefore, I Xavier L. Suarez, Mayor of the City of Miami, Florida, do hereby proclaim Monday, December 9, 1985, as "Peace Corps 25th Anniversary Day."

In observance thereof: I urge the residents of the City of Miami to join me in congratulating all the members of the Peace Corps and especially the Miami Peace Corps staff for their dedication and efforts on behalf of a better world community.

PROCLAMATION—BOARD OF COUNTY COMMISSIONERS, DADE COUNTY, FL

Whereas the Peace Corps has enabled 2,200 Floridians to promote world peace and friendship by working side by side with the people of developing nations as they strive to meet their basic human needs, and

Whereas the Peace Corps today has 130 Floridians serving as volunteers helping to promote a better understanding of the American people on the part of the people served, and

Whereas former Peace Corps volunteers and staff have returned to Florida to promote a better understanding of the values and strengths and in the tradition and cultures of other people, and

Whereas the peoples of developing countries in Africa, Latin and South America, the Caribbean, as well as the people of the Near East Asian and Pacific countries, have welcomed Floridians into their communities and homes and shared their traditions and customs, and

Whereas former Peace Corps volunteers help their communities and businesses better understand their responsibilities and opportunities in an increasingly interdependent world, and

Whereas the Peace Corps is celebrating its 25th Anniversary, commemorating the contributions volunteers have made throughout the world in providing skills and training in the fields of nutrition, education, farming, health, and development to the people of developing nations;

Now, therefore: be it resolved that I, Stephen P. Clark, Mayor of Metropolitan Dade County, Florida, do hereby proclaim December 9–15, 1985, as "Peace Corps Week."

In Observance Thereof: I call upon the good people of Metropolitan Dade County to join me in saluting the Peace Corps on its 25th Anniversary, and commend each and every volunteer who has contributed to the advancement of world peace.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to offer my strong support for this resolution commemorating the 25th anniversary of the Peace Corps, to compliment the present Director, Loret Ruppe of Michigan for the tremendous job he has been doing as head of the Peace Corps.

Just over 25 years ago, in my home State of Michigan, on the steps of the student union at the University of Michigan, President John F. Kennedy announced his plans for what eventually became the Peace Corps Act of 1961.

The mission of the Peace Corps is to harness the finest qualities of the American people in an effort to ease the burden of the suffering, the starving, and the poor of our world. Members of the Peace Corps, through their hard work and dedication, have provided proof to the people of this world that the promise of America is true. Their compassion and sacrifice have won us allies where no foreign policy decisions can reach. In the poorest parts of our world, they have touched the hearts of millions.

I urge my colleagues to join me in support of this resolution, in recognition of a job well done.

Mr. Speaker, I yield to the gentleman from California [Mr. LAGOMARSINO], a member of the Foreign Affairs Committee.

Mr. LAGOMARSINO. Mr. Speaker, I want to rise also in commendation to the Peace Corps on the occurrence of its 25th anniversary, and especially as my colleague, the gentleman from Michigan has done, to commend Loret Ruppe, the present Director of that organization.

The Peace Corps is a very good example of something that is almost uniquely American, and that is the strong role of volunteers in our society and beyond our own individual society, worldwide, with the Peace Corps itself.

You know, it is a common perception that the Peace Corps is made up of young people. While most of the volunteers are young people, they have done a tremendous job, many have gone on to other very productive things and notable things, it is also true that as you go around the world that you see a number of Peace Corps volunteers who are older, who are performing very valuable functions in filling advisory roles based on the experience they have had in their lives prior to that time.

I recall an elderly gentleman in Micronesia who was teaching Micronesian natives how to repair outboard motors, something very essential in that community, something that sounds very small, but something that was extremely important to them and extremely important to their efforts to progress.

So as I say, I want to join in commending the Peace Corps on this very happy occasion.

Mr. BEDELL. Mr. Speaker, the weekend of September 18–22 has been a chance for all Americans to glimpse at what the Peace Corps has brought back to the United States. I would like to take this opportunity to commend the Peace Corps, and the many volunteers it has sent overseas, on the outstanding job they have done in the past and continue to do today.

In 1961, John F. Kennedy, in one of his first official acts as President, established the Peace Corps. In honor of its 25th anniversary, a year-long celebration was planned. Now, this celebration has reached its culmination here in Washington. Thousands of former Peace Corps volunteers converged here in our Nation's Capital for a 3-day national conference. This weekend was not merely a reunion, but an exchange of ideas and experiences which will serve to improve and invigorate an already innovative and effective program.

Peace Corps volunteers leave home and country, family and friends in order to help those less fortunate than themselves. Through their experiences they have brought the problems and concerns of the developing world home to the citizens of the United States. As in the past, it remains their mission to promote peace and understanding throughout the globe, and now with nearly 120,000 returned volunteers, they help to spread that same understanding here at home. As one former volunteer put it, "* * * we must teach our fellow citizens how to reach out to the interdependent world of the 1980's—they tend to see only terrorists and "hot spots"—we see people and opportunities for partnership—mutual growth rather than mutual destruction * * *"

In over 60 countries scattered across the globe, the Peace Corps continues to serve and earn both the respect and affection of the host governments and their people. While we see burning flags and demonstrations on TV, Peace Corps volunteers are working side by side with the local people, sharing food and living quarters. The Peace Corps reaches deeper into the lives of the people than other Government programs. A volunteer educates people to help themselves survive and prosper toward a brighter future rather than to be dependent on foreign or even domestic aid. It is a program that directly addresses the source of a problem and provides solutions rather than offering just a short-term fix. Self-help and self-reliance are the lessons they offer. The Peace Corps truly, "helps people learn to help themselves."

I would also like to commend my colleague from Iowa, Mr. LEACH, for his work in promoting this anniversary. The Peace Corps is certainly worthy of a celebration and deserving of our attention in the future. It is a cost-effective and productive foreign aid program which helps needy people throughout the world and promotes peace and understanding between our Nation and those we aid. I am sure that it will continue to carry on in its global mission with the same vitality which is reflected by its members. I only hope that one day the Peace Corps may be able to grow to match its obvious potential.

Mr. BROWN of California. Mr. Speaker, I would like to recognize and commend the Peace Corps, and the people who have served in it, for their tireless and generous efforts toward assisting communities less fortunate than ourselves, as well as their contribution to international understanding. I would also like to congratulate the organizers of this week's celebration of the Peace Corps' 25th year.

Since the Peace Corps was founded just as I entered office, I have had the privilege to watch this program from its inception. On March 1, 1961, legislation creating the Peace Corps was signed into law, calling for the corps to meet three ambitious goals. They were: "To help the people of interested countries and areas in meeting their needs for trained manpower; to help promote a better understanding of Americans on the part of the people served; to help promote a better understanding of other people on the part of Americans."

While obtaining those goals was going to be a formidable task, the corps has also had to face and overcome some serious challenges to its existence. Originally, the program was bombarded with skepticism. First of all, critics wondered if many American citizens were really willing to make the 2-year sacrifice to live in remote, desolate or impoverished areas of the globe. The numbers of participants proved them wrong. Within the first 7 months, 750 volunteers were in the field. By 1965, 7,900 Americans were working abroad, and the next year this doubled to 15,556. Today, the corps receives thousands of applications, yet has a surplus of applicants for the positions available. In all, over 110,000 people have served in the corps.

There were also geopolitical realities that threatened the ability of the Peace Corps to even begin to meet its objectives. How many countries were willing to welcome the advice of Americans who barely spoke the native language? Since 1961, 92 developing countries have hosted volunteers, and countries are still requesting placement of volunteers in their villages.

Some of the greatest challenges to the Peace Corps were posed by the administration of the program. In 1965, there were charges that the volunteers were left floundering in their host countries with little experience and skills, and that no one followed through on the work of the people. Yet, the program overcame this charge with a unique and open approach. A journalist, along with others, was sent out in the midsixties to document the successes and failures with an unflinching eye. The results of those reports led to complete overhauls in the structure and personnel administering entire regions.

In the early seventies, politics forced the organization to come under the jurisdiction of the Agency for International Development. The weight of this bureaucracy stifled the individual spirit contributed by thousands of volunteers.

In the early eighties, the organization regained its independent status because of the savings obtained from sending an individual to a country rather than an entire bureaucracy. Even then, the organization has faced continued threats from budget cuts. However, the Peace Corps survived such threats when legislation was passed declaring "that it is the policy of the United States and a purpose of the Peace Corps to maintain, to the maximum extent appropriate and consistent with programmatic and fiscal considerations, a volunteer corps of at leat 10,000 individuals." Overall, the Peace Corps has obtained a proud history of standing up to the challenges it faces and overcoming them.

Today, the Peace Corps continues to serve the world and the United States with a redefined sense of purpose for the realities of the 1980's. Today, the volunteers are no longer the stereotyped, fresh college graduates of the 1960's. Their backgrounds are very diverse. They range in age from 18 to 82. Their backgrounds range from business and community development to nursing and engineering. One volunteer is a 79-year-old Iowa grandfather of 40 children. He uses the skills he learned as a child in the Philippines to teach bamboo construction in Peru's tropical lowlands.

The countries that host the Peace Corps have become more demanding in what they seek from a volunteer. The Peace Corps is facing a heavy demand for more skilled volunteers. Whereas, the percent of volunteers with a liberal arts background was 57 percent in

1962, that percentage has dropped to only 15 percent in 1984. The Peace Corps Director recently had to make a plea for 10,000 volunteers with agricultural skills to work in famine-stricken regions of Africa.

The Peace Corps volunteers of today continue to face the impoverished conditions and demanding challenges that volunteers faced in the sixties. Applicants have to be in perfect medical and dental condition before they leave. According to Bill Wilcox, 64, a volunteer in Jamaica, "This is a great opportunity to have a great adventure but no sport for the short winded." In fact, poor environmental conditions forced one volunteer out of her host's house into a dark, miserable room. The host's refusal to use soap while cleaning the dishes caused the volunteer to lose 30 pounds due to internal parasites. Overall, the Peace Corps continues to meet the challenges presented by today's environment.

While I have pointed out that the Peace Corps has done remarkable things in the past, 25 years is a short time to really appreciate the significance and impact of the program. In 1964, the women of Mira, Ecuador, began to knit wool sweaters using rounded knitting needles provided by corps volunteer Emily Gladhart. With the money from the sales of these sweaters, the women of Mira are able to pay for their children's education and basic household needs. Today, that money is paying for new houses and improved streets. There is even consideration of exporting those sweaters.

Evaluations of Peace Corps programs in education have found remarkably higher test performance from those who obtained the education provided by volunteers than those who have not. According to a World Bank report, "The differences were large enough that we could be certain they could not have occurred by chance." We can't begin to estimate that kinds of lives these children will have as a result.

Returned Peace Corps volunteers offer the promise of economic and social benefits to the United States as well. Several returnees have gone on to become judges, writers, and even U.S. Congressmen. Those now in the Foreign Service help to make U.S. foreign policy decisions with recognition of the realities of life in developing countries. Hundreds of them return to work in public and private agencies in the United States, such as AID, interested in developing countries. These people assist these agencies meet their objectives since they have worked with their host country governments and know the economic, social, and cultural environment of a country.

Businesses in the United States seek out Peace Corps volunteers for their valued skills. "The individual initiative required to succeed in such situations is the very quality we look for when hiring for Citibank," says George J. Clark, the executive vice president of Citibank. They also provide important contacts in a country for businesses trying to break into a foreign market.

The dream and initiative of John F. Kennedy and Hubert Humphrey is alive each day as people from the 50 States and U.S. territories provide their enthusiasm, dedication, and skills toward the betterment of people around the world. This organization and the people who comprise it are an inspiration for those who still dream about making this a better world.

Mr. GILMAN. Mr. Speaker, today, there will be a congressional reception to celebrate the return of Peace Corps volunteers and their vital contributions to world peace, cooperation, and understanding. In its 25th anniversary year, the Peace Corps continues to send Americans from every walk of life to countries throughout the world, in a genuine attempt to alleviate the adverse conditions that plague so many Third World communities.

The dedicated volunteers of the Peace Corps are deserving of our most profound respect and gratitude for helping to weave together the sometimes disparate threads of international relations. In an effort to develop the kind of environment in which Third World communities can prosper within the parameters of their own culture, and unfettered by the imposition of an industrialized nation's methodology, these noble men and women have provided only the most sensitive, educated support.

At a period in world development in which the polarization of the developed and underdeveloped nations and the quality of life which they embrace is most pronounced, these volunteers serve a more vital role than ever in helping to diminish this gap—a gap which in real terms means the difference between being able to care adequately for your children, and helplessly watching them starve.

Again, I extend to both current and former Peace Corps volunteers not only my deepest gratitude and respect, but the entire Nation's.

Mr. WRIGHT. Mr. Speaker, September 22, 1986, marks the 25th anniversary of the Peace Corps. How vividly I recall its founding and the great hopes we dared to entertain when we launched it. We've not been disappointed. The program has made a significant contribution to the developing world, to the United States, and to world peace.

The important thing about the Peace Corps is that it involves people-to-people contact. Americans live and work among the people, in the villages, speaking their languages, learning their cultures. In return, the people of the host countries learn about Americans through our volunteers.

Over the next 4 days, former Peace Corps volunteers from around the country will come to Washington, DC, to participate in Peace Corps' 25th anniversary celebration and conference. I wish them well. I thank them on behalf of a grateful nation for their humanitarian service to others.

On Saturday, Mr. Speaker, five former Peace Corps volunteers will be singled out for a very special honor. They will receive the first annual Sargent Shriver Awards for Distinguished Humanitarian Service. One of these five is already well known to us. He is Paul Tsongas, our former colleague in the House and former U.S. Senator. It is a privilege for me to congratulate Paul Tsongas for receiving this first-ever Shriver Award. I can think of nobody in public life who deserves the honor more than Paul Tsongas.

But we should not forget the other four awardees. All of them have made distinguished contributions to the field of humanitarian service, and they deserve widespread public recognition. Congratulations to Paul Thompson, vice president of Intertect and former Peace Corps volunteer in Chile; to Timothy Carroll, cofounder and CEO of Eye Care, Inc., and former Peace Corps volunteer in Nigeria; to Katrina Clark, executive director of Fair Haven Health Clinic and former Peace Corps volunteer in Colombia; and to twin brothers, Douglas and Stephen Hellinger, cofounders and codirectors of Development GAP [Group for Alternative Policies].

The Shriver Awards are presented to these individuals for making sustained and exemplary contributions in the field of humanitarian service in developing countries or here in the United States. I am pleased that returned Peace Corps volunteers across the country have established this important award program and have honored these five fine servants of humanity. In honoring them, they also pay tribute to a great American, Sargent Shriver, for his role in creating the Peace Corps and for his ongoing commitment to public and humanitarian service.

Congratulations Sargent Shriver, and happy 25th birthday to Peace Corps! It is a better world, and our own country is a better place because of the contributions made by all Peace Corps volunteers.

Reprinted below for the benefit of my colleagues are brief profiles of the five winners of this year's Sargent Shriver Awards for Distinguished Humanitarian Service:

PROFILES OF 1986 SARGENT SHRIVER AWARD WINNERS

PAUL E. TSONGAS

(Former U.S. Representative and U.S. Senator from Massachusetts and former Peace Corps Volunteer in Ethiopia ('62-'64))

By means of this award, returned Peace Corps volunteers across the country give special recognition of Paul Tsongas for championing throughout his distinguished public career the cause of human rights abroad and civil rights here at home, for his exemplary leadership in supporting arms control between the superpowers, adequate foreign assistance to developing countries, and strengthened international education programs in America's schools and colleges.

As the first returned Peace Corps volunteer to win election to the U.S. Senate, Paul Tsongas serves as a trailblazing inspiration to others seeking to translate their Peace Corps experience into a public career based on deeply-held principles of humanitarian service to others and concern for the less fortunate among us.

PAUL THOMPSON

(Vice President, Intertect, Madison, Wisconsin, and former Peace Corps volunteer in Chile ('69-'71))

Following his service in the Peace Corps as an architect/construction supervisor, Mr. Thompson has devoted nearly 10 years of his life and talent to the field of disaster management, concentrating his energies on helping Third World communities rebuild after a disaster.

Mr. Thompson has demonstrated an unusual degree of cultural sensitivity, professional excellence, and sustained commitment to providing shelter and jobs to disaster victims in desperate need of compassionate help in difficult times.

TIMOTHY CARROLL

(Co-founder and CEO, Eye Care, Inc., and former Peace Corps volunteer in Nigeria ('63–'66))

Thirteen years after this Peace Corps service, Mr. Carroll left his job as Associate Dean for International Studies at Antioch University to co-found and direct Eye Care, Inc. For seven years, Eye Care has provided critically needed assistance to the island nation of Haiti. Totally financed by private monies, Eye Care has built, staffed, and equipped four rural eye hospitals and three urban eye clinics across Haiti. Today, 117 trained Haitians staff these permanent centers, with only two fulltime Americans involved.

By reaching out to help serve the eye care needs of impoverished Haitians, Mr. Carroll exemplifies the values that motivate Peace Corps service. In addition, by stressing the importance of training host-country nationals, Mr. Carroll demonstrates how compassionate assistance can stimulate local self-help efforts.

KATRINA CLARK

(Executive Director, Fair Haven Community Health Care Clinic and former Peace Corps volunteer in Colombia ('67–'69))

After receiving her Masters Degree in Public Health, Ms. Clark became director of a small, community health clinic in New Haven, Connecticut. She has overseen the growth of Fair Haven Health Clinic from a 500-patient, $30,000 operation to one that serves 10,000 people annually and has a budget of $1 million.

By serving the health care needs of this low-income, largely Hispanic community, Ms. Clark has carried on the ethic of Peace Corps service, successfully transplanting it from its overseas variety into an exemplarly and important community service program in the United States.

DOUGLAS AND STEPHEN HELLINGER

Co-founders and Co-Directors, The Development GAP, and former Peace Corps volunteers in Brazil and in Nicaragua and Venezuela, respectively ('70–'72)

Twin brothers, Douglas and Stephen served in the Peace Corps during the same period of time, although in separate countries. Together, in 1977, they founded the Development GAP (Group for Alternative Policies), a small policy and research organization which develops innovative alternatives to current international development assistance programs.

Through their work in shaping constructive alternative policies in the field of foreign assistance, Stephen and Douglas have performed highly professional service, characterized by a hands on approach to problem-solving that led to development of such innovations as an alternative credit program in Mexico, Colombia, Nicaragua, Bolivia and Chile, creation of small-scale enterprise programs in Ecuador, Bolivia, and Brazil, and establishment of employment and income-generating programs in Kenya, Egypt and Zimbabwe.

Stephen and Douglas stand apart in their determination to work tirelessly on behalf of the world's poorest citizens and to devote their considerable talent and creativity to further the cause of social and economic justice.

Mr. MATSUI. Mr. Speaker, I would like to join you and my colleagues in celebrating the 25th anniversary celebration of the inception of the Peace Corps.

Since 1961, over 120,000 American volunteers have served in 92 developing nations and done an outstanding job. In their host countries, the Peace Corps has worked to improve the lifestyles of people in many different villages and barrios. Their goals have served to promote a better understanding of Americans abroad and a greater knowledge of the Third World at home.

Several thousands of past volunteers have gathered in Washington during September 18–22 for a 3-day national conference. I would like to express my appreciation to these and all the volunteers who have made the commitment to help those less fortunate in other nations.

Mr. Speaker, the dedication and commitment by the Peace Corps has always been outstanding. I would like to extend my congratulations and best wishes to all the volunteers and staff on their well-earned silver anniversary celebration.

Mr. BOLAND. Mr. Speaker, I am pleased to join my colleagues in honoring the volunteers of the Peace Corps.

On March 1, 1961, President John Kennedy established one of the most successful volunteer programs in the world, the Peace Corps. We all know that that program, celebrating it's 25th anniversary this year, has provided assistance to meet educational, agricultural, transportation, health, and other developmental needs in Third World countries. We are all familiar with the Peace Corps objectives: To help the poor meet basic human needs; to promote world peace, and to increase understanding between Americans and the people of other nations. The Peace Corps programs are community-based, and are designed to emphasize the human dimension of development by concentrating on people-to-people approaches. The Peace Corps has provided vital services to those most in need in a manner that has done much to improve the image of the United States in developing countries.

We all recognize the wonderful work of the Peace Corps, but how often do we think of the Americans who actually do that work, who actually have been the Peace Corps for the last quarter century. I refer to the men and women who unselfishly gave their time, skills, and energy to assist their fellowman in countries around the globe. For over 2 years, they lived in villages with very different societal traditions and attitudes, learned to speak another language, and became part of the life of communities markedly different from those from which they came. Over 110,000 U.S. citizens have served as Peace Corps volunteers in over 92 countries throughout the world. I am proud to say that the State of Massachusetts has had 4,174 volunteers since 1961, and this year, 273 volunteers are continuing Massachusetts' Peace Corps' tradition.

As the Peace Corps celebrates it 25th anniversary, it is appropriate to honor all those who have served in it. As the Peace Corps reflects on past achievements and prepares for the challenges of the future, I hope it will never lose the spirit with which it was infused at its creation.

Mr. Speaker, I am pleased to join with my colleagues in honoring our returned Peace Corps volunteers and want to take this opportunity to personally thank them for their efforts to make the world a better place for all of us.

Mr. BROOMFIELD. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the resolution, House Resolution 546.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

COMMEMORATING 25TH ANNIVERSARY OF THE ARMS CONTROL AND DISARMAMENT AGENCY

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 551) commemorating the 25th anniversary of the Army Control and Disarmament Agency.

The Clerk read as follows:

H. RES. 551

Whereas the United States Arms Control and Disarmament Agency was proposed by President John F. Kennedy and was established by an Act of Congress on September 26, 1961;

Whereas the Arms Control and Disarmament Agency is the only agency of the United States Government charged by the Congress with primary responsibility for making arms control an integral part of United States national security policy;

Whereas the Arms Control and Disarmament Agency is the principal agency of the United States Government entrusted to provide impetus to world peace by dealing with the reduction and control of armaments, with the ultimate goal being world disarmament;

Whereas over the past 25 years, the Arms Control and Disarmament Agency has dutifully performed its responsibility to advise the President, the Secretary of State, and the heads of other government agencies on United States arms control and disarmament policy, and has contributed positively to United States national security policy; and

Whereas the national security and well-being of this Nation and other nations have been served by the prominent role of the Arms Control and Disarmament Agency in fostering understanding and agreements be-

tween nations on critical arms control issues: Now, therefore, be it

Resolved, That the House of Representatives commends the United States Arms Control and Disarmament Agency, on the occasion of the 25th anniversary of its establishment, for its service to our Nation and to world peace.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 551, unanimously passed by the Foreign Affairs Committee last Tuesday, commends the Arms Control and Disarmament Agency [ACDA] for its service to the Nation and to world peace on the occasion of the 25th anniversary of its founding.

In establishing ACDA on September 26, 1961, President Kennedy and the Congress sought to create a separate authority to coordinate U.S. arms control policy as well as to integrate arms control into U.S. national security policy.

The Agency grew out of a strong bipartisan consensus in Congress that negotiated arms controls were an essential element of our national security policy. The Agency was entrusted with the mandate of institutionalizing the arms control process and ensuring its presence in the formulation of U.S. national security policy.

As a sponsor, along with the ranking member of the Foreign Affairs Committee, Mr. BROOMFIELD, of this resolution, I want to commend the Arms Control and Disarmament Agency for the important and vital role it has played during its short existence for promoting international arms control and disarmament.

Every day that has gone by in the past 25 years has pointed out the need, the desperate need, for an agency of this kind to coordinate U.S. arms control policy.

While a strong bipartisan consensus resulted in the creation of such an arms control and disarmament agency, such a consensus would not have been reached, had it not been for the President of the United States, John Kennedy, who saw fit to give and lend his support to that measure. Ever since then we have been struggling, but nevertheless, the Arms Control Agency for 25 years has been trying to do what Congress has sought for it to do. We have disagreed from time to time, obviously, but nevertheless ACDA is the focal point and has the responsibility for fostering an atmosphere of peace and for integrating arms control into our national security policy. The Arms Control and Disarmament Agency deserves the commendation of the Congress for the arms control efforts of its current Director Ken Adelman and for the work of its past Directors, including Paul Warnke, Gerard Smith, Ralph Earle, Eugene Rostow, George Seignious, Fred Ikle, and William Foster. Over the years these Directors and their staff have wrestled with perhaps the most insurmountable problem confronting the world.

I therefore encourage my colleagues to support this bipartisan resolution and to express the hope that ACDA's next 25 years of existence will be even more productive than its first quarter century of existence.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to take this opportunity to join my good friend, the chairman of the Foreign Affairs Committee, the gentleman from Florida [Mr. FASCELL] in supporting this resolution commemorating the 25th anniversary of the Arms Control and Disarmament Agency, and I also take this opportunity to compliment Ken Adelman, the present Director, and his staff for the fine job he is doing today.

Since the establishment of ACDA in 1961, the Agency has been responsible for making arms control a relevant part of U.S. national security policy. In this regard, ACDA has made special contributions to bilateral arms limitation talks with the Soviet Union while participating in a number of multilateral arms control negotiations.

I especially want to commend the Agency for its research in verification, including seismic developments, as well as nuclear nonproliferation. Over the years, the Agency has also played an important role in reviewing United States arms transfers as well as attempting to resolve Soviet noncompliance with arms control agreements.

With these accomplishments in mind, I take this occasion to wish the agency all the best and expect that ACDA will continue to contribute to our Nation's search for a more peaceful world.

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, I also rise in support of this resolution commending the organization of ACDA, Arms Control and Disarmament Agency, on its 25th anniversary and to commend the present Director, Ken Adelman.

I think the organization is realistic, tough and innovative.

I might also say, Mr. Speaker, that if the proposals that were put forth by President Reagan today at the United Nations can be put into effect and the Soviets will reciprocate, I think we can go a long, long way in true verifiable and realistic arms control.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the resolution, House Resolution 551.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and to include extraneous material, on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949 AMENDMENTS

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5506) to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken.

The Clerk read as follows:

H.R. 5506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DETERMINATION OF VALUE OF CLAIMS.

(a) FAIR MARKET VALUE.—Section 4(a) of the International Claims Settlement Act of 1949 (22 U.S.C. 1623(a)) is amended by amending the second sentence to read as follows: "In the decision of claims under this title, the Commission shall apply the following in the following order:

"(1) The provisions of the applicable claims agreement as provided in this subsection.

"(2) The applicable principles of international law, justice, and equity. In determining the value of a claim under international law, the Commission shall award the fair market value of the property as of the time of the taking by the foreign government involved (without regard to any action or event that occurs after the taking), except that the value of the claim shall not reflect any diminution in value attributable to actions which are carried out, or threats of action which are made, by the foreign gov-

ernment with respect to the property before the taking. Fair market value shall be ascertained in accordance with the method most appropriate to the property taken and equitable to the claimant, including—

"(i) market value of outstanding equity securities;

"(ii) replacement value;

"(iii) going-concern value (which includes consideration of an enterprise's profitability); and

"(iv) book value.

In the case of any claim for losses in a service industry, the appropriate basis of valuation shall be presumed to be that referred to in clause (iii). For purposes of the preceding sentence, the term 'service' means economic activity the output of which is other than tangible goods.".

(b) APPLICABILITY.—Section 4 of the International Claims Settlement Act of 1949 is amended by adding at the end the following:

"(k) In exercising authority granted after the date of the enactment of this subsection under this or any other Act, the Commission, in determining the value of claims of the Government of the United States or of nationals of the United States (as defined in this Act or such other Act) against any foreign government for losses arising from the nationalization or other taking of property, shall comply with the principles set forth in subsection (a)(2) of this section.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply to any claim pending on the date of the enactment of this Act and to any other claim determined after such date.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5506, to amend the International Claims Settlement Act of 1949.

This bill is technical in nature. It would amend the International Claims Settlement Act of 1949 to specify that, in determining compensation, the International Claims Settlement Commission shall determine the value of an asset based on fair market value.

The genesis of this bill is that sometimes the Commission uses book value as the basis for valuation, but that for service industries—which have few physical assets—this is often not an accurate reflection of the real value of the property.

I understand that the administration and the Commission feel that this legislation does or should reflect actual practices of the Commission and that they have no objection to it.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5506 and commend the chairman of the Foreign Affairs Committee and the ranking Republican, the gentleman from Michigan, Mr. BROOMFIELD, as well as the gentleman from Washington, Mr. BONKER, and the gentleman from Wisconsin, Mr. TOBY ROTH, the chairman and ranking members of the Subcommittee on International Economic Policy and Trade who proposed this legislation. It does exactly as Chairman FASCELL says and I urge its adoption.

Mr. ROTH. Mr. Speaker, I rise in support of H.R. 5506, which amends the International Claims Settlement Act of 1949. This legislation was unanimously adopted by the Foreign Affairs Committee and is sponsored by both the chairman and the ranking member of the Subcommittee on International Economic Policy and Trade.

This legislation directs the Foreign Claims Settlement Commission to use applicable principles of international law in determining the value of claims submitted by service industries. The bill does not mandate the use of specific accounting methods, but it does establish a presumption standard for the Commission to follow when determining the fair market value of expropriated property.

Over the past 20 years, the Foreign Claims Settlement Commission has adjudicated the claims of many U.S. citizens against foreign governments that have unlawfully expropriated U.S. property. In all, 660,000 claims have been filed and awards granted in excess of $3 billion. In adjudicating these claims, the Commission has been directed by Congress to follow the principles of international law, justice, and equity.

In reviewing the many decisions rendered by the Commission over the years, it appears that the value of the claimant's property is most often determined by its book value. For service industries most particularly, this standard of compensation is inappropriate.

H.R. 5506 establishes a straightforward standard—the fair market value of property—for the Commission to follow in adjudicating claims. By establishing a presumption in favor of the "going concern" method for service industries, the bill recognizes that, for example, the value of a credit card business is more than its inventory of desks, typewriters, and plastic cards.

This legislation is noncontroversial and is unopposed by the administration. I urge the support of my colleagues in favor of this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and pass the bill, H.R. 5506.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RELEASE TO MUSEUMS OF OBJECTS OWNED BY THE USIA

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5522) to authorize the release to museums in the United States of certain objects owned by the U.S Information Agency.

The Clerk read as follows:

H.R. 5522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELEASE OF CERTAIN OBJECTS OWNED BY USIA.

Notwithstanding section 208 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (22 U.S.C. 1461-1a), and the second sentence of section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), the Director of the United States Information Agency may release to any museum located in the United States the objects described in section 2 if that museum pays all costs associated with the transfer of such objects to that museum (as determined by the Director).

SEC. 2. OBJECTS SUBJECT TO RELEASE.

The objects referred to in section 1 are those objects displayed at the United States Pavilion at the 86 Expo in Vancouver, British Columbia, Canada, which are owned by the United States Information Agency but (as determined by the Director of the United States Information Agency) not committed by it for other purposes.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5522, to release certain articles for exhibit within the United States which are currently on display at the United States pavilion at the 1986 Expo in Vancouver, British Columbia, Canada.

The ban on domestic dissemination of USIA materials within the United States would prevent certain items in this space technology exhibit from being displayed in the United States. This bill would allow the Director of the U.S. Information Agency to release these materials to a museum in the United States, if all costs associated with the transfer of the items is paid by the requesting party, and if the items have not already been committed by USIA for another purpose.

Mr. Speaker, given the nature of this exhibit, it is understandable that an American museum would be interested in acquiring some of the exhibit materials. If these unobligated materials were not made available to a U.S. museum, they would either be presented to a foreign museum for exhibit, or allocated to storage space in the General Services Administration. I urge the adoption of this bill.

Mr. Speaker, I yield to the original sponsor of this legislation, the gentleman from Virginia [Mr. OLIN].

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Mr. OLIN. Mr. Speaker, I thank the chairman of the Committee on Foreign Affairs for yielding, and for all of the help that he gave us in getting this bill to the floor as quickly as we did.

Mr. Speaker, this bill would permit the United States Information Agency to transfer to any museum in the United States the very fine space exhibit that has been on display at the 1986 Expo in Vancouver, British Columbia, Canada, this year.

That exhibit will end in October, and my understanding is that the USIA has no further use for this exhibit. It is a very, very fine one. It covers the history of the U.S. space program, and it is hoped that this exhibit, the parts of it that are exclusively directed to this purpose, can be transferred to the Virginia Museum of Transportation in Roanoke, VA. That transportation museum has had a very fine space exhibit, but in last year's flood the space exhibit was largely destroyed, and we are hopeful that this exhibit can be acquired as a permanent exhibit and be available for the people of this country.

The CSX Railroad has agreed to transport the items involved, and we believe that this can be accomplished.

Mr. Chairman, I thank the committee for their help.

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this bill. There is no cost to the U.S. Government. Those who use the exhibit will pay for it. I think that it is fitting that people in this country see this exhibit also, which points out the history of the U.S. space program.

Mr. Speaker, I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HOYER). The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and pass the bill, H.R. 5522.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 5506 and H.R. 5522, the last two bills passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

GRAIN QUALITY IMPROVEMENT ACT OF 1986

Mr. DE LA GARZA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5407) to amend the Grain Standards Act of 1916 to establish the policy of providing grain of high quality to both domestic and foreign buyers, to better define the purpose of Official United States Standards for Grain, and to provide for the closer regulation of dockage and foreign material in grain, as amended.

The Clerk read as follows:

H.R. 5407

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as the "Grain Quality Improvement Act of 1986".

DECLARATION OF POLICY

SEC. 2. Section 2 of the United States Grain Standards Act (7 U.S.C. 74) is amended by adding at the end thereof the following:

"It is also declared to be the policy of Congress to promote the marketing of grain of high quality to both domestic and foreign buyers; that the primary objective of the official United States standards for grain is to certify the quality of grain as accurately as practicable; and that official United States standards for grain shall—

"(1) define uniform and accepted descriptive terms to facilitate trade in grain;

"(2) provide information to aid in determining grain storability;

"(3) offer users of such standards for best possible information from which to determine end-product yield and quality of grain; and

"(4) provide the framework necessary for the markets to establish grain quality improvement incentives.".

FOREIGN MATERIAL RECOMBINATION PROHIBITION

SEC. 3. Section 13 of the United States Grain Standards Act (7 U.S.C. 87b) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c)(1) To ensure the quality of grain marketed in or exported from the United States, no dockage or foreign material, as defined by the Secretary, including dust, once removed from grain shall be recombined with any grain; and no dockage or foreign material of any origin may be added to any grain.

"(2) Nothing in paragraph (1) shall be construed to prohibit—

"(A) the treatment of grain to suppress, destroy, or prevent insects and fungi injurious to stored grain;

"(B) the marketing, domestically or for export, of dockage or foreign material removed from grain when such dockage or foreign material is marketed separately and uncombined with any such whole grain or is marketed in pelletized form or as a part of a processed ration for livestock, poultry, or fish;

"(C) the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture;

"(D) the recombination of broken corn or broken kernels, a defined by the Administrator, with grain of the type from which the broken corn or broken kernels were derived;

"(E) effective for the period ending December 31, 1987, the recombination of dockage or foreign material, except dust, removed at an export loading facility from grain destined for shipment as a cargo under one export official certificate of inspection when the recombination occurs during the loading of the cargo, when the purpose is to ensure uniformity of dockage or foreign material throughout that specific cargo, and when the separation and recombination are conducted in accordance with regulations issued by the Administrator;

"(F) the addition to grain of a dust suppressant, or the addition of confetti or any other similar material that serves the same purpose in an amount necessary to facilitate identification of ownership or origin of a particular lot of grain; and

"(G) any other addition of foreign material that may be determined by the Secretary to be in the interest of grain producers and to be neutral or constructive in achieving the goal of ensuring the quality of grain marketed in or exported from the United States.

"(3) Effective for the period ending December 31, 1987, the Secretary, by regulation, may exempt from paragraph (1) the last handling of grain in the final sale and shipment of such grain to a domestic user or processor when such exemption is determined by the Secretary to be in the best economic interest of producers, grain merchants, the industry involved, and the public. Grain sold under an exemption authorized by this paragraph shall be consumed or processed into one or more products by the purchaser, but may not be resold into commercial channels for such grain or blended with other grain for resale; and neither products nor byproducts derived therefrom shall be blended with or added to grain in commercial channels except in accordance with an exemption granted by the Secretary under paragraph (2)(G).

"(4) This subsection shall become effective on May 1, 1987.".

COMPENSATION FOR MODIFICATIONS OF GRAIN CLASSIFICATIONS

SEC. 4. The United States Grain Standards Act (7 U.S.C. 71, et seq.) is amended by inserting after section 17B the following new section:

"COMPENSATION FOR MODIFICATIONS OF GRAIN CLASSIFICATIONS

"SEC. 17C. (a) The Secretary shall compensate a producer, grain merchant, grain processor, or grain exporter for loss of value of grain held in inventory if the person can show that the loss of value resulted from a change by the Administrator in grain classi-

fications under this Act or regulations based thereon.

"(b) Compensation under this section shall be paid only on the inventory of grain held by a person on the effective date of the change in classification and under procedures established by the Secretary by regulation.

"(c) Compensation may be paid under this section only for losses occurring after the date of enactment of this section.

"(d) Funds may be expended under this section only if provided in advance in an appropriation Act.".

INSECT INFESTATION

SEC. 5. Not later than six months after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall issue a final rulmaking that revises grain inspection procedures and standards under the United States Grain Standards Act to more accurately reflect levels of insect infestation.

STUDY OF PREMIUMS FOR HIGH-QUALITY GRAIN

SEC. 6. The Secretary of Agriculture, following public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules to (1) encourage the delivery, storage, and export of high-quality, clean grain and (2) offer incentives to minimize the amount of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation. The Secretary shall transmit the report, together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate within 180 days after the date of enactment of this Act.

REVIEW OF OPTIMAL GRADE PROPOSAL

SEC. 7. To evaluate the effects of moving to an optimal grain grading system, the Administrator of the Federal Grain Inspection Service shall publish in the Federal Register a detailed description of the proposals contained in H.R. 5354, 99th Congress, the Optimal Grain Grading Act of 1986, and shall solicit public comment, during a period of not less than 60 days, on (1) the optimal grain grading system as proposed in H.R. 5354 and (2) the general objective of improving grain quality by revising the official United States grain standards to provide greater economic incentives for production and sale of high-quality grain. The Administrator shall report to Congress, by May 1, 1987, on the comments received and on the Administrator's recommendations with respect to the matters on which comments were solicited.

STUDY OF UNIFORM END-USE VALUE TESTS

SEC. 8. (a) The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to conduct a study of the need for and availability of uniform end-use value tests for grain. The study shall include—

(1) a survey of domestic and foreign buyers of grain to determine what information about grain characteristics would be most useful to such buyers. The survey shall take into account those factors that buyers specify in their contracts, test for, measure, or would measure if tests were available, including but not limited to the following characteristics:

(A) the starch, oil, and protein content, breakage susceptibility, and individual kernel moisture of corn;

(B) the baking characteristics, protein content, gluten content and quality, and milling hardness of wheat; and

(C) the protein, oil, and free-fatty-acid content of soybeans; and

(2) a review of the development and availability of tests for the characteristics identified in the survey conducted under paragraph (1), including an evaluation of the costs of providing such tests.

(b)(1) The Secretary of Agriculture shall direct the Federal Grain Inspection Service and the Agricultural Research Service to maintain an ongoing review to determine the end-use tests that are of economic value to buyers, and the availability and costs of such tests.

(2) The Administrator of the Federal Grain Inspection Service, to the extent practicable, shall revise official grain inspection and certification procedures to include within official inspection (as defined in section 3(i) of the United States Grain Standards Act) those tests that are identified under the study conducted under subsection (a) as useful, available, and economically feasible.

(c) Not later than one year after the date of enactment of this Act, the Administrator of the Federal Grain Inspection Service shall submit a report to Congress setting forth the results of the study and actions taken under subsection (b)(2). The Administrator shall report yearly to Congress on the ongoing review under subsection (b)(1).

The SPEAKER pro tempore. Is a second demanded?

Mr. ROBERTS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. DE LA GARZA] will be recognized for 20 minutes and the gentleman from Kansas [Mr. ROBERTS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. DE LA GARZA].

Mr. DE LA GARZA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of H.R. 5407 is to improve the quality of U.S. grain provided to both foreign and domestic buyers. The need for the legislation is made apparent by the rise in complaints filed recently by foreign purchasers of U.S. grain, and the increasing public perception that the quality of grain shipped from the United States does not match that of our major competitors.

The fact that U.S. agricultural exports must seek markets today in an intensely competitive international environment significantly increases the importance of grain quality as a marketing factor. The United States, through recent changes in farm policy, has renewed its effort to be competitive in world grain markets on the basis of price. As long as other major producers of agricultural commodities attempt to match U.S. export prices, factors such as quality will gain in importance in determining who has an edge in reclaiming market share.

H.R. 5407, as reported, will revise the United States Grain Standards Act declaration of policy to add statements that it is the policy of Congress to promote the marketing of high quality grain; that the primary objective of official U.S. grain standards is to accurately determine grain quality; and that the grain standards must provide a framework for the markets to establish grain quality improvement incentives.

The bill will add a new provision to the act to prohibit, effective May 1, 1987, the recombination of grain with dockage or any other foreign material, including dust, removed from grain. Further, no dockage or foreign material of any origin could be added to grain. Dockage and foreign material are terms used in the grain industry to apply to a variety of items ranging from pieces of grain kernels to nongrain material. The prohibition would apply to both export and domestic shipments.

The Secretary of Agriculture would have discretionary power to exempt handling practices by "last handlers" in the United States who sell grain to a domestic user or processor such as a cattle feeder or distiller. Recombined grain covered by this exemption could not flow back into domestic or export channels, and the exemption would end on December 31, 1987. Also, the prohibitions could not be construed to prohibit a number of traditional marketing and handling processes. These protected steps include: Treatment of grains to kill insects; blending of grain of differing quality to adjust the quality of the resulting mixture; domestic and export sales of dockage and foreign material in the form of pellets or as part of processed livestock rations; recombining dockage or foreign material, except dust, taken out of grain at an export loading facility from grain earmarked for a single specific shipment when this is done to ensure even distribution of the material through the specific graded cargo, with the exemption ending on December 31, 1987; and returning broken corn or grain kernels into a lot of the same kind of grain. Also, the Secretary would have general discretionary power to permit the addition of foreign material to grain if the step would aid farmers and be neutral or favorable in ensuring the quality of exported grain.

The bill will amend the act to require the Secretary, subject to appropriation of funds, to compensate farmers and grain merchants, processors, or exporters if a change in Federal

grain classification results in reducing the value of grain in inventory.

The bill will direct the Secretary, in consultation with farmers and members of the grain industry, to make a study of the feasibility of adjusting the Commodity Credit Corporation grain premium and discount schedules to encourage the delivery, storage, and export of high quality grain.

The bill will require the Secretary to publish and seek public comment on proposals contained in a pending House bill, H.R. 5354, the Optimal Grain Grading Act.

The bill also will direct the Department of Agriculture to study the need for and availability of uniform tests to rate the suitability of grains and soybeans for specific uses. Where tests are found to be useful and economically practical, the Federal Grain Inspection Service would be directed to adopt them as far as practicable—section 8. The agency would also be directed to issue a final rule within 6 months to make grain inspection standards more accurately reflect levels of insect infestation.

Mr. Speaker, this legislation will serve to enhance our agricultural export market position while having a minimal effect on legitimate grain industry practices. I urge the House to pass the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I thank and commend all those who have worked to report this bill to the House of Representatives. Since several Members were strong supporters and indispensable, including the chairman, Mr. DE LA GARZA, and all who are listed as cosponsors, I hesitate to single out individuals for special praise, but I must mention Mr. EVANS of Iowa especially, and Mr. BEDELL, Mr. GLICKMAN, and Mr. ROBERTS. Mr. EVANS has had personal experience and spent a great deal of time and effort. He thoroughly understands the issue; his judgment concerning details is highly respected; and he made a major contribution to this cause. It is near the end of this Congress and determination of the full Agriculture Committee under the chairman to move this bill in this Congress should send a message to the world that U.S. producers and domestic handlers are determined to improve the quality and reputation of U.S. grain.

U.S. grain sales, which were $21.9 billion in 1981, were only $10.2 billion last year. Last May, the United States ran a farm-trade deficit for the first time in 15 years. During that time the U.S. share of grain exports has been reduced drastically too. The slump has cost the U.S. balance of payments $16.3 billion.

While no one would claim that loose grain standards and practices which result in dirtier grain and lower quality than exports from other countries is the only cause of these drastic losses in grain trade, it is certainly one of the most important reasons. Both price and quality affect sales of any product and when supply is plentiful enough, buyers gravitate even more toward buying where they can secure better quality. Just as a customer in a grocery store selects the highest quality vegetables from a bin, grain buyers select the highest quality grain available for the same price; and since other countries, especially those without adequate storage, will meet our price, a reputation for lower quality and dirty product caused us to become the world's residual supplier. In recent years, we have been able to sell for cash only what cash buyers could not locate elsewhere.

This bill before us today, H.R. 5407, will not correct all these problems but it will go a long way toward correcting abuses by exporters. Grain standards will still not be as tight as in several exporting countries, but at least exporters will not be permitted to add dust and foreign material out of the surge tank or that has previously been removed from the same or other grain.

For example, U.S. grain standards of the most common grade of U.S. wheat permits 7.5 percent of other grain and foreign material, and such material is added to U.S. wheat so that wheat shipments routinely contain near that maximum. But Canadian standards permit a maximum of less than 4 percent for that grade and they routinely ship wheat that is less than 2 percent other grain and foreign material, and do not add any foreign material or other cheaper grains to take advantage of the tolerance permitted. This means that Canadian wheat at the same price per bushel is cheaper per pound of the product the customer sought and more desirable for other obvious reasons.

Our U.S. standards need to be tightened and should have been under authority to do so administratively. This bill still leaves a need for further perfection but at least we will have prohibited the practice of adding dust and undesirable material for the sole purpose of selling maximum amount of dirt and undesirable material permitted. Foreign purchasers in several countries have told me that they expect some foreign material in grain harvested by machines in the normal course and it is bad enough for shipments to vary widely from hold to hold or ship to ship, but it is inexcusable for undesirable material to have been added. It makes them so angry that they go elsewhere when they can.

Foreign customers typically pay for cargoes they have not seen and order them to arrive on the date needed or when the port can handle the cargo. Unlike domestic buyers, they are dependent on these standards, and cannot reject a cargo and buy from someone else and secure delivery that day or week. Many times the cargo has been loaded and is on the high seas with a "destination unknown" bill of lading when they buy it. They depend on the impartial officials in the selling country for honest weights, honest grading, and description of product.

For many years, remedial action has been avoided by having one study after another. It is long past time to pass some remedial legislation. About 13 years ago, I made a personal investigation at several export points for U.S. grain and was appalled to see corn being loaded which contained rice hulls and other foreign material which had obviously been added, as well as dirt and dust which had been reintroduced after having been extracted at an earlier point. Also, I had received complaints concerning fraudulent weights and stealing of grain at export points where the seller was not present. Following these limited investigations, I received support from the Appropriations Committee to order a special investigation by the Department. That investigation was headed by an Inspector Ryan. His investigation revealed a practice of leaving some grain in grain cars when they were unloaded before they were sent to a salvage or cleaning yard where the grain was accumulated and sold. He also found fraudulent weighing, and these and other facts he uncovered and made available resulted in 126 indictments against 14 grain handlers, led to more than $1 million in fines and numerous criminal prosecutions, and confirmed the need for legislation.

I then introduced the Grain Inspection Amendments Act of 1975, which was passed shortly thereafter, and I believe it cured most of the problems relating to waste and fraud. However, the big international grain companies successfully opposed the provision which would have prohibited the adding of foreign material at export points.

Each Congress the big grain exporters have lobbied in favor of another study as a way of avoiding action, and unfortunately the commodity organizations which should have been supporting this legislation, until very recently, have either been uninterested or in some instances opposed to my bills. Meanwhile, the reputation for U.S. corn, soybeans, wheat, and rice has suffered. Under our system we let private international exporters market our grain and usually the producers and marketing interest coincide. How-

ever, when exporters add foreign material in order to squeese a few extra pennies per unit out of the transactions, it is the producers of the Nation who pay for their greed.

In 1979, the GAO recommended that the Secretary of Agriculture revise U.S. grain standards to better meet end user requirements and in particular to reduce the maximum limitations of foreign material and moisture in corn and soybeans. A 1980 Department of Agriculture task force study into dust explosions in grain elevators recommended that for safety reasons, all grain dust should be removed from the handling system and the reintroduction of collected dust should be prohibited. Reversing its earlier position, USDA supported the passage of my legislation in 1980 during hearings before the Agricuture Subcommittee on Livestock and Grain. Notwithstanding considerable support, this legislation was again sidetracked following heavy lobbying by a few big international grain companies.

The provisions in this bill should have been passed as a part of the 1975 bill, and as the principal sponsor of that bill, I am glad to see this provision finally pass. The 1975 bill made a giant step toward assuring honest weights and honest grading, but the protection against adding dust, dirt, and foreign material was stripped out of it and has been opposed for too long. That delay has cost the U.S. farmers and domestic handlers dearly by hurting our sales, but is better late than never.

I urge a resounding vote of approval for this bill.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the chairman has indicated, this legislation, of which I am a cosponsor and that we are considering today, H.R. 5407, is a bill to improve the quality of U.S. grain shipped overseas. It is a vital and important step, Mr. Speaker, in the process of getting our grain moving again in the world export market.

This legislation is the product of several days of hearings, both in farm country and here in Washington. The first hearing was held in Illinois, where the Committee on Agriculture heard excellent testimony on the quality problems that corn and soybeans have experienced in recent years.

The second hearing was held here in Washington, and it built upon that testimony and led to the introduction of the legislation which we are considering today.

We think that we really have a significant problem in regards to our export market. I think that this is a needed first step.

I want to follow on the comments of my chairman and the distinguished gentleman from Iowa in regard to the efforts in behalf of this bill. This legislation builds upon the work of my friend and colleague, the gentleman from Iowa [Mr. EVANS]. He has introduced several bills on grain quality. He has visited our export facilities, as well as gone overseas to see firsthand the condition of our grain when it arrives in the importing country.

Mr. EVANS, who is a farmer by trade, is to be commended for his efforts in really getting this legislation written and hopefully passed into law.

Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. EVANS].

Mr. EVANS of Iowa. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, it is with the greatest of pleasure that I rise in support of H.R. 5407, the Grain Quality Improvement Act of 1986. I think that it is broadly understood in this country at this point that we have serious problems with our agriculture, that in substantial measure that is due to declining agricultural exports, that we face a number of years of highly competitive markets for our grain, and that in highly competitive markets, the quality of that grain is of extremely great importance.

Given these circumstances, Mr. Speaker, it is almost unbelievable, but true, that at the present time our Grain Standards Act does not even speak to the question of grain quality.

□ 1320

As a matter of fact, the words "grain quality" do not appear even a single time in that act as it is presently written.

What our Grain Standards Act now does say is that we want honest scales, we want honest inspectors, and these we have in abundance. But we also have an unbelievable amount of low quality grain that goes into our export markets, and we are getting more and more complaints.

Why is this? There are a number or reasons. But I want to mention just two.

At the present time, our standards deliberately encourage grain merchants to understate the amount of dirt and trash in our grain. For another, at the present time our Federal Grain Inspection Service has absolutely no authority to prohibit the introduction of trash and dirt into our grain. It is no wonder that our customers complain.

This act takes several substantial steps to correct that situation. For one thing, it makes it clear that from now on it is the policy of the U.S. Government to provide grain of good quality to both domestic and foreign customers. No. 2, it makes it clear that a primary purpose of our grain standard is to correctly state as accurately as practicable the true condition of that grain. No more understating of the amount of trash and dirt that is included in that grain.

Fourth, the act totally prohibits for the first time the addition of dirt and trash to that grain. I would like to say that this is something that my colleague from Iowa, NEAL SMITH, has been strongly advocating for a long time, and I am delighted to see we are finally going to be successful I think in getting that into the law.

Next, the act totally prohibits the reintroduction of dust into the grain once that grain dust has been removed. I think most of us understand that under the OSHA regulations for years we have been removing dust from grain as a safety measure at virtually all of the large commercial elevators in this country, and our grain merchants have been faithfully doing that. But just as faithfully they have been putting that dust back into the grain at the time the grain leaves the elevator. In the future, this would be totally prohibited.

Finally, I will mention the fact that with two very limited exceptions, H.R. 5407 would prohibit the reintroduction of dockage in foreign material once it has been removed from grain.

These are, in my judgment, the major features of this bill. I want to make it clear that these changes will not solve all of the grain quality problems that we face in this country. There are a number of others that the act does not address.

But I would say that virtually all of these that we do not address are very complex, very technical problems, problems on which there are divergent views, not only in the grain industry but among our producers and among our customers, and that there is a need for more time, Mr. Speaker, to address these problems, time for research and development, time for study, time for discussions among producers, grain merchants and our customers. In my judgment, in many instances many of these technical problems do not lend themselves to legislative solutions either now or in the future.

But what this act will do is provide an appropriate legislative base upon which further administrative improvements in our grain standards can and will be made.

In closing, I would only add that this bill has the support of the U.S. Department of Agriculture, and I urge my colleagues to support H.R. 5407.

Mr. ROBERTS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman for his contribution.

Mr. Speaker, the legislation we are considering today, H.R. 5407, a bill to improve the quality of U.S. grain shipped overseas, is a vital and important step in the process of getting U.S.

grain moving again in the world export markets.

This legislation is the product of several days of hearings both in farm country and here in Washington. The first, hearing was a hearing held in Illinois, where the Agriculture Committee heard excellent testimony on the quality problems that corn and soybeans have experienced in recent years. The second hearing held in Washington, DC, built upon that testimony and led to the introduction of the legislation we are considering today, H.R. 5407, which addresses what many of us feel is a significant problem in the grain industry—the adding back of foreign material already removed from grain.

This legislation, builds upon the work of my friend and colleague from Iowa, Congressman COOPER EVANS. Mr. EVANS, has introduced several bills on grain quality, visited our export facilities as well as gone overseas to see first hand the condition of U.S. grain when it arrives in the importing country. Mr. EVANS, who is a farmer by trade, is to be commended for his efforts on getting this legislation written and hopefully passed into law.

Mr. Speaker, grain quality is a front burner issue in farm country.

Farmers rightly insist, the grain that this country sells to be as clean and in as good as condition as when the farmer delivers it to the country elevator. Some have pointed out that the farmer may bear the burden for some of the additional costs that may occur as a result of the passage of this legislation. I would only say that all of us involved in agriculture should be willing to shoulder this burden because of the overwhelming concern and commitment and need to sell a high quality product.

There is little doubt that grain quality has affected our ability to sell in the world export markets. I call my colleagues attention to a telex issued by the Soviet Grain Importing Agency [Exportkleb] and sent to all grain exporters last month. The telex outlined new conditions for grain shipped to the Soviet Union, such as the right of the Soviets to turn down shipments that are contaminated with "any foreign matters such as glass, cement, iron ore, metal parts, rust, ropes, strings, rags, remnants of fumigant," et cetera and the telex further outlined the condition that payment would be made on 95 percent with the balance paid when the quality is determined to be consistent with what the Soviets ordered.

I understand that the telex has caused an uproar in all of the grain exporting countries and that the U.S. grain companies and for that matter other grain companies, and have notified the Soviets that the terms are unreasonable. However, the telex does point out that the issue of grain quality is of concern to our customers. It is also of concern to farmers, Congress and the entire grain trade. For this reason, we should adopt this legislation.

Mr. Speaker, this legislation would prohibit the adding back of foreign material to grain. Just recently, in my home State of Kansas, we had the situation where a farmer-owned cooperative was adding dirt to a shipment of soybeans, simply because the contract allowed up to 20 percent foreign matter. This type of practice is totally unacceptable to the farmer and this legislation we are considering will go a long way to prevent this type of abuse of the grain system.

The major points of the legislation:

No dockage or foreign material, including dust, once removed from grain shall be recombined or added to grain.

Producers, grain merchants, grain processors, or grain exporters will be compensated for a loss of value resulting from changes in grain classification regulations.

Not later than 6 months from enactment the Secretary shall issue final rules regarding insect infestation of grain.

H.R. 5407, is a modest solution to some of the quality problems U.S. grain has been experiencing in recent years. It is not the final answer, but it is a step in the right direction. I urge my colleagues to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. DE LA GARZA. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. BEDELL], chairman of the subcommittee that did tremendous work on this legislation.

Mr. BEDELL. Mr. Speaker, I particularly want to commend those who have done so much work on this particular issue. I would commend my colleague from Iowa, NEAL SMITH, and my other colleague from Iowa, COOPER EVANS, particularly. I appreciate the work of the gentleman from Kansas, PAT ROBERTS, the ranking minority member on the subcommittee for the work he has done in this regard, and I appreciate the cooperation we have had from the gentleman from Texas, Mr. DE LA GARZA, chairman of the full committee.

Mr. Speaker, this is a very modest bill. This goes part way in what I believe we need to do if we are going to address the problems we have at this time in being competitive in international markets.

I have been in business myself. When you are in a competitive market, if you are really going to compete you try to furnish your customers with a product which they would prefer to buy compared to that of your competitors.

At this time, it is no secret that the Canadians clean their wheat so that it is cleaner than the wheat we ship. I see no excuse for that, Mr. Speaker.

The problem I believe is, Mr. Speaker, that we have failed to adjust our thinking to the fact that we are now in a buyers' market instead of a seller's market. We are, indeed, losing sales, as is well documented, in the international market. I believe what we have to do ultimately is give financial incentives to our exporters to see that they provide for the needs of our customers in a better manner than do our competitors from foreign countries.

This is going to be quite a challenge. I think it is a challenge that those that follow me here in the Congress are going to face. I only hope that we do not wait too long to recognize the change that has taken place as we have moved from a sellers' market to a buyers' market, and that we adopt our thinking properly and our policies properly to address that change.

Mr. DE LA GARZA. Mr. Speaker, I yield 2 minutes to the gentleman from Kansas [Mr. GLICKMAN], a distinguished member of our committee.

Mr. GLICKMAN. Mr. Speaker, I rise in strong support of this bill, H.R. 5407, the Grain Quality Improvement Act of 1986. The legislation sends an unequiovocal statement that the grain the United States ships to the world will be the best quality in the world. In today's increasingly competitive grain trade, we need to be sure that our product meets this rigorous test. There is no reason why the United States can't supply the cleanest, purest, most reliable grain in the world. Farmer after farmer, when I am home, ask why is it the United States has problems with grain quality. This bill will help.

Since first enacted in 1917, the Grain Standards Act has remained largely unchanged while the modern technology of grain handling and of grain production have revolutionized American farming. Perhaps the most profound change has been that the world grain market is now a buyers' market. Intense competition between sellers has lowered prices, and U.S. farm policy has ensured that our products will be competitively priced. That same intense competition has placed a new premium on high quality grain, but to date, before this legislation, the Federal Government was handicapping our producers with an outdated set of standards.

In hearings and during visits with our farmers, all of us on the Agriculture Committee have recognized that they consider an affirmative statement that the United States will ship only the highest quality grain to be a top priority. This bill makes that statement by ensuring that no foreign material or dockage can be added back into grain shipments before they leave port. In tightening these standards,

the bill does not hamstring grain handlers with excessive Government regulation. It also ensures that our producers are no longer hamstrung by complaints that we sell dirty, low quality grain.

In addition to setting new Federal guidelines on quality, the bill calls on the Agriculture Department to study ways in which incentives in the market can stimulate increased grain quality. Currently, the Commodity Credit Corporation discounts grain for poor quality but it does not have a system to encourage the delivery to it of clean, high quality grain. This bill will require USDA to study the feasibility of implementing such a system of premiums which, if implemented by CCC, can be a powerful method by which the market provides an incentive for greater quality control of grain throughout the marketing channel.

In the 60 years since enactment of the Grain Standards Act and the implementation of today's grain classifications, technology has also given farmers new varieties of grains. Some of these new strains have been bred for their resistance to certain diseases, for their special ability to adapt to certain growing conditions, and for their yields. For example, the crossing of a Hard Red Winter wheat with a variety of soft wheat has created a new variety, known as Arkan, with extremely good yields. It is rapidly becoming one of the most popular wheat varieties in parts of Oklahoma and Kansas. This particular cross of varieties has the visual appearance of a soft wheat, yet it has the milling characteristics of a hard wheat. Under the grain classification rules now in effect, it has been classed as a soft wheat and as a result farmers have been unfairly and undeservedly penalized as much as 20 to 25 cents per bushel.

The Federal Grain Inspection Service is considering several changes to its classification standards to account for new varieties such as Arkan. With the cooperation of farmers, the industry, and agricultural scientists, work on developing new techniques for measuring the relative hardness and softness in ways other than visual inspection is proceeding with the hope that new rules based on this technology can be proposed in the not too distant future. For the time being, however, farmers and the grain trade face considerable uncertainty about the economic ramifications of FGIS policies.

Those of us from wheat producing areas, including myself and Mr. ROBERTS of Kansas, have been successful in blocking earlier proposed classification changes and have been successful in prevailing on FGIS to implement an interim system of classification ensuring that producers will not be penalized. Also, the 1985 farm bill requires FGIS to report to us semiannually on the progress it is making to develop a new classification system. I am convinced, however, that we need to go further, and this bill includes an amendment I authored to protect farmers, grain processors, and grain exporters from economic loss if FGIS changes classifications.

The amendment provides that, subject to appropriations, the Secretary can compensate farmers, grain processors, grain exporters, and grain merchants for loss in the value of their inventories if FGIS should implement a new classification system which would result in a lowering of the value of their stocks.

For example, in the case of Arkan, FGIS had proposed to class it as Red wheat. The grain trade calculated that such a classification would result in a 25-cent per bushel discount under the price paid for Hard Red Winter wheat. Such a discount would have been unwarranted since Arkan mills and is used for the same purposes as traditional Hard Red Winter wheats. Nonetheless, the uncertainty of the new classification would have caused everyone holding Arkan in inventory huge losses because of this Federal action. The same situation presented itself last harvest when FGIS was grading lots of Arkan as Mixed wheat, a grade traditionally discounted below Hard Red Winter wheat.

All of us concerned about this problem recognize that a new classification system needs to be implemented and we are encouraging FGIS to act as expeditiously as possible. However, in doing so, we want to ensure that farmers and the grain trade are not penalized and do not suffer tremendous economic losses. This amendment will provide the Secretary with the ability to compensate for those losses, thus ensuring that he need not withhold final action on any new classifications for fear of the possible harmful economic consequences. While in authoring the amendment I was most concerned about the situation facing wheat producers. I do not believe that the application of the amendment should be restricted to wheat but that it could apply to all commodities regulated under the act which might be the subject of similar actions. I believe the amendment provides a sensible way to proceed with new classifications without imposing economic hardships on farmers and the grain trade.

In closing, Mr. Speaker, let me reiterate my strong support for the fundamental intent of this legislation and for these two particular provisions. I urge my colleagues to support the bill.

Mr. DASCHLE. Mr. Speaker, I rise in support of H.R. 5407, legislation which will promote U.S. agricultural exports by improving grain quality standards. As a cosponsor of this bill, I am delighted that it has been scheduled for action in time for enactment into law this session.

The problem which this bill addresses—that of dirty grain exported to foreign purchasers—is straightforward. American farmers take great pride in bringing clean grain to market. Yet, their overseas customers do not always receive the same high quality grain because dockage has been added to the shipments. In many cases, foreign buyers cannot really be sure what quality they will receive, and farmers, through no fault of their own, are losing customers and income.

This situation has disturbing implications for farmers struggling to survive the most devastating agricultural depression in recent memory. It also has serious ramifications on our national economy which is besieged by mounting trade deficits.

Recent changes in traditional trading patterns illustrate the magnitude of this problem. According to USDA, U.S. agricultural exports have been declining in value and in volume since 1981. In May, for the first time since records have been kept, the United States experienced a negative agricultural trade balance.

U.S. agricultural exports are facing strong competition from other exporting countries and from production gains by traditional importing countries. Also, a strong dollar, soft world economy, and high real interest rates have made U.S. agricultural exports less affordable in world markets. The international marketplace has become increasingly competitive, and the effect of changed market conditions has been compounded by growing dissatisfaction about the quality of U.S. grain exports.

The record clearly documents these complaints. For example, early last year Egypt turned away five shiploads of moldly United States corn. And, in February, the Chinese received two boatloads of U.S. soybeans in which good soybeans had been mixed with hurricane-damaged soybeans that were so severely discolored they were considered unfit for human consumption.

As U.S. agricultural exports decline and reports of foreign dissatisfaction with the quality of our grain exports increase, South Dakota farmers ask me daily why we allow dirty grain out of our ports. That is a very legitimate question.

This is not a new problem. Nor is it a problem that the House of Representatives is considering today for the first time.

The House Agriculture Committee and the full House of Representatives, addressed the problem of dirty grain in the 1985 farm bill. In fact, much of the language of the bill we are considering today was contained in the House-passed version of the 1985 farm bill, only to be dropped in conference with the Senate.

The House also addressed this issue when it considered the omnibus trade bill (H.R. 4800) last spring. This legislation remains bottled up in committee in the Senate.

Mr. Speaker, the House is on record concerning the importance of cleaning up of our grain. It has passed legislation twice in the last year which addresses the problem. Yet, each initiative has been sidetracked in the Senate.

Today we present a new vehicle for solving this problem. Rather than including dirty grain language in broader legislation, we offer a bill which deals exclusively with this issue.

The problem of dirty grain arises when dockage and other foreign materials are removed from grains as they are cleaned, only to be added back with the grain later to increase the volume of grain shipped. H.R. 5407 would end this practice by prohibiting the recombination of dockage or foreign materials, including dust, in any grains marketed in the United States or exported abroad.

The bill contains several exceptions from this general prohibition. Exceptions are made for insecticides and dust suppressants. The bill also allows the addition of any foreign material that the Agriculture Department determines to be in the interests of grain producers but which does not lessen overall grain quality. The adding back of nongrain material will still allow the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture, and for the continued separate marketing of dockage as feedstocks for livestock, poultry, and fish.

H.R. 5407 provides that when a grain producer, merchant, processor, or exporter can show that a loss of value resulted from a change in official Government grain classifications, the Agriculture Department shall compensate the injured party for the loss. The bill also requires that within 6 months, the Federal Grain Inspection Service must issue final regulations to improve grain inspection procedures and standards to more accurately reflect the true levels of insect infestation in grains.

Mr. Speaker, H.R. 5407 will make sure that the quality of our grain exports meets legitimate expectations by tightening up grain standards. This is a necessary step, and I urge adoption of this bill.

However, tighter standards alone will not be enough. Their enforcement must also be strengthened. New standards will not be effective if the Federal Grain Inspection Service does not aggressively enforce existing criminal and administrative penalties for violations.

The enactment of H.R. 5407 and stronger enforcement of its provisions will strengthen world buyers' confidence in the quality of American grain. This dual approach will help our farmers. It will help our balance of trade. And, it will help our Nation's economy.

□ 1330

Mr. DE LA GARZA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. DE LA GARZA] that the House suspend the rules and pass the bill, H.R. 5407, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the United States Grain Standards Act to encourage the provision of grain of high quality to both domestic and foreign buyers, to better define the purposes of the official United States standards for grain, to provide for improved regulation of dockage and foreign material in grain, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5407, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PARLIAMENTARY INQUIRY

Mr. GEKAS. Mr. Speaker, I have a parliamentary inquiry.

The Speaker pro tempore. The gentleman will state it.

Mr. GEKAS. Mr. Speaker, listed on the agenda for today is No. 11, the hate crimes bill. The gentleman from Kansas [Mr. GLICKMAN] and I are vitally interested in proceeding with this, but there is no Member from the subcommittee that had jurisdiction over this bill to present the bill.

The point of parliamentary inquiry that I am making, Mr. Speaker, is, under a unanimous-consent request posed by this Member, could the body entertain this bill if presented by any member of the Committee on the Judiciary?

Mr. GLICKMAN. Mr. Speaker, will the gentleman yield?

Mr. GEKAS. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Speaker, I have talked to the gentleman from Pennsylvania [Mr. GEKAS] about this. This bill is a bill that I am a sponsor of, so I am interested in seeing it move.

I am told that the gentleman from Texas [Mr. BYRANT], a member of the subcommittee, is the one who has been designated by the chairman of the subcommittee to handle the bill.

Mr. GEKAS. I understand.

Mr. GLICKMAN. He should be here fairly soon, Mr. Speaker, and I do not believe that the bill will be prejudiced. I think it can be heard at any time that he comes. Is that not correct?

Mr. GEKAS. Mr. Speaker, if I may recapture my time, this is a burning question in my mind, and has been ever since I have been a Member of Congress.

I want to know why it is impossible for us to proceed with a suspension bill if, under unanimous consent, we can gain the right to have any member of the committee present a bill which is routine in nature, and which has no substantial opposition, and which can clear up the agenda faster than we normally can accomplish around here.

The SPEAKER pro tempore (Mr. HOYER). The Chair appreciates the gentleman's burning interest in this legislation. The Chair has the discretion whom to recognize for a motion to suspend the rules, and is exercising that discretion, because we do understand that the gentleman who is charged with responsibility by the committee to handle the bill on the floor will be here shortly.

So the Speaker is simply exercising his discretion to try to give the gentleman that opportunity to get to the floor.

Mr. GEKAS. That is fine with me, Mr. Speaker. Am I to understand, then, that the answer to my parliamentary inquiry is that the Chair has first the discretion to do so and secondly the question is. Could a Member from the floor gain unanimous consent to proceed as follows?

The SPEAKER pro tempore. The Chair will decline to answer that question at this point in time, and simply inform the Member that the Chair, at this time, is not exercising his discretion to recognize another Member.

Mr. GEKAS. We would request, Mr. Speaker, the gentleman from Kansas [Mr. GLICKMAN] and I, that this particular bill be postponed until later in the day until we gather our forces.

The SPEAKER pro tempore. The Chair has that discretion, and the Chair wants to assure the gentleman that the Chair intends to have the gentlemen from Pennsylvania and Kansas present at the time this bill is considered.

Mr. GEKAS. I thank the Chair.

EDUCATION OF THE HANDICAPPED ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5520) to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that act, to authorize an early intervention program under that act for handicapped infants and toddlers and their families, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5520

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Education of the Handicapped Act Amendments of 1986".

(b) REFERENCE.—References in this Act to "the Act" are references to the Education of the Handicapped Act.

TITLE I—HANDICAPPED INFANTS AND TODDLERS

SEC. 101. ADDITION OF A NEW PART RELATING TO HANDICAPPED INFANTS AND TODDLERS.

(a) AMENDMENT.—The Act is amended by inserting after the part added by section 316 the following new part:

"PART H—HANDICAPPED INFANTS AND TODDLERS

"FINDINGS AND POLICY

"SEC. 671. (a) FINDINGS.—The Congress finds that there is an urgent and substantial need—

"(1) to enhance the development of handicapped infants and toddlers and to minimize their potential for developmental delay,

"(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after handicapped infants and toddlers reach school age,

"(3) to minimize the likelihood of institutionalization of handicapped individuals and maximize the potential for their independent living in society, and

"(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with handicaps.

"(b) POLICY.—It is therefore the policy of the United States to provide financial assistance to States—

"(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for handicapped infants and toddlers and their families,

"(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage), and

"(3) to enhance its capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to handicapped infants, toddlers, and their families.

"DEFINITIONS

"SEC. 672. As used in this part—

"(1) The term 'handicapped infants and toddlers' means individuals from birth to age 2, inclusive, who need early intervention services because they—

"(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: Cognitive development, physical development, language and speech development, psychosocial development, or self-help skills, or

"(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay.

Such term may also include, at a State's discretion, individuals from birth to age 2, inclusive, who are at risk of having substantial developmental delays if early intervention services are not provided.

"(2) 'Early intervention services' are developmental services which—

"(A) are provided under public supervision,

"(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees,

"(C) are designed to meet a handicapped infant's or toddler's developmental needs in any one or more of the following areas:

"(i) physical development,

"(ii) cognitive development,

"(iii) language and speech development,

"(iv) psycho-social development, or

"(v) self-help skills,

"(D) meet the standards of the State, including the requirements of this part,

"(E) include—

"(i) family training, counseling, and home visits,

"(ii) special instruction,

"(iii) speech pathology and audiology,

"(iv) occupational therapy,

"(v) physical therapy,

"(vi) psychological services,

"(vii) case management services,

"(viii) medical services only for diagnostic or evaluation purposes,

"(ix) early identification, screening, and assessment services, and

"(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services,

"(F) are provided by qualified personnel, including—

"(i) special educators,

"(ii) speech and language pathologists and audiologists,

"(iii) occupational therapists,

"(iv) physical therapists,

"(v) psychologists,

"(vi) social workers,

"(vii) nurses, and

"(viii) nutritionists, and

"(G) are provided in conformity with an individualized family service plan adopted in accordance with section 677.

"(3) The term 'developmental delay' has the meaning given such term by a State under section 676(b)(1).

"(4) The term 'Council' means the State Interagency Coordinating Council established under section 682.

"GENERAL AUTHORITY

"SEC. 673. The Secretary shall, in accordance with this part, make grants to States (from their allocations under section 684) to assist each State to develop a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for handicapped infants and toddlers and their families.

"GENERAL ELIGIBILITY

"SEC. 674. In order to be eligible for a grant under section 673 for any fiscal year, a State shall demonstrate to the Secretary (in its application under section 678) that the State has established a State Interagency Coordinating Council which meets the requirements of section 682.

"CONTINUING ELIGIBILITY

"SEC. 675. (a) FIRST TWO YEARS.—In order to be eligible for a grant under section 673 for the first or second year of a State's participation under this part, a State shall include in its application under section 678 for that year assurances that funds received under section 673 shall be used to assist the State to plan, develop, and implement the statewide system required by section 676.

"(b) THIRD AND FOURTH YEAR.—(1) In order to be eligible for a grant under section 673 for the third or fourth year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that—

"(A) the State has adopted a policy which incorporates all of the components of a statewide system in accordance with section 676 or obtained a waiver from the Secretary under paragraph (2),

"(B) funds shall be used to plan, develop, and implement the statewide system required by section 676, and

"(C) such statewide system will be in effect no later than the beginning of the fourth year of the State's participation under section 673, except that with respect to section 676(b)(4), a State need only conduct multidisciplinary assessments, develop individualized family service plans, and make available case management services.

"(2) Notwithstanding paragraph (1), the Secretary may permit a State to continue to receive assistance under section 673 during such third year even if the State has not adopted the policy required by paragraph (1)(A) before receiving assistance if the State demonstrates in its application—

"(A) that the State has made a good faith effort to adopt such a policy,

"(B) the reasons why it was unable to meet the timeline and the steps remaining before such a policy will be adopted, and

"(C) an assurance that the policy will be adopted and go into effect before the fourth year of such assistance.

"(c) FIFTH AND SUCCEEDING YEARS.—In order to be eligible for a grant under section 673 for a fifth and any succeeding year of a State's participation under this part, a State shall include in its application under section 678 for that year information and assurances demonstrating to the satisfaction of the Secretary that the State has in effect the statewide system required by section 676 and a description of services to be provided under section 676(b)(2).

"(d) EXCEPTION.—Notwithstanding subsections (a) and (b), a State which has in effect a State law, enacted before September 1, 1986, that requires the provision of free appropriate public education to handicapped children from birth through age 2, inclusive, shall be eligible for a grant under section 673 for the first through fourth years of a State's participation under this part.

"REQUIREMENTS FOR STATEWIDE SYSTEM

"SEC. 676. (a) IN GENERAL.—A statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all handicapped infants and toddlers and their families shall include the minimum components under subsection (b).

"(b) MINIMUM COMPONENTS.—The statewide system required by subsection (a) shall include, at a minimum—

"(1) a definition of the term 'developmentally delayed' that will be used by the State in carrying out programs under this part,

"(2) timetables for ensuring that appropriate early intervention services will be available to all handicapped infants and toddlers in the State before the beginning of the fifth year of a State's participation under this part,

"(3) a timely, comprehensive, multidisciplinary evaluation of the functioning of each handicapped infant and toddler in the State and the needs of the families to appropriately assist in the development of the handicapped infant or toddler,

"(4) for each handicapped infant and toddler in the State, an individualized family service plan in accordance with section 677, including case management services in accordance with such service plan,

"(5) a comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines, and provides for the participation by primary referral sources,

"(6) a public awareness program focusing on early identification of handicapped infants and toddlers,

"(7) a central directory which includes early intervention services, resources, and experts available in the State and research

and demonstration projects being conducted in the State,

"(8) a comprehensive system of personnel development,

"(9) a single line of responsibility in a lead agency designated or established by the Governor for carrying out—

"(A) the general administration, supervision, and monitoring of programs and activities receiving assistance under section 673 to ensure compliance with this part,

"(B) the identification and coordination of all available resources within the State from Federal, State, local and private sources,

"(C) the assignment of financial responsibility to the appropriate agency,

"(D) the development of procedures to ensure that services are provided to handicapped infants and toddlers and their families in a timely manner pending the resolution of any disputes among public agencies or service providers,

"(E) the resolution of intra- and interagency disputes, and

"(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination,

"(10) a policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements,

"(11) a procedure for securing timely reimbursement of funds used under this part in accordance with section 681(a),

"(12) procedural safeguards with respect to programs under this part as required by section 680, and

"(13) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including—

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which such personnel are providing early intervention services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State, and

"(14) a system for compiling data on the numbers of handicapped infants and toddlers and their families in the State in need of appropriate early intervention services (which may be based on a sampling of data), the numbers of such infants and toddlers and their families served, the types of services provided (which may be based on a sampling of data), and other information required by the Secretary.

"INDIVIDUALIZED FAMILY SERVICE PLAN

"SEC. 677. (a) ASSESSMENT AND PROGRAM DEVELOPMENT.—Each handicapped infant or toddler and the infant or toddler's family shall receive—

"(1) a multidisciplinary assessment of unique needs and the identification of services appropriate to meet such needs, and

"(2) a written individualized family service plan developed by a multidisciplinary team, including the parent or guardian, as required by subsection (d).

"(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6 month-intervals (or more often where appropriate based on infant and toddler and family needs).

"(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parent's consent, early intervention services may commence prior to the completion of such assessment.

"(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

"(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, language and speech development, psycho-social development, and self-help skills, based on acceptable objective criteria,

"(2) a statement of the family's strengths and needs relating to enhancing the development of the family's handicapped infant or toddler,

"(3) a statement of the major outcomes expected to be achieved for the infant and toddler and the family, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the outcomes are being made and whether modifications or revisions of the outcomes or services are necessary,

"(4) a statement of specific early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and the method of delivering services,

"(5) the projected dates for initiation of services and the anticipated duration of such services,

"(6) the name of the case manager from the profession most immediately relevant to the infant's and toddler's or family's needs who will be responsible for the implementation of the plan and coordination with other agencies and persons, and

"(7) the steps to be taken supporting the transition of the handicapped toddler to services provided under part B to the extent such services are considered appropriate.

"STATE APPLICATION AND ASSURANCES

"SEC. 678. (a) APPLICATION.—Any State desiring to receive a grant under section 673 for any year shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require by regulation. Such an application shall contain—

"(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 673,

"(2) information demonstrating eligibility of the State under section 674,

"(3) the information or assurances required to demonstrate eligibility of the State for the particular year of participation under section 675, and

"(4)(A) information demonstrating that the State has provided (i) public hearings, (ii) adequate notice of such hearings, and (iii) an opportunity for comment to the general public before the submission of such application and before the adoption by the State of the policies described in such application, and (B) a summary of the public comments and the State's responses,

"(5) a description of the uses for which funds will be expended in accordance with this part and for the fifth and succeeding fiscal years a description of the services to be provided,

"(6) a description of the procedure used to ensure an equitable distribution of resources made available under this part among all geographic areas within the State, and

"(7) such other information and assurances as the Secretary may reasonably require by regulation.

"(b) STATEMENT OF ASSURANCES.—Any State desiring to receive a grant under section 673 shall file with the Secretary a statement at such time and in such manner as the Secretary may reasonably require by regulation. Such statement shall—

"(1) assure that funds paid to the State under section 673 will be expended in accordance with this part,

"(2) contain assurances that the State will comply with the requirements of section 681,

"(3) provide satisfactory assurance that the control of funds provided under section 673, and title to property derived therefrom, shall be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property,

"(4) provide for (A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part, and (B) keeping such records and affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports and proper disbursement of Federal funds under this part,

"(5) provide satisfactory assurance that Federal funds made available under section 673 (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for handicapped infants and toddlers and their families and in no case to supplant such State and local funds,

"(6) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under section 673 to the State, and

"(7) such other information and assurances as the Secretary may reasonably require by regulation.

"(c) APPROVAL OF APPLICATION AND ASSURANCES REQUIRED.—No State may receive a grant under section 673 unless the Secretary has approved the application and statement of assurances of that State. The Secretary shall not disapprove such an application or statement of assurances unless the Secretary determines, after notice and opportunity for a hearing, that the application or statement of assurances fails to comply with the requirements of this section.

"USES OF FUNDS

"SEC. 679. In addition to using funds provided under section 673 to plan, develop, and implement the statewide system required by section 676, a State may use such funds—

"(1) for direct services for handicapped infants and toddlers that are not otherwise provided from other public or private sources, and

"(2) to expand and improve on services for handicapped infants and toddlers that are otherwise available.

"PROCEDURAL SAFEGUARDS

"SEC. 680. The procedural safeguards required to be included in a statewide system

under section 676(b)(12) shall provide, at a minimum, the following:

"(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

"(2) The right to confidentiality of personally identifiable information.

"(3) The opportunity for parents and a guardian to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

"(4) Procedures to protect the rights of the handicapped infant and toddlers whenever the parents or guardian of the child are not known or unavailable or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency providing services) to act as a surrogate for the parents or guardian.

"(5) Written prior notice to the parents or guardian of the handicapped infant or toddler whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change the identification, evaluation, placement, or the provision of appropriate early intervention services to the handicapped infant or toddler.

"(6) Procedures designed to assure that the notice required by paragraph (5) fully informs the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

"(7) During the pendency of any proceeding or action involving a complaint, unless the State agency and the parents or guardian otherwise agree, the child shall continue to receive the appropriate early intervention services currently being provided or if applying for initial services shall receive the services not in dispute.

"PAYOR OF LAST RESORT

"SEC. 681. (a) NONSUBSTITUTION.—Funds provided under section 673 may not be used to satisfy a financial commitment for services which would have been paid for from another public or private source but for the enactment of this part, except that whenever considered necessary to prevent the delay in the receipt of appropriate early intervention services by the infant or toddler or family in a timely fashion, funds provided under section 673 may be used to pay the provider of services pending reimbursement from the agency which has ultimate responsibility for the payment.

"(b) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for handicapped infants and toddlers) within the State.

"STATE INTERAGENCY COORDINATING COUNCIL

"SEC. 682. (a) ESTABLISHMENT.—(1) Any State which desires to receive financial assistance under section 673 shall establish a State Interagency Coordinating Council composed of 15 members.

"(2) The Council and the chairperson of the Council shall be appointed by the Governor. In making appointments to the Council, the Governor shall ensure that the membership of the Council reasonably represents the population of the State.

"(b) COMPOSITION.—The Council shall be composed of—

"(1) at least 3 parents of handicapped infants or toddlers or handicapped children aged 3 through 6, inclusive,

"(2) at least 3 public or private providers of early intervention services,

"(3) at least one representative from the State legislature,

"(4) at least one person involved in personnel preparation, and

"(5) other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to handicapped infants and toddlers and their families and others selected by the Governor.

"(c) MEETINGS.—The Council shall meet at least quarterly and in such places as it deems necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

"(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the Council may prepare and approve a budget using funds under this part to hire staff, and obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

"(e) FUNCTIONS OF COUNCIL.—The Council shall—

"(1) advise and assist the lead agency designated or established under section 676(b)(9) in the performance of the responsibilities set out in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements,

"(2) advise and assist the lead agency in the preparation of applications and amendments thereto, and

"(3) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for handicapped infants and toddlers and their families operated within the State.

"(f) CONFLICT OF INTEREST.—No member of the Council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"(g) USE OF EXISTING COUNCILS.—To the extent that a State has established a Council before September 1, 1986, that is comparable to the Council described in this section, such Council shall be considered to be in compliance with this section. Within 4 years after the date the State accepts funds under section 673, such State shall establish a council that complies in full with this section.

"FEDERAL ADMINISTRATION

"SEC. 683. Sections 616, 617, and 620 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

"(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 676(b)(9),

"(2) any reference to the education of handicapped children and the education of all handicapped children and the provision of free public education to all handicapped children shall be deemed to be a reference to the provision of services to handicapped infants and toddlers in accordance with this part, and

"(3) any reference to local educational agencies and intermediate educational agencies shall be deemed to be a reference to local service providers under this part.

"ALLOCATION OF FUNDS

"SEC. 684. (a) From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve 1 percent for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs.

"(b)(1) The Secretary shall make payments to the Secretary of the Interior according to the need for such assistance for the provision of early intervention services to handicapped infants and toddlers and their families on reservations serviced by the elementary and secondary schools operated for Indians by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for that fiscal year.

"(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which meets the requirements of section 678 and which is approved by the Secretary. Section 616 shall apply to any such application.

"(c)(1) For each of the fiscal years 1987 through 1991 from the funds remaining after the reservation and payments under subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States, except that no State shall receive less than 0.5 percent of such remainder.

"(2) For the purpose of paragraph (1)—

"(A) the terms 'infants' and 'toddlers' mean children from birth to age 2, inclusive, and

"(B) the term 'State' does not include the jurisdictions described in subsection (a).

"(d) If any State elects not to receive its allotment under subsection (c)(1), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 685. There are authorized to be appropriated to carry out this part $50,000,000 for fiscal year 1987, $75,000,000 for fiscal year 1988, and such sums as may be necessary for each of the 3 succeeding fiscal years.".

(b) STUDY OF SERVICES; COORDINATION OF ACTIONS.—(1) The Secretary of Education and the Secretary of Health and Human Services shall conduct a joint study of Federal funding sources and services for early intervention programs currently available and shall jointly act to facilitate interagency coordination of Federal resources for such programs and to ensure that funding available to handicapped infants, toddlers, children, and youth from Federal programs, other than programs under the Education of

the Handicapped Act, is not being withdrawn or reduced.

(2) Not later than 18 months after the date of the enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall submit a joint report to the Congress describing the findings of the study conducted under paragraph (1) and describing the joint action taken under that paragraph.

TITLE II—HANDICAPPED CHILDREN AGED 3 TO 5

SEC. 201. PRE-SCHOOL GRANTS.

(a) AMENDMENT.—Section 619 of the Act (20 U.S.C. 1419) is amended to read as follows:

"PRE-SCHOOL GRANTS

"SEC. 619. (a)(1) For fiscal years 1987 through 1989 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for such fiscal year) the Secretary shall make a grant to any State which—

"(A) has met the eligibility requirements of section 612,

"(B) has a State plan approved under section 613, and

"(C) provides special education and related services to handicapped children aged three to five, inclusive.

"(2)(A) For fiscal year 1987 the amount of a grant to a State under paragraph (1) may not exceed—

"(i) $300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), or

"(ii) if the amount appropriated under subsection (e) exceeds the product of $300 and the total number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3)—

"(I) $300 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3), plus

"(II) an amount equal to the portion of the appropriation available after allocating funds to all States under subclause (I) (the excess appropriation) divided by the estimated increase, from the preceding fiscal year, in the number of handicapped children aged three to five, inclusive, who will be receiving special education and related services in all States multiplied by the estimated number of such children in such State.

"(B) For fiscal year 1988, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $400 instead of $300.

"(C) For fiscal year 1989, funds shall be distributed in accordance with clause (i) or (ii) of paragraph (2)(A), except that the amount specified therein shall be $500 instead of $300.

"(D) If the Secretary makes a grant under paragraph (1) for fiscal year 1990, the amount of a grant to a State under such paragraph may not exceed $1,000 per handicapped child aged three to five, inclusive, who received special education and related services in such State as determined under section 611(a)(3).

"(E) If the actual number of additional children served in a fiscal year differs from the estimate made under clause (ii)(II) of the applicable subparagraph, subparagraph (A)(ii)(II), the Secretary shall adjust (upwards or downwards) a State's allotment in the subsequent fiscal year.

"(F)(i) The amount of a grant under subparagraph (A), (B), or (C) to any State for a fiscal year may not exceed $3,800 per estimated handicapped child aged three to five, inclusive, who will be receiving or handicapped child, age three to five, inclusive, who is receiving special education and related services in such State.

"(ii) If the amount appropriated under subsection (e) for any fiscal year exceeds the amount of grants which may be made to the States for such fiscal year, the excess amount appropriated shall remain available for obligation under this section for 2 succeeding fiscal years.

"(3) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(b)(1) For fiscal year 1990 (or fiscal year 1991 if required by paragraph (2)) and fiscal years thereafter the Secretary shall make a grant to any State which—

"(A) has met the eligibility requirements of section 612, and

"(B) has a State plan approved under section 613 which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all handicapped children aged three to five, inclusive.

"(2) The Secretary may make a grant under paragraph (1) only for fiscal year 1990 and fiscal years thereafter, except that if—

"(A) the aggregate amount that was appropriated under subsection (e) for fiscal years 1987, 1988, and 1989 was less than $656,000,000, and

"(B) the amount appropriated for fiscal year 1990 under subsection (e) is less than $306,000,000,

the Secretary may not make a grant under paragraph (1) until fiscal year 1991 and shall make a grant under subsection (a)(1) for fiscal year 1990.

"(3) The amount of any grant to any State under paragraph (1) for any fiscal year may not exceed $1,000 for each handicapped child in such State aged three to five, inclusive.

"(4) To receive a grant under paragraph (1) a State shall make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(c)(1) For fiscal year 1987, a State which receives a grant under subsection (a)(1) shall—

"(A) distribute at least 70 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

"(B) use not more than 25 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

"(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

"(2) For fiscal years beginning after fiscal year 1987, a State which receives a grant under subsection (a)(1) or (b)(1) shall—

"(A) distribute at least 75 percent of such grant to local educational agencies and intermediate educational units in such State in accordance with paragraph (3), except that in applying such section only handicapped children aged three to five, inclusive, shall be considered,

"(B) use not more than 20 percent of such grant for the planning and development of a comprehensive delivery system for which a grant could have been made under section 623(b) in effect through fiscal year 1987 and for direct and support services for handicapped children, and

"(C) use not more than 5 percent of such grant for administrative expenses related to the grant.

"(3) From the amount of funds available to local educational agencies and intermediate educational units in any State under this section, each local educational agency or intermediate educational unit shall be entitled to—

"(A) an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(i) or subsection (a)(2)(A)(ii)(I), as the case may be, as the number of handicapped children aged three to five, inclusive, who received special education and related services as determined under section 611(a)(3) in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to five, inclusive, who received special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section, and

"(B) to the extent funds are available under subsection (a)(2)(A)(ii)(II), an amount which bears the same ratio to the amount available under subsection (a)(2)(A)(ii)(II) as the estimated number of additional handicapped children aged three to five, inclusive, who will be receiving special education and related services in such local educational agency or intermediate educational unit bears to the aggregate number of handicapped children aged three to five, inclusive, who will be receiving special education and related services in all local educational agencies and intermediate educational units in the State entitled to funds under this section.

"(d) If the sums appropriated under subsection (e) for any fiscal year for making payments to States under subsection (a)(1) or (b)(1) are not sufficient to pay in full the maximum amounts which all States may receive under such subsection for such fiscal year, the maximum amounts which all States may receive under such subsection for such fiscal year shall be ratably reduced by first ratably reducing amounts computed under the excess appropriation provision of subsection (a)(2)(A)(ii)(II). If additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, the reduced maximum amounts shall be increased on the same basis as they were reduced.

"(e) For grants under subsections (a)(1) and (b)(1) there are authorized to be appropriated such sums as may be necessary.".

(b) CONFORMING AMENDMENTS.—

(1) Section 611(a)(1)(A) of the Act (20 U.S.C. 1411(a)(1)(A)) is amended to read as follows:

"(A) the number of handicapped children aged 3-5, inclusive, in a State who are receiving special education and related services as determined under paragraph (3) if the State is eligible for a grant under section 619 and the number of handicapped children aged 6-21, inclusive, in a State who are receiving special education and related services as so determined;".

(2)(A) Section 611(g)(1) of the Act is amended by striking out "this part" each

place it occurs and inserting in lieu thereof "subsection (a)".

(B) Section 611(g)(1) of the Act is amended by inserting "under subsection (h)" after "appropriated".

(C) Section 611(g)(2) of the Act is amended by striking out "this part" the first place it occurs and inserting in lieu thereof "this section".

(3) Section 611 of the Act is amended by adding at the end the following:

"(h) For grants under subsection (a) there are authorized to be appropriated such sums as may be necessary.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect with respect to the school year 1987-1988.

SEC. 202. ELIGIBILITY FOR FINANCIAL ASSISTANCE.

Part A of the Act is amended by adding at the end the following:

"ELIGIBILITY FOR FINANCIAL ASSISTANCE

"SEC. 609. Effective for fiscal years for which the Secretary may make grants under section 619(b)(1), no State or local educational agency or intermediate educational unit or other public institution or agency may receive a grant under parts C through G which relate exclusively to programs, projects, and activities pertaining to children aged three to five, inclusive, unless the State is eligible to receive a grant under section 619(b)(1).".

SEC. 203. SHARING OF COSTS OF FREE APPROPRIATE PUBLIC EDUCATION.

(a) ELIGIBILITY FOR SECTION 611 GRANTS.—Section 612(6) of the Act (20 U.S.C. 1412(6)) is amended by adding at the end the following: "This paragraph shall not be construed to limit the responsibility of agencies other than educational agencies in a State from providing or paying for some or all of the costs of a free appropriate public education to be provided handicapped children in the State.".

(b) STATE PLANS.—

(1) Section 613(a)(9) of the Act (20 U.S.C. 1413(a)(9)) is amended to read as follows:

"(9) provide satisfactory assurance that Federal funds made available under this part (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to handicapped children under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Secretary may waive in part the requirement of this clause if he concurs with the evidence provided by the State;".

(2) Section 613(a) of the Act is amended by striking out "and" at the end of paragraph (11), by striking out the period at the end of paragraph (12) and inserting in lieu thereof a semicolon, and by adding at the end the following:

"(13) set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other appropriate State and local agencies to (A) define the financial responsibility of each agency for providing handicapped children and youth with free appropriate public education, and (B) resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement.".

(3) Section 613 of the Act is amended by adding at the end the following:

"(e) This Act shall not be construed to permit a State to reduce medical and other assistance available or to alter eligibility under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for handicapped children within the State; and".

TITLE III—DISCRETIONARY PROGRAMS

SEC. 301. REGIONAL RESOURCE CENTERS.

Section 621 of the Act (20 U.S.C. 1421) is amended to read as follows:

"REGIONAL RESOURCE AND FEDERAL CENTERS

"SEC. 621. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, institutions of higher education, public agencies, private nonprofit organizations, State educational agencies, or combinations of such agencies or institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State educational agencies to local educational agencies and to other appropriate State agencies providing early intervention services. The services provided by a regional resource center shall be consistent with the priority needs identified by the States served by the center and the findings of the Secretary in monitoring reports prepared by the Secretary under section 617 of the Act. Each regional resource center established or operated under this section shall—

"(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth and early intervention services to handicapped infants and toddlers and their families,

"(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families and early intervention services to handicapped infants and toddlers and their families,

"(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this subsection and other relevant projects conducted by the Department of Education,

"(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped infants, toddlers, children, and youth, and

"(5) provide information to and training for agencies, institutions, and organizations, regarding techniques and approaches for submitting applications for grants, contracts, and cooperative agreements under this part and parts D through G.

"(b) In determining whether to approve an application for a project under subsection (a), the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a).

"(c) Each regional resource center shall report a summary of materials produced or developed and the summaries reported shall be included in the annual report to Congress required under section 618.

"(d) The Secretary may establish one coordinating technical assistance center focusing on national priorities established by the Secretary to assist the regional resource centers in the delivery of technical assistance, consistent with such national priorities.

"(e) Before using funds made available in any fiscal year to carry out this section for purposes of subsection (d), not less than the amount made available for this section in the previous fiscal year shall be made available for regional resource centers under subsection (a) and in no case shall more than $500,000 be made available for the center under subsection (d).".

SEC. 302. SERVICES FOR DEAF-BLIND CHILDREN AND YOUTH.

Section 622 is amended by adding at the end thereof the following new subsections:

"(e) The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, public or nonprofit private agencies, institutions, or organizations for the development and operation of extended school year demonstration programs for severely handicapped children and youth, including deaf-blind children and youth.

"(f) The Secretary may make grants to, or enter into contracts or cooperative agreements with, the entities under section 624(a) for the purposes in such section.".

SEC. 303. EARLY EDUCATION FOR HANDICAPPED CHILDREN.

Section 623 of the Act (20 U.S.C. 1423) is amended to read as follows:

"EARLY EDUCATION FOR HANDICAPPED CHILDREN

"SEC. 623. (a)(1) The Secretary may arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of such children, (2) encourage the participation of the parents of such children in the development and operation of any such program, and (3) acquaint the community to be served by any such program with the problems and potentialities of such children, (4) offer training about exemplary models and practices to State and local personnel who provide services to handicapped children from birth through eight, and (5) support the adaption of exemplary models and practices in States and local communities.

"(2) Programs authorized by paragraph (1) shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served and with similar programs operated by other public agencies in such community.

"(3) As much as is feasible, programs assisted under paragraph (1) shall be geographically dispersed throughout the Nation in urban as well as rural areas.

"(4)(A) Except as provided in subparagraph (B), no arrangement under paragraph (1) shall provide for the payment of more than 90 percent of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including plant, equipment, and services.

"(B) The Secretary may waive the requirement of subparagraph (A) in the case of an arrangement entered into under paragraph (1) with governing bodies of Indian tribes located on Federal or State reservations and with consortia of such bodies.

"(b) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to handicapped children.

"(c) The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations for the establishment of early childhood research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for handicapped children and their families.

"(d) The Secretary may make grants to, enter into contracts or cooperative agreements under this section with, such organizations or institutions, as are determined by the Secretary to be appropriate, for research to identify and meet the full range of special needs of handicapped children and for training of personnel for programs specifically designed for handicapped children.

"(e) At least one year before the termination of a grant, contract, or cooperative agreement made or entered into under subsections (b) and (c), the Secretary shall publish in the Federal Register a notice of intent to accept application for such a grant, contract, or cooperative agreement contingent on the appropriation of sufficient funds by Congress.

"(f) For purposes of this section the term 'handicapped children' includes children from birth through eight years of age.".

SEC. 304. PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN.

Section 624 of the Act (20 U.S.C. 1424) is amended to read as follows:

"PROGRAMS FOR SEVERELY HANDICAPPED CHILDREN

"SEC. 624. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, such organizations or institutions, as are determined by the Secretary to be appropriate, to address the needs of severely handicapped children and youth, for—

"(1) research to identify and meet the full range of special needs of such handicapped children and youth,

"(2) the development or demonstration of new, or improvements in, existing, methods, approaches, or techniques which would contribute to the adjustment and education of such handicapped children and youth,

"(3) training of personnel for programs specifically designed for such children, and

"(4) dissemination of materials and information about practices found effective in working with such children and youth.

"(b) In making grants and contracts under subsection (a), the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this Act.

"(c) To the extent feasible, programs, authorized by subsection (a) shall be geographically dispersed throughout the nation in urban and rural areas.".

SEC. 305. POSTSECONDARY EDUCATION PROGRAMS.

Section 625 is amended to read as follows:

"POSTSECONDARY EDUCATION

"SEC. 625. (a)(1) The Secretary may make grants to, or enter into contracts with, State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

"(2) In making grants or contracts on a competitive basis under paragraph (1), the Secretary shall give priority consideration to 4 regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

"(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals, and

"(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

"(3) Persons operating programs for handicapped persons under a grant or contract under paragraph (1) must coordinate their efforts with and disseminate information about their activities to the clearinghouse on postsecondary programs established under section 633(b).

"(4) At least one year before the termination of a grant or contract with any of the 4 regional centers for the deaf, the Secretary shall publish in the Federal Register a notice of intent to accept application for such grant or contract, contingent on the appropriation of sufficient funds by Congress.

"(5) To the extent feasible, programs authorized by paragraph (1) shall be geographically dispersed throughout the nation in urban and rural areas.

"(6) Of the sums made available for programs under paragraph (1), not less than $2,000,000 shall first be available for the 4 regional centers for the deaf.

"(b) For the purposes of subsection (a) the term 'handicapped individuals' means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.".

SEC. 306. SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH.

Section 626 of the Act is amended to read as follows:

"SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTH

"SEC. 626. (a) The Secretary may make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300)) to—

"(1) strengthen and coordinate special education and related services for handicapped youth currently in school or who recently left school to assist them in the transition to postsecondary education, vocational training, competitive employment (including supported employment), continuing education, or adult services,

"(2) stimulate the improvement and development of programs for secondary special education, and

"(3) stimulate the improvement of the vocational and life skills of handicapped students to enable them to be better prepared for transition to adult life and services.

To the extent feasible, such programs shall be geographically dispersed through the Nation in urban and rural areas.

"(b) Projects assisted under subsection (a) may include—

"(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education, and competitive employment (including supported employment) for handicapped youth,

"(2) establishing demonstration models for services, programs, and individualized education programs, which emphasize vocational training, transitional services, and placement for handicapped youth,

"(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs,

"(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth,

"(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models,

"(6) initiating cooperative models between educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services,

"(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth,

"(8) conducting studies which provide information on the numbers, age levels, types of handicapping conditions and reasons why handicapped youth drop out of school, and

"(9) developing special education curriculum and instructional techniques that will improve handicapped students' acquisition of the skills necessary for transition to adult life and services, and

"(10) specifically designed physical education and therapeutic recreation programs to increase the potential of handicapped youths for community participation.

"(c) For purposes of paragraphs (1) and (2) of subsection (b), if an applicant is not an educational agency, such applicant shall coordinate with the State educational agency.

"(d) Applications for assistance under subsection (a) other than for the purpose of conducting studies or evaluations shall—

"(1) describe the procedures to be used for disseminating relevant findings and data to regional resource centers, clearinghouses, and other interested persons, agencies, or organizations,

"(2) describe the procedures that will be used for coordinating services among agencies for which handicapped youth are or will be eligible, and

"(3) to the extent appropriate, provide for the direct participation of handicapped students and the parents of handicapped stu-

dents in the planning, development, and implementation of such projects.

"(e) The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, such organizations or institutions as are determined by the Secretary to be appropriate for the development or demonstration of new or improvements in existing methods, approaches, or techniques which will contribute to the adjustment and education of handicapped children and youth and the dissemination of materials and information concerning practices found effective in working with such children and youth.

"(f) The Secretary, as appropriate, shall coordinate programs described under subsection (a) with projects developed under section 311 of the Rehabilitation Act of 1973.".

SEC. 307. AUTHORIZATION.

Section 628 is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 628. (a) There are authorized to be appropriated to carry out section 621, $6,700,000 for fiscal year 1987, $7,100,000 for fiscal year 1988, and $7,500,000 for fiscal year 1989.

"(b) There are authorized to be appropriated to carry out section 622, $15,900,000 for fiscal year 1987, $16,800,000 for fiscal year 1988, and $17,800,000 for fiscal year 1989.

"(c) There are authorized to be appropriated to carry out section 623, $24,470,000 for fiscal year 1987, $25,870,000 for fiscal year 1988, and $27,410,000 for fiscal year 1989.

"(d) There are authorized to be appropriated to carry out section 624, $5,300,000 for fiscal year 1987, $5,600,000 for fiscal year 1988, and $5,900,000 for fiscal year 1989.

"(e) There are authorized to be appropriated to carry out section 625, $5,900,000 for fiscal year 1987, $6,200,000 for fiscal year 1988, and $6,600,000 for fiscal year 1989.

"(f) There are authorized to be appropriated to carry out section 626, $7,300,000 for fiscal year 1987, $7,700,000 for fiscal year 1988, and $8,100,000 for fiscal year 1989.".

SEC. 308. GRANTS FOR PERSONNEL TRAINING.

Section 631 of the Act (20 U.S.C. 1431) is amended to read as follows:

"GRANTS FOR PERSONNEL TRAINING

"SEC. 631. (a)(1) The Secretary may make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 and satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education and early intervention, including—

"(A) special education teaching, including speech-language pathology and audiology, and adaptive physical education,

"(B) related services to handicapped children and youth in educational settings,

"(C) special education supervision and administration,

"(D) special education research, and

"(E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for handicapped children.

"(2)(A) In making grants under paragraph (1), the Secretary shall base the determination of such grants on information relating to the present and projected need for the personnel to be trained based on identified State, regional, or national shortages, and the capacity of the institution or agency to train qualified personnel, and other information considered appropriate by the Secretary.

"(B) The Secretary shall ensure that grants are only made under paragraph (1) to applicant agencies and institutions that meet State and professionally recognized standards for the preparation of special education and related services personnel unless the grant is for the purpose of assisting the applicant agency or institution to meet such standards.

"(3) Grants under paragraph (1) may be used by institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

"(4) The Secretary in carrying out paragraph (1) may reserve a sum not to exceed 5 percent of the amount available for paragraph (1) in each fiscal year for contracts to prepare personnel in areas where shortages exist when a response to that need has not been adequately addressed by the grant process.

"(b) The Secretary may make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches (including the application of new technology) for the preservice training purposes set forth in subsection (a), for regular educators, for the training of teachers to work in community and school settings with handicapped secondary school students, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children and personnel providing early intervention services.

"(c)(1) The Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented.

"(2) In order to receive a grant under paragraph (1) a private nonprofit organization shall—

"(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth, or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under paragraph (1),

"(B) serve the parents of children with the full range of handicapping conditions under such grant program, and

"(C) demonstrate the capacity and expertise to conduct effectively the training and information activities for which a grant may be made under paragraph (1).

"(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under paragraph (1) shall meet at least once in each calendar quarter to review the parent training and information activities for which the grant is made, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under paragraph (1) for a fiscal year, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

"(4) The Secretary shall ensure that grants under paragraph (1) will—

"(A) be distributed geographically to the greatest extent possible throughout all the States and give priority to grants which involve unserved areas, and

"(B) be targeted to parents of handicapped children in both urban and rural areas or on a State or regional basis.

"(5) Parent training and information programs assisted under paragraph (1) shall assist parents to—

"(A) better understand the nature and needs of the handicapping conditions of children,

"(B) provide followup support for handicapped children's educational programs,

"(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals,

"(D) participate in educational decision-making processes including the development of a handicapped child's individualized educational program,

"(E) obtain information about the programs, services, and resources available to handicapped children and the degree to which the programs, services, and resources are appropriate, and

"(F) understand the provisions for the education of handicapped children as specified under part B of this Act.

"(6) Parent training and information programs may, at a grant recipient's discretion, include State or local educational personnel where such participation will further an objective of the program assisted by the grant.

"(7) Each private nonprofit organization operating a program receiving a grant under paragraph (1) shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

"(8) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.".

SEC. 309. GRANTS FOR STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS.

Section 632 of the Act (20 U.S.C. 1432) is amended to read as follows:

"GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS FOR TRAINEESHIPS

"SEC. 632. The Secretary shall make grants to each State educational agency and may make grants to institutions of higher education to assist in establishing and maintaining preservice and inservice programs to prepare personnel to meet the needs of handicapped infants, toddlers, children, and youth or supervisors of such persons, consistent with the personnel needs identified

in the State's comprehensive system of personnel development under section 613.".

SEC. 310. CLEARINGHOUSES.

(a) IN GENERAL.—Subsection (a) of section 633 of the Act (20 U.S.C. 1433) is amended by striking out "to achieve" and all that follows in that subsection and inserting in lieu thereof the following: "to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

"(1) programs relating to the education of the handicapped under this Act and under other Federal laws, and

"(2) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance.".

(b) ADDITIONAL CLEARINGHOUSE.—Section 633 of the Act is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following:

"(c) The Secretary shall make a grant or enter into a contract for a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of handicapped children and youth through the following:

"(1) Collection and dissemination of information on current and future national, regional, and State needs for special education and related services personnel.

"(2) Dissemination to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

"(3) Identification of training programs available around the country.

"(4) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

"(5) Technical assistance to institutions seeking to meet State and professionaly recognized standards.".

(c) TECHNICAL AMENDMENT.—The heading for section 633 of the Act is amended to read as follows:

"CLEARINGHOUSES"

SEC. 311. AUTHORIZATION.

Section 635 of the Act (20 U.S.C. 1435) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 635. (a) There are authorized to be appropriated to carry out this part (other than section 633) $70,400,000 for fiscal year 1987, $74,500,000 for fiscal year 1988, and $79,000,000 for fiscal year 1989. There are authorized to be appropriated to carry out section 633, $1,200,000 for fiscal year 1987, $1,900,000 for fiscal year 1988, and $2,000,000 for fiscal year 1989.

"(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in subparagraphs (A) through (E) of section 631(a)(1).

"(c) Of the funds appropriated under subsection (a) for any fiscal year, the Secretary shall reserve 10 percent for activities under section 631(c).".

SEC. 312. RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN.

Section 641 of the Act (20 U.S.C. 1441) is amended to read as follows:

"RESEARCH AND DEMONSTRATION PROJECTS IN EDUCATION OF HANDICAPPED CHILDREN

"SEC. 641. (a) The Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities to assist special education personnel, related services personnel, early intervention personnel, and other appropriate persons, including parents, in improving the special education and related services and early intervention services for handicapped infants, toddlers, children, and youth, and to conduct research, surveys, or demonstrations relating to the provision of services to handicapped infants, toddlers, children, and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions, and teaching, learning, and education-related developmental practices and services for handicapped infants, toddlers, children and youth. Research and related activities assisted under this section shall include the following:

"(1) The development of new and improved techniques and devices for teaching handicapped infants, toddlers, children and youth.

"(2) The development of curricula which meet the unique educational and developmental needs of handicapped infants, toddlers, children and youth.

"(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped infants, toddlers, children and youth.

"(4) The development of program models and exemplary practices in areas of special education and early intervention.

"(5) The dissemination of information on research and related activities conducted under this part to regional resource centers and interested individuals and organizations.

"(6) The development of instruments, including tests, inventories, and scales for measuring progress of handicapped infants, toddlers, children and youth across a number of developmental domains.

"(b) In carrying out subsection (a), the Secretary shall consider the special education or early intervention experience of applicants under such subsection.

"(c) The Secretary shall publish proposed research priorities in the Federal Register every 2 years, not later than July 1, and shall allow a period of 60 days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than 30 days after the close of the comment period.

"(d) The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 618. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

"(e) The Secretary shall coordinate the research priorities established under subsection (c) with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under such subsection to the National Council on the Handicapped, and to the Bureau of Indian Affairs Advisory Committee for Exceptional Children.".

SEC. 313. PANELS AND EXPERTS.

Section 643 of the Act (20 U.S.C. 1443) is amended to read as follows:

"PANELS OF EXPERTS

"SEC. 643. (a) The Secretary shall convene, in accordance with subsection (b), panels of experts who are competent to evaluate proposals for projects under parts C through G. The panels shall be composed of—

"(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals, and

"(2) handicapped individuals and parents of handicapped individuals when appropriate.

"(b)(1) The Secretary shall convene panels under subsection (a) for any application which includes a total funding request exceeding $60,000 and may convene or otherwise appoint panels for applications which include funding requests that are less than such amount.

"(2) Such panels shall include a majority of non-Federal members. Such non-Federal members shall be provided travel and per diem not to exceed the rate provided to other educational consultants used by the Department and shall be provided consultant fees at such a rate.

"(c) The Secretary may use funds available under parts C through G to pay expenses and fees of non-Federal members under subsection (b).".

SEC. 314. AUTHORIZATION.

Section 644 of the Act (20 U.S.C. 1444) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 644. For purposes of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1987, $19,000,000 for fiscal year 1988, and $20,100,000 for fiscal year 1989.".

SEC. 315. CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED PERSONS.

(a) ILLITERACY.—Subsection (a) of section 652 of the Act (20 U.S.C. 1452) is amended—

(1) by striking out "in accordance with regulations" and inserting in lieu thereof ", including for the purpose of addressing problems of illiteracy among the handicapped",

(2) by inserting after "available" the following: ", in accordance with regulations,".

(b) AUTHORIZED USES.—(1) Subsection (b)(4) of section 652 of the Act is amended by inserting after "handicapped" the following: ", public libraries,".

(2) Subsection (b)(7) is amended by striking the period and inserting in lieu thereof "; and", and by adding the following:

"(8) provide by grant or contract for educational media and materials for the deaf.".

(c) NATIONAL THEATRE OF THE DEAF.—Section 652 of the Act is amended by adding at the end the following:

"(c) The Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. for the purpose of providing theatrical experiences to—

"(1) enrich the lives of deaf children and adults,

"(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf people, and

"(3) promote the integration of hearing and deaf people through shared cultural experiences.".

SEC. 316. AUTHORIZATION.

Section 653 of the Act (20 U.S.C. 1453) is repealed and section 654 of the Act (20

U.S.C. 1454) is redesignated as section 653 and amended to read as follows:

"AUTHORIZATION

"SEC. 653. For the purposes of carrying out this part, there are authorized to be appropriated $15,000,000 for fiscal year 1987, $15,750,000 for fiscal year 1988, and $16,540,000 for fiscal year 1989.".

SEC. 317. TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR THE HANDICAPPED.

The Act is amended by adding after part F the following:

"PART G—TECHNOLOGY, EDUCATIONAL MEDIA, AND MATERIALS FOR THE HANDICAPPED

"FINANCIAL ASSISTANCE

"SEC. 661. The Secretary may make grants or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of handicapped students and the provision of early intervention to handicapped infants and toddlers. In carrying out this subsection, the Secretary may fund projects or centers for the purposes of—

"(1) determining how technology, media, and materials are being used in the education of the handicapped and how they can be used more effectively,

"(2) designing and adapting new technology, media, and materials to improve the education of handicapped students,

"(3) assisting the public and private sectors in the development and marketing of new technology, media, and materials for the education of the handicapped, and

"(4) disseminating information on the availability and use of new technology, media, and materials for the education of the handicapped.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 662. For the purposes of carrying out this part, there are authorized to be appropriated $10,000,000 for fiscal year 1987, $10,500,000 for fiscal year 1988, and $11,025,000 for fiscal year 1989."

TITLE IV—MISCELLANEOUS

SEC. 401. REMOVAL OF ARCHITECTURAL BARRIERS.

Section 607(a) of the Act (20 U.S.C. 1406) is amended by inserting "with the Secretary of the Interior and" after "cooperative agreements".

SEC. 402. DEFINITIONS.

Section 602(a) of the Act (20 U.S.C. 1401(a)) is amended—

(1) in paragraph (11), by striking out "and" at the end of subparagraph (D), by striking out the period at the end of subparagraph (E) and inserting in lieu thereof "; and", and by adding at the end the following:

"(F) The term includes community colleges receiving funding from the Secretary of the Interior under Public Law 95-471.", and

(2) by adding at the end the following:

"(23)(A) The term 'public or private nonprofit agency or organization' includes an Indian tribe.

"(B) The terms 'Indian', 'American Indian', and 'Indian American' mean an individual who is a member of an Indian tribe.

"(C) The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).".

SEC. 403. ALLOCATION; STATE ADMINISTRATION.

(a) ALLOCATION.—Section 611(a)(5)(A) of the Act (20 U.S.C. 1411(a)(5)(A)) is amended to read as follows:

"(5)(A) In determining the allotment of each State under paragraph (1), the Secretary may not count—

"(i) handicapped children aged three to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged three to seventeen, inclusive, in such State and the State serves all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice or the order of any court,

"(ii) handicapped children aged five to seventeen, inclusive, in such State under paragraph (1)(A) to the extent the number of such children is greater than 12 percent of the number of all children aged five to seventeen, inclusive, in such State and the State does not serve all handicapped children aged three to five, inclusive, in the State pursuant to State law or practice on the order of any court; and

"(iii) handicapped children who are counted under section 121 of the Elementary and Secondary Education Act of 1965.".

(b) STATE ADMINISTRATION.—Section 611(c)(2)(A)(ii) of the Act (20 U.S.C. 1411(c)(2)(A)(ii)) is amended to read as follows:

"(ii) the part remaining after use in accordance with clause (i) shall be used by the State (I) to provide support services and direct services in accordance with the priorities established under section 612(3), and (II) for the administrative costs of monitoring and complaint investigation but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.".

SEC. 404. INDIANS.

Subsection (f) of section 611 of such Act (20 U.S.C. 1411) is amended to read as follows:

"(f)(1) The Secretary shall make payments to the Secretary of the Interior according to the need for assistance for the education of handicapped children on reservations serviced by elementary and secondary schools operated for Indian children by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate amounts available to all States under this section for that fiscal year.

"(2) The Secretary of the Interior may receive an allotment under paragraph (1) only after submitting to the Secretary an application which—

"(A) meets the applicable requirements of sections 612, 613, and 614(a),

"(B) includes satisfactory assurance that all handicapped children aged 3 to 5, inclusive receive a free appropriate public education by or before the 1987-1988 school year,

"(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and designated local school boards before adoption of the policies, programs, and procedures required under sections 612, 613, and 614(a), and

"(D) is approved by the Secretary.

Section 616 shall apply to any such application.".

SEC. 405. QUALIFIED PERSONNEL.

Section 613(a) of the Act (20 U.S.C. 1413) is amended by inserting at the end thereof the following:

"(14) policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including—

"(A) the establishment and maintenance of standards which are consistent with any State approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services, and

"(B) to the extent such standards are not based on the highest requirements in the State applicable to a specific profession or discipline, the steps the State is taking to require the retraining or hiring of personnel that meet appropriate professional requirements in the State.".

SEC. 406. EVALUATION.

Section 618 of the Act (20 U.S.C. 1418) is amended to read as follows:

"EVALUATION

"SEC. 618. (a) The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

"(1) to assess progress in the implementation of this Act, the impact, and the effectiveness of State and local efforts and efforts by the Secretary of Interior to provide free appropriate public education to all handicapped children and youth and early intervention services to handicapped infants and toddlers, and

"(2) to provide—

"(A) Congress with information relevant to policymaking, and

"(B) Federal, State, and local agencies and the Secretary of Interior with information relevant to program management, administration, and effectiveness with respect to such education and early intervention services.

"(b) In carrying out subsection (a), the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this Act and under other Federal laws relating to handicapped infants, toddlers, children, and youth, and such additional information, from State and local educational agencies, the Secretary of Interior, and other appropriate sources, as is necessary for the implementation of this Act including—

"(1) the number of handicapped infants, toddlers, children, and youth in each State receiving a free appropriate public education or early intervention services (A) in age groups 0-2 and 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category,

"(2) the number of handicapped children and youth in each State who are participating in regular educational programs (consistent with the requirements of sections 612(5)(B) and 614(a)(1)(C)(iv)) by disability category, and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment,

"(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise (A) in age group 3-5, and (B) in age groups 6-11, 12-17, and 18-21 by disability category and anticipated services for the next year,

"(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related serv-

ices and for early intervention services (which may be based upon a sampling of data from State agencies including State and local educational agencies),

"(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth and early intervention services to handicapped infants and toddlers by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this Act, and

"(6) a description of the special education and related services and early intervention services needed to fully implement this Act throughout each State, including estimates of the number of handicapped infants and toddlers in the 0-2 age group and estimates of the number of handicapped children and youth (A) in age group 3-5 and (B) in age groups 6-11, 12-17, and 18-21 and by disability category.

"(c) The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this Act. Each such evaluation shall include recommendations for improvement of the programs under this Act. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

"(d)(1) The Secretary may enter into cooperative agreements with State educational agencies and other State agencies to carry out studies to assess the impact and effectiveness of programs assisted under this Act.

"(2) An agreement under paragraph (1) shall—

"(A) provide for the payment of not to exceed 60 percent of the total cost of studies conducted by a participating State agency to assess the impact and effectiveness of programs assisted under this Act, and

"(B) be developed in consultation with the State Advisory Panel established under this Act, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

"(3) The Secretary shall provide technical assistance to participating State agencies in the implementation of the study design, analysis, and reporting procedures.

"(4) In addition, the Secretary shall disseminate information from such studies to State agencies, regional resources centers, and clearinghouses established by this Act, and, as appropriate, to others involved in, or concerned with, the education of handicapped children and youth and the provision of early intervention services to handicapped infants and toddlers.

"(e)(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

"(2) At least one study shall focus on obtaining and compiling current information available, through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services) and shall gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

"(f)(1) Not later than 120 days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth and early intervention services for handicapped infants and toddlers. The annual report shall be transmitted to the appropriate committees of each House of Congress and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

"(2) The Secretary shall include in each annual report under paragraph (1)—

"(A) a compilation and analysis of data gathered under subsection (b),

"(B) an index and summary of each evaluation activity and results of studies conducted under subsection (c),

"(C) a description of findings and determinations resulting from monitoring reviews of state implementation of part B of this Act,

"(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services,

"(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities, and

"(F) any recommendation for change in the provisions of this Act or any other Federal law providing support for the education of handicapped children and youth.

"(3) In the annual report under paragraph (1) for fiscal year 1985 which is published in 1986 and for every third year thereafter, the Secretary shall include in the annual report—

"(A) an index of all current projects funded under parts C through G of this title, and

"(B) data reported under sections 621, 622, 623, 627, 634, 641, and 661.

"(4) In the annual report under paragraph (1) for fiscal year 1988 which is published in 1989, the Secretary shall include special sections addressing the provision of a free appropriate public education to handicapped infants, toddlers, children, and youth in rural areas and to handicapped migrants, handicapped Indians (particularly programs operated under section 611(f)), handicapped Native Hawaiian, and other native Pacific basin children and youth, handicapped infants, toddlers, children and youth of limited English proficiency.

"(5) Beginning in 1986, in consultation with the National Council for the Handicapped and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, a description of the status of early intervention services for handicapped infants and toddlers from birth through age two, inclusive, and special education and related services to handicapped children from 3 through 5 years of age (including those receiving services through Head Start, Developmental Disabilities Programs, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

"(g) There are authorized to be appropriated $3,800,000 for fiscal year 1987, $4,000,000 for fiscal year 1988, and $4,200,000 for fiscal year 1989 to carry out this section.".

SEC. 407. REPEAL.

Section 604 of the Act (20 U.S.C. 1403) is repealed.

The SPEAKER pro tempore. Is a second demanded?

Mr. BARTLETT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] will be recognized for 20 minutes and the gentleman from Texas [Mr. BARTLETT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5520, the Education of the Handicapped Amendments of 1986. The bill is a significant link in the chain of protections the Congress has provided to children with disabilities.

This bill has three purposes. First, the bill reauthorizes the discretionary programs under the act, which provide assistance for demonstration projects, training, and research.

Second, the bill provides greater incentives to States to serve the estimated 70,000 handicapped children aged 3 to 5 who currently are not being served—260,000 children currently are being provided services.

Finally, the bill adds a new discretionary program to the act that addresses the special needs of handicapped infants and toddlers and their families to appropriate early intervention services.

The bill is the outcome of 7 days of hearings. It responds to the comments of more than 50 witnesses representing diverse views and needs. It was developed with the help of the disability community including, of course, parents, education administrators, local school boards, and the Governors.

The bill is a consensus bill; it is a bipartisan bill; and it is a bill which we can expect, based on negotiations with the Senate, will be accepted by that body without amendment.

Such a result could not have come about without cooperation with the minority, especially Mr. BARTLETT, the ranking member of the subcommittee, and Mr. JEFFORDS the ranking member of the full Committee on Education and Labor. I would like to thank them for their efforts. I would also like to provide a special thanks to Senator WEICKER and Congressman BIAGGI. Also, I would like to thank my staff,

the staff of the minority, and the Senate staff for their work on this bill.

H.R. 5520 was introduced in response to the overwhelming case that exists for providing comprehensive services for handicapped infants, toddlers, and preschoolers. The Department of Education, in its report to Congress states:

Studies of the effectiveness of preschool education for the handicapped have demonstrated beyond doubt the economic and educational benefits of programs for young handicapped children.

In addition, the studies show that the earlier intervention is started, the greater the ultimate dollar savings and the higher is the rate of educational attainment by these handicapped children.

Let me take a moment to describe the major components of the bill. First, title I creates a new part to the Education of the Handicapped Act for the purpose of providing financial assistance to States to develop and implement a statewide, comprehensive, coordinated multidisciplinary interagency program of early intervention services for all handicapped infants and toddlers and their families.

Under the bill, after 4 years, the State, if it wants to continue receiving assistance under the part, must have in effect, among other things, a policy under which appropriate early intervention services will be made available to all handicapped infants and toddlers in the State at no cost except where Federal or State law provides for a system of payment by families, including a schedule of sliding fees.

This provision is designed to, on the one hand send a message that after 4 years all early intervention services must be free but at the same time provide States with the discretion to charge families that can afford to pay for certain services pursuant to a specific Federal or State law.

The phrase "including a schedule of sliding fees" is intended to preclude a State from enacting a law that requires payment by all parents if the effect of the law is to deny services to poor infants and toddlers. Further, this provision should not be construed as permitting a State to charge a parent for particular service if such services must be provided to them free of charge under a separate State or Federal law. That is, this law is not designed to supersede provisions included in other laws.

Early intervention services are developmental services which are designed to meet the infant's developmental needs; are provided by qualified personnel; and are provided in conformity with an individualized family service plan. The bill includes examples of early intervention services such as special instruction.

The bill includes examples of qualified personnel. However, this list is not meant to be exhaustive. For example, physicians are clearly intended to be considered qualified personnel for purposes of providing diagnostic and evaluation services.

With respect to title II, the bill amends the current preschool incentive grant program. The bill establishes maximum per child amounts which a State may receive under the preschool program; includes conditions which a State must satisfy in order to be eligible for assistance; prescribes the apportionment of funds between the State educational agency and local educational agencies and the procedure for suballocating funds to local educational agencies, identifies acceptable uses of funds under this program, includes an amendment concerning the circumstances under which a State may count handicapped children aged 3 to 5 for purpose of receiving funds for the basic State grant.

With respect to the discretionary programs, the bill makes certain changes which enhance the capacity of the special education system to meet the needs of handicapped children. These discretionary programs provide for demonstration programs, personnel training and research related to the education of handicapped infants, children, youth, and young adults. They are reauthorized for 3 years.

The bill provides for expansion of services under part C of the act by establishing a national technical assistance center focusing on national priorities in the education of the handicapped; expands the authority and functions of regional resource centers to provide information and training assistance to States with respect to early intervention services; establishes early childhood research institutes; provides for demonstration and outreach programs; focuses research funds for programs for the severely handicapped; provides for expansion of transition services to handicapped children throughout their school experience; and provides for greater coordination and dissemination of information regarding the education of the handicapped from early intervention through postsecondary programs.

The bill amends part D of the act by establishing a clearinghouse to encourage personnel to seek employment in fields relating to the education of handicapped children and youth; clarifying the purpose of training to include training for careers in early intervention; and provides for grants to State education agencies for preservice and inservice training for personnel working with handicapped children.

The bill amends part E of the act by expanding the list of authorized uses of funds for research and demonstration projects to include issues relating to early intervention for infants and toddlers. The bill also provides that the Secretary must convene panels of experts for the review of proposals under parts C through G and includes the necessary administrative authority.

The bill amends part F of the act to address the problems of illiteracy among the handicapped and to clarify that public libraries may be used to distribute captioned films and educational media to handicapped persons.

These existing discretionary programs are reauthorized at $184 million for fiscal year 1987, $195 million in fiscal year 1988 and $206 million in fiscal year 1989.

The bill adds a new part G which is designed to advance the use of new technology, media, and materials in the education of handicapped students. For this new part, the bill authorizes $10 million for fiscal year 1987, and $10.5 million for fiscal year 1988 and $11.25 million for fiscal year 1989.

The bill also makes certain miscellaneous amendments to the act that: clarify that the Secretary of Education may make grants for the purpose of removing barriers in schools serving Indians on reservations; clarify the definition of "public or private nonprofit agency or organization" to include Indian tribe; increase from 1 to 1.25 percent, the amount reserved for the education of handicapped children on reservations serviced by schools operated by the Department of the Interior; modify the 12-percent cap provision regarding the counting of children; and provide States with additional resources to ensure appropriate implementation of the act; and providing for modifications in data collection in regard to early intervention and special education services.

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Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5520, the Education of the Handicapped Act Amendments of 1986. This legislation not only reauthorizes and improves the discretionary programs under the act, but also puts into place two initiatives which will lead significantly improved services to handicapped infants and toddlers and their families. These improvements are tantamount to a Head Start Program for these handicapped infants and preschoolers who, because of these services, will likely require less special education when they enter school.

I want to congratulate and thank the chairman of the Subcommittee on Select Education, PAT WILLIAMS, and his staff, for the hard work and leadership exhibited on this legislation. Because of his leadership, we have a

bipartisan bill, supported by disability and school administration groups, and an understanding with the other body that this bill will be accepted without change.

This bill accomplishes three major educational and social objectives and does so by establishing a relationship between the Federal Government and State and local units of government which are appropriate and desirable.

We have established a new discretionary program for the purpose of assisting States to establish a comprehensive system of early intervention services. This program is essentially an expansion of the Early Childhood Education Program designed by the former chairman of the Subcommittee on Select Education, Congressman AUSTIN MURPHY of Pennsylvania. H.R. 5520 provides assistance to States for capacity building, and provides States with the authority to develop a system that fits their individual characteristics. The bill provides States with a significant financial incentive, sets them on a course that will be fueled by local advocates and the benefits of early intervention, and does not penalize States which choose not to participate.

The Federal requirements for the early intervention system are broad, and includes a nonexhaustive list of service providers. It is expected that a range of professions, including physicians, will play an integral role in carrying out the purposes of the program.

Our improvements to the Preschool Incentive Grant Program effectively tell States that by the beginning of the 1992-93 school year, at the latest, Congress will have provided States with over 15 years worth of preschool incentive grant funds and expect States to serve all handicapped 3- to 5-year-olds in their State. Failure to provide services to all of these 3- to 5-year-olds will result in a loss of Federal support only for 3 to 5 funding. The penalty does not extend to a potential loss of other Federal funding.

Our changes in the discretionary programs under the act include a number of major improvements:

Teacher shortages and the lack of qualified teachers are probably the greatest problems facing special education today. We have attempted to solve this problem by creating a tighter fit between identified State shortages and Federal training grants.

Similarly, we know that the 0-2 and 3-5 initiatives are going to generate even greater needs for trained personnel in every facet of special education. As a result, the bill integrates these initiatives into virtually every discretionary program.

In the area of computer technology, the bill authorizes a new part G which will allow for growth and improvement in the development and use of computer technology in special education.

This is a particularly exciting field and the Federal role will be one of adapting mainstream technology, promoting its use in the classroom, and supporting the research efforts particular to special education.

In summary I would observe that H.R. 5520 marks another important step in Congress' willingness to address the needs of handicapped persons and their families. This bill establishes a national policy on early intervention which recognizes its benefits, provides assistance to States to build systems of service delivery, and recognizes the unique role of families in the development of their handicapped children. Families of infants and toddlers with handicaps are under tremendous strain. When early intervention services are provided to their handicapped children, at the same time a helping hand is being extended to families. I have visited early intervention programs in my home State of Texas and talked to parents of mentally retarded and physically handicapped infants. After hearing them talk about the benefits of the program to their child, one is struck by the pride and optimism that is part of their lives as a result of the early intervention program. It would not be an overstatement to characterize H.R. 5520 as a profamily bill for families with handicapped infants and toddlers.

Mr. Speaker, I reserve the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I yield such time as he may consume to the chairman of the Select Committee on Children, Youth, and Families, the gentleman from California [Mr. MILLER]. Mr. MILLER's leadership on this legislation and other similar legislation has meant so much to America's children and to their parents.

Mr. MILLER of California. I thank the chairman of the subcommittee for his kind remarks and for yielding this time to me.

Mr. Speaker, I rise in support of this legislation, H.R. 5520, and in doing so I want to commend both the majority and the minority on the Committee on Education and Labor for arriving at this piece of legislation.

This is a continuation of our national commitment to children who are handicapped and to their families in which those children live so that we make every effort at the national level to see to it that those children have the fullest opportunity possible to participate in American society, in the American educational system, in the American economic system.

What we have seen over the 10 years of this program is that this law has dramatically increased the opportunities for the handicapped to participate. In those 10 years I have conducted along with the chairman of the subcommittee, Mr. WILLIAMS, and others numerous oversight hearings, and I would like to tell the Members of this Congress that they should be very proud of this legislation, which they passed 10 years ago because time and again parents have come to this committee and have said "but for this law my child would not have been able to go to school," "but for this law I would not have been able to get the services that were necessary so my child could receive an education," "I would not have been able to get the medical help," "I would not have been able to get the appliances that were necessary so that my child could participate in the educational system of this country."

Time and again we were told of cases where people tried to deny that access to go back to the days that gave them impetus to this legislation when children who were handicapped were educated in basements, children were segregated from the rest of the school population, children were denied education at all. This legislation has overcome that problem in American society and within the educational institutions of this country. But that is not to say that all educational institutions have accepted it readily and that they still do not battle and seek the time when perhaps they can roll this back. So the extension of this program is an important signal to those families that suffer from the burdens and the troubles and the problems that educational institutions force upon them when they have a handicapped child in their family.

The exciting part of this legislation is that now we are prepared to go even a step further. We are prepared to expand the benefits of this program to infants, toddlers, to preschoolers because what we have learned over the last decade is that the earlier time in this child's life that we can intervene in behalf of them, the greater success that we have, and in fact the cost of education to the handicapped per student starts to drop because of our ability to work with these children at a very young age. I wish that that provision of the bill were mandatory, but I think as school districts start to learn what the research is telling us with respect to future costs and the ability to avoid those costs, if we start to intervene with handicapped children at an earlier date, they will take advantage of this provision, and I would hope that the Appropriations Committee would understand that the sooner we appropriate the $75 million for this provision we will start to drive down the long-term costs of educating those children.

I am also excited that after a tour of Indian reservations which I made earlier this year, that the legislation

speaks to try to increase the services, remove the barriers that exist on the Indian reservations in this country so that those children, too, who live on Indian reservations and suffer from handicaps, can in fact participate in the educational systems that are extended to those reservations.

So, I would hope that all of our colleagues would give this legislation unanimous endorsement and that we would in fact see the extension of these services and a reconfirmation of our beliefs in the rights of the handicapped in this Nation to achieve their full participation in our society as it is embodied in this legislation.

Again I want to commend all of the members of the Committee on Education and Labor for all of the work that they have done on this legislation over the past year.

Mr. BARTLETT. Mr. Speaker, I yield myself 1 additional minute.

I want to take this 1 minute to say—Mr. Speaker, first I have no further requests for time—I would want to take this time to do two things. First of all, I want to thank the leadership and the vision of Chairman WILLIAMS in this. It is late in the session, but we have developed a piece of legislation with his leadership which is both cost effective for the Federal Government as well as the State governments, as well as providing a substantial new day and leadership in terms of education of the handicapped.

It is cost effective because as these preschoolers move into the first grade and beyond, their need for special education services is minimized.

I also want to take a minute to remind the House that this is legislation that is supported by all groups who are involved in education, both education groups of school administrators, school boards as well as disability groups. It is legislation that is truly consensus legislation but that is both compassionate and cost effective.

Mr. Speaker, I reserve the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this piece of legislation is the most important thing that this Congress will do for handicapped infants and young children up to the age of 5 in this decade and perhaps for the remainder of this century. This legislation will require commitment, effort, expertise, long hours and, yes, money.

But what great effort in American history has not required all of those things? What great problem in American history has been resolved without the enormous effort from our citizenry and without a fairly high cost attached to it?

Some years ago family friends of mine living out in Montana in a city called Missoula were blessed with a young daughter. They named her Keough, Keough Duffy.

Keough was born as a Down's syndrome child.

Not long after her birth, the parents made me proud by asking me to be Keough's godfather, which I am.

There are a lot of Keough Duffy's in this land, children born very, very close to the threshold of death, many of whom are given up on, their lives abandoned, but others like Keough who are blessed with parents, health care professionals and educators to surround them, hold them, care for them and teach them until, like Keough today, nearing 6 years of age, the children become healthy, happy and wise.

□ 1355

So, Keough Duffy, for you and for all the children like you throughout the country, this bill is for you.

Mr. AKAKA. Mr. Speaker, I rise in strong support of the bill, H.R. 5520, the Education of the Handicapped Amendments of 1986.

H.R. 5520 boasts a record of extensive, insightful review, of which the Committee on Education and Labor should be extremely proud. It is, in this light, certainly appropriate that we commend those whose efforts have had the effect of producing such a fine piece of legislation: Chairman HAWKINS, ranking Republican member, JAMES JEFFORDS, Subcommittee Chairman PAT WILLIAMS, the subcommittee's ranking Republican member, STEVE BARTLETT, and the other members of the committee.

Mr. Speaker, H.R. 5520 focuses on three objectives: First, to amend the Education of the Handicapped Act [EHA] by establishing a new Federal discretionary program to assist States in the development and implementation of a comprehensive, coordinated, interdisciplinary program of early intervention services for handicapped infants and toddlers and their families. Second, the bill amends the preschool incentive provision and other sections of the EHA to strengthen the incentive for States to serve all handicapped children aged 3 to 5, inclusive. Finally, the bill amends certain evaluations of the EHA and amends and extends the authority for the discretionary programs under parts C through G of the EHA.

In sum, H.R. 5520 sends a strong signal to our Nation's State and local educational agencies of the Federal Government's continued commitment to meeting the special educational and related services needs of handicapped children and youth. I commend the committee for its wisdom.

I believe that it is appropriate for me to further thank and commend the committee for its sensitivity to the needs of handicapped children and youth of native Hawaiian ancestry.

As my colleagues will notice, the committee has expressed a sincere concern for the needs of this population group, specifically, that its members suffer from an across-the-board lack of parity with their peers nationally. Furthermore, the committee has provided the groundwork for increased attention to those problems. I thank the committee for including language in the report accompanying H.R. 5520 that does the following: First, directs the Secretary to make a grant under the bill's early education for handicapped children to the State of Hawaii for the purpose of addressing the needs of native Hawaiian children with handicaps; second, clarifies its intent that the term "severely handicapped" include severely handicapped native Hawaiians; third, clarifies its intent that the term "traditionally underrepresented" includes native Hawaiians; fourth, directs the Secretary to make a separate grant to a nonprofit agency in the State of Hawaii for the purpose of training native Hawaiian parents; fifth, directs the Secretary to make a grant to, or enter into a cooperative agreement or contract with, an educational agency in the State of Hawaii providing comprehensive elementary and secondary educational services to native Hawaiian handicapped children and youth for the purpose of developing program models and demonstrations for native Hawaiian children and youth; and sixth, provides that in the annual report for fiscal year 1988, the Secretary must include special sections addressing the provision of free appropriate public education to handicapped native Hawaiian children and youth.

That there is an urgent need for these services is unquestionable, and I am sure that I speak for the entire native Hawaiian population when I say that the committee's attention to their needs is greatly appreciated. I look forward to working with the committee and with the Secretary in the coming year to ensure that the aims of the native Hawaiian provisions are met.

Mr. Speaker, I strongly urge the passage of this bill.

Mr. BIAGGI. Mr. Speaker, since the enactment of Public Law 94-142, we have made tremendous strides in ensuring an appropriate education for handicapped children. As one of the original authors of that law, I have taken a deep personal interest in the success and effectiveness of education programs for children with disabilities. It has been my observation that these programs work, and do so in large measure to the strong leadership role displayed by the Federal Government.

Today we will consider legislation that recognizes that this Federal role must continue, and in fact expand, to ensure that handicapped infants and toddlers receive the early intervention services they clearly need, and deserve.

H.R. 5520 reauthorizes the important discretionary programs currently under the Education of the Handicapped Act, strengthens the State grant program for 3- to 5-year-old handicapped preschoolers, and establishes a new program of early intervention services for handicapped infants and toddlers.

I am proud to have joined as an original cosponsor of H.R. 5520. This bill is the product of a true bipartisan effort and I congratulate both Mr. WILLIAMS and Mr. BARTLETT for their work on this measure. I also commend Chairman HAWKINS for the expeditious manner in which he brought this bill before the committee and to the floor. And I thank Mr. JEFFORDS, the ranking minority member, for his input and work on this bill.

There is no one who questions the importance of early intervention services. Not only have these services proven to be significant in

terms of educational advancements and achievements for handicapped children, the economic benefits derived from early intervention are astounding. These findings have resulted from literally hundreds of studies on the efficacy of early intervention. These findings also correspond with the Department of Education's seventh annual report to Congress which states:

Studies of the effectiveness of preschool education for the handicapped have demonstrated beyond doubt the economic and educational benefits of programs for young handicapped children. In addition, the studies have shown that the earlier intervention is started, the greater is the ultimate dollar savings and the higher is the rate of educational attainment by these handicapped children.

The need for this legislation is clear.

The real strength of this bill lies in the expanded role of the family. Clearly, the family is at the very core of early intervention services and this measure certainly recognizes that role. I want to recognize the Alexander Graham Bell Association for the Deaf, an organization with one of the most effective parent networks in this Nation. Their pioneering work during the past years has demonstrated that the support and assistance of the family is critical to the success and effectiveness of early intervention services.

There are a few provisions contained within H.R. 5520 that deserve special attention. One such provision is the option of each State to serve the at-risk population, those handicapped infants from birth through age 2 who are at risk of having substantial developmental delay if early intervention services are not provided. I urge each State to serve this special population. It is foolish to wait for a child to develop a preventable delay. It is difficult to neatly separate biological and environmental factors when diagnosing developmental delays in young, rapidly changing infants. And the fact that those most at risk for environmental reasons are generally the infants whose families are least able to obtain quality services without the assistance of this law are all critical and rational reasons for a State to serve the at risk population. I strongly urge each State to include this option in their plan.

I also want to recognize the role of the physician in providing early intervention services for handicapped youngsters. While physicians were not explicitly listed as qualified personnel in the statute, this omission was rectified in report language. It is obvious that when providing early intervention services for infants, many of these services are health related. And it is just as obvious that physicians must be eligible to administer these health services.

The due process procedures are clearly outlined under this legislation. I want to point out the importance for parents to receive any assistance necessary to allow them to participate in a full and informed manner. I wish to recognize the vital need for handicapped children to receive interim services pending the full complaint resolution procedures, where the child would be harmed by a delay. And finally, it is my hope that the remedies provided to parents under this act are in no way meant to be exclusive of any other remedies parents may have under existing laws.

Coordination between agencies is the key to the success of early intervention services. In no way should one overlook the necessity of providing a smooth transition of services for children when reaching their third birthday and moving into the preschool portion of the early intervention program. All agencies must coordinate their efforts to ensure that these children are provided a continuation of services, and that one agency does not become encumbered by payments of these services, when another agency is under the obligation to do so.

H.R. 5520 offers us the opportunity to renew our commitment to both handicapped children and their families. It presents us with the chance to further our original goals outlined in Public Law 94-142—the goal of equal education, the goal of equal opportunity, the goal of allowing handicapped citizens to move from a life of dependency into a life of productivity and self-sufficiency. With early intervention services in place for all handicapped children, these goals are a significant step closer to reality.

Mr. JEFFORDS. Mr. Speaker, I am very pleased to rise in support of the Education of the Handicapped Act Amendments of 1986, H.R. 5520. I would like to commend my colleagues, the gentleman from Montana [Mr. WILLIAMS] and the gentleman from Texas [Mr. BARTLETT] for their outstanding efforts. With very limited time and diverse perspectives on achieving common goals, they developed a consensus bill. The bill is not only supported by all Members of the Committee on Education and Labor, but by the full spectrum of groups concerned about and responsible for handicapped children.

I personally participated in the authorization of the legislation which became Public Law 94-142 and subsequent reauthorizations of the Education of the Handicapped Act. The passage of these particular amendments is important because, if enacted, they would assist States to provide services to handicapped infants, toddlers, and preschoolers.

In 1975 the Education for All Handicapped Children Act [Public Law 94-142] was enacted. Today we are amending the Basic State Grant Program, part B, of the act. In Public Law 94-142, Congress mandated that a free appropriate public education be available to each handicapped child between the ages of 5 and 17. In addition, Congress authorized the Preschool Incentive Grant Program for handicapped children to encourage and assist States to provide services for handicapped children ages 3 to 5.

Eleven years later, over 4 million handicapped school-aged children are receiving a free appropriate public education and approximately 260,000 preschool handicapped children are participating in educational programs. This is an impressive record. However, the U.S. Department of Education has estimated that an additional 70,000 preschool handicapped children still need the benefit of education programs.

H.R. 5520 provides support for the 70,000 unserved preschoolers and continues to support all handicapped children currently being served. In addition, H.R. 5520 authorizes a program to assist States establish early intervention services for handicapped infants and toddlers and their families. H.R. 5520 builds on the strength, the experience, and spirit of Public Law 94-142.

I think it is very important to take this next step. It is time to fully recognize the need for and value of early intervention and preschool programs for handicapped children. It is time to make a serious investment in such programs.

In a personal sense I am pleased to be part of our current effort because it allows me to continue a Vermont tradition. On May 7, 1968, Senator Winston Prouty from Vermont introduced in the other body—the Handicapped Children's Early Education Assistance Act, S. 3446. This bill, cosponsored by Senators Morris, Yarborough, and Javits, represented the first effort to provide specific Federal assistance for demonstration programs to serve handicapped children below the age of 6. In this body Messrs. Quie and Cary offered parallel legislation, H.R. 18763. Both measures were adopted and became Public Law 90-538.

Senator Prouty, in his statement of introduction for S. 3446, emphasized the value of early intervention and education in the life of a handicapped child. He indicated that these provide the foundation for the full education, employment, health, and social welfare of such a child.

He said further:

Mr. President, there is no child who deserves a First Chance, a helping hand, more than a child who enters this world with dim vision, with faint hearing, with difficulty in comprehending the nature of our world, or with any of the myriad of disabilities which afflict our handicapped children. Despite the recognized success of such programs as Headstart, and its very promising companion, Followthrough, there is today no systematic attempt to provide this opportunity. (CONGRESSIONAL RECORD, May 7, 1968, p. 5045.)

H.R. 5520 would provide the catalyst and the incentive for the "systematic attempt" referred to by Senator Prouty. The bill would create a new discretionary program, part H in the act, which would assist States in the development and implementation of a "comprehensive, coordinated, interdisciplinary program of early intervention services" for handicapped infants from birth through age 2, inclusive.

Part H has a 5-year authorization. It calls for an authorization of an appropriation of $50 million in fiscal year 1987, $75 million in fiscal year 1988, and such sums as necessary for the remaining 3 years. It contains many important and practical concepts. I would like to highlight four:

First. The development and implementation of a child find system for identifying all handicapped infants and toddlers no later than the end of the third year of a State's participation in the program.

Second. The development of an individualized family service plan to provide parents of such an infant with a sense of the infant's needs, likely progress, and information about resources, and a commitment for services.

Third. The promotion of interagency cooperation in creative ways that should result in

effective and efficient use of resources to meet the needs of handicapped infants.

Fourth. The designation of the Governor as the final authority for the implementation of an early intervention program and provides considerable flexibility and discretion in the design of the program.

H.R. 5520 contributes to the systematic effort sought by Senator Prouty in other ways. The Preschool Incentive Grant Program is permanently authorized. H.R. 5520 would set the authorization of appropriations for this program at such sums as may be necessary, and establishes expected levels of Federal support for the Preschool Incentive Grant Program for the next 5 years. If these expected levels of appropriations are not met, States will not be required to serve all handicapped children from 3 through 5 years of age until school year 1991–92.

If appropriation targets are met, the State of Vermont would be required to serve approximately 329 more preschool handicapped children in school year 1990–91 or 1991–92, depending on appropriations, than it is serving now. The State is currently serving about 1,286 handicapped preschoolers.

All things being equal, each State would be required to serve approximately 26 percent more handicapped preschoolers in 5 years than they are serving now. If appropriation targets were met by the fifth year, approximately $900 million Federal dollars would have been directed to the preschool program. Over the last 5 years the appropriation for this program has ranged from approximately $20 milion to $30 million annually.

I believe that H.R. 5520 provides a genuine incentive for States to serve more handicapped preschoolers. I also think that States have the capacity to serve one quarter again as many children as they are now serving by school year 1990–91.

In addition to addressing the needs of very young handicapped children, H.R. 5520 reauthorizes for 3 years important discretionary programs. These programs provide Federal support for model demonstration efforts, personnel training, research and innovations—activities that benefit handicapped children of all ages. H.R. 5520 also creates a new part G to strengthen and improve the application of technology in meeting the developmental and educational needs of such children. These various discretionary programs provide the best practical guidelines, technical assistance, and information that ultimately shape and improve the direct service programs for handicapped children.

For the record I would like to address one more benefit of H.R. 5520.

In my travels overseas I have made a special effort to meet with military personnel and their families, especially those who have handicapped children. On numerous occasions parents of such children have said that services of preschool handicapped children are seldom available when families are stationed overseas.

In my discussions with Members on the other side, I understand that through the preschool amendments in H.R. 5520 we are able to offer these parents some assurance that they will have access to such services as the result of the preschool amendments in H.R. 5520. The amendments to the Preschool Incentive Grant Program apply to the Department of Defense Overseas Dependent Schools.

When H.R. 5520 is enacted, military families with handicapped preschoolers, living overseas, shall have access to educational programs for their children by school year 1990–91 or school year 1991–92. Full compliance is expected if Congress appropriates the level of funds set out in the new section 619(b)(2) of Public Law 94–142, the Education of All Handicapped Children Act.

In 1978, section 1409(c) of the Defense Dependents' Education Act was amended as follows:

The provisions of the Education of all Handicapped Children's Act (Public Law 94–142) shall apply with respect to all schools operated by the Department of Defense under this chapter.

It is the committee's intent that in order to be consistent with this provision of law, that overseas schools operated by the Department of Defense will serve all handicapped children aged 3 to 5, inclusive, no later than school year 1990–91 or 1991–92, if the appropriation targets for the Preschool Incentive Grant Program are reached. Educational services for all of these children must be provided by school year 1991–92 and thereafter.

I would hope the Department of Defense Overseas Dependents' School Program would begin planning to serve all handicapped preschoolers before 1990–91 and that they would share their efforts with us. However, I am pleased that we have a specific timeline to serve as an incentive for planning for and eventually providing services. The amendments should also reduce the frustration that parents have been facing.

In closing, I would like to offer this observation. I believe we all support helping an individual achieve his or her maximum level of productivity. H.R. 5520 brings us one step closer to that goal for a very special segment of our population. In a very real sense H.R. 5520 is a concrete investment in the future, a future in which a handicapped child's life:

Is measured in terms of ability more than it is judged in terms of potential;

Is converted from dependence to independence;

Is filled with as many opportunities to participate and contribute as to observe and to receive; and

Reflects an understanding of self-worth and dignity that transcends physical limitations and human differences.

I urge my colleagues to support this bill.

Mr. COELHO. Mr. Speaker, as an original cosponsor of H.R. 5520 I rise in support of this bill. I would like to recognize and commend the hard work of committee chairman, PAT WILLIAMS and ranking minority member, Congressman STEVE BARTLETT on this legislation. As my colleagues well know, I have epilepsy and have a personal interest in issues affecting children and adults with handicaps. I have carefully watched the evolution of this bill.

While I cannot tell you this bill is perfect, I do believe that it will ultimately work for children with disabilities. Above all, I believe that the new services included for children from birth to age 5 are long overdue.

I'm sure we each have a poignant story we can tell on the impact of Public Law 94–142 on children with disabilities. A story that I hear over and over again from parents of children with epilepsy is the story of the children that wouldn't be in special education classes, or even remedial education classes if his condition had not been identified and treated early. I am reminded of the thousands of dollars that would be saved if these children were provided the services they needed as soon as their condition was detected.

I strongly support this bill because it does address that need. I would like, Mr. Speaker, to point out areas of the early childhood provisions that I believe need to be clarified.

In setting forth the eligible population to be served in the early intervention programs, section 672(1)(b) of part H of this bill defines handicapped infants and toddlers as those individuals from birth to age 2, inclusive, who need early intervention services because they "have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay."

It is my understanding that the term "high probability" is not to be viewed as a statistical term, but rather is intended to cover infants with conditions which have a significant potential or good chance of resulting in developmental delay if an infant does not receive early intervention services.

I applaud this legislation for recognizing that infants may have a condition that does not manifest itself in developmental delay for months or years. These provisions recognize that it is in the best interest of the infant to provide early intervention services as soon as possible before a child starts failing later in life.

It is similarly in the best interest of at-risk infants to receive early intervention services. I am pleased that this bill gives States the option to include at-risk infants in its definition of eligible infants, and believe that those States that are currently serving those infants must continue to do so and those States not presently serving this group should take advantage of this opportunity to reach these infants.

We all know that it is often very difficult to diagnose developmental delays in such young, rapidly changing infants. It would be foolhardy for States, for human and economic reasons, to wait until an infant developed a preventable delay before providing needed services to that child. Moreover those infants who are most at-risk for environmental reasons are usually the infants whose families are least able to provide quality services for them.

I am pleased to note that the State application, which is subject to public hearings and the Secretary's review, will include all the policies constituting the statewide system—ncluding the policies determining the infants and toddlers to be served consistent with the statute. Thus, the public will have an opportunity to address this important question of serving infants at risk.

I commend the Subcommittee on Select Education for addressing the difficult question

of payment for health related services as opposed to actual medical treatment. There are times when a physician's services are clearly necessary to meet an infant's needs and implement the individualized family service plan. Physicians are considered qualified personnel whenever they are needed for any of the early intervention services under the bill, such as assessment and diagnosis or provision of those health services required for an infant to benefit from other early intervention services.

It is my understanding that the early intervention services as defined in section 672 of this legislation are to be provided "at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees." The key words here are "at no cost." The primary obligation rests upon the State. It is my understanding that we have created an exception because we did not want to require the disruption of those existing family payment systems which are working well and which do not pose barriers to infants in need of services. This exception is not intended to permit States to rely on such laws in a manner which could result in denial of required services because of families' limited resources.

Crucial to this early intervention program are parents and their ability to play a key role in obtaining needed services for their children. Thus, the existence of an impartial resolution system to address denial of the right to needed services, and the ability to seek court action to enforce that right, are among the most important provisions of this bill. At the same time of course, these remedies are in no way meant to exclude any other remedies these parents may have under other laws, such as section 1983 of the Civil Rights Act. Further, just as with 94-142, although court actions will generally be initiated as appeals from the complaint resolution system, there are exceptions to the general procedure, such as where exhaustion of administrative remedies is futile or would frustrate the intent of this act. See section 3 of Public Law 99-372 and the accompanying legislative history.

I believe some issues need to be clarified, additionally I had hoped that the Senate version for mandate of preschool services—tying it to funding under Public Law 94-142—would be included in this bill. I have been assured that the incentives in this legislation are strong enough to insure that all children with handicapping conditions in the 3 to 5 age group will in all States receive a free, appropriate public education by fiscal year 1991. I, for one, will be carefully watching this program over the next few years and hope that we will not have to address this issue again.

Mr. PERKINS. Mr. Speaker, I appreciate this opportunity to voice my full support for the Education of the Handicapped Act amendments, H.R. 5520. This package of amendments is another step forward for the handicapped children and their families of this country. We are able to show with this legislation that we have the wisdom to follow up on the important handicapped legislation that was passed by Congress some 10 years ago. Many of the faces and names have changed since that very important time but the feelings and convictions about this need remain the same.

This legislation builds on the idea that the handicapped children of this country deserve the same opportunities that education can provide for every child. We would be very neglectful if we did not do our part in this noble effort. Whatever the child's supposed handicap they, in many cases, still have the ability to learn, grow, and contribute to the world around them in many very positive ways. Too long we were willing to shut our eyes to the need of this group of children. That day is past and this shows the families of handicapped children that we are standing beside them and that we care.

In H.R. 5520 we have decided to break more new ground by providing new area for grants. We are now looking at the preschool kids, toddlers, and even the newborn to see how we can attack this problem early in the child's life. We are taking an exciting step here and we need to do it with the same conviction as we have for the rest of the programs. For the States, they are not required to expand into these areas but as more and more evidence comes in that the early ages are the most important times to help these children I feel many more States will see the need to join in and take advantage of these programs. Even for the fiscally conservative among us that feel we simply don't have the money, this idea of early prevention is attractive since this early action will help to lower the costs that would have been spent in later years. I feel that we can't afford to not take this step if we are serious about this effort.

There are many other good ideas that are contained in this legislation as well. We are amending section D of the bill to encourage more research into the area of employment for handicapped youth and children. We must remain aware of the work and training that is needed to provide the flexibility and opportunity for choice to these children. We must not ever underestimate the ability of these children to contribute to our society. This legislation also attacks the problem of illiteracy among the handicapped, the bill establishes early childhood research institutes, and sets up grants for inservice training of personnel who work with the handicapped children.

I would like to thank Mr. BARTLETT for his work on this legislation and also Mr. JEFFORDS the ranking member on the full committee. In particular I want to praise the work of the subcommittee chairman, PAT WILLIAMS. His untiring work on this issue shows the true concern and conviction that he feels for this matter. His Subcommittee on Select Education has done an excellent job in crafting this bill and negotiating an agreement with the other body so that this bill will be enacted as it is now written.

In this legislation we are following the example that was set 10 years ago by other distinguished members of the Education and Labor Committee as they broke new ground and passed the original Education of the Handicapped Act. I hope that this will be seen as simply another step on our path to providing even better service for our handicapped children. These children, as do all of the Nation's handicapped, deserve the best we can possibly give them.

Mr. BONIOR of Michigan. Mr. Speaker, I rise in support of the Education of the Handicapped Amendments of 1986. I commend the Committee on Education and Labor for its fine bill and trust that this good legislation will be signed by the President.

I am particularly pleased with the bill's continued support for important help for deaf and hearing-impaired Americans. As a trustee of Gallaudet University, I feel a special responsibility for providing as much as we can to educate and inform deaf and hearing-impaired persons everywhere.

The bill continues funding for Captioned Films and Educational Media, in my view a very important part of our aid to disabled persons. By means of closed captioning for television, as assisted with federal funds authorized by this legislation, many thousands of deaf and hearing-impaired persons can keep up with television news, cultural and entertainment events from across the Nation. This is truly a marvelous service achieved at very low Federal investment, now more than matched with non-Federal funds.

This new legislation would allow continued although modest growth in Federal support for captioning, production and caption decoders and design help for even lower cost decoders, and with public awareness of these materials.

The result of this legislation will be an even greater participation by hearing impaired persons in the rich information and education resources of our Nation. I am pleased to be able to support this legislation.

Mr. WILLIAMS. Mr. Speaker, I yield back the balance of my time.

Mr. BARTLETT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Montana [Mr. WILLIAMS] that the House suspend the rules and pass the bill, H.R. 5520, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor be discharged from further consideration of the Senate bill (S. 2294) to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2294

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Education of the Handicapped Amendments of 1986".

DEFINITION OF HANDICAPPED CHILDREN

SEC. 2. Section 602(a)(1) of the Education of the Handicapped Act (hereafter in this Act referred to as the "Act") is amended by inserting before the period at the end thereof a comma and the following: "and for children aged three to five, inclusive, includes developmentally delayed children".

ALLOCATIONS

SEC. 3. (a) AGE CATEGORY LIMITATION REVISION.—Section 611(a)(5)(A)(i) of the Act is amended by inserting before the semicolon a comma and the following: "except that the age category for the number of all children subject to the per centum limitation under this clause shall, in the case of a State which actually provides free appropriate public education for a different age category, be the age category which the State actually serves".

(b) SUPPORT SERVICES.—Section 611(c)(2)(A)(ii) of the Act is amended to read as follows:

"(ii) the remainder shall be used by such State to provide support services and direct services, in accordance with the priorities established under section 612(3), and for the administrative costs of monitoring and complaint investigation, but only to the extent that such costs exceed the costs of administration incurred during fiscal year 1985.".

ELIGIBILITY

SEC. 4. (a) GENERAL RULE.—Section 612(2)(B) of the Act is amended by striking out "aged three to five and".

(b) EFFECTIVE DATE AND APPLICABILITY.—(1) The amendment made by subsection (a) of this section shall take effect three years after the date of enactment of this Act with respect to States which, in order to comply with the amendment made by subsection (a), have to qualify under State laws.

(2)(A) The amendment made by subsection (a) of this section shall not apply in any fiscal year in which the appropriations for subpart 1 of part B of the Education of the Handicapped Act do not equal or exceed $1,300,000,000.

(B) The provisions of subparagraph (A) are repealed on September 30, 1990.

AUTHORIZATION FOR EVALUATION

SEC. 5. Section 618(g) of the Act is amended to read as follows:

"(g) There are authorized to be appropriated $3,800,000 for fiscal year 1987, $4,000,000 for fiscal year 1988, and $4,200,000 for fiscal year 1989 to carry out the provisions of this section.".

EARLY INTERVENTION PROGRAM FOR HANDICAPPED INFANTS

SEC. 6. (a) GENERAL AUTHORITY.—The Act is amended—

(1) by inserting after the heading for part B the following:

"SUBPART 1—EDUCATION OF ALL HANDICAPPED CHILDREN";

(2) by redesignating sections 621 through 628 as sections 631 through 638, respectively;

(3) by redesignating sections 631 through 635 as sections 641 through 645, respectively;

(4) by redesignating sections 641 through 644 as sections 651 through 654, respectively;

(5) by redesignating section 651 through section 654 as sections 661 through 664, respectively; and

(6) by adding after section 620 the following:

"SUBPART 2—EARLY INTERVENTION FOR HANDICAPPED INFANTS

"PROGRAM AUTHORIZED

"SEC. 621. (a) The Secretary shall make grants, in accordance with the provisions of this subpart, to States to carry out an early intervention program for handicapped infants.

"(b)(1) There are authorized to be appropriated $100,000,000 for the fiscal year 1987, and for each succeeding fiscal year ending prior to October 1, 1989, to carry out the provisions of this subpart other than section 628.

"(2) There are authorized to be appropriated $6,870,000 for fiscal year 1987, $7,270,000 for fiscal year 1988, and $7,710,000 for fiscal year 1989, to carry out the provisions of section 627.

"(c) During any fiscal year in which the amount appropriated for this subpart is less than $50,000,000 each State shall be entitled to receive its allotment under this subpart if the Secretary determines that the State is making a good faith effort to comply substantially with the provisions of this subpart.

"ALLOTMENT TO STATES

"SEC. 622. (a)(1) From the sums appropriated to carry out this subpart for any fiscal year, the Secretary shall reserve 1 per centum for payments to Guam, American Samoa, the Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and the Commonwealth of the Northern Mariana Islands, to be allotted in accordance with their respective needs.

"(2)(A) For each of the fiscal years 1987 and 1988 from the remainder of such funds, the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of eligible infants in the State bears to the number of eligible infants in all States, except that no State shall receive less than 0.5 per centum of such remainder.

"(B) For the purpose of subparagraph (A)—

"(i) the term 'infants' means children from birth to age two, inclusive; and

"(ii) the term 'eligible infants' means two percent of the infants in a State and in all States.

"(C) For each fiscal year after September 30, 1988, from the remainder of such funds the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the number of eligible handicapped infants served to the number of such infants served by all States, except that no State shall receive less than 0.5 per centum of such remainder.

"(D) For the purpose of this paragraph, the term 'State' does not include the jurisdictions described in paragraph (1).

"(b) If any State elects not to receive its allotment under this part, the Secretary shall reallot, among the remaining States, amounts from such State in accordance with subsection (a) of this section.

"ELIGIBILITY

"SEC. 623. In order to qualify for assistance under this subpart in each fiscal year, a State shall demonstrate to the Secretary that the State has—

"(1) met the eligibility requirements of section 612;

"(2) a State plan approved under section 613;

"(3) a State Early Intervention Council which meets the requirements of section 624(a) for the purpose of ensuring that the State provides a comprehensive system of early intervention for handicapped infants;

"(4) beginning three years after the date of enactment of this subpart, a comprehensive early childhood plan for services to handicapped children from birth to age five, inclusive, which address service delivery to all handicapped infants and includes the transition to services under subpart 1;

"(5) beginning three years after the date of enactment of this subpart, a statewide comprehensive system of early intervention services available to serve all handicapped infants; and

"(6) a State agency administration which meets the requirements of section 624(b).

"EARLY INTERVENTION COUNCIL; STATE ADMINISTRATION

"SEC. 624. (a)(1) The Governor shall appoint, or designate an existing agency as, an Early Intervention Council which shall be composed of members who represent each public agency within the State providing services to handicapped infants including the grant recipient under section 627, one member representing the Governor, and at least two individuals involved in or concerned with the needs of handicapped infants, such as members of the State Advisory Council on Special Education, members of the Developmental Disabilities Council, or representatives of the Parent Training Center established under part D of this Act.

"(2) The Early Intervention Council shall—

"(A) identify the sources of fiscal and other support for services for early intervention programs and ensure that each State agency is making a financial contribution to support;

"(B) promote the development of formal interagency agreements for services for handicapped infants;

"(C) assist the State agency in the development of and approval of the comprehensive early childhood plan and the application for assistance under this subpart;

"(D) ensure that the application for assistance under this subpart is coordinated with grants awarded in the State under section 627;

"(E) disseminate information regarding early intervention programs; and

"(F) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for handicapped infants.

"(3) The report required by clause (F) of paragraph (2) of this subsection shall include recommendations on the appropriate use of Federal and State funds, together with a statement of statewide policy for the early intervention program for handicapped infants within the State.

"(4) A summary of the data required by this section shall be included in the annual report of the Secretary under section 618 of this Act.

"(5) The Early Intervention Council required by this section shall meet at least quarterly in each fiscal year.

"(b)(1)(A) Subject to the provisions of subparagraph (B), the Governor shall establish or designate a State agency for the purpose of administering this subpart in accordance with the provisions of this subsection. In carrying out this paragraph, the Governor may designate the State educational agency, the mental health agency, the mental retardation agency, a State health or social service agency, or a State Early Intervention Council.

"(B) In any State in which there is a State agency administering a program which is substantially the same as the program authorized by this subpart on the date of enactment of the Education of the Handicapped Amendments of 1986, the Governor shall designate that agency for the purpose of administering this subpart pursuant to subparagraph (A).

"(2) The agency designated under paragraph (1) shall have responsibility for the general administration, supervision, and monitoring of the comprehensive system of early intervention services for handicapped infants within the State including the delivery of services to such infants. The State agency shall also be responsible either directly or by contract or other agreement with other agencies or organizations for coordinating multidisciplinary referrals of handicapped infants, conducting indepth assessments of such infants, and coordinating early intervention services for handicapped infants within the State.

"PROGRAM COMPONENTS

"SEC. 625. (a) Each State shall develop and carry out a comprehensive plan to serve handicapped infants in accordance with the provisions of subsections (b), (c), and (d).

"(b) The State has or will establish an early intervention services program serving all handicapped infants from birth to age two, inclusive, within the State.

"(c) Each handicapped infant shall have—

"(1) a multidisciplinary assessment of individual needs and services required to meet such needs;

"(2) a written individualized program plan developed by a multidisciplinary team, including the parent or guardian describing necessary services which may include but is not limited to—

"(A) special education;

"(B) speech and language pathology/audiology;

"(C) occupational therapy;

"(D) physical therapy;

"(E) psychological services;

"(F) health services;

"(G) parent and family support services; and

"(H) social services; and

"(3) access to all services described in the early intervention program plan without cost, to the extent not inconsistent with Federal or State law, to the parent or guardian.

"(d)(1) Each individualized program shall be reviewed at least annually.

"(2) Services under the individualized program shall be provided by qualified personnel.

"(3) The individualized program shall include provisions which support the transition of handicapped infants to services provided under subpart 1 of this part.

"PROCEDURAL SAFEGUARDS

"SEC. 626. (a) Any State agency which receives assistance under this subpart shall establish and maintain procedures to assure that handicapped infants and their parents or guardians are guaranteed procedural safeguards with respect to the provision of early intervention services.

"(b)(1) The procedures required by this section shall include, but shall not be limited to—

"(A) an opportunity for the parents or guardian of a handicapped infant to examine all records relating to the assessment of that infant's need for early intervention services, and the development of that infant's individualized program plan;

"(B) procedures to protect the rights of the infant whenever the parents or guardian of the child are not known, unavailable, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State agency or local service program funded under this subpart) to act as a surrogate for the parents or guardian;

"(C) written prior notice to the parents or guardian of the infant whenever the State agency or local service program funded under this subpart—

"(i) proposes to initiate or change, or

"(ii) refuses to initiate or change,

the assessment of such infant's need for early intervention services or the provision of such services.

"(D) procedures designed to assure that the notice required by clause (C) fully inform the parents or guardian, in the parents' or guardian's native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section; and

"(E) an opportunity for the parents or guardian to present complaints with respect to any matter relating to the assessment of the handicapped infant's need for early intervention services or the provision of services to such infant.

"(2) Whenever a complaint has been received under paragraph (1) of this subsection, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency directly involved in the provision of early intervention services to the handicapped infant who is the subject of the hearing.

"(c) Any party to any hearing conducted pursuant to subsection (b) shall be accorded (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention for handicapped infants, (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, (3) the right to a written or electronic verbatim record of such hearing, and (4) the right to written findings of fact and decisions (which findings and decisions shall also be transmitted to the Early Intervention Council established pursuant to section 624(c)).

"(d)(1) A decision made in a hearing conducted pursuant to paragraph (2) of subsection (b) shall be final, except that any party involved in such hearing may appeal such decisions under paragraph (2) of this subsection.

"(2) Any party aggrieved by the findings and decision made under subsection (b) shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of evidence, shall grant such relief as the court determines is appropriate.

"(3) During the pendency of any proceedings conducted pursuant to this section, unless the State agency and the parents or guardian otherwise agree, the infant shall receive early intervention services not subject to dispute.

"(4) The district courts of the United States shall have jurisdiction of actions brought under this subsection without regard to the amount in controversy.

"APPLICATION

"SEC. 627. (a) Each State meeting the eligibility requirements set forth in section 623 and desiring to participate in the program under this subpart shall submit an application to the Secretary through the Early Intervention Council at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(b) Each such application shall—

"(1) specify the role and financial contribution of each State agency providing services to handicapped infants;

"(2) identify and describe the services which shall be available to handicapped infants and their families;

"(3) describe the procedures used to identify and serve handicapped infants;

"(4) set forth policies and procedures designed to assure that, to the extent consistent with the number and location of handicapped infants in the State, provision is made for the participation of such infants in the program assisted or carried out under this subpart by providing for such children community based early intervention services;

"(5) provide assurances that Federal funds made available under this subpart (A) will not be commingled with State funds, and (B) will be so used as to supplement and increase the level of State and local funds expended for the purposes described in this subpart and in no case to supplant such State and local funds; and

"(6) provide assurances that the State will not expend more than 10 per centum of its allotment on administrative costs of carrying out the early intervention services for which assistance is sought.

"PLANNING, DEVELOPMENT, AND IMPLEMENTATION GRANTS

"SEC. 628. (a) The Secretary shall make one of the following types of grants to each State through the State agency for services for which handicapped children aged birth through 5 are eligible. Grants under this section may be made to any State which submits an application which meets the requirements of this section:

"(1) PLANNING GRANT.—A grant for a maximum of two years for the purpose of assessing needs within the State and establishing a procedure and design for the development of a comprehensive early childhood State plan which includes parent participation and training of professionals and others.

"(2) DEVELOPMENT GRANT.—A grant for a maximum of two years for the purpose of developing a comprehensive early childhood

State plan, and gaining approval of the plan from the State educational agency, the Secretary of Education, or other designated official of the appropriate State agency.

"(3) IMPLEMENTATION GRANT.—A grant for a maximum of one year for the purpose of implementing and evaluating the comprehensive early childhood State plan.

"(b) Each State educational agency or other State agency desiring to receive a grant under this subsection shall submit an application at such time, in such manner, and containing or accompanied by such information as the Secretary considers necessary. Each such application shall contain assurances and evidence that—

"(1) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency) in carrying out the grant.

"(2) The State plan will address the early intervention and the special education and related service needs of all handicapped children from birth through five years of age with special emphasis on children who are often not identified and children who are not now served.

"(3) The State plan will be closely coordinated with child-find efforts under section 612(2)(C) and with preschool incentive grant activities under section 619 of this Act.

"(c) The Secretary shall include in the annual report under section 618 of this Act the following:

"(1) The States and State agencies receiving grants under this subsection and the types of grants received.

"(2) A description of the activities in each State being undertaken through grants under this subsection.

"(3) Beginning in fiscal year 1987, in consultation with the National Council on the Handicapped a description of the status of early intervention programs for handicapped children from birth through five years of age (including children receiving services through Head Start, Developmental Disabilities Program, Maternal and Child Health Services, Mental Health/Mental Retardation Agency Services, and State child-developmental centers and private agencies under contract with State agencies or local schools).

"(d) Any planning or development grant application submitted pursuant to section 623(b) prior to the date of enactment of the Education of the Handicapped Amendments of 1986 shall qualify for a grant under this section.

"RESTRICTION

"SEC. 629. Nothing in this subpart shall be construed—

"(1) to permit the State to reduce medical assistance available, or to alter eligibility, under title XIX of the Social Security Act, relating to medicaid, for handicapped infants within the State; and

"(2) to encourage the reduction in benefits paid under other public or private insurance coverage.

"APPLICABILITY OF CERTAIN PROVISIONS OF LAW

"SEC. 630. The provisions of sections 616, 617, 618, and 620 of this Act shall, to the extent not inconsistent with this subpart, apply to the program authorized by this subpart, except that—

"(1) any reference to a State educational agency shall be deemed to be a reference to the State agency established or designated under section 624(b);

"(2) any reference to the education of handicapped children and the education of all handicapped children and the provision of public education to all handicapped children shall be deemed to be a reference to the provision of services to handicapped infants in accordance with this subpart; and

"(3) any reference to local educational agencies and intermediate educational units shall be deemed to be local service providers under this subpart.".

(b) STUDY OF SERVICES.—(1) The Comptroller General shall conduct a study of the services provided for under subpart 2 and the extent and manner in which such services are available in the States.

(2) Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall prepare and submit a report to the Congress describing the findings of the study required under paragraph (1) of this subsection.

(c) CONFORMING AMENDMENTS.—(1) Section 601(c) of the Act is amended by inserting before the period at the end thereof a comma the following: "and to assure that all handicapped infants have available to them a free appropriate early intervention program designed to meet their unique needs".

(2) Section 602(a) of the Act is amended by inserting after paragraph (1) the following new paragraph:

"(2) The term 'handicapped infants' means individuals from birth to age two, inclusive, who are substantially developmentally delayed or children with specific congenital or acquired conditions who by reason thereof require early intervention.".

(3) Section 602 of the Act is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b) For the purpose of subpart 2 of part A of this title—

"(1) the term 'early intervention' means a program of services including special education integrated services as specified in section 625;

"(2) the term 'Early Intervention Council' means the Council established in accordance with the provisions of section 624(a);

"(3) the term 'Governor' means the chief executive of any State; and

"(4) the term 'State agency' means the State agency established or designated in accordance with section 624(b).".

(4)(A) Section 611(a)(1) of the Act is amended by striking out "part" and inserting in lieu thereof "subpart".

(B) Section 611(g)(1) of the Act is amended by striking out "part" and inserting in lieu thereof "subpart".

(C) Section 612 of the Act is amended—

(i) by striking out "part" in the matter preceding paragraph (1) and inserting in lieu thereof "subpart"; and

(ii) by striking out "part" in paragraph (6) and inserting in lieu thereof "subpart".

(D) Section 613 of the Act is amended by striking out "part" each time it appears and inserting in lieu thereof "subpart" each such time.

(5)(A) Section 618(b) of the Act is amended by inserting "0-2," before "3-5" each time it appears.

(B) Section 618 of the Act is amended by inserting "infants," before "children and youth" each time it appears.

(C) Section 618(f)(1) of the Act is amended by striking out "and the National Advisory Committee on the Education of Handicapped Children and Youth".

(D) Section 618(f)(3)(B) of the Act is amended to read as follows:

"(B) data reported under sections 631, 632, 633, 637, 644, 651, and 663.".

(6) Section 619(c) of the Act is amended by striking out ", and for providing special education and related services for handicapped children from birth to three years of age".

REGIONAL RESOURCE CENTERS

SEC. 7. (a) PHYSICAL EDUCATION INCLUDED.—Section 631(a) of the Act (as redesignated by this Act) is amended—

(1) by inserting after "special education" in clause (1) a comma and the following: "including physical education,"; and

(2) by inserting after "special education" in clause (2) a comma and the following: "including physical education,".

(b) DISSEMINATION OF SUCCESSFUL TRANSITION ACTIVITIES.—Section 631(a) of the Act is further amended—

(1) by striking out "and" at the end of clause (3);

(2) by inserting at the end of clause (4) a semicolon and the word "and"; and

(3) by adding at the end thereof the following new clause:

"(5) gather and disseminate information to State educational agencies within the region on successful activities developed under section 636 relating to transitional services for handicapped youth.".

SERVICES FOR DEAF AND BLIND YOUTH

SEC. 8. Section 632(a)(2)(ii) of the Act is amended by inserting after "education" the following: "including physical education".

EARLY INTERVENTION AND PRESCHOOL SERVICES FOR HANDICAPPED CHILDREN

SEC. 9. (a) GENERAL AUTHORITY.—Section 633(a)(1) of the Act (as redesignated by this Act) is amended to read as follows:

"SEC. 633. (a)(1) The Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies, institutions of higher education (including university affiliated facilities program under the Developmental Disabilities Act of 1984 and the satellite network of the developmental disabilities program and the research and training centers under the Rehabilitation Act of 1973 specifically designed to address the needs of handicapped infants), and other appropriate nonprofit organizations for—

"(A) the development and operation of programs of experimental early intervention for traditionally unserved handicapped infants and children and their families;

"(B) preservice and inservice training of personnel including volunteers and paraprofessionals as well as physicians, nurses, occupational and physical therapists, educators, psychologists, social workers, speech and language pathologists, and administrators in early intervention practices; and

"(C) research pertaining to the intellectual, emotional, physical, social, and language development of handicapped children including investigations of the cost effectiveness of various approaches to service delivery.".

(b) SPECIAL RULE.—Section 633(a)(3) of the Act is amended by adding at the end thereof the following: "In carrying out the provisions of this Act the Secretary shall, due to the overrepresentation of native Americans, including native Hawaiians, in statistical reports of children with handicaps, make one grant under paragraph (1) of this subsection within the State of Hawaii to address the needs of native Hawaiian children with handicaps, and make an additional grant to address the needs of native American children with handicaps. The grant made under the previous sen-

tence shall be in addition to any other grant which may be made to Hawaii under this section.".

(c) RESERVATIONS.—(1) Section 633(b) of the Act is amended to read as follows:

"(b)(1) Not less than 10 per centum of the funds available in any fiscal year for purposes of this section shall be available for the provision of training and technical assistance for States preparing to receive or receiving grants under subsection (a)(1)(A) of this section, and under part B.

"(2) Not less than 10 per centum of the funds available in any fiscal year for the purposes of this section shall be used for research pertaining to the intellectual, emotional, physical, social, and language development of handicapped infants and children, including studies providing information on various cost-effective approaches to service delivery as well as the impact and effectiveness of early intervention programs.".

(2) Subsection (c) of section 633 of the Act is repealed.

(d) TECHNICAL AMENDMENT.—The heading of section 633 of the Act is amended to read as follows:

"EARLY INTERVENTION AND PRESCHOOL SERVICES FOR HANDICAPPED CHILDREN".

RESEARCH, INNOVATION, TRAINING, AND DISSEMINATION ACTIVITIES

SEC. 10. Section 634(c) of the Act is amended by inserting before the period the following: "including severely handicapped native American, including native Hawaiian and other native pacific basin children and youth".

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR HANDICAPPED YOUTHS

SEC. 11. (a) NEW ACTIVITIES.—Section 636(b) of the Act (as redesignated by this Act) is amended—

(1) by redesignating clauses (5), (6), and (7) as clauses (6), (7), and (8), respectively, and

(2) by inserting after clause (4) the following new clause:

"(5) specifically designed physical education and therapeutic recreation programs to increase the potential of handicapped youths for community participation;".

(b) CONDITIONS FOR PROJECTS.—Section 636(d) of the Act is amended to read as follows:

"(d) Projects funded under this section shall—

"(1) be coordinated with other State agencies providing services for which the student is eligible;

"(2) provide individual transition plans for students served by projects funded under this section; and

"(3) to the extent appropriate provide for the direct participation of handicapped students and the parents of such students in the planning, development, and implementation of such projects.".

AUTHORIZATION OF APPROPRIATIONS FOR PART C

SEC. 12. Section 638 of the Act (as redesignated by this Act) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 638. (a) There are authorized to be appropriated to carry out the provisions of section 631 $6,700,000 for the fiscal year 1987, $7,100,000 for the fiscal year 1988, and $7,500,000 for the fiscal year 1989.

"(b) There are authorized to be appropriated to carry out the provisions of section 632 $15,900,000 for the fiscal year 1987, $16,800,000 for the fiscal year 1988, and $17,800,000 for the fiscal year 1989.

"(c) There are authorized to be appropriated to carry out the provisions of section 633 $17,600,000 for the fiscal year 1987, $18,600,000 for the fiscal year 1988, and $19,700,000 for the fiscal year 1989.

"(d) There are authorized to be appropriated to carry out the provisions of section 634 $5,300,000 for the fiscal year 1987, $5,600,000 for the fiscal year 1988, and $5,900,000 for the fiscal year 1989.

"(e) There are authorized to be appropriated to carry out the provisions of section 635 $5,900,000 for the fiscal year 1987, $6,200,000 for the fiscal year 1988, and $6,600,000 for the fiscal year 1989.

"(f) There are authorized to be appropriated to carry out the provisions of section 636 $7,300,000 for the fiscal year 1987, $7,700,000 for the fiscal year 1988, and $8,100,000 for the fiscal year 1989.".

GRANTS FOR PERSONNEL TRAINING

SEC. 13. (a) PRIORITY.—Section 641(a) of the Act is amended—

(1) by inserting "(A)" after paragraph (4);

(2) by adding at the end thereof the following new subparagraph:

"(B) Whenever possible, the Secretary shall give priority to applications from States with areas where shortages exist or where problems of implementation remain.".

(b) PARENTAL TRAINING SPECIAL RULES.—(1) Section 641(c)(1) of the Act (as redesignated by this Act) is amended by inserting at the end thereof the following new sentence: "Two such grants shall be made to nonprofit organizations serving the needs of native Americans, including native Hawaiians. The grant to Hawaii shall be in addition to and not in place of any other parent training grant made to an agency in the State of Hawaii.".

(2) Section 641(c)(4) of the Act is amended by adding at the end thereof the following new sentence: "The Secretary shall give priority to grants under this subsection which involve unserved geographic areas.".

(3) Section 641(c)(6) of the Act is amended by adding at the end thereof the following new sentence: "Staff personnel of parent training and information programs may assist parents directly in activities under part B.".

(c) SPECIAL TRAINING DEMONSTRATION PROJECTS.—Section 641 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) The Secretary is authorized to make grants to institutions of higher education and other appropriate public agencies and private nonprofit organizations to conduct demonstration projects which—

"(A) replicate model programs designed to train transition resource teachers who will serve the handicapped in secondary school classes and in adult service programs in the community; and

"(B) are designed to address the need to fill critical shortages of special education personnel.

"(2) No grant may be made under this section unless an application is made to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.".

GRANTS FOR TRAINEESHIPS

SEC. 14. Section 642 of the Act (as redesignated by this Act) is amended—

(1) by striking out "to State educational agencies" and inserting in lieu thereof "to each State educational agency";

(2) by striking out "teachers of" the first time it appears and inserting in lieu thereof "personnel serving"; and

(3) by striking out "teachers" the second time it appears and inserting in lieu thereof "personnel".

GRANTS TO IMPROVE RECRUITMENT OF EDUCATIONAL PERSONNEL

SEC. 15. (a) PHYSICAL EDUCATION.—Section 643(a)(2) of the Act is amended by inserting after "education" a comma and the following: "including physical education,".

(b) TRANSITIONAL SERVICES.—Section 643(b) of the Act is amended by inserting after "available" the following: "transitional services and programs as well as".

AUTHORIZATION OF APPROPRIATIONS FOR PART D

SEC. 16. (a) GENERAL.—Section 645(a) of the Act (as redesignated by this Act) is amended to read as follows:

"(a) There are authorized to be appropriated to carry out the provisions of this part (other than section 643) $70,400,000 for fiscal year 1987 and $74,500,000 for fiscal year 1988, and $79,000,000 for fiscal year 1989. There are authorized to be appropriated to carry out the provisions of section 643, $1,200,000 for fiscal year 1987, $1,400,000 for fiscal year 1988, and $1,500,000 for fiscal year 1989.".

(b) RESERVATION.—Section 645 of the Act is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection:

"(b) Of the funds appropriated pursuant to subsection (a) for any fiscal year, the Secretary shall reserve not less than 65 per centum for activities described in clauses (A) through (E) of section 641(a)(1).".

(c) TECHNICAL AMENDMENT.—Section 645(c) of the Act (as redesignated by subsection (b) of this section) is amended by striking out "section 631(c)" and inserting in lieu thereof "section 641(c)".

RESEARCH AND DEMONSTRATION PROJECTS

SEC. 17. (a) USES SPECIAL RULE.—Section 651 of the Act (as redesignated by this Act) is amended by—

(1) redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively, and

(2) by adding after subsection (a) the following new subsection:

"(b) Not less than 5 per centum of the funds made available in any year for the purpose of this section shall be used to address the needs of underserved secondary school-aged handicapped youth.".

(b) ADDITIONAL ACTIVITIES.—Section 651(a) of the Act is amended by adding after paragraph (5) the following new paragraph:

"(6) The development of program models and demonstrations for native Hawaiian handicapped children and youth by an educational agency providing comprehensive elementary and secondary educational services to native Hawaiians. A grant contract or cooperative agreement under this section shall be in addition to and not in place of any other grant made to other Hawaiian public or private agencies under this part.".

AUTHORIZATION OF APPROPRIATIONS FOR PART E

SEC. 18. Section 654 of the Act (as redesignated by this Act) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 654. For the purpose of carrying out this part, there are authorized to be appropriated $18,000,000 for fiscal year 1987, $19,000,000 for fiscal year 1988, and $20,100,000 for fiscal year 1989.".

INSTRUCTIONAL MEDIA

SEC. 19. (a) THEATER.—(1) Section 661(a)(1)(A) of the Act (as redesignated by this Act) is amended by inserting after "films" the following: "and through theater".

(2) Section 661(a)(1)(B) of the Act is amended by inserting after "films" the following: "and through theater".

(b) MEDIAN TECHNOLOGY.—Section 661(a)(2) of the Act is amended by inserting after "media" each time it appears a comma and the following: "material and technology".

(c) NATIONAL THEATER OF THE DEAF.—Section 662 of the Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary is authorized to make grants to or enter into contracts or cooperative agreements with the National Theater of the Deaf for the purpose of providing theatrical experiences to—

"(1) enrich the lives of deaf children and adults,

"(2) increase public awareness and understanding of deafness and of the artistic and intellectual achievements of deaf people, and

"(3) promote the integration of hearing and deaf people through shared cultural experiences.".

AUTHORIZATION OF APPROPRIATIONS FOR PART F

SEC. 20. Section 664 of the Act (as redesignated by this Act) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 664. For the purpose of carrying out this part, there are authorized to be appropriated $18,500,000 for fiscal year 1987, $19,600,000 for fiscal year 1988, and $20,800,000 for fiscal year 1989.".

REPEAL

SEC. 21. Section 604 of the Act is repealed.

MOTION OFFERED BY MR. WILLIAMS

Mr. WILLIAMS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WILLIAMS moves to strike all after the enacting clause of the Senate bill (S. 2294) and to insert in lieu thereof the provisions of H.R. 5520, as passed by the House.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Montana [Mr. WILLIAMS].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time and passed.

The title of the Senate bill was amended so as to read: "An Act to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that Act, to authorize an early intervention program under that Act for handicapped infants and toddlers and their families, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5520) was laid on the table.

APPOINTMENT OF ADDITIONAL CONFEREE ON S. 2638, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1987

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that, with respect to the Senate bill (S. 2638), the Speaker be authorized to appoint an additional exclusive conferee, from the Committee on Education and Labor, solely for consideration of division F (relating to child nutrition) of the Senate bill and modifications committed to conference.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana? The Chair hears none and, without objection, appoints the gentleman from Vermont [Mr. JEFFORDS], as an additional conferee on the Senate bill, S. 2638.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferees.

CONFERENCE REPORT ON S. 1965, HIGHER EDUCATION AMENDMENTS OF 1986

Mr. WILLIAMS submitted the following conference report and statement on the Senate bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes:

CONFERENCE REPORT (H. REPT. 99-861)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965), To reauthorize and revise the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Higher Education Amendments of 1986".

(b) REFERENCES.—References in this Act (except as otherwise provided) to "the Act" are to the Higher Education Act of 1965.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; references; table of contents.
Sec. 2. Effective date.
Sec. 3. Contracting authority subject to appropriations.

TITLE I—AMENDMENT TO TITLE I OF THE ACT

Sec. 101. Revision of title I.

"TITLE I—POSTSECONDARY PROGRAMS FOR NONTRADITIONAL STUDENTS

"Sec. 101. Findings.
"Sec. 102. Definitions.
"Sec. 103. Limitation on contract authority.
"PART A—PROGRAM AND PLANNING GRANTS
"Sec. 111. Institutional development.
"Sec. 112. Establishment of off-campus program grants.
"Sec. 113. Adult and continuing education staff development.
"Sec. 114. Administration of programs by the Secretary.
"Sec. 115. Authorization of appropriations.
"PART B—NATIONAL PROGRAMS
"Sec. 121. Adult learning research.
"Sec. 122. Authorization limitation.
"PART C—THE NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION
"Sec. 131. National Advisory Council on Continuing Education.".

TITLE II—LIBRARIES

Sec. 201. Purpose; authorization.
Sec. 202. College library resources.
Sec. 203. Definition of full-time equivalent student.
Sec. 204. Repeal of special purpose grants.
Sec. 205. Research and demonstration.
Sec. 206. Strengthening research library resources.
Sec. 207. College library technology and cooperation.

TITLE III—INSTITUTIONAL AID

Sec. 301. Institutional aid reauthorized.

"TITLE III—INSTITUTIONAL AID

"Sec. 301. Findings and purposes.
"PART A—STRENGTHENING INSTITUTIONS
"Sec. 311. Program purpose.
"Sec. 312. Definitions; eligibility.
"Sec. 313. Duration of grant.
"PART B—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES
"Sec. 321. Findings and purposes.
"Sec. 322. Definitions.
"Sec. 323. Grants to institutions.
"Sec. 324. Allotments to institutions.
"Sec. 325. Applications.
"Sec. 326. Professional or graduate institutions.
"Sec. 327. Reporting and audit requirements.
"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B
"Sec. 331. Establishment of challenge grant program.
"Sec. 332. Endowment challenge grants.
"PART D—GENERAL PROVISIONS
"Sec. 351. Applications for assistance.
"Sec. 352. Waiver authority and reporting requirement.
"Sec. 353. Application review process.
"Sec. 354. Cooperative arrangements.
"Sec. 355. Special payments rules.
"Sec. 356. Assistance to institutions under other programs.
"Sec. 357. Limitations.
"Sec. 358. Penalties.
"Sec. 359. Challenge grant application required.
"Sec. 360. Authorizations of appropriations.".

TITLE IV—STUDENT ASSISTANCE

Sec. 401. Students grants reauthorized.

"TITLE IV—STUDENT ASSISTANCE

"PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION
"Sec. 401. Statement of purpose; program authorization.

"SUBPART 1—BASIC EDUCATIONAL OPPORTUNITY GRANTS
"Sec. 411. Basic educational opportunity grants: amount and determinations; applications.
"Sec. 411A. Family contribution schedule for Pell Grants; data elements.
"Sec. 411B. Eligibility determination for dependent students.
"Sec. 411C. Eligibility determination for independent students with dependents other than a spouse.
"Sec. 411D. Eligibility determination for single independent students or for married independent students without other dependents.
"Sec. 411E. Regulations; updated tables.
"Sec. 411F. Definitions; determinations.
"SUBPART 2—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS
"Sec. 413A. Purpose; appropriations authorized.
"Sec. 413B. Amount and duration of grants.
"Sec. 413C. Agreements with institutions; selection of recipients.
"Sec. 413D. Allocation of funds.
"SUBPART 3—GRANTS TO STATES FOR STATE STUDENT INCENTIVES
"Sec. 415A. Purpose; appropriations authorized.
"Sec. 415B. Allotment among States.
"Sec. 415C. Applications for State student incentive grant programs.
"Sec. 415D. Administration of State programs; judicial review.
"Sec. 415E. Definition.
"SUBPART 4—SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS
"Sec. 417A. Program authority; authorization of appropriations.
"Sec. 417B. Talent search.
"Sec. 417C. Upward bound.
"Sec. 417D. Student support services.
"Sec. 417E. Educational opportunity centers.
"Sec. 417F. Staff development activities.
"SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK
"Sec. 418A. Maintenance and expansion of existing programs.
"SUBPART 6—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM
"Sec. 419A. Statement of purpose.
"Sec. 419B. Definition.
"Sec. 419C. Scholarships authorized.
"Sec. 419D. Allocation among States.
"Sec. 419E. Agreements.
"Sec. 419F. Eligibility of scholars.
"Sec. 419G. Selection of scholars.
"Sec. 419H. Stipends and scholarship conditions.
"Sec. 419I. Awards ceremony.
"Sec. 419J. Construction of needs provisions.
"Sec. 419K. Authorization of appropriations.
"SUBPART 7—ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION
"Sec. 420. Payments to institutions of higher education.
"Sec. 420A. Veterans education outreach program.
"SUBPART 8—SPECIAL CHILD CARE SERVICES FOR DISADVANTAGED COLLEGE STUDENTS
"Sec. 420B. Special child care services for disadvantaged college students.".
Sec. 402. Extension of guaranteed student loan program.
"PART B—GUARANTEED STUDENT LOAN PROGRAM
"Sec. 421. Statement of purpose; nondiscrimination; and appropriations authorized.
"Sec. 422. Advances for reserve funds of State and nonprofit private loan insurance programs.
"Sec. 423. Effects of adequate non-Federal programs.
"Sec. 424. Scope and duration of Federal loan insurance program.
"Sec. 425. Limitations on individual federally insured loans and on Federal loan insurance.
"Sec. 426. Sources of funds.
"Sec. 427. Eligibility of student borrowers and terms of federally insured student loans.
"Sec. 427A. Applicable interest rates.
"Sec. 428. Federal payments to reduce student interest costs.
"Sec. 428A. Supplemental loans for students.
"Sec. 428B. Plus loans.
"Sec. 428C. Consolidation loans.
"Sec. 428D. Commingling of funds.
"Sec. 428E. State garnishment law requirements.
"Sec. 428F. Rehabilitation of defaulted loans.
"Sec. 429. Certificate of Federal loan insurance—effective date of insurance.
"Sec. 430. Default of student under Federal loan insurance program.
"Sec. 430A. Reports to credit bureaus and institutions of higher education.
"Sec. 431. Insurance fund.
"Sec. 432. Legal powers and responsibilities.
"Sec. 433. Student loan information by eligible lenders.
"Sec. 434. Participation by Federal credit unions in Federal, State, and private student loan insurance programs.
"Sec. 435. Definitions for student loan insurance program.
"Sec. 436. District of Columbia student loan insurance program.
"Sec. 437. Repayment by the Secretary of loans of bankrupt, deceased, or disabled borrowers.
"Sec. 438. Special allowances.
"Sec. 439. Student loan marketing association.".
Sec. 403. Work study reauthorized.
"PART C—WORK-STUDY PROGRAMS
"Sec. 441. Purpose; appropriations authorized.
"Sec. 442. Allocation of funds.
"Sec. 443. Grants for work-study programs.
"Sec. 444. Sources of matching funds.
"Sec. 445. Flexible use of funds.
"Sec. 446. Job location and development programs.
"Sec. 447. Work study for community service-learning on behalf of low-income individuals and families.".
Sec. 404. Demonstration project authorized.
"PART D—INCOME CONTINGENT DIRECT LOAN DEMONSTRATION PROJECT
"Sec. 451. Statement of purpose.
"Sec. 452. Demonstration project authorized.
"Sec. 453. Agreements with institutions of higher education.
"Sec. 454. Terms of loan under the pilot program.
"Sec. 455. Feasibility study.".
Sec. 405. Amendment to part E of the Act.
"PART E—DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION
"Sec. 461. Appropriations authorized.
"Sec. 462. Allocation of funds.
"Sec. 463. Agreements with institutions of higher education.
"Sec. 463A. Student loan information by eligible institutions.
"Sec. 464. Terms of loans.
"Sec. 465. Cancellation of loans for certain public service.
"Sec. 466. Distribution of assets from student loan funds.
"Sec. 467. Collection of defaulted loans.
"Sec. 468. General authority of Secretary.".
Sec. 406. Addition of a new part F relating to need analysis for student assistance.
"PART F—NEED ANALYSIS
"Sec. 471. Amount of need.
"Sec. 472. Cost of attendance.
"Sec. 473. Family contribution.
"Sec. 474. Data elements used in determining expected family contribution.
"Sec. 475. Family contribution for dependent students.
"Sec. 476. Family contribution for independent students without dependents.
"Sec. 477. Family contribution for independent students with dependents.
"Sec. 478. Regulations; updated tables.
"Sec. 479. Simplified needs test.
"Sec. 479A. Discretion of student financial aid administrators.
"Sec. 479B. Student assistance and other Federal programs.
"Sec. 480. Definitions.".
Sec. 407. Revision of student assistance general provisions.
"PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS
"Sec. 481. Definitions.
"Sec. 482. Master calendar.
"Sec. 483. Forms and regulations.
"Sec. 484. Student eligibility.
"Sec. 484A. Statute of limitations.
"Sec. 485. Institutional and financial assistance information for students.
"Sec. 485A. Combined payment plan.
"Sec. 485B. National student loan data system.
"Sec. 486. Training in financial aid and student support services.
"Sec. 487. Program participation agreements.
"Sec. 488. Transfer of allotments.
"Sec. 489. Administrative expenses.
"Sec. 490. Criminal penalties.
"Sec. 491. Advisory Committee on Student Financial Assistance.".
Sec. 408. Conforming provisions.
TITLE V—TEACHER TRAINING AND DEVELOPMENT
Sec. 501. Revision of title V.
"TITLE V—EDUCATOR RECRUITMENT, RETENTION, AND DEVELOPMENT
"Sec. 501. Statement of purpose; applicability.
"Sec. 502. Authorization of appropriations.
"PART A—MIDCAREER TEACHER TRAINING FOR NONTRADITIONAL STUDENTS
"Sec. 511. Statement of purpose.
"Sec. 512. Selection procedures.
"Sec. 513. Applications.
"Sec. 514. Amount of grants.
"Sec. 515. Reports and information.

"PART B—SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS
"Sec. 521. Purpose.
"Sec. 522. Partnership agreement.
"Sec. 523. Grants.
"Sec. 524. Application for grants.
"Sec. 525. Community college pilot project.
"PART C—PROFESSIONAL DEVELOPMENT AND LEADERSHIP PROGRAMS
"SUBPART 1—PROFESSIONAL DEVELOPMENT RESOURCE CENTERS
"Sec. 531. Program authority and purpose.
"Sec. 532. Geographical distribution of grants.
"Sec. 533. Grant requirements.
"Sec. 534. Professional development policy board.
"Sec. 535. Submission and approval of applications.
"SUBPART 2—Leadership in Educational Administration Development
"Sec. 541. Purpose; intention; regulations.
"Sec. 542. Allocation of appropriations.
"Sec. 543. Technical assistance centers.
"Sec. 544. General criteria for contracts.
"Sec. 545. Definitions.
"PART D—TEACHER SCHOLARSHIPS AND FELLOWSHIPS
"SUBPART 1—CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAMS
"Sec. 551. Purpose.
"Sec. 552. Allocation among States.
"Sec. 553. Grant applications.
"Sec. 554. Amount and duration of and relation to other assistance.
"Sec. 555. Selection of Congressional Teacher Scholars.
"Sec. 556. Scholarship conditions.
"Sec. 557. Scholarship repayment provisions.
"Sec. 558. Exceptions to repayment provisions.
"Sec. 559. Federal administration of State programs; judicial review.
"SUBPART 2—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM
"Sec. 561. Declaration of purpose; designation.
"Sec. 562. Use of funds for fellowships and administration.
"Sec. 563. Christa McAuliffe fellowships.
"Sec. 564. Selection of Christa McAuliffe teacher fellowships.
"Sec. 565. Evaluation of applications.
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"PART E—STATE TASK FORCES ON TEACHER TRAINING
"Sec. 571. State task forces on teacher training.".
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Sec. 604. Undergraduate international studies and foreign language programs.
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Sec. 608. Selection of grant recipients.
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"TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES
"Sec. 701. Purposes.
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"Sec. 711. State plan.
"Sec. 712. Basic criteria.
"Sec. 713. Allotment of funds.
"PART B—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES
"Sec. 721. Grants.
"PART C—LOANS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES
"Sec. 731. Eligibility conditions, amounts, and terms.
"Sec. 732. General provisions for loan program.
"Sec. 733. Revolving loan and insurance fund.
"PART D—GRANTS TO PAY INTEREST ON DEBT
"Sec. 741. Annual interest grants.
"PART E—COLLEGE CONSTRUCTION LOAN INSURANCE ASSOCIATION
"Sec. 751. Congressional declaration of purpose; definition; incorporation.
"Sec. 752. Criteria for guarantees and insurance.
"Sec. 753. Process of organization.
"Sec. 754. Operation and election of Board of Directors.
"Sec. 755. Initial capital.
"Sec. 756. Issue of nonvoting stock and debt to the public.
"Sec. 757. Obligations not federally guaranteed; no Federal priority.
"Sec. 758. Authority of Secretary to sell common stock; right of first refusal.
"Sec. 759. Use of stock sale proceeds.
"Sec. 760. Audits; reports to the President and the Congress.
"PART F—HOUSING AND OTHER EDUCATIONAL FACILITIES LOANS
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"Sec. 762. General provisions.
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"Sec. 776. University of Connecticut Behavioral Science Facility.
"Sec. 777. University of Rhode Island business administration program.
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"TITLE VIII—COOPERATIVE EDUCATION
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"TITLE IX—GRADUATE PROGRAMS
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"Sec. 902. Submission and contents of applications.
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"PART B—PATRICIA ROBERTS HARRIS FELLOWSHIPS
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"Sec. 922. Program authorized.
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"PART C—JACOB K. JAVITS FELLOWS PROGRAM
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"Sec. 932. Allocation of fellowships.
"Sec. 933. Stipends.
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"Sec. 942. Grants to academic departments and programs of institutions.
"Sec. 943. Institutional eligibility.
"Sec. 944. Criteria for applications.
"Sec. 945. Awards to graduate students.
"Sec. 946. Additional assistance for cost of education.
"PART E—ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION
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"PART F—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS
"Sec. 961. Program authorization.
"Sec. 962. Applications.
"PART G—AUTHORIZATION OF APPROPRIATIONS
"Sec. 971. Amount and duration of authorization.".
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"Sec. 1021. Purpose; authority.
"Sec. 1022. Grant recipient selection.
"Sec. 1023. Use of funds.
"Sec. 1024. Administration.
"SUBPART 2—Science and Engineering Access Programs
"Sec. 1031. Minority support in science and engineering programs.
"Sec. 1032. Special service projects program.
"Sec. 1033. Supportable activities.
"SUBPART 3—Administrative and General Provisions
"Sec. 1041. Eligibility for grants.
"Sec. 1042. Grant application.

"Sec. 1043. Cross program and cross agency cooperation.
"Sec. 1044. Administrative provisions.
"Sec. 1045. Advisory provisions.
"Sec. 1046. Definitions.
"Sec. 1047. Authorization of appropriations.".
Sec. 1003. Innovative projects authorized.
"PART C—INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE
"Sec. 1061. Statement of purpose.
"Sec. 1062. Innovative projects for community services and student financial independence.
"Sec. 1063. Authorization of appropriations.".
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"TITLE XI—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE
"PART A—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT
"Sec. 1101. Findings and purpose.
"Sec. 1102. Use of economic development funds.
"Sec. 1103. Requirements for economic development grant applications.
"PART B—URBAN COMMUNITY SERVICE
"Sec. 1111. Purpose.
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"Sec. 1113. Contents for applications for urban community services projects.
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"Sec. 1121. Administrative provisions.
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"PART D—WAGNER INSTITUTE OF URBAN PUBLIC POLICY
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"Sec. 1132. Application for and use of funds.
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Sec. 1305. Study of bankruptcy treatment of students.
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Sec. 1341. Volunteers.
PART F—FAULKNER UNIVERSITY
Sec. 1351. Relief of liability.
PART G—ALIEN YOUTH EDUCATION OPPORTUNITY PANEL
Sec. 1361. Denial of student assistance to certain noncitizens.
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Sec. 1381. Appropriation provision.
TITLE XIV—EDUCATION RESEARCH AND STATISTICS
Sec. 1401. Educational research and improvement.
Sec. 1402. Center for Education Statistics.
Sec. 1403. Use of Council staff and facilities.
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Sec. 1505. Board of Trustees.
Sec. 1506. Executive Board.
Sec. 1507. General powers of the Board.
Sec. 1508. President of the Institute.
Sec. 1509. Staff of Institute.
Sec. 1510. Functions of the Institute.
Sec. 1511. Indian preference.
Sec. 1512. Nonprofit and nonpolitical nature of the Institute.
Sec. 1513. Tax status.
Sec. 1514. Transfer of functions.
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Sec. 1521. Program for Native Hawaiian culture and art development.
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PART C—AUTHORIZATION OF APPROPRIATIONS
Sec. 1531. Authorization of appropriations.
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Sec. 1601. Authorizations of appropriations.

SEC. 2. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect on the date of enactment of this Act.

SEC. 3. CONTRACTING AUTHORITY SUBJECT TO APPROPRIATIONS.

The authority to enter into contracts or other obligations under this Act (other than amendments made to part B of title IV of the Act) shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

TITLE I—AMENDMENT TO TITLE I OF THE ACT

SEC. 101. REVISION OF TITLE I.

Title I of the Act is amended to read as follows:

"TITLE I—POSTSECONDARY PROGRAMS FOR NONTRADITIONAL STUDENTS

"FINDINGS

"SEC. 101. The Congress finds that—

"(1) the increasing incidence of relocation and dislocation of industries and workers, the entry and reentry of adults into the labor force, and the rapid rate of change in technology, the economy, population demographics, and social conditions, necessitate significant improvement in postsecondary educational opportunities for adults in all stages of life;

"(2) the majority of adults who continue their education do so for job-related and career-oriented reasons or to fulfill admissions requirements for educational or vocational training;

"(3) minority-group citizens comprise the fastest growing segment of the population and labor force, yet are underrepresented in adult education programs;

"(4) access to postsecondary educational opportunities is limited for adults whose educational needs have been inadequately served, or for those whose age, sex, race, disability, national origin, rural isolation, or economic or personal circumstances (such as marital status or responsibility with regard to dependent children) are barriers to such opportunities;

"(5) enrollment of adult learners (including individuals aged 50 and over) approaches or equals that of traditional students in postsecondary institutions and such enrollment patterns are changing the demography of postsecondary education;

"(6) the organizational structure and administration of postsecondary institutions often represents a significant barrier to matriculation for the adult learner and such institutions need to adapt themselves to integrate adult learners;

"(7) the Federal Government should encourage the development of institutional partnerships between the public and private sectors and postsecondary institutions for the purpose of planning and implementing effective educational programs and services for the adult learner; and

"(8) it is in the interest of the Federal Government to support continuing education for adults in order to reduce unemployment and underemployment, enhance job opportunities, and promote a well-trained, flexible, internationally competitive work force and an educated citizenry.

"DEFINITIONS

"SEC. 102. For the purpose of this title—

"(1) the term 'continuing education' means postsecondary instruction and support services that are designed to meet the educational needs of adult learners;

"(2) the term 'adult learner' means an individual who by reason of personal circum-

stance, age, gender, disability, minority status, income, rural isolation, economic or educational disadvantage, marital status, presence of dependent children, lack of or need for new employment skills (including skills needed to pursue a new career) or other significant barrier (A) is not a traditional student, and (B) engages in some form of structured postsecondary study to improve the individual's knowledge, information skills, or employment opportunities;

"(3) the term 'eligible institution' means an institution of higher education, combinations of institutions of higher education, or consortia of any such institutions; and

"(4) the term 'qualified entity' means a public or nonprofit private organization which has—

"(A) experience in administering a program consistent with the requirements of this title; and

"(B) demonstrated the ability to coordinate, manage, and provide technical assistance to programs that receive grants under this title.

"LIMITATION ON CONTRACT AUTHORITY

"SEC. 103. The authority to enter into contracts under this title is subject to the availability of appropriations.

"PART A—PROGRAM AND PLANNING GRANTS

"INSTITUTIONAL DEVELOPMENT

"SEC. 111. (a) PURPOSE.—It is the purpose of this section—

"(1) to assist eligible institutions to establish programs relating postsecondary education resources more closely to the continuing educational training needs of the American work force;

"(2) to help strengthen the capacity of postsecondary institutions to respond to the continuing education needs of adults, especially adults—

"(A) dislocated by technological and economic change,

"(B) seeking entry, reentry, or progression in the work force after prolonged absences due to marriage and child-rearing;

"(C) isolated from educational resources due to age or geographic location;

"(D) seeking entry into nontraditional occupations for their race or sex;

"(E) receiving aid to families with dependent children;

"(F) who are functionally illiterate; and

"(G) who desire to pursue a new career; and

"(3) to support cooperative arrangements between eligible institutions, community-based organizations, and private and public sector employers that will facilitate meeting the goals of paragraphs (1) and (2).

"(b) GRANTS.—To carry out the purpose of this section, the Secretary shall make grants to, and enter into contracts with, eligible institutions for activities, such as—

"(1) structuring an academic program designed to facilitate the attendance of working students, parents caring for dependent children, and individuals seeking to reenter the educational system;

"(2) making academic programs available to adult learners at convenient times and locations;

"(3) the encouragement of resource sharing for innovative uses of technology, including telecommunications (on an interstate or intrastate basis) to overcome barriers to continuing education opportunities and to develop innovative delivery systems for education programs;

"(4) the creation or expansion of education programs and curriculum, including adult literacy efforts, designed to meet the present and future needs of the labor market;

"(5) the development of cooperative relationships between business and labor organizations, community-based organizations, and agencies which provide opportunities for continuing education;

"(6) the removal of barriers posed by previous education or training, age, sex, race, handicap, national origin, rural isolation, or economic circumstance which may place adults at a disadvantage in seeking continuing educational opportunities;

"(7) educational information, including literacy information, student financial assistance information, and occupational information and counseling services designed to meet the special needs of inadequately served adults and to assist their entry or reentry into continuing education and the labor force;

"(8) training for administrators, faculty, and staff to improve their ability to teach and serve adult learners; and

"(9) development of remedial instruction programs for adult learners to enable them to enroll in college-level educational programs.

"(c) ADDITIONAL USE OF FUNDS.—(1) Funds awarded under this section to any eligible institution shall be used for the purposes under subsection (b), except that, to a limited extent as approved by the Secretary, such funds may also be used for program planning and development to carry out the purposes of this section including—

"(A) making adult and continuing educational opportunities available at convenient times and locations, including off-campus locations;

"(B) evaluating the responsiveness of continuing education programs to the work and career-related objectives of adults;

"(C) developing or expanding educational and occupational information and counseling services to meet the special needs of adults, including information concerning available forms of student financial assistance;

"(D) training of personnel in continuing education programs to improve their ability to serve adult learners;

"(E) developing or expanding high-technology delivery systems and curricula to ensure closer development and career transitions for adult learners;

"(F) joint planning and implementation activities between institutional and private sector representatives to expand educational opportunities;

"(G) promoting the sharing of personnel and resources between an eligible institution and an employer;

"(H) contributing to dependent care programs for low income participants in adult and continuing education and the development of dependent care programs; and

"(I) encouraging and developing collaborative efforts between the institution or institutions and combinations of education institutions, private and public institutions, organizations, business, and labor to develop programs responsive to current employment and economic conditions.

"(2) Funds made available under this section may not be used—

"(A) to purchase or rent facilities to be used in connection with the program or for general operational overhead of the eligible institution; or

"(B) to pay stipends or provide direct financial assistance to any individual participating in the programs established under this section.

"(d) APPLICATIONS FOR ASSISTANCE.—(1) Any eligible institution may submit an application to the Secretary at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate the need for assistance. The Secretary shall make awards on a competitive basis.

"(2) Each such application shall—

"(A) provide evidence that the eligible institution has identified the educational needs of potential adult learners in the area served by the applicant, especially adults identified in subsection (a)(2);

"(B) describe the current continuing education program offered by the eligible institution (including information concerning the professional competence of faculty and staff, their degree of participation in the continuing education program, and institutional resources committed to the continuing education program) and the activities proposed to be developed or assisted to meet the purposes of this section;

"(C) provide assurance that Federal funds made available under this section will comprise not more than 87.5 percent of the cost of the program in the second year, and 75 percent in the third year;

"(D) describe procedures for evaluating the effectiveness of the activities for which a grant or contract is awarded under this section;

"(E) provide for such financial controls and accounting procedures as are necessary to ensure proper disbursement and accounting for funds made available to the applicant under this section and to ensure that funds made available under this section for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of this section and in no case supplant those funds;

"(F) provide assurances that the continuing education programs, services, and activities, funded under this section will not be limited to individuals who are enrolled in programs of study that lead to baccalaureate or graduate degrees, but will also include programs for adults enrolled in noncredit continuing education programs, that address the purposes of this section;

"(G) provide assurances that the program funded under this section does not duplicate existing State funded programs, and, in the case of any public institution, that the proposed program is consistent with the State's goals for that institution;

"(H) provide the projected number of students who will participate in the program and the proposed operational budget for the program, including the specific amounts proposed to be expended for salaries;

"(I) include assurances that the applicant intends to continue the activities to be supported under the grant after termination of the grant, including a detailed plan for obtaining funds to continue such activities;

"(J) provide assurances that funds made available under this section will be used only for the purposes of this section;

"(K) provide for a reasonable period of review and comment on the proposed program by the appropriate State agency and include any such comments with the application to the Secretary; and

"(L) include such other information as the Secretary may reasonably require to carry out the provisions of this section.

"(3) In awarding grants or contracts the Secretary shall give priority consideration to eligible institutions which—

"(A) as appropriate, include area employer and employee organizations in the planning of the proposed continuing education activi-

ty and provide assurances of the continued participation of such organizations in the implementation, operation, and evaluation of the funded activities;

"(B) include assurances that the appropriate State agencies concerned with postsecondary education and State labor market and economic agencies have been consulted in the development of the proposal;

"(C) demonstrate a willingness to conduct and integrate into the curriculum work-oriented professional and technical continuing education programs;

"(D) demonstrate the capacity to obtain contributions of staff, equipment, and resources for such programs from nonacademic sources, particularly employers; and

"(E) provide assurances that adults enrolled in such programs will have access to suitable and adequate financial assistance opportunities, including Federal student aid funds available for students enrolled less than half time.

"ESTABLISHMENT OF OFF-CAMPUS PROGRAM GRANTS

"SEC. 112. (a) PURPOSE; OFF-CAMPUS EDUCATION PROGRAMS.—The Secretary shall establish a grant program to assist postsecondary institutions in developing programs to encourage the establishment and growth of off-campus educational programs.

"(b) USES OF FUNDS.—Grants made under this section to any institution may be used for planning, developing, or operating a program designed by the institution to carry out the purposes of this section including—

"(1) the development and use of high-technology educational delivery systems using computers, radio, television, teleconferencing, video-disc, print, any combination of such components, or such other means as may provide direct use and access by individuals to off-campus programs;

"(2) the development of interstate educational delivery systems, cooperative, and consortia arrangements and programs (including telecommunications) which more effectively address regional needs for education;

"(3) training of faculty and staff to develop educational programs using creative and innovative delivery systems;

"(4) development of technological systems designed to enhance the teaching capabilities of faculty for students off-campus;

"(5) the development of curricula and student support services for students off-campus; and

"(6) acquisition (by lease or purchase) of necessary equipment, except that not more than 10 percent of such funds may be used for such acquisition.

"(c) APPLICATIONS FOR ASSISTANCE.—(1) Any eligible institution requesting assistance under this section shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be required by the Secretary. The Secretary shall make awards on a competitive basis taking into consideration the relative cost and effectiveness of the proposed program.

"(2) An institution, in its application for a grant, shall—

"(A) describe a program for establishing or improving delivery systems for students off-campus which shall include (i) the proposed operational budget for the program or activities to be conducted with funds received under the grant; (ii) the educational program or courses which would be made available off-campus; and (iii) the educational needs which the program is designed to address;

"(B) describe the applicant's current off-campus program or plans for an off-campus program;

"(C) provide for such financial control and accounting procedures as may be necessary to ensure proper disbursement and accounting for funds made available to the applicant under this section;

"(D) set forth policies and procedures to ensure that Federal funds made available under this section for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of this section and in no case supplant those funds;

"(E) provide assurances that Federal funds made available under this section will comprise not more than 87.5 percent of the cost of the program in the second year, and 75 percent in the third year;

"(F) set forth policies and procedures for evaluating the effectiveness of the institution in accomplishing the purposes of the activities for which a grant is awarded under this section; and

"(G) provide such other information as the Secretary may require.

"(3) Funds made available under this section to any institution may not be used for rent or the purchase of facilities to be used in connection with the program, for general operational overhead of the institution or combination of institutions, or for salaries or stipends to students participating in the program.

"ADULT AND CONTINUING EDUCATION STAFF DEVELOPMENT

"SEC. 113. (a) PURPOSE.—It is the purpose of this section to assist eligible institutions to provide in-service training to individuals involved in providing adult and continuing education services, including personnel involved in training offered under the Adult Education Act, the Job Training Partnership Act, the Carl D. Perkins Vocational Education Act, the Rehabilitation Act of 1973, the National Apprenticeship Act, the Older Americans Act of 1965, and the Social Security Act.

"(b) GRANTS AUTHORIZED.—To carry out the purpose of this section, the Secretary shall make grants to eligible postsecondary institutions that have entered into agreements with the Secretary to carry out an adult and continuing education staff development training program in accordance with the requirements of this section, which may include—

"(1) programs designed to enhance the pedagogical skills of the staff involved in programs offering adult and continuing education, including the training of staff and volunteers for literacy programs;

"(2) technical assistance to programs of adult education, with particular emphasis on federally funded programs; and

"(3) development of adult and continuing educational curricula materials, including adult literacy curricula, that may be used in adult and continuing education staff development training, especially materials that focus on utilization of new technologies.

"(c) APPLICATIONS FOR ASSISTANCE.—(1) Any eligible institution requesting assistance under this section shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be required by the Secretary. The Secretary shall make awards on a competitive basis taking into consideration the relative cost and effectiveness of the proposed program.

"(2) An institution, in its application for a grant, shall—

"(A) describe a proposal for establishing or improving staff development programs including the proposed operational budget for the program or activities to be conducted with funds made available under this section;

"(B) describe the applicant's current staff development program;

"(C) provide for such financial control and accounting procedures as may be necessary to ensure proper disbursement and accounting for funds made available to the applicant under this section;

"(D) set forth policies and procedures to ensure that Federal funds made available under this section for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of this part and in no case supplant those funds;

"(E) set forth policies and procedures for evaluating the effectiveness of the institution in accomplishing the purposes of the activities for which a grant is awarded under this section; and

"(F) provide such other information as the Secretary may require.

"(3) Funds made available under this section to any institution may not be used for rent or the purchase of facilities to be used in connection with the program, for general operational overhead of the institution or combination of institutions, or for salaries or stipends to students participating in the program.

"(4) A grant under this section may not exceed $50,000 for any fiscal year and may be awarded for a period not to exceed 3 years.

"ADMINISTRATION OF PROGRAMS BY THE SECRETARY

"SEC. 114. The Secretary shall ensure the equitable geographic distribution of funds under this part. In making awards under this part, the Secretary shall consider the equitable levels of funding for urban and rural areas. Grants and contracts under section 111 or 112 may be awarded for a period not to exceed 3 years and may not exceed $100,000 in the first year of funding, except that a grant or contract involving combinations of institutions of higher education or a consortia with other institutions or organizations may not exceed $150,000 in the first year.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 115. There is authorized to be appropriated to carry out this part $10,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years. One hundred percent of the funds appropriated under this section for fiscal year 1987 shall be available only to carry out sections 111 and 112.

"PART B—NATIONAL PROGRAMS

"ADULT LEARNING RESEARCH

"SEC. 121. (a) ESTABLISHMENT OF PROGRAM.—To carry out the purpose of this section by providing assistance to institutions of higher education, the Secretary is authorized to make grants to, and to enter into contracts with, eligible institutions to ensure a sustained capacity to undertake independent research and research application activities in adult and continuing education.

"(b) USES OF FUNDS.—Funds made available under this section to any eligible institution may be used for planning, developing, or operating a program which may include—

"(1) identifying and analyzing the special problems and needs of adult learners;

"(2) collecting, analyzing, and disseminating information relating to adult learners and their educational and employment objectives, with particular focus on analyzing and disseminating information on the current and projected needs of the labor market;

"(3) examining and applying uses of education technologies to reach new and isolated learners;

"(4) collecting and disseminating relevant data from Federal agencies and other national and State resources applicable to postsecondary institutional planning for continuing education, including information related to Federal and other forms of student financial assistance;

"(5) supporting training programs designed to enhance the effectiveness of faculty to teach adult learners;

"(6) developing curriculum and instructional methods for adults seeking new employment opportunities;

"(7) demonstrating and disseminating new and existing programs designed for the adult learner; and

"(8) promoting resource sharing for innovative uses of technology, including telecommunications, to overcome barriers to postsecondary educational opportunities.

"(c) APPLICATION FOR ASSISTANCE.—A grant or contract authorized by this part may be awarded by the Secretary on a competitive basis upon receipt of an application, which is submitted to the Secretary at such time or times and contains such information as the Secretary may prescribe. Each such application shall—

"(1) contain provisions that demonstrate the existing resources and academic reputation of the institution of higher education in the field of continuing education and its ability to conduct such activities; and

"(2) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part.

SEC. 122. AUTHORIZATION LIMITATION.

No funds are authorized to be appropriated for the purpose of this part for fiscal year 1987 and the 4 succeeding fiscal years.

"PART C—THE NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

"NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

"SEC. 131. (a) ESTABLISHMENT AND COMPOSITION.—The President shall appoint a National Advisory Council on Continuing Education consisting of 8 representatives of Federal agencies having postsecondary continuing education and training responsibilities, including, but not limited to—

"(1) one representative each from—

"(A) the Department of Education,

"(B) the Department of Agriculture,

"(C) the Department of Defense,

"(D) the Department of Labor, and

"(E) the Veterans' Administration; and

"(2) 12 members, not full-time employees of the Federal Government, who are knowledgeable and experienced in the field of continuing education, including State and local government officials, representatives of business, labor, and community groups, and adults whose educational needs have been inadequately served.

The Advisory Council shall meet at the call of the Chairman but not less than twice a year.

"(b) ADVISORY FUNCTIONS.—The Advisory Council shall advise the Secretary in the preparation of general regulations and with respect to policies and procedures arising in the administration of this Act with respect to continuing education.

"(c) FUNCTIONS RELATING TO ELIMINATING DUPLICATION.—The Advisory Council shall examine all federally supported continuing education and training programs and make recommendations with regard to policies to eliminate duplication and to effectuate the coordination of programs under this Act with respect to continuing education and other federally funded continuing education and training programs and services.

"(d) REPORTS.—The Advisory Council shall make annual reports to the President, the Congress, and the Secretary of its findings and recommendations, including recommendations for changes in the provisions of this Act with respect to continuing education and other Federal laws relating to continuing education and training activities. The President shall transmit each such report to the Congress with his comments and recommendations. The Advisory Council shall make such other reports or recommendations to the President, the Congress, the Secretary, or the head of any other Federal department or agency as may be appropriate.

"(e) USE OF SERVICES.—The Advisory Council may utilize the services and facilities of any agency of the Federal Government as may be necessary. The Advisory Council may accept, employ, and dispose of gifts or bequests to carry out its responsibilities under this section.".

TITLE II—LIBRARIES

SEC. 201. PURPOSE; AUTHORIZATION.

(a) DESIGNATION OF TITLE.—The heading of title II is amended to read as follows:

"TITLE II—ACADEMIC LIBRARY AND INFORMATION TECHNOLOGY ENHANCEMENT".

(b) PURPOSE.—Section 201(a) of the Act is amended by striking out paragraph (4) and inserting in lieu thereof the following:

"(4) college and university libraries in acquiring technological equipment and in conducting research in information technology in accordance with part D.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 201(b) of the Act is amended to read as follows:

"(b)(1) There are authorized to be appropriated to carry out part A $10,000,000 for fiscal year 1987, and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(2) There are authorized to be appropriated to carry out part B $5,000,000 for fiscal year 1987, and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(3) There are authorized to be appropriated to carry out part C $10,000,000 for fiscal year 1987, and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(4) There are authorized to be appropriated to carry out part D $5,000,000 for fiscal year 1987, and such sums as may be necessary for each of the 4 succeeding fiscal years.".

SEC. 202. COLLEGE LIBRARY RESOURCES.

Section 211 of the Act is amended to read as follows:

"COLLEGE LIBRARY RESOURCES

"SEC. 211. (a) From the amount appropriated for this part, the Secretary shall make grants to eligible institutions of higher education or combinations thereof (and to branches of institutions which are located in different communities from that in which its parent institution is located). The amount of a grant under this part shall not be less than $2,000 nor more than $10,000 and shall reflect the number of full-time equivalent students enrolled at the recipient institution. If the funds are not sufficient to provide grants to all eligible institutions, grants shall be made to those institutions demonstrating the greatest need, based on the eligibility criteria in section 211(c).

"(b) A grant under this part may be made only if the application provides—

"(1) information about the institution and its library resources as prescribed by the Secretary in regulations;

"(2) satisfactory assurance that the applicant has expended for all library materials (exclusive of construction) during the institutional fiscal year preceding the year of application for which the grant is sought (hereafter in this section referred to as the 'base year'), from funds other than funds received under this part, an amount not less than the average annual aggregate amount or the average amount per full-time equivalent student it expended for such purposes during the two years preceding the base year;

"(3) for such fiscal control and fund accounting procedures as are necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part;

"(4) for making such reports as the Secretary may require, including a report on how such funds received under a grant were expended, and for keeping such records and for affording such access thereto as the Secretary deems necessary to assure the correctness and verification of such reports; and

"(5) a statement setting forth how the funds received under this part will be used to improve the quality of the institution's library services.

"(c) In order to be considered an eligible institution, an institution must provide the Secretary assurance that—

"(1) the expenditures of the institution per full-time equivalent student for library materials is less than the average of the expenditures for library materials per full-time equivalent student by other institutions of comparable size and program, as determined by the Secretary in accord with definitions established by the Center for Education Statistics; and

"(2) the number of volumes per full-time equivalent student is less than the average of such number of volumes held by institutions of comparable size and program, as determined by the Secretary in accord with definitions established by the Center for Education Statistics.

"(d) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent the applicant from making the assurance required by subsection (b)(2), the requirement for such assurance may be waived. For the purpose of this subsection, the term 'very unusual circumstances' means theft, vandalism, fire, flood, earthquake, or other occurrence which may temporarily reduce the level of expenditures for library materials, or which resulted in unusually high expenditures for library materials.

"(e) If the Secretary determines, in accordance with regulations, that there are very unusual circumstances which prevent an otherwise eligible institution from qualifying under subsection (c), the requirements of subsection (c) may be waived. The Secretary may not grant such waivers to more than 5

percent of the eligible institutions receiving grants under this part.

"(f) Grants under this part may be used only for books, periodicals, documents, magnetic tapes, computer software, phonographic records, audiovisual materials, and other related library materials (including necessary binding) and for the establishment and maintenance of networks for sharing library resources with other institutions of higher education.".

SEC. 203. DEFINITION OF FULL-TIME EQUIVALENT STUDENT.

Part A of title II of the Act is further amended by inserting after section 212 the following new sections:

"DEFINITION

"SEC. 213. For the purpose of this part, the term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time at such institution (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12).".

SEC. 204. REPEAL OF SPECIAL PURPOSE GRANTS.

(a) REPEAL.—Section 224 of the Act is repealed.

(b) CONFORMING AMENDMENTS.—(1) Section 221 of the Act is amended to read as follows:

"GRANTS AUTHORIZED

"SEC. 221. From the amounts appropriated for this part for any fiscal year, the Secretary shall make grants in accordance with sections 222 and 223. Of such amount, two-thirds shall be available for the purpose of section 222 and one-third shall be available for the purpose of section 223.".

(2) Section 231(b) of the Act is amended by striking out "or 224".

SEC. 205. RESEARCH AND DEMONSTRATION.

Section 223 of the Act is amended by striking out "and information technology,".

SEC. 206. STRENGTHENING RESEARCH LIBRARY RESOURCES.

Section 231 of the Act is further amended by inserting at the end thereof the following new subsection:

"(c) In determining eligibility for assistance under this part, the Secretary shall permit institutions that do not otherwise qualify to provide additional information or documents to demonstrate the national or international significance for scholarly research of the particular collection described in the grant proposal.".

SEC. 207. COLLEGE LIBRARY TECHNOLOGY AND COOPERATION.

Part D of title II of the Act is amended to read as follows:

"PART D—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS

"ESTABLISHMENT OF PROGRAM

"SEC. 241. (a) The Secretary is authorized to make grants for technological equipment and other special purposes to—

"(1) institutions of higher education which demonstrate a need for special assistance for the planning, development, acquisition, installation, maintenance, or replacement of technological equipment (including computer hardware and software) necessary to participate in networks for sharing of library resources;

"(2) combinations of higher education institutions which demonstrate a need for special assistance in establishing and strengthening joint-use library facilities, resources, or equipment;

"(3) other public and private nonprofit organizations which provide library and information services to institutions of higher education on a formal, cooperative basis for the purpose of establishing, developing, or expanding programs or projects that improve their services to institutions of higher education; and

"(4) institutions of higher education conducting research or demonstration projects to meet special national or regional needs in utilizing technology to enhance library or information sciences.

"(b) From funds appropriated for this part, the Secretary shall make competitive awards to institutions or combinations of institutions in each of the categories described in clauses (1) through (4) of subsection (a). The minimum award shall be $15,000 and may be expended over a 3-year period.

"(c) A grant under this section may be made only if the application (whether by an individual institution or a combination of institutions) is approved by the Secretary on the basis of criteria prescribed in regulations and provides satisfactory assurance that the applicant will expend during the 3-year period for which the grant is sought (from funds other than funds received under this title), for the same purpose as such grant, an amount from such other sources equal to not less than one-third of such grant.

"(d) This program shall be administered in the Department by an expert in library technology.".

TITLE III—INSTITUTIONAL AID

SEC. 301. INSTITUTIONAL AID REAUTHORIZED.

(a) AMENDMENT.—Title III of the Act is amended to read as follows:

"TITLE III—INSTITUTIONAL AID

"FINDINGS AND PURPOSES

"SEC. 301. (a) FINDINGS.—The Congress finds that—

"(1) many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive;

"(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning, recruitment activities, and development activities, including endowment building;

"(3) the title III program prior to 1985 did not always meet the specific development needs of historically Black colleges and universities and other institutions with large concentrations of minority, low-income students;

"(4) the solution of the problems of these institutions would enable them to become viable, fiscally stable and independent, thriving institutions of higher education;

"(5) providing a minimum level of assistance to all categories of eligible institutions will assure the continued participation of the institutions in the program established in title III and enhance their role in providing access and quality education to low-income and minority students;

"(6) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations, and in becoming financially independent; and

"(7) there is a particular national interest in aiding those institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin and whose participation in the American system of higher education is in the Nation's interest so that equality of access and quality of postsecondary education opportunities may be enhanced for all students.

"(b) PURPOSE.—It is the purpose of this title to assist such institutions in equalizing educational opportunity through a program of Federal assistance.

"PART A—STRENGTHENING INSTITUTIONS

"PROGRAM PURPOSE

"SEC. 311. (a) GENERAL AUTHORIZATION.—The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

"(b) GRANTS AWARDED; SPECIAL CONSIDERATION.—(1) From the sums available for this part under section 358(a)(1), the Secretary may award grants to any eligible institution with an application approved under section 351 in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution.

"(2) Special consideration shall be given to any eligible institution—

"(A) which has endowment funds (other than any endowment fund built under section 332 of this Act as in effect on September 30, 1986, and under part B) the market value of which, per full-time equivalent student, is less than the average current market value of the endowment funds, per full-time equivalent student (other than any endowment fund built under section 332 of this Act as in effect on September 30, 1986, and under part B) at similar institutions; or

"(B) which has expenditures per full-time equivalent student for library materials which is less than the average of the expenditures for library materials per full-time equivalent student by other similarly situated institutions.

"(3) Special consideration shall be given to applications which propose, pursuant to the institution's plan, to engage in—

"(A) faculty development;

"(B) funds and administrative management;

"(C) development and improvement of academic programs;

"(D) acquisition of equipment for use in strengthening funds management and academic programs;

"(E) joint use of facilities such as libraries and laboratories; and

"(F) student services.

"DEFINITIONS; ELIGIBILITY

"SEC. 312. (a) EDUCATIONAL AND GENERAL EXPENDITURES.—For the purpose of this part, the term 'educational and general expenditures' means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

"(b) ELIGIBLE INSTITUTION.—For the purpose of this part, the term 'eligible institution' means—

"(1) an institution of higher education—

"(A) which has an enrollment of needy students as required by subsection (c) of this section;

"(B) except as provided in section 352(b), the average educational and general expend-

itures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

"(C)(i) is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (ii) is a junior or community college;

"(D) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation;

"(E) except as provided in section 352(b) has, during the 5 academic years preceding the academic year for which it seeks assistance under this part—

"(i) met the requirement of either subparagraph (C)(i) or (C)(ii), or of both such subparagraphs (simultaneously or consecutively); and

"(ii) met the requirement of subparagraph (D); and

"(F) meets such other requirements as the Secretary may prescribe;

"(2) any branch of any institution of higher education described under paragraph (1) which by itself satisfies the requirements contained in subparagraphs (A) and (B) of such paragraph;

"(3) any institution of higher education which has an enrollment of which at least 20 percent are Mexican American, Puerto Rican, Cuban, or other Hispanic students, or combination thereof, and which also satisfies the requirements of subparagraphs (A) and (B) of paragraph (1);

"(4) any institution of higher education which has an enrollment of at least 60 percent American Indian, or in the case of Alaska natives, an enrollment of at least 5 percent, and which also satisfies the requirements of subparagraphs (A), (B), (C), and (D) of paragraph (1); and

"(5) any institution of higher education which has an enrollment of which at least 5 percent are Native Hawaiian, Asian American, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian, or any combination thereof, and which also satisfies the requirements of subparagraphs (A) and (B) of paragraph (1).

For purposes of the determination of whether an institution is an eligible institution under this paragraph, the factor described under paragraph (1)(A) shall be given twice the weight of the factor described under paragraph (1)(B).

"(c) ENROLLMENT OF NEEDY STUDENTS.—For the purpose of this part, the term 'enrollment of needy students' means an enrollment at an institution of higher education or a junior or community college which includes—

"(1) at least 50 percent of the degree students so enrolled who are receiving need-based assistance under title IV of this Act (other than loans for which an interest subsidy is paid pursuant to section 428), or

"(2) a substantial percentage of students receiving Pell Grants in the second preceding fiscal year, in comparison with the percentage of students receiving Pell Grants at all such institutions in such fiscal year, unless the requirement of this subdivision is waived under section 352(a).

"(d) FULL-TIME EQUIVALENT STUDENTS.—For the purpose of this part, the term 'full-time equivalent students' means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

"(e) JUNIOR OR COMMUNITY COLLEGE.—For the purpose of this part, the term 'junior or community college' means an institution of higher education—

"(1) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

"(2) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

"(3) that—

"(A) provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or

"(B) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

"DURATION OF GRANT

"SEC. 313. (a) GENERAL RULE.—The Secretary may award a grant to an eligible institution under this part for—

"(1) not to exceed 3 years;

"(2) not to exceed 4 years; or

"(3) not to exceed 5 years.

"(b) PROHIBITION.—An eligible institution that is awarded a grant—

"(1) under paragraph (2) of subsection (a) shall not be eligible to receive a grant under this part during the 4 years immediately following the period that it received such grant; and

"(2) under paragraph (3) of subsection (a) shall not be eligible to receive a grant under this part during the 5 years immediately following the period that it received such grant.

"(c) PLANNING GRANTS.—Notwithstanding subsection (a), the Secretary may award a grant to an eligible institution under this part for a period of one year for the purpose of preparation of plans and applications for a grant under this part.

"PART B—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

"FINDINGS AND PURPOSES

"SEC. 321. The Congress finds that—

"(1) the historically Black colleges and universities have contributed significantly to the effort to attain equal opportunity through postsecondary education for Black, low-income, and educationally disadvantaged Americans;

"(2) States and the Federal Government have discriminated in the allocation of land and financial resources to support Black public institutions under the Morrill Act of 1862 and its progeny, and against public and private Black colleges and universities in the award of Federal grants and contracts, and the distribution of Federal resources under this Act and other Federal programs which benefit institutions of higher education;

"(3) the current state of Black colleges and universities is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of Black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity; and

"(4) financial assistance to establish or strengthen the physical plants, financial management, academic resources, and endowments of the historically Black colleges and universities are appropriate methods to enhance these institutions and facilitate a decrease in reliance on governmental financial support and to encourage reliance on endowments and private sources.

"DEFINITIONS

"SEC. 322. For the purpose of this part:

"(1) The term 'graduate' means an individual who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than 5 consecutive school years.

"(2) The term 'part B institution' means any historically Black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation.

"(3) The term 'Pell Grant recipient' means a recipient of financial aid under subpart 1 of part A of title IV of this Act.

"(4) The term 'professional and academic areas in which Blacks are underrepresented' shall be determined by the Secretary and the Commissioner of the Bureau of Labor Statistics, on the basis of the most recent available satisfactory data, as professional and academic areas in which the percentage of Black Americans who have been educated, trained, and employed is less than the percentage of Blacks in the general population.

"(5) The term 'school year' means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

"GRANTS TO INSTITUTIONS

"SEC. 323. (a) GENERAL AUTHORIZATION; USES OF FUNDS.—From amounts available under section 358(a)(2) in any fiscal year the Secretary shall make grants (under section 324) to institutions which have applications approved by the Secretary (under section 325) for any of the following uses:

"(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

"(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities.

"(3) Support of faculty exchanges and faculty fellowships to assist in attaining advanced degrees in their field of instruction.

"(4) Academic instruction in disciplines in which Black Americans are underrepresented.

"(5) Purchase of library books, periodicals, microfilm, and other educational materials.

"(6) Tutoring, counseling, and student service programs designed to improve academic success.

"(b) LIMITATIONS.—(1) No grant may be made under this Act for any educational program, activity, or service related to sectarian instruction or religious worship, or provided by a school or department of divinity. For the purpose of this subsection, the term 'school or department of divinity' means an institution whose program is spe-

cifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

"(2) Not more than 50 percent of the allotment of any institution may be available for the purpose of constructing or maintaining a classroom, library, laboratory, or other instructional facility.

"ALLOTMENTS TO INSTITUTIONS

"SEC. 324. (a) ALLOTMENT; PELL GRANT BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-half that amount as the number of Pell Grant recipients in attendance at such institution at the end of the school year preceding the beginning of that fiscal year bears to the total number of Pell Grant recipients at all part B institutions.

"(b) ALLOTMENT; GRADUATES BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates for such school year at such institution bears to the total number of graduates for such school year at all part B institutions.

"(c) ALLOTMENT; GRADUATE AND PROFESSIONAL STUDENT BASIS.—From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates, who are admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented, bears to the number of such graduates for all part B institutions.

"(d) REALLOTMENT.—The amount of any part B institution's allotment under subsection (a), (b), or (c) for any fiscal year which the Secretary determines will not be required for such institution for the period such allotment is available shall be available for reallotment from time to time on such date during such period as the Secretary may determine to other part B institutions in proportion to the original allotment to such other institutions under this section for such fiscal year.

"(e) SPECIAL MERGER RULE.—(1) The Secretary shall permit any eligible institution for a grant under part B in any fiscal year prior to the fiscal year 1986 to apply for a grant under this part if the eligible institution has merged with another institution of higher education which is not so eligible or has merged with an eligible institution.

"(2) The Secretary may establish such regulations as may be necessary to carry out the requirement of paragraph (1) of this subsection.

"(f) SPECIAL RULE FOR CERTAIN DISTRICT OF COLUMBIA ELIGIBLE INSTITUTIONS.—In any fiscal year that the Secretary determines that Howard University or the University of the District of Columbia will receive an allotment under subsections (b) and (c) of this section which is not in excess of amounts received by Howard University under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123), relating to annual authorization of appropriations for Howard University, or by the University of the District of Columbia under the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 774) for such fiscal year, then Howard University and the University of the District of Columbia, as the case may be, shall be ineligible to receive an allotment under this section.

"APPLICATIONS

"SEC. 325. (a) CONTENTS.—No part B institution shall be entitled to its allotment of Federal funds for any grant under section 324 for any period unless that institution meets the requirements of subparagraphs (C), (D), and (E) of section 312(b)(1) and submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

"(1) provide that the payments under this Act will be used for the purposes set forth in section 322; and

"(2) provide for making an annual report to the Secretary and provide for—

"(A) conducting, except as provided in subparagraph (B), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this title at least once every two years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

"(B) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of subparagraph (A) for the period covered by such audit.

"(b) APPROVAL.—The Secretary shall approve any application which meets the requirements of subsection (a) and shall not disapprove any application submitted under this part, or any modification thereof, without first affording such institution reasonable notice and opportunity for a hearing.

"PROFESSIONAL OR GRADUATE INSTITUTIONS

"SEC. 326. (a) GENERAL AUTHORIZATION.—(1) Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the postgraduate institutions listed in subsection (e) that is determined by the Secretary to be making a substantial contribution to the legal, medical, dental, veterinary, or other graduate education opportunities for Black Americans.

"(2) No grant in excess of $500,000 may be made under this section unless the postgraduate institution provides assurances that 50 percent of the cost of the purposes for which the grant is made will be paid from non-Federal sources.

"(b) DURATION.—Grants shall be made for a period not to exceed 5 years. No more than two 5-year grants (for a period of not more than 10 years) may be made to any one undergraduate or postgraduate institution.

"(c) USES OF FUNDS.—A grant under this section may be used for—

"(1) any of the purposes enumerated under section 323;

"(2) to establish or improve a development office to strengthen and increase contributions from alumni and the private sector; and

"(3) to assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 333 of this title.

"(d) APPLICATION.—Any institution eligible for a grant under this section shall submit an application which—

"(1) demonstrates how the grant funds will be used to improve graduate educational opportunities for Black and low-income students, and lead to greater financial independence; and

"(2) provides, in the case of applications for grants in excess of $500,000, the assurances required by subsection (a)(2) and specifies the manner in which the eligible institution is going to pay the non-Federal share of the cost of the application.

"(e) ELIGIBLE PROFESSIONAL OR GRADUATE INSTITUTIONS.—Independent professional or graduate institutions eligible for grants under subsection (a) include—

"(1) Morehouse School of Medicine;

"(2) Meharry Medical School;

"(3) Charles R. Drew Postgraduate Medical School;

"(4) Atlanta University; and

"(5) Tuskegee Institute School of Veterinary Medicine.

"REPORTING AND AUDIT REQUIREMENTS

"SEC. 327. (a) RECORDKEEPING.—Each recipient of a grant under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose—

"(1) the amount and disposition by such recipient of the proceeds of such assistance;

"(2) the cost of the project or undertaking in connection with which such assistance is given or used;

"(3) the amount of that portion of the cost of the project or undertaking supplied by other sources; and

"(4) such other records as will facilitate an effective audit.

"(b) REPAYMENT OF UNEXPENDED FUNDS.—Any funds paid to an institution and not expended or used for the purposes for which the funds were paid within 10 years following the date of the initial grant awarded to an institution under part B of this title shall be repaid to the Treasury of the United States.

"PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

"ESTABLISHMENT OF CHALLENGE GRANT PROGRAM

"SEC. 331. (a) GENERAL AUTHORIZATION; ELIGIBILITY.—(1) From the sums available under section 360(a)(3) for each fiscal year, the Secretary may award a challenge grant to each institution—

"(A) which is an eligible institution under part A or would be considered to be such an institution if section 312(b)(1)(C) referred to a postgraduate degree rather than a bachelor's degree;

"(B) which is an institution under part B or would be considered to be such an institution if section 324 referred to a postgraduate degree rather than a baccalaureate degree; or

"(C) which is an institution that makes a substantial contribution to postgraduate medical educational opportunities for minorities and the economically disadvantaged.

"(2) The Secretary may waive the requirements set forth in subparagraphs (A) and (B) of paragraph (1) with respect to a postgraduate degree in the case of any institution otherwise eligible under such paragraph for a challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.

"(b) USES OF FUNDS.—A grant under this section may be used by an institution eligible for a grant under this section to assist

the institution to achieve financial independence.

"(c) DURATION OF GRANT.—The Secretary may make a grant under this section for a period of not more than 5 years, subject to annual appropriations.

"(d) CONTENTS OF APPLICATIONS.—Any institution eligible for a challenge grant under this section may apply for such a grant under section 351, except that the application for the purpose of this part shall—

"(1) provide assurances that funds will be available to the applicant within one year to match funds that the Secretary is requested to make available to the institution as a challenge grant;

"(2) in the case of an application by a public institution, contain the recommendations of an appropriate State agency responsible for higher education in the State, or provide evidence that the institution requested the State agency to comment but the State agency failed to comment; and

"(3) demonstrate how challenge grant funds will be used to achieve financial independence.

"(e) NOTICE OF APPROVAL.—Not later than April 1 of the fiscal year preceding the fiscal year in which any grant is to be made under this section, the Secretary shall determine which institutions will receive challenge grants under such section and notify the institutions of the amount of the grant.

"(f) PREFERENCE.—In approving applications for such grants, preference shall be given to institutions which are receiving, or have received, grants under part A or part B of this title.

"ENDOWMENT CHALLENGE GRANTS

"SEC. 332. (a) PURPOSE; DEFINITIONS.—(1) The purpose of this section is to establish a program to provide matching grants to eligible institutions of higher education in order to establish or increase endowment funds at such institutions, to provide additional incentives to promote fund raising activities by such institutions, and to foster increased independence and self-sufficiency at such institutions.

"(2) For the purpose of this section:

"(A) The term 'endowment fund' means a fund established by State law, by an institution of higher education, or by a foundation which is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, but which shall not include real estate.

"(B) The term 'endowment fund corpus' means an amount equal to the grant or grants awarded under this section plus an amount equal to such grant or grants provided by the institution.

"(C) The term 'endowment fund income' means an amount equal to the total value of the endowment fund established under this section minus the endowment fund corpus.

"(b) GRANTS AUTHORIZED.—(1) From sums available for this section under section 360, the Secretary is authorized to award challenge grants to eligible institutions of higher education to establish or increase an endowment fund at such institution. Such grants shall be made only to eligible institutions described in paragraph (4) whose applications have been approved pursuant to subsection (g).

"(2)(A) Except as provided in subparagraph (B), no institution shall receive a grant under this section, unless such institution has deposited in its endowment fund established under this section an amount equal to the amount of such grant. The source of funds for this institutional match shall not include Federal funds or funds from an existing endowment fund.

"(B) In any fiscal year in which the appropriations for this part exceeds $10,000,000, the Secretary may make a grant under this part to an eligible institution of higher education if such institution—

"(i) has deposited in its endowment fund established under this section an amount which is equal to one-half of the amount of such grant; and

"(ii) applies for a grant in an amount exceeding $1,000,000.

"(C) An eligible institution of higher education that is awarded a grant under this section shall not be eligible to reapply for a grant under this section during the 10 years immediately following the period that it received such grant.

"(3) The period of a grant under this section shall be not more than 20 years. During the grant period, an institution may not withdraw or expend any of the endowment fund corpus. After the termination of the grant period, an institution may use the endowment fund corpus plus any endowment fund income for any educational purpose.

"(4)(A) An institution of higher education is eligible to receive a grant under this section if it is an eligible institution as described in section 331(a)(1).

"(B) No institution shall be ineligible for a challenge grant under this section for a fiscal year by reason of the previous receipt of such a grant but no institution shall be eligible to receive such a grant for more than 2 fiscal years out of any period of 5 consecutive fiscal years.

"(5) Except as provided in paragraph (2)(B), a challenge grant under this section to an eligible institution year shall—

"(A) not be less than $50,000 for any fiscal year; and

"(B) not be more than (i) $250,000 for fiscal year 1987; or (ii) $500,000 for fiscal year 1988 or any succeeding fiscal year.

"(6)(A) An eligible institution may designate a foundation, which was established for the purpose of raising money for the institution, as the recipient of the grant awarded under this section.

"(B) The Secretary shall not award a grant to a foundation on behalf of an institution unless—

"(i) the institution assures the Secretary that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the fund in accordance with this section and any implementing regulation;

"(ii) the foundation agrees to administer the fund in accordance with the requirements of this section and any implementing regulation; and

"(iii) the institution agrees to be liable for any violation by the foundation of the provisions of this section and any implementing regulation, including any monetary liability that may arise as a result of such violation.

"(c) GRANT AGREEMENT; ENDOWMENT FUND PROVISIONS.—(1) An institution awarded a grant under this section shall enter into an agreement with the Secretary containing satisfactory assurances that it will (A) immediately comply with the matching requirements of subsection (b)(2), (B) establish an endowment fund independent of any other such fund of the institution, (C) invest the endowment fund corpus, and (D) meet the other requirements of this section.

"(2)(A) An institution shall invest the endowment fund corpus and endowment fund income in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located such as a federally insured bank savings account or comparable interest-bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

"(B) The institution, in investing the endowment fund established under this section, shall exercise the judgment and care, under the circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of such person's own affairs.

"(3)(A) An institution may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of such college, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance.

"(B)(i) Except as provided in clause (ii), an institution may not spend more than 50 percent of the total aggregate endowment fund income earned prior to the time of expenditure.

"(ii) The Secretary may permit an institution to spend more than 50 percent of the endowment fund income notwithstanding clause (i) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.

"(d) REPAYMENT PROVISIONS.—(1) If at any time an institution withdraws part of the endowment fund corpus, the institution shall repay to the Secretary an amount equal to 50 percent of the withdrawn amount, which represents the Federal share, plus income earned thereon. The Secretary may use such repaid funds to make additional challenge grants, or to increase existing endowment grants, to other eligible institutions.

"(2) If an institution expends more of the endowment fund income than is permitted under subsection (c), the institution shall repay the Secretary an amount equal to 50 percent of the amount improperly expended (representing the Federal share thereof). The Secretary may use such repaid fund to make additional challenge grants, or to increase existing challenge grants, to other eligible institutions.

*"(e) AUDIT INFORMATION.—An institution receiving a * * * such information as the Secretary may prescribe. Subject to the availability of appropriations to carry out this section and consistent with the requirement of subsection (f), the Secretary may approve an application for a grant if an institution, in its application, provides adequate assurances that it will comply with the requirements of this section.*

"(h) TERMINATION AND RECOVERY PROVISIONS.—(1) After notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this section if the grantee institution—

"(A) expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3);

"(B) fails to invest the endowment fund in accordance with the investment standards set forth in subsection (c)(2); or

"(C) fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds.

"(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of each original grant under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing challenge grants, to other eligible institutions under this part.

"PART D—GENERAL PROVISIONS

"APPLICATIONS FOR ASSISTANCE

"SEC. 351. (a) APPLICATION REQUIRED; APPROVAL.—Any institution which is eligible for assistance under this title shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this title, the Secretary may approve an application for a grant under this title if the application meets the requirements of subsection (b) and shows that the applicant is eligible for assistance in accordance with the part of this title under which the assistance is sought.

"(b) CONTENTS.—An institution, in its application for a grant, shall—

"(1) set forth, or describe how the institution, (other than an institution applying under part C) will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this title);

"(2) set forth policies and procedures to ensure that Federal funds made available under this title for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 311(b) or 323, and in no case supplant those funds;

"(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this title;

"(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this title;

"(5) provide (A) for making such reports, in such form and containing such information, as the Secretary may require to carry out the functions under this title, including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded, and (B) for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

"(6) provide that the institution will comply with the limitations set forth in section 356;

"(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

"(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

"(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this title in conjunction with other parts of the development project (as specified by the applicant);

"(C) an evaluation by the applicant of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this title, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

"(D) information explaining the manner in which the proposed project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, and other problems;

"(E) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

"(F) a detailed description of any activity which involves the expenditure of more than $25,000, as identified in the budget referred to in subparagraph (E); and

"(8) include such other information as the Secretary may prescribe.

"(c) PRIORITY CRITERIA PUBLICATION REQUIRED.—The Secretary shall publish in the Federal Register, pursuant to chapter 5 of title 5, United States Code, all policies and procedures required to exercise the authority set forth in subsection (a). No other criteria, policies, or procedures shall apply.

"(d) ELIGIBILITY DATA.—The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under title IV of this Act in making eligibility determinations under section 312 and shall advance the base-year forward following each annual grant cycle.

"WAIVER AUTHORITY AND REPORTING REQUIREMENT

"SEC. 352. (a) WAIVER REQUIREMENTS; NEED-BASED ASSISTANCE STUDENTS.—The Secretary shall waive the requirements set forth in section 312(b)(1)(A) in the case of an institution—

"(1) which is extensively subsidized by the State in which it is located and charges low or no tuition;

"(2) which serves a substantial number of low- and middle-income students as a percentage of its total student population;

"(3) which is contributing substantially to increasing higher education opportunities for educationally disadvantaged, underrepresented, or minority students, who are low-income individuals;

"(4) which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions;

"(5) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians; or

"(6) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Black Americans, Hispanic Americans, Native Americans, Asian Americans, or Pacific Islanders, including Native Hawaiians.

"(b) WAIVER DETERMINATIONS; EXPENDITURES.—(1) The Secretary may waive the requirements set forth in section 312(b)(1)(B) if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A is otherwise consistent with the purposes of such parts.

"(2) The Secretary shall submit to the Congress every other year a report concerning the institutions which, although not satisfying the criterion contained in section 312(b)(1)(B), have been determined to be eligible institutions under part A institutions which enroll significant numbers of Black American, Hispanic, Native American, Asian American, or Native Hawaiian students under part A, as the case may be. Such report shall—

"(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with subparagraphs (A) and (B) of section 312(b)(1); and

"(B) contain a list of each institution determined to be an eligible institution under part A including a statement of the reasons for each such determination.

"APPLICATION REVIEW PROCESS

"SEC. 353. (a) REVIEW PANEL.—(1) All applications submitted under this title by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall assure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

"(2) The Secretary shall take care to assure that representatives of historically and predominantly Black colleges, Hispanic institutions, Native American colleges and universities, and institutions with substantial numbers of Hispanics, Native Americans, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians) are included as readers.

"(3) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this title and consistent with the provisions of this title, including—

"(A) explanations and examples of the types of activities referred to in section 311(b) that should receive special consideration for grants awarded under part A and of the types of activities referred to in section 323 that should receive special consideration for grants awarded under part B;

"(B) an enumeration of the factors to be used to determine the quality of applications submitted under this title; and

"(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this title, the amount of any such grant, and the duration of any such grant.

"(b) RECOMMENDATIONS OF PANEL.—In awarding grants under this title, the Secretary shall take into consideration the recommendations of the panel made under subsection (a).

"(c) NOTIFICATION.—Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this title of—

"(1) the scores given the applicant by the panel pursuant to this section;

"(2) the recommendations of the panel with respect to such application; and

"(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this title, and any modifications, if any, in the recommendations of the panel made by the Secretary.

"COOPERATIVE ARRANGEMENTS

"SEC. 354. (a) GENERAL AUTHORITY.—The Secretary may make grants to encourage cooperative arrangements—

"(1) with funds available to carry out part A, between institutions eligible for assistance under part A and between such institutions and institutions not receiving assistance under this title; or

"(2) with funds available to carry out part B, between institutions eligible for assistance under part B and institutions not receiving assistance under this title;

for the activities described in section 311(b) or section 323, as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts and to enhance the development of part A and part B eligible institutions.

"(b) PRIORITY.—The Secretary shall give priority to grants for the purposes described under subsection (a) whenever the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant institution.

"(c) DURATION.—Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 313 or section 323.

"SPECIAL PAYMENTS RULES

"SEC. 355. (a) HISTORICALLY BLACK COLLEGE PAYMENTS RULE.—Any historically Black college or university which, prior to September 30, 1986, received a grant under part A of this title as in effect prior to such date and continues to receive a grant under such part A for any fiscal year beginning after September 30, 1986, and ending prior to October 1, 1991, shall be paid from amounts appropriated to carry out part B of this title.

"(b) OTHER INSTITUTIONS SPECIAL PAYMENT RULE.—Each eligible institution other than an historically Black college or university which received a grant under part B of this title as in effect prior to such date and continues to receive a grant under such part B for any fiscal year beginning after September 30, 1986, and ending prior to October 1, 1991, shall be paid out of appropriations made pursuant to part A.

"(c) SPECIAL RULE FOR UNOBLIGATED PART A AND PART B FUNDS.—In any fiscal year in which amounts appropriated pursuant to part A or part B for this title are available for obligation in the year succeeding the year in which the funds were appropriated, the Secretary shall make such funds available for grants under section 332, relating to the endowment challenge grant program, for the same type of institution for which the grants would have been made had the funds been paid pursuant to such part A or part B.

"ASSISTANCE TO INSTITUTIONS UNDER OTHER PROGRAMS

"SEC. 356. (a) ASSISTANCE ELIGIBILITY.—Each institution which the Secretary determines to be an institution eligible under part A or an institution eligible under part B shall be eligible for waivers in accordance with subsection (b).

"(b) WAIVER APPLICABILITY.—(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

"(2) The provisions of this section shall apply to any program authorized by title II, IV, VII, or VIII of this Act.

"(c) LIMITATION.—The Secretary shall not waive, under subsection (b), the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.

"LIMITATIONS

"SEC. 357. The funds appropriated under section 360 may not be used—

"(1) for a school or department of divinity or any religious worship or sectarian activity;

"(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

"(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

"(4) for purposes other than the purposes set forth in the approved application under which the funds were made available to the institution.

"PENALTIES

"SEC. 358. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this title embezzles, willfully misapplies, steals, or obtains by fraud any of the funds which are the subject of such grant or assistance, shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both.

"CHALLENGE GRANT APPLICATION REQUIRED

"SEC. 359. The Secretary shall not make a Challenge Grant to any grantee institution under section 313(a)(2) or under part B which has not applied for funds under part C and complied with section 332(a)(1) of part C after September 30, 1989.

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 360. (a) AUTHORIZATIONS.—(1) There are authorized to be appropriated to carry out part A $120,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2)(A) There are authorized to be appropriated to carry out part B (other than section 326) $100,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(B) There are authorized to be appropriated to carry out section 326 $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(3) There are authorized to be appropriated to carry out part C $20,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(4) Funds appropriated for part C shall remain available until expended.

"(b) USE OF MULTIPLE YEAR AWARDS.—In the event of a multiple year award to any institution under this title, the Secretary shall make funds available for such award from funds appropriated for this title for the fiscal year in which such funds are to be used by the recipient.

"(c) RESERVATIONS.—If the amount appropriated under subsection (a)(1) for part A for any fiscal year beginning after September 30, 1986, equals or exceeds the amount appropriated for such part for fiscal year 1986—

"(1) the Secretary shall, for such fiscal year, make available for use for the purposes of part A to institutions that are junior or community colleges not less than $51,400,000; and

"(2) the Secretary shall, for such fiscal year—

"(A) allocate 25 percent of the excess (above the amount appropriated for part A for fiscal year 1986) among eligible institutions with the highest percentages of students who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

"(B) allocate 75 percent of such excess among other eligible institutions.

"(d) RATABLE REDUCTION IN FISCAL YEARS IN WHICH AMOUNTS APPROPRIATED ARE INSUFFICIENT.—In any fiscal year in which the sums appropriated for part A are insufficient to make the reservations required by subsection (c) of this section, the Secretary shall ratably reduce the amount of the reservation.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect July 1, 1987.

TITLE IV—STUDENT ASSISTANCE

SEC. 401. STUDENTS GRANTS REAUTHORIZED.

(a) AMENDMENT.—Part A of title IV of the Act (20 U.S.C. 1070 et seq.) is amended to read as follows:

"TITLE IV—STUDENT ASSISTANCE

"PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

"STATEMENT OF PURPOSE; PROGRAM AUTHORIZATION

"SEC. 401. (a) PURPOSE.—It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 484) in institutions of higher education by—

"(1) providing basic educational opportunity grants to all eligible students;

"(2) providing supplemental educational opportunity grants to those students who demonstrate financial need;

"(3) providing for payments to the States to assist them in making financial aid available to such students;

"(4) providing for special programs and projects designed (A) to identify and encourage qualified youths with financial or cultural need with a potential for postsecondary education, (B) to prepare students from low-income families for postsecondary education, and (C) to provide remedial (including remedial language study) and other services to students; and

"(5) providing assistance to institutions of higher education.

"(b) SECRETARY REQUIRED TO CARRY OUT PURPOSES.—The Secretary shall, in accordance with subparts 1 through 8, carry out programs to achieve the purposes of this part.

"SUBPART 1—BASIC EDUCATIONAL OPPORTUNITY GRANTS

"BASIC EDUCATIONAL OPPORTUNITY GRANTS: AMOUNT AND DETERMINATIONS; APPLICATIONS

"SEC. 411. (a) PROGRAM AUTHORITY AND METHOD OF DISTRIBUTION.—(1) The Secretary shall, during the period beginning July 1,

1972, and ending September 30, 1992, pay to each eligible institution such sums as may be necessary to pay to each eligible student (defined in accordance with section 484) for each academic year during which that student is in attendance at an institution of higher education, as an undergraduate, a basic grant in the amount for which that student is eligible, as determined pursuant to paragraph (2). Not less than 85 percent of such sums shall be advanced to eligible institutions prior to the start of each payment period and shall be based upon an amount requested by the institution as needed to pay eligible students.

"(2) Nothing in this section shall be interpreted to prohibit the Secretary from paying directly to students, in advance of the beginning of the academic term, an amount for which they are eligible, in cases where the eligible institution elects not to participate in the disbursement system required by paragraph (1).

"(3) Basic grants made under this subpart shall be known as 'Pell Grants'.

"(b) PURPOSE AND AMOUNT OF GRANTS.—(1) The purpose of this subpart is to provide a basic grant that (A) as determined under paragraph (2), will meet 60 percent of a student's cost of attendance (as defined in section 411F); and (B) in combination with reasonable parental or independent student contribution and supplemented by the programs authorized under subparts 2 and 3 of this part, will meet 75 percent of a student's cost of attendance (as defined in section 472), unless the institution determines that a greater amount of assistance would better serve the purposes of section 401.

"(2)(A) The amount of the basic grant for a student eligible under this part shall be—

"(i) $2,300 for academic year 1987–1988,

"(ii) $2,500 for academic year 1988–1989,

"(iii) $2,700 for academic year 1989–1990,

"(iv) $2,900 for academic year 1990–1991, and

"(v) $3,100 for academic year 1991–1992,

less an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.

"(B) In any case where a student attends an institution of higher education on less than a full-time basis during any academic year, the amount of the basic grant to which that student is entitled shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this division. Such schedule of reductions shall be established by regulation and published in the Federal Register in accordance with section 482 of this Act.

"(3) The amount of a basic grant to which a student is entitled under this subpart for any academic year shall not exceed 60 percent of the cost of attendance (as defined in section 411F) at the institution at which the student is in attendance for that year.

"(4) No basic grant under this subpart shall exceed the difference between the expected family contribution for a student and the cost of attendance (as defined in section 411F) at the institution at which that student is in attendance. If with respect to any student, it is determined that the amount of a basic grant plus the amount of the expected family contribution for that student exceeds the cost of attendance for that year, the amount of the basic grant shall be reduced until the combination of expected family contribution and the amount of the basic grant does not exceed the cost of attendance at such institution.

"(5) No basic grant shall be awarded to a student under this subpart if the amount of that grant for that student as determined under this subsection for any academic year is less than $200.

"(6) No basic grant shall be awarded under this subpart to any student who is attending on a less than half-time basis—

"(A) from funds appropriated for fiscal years before fiscal year 1989;

"(B) from funds appropriated for fiscal year 1989 or 1990, unless the expected family contribution for such student is less than or equal to zero; or

"(C) from funds appropriated for fiscal year 1991, unless the expected family contribution for such student is less than or equal to $200.

"(7) No basic grant shall be awarded under this subpart from funds appropriated for fiscal year 1989 to students who are attending on a less than half-time basis if awarding basic grants to such students would cause basic grants to other students to be reduced pursuant to subsection (g). The provisions of this paragraph may not be waived unless enacted in express limitation of this paragraph.

"(c) PERIOD OF ELIGIBILITY FOR GRANTS.—(1) The period during which a student may receive basic grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student at the institution at which the student is in attendance except that—

"(A) such period may not exceed the full-time equivalent of—

"(i) 5 academic years in the case of an undergraduate degree or certificate program normally requiring 4 years or less;

"(ii) 6 academic years in the case of an undergraduate degree or certificate program normally requiring more than 4 years;

"(B) any period during which the student is enrolled in a noncredit or remedial course of study as defined in paragraph (2) shall not be counted for the purpose of subparagraph (A); and

"(C) an institution of higher education at which the student is in attendance may waive subparagraph (A) for undue hardship based on—

"(i) the death of a relative of the student;

"(ii) the personal injury or illness of the student; or

"(iii) special circumstances as determined by the institution.

"(2) Nothing in this section shall exclude from eligibility courses of study which are noncredit or remedial in nature (including courses in English language instruction) which are determined by the institution to be necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of courses in English language instruction, to be necessary to enable the student to utilize already existing knowledge, training, or skills.

"(3) No student is entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

"(d) APPLICATIONS FOR GRANTS.—(1) The Secretary shall from time to time set dates by which students shall file applications for basic grants under this subpart.

"(2) Each student desiring a basic grant for any year shall file an application therefor containing such information and assurances as the Secretary may deem necessary to enable the Secretary to carry out the functions and responsibilities of this subpart.

"(e) DISTRIBUTION OF GRANTS TO STUDENTS.—Payments under this section shall be made in accordance with regulations promulgated by the Secretary for such purpose, in such manner as will best accomplish the purpose of this section. Any disbursement allowed to be made by crediting the student's account shall be limited to tuition and fees and, in the case of institutionally owned housing, room and board. The student may elect to have the institution provide other such goods and services by crediting the student's account.

"(f) CALCULATION OF ELIGIBILITY.—(1) Each contractor processing applications for awards under this subpart (including a central processor, if any, designated by the Secretary) shall, in a timely manner, furnish to the student financial aid administrator (at each institution of higher education which a student awarded a basic grant under this subpart is attending) an estimate of the eligibility index for each such student. Each such student financial aid administrator shall—

"(A) examine and assess the data used to calculate the eligibility index of the student furnished pursuant to this subsection;

"(B) recalculate the eligibility index of the student if there has been a change in circumstances of the student or in the data submitted;

"(C) make the award to the student in the correct amount; and

"(D) after making such award report the corrected data to such contractor and to a central processor (if any) designated by the Secretary for a confirmation of the correct computation of amount of the eligibility index for each such student.

"(2) Whenever a student receives an award under this subpart that, due to recalculation errors by the institution of higher education, is in excess of the amount which the student is entitled to receive under this subpart, such institution of higher education shall pay to the Secretary the amount of such excess unless such excess can be resolved in a subsequent disbursement to the institution.

"(3) Each contractor processing applications for awards under this subpart shall for each academic year after academic year 1986–1987 prepare and submit a report to the Secretary on the correctness of the computations of amount of the eligibility index, and on the accuracy of the questions on the application form under this subpart for the previous academic year for which the contractor is responsible. The Secretary shall transmit the report, together with the comments and recommendations of the Secretary, to the Committee on Appropriations and the Committee on Labor and Human Resources of the Senate and the Committee on Appropriations and the Committee on Education and Labor of the House of Representatives.

"(g) ADJUSTMENTS FOR INSUFFICIENT APPROPRIATIONS.—(1) If, for any fiscal year, the funds appropriated for payments under this subpart are insufficient to satisfy fully all entitlements, as calculated under subsection (b), the amount paid with respect to each entitlement shall be—

"(A) the full amount for any student whose expected family contribution is $200 or less, or

"(B) a percentage of that entitlement, as determined in accordance with a schedule of reductions established by the Secretary for this purpose, for any student whose expected family contribution is more than $200.

"(2) Any schedule established by the Secretary for the purpose of paragraph (1) of this subsection shall contain a single linear reduction formula in which the percentage reduction increases uniformly as the entitlement decreases, and shall provide that if an entitlement is reduced to less than $100, no payment shall be made.

"(h) USE OF EXCESS FUNDS.—(1) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by 15 percent or less, then all of the excess funds shall remain available for making payments under this subpart during the next succeeding fiscal year.

"(2) If, at the end of a fiscal year, the funds available for making payments under this subpart exceed the amount necessary to make the payments required under this subpart to eligible students by more than 15 percent, then all of such funds shall remain available for making such payments but payments may be made under this paragraph only with respect to entitlements for that fiscal year.

"(i) NONCONTRACTOR STATUS OF INSTITUTIONS.—Any institution of higher education which enters into an agreement with the Secretary to disburse to students attending that institution the amounts those students are eligible to receive under this subpart shall not be deemed, by virtue of such agreement, a contractor maintaining a system of records to accomplish a function of the Secretary.

"FAMILY CONTRIBUTION SCHEDULE FOR PELL GRANTS; DATA ELEMENTS

"SEC. 411A. (a) GENERAL RULE FOR DETERMINATION OF EXPECTED FAMILY CONTRIBUTION.—(1) The expected family contribution—

"(A) for a dependent student shall be determined in accordance with section 411B,

"(B) for an independent student with dependents other than a spouse shall be determined in accordance with section 411C, and

"(C) for a single independent student or a married independent student without other dependents shall be determined in accordance with section 411D.

"(2) The following data elements are considered in determining the expected family contribution:

"(A) the effective income of (i) the student and the student's spouse; and (ii) the student's parents, in the case of a dependent student;

"(B) the number of family members in the household;

"(C) the number of family members in the household who are enrolled, on at least a half-time basis, in a program of postsecondary education;

"(D) the assets of (i) the student and the student's spouse, and (ii) the student's parents, in the case of a dependent student;

"(E) the marital status of the student;

"(F) the unusual medical expenses of (i) the student's parents, in the case of a dependent student, or (ii) the student and the student's spouse, in the case of an independent student;

"(G) the additional expenses incurred (i) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (ii) in the case of an independent student, when both the student and the student's spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1954; and

"(H) the tuition paid (i) in the case of a dependent student, by the student's parents for dependent children, other than the student, who are enrolled in an elementary or secondary school, (ii) in the case of an independent student, by the student or the student's spouse for dependent children who are so enrolled.

"ELIGIBILITY DETERMINATION FOR DEPENDENT STUDENTS

"SEC. 411B. (a) COMPUTATION OF STUDENT AID INDEX.—For each dependent student, the student aid index is equal to the sum of—

"(1) the contribution from parents' income and assets, determined in accordance with subsection (b);

"(2) the contribution from student's (and spouse's) income, determined in accordance with subsection (h); and

"(3) the contribution from student's (and spouse's) assets, determined in accordance with subsection (l).

"(b) CONTRIBUTION FROM PARENTS' INCOME AND ASSETS.—The parents' contribution from income and assets is equal to the amount determined by—

"(1) computing the standard contribution from parents' income, determined in accordance with subsection (c);

"(2) adding the contribution from parents' assets, determined in accordance with subsection (g); and

"(3) dividing the resultant amount by the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which aid under this subpart is requested.

"(c) STANDARD CONTRIBUTION FROM PARENTS' INCOME.—The standard contribution from parents' income is determined by calculating the effective family income in accordance with subsection (d); by deducting the total offsets against income, as determined in accordance with subsection (e); and by assessing the results in accordance with subsection (f).

"(d) DETERMINATION OF EFFECTIVE FAMILY INCOME.—The effective family income is equal to—

"(1) the sum of—

"(A) the adjusted gross income of the parents as reported to the Internal Revenue Service for the year immediately preceding the award year, and income earned from work but not reported on a Federal income tax return; and

"(B) the total annual amount of untaxed income and benefits, received by the parents in the year immediately preceding the award year; minus

"(2) the sum of—

"(A) the amount of United States income tax paid or payable by the parents in the tax year preceding the award year; and

"(B) an allowance for State and other taxes, as determined by multiplying the parents' total income (as determined under paragraph (1)) by a percentage determined according to the following table:

"Percentages for Computation of State and Other Tax Allowance

If parents' State or territory of residence is—	And parent's total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13

—Continued

"(e) TOTAL OFFSETS AGAINST INCOME.—Total offsets against income are determined by deducting—

"(1) a family size offset as determined by the following table:

"FAMILY SIZE OFFSETS

Family members	Amount
2	$6,700
3	8,100
4	10,400
5	12,300
6	13,800
7 or more	13,800 plus $1,800 for each member over 6

"(2) an offset for unusual medical and dental expenses;

"(3) an offset for employment expenses; and

"(4) an offset for unreimbursed elementary and secondary school tuition and fees.

"(f) ASSESSMENT OF EFFECTIVE FAMILY INCOME.—(1) If the effective family income (as determined under subsection (d)) minus the total offsets (as determined under subsection (e)) is a negative amount, the standard contribution from the parents' income is zero.

"(2) If such effective family income is a positive amount, the standard contribution from effective family income is determined in accordance with the following chart:

"Effective family income	Expected contribution
$0 to $5,000	11% of effective family income.
$5,001 to $10,000	$550, plus 13% of amount over $5,000.
$10,001 to $15,000	$1,200, plus 18% of amount over $10,000.
$15,001 and above	$2,100, plus 25% of amount over $15,000.

"(g) CONTRIBUTION FROM PARENTS' ASSETS.—The standard contribution from parents' assets is determined in accordance with paragraphs (1) through (7):

"(1) If the parental assets include a principal place of residence, deduct $30,000 from the net value of the principal place of residence. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(2) If the parental assets include assets other than a principal place of residence and other than farm and business assets, deduct $25,000 from the net value of those other assets. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(3) If the parental assets include farm or business assets, or both, deduct $80,000 in the case of business assets or $100,000 in the case of farm assets from the net value of the farm or business assets, or both. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(4) If the sum of the farm and business deduction and the deductions in paragraphs (1) and (2) exceeds $110,000 in the case of business deductions or $130,000 in the case of farm deductions, the farm and business deduction shall be reduced by the amount that that sum exceeds $110,000, or $130,000, as the case may be.

"(5)(A) The expected contribution from parental assets equals 5 percent of the total of the amounts obtained under paragraphs (1), (2), and (3).

"(B) If the calculation of effective family income required by subsection (d) produces a negative number, the expected contribution from parental assets, calculated under this paragraph, shall be reduced by the amount of that negative effective family income. If the subtraction required by the preceding sentence of this subparagraph produces a negative number, the amount determined under this subparagraph shall be zero.

"(6)(A) If the student's parents are separated, or divorced and not remarried, only the assets of the parent whose income is included in computing annual adjusted family income shall be considered.

"(B) If that parent has remarried, or if the parent was a widow or widower who has remarried, and the parent's spouse's income also is included in computing effective family income, the assets of that parent's spouse shall also be included.

"(7) The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under this subpart for any academic year, the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"(h) CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) INCOME.—The contribution from student's (and spouse's) income is determined by calculating the student's (and spouse's) effective income, as determined in accordance with subsection (i), by deducting the total offsets against income, as determined in accordance with subsection (j), and by assessing the results in accordance with subsection (k).

"(i) DETERMINATION OF STUDENT'S (AND SPOUSE'S) EFFECTIVE INCOME.—The effective income of the student (and spouse) is equal to—

"(1) the sum of—

"(A) the adjusted gross income of the student (and spouse) as reported to the Internal Revenue Service for the year immediately preceding the award year, or income earned from work other than amounts earned under part C of this title, but not reported on a Federal income tax return; and

"(B) the total annual amount of untaxed income and benefits received by the student (and spouse) in the year immediately preceding the award year; minus

"(2) the amount of United States income tax paid or payable by the student (and spouse) in the tax year preceding the award year.

"(j) TOTAL OFFSETS AGAINST STUDENT'S (AND SPOUSE'S) INCOME.—Total offsets against student's (and spouse's) income are determined by deducting—

"(1) a dependent student offset of $3,500, or $5,100 in the case of a dependent student with a spouse; and

"(2) if the parental effective family income (as determined under subsection (f)) is a negative amount, the amount, if any, by which the result of the subtraction performed under subsection (g)(5) is less than zero.

"(k) ASSESSMENT OF STUDENT'S (AND SPOUSE'S) INCOME.—If the student's (and spouse's) effective income (as determined under subsection (i)) minus the total offsets (as determined under subsection (j)) is a negative amount, the contribution from student income is zero. If the student's (and spouse's) effective income is a positive amount, multiply it by 75 percent to determine the contribution from student's income.

"(l) DETERMINATION OF CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) ASSETS.—The contribution from the student's (and spouse's) assets is determined by calculating the net assets of the student (and spouse) and multiplying the amount by 33 percent.

"ELIGIBILITY DETERMINATION FOR INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

"SEC. 411C. (a) COMPUTATION OF STUDENT AID INDEX.—For independent students with dependents other than a spouse, the student aid index is equal to the amount determined by—

"(1) computing the standard contribution from student's (and spouse's) income determined in accordance with subsection (b);

"(2) adding the contribution from student's (and spouse's) assets determined in accordance with subsection (f); and

"(3) dividing the resultant amount by the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which aid under this subpart is requested.

"(b) COMPUTING THE STANDARD CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) INCOME.—The standard contribution from the student's (and spouse's) income is determined by calculating the effective family income in accordance with subsection (c); by deducting the total offsets against income, as determined in accordance with subsection (d); and by assessing the results in accordance with subsection (e).

"(c) DETERMINATION OF EFFECTIVE FAMILY INCOME.—The effective family income is equal to—

"(1) the sum of—

"(A) the adjusted gross income of the student (and spouse) as reported to the Internal Revenue Service for the year immediately preceding the award year and income earned from work, other than amounts received under part C of this title, but not reported on a Federal income tax return;

"(B) the total annual amount of untaxed income and benefits which is received by the student (and spouse) in the year immediately preceding the award year; and

"(C) one-half of the student's total veterans educational benefits, excluding Veterans' Administration contributory benefits, expected to be received during the award period; minus

"(2) the sum of—

"(A) the amount of United States income tax paid or payable by the student (and spouse) in the tax year preceding the award year; and

"(B) an allowance for State and other taxes as determined by multiplying the student's (and spouse's) total income (as determined under paragraph (1)) by a percentage determined according to the following table:

"PERCENTAGES FOR COMPUTATION OF STATE AND OTHER TAX ALLOWANCE

If student's State or territory of residence is—	And student's (and spouse's) total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13

"(d) TOTAL OFFSETS AGAINST INCOME.—Total offsets against income are determined by deducting—

"(1) a family size offset equal to the amount specified in the following table:

"FAMILY SIZE OFFSETS

Family members	Amount
2	$6,700
3	8,100
4	10,400
5	12,300
6	13,800
7 or more	13,800 plus $1,800 or each member over 6

"(2) an offset for unusual medical and dental expenses;

"(3) in the case of a married independent student when both the student and spouse were employed in the year for which income is reported, or in the case of a student who qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, an offset for employment expenses; and

"(4) an offset for unreimbursed elementary and secondary school tuition and fees.

"(e) ASSESSMENT OF EFFECTIVE FAMILY INCOME.—(1) If the effective family income (as determined under subsection (c)) minus the total offsets (as determined under subsection (d)) is a negative amount, the stand-

ard contribution from the student's (and spouse's) income is zero.

"(2) If such effective family income is a positive amount, the standard contribution from effective family income is determined in accordance with the following chart:

"Effective family income	Expected contribution
$0 to $5,000	11% of effective family income.
$5,001 to $10,000	$550, plus 13% of amount over $5,000.
$10,001 to $15,000	$1,200, plus 18% of amount over $10,000.
$15,001 and above	$2,100, plus 25% of amount over $15,000.

"(f) CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) ASSETS.—The standard contribution from student's (and spouse's) assets is determined in accordance with paragraphs (1) through (7):

"(1) If the student's (and spouse's) assets include a principal place of residence, deduct $30,000 from the net value of the principal place of residence. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(2) If the student's (and spouse's) assets include assets other than a principal place of residence and other than farm and business assets, deduct $25,000 from the net value of those other assets. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(3) If the student's (and spouse's) assets include farm or business assets, or both, deduct $80,000 in the case of business assets or $100,000 in the case of farm assets from the net value of the farm or business assets, or both. If the subtraction required by the preceding sentence of this paragraph produces a negative number, the amount determined under this paragraph shall be zero.

"(4) If the sum of the farm and business deduction and the deductions in paragraphs (1) and (2) exceeds $110,000 in the case of business deductions or $130,000 in the case of farm deductions, the farm and business deduction shall be reduced by the amount that that sum exceeds $110,000, or $130,000, as the case may be.

"(5)(A) The expected contribution from student's (and spouse's) assets equals 5 percent of the total of the amounts obtained under paragraphs (1), (2), and (3).

"(B) If the calculation of effective family income required by subsection (c) produces a negative number, the expected contribution from student's (and spouse's) assets, calculated under this paragraph, shall be reduced by the amount of that negative effective family income. If the subtraction required by the preceding sentence of this subparagraph produces a negative number, the amount determined under this subparagraph shall be zero.

"(6) If the married independent student with dependents is separated or divorced, only assets of the independent student shall be considered.

"(7) The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under this subpart for any academic year, the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"ELIGIBILITY DETERMINATION FOR SINGLE INDEPENDENT STUDENTS OR FOR MARRIED INDEPENDENT STUDENTS WITHOUT OTHER DEPENDENTS

"SEC. 411D. (a) COMPUTATION OF STUDENT AID INDEX.—For single independent students or married independent students without other dependents, the student aid index is equal to the amount determined by—

"(1) computing the standard contribution from student's (and spouse's) income determined in accordance with subsection (b);

"(2) adding contribution from student's (and spouse's) assets determined in accordance with subsection (f); and

"(3) dividing the resultant amount by the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which aid under this subpart is requested.

"(b) COMPUTING THE STANDARD CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) INCOME.—The standard contribution from the student's (and spouse's) income is determined by calculating the effective family income in accordance with subsection (c); by deducting the total offsets against income, as determined in accordance with subsection (d); and by assessing the results in accordance with subsection (e).

"(c) DETERMINATION OF EFFECTIVE FAMILY INCOME.—The effective family income is equal to—

"(1) the sum of—

"(A) the adjusted gross income of the student (and spouse) as reported to the Internal Revenue Service for the year immediately preceding the award year and income earned from work, other than amounts received under part C of this title, but not reported on a Federal income tax return;

"(B) the total annual amount of untaxed income and benefits which is received by the student (and spouse) in the year immediately preceding the award year; and

"(C) one-half of the student's total veterans educational benefits, excluding Veterans' Administration contributory benefits, expected to be received during the award period; minus

"(2) the sum of—

"(A) the amount of United States income tax paid or payable by the student (and spouse) in the tax year preceding the award year; and

"(B) an allowance for State and other taxes as determined by multiplying the student's (and spouse's) total income (as determined under paragraph (1)), by a percentage determined according to the following table:

"Percentages for Computation of State and Other Tax Allowance

If student's State or territory of residence is—	And student's (and spouse's) total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13

"(d) TOTAL OFFSETS AGAINST INCOME.—Total offsets against income are determined by deducting—

"(1) a family size offset equal to the amount specified in the following table:

"Family Size Offsets

Family members	Amount
1	$5,300
2	6,700

"(2) an offset for unusual medical and dental expenses; and

"(3) in the case of a married independent student when both the student and spouse were employed in the year for which income is reported, or in the case of a student who qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, an offset for employment expenses.

"(e) ASSESSMENT OF EFFECTIVE FAMILY INCOME.—(1) If the effective family income (as determined under subsection (c)), minus the total offsets (as determined under subsection (d)) is a negative amount, the standard contribution from the student's (and spouse's) income is zero.

"(2) If such effective family income is a positive amount, the standard contribution from student's (and spouse's) income is multiplied by 75 percent.

"(f) CONTRIBUTION FROM STUDENT'S (AND SPOUSE'S) ASSETS.—(1) The asset contribution amount of an independent student and the student's spouse is equal to 5 percent of the sum of the amounts computed under paragraphs (3) and (4), reduced by the amount, if any, by which effective family income as computed under subsection (c) is less than zero. If the result of such subtraction is a negative amount, the family asset contribution amount is zero.

"(2) The family asset contribution amount of a single independent student is equal to 33 percent of such student's net asset value, reduced by the amount, if any, by which effective family income as computed under subsection (c) is less than zero. If such value minus such amount is a negative amount, the family asset contribution amount is zero.

"(3) If the assets of an independent student with a spouse include a principal place of residence, deduct $30,000 from the net value of the principal place of residence. If the subtraction required by the preceding sentence of this paragraph produces a nega-

tive number, the amount determined under this paragraph shall be zero.

"(4)(A) If the assets of an independent student with a spouse include assets other than a principal place of residence and other than farm and business assets, deduct $25,000 from the net value of those other assets. If the subtraction required by the preceding sentence of this subparagraph produces a negative number, the amount determined under this subparagraph shall be zero.

"(B)(i) If the assets of an independent student with a spouse include farm or business assets, or both, deduct $80,000 in the case of business assets or $100,000 in the case of farm assets from the net value of the farm or business assets, or both. If the subtraction required by the preceding sentence of this subparagraph produces a negative number, the amount determined under this subparagraph shall be zero.

"(ii) If the sum of the farm and business deduction and the deductions in paragraphs (3) and (4)(A) exceeds $110,000 in the case of business deductions or $130,000 in the case of farm deductions, the farm and business deduction shall be reduced by the amount that that sum exceeds $110,000, or $130,000, as the case may be.

"(5) The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under this subpart for any academic year, the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"REGULATIONS; UPDATED TABLES

"SEC. 411E. (a) AUTHORITY TO PRESCRIBE REGULATIONS RESTRICTED.—(1) Notwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this subpart except—

"(A) to prescribe updated tables under sections 411B through 411D; or

"(B) to propose modifications in the need analysis methodology required by this subpart.

"(2) Any regulation proposed by the Secretary that (A) updates tables in a manner that does not comply with subsections (b), or (B) that proposes modifications under paragraph (1)(B) of this subsection, shall not be effective unless approved by joint resolution of the Congress by May 1 following the date such regulations are published in the Federal Register in accordance with section 482. If the Congress fails to approve such regulations by such May 1, the Secretary shall publish in the Federal Register in accordance with section 482 updated tables for the applicable award year that are prescribed in accordance with subsection (b) of this section.

"(b) PROVISIONS GOVERNING UPDATED TABLES.—(1)(A) Each of the amounts allowed as an offset for family size for dependent and independent students shall, for each academic year after academic year 1988-1989, be adjusted by the Secretary by increasing (or decreasing) the comparable amount for the preceding academic year by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounded to the nearest $100.

"(B) The Secretary shall publish in the Federal Register a revised table for an offset for family size in accordance with section 482.

"(2)(A) The Secretary shall, for each academic year after academic year 1988-1989, publish in the Federal Register such revisions in offsets against income, asset determination, and assessment rates as are necessary to reflect the most recent and relevant data.

"(B) The Secretary shall publish in the Federal Register the revised determinations required by subparagraph (A) in accordance with section 482.

"DEFINITIONS; DETERMINATIONS

"SEC. 411F. For the purpose of this subpart—

"(1) The term 'annual adjusted family income' means the sum received in the year immediately preceding the award year, by the student's parents (in the case of a dependent student), or by the student and, if applicable, the student's spouse (in the case of an independent student), except excludable income under paragraph (9) of this subsection, from the following sources subject to the following rules:

"(A) Adjusted gross income, as defined in section 62 of the Internal Revenue Code of 1954.

"(B) Untaxed income and benefits, as defined in paragraph (13) of this section.

"(C) Income from one-half of any veteran's benefits expected to be paid to the student during the award period under chapters 34 and 35 of title 38 of the United States Code.

"(D) Income for a student whose parents are divorced or separated is determined under the following procedures:

"(i) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

"(ii) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

"(iii) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

"(E) Income in the case of the death of any parent as follows:

"(i) If either of the parents have died, the student shall include only the income of the surviving parent.

"(ii) If both parents have died, the student shall not report any parental income.

"(F) Income in the case of a parent whose income is taken into account under subparagraph (D) of this paragraph, or a parent who is a widow or widower and whose income is taken into account under clause (i) of this subparagraph, has remarried, under the following rule: The income of that parent's spouse shall be included in determining the student's annual adjusted family income if—

"(i) the student's parent and the stepparent are married as of the date of application for the award year concerned; and

"(ii) the student is not an independent student.

"(G)(i) Income in the case of a dislocated worker shall be the income for the year for which the determination is made.

"(ii) For the purpose of this subparagraph, a dislocated worker is a worker identified pursuant to title III of the Job Training Partnership Act.

"(2) The term 'assets' means cash on hand, including amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, and the net value of real estate, income producing property, and business and farm assets.

"(3) The term 'award year' is the period of time between July 1 of the first year and June 30 of the following year.

"(4) The term 'business assets' means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.

"(5) The term 'cost of attendance' means—

"(A) the student's tuition and uniform compulsory fees at the institution at which the student is in attendance for any award year, plus

"(B)(i) an allowance for room and board costs, books, supplies, transportation, and miscellaneous expenses incurred by the student which shall not exceed $1,700 for a student without dependents residing at home with parents;

"(ii) an allowance for room and board costs, books, supplies, transportation, and miscellaneous expenses incurred by the student which shall not exceed $2,300 for all other students, subject to clause (iii);

"(iii) an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with clause (iv)) for less than half-time students (as determined by the institution);

"(iv) an allowance for child care which shall not exceed $1,000; and

"(v) an allowance for the costs of special services and equipment required for attendance by the handicapped that are not provided by other assisting agencies;

except that, if the maximum award under this subpart is less than or greater than $2,300, then the dollar amounts specified in clauses (i) and (ii) of subparagraph (B) of this paragraph shall be increased or decreased by an amount equal to the amount by which such maximum award is greater than or less than $2,300, respectively.

"(6) Except as otherwise provided, the term 'dependent of the student' means the parents of the student, the student's spouse, any of the student's dependent children, dependent children of the student's parents, including those children who are deemed to be dependent student when applying for aid under this title, and other persons who live with and receive more than one-half of their support from the parents and will continue to receive more than half of their support from the parents during the award year.

"(7) Effective family income shall be determined on the basis of the annual adjusted family income minus the Federal taxes and imputed State and other taxes paid or payable for the year that adjusted gross income is used in the calculation of the student's Pell Grant.

"(8)(A) The employment expense offset is determined as follows:

"(i) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such offset is equal to the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the parent with the lesser earned income.

"(ii) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, such offset is equal to the lesser of $1,500 or 50 percent of the parent's earned income.

"(B) The employment expense offset in the case of an independent student with dependents is determined as follows:

"(i) If both the student and the student's spouse were employed in the year for which their income is reported and both have their incomes reported in determined the expected family contribution, such offset is equal to the lesser of $1,500 or 50 percent of the earned income (income earned by work) of the spouse with the lesser earned income.

"(ii) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code of 1954, such offset is equal to the lesser of $1,500 or 50 percent of the student's earned income.

"(9)(A) The term 'excludable income' means the income described in subparagraphs (B), (C), and (D) of this paragraph which is excluded for the purpose of determining 'annual adjusted family income' under paragraph (1).

"(B) For a Native American student, the annual adjusted family income does not include the income received by the student, the student's spouse, or the student's parents under the Distribution of Judgment Funds Act (25 U.S.C. 1401, et seq.), the Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.), or the Maine Indians Claims Settlement Act (25 U.S.C. 1721, et seq.).

"(C) In the case of a student who is divorced or separated, or whose spouse has died, the spouse's income shall not be considered in determining the effective family income.

"(D) The annual adjusted family income does not include any student financial assistance except veterans' or Social Security benefits set forth in paragraph (15) of this subsection.

"(10)(A) In determining family size in the case of a dependent student—

"(i) if the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

"(ii) if the parents are divorced or separated, family members include the parent whose income is included in computing the effective family income and that parent's dependents, including the student; and

"(iii) if the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining effective family income.

"(B) In determining family size in the case of an independent student with dependents—

"(i) family members include the student, the student's spouse, and the student's dependents; and

"(ii) if the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

"(11) The term 'farm assets' means any property owned and used in the operation of a farm for profit, including real estate, livestock, livestock products, crops, farm machinery, and other equipment inventories. A farm is not considered to be operated for profit if crops or livestock are raised mainly for the use of the family, even if some income is derived from incidental sales.

"(12)(A) The term 'independent', when used with respect to a student, means any individual who—

"(i) is 24 years of age or older by December 31 of the award year; or

"(ii) meets the requirements of subparagraph (B).

"(B) Except as provided in subparagraph (C), an individual meets the requirements of this subparagraph if such individual—

"(i) is an orphan or ward of the court;

"(ii) is a veteran of the Armed Forces of the United States;

"(iii) is a graduate or professional student who declares that he or she will not be claimed as a dependent for income tax purposes by his or parents (or guardian) for the first calendar year of the award year;

"(iv) is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year;

"(v) has legal dependents other than a spouse;

"(vi) is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the 2 calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the 2 calendar years preceding the award year in which the initial award will be granted by demonstrating an annual total income of $4,000; or

"(vii) is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

"(C) An individual may not be treated as an independent student pursuant to clauses (iii), (iv), and (vi) of subparagraph (B) if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

"(D) The financial aid administrator may certify an individual described in clause (iii), (iv), or (vi) of subparagraph (B) on the basis of a demonstration made by the individual, but no disbursal of an award may be made without documentation.

"(13) The term 'net assets' means the current market value at the time of application of the assets included in the definition of 'assets', minus the outstanding liabilities (indebtedness) against the assets.

"(14) The term 'unreimbursed elementary and secondary school tuition and fees' means the unreimbursed tuition and fees paid by the student's parents for each dependent other than the student, or by an independent student (and spouse) for dependents enrolled in elementary or secondary school, and may not exceed for each such dependent the national average per pupil instructional cost as published by the Center for Education Statistics using the most recent available data.

"(15) The term 'untaxed income and benefits' means—

"(A) investment income upon which no Federal income tax is required to be paid, such as the interest on municipal bonds;

"(B) untaxed portions of capital gains;

"(C) credit for Federal tax on special fuels;

"(D) dividend exclusions and dividend reinvestment exclusions;

"(E) foreign income exclusions;

"(F) child support received;

"(G) welfare benefits, including aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act, and aid to dependent children;

"(H) veterans benefits such as Death Pension and Dependency and Indemnity Compensation, except that veterans educational benefits paid under chapters 34 and 35 of title 38 of the United States Code, Veterans' Administration contributory benefits, and Veterans' Administration vocational rehabilitation program benefits for postsecondary education shall not be included;

"(I) untaxed Social Security benefits, including supplemental security income which individuals receive for themselves and for children under age 18;

"(J) interest on tax free bonds;

"(K) housing, food, and other living allowances, excluding rent subsidies for low-income housing, paid to members of the military, the clergy, and others; and

"(L) Job Training Partnership Act non-educational benefits.

"(16)(A) The term 'unusual medical and dental expenses' means an amount equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective family income of the parents. The expenses of both parents are included only if the income of both parents is included in determining effective family income. A stepparent's expenses are included only if the parent's income is included in determining effective family income.

"(B) The term 'unusual medical and dental expenses', in the case of an independent student with dependents, means an amount equal to the amount by which the sum of unreimbursed medical and dental expenses exceeds 20 percent of the effective family income of the independent student with dependents. The expenses of both the student and the student's spouse are included only if the incomes of both are included in determining effective family income.

"SUBPART 2—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 413A. (a) PURPOSE OF SUBPART.—It is the purpose of this subpart to provide, through institutions of higher education, supplemental grants to assist in making available the benefits of postsecondary education to qualified students who demonstrate financial need in accordance with the provisions of part F of this title.

"(b) AUTHORIZATION OF APPROPRIATIONS.—(1) For the purpose of enabling the Secretary to make payments to institutions of higher education which have made agreements with the Secretary in accordance with section 413C(a), for use by such institutions for payments to undergraduate students of supplemental grants awarded to them under this subpart, there are authorized to be appropriated $490,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2) Sums appropriated pursuant to this subsection for any fiscal year shall be available for payments to institutions until the end of the second fiscal year succeeding the fiscal year for which they were appropriated.

"AMOUNT AND DURATION OF GRANTS

"SEC. 413B. (a) AMOUNT OF GRANT.—(1) From the funds received by it for such purpose under this subpart, an institution which awards a supplemental grant to a student for an academic year under this subpart shall, for each year, pay to that student an amount not to exceed the lesser of (A) the amount determined by the institution, in accordance with the provisions of part F of this title, to be needed by that student to

enable the student to pursue a course of study at the institution, or (B) $4,000.

"(2) If the amount determined under paragraph (1) with respect to a student for any academic year is less than $100, no payment shall be made to that student for that year. For a student enrolled for less than a full academic year, the minimum payment required shall be reduced proportionately.

"(b) PERIOD FOR RECEIPT OF GRANTS; CONTINUING ELIGIBILITY.—(1) The period during which a student may receive supplemental grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student.

"(2) A supplemental grant awarded under this subpart shall entitle the student (to whom it is awarded) to payments pursuant to such grant only if the student meets the requirements of section 484, except as provided in section 413C(c).

"(c) DISTRIBUTION OF GRANT DURING ACADEMIC YEAR.—Nothing in this section shall be construed to prohibit an institution from making payments of varying amounts from a supplemental grant to a student during an academic year to cover costs for a period which are not applicable to other periods of such academic year.

"AGREEMENTS WITH INSTITUTIONS; SELECTION OF RECIPIENTS

"SEC. 413C. (a) INSTITUTIONAL ELIGIBILITY.—Assistance may be made available under this subpart only to an institution which—

"(1) has, in accordance with section 487, an agreement with the Secretary applicable to this subpart;

"(2) agrees that the Federal share of awards under this subpart will not exceed—

"(A) 95 percent of such awards in fiscal year 1989,

"(B) 90 percent of such awards in fiscal year 1990, and

"(C) 85 percent of such awards in fiscal year 1991,

except that the Federal share may be exceeded if the Secretary determines, pursuant to regulations establishing objective criteria for such determinations, that a larger Federal share is required to further the purpose of this subpart; and

"(3) agrees that the non-Federal share of awards made under this subpart shall be made from the institution's own resources, including—

"(A) institutional grants and scholarships;

"(B) tuition or fee waivers;

"(C) State scholarships; and

"(D) foundation or other charitable organization funds.

"(b) ELIGIBILITY FOR SELECTION.—Awards may be made under this subpart only to a student who—

"(1) is an eligible student under section 484; and

"(2) makes application at a time and in a manner consistent with the requirements of the Secretary and that institution.

"(c) SELECTION OF INDIVIDUALS AND DETERMINATION OF AMOUNT OF AWARDS.—(1) From among individuals who are eligible for supplemental grants for each fiscal year, the institution shall, in accordance with the agreement under section 487, and within the amount allocated to the institution for that purpose for that year under section 413D, select individuals who are to be awarded such grants and determine, in accordance with section 413B, the amounts to be paid to them.

"(2)(A) In carrying out paragraph (1) of this subsection, each institution of higher education shall, in the agreement made under section 487, assure that the selection procedures—

"(i) will be designed to award supplemental grants under this subpart, first, to students with exceptional need, and

"(ii) will give a priority for supplemental grants under this subpart to students who receive Pell Grants and meet the requirements of section 484.

"(B) For the purpose of subparagraph (A), the term 'students with exceptional need' means students with the lowest expected family contributions at the institution.

"(d) USE OF FUNDS FOR LESS-THAN-FULL-TIME STUDENTS.—If the institution's allocation under this subpart is directly or indirectly based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution's allocation shall be made available to such students.

"(e) USE AND TRANSFER OF FUNDS FOR ADMINISTRATIVE EXPENSES.—An agreement entered into pursuant to this section shall provide that funds granted to an institution of higher education may be used only to make payments to students participating in a grant program authorized under this subpart, except that an institution may use a portion of the sums allocated to it under this subpart to meet administrative expenses in accordance with section 489 of this title, and may transfer such funds in accordance with the provisions of section 488.

"ALLOCATION OF FUNDS

"SEC. 413D. (a) ALLOCATION BASED ON PREVIOUS ALLOCATION.—(1) From the amount appropriated pursuant to section 413A(b) for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to 100 percent of the amount such institution received and used under this subpart for fiscal year 1985.

"(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1985 but is not a first or second time participant, an amount equal to the greater of—

"(i) $5,000; or

"(ii) 90 percent of the amount received and used under this subpart for the first year it participated in the program.

"(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this subpart after fiscal year 1985 and is a first or second time participant, an amount equal to the greatest of—

"(i) $5,000;

"(ii) an amount equal to (I) 90 percent of the amount received and used under this subpart in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

"(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

"(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

"(i) was a first-time participant in the program in fiscal year 1986 or any subsequent fiscal year, and

"(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

"(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

"(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

"(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

"(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

"(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

"(b) ALLOCATION OF EXCESS BASED ON PRO RATA SHARE.—From one-quarter of the remainder of the amount appropriated pursuant to section 413A(b) for any fiscal year (after making the allocations required by subsection (a)), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) bears to the amount all such institutions receive under such subsection (a).

"(c) ALLOCATION OF EXCESS BASED ON FAIR SHARE.—(1) From three-quarters of the remainder of the amount appropriated pursuant to section 413A(b) for each year (after making the allocations required by subsection (a)), the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

"(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

"(A)(i) the amount of that institution's need (as determined under subsection (d)), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 413A(b) of the fiscal year; exceeds

"(B) the amount required to be allocated to that institution under subsection (a).

"(d) DETERMINATION OF INSTITUTION'S NEED.—(1) The amount of an institution's need is equal to—

"(A) the sum of the need of the institution's eligible undergraduate students; minus

"(B) the sum of grant aid received by students under subparts 1 and 3 of this part.

"(2) To determine the need of an institution's eligible undergraduate students, the Secretary shall—

"(A) establish various income categories for dependent and independent undergraduate students;

"(B) establish an expected family contribution for each income category of depend-

ent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title) of a representative sample within each income category for the second preceding fiscal year;

"(C) compute 75 percent of the average cost of attendance for all undergraduate students;

"(D) multiply the number of eligible dependent students in each income category by the lesser of—

"(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

"(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

"(F) multiply the number of eligible independent students in each income category by the lesser of—

"(i) 75 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

"(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

"(H) add the amounts determined under subparagraphs (E) and (G).

"(3)(A) For purposes of paragraph (2), the term 'average cost of attendance' means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

"(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

"(C) The standard living expense described in subparagraph (A)(ii) is equal to three-fourths in the Pell Grant family size offset for a single independent student.

"(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $450.

"(e) REALLOCATION OF EXCESS ALLOCATIONS.—If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.

"(f) FILING DEADLINES.—The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

"SUBPART 3—Grants to States for State Student Incentives

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 415A. (a) PURPOSE OF SUBPART.—It is the purpose of this subpart to make incentive grants available to the States to assist them in providing grants to eligible students attending institutions of higher education and grants to eligible students for campus-based community service work learning study.

"(b) AUTHORIZATION OF APPROPRIATIONS; AVAILABILITY.—(1) There are authorized to be appropriated $85,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2) Sums appropriated pursuant to paragraph (1) for any fiscal year shall remain available for payments to States under this subpart until the end of the fiscal year succeeding the fiscal year for which such sums were appropriated.

"ALLOTMENT AMONG STATES

"SEC. 415B. (a) ALLOTMENT BASED ON NUMBER OF ELIGIBLE STUDENTS IN ATTENDANCE.—(1) From the sums appropriated pursuant to section 415A(b)(1) for any fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such sums as the number of students who are deemed eligible in such State for participation in the grant program authorized by this subpart bears to the total number of such students in all the States, except that no State shall receive less than the State received for fiscal year 1979.

"(2) For the purpose of this subsection, the number of students who are deemed eligible in a State for participation in the grant program authorized by this subpart, and the number of such students in all the States, shall be determined for the most recent year for which satisfactory data are available.

"(b) REALLOTMENT.—The amount of any State's allotment under subsection (a) for any fiscal year which the Secretary determines will not be required for such fiscal year for the State student grant incentive program of that State shall be available for reallotment from time to time, on such dates during such year as the Secretary may fix, to other States in proportion to the original allotments to such States under such part for such year, but with such proportionate amount for any of such States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use for such year for carrying out the State plan. The total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this part during a year from funds appropriated pursuant to section 415A(b)(1) shall be deemed part of its allotment under subsection (a) for such year.

"(c) ALLOTMENTS SUBJECT TO CONTINUING COMPLIANCE.—The Secretary shall make payments for continuing incentive grants only to States which continue to meet the requirements of section 415C(b).

"APPLICATIONS FOR STATE STUDENT INCENTIVE GRANT PROGRAMS

"SEC. 415C. (a) SUBMISSION AND CONTENTS OF APPLICATIONS.—A State which desires to obtain a payment under this subpart for any fiscal year shall submit annually an application therefor through the State agency administering its program under this subpart as of July 1, 1985, unless the Governor of that State so designates, in writing, a different agency to administer the program. The application shall contain such information as may be required by, or pursuant to, regulation for the purpose of enabling the Secretary to make the determinations required under this subpart.

"(b) PAYMENT OF FEDERAL SHARE OF GRANTS MADE BY QUALIFIED PROGRAM.—From a State's allotment under this subpart for any fiscal year the Secretary is authorized to make payments to such State for paying up to 50 percent of the amount of student grants pursuant to a State program which—

"(1) is administered by a single State agency;

"(2) provides that such grants will be in amounts not in excess of $2,500 per academic year (A) for attendance on a full-time basis at an institution of higher education, and (B) for campus-based community service work learning study jobs;

"(3) provides that—

"(A) not more than 20 percent of the allotment to the State for each fiscal year may be used for the purpose described in paragraph (2)(B);

"(B) grants for the campus-based community work learning study jobs may be made only to students who are otherwise eligible for assistance under this subpart; and

"(C) grants for such jobs be made in accordance with the provisions of section 443(b)(1);

"(4) provides for the selection of recipients of such grants or of such State work-study jobs on the basis of substantial financial need determined annually on the basis of criteria established by the State and approved by the Secretary;

"(5) provides that, effective with respect to any academic year beginning on or after October 1, 1978, all nonprofit institutions of higher education in the State are eligible to participate in the State program, except in any State in which participation of nonprofit institutions of higher education is in violation of the constitution of the State or in any State in which participation of nonprofit institutions of higher education is in violation of a statute of the State which was enacted prior to October 1, 1978;

"(6) provides for the payment of the non-Federal portion of such grants or of such work-study jobs from funds supplied by such State which represent an additional expenditure for such year by such State for grants or work-study jobs for students attending institutions of higher education over the amount expended by such State for such grants or work-study jobs, if any, during the second fiscal year preceding the fiscal year in which such State initially received funds under this subpart;

"(7) provides that, if the institution's allocation under this subpart is based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution's allocation shall be made available to such students;

"(8) provides for State expenditures under such program of an amount not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years;

"(9) provides (A) for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the State agency under this subpart, and (B) for the making of such reports, in such form and containing such information, as may be reasonably necessary to enable the Secretary to perform his functions under this subpart; and

"(10) for any academic year beginning after June 30, 1987, provides the non-Federal share of the amount of student grants or work-study jobs under this subpart through a direct appropriation of State funds for the program under this subpart.

"(c) RESERVATION AND DISBURSEMENT OF ALLOTMENTS AND REALLOTMENTS.—Upon his approval of any application for a payment under this subpart, the Secretary shall reserve from the applicable allotment (including any applicable reallotment) available therefor, the amount of such payment, which (subject to the limits of such allotment or reallotment) shall be equal to the Federal share of the cost of the students' incentive grants or work-study jobs covered by such application. The Secretary shall pay such reserved amount, in advance or by way of reimbursement, and in such installments as the Secretary may determine. The Secretary may amend the reservation of any amount under this section, either upon approval of an amendment of the application or upon revision of the estimated cost of the student grants or work-study jobs with respect to which such reservation was made. If the Secretary approves an upward revision of such estimated cost, the Secretary may reserve the Federal share of the added cost only from the applicable allotment (or reallotment) available at the time of such approval.

"ADMINISTRATION OF STATE PROGRAMS; JUDICIAL REVIEW

"SEC. 415D. (a) DISAPPROVAL OF APPLICATIONS; SUSPENSION OF ELIGIBILITY.—(1) The Secretary shall not finally disapprove any application for a State program submitted under section 415C, or any modification thereof, without first affording the State agency submitting the program reasonable notice and opportunity for a hearing.

"(2) Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a State program approved under this subpart, finds—

"(A) that the State program has been so changed that it no longer complies with the provisions of this subpart, or

"(B) that in the administration of the program there is a failure to comply substantially with any such provisions,

the Secretary shall notify such State agency that the State will not be regarded as eligible to participate in the program under this subpart until he is satisfied that there is no longer any such failure to comply.

"(b) REVIEW OF DECISIONS.—(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State program submitted under this subpart or with his final action under subsection (a), such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Commissioner shall forthwith certify and file in the court the transcript of the proceedings and the record on which he based his action.

"(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in title 28, United States Code, section 1254.

"DEFINITION

"SEC. 415E. For the purpose of this subpart, the term 'community service' means services, including direct service, planning, and applied research which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, and which—

"(1) are designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to the needs of such residents, including but not limited to, such fields as health care, child care, education, literary training, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, and community improvement; and

"(2) provide participating students with work-learning opportunities related to their educational or vocational programs or goals.

"SUBPART 4—SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS

"PROGRAM AUTHORITY; AUTHORIZATION OF APPROPRIATIONS

"SEC. 417A. (a) GRANTS AND CONTRACTS AUTHORIZED.—The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants and contracts designed to identify qualified individuals from disadvantaged backgrounds, to prepare them for a program of postsecondary education, to provide support services for such students who are pursuing programs of postsecondary education, and to train individuals serving or preparing for service in programs and projects so designed.

"(b) ELIGIBLE GRANT AND CONTRACT RECIPIENTS.—(1) For the purposes described in subsection (a), the Secretary is authorized, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants to, and contracts with, institutions of higher education, public and private agencies and organizations, and, in exceptional circumstances, secondary schools for planning, developing, or carrying out one or more of the services assisted under this subpart.

"(2) In making grants and contracts under this subpart, the Secretary shall consider the prior experience of service delivery under the particular program for which funds are sought by each applicant. For fiscal years after 1985, the level of consideration given to prior experience shall not vary from the level of consideration given this factor for fiscal year 1985.

"(c) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants and contracts under this subpart, there are authorized to be appropriated $205,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(d) DEFINITIONS.—For the purpose of this subpart—

"(1) the term 'first generation college student' means—

"(A) an individual both of whose parents did not complete a baccalaureate degree; or

"(B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree;

"(2) the term 'low-income individual' means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census; and

"(3) no veteran shall be deemed ineligible to participate in any program under this subpart by reason of such individual's age who—

"(A) served on active duty for a period of more than 180 days, any part of which occurred after January 31, 1955, and was discharged or released therefrom under conditions other than dishonorable; or

"(B) served on active duty after January 31, 1955, and was discharged or released therefrom because of a service connected disability.

"TALENT SEARCH

"SEC. 417B. (a) PROGRAM AUTHORITY.—The Secretary shall carry out a program to be known as talent search which shall be designed—

"(1) to identify qualified youths with potential for education at the postsecondary level and to encourage such youth to complete secondary school and to undertake a program of postsecondary education;

"(2) to publicize the availability of student financial assistance available to persons who pursue a program of postsecondary education; and

"(3) to encourage persons who have not completed programs of education at the secondary or postsecondary level, but who have the ability to complete such programs, to reenter such programs.

"(b) TUTORIAL SERVICES.—A talent search project assisted under this subpart may include, in addition to the services described in paragraphs (1), (2), and (3) of subsection (a), tutorial services for youths being encouraged to undertake or reenter programs of postsecondary education if such tutorial services are not otherwise available to such youths through a project assisted under this subpart.

"(c) REQUIREMENTS FOR APPROVAL OF APPLICATIONS.—In approving applications for talent search projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who either have completed 6 years of elementary education or are at least 12 years of age but not more than 27 years of age, unless the imposition of any such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417E;

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417E; and

"(4) require assurances that the project will be located in a setting accessible to the persons proposed to be served by the project.

"UPWARD BOUND

"SEC. 417C. (a) PROGRAM AUTHORITY.—The Secretary shall carry out a program to be known as upward bound which shall be designed to generate skills and motivation necessary for success in education beyond high school.

"(b) PERMISSIBLE SERVICES.—Any upward bound project assisted under the subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in high school course selection;

"(4) tutorial services;

"(5) exposure to cultural events, academic programs, and other activities not usually available to disadvantaged youth;

"(6) activities designed to acquaint youths participating in the project with the range of career options available to them;

"(7) instruction designed to prepare youths participating in the project for careers in which persons from disadvantaged backgrounds are particularly underrepresented;

"(8) on-campus residential programs; and

"(9) programs and activities as described in paragraphs (1) through (8) which are specially designed for students of limited English proficiency.

"(c) REQUIREMENTS FOR APPROVAL OF APPLICATIONS.—In approving applications for upward bound projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining youths participating in the project proposed to be carried out under any application be either low-income individuals or be first generation college students;

"(3) require that there be a determination by the institution, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school; and

"(4) require that such participants be persons who have completed 8 years of elementary education and are at least 13 years of age but not more than 19 years of age, unless the imposition of any such limitation would defeat the purposes of this section.

"(d) MAXIMUM STIPENDS.—Youths participating in a project proposed to be carried out under any application may be paid stipends not in excess of $60 per month during June, July, and August, and not in excess of $40 per month during the remaining period of the year.

"STUDENT SUPPORT SERVICES

"SEC. 417D. (a) PROGRAM AUTHORITY.—The Secretary shall carry out a program to be known as student support services (hereinafter referred to as 'student support services').

"(b) PERMISSIBLE SERVICES.—A support services project assisted under this subpart may provide services such as—

"(1) instruction in reading, writing, study skills, mathematics, and other subjects necessary for success beyond high school;

"(2) personal counseling;

"(3) academic advice and assistance in course selection;

"(4) tutorial services and counseling and peer counseling;

"(5) exposure to cultural events and academic programs not usually available to disadvantaged students;

"(6) activities designed to acquaint students participating in the project with the range of career options available to them;

"(7) activities designed to assist students participating in the project in securing admission and financial assistance for enrollment in graduate and professional programs;

"(8) activities designed to assist students currently enrolled in 2-year institutions in securing admission and financial assistance for enrollment in a four-year program of postsecondary education; and

"(9) programs and activities as described in paragraphs (1) through (8) which are specially designed for students of limited English proficiency.

"(c) REQUIREMENTS FOR APPROVAL OF APPLICATIONS.—In approving applications for support services projects under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application—

"(A) be physically handicapped, or

"(B) be low-income individuals who are first generation college students;

"(2) require an assurance that the remaining students participating in the project proposed to be carried out under any application either be low-income individuals, first generation college students, or physically handicapped;

"(3) require that there be a determination by the institution, with respect to each participant in such project, that the participant has a need for academic support in order to pursue successfully a program of education beyond high school;

"(4) require that such participants be enrolled or accepted for enrollment at the institution which is the recipient of the grant or contract; and

"(5) require an assurance from the institution which is the recipient of the grant or contract that each student enrolled in the project will receive sufficient financial assistance to meet that student's full financial need.

"(d) POST-BACCALAUREATE ACHIEVEMENT PROGRAM AUTHORITY.—(1) The Secretary shall carry out a program to be known as the "Post-Baccalaureate Achievement Program".

"(2) A post-baccalaureate achievement project assisted under this subsection may provide services such as—

"(A) opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study;

"(B) summer internships;

"(C) seminars and other educational activities designed to prepare students for doctoral study;

"(D) tutoring;

"(E) academic counseling; and

"(F) activities designed to assist students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

"(2) In approving applications for post-baccalaureate achievement projects assisted under this subsection for any fiscal year, the Secretary shall require—

"(A) an assurance that not less than two-thirds of the individuals participating in the project proposed to be carried out under any application be low-income individuals who are first-generation college students;

"(B) an assurance that the remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education;

"(C) an assurance that participants be enrolled in a degree program at an eligible institution in accordance with the provisions of section 487; and

"(D) an assurance that participants in summer research internships have completed their sophomore year in post-secondary education.

"(4) In addition to such other selection criteria as may be prescribed by regulations, the Secretary shall consider in making awards to institutions under this subsection—

"(A) the quality of research and other scholarly activities in which students will be involved;

"(B) the level of faculty involvement in the project and the description of the research in which students will be involved; and

"(C) the institution's plan for identifying and recruiting participants including students enrolled in projects authorized under this subsection.

"(5) Students participating in research under a post-baccalaureate achievement project may receive stipends not to exceed $2,400 per annum.

"(6) No funds shall be allocated to projects authorized under this subsection until projects authorized the other provisions of this subpart are allocated a minimum of $168,800,000, and in no case shall funds allocated to projects authorized under this subsection exceed—

"(A) $1,000,000 in the fiscal year 1988,

"(B) $2,000,000 in the fiscal year 1989,

"(C) $3,000,000 in the fiscal year 1990, and

"(D) $4,000,000 in the fiscal year 1991.

"EDUCATIONAL OPPORTUNITY CENTERS

"SEC. 417E. (a) PROGRAM AUTHORITY; SERVICES PROVIDED.—The Secretary shall carry out a program to be known as educational opportunity centers which shall be designed—

"(1) to provide information with respect to financial and academic assistance available for individuals desiring to pursue a program of postsecondary education; and

"(2) to provide assistance to such persons in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers.

"(b) TUTORIAL AND COUNSELING SERVICES.—An educational opportunity center assisted under this subpart may provide, in addition to the services described in paragraphs (1) and (2) of subsection (a), tutorial and counseling services for persons participating in the project if such tutorial and counseling services are not otherwise available through a project assisted under this subpart.

"(c) REQUIREMENTS FOR APPROVAL OF APPLICATIONS.—In approving applications for educational opportunity centers under this subpart for any fiscal year the Secretary shall—

"(1) require an assurance that not less than two-thirds of the persons participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

"(2) require that such participants be persons who are at least nineteen years of age, unless the imposition of such limitation with respect to any person would defeat the purposes of this section or the purposes of section 417B; and

"(3) require an assurance that individuals participating in the project proposed in the application do not have access to services from another project funded under this section or under section 417B.

"STAFF DEVELOPMENT ACTIVITIES

"SEC. 417F. For the purpose of improving the operation of the programs and projects

authorized by this subpart, the Secretary is authorized to make grants to institutions of higher education and other public and private nonprofit institutions and organizations to provide training for staff and leadership personnel employed in, or preparing for employment in, such programs and projects. Such training shall include conferences, internships, seminars, workshops, and the publication of manuals designed to improve the operation of such programs and projects and shall be carried out in the various regions of the Nation in order to ensure that the training opportunities are appropriate to meet the needs in the local areas being served by such programs and projects. Grants for the purposes of this section shall be made only after consultation with regional and State professional associations of persons having special knowledge with respect to the needs and problems of such programs and projects.

"SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

"MAINTENANCE AND EXPANSION OF EXISTING PROGRAMS

"SEC. 418A. (a) PROGRAM AUTHORITY.—The Secretary shall maintain and expand existing secondary and postsecondary high school equivalency program and college assistance migrant program projects located at institutions of higher education or at private nonprofit organizations working in cooperation with institutions of higher education.

"(b) SERVICES PROVIDED BY HIGH SCHOOL EQUIVALENCY PROGRAM.—The services authorized by this subpart for the high school equivalency program include—

"(1) recruitment services to reach persons who are 17 years of age and over, who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent;

"(2) educational services which provide instruction designed to help students obtain a general education diploma which meets the guidelines established by the State in which the project is located for high school equivalency;

"(3) supportive services which include the following:

"(A) personal, vocational, and academic counseling;

"(B) placement services designed to place students in a university, college, or junior college program, or in military service or career positions; and

"(C) health services;

"(4) information concerning and assistance in obtaining available student financial aid;

"(5) weekly stipends for high school equivalency program participants;

"(6) housing for those enrolled in residential programs;

"(7) exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth; and

"(8) other essential supportive services, as needed to ensure the success of eligible students.

"(c) SERVICES PROVIDED BY COLLEGE ASSISTANCE MIGRANT PROGRAM.—Services authorized by this subpart for the college assistance migrant program include—

"(1) outreach and recruitment services to reach persons who themselves or whose parents have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university;

"(2) supportive and instructional services which include:

"(A) personal, academic, and career counseling as an ongoing part of the program;

"(B) tutoring and academic skill building instruction and assistance;

"(C) assistance with special admissions;

"(D) health services; and

"(E) other services as necessary to assist students in completing program requirements;

"(3) assistance in obtaining student financial aid which includes, but is not limited to:

"(A) stipends;

"(B) scholarships;

"(C) student travel;

"(D) career oriented work study;

"(E) books and supplies;

"(F) tuition and fees;

"(G) room and board; and

"(H) other assistance necessary to assist students in completing their first year of college;

"(4) housing support for students living in institutional facilities and commuting students;

"(5) exposure to cultural events, academic programs, and other activities not usually available to migrant youth; and

"(6) other support services as necessary to ensure the success of eligible students.

"(d) MANAGEMENT PLAN REQUIRED.—Each project application shall include a management plan which contains assurances that staff shall have a demonstrated knowledge and be sensitive to the unique characteristics and needs of the migrant and seasonal farmworker population, and provisions for:

"(1) staff in-service training;

"(2) training and technical assistance;

"(3) staff travel;

"(4) student travel;

"(5) interagency coordination; and

"(6) an evaluation plan.

"(e) THREE-YEAR GRANT PERIOD; CONSIDERATION OF PRIOR EXPERIENCE.—Except under extraordinary circumstances, the Secretary shall award grants for a 3-year period. For the purpose of making grants under this subpart, the Secretary shall consider the prior experience of service delivery under the particular project for which funds are sought by each applicant. Such prior experience shall be awarded the same level of consideration given this factor for applicants for programs authorized by subpart 4 of this part in accordance with section 417A(b)(2).

"(f) MINIMUM ALLOCATIONS.—The Secretary shall not allocate an amount less than—

"(1) $150,000 for each project under the high school equivalency program, and

"(2) $150,000 for each project under the college assistance migrant program.

"(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for this part $9,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"SUBPART 6—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

"STATEMENT OF PURPOSE

"SEC. 419A. It is the purpose of this subpart to establish a Robert C. Byrd Honors Scholarship Program to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence.

"DEFINITION

"SEC. 419B. For the purpose of this subpart—

"(1) the term 'secondary school' has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965; and

"(2) the term 'State' means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SCHOLARSHIPS AUTHORIZED

"SEC. 419C. (a) PROGRAM AUTHORITY.—The Secretary is authorized, in accordance with the provisions of this subpart, to make grants to States to enable the States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement.

"(b) PERIOD OF AWARD.—Scholarships under this section shall be awarded for a period of one academic year for the first year of study at an institution of higher education.

"(c) USE AT ANY INSTITUTION PERMITTED.—A student awarded a scholarship under this subpart may attend any institution of higher education.

"(d) BYRD SCHOLARS.—Individuals awarded scholarships under this subpart shall be known as 'Byrd Scholars'.

"ALLOCATION AMONG STATES

"SEC. 419D. From the sums appropriated pursuant to section 419K for any fiscal year, the Secretary shall allocate to each State having an agreement under section 419E—

"(1) $1,500 multiplied by the number of individuals in the State eligible for scholarships pursuant to section 419G(b), plus

"(2) $10,000, plus 5 percent of the amount to which a State is eligible under paragraph (1) of this section.

"AGREEMENTS

"SEC. 419E. The Secretary shall enter into an agreement with each State desiring to participate in the scholarship program authorized by this subpart. Each such agreement shall include provisions designed to assure that—

"(1) the State educational agency will administer the scholarship program authorized by this subpart in the State;

"(2) the State educational agency will comply with the eligibility and selection provisions of this subpart;

"(3) the State educational agency will conduct outreach activities to publicize the availability of scholarships under this subpart to all eligible students in the State, with particular emphasis on activities designed to assure that students from low-income and moderate-income families have access to the information on the opportunity for full participation in the scholarship program authorized by this subpart;

"(4) the State educational agency will pay to each individual in the State who is awarded a scholarship under this subpart $1,500 at an awards ceremony in accordance with section 419I; and

"(5) the State educational agency will use the amount of the allocation described in paragraph (2) of section 419D for administrative expenses, including the conduct of the awards ceremony required by section 419I.

"ELIGIBILITY OF SCHOLARS

"SEC. 419F. (a) HIGH SCHOOL GRADUATION OR EQUIVALENT AND ADMISSION TO INSTITUTION REQUIRED.—Each student awarded a scholarship under this subpart shall be a graduate of a public or private secondary school or have the equivalent of a certificate of graduation as recognized by the State in which the student resides and must have been ad-

mitted for enrollment at an institution of higher education.

"(b) SELECTION BASED ON PROMISE OF ACADEMIC ACHIEVEMENT.—Each student awarded a scholarship under this subpart must demonstrate outstanding academic achievement and show promise of continued academic achievement.

"SELECTION OF SCHOLARS

"SEC. 419G. (a) ESTABLISHMENT OF CRITERIA.—The State educational agency is authorized to establish the criteria for the selection of scholars under this subpart.

"(b) ADOPTION OF PROCEDURES.—The State educational agency shall adopt selection procedures which are designed to assure that 10 individuals will be selected from among residents of each congressional district in a State (and in the case of the District of Columbia and the Commonwealth of Puerto Rico not to exceed ten individuals will be selected in such district or Commonwealth).

"(c) CONSULTATION REQUIREMENT.—In carrying out its responsibilities under subsections (a) and (b), the State educational agency shall consult with school administrators, school boards, teachers, counselors, and parents.

"STIPENDS AND SCHOLARSHIP CONDITIONS

"SEC. 419H. (a) AMOUNT OF AWARD.—Each student awarded a scholarship under this subpart shall receive a stipend of $1,500 for the academic year of study for which the scholarship is awarded.

"(b) USE OF AWARD.—The State educational agency shall establish procedures to assure that a scholar awarded a scholarship under this subpart pursues a course of study at an institution of higher education.

"AWARDS CEREMONY

"SEC. 419I. (a) LOCAL CEREMONY.—The State educational agency shall make arrangements to award scholarships under this subpart at a place in each State which is convenient to the individuals selected to receive such scholarships. To the extent possible, the award shall be made by Members of the Senate and Members of the House of Representatives (by the Delegate in the case of the District of Columbia and the Resident Commissioner in the case of the Commonwealth of Puerto Rico) who represent the State, Commonwealth, or District, as the case may be, from which the individuals come.

"(b) TIMING OF SELECTION.—The selection process shall be completed, and the awards made prior to the end of each secondary academic year.

"CONSTRUCTION OF NEEDS PROVISIONS

"SEC. 419J. Nothing in this subpart, or any other Act, shall be construed to permit the receipt of a scholarship under this subpart to be counted for any needs test in connection with the awarding of any grant or the making of any loan under this Act or any other provision of Federal law relating to educational assistance.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 419K. There are authorized to be appropriated for this subpart $8,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"SUBPART 7—ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

"PAYMENTS TO INSTITUTIONS OF HIGHER EDUCATION

"SEC. 420. (a) COST OF EDUCATION PAYMENTS.—Each institution of higher education shall be entitled for each fiscal year to a cost-of-education payment in accordance with the provisions of this section.

"(b) COMPUTATION OF AMOUNT.—(1) The amount of the cost-of-education payment to which an institution shall be entitled under this section for a fiscal year shall be, subject to subsection (d), the amount determined under paragraph (2)(A) plus the amount determined under paragraph (2)(B).

"(2)(A)(i) The Secretary shall determine the amount to which an institution is entitled under this subparagraph on the basis of the total number of undergraduate students who are in attendance at the institution and the number of students who are also recipients of basic grants under subpart 1, in accordance with the following table:

"If the total number of students in attendance is—	The amount of the grant is—
Not over 1,000	$500 for each recipient.
Over 1,000 but not over 2,500.	$500 for each of 100 recipients; plus $400 for each recipient in excess of 100.
Over 2,500 but not over 5,000.	$500 for each of 100 recipients; plus $400 for each of 150 recipients in excess of 100; plus $300 for each recipient in excess of 250.
Over 5,000 but not over 10,000.	$500 for each 100 recipients; plus $400 for each of 150 recipients in excess of 100; plus $300 for each of 250 recipients in excess of 250; plus $200 for each recipient in excess of 500.
Over 10,000	$500 for each of the 100 recipients; plus $400 for each of 150 recipients in excess of 100; plus $300 for each of 250 recipients in excess of 250; plus $200 for each of 500 recipients in excess of 500; plus $100 for each recipient in excess of 1,000.

"(ii) In any case where a recipient of a basic grant under subpart 1 attends an institution receiving a cost-of-education payment under this subpart on less than a full-time basis, the amount determined under this subparagraph with respect to the student shall be reduced in proportion to the degree to which that student is not attending on a full-time basis.

"(iii) If during any period of any fiscal year the funds available for making payments on the basis of entitlements established under this subparagraph are insufficient to satisfy fully all such entitlements, the amount paid with respect to each such entitlement shall be ratably reduced. When additional funds become available for such purpose, the amount of payment from such additional funds shall be in proportion to the degree to which each such entitlement is unsatisfied by the payments made under the first sentence of this division.

"(B)(i) The Secretary shall determine with respect to each institution an amount equal to the appropriate percent (specified on the table below) of the aggregate of—

"(I) supplemental educational opportunity grants under subpart 2;

"(II) work-study payments under part C; and

"(III) loans to students under part E;

made for such year to students who are in attendance at such institution. The Secretary shall determine such amounts on the basis of percentages of such aggregate, and the number of students in attendance at institutions during the most recent academic year ending prior to such fiscal year, in accordance with the following table:

"If the number of students in attendance at the institution is—	The percentage of such aggregate shall be—
Not over 1,000	50 percent.
Over 1,000 but not over 3,000	46 percent.
Over 3,000 but not over 10,000	42 percent.
Over 10,000	38 percent.

"(ii) If during any period of any fiscal year the funds available for making payments on the basis of entitlements established under this subparagraph are insufficient to satisfy fully all such entitlements, the amount paid with respect to each such entitlement shall be ratably reduced. When additional funds become available for such purpose, the amount of payment from such additional funds shall be in proportion to the degree to which each such entitlement is unsatisfied by the payments made under the first sentence of this division.

"(3)(A) In determining the number of students in attendance at institutions of higher education under this subsection, the Secretary shall compute the full-time equivalent of part-time students.

"(B) The Secretary shall make a separate determination of the number of students in attendance at an institution of higher education and the number of recipients of basic grants at any such institution at each branch or separate campus of that institution located in a different community from the principal campus of that institution pursuant to criteria established by him.

"(c) APPLICATIONS; CONTENTS AND MANNER OF FILING.—An institution of higher education may receive a cost-of-education payment in accordance with this section only upon application therefor. An application under this section shall be submitted at such time or times, in such manner, and containing such information as the Secretary determines necessary to carry out his functions under this title, and shall—

"(1) set forth such policies, assurances, and procedures as will ensure that—

"(A) the funds received by the institution under this section will be used solely to defray instructional expenses in academically related programs of the applicant;

"(B) the funds received by the institution under this section will not be used for a school or department of divinity or for any religious worship or sectarian activity;

"(C) the applicant will expend, during the academic year for which a payment is sought, for all academically related programs of the institution, an amount equal to at least the average amount so expended during the 3 years preceding the year for which the grant is sought; and

"(D) the applicant will submit to the Secretary such reports as the Secretary may require by regulation; and

"(2) contain such other statement of policies, assurances, and procedures as the Secretary may require by regulation in order to protect the financial interests of the United States.

"(d) APPORTIONMENT OF APPROPRIATIONS.—(1) The Secretary shall pay to each institution of higher education for each fiscal year the amount to which it is entitled under this section.

"(2) Of the total sums appropriated to make payments on the basis of entitlements established under this section and to make payments under part D of title IX—

"(A) 45 percent shall be available for making payments on the basis of entitle-

ments established under paragraph (2)(A) of subsection (a);

"(B) 45 percent shall be available for making payments on the basis of entitlements established under paragraph (2)(B) of subsection (a); and

"(C) 10 percent shall be available for making payments under part D of title IX.

"(3) No payments on the basis of entitlements established under paragraph (2)(A) of subsection (a) may be made during any fiscal year for which the appropriations for making grants under subpart 1 does not equal at least 50 percent of the appropriation necessary for satisfying the total of all entitlements established under such subpart. In no event shall, during any fiscal year, the aggregate of the payments to which this paragraph applies exceed that percentage of the total entitlements established under such paragraph (2)(A) which equals the percentage of the total entitlements established under subpart 1 which are satisfied by appropriations for such purpose for that fiscal year.

"(e) LIMITATION ON APPROPRIATIONS.—No funds are authorized to be appropriated for this subpart for fiscal year 1987.

"VETERANS' EDUCATION OUTREACH PROGRAM

"SEC. 420A. (a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the provisions of this section $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(b) SIZE AND DURATION OF AWARDS.—(1) The minimum grant that may be awarded to an institution under this section is $1,000, which may remain available for expenditure over a period not to exceed 2 academic years.

"(2) The amount of the payment to which any institution shall be entitled under this section for any fiscal year shall be—

"(A) $300 for each person who is a veteran receiving vocational rehabilitation under chapter 31 of title 38, United States Code, or a veteran receiving educational assistance under chapter 34 of such title 38, and who is in attendance at such institution as an undergraduate student during such year;

"(B) $150 for each person who is in attendance at such institution as an undergraduate student during such year and who has been the recipient of educational assistance under subchapter V or VI of chapter 34 of such title 38, or who has a service-connected disability as defined in section 101(16) of such title 38, or who is disabled, as determined in accordance with regulations promulgated by the Secretary after consultation with the Administrator of Veterans' Affairs; and

"(C) $100 for each person who is in attendance at such institution as an undergraduate student during such year and who has received an honorable discharge from military service but who is no longer eligible to or does not receive educational benefits under chapter 31 or chapter 34 of title 38 of the United States Code.

"(3) In any case where a person on behalf of whom a payment is made under this section attends an institution on less than a full-time basis, the amount of the payment on behalf of that person shall be reduced in proportion to the degree to which that person is not attending on a full-time basis.

"(4)(A) The Secretary shall pay to each institution of higher education which has had an application approved under subsection (c) the amount to which it is entitled under this section. If the amount appropriated for any fiscal year is not sufficient to pay the amounts to which all such institutions are entitled, the Secretary shall ratably reduce such payments. If any amounts become available for a fiscal year after such reductions have been imposed, such reduced payments shall be increased on the same basis as they were reduced.

"(B) The maximum amount of payments to any institution of higher education, or any branch thereof which is located in a community which is different from that in which the parent institution thereof is located, in any fiscal year shall be $75,000. In making payments under this section for any fiscal year, the Secretary shall apportion the appropriation for making such payments, from funds which become available as a result of the limitation on payments set forth in the preceding sentence, in such a manner as will result in the receipt by each institution which is eligible for payment under this section of the first $9,000 (or the amount of its entitlement for that fiscal year, but not less than $1,000, whichever is the lesser) and then additional amounts up to the limitation set forth in the preceding sentence.

"(5) Not less than 90 percent of the amounts paid to any institution under paragraph (3)(A) in any fiscal year shall be used to implement the requirement of subsection (c)(2)(C)(i), and to the extent that such funds remain after implementing such requirement, funds limited by such 90 percent requirement shall be used for implementing the requirements of clauses (ii) through (v) of subsection (c)(2)(C), except that the Secretary may, in accordance with criteria established in regulations jointly prescribed by the Secretary with the Administrator, waive the requirement of this subsection to the extent that he finds that such institution is adequately carrying out all such requirements without the necessity for such application of such amount of the payments received under this subsection.

"(c) ELIGIBILITY FOR AWARDS.—(1) During the period beginning July 1, 1987, and ending September 1, 1991, each institution of higher education shall be entitled to a payment under, and in accordance with, this section during any fiscal year if the number of persons who are veterans with honorable discharges and are in attendance as undergraduate students at the institution is at least 100.

"(2) An institution of higher education shall be eligible to receive the payment to which it is entitled under this section only if it makes application therefor to the Secretary. An application under this section shall be submitted at such time or times, in such manner, in such form and containing such information as the Secretary determines necessary to carry out the functions of the Secretary under this title, and shall—

"(A) set forth such policies, assurances, and procedures as will ensure that—

"(i) the funds received by the institution under this section and available to it after the requirements of subsection (e) have been met will be used solely to defray instructional expenses in academically related programs of the applicant;

"(ii) the funds received by the institution under this section will not be used for a school or department of divinity or for any religious worship or sectarian activity;

"(iii) the applicant will expend, during the academic year for which a payment is sought, for all academically related programs of the institution, an amount equal to at least the average amount so expended during the 3 years preceding the year for which the grant is sought;

"(iv) the applicant will expend, during the academic year for which a payment is sought, for enhancing the functions of the Veterans Education Outreach Program, an amount equal to at least the amount of the award under this section from sources other than this or any other Federal program; and

"(v) the applicant will submit to the Secretary such reports as the Secretary may require by regulation;

"(B) contain such other statement of policies, assurances, and procedures as the Secretary may require by regulation in order to protect the financial interests of the United States; and

"(C) set forth such plans, policies, assurances, and procedures as will ensure that the applicant will make an adequate effort—

"(i) to maintain an office of veterans' affairs which has responsibility for veterans' outreach, recruitment, and special education programs, including the provision of educational, vocational, and personal counseling for veterans,

"(ii) to carry out programs designed to prepare educationally disadvantaged veterans for postsecondary education (I) under subchapter V of chapter 34 of title 38, United States Code, and (II) in the case of any institution located near a military installation, under subchapter VI of such chapter 34,

"(iii) to carry out active outreach (with special emphasis on service-connected disabled veterans, other disabled or handicapped veterans, incarcerated veterans, and educationally disadvantaged veterans), recruiting, and counseling activities through the use of funds available under federally assisted work-study programs (with special emphasis on the veteran-student services program under section 1685 of such title 38),

"(iv) to carry out an active tutorial assistance program for veterans, including dissemination of information regarding such program, with special emphasis on making maximum use of the benefits available under section 1692 of such title 38, and

"(v) to coordinate activities carried out under this part with the readjustment counseling program authorized under section 612A of title 38, United States Code, and with the programs of veterans employment and training authorized under the Job Training Partnership Act and under chapters 41 and 42 of title 38, United States Code, in order to assist in serving the readjustment, rehabilitation, personal counseling, and employment needs of veterans,

except that an institution which the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator of Veterans' Affairs (hereinafter referred to as the 'Administrator'), cannot feasibly itself, in terms of the number of veterans in attendance there, carry out any or all of the programs set forth in clauses (i) through (v) of subparagraph (C), may carry out such program or programs through a consortium agreement with one or more other institutions of higher education and shall be required to carry out such programs only to the extent that the Secretary determines, in accordance with regulations jointly prescribed by the Secretary and the Administrator, is appropriate in terms of the number of veterans in attendance at such institution. The adequacy of efforts to meet the requirements of subparagraph (C) of this paragraph shall be determined by the Secretary, based upon the recommendations of the Administrator, in accordance with criteria established in regu-

lations jointly prescribed by the Secretary and the Administrator.

"(3) The Secretary shall not approve an application under this subsection unless he determines that the applicant will implement the requirements of subparagraph (C) of paragraph (1) within the first academic year during which it receives a payment under this section.

"(4) Any institution which has been eligible under this section prior to September 30, 1985, for a continuous period of three of the last five years shall be determined eligible under the terms of this section.

"(d) COORDINATION OF PROGRAMS.—The Secretary, in carrying out the provisions of this section, shall seek to assure the coordination of programs assisted under this section with programs carried out by the Veterans' Administration pursuant to title 38, United States Code, and the Administrator shall provide all assistance, technical consultation, and information otherwise authorized by law as necessary to promote the maximum effectiveness of the activities and programs assisted under this section.

"(e) ADMINISTRATION OF PROGRAM.—The program provided for in this section shall be administered by an identifiable administrative unit in the Department.

"(f) DISSEMINATION OF INFORMATION.—From the amounts appropriated for this section, the Secretary shall retain one percent or $10,000, whichever is less, for the purpose of collecting information about exemplary Veterans Educational Outreach Programs and disseminating that information to other institutions of higher education having such programs on their campuses. Such collection and dissemination shall be done on an annual basis.

"SUBPART 8—SPECIAL CHILD CARE SERVICES FOR DISADVANTAGED COLLEGE STUDENTS

"SPECIAL CHILD CARE SERVICES FOR DISADVANTAGED COLLEGE STUDENTS

"SEC. 420B. (a) PROGRAM AUTHORITY.—Funds appropriated pursuant to subsection (c) shall be used by the Secretary to make grants to institutions of higher education to provide special child care services to disadvantaged students.

"(b) APPLICATIONS.—Any institution wishing to receive a grant under this section shall submit an application to the Secretary. Such application shall include—

"(1) a description of the program to be established;

"(2) assurances by the applicant to the Secretary that—

"(A) not less than two-thirds of the participants in the program are low-income individuals;

"(B) the remaining participants in the program are either low-income individuals;

"(C) the participants require the services to pursue a successful program of education beyond high school;

"(D) the participants are enrolled at the institution which is the recipient of the grant;

"(E) all participants will receive sufficient assistance (under this subpart, other provisions of this title, or otherwise) to meet that student's full financial need for child care services related to such enrollment; and

"(F) the institution will meet such need of participants by providing child care through vouchers, contracted services, or direct provision of services; and

"(3) such information (and meet such conditions) as may be required by the Secretary.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purpose of this section, $10,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(d) DEFINITIONS.—For the purpose of this subpart—

"(1) the term 'first generation college student' means—

"(A) an individual both of whose parents did not complete a baccalaureate degree; or

"(B) in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree; and

"(2) the term 'low-income individual' means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.".

(b) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), sections 411A through 411F of the Act as amended by this section shall apply with respect to the determination of need for Pell Grants for academic years beginning with academic year 1988-1989. With respect to any preceding academic year, such determinations shall be made in accordance with regulations prescribed by the Secretary of Education in accordance with the Student Financial Assistance Technical Amendments Act of 1982.

(2) The definition of independent student contained in section 411F(12) of the Act as amended by this section shall apply with respect to the determination of such need for academic years beginning with academic year 1987-1988.

(3) Section 411(c) of the Act as amended by this section shall apply only to individuals who receive a Pell Grant for the first time for a period of enrollment beginning on or after July 1, 1987.

(4) Section 411(f) of the Act as amended by this section shall apply to the awarding of Pell Grants for periods of enrollment beginning on or after July 1, 1987.

(5) Section 413C(c)(2) of the Act as amended by this section shall apply to the awarding of grants under subpart 2 of part A of title IV of the Act for periods of enrollment beginning on or after July 1, 1987.

(6) The changes made in section 417D of the Act shall apply with respect to grants awarded under such section in fiscal year 1988 or any succeeding fiscal year.

SEC. 402. EXTENSION OF GUARANTEED STUDENT LOAN PROGRAM.

(a) AMENDMENT.—Part B of title IV of the Act (20 U.S.C. 1071 et seq.) is amended to read as follows:

"PART B—GUARANTEED STUDENT LOAN PROGRAM

"STATEMENT OF PURPOSE; NONDISCRIMINATION; AND APPROPRIATIONS AUTHORIZED

"SEC. 421. (a) PURPOSE; DISCRIMINATION PROHIBITED.—

"(1) PURPOSE.—The purpose of this part is to enable the Secretary—

"(A) to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions (as defined in section 435),

"(B) to provide a Federal program of student loan insurance for students or lenders who do not have reasonable access to a State or private nonprofit program of student loan insurance covered by an agreement under section 428(b),

"(C) to pay a portion of the interest on loans to qualified students which are insured under this part, and

"(D) to guarantee a portion of each loan insured under a program of a State or of a nonprofit private institution or organization which meets the requirements of section 428(a)(1)(B).

"(2) DISCRIMINATION BY CREDITORS PROHIBITED.—No agency, organization, institution, bank, credit union, corporation, or other lender who regularly extends, renews, or continues credit or provides insurance under this part shall exclude from receipt or deny the benefits of, or discriminate against any borrower or applicant in obtaining, such credit or insurance on the basis of race, national origin, religion, sex, marital status, age, or handicapped status.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part—

"(1) there are authorized to be appropriated to the student loan insurance fund (established by section 431) (A) the sum of $1,000,000, and (B) such further sums, if any, as may become necessary for the adequacy of the student loan insurance fund,

"(2) there are authorized to be appropriated, for payments under section 428 with respect to interest on student loans and for payments under section 437, such sums for the fiscal year ending June 30, 1966, and succeeding fiscal years, as may be required therefor,

"(3) there is authorized to be appropriated the sum of $17,500,000 for making advances pursuant to section 422 for the reserve funds of State and nonprofit private student loan insurance programs,

"(4) there are authorized to be appropriated (A) the sum of $12,500,000 for making advances after June 30, 1968, pursuant to sections 422 (a) and (b), and (B) such sums as may be necessary for making advances pursuant to section 422(c), for the reserve funds of State and nonprofit private student loan insurance programs, and

"(5) there are authorized to be appropriated such sums as may be necessary for the purpose of paying an administrative cost allowance in accordance with section 428(f) to guaranty agencies.

Sums appropriated under paragraphs (1), (2), (4), and (5) of this subsection shall remain available until expended. No additional sums are authorized to be appropriated under paragraphs (3) or (4) of this subsection by reason of the reenactment of such paragraphs by the Higher Education Amendments of 1986.

"ADVANCES FOR RESERVE FUNDS OF STATE AND NONPROFIT PRIVATE LOAN INSURANCE PROGRAMS

"SEC. 422. (a) PURPOSE OF AND AUTHORITY FOR ADVANCES TO RESERVE FUNDS.—

"(1) PURPOSE; ELIGIBLE RECIPIENTS.—From sums appropriated pursuant to paragraphs (3) and (4)(A) of section 421(b), the Secretary is authorized to make advances to any State with which the Secretary has made an agreement pursuant to section 428(b) for the purpose of helping to establish or strengthen the reserve fund of the student loan insurance program covered by that agreement. If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 428(b), and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances for such year for the same purpose to one or more nonprofit private institutions or organizations with which the Secretary has made an agreement pursuant to section 428(b) in

order to enable students in the State to participate in a program of student loan insurance covered by such an agreement. The Secretary may make advances under this subsection both to a State program (with which he has such an agreement) and to one or more nonprofit private institutions or organizations (with which he has such an agreement) in that State if he determines that such advances are necessary in order that students in each eligible institution have access through such institution to a student loan insurance program which meets the requirements of section 428(b)(1).

"(2) MATCHING REQUIREMENT.—No advance shall be made after June 30, 1968, unless matched by an equal amount from non-Federal sources. Such equal amount may include the unencumbered non-Federal portion of a reserve fund. As used in the preceding sentence, the term 'unencumbered non-Federal portion' means the amount (determined as of the time immediately preceding the making of the advance) of the reserve fund less the greater of—

"(A) the sum of—

"(i) advances made under this section prior to July 1, 1968;

"(ii) an amount equal to twice the amount of advances made under this section after June 30, 1968, and before the advance for purposes of which the determination is made; and

"(iii) the proceeds of earnings on advances made under this section; or

"(B) any amount which is required to be maintained in such fund pursuant to State law or regulation, or by agreement with lenders, as a reserve against the insurance of outstanding loans.

"(3) TERMS AND CONDITIONS; REPAYMENT.—Advances pursuant to this subsection shall be upon such terms and conditions (including conditions relating to the time or times of payment) consistent with the requirements of section 428(b) as the Secretary determines will best carry out the purpose of this section. Advances made by the Secretary under this subsection shall be repaid within such period as the Secretary may deem to be appropriate in each case in the light of the maturity and solvency of the reserve fund for which the advance was made.

"(b) LIMITATIONS ON TOTAL ADVANCES.—

"(1) IN GENERAL.—The total of the advances from the sums appropriated pursuant to paragraph (4)(A) of section 421(b) to nonprofit private institutions and organizations for the benefit of students in any State and to such State may not exceed an amount which bears the same ratio to such sums as the population of such State aged 18 to 22, inclusive, bears to the population of all the States aged 18 to 22 inclusive, but such advances may otherwise be in such amounts as the Secretary determines will best achieve the purposes for which they are made. The amount available for advances to any State shall not be less than $25,000 and any additional funds needed to meet this requirement shall be derived by proportionately reducing (but not below $25,000) the amount available for advances to each of the remaining States.

"(2) CALCULATION OF POPULATION.—For the purpose of this subsection, the population aged 18 to 22, inclusive, of each State and of all the States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

"(c) ADVANCES FOR INSURANCE OBLIGATIONS.—

"(1) USE FOR PAYMENT OF INSURANCE OBLIGATIONS.—From sums appropriated pursuant to section 421(b)(4)(B), the Secretary shall advance to each State which has an agreement with the Secretary under section 428(c) with respect to a student loan insurance program, an amount determined in accordance with paragraph (2) of this subsection to be used for the purpose of making payments under the State's insurance obligations under such program.

"(2) AMOUNT OF ADVANCES.—(A) Except as provided in subparagraph (B), the amount to be advanced to each such State shall be equal to 10 percent of the principal amount of loans made by lenders and insured by such agency on those loans on which the first payment of principal became due during the fiscal year immediately preceding the fiscal year in which the advance is made.

"(B) The amount of any advance determined according to subparagraph (A) of this paragraph shall be reduced by—

"(i) the amount of any advance or advances made to such State pursuant to this subsection at an earlier date; and

"(ii) the amount of the unspent balance of the advances made to a State pursuant to subsection (a).

Notwithstanding subparagraph (A) and the preceding sentence of this subparagraph, but subject to subparagraph (D) of this paragraph, the amount of any advance to a State described in paragraph (5)(A) for the first year of its eligibility under such paragraph, and the amount of any advance to any State described in paragraph (5)(B) for each year of its eligibility under such paragraph, shall not be less than $50,000.

"(C) For the purpose of subparagraph (B), the unspent balance of the advances made to a State pursuant to subsection (a) shall be that portion of the balance of the State's reserve fund (remaining at the time of the State's first request for an advance pursuant to this subsection) which bears the same ratio to such balance as the Federal advances made and not returned by such State, pursuant to subsection (a), bears to the total of all past contributions to such reserve funds from all sources (other than interest on investment of any portion of the reserve fund) contributed since the date such State executed an agreement pursuant to section 428(b).

"(D) If the sums appropriated for any fiscal year for paying the amounts determined under subparagraphs (A) and (B) are not sufficient to pay such amounts in full, then such amounts shall be reduced—

"(i) by ratably reducing that portion of the amount allocated to each State which exceeds $50,000; and

"(ii) if further reduction is required, by equally reducing the $50,000 minimum allocation of each State.

If additional sums become available for paying such amounts for any fiscal year during which the preceding sentence has been applied, such reduced amounts shall be increased on the same basis as they were reduced.

"(3) USE OF EARNINGS FOR INSURANCE OBLIGATIONS.—The earnings, if any, on any investments of advances received pursuant to this subsection must be used for making payments under the State's insurance obligations.

"(4) REPAYMENT OF ADVANCES.—Advances made by the Secretary under this subsection shall, subject to subsection (d), be repaid within such period as the Secretary may deem to be appropriate and shall be deposited in the fund established by section 431.

"(5) LIMITATION ON NUMBER OF ADVANCES.—Advances pursuant to this subsection shall be made to a State—

"(A) in the case of a State which is actively carrying on a program under an agreement pursuant to section 428(b) which was entered into before October 12, 1976, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 2 succeeding calendar years after the date so requested; and

"(B) in the case of a State which enters into an agreement pursuant to section 428(b) on or after October 12, 1976, or which is not actively carrying on a program under an agreement pursuant to such section on such date, upon such date as such State may request, but not before October 1, 1977, and on the same day of each of the 4 succeeding calendar years after the date so requested of the advance.

"(6) PAYMENT OF ADVANCES WHERE NO STATE PROGRAM.—(A) If for any fiscal year a State does not have a student loan insurance program covered by an agreement made pursuant to section 428(b), and the Secretary determines after consultation with the chief executive officer of that State that there is no reasonable likelihood that the State will have such a student loan insurance program for such year, the Secretary may make advances pursuant to this subsection for such year for the same purpose to one or more nonprofit private institutions or organizations with which he has made an agreement pursuant to subsection (c), as well as subsection (b), of section 428 and subparagraph (B) of this paragraph in order to enable students in that State to participate in a program of student loan insurance covered by such agreements.

"(B) The Secretary may enter into an agreement with a private nonprofit institution or organization for the purpose of this paragraph under which such institution or organization—

"(i) agrees to establish within such State at least one office with sufficient staff to handle written and telephone inquiries from students, eligible lenders, and other persons in the State, to encourage maximum commercial lender participation within the State, and to conduct periodic visits to at least the major eligible lenders within the State;

"(ii) agrees that its insurance will not be denied any student because of his or her choice of eligible institutions; and

"(iii) certifies that it is neither an eligible institution, nor has any substantial affiliation with an eligible institution.

"(d) RECOVERY OF ADVANCES DURING FISCAL YEARS 1988 AND 1989.—

"(1) AMOUNT AND USE OF RECOVERED FUNDS.—Notwithstanding any other provision of this section, advances made by the Secretary under this section shall be repaid in accordance with this subsection and shall be deposited in the fund established by section 431. The Secretary shall, in accordance with the requirements of paragraph (2), recover (and so deposit) an amount equal to $75,000,000 during fiscal year 1988 and an amount equal to $35,000,000 for fiscal year 1989.

"(2) DETERMINATION OF GUARANTY AGENCY OBLIGATIONS.—In determining the amount of advances which shall be repaid by a guaranty agency under paragraph (1), the Secretary—

"(A) shall consider the solvency and maturity of the reserve and insurance funds of the guaranty agency assisted by such advances, as determined by the Comptroller

General taking into account the requirements of State law as in effect on the date of enactment of the Higher Education Amendments of 1986;

"(B) shall not seek repayment of such advances from any State described in subsection (c)(5)(B) during any year of its eligibility under such subsection; and

"(C) shall not seek repayment of such advances from any State if such repayment encumbers the reserve fund requirement of State law as in effect on such date of enactment.

"EFFECTS OF ADEQUATE NON-FEDERAL PROGRAMS

"SEC. 423. (a) FEDERAL INSURANCE BARRED TO LENDERS WITH ACCESS TO STATE OR PRIVATE INSURANCE.—Except as provided in subsection (b), the Secretary shall not issue certificates of insurance under section 429 to lenders in a State if the Secretary determines that every eligible institution has reasonable access in that State to a State or private nonprofit student loan insurance program which is covered by an agreement under section 428(b).

"(b) EXCEPTIONS.—The Secretary may issue certificates of insurance under section 429 to a lender in a State—

"(1) for insurance of a loan made to a student borrower who does not, by reason of the borrower's residence, have access to loan insurance under the loan insurance program of such State (or under any private nonprofit loan insurance program which has received an advance under section 422 for the benefit of students in such State);

"(2) for insurance of all the loans made to student borrowers by a lender who satisfies the Secretary that, by reason of the residence of such borrowers, such lender will not have access to any single State or nonprofit private loan insurance program which will insure substantially all of the loans such lender intends to make to such student borrowers; or

"(3) under such circumstances as may be approved by the guaranty agency in such State, for the insurance of a loan to a borrower for whom such lender previously was issued such a certificate if the loan covered by such certificate is not yet repaid.

"SCOPE AND DURATION OF FEDERAL LOAN INSURANCE PROGRAM

"SEC. 424. (a) LIMITATIONS ON AMOUNTS OF LOANS COVERED BY FEDERAL INSURANCE.—The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 435) to students covered by Federal loan insurance under this part shall not exceed $2,000,000,000 for the period from July 1, 1976, to September 30, 1976, and for each of the succeeding fiscal years ending prior to October 1, 1992. Thereafter, Federal loan insurance pursuant to this part may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this part, to continue or complete their educational program; but no insurance may be granted for any loan made or installment paid after September 30, 1997.

"(b) APPORTIONMENT OF AMOUNTS.—The Secretary may, if he or she finds it necessary to do so in order to assure an equitable distribution of the benefits of this part, assign, within the maximum amounts specified in subsection (a), Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

"LIMITATIONS ON INDIVIDUAL FEDERALLY INSURED LOANS AND ON FEDERAL LOAN INSURANCE

"SEC. 425. (a) ANNUAL AND AGGREGATE LIMITS.—

"(1) ANNUAL LIMITS.—(A) The total of loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this part may not exceed—

"(i) $2,625, in the case of a student who has not successfully completed the first and second year of a program of undergraduate education;

"(ii) $4,000, in the case of a student who has successfully completed such first and second year but who has not successfully completed the remainder of a program of undergraduate education; or

"(iii) $7,500, in the case of a graduate or professional student (as defined in regulations of the Secretary).

"(B) The annual insurable limits contained in subparagraph (A) shall not apply in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education. The annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

"(2) AGGREGATE LIMITS.—(A) The aggregate insured unpaid principal amount for all such insured loans made to any student shall not at any time exceed—

"(i) $17,250 in the case of any student who has not successfully completed a program of undergraduate education; and

"(ii) $54,750, in the case of any graduate or professional student (as defined by regulations of the Secretary and including any loans which are insured by the Secretary under this part, or by a guaranty agency, made to such person before he or she became a graduate or professional student).

"(B) The Secretary may increase the aggregate insurable limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive.

"(b) LEVEL OF INSURANCE COVERAGE BASED ON DEFAULT RATE.—

"(1) REDUCTION FOR DEFAULTS IN EXCESS OF 5 OR 9 PERCENT.—(A) Except as provided in subparagraph (B), the insurance liability on any loan insured by the Secretary under this part shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest, except that—

"(i) if, for any fiscal year, the total amount of payments under section 430 by the Secretary to any eligible lender as described in section 435(d)(1)(D) exceeds 5 percent of the sum of the loans made by such lender which are insured by the Secretary and which were in repayment at the end of the preceding fiscal year, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 90 percent of the amount of such portion; or

"(ii) if, for any fiscal year, the total amount of such payments to such a lender exceeds 9 percent of such sum, the insurance liability under this subsection for that portion of such excess which represents loans insured after the applicable date with respect to such loans, as determined under subparagraph (C), shall be equal to 80 percent of the amount of such portion.

"(B) Notwithstanding subparagraph (A), the provisions of clauses (i) and (ii) of such subparagraph shall not apply to an eligible lender as described in section 435(d)(1)(D) for the fiscal year in which such lender begins to carry on a loan program insured by the Secretary, or for any of the 4 succeeding fiscal years.

"(C) The applicable date with respect to a loan made by an eligible lender as described in section 435(d)(1)(D) shall be—

"(i) the 90th day after the adjournment of the next regular session of the appropriate State legislature which convenes after the date of enactment of the Education Amendments of 1976, or

"(ii) if the primary source of lending capital for such lender is derived from the sale of bonds, and the constitution of the appropriate State prohibits a pledge of such State's credit as security against such bonds, the day which is one year after such 90th day.

"(2) COMPUTATION OF AMOUNTS IN REPAYMENT.—For the purpose of this subsection, the sum of the loans made by a lender which are insured by the Secretary and which are in repayment shall be the original principal amount of loans made by such lender which are insured by the Secretary reduced by—

"(A) the amount the Secretary has been required to pay to discharge his or her insurance obligations under this part;

"(B) the original principal amount of loans insured by the Secretary which have been fully repaid;

"(C) the original principal amount insured on those loans for which payment of first installment of principal has not become due pursuant to section 427(a)(2)(B) or such first installment need not be paid pursuant to section 427(a)(2)(C); and

"(D) the original principal amount of loans repaid by the Secretary under section 437.

"(3) PAYMENTS TO ASSIGNEES.—For the purpose of this subsection, payments by the Secretary under section 430 to an assignee of the lender with respect to a loan shall be deemed payments made to such lender.

"(4) PLEDGE OF FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 430 or 437 of this part.

"SOURCES OF FUNDS

"SEC. 426. Loans made by eligible lenders in accordance with this part shall be insurable by the Secretary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.

"ELIGIBILITY OF STUDENT BORROWERS AND TERMS OF FEDERALLY INSURED STUDENT LOANS

"SEC. 427. (a) LIST OF REQUIREMENTS.—Except as provided in section 428C, a loan by an eligible lender shall be insurable by the Secretary under the provisions of this part only if—

"(1) made to a student who (A) is an eligible student under section 484, (B) has agreed to notify promptly the holder of the loan concerning any change of address, and (C) is carrying at least one-half the normal full-time academic workload for the course of study the student is pursuing (as determined by the institution); and

"(2) evidenced by a note or other written agreement which—

"(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by the borrower would not,

under the applicable law, create a binding obligation, endorsement may be required;

"(B) provides for repayment (except as provided in subsection (c)) of the principal amount of the loan in installments over a period of not less than 5 years (unless sooner repaid or unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, except—

"(i) as provided in subparagraph (C);

"(ii) that the note or other written instrument may contain such reasonable provisions relating to repayment in the event of default in the payment of interest or in the payment of the cost of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made; and

"(iii) that the lender and the student, after the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, may agree to a repayment schedule which begins earlier, or is of shorter duration, than required by this subparagraph, but in the event a borrower has requested and obtained a repayment period of less than 5 years, the borrower may at any time prior to the total repayment of the loan, have the repayment period extended so that the total repayment period is not less than 5 years;

"(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—

"(i) during which the borrower (I) is pursuing a full-time course of study at an eligible institution, (II) is pursuing at least a half-time course of study (as determined by such institution) during an enrollment period for which the student has obtained a loan under this part, or (III) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary;

"(ii) not in excess of 3 years during which the borrower is a member of the Armed Forces of the United States, is an active duty member of the National Oceanic and Atmospheric Administration Corps, or is an officer in the Commissioned Corps of the Public Health Service;

"(iii) not in excess of 3 years during which the borrower is in service as a volunteer under the Peace Corps Act;

"(iv) not in excess of 3 years during which the borrower is in service as a full-time volunteer under the Domestic Volunteer Service Act of 1973;

"(v) not in excess of 3 years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

"(vi) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public or private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to section 428(b)(4);

"(vii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service;

"(viii) not in excess of 3 years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a dependent who is so disabled;

"(ix) not in excess of 24 months, at the request of the borrower, during which the borrower is seeking and unable to find full-time employment;

"(x) not in excess of 6 months of parental leave; or

"(xi) not in excess of 12 months for mothers with preschool age children who are just entering or reentering the work force and who are compensated at a rate not exceeding $1 in excess of the rate prescribed under section 6 of the Fair Labor Standards Act of 1938,

and that any such period shall not be included in determining the 10-year period provided in subparagraph (B);

"(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed in section 427A, which interest shall be payable in installments over the period of the loan except that, if provided in the note or other written agreement, any interest payable by the student may be deferred until not later than the date upon which repayment of the first installment of principal falls due, in which case interest accrued during that period may be added on that date to the principal;

"(E) provides that the lender will not collect or attempt to collect from the borrower any portion of the interest on the note which is payable by the Secretary under this part, and that the lender will enter into such agreements with the Secretary as may be necessary for the purpose of section 437;

"(F) entitles the student borrower to accelerate without penalty repayment of the whole or any part of the loan;

"(G)(i) contains a notice of the system, of disclosure of information concerning such loan to credit bureau organizations under section 430A, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations; and

"(H) contains such other terms and conditions, consistent with the provisions of this part and with the regulations issued by the Secretary pursuant to this part, as may be agreed upon by the parties to such loan, including, if agreed upon, a provision requiring the borrower to pay the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan;

"(3) the funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this title shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check; and

"(4) in the case of any loan made for any period of enrollment that ends more than 180 days (or 6 months) after the date disbursement is scheduled to occur, and for an amount of more than $1,000, the proceeds of the loan will, subject to subsection (b), be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second installment being disbursed after not less than one-third of such period (except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment).

"(b) SPECIAL RULES FOR MULTIPLE DISBURSEMENT.—For the purpose of subsection (a)(4)—

"(1) all loans issued for the same period of enrollment shall be considered as a single loan; and

"(2) the requirements of such subsection shall not apply in the case of a loan made under section 428A, 428B, or 428C, or made to a student to cover the cost of attendance at an eligible institution outside the United States.

"(c) MINIMUM REPAYMENT RATE.—The total of the payments by a borrower during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less, except that in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less.

"APPLICABLE INTEREST RATES

"SEC. 427A. (a) RATES TO BE CONSISTENT FOR BORROWER'S ENTIRE DEBT.—With respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, the rate of interest applicable to any borrower shall—

"(1) not exceed 7 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has an outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, for which the interest rate does not exceed 7 percent;

"(2) except as provided in paragraph (3), be 9 percent per year on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has no outstanding balance of principal or interest on any loan described in paragraph (1) or any loan for which the interest rate is determined under paragraph (1); or

"(3) be 8 percent per year on the unpaid principal balance of the loan for a loan to cover the cost of education for any period of enrollment beginning on or after a date which is 3 months after a determination made under subsection (b) in the case of any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan for which the interest rate is determined under paragraph (1) or (2) of this subsection.

"(b) REDUCTION FOR NEW BORROWERS AFTER DECLINE IN TREASURY BILL RATES.—If for any 12-month period beginning on or after January 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 9 percent, the interest rate for loans under this part shall be the rate pre-

scribed in subsection (a)(3) for borrowers described in such subsection.

"(c) RATES FOR SUPPLEMENTAL LOANS FOR STUDENTS AND LOANS FOR PARENTS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the applicable rate of interest on loans made pursuant to section 428A or 428B on or after October 1, 1981, shall be 14 percent per year on the unpaid principal balance of the loan.

"(2) REDUCTION OF RATE AFTER DECLINE IN TREASURY BILL RATES.—If for any 12-month period beginning on or after October 1, 1981, the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period is equal to or less than 14 percent, the applicable rate of interest for loans made pursuant to section 428A or 428B on and after the first day of the first month beginning after the date of publication of such determination shall be 12 percent per year on the unpaid principal balance of the loan.

"(3) INCREASE OF RATE AFTER INCREASE IN TREASURY BILL RATES.—If for any 12-month period beginning on or after the date of publication of a determination under paragraph (2), the Secretary, after consultation with the Secretary of the Treasury, determines that the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 12-month period exceeds 14 percent, the applicable rate of interest for loans made pursuant to section 428A or 428B on and after the first day of the first month beginning after the date of publication of that determination under this paragraph shall be 14 percent per year on the unpaid principal balance of the loan.

"(4) AVAILABILITY OF VARIABLE RATES.—(A) For any loan made pursuant to section 428A or 428B to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1987, or any loan made pursuant to such section prior to such date that is refinanced pursuant to section 428A(d) or 428B(d), the applicable rate of interest during any calendar year shall be determined under subparagraph (B), except that such rate shall not exceed 12 percent.

"(B) For any calendar year, the rate determined under this subparagraph is determined on December 15 preceding such calendar year and is equal to—

"(i) the average of the bond equivalent rates of 91-day Treasury bills auctioned during the 12 months ending on November 30 preceding such calendar year; plus

"(ii) 3.75 percent.

"(C) The Secretary shall determine the applicable rate of interest under subparagraph (B) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(d) INTEREST RATES FOR NEW BORROWERS AFTER JULY 1, 1988.—Notwithstanding subsections (a) and (b) of this section, with respect to any loan (other than a loan made pursuant to sections 428A, 428B, and 428C) to cover the cost of instruction for any period of enrollment beginning on or after July 1, 1988, to any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, the applicable rate of interest shall be—

"(1) 8 percent per year on the unpaid principal balance of the loan during the period beginning on the date of the disbursement of the loan and ending 4 years after the commencement of repayment; and

"(2) 10 percent per year on the unpaid principal balance of the loan during the remainder of the repayment period.

"(e) TREATMENT OF EXCESS INTEREST PAYMENTS ON NEW BORROWER ACCOUNTS RESULTING FROM DECLINE IN TREASURY BILL RATES.—

"(1) IN GENERAL.—If, with respect to a loan for which the applicable interest rate is 10 percent under subsection (d) of this section at the close of any calendar quarter, the sum of the average of the bond equivalent rates of 91-day Treasury bills auctioned for that quarter and 3.25 percent is less than 10 percent, then an adjustment shall be made to a borrower's account—

"(A) by calculating excess interest in the amount computed under paragraph (2) of this subsection; and

"(B) by crediting the excess interest to the reduction of principal to the extent provided for under paragraph (3) of this subsection.

"(2) AMOUNT OF ADJUSTMENT.—The amount of any adjustment of interest on a loan to be made under this subsection for any quarter shall be equal to—

"(A) 10 percent minus the sum of (i) the average of the bond equivalent rates of 91-day Treasury bills auctioned for such calendar quarter, and (ii) 3.25 percent; multiplied by

"(B) the outstanding principal balance of the loan (not including unearned interest added to principal) at the end of such calendar quarter; divided by

"(C) four.

"(3) ANNUAL ADJUSTMENT OF INTEREST AND BORROWER ELIGIBILITY FOR CREDIT.—Any adjustment amount computed pursuant to paragraph (2) of this subsection for any quarter shall be credited, by the holder of the loan on the last day of the calendar year in which such quarter falls, to the loan account of the borrower so as to reduce the principal balance of such account. No such credit shall be made to the loan account of a borrower who on the last day of the calendar year is delinquent for more than 30 days in making a required payment on the loan, nor need any credit be made when the amount to be credited is less than $50. Any credit which is to be made to a borrower's account pursuant to this subsection shall be made effective commencing no later than 30 days following the last day of the calendar year in which the quarter falls for which the credit is being made. Nothing in this subsection shall be construed to require refunding any repayment of a loan. At the option of the lender, the amount of such adjustment may be distributed to the borrower either by reduction in the amount of the periodic payment on the loan, or by reducing the number of payments that shall be made with respect to the loan.

"(4) PUBLICATION OF TREASURY BILL RATE.—For the purpose of enabling holders of loans to make the determinations and adjustments provided for in this subsection, the Secretary shall for each calendar quarter commencing with the quarter beginning on July 1, 1987, publish a notice of the average of the bond equivalent rates of 91-day Treasury bills auctioned for such quarter. Such notice shall be published not later than 7 days after the end of the quarter to which the notice relates.

"(5) STUDY OF TREATMENT OF EXCESS INTEREST PAYMENTS PROVISIONS.—The Secretary shall examine and evaluate the provisions of this subsection, and not later than 6 months after the date of enactment of the Higher Education Amendments of 1986, prepare and submit to the Congress such legislative proposals as the Secretary determines are necessary to carry out the objectives of this subsection.

"(f) LESSER RATES PERMITTED.—Nothing in this section or section 428C shall be construed to prohibit a lender from charging a borrower interest at a rate less than the rate which is applicable under this part.

"(g) DEFINITIONS.—For the purpose of subsections (a) and (d) of this section—

"(1) the term 'period of instruction' shall, at the discretion of the lender, be any academic year, semester, trimester, quarter, or other academic period; or shall be the period for which the loan is made as determined by the institution of higher education; and

"(2) the term 'period of enrollment' shall be the period for which the loan is made as determined by the institution of higher education and shall coincide with academic terms such as academic year, semester, trimester, quarter, or other academic period as defined by such institution.

"FEDERAL PAYMENTS TO REDUCE STUDENT INTEREST COSTS

"SEC. 428. (a) FEDERAL INTEREST SUBSIDIES.—

"(1) TYPES OF LOANS THAT QUALIFY.—Each student who has received a loan for study at an eligible institution—

"(A) which is insured by the Secretary under this part; or

"(B) which is insured under a program of a State or of a nonprofit private institution or organization which was contracted for, and paid to the student, within the period specified in paragraph (5), and which—

"(i) in the case of a loan insured prior to July 1, 1967, was made by an eligible lender and is insured under a program which meets the requirements of subparagraph (E) of subsection (b)(1) and provides that repayment of such loan shall be in installments beginning not earlier than 60 days after the student ceases to pursue a course of study (as described in subparagraph (D) of subsection (b)(1)) at an eligible institution, or

"(ii) in the case of a loan insured after June 30, 1967, was made by an eligible lender and is insured under a program covered by an agreement made pursuant to subsection (b),

shall be entitled to have paid on his or her behalf and for his or her account to the holder of the loan a portion of the interest on such loan under circumstances described in paragraph (2).

"(2) ADDITIONAL REQUIREMENTS TO RECEIVE SUBSIDY.—(A) Each student qualifying for a portion of an interest payment under paragraph (1) shall—

"(i) have provided to the lender a statement from the eligible institution, at which the student has been accepted for enrollment, or at which the student is in attendance, which—

"(I) sets forth such student's estimated cost of attendance (as determined under section 472); and

"(II) sets forth such student's estimated financial assistance; and

"(ii) meet the requirements of subparagraph (B).

"(B) For the purpose of clause (ii) of subparagraph (A), a student shall qualify for a portion of an interest payment under paragraph (1) if the eligible institution has provided the lender with a statement evidencing a determination of need for a loan (as determined under part F of this title) and the amount of such need, subject to the provisions of subparagraph (D).

"(C) For the purpose of paragraph (1) and this paragraph—

"(i) a student's estimated financial assistance means, for the period for which the loan is sought, the amount of assistance such student will receive under subpart 1 of part A (as determined in accordance with section 484(b)), subpart 2 of part A, and parts C and E of this title, and any amount paid the student under chapters 32, 34, and 35 of title 38, United States Code, plus other scholarship, grant, or loan assistance; and

"(ii) the determination of need and of the amount of a loan by an eligible institution under subparagraph (B) with respect to a student shall be calculated by subtracting from the estimated cost of attendance at the eligible institution the total of the expected family contribution with respect to such student plus any estimated financial assistance reasonably available to such student.

"(D) An eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, provide a statement which permits the student to receive any loan under this part in excess of the maximum amount applicable to such loan.

"(E) For the purpose of subparagraphs (B) and (C) of this paragraph, any loan obtained by a student under section 428A or a parent under section 428B of this Act or under any State-sponsored or private loan program for an academic year for which the determination is made may be used to offset the expected family contribution of the student for that year.

"(F) Except as provided in subparagraph (D), an eligible institution may not, in carrying out the provisions of subparagraphs (A) and (B) of this paragraph, refuse to provide to any eligible lender which has an agreement under subsection (b) of this section with any guaranty agency, a statement which permits a student to receive any loan under this part.

"(3) AMOUNT OF INTEREST SUBSIDY.—(A)(i) Subject to section 438(c), the portion of the interest on a loan which a student is entitled to have paid, on behalf of and for the account of the student, to the holder of the loan pursuant to paragraph (1) of this subsection shall be equal to the total amount of the interest on the unpaid principal amount of the loan—

"(I) which accrues prior to the beginning of the repayment period of the loan, or

"(II) which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in subsection (b)(1)(M) of this section or in section 427(a)(2)(C).

"(ii) Such portion of the interest on a loan shall not exceed, for any period, the amount of the interest on that loan which is payable by the student after taking into consideration the amount of any interest on that loan which the student is entitled to have paid on his or her behalf for that period under any State or private loan insurance program.

"(iii) The holder of a loan with respect to which payments are required to be made under this section shall be deemed to have a contractual right, as against the United States, to receive from the Secretary the portion of interest which has been so determined without administrative delay after the receipt by the Secretary of an accurate and complete request for payment pursuant to paragraph (4).

"(iv) The Secretary shall pay this portion of the interest to the holder of the loan on behalf of and for the account of the borrower at such times as may be specified in regulations in force when the applicable agreement entered into pursuant to subsection (b) was made, or, if the loan was made by a State or is insured under a program which is not covered by such an agreement, at such times as may be specified in regulations in force at the time the loan was paid to the student.

"(B) If—

"(i) a State student loan insurance program is covered by an agreement under subsection (b),

"(ii) a statute of such State limits the interest rate on loans insured by such program to a rate which is less than the applicable interest rate under this part, and

"(iii) the Secretary determines that subsection (d) does not make such statutory limitation inapplicable and that such statutory limitation threatens to impede the carrying out of the purpose of this part,

then the Secretary may pay an administrative cost allowance to the holder of each loan which is insured under such program and which is made during the period beginning on the 60th day after the date of enactment of the Higher Education Amendments of 1968 and ending 120 days after the adjournment of such State's first regular legislative session which adjourns after January 1, 1969. Such administrative cost allowance shall be paid over the term of the loan in an amount per year (determined by the Secretary) which shall not exceed 1 percent of the unpaid principal balance of the loan.

"(4) SUBMISSION OF STATEMENTS BY HOLDERS ON AMOUNT OF PAYMENT.—Each holder of a loan with respect to which payments of interest are required to be made by the Secretary shall submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which he must make with respect to that loan.

"(5) DURATION OF AUTHORITY TO MAKE INTEREST SUBSIDIZED LOANS.—The period referred to in subparagraph (B) of paragraph (1) of this subsection shall begin on the date of enactment of this Act and end at the close of September 30, 1992, except that, in the case of a loan made or insured under a student loan or loan insurance program to enable a student who has obtained a prior loan made or insured under such program to continue his or her education program, such period shall end at the close of September 30, 1997.

"(6) ASSESSMENT OF BORROWER'S FINANCIAL CONDITION NOT PROHIBITED OR REQUIRED.—Nothing in this or any other Act shall be construed to prohibit or require, unless otherwise specifically provided by law, a lender to evaluate the total financial situation of a student making application for a loan under this part, or to counsel a student with respect to any such loan, or to make a decision based on such evaluation and counseling with respect to the dollar amount of any such loan.

"(b) INSURANCE PROGRAM AGREEMENTS TO QUALIFY LOANS FOR INTEREST SUBSIDIES.—

"(1) REQUIREMENTS OF INSURANCE PROGRAM.—Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) if the Secretary determines that the student loan insurance program—

"(A) authorizes the insurance in any academic year or its equivalent (as determined under regulations of the Secretary) for any student who is carrying at an eligible institution at least one-half the normal full-time academic workload (as determined by the institution) in any amount up to a maximum of—

"(i) $2,625 in the case of a student who has not successfully completed the first or second year of a program of undergraduate education;

"(ii) $4,000, in the case of a student who has successfully completed such first and second year but who has not successfully completed the remainder of a program of undergraduate education; and

"(iii) $7,500, in the case of a graduate or professional student (as defined in regulations of the Secretary);

except in cases where the Secretary determines, pursuant to regulations, that a higher amount is warranted in order to carry out the purpose of this part with respect to students engaged in specialized training requiring exceptionally high costs of education, but the annual insurable limit per student shall not be deemed to be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any years in excess of the annual limit;

"(B) provides that the aggregate insured unpaid principal amount for all such insured loans made to any student shall be any amount up to a maximum of—

"(i) $17,250, in the case of any student who has not successfully completed a program of undergraduate education; and

"(ii) $54,750, in the case of any graduate or professional student (as defined by regulations of the Secretary and including any loans which are insured by the Secretary under this part, or by a guaranty agency, made to such student before the student became a graduate or professional student);

except that the Secretary may increase the limit applicable to students who are pursuing programs which the Secretary determines are exceptionally expensive;

"(C) authorizes the insurance of loans to any individual student for at least 6 academic years of study or their equivalent (as determined under regulations of the Secretary);

"(D) provides that (i) the student borrower shall be entitled to accelerate without penalty the whole or any part of an insured loan, (ii) except as provided in subparagraph (M) of this paragraph, the repayment period of any insured loan may not exceed 10 years, and (iii) the note or other written evidence of any loan, may contain such reasonable provisions relating to repayment in the event of default by the borrower as may be authorized by regulations of the Secretary in effect at the time such note or written evidence was executed;

"(E) subject to subparagraphs (D) and (L) of this paragraph and except as provided by subparagraph (M) of this paragraph, provides that repayment of loans shall be in installments over a period of not less than 5 years (unless the student, during the 6 months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than 10 years beginning 6 months after the month in which the student ceases to carry at least one-half the normal full-time academic workload as determined by the institution;

"(F) authorizes interest on the unpaid balance of the loan at a yearly rate not in excess (exclusive of any premium for insurance which may be passed on to the borrower) of the rate required by section 427A;

"(G) insures not less than 100 percent of the unpaid principal of loans insured under the program;

"(H) provides for collection of a single insurance premium equal to not more than 3 percent of the principal amount of the loan, by deduction proportionately from each installment payment of the proceeds of the loan to the borrower, and insures that the proceeds of the premium will not be used for incentive payments to lenders;

"(I) provides that the benefits of the loan insurance program will not be denied any student who is eligible for interest benefits under subsection (a) (1) and (2);

"(J) provides that a student may obtain insurance under the program for a loan for any year of study at an eligible institution;

"(K) in the case of a State program, provides that such State program is administered by a single State agency, or by one or more nonprofit private institutions or organizations under supervision of a single State agency;

"(L) provides that the total of the payments by a borrower—

"(i) during any year of any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this part shall not, unless the borrower and the lender otherwise agree, be less than $600 or the balance of all such loans (together with interest thereon), whichever amount is less, except that, in the case of a husband and wife, both of whom have such loans outstanding, the total of the combined payments for such a couple during any year shall not be less than $600 or the balance of all such loans, whichever is less; and

"(ii) for a monthly or other similar payment period with respect to the aggregate of all loans held by the lender may, when the amount of a monthly or other similar payment is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5;

"(M) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period—

"(i) during which the borrower (I) is pursuing a full-time course of study as determined by an eligible institution, (II) is pursuing at least a half-time course of study (as determined by such institution) for which the student has obtained a loan under this part, or (III) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for disabled individuals approved by the Secretary;

"(ii) not in excess of 3 years during which the borrower is a member of the Armed Forces of the United States, is an active duty member of the National Oceanic and Atmospheric Administration Corps, or is an officer in the Commissioned Corps of the Public Health Service;

"(iii) not in excess of 3 years during which the borrower is in service as a volunteer under the Peace Corps Act;

"(iv) not in excess of 3 years during which the borrower is in service as a full-time volunteer under the Domestic Volunteer Service Act of 1973;

"(v) not in excess of 3 years during which the borrower is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

"(vi) not in excess of 3 years during which the borrower is engaged as a full-time teacher in a public or private elementary or secondary school in a teacher shortage area established by the Secretary pursuant to paragraph (4) of this subsection;

"(vii) not in excess of 2 years during which the borrower is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service;

"(viii) not in excess of 3 years during which the borrower is temporarily totally disabled, as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a dependent who is so disabled;

"(ix) not in excess of 24 months, at the request of the borrower, during which the borrower is seeking and unable to find full-time employment;

"(x) not in excess of 6 months of parental leave; and

"(xi) not in excess of 12 months for mothers with preschool age children who are just entering or reentering the work force and who are compensated at a rate not exceeding $1 in excess of the rate prescribed under section 6 of the Fair Labor Standards Act of 1938;

"(N) provides that funds borrowed by a student are disbursed to the institution by check or other means that is payable to and requires the endorsement or other certification by such student, except nothing in this title shall be interpreted to allow the Secretary to require checks to be made co-payable to the institution and the borrower or to prohibit the disbursement of loan proceeds by means other than by check;

"(O) provides that the proceeds of any loan made for any period of enrollment that ends more than 180 days (or 6 months) after the date disbursement is scheduled to occur, and for an amount of more than $1,000—

"(i) will be disbursed directly by the lender in two or more installments, none of which exceeds one-half of the loan, with the interval between the first and second installment being disbursed not less than one-third of such period (except as necessary to permit the second installment to be disbursed at the beginning of the second semester, quarter, or similar division of such period of enrollment), or

"(ii) will be disbursed in such installments pursuant to the escrow provisions of subsection (i) of this section,

but all loans issued for the same period of enrollment shall be considered as a single loan for the purpose of this subparagraph and the requirements of this subparagraph shall not apply in the case of a loan made under section 428A, 428B, or 428C, or made to a student to cover the cost of attendance at an eligible institution outside the United States;

"(P) requires the borrower and the institution at which the borrower is in attendance to promptly notify the holder of the loan, directly or through the guaranty agency, concerning any change of address or status;

"(Q) provides for the guarantee of loans made to students and parents under sections 428A and 428B;

"(R) with respect to lenders which are eligible institutions, provides for the insurance of loans by only such institutions as are located within the geographic area served by such guaranty agency;

"(S) provides no restrictions with respect to the insurance of loans for students who are otherwise eligible for loans under such program if such a student is accepted for enrollment in or is attending an eligible institution within the State, or if such a student is a legal resident of the State and is accepted for enrollment in or is attending an eligible institution outside that State;

"(T) provides no restrictions with respect to eligible institutions which are more onerous than eligibility requirements for institutions under the Federal student loan insurance program as in effect on January 1, 1985, unless—

"(i) that institution is ineligible under regulations for the limitation, suspension, or termination of eligible institutions under the Federal student loan insurance program or is ineligible pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility issued under the Federal student loan insurance program; or

"(ii) there is a State constitutional prohibition affecting the eligibility of such an institution; and

"(U) provides (i) for the eligibility of all lenders described in section 435(d)(1) under reasonable criteria, unless (I) that lender is eliminated as a lender under regulations for the limitation, suspension, or termination of a lender under the Federal student loan insurance program or is eliminated as a lender pursuant to criteria issued under the student loan insurance program which are substantially the same as regulations with respect to such eligibility as a lender issued under the Federal student loan insurance program, or (II) there is a State constitutional prohibition affecting the eligibility of a lender, and (ii) assurances that the guaranty agency will report to the Secretary concerning changes in such criteria, including any procedures in effect under such program to limit, suspend, or terminate lenders.

"(2) CONTENTS OF INSURANCE PROGRAM AGREEMENT.—Such an agreement shall—

"(A) provide that the holder of any such loan will be required to submit to the Secretary, at such time or times and in such manner as the Secretary may prescribe, statements containing such information as may be required by or pursuant to regulation for the purpose of enabling the Secretary to determine the amount of the payment which must be made with respect to that loan;

"(B) include such other provisions as may be necessary to protect the United States from the risk of unreasonable loss and promote the purpose of this part, including such provisions as may be necessary for the purpose of section 437, and as are agreed to by the Secretary and the guaranty agency, as the case may be;

"(C) provide for making such reports, in such form and containing such information, as the Secretary may reasonably require to carry out the Secretary's functions under this part, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

"(D) provide for—

"(i) conducting, except as provided in clause (ii), financial and compliance audits of the guaranty agency at least once every 2 years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accord-

ance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

"(ii) with regard to a guaranty program of a State which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period of time covered by such audit; and

"(E) provide that any guaranty agency may transfer loans which are insured under this part to any other guaranty agency with the approval of the holder of the loan and such other guaranty agency.

"(3) RESTRICTIONS ON INDUCEMENTS, MAILINGS, AND ADVERTISING.—A guaranty agency shall not—

"(A) offer, directly or indirectly, premiums, payments, or other inducements to any educational institution or its employees in order to secure applicants for loans under this part;

"(B) conduct unsolicited mailings to students enrolled in secondary school of student loan application forms; or

"(C) conduct fraudulent or misleading advertising concerning loan availability.

"(4) TARGETED TEACHER DEFERMENT RULE.—(A) The deferment for service as a teacher in a public or nonprofit private elementary or secondary school shall be for service as such a teacher in shortage areas prescribed by the Secretary, in consultation with the chief State school officer or, in the case of nonprofit private elementary or secondary schools, with appropriate officials of the nonprofit private schools in each State in accordance with this subparagraph.

"(B) For the purpose of this paragraph, the term 'shortage areas' means (i) geographic areas of the State in which there is a shortage of elementary and secondary school teachers, and (ii) an area of shortage of elementary and secondary school teachers in specific grade levels and in specific academic, instructional, subject matter, and discipline classifications. In carrying out the provisions of this subparagraph, the Secretary shall give special consideration to areas in which emergency certification of individuals in a State is being used to correct teacher shortages; and to States which have retirement laws permitting early retirement.

"(5) SPECIAL RULE.—For the purpose of paragraph (1)(M) of this subsection, the Secretary shall approve any course of study at a foreign university that is accepted for the completion of a recognized international fellowship program by the administrator of such a program.

"(6) GUARANTY AGENCY INFORMATION TRANSFERS.—(A) Prior to the implementation of section 485B, any guaranty agency may request information regarding loans made after January 1, 1987, to students who are residents of the State for which the agency is the designated guarantor, from any other guaranty agency insuring loans to such students.

"(B) Upon a request pursuant to subparagraph (A), a guaranty agency shall provide—

"(i) the name and the social security number of the borrower; and

"(ii) the amount borrowed, the cumulative amount borrowed, the income reported on the loan application, and the purposes and the cost of attendance of the borrower.

"(C) Any costs associated with fulfilling the request of a guaranty agency for information on students shall be paid by the guaranty agency requesting the information.

"(c) GUARANTY AGREEMENTS FOR REIMBURSING LOSSES.—

"(1) AUTHORITY TO ENTER INTO AGREEMENTS.—(A) The Secretary may enter into a guaranty agreement with any guaranty agency, whereby the Secretary shall undertake to reimburse it, under such terms and conditions as the Secretary may establish, with respect to losses (resulting from the default of the student borrower) on the unpaid balance of the principal and accrued interest of any insured loan, including the administrative costs of supplemental preclaim assistance for default prevention as defined in paragraph (6)(C). The guaranty agency shall be deemed to have a contractual right against the United States, during the life of such loan, to receive reimbursement according to the provisions of this subsection. Upon receipt of an accurate and complete request by a guaranty agency for reimbursement with respect to such losses, the Secretary shall pay promptly and without administrative delay. Except as provided in subparagraph (B) of this paragraph and in paragraph (7), the amount to be paid a guaranty agency as reimbursement under this subsection shall be equal to 100 percent of the amount expended by it in discharge of its insurance obligation incurred under its loan insurance program. In no case shall a guaranty agency file a claim under this subsection for reimbursement with respect to losses prior to 270 days after the loan becomes delinquent with respect to any installment thereon.

"(B) Notwithstanding subparagraph (A)—

"(i) if, for any fiscal year, the amount of such reimbursement payments by the Secretary under this subsection exceeds 5 percent of the loans which are insured by such guaranty agency under such program and which were in repayment at the end of the preceding fiscal year, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 90 percent of the amount of such excess; and

"(ii) if, for any fiscal year, the amount of such reimbursement payments exceeds 9 percent of such loans, the amount to be paid as reimbursement under this subsection for such excess shall be equal to 80 percent of the amount of such excess.

"(C) For the purpose of this subsection, the amount of loans of a guaranty agency which are in repayment shall be the original principal amount of loans made by a lender which are insured by such a guaranty agency reduced by—

"(i) the amount the insurer has been required to pay to discharge its insurance obligations under this part;

"(ii) the original principal amount of loans insured by it which have been fully repaid; and

"(iii) the original principal amount insured on those loans for which payment of the first installment of principal has not become due pursuant to subsection (b)(1)(E) of this section or such first installment need not be paid pursuant to subsection (b)(1)(M) of this section.

"(2) CONTENTS OF GUARANTY AGREEMENTS.—The guaranty agreement—

"(A) shall set forth such administrative and fiscal procedures as may be necessary to protect the United States from the risk of unreasonable loss thereunder, to ensure proper and efficient administration of the loan insurance program, and to assure that due diligence will be exercised in the collection of loans insured under the program, including a requirement that each beneficiary of insurance on the loan submit proof that reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known);

"(B) shall provide for making such reports, in such form and containing such information, as the Secretary may reasonably require to carry out the Secretary's functions under this subsection, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports;

"(C) shall set forth adequate assurances that, with respect to so much of any loan insured under the loan insurance program as may be guaranteed by the Secretary pursuant to this subsection, the undertaking of the Secretary under the guaranty agreement is acceptable in full satisfaction of State law or regulation requiring the maintenance of a reserve;

"(D) shall provide that if, after the Secretary has made payment under the guaranty agreement pursuant to paragraph (1) of this subsection with respect to any loan, any payments are made in discharge of the obligation incurred by the borrower with respect to such loan (including any payments of interest accruing on such loan after such payment by the Secretary), there shall be paid over to the Secretary (for deposit in the fund established by section 431) such proportion of the amounts of such payments as is determined (in accordance with paragraph (6)) to represent his equitable share thereof, but (i) shall provide for subrogation of the United States to the rights of any insurance beneficiary only to the extent required for the purpose of paragraph (8); and (ii) except as the Secretary may otherwise by or pursuant to regulation provide, amounts so paid by a borrower on such a loan shall be first applied in reduction of principal owing on such loan;

"(E) shall set forth adequate assurance that an amount equal to each payment made under paragraph (1) will be promptly deposited in or credited to the accounts maintained for the purpose of section 422(c);

"(F) set forth adequate assurances that the guaranty agency will not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the guaranty agency, length of the borrower's educational program, or the borrower's academic year in school; and

"(G) may include such other provisions as may be necessary to promote the purpose of this part.

"(3) FORBEARANCE.—To the extent provided in regulations of the Secretary, a guaranty agreement under this subsection may contain provisions which permit such forbearance for the benefit of the student borrower as may be agreed upon by the parties to an insured loan and approved by the insurer. Such regulations shall not preclude guaranty agencies from permitting the parties to such a loan from entering into a forbearance agreement solely because the loan is in default.

"(4) DEFINITIONS.—For the purpose of this subsection, the terms 'insurance beneficiary' and 'default' have the meanings assigned to them by section 435.

"(5) APPLICABILITY TO EXISTING LOANS.—In the case of any guaranty agreement with a guaranty agency, the Secretary may, in accordance with the terms of this subsection, undertake to guarantee loans described in paragraph (1) which are insured by such guaranty agency and are outstanding on the date of execution of the guaranty agreement, but only with respect to defaults occurring after the execution of such guaranty agreement or, if later, after its effective date.

"(6) SECRETARY'S EQUITABLE SHARE.—(A) For the purpose of paragraph (2)(D), the Secretary's equitable share of payments made by the borrower shall be that portion of the payments remaining after the guaranty agency with which the Secretary has an agreement under this subsection has deducted from such payments—

"(i) a percentage amount equal to the complement of the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

"(ii) an amount equal to 30 percent of such payments (subject to subparagraph (D) of this paragraph) for costs related to the student loan insurance program, including the administrative costs of collection of loans reimbursed under this subsection, the administrative costs of preclaims assistance for default prevention, the administrative costs of supplemental preclaims assistance for default prevention, and the administrative costs of monitoring the enrollment and repayment status of students (as such terms are defined in subparagraph (B) or (C) of this paragraph).

"(B) For the purpose of this paragraph and subsection (f) of this section, the term—

"(i) 'administrative costs of collection of loans' means any administrative costs incurred by a guaranty agency which are directly related to the collection of the loan on which a default claim has been paid to the participating lender, including the attributable compensation of collection personnel (and in the case of personnel who perform several functions for such an agency only the portion of the compensation attributable to the collection activity), attorney's fees, fees paid to collection agencies, postage, equipment, supplies, telephone and similar charges, but does not include the overhead costs of such agency whether or not attributable;

"(ii) 'administrative costs of preclaim assistance for default prevention' means any administrative costs incurred by a guaranty agency which are directly related to providing collection assistance to the lender on a delinquent loan, prior to the loan's being legally in a default status, including the attributable compensation of appropriate personnel (and in the case of personnel who perform several functions for such an agency only the portion of compensation attributable to the collection activity), fees paid to locate a missing borrower, postage, equipment, supplies, telephone and similar charges, but does not include the overhead costs of such agency whether or not attributable; and

"(iii) 'administrative costs of monitoring the enrollment and repayment status of students' means any administrative costs by a guaranty agency which are directly related to ascertaining the student's enrollment status, prompt notification to the lender of such status, an audit of the note or written agreement to determine if the provisions of that note or agreement are consistent with the records of the guaranty agency as to the principal amount of the loan guaranteed, and an examination of the note or agreement to assure that the repayment provisions are consistent with the provisions of this part,

subject to such additional criteria as the Secretary may by regulation prescribe.

"(C)(i) For the purpose of this paragraph, 'administrative costs of supplemental preclaims assistance' means (subject to divisions (ii) through (iv)) any administrative costs—

"(I) incurred by a guaranty agency in connection with a loan on which the guarantor has exercised preclaims assistance required or permitted under paragraph (2)(A) of this subsection and subsection (f), and which has been in delinquent status for at least 120 days; and

"(II) which are directly related to providing collection assistance to the lender on a delinquent loan, prior to a claim being filed with the guaranty agency,

including the attributable compensation of appropriate personnel (and in the case of personnel who perform several functions, only the portion of compensation attributable to the collection assistance), fees paid to locate a missing borrower, postage, equipment, supplies, telephone, and similar charges, but does not include overhead costs.

"(ii) The administrative costs for which reimbursement is authorized under this subparagraph must be clearly supplemental to the preclaim assistance for default prevention which the guaranty agency is required or permitted to provide pursuant to paragraph (2)(A) of this subsection and subsection (f).

"(iii) The services associated with carrying out this subparagraph may be provided by the guaranty agency directly or under contract, except that such services may not be carried out by an organization or entity (other than the guaranty agency)—

"(I) that is the holder or servicer of the loan or an organization or entity that owns or controls the holder or servicer of the loan;

"(II) that is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the holder or servicer of the loan; or

"(III) that is an organization or entity that has a contract with a guaranty agency to perform collection activities with respect to the same loans in the event of default.

"(iv) The costs for each delinquent loan associated with carrying out this subparagraph may not exceed 2 percent of the outstanding principal balance of each such loan subject to the supplemental preclaims assistance authorized by this subparagraph or $100, whichever is less.

"(D) In the case of a State which enacts a garnishment law that complies with the requirements of section 428E, subparagraph (A)(ii) shall be applied by substituting '35 percent' for '30 percent'.

"(7) NEW PROGRAMS ELIGIBLE FOR 100 PERCENT REINSURANCE.—(A) Notwithstanding paragraph (1)(B), the amount to be paid a guaranty agency for any fiscal year—

"(i) which begins on or after October 1, 1977; and

"(ii) which is either the fiscal year in which such guaranty agency begins to actively carry on a student loan insurance program which is subject to a guaranty agreement under subsection (b) of this section, or is one of the 4 succeeding fiscal years,

shall be 100 percent of the amount expended by such guaranty agency in discharge of its insurance obligation insured under such program.

"(B) The Secretary shall continuously monitor the operations of those guaranty agencies to which the provisions of subparagraph (A) are applicable and revoke the application of such subparagraph to any such guaranty agency which the Secretary determines has not exercised reasonable prudence in the administration of such program.

"(8) ASSIGNMENT TO PROTECT FEDERAL FISCAL INTEREST.—If the Secretary determines that the protection of the Federal fiscal interest so requires, a guaranty agency shall assign to the Secretary any loan of which it is the holder and for which the Secretary has made a payment pursuant to paragraph (1) of this subsection.

"(9) REINSURANCE FEES.—(A) Any guaranty agency which has entered into an agreement with the Secretary pursuant to this subsection shall pay to the Secretary during each fiscal year a reinsurance fee in an amount equal to—

"(i) 0.25 percent of the total principal amount of the loans upon which insurance was issued by such agency during such fiscal year, in any fiscal year other than a fiscal year described in clause (ii); or

"(ii) 0.5 percent of the total principal amount of the loans upon which insurance was issued by such agency during such fiscal year, in any fiscal year with respect to which the Secretary reimbursed the agency for any losses (resulting from the default of the borrower) pursuant to paragraph (1)(B) of this subsection.

"(B) The amount to be paid pursuant to subparagraph (A) may be paid from any funds available to the guaranty agency.

"(C) When the Secretary first reimburses a guaranty agency pursuant to paragraph (1)(B) of this subsection, the Secretary shall notify such agency of the exact date of such reimbursement.

"(d) USURY LAWS INAPPLICABLE.—No provision of any law of the United States (other than this Act) or of any State (other than a statute applicable principally to such State's student loan insurance program) which limits the rate or amount of interest payable on loans shall apply to a loan—

"(1) which bears interest (exclusive of any premium for insurance) on the unpaid principal balance at a rate not in excess of the rate specified in this part; and

"(2) which is insured (i) by the United States under this part, or (ii) by a guaranty agency under a program covered by an agreement made pursuant to subsection (b) of this section.

"(e) PAYMENTS FOR LENDER REFERRAL SERVICES.—

"(1) IN GENERAL.—The Secretary shall make payments in accordance with this paragraph to a guaranty agency in any State which provides a lender referral service for students who meet the requirements of paragraph (2).

"(2) STUDENT ELIGIBILITY.—A student is eligible to apply for lender referral services to a guaranty agency in a State if—

"(A) such student is either a resident of such State or is accepted for enrollment in or is attending an eligible institution in such State; and

"(B) such student has sought and was unable to find a lender willing to make a loan under this part.

"(3) AMOUNT OF PAYMENT.—The amount which the Secretary shall pay to any eligible guaranty agency under this paragraph shall be equal to one-half of 1 percent of the total principal amount of the loans (upon which insurance was issued under this part) to a student described in paragraph (2) who sub-

sequently obtained such loans because of such agency's referral service.

"(4) INCENTIVE FEES TO LENDERS.—Nothing in this or any law shall prohibit an agency from using all or any portion of the funds received under this part for the payment of incentive fees to lenders who agree to participate in a lender referral service.

"(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out the provisions of this paragraph.

"(f) PAYMENTS OF CERTAIN COSTS.—

"(1) PAYMENTS BASED ON INSURANCE PROGRAM AGREEMENT.—(A) The Secretary shall make payments in accordance with the provisions of this paragraph to any guaranty agency for the purposes of—

"(i) the administrative cost of promotion of commercial lender participation;

"(ii) the administrative costs of collection of loans;

"(iii) the administrative costs of preclaims assistance for default prevention;

"(iv) the administrative costs of monitoring the enrollment and repayment status of students; or

"(v) other such costs related to the student loan insurance program subject to such agreement.

"(B) The total amount of payments for any fiscal year made under this paragraph shall be equal to 1 percent of the total principal amount of the loans upon which insurance was issued under this part during such fiscal year by such guaranty agency. The guaranty agency shall be deemed to have a contractual right against the United States to receive payments according to the provisions of this subparagraph. Payments shall be made promptly and without administrative delay to any guaranty agency submitting an accurate and complete application therefor under this subparagraph.

"(2) APPLICATIONS FOR PAYMENTS.—No payment may be made under paragraph (1) of this subsection unless the guaranty agency submits to the Secretary an application at such time, at least annually, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

"(A) set forth assurances that the student loan insurance program subject to the guaranty agreement complies with subparagraphs (A), (B), (G), (R), (S), (T), and (U) of subsection (b)(1);

"(B) contain provisions designed to demonstrate the capability of carrying out a necessary and successful program of collection of and preclaim assistance for the loan program subject to that agreement;

"(C) set forth an estimate of the costs which are eligible for payment under the provisions of this subsection;

"(D) provide for such administrative and fiscal procedures, including an audit, as are necessary to carry out the provisions of this subsection; and

"(E) set forth assurances that the guaranty agency will furnish such data and information, including where necessary estimates, as the Secretary may reasonably require, to carry out the provisions of this subsection.

"(g) ACTION ON INSURANCE PROGRAM AND GUARANTY AGREEMENTS.—If a nonprofit private institution or organization—

"(1) applies to enter into an agreement with the Secretary under subsections (b) and (c) with respect to a student loan insurance program to be carried on in a State with which the Secretary does not have an agreement under subsection (b), and

"(2) as provided in the application, undertakes to meet the requirements of section 422(c)(6)(B) (i), (ii), and (iii),

the Secretary shall consider and act upon such application within 180 days, and shall forthwith notify the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of his actions.

"(h) LENDING BY GUARANTY AGENCIES.—

"(1) LENDING FROM SALLIE MAE ADVANCES.—From sums advanced by the Association pursuant to section 439(p), each guaranty agency or an eligible lender in a State described in section 435(d)(1) (D) or (F) of the Act is authorized to make loans directly to students otherwise unable to obtain loans under this part.

"(2) AMOUNT OF ADVANCES.—(A) Each guaranty agency or an eligible lender in a State described in section 435(d)(1) (D) or (F) which has an application approved under section 439(p)(2) may receive advances under section 439(p) for each fiscal year in an amount necessary to meet the demand for loans under this section. The amount such agency or lender is eligible to receive may not exceed 25 percent of the average of the loans guaranteed by that agency or lender for the 3 years preceding the fiscal year for which the determination is made. Whenever the determination required by the preceding sentence cannot be made because the agency or lender does not have 3 years previous experience, the amount such agency or lender is eligible to receive may not exceed 25 percent of the loans guaranteed under a program of a State of comparable size.

"(B) Each guaranty agency and each eligible lender in a State described in section 435(d)(1) (D) or (F) shall repay advances made under section 439(p) in accordance with agreements entered into between the Association and such agency or lender.

"(3) LOAN TERM, CONDITIONS, AND BENEFITS.—Loans made pursuant to this subsection shall have the same terms, conditions, and benefits as all other loans made under this part.

"(i) MULTIPLE DISBURSEMENT OF LOANS.—

"(1) ESCROW ACCOUNTS ADMINISTERED BY ESCROW AGENT.—Any guaranty agency or eligible lender (hereafter in this subsection referred to as the 'escrow agent') may enter into an agreement with any other eligible lender that is not an eligible institution or an agency or instrumentality of the State (hereafter in this subsection referred to as the 'lender') for the purpose of authorizing multiple disbursements of the proceeds of a loan to a student. Such agreement shall provide that the lender will pay the proceeds of such loans into an escrow account to be administered by the escrow agent in accordance with the provisions of paragraph (2) of this subsection. Such agreement may allow the lender to make payments into the escrow account in amounts that do not exceed the sum of the amounts required for disbursement of initial or subsequent installments to borrowers and to make such payments not more than 45 days prior to the date of the disbursement of such installment to such borrowers. Such agreement shall require the lender to notify promptly the eligible institution when funds are escrowed under this subsection for a student at such institution.

"(2) AUTHORITY OF ESCROW AGENT.—Each escrow agent entering into an agreement under paragraph (1) of this subsection is authorized to—

"(A) make the disbursements in accordance with the note evidencing the loan;

"(B) commingle the proceeds of all loans paid to the escrow agent pursuant to the escrow agreement entered into under such paragraph (1);

"(C) invest the proceeds of such loans in obligations of the Federal Government or obligations which are insured or guaranteed by the Federal Government;

"(D) retain interest or other earnings on such investment; and

"(E) return to the lender undisbursed funds when the student ceases to carry at an eligible institution at least one-half of the normal full-time academic workload as determined by the institution.

"(j) LENDERS-OF-LAST-RESORT.—In each State, the guaranty agency or an eligible lender in the State described in section 435(d)(1)(D) of this Act shall make loans directly, or through an agreement with an eligible lender or lenders, to students eligible to receive interest benefits paid on their behalf under subsection (a) of this section who are otherwise unable to obtain loans under this part. Loans made under this subsection shall not exceed the amount of the need of the borrower, as determined under subsection (a)(2)(B), nor be less than $200.

"(k) INFORMATION ON DEFAULTS.—

"(1) PROVISION OF INFORMATION TO ELIGIBLE INSTITUTIONS.—In order to notify eligible institutions of former students who are in default of their continuing obligation to repay student loans, each guaranty agency may, upon the request of an eligible institution, furnish information with respect to students who were enrolled at the eligible institution and who are in default on the repayment of any loan made, insured, or guaranteed under this part. The information authorized to be furnished under this subsection may include the names and addresses of such students.

"(2) PUBLIC DISSEMINATION NOT AUTHORIZED.—Nothing in paragraph (1) of this subsection shall be construed to authorize public dissemination of the information described in paragraph (1).

"SUPPLEMENTAL LOANS FOR STUDENTS

"SEC. 428A. (a) AUTHORITY TO BORROW.—Graduate and professional students (as defined by regulations of the Secretary) and undergraduate independent students shall be eligible to borrow funds under this section in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), loans under this section shall have the same terms, conditions, and benefits as all other loans made under this part.

"(b) LIMITATIONS ON AMOUNTS OF LOANS.—

"(1) ANNUAL LIMIT.—Subject to paragraphs (2) and (3), the maximum amount a student may borrow in any academic year or its equivalent (as defined by regulation by the Secretary) is $4,000.

"(2) AGGREGATE LIMIT.—The aggregate insured principal amount for insured loans made to any student under this section, exclusive of interest capitalized under subsection (c), shall not exceed $20,000.

"(3) LIMITATION BASED ON NEED.—Any loan under this section may be counted as part of the expected family contribution in the determination of need under this title, but no loans may be made to any student under this section which would cause the student's combined loans for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on ac-

count of the student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c) PAYMENT OF PRINCIPAL AND INTEREST.—

"(1) COMMENCEMENT OF REPAYMENT.—Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral pursuant to sections 427(a)(2)(C) and 428(b)(1)(M).

"(2) CAPITALIZATION OF INTEREST.—Interest on loans made under this section for which payments of principal and interest are deferred under sections 427(a)(2)(C)(i) and 428(b)(1)(M)(i) shall, if agreed upon by the borrower and the lender (A) be paid quarterly or (B) be added to the principal amount of the loan on a quarterly basis by the lender. Such capitalization of interest shall not be deemed to exceed the annual insurable limit on account of the student.

"(3) SUBSIDIES PROHIBITED.—No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(4) APPLICABLE RATES OF INTEREST.—Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 427A(c).

"(5) AMORTIZATION.—The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—

"(A) the amount of the periodic payment will be adjusted annually, or

"(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 427A(c)(4).

"(d) REFINANCING.—

"(1) REFINANCING TO SECURE COMBINED PAYMENT.—An eligible lender may consolidate loans held by it which are made under this section to a borrower, including loans which were made under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986, under a single repayment schedule which provides for a single principal payment and a single payment of interest, and shall calculate the repayment period for each included loan from the date of the commencement of repayment of the most recent included loan. Unless the borrower complies with the requirements of paragraph (2), such consolidated loan shall bear interest at the weighted average of the rates of all included loans. The extension of any repayment period of an included loan pursuant to this paragraph shall be reported to the Secretary or guaranty agency insuring the loan, as the case may be, but no additional insurance premiums shall be payable with respect to any such extension. The extension of the repayment period of any included loan shall not require the formal extension of the promissory note evidencing the included loan or the execution of a new promissory note, but shall be treated as an administrative forbearance of the repayment terms of the included loan.

"(2) REFINANCING TO SECURE VARIABLE INTEREST RATE.—An eligible lender may reissue a loan which was made under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986 in order to permit the borrower to obtain the interest rate provided under section 427A(c)(4). A lender offering to reissue a loan for such purpose may charge a borrower an amount not to exceed $100 to cover the administrative costs of reissuing such loan, not more than one-half of which shall be paid to the guarantor of the loan being reissued to recover costs of reissuance. Reissuance of a loan under this paragraph shall not affect any insurance applicable with respect to the loan, and no additional insurance fee may be charged to the borrower with respect to the loan.

"(3) REFINANCING BY DISCHARGE OF PREVIOUS LOAN.—A borrower who has applied to an original lender for reissuance of a loan under paragraph (2) and who is denied such reissuance may obtain a loan from another lender for the purpose of discharging the loan from such original lender. A loan made for such purpose—

"(A) shall bear interest at the applicable rate of interest provided under section 427A(c)(4);

"(B) shall not result in the extension of the duration of the note (other than as permitted under subsection (c)(5)(B));

"(C) may be subject to an additional insurance fee but shall not be subject to the administrative cost charge permitted by paragraph (2) of this subsection; and

"(D) shall be applied to discharge the borrower from any remaining obligation to the original lender with respect to the original loan.

"(4) CERTIFICATION IN LIEU OF PROMISSORY NOTE PRESENTATION.—Each new lender may accept certification from the original lender of the borrower's original loan in lieu of presentation of the original promissory note.

"(5) NOTIFICATION TO BORROWERS OF AVAILABILITY OF REFINANCING OPTIONS.—Each holder of a loan made under this section or under section 428B as in effect prior to the date of enactment of this Act shall, not later than January 1, 1987, in the case of loans made before the date of enactment of this Act, notify the borrower of such loan—

"(A) of the refinancing options for which the borrower is eligible under this subsection;

"(B) of those options which will be made available by the holder; and

"(C) that, with respect to any option that the holder will not make available, the holder will, to the extent practicable, refer the borrower to an eligible lender offering such option.

"PLUS LOANS

"SEC. 428B. (a) AUTHORITY TO BORROW.—Parents of a dependent student shall be eligible to borrow funds under this section in amounts specified in subsection (b), and unless otherwise specified in subsections (c) and (d), such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section, the terms 'student' and 'borrower' as used in this part shall include a parent borrower under this section, but such a parent borrower shall not be eligible for any deferment pursuant to section 427(a)(2)(C) or 428(b)(1)(M) except for the deferments allowed (with respect to the student) under clauses (i), (viii), and (ix) of such sections.

"(b) LIMITATIONS ON AMOUNTS OF LOANS.—

"(1) ANNUAL LIMIT.—Subject to paragraphs (2) and (3), the maximum amount parents may borrow for one student in any academic year or its equivalent (as defined by regulation of the Secretary) is $4,000.

"(2) AGGREGATE LIMIT.—The aggregate insured principal amount for insured loans made to parents on account of a student shall not exceed $20,000.

"(3) LIMITATION BASED ON NEED.—Any loan under this section may be counted as part of the expected family contribution in the determination of need under this title, but no loan may be made to any parent under this section which would cause the combined loans of the parent and the student for any academic year to exceed the student's estimated cost of attendance minus such student's estimated financial assistance as certified by the eligible institution under section 428(a)(2)(A) of this part. The annual insurable limit on account of any student shall not be deemed to be exceeded by a line of credit under which actual payments to the borrower will not be made in any year in excess of the annual limit.

"(c) PAYMENT OF PRINCIPAL AND INTEREST.—

"(1) COMMENCEMENT OF REPAYMENT.—Repayment of principal on loans made under this section shall commence not later than 60 days after the date such loan is disbursed by the lender, subject to deferral pursuant to sections 427(a)(2)(C) (i), (viii), and (ix) and 428(b)(1)(M) (i), (viii), and (ix).

"(2) CAPITALIZATION OF INTEREST.—Interest on loans made under this section for which payments of principal and interest are deferred under sections 427(a)(2)(C)(i) and 428(b)(1)(M)(i) shall, if agreed upon by the borrower and the lender (A) be paid quarterly or (B) be added to the principal amount of the loan on a quarterly basis by the lender. Such capitalization of interest shall not be deemed to exceed the annual insurable limit on account of the student.

"(3) SUBSIDIES PROHIBITED.—No payments to reduce interest costs shall be paid pursuant to section 428(a) of this part on loans made pursuant to this section.

"(4) APPLICABLE RATES OF INTEREST.—Interest on loans made pursuant to this section shall be at the applicable rate of interest provided in section 427A(c).

"(5) AMORTIZATION.—The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan commences. At the option of the lender, the note or other written evidence of the loan may require that—

"(A) the amount of the periodic payment will be adjusted annually, or

"(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 427A(c)(4).

"(d) REFINANCING.—

"(1) REFINANCING TO SECURE COMBINED PAYMENT.—An eligible lender may consolidate loans held by it which are made under this section to a borrower, including loans which were made under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986, under a single repayment schedule which provides for a single principal payment and a single payment of interest, and shall calculate the repayment period for each included loan from the date of the commencement of repayment of the most recent included loan. Unless the borrower complies with the requirements of paragraph (2), such consolidated loan shall bear interest at the weighted average of the rates of all included loans. The extension of any repayment period of an included loan pursuant to this paragraph shall be reported to the Secretary or guaranty agency insur-

ing the loan, as the case may be, but no additional insurance premiums shall be payable with respect to any such extension. The extension of the repayment period of any included loan shall not require the formal extension of the promissory note evidencing the included loan or the execution of a new promissory note, but shall be treated as an administrative forbearance of the repayment terms of the included loan.

"(2) REFINANCING TO SECURE VARIABLE INTEREST RATE.—An eligible lender may reissue a loan which was made under section 428B as in effect prior to the enactment of the Higher Education Amendments of 1986 in order to permit the borrower to obtain the interest rate provided under section 427A(c)(4). A lender offering to reissue a loan for such purpose may charge a borrower an amount not to exceed $100 to cover the administrative costs of reissuing such loan, not more than one-half of which shall be paid to the guarantor of the loan being reissued to cover costs of reissuance. Reissuance of a loan under this paragraph shall not affect any insurance applicable with respect to the loan, and no additional insurance fee may be charged to the borrower with respect to the loan.

"(3) REFINANCING BY DISCHARGE OF PREVIOUS LOAN.—A borrower who has applied to an original lender for reissuance of a loan under paragraph (2) and who is denied such reissuance may obtain a loan from another lender for the purpose discharging the loan from such original lender. A loan made for such purpose—

"(A) shall bear interest at the applicable rate of interest provided under section 427A(c)(4);

"(B) shall not result in the extension of the duration of the note (other than as permitted under subsection (c)(5)(B));

"(C) may be subject to an additional insurance fee but shall not be subject to the administrative cost charge permitted by paragraph (2) of this subsection; and

"(D) shall be applied to discharge the borrower from any remaining obligation to the original lender with respect to the original loan.

"(4) CERTIFICATION IN LIEU OF PROMISSORY NOTE PRESENTATION.—Each new lender may accept certification from the original lender of the borrower's original loan in lieu of presentation of the original promissory note.

"(5) NOTIFICATION TO BORROWERS OF AVAILABILITY OF REFINANCING OPTIONS.—Each holder of a loan made under this section or under section 428B as in effect prior to the date of enactment of this Act shall, not later than January 1, 1987, in the case of loans made before the date of enactment of this Act, notify the borrower of such loan—

"(A) of the refinancing options for which the borrower is eligible under this subsection;

"(B) of those options which will be made available by the holder; and

"(C) that, with respect to any option that the holder will not make available, the holder will, to the extent practicable, refer the borrower to an eligible lender offering such option.

"CONSOLIDATION LOANS

"SEC. 428C. (a) AGREEMENTS WITH ELIGIBLE LENDERS.—

"(1) AGREEMENT REQUIRED FOR INSURANCE COVERAGE.—For the purpose of providing loans to eligible borrowers for consolidation of their obligations with respect to eligible student loans, the Secretary or a guaranty agency shall enter into agreements in accordance with subsection (b) with the following eligible lenders:

"(A) the Student Loan Marketing Association;

"(B) State agencies described in subparagraphs (D) and (F) of section 435(d)(1); and

"(C) other eligible lenders described in subparagraphs (A), (B), (C), and (E) of such section.

"(2) INSURANCE COVERAGE OF CONSOLIDATIONS LOANS.—Except as provided in section 429(e), no contract of insurance under this part shall apply to a consolidation loan unless such loan is made under an agreement pursuant to this section and is covered by a certificate issued in accordance with subsection (b)(2). Loans covered by such a certificate that is issued by a guaranty agency shall be considered to be insured loans for the purposes of reimbursements under section 428(c), but no payment shall be made with respect to such loans under section 428(f) to any such agency.

"(3) DEFINITION OF ELIGIBLE BORROWER.—(A) For the purpose of this section, the term 'eligible borrower' means a borrower who, at the time of application for a consolidation loan—

"(i) has an outstanding indebtedness on eligible student loans, at the time of application for a consolidation loan, of not less than $5,000;

"(ii) is in repayment status, or in a grace period preceding repayment, and is not delinquent with respect to any required payment on such indebtedness by more than 90 days; and

"(iii) is not a parent borrower under section 428B.

"(B) An individual's status as an eligible borrower under this section terminates upon receipt of a consolidation loan under this section except with respect to loans received under this title after the date of receipt of the consolidation loan. Loans made under this section shall, to the extent used to discharge loans made under this part, be counted against the applicable limitations on aggregate indebtedness contained in sections 425(a)(2) and 428(b)(1)(B).

"(4) DEFINITION OF ELIGIBLE STUDENT LOANS.—For the purpose of paragraph (1), the term 'eligible student loans' means loans—

"(A) made, insured, or guaranteed under this part;

"(B) made under part E of this title; or

"(C) made under subpart II of part C of title VII of the Public Health Service Act.

"(b) CONTENTS OF AGREEMENTS, CERTIFICATES OF INSURANCE, AND LOAN NOTES.—

"(1) AGREEMENTS WITH LENDERS.—Any lender described in subparagraph (A), (B), or (C) of subsection (a)(1) who wishes to make consolidation loans under this section shall enter into an agreement with the Secretary or a guaranty agency which provides—

"(A) that, in the case of all lenders described in subsection (a)(1), the lender will make a consolidation loan to an eligible borrower (on request of that borrower) only if the borrower certifies that the borrower has no other application pending for a loan under this section and (i) the lender holds an outstanding loan of that borrower which is selected by the borrower for consolidation under this section, or (ii) the borrower certifies that the borrower has sought and has been unable to obtain a consolidation loan from the holders of the outstanding loans of that borrower (which are so selected for consolidation);

"(B) that each consolidation loan made by the lender will bear interest, and be subject to repayment, in accordance with subsection (c);

"(C) that each consolidation loan will be made, notwithstanding any other provision of this part limiting the annual or aggregate principal amount for all insured loans made to a borrower, in an amount (i) which is not less than the minimum amount required for eligibility of the borrower under subsection (a)(2), and (ii) which is equal to the sum of the unpaid principal and accrued unpaid interest and late charges of all loans received by the eligible borrower under this title which are selected by the borrower for consolidation;

"(D) that the proceeds of each consolidation loan will be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans;

"(E) such other terms and conditions as the Secretary or the guaranty agency may specifically require of the lender to carry out this section.

"(2) ISSUANCE OF CERTIFICATE OF COMPREHENSIVE INSURANCE COVERAGE.—The Secretary shall issue a certificate of comprehensive insurance coverage under section 429(b) to a lender which has entered into an agreement with the Secretary under paragraph (1) of this subsection. The guaranty agency may issue a certificate of comprehensive insurance coverage to a lender with which it has an agreement under such paragraph. The Secretary shall not issue a certificate to a lender described in subparagraph (B) or (C) of subsection (a)(1) unless the Secretary determines that such lender has first applied to, and has been denied a certificate of insurance by, the guaranty agency which insures the preponderance of its loans (by value).

"(3) CONTENTS OF CERTIFICATE.—A certificate issued under paragraph (2) shall, at a minimum, provide—

"(A) that all consolidation loans made by such lender in conformity with the requirements of this section will be insured by the Secretary or the guaranty agency (whichever is applicable) against loss of principal and interest;

"(B) that a consolidation loan will not be insured unless the lender has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being consolidated—

"(i) that the loan is a legal, valid, and binding obligation of the borrower;

"(ii) that each such loan was made and serviced in compliance with applicable laws and regulations; and

"(iii) in the case of loans under this part, that the insurance on such loan is in full force and effect;

"(C) the effective date and expiration date of the certificate;

"(D) the aggregate amount to which the certificate applies;

"(E) the reporting requirements of the Secretary on the lender and an identification of the office of the Department of Education or of the guarantee agency which will process claims and perform other related administrative functions;

"(F) the alternative repayment terms which will be offered to borrowers by the lender;

"(G) that, if the lender prior to the expiration of the certificate no longer proposes to make consolidation loans, the lender will so notify the issuer of the certificate in order that the certificate may be terminated (without affecting the insurance on any consolidation loan made prior to such termination); and

"(H) the terms upon which the issuer of the certificate may limit, suspend, or terminate the lender's authority to make consolidation loans under the certificate (without affecting the insurance on any consolidation loan made prior to such limitation, suspension, or termination).

"(4) TERMS AND CONDITIONS OF LOANS.—A consolidation loan made pursuant to this section shall be insurable by the Secretary or a guaranty agency pursuant to paragraph (2) only if the loan is made to an eligible borrower who has agreed to notify the holder of the loan promptly concerning any change of address and the loan is evidenced by a note or other written agreement which—

"(A) is made without security and without endorsement, except that if the borrower is a minor and such note or other written agreement executed by him or her would not, under applicable law, create a binding obligation, endorsement may be required;

"(B) provides for the payment of interest and the repayment of principal in accordance with subsection (c) of this section;

"(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period for which the borrower would be eligible for a deferral under clause (i), (viii), or (ix) of section 428(b)(1)(M), and that any such period shall not be included in determining the repayment period pursuant to subsection (c)(2) of this section;

"(D) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

"(E)(i) contains a notice of the system of disclosure concerning such loan to credit bureau organizations under section 430A, and (ii) provides that the lender on request of the borrower will provide information on the repayment status of the note to such organizations.

"(c) PAYMENT OF PRINCIPAL AND INTEREST.—

"(1) INTEREST RATES.—(A) Consolidation loans made under this section shall bear interest at rates determined under subparagraph (B) or (C). For the purposes of payment of special allowances under section 438(b)(2), the interest rate required by this subsection is the applicable interest rate with respect to a consolidation loan.

"(B) Except as provided in subparagraph (C), a consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan which is equal to the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent.

"(C) A consolidation loan shall bear interest at an annual rate on the unpaid principal balance of the loan equal to not less than 9 percent.

"(2) REPAYMENT SCHEDULES.—(A) Notwithstanding any other provision of this part, to the extent authorized by its certificate of insurance under subsection (b)(2)(F) and approved by the issuer of such certificate, the lender of a consolidation loan shall establish repayment terms as will promote the objectives of this section, which may include the establishment of graduated or income sensitive repayment schedules. Such repayment terms shall require that if the sum of the consolidation loan and the amount outstanding on other student loans to the individual—

"(i) is equal to or greater than $5,000 but less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;

"(ii) is equal to or greater than $7,500 but less than $10,000, then such consolidation loan shall be repaid in not more than 12 years;

"(iii) is equal to or greater than $10,000 but less than $20,000, then such consolidation loan shall be repaid in not more than 15 years;

"(iv) is equal to or greater than $20,000 but less than $45,000, then such consolidation loan shall be repaid in not more than 20 years; or

"(v) is more than $45,000, then such consolidation loan shall be repaid in not more than 25 years.

"(B) Unless a consolidation loan under subparagraph (A)(ii) will be used to discharge at least $5,000 of loans made under this part, such loan shall be repaid in accordance with subparagraph (A)(i).

"(C) The amount outstanding on other student loans which may be counted for the purpose of subparagraph (A) may not exceed the amount of the consolidation loan.

"(3) ADDITIONAL REPAYMENT REQUIREMENTS.—Notwithstanding paragraph (2)—

"(A) a repayment schedule established with respect to a consolidation loan shall require that the minimum installment payment equal to not less than the accrued unpaid interest; and

"(B) the lender of a consolidation loan may, with respect to repayment on the loan, when the amount of a monthly or other similar payment on the loan is not a multiple of $5, round the payment to the next highest whole dollar amount that is a multiple of $5.

"(4) COMMENCEMENT OF REPAYMENT.—Repayment of a consolidation loan shall commence within 60 days after all holders have, pursuant to subsection (b)(1)(D), discharged the liability of the borrower on the loans selected for consolidation.

"(5) INSURANCE PREMIUMS PROHIBITED.—No insurance premium shall be charged to the borrower on any consolidation loan, and no insurance premium shall be payable by the lender to the Secretary with respect to any such loan.

"(d) TERMINATION OF AUTHORITY.—The authority to make loans under this section expires at the close of September 30, 1992. Nothing in this section shall be construed to authorize the Secretary to promulgate rules or regulations governing the terms or conditions of the agreements and certificates under subsection (b). Loans made under this section which are insured by the Secretary shall be considered to be new loans made to students for the purpose of section 424(a).

"COMMINGLING OF FUNDS

"SEC. 428D. Notwithstanding any other provision of this part regarding permissible uses of funds from any source, funds received by a guaranty agency under any provision of this part may be commingled with funds received under any other provision of this part and may be used to carry out the purposes of such other provision, except that—

"(1) the total amount expended for the purposes of such other provision shall not exceed the amount the guaranty agency would otherwise be authorized to expend; and

"(2) the authority to commingle such funds shall not relieve such agency of any accounting or auditing obligations under this part.

"STATE GARNISHMENT LAW REQUIREMENTS

"SEC. 428E. (a) REQUIREMENTS FOR ADDITIONAL COST PAYMENTS.—A garnishment law complies with the requirements of this section if such law—

"(1) provides that the amount deducted for any pay period may not exceed 10 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved;

"(2) provides the individual with a minimum of 30 days written notice, informing such individual of the nature and amount of the indebtedness determined by such agency to be due, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under such law;

"(3) provides the individual with an opportunity to inspect and copy records relating to the debts;

"(4) provides the individual with an opportunity to enter into a written agreement with the agency, under terms agreeable to the head of the agency or his designee, to establish a schedule for the repayment of the debt;

"(5) provides the individual with an opportunity for a hearing in accordance with subsection (b) on the determination of the agency concerning the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to paragraph (4), concerning the terms of the repayment schedule, but does not permit additional administrative or judicial procedures that would delay collection of the debt (such as reduction of the debt to a judgment);

"(6) provides that the employer will be held liable to the agency for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under paragraph (2), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph; and

"(7) provides for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any individual subject to wage withholding required by this section because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

"(b) HEARING REQUIREMENTS.—A hearing described in subsection (a)(5) shall be provided if the individual, on or before the 15th day following receipt of the notice described in subsection (a)(2), and in accordance with such procedures as the head of the agency may prescribe, files a petition requesting such a hearing. The timely filing of a petition for hearing shall stay the commencement of collection proceedings. A hearing under subsection (a)(5) may not be conducted by an individual under the supervision or control of the head of the agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing.

"(c) NOTICE REQUIREMENTS.—The notice given to the employer pursuant to subsection (a)(2) shall contain only such information as may be necessary for the employer to comply with the withholding order.

"(d) DEFINITION.—For the purpose of this section, the term 'disposable pay' means that part of pay of any individual remaining after the deduction of any amounts required by law to be withheld.

"REHABILITATION OF DEFAULTED LOANS

"SEC. 428F. (a) AUTHORITY TO ESTABLISH PILOT PROGRAM.—The Secretary shall, in accordance with the requirements of this section, establish a pilot program to test the feasibility of rehabilitating defaulted loans under this part. Such pilot program shall be commenced within 3 months after the date of enactment of this section and shall be completed not later than 3 years after such date. The Secretary shall submit a report on the results of such pilot program within 3 months after its completion.

"(b) ELIGIBILITY FOR PILOT PROGRAM.—The loans which shall be eligible for rehabilitation under this section shall be only those loans which are made to borrowers who, at the time of default on the loan, are unemployed or institutionalized.

"(c) METHOD OF REHABILITATION.—

"(1) SALE OF LOAN PURSUANT TO AGREEMENT.—Upon securing consecutive payments for 12 months of amounts owed on a loan for which the Secretary has made a payment under section 428(c)(1), the guaranty agency (pursuant to an agreement with the Secretary) or the Secretary shall, if practicable, sell the rehabilitated loan to an eligible lender, other than an eligible lender who has been found by the guaranty agency or the Secretary to have substantially failed to exercise the due diligence required of lenders under this part.

"(2) TERMS OF AGREEMENT.—Such agreement between the guaranty agency and the Secretary shall provide—

"(A) for the repayment by the agency to the Secretary of 81.5 percent of the amount of the principal balance outstanding at the time of such sale multiplied by a percentage amount equal to the reinsurance percentage in effect when payment under the guaranty agreement was made with respect to the loan; and

"(B) for the reinstatement by the Secretary (I) of the obligation to reimburse such agency for the amount expended by it in discharge of its insurance obligation under its loan insurance program, and (II) of the obligation to pay to the holder of the rehabilitated loan a special allowance pursuant to section 438.

"(3) PROCEEDS OF SALES OFFSET AGAINST DEFAULT CLAIMS.—Amounts received by the Secretary pursuant to the sale of rehabilitated loans by a guaranty agency under this paragraph shall be deducted from the calculations of the amount of claims for reimbursement filed by the agency under section 428(c)(1) for the fiscal year in which the amount was received, notwithstanding the fact that the default occurred in a prior fiscal year.

"(4) EFFECT OF REHABILITATION ON BORROWER ELIGIBILITY.—Any borrower whose loan is rehabilitated under this subsection shall not be precluded by section 484 from receiving additional assistance under this title (for which he or she is otherwise eligible) on the basis of defaulting on the loan prior to rehabilitation.

"(5) APPLICABILITY OF OTHER TERMS, CONDITIONS, AND BENEFITS.—A loan which is rehabilitated under this paragraph shall be subject to the same terms and conditions and qualify for the same benefits and privileges as other loans made under this part.

"CERTIFICATE OF FEDERAL LOAN INSURANCE—EFFECTIVE DATE OF INSURANCE

"SEC. 429. (a) LOAN-BY-LOAN INSURANCE.—

"(1) AUTHORITY TO ISSUE CERTIFICATES ON APPLICATION.—If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible student which is insurable under the provisions of this part, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

"(2) EFFECTIVENESS OF CERTIFICATE.—Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance was made. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to subsection (c).

"(3) CONTENTS OF APPLICATIONS.—An application submitted pursuant to subsection (a)(1) shall contain (A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to subsection (c), and (B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statement during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

"(b) COMPREHENSIVE INSURANCE COVERAGE CERTIFICATE.—

"(1) ESTABLISHMENT OF SYSTEM BY REGULATION.—In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each student loan made by an eligible lender as provided in subsection (a), the Secretary may, in accordance with regulations consistent with section 424, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the United States from the risk of unreasonable loss and promoting the objectives of this part, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

"(2) UNCOVERED LOANS.—If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a student a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 424, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) or by inclusion of such insurance on comprehensive coverage under the subsection for the period or periods in which such future loans or payments are made.

"(c) CHARGES FOR FEDERAL INSURANCE.—The Secretary shall, pursuant to regulations, charge for insurance on each loan under this part a premium in an amount not to exceed one-fourth of 1 percent per year of the unpaid principal amount of such loan (excluding interest added to principal), payable in advance, at such times and in such manner as may be prescribed by the Secretary. Such regulations may provide that such premium shall not be payable, or if paid shall be refundable, with respect to any period after default in the payment of principal or interest or after the borrower has died or becomes totally and permanently disabled, if (1) notice of such default or other event has been duly given, and (2) requests for payment of the loss insured against has been made or the Secretary has made such payment on his own motion pursuant to section 430(a).

"(d) ASSIGNABILITY OF INSURANCE.—The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned as security by such lender only to another eligible lender, and subject to regulation by the Secretary.

"(e) CONSOLIDATION NOT TO AFFECT INSURANCE.—The consolidation of the obligations of two or more federally insured loans obtained by a student borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a), the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation; if they are covered by a single comprehensive certificate issued under subsection (b), the Secretary may amend that certificate accordingly.

"DEFAULT OF STUDENT UNDER FEDERAL LOAN INSURANCE PROGRAM

"SEC. 430. (a) NOTICE TO SECRETARY AND PAYMENT OF LOSS.—Upon default by the student borrower on any loan covered by Federal loan insurance pursuant to this part, and prior to the commencement of suit or other enforcement proceedings upon security for that loan, the insurance beneficiary shall promptly notify the Secretary, and the Secretary shall if requested (at that time or after further collection efforts) by the beneficiary, or may on the Secretary's own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount had been determined. The 'amount of the loss' on any loan shall, for the purposes of this subsection and subsection (b), be deemed to be an amount equal to the unpaid balance of the principal amount and accrued interest, including interest accruing

from the date of submission of a valid default claim (as determined by the Secretary) to the date on which payment is authorized by the Secretary, reduced to the extent required by section 425(b). Such beneficiary shall be required to meet the standards of due diligence in the collection of the loan and shall be required to submit proof that reasonable attempts were made to locate the borrower (when the location of the borrower is unknown) and proof that contact was made with the borrower (when the location is known). The Secretary shall make the determination required to carry out the provisions of this section not later than 90 days after the notification by the insurance beneficiary and shall make payment in full on the amount of the beneficiary's loss pending completion of the due diligence investigation.

"(b) EFFECT OF PAYMENT OF LOSS.—Upon payment of the amount of the loss pursuant to subsection (a), the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs and collection costs, to the extent set forth in regulations issued by the Secretary) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may, in attempting to make recovery on such loans, contract with private business concerns, State student loan insurance agencies, or State guaranty agencies, for payment for services rendered by such concerns or agencies in assisting the Secretary in making such recovery. Any contract under this subsection entered into by the Secretary shall provide that attempts to make recovery on such loans shall be fair and reasonable, and do not involve harassment, intimidation, false or misleading representations, or unnecessary communications concerning the existence of any such loan to persons other than the student borrower.

"(c) FORBEARANCE NOT PRECLUDED.—Nothing in this section or in this part shall be construed to preclude any forbearance for the benefit of the student borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary, or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance. Any forbearance which is approved by the Secretary under this subsection with respect to the repayment of a loan, including a forbearance during default, shall not be considered as indicating that a holder of a federally insured loan has failed to exercise reasonable care and due diligence in the collection of the loan.

"(d) CARE AND DILIGENCE REQUIRED OF HOLDERS.—Nothing in this section or in this part shall be construed to excuse the holder of a federally insured loan from exercising reasonable care and diligence in the making and collection of loans under the provisions of this part. If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that it has substantially failed to exercise such care and diligence or to make the reports and statements required under section 428(a)(4) and section 429(a)(3), or to pay the required Federal loan insurance premiums, the Secretary shall disqualify that lender for further Federal insurance on loans granted pursuant to this part until the Secretary is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence or comply with such requirements, as the case may be.

"REPORTS TO CREDIT BUREAUS AND INSTITUTIONS OF HIGHER EDUCATION

"SEC. 430A. (a) AGREEMENTS TO EXCHANGE INFORMATION.—For the purpose of promoting responsible repayment of loans covered by Federal loan insurance pursuant to this part or covered by a guaranty agreement pursuant to section 428, the Secretary, each guaranty agency, eligible lender, and subsequent holder shall enter into agreements with credit bureau organizations to exchange information concerning student borrowers, in accordance with the requirements of this section. For the purpose of assisting such organizations in complying with the Fair Credit Reporting Act, such agreements may provide for timely response by the Secretary (concerning loans covered by Federal loan insurance), by a guaranty agency, eligible lender, or subsequent holder (concerning loans covered by a guaranty agreement), or to requests from such organizations for responses to objections raised by borrowers. Subject to the requirements of subsection (c), such agreements shall require the Secretary, the guaranty agency, eligible lender, or subsequent holder, as appropriate, to disclose to such organizations, with respect to any loan under this part that has not been repaid by the borrower—

"(1) the total amount of loans made to any borrower under this part and the remaining balance of the loans;

"(2) information concerning the date of any default on the loan and the collection of the loan, including information concerning the repayment status of any defaulted loan on which the Secretary has made a payment pursuant to section 430(a) or the guaranty agency has made a payment to the previous holder of the loan; and

"(3) the date of cancellation of the note upon completion of repayment by the borrower of the loan or payment by the Secretary pursuant to section 437.

"(b) ADDITIONAL INFORMATION.—Such agreements may also provide for the disclosure by such organizations to the Secretary or a guaranty agency, whichever insures or guarantees a loan, upon receipt of a notice under subsection (a)(2) that such a loan is in default, of information concerning the borrower's location or other information which may assist the Secretary, the guaranty agency, the eligible lender, or the subsequent holder in collecting the loan.

"(c) CONTENTS OF AGREEMENTS.—Agreements entered into pursuant to this section shall contain such provisions as may be necessary to ensure that—

"(1) no information is disclosed by the Secretary or the guaranty agency, eligible lender, or subsequent holder unless its accuracy and completeness have been verified and the Secretary or the guaranty agency has determined that disclosure would accomplish the purpose of this section;

"(2) as to any information so disclosed, such organizations will be promptly notified of, and will promptly record, any change submitted by the Secretary, the guaranty agency, eligible lender, or subsequent holder with respect to such information, or any objections by the borrower with respect to any such information, as required by section 611 of the Fair Credit Reporting Act (15 U.S.C. 1681i);

"(3) no use will be made of any such information which would result in the use of collection practices with respect to such a borrower that are not fair and reasonable or that involve harassment, intimidation, false or misleading representations, or unnecessary communication concerning the existence of such loan or concerning any such information; and

"(4) with regard to notices of default under subsection (a)(2) of this section, except for disclosures made to obtain the borrower's location, the Secretary, or the guaranty agency, eligible lender, or subsequent holder whichever is applicable (A) shall not disclose any such information until the borrower has been notified that such information will be disclosed to credit bureau organizations unless the borrower enters into repayment of his or her loan, but (B) shall, if the borrower has not entered into repayment within a reasonable period of time, but not less than 30 days, from the date such notice has been sent to the borrower, disclose the information required by this subsection.

"(d) CONTRACTOR STATUS OF PARTICIPANTS.—A guaranty agency, eligible lender, or subsequent holder or credit bureau organization which discloses or receives information under this section shall not be considered a Government contractor within the meaning of section 552a of title 5, United States Code.

"(e) DISCLOSURE TO INSTITUTIONS.—The Secretary and each guaranty agency, eligible lender, and subsequent holder of a loan are authorized to disclose information described in subsections (a) and (b) concerning student borrowers to the eligible institutions such borrowers attend or previously attended.

"(f) DURATION OF AUTHORITY.—Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c (a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from the Secretary or a guaranty agency, eligible lender, or subsequent holder regarding the status of a borrower's defaulted account on a loan guaranteed under this part until—

"(1) 7 years from the date on which the Secretary or the agency paid a claim to the holder on the guaranty, or

"(2) with regard to an account on a loan on which the Secretary or the guaranty agency has paid a claim but not reported the account to a consumer reporting agency on or before October 1, 1985, 7 years from that date.

"INSURANCE FUND

"SEC. 431. (a) ESTABLISHMENT.—There is hereby established a student loan insurance fund (hereinafter in this section called the 'fund') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the default of loans insured by the Secretary under this part, or in connection with payments under a guaranty agreement under section 428(c). All amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with operations under this part, any excess advances under section 422(c)(4)(C), and any other moneys, property, or assets derived by the Secretary from operations in connection with this section, shall be deposited in the fund. All payments in connection with the default of loans insured by the Secretary under this part, or in connection with such guaranty agreements shall be paid from the fund. Moneys in the fund not needed for current

operations under this section may be invested in bonds or other obligations guaranteed as to principal and interest by the United States.

"(b) BORROWING AUTHORITY.—If at any time the moneys in the fund are insufficient to make payments in connection with the default of any loan insured by the Secretary under this part, or in connection with any guaranty agreement made under section 428(c), the Secretary is authorized, to the extent provided in advance by appropriations Acts, to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under the subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

"LEGAL POWERS AND RESPONSIBILITIES

"SEC. 432. (a) GENERAL POWERS.—In the performance of, and with respect to, the functions, powers, and duties, vested in him by this part, the Secretary may—

"(1) prescribe such regulations as may be necessary to carry out the purposes of this part;

"(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the Secretary's control and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 509, 517, 547, and 2679 of title 28 of the United States Code;

"(3) include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payment of interest, relating to the Secretary's obligations and rights to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this part will be achieved; and any term, condition, and covenant made pursuant to this paragraph or pursuant to any other provision of this part may be modified by the Secretary, after notice and opportunity for a hearing on the record, if the Secretary finds that the modification is necessary to protect the United States from the risk of unreasonable loss;

"(4) subject to the specific limitations in this part, consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note or other instrument evidencing a loan which has been insured by the Secretary under this part;

"(5) enforce, pay, or compromise, any claim on, or arising because of, any such insurance or any guaranty agreement under section 428(c); and

"(6) enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.

"(b) FINANCIAL OPERATIONS RESPONSIBILITIES.—The Secretary shall, with respect to the financial operations arising by reason of this part—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code; and

"(2) maintain with respect to insurance under this part an integral set of accounts and prepare financial statements in accordance with generally accepted accounting principles, which shall be audited annually by the General Accounting Office in conformity with generally accepted government auditing standards except that the transactions of the Secretary, including the settlement of insurance claims and of claims for payments pursuant to section 428, and transactions related thereto and vouchers approved by the Secretary in connection with such transactions, shall be final and conclusive upon all accounting and other officers of the Government.

"(c) DATA COLLECTION.—

"(1) COLLECTION BY CATEGORY OF LOAN.—(A) For loans insured after December 31, 1976, or in the case of each insurer after such earlier date where the data required by this subsection are available, the Secretary and all other insurers under this part shall collect and accumulate all data relating to (i) loan volume insured and (ii) defaults reimbursed or default rates according to the categories of loans listed in subparagraph (B) of this paragraph.

"(B) The data indicated in subparagraph (A) of this paragraph shall be accumulated according to the category of lender making the loan and shall be accumulated separately for lenders who are (i) eligible institutions, (ii) State or private, nonprofit direct lenders, (iii) commercial financial institutions who are banks, savings and loan associations, or credit unions, and (iv) all other types of institutions or agencies.

"(C) The Secretary may designate such additional subcategories within the categories specified in subparagraph (B) of this paragraph as the Secretary deems appropriate.

"(D) The category or designation of a loan shall not be changed for any reason, including its purchase or acquisition by a lender of another category.

"(2) COLLECTION AND REPORTING REQUIREMENTS.—(A) The Secretary shall collect data under this subsection from all insurers under this part and shall publish not less often than once every fiscal year a report showing loan volume guaranteed and default data for each category specified in subparagraph (B) of paragraph (1) of this subsection and for the total of all lenders.

"(B) The reports specified in subparagraph (A) of this paragraph shall include a separate report for each insurer under this part including the Secretary, and where an insurer insures loans for lenders in more than one State, such insurer's report shall list all data separately for each State.

"(3) INSTITUTIONAL, PUBLIC, OR NONPROFIT LENDERS.—For purposes of clarity in communications, the Secretary shall separately identify loans made by the lenders referred to in clause (i) and loans made by the lenders referred to in clause (ii) of paragraph (1)(B) of this subsection.

"(d) DELEGATION.—

"(1) REGIONAL OFFICES.—The functions of the Secretary under this part listed in paragraph (2) of this subsection may be delegated to employees in the regional office of the Department.

"(2) DELEGABLE FUNCTIONS.—The functions which may be delegated pursuant to this subsection are—

"(A) reviewing applications for loan insurance under section 429 and issuing contracts for Federal loan insurance, certificates of insurance, and certificates of comprehensive insurance coverage to eligible lenders which are financial or credit institutions subject to examination and supervision by an agency of the United States or of any State;

"(B) receiving claims for payments under section 430(a), examining those claims, and pursuant to regulations of the Secretary, approving claims for payment, or requiring lenders to take additional collection action as a condition for payment of claims; and

"(C) certifying to the central office when collection of defaulted loans has been completed, compromising or agreeing to the modification of any Federal claim against a borrower (pursuant to regulations of the Secretary issued under section 432(a)), and recommending litigation with respect to any such claim.

"(e) USE OF INFORMATION ON BORROWERS.—Notwithstanding any other provision of law, the Secretary may provide to eligible lenders, and to any guaranty agency having a guaranty agreement under section 428(c)(1), any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived.

"(f) AUDIT OF FINANCIAL TRANSACTIONS.—

"(1) COMPTROLLER GENERAL AND INSPECTOR GENERAL AUTHORITY.—The Comptroller General and the Inspector General of the Department of Education shall each have the authority to conduct an audit of the financial transactions of—

"(A) any guaranty agency operating under an agreement with the Secretary pursuant to section 428(b);

"(B) any eligible lender as defined in section 435(d)(1) (D), (F), or (H);

"(C) a representative sample of eligible lenders under this part, upon the request of the Committee on Education and Labor of the House of Representatives or the Committee on Labor and Human Resources of the Senate, with respect to the payment of the special allowance under section 438 in order to evaluate the program authorized by this part; and

"(D) any Authority required to file a plan for doing business under section 438(d).

"(2) ACCESS TO RECORDS.—For the purpose of carrying out this subsection, the records of any entity described in subparagraph (A),

(B), (C), or (D) of paragraph (1) shall be available to the Comptroller General and the Inspector General of the Department of Education. For the purpose of section 716(c) of title 31, United States Code, such records shall be considered to be records to which the Comptroller General has access by law, and for the purpose of section 6(a)(4) of the Inspector General Act of 1978, such records shall be considered to be records necessary in the performance of functions assigned by that Act to the Inspector General.

"(3) DEFINITION OF RECORDS.—For the purpose of this subsection, the term 'record' includes any information, document, report, answer, account, paper, or other data or documentary evidence.

"(g) CIVIL PENALTIES.—

"(1) AUTHORITY TO IMPOSE PENALTIES.—Upon determination, after reasonable notice and opportunity for a hearing on the record, that a lender or a guaranty agency—

"(A) has violated or failed to carry out any provision of this part or any regulation prescribed under this part, or

"(B) has engaged in substantial misrepresentation of the nature of its financial charges,

the Secretary may impose a civil penalty upon such lender or agency of not to exceed $25,000 for each violation, failure, or misrepresentation.

"(2) LIMITATIONS.—No civil penalty may be imposed under paragraph (1) of this subsection unless it is determined that the violation, failure, or substantial misrepresentation referred to in that paragraph resulted from—

"(A)(i) a clear and consistent pattern or practice of violations, failures, or substantial misrepresentations in which the lender or guaranty agency did not maintain procedures reasonably adapted to avoid the violation, failure, or substantial representation;

"(ii) gross negligence; or

"(iii) willful actions on the part of the lender or guaranty agency; and

"(B) the violation, failure, or substantial representation is material.

"(3) CORRECTION OF FAILURE.—A lender or guaranty agency has no liability under paragraph (1) of this subsection if, prior to the institution of an action under that paragraph, the lender or guaranty agency cures or corrects the violation or failure or notifies the person who received the substantial misrepresentation of the actual nature of the financial charges involved.

"(4) CONSIDERATION AS SINGLE VIOLATION.—For the purpose of paragraph (1) of this subsection, violations, failures, or substantial misrepresentations arising from a specific practice of a lender or guaranty agency shall be deemed to be a single violation, failure, or substantial misrepresentation even if the violation, failure, or substantial misrepresentation affects more than one loan or more than one borrower, or both, and the Secretary may only impose a single civil penalty for each such violation, failure, or substantial misrepresentation.

"(5) ASSIGNEES NOT LIABLE FOR VIOLATIONS BY OTHERS.—If a loan affected by a violation, failure, or substantial misrepresentation is assigned to another holder, the lender or guaranty agency responsible for the violation, failure, or substantial misrepresentation shall remain liable for any civil money penalty provided for under paragraph (1) of this subsection, but the assignee shall not be liable for any such civil money penalty.

"(6) COMPROMISE.—Until a matter is referred to the Attorney General, any civil penalty under paragraph (1) of this subsection may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the Secretary shall consider the appropriateness of the penalty to the resources of the lender or guaranty agency subject to the determination; the gravity of the violation, failure, or substantial misrepresentation; the frequency and persistence of the violation, failure, or substantial misrepresentation; and the amount of any losses resulting from the violation, failure, or substantial misrepresentation. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the lender or agency charged, unless the lender or agency has, in the case of a final agency determination, commenced proceedings for judicial review within 90 days of the determination, in which case the deduction may not be made during the pendency of the proceeding.

"(h) AUTHORITY OF THE SECRETARY TO IMPOSE AND ENFORCE LIMITATIONS, SUSPENSIONS, AND TERMINATIONS.—

"(1) IMPOSITION OF SANCTIONS.—(A) If the Secretary, after a reasonable notice and opportunity for hearing to an eligible lender, finds that the eligible lender—

"(i) has substantially failed—

"(I) to exercise reasonable care and diligence in the making and collecting of loans under the provisions of this part,

"(II) to make the reports or statements under section 428(a)(4), or

"(III) to pay the required loan insurance premiums to any guaranty agency, or

"(ii) has engaged in—

"(I) fraudulent or misleading advertising or in solicitations that have resulted in the making of loans insured or guaranteed under this part to borrowers who are ineligible; or

"(II) the practice of making loans that violate the certification for eligibility provided in section 428,

the Secretary shall limit, suspend, or terminate that lender from participation in the insurance programs operated by guaranty agencies under this part.

"(B) The Secretary shall not lift any such limitation, suspension, or termination until the Secretary is satisfied that the lender's failure under subparagraph (A)(i) of this paragraph or practice under subparagraph (A)(ii) of this paragraph has ceased and finds that there are reasonable assurances that the lender will—

"(i) exercise the necessary care and diligence,

"(ii) comply with the requirements described in subparagraph (A)(i), or

"(iii) cease to engage in the practices described in subparagraph (A)(ii),

as the case may be.

"(2) REVIEW OF SANCTIONS ON LENDERS.—(A) The Secretary shall, in accordance with sections 556 and 557 of title 5, United States Code, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 428(b)(1)(U) within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the lender. The Secretary shall disqualify such lender from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification—

"(i) if such review is waived; or

"(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

"(B) The Secretary shall not lift any such disqualification until the Secretary is satisfied that the lender has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the lender will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such disqualification.

"(3) REVIEW OF SANCTIONS ON ELIGIBLE INSTITUTIONS.—(A) The Secretary shall, in accordance with sections 556 and 557 of title 5, United States Code, review each limitation, suspension, or termination imposed by any guaranty agency pursuant to section 428(b)(1)(T) within 60 days after receipt by the Secretary of a notice from the guaranty agency of the imposition of such limitation, suspension, or termination, unless the right to such review is waived in writing by the institution. The Secretary shall disqualify such institution from participation in the student loan insurance program of each of the guaranty agencies under this part, and notify such guaranty agencies of such disqualification—

"(i) if such review is waived; or

"(ii) if such review is not waived, unless the Secretary determines that the limitation, suspension, or termination was not imposed in accordance with requirements of such section.

"(B) The Secretary shall not lift any such disqualification until the Secretary is satisfied that the institution has corrected the failures which led to the limitation, suspension, or termination, and finds that there are reasonable assurances that the institution will, in the future, comply with the requirements of this part. The Secretary shall notify each guaranty agency of the lifting of any such disqualification.

"(i) AUTHORITY TO SELL DEFAULTED LOANS.—In the event that all other collection efforts have failed, the Secretary is authorized to sell defaulted student loans assigned to the United States under this part to collection agencies, eligible lenders, guaranty agencies, or other qualified purchaser on such terms as the Secretary determines are in the best financial interests of the United States. A loan may not be sold pursuant to this subsection if such loan is in repayment status.

"STUDENT LOAN INFORMATION BY ELIGIBLE LENDERS

"SEC. 433. (a) REQUIRED DISCLOSURE BEFORE DISBURSEMENT.—Each eligible lender shall, at or prior to the time such lender disburses a loan which is insured or guaranteed under this part, provide thorough and accurate loan information on such loan to the borrower. Any disclosure required by this subsection may be made by an eligible lender as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosure shall include—

"(1) the name of the eligible lender, and the address to which communications and payments should be sent;

"(2) the principal amount of the loan;

"(3) the amount of any charges, such as the origination fee and insurance premium, collected by the lender at or prior to the disbursal of the loan and whether such charges

are deducted from the proceeds of the loan or paid separately by the borrower;

"(4) the stated interest rate on the loan;

"(5) the yearly and cumulative maximum amounts that may be borrowed;

"(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

"(7) a statement as to the minimum and maximum repayment term which the lender may impose, and the minimum annual payment required by law;

"(8) a statement of the total cumulative balance, including the loan applied for, owed by the student to that lender, the projected level of indebtedness of the student based on a 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a four- or 5-year college career;

"(9) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

"(10) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);

"(11) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default will be reported to a credit bureau or credit reporting agency;

"(12) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

"(13) an explanation of any cost the borrower may incur in the making or collection of the loan.

"(b) REQUIRED DISCLOSURE BEFORE REPAYMENT.—Each eligible lender shall, at or prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the borrower the information required under this subsection. Any disclosure required by this subsection may be made by an eligible lender either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosure shall include—

"(1) the name of the eligible lender, and the address to which communications and payments should be sent;

"(2) the scheduled date upon which the repayment period is to begin;

"(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);

"(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

"(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

"(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;

"(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan and of the availability and terms of such other options;

"(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

"(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

"(c) COST OF DISCLOSURE AND CONSEQUENCES OF NONDISCLOSURE.—Such information shall be available without cost to the borrower. The failure of an eligible lender to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary under a contract of insurance or reinsurance, or the obligation of a guaranty agency under a contract of guaranty. Nothing in this section shall be construed as subjecting the lender to the Truth in Lending Act with regard to loans made under this part. The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section.

"(d) SEPARATE STATEMENT.—Each eligible lender shall, at the time such lender makes the first disbursement of a loan with respect to a borrower which is insured or guaranteed under this part, provide the borrower with a separate paper which summarizes (in plain English) the rights and responsibilities of the borrower with respect to the loan, including a statement of the consequences of defaulting on the loan and a statement that each borrower who defaults will be reported to a credit bureau. The requirement of this subsection shall be in addition to the information required by subsection (a) of this section.

"PARTICIPATION BY FEDERAL CREDIT UNIONS IN FEDERAL, STATE, AND PRIVATE STUDENT LOAN INSURANCE PROGRAMS

"SEC. 434. Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the National Credit Union Administration, have power to make insured loans to student members in accordance with the provisions of this part relating to federally insured loans, or in accordance with the provisions of any State or nonprofit private student loan insurance program which meets the requirements of section 428(a)(1)(B).

"DEFINITIONS FOR STUDENT LOAN INSURANCE PROGRAM

"SEC. 435. As used in this part:

"(a) ELIGIBLE INSTITUTION.—

"(1) IN GENERAL.—The term 'eligible institution' means—

"(A) an institution of higher education;

"(B) a vocational school; or

"(C) with respect to students who are nationals of the United States, an institution outside the United States which is comparable to an institution of higher education or to a vocational school and which has been approved by the Secretary for the purpose of this part,

except that such term does not include any such institution or school which employs or uses commissioned salesmen to promote the availability of any loan program described in section 428(a)(1), 428A, or 428B at that institution or school.

"(2) FOREIGN MEDICAL SCHOOLS.—For the purpose of qualifying an institution under paragraph (1)(C) of this subsection, the Secretary shall establish criteria by regulation. In the case of a graduate medical school outside the United States, such criteria shall include a requirement that a student attending a medical school is ineligible for loans made, insured, or guaranteed under this part unless at least 60 percent of the students enrolled in such school are nationals of the country in which the school is located. A school that is unable to meet that criteria may establish the eligibility of its students for such loans if the United States nationals attending such school achieve a pass rate on the examinations administered by the Educational Commission for Foreign Medical Graduates that is—

"(A) not less than 45 percent for students taking such examination in the first and second years after the date of enactment of the Higher Education Amendments of 1986; and

"(B) not less than 50 percent for students taking such examination in any subsequent year.

"(b) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an educational institution in any State which—

"(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate, or who are beyond the age of compulsory school attendance;

"(2) is legally authorized within such State to provide a program of education beyond secondary education;

"(3) provides an educational program for which it awards a bachelor's degree or provides not less than a 2-year program which is acceptable for full credit toward such a degree;

"(4) is a public or other nonprofit institution; and

"(5) is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

"(A) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

"(B) is an institution whose credits are accepted on transfer by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

Such term includes any school which provides not less than 1-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of paragraphs (1), (2), (4), and (5). If the Secretary determines that a particular category of such schools does not meet the requirements of paragraph (5) because there is no nationally recognized accrediting agency or association qualified to accredit schools in such category, the Secretary shall, pending the establishment of such an accrediting agency or association, appoint an advisory committee, composed of persons specially qualified to evaluate training provided by schools in such category, which shall (i) prescribe the standards of content, scope, and quality which must be met in order to qualify schools in such category to participate in the program pursuant

to this part, and (ii) determine whether particular schools not meeting the requirements of paragraph (5) meet those standards. For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authorities as to the quality of training offered.

"(c) VOCATIONAL SCHOOL.—The term 'vocational school' means a business or trade school, or technical institution or other technical or vocational school, in any State, which—

"(1) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit (as determined by the institution under section 481(d)) from the training offered by such institution;

"(2) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

"(3) has been in existence for 2 years or has been specially accredited by the Secretary as an institution meeting the other requirements of this subsection; and

"(4) is accredited—

"(A) by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this paragraph;

"(B) if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary pursuant to this paragraph; and

"(C) if the Secretary determines there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools in order for loans to students attending them to be insurable under this part and shall also determine whether particular schools meet those standards.

For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations and State agencies which the Secretary determines to be reliable authority as to the quality of education or training afforded.

"(d) ELIGIBLE LENDER.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) through (5), the term 'eligible lender' means—

"(A) a National or State chartered bank, a mutual savings bank, a savings and loan association, a stock savings bank, a trust company, or a credit union which—

"(i) is subject to examination and supervision by an agency of the United States or of the State in which its principal place of operation is established, and

"(ii) does not have as its primary consumer credit function the making or holding of loans made to students under this part unless (I) it is a bank which is wholly owned by a State, (II) it is a single wholly owned subsidiary of a bank holding company which does not have as its primary consumer credit function the making or holding of loans made to students under this part, or (III) it is a trust company which makes student loans as a trustee pursuant to an express trust and which operated as a lender under this part prior to January 1, 1981;

"(B) a pension fund as defined in the Employee Retirement Income Security Act;

"(C) an insurance company which is subject to examination and supervision by an agency of the United States or a State;

"(D) in any State, a single agency of the State or a single nonprofit private agency designated by the State;

"(E) an eligible institution which meets the requirements of paragraphs (2) through (5) of this subsection;

"(F) for purposes only of purchasing and holding loans made by other lenders under this part, the Student Loan Marketing Association or an agency of any State functioning as a secondary market;

"(G) for purposes of making loans under sections 428A(d), 428B(d), 428C, and 439(q), the Student Loan Marketing Association;

"(H) for purposes of making loans under sections 428(h) and 428(j), a guaranty agency; and

"(I) a Rural Rehabilitation Corporation, or its successor agency, which has received Federal funds under Public Law 499, Eighty-first Congress (64 Stat. 98 (1950)).

"(2) ADDITIONAL REQUIREMENTS OF ELIGIBLE INSTITUTIONS.—To be an eligible lender under this part, an eligible institution—

"(A) shall employ at least one person whose full-time responsibilities are limited to the administration of programs of financial aid for students attending such institution; and

"(B) shall not be a home study school.

"(3) DISQUALIFICATION FOR HIGH DEFAULT RATES.—The term 'eligible lender' does not include any eligible institution in any fiscal year immediately after the fiscal year in which the Secretary determines, after notice and opportunity for a hearing, that for each of 2 consecutive years, 15 percent or more of the total amount of such loans as are described in section 428(a)(1) made by the institution with respect to students at that institution and repayable in each such year, are in default, as defined in section 435(o).

"(4) WAIVER OF DISQUALIFICATION.—Whenever the Secretary determines that—

"(A) there is reasonable possibility that an eligible institution may, within 1 year after a determination is made under paragraph (3), improve the collection of loans described in section 428(a)(1), so that the application of paragraph (3) would be a hardship to that institution, or

"(B) the termination of the lender's status under paragraph (3) would be a hardship to the present or for prospective students of the eligible institution, after considering the management of that institution, the ability of that institution to improve the collection of loans, the opportunities that institution offers to economically disadvantaged students, and other related factors,

the Secretary shall waive the provisions of paragraph (3) with respect to that institution. Any determination required under this paragraph shall be made by the Secretary prior to the termination of an eligible institution as a lender under the exception of paragraph (3). Whenever the Secretary grants a waiver pursuant to this paragraph, the Secretary shall provide technical assistance to the institution concerned in order to improve the collection rate of such loans.

"(5) DISQUALIFICATION FOR USE OF CERTAIN INCENTIVES.—The term 'eligible lender' does not include any lender that the Secretary determines, after notice and opportunity for a hearing, has after the date of enactment of this paragraph—

"(A) offered, directly or indirectly, points, premiums, payments, or other inducements, to any educational institution or individual in order to secure applicants for loans under this part;

"(B) conducted unsolicited mailings to students of student loan application forms, except to students who have previously received loans under this part from such lender;

"(C) offered, directly or indirectly, loans under this part as an inducement to a prospective borrower to purchase a policy of insurance or other product; or

"(D) engaged in fraudulent or misleading advertising.

"(e) LINE OF CREDIT.—The term 'line of credit' means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

"(f) DUE DILIGENCE.—The term 'due diligence' requires the utilization by a lender, in the servicing and collection of loans insured under this part, of collection practices at least as extensive and forceful as those generally practiced by financial institutions for the collection of consumer loans.

"(g) TEMPORARILY TOTALLY DISABLED.—

"(1) IN GENERAL.—The term 'temporarily totally disabled' when used with respect to a borrower means a borrower who, by reason of injury or illness, cannot be expected to be able to attend an eligible institution or to be gainfully employed during a reasonable period of recovery from such injury or illness not to exceed 3 years.

"(2) DISABLED DEPENDENT OF A BORROWER.—Such term when used with respect to the disabled dependent of a single parent borrower means a dependent who, by reason of injury or illness, cannot be expected to be able to attend school or to be gainfully employed during a period of injury or illness of not less than 3 months and who during such period requires continuous nursing or similar services.

"(3) DETERMINATIONS.—The determination that a borrower, or dependent of the borrower is temporarily totally disabled must be established by a sworn affidavit of a qualified physician.

"(h) DEFINITION OF PARENTAL LEAVE.—The term 'parental leave' means a period—

"(1) during which the borrower is pregnant, caring for his or her newborn child, or caring for his or her child immediately following the placement of the child through adoption;

"(2) during which such borrower is not in attendance at an eligible institution or gainfully employed; and

"(3) which follows, by 6 months or less, a period during which the borrower was enrolled in at least a half-time course of study at an eligible institution.

"(i) HOLDER.—The term 'holder' means an eligible lender in possession of a loan.

"(j) GUARANTY AGENCY.—The term 'guaranty agency' means any State or nonprofit private institution or organization with which the Secretary has an agreement under section 428(b).

"(k) INSURANCE BENEFICIARY.—The term 'insurance beneficiary' means the insured or its authorized representative assigned in accordance with section 429(d).

"(l) DEFAULT.—The term 'default' includes only such defaults as have existed for (1) 180 days in the case of a loan which is repayable in monthly installments, or (2) 240 days in the case of a loan which is repayable in less frequent installments.

"DISTRICT OF COLUMBIA STUDENT LOAN INSURANCE PROGRAM

"SEC. 436. (a) AUTHORITY.—The government of the District of Columbia is authorized (1) to establish a student loan insurance program which meets the requirements of this part for a State loan insurance program in order to enter into agreements with the Secretary for the purposes of this title, (2) to enter into such agreements with the Secretary, (3) to use amounts appropriated for the purposes of this section to establish a fund for such purposes and for expenses in connection therewith, and (4) to accept and use donations for the purposes of this section.

"(b) BINDING EFFECT ON MINORS.—Notwithstanding the provisions of any applicable law, if the borrower, on any loan insured under the program established pursuant to this section, is a minor, any otherwise valid vote or other written agreement executed by him for the purposes of such loan shall create a binding obligation.

"(c) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated such amounts as may be necessary for the purposes of this section.

"REPAYMENT BY THE SECRETARY OF LOANS OF BANKRUPT, DECEASED, OR DISABLED BORROWERS

"SEC. 437. (a) REPAYMENT IN FULL.—If a student borrower who has received a loan described in subparagraph (A) or (B) of section 428(a)(1) dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), then the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan.

"(b) REPAYMENT OF AMOUNT DISCHARGED.—If a student borrower who has received a loan described in subparagraph (A) or (B) of section 428(a)(1) is relieved of his obligation to repay such loan, in whole or in part, through a discharge in bankruptcy, the Secretary shall repay the amount of the loan so discharged.

"SPECIAL ALLOWANCES

"SEC. 438. (a) FINDINGS.—In order to assure (1) that the limitation on interest payments or other conditions (or both) on loans made or insured under this part, do not impede or threaten to impede the carrying out of the purposes of this part or do not cause the return to holders of loans to be less than equitable, (2) that incentive payments on such loans are paid promptly to eligible lenders, and (3) that appropriate consideration of relative administrative costs and money market conditions is made in setting the quarterly rate of such payments, the Congress finds it necessary to establish an improved method for the determination of the quarterly rate of the special allowances on such loans, and to provide for a thorough, expeditious, and objective examination of alternative methods for the determination of the quarterly rate of such allowances.

"(b) COMPUTATION AND PAYMENT.—

"(1) QUARTERLY PAYMENT BASED ON UNPAID BALANCE.—A special allowance shall be paid for each of the 3-month periods ending March 31, June 30, September 30, and December 31 of every year and the amount of such allowance paid to any holder with respect to any 3-month period shall be a percentage of the average unpaid balance of principal (not including unearned interest added to principal) of all eligible loans held by such holder during such period.

"(2) RATE OF SPECIAL ALLOWANCE.—(A) Subject to subparagraphs (B), (C), and (D) and paragraph (4), the special allowance paid pursuant to this subsection on loans shall be computed (i) by determining the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period, (ii) by subtracting the applicable interest rate on such loans from such average, (iii) by adding 3.25 percent to the resultant percent, and (iv) by dividing the resultant percent by 4.

"(B)(i) The quarterly rate of the special allowance for holders of loans which were made or purchased with funds obtained by the holder from the issuance of obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954 shall be one-half the quarterly rate of the special allowance established under subparagraph (A), except that, in determining the rate for the purpose of this division, subparagraph (A)(iii) shall be applied by substituting '3.5 percent' for '3.25 percent'. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interests or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds. This subparagraph shall not apply to loans which were made or insured prior to October 1, 1980.

"(ii) The rate set under division (i) shall not be less than (I) 2.5 percent per year in the case of loans for which the applicable interest rate is 7 percent per year, (II) 1.5 percent per year in the case of loans for which the applicable interest rate is 8 percent per year, or (III) 0.5 percent in the case of loans for which the applicable rate is 9 percent per year.

"(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with subsection (c) of this section.

"(C) In the case of loans made pursuant to section 428A or 428B for which the interest rate is determined under section 427A(c)(4), a special allowance shall not be paid unless the rate determined for any 12-month period under subparagraph (B) of such section exceeds 12.5 percent.

"(D)(i) In the case of loans made directly from funds loaned or advanced pursuant to a qualified State obligation, subparagraph (A)(iii) shall be applied by substituting '3.5 percent' for '3.25 percent'.

"(ii) For the purpose of division (i) of this subparagraph, the term 'qualified State obligation' means—

"(I) an obligation of the Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

"(II) an obligation of the South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

"(3) CONTRACTUAL RIGHT OF HOLDERS TO SPECIAL ALLOWANCE.—The holder of an eligible loan shall be deemed to have a contractual right against the United States, during the life of such loan, to receive the special allowance according to the provisions of this section. The special allowance determined for any such 3-month period shall be paid promptly after the close of such period, and without administrative delay after receipt of an accurate and complete request for payment, pursuant to procedures established by regulations promulgated under this section.

"(4) PENALTY FOR LATE PAYMENT.—(A) If payments of the special allowances payable under this section or of interest payments under section 428(a) with respect to a loan have not been made within 30 days after the Secretary has received an accurate, timely, and complete request for payment thereof, the special allowance payable to such holder shall be increased by an amount equal to the daily interest accruing on the special allowance and interest benefits payments due the holder.

"(B) Such daily interest shall be computed at the daily equivalent rate of the sum of the special allowance rate computed pursuant to paragraph (2) and the interest rate applicable to the loan and shall be paid for the later of (i) the 31st day after the receipt of such request for payment from the holder, or (ii) the 31st day after the final day of the period or periods covered by such request, and shall be paid for each succeeding day until, and including, the date on which the Secretary authorizes payment.

"(C) For purposes of reporting to the Congress the amounts of special allowances paid under this section, amounts of special allowances paid pursuant to this paragraph shall be segregated and reported separately.

"(5) DEFINITION OF ELIGIBLE LOAN.—As used in this section, the term 'eligible loan' means a loan—

"(A)(i) on which a portion of the interest is paid on behalf of the student and for the student's account to the holder of the loan under section 428(a);

"(ii) which is made under section 428A, 428B, 428C, or 439(o); or

"(iii) which was made prior to October 1, 1981; and

"(B) which is insured under this part, or made under a program covered by an agreement under section 428(b) of this Act.

"(6) REGULATION OF TIME AND MANNER OF PAYMENT.—The Secretary shall pay the holder of an eligible loan, at such time or times as are specified in regulations, a special allowance prescribed pursuant to this subsection subject to the condition that such holder shall submit to the Secretary, at such time or times and in such a manner as the Secretary may deem proper, such information as may be required by regulation for the purpose of enabling the Secretary to carry out his functions under this section and to carry out the purposes of this section.

"(c) ORIGINATION FEES.—

"(1) DEDUCTION FROM INTEREST AND SPECIAL ALLOWANCE SUBSIDIES.—Notwithstanding subsection (b), the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, to any holder shall be reduced by the Secretary by the amount which the lender is authorized to charge as an origination fee in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, is less than the amount the lender was authorized to charge borrowers for origination fees in that quarter, the Secretary shall deduct the excess amount from the subsequent quarters' payments until the total amount has been deducted.

"(2) AMOUNT OF ORIGINATION FEES.—With respect to any loan (other than loans made under sections 428A, 428B, 428C, and 439(o)) for which a completed note or other written evidence of the loan was sent or delivered to the borrower for signing on or after 10 days after the date of enactment of the Postsecondary Student Assistance Amendments of 1981, each eligible lender under this part is authorized to charge the borrower an origination fee in an amount not to exceed 5 per-

cent of the principal amount of the loan, to be deducted proportionately from each installment payment of the proceeds of the loan prior to payment to the borrower.

"(3) RELATION TO APPLICABLE INTEREST.—Such origination fee shall not be taken into account for purposes of determining compliance with section 427A.

"(4) DISCLOSURE REQUIRED.—The lender shall disclose to the borrower the amount and method of calculating the origination fee.

"(5) PROHIBITION ON DEPARTMENT COMPELLING ORIGINATION FEE COLLECTIONS BY LENDERS.—Nothing in this subsection shall be construed to permit the Secretary to require any lender that is making loans that are insured or guaranteed under this part, but for which no amount will be payable for interest under section 428(a)(3)(A) or for special allowances under subsection (b) of this section, to collect any origination fee or to submit the sums collected as origination fees to the United States. The Secretary shall, not later than January 1, 1987, return to any such lender any such sums collected before the enactment of this paragraph, together with interest thereon.

"(d) LENDING FROM PROCEEDS OF TAX EXEMPT OBLIGATIONS.—

"(1) PLAN FOR DOING BUSINESS REQUIRED.—In order for the holders of loans any portion of which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, to be eligible to receive a special allowance under subsection (b)(2) of this section, the Authority shall submit to the Governor of the State, and to the guaranty agency determined by the Secretary to be the principal guaranty agency for the State, a plan for doing business. The Governor shall, after consultation with the guaranty agency, approve or disapprove the plan within 30 days of the receipt of the proposed plan from the Authority. Such plan shall also be transmitted to the Secretary within 60 days after approval.

"(2) CONTENTS OF PLAN.—Each such plan shall contain provisions designed to assure that—

"(A) no eligible lender in the area served by the Authority will be excluded from participation in the program of the Authority and all eligible lenders may participate in the program on the same terms and conditions if eligible lenders are going to participate in the program;

"(B) no director or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation from, any agency that would contract to service and collect the loans of the Authority;

"(C) student loans will not be purchased from participating lenders at a premium or discount amounting to more than 1 percent of the unpaid principal amount borrowed plus accrued interest to the date of acquisition, but a reasonable loan transfer fee may be paid by the purchaser;

"(D) the Authority will, within the limit of funds available and subject to the applicable State and Federal law, make loans to, or purchase loans incurred by, all eligible students who are residents of, or who attend an eligible institution within, the area served by the Authority;

"(E) the Authority has a plan under which the Authority will pursue the development of new lender participation in a continuing program of benefits to students together with assurances of existing lender commitments to the program; and

"(F) there will be an annual audit of the Authority by a certified public accounting firm which will include review of compliance by the Authority with the provisions of the plan.

"(3) NONDISCRIMINATION.—In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under the Internal Revenue Code of 1954, to be eligible to receive a special allowance under subsection (b)(2) of this section on any such loans, the Authority shall not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, length of the borrower's educational program, or the borrower's academic year in school.

"(4) REPORT BY THE SECRETARY.—The Secretary shall, no later than September 30, 1988, and each succeeding September 30th, submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate specifying—

"(A) the amount of student loan credit provided through the use of tax-exempt obligations for the most recent fiscal year;

"(B) an assessment of the impact of the availability of such financing on the availability of student credit in the areas served by the authorities issuing such obligations;

"(C) an assessment of the need for additional tax-exempt financing for student credit for the next fiscal year, as evidenced by the information submitted under paragraph (2)(G) of this subsection; and

"(D) any other information determined by the Secretary to be relevant to the purposes of the report.

"(e) REGULATIONS TO PREVENT DENIAL OF LOANS TO ELIGIBLE STUDENTS.—The Secretary shall adopt or amend appropriate regulations pertaining to programs carried out under this part to prevent, where practicable, any practices which the Secretary finds have denied loans to a substantial number of eligible students.

"STUDENT LOAN MARKETING ASSOCIATION

"SEC. 439. (a) PURPOSE.—The Congress hereby declares that it is the purpose of this section (1) to establish a private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for student loans, including loans which are insured by the Secretary under this part or by a guaranty agency, and which will provide liquidity for student loan investments; (2) in order to facilitate secured transactions involving student loans, to provide for perfection of security interests in student loans either through the taking of possession or by notice filing; and (3) to assure nationwide the establishment of adequate loan insurance programs for students, to provide for an additional program of loan insurance to be covered by agreements with the Secretary.

"(b) ESTABLISHMENT.—

"(1) IN GENERAL.—There is hereby created a body corporate to be known as the Student Loan Marketing Association (hereinafter referred to as the 'Association'). The Association shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Association in such other place or places as it may deem necessary or appropriate for the conduct of its business.

"(2) EXEMPTION FROM STATE AND LOCAL TAXES.—The Association, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the Association shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

"(3) APPROPRIATIONS AUTHORIZED FOR ESTABLISHMENT.—There is hereby authorized to be appropriated to the Secretary $5,000,000 for making advances for the purpose of helping to establish the Association. Such advances shall be repaid within such period as the Secretary may deem to be appropriate in light of the maturity and solvency of the Association. Such advances shall bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining period to maturity comparable to the maturity of such advances, adjusted to the nearest one-eighth of 1 percent, plus (B) an allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses. Repayments of such advances shall be deposited into miscellaneous receipts of the Treasury.

"(c) BOARD OF DIRECTORS.—

"(1) BOARD MEMBERSHIP.—The Association shall have a Board of Directors which shall consist of twenty-one persons, one of whom shall be designated Chairman by the President.

"(2) INTERIM BOARD.—An interim Board of Directors shall be appointed by the President, one of whom he shall designate an interim Chairman. The interim Board shall consist of twenty-one members, seven of whom shall be representative of banks or other financial institutions which are insured lenders pursuant to this section, seven of whom shall be representative of educational institutions, and seven of whom shall be representative of the general public. The interim Board shall arrange for an initial offering of common and preferred stocks and take whatever other actions are necessary to proceed with the operations of the Association.

"(3) REGULAR BOARD.—When, in the judgment of the President, sufficient common stock of the Association has been purchased by educational institutions and banks or other financial institutions, the holders of common stock which are educational institutions shall elect seven members of the Board of Directors and the holders of common stock which are banks or other financial institutions shall elect seven members of the Board of Directors. The President shall appoint the remaining seven directors, who shall be representative of the general public.

"(4) SUCCESSION OF REGULAR BOARD.—At the time the events described in paragraph (3) have occurred, the interim Board shall turn over the affairs of the Association to the regular Board so chosen or appointed.

"(5) TERMS OF APPOINTED AND ELECTED MEMBERS.—The directors appointed by the President shall serve at the pleasure of the Presi-

dent and until their successors have been appointed and have qualified. The remaining directors shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Association, and shall serve until their successors have been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

"(6) MEETINGS AND FUNCTIONS OF BOARD.—The Board of Directors shall meet at the call of its Chairman, but at least semiannually. The Board shall determine the general policies which shall govern the operations of the Association. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Association and shall discharge all such executive functions, powers, and duties.

"(d) AUTHORITY OF ASSOCIATION.—

"(1) IN GENERAL.—The Association is authorized, subject to the provisions of this section—

"(A) pursuant to commitments or otherwise to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations, or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Association, student loans which are insured by the Secretary under this part or by a guaranty agency;

"(B) to buy, sell, hold, underwrite, and otherwise deal in obligations, if such obligations are issued, for the purpose of making or purchasing insured loans, by a guaranty agency or by an eligible lender in a State described in section 435(d)(1) (D) or (F);

"(C) to buy, sell, hold, insure, underwrite, and otherwise deal in obligations issued for the purpose of financing or refinancing the construction, reconstruction, renovation, or purchase of educational and training facilities and housing for students and faculties (including the underlying real property), and related equipment, instrumentation, and furnishings;

"(D) to undertake a program of loan insurance pursuant to agreements with the Secretary under section 428, and except with respect to loans under subsection (o) of this section or under section 428C, the Secretary may enter into an agreement with the Association for such purpose only if the Secretary determines that (i) eligible borrowers are seeking and unable to obtain loans under this part, and (ii) no guaranty agency is capable of or willing to provide a program of loan insurance for such borrowers; and

"(E) to undertake any other activity which the Board of Directors of the Association determines to be in furtherance of the programs of insured student loans authorized under this part or will otherwise support the credit needs of students, except that—

"(i) in carrying out all such activities the purpose shall always be to provide secondary market and other support for lending programs offered by other organizations and not to replace or compete with such other programs;

"(ii) nothing in this subparagraph (E) shall be deemed to authorize the Association to acquire, own, operate, or control any bank, savings and loan association, savings bank or credit union; and

"(iii) not later than 30 days prior to the initial implementation of a program undertaken pursuant to this subparagraph (E), the Association shall advise the Chairman and the Ranking Member on the Committee on Human Resources of the Senate and the Chairman and the Ranking Member of the Committee on Education and Labor of the House of Representatives in writing of its plans to offer such program and shall provide information relating to the general terms and conditions of such program.

The Association is further authorized to undertake any activity with regard to student loans which are not insured or guaranteed as provided for in this subsection as it may undertake with regard to insured or guaranteed student loans. Any warehousing advance made on the security of such loans shall be subject to the provisions of paragraph (3) of this subsection to the same extent as a warehousing advance made on the security of insured loans.

"(2) WAREHOUSING ADVANCES.—Any warehousing advance made under paragraph (1)(A) of this subsection shall be made on the security of (A) insured loans, (B) marketable obligations and securities issued, guaranteed, or insured by, the United States, or for which the full faith and credit of the United States is pledged for the repayment of principal and interest thereof, or (C) marketable obligations issued, guaranteed, or insured by any agency, instrumentality, or corporation of the United States for which the credit of such agency, instrumentality, or corporation is pledged for the repayment of principal and interest thereof, in an amount equal to the amount of such advance. The proceeds of any such advance secured by insured loans shall either be invested in additional insured loans or the lender shall provide assurances to the Association that during the period of the borrowing it will maintain a level of insured loans in its portfolio not less than the aggregate outstanding balance of such loans held at the time of the borrowing. The proceeds from any such advance secured by collateral described in clauses (B) and (C) shall be invested in additional insured student loans.

"(3) PERFECTION OF SECURITY INTERESTS IN STUDENT LOANS.—Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect in any State, a security interest in insured student loans created on behalf of the Association or any eligible lender as defined in section 435(a) may be perfected either through the taking of possession of such loans or by the filing of notice of such security interest in such loans in the manner provided by such State law for perfection of security interests in accounts.

"(4) FORM OF SECURITIES.—Securities issued pursuant to the offering of participations or pooled interests under paragraph (1) of this subsection may be in the form of debt obligations, or trust certificates of beneficial ownership, or both. Student loans set aside pursuant to the offering of participations or pooled interests shall at all times be adequate to ensure the timely principal and interest payments on such securities.

"(5) RESTRICTIONS ON FACILITIES AND HOUSING ACTIVITIES.—Not less than 75 percent of the aggregate dollar amount of obligations bought, sold, held, insured, underwritten, and otherwise supported in accordance with the authority contained in paragraph (1)(C) shall be obligations which are listed by a nationally recognized statistical rating organization at a rating below the third highest rating of such organization.

"(e) ADVANCES TO LENDERS THAT DO NOT DISCRIMINATE.—The Association, pursuant to such criteria as the Board of Directors may prescribe, shall make advances on security or purchase student loans pursuant to subsection (d) only after the Association is assured that the lender (1) does not discriminate by pattern or practice against any particular class or category of students by requiring that, as a condition to the receipt of a loan, the student or his family maintain a business relationship with the lender, except that this clause shall not apply in the case of a loan made by a credit union, savings and loan association, mutual savings bank, institution of higher education, or any other lender with less than $75,000,000 in deposits, and (2) does not discriminate on the basis of race, sex, color, creed, or national origin.

"(f) STOCK OF THE ASSOCIATION.—

"(1) COMMON STOCK TO INSURED LENDERS AND ELIGIBLE INSTITUTIONS ONLY.—The Association shall have common stock having such par value as may be fixed by its Board of Directors from time to time which may be issued only to lenders under this part, pertaining to guaranteed student loans, who are qualified as insured lenders under this part or who are eligible institutions, as defined in section 435(a), other than an institution outside of the United States.

"(2) VOTING RIGHTS.—Each share of common stock shall be entitled to one vote with rights of cumulative voting at all elections of Directors. Voting shall be by classes as described in subsection (c)(3).

"(3) NUMBER OF SHARES; TRANSFERABILITY.—The maximum number of shares of common stock that the Association may issue and have outstanding at any one time shall be fixed by the Board of Directors from time to time. Any common share issued shall be fully transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

"(4) DIVIDENDS.—To the extent that net income is earned and realized, subject to subsection (g)(2), dividends may be declared on common stock and nonvoting common stock by the Board of Directors. Such dividends as may be declared by the Board shall be paid to the holders of outstanding shares of common stock and nonvoting common stock, except that no such dividends shall be payable with respect to any share which has been called for redemption past the effective date of such call.

"(5) NONVOTING COMMON STOCK.—The Association is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. Any nonvoting common stock shall be freely transferable, except that, as to the Association, it shall be transferable only on the books of the Association.

"(g) PREFERRED STOCK.—

"(1) AUTHORITY OF BOARD.—The Association is authorized to issue nonvoting preferred stock having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Association, it shall be transferred only on the books of the Association.

"(2) RIGHTS OF PREFERRED STOCK.—The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share

of common stock at any time when any dividend is due on any share of preferred stock and has not been paid.

"(3) PREFERENCE ON TERMINATION OF BUSINESS.—In the event of any liquidation, dissolution or winding up of the Association's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

"(h) DEBT OBLIGATIONS.—

"(1) APPROVAL BY SECRETARIES OF EDUCATION AND THE TREASURY.—The Association is authorized with the approval of the Secretary of Education and the Secretary of the Treasury to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association. The authority of the Secretary of Education to approve the issuance of such obligations is limited to obligations issued by the Association and guaranteed by the Secretary pursuant to paragraph (2) of this subsection. Such obligations may be redeemable at the option of the Association before maturity in such manner as may be stipulated therein. The Secretary of the Treasury may not direct as a condition of his approval that any such issuance of obligations by the Association be made or sold to the Federal Financing Bank. To the extent that the average outstanding amount of the obligations owned by the Association pursuant to the authority contained in subsection (d)(1) (B) and (C) of this section and as to which the income is exempt from taxation under the Internal Revenue Code of 1954 does not exceed the average stockholders' equity of the Association, the interest on obligations issued under this paragraph shall not be deemed to be interest on indebtedness incurred or continued to purchase or carry obligations for the purpose of section 265 of the Internal Revenue Code of 1954.

"(2) GUARANTEE OF DEBT.—The Secretary is authorized, prior to October 1, 1984, to guarantee payment when due of principal and interest on obligations issued by the Association in an aggregate amount determined by the Secretary in consultation with the Secretary of the Treasury. Nothing in this section shall be construed so as to authorize the Secretary of Education or the Secretary of the Treasury to limit, control, or constrain programs of the Association or support of the Guaranteed Student Loan Program by the Association.

"(3) BORROWING AUTHORITY TO MEET GUARANTEE OBLIGATIONS.—To enable the Secretary to discharge his responsibilities under guarantees issued by him, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the months preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. There is authorized to be appropriated to the Secretary such sums as may be necessary to pay the principal and interest on the notes or obligations issued by him to the Secretary of the Treasury.

"(4) ACTION ON REQUEST FOR GUARANTEES.—Upon receipt of a request from the Association under this subsection requiring approvals by the Secretary of Education or the Secretary of the Treasury, the Secretary of Education or the Secretary of the Treasury shall act promptly either to grant approval or to advise the Association of the reasons for withholding approval. In no case shall such an approval be withheld for a period longer than 60 days unless, prior to the end of such period, the Secretary of Education and the Secretary of the Treasury submit to the Congress a detailed explanation of reasons for doing so.

"(5) AUTHORITY OF TREASURY TO PURCHASE DEBT.—The Secretary of the Treasury is authorized to purchase any obligations issued by the Association pursuant to this subsection as now or hereafter in force, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force are extended to include such purchases. The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $1,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public debt transactions of the United States.

"(6) SALE OF DEBT TO FEDERAL FINANCING BANK.—Notwithstanding any other provision of law the Association is authorized to sell or issue obligations on the security of student loans, the payment of interest or principal of which has at any time been guaranteed under section 428 or 429 of this part, to the Federal Financing Bank.

"(i) GENERAL CORPORATE POWERS.—The Association shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

"(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Association;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(j) ACCOUNTING, AUDITING, AND REPORTING.—The accounts of the Association shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States, except that independent public accountants licensed to practice by such regulatory authority after December 31, 1970, and persons who, although not so certified or licensed, meet, in the opinion of the Secretary, standards of education and experience representative of the highest standards prescribed by the licensing authorities of the several States which provide for the continuing licensing of public accountants and which are prescribed by the Secretary in appropriate regulations may perform such audits until December 31, 1975. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Association and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

"(k) REPORT ON AUDITS BY TREASURY.—A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of

the Association, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Secretary, and to the Association.

"(l) LAWFUL INVESTMENT INSTRUMENTS; EFFECT OF AND EXEMPTIONS FROM OTHER LAWS.—All obligations issued by the Association including those made under subsection (d)(4) shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Association shall, for the purposes of section 14(b)(2) of the Federal Reserve Act, be deemed to be an agency of the United States. The obligations of the Association shall be deemed to be obligations of the United States for the purpose of section 3124 of title 31, United States Code. For the purpose of the distribution of its property pursuant to section 726 of title 11, United States Code, the Association shall be deemed a person within the meaning of such title. The priority established in favor of the United States by section 3713 of title 31, United States Code, shall not establish a priority over the indebtedness of the Association issued or incurred on or before September 30, 1992. The Federal Reserve Banks are authorized to act as depositaries, custodians, or fiscal agents, or a combination thereof, for the Association in the general performance of its powers under this section.

"(m) PREPARATION OF OBLIGATIONS.—In order to furnish obligations for delivery by the Association, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Board of Directors may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Association. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Association shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations. The Secretary of the Treasury is authorized to promulgate regulations on behalf of the Association so that the Association may utilize the book-entry system of the Federal Reserve Banks.

"(n) REPORT ON OPERATIONS AND ACTIVITIES.—The Association shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress a report of its operations and activities during each year.

"(o) LOAN CONSOLIDATIONS.—

"(1) IN GENERAL.—The Association or its designated agent may, upon request of a borrower, consolidate loans received under this title in accordance with section 428C.

"(2) USE OF EXISTING AGENCIES AS AGENT.—The Association in making loans pursuant to this subsection in any State served by a guaranty agency or an eligible lender in a State described in section 435(d)(1) (D) or (F) may designate as its agent such agency or lender to perform such functions as the Association determines appropriate. Any agreements made pursuant to this subparagraph shall be on such terms and conditions as agreed upon by the Association and such agency or lender.

"(p) ADVANCES FOR DIRECT LOANS BY GUARANTY AGENCIES.—

"(1) IN GENERAL.—The Association shall make advances in each fiscal year from amounts available to it to each guaranty agency and eligible lender described in subsection 428(h)(1) which has an agreement with the Association which sets forth that advances are necessary to enable such agency or lender to make student loans in accordance with section 428(h) and that such advances will be repaid to the Association in accordance with such terms and conditions as may be set forth in the agreement and agreed to by the Association and such agency or lender. Advances made under this subsection shall not be subject to subsection (d)(2) of this section.

"(2) LIMITATION.—No advance may be made under this subsection unless the guaranty agency or lender makes an application to the Association, which shall be accompanied by such information as the Association determines to be reasonably necessary.

"(q) LENDER OF LAST RESORT.—

"(1) ACTION AT REQUEST OF SECRETARY.—(A) Whenever the Secretary determines that eligible borrowers in a State not served by a guaranty agency or an eligible lender in a State described in section 435(d)(1) (D) or (F) are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary. The Association shall give preference to such States in making loans under this subsection.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1).

"(2) ISSUANCE AND COVERAGE OF LOANS.—(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 435(d)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent may begin making loans in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in subparagraph (A) having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

"(3) TERMINATION OF LENDING.—The Association or its designated agent shall cease making loans under this part in any State at such time as it is determined by the Secretary, with regard to loans made under paragraph (1), or by any party to the agreement required by paragraph (2), that—

"(A) the conditions which caused the implementation of this subsection have ceased to exist; or

"(B) the implementation of this subsection has either (i) further reduced the availability of loans from other sources in the applicable geographical area, or (ii) inhibited the formation in a State of an agency which would have an agreement pursuant to section 428(b) of this part which would have the responsibility of developing local sources of funds for student loans.".

(b) EFFECTIVE DATES.—The changes made in part B of title IV of the Act by the amendment made by subsection (a) of this section shall take effect on the date of enactment of this Act, except—

(1) as otherwise provided in such part B;

(2) the changes in sections 427(a)(2)(C) and 428(b)(1)(M) of the Act shall apply only to loans made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, to individuals who are new borrowers on that date;

(3) the changes made in sections 425(a), 428(b)(1)(A), and 428(b)(1)(B) of the Act shall apply with respect only to loans made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

(4) the changes made in subsections (a), (b), and (d) of section 433 of the Act shall apply with respect only to loans made to cover the costs of instruction for periods of enrollment beginning on or after January 1, 1987;

(5) the changes in section 428(b)(1)(H) shall apply with respect only to loans for which the borrower files an application on or after July 1, 1987;

(6) the changes in sections 435(d)(5) and 438(d) of the Act shall take effect 30 days after the date of enactment of this Act; and

(7) the changes made in section 438(b) shall take effect with respect to loans made to cover the costs of instruction for periods of enrollment beginning on or after 30 days after the date of enactment of this Act.

(c) CHANGES EFFECTIVE WITHOUT REGARD TO REGULATIONS; REPUBLICATION OF REGULATIONS.—The changes made in part B of title IV of the Act by the amendment made by subsection (a) of this section shall be effective in accordance with subsection (b) of this section without regard to whether such changes are reflected in the regulations prescribed by the Secretary of Education for the purpose of such part.

(d) NEW BORROWERS.—For the purpose of this section, the term "new borrower" means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under part B of title IV of the Act.

SEC. 403. WORK-STUDY REAUTHORIZED.

(a) AMENDMENT.—Part C of title IV of the Act is amended to read as follows:

"PART C—WORK-STUDY PROGRAMS

"PURPOSE; APPROPRIATIONS AUTHORIZED

"SEC. 441. (a) PURPOSE.—The purpose of this part is to stimulate and promote the part-time employment of students who are enrolled as undergraduate, graduate, or professional students and who are in need of earnings from employment to pursue courses of study at eligible institutions.

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part $656,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years.

"ALLOCATION OF FUNDS

"SEC. 442. (a) ALLOCATION BASED ON PREVIOUS ALLOCATION.—(1) From the amount ap-

propriated pursuant to section 441(b) for each fiscal year, the Secretary shall first allocate to each eligible institution for each succeeding fiscal year, an amount equal to 100 percent of the amount such institution received and used under this part for fiscal year 1985.

"(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1985 but is not a first or second time participant, an amount equal to the greater of—

"(i) $5,000; or

"(ii) 90 percent of the amount received and used under this part for the first year it participated in the program.

"(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1985 and is a first or second time participant, an amount equal to the greatest of—

"(i) $5,000;

"(ii) an amount equal to (I) 90 percent of the amount received and used under this part in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

"(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

"(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

"(i) was a first-time participant in the program in fiscal year 1986 or any subsequent fiscal year, and

"(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

"(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

"(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

"(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

"(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

"(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

"(b) ALLOCATION OF EXCESS BASED ON PRO RATA SHARE.—From one-quarter of the remainder of the amount appropriated pursuant to section 441(b) for any fiscal year (after making the allocations required by subsection (a)), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as the amount the eligible institution receives for such fiscal year under subsection (a) bears to the amount all such institutions receive under such subsection (a).

"(c) ALLOCATION OF EXCESS BASED ON SHARE OF EXCESS ELIGIBLE AMOUNTS.—(1) From three-quarters of the remainder of the amount appropriated pursuant to section 441(b) after making the allocations required by subsection (a), the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

"(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

"(A)(i) the amount of that institution's need (as determined under subsection (d)), divided by (ii) the sum of the need of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 441(b) for the fiscal year; exceeds

"(B) the amount required to be allocated to that institution under subsection (a).

"(d) DETERMINATION OF INSTITUTION'S NEED.—(1) The amount of an institution's need is equal to the sum of the self-help need of the institution's eligible undergraduate students and the self-help need of the institution's eligible graduate and professional students.

"(2) To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall—

"(A) establish various income categories for dependent and independent undergraduate students;

"(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title) of a representative sample within each income category for the second preceding fiscal year;

"(C) compute 25 percent of the average cost of attendance for all undergraduate students;

"(D) multiply the number of eligible dependent students in each income category by the lesser of—

"(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

"(E) add the amounts determined under subparagraph (D) for each income category of dependent students; and

"(F) multiply the number of eligible independent students in each income category by the lesser of—

"(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

"(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

"(H) add the amounts determined under subparagraphs (E) and (G).

"(3) To determine the self-help need of an institution's eligible graduate and professional students, the Secretary, for academic year 1988–1989 shall use the procedures employed for academic year 1986–1987, and, for any subsequent academic years, the Secretary shall—

"(A) establish various income categories of graduate and professional students;

"(B) establish an expected family contribution for each income category of graduate and professional students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title) of a representative sample within each income category for the second preceding fiscal year;

"(C) determine the average cost of attendance for all graduate and professional students;

"(D) subtract from the average cost of attendance for all graduate and professional students (determined under subparagraph (C)), the expected family contribution (determined under subparagraph (B)) for each income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

"(E) multiply the amounts determined under subparagraph (D) by the number of eligible students in each category; and

"(F) add the amounts determined under subparagraph (E) of this paragraph for each income category.

"(4)(A) For purposes of paragraphs (2) and (3), the term 'average cost of attendance' means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

"(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

"(C) The standard living expense described in subparagraph (A)(ii) is equal to three-fourths in the Pell Grant family size offset for a single independent student.

"(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $450.

"(e) REALLOCATION OF EXCESS ALLOCATIONS.—(1) If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall reallocate such excess in accordance with paragraph (2). Any sums reallocated under this subsection may be used in accordance with section 445(a)(2).

"(2) The Secretary shall reallot 25 percent of the amount available pursuant to paragraph (1) to eligible institutions for use in initiating, improving, and expanding programs of community service-learning conducted in accordance with section 448 of this part. The Secretary shall allocate the remainder of the amounts available pursuant to paragraph (1) to eligible institutions based upon the criteria described in subsection (c).

"(f) FILING DEADLINES.—The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

"GRANTS FOR WORK-STUDY PROGRAMS

"SEC. 443. (a) AGREEMENTS REQUIRED.—The Secretary is authorized to enter into agreements with institutions of higher education under which the Secretary will make grants to such institutions to assist in the operation of work-study programs as provided in this part.

"(b) CONTENTS OF AGREEMENTS.—An agreement entered into pursuant to this section shall—

"(1) provide for the operation by the institution of a program for the part-time employment of its students in work for the institution itself or work in the public interest for a Federal, State, or local public agency or private nonprofit organization under an arrangement between the institution and such agency or organization, and such work—

"(A) will not result in the displacement of employed workers or impair existing contracts for services;

"(B) will be governed by such conditions of employment as will be appropriate and reasonable in light of such factors as type of work performed, geographical region, and proficiency of the employee;

"(C) does not involve the construction, operation, or maintenance of so much of any facility as is used or is to be used for sectarian instruction or as a place for religious worship; and

"(D) will not pay any wage to students employed under this subpart that is less than the current Federal minimum wage as mandated by section 6(a) of the Fair Labor Standards Act of 1938;

"(2) provide that funds granted an institution of higher education, pursuant to section 443, may be used only to make payments to students participating in work-study programs, except that—

"(A) an institution may use not to exceed 10 percent of the funds granted to the institution in any fiscal year to carry out the work study program described in section 447 at the increased Federal share specified in clause (6)(B) of this subsection, and

"(B) an institution may use a portion of the sums granted to it to meet administrative expenses in accordance with section 489 of this Act, may use a portion of the sums granted to it to meet the cost of a job location and development program in accordance with section 446 of this part, and may transfer funds in accordance with the provisions of section 488 of this Act;

"(3) provide that in the selection of students for employment under such work-study program, only students who demonstrate financial need in accordance with part F of this title, and who meet the requirements of section 484 will be assisted, except that, if the institution's grant under this part is directly or indirectly based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the institution's grant shall be made available to such students;

"(4) provide that for a student employed in a work-study program under this part, at the time income derived from any employment (including non-work-study or both) is in excess of the determination of the amount of such student's need by more than $200, continued employment shall not be subsidized with funds appropriated under this part;

"(5) provide that the Federal share of the compensation of students employed in the work study program in accordance with the agreement will not exceed 80 percent for academic years 1987-1988 and 1988-1989, 75 percent for academic year 1989-1990, and 70 percent for academic year 1990-1991 and succeeding academic years, except that—

"(A) the Federal share may exceed such amounts of such compensation if the Secretary determines, pursuant to regulations promulgated by the Secretary establishing objective criteria for such determinations, that a Federal share in excess of such amounts is required in furtherance of the purpose of this part; and

"(B) the Federal share of the compensation of the students employed in the work study for community service-learning programs described in section 447 from funds available under clause (2)(A) in accordance with the agreement will not exceed 90 percent of such compensation;

"(6) include provisions to make employment under such work-study program reasonably available (to the extent of available funds) to all eligible students in the institution in need thereof, and to make equivalent employment offered or arranged by the institution reasonably available (to the extent of available funds) to all students in the institution who desire such employment;

"(7) provide assurances that employment made available from funds under this part will, to the maximum extent practicable, complement and reinforce the educational program or vocational goals of each student receiving assistance under this part;

"(8) provide assurances, in the case of each proprietary institution, that students attending the proprietary institution receiving assistance under this part who are employed by the institution may be employed in jobs—

"(A) on campus only;

"(B) that, to the maximum extent practicable, complement and reinforce the educational programs or vocational goals of such students; and

"(C) furnishing student services, as determined by the Secretary pursuant to regulations, except that no student shall be employed in any position that would involve the solicitation of other potential students to enroll in the school; and

"(9) include such other reasonable provisions as the Secretary shall deem necessary or appropriate to carry out the purpose of this part.

"(c) PRIVATE SECTOR EMPLOYMENT AGREEMENT.—In addition to the agreement described in subsection (b), an institution of higher education may, at its option, enter into an additional agreement with the Secretary which shall—

"(1) provide for the operation by the institution of a program of part-time employment of its students in work for a private for-profit organization under an arrangement between the institution and such organization that complies with the requirements of subparagraphs (A) through (D) of subsection (b)(1);

"(2) provide that the institution will use not more than 25 percent of the funds made available to such institution under this part for any fiscal year for the operation of the program described in paragraph (1);

"(3) provide that, notwithstanding subsection (b)(5), the Federal share of the compensation of students employed in such program will not exceed 60 percent for academic years 1987-1988 and 1988-1989, 55 percent for academic year 1989-1990, and 50 percent for academic year 1990-1991 and succeeding academic years, and that the non-Federal share of such compensation will be provided by the private for-profit organization in which the student is employed;

"(4) provide that jobs under the work study program will be academically relevant; and

"(5) provide that the for-profit organization will not use funds made available under this part to pay any employee who would otherwise be employed by the organization.

"SOURCES OF MATCHING FUNDS

"SEC. 444. Nothing in this part shall be construed as restricting the source (other than this part) from which the institution may pay its share of the compensation of a student employed under a work-study program covered by an agreement under this part, and such share may be paid to such student in the form of services and equipment (including tuition, room, board, and books) furnished by such institution.

"FLEXIBLE USE OF FUNDS

"SEC. 445. (a) CARRY-OVER AUTHORITY.—(1) Of the sums granted to an eligible institution under this part for any fiscal year, 10 percent may, at the discretion of the institution, remain available for expenditure during the succeeding fiscal year to carry out programs under this part.

"(2) Any of the sums so granted to an institution for a fiscal year which are not needed by that institution to operate work-study programs during that fiscal year, and which it does not wish to use during the next fiscal year as authorized in the preceding sentence, shall remain available to the Secretary for making grants under section 443 to other institutions in the same State until the close of the second fiscal year next succeeding the fiscal year for which such funds were appropriated.

"(b) CARRY-BACK AUTHORITY.—Up to 10 percent of the sums the Secretary determines an eligible institution may receive from funds which have been appropriated for a fiscal year may be used by the Secretary to make grants under this part to such institution for expenditure during the fiscal year preceding the fiscal year for which the sums were appropriated.

"JOB LOCATION AND DEVELOPMENT PROGRAMS

"SEC. 446. (a) AGREEMENTS REQUIRED.—(1) The Secretary is authorized to enter into agreements with eligible institutions under which—

"(A) such institution may use not more than 10 percent or $30,000 of its allotment under section 442, whichever is less, to establish or expand a program under which such institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students; and

"(B) such institution may use not more than 10 percent or $20,000 of its allotment under section 442, whichever is less, to establish or expand a program under which such institution, separately or in combination with other eligible institutions and through formal or informal consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students eligible under this part.

"(2) Jobs located and developed under subparagraph (A) or (B) of paragraph (1) shall be jobs which are suitable to the scheduling and other needs of such students and which, to the maximum extent practicable, comple-

ment and reinforce the educational programs or vocational goals of such students.

"(b) CONTENTS OF AGREEMENTS.—Agreements under subsection (a) shall—

"(1) provide that the Federal share of the cost of any program under this section will not exceed 80 percent of such cost;

"(2) provide satisfactory assurance that funds available under this section will not be used to locate or develop jobs at an eligible institution unless such jobs directly relate to the objectives described in subsection (a)(1)(B) of this section;

"(3) provide satisfactory assurance that the institution will continue to spend in its own job location and development programs, from sources other than funds received under this section, not less than the average expenditures per year made during the most recent 3 fiscal years preceding the effective date of the agreement;

"(4) provide satisfactory assurance that funds available under this section will not be used for the location or development of jobs for students to obtain upon graduation, but rather for the location and development of jobs available to students during and between periods of attendance at such institution;

"(5) provide satisfactory assurance that the location or development of jobs pursuant to programs assisted under this section will not result in the displacement of employed workers or impair existing contracts for services;

"(6) provide satisfactory assurance that Federal funds used for the purpose of this section can realistically be expected to help generate student wages exceeding, in the aggregate, the amount of such funds, and that if such funds are used to contract with another organization, appropriate performance standards are part of such contract; and

"(7) provide that the institution will submit to the Secretary an annual report on the uses made of funds provided under this section and an evaluation of the effectiveness of such program in benefiting the students of such institution.

"(c) DEFINITION OF COMMUNITY SERVICE.—For the purpose of this section, the term 'community services' means services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

"WORK STUDY FOR COMMUNITY SERVICE-LEARNING ON BEHALF OF LOW-INCOME INDIVIDUALS AND FAMILIES

"SEC. 447. (a) PURPOSE.—The purpose of this section is to encourage and enable institutions of higher education to develop work study programs involving eligible students in community service-learning designed to develop, improve, or expand services for low-income individuals and families or to solve particular problems related to the needs of low-income individuals.

"(b) DEFINITIONS.—For the purpose of this section—

"(1) 'community service-learning program' means a program of student work that—

"(A) provides tangible community services for or on behalf of low-income individuals or families; and

"(B) to the maximum extent practicable, provides participating students with work-learning opportunities which complement and reinforce their educational programs or vocational goals; and

"(2) 'community services' means services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement.

"(c) USE OF OTHER FUNDS TO CONDUCT PROGRAM.—Each institution participating under this part may use funds made available under the last sentence of section 489(a) to conduct that institution's program of community service-learning, including—

"(1) development of mechanisms to assure the academic quality of the student experience,

"(2) assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives, and

"(3) collaboration with public and private nonprofit agencies in the planning, development, and administration of such programs.".

(b) EFFECTIVE DATE.—Sections 443(c), 446, and 447 of the Act as amended by this section shall apply to periods of enrollment beginning on or after July 1, 1987.

SEC. 404. DEMONSTRATION PROJECT AUTHORIZED.

The Act is amended by adding after part C the following:

"PART D—INCOME CONTINGENT DIRECT LOAN DEMONSTRATION PROJECT

"STATEMENT OF PURPOSE

"SEC. 451. It is the purpose of this part to examine the feasibility of a direct loan program which uses the income contingent repayment method in order to increase the economic and full use of direct student loan funds.

"DEMONSTRATION PROJECT AUTHORIZED

"SEC. 452. (a) GENERAL AUTHORITY.—The Secretary shall, from the amounts appropriated each fiscal year, carry out demonstration projects in accordance with the provisions of this part.

"(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making contributions to student loan funds established pursuant to this part, there are authorized to be appropriated $5,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(c) ALLOTMENT; MAXIMUM NUMBER OF GRANTS.—(1) The Secretary shall allot the amounts appropriated in each fiscal year pursuant to subsection (b) among institutions of higher education which desire to participate in the pilot project authorized by this part and which have agreements with the Secretary under section 453.

"(2) The Secretary may not enter into agreements with more than 10 institutions of higher education under this part.

"AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION

"SEC. 453. An agreement with an institution of higher education under this part shall—

"(1) provide for the establishment and maintenance of a student loan fund for the purpose of this part;

"(2) provide for the deposit in such fund of Federal capital contributions from funds appropriated pursuant to section 452(b);

"(3) provide for the deposit in such fund of a capital contribution by such institution equal to not less than one-ninth of the amount of the Federal capital contribution described in paragraph (2);

"(4) provide for the deposit in such fund of collections of principal and interest on student loans made from deposited funds and any other earnings of such funds;

"(5) provide that such student loan fund shall be used only for—

"(A) loans to students, in accordance with the provisions of this part,

"(B) administrative expenses; and

"(C) costs of litigation, and other collection costs agreed to by the Secretary in connection with the collection of a loan from the fund (and interest thereon) or a charge assessed pursuant to regulations;

"(6) provide that repayment of the loans made from such student loan funds will be made in accordance with a repayment schedule, which will be adjusted annually on the basis of the total amount borrowed by the student and the income of the student borrower, together with such adjustments in the schedule as the Secretary and the institution determine will best carry out the purpose of this part, except that for the first 2 years of the repayment period the schedule may require a fixed payment plan;

"(7) provide for the distribution of assets from student loan funds under this part in accordance with criteria prescribed by the Secretary, based upon the provisions of section 466; and

"(8) provide for such other assurances and limitations as the Secretary may reasonably require.

"TERMS OF LOAN UNDER THE PILOT PROGRAM

"SEC. 454. (a) CONDITIONS, LIMITATIONS, AND REQUIREMENTS.—(1) Loans from any student loan fund established pursuant to an agreement under section 453, to any student by any institution shall, subject to such conditions, limitations, and requirements as the Secretary shall prescribe by regulation, be made on such terms and conditions as the institution may determine.

"(2) The aggregate amount of all loans made by institutions of higher education from loan funds established pursuant to agreements under this part to any student may not exceed $17,500.

"(3) The total amount of loans made by institutions of higher education from loan funds established pursuant to such agreement for any academic year may not exceed—

"(A) $2,500 in the case of a student who is in the first or second academic year of a program of education leading to a bachelor's degree;

"(B) $3,500 in the case of a student who is in the third such year; and

"(C) $4,500 in the case of a student who is in the fourth and fifth such year.

"(4) The interest rate on all such loans shall be the rate equal to the rate obtained for each calendar year (A) by computing the average of the bond equivalent rates of 91-day Treasury bills auctioned for such 3-month period preceding such year, and (B) by adding 3 percent to the resulting percent.

"(5) Loans made from loan funds established pursuant to such agreements shall contain such agreements for deferments, in-

terest accrual during deferments, and loan cancellation, as are consistent with the provisions of part E of this title, subject to such modifications as the Secretary may, by regulation, prescribe.

"(b) AUTHORITY OF SECRETARY TO PRESCRIBE OTHER TERMS.—The Secretary may by regulation prescribe such other terms for loans made from loan funds established pursuant to such agreements as the Secretary determines will contribute to carrying out the provisions of this part.

"FEASIBILITY STUDY

"SEC. 455. (a) STUDY.—The Secretary shall, based upon the projects assisted under this part, conduct a study of the feasibility of extending the pilot project to a direct student loan fund program of general applicability beginning after September 30, 1990.

"(b) REPORT.—The Secretary shall prepare and submit to the Congress a report on the feasibility study begun pursuant to subsection (a) not later than October 1, 1991, and October 1, 1995, together with such recommendations as the Secretary deems appropriate.".

SEC. 405. AMENDMENT TO PART E OF THE ACT.

(a) AMENDMENT.—Part E of title IV of the Act is amended to read as follows:

"PART E—DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

"APPROPRIATIONS AUTHORIZED

"SEC. 461. (a) PROGRAM AUTHORITY.—The Secretary shall carry out a program of stimulating and assisting in the establishment and maintenance of funds at institutions of higher education for the making of low-interest loans to students in need thereof to pursue their courses of study in such institutions. Loans made under this part shall be known as 'Perkins Loans'.

"(b) AUTHORIZATION OF APPROPRIATIONS.—(1) For the purpose of enabling the Secretary to make contributions to student loan funds established under this part, there are authorized to be appropriated $268,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(2) In addition there are hereby authorized to be appropriated such sums for fiscal year 1991 and each of the five succeeding fiscal years as may be necessary to enable students who have received loans for academic years ending prior to October 1, 1991, to continue or complete courses of study.

"(c) USE OF APPROPRIATIONS.—Any sums appropriated pursuant to subsection (b) for any fiscal year shall be available for apportionment pursuant to section 462 and for payments of Federal capital contributions therefrom to institutions of higher education which have agreements with the Secretary under section 463. Such Federal capital contributions and all contributions from such institutions shall be used for the establishment, expansion, and maintenance of student loan funds.

"ALLOCATION OF FUNDS

"SEC. 462. (a) ALLOCATION BASED ON PREVIOUS ALLOCATION.—(1) From the amount appropriated pursuant to section 461(b) for each fiscal year, the Secretary shall first allocate to each eligible institution an amount equal to—

"(A) 100 percent of the amount such institution expended under this part for fiscal year 1985, multip'ied by

"(B) the institution's default penalty, as determined under subsection (f),

except that if the institution which has a default rate in excess of the applicable maximum default rate under subsection (g), the institution may not receive an allocation under this paragraph.

"(2)(A) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1985 but is not a first or second time participant, an amount equal to the greater of—

"(i) $5,000; or

"(ii) 100 percent of the amount received and expended under this part for the first year it participated in the program.

"(B) From the amount so appropriated, the Secretary shall next allocate to each eligible institution that began participation in the program under this part after fiscal year 1985 and is a first or second time participant, an amount equal to the greatest of—

"(i) $5,000;

"(ii) an amount equal to (I) 90 percent of the amount received and used under this part in the second preceding fiscal year by eligible institutions offering comparable programs of instruction, divided by (II) the number of students enrolled at such comparable institutions in such fiscal year, multiplied by (III) the number of students enrolled at the applicant institution in such fiscal year; or

"(iii) 90 percent of the institution's allocation under this part for the preceding fiscal year.

"(C) Notwithstanding subparagraphs (A) and (B) of this paragraph, the Secretary shall allocate to each eligible institution which—

"(i) was a first-time participant in the program in fiscal year 1986 or any subsequent fiscal year, and

"(ii) received a larger amount under this subsection in the second year of participation,

an amount equal to 90 percent of the amount it received under this subsection in its second year of participation.

"(D) For any fiscal year after a fiscal year in which an institution receives an allocation under subparagraph (A), (B), or (C), the Secretary shall allocate to such institution an amount equal to the product of—

"(i) the amount determined under subparagraph (A), (B), or (C), multiplied by

"(ii) the institution's default penalty, as determined under subsection (f),

except that if the institution which has a default rate in excess of the applicable maximum default rate under subsection (g), the institution may not receive an allocation under this paragraph.

"(3)(A) If the amount appropriated for any fiscal year is less than the amount required to be allocated to all institutions under paragraph (1) of this subsection, then the amount of the allocation to each such institution shall be ratably reduced.

"(B) If the amount appropriated for any fiscal year is more than the amount required to be allocated to all institutions under paragraph (1) but less than the amount required to be allocated to all institutions under paragraph (2), then—

"(i) the Secretary shall allot the amount required to be allocated to all institutions under paragraph (1), and

"(ii) the amount of the allocation to each institution under paragraph (2) shall be ratably reduced.

"(C) If additional amounts are appropriated for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced (until the amount allocated equals the amount required to be allocated under paragraphs (1) and (2) of this subsection).

"(b) ALLOCATION OF EXCESS BASED ON PRO RATA SHARE.—From one-quarter of the remainder of the amount appropriated pursuant to section 461(b) for any fiscal year (after making the allocations required by subsection (a) of this section), the Secretary shall allocate to each eligible institution an amount which bears the same ratio to such one-quarter as—

"(1) the amount the eligible institution receives for such fiscal year under subsection (a), bears to

"(2) the amount all such institutions receive under such subsection (a).

"(c) ALLOCATION OF EXCESS BASED ON SHARE OF EXCESS ELIGIBLE AMOUNTS.—(1) From three-quarters of the remainder of the amount appropriated pursuant to section 461(b) after making the allocations required by subsection (a) of this section, the Secretary shall allocate to each eligible institution which has an excess eligible amount an amount which bears the same ratio to such remainder as such excess eligible amount bears to the sum of the excess eligible amounts of all such eligible institutions (having such excess eligible amounts).

"(2) For any eligible institution, the excess eligible amount is the amount, if any, by which—

"(A)(i) that institution's eligible amount (as determined under paragraph (3)), divided by (ii) the sum of the eligible amounts of all institutions (as so determined), multiplied by (iii) the amount appropriated pursuant to section 461(b) for the fiscal year; exceeds

"(B) the amount required to be allocated to that institution under subsection (a),

except that an eligible institution which has a default rate in excess of the applicable maximum default rate under subsection (g) may not receive an allocation under this paragraph.

"(3) For any eligible institution, the eligible amount of that institution is equal to—

"(A) the amount of the institution's self-help need, as determined under subsection (d); minus

"(B) the institution's anticipated collections; multiplied by

"(C) the institution's default penalty, as determined under subsection (f);

except that, if the institution has a default rate in excess of the applicable maximum default rate under subsection (g), the eligible amount of that institution is zero.

"(d) DETERMINATION OF INSTITUTION'S SELF-HELP NEED.—(1) The amount of an institution's self-help need is equal to the sum of the self-help need of the institution's eligible undergraduate students and the self-help need of the institution's eligible graduate and professional students.

"(2) To determine the self-help need of an institution's eligible undergraduate students, the Secretary shall—

"(A) establish various income categories for dependent and independent undergraduate students;

"(B) establish an expected family contribution for each income category of dependent and independent undergraduate students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title) of a representative sample within each income category for the second preceding fiscal year;

"(C) compute 25 percent of the average cost of attendance for all undergraduate students;

"(D) multiply the number of eligible dependent students in each income category by the lesser of—

"(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction shall not be less than zero;

"(E) add the amounts determined under subparagraph (D) for each income category of dependent students;

"(F) multiply the number of eligible independent students in each income category by the lesser of—

"(i) 25 percent of the average cost of attendance for all undergraduate students determined under subparagraph (C); or

"(ii) the average cost of attendance for all undergraduate students minus the expected family contribution determined under subparagraph (B) for that income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

"(G) add the amounts determined under subparagraph (F) for each income category of independent students; and

"(H) add the amounts determined under subparagraphs (E) and (G).

"(3) To determine the self-help need of an institution's eligible graduate and professional students, the Secretary, for academic year 1988-1989, shall use the procedures employed for academic year 1986-1987, and, for any subsequent academic years, the Secretary shall—

"(A) establish various income categories for graduate and professional students;

"(B) establish an expected family contribution for each income category of graduate and professional students, determined on the basis of the average expected family contribution (computed in accordance with part F of this title) of a representative sample within each income category for the second preceding fiscal year;

"(C) determine the average cost of attendance for all graduate and professional students;

"(D) subtract from the average cost of attendance for all graduate and professional students (determined under subparagraph (C)), the expected family contribution (determined under subparagraph (B)) for each income category, except that the amount computed by such subtraction for any income category shall not be less than zero;

"(E) multiply the amounts determined under subparagraph (D) by the number of eligible students in each category;

"(F) add the amounts determined under subparagraph (E) for each income category.

"(3)(A) For purposes of paragraphs (2) and (3), the term 'average cost of attendance' means the average of the attendance costs for undergraduate students and for graduate and professional students, which shall include (i) tuition and fees determined in accordance with subparagraph (B), (ii) standard living expenses determined in accordance with subparagraph (C), and (iii) books and supplies determined in accordance with subparagraph (D).

"(B) The average undergraduate and graduate and professional tuition and fees described in subparagraph (A)(i) shall be computed on the basis of information reported by the institution to the Secretary, which shall include (i) total revenue received by the institution from undergraduate and graduate tuition and fees for the second year preceding the year for which it is applying for an allocation, and (ii) the institution's enrollment for such second preceding year.

"(C) The standard living expense described in subparagraph (A)(ii) is equal to three-fourths in the Pell Grant family size offset for a single independent student.

"(D) The allowance for books and supplies described in subparagraph (A)(iii) is equal to $450.

"(e) ANTICIPATED COLLECTIONS; CASH ON HAND.—An institution's anticipated collections are equal to the amount which was collected during the second year preceding the beginning of the award period, multiplied by 1.21.

"(f) DEFAULT PENALTY.—For any institution which has a default rate which equals or exceeds 7.5 percent but does not exceed the maximum default rate applicable to the award year under paragraph (2), the institution's default penalty is a percentage equal to the complement of such default rate. For any institution which has a default rate that does not exceed 7.5 percent, the institution's default penalty is equal to one.

"(g) APPLICABLE MAXIMUM DEFAULT RATE.—(1) For award years 1988, 1989, and 1990, the applicable maximum default rate is 20 percent.

"(2) For award year 1991 and subsequent years, the applicable maximum default rate is 15 percent.

"(h) DEFINITION OF DEFAULT RATE.—(1) For the purpose of this section, the default rate is computed by dividing—

"(A) the total principal amount of defaulted loans; by

"(B) the total principal amount of loans made under this part, less the principal amount of all loans made to borrowers who are eligible for deferment under section 464(c)(2)(A)(i) or are in a grace period preceding repayment.

"(2) For the purpose of paragraph (1)(A), the total principal amount of defaulted loans is equal to the total amount borrowed under loans that have reached repayment status and that are in default, minus—

"(A) amounts that have been repaid or cancelled on such loans;

"(B) loans discharged in bankruptcy;

"(C) loans referred or assigned to the Secretary for collection under paragraph (5)(A), (5)(B)(i), or (6) of section 463(a); and

"(D) loans that are in default but on which the borrowers have made satisfactory arrangements to resume payment.

"(3) A loan shall be considered to be in default—

"(A) 120 days (in the case of a loan repayable monthly), or

"(B) 180 days (in the case of a loan repayable quarterly),

after the borrower fails to make an installment payment when due or to comply with other terms of the promissory note.

"(i) FILING DEADLINES.—The Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part.

"(j) REALLOCATION OF EXCESS ALLOCATIONS.—If an institution returns to the Secretary any portion of the sums allocated to such institution under this section for any fiscal year the Secretary shall, in accordance with regulations, reallocate such excess to other institutions.

"AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION

"SEC. 463. (a) CONTENTS OF AGREEMENTS.—An agreement with any institution of higher education for the payment of Federal capital contributions under this part shall—

"(1) provide for the establishment and maintenance of a student loan fund for the purpose of this part;

"(2) provide for the deposit in such fund of—

"(A) Federal capital contributions from funds appropriated under section 461;

"(B) a capital contribution by such institution in an amount equal to not less than one-ninth of the amount of the Federal capital contributions described in subparagraph (A);

"(C) collections of principal and interest on student loans made from deposited funds;

"(D) charges collected pursuant to regulations under section 464(c)(1)(H); and

"(E) any other earnings of the funds;

"(3) provide that such student loan fund shall be used only for—

"(A) loans to students, in accordance with the provisions of this part;

"(B) administrative expenses, as provided in subsection (b);

"(C) capital distributions, as provided in section 466; and

"(D) costs of litigation, and other collection costs agreed to by the Secretary in connection with the collection of a loan from the fund (and interest thereon) or a charge assessed pursuant to regulations under section 464(c)(1)(H);

"(4) provide that where a note or written agreement evidencing a note has been in default for (A) 120 days, in the case of a loan which is repayable in monthly installments, or (B) 180 days, in the case of a loan which is repayable in less frequent installments, notice of such default shall be given to the Secretary in a report describing the total number of loans from such fund which are in such default, and made to the Secretary at least semiannually;

"(5) provide that where a note or written agreement evidencing a loan has been in default despite due diligence on the part of the institution in attempting collection thereon—

"(A) if the institution has knowingly failed to maintain an acceptable collection record with respect to such loan, as determined by the Secretary in accordance with criteria established by regulation, the Secretary may—

"(i) require the institution to assign such note or agreement to the Secretary, without recompense; and

"(ii) apportion any sums collected on such a loan, less an amount not to exceed 30 percent of any sums collected to cover the Secretary's collection costs, among other institutions in accordance with section 462; or

"(B) if the institution is not one described in subparagraph (A), the Secretary may—

"(i) allow such institution to transfer its interest in such loan to the Secretary, for collection, and the Secretary may use any collections thereon (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) to make allocations to institutions of additional capital contributions in accordance with section 462; or

"(ii) allow such institution to refer such note or agreement to the Secretary, without recompense, except that any sums collected on such a loan (less an amount not to exceed 30 percent of any such sums collected to cover the Secretary's collection costs) shall be repaid to such institution no later than 180 days after collection by the Secre-

tary and treated as an additional capital contribution;

"(6) provide that, if an institution of higher education determines not to service and collect student loans made available from funds under this part, the institution will assign, at the beginning of the repayment period, notes or evidence of obligations of student loans made from such funds to the Secretary and the Secretary shall apportion any sums collected on such notes or obligations (less an amount not to exceed 30 percent of any such sums collected to cover that Secretary's collection costs) among other institutions in accordance with section 462;

"(7) provide that, notwithstanding any other provision of law, the Secretary will provide to the institution any information with respect to the names and addresses of borrowers or other relevant information which is available to the Secretary, from whatever source such information may be derived;

"(8) provide assurances that the institution will comply with the provisions of section 463A;

"(9) provide that the institution of higher education will make loans first to students with exceptional need; and

"(10) include such other reasonable provisions as may be necessary to protect the United States from unreasonable risk of loss and as are agreed to by the Secretary and the institution.

"(b) ADMINISTRATIVE EXPENSES.—An institution which has entered into an agreement under subsection (a) shall be entitled, for each fiscal year during which it makes student loans from a student loan fund established under such agreement, to a payment in lieu of reimbursement for its expenses in administering its student loan program under this part during such year. Such payment shall be made in accordance with section 485.

"(c) COOPERATIVE AGREEMENTS WITH CREDIT BUREAU ORGANIZATIONS.—(1) For the purpose of promoting responsible repayment of loans made pursuant to this part, the Secretary shall enter into cooperative agreements with credit bureau organizations to provide for the exchange of information concerning student borrowers concerning whom the Secretary has received a referral pursuant to section 467.

"(2) Each cooperative agreement made pursuant to paragraph (1) shall be made in accordance with the requirements of section 430A except that such agreement shall provide for the disclosure by the Secretary to such organizations, with respect to any loan for which the Secretary is responsible, of—

"(A) the date of disbursement and the amount of any such loan;

"(B) information concerning collection of any such loan, including information concerning the status of any defaulted loan; and

"(C) the date of cancellation of the note upon completion of repayment by the borrower of any such loan.

"(3) Notwithstanding paragraphs (4) and (6) of subsection (a) of section 605 of the Fair Credit Reporting Act (15 U.S.C. 1681c (a)(4), (a)(6)), a consumer reporting agency may make a report containing information received from the Secretary regarding the status of a borrower's account on a loan made under this part until—

"(A) 7 years from the date on which the Secretary accepted an assignment or referral of a loan, or

"(B) 7 years from the date the Secretary first reports the account to a consumer reporting agency, if that account has not been previously reported by any other holder of the note.

"STUDENT LOAN INFORMATION BY ELIGIBLE INSTITUTIONS

"SEC. 463A. (a) DISCLOSURE REQUIRED PRIOR TO DISBURSEMENT.—Each institution of higher education, in order to carry out the provisions of section 463(a)(8), shall, at or prior to the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on such loan to the student borrower. Any disclosure required by this subsection may be made by an institution of higher education as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include—

"(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

"(2) the principal amount of the loan;

"(3) the amount of any charges collected by the institution at or prior to the disbursal of the loan and whether such charges are deducted from the proceeds of the loan or paid separately by the borrower;

"(4) the stated interest rate on the loan;

"(5) the yearly and cumulative maximum amounts that may be borrowed;

"(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

"(7) a statement as to the minimum and maximum repayment term which the institution may impose, and the minimum monthly payment required by law and a description of any penalty imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the Secretary or institutions to collect on a loan;

"(8) a statement of the total cumulative balance owed by the student to that institution, the projected level of indebtedness of the student based on a 2- or 4-year college career, and an estimate of the projected monthly repayment given the level of indebtedness over a 2-, 4-, or 5-year college career;

"(9) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

"(10) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);

"(11) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default may be reported to a credit bureau or credit reporting agency;

"(12) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

"(13) an explanation of any cost the borrower may incur in the making or collection of the loan.

"(b) DISCLOSURE REQUIRED PRIOR TO REPAYMENT.—Each institution of higher education shall enter into an agreement with the Secretary under which the institution will, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection. Any disclosure required by this subsection may be made by an institution of higher education either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosures shall include—

"(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

"(2) the scheduled date upon which the repayment period is to begin;

"(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);

"(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

"(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

"(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;

"(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

"(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

"(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

"(c) COSTS AND EFFECTS OF DISCLOSURES.—Such information shall be available without cost to the borrower. The failure of an eligible institution to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary to make payments with respect to such loan.

"TERMS OF LOANS

"SEC. 464. (a) TERMS AND CONDITIONS.—(1) Loans from any student loan fund established pursuant to an agreement under section 463 to any student by any institution shall, subject to such conditions, limitations, and requirements as the Secretary shall prescribe by regulation, be made on such terms and conditions as the institution may determine.

"(2) The aggregate of the loans for all years made by institutions of higher education from loan funds established pursuant to agreements under this part may not exceed—

"(A) $18,000 in the case of any graduate or professional student (as defined by regulations of the Secretary, and including any loans from such funds made to such person before he became a graduate or professional student);

"(B) $9,000 in the case of a student who has successfully completed 2 years of a program of education leading to a bachelor's degree, but who has not completed the work necessary for such a degree (determined under regulations of the Secretary, and including any loans from such funds made to such person before he became such a student); and

"(C) $4,500 in the case of any other student.

"(3) Regulations of the Secretary under paragraph (1) shall be designed to prevent the impairment of the capital student loan funds to the maximum extent practicable and with a view toward the objective of enabling the student to complete his course of study.

"(b) DEMONSTRATION OF NEED AND ELIGIBILITY REQUIRED.—(1) A loan from a student loan fund assisted under this part may be made only to a student who demonstrates financial need in accordance with part F of this title and who meets the requirements of section 484.

"(2) If the institution's Federal capital contribution under section 462 is directly or indirectly based in part on the financial need demonstrated by students attending the institution less than full time, a reasonable proportion of the loans under this part shall be made available to such students.

"(c) CONTENTS OF LOAN AGREEMENT.—(1) Any agreement between an institution and a student for a loan from a student loan fund assisted under this part—

"(A) shall be evidenced by note or other written instrument which, except as provided in paragraph (2), provides for repayment of the principal amount of the loan, together with interest thereon, in equal installments (or, if the borrower so requests, in graduated periodic installments determined in accordance with such schedules as may be approved by the Secretary) payable quarterly, bimonthly, or monthly, at the option of the institution, over a period beginning nine months after the date on which the student ceases to carry, at an institution of higher education or a comparable institution outside the United States approved for this purpose by the Secretary, at least one-half the normal full-time academic workload, and ending 10 years and 9 months after such date except that such period may begin earlier than 9 months after such date upon the request of the borrower;

"(B) shall include provision for acceleration of repayment of the whole, or any part, of such loan, at the option of the borrower;

"(C)(i) may provide, at the option of the institution, in accordance with regulations of the Secretary, that during the repayment period of the loan, payments of principal and interest by the borrower with respect to all outstanding loans made to the student from a student loan fund assisted under this part shall be at a rate equal to not less than $30 per month, except that the institution may, subject to such regulations, permit a borrower to pay less than $30 per month for a period of not more than one year where necessary to avoid hardship to the borrower, but without extending the 10-year maximum repayment period provided for in subparagraph (A) of this paragraph; and

"(ii) may provide that the total payments by a borrower for a monthly or similar payment period with respect to the aggregate of all loans held by the institution may, when the amount of a monthly or other similar payment is not a multiple of $5, be rounded to the next highest whole dollar amount that is a multiple of $5;

"(D) shall provide that the loan shall bear interest, on the unpaid balance of the loan, at the rate of (i) 3 percent per year, (ii) 4 percent per year in the case of any loan made on or after July 1, 1981, or (iii) 5 percent per year in the case of any loan made on or after October 1, 1981, except that no interest shall accrue (I) prior to the beginning date of repayment determined under subparagraph (A)(i), or (II) during any period in which repayment is suspended by reason of paragraph (2);

"(E) unless the borrower is a minor and the note or other evidence of obligation executed by him would not, under applicable law, create a binding obligation, shall provide that the loan shall be made without security and without endorsement;

"(F) shall provide that the liability to repay the loan shall be canceled upon the death of the borrower, or if he becomes permanently and totally disabled as determined in accordance with regulations of the Secretary;

"(G) shall provide that no note or evidence of obligation may be assigned by the lender, except upon the transfer of the borrower to another institution participating under this part (or, if not so participating, is eligible to do so and is approved by the Secretary for such purpose), to such institution, and except as necessary to carry out section 463(a)(6);

"(H) pursuant to regulations of the Secretary, shall provide for an assessment of a charge with respect to the loan for failure of the borrower to pay all or part of an installment when due, which shall include the expenses reasonably incurred in attempting collection of the loan, to the extent permitted by the Secretary, except that no charge imposed under this subparagraph shall exceed 20 percent of the amount of the monthly payment of the borrower; and

"(I) shall contain a notice of the system of disclosure of information concerning default on such loan to credit bureau organizations under section 463(c).

"(2)(A) No repayment of principal of, or interest on, any loan from a student loan fund assisted under this part shall be required during any period in which the borrower—

"(i) is carrying at least one-half the normal full-time academic workload at an institution of higher education or at a comparable institution outside the United States which is approved for this purpose by the Secretary;

"(ii) is a member of the Armed Forces of the United States, is an active duty member of the National Oceanic and Atmospheric Administration Corps, or is an officer in the Commissioned Corps of the Public Health Service;

"(iii) is in service as a volunteer under the Peace Corps Act;

"(iv) is in service as a volunteer under the Domestic Volunteer Act of 1973;

"(v) is in service, comparable to the service referred to in clauses (iii) and (iv), as a full-time volunteer for an organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954;

"(vi) is serving an internship, the successful completion of which is required in order to receive professional recognition required to begin professional practice or service;

"(vii) is temporarily totally disabled (as defined in section 435(g)), as established by sworn affidavit of a qualified physician, or during which the borrower is unable to secure employment by reason of the care required by a dependent who is so disabled;

"(viii) is on parental leave, as defined in section 435(h); or

"(ix) is a mother with preschool age children who is just entering or reentering the workforce and who is compensated at a rate not to exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

The period during which repayment may be deferred by reason of clause (ii), (iii), (iv), (v), or (vii) shall not exceed 3 years. The period during which repayment may be deferred by reason of clause (vi) shall not exceed 2 years. The period during which repayment may be deferred by reason of clause (viii) shall not exceed 6 months. The period during which the repayment may be deferred by reason of clause (ix) shall not exceed 12 months.

"(B) Any period during which repayment is deferred under subparagraph (A) shall not be included in computing the 10-year maximum period provided for in subparagraph (A) of paragraph (1).

"(C) No repayment of principal of, or interest on, any loan for any period of study, service, or disability described in subparagraph (A) or any combination thereof shall begin until 6 months after the completion of such period of study, service, disability, or combination thereof.

"(3)(A) The Secretary is authorized, when good cause is shown, to extend, in accordance with regulations, the 10-year maximum repayment period provided for in subparagraph (A) of paragraph (1) with respect to individual loans.

"(B) Pursuant to uniform criteria established by the Secretary, the repayment period for any student borrower who during the repayment period is a low-income individual may be extended for a period not to exceed 10 years and the repayment schedule may be adjusted to reflect the income of that individual.

"(4) The institution may elect—

"(A) to add the amount of any charge imposed under paragraph (1)(H) to the principal amount of the loan as of the first day after the day on which the installment was due and to notify the borrower of the assessment of the charge; or

"(B) to make the amount of the charge payable to the institution not later than the due date of the next installment.

"(d) AVAILABILITY OF LOAN FUND TO ALL ELIGIBLE STUDENTS.—An agreement under this part for payment of Federal capital contributions shall include provisions designed to make loans from the student loan fund established pursuant to such agreement reasonably available (to the extent of the available funds in such fund) to all eligible students in such institutions in need thereof.

"CANCELLATION OF LOANS FOR CERTAIN PUBLIC SERVICE

"SEC. 465. (a) CANCELLATION OF PERCENTAGE OF DEBT BASED ON YEARS OF QUALIFYING SERVICE.—(1) The percent specified in paragraph (3) of this subsection of the total amount of any loan made after June 30, 1972, from a student loan fund assisted under this part shall be canceled for each complete year of service after such date by the borrower under circumstances described in paragraph (2).

"(2) Loans shall be canceled under paragraph (1) for service—

"(A) as a full-time teacher for service in an academic year in a public or other nonprofit private elementary or secondary school which is in the school district of a local educational agency which is eligible in such year for assistance pursuant to title I of the Elementary and Secondary Education Act of 1965, and which for the purpose of this paragraph and for that year has been determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the

enrollment of children counted under section 111(c) of the Elementary and Secondary Education Act of 1965 exceeds 30 percent of the total enrollment of that school and such determination shall not be made with respect to more than 50 percent of the total number of schools in the State receiving assistance under such title I;

"(B) as a full-time staff member in a preschool program carried on under section 222(a)(1) of the Economic Opportunity Act of 1964 which is operated for a period which is comparable to a full school year in the locality if the salary of such staff member is not more than the salary of a comparable employee of the local educational agency;

"(C) as a full-time teacher of handicapped children in a public or other nonprofit elementary or secondary school system;

"(D) as a member of the Armed Forces of the United States, for services that qualifies for special pay under section 310 of title 37, United States Code, as an area of hostilities; or

"(E) as a volunteer under the Peace Corps Act or a volunteer under the Domestic Volunteer Service Act of 1973.

For the purpose of this paragraph, the term 'handicapped children' has the meaning set forth in section 602(1) of the Education of the Handicapped Act.

"(3)(A) The percent of a loan which shall be canceled under paragraph (1) of this subsection is—

"(i) in the case of service described in subparagraph (A) or (C) of paragraph (2), at the rate of 15 percent for the first or second year of such service, 20 percent for the third or fourth year of such service, and 30 percent for the fifth year of such service;

"(ii) in the case of service described in subparagraph (B) of paragraph (2), at the rate of 15 percent for each year of such service;

"(iii) in the case of service described in subparagraph (D) of paragraph (2), not to exceed a total of 50 percent of such loan at the rate of 12½ percent for each year of qualifying service; or

"(iv) in the case of service described in subparagraph (E) of paragraph (2) at the rate of 15 percent for the first or second year of such service and 20 percent for the third or fourth year of such service.

"(B) If a portion of a loan is canceled under this subsection for any year, the entire amount of interest on such loan which accrues for such year shall be canceled.

"(C) Nothing in this subsection shall be construed to authorize refunding of any repayment of a loan.

"(4) For the purpose of this subsection, the term 'year' where applied to service as a teacher means academic year as defined by the Secretary.

"(5) The amount of a loan, and interest on a loan, which is canceled under this section shall not be considered income for purposes of the Internal Revenue Code of 1954.

"(b) REIMBURSEMENT FOR CANCELLATION.—The Secretary shall pay to each institution for each fiscal year an amount equal to the aggregate of the amounts of loans from its student loan fund which are canceled pursuant to this section for such year, minus an amount equal to the aggregate of the amounts of any such loans so canceled which were made from Federal capital contributions to its student loan fund provided by the Secretary under section 468. None of the funds appropriated pursuant to section 461(b) shall be available for payments pursuant to this subsection.

"DISTRIBUTION OF ASSETS FROM STUDENT LOAN FUNDS

"SEC. 466. (a) IN GENERAL.—After September 30, 1996, and not later than March 31, 1997, there shall be a capital distribution of the balance of the student loan fund established under this part by each institution of higher education as follows:

"(1) The Secretary shall first be paid an amount which bears the same ratio to the balance in such fund at the close of September 30, 1996, as the total amount of the Federal capital contributions to such fund by the Secretary under this part bears to the sum of such Federal contributions and the institution's capital contributions to such fund.

"(2) The remainder of such balance shall be paid to the institution.

"(b) DISTRIBUTION OF LATE COLLECTIONS.—After March 31, 1997, each institution with which the Secretary has made an agreement under this part, shall pay to the Secretary the same proportionate share of amounts received by this institution after September 30, 1996, in payment of principal and interest on student loans made from the student loan fund established pursuant to such agreement (which amount shall be determined after deduction of any costs of litigation incurred in collection of the principal or interest on loans from the fund and not already reimbursed from the fund or from such payments of principal or interest), as was determined for the Secretary under subsection (a).

"(c) DISTRIBUTION OF EXCESS CAPITAL.—Upon a finding by the institution or the Secretary prior to October 1, 1997, that the liquid assets of a student loan fund established pursuant to an agreement under this part exceed the amount required for loans or otherwise in the foreseeable future, and upon notice to such institution or to the Secretary, as the case may be, there shall be, subject to such limitations as may be included in regulations of the Secretary or in such agreement, a capital distribution from such fund. Such capital distribution shall be made as follows:

"(1) The Secretary shall first be paid an amount which bears the same ratio to the total to be distributed as the Federal capital contributions by the Secretary to the student loan fund prior to such distribution bear to the sum of such Federal capital contributions and the capital contributions to the fund made by the institution.

"(2) The remainder of the capital distribution shall be paid to the institution.

"COLLECTION OF DEFAULTED LOANS

"SEC. 467. (a) AUTHORITY OF SECRETARY TO COLLECT REFERRED, TRANSFERRED, OR ASSIGNED LOANS.—With respect to any loan—

"(1) which was made under this part, and

"(2) which is referred, transferred, or assigned to the Secretary by an institution with an agreement under section 463(a),

the Secretary is authorized to attempt to collect such loan by any means authorized by law for collecting claims of the United States (including referral to the Attorney General for litigation) and under such terms and conditions as the Secretary may prescribe, including reimbursement for expenses reasonably incurred in attempting such collection.

"(b) COLLECTION OF REFERRED, TRANSFERRED, OR ASSIGNED LOANS.—The Secretary shall continue to attempt to collect any loan referred, transferred, or assigned under paragraph (5)(A), (5)(B)(i), or (6) of section 463(a) until all appropriate collection efforts, as determined by the Secretary, have been expended.

"GENERAL AUTHORITY OF SECRETARY

"SEC. 468. In carrying out the provisions of this part, the Secretary is authorized—

"(1) to consent to modification, with respect to rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision of any note evidencing a loan which has been made under this part;

"(2) to enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption;

"(3) to conduct litigation in accordance with the provisions of section 432(a)(2); and

"(4) to enter into a contract or other arrangement with State or nonprofit agencies and, on a competitive basis, with collection agencies for servicing and collection of loans under this part.".

(b) EFFECTIVE DATES.—(1) The changes made in sections 464(c)(1)(A), 464(c)(2), and 465(a)(2)(E) of the Act shall apply only to loans made to cover the costs of instruction for periods of enrollment beginning on or after July 1, 1987, to individuals who are new borrowers on that date.

(2) Section 463(a)(9) of the Act as amended by this section shall apply only to loans made for periods of enrollment beginning on or after July 1, 1987.

(3) For the purpose of this subsection, the term "new borrower" means, with respect to any date, an individual who on that date has no outstanding balance of principal or interest owing on any loan made under part E of title IV of the Act.

SEC. 406. ADDITION OF A NEW PART F RELATING TO NEED ANALYSIS FOR STUDENT ASSISTANCE.

(a) AMENDMENT.—Title IV of the Act is further amended by redesignating part F as part G and by inserting after part E the following new part:

"PART F—NEED ANALYSIS

"AMOUNT OF NEED

"SEC. 471. Except as otherwise provided therein, the amount of need of any student for financial assistance under this title (except subparts 1 and 3 of part A) is equal to the cost of attendance of such student minus the expected family contribution for such student.

"COST OF ATTENDANCE

"SEC. 472. For the purpose of this title (except for subpart 1 of part A and subject to section 478), the term 'cost of attendance' means—

"(1) tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study;

"(2) an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution;

"(3) an allowance (as determined by the institution) for room and board costs incurred by the student which—

"(A) shall be an allowance of not less than $1,500 for a student without dependents residing at home with parents;

"(B) for students without dependents residing in institutionally owned or operated housing, shall be a standard allowance determined by the institution based on the

amount normally assessed most of its residents for room and board; and

"(C) for all other students shall be an allowance based on the expenses reasonably incurred by such students for room and board, except that the amount may not be less than $2,500;

"(4) for less than half-time students (as determined by the institution) tuition and fees and an allowance for only books, supplies, and transportation (as determined by the institution) and dependent care expenses (in accordance with paragraph (7));

"(5) for a student engaged in a program of study by correspondence, only tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

"(6) for a student enrolled in an academic program which normally includes a formal program of study abroad, reasonable costs associated with such study (as determined by the institution);

"(7) for a student with one or more dependents, an allowance (as determined by the institution) based on the expenses reasonably incurred for dependent care based on the number and age of such dependents;

"(8) for a handicapped student, an allowance (as determined by the institution) for those expenses related to his or her handicap, including special services, transportation, equipment, and supplies that are reasonably incurred and not provided for by other assisting agencies; and

"(9) for a student receiving all or part of his or her instruction by means of telecommunications technology, no distinction shall be made with respect to the mode of instruction in determining costs, but this paragraph shall not be construed to permit including the cost of rental or purchase of equipment.

"FAMILY CONTRIBUTION

"SEC. 473. For the purpose of this title, except subparts 1 and 3 of part A, the term 'family contribution' with respect to any student means the amount which the student and his or her family may be reasonably expected to contribute toward his or her postsecondary education for the academic year for which the determination is made, as determined in accordance with this part.

"DATA ELEMENTS USED IN DETERMINING EXPECTED FAMILY CONTRIBUTION

"SEC. 474. The following data elements are considered in determining the expected family contribution:

"(1) the available income of (A) the student and his or her spouse, or (B) the student (and spouse) and the student's parents, in the case of a dependent student;

"(2) the number of dependents in the family of the student;

"(3) the number of dependents in the family of the student who are enrolled in, on at least a half-time basis, a program of postsecondary education and for whom the family may reasonably be expected to contribute to their postsecondary education;

"(4) the net assets of (A) the student and his or her spouse, and (B) the student (and spouse) and the student's parents, in the case of a dependent student;

"(5) the marital status of the student;

"(6) any unusual medical and dental expenses of (A) the student and the student's parents, in the case of a dependent student, or (B) the student and his or her dependents, in the case of an independent student;

"(7) the number of dependent children other than the student enrolled in a private elementary or secondary institution and the unreimbursed tuition paid (A) in the case of a dependent student, by the student's parents for such dependent children, or (B) in the case of an independent student with dependents, by the student or his or her spouse for such dependent children who are so enrolled; and

"(8) the additional expenses incurred (A) in the case of a dependent student, when both parents of the student are employed or when the family is headed by a single parent who is employed, or (B) in the case of an independent student, when both the student and his or her spouse are employed or when the employed student qualifies as a surviving spouse or as a head of a household under section 2 of the Internal Revenue Code of 1954.

"FAMILY CONTRIBUTION FOR DEPENDENT STUDENTS

"SEC. 475. (a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each dependent student the expected family contribution is equal to the sum of—

"(1) the parents' contribution from adjusted available income (determined in accordance with subsection (b));

"(2) the student (and spouse) contribution from available income (determined in accordance with subsection (g)); and

"(3) the student (and spouse) income supplemental amount from assets (determined in accordance with subsection (h)).

"(b) PARENTS' CONTRIBUTION FROM ADJUSTED AVAILABLE INCOME.—The parents' contribution from adjusted available income is equal to the amount determined by—

"(1) computing adjusted available income by adding—

"(A) the parents' available income (determined in accordance with subsection (c)); and

"(B) the parents' income supplemental amount from assets (determined in accordance with subsection (d));

"(2) assessing such adjusted available income in accordance with the assessment schedule set forth in subsection (e); and

"(3) dividing the assessment resulting under paragraph (2) by the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which assistance under this title is requested;

except that the amount determined under this subsection shall not be less than zero.

"(c) PARENTS' AVAILABLE INCOME.—

"(1) IN GENERAL.—The parents' available income is determined by deducting from total income (as defined in section 480)—

"(A) Federal income taxes;

"(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

"(C) an allowance for social security taxes, determined in accordance with paragraph (3);

"(D) a standard maintenance allowance, determined in accordance with paragraph (4);

"(E) an employment expense allowance, determined in accordance with paragraph (5);

"(F) a medical-dental expense allowance, determined in accordance with paragraph (6); and

"(G) an educational expense allowance, determined in accordance with paragraph (7).

"(2) ALLOWANCE FOR STATE AND OTHER TAXES.—The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 480) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 479):

"Percentages for Computation of State and Other Tax Allowance

If parents' State or territory of residence is—	And parents' total income is—	
	Less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13

"(3) ALLOWANCE FOR SOCIAL SECURITY TAXES.—The allowance for social security taxes is equal to the amount earned by each parent multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

"(4) STANDARD MAINTENANCE ALLOWANCE.—The standard maintenance allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The standard maintenance allowance is determined by the following table (or a successor table prescribed by the Secretary under section 479):

"Standard Maintenance Allowance

Family size (including student)	Number in college					
	1	2	3	4	5	For each additional subtract:
2	$8,380	$6,950				
3	10,440	9,010	$7,580			
4	12,890	11,460	10,030	$8,600		
5	15,210	13,780	12,350	10,920	$8,490	
6	17,790	16,360	14,930	13,500	12,070	1,430
For each additional add	2,010	2,010	2,010	2,010	2,010	

"(5) EMPLOYMENT EXPENSE ALLOWANCE.—The employment expense allowance is determined as follows:

"(A) If both parents were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,100 or 35 percent of the earned income of the parent with the lesser earned income.

"(B) If a parent qualifies as a head of household as defined in section 2 of the Internal Revenue Code, such allowance is equal to the lesser of $2,100 or 35 percent of his or her earned income.

For any award year after award year 1987–1988, this paragraph shall be applied by increasing the dollar amount specified in subparagraphs (A) and (B) to reflect increases in the amount and percent of the Bureau of Labor Standards budget of the marginal costs for meals away from home, apparel and upkeep, transportation, and housekeeping services for a two-worker versus one-worker family.

"(6) MEDICAL-DENTAL EXPENSE ALLOWANCE.—The medical-dental expense allowance is equal to the amount by which the sum of unreimbursed medical and dental expenses, including medical insurance premiums, exceeds 5 percent of the total income of the parents.

"(7) EDUCATIONAL EXPENSE ALLOWANCE.—The educational expense allowance is equal to the unreimbursed tuition and fees paid by the student's parents for each dependent child, other than the student, enrolled in an elementary or secondary school, not to exceed for each such child the national average per pupil instructional cost as published by the National Center for Educational Statistics using the most recent available data.

"(d) PARENTS' INCOME SUPPLEMENTAL AMOUNT FROM ASSETS.—

"(1) IN GENERAL.—The parents' income supplemental amount from assets is equal to—

"(A) the parental net worth (determined in accordance with paragraph (2)); minus

"(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

"(C) the asset conversion rate (determined in accordance with paragraph (4)).

"(2) PARENTAL NET WORTH.—The parental net worth is calculated by adding—

"(A) the current balance of checking and savings accounts and cash on hand;

"(B) the net value of investments and real estate, including the net value of the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a dislocated homemaker (as defined in section 480(e) of this Act); and

"(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter in this subsection referred to as 'NW'), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 479):

"ADJUSTED NET WORTH OF A BUSINESS OR FARM

If the net worth of a business or farm is—	Then the adjusted net worth is:
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000

"(3) ASSET PROTECTION ALLOWANCE.—The asset protection allowance is calculated according to the following table:

"Asset Protection Allowances for Families and Students

If the age of the oldest parent is—	And there are	
	two parents	one parent
	then the asset protection allowance is—	
25 or less	$0	$0
26	1,900	1,500
27	3,900	3,000
28	5,800	4,500
29	7,800	6,100
30	9,700	7,600
31	11,700	9,100
32	13,600	10,600
33	15,600	12,100
34	17,500	13,600
35	19,500	15,100
36	21,400	16,600
37	23,400	18,200
38	25,300	19,700
39	27,300	21,200
40	29,200	22,700
41	30,000	23,200
42	30,800	23,800
43	31,600	24,200
44	32,500	24,800
45	33,300	25,400
46	34,200	26,100
47	35,200	26,700
48	36,100	27,200
49	37,300	27,900
50	38,300	28,800
51	39,600	29,500
52	40,900	30,300
53	42,000	31,000
54	43,400	32,000
55	44,800	32,800
56	46,300	33,800
57	48,100	34,600
58	49,700	35,700
59	51,600	36,800
60	53,300	37,900
61	55,300	39,000
62	57,400	40,200
63	59,600	41,400
64	61,800	42,600
65 or more	64,100	44,100

"(4) ASSET CONVERSION RATE.—The asset conversion rate is determined as follows:

"(A) if the parental net worth (determined in accordance with paragraph (2)) minus the asset protection allowance (determined in accordance with paragraph (3)) is equal to or greater than zero, the conversion rate is 12 percent;

"(B) if such parental net worth minus such asset protection allowance is less than zero and the parents' contribution from available income (determined in accordance with subsection (c)) is greater than $15,000, the conversion rate is zero percent;

"(C) if such parental net worth minus such asset protection allowance is less than zero and such parents' available income is equal to or greater than zero but less than $15,000, the conversion rate (rounded to 3 decimal places) is equal to 6 percent multiplied by a fraction—

"(i) the numerator of which is equal to $15,000 minus such parents' available income; and

"(ii) the denominator of which is $15,000; and

"(D) if such parental net worth minus such asset protection allowance is less than zero and such parents' available income is equal to or less than zero, the conversion rate is 6 percent.

"(e) ASSESSMENT SCHEDULE.—The adjusted available income (as determined under subsection (b)(1) and hereafter in this subsection referred to as 'AAI') is assessed according to the following table (or a successor table prescribed by the Secretary under section 479):

"PARENTS' ASSESSMENT FROM ADJUSTED AVAILABLE INCOME (AAI)

If AAI is—	Then the assessment is—
Less than $3,409	−$750
$3,409 to $7,500	22% of AAI
$7,501 to $9,400	$1,650 + 25% of AAI over $7,500
$9,401 to $11,300	$2,125 + 29% of AAI over $9,400
$11,301 to $13,200	$2,676 + 34% of AAI over $11,300
$13,201 to $15,100	$3,322 + 40% of AAI over $13,200
$15,101 or more	$4,082 + 47% of AAI over $15,100

"(f) COMPUTATIONS IN CASE OF SEPARATION, DIVORCE, REMARRIAGE, OR DEATH.—

"(1) DIVORCED OR SEPARATED PARENTS.—Income for a student whose parents are divorced or separated is determined under the following procedures:

"(A) Include only the income of the parent with whom the student resided for the greater portion of the 12-month period preceding the date of the application.

"(B) If the preceding criterion does not apply, include only the income of the parent who provided the greater portion of the student's support for the 12-month period preceding the date of application.

"(C) If neither of the preceding criteria apply, include only the income of the parent who provided the greater support during the most recent calendar year for which parental support was provided.

"(2) DEATH OF A PARENT.—Income in the case of the death of any parent is determined as follows:

"(A) If either of the parents have died, the student shall include only the income of the surviving parent.

"(B) If both parents have died, the student shall not report any parental income.

"(3) REMARRIED PARENTS.—Income in the case of a parent whose income is taken into account under paragraph (1) of this subsection, or a parent who is a widow or widower and whose income is taken into account under paragraph (2) of this subsection, has remarried, is determined as follows: The income of that parent's spouse shall be included in determining the student's annual adjusted family income if—

"(A) the student's parent and the stepparent are married as of the date of application for the award year concerned; and

"(B) the student is not an independent student.

"(g) STUDENT CONTRIBUTION FROM AVAILABLE INCOME.—

"(1) IN GENERAL.—The student (and spouse) contribution from available income is equal to the greater of—

"(A) a mandatory self-help amount of $700 for a first-year undergraduate student;

"(B) a mandatory self-help amount of $900 for any other student; or

"(C) an amount equal to 70 percent of the student's total income (determined in accordance with section 480) minus the adjustment to student (and spouse) income (determined in accordance with paragraph (3)).

"(2) ADJUSTMENT TO STUDENT (AND SPOUSE) INCOME.—The adjustment to student (and spouse) income is equal to the sum of—

"(A) estimated Federal income taxes of the student (and spouse);

"(B) an allowance for State and local income taxes (determined in accordance with paragraph (3)); and

"(C) an allowance for social security taxes determined in accordance with paragraph (4).

"(3) ALLOWANCE FOR STATE AND LOCAL INCOME TAXES.—The allowance for State and local income taxes is equal to an amount determined by multiplying total taxable income (as defined in section 480) by a percentage determined according to the following table:

"PERCENTAGES FOR COMPUTATION OF STATE AND LOCAL INCOME TAX ALLOWANCE

If the students' State or territory of residence is—	The percentage is—
Alaska, American Samoa, Florida, Guam, Nevada, South Dakota, Tennessee, Texas, Trust Territory, Virgin Islands, Washington, Wyoming	0
Connecticut, Louisiana, Puerto Rico	1
Arizona, New Hampshire, New Mexico, North Dakota	2
Alabama, Colorado, Illinois, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Jersey, Oklahoma	3
Arkansas, Georgia, Iowa, Kentucky, Maine, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Canada, Mexico	4
California, Idaho, Massachusetts, North Carolina, Ohio, Rhode Island, South Carolina	5
Hawaii, Maryland, Michigan, Wisconsin	6
Delaware, District of Columbia, Minnesota, Oregon	7
New York	8

"(4) ALLOWANCE FOR SOCIAL SECURITY TAXES.—The allowance for social security taxes is equal to the amount earned by the student (and spouse) multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

"(h) STUDENT (AND SPOUSE) INCOME SUPPLEMENTAL AMOUNT FROM ASSETS.—The student (and spouse) supplemental income amount from assets is determined by multiplying by 35 percent the sum of—

"(1) the current balance of checking and savings accounts and cash on hand; and

"(2) the net value of investments and real estate, including the net value in the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a dislocated homemaker (as defined in section 480(e) of this Act).

"FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITHOUT DEPENDENTS

"SEC. 476. (a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each independent student without dependents (including a spouse), the expected family contribution is equal to the sum of—

"(1) the student's contribution from income (determined in accordance with subsection (b)); and

"(2) the student's income supplemental amount from assets (determined in accordance with subsection (c)).

"(b) STUDENT'S CONTRIBUTION FROM INCOME.—

"(1) IN GENERAL.—The student's contribution from income is determined by—

"(A) computing the student's available taxable income by deducting from the student's adjusted gross income—

"(i) Federal income taxes;

"(ii) an allowance for State and local income taxes, determined in accordance with paragraph (2);

"(iii) the allowance for social security taxes, determined in accordance with paragraph (3); and

"(iv) a maintenance allowance for periods of non-enrollment not to exceed $600 per month;

"(B) assessing such available taxable income in accordance with paragraph (4); and

"(C) adding to the assessment resulting under subparagraph (B) the amount of the untaxed income and benefits of the student (determined in accordance with section 480(c)),

except that the student's contribution from income shall not be less than $1,200.

"(2) ALLOWANCE FOR STATE AND LOCAL INCOME TAXES.—The allowance for State and local income taxes is equal to an amount determined by multiplying total taxable income (as defined in section 480) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 479):

"Percentages for Computation of State and Local Income Tax Allowance

If the students' State or territory of residence is—	The percentage is—
Alaska, American Samoa, Florida, Guam, Nevada, South Dakota, Tennessee, Texas, Trust Territory, Virgin Islands, Washington, Wyoming	0
Connecticut, Louisiana, Puerto Rico	1
Arizona, New Hampshire, New Mexico, North Dakota	2
Alabama, Colorado, Illinois, Indiana, Kansas, Mississippi, Missouri, Montana, Nebraska, New Jersey, Oklahoma	3
Arkansas, Georgia, Iowa, Kentucky, Maine, Pennsylvania, Utah, Vermont, Virginia, West Virginia, Canada, Mexico	4
California, Idaho, Massachusetts, North Carolina, Ohio, Rhode Island, South Carolina	5
Hawaii, Maryland, Michigan, Wisconsin	6
Delaware, District of Columbia, Minnesota, Oregon	7
New York	8

"(3) ALLOWANCE FOR SOCIAL SECURITY TAXES.—The allowance for social security taxes is equal to the amount earned by the student multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

"(4) ASSESSMENT OF AVAILABLE TAXABLE INCOME.—The student's available taxable income (determined in accordance with paragraph (1)(A) of this subsection) is assessed as follows:

"(A) if such available taxable income is equal to or greater than $0 but less than or equal to $8,900, then the assessment is equal to 70 percent of such available taxable income; and

"(B) if such available taxable income is greater than $8,900, then the assessment is equal to $6,230 plus 90 percent of such available taxable income in excess of $8,900.

"(c) STUDENT'S INCOME SUPPLEMENTAL AMOUNT FROM ASSETS.—

"(1) IN GENERAL.—The student's income supplemental amount from assets is equal to—

"(A) the student's net worth (determined in accordance with paragraph (2)); minus

"(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

"(C) the asset conversion rate (determined in accordance with paragraph (4)).

"(2) STUDENT'S NET WORTH.—The student's net worth is calculated by adding—

"(A) the current balance of checking and savings accounts and cash on hand;

"(B) the net value of investments and real estate, including the net value in the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a dislocated homemaker (as defined in section 480(e) of this Act); and

"(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as 'NW'), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 479):

"ADJUSTED NET WORTH OF A BUSINESS OR FARM

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000

"(3) ASSET PROTECTION ALLOWANCE.—The asset protection allowance is calculated according to the following table:

"ASSET PROTECTION ALLOWANCES FOR STUDENTS

If the age of the student is—	Then the asset protection allowance is—
25 or less	$0
26	1,500
27	3,000
28	4,500
29	6,100
30	7,600
31	9,100
32	10,600
33	12,100
34	13,600
35	15,100
36	16,600
37	18,200
38	19,700
39	21,200
40	22,700
41	23,200
42	23,800
43	24,200
44	24,800
45	25,400
46	26,100
47	26,700
48	27,200
49	27,900
50	28,800
51	29,500
52	30,300
53	31,000
54	32,000
55	32,800
56	33,800
57	34,600
58	35,700
59	36,800
60	37,900
61	39,000
62	40,200
63	41,400
64	42,600
65 or more	44,100

"(4) ASSET CONVERSION RATE.—The asset conversion rate is 35 percent.

"FAMILY CONTRIBUTION FOR INDEPENDENT STUDENTS WITH DEPENDENTS

"SEC. 477. (a) COMPUTATION OF EXPECTED FAMILY CONTRIBUTION.—For each independent student with dependents (including a spouse) the expected family contribution is equal to the amount determined by—

"(1) computing adjusted available income by adding—

"(A) the family's available income (determined in accordance with subsection (b)); and

"(B) the family's income supplemental amount from assets (determined in accordance with subsection (c));

"(2) assessing such adjusted available income in accordance with an assessment schedule set forth in subsection (d); and

"(3) dividing the assessment resulting under paragraph (2) by the number of family members who will be attending, on at least a half-time basis, a program of postsecondary education during the award period for which assistance under this title is requested;

except that the amount determined under this subsection shall not be less than zero.

"(b) FAMILY'S AVAILABLE INCOME.—

"(1) IN GENERAL.—The family's available income is determined by deducting from total income (as defined in section 480)—

"(A) Federal income taxes;

"(B) an allowance for State and other taxes, determined in accordance with paragraph (2);

"(C) an allowance for social security taxes, determined in accordance with paragraph (3);

"(D) a standard maintenance allowance, determined in accordance with paragraph (4);

"(E) an employment expense allowance, determined in accordance with paragraph (5);

"(F) a medical-dental expense allowance, determined in accordance with paragraph (6); and

"(G) an educational expense offset, determined in accordance with paragraph (7);

except that the family's available income shall not be less than $700 for a first year undergraduate student or $900 for any other student.

"(2) ALLOWANCE FOR STATE AND OTHER TAXES.—The allowance for State and other taxes is equal to an amount determined by multiplying total income (as defined in section 480) by a percentage determined according to the following table (or a successor table prescribed by the Secretary under section 479):

"Percentages for Computation of State and Other Tax Allowance

If student's State or territory of residence is—	And student's total income is—	
	less than $15,000	$15,000 or more
	then the percentage is—	
Alaska, Puerto Rico, Wyoming	3	2
American Samoa, Guam, Louisiana, Nevada, Texas, Trust Territory, Virgin Islands	4	3
Florida, South Dakota, Tennessee, New Mexico	5	4
North Dakota, Washington	6	5
Alabama, Arizona, Arkansas, Indiana, Mississippi, Missouri, Montana, New Hampshire, Oklahoma, West Virginia	7	6
Colorado, Connecticut, Georgia, Illinois, Kansas, Kentucky	8	7
California, Delaware, Idaho, Iowa, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Canada, Mexico	9	8
Maine, New Jersey	10	9
District of Columbia, Hawaii, Maryland, Massachusetts, Oregon, Rhode Island	11	10
Michigan, Minnesota	12	11
Wisconsin	13	12
New York	14	13

"(3) ALLOWANCE FOR SOCIAL SECURITY TAXES.—The allowance for social security taxes is equal to the amount earned by the student and the student's spouse multiplied by the social security withholding rate appropriate to the tax year of the earnings, up to the maximum statutory social security tax withholding amount for that same tax year.

"(4) STANDARD MAINTENANCE ALLOWANCE.—The standard maintenance allowance is the amount of reasonable living expenses that would be associated with the maintenance of an individual or family. The standard maintenance allowance is determined by the following table (or a successor table prescribed by the Secretary under section 479):

"Standard Maintenance Allowance

Family Size (including student)	Number in College					
	1	2	3	4	5	For Each Additional Subtract:
2	$8,380	$6,950				
3	10,440	9,010	$7,580			
4	12,890	11,460	10,030	$8,600		
5	15,210	13,780	12,350	10,920	$8,490	
6	17,790	16,360	14,930	13,500	12,070	1,430
For Each Additional Add	2,010	2,010	2,010	2,010	2,010	

"(5) EMPLOYMENT EXPENSE ALLOWANCE.—The employment expense allowance is determined as follows:

"(A) If both the student and a spouse were employed in the year for which their income is reported and both have their incomes reported in determining the expected family contribution, such allowance is equal to the lesser of $2,000 or 35 percent of the earned income of the student or spouse with the lesser earned income.

"(B) If a student qualifies as a head of household as defined in section 2 of the Internal Revenue Code, such allowance is equal to the lesser of $2,100 or 35 percent of his or her earned income.

For any award year after award year 1987-1988, this paragraph shall be applied by increasing the dollar amount specified in subparagraphs (A) and (B) to reflect increases in the amount and percent of the Bureau of Labor Standards budget of the marginal costs for meals away from home, apparel and upkeep, transportation, and housekeeping services for a two-worker versus one-worker family.

"(6) MEDICAL-DENTAL EXPENSE ALLOWANCE.—The medical-dental expense allowance is equal to the amount by which the sum of unreimbursed medical and dental expenses, including medical insurance premiums, exceeds 5 percent of the total income of the family.

"(7) EDUCATIONAL EXPENSE ALLOWANCE.—The educational expense allowance is equal to the unreimbursed tuition and fees paid by the student or the student's spouse, or both, for each dependent child, enrolled in elementary or secondary school, not to exceed for each such child the national average per pupil instructional cost as published by the National Center for Educational Statistics using the most recent available data.

"(c) FAMILY'S INCOME SUPPLEMENTAL AMOUNT FROM ASSETS.—

"(1) IN GENERAL.—The family's income supplemental amount from assets is equal to—

"(A) the family net worth (determined in accordance with paragraph (2)); minus

"(B) the asset protection allowance (determined in accordance with paragraph (3)); multiplied by

"(C) the asset conversion rate (determined in accordance with paragraph (4)).

"(2) FAMILY NET WORTH.—The family net worth is calculated by adding—

"(A) the current balance of checking and savings accounts and cash on hand;

"(B) the net value of investments and real estate, including the net value in the principal place of residence except in the case of a dislocated worker (certified in accordance with title III of the Job Training Partnership Act) or a dislocated homemaker (as defined in section 480(e) of this Act); and

"(C) the adjusted net worth of a business or farm, computed on the basis of the net worth of such business or farm (hereafter referred to as 'NW'), determined in accordance with the following table (or a successor table prescribed by the Secretary under section 479):

"Adjusted Net Worth of a Business or Farm

If the net worth of a business or farm is—	Then the adjusted net worth is—
Less than $1	$0
$1–$65,000	40 percent of NW
$65,001–$195,000	$26,000 plus 50 percent of NW over $65,000
$195,001–$325,000	$91,000 plus 60 percent of NW over $195,000
$325,001 or more	$169,000 plus 100 percent of NW over $325,000

"(3) ASSET PROTECTION ALLOWANCE.—The asset protection allowance is calculated according to the following table:

"Asset Protection Allowances for Families and Students

If the age of the student is—	And there are two spouses	And there are one spouse
	then the asset protection allowance is—	
25 or less	$0	$0
26	1,900	1,500
27	3,900	3,000
28	5,800	4,500
29	7,800	6,100
30	9,700	7,600
31	11,700	9,100
32	13,600	10,600
33	15,600	12,100
34	17,500	13,600
35	19,500	15,100
36	21,400	16,600
37	23,400	18,200
38	25,300	19,700
39	27,300	21,200
40	29,200	22,700
41	30,000	23,200
42	30,800	23,800
43	31,600	24,200
44	32,500	24,800
45	33,300	25,400
46	34,200	26,100
47	35,200	26,700
48	36,100	27,200
49	37,300	27,900
50	38,300	28,800
51	39,600	29,500
52	40,900	30,300
53	42,000	31,000
54	43,400	32,000
55	44,800	32,800
56	46,300	33,800
57	48,100	34,600
58	49,700	35,700
59	51,600	36,800
60	53,300	37,900
61	55,300	39,000
62	57,400	40,200
63	59,600	41,400
64	61,800	42,600
65 or more	64,100	44,100

"(4) ASSET CONVERSION RATE.—The asset conversion rate is determined as follows:

"(A) if the family's net worth (determined in accordance with paragraph (2)) minus the asset protection allowance (determined in accordance with paragraph (3)) is equal to or greater than zero, the conversion rate is 12 percent;

"(B) if such family's net worth minus such asset protection allowance is less than zero and the family's available income (determined in accordance with subsection (c)) is greater than $15,000, the conversion rate is zero percent;

"(C) if such family's net worth minus such asset protection allowance is less than zero and such family's available income is equal to or greater than zero but less than $15,000, the conversion rate is equal to 6 percent multiplied by a fraction—

"(i) the numerator of which is equal to $15,000 minus such family's available income; and

"(ii) the denominator of which is $15,000; and

"(D) if such family's net worth minus such asset protection allowance is less than zero and such family's available income is less than zero, the conversion rate is 6 percent.

"(d) ASSESSMENT SCHEDULE.—The adjusted available income (as determined under subsection (a)(1) and hereafter referred to as 'AAI') is assessed according to the following table (or a successor table prescribed by the Secretary under section 479):

"ASSESSMENT FROM ADJUSTED AVAILABLE INCOME (AAI)

If AAI is—	Then the assessment is—
Less than $3,409	−$750
$3,409 to $7,500	22% of AAI
$7,501 to $9,400	$1,650 + 25% of AAI over $7,500
$9,401 to $11,300	$2,125 + 29% of AAI over $9,400
$11,301 to $13,200	$2,676 + 34% of AAI over $11,300
$13,201 to $15,100	$3,322 + 40% of AAI over $13,200
$15,101 or more	$4,082 + 47% of AAI over $15,100

"SEC. 478. (a) AUTHORITY TO PRESCRIBE REGULATIONS RESTRICTED.—(1) Notwithstanding any other provision of law, the Secretary shall not have the authority to prescribe regulations to carry out this part except—

"(A) to prescribe updated tables in accordance with subsections (b) through (e) of this section; or

"(B) to propose modifications in the need analysis methodology required by this part.

"(2) Any regulation proposed by the Secretary that (A) updates tables in a manner that does not comply with subsections (b) through (e) of this section, or (B) that proposes modifications under paragraph (1)(B) of this subsection, shall not be effective unless approved by joint resolution of the Congress by May 1 following the date such regulations are published in the Federal Register in accordance with section 482. If the Congress fails to approve such regulations by such May 1, the Secretary shall publish in the Federal Register in accordance with section 482 updated tables for the applicable award year that are prescribed in accordance with subsections (b) through (e) of this section.

"(b) STANDARD MAINTENANCE ALLOWANCE.—For each academic year after academic year 1987–1988, the Secretary shall publish in the Federal Register a revised table of standard maintenance allowances for the purpose of sections 475(c)(4) and 477(b)(4). Such revised table shall be developed by increasing each of the dollar amounts contained in the table in each such section by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between December 1986 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $10.

"(c) ADJUSTED NET WORTH OF A FARM OR BUSINESS.—For each academic year after academic year 1987–1988, the Secretary shall publish in the Federal Register a revised table of adjusted net worth of a farm or business for the purpose of sections 475(d)(2)(C), 476(c)(2)(C), and 477(c)(2)(C). Such revised table shall be developed—

"(1) by increasing each dollar amount that refers to net worth of a farm or business by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between 1986 and the December next preceding the beginning of such academic year, and rounding the result to the nearest $5,000; and

"(2) by adjusting the dollar amounts '$26,000', '$91,000', and '$169,000' to reflect the changes made pursuant to paragraph (1).

"(d) ASSET PROTECTION ALLOWANCE.—For each academic year after academic year 1987–1988, the Secretary shall publish in the Federal Register a revised table of asset protection allowances for purposes of sections 475(d)(3), 476(c)(3), and 477(c)(3). Such revised table shall be developed by determin-

ing the present value cost of an annuity that would provide, for each age cohort, a supplemental income at age 65 (adjusted for inflation) equal to the difference between the moderate family income (as most recently determined by the Bureau of Labor Statistics) and the current average social security retirement benefits. In making such determinations—

"(1) inflation shall be presumed to be 6 percent per year;

"(2) the rate of return of an annuity shall be presumed to be 8 percent; and

"(3) the sales commission on an annuity shall be presumed to be 6 percent.

"(e) ASSESSMENT SCHEDULES AND RATES.—(1) For each academic year after academic year 1987-1988, the Secretary shall publish in the Federal Register a revised table of assessments from adjusted available income for the purpose of sections 475(e) and 477(d). Such revised table shall be developed—

"(A) by increasing each dollar amount that refers to adjusted available income by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between December 1986 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

"(B) by adjusting the other dollar amounts to reflect the changes made pursuant to subparagraph (A).

"(2) For each academic year after academic year 1987-1988, the assessments made pursuant to section 476(b)(4) shall be made—

"(A) by increasing each dollar amount that refers to adjusted available income by a percentage equal to the estimated percentage increase in the Consumer Price Index (as determined by the Secretary after consultation with the Advisory Committee on Student Financial Assistance) between December 1986 and the December next preceding the beginning of such academic year, rounded to the nearest $100; and

"(B) by adjusting the other dollar amount to reflect the changes made pursuant to subparagraph (A).

The Secretary shall publish in the Federal Register the adjustments required to carry out this paragraph.

"(f) DEFINITION OF CONSUMER PRICE INDEX.—As used in this section, the term 'Consumer Price Index' means the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor. Each annual update of tables to reflect changes in the Consumer Price Index shall be corrected for misestimation of actual changes in such Index in previous years.

"SIMPLIFIED NEEDS TEST

"SEC. 479. (a) APPLICABLE TO ALL TITLE IV PROGRAMS.—The Secretary shall use a simplified needs analysis for any provision of this title based upon the elements set forth in paragraph (2) for the calculation of the expected family contribution for families which have adjusted gross incomes which are equal to or less than $15,000 per year and which file a form 1040A pursuant to the Internal Revenue Code of 1954.

"(b) ELEMENTS IN TESTS.—The five elements to be used for the simplified needs analysis are—

"(1) adjusted gross income,

"(2) Federal and State taxes paid,

"(3) untaxed income and benefits,

"(4) the number of family members, and

"(5) the number of family members in postsecondary education.

"DISCRETION OF STUDENT FINANCIAL AID ADMINISTRATORS

"SEC. 479A. Nothing in this part shall be interpreted as limiting the ability of the student financial aid administrator, on the basis of adequate documentation, to make necessary adjustments to the cost of attendance and expected family contribution computations to allow for treatment of individual students with special circumstances. In addition, nothing in this part shall be interpreted as limiting the ability of the student financial aid administrator to use supplementary information about the financial status of eligible applicants in selecting recipients and determining the amount of awards under subparts 1 and 2 of part A and parts B, C, and E of this title.

"STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS

"SEC. 479B. No portion of any student financial assistance received by an individual from any program funded in whole or in part under title IV of this Act which is used by that individual for costs described in section 472 (1) and (2) of this title, shall be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

"DEFINITIONS

"SEC. 480. As used in this part:

"(a) TOTAL INCOME.—(1) Except as provided in paragraphs (2) and (3), the term 'total income' is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year.

"(2) The Secretary shall promulgate special regulations to permit, in the computation of family contributions for the programs under subpart 2 of part A and parts B, C, and E of this title for any academic year the exclusion from family income of any proceeds of a sale of farm or business assets of that family if such sale results from a voluntary or involuntary foreclosure, forfeiture, liquidation, or bankruptcy.

"(3) Income in the case of a dislocated worker shall be the income for the year for which the determination is made. For the purpose of this subparagraph, a dislocated worker is a worker identified pursuant to title III of the Job Training Partnership Act.

"(b) UNTAXED INCOME AND BENEFITS OF PARENTS AND INDEPENDENT STUDENTS WITH DEPENDENTS.—The term 'untaxed income and benefits' when applied to parent contributions or the contributions of independent students with dependents (including spouses) means—

"(1) the Federal income tax deduction for a married couple when both work;

"(2) child support received;

"(3) welfare benefits, including aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act and aid to dependent children;

"(4) untaxed portions of unemployment compensation, except in any case in which a student is a dislocated worker certified in accordance with title III of the Job Training Partnership Act;

"(5) workman's compensation;

"(6) veterans benefits such as death pension, dependency and indemnity compensation, and Veterans' Administration vocational rehabilitation program benefits (excluding educational benefits);

"(7) educational benefits received under chapter 31 or chapter 34 of title 38, United States Code, by family members excluding dependent students;

"(8) interest on tax-free bonds;

"(9) the amount of dividends excluded for Federal income tax purposes;

"(10) untaxed portions of pensions and capital gains;

"(11) housing, food, and other living allowances (excluding rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits);

"(12) Job Training Partnership Act non-educational benefits;

"(13) payments to individual retirement accounts and Keogh accounts;

"(14) the amount of earned income credit claimed for Federal income tax purposes;

"(15) credit for Federal tax on special fuels;

"(16) the amount of dividend reinvestment excluded for purposes of Federal income taxes;

"(17) the amount of foreign income excluded for purposes of Federal income taxes;

"(18) untaxed social security benefits; and

"(19) any other untaxed income and benefits, such as black lung or railroad retirement benefits.

"(c) UNTAXED INCOME AND BENEFITS OF DEPENDENT STUDENTS OR INDEPENDENT STUDENTS WITHOUT DEPENDENTS.—For the purpose of this part, the term 'untaxed income and benefits' when applied to the contributions of dependent students or independent students without dependents means—

"(1) veterans benefits such as death pension, dependency and indemnity compensation, and Veterans' Administration vocational rehabilitation program benefits (excluding educational benefits);

"(2) educational benefits received under chapter 31 or chapter 34 of title 38, United States Code, by the student;

"(3) interest on tax-free bonds;

"(4) the amount of dividends excluded for purposes of Federal income taxes;

"(5) untaxed portions of pensions and capital gains;

"(6) housing, food, and other living allowances (excluding rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits);

"(7) Job Training Partnership Act noneducational benefits, except in any case in which a student is a dislocated worker certified in accordance with title III of the Job Training Partnership Act;

"(8) untaxed portions of social security;

"(9) welfare benefits;

"(10) untaxed portions of unemployment compensation;

"(11) workmen's compensation;

"(12) payments to individual retirement accounts and Keogh accounts;

"(13) credit for Federal tax on special fuels;

"(14) the amount of dividend reinvestment excluded for purposes of Federal income taxes;

"(15) the amount of foreign income excluded for purposes of Federal income taxes; and

"(16) any other untaxed income and benefits, such as black lung or railroad retirement benefits.

"(d) INDEPENDENT STUDENT.—(1) The term 'independent', when used with respect to a student, means any individual who—

"(A) is 24 years of age or older by December 31 of the award year; or

"(B) meets the requirements of paragraph (2).

"(2) Except as provided in paragraph (3), an individual meets the requirements of this paragraph if such individual—

"(A) is an orphan or ward of the court;

"(B) is a veteran of the Armed Forces of the United States;

"(C) is a graduate or professional student who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year;

"(D) is a married individual who declares that he or she will not be claimed as a dependent for income tax purposes by his or her parents (or guardian) for the first calendar year of the award year;

"(E) has legal dependents other than a spouse;

"(F) is a single undergraduate student with no dependents who was not claimed as a dependent by his or her parents (or guardian) for income tax purposes for the 2 calendar years preceding the award year and demonstrates to the student financial aid administrator total self-sufficiency during the 2 calendar years preceding the award year in which the initial award will be granted by demonstrating an annual total income of $4,000; or

"(G) is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

"(3) An individual may not be treated as an independent student pursuant to subparagraphs (C), (D), and (F) of paragraph (2) if the financial aid administrator determines that such individual was treated as an independent student during the preceding award year, but was claimed as a dependent by any other individual (other than a spouse) for income tax purposes for the first calendar year of such award year.

"(4) The financial aid administrator may certify an individual described in subparagraph (C), (D), or (F) of paragraph (2) on the basis of a demonstration made by the individual, but no disbursal of an award may be made without documentation.

"(e) DISPLACED HOMEMAKER.—The term 'displaced homemaker' means an individual who—

"(1) has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members;

"(2)(A) has been dependent on public assistance or on the income of another family member but is no longer supported by that income, or (B) is receiving public assistance on account of dependent children in the home; and

"(3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.".

(b) EFFECTIVE DATES FOR NEED ANALYSIS PROVISIONS.—(1) Except as provided in paragraphs (2) and (3)—

(A) part F of title IV of the Act shall apply with respect to determinations of need under such title for academic years beginning with academic year 1988-1989 and succeeding academic years; and

(B) for any preceding academic year, determinations of need shall be made in accordance with regulations prescribed by the Secretary of Education in accordance with the Student Financial Assistance Technical Amendments Act of 1982.

(2) With respect to an application filed after the date of enactment of this Act for a loan under part B of such title for any academic year preceding academic year 1988-1989, any determination of expected family contribution shall be made using the system of financial need analysis approved by the Secretary of Education for use under subpart 2 of part A and parts C and E of such title.

(3) For purposes of sections 413D(d)(2)(B), 442(d)(2)(B) and 462(d)(2)(B) for any academic year preceding academic year 1988-1989, the Secretary shall, in lieu of average expected family contribution, use the procedures for sampling expected family contribution within income categories that was employed for academic year 1986-1987, adjusted to reflect changes in data.

(4) The definition of independent student contained in section 480(d) of the Act as amended by subsection (a) of this section shall apply with respect to the determination of such need for periods of enrollment beginning on or after January 1, 1987.

SEC. 407. REVISION OF STUDENT ASSISTANCE GENERAL PROVISIONS.

(a) AMENDMENT.—Part G of title IV of the Act (as redesignated by section 406) is amended to read as follows:

"PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

"DEFINITIONS

"SEC. 481. (a) INSTITUTION OF HIGHER EDUCATION.—(1) For the purpose of this title, except subpart 6 of part A and part B, the term 'institution of higher education' includes, in addition to the institutions covered by the definition contained in section 1201(a)—

"(A) a proprietary institution of higher education;

"(B) a postsecondary vocational institution;

"(C) a department, division, or other administrative unit in a college or university which provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing; and

"(D) a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively an accredited 2-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree.

"(2) The term 'accredited' when applied to any program of nurse education means a program accredited by a recognized body or bodies approved for such purpose by the Secretary.

"(b) PROPRIETARY INSTITUTION OF HIGHER EDUCATION.—For the purpose of this section, the term 'proprietary institution of higher education' means a school (1) which provides not less than a 6-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1) and (2) of section 1201(a), (3) which does not meet the requirement of clause (4) of section 1201(a), (4) which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, and (5) which has been in existence for at least 2 years. Such term also includes a proprietary educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit (as determined by the institution under section 484(d)) from the training offered by the institution. For the purpose of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered. The Secretary shall not promulgate regulations defining the admissions procedures or remediation programs that must be used by an institution in admitting students on the basis of their ability to benefit from the training offered and shall not, as a condition of recognition under section 413(e) of this Act, impose upon any accrediting body or bodies standards which are different or more restrictive than the standards provided in this subsection.

"(c) POSTSECONDARY VOCATIONAL INSTITUTION.—For the purpose of this section, the term 'postsecondary vocational institution' means a school (1) which provides not less than a 6-month program of training to prepare students for gainful employment in a recognized occupation, (2) which meets the requirements of clauses (1), (2), (4), and (5) of section 1201(a), and (3) which has been in existence for at least 2 years. Such term also includes an educational institution in any State which, in lieu of the requirement in clause (1) of section 1201(a), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit (as determined by the institution under subsection (d) of this section) from the training offered by the institution.

"(d) ACADEMIC YEAR.—For the purpose of any program under this title, the term 'academic year' shall be defined by the Secretary by regulation.

"MASTER CALENDAR

"SEC. 482. (a) SECRETARY REQUIRED TO COMPLY WITH SCHEDULE.—To assure adequate notification and timely delivery of student aid funds under this title, the Secretary shall adhere to the following calendar dates in the year preceding the award year:

"(1) Development and distribution of Federal and multiple data entry forms—

"(A) by February 1: first meeting of the technical committee on forms design of the Department;

"(B) by March 1: proposed modifications and updates pursuant to sections 411E and 478 published in the Federal Register;

"(C) by June 1: final modifications and updates pursuant to section 411E and 478 published in the Federal Register;

"(D) by August 15: application for Federal student assistance and multiple data entry data elements and instructions approved;

"(E) by August 30: final approved forms delivered to servicers and printers;

"(F) by October 1: Federal and multiple data entry forms and instructions printed; and

"(G) by November 1: Federal and multiple data entry forms, instructions, and training materials distributed.

"(2) Allocations of campus-based and Pell Grant funds—

"(A) by August 1: distribution of institutional application for campus-based funds (FISAP) to institutions;

"(B) by October 1: final date for submission of FISAP by institutions to the Department;

"(C) by November 15: edited FISAP and computer printout received by institutions;

"(D) by December 1: appeals procedures received by institutions;

"(E) by December 15: edits returned by institutions to the Department;

"(F) by February 1: tentative award levels received by institutions and final Pell Grant payment schedule;

"(G) by February 15: closing date for receipt of institutional appeals by the Department;

"(H) by March 1: appeals process completed;

"(I) by April 1: final award notifications sent to institutions; and

"(J) by June 1: Pell Grant authorization levels sent to institutions.

"(b) TIMING FOR REALLOCATIONS.—With respect to any funds reallocated under section 413D(e) or 442(e), the Secretary shall reallocate such funds at any time during the course of the year that will best meet the purpose of the programs under subpart 2 of part A and part C, respectively. However, such reallocation shall occur at least once each year, not later than September 30 of that year.

"(c) DELAY OF EFFECTIVE DATE OF LATE PUBLICATIONS.—Any additional regulatory changes initiated by the Secretary affecting the general administration of the programs pursuant to this title that have not been published in final form by December 1 prior to the start of the award year shall not become effective until the beginning of the second award year after the December 1 date.

"(d) NOTICE TO CONGRESS.—The Secretary shall notify the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives when the items specified in the calendar have been completed and provide all relevant forms, rules, and instructions with such notice. When a deadline included in the calendar is not met, the Secretary, within 7 days, shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives a written report, including proper documentation, as to why the deadline was not adhered to and a detailed plan for ensuring that subsequent dates are met. Nothing in this section shall be interpreted to penalize institutions or deny them the specified times allotted to enable them to return information to the Secretary based on the failure of the Secretary to adhere to the dates specified in this section.

"FORMS AND REGULATIONS

"SEC. 483. (a) COMMON FINANCIAL AID FORM AND PROCESSING.—(1) The Secretary, in cooperation with representatives of agencies and organizations involved in student financial assistance, shall prescribe a common financial reporting form to be used to determine the need and eligibility of a student for financial assistance under parts A, C, and E of this title (other than under subpart 3 of part A) and to determine the need of a student for the purpose of part B of this title. For the purpose of collecting eligibility and other data for the purpose of part B, guaranty agencies, in cooperation with the Secretary, shall develop separate, identifiable loan application documents that applicants shall submit directly to eligible lenders. No student or parent of a student shall be charged a fee for processing the form prescribed by the Secretary whether the student completes that form or any other approved form. A student or parent may be charged a fee for processing an institutional or a State financial aid form or data elements that is not required by the Secretary.

"(2) The Secretary shall, to the extent practicable, enter into not less than 3 contracts with States, institutions of higher education, or private organizations for the purpose of processing the application required under this subsection and issuing eligibility reports.

"(3) The Secretary shall reimburse all approved contractors at a reasonable predetermined rate for processing such applications, for issuing eligibility reports, and for carrying out other services or requirements that may be prescribed by the Secretary.

"(4) All approved contractors shall be required to adhere to all editing, processing, and reporting requirements established by the Secretary to ensure consistency.

"(5) Nothing in this section shall prohibit States, institutions of higher education, or private organizations from simultaneously collecting data elements, in addition to the data elements prescribed by the Secretary, as may be necessary to determine the eligibility of a student for financial aid funds not covered by this title.

"(b) INFORMATION TO COMMITTEES OF CONGRESS.—Copies of all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this title shall be provided to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives at least 45 days prior to their effective date.

"(c) INFORMATION ON ELIGIBILITY FOR ASSISTANCE.—To help ensure access to postsecondary education by providing early notice to students of their potential eligibility for financial aid, the Secretary is authorized to enter into contracts with States, institutions of higher education, and private organizations for the purpose of—

"(1) developing a common pre-eligibility Federal financial aid form,

"(2) distributing and processing such form on a year-round basis free of charge to students, and

"(3) issuing, on the basis of information reported by the student on such form, a pre-eligibility index designed to estimate the amount of Federal (and, if feasible, non-Federal) funds for which the student might qualify in later completing and submitting the application form called for under this section.

The Secretary shall widely disseminate the pre-eligibility form through post offices and other appropriate Federal installations, schools, postsecondary institutions, libraries, and community-based agencies, including projects assisted under subparts 4 and 5 of part A of this title.

"(d) TOLL-FREE INFORMATION.—The Secretary shall contract for, or establish, and publicize a toll-free telephone number to provide timely and accurate information to the general public. The information provided shall include specific instructions on completing application forms for assistance under this title.

"(e) NOTICE OF STUDENT AID RECEIPT.—(1) The Secretary shall develop a single form on which the amount of assistance received under this title (except assistance received under subparts 4, 5, and 7 of part A) by each student who receives such assistance can be recorded. This form shall be titled 'United States Department of Education, Federal Student Assistance Report'. Such form shall have prominently displayed the Great Seal of the United States. Such form shall be the same or a closely similar color to that of checks issued by the Treasury Department and be provided by the Secretary free to eligible institutions in sufficient quantity and in a timely manner so that each eligible institution can provide a completed copy to each recipient of assistance under this title (except assistance received under subparts 4, 5, and 7 of part A) at the time awards are made but not less than once annually.

"(2) Eligible institutions shall provide to each recipient of assistance under this title (except assistance received under subparts 4, 5, and 7 of part A) a completed copy of the 'United States Department of Education, Federal Student Assistance Report' form at the time awards are made but not less than once annually.

"STUDENT ELIGIBILITY

"SEC. 484. (a) IN GENERAL.—In order to receive any grant, loan, or work assistance under this title, a student must—

"(1) be enrolled or accepted for enrollment in a degree, certificate, or other program leading to a recognized educational credential at an institution of higher education that is an eligible institution in accordance with the provisions of section 487;

"(2) if the student is presently enrolled at an institution, be maintaining satisfactory progress in the course of study the student is pursuing in accordance with the provisions of subsection (c);

"(3) not owe a refund on grants previously received at any institution under this title, or be in default on any loan from a student loan fund at any institution provided for in part E, or a loan made, insured, or guaranteed by the Secretary under this title for attendance at any institution;

"(4) file with the institution of higher education which the student intends to attend, or is attending (or in the case of a loan or loan guarantee with the lender), a statement of educational purpose (which need not be notarized but which shall include such student's social security number or, if the student does not have a social security number, such student's student identification number) stating that the money attributable to such grant, loan, or loan guarantee will be used solely for expenses related to attendance or continued attendance at such institution; and

"(5) be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and able to provide evidence from the Immigration and Naturalization Service of his or her intent to become a permanent resident, or a permanent resident of the Trust Territory of the Pacific Islands, Guam, or the Northern Mariana Islands.

"(b) ELIGIBILITY FOR STUDENT LOANS.—In order to be eligible to receive any loan under this title (other than a loan under section 428A, 428B, or 428C) for any period of enrollment, a student who is not a graduate or professional student (as defined in regulations of the Secretary), and who is enrolled in a program at an institution which has a participation agreement with the Secretary to make awards under subpart 1 of part A of this title, shall—

"(1) have received a determination of eligibility or ineligibility for a grant under such subpart 1 for such period of enrollment; or

"(2) have (A) filed an application with the Pell Grant processor for such institution for such enrollment period, and (B) received from the financial aid administrator of the institution a preliminary determination of the student's eligibility or ineligibility for a grant under such subpart 1.

"(c) SATISFACTORY PROGRESS.—(1) For the purpose of subsection (a)(2), a student is maintaining satisfactory progress if—

"(A) the institution at which the student is in attendance, reviews the progress of the student at the end of each academic year, or

its equivalent, as determined by the institution, and

"(B) the student has a cumulative C average, or its equivalent or academic standing consistent with the requirements for graduation, as determined by the institution, at the end of the second such academic year.

"(2) Whenever a student fails to meet the eligibility requirements of subsection (a)(2) as a result of the application of this subsection and subsequent to that failure the student has academic standing consistent with the requirements for graduation, as determined by the institution, for any grading period, the student may, subject to this subsection, again be eligible under subsection (a)(2) for a grant, loan, or work assistance under this title.

"(3) Any institution of higher education at which the student is in attendance may waive the provisions of paragraph (1) or paragraph (2) of this subsection for undue hardship based on—

"(A) the death of a relative of the student,

"(B) the personal injury or illness of the student, or

"(C) special circumstances as determined by the institution.

"(d) ABILITY TO BENEFIT.—A student who is admitted on the basis of the ability to benefit from the education or training in order to remain eligible for any grant, loan, or work assistance under this title shall—

"(1) receive the general education diploma prior to the student's certification or graduation from the program of study, or by the end of the first year of the course of study, whichever is earlier; or

"(2)(A) be counseled prior to admissions or be administered a nationally recognized standardized or industry developed test, subject to criteria developed by the appropriate accrediting association, measuring the applicant's aptitude to complete successfully the program to which he has applied; and

"(B) with respect to applicants who are unable to satisfy the institution's admissions testing requirements specified in subparagraph (A), be enrolled in an institutionally prescribed program or course of remedial or developmental education, not to exceed one academic year or its equivalent.

"(e) CERTIFICATION FOR GSL ELIGIBILITY.—Each eligible institution may certify student eligibility for a loan by an eligible lender under part B of this title prior to completing the review for accuracy of the information submitted by the applicant required by regulations issued under this title, if—

"(1) checks for the loans are mailed to the eligible institution prior to disbursements;

"(2) the disbursement is not made until the review is complete; and

"(3) the eligible institution has no evidence or documentation on which the institution may base a determination that the information submitted by the applicant is incorrect.

"(f) VERIFICATION LIMITATIONS.—Notwithstanding any other provision of law, the Secretary may not require, or prescribe regulations that require, institutions to verify the accuracy of data used to determine the eligibility for any program under this title for more than 30 percent of the applicants in any award year.

"(g) LOSS OF ELIGIBILITY FOR VIOLATION OF LOAN LIMITS.—No student shall be eligible to receive any grant, loan, or work assistance under this title if the eligible institution determines that the student borrowed in violation of the annual loan limits under part B or part E of this title in the same academic year, or if the student borrowed in excess of the aggregate maximum loan limits under such part B or part E.

"STATUTE OF LIMITATIONS

"SEC. 484A. (a) IN GENERAL.—Notwithstanding any provision of State law that would set an earlier deadline for filing suit—

"(1) an institution which receives funds under this title may file suit for collection of a refund due from a student on a grant made or work assistance awarded under this title during a period of time extending at least until a date 6 years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date the refund first became due;

"(2) a guaranty agency which has an agreement with the Secretary under section 428(c) may file suit for collection of the amount due from a borrower on a loan made under part B of this title during a period of time extending at least until a date 6 years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date such guaranty agency reimburses the previous holder of the loan for its loss on account of the default of the borrower;

"(3) an institution which has an agreement with the Secretary pursuant to section 463(a) may file suit for collection of the amount due from a borrower on a loan made under part E of this title during a period of time extending at least until a date 6 years (exclusive of periods during which the State statute of limitations period otherwise applicable to the suit would be tolled under State law) after the date of the default of the borrower with respect to that amount; and

"(4) subject to the provisions of section 2416 of title 28 of the United States Code, the Attorney General may file suit—

"(A) for payment of a refund due from a student on a grant made under this title until 6 years following the date on which the refund first became due;

"(B) for collection of the amount due the Secretary from a borrower pursuant to section 428 (c)(2)(D) and (c)(8) of this title until 6 years following the date on which the loan is assigned to the Secretary under part B of this title; and

"(C) for collection of the amount due from a borrower on a loan made under part E until 6 years following the date on which the loan is assigned, transferred, or referred to the Secretary under part E of this title.

"(b) ASSESSMENT OF COSTS AND OTHER CHARGES.—Notwithstanding any provision of State law to the contrary—

"(1) a borrower who has defaulted on a loan made under this title shall be required to pay, in addition to other charges specified in this title, reasonable collection costs; and

"(2) in collecting any obligation arising from a loan made under part B of this title, a guaranty agency or the Secretary shall not be subject to a defense raised by any borrower based on a claim of infancy.

"INSTITUTIONAL AND FINANCIAL ASSISTANCE INFORMATION FOR STUDENTS

"SEC. 485. (a) INFORMATION DISSEMINATION ACTIVITIES.—(1) Each eligible institution participating in any program under this title shall carry out information dissemination activities for prospective and enrolled students (including those attending or planning to attend less than full time) regarding the institution and all financial assistance under this title. The information required by this section shall be produced and be made readily available, through appropriate publications and mailings, to all current students, and to any prospective student upon request. The information required by this section shall accurately describe—

"(A) the student financial assistance programs available to students who enroll at such institution;

"(B) the methods by which such assistance is distributed among student recipients who enroll at such institution;

"(C) any means, including forms, by which application for student financial assistance is made and requirements for accurately preparing such application;

"(D) the rights and responsibilities of students receiving financial assistance under this title;

"(E) the cost of attending the institution, including (i) tuition and fees, (ii) books and supplies, (iii) estimates of typical student room and board costs or typical commuting costs, and (iv) any additional cost of the program in which the student is enrolled or expresses a specific interest;

"(F) a statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of cost, as described in subparagraph (E) of this paragraph;

"(G) the academic program of the institution, including (i) the current degree programs and other educational and training programs, (ii) the instructional, laboratory, and other physical plant facilities which relate to the academic program, and (iii) the faculty and other instructional personnel;

"(H) each person designated under subsection (c) of this section, and the methods by which and locations in which any person so designated may be contacted by students and prospective students who are seeking information required by this subsection;

"(I) special facilities and services available to handicapped students;

"(J) the names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs, and the procedures under which any current or prospective student may obtain or review upon request a copy of the documents describing the institution's accreditation, approval, or licensing; and

"(K) the standards which the student must maintain in order to be considered to be making satisfactory progress, pursuant to section 484(a)(2).

"(2) For the purpose of this section, the term 'prospective student' means any individual who has contacted an eligible institution requesting information concerning admission to that institution.

"(b) EXIT COUNSELING FOR BORROWERS.—Each eligible institution shall, through financial aid officers or otherwise, make available counseling to borrowers (individually or in groups) of loans which are made, insured, or guaranteed under part B of this title or made under part E of this title prior to the completion of the course of study for which the borrower enrolled at the institution or at the time of departure from such institution. The counseling required by this subsection shall include—

"(1) general information with respect to the average indebtedness of students who have loans under part B or part E; and

"(2) the average anticipated monthly repayments, a review of the repayment options available, together with such debt and management strategies as the institution determines are designed to facilitate the repayment of such indebtedness.

In the case of a borrower who leaves an institution without the prior knowledge of the institution, the institution shall attempt to provide the information to the student in writing.

"(c) FINANCIAL ASSISTANCE INFORMATION PERSONNEL.—Each eligible institution shall designate an employee or group of employees who shall be available on a full-time basis to assist students or potential students in obtaining information as specified in subsection (a). The Secretary may, by regulation, waive the requirement that an employee or employees be available on a full-time basis for carrying out responsibilities required under this section whenever an institution in which the total enrollment, or the portion of the enrollment participating in programs under this title at that institution, is too small to necessitate such employee or employees being available on a full-time basis. No such waiver may include permission to exempt any such institution from designating a specific individual or a group of individuals to carry out the provisions of this section.

"(d) DEPARTMENTAL PUBLICATION OF DESCRIPTIONS OF ASSISTANCE PROGRAMS.—The Secretary shall make available to eligible institutions, eligible lenders, and secondary schools descriptions of Federal student assistance programs including the rights and responsibilities of student and institutional participants, in order to (1) assist students in gaining information through institutional sources, and (2) assist institutions in carrying out the provisions of this section, so that individual and institutional participants will be fully aware of their rights and responsibilities under such programs. In particular, such information shall include information to enable students and prospective students to assess the debt burden and monthly and total repayment obligations that will be incurred as a result of receiving loans of varying amounts under this title. Such information shall be provided by eligible institutions and eligible lenders at any time that information regarding loan availability is provided to any student.

"COMBINED PAYMENT PLAN

"SEC. 485A. (a) ELIGIBILITY FOR PLAN.—Upon the request of the borrower, a lender described in clause (i), (ii), or (iii) of section 428C(a)(1) of this Act, or defined in subpart I of part C of title VII of the Public Health Service Act may, with respect to a consolidation loan made under section 428C of this Act (and section 439(o) of this Act as in effect prior to the enactment of section 428C) and loans guaranteed under subpart I of part C of title VII of the Public Health Service Act (known as Health Education Assistance Loans), offer a combined payment plan under which the lender shall submit one bill to the borrower for the repayment of all such loans for the monthly or other similar period of repayment.

"(b) APPLICABILITY OF OTHER REQUIREMENTS.—A lender offering a combined payment plan shall comply with all provisions of section 428C applicable to loans consolidated or to be consolidated and shall comply with all provisions of subpart I of part C of title VII of the Public Health Service Act applicable to loans under that subpart which are made part of the combined payment plan, except that a lender offering a combined payment plan under this section may offer consolidation loans pursuant to section 428C(b)(1)(A) if such lender holds any outstanding loan of a borrower which is selected for inclusion in a combined payment plan.

"(c) LENDER ELIGIBILITY.—Such lender may offer a combined payment plan only if—

"(1) the lender holds an outstanding loan of that borrower which is selected by the borrower for incorporation into a combined payment plan pursuant to this section (including loans which are selected by the borrower for consolidation under this section); or

"(2) the borrower certifies that the borrower has sought and has been unable to obtain a combined payment plan from the holders of the outstanding loans of that borrower.

"(d) BORROWER SELECTION OF COMPETING OFFERS.—In the case of multiple offers by lenders to administer a combined payment plan for a borrower, the borrower shall select from among them the lender to administer the combined payment plan including its loan consolidation component.

"(e) EFFECT OF PLAN.—Upon selection of a lender to administer the combined payment plan, the lender may reissue any Health Education Assistance Loan selected by the borrower for incorporation in the combined payment plan which is not held by such lender and the proceeds of such reissued loan shall be paid by the lender to the holder or holders of the loans so selected to discharge the liability on such loans, if—

"(1) the lender selected to administer the combined payment plan has determined to its satisfaction, in accordance with reasonable and prudent business practices, for each loan being reissued (A) that the loan is a legal, valid, and binding obligation of the borrower; (B) that each such loan was made and serviced in compliance with applicable laws and regulations; and (C) the insurance on such loan is in full force and effect; and

"(2) the loan being reissued was not in default (as defined in section 733(e)(3) of the Public Health Service Act) at the time the request for a combined payment plan is made.

"(f) NOTES AND INSURANCE CERTIFICATES.—(1) Each loan reissued under subsection (e) shall be evidenced by a note executed by the borrower. The Secretary of Health and Human Services shall insure such loan under a certificate of comprehensive insurance with no insurance limit, but any such certificate shall only be issued to an authorized holder of loans insured under subpart I of part C of title VII of the Public Health Service Act (including the Student Loan Marketing Association). Such certificates shall provide that all loans reissued under this section shall be fully insured against loss of principal and interest. Any insurance issued with respect to loans reissued under this section shall be excluded from the limitation on maximum insurance authority set forth in section 728(a) of the Public Health Service Act. Notwithstanding the provisions of section 729(a) of the Public Health Service Act, the reissued loan shall be made in an amount, including outstanding principal, capitalized interest, accrued unpaid interest not yet capitalized, and authorized late charges. The proceeds of each such loan will be paid by the lender to the holder of the original loan being reissued and the borrower's obligation to that holder on that loan shall be discharged.

"(2) Except as otherwise specifically provided for under the provisions of this section, the terms of any reissued loan shall be the same as the terms of the original loan. The maximum repayment period for a loan reissued under this section shall not exceed the remainder of the period which would have been permitted on the original loan. If the lender holds more than one loan insured under subpart I of part C of title VII of the Public Health Service Act, the maximum repayment period for all such loans may extend to the latest date permitted for any individual loan. Any reissued loan may be consolidated with any other Health Education Assistance Loan as provided in the Public Health Service Act, and, with the concurrence of the borrower, repayment of any such loans during any period may be made in amounts that are less than the interest that accrues on such loans during that period.

"(g) TERMINATION OF BORROWER ELIGIBILITY.—The status of an individual as an eligible combined payment plan borrower terminates upon receipt of a combined payment plan.

"(h) FEES AND PREMIUMS.—No origination fee or insurance premium shall be charged to the borrower on any combined payment plan, and no origination fee or insurance premium shall be payable by the lender to the Secretary of Health and Human Services.

"(i) COMMENCEMENT OF REPAYMENT.—Repayment of a combined payment plan shall commence within 60 days after the later of the date of acceptance of the lender's offer to administer a combined payment plan, the making of the consolidation loan or the reissuance of any Health Education Assistance Loans pursuant to subsection (e).

"NATIONAL STUDENT LOAN DATA SYSTEM

"SEC. 485B. (a) AUTHORITY OF THE SECRETARY.—In order to assure improved and accurate information on student loan indebtedness and institutional lending practices, and to insure improved compliance with the repayment and loan limitation provisions of this title, the Secretary is authorized to establish and carry out a nationwide computerized student loan data system containing information regarding loans made, insured, or guaranteed under part B and loans made under part E. The information in the data system shall include—

"(1) the exact amount of such loans made;

"(2) the names, social security numbers, and addresses of the borrowers (and in the case of dependent students the names and addresses of the parents of such students);

"(3) the guaranty agency responsible for the guarantee of the loan in the case of loans made, insured, or guaranteed under part B; and

"(4) the institution of higher education or organization responsible for loans made under part E.

The information to be stored in the student loan data system established by this subsection shall be furnished by guaranty agencies for loans made, insured, or guaranteed under part B and by institutions of higher education for loans made under part E.

"(b) ACCESS TO INFORMATION.—(1) Subject to the provisions of paragraphs (2) and (3), and notwithstanding the provisions of section 552(a) of title 5, United States Code, relating to freedom of information, access to information in the data system established and maintained pursuant to subsection (a) of this section shall be restricted to individuals and Federal agencies, specifically authorized by the Secretary to have such access.

"(2) In carrying out this subsection, the Secretary shall approve access to information for—

"(A) research on student loan practices, student and parental indebtedness, repayment and debt collection trends, Federal costs associated with the guaranteed student loan program under part B of this title, in-

cluding the cost of interest subsidies and special allowance payments;

"(B) the improvement of Federal debt collection practices and Federal criminal prosecutions under this title, relating to loans made, insured, or guaranteed under part B or loans under part E of this title;

"(C) furnishing information in response to an official request made by any committee of the Congress; and

"(D) any guaranty agency under part B, except that such access shall be limited to the name, social security number, and the amount of indebtedness, including the amount borrowed each year, of a borrower for whom the guaranty agency provides insurance.

"(3) No name, address, or social security number of any individual borrower may be made available to any requesting individual, Federal agency, or organization, unless the Secretary determines that the request is connected with the enforcement or debt collection responsibilities imposed by Federal law on such individual, agency, or organization.

"(4) In carrying out this subsection, the Secretary shall require semiannual reports (continuing the information set forth in subsection (a) (1) and (2)) from each guaranty agency responsible for the guarantee of loans made, insured, or guaranteed under part B and any institution of higher education or proprietary institution responsible for a loan made under part E.

"(c) VERIFICATION NOT REQUIRED.—The Secretary shall not require lenders, guaranty agencies, or institutions of higher education to verify information or obtain eligibility or other information through the National Student Loan Data System prior to making, guaranteeing, or certifying a loan under part B or part E.

"(d) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the Congress twice in each fiscal year a report describing the results obtained by the establishment and operation of the student loan data system authorized by this section.

"TRAINING IN FINANCIAL AID AND STUDENT SUPPORT SERVICES

"SEC. 486. (a) PROGRAM AUTHORITY.—The Secretary is authorized to enter into contracts with appropriate public agencies or nonprofit private organizations or institutions of higher education to provide training for financial aid administrators, student peer counselors, student staff or volunteers, and other part-time staff and volunteers who provide financial aid, admissions and academic counseling and outreach, and student support programs in postsecondary education in postsecondary institutions, communities, or statewide programs.

"(b) USE OF FUNDS.—Financial assistance under this section may be used for—

"(1) development of materials and in-service training and career awareness programs;

"(2) operation of short-term trainin institutes designed to improve the skills and career awareness of participants in such institutes; and

"(3) special programs to assist in training of students and part-time staff or volunteers at institutions eligible for assistance under title III of this Act.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 to carry out the provisions of this section for fiscal year 1981 and for each of the succeeding fiscal years ending prior to October 1, 1986.

"PROGRAM PARTICIPATION AGREEMENTS

"SEC. 487. (a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 3 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

"(1) The institution will use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

"(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student's eligibility for assistance under this title or the amount of such assistance, or for completing or handling the Federal Student Assistance Report provided for in section 483(e).

"(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be necessary to ensure proper and efficient administration of funds received from the Secretary or from students under this title.

"(4) The institution will comply with the provisions of subsection (b) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

"(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this title.

"(6) The institution will not provide any student with any statement or certification to any lender under part B that qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 425(a), 428(a)(2), and 428(b)(1) (A) and (B).

"(7) The institution will comply with the requirements of section 485.

"(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application, the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements.

"(9) In the case of an institution participating in a program under part B, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

"(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

"(b) HEARINGS.—(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

"(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing on the record and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

"(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

"(A)(i) except as provided in clause (ii), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, at least once every 2 years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organization, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

"(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit;

"(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title;

"(C) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll; and

"(D) the limitation, suspension, or termination of the eligibility for any program under this title of any otherwise eligible institution, or the imposition of a civil penalty under paragraph (2)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing on the record, that such institution has violated or failed to carry out any provision of this title or any regulation prescribed under this title, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time.

"(2)(A) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of

any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

"(B)(i) Upon determination, after reasonable notice and opportunity for a hearing on the record, that an eligible institution—

"(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

"(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed $25,000 for each violation or misrepresentation.

"(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

"(3) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

"(d) DEFINITION OF ELIGIBLE INSTITUTION.—For the purpose of this section, the term 'eligible institution' means any such institution described in section 435(a) of this Act.

"TRANSFER OF ALLOTMENTS

"SEC. 488. Up to 10 percent of the allotment of an eligible institution for a fiscal year under section 413D or 446 of this Act, may be transferred to, and used for the purposes of, the institution's allotment under the other section within the discretion of such institution in order to offer an arrangement of types of aid, including institutional and State aid, which best fits the needs of each individual student. The Secretary shall have no control over such transfer, except as specifically authorized, except for the collection and dissemination of information.

"ADMINISTRATIVE EXPENSES

"SEC. 489. (a) AMOUNT OF PAYMENTS.—From the sums appropriated for any fiscal year for the purpose of the program authorized under subpart 1 of part A, the Secretary shall reserve such sums as may be necessary to pay to each institution with which he has an agreement under section 487, an amount equal to $5 for each student at that institution who receives assistance under subpart 1 of part A. In addition, an institution which has entered into an agreement with the Secretary under subpart 2 of part A or part C (other than section 448), of this title or under part E of this title shall be entitled for each fiscal year which such institution disburses funds to eligible students under any such part to a payment for the purpose set forth in subsection (b). The payment for a fiscal year shall be payable from each such allotment by payment in accordance with regulations of the Secretary and shall be equal to 5 percent of the institution's first $2,750,000 of expenditures plus 4 percent of the instiing such fiscal year under part C for compensation of students, and the principal amount of loans made during such fiscal year from its student loan fund established under part E, excluding the principal amount of any such loans which the institution has agreed to assign under section 463(a)(6)(B). The payment for a fiscal year for the purpose of subsection (b) with respect to section 447 shall be payable from each allotment under part C in accordance with regulations of the Secretary, and shall be 10 percent of the institution's expenditures during such fiscal year under such section.

"(b) PURPOSE OF PAYMENTS.—The sums paid to institutions under this part are for the sole purpose of offsetting the administrative costs of the programs described in subsection (a).

"CRIMINAL PENALTIES

"SEC. 490. (a) IN GENERAL.—Any person who knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery any funds, assets, or property provided or insured under this title shall be fined not more than $10,000 or imprisoned for not more than 5 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud, false statement, or forgery does not exceed $200, the fine shall not be more than $1,000 and imprisonment shall not exceed one year, or both.

"(b) ASSIGNMENT OF LOANS.—Any person who knowingly and willfully makes any false statement, furnishes any false information, or conceals any material information in connection with the assignment of a loan which is made or insured under this title shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(c) INDUCEMENTS TO LEND OR ASSIGN.—Any person who knowingly and willfully makes an unlawful payment to an eligible lender under part B as an inducement to make, or to acquire by assignment a loan insured under that part shall, upon conviction thereof, be fined not more than $1,000 or imprisoned not more than one year, or both.

"(d) OBSTRUCTION OF JUSTICE.—Any person who knowingly and willfully destroys or conceals any record relating to the provision of assistance under this title with intent to defraud the United States or to prevent the United States from enforcing any right obtained by subrogation under this part, shall upon conviction thereof, be fined not more than $10,000 or imprisoned not more than 5 years, or both.

"ADVISORY COMMITTEE ON STUDENT FINANCIAL ASSISTANCE

"SEC. 491. (a) ESTABLISHMENT AND PURPOSE.—(1) There is established in the Department an independent Advisory Committee on Student Financial Assistance (hereafter in this section referred to as the 'Advisory Committee') which shall provide advice and counsel to the Congress and to the Secretary on student financial aid matters.

"(2) The purpose of the Advisory Committee is—

"(A) to provide extensive knowledge and understanding of the Federal, State, and institutional programs of postsecondary student assistance;

"(B) to provide technical expertise with regard to systems of needs analysis and application forms; and

"(C) to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

"(b) INDEPENDENCE OF ADVISORY COMMITTEE.—In the exercise of its functions, powers, and duties, the Advisory Committee shall be independent of the Secretary and the other offices and officers of the Department. The recommendations of the Committee shall not be subject to review or approval by any officer in the executive branch, but may be submitted to the Secretary for comment prior to submission to the Congress in accordance with subsection (f).

"(c) MEMBERSHIP.—(1) The Advisory Committee shall have 11 members of which—

"(A) 3 members shall be appointed by the President pro tempore of the Senate upon the recommendation of the Majority Leader and the Minority Leader,

"(B) 3 members shall be appointed by the Speaker of the House of Representatives upon the recommendation of the Majority Leader and the Minority Leader, and

"(C) 5 members shall be appointed by the Secretary including, but not limited to representatives of States, institutions of higher education, secondary schools, credit institutions, students, and parents.

"(2) Not less than 7 members of the Advisory Committee shall be individuals who have been appointed on the basis of technical qualifications, professional standing and demonstrated knowledge in the fields of higher education and student aid administration, need analysis, financing postsecondary education, student aid delivery, and the operations and financing of student loan guarantee agencies.

"(d) FUNCTIONS OF THE COMMITTEE.—The Advisory Committee shall—

"(1) develop, review, and comment annually upon the system of needs analysis established under sections 411A through 411E and part F of this title;

"(2) monitor, apprise, and evaluate the effectiveness of student aid delivery and recommend improvements;

"(3) recommend data collection needs and student information requirements which would improve access and choice for eligible students under this title and assist the Department of Education in improving the delivery of student aid and in assessing the impact of legislative and administrative policy proposals;

"(4) review and comment upon, prior to promulgation, all regulations affecting programs under this title, including proposed regulations;

"(5) recommend to the Congress and to the Secretary such studies, surveys, and analyses of student financial assistance programs, policies, and practices, including the special needs of low-income, disadvantaged, and nontraditional students, and the means by which the needs may be met, but nothing in this section shall authorize the committee to perform such studies, surveys, or analyses;

"(6) review and comment upon standards by which financial need is measured in determining eligibility for Federal student assistance programs; and

"(7) appraise the adequacies and deficiencies of current student financial aid information resources and services and evaluate the effectiveness of current student aid information programs.

"(e) OPERATIONS OF THE COMMITTEE.—(1) Each member of the Advisory Committee shall be appointed for a term of 3 years, except that, of the members first appointed—

"(A) 4 shall be appointed for a term of 1 year;

"(B) 4 shall be appointed for a term of 2 years; and

"(C) 3 shall be appointed for a term of 3 years,

as designated at the time of appointment by the Secretary.

"(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term of a predecessor shall be appointed only for the remainder of such term. A member of the Advisory Committee shall, upon request, continue to serve after the expiration of a term until a successor has been appointed. A member of the Advisory Committee may be reappointed to successive terms on the Advisory Committee.

"(3) The Advisory Committee shall elect a Chairman and a Vice Chairman from among its members.

"(4) Six members of the Advisory Committee shall constitute a quorum.

"(5) The Advisory Committee shall meet at the call of the Chairman or a majority of its members.

"(f) SUBMISSION TO DEPARTMENT FOR COMMENT.—The Advisory Committee may submit its proposed recommendations to the Department of Education for comment for a period not to exceed 30 days in each instance.

"(g) COMPENSATION AND EXPENSES.—(1) Members of the Advisory Committee who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) Members of the Advisory Committee who are not officers or full-time employees of the United States may each receive reimbursement for travel expenses incident to attending Advisory Committee meetings, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(h) PERSONNEL AND RESOURCES.—(1) The Advisory Committee may appoint such personnel as may be necessary by the Chairman without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS-18 of the General Schedule.

"(2) In carrying out its duties under the Act, the Advisory Committee shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

"(3)(A) The Advisory Committee is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this section and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Advisory Committee, upon request made by the Chairman.

"(B) The Advisory Committee may enter into contracts for the acquisition of information, suggestions, estimates, and statistics for the purpose of this section.

"(4) The Advisory Committee is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(5) The head of each Federal agency shall, to the extent not prohibited by law, cooperate with the Advisory Committee in carrying out this section.

"(6) The Advisory Committee is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

"(i) AVAILABILITY OF FUNDS.—An amount, not to exceed $500,000 in any fiscal year, shall be available from the amount appropriated for each such fiscal year from salaries and expenses of the Department for the costs of carrying out the provisions of this section.".

(b) EFFECTIVE DATES.—(1) Sections 483(e) and 484(d) of the Act as amended by this section shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

(2) The changes made in section 484(a)(1) of the Act shall apply to student assistance awarded for periods of enrollment beginning on or after July 1, 1987.

(3) Section 484(c) of the Act as amended by this section shall apply only to student assistance awarded for periods of enrollment beginning on or after July 1, 1987, to individuals who were not awarded such assistance for any preceding period of enrollment.

(4) Sections 484(f), 485(b), and 487(a)(10) of the Act as amended by this section shall apply only to periods of enrollment beginning on or after July 1, 1987.

SEC. 408. CONFORMING PROVISIONS.

(a) APPLICATION OF STUDENT FINANCIAL ASSISTANCE TECHNICAL AMENDMENTS TO ACADEMIC YEARS 1986-1987, AND 1987-1988.—The Student Financial Assistance Technical Amendments Act of 1982 is amended—

(1) in sections 3, 4, and 6 by striking out "and 1986-1987" each place it appears and inserting in lieu thereof "1986-1989, and 1987-1988";

(2) in section 5, by striking out "and 1986-1987" each place it appears and inserting in lieu thereof "1986-1989, and 1987-1988" in subsections (a), (b)(1), and (c);

(3) in section 5(b)(2), by striking out "and" at the end of subparagraph (B), by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and", and by inserting after such paragraph the following new subparagraph:

"(D) for the period from October 1, 1984, through September 30, 1985, and the arithmetic mean of such index for the period from October 1, 1985, through September 30, 1986, in the case of academic year 1987-1988.";

(4) in section 5(b)(3)—

(A) by striking out "1985-1986), and" and inserting in lieu thereof "1985-1986),"; and

(B) by inserting before the period at the end thereof the following: ", and immediately after such publication for September 1986 (with respect to academic year 1987-1988)";

(5) in section 5(d), by striking out "and" at the end of paragraph (2), by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and", and by inserting after such paragraph the following new paragraph:

"(4) not later than April 1, 1986, for academic year 1987-1988.";

(6) in section 9(a)—

(A) by inserting "and" after "June 30, 1987"; and

(B) by striking out "from July 1, 1988, through June 30, 1989, and from July 1, 1989, through June 30, 1999,"; and

(7) in section 9(c), by inserting "and" at the end of paragraph (4) and by striking out paragraphs (6) and (7).

(b) REPEAL.—Effective with respect to any academic year beginning on or after July 1, 1988, the Student Financial Assistance Technical Amendments Act of 1982 is repealed.

TITLE V—TEACHER TRAINING AND DEVELOPMENT

SEC. 501. REVISION OF TITLE V.

(a) AMENDMENT.—Title V of the Act is amended to read as follows:

"TITLE V—EDUCATOR RECRUITMENT, RETENTION, AND DEVELOPMENT

"STATEMENT OF PURPOSE; APPLICABILITY

"SEC. 501. It is the purpose of this title—

"(1) to encourage the establishment and maintenance of programs that provide teacher training to individuals who are moving to careers in education from other occupations;

"(2) to promote university partnerships with local education agencies serving at-risk students, providing stronger linkages between teachers and such students, and with local labor, business, and professional associations;

"(3) to provide assistance to our Nation's teaching force for the continued improvement of their professional skills and expansion of their subject matter expertise, including pre-school and early childhood education specialists;

"(4) to improve the leadership and administrative skills of elementary and secondary school administrators;

"(5) to encourage academically qualified students to become teachers through scholarship assistance; and

"(6) to encourage States to assess their need for teachers and to plan for meeting current and projected teacher shortages.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 502. (a) MID-CAREER TEACHER TRAINING PROGRAMS.—For part A, there are authorized to be appropriated $3,500,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(b) SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS.—For part B, there are authorized to be appropriated $15,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(c) PROFESSIONAL DEVELOPMENT AND LEADERSHIP PROGRAMS.—(1) For subpart 1 of part C, there are authorized to be appropriated $15,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2) For subpart 2 of part C, there are authorized to be appropriated $10,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(d) TEACHER SCHOLARSHIPS AND FELLOWSHIPS.—(1) For subpart 1 of part D, there are authorized to be appropriated $13,500,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(2) For subpart 2 of part D, there are authorized to be appropriated $2,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(e) TASK FORCES ON TEACHER EDUCATION.—For part E, there are authorized to be appropriated $1,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"PART A—MIDCAREER TEACHER TRAINING FOR NONTRADITIONAL STUDENTS

"STATEMENT OF PURPOSE

"SEC. 511. It is the purpose of this part to encourage institutions of higher education with schools or departments of education to establish and maintain programs that will provide teacher training to individuals who are moving to a career in education from another occupation.

"SELECTION PROCEDURES

"SEC. 512. From the funds available for this part, the Secretary shall make grants to institutions of higher education on the basis of the competitive selection among qualifying applications. Institutions selected as recipients shall be awarded (1) an initial planning grant for use during the first 2 fiscal years after selection, and (2) for institutions demonstrating successful performance with the planning grant, a renewal grant for use during not more than 2 additional years.

"APPLICATIONS

"SEC. 513. (a) CONTENTS OF APPLICATIONS.—Applications for grants under this part shall demonstrate that—

"(1) the applicant will establish and maintain a program of midcareer teacher retraining designed to prepare individuals for teacher certification requirements who already have a baccalaureate or advanced degree and job experience in education-related fields of study, including pre-school and early childhood education;

"(2) the applicant has designed a program which includes at least the following elements:

"(A) a screening mechanism to assure that individuals who are admitted to the program possess the current subject matter knowledge and the characteristics that would make them likely to succeed as classroom teachers;

"(B) a clear set of program goals and expectations which are communicated to participants; and

"(C) a curriculum that, when successfully completed, will provide participants with the skills and credentials needed to teach in specific subject areas, as well as a realistic perspective on the educational process;

"(3) the program has been developed with the cooperation and assistance of the local business community;

"(4) the program will be operated under a cooperative agreement between the institution and one or more State or local educational agencies; and

"(5) the program will be designed and operated with the active participation of qualified classroom teachers, including early childhood education specialists, and will include an in-service training component and follow-up assistance.

"(b) REVIEW OF APPLICATIONS.—Applications for grants under this part shall be reviewed by a panel of experts in teacher training designated by the Secretary. The Secretary shall, to the extent of available funds, select at least one applicant from each of the 10 regions served by the Department and assure that programs offered reflect all significant areas of national need in which shortages exist.

"AMOUNT OF GRANTS

"SEC. 514. The initial planning grant to an institution of higher education under this part shall not exceed $100,000 for the 2 years for which it is available. The renewal grant to an institution under this part shall not exceed $50,000 for each of the two years for which it is available.

"REPORTS AND INFORMATION

"SEC. 515. Each institution of higher education that receives a grant under this part shall submit to the Secretary such reports and other information on the program it conducts under this part as the Secretary deems necessary. The Secretary shall disseminate such information to other institutions of higher education for the purpose of promoting greater use of midcareer teacher training programs without direct Federal financial assistance.

"PART B—SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS

"PURPOSE

"SEC. 521. It is the purpose of this part to encourage partnerships between institutions of higher education and secondary schools serving low-income students, to support programs that improve the academic skills of public and private nonprofit secondary school students, increase their opportunity to continue a program of education after secondary school and improve their prospects for employment after secondary school.

"PARTNERSHIP AGREEMENT

"SEC. 522. (a) PARTNERSHIP AGREEMENT.—To be eligible for a grant under this part, an institution of higher education and a local education agency must enter into a written partnership agreement. A partnership may include businesses, labor organizations, professional associations, community-based organizations, or other private or public agencies or associations. All partners shall sign the agreement.

"(b) CONTENTS OF AGREEMENT.—The agreement shall include—

"(1) a listing of all participants in the partnerships;

"(2) a description of the responsibilities of each participant in the partnership; and

"(3) a listing of the resources to be contributed by each participant in the partnership.

"GRANTS

"SEC. 523. (a) DIVISION BETWEEN SCHOOL-YEAR AND SUMMER PROGRAMS.—From the funds appropriated for this part pursuant to section 502(b), the Secretary shall reserve 65 percent to carry out programs operating during the regular school year and 35 percent to carry out programs operating during the summer.

"(b) AMOUNT AND USE OF GRANTS.—From such funds, the Secretary shall make grants of no less than $250,000 and no more than $1,000,000. The grants may be used by the partnership for programs that—

"(1) use college students to tutor secondary school students and improve their basic academic skills;

"(2) are designed to improve the basic academic skills of secondary school students;

"(3) are designed to increase the understanding of specific subjects of secondary school students;

"(4) are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

"(5) are designed to increase the prospects for employment after graduation of secondary school students.

"(c) PREFERENCES.—In making grants under this part, the Secretary shall give a preference to—

"(1) programs which will serve predominantly low-income communities;

"(2) partnerships which will run programs during the regular school year and the summer; and

"(3) programs which will serve educationally disadvantaged students; potential dropouts; pregnant, adolescent, and teen parents; or children of migratory agricultural workers or of migratory fishermen.

"APPLICATION FOR GRANTS

"SEC. 524. (a) APPLICATION REQUIRED.—A partnership desiring to receive a grant under this part shall submit an application to the Secretary.

"(b) CONTENTS OF APPLICATION.—The application shall include—

"(1) the written and signed partnership agreement;

"(2) a listing of the public and private nonprofit secondary school or schools to be involved in the program;

"(3) a description of the programs to be developed and operated by the partnership;

"(4) assurances to the Secretary that—

"(A) the partnership will establish a governing body including one representative of each participant in the partnership;

"(B) Federal funds will provide no more than 70 percent of the cost of the project in the first year, 60 percent of such costs in the second year, and 50 percent of such costs in the third year and any subsequent year;

"(C) a local educational agency receiving funds under this subpart shall not reduce its combined fiscal effort per student or its aggregate expenditure on education; and

"(D) a local educational agency receiving funds under this part shall use the Federal funds so as to supplement and, to the extent practical, increase the resources that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of students participating in the project, and in no case may funds be used to supplant such non-Federal funds; and

"(5) provide such information and meet such conditions as may be required by the Secretary.

"COMMUNITY COLLEGE PILOT PROJECT

"SEC. 525. (a) PROGRAM AUTHORIZED.—In addition to the grants awarded under section 523, the Secretary is authorized to award 4 grants for pilot community college partnership projects under this section.

"(b) PARTNERSHIP AGREEMENTS.—To be eligible for a grant under this section, a community college shall enter into a partnership agreement in accordance with section 522 with a local educational agency and at least one local business or industry.

"(c) AMOUNT AND USE OF GRANTS.—Grants under this section shall be no less than $250,000. The grants may be used by the partnership for programs that—

"(1) use college students to tutor secondary school students and improve their basic academic skills;

"(2) are designed to improve the basic academic skills of secondary school students;

"(3) are designed to increase the understanding of specific subjects of secondary school students;

"(4) are designed to improve the opportunity to continue a program of education after graduation for secondary school students; and

"(5) are designed to increase the prospects for employment after graduation of secondary school students.

"(d) APPLICATION.—To receive a grant under this section, a community college shall submit an application in accordance with section 524(b).

"(e) AWARD OF GRANTS.—In making awards under this section, the Secretary shall give preference to applications indicating that the business or industry partner is engaged in technological or aerospace activities.

"(f) ELIGIBLE INSTITUTIONS.—The institutions which may be awarded grants under this section are—

"(1) the Wayne County Community College of Wayne County, Michigan;

"(2) the Community College of Vermont;

"(3) the Compton Community College of Compton, California; and

"(4) the Metropolitan Community College of Kansas City, Missouri.

"(g) REPORTS AND INFORMATION.—Each community college that receives a grant under this subpart for establishing pilot projects shall submit to the Secretary such reports and other information as is requested in order to evaluate program effectiveness and to disseminate information on exemplary programs to other community colleges, area vocational-technical schools, and other institutions of higher education, for the purposes of promoting greater use of university-secondary school partnerships without direct Federal financial assistance.

"PART C—PROFESSIONAL DEVELOPMENT AND LEADERSHIP PROGRAMS

"SUBPART 1—PROFESSIONAL DEVELOPMENT RESOURCE CENTERS

"PROGRAM AUTHORITY AND PURPOSE

"SEC. 531. (a) AUTHORITY.—(1) The Secretary is authorized to make grants under this subpart to pay the Federal share of programs to assist teachers from public and private nonprofit schools in the continuous improvement of their professional skills and the expansion and updating of their subject matter expertise by establishing professional development resource centers for teachers.

"(2) The Federal share for each fiscal year shall be 50 percent.

"(b) PURPOSE.—It is the purpose of this subpart to assist in the establishment of professional development resource centers that will—

"(1) help teachers make effective use of educational tools including understanding new technologies and their application;

"(2) enhance teachers' subject matter expertise;

"(3) help teachers learn new classroom management techniques;

"(4) help teachers learn and apply the latest research on learning and teaching, including pre-school and early childhood education and development; and

"(5) help teachers to apply creative approaches toward achieving instructional goals, including making the best use of available community resources.

"GEOGRAPHICAL DISTRIBUTION OF GRANTS

"SEC. 532. In making grants under this subpart, the Secretary shall ensure that eligible applicants within each State receive sufficient funds to plan, establish, or operate at least one professional development resource center within the State in each fiscal year.

"GRANT REQUIREMENTS

"SEC. 533. (a) ELIGIBLE APPLICANTS.—The Secretary is authorized to make grants to local educational agencies or consortia of local educational agencies, in accordance with the provisions of this section, to assist such agencies in planning, establishing, and operating professional development resource centers.

"(b) DEFINITION OF CENTER.—For the purpose of this part, the term 'professional development resource centers' means any year-round program operated by a local educational agency, a combination of such agencies, or an educational service agency which serves teachers from public and private nonprofit schools, including pre-school and early childhood educational specialists, in a State or from an area or community within a State. Through the centers, teachers, with the assistance of such consultants and experts as may be necessary, including expertise available at institutions of higher education, shall conduct activities to advance the goal of professional excellence and to improve teaching skills for the teachers they serve.

"(c) USE OF FUNDS.—Grants under this subpart may be used for—

"(1) developing and disseminating curricula designed to meet the educational needs of students in pre-school and kindergarten through grade 12, in the community, area, or State being served, including the use of educational research findings or new or improved methods, practices, and techniques in the development of such curricula, and including the use of technology and telecommunications;

"(2) providing training to enable teachers to better meet the educational needs of students, including pre-school students, and to familiarize teachers with developments in curriculum, testing, and educational research including the manner in which the research can be used to improve classroom instruction;

"(3) providing for dissemination of information to those served by the center and to other professional development resource centers nationally about the activities and services of the centers;

"(4) bringing together teachers and materials from various school sites to serve as resources for teachers using the center;

"(5) encouraging collaborative activities between pre-school, elementary and secondary school teachers and faculty at institutions of higher education;

"(6) encouraging the application of institutional and community resources to the goal of improving the quality of classroom instruction; and

"(7) providing professional development opportunities for teachers of special population groups (pre-school, handicapped children, limited English proficient children, educationally and economically disadvantaged children) in rural settings.

"PROFESSIONAL DEVELOPMENT POLICY BOARD

"SEC. 534. Each professional development resource center shall be planned and operated under the supervision of a professional development policy board, the majority of which shall be representatives or designees of the public and private nonprofit, preschool, elementary and secondary classroom teachers to be served by such center. Such board shall also include individuals representative of, or designated by, school administrators, the school board (or boards) of the local educational agency (or agencies) served by such center, local business, and at least one representative designated by institutions of higher education, when such institutions are located within reasonable proximity of the center, including (but not limited to) institutions that have departments, schools, or colleges of education.

"SUBMISSION AND APPROVAL OF APPLICATIONS

"SEC. 535. (a) SUBMISSION.—(1) Any local educational agency or any consortium of local educational agencies including educational service agencies, desiring to receive a grant under this subpart shall make application therefor at such time, in such manner, and containing or accompanied by such information, as the Secretary may by regulation require. Each application shall be submitted through the State educational agency of the State in which the applicant is located. Each such State agency shall review the application, make comments thereon, and recommend each application the State agency finds should be approved. The recommendations of the State education agency shall be taken into consideration by the Secretary in awarding grants under this part.

"(2) Each State education agency, in reviewing local educational agency applications for a grant under this subpart, shall seek to assure an equitable within-State geographical distribution of center grant funds so that both large urban and small rural school districts are served.

"(b) MINIMUM REQUIREMENTS.—A grant under this subpart may be made only if the application provides—

"(1) satisfactory assurances that the program designed for the professional development resource center is based on a thorough assessment of instructional and professional development needs identified by the teachers to be served, including early childhood educational specialists, and establishes goals for the center derived from such assessment;

"(2) satisfactory assurances that the program the center plans to provide will meet the needs of the teachers served, including assurances that center activities will lead to in-depth and incremental knowledge and skill development;

"(3) a description of the activities planned to meet the center's goals;

"(4) procedures for the conduct of a yearly evaluation of center activities;

"(5) satisfactory assurances that the center will employ a full-time center director who has had classroom teaching experience and other staff as may be necessary;

"(6) satisfactory assurances that the applicant will pay the non-Federal share of the cost of the program for which assistance is sought and that 50 percent of such non-Federal share shall be paid by the State educational agency and 50 percent of the non-Federal share shall be from local resources, including institutions of higher education and other public and private non-Federal sources; and

"(7) satisfactory assurances that the facilities of the center will not be used for the purpose of influencing the result of an election to an office in Federal, State, or local government or for the purpose of supporting or opposing any campaign for such office.

"(c) SELECTION PROCEDURES.—(1) In approving any application under this subpart, the Secretary shall take into account the resources which the applicant will provide in addition to Federal funds provided under this or any other Federal program.

"(2) In approving applications under this subpart, the Secretary shall substantially involve teachers, including early childhood educational specialists, in reviewing and recommending programs for funding.

"(d) SUBCONTRACTING.—Any local educational agency having an application approved under this subpart may contract with an institution of higher education to carry out activities under, or provide technical assistance in connection with, such application.

"(e) RESERVATION FOR DIRECT EXPENDITURES.—Notwithstanding the provisions of subsection (a)(1) of this section with respect to the requirement that professional development resource centers be operated by local educational agencies, 10 percent of the funds expended under this subpart may be expended directly by the Secretary to make grants to institutions of higher education to operate professional development resource centers, subject to the other provisions of this subpart.

"SUBPART 2—LEADERSHIP IN EDUCATIONAL ADMINISTRATION DEVELOPMENT

"PURPOSE; INTENTION; REGULATIONS

"SEC. 541. (a) PURPOSE.—It is the purpose of this subpart to improve the level of student achievement in public and private nonprofit elementary and secondary schools through the enhancement of the leadership skills of school administrators by establishing technical assistance centers for each State to promote the development of the leadership skills of public and private nonprofit elementary and secondary school administrators with particular emphasis upon increasing access for minorities and women to administrative positions.

"(b) INTENTION.—It is the intention of Congress that contractors seeking to establish technical assistance and training centers should design programs which upgrade the skills of elementary and secondary school administrators in—

"(1) enhancing the schoolwide learning environment by assessing the school climate, setting clear goals for improvement, and devising strategies for completing manageable projects with measurable objectives;

"(2) evaluating the school curriculum in order to assess its effectiveness in meeting academic goals;

"(3) developing skills in instructional analysis to improve the quality of teaching through classroom observation and supervision;

"(4) mastering and implementing objective techniques for evaluating teacher performance; and

"(5) improving communication, problem-solving, student discipline, time-management, and budgetary skills.

"(c) REGULATIONS.—The Secretary is authorized to prescribe such regulations as may be necessary to carry out this subpart.

"ALLOCATION OF APPROPRIATIONS

"SEC. 542. Of the amount appropriated for this subpart for any fiscal year, the Secretary shall make available an amount as may be necessary for establishing and operating a technical assistance center in each State, but not less than $150,000 for each State.

"TECHNICAL ASSISTANCE CENTERS

"SEC. 543. (a) ELIGIBLE CONTRACTS RECIPIENTS.—The Secretary shall, subject to the availability of funds pursuant to section 542, enter into contracts with local educational agencies, intermediate school districts, State educational agencies, institutions of higher education, private management organizations, or nonprofit organizations (or consortium of such entities) for the establishment and operation of training centers in each State in accordance with the requirements of this section and section 544.

"(b) CONTRACT REQUIREMENTS.—Each contract entered into under subsection (a) shall require the contractor—

"(1) to make the services of the technical assistance center available to school administrators from any of the public and private nonprofit schools within the State served by that contractor;

"(2) to collect information on school leadership skills;

"(3) to assess the leadership skills of individual participants based on established effective leadership criteria;

"(4) to conduct training programs on leadership skills for new school administrators and to conduct training seminars on leadership skills for practicing school administrators, with particular emphasis on women and minority administrators;

"(5) to operate consulting programs to provide personnel within school districts with advice and guidance on leadership skills;

"(6) to maintain training curricula and materials on leadership skills drawing on expertise in business, academia, civilian and military governmental agencies, and existing effective schools;

"(7) to conduct programs which—

"(A) make available executives from business, scholars from various institutions of higher education, and practicing school administrators; and

"(B) offer internships in business, industry, and effective school districts to school administrators,

for the purpose of promoting improved leadership skills of such administrators;

"(8) to disseminate information on leadership skills associated with effective schools; and

"(9) to establish model administrator projects.

"(c) SELECTION OF CONTRACTORS.—In making a selection among applicants for any contract under this section, the Secretary shall take into account whether the applicant, if selected, would be able to operate its programs in a manner which would emphasize development of leadership skills identified by graduate schools of management and graduate schools of education.

"GENERAL CRITERIA FOR CONTRACTS

"SEC. 544. (a) CONTRACT REQUIREMENTS.—The following criteria shall apply to each contract under this subpart:

"(1) The contract shall assure the involvement of private sector managers and executives in the conduct of such programs.

"(2) The contract shall contain assurances of an ongoing organizational commitment to carrying out the purposes of this subpart through (A) obtaining matching funds for such programs in cash or in kind at least equal in amount to the amount of funds provided under this subpart, (B) making in-kind contributions to such programs, (C) demonstrating a commitment to continue to operate such programs after expiration of funding under this subpart, and (D) organizing a policy advisory committee including (but not limited to) representatives from business, private foundations, private nonprofit schools, and local and State educational agencies.

"(3) The contract shall indicate the level of development of human relations skills which its programs will instill by (A) identifying the credentials of the staff responsible for such development; (B) describing the manner in which such skills will be developed; and (C) describing the manner in which the program deals with human relations issues facing education administrators.

"(4) The contract shall establish a system for the evaluation of the programs conducted.

"(b) DURATION OF CONTRACT.—Each contract under this subpart shall be for a term of 3 years subject to the availability of appropriations. Such contract shall not be renewable, except that a single 3-year extension may be granted if the contractor agrees to maintain the programs with assistance under this part reduced by one-half.

"DEFINITIONS

"SEC. 545. For the purpose of this subpart—

"(1) the term 'school administrator' means a principal, assistant principal, district superintendent, and other local school administrators; and

"(2) the term 'leadership skills' includes, but is not limited to, managerial, administrative, evaluative, communication and disciplinary skills and related techniques.

"PART D—TEACHER SCHOLARSHIPS AND FELLOWSHIPS

"SUBPART 1—CONGRESSIONAL TEACHER SCHOLARSHIP PROGRAMS

"PURPOSE

"SEC. 551. It is the purpose of this subpart to make available, through grants to the States, scholarships during fiscal years 1987 through 1991 to a maximum of 10,000 individuals who are outstanding high school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the pre-school, elementary or secondary level. Such scholarships shall be referred to as 'Congressional Teacher Scholarships'.

"ALLOCATION AMONG STATES

"SEC. 552. (a) PER CAPITA ALLOCATION.—From the sums appropriated for this subpart pursuant to section 502(d) for any fiscal year, the Secretary shall allocate to any State an amount which bears as nearly as possible the same ratio to such sums as the number of persons in that State bears to the number of persons in all States.

"(b) USE OF CENSUS DATA.—For the purpose of this section, the number of persons in a State and in all States shall be determined by the most recently available data from the United States Census Bureau.

"GRANT APPLICATIONS

"SEC. 553. (a) SUBMISSION OF APPLICATIONS.—The Secretary is authorized to make grants to States in accordance with the provisions of this subpart. In order to receive a grant under this subpart, a State shall submit an application at such time or times, in such manner, and containing such information as the Secretary may prescribe by regulation. Such application shall set forth a program of activities for carrying out the purposes set forth in section 546 in such detail as will enable the Secretary to determine the degree to which such program will accomplish such purposes and such other policies, procedures, and assurances as the Secretary may require by regulation.

"(b) CONTENT OF APPLICATIONS.—The Secretary shall approve an application under this subpart only if the application—

"(1) describes the selection criteria and procedures to be used by the State in the selection of scholarships under this part which satisfy the provisions of this part;

"(2) designates the State agency which administers the program under subpart 3 of part A of title IV, relating to State student incentive grants, or the State agency with which the Secretary has an agreement under section 428(b);

"(3) describes the outreach effort the State agency intends to use to publicize the availability of Congressional Teacher Scholarships to high school students in the State;

"(4) provides assurances that each recipient eligible under section 555(b) of this part who receives a Congressional Teacher Scholarship shall enter into an agreement with the State agency under which the recipient shall—

"(A) within the 10-year period after completing the postsecondary education for which the Congressional Teacher Scholarship was awarded, teach, for a period of not less than 2 years for each year for which assistance was received, in a public or private nonprofit elementary or secondary school in any State, in a public education program in any State, or, on a full-time basis, handi-

capped children or children with limited English proficiency in a private nonprofit school, except that, in the case of individuals who teach in a shortage area established by the Secretary pursuant to section 428(b)(4), the requirements of this subparagraph shall be reduced by one-half;

"(B) provide the State agency evidence of compliance with section 557 as required by the State agency; and

"(C) repay all or part of a Congressional Teacher Scholarship received under section 554 plus interest and, if applicable, reasonable collection fees, in compliance with regulations issued by the Secretary under section 557, in the event that the conditions of subparagraph (A) are not complied with, except as provided for in section 558;

"(5) provides that the agreement entered into with recipients shall fully disclose the terms and conditions under which assistance under this subpart is provided and under which repayment may be required, including—

"(A) a description of the procedures required to be established under paragraph (6); and

"(B) a description of the appeals procedures required to be established under paragraph (7) under which a recipient may appeal a determination of noncompliance with any provision under this subpart;

"(6) provides for procedures under which a recipient of assistance received under this part who teaches for less than the period required under paragraph (4)(A) will have the repayment requirements reduced or eliminated consistent with the provisions of sections 557 and 558;

"(7) provides for appeals procedures under which a recipient may appeal any determination of noncompliance with any provision under this part;

"(8) provides assurances that the State agency shall make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

"(9) provides assurances that Congressional Teacher Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background.

"(c) SELECTION CRITERIA AND PROCEDURES.—The selection criteria and procedures to be used by the State shall reflect the present and projected teacher needs of the State, including the demand for and supply of early childhood and elementary teachers in the State, the demand for and supply of secondary teachers in the State, and the demand for teachers with training in specific academic disciplines in the State.

"(d) SOLICITATION OF VIEWS ON SELECTION CRITERIA AND PROCEDURES.—In developing the selection criteria and procedures to be used by the State, the State shall solicit the views of State and local educational agencies, private educational institutions, and other interested parties. Such views—

"(1) shall be solicited by means of (A) written comments; and (B) publication of proposed selection criteria and procedures in final form for implementation; and

"(2) may be solicited by means of (A) public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with training in specific academic disciplines, including early childhood education and development); or (B) such other methods as the State may determine to be appropriate to gather information on such needs.

"AMOUNT AND DURATION OF AND RELATION TO OTHER ASSISTANCE

"SEC. 554. (a) LIMITATIONS ON AMOUNT AND DURATION.—Subject to subsection (c), each Congressional Teacher Scholar shall receive a $5,000 scholarship for each academic year of postsecondary education for study in preparation to become a pre-school, elementary or secondary teacher. No individual shall receive scholarship assistance for more than 4 years of postsecondary education, as determined by the State agency.

"(b) CONSIDERATION OF AWARD IN OTHER PROGRAMS.—Notwithstanding the provisions of title IV of this Act, scholarship funds awarded pursuant to this part shall be considered in determining eligibility for student assistance under title IV of this Act.

"(c) ASSISTANCE NOT TO EXCEED NEED.—Congressional Teacher Scholarship assistance awarded by the statewide panel established pursuant to section 555 to any individual in any given year, when added to assistance received under title IV of this Act, shall not exceed the cost of attendance, as defined in section 472 of this Act, at the institution the individual is attending. If the amount of the Congressional Teacher Scholarship assistance and assistance received under title IV of this Act, exceeds the cost of attendance, the Congressional Teacher Scholarship shall be reduced by an amount equal to the amount by which the combined awards exceed the cost of attendance.

"(d) ASSISTANCE NOT TO EXCEED COST OF ATTENDANCE.—No individual shall receive an award under the Congressional Teacher Scholarship established under this subpart, in any academic year, which exceeds the cost of attendance, as defined in section 472 of this Act, at the institution the individual is attending.

"SELECTION OF CONGRESSIONAL TEACHER SCHOLARS

"SEC. 555. (a) SELECTION BY STATEWIDE PANELS.—Congressional Teacher Scholars shall be selected by a seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency, or by an existing grant agency or panel designated by the chief State elected official and approved by the Secretary of Education. The statewide panel shall be representative of school administrators, teachers, including pre-school teachers, and parents.

"(b) ELIGIBILITY FOR SELECTION; SELECTION CRITERIA AND PROCEDURES.—Selections of Congressional Teacher Scholars shall be made from students who have graduated or who are graduating from high school and who rank in the top 10 percent of their graduating class. The State educational agency shall make applications available to public and private nonprofit high schools in the State and in other locations convenient to applicants, parents, and others. The statewide panel shall develop criteria and procedures for the selection of Congressional Teacher Scholars. Such criteria may include the applicant's high school grade point average, involvement in extracurricular activities, financial need, and expression of interest in teaching as expressed in an essay written by the applicant. The panel may also require the applicant to furnish letters of recommendation from teachers and others.

"SCHOLARSHIP CONDITIONS

"SEC. 556. Recipients of scholarship assistance under this subpart shall continue to receive such scholarship payments only during such periods that the State agency finds that the recipient is—

"(1) enrolled as a full-time student in an accredited postsecondary institution;

"(2) pursuing a course of study leading to teacher certification; and

"(3) maintaining satisfactory progress as determined by the postsecondary institution the recipient is attending.

"SCHOLARSHIP REPAYMENT PROVISIONS

"SEC. 557. Recipients found by the State agency to be in noncompliance with the agreement entered into under section 553(b)(4) of this subpart shall be required to repay a pro rata amount of the scholarship awards received, plus interest and, where applicable, reasonable collection fees, on a schedule and at a rate of interest to be prescribed by the Secretary by regulations issued pursuant to this subpart.

"EXCEPTIONS TO REPAYMENT PROVISIONS

"SEC. 558. (a) DEFERRAL DURING CERTAIN PERIODS.—A recipient shall not be considered in violation of the agreement entered into pursuant to section 553(b)(4)(C) during any period in which the recipient—

"(1) is pursuing a full-time course of study related to the field of teaching at an eligible institution;

"(2) is serving, not in excess of 3 years, as a member of the armed services of the United States;

"(3) is temporarily totally disabled for a period of time not to exceed 3 years as established by sworn affidavit of a qualified physician;

"(4) is unable to secure employment for a period not to exceed 12 months by reason of the care required by a spouse who is disabled;

"(5) is seeking and unable to find full-time employment for a single period not to exceed 12 months;

"(6) is seeking and unable to find full-time employment as a teacher in a public or private nonprofit pre-school, elementary or secondary school or a public or private nonprofit pre-school, education program; or

"(7) satisfies the provisions of additional repayment exceptions that may be prescribed by the Secretary in regulations issued pursuant to this subpart.

"(b) FORGIVENESS IF PERMANENTLY TOTALLY DISABLED.—A recipient shall be excused from repayment of any scholarship assistance received under this subpart if the recipient becomes permanently totally disabled as established by sworn affidavit of a qualified physician.

"FEDERAL ADMINISTRATION OF STATE PROGRAMS; JUDICIAL REVIEW

"SEC. 559. (a) DISAPPROVAL HEARING REQUIRED.—The Secretary shall not finally disapprove any application for a State program submitted under section 553, or any modification thereof, without first affording the State agency submitting the program reasonable notice and opportunity for a hearing.

"(b) SUSPENSION OF ELIGIBILITY.—Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a State program approved under this subpart, finds—

"(1) that the State program has been so changed that it no longer complies with the provisions of this subpart, or

"(2) that in the administration of the program there is a failure to comply substantially with any such provisions,

the Secretary shall notify such State agency that the State will not be regarded as eligible to participate in the program under this

subpart until the Secretary is satisfied that there is no longer any such failure to comply.

"(c) COURT REVIEW.—(1) If any State is dissatisfied with the Secretary's final action under subsection (b) (1) or (2), such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Secretary shall forthwith certify and file in the court the transcript of the proceedings and the record on which the action was based.

"(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify any previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SUBPART 2—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

"DECLARATION OF PURPOSE; DESIGNATION

"SEC. 561. (a) PURPOSE.—It is the purpose of this subpart to establish a national fellowship program for outstanding teachers.

"(b) DESIGNATION.—Individuals awarded fellowships under this subpart shall be known as 'Christa McAuliffe Fellows'.

"USE OF FUNDS FOR FELLOWSHIPS AND ADMINISTRATION

"SEC. 562. Funds appropriated for any fiscal year for fellowships to outstanding teachers under this subpart shall be used to award fellowships in accordance with the requirements of this subpart, except that not more than 2.5 percent of such funds shall be used for purposes of administering this subpart.

"CHRISTA MCAULIFFE FELLOWSHIPS

"SEC. 563. (a) AWARD DISTRIBUTION AND AMOUNTS.—(1) Except as provided under paragraph (3), sums available for the purpose of this subpart shall be used to award one national teacher fellowship to a public or private school teacher teaching in each congressional district of each State, and in the District of Columbia, and the Commonwealth of Puerto Rico; and one such fellowship in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(2) Fellowship awards may not exceed the average national salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. Christa McAuliffe teacher fellows may not receive an award for 2 consecutive years. Subject to the repayment provisions of section 566, Christa McAuliffe teacher fellows shall be required to return to a teaching position in their current school district or private school system for at least 2 years following the fellowship award.

"(3) If the appropriation for this subpart under section 502(d) is not sufficient to provide the number of fellowships required by paragraph (1) at the level required under paragraph (2), the Secretary shall determine and publish an alternative distribution of fellowships which will permit fellowship awards at that level and which is geographically equitable. The Secretary shall send a notice of such determination to each of the statewide panels established under section 564.

"(b) USE OF AWARDS.—Christa McAuliffe teacher fellows may use such awards for such projects for improving education as the Secretary may approve, including (1) sabbaticals for study or research directly associated with the objectives of this part, or academic improvement; (2) consultation with or assistance to other school districts or private school systems; (3) development of special innovative programs; or (4) model teacher programs and staff development.

"SELECTION OF CHRISTA MCAULIFFE TEACHER FELLOWSHIPS

"SEC. 564. Recipients of Christa McAuliffe teacher fellowship in each State shall be selected (in accordance with section 565) by a 7-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency, or by an existing panel designated by the chief State elected official and approved by the Secretary. The statewide panel shall be representative of school administrators, teachers, parents, and institutions of higher education.

"EVALUATION OF APPLICATIONS

"SEC. 565. (a) SUBMISSION TO AND REVIEW BY STATEWIDE PANEL.—An applicant for Christa McAuliffe teacher fellowship assistance shall submit a proposal for a project under section 563(b), and shall indicate the extent to which the applicant wishes to continue current teaching duties. The applicant shall submit such a proposal to the local education agency for comment prior to submission to the statewide panel (appointed under section 564) for the State within which the proposed project is to be conducted. In evaluating proposals, such statewide panel shall consult with the local education agency, requesting 2 recommendations from teaching peers; a recommendation from the principal; and a recommendation of the superintendent on the quality of the proposal and its benefit to education; and any other criteria for awarding fellowships as is considered appropriate by such statewide panel. Selection of fellows shall be made in accordance with regulations prescribed by the Secretary of Education.

"(b) PUBLIC ANNOUNCEMENT.—Announcement of awards shall be made in a public ceremony.

"FELLOWSHIP REPAYMENT PROVISIONS

"SEC. 566. Repayment of the award shall be made to the Federal Government in the case of fraud or gross noncompliance.

"PART E—STATE TASK FORCES ON TEACHER TRAINING

"STATE TASK FORCES ON TEACHER TRAINING

"SEC. 571. (a) IN GENERAL.—No institution of higher education or other entity in any State shall be eligible for assistance under this title for any fiscal year beginning on or after October 1, 1987, unless—

"(1) the State educational agency has established a task force on teacher training in accordance with the requirements of subsections (b) and (c); or

"(2) the Secretary waives the requirements of this section if the State educational agency has substantially complied with the requirements of paragraphs (1), (2), and (3) of subsection (b), and submits evidence to the Secretary showing such compliance.

"(b) TASK FORCE.—The State educational agency, in consultation with the task force established under this section, shall be responsible—

"(1) for conducting a statewide assessment of the State's needs for recruiting, retaining, retraining, and improving the performance of, instructional and administrative personnel in pre-schools, elementary and secondary schools within the State;

"(2) for developing plans to meet the needs identified pursuant to paragraph (1); and

"(3) for conducting such activities in cooperation with the State needs assessment required under section 208 of the Education for Economic Security Act (20 U.S.C. 3968).

"(c) MEMBERSHIP OF TASK FORCE.—A task force established under this section shall be composed of at least one representative of each of the following:

"(1) The Governor of the State.

"(2) The chief State school officer.

"(3) The State higher education executive officer.

"(4) The State board of education.

"(5) The deans of the schools or colleges of education within the State.

"(6) The presidents of colleges and universities within the State.

"(7) Pre-school, elementary and secondary school teachers.

"(8) Elementary and secondary school administrators, including local superintendents and principals.

"(9) The State legislature.

"(10) Private nonprofit pre-school, elementary and secondary education.

"(d) ALTERNATIVE MEMBERSHIP.—Any previously existing State organization or entity whose membership is substantially the same as the membership required by subsection (c) may, with the approval of the State educational agency, assume the responsibilities of the task force on teacher training under this section.

"(e) LONG-RANGE PLANNING.—From the funds available to carry out this subpart, a State educational agency may apply to the Secretary for assistance in order to develop a long-range plan, in consultation with the task force established under this section. Such plan shall—

"(1) assess the supply and determine the future needs of educators in the State, including early childhood education and development specialists;

"(2) assess the ability of teacher training institutions, the State educational agency, and local educational agencies within the State to meet such needs;

"(3) describe the steps being taken within the State to improve the qualifications and performance of practicing and prospective educators and the availability of training resources for such educators;

"(4) if determined to be appropriate by the State education agency, establish a program of competitive grants to local educational agencies, professional organizations, institutions of higher education, and consortia of such agencies and institutions within the State that are allocated in accordance with specific criteria developed by the task force on teacher training; and

"(5) provide for the performance of such other activities as are deemed appropriate to carry out purposes of this subpart.

"(f) DISPOSITION OF FUNDS TO STATES.—Funds appropriated for this subpart shall be allocated among the States based on the number of children aged 5 through 17, inclusive, except that no State shall receive less than the greater of $10,000 or 0.01 percent of the amount so appropriated.

"(g) STATE APPLICATIONS.—A State educational agency which desires to obtain a

grant under this subpart shall file an application with the Secretary which—

"(1) describes the methods which will be used to insure active and continuing consultation with the task force;

"(2) provides for timely public notice and public dissemination of the information collected and plans developed; and

"(3) ensures that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation, consistent with the responsibilities of the Secretary under this subpart.".

(b) CONFORMING AMENDMENT.—The Human Services Reauthorization Act (Public Law 98-558) is amended by striking out title IX, relating to leadership in educational administration development.

SEC. 502. TAFT INSTITUTE.

Section 1373 of the Education Amendments of 1980, relating to the Robert A. Taft Institute, is amended by inserting after "1985" a comma and the following: "$750,000 for the fiscal year 1986 and for each succeeding fiscal year ending prior to October 1, 1988".

TITLE VI—INTERNATIONAL EDUCATION PROGRAMS

SEC. 601. FINDINGS AND PURPOSES.

Section 601 of the Act is amended to read as follows:

"FINDINGS AND PURPOSES

"SEC. 601. (a) The Congress finds that—

"(1) the well-being of the United States, its economy and long-range security, is dependent on the education and training of Americans in international and foreign language studies and on a strong research base in these areas;

"(2) knowledge of other countries and the ability to communicate in other languages is essential to the promotion of mutual understanding and cooperation among nations; and

"(3) present and future generations of Americans must be afforded the opportunity to develop to the fullest extent possible their intellectual capacities in all areas of knowledge.

"(b) It is the purpose of this part to assist in the development of knowledge, international study, resources and trained personnel, to stimulate the attainment of foreign language acquisition and fluency, and to coordinate the programs of the Federal Government in the areas of foreign language and international studies and research.".

SEC. 602. LANGUAGE AND AREA CENTERS.

(a) AUTHORITY TO MAKE GRANTS.—(1) Section 602(a)(1) of the Act is amended to read as follows:

"SEC. 602. (a)(1) The Secretary is authorized—

"(A) to make grants to institutions of higher education, or combinations thereof, for the purpose of establishing, strengthening, and operating comprehensive language and area centers and programs; and

"(B) to make grants to such institutions or combinations for the purpose of establishing, strengthening, and operating undergraduate language and area centers and programs,

which will be national resources for teaching of any modern foreign language, for instruction in fields needed to provide full understanding of areas, regions, or countries in which such language is commonly used, for research and training in international studies, and the international and foreign language aspects of professional and other fields of study, and for instruction and research on issues in world affairs which concern one or more countries.".

(2) Section 602(a)(2) of the Act is amended by striking out "or contract".

(3) Section 602(a)(3) is amended by striking out "paragraph (1)" and inserting in lieu thereof "paragraph (1)(A)".

(b) STIPEND AND TRAVEL REQUIREMENTS.—Section 602 is further amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b)(1)(A) The Secretary is authorized to make grants to institutions of higher education or combinations of such institutions for the purpose of paying stipends to individuals undergoing advanced training in any center or program approved by the Secretary under this part.

"(B) Stipend recipients shall be individuals who are engaged in a program of competency-based language training, in a program of competency-based training, or in a program developing competency-based language training, in combination with area studies, international studies, or the international aspects of a professional studies program.

"(C) Stipends awarded to graduate level recipients may include allowances for dependents and for travel for research and study in the United States and abroad.

"(2)(A) The Secretary is also authorized to award, on the basis of a national competition, stipends to students beginning their third year of graduate training.

"(B) Stipend recipients shall be selected by a nationally recognized panel of scholars on the basis of exceptional performance (on a nationally referenced test, if available) in the specialty language and evidence of substantial multidisciplinary area training.

"(C) Stipends may be held for up to a maximum 4 years contingent on periodic demonstration of a high level of language proficiency.

"(D) Stipends may be used for continuation of studies at the institution where the recipient is currently enrolled and for the conduct of research and advanced language study abroad.

"(3) The Secretary is not authorized to make awards under paragraph (2) for any fiscal year unless the amount made available by grants under paragraph (1) for such fiscal year equals or exceeds the current services equivalent of the level of funding during fiscal year 1985 under paragraph (1).

"(c) No funds may be expended under this part for undergraduate travel except in accordance with rules prescribed by the Secretary setting forth policies and procedures to assure that Federal funds made available for such travel are expended as part of a formal program of supervised study.".

SEC. 603. FOREIGN LANGUAGE RESOURCE CENTERS.

Section 603 of the Act is amended to read as follows:

"LANGUAGE RESOURCE CENTERS

"SEC. 603. (a) The Secretary is authorized to make grants to and enter into contracts with institutions of higher education, or combinations of such institutions, for the purpose of establishing, strengthening, and operating language training centers, which shall serve as resources to improve the capacity to teach and learn foreign languages effectively. Activities carried out by such centers may include—

"(1) the conduct of research on new and improved teaching methods, including the use of advanced educational technology;

"(2) the development of new teaching materials reflecting the use of such research in effective teaching strategies;

"(3) the development and application of proficiency testing appropriate to an educational setting for use as a standard and comparable measurement of skill levels in all languages;

"(4) the training of teachers in the administration and interpretation of proficiency tests, the use of effective teaching strategies, and the use of new technologies;

"(5) the publication of instructional materials in the less commonly taught languages; and

"(6) the widespread dissemination of research results, teaching materials, and improved pedagogical strategies to others within the postsecondary education community.

"(b) Grants under this section shall be made on such conditions as the Secretary determines to be necessary to carry out the provisions of this section.".

SEC. 604. UNDERGRADUATE INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAMS.

(a) CLARIFYING PROVISION.—The matter preceding clause (1) of section 604 of the Act is amended by striking out "comprehensive" each place it appears.

(b) TYPE OF TRAINING.—Section 604(a)(7) of the Act is amended by inserting before "teacher" the following: "pre-service and in-service".

(c) MODEL PROGRAMS.—Section 604 is further amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

"(b)(1) The Secretary is also authorized to make grants to institutions of higher education whose applications are approved under subsection (a) for the purpose of providing assistance to model programs designed to improve and expand foreign language studies at those institutions. Any institution of higher education desiring to receive a grant under this subsection shall submit an application to the Secretary at such time, in such form, and containing such information and assurances as the Secretary may require.

"(2)(A) An institution of higher education shall not be eligible for a grant under this subsection for a fiscal year unless—

"(i) the sum of the number of students enrolled at such institution in qualified post-secondary language courses on October 1 of that fiscal year exceeds 5 percent of the total number of students enrolled at such institution; and

"(ii) such institution requires that each entering student have successfully completed at least 2 years of secondary school foreign language instruction or requires that each graduating student have earned 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in a foreign language).

"(B) For the purpose of subparagraph (A)(i), the total number of students enrolled in an institution shall be considered to be equal to the sum of (i) the number of full-time degree candidate students enrolled at the institution, and (ii) the number of part-time degree candidate students who are enrolled at the institution for an academic workload which is at least half the full-time academic workload, as determined by the institution in accordance with standards prescribed by the Secretary.

"(3) As a condition for the award of any grant under this subsection, the Secretary may establish criteria for evaluating programs assisted with funds under this subsection and require an annual report which evaluates the progress and proficiency of students in such programs.".

SEC. 605. INTENSIVE SUMMER LANGUAGE INSTITUTES.

Title VI of the Act is further amended—

(1) by redesignating sections 605, 606, and 607 as sections 606, 609, and 610, respectively; and

(2) by inserting after section 604 the following new section:

"INTENSIVE SUMMER LANGUAGE INSTITUTES

"SEC. 605. (a)(1) The Secretary is authorized to make grants to institutions of higher education, or combinations of such institutions, for the purpose of establishing and conducting intensive summer language institutes.

"(2) Training authorized by this section shall be provided through—

"(A) institutes designed to meet the needs for intensive language training by advanced foreign language students;

"(B) institutes designed to provide professional development and improve language instruction through pre-service and in-service training for language teachers; or

"(C) institutes that combine the combine the purposes of subparagraphs (A) and (B).

"(3) Grants made under this section may be used for—

"(A) intensive training in languages critical to the national economic and political future;

"(B) training in neglected languages; and

"(C) stipends for students and faculty attending the institutes authorized by this section.

"(4) Institutes supported under this section may provide instruction on a full-time or part-time basis to supplement instruction not fully available in centers supported under section 602.

"(b) Grants made under this section shall be awarded on the basis of recommendations made by peer review panels composed of broadly representative professionals.".

SEC. 606. RESEARCH; STUDIES; ANNUAL REPORT.

(a) RESEARCH AND STUDIES.—Section 606 (as redesignated by section 605 of this Act) is amended—

(1) by striking out "and part N of title III of the Elementary and Secondary Education Act of 1965";

(2) by striking out "and" at the end of paragraph (2);

(3) by redesignating paragraph (3) as paragraph (4);

(4) by inserting after paragraph (2) the following new paragraph:

"(3) the application of proficiency tests and standards across all areas of foreign language instruction and classroom use; and"; and

(5) by inserting "and publication" after "development" in paragraph (4) (as redesignated by this section).

(b) TECHNICAL AMENDMENT.—Section 606(b) of the Act is amended by striking out "listing of" in subsection (b) and inserting in lieu thereof "listing".

SEC. 607. PERIODICALS PUBLISHED OUTSIDE THE UNITED STATES.

Title VI of the Act is further amended by inserting after section 606 (as redesignated by section 605 of this Act) the following new section:

"PERIODICALS PUBLISHED OUTSIDE THE UNITED STATES

"SEC. 607. (a) In addition to the amount authorized to be appropriated by section 609, there are authorized to be appropriated $1,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years to provide assistance for the acquisition of, and provision of access to, periodicals published outside the United States.

"(b) From the amount appropriated under subsection (a) for any fiscal year, the Secretary shall make grants to institutions of higher education or public or nonprofit private library institutions or consortia of such institutions for the following purposes:

"(1) to acquire periodicals published outside the United States which are not commonly held by American academic libraries and which are of scholarly or research importance;

"(2) to maintain current bibliographic information on periodicals thus acquired in machine-readable form and to enter such information into one or more of the widely available bibliographic data bases;

"(3) to preserve such periodicals; and

"(4) to make such periodicals available to researchers and scholars.

"(c) The Secretary shall approve as a recipient of a grant under this section only an institution or consortium which has an established library or consortium of libraries with collection strengths in either specific geographical areas of the world or particular fields or issues in world affairs which concern one or more countries, or both, and which demonstrates a commitment to share the resources of the collection.

"(d) Nothing in this section shall be considered to amend, affect, or define the provisions of title 17, United States Code, relating to copyright.".

SEC. 608. SELECTION OF GRANT RECIPIENTS.

Title VI of the Act is further amended by inserting after section 607 (as added by section 607 of this Act) the following new section:

"SELECTION OF GRANT RECIPIENTS

"SEC. 608. (a) The Secretary shall award grants under section 602 competitively on the basis of criteria that separately, but not less rigorously, evaluate the applications for comprehensive and undergraduate language and area centers and programs.

"(b) The Secretary shall set criteria for grants awarded under section 602 by which a determination of excellence shall be made to meet the differing objectives of graduate and undergraduate institutions.

"(c) The Secretary shall, to the extent practicable, award grants under this part (other than section 602(a)(1)) in such manner as to achieve an equitable distribution of assistance throughout the Nation, based on the merit of a proposal with peer review by broadly representative professionals.".

SEC. 609. REAUTHORIZATION OF PART A.

Section 610 of the Act (as redesignated by section 605 of this Act) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 610. There are authorized to be appropriated to carry out this part $49,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.".

SEC. 610. BUSINESS AND INTERNATIONAL EDUCATION PROGRAMS.

Section 611(a)(1) of the Act is amended by inserting "and educational" after "skills in the business".

SEC. 611. OVERSEAS INTERNSHIPS.

Section 612(b) of the Act is amended—

(1) by striking out "and" at the end of paragraph (8);

(2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (9) the following new paragraph:

"(10) the establishment of internships overseas to enable foreign language students to develop their foreign language skills and knowledge of foreign cultures and societies.".

SEC. 612. REAUTHORIZATION OF PART B.

Section 613 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 613. There are authorized to be appropriated to carry out this part $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.".

SEC. 613. ADVISORY BOARD.

Section 621 of the Act is amended to read as follows:

"ADVISORY BOARD

"SEC. 621. (a) Not less than 2 times each year the Secretary shall convene an advisory board on the conduct of programs under this title. The Advisory Board shall consist of—

"(1) 5 members selected by the Secretary from among members of the postsecondary educational community, at least two of whom shall be considered by their peers to be specialists in one or more fields of language, area, or international studies;

"(2) 2 members selected by the Secretary from among members of the public; and

"(3) 2 members selected by the Secretary from among representatives of the business community.

"(b) The Secretary may consult with, or include as ad hoc ex officio participants in Advisory Board meetings, a representative from any appropriate executive agency.

"(c) The Advisory Board shall advise the Secretary on—

"(1) any geographic areas of special concern to the United States;

"(2) innovative approaches which may help to fulfill the purposes of this title;

"(3) changes which should be made in the operation of programs under this part to ensure that the attention of scholars is attracted to problems of critical concern to United States international relations;

"(4) emerging trends within various segments (pre-college, undergraduate, graduate, and postgraduate) of the international education community;

"(5) administrative and staffing requirements of international education programs in the Department; and

"(6) special needs with regard to the programs operated under part B.

"(d) The Advisory Board shall advise the Secretary and the Congress on adequate budget levels for parts A and B of this title.".

SEC. 614. DEFINITIONS.

Section 622 of the Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof a semicolon; and

(3) by inserting at the end thereof the following:

"(5) the term 'comprehensive language and area center' means an administrative unit of a university that contributes significantly to the national interest in advanced research and scholarship, employs a critical mass of scholars in diverse disciplines related to a geographic concentration, offers intensive language training in languages of its area specialization, maintains important library collections related to the area, and makes training available in language and area studies to a graduate, postgraduate, and undergraduate clientele; and

"(6) the term 'undergraduate language and area center' means an administrative unit

of an institution of higher education, including but not limited to 4-year colleges, that contributes significantly to the national interest through the education and training of students who matriculate into advanced language an area studies programs, professional school programs, or incorporates substantial international and foreign language content into baccalaureate degree programs, engages in research, curriculum development and community outreach activities designed to broaden international and foreign language knowledge, employs faculty with strong language, area, and international studies credentials, maintains library holdings, including basic reference works, journals, and works in translation, and makes training available predominantly to undergraduate students.".

TITLE VII—CONSTRUCTION AND RENOVATION

SEC. 701. REVISION OF TITLE VII.

Title VII of the Act is amended to read as follows:

"TITLE VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

"PURPOSES

"SEC. 701. (a) IN GENERAL.—The Secretary shall carry out programs of financial assistance to institutions of higher education and to higher education building agencies for the construction, reconstruction, or renovation of academic facilities and the acquisition and maintenance of special research and instructional instrumentation and equipment if the primary purpose of such assistance is to enable such institutions—

"(1) to bring their facilities into conformity with the requirements of—

"(A) the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

"(B) section 504 of the Rehabilitation Act of 1973;

"(C) environmental protection or health and safety programs mandated by Federal, State, or local law, if such requirements were not in effect at the time such facilities were constructed; or

"(D) hazardous waste disposal, treatment, and storage requirements mandated by the Resource Conservation and Recovery Act of 1976, or similar State statutes;

"(2) to more efficiently use available energy resources, especially coal, solar power, and other renewable energy resources;

"(3) to detect, remove, or otherwise contain asbestos hazards in academic and other facilities used by students, in accordance with regulations prescribed by the Secretary;

"(4) to construct, reconstruct, or renovate the Nation's academic research and instructional instrumentation and facilities, including libraries, and to acquire and maintain special research and instructional instrumentation and equipment;

"(5) to provide facilities for advanced skill training programs that relate to emerging technologies and skill needs;

"(6) with unusual increases in enrollment or with significant internal programmatic enrollment shifts (according to data and criteria established by the Secretary) to construct, reconstruct, or renovate their facilities; or

"(7) to preserve significant architecture.

"(b) PRIORITY ON RENOVATION.—In the awarding of grants under this title, priority shall be given to projects involving the renovation of facilities.

"APPROPRIATIONS AUTHORIZED

"SEC. 702. (a) PARTS A AND B.—There are authorized to be appropriated—

"(1) $15,000,000 for part A for fiscal year 1987,

"(2) $10,000,000 for part B for such fiscal year, and

"(3) such sums as may be necessary for parts A and B for each of the 4 succeeding fiscal years,

except that no funds may be appropriated for parts A and B for any such fiscal year unless at least $20,000,000 is appropriated for part E of this title for such fiscal year.

"(b) OTHER PROGRAMS.—There are authorized to be appropriated—

"(1) $25,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years for part C;

"(2) $25,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years for part D; and

"(3) $20,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years for part E.

"PART A—GRANTS FOR THE CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF UNDERGRADUATE ACADEMIC FACILITIES

"STATE PLAN

"SEC. 711. (a) SUBMISSION AND CONTENTS OF PLAN.—Any State desiring to participate in the grant program authorized by this part shall have an agreement pursuant to section 1203 and submit annually to the Secretary, through the State agency designated in such agreement, a State plan which shall—

"(1) provide that the plan shall be administered by the State entity having an agreement under section 1203;

"(2) set forth objective standards and methods which are consistent with basic criteria established under section 712, for—

"(A) determining the relative priorities of eligible projects submitted by institutions of higher education within the State, and

"(B) certifying the Federal share of the cost of each project;

"(3) provide for every applicant an opportunity for a hearing before the State agency regarding the priority assigned to such project, or any other decision by the State agency adversely affecting such applicant; and

"(4) provide for accounting procedures necessary to assure proper disbursement of Federal funds.

"(b) HEARING REQUIRED BEFORE DISAPPROVAL.—The Secretary shall not disapprove any State plan, or modification thereof, without first affording the State agency reasonable notice and opportunity for a hearing.

"(c) SUSPENSION FOR NONCOMPLIANCE.—Whenever the Secretary finds that the State plan substantially fails to comply with this section, the Secretary shall notify the State that it is ineligible to participate in the program under this part until a determination is made that there is no longer a failure to comply.

"BASIC CRITERIA

"SEC. 712. (a) SECRETARY TO PRESCRIBE CRITERIA.—The Secretary shall, by regulation, prescribe basic criteria for the consideration of State plans which ensure—

"(1) flexibility for States to accommodate the varied needs of institutions in the States;

"(2) consideration of the degree to which applicant institutions are effectively using existing facilities; and

"(3) that the Federal share shall not exceed 50 percent of the development costs of a project.

"(b) RULEMAKING PROCEDURES REQUIRED.—Section 553 of title 5, United States Code, shall apply to the prescription of regulations under this section.

"ALLOTMENT OF FUNDS

"SEC. 713. (a) USE FOR PUBLIC COMMUNITY COLLEGES AND TECHNICAL INSTITUTES; OTHERS.—From the sums appropriated pursuant to section 702 to carry out the purposes of this part, not less than 24 percent shall be allotted to States under subsection (b) for public community colleges and public technical institutes. The remainder of such sums shall be allotted to States under subsection (c) for all other institutions of higher education.

"(b) ALLOTMENT FOR PUBLIC COMMUNITY COLLEGES AND TECHNICAL INSTITUTES.—(1) For the purpose of making grants to public community colleges and public technical institutes, the Secretary shall allot to each State an amount which bears the same ratio to the amount available for allotment under this subsection as the product of—

"(A) the number of persons in the State who have graduated from high school or received an equivalent certificate during the previous school year, and

"(B) the State's allotment ratio,

bears to the sum of the corresponding products for all the States.

"(2)(A) Except as provided in subparagraph (B), the allotment ratio shall be 1.00 less the product of—

"(i) 0.50, and

"(ii) the quotient obtained by dividing the income per person for the State by the income per person for all States (not including Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam).

"(B) Notwithstanding subparagraph (A)—

"(i) the allotment ratio shall in no case be less than 0.33⅓ or more than 0.66⅔;

"(ii) the allotment ratio for Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam shall be 0.66 2/3; and

"(iii) the allotment ratio of any State shall be 0.50 for any fiscal year if the Secretary finds that the cost of school construction in such State exceeds twice the median of such costs in all the States as determined by the Secretary on the basis of statistics and data as the Secretary shall deem adequate and appropriate.

"(C) Allotment ratios shall be promulgated annually by the Secretary on the basis of the average personal income in the State and in all the States for the three most recent consecutive calendar years for which data are available from the Department of Commerce.

"(c) ALLOTMENT FOR OTHER INSTITUTIONS.—For the purpose of making grants to all other institutions of higher education, the Secretary shall allot to each State—

"(1) an amount which bears the same ratio to 50 percent of the amount available for allotment under this subsection as the number of students enrolled in institutions of higher education in such State bears to the number of students so enrolled in all States; and

"(2) an amount which bears the same ratio to 50 percent of the amount available for allotment under this subsection as the number of students enrolled in grades 9 through 12 of schools in such State bears to the total number of students so enrolled in all the States.

"(d) AGGREGATE LIMITS AND RATABLE REDUCTIONS.—The aggregate amount allotted to

any State under subsections (b) and (c) for any fiscal year shall not be less than $100,000. If the sums appropriated pursuant to section 702 are not sufficient to make payments to each State, then the amount of each State's allotment shall be ratably reduced.

"(e) REALLOCATION.—(1) Any portion of a State's allotment under subsections (b) and (c) for any fiscal year for which applications from qualified institutions have not been received by the State agency prior to January 1 of such fiscal year shall, by request, be available for payment of the Federal share of cost of other approved projects.

"(2) Amounts allotted under this section for any fiscal year which are not used by the close of the fiscal year shall be reallotted by the Secretary among the States which are able to use the funds without delay during the next fiscal year.

"(f) USE FOR CONSTRUCTION, RECONSTRUCTION, RENOVATION.—Funds available under this part may be used for construction, reconstruction, or renovation of undergraduate facilities and combined graduate and undergraduate facilities.

"(g) USE FOR MAINTENANCE.—In addition, an amount less than or equal to 10 percent of that portion of an award granted under this part which is allotted by the recipient to meet costs of—

"(1) research or instructional instrumentation and equipment, and

"(2) equipment and structural changes necessary to ensure the proper functioning of such research or instructional instrumentation and equipment,

may be allocated by the recipient for maintenance of equipment and changes described in paragraphs (1) and (2). Part or all of this percentage may also be applied to costs of upgrading such equipment and structural changes within three years of the date of initial use, if the recipient deems such upgrading essential to the continued utility (usefulness) of such research or instructional instrumentation and equipment.

"PART B—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

"GRANTS

"SEC. 721. (a) GRANT TO INSTITUTIONS; STATE LIMITATION.—(1) Funds available for this part shall be used by the Secretary to make grants to graduate institutions of higher education whose applications for assistance are consistent with the objectives of this title.

"(2) The total payment for any fiscal year made to institutions of higher education in any State shall not exceed 12.5 percent of sums appropriated for this part.

"(b) PEER REVIEW REQUIRED.—In making grants under this section, the Secretary shall utilize a national peer review panel. The National Peer Review Panel shall be broadly representative of all types and classes of institutions of higher education in the United States. Such panel shall make recommendations to the Secretary based on their assessment of—

"(1) the effectiveness of the program in the proposed use of Federal assistance; and

"(2) the extent to which the receipt of the grant will assist the institution in overcoming deficiencies in existing equipment and facilities.

"(c) COST LIMITATIONS.—The amount of the grant shall not exceed 50 percent of the development cost of the project. No funds or resources provided through Federal programs shall be used to meet the institution's share of the program supported under this section.

"(d) USE FOR MAINTENANCE.—An amount less than or equal to 10 percent of that portion of an award granted under this part which is allotted by the recipient to meet costs of—

"(1) research or instructional instrumentation and equipment, and

"(2) equipment and structural changes necessary to ensure the proper functioning of such research or instructional instrumentation and equipment,

may be allocated by the recipient for maintenance of equipment and changes described in paragraphs (1) and (2). Part or all of this percentage may also be applied to costs of upgrading such equipment and structural changes within three years of the date of initial use, if the recipient deems such upgrading essential to the continued utility (usefulness) of such research or instructional instrumentation and equipment.

"PART C—LOANS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

"ELIGIBILITY CONDITIONS, AMOUNTS, AND TERMS

"SEC. 731. (a) SELECTION OF RECIPIENTS.—From the sums available for this part, the Secretary shall make and insure loans to institutions of higher education and to higher education building agencies for programs consistent with the purposes of this title. No loan shall be made unless the Secretary finds that—

"(1) not less than 20 percent of the development cost of the project will be financed from non-Federal sources;

"(2) the applicant is unable to secure the loan from other sources upon terms and conditions equally as favorable as those applicable to loans under this part;

"(3) the project will be undertaken in an economical manner; and

"(4) for any project with regard to an infirmary or other outpatient care facility for students and institutional personnel, assistance will not be provided under part F of this title.

"(b) TERMS OF LOANS.—Loans shall be repaid within 50 years and shall bear interest at (1) a rate annually determined by the Secretary which shall be not more than one-quarter of 1 percentage point above the average annual interest rate on all interest-bearing obligations of the United States forming a part of the public debt as computed at the end of the preceding fiscal year, adjusted to the nearest one-eighth of 1 percent, or (2) the rate of 5.5 percent per year, whichever is less.

"(c) USE FOR MAINTENANCE.—An amount less than or equal to 10 percent of that portion of a loan granted under this part which is allotted by the recipient to meet costs of—

"(1) research or instructional instrumentation and equipment, and

"(2) equipment and structural changes necessary to ensure the proper functioning of such research or instructional instrumentation and equipment,

may be allocated by the recipient for maintenance of equipment and changes described in paragraphs (1) and (2). Part or all of this percentage may also be applied to costs of upgrading such equipment and structural changes within three years of the date of initial use, if the recipient deems such upgrading essential to the continued utility (usefulness) of such research or instructional instrumentation and equipment.

"GENERAL PROVISIONS FOR LOAN PROGRAM

"SEC. 732. (a) CONCLUSIVENESS OF SECRETARY'S TRANSACTIONS.—Financial transactions of the Secretary, except with respect to administrative expenses, shall be final and conclusive on all officers of the Government and shall not be reviewable by any court.

"(b) GENERAL AUTHORITY.—In the performance of, and with respect to, the functions vested in the Secretary by this part, the Secretary may—

"(1) prescribe such rules and regulations as may be necessary to carry out the purposes of this part;

"(2) sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under his control, and nothing herein shall be construed to except litigation arising out of activities under this part from the application of sections 507(b) and 517 and 2679 of title 28, United States Code;

"(3) foreclose on any property and bid for and purchase at any foreclosure, or any other sale, any property in connection with which the Secretary has made a loan pursuant to this part; in the event of such an acquisition, notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real property by the United States, the Secretary may complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property; except that (A) such action shall not preclude any other action by the Secretary to recover any deficiency in the amounts loaned, and (B) any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

"(4) sell, exchange, or lease real or personal property and securities or obligations;

"(5) modify, with respect to the rate of interest, the time of payment of principal, interest, security, or any other term of any contract or agreement to which the Secretary is a party, including—

"(A) granting a moratorium on the repayment of principal or interest to a party temporarily unable to make such repayment without undue financial hardship provided the applicant files, and the Secretary approves, a plan to make repayment; and

"(B) granting to a borrower of a loan made before October 1, 1986, the option of repaying the loan at a discount computed in accordance with subsection (c) if the Secretary has received satisfactory assurances that the facilities financed with the loan will continue to be used for purposes related to the educational institution for the original term of the loan, and the prepayment is (i) made from non-Federal sources, (ii) not derived from proceeds of obligations the income of which is exempt from taxation under the Internal Revenue Code of 1954, (iii) made on a loan that has been outstanding for at least 5 years, and (iv) is made prior to October 1, 1991; and

"(6) include in any contract such other covenants, conditions, or provisions necessary to ensure that the purposes of this title will be achieved.

"(c) COMPUTATION OF ALLOWABLE DISCOUNTS.—The Secretary shall compute the discount which may be offered to a borrower as an inducement to early repayment under subsection (b)(5) in an amount determined by the Secretary to be in the best financial interests of the Government, taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan.

"(d) NONDISCRIMINATION BETWEEN BORROWERS IN OFFERING DISCOUNTED PREPAYMENT.—(1) If the Secretary offers a discount as an inducement to early repayment under subsection (b)(5), such offer shall be available without regard to whether the borrower is delinquent or in default on the loan on or before October 1, 1986, but the Secretary shall refuse to make such offer to a borrower that becomes delinquent or goes into default after that date.

"(2) The discount offered shall apply, in the case of a borrower that complies with paragraph (1), to the entire amount outstanding on the loan (including any amount owed with respect to payments that are overdue).

"REVOLVING LOAN AND INSURANCE FUND

"SEC. 733. (a) ESTABLISHMENT.—There is created within the Treasury a revolving loan fund for the purpose of making and insuring loans under this part (hereafter referred to as the 'fund') which shall be available to the Secretary without fiscal year limitation. The total of any loans made from the fund in any fiscal year shall not exceed limitations specified in appropriations Acts.

"(b) MANAGEMENT OF FUND.—(1) The Secretary shall transfer to the fund appropriations provided under section 702 to provide capital for making loans. Interest and principal payments on loans, and any other moneys, property, or assets derived from activities under this part shall be deposited in the fund.

"(2) All loans, expenses, and payments pursuant to operation of this part shall be paid from the fund, including expenses and payments in connection with sale, pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, of participations in obligations acquired under this part. At the close of each fiscal year, the Secretary shall pay interest on the cumulative amount of funds paid out for loans under this part less the average undisbursed cash balance in the fund during the year. The interest rate shall be determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of maturity comparable to the average maturity of loans made from the fund during the month preceding each fiscal year. Interest payments may be deferred with the approval of the Secretary of the Treasury, but interest payments so deferred shall themselves bear interest. If the Secretary determines that moneys in the fund exceed the present and prospective needs of the fund, the excess may be transferred to the general fund of the Treasury.

"PART D—GRANTS TO PAY INTEREST ON DEBT

"ANNUAL INTEREST GRANTS

"SEC. 741. (a) GRANT AUTHORITY.—To assist institutions of higher education and higher education building agencies in reducing the cost of borrowing from other sources for projects under this part, the Secretary may make annual interest grants to such institutions and agencies with respect to any project made over a fixed period not exceeding 40 years, and provision for the grants shall be embodied in the contract guaranteeing their payment. Grants shall not be greater than the difference between (1) the average annual debt service which would be required to be paid during the life of the loan on the amount borrowed from other sources for the construction of such facilities, and (2) the average annual debt service which the institution or agency would have been required to pay during the life of the loan if the applicable interest rate had been determined by the Secretary in accordance with section 731(b).

"(b) LIMITS ON GRANTS.—The total amount of annual interest grants which may be paid to institutions of higher education and higher education building agencies in any year pursuant to contracts entered into for such year under this section shall not exceed $13,500,000.

"(c) STATE ALLOCATION LIMITS.—The total payment for any fiscal year made to institutions of higher education and higher education building agencies in any State shall not exceed 12.5 percent of sums appropriated for this section.

"(d) REQUIREMENTS FOR GRANTS.—No annual interest grant shall be made unless (1) assurance is provided that not less than 10 percent of the costs of the project will be financed from non-Federal sources, (2) the applicant is unable to secure a loan from other sources upon terms and conditions as favorable as those applicable to loans under this title, and (3) the project will be undertaken in an economical manner. Loans for which an interest grant is made shall, for purposes of this section only, not be considered financing from a non-Federal source.

"PART E—COLLEGE CONSTRUCTION LOAN INSURANCE ASSOCIATION

"CONGRESSIONAL DECLARATION OF PURPOSE; DEFINITION; INCORPORATION

"SEC. 751. (a) PURPOSE.—The Congress hereby declares that it is the purpose of this part to authorize participation of the United States Government and the Student Loan Marketing Association in a private, for profit corporation to be known as the College Construction Loan Insurance Association (hereinafter referred to as the 'Corporation') which will, directly or indirectly, alone or in collaboration with others—

"(1) guarantee, insure, and reinsure bonds, debentures, notes, evidences of debt, loans, and interests therein, the proceeds of which are to be used for an education facilities purpose;

"(2) guarantee and insure leases of personal, real, or mixed property to be used for an education facilities purpose; and

"(3) issue letters of credit and undertake obligations and commitments as the Corporation deems necessary to carry out the purposes described in paragraphs (1) nad (2).

"(b) STATUS AS NON-GOVERNMENTAL ENTITY.—The Corporation shall not be an agency, instrumentality, or establishment of the United States Government and shall not be a 'Government corporation' nor a 'Government controlled corporation' as defined in section 103 of title 5, United States Code. No action under section 1491 of title 28, United States Code (commonly known as the Tucker Act) shall be allowable against the United States based on the actions of the Corporation.

"(c) CORPORATE POWERS AND LIMITATIONS.—The Corporation shall be subject to the provisions of this part and, to the extent not inconsistent with this part, to the District of Columbia Business Corporation Act. The business activities of the Corporation shall always be limited to the purposes set forth in subsection (a) of this section. It shall have the powers conferred upon a corporation by the District of Columbia Business Corporation Act as from time to time in effect in order to conduct its corporate affairs and to carry out its purposes and activities incidental thereto.

"(d) DEFINITION OF EDUCATION FACILITIES PURPOSE.—As used in this section, an 'education facilities purpose' includes any activity (including activities related to the payment of financing or transaction costs) relating to the construction, reconstruction, renovation, acquisition, or purchase of (1) education, training, or research facilities or housing for students, faculty, or staff, (2) any underlying real property or any interest therein, (3) furniture, fixtures, and equipment to be used in connection with any education or training facility or housing for students, faculty, or staff, and (4) instructional equipment and research instrumentation including site preparation for such equipment and instrumentation.

"CRITERIA FOR GUARANTEES AND INSURANCE

"SEC. 752. (a) GENERAL RULE.—The Corporation shall provide direct insurance, guarantees, and reinsurance on obligations issued for education facilities purposes only in accordance with the requirements of this section.

"(b) ALLOCATION OF REINSURANCE CAPACITY.—

"(1) At least the percentages specified in paragraph (2) of the aggregate dollar amount of bond and debenture issues reinsured by the Corporation shall be issues which, without insurance, are listed by a nationally recognized statistical rating organization at a rating below the third highest rating of such organization.

"(2) For the purpose of subparagraph (1) of this paragraph, the percentages specified in this paragraph shall be—

"(A) 10 percent for the first full year of operation of the Corporation;

"(B) 30 percent for the second full year of such operation; and

"(C) 50 percent for the third full year of such operation and thereafter.

"(3) No bond or debenture issue which is both reinsured and directly insured by the Corporation may be counted toward the fulfillment of the requirements of paragraph (1).

"(c) DIRECT INSURANCE AND GUARANTEE ACTIVITIES; LIMITATIONS.—

"(1) All of the assets and obligations directly covered by primary insurance or guarantees issued by the Corporation shall be assets or obligations of institutions which are, without insurance or guarantee, listed by a nationally recognized statistical rating organization at a rating below the third highest rating of such organization.

"(2) At least the percentages specified in paragraph (3) of the aggregate dollar amount of the assets and obligations reinsured, insured, and guaranteed by the Corporation under this section shall be in the direct insurance and guarantee activities specified in this subsection.

"(3) For the purpose of paragraph (2) of this paragraph, the percentages specified in this paragraph shall be—

"(A) 10 percent for the first full year of operation of the Corporation;

"(B) 30 percent for the second full year of such operation; and

"(C) 50 percent for the third full year of such operation and thereafter.

"(4) For the purpose of paragraph (1), the assets and obligations which may be directly

covered by primary insurance or guarantees issued by the Corporation are—

"(A) bonds, debentures, notes, evidences of debt, loans, and interests therein, the proceeds of which are to be used for an education facilities purpose; and

"(B) leases of personal, real, or mixed property to be used for an education facilities purpose.

"(d) NOTICE OF SERVICES.—The Corporation shall take such steps as may be necessary to publicize the availability of its insurance and reinsurance programs under this section in a manner that assures that information concerning such programs will be available to each eligible institution.

"(e) NONDISCRIMINATION REQUIRED.—

"(1) The Corporation may not carry out any activities with respect to any educational facilities purpose of a participating institution if the institution discriminates on account of race, color, religion (subject to paragraph (2)), national origin, sex (to the extent provided in title IX of the Education Amendments of 1972), or handicapping condition.

"(2) The prohibition with respect to religion shall not apply to an educational institution which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of this section would not be consistent with the religious tenets of such organization.

"(3) Each participating institution shall certify to the Corporation that the institution does not discriminate as required by the provisions of paragraph (1).

"PROCESS OF ORGANIZATION

"SEC. 753. The Secretary of the Treasury, the Secretary, and the Student Loan Marketing Association shall each appoint 2 persons to be incorporators of the Corporation. If either the Secretary of the Treasury or the Secretary fail to appoint incorporators within 90 days after the date of enactment of the Higher Education Amendments of 1986, the Student Loan Marketing Association, after consultation with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives, shall have the authority to name the incorporators which have not been so appointed. The incorporators so appointed shall each sign the articles of incorporation and shall serve as the initial Board of Directors until the members of the first regular Board of Directors shall have been appointed and elected. Such incorporators shall take whatever actions are necessary or appropriate to establish the Corporation, including the filing of articles of incorporation.

"OPERATION AND ELECTION OF BOARD OF DIRECTORS

"SEC. 754. (a) IN GENERAL.—The Corporation shall have a Board of Directors which shall consist of 11 members, of whom one shall be elected annually by the Board to serve as chairman. Directors shall serve for terms of one year or until their successors have been appointed and qualified, and any member so appointed to fill a vacancy shall be appointed only for the unexpired term of the Director whom he succeeds. Two Directors shall be appointed by the Secretary of the Treasury; 2 Directors shall be appointed by the Secretary; 3 Directors shall be appointed by the Student Loan Marketing Association; and the remaining 4 Directors shall be elected by the holders of the Corporation's voting common stock at least one of whom shall be a college or university administrator. The failure of the Secretary or the Secretary of the Treasury to make any one or more appointments to the Board of Directors of the Corporation shall not affect or diminish the right and power of (1) the other directors who have been appointed or elected to assume and carry out their duties as directors and (2) the Board so constituted to act for all purposes as the full Board of the Corporation.

"(b) CUMULATIVE VOTING.—The articles of incorporation of the Corporation shall provide for cumulative voting under section 27(d) of the District of Columbia Business Corporation Act (D.C. Code, sec. 29-327(d)).

"INITIAL CAPITAL

"SEC. 755. (a) AUTHORITY TO ISSUE COMMON STOCK.—The Corporation shall issue shares of voting common stock of no par value at such time within 6 months of its incorporation as shall be designated by the initial Board of Directors, and from time to time thereafter.

"(b) SUBSCRIPTION BY SECRETARY.—The Secretary is authorized and directed to subscribe to and purchase, in each of the 5 years following the incorporation of the Corporation, voting common stock of the Corporation having an aggregate purchase price of not more than $20,000,000, subject to availability of appropriations.

"(c) SUBSCRIPTION BY ASSOCIATION.—The Student Loan Marketing Association is authorized to subscribe to and purchase during the 5 years following the incorporation of the Corporation voting common stock of the Corporation having an aggregate purchase price of $25,000,000 or more.

"(d) ANNUAL ISSUANCE.—The Corporation is authorized to offer for subscription and purchase to the general public during the 5 years following the incorporation of the Corporation, voting common stock having an aggregate purchase price of $125,000,000. Not less than 40 percent of such stock shall be set aside for purchase by institutions of higher education prior to being offered to the general public.

"ISSUE OF NONVOTING STOCK AND DEBT TO THE PUBLIC

"SEC. 756. The Corporation may issue, without limitation as to amount or restriction as to ownership, such nonvoting common, preferred, and preference stock, debt, and such other securities and obligations, in such amounts, at such times, and having such terms and conditions as may be deemed necessary or appropriate by its Board of Directors.

"OBLIGATIONS NOT FEDERALLY GUARANTEED; NO FEDERAL PRIORITY

"SEC. 757. No obligation which is insured, guaranteed, or otherwise backed by the Corporation, shall be deemed to be an obligation which is guaranteed by the full faith and credit of the United States. No obligation which is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation which is guaranteed by the Student Loan Marketing Association. This section shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

"AUTHORITY OF SECRETARY TO SELL COMMON STOCK; RIGHT OF FIRST REFUSAL

"SEC. 758. (a) AUTHORITY TO SELL.—The Secretary may, at any time after a date which is 5 years after the date of incorporation of the Corporation, sell (in one or more transactions) the voting common stock of the Corporation owned by the Secretary. Prior to offering such common stock for sale to any other person, the Secretary shall offer such stock to the Student Loan Marketing Association at the price determined pursuant to subsection (b). Not later than 30 days prior to the sale of such stock, the Secretary shall advise, in writing, the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of plans of the Secretary.

"(b) PURCHASE PRICE.—The price at which the Secretary may sell the voting common stock of the Corporation under subsection (a) shall be the market value of such shares as determined by the Secretary, on the basis of an independent appraisal, but shall not be less than the value of such shares as shown on the books of account of the Corporation as of the date of closing of such purchase. In no event shall the purchase price be less than the original issuance price.

"(c) BOARD OF DIRECTORS ELECTED AFTER MAJORITY BUY-OUT.—If the Student Loan Marketing Association acquires from the Secretary sufficient voting common stock so as to own more than 50 percent of the issued and outstanding voting common stock of the Corporation, section 754 (except subsection (b)) shall be of no further force or effect and the Board of Directors of the Corporation shall thereafter be elected entirely by the voting common shareholders.

"(d) RIGHT OF FIRST REFUSAL TO ASSOCIATION.—Until such time as the Student Loan Marketing Association acquires all of the voting common stock owned by the Secretary, the Student Loan Marketing Association shall have the right to purchase all, or any lesser portion it shall select, of each of the issues of equity securities or other securities convertible into equity of the Corporation as the Corporation may issue from time to time, on the same terms and conditions as such securities are to be offered to other persons.

"(e) AUTHORITY OF ASSOCIATION WITH RESPECT TO CORPORATION.—The Student Loan Marketing Association is authorized and empowered to purchase stock and to carry out such other activities as are necessary and appropriate for carrying out the Association's obligations and responsibilities with respect to the Corporation. The Student Loan Marketing Association is also authorized to enter into such other transactions with the Corporation, including the acquisition of securities and obligations of the Corporation referred to in this section and sections 755 and 756, and arrangements for the provision of management and other services to the Corporation, as shall be approved by the Student Loan Marketing Association and the Corporation.

"USE OF STOCK SALE PROCEEDS

"SEC. 759. The proceeds received by the Secretary upon the sale of any shares of the Corporation to the Student Loan Marketing Association or any other person shall be deposited in the general fund of the Treasury.

"AUDITS; REPORTS TO THE PRESIDENT AND THE CONGRESS

"SEC. 760. (a) ACCOUNTING.—The books of account of the Corporation shall be maintained in accordance with generally accepted accounting principles and shall be subject to an annual audit by an independent public accountant.

"(b) REPORTS.—The Corporation shall transmit to the President and the Congress, annually and at such other times as it deems desirable, a report of its operations and activities under this part, which annual report shall include a copy of the Corporation's financial statements and the opinion

with respect thereto prepared by the independent public accountant reviewing such statements and a copy of any report made on an audit conducted under subsection (a). The annual reports shall include such information and other evidence as is necessary to demonstrate that the Corporation has complied with the requirements of section 752.

"PART F—HOUSING AND OTHER EDUCATIONAL FACILITIES LOANS

"FEDERAL ASSISTANCE IN THE FORM OF LOANS

"SEC. 761. (a) AUTHORITY AND CONDITIONS FOR LOANS.—To assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties, the Secretary may make loans of funds to such institutions for the construction, reconstruction, or renovation of such facilities. No such assistance shall be provided unless—

"(1) the educational institution involved is unable to secure the necessary funds for the construction or purchase from other sources upon terms and conditions equally as favorable as the terms and conditions applicable to loans under this title; and

"(2) the Secretary finds that any such construction will be undertaken in an economical manner, and that any such facilities are not or will not be of elaborate or extravagant design or materials.

"(b) USE OF LOANS FOR PREVIOUSLY MADE CONTRACTS.—Any undergraduate postsecondary educational institution which, prior to the date of enactment of this section, has contracted for housing or other educational facilities may, in connection therewith, receive loans authorized under this title, as the Secretary may determine. No such loan shall be made for any housing or other educational facilities, the construction of which was begun prior to the effective date of this section, or completed prior to the filing of an application under this title.

"(c) AMOUNT AND CONDITIONS OF LOANS.—A loan to an undergraduate postsecondary educational institution—

"(1) may be in an amount not exceeding the total development cost of the facility, as determined by the Secretary;

"(2) shall be secured in such manner and be repaid within such period, not exceeding 50 years, as may be determined by the Secretary; and

"(3) shall bear interest at a rate determined by the Secretary which shall be not more than the lower of (A) 5.5 percent per annum, or (B) the total of one-quarter of 1 percent per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in subsection (d).

"(d) USE OF FUNDS FROM TITLE IV OF THE HOUSING ACT OF 1950.—Funds obtained pursuant to section 401(d) of the Housing Act of 1950 shall be available for the purposes of carrying out this part. For such purposes, the total amount of notes and obligations which the Secretary may continue to issue and have outstanding for purchase by the Secretary of the Treasury shall not exceed the amount issued and outstanding under such section 401(d) as of September 30, 1985. Such notes and other obligations shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations issued to obtain funds for loan contracts entered into after the effective date of the Higher Education Act Amendments of 1986 shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the average current yield on outstanding obligations of the United States of comparable maturities in the month preceding the month in which the contract for such loan is made. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations of the Secretary issued under this part and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchases of such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired under this part. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

"(e) USE OF FUNDS.—Not less than 10 percent of the funds held by the Secretary under subsection (d) shall be made available for loans under this part for each fiscal year.

"(f) APPROPRIATION TO COVER NOTES AND OBLIGATIONS NOT COVERED BY LOAN REPAYMENT.—There are authorized to be appropriated to the Secretary such sums as may be necessary, together with principal and interest payments made by postsecondary educational institutions assisted with loans made under this part (or under title IV of the Housing Act of 1950), for payment on notes and obligations issued by the Secretary under this part or such title.

"GENERAL PROVISIONS

"SEC. 762. (a) BUDGET AND ACCOUNTING.—In the performance of, and with respect to, the functions, powers, and duties under this part, the Secretary notwithstanding the provisions of any other law, shall—

"(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31, United States Code; and

"(2) maintain a set of accounts which shall be audited by the Comptroller General in accordance with the provisions of chapter 35 of title 31, United States Code, but such financial transactions of the Secretary, as the making of loans and vouchers approved by the Secretary, in connection with such financial transactions shall be final and conclusive upon all officers of the Government.

"(b) USE OF FUNDS.—Funds made available to the Secretary pursuant to the provisions of this part shall be deposited in a checking account or accounts with the Treasurer of the United States. Receipts and assets obtained or held by the Secretary in connection with the performance of functions under this part, and all funds available for carrying out the functions of the Secretary under this part (including appropriations therefore, which are hereby authorized), shall be available, in such amounts as may from year to year be authorized by the Congress, for the administrative expenses of the Secretary in connection with the performance of such functions.

"(c) LEGAL POWERS.—In the performance of, and with respect to, the functions, powers, and duties under this part, the Secretary, notwithstanding the provisions of any other law, may—

"(1) prescribe such rules and regulations as may be necessary to carry out the purposes for this part;

"(2) sue and be sued;

"(3) foreclose on any property or commence any action to protect or enforce any right conferred upon him by any law, contract, or other agreement, and bid for and purchase at any foreclosure or any other sale any property in connection with which the Secretary has made a loan pursuant to this part;

"(4) in the event of any such acquisition, notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property, but any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

"(5) sell or exchange at public or private sale, or lease, real or personal property, and sell or exchange any securities or obligations, upon such terms as the Secretary may fix;

"(6) obtain insurance against loss in connection with property and other assets held;

"(7) subject to the specific limitations in this part, consent to the modification, with respect to the rate of interest, time of payment of any installment of principal or interest, security, or any other term of any contract or agreement to which the Secretary is a party or which has been transferred to the Secretary pursuant to this part, granting to a borrower of a loan made before October 1, 1986, the option of repaying the loan at a discount computed in accordance with subsection (d) if the repayment is (A) made from non-Federal sources, (B) not derived from proceeds of obligations the income of which is exempt from taxation under the Internal Revenue Code of 1954, and (C) made on a loan that has been outstanding for at least 5 years; and

"(8) include in any contract or instrument made pursuant to this title such other covenants, conditions, or provisions as may be necessary to assure that the purposes of this part will be achieved.

"(d) COMPUTATION OF ALLOWABLE DISCOUNTS.—The Secretary shall compute the discount which may be offered to a borrower as an inducement to early repayment under subsection (c)(7) in an amount determined by the Secretary to be in the best financial interests of the Government, taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan.

"(e) NONDISCRIMINATION BETWEEN BORROWERS IN OFFERING DISCOUNTED PREPAYMENT.—(1) If the Secretary offers a discount as an inducement to early repayment under subsection (c)(7), such offer shall be available without regard to whether the borrower is delinquent or in default on the loan on or before October 1, 1986, but the Secretary shall refuse to make such offer to a borrower that becomes delinquent or goes into default after that date.

"(2) The discount offered shall apply, in the case of a borrower that complies with paragraph (1), to the entire amount outstanding on the loan (including any amount owed with respect to payments that are overdue).

"(f) CONTRACTS FOR SUPPLIES OR SERVICES.—Section 3709 of the Revised Statutes shall not apply to any contract for services or supplies on account of any property ac-

quired pursuant to this part if the amount of such contract does not exceed $1,000.

"(g) APPLICABILITY OF GOVERNMENT CORPORATION CONTROL ACT.—The provisions of section 9107(a) of title 31, United States Code, which are applicable to corporations or agencies subject to chapter 91 of such title, shall also be applicable to the activities of the Secretary under this part.

"(h) WAGE RATES.—The Secretary shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors or any project assisted under this part, the construction or rehabilitation of which was commenced after the date of enactment of the Housing Act of 1950—

"(1) shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (Davis-Bacon Act), as amended; and

"(2) shall be employed not more than 40 hours in any one week unless the employee receives wages for his employment in excess of the hours specified above at a rate not less than one and one-half times the regular rate at which he is employed;

but the Secretary may waive the application of this subsection in cases or classes of cases where laborers or mechanics, not otherwise employed at any time in the construction of such project, voluntarily donate their services without full compensation for the purpose of lowering the costs of construction and the Secretary determines that any amounts saved thereby are fully credited to the educational institution undertaking the construction.

"(i) LIMITATION.—No loan may be made under this part for any facility on the campus of any undergraduate postsecondary educational institution until 10 years after the date on which a previous loan for another facility on such campus was made under this part.

"APPORTIONMENT; PRIORITIES

"SEC. 763. (a) APPORTIONMENT.—Not more than 12.5 percent of the amount of the funds provided for in this part in the form of loans shall be made available to educational institutions within any one State.

"(b) PRIORITIES.—In awarding loans under this part, the Secretary shall give priority—

"(1) to loans for renovation or reconstruction of undergraduate academic facilities; and

"(2) to loans for renovation or reconstruction of older undergraduate academic facilities and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

"DEFINITIONS

"SEC. 764. For the purpose of this part:

"(a) HOUSING.—The term 'housing' means—

"(1) new or existing structures suitable for dwelling use, including single-room dormitories and apartments; and

"(2) dwelling facilities provided for rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for the proposed dwelling use.

"(b) EDUCATIONAL INSTITUTION.—The term 'undergraduate postsecondary educational institution' means—

"(1)(A) any educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of a facility for which assistance is requested under this part, at least a 2-year program acceptable for full credit toward a baccalaureate degree (including any public educational institution, or any private educational institution no part of the net earnings of which inures to the benefit of any private shareholder or individual); or

"(B) any public educational institution which—

"(i) is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

"(ii) offers technical or vocational instruction; and

"(iii) provides residential facilities for some or all of the students receiving such instruction;

"(2) any hospital operating a school of nursing beyond the level of high school approved by the appropriate State authority, or any hospital approved for internships, by recognized authority, if such hospital is either a public hospital or a private hospital, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

"(3) any corporation (no part of the net earnings of which inures to the benefit of any private shareholder or individual)—

"(A) established for the sole purpose of providing housing or other educational facilities for students or students and faculty of one or more institutions included in paragraph (1) without regard to their membership in or affiliation with any social, fraternal, or honorary society or organization; and

"(B) upon dissolution of which all title to any property purchased or built from the proceeds of any loan which is made under section 761, will pass to such institution (or to anyone or more of such institutions) unless it is shown to the satisfaction of the Secretary that such property or the proceeds from its sale will be used for some other nonprofit educational purpose;

"(4) any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or faculty of any educational institution included in paragraph (1), but nothing in this paragraph shall require an institution included in paragraph (1) to obtain loans or grants through any instrumentality included in this paragraph; and

"(5) any nonprofit student housing cooperative corporation established for the purpose of providing housing for students or students and faculty of any institution included in paragraph (1).

In the case of any loan made under section 761 to a corporation described in paragraph (3) which was not established by the institution or institutions for whose students or students and faculty it would provide housing, or to a student housing cooperative corporation described in paragraph (5), and in the case of any loan which is obtained from other sources by such a corporation, the Secretary shall require that the note securing such loan be cosigned by such institution (or by any one or more of such institutions). Where the law of any State in effect on the date of enactment of the Housing Act of 1964 prevents the institution or institutions, for whose students or students and faculty housing is to be provided, from cosigning the note, the Secretary shall require the corporation and the proposed project to be approved by such institution (or by any one or more of such institutions) in lieu of such cosigning.

"(c) UNDERGRADUATE ACADEMIC FACILITIES.—(1) Except as provided in paragraph (2), the term 'undergraduate academic facilities' means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing a baccalaureate degree, or for administration of the educational programs serving such students, of an institution of higher education, and maintenance, storage, or utility facilities essential to operation of the foregoing facilities, as well as infirmaries or other facilities designed to provide primarily for outpatient care of student and instructional personnel. Plans for such facilities shall be in compliance with such standards as the Secretary may prescribe or approve in order to insure that projects assisted with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

"(2) The term 'undergraduate academic facilities' shall not include (A) any facility intended primarily for events for which admission is to be charged to the general public, (B) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Secretary finds that the physical integration of such facilities with other undergraduate academic facilities included under this part is required to carry out the objectives of this part, (C) any facility used or to be used for sectarian instruction or as a place for religious worship, or (D) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity.

"(d) DEVELOPMENT COST.—The term 'development cost' means costs of the construction of the housing or other educational facilities and the land on which it is located, including necessary site improvements to permit its use for housing or other educational facilities; except that in the case of the purchase of facilities such term means the cost as approved by the Secretary.

"(e) FACULTIES.—The term 'faculties' means member of the faculty and their families.

"(f) OTHER EDUCATIONAL FACILITIES.—The term 'other educational facilities' means (1) new or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for other essential service facilities, and (2) structures suitable for the above uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for such uses.

"PART G—SPECIAL PROGRAMS

"WELCH HALL

"SEC. 771. (a) PROGRAM AUTHORITY.—In recognition of the unique architectural and historic significance to the education profession of Welch Hall, the Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to Eastern Michigan University in Ypsilanti, Michigan, for the purpose of the renovation and restoration of the physical facilities of Welch Hall.

"(b) APPLICATION.—No financial assistance may be made available under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 to carry out the provisions of this

section. Funds appropriated pursuant to this section shall remain available until expended.

"ACADEMIC HEALTH EDUCATION CENTER AUTHORIZED

"SEC. 772. (a) ASSISTANCE AUTHORIZED.—The Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to the Rochester Institute of Technology located in Rochester, New York, to pay the Federal share of the cost of construction, and related costs (including equipment), for the Academic Health Education Center facility at the Rochester Institute of Technology, to be used as a national model for the integration of student academic, counseling, health, and professional development activities. The Center will integrate students and programs developed for the hearing-impaired.

"(b) TERMS AND CONDITIONS.—(1) No financial assistance may be made available under this section except upon application at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(2) For the purpose of this section, the Federal share of the cost of the Academic Health Education Center facility at the Rochester Institute of Technology shall not exceed 50 percent.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $1,800,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"ESTEY HALL

"SEC. 773. (a) PROGRAM AUTHORITY.—In recognition of its historic and architectural significance as the first Black women's college dormitory, the Secretary is authorized, in accordance with the provisions of this section, to provide financial assistance to Shaw University of Raleigh, North Carolina, for the purpose of the renovation and restoration of the physical facilities of Estey Hall.

"(b) APPLICATION.—No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $550,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"ELECTRONIC INSTRUCTIONAL NETWORK FOR GIFTED AND TALENTED STUDENTS

"SEC. 774. (a) ASSISTANCE AUTHORIZED.—In recognition of the benefits to be gained from applying existing and emerging technologies to classroom instruction, the Secretary is authorized, under the provisions of this section, to provide financial assistance to a 4-year postsecondary institution in cooperation with school districts, for the purpose of renovating, constructing, and equipping a facility incorporating such technological advances as two-way interactive video communications to extend an existing electronic instructional network for providing college and advanced level courses to talented and gifted secondary school students.

"(b) APPLICATION.—No financial assistance may be made available under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,000,000 to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"MARY M'LEOD BETHUNE MEMORIAL FINE ARTS CENTER

"SEC. 775. (a) GENERAL AUTHORITY.—In recognition of the remarkable career of Mary McLeod Bethune, founder and president of Bethune-Cookman College, founder and first president of the National Council of Negro Women, and confidant and advisor to Presidents of the United States, and in order to enhance the ability of Bethune-Cookman College to carry on the unique quality of service to the community and to the Nation that characterizes the life of Mary McLeod Bethune, the Secretary shall, in accordance with the provisions of this section, provide financial assistance to the Bethune-Cookman College in Volusia County, Florida, to enable the Bethune-Cookman College to establish the Mary McLeod Bethune Memorial Fine Arts Center.

"(b) APPLICATION.—No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

"(c) USES.—The financial assistance made available pursuant to this section shall be used for the construction of the Mary McLeod Bethune Memorial Fine Arts Center building, the acquisition of necessary equipment, and the acquisition of necessary real property for the establishment of the Center.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $6,200,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"UNIVERSITY OF CONNECTICUT BEHAVIORAL SCIENCE FACILITY

"SEC. 776. (a) GENERAL AUTHORITY.—The Secretary is authorized to provide financial assistance, in accordance with the provisions of this section, to pay the costs of the Behavioral Science Facility at the University of Connecticut, located at Storrs, Connecticut, to enable the University of Connecticut to expand collaborative research for the benefit of the region.

"(b) APPLICATION.—No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $1,300,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"UNIVERSITY OF RHODE ISLAND BUSINESS ADMINISTRATION PROGRAM

"SEC. 777. (a) GENERAL AUTHORITY.—The Secretary is authorized to provide financial assistance, in accordance with the provisions of this section, to pay the costs establishing a business administration program leading to a doctorate degree at the University of Rhode Island located at Kingston, Rhode Island, in order to enhance economic development of the southeastern New England region.

"(b) APPLICATION.—No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums, not to exceed $300,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

"PART H—GENERAL

"RECOVERY OF PAYMENTS

"SEC. 781. (a) PUBLIC BENEFIT.—The Congress declares that, if a facility constructed with the aid of a grant under part A or B of this title is used as an academic facility for 20 years following completion of such construction, the public benefit accruing to the United States will equal in value the amount of the grant. The period of 20 years after completion of such construction shall therefore be deemed to be the period of Federal interest in such facility for the purposes of this title.

"(b) RECOVERY UPON CESSATION OF PUBLIC BENEFIT.—If, within 20 years after completion of construction of an academic facility which has been constructed, in part with a grant under part A or B of this title—

"(1) the applicant (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

"(2) the facility ceases to be used as an academic facility, or the facility is used as a facility excluded from the term 'academic facility', unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such applicant (or successor) an amount which bears to the value of the facility at that time (or so much thereof as constituted an approved project or projects) the same ratio as the amount of Federal grant bore to the cost of the facility financed with the aid of such grant. The value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

"(c) PROHIBITION ON USE FOR RELIGION.—Notwithstanding the provisions of subsections (a) and (b), no project assisted with funds under this title shall ever be used for religious worship or a sectarian activity or for a school or department of divinity.

"DEFINITIONS

"SEC. 782. The following definitions apply to terms used in this title:

"(1)(A) Except as provided in subparagraph (B), the term 'academic facilities' means structures suitable for use as classrooms, laboratories, libraries, and related facilities necessary or appropriate for instruction of students, or for research, or for administration of the educational or research programs, of an institution of higher education, and maintenance, storage, or utility facilities essential to operation of the foregoing facilities. For the purpose of part A or C, such term includes infirmaries or other facilities designed to provide primarily for outpatient care of student and instructional personnel. Plans for such facilities shall be in compliance with such standards as the Secretary may prescribe or approve in order to ensure that projects assisted with the use of Federal funds under this title shall be, to the extent appropriate in view of the uses to be made of the facilities, accessible to and usable by handicapped persons.

"(B) The term 'academic facilities' shall not include (i) any facility intended primarily for events for which admission is to be charged to the general public, or (ii) any gymnasium or other facility specially designed for athletic or recreational activities, other than for an academic course in physical education or where the Secretary finds that the physical integration of such facilities with other academic facilities included under this title is required to carry out the objectives of this title, or (iii) any facility used or to be used for sectarian instruction or as a place for religious worship, or (iv) any facility which (although not a facility described in the preceding clause) is used or to be used primarily in connection with any part of the program of a school or department of divinity, or (v) any facility used or to be used by a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, or school of public health as these terms are defined in section 724 of the Public Health Service Act, or a school of nursing as defined in section 843 of that Act, except that the term 'academic facilities' may include any facility described in clause (v) to the degree that such facility is owned, operated, and maintained by the institution of higher education requesting the approval of a project; and that funds available for such facility under such project shall be used solely for the purpose of conversion or modernization of energy utilization techniques to economize on the use of energy resources; and that such project is not limited to facilities described in clause (v).

"(2)(A) The term 'construction' means (i) erection of new or expansion of existing structures, and the acquisition and installation of initial equipment therefor; or (ii) acquisition of existing structures not owned by the institution involved; or (iii) a combination of either of the foregoing. For the purpose of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, but not including books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed in connection with construction; and the terms 'equipment', 'initial equipment', and 'built-in equipment', shall be more particularly defined by the Secretary by regulation.

"(B) The term 'reconstruction or renovation' means rehabilitation, alteration, conversion, or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of such equipment) of existing structures. For the purpose of the preceding sentence, the term 'equipment' includes, in addition to machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, all other items necessary for the functioning of a particular facility as an academic facility, including necessary furniture, but not including books, curricular, and program materials, and items of current and operating expense such as fuel, supplies, and the like; the term 'initial equipment' means equipment acquired and installed either in connection with construction as defined in paragraph (2)(A), or as part of the rehabilitation, alteration, conversion, or improvement of an existing structure, which structure would otherwise not be adequate for use as an academic facility; the terms 'equipment', 'initial equipment', and 'built-in equipment' shall be more particularly defined by the Secretary by regulation; and the term 'rehabilitation, alteration, conversion, or improvement' includes such action as may be necessary to provide for the architectural needs of, or to remove architectural barriers to, handicapped persons with a view toward increasing the accessibility to, and use of, academic facilities by such persons.

"(3)(A) The term 'development cost', with respect to an academic facility, means the amount found by the Secretary to be the cost, to the applicant for a grant or loan under this title, of the construction, reconstruction, or renovation involved and the cost of necessary acquisition of the land on which the facility is located and of necessary site improvements to permit its use for such facility. There shall be excluded from the development cost—

"(i) in determining the amount of any grant under part A or B, an amount equal to the sum of (I) any Federal grant which the institution has obtained or is assured of obtaining, under any law other than this title, with respect to the construction, reconstruction, or renovation that is to be financed with the aid of a grant under part A or B, and (II) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant; and

"(ii) in determining the amount of any loan under part C, an amount equal to the amount of any Federal financial assistance which the institution has obtained, or is assured of obtaining, under any law other than this title, with respect to the construction, reconstruction, or renovation that is to be financed with the aid of a loan under part C.

"(B) In determining the development cost with respect to an academic facility, the Secretary may include expenditures for works of art for the facility not to exceed 1 percent of the total cost (including such expenditures) to the applicant of construction, reconstruction, or renovation of, and land acquisition and site improvements for, such facility.

"(4) The term 'maintenance', with respect to instructional and research equipment obtained with funding under this title, shall mean the care necessary to the optimal functioning of such equipment. With respect to the equipment and structural changes related to obtaining and sustaining the necessary environment (ventilation, etc.) for proper functioning of instructional and research equipment, 'maintenance' shall mean that portion of care above and beyond normal overhead costs.

"(5) The term 'Federal share' means in the case of any project a percentage (as determined under the applicable State plan) not in excess of 50 percent of its development cost.

"(6) The term 'higher education building agency' means (A) an agency, public authority, or other instrumentality of a State authorized to provide, or finance the construction, reconstruction, or renovation of, academic facilities for institutions of higher education (whether or not also authorized to provide or finance other facilities for such or other educational institutions, or for their students or faculty), or (B) any corporation (no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual (i) established by an institution of higher education for the sole purpose of providing academic facilities for the use of such institution, and (ii) upon dissolution of which, all title to any property purchased or built from the proceeds of any loan made under part C will pass to such institution), or (C) an institution of postsecondary education.

"(7) The term 'public community college and public technical institute' means an institution of higher education which is under public supervision and control, and is organized and administered principally to provide a 2-year program which is acceptable for full credit toward a bachelor's degree, or a 2-year program in engineering, mathematics, or the physical or biological sciences which is designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge; and the term includes a branch of an institution of higher education offering 4 or more years of higher education which is located in a community different from that in which its parent institution is located.

"(8) The term 'public educational institution' does not include a school or institution of any agency of the United States.

"(9) The term 'State' includes in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"SALES OF OBLIGATIONS REQUIRED

"SEC. 783. The Secretary shall sell, at public or private sale, obligations held under parts C and E of this title upon such terms as the Secretary may fix and in such amounts as the Secretary determines will carry out the directions in the concurrent resolution on the budget for the fiscal year 1987 (S. Con. Res. 120, 99th Congress, agreed to June 27, 1986), but the Secretary shall not sell obligations having a market value of more than $579,000,000 in fiscal year 1987 and more than $314,000,000 in fiscal year 1988.".

SEC. 702. CONFORMING PROVISION.

Title IV of the Housing Act of 1950 is repealed.

TITLE VIII—COOPERATIVE EDUCATION

SEC. 801. COOPERATIVE EDUCATION REAUTHORIZED.

Title VIII of the Act is amended to read as follows:

"TITLE VIII—COOPERATIVE EDUCATION

"APPROPRIATIONS AUTHORIZED; RESERVATIONS

"SEC. 801. (a) APPROPRIATIONS AUTHORIZED.—There are authorized to be appropriated to carry out this title $17,000,000 for fiscal year 1987, and such sums as may be necessary for each of the 4 succeeding fiscal years.

"(b) RESERVATIONS.—Of the amounts appropriated in each fiscal year—

"(1) not less than 75 percent shall be available for carrying out grants to institutions of higher education and combinations of such institutions for cooperative education under section 802;

"(2) not to exceed 12½ percent shall be available for demonstration projects under paragraph (1) of section 803(a);

"(3) not to exceed 10 percent shall be available for training and resource centers under paragraph (2) of section 803(a); and

"(4) not to exceed 2½ percent shall be available for research under paragraph (3) of section 803(a).

"(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations under this title shall not be available for the payment of compensation of students for employment by employers under arrangements pursuant to this title.

"GRANTS FOR COOPERATIVE EDUCATION PROGRAMS

"SEC. 802. (a) GRANTS AUTHORIZED; MAXIMUM AMOUNT OF GRANT.—(1) The Secretary is authorized, from the amount available under section 801(b)(1) in each fiscal year and in accordance with the provisions of this title, to make grants to institutions of higher education, or to combinations of such institutions, to pay the Federal share of the cost of planning, establishing, expanding, or carrying out programs of cooperative education by such institutions or combinations of institutions.

"(2)(A) Cooperative education programs assisted under this section shall provide alternating or parallel periods of academic study and of public or private employment, giving work experience related to their academic or occupational objectives and the opportunity to earn the funds necessary for continuing and completing their education.

"(B) The amount of each grant shall not exceed $500,000 to any institution of higher education or combination of such institutions in any fiscal year.

"(b) APPLICATIONS.—Each institution of higher education, or combination of institutions desiring to receive a grant under this title shall submit an application to the Secretary at such time and in such manner as the Secretary shall prescribe. Each such application shall—

"(1) set forth the program or activities for which a grant is authorized under this section;

"(2) specify each portion of such program or activities which will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid for such performance;

"(3) provide that the applicant will expend during such fiscal year for the purpose of such program or activities not less than the amount expended for such purpose during the previous fiscal year;

"(4) describe the plans which the applicant will carry out to assure that the applicant will continue the cooperative education program beyond the 5-year period of Federal assistance described in subsection (c)(1);

"(5) provide that, in the case of an institution of higher education that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the cooperative education program will be available to students who are certificate candidates and who carry at least one-half the normal full time academic workload;

"(6) provide that the applicant will—

"(A) make such reports as may be essential to insure that the applicant is complying with the provisions of this section, including in the reports for the second and each succeeding fiscal year for which the applicant receives a grant data with respect to the impact of the cooperative education program in the previous fiscal year, including—

"(i) the number of students enrolled in the cooperative education program,

"(ii) the number of employers involved in the program,

"(iii) the income of the students enrolled, and

"(iv) the increase or decrease of enrollment in the program in the second previous year compared to such previous fiscal year; and

"(B) keep such records as are essential to insure that the applicant is complying with the provisions of this title;

"(7) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid to the applicant under this title; and

"(8) include such other information as is essential to carry out the provisions of this title.

"(c) DURATION OF GRANTS; FEDERAL SHARE.—(1)(A) Except as provided in paragraph (3), no individual unit of an institution of higher education may receive, individually or as a participant in a combination of such institutions, grants under this section for more than 5 fiscal years.

"(B) The limitation contained in subparagraph (A) shall apply to each institution of higher education or participant in a combination of such institutions whether the grant was received before or after the date of enactment of the Higher Education Amendments of 1986.

"(2) The Federal share of a grant under this section may not exceed—

"(A) 90 percent of the cost of carrying out the application in the first year the applicant receives a grant under this section;

"(B) 80 percent of such cost in the second such year;

"(C) 70 percent of such cost in the third such year;

"(D) 60 percent of such cost in the fourth such year; and

"(E) 30 percent of such cost in the fifth such year.

"(3) Any institution of higher education, or participant in a combination of such institutions which—

"(A) has received a grant for 5 fiscal years under this section;

"(B) has conducted without Federal assistance a cooperative education program for at least 2 academic years subsequent to the end of the fifth such fiscal year;

"(C) has expended for the cooperative education program for each such subsequent academic year an amount at least equal to the total cost of the program in the fifth fiscal year in which the institution, or participant, received assistance under this section; and

"(D) provides statistics in the application required under subsection (b) on the number of students enrolled in the cooperative education program, the number of institutional personnel, including faculty advisers and cooperative education coordinators, and the income of the students enrolled, for each such year;

may apply under subsection (b) as an institution, or participant, to which subparagraph (A) of paragraph (2) applies.

"(4) Any provision of law to the contrary notwithstanding, the Secretary shall not waive the provisions of this subsection.

"(d) FACTORS FOR SPECIAL CONSIDERATION OF APPLICATIONS.—(1) In approving applications under this section, the Secretary shall give special consideration to applications from institutions of higher education for programs which show the greatest promise of success because of—

"(A) the extent to which programs in the academic discipline with respect to which the application is made have had a favorable reception by public and private sector employers,

"(B) the commitment of the institution of higher education to cooperative education has demonstrated by the plans which such institution has made to continue the program after the termination of Federal financial assistance,

"(C) the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit, and

"(D) such other factors as are consistent with the purposes of this section.

"(2) The Secretary shall also give special consideration to applications from institutions of higher education or combinations thereof which demonstrate a commitment to serving special populations such as women, the handicapped and Black, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian students.

"DEMONSTRATION AND INNOVATION PROJECTS; TRAINING AND RESOURCE CENTERS; AND RESEARCH

"SEC. 803. (a) AUTHORIZATION.—The Secretary is authorized, in accordance with the provisions of this section, to make grants and enter into contracts for—

"(1) the conduct of demonstration projects designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education from the amounts available in each fiscal year under section 801(b)(2);

"(2) the conduct of training and resource centers designed to—

"(A) train personnel in the field of cooperative education;

"(B) improve materials used in cooperative education programs;

"(C) furnish technical assistance to institutions of higher education to increase the potential of the institution to continue to conduct a cooperative education program without Federal assistance;

"(D) encourage model cooperative education programs which furnish education and training in occupations in which there is a national need; and

"(E) support partnerships under which an institution carrying out a comprehensive cooperative education program joins with another institution of higher education in order to (i) assist the institution other than the comprehensive cooperative education institution to develop and expand an existing program of cooperative education, or (ii) establish and improve or expand comprehensive cooperative education programs,

from the amounts available in each fiscal year under section 801(b)(3); and

"(3) the conduct of research relating to cooperative education, from the amounts available in each fiscal year under section 801(b)(4).

"(b) ADMINISTRATIVE PROVISION.—To carry out this section, the Secretary may—

"(1) make grants to or contracts with institutions of higher education, or combinations of such institutions, and

"(2) make grants to or contracts with other public or private nonprofit agencies or organizations, whenever such grants or contracts will make an especially significant contribution to attaining the objectives of this section.

"(c) SUPPLEMENT NOT SUPPLANT.—A recipient of a grant or contract under this section may use the funds provided only so as to supplement and, to the extent possible, increase the level of funds that would, in the absence of such funds, be made available from non-Federal sources to carry out the

activities supported by such grant or contract, and in no case to supplant such funds from non-Federal sources.".

TITLE IX—GRADUATE EDUCATION

SEC. 901. REVISION OF TITLE IX.

(a) AMENDMENT.—Title IX of the Act is amended to read as follows:

"TITLE IX—GRADUATE PROGRAMS

"PART A—GRANTS TO INSTITUTIONS TO ENCOURAGE MINORITY PARTICIPATION IN GRADUATE EDUCATION

"PROGRAM AUTHORIZED

"SEC. 901. The Secretary shall make grants to institutions of higher education to enable such institutions to identify talented undergraduate low-income students who demonstrate financial need and are from minority groups underrepresented in graduate education, and provide such students with an opportunity to participate in a program of research and scholarly activities at such institution designed to provide such students with effective preparation for graduate study in such field or related fields.

"SUBMISSION AND CONTENTS OF APPLICATIONS

"SEC. 902. (a) REQUIRED INFORMATION.—Each institution of higher education shall submit an application under this part to the Secretary in such form and containing such information as the Secretary may by regulation prescribe. Each such application shall provide information regarding—

"(1) the program of study, to take the form of summer research internships, seminars, and other educational experiences;

"(2) the institution's plan for identifying and recruiting talented minority undergraduates;

"(3) the participation of faculty in the program and a detailed description of the research in which students will be involved;

"(4) a plan for the evaluation of the effectiveness of the program; and

"(5) such other assurances and information as the Secretary may require by regulation.

"(b) SELECTION REQUIREMENTS.—In making awards to institutions—

"(1) the Secretary shall consider the quality of the research in which students will be involved as well as the recruitment program and program of study; and

"(2) the Secretary shall ensure an equitable geographic distribution among public and private institutions of higher education.

"USE OF FUNDS

"SEC. 903. Awards made to institutions under this part shall be used exclusively to provide direct fellowship aid which may include need-based stipends, room and board costs, transportation costs, and tuition for courses for which credit is given by the institution as approved by the Secretary.

"PART B—PATRICIA ROBERTS HARRIS FELLOWSHIPS

"STATEMENT OF PURPOSE; DESIGNATION OF AWARDS

"SEC. 921. (a) PURPOSE.—It is the purpose of this part to provide, through institutions of higher education, a program of grants to assist in making available the benefits of a post-baccalaureate education to graduate and professional students who demonstrate financial need.

"(b) DESIGNATION.—Each recipient of such an award under this part shall be known as a 'Patricia Roberts Harris Fellow'.

"PROGRAM AUTHORIZED

"SEC. 922. (a) GRANTS BY SECRETARY.—The Secretary shall make grants to institutions of higher education to enable such institutions to make grants in accordance with the provisions of this part.

"(b) DISTRIBUTION AND AMOUNTS OF GRANTS.—(1) In making such grants the Secretary shall, to the maximum extent feasible, ensure an equitable geographic distribution of awards and an equitable distribution among eligible public and independent institutions of higher education.

"(2) Whenever the Secretary determines that an institution of higher education is unable to use all of the amounts available to it under this part, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot such amounts not needed to institutions which can use the grants authorized by this part.

"(c) APPLICATIONS.—Any eligible institution of higher education offering a program of post-baccalaureate study leading to a graduate or professional degree may apply for grants under this part. Each such institution may make an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. Such application may be made on behalf of professional schools, academic departments, or similar organizational units within such institution meeting the requirements of this subsection, including interdisciplinary or interdepartmental programs.

"(d) SELECTION OF APPLICATIONS.—In making grants to institutions of higher education, the Secretary shall—

"(1) take into account present and projected needs for highly trained individuals in all areas of education beyond secondary school;

"(2) take into account present and projected needs for highly trained individuals in other than academic career fields of high national priority; and

"(3) consider the need to prepare a larger number of individuals from minority groups, especially from among such groups which have been traditionally underrepresented in colleges and universities, but nothing contained in this paragraph shall be interpreted to require any institution to grant preference or disparate treatment to the members of one minority group on account of an imbalance which may exist with respect to the total number or percentage of individuals of such group participating in or receiving the benefits of the program authorized in this section, in comparison with the total number or percentage of individuals of such group in any community, State, section, or other area.

"(e) PRIORITIES FOR FELLOWSHIPS.—The Secretary shall assure that, in making grants under this part, awards are made to—

"(1) individuals who plan to pursue a career in public service; and

"(2) individuals from traditionally underrepresented groups, as determined by the Secretary, undertaking graduate or professional study.

The Secretary shall assure that the amount expended for categories of fellowships described in paragraphs (1) and (2) of this subsection for each fiscal year is not less than the amount expended for each category in fiscal year 1985.

"(f) INSTITUTIONAL PAYMENTS.—From sums required to be expended by the Secretary for grants under subsection (e), the Secretary shall (in addition to the awards made to individuals) pay to the institution of higher education at which such individual is pursuing his or her course of study such amounts as are paid under similar fellowship programs administered through the National Science Foundation and other similar agencies, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"(g) USE FOR RELIGIOUS PURPOSES PROHIBITED.—No fellowship shall be awarded under this part for study at a school or department of divinity.

"AWARD OF FELLOWSHIPS

"SEC. 923. (a) AWARDS BASED ON NEED.—An institution of higher education receiving funds under this part shall make available to financially needy graduate and professional students an award determined by such institution of higher education, except that no award under this part may exceed the lesser of $10,000, or the demonstrated level of financial need as determined under part F of title IV of this Act.

"(b) REQUIREMENTS FOR AWARD.—No student shall receive an award except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research (including acting as a teaching assistant or research assistant as may be required as a condition to award of a degree) in the field in which such fellowship was awarded and is not engaging in gainful employment, other than part-time employment by the institution of higher education involved in teaching, research, or similar activities, approved by the Secretary. Such period shall not exceed a total of 3 years, except that the Secretary may provide by regulation for the granting of such fellowships for a period of study not to exceed one 12-month period, in addition to the 3-year period set forth in this section, under special circumstances which the Secretary determines would most effectively serve the purposes of this part. The Secretary shall make a determination to provide such 12-month extension of an award to an individual fellowship recipient upon review of an application for such extension by the recipient.

"PART C—JACOB K. JAVITS FELLOWS PROGRAM

"AWARD OF NATIONAL GRADUATE FELLOWSHIPS

"SEC. 931. (a) NUMBER AND TIMING OF AWARDS.—The Secretary is authorized to award not more than 450 fellowships per year in accordance with the provisions of this part for graduate study in the arts, humanities, and social sciences by students of superior ability selected on the basis of demonstrated achievement and exceptional promise. All funds appropriated in a fiscal year shall be obligated and expended to the students for fellowships for use in the academic year beginning after July 1 of the fiscal year for which the funds were appropriated. The fellowships shall be awarded for only one academic year of study and shall be renewable for a period not to exceed 4 years of study.

"(b) DESIGNATION OF FELLOWS.—Students receiving awards under this part shall be known as 'Jacob K. Javits Fellows'.

"(c) INTERRUPTIONS OF STUDY.—The institution of higher education may allow a fellowship recipient to interrupt periods of study for a period not to exceed 12 months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program and shall continue payments for those 12-month periods during which the student is pursuing travel

or independent study supportive of the recipient's academic program.

"ALLOCATION OF FELLOWSHIPS

"SEC. 932. (a) FELLOWSHIP BOARD.—(1) The Secretary shall appoint a National Graduate Fellows Program Fellowship Board consisting of not less than 9 and not more than 15 individuals prior to July 31, 1987, 13 individuals after July 31, 1987, and prior to August 1, 1989, 11 individuals after July 31, 1989, and prior to August 1, 1991, and 9 individuals after July 31, 1991, representatives of both public and private institutions of higher education especially qualified to serve on the Board. In making appointments, the Secretary shall give due consideration to the appointment of individuals who are highly respected in the academic community. The Secretary shall assure that individuals appointed to the Board are broadly knowledgeable about and have experience in doctoral education in arts, humanities, and social sciences.

"(2) The Board shall—

"(A) establish general policies for the program established by this part and oversee its operation;

"(B) establish general criteria for the distribution of fellowships among eligible academic fields identified by the Board;

"(C) appoint panels of academic scholars with distinguished backgrounds in the arts, humanities, and social sciences for the purpose of directing fellows; and

"(D) prepare and submit to the Congress at least once in every 3-year period a report on any modifications in the program that the Board determines are appropriate.

"(3) In carrying out its responsibilities, the Board shall consult on a regular basis with representatives of the National Science Foundation, the National Endowment for the Humanities, the National Endowment for the Arts, and representatives of institutions of higher education and associations of such institutions, learned societies, and professional organizations.

"(4) The term of office of each member of the Board shall be 4 years; except that any member appointed to fill a vacancy shall serve for the remainder of the term for which the predecessor of the member was appointed. No member may serve for a period in excess of 6 years.

"(5) The Secretary shall call the first meeting of the Board, at which the first order of business shall be the election of a Chairman and a Vice Chairman, who shall serve until one year after the date of their appointment. Thereafter each officer shall be elected for a term of 2 years. In case a vacancy occurs in either office, the Board shall elect an individual from among the members of the Board to fill such vacancy.

"(6)(A) A majority of the members of the Board shall constitute a quorum.

"(B) The Board shall meet at least once a year or more frequently, as may be necessary, to carry out its responsibilities.

"(7) Members of the Board, while serving on the business of the Board, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate prescribed for GS-18 of the General Schedule under section 5332, title 5, United States Code, including traveltime; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(b) USE OF SELECTION PANELS.—The recipients of fellowships shall be selected in each designated field from among all applicants nationwide in each field by distinguished panels appointed by the Fellowship Board to make such selections under criteria established by the Board. The number of recipients in each field in each year shall not exceed the number of fellows allocated to that field for that year by the Fellowship Board.

"(c) FELLOWSHIP PORTABILITY.—Each recipient shall be entitled to use the fellowship in a doctoral program at any accredited institution of higher education in which the recipient may decide to enroll.

"STIPENDS

"SEC. 933. (a) AWARD BY SECRETARY.—The Secretary shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such individuals and their dependents) as the Secretary may determine to be appropriate, adjusting such stipends as necessary so as not to exceed the fellow's demonstrated level of need according to measurements of need approved by the Secretary. The stipend levels established by the Secretary shall reflect the purpose of this program to encourage highly talented students to undertake graduate study and shall provide a level of support comparable to that provided by federally funded graduate fellowships in the science and engineering fields.

"(b) INSTITUTIONAL PAYMENTS.—(1) The Secretary shall (in addition to the stipends paid to individuals under subsection (a)) pay to the institution of higher education, for each individual awarded a fellowship for pursuing a course at such institution, $6,000.

"(2) Subject to the availability of appropriations, amounts payable to an institution by the Secretary pursuant to this subsection shall not be reduced for any purpose other than the purposes specified under paragraph (1).

"FELLOWSHIP CONDITIONS

"SEC. 934. (a) REQUIREMENTS FOR RECEIPT.—An individual awarded a fellowship under the provisions of this part shall continue to receive payments provided in section 933 only during such periods as the Secretary finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment by such institution in teaching, research, or similar activities, approved by the Secretary.

"(b) REPORTS FROM RECIPIENTS.—The Secretary is authorized to require reports containing such information in such form and to file at such times as the Secretary determines necessary from any person awarded a fellowship under the provisions of this part. The reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center approved by the Secretary, stating that such individual is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded.

"PART D—GRADUATE ASSISTANCE IN AREAS OF NATIONAL NEED

"PURPOSE

"SEC. 941. In order to sustain and enhance the capacity for teaching and research in areas of national need, it is the purpose of this part to provide, through academic departments and programs of institutions of higher education, a fellowship program to assist graduate students of superior ability who demonstrate financial need.

"GRANTS TO ACADEMIC DEPARTMENTS AND PROGRAMS OF INSTITUTIONS

"SEC. 942. (a) GRANT AUTHORITY.—(1) The Secretary shall make grants to academic departments and programs and other academic units of institutions of higher education that provide courses of study leading to a graduate degree in order to enable such institutions to provide assistance to graduate students in accordance with this part.

"(2) The Secretary may also make grants to such departments and programs and to other units of institutions of higher education granting graduate degrees which submit joint proposals involving nondegree granting institutions which have formal arrangements for the support of doctoral dissertation research with degree-granting institutions. Nondegree granting institutions eligible for awards as part of such joint proposals include any organization which—

"(A) is described in section 501(c)(3) of the Internal Revenue Code of 1954, and is exempt from tax under section 501(a) of such Code;

"(B) is organized and operated substantially to conduct scientific and cultural research and graduate training programs;

"(C) is not a private foundation;

"(D) has academic personnel for instruction and counseling who meet the standards of the institution of higher education in which the students are enrolled; and

"(E) has necessary research resources not otherwise readily available in such institutions to such students.

"(b) AWARD AND DURATION OF GRANTS.—(1) The principal criterion for the allocation of awards shall be the relative quality of the graduate programs presented in competing applications. Consistent with an allocation of awards based on quality of competing applications, the Secretary shall, in making such grants, promote an equitable geographic distribution among eligible public and private institutions of higher education.

"(2) The Secretary shall approve a grant recipient under this part for a 3-year period. From the sums appropriated under this part for any fiscal year, the Secretary shall not make a grant to any academic department or program of an institution of higher education of less than $100,000 or greater than $500,000 per fiscal year.

"(3) Whenever the Secretary determines that an academic department or program of an institution of higher education is unable to use all of the amounts available to it under this part, the Secretary shall, on such dates during each fiscal year as the Secretary may fix, reallot the amounts not needed to academic departments and programs of institutions which can use the grants authorized by this part.

"(c) PREFERENCE TO CONTINUING GRANT RECIPIENTS.—(1) The Secretary shall make new grant awards under this part only to the extent that each previous grant recipient has received continued funding in accordance with subsection (b)(2).

"(2) To the extent that appropriations under this part are insufficient to comply with paragraph (1), available funds shall be distributed by ratably reducing the amounts required to be awarded by subsection (b)(2).

"INSTITUTIONAL ELIGIBILITY

"SEC. 943. (a) ELIGIBILITY CRITERIA.—Any academic department or program of an institution of higher education that offers a program of post-baccalaureate study leading to a graduate degree in an area of national

need (as designated under subsection (b)) may apply for a grant under this part. No department or program shall be eligible for a grant unless the program of post-baccalaureate study has been in existence for at least 4 years at the time of application for assistance under this part.

"(b) DESIGNATION OF AREAS OF NATIONAL NEED.—After consultation with the National Science Foundation, the National Academy of Sciences, the National Endowments for the Arts and the Humanities, and other appropriate Federal and nonprofit agencies and organizations, the Secretary shall designate areas of national need, such as mathematics, biology, physics, chemistry, engineering, geosciences, computer science, or foreign languages or areas studies. In making such designations, the Secretary shall take into account the extent to which the interest is compelling and the extent to which other Federal programs support post-baccalaureate study in the area concerned.

"CRITERIA FOR APPLICATIONS

"SEC. 944. (a) SELECTION OF APPLICATIONS.—The Secretary shall make grants to academic departments and programs of institutions of higher education on the basis of applications submitted in accordance with subsection (b). Applications shall be ranked on program quality by geographically balanced review panels of nationally recognized scholars. To the extent possible (consistent with other provisions of this section), the Secretary shall make awards that are consistent with recommendations of the review panels.

"(b) CONTENTS OF APPLICATIONS.—An academic department or program of an institution of higher education, in its application for a grant, shall—

"(1) describe the current academic program of the applicant for which the grant is sought;

"(2) provide assurances that the applicant will provide, from other non-Federal funds, for the purposes of the fellowship program under this part an amount equal to at least 25 percent of the amount of the grant received under this part;

"(3) set forth policies and procedures to assure that, in making fellowship awards under this part the institution will seek talented students from traditionally underrepresented backgrounds, as determined by the Secretary;

"(4) set forth policies and procedures to assure that, in making fellowship awards under this part, the institution will make awards to individuals who—

"(A) have financial need, as determined under criteria developed by the institution;

"(B) have excellent academic records in their previous programs of study;

"(C) plan teaching or research careers; and

"(D) plan to pursue the highest possible degree available in their course of study;

"(5) set forth policies and procedures to ensure that Federal funds made available under this part for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purpose of this part and in no case to supplant those funds;

"(6) provide assurances that, in the event that funds made available to the academic department or program under this part are insufficient to provide the assistance due a student under the commitment entered into between the academic department or program and the student, the academic department or program will endeavor, from any funds available to it, to fulfill the commitment to the student;

"(7) provide that the applicant will comply with the limitations set forth in section 945; and

"(8) include such other information as the Secretary may prescribe.

"AWARDS TO GRADUATE STUDENTS

"SEC. 945. (a) COMMITMENTS TO GRADUATE STUDENTS.—(1) From at least 60 percent of the funds received under this part, an academic department or program of an institution of higher education shall make commitments to graduate students at any point of their graduate study to provide stipends for the length of time necessary for a student to complete the course of graduate study, but in no case longer than 5 years.

"(2) No such commitments shall be made to students under this part unless the academic department or program has determined adequate funds are available to fulfill the commitment either from funds received or anticipated under this part, or from institutional funds.

"(b) AMOUNT OF STIPENDS.—The size of the stipend awarded to students for an individual academic year shall be determined by the institution, except that no annual stipend award under this part may exceed $10,000, or the demonstrated level of need (according to criteria of need developed by the institution), whichever is less.

"(c) ACADEMIC PROGRESS REQUIRED.—Notwithstanding the provisions of subsection (a), no student shall receive an award (1) except during periods in which such student is maintaining satisfactory progress in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, or (2) if the student is engaging in gainful employment other than part-time employment involved in teaching, research, or similar activities determined by the institution to be in support of the student's progress towards a degree.

"ADDITIONAL ASSISTANCE FOR COST OF EDUCATION

"SEC. 946. (a) USE FOR TUITION AND FEES.—From the remainder of the funds received under this part after complying with the requirements of section 945, the academic department or program of an institution of higher education may award fellowship recipients under section 945 additional amounts to pay the recipients' tuition and fees and other costs of education.

"(b) USE FOR OVERHEAD PROHIBITED.—Funds made available pursuant to this part may not be used for the general operational overhead of the academic department or program.

"PART E—ASSISTANCE FOR TRAINING IN THE LEGAL PROFESSION

"PROGRAM AUTHORIZED

"SEC. 951. (a) GRANTS AND CONTRACTS.—The Secretary is authorized to make grants to, or enter into contracts with, public and private agencies and organizations other than institutions of higher education for the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake training for the legal profession.

"(b) USE OF FUNDS.—Grants made, and contracts entered into, under subsection (a) may cover, in accordance with regulations of the Secretary, all or part of the cost of—

"(1) selecting individuals from disadvantaged backgrounds for training for the legal profession,

"(2) facilitating the entry of such individuals into institutions of higher education for the purpose of pursuing such training,

"(3) providing counseling or other services designed to assist such individuals to complete successfully such training,

"(4) providing, for not more than 6 months prior to the entry of such individuals upon their courses of training for the legal profession, preliminary training for such individuals designed to assist them to complete successfully such training for the legal profession,

"(5) paying such stipends (including allowances for travel and for dependents) as the Secretary may determine for such individuals for any such period of preliminary training or for any period of training for the legal profession during which such individuals maintain satisfactory academic proficiency, as determined by the Secretary, and

"(6) paying for administrative activities of the agencies and organizations which receive such grants, or with which such contracts are entered into, to the extent such activities are for the purpose of furthering activities described in paragraphs (1) through (5).

"PART F—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

"PROGRAM AUTHORIZATION

"SEC. 961. (a) GRANT AND CONTRACT PURPOSES.—The Secretary is authorized to enter into grants or contracts with accredited law schools in the States for the purpose of paying not to exceed 90 per centum of the costs of establishing or expanding programs in such schools to provide clinical experience to students in the practice of law, which includes any form of law student work involving performance in the role of a lawyer exercising legal skills and roles such as those of an advocate, counselor, negotiator, investigator, and ethical practitioner, whether by way of the provision of representation of or services to an identifiable client in actual cases or situations (subject to existing State or local limitations upon such provision) or by way of simulation of such provision through appropriate exercises. Preference shall be given to those programs providing legal experience in the preparation and trial of actual cases, including administrative cases and the settlement of controversies outside the courtroom. The cases and situations handled in actuality or by simulation may encompass any one or more of the following:

"(1) judicial, administrative, executive, or legislative proceedings, including the full range of preparation therefor;

"(2) office or house counsel problems; or

"(3) factual investigation, empirical research, or policy or legal analysis.

"(b) USE OF FUNDS.—Such costs may include necessary expenditures incurred for—

"(1) planning;

"(2) training of faculty members and salary for additional faculty members;

"(3) travel and per diem for faculty and students;

"(4) reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year;

"(5) equipment and library resources;

"(6) involving practicing lawyers in the process of training law students to perform as lawyers; and

"(7) such other items as are allowed pursuant to regulations issued by the Secretary.

"(c) LIMITATIONS ON AMOUNTS.—No law school may receive more than $100,000 in any fiscal year pursuant to this part, no part of which may be used to pay for indirect costs or charges.

"(d) DEFINITION.—For the purpose of this part, the term 'accredited law school' means any law school which is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose, including any combination or consortium of such schools.

"APPLICATIONS

"SEC. 962. (a) REQUIREMENTS.—A grant or contract authorized by this part may be made by the Secretary upon application which—

"(1) is made at such time or times and contains such information as the Secretary may prescribe;

"(2) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this part; and

"(3) provides for making such reports, in such form and containing such information as the Secretary may require to carry out functions under this part, and for keeping such records and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

"(b) DISTRIBUTION OF GRANTS AND CONTRACTS.—The Secretary shall allocate grants or contracts under this part in such manner as will provide an equitable distribution of such grants or contracts throughout the United States among law schools which show promise of being able to use funds effectively for the purposes of this part.

"PART G—AUTHORIZATION OF APPROPRIATIONS

"AMOUNT AND DURATION OF AUTHORIZATION

"SEC. 971. (a) PART A.—There are authorized to be appropriated to carry out part A of this title $10,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(b) PART B.—There are authorized to be appropriated to carry out part B of this title $30,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(c) PART C.—There are authorized to be appropriated to carry out part C of this title $10,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(d) PART D.—There are authorized to be appropriated to carry out part D of this title $30,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(e) PART E.—There are authorized to be appropriated to carry out part E of this title $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(f) PART F.—There are authorized to be appropriated to carry out part F of this title $5,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(g) LIMITATION ON APPROPRIATIONS FOR PARTS A AND D.—No funds are authorized to be appropriated for part A or D of this title for any fiscal year unless the appropriation for the preceding fiscal year—

"(1) for part B equals or exceeds $18,000,000; and

"(2) for part C equals or exceeds $5,000,000.".

(b) EFFECTIVE DATE.—The amendments made to section 932 (a) and (c) of the Act by this section shall take effect with respect to individuals appointed to the Fellowship Board to fill vacancies occurring after the date of enactment of this Act on the Fellowship Board as constituted prior to the amendments made by this section. The Secretary shall make initial appointments under this subsection so that the terms of 3 members expire at the end of 2 years, 3 members expire at the end of 3 years, and 3 members expire at the end of 4 years.

TITLE X—IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 1001. FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION.

(a) FUNCTIONS.—(1) Section 1003(c)(2) of the Act is amended to read as follows:

"(2) advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education on priorities for the improvement of postsecondary education and make such recommendations as it may deem appropriate for the improvement of postsecondary education and for the evaluation, dissemination, and adaptation of demonstrated improvements in postsecondary educational practice;".

(b) REAUTHORIZATION.—Section 1005 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1005. There are authorized to be appropriated to carry out this part $14,500,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.".

SEC. 1002. MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAMS.

Part B of title X of the Act is amended to read as follows:

"PART B—MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAMS

"SUBPART 1—MINORITY SCIENCE IMPROVEMENT PROGRAM

"PURPOSE; AUTHORITY

"SEC. 1021. (a) It is the purpose of this subpart to continue the authority of the Department to operate the Minority Institutions Science Improvement Program created under section 3(a)(1) of the National Science Foundation Act of 1950 and transferred to the Department by section 304(a)(1) of the Department of Education Organization Act of 1979.

"(b) The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants to institutions of higher education that are designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities in scientific and technological careers.

"GRANT RECIPIENT SELECTION

"SEC. 1022. (a) ESTABLISHMENT OF CRITERIA.—Grants under this subpart shall be awarded on the basis of criteria established by the Secretary by regulations.

"(b) PRIORITIES TO BE GIVEN IN CRITERIA.—In establishing criteria under subsection (a), the Secretary shall give priority to applicants which have not previously received funding from the Minority Institutions Science Improvement Program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among projects with respect to geographic region, academic discipline, and project type.

"(c) REQUIRED CRITERIA.—In establishing criteria under subsection (a), the Secretary may consider the following selection criteria in making grants:

"(1) plan of operation;

"(2) quality of key personnel;

"(3) budget and cost effectiveness;

"(4) evaluation plan;

"(5) adequacy of resources;

"(6) identification of need for the project;

"(7) potential institutional impact of the project;

"(8) institutional commitment to the project;

"(9) expected outcomes; and

"(10) scientific and educational value of the proposed project.

"USE OF FUNDS

"SEC. 1023. (a) TYPES OF GRANTS.—Funds appropriated to carry out this subpart may be made available as—

"(1) institutional grants (as defined in section 1046(6));

"(2) cooperative grants (as defined in section 1046(7));

"(3) design projects (as defined in section 1046(8)); or

"(4) special projects (as defined in section 1046(9)).

"(b) AUTHORIZED USES FOR EACH TYPE OF GRANT.—(1) The authorized uses of funds made available as institutional grants include (but are not limited to)—

"(A) faculty development programs; or

"(B) development of curriculum materials.

"(2) The authorized uses of funds made available as cooperative grants include (but are not limited to)—

"(A) assisting institutions in sharing facilities and personnel;

"(B) disseminating information about established programs in science and engineering;

"(C) supporting cooperative efforts to strengthen the institutions' science and engineering programs; or

"(D) carrying out a combination of any of the activities in subparagraphs (A) through (C).

"(3) The authorized uses of funds made available as design projects include (but are not limited to)—

"(A) developing planning, management, and evaluation systems; or

"(B) developing plans for initiating scientific research and for improving institutions' capabilities for such activities.

Funds used for design project grants may not be used to pay more than 50 percent of the salaries during any academic year of faculty members involved in the project.

"(4) The authorized uses of funds made available as special projects include (but are not limited to)—

"(A) advanced science seminars;

"(B) science faculty workshops and conferences;

"(C) faculty training to develop specific science research or education skills;

"(D) research in science education;

"(E) programs for visiting scientists;

"(F) preparation of films or audio-visual materials in science;

"(G) development of learning experiences in science beyond those normally available to minority undergraduate students;

"(H) development of pre-college enrichment activities in science; or

"(I) any other activities designed to address specific barriers to the entry of minorities into science.

"ADMINISTRATION

"SEC. 1024. The Secretary shall submit to the Congress on an annual basis a list of grantees receiving awards under this part.

"SUBPART 2—SCIENCE AND ENGINEERING ACCESS PROGRAMS

"MINORITY SUPPORT IN SCIENCE AND ENGINEERING PROGRAMS

"SEC. 1031. The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants to institutions of higher education that are designed to provide or improve support programs for minority students enrolled in science and engineering programs at institutions with a significant minority enrollment (at least 10 percent).

"SPECIAL SERVICE PROJECTS PROGRAM

"SEC. 1032. The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants to institutions of higher education that are designed to provide or improve support to accredited colleges and universities and professional scientific societies for a broad range of activities designed to eliminate or reduce specific barriers to the entry of minorities into science and technology.

"SUPPORTABLE ACTIVITIES

"SEC. 1033. Funds appropriated for the purpose of this subpart may be made available for—

"(1) providing needed services to groups of minority institutions or providing training for scientists and engineers from eligible minority institutions;

"(2) providing needed services to groups of institutions serving significant numbers of minority students or providing training for scientists and engineers from such institutions to improve their ability to train minority students in science or engineering;

"(3) assisting minority institutions to improve the quality of preparation of their students for graduate work or careers in science, mathematics, and technology;

"(4) improving access of undergraduate students at minority institutions to careers in the sciences, mathematics, and engineering;

"(5) improving access of minority students to careers in the sciences, mathematics, and engineering;

"(6) improving access for pre-college minority students to careers in science, mathematics, and engineering through community outreach programs conducted through colleges and universities eligible for support through the Minority Science and Engineering Improvement Programs;

"(7) disseminating activities, information, and educational materials designed to address specific barriers to the entry of minorities into science and technology, and conducting activities and studies concerning the flow of underrepresented ethnic minorities into scientific careers;

"(8) supporting curriculum models to encourage minority student participation in research careers in science, mathematics, and technology; and

"(9) improving the capability of minority institutions for self-assessment, management, and evaluation of their science, mathematics, and engineering programs and dissemination of their results.

"SUBPART 3—ADMINISTRATIVE AND GENERAL PROVISIONS

"ELIGIBILITY FOR GRANTS

"SEC. 1041. Eligibility to receive grants under this part is limited to—

"(1) public and private nonprofit institutions that are minority institutions (as defined in section 1046(3));

"(2) nonprofit science-oriented organizations, professional scientific societies, and all nonprofit, accredited colleges and universities which provide a needed service to a group of eligible minority institutions or which provide in-service training for project directors, scientists, and engineers from eligible minority institutions; and

"(3) for the purposes of section 1032, public and private nonprofit institutions that have at least 10 percent minority enrollment.

"GRANT APPLICATION

"SEC. 1042. (a) SUBMISSION AND CONTENTS OF APPLICATIONS.—An eligible applicant (as determined under section 1041) that desires to receive a grant under this part shall submit to the Secretary an application therefor at such time or times, in such manner, and containing such information as the Secretary may prescribe by regulation. Such application shall set forth—

"(1) a program of activities for carrying out one or more of the purposes described in section 1021(b) in such detail as will enable the Secretary to determine the degree to which such program will accomplish such purpose or purposes; and

"(2) such other policies, procedures, and assurances as the Secretary may require by regulation.

"(b) APPROVAL BASED ON LIKELIHOOD OF PROGRESS.—The Secretary shall approve an application only if the Secretary determines that the application sets forth a program of activities which are likely to make substantial progress toward achieving the purposes of this part.

"CROSS PROGRAM AND CROSS AGENCY COOPERATION

"SEC. 1043. The Minority Science and Engineering Improvement Programs shall cooperate with other programs within the Department and within Federal, State, and private agencies which carry out programs to improve the quality of science, mathematics, and engineering education.

"ADMINISTRATIVE PROVISIONS

"SEC. 1044. (a) TECHNICAL STAFF.—The Secretary shall appoint, without regard to the provisions of title 5 of the United States Code governing appointments in the competitive service, not less than 2 technical employees with appropriate scientific and educational background to administer the programs under this part who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) PROCEDURES FOR GRANT REVIEW.—The Secretary shall establish procedures for reviewing and evaluating grants and contracts made or entered into under such programs. Procedures for reviewing grant applications, based on the peer review system, or contracts for financial assistance under this title may not be subject to any review outside of officials responsible for the administration of the Minority Science and Engineering Improvement Programs.

"ADVISORY PROVISIONS

"SEC. 1045. (a) ADVISORY BOARD FOR THE MINORITY SCIENCE AND ENGINEERING IMPROVEMENT PROGRAMS.—There shall be established an Advisory Board for the Minority Science and Engineering Improvement Programs. The Board shall consist of 9 members, at least 6 of whom must be racial and national origin minority scientists, engineers, or science or engineering educators. In constituting the initial Board under subsection (c), efforts shall be made to achieve a balance on the Board with respect to sexual, geographic, and institutional background.

"(b) PURPOSES OF THE BOARD.—The Board shall act as an advisory group to the program. Drawing on the expertise of members, the Board will recommend to the Secretary and the director of the program those policies, procedures, and other measures which will further the efforts made through the program to improve the quality of science and engineering education by contributing to the access and retention of ethnic minorities in science and engineering education programs. Upon the request of the Secretary, the Board may be called upon to advise the Secretary on any matters within the Department which could be expected to have an impact on the access of minority students to careers in science, mathematics, or engineering.

"(c) CONSTITUTION OF BOARD.—The initial Board shall be constituted in as follows:

"(1) The Director of the Programs shall solicit nominations for the Board from present and past grant recipients of the Minority Institutions Science Improvement Program. The Director shall select from among the nominees 18 candidates whose names shall be given to the Secretary.

"(2) The Secretary shall choose 9 Board members from among the 18 presented.

"(3) The Secretary shall assign 3 Board members to a 3-year term, 3 members to a 4-year term, and 3 members to a 5-year term. Upon expiration of these initial terms, replacement Board members shall serve for 3-year terms. Board members may serve more than one term.

"(4) The Chair of the Board shall be selected by a simple majority vote of Board members and will serve a single term.

"(5) Vacancies on the Board shall be filled by the Board soliciting nominees from institutions eligible to receive grants through the Program. From among the nominees the present and immediate past Chair of the Board shall submit at least 2 nominees for each vacancy to the Secretary, who shall fill vacancies from among the names submitted.

"(d) COMPENSATION OF THE BOARD.—Members of the Board shall receive compensation at a rate not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Board.

"DEFINITIONS

"SEC. 1046. For the purpose of this part—

"(1) The term 'accredited' means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

"(2) The term 'minority' means American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

"(3) The term 'minority institution' means an institution of higher education whose enrollment of a single minority or a combination of minorities (as defined in paragraph (2)) exceeds 50 percent of the total enrollment. The Secretary shall verify this information from the data on enrollments in the higher education general information surveys (HEGIS) furnished by the institution to the Office for Civil Rights, Department of Education.

"(4) The term 'science' means, for the purpose of this program, the biological, engineering, mathematical, physical, and social sciences, and history and philosophy of science; also included are interdisciplinary

fields which are comprised of overlapping areas among two or more sciences.

"(5) The term 'underrepresented in science and engineering' means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

"(6) The term 'institutional grant' means a grant that supports the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

"(7) The term 'cooperative grant' means a grant that assists groups of nonprofit accredited colleges and universities to work together to conduct a science improvement program.

"(8) The term 'design projects' means projects that assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

"(9) The term 'special projects' means—

"(A) a special project grant to a minority institution which support activities that—

"(i) improve the quality of training in science and engineering at minority institutions; or

"(ii) enhance the minority institutions' general scientific research capabilities; or

"(B) a special project grant to any eligible applicant which supports activities that—

"(i) provide a needed service to a group of eligible minority institutions; or

"(ii) provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1047. (a) AUTHORIZATIONS.—There are authorized to be appropriated to carry out the purposes of this part, $7,500,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(b) APPROPRIATION LIMITATION.—For any fiscal year, 50 percent of the funds under this part shall be allocated for the purpose of section 1021, 33.33 percent for the purpose of section 1031, and 16.67 percent for the purpose of section 1032.".

SEC. 1003. INNOVATIVE PROJECTS AUTHORIZED.

Title X of the Act is further amended by adding at the end thereof the following new part:

"PART C—INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE

"STATEMENT OF PURPOSE

"SEC. 1061. It is the purpose of this part to support innovative projects in order to determine the feasibility of encouraging student participation in community service projects in exchange for educational services or financial assistance and thereby reduce the debt acquired by students in the course of completing postsecondary educational programs.

"INNOVATIVE PROJECTS FOR COMMUNITY SERVICES AND STUDENT FINANCIAL INDEPENDENCE

"SEC. 1062. (a) GENERAL AUTHORITY.—The Secretary is authorized, in accordance with the provisions of this part, to make grants to and contracts with institutions of higher education (including combinations of such institutions) and with such other public agencies and nonprofit private organizations as the Secretary deems necessary for innovative projects designed to carry out the purpose of this part.

"(b) APPLICATIONS.—No grant may be made and no contract may be entered into under this section unless an application is made at such time, in such manner, and contained or accompanied by such information as the Director may require.

"(c) APPLICABLE PROCEDURES.—(1) No application may be approved under subsection (b) unless the National Board of the Fund for Improvement of Postsecondary Education, under procedures established by the Director, approves the application.

"(2) The provisions of section 1004(b) shall apply to grants made under this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1063. (a) There are authorized to be appropriated to carry out this part, $3,000,000 for fiscal year 1987, and such sums as may be necessary for the 4 succeeding fiscal years.

"(b) No funds may be appropriated pursuant to subsection (a) for any fiscal year unless funds are appropriated for part A of this title for such fiscal year.".

SEC. 1004. TECHNICAL AMENDMENT.

The headings of title X, and of part A of title X, of the Act are amended to read as follows:

"PART A—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION"

TITLE XI—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

SEC. 1101. PROGRAM AUTHORIZED.

Title XI of the Act is amended to read as follows:

"TITLE XI—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

"PART A—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT

"FINDINGS AND PURPOSE

"SEC. 1101. (a) FINDINGS.—The Congress finds that—

"(1) there is a need for more systematic and comprehensive efforts to link postsecondary education institutions with State and local governments, labor, business, industry, and community organizations, in order to meet local problems, and to plan, maintain, and attract lasting economic improvement;

"(2) effective economic development is enhanced by the active participation of postsecondary education institutions;

"(3) the economic vitality and international competitiveness of the United States depends on using all available resources; and

"(4) Federal leadership is critical to promoting such competitiveness efforts.

"(b) PURPOSE.—The purpose of this part is to encourage the involvement of postsecondary education institutions with units of government, labor, business, industry, and community organizations to—

"(1) conduct planning, research, and activities which promote economic development and the expansion and retention of jobs on the local, State, and regional level;

"(2) develop programs for job retraining and expanding business and industry opportunities in the area;

"(3) enhance local growth initiatives through utilization of their expertise in economic and community development; and

"(4) demonstrate new approaches to economic development partnerships and to make them available to other areas of the Nation.

"USE OF ECONOMIC DEVELOPMENT FUNDS

"SEC. 1102. (a) ALLOWABLE ACTIVITIES.—An eligible institution or consortium of such institutions may apply for assistance under this part to support—

"(1) planning and research (including applied research) directed at solving local economic development problems, promoting growth, and improving productivity;

"(2) resource exchanges between faculty, government personnel, and private sector experts in economic development activities; and

"(3) any combination of the activities described in subparagraphs (A) and (B) which promote local economic development.

"(b) SPECIAL PROJECTS AUTHORIZED.—Special projects which may be supported under subsection (a)(2) are projects which address broad or national economic development issues, are innovative in their approach, and hold promise of application beyond the area served. Such projects may include—

"(1) the application of technology research to manufacturing aspects of mature industries in a region or State;

"(2) the design and development of technical assistance centers based at eligible institutions which will provide an integrated program of education, research, and technology transfer to business and industry;

"(3) projects to support entrepreneurship training and technical assistance; and

"(4) projects to develop new approaches or complement efforts to explore, expand, and foster opportunities for international business and trade.

"(c) DISSEMINATION PROJECTS.—In addition to the activities described in subsections (a) and (b), the Secretary is authorized to make a limited number of grants to identify and disseminate effective models and techniques which use partnerships between postsecondary education institutions and others involved in economic development to support economic improvement.

"(d) MAXIMUM GRANT.—The maximum grant awarded under subsection (a) for any fiscal year shall be $50,000, except that the limitation contained in this paragraph shall not apply in the case of an application submitted by a consortium of eligible institutions.

"REQUIREMENTS FOR ECONOMIC DEVELOPMENT GRANT APPLICATIONS

"SEC. 1103. (a) LOCAL INVOLVEMENT.—The Secretary may make grants under this part to an eligible institution or consortium of such institutions that demonstrates in its application a proposed program that will involve the active participation of and commitment of resources and personnel by—

"(1) local or State units of governments;

"(2) business or industry;

"(3) labor unions or union representatives; and

"(4) nonprofit organizations concerned with economic development in the area to be served.

"(b) GENERAL CONDITIONS.—Each application under this part shall be filed with the Secretary at such time or times as the Secretary may prescribe. The application shall—

"(1) set forth a program which is likely to make substantial progress toward achieving the purposes of this part;

"(2) provide for an effective dissemination of information on successful results of the activities;

"(3) provide assurances that an assessment has been made of Federal and State resources and that the resources are unavailable for the proposed activity;

"(4) describe the consultation and, if appropriate, coordination with other Federal and State economic development efforts;

"(5) contain assurances that the eligible institution will, to the extent practicable,

coordinate its use of resources available for student assistance in a manner which will support the activities conducted under this part;

"(6) describe how the plan fits into the overall economic development plan for the area to be served, contributes to long-term economic growth and employment opportunities, and furthers the goals of the postsecondary education institution; and

"(7) contain such other information and assurances as the Secretary may require by regulation.

"(c) SPECIAL CONSIDERATION.—In making grants under this part, the Secretary shall give special consideration to applications which—

"(1) propose to serve an area which—

"(A) has an unemployment rate 1 percent above the national average unemployment rate for the most recent 24-month period, or

"(B) has experienced or is about to experience sudden economic dislocation resulting in job loss that is significant, both in terms of the number of jobs eliminated and the effect upon the employment rate of the area;

"(2) are submitted by a consortia of postsecondary education institutions, including 4- and 2-year, public and private postsecondary education institutions, and provides a regional geographic approach to solving economic development problems; or

"(3) develop approaches which promote economic diversification for rural areas or areas whose economy is dependent upon a single industry or single employer.

"PART B—URBAN COMMUNITY SERVICE

"PURPOSE

"SEC. 1111. It is the purpose of this part to encourage the use of urban universities as sources of skills, talents, and knowledge which can serve the urban areas in which they are located in meeting urban problems.

"USE OF URBAN COMMUNITY SERVICE FUNDS

"SEC. 1112. (a) ALLOWABLE ACTIVITIES.—An eligible institution that is an urban university, or consortium of such institutions, may apply for assistance under this part to support cooperative projects through which such universities provide urban areas with applied research, planning services, specialized training, technical assistance or other services to address high priority needs of such urban areas.

"(b) PRIORITY NEEDS.—Each eligible urban university shall establish high priority needs through consultation with local government, business, labor, or community-based organizations.

"CONTENTS FOR APPLICATIONS FOR URBAN COMMUNITY SERVICES PROJECTS

"SEC. 1113. (a) EVALUATION AND SELECTION OF APPLICATIONS.—An application submitted under this part shall—

"(1) contain assurances that the chief executive officer of the local government has been given a reasonable opportunity to review and comment on the proposed project or projects; and

"(2) show participation of any local agency of general government and of the community in the development and implementation of each project for which assistance is sought.

"(b) SELECTION PRIORITIES.—The Secretary shall give priority to applications which contain cooperative arrangements among urban universities, community colleges, and other institutions of higher education and other entities in the public, private, and nonprofit sectors within an urban area.

"PART C—GENERAL PROVISIONS

"ADMINISTRATIVE PROVISIONS

"SEC. 1121. (a) PEER REVIEW.—The Secretary shall designate a peer review panel to review applications submitted under parts A and B of this title and make recommendations for funding to the Secretary. In selecting the peer review panel, the Secretary shall consult with other appropriate Cabinet-level officials and non-Federal organizations, to ensure that the panel will be geographically balanced and be composed of an equal number of representatives from public and private higher education, labor, business, and State and local government who have expertise in economic development and urban community service.

"(b) DURATION OF GRANTS.—Subject to the availability of appropriations, grants under parts A and B may be made on a multiyear basis, except that no institution, individually or as a participant in a combination of such institutions may receive a grant for one project for more than 5 years.

"(c) GEOGRAPHIC DISTRIBUTION.—The Secretary shall award grants under parts A and B in such a manner as to achieve broad and equitable distribution of assistance throughout the Nation.

"(d) NON-FEDERAL MATCH REQUIRED.—An applicant under parts A and B and the organizations associated with its application shall contribute to the conduct of the program supported by the grant an amount from non-Federal sources equal to at least one-fourth the amount of the grant, which contribution may be in cash or in services, supplies, or equipment.

"(e) WAIVER OF MATCHING REQUIREMENT.—The Secretary may waive the requirement of subsection (d) with respect to an eligible institution that demonstrates a unique hardship that precludes its compliance with that requirement.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1122. There are authorized to be appropriated to carry out parts A and B of this title $15,000,000 for fiscal year 1987 and such sums as may be necessary for each of the 4 succeeding fiscal years. The Secretary shall allocate 66 2/3 percent of the funds appropriated under this title for part A and 33 1/3 percent for part B.

"DEFINITIONS

"SEC. 1123. As used in this title—

"(1) the term 'eligible institution' has the meaning given such term by section 435(a) of this Act;

"(2) the term 'urban area' means a metropolitan statistical area having a population of not less than 500,000 individuals; or in any State which does not have a standard metropolitan statistical area which has such a population, the entity of the State having an agreement under section 1203 may, or if no such entity has an agreement, the Secretary shall designate one urban area for the purpose of this part; and

"(3) the term 'urban university' means an institution of higher education or a consortium of institutions of higher education, any one of which meets all the requirements of this paragraph which—

"(A) is located in an urban area,

"(B) draws a substantial portion of its undergraduate students from the urban area in which it is located or contiguous students from the urban area in which it is located or contiguous areas,

"(C) carries out programs to make postsecondary education opportunities more accessible to residents of such urban area or contiguous areas,

"(D) has the present capacity to provide resources responsive to the needs and priorities of such urban area and contiguous areas,

"(E) offers a range of professional or graduate programs sufficient to sustain its capacity to provide such resources, and

"(F) has demonstrated and sustained a sense of responsibility to such urban area and contiguous areas and its people.

"PART D—WAGNER INSTITUTE OF URBAN PUBLIC POLICY

"PURPOSE; DESIGNATION

"SEC. 1131. It is the purpose of this part to provide assistance to the City University of New York to enable the University to establish a center to coordinate resources for the development of solutions to pressing urban and social problems. The institute shall be known as the 'Robert F. Wagner, Sr., Institute of Urban Public Policy' (hereafter in this part referred to as the 'Institute').

"APPLICATION FOR AND USE OF FUNDS

"SEC. 1132. (a) APPLICATION.—No payment may be made under this part except upon application at such time, in such manner, and containing or accompanied by such information as the Secretary may require.

"(b) USE OF FUNDS.—Payments made under this part may be used by the City University of New York to establish and operate the Institute and to support the following activities of the institute:

"(1) The Institute shall inventory and assess academic research, education, and training capabilities with respect to urban redevelopment strategies. The Institute shall ensure that information derived from this activity shall be available for use in public policy debates on solutions to urban problems.

"(2) The Institute shall conduct a series of forums to promote and coordinate decisionmaking on urban problems. Such forums shall be focused upon such issues as economic development, youth employment, law enforcement, education, services to the elderly, health care delivery systems, and immigration patterns. Participants in such forums shall be drawn from Federal, State, and local government, the business and professional community, labor, education, and community based organizations.

"(3) In developing topics for the forums to be conducted under paragraph (2), and in establishing priorities for the allocation of its resources, the Institute shall establish and regularly consult with an advisory council of urban advisors representing leaders in government, business, labor, education, and community based operations.

"(4) The Institute shall prepare and publish reports on the forums conducted pursuant to paragraph (2) and publish and disseminate the results of its research activities.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1133. There are authorized to be appropriated to carry out this part, $2,000,000, which may remain available until expended.".

TITLE XII—GENERAL PROVISIONS

SEC. 1201. TREATMENT OF TERRITORIES AND TERRITORIAL STUDENT ASSISTANCE.

Section 1204 of the Act is amended—

(1) by striking out the first sentence of subsection (a) and inserting in lieu thereof the following: "Within 6 months after the date of enactment of the Higher Education Amendments of 1986, the Secretary shall promulgate regulations in accordance with the recommendations in the report entitled

'Postsecondary Education in the U.S. Territories' (May 1982) in order to adapt programs under this Act to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.";

(2) by striking out "October 1, 1985" in subsection (c) and inserting in lieu thereof "October 1, 1991,"; and

(3) by striking out subsection (b), by redesignating subsection (a) as subsection (b), and by inserting before such subsection the following new subsection:

"(a) The Secretary is required to waive the eligibility criteria of any postsecondary education program administered by the Department where such criteria does not take into account the unique circumstances in Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Northern Mariana Islands. Priority shall be given to proposals submitted by these territories which otherwise meet program criteria.".

SEC. 1202. REAUTHORIZATION OF THE NATIONAL ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY.

Section 1205(f) of the Act is amended by striking out "September 30, 1985" and inserting in lieu thereof "September 30, 1991".

SEC. 1203. COMMISSION TO STUDY POSTSECONDARY INSTITUTIONAL AND PROGRAMMATIC RECOGNITION PROCESS.

Title XII of the Act is amended by adding at the end thereof the following new section:

"COMMISSION TO STUDY POSTSECONDARY INSTITUTIONAL AND PROGRAMMATIC RECOGNITION PROCESS

"SEC. 1206. (a) There is established in the legislative branch a Joint Study Commission on Postsecondary Institutional Recognition (hereafter in this section referred to as the 'Commission').

"(b) The Commission shall be composed of 5 members appointed jointly by the President pro tempore of the Senate, upon the recommendation of the Majority Leader and the Minority Leader, and by the Speaker of the House of Representatives, upon the recommendation of the Majority Leader and the Minority Leader.

"(c)(1) Members of the Commission shall be appointed, on the basis of their integrity, impartiality, and good judgment, from among individuals who, as a result of their training, experience, and attainment, are widely recognized by professionals in the fields of education and governmental administration as experts in those fields.

"(2) A majority of the members of the Commission may not, at the time of their appointment, be serving as either employees or officers of any accrediting agency or an organization of accrediting agencies, currently serving as administrators of accredited institutions, or be current or past members of the Advisory Committee on Accreditation and Institutional Eligibility of the Department.

"(3) Vacancies in the membership of the Commission shall not affect the power of the remaining members to perform the duties of the Commission and shall be filled in the same manner in which the original appointment was made.

"(4) Each member of the Commission not otherwise employed by the United States Government shall receive the daily equivalent of the annual basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, for each day during which such member is actually engaged in the performance of the duties of the Commission. Each member of the Commission shall be allowed travel expenses in the same manner as any individual employed intermittently by the Federal Government is allowed travel expenses under section 5703 of title 5, United States Code.

"(d)(1) The Commission shall conduct a thorough study of the institutional and programmatic recognition process used by the Department in determining institutional or programmatic eligibility for student participation in Federal student assistance programs under this Act with attention being given to the accreditation of various types of public and private postsecondary institutions and programs.

"(2) The study shall address, analyze, and report specifically on—

"(A) the comprehensiveness of the standards and criteria used by existing accreditation agencies;

"(B) the reliability and validity of the institutional and programmatic review processes used by the existing accreditation agencies;

"(C) the adequacy of the current accreditation methodology and system;

"(D) alternative structures, standards, criteria, and processes that might be used in accrediting institutions and programs;

"(E) the indicators of educational quality that might be incorporated into the accreditation process;

"(F) the educational outcome measurements that might be used in the accreditation process;

"(G) the indicators of institutional and programmatic quality that should be provided to applicants and students; and

"(H) alternative approaches that might be used by the Secretary for institutional and programmatic recognition to permit student participation in Federal student assistance programs,

as each factor bears on eligibility for participation in Federal student assistance programs.

"(3) The study shall also include an analysis of—

"(A) the processes and procedures currently utilized by the Secretary and the Department in determining institutional and program eligibility for receiving Federal student assistance funds;

"(B) the operations and effectiveness in carrying out eligibility determination of the division of the Department referred to as the 'Division of Eligibility and Agency Evaluation';

"(C) review of alternatives to accreditation in determining eligibility and their acceptability;

"(D) the role and effectiveness of, participation agreements, between institutions and programs and the Department in determining specific institutional program eligibility for Federal funds;

"(E) the ability of the Department to enforce conditions specified in participation agreements, including institutional and program audits;

"(F) the current status, functioning, and effectiveness of the National Advisory Committee on Accreditation and Institutional Eligibility, including its role in developing criteria for recognition of accrediting agencies and evaluating their success in assessing the quality of the education or training offered.

"(e) The Commission shall adopt procedures allowing any interested party to submit information with respect to the recognition process, including critiques of current accrediting agency recognition procedures, accreditation procedures, possible alternative procedures, and proposed changes in criteria for recognition of individual accrediting agencies.

"(f) The Commission shall prepare a narrative and statistical report consisting of—

"(1) an overview description of the voluntary accrediting process used for postsecondary education in the United States; and

"(2) a brief description of each accrediting agency recognized by the Department.

The report shall include at least a statement of the agency's purpose and a description of the organizational and governance structure of the agency, the agency's accreditation and visitation procedures, employers of members of the accrediting agency's governing body, the agency's sources of financial support, and such background information as the Commission may request from the agency regarding the number of members, number of candidates for accreditation, number of members voluntarily withdrawn after membership, number of applications withdrawn before membership, number of members dropped, and number of applicants denied accreditation. The report shall include the types of information shared among the various accrediting agencies, the degree of duplication among accrediting agencies in the current system, and an analysis of reported complaints by the agency and its member institutions and programs.

"(g) The Commission shall also prepare a report on—

"(1) the history, operation, procedures, and the role and adequacy of staff of the division described in subsection (e)(3)(B);

"(2) the history and current operations of the National Advisory Committee on Accreditation and Institutional Eligibility, including current criteria for Federal recognition of accrediting bodies, how the criteria were developed, possible modifications, and procedures for accomplishing this; and

"(3) with respect to the Department in general, an overview of its role in the institutional and programmatic recognition process as it relates to eligibility for Federal student assistance, including recommendations, if appropriate, on how this role might be changed and improved.

"(h)(1)(A) By agreement between the President pro tempore of the Senate and the Speaker of the House of Representatives, the Commission is authorized to secure on a reimbursable basis, office space, clerical personnel, travel expenses, and such supplies and equipment as may be necessary for the Commission to carry out the study.

"(B) Subject to such limitations as the President pro tempore of the Senate and the Speaker of the House of Representatives may jointly prescribe, the Commission may appoint such personnel as the Commission deems necessary and fix the compensation at an annual rate that does not exceed the rate of basic pay then payable for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and may procure by contract the temporary and intermittent services of clerical personnel and experts or consultants, or organizations thereof.

"(2) In conducting the study authorized by this section, the Commission is authorized to—

"(A) seek such assistance and support as may be required to conduct the study from appropriate Federal agencies;

"(B) arrange for the detail of staff personnel from other Federal agencies;

"(C) enter into contracts and make other arrangements, as may be necessary for the conduct of the study;

"(D) convene such technical groups as deemed necessary to secure information about the existing recognition process; and

"(E) provide transportation and subsistence for persons serving without compensation.

"(3) Upon request by the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist in the conduct of the study.

"(i) The Commission shall submit a report of the findings and recommendations of the study required by this section to the Postsecondary Education Subcommittee of the Education and Labor Committee of the House of Representatives and the Subcommittee on Education, Arts, and Humanities of the Labor and Human Resources Committee of the Senate not later than one year after funds are appropriated and made available for this study.

"(j) There are authorized to be appropriated $1,000,000 to carry out the study authorized by this section.".

SEC. 1204. STUDENT REPRESENTATION.

Title XII of the Act is further amended by adding at the end thereof the following new section:

"STUDENT REPRESENTATION

"SEC. 1207. The Secretary shall, in appointing individuals to any commission, committee, board, panel, or other body in connection with the administration of this Act, include individuals who are, at the time of appointment, attending an institution of higher education.".

SEC. 1205. FINANCIAL RESPONSIBILITY OF FOREIGN STUDENTS.

Title XII of the Act is further amended by adding at the end thereof the following new section:

"FINANCIAL RESPONSIBILITY OF FOREIGN STUDENTS

"SEC. 1208. Nothing in this Act or any other Federal law shall be construed to prohibit any institution of higher education from requiring a student who is a foreign national (and not admitted to permanent residence in the United States) to guarantee the future payment of tuition and fees to such institution by (1) making advance payment of such tuition and fees, (2) making deposits in an escrow account administered by such institution for such payments, or (3) obtaining a bond or other insurance that such payments will be made.".

SEC. 1206. DISCLOSURES OF FOREIGN GIFTS.

(a) GENERAL RULE.—Title XII of the Act is further amended by adding at the end thereof the following new section:

"DISCLOSURES OF FOREIGN GIFTS

"SEC. 1209. (a) Whenever any institution receives a gift from or enters into a contract with a foreign source, the value of which is $250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner.

"(b) Each report to the Secretary required by this Act shall contain:

"(1) For gifts received from or contracts entered into with a foreign source other than a foreign government, the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.

"(2) For gifts received from or contracts entered into with a foreign government, the aggregate amount of such gifts and contracts received from each foreign government.

"(c) Notwithstanding the provisions of subsection (b), whenever any institution receives a restricted or conditional gift or contract from a foreign source, the institution shall disclose:

"(1) For such gifts received from or contracts entered into with a foreign source other than a foreign government, the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.

"(2) For gifts received from or contracts entered into with a foreign government, the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.

"(d)(1) If an institution described under subsection (a) is within a State which has enacted requirements for public disclosure of gifts from or contracts with a foreign source that are substantially similar to the requirements of this section, a copy of the disclosure report filed with the State may be filed with the Secretary in lieu of a report required under subsection (a). The State in which the institution is located shall provide to the Secretary such assurances as the Secretary may require to establish that the institution has met the requirements for public disclosure under State law if the State report is filed.

"(2) If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bureau of the executive branch requires a report containing requirements substantially similar to those required under this Act, a copy of this report may be filed with the Secretary in lieu of a report required under subsection (a).

"(e) All disclosure reports required by this Act shall be public records open to inspection and copying during business hours.

"(f)(1) Whenever it appears that an institution has failed to comply with the requirements of this section, including any rule or regulation promulgated thereunder, a civil action may be brought in an appropriate district court of the United States, or the appropriate United States court of any territory or other place subject to the jurisdiction of the United States, to request such court to compel compliance with the requirements of the Act.

"(2) For knowing or willful failure to comply with the requirements of this section, including any rule or regulation promulgated thereunder, an institution shall pay to the Treasury of the United States the full costs to the United States of obtaining compliance, including all associated costs of investigation and enforcement.

"(g) The Secretary may promulgate regulations to carry out the ministerial duties imposed on the Secretary by this section.

"(h) For the purpose of this section—

"(1) the term 'contract' means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties;

"(2) the term 'foreign source' means—

"(A) a foreign government, including an agency of a foreign government;

"(B) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;

"(C) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; and

"(D) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source;

"(3) the term 'gift' means any gift of money or property;

"(4) the term 'institution' means any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State which—

"(A) is legally authorized within such State to provide a program of education beyond high school;

"(B) provides a program for which it awards a bachelor's degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and

"(C) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of its subunits; and

"(5) the term 'restricted or conditional gift or contract' means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding (A) the employment, assignment, or termination of faculty; (B) the establishment of departments, centers, research or lecture programs, or new faculty positions; (C) the selection or admission of students; or (D) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.".

(b) REPEALER.—Section 1208 of the Act, as added by subsection (a) of this section, is repealed on August 1, 1989.

SEC. 1207. AGGREGATE LIMIT OF AUTHORIZATION OF APPROPRIATIONS.

Title XII of the Act is further amended by adding at the end thereof the following new section:

"AGGREGATE LIMIT OF AUTHORIZATION OF APPROPRIATIONS

"SEC. 1210. Notwithstanding any other provision of this Act, the total amount which may be appropriated to carry out the programs and activities authorized by this Act, other than the programs and activities authorized by subpart 1 of part A and part B of title IV, shall not exceed—

"(1) $3,166,000,000 for fiscal year 1987,

"(2) $3,351,000,000 for fiscal year 1988,

"(3) $3,552,000,000 for fiscal year 1989,

"(4) $3,771,000,000 for fiscal year 1990, and

"(5) $4,007,000,000 for fiscal year 1991.".

TITLE XIII—EDUCATION ADMINISTRATION

PART A—SECRETARIAL STUDIES AND EVALUATIONS

SEC. 1301. SATISFACTORY PROGRESS.

The Secretary, through the Office of Educational Research and Improvement, shall conduct a survey on the impact, if any, on grades of students of the amendments made by this Act to section 484(d) of the Act. The study required by this subsection shall be conducted over the 5-year period ending

September 30, 1991. The Secretary, after the end of each year of the study, shall submit to the Congress a report of the survey required by this subsection, together with such recommendations as the Secretary deems appropriate.

SEC. 1302. NATIONAL ENDOWMENT FOR INTERNATIONAL STUDIES.

(a) STUDY REQUIRED.—The Secretary shall, in consultation with the Director of the United States Information Agency, the Director of the Agency for International Development, the Secretary of State, and the Secretary of Defense, conduct a study on the establishment of a National Endowment for International Studies. The study shall develop a program, a funding plan, and priorities for such an Endowment.

(b) CONDUCT OF STUDY.—In carrying out the study required by this section, the Secretary shall consider—

(1) the extent of the need for international studies programs at all educational levels, not served by this title;

(2) the programs at the Agency for International Development, the United States Information Agency, and the Departments of State, Defense, and Education which can be coordinated to increase the scope and number and kinds of participants in international educational programs;

(3) the feasibility of an Endowment for International Studies, by whom it shall be administered, and procedures for receiving corporate and other private contributions for supplemental funding, similar to Treasury fund accounts at other Federal agencies; and

(4) a comprehensive evaluation of the weaknesses and strengths in international education and foreign language training at all levels of education in our Nation and the role of the Endowment to remedy these weaknesses, and encourage expansion of these strengths.

(c) REPORT.—The Secretary shall prepare and submit to the Congress, not later than one year after the date of enactment of this section, a report on the study required by this section, together with such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

SEC. 1303. DATA STUDY REQUIRED.

(a) CONDUCT OF STUDIES.—The Secretary shall, through the Office of Education Research and Improvement or the Center for Education Statistics, shall conduct the studies required by this section and submit reports thereon to the Congress not later than September 30, 1990. The reports shall contain such recommendations, including recommendations for legislation, as the Secretary deems appropriate.

(b) COST STUDY REQUIRED.—(1) The Secretary shall conduct a study on the escalating cost of higher education. The study required by this section shall—

(A) identify the current cost of obtaining a higher education and determine how that cost has changed in recent years,

(B) determine the specific causes of such changes in cost and the extent to which those causes have contributed to such changes,

(C) forecast the future cost of obtaining a higher education with consideration given to prospective demographic changes in student enrollments,

(D) evaluate the impact of such changes in cost on institutions of higher education, their students, and lower and middle income families,

(E) make recommendations on how such changes in cost can be minimized in the future, and

(F) outline State and Federal policy options which may help to minimize such changes in cost in the future.

(2) In conducting such study, the Secretary shall give special consideration to the impact of escalating costs on lower and middle income students and families, the impact of escalating costs on female and minority students, the impact of escalating costs on the career choices made by students, and the relationship between escalating costs and the Federal student financial assistance programs.

(3) During the conduct of such study, the Secretary shall consult frequently with the Department of Education, the Chairman of the Senate Committee on Labor and Human Resources, and the Chairman of the House Committee on Education and Labor.

(c) STUDENT AID RECIPIENT SURVEY.—(1) The Secretary shall survey student aid recipients on a regular cycle, but not less than once every 3 years—

(A) to identify the population of students receiving Federal student aid;

(B) to determine the income distribution and other socioeconomic characteristics of federally aided students;

(C) to describe the combinations of aid from State, Federal, and private sources received by students from all income groups;

(D) to describe the debt burden of loan recipients and their capacity to repay their education debts; and

(E) to disseminate such information in both published and machine readable form.

(2) The survey shall be representative of full-time and part-time, undergraduate, graduate, and professional and current and former students in all types of institutions, and should be designed and administered in consultation with the Congress and the postsecondary education community.

(d) TEACHER SUPPLY AND DEMAND.—(1) The Secretary shall utilize the legislative authority under section 406(b) of the General Education Provisions Act to annually assess current and future supply and demand for teachers with particular attention to—

(A) long-term and short-term shortages of personnel in various subject areas or teaching specialties;

(B) shortages in particular States or regions;

(C) the number of minorities entering teaching;

(D) the number of women and minorities entering educational administration;

(E) the effect of State curriculum and graduation requirements on the need for teachers in each State;

(F) the extent to which demographic characteristics of persons currently employed as teachers and persons studying to be teachers match the characteristics of the students in each State (race, age, sex);

(G) the academic qualifications of prospective teachers and the academic preparation of persons currently preparing to be teachers;

(H) the effect of the introduction of State mandated teacher competency tests on the demographic and educational characteristics of teachers and the supply of teachers; and

(I) an assessment of new and emerging specialties and the technologies, academic subjects, and occupational areas requiring vocational education, with emphasis on the unique needs for preparing an adequate supply of vocational teachers of handicapped students, with added emphasis on the preparation required to teach combined classrooms of handicapped, or other highly targeted groups of students and other students within a vocational education setting.

(2) The analysis conducted under this subsection may include assessment of other educational needs identified by the Congress, including an assessment of the need for instructional equipment and materials in elementary and secondary schools and in institutions of higher education.

(e) EQUITABLE STUDENT AID FOR FARM FAMILIES.—The Secretary shall conduct a study of financial aid formulas under title IV of the Act for students in postsecondary educational institutions with special attention to devising a more equitable formula for farm families.

SEC. 1304. EVALUATION OF CONTINUING EDUCATION.

(a) EVALUATION.—The Secretary shall enter into a contract with a qualified entity to study and evaluate the programs established under part A of this title.

(b) SECRETARY'S RESPONSIBILITIES.—The Secretary shall assist in evaluating the status and progress of adult education and postsecondary continuing education in achieving the purposes of this title. Such assistance shall include—

(1) an analysis of the findings of the report under subsection (a) together with suggestions for improvements in planning or program operation; and

(2) an information network on research in adult and continuing education, the operation of model or innovative programs, successful experiences in the planning, administration, and conduct of adult and continuing education programs, and advances in curriculum and instructional practices and technologies.

(c) REPORT.—Not later than January 1, 1990, the Secretary shall submit a report to the Congress on the program evaluations required under this title and on any progress in fulfilling the goals and purposes of this title. The Secretary may include in the report appropriate recommendations or legislative proposals.

SEC. 1305. STUDY OF BANKRUPTCY TREATMENT OF STUDENTS.

The Secretary shall conduct a study of the treatment of students under chapter 13 of title 11, United States Code, relating to the discharge of student loan indebtedness in bankruptcy proceedings, and of the effect of including such students under that provision of that law. The Secretary shall prepare and submit a report to the Congress on the study required by this section not later than 3 months after the date of enactment of this Act.

SEC. 1306. STUDY OF PELL GRANT LESS THAN HALF-TIME STUDENTS.

The Secretary shall conduct a study to determine the number of less than half-time students who would be eligible for Pell grants by reason of having an expected family contribution of $0 and by reason of having an expected family contribution of $0–$200 for the appropriate academic years. The Secretary shall prepare and submit a report to the Congress not later than September 30, 1988, on the results of the study required by this section.

SEC. 1307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $2,700,000 for the fiscal year 1987 and for each of the 2 succeeding fiscal years to carry out the provisions of this part.

PART B—GENERAL ACCOUNTING OFFICE REPORTS

SEC. 1311. STUDY OF PRACTICES OF STATE GUARANTY AGENCIES AND MULTISTATE GUARANTORS UNDER THE GUARANTEED STUDENT LOAN PROGRAM.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a complete study of the practices of State guaranty agencies and multistate guarantors under the guaranteed student loan program authorized by part B of title IV of the Act. The study shall investigate, on a comparative basis—

(1) due diligence practice of lenders;

(2) default rates and recovery rates on student loans;

(3) changes in loan volume;

(4) methods of soliciting student borrowers;

(5) potential for fraudulent double borrowing by students;

(6) participation agreements between the types of guarantor and lenders;

(7) eligible institution participation agreements;

(8) adequacy of reserved funds in relation to guaranty commitments made by the agency and the default risk which such commitments represent, as reflected by the socioeconomic background of the borrowers, the category of institution attended, and the historical experience of the agency;

(9) types of services provided to lenders, eligible institutions, and borrowers;

(10) use of funds generated through participation in the guaranteed student loan program by amount and nature of expenses for administrative support for programs other than the guaranteed student loan program;

(11) to what extent the guarantors meet the requirements of truth-in-lending provisions;

(12) profile of borrowers and defaulters of loans guaranteed by the agency and an assessment of the default risks inherent in such loans;

(13) coordination of the loan guaranty program with grant programs;

(14) general student access to loan assistance; and

(15) need for administrative cost allowances by particular guaranty agencies in relation to the default risk faced by the agency, the administrative costs incurred, or needed to be incurred by the agency, and other factors relevant to the cost of guaranteeing loans under the program.

(b) REPORT.—The Comptroller General of the United States shall prepare and submit a report, not later than 2 years after the date of enactment of this Act, to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives on the findings of the study required by subsection (a) of this section, together with such recommendations as the Comptroller General deems appropriate.

SEC. 1312. STUDY OF USE OF MULTIPLE-YEAR LINES OF CREDIT.

The Comptroller General shall evaluate the feasibility and efficiency of permitting students to establish lines of credit with eligible lenders under part B of title IV of the Act that cover more than 2 years of attendance at an institution of higher education. Such evaluation shall determine the extent to which such an arrangement would reduce the administrative costs associated with making separate loans annually under such part. In conducting such evaluation, the Comptroller General shall consult institutions of higher education and eligible lenders under such part. Within 2 years after the date of enactment of this Act, the Comptroller General shall submit to the Congress a report on the results of such evaluation together with such recommendations as the Secretary considers appropriate.

SEC. 1313. STUDY OF MULTIPLE DISBURSEMENT.

The Comptroller General shall evaluate the impact of the multiple disbursement system required for student loans under part B of title IV of the Act on the ability of both students and institutions of higher education to meet their expenses as they arise. Such evaluation shall include an assessment of any other impacts of such system on such students or institutions that the Comptroller General determines to be significant. A report on the results of such evaluation shall be submitted to the Congress not later than 2 years after the date of enactment of this Act.

SEC. 1314. STUDENT LOAN CONSOLIDATION.

The Comptroller General shall evaluate the cost, efficiency, and impact of the consolidation loan program established by the amendments made by this Act to part B of title IV of the Act and shall report to the Congress not later than 2 years after the date of enactment of this Act on the findings and recommendations required by this subsection.

PART C—COSTS OF POSTSECONDARY EDUCATION

SEC. 1321. NATIONAL COMMISSION ON RESPONSIBILITIES FOR FINANCING POSTSECONDARY EDUCATION.

(a) FINDINGS.—The Congress finds—

(1) that institutions of higher education in our Nation and their human and intellectual resources are critical to the future of the American society, and the Nation's economic potential, its strength, security, and freedom, and the quality of life for all citizens are tied to the quality and extent of higher education available;

(2) that it is the responsibility of the Federal Government to establish a clearly defined national policy regarding—

(A) the role and expectations of respective institutions in society (the family unit, institutions of higher education, government, and the individual in financing the costs of postsecondary education); and

(B) the most efficient and effective use of limited Federal, State, and private resources for supplementing the family effort in financing postsecondary education and for creating incentives for individuals and families to plan for financing postsecondary education; and

(3) the appropriate response to economic, budgetary, demographic, and social changes which will require individuals, families, institutions of higher education, and government to plan and adapt to the future needs for student financial assistance for postsecondary education.

(b) ESTABLISHMENT OF THE COMMISSION.—(1) There is established as an independent agency in the executive branch a commission to be known as the National Commission on Responsibilities for Financing Postsecondary Education (hereafter in this section referred to as the "Commission").

(2) The Commission shall be composed of 9 members, 3 of whom shall be appointed by the President, 3 of whom shall be appointed by the Speaker of the House of Representatives, and 3 of whom shall be appointed by the majority leader of the Senate. The membership of the Commission shall provide expertise and experience in the provision and financing of postsecondary education, including student financial aid administrators, secondary school administrators, individuals skilled in education economics research, individuals having expertise in the development of standards and systems of need analysis for student assistance programs, and individuals with particular expertise in credit financing for postsecondary education.

(c) DUTIES OF THE COMMISSION.—

(1) IN GENERAL.—The Commission shall study and investigate the extent to which—

(A) there is a consistent and coherent Federal policy regarding the appropriate family role in financing the costs of postsecondary education for family members;

(B) the current Federal laws and regulations promote the stated Federal policy; and

(C) the extent to which State laws which remove parental responsibilities for children over 18 years of age conflict with Federal policy in this area.

(2) REPORT AND RECOMMENDATIONS.—The Commission shall—

(A) summarize the appropriate findings of the National Commission on Student Financial Assistance;

(B) recommend to the Congress a comprehensive analysis on the extent to which a consensus exists regarding the appropriate role of the family in financing postsecondary education; and

(C) to the extent that a consensus exists, recommend changes in current law that would be required to achieve the desired Federal policy, including recommendations on Federal incentives to encourage families to plan and save for their financial responsibilities in financing postsecondary education for family members taking into account the needs of future generations.

(d) SPECIFIC REQUIREMENTS.—In carrying out its responsibilities under subsection (c), the Commission shall make a study of the following areas:

(1) NEED ANALYSIS.—

(A) The most appropriate mechanisms for measuring student and family ability to pay for postsecondary education.

(B) The incentives and disincentives for family saving in existing need analysis systems.

(C) The feasibility and impact of different need analysis systems and eligibility formulas for determining student and family contributions for Federal and non-Federal grant, loan, and work-study programs.

(D) The extent to which existing systems of need analysis take into account the circumstances of older and non-traditional students, students with minor dependents, and divorced and separated parents.

(E) The extent to which existing systems of need analysis recognize differing regional economic conditions.

(F) The feasibility of a simplified need analysis system for determining ability to pay for low-income families, economically disadvantaged families, and families receiving public assistance benefits.

(G) The postsecondary education financing partnership, and the impact of external influences, such as economic conditions or State-level initiatives, that affect the balance of financial support among students and their families, the Federal Government, States, postsecondary institutions, credit institutions, and the private sector.

(2) STUDENT INDEPENDENCE.—The most appropriate mechanisms and factors to be considered in determining student independence and self-support and in determining when families should be expected to provide parental financial information in determining expected family contributions for Federal student assistance programs.

(3) PARENTAL RESPONSIBILITY.—In consultation and cooperation with associations of higher education institutions and administrators, secondary schools, student and parent associations, and other organizations, the most effective means of reinforcing and promoting the principle of parental responsibility for contributing, to the extent that they are able, to the costs of their children's postsecondary education.

(4) STUDENT RESPONSIBILITY.—The most effective mechanisms for measuring student ability to contribute to educational cost through earnings and savings, the extent to which such mechanisms reflect the circumstances of students from disadvantaged families, and the existing levels of student contributions from past, current, and future earnings.

(5) INSTITUTIONAL RESPONSIBILITY.—The most effective mechanisms of reinforcing and promoting the principle of institutional responsibility for providing need-based aid to students attending postsecondary institutions.

(6) GOVERNMENTAL RESPONSIBILITY.—The most efficient and appropriate mechanisms for providing student assistance from the various levels of government.

(7) EARLY INFORMATION, PLANNING, AND INFORMATION TECHNOLOGY.—The extent to which programs providing early information on postsecondary education, costs, and financial aid programs to students and their families influence educational opportunity and family saving.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part $1,000,000.

(f) TERMINATION.—The Commission shall terminate 2 years after the initial appointment of members.

PART D—LIBRARY RESOURCES

SEC. 1331. STUDY OF THE EFFECTIVENESS OF THE NEEDS CRITERIA FOR THE COLLEGE LIBRARY RESOURCE PROGRAM AUTHORIZED.

(a) STUDY REQUIRED.—The National Commission on Libraries and Information Sciences shall conduct a study on the effectiveness in directing assistance to libraries with the greatest need of the needs criteria specified in section 211 of the Act.

(b) REPORT TO CONGRESS.—The National Commission on Libraries and Information Sciences shall prepare and submit a report to the Congress not later than 3 years after the conclusion of the first fiscal year in which appropriations are made for the College Library Resource Program authorized by section 211 of the Act, together with such recommendations as the Commission on Libraries and Information Sciences deems appropriate.

PART E—NATIONAL ACADEMY OF SCIENCES STUDY

SEC. 1341. VOLUNTEERS.

(a) STUDY REQUIRED.—The National Academy of Sciences shall conduct a thorough study of how volunteers can best be used in the classroom. The study required by this section shall include—

(1) the feasibility of using recipients of student loans made, assured, or guaranteed under part B of title IV of the Act or part E of such title as part of repayment of such loans;

(2) the use of older Americans as such volunteers;

(3) the use of business persons and other professionals as volunteers; and

(4) the place of incentives to encourage volunteerism.

The study required by this section shall examine the methods of using volunteers designed to provide the greatest flexibility for local educational agencies.

(b) REPORTS REQUIRED.—The National Academy of Sciences shall, not later than one year after the date of enactment of this Act, prepare and submit to the Congress their respective reports, together with a description of programs on the use of volunteers and with such recommendations as the Secretary deems appropriate.

(c) AVAILABILITY OF FUNDS.—The Secretary shall, from funds available for the administration of the Department of Education, make available not to exceed $500,000 for the study required by this section.

PART F—FAULKNER UNIVERSITY

SEC. 1351. RELIEF OF LIABILITY.

(a) RELIEF OF LIABILITY.—Faulkner University (formerly Alabama Christian College) of Montgomery, Alabama, is relieved of all liability—

(1) to repay to the United States the sum of $147,681.39, plus accrued interest, and

(2) to pay $7,822.50 to the National Direct Student Loan Fund of the Faulkner University,

representing payments inadvertently made pursuant to subpart 1 and subpart 2 of part A and part C of title IV of the Higher Education Act of 1965 and direct student loans inadvertently made under part E of such title IV prior to the receipt of eligibility status for the junior and senior years of the baccalaureate degree programs offered by Faulkner University. In the audit and settlement of the accounts of any certifying or disbursing officer of the United States, full credit shall be given for the amount for which liability is relieved by this section.

(b) SPECIAL RULE.—For the purpose of part B of title IV of the Higher Education Act of 1965, each student in attendance at the Faulkner University of Montgomery, Alabama, receiving a federally insured loan for the academic year 1981-1982 and for the academic year 1982-1983 pursuant to such part B shall be deemed to be in attendance at an eligible institution for that academic year.

PART G—ALIEN YOUTH EDUCATION OPPORTUNITY PANEL

SEC. 1361. DENIAL OF STUDENT ASSISTANCE TO CERTAIN NONCITIZENS.

(a) ESTABLISHMENT OF PANEL.—(1) There is established in the Department of Education a panel to be known as the "Alien Youth Education Opportunity Panel" (hereafter in this section referred to as the "Panel").

(2) The Panel shall be composed of 7 members, 3 of whom shall be appointed by the Secretary, 2 of whom shall be appointed by the Speaker of the House of Representatives, and 2 of whom shall be appointed by the Majority Leader of the Senate.

(b) DUTIES OF PANEL.—The Panel shall study and investigate the extent to which the requirements of section 484(a)(5) of the Act result in the denial of student assistance to long-term residents of the United States who have graduated from United States high schools and the extent to which that denial deprives those individuals of an equal educational opportunity.

(c) REPORT AND RECOMMENDATIONS.—The Panel shall submit a report of its findings and recommendations to the Secretary, the President, and the Congress not later than 2 years after the date of enactment of this section.

(d) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Secretary shall provide the Panel with such administrative and clerical support as it may require to carry out its activities under this section.

(e) COMPENSATION AND EXPENSES.—(1) Members of the Panel who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Members of the Panel who are not officers or full-time employees of the United States may each receive reimbursement for travel expenses incident to attending Panel meetings, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(f) ACCESS TO INFORMATION.—The Panel is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality information, suggestions, estimates, and statistics for the purpose of this section and each such department, bureau, agency, board, commission, office, independent establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Panel.

PART H—BOSTON COLLEGE

SEC. 1371. DEBT PROVISION.

The Secretary is directed to cancel all annual debt service obligations of the receiving institution for fiscal years 1987, 1988, 1989, and 1990 of which the total amount to be cancelled shall not exceed $2,700,000 adjusted as required in fiscal year 1990, for the Department of Education Project Loan #5-1-00665-0 dated August 5, 1981, and shall adjust the loan agreement to reflect the change required by this section without any other provision of law being applicable.

PART I—CARL ALBERT CONGRESSIONAL RESEARCH AND STUDIES CENTER

SEC. 1381. APPROPRIATION PROVISION.

Funds appropriated in Public Law 97-377 under the heading "HIGHER AND CONTINUING EDUCATION", for the Carl Albert Congressional Research and Studies Center, under the terms of H.R. 3598 (97th Congress) shall be available as a direct appropriation without regard to section 4(a) of H.R. 3598 (97th Congress).

TITLE XIV—EDUCATION RESEARCH AND STATISTICS

SEC. 1401. EDUCATIONAL RESEARCH AND IMPROVEMENT.

(a) OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT.—Section 405 of the General Education Provisions Act (20 U.S.C. 1221e) is amended to read as follows:

"OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

"SEC. 405. (a)(1) The Congress declares it to be the policy of the United States to provide to every individual an equal opportunity to receive an education of high quality regardless of race, color, religion, sex, age, handicap, national origin, or social class. Although the American educational system has pursued this objective, it has not attained the objective. Inequalities of opportunity to receive high quality education remain pronounced. To achieve the goal of

quality education requires the continued pursuit of knowledge about education through research, improvement activities, data collection, and information dissemination. While the direction of American education remains primarily the responsibility of State and local governments, the Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process.

"(2) The Congress further declares it to be the policy of the United States to—

"(A) promote the quality and equity of American education;

"(B) advance the practice of education as an art, science, and profession;

"(C) support educational research of the highest quality;

"(D) strengthen the educational research and development system;

"(E) improve educational techniques and training;

"(F) assess the national progress of this Nation's schools and educational institutions, particularly special populations; and

"(G) collect, analyze, and disseminate statistics and other data related to education in the United States and other nations.

"(3) For purposes of this section—

"(A) the term 'Assistant Secretary' means the Assistant Secretary for Educational Research and Improvement established by section 202 of the Department of Education Organization Act;

"(B) the term 'Council' means the National Advisory Council on Educational Research and Improvement established by subsection (c);

"(C) the term 'educational research' includes basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and other fields relating to education;

"(D) the term 'Office' means the Office of Educational Research and Improvement established by section 209 of the Department of Education Organization Act; and

"(E) the terms 'United States' and 'State' include the District of Columbia and the Commonwealth of Puerto Rico.

"(b)(1) It shall be the purpose of the Office to carry out the policies set forth in subsection (a) of this section. The Office shall be administered by the Assistant Secretary and shall include—

"(A) the National Advisory Council on Educational Research and Improvement established in subsection (c);

"(B) the Center for Education Statistics established by section 406; and

"(C) such other units as the Secretary deems appropriate to carry out the purposes of the Office.

"(2) The Office shall, in accordance with the provisions of this section, seek to improve education in the United States through concentrating the resources of the Office on the priority research and development needs described in paragraph (3).

"(3) The needs to which paragraph (2) apply are—

"(A) improving student achievement;

"(B) improving the ability of schools to meet their responsibilities to provide equal educational opportunities for all students, including those with limited English-speaking ability, women, older students, part-time students, minority students, gifted and talented students, handicapped students, and students who are socially, economically, or educationally disadvantaged;

"(C) collecting, analyzing, and disseminating statistics and other data related to education in the United States and other nations;

"(D) improving the dissemination and application of knowledge obtained through educational research and data gathering, particularly to education professionals and policy makers;

"(E) encouraging the study of the sciences, the arts, and the humanities, including foreign languages and cultures;

"(F) improving the data base of information on special populations and their educational status;

"(G) conducting research on adult educational achievement, particularly literacy and illiteracy as it affects employment, crime, health, and human welfare;

"(H) conducting research on postsecondary opportunities, especially access for minorities and women; and

"(I) conducting research on education professionals, especially at the elementary and secondary levels including issues of recruitment, training, retention, and compensation.

"(4) The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than October 1, and shall allow a period of sixty days for public comments and suggestions.

"(c)(1) The Council shall consist of fifteen members appointed by the President, by and with the advice and consent of the Senate. In addition, there shall be such ex officio members who are officers of the United States as the President may designate, including the Assistant Secretary. A majority of the appointed members of the Council shall constitute a quorum. The chairperson of the Council shall be designated by the President from among the appointed members. Ex officio members shall not have a vote on the Council. The members of the Council shall be appointed to ensure that the Council is broadly representative of the general public; the education professions, including practitioners; policymakers and researchers; and the various fields and levels of education.

"(2)(A) Except as provided in subparagraph (B), members shall be appointed to terms of three years.

"(B) Of the members first appointed—

"(i) five shall be appointed for terms of one year;

"(ii) five shall be appointed for terms of two years; and

"(iii) five shall be appointed for terms of three years;

as designated by the President at the time of appointment.

"(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of a term until a successor has taken office.

"(D) An appointed member who has been a member of the Council for six consecutive years shall be ineligible for appointment to the Council during the two-year period following the expiration of the sixth year.

"(3) The Council shall—

"(A) advise the Secretary and the Assistant Secretary on the policies and activities carried out by the Office;

"(B) review and publicly comment on the policies and activities of the Office;

"(C) conduct such activities as may be necessary to fulfill its functions under this subsection;

"(D) prepare such reports to the Secretary on the activities of the Office as are appropriate; and

"(E) submit, no later than March 31 of each year, a report to the President and the Congress on the activities of the Office, and on education, educational research, and data gathering in general.

"(d)(1) In order to carry out the objectives of the Office under this section, the Secretary within the limits of available resources shall—

"(A) conduct educational research;

"(B) collect, analyze, and disseminate the findings of education research;

"(C) train individuals in educational research;

"(D) assist and foster such research, collection, dissemination, and training through grants, cooperative agreements, and technical assistance;

"(E) promote the coordination of educational research and research support within the Federal Government and otherwise assist and foster such research; and

"(F) collect, analyze, and disseminate statistics and other data related to education in the United States and other nations.

"(2)(A) The Secretary may appoint, for terms not to exceed three years (without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service) and may compensate (without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates) such scientific or professional employees of the Office as the Secretary considers necessary to accomplish its functions. The Secretary may also appoint and compensate not more than one-fifth of the number of full-time, regular scientific or professional employees of the Office without regard to such provisions. The rate of basic pay for such employees may not exceed the maximum annual rate of pay for grade GS-15 under section 5332 of title 5 of the United States Code, except that the pay of any employee employed before the date of enactment of the Higher Education Amendments of 1986 shall not be reduced by application of such maximum pay limitation.

"(B) The Secretary may reappoint employees described in subparagraph (A) upon presentation of a clear and convincing justification of need, for one additional term not to exceed three years. All such employees shall work on activities of the Office and shall not be reassigned to other duties outside the Office during their term.

"(C) Individuals who are employed on the date of enactment of this Act and were employed by such Office on April 1, 1986, and who were employed under excepted hiring authority provided by section 209 of the Department of Education Organization Act or this section may continue to be employed for the duration of their current term.

"(3)(A) The Secretary may carry out the activities in paragraph (1)—

"(i) directly;

"(ii) through grants, contracts, and cooperative agreements with institutions of higher education, public and private organizations, institutions, agencies, and individuals; and

"(iii) through the provision of technical assistance.

"(B) When making competitive awards under this subsection, the Secretary shall—

"(i) solicit recommendations and advice regarding research priorities, opportunities, and strategies from qualified experts, such as education professionals and policymakers, personnel of the regional education laboratories and of the research and develop-

ment centers supported under paragraph (4), and the Council, as well as parents and other members of the general public;

"(ii) employ suitable selection procedures utilizing the procedures and principles of peer review, except where such peer review procedures are clearly inappropriate given such factors as the relatively small amount of a grant or contract or the exigencies of the situation; and

"(iii) determine that the activities assisted will be conducted efficiently, will be of high quality, and will meet priority research and development needs under this section.

"(C) Whenever the Secretary enters into a cooperative agreement under this section, the Secretary shall negotiate any subsequent modifications in the cooperative agreement with all parties to the agreement affected by the modifications.

"(4)(A) In carrying out the functions of the Office, the Secretary shall, in accordance with the provisions of this subsection, support—

"(i) regional educational laboratories established by public agencies or private nonprofit organizations to serve the needs of a specific region of the Nation under the guidance of a regionally representative governing board, the regional agendas of which shall, consistent with the priority research and development needs established by subsection (b) (2) and (3), be determined by the governing boards of such labs;

"(ii) research and development centers established by institutions of higher education, by institutions of higher education in consort with public agencies or private nonprofit organizations, or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development;

"(iii) meritorious unsolicited proposals for educational research and related activities that are authorized by this subsection; and

"(iv) proposals that are specifically invited or requested by the Secretary, on a competitive basis, which meet objectives authorized by this subsection.

"(B) Prior to awarding a grant or entering into a contract for a regional educational laboratory or research and development center under subparagraph (A)(i) or (A)(ii), the Secretary shall invite applicants to compete for such laboratories and centers through notice published in the Federal Register.

"(C) Each application for assistance under subparagraph (A) (i) or (ii) as a regional educational laboratory or a research and development center shall contain such information as the Secretary may reasonably require, including assurances that the applicant will—

"(i) be responsible for the conduct of the research and development activities;

"(ii) prepare a long-range plan relating to the conduct of such research and development activities;

"(iii) ensure that information developed as a result of such research and development activities, including new educational methods, practices, techniques, and products, will be appropriately disseminated;

"(iv) provide technical assistance to appropriate educational agencies and institutions; and

"(v) to the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques, and products developed in connection with such activities.

"(D) No grant may be made and no contract entered into for assistance described under subparagraph (A) (i) or (ii) unless—

"(i) proposals for assistance under this subsection are solicited from regional educational laboratories and research and development centers by the Office;

"(ii) proposals for such assistance are developed by the regional educational laboratories and the research and development centers in consultation with the Office; and

"(iii) the Office determines that the proposed activities will be consistent with the education research and development program and dissemination activities which are being conducted by the Office.

"(E) No regional educational laboratory or research and development center receiving assistance under this subsection shall, by reason of the receipt of that assistance, be ineligible to receive any other assistance from the Office authorized by law.

"(F) The Secretary shall make available adequate funds to support meritorious, unsolicited proposals as described under subparagraph (A)(iii), and provide sufficient notice of the availability of such funds to individual researchers in all regions of the country.

"(5) The Secretary, from funds appropriated under this section, may establish and maintain research fellowships in the Office, for scholars, researchers, and statisticians engaged in the collection and dissemination of information about education and educational research. Subject to regulations published by the Secretary, fellowships may include such stipends and allowance, including travel and subsistence expenses provided for under title 5, United States Code, as the Secretary considers appropriate.

"(6) The Secretary may award grants to institutions of higher education, including technical and community colleges as appropriate, to assess the new and emerging specialties and the technologies, academic subjects, and occupational areas requiring vocational education, with emphasis on the unique needs for preparing an adequate supply of vocational teachers of handicapped students. The Secretary shall give special consideration to the preparation required to teach classrooms of handicapped, or other highly targeted groups of students, in combination with other nonhandicapped or other nontargeted students, within the same vocational education setting.

"(e)(1) In addition to the other responsibilities of the Office under this section, the Office shall carry out, by grant or cooperative agreement with a nonprofit educational organization, a National Assessment of Educational Progress which shall have as a primary purpose the assessment of the performance of children and young adults in the basic skills of reading, mathematics, communication, and other subjects and skills. Such a National Assessment shall—

"(A) collect and report at least once every five years data assessing the performance of students at various age or grade levels in each of the areas of reading, writing, and mathematics;

"(B) report periodically data on changes in knowledge and skills of such students over a period of time;

"(C) conduct special assessments of other educational areas, as the need for additional national information arises;

"(D) include in assessment activities information on special groups of individuals;

"(E) provide technical assistance to State educational agencies and to local educational agencies on the use of National Assessment objectives, primarily pertaining to—

"(i) the basic skills of reading, mathematics, and communication, and

"(ii) on making comparisons of such assessments with the national profile (including special population profiles) and change data developed by the National Assessment; and

"(F) with respect to each State which voluntarily participates in accordance with paragraph (5), provide a statement of information collected by the National Assessment for each such State.

"(2)(A) The organization through which the Office carries out the National Assessment shall be responsible for overall management of the National Assessment. Such organization shall delegate authority to design and supervise the conduct of the National Assessment to an Assessment Policy Committee, established by such organization. The Assessment Policy Committee shall be composed of—

"(i) five members appointed by the organization of whom two members shall be representatives of business and industry and three members shall be representatives of the general public; and

"(ii) fourteen members appointed by the organization from the categories of membership specified in subparagraph (B).

"(B) Members of the Assessment Policy Committee appointed in accordance with subparagraph (A)(ii) shall be—

"(i) one chief State school officer;

"(ii) two State legislators;

"(iii) two school district superintendents;

"(iv) one member of a State board of education;

"(v) one member of a local school board;

"(vi) one Governor of a State;

"(vii) four classroom teachers;

"(viii) one elementary school principal; and

"(ix) one secondary school principal.

"(C) The Assistant Secretary shall serve as an ex officio member of the Assessment Policy Committee. The Assistant Secretary shall also appoint a member of the Council to serve as nonvoting member of the Assessment Policy Committee.

"(D) Members appointed in accordance with subparagraph (A) (i) and (ii) shall be appointed for terms for three years on a staggered basis.

"(3) The Assessment Policy Committee established by paragraph (2) shall be responsible for the design of the National Assessment, including the selection of the learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, the form and content of the reporting and dissemination of assessment results, and studies to evaluate and improve the form and utilization of the National Assessment. The appropriateness of all cognitive, background, and attitude items developed as part of the National Assessment shall be the responsibility of the Assessment Policy Committee. Such items shall be subject to review by the Department of Education and the Office of Management and Budget for a single period of not more than sixty days.

"(4) Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, subject matter specialists, local school administrators, parents, and members of the general public. All items selected for use in the assessment shall be reviewed

to exclude items which might reflect racial, sex, cultural, or regional bias.

"(5) Participation in the National Assessment by State and local education agencies selected as part of a sample of such agencies shall be voluntary.

"(6) The Secretary shall provide for a periodic review of the National Assessment. This review shall provide an opportunity for public comment on the conduct and usefulness of the National Assessment and shall result in a report to the Congress, the President, and the Nation on the findings and recommendations, if any, of the review. The Secretary shall consider the findings and recommendations in designing the competition to select the organization through which the Office carries out the National Assessment.

"(f)(1) There are authorized to be appropriated to carry out this section and section 406 of this Act, $72,231,000 for fiscal year 1987 and such sums as may be necessary for each of the four succeeding fiscal years.

"(2) The Secretary may not enter into a contract for the purpose of regional educational laboratories under subsection (d)(3)(A)(i) for a period in excess of five years.

"(3) Not less than 95 per centum of funds appropriated pursuant to this subsection for any fiscal year shall be expended to carry out this section through grants, cooperative agreements, or contracts.

"(4) When more than one Federal agency uses funds to support a single project under this section, the Office may act for all such agencies in administering those funds.

"(g)(1) In each fiscal year for which the total amount appropriated to carry out this section and section 406 of this Act equals or exceeds the total amount appropriated for fiscal year 1986 to carry out such sections—

"(A) not less than $17,760,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(ii) of this section (relating to centers);

"(B) not less than $17,000,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(i) of this section (relating to labs);

"(C) not less than $5,700,000 shall be available in each fiscal year to assist the education resources information centers pursuant to subsection (d)(3)(A) of this section;

"(D) not less than $4,000,000 shall be available in each fiscal year to carry out subsection (e) of this section (relating to the National Assessment of Educational Progress);

"(E) not less than $8,750,000 shall be available in each fiscal year to carry out section 406 of this Act (relating to the Center for Educational Statistics); and

"(F) not less than $500,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(iii) of this section (relating to field initiated research).

"(2) If the sums appropriated for any fiscal year are less than the amount required to be made available under subparagraphs (A) through (F) of paragraph (1), then each of the amounts required to be made available under such subparagraphs shall be ratably reduced. If additional amounts become available for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.".

(b) TRANSITION PROVISIONS.—On the effective date of this title, the property and records of the National Institute of Education shall be transferred to the Office of Educational Research and Improvement.

(c) EMPLOYMENT LIMITATION WAIVER.—Notwithstanding the 3-year employment period limitation under section 405(d)(2) of the General Education Provisions Act, the Secretary may continue to employ for an indefinite period 3 individuals, selected by the Secretary, who are employed by the Office of Educational Research and Improvement on the date of enactment of this Act, were employed by such office on April 1, 1986, and were employed by the National Institute of Education under its excepted hiring authority immediately prior to employment by such office.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—Section 401 of the Department of Education Organization Act (Public Law 96-88) is amended by striking out subsection (c).

SEC. 1402. CENTER FOR EDUCATION STATISTICS.

(a) GENERAL AUTHORITY.—(1) Section 406 of the General Education Provisions Act is amended—

(A) by striking out subsections (e); and

(B) by redesignating subsections (f), (g), (h), and (i) as subsections (e), (f), (g), and (h) respectively.

(2) The heading of such section is amended to read as follows:

"CENTER FOR EDUCATION STATISTICS";

(3) Section 406(a) of the General Education Provisions Act is amended—

(A) in the first sentence by striking out "Office" and everything that follows through the end thereof, and inserting in lieu thereof "Office of Educational Research and Improvement, a Center for Education Statistics (hereafter in this section referred to as the 'Center').''; and

(B) in the second sentence, by striking out "an Administrator" and inserting in lieu thereof "a Director".

(4) Section 406(b) of the General Education Provisions Act is amended—

(A) in the first sentence by inserting ", and analyze," immediately after "collect";

(B) in paragraph (1) by inserting "if feasible, on a State-by-State basis," after "(1)"; and

(C) in paragraph (5) by striking out "Education Division" and inserting "Department of Education".

(5) Section 406(b) of the General Education Provision Act is amended—

(A) by striking out "and" at the end of paragraph (4);

(B) by striking out the period at the end of paragraph (5) and insert in lieu thereof a semicolon and the word "and"; and

(C) by adding at the end thereof the following:

"(6) access periodically the current and projected supply and demand for elementary and secondary school teachers (including teachers at the pre-school level) and early childhood education development personnel with particular attention to—

"(A) long-term and short-term needs for personnel in various subject areas or teaching specialities;

"(B) shortages in particular types of schools or communities, and in States or regions;

"(C) the number of minorities entering teaching;

"(D) the proportions of women and minorities in educational administration, and the trends over time;

"(E) the demographic characteristics, academic qualifications, job preparation, experience and skills of existing teachers and new entrants in the field of education;

"(F) the effect of the introduction of State mandated teacher competency tests on the demographic and educational characteristics of teachers and the supply of teachers; and

"(G) the rate at which teachers leave teaching, their reasons for leaving, the sources of supply for new entrants, and the trends over time.".

(b) ADVISORY COUNCIL.—Section 406(c)(2) of the General Education Provisions Act is amended—

(1) by striking out subparagraph (A);

(2) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (A), (B), and (C), respectively; and

(3) in subparagraph (A) (as redesignated by paragraph (2)), by striking out "Director of the National Institute of Education," and inserting "Assistant Secretary,".

(c) ANNUAL REPORT.—Section 406(d)(1) of the General Education Provisions Act is amended by striking out "Assistant Secretary" and inserting "Secretary".

(d) STATISTICAL RECORDS.—Section 406(e) of the General Education Provisions Act (as redesignated in subsection (a)(1)) is amended—

(1) in paragraph (1)—

(A) by striking out "(A)";

(B) by striking out the first sentence and inserting "The Center is authorized to furnish transcripts or copies of tables and other statistical records of the Office and make special statistical compilations and surveys for State and local officials, public and private organizations, and individuals. The Center shall provide State and local educational agencies opportunities to suggest the development of particular compilations of statistics, surveys, and analyses that would assist those educational agencies.";

(C) in the fourth sentence by striking out "Assistant Secretary" each place it appears and inserting "Secretary"; and

(D) by striking out subparagraph (B); and

(2) by striking out paragraph (3).

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 406(f) of the General Education Provisions Act (as redesignated in subsection (a)(1)) is amended to read as follows:

"(f) Funds to carry out this section are authorized by section 405(g) of this Act.".

(f) UNIFORM FINANCING DATA.—Section 406(g) of the General Education Provisions Act (as redesignated in subsection (a)(1)) is amended to read as follows:

"(g) In addition to its other responsibilities, the Center shall collect uniform data from the States on the financing of elementary and secondary education. Each State receiving funds under the Education Consolidation and Improvement Act of 1981 shall cooperate with the Center in this effort.".

SEC. 1403. USE OF COUNCIL STAFF AND FACILITIES.

The National Advisory Council on Educational Research and Improvement, the Advisory Council on Education Statistics, and members of such councils may not use any staff, facilities, equipment, supplies, or franking privileges of the councils for activities unrelated to the purposes of the councils.

SEC. 1404. SPECIAL PROJECTS UNDER THE SECRETARY'S DISCRETIONARY FUNDS.

(a) DISCRETIONARY PROGRAMS.—Section 583(a)(1) of the Education Consolidation and Improvement Act of 1981 is amended by striking out ", including" and all that follows before the semicolon.

(b) PRIORITY FUNDING.—Section 583(b) of the Education Consolidation and Improvement Act of 1981 is amended—

(1) by striking out "and" after the comma in paragraph (3);

(2) by inserting "and" after the comma in paragraph (4);

(3) by adding after paragraph (4) the following:

"(5) a National Diffusion Network program as described in subsection (c),";

(4) by striking out "paragraph (4))" and inserting "paragraph (4) and not less than 34 percent of funds reserved for the purposes of this section in the case of the program referred to in paragraph (5))".

(c) NATIONAL DIFFUSION NETWORK.—Section 583 of the Education Consolidation and Improvement Act of 1981 is amended by adding the following subsection (c):

"(c)(1) The National Diffusion Network program under subsection (b)(5) shall be a national program that recognizes and furthers excellence in education by: (A) promoting the awareness and implementation of exemplary educational programs, products, and practices to interested elementary, secondary, and postsecondary institutions throughout the Nation; and (B) promoting the utilization of the knowledge, talents, and services of local staff associated with various educational excellence recognition efforts.

"(2) The program shall be directed toward improving the quality of education through the implementation of promising and validated innovations and improvements in educational programs, products, and practices, and through the provision of training, consultation, and related assistance services.

"(3) In carrying out the program the Secretary shall—

"(A) acquaint persons responsible for the operation of elementary, secondary, and postsecondary schools with information about exemplary educational programs, products, practices, and services;

"(B) assist them in implementing programs, products, and practices, which those persons determine to hold promise for improving the quality of education in the schools for which they are responsible by providing materials, initial training, and ongoing implementation assistance;

"(C) ensure that all such programs, products, and practices are subjected to rigorous evaluation with respect to their effectiveness and their capacity for implementation;

"(D) provide program development assistance toward the recognition, dissemination, and implementation of promising practices that hold the potential for answering critical needs and that have achieved credibility because of their effective use in schools; and

"(E) ensure that a substantial percentage of the innovations disseminated represent significant changes in practice for schools and teachers;

"(4) For the purpose of carrying out the program the Secretary is authorized to make grants to, and contracts with, local educational agencies, State educational agencies, institutions of higher education, and other public and nonprofit private educational institutions and organizations.".

TITLE XV—AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN CULTURE AND ART DEVELOPMENT

SEC. 1501. SHORT TITLE.

This title may be cited as the "American Indian, Alaska Native, and Native Hawaiian Culture and Art Development Act".

SEC. 1502. FINDINGS.

The Congress finds that—

(1) Indian art and culture and Native Hawaiian art and culture have contributed greatly to the artistic and cultural richness of the Nation;

(2) Indian art and culture and Native Hawaiian art and culture occupy a unique position in American history as being our only native art form and cultural heritage;

(3) the enhancement and preservation of this Nation's native art and culture has a fundamental positive influence on the American people;

(4) although the encouragement and support of Indian and Native Hawaiian arts and crafts are primarily a matter for private, local, and Indian and Native Hawaiian initiative, it is also an appropriate matter of concern to the Federal Government;

(5) it is appropriate and necessary for the Federal Government to support research and scholarship in Indian art and culture and Native Hawaiian art and culture and to complement programs for the advancement of such art and culture by tribal, private, and public agencies and organizations;

(6) current Federal initiatives in the area of Indian art and culture and Native Hawaiian art and culture are fragmented and inadequate; and

(7) in order to coordinate the Federal Government's effort to preserve, support, revitalize, and disseminate Indian art and culture and Native Hawaiian art and culture, it is desirable to establish—

(A) a national Institute of American Indian and Alaska Native Culture and Arts Development, and

(B) a program for Native Hawaiian culture and arts development.

SEC. 1503. DEFINITIONS.

For the purpose of this title—

(1) The term "Indian art and culture" includes (but is not limited to) the traditional and contemporary expressions of Indian language, history, visual and performing arts, and crafts.

(2) The term "Native Hawaiian art and culture" includes the traditional and contemporary expressions of Native Hawaiian language, history, visual and performing arts, and crafts.

(3) The term "Institute" means the Institute of American Indian and Alaska Native Culture and Arts Development established by this title.

(4) The term "Indian" means any person who is a member of an Indian tribe.

(5) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(6) The term "Native Hawaiian" means any descendent of a person who, prior to 1778, was a native of the Hawaiian Islands.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Board" means the Board of Trustees of the Institute established under this title.

PART A—AMERICAN INDIANS AND ALASKA NATIVES

SEC. 1504. ESTABLISHMENT OF INSTITUTE.

(a) IN GENERAL.—There is hereby established a corporation to be known as the "Institute of American Indian and Alaska Native Culture and Arts Development", which shall be under the direction and control of a Board of Trustees established under section 1505.

(b) SUCCESSION AND AMENDMENT OF CHARTER.—The corporation established under subsection (a) shall have succession until dissolved by Act of Congress. Only the Congress shall have the authority to revise or amend the charter of such corporation.

SEC. 1505. BOARD OF TRUSTEES.

(a) COMPOSITION.—

(1) The Board of Trustees of the Institute shall be composed of 13 voting members and 6 nonvoting members as follows:

(A) The voting members shall be appointed by the President of the United States by and with the advice and consent of the Senate, not later than 180 days after the date of enactment of this Act, from among individuals from private life who are Indians, or other individuals, widely recognized in the field of Indian art and culture and who represent diverse political views.

(B) The nonvoting members shall consist of—

(i) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives;

(ii) 2 Members of the Senate appointed by the President pro tempore of the Senate, upon the recommendation of the Majority Leader and the Minority Leader of the Senate;

(iii) the President of the Institute, ex officio; and

(iv) the president of the student body of the Institute, ex officio.

(2) In making appointments pursuant to paragraph (1)(A), the President of the United States shall—

(A) consult with the Indian tribes and the various organizations of Indians;

(B) publish in the Federal Register an announcement of the expiration of terms no less than 4 months before such expiration;

(C) solicit nominations from Indian tribes and various Indian organizations to fill the vacancies;

(D) give due consideration to the appointment of individuals who will provide appropriate regional and tribal representation on the Board; and

(E) ensure that a majority of the Board appointed under paragraph (1)(A) are Indians.

(3) Members of Congress appointed under this section, or their designees, shall be entitled to attend all meetings of the Board and to provide advice to the Board on any matter relating to the Institute.

(b) TERMS OF OFFICE.—

(1) Except as otherwise provided in this section, members shall be appointed for terms of office of 6 years.

(2) The terms of office on the Board for the Members of the House of Representatives and of the Senate shall expire at the end of the congressional term of office during which such Member or Senator was appointed to the Board.

(3) Of the members of the Board first appointed under subsection (a)(1)(A)—

(A) 4 shall be appointed for terms of office of 2 years;

(B) 4 shall be appointed for terms of office of 4 years; and

(C) 5 shall be appointed for terms of office of 6 years,

as determined by the drawing of lots during the first meeting of the Board.

(4) No member of the Board appointed under subsection (a)(1)(A) shall be eligible to serve in excess of 2 consecutive terms, but may continue to serve until such member's successor is appointed.

(c) VACANCIES.—Any member of the Board appointed under subsection (a) to fill a vacancy occurring before the expiration of the

term to which such member's predecessor was appointed shall be appointed for the remainder of such term. If the vacancy occurs prior to the expiration of the term of a member of the Board appointed under subsection (a)(1)(B), a replacement shall be appointed in the same manner in which the original appointment was made.

(d) REMOVAL.—No member of the Board may be removed during the term of office of such member except for just and sufficient cause.

(e) CHAIRMAN AND VICE CHAIRMAN.—The President of the United States shall designate the initial Chairman and Vice Chairman of the Board from among the members of the Board appointed pursuant to subsection (a)(1)(A). Such Chairman and Vice Chairman so designated shall serve for 12 calendar months. Thereafter, the Chairman and Vice Chairman shall be elected from among the members of the Board appointed pursuant to subsection (a)(1)(A) and shall serve for terms of 2 years. In the case of a vacancy in the office of Chairman or Vice Chairman, such vacancy shall be filled by the members of the Board appointed pursuant to subsection (a)(1)(A), and the member filling such vacancy shall serve for the remainder of the unexpired term.

(f) QUORUM.—Unless otherwise provided by the bylaws of the Institute, a majority of the members appointed under subsection (a)(1)(A) shall constitute a quorum.

(g) POWERS.—The Board is authorized—

(1) to formulate the policy of the Institute;

(2) to direct the management of the Institute; and

(3) to make such bylaws and rules as it deems necessary for the administration of its functions under this title, including the organization and procedures of the Board.

(h) COMPENSATION.—Members of the Board appointed pursuant to subsection (a)(1)(A) shall, for each day they are engaged in the performance of the duties under this title, receive compensation at the rate of $125 per day, including traveltime. All members of the Board, while so serving away from their homes or regular places of business, shall be allowed travel expenses (including per diem in lieu of subsistence), as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(i) REVIEW BY THE SECRETARY OF THE INTERIOR.—For so long as any employee of the Institute is covered under title 5, United States Code, the Board (acting by majority vote) shall submit final decisions relating to personnel to the Secretary of the Interior. Each such decision shall become final 30 days after the date of its receipt by the Secretary unless the Secretary disapproves of such decision. The Secretary may only disapprove a decision of the Board for just cause.

SEC. 1506. EXECUTIVE BOARD.

(a) COMPOSITION.—The Board shall have an Executive Board composed of—

(1) the chairman of the Board;

(2) the vice chairman of the Board;

(3) the secretary of the Board;

(4) the treasurer of the Board; and

(5) an at-large member of the Board elected by the Board at its initial meeting.

(b) VACANCIES.—In the case of any vacancy which occurs in the position of at-large member before the expiration of such member's term, the Board shall elect a replacement to complete that term.

(c) MEETINGS.—The Executive Board shall hold not more than 4 regular meetings per calendar year. Special meetings may be held upon the call of the chairman or 3 members of the Executive Board.

(d) QUORUM.—A majority of the Executive Board shall constitute a quorum.

(e) POWERS.—The Executive Board may hold and use all the powers of the Board, subject to the approval of the Board.

SEC. 1507. GENERAL POWERS OF THE BOARD.

In carrying out the provisions of this title, the Board shall have the power, consistent with the provisions of this title—

(1) to adopt, use, and alter a corporate seal;

(2) to make agreements and contracts with persons, Indian tribes, and private or governmental entities and to make payments or advance payments under such agreements or contracts without regard to section 3324 of title 31, United States Code;

(3) to sue and be sued in its corporate name and to complain and defend in any court of competent jurisdiction;

(4) to represent itself, or to contract for representation, in all judicial, legal, and other proceedings;

(5) with the approval of the agency concerned, to make use of services, facilities, and property of any board, commission, independent establishment, or executive agency or department of the executive branch in carrying out the provisions of this title and to pay for such use (such payments to be credited to the applicable appropriation that incurred the expense);

(6) to use the United States mails on the same terms and conditions as the executive departments of the United States Government;

(7) to obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, and to accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;

(8) to solicit, accept, and dispose of gifts, bequests, devises of money, securities, and other properties of whatever character, for the benefit of the Institute;

(9) to receive grants from, and enter into contracts and other arrangements with, Federal, State, or local governments, public and private agencies, organizations, institutions, and individuals;

(10) to acquire, hold, maintain, use, operate, and dispose of such real property, including improvements thereon, personal property, equipment, and other items, as may be necessary to enable the Board to carry out the purpose of this title;

(11) to obtain insurance or make other provisions against losses;

(12) to use any funds or property received by the Institute to carry out the purpose of this title; and

(13) to exercise all other lawful powers necessarily or reasonably related to the establishment of the Institute in order to carry out the provisions of this title and the exercise of the powers, purposes, functions, duties, and authorized activities of the Institute.

SEC. 1508. PRESIDENT OF THE INSTITUTE.

(a) APPOINTMENT.—The Institute shall have a President who shall be appointed by the Board. The President of the Institute shall serve as the chief executive officer of the Institute. Subject to the direction of the Board and the general supervision of the Chairman of the Board, the President of the Institute shall have the responsibility for carrying out the policies and functions of the Institute and shall have authority over all personnel and activities of the Institute.

(b) COMPENSATION.—The President of the Institute shall be paid at a rate not to exceed the maximum rate of basic pay payable for grade GS-18 of the General Schedule.

SEC. 1509. STAFF OF INSTITUTE.

(a) EXEMPTION FROM CIVIL SERVICE.—Except as otherwise provided in this section, title 5, United States Code, shall not apply to the Institute.

(b) APPOINTMENT AND COMPENSATION.—

(1) The President of the Institute, with the approval of the Board, shall have the authority to appoint, fix the compensation of (including health and retirement benefits), and prescribe the duties of, such officers and employees as the President of the Institute deems necessary for the efficient administration of the Institute.

(2) The President of the Institute shall fix the basic compensation for officers and employees of the Institute at rates comparable to the rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5, United States Code, applies.

(3)(A) Not later than 180 days after the President of the Institute is appointed, the President of the Institute shall make policies and procedures governing—

(i) the establishment of positions at the Institute,

(ii) basic compensation for such positions (including health and retirement benefits),

(iii) entitlement to compensation,

(iv) conditions of employment,

(v) discharge from employment,

(vi) the leave system, and

(vii) such other matters as may be appropriate.

(B) Rules and regulations promulgated with respect to discharge and conditions of employment shall require—

(i) that procedures be established for the rapid and equitable resolution of grievances of such individuals; and

(ii) that no individual may be discharged without notice of the reasons therefor and an opportunity for a hearing under procedures that comport with the requirements of due process.

(c) APPEAL TO BOARD.—Any officer or employee of the Institute may appeal to the Board any determination by the President of the Institute to not re-employ or to discharge such officer or employee. Upon appeal, the Board may, in writing, overturn the determination of the President of the Institute with respect to the employment of such officer or employee.

(d) NO REDUCTION IN CLASSIFICATION OR COMPENSATION.—Individuals who elect to remain civil service employees shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions and personnel, except that any such transfer shall not result in a reduction in classification or compensation with respect to any such individual for at least one year after the date on which such transfer occurs.

(e) LEAVE.—

(1) Any individual who—

(A) elects under subsection (g) to be covered under the provisions of this section, or

(B) is an employee of the Federal Government and is transferred or reappointed, without a break in service, from a position under a different leave system to the Institute,

shall be credited for purposes of the leave system provided under rules and regulations promulgated pursuant to subsection (b), with the annual and sick leave to the credit

of such individual immediately before the effective date of such election, transfer, or reappointment.

(2) Upon termination of employment with the Institute, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under rules and regulations promulgated pursuant to subsection (b) shall not be so liquidated.

(3) In the case of any individual who is transferred, promoted, or reappointed, without break in service, to a position in the Federal Government under a different leave system, any remaining leave to the credit of such person earned or credited under the rules and regulations promulgated pursuant to subsection (b) shall be transferred to the credit of such individual in the employing agency on an adjusted basis in accordance with the rules and regulations which shall be promulgated by the Office of Personnel Management.

(f) APPLICABILITY.—This section shall apply to any individual appointed after the date of enactment of this title for employment in the Institute. Except as provided in subsections (d) and (g), the enactment of this title shall not affect—

(1) the continued employment of any individual employed immediately before the date of enactment of this title, or

(2) such individual's right to receive the compensation attached to such position.

(g) TERMINATION OF CIVIL SERVICE POSITIONS.—

(1) At the end of the 2-year period beginning on the date referred to in section 1514(f), any position at the Institute which is occupied by an individual in the civil service shall terminate. During such period, such individual may make an irrevocable election to be covered under the provisions of this section, except that any such individual who is subject to subchapter III of chapter 83 of title 5, United States Code, may elect to continue to be subject to such subchapter, and any such individual who is subject to chapter 84 of such title may elect to continue to be subject to such chapter.

(2) Any individual who makes an election under paragraph (1) to continue to be subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Institute without a break in service subject to such subchapter or such chapter 84, as the case may be, continue to be treated as an employee subject to such subchapter or such chapter 84, as the case may be. Employment by the Institute without a break of continuity in service shall be considered to be employment by the United States Government for the purpose of such subchapter or such chapter 84, as the case may be. The Institute shall be responsible for making the contributions required to be made by an employing agency under such subchapter or such chapter 84, as the case may be.

(h) COLLECTIVE BARGAINING.—The Institute shall be considered an agency for the purpose of chapter 71 of title 5, United States Code.

(i) WORKMEN'S COMPENSATION.—Employees of the Institute shall receive compensation for work injuries and illnesses in accordance with chapter 81 of title 5, United States Code.

SEC. 1510. FUNCTIONS OF THE INSTITUTE.

(a) PRIMARY FUNCTIONS.—The primary functions of the Institute shall be—

(1) to provide scholarly study of, and instruction in, Indian art and culture, and

(2) to establish programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

(b) ESTABLISHMENTS WITHIN INSTITUTE.—There shall be established within the Institute—

(1) a Center for Culture and Art Studies to be administered by a director (appointed by the President of the Institute, with the approval of the Board), which shall include (but not be limited to) Departments of Arts and Sciences, Visual Arts, Performing Arts, Language, Literature, and Museology; and

(2) a Center for Research and Cultural Exchange, administered by a director (appointed by the President of the Institute, with the approval of the Board), which shall include—

(A) a museum of Indian arts;

(B) a learning resources center;

(C) programs of institutional support and development;

(D) research programs;

(E) fellowship programs;

(F) seminars;

(G) publications;

(H) scholar-in-residence and artist-in-residence programs; and

(I) inter-institutional programs of cooperation at national and international levels.

(c) OTHER PROGRAMS.—In addition to the centers and programs described in subsection (b), the Institute shall develop such programs and centers as the Board determines are necessary to—

(1) foster research and scholarship in Indian art and culture through—

(A) resident programs;

(B) cooperative programs; and

(C) grant programs;

(2) complement existing tribal programs for the advancement of Indian art and culture; and

(3) coordinate efforts to preserve, support, revitalize, and develop evolving forms of Indian art and culture.

SEC. 1511. INDIAN PREFERENCE.

(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Institute is authorized to extend preference to Indians in—

(1) admissions to, and enrollment in, programs conducted by the Institute,

(2) employment by the Institute, and

(3) contracts, fellowships, and grants awarded by the Institute.

(b) HIRING PREFERENCE.—In carrying out section 1509(b)(1), the President of the Institute shall, to the maximum extent practicable, give preference in hiring to Indians.

SEC. 1512. NONPROFIT AND NONPOLITICAL NATURE OF THE INSTITUTE.

(a) STOCK.—The Institute shall have no power to issue any shares of stock or to declare or pay any dividends.

(b) NONPROFIT NATURE.—No part of the income or assets of the Institute shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(c) NONPOLITICAL NATURE.—The Institute may not contribute to, or otherwise support, any political party or candidate for elective public office.

SEC. 1513. TAX STATUS.

The Institute and the franchise, capital, reserves, income, and property of the Institute shall be exempt from all taxation now or hereafter imposed by the United States, by any Indian tribe, or by any State or political subdivision thereof.

SEC. 1514. TRANSFER OF FUNCTIONS.

(a) INSTITUTE OF AMERICAN INDIAN ARTS.—There are hereby transferred to the Institute of American Indian and Alaska Native Culture and Art Development, and such Institute shall perform, the functions of the Institute of American Indian Arts established by the Secretary in 1962.

(b) CERTAIN MATTERS RELATING TO TRANSFERRED FUNCTIONS.—

(1) All personnel, liabilities, contracts, real property (including the collections of the museum located on the site known as the "Santa Fe Indian School" but not the museum building), personal property, assets, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function transferred under the provisions of this title (regardless of the administrative entity providing the services on the date before the transfer) shall be transferred to the Institute.

(2) Personnel engaged in functions transferred by this title shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions, except that such transfer shall be without reduction in classification or compensation for one year after such transfer.

(c) REFERENCES IN OTHER LAWS.—All laws and regulations relating to the Institute of American Indian Arts established by the Secretary in 1962 shall, insofar as such laws and regulations are appropriate, and not inconsistent with the provisions of this title, remain in full force and effect and apply with respect to the Institute. All references in any other Federal law to the Institute of American Indian Arts, or any officer transferred to the Institute of American Indian and Alaska Native Culture and Arts Development under subsection (b), shall be deemed to refer to the Institute of American Indian and Alaska Native Culture and Arts Development or an officer of the Institute of American Indian and Alaska Native Culture and Arts Development.

(d) TECHNICAL AND SUPPORT ASSISTANCE.—During the 2-year period beginning on the date referred to in subsection (f), the Secretary of the Interior shall provide such technical and support assistance to the Institute as the Secretary determines reasonable or necessary to assist the Institute. Such assistance shall include audit, accounting, computer services, and building and maintenance services.

(e) ADVISORY BOARD.—During the period beginning on the date of enactment of this title and ending on the date referred to in subsection (f), the Advisory Board for Institute of American Indian Arts shall continue to act in an advisory role for the Board and the Institute of American Indian and Alaska Native Culture and Arts Development.

(f) EFFECTIVE DATE.—The provisions of this section (other than subsection (e)) shall take effect on October 1, 1986.

SEC. 1515. REPORTS.

(a) ANNUAL REPORT.—The President of the Institute shall submit an annual report to the Congress and to the Board concerning the status of the Institute during the 12 calendar months preceding the date of the report. Such report shall include, among other matters, a detailed statement of all private and public funds, gifts, and other items of a monetary value received by the Institute during such 12-month period and the disposition thereof as well as any recommendations for improving the Institute.

(b) BUDGET PROPOSAL.—

(1) During the 2-year period beginning on the date referred to in section 1514(f), the Board shall submit a budget proposal to the Secretary of the Interior. The Secretary shall submit that proposal to the Congress.

(2) After the period described in paragraph (1) and for each fiscal year thereafter, the Board shall submit a budget proposal to the Congress.

(3) A budget proposal under this subsection shall be submitted not later than April 1 of each calendar year and shall propose a budget for the Institute for the 2 fiscal years succeeding the fiscal year during which such proposal is submitted.

(4) In determining the amount of funds to be appropriated to the Institute on the basis of such proposals, the Congress shall not consider the amount of private fundraising or bequests made on behalf of the Institute during any preceding fiscal year.

SEC. 1516. HEADQUARTERS.

The site of the Institute of American Indian Arts, at Santa Fe, New Mexico, shall be maintained as the location for the Institute of Indian and Alaska Native Culture and Arts Development. To facilitate this action and the continuity of programs being provided at the Institute of American Indian Arts, the Secretary may enter into negotiations with State and local governments for such exchanges or transfers of lands and such other assistance as may be required.

SEC. 1517. COMPLIANCE WITH OTHER ACTS.

(a) IN GENERAL.—The Institute shall comply with the provisions of—

(1) Public Law 95-341 (42 U.S.C. 1996), popularly known as the American Indian Religious Freedom Act,

(2) the Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), and

(3) the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(b) CRIMINAL LAWS.—All Federal criminal laws relating to larceny, embezzlement, or conversion of the funds or the property of the United States shall apply to the funds and property of the Institute.

SEC. 1518. ENDOWMENT PROGRAM.

(a) ESTABLISHMENT.—

(1) From the amount appropriated pursuant to section 1521(a), the Secretary shall make available to the Institute not more than $500,000 which shall be deposited into a trust fund maintained by the Institute at a federally insured banking or savings institution.

(2) The President of the Institute shall provide for the deposit into the trust fund described in paragraph (1)—

(A) of a capital contribution by the Institute in an amount equal to the amount of each Federal contribution; and

(B) any earnings on the funds deposited under paragraph (1) or subparagraph (A).

(3) Funds in the trust fund described in paragraph (1) shall be invested in a manner as to insure the accumulation of interest thereon at a rate not less than that generally available for similar funds deposited at the same banking or savings institution for the same period or periods of time.

(4) If at any time the Institute withdraws any capital contribution made by the Institute to the trust fund described in paragraph (1), an equal amount of Federal capital contribution shall be withdrawn from such trust fund and returned to the Treasury as miscellaneous receipts.

(5) No part of the net earnings of the trust fund described in paragraph (1) shall inure to the benefit of any private person.

(6) The President of the Institute shall provide for such other provisions governing the trust fund described in paragraph (1) as may be necessary to protect the financial interest of the United States and to promote the purpose of this title as are agreed to by the Secretary and the Institute, including recordkeeping procedures for the expenditure of accumulated interest which allow the Secretary to audit and monitor programs and activities conducted with such interest.

(b) USE OF FUNDS.—Interest deposited pursuant to subsection (a)(2)(B) in the trust fund described in subsection (a)(1) may be periodically withdrawn and used, at the discretion of the Institute, to defray any expenses associated with the operation of the Institute, including expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

(c) COMPLIANCE WITH MATCHING REQUIREMENT.—For the purpose of complying with the contribution requirement of subsection (a)(2)(A), the Institute may use funds which are available from any private or tribal source.

(d) ALLOCATION OF FUNDS.—From the amount appropriated pursuant to section 1521(a), the Secretary shall allocate to the Institute an amount for a Federal capital contribution equal to the amount which the Institute demonstrates has been placed within the control of, or irrevocably committed to the use of, the Institute and is available for deposit as a capital contribution of that Institute in accordance with subsection (a).

PART B—NATIVE HAWAIIANS

SEC. 1521. PROGRAM FOR NATIVE HAWAIIAN CULTURE AND ARTS DEVELOPMENT.

(a) IN GENERAL.—The Secretary of the Interior is authorized to make grants for the purpose of supporting a program for Native Hawaiian culture and arts development to any private, nonprofit organization or institution which—

(1) primarily serves and represents Native Hawaiians, and

(2) has been recognized by the Governor of the State of Hawaii for the purpose of making such organization or institution eligible to receive such grants.

(b) PURPOSE OF GRANTS.—Grants made under subsection (a) shall, to the extent deemed possible by the Secretary and the recipient of the grant, be used—

(1) to provide scholarly study of, and instruction in, Native Hawaiian art and culture,

(2) to establish programs which culminate in the awarding of degrees in the various fields of Native Hawaiian art and culture, or

(3) to establish centers and programs with respect to Native Hawaiian art and culture that are similar in purpose to the centers and programs described in subsections (b) and (c) of section 1510.

(c) MANAGEMENT OF GRANTS.—

(1) Any organization or institution which is the recipient of a grant made under subsection (a) shall establish a governing board to manage and control the program with respect to which such grant is made.

(2) The members of the governing board which is required to be established under paragraph (1) shall—

(A) be Native Hawaiians or individuals widely recognized in the field of Native Hawaiian art and culture,

(B) include a representative of the Office of Hawaiian Affairs of the State of Hawaii, and

(C) shall serve for a fixed term of office.

SEC. 1522. ADMINISTRATIVE PROVISIONS.

(a) PAYMENTS.—The Secretary may award grants under this part in installments, in advance, or by way of reimbursement and may make necessary adjustments in payments of grants on account of overpayments or underpayments.

(b) RECOVERY OF OVERPAYMENTS.—

(1) If the Secretary or a court of competent jurisdiction finds that—

(A) any person—

(i) has—

(I) made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or

(II) knowingly failed, or caused another to fail, to disclose a material fact; and

(ii) as a result of such action, has received any funds under this part which such person would not have otherwise received, or

(B) any person misappropriates any funds paid by the Secretary under this part,

such person shall be liable to repay the amount of such funds to the United States. Any such finding by the Secretary may be made only after an opportunity for a fair hearing.

(2) Any amount repaid under this subsection shall be returned to the general fund of the Treasury of the United States.

(c) PENALTIES.—Whoever—

(1) makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for such person or for any other person any payment of funds provided under this part, or

(2) misappropriates any funds provided under this part,

shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

PART C—AUTHORIZATION OF APPROPRIATIONS

SEC. 1531. AUTHORIZATION OF APPROPRIATIONS.

(a) PART A.—There are authorized to be appropriated for the purpose of carrying out the provisions of part A of this title—

(1) for fiscal year 1987, $4,000,000, and

(2) for each succeeding fiscal year, such sums as may be necessary to carry out such provisions.

(b) PART B.—There are authorized to be appropriated for the purpose of carrying out the provisions of part B of this title—

(1) for fiscal year 1987, $1,000,000, and

(2) for each succeeding fiscal year, such sums as may be necessary to carry out such provisions.

TITLE XVI—UNITED STATES INSTITUTE OF PEACE

SEC. 1601. AUTHORIZATIONS OF APPROPRIATIONS.

(a) AUTHORIZATIONS OF APPROPRIATIONS.—(1) The first sentence of section 1710(a) of the United States Institute of Peace Act (22 U.S.C. 4609(a)) is amended—

(A) by striking out "fiscal year 1985" and inserting in lieu thereof "fiscal year 1987"; and

(B) by striking out "fiscal year 1986" and inserting in lieu thereof "fiscal year 1988".

(2) The amendments made by paragraph (1) shall take effect on October 1, 1986.

(b) AVAILABILITY OF FUNDS.—The second sentence of section 1710(a) of such Act (22 U.S.C. 4609(a)) is amended to read as follows: "Amounts appropriated under this section are authorized to remain available to the Institute until expended.".

And the House agree to the same.

For consideration of all provisions (except section 157) of the Senate bill and all provi-

sions of the House amendment and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
PAT WILLIAMS,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TERRY L. BRUCE,
STEPHEN J. SOLARZ,
MERVYN M. DYMALLY,
DENNIS E. ECKART,
TIMOTHY J. PENNY,
CHET ATKINS,
JAMES M. JEFFORDS,
BILL GOODLING,
TOM COLEMAN,
THOMAS E. PETRI,
MARGE ROUKEMA,
STEVE GUNDERSON,
THOMAS J. TAUKE,
JOHN R. MCKERNAN, JR.,
PAUL B. HENRY,

As additional conferee for consideration of title V of the Senate bill and title XIII and section 1405 of the House amendment and modifications committed to conference:

DALE E. KILDEE,

As additional conferee for consideration of title III of the Senate bill and title XIV of the House amendment and modifications committed to conference:

STEVE BARTLETT,

As additional conferees for consideration of section 147 and 189 of the Senate bill and modifications committed to conference from the Committee on Energy and Commerce:

JOHN D. DINGELL,
JAMES H. SCHEUER,
HENRY A. WAXMAN,
NORMAN F. LENT,
ED MADIGAN,

As additional conferees for consideration of title VI of the Senate bill and modifications committed to conference, from the Committee on Foreign Affairs:

DANTE FASCELL,
LEE H. HAMILTON,
DAN MICA,
WM. BROOMFIELD,
OLYMPIA SNOWE,

As sole House conferees for consideration of section 157 of the Senate bill and modifications committed to conference; and as additional conferees for consideration of section 198 of the Senate bill and modifications committed to conference, from the Committee on the Judiciary:

PETER W. RODINO,
DON EDWARDS,
DAN GLICKMAN,
HAMILTON FISH, JR.,
HANK BROWN,

Managers on the Part of the House.

ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
L. P. WEICKER, JR.,
MALCOLM WALLOP,
STROM THURMOND,
EDWARD M. KENNEDY,
CLAIBORNE PELL,
CHRISTOPHER DODD,
SPARK MATSUNAGA,
PAUL SIMON,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

1. SHORT TITLE

The title of the House amendment is "Higher Education Amendments of 1985." The title of the Senate bill is "Higher Education Amendments of 1986."

The House recedes.

2. TABLE OF CONTENTS

The Senate bill, but not the House amendment, provides for a Table of Contents.

The House recedes.

3. CONTRACTING AUTHORITY

The Senate bill, but not the House amendment, exempts contracts under the GSL program from funding limitations in annual appropriation Acts.

The House recedes.

TITLE I

4. TITLE I

The Senate bill repeals Title I, while the House amendment provides for a substitute Title I which focuses on nontraditional students.

The Senate recedes.

5. ADMINISTRATION

The House amendment, but not the Senate bill, establishes guidelines for the administration of Title I Part A programs by the Secretary.

The Senate recedes.

6. AUTHORIZATIONS

The House amendment, but not the Senate bill, authorizes $30 million for Part A for FY 1987 and such sums for subsequent years.

The Senate recedes with an amendment authorizing $10 million for FY 1987 and such sums thereafter.

7. PART B

The House amendment, but not the Senate bill, establishes a Part B, National Programs.

The Senate recedes.

8. PART B AUTHORIZATIONS

The House amendment, but not the Senate bill, authorizes $5 million for FY 1987 and such sums for subsequent years.

The Senate recedes with an amendment authorizing no funds for FY 1987 or for succeeding fiscal years.

In agreeing to a $10 million authorization level for Title I in FY 1987, the Conferees mandated that the entire $10 million should be targeted to Part A. Within Part A, Conferees intend that sections 111 and 112, which provide for development of on and off-campus programs respectively, receive the total authorization due to the limited level of funding.

The Conferees authorized no funding for FY 1987 for Part B of Title I. However, this action should not be interpreted as a lack of commitment to necessary research, evaluation, and dissemination activities in future years, but is due to an ordering of priorities within Title I based on the limited amount of authorization.

The Conferees intend that no funding from the Title I authorization in the Act will be used or designated for funding of the National Advisory Council for Continuing Education.

9. NATIONAL ADVISORY COUNCIL ON CONTINUING EDUCATION

The House amendment repeals the Advisory Council on Continuing Education, while the Senate bill maintains it as an amendment to Title II of the Department of Education Organization Act.

The House recedes.

TITLE II—ACADEMIC LIBRARY AND INFORMATION TECHNOLOGY ENHANCEMENT

10. HEADING AND PURPOSES

The House amendment, but not the Senate bill conforms the Heading and Purposes of Title II to reflect the addition, by the House amendment, of a new Part D to Title II.

The Senate recedes.

11. AUTHORIZATION OF APPROPRIATIONS

The House amendment authorizes appropriations of $12.5 million for Part A; $5 million for Part B, $12.5 million for Part C, and $5 million for a new Part D to title II for Fiscal Year 1987, and such sums in each of the fiscal years 1988-1991 thereafter. The Senate bill authorizes appropriations of $5 million in FY 87, $5.25 million in FY 88; $5.512 million in FY 89; $5.788 million in FY 90, and $6.077 million in FY 91, for Part A; for Part B, the Senate bill authorizes $1.050 million in FY 87; $1.103 million in FY 88; $1.158 million in FY 89; $1.216 million in FY 90; and $1.277 million in FY 91; for, Part C, the Senate authorizes $6.3 million in FY 87; $6.615 million in FY 88; $6.940 million in FY 89; $7.28 million in FY 90; and $7.65 million in FY 91. The House amendment, but not the Senate bill, authorizes an appropriation of $5 million for new Part D of title II.

The House amendment, but not the Senate bill, authorizes an appropriation in FY 87 of $75,000 for the National Commission on Library Information and Sciences to conduct a study of the Needs Criteria under Part A.

The House recedes.

The Conference substitute authorizes the following amounts for Title II:

Fiscal year:	*Millions*
Part A:	
1987	$10
1988–91	(1)
Part B:	
1987	5
1988–91	(1)
Part C:	
1987	10
1988–91	
Part D:	
1987	5
1988–91	(1)

[1] Such sums.

12. EDUCATION STATISTICS

The House amendment, but not the Senate bill, refers to the "National Center for Education Statistics." The Senate bill, in miscellaneous provisions, renames the Center the "Center for Educational Statistics".

The House recedes.

13. COMPUTER SOFTWARE

The House amendment, but not the Senate bill, allows expenditures for computer software.

The Senate recedes.

14. EFFECTIVENESS STUDY

Both the House amendment and the Senate bill authorize a study of the Effectiveness of the Needs Criteria established under Part A. The Senate bill refers to a "Study of the Effectiveness of the Needs Criteria for the College Library Resources Program." The House amendment refers to a "Study of the Criteria and Definition of Full-Time Equivalent Student".

The House recedes.

15. COMMISSION RECOMMENDATION

The Senate bill, but not the House amendment, permits the Commission (NCLIS) to send "such recommendations as the Commission . . . deems appropriate."

The House recedes.

16. DEFINITION OF FTE STUDENTS

The House amendment, but not the Senate bill, defines full-time equivalent student for the purposes of uniformity in imposing the new needs criteria under Part A.

The Senate recedes.

17. APPROPRIATIONS DISTRIBUTION

The House amendment, but not the Senate bill, would distribute appropriations for Sections 222 and 223 by a two-thirds/one-third split, respectively.

The Senate recedes.

18. INFORMATION TECHNOLOGY

The House amendment, but not the Senate bill, amends Sec. 223 by striking the words "and information technology".

The Senate recedes.

19. REPEAL OF SPECIAL PURPOSE GRANTS

The House amendment, but not the Senate bill, repeals the Special Purpose Grants under Sec. 224.

The Senate recedes.

20. LIBRARY PERIODICALS, TECHNOLOGY AND COOPERATION

The Senate bill, but not the House amendment, repeals Part D, the National Periodicals Center, in current law.

The House recedes.

The House amendment, but not the Senate bill, replaces Part D in current law with a new Part D titled "College Library Technology and Cooperation Grants."

The Senate recedes.

TITLE III

22. FINDINGS

The House amendment, but not the Senate bill, includes a finding regarding the national interest in providing access to underserved minorities and on the need to provide assistance to institutions serving those students denied access to postsecondary education.

The Senate recedes.

The Senate bill, but not the House amendment, includes findings that specifically include endowment building as a purpose under the Title, that specify that a goal of the Title is to enable eligible institutions to become "fiscally stable and independent", that highlight the objective of providing "quality education" to low-income and minority students and that note assistance under this title is aimed at aiding institutions "in becoming fiscally independent".

23. PURPOSE

The House amendment states that the purpose of Title III is to assist institutions "in equalizing educational opportunity" through Federal assistance while the Senate bill states the purpose as assisting eligible institutions.

The Senate recedes.

24. SPECIAL CONSIDERATION

The Senate bill, but not the House amendment, gives the Secretary the discretion to consider endowments per full time equivalent students and library expenditures per full time equivalent students at comparable institutions in making awards to eligible Part A schools.

The House recedes.

25. ELIGIBLE INSTITUTIONS

The House amendment defines an "eligible institution" as one which has a "substantial percentage of students receiving Pell Grants" in comparison to comparable institutions. The Senate bill states the definition in terms of institutions at least 50% of whose degeree students are receiving need-based student aid from title IV programs (except GSL).

The House recedes with an amendment allowing an institution which meets either definition to be considered eligible.

26. NATIVE AMERICAN INSTITUTIONS.

The House amendment automatically grants eligibility to institutions which have an enrollment of at least 60% American Indian, Alaskan Aleut, or any combination thereof. The Senate bill removes Alaskan Natives from this calculation and provides for automatic eligibility for an institution which enrolls at least 5% Alaskan Natives.

The House recedes.

27. ASIAN AMERICANS

The Senate bill, but not the House amendment, includes "Asian Americans" among the minority groups.

The House recedes.

28. GRANT DURATION

The House amendment provides for Part A grants of from 3 to 7 years in duration and requires that institutions not receive another Part A grant for a period of time equal to the length of their grant. The Senate bill provides for a grant not to exceed three, four or five years. In the case of the four or five year grants, institutions may not reapply for an additional grant for a period of four or five years. However, there is no limit in the number of consecutive three year grants that an institution can receive.

The House recedes with an amendment prohibiting an institution from filing for a new grant for four or five years, respectively, until that institution has been without a grant for such a period of time, after receiving such a grant.

29. LIMITATION

The House amendment, but not the Senate bill, includes in determining the grant period, the time the institution had a grant from 1981 to 1986.

The House recedes.

30. WAIVER AUTHORITY

The House amendment, but not the Senate bill, permits the Secretary to waive the requirements of subsections (a), (b) and (c) on institutional participation in the program.

The House recedes.

31. ACCREDITATION

The House amendment, but not the Senate bill, requires institutions to be accredited.

The Senate recedes.

32. UNDERREPRESENTATION DETERMINATIONS

In Part B, the Senate bill has the determination of "professional and academic areas in which blacks are underrepresented" made by the Assistant Secretary for Educational Research and Improvement and the Commissioner of the Bureau of Labor Statistics. The House amendment has this determination made by the Secretary and the Commissioner.

The Senate recedes.

33. CONSTRUCTION AND MAINTENANCE

In Part B, the House amendment but not the Senate bill, permits funds to be used for "construction" and "maintenance" of instructional facilities.

The Senate recedes with an amendment allowing not more than 50% of funds received by an institution under Part B to be used for construction and maintenance.

34. STUDENT STANDING

In Part B, the Senate bill bases allotments to institutions in part on the number of Pell Grant recipients in attendance and "in good standing," while the House bill uses only the number of Pell Grant recipients in attendance.

The Senate recedes.

35. MERGED INSTITUTIONS

The Senate bill has a special rule for Part B eligibility for institutions which have merged. The House amendment has no comparable provision.

The House recedes.

The Conferees agree to establish a new program in Part B of the Act for historically black colleges and universities which provides grants directly to eligible colleges under a statutory allocation formula based on the proportion of Pell Grant recipients at each institution (compared to the total), the number of students who graduate within five years, and the number of students who are admitted to graduate and professional schools. The Conferees understand that the Department of Education does not collect data in the latter two categories and must depend on the institutions themselves for the information. In determining allocations for Part B, the Conferees expect that the Department will rely on data provided by the institutions and certified as accurate from calculations from the previous academic year.

The Conferees intend that the new Part B appropriation will be based on those funds set aside during the last three fiscal years for historically black colleges. The Senate-passed Labor/HHS/Education Appropriation Act for FY 1987 includes $45.7 for them, compared to an authorization level of $100 million in the conference report on S. 1965. The Conferees expect that the amount set aside for historically black colleges and universities in Parts A and B would be combined to establish the new Part B appropriation. Further, the Conferees intend that the balance of the appropriation for Parts A and B would be consolidated to form the Part A appropriation (approximately $85 million), reserving at least $51.4 million for community and junior colleges. The balance, approximately $35 million, would be available for competition among primarily four-year private and public institutions.

The Conferees intend that the statutory definition contained in section 332 (2) defining "Part B institution" for historically black college and university includes the universe of eligible Part B institutions. No other criteria, standard or definition should be used. This definition includes many institutions which are more than 100 years old, at least one established as late as 1963, one created in the 1940s, three whose student enrollments are no longer majority black

and several historically black colleges which have been (or will be) merged with traditionally white institutions.

Finally, the Conferees wish to call attention to statutory language in the conference report limiting the authority of the Department of Education to modify program activities which may be funded under Title III by administrative memoranda or any process which does not provide for publication in the Federal Register and an opportunity for public comment prior to implementation. The Conferees have specific reference to a so-called "administrative memorandum" which was published by the Department without complying with Chapter V of Title V, United States Code. The memorandum placed limitations on the use of "non-developmental" activities. This distinction is not based on any statutory language included in the 1980 Amendments to the Higher Education Act, nor in this conference report on S. 1965, and is expressly repudiated.

36. AUDITING

The Senate bill, but not the House amendment, requires an audit every other year to be conducted under standards established by the Comptroller General and prescribed by the Secretary.

The House recedes.

37. MEDICAL EDUCATION

The Senate bill, but not the House amendment, deletes schools which provide post-graduate medical education programs from eligibility.

The Senate recedes.

38. DURATION OF GRANT

The House amendment, but not the Senate bill, authorizes grants of 5-year duration in Part C of the Title.

The Senate recedes.

39. MATCHING AND FINANCIAL INDEPENDENCE

(a) The House amendment requires that applicant institutions under part C provide "evidence" that matching funds are "currently available" while the Senate bill requires "assurances" that matching funds "will be available to the applicant within one year."

The House recedes.

(b) The Senate bill, but not the House amendment, extends the requirement that applicants show how grant funds will promote financial independence to all applicants, not just those described in section 331(a)(1)(B).

The House recedes.

40. DATES

The House amendment provides for a July 1st notice of grant award, while the Senate bill establishes an April 1st grant notification date.

The House recedes.

41. INSTITUTIONAL MATCH

The Senate bill, but not the House amendment, provides that for Part C awards of $1 million or more, the federal institutional match shall be $2 federal to $1 institutional and the applicant will provide assurances that it will not make application for another grant for at least 10 years.

The House recedes with an amendment prohibiting eligibility for an additional grant for 10 years after the approval of an application for a grant.

42. RESERVATION OF FUNDS

The House amendment provides:

$45.7 million of the Part A appropriations will be reserved for eligible Part A institutions which serve the highest percentages of minority students;

not less than 30% of the Part A funds will go to community colleges.

The Senate bill provides:

not less than $51.4 million of the funds appropriated for Parts A and C will go to community colleges if the appropriation for Part A is greater than the appropriation for FY 1986;

if Part A appropriations are greater than the FY 1986 appropriation, the Secretary will give priority to applications from institutions with significant groups of students who are minority or who are underrepresented in higher education or who are educationally disadvantaged.

The Senate recedes with an amendment providing $51.4 million for community and junior colleges and, if appropriations exceed the FY 1986 appropriation level, 25% of the excess funds will go to eligible institutions under part A (excluding institutions receiving assistance under part B of this title) which serve the highest percentages of Black American, Mexican American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaskan Native, Aleut, Asian American, Native Hawaiian, American Samoan, Micronesian, Guamian (Chamorro), and Northern Marianian students or any combination thereof.

43. SPECIAL PAYMENT RULES

(a) The Senate bill, but not the House amendment, requires historically black institutions receiving aid under part A prior to September 30, 1986 which continue to receive a grant shall be paid under part B.

The House recedes.

(b) The Senate bill, but not the House amendment, requires any institution, other than a historically black institution which received a grant under part B prior to September 30, 1986 and continues to receive such grant shall be paid from funds under part A.

The House recedes.

(c) The Senate bill, but not the House amendment, requires that any funds under part A or part B available for obligation in the year succeeding the year in which they were appropriated shall be made available for obligation under part C.

The House recedes.

44. DEVELOPMENT PLAN

The Senate bill, but not the House amendment, exempts institutions applying under part C from setting forth a comprehensive development plan.

The House recedes.

45. STATEMENT OF NECESSITY

The Senate bill, but not the House amendment, requires a statement of necessity in the application for multi-year grant periods.

The Senate recedes.

46. DATA

The Senate bill, but not the House amendment, directs the Secretary to use the most recent and relevant data in making eligibility determinations.

The House recedes.

47. WAIVER AUTHORITY

The House amendment, but not the Senate bill, eliminates the waiver authority of the Secretary.

The Senate bill, but not the House amendment, lists the waiver criteria as 1) an institution extensively subsidized by the State which is a low tuition school, 2) an institution serving a substantial number of low and middle income students as a percent of its total student population, 3) an institution contributing to the increase in opportunity for the educationally disadvantaged, underrepresented, and minorities who are low income students.

The House recedes with an amendment striking middle income students and adding a waiver for institutions serving "individuals located on or near an Indian reservation."

48. READERS

The House amendment, but not the Senate bill, includes predominantly black college representatives as readers. The Senate bill, but not the House amendment, requires that Asian Americans, Native Americans, Pacific Islanders, including Native Hawaiians, be included as readers. The House amendment requires that representatives of postsecondary institutions with these minority student populations in attendance be used as readers.

The House recedes with an amendment including all the types of readers listed in both the House and Senate versions.

49. CHALLENGE GRANT APPLICATION

The Senate bill, but not the House amendment has specific requirements on making Challenge Grant awards to institutions.

The House recedes with an amendment requiring that fourth and fifth year grantees apply for a Challenge Grant in the final year of the grant.

AUTHORIZATION OF APPROPRIATIONS

[In millions of dollars]

	Senate bill	House amendment	Conference agreement
Part A:			
1987	$85	$175	$120
1988	$89.25	(1)	(1)
1989	$93.71	(1)	(1)
1990	$93.398	(1)	(1)
1991	$103.318	(1)	(1)
Part B (except Section 326):			
1987	55	110	100
1988	57.75	(1)	(1)
1989	60.637	(1)	(1)
1990	63.669	(1)	(1)
1991	66.85	(1)	(1)
Part B—Section 326):			
1987	5	2.5	5
1988	5	(1)	(1)
1989	5	(1)	(1)
1990	5	(1)	(1)
1991	5	(1)	(1)
Part C:			
1987	20	35	20
1988	21.25	(1)	(1)
1989	22.56	(1)	(1)
1990	23.94	(1)	(1)
1991	25.387	(1)	(1)

[1] Such sums.

50. MULTI-YEAR AWARDS

The House amendment, but not the Senate bill, provides for the appropriation of funds from specific years for multiple year awards.

The Senate recedes.

51. RATABLE REDUCTIONS

The Senate bill, but not the House amendment, allows for ratable reduction for Part A reservations if there are insufficient appropriations.

The House recedes.

TITLE IV

TECHNICAL AMENDMENT

The House amendment, but not the Senate bill, makes conforming technical amendments with respect to the numbering of the the subparts of Part A of Title IV.

The Senate recedes.

PELL GRANTS

Extension

The Senate bill extends the Pell Grant program through FY 1991, while the House

amendment extends it through FY 1992. The Senate recedes.

Advance Payment

The House amendment, but not the Senate bill, requires the Secretary of Education to pay institutions in advance of the academic year such sums as may be necessary to provide Pell Grants to eligible students. The Senate recedes with an amendment providing that the Secretary must pay to institutions not less than 85% of their estimated need for Pell Grant funds for the enrollment period during which such funds will be used. The conferees wish to clarify that they do not intend for institutions to have to incur financial liability to insure that Pell Grant eligible students receive their payments on a timely basis. The Conferees encourage the Secretary to review and utilize appropriate historical data and the institutional request to insure that sufficient funds are advanced to institutions for this purpose in a timely manner. The Conferees further ask that the Secretary report to the House Subcommittee on Postsecondary Education and the Senate Subcommittee on Education, Art and Humanities within 30 days of the resolution of Pell Grant disbursements (allocations) the exact amounts advanced to each institution per payment period and the amount expended (disbursed) by each institution per payment period for each fiscal year.

Eligibility

The Senate bill, but not the House amendment, limits eligibility for Pell Grants to students from families with incomes of less than $30,000, after subtracting Federal and State income taxes. The Senate recedes.

Five-year limitation

The Senate bill, but not the House amendment, limits eligibility to receive Pell Grant to five years. The House recedes with an amendment providing that Pell Grant eligibility is limited to five years of full time attendance or its equivalent; six years of full time attendance or its equivalent in the case of a program that normally requires five years for completion of the first baccalaureate degree; and does not include in either the five or six year period any period during which the student is enrolled in a non-credit or remedial course of study; and that this limitation on eligibility may be waived by the institution of higher education for undue hardship based on death of a relative of the student, the personal injury or illness of the student or special circumstances.

Minimum award for less-than-half-time-students

The House amendment, but not the Senate bill, provides for a minimum Pell Grant award of $50 in the case of less-than-half-time students. House recedes.

Remedial courses

The House amendment, but not the Senate bill, requires Pell Grant eligibility for non-credit and remedial courses, including courses in English language instruction, which are determined by the institution to be necessary to help the student be prepared for pursuit of a baccalaureate degree, or in the case of the course in English language instruction, necessary to enable the student to utilize already existing knowledge, training or skills. The Senate recedes.

One grant per year

The House amendment, but not the Senate bill, prohibits students from receiving Pell Grant payments concurrently from more than one institution or from the Secretary and an institution. The Senate recedes.

Limitation on disbursement of grant

The Senate bill, but not the House amendment, limits the amount of the student's grant that can be disbursed by crediting it to his or her account at the institution to the amount required for tuition and fees, and, in the case of university-owned housing, to room and board. The House recedes.

Linear reduction

The House amendment, but not the Senate bill, reduces the minimum grant available under linear reduction from $100 to $50. The House recedes.

Cost of attendance and family contribution schedule

The Senate bill, but not the House amendment, delineates the cost of attendance and family contribution schedule for the Pell Grant program in Section 411. The House recedes with an amendment eliminating the reinclusion in income of the married couple deduction when both work; deleting obsolete references to Social Security educational benefits; more specifically defining untaxed income; taking into account veterans educational benefits based on the amount expected to be received in the award year; in the case of a dependent student whose parent with whom they are living is divorced or widowed and who remarries, taking into account the income of the stepparent in determining expected family contribution; deducting state and local income taxes paid or payable in determining expected family contribution; limiting the offset for unreimbursed elementary and secondary school tuition and fees for each child to an amount not to exceed the national per pupil instructional cost as published by the National Center for Educational Statistics; not considering home equity as an asset in the case of either a dislocated worker or a displaced homemaker; increasing the asset protection for home equity from $25,000 to $30,000; providing that the expected family contribution will be equally divided among the dependent children in postsecondary education; treating the independent student with dependents (other than a spouse) and the independent student with a spouse and no other dependents as in current law with respect to the assessment rate on discretionary income; and placing outside the cap on costs other than tuition and fees, the costs for child care (up to $1,000 per year) and the costs of special services or equipment for the handicapped. The conferees note that for those students who receive a Federal rental subsidy or other housing assistance payment, a special computation should be used to ensure fair treatment of these students. Rather than using the regular family size offset, which includes an allowance for housing, a special family size offset, computed by subtracting the housing allowance, should be used. In addition, the student's housing subsidy should be excluded from income.

Recalculation

The House amendment and the Senate bill allow the institution to recalculate the eligibility index and award for a student if it determines that there has been a change in circumstances or an error that affect the amount of the award. The Senate bill, but not the House amendment, also requires that any corrected data be reported to the contractor who processes the applications for a confirmation of the amount of the eligibility index for the student. The House recedes with an amendment providing that the corrected data will also be provided to the central processor if one has been designated by the Secretary and clarifying that the corrected data is reported after an adjusted award has been made to the student.

Overawards

The Senate bill, but not the House amendment, requires institutions to pay the Secretary an amount equal to any excess amount received by a student as a result of an overaward in the Pell Grant program. The House recedes.

Contractor reports

The Senate bill, but not the House amendment, requires each contractor processing applications for awards to submit to the Secretary after each academic year a report on the correctness of the computations of amounts of the eligibility index and on the accuracy of the questions on the application. The House recedes with an amendment requiring these reports also to be provided by the central processor, if one has been designated by the Secretary, with respect to both corrections by other contractors and corrections by the student financial aid administrator.

Submission of schedule

The conference substitute provides that a joint resolution of approval is required for the implementation of any proposed modifications to the Pell Grant needs analysis or any updates which depart from the specific instructions in law. In the absence of a joint resolution of approval within the time frame specified, the needs analysis will automatically be updated annually according to criteria and formulas specified in the law.

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

AUTHORIZATIONS

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	$433.125	$500	$490
1988	454.781	(1)	(1)
1989	477.520	(1)	(1)
1990	501.396	(1)	(1)
1991	526.466	(1)	(1)

[1] Such sums.

Maximum award

The Senate bill increases the maximum award from $2,000 to $3,000, while the House amendment increases it to $4,000. The Senate recedes.

Minimum award

The House bill, but not the Senate bill, repeals the $200 minimum grant requirement. The Senate recedes with an amendment establishing a $100 minimum grant.

Grant distribution

The House amendment, but not the Senate bill, permits payments to students of varying amounts rather equal amounts during the academic year. The Senate recedes.

Federal share

The House amendment, but not the Senate bill, reduces the Federal share of SEOG awards to 90% for FY 1989, 85% for FY 1990 and 80% for FY 1991 and each year thereafter, unless the Secretary determines that a larger share is necessary for an institution. The House amendment also specifies

allowable sources for the non-Federal share. The Senate recedes with an amendment reducing the percentages for the Federal share to 95%, 90% and 85% for fiscal years 1989, 1990 and 1991 and thereafter respectively.

Need criteria

The House amendment requires that at least 75% of the students receiving an award at an institution be Pell Grant recipients. The Senate bill requires that SEOGs be awarded first to students with exceptional need and that priority in awarding grants be given to students who receive Pell Grants. The Senate bill also stipulates that in determining exceptional need, the expected family contribution of a student may not exceed 50% of the cost of attendance at the institution. The Senate recedes with an amendment requiring that SEOGs be awarded to students with the lowest expected family contribution at the institution. The managers wish to make clear that it is not their intent that awards must be proportional to the need of students at each institution. The Conferees wish to emphasize their belief that SEOG funds should be provided to the most needy students at an institution. The conferees recognize, however, that institutions may prescribe dates by which students must apply to be considered for limited SEOG dollars, and that students with the lowest EFCs, who meet the other eligibility criteria, would receive awards first. The conferees further recognize that some students applying later may have lower EFCs than some students awarded in the first round, and while the conferees would encourage institutions to implement procedures to insure that such students are given priority in awarding the remaining funds, the conferees do not intend to prescribe institutional procedures with respect to application dates.

LESS-THAN-HALF-TIME STUDENTS

Both the Senate bill and the House amendment repeal the current law provision which limits the use of SEOG funds for less than-half-time student to 10% of the institution's SEOG allocation. The House amendment also requires institutions to provide a reasonable proportion of their SEOG allocation to less-than-half-time students if the need of such students is counted in determining the institution's SEOG allocation. The Senate recedes.

Administrative expenses

The House amendment, but not the Senate bill, clarifies an institution's right to use a portion of its allotment to meet administrative expenses and to transfer funds to the College Work Study program in accordance with the General Provisions of Title IV. The Senate recedes.

Allocation formula

Both the Senate bill and the House amendment create new allocation formulas which eliminate the state allotment formulas in current law. The formula in the House amendment provides that amounts in excess of a hold harmless based on the FY 1979 appropriation and an allocation to new institutions participating in the program will be provided to institutions based on financial need of their undergraduate students. The formula in the Senate bill provides that amounts in excess of a hold harmless based on the FY 1985 appropriation will be provided to institutions based on their enrollments of students eligible to participate in the program. The Senate recedes with an amendment providing that institutions will be held harmless at their allotment based on the FY 1985 appropriation or a pro rata share thereof in the event of insufficient appropriations; that institutions participating in the program for the first or second time will receive an allocation based on the allocation received by comparable institutions; that 25% of any additional funds will be allocated to all institutions as an equal percentage increase; and that the remaining 75% of any additional funds will be allocated to institutions based on the financial need of their undergraduate students.

STATE STUDENT INCENTIVE GRANTS

Purpose

The House amendment modifies the statement of purpose to include work study jobs. The Senate bill modifies it to include campus-based community service work learning jobs. The House recedes with an amendment incorporating both purposes.

AUTHORIZATIONS

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	$76	$100	$85
1988	76	(1)	(1)
1989	76	(1)	(1)
1990	76	(1)	(1)
1991	76	(1)	(1)

[1] Such sums.

Eligible students

The House amendment, but not the Senate bill, requires that only those students deemed eligible to participate in the program in a state can be counted in determining the state's allotment. The Senate recedes.

Maximum grant

The House amendment, but not the Senate bill, increases the maximum grant from $2,000 to $3,000. The Senate recedes with an amendment increasing the maximum grant to $2,500.

Work study and community services work learning jobs

The House amendment, but not the Senate bill, allows a state to use any allotment in excess of its FY 1985 allotment for work study programs operated in compliance with the Federal college work study program. The Senate bill, but not the House amendment, allows a state to use any part of its allotment for community services work learning jobs. The House recedes with an amendment limiting states to using not more than 20% of their allotment for either a work study program or a community services work learning program or both. The amendment further provides that funds used for a community services work learning program will be provided only to students eligible for the state's SSIG program on the basis of financial need.

Federal share

The Senate bill, but not the House amendment, provides that the Federal share for community services work learning programs will be 60%. The Senate recedes.

Definition

The Senate bill, but not the House amendment, provides a definition of community services. The House recedes.

Nonprofit institutions

The Senate bill, but not the House amendment, strikes references to nonprofit institutions. The Senate recedes.

Conforming amendment

The House amendment, but not the Senate bill, includes a conforming amendment relating to the eligibility of less-than-half-time students. The Senate recedes.

Non-Federal share

The House amendment provides that the non-Federal share provided under the program must be funded through a direct appropriation of State funds. The Senate bill requires that the non-Federal share be paid from state or other public sources. The Senate recedes with an amendment providing that this modification will be effective not later than July 1, 1987. The managers express their strong encouragement to both the states and the Department of Education to implement this new requirement as soon as possible but not later than July 1, 1987.

SPECIAL PROGRAMS FOR STUDENTS FROM DISADVANTAGED BACKGROUNDS AUTHORIZATIONS

AUTHORIZATIONS

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	$185,249	$400	$205
1988	194,511	(1)	(1)
1989	204,237	(1)	(1)
1990	214,449	(1)	(1)
1991	225,171	(1)	(1)

[1] Such sums.

First generation students

The House amendment, but not the Senate bill, includes a student living with only one parent in the definition of first generation student. The Senate recedes.

Veterans

The House amendment, but not the Senate bill, expands to pre- and post-Vietnam era veterans the provision of current law providing that veterans will not be deemed ineligible to participate in TRIO programs on the basis of their age. The Senate recedes.

Name change

Both the House amendment and the Senate bill change the name of the Special Services for Disadvantaged Students program to Student Support Services. The Senate bill then refers to this program as "student support services" while the House amendment refers to it as "support services." The House recedes. The managers note that the name change does not create a new program authority. "Special Services for Disadvantaged Students" projects in the midst of multi-year funding cycles should be continued as "Student Support Services" programs without being required to submit a new application. Moreover, institutions which had received "Special Services for Disadvantaged Students" funding prior to fiscal 1987 are to receive consideration for "prior experience" when applying for funding under the "Student Support Services" program for fiscal 1987 and beyond.

Permissible activities

The House amendment, but not the Senate bill, adds to the permissible activities in the Student Support Services program those designed to assist students currently enrolled in two year institutions in securing admission and financial assistance for enrollment in four-year postsecondary institutions. The Senate recedes.

Need determination

The Senate bill, but not the House amendment, provides that the determination of a student's need for academic support in order to pursue successfully a program of education beyond high school with respect to the Student Support Services program will be made by the institution at which the student is enrolled. The House recedes with an amendment making this same modification in the Upward Bound program.

Graduate education outreach

The Senate bill, but not the House amendment, permits the Secretary to give grants to Student Support Services programs which include outreach and counseling for juniors and seniors in postsecondary education to encourage them to apply and enroll in graduate programs and provides that $1 million per year may be available for this purpose. The House recedes with an amendment establishing the post-baccalaureate achievement program to provide research, counseling and enrichment for students who have completed their sophomore year in postsecondary education to assist and encourage them to apply for and enroll in graduate programs. The amendment further provides that not less than two-thirds of the students participating in a project must be low-income individuals who are first generation college students and that the remaining participants be from a group that is under-represented in graduate education. Student participants may receive a stipend not to exceed $2,400 per year. In making awards to institutions the Secretary shall consider the quality of the research and other scholarly activities in which students will be involved, the level of faculty involvement in the project and the institution's plan for identifying and recruiting participants. No funds shall be allocated to these projects until the activities authorized under the other sections of this subpart receive at least $168.8 million and in no case shall these projects receive more than $1 million in FY 1988, $2 million in FY 1989, $3 million in FY 1990, and $4 million in FY 1991.

MATCHING REQUIREMENT

The House amendment, but not the Senate bill, repeals the 25% matching requirement for Educational Opportunity Centers. The Senate recedes.

Publications

The House amendment, but not the Senate bill, provides that training provided through the Staff Development Activities program shall include the "publication" of manuals. The Senate recedes.

Expansion of outreach activities

The Senate bill, but not the House amendment, modifies the Staff Development Activities in current law to be Outreach and Staff Development Activities to expand outreach activities which extend postsecondary educational opportunities to students from disadvantaged backgrounds. The Senate recedes.

National Center for Postsecondary Opportunity

The House amendment, but not the Senate bill, provides for the establishment of a National Center for Postsecondary Opportunity to help ensure that adequate information and counseling regarding Federal financial aid programs is readily available to students, parents and others interested in postsecondary educational opportunities. The Department of Education is required to allocate $5 million for the Center each year from the Department's appropriations for salaries and expenses. The House recedes. The decision of the conferees not to include the National Center for Postsecondary Opportunity in the conference agreement in no way is meant to imply their satisfaction with the current efforts of the Department of Education to provide information, outreach and training to insure that the Title IV programs effectively reach their intended target populations. Indeed, the conferees believe that these activities by the Department are inadequate and they therefore direct the Secretary to review and improve these activities with the aim of providing more timely and adequate information about Title IV programs to those who are economically or educationally disadvantaged, disabled, living in rural isolation, nontraditional adult students, unemployed and women. The Secretary is urged to explore innovative ways for the dissemination of information about Title IV programs, including the use of videotapes and seminars. The Secretary is also urged to involve in such activities those who work as professionals directly in the delivery of services to students and potential students such as school counselors, college admissions personnel, TRIO program personnel, student financial aid administrators and school administrators.

HEP/CAMP PROGRAMS

HEP

The House amendment, but not the Senate bill, spells out in detail the current practices which constitute the services and structure of HEP.

The Senate recedes.

CAMP

The House amendment, but not the Senate bill, spells out in detail the current practices which constitute the services and structure of CAMP.

The Senate recedes.

Management plan

The House amendment, but not the Senate bill, requires that applications for assistance include a management plan.

The Senate recedes.

Grant period

The House amendment, but not the Senate bill, provides for a 3-year grant period.

The Senate recedes.

Prior performance

The House amendment, but not the Senate bill, provides for the consideration of prior performance in making awards.

The Senate recedes.

Minimum grant

The House amendment, but not the Senate bill, provides for a minimum grant of $150,000 for both HEP and CAMP.

The Senate recedes.

AUTHORIZATION

[In millions of dollars]

Fiscal year	Senate bill	House amendment		Conference agreement	
		HEP	CAMP	HEP	CAMP
1987	$7.875	$9	$3	$7	$2
1988	8.269	(1)	(1)	(1)	(1)
1989	8.682	(1)	(1)	(1)	(1)
1990	9.116	(1)	(1)	(1)	(1)
1991	9.572	(1)	(1)	(1)	(1)

[1] Such sums.

HONORS SCHOLARSHIP PROGRAM

Extension

The Senate bill, but not the House amendment, further extends the Federal Merit Scholarships program for fiscal years 1989, 1990 and 1991 at the current authorization of $8 million each year.

The House recedes.

ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

The House amendment, but not the Senate bill, deletes obsolete cross-references in the program.

The Senate recedes.

VCIP

Program changes

The Senate bill reauthorizes the VCIP program without change. The House amendment revises current law and changes the name of the program to the Veterans Education Outreach Program; establishes a 1,000 minimum award; requires that at least 100 undergraduate veterans with honorable discharges must be enrolled at the institution in order for it to participate in the program; allows any institution which participated in the VCIP program for a continuous three year period between 1980 and 1985 and which has at least 100 eligible veterans in attendance to continue to be eligible; allows institutions to receive $100 for each veteran undergraduate student who has received an honorable discharge and is not covered under the current law provisions; allows institutions to count less-than-full-time students in proportion to the degree to which they are attending the institution; eliminates the requirement that the institution maintain a full-time office and requires the Secretary to collect information on exemplary Veterans Education Outreach Programs and to disseminate it to other institutions having such programs on their campuses.

The Senate recedes with an amendment eliminating the requirement that an institution have at least 100 eligible veterans in attendance to qualify for the grandfather provision.

AUTHORIZATION

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	$3.15	$15	$5
1988	$3.307	(1)	(1)
1989	$3.437	(1)	(1)
1990	$3.646	(1)	(1)
1991	$3.829	(1)	(1)

[1] Such sums.

CHILD CARE

The House amendment, but not the Senate bill, authorizes a program of grants from the Secretary of Education to institutions of higher education to provide child care services for disadvantaged students. The authorization is $15 million in FY 1987 and "such sums" in each of the four succeeding fiscal years. The Senate recedes with an amendment changing the FY 1987 authorization amount to $10 million.

GSL

Title

The House amendment, but not the Senate bill, changes the Title of Part B of Title IV to the "Guaranteed Student Loan Program."

The Senate recedes.

Technical corrections

The House amendment, but not the Senate bill, makes technical corrections to section 421 by deleting outdated and contradictory provisions.

The Senate recedes.

Advances

The House amendment, but not the Senate bill, makes technical corrections to section 422 by deleting outdated and contradictory provisions.

The Senate recedes.

Return of advances

The House amendment, but not the Senate bill, requires a return of $50 million in guaranty agency advances in FY 1988.

The House recedes with an amendment requiring the return of $75 million in advances in FY 1988 as required by the Consolidated Omnibus Budget Reconciliation Act of 1985 and $35 million in advances in FY 1989.

The Conferees intend that federal advances be returned to the Secretary following strict adherence to the criteria set forth in the Act. These criteria are extremely important in assuring that advances are returned in an orderly fashion without threatening the viability of guaranty agencies.

State requirements

The House amendment, but not the Senate bill, mandates the Comptroller General to take into account State law requirements regarding advances in effect on the date of enactment of the law.

The Senate recedes.

Technical corrections

The House amendment, but not the Senate bill, makes technical corrections to section 423 by deleting outdated and contradictory provisions. The House amendment also deletes references to postsecondary education institutions which are eligible lenders because H.R. 3700, unlike current law and the Senate bill, treats all institutions alike making separate provisions unnecessary.

The Senate recedes.

Extension of program

(a) The House amendment extends the program for loans made to students after 1992 to enable them to continue or complete their education through fiscal year 1997.

(b) The Senate bill extends this authority through FY 1996.

(c) The House amendment also deletes outdated provisions.

The Senate recedes.

Origination fee

The House amendment, but not the Senate bill, allows the student to borrow the origination fee even if the resulting loan amount is in excess of the borrowing limits.

The House recedes.

Loan limits

The Senate bill and the House amendment increase loan limits as follows:

	Senate bill	House bill	Conference agreement
1st 2 years of undergraduate work	$3,000	$2,500	$2,625
Final 2 years of undergraduate work	4,000	5,000	4,000
Graduate work	7,500	8,000	7,500
Cumulative undergraduate work	18,000	14,500	17,250
Cumulative undergraduate and graduate work	55,000	54,500	54,750

Technical corrections

The House amendment makes necessary conforming amendments to the section.

The Senate recedes.

First-year limits

The House amendment, but not the Senate bill, repeals the limitations on first year student borrowing. The Senate bill increases borrowing limits for these students.

The Senate recedes.

Increase in aggregate limits

The House amendment, but not the Senate bill, provides that the Secretary shall increase aggregate loan limits for students in programs which he determines are exceptionally expensive. The Senate bill continues existing law which provides that the Secretary may waive such limits. The House recedes.

Consolidated loan exemption

The Senate bill, but not the House amendment, exempts consolidation loans from the provisions of section 427.

The House recedes.

Academic workload

The House amendment, but not the Senate bill, moves the provision requiring that loans be insured only if the student is carrying at least one-half the normal full-time academic workload as determined by the institution.

The Senate recedes.

Grace period

The House amendment, but not the Senate bill, extends the grace period for FISL loans from six months to nine months.

The House recedes.

Graduated repayment

The Senate bill, but not the House amendment, requires lenders upon request of the borrower to provide a revised repayment schedule which is based upon graduated repayment.

The Senate recedes.

Deferral during attendance

The House amendment allows students carrying at least one-half of the normal full time academic workload to defer repayments of loans. The Senate bill requires full-time workloads for deferral.

The Senate recedes with an amendment providing that students who are carrying at least one-half the normal full time load may receive a deferment if they have received a GSL for that enrollment period.

Additional deferments

(a) The House amendment, but not the Senate bill, provides for a three year deferment of repayment for active duty members of the National Oceanic and Atmospheric Administration Corps.

The Senate recedes.

(b) The House amendment, but not the Senate bill, provides for up to three years deferment for borrowers engaged as full-time public or private elementary or secondary teachers.

The Senate recedes with an amendment allowing deferments for teachers in geographic areas where there is a teacher shortage or in subject areas in which there are teacher shortages. The Secretary in consultation with the Chief State School Officer or appropriate private school officials will define the areas of shortages.

It is the intent of the Conferees that the Secretary, in defining shortage areas as required under Sec. 428(b)(4) of the Act, shall also consider deferments for teachers from minority groups including Blacks and Hispanics teaching at schools with high percentages of minority students, as an important means of recruiting more minorities into the teaching profession to serve as role models for those students. Deferments should also be considered in states where recent reforms require mandatory testing of current and prospective teachers, thus affecting teacher supply; and in states having mandates to reduce teacher-pupil ratios, with particular attention given to grades K-2.

The Conferees also urge the Secretary to take into consideration wherever possible the needs of state and local education agencies at the pre-school and early childhood education levels, and, further stresses their intention that all targeting reflect the needs of handicapped and special education as well as traditional pre-school, elementary, and secondary education.

(c) The Senate bill provides for up to 3 years deferment for the care of disabled dependents, while the House amendment provides for up to 3 years deferment for disabled spouses and children.

The House recedes.

(d) The House amendment provides for up to six months of parental leave, while the Senate bill provides for six up to nine months of maternal leave.

The Senate recedes.

(e) The House amendment, but not the Senate bill, deletes a requirement that lenders notify institutions of loans.

The Senate recedes.

Multiple disbursement

The House amendment, but not the Senate bill, allows the second installment of a loan to be made sooner than one-third of the period, if it is necessary to permit the installment to be disbursed at the beginning of the second term of enrollment.

The Senate receded with amendments to clarify that:

multiple disbursement does not apply to supplemental parent and student loans, consolidation loans, or loans to students attending foreign schools; and

the periods of enrollment to which multiple disbursement applies.

The Conferees understand that the present forms filled out by students applying for loans may not request adequate information to determine the times at which loans disbursements are to be made. However, it is not the intention of the Conferees that the forms should be reprinted because they do not require the starting and ending dates of enrollment periods.

Technical correction

The House amendment, but not the Senate bill, repeals outdated and contradictory provisions in Section 427.

The Senate recedes.

Conforming amendments

Both the House amendment and the Senate bill make necessary conforming and technical amendments to Section 427A.

The Senate recedes with an amendment incorporating all of the changes in both versions.

In-school interest

(a) The Senate bill, but not the House amendment, retains the in-school interest rate for new borrowers at 8 percent. The Senate bill increases the interest rate to 10 percent during repayment; the House amendment increases the rate to 10 percent in the fifth year of repayment.

The Senate recedes with an amendment stating that when any return to a holder of

a loan exceeds T-bill + 3.25%, because of the interest rate paid by the borrower, the excess amount will be returned to the borrower by shortening the borrowers repayment period or by reducing the amount of the borrower's principal. The Secretary shall review the two options outlined for implementing this provision and report to the House Education and Labor Committee and the Senate Labor and Human Resources Committee within six months on the viability of implementing the provisions, and, if necessary, make additional recommendations.

(b) The House amendment sets the effective date for interest rates for new borrowers as October 1, 1987; the Senate bill sets the effective date as July 1, 1986.

The Senate recedes.

Authority to borrow origination fee

The House amendment, but not the Senate bill, provides that the amount of any loan which is eligible for interest subsidies is equal to the amount of need of the student increased by an amount necessary to cover the origination fee for the loan.

The House recedes.

Certification of loan need

The Senate bill, but not the House amendment, specifically requires that institutions not certify loans for amounts in excess of the student's demonstrated need.

The House recedes.

Family contribution offsets

The Senate bill, but not the House amendment, specifically allows supplemental and State-sponsored or private loans to be used to provide the expected family contribution.

The House recedes.

Lender discrimination

The Senate bill, but not the House amendment, prohibits institutions from refusing to provide any eligible lender with a statement permitting a student to receive a loan.

The House recedes.

Prompt payment of subsidies

The House amendment, but not the Senate bill, requires the Secretary to make prompt payment of interest subsidies to holders of loans.

The Senate recedes.

Technical amendment

The House amendment, but not the Senate bill, deletes outdated and contradictory provisions.

The Senate recedes.

Half-time study

The House amendment, but not the Senate bill, authorizes insurance for only those students attending school on at least a half-time basis.

The Senate recedes.

Origination fee

The House amendment, but not the Senate bill, allows the student to borrow the origination fee even if the resulting loan amount is in excess of the loan limits.

The House recedes.

Loan limits

The Senate bill and the House amendment increase loan limits as follows:

	Senate bill	House bill	Conference agreement
1st 2 years of undergraduate work	$3,000	$2,500	$2,625
Final 2 years of undergraduate work	4,000	5,000	4,000
Graduate work	7,500	8,000	7,500
Cumulative undergraduate work	18,000	14,500	17,250
Cumulative undergraduate and graduate work	55,000	54,500	54,750

Technical corrections

The House amendment makes necessary conforming amendments to the section.

The Senate recedes.

Loan limits tied to costs

The House amendment, but not the Senate bill, provides for loan limits for graduate students (based only on the sum of tuition, fees and costs of such education) an amount equal to such sum if it is between $5,000 and $8,000 and to $8,000 if tuition, fees, and costs are equal to or greater than $8,000. The Senate bill provides for annual loan limits for graduate students of $7,500.

The House recedes.

First-year limits

The House amendment, but not the Senate bill, repeals the limitations on first year student borrowing. The Senate bill increases borrowing limits for these students.

The Senate recedes.

Increase in aggregate limits

The House amendment, but not the Senate bill, provides that the Secretary shall increase aggregate loan limits for students in programs which he determines are exceptionally expensive. The Senate bill continues existing law which provides that the Secretary may waive such limits.

The House recedes.

Repayment period

The House amendment, but not the Senate bill, changes the repayment period from 15 years to 10 years.

The Senate recedes.

Grace period

The House amendment, but not the Senate bill, extends the grace period for FISL loans from six months to nine months.

The House recedes.

Technical amendment

The House amendment, but not the Senate bill, restates, in condensed form, existing requirements relating to the repayment period.

The Senate recedes.

Insurance premium

The Senate bill, but not the House amendment, charges a 3 percent insurance premium per loan for the first year of the loan.

The House recedes with an amendment stating there is a single 3% insurance premium equal to not more than 3% of the principal amount of the loan, charged when the loan is taken out.

Graduated repayment

The Senate bill, but not the House amendment, provides that lenders will, upon request of the borrower provide a repayment schedule which is based upon graduated repayment. The monthly payments by the borrower are to be rounded to multiples of $5.

The Senate recedes on graduated repayment and the House recedes on rounding.

Deferral during half time study

The House amendment, but not the Senate bill, allows students carrying at least one-half of the normal full-time academic workload to defer repayments of loans.

The Senate recedes with an amendment providing that students who are carrying at least one-half the normal full time load may receive a deferment if they have received a GSL for that enrollment period.

Additional deferments

(a) The House amendment, but not the Senate bill, provides for a three year deferment of repayment for active duty members of the National Oceanic and Atmospheric Administation Corps.

The Senate recedes.

(b) The House amendment, but not the Senate bill, provides for up to three years deferment for borrowers engaged as full-time public or private elementary or secondary teachers.

The Senate recedes with an amendment allowing deferments for teachers in geographic areas where there is a teacher shortage or in subject areas in which there are teacher shortages. The Secretary in consultation with the Chief State School Officer or appropriate private school officials will define the areas of shortages.

It is the intent of the Conferees that the Secretary, in defining shortage areas as required under Sec. 428(b)(4) of the Act, shall also consider deferments for teachers from minority groups including Blacks and Hispanics teaching at schools with high percentages of minority students, as an important means of recruiting more minorities into the teaching profession to serve as role models for those students. Deferments should also be considered in states where recent reforms require mandatory testing of current and prospective teachers, thus affecting teacher supply; and in states having mandates to reduce teacher-pupil ratios, with particular attention given to grades K-2.

The Conferees also urge the Secretary to take into consideration wherever possible the needs of state and local education agencies at the pre-school and early childhood education levels, and, further stresses their intention that all targeting reflect the needs of handicapped and special education as well as traditional pre-school, elementary, and secondary education.

(c) The Senate bill provides for up to 3 year's deferment for the care of disabled dependents, while the House amendment provides for up to 3 year's deferment for disabled spouses and children.

The House recedes.

(d) The House amendment provides for up to six months of parental leave, while the Senate bill provides for up to six months of maternal leave.

The Senate recedes.

Working mother deferral

The Senate bill, but not the House amendment, provides that mothers of preschool children entering or reentering the workforce who earn less than $1 above minimum wage will have a deferment of loan repayment for a period not to exceed 12 months.

The House recedes with an amendment applying the same provisions to FISL loans.

Loan disbursement

The House amendment, but not the Senate bill, allows the second installment of a loan to be made sooner than one-third of the period, if it is necessary to permit the installment to be disbursed at the beginning of the second term of enrollment.

The Senate receded with amendments to clarify that:

multiple disbursement does not apply to supplemental parent and student loans, consolidation loans, or loans to students attending foreign schools; and

the periods of enrollment to which multiple disbursement applies.

The Conferees understand that the present forms filled out by students applying for loans may not request adequate information to determine the times at which loans disbursements are to be made. However, it is not the intention of the Conferees that the forms should be reprinted because they do not require the starting and ending dates of enrollment periods.

Incorporation of supplemental agreement

The House amendment, but not the Senate bill, incorporates the provisions of the supplemental agreement in section 428A of current law into the agreement in section 428(b).

The Senate recedes.

Regulations to control risk

The House amendment, but not the Senate bill, alters the authority of the Secretary to promulgate regulations which "protect the financial interests of the United States" to regulations which "protect the United States from the risk of unreasonable loss."

The Senate recedes.

Transfers between guaranty agencies

The Senate bill, but not the House amendment, allows guaranty agencies to transfer loans to other guaranty agencies.

The House recedes with an amendment to require that the agencies must have consent of the holder of the loan.

Inducements by guaranty agencies

The Senate bill, but not the House amendment, prohibits agencies from offering inducements to educational institutions or employees to secure applicants for loans.

The House recedes.

Foreign study deferral

The Senate bill, but not the House amendment, provides that the Secretary shall approve any course of study at a foreign university accepted for completion of a recognized international fellowship program as grounds for a deferment of loan repayment.

The House recedes.

Multistate guarantor reporting

The Senate bill, but not the House amendment, requires each multistate guarantor to provide information on students for whom they are guarantors to the State-designated agency in the state where the student is a resident.

The House recedes with an amendment which allows any guaranty agency to request information from any other agency on borrowing by students in its State. The address of the borrower cannot be provided and the agency requesting the information must pay the costs associated with complying with the request. The amendment becomes effective January 1, 1987 and expires when the student loan data system provided for in section 485B becomes effective and the Secretary can provide this information on a timely basis.

It is the intention of the Conferees that only those costs directly associated with providing the requested information can be charged. Agencies may not charge a service fee.

Reimbursing supplemental pre-claims costs

The Senate bill, but not the House amendment, allows the Secretary to reimburse agencies for the costs of supplemental pre-claims assistance under reinsurance.

The House recedes with an amendment prohibiting any entity from performing both supplemental pre-claims assistance and collections activities on the same loan.

The Conferees do not intend to prohibit the same entity from providing both supplemental pre-claims assistance and collections assistance for the same contractor, provided that in no instance would the same entity provide both forms of assistance on the same student loan.

The Conferees also wish to clarify that, in the case of accounts brought into repayment status as a result of the performance of supplemental pre-claims assistance, the cost of such assistance is a permissible charge-back to the borrower for which the borrower shall be liable. The amount of such charges should be drawn from the first payments received from the borrower resulting from the supplemental pre-claims effort and shall be paid to the entity performing the supplemental pre-claims assistance under the terms of the contract with the guarantor.

Contractual right to default payment

The House amendment, but not the Senate bill, deems that the guaranty agency has a contractual right against the United States to receive reimbursement on defaulted loans. the Secretary is directed to make prompt payment to the guaranty agencies on claims.

The Senate recedes.

Reinsurance rates based on default rates

The Senate bill, but not the House amendment, reduces the reinsurance triggers for States with default rates between 5 percent and 9 percent from 90 percent to 80 percent and for States with rates in excess of 9 percent from 80 percent to 70 percent.

The House recedes with an amendment establishing a reinsurance fee based on default rates to be paid to the Federal government by the guaranty agencies. Agencies with a default rate less than 5 percent will pay a fee equal to .25 percent of the total principal amount of loans on which they issued insurance during the fiscal year. Agencies with default rates equal to or greater than 5 percent will pay a fee equal to .5 percent of such amount.

Additional guaranty agreement conditions

The House amendment, but not the Senate bill, requires that the guaranty agreement shall require:

(a) Guaranty agencies to submit proof that reasonable attempts were made to locate the borrower, in the case of a defaulted loan when the borrower's location was unknown and proof of contact with the borrower when the location was known;

The Senate recedes.

(b) Guaranty agencies to set forth assurances that they will not engage in any patterns of discrimination which result in borrowers being denied access to loans because of race, sex, color, religion, national origin, age, handicapped status, income, or the characteristics of the borrower's academic program;

The Senate recedes.

(c) Guaranty agencies be allowed to permit forebearance on defaulted loans.

The Senate recedes.

Collection costs

The House amendment, but not the Senate bill, allows guaranty agencies to retain 30 percent of collections to cover agency costs without proof of sums incurred costs to the agency.

The Senate recedes.

Garnishment provisions

The House amendment, but not the Senate bill, allows guaranty agencies in States which adopt the garnishment provisions provided for in the House amendment to retain 35 percent of their collections instead of 30 percent. The House garnishment provisions limit the amount that may be withheld to 10 percent of disposable pay; require notice to the borrower and an opportunity to respond; provide the borrower with the opportunity to review existing information; provide the borrower the opportunity to establish a repayment schedule with the guaranty agency; sets penalties for employers' non-compliance after notice; and prohibit the employer from firing or taking disciplinary action against an employee whose wages are garnished.

The Senate recedes.

Rehabilitation of defaulted loans

The House amendment, but not the Senate bill, allows guaranty agencies or the Secretary to sell defaulted loans which have been in repayment status for 12 months and allows the borrower having such a rehabilitated loan to be eligible to receive additional loans.

The Senate recedes with an amendment providing for a three-year pilot program only and for an evaluation study of the program. In order to qualify the participants must have been institutionalized or unemployed at the time of default.

Supplemental guaranty benefits

The House amendment, but not the Senate bill, applies the supplemental agreement benefits to the basic guaranty agreement and repeals the supplemental guaranty agreement provisions because the supplemental provisions are incorporated into the basic agreement.

The Senate recedes.

Contractual right to administrative cost allowance

The House amendment, but not the Senate bill, provides for a contractual right on the part of the guaranty agencies to receive prompt payment of the administrative cost allowance.

The Senate recedes.

Default information

The Senate bill, but not the House amendment, allows guaranty agencies to provide information to eligible institutions on former students of the institution who are in default, including the names and addresses of such students. Public dissemination of such information is not authorized.

The House recedes.

It is the intention of the Conferees that the activities performed by educational institutions relating to delinquent or defaulted borrowers be clearly supplemental to the due diligence required to be performed by guarantors and lenders under this part and that such activities in no way supplant their responsibilities.

Supplemental guaranty agreement

The House amendment, but not the Senate bill, repeals section 428A, Loan Insurance Supplemental Guaranty Agreement, having incorporated its provisions into a single guaranty agreement provided for in section 428.

The Senate bill, but not the House bill, amends Section 428A to conform it to the changes in annual and aggregate loan limits provided for in the Senate bill.

The Senate recedes.

Additional supplemental agreement requirements.

The Senate bill, but not the House amendment, modifies section 428A(a)(1), relating to the eligibility of guaranty agencies for Federal reinsurance, and section 428A(a)(2) relating to the eligibility of guaranty agencies for administrative allowances, to require that guaranty agencies provide eligibility for all eligible lenders under reasonable criteria unless a lender has been eliminated from the program under limit, suspend and terminate or there is a state constitutional prohibition affecting the eligibility of a lender. The Senate bill also requires that the guaranty agency provide assurances that it will report annually to the Secretary concerning these criteria. In current law, these requirements apply only to institutional (i.e., school) lenders.

The House recedes with an amendment requiring agencies to report to the Secretary only on any changes in criteria.

Commingling of funds

The House amendment, but not the Senate bill, provides for a new section 428A, Commingling of Funds, which permits guaranty agencies to commingle funds received under this program and to use them to carry out any of the purposes for which the funds are authorized, except that expenditures for a particular purpose may not exceed the amount authorized to be spent for that purpose and guaranty agencies must still comply with their accounting or auditing obligations.

The Senate recedes with an amendment clarifying the House language and strengthening it.

Supplemental or auxiliary loan limits.

(a) The Senate bill amends the Auxiliary Loans to Assist Students (ALAS) program by increasing the annual loan limit for parents from $3,000 to $4,000 on behalf of each student in the family. The aggregate loan limit for parents is increased from $15,000 to $20,000. These same increases in the annual and aggregate loan limits apply as well to graduate and professional students. The annual loan limit for independent undergraduate students is increased from $2,500 to $4,500 and the aggregate loan limit for these students is increased from $12,500 to $22,500.

The Senate recedes.

(b) The House bill repeals the ALAS program and establishes in its place separate programs of Supplemental Loans for Students and Loans for Parents.

The Senate recedes.

(c) The Supplemental Loans for Students in the House bill differs from the current ALAS program by taking all students eligible for these loans (not just graduate, professional and independent undergraduate students). It increases the annual loan limit from $3,000 to $4,000, and it increases the aggregate loan limit from $15,000 to $20,000.

The Senate recedes with an amendment excluding dependent undergraduates from eligibility for the Supplemental Loans for Students.

(d) The House amendment, but not the Senate bill, deletes the separate limitations on borrowing by independent undergraduate students.

The Senate recedes.

(e) The House amendment, but not the Senate bill, requires that interest payments which are deferred shall, at the option of the lender, either be paid quarterly or added to the principal amount of the loan (i.e., capitalized).

The Senate recedes with an amendment providing that repayment will commence 60 days after the loan is disbursed with the option to defer payments of interest and principal while the student is in school.

(f) The House amendment permits Supplemental Loans for Students and ALAS loans to be consolidated into a single repayment schedule.

The Senate recedes with a technical amendment on the method of consolidating the loans.

(g) The House amendment, but not the Senate bill, deletes the restrictions on FISL insurance of supplemental loans to students.

The Senate recedes.

The Conferees expect that the Guaranteed Student Loans shall be available only to otherwise qualified health professions residents who are paying tuition and fees. Supplemental loans may be made to qualified medical residents, whether they pay tuition or not, in amounts not to exceed the total costs of education, computed using a standard student budget, less other aid or stipend payments received. Annual borrowing limits for residents shall be the same as those applicable to other graduate and professional students. Hospitals that conduct resident training programs which comply with Department of Education requirements, shall be considered institutions of higher education for the purpose of awarding Supplemental Loans.

The Conferees were concerned that the confusion about resident eligibility for Guaranteed Student Loans and Supplemental Loans has led to inconsistent and overly restrictive interpretations. It is the intent of the Conferees that access to Guaranteed Student Loans be limited to medical residents who are paying tuition and fees and have the same borrowing needs as other graduate and professional students.

The Conferees also recognize the fact that some residents—including many non-physician residents—do not receive stipends, and others are paid amounts that often fall short of reasonable student living costs. The Conferees expect these students to have access to the Supplemental program to meet their remaining need.

Parent loans

(a) The Loans for Parents program in the House amendment allows parents to defer repayment for up to three years for temporary total disability and for a single period of up to one year if the borrower is unemployed.

The Senate recedes with an amendment extending the provision to dependent student borrowing.

(b) The House amendment, but not the Senate bill, increases the annual loan limit from $3,000 to $4,000.

The Senate recedes.

(c) The House amendment, but not the Senate bill, provides for an aggregate loan limit of $20,000.

The Senate recedes.

(d) The House amendment, but not the Senate bill, requires repayment of principal and interest to begin not later than 90 days after the loan is disbursed.

The Senate recedes with an amendment providing for repayment to begin not later than 60 days, but allowing the lender at the request of the borrower to defer and capitalize payments until the student for whose benefit the loan was made ceases to remain a student.

(e) The House amendment, but not the Senate bill, permits Loans for Parents and ALAS loans made under current law to be consolidated into a single repayment schedule.

The Senate recedes.

The Conferees agreed to a substitute for the 12% interest rates in the student and parent supplemental loan programs. Under the provision a variable rate is established for all new supplemental loans. All loans are to be made at an interest rate equal to the one-year T-bill plus 3.75%, with a maximum allowable rate of 12%. A special allowance would be paid only if T-bill + 3.75 exceeded 12%.

Additionally, the conferees established a refinancing program at the newly established variable rate offered to borrowers at the option of the lender. The current holder of the loan is given the first option to refinance the loan. A refinancing fee of $100 is charged to borrowers to defray the administrative costs associated with refinancing.

Under current law, lenders may charge an interest rate of up to 12%. However, most lenders charge a flat 12% interest rate, indicating that the flexibility provided in law has been under utilized. As a result, the Conferees considered making refinancing of supplemental loans mandatory. Although the Conferees decided against mandatory refinancing, it is their intention that lenders will make refinancing available to all borrowers. The Conferees intend that the Congress will conduct oversight regarding the availability of refinancing to all borrowers.

Loan consolidation

(a) The Senate bill, but not the House amendment, permits Health Professions Student Loans (HPSL) to be included in Consolidation Loans.

The House recedes.

(b) In providing for insurance coverage of Consolidated Loans, the House amendment, but not the Senate bill, cross-references the authority of the Student Loan Marketing Association (Section 439(o)) which expired on November 1, 1983.

The Senate recedes.

(c) The House amendment requires a borrower to have outstanding indebtedness of not less than $7,500 to be eligible for a Consolidation Loan. The Senate bill requires an eligible Consolidation Loan borrower to have an outstanding indebtedness to one or more lenders or programs of not less than $5,000 to be eligible for a Consolidation Loan.

The House recedes.

(d) The Senate bill, but not the House amendment, requires that an eligible Consolidation Loan borrower not have been enrolled at least half-time in postsecondary education during the previous four months.

The Senate recedes.

(e) The House amendment, but not the Senate bill, permits an eligible consolidation Loan borrower to be in the grace period preceding repayment.

The Senate recedes.

(f) The House amendment, but not the Senate bill, specifies that a Consolidation Loan counts against the borrower's aggregate loan limits under the GSL program.

The Senate recedes.

(g) The House amendment, but not the Senate bill, permits a lender to make a Consolidation Loan to a borrower only if the borrower certifies that he or she has no other application pending for a Consolidation Loan.

The Senate recedes.

(h) The House amendment, but not the Senate bill, provides that an eligible lender

must agree to make a reasonable effort to notify each borrower to whom they have made a Guaranteed Student Loan of the availability and terms of Consolidation Loans.

The Senate recedes with an amendment which requires that this information be provided to the borrower at or prior to the point of loan disbursement.

(i) The House amendment provides that the Secretary will not issue a certificate of comprehensive insurance to a lender unless the Secretary determines that such lender has been denied a certificate of insurance, the guaranty agency which insures the preponderance of its loans (by value). The Senate bill provides that the Secretary will not issue a certificate of comprehensive insurance to a lender if the Secretary determines that the lender has reasonable access in its State, for the purpose of obtaining such a certificate, to a guaranty agency.

The Senate recedes with an amendment giving the right of first refusal to issue the certificate of insurance to the guarantor with the largest percentage value of the loans guaranteed under the consolidation.

(j) The House amendment requires that the maker of the Consolidation Loan obtain from the holder or holders of each loan a certificate attesting to the validity and the legality of the loans. The Senate bill requires that the maker of the Consolidation Loan determine to its satisfaction, in accordance with reasonable and prudent business practices, that these conditions have been met.

The House recedes.

(k) The House amendment, but not the Senate bill, provides that the certificate of comprehensive insurance shall include the reporting requirements of the Secretary on the lender, an identification of the Office of the Department of Education or of the guaranty agency which will process claims and perform other related administrative functions, and the alternative repayment terms which will be offered to borrowers by the lender.

The Senate recedes.

(l) The Senate bill, but not the House amendment, requires that the loan agreement between the borrower and the lender contain a notice of the possibility of a revised payment schedule.

The Senate recedes.

(m) The House amendment provides that borrowers of Consolidation Loans will have available to them all of the deferments available to regular GSL borrowers. The Senate bill provides for deferments only during periods of full-time study, study pursuant to a graduate fellowship program approved by the Secretary, study pursuant to a rehabilitation training program for disabled individuals approved by the Secretary, not in excess of two years during which the borrower is serving an internship, not in excess of three years during which the borrower is temporarily totally disabled and a single period not in excess of one year during which the borrower is unemployed.

The Senate recedes with an amendment limiting deferments to full-time study, temporary disability and unemployment.

The Conferees intend that lenders who hold Title IV loans provide information to borrowers during grace and deferral periods that will enable students to make fully informed decisions about all loan consolidation and combined payment plans available to them. The Conferees are concerned that all borrowers be informed of the deferrals and grace periods for which they are eligible and that after consolidating their loans the only deferments for which they are eligible are in-school periods, disability, and unemployment. Lenders who offer consolidation and combined payment plans are expected to design these plans in a way that maximizes each borrower's available deferrals and grace period(s). Lender efforts to encourage students to consolidate their loans prior to the expiration of Title IV deferral periods would be contrary to the intent of the Conferees in establishing the loan consolidation and combined payment plans.

(n&o) The Senate bill provides that the interest rate on a Consolidated Loan will be at 10% unless one or more of the loans being consolidated is an ALAS loan in which case the interest rate will be the highest rate of the ALAS loan being consolidated. The Senate bill further provides that in the first month of the tenth year of repayment the interest rate will be adjusted to a market rate established by the Secretary of the Treasury at the beginning of the calendar year based on the average of the bond equivalent rates of 91-day Treasury bills auctioned during the preceding year plus 3.25%.

The Senate bill also provides that this interest rate adjustment will not be made in the case of borrowers who are determined pursuant to regulations prescribed by the Secretary to be low-income individuals or individuals who have a high ratio of outstanding loans to income.

The House amendment provides that the interest rate on a Consolidated Loan will be 8% during the first four years of repayment, 9% during the 5th through 7th years of repayment, 10% during the 8th through 10th years of repayment and 12% during the 11th through 25th years of repayment. The House bill further provides that in no event will the interest rate on a Consolidated Loan be less than the weighted average of the interest rates on the loans consolidated.

The Senate recedes with an amendment which sets the interest rate at the weighted average of the interest rates on the loans consolidated rounded to the nearest percent with a minimum interest rate of 9%.

(p) The Senate bill, but not the House amendment, provides that the minimum payment must equal the accrued unpaid interest for the payment period.

The House recedes.

(q) The House amendment, but not the Senate bill, provides that the repayment schedule for Consolidated Loans may be income sensitive.

The Senate recedes with an amendment providing for the establishment of graduated or income-sensitive repayment schedules.

(r&s) The Senate bill provides that the length of repayment period for a Consolidation Loan will not be more than 15 years except if the original amount of the Consolidation Loan exceeds $25,000 and the borrower also has a Health Education Assistance Loan (HEAL) which together with the Consolidation Loan exceeds $30,000, then the repayment period for the Consolidation Loan will not be more than 20 years.

The House amendment provides that the length of the repayment period for a Consolidation Loan will not be more than 15 years in the case of a Consolidation Loan which is less than $15,000. The House bill further provides that if the Consolidation Loan equals or exceeds $15,000 but is less than $35,000 or if the sum of the Consolidation Loan and other outstanding loans equals or exceeds $15,000 but is less than $35,000, the repayment period will be not more than 20 years. The House bill also provides that if the Consolidation Loan equals or exceeds $35,000 or if the sum of Consolidation Loans and outstanding student loans equals or exceeds $35,000, the repayment period will not be more than 25 years.

The Conference substitute provides for the following terms of repayment: Consolidated Loans between $5,000 and $7,500 will be allowed a repayment period not to exceed 10 years; Consolidated Loans between $7,500 and $10,000, with the balance including minimum of $5,000 in Guaranteed Student Loans will receive a repayment period not to exceed 12 years; Consolidated Loans and other educational loans between $10,000 to $20,000 will be allowed a repayment period not to exceed 15 years; Consolidated Loans and other educational loans between $20,000 and $45,000 will be allowed a repayment period not to exceed 20 years; Consolidated Loans and other educational loans of $45,000 and greater will be allowed a repayment period not to exceed 25 years. At least 50% of the indebtedness considered in determing the length of the repayment period must be consolidated loans.

(t) The Senate bill, but not the House amendment, provides that the monthly repayment amount may be rounded to the nearest $5.

The House recedes.

(u) The Senate bill provides that the consolidation loan program will expire on September 30, 1991. The House amendment provides that the Consolidation Loan program will expire on September 30, 1992.

The Senate recedes.

(v) The Senate bill, but not the House amendment, provides that the Secretary of Education is not authorized to promulgate rules or regulations governing the terms or conditions of the agreement with the lenders and certificates of insurance.

The House recedes.

(w) The Senate bill provides that Consolidation Loans will not be considered as new loans for the purposes of the limitation on the total amount of loans that may be insured under the Federal Insured Student Loan (FISL) program. The House amendment provides that Consolidation Loans will be considered for the purposes of this limitation.

The Senate recedes.

(x) The Senate bill, but not the House amendment, requires the Secretary of Education to evaluate the cost, efficiency and impact of the Consolidation Loan program and report his findings and recommendations to the Congress not later than June 30, 1988.

The House recedes with an amendment directing the Comptroller General to conduct the study and report his findings and recommendations to the Congress no later than June 30, 1988.

Fiscal responsibility

The House amendment, but not the Senate bill, changes "protecting the financial interest of the United States" to "protecting the United States from the risk of unreasonable loss."

The Senate recedes.

Borrower location

The House amendment, but not the Senate bill, requires the guaranty agencies to submit proof that attempts were made to locate the borrower in the case of a default.

The Senate recedes.

Credit bureaus

The House amendment, but not the Senate bill, requires the guaranty agency to make reports to credit bureaus on the date and amount of disbursement, default date, and collection, and cancellation of the loan through repayment. Current law requires reporting throughout the life of the loan by guaranty agencies, lenders and subsequent holders.

The Senate recedes with an amendment requiring holders of loans to report on current balances rather than each disbursement. Holders are to report on loans in good standing and guaranty agencies on loans in default status.

Reporting authority

The House amendment, but not the Senate bill, allows reporting agencies to report material on GSLs for seven years from October 1, 1985, if the Secretary paid a claim prior to that date but did not report it to a consumer reporting agency.

The Senate recedes.

Fiscal responsibility

The House amendment, but not the Senate bill, changes "protecting the financial interest of the United States" to "protecting the United States from the risk of unreasonable loss."

The Senate recedes.

Accounting and auditing standards

The House amendment, but not the Senate bill, requires accounts to be maintained in accordance with generally accepted accounting principles rather than procedures applicable to commercial corporate transactions as provided for in the Government Corporation Control Act, as required by current law.

The Senate recedes.

Audits of program participants

The House amendment, but not the Senate bill, allows the Comptroller General and the Inspector General of the Department of Education to conduct financial audits of guaranty agencies, eligible lenders, and secondary markets and direct lenders.

The Senate recedes.

Civil penalties

The House amendment, but not the Senate bill, increase the civil penalty from $15,000 to $25,000.

The Senate recedes.

Limitation, suspension, and termination

The Senate bill, but not the House amendment, requires the Secretary to limit, suspend or terminate lenders who engage in fraudulent or misleading advertising that have led to making loans or the making of loans that violate the certification for eligibility.

The House recedes.

Sale of defaulted loans

The Senate bill, but not the House amendment, authorizes the Secretary to sell defaulted loans (assigned to the United States) to collection agencies.

The House recedes with an amendment requiring that the provision only apply to loans that are in default status and only as a last recourse after all other collection efforts have failed and the loan has been in default for at least one year. Sale of the loans is not limited solely to collection agencies.

Institutional lenders

The House amendment, but not the Senate bill, repeals section 433, which provides the terms for institutional lenders and includes institutional lenders under the general requirements for all lenders.

The Senate recedes.

Disclosure of loan information

The Senate bill, but not the House amendment, requires that the information given the student borrower include a statement of the total cumulative balance owed, the projected level of indebtedness of the student (based on a 4-year college career), and an estimate of the projected monthly repayment.

The House recedes with an amendment clarifying that the provision only applies to those loans held by the lender.

Truth in lending

The House amendment, but not the Senate bill, provides that lenders not be subject to the Truth in Lending Act with regard to guaranteed student loans.

The Senate recedes.

Separate statement of rights and responsibilities

The Senate bill, but not the House amendment, requires the lender, each time a loan is disbursed, to provide the borrower with a separate paper summarizing his rights and responsibilities including a statement of consequences of default and a statement that defaults will be reported to a credit bureau.

The House recedes with an amendment requiring that the statement be written in plain English which is easily understood.

Use of salesmen

The House amendment, hut not the Senate bill, extends the prohibition against the use of commissioned salesmen to promote the availability of loans to the Supplemental Loans for Students and Loans to Parents programs.

The Senate recedes.

Schools outside the United States

Both the House amendment and the Senate bill provide that with respect to eligible institutions outside the United States or which are vocational schools approved by the Secretary for purposes of this part the Secretary may establish criteria by regulation for qualifying such institutions. The House amendment further provides that the criteria in the case of a graduate medical school outside the United States may include a requirement that not less than 90% of the students who are nationals of the United States enrolled in such school shall have scored in the top one-quarter on an approved medical college admissions examination and that such students achieve a pass rate of not less than 50% on examinations administered by the Educational Commission for Foreign Medical Graduates. The Senate bill mandates that criteria for medical schools outside the United States shall include a requirement, that at least 75% of its students are nationals of the country in which the medical school is located.

The House recedes with an amendment requiring that 60% of the students be nationals of the country in which the school is located and that 45% of the United States students shall pass the foreign medical graduates examination in 1987 and that 50% must pass the test in 1988 and in subsequent years.

Nursing school definitions

The House amendment, but not the Senate bill, repeals the definitions of a "collegiate school of nursing," "associate degree school of nursing," and "accredited" when applied to a program of nurse education references to them.

The Senate recedes.

Eligible lender definition

The Senate bill, but not the House amendment, includes trust companies and a stock savings bank in the definition of an eligible lender.

The House recedes.

Trust company exception

The Senate bill, but not the House amendment exempts from the prohibition against an eligible lender having as its primary consumer credit function the making or holding of student loans a trust company which makes student loans as a trustee pursuant to an express trust.

The House recedes with an amendment limiting the exception to an institution which participated in the program prior to January 1, 1981 and exempting single wholly owned subsidiaries of a bank holding company.

The amendment reflects the Conferees' understanding of current practice as it applies to bank holding companies.

Rural rehabilitation corporation

The House amendment, but not the Senate bill, includes the Rural Rehabilitation Corporation within the definition of an eligible lender.

The Senate recedes.

Hearing on disqualification

The House amendment, but not the Senate bill, provides that an eligible lender may only be disqualified as an eligible lender for the use of certain incentives if the determination by the Secretary that such incentives have been offered is made after notice and opportunity for a hearing.

The Senate recedes.

Disqualification for false advertising

The Senate bill, but not the House amendment, provides for the disqualification of a lender as an eligible lender if the lender engages in fraudulent or misleading advertising.

The House recedes with an amendment prohibiting unsolicited mailings of student loan application forms to students unless the students have previously received loans under this part from such lender.

The Conferees do not consider advertising a telephone number which can be called to request additional information regarding eligibility and application for a GSL fraudulent or misleading.

Lender reports

The Senate bill, but not the House amendment, requires each eligible lender to report annually to the Secretary concerning the amount of special allowance received. The Secretary may make only aggregate data available.

The House recedes with an amendment requiring the Comptroller General and the Inspector General, at the request of the House or Senate Committees, to determine from a representative sample of eligible lenders, with respect to the payment of the special alllowance under section 438, the profitability of the program to lenders.

Temporary total disability

(a) The House amendment, but not the Senate bill, provides a definition of temporary total disability with respect to the disabled child of a single parent borrower.

The Senate recedes with an amendment changing "child" to "dependent".

(b) The House amendment, but not the Senate bill, provides that determinations of temporary total disability will be estab-

lished by a sworn affidavit of a qualified physician.

The Senate recedes.

Parental/maternal leave

The House amendment, but not the Senate bill, provides for a definition of the term "parental leave."

The Senate recedes.

Holder definition

The House amendment, but not the Senate bill, provides for a definition of the term "holder."

The Senate recedes.

Insurance beneficiary definition

The House amendment, but not the Senate bill, transfers the definition of the term "insurance beneficiary" to section 435 from section 430(e)(2).

The Senate recedes.

Default definition

The House amendment, but not the Senate bill, transfers the definition of the term "default" to section 435 from section 430(e)(2).

The Senate recedes.

Special allowance

The Senate bill, but not the House amendment, reduces the special allowance from 3.5 percent above the 91-day T-bill rate to 3.00, except for holders of loans from tax exempt obligations, which would continue to receive one-half the 3.5 percent special allowance rate.

The House recedes with an amendment naking the rate 3.25 percent above the 91-day T-bill, and allowing special allowances for the State of Maine Secondary market and the State of South Carolina Direct Lender which are related to their 1984 and 1985 taxable issues, respectively, to be 3.5% above tho 91-day T-bill.

Prompt payment

The House amendment, hut not the Senate bill, requires the special allowance to be paid promptly.

The Senate recedes.

Origination fees

The House amendment, but not the Senate bill, prohibits the Secretary from requiring the payment of origination fees on loans which do not receive special allowance payments.

The Senate recedes.

Plan for doing business

The Senate bill repeals the plan for doing business for entities using tax exempt financing, while the House amendment gives governors of states the authority to approve or disapprove the plan for doing business. The House amendment requires the governors to approve or disapprove plans within 30 days and to submit plans to the Secretary within 60 days.

The Senate recedes with an amendment striking subparagraph (G).

The Conferees intend that all loans made or purchased by the holder with the proceeds of tax-exempt obligations governed by a plan for doing business that has been approved by the Secretary under prior law will continue to receive the special allowance payments specified in Section 438 of the Act with no need for further approval. All loans made or purchased by the holder with the proceeds of tax-exempt obligations issued prior to enactment of this legislation with respect to when the Secretary's approval of a plan was not received will then be eligible for special allowance payments from the date of approval of a Plan submitted to the Governor of the State in accordance with subsection 438(d) of the Act. However, such approval date may not be prior to the date of enactment of this Act.

Report to Congress

The House amendment, but not the Senate bill, requires the Secretary to report to the authorizing committees at the end of each fiscal year regarding:

(a) the amount of student loan capital provided through tax-exempt financing;

(b) its impact on availability of student credit, and an assessment of the need for additional tax-exempt financing;

(c) any other relevant information. The Senate recedes.

General authority of Sallie Mae

The Senate bill but not the House amendment:

(a) requires the Association to provide secondary market and other support and not to replace or compete with such other programs;

(b) prohibits the Association from purchasing or in any way controlling a bank or savings and loan association;

(c) requires the Association to report to the Congress not later than 30 days prior to implementing any new programs under the general authority of the Board of Directors.

The House recedes. It is the intention of the Conferees that the Congress need only be advised of new programs to be offered under the authority found in section 439(d)(1)(D), not each individual proposed transaction which may be undertaken after a program is put in place under the authority. The Conferees do intend that in carrying out its activities under section 439(d)(1)(D), Sallie Mae shall be mindful of the need to support lending programs offered by others. Sallie Mae's objective should not be simply to substitute its programs for effective programs developed by others. Instead, Sallie Mae should identify education credit needs that have not been fully met by others, and design programs to meet those needs.

Construction obligations

The Senate bill and the House amendment both give Sallie Mae the authority to deal in obligations for the construction of academic facilities. But the Senate bill limits that authority to providing services only to those institutions who have difficulty in acquiring other funding.

The House records with an amendment targeting 75% of the lending volume on non-investment grade institutions and 25% on rated institutions.

Tax treatment of interest

The House amendment, but not the Senate bill, exempts the interest on obligations from being deemed to be interest on indebtedness incurred, to the extent that the average outstanding amount of the obligations owned by Sallie Mae and exempt from taxation does not exceed the average stockholders equity of the association.

The Senate recedes.

Bankruptcy priority

The House amendment, but not the Senate bill, repeals the 1990 expiration date for the bankruptcy priority.

The Senate recedes with an amendment establishing the expiration date as 1992.

Federal Reserve banks

The House amendment, but not the Senate bill, allows the Federal Reserve Banks to act as depositories, custodians or fiscal agents for the Association.

The Senate recedes.

Book-entry system

The House amendment, but not the Senate bill, authorizes the Secretary of the Treasury to promulgate regulations to allow the Association to use the book-entry system of the Federal Reserve Banks.

The Senate recedes.

Regulations

(a) The House amendment, but not the Senate bill, makes the changes made by law effective without regard to whether they are reflected in regulations prescribed by the Secretary.

The Senate recedes.

(b) The House amendment, but not the Senate bill, provides that no change in any regulation that is prescribed on or after October 1, 1985, shall be effective unless approved by a joint resolution of the Congress.

The House recedes.

Bankruptcy provision

The Senate bill, but not the House amendment, strengthens the provision for recovery of defaulted student loans under chapter 13 of the Bankruptcy Act.

The Senate recedes.

COLLEGE WORK STUDY

Purpose

The House amendment, but not the Senate bill, includes graduate and professional students in the statement of purpose.

The Senate recedes.

AUTHORIZATION

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	622.125	700	656
1988	653.321	([1])	([1])
1989	685.893	([1])	([1])
1990	720.187	([1])	([1])
1991	756.197	([1])	([1])

[1] Such sums.

Allocation formula

Both the Senate bill and the House amendment create new allocation formulas which eliminate the state allotment formulas in current law. The formula in the House amendment provides that amounts in excess of a hold harmless based on the fiscal year 1979 appropriation and an allocation to new institutions participating in the program will be provided to institutions based on financial need of their undergraduate students. The formula in the Senate bill provides that amounts in excess of a hold harmless based on the fiscal year 1985 appropriation will be provided to institutions based on their enrollments of students eligible to participate in the program. The Senate recedes with an amendment providing that institutions will be held harmless at their allotment based on the fiscal year 1985 appropriation or a prorata share thereof in the event of insufficient appropriations; that institutions participating in the program for the first or second time will receive an allocation based on the allocation received by comparable institutions; that 25% of any additional funds will be allocated to all institutions as an equal percentage increase; and that the remaining 75% of any additional funds will be allocated to institutions based on the financial need of their undergraduate students.

Institutional share

The Senate bill, but not the House amendment, provides that the institutional share of wages paid to students in the Community Service Learning program will be not less than 10%. The House recedes.

Less-than-half-time students

The House amendment, but not the Senate bill, provides that if the need of less-than-half-time students is included in the calculation of an institution's need for CWS funds, a "reasonable proportion" of the funds will be provided to these students. The Senate recedes.

Continued employment

The House amendment, but not the Senate bill, rewrites the provision of current law governing the continued employment of students who have earned in excess of $200 more than their CWS eligibility to permit such students to continue to be employed in non-CWS jobs. The Senate recedes.

Maintenance of effort and institutional share

The House amendment, but not the Senate bill, deletes the maintenance of effort requirement and increases the institutional share of CWS compensation provided to students from at least 20% currently to at least 25% for academic year 1989-90 and to at least 30% for the academic year 1990-91 and succeeding academic years. The Senate recedes.

Community service learning jobs

The Senate bill, but not the House amendment, permits institutions to use up to 10% of their CWS funds for Community Service Learning jobs. The House recedes.

Proprietary school students

Both the House amendment and the Senate bill provide that students attending proprietary institutions may be employed in work-study jobs at the institution and also require that such employment be in jobs related to providing student services as determined by the Secretary by regulation. The Senate bill also provides that such employment on-campus be related to the extent practicable to the students' educational objectives and not be in a position that would involve the solicitation of other potential students to enroll in the school. The House recedes with an amendment providing that the employment "to the maximum extent practicable, complement and reinforce the educational programs or vocational goals of such students." The managers wish to make it clear that students attending both proprietary institutions and non-profit institutions may continue to be employed under the CWS program in jobs at off-campus non-profit institutions.

Private sector employment

The Senate bill, but not the House amendment, provides that Private Sector Employment Agreements shall provide that the work-study jobs will be academically relevant and that the for-profit organization will not use CWS funds to pay any employee who would otherwise be employed by the organization. The House recedes.

Reallocation

The Senate bill, but not the House amendment, deletes the requirement that funds that institutions are unable to use will be reallocated to institutions in the same State. The House recedes.

Job location

The House amendment, but not the Senate bill, increases from 10% or $25,000, whichever is less, to 20% or $50,000, whichever is less, the amount of an institution's CWS funds that may be used for the existing Job Location and Development program. The Senate bill, but not the House amendment, provides that up to 10% or $20,000 of an institution's CWS funds may be used for Community Services Job Location. The House recedes with an amendment providing that an institution may use up to 10% or $30,000, whichever is less, of its CWS funds for the existing Job Location and Development program and that it may use up to 10% or $20,000, whichever is less, for Community Services Job Location.

Consultation

The Senate bill, but not the House amendment, specifies that a Community Services Job Location program will be developed through formal or informal consultation with local nonprofit, governmental, educational and community-based organizations. The House recedes.

Contracts

The House amendment, but not the Senate bill, permits educational institutions to conduct their Job Location and Development program through a contract with a nonprofit organization. The House recedes.

Eligibility

The Senate bill, but not the House amendment, requires that jobs developed through the Job Location Development Program go to students eligible to receive CWS. The Senate recedes with an amendment providing that CWS recipients will receive a preference for the jobs developed by the program.

Education programs

The Senate bill, but not the House amendment, requires that jobs located through the Job Location and Development program to the maximum extent practicable complement and reinforce the educational programs or vocational goals of the students who hold such jobs. The House recedes.

Payment of wages

The Senate bill, but not the House amendment, permits funds available for the Community Services Job Location program to be used to pay the wages of students at an institution of higher education if the jobs relate to the purposes of the program. The House recedes.

Community service jobs

The Senate bill, but not the House amendment, permits unused Job Location and Development program funds to be used to pay the wages of students engaged in community services work learning jobs. The Senate recedes.

Definition

The Senate bill, but not the House amendment, provides a definition of "community services" for purposes of the Community Services Job Location program. The House recedes.

Literacy priority

The Senate bill, but not the House amendment, provides that the Secretary will give priority consideration to applications for Job Location and Development programs which propose community service projects involving literacy training and education. The Senate recedes.

Education programs

The Senate bill, but not the House amendment, provides that jobs provided to students under the Work Study for Community Service Learning on Behalf of Low-Income Individuals and Families program to the maximum extent practicable complement and reinforce the educational or vocational programs or goals of such students. The House recedes.

Definition

The Senate bill, but not the House amendment, modifies the definition of "community services" to include services identified through formal or informal consultation with local nonprofit, governmental and community-based organizations. The House recedes.

Definition

The Senate bill, but not the House amendment, deletes from the definition of "community services" direct service, planning or applied research activities. The House recedes.

Definition

The Senate bill, but not the House amendment, eliminates from the fields that might be included in "community services": welfare, social services, public safety, crime prevention and control and recreation and adds to these fields child care, literacy training and education (including tutorial services). The House recedes with an amendment retaining the fields included in current law and adding the new fields contained in the Senate bill.

Program development

The Senate bill, but not the House amendment, permits funds to be used for the development of programs. The House recedes.

INCOME CONTINGENT DIRECT LOAN DEMONSTRATION PROJECT

The Senate bill, but not the House amendment, establishes a pilot project to examine the feasibility of a direct loan program which uses the income contingent repayment method to increase the economic and full use of direct student loan funds. There are $5 million authorized for FY 1987 and for each of the four succeeding fiscal years. The Secretary may enter into agreements with not more than 10 institutions to carry out the project. The House recedes with an amendment providing for a "such sums" authorization in the fiscal years after 1987 and for increasing the flexibility of the Secretary with respect to the measure of the borrower's income and the payment plan.

PERKINS LOANS

Perkins loans

The House amendment, but not the Senate bill, renames the National Direct Student Loan program "Perkins Loans." The Senate recedes.

AUTHORIZATION

[In millions of dollars]

Fiscal year	Senate bill	House amendment	Conference agreement
1987	228,356	300	275
1988	239,774	(1)	(1)
1989	251,763	(1)	(1)
1990	264,351	(1)	(1)
1991	277,568	(1)	(1)

[1] Such sums.

Allocation formula

Both the Senate bill and the House amendment create new allocation formulas which eliminate the state allotment formulas in current law. The formula in the House amendment provides that amounts in excess of a hold harmless based on the FY

1979 appropriation and an allocation to new institutions participating in the program will be provided to institutions based on financial need of their undergraduate students. The formula in the Senate bill provides that amounts in excess of a hold harmless based on FY 1985 appropriation will be provided to institutions based on their enrollments of students eligible to participate in the program. The Senate recedes with an amendment providing that institutions will be held harmless at their allotment based on the FY 1985 appropriation or a prorata share thereof in the event of insufficient appropriations; that institutions participating in the program for the first or second time will receive an allocation based on the allocation received by comparable institutions; that 25% of any additional funds will be allocated to all institutions as an equal percentage increase; and that the remaining 75% of any additional funds will be allocated to institutions based on the financial need of their undergraduate students. The substitute formula also provides for the reduction or elimination of new capital contributions to an institution depending on its default rate.

Definitions

The House bill, but not the Senate amendment provides definitions of the terms "anticipated collections" and "cash-on-hand". The Senate recedes.

Definition of default rate

The House amendment, but not the Senate bill, provides a definition of the default rate for use in the allocation formula. The Senate recedes.

Default penalty

The House amendment provides that institutions with a default rate in excess of 25% will receive no new Federal capital contributions and that institutions with default rates between 10% and 25% will have their Federal capital contributions reduced through the allocation formula. The Senate bill provides that for the 1987-88 award year institutions with a default rate in excess of 20% will receive no new Federal capital contributions and that institutions with default rates between 7.5% and 20% will have their Federal capital contributions reduced in accordance with regulations of the Secretary. The Senate bill further provides that for the 1988-89 and other subsequent award years institutions with a default rate in excess of 15% will receive no new Federal capital contributions and that institutions with default rates between 5% and 15% will have their Federal capital contributions reduced in accordance with regulations of the Secretary. The House recedes with an amendment providing that the default penalty will be implemented through the allocation formula rather than in accordance with regulations of the Secretary and that in the 1991-92 award year, and other subsequent award years, institutions with a default rate in excess of 15% will receive no new Federal capital contributions and that institutions with default rates between 7.5% and 15% will have their Federal capital contributions reduced.

Filing deadlines

The House amendment, but not the Senate bill, provides that the Secretary shall, from time to time, set dates before which institutions must file applications for allocations under this part. The Senate recedes. It is the intention of the conferees that the Secretary implement the NDSL referral and assignment programs provided for pursuant to section 463(a)(5)(B)(i) as soon as practicable following the date of enactment of this act.

Need required

The Senate bill, but not the House amendment, provides that institutions will make loans first to students with exceptional need. The House recedes.

Fiscal responsibility

The House amendment, but not the Senate bill, changes "necessary to protect the financial interest of the United States" to "necessary to protect the United States from unreasonable risk of loss." The Senate recedes.

Penalty description

The House amendment, but not the Senate bill, requires a description of penalties imposed for defaulters. The Senate recedes.

Loan information

The Senate bill, but not the House amendment, provides that loan information provided to students by institutions will include a statement of the total cumulative balance owed by the student, the projected level of indebtedness of the student based on a two- or four-year college career and an estimate of the projected monthly repayment given the anticipated level of the student's indebtedness over a two-, four- or five-year college career. The House recedes with an amendment conforming this information requirement to the comparable provision in the Guaranteed Student Loan program.

Loan limits

The House amendment increases the cumulative loan limits from $3,000 to $5,000 for students in their first two years of undergraduate study. The Senate bill increases this limit from $3,000 to $4,000. The House amendment increases from $6,000 to $10,000 the cumulative loan limit for undergraduates who have completed two years of study. The Senate bill increases this cumulative limit from $6,000 to $8,000. The House amendment increases from $12,000 to $20,000 the cumulative amount that may be borrowed by a graduate student (including loans received as an undergraduate). The Senate bill increases this cumulative limit from $12,000 to $16,000. The House recedes with an amendment changing the three cumulative limits to $4,500, $9,000 and $18,000 respectively.

Less-than-half-time students

The House amendment, but not the Senate bill, provides that if the need of less-than-half-time students is included in the calculation of institution need for funds that these students are provided with a "reasonable proportion" of such funds. The Senate recedes.

Grace period

The House amendment, but not the Senate bill, increases the grace period from 6 to 9 months. The Senate recedes.

Rounding

The Senate bill, but not the House amendment, provides that the amount of repayment may be rounded to the nearest $5. The House recedes.

Deferment for NOAA

The House amendment, but not the Senate bill, provides for a 3 year deferment of repayment while the borrower is an active duty member of the National Oceanic and Atmospheric Administration Corps. The Senate recedes.

Teacher deferment

The House amendment, but not the Senate bill, provides for a 3 year repayment deferment while the borrower is a full-time teacher in a public or private elementary or secondary school. The House recedes.

Maternal/parental leave

The Senate bill provides for a 6 month repayment deferment for maternity leave. The House bill provides for a 6 month repayment for parental leave. The Senate recedes.

Deferment for mothers

The Senate bill, but not the House amendment, provides for a 12 month deferment for a mother with preschool age children who is just entering or reentering the workforce and who is paid not more than the minimum wage. The House recedes with an amendment specifying that the wage may not be more than the minimum wage plus $1 per hour.

Cancellations

The Senate bill, but not the House amendment, provides for loan cancellation for service as a Peace Corps or Vista volunteer at a rate of 15% per year for the first two years and 20% per year for the third and fourth years of such service for any period of enrollment beginning on or after July 1, 1986. The House recedes.

Repealer

The House amendment, but not the Senate bill, repeals the alternative funding mechanism and makes appropriate conforming amendments. The Senate recedes.

Repealer

The House amendment, but not the Senate bill, repeals the provisions relating to recapture of current balance of the student loan funds and makes appropriate conforming amendments. The Senate recedes.

NEEDS ANALYSIS

Uniform methodology

The House amendment provides for a single legislated needs analysis methodolgy which applies to all of the Title IV financial assistance programs (except the State Student Incentive Grant program and Federal Merit Scholarships). The single methodology in the House bill generally follows the Uniform Methodology which is currently used to determine expected family contribution for the campus-based financial aid programs and in some cases the Guaranteed Student Loan program. The Senate bill includes an outline of the policies and basic criteria to be used in needs analysis for the campus-based programs and the Guaranteed Student Loan program. The Senate recedes to the needs analysis as provided in the House amendment with an amendment limiting it to the campus-based programs and the Guaranteed Student Loan program, using current year income in the case of a dislocated worker and specifying that the cost of receiving equipment for those receiving instruction through telecommunications will not be considered as part of the costs for books and supplies in determining cost of attendance. The conferees note that in those cases in which a Federal rental subsidy or other housing assistance payment is included as untaxed income in a student's expected contribution, the student's room allowance in the cost-of-attendance formula should be set equal to his or her actual rent, including the amount of the subsidy.

Independent Student Definition

The Senate bill provides that a student will be considered an independent student if the student did not have more than 6 weeks at home with the student's parents, did not receive more than $750 from the student's parents and was not claimed as a dependent for Federal income tax purposes by the parents. If the student is less than 23 years of age, he or she must meet these Senate criteria for the first calendar year of award year and the two preceding calendar years. The Senate bill provides that married students and unmarried students with minor dependents will only be considered independent if they meet the Senate criteria for the first calendar year of the award year and the preceding calendar year. The Senate bill also provides that a student will only be considered independent if in addition to meeting the Senate criteria for the applicable period of time the student demonstrates to the satisfaction of the institution, in accordance with guidelines by the Secretary, how, for the years prescribed, such student was self-supporting. The House amendment provides that a student will be considered an independent student if the student is an orphan, ward of the court, married, not married, but has legal dependents, a veteran, 23 years of age or older in July of the award year, a graduate of professional student, a student with unusual circumstances as determined by the student financial aid administrator or a student who demonstrates to the financial aid administrator self-sufficiency during the two-year period preceding July 1 of the award year and if treated as an independent student during the preceding calendar year, was not claimed as a dependent by any other person for such preceding calendar year. The Senate recedes with an amendment substituting the age 24, requiring in the case of married students and graduate or professional students that there be an affirmative finding of independence by the student financial aid administrator based on documentation, before actual disbursement of awards, and modifying the criteria based on self-sufficiency to require that the person not have been claimed as a dependent for tax purposes for the two years prior to the award year and to require evidence of an annual income of at least $4,000 for single persons. The conferees note that in the situation where a student is denied independent student status solely as a result of being claimed as a dependent for tax purposes by a spouse, the income of that spouse, and not the income of the student's parents shall be used to determine the eligibility of the student in question.

Aid administrator discretion

The House amendment and the Senate bill permit financial aid administrators to exercise discretion to make adjustments to cost of attendance and expected family contribution computations for students, however, the Senate bill limits the exercise of such discretion to individual students, while the House amendment permits it to be exercised for groups of students. The House recedes. The conference substitute allows the student financial aid administrators to make necessary adjustments to the need analysis computations based on additional knowledge about the financial status of students which they might have. This includes not only allowing a more liberal financial aid package for some students, but also the ability to restrict aid for students who have additional sources of support not apparent in the analysis. For example, if an aid officer was aware that a graduate or professional student was receiving support from his or her family, even though technically such student is considered independent, it is the intention of the conferees that the administrator would have the ability to reduce the student eligibility for Federal assistance accordingly. The conferees are particularly concerned that students from high income families, who are enrolled in high cost programs and who would otherwise be considered independent of their parents, be carefully evaluated to determine if a parental contribution is warranted.

Aid administrator discretion

The Senate bill, but not the House amendment, requires that for the purpose of exercising discretion in making necessary adjustments to the cost of attendance and expected family contribution computations financial aid administrators must maintain adequate documentation of adjustments. The House recedes with an amendment clarifying that this provision also applies to adjustments in the certification of need for a Guaranteed Student Loan.

Submission of schedule

The Senate bill, but not the House amendment, provides that the schedule of expected family contributions for campus-based programs and the Guaranteed Student Loan program must be submitted to the Congress by March 1 of the year for which the schedule is applicable. Before such schedule shall become effective a joint resolution approving or modifying the proposed schedule must be adopted. If such a joint resolution has not been enacted by September 1, the Secretary shall publish by September 15 a schedule which updates the schedule of the previous year and the Secretary shall also publish a schedule which updates the Pell Grant schedule of the previous year. The House recedes with an amendment providing that a resolution of approval is required for the implementation of any proposed modifications or updates to both the Pell Grant needs analysis and the needs analysis for the campus-based and Guaranteed Student Loan programs. In the absence of the adoption of a resolution of approval within the time frame specified, both needs analyses will be automatically updated annually according to criteria and formulas specified in the law. The Master Calendar is modified to require that by March 1 any proposed modifications or updates to the needs analyses will be published in the Federal Register, by May 1 the Congress must adopt a joint resolution of approval in order for the proposed modifications or updates to become effective and by June 1 the Secretary must publish updated versions of the needs analyses according to the criteria and formulas specified in the law, including any necessary clarifying information, in the absence of enactment of the joint resolution of approval or if a resolution of approval has been adopted with or without modifications.

Simplified needs test

The Senate bill, but not the House amendment, authorizes the Secretary to use a simplified needs test for very low-income families. The House recedes with an amendment requiring the Secretary to submit a simplified needs test for very low-income families to the Congress subject to approval by a joint resolution. The Secretary is encouraged by the conferees to develop a simplified needs analysis form for such families.

Advisory committee

Both the House amendment and the Senate bill provide for the creation of an advisory committee on student financial assistance. The House bill provides for a free-standing committee while the Senate establishes the committee in the Department of Education. The House committee reports only to the Congress and its 12 members are appointed by the Congress, while the Senate committee reports to both the Congress and the Secretary of Education and 6 of its 11 members are appointed by the Congress and 5 are appointed by the Secretary of Education. The House committee has no definite termination date while the Senate committee terminates after one year. The Senate committee has a one time authorization of $1 million while the House committee has an annual authorization of $750,000. The House recedes with an amendment providing that the committee is an independent entity in the Department of Education, is authorized without a fixed termination date and is to be provided $500,000 annually by the Secretary from the salaries and expenses of the Department. The committee is independent of the Secretary and with the authority to make recommendations directly to the Congress without review or comment in the executive branch. The committee may submit its recommendations and analyses (other than its recommendations with respect to the annual modification and updating of the needs analyses) to the Secretary for comment. The central function of the committee is to advise the Secretary and the Congress annually and simultaneously concerning modifications in the needs analyses. The committee controls its staff and its members are not paid a daily stipend but are reimbursed for travel and subsistence expenses. The committee may contract to obtain data and information.

Federal assistance

The House amendment, but not the Senate bill, provides that no portion of any financial assistance received by an individual from any program funded in whole or in part under Title IV which is used by that individual for the payment of tuition and fees shall be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds. The Senate recedes with an amendment clarifying that this provision applies to Title IV assistance used by an individual to pay for tuition, fees, books, supplies, transportation and miscellaneous personal expenses.

GENERAL PROVISIONS

Ability to benefit

The House amendment requires that for students without a high school diploma or a GED to be eligible for Federal student financial assistance, the admissions standards for the institution at which they enroll must include counseling or a validated test measuring the students' aptitudes to successfully complete the program to which they have applied. The Senate bill requires that, for such students to remain eligible for Federal assistance under Title IV, they must complete an institutionally prescribed course of remedial or developmental education or receive a GED by the end of the first year. If the course of study is shorter than one year, they must meet the requirements prior to certification or graduation. The conference substitute provides that in order to remain eligible a student who is admitted on the basis of the ability to benefit from

the education or training: (1) must obtain the GED diploma prior to the student's certification or graduation from the program of study; (2) or be counseled prior to admission and undertake the institution's program of remediation or developmental education by the end of the first year of the course of study; or (3) be administered a nationally recognized standardized or industry developed test, measuring the applicant's aptitude to complete successfully the program to which he or she has applied. With respect to applicants who are unable to satisfy the institution's admissions testing requirements, he or she must be enrolled in an institutionally prescribed program or course of supplemental education, not to exceed one academic year or its equivalent. It is the intent of the conferees that a nationally recognized standardized or industry developed test be one which meets criteria established by the appropriate accrediting body or bodies, but which is not subject to prior approval by such body or bodies. It is the intent of the conferees that this remedial or developmental education provide the student with the basic skills necessary for satisfactory performance in the training or education program which the student has chosen. The institution is not obligated to provide a separate remediation or developmental education course or program of instruction if the institution's curriculum presently includes coursework which provides the student with the basic skills necessary for satisfactory performance in the training or education program which the student has chosen. The conferees are aware that many institutions currently provide coursework which would satisfy the intent of this provision such as Business Math or English for Electricians, literacy training geared to reading maps and road signs for truck drivers or coursework providing reading comprehension skills necessary for cosmetologists. It is not the intent of the conferees that such education disrupt or interfere with the normal progress a student makes toward a degree or certificate and a student's enrollment in non-remedial coursework is not meant to be contingent upon completion of the supplemental education. The conferees do not intend that these provisions authorize or require the Secretary of Education to issue rules or regulations defining the admissions procedures or coursework provided by institutions of higher education. The conferees further want to encourage increasing basic skills instruction at institutions admitting students on the basis of ability to benefit and express their feeling that attainment of literacy is as important for the postsecondary student as attainment of vocational skills.

Application fees

The House amendment, but not the Senate bill, clarifies the provision requiring that students and parents not be charged a fee for applying for Federal student financial assistance. The Senate recedes with an amendment requiring the development of separate, identifiable loan application documents for Part B of Title IV that applicants shall submit directly to eligible lenders.

Contracts

The House amendment, but not the Senate bill, deletes "to the extent practicable" in directing the Secretary to enter into contracts for processing student aid forms and adds the word "official" in describing eligibility reports. The House recedes.

Management information system

The House amendment, but not the Senate bill, authorizes the Secretary to contract for additional data gathering services to assist the Department of Education in developing a Management Information System. The House recedes.

Reporting requirement

The House amendment, but not the Senate bill, requires the Secretary to forward copies of all forms and regulations to the House and Senate committees at least 45 days prior to their effective date. The Senate recedes.

Toll-free information

The House amendment, but not the Senate bill, requires the Secretary to establish and publicize a toll-free telephone to provide timely and accurate information to the general public, including specific instruction on completing applications for assistance under Title IV. The Senate recedes.

Federal student aid report

The House amendment, but not the Senate bill, requires the Secretary to develop a Federal Student Assistance Report, which will be completed by institutions of higher education and delivered to all student aid recipients. The form will indicate amounts of Federal student aid the student received. The Senate recedes.

Eligibility

The House amendment, but not the Senate bill, requires that a student must be enrolled in a degree, certificate or other program leading to a recognized educational credential to be elibible to receive Federal student assistance. The Senate bill requires that a student be making satisfactory progress toward a degree or certificate. The Senate recedes.

Less-than-half-time students

The House bill repeals the current law requirement that a student must be carrying at least a half-time course load to be eligible for Federal student aid in all of the need-based Title IV programs expect for the Guaranteed Student Loan program, thereby providing eligibility for less-than-half-time students. The Senate recedes with an amendment providing that less-than-half-time students will be eligible for Pell Grants beginning in FY 1989 and that only those less-than-half-time students with an expected family contribution of $0 will be eligible in FY 1989 and FY 1990. The Senate amendment further provides that in FY 1991 only those less-than-half-time students with an expected family contribution of between $0 and $200 will be eligible for the Pell Grants. In addition, the Senate amendment provides that if insufficient appropriations require the reduction of awards pursuant to Section 411(g) in FY 1989, less-than-half-time students will not be eligible for Pell Grants in that year. Further, it is the intent of the conferees that prior to less-than-half-time students becoming eligible for Pell Grants that the Secretary shall conduct and report to the Congress the results of a study to determine the number of less-than-half-time students with a $0 expected family contribution and the number of students in the $0-$200 expected family contribution category.

Students in default

Both in House amendment and the Senate bill prohibit students who are default under the Guaranteed Student Loan program from receiving any form of Federal assistance while they remain in default. In addition, the House amendment provides the same prohibition for students in default on a NDSL or owing any refund on any Federal grant program. The Senate recedes.

Eligibility

The House amendment, but not the Senate bill, codifies into law the current regulations with respect to citizenship or other permanent status that is a prerequisite for eligibility for student assistance and provides eligibility to those who have a certificate of graduation from a school providing secondary education in the United States. The Senate recedes with an amendment deleting eligibility for those who have a certificate of graduation from a school providing secondary education in the United States and providing for a study of the incidence of students who have graduated from high schools in the United States and who are ineligible for Federal student assistance because of their legal status and the impact of their ineligibility on their educational opportunities. The study shall also estimate the cost of providing federal student financial aid to such individuals and, to the extent practicable, the tax status of their parents or guardians. The study will be conducted by a panel consisting of two Members of the House of Representatives appointed by the Speaker, two Members of the Senate appointed by the President Pro Tempore and three persons appointed by the Secretary of Education. Staff and other resources for the study will be provided by the Department of Education and the panel's report to the Congress and the Secretary will be due two years after the date of enactment of this act. In addition, the conferees direct the Secretary of Education to provide information to the Congress on the extent to which Title IV student aid funds are being provided to students who are not citizens or nationals of the United States and are not eligible non-citizens. The Senate amendment further provides that the Title IV program participation agreement will require each institution of higher education to certify that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution. The conferees wish to emphasize that this requirement should not be construed to direct or permit the Secretary of Education to promulgate any rules or regulations relating to the content or conduct of the drug abuse prevention program.

Less-than-half-time students

The Senate bill allows a less-than-half-time student to be eligible for the SEOG, CWS and NDSL programs only if the institution has already met the need of full-time students eligible for aid from those programs while the House amendment allows less-than-half-time students to be eligible for these programs without this limitation. The Senate recedes.

Satisfactory progress

The Senate bill, but not the House amendment, requires that students must be making satisfactory progress as determined by the institution and must maintain a C average at the end of the second academic year or its equivalent or academic standing consistent with the requirements for graduation as determined by the institution. A waiver by the institution in circumstances of undue hardship is provided and the Secretary of Education is required to conduct a study of the impact of this provision on student grades. The House recedes with an

amendment providing that students can reestablish their eligibility by attaining academic standing consistent with the institution's requirements for graduation.

Verification

The Senate bill, but not the House amendment, requires all institutions to certify student eligibility for a Guaranteed Student Loan if the loan is sent to the institution, disbursement of the loan is not made until a review for the accuracy of the information on the application is completed and the institution has evidence that the information submitted by the applicant is incorrect. The House recedes with an amendment limiting to not more than 30% of the applicants in any award year the number of applicants for whom institutions are required to verify the accuracy of data used to determine their eligibility for any program under this title.

Statute of limitations

The Senate bill, but not the House amendment, reflects the changes made in the statute of limitations made by the Consolidated Omnibus Budget Reconciliation Act. The House recedes.

Information

The House amendment, but not the Senate bill, requires that institutions provide student aid information to less-than-full-time students. The Senate recedes.

Exit counseling

The Senate bill, but not the House amendment, requires exit counseling of student loan borrowers which provides general information on the average indebtedness of students, the average anticipated monthly repayments and the available repayment options. The House recedes with an amendment requiring that such counseling must be made available to students and that it can be provided either to individuals or groups of students.

Debt burden information

The House amendment, but not the Senate bill, requires the Secretary to make available to institutions and lenders information on debt burdens and total and monthly repayment obligations that students may incur as a result of borrowing under the GSL and NDSL programs. The Senate recedes.

Combined repayment

The Senate bill, but not the House amendment, provides for the combined repayment of loans under subpart 1 of part C of title VII of the Public Health Service Act with loans consolidated under section 428C (consolidation loans). The House recedes with technical and clarifying amendments.

Student loan data bank

The Senate bill, but not the House amendment, creates a National Student Loan Data Bank. The Secretary is authorized to establish and carry out a nationwide computerized student loan data bank containing information regarding loans made, insured or guaranteed under the GSL or NDSL programs. Access to information in the bank shall be restricted to individuals and Federal agencies specifically authorized by the Secretary to have such access and may be used only for research, improvement of Federal debt collection practices and furnishing information in response to an official request made by a committee of the Congress. The Secretary must prepare and submit a report to Congress twice a year on the results obtained by the establishment and operation of the data bank. The House recedes with an amendment changing the name to the National Student Loan Data System and clarifying that information with respect to the NDSL program will be supplied by institutions of higher education.

Federal employees

The Senate bill, but not the House amendment, requires Federal agency head to collect in monthly installments by deduction from an employee's pay account any indebtedness on Federal student loans which such employee is in default on. The Senate recedes.

Withholding

The Senate bill, but not the House amendment, requires that Federal agency heads reduce any Federal payments to individuals who have defaulted on Federal student loans by 25% until the default is paid. The Senate recedes.

Financial aid training

The House amendment extends Training in Financial Aid and Student Support Services through FY 1991, while the Senate bill extends it through FY 1986. The House recedes.

Maintenance of effort

The House amendment, but not the Senate bill, repeals the maintenance of effort provision for institutions participating in the SEOG and CWS programs. The Senate recedes.

Conforming amendments

The House amendment, but not the Senate bill, contains a conforming amendment prohibiting charges for the Federal Student Assistance Report form and modifying the certification requirements for the Guaranteed Student Loan program. The Senate recedes.

Advertisements

The Senate bill, but not the House amendment, requires that institutions which use advertisements citing job placement rates must publish in their catalogs actual employment statistics, graduation statistics and any other information necessary to substantiate the truthfulness of the advertisements. The House recedes with an amendment requiring that this information be made available at or before the time of application and deleting the requirement that the information be published in the institution's catalog.

Criteria for recovery of funds

The House amendment, but not the Senate bill, requires that only those funds expended not in substantial compliance with the law may be recovered from an institution following a final audit determination. The House recedes.

Due process standards for recovery of funds

The House amendment, but not the Senate bill, requires that final audit determinations will only be made following written notice and the opportunity for a hearing on the record and that the burden of proof will be on the Secretary and that all parties will have discovery procedures available to them. The Senate recedes with an amendment deleting the provisions relating to discovery and burden of proof.

Grant eligibility

The Senate bill, but not the House amendment, requires that institutions inform all borrowers under the Guaranteed Student Loan program of the availability of and their eligibility for State grant assistance. The House recedes with an amendment providing that institutions need only inform borrowers about the availability of and their eligibility for State grant assistance with respect to the State in which the institution is located and will inform borrowers about how to obtain such information concerning assistance from other States.

Data collection

The House amendment, but not the Senate bill, requires the Secretary to collect data on student aid recipients at least once every three years. The Senate recedes with an amendment allowing the Department of Education to collect the appropriate data.

Commission

The House amendment, but not the Senate bill, provides for the establishment in the executive branch of an independent agency called the National Commission on Family Responsibilities for Financing Postsecondary Education. $1.5 million is authorized for the Commission which will terminate two years after the initial appointment of its members.

The Senate recedes with an amendment removing the word "family" from the name of the Commission, reducing the authorization to $1 million and adding students to the membership of the Commission.

Repeal of Student Financial Assistance Technical Amendments

The House amendment, but not the Senate bill, repeals the Student Financial Assistance Technical Amendments Act of 1982.

The Senate recedes with an amendment extending the appropriate provisions to the Act to provide for a transition to the implementation of the provisions of this act.

Administration offset

The Senate bill, but not the House amendment, amends the U.S. Code to allow Federal agencies to use administrative offset at any time to collect on a claim against any individual. Agency heads are directed to establish standards for the exercise of such offsets which take into account the likelihood of collecting by offset and the cost effectiveness of carrying a claim beyond 6 years.

The Senate recedes.

TITLE V—EDUCATOR RECRUITMENT, RETENTION AND DEVELOPMENT

TITLE

The House amendment, but not the Senate bill, revises and rewrites Title V of HEA, and provides a new Heading for the Title.

The Senate recedes.

COORDINATION OF EDUCATION PROFRESSIONAL DEVELOPMENT

The Senate bill, but not the House amendment, repeals Part D of Title V.

The House recedes.

STATEMENT OF PURPOSE

The House amendment, but not the Senate bill, provides a new Statement of Purpose for title V.

The Senate recedes with an amendment to include references to pre-school and Early Childhood Education and Development.

AUTHORIZATION OF APPROPRIATIONS

The House amendment, but not the Senate bill, provides for the authorization of appropriations under Sec. 502 for Parts A, B, C, D, and E for FY1987, and then such sums through FY 1991. The House amendment included authorizations for four programs in existing law, and seven (7) new initiatives under title V, as follows:

(a) The House amendment, but not the Senate bill, authorizes a new Part A, Subpart 1, titled "Enhancing Teacher Education" funding it at $10 million in FY1987, and then such sums through FY1991.

The House recedes.

The House amendment, but not the Senate bill, authorizes a new Subpart 2 to Part A, titled "Midcareer Teacher Training for Nontraditional Students", authorizing it at $4 million in FY1987, and then such sums through FY1991.

The Senate recedes with an amendment to reduce the funding level to $3.5 million in FY1987, and then such sums through FY1991.

The House amendment, but not the Senate bill, authorizes a new Subpart 1 in Part B, titled "University-High School Partnerships", funding it at $20 million in FY1987, and then such sums through FY1991.

The Senate recedes with an amendment to reduce the funding level to $15 million in FY1987, and then such sums through FY1991.

The House amendment, but not the Senate bill, authorizes a new program under Subpart 2 in Part B, titled "Teacher Academies", funding it at $7.5 million in FY1987, and then such sums through FY1991.

The Senate recedes.

(c) The House amendment, but not the Senate bill, authorizes a new Subpart 1 in Part C, titled "Professional Development Resource Centers", funding it at $20 million in FY1987, and then such sums through FY1991.

The Senate recedes with an amendment to reduce the funding level to $15 million in FY1987, and then such sums through FY1991.

The House amendment, but not the Senate bill, transfers the Leadership in Educational Administration and Development (LEAD) from title IX of P.L. 98-558 (Human Services) to Title V, funding it at $20 million in FY1987, and then such sums through FY1991. The Senate recedes with an amendment to reduce the funding level to $10 million in FY1987, and then such sums through FY1991.

(d) The House amendment, but not the Senate bill, continues the program in current law (Part C of title V), titled "Training Teachers of the Handicapped", as Subpart 1 of Part D, funding it at $5 million in FY1987, and then such sums through FY1991.

The Senate bill repeals the program.

The House recedes.

(e) The House amendment authorized the Perkins Scholarship Program (and renames it the Congressional Teacher Scholarship Program, and funds it at $20 million in FY1987, and then such sums through FY1991.

The Senate bill authorizes the Perkins Scholarship Program at $10.5 million in FY1987; $11.05 million in FY1988; $11.57 million in FY1989; $12.15 million in FY1990; and $12.76 million in FY1991.

The Senate recedes with an amendment to fund the program at $13.5 million in FY1987, and then such sums through FY1991.

(f) The House amendment continues the Talented Teacher Fellowship Program as Subpart 3 of Part D, funding it at $2 million in FY1987, and then such sums through FY1991.

The Senate bill authorizes the program at $5.25 million in FY1987; $5.513 million in FY1988; $5.788 million in FY1989; $6.080 million in FY1990; and $6.38 million in FY1991.

The Senate recedes to the House provisions.

(g) The House amendment, but not the Senate bill, authorizes appropriations for new Part E, Subpart 1, titled "Research and Data Collection", at $2 million in FY1987, and then such sums through FY1991.

The House recedes with an amendment to authorize additional research and data collection activities through the Office of Education Research and Improvement.

The House amendment, but not the Senate bill, authorizes a new program under Subpart 2 of Part E, requiring the mandatory establishment of State Teacher Task Forces to assess need for teachers in elementary and secondary schools (projections on supply/demand by geographic and subject matter shortage areas). The House amendment would fund the program at $1 million in FY1987, and then such sums thorough FY1991.

The Senate recedes with an amendment, retaining the mandate requiring establishment of state task forces, but providing a waiver. The waiver from the requirement is achieved under this section when the State Education Agency submits documentary evidence, as determined by the State, to the Secretary, showing voluntary compliance.

The Conference substitute agreement on Title V is as follows:

[In millions of dollars]

	Fiscal years	
	1987	1989–91
Part A: Midcareer teacher training	3.5	(1)
Part B: University-high school partnerships	15.0	(1)
Part C:		
Subpart 1, professional development resource centers	15.0	(1)
Subpart 2, leadership in educational administration and development	10.0	(1)
Part D:		
Subpart 1, congressional teacher scholarships	13.5	(1)
Subpart 2, Christa McAuliffe fellowships	2.0	(1)
Part E: Establishment of State task forces for assessment planning	1.0	(1)

[1] Such sums.

EXCELLENCE TEACHER EDUCATION PROGRAMS

The House amendment, but not the Senate bill, rewrites Title V of the Higher Education Act, consisting of four (4) existing programs, and seven (7) new initiatives for Educator Recruitment, Retention and Development purposes.

(a) In the House amendment, but not the Senate bill, Subpart 1 of Part A, titled "Enhancing the Quality of Teacher Education Programs", authorizes discretionary grants to institutions of higher education for programs designed and implemented jointly with elementary and secondary schools to improve teacher education.

The House recedes.

(b) In the House amendment, but not the Senate bill, Subpart 2 of Part A titled "Midcareer Teacher Training for Nontraditional Students", is a demonstration program authorizing grants to higher education institutions to encourage the development of teacher training for individuals from other occupations. Two year planning grants are first awarded; successful projects are then eligible for two-year renewal grants to continue the projects. The Secretary, after competition, will select one institution from each of the ten (10) federal regions. Model programs resulting from this demonstration will be disseminated to other IHE's for replication at state and local expense.

The Senate recedes.

SCHOOL, COLLEGE, AND UNIVERSITY PARTNERSHIPS

In the House amendment, Subpart 1 of Part B authorizes the "University-High School Partnership Program", for grants to establish cooperative programs between colleges and local high schools serving predominantly low-income students, which encourages students to graduate from high school, to prepare them for better employment prospects, and to encourage such students to pursue postsecondary training. Grants may range from $250,000 to $1 million, and must be used for year-round projects (65% is earmarked for school year projects; 35% is earmarked for summer months). These projects are intended to encourage involvement of the private sector; priorities are established. The Senate has no comparable provision.

The Senate recedes.

COMMUNITY COLLEGE PILOT PROJECTS

Section 525 of Part B, Subpart 1 in the House amendment, establishes a Pilot Project at four (4) Community Colleges: Wayne County Community College (Michigan); The Community College of Vermont; Compton Community College in California; and the Metropolitan Community College in Missouri. Minimum grant size is $250,000. The Senate bill has no comparable provision.

The Senate recedes.

TEACHING ACADEMIES

In the House amendment, Subpart 2 of Part B is titled "Teaching Academies", and would establish teacher academy demonstration projects. Grants would be available to consortia of schools of education and LEA's to establish and operate such academies to provide one-year internships for entry-level teachers. The Senate bill has no comparable provision. The House recedes.

PROFESSIONAL DEVELOPMENT RESOURCE CENTERS (PDRC'S)

(a) In the House amendment, Subpart 1 of Part C establishes Professional Development Resource Centers to be funded through competitive grants to LEA's, consortia and higher education institutions (10 percent of funds appropriated are reserved for higher education institutions). Grants would be used to develop and operate such Centers aimed at improving elementary and secondary school teachers' skills. The Senate bill has no comparable provisions.

The Senate recedes with an amendment to strike the words "help retain effective teachers in the profession by providing them with collegial interaction and support and opportunities for professional growth" in Sec. 531(B)(6).

The Managers note that such efforts to retain effective teachers will remain as a permissible activity within the scope of programs offered by Professional Development Resource Centers.

The Senate receded with an amendment also striking Sec. 535(b), Priorities and Preferences, and to strike the words "satisfactory assurances that teachers will be given adequate paid leave time away from classroom activities to participate in Center activities", contained in Sec. 535(c)(6), Minimum Requirements.

It is not the intent of conferees to prohibit local education agencies, with teacher contracts or other collective bargaining agreements in effect from allowing teachers

to receive paid leave time away from classroom activities, or to prohibit teachers to be paid for leave time in order to participate in Center activities.

The House amendment provides that the grants made to LEA's for the establishment and operation of Professional Development Resource Centers will cover 100 percent of the costs of such establishment.

The Senate recedes with an amendment requiring a 50 percent state and local matching requirement, so that in order to receive a grant under this part for the establishment of Professional Development Resource Centers, an applicant must provide assurances that the monies received will be matched by 50 percent. Of the nonfederal share, 50 percent of the dollar match must come from State Education Agency sources, and 50 percent from local sources. This match must be on a dollar-for-dollar basis, with no provision for in-kind credit on the state or local level.

(b) In the House amendment, Subpart 2 of Part C continues the authorization of the Leadership in Education Administration Development (LEAD) as authorized in P.L. 98-558, but transfers the program to title V of the Higher Education Act. The Senate bill has no comparable provision.

The Senate recedes with an amendment to repeal existing law under Title IX of P.L. 98-558, the Human Services Reauthorization Act of 1984.

CONTRACTING AUTHORITY.

The House amendment, but not the Senate bill, amends Section (b). Duration of Contract under the LEAD program, by inserting the words "subject to the availability of appropriations" at the end of the first sentence. The Senate recedes.

TEACHER SCHOLARSHIPS AND FELLOWSHIPS

The House amendment, under Subpart 1 of Part D continues a program which trains elementary and secondary teachers of handicapped children (Part C of current law). The Senate bill repeals this program. The House recedes.

RENAMING THE PERKINS' SCHOLARSHIP PROGRAM

The House amendment, but not the Senate bill, changes the name of the Carl D. Perkins Scholarship program to the "Congressional Teacher Scholarship Program". The Senate recedes.

CHANGES IN REPAYMENT PROVISIONS

The House amendment amends the Perkins Scholarship Program by striking the restriction in current law that permits recipients of such scholarships, who choose to teach in private schools, to repay their obligation only if they taught in private nonprofit schools located and serving students in a district eligible for assistance pursuant to Chapter 1 of ECIA.

The Senate recedes with an amendment providing that the teaching obligation, in lieu of repayment of a Perkins Scholarship, may be achieved by a individual's teaching in a private nonprofit, tax exempt elementary or secondary school in a shortage area, as defined by the Secretary of Education in consultation with the Chief State School Officer and appropriate representative of the Private school sector.

"Area" is defined to be both geographic, taking into account the needs of both state and local education agencies, as well as subject, taking into account shortages of teachers within a particular subject matter, a discipline, or by grade level. In further defining shortage areas, the Secretary is required to give special consideration to granting teachers repayment opportunities in areas where there are increasing trends towards the use of emergency certification of individuals in order to fill classroom vacancies, and in instances where states having "early-out" retirement incentives are creating shortages of classroom teachers.

RENAMING THE TALENTED TEACHER FELLOWSHIPS FOR CHRISTA MC AULIFFE

The Senate bill, but not the House amendment, renames the National Talented Teacher Fellowship Program for Mrs. Christa McAuliffe, who was to have been the first citizen in space. Selected from among thousands of her peers to fly into space on the NASA space shuttle The Challenger, Mrs. McAuliffe was killed along with six other astronauts when the Challenger exploded only 73 seconds into launch from Cape Canaveral, Florida, on January 28, 1986. The House recedes. The House had passed separate legislation (H.R. 4143 on April 9, 1986) renaming the program for Mrs. McAuliffe.

RESEARCH, DATA COLLECTION, ASSESSMENT, AND PLANNING

In Subpart 1 of Part E of the House amendment, research and data collection on the current and projected supply and demand for teachers in pre-school, elementary and secondary schools, by subject area and teaching specialty, is required. The Senate bill has no comparable provisions.

The Senate recedes with an amendment, striking the authorization of appropriations of $2 million for this Subpart, and transfers the research and data collection component to the Office of Education Research and Improvement. The House recedes with an amendment directing the OERI to complete these data collection activities.

MANDATORY ESTABLISHMENT OF STATE TASK FORCES FOR ASSESSMENT AND PLANNING

Subpart 2 of Part E of the House amendment, but not the Senate bill, mandates the establishment of a State Task Force on Teacher Training in every state, for the purposes of conducting assessments of state and local need for recruiting, retaining and improving the performance of instructional and administrative personnel in elementary and secondary schools within each State, and to develop state plans for meeting those needs.

Under the mandate, if states do not comply, no eligible entity within those states may apply for or receive a grant under any program authorized under title V.

The Senate recedes with an amendment which retains the mandate, but permits the Secretary to waive the requirement if states submit evidence that they are implementing programs to attain the same objectives by other means.

The Secretary is permitted to give special consideration to applications for grants from states who are meeting the mandate without Federal assistance. The amendment is not intended to penalize states who, in the absence of Federal appropriations, cannot afford to establish a Task Force, and the Conference committee intends that the waiver will be an incentive for those states to seek other sources of funding so that they will be in compliance with the mandate.

REAUTHORIZATION OF THE TAFT INSTITUTE

The House amendment authorizes the Robert Taft Institute for five fiscal years, from FY 1987 to FY 1991, at a funding level of $1 million in FY 1987, and then such sums. The Senate bill authorizes the Institute for two years, at a funding level of $750,000 for FY 1987 and FY 1988. The House recedes.

TEACHER WARRANTY STANDARDS

The House amendment, but not the Senate bill, provides authority for the Secretary of Education to develop and publish, in the Federal Register, Teacher Warranty Standards. The House recedes.

TITLE VI

LANGUAGE AND AREA CENTERS

(a) The general description of activities to be funded under language and area centers is identical in the House amendment and the Senate bill with the exception that the Senate bill gives added emphasis to foreign language research and training.

The House recedes.

(b) The House amendment retains the title "Graduate and Undergraduate Language Area Centers." The Senate bill renames this section "Language and Area Centers."

The House recedes.

(c) The House amendment uses the phrase "graduate and undergraduate"; the Senate bill substitutes "comprehensive" for this phrase.

The House recedes.

(d) The Senate bill and the House amendment establish a two-tiered fellowship program, with the second tier awarded on the basis of a national competition. The Senate bill grants eligiblity to students attending comprehensive centers. The House amendment grants eligibility to students attending all Sec. 602 centers.

The Senate recedes.

(e) The House amendment states recipients "shall be" certain individuals; the Senate bill states they "must be". The Senate recedes with an amendment clarifying that students can be engaged in a program developing competency-based foreign language training since competency-based training is not yet available in all foreign languages.

(f) The Senate bill, but not the House amendment, requires the use of a nationally referenced test only if such a test is available.

The House recedes with a technical amendment.

(g) Both the Senate bill and the House amendment establish a two-tiered fellowship program, with the second tier awarded on the basis of a national competition. The House amendment, but not the Senate bill, requires that the first tier be funded at 1985 levels before funding the newly authorized second tier.

The Senate recedes.

(h) The Senate bill, but not the House amendment, allows funds provided under this part to be used for travel which is part of a formal program of supervised study in accordance with rules prescribed by the Secretary.

The Senate recedes.

(i) The House amendment retains existing law authorizing both undergraduate and graduate (comprehensive) centers together, but the House bill amendment requires (under Sec. 608) that separate criteria for undergraduate and graduate centers be established for the purpose of evaluating and awarding grants. The Senate bill separates the graduate and undergraduate centers by establishing two separate parts under Sec. 602. The language for each of these parts is

virtually identical, with the exception that undergraduate centers are also authorized by the Senate bill to acquire foreign periodicals with funds.

The Senate recedes with an amendment providing detailed descriptions of the terms "comprehensive" and "undergraduate".

LANGUAGE RESOURCE CENTERS

(a) The House amendment uses the title "Language Resource Centers." The Senate bill uses "Foreign Language Resource Centers."

The House recedes.

(b) Both the Senate bill, and the House amendment both authorize new language resource centers. The Senate bill, but not the House amendment, permits the Secretary to enter into contracts with institutions, as well as make grants, for this purpose. The Senate bill, but not the House amendment, refers to the resource centers as language training centers.

The House recedes.

(c) Both the House amendment and the Senate bill include the development and application of proficiency testing as an allowable center activity, but the Senate bill, and not the House amendment, indicates that such testing should be appropriate to an educational setting and uses the word "comparable" in describing the type of measurement of skill level.

The House recedes.

(d) The Senate bill speaks of widespread dissemination; the House amendment says simply dissemination.

The House recedes.

INTERNATIONAL STUDIES AND FOREIGN LANGUAGE PROGRAMS

(a) The House amendment retains the title "Undergraduate International Studies and Foreign Language Programs"; the Senate bill renames the section "International Studies and Foreign Language Programs."

The Senate recedes.

(b) The House amendment and the Senate bill continue undergraduate international studies and foreign language programs. The House amendment strikes the term "comprehensive" in a single instance' while the Senate bill strikes the term throughout the section.

The House recedes.

(c) The House amendment, but not the Senate bill, grants eligibility to public and private non-profit organizations only if the proposed activity or project cannot be conducted by an eligible postsecondary education institution.

The House recedes.

(d) The House amendment, but not the Senate bill, includes as an eligible activity under this program model programs designed to improve and expand foreign language studies. Grants to institutions for these model programs would be based on a percentage of student enrollment in foreign languages at institutions, along with certain foreign language requirements.

The Senate recedes.

SUMMER INSTITUTES

(a) The House amendment uses the title "Intensive Summer Language Institutes"; The Senate bill uses the title "Summer Institutes for Foreign Languages".

The Senate recedes.

(b) Both the House amendment and the Senate bill authorize new summer language training institutes. Both indicate that grants made under this section may be used for intensive training in critical and neglected languages. The Senate bill, but not the House amendment, further states that grants may be used to pay stipends for students and faculty attending the institutes authorized by this section.

The House recedes with an amendment clarifying that eligible institutes can combine the purposes described in (A) and (B).

(c) The House amendment, but not the Senate bill, identifies improving the language skills of beginning or intermediate college and secondary school students and faculty as another primary goal of summer institutes.

The House recedes.

(d) The Senate bill requires that grants shall be made on the basis of recommendations made by peer review panels composed of broadly representative professionals. The House amendment requires peer review panels to be composed of representatives of institutions of higher education.

The House recedes.

RESEARCH

(a) The Senate bill, but not the House amendment, renames the section.

The Senate recedes.

(b) The Senate bill, but not the House amendment includes a new category of research on the application of proficiency tests in all disciplines.

The House recedes

PERIODICALS

The House amendment, but not the Senate bill, establishes a separate section with a separate authorization of $1 million for the acquisition of foreign periodicals.

The Senate recedes.

SELECTION OF GRANT RECIPIENTS

(a) The House amendment, but not the Senate bill, renames this section.

The Senate recedes.

(b) Both the House amendment and the Senate bill require that to the extent practicable, the Secretary shall award Title VI grants in such a way as to ensure an equitable distribution of assistance throughout the nation, based on peer review. However, the House amendment exempts all Sec. 602 grants from the distribution requirement; while the Senate bill exempts only Sec. 602(a) grants-comprehensive center grants.

The Senate recedes.

The Conferees have established separate criteria for comprehensive and undergraduate institutions for the selection of grants awarded under Sec. 602. The Conferees find that Graduate Area Centers historically have served as the centerpiece of this Title, and through their expertise have made significant contributions to the national interest. The purpose of establishing separate criteria is to allow undergraduate centers to be funded on the basis of equally rigorous but differing judgments of quality. Separate criteria will permit the Department of Education to assess more appropriately the relative strengths of undergraduate programs, which, by virtue of their commitments to language and area studies, merit recognition as national resources. The Conferees deem it necessary to emphasize that the creation of separate criteria should not be construed as an intention to shift the focus of this legislation away from its central purpose of sustaining and deepening the Nation's capacity for advanced training and expertise in foreign languages and international studies through support principally for comprehensive centers. Therefore, the Conferees expect that the amount of support provided in Fiscal Year 1986 to comprehensive and undergraduate centers shall remain at approximately the same ratio in subsequent years. The Conferees also caution the Department that the establishment of separate criteria should not be implemented in such a manner as to create an additional avenue of competition by comprehensive centers that are unable to compete successfully as comprehensive centers.

In addition, the Conferees require the Secretary to "set criteria for grants awarded under Sec. 602 by which a determination of excellence shall be made to meet the differing objectives of comprehensive and undergraduate institutions." The Conferees intend for the Department to utilize the general criteria to be used in the grant award process. The Department should not construe the mandate to set criteria to meet the differing objectives of comprehensive and undergraduate centers institutions as a requirement to develop new criteria for comprehensive centers if the current criteria is adequate.

BUSINESS AND INTERNATIONAL EDUCATION

The House amendment includes, as an eligible activity, study abroad to be combined with an internship in international business. The Senate bill contains no similar provision.

The Senate recedes with an amendment reducing the scope of this program. In establishing internships abroad as one of the eligible activities under this Part, the Conferees intend to enhance foreign language ability in the languages of those countries in which there is a great amount of international business activity with the United States or in those countries with which we wish to promote new avenues of business, but for which there is a shortage of persons proficient in those languages.

ENDOWMENT FOR INTERNATIONAL STUDIES

The Senate bill, but not the House amendment, authorizes a new section, a study of the National Endowment for International Studies, to assess weaknesses and strengths in international education and foreign language studies in our nation at all levels and to determine the feasibility and structure of an endowment.

The House recedes.

The mandated study anticipates that the existing and ongoing studies conducted by various higher education and professional associations will be used as a component of the Departmental recommendations.

AUTHORIZATION OF APPROPRIATIONS

The Authorizations for Title VI, Part A (excluding Sec. 607) follow:

[In millions of dollars]

Fiscal year	Senate bill	House Amendment	Conference Agreement
1987	35,000,000	70,000,000	49,000,000
1988	36,750,000	(1)	(1)
1989	38,587,500	(1)	(1)
1990	40,567,875	(1)	(1)
1991	42,775,312	(1)	(1)

[1] Such sums.

The Authorizations for Sec. 607, Part A follow:

[In millions of dollars]

Fiscal year	Senate bill	House Amendment	Conference Agreement
1987	0	1,000,000	1,000,000
1988	0	(1)	(1)
1989	0	(1)	(1)

[In millions of dollars]

Fiscal year	Senate bill	House Amendment	Conference Agreement
1990	0	(1)	(1)
1991	0	(1)	(1)

[1] Such sums.

The Authorizations for Title VI, Part B follow:

[In millions of dollars]

Fiscal year	Senate bill	House Amendment	Conference Agreement
1987	2,200	$7	$5
1988	2,310,400	(1)	(1)
1989	2,425,600	(1)	(1)
1990	2,546,900	(1)	(1)
1991	2,674,250	(1)	(1)

[1] Such sums.

TITLE VII—CONSTRUCTION, RECONSTRUCTION AND RENOVATION OF ACADEMIC FACILITIES

GENERAL PURPOSES

(a) The House amendment, but not the Senate bill, amends the general purposes to allow funds to be used to "maintain" special research and instructional equipment. The Senate recedes.

(b) In the general statement of purposes of Title VII the House amendment, but not the Senate bill, rewords the purpose related to energy usage. The Senate recedes.

(c) The House amendment, but not the Senate bill also adds four new general purposes for the uses of resources provided by Title VII. These are to comply with Federal and state requirements for the disposal, treatment and storage of hazardous wastes, to provide facilities for advanced skill training programs that relate to emerging technologies and skill needs, to enable institutions to deal with unusual enrollment increases or significant internal programmatic enrollment shifts, and to preserve significant architecture. The Senate recedes.

PRIORITY

The House amendment, but not the Senate bill, provides for priority in making grants to renovation projects. The Senate recedes.

AUTHORIZATIONS.

The House amendment provides that no funds may be appropriated for Parts A and B for any fiscal year unless at least $20 million is appropriated for the College Construction Loan Insurance Association. The Senate recedes.

The Senate bill and the House amendment provide the following authorizations for Part A, grants for undergraduate facilities.

Fiscal year	House bill	Senate bill
1987	$50,000,000	$5,000,000
1988	(1)	5,525,000
1989	(1)	6,076,250
1990	(1)	6,655,063
1991	(1)	7,262,816

[1] Such sums.

The Senate bill and the House amendment provide the following authorizations for Part B, grants for graduate facilities:

Fiscal year	House bill	Senate bill
1987	$50,000,000	$5,000,000
1988	(1)	5,525,000
1989	(1)	6,076,250
1990	(1)	6,655,063
1991	(1)	7,262,816

[1] Such sums.

The authorizations for Part C, loans for academic facilities, are as follows:

Fiscal year	House bill	Senate bill
1987	$50,000,000	$18,795,000
1988	(1)	19,734,475
1989	(1)	20,721,488
1990	(1)	21,757,562
1991	(1)	22,845,440

[1] Such sums.

The authorizations for annual interest grants (Part D of Title VII of the House amendment and Section 734 of the Senate bill and current law) are as follows:

Fiscal year	House bill	Senate bill
1987	(1)	$24,675,000
1988	(1)	25,908,750
1989	(1)	27,204,188
1990	(1)	28,564,397
1991	(1)	29,992,617

[1] Such sums.

The College Construction Loan Insurance Association (Part E of Title VII of the House amendment and Part F of Title VII of the Senate bill) has a total authorization of $11 million in the Senate bill and $50 million for FY 1987 and each of the four succeeding fiscal years in the House amendment.

The conference substitute provides for the following authorizations for FY1987:

Part A $15,000,000
Part B $10,000,000
Part C $25,000,000
Part D $25,000,000
Part E $20,000,000

MAINTENANCE

Of the portion of a Part A grant that is to be used for instructional or research equipment and providing a suitable environment for such equipment the House amendment, but not the Senate bill, allows up to 15% to be used to maintain such equipment and environment. These funds may also be used for upgrading the equipment and environment for a period of three years after the date of initial use. The Senate recedes with an amendment modifying the percentage to 10% , including instrumentation and requiring that the recipient deem any upgrading to be essential to the continued utility of the research or instructional instrumentation and equipment.

PEER REVIEW

The House amendment, but not the Senate bill, adds a new requirement that the Secretary use a "national peer review panel" to make recommendations to the Secretary in awarding Part B grants. The panel is to make its recommendations to the Secretary based on their assessment of the effectiveness of the program in the proposed use of Federal assistance and the extent to which the grant will assist in overcoming deficiencies in existing equipment and facilities. The Senate recedes with an amendment requiring that the peer review panel be broadly representative of all types and classes of higher education institutions.

CONTENTS OF APPLICATION

The House amendment, but not the Senate bill, specifies the contents of an application for a Part B grant to include a description of the basic research programs of the applicant, an indication of the ability of the applicant to make effective use of the funds, a description of the applicant's advanced training programs, an assessment of the applicant's past and projected contributions to the growth of knowledge, and such other information as the Secretary deems necessary to carry out the purposes of the program. The House recedes.

INSTITUTIONAL SHARE

The House amendment, but not the Senate bill, provides that the institution's share of the cost of a facility for which a Part B grant is received may not be derived from another Federal program. The Senate recedes.

MAINTENANCE

Of the portion of a Part B grant that is to be used for instructional or research equipment and providing a suitable environment for such equipment the House amendment, but not the Senate bill, allows up to 15% to be used to maintain such equipment and environment. These funds may also be used for upgrading the equipment and environment for a period of three years after the date of initial use. The Senate recedes with an amendment modifying the percentage to 10% , including instrumentation and requiring that the recipient deem any upgrading to be essential to the continued utility of the research or instructional instrumentation and equipment.

LOAN TERMS

The House amendment, but not the Senate bill, changes the current law requirement for Part C so that loans bear an interest rate determined annually which shall not be more than one quarter percent above the average annual interest on U.S. securities for the preceding year or 5.5%, whichever is less. The Senate recedes.

MAINTENANCE

Of the portion of a Part C loan that is to be used for instructional and research equipment and providing a suitable environment for such equipment, the House amendment, but not the Senate bill, permits the use of up to 15% to maintain such equipment and environment. These funds may be used for upgrading the equipment and environment for a period of three years after the date of initial use. The Senate recedes with an amendment modifying the percentage to 10%, including instrumentation and requiring that the recipient deem any upgrading to be essential to the continued utility of the research or instructional instrumentation and equipment.

ALLOWABLE DISCOUNTS

(a) The House amendment, but not the Senate bill, requires the Secretary of Education to consult with the Secretary of the Treasury in determining the appropriate discount that may be offered as an inducement to early repayment.

(b) The House amendment provides that the discounted price which may be offered on a Part C loan "shall be the present value of the scheduled future payments on the loan discounted by using, as an imputed interest rate, the current market yields on outstanding marketable obligations of the United States having comparable maturities."

(c) The Senate amendment provides that the discounted price which may be offered on a Part C loan shall be determined by "taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan, if (A) the repayment is made from non-Federal sources, (B) the Secretary has received satisfactory assurances that the housing or other educational facilities financed with the loan will continue to be used for purposes related to the original term of the loan and (C) the repayment is made prior to October 1, 1991."

The conference substitute provides that both with respect to Part C and the College Housing Loan program the Secretary shall compute the discount which may be offered to a borrower as an inducement to early repayment in an amount determined by the Secretary to be in the best financial interests of the Government, taking into account the yield on outstanding marketable obligations of the United States having maturities comparable to the remaining term of such loan. If the Secretary offers a discount as an inducement to early repayment, such offer shall be available without regard to whether the borrower is delinquent or in default on the loan on October 1, 1986, but the Secretary shall refuse to make such offer to a borrower that becomes delinquent or goes into default after that date. The discount offered shall apply to the entire amount outstanding on the loan (including any amount owed with respect to payments that are overdue). It is the intent of the conferees that the Department of Education consider all loans on which there is outstanding principal as eligible to participate in the discounting programs and that all institutions with outstanding principal due on loans granted from the Department of Education have the first option to purchase their loans from the Department at the discounted rate. It is the very strong view of the conferees that institutions participating regardless of present status (in default or with workout agreements with the Department) do not have to come current on the outstanding amounts owed to the Department in order to participate in the discounting program.

INTEREST GRANTS

The House amendment, but not the Senate bill, establishes the existing program of Annual Interest Grants as a separate Part D of Title VII. The Senate recedes.

REPEAL OF ACADEMIC FACILITIES LOAN INSURANCE

The House amendment, but not the Senate bill, repeals the Academic Facilities Loan Insurance Program. The Senate recedes.

ESTABLISHMENT OF COLLEGE CONSTRUCTION LOAN INSURANCE ASSOCIATION

(a) Both the House amendment and the Senate bill create a new College Construction Loan Insurance Association (the Corporation) as a part of Title VII. It is Part E of Title VII in the House amendment and Part F of Title VII in the Senate bill. The Senate recedes.

(b) The Senate bill allows guarantees to be used for an educational facilities purpose. The House amendment allows guarantees to be used substantially for an educational facilities purpose. The House recedes with an amendment modifying the definition of an education facilities purpose to include activities related to the payment of financing or transaction costs.

(c) The House amendment permits the Corporation to issue letters of credit and undertake obligations and commitments "for the purpose of increasing the availability of funds for educational facilities and equipment." The Senate bill limits the use of these instruments only for "an educational facilities purpose." The House recedes.

(d) The Senate bill, but not the House amendment, provides that "no action under section 1491 of Title 28, United States Code (commonly known as the Tucker Act) shall be allowable against the United States based on the actions of the Corporation." The House recedes.

(e) The Senate bill, but not the House amendment, provides that the business activities of the Corporation shall always be limited to education facilities purposes. The House recedes.

(f) The Senate bill, but not the House amendment, requires that all of the borrowings and any property acquired by the Corporation shall be used for educational facilities purposes which do not qualify under usual business practices because the educational institutions cannot obtain financing, loan guarantees or loan insurance on reasonable terms. The House recedes with an amendment providing that the corporation shall be permitted to reinsure bonds for facilities purposes with the following restrictions: during the first full year of the corporation's operation, not less than 10% of the aggregate dollar amount of bond issues for which the reinsurance is provided shall be on behalf of institutions which meet the financial criteria indicated below. During the second full year of the corporation's operation, not less than 30% of the aggregate dollar amount of the bond issues for which reinsurance is provided shall be on behalf of institutions which meet the financial criteria. During the third full year of the corporation's operation, and during each year thereafter, not less than 50% of the aggregate dollar amount of the bond issues for which the reinsurance is provided shall be on behalf of institutions which meet the financial criteria. Bond issues which are both insured and reinsured by the corporation may not be counted toward the fulfillment of these requirements. The corporation shall be permitted to directly guarantee and insure bonds, loans, debentures, notes, evidences of debt, leases of personal, real or mixed property, and issue letters of credit only on behalf of institutions which meet the financial criteria. During the first full year of the corporation's operation, not less than 10% of the aggregate dollar amount of the total obligations undertaken by the corporation in that year shall consist of these direct guarantee and insurance activities. During the second full year of the corporation's operation, not less than 30% of the aggregate dollar amount of the total obligations undertaken by the corporation in that year shall consist of these direct guarantee and insurance activities. During the third full year of the corporation's operation, and during each year thereafter, not less than 50% of the aggregate dollar amount of total obligations undertaken by the corporation in that year shall consist of these direct guarantee and insurance activities. The financial criteria for determining which institutions qualify for the Corporation's services in accordance with the above requirements are as follows: Is that the institution of higher education or the proposed educational facility project at such institution must be listed by a nationally recognized statistical rating organization at any rating below the third highest rating of such nationally recognized statistical rating organization. The conferees intend that in order for an institution of higher education or a proposed educational facility project at an institution to be eligible for any of the Corporation's reinsurance and direct insurance and guarantee services, the institution or project must have a financial rating from a nationally recognized statistical rating organization. While the conferees realize that a limited number of institutions which have not acquired such a rating will have to do so in order to be eligible for the Corporation's services, the conferees also recognize that the use of such ratings is the only proven way for the Corporation to objectively assess the relative financial strengths of different institutions. The Corporation shall demonstrate and provide evidence of the fulfillment of the percentage requirements described in the reinsurance and the direct guarantee and insurance sections as part of the annual report of the Corporation's operations and activities submitted to Congress and the President. The Corporation shall make a good faith effort to publicize the availability of its reinsurance and direct insurance and guarantee activities and make such information available to institutions of higher education throughout the nation. The conferees expect there to be enough demand for the Corporation's services to enable it to comply with the annual requirements and limitation placed on its reinsurance and direct insurance and guarantee services. However, the conferees understand that during certain calendar years and under certain circumstances, it may be impossible for the corporation to meet the percentage requirements because there is a demonstrated lack of demand for the corporation's reinsurance or direct insurance and guarantee activities. Under such circumstances, the corporation must, as part of its annual report to Congress and the President, provide assurances that there was a good faith effort to publicize its services and demonstrate and provide evidence that its failure to meet these percentage requirements was solely the result of a lack of demand.

(g) In the Senate bill, but not the House amendment, incorporators of the Corporation are also required to establish uniform criteria to implement these requirements. The Senate recedes. Because the Corporation will use objective financial criteria to determine which institutions are eligible for its services, this requirement is no longer necessary.

(h) The Senate bill, but not the House amendment, states that the Corporation may not serve the educational facilities needs of any institution which discriminates on the basis of race, color, religion, national origin, sex or handicapping condition. Institutions are required to certify to the Corporation that they do not discriminate on any of these bases. The House recedes with an amendment providing that with respect to "religion" this prohibition shall not apply to an educational institution which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of this provision would not be consistent with the religious tenets of such an organization.

ORGANIZATION OF ASSOCIATION.

The Senate bill, but not the House amendment, requires that if the Secretary of Education or the Secretary of the Treasury fail to appoint incorporators within the time

specified, the Student Loan Marketing Association can only name these incorporators after consultation with the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor. The House recedes with an amendment providing that the failure of the Secretary of Education or the Secretary of the Treasury to make any one or more appointments to the board of the corporation shall not affect or diminish the right and power of the other directors who have been appointed or elected to assume and carry out their duties as directors and the board so constituted to act for all purposes as the full board of the corporation.

CAPITAL

The House amendment provides that the capital of the corporation raised through the sale of voting common stock in the first six months may not exceed $30 million, while the Senate bill establishes this limit at $16 million.

The House amendment provides that the capital of the corporation raised in each of the four years following the initial six month period through the sale of voting common stock may not exceed $55 million per year. The Senate bill establishes this limit at $41 million per year.

The House amendment but not the Senate bill, states that such shares shall be issued and sold to the Secretary and SLMA in the ratio of 5:1.

The House amendment permits the Secretary of Education to purchase up to $25 million in voting common stock of the Corporation during each of its first five years in existence, subject to the availability of appropriations. The Senate bill limits these annual purchases to not more than $11 million.

The House amendment authorizes the Corporation to offer for subscription and purchase voting common stock in years one through five. The Senate bill so provides for years two through five.

The Senate recedes with an amendment providing that the Secretary of Education is authorized and directed to subscribe to and purchase, in each of the 5 years following the incorporation of the corporation, voting common stock of the corporation having an aggregate purchase price of not more than $20 million; that the Student Loan Marketing Association is authorized to subscribe to and purchase during the 5 years following the incorporation of the corporation voting common stock of the corporation having an aggregate purchase price of $25 million; that the corporation is authorized to offer for subscription and purchase to the general public during the 5 years following the incorporation of the corporation, voting common stock having an aggregate purchase price of $100 million; and that not less than 40% of such stock shall be set aside for purchase by institutions of higher education prior to being offered to the general public.

FEDERAL GUARANTEE

The Senate bill, but not the House amendment provides that "no obligation which is insured, guaranteed or otherwise backed by the Corporation, shall be deemed to be an obligation which is guaranteed by the full faith and credit of the United States." The House amendment provides that "no obligation which is insured, guaranteed or otherwise backed by the Corporation, shall be deemed to be an obligation which is Federally guaranteed within the meaning of section 103(h) of the Internal Revenue Code of 1954, as amended." The House amendment also provides that "the priority established in favor of the United States by section 3466 of the Revised Statutes (31 U.S.C. 191) shall not establish a priority over the indebtedness of the Corporation." The House recedes with an amendment providing that no obligation which is insured, guaranteed, or otherwise backed by the corporation, shall be deemed to be an obligation which is guaranteed by the full faith and credit of the United States; that no obligation which is insured, guaranteed, or otherwise backed by the corporation, shall be deemed to be an obligation which is guaranteed by the Student Loan Marketing Association; and that these provisions shall not affect the determination of whether such obligation is guaranteed for purposes of Federal income taxes.

EXEMPTION FROM INSURANCE LAWS

The House amendment, but not the Senate bill, exempts the Corporation and its activities from insurance laws and qualification laws of any state, territory, possession, commonwealth, dependency of the United States, and of the District of Columbia until the Student Loan Marketing Association acquires all of the voting common stock of the Corporation owned by the Secretary of Education. The House recedes.

SALE OF SECRETARY'S STOCK

(a) The Senate bill, but not the House amendment, provides that if the Secretary of Education decides to sell his stock in the Corporation, he must advise the Senate Committee on Labor and Human Resources and the House Education and Labor Committee in writing of his plans thirty days prior to the sale. The House recedes.

(b) The Senate bill, but not the House amendment, provides that the sale price of the Corporation stock held by the Secretary of Education shall in no event be less than the original issuance price. The House recedes.

TERMINATION OF OWNERSHIP

The House amendment, but not the Senate bill, provides that Section 757 becomes ineffective if SLMA acquires all the voting common stock owned by the Secretary. The House recedes.

USE OF SALE PROCEEDS

The House amendment provides that the proceeds of the sale of the Corporation's stock held by the Secretary of Education will be paid into a fund administered by the Corporation on behalf of the Secretary for the purpose of providing guarantees and insurance to institutions of higher education which do not qualify for the Corporation's programs because of their inability to comply with its financial criteria. The Senate bill provides that these proceeds will be deposited in the general fund of the Treasury. The House recedes.

COLLEGE HOUSING

(a) The House amendment and the Senate bill incorporate with modifications, the existing college Housing Loan program into Title VII. The Senate bill makes this program Part D of Title VII, while the House amendment makes it Part F of Title VII. The Senate recedes.

(b) The Senate bill provides that College Housing Loans will bear an interest rate determined by "the Secretary of the Treasury which shall not be more than the average current yield on outstanding obligations of the United States of comparable maturities in the month preceding the month in which the contract for such loan is made." The House amendment provides that the interest rate on these loans will be determined by the Secretary of Education and will be "not more than the lower of (A) 5.5 percent per annum, or (B) the total of one-quarter of 1 percent per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury" for the program. The Senate recedes.

(c) The House amendment specifies a repayment period of not exceeding fifty years; the Senate bill specifies a period of not exceeding forty years. The Senate recedes.

(d) The Senate bill, but not the House amendment, provides that borrowings by the Secretary of Education from the Secretary of the Treasury for the program after the effective date of this reauthorization "Shall bear interest at a rate determined by the Secretary of the Treasury which shall not be more than the average current yield on outstanding obligations of the United States of comparable maturities in the month preceding the month in which the contract for such loan is made." The House recedes.

(e) The Senate bill, but not the House amendment provides that no College Housing loan application may be made for ten years after the date on which an undergraduate postsecondary educational institution received a loan under this program. The House recedes with a clarifying amendment.

WELCH HALL

The House amendment, but not the Senate bill, authorizes $2 million for the renovation and restoration of Welch Hall at Eastern Michigan University. The Senate recedes.

ACADEMIC HEALTH EDUCATION CENTER

The House amendment, but not the Senate bill, authorizes $1.8 million for up to 50% of the cost of construction of an Academic Health Education Center facility at the Rochester Institute of Technology. The Senate recedes.

ESTEY HALL

The House amendment, but not the Senate bill, authorizes $550,000 for the renovation and restoration of Estey Hall at Shaw University in Raleigh, North Carolina. The Senate recedes.

ELECTRONIC NETWORK

The House amendment, but not the Senate bill, authorizes $2 million to provide assistance to a four-year postsecondary institution in cooperation with school districts, for the purpose of renovating, constructing, and equipping a facility incorporating such technological advances as two-way interactive video communications to extend an existing electronic instructional network for providing college and advanced level courses to talented and gifted secondary school students. The Senate recedes.

MAINTENANCE

The House amendment, but not the Senate bill, provides a definition of the term "maintenance" for purposes of Title VII. The Senate recedes.

REPEAL

The House amendment, but not the Senate bill, repeals the College Housing loan program in the Housing Act of 1950. The Senate recedes.

FACILITIES

The conference substitute provides that the Secretary shall provide financial assistance to the Bethune Cookman College in Volusia County in Florida. The Assistance made available shall be used for the con-

struction of the Mary McLeod Bethune Fine Arts Center Building and for the acquisition of related equipment and real property. There are authorized to be appropriated $6.2 million to carry out this provision.

Senate recedes with an amendment authorizing $1.3 million to pay. the costs of a Behavioral Science Facility at the University of Connecticut, Storrs, Connecticut, and $300,000 to help establish a doctoral degree program in Business Administration at the University of Rhode Island, Kingston, Rhode Island.

TITLE VIII—COOPERATIVE EDUCATION

AUTHORIZATION OF APPROPRIATIONS

(a) The Senate bill authorizes:
FY 1987, $15,120,000,
FY 1988, $15,376,000,
FY 1989, $16,670,000,
FY 1990, $17,500,000,
FY 1991, $18,380,000.

(b) Requires that not less than 75% of appropriations be used for section 802;

(c) Limits appropriations to not more than 12½% of appropriations the amounts available for demonstration grants under section 803;

(d) Limits to not more than 10% of appropriations the amount available for training and resource centers under section 803; and

(e) Limits to not more than 2½% the amount of appropriations available for research under section 803.

The House amendment authorizes:

(a) $25,000,000 for institutional grants under section 802 and $4,000,000 for demonstration, training, and research grants under section 803, for FY 1987; and

(b) such sums as may be necessary for each of the four succeeding fiscal years.

The House recedes.

LIMITATION

The House amendment, but not the Senate bill, limits appropriations for section 803 to not more than 20% of the total.

The House recedes.

MAXIMUM GRANT

The Senate bill limits the maximum award under section 802 to combinations of institutions to the product of $345,000 times the number of institutions participating in the combination, while the House amendment limits the maximum award to such institutions to $500,000.

The Senate recedes.

INSTITUTION-WIDE PROGRAMS

The House amendment, but not the Senate bill, authorizes the Secretary to make grants, on a competitive basis, from not less than 20% of the sums appropriated under section 802, to higher education institutions which provide institution-wide cooperative education programs for their students and make major commitments of their own resources to those programs. The House recedes.

2-YEAR PROGRAM

The Senate bill, but not the House amendment requires that cooperative education programs at institutions, offering 2-year programs that are acceptable for full credit toward a bachelor's degree, be made available to students who are certificate candidates and who are carrying at least ½ the normal full-time academic workload.

The House recedes.

Limitation

(a) The Senate bill, but not the House amendment, limits the duration of grants to individual units of higher education institutions as well as individual institutions.

The Senate recedes.

(b) The Senate bill, but not the House amendment, specifies that the 5-year limitation shall apply whether the grant was received before or after the enactment of the Cooperative Education Act of 1985.

The House recedes.

Federal share.

The Senate bill provides that the Federal share may not exceed 90% for the first year; 80% for the second year; 70% for the third year, 60% for the fourth year; and 30% for the fifth year. The House amendment provides that the Federal share may not exceed 100%, 90%, 80%, 60% and 30% respectively.

The House recedes.

Reapplication.

The Senate bill and the House amendment limit the duration of grants to five years but the Senate bill allows an institution to apply for assistance again if the institution—

(a) has received a grant for five years;

(b) conducts a cooperative education program for at least two academic years without Federal assistance and expends for each such year an amount at least equal to the total cost of the program in the last year in which the institution received assistance; and

(c) provides statistics in its application on the number of students enrolled in the program, the number of institutional personnel, and the incomes of the students enrolled in the program for each such year.

The House amendment requires an institution to maintain a cooperative education program for at least five fiscal years without Federal assistance, at a level at least equal to the amount expended for the program in the last year in which it received assistance, before its eligibility can be reinstated. The House bill does not require the submission of statistics.

The House recedes.

Favorable reception

The Senate bill, but not the House amendment, requires special consideration be given to applications which have a favorable reception from private and public employers.

The House recedes.

Special consideration

The Senate bill, but not the House amendment, requires the Secretary to give special consideration to applications which demonstrate the institution's commitment to extending cooperative education on an institution-wide basis.

The House recedes.

Special populations

The House amendment, but not the Senate bill, requires the Secretary to give special consideration to institutions serving special populations.

The Senate recedes.

New recipients

The House amendment, but not the Senate bill, requires that the number of awards to newly participating institutions shall be no fewer than the number of institutions becoming ineligible after receiving awards for five years.

The House recedes.

Partnerships and comprehensive programs

The Senate bill, but not the House amendment, authorizes the Secretary to enter into contracts for conducting training and resource centers designed to support partnerships between a comprehensive cooperative education institution and another institution to assist such other institution in developing and expanding an existing cooperative education program or to establish comprehensive cooperative education programs.

The House recedes.

Section 804

The House amendment, but not the Senate bill, contains a section 804 that requires the Secretary to make competitive grants from not less than 20% of the appropriations for section 802, to institutions, which are not receiving Federal assistance but which are carrying out comprehensive cooperative education programs. Fifty percent of each grant must be used by the institutions to assist other institutions in developing or expanding their existing cooperative education programs.

The House recedes.

TITLE IX

Minority participation

The House amendment amends Part A of Title IX to become "Grants to Institutions to Encourage Minority Participation in Graduate Education."

The Senate recedes with a amendment deleting Subpart 2 and maintaining the basic parameters of the House language with respect to Subpart 1. The amendment ensures that existing Title IX programs will receive adequate funding before appropriations are made for the new initiative.

In addition the amendment renames the G*POP program the Patricia Roberts Harris Fellowship program and increases stipends to $10,000.

The Conferees intend that the new Subpart 1 program will be implemented by institutions principally through the provision of summer research internships, augmented by seminars and related educational activities.

Minimum grant

The Senate bill repeals the requirement in Fellowships for Graduate and Professional Study that grants to single institutions cannot be less than $75,000 while the House amendment requires that the minimum grant not be less than $100,000.

The House recedes.

Application evaluation

The House amendment, but not the Senate bill, requires the Secretary in evaluating applications for Graduate and Professional Fellowships to assess the extent to which: Applicants previously receiving grants under Title IX B achieved the objectives of the previous grants; and the applicant has demonstrated high quality in its academic program.

The House recedes. The Conferees expect that the Secretary, in evaluating grant applications, will assess the extent to which applicants can document an effective commitment to minority graduate and professional education and the extent to which applicants which previously received grants under this part achieved the specified objectives for students previously supported under this program.

Mining fellowship

The House amendment, but not the Senate bill, eliminates grants for mining fellowships.

The Senate recedes.

Award amounts

The Senate bill requires that the minimum amount that may be paid to any institution for any student may not be less than $4,200, while the House amendment requires that the Secretary pay amounts to

institutions for students equal to amounts paid by the National Science Foundation and other similar agencies.

The Senate recedes.

Individual award

The House amendment, but not the Senate bill, allows maximum graduate and professional fellowship award of $10,000. The Senate bill limits awards to $7,000.

The Senate recedes.

Jacob J. Javits fellowship

The Senate bill, but not the House amendment, amends the National Graduate Fellows Program to refer to recipients as "Jacob J. Javits Fellows."

The House recedes with an amendment.

Fellowship board

The Senate bill, but not the House amendment, requires that the members of the Fellowship Board:

(a) be appointed by the Secretary instead of the President;

(b) be reduced to 13 individuals between July 31, 1987 and August 1, 1989, 11 individuals between August 1, 1989 and August 1, 1991, and 9 individuals thereafter;

(c) have experience in doctoral education in the arts, humanities, and social studies;

(d) establish general policies for the program;

(e) establish general criteria for distribution of fellowships;

(f) appoint panels of academic scholars with distinguished backgrounds in the arts, humanities, and social sciences;

(g) prepare and submit to Congress a report at least once every 3 years on modifications in the program.

The House recedes.

The Conferees wish to highlight the expectation that the Secretary will assure appointees to the Board are well respected scholars with broad experience in education at the doctoral level. The conference agreement modifies the responsibilities of the Board to focus on the development of general policies and not specific information. Although the Conference agreement reduces the size of the Board from fifteen to nine members, the intent of the change is not to alter the tenure of current members of the Board.

Term of office

The Senate bill, but not the House amendment, limits terms of office to 4 years.

The House recedes.

Selection criteria

The Senate bill, but not the House amendment, deletes the requirement that the number of recipients each year in each field not exceed the number allocated to that field by the Fellowship Board.

The Senate recedes.

Effective date

The Senate bill, but not the House amendment, makes reconstitution of the Board effective with appointments to fill vacancies.

The House recedes.

Stipends

The House amendment, but not the Senate bill, requires that fellowships provide a level of support comparable to other graduate fellowship programs in the science and engineering fields. The Secretary is also required to pay $6,000 to institutions for each fellowship recipient at the institution.

The Senate recedes.

The Conferees intend that stipends shall be adjusted so as not to exceed a fellow's demonstrated level of need, based on measurements of need that reflect the financial circumstances of doctoral students and the purpose of the program to encourage highly talented students to undertake graduate study. Institutions should feel free to supplement stipends for teaching or research activities required as conditions for receipt of a doctoral degree.

Graduate assistance in areas of national need

The House amendment, but not the Senate bill, creates a program for "Graduate Assistance in Areas of National Need," which provides a fellowship program through departments and programs of higher education institutions to assist graduate students in areas of national need. Awards are also made to institutions for improving the quality of their academic programs.

The Senate recedes with an amendment requiring that all grant monies received by an institution under this part be used for support of fellowship stipends and cost of education payments in lieu of tuition and fees.

The Conferees are concerned that many eligible students may leave the universities in which they are enrolled in order to find the resources necessary for their dissertation research. Certain non degree granting institutions, such as museums, cooperating with graduate schools, provide a large portion of the research resources and instruction received by these students. In recognition of this fact, the Conferees provide that students at these non degree granting institutions can compete for fellowships. Conferees intend that students at non degree granting institutions should not receive preference over students at degree granting institutions.

Preference

The House bill, but not the Senate bill, amends the Law School Clinical Experience Programs to include a preference for programs providing legal experience in the preparation and trial of actual cases, including administration cases and the settlement of cases outside the courtroom. The Senate recedes.

AUTHORIZATIONS

The authorizations for Subpart 1 of Grants to Institutions to Encourage Minority Education are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	NA	20	10
1988	NA	(1)	(1)
1989	NA	(1)	(1)
1990	NA	(1)	(1)
1991	NA	(1)	(1)

[1] Such sums.

The authorizations for Subpart 2 of Grants to Institutions to Encourage Minority Education are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	NA	15	NA
1988	NA	(1)	NA
1989	NA	(1)	NA
1990	NA	(1)	NA
1991	NA	(1)	NA

[1] Such sums.

The authorizations for Fellowships for Graduate and Professional Study are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	18.480	30	35
1988	19.404	(1)	(1)
1989	?????	(1)	(1)
1990	21.393	(1)	(1)
1991	22.463	(1)	(1)

[1] Such sums.

The authorizations for National Graduate Fellows Program are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	2.625	10	5
1988	2.756	(1)	(1)
1989	2.894	(1)	(1)
1990	3.039	(1)	(1)
1991	3.191	(1)	(1)

[1] Such sums.

The authorizations for Graduate Assistance in Areas of National Need are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	NA	50	30
1988	NA	(1)	(1)
1989	NA	(1)	(1)
1990	NA	(1)	(1)
1991	NA	(1)	(1)

[1] Such sums.

The authorizations for Assistance for Training in the Legal Profession are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	1.575	5	5
1988	1.6537	(1)	(1)
1989	1.763437	(1)	(1)
1990	1.823259	(1)	(1)
1991	1.874421	(1)	(1)

[1] Such sums.

The authorizations for Law School Clinical Experience are as follows:

[In millions of dollars]

Fiscal year	Senate bill	House bill	Agreement
1987	1.575	5	5
1988	1.6537	(1)	(1)
1989	1.763437	(1)	(1)
1990	1.823259	(1)	(1)
1991	1.874421	(1)	(1)

[1] Such sums.

TITLE X

National board appointment

(a) The House amendment, but not the Senate bill, changes the appointment of the FIPSE Board by the Secretary to appointment by the President with the advice and consent of the Senate and the President also designates the Chairman of the Board.

The House recedes.

(b) The House amendment, but not the Senate bill, makes conforming changes in terms and appointments with the change to Presidential appointment of the Board.

The House recedes.

Priorities

The House amendment, but not the Senate bill, provides that the FIPSE Board will establish the priorities for making annual awards.

The House recedes.

Scope

The House amendment, but not the Senate bill, expands the functions of the Board to include advising the Secretary and the Director on the priorities for improving postsecondary education.

The Senate recedes.

Secretary's authority

The House amendment, but not the Senate bill, prohibits the Secretary from setting or modifying the Board's priorities.

The House recedes.

Authorizations

The authorizations for FIPSE are as follows:

Fiscal year	House amendment	Senate bill	Conference agreement
1987	$20,000,000	$13,350,000	$14,500,000
1988	(1)	14,010,000	(1)
1989	(1)	14,710,000	(1)
1990	(1)	15,450,000	(1)
1991	(1)	16,220,000	(1)

[1] Such sums.

MISIP

Both the House amendment and the Senate bill reauthorize the Minority Institutions Science Improvement Program (MSIP) for fiscal years 1987 through 1991.

The House amendment, but not the Senate bill, delineates the authority of the Minority Institutions Science Improvement Program.

The Senate recedes.

Minority support

The House amendment, but not the Senate bill, delineates the authority for the Minority Support in Science and Engineering Programs.

The Senate recedes.

Special service project

The House amendment, but not the Senate bill, delineates the authority for the Special Service Projects Programs.

The Senate recedes.

Authorizations

(a) The authorizations for MISIP are as follows:

Fiscal year	House bill	Senate bill	Conference agreement
1987	$12,000,000	$5,250,000	$7,500,000
1988	(1)	5,125,000	(1)
1989	(1)	5,789,125	(1)
1990	(1)	6,078,580	(1)
1991	(1)	6,982,500	(1)

[1] Such sums.

(b) The House amendment, but not the Senate bill, also specifies that 50% of the funds appropriated under this part will be used for the Minority Science Improvement Program, 33.33% will be used for the Minority Support in Science and Engineering Programs and 16.67% for the Special Service Projects Program.

The Senate recedes.

Repealer

The House amendment, but not the Senate bill, repeals the establishment of the Bureau of Occupational and Adult Education and the Community College Unit.

The Senate recedes.

Community services

The Senate bill, but not the House amendment, adds a new Part B to Title X which establishes a discretionary grant program to institutions of higher education and other public agencies and nonprofit organizations "to support innovative projects in order to determine the feasibility of encouraging student participation in community service projects in exchange for educational services or financial assistance and thereby reduce the debt acquired by students."

The House recedes.

The conferees are concerned about the growing indebtedness of students attending postsecondary institutions, and the impact of this debt burden on future career choices. In addition, the Carnegie Foundation study released in 1985 documents the decline in the number of students volunteering for community activities because of the competing pressures of work and study. Funds awarded under this part will assist higher education institutions address these concerns and develop innovative alternatives for students.

Community college unit

The Senate bill, but not the House amendment, amends the Department of Education Organization Act to establish a Community College Unit in the Office of Postsecondary Education and to require that it have a Director who is a GS-17.

The Senate recedes.

Applications.

The Senate bill, but not the House amendment, requires that all applications must be approved by the FIPSE Board.

The House recedes.

Authorizations

The Senate bill, but not the House amendment, authorizes the following apropriations for Part B:

(a):

		Conference agreement
Fiscal year:		
1987	$3,800,000	$3,000,000
1988	4,000,000	(1)
1989	4,200,000	(1)
1990	4,400,000	(1)
1991	4,600,000	(1)

[1] Such sums.

(b) No funds may be appropriated in any fiscal year for this Part unless funds are appropriated for Part A.

The House recedes with an amendment including Part B as well as Part A in the funding priority.

TITLE XI

Repeal

The Senate bill repeals Title XI of the Higher Education Act while the House amendment extends the current Urban Grant University Program and creates a new Part B, the Higher Education and Economic Development Program, which encourages the participation of postsecondary education institutions in activities which further economic growth and productivity.

The Senate recedes with an amendment modifying and clarifying the provisions of both parts.

Authorizations

The House amendment, but not the Senate bill, authorizes $40 million for FY 1987 and such sums for each of the succeeding fiscal years to be divided equally between Part A and Part B.

The Senate recedes with an amendment making the split ⅔ for part B and ⅓ for part A with an authorization of $15 million for FY 1987 and such sums for each of the four succeeding fiscal years.

Wagner Institute of Urban Public Policy

The House amendment includes a Part C, of Title XI, which authorizes $2 million to provide assistance to City University of New York to; establish the Wagner Institute of Urban Public Policy to coordinate resources for the development of solutions to pressing urban and social problems.

The Senate recedes.

TITLE XII

Territories

The House amendment, not the Senate bill, requires the Secretary to promulgate regulations in accordance with the recommendations in the report titled "Postsecondary Education in the U.S. Territories" (May 1982) in order to adapt programs to the needs of Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Northern Mariana Islands, within six months after the date of enactment of the reauthorization Act.

The Senate recedes.

Disclosure of foreign gifts

(a) The Senate bill establishes a floor of $250,000, after which disclosure of gifts must be made. The House amendment also establishes a floor of $250,000 except when conditions have been applied to the use of the gift, in which case the floor is lowered to $100,000. The House recedes.

(b) The House amendment refers to receipt of gifts within a fiscal year; the Senate bill within a calendar year. The House recedes.

(c) The Senate bill requires disclosure by January 31 or July 31 (whichever is sooner). The House amendment requires disclosure within 90 days of receipt of a gift.

The House recedes.

(d) The House amendment, but not the Senate bill, requires the identity of an individual giving the gift to be included in the report when conditions on its use are present.

The House recedes.

(e) The Senate bill allows disclosure of an aggregate amount when more than one gift has been received from one country, except when conditions are present, in which case each gift of $250,000 or more must be reported separately. The House amendment has no comparable provision.

The House recedes.

(f) The Senate bill requires States and/or executive agencies with which reports are filed (exempting institutions from filing directly with the Secretary) to file with the Secretary.

The House amendment requires this only of States.

The House recedes.

The conferees wish to note that as of the enactment of this act several states have enacted legislation requiring the disclosure of foreign gifts. It is the intention of the conferees that institutions residing in such states shall be viewed as having complied with disclosure requirement "substantially similar" to the requirements of this act, and

that they therefore need not file directly with the Secretary.

(g) The House amendment treats a "nonresident alien" as a foreign source. The Senate bill applies this term to any individual who is not a "citizen" or "national" of the U.S.

The House recedes.

(h) The House amendment uses the term "grant" whereas the Senate bill refers to "gift".

The House recedes.

(i) The Senate bill, but not the House amendment, articulates the definition of "restricted gift", noting each instance constituting a category to which restrictions would apply.

The House recedes.

(j) The Senate bill sunsets the entire provision in August 1989. The House amendment has no comparable provision.

The House recedes.

National Accreditation Committee

The Senate bill extends the National Advisory Committee on Accreditation and Institutional Eligibility through 1991. The House amendment extends it through 1992.

The House recedes.

Recognition Process Study

The Senate bill, but not the House amendment, establishes a Joint Study Commission on Postsecondary Institutional Recognition to conduct a study of the institutional and programmatic recognition process used by the Department of Education in determining institutional or programmatic eligibility for student participation in Federal student assistance programs. $1,000,000 is authorized for the study.

The House recedes with clarifying amendments.

Foreign Students

The House amendment, but not the Senate bill, spells out the rights of institutions of higher education in ensuring the financial responsibility of foreign students.

The Senate recedes.

Cost of Higher Education

The House amendment requires the Secretary of Education to establish a National Task Force on the Cost of Higher Education and to report to the Congress within two years.

The House recedes with an amendment to place it in Title XIII.

REENACTMENT OF TITLES

The amendments made by this Act are, in many cases, accomplished by amending entire titles or parts of the Higher Education Act of 1965 "to read as follows". While this, in effect, constitutes a reenactment of these titles, the managers do not intend such reenactment to be construed as a legislative affirmation of existing practices. In addition, these amendments of entire titles and parts add various subsection and other headings. These headings are provided for the convenience of the reader and are not intended by the managers to alter the meaning of any provision to which they apply.

Sexually transmitted diseases

The House amendment, but not the Senate bill, requires the Secretary of HHS to conduct a study of sexually transmitted diseases among college students.

The House recedes.

MISCELLANEOUS PROVISIONS

Peace Institute

The Senate bill, but not the House amendment, extends authorization for the United States Institute of Peace for FY 1987 and FY 1988 and permits funds appropriated to remain available until expended.

The House recedes.

Carl Albert Center

The Senate bill, but not the House amendment, provides that the $2 million appropriated for the Carl Albert Congressional Research and Studies Center need not be matched on a dollar for dollar basis as provided in the statute authorizing the Center.

The House recedes with a clarifying amendment.

Homeless shelter

The Senate bill, but not the House amendment, expresses the sense of the Senate that the Administration should immediately release a portion of the $5 million the Administration has agreed to provide for a shelter for the homeless in the District of Columbia.

The Senate recedes.

Impact aid

The Senate bill, but not the House amendment, provides that the Secretary shall accept an application for pinpoint Disaster assistance from the Preston County Board of Education, West Virginia.

The Senate recedes.

Authorization cap

In determining the authorization levels for programs under the Higher Education Act, the Conferees imposed an overall spending cap for all authorizations. For fiscal year 1987 the cap is $10.2 billion.

According to the Congressional Budget Office (CBO), the Guaranteed Student Loan provisions in the Act will cost $3.113 billion for FY 1987 and the Pell Grant provisions will cost $3.921 billion. Therefore, $3.166 billion remains to be expended in the other programs. Specific authorization levels are mandated for all the other programs in FY 1987.

For each of the four subsequent years, the $3.166 billion is inflated according to CBO estimates for inflation for higher education programs for each year respectively. As a result the spending cap for programs other than GSL and Pell is $3.351 billion for FY 1988, $3.552 for FY 1989, $3.771 billion for FY 1990, and $4.007 billion for FY 1991. Individual programs have "such sums" authorizations; however, their total appropriation cannot exceed the cap for each year.

The GSL and Pell grant program are not confined by the authorization cap in fiscal years 1988 through 1991. The elements of both the Pell Grant and the GSL programs are designed under the parameters of funding set for those programs in FY 1987.

REENACTMENT OF TITLES

The amendments made by this Act are, in many cases, accomplished by amending entire titles or parts of the Higher Education Act of 1965 "to read as follows". While this, in effect, constitutes a reenactment of these titles, the managers do not intend such reenactment to be construed as a legislative affirmation of existing practices. In addition, these amendments of entire titles and parts add various subsection and other headings. These headings are provided for the convenience of the reader and are not intended by the managers to alter the meaning of any provision to which they apply.

TITLE XIII—STUDIES AND EVALUATIONS

Both the House amendment and the Senate bill contain numerous studies to be conducted during the 5-year reauthorization cycle. The Conferees agreed to place all the studies in one title and to eliminate any overlapping studies by combining them as appropriate. The studies included in Title XIII, which have not been previously noted, include the following items which are to be conducted by the Secretary through the Office of Education Research and Improvement or the Center for Education Statistics.

Study on the Escalating Cost of Higher Education. The Secretary is directed to give consideration to the impact of the escalating cost on lower and middle income students and families, the impact on female and minority students, the impact on career choices made by students, and the relationship between escalating costs and the Federal student financial assistance programs.

Teacher Supply and Demand. A new permanent research and data collection authority under section 406 of GEPA is authorized, directing the Secretary to periodically assess current and future trends in the supply and demand for teachers, including preschool and early childhood education and development. This new emphasis is intended to provide the Congress with information and data on a timely basis for making policy decisions with regard to long and short term needs in the teaching profession, the number and proportion of women and minorities entering the field, the demographic and educational qualifications of new entrants into the profession, and the effects, if any of state educational reforms requiring teacher competency testing and increased graduation requirements for high school seniors, on teacher supply and demand.

Study on Equitable Student Aid for Farm Families. The Secretary shall conduct a study of financial aid formulas with special attention to devising a more equitable formula for farm families.

Additionally, the General Accounting Office is directed to conduct the following studies:

Volunteers

The Secretary is required to conduct a study of how volunteers can best be used in the classroom and to contract with the National Academy of Sciences for a concurrent independent study of the same issue. The Secretary and the Academy are to prepare and submit a report to Congress within one year.

Study of Practices of State Guaranty Agencies and Multistate Guarantors under the Guaranteed Student Loan Program. The purpose of the report is to investigate on a comparative basis—the due diligence practices of lenders, the default rates and recovery rates of student loans, changes in loan volume, methods of soliciting student borrowers, potential for fraudulent double borrowing by students, participation agreements between types of lenders, eligible institution participation agreements, adequacy of reserve funds, types of services provided to lenders, institutions, and borrowers, truth-in-lending provisions, profiles of borrowers and defaulters, coordination of loan and grant programs, student access to loan assistance, and the need for administrative cost allowances. The Comptroller General is to prepare and submit the report within 2 years.

In directing the study, it is the intention of the Conferees that information be developed on the characteristics of borrowers and defaulters to assist the Congress in differentiating the risks incurred by various agen-

cies on the basis of the socio-economic characteristics, or nature of educational program of borrowers.

Study of Multiple-Year Lines of Credit. The GAO is directed to evaluate the feasibility and efficiency of permitting students to establish lines of credit with eligible lenders under Part B and to report to the Congress within two years.

Study of Multiple Disbursement. The GAO is directed to evaluate the impact of the multiple disbursement system on students and institutions and to report their findings to the Congress within two years.

Student Loan Consolidation. The GAO is directed to evaluate the cost and efficiency and impact of the consolidation loan program and report to the Congress within two years.

The Senate also recedes with an amendment relieving Faulkner University (previously named Alabama Christian College) of its $147,681.39 debt to the Department of Education and the interest accruing from August 15, 1983.

Inadvertently, when Alabama Christian shifted from a 2-year to a 4-year institution, student loans were offered to juniors and seniors before the university had received full accreditation. These loans plus interest constitute the sum for which the Department of Education is seeking repayment.

The Senate recedes with an amendment authorizing $2.7 million to cancel certain debt services obligations for Department of Education project 5-1-00665-0, dated August 5, 1981.

99. TITLE

The House title is "Institute For Native American Culture and Art Development: Act." The Senate title is "Native American Culture and Art Development Act."

House recedes with an amendment stipulating a comprehensive title for the Act

100. FINDINGS

Senate provision adds a funding that the enhancement and preservation of nature art and culture has a fundamental impact.

House recedes.

101. ESTABLISHMENT

House provision establishes a Federal corporation. Senate provision adds that the Institute shall have succession until dissolved by Congress and that only Congress may amend its charter.

House recedes with an amendment altering the name of the corporation.

102. BOARD OF TRUSTEES

(a) The House bill establishes a 19 member Board of Trustees to govern the Institute, appointed by the Secretary of the Interior stipulating (a) they must be Native Americans or others recognized in the field: (b) there must be particular Congressional representation; (c) the Presidents (d); of the Instit. of the Student Org. will serve ex officio; (e) consultation with Tribes before appointment, including notice and nominations: and (f) regional representation.

(b) Terms will be for 6 years, with the initial Board serving staggered terms. Vacancies will be filled on the same basis as the original appointment and for the unserved version of the appointment.

(c) There are provisions for removal, meetings and quorum, and election of officers will be by the Board (at its initial meeting). The Board is assigned functions to govern the Institute and itself, and compensation for Board members is set. For so long as any Institute employees are covered by Civil Service, Board decisions on personnel issues must be submitted to the Secretary of the Interior, who may disapprove the decision for just cause.

(d) The Senate provision is basically similar, with the following differences: (1) the Board would be composed of 18 members, appointed by the President; (2) all Board members must be Native Americans; (3) the numbers of Indian and Congressional representatives, and their makeup is different; (4) there is no provision for the Presidents of the Institute or Student Orgs. to serve ex officio; (5) there is no requirement for publication.

(e) The Senate bill contains no similar provisions on unserved vacancies, removal, meetings, or review of Board decisions by the Secretary of the Interior. The Senate bill stipulates that the term of a Congressional member of the Board shall terminate at the end of the member's Congressional term, and that Congressional members shall not vote on issues. The Senate bill stipulates that the President will appoint the initial officers.

House recedes with an amendment limiting the number of members of the Board, stipulating required consultation for nominations to the post, limiting removal of Board Members, stipulating compensation, and requiring review of Board decisions by the Secretary of the Interior (for the first 2 years).

103. EXECUTIVE BOARD

The House bill establishes a 5 member Executive Board of the Board of Trustees to assist in governance of the Institute, there is no similar Senate provision.

Senate recedes.

104. POWERS

The House bill enumerates the powers of the Board. The Senate bill vests the powers in the Institute. Both provisions are basically similar, with the Senate bill adding the authority to acquire insurance.

Senate recedes with an amendment retaining the authority to obtain insurance.

105. PRESIDENT

Both bills provide for a President of the Institute, who shall be the chief executive Officer. Compensation cannot exceed the rate of GS-15.

In the Senate bill: (a) compensation could not exceed the rate of GS-18; and (b) the President is given general authority over appointment, duties and compensation for all employees.

Such employees would not be Civil Service, though Federal provisions with respect to Labor-Management relations and Workmen's Compensation would apply.

House recedes with an amendment deleting the Senate's provisions giving the President of the Institute powers over staff.

106. STAFF

The House bill, but not the Senate, has a detailed section on the staff of the Institute, stipulating that while they would not be Civil Service, compensation should be set at a rate comparable with the General Schedule. The President of the Institute would have 6 months to establish policies and procedures governing personnel matters. Discharge and conditions of employment must provide for rapid and equitable dispute resolution and hearing. There is provision for Native American preference in hiring and a right to an appeal to the Board. Current Civil Service employees have a protected right to transfer, or can elect to remain under the new system. Provision is made for the protection or retirement of annual or sick leave. Employees will still be covered by Civil Service Retirement.

Senate recedes with an amendment to retain the Senate provisions on Workman's Compensation and Employee Bargaining, and to amend the House language relating to the process for dismissal.

107. CENTER BOARD

The Senate bill, but not the House bill, includes specific Departments on the Board, but does not limit the Board to only them.

House recedes.

108. PREFERNCE

The Senate bill sets out Native American preference in admissions and enrollment, employment, contracts, fellowships and grants. No similar House provision.

House recedes.

109. TAX STATUS

The Senate bill states that the Institute and its property are tax-exempt of all taxes, regardless of taxing authority. No similar House provision.

House recedes.

110. TRANSFERS

The House and Senate provisions are basically the same, with the following exeptions—the House bill, but not the Senate bill, transfers real property and assets, states that the determination of the matters to be transferred should not be based upon the administrative entity in control of them prior to the transfer, and establishes a 2 year transfer period, to ease the transition; additionally, the House provision states that existing laws and regulations, which are applicable shall remain in effect, while the Senate bill states that only those laws and regulations which are appropriate and not inconsistent with the provisions of this title shall remain in effect.

House recedes with an amendment clarifying that no museum real property is transferred and retaining the 2-year transition period to full Board control.

111. BUDGET

The House bill, but not the Senate provision, requires the Secretary of the Interior to submit the budget proposal of the Institute for the first 2 years, after which the Board shall submit a direct budget proposal. The House bill also states that the Congress should not consider private fundraising in determining appropriations levels.

Senate recedes.

112. COMPLIANCE

The Senate bill specifically lists a number of laws which shall apply to the Institute. There is no similar House provision.

House recedes.

113. ENDOWMENTS

The House bill authorizes an endowment program of matching grants. For this purpose, the Secretary of the Interior is to make available not more than $500,000. No similar Senate provision.

Senate recedes.

114. NATIVE HAWAIIANS

The Senate bill, but not the House provision, includes Native Hawaiians in the definition of Native American and includes a separate definition of Native Hawaiian.

House recedes with an amendment designating the Institute for Indians out as Part A and designating Part B as a separate program for Native Hawaiian studies.

115. AUTHORIZATIONS

The House bill authorizes such sums as may be necessary. The Senate bill authorizes $4 million for each fiscal year.

Senate recedes with an amendment stipulating $4 M for the Indian Institute under Part A and $1 M for the Native Hawaiian program under Part B for FY 1987, and for each succeeding FY, such sums as may be necessary thereafter.

"In enacting the Native Hawaiian provision the conferees were pleased to support the efforts of the indigenous peoples of Hawaii to preserve their art and cultural history. The Bishop Museum is to be commended for taking the lead in this important endeavor and the conferees intend that the newly authorized Native Hawaiian program will be located at the Bishop Museum, Honolulu, Hawaii. The conferees further direct that there shall be established by the Governor of Hawaii a formal Board of Trustees for the program which shall be chaired by the chairman of the Office of Hawaiian Affairs, and with the Vice-Chairman being the President of the Bishop Museum. The President of the University of Hawaii shall also serve as a voting member of the Board. The Governor, after consultation with Native Hawaiian organizations, shall appoint 10 additional members to the board and shall ensure that their terms rotate, at least every six years. Further, the conferees direct that a report be submitted to the Congress annually by the Department describing the efforts being made to date to identify and preserve and perpetuate Native Hawaiian art and culture."

Declaration of policy

(a) In the declaration of policy, the House bill, but not the Senate bill, includes the phrase "Inequalities of opportunity to receive high quality education remain pronounced."

Senate recedes.

(b) The Senate bill declares a policy of promoting "the quality and equity" of American education; the House amendment declares a policy of promoting "the improvement" of American education.

House recedes.

Definitions

(a) The Senate bill defines in paragraph (3) the following terms: "Assistant Secretary", "Council", and "Office". The House bill defines these terms within the text of subsection (b).

House recedes.

(b) The House bill defines the terms of "Assistant Secretary", "Council", and "Office" within the text of this subsection; the Senate bill defines these terms in subsection (a).

House recedes.

Education statistics

The House bill refers to a "Center for Statistics" throughout these provisions: the Senate bill refers to a "Center for Education Statistics".

House recedes.

Priorities

Both the Senate bill and the House bill identify priority research and development needs. The House amendment identifies four needs. With slightly different wording, the Senate bill identifies these four needs and also includes five additional priority needs:

(a) science, arts, humanities, and foreign languages;

(b) data base for special populations;

(c) adult education and literacy research;

(d) postsecondary opportunities; and

(e) research on educational professionals.

The Senate bill, but not the House bill, extends research priorities for equal educational opportunity to "minority students" and "gifted and talented students".

House recedes.

Officials

The House bill, but not the Senate bill, specifically identifies "educational professionals and policy makers" to whom information should be disseminated.

Senate recedes.

Publication of priorities

The House bill, but not the Senate bill, specifies that the Secretary must publish proposed research priorities in the Federal Register.

Senate recedes.

Responsibilities

(a) In regard to the Secretary's responsibilities to discharge listed functions of the Office, the House bill is permissive; the Senate bill is mandatory.

House recedes.

(b) The Senate bill, but not the House bill, specifies that assisting and fostering research, collection, dissemination, and training shall be carried out through grants, cooperative arrangements, and technical assistance.

House recedes with an amendment clarifying that when cooperative agreements are negotiated between the Secretary or the Office and eligible providers, that any changes from the initial agreement be negotiated by the Secretary or the Office with the eligible providers.

Personnel

(a) The House bill amends the GEPA provision and deletes the DEOA provision; the Senate bill amends the DEOA provisions and deletes the GEPA provision.

Senate recedes.

(b) The House bill limits appointments to not more than 20 percent of the Office staff; the Senate bill limits appointments to not more than 175 persons.

Senate recedes.

(c) The House bill limits tenure to three years. The Senate bill has no tenure limit.

Senate recedes with amendment stating that the Secretary may reappoint such employees upon presentation of a clear and convincing justification of need, for one additional term not to exceed three years. All such employees shall work on activities of the Office and shall not be reassigned to other duties outside the Office during their term.

(d) The House bill applies the provisions to "scientific or professional employees"; the Senate bill applies the provisions to "scientific, technical, or professional employees."

Senate recedes.

(e) The House bill, but not the Senate bill, provides a waiver from these provisions for three employees, selected by the Secretary, who were hired by NIE under the GEPA provision and were employed by the Office both on April 1, 1986, and on the date of enactment of these amendments.

Senate recedes with an amendment stating that individuals who are employed on the date of enactment of this Act and were employed by such Office on April 1, 1986, and who were employed under excepted hiring authority provided by Sec. 209 of the Department of Education Organization Act or Sec. 405 of the General Education Provisions Act may continue to be employed for the duration of their current term.

Secretary's functions

(a) The House bill, but not the Senate bill, includes the following entities through whom the Secretary may carry out the Office's activities: public organizations, public institutions, and private agencies.

Senate recedes.

(b) The House bill, but not the Senate bill, allows the Secretary to carry out the functions of the Office by providing technical assistance.

Senate recedes.

(c) The House bill mandates solicitation of recommendations and advice, use of peer review, and determinations regarding assisted activities. The Senate bill, with different wording, provides that these methods shall be used "to the fullest extent possible".

Senate recedes with an amendment giving an exemption when such peer review procedures are clearly inappropriate given such factors as the relatively small amount of a grant or contract or the exigencies of the situation (i.e. need to quickly plan a small meeting.

(d) The Senate bill mandates that the Secretary shall determine that the activities supported by an award "are consistent with the purposes and priorities of the Office". The House amendment mandates that they "will meet priority research and development needs under this section".

Senate recedes.

Regional labs

(a) The Senate bill, but not the House bill, requires the priority research and development needs of the labs to be determined by the labs' governing boards.

House recedes.

(b) The Senate bill provides that Centers may be operated by public agencies or private non-profit organizations. The House bill provides that Centers may be operated by institutions of higher education in consort with public agencies or private nonprofit organizations.

Senate recedes.

(c) The Senate bill, but not the House bill, requires proposals that have been invited by the Secretary to be on a competitive basis.

House recedes.

Applications

The House bill, but not the Senate bill, specifies that prior to awarding grants or entering into contracts for labs and centers, the Secretary must invite applications to compete through notice in the Federal Register.

Senate recedes.

Conditions

The House bill, but not the Senate bill, includes conditions that must be adhered to prior to the making of a grant or entering into of a contract for a lab or center:

(a) the Office must solicit proposals from the Labs and Centers;

(b) such proposals must be developed by the Labs and Centers in consultation with the Office; and

(c) the Office must determine if the proposals are consistent with the activities the Office is charged with carrying out.

Senate recedes.

Meritorious proposals

The House bill, but not the Senate bill, specifies that the Secretary shall make available adequate funds to support meritorious unsolicited proposals and provide adequate notice.

Senate recedes.

NAEP

(a) The Senate bill specifies that the Secretary, through the Office, shall, carry out the National Assessment of Educational Progress: whereas the House bill specifies that the Office shall carry out the Assessment.

Senate recedes.

(b) The Senate bill, but not the House bill, requires the National Assessment award to be made to a non-profit "educational" organization.

House recedes.

(c) The Senate bill, but not the House bill, specifies that the National Assessment include information on special groups of individuals.

House recedes.

(d) The Senate bill requires the Assessment Policy Committee to be established "with the advice of the Secretary."

Senate recedes.

(e) The House bill requires the periodic review of the Assessment to be reported to the Congress and the President; the Senate bill requires the review to be reported to the Congress and the Nation.

House and Senate recede to each other so that the Assessment is reported to the Congress, President and the Nation.

Authorization

(a) The House bill authorizes sections 405 and 406 for fiscal years 1987, 1988, and 1989; the Senate bill authorizes these sections through fiscal year 1991. (See also the section in the bill pertaining to statistics.)

	House		
	Section 405	406 [1]	Total
1987	$51,200,000	$20,000,000	$71,200,000
1988			[3]
1989			[3]
1990			
1991			

	Senate		
	Sections 405 and 406 [2]	Section 405 (labs)	Total
1987	$53,231,000	$19,000,000	$72,231,000
1988			[3]
1989			[3]
1990			[3]
1991			[3]

[1] NAEP may be funded under 405.
[2] Excludes funding for labs.
[3] Such sums.

The Senate and House receded to each other with an amendment.

There are authorized to be appropriated to carry out the provisions of this section. $72,231 million for fiscal year 1987 and such sums as may be necessary for each of the fiscal years 1988 through 1991.

Of the funds appropriated for any fiscal year under this section, except as provided in the succeeding sentence, (A) not less than $17.76 million shall be available in each fiscal year to carry out the section relating to centers, (B) not less than $17.0 million shall be available in each fiscal year to carry out the section of the Act relating to labs, (C) not less than $5.7 million shall be available in each fiscal year to carry out the section relating to ERIC, (D) not less than $4.0 million shall be available in each fiscal year to carry out the section relating to NAEP, (E) not less than $8.7 million shall be available in each fiscal year to carry out the section of the Act relating to the Center for Educational Statistics and (F) not less than $500,000 shall be available in each fiscal year to carry out the section of the Act relating to field initiated research. If the sums appropriated for any fiscal year are less than $53.713 million (total of (A)-(F)), the amounts specified in each clause in the previous sentence shall be ratably reduced. The President's Annual Budget Request shall be broken down in accordance with authorized uses set out in Section 405, including at a minimum the uses specified in clauses (A)-(F).

The Conference Committee establishes a single authorization for the Office of Educational Research and Improvement and places a hold harmless at least at the 1986 level for regional educational laboratories, research and development centers, field initiated studies, Educational Resources Information Centers, National Assessment of Educational Progress and the Center for Education Statistics. This hold harmless should not be construed as a ceiling on these activities. Rather, it represents a minimum level of appropriations necessary to insure a balanced portfolio of research and statistics for the office. Sufficient flexibility remains within the authorization to allow the activities to grow in response to emerging educational needs and priorities. Maintenance of effort provisions for the Office of Education Research and Information refer to both the number of grants and the budget levels committed to OERI programs by categories listed in statute.

It is important to note for the first time, the authorization addresses field initiated studies as a separate activity. In recent years there has been a sharp decline in support for research activities outside of the work conducted by the educational labs and centers. This decline suggests that sparse and less diverse information will be available on which to base future decisions about education. The Committee believes there is a growing need for independent research and through this new emphasis, it is hoped that important new avenues of inquiry and contributions to the field of educational research will be provided.

Furthermore, the conferees intend that the information breakout documents accompanying the President's Annual Budget Request demonstrates the allocation of funds between educational labs, centers, NAEP, ERIC, the Center for Educational Statistics, and field-initiated research.

(b) The Senate bill, but not the House bill, specifies that the Secretary may not enter into a contract for labs for a period in excess of 5 years.

House recedes.

Funds

The House bill specifies that not less than 95 percent and the Senate bill specifies that not less than 90 percent of the funds appropriated for any fiscal year must be carried out through grants, cooperative agreements, or contracts.

Senate recedes.

Maintenance of effort

The Senate bill, but not the House bill, includes a maintenance of level funding provision for the Center for Educational Statistics, NAEP, and ERIC.

See prior "comment" under the section in the report pertaining to authorizations.

Transition

The House bill, but not the Senate bill, includes a transition provision (change from NIE to OERI).

Senate recedes.

Center

The House bill establishes a "Center for Statistics" within the Office of Educational Research and Improvement, the Senate bill establishes a "Center for Education Statistics".

House recedes.

Data collection

The House bill, but not the Senate bill, requires the Center to collect, collate and analyze the data on a State by State basis if feasible.

Senate recedes.

Technical amendment

The House bill, but not the Senate bill, contains a technical amendment updating a reference to the education division in Section 406(b)(5).

Senate recedes.

Staggered terms

The Senate bill, but not the House bill, eliminates provisions in current law requiring three-year staggered terms for members of the Advisory Council on Education Statistics and requiring that this Council meet at least four times a year.

Senate recedes.

Annual report

The Senate bill, but not the House bill, eliminates certain components of the mandated annual report on the Center's activities: (1) describe activities of the Center during the current fiscal year and project activities for the next year and (2) contain estimates of the cost of these projected activities.

Senate recedes.

(b) The House bill, unlike the Senate bill, also makes a technical and conforming amendment.

Senate recedes.

Authorizations

See prior "comment" under the section in the report pertaining to research for a chart describing the differences in authorization levels between the Senate bill and the House bill.

National Diffusion Network

The House bill, but not the Senate bill, amends the provisions in Chapter 2 of ECIA pertaining to the National Diffusion Network.

Senate recedes.

Effective date

The House bill, but not the Senate bill, includes an effective date of October 1, 1986.

House recedes.

Paperwork

The Senate bill, but not the House bill, repeals section 400A of GEPA pertaining to control of paperwork.

Senate recedes.

For consideration of all provisions (except section 157) of the Senate bill and all provisions of the House amendment and modifications committed to conference:

AUGUSTUS F. HAWKINS,
WILLIAM D. FORD,
JOSEPH M. GAYDOS,
MARIO BIAGGI,
PAT WILLIAMS,
MAJOR R. OWENS,
CHARLES A. HAYES,
CARL C. PERKINS,
TERRY L. BRUCE,
STEPHEN J. SOLARZ,
MERVYN M. DYMALLY,
DENNIS E. ECKART,
TIMOTHY J. PENNY,

CHET ATKINS,
JAMES M. JEFFORDS,
BILL GOODLING,
TOM COLEMAN,
THOMAS E. PETRI,
MARGE ROUKEMA,
STEVE GUNDERSON,
THOMAS J. TAUKE,
JOHN R. MCKERNAN, Jr.,
PAUL B. HENRY,

As additional conferee for consideration of title V of the Senate bill and title XIII and section 1405 of the House amendment and modifications committed to conference:

DALE E. KILDEE,

As additional conferee for consideration of title III of the Senate bill and title XIV of the House amendment and modifications committed to conference:

STEVE BARTLETT,

As additional conferees for consideration of sections 147 and 189 of the Senate bill and modifications committed to conference from the Committee on Energy and Commerce:

JOHN D. DINGELL,
JAMES H. SCHEUER,
HENRY A. WAXMAN,
NORMAN F. LENT,
ED MADIGAN,

As additional conferees for consideration of title VI of the Senate bill and modifications committed to conference, from the Committee on Foreign Affairs:

DANTE FASCELL,
LEE H. HAMILTON,
DAN MICA,
WM. BROOMFIELD,
OLYMPIA SNOWE,

As sole House conferees for consideration of section 157 of the Senate bill and modifications committed to conference; and as additional conferees for consideration of section 198 of the Senate bill and modifications committed to conference, from the Committee on the Judiciary:

PETER W. RODINO,
DON EDWARDS,
DAN GLICKMAN,
HAMILTON FISH Jr.,
HANK BROWN,

Managers on the Part of the House.

ORRIN HATCH,
ROBERT T. STAFFORD,
DAN QUAYLE,
L. P. WEICKER, Jr.,
MALCOLM WALLOP,
STROM THURMOND,
EDWARD M. KENNEDY,
CLAIBORNE PELL,
CHRISTOPHER DODD,
SPARK MATSUNAGA,
PAUL SIMON,

Managers of the Part of the Senate.

TENNESSEE WILDERNESS ACT OF 1986

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5166) to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5166

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tennessee Wilderness Act of 1986".

SEC. 2. DESIGNATION OF WILDERNESS AREAS.

In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the following lands in the Cherokee National Forest in the State of Tennessee are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) certain lands which comprise approximately 6,665 acres, as generally depicted on a map entitled "Pond Mountain Wilderness—Proposed and Pond Mountain Addition Wilderness—Proposed", dated July 15, 1986, and which shall be known as the Pond Mountain Wilderness;

(2) certain lands which comprise approximately 6,251 acres, as generally depicted on a map entitled "Big Laurel Branch Wilderness—Proposed", dated July 15, 1986, and which shall be known as the Big Laurel Branch Wilderness;

(3) certain lands which comprise approximately 4,700 acres, as generally depicted on a map entitled "Unaka Mountain Wilderness—Proposed", dated July 15, 1986, and which shall be known as the Unaka Mountain Wilderness;

(4) certain lands which comprise approximately 8,319 acres, as generally depicted on a map entitled "Sampson Mountain Wilderness—Proposed", dated July 15, 1986, and which shall be known as the Sampson Mountain Wilderness;

(5) certain lands which comprise approximately 4,800 acres, as generally depicted on a map entitled "Little Frog Mountain Wilderness—Proposed", dated July 15, 1986, and which shall be known as the Little Frog Mountain Wilderness; and

(6) certain lands which comprise approximately 3,000 acres, as generally depicted on maps entitled "Big Frog Extension Wilderness—Proposed", dated July 15, 1986, and which shall be combined with the now existing Big Frog Wilderness and known as the Big Frog Wilderness.

SEC. 3. MAPS AND DESCRIPTIONS.

As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall file a map and legal description of each wilderness area designed by this Act with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Agriculture, Nutrition, and Forestry of the United States Senate. Each such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map and description may be made by the Secretary. Each such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

SEC. 4. ADMINISTRATION OF WILDERNESS.

(a) IN GENERAL.—Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

SEC. 5. EFFECT OF RARE II.

(a) FINDINGS.—The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest System roadless area in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Cocke, and McMinn Counties, Tennessee, and of the environmental impacts associated with alternative allocations of such areas.

(b) REVIEW AND RELEASE.—On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to the National Forest System lands other than in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Cocke, and McMinn Counties, Tennessee, such statement shall not be subject to judicial review with respect to National Forest lands in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Monroe, Polk, McMinn, Greene, Cocke, and McMinn Counties, Tennessee, which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II) and those lands referred to in subsection (d), except those lands designated for wilderness study upon enactment of this Act, that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time, the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Monroe, Polk, McMinn, and Cocke Counties, Tennessee, reviewed in such final environmental statement or referenced in subsection (d) and not designated as wilderness or for wilderness study upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during the revision of the initial land management plans; and

(4) in the event that revised land management plans in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Monroe, Polk, McMinn, and Cocke Counties, Tennessee, are implemented pursuant to section 6 of the Forest and Rangelands Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required

by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law.

(c) REVISION.—As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

(d) CERTAIN AREAS LESS THAN 5,000 ACRES IN SIZE.—The provisions of this section shall also apply to National Forest System roadless lands in Johnson, Carter, Sullivan, Unicoi, Washington, Greene, Monroe, Polk, McMinn, and Cocke Counties, Tennessee, which are less than 5,000 acres in size.

SEC. 6. TERMINATION OF WILDERNESS STUDY.

The designations of the Little Frog Wilderness Study Area and the Big Frog Study Area pursuant to section 6 of the Act of October 30, 1984 (98 Stat. 3090), are terminated, and the Secretary of Agriculture shall have no further obligation to study such areas for wilderness.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would designate six wilderness areas in the Cherokee National Forest, totaling 33,375 acres. These areas lie in the congressional districts of the sponsors of the bill, our colleagues JAMES QUILLEN and JOHN DUNCAN of Tennessee. The Department of Agriculture recommended these additions to the Nation's wilderness system as a result of its recently completed land use plan for this forest.

In bringing this bill to the floor, I want to especially thank Representative QUILLEN for his initiative and hard work on this bill, and for bringing to the attention of our committee the concerns of his constituents about various aspects of the management of the national forests in eastern Tennessee. I particularly want to note a situation in Unicoi County, involving a piece of Forest Service land which local authorities believe is needed for the development of their community. I want to take this opportunity to note that we have directed the Forest Service to give a high priority to resolving this matter, and that the Interior Committee intends to monitor the Forest Service to make sure that is done in a prompt and fair manner.

Mr. Speaker, I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5166, the Tennessee wilderness bill.

I wish to recognize the hard work of our colleagues from Tennessee, Mr. QUILLEN and Mr. DUNCAN, the authors of the bill, and to commend them for bringing a bill to the Interior Committee and the House floor that has the support of all parties involved.

The bill will designate approximately 33,400 acres of national forest land as wilderness which reflects the recommendations made by the Forest Service in their land management plans for the Cherokee National Forest.

All too often we stray far beyond these recommendations. I am pleased to see that Tennessee has not done so.

I urge my colleagues to support the bill.

Mr. QUILLEN. Mr. Speaker, today the Tennessee Wilderness Act of 1986, which I introduced along with my colleague, Mr. DUNCAN on July 15, is before the House for passage. I am pleased with the bill's prompt advance toward enactment and wish especially to express my appreciation for the consideration and cooperation I have received on this account from the gentleman from Ohio, Mr. SEIBERLING, the chairman of the Subcommittee on Public Lands and the subcommittee staff. Because of this willingness to work with me, certain potenital questions have been dealt with satisfactorily and the bill is on track for enactment into law this year.

The bill designates approximately 33,735 acres of the Cherokee National Forest as wilderness and when added to the forest's present wilderness acreage will result in about 66,000 acres of wilderness in Tennessee, amounting to about 11 percent of the Cherokee's total area.

East Tennessee is extremely blessed with this beautiful and enjoyable mountain and forest resource which has been a source of pride and substance to our people for over 200 years. I believe we are honor-bound to protect and maintain this heritage for all to enjoy for decades to come. I am proud to sponsor this bill not only for our time but for the future generations.

Mr. Speaker, I urge passage of the bill.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARLENEE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BENNETT). The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5166, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

AMENDMENTS RE RELIGIOUS LIBERTY AND DEFACEMENT OF RELIGIOUS PROPERTY

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4980) to amend chapter 13 of title 18, United States Code, to impose criminal penalities for damage to religious property and for injury to persons in the free exercise of religious beliefs.

The Clerk read as follows:

H.R. 4980

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CRIMINAL PENALITIES FOR DAMAGE TO RELIGIOUS PROPERTY AND INJURY TO PERSONS IN THE FREE EXERCISE OF RELIGIOUS BELIEFS.

Chapter 13 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 247. Damage to religious property; injury to persons in the free exercise of religious beliefs

"(a) Whoever travels in, or uses a facility or instrumentality of, interstate or foreign commerce with intent to—

"(1) deface, damage, or destroy any religious real property, because of the religious character of that property; or

"(2) obstruct, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs;

shall be punished as provided in subsection (b) of this section.

"(b) The punishment for a violation of subsection (a) of this section shall be—

"(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

"(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than fifteen years, or both; and

"(3) in any other case, a fine in accordance with this title and imprisonment for not more than five years, or both.

(c) As used in this section—

"(1) the term 'religious real property' means any church, synagogue, religious cemetery, or other religious real property; and

"(2) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

SEC. 2. TECHNICAL AMENDMENT.

The table of sections for chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

"247. Damage to religious property; injury to persons in the free exercise of religious beliefs.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes and the gentleman from Pennsylvania [Mr. GEKAS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4980, has been unanimously reported by the Committee on the Judiciary, addresses the problem of religiously motivated violence. The bill amends title 18 of the United States Code to make it a Federal crime to travel in, or to use an instrumentality of, interstate or foreign commerce with intent to damage or destroy any religious real property because of the religious nature of that property, or with intent to obstruct—by force or threats—any person in the free exercise of religious beliefs.

This sort of violence is on the increase. Although precise statistics are not maintained on the number of incidents directed against religious groups, the data available show recurring incidents of defacement or destruction of places of worship, and in some instances, personal injury or murder motivated by religious hatred. In Pennsylvania, for example, the number of reported incidents increased 85 percent in the last year.

While the States have the primary responsibility of law enforcement with regard to such matters, the Federal Government has a responsibility as well. Many of the hate groups that appear to be behind religiously motivated violence have members in several States and operate across State lines. Groups such as the Covenant, Christian Identity Movement, posse comitatus and the Aryan Nation are described by the FBI as being paramilitary in orientation and linked by their anti-Semitic and white supremist teachings, claim membership, and operate, in more than one State.

Current Federal law permits prosecution of religiously motivated violence only in limited circumstances. H.R. 4980 will expand those circumstances so that there can be a more effective Federal response whenever Federal prosecution is called for. H.R. 4980 does not supplant or replace local enforcement authority and responsibility, but strengthens the measures that the Federal Government can take to augment local action.

Mr. Speaker, it is important that we in Congress send a strong signal that religiously motivated violence will not be tolerated. This legislation will do that. The bill enjoys wide support, and I urge my colleague to support it.

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Mr. Speaker, I reserve the balance of my time.

Mr. GEKAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Kansas [Mr. GLICKMAN] for so properly reviewing the contents of the legislation and who, quite correctly, characterized its provisions.

Since the gentleman from Kansas is also the author of the bill, it is very appropriate that we have the procedure we are undergoing today so that the gentleman could not only report the findings of the committee, but also tout his own bill, which I found a happy wedding.

Mr. Speaker, the gentleman from Kansas is quite correct that this is an attempt, we think a successful attempt, to fill a slight vacuum that exists in the general body of law having to do with hate crimes.

Many States, including my own of Pennsylvania, have long since enacted legislation that would target the kind of religious-house vandalism that too often makes the headlines. You would think that at first glance there would be no need for Federal legislation because many of us, happy as we are when local law enforcement carries out the duties of its obligations without need to resort to Federal aid and Federal help, feel, nevertheless, in this kind of situation, there are a limited number of cases which, when crossing State lines, might not fall into the net of local law enforcement and would give the Federal law enforcement establishment a lead and a tracking that might otherwise be impossible.

The hearings that were held on this were quite good in that the case histories involved in many of the individual cases throughout the country were made part of the record and that, of course, helps in any legislative history and it also helps the Members of Congress make an ultimate decision, as I know they will, in favor of this legislation.

But it must be noted that the same questions of hesitancy on the total impact of the bill were made by the Justice Department and some members of the committee voiced some question about them. We want to make it clear, Mr. Speaker, that in no way does this law preempt action by local and State authorities in the execution of their own laws having to do with hate crimes.

Far from it, this is a supplement to those kinds of cases, a catch-all, as it were, when some cases might appear on the horizon that the State and local authorities could not pursue; could not prosecute because of various factual and legal circumstances.

In passing this bill, we laud and support local law enforcement efforts in this field. We say to them contemporaneously therewith that this law does not remove any of their jurisdiction, does not preempt any of its authority, does not in any way interfere with the pursuit of its own jurisdiction in these questions.

It simply means that the Congress of the United States sees it as a national problem and, therefore, would tighten up the law as it might cross State boundaries and tell the whole world that the day of hate crimes must come to an end and that we in Congress will do our part to hasten that end.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, just a final word: I think the gentleman from Pennsylvania [Mr. GEKAS] characterized this bill right on target. This is not an attempt to usurp any State jurisdiction and it does not do that. But it does send a signal, not only to the rest of the world, but to this country, that this Federal Government of ours believes that the first amendment, and particularly, the freedom to worship as people please, is a very sacrosanct part of the Constitution of the United States and that we will protect that right against religious violence which crosses State lines and meets the other jurisdictional requirements of this bill.

The entire range of religious faiths, including Baptist, Catholic, Episcopal, Jewish, and others have been the target of such attacks. Not long ago, two predominantly black churches in rural South Carolina were destroyed by arson and the fact of the matter is that in many parts of this country, we see the ugly roots of racism and religious prejudice rising, many of which have perhaps been caused by the tremendous hardship that some folks are facing as it relates to the economy.

This bill is narrow in scope. It puts the U.S. Government and its law enforcement authorities on record in helping the States and local governments enforce laws which fight against religious persecution.

Mr. SOLARZ. Mr. Speaker, I rise in strong support of H.R. 4980, a bill which would make

it a Federal crime to damage or destroy religious property because of the religious character of that property, or to obstruct any person in that person's free exercise of religious beliefs.

As citizens of the United States, the freest country in the world, we might expect to need this type of legislation. After all, who could doubt that with all our freedoms, the freedom to practice religion would be in danger. Unhappily, however, this legislation is all too necessary.

Religiously motivated violence—which can involve simple vandalism—such as defacing the walls of a synagogue with a swastika—or more dangerous acts—such as arson or bombing—appears to be a growing problem.

The senseless and brutal massacre at the synagogue in Turkey and the recent airline hijackings are just vivid reminders of this kind of violence which is occurring around the world at increased levels. But here in the United States, as well, we must face the growing number of hate crimes committed against religious property—crimes which in turn jeopardize our inherent freedom to safely practice our religious beliefs.

As the Congressman representing the largest Orthodox Jewish community, not only in the country, but in the world, I have experienced firsthand the evil spectre of anti-Semitic hate crimes through actions directed against the communities I represent. There is nothing more horrifying or frightening to religious Jews who come to their synagogue for prayer, only to find the walls of the synagogue covered with anti-Semitic graffiti, or their sacred Torah scrolls burned by criminals who want to prevent these worshippers from practicing their religion.

To the communities of Boro Park and Williamsburg in my district in Brooklyn—communities which have arisen out of the ashes of the Holocaust to create a new life in America—the sight of a swastika on the wall of the synagogue is not merly a mindless act of vandalism, but the act of a criminal who is persecuting members of their religion. This legislation will help address this problem and seek to end religiously motivated crimes.

Although the bulk of religious motivated hate crimes are anti-Semitic in nature, directed against synagogues and their congregations, the problem is by no means limited to Jews. The entire range of faiths, from Baptist, to Catholic and Episcopal have been the targets of such attacks.

Several years ago I offered pioneering legislaiton designed to address the problem of violence directed against religious targets. As the rise in these actions increased, and the number of neo-Nazi and hate groups grew, this legislation has become even more vital.

I am happy to join Congressman GLICKMAN in his efforts to see that the fight we began several years ago is carried to fruition. Because of his position on the Judiciary Committee, Congressman GLICKMAN was able to take up this worthy legislation and, with the assistance of the honorable chairman of the Subcommittee on Criminal Justice, Mr. CONYERS, has made the passage of this legislation a reality.

Too often we are tempted to dismiss this hateful vandalism as isolated incidents or pranks. It is just as easy to let a sense of hopelessness come over us as we wonder about how to combat this. But the passage of H.R. 4980 will make it clear that we are fighting these acts of violence and destruction by the extremist elements of our society.

Through the passage of H.R. 4980 we will continue the long tradition of our democratic Nation of protecting our constitutional right to practice religious beliefs without fear of harassment or violence. This bill represents a strong signal reflecting the attitude of the American people both in the commitment to religious toleration and opposition to those who threaten it. It is a most worthy cause, supported by more than 200 years of democratic freedom and it deserves our wholehearted support.

Mr. BIAGGI. Mr. Speaker, as an original cosponsor of this measure as well as the author of the first bill ever authored in the House to deal with the problem of "hate crimes" I rise in strong support of H.R. 4980. This is a long overdue measure which takes the critically important step of providing for strong and specific Federal criminal penalties against those who commit crimes or violence and or vandalism against religious persons and or property.

The date was February 25, 1981, when I introduced H.R. 2085, "a bill to amend title 18 of the United States Code to prohibit certain damage to, and theft of property used for religious purposes, and for other purposes." I reintroduced similar measures in the succeeding Congresses and finally when the Subcommittee on Criminal Justice reported out this bill, I was pleased to join as a cosponsor.

The issue we are dealing with in this legislation is a national scandal pure and simple. We are talking about some of the most intimidating and heinous crimes committed against one of our Nation's most fundamental freedoms—the freedom of religion. We are all too acutely aware of the existence of these crimes. They happen in our neighborhoods, they claim our neighbors as their victims. They are carried out by persons who operate with virtual impunity knowing that prosecution is remote. The prejudice and hatred practiced by these people with closed minds has left an open wound on our communities and the Nation as a whole.

To me there are two critical features of this legislation. The first is the fact that it imposes first time and specific Federal penalties against these crimes. The second key element is this bill, as I had hope with all of my bills, does set up a graduated series of penalties based on the severity of the crime. This includes life imprisonment should dealth result from an act of antireligious violence or vandalism.

This legislation properly directs its penalties against persons who not only "defaces, damages, or destroys" religious real property but also against those convicted of "obstructing by force or threat of force, any person in the enjoyment of that person's free excercise of religious beliefs."

The incidences of these crimes on a national basis is not known in the pure statistical sense. One compilation that is provided each year is done by B'nai B'rith and it does reveal some shocking data regarding anti-Semitic acts of violence and vandalism. When I testified before the Subcommittee on Criminal Justice in April of 1985 the B'nai B'rith report had indicated a 6.7-percent increase in the number of incidents, totaling 715 for that year alone. While the number decreased slightly in 1985, the rate these crimes occurred exceeded one per day for the entire year.

These crimes included bombings, arsons, and cemetery desecrations. These crimes included assaults, threats, and harassment.

The B'nai B'rith pointed up the second need for this legislation. In addition to the report establishing that this problem does in fact exist it also pointed to the fact that in 1984 the number of persons arrested for the crimes decreased even though the number of crimes increased.

The problem this legislation addresses affects all religions in our great Nation. These can be acts directed at religious and or racially motivated grounds. As the committee report accompanying this bill states:

> The majority of religiously motivated crimes of destruction are believed to be committed against synagogues and involve such things as swastikas painted on walls or destruction of Torah scrolls. Black churches are believed to be the next most frequent target of religiously motivated violence.

Tragically no religion is exempt.

Let me quote from two New York Post articles:

> A gentle Long Island minister who devoted his life to helping young criminals is in a coma today after he was bludgeoned by a thief who invaded his church.

> A Catholic priest was viciously attacked in Brooklyn yesterday by four punks who beat him and kicked him even after he offered them his money.

A further need for this legislation is based on the fact that barely one-third of the States in this Nation have laws on the books to provide criminal penalties for these crimes. The present Federal law, section 1074 of title 18 is entirely too vague and does not in any real fashion direct its attention or penalties to the various types of antireligious crime that is the reality of today's America.

We must combine stricter laws, with greater public education about this problem if we hope to reduce its growth. This Congress last year passed an important measure, requiring the Justice Department to maintain statistics for "hate crimes" in the annual uniform crime report. This was important as a means of ensuring we know the extent of the problem as well as how to allocate resources.

I have argued for the past 5 years that for us to embark on anything less than a full-fledged effort will give license to the continuation of these horrible crimes. To sit back and do nothing of this threat is to invite its continuation. As Dr. Martin Luther King once said "Injustice anywhere is a threat to justice everywhere."

Let me pay a brief tribute to an organization which did so much to advance my bill and this final product. I refer to the International Network of Children of Jewish Holocaust Survivors who in a letter in support of my bill said "We know all too well from our parents what effects the damage, destruction, and desecration of religious objects and buildings have on people and what it can lead to."

This is a most important piece of legislation which must be passed by the House and the other body before we adjourn. I commend Chairman CONYERS for his outstanding work on this issue as well as the other of the final bill, Mr. GLICKMAN.

Religiously motivated violence and vandalism has no place in a democracy. It is an anathema to our basic principles and we must put the full resources of our Criminal Code to work to combat this evil before it spreads.

Mr. McGRATH. Mr. Speaker, over 300 years ago this country was settled by people seeking religious freedom. It is sadly ironic that in a country where people take pride in their ability to worship their God as they please that heinous acts of vandalism and violence are committed against them, their places of worship, and religious artifacts they hold with deep regard.

Too many times we hear about needless, wanton criminal acts against religious property. The majority of these crimes, anti-Semitic in nature, are perpetrated neither for material gain nor are they intended as harmless scrawls of graffiti. These criminal acts are motivated by hate and prejudice and committed with the intent to intimidate and frighten citizens singled out merely for their religious beliefs.

Some people may contest that anti-Semitic acts of violence are hard to differentiate from other crimes. I must say that defacement of property such as painting swastikas, burning crosses, scrawling hateful graffiti and desecrating cemeteries are definite signs of religiously motivated anti-Semitic offenses which should be brought under the Criminal Code.

I am pleased to say that New York has addressed this troubling phenomenon by enacting measures which criminalize bias vandalism and related activities.

Legislation passed by New York State makes harassment of another person based on race, color, creed, or national origin a class A misdemeanor. Also, my State has a parental liability statute which holds parents responsible for up to $5,000 for damage repayment perpetrated by their children between 11 and 18 years old.

Thefts of religious articles and property from religious buildings continue to increase. In an effort to further address the bias problem, a bill was introduced in the State Senate which will make it a class E felony for possessing stolen religious articles with a value of $100 or more.

Needless to say, I am very pleased to represent one of the 29 States which has taken these malicious crimes seriously enough to take substantive legal action against sick people who are motivated by crimes of religious hatred.

H.R. 4980 will make it a Federal crime to travel in interstate or foreign commerce, or use the mail or telephone with intent to obstruct, by force or threat of force, any person in the free exercise of religious beliefs. If a death results in the course of such a crime, the measure would impose penalties of up to $250,000 and life imprisonment, up to $250,000 and 15 years in jail if serious bodily injury results, and up to $250,000 and 5 years in jail in other cases. Fines of up to $500,000 could be imposed on organizations.

I believe that adoption of H.R. 4980 will send a clear message that the United States will not tolerate crimes of religiously motivated hate. When countrywide organizations such as the Ku Klux Klan, Neo-Nazis, Aryan Nations various survivalist groups, and radical leftist organizations proclaim the superiority of one class of people and denounce others as inferior then follow such outrageous statements with hateful acts of violence, I feel that it is way passed due for Federal legislation to combat this growing problem.

Since H.R. 4980 will not supercede State laws now in place, it will serve to work with State and local government to present a more formidable force for these groups as well as the individuals who derive a sickening pleasure from committing such vile acts.

SPEECH OF

Mr. YOUNG of Florida. Mr. Speaker, I rise in support of H.R. 4980, legislation I have cosponsored to establish a Federal crime for the vandalizing of religious property or for causing injury to persons during religious worship.

The founders of our Nation sought a land where they could freely worship the God of their choice. Our Constitution affords this protection by prohibiting any type of Government interference that would inhibit that right.

Despite these protections, there are still some congregations and organizations whose right to worship freely is violated by others whose beliefs differ from their own. These congregations are harassed by vandals and terrorized by threats of violence.

The congregation of a Seminole, FL, synagogue I represent has reported several such attacks over the last few years. In the most recent incident, earlier this month, vandals using spray paint smeared obscenities on the walls of the Congregation Beth Chai Synagogue. The congregation has been subject in past years to bomb threats, arson attempts, and graffiti.

These attacks constitute a breach of the constitutional right to freedom of religion. As a cosponsor of the legislation we consider today, I believe Congress must provide protection to all Americans who desire to worship free from the fear of violence and harassment. This legislation, for the first time, would establish Federal penalties for vandalizing and terrorizing houses of worship.

Federal legislation would complement the efforts of States, such as Florida, which have enacted similar laws. The Anti-Defamation League of B'nai B'rith has reported this legislation is in part responsible for a decline in the number of violent actions aimed at places of worship in these States.

Still, it is sad to note that testimony received by the Judiciary Committee indicated that the number of these crimes reported in 1985 exceeded one per day. No religion or denomination is exempt from the bombings, arson, desecration of cemeteries, vandalism, assaults, threats, or harassment associated with these crimes.

The enactment of this legislation, I am confident, will improve efforts at the Federal, State, and local level to ensure that Americans, regardless of religious affiliation, will be free to worship without the fear of terror or the public humiliation of vandalism.

Monday, September 22, 1986

Ms. FIEDLER. Mr. Speaker, I rise in strong support of H.R. 4980. Legislation to stop the wave of desecration of churches and synagogues is sorely needed. For the past 5 years, I have introduced legislation to impose Federal criminal penalties on the perpetrators of these hateful acts. I am pleased that the Judiciary Committee has finally acted on this important issue.

In 1985, the hateful acts of desecration continued at a high level, including 638 directed at Jewish communities alone. That means swastikas splashed on the walls of synagogues, graves destroyed, sacred books burned, and hate posters plastered on the walls of schools for young children.

These crimes of hate are occurring nationwide. Though New York and California have been most affected, 31 other States and the District of Columbia have their own ugly incidents to report. Nor are Jews the only victims, Catholics, Baptists, Buddhists, and members of other faiths have found their places of worship vandalized, torched or ransacked.

Why should these crimes be under Federal jurisdiction? There are many reasons. Religious hate crimes strike at one of the fundamental pillars of our identity as a nation: the principle of religious freedom and tolerance. My ancestors, and I'm sure many of yours, came to the United States for the purpose of exercising that freedom. Whan vandals paint their swastikas, they identify themselves with an evil cause that over 400,000 Americans died to defeat. An assault on religious freedom is more than mere vandalism, it is an assault on the very nature of our society.

Furthermore, many of these acts of desecration are linked with an expanding network of organized hate groups across the Nation. These people use our telecommunications system, our postal system and our highways to incite others to burn Torah scrolls, destroy graves and burn crosses. Surely that should be considered a Federal crime. I urge swift enactment of this legislation so these hateful acts can be punished and prevented.

Mr. WEISS. Mr. Speaker, as a cosponsor of this bill, I rise in strong support of H.R. 4980, which will impose criminal penalties for crimes against religious practices and property.

We have grown accustomed to the tragedy of religious violence when it occurs in Lebanon, Ireland, or India. Yet the jarring truth is that religiously motivated crimes have also been increasing in our own country. In Pennsylvania alone—one of the few States to keep records of ethnic and race-related violence—the number of incidents reported has increased 85 percent in the past year. Statistics show the most common targets of these hate crimes are synagogues and black churches.

Records kept by the Anti-Defamation League of B'nai Brith [ADL] show a troublesome rise in anti-Semitic violence over the last 7 years. In 1985, the ADL reported 306 accounts of assaults or threats against Jews—up almost 70 percent over 1980—and 638 acts of vandalism—up over 170 percent since 1980. Among the acts reported were bombings of a synagogue in Boise, ID; the burning of a swastika on a lawn in a swank Los Angeles subdivision; and 17 acts of van-

dalism in a Bronx housing project. Only last spring, a vandal broke into the Jewish Center in South Baldwin, NY, stacked all of the prayer books on the altar and podium, and set them on fire.

Many of these crimes can be traced to a network of paramilitary white supremacy groups, which are closely linked by a violently anti-Semitic doctrine, and are known collectively as the Christian Identity Movement. One group known as the Order had 23 members indicted last year for robbery and murder. Other anti-Semitic organizations, such as the Posse Comitatus, the Covenant, the Aryan Nation, and the Silent Brotherhood, have developed organizations even more dangerous than the Klan groups from which they sprang. Typically, these groups try to blame economic hardships on Jews, who are alleged to control the economy, and blacks, Asian-Americans, and Hispanics who supposedly take their jobs.

Religiously motivated violence affects the entire range of faiths, not just synagogues and Jewish communities. Not long ago, two predominantly black churches in rural South Carolina were destroyed by arson. At a Buddhist Temple in downtown Los Angeles, a priceless scripture was recently stolen. In 1984, three churches in Lancaster, PA, were burned Had the congregations been inside, the human tragedy would have been enormous.

All violence is reprehensible. But religiously motivated crimes are uniquely abhorrent. Our Nation was founded by men and women fleeing religious persecution, and has since become a haven for people in search of religious freedom. Of all the rights we enjoy as Americans, our right to worship as we choose is among the most cherished. Any infringements on our freedom of religion—whether by the Government or by private groups or individuals—attacks not just that religion, but the principles on which our Nation was founded.

Countless immigrants—myself among them—have come to America to escape religious persecution in other countries. Our Government must be determined to keep the ugly scourge of religiously motivated violence out of this Nation. I believe this bill will play an important role in accomplishing this, and I urge my colleagues to support its passage.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BENNETT). The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 4980.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

Mr. NEAL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945.

The Clerk read as follows:

H.R. 5548

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Export-Import Bank Act Amendments of 1986".

SEC. 2 FEES.

Section 2(a)(1) of the Export-Import Bank Act of 1945 is amended by inserting after the fifth sentence thereof the following: "The Bank may impose and collect reasonable fees to cover the costs of conferences and seminars sponsored by, and publications provided by, the Bank. Amounts received under the preceding sentence shall be credited to the fund which initially paid for such activities.".

SEC. CREDIT APPLICATION FEES.

Section 2(b)(1)(B) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(B)) is amended by inserting after the third sentence the following: "The Bank may not impose a credit application fee unless (i) the fee is competitive with the average fee charged by the Bank's primary foreign competitors, and (ii) the borrower or the exporter is given the option of paying the fee at the outset of the loan or over the life of the loan and the present value of the fee determined under either such option is the same amount.".

SEC. 4 ENHANCEMENT OF MEDIUM-TERM PROGRAM.

Section 2(a) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(a)) is amended by adding at the end thereof the following new paragraph:

"(3) ENHANCEMENT OF MEDIUM-TERM PROGRAM.—

"(A) IN GENERAL.—To enhance the medium-term financing program established pursuant to paragraph (2), the Bank shall establish measures to—

"(i) improve the competitiveness of the Bank's medium-term financing and ensure that its medium-term financing is fully competitive with that of other major official credit agencies;

"(ii) ease the administrative burdens and procedural and documentary requirements imposed on the users of medium-term financing;

"(iii) attract the widest possible participation of private financial institutions and other sources of private capital in the medium-term financing of United States exports; and

"(iv) render the Bank's medium-term financing as supportive of United States exports as is its Direct Loan Program.

"(B) REPORT REQUIRED.—Not later than April 15, 1988, the Bank shall transmit a report to the Congress analyzing the measures adopted to enhance medium-term financing.".

SEC. 5. COMPETITIVENESS MANDATE.

The second sentence of section 2(b)(1)(B) of the Export-Import Bank Act of 1945 is amended by striking out "equivalent" and inserting in lieu thereof "identical in all respects".

SEC. 6. MULTIPLE-EXPORTER RISK PROTECTION.

Section 2(b)(1)(E) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following new clause:

"(ix) The Bank shall provide, through creditworthy trade associations, export trading companies, State export finance companies, export finance cooperatives, and other multiple-exporter organizations, medium-term risk protection coverage for the members and clients of such organizations. Such coverage shall be made available to each such organization under a single risk protection policy covering its members or clients. Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.".

SEC. 7. PROGRAM ACCESS.

Section 2(b)(1) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following new subparagraph:

"(G) Participation in or access to long-, medium-, and short-term financing, guarantees, and insurance provided by the Bank shall not be denied solely because the entity seeking participation or access is not a bank or is not a United States person.".

SEC. 8. PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.

Section 2(b)(2) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(2)) is amended to read as follows:

"(2) PROHIBITION ON AID TO MARXIST-LENINIST COUNTRIES.—

"(A) IN GENERAL.—The Bank in the exercise of its functions shall not guarantee, insure, extend credit, or participate in the extension of credit—

"(i) in connection with the purchase or lease of any product by a Marxist-Leninist country, or agency or national thereof; or

"(ii) in connection with the purchase or lease of any product by any other foreign country, or agency or national thereof, if the product to be purchased or leased by such other country, agency, or national is, to the knowlege of the Bank, principally for use in, or sale or lease to, a Marxist-Leninist country.

"(B) MARXIST-LENINIST COUNTRY DEFINED.—

"(i) IN GENERAL.—For the purposes of this paragraph, the term 'Marxist-Leninist country' means any country which—

"(I) maintains a centrally planned economy based on the principles of Marxist-Leninism, or

"(II) is economically and militarily dependent on the Union of Soviet Socialist Republics or on any other Marxist-Leninist country.

"(ii) SPECIFIC COUNTRIES DEEMED TO BE MARXIST-LENINIST.—Unless otherwise determined by the President in the manner provided in subparagraph (C), the following countries are deemed to be Marxist-Leninist countries for purposes of this paragraph:

"Cambodian People's Republic.
"Cooperative Republic of Guyana.
"Czechoslovak Socialist Republic.
"Democratic People's Republic of Korea.
"Democratic Republic of Afghanistan.
"Estonia.
"German Democratic Republic.
"Hungarian People's Republic.
"Lao People's Democratic Republic.
"Latvia.
"Lithuania.
"Mongolian People's Republic.
"People's Democratic Republic of Yeman.
"People's Republic of Albania.
"People's Republic of Angola.
"People's Republic of Benin.
"People's Republic of Bulgaria.
"People's Republic of China.
"People's Republic of the Congo.
"People's Republic of Mozambique.
"Polish People's Republic.
"Republic of Cuba.
"Republic of Nicaragua.

"Socialist Ethiopia.
"Socialist Federal Republic of Yugoslavia.
"Socialist Republic of Romania.
"Socialist Republic of Vietnam.
"Surinam.
"Tibet.
"Union of Soviet Socialist Republics (including its captive constituent republics).

"(C) PRESIDENTIAL DETERMINATION THAT A COUNTRY HAS CEASED TO BE MARXIST-LENINIST.—If the President determines that any country on the list contained in subparagraph (B)(ii) has ceased to be a Marxist-Leninist country (within the definition of such term in subparagraph (B)(i)), such country shall not be treated as a Marxist-Leninist country for purposes of this paragraph after the date of such determination, unless the President subsequently determines that such country has again become a Marxist-Leninist country.".

"(D) PRESIDENTIAL DETERMINATION RELATING TO FINANCING IN THE NATIONAL INTEREST.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to guarantees, insurance, or extensions of credit by the Bank to a country, agency, or national described in clause (i) or (ii) of subparagraph (A) (in connection with transactions described in such clauses) if the President determines that such guarantees, insurance, or extensions of credit are in the national interest.

"(ii) SEPARATE DETERMINATION FOR CERTAIN TRANSACTIONS.—The President shall make a separate determination under clause (i) for each transaction described in clause (i) or (ii) or subparagraph (A) for which the Bank would extend a loan in an amount equal to or greater than $50,000,000.

"(iii) REPORT OF CLAUSE (i) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (i) shall be reported to the Congress not later than the earlier of—

"(I) the end of the 30-day period beginning on the date of such determination; or

"(II) the date the Bank takes final action with respect to the first transaction involving the country, agency, or national for which such determination is made after the date of the enactment of the Export-Import Bank Amendments of 1974, unless a report of a determination with respect to such country, agency, or national was made and reported before such date of enactment.

"(iv) REPORT OF CLAUSE (ii) DETERMINATIONS TO CONGRESS.—Any determination by the President under clause (ii) shall be reported to the Congress not later than the earlier of—

"(I) the end of the 30-day period beginning on the date of such determination; or

"(II) the date the Bank takes final action with respect to the transaction for which such determination is made.

SEC. 9. PROHIBITION ON AID TO ANGOLA.

Section 2(b) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)) is amended by adding at the end thereof the following new paragraph:

"(11) PROHIBITION RELATING TO ANGOLA.—Notwithstanding any determination by the President under paragraph (2), the Bank may not guarantee, insure, or extend credit (or participate in the extension of credit) in connection with any export of goods or services, except food or agricultural commodities, to the People's Republic of Angola until the President certifies to the Congress that no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country (as such term is defined in paragraph (2)(B) remain in Angola.".

SEC. 10. TRANSFERABILITY OF GUARANTEES.

Section 2(c) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following new paragraph:

"(3) TRANSFERABILITY OF GUARANTEES.—With respect to medium-term and long-term obligations insured or guaranteed by the Bank after the date of the enactment of the Export-Import Bank Act Amendments of 1986, the Bank shall authorize the unrestricted transfer of such obligations by the originating lenders or their transferees to other lenders without affecting, limiting, or terminating the guarantee or insurance provided by the Bank.".

SEC. 11. PROHIBITION AGAINST CERTAIN TRANSACTIONS

Section 2 of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following:

"(e) LIMITATION ON ASSISTANCE WHICH ADVERSELY AFFECT THE UNITED STATES.—

"(1) IN GENERAL.—The Bank may not extend any direct credit or financial guarantee for establishing or expanding production of any commodity for export by any country other than the United States, if—

"(A) the Bank determines that—

"(i) the commodity is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative; or

"(ii) the resulting production capacity is expected to compete with United States production of the same, similar, or competing commodity; and

"(B) the Bank determines that the extension of such credit or guarantee will cause substantial injury to United States producers of the same, similar, or competing commodity.

"(2) EXCEPTION.—Paragraph (1) shall not apply in any case where, in the judgment of the Board of Directors of the Bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the injury to United States producers of the same, similar, or competing commodity.".

SEC. 12. IMPACT ANALYSIS.

Section 1911 of the Export-Import Bank Act Amendments of 1978 is amended by adding at the end thereof the following: "In all cases to which this section applies, the Bank shall consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on the loan or guarantee. This requirement does not subject the Bank to the provisions of subchapter II of chapter 5 of title 5, United States Code.".

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

Section 7(a) of the Export-Import Bank Act of 1945 is amended by adding at the end thereof the following new paragraph:

"(3) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated $145,259,000 for fiscal year 1987 to cover the subsidy cost of new direct loans obligated by the Bank in that fiscal year. Any amounts appropriated under this paragraph shall be permanent additions to the capital and reserves of the Bank.".

SEC. 14. EXTENSION OF CHARTER.

Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635f) is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1992".

SEC. 15. MATCHING FOREIGN OFFICIAL EXPORT CREDITS IN THE UNITED STATES.

(a) IN GENERAL.—Section 1912(b) of the Export-Import Bank Act Amendments of 1978 (12 U.S.C. 635a-3(b)) is amended to read as follows:

"(b) The Secretary of the Treasury shall issue such authorization to the Bank to provide guarantees, insurance, and credits to competing United States sellers, unless the Secretary determines that—

"(1) the availability of foreign official noncompetitive financing is not likely to be a significant factor in the sale; or

"(2) the foreign noncompetitive financing has been withdrawn.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1912(a)(1) of the Export-Import Bank Act Amendments of 1978 (12 U.S.C. 635a-3(a)(1)) is amended by inserting "irrespective of whether these credits are being offered by governments which are signatories to such standstills, minutes, or practices," after "major export countries have agreed,".

SEC. 16. REPORT ON ROLE OF PRIVATE INSURANCE.

Not later than October 1, 1987, the Export-Import Bank of the United States and the Office of Management and Budget shall jointly prepare and transmit to the Congress, and the General Accounting Office shall prepare and transmit to the Congress, reports analyzing—

(1) the need for United States Government involvement in export credit insurance, considering the current activities of private insurance companies in this area, private insurance industry trends over the longer term, and ways in which private insurance companies can be encouraged by the Bank to maximize export credit insurance activities;

(2) the need to employ an agent in administering government-supported insurance programs which are determined to be necessary; and

(3) the efficiency and effectiveness of continuing to utilize the Foreign Credit Insurance Association as the Bank's agent (including an analysis of the administrative and economic cost to the government and the Bank of maintaining the Foreign Credit Insurance Association).

SEC. 17. CONFORMING AMENDMENT RELATING TO CREDIT AUTHORITY.

The second sentence of section 7(a) of the Export-Import Bank Act of 1945 is amended by inserting "and credit" immediately after the words "all spending".

SEC. 18. DIRECTORS' TERMS.

Section 3(c)(8) of the Export-Import Bank Act of 1945 (12 U.S.C. 635a(c)(8)) is amended by adding at the end thereof the following new subparagraph:

"(E) Any director whose term has expired may continue to serve on the Board of Directors until the earlier of—

"(i) the date on which such director's successor is qualified; or

"(ii) the end of the 6-month period beginning on the date such director's term expires.".

SEC. 19. TIED AID CREDIT WAR CHEST.

The Export-Import Bank Act of 1945 is amended by adding at the end thereof the following new section:

"SEC. 15. TIED AID CREDIT PROGRAM AND FUND.

"(a) FINDINGS.—The Congress finds that—

"(1) tied aid and partially untied aid credits offered by other countries are a predacious method of financing exports because of their market-distorting effects;

"(2) these distortions have caused the United States to lose export sales, with resulting losses in economic growth and employment;

"(3) these practices undermine market mechanisms that would otherwise result in export purchase decisions made on the basis of price, quality, delivery, and other factors directly related to the export, where official financing is not subsidized and would be a neutral factor in the transaction;

"(4) support of commercial exports by donor countries with tied aid and partially untied aid credits impedes the growth of developing countries because it diverts development assistance funds from essential developmental purposes; and

"(5) there should be established in the Bank a temporary tied aid program to target the export markets of those countries which make extensive use of tied aid or partially untied aid credits for commercial advantage for the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, and such program should be aggressively used until such an arrangement is established.

"(b) ESTABLISHMENT OF TIED AID CREDIT PROGRAM.—

"(1) IN GENERAL.—For the purpose of facilitating the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes, the Bank shall establish a tied aid credit program under which grants shall be made from funds available in the Tied Aid Credit Fund established under subsection (c)—

"(A) to supplement the financing of a United States export when there is a reasonable expectation that predacious financing will be provided by another country for a sale by a competitor of the United States exporter with respect to such export;

"(B) to supplement the financing of United States exports to foreign markets which are actual or potential export markets for any country which the Bank determines—

"(i) engages in predacious official export financing through the use of tied aid or partially untied aid credits; and

"(ii) impedes negotiations to eliminate the use of such credits for commercial purposes; or

"(C) to supplement the financing of United States exports under such other circumstances as the Bank may determine to be appropriate for carrying out the purposes of this section.

"(2) ADMINISTRATION OF PROGRAM.—The tied aid credit program shall be administered by the Bank—

"(A) in consultation with the Secretary of the Treasury and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes;

"(B) in cooperation with private financial insitutions or entities, as appropriate; and

"(C) in consultation with the National Advisory Council on International Monetary and Financial Policies.

"(3) COORDINATION WITH OTHER EXPORT FINANCING.—Under the tied aid credit program, the Bank may combine grants from the Tied Aid Credit Fund with—

"(A) any guarantee, insurance, or other extension of credit provided by the Bank under this Act;

"(B) any export financing provided by any private financial institution or other entity; and

"(C) any other type of export financing, in such manner and under such terms as the Bank determines to be appropriate, including combinations of export financing in the form of blended financing and parallel financing.

"(4) INFORMATION ON COUNTRIES WHICH ENGAGE IN OFFICIAL PREDACIOUS EXPORT FINANCING AND IMPEDE NEGOTIATIONS.—In order to assist the Bank to make the most efficient use of funds available for supplemental financing under paragraph (1)(B), the United States Trade Representative and the Secretary of Commerce may provide information on principal sectors and key markets of countries described in paragraph (1)(B) to the Bank, the Secretary, and the National Advisory Council on International Monetary and Financial Policies.

"(c) TIED AID CREDIT FUND.—

"(1) IN GENERAL.—There is hereby established within the Bank a fund to be known as the 'Tied Aid Credit Fund' (hereinafter in this section referred to as the 'Fund'), consisting of such amounts as may be appropriated to the Fund pursuant to the authorization contained in subsection (e).

"(2) EXPENDITURES FROM FUND.—Amounts in the Fund shall be available for grants made by the Bank under the tied aid credit program established pursuant to subsection (b) and to reimburse the Bank for the cost of any tied aid credits authorized by the Bank during fiscal year 1986.

"(d) CONSISTENCY WITH ARRANGEMENT.—Any export financing involving the use of a grant under the tied aid credit program shall be consistent with the procedures established by the Arrangement, as in effect at the time such financing is approved.

"(e) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There is hereby authorized to be appropriated to the Fund for fiscal years 1987 and 1988, $300,000,000. Except as provided in paragraph (2), such sums shall remain available until expended.

"(2) RESCISSION AUTHORITY.—

"(A) DETERMINATION BY PRESIDENT.—If the President determines that any amount appropriated to the Fund is not required to achieve the purpose of the Fund, the President shall transmit a special message of such determination to the Congress in the manner provided in section 1012(a) of the Impoundment Control Act of 1975.

"(B) SPECIAL MESSAGE.—Any message under this paragraph shall be treated as a special message under such section for purposes of such Act.

"(f) NONREVIEWABILITY.—No action taken under this section shall be reviewable by any court, except for abuse of discretion.

"(g) REPORT TO CONGRESS.—

"(1) REPORT REQUESTED.—Before the end of the 6-month period beginning on the date of enactment of this section and every six months thereafter, the Bank, in consultation with the Secretary, shall prepare and transmit a report on tied aid credits to the President of the Senate and the Speaker of the House of Representatives.

"(2) CONTENTS OF REPORT.—Each report required by paragraph (1) shall contain a description of—

"(A) the principal offers of predacious financing by foreign countries during the course of the previous 6 months;

"(B) steps taken by the United States to combat specific predacious financing practices of foreign countries;

"(C) any use by the Bank of the Tied Aid Credit Fund to match specific predacious financing practices of foreign counties and to initiate tied aid credit offers;

"(D) any additional steps the United States may take in the future to discourage use of predacious financing practices; and

"(E) any progress achieved in negotiations to establish a comprehensive international arrangement restricting the use of tied aid and partially untied credits for commercial purposes.

"(3) CONFIDENTIAL INFORMATION.—To the extent the Bank determines any information required to be included in the report under this subsection should not be made public, such information may be submitted separately on a confidential basis or provided orally, rather than in written form, to the Chairmen and ranking minority Members of the Committees of the Senate and the House of Representatives with jurisdiction over the subject matter of the report.

"(h) DEFINITIONS.—For the purpose of this section—

"(1) TIED AID PARTIALLY UNTIED AID CREDIT.—The terms 'tied aid credit' and 'partially untied aid credit' mean any credit which—

"(A) has a grant element greater than zero percent, as determined by the Development Assistance Committee of the Organization for Economic Cooperation and Development;

"(B) is, in fact or in effect, tied to—

"(i) the procurement of goods or services from the donor country, in the case of tied aid credit; or

"(ii) the procurement of goods or services from a restricted number of countries, in the case of partially untied aid credit; and

"(C) is financed either exclusively from public funds or partly from public and partly from private funds.

"(2) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(3) ARRANGEMENT.—The term 'Arrangement' means the Arrangement on Guidelines for Officially Supported Export Credits established through the Organization for Economic Cooperation and Development.

"(4) BLENDED FINANCING.—The term 'blended financing' means financing provided through any combination of official development assistance, official export credits, and private commercial credit which is integrated into a single agreement with a single set of financial terms.

"(5) PARALLEL FINANCING.—The term 'parallel financing' means financing provided by any combination of official development assistance, offical export credits, and private commercial credit which is not integrated into a single agreement and does not have a single set of financial terms.".

SEC. 20. INTEREST SUBSIDY PAYMENTS.

"(a) IN GENERAL.—Section 2 of the Export-Import Bank Act of 1945 (as amended by section 11) is amended by adding at the end thereof the following new subsection:

"(f) INTEREST SUBSIDY PAYMENTS.—

"(1) PAYMENTS AUTHORIZED.—The Bank may enter into commitments to make payments to commercial lending institutions and other lenders, in such amounts as the Bank may determine to be appropriate, to provide a sufficient return on loans by such lenders (including loans guaranteed by the Bank) in support of United States exports (of goods or services) when financing at less than market rates is required for such exports in order to respond to subsidized financing offered by foreign export credit agencies.

"(2) AUTHORITY TO MAKE PAYMENTS SUBJECT TO MINIMUM AMOUNT OF DIRECT LOAN AUTHORITY.—The authority to enter into commitments to make interest subsidy payments under paragraph (1) shall be effective for any fiscal year only if the aggregate principal amount of direct loans the Bank may obligate in such fiscal year is equal to or greater than $700,000,000.

"(3) PAYMENTS ALLOWED ONLY FROM FUNDS APPROPRIATED FOR SUCH PURPOSE.—The estimated aggregate amount of commitments entered into by the Bank under paragraph (1) in any fiscal year beginning after fiscal year 1986 may not exceed the amount of funds appropriated to the Bank for such purposes for such fiscal year.

"(4) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—Subject to paragraph (B), there are authorized to be appropriated to the Bank, for any fiscal year beginning after fiscal year 1986, such sums as may be necessary to carry out the purposes of this subsection.

"(B) BUDGET SCORING.—No amount is authorized to be appropriated for commitments to make interest subsidy payments on loans for which the Bank extends a loan guarantee commitment if any amount of such loan guarantee commitment is scored as budget authority in any estimate of budget authority prepared pursuant to any provision of the Congressional Budget and Impoundment Control Act of 1974.

"(5) SUNSET PROVISION.—The authority to enter into commitments to make interest subsidy payments shall lapse on October 1, 1988.".

(b) GAO REPORT ON INTEREST SUBSIDY PAYMENTS.—Section 9 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended by adding at the end thereof the following new subsection:

"(e) GAO REPORT ON INTEREST SUBSIDY PAYMENTS.—

"(1) REPORT REQUIRED.—Not later than March 1, 1988, the Comptroller General of the United States shall transmit to both Houses of the Congress a report on the manner in which and the extent to which the Bank is exercising its authority to make interest subsidy payments under section 2(f).

"(2) CONTENTS OF REPORT.—The report required under paragraph (1) with respect to interest subsidy payments shall—

"(A) compare the efficiency and competitiveness of interest subsidy payments with the efficiency and competitiveness of direct Bank financing of an equivalent value of exports;

"(B) compare the cost, to the United States Government, of making interest subsidy payments and the impact of such payments on the financial condition of the Bank with the cost and impact of direct Bank financing of an equivalent value of exports;

"(C) compare the impact of interest subsidy payments on the Federal budget with the impact on such budget of direct Bank financing of an equivalent value of exports; and

"(D) include all views and recommendations of the Advisory Committee of the Bank which are submitted to the Comptroller General of the United States before December 1, 1987.".

(c) REPORT SUNSET PROVISION.—Effective March 2, 1988, the amendment made by subsection (b) is repealed.

The SPEAKER pro tempore. Is a second demanded?

Mr. CHANDLER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. NEAL] will be recognized for 20 minutes and the gentleman from Washington [Mr. CHANDLER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is the result of extensive negotiations between the Banking Committees of the House and the Senate. Both bodies had passed similar legislation reauthorizing the Export-Import Bank. Instead of convening a formal conference, we decided to work with the other body in preparing an entirely new bill embodying the compromises we would have reached in a conference. This bill, which I hope we can pass today under suspension of the rules, stands a very good chance of being considered favorably by the other body, and quickly sent to the President for his signature. We need quick action because, under current law, the authority of the Bank to finance U.S. exports expires on September 30. By passing this bill we would extend that authority for another 6 years to September 30, 1992.

This bill is very similar to H.R. 4510, the Eximbank reauthorization that has already passed the House. I would like to clarify very briefly the few points on which it differs, and point out the major provisions which were retained, virtually unchanged, from H.R. 4510.

Section 5 of H.R. 5548 addresses the Bank's "competitiveness mandate." Current law requires the Bank to be fully competitive, but stipulates that "rates and terms and conditions need not be equivalent to those offered by foreign countries, * * *." This would be changed to read: "Rates and terms and conditions need not be identical in all respects to those offered by foreign countries. . . ."

The substitution of "need not be identical" for "need not be equivalent" is meant to strengthen the Bank's competitiveness mandate by removing any possible ambiguity in the current language. "Need not be equivalent" might be read as a relaxation of the requirement that the Bank be fully competitive," without qualification, but with the understanding that each individual rate, term and condition of an offer need not be identical to that of a foreign financing offer, as long as the financing package as a whole is competitive.

The purpose of section 7 of this bill, relating to program access, is to ensure that an entity not be denied access to the Bank's programs solely because that entity is not a bank or is not a U.S. person. It is not intended to limit the Bank's flexibility in determining access, based upon other criteria, to its programs or to restructure them in any way. Thus, the Bank would still be able to establish rules for access to its programs as part of the process of implementing the mandates contained in its statutory charter, such as finding reasonable assurance of repayment and avoiding competition with private capital. The Bank would also be able to handle access to its programs in ways that will enable it to continue to administer its programs in an effective and efficient manner.

As it passed the House, H.R. 4510 contained a new provision defining Marxist-Leninist countries, and prohibiting Eximbank financing to such countries without a Presidential waiver. it also contained an explicit prohibition on Eximbank financing for exports to Angola, unless the President certifies that Cuba combatant forces no loger remain in Angola. This bill, in sections 8 and 9, retains of those provisions virtually unchanged. The Marxist-Leninist provision incorporates Senate language permitting the President to remove a country from the list if that country no longer meets the definition of Marxism-Leninism, and the Angolan provision is broadened somewhat by requiring the President to certify that no combatant forces or military advisors of Cuba or any other Marxist-Leninist country remain in Cuba.

H.R. 4510 contained an important provision requiring the Bank to authorize the unrestricted transfer of its guarantees, thereby making Eximbank guaranteed loans highly liquid assets, and encouraging the development of a secondary market in such assets. This bill, in section 10, contains a very similar provision, with the same intent and purpose. It may, however, require some clarification. It refers to the unrestricted transfer of obligations guaranteed or insured by the Bank from the original lenders to other "lenders" without limiting or terminating the guarantee or insurance. the word "lender" is not to be narrowly construed. It does not mean simply another bank, or financial institution that normally makes export loans. Since the asset in question is a loan—a loan made by the original lender and guaranteed or insured by the Bank—any person or entity acquiring ownership of that asset should be deemed to be a "lender" under the language of this provision. Our purpose is to permit the original lender to sell or transfer the loan to any other person or entity without affecting or limiting in any way the Bank's guarantee or insurance.

Section 19 of this bill establishes, within the Export-Import Bank, the so-called "mixed credits" war chest the administration has been requesting, and authorizes the appropriation of $300 million for that purpose. The structure and purpose of this "war chest" have been carefully designed. It could be used for both "offensive" and "defensive" purposes, that is, it could be used aggressively to take markets away from other countries, and defensively to protect American exports facing unfair mixed credits financing. Its overriding purpose is to strengthen the hand of the Secretary of the Treasury in negotiating a comprehensive agreement to limit the use and abuse of mixed credits. To serve that purpose, it is essential that the Secretary, who is in charge of these negotiations for the United States, be able to direct the use of the funds from this war chest. Thus, though it is lodged administratively in the Bank, the actual use of the funds in the war chest will be under the control of the Secretary. His practical control over these funds is assured by the language in this section which requires the Bank to administer this tied aid credit program "in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes."

Finally, section 20 of H.R. 5548 authorizes the Bank to establish its so-called I-Match Program, under which it would make interest subsidy payments to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is granted for 2 years, will be effective only if three conditions are met: First, the funds for the interest subsidy payments are appropriated; second, loan guarantees accompanying these payments are scored "off-budget"; and third, the Bank has a direct loan budget of at least $700 million. This last condition does not mean the Bank must actually lend $700 million. It means that I-Match authority is effective in any fiscal year only if the Bank has at least a $700 million direct loan budget in place for that year, that is, that the Bank is empowered to lend that much. This condition is intended to ensure that, for the 2 years of its operation, I-Match will remain an experimental or pilot program. Then, on the basis of this experience, we can decide whether or not it should be expanded.

Mr. Speaker, this bill is a good compromise package. It enjoys widespread support among exporters and financial institutions financing exports. It deserves our speedy passage.

Mr. Speaker, I reserve the balance of my time.

Mr. CHANDLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, with the number of bills under consideration today, I will be brief; but I am pleased to rise in support of this measure.

Several provisions are a disappointment: I'm not especially pleased that we're authorizing an appropriation to subsidize direct lending. That hasn't been necessary in the past, and in the current budget climate I think it is a mistake. And I'm also disappointed that this bill makes foreign policy. The provisions prohibiting assistance to Angola and other Communist countries address foreign policy issues, not export policy. These foreign policy issues deserve our attention; but this isn't the vehicle.

Having said that, the measure's attributes far outweigh its flaws. The authorization runs for 6 years. The medium-term program is strengthened. The direct lending program is retained, but the so-called I-Match option is retained.

I'm especially pleased by a new provision in section 10, which allows the bank to authorize the unrestricted transferability of obligations it guarantees. Everybody wins under this provision. Large exports can be financed by insurance and pension funds, because of the strength of such a liquid guarantee. The diminished demand by large exporters on the direct lending program will leave more resources available for smaller exports.

Mr. Speaker, if we're going to win the trade war, vigorous exporting is essential. This bill gives our exporters an important tool in meeting foreign competition. I'm hopeful that this measure will reach the President's desk in the near future, and I urge my colleagues to join me in voting in favor of its passage.

Mr. WYLIE. Mr. Speaker, I rise in support of H.R. 5548, the Export-Import Bank Act Amendments of 1986. This bill includes a 6-year extension of the charter of the Export-Import Bank which, I believe, will provide a greater sense of certainty and continuity for the exporting community. Eximbank policies and programs put in place by this legislation should more easily permit long-range planning and should provide greater flexibility for our beleaguered exporters. This bill is good for American workers and good for American businesses alike.

This bill fully reflects the substance of an Eximbank reauthorization bill which was considered by the House on July 15. Its adoption today in this form will permit the Congress additionally to authorize the tied-aid credit war chest which is of vital importance to our exporting community. The war chest was first requested by President Reagan over 1 year ago.

This war chest provision is similar to a bill I introduced last year, H.R. 3515, which enjoyed the broad support of the Democratic and Republican leadership. The majority leader, Mr. WRIGHT of Texas; the Republican leader, Mr. MICHEL of Illinois; and a bipartisan majority of the House Committee on Banking, Finance and Urban Affairs, to which my bill was referred, joined in cosponsoring my legislation. Enactment of this legislation will help to combat and eliminate the unfair trade financing practices facing our exporters today.

Establishing a tied-aid credit program in the Export-Import Bank in consultation with the Secretary of the Treasury will greatly facilitate the negotiation of a comprehensive international arrangement to eliminate the abusive used of tied-aid credits. These predatory credits, which combine foreign aid with regular commercial credit, cost American export sales and jobs.

Adoption of the war chest proposal contained in this legislation will result in export purchase decisions made on the basis of price, quality, delivery, and other key factors. Under this program the administration can target the export markets of those countries, such as Japan, France, and Italy, which make extensive use of tied aid or partially untied aid credits for an unfair competitive advantage.

Among its other provisions, the bill: Sets up an I-Match interest subsidy program; improves the competitiveness of the medium-term program; prohibits aid to certain Marxist-Leninist countries; provides for the transferability of the Eximbank guarantee; prohibits aid to Angola; and limits Eximbank assistance which would adversely affect the United States.

I would also call the attention of my colleagues to the program access provisions in the bill which are aimed at broadening the accessibility of Bank short-, medium-, and long-term programs. It is intended to ensure that an entity is not denied access to Eximbank's programs simply because it is not a bank or a U.S. person. It is not intended, however, to limit the Bank's flexibility in determining access, based on other criteria, to its programs or to restructure them in other ways. The Bank would still be able to establish rules for access to its programs as part of the process of implementing the mandates contained in its stautory charter, such as finding reasonable assurance of repayment and avoiding competition with private capital. The Bank would also be able to handle access to its programs in ways that will enable it to continue to administer its programs in an effective and efficient manner.

Mr. Speaker, I am also concerned about the implications of the provision requiring all Eximbank guarantees to be fully transferable. This provision has become a trendy addition to legislation dealing with Government guarantees, but we should take a moment now to consider where we are headed.

As originally envisioned, Eximbank set out to loan money to a foreign buyer, usually a government, so that it could purchase American goods. Over time, Eximbank found that private banks would happily carry out the loan if it carried an ironclad Government guarantee. Using this technique, Eximbank created some $1.3 billion in Government-guaranteed private sector debt in fiscal year 1985. This is all well and good, I suppose, and seems to have been the intention of Congress.

The provision before us today would move Eximbank's financial practices to stage three. The first stage was direct loans from Eximbank to foreign buyers. The second stage was guaranteed private sector loans. The third stage is a fully transferable private sector loan, still guaranteed by the Federal Government.

I ask my colleagues to consider the implications on the national debt and on Congress responsibility to control the purse. Here's how this provision would work. A private sector lender, backed by the approval of Eximbank and an ironclad U.S. Government guarantee, generates a new loan. Working with an investment banker, the private sector lender immediately takes the loan to the financial markets, playing heavily on the security of the Federal guarantee. The loan is sold off, removing the lender from any interest in the creditworthiness of the loan it generated. The investment banker collects a fee and is content to have been of service. And the markets are burdened with yet another riskless financial instrument.

Don't we have a situation here in which one small government program will, in essence, be issuing national debt without the benefit of an appropriation and without that debt registering in the debt ceiling calculation?

I would like to conclude with two observations, First, while I firmly support Eximbank's purpose of financing U.S. exports, this provision is primarily geared to helping the banking community and Wall Street exclusively, I for one, would be happy to look at a more direct way to help the exporter. For example, instead of making the guarantee transferable, why not simply have the government buy down the interest rate on the guarantee, making it that much more attractive to the original private sector lender?

Second, I would like to emphasize to my colleagues that this Eximbank provision is not an isolated case. The government guarantees a large and growing amount of private sector debt, with each loan program preferring the most perfect, ironclad guarantee it can squeeze into the law. In addition, we're now embarking on a major program of loan asset sales, with each purchaser of such loans requesting the most perfect, ironclad guarantee it can get. Unless we recognize this trend and tackle it as such, we will find ourselves engulfed in T-bill look-alikes—federally guaranteed debt issued by the private sector but marketed and traded just like Treasuries.

I will be working on these issues in conference and ask my colleagues to be suspicious of transferability as it crops up in the last weeks of this Congress.

Mr. Speaker, in closing I encourage my colleagues to support this urgently needed legislation which is designed to make our export community more competitive financially. The new $300 million war chest requested by President Reagan will go a long way toward increasing American jobs and preserving our exporting industries.

Mr. RAHALL. Mr. Speaker, the legislation before us today is a compromise between the bill originally passed by the House on July 15 and the version adopted by the other body on July 22 to reauthorize the programs of the U.S. Export-Import Bank. When the House considered this legislation last July, I along with our colleague from Michigan, SANDY LEVIN, sought to amend the bill (H.R. 4510) with a provision that would prohibit Eximbank assistance to foreign projects which in turn would export to the U.S. commodities that would compete with our own domestic producers and result in a net employment loss.

This amendment was modified somewhat on the House floor and was subsequently adopted. In the other body, an amendment with a similar intent was offered by the senior Senator from West Virginia, ROBERT BYRD, and was also adopted by that body. I am pleased to say that while a conference was never held on H.R. 4510, the compromise bill before us this afternoon contains prohibition language similar in scope to what was previously adopted in the context of H.R. 4510.

Mr. Speaker, with unemployment levels still at a very high level in many of our basic industries it makes little sense for the Eximbank to provide assistance to foreign projects that will in turn export like and similar commodities into the United States and as such, further aggravate our domestic unemployment problem. Yet, we have witnessed the Bank time and time again engage in such transactions, the most outrageous of which have involved coal, copper, and steel projects.

The intent of the prohibition provision of this legislation is to insure that never again will the Eximbank provide assistance to projects such as the El Cerrejon Coal Mine in Colombia. This project received $850 million in Eximbank assistance and will soon be the largest surface coal mine in the world. Already, coal from El Cerrejon is infiltrating U.S. electric utility markets and displacing U.S. export coal on the international market.

It is time we cease the shortsighted policy of the Bank in transactions such as this which are so clearly against the best interest of the Nation. I can assure the Eximbank that I will closely monitor its implementation of this legislation.

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Mr. CHANDLER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. NEAL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. BENNETT]. The question is on the motion offered by the gentleman from North Carolina [Mr. NEAL] that the House suspend the rules and pass the bill, H.R. 5548.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NEAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

PUBLIC UTILITY HOLDING COMPANIES' OWNERSHIP OF QUALIFYING COGENERATION FACILITIES

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5056) to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities, as amended.

The Clerk read as follows:

H.R. 5056

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Public Law 99-186, 99th Congres, 99 Stat 1180, be amended to read as follows:

"SECTION. 1. Notwithstanding section 11(b)(1) of the Public Utility Holding Company Act of 1935, a company registered under said Act, or a subsidiary company of such registered company, may acquire or retain, in any geographic area, an interest in any qualifying cogeneration facilities as defined pursuant to the Public Utility Regulatory Policies Act of 1978, and shall qualify for any exemption relating to the Public Utility Holding Company Act prescribed pursuant to section 210 of the Public Utility Regulatory Policies Act.

"SEC. 2. Nothing herein shall be construed to affect the applicability of section 3(17)(C) or section 3(18)(B) of the Federal Power Act or any provision of the Public Utility Holding Company Act, other than section 11(b)(1), to the acquisition or retention of any such interest by any such company.".

SEC. 2. The Federal Energy Regulatory Commission shall, not later than 60 days after the enactment of this Act, issue a final order in ANR Pipeline Company, FERC docket No. RP82-80, filed April 30, 1982.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5056, a bill which was introduced by my colleague, Mr. BRYANT of Texas, and which was reported favorably out of the Committee on Energy and Commerce on September 16, 1986. This bill clarifies the exemptive authority of the Securities and Exchange Commission under the Public Utility Holding Company Act so as to allow registered

electric utility holding companies to invest in qualifying cogeneration facilities outside of their service territory.

I support this bill because it gives to the nine remaining registered electric utility holding companies what is now available to every other utility, gas or electric, in the Nation, the ability to invest in qualifying cogeneration facilities outside of their service territory. H.R. 5056 preserves the beneficial policy objectives of PUHCA. It also explicitly preserves the restrictions on ownership by an electric utility of a qualifying cogeneration facility that are set forth in the Public Utility Regulatory Policies Act of 1978. I know of no objections that have been raised to this narrowly crafted and well thought-out piece of legislation.

I thank my friend, the gentleman from Texas, JOHN BRYANT, for his vigorous leadership in pressing forward on this initiative, and I invite my colleagues to join with me in voting favorably on H.R. 5056.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join with my colleague from Massachusetts in urging favorable action on H.R. 5056. This bill grants needed relief to the electric utilities registered under the Public Utility Holding Company Act. This act restricts these companies' operations to a single, integrated system and to other businesses reasonably incidental, economically necessary, or appropriate to that system. This provision prevents an electric utility holding company from participating in cogeneration projects outside of its service territory—something all other electric utilities are able to do.

This law is part of a continuing effort to reduce the restrictions of the 1935 act on a case-by-case basis. In 1985, Congress passed S. 727 to allow the three registered gas public utility holding companies to invest in qualifying cogeneration facilities outside of their service areas.

H.R. 5056 continues this effort. Allowing electric utility holding companies to invest in qualifying cogeneration facilities outside of their service territories will promote competition, improve the ability of these utilities to produce energy for homes and industry, and will reduce our Nation's reliance on imported energy. This legislation will make greater amounts of electricity available to consumers at lower cost.

This bill will not insulate the electric utility holding companies from their other regulatory responsibilities under the 1935 act. H.R. 5056 will not alter the Securities and Exchange Commission's authority over these electric utility holding companies or affect the SEC's financial reporting and accounting requirements. The electric utility holding companies will still be obligated to obtain SEC approval for financing arrangements concerning cogeneration projects.

Accordingly, I support this bill.

Nonetheless, I would be remiss if I did not point out that this law does not provide complete relief. This law addresses regulatory restrictions created by the 1935 act on a piecemeal basis. Instead, I believe it would be preferable to repeal the 1935 act in its entirety.

Congress passed the 1935 act to address many well-known abuses in the public utility industry. Vigorous enforcement of that act by the SEC, has resulted in the comprehensive restructuring of that industry. Furthermore, the structure of our Nation's economy has changed significantly since the 1930's.

Rather than protecting against abuse, the 1935 act prevents the restructuring of the electric utility industry along lines that would increase its efficiencies and benefit electricity consumers. The 1935 act impedes interstate mergers of utilities. These mergers would benefit consumers by maximizing the efficiencies associated with existing capacity, as well as by reducing the risks associated with building new capacity. Also, I do not believe that an independent power sector is a viable possibility until the 1935 act is repealed. Large companies, like General Electric or Bechtel, will not build and own generating facilities as long as they would have to divest all of their other activities.

The administration recognizes the problems associated with the 1935 act, and supports repeal of this legislation. The Energy and Commerce Committee's Subcommittee on Energy Conservation and Power held hearings on the regulation of public utilities and the bulk power market. These hearings underscored the need to provide reliable electrical service to the public at low cost. I believe that consistent with these goals, we should reassess the 1935 act and determine whether it continues to serve any useful purpose. I would hope we could legislatively address this issue next year.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my friend, the gentleman from California [Mr. MOORHEAD] for his work on this issue. We completed deliberations over a period of 2 or 3 months of private negotiations that involved the gentleman from California and, most prominently, the gentleman from Texas [Mr. BRYANT], who initiated this piece of legislation and who has been its guiding force from initiation right to this point.

I would like at this time to publicly compliment the gentleman from Texas, who because of a delay in a flight back from his home district cannot be here right at this moment, but in recognition of his work just note for the record that he has been the single most important factor in seeing this bill reach this important point in the legislative process.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, at the request of the gentleman from Texas [Mr. BRYANT] I wish to engage the chairman of the subcommittee, the gentleman from Massachusetts [Mr. MARKEY] in a colloquy.

H.R. 1779, the companion bill to S. 727, which eventually became Public Law 99-186; S. 727 was intended to permit the three remaining registered gas utility holding companies to engage in cogeneration activities.

Today I want to be certain H.R. 5056 will in no way affect the rights of the registered gas utility holding companies to acquire, operate, and maintain qualifying cogeneration facilities in any geographic area. Will H.R. 5056 affect such rights in any manner?

Mr. MARKEY. The answer to that very important question is no.

Mr. MOORHEAD. Is the conclusion of registered electric utility companies under Public Law 99-186 intended to affect the manner in which the SEC subsequently administers PUHCA with regard to registered gas companies?

Mr. MARKEY. That question, as its predecessor, must be answered in the negative.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman.

Mr. Speaker, I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 5056, as amended.

The question was taken; and (two-thirds having voted in favor thereof, the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

NATIONAL APPLIANCE ENERGY CONSERVATION ACT OF 1986

Mr. MARKEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5465) to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances, as amended.

The Clerk read as follows:

H.R. 5465

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Appliance Energy Conservation Act of 1986".

SEC. 2. DEFINITIONS.

(a) ENERGY CONSERVATION STANDARD.—Section 321(a)(6) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)(6)) is amended to read as follows:

"(6) The term 'energy conservation standard' means—

"(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

"(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), and (13) of section 322(a); and

includes any other requirements which the Secretary may prescribe under section 325(m)."

(b) NEW DEFINITIONS.—Section 321(a) of the Energy Policy and Conservation Act (42 U.S.C. 6291(a)) is amended by adding at the end the following paragraphs:

"(19) The term 'AV' is the adjusted volume for refrigerators, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed under section 323.

"(20) The term 'annual fuel utilization efficiency' means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

"(A) weatherized warm air furnaces or boilers are located out-of-doors;

"(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills and ducts from the outdoors; and

"(C) boilers which are not weatherized are located within the heated space.

"(21) The term 'central air conditioner' means a product, other than a packaged terminal air conditioner, which—

"(A) is powered by single phase electric current;

"(B) is air-cooled;

"(C) is rated below 65,000 Btu per hour;

"(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour; and

"(E) is a heat pump or a cooling only unit.

"(22) The term 'efficiency descriptor' means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 323 and expressed for the following products in the following terms:

"(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

"(B) For room air conditioners, energy efficiency ratio.

"(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

"(D) For water heaters, energy factor.

"(E) For pool heaters, thermal efficiency.

"(23) The term 'furnace' means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

"(A) is designed to be the principal heating source for the living space of a residence;

"(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

"(C) is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low pressure steam or hot water boiler; and

"(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

"(24) The terms 'heat pump' or 'reverse cycle' mean a product, other than a packaged terminal heat pump, which—

"(A) consists of one or more assemblies;

"(B) is powered by single phase electric current;

"(C) is rated below 65,000 Btu per hour;

"(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

"(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

"(25) The term 'pool heater' means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

"(26) The term 'thermal efficiency of pool heaters' means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56-1986, or as may be prescribed by the Secretary.

"(27) The term 'water heater' means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

"(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

"(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

"(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

"(28) The term 'weatherized warm air furnace or boiler' means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system."

SEC. 3. COVERAGE.

Section 322(a) of the Energy Policy and Conservation Act (42 U.S.C. 6292(a)) is amended to read as follows:

"COVERAGE

"SEC. 322. (a) IN GENERAL.—The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

"(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

"(A) any type designed to be used without doors; and

"(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

"(2) Room air conditioners.

"(3) Central air conditioners and central air conditioning heat pumps.

"(4) Water heaters.

"(5) Furnaces.

"(6) Dishwashers.

"(7) Clothes washers.

"(8) Clothes dryers.

"(9) Direct heating equipment.

"(10) Kitchen ranges and ovens.

"(11) Pool heaters.

"(12) Television sets.

"(13) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b)."

SEC. 4. TEST PROCEDURES.

Section 323 of the Energy Policy and Conservation Act (42 U.S.C. 6293) is amended to read as follows:

"TEST PROCEDURES

"SEC. 323. (a) GENERAL RULE.—All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on the date of enactment of the National Appliance Energy Conservation Act of 1986 shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b).

"(b) AMENDED AND NEW PROCEDURES.—(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

"(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 322(b).

"(C) The Secretary shall direct the National Bureau of Standards to assist in developing new or amended test procedures.

"(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such infor-

mation as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

"(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

"(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy.

"(c) RESTRICTION ON CERTAIN REPRESENTATIONS.—(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

"(A) in writing (including a representation on a label); or

"(B) in any broadcast advertisement,

with respect to the energy use or efficiency of a covered product to which a test procedure is applicable under subsection (a) or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

"(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed under subsection (b), no manufacturer, distributor, retailer, or private labeler may make any representation—

"(A) in writing (including a representation on a label); or

"(B) in any broadcast advertisement,

with respect to energy use or efficiency of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new test procedures and such representation fairly discloses the results of such testing.

"(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

"(d) CASE IN WHICH TEST PROCEDURE IS NOT REQUIRED.—(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) and publishes such determination in the Federal Register, together with the reasons therefor.

"(2) For purposes of section 327, a determination under paragraph (1) with respect to any covered product or class shall have the same effect as would a standard prescribed for a covered product (or class).

"(e) AMENDMENT OF STANDARD.—(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure.

"(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency or energy use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

"(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) that comply with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

"(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 325."

SEC. 5. ENERGY CONSERVATION STANDARDS.

Section 325 of the Energy Policy and Conservation Act (42 U.S.C. 6295) is amended to read as follows:

"ENERGY CONSERVATION STANDARDS

"SEC. 325. (a) PURPOSES.—The purposes of this section are to—

"(1) provide Federal energy conservation standards applicable to covered products; and

"(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

"(b) STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.—(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
"Refrigerators and Refrigerator-Freezers with manual defrost	16.3 AV+316
Refrigerator-Freezers—partial automatic defrost	21.8 AV+429
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice	23.5 AV+471
Side mounted freezer without ice	27.7 AV+488
Bottom mounted freezer without ice	27.7 AV+488
Top mounted freezer with through the door ice service	26.4 AV+535
Side mounted freezer with through the door ice	30.9 AV+547
Upright Freezers with:	
Manual defrost	10.9 AV+422
Automatic defrost	16.0 AV+623
Chest Freezers and all other freezers	14.8 AV+223

"(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

"(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or after January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

"(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

"(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

"(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than every five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

"(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standards, the earliest date by

which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

"(c) STANDARDS FOR ROOM AIR CONDITIONERS.—(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

"Product Class	Ratio
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	9.0
14,000 to 19,999 Btu	8.8
20,000 and more Btu	8.2
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	8.0
6,000 to 7,999 Btu	8.5
8,000 to 13,999 Btu	8.5
14,000 to 19,999 Btu	8.5
20,000 and more Btu	8.2
With Reverse Cycle and With Louvered Sides	8.5
With Reverse Cycle, Without Louvered Sides	8.0

"(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

"(B) After January 1, 1992, the Secretary shall publish a final rule no later than every five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

"(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

"(d) STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS.—(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

"(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

"(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

"(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

"(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

"(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2006.

"(C) After January 1, 2001, the Secretary shall publish a final rule—

"(i) no earlier than five years and no later than seven years after the date of publication of the previous final rule; or

"(ii) if the previous final rule did not amend the standards, five years after the date of publication of the previous final rule.

The Secretary shall determine in such rule whether to amend the standards in effect for such products.

"(D) Standards amended pursuant to subparagraph (C) shall apply only to products manufactured after a date which is—

"(i) no earlier than five and no later than seven years after the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, five years after the earliest date by which a previous amendment could have become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule prescribing such standard.

"(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

"(A) Gas Water Heater: .62 - (.0019 x Rated Storage Volume)

"(B) Oil Water Heater: .59 - (.0019 x Rated Storage Volume)

"(C) Electric Water Heater: .95 - (.00132 x Rated Storage Volume)

"(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

"(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

"Wall	
Fan type	
Up to 42,000 Btu/hour	73% AFUE
Over 42,000 Btu/hour	74% AFUE
Gravity type	
Up to 10,000 Btu/hour	59% AFUE
Over 10,000 Btu/hour up to 12,000 Btu/hour	60% AFUE
Over 12,000 Btu/hour up to 15,000 Btu/hour	61% AFUE
Over 15,000 Btu/hour up to 19,000 Btu/hour	62% AFUE
Over 19,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE
"Floor	
Up to 37,000 Btu/hour	56% AFUE
Over 37,000 Btu/hour	57% AFUE
"Room	
Up to 18,000 Btu/hour	57% AFUE
Over 18,000 Btu/hour up to 20,000 Btu/hour	58% AFUE
Over 20,000 Btu/hour up to 27,000 Btu/hour	63% AFUE
Over 27,000 Btu/hour up to 46,000 Btu/hour	64% AFUE
Over 46,000 Btu/hour	65% AFUE

"(4)(A) The Secretary shall publish final rules no later than January 1, 1992, to determine whether the standards established by paragraphs (1), (2), or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

"(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

"(C) After January 1, 2000, the Secretary shall publish a final rule—

"(i) no earlier than every five years and no later than every ten years after the date of publication of the previous final rule; or

"(ii) if the previous final rule did not amend the standards, five years after the date of publication of the previous final rule.

The Secretary shall determine in such rule whether to amend the standards in effect for such products.

"(D) Such amended standards shall only apply to products manufactured after a date which is—

"(i) no earlier than five years and no later than ten years after the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, five years after the earliest date by which the previous amendment could have become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule establishing such standard.

"(f) STANDARDS FOR FURNACES.—(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

"(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 68 percent; and

"(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

"(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992; and

"(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent.

"(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1,

1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

"(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

"(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

"(C) After January 1, 1997, and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

"(D) After the publication of the final rule described in subparagraph (C), the Secretary shall publish a final rule—

"(i) no earlier than five years and no later than ten years after the date of publication of the previous final rule; or

"(ii) if the previous final rule did not amend the standards, five years after the date of publication of the previous final rule.

The Secretary shall determine in such rule whether to amend the standards in effect for such products.

"(E) Standards amended pursuant to subparagraph (D) shall apply only to products manufactured after a date which is—

"(i) no earlier than five and no later than ten years after the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, five years after the earliest date by which the previous amendment could have become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule.

"(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS.—(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

"(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

"(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

"(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

"(B) After January 1, 1990, the Secretary shall publish a final rule no later than every five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

"(C) Any such amendment shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

"(h) STANDARDS FOR KITCHEN RANGES AND OVENS.—(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

"(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

"(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effect for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

"(C) After January 1, 1997, the Secretary shall publish a final rule no later than every five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such product.

"(D) Any amendment prescribed under subparagraph (C) shall apply to products manufactured after a date which is five years after—

"(i) the effective date of the previous amendment; or

"(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

"(i) STANDARDS FOR OTHER COVERED PRODUCTS.—(1) The Secretary may prescribe an energy conservation standard for any type (or class) of covered products of a type specified in paragraph (13) of section 322(a) if the requirements of subsections (j) and (k) are met and the Secretary determines that—

"(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

"(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

"(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

"(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

"(2) Any new or amended standard for covered products of a type specified in paragraph (13) of section 322(a) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

"(3) The Secretary may, in accordance with subsections (j) and (k), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1992.

"(j) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product.

"(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

"(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

"(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

"(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

"(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

"(IV) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

"(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

"(VI) the need for national energy conservation; and

"(VII) other factors the Secretary considers relevant.

"(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

"(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there

shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

"(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product if—

"(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of product; or

"(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

"(4) The Secretary may not prescribe an amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

"(k) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

"(1) The Secretary—

"(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

"(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

"(C) may identify proposed or amended standards that may be prescribed.

"(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes no amendment or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

"(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

"(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (j)(2)) or will result in the effects described in subsection (j)(4);

"(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

"(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

"(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

"(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practicable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

"(l) SPECIAL RULE FOR CERTAIN TYPES OR CLASSES OF PRODUCTS.—(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

"(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

"(B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

"(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

"(m) INCLUSION IN STANDARDS OF TEST PROCEDURES AND OTHER REQUIREMENTS.—Any new or amended energy conservation standard prescribed under this section shall include, where applicable, test procedures prescribed in accordance with section 323 and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

"(n) DETERMINATION OF COMPLIANCE WITH STANDARDS.—Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under, this section shall be determined using the test procedures and corresponding compliance criteria prescribed under section 323.

"(o) SMALL MANUFACTURER EXEMPTION.—(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

"(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.".

SEC. 6. REQUIREMENTS OF MANUFACTURERS.

Section 326(d) of the Energy Policy and Conservation Act (42 U.S.C. 6296(d)) is amended to read as follows:

"(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency or energy use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources of information, including nationally recognized certification programs of trade associations.

"(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

"(3) The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 11 of such Act."

SEC. 7. EFFECT ON OTHER LAW.

Section 327 of the Energy Policy and Conservation Act (42 U.S.C. 6297) is amended to read as follows:

"EFFECT ON OTHER LAW

"SEC. 327. (a) PREEMPTION OF TESTING AND LABELING REQUIREMENTS.—(1) Effective on the date of enactment of the National Appliance Energy Conservation Act of 1986, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if—

"(A) such State regulation requires testing or the use of any measure of energy consumption or energy descriptor in any

manner other than that provided under section 323; or

"(B) such State regulation requires disclosure of information with respect to the energy use or energy efficiency of any covered product other than information required under section 324.

"(2) For purposes of this section, the term 'State regulation' means a law, regulation, or other requirement of a State or its political subdivisions.

"(b) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS BEFORE FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Effective on the date of enactment of the National Appliance Energy Conservation Act of 1986 and ending on the effective date of an energy conservation standard established under section 325 for any covered product, no State regulation, or revision thereof, concerning the energy efficiency or energy use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

"(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988;

"(2) is a State procurement regulation described in subsection (e);

"(3) is a regulation described in subsection (f)(1) or is prescribed or enacted in a building code for new construction described in subsection (f)(2);

"(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot;

"(5) is a regulation described in subsection (d)(5)(B) for which a waiver has been granted under subsection (d); or

"(6) is a regulation concerning the energy efficiency or energy use of television sets.

"(c) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS WHEN FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Except as provided in section 325(b)(3)(A)(ii) and effective on the effective date of an energy conservation standard established in or prescribed under section 325 for any covered product, no State regulation concerning the energy efficiency or energy use of such covered product shall be effective with respect to such product unless the regulation—

"(1) is a regulation described in paragraph (2) or (4) of subsection (b);

"(2) is a regulation which has been granted a waiver under subsection (d); or

"(3) is in a building code for new construction described in subsection (f)(3).

"(d) WAIVER OF FEDERAL PREEMPTION.—(1)(A) Any State with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use or energy efficiency for any type (or class) of covered product for which there is a Federal energy conservation standard under section 325 may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

"(B) Subject to paragraphs (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy interests.

"(C) For purposes of this subsection, the term 'unusual and compelling State or local energy interests' means interests which—

"(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

"(ii) are such that the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast.

"(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall, within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of, and the reasons for, such denial.

"(3) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

"(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

"(B) the extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

"(C) the extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

"(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

"(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

"(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

"(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

"(5) No final rule prescribed by the Secretary under this subsection may—

"(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

"(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 325 for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

"(i) an energy emergency condition exists within the State which—

"(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

"(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and

"(ii) the State regulation is necessary to alleviate substantially such condition.

"(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended pursuant to section 325, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

"(e) EXCEPTION FOR CERTAIN STATE PROCUREMENT STANDARDS.—Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

"(f) EXCEPTION FOR CERTAIN BUILDING CODE REQUIREMENTS.—(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product.

"(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product if the code does not require that the energy efficiency of such covered product exceed—

"(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

"(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsections (b)(1) or (b)(5) whichever is higher.

"(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 325, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

"(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

"(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 325, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

"(C) The credit to the energy consumption or conservation objective allowed by the code for installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 325 or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use basis.

"(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 325, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

"(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

"(F) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

"(G) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the State may permit the estimated energy use calculation to be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.

"(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

"(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 325 and the applicable standard of such State, if any, that has been granted a waiver under subsection (d), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d).

"(g) NO WARRANTY.—Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.".

SEC. 8. CITIZEN SUITS.

Section 335(a) of the Energy Policy and Conservation Act (42 U.S.C. 6305) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or";

(3) by inserting after paragraph (2) the following new paragraph:

"(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 325."; and

(4) by adding after the last sentence the following:

"The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 325, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.".

SEC. 9. ADMINISTRATIVE REVIEW AND JUDICIAL REVIEW.

Section 336 of the Energy Policy and Conservation Act (42 U.S.C. 6306) is amended to read as follows:

"ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

"SEC. 336. (a)(1) In addition to the requirements of section 553 of title 5, United States Code, rules prescribed under section 323, 324, 325, 327, or 328 of this part shall afford interested persons an opportunity to present written and oral data, views, and arguments with respect to any proposed rule.

"(2) In the case of a rule prescribed under section 325, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

"(A) other interested persons who have made oral presentations; and

"(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

"(3) A transcript shall be kept of any oral presentations made under this subsection.

"(b)(1) Any person who will be adversely affected by a rule prescribed under section 323, 324, or 325 may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

"(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule under section 323, 324, or 325 may be affirmed unless supported by substantial evidence.

"(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

"(5) The procedures applicable under this part shall not—

"(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

"(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

"(c) Jurisdiction is vested in the Federal district courts of the United States over actions brought by any adversely affected person to determine whether a State or local government is complying with the requirements of this part.".

SEC. 10. ANNUAL REPORT.

Section 338 of the Energy Policy and Conservation Act (42 U.S.C. 6308) is amended by adding at the end the following: "Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part."

SEC. 11. CONFORMING AMENDMENTS.

(a) IN GENERAL.—Part B of title III of the Energy Policy and Conservation Act is amended as follows:

(1) Section 324 is amended—

(A) in subsection (a)(1), by striking out "paragraphs (1) through (9)" and inserting in lieu thereof "paragraphs (1), (2), (4), (6), and (8) through (12)";

(B) in subsection (a)(2), by striking out "paragraphs (10) through (13)" and inserting in lieu thereof "paragraphs (3), (5), and (7)"; and

(C) in subsection (a)(3)—

(i) by striking out "paragraph (14)" and inserting in lieu thereof "paragraph (13)";

(ii) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,";

and

(iii) by striking out "section 323(a)(5)" in subparagraph (B) and inserting in lieu thereof "section 323(b)(1)(B)";

(D) by striking out subsection (b)(1) and inserting in lieu thereof the following:

"(b) RULES IN EFFECT; NEW RULES.—(1)(A) Any labeling rule in effect on the date of the enactment of the National Appliance Energy Conservation Act of 1986 shall remain in effect until amended, by rule, by the Commission.

"(B) After the date of the enactment of the National Appliance Energy Conservation Act of 1986 and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (13) of section 322(a) (or class thereof) is prescribed under section 323(b), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).";

(E) in subsection (b)(3)—

(i) by striking out "section 323" both places in which it appears and inserting in lieu thereof "section 323(b)";

(ii) by striking out "(13)" and inserting in lieu thereof "(12)"; and

(iii) by striking out "(14)" and inserting in lieu thereof "(13)";

(F) in subsection (b)(5)—

(i) by striking out "(10) through (13)" and inserting in lieu thereof "(3), (5), and (7)"; and

(ii) by striking out "(14)" and inserting in lieu thereof "(13)"; and

(G) in subsection (f), by striking out "or (2)" in the second sentence.

(2) Section 326(b)(3)(A) is amended by inserting "established in or" before "prescribed under".

(3) Section 332(a)(5) is amended by striking out "energy efficiency standard prescribed under" and inserting in lieu thereof "energy conservation standard established in or prescribed under".

(b) STYLISTIC CONFORMING AMENDMENTS.—Part B of title III of the Energy Policy and Conservation Act is amended as follows:

(1) Section 322(b)(1) is amended by striking out "(b)(1)" and inserting in lieu thereof "(b) SPECIAL CLASSIFICATION OF CONSUMER PRODUCT.—(1)".

(2) Section 324 is amended—

(A) by striking out "SEC. 324. (a)(1)" and inserting in lieu thereof "SEC. 324. (a) IN GENERAL.—(1)";

(B) in subsection (c)(1), by striking out "(c)(1)" and inserting in lieu thereof "(c) CONTENT OF LABEL.—(1)";

(C) in subsection (d), by striking out "(d)" and inserting in lieu thereof "(d) EFFECTIVE DATE.—";

(D) in subsection (e), by striking out "(e)" and inserting in lieu thereof "(e) STUDY OF CERTAIN PRODUCTS.—";

(E) in subsection (f), by striking out "(f)" and inserting in lieu thereof "(f) CONSULTATION.—"; and

(F) in subsection (g), by striking out "(g)" and inserting in lieu thereof "(g) OTHER AUTHORITY OF THE COMMISSION.—".

(3) Section 326 is amended—

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) IN GENERAL.—";

(B) in subsection (b)(1), by striking out "(b)(1)" and inserting in lieu thereof "(b) NOTIFICATION.—(1)"; and

(C) in subsection (c), by striking out "(c) Each" and inserting in lieu thereof "(c) DEADLINE.—Each".

(4) Section 329 is amended—

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) IN GENERAL.—"; and

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) CONFIDENTIALITY.—".

(5) Section 332 is amended—

(A) in subsection (a), by striking out "SEC. 332. (a)" and inserting in lieu thereof "SEC. 332. (a) IN GENERAL.—"; and

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) DEFINITION.—".

(6) Section 333 is amended—

(A) in subsection (a), by striking out "SEC. 333. (a)" and inserting in lieu thereof "SEC. 333. (a) IN GENERAL.—";

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) DEFINITION.—";

(C) in subsection (c), by striking out "(c) It" and inserting in lieu thereof "(c) SPECIAL RULE.—It"; and

(D) in subsection (d)(1), by striking out "(d)(1)" and inserting in lieu thereof "(d) PROCEDURE FOR ASSESSING PENALTY.—(1)".

(7) Section 335 is amended—

(A) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) LIMITATION.—";

(B) in subsection (c), by striking out "(c)" and inserting in lieu thereof "(c) RIGHT TO INTERVENE.—";

(C) in subsection (d), by striking out "(d)" and inserting in lieu thereof "(d) AWARD OF COSTS OF LITIGATION.—";

(D) in subsection (e), by striking out "(e)" and inserting in lieu thereof "(e) PRESERVATION OF OTHER RELIEF.—"; and

(E) in subsection (f), by striking out "(f)" and inserting in lieu thereof "(f) COMPLIANCE IN GOOD FAITH.—".

(8) Section 339 is amended—

(A) in subsection (a), by striking out "(a)" and inserting in lieu thereof "(a) AUTHORIZATIONS FOR THE SECRETARY.—";

(B) in subsection (b), by striking out "(b)" and inserting in lieu thereof "(b) AUTHORIZATIONS FOR THE COMMISSION.—"; and

(C) in subsection (c), by striking out "(c)" and inserting in lieu thereof "(c) OTHER AUTHORIZATIONS.—".

SEC. 12. FERC REQUIREMENT.

The Federal Energy Regulatory Commission shall, not later than 60 days after the date of the enactment of this Act, issue a final order in ANR Pipeline Company, FERC Docket No. RP 82-80, filed April 30, 1982.

The SPEAKER pro tempore. Is a second demanded?

Mr. MOORHEAD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5465, the National Appliance Energy Conservation Act of 1986. This important piece of consumer legislation was marked up by the Subcommittee on Energy Conservation and Power by a voice vote on September 10. The bill is cosponsored by 81 Members, including every member of my subcommittee, on both sides of the aisle, and is also cosponsored by 25 of the 42 members of the Energy and Commerce Committee, including its chairman, the gentleman from Michigan [Mr. DINGELL], the ranking minority member of the committee, the gentleman from New York [Mr. LENT], and the ranking minority member of the subcommittee, the gentleman from California [Mr. MOORHEAD], without whose effort and the effort of his staff this piece of legislation would not have been possible. We have worked on a very fast track for the last 2 to 3 weeks to get this legislation to the floor as quickly as possible in the hopes that we might be able to see final passage and signature by the President before the end of this legislative year, and it is only again by a continuation of the bipartisan cooperation which has characterized our subcommittee over the past 2 years that it has been possible to bring this piece of very important almost critical energy conservation legislation out to the floor in such a fast period of time.

The legislation which has attracted this extraordinary list of cosponsors is the product of a protracted negotiation between the appliance manufacturing industry and key environmental groups, notably the Natural Resources Defense Council. The product of that negotiation is a comprehensive and unprecedented Federal code of home appliance energy conservation standards. The bill which this coalition has helped to craft restores appliance standards to their rightful place in the Energy Code.

□ 1430

To give a sense of the magnitude of this bill, I want to share with the Members some of the projected savings. H.R. 5465 will provide consumers with a projected net savings of $28 bil-

lion, or nearly $300 per household. In addition, this bill will lower residential energy consumption in the United States by 1 quad, or about 6 percent; 6 percent of all the residential energy consumption in this country will be reduced. The energy savings expected over the lifetime of products sold through the year 2000—17 quads—is equivalent to over 2 years of energy imports at America's current import rate. Finally, the standards will lower peak electricity demand in the year 2000 by 22,000 megawatts—equivalent to about 10 percent of the growth in peak power demand between the year 1986 and the year 2000 as forecast by the utility industry.

What does that translate into? That means that there are 22 nuclear power plants that will not have to be built between the year 1986 and the year 2000, 22 oil, 22 gas, 22 coal-fired plants, or some combination thereof, will not have to be built because these standards are going to go into effect if we can get them through the legislative process over the next 2 weeks in a fashion that gets it to the President's desk.

Paradoxically, however, it is the Federal Department of Energy that has contributed most heavily to this fortuitous meeting of the minds. DOE's now-notorious "no standard" applicant standards, which were promulgated in the early 1980's, robbed American consumers of close to a decade of energy savings because of the Department's determination that there was no such thing as an appliance standard that was both "technologically feasible" and "economically justified." DOE's "no standard" standards were struck down by a Federal appeals court in a harsh 154-page decision last July.

Although DOE has yet to promulgate Federal appliance standards, a growing number of States have understood the good reasons for doing so. California, New York, Massachusetts, and others have seen the extraordinary benefits that can be reaped from minimum efficiency standards for appliances, and they have legislated accordingly. These States truly deserve major credit for being in the vanguard of the Nation in this vital area of energy conservation. In addition, the informed advice of these three States during the drafting of H.R. 5465 has helped to make it a better bill. The wisdom of these States and of a growing number of other States which have joined their ranks have brought these diverse interest groups to the bargaining table to negotiate a tough and uniform Federal standard which will benefit the entire Nation. The tradeoff is preemption of State standards in most cases, a balance which is justified by the rigor of the standards contained in the bill and by the justified needs of appliance manufacturers to make their long-term business plans in the context of a stable and uniform national standard.

Energy conservation is alive and well in the 99th Congress, and this bill is proof that the lessons of 1975 and 1978 have not been lost amidst the din of voices claiming that the energy crisis is over. I am proud to be the chief sponsor of this bill, along with CARLOS "THE REFRIGERATOR" MOORHEAD, from the State of California, who is helping to ensure that whether it be refrigerators or any other appliances that will be used in this country over the next 20 years, they will have the tough, hard standards that will, in fact, be mandated by this bill, but with the understanding that at the same time, appliance manufacturers will have the predictability that will allow them to make the long-term investment planning to guarantee that they are not, in fact, put in a position where they have State after State, or administration after administration, changing standards which cause them tremendous additional expenditures in their competition against foreign countries in their attempt to produce products that we can market around the world.

So we achieve both those goals in this bill. It reflects a true compromise between the appliance manufacturers and the environmental groups, between Democrats and Republicans, in trying to build some predictability into what is, I think, accepted as a consensus view in this country, that we have benefited from the conservation measures that have been implemented, both by price and by regulation, over the past decade, and that by building upon that we can help to reduce the likelihood that we will fall back into the same trap that twice during the 1970's we fell into because we did not build in the proper long-term planning that I think that this bill represents.

I would hope that the House would accept this bill with a unanimous vote. I once again want to compliment my colleague, the gentleman from California [Mr. MOORHEAD]. This is one of the final pieces of major legislation which will be coming out of our subcommittee after 2 years of working together, and I cannot tell the gentleman how much I have enjoyed working with him, because this piece of legislation, if it does go into effect, I think is going to have a long-term effect upon energy decisions that are made on a macroeconomic basis in this country.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5465, the National Appliance Energy Conservation Act of 1986, a bill which is cosponsored by every member of the Subcommittee on Energy Conservation and Power of the Committee on Energy and Commerce. H.R. 5465 addresses a significant problem which has been developing in the area of appliance energy efficiency. The Department of Energy is under a statutory duty to develop appliance energy efficiency standards. At the same time, many States, including my own State of California, have moved and are moving to adopt their own appliance standards. Thus, multiple differing appliance standards are developing.

The establishment of a number of differing appliance standards is in no one's interest. Multiple differing appliance standards pose significant problems for appliance munufacturers who sell their products on a nationwide basis. Such manufacturers cannot target their research so that their product is constantly improved. Instead, their research money must be applied to modifying products so that they meet different standards in different States. Similarly, appliance manufacturers cannot market or distribute their products on a streamlined national basis.

Additionally, multiple State standards will have an adverse effect on consumers as it will increase the cost of appliances and will reduce the number of products available to them. Multiple standards could even lead to manufacturers, especially small- and medium-sized companies, ceasing to make particular appliances, thus lessening competition.

H.R. 5465 addresses the problem of multiple differing State standards. It enacts appliance standards for 11 major appliances. When these Federal standards go into effect, then State appliance standards applicable to appliances covered by these Federal standards are preempted. It is important to note that the Federal standards contained in H.R. 5465 are more stringent than any existing State standards, thus achieving the energy conservation goals of those States that have adopted appliance standards.

The committee amendment to H.R. 5465 deals with small gas furnaces and heat pumps. The amendment directs the Department of Energy to engage in a rulemaking to determine the appropriate efficiency standard for gas furnaces with an input of less than 45,000 Btu. The amendment also restricts the Department's determination to a range of efficiencies between 71 and 78 AFUE. The rulemaking is to commence in 1989 with the standard to take effect in 1992. The DOE rulemaking should not result in a preference for one fuel over another.

As introduced, H.R. 5465 did not contain an efficiency standard for the heating side of a heat pump, although it did contain one for the cooling side. The committee amendment corrects

this omission by imposing a heating season performance factor of 6.8 on split systems and 6.6 on single systems for heat pumps. This standard is comparable to the 78 AFUE standard for large gas furnaces and was selected with reference to the applicable California standard.

Finally, I would like to note that the fast track on which this bill is moving imposed difficult and frustrating conditions on those who worked out this amendment and I want to thank them for their efforts in this regard. I want also to thank our subcommittee chairman, the gentleman from Massachusetts [Mr. MARKEY] for his many efforts to move this bill quickly and harmoniously.

In sum, I urge my colleagues to vote in favor of H.R. 5465 today.

□ 1440

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from California [Mr. MOORHEAD] for his nice words and I would want to once again reciprocate.

The fact of the matter is that applicances across this country for a generation were consuming electricity on the premise that it was so inexpensive and so easy to generate that we really did not have to build any real economies into the appliances themselves. But, collectively, all of the nuclear plants and coal fired plants across this country are nothing more than the collective demand placed upon them by the numbers of refrigerators and like appliances, and their efficiency is all collectively put together that then ultimately determine the number of plants that we have to build in this country.

What we have done here in this legislation is built in tough, strict new regulations agreed upon by the industry so that they can gain the predictability of long-term investment which will help to reduce dramatically and significantly over the next 20 years or so the need for new, additional generation facilities being built in this country.

I would like to compliment as well from my staff Richard Lehfedlt, and from the minority staff Jessica Leverty for their work in putting this package together. It has taken a lot of work into the night to build this package so that it can move as quickly as it is.

I like the aerodynamics of it right now. I think that it will fly. It is going to take a little more work. We only have another week and a half to go and we have to get it through the other body. But I think it is very, very possible.

Mr. WYDEN. Mr. Speaker, I urge support of the National Appliance Energy Conservation Act of 1986.

If we as a nation are to use energy wisely, we must take advantage of conservation wherever we reasonably can. Passage of this bill will be a major victory in the battle for wise energy use and reduction of dependence of foreign sources.

Mr. Speaker, States like my home State of Oregon historically have been the birthplace and proving grounds of progressive approaches to energy regulation. Though this bill creates national standards, it does not entirely deprive the States of flexibility in regulating energy conservation.

For example, the bill allows the Secretary of Energy to waive Federal preemption where State regulation is needed to address local interests. The standards for granting waivers are designed to give States the necessary leeway to handle unusual and compelling local problems while protecting industry from a proliferation of State standards that differ from one another.

Also, of great importance to Oregon, the bill will not bar flexible, performance-based building codes designed to promote energy conservation. These codes do not require builders to install appliances that exceed Federal efficiency standards. However, they allow builders to install more efficient appliances as an alternative to meeting high energy conservation standards for walls, windows, or other building components. Such flexibility can save money as well as energy.

Mr. Speaker, this is an excellent bill. It addresses a national problem without unduly tying the hands of the states. It will benefit manufacturers and consumers alike and has deservedly earned their broad support. But most importantly, this bill will help our Nation use energy more efficiently. And that, Mr. Speaker, helps everybody in the long run.

Mr. VENTO. Mr. Speaker, I rise in support of H.R. 5465, the Appliance Energy Conservation Standards Act.

Once again, we find ourselves relegislating an issue which Congress previously addressed 8 years ago. In 1978, Congress passed the National Energy Conservation Policy Act, which required the Department of Energy to set mandatory minimum efficiency standards for 13 types of appliances, including air-conditioners, refrigerators, furnaces, and other appliances. In 1980, proposed standards for 8 of the 13 types of appliances were issued by the Department of Energy.

But the Reagan administration decided otherwise and subsequently refused to issue final standards for most of the covered appliances. In July 1985, the U.S. Circuit Court of Appeals for the District of Columbia held that the issuance of "no standard" standards by the Department of Energy was illegal and contrary to clearly expressed congressional intent in the 1978 law. The Department was further instructed by the court to develop new standards. As of today, the Department has not yet complied with the 1978 law or the court's order. Because the Department of Energy has not done its job, a number of States have implemented their own energy efficiency standards for various appliances, thus causing serious compliance problems for appliance manufacturers who have been faced with various different standards in the different States where their products are sold.

H.R. 5465 sets minimum energy conservation standards for 11 different types of appliances which shall take effect within 2 to 6 years. The bill also requires the Department of Energy to review the minimum standards set in the bill and to determine whether any changes should be made and to issue new standards within set time periods. There is also a provision in the bill for States to obtain waivers from the Federal standards under limited circumstances—that is, only if needed to meet "unusual or compelling State or local interests."

Mr. Speaker, this measure incorporates much of the fine work done by the gentleman from Connecticut, Mr. GEJDENSON, who was the chief author of H.R. 2876, the Consumer Products Energy Efficiency Act of 1985, which I cosponsored.

I hope that my colleagues will join me in supporting this legislation and I hope that the Reagan administration and the Department of Energy will soon come to the conclusion that they cannot and should not ignore the laws passed by Congress.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BENNETT). The question is on the motion offered by the gentleman from Massachusetts [Mr. MARKEY] that the House suspend the rules and pass the bill, H.R. 5465, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may be allowed to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

WATER RESOURCES RESEARCH ACTIVITIES AUTHORIZATION FOR USGS

Mr. MILLER of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5526) to authorize the water resources research activities of the U.S. Geological Survey, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5526

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 101. AUTHORIZATION.

SEC. 101. (a) The Act of March 3, 1879 is amended by inserting after subsection (a), the following new subsection and renumbering the subsequent subsections accordingly:

"(b) The Secretary of the Interior (hereafter the "Secretary"), acting through the Geological Survey, is authorized to undertake

research, investigations, appraisals, surveys and related activities of the Nation's water resources. The Secretary is authorized to undertake such activities in cooperation with other Federal, State, and local governments and agencies, private organizations and individuals, and academic institutions. The Secretary is further authorized to disseminate the results of such research, investigations, appraisals, surveys, and related activities.

"(c)(1) The Secretary may undertake the activities authorized by the previous subsection on a reimbursable basis with other Federal agencies, State and local governments, and Federal permittees or licensees, except that the amount obligated by the Secretary for such reimbursable activities during any one fiscal year shall not exceed 50 per centum of the amount appropriated by the Congress for all surveys, investigations and research of water resources activities undertaken under the authority of this Act.

"(2) The Secretary may undertake the reimbursable activities described in subsection (c)(1) with other Federal agencies or Federal permittees or licensees only after execution of an agreement which outlines for whom such reimbursable activities are being undertaken, and the purpose, cost and duration of the activities. Upon execution of such agreement or agreements, the Secretary shall transmit copies to the Committees on Appropriations and Interior and Insular Affairs of the House of Representatives and the Committees on Appropriations and Energy and Natural Resources of the Senate."

(b) REPEAL OF AUTHORITY.—Subsection (a) of this Act shall constitute the sole authority for the Secretary, acting through the Geological Survey, to engage in such water resource activities and all prior authorities for the Geological Survey are herewith repealed.

SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

SEC. 102. For the purpose of carrying out the activities authorized by section 101 of this Title, there are authorized to be appropriated $145,000,000 for each of the fiscal years 1988 and 1989.

TITLE II. NATIONAL GROUND WATER CONTAMINATION RESEARCH

SEC. 201. SHORT TITLE.

SEC. 201. This title may be cited as the "National Ground Water Contamination Research Act of 1986."

SEC. 202. FINDINGS.

SEC. 202. Recognizing the dependence of the nation on its water resources, the Congress finds that—

(a) ground water supplies approximately one-half of the nation with drinking water and 90 percent of the nation's rural population with domestic water;

(b) ground water contamination has occurred in every State in the nation and is being detected with increasing frequency;

(c) sources of ground water contamination are diverse, including waste and non-waste products and activities, point and non-point sources, and hazardous and non-hazardous substances;

(d) ground water contaminants are associated with adverse health, environmental, economic, and social impacts;

(e) ground water and surface water are interconnected as related parts of the hydrologic cycle;

(f) the nation's groundwater quality data collection, analysis and information dissemination programs and activities are insufficient to define national water quality conditions, detect changes in water quality over time, and project trends in national water quality; and,

(g) access to comprehensive information regarding national water quality conditions and trends is essential to prudent management of the Nation's ground water resources.

SEC. 203. NATIONAL POLICY.

SEC. 203. The Secretary of the Interior, in cooperation with other Federal agencies, State and local governments and private organizations and individuals, shall have the primary Federal duty and responsibility for the collection, analysis and dissemination of information concerning the quantity, quality and contamination of the Nation's ground water.

SEC. 204. RESPONSIBILITIES OF THE SECRETARY.

SEC. 204. (a) RESPONSIBILITIES.—The Secretary of the Interior shall be the lead Federal agency official responsible for: (1) the collection and analysis of data concerning the quality and quantity of the Nation's ground water resources; and, (2) the dissemination of such data and information to other Federal agencies, State and local governments, and private organizations and individuals.

(b)(1) REPORT.—The Secretary of the Interior, in consultation with other Federal agencies, State and local governments, private organizations and individuals, shall prepare a report within two years after the date of enactment which includes the following:

(A) an assessment of the nation's groundwater quality and quantity, including a description of areas where insufficient quality and quantity information is available;

(B) an evaluation of the adequacy of existing groundwater data collection and monitoring programs conducted by Federal, State and local governments and private industry; and,

(C) a description of projected changes and trends in the quality and quantity of the Nation's ground water resources to the extent that existing data and information are readily available.

(2) The Secretary shall complete the report referred to in subsection (a) no later than two years after enactment of this Act, and submit copies of the report to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources, the States, and such other organizations and individuals as the Secretary deems appropriate.

(3) The report referred to in subsection (a) shall be accompanied by an independent evaluation of the report prepared by individuals with a responsibility for water pollution control matters selected by the Governors of the several States, including whether the report adequately addresses the requirements of Sec. 204(b)(1)(A)-(D) of this Act. This evaluation shall be funded in accordance with the provisions of Sec. 209(e) of this Act.

SEC 205. NATIONAL GROUND WATER QUALITY PROGRAM.

SEC. 205. (a) ESTABLISHMENT OF PROGRAM.—The Secretary is authorized and directed, based on information contained in the report required in Section 204(b)(1) of this Act, to establish and conduct a national groundwater quality assessment program to:

(1) identify, assess, and monitor the quality of the nation's groundwater; and,

(2) project changes and trends in the quality of the nation's groundwater.

Such program shall be established within three years after the date of enactment of this Act but no sooner than completion of the report required in Section 204(b)(1) of this Act.

(b) ELEMENTS OF PROGRAM.—In conducting the program authorized by subsection (a) of this section, the Secretary shall insure that the program:

(1) includes agreements and/or memorandum of understanding, where appropriate, with State and local governments and private organizations and individuals detailing the responsibilities of each entity in order to avoid duplication of efforts;

(2) recommend and seek to achieve uniform data collection protocols for Federal agencies, State and local governments and private organizations and individuals to follow to aid in the collection of reliable ground water data and information;

(3) assist Federal agencies in meeting their responsibilities under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, and other related statutes;

(4) improves the generic knowledge and understanding of the nature, extent, causes and effects of ground water contamination as it affects specific sites;

(5) assists State and local governments in the management, protection, classification, and regulation of ground water resources; and,

(6) is specifically designed to obtain complementary surface water quality data to provide an integrated knowledge of water quality conditions within specific hydrologic regions and subregions. For this purpose, the Secretary is authorized to obtain any water quality information required or permitted to be obtained by law and in the possession of such agencies, States or subdivisions thereof, or private entities, and shall maintain the confidentiality of any such unpublished data on request except for good cause shown. The Secretary shall report periodically to the Congress his views on the quality of such surface water data collection efforts.

SEC. 206. NATIONAL GROUND WATER INFORMATION CLEARINGHOUSE.

SEC. 206. The Secretary is authorized and directed to establish within one year after the submission to the Congress of the report required in Section 204(b)(1) a National Ground water Clearinghouse to be used to disseminate ground water quality and quantity information to other Federal agencies, State and local governments, and private organizations and individuals. The Clearinghouse shall be a repository for reliable ground water information to be collected from and made available to such government agencies, organizations, and individuals.

SEC. 207. TECHNICAL ASSISTANCE.

SEC. 207. The Secretary shall establish within one year after the Secretary submits to the Congress the report required in Section 204(b)(1) of this Act a program to provide technical assistance to other Federal agencies, State and local governments, and private organizations and individuals. Such technical assistance program shall assist such agencies, organizations, and individuals in their efforts to prevent ground water contamination. The program shall include general, as well as site specific, information designed to meet the technical assistance needs of such agencies, organizations, and individuals.

SEC. 208. WATER RESOURCES RESEARCH.

SEC. 208. (a) Section 108 of the Water Resources Research Act of 1984 (P.L. 98-242, 98 Stat. 97, 98) is amended—

(1) in paragraph (6) by inserting ", contamination," after "Depletion"; and,

(2) in paragraph (8) by inserting "quality and quantity" after "water".

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

SEC. 209. (a) There is authorized to be appropriated for the purpose of carrying out section 204 of this Act $4,000,000 for fiscal year 1988 and $5,000,000 for fiscal year 1989.

(b) For the purpose of carrying out section 205 of this Act, there is authorized to be appropriated $10,000,000 for fiscal year 1988 and $10,000,000 for each of the fiscal years 1989 and 1990.

(c) For the purpose of carrying out section 206 of this Act, there is authorized to be appropriated $4,000,000 for fiscal year 1988 and $2,000,000 for each of the fiscal years 1989 and 1990.

(d) For the purpose of carrying out section 207, there is authorized to be appropriated $2,000,000 for fiscal year 1988 and $2,000,000 per fiscal year for each of the fiscal years 1989 and 1990.

(e) Of the funds appropriated under the authority of subsections (a), (b), and (c) of this section, not less than $500,000 per fiscal year shall be used to fund the study required by section 204(b)(3) of this Act.

(f) The funds authorized to be appropriated by this Title shall be in addition to the sums authorized to be appropriated by Title I of this Act.

SEC. 210. DEFINITIONS.

SEC. 210. For the purposes of this Act, the term "State" shall be defined to include the Territories and Commonwealths of the United States.

The SPEAKER pro tempore. Is a second demanded?

Mr. CHENEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. MILLER] will be recognized for 20 minutes and the gentleman from Wyoming [Mr. CHENEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, managing and protecting ground water is the Nation's most serious water resource problem. However, despite the fact that 50 percent of the people in this country depend on ground water as their source of drinking water, this vast resource remains a mystery. Several recent reports have concluded that we do not know enough about ground water quality and quantity to protect this valuable resource.

Mr. Speaker, the bill we are considering today, H.R. 5526, the "National Ground Water Contamination Research Act," takes a major first step toward protecting the Nation's ground water resources. H.R. 5526 is a clean bill which reflects the results of hearings held by the Subcommittee on Water and Power Resources. This bill was reported by the Committee on Interior and Insular Affairs with unanimous support. I want to especially compliment my colleague Congressman SAM GEJDENSON for having the wisdom and foresight to introduce and work hard for this legislation.

H.R. 5526 is an outgrowth of the findings and recommendations of the National Ground Water Policy Forum, the National Academy of Sciences, and the Environmental and Energy Study Institute. All of these groups observed that Federal, State, and local regulators lack adequate data and information on ground water quality and quantity. As the National Academy of Sciences reported in its recently released report examining the efforts of State and local governments to deal with ground water problems, "There are no adequate data available on a national or even regional scale to estimate the extent of ground water contamination and the impacts of this contamination.

H.R. 5526 has two titles. Title I provides permanent generic authority for the programs of the Water Resources Division of the U.S. Geologic Survey. The water resources activities of the Survey have never been formally authorized by the Congress. Instead, the Survey's authority has been provided for many years in annual appropriations acts. The authority in title I does not provide the Survey with any new authority beyond that which is currently exercised on a year-to-year basis. H.R. 5526 authorizes the appropriations of $145 million for fiscal years 1988 and 1989.

Title II authorizes and directs the Secretary of the Interior to undertake a comprehensive ground water research and data collection program. This title is referred to as the "National Ground Water Contamination Research Act of 1986" and would authorize a total of $53 million for fiscal years 1988 through 1990.

H.R. 5526 designates the Secretary of the Interior as the lead Federal official responsible for the collection and dissemination of information concerning ground water quality and quantity. Within 2 years after enactment, the Secretary is directed to undertake a comprehensive report detailing what ground water information is currently being collected, by whom, and how adequate this information is to meet the needs of Federal, State, and local governments. To insure this report isn't just another academic treatise, the bill authorizes a separate review by a State organization, such as the Association of State and Interstate Water Pollution Control Administrators.

Based on the findings in the report, the Secretary shall establish a national ground water quality assessment program. This program shall assist Federal, State, and local governments in meeting their responsibilities under other statutes. As my colleagues know, the Congress has enacted an assortment of statutes—including the Safe Drinking Water Amendments, Superfund, and the Resource Conservation and Recovery Act—which deal with ground water matters. These statutes have also delegated important responsibilities to State and local governments. Despite this growing list of Federal and State statutes affecting ground water, there is a consensus that regulators lack adequate data and information on ground water quality and quantity.

H.R. 5526 would "fill in the gaps" of present efforts. Under the bill, the Secretary would establish a ground water quality assessment program to monitor and project changes in the quality and quantity of the Nation's ground water. The program would be designed especially to improve our knowledge and understanding of the nature, extent, causes, and effects of ground water contamination.

H.R. 5526 would establish a National Ground Water Information Clearinghouse to enable Government agencies, private organizations and individuals to share their information. The bill also would authorize the Survey to expand its present technical assistance efforts in the ground water area.

Mr. Speaker, this bill is an important first step in meeting the problems of ground water contamination head on. Before we can become proficient at protecting ground water from contamination, we need to know more about ground water as a resource and to make that information available. I urge my colleagues to join me in support of this bill.

Mr. Speaker, again I would like to thank the gentleman from Connecticut [Mr. GEJDENSON], who has worked very, very hard to bring this legislation to the floor. I think it is legislation that speaks to the difficulties in every region in this country with respect to the inventory and the problems confronting us on our ground water supply.

I would also like to thank the gentleman from Arizona [Mr. UDALL], chairman of the full committee, the gentleman from Wyoming [Mr. CHENEY], my ranking minority member as well as the gentleman from Arizona [Mr. MCCAIN], the gentleman from Colorado [Mr. STRANG], the gentleman from California [Mr. LEHMAN], and the gentleman from New Mexico [Mr. LUJAN], for all of their efforts within the Interior and Insular Affairs Committee to report this legislation out.

Mr. Speaker, I reserve the balance of my time.

Mr. CHENEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5526, the ground water research legislation before us today. I think this is an excellent bill that provides the framework for a national program to affect our ground water quality throughout the country. Clearly, it is time for such a program.

Our subcommittee has held numerous hearings on ground water issues during this Congress. Many States are heavily reliant upon ground water for both drinking and domestic purposes, as well as for irrigation and other uses. Shortages and contamination have become increasingly a problem in many areas throughout the country in recent years; yet many States have limited information upon the quantity and the quality of the ground water available to them. They, therefore, are in a position in which it is very difficult for them to be able to plan with respect to future development of their water resources.

Mr. Speaker, I believe the U.S. Geological Survey Research Program that we are authorizing here today will provide significant assistance to the States as they move forward with their water resource planning effort. It will also provide very important information for Federal water resource decisionmakers.

Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. COMBEST].

Mr. COMBEST. Mr. Speaker, I appreciate the distinguished ranking member yielding to me and rise in support of this legislation.

Those of us in west Texas understand the growing importance of protecting our valuable ground water supplies. My district lies over the Ogallala aquifer. The entire aquifer serves some 2 million people and provides irrigation water for some 14.3 million acres of the Nation's farmland. The aquifer is the single most important ground water source for seven States.

This vital role played by water is the reason that I particulary applaud the committee's report language relating to a nuclear waste repository site. The DOE has proposed an area in my district as a possible site for the construction of a high level nuclear waste repository. That site is not only near the Ogallala aquifer but it is also squarely in the middle of one of the most fertile agricultural areas in the country.

I am very concerned that the ramifications of placing the nuclear waste site as it relates to water is not getting the attention it deserves. There are a tremendous number of questions that must be answered. Beyond those that immediately come to mind is the problem of possible water contamination by the salt which is lifted out of the site. The committee's report language giving this issue a high priority is most welcomed.

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Mr. Speaker, I would like to engage the chairman of the subcommittee in a colloquy relative to the language.

I would like to affirm with the distinguished subcommittee chairman that the report language on this issue reflects the firmly held views of the committee.

Mr. MILLER of California. If the gentleman will yield, the answer is yes.

Mr. COMBEST. Further, is it your intention that the Geological Survey give priority to acquiring additional information needed in order to provide a sound basis for the decisions the Department of Energy makes relating to repository construction activities?

Mr. MILLER of California. I say to my colleague, yes.

Mr. COMBEST. Mr. Speaker, I thank the gentleman for his responses.

Mr. CHENEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to take this opportunity to thank the distinguished chairman of the subcommittee for his excellent leadership in this area. This is a problem that has been approached on a bipartisan basis by members on both sides of the aisle on our subcommittee, and I would urge my colleagues to support the passage of H.R. 5526.

Mr. SYNAR. Mr. Speaker, for the past 6 years, the Environment, Energy and Natural Resources Subcommittee, which I chair, has been spearheading an effort to develop a national ground water protection policy and strategy. For that reason, I am particularly pleased to support H.R. 5526, legislation which would designate the U.S. Geological Survey as the lead Federal agency for the collection and distribution of ground water quality and quantity information. I believe it is a sound beginning for the work the Congress needs to do to protect this vital resource.

For the past 2 years, I have been a member of a working group on ground water policy of the Environment and Energy Study Institute. That group designed a project to determine what the real needs for Federal ground water protection action are. The project conducted a congressional ground water policy symposium, held six regional conferences in various parts of the country designed to get input from a range of people actually working to protect ground water, and conducted a national workshop to identify and develop the most promising options.

I am pleased that some of the important findings of this work are reflected in this legislation.

The Institute found that State and local officials, environmental group representatives and industry spokesmen all see a critical need for better data, better ways to make that data available to those who meet it, and better methods to interpret the data for and give advice to decisionmakers. Further, they believe that the existing resources of the USGS and its relationship with State and local governments provide an excellent function for generating needed ground water data and for a network to gather and disseminate information and provide technical assistance on a localized basis.

H.R. 5526 not only gives the USGS responsibility for data collection and dissemination, but also calls for that information to be directed to meet the needs of State and local ground water protection efforts. This is clearly the way Federal efforts should be moving.

In addition, H.R. 5526 requires the USGS to establish protocols for collecting ground water quality data. The Institute found that people often are reluctant to base decisions on existing data because they cannot be sure how reliable it is. The problem is that there are no uniform, accepted standards for collecting samples or for analyzing them. This provision would fill that need.

Finally, H.R. 5526 would set up a national ground water information clearinghouse and provide technical assistance to State and local governments through the USGS. Such a clearinghouse and technical assistance is critically needed if State and local decisionmakers are to make sound policy choices. The Institute found that currently officials may not know they need to take ground water concerns into consideration, they may not know needed information exists or they may not know how to get it. A clearinghouse, as opposed to a new data base, would provide a more personalized, decentralized, broad-based network of providers and users of information. It would then complement the Survey's technical assistance activities.

Mr. GEJDENSON. Mr. Speaker, I rise in support of H.R. 5526, the National Ground Water Contamination Research Act of 1986. Before going any further, I want to express my sincere thanks to GEORGE MILLER, the chairman of the Interior Subcommittee on Water and Power, and his staff, for all the hard work they have done on this bill. I also thank Representative CHENEY, the ranking minority member of the Subcommittee on Water and Power, for his cooperation and support of the bill.

My interest in the ground water contamination problem goes back to 1982 when I met with families living on Pink Row, in Montville, CT, who had suddenly learned that their water was contaminated with trichlorethylene [TCE], a carcinogenic chemical. I cannot even begin to convey the fears and frustrations of parents who discover that for years their children have been drinking and bathing in water tainted with toxic substances. This tragic situation has occurred countless times throughout eastern Connecticut and the rest of the Nation.

Unfortunately, a major barrier to the protection of ground water from contamination is the lack of basic information on the problem. For example, there is no reliable estimate of how much ground water in the United States is contaminated. The small amount of information we do have is alarming. One study by the Environmental Protection Agency found that up to 63 percent of rural Americans may be drinking water tainted by pesticides or other contaminants.

The National Ground Water Contamination Research Act of 1986 will provide Federal, State, and local governments, and industry with the information they need to resolve

ground water contamination problems. The bill expands and focuses U.S. Geological Survey [USGS] research on ground water quality.

The bill directs USGS to report on the adequacy of existing ground water information to meet the needs of States, communities, and industry. Following the completion of this report, USGS is required to establish a national gound water quality assessment program to meet the information needs identified by the report.

The bill also establishes a national ground water information clearinghouse to provide ground water information to Federal agencies, State and local governments, and private organizations and individuals. The clearinghouse will provide decisionmakers with easy access to information they need to resolve ground water problems.

The bill also expands the USGS program to provide technical assistance to States and localities experiencing ground water problems. This program has been extremely helpful in many areas, including Connecticut, that have ground water contamination problems.

Ground water contamination is one of the most serious environmental problems facing this Nation. The number of wells closed because of contamination by toxic chemicals and other substances increases every day. In my home State of Connecticut alone, over 1,000 wells have been closed because of contamination.

The National Ground Water Contamination Research Act of 1986 will provide the information we need to begin to solve the ground water contamination problem. I urge my colleagues to strongly support this legislation.

Mr. LUJAN. Mr. Speaker, I rise in support of H.R. 5526, a bill which provides reauthorization of the Geological Survey Water Resources Program, and authorizes a national Ground Water Contamination Research Program.

My comments are directed specifically to title II of the legislation, which authorizes for the first time a national program designed to provide vital information on ground water contamination.

This authorization, for $20 million per year over the next 3 years, is long overdue. It is certainly a step in the right direction toward solving ground water contamination, which has become a serious problem in many areas of the country.

In my own district, the city of Albuquerque's South Valley area has experienced significant ground water contamination problems. These problems have led to health concerns and well closings.

When this bill was reported out of committee, I was pleased to see that report language was added to the bill, which would authorize the Geological Survey to consider the advisability of using excess water supplies as a means of aiding ground water pollution control.

In New Mexico, as well as in California and other regions, there are times when certain areas experience temporary excesses of surface water.

It is quite possible that this excess surface water can be pumped into underground aquifers, through recharge wells, thus expanding the ground water resource as well as aiding pollution control.

In reporting the bill, the Committee on Interior and Insular Affairs noted that the Geological Survey's program should be designed, in part, to provide data for State and local water resources managers which will allow them to solve management problems of the kind being experienced in Albuquerque, California, and elsewhere.

Further, the Geological Survey has authority, if it chooses, to do work at the sites such as the affected areas of Albuquerque if it believes that the information obtained there may provide assistance to the national effort to deal with ground water contamination.

Finally, the bill provides authority for the Geological Survey to respond to requests for technical assistance by New Mexico or Albuquerque officials for help in dealing with the problems which exist in the South Valley.

I applaud the Interior Committee for its action, which authorizes a Federal agency to provide assistance in solving a local problem. I hope the House will pass this legislation.

Mr. LAGOMARSINO. Mr. Speaker, the bill to authorize water resources research activities for the U.S. Geological Survey, H.R. 5526, has an excellent basis upon which it was formulated. I agree that there is a need to undertake research investigations, and surveys of the Nation's water resources.

The administration has already initiated a National Water Quality Assessment Pilot Program this year and has requested increased funding for fiscal year 1987. It is therefore somewhat premature to enact this legislation when a pilot program is already in place. That program should provide meaningful experience and data from which an expanded program can be implemented. I commend the authors of the legislation for including the territories and commonwealths in the legislation. The insular areas are important members of the American family and their needs should always be considered. The five insular areas include American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands.

While four of the five areas have nonvoting representation here in Congress, the Commonwealth of the Northern Mariana Islands does not, as it is still part of the United Nations trusteeship, the Trust Territory of the Pacific Islands. When the trust territory is terminated—and I would hope that would be soon after the Congress enacts the Compact of Free Association for Palau which is nearly ready for congressional action—the Commonwealth of the Northern Mariana Islands will be fully integrated into the American family. At that time I would hope that the Congress would consider granting the Northern Mariana Islands a nonvoting representative, as enjoyed by the other insular areas.

I am pleased to note that the Resident Commissioner from Puerto Rico has agreed to the inclusion of Puerto Rico in this legislation covering ground water resources, as administered by the Department of the Interior. On August 1, 1986, when H.R. 2478, the Omnibus Insular Areas Act, passed the House, I indicated that Puerto Rico had been excluded by the Resident Commissioner of Puerto Rico from a couple of provisions, one of which dealt with the development of water supply irrigation water service and water quality improvement, through the Bureau of Reclamation. The benefits that the Bureau of Reclamation could offer Puerto Rico were discussed and seen as advantageous by some members of the Interior and Insular Affairs Committee prior to the passage of the bill. However, we deferred to the judgment of the Resident Commissioner to exclude Puerto Rico rather than force its inclusion. I am therefore pleased to see that the Resident Commissioner has acknowledged the benefits that the U.S. Geological Survey can provide to Puerto Rico. Under the direction of the Secretary of the Interior, the USGS has already produced a report summarizing the most important water-related issues affecting Puerto Rico. That 1984 report of ground water resources in Puerto Rico is indicative of the technical expertise available to assist the insular areas.

It is hoped that the National Water Quality Assessment Pilot Program will consider the needs of the insular areas. When the pilot program is completed, I will support an appropriate expanded ground water program in the insular areas.

Mr. McCAIN. Mr. Speaker, I rise in strong support of H.R. 5526, legislation to provide authority for the U.S. Geological Survey's existing water research activities and to establish a National Ground Water Quality Assessment Program.

Mr. Speaker, it is becoming increasingly clear that contaminants from natural and man-induced sources are causing an ever-increasing decline in the quality of our Nation's water supplies. Water quality and its management is a national issue with broad implications for all segments of our society. The legislation before us today seeks to address this mounting environmental problem and I urge its adoption by my colleagues.

This legislation provides the framework for a national program to assess ground water quality throughout the United States. The Water and Power Subcommittee of the House Interior Committee has held several hearings on ground water issues during this Congress. From these hearings it became clear to me that while my own State of Arizona has been concerned about issues of ground water quality and supply for many years, and has developed important State legislation to address these issues, many other States have not been so fortunate. Many States have populations which rely heavily on ground water for drinking and domestic water purposes, as well as for irrigation and other uses. However, many States have only limited information about the quality and quantity of their ground water supplies, and are therefore in a position where they are unable to plan effectively for the future development of their water resources.

Mr. Speaker, I believe the Geological Survey research program we are considering today will provide significant assistance to the States as they move forward with their water resources planning efforts. It will also provide important information for Federal water resources decisionmakers

The legislation authorizes approximately $50 million over a 3-year period for prepara-

tion of a comprehensive report to Congress and the first several years of the actual Ground Water Quality Assessment Program.

I acknowledge that this is a substantial sum of money. That is why we have written the legislation in such a way that it sets up a program which will be carefully phased in under the close scrutiny of the States and other interested parties, including the Congress. Additionally, this legislation will make good use of the Geological Survey's abilities while respecting the paramount authority of the States to manage ground water resources.

I emphasize that we are not authorizing yet another academic research program; we are authorizing a program to help the States do the best possible job of protecting their ground water resources for the benefit of all Americans, and we expect the Geological Survey to structure its program to that end. The legislation before us today complements the amendments to the Safe Drinking Water Act which received overwhelming congressional support from this body on May 13, 1986.

Mr. Speaker, our ultimate goal must be to provide a national framework for protecting our water resources. Over 95 percent of our Nation's rural residents and over 50 percent of our urban residents depend on ground water for drinking. Our Nation is blessed with a generally abundant supply of water, but this resource, while renewable, is one that is also vulnerable to our uses and abuses.

Mr. Speaker, H.R. 5526 provides us with some of the tools necessary to reach this goal. I urge favorable consideration of H.R. 5526.

Mr. CHENEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. MILLER] that the House suspend the rules and pass the bill, H.R. 5526, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill as amended was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5526, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Colorado [Mrs. SCHROEDER] is recognized for 5 minutes.

Mrs. SCHROEDER. Mr. Speaker, I was absent the evening of September 11 and September 12. If I had been present, I would have voted as follows:

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Roll No. 375, the Bennett amendment; "no."

Roll No. 376, the Chandler amendment; "no."

Roll No. 377, the Bilirakis amendment; "no."

Roll No. 378, passage of H.R. 5484, the Omnibus Drug Act; "no."

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Roll No. 379, approve the Journal; "no."

Roll No. 380, H. Res. 548, the rule for H.R. 4868, the Anti-Apartheid Act; "yea."

Roll No. 381, passage of H.R. 4868, the Anti-Apartheid Act; "yea."

Roll No. 382, House Joint Resolution 532, the rule for H.R. 5313; "yea."

Roll No. 383, passage of H.R. 5313, HUD appropriations; "yea."

A PROGRAM FOR THE FUTURE

The SPEAKER pro tempore (Mr. MILLER of California). Under a previous order of the House, the gentleman from Florida [Mr. BENNETT] is recognized for 60 minutes.

Mr. BENNETT. Mr. Speaker, I speak today primarily of my candidacy for and plans for the chairmanship of the House Armed Services Committee in the upcoming Congress.

Incidentally, I will also speak briefly of the seniority system of choosing chairmen and of the merits of retaining that system as preferable to all others so far suggested. Since I have the longest seniority by far among the candidates, I have a personal interest in seeing this seniority system sustained, in addition to my philosophical support for this system.

This giving of priority on the basis of longest service is not just a policy designated to reward the most senior members, nor just a convenience for prompt elections. It is instead a system designed to select Congressmen whose ability and integrity have stood the test of time in observations by their peers; and who can as they wait for advancement have time to plan and organize for their period of upcoming leadership.

Seniority selection of chairmen is not the only system Congress has used. Years ago the Speaker appointed the chairmen and also made committee assignments. Congress observed that this gave too much power to the Speaker and then it established a system of choice by seniority while allowing leeway to turn down the senior Member for reasons of severe illness or personal fault of the person voted down. Sheer personal popularity, charisma and cleverness in campaigning were not set up to be factors in this system and they shouldn't be! Perhaps this is not a perfect arrangement but no better plan has been suggested.

State legislatures seldom use seniority as the controlling or dominant element in the choice of chairmen. Often the speaker in a State legislature appoints as chairmen those legislators who have pledged to vote for the speaker's election and have received from the speaker campaign funds for their own elections to the State legislature. We in Congress ought to be glad that years ago the tyranny of former Speakers in this Congress cut off that type of thing in Congress. Thus reform gave us instead the preferable seniority system which protects the country against financial and other pressures from special interests imposing themselves on the Government through influencing the choice of chairmanships.

There is also the question of what campaigning for chairmanships of committees and subcommittees may do in sapping away the time of legislators from their responsibilities to legislate properly. In the House we spend a large portion of our 2 year terms doing constituent services and seeking reelection. It is becoming increasingly difficult for us even to do our legislative duties and to pass basic authorization and appropriation bills. Adding campaigns for chairmanships and subcommittee chairmanships is hardly something that would make us more efficient in our priority legislative duties.

Ask yourself these questions. How much more inefficient would this body become if the seniority system were abandoned and numerous Members were intensively campaigning for various committee chairmanships and subcommittee chairmanships? After all, there are 22 chairmen of committees in the House and 123 subcommittee chairmanships. More importantly perhaps, how long would it take the powerful interest groups in this country to get in on the act of selecting chairmen when it is done not by seniority (which they cannot control) but by campaigns that may require campaign pressures and campaign financial contributions?

I believe it is in the national interest of this country to fight the erosion of the seniority system at least until a better system is invented or discovered. It strikes me that the seniority system is not only fair to the Members but in the country's best interests.

All of this has a bearing on my candidacy. If my 35 years of seniority on this committee were to be followed by election next January this would soon reopen again the processes of the seniority system to allow others to have a chance at the chairmanship for I would not seek or accept the chair for more than 4 years at most. By way of

contrast the incumbent chairman has announced that he wants to serve as such for at least 20 years. This would deprive the country of possible leadership from many other able persons on the committee, it seems to me.

I should not be considered for the chairmanship if I am not qualified so I should mention my qualifications. In addition to having served as subcommittee chairman on more subcommittees than my opposition and for more years, I have authored and passed more bills and more amendments to bills than my opposition, and spoken more often in committee and on the floor in support or opposition to legislation. This is not just because I have served longer but it is characteristic of my service in each year compared with the opposition. In the current Congress alone I have passed pieces of legislation now law that involved the military in the fight against drugs, strengthened the strategic stockpiles, limited the excessive expenditures for the MX missile, reformed procurement procedures and started a conventional defense initiative, and others. In the recently passed authorization bill, it is my amendment which increased funds for the conventional defense initiatives, made military charter flights safer, improved procurement revolving door procedures, limited excessive spending for SDI, provided for live fire testing to ensure able weapons procurement, and again increased the availability of military assets to fight the drug traffic. Neither of my opponents have done anything comparable in legislation.

The question of party loyalty has been raised. I believe in the two-party system. While I do not believe this should make any legislator violate his conscience, I look with a jaundiced eye at those who participate in divisive actions. Consequently, I have never been a hyphenated Democrat. When I came here, these were called Dixiecrats. I have spoken for every Democratic nominee for the Presidency since I have been old enough to vote and never voted for any Republican. Yet I am an independent thinker and do not cast votes on the basis of sheer partisanship but on the basis of what my conscience tells me is the proper vote for the country as I see it. Usually, this is in accord with the Democratic platform, for that is where my philosophy takes me.

I have thought a lot about what I think our country needs in the field of national defense. If I am elected to the chairmanship my first priority would not be the SDI, nor nuclear weaponry, as important as these matters may be—but my top priority would be to put this country in a position where it can win a conventional war. It is a tragedy and a disgrace that we have allowed our defenses to fall to such a point that the NATO Command has said that it is now questionable that we will have time to decide to mount a nuclear response in Europe if we were quickly defeated there in conventional weaponry. This is something we can remedy if we will just do it. But somebody will have to press for it with unrelenting dedication and zeal. If elected chairman, I will do that. At this point, I include in my remarks measures I have authored in this Congress along these lines.

H. RES. 539

Resolution expressing the sense of the Congress that the United States should place greater emphasis on the improvement of the capabilities of United States conventional forces, particularly in cooperation with other member nations of the North Atlantic Treaty Organization

Whereas in May 1985 a North Atlantic Treaty Organization Military Committee report warned that under present trends, the alliance's conventional forces would not be able to withstand a Warsaw Pact invasion long enough for the alliance to decide whether to escalate the war to the nuclear level:

Whereas four out of five Americans mistakenly believe that the United States has already adopted a policy of no-first-use of nuclear weapons; and

Whereas the United States and its European allies must now take extraordinary steps to redress the conventional force imbalance in order to eliminate the alliance dependence on the early use of nuclear weapons: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the United States should place greater emphasis on the improvement of the capabilities of United States conventional forces, particularly in cooperation with other member nations of the North Atlantic Treaty Organization;

(2) such improvement should concentrate on improved readiness and greater sustainability in conflict;

(3) such improvement should emphasize defensive measures, particularly the joint development and widespread deployment of infantry antitank weapons; and

(4) such improvement should be based upon the assumption that the United States would not be the first to use nuclear weapons.

H.R. 5487

A bill to establish a Conventional Defense Advisory Board within the Department of Defense

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(a) ESTABLISHMENT.—There shall be established within the Department of Defense a Conventional Defense Advisory Board.

(b) PURPOSE AND RESPONSIBILITIES.—(1) The Board shall examine and survey, all aspects of conventional warfare relating to the fighting ability and sustainability of the armed forces of the United States, particularly with regard to the conventional defense of Europe.

(2) The Board shall specifically examine, survey, and make recommendations concerning the sufficiencies and deficiencies of—

(A) research and development programs;

(B) weapons procurement programs;

(C) ammunition procurement programs; and

(D) programs affecting the sustainability of forces in the field.

(c) MEMBERSHIP AND SUPPORT.—(1) The Board shall be appointed by the Secretary of Defense and shall include representatives of the Department of Defense, the defense industry, and the academic and research community.

(2) The Secretary of Defense shall make available to the Board such information as it may require in the performance of its duties.

(d) REPORTS.—(1) The Board shall report annually to the Secretary of Defense by March 1 concerning the relationship between the current programs of the Department of Defense and the requirements for more adequate conventional defenses. With respect to such relationship the report shall, at a minimum, specify—

(A) shortfalls;

(B) excesses; and

(C) recommendations for correcting these imbalances.

(2) The Secretary of Defense shall forward the report required in paragraph (1) to the Congress within thirty days of its receipt, together with such additional views as the Secretary may desire.

(3) The Secretary of Defense may require such additional reports from the Board as the Secretary deems necessary.

It is no accident that I feel this way about conventional warfare. I am a combat infantry veteran, Silver Star, Bronze Star, Combat Infantry Badge, Philippine Legion of Honor, Philippine Gold Cross, et cetera. I led guerrillas in the Philippines and fought as an infantry soldier on New Guinea in World War II.

Until an infantry soldier stands on the land with a rifle in hand and effectively directs the enemy, wars are not won. Everything else, however important, leads up to that.

Today, we cannot put the infantry in a position to do that in Europe. We are lacking in ammunition and other supplies. We have no good antitank weapons against the Warsaw Pact's 53,000 tanks. We do not even have efficient battlefield communications there in our own troops, to say nothing of our allies. What a shame—what a disgrace!

If elected, I will try to turn that around and while retaining our nuclear deterrence, put ourselves in a position where we can win a conventional war.

□ 1500

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COMBEST) to revise and extend their remarks and include extraneous material:)

Mr. GINGRICH, for 60 minutes, on September 23.

Mr. GINGRICH, for 60 minutes, on September 24.

Mr. GINGRICH, for 60 minutes, on September 25.

(The following Members (at the request of Mr. BENNETT) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. SCHROEDER, for 5 minutes, today.

Mrs. COLLINS, for 60 minutes, today.

Mr. BEDELL, for 60 minutes, on September 23.

Mr. BEDELL, for 60 minutes, on September 24.

Mr. BEDELL, for 60 minutes, on September 25.

Mr. ALEXANDER, for 30 minutes, on September 23.

Mr. ALEXANDER, for 30 minutes, on September 24.

Mr. ALEXANDER, for 30 minutes, on September 25.

Mr. OBEY, for 5 minutes, on September 23, 24, 25, 26, 29, 30, October 1, 2, and 3.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COMBEST) and to include extraneous matter:)

Mr. DANNEMEYER.

Mr. CONTE.

Mr. SMITH of New Jersey.

Mr. TAUKE.

(The following Members (at the request of Mr. BENNETT) to include extraneous matter:)

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. GARCIA.

Mr. MONTGOMERY.

Mr. MAVROULES.

Mr. SYNAR.

Mrs. BYRON.

Mr. DOWNEY of New York.

Mr. MCHUGH.

Mr. GEJDENSON in two instances.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker pro tempore.

H.R. 1483. An act to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes, and

H.R. 3622. An act to reorganize the Department of Defense and strengthen civilian authority in the Department of Defense, to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense, to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands and ensure that the authority of those commanders is fully commensurate with that responsibility, to increase attention to the formulation of strategy and to contingency planning, to provide for more efficient use of defense resources, to improve joint officer management policies, otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense, and for other purposes.

BILLS AND JOINT RESOLUTION PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following day present to the President, for his approval, bills and joint resolution of the House of the following title:

On September 19, 1986:

H.R. 1483. An act to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes;

H.R. 3358. An act to reauthorize the Atlantic Striped Bass Conservation Act, and for other purposes;

H.R. 3622. An act to reorganize the Department of Defense and strengthen civilian authority in the Department of Defense, to improve the military advice provided to the President, the National Security Council, and the Secretary of Defense, to place clear responsibility on the commanders of the unified and specified combatant commands for the accomplishment of missions assigned to those commands and ensure that the authority of those commanders is fully commensurate with that responsbility, to increase attention to the formulation of strategy and to contingency planning, to provide for more efficient use of defense resources, to improve joint officer management policies, otherwise to enhance the effectiveness of military operations and improve the management and administration of the Department of Defense, and for other purposes;

H.R. 4421. An act to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grand, and community food and nutrition programs, and for other purposes; and

H.J. Res. 60. Joint resolution to designate the week beginning September 15, 1986, as "National School-Age Child Care Awareness Week."

ADJOURNMENT

Mr. BENNETT. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 7 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 23, 1986, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4241. A letter from the Comptroller General of the United States, transmitting a review of four deferrals of budget authority transmitted by the President on June 24, 1986 in his seventh special message for fiscal year 1986, pursuant to 2 U.S.C. 685 (H. Doc. No. 99-268); to the Committee on Appropriations and ordered to be printed.

4242. A letter from the Assistant Secretary of the Navy (Shipbuilding and Logistics); transmitting, notification of the plan to study the conversion of various functions to contractor performance at several locations, pursuant to 10 U.S.C. 2304 nt.; to the Committee on Armed Services.

4243. A letter from the Auditor, District of Columbia, transmitting a copy of a report entitled "Revenue Report for July 1986," pursuant to D.C. Code section 47-117(d); to the Committee on the District of Columbia.

4244. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112(a); to the Committee on Foreign Affairs.

4245. A letter from the Chairman, Commission on the Bicentennial of the Constitution, transmitting the second report containing recommendations for commemoration and coordination of the Bicentennial and related activities, pursuant to Public Law 98-101, section 6(e); to the Committee on Post Office and Civil Service.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[*Pursuant to the order of the House on Sept. 19, 1986 the following report was filed on Sept. 20, 1986*]

Mr. DE LA GARZA: Committee on Agriculture. H.R. 5407. A bill to amend the Grain Standards Act of 1916 to establish the policy of providing grain of high quality to both domestic and foreign buyers, to better define the purpose of Official United States Standards for Grain, and to provide for the closer regulation of dockage and foreign material in grain; with an amendment (Rept. 99-858). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SCHROEDER: Committee on Post Office and Civil Service. H.R. 4033. A bill to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes; with an amendment (Rept. 99-859). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAWKINS: Committee on Education and Labor. H.R. 5520. A bill to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that Act, to authorize an early intervention program under that Act for handicapped infants and toddlers and their families, and

for other purposes; with an amendment (Rept. 99-860). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAWKINS: Committee of conference. Conference report on S. 1965 (Rept. 99-861). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5526. A bill to authorize the water resources activities of the United States Geological Survey, and for other purposes; with an amendment (Rept. 99-862). Referred to the Committee of the Whole House on the State of the Union.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

[*Omitted from the Record of September 15, 1986*]

H.R. 4917. The Committee on Government Operations discharged from further consideration of H.R. 4917.

[*Submitted Sept. 22, 1986*]

H.R. 4917. The Committee on Post Office and Civil Service discharged from further consideration of H.R. 4917; H.R. 4917 referred to Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANDERSON (for himself, Mr. HOWARD, Mr. SNYDER, and Mr. SHUSTER):

H.R. 5568. A bill to establish uniform standards for testing and licensing of operators of commercial motor vehicles; to the Committee on Public Works and Transportation.

By Mr. FRANK:

H.R. 5569. A bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age; to the Committee on Ways and Means.

By Mr. HOWARD (for himself, Mr. ANDERSON, Mr. HAMMERSCHMIDT, Mr. ROE, Mr. SHUSTER, Mr. BREAUX, Mr. STANGELAND, Mr. MINETA, Mr. GINGRICH, Mr. OBERSTAR, Mr. CLINGER, Mr. NOWAK, Mr. MOLINARI, Mr. EDGAR, Mr. SHAW, Mr. YOUNG of Missouri, Mr. MCEWEN, Mr. RAHALL, Mr. PETRI, Mr. APPLEGATE, Mr. SUNDQUIST, Mr. DE LUGO, Mrs. JOHNSON, Mr. SAVAGE, Mr. PACKARD, Mr. SUNIA, Mr. BOEHLERT, Mr. BOSCO, Mr. DELAY, Mr. MOODY, Mr. CALLAHAN, Mr. BORSKI, Mr. GALLO, Mr. KOLTER, Mrs. BENTLEY, Mr. VALENTINE, Mr. LIGHTFOOT, Mr. TOWNS, Mr. MONSON, Mr. LIPINSKI, Mr. ROWLAND of Connecticut, Mr. ROWLAND of Georgia, Mr. WISE, Mr. GRAY of Illinois, Mr. VISCLOSKY, Mr. TRAFICANT, Mrs. LONG, Mr. CHAPMAN, Mr. PERKINS, and Mr. TAYLOR):

H.R. 5570. A bill to designate the U.S. courthouse and customhouse at 601 West Broadway, Louisville, KY, as the "Gene Snyder United States Courthouse and Customhouse"; to the Committee on Public Works and Transportation.

By Mr. KASTENMEIER:

H.R. 5571. A bill to establish a commission to study and make recommendations on the desirability and feasibility of amending the copyright laws to compensate authors for the not-for-profit lending of their works; to the Committee on the Judiciary.

By Mr. KASTENMEIER (for himself, Mr. SYNAR, Mr. WIRTH, Mr. BOUCHER, and Mr. MOORHEAD):

H.R. 5572. A bill to amend title 17, United States Code, relating to copyrights, to provide for the temporary compulsory licensing of the secondary transmission by satellite carriers of superstations for private viewing by Earth station owners; to the Committee on the Judiciary.

By Mr. MICHEL:

H.R. 5573. A bill to authorize an affiliated status with the National Park Service for the Wildlife Prairie Park, in the State of Illinois; to the Committee on Interior and Insular Affairs.

By Mr. RODINO (by request):

H.R. 5574. A bill to implement the Inter-American Convention on International Commercial Arbitration; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 524: Mr. BOUCHER, Mr. COURTER, Mr. HYDE, Mr. KASICH, Mr. KOLTER, Mr. KOSTMAYER, Mr. LOWRY of Washington, Mr. MACKAY, Mr. MARKEY, Mr. MILLER of Ohio, Mr. SMITH of New Jersey, Mr. WILLIAMS, Mrs. JOHNSON, Mr. ATKINS, and Mr. BATEMAN.

H.R. 1453: Ms. MIKULSKI and Mr. ATKINS.

H.R. 2353: Mr. SWEENEY.

H.R. 3024: Mr. RUSSO.

H.R. 3040: Mr. GINGRICH and Mr. KOSTMAYER.

H.R. 3260: Mr. SWINDALL, Mr. WEAVER, Mr. MOODY, and Mr. BARNARD.

H.R. 4568: Mr. BROWN of California and Mr. RAHALL.

H.R. 4763: Mr. SHUMWAY.

H.R. 4820: Mr. RALPH M. HALL.

H.R. 4953: Mr. MARTIN of New York, Mr. CHANDLER, and Mr. BADHAM.

H.R. 5477: Mr. MILLER of Washington, Mr. WYLIE, Mr. PORTER, Mr. WORTLEY, Mr. MOLLOHAN, and Mr. BOUCHER.

H.R. 5488: Mr. LAGOMARSINO, and Mr. MATSUI.

H.R. 5549: Mr. WATKINS, Mr. MCCURDY, Mr. COELHO, and Mr. DORGAN of North Dakota.

H.J. Res. 87: Mr. STAGGERS.

H.J. Res. 133: Mr. MACK, Mrs. JOHNSON, and Mr. OBERSTAR.

H.J. Res. 244: Mr. PRICE and Mr. EVANS of Iowa.

H.J. Res. 438: Mr. BOUCHER, Mr. REGULA, Mr. BATES, Mr. ZSCHAU, Mr. SABO, Mr. STUMP, Mr. SPENCE, Mr. ROSE, Mr. KASTENMEIER, and Mr. HARTNETT.

H.J. Res. 550: Mr. MCKINNEY, Mr. HEFNER, Mrs. HOLT, Mr. KANJORSKI, Mr. KASICH, Mr. JONES of North Carolina, Mr. MACKAY, Mr. MCDADE, Mr. MCHUGH, Mr. HUGHES, Mr. MATSUI, Mr. MONSON, Mr. MURPHY, Mr. PERKINS, Mr. RICHARDSON, Mr. ROE, Mr. SABO, Mr. SCHEUER, Mr. MCCLOSKEY, Mr. SCHUMER, Mr. SNYDER, Mr. SPRATT, Mr. TRAFICANT, Mr. PRICE, Mr. KOLTER, Mr. YATRON, and Mr. BUSTAMANTE.

H.J. Res. 602: Mr. ENGLISH, Mr. DYMALLY, Mr. MOODY, Mr. STRANG, Mrs. KENNELLY, Ms. SNOWE, Mr. MCMILLAN, Mr. DIXON, Mr. HAMMERSCHMIDT, Mr. HOPKINS, Mr. MORRISON of Connecticut, Mr. TAUKE, Mr. DARDEN, Mr. KEMP, Mr. MURPHY, Mr. CLAY, Mr. SABO, Mr. SUNIA, Mr. PORTER, Mr. FAUNTROY, Mr. KOLTER, Mr. MOORE, Mr. SKELTON, Mr. SAVAGE, Mr. MCEWEN, Mr. FRANK, Mr. ANTHONY, Mr. BOLAND, Mr. STOKES, Mr. CHAPPELL, Mr. MURTHA, Mr. LOEFFLER, Mr. KASTENMEIER, Mr. VANDER JAGT, Mr. DIOGUARDI, Mr. HENRY, Mr. EVANS of Iowa, Mr. MILLER of California, Mr. SILJANDER, Mr. ROBERTS, Mr. PERKINS, Mr. TAUZIN, Mr. MANTON, Mr. LEHMAN of Florida, Mr. LEWIS of California, and Mr. CALLAHAN.

H.J. Res. 645: Mr. LEVIN of Michigan and Mr. MONSON.

H.J. Res. 677: Mr. BRYANT, Mr. FIELDS, Mr. BARTLETT, Mr. MRAZEK, Mr. KOSTMAYER, Mr. COBLE, Mr. LIPINSKI, Mr. EARLY, Mr. KINDNESS, Mr. CLAY, Mr. TAUKE, Mr. WAXMAN, Ms. KAPTUR, Mr. BILIRAKIS, Mr. RANGEL, Mr. LIVINGSTON, Mr. HENRY, Mr. CROCKETT, Mr. FORD of Michigan, Mr. TALLON, Mr. BENNETT, Mr. LEVIN of Michigan, Mr. EDGAR, Mrs. LONG, Mr. BADHAM, Mr. RUDD, and Mrs. MARTIN of Illinois.

H.J. Res. 706: Mr. LIPINSKI, Mr. KOLBE, Mr. FUQUA, Mr. GREEN, Mr. MCEWEN, and Mr. STOKES.

EXTENSIONS OF REMARKS

JUDICIAL REVIEW: ABSOLUTELY (BUT MAYBE NOT)

HON. G.V. (SONNY) MONTGOMERY
OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. MONTGOMERY. Mr. Speaker, those of us who serve in public office are often confronted with difficult decisions. We are tempted at times to agree with both sides of an issue. However, the public, and particularly the press, holds us accountable and discourages us from taking the easy way out on hard issues. As public officials, we are bound to make the hard choices.

Evidently, there is no such burden on editorial writers. For some, hard choices and consistency take a back seat. As an example, let me compare two editorials concerning veterans issues that have appeared in the New York Times within the past 3 months.

Recently, the Times commented on the delay in the settlement of the litigation brought by veterans against the chemical companies which manufactured the defoliant used in Vietnam, agent orange. As I read the editorial, its logic is as follows:

First, there is little evidence that agent orange has caused disease among veterans who served in Vietnam.

Second, the attorneys who brought the suit against the manufacturers of agent orange depended on fears, not facts—"on their ability to haunt a jury with a parade of injuries and on the fear of the chemical companies and their insurers that however many cases they might win, they could not afford to fight them all."

Third, the settlement in this case was the result of a seasoned judge who encouraged the companies to settle with the veterans even though there was no evidence that agent orange caused maladies or birth defects in the offspring of Vietnam veterans. The judge also correctly reduced the attorneys' outrageous fee requests from $40 to $9 million.

Fourth, despite the greed of the lawyers and the lack of proof, the Times supports a prompt approval of the settlement, without any further appeals or delays, as the only "equitable solution," the only way to ensure that the veterans get some money.

The Times concludes that the courts are not well equipped to administer claims for disability benefits from a large group of persons, such as veterans who may have been exposed to agent orange. According to the Times, the system used by the courts just isn't designed for resolving such claims.

Mr. Speaker, only 2 months earlier, the Times endorsed a change in the process used by the Federal Government to decide veterans' disability claims. The change which the Times endorsed would allow a dissatisfied veteran and his attorney to go to court to reverse the VA's decision. What would result is that veterans with sympathetic cases, or those cases which were not vigorously defended by U.S. attorneys, would receive benefits. The same pressures which forced the settlement of the claims against the chemical companies would force the United States to settle many other cases, regardless of their merit. If this change in the present adjudication procedure were enacted, cases involving more severe and dramatic disabilities would run the full gamut of the legal process, the same process the Times describes as inadequate to resolve claims by groups of persons who are injured or contract disease through no fault of their own.

One might well ask who would benefit from the change endorsed by the Times? Some deserving veterans might, at least at first, as would some nondeserving veterans. But who could tell whether the judgment in a particular case was really fair?

What the advocates of judicial review often ignore is the fact that the judiciary that interpreted the Constitution in a way that outlawed segregated schools is the same institution that enforced the fugitive slave laws. As a distinguished law professor from Yale University pointed out in his testimony before our committee, the debate over whether and how veterans who were exposed to agent orange in Vietnam should be compensated does not justify a move toward general judicial review of all VA decisions.

The executive director of the Disabled American Veterans recently wrote that public policy with respect to veterans whose claims have been denied should be resolved in the Congress, in a democratic manner, after hearing the views of as many informed parties as possible. While some groups think it is necessary to hire paid lobbyists to persuade the press and Members of the Congress of the correctness of their cause, the views of the veterans who served are the voices that are most clearly heard in our committee.

Mr. Speaker, some critics charge that the existing system is perhaps overgenerous, while proponents for judicial review of veterans' claims complain that the current adjudication procedure prevents too many veterans from receiving benefits for disease or disability incurred in the service of their country. The value of expanded judicial review of VA disability determinations often depends on the perspective of the commentator. I support a system that gives veterans the benefit of the doubt. I just don't think that the courts are any better at reaching a just resolution of veterans' claims than the VA. It would appear from the following two editorials that the Times would like to have it both ways. Unfortunately, such luxury is not available to Members who serve in the U.S. House and Senate.

[From the New York Times, July 16, 1986]

SOME VETERANS DESERVE A DAY IN COURT

A veteran who feels shortchanged by the Veterans Administration as it distributes $15 billion in benefits each year cannot normally take the agency to court. Many veterans accept the denial of judicial review in the belief that the Veterans Administration's internal review process is fair enough. But Vietnam veterans call it unfair. Congress should heed their complaint.

Judicial review for veterans' benefit claims was prohibited to hold down Government costs during the Great Depression. A veteran who seeks to secure benefits goes first to a regional board. If no satisfactory settlement is reached, the case goes to the Board of Veterans Appeals, which approves fewer than 14 percent of the 45,000 claims it hears annually. Only claims raising constitutional issues may go on to court.

The Veterans Administration, however, may sue veterans who receive excessive benefits, a right that it invokes against 35,000 veterans each year. Even defending against such suits amounts to lopsided justice. A Federal law dating to the Civil War limits lawyers' fees in veterans' cases to $10.

Nevertheless, traditional lobbies like the American Legion and Disabled American Veterans defend the current system. They say most cases are settled well before they reach the final appeal stage. Review by Federal courts, they fear, would turn the present informal system into a more adversarial and costly process.

The Vietnam Veterans of America, however, presses for the right to go to court. It believes recent veterans now fare worse than older veterans, particularly on claims for post-traumatic stress disorders. Their plea has met with considerable sympathy in Congress. Bills that would honor it have passed the Senate three times, but have been blocked by the chairman of the House Veterans Affairs Committee, G.V. Montgomery.

Several members of the House Committee propose a law that would codify the regulations now relied on by the Veterans Administration and permit the courts to reverse the agency only when its decisions are judged arbitrary. They would retain the $10 fee limit when lawyers represent veterans before the Veterans Administration but permit more reasonable fees for representation in court. That sounds like a fair compromise.

[From the New York Times, Sept. 4, 1986]

AGENT ORANGE—LET IT LIE

The vexed case of Agent Orange has been laid almost to rest by a solution that is almost a lie. But now, at the last minute, the U.S. Court of Appeals for the Second Circuit seems poised to overthrow Federal Judge Jack Weinstein's elegantly contrived solution with a narrow insistence on the truth. That would be an error that would fruitlessly prolong Vietnam veterans' tormented search for solace.

The veterans came home from a war no one wanted to hear about. With reason, many resented the neglect. They were too prone to believe a rumor, beginning years

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

after the war's end, that Agent Orange, the herbicide sprayed in Vietnam, was the cause of many of their illnesses. An avid legion of tort lawyers stoked their fears and filed thousands of suits against the herbicide's makers.

The medical case against Agent Orange is but shadow. True, the herbicide contained minute amounts of dioxin, a potent poison. But poisoning depends on dose as well. In 10 years, across six million acres, just 368 pounds of dioxin were sprayed. Could the faint residues surviving in the soil and water of Vietnam somehow get into troops in quantities to cause disease? Conceivable, but far from likely. The veterans have no obvious symptoms for which dioxin might be the explanation. Their diseases so far seem to be the same as other people's. The pilots who sprayed Agent Orange were far more exposed than any ground troops, but they too have shown no unusual pattern of disease.

The Agent Orange lawyers depended not on facts but fears—on their ability to haunt a jury with a parade of injuries and on the fear of the chemical companies and their insurers that however many cases they might win, they could not afford to fight them all. Sure enough, the companies were happy to buy their way out of an avalanche of litigation with a $180 million settlement, and the lawyers filed to cream off some $40 million in fees.

But they hadn't reckoned with a judge who both understood their manipulations of the tort system and was prepared to impose his own conception of justice. First, Judge Weinstein reduced the lawyers' fees to $9 million. Then, saying they had not proved causation, he rules that all severely diseased veterans should be eligible for a share of the settlement. But to keep the payouts reasonably substantial, he also made the likely degree of exposure to Agent Orange a criterion. As the veterans' groups desired, he proposed creating a fund to provide services to families with birth defects.

The veterans are eager to start benefiting from Judge Weinstein's plan. But their lawyers, contrary to the veterans' interests, have now appealed it. And the appellate court seems clearly tempted to reject the plan and require that causation must be proved. That is a recipe for the chaos the plan was meant to avert. Instead of compensating the whole class of disabled veterans, the settlement fund would go, after further long delay, to those who drew sympathetic juries.

Since there's still no proof that any veteran was actually harmed by Agent Orange, it is surely better to use the money to help the larger group. Judge Weinstein's plan would resolve the Agent Orange nightmare, now eight years in the making—even though in denying causation it flouts a basic premise of tort law. The circumvention is necessary to an equitable solution. The courts do not usually do well in handling mass tort cases like this one. It's the tort system that needs changing, not Judge Weinstein's innovation and careful solution.

HOW TO IMPROVE THE HELSINKI PROCESS

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. GARCIA. Mr. Speaker, my friend and colleague from the North Atlantic Assembly, Mr. Gianfranco Astori, an Italian Member of Parliament, wrote an excellent essay on how to improve the human rights provisions of the Helsinki Accords for the International Herald Tribune.

As Chairman of the Assembly's Civilian Affairs Committee's Subcommittee on the Free Flow of Information and People, Mr. Astori attended the recent CSCE review conference in Bern, Switzerland. In his essay, Mr. Astori describes the progress and problems of the CSCE process, particularly with regard to the human rights provisions. I am inserting that essay in the RECORD for my colleagues' perusal. I am certain that they will find it as enlightening as I have.

In addition, I would like to mention that the Subcommittee on the Free Flow of Information and People is visiting Washington this week for a series of meetings to discuss human rights in an East-West context. I would like to welcome them to Washington on behalf of myself and my colleagues.

[From the International Herald Tribune]

FOR COOPERATION TO IMPROVE THE HELSINKI PROCESS

(By Gianfranco Astori)

(The writer, a Christian Democratic member of the Italian Parliament, is chairman of the Subcommittee on the Free Flow of Information and People of the Civilian Affairs Committee of the North Atlantic Assembly.)

BRUSSELS.—Despite the less than encouraging outcome of the recent review conference in Bern of the Commission on Security and Cooperation in Europe, during which the United States vetoed a compromise resolution presented by neutral participants, some lessons may be drawn from events surrounding the six-week session especially in the area of increasing public participation in the Helsinki process.

As a member of the North Atlantic Assembly, the interparliamentary organization of NATO, I participated in meetings between alliance parliamentarians and diplomats delegated to the conference.

It is now 11 years since 35 countries—from Eastern and Western Europe, the United States and Canada—signed the Helsinki Final Act. The act provided a means for Western countries to encourage change in Eastern Europe by improving human rights and enhancing the flow of information and people. It also served to recognize as inviolable the postwar borders of Eastern Europe.

Western expectations for positive change have waned since the heyday of détente, but the Helsinki process has nevertheless been successful in some areas of human rights. Although the halcyon days of Solidarity are over, public opinion in Poland still finds more voice than it could ever have found in the '70s. Hungary, too, has relaxed restrictions on public expression and eased freedom of movement. But improvement has been piecemeal at best. Human rights violations remain the norm, not the exception, in East Bloc countries.

As chairman of the North Atlantic Assembly's Subcommittee on the Free Flow of Information and People, I sought to arrange our recent meetings in Bern to highlight a key aspect of the Helsinki process: that of participation by citizens. The Helsinki process is about not only fostering diplomatic contacts but also expanding people-to-people ties.

With its frequent meetings, the CSCE process already affords citizens a chance to influence human rights. They cannot actually participate in the talks, but many citizen groups observe meetings. The parliamentary participation in the CSCE, which my subcommittee is seeking to foster, would encourage more public activism in human rights issues.

This is such an important aspect of the CSCE process that the Soviet Union is trying to keep meetings closed to observers. The U.S. Congress's CSCE commission participated in the Bern talks. Canada and Norway also include parliamentarians in their CSCE delegations.

If the West's goal in the Helsinki process is to protect human rights in the short term and to achieve longer-term transcendence of East-West divisions in Europe, diplomats on both sides must avoid approaching human rights in a bloc-to-bloc fashion. In the past, this approach has only reinforced existing barriers. Western human rights policy must be more flexible and varied.

One of the achievements of the last few years has been the "Europeanization" of Eastern Europe. During the Bern meeting the language used by the Soviet delegates was echoed only by the Bulgarian delegation. One of the sad aspects of the U.S. decision to block adoption of a document at the last moment has been that such Europeanization has not been encouraged.

Contacts at the parliamentary level would decentralize the Helsinki process. While not seeking to compete with national governments, legislators can nevertheless endow the CSCE review process, and human rights monitoring in general, with much needed flexibility.

Ultimately, complementary roles exist for governments, parliaments and the public. In combination, these three forces may indeed form a structure conducive to creative diplomacy.

Naturally, there are far more facets to Western relations with the East than human rights. But when discreet government initiatives fail to secure the release of prisoners of conscience and when Eastern governments persist in attacking religious and artistic freedom, national parliaments can step in as consciousness raisers. They are in a unique position to cultivate human rights groups which, in turn, can monitor compliance with Helsinki's human rights provision.

But for parliaments to participate effectively in the Helsinki process, they must necessarily be well apprised of developments on the human rights front. The U.S. Congressional Commission on Security and Cooperation in Europe, with which my subcommittee regularly meets, provides an excellent example of how legislatures may be kept up-to-date on Helsinki-process developments. The U.S. panel provides an example for all NATO legislatures in establishing their own such organizations. Such committees would provide channels for human rights-oriented groups to make their influence felt in governmental policy-making.

They would also act as a spur on governments to improve their own policies.

However, parliamentary participation can and should go beyond the mere creation of parliamentary CSCE committees. National legislators can also act as observers or even participants in the CSCE human rights or cultural review meetings.

The work of the Subcommittee on the Free Flow of Information and People represents only a small step in the right direction. However, through this body the assembly can exert more influence on national parliaments through its members in order to work toward the establishment of an alliance-wide process of parliamentary monitoring. The end result can only be an improvement of the Helsinki process with increased participation by the people and better treatment for those currently deprived of their rights.

PEACE CORPS: CELEBRATING 25 YEARS OF DEDICATION TO HUMANITY

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. MAVROULES. Mr. Speaker, I rise today to recognize a program in which all Americans can take great pride. This weekend marks the celebration of the 25th anniversary of the Peace Corps, a program which has built a tradition of friendship, peace, and dedication to humanity.

Twenty-five years ago, President John F. Kennedy made a commitment to a "Peace Corps of talented young men and women * * * to serve the great Republic and serve the cause of freedom." Today, the Peace Corps still embodies the spirit of cooperation and understanding upon which it was founded.

For the last 25 years, more than 120,000 Americans serving as Peace Corps volunteers in nearly 90 Third World countries, have been sewing threads of peace and friendship. The responsibility, challenges, and sense of independence which Peace Corps volunteers experience positively affect these individuals throughout their entire lives. My own experience has shown me that returned Peace Corps volunteers can be an invaluable asset to most organizations. In fact, Cathy Garman, staff director of the Small Business Subcommittee on General Oversight and the Economy which I chair, has been a treasured addition to my staff for a number of years.

Upon this occasion of the Peace Corps' silver anniversary, we must celebrate not only the experience of all those Americans who serve or have served as volunteers, but also the strengthening of the bond between the peoples of the United States and the Third World. A program devoted to the betterment of mankind, the Peace Corps truly provides a service to humanity. I would like to commend all those individuals who have made the Peace Corps a success, and I extend my best wishes and sincerest hope for an equally successful and productive future.

ACID RAIN LEGISLATION

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. CONTE. Mr. Speaker, acid rain is killing and will continue to kill as long as the legislative solution to this problem is bottled up in a committee of this House.

Last April, a bipartisan group of our colleagues introduced H.R. 4567, a well balanced and sensitive Acid Rain Control Program. Rather than mandating expensive technologies, H.R. 4567 allows each State to develop its own least-cost compliance strategy. H.R. 4567 also recognizes the regional impacts inherent in any solution to the acid rain problem. The bill gives States the opportunity to preserve high-sulfur coal jobs while ensuring that residential rates increase no more than 10 percent. Finally, the bill allows Congress to make a mid-course correction in the program if one is warranted.

Mr. Speaker, despite the 171 House cosponsors and a favorable report by the subcommittee, H.R. 4567 is dying a slow death in the full Energy and Commerce Committee. If the leadership of that committee is sensitive to the economic and environmental impact of acid rain, then the House of Representatives will be given the opportunity to debate and dispose of control legislation during this session of Congress.

Mr. Speaker, I'm not the only one deeply concerned about this issue. Besides my colleagues who have worked hard to develop this legislation, national and local environmental organizations together with the millions of Americans that they represent are firmly committed to pressing for acid rain control in this session of Congress. For the RECORD, I will submit a letter sent to each Member of the House from the League of Conservative Voters. I agree with the assertion contained in this letter. Like me, "The environmental community considers acid rain to be the most pressing unaddressed environmental problem facing President Reagan and Congress."

Mr. Speaker, I urge my colleagues to join me in cosponsoring H.R. 4567 and urge my good friend JOHN DINGELL to give the House a chance to vote on an acid rain bill before we adjourn and close the 99th Congress.

LEAGUE OF CONSERVATION VOTERS,
September 16, 1986.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: I want to let you know that the League of Conservation Voters will very likely make an important change in the way that we compile our annual voting chart and calculate the "LCV environmental rating" for each Representative for 1986.

The League's Voting Chart and Executive Committees will recommend to the Board at its October 3rd meeting that we list on the chart—and count in calculating the LCV score—whether each Representative cosponsored the Acid Deposition Control Act of 1986, H.R. 4567. Historically, cosponsorship of a significant environmental bill was shown in a separate column "for information purposes only", and not used in calculating individual scores.

The League plans to take this unusual step because, in the probable absence of a floor vote, it is the only way to ensure that those who take a public stand for acid rain controls gain appropriate credit for their action. H.R. 4567 is the only acid rain bill in the House of Representatives endorsed by the environmental community.

The environmental community considers acid rain to be the most pressing unaddressed environmental problem facing President Reagan and Congress. As the electoral voice of America's environmental movement, the League wishes to give proper recognition to those members of the House who have joined the fight against acid rain by cosponsoring H.R. 4567.

Cosponsors of H.R. 4567 would be credited with the same number of "points" given for each pro-environmental vote on the House floor in the League's 1986 environmental rating. Representatives who do not cosponsor this bill would lose the same number of "points" from their score. Thus, if approved by our Board, formal cosponsorship of H.R. 4567 would be given equal weight to an actual House floor vote.

I wanted to give you advance notice of this change, since it will affect the environmental voting record of each Member of the House. Should you have any comments, I will certainly share them with our Board members.

Sincerely yours,

ALDEN MEYER,
Executive Director.

ESSAY WINNERS: "HEALTHY MIND—HEALTHY BODY—NO DRUGS"

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. DANNEMEYER. Mr. Speaker, it is disturbing to know that many grade school children are becoming involved in abusing drugs. In an effort to educate our young people, teachers throughout the country are encouraging their students to speak out against the use of drugs. Sixth grade students were asked to contribute their thoughts about the effects of drug abuse in a competition which involved writing an essay entitled, "What I Would Do If Offered Drugs and as a Good Citizen, How I Can Help my Community."

Five sixth grade students from schools throughout my congressional district were selected as winners in the local essay competition. One of these five essays was entered into the national competition. Andrew Hoffman was selected from the five local winners. The national winner will be invited, with his or her parents, to visit Congress, the White House, and to participate in the 1987 Cherry Blossom Festival.

I am pleased to see teachers and students joining together in the crusade against drug abuse. Following are the remarks of those five students selected as winners from my congressional district:

(1) Andrew Hoffman; St. Norbert School; Orange, CA; Mrs. Biale/Mrs. Young, teachers; Sister Frances O'Leary, principal.

I would say no. Some people tell you that some drugs aren't bad for you. They're all

bad for you. Drugs can ruin your body. They can kill your brain cells. You would have to be really dumb to take drugs. It would be very hard to say no, but I would.

To be a good citizen I have to be a good leader. I also have to be a good follower. I have to follow the laws to make my community a better place in which to live. But I can be a good leader by improving the laws that people have made for us.

(2) Jennifer Romo; St. Mary's School; Fullerton, CA; Sister M. Mulhern, teacher; Sister JoAnne Eannareno, principal.

If I were offered drugs I would say "No!" and ignore the person. I wouldn't take drugs because I don't want to ruin my life when it just started. I think people who sell and take drugs are airheaded—or soon to be—if they keep using drugs.

To be a good citizen I can follow the rules for crossing streets and riding bikes. I will not litter and pick up litter at parks so it will be a clean and enjoyable place to go. I could take the drug program my community offers—and live by it!

(3) Tiffany Everett; Dr. Albert Schweitzer School; Anaheim, CA; Ann Morris, teacher; John A. Allison, principal.

If I were offered drugs I wouldn't take them. I would tell the pusher dope was dumb. All dope does is mess up your brain and make you do things you don't want to do. I would walk away and try to avoid those who were selling the drugs.

As a good citizen I would go to schools and talk about drugs. I'd open a place where people who are hooked on unprescribed drugs could get help. I would start a school for people who want to help others who are hooked on drugs.

(4) Duc Pham; Maxwell School; Anaheim, CA; Miss Kathy Duncan, teacher; George Busdeicker, Jr., principal.

I would say no, and tell the guy who offered me it if he thinks he is being smart by taking the drugs. I would tell him if I had a chance of picking a best friend he wouldn't be on the list. Then I'd tell him not to kill himself.

I can help by not taking drugs, and have signs up saying that we kids are the future for our country. Our country needs kids that grow up to be something, but it's not for kids who take drugs.

(5) Melissa Masinsin; Pacific Drive Elementary School; Fullerton, CA; Mr. Alvin Maynard, teacher; Mrs. Adeline Civretta, principal.

If I was ever offered drugs, I wouldn't take them. I know what drugs could do to my health and to my appearance. It could be very dangerous, too. A lot of kids and teen-agers try them and soon they begin to depend on them more and more. I will never take drugs, even if my friends do.

I can help my community by influencing younger kids not to take drugs and alcohol because they are bad for them. They are bad for their bodies and their health. I can also try to talk to kids that are older than me to try to stop them from getting addicted to drugs so that we could have a better community.

NATHAN HALE DAY

HON. SAM GEJDENSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. GEJDENSON. Mr. Speaker, I rise today to pay tribute to a great American hero, Nathan Hale. Hale, who was born in Coventry, CT, in June, 1755, was one of the greatest heros of the American Revolution. After graduating from Yale University in 1773, Nathan Hale pursued a teaching career in East Haddam and New London CT, and eventually became active in the movement for American liberty and independence.

In 1775, he was commissioned a lieutenant in the Army by the General Assembly of Connecticut, and by January 1776 was promoted to captain, serving in the famed "Knowlton's Rangers."

In September of 1776, General Washington needed someone to gather intelligence about British activities in New York, and Nathan Hale was the sole volunteer for this dangerous assignment. Disguised as a schoolmaster, he went to Long Island, made sketches of enemy lines, and obtained other valuable information concerning British activities in New York. En route back, and within a short distance of friendly lines, Hale was captured as a spy. A British general, impressed with his talents, offered to spare his life if he would join the British in fighting the Americans. Hale refused, and, on September 22, 1776, was hanged. His well-known last words, of course, were "I only regret that I have but one life to lose for my country."

In 1985, the Connecticut General Assembly made Nathan Hale the official State hero, an honor well befitting the sacrifice made by this courageous man. This legislation was passed through the efforts of Jonathan L. Johnson, Sr. of Groton, CT, who serves as the chairman of the Hale Hero Committee of Connecticut. I commend Mr. Johnson for his efforts, and join with him and all other residents of the State of Connecticut in paying homage today to a great American, Nathan Hale.

CONGRATULATIONS TO NATO ESSAY CONTEST WINNER

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. GARCIA. Mr. Speaker, Marc Wantz, a high school student from Luxembourg, recently won an essay contest on the importance of NATO to the United States and Western Europe. The contest, which was sponsored by the Atlantic Council, had as its first prize a trip to the United States.

I am inserting in the RECORD Marc's fine essay for my colleagues' perusal. I also want to extend to him on behalf of Congress a hearty welcome. I hope he finds his stay both informative and rewarding.

WE ARE FREE BECAUSE YOU WERE STRONG

History shows that countries are invaded because they are weak. On September 29th-30th 1938, the leaders of Europe, Chamberlain, Daladier, Hitler and Mussolini met in Munich to sign a treaty. This stipulated that the Germans could occupy the "predominatly German territory" in Czechoslovakia, but Hitler annexed the whole country and World War II broke out. On his return to England, Chamberlain said with great joy: "My good friends, this is the second time in our history that there has come back from Germany to Downing Street peace with honour. I believe it is peace in our time.

However the weakeness shown at Munich had disastrous consequences. The only one that saw what really happening, was Churchill, who said: "We have sustained a total, unmitigated defeat . . . And do not suppose that this is the end. It is only the beginning."

So the result of the agreement of Munich was oppression for Europe and a disastrous dictatorship, which cost millions of innocent lives. The final liberation of Europe was due to the "Allies". The bravery of these soldiers is shown by the following words by General Patton: "How human beings could endure this continuous fighting at sub-zero temperatures is still beyond my comprehension." On December 22nd 1944, when the Germans gave General McAuliffe an ultimatum to surrender at Bastogne, he replied with only one word: "Nuts". Because of this perseverance, the Europeans feel gratitude to the "Allies" for restoring there liberty.

Liberty and peace are nowadays asssured by NATO. Since the foundation of this organization in 1949, there has been no armed conflict in Europe. This time of peace would not have lasted without a great military power behind us. We know that the Soviets will not risk war, unless they are sure they can win, and so if NATO were to be dissolved, there would be no unified force to counter a Soviet aggression. We must not take our peace and freedom for granted! The strength of NATO prevents us from falling once more under the control of a dictatorship.

THE IMPORTANCE OF FLIGHT ATTENDANTS

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. DOWNEY of New York. Mr. Speaker, I rise today to pay tribute to the flight attendants in this Nation whose contribution to the safety of the flying public can not be exaggerated.

The flight attendant has too often been taken for granted as only a provider of creature comforts. Today, the responsibilities of the flight attendant include limited to monitoring aircraft safety, handling medical emergencies, and executing evacuations within seconds. And with the growing number of terrorist attacks aboard airplanes, it is the flight attendant that must act as a buffer between terrorists and their victims, putting their lives on the line on behalf of those in their charge. Tragically, they are often victims themselves.

During the recent terrorist attack aboard a Pan Am flight, it was the cabin crew that assumed charge of the aircraft and responsibility for the passengers after the three ranking

crew members escaped from the plane. FAA policy dictates that during a highjacking, the cockpit's responsibility is to immobilize the aircraft by exiting if possible. This highlights the need for professional, experienced cabin crew members, capable of executing their responsibilities in terrifying and dangerous circumstances.

Recent events, however, indicate that the airline industry and the Federal Government have underestimated the invaluable role these women and men play in protecting our lives.

Nowhere is this more clearly demonstrated than at Trans World Airlines. TWA, whose flight attendants on the infamous flight 847, were honored for their outstanding performance during that flight's highjacking, were the models for others to follow. The flight attendants on that flight performed the duties they were trained to do, and any one of the nearly 50,000 American flight attendants could have risen to meet the grueling demands of that situation.

Yet today, nearly 5,000 of these proven heroes at TWA, who are predominately experienced career women, are still prevented from returning to their jobs by TWA Chairman Carl Icahn precisely because of their experience. With FAA approval, the training period for their replacements was reduced from 5 weeks to 18 days. These diminished standards have led to at least five mishandled emergencies involving TWA aircraft since March 1986, when the labor dispute began. Hundreds of additional safety violations have also been filed with the FAA by the flying public. Now, when 75 percent of TWA's current flight attendant workforce has less than 6 months experience, public interest and safety continue to be jeopardized.

It is time that this Nation recognize the important contributions flight attendants have made to airline safety. It is time that standards for the uniform safety training of flight attendants be established and that we certify those individuals successfully completing that program. It is time action be taken to stop the blatant discrimination that TWA's flight attendants have endured. It is time that the dispute between the flight attendants and TWA be resolved, not only for the sake of fairness, but so the confidence of the flying public can once again be restored in our air transport system.

TRIBUTE TO REV. JOSEPH A. VIANO, S.S.P.

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. TRAFICANT. Mr. Speaker, I would like to take time today to pay tribute to Rev. Joseph A. Viano, who recently celebrated the 50th anniversary of his ordination to the priesthood. As a member of the Society of St. Paul since 1922, Father Viano has dedicated his entire life to the society and the good work it does. Father Viano is a respected member of the Canfield community—which is in my district—and I am honored to pay tribute to such an outstanding individual.

Father Viano is a native of Italy. Upon entering the Society of St. Paul in Alba, Italy, in 1922, Father Viano studied at Alba, Rome, and Fordham University in the Bronx, NY. He first made his profession of vows in Alba, Italy, in 1932. He was ordained a priest on August 15, 1936. Shortly after being ordained, Father Viano was assigned to work in the United States by the founder of the Society of St. Paul, Rev. James Alberione. This began Father Viano's 50 years of service in this country.

Father Viano's work took him Staten Island, NY, where he served as pastor at Our Lady of Pity Church from 1944 to 1949, while the parish was entrusted to the society. He then served as superior of the Society of St. Paul on Staten Island from 1949 to 1952, and again from 1975 to 1982. From 1968 to 1975 he served as superior of the society in Canfield, OH.

Always seeking to reach to those in need and to spread the work and teachings of the society, Father Viano was sent to Detroit in 1953 as the first member of the society to open a new house. He stayed in Detroit for 10 years, serving as editor of an English-Italian newspaper, "Voice of the People." Everywhere he has gone, Father Viano has displayed a rare dedication to his faith and to his parishioners. He has also been a valuable community member, and the citizens of Canfield will be forever grateful to the many contributions he has made to that community.

Father Viano is also an accomplished author, having several books published, most recently, a book entitled "Two Months With Mary," released in 1985. Father Viano's 50th anniversary as an ordained priest was celebrated on September 7, 1986, at the Society of St. Paul Chapel, in Canfield. Additional celebrations for Father Viano were on September 14 at the Society of St. Paul Chapel in Dearborn, MI, and on September 21 on Staten Island at the Society of St. Paul Chapel.

In closing, I would like to express my admiration and sincere congratulations to Father Viano on the occasion of his 50th anniversary. I am pleased to have this opportunity to pay tribute to him and the fine work he has done and continues to do.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 23, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 24

9:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

9:30 a.m.
Commerce, Science, and Transportation
Business meeting, on pending calendar business.
SR-253

Governmental Affairs
Permanent Subcommittee on Investigations
To resume hearings on emerging foreign criminal groups in the United States.
SD-342

Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

10:00 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings on the nomination of Jim R. Billington, of Oklahoma, to be a Member of the Farm Credit Administration Board, Farm Credit Administration.
SR-332

Judiciary
Courts Subcommittee
To hold hearings on S. 2531, Bankruptcy Antifraud Act of 1986.
SD-226

Labor and Human Resources
Business meeting, to consider S. 2771, to require the Food and Drug Administration to determine the appropriate regulatory classification of the transitional devices of the Medical Device Amendments of 1976, S. 2772, to allow more than one pharmeceutical company to undertake simultaneous development of an orphan drug, S. 2148, to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor, S. 2688, to authorize grants to university graduate programs which provide training in the care of elderly persons with developmental disabilities, S. 2402, to improve access to health insurance coverage for Americans, and pending nominations.
SD-430

2:00 p.m.
Rules and Administration
To resume hearings on the nomination of Thomas J. Josefiak, of Virginia, to be a Member of the Federal Election Commission.
SR-301

SEPTEMBER 25

9:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research, Conservation, Forestry, and General Legislation Subcommittee
To hold hearings on S. 2685, to designate certain lands in the Cherokee Na-

tional Forest in Tennessee as wilderness areas, and S. 2782, to designate the Sipsey River in Alabama as a component of the National Wild and Scenic Rivers System.
SR-332

Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Labor and Human Resources
Employment and Productivity Subcommittee
To hold hearings on the employment impact of United States/Japan auto parts trade relations.
SD-430

10:00 a.m.
Armed Services
To hear and consider the nominations of Robert B. Barker, of California, to be Chairman of the Military Liaison Committee to the Department of Energy, William A. Clinkscales, of Virginia, to be Director of the Selective Service System, and James F. McGovern, of Virginia, to be Under Secretary of the Air Force.
SR-222

Environment and Public Works
To hold hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

Judiciary
Business meeting, to consider pending calendar business.
SD-226

2:00 p.m.
Labor and Human Resources
To hold oversight hearings on activities of the Mine Safety and Health Administration.
SD-430

SEPTEMBER 26

9:30 a.m.
Governmental Affairs
Intergovernmental Relations Subcommittee
To hold hearings on comprehensive federalism reform.
SD-342

10:00 a.m.
Environment and Public Works
To continue hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

SEPTEMBER 29

9:30 a.m.
Finance
Taxation and Debt Management Subcommittee
To hold hearings on S. 1974 and S. 1113, bills to prohibit the imposition by States of the worldwide unitary method of taxation.
SD-215

SEPTEMBER 30

10:00 a.m.
Environment and Public Works
To resume hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold hearings on United States trade relations with Taiwan and Korea.
SD-419

OCTOBER 1

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings on activities of the National Highway Traffic Safety Administration, and the implementation of the Motor Carrier Safety Act of 1984.
SR-253

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

2:00 p.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold oversight hearings on the North Pacific drift net fisheries.
SD-419

OCTOBER 2

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
To resume hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

CANCELLATIONS

SEPTEMBER 23

10:00 a.m.
Labor and Human Resources
Children, Families, Drugs, and Alcoholism Subcommittee
To hold hearings to review proposed drug testing measures.
SD-430

SEPTEMBER 24

9:30 a.m.
Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear powerplant accident.
SD-406

SEPTEMBER 26

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings on proposed legislation authorizing funds for the Airport and Airway Trust Fund.
SD-253

HOUSE OF REPRESENTATIVES—*Tuesday, September 23, 1986*

The House met at 12 noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Enable us, gracious God, to understand our own blessings and heritage, and to give thanks for our own history, and also to seek to understand the motivations and aspirations of those whose heritage and traditions are different than ours. As we believe that Your creation extends to every person, so remind us that every person carries the mark of Your power and life. O God, we are appreciative of the gifts we have been given and the experiences we have known. Remind us of the width and breadth and height of Your whole creation so that together we may praise Your spirit and do those good works of service that bring peace to all people of our world. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr Hallen, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2706. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120, 99th Congress).

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
September 23, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I have the honor to transmit herewith a copy of a letter received from the Honorable John Waihee, Lieutenant Governor, State of Hawaii, confirming the results of the Special Election held on September 20, 1986, for the Office of Representative in Congress from the First District of Hawaii, in which the Honorable Neil Abercrombie was elected.

With kind regards, I am,
Sincerely,

BENJAMIN J. GUTHRIE,
Clerk, House of Representatives.

SWEARING IN OF THE HONORABLE NEIL ABERCROMBIE AS A MEMBER OF THE HOUSE

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the gentleman from Hawaii, Mr. NEIL ABERCROMBIE, be permitted to take the oath of office today. His certificate of election has not arrived, but there is no contest, and no question has been raised with regard to his election.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

Mr. SENSENBRENNER. Mr. Speaker, reserving the right to object, will the gentleman from Washington advise the membership when the certificate of election will arrive for the Member-elect?

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. SENSENBRENNER. I yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, I think it is expected later this week.

Mr. SENSENBRENNER. Further reserving the right to object, I would just point out that the procedure that is being used in the House is inconsistent.

On the first day of the session, the gentleman from the Eighth District of Indiana, Mr. McIntyre, arrived with a certificate of election and was not permitted to take the oath of office. Yet here we are proposing to administer the oath of office to a Member who does not have a certificate of election. I believe that the people of Hawaii are entitled to have representation, and I shall not object, but I would just like to point out that once, again, the majority leadership in this House is being inconsistent relative to privileges and elections.

Mr. FOLEY. Mr. Speaker, will the gentleman yield further?

Mr. SENSENBRENNER. Further reserving the right to object, I yield to the gentleman from Washington.

Mr. FOLEY. I would just say that the gentleman states that there was

NOTICE

As late sessions may be anticipated during the remaining days of the 99th Congress, Members are advised that their remarks may be withheld and printed in a later issue of the Congressional Record if manuscript copy is not received by the Government Printing Office in a timely manner. While the Public Printer will make every effort to include the complete proceedings in each day's issue, remarks made earlier in the day and returned to a Member for editing, must be received by the GPO no later than 12:00 midnight in order not to jeopardize the timely production of later proceedings.

The Joint Committee on Printing will enforce the applicable Laws and Rules for Publication of the Congressional Record to ensure that as much of the proceedings as possible is printed and available on the day following a late session.

For your information, the applicable rules follow:

4. *Return of manuscript.*—When manuscript is submitted to Members for revision it should be returned to the Government Printing Office not later than 9 o'clock p.m. in order to insure publication in the Congressional Record issued on the following morning; and if all of the manuscript is not furnished at the time specified, the Public Printer is authorized to withhold it from the Congressional Record for 1 day. In no case will a speech be printed in the Congressional Record of the day of its delivery if the manuscript is furnished later than 12 o'clock midnight.

7. *Notation of withheld remarks.*—If manuscript or proofs have not been returned in time for publication in the proceedings, the Public Printer will insert the words "Mr. —— addressed the Senate (House or Committee). His remarks will appear hereafter in Extensions of Remarks" and proceed with the printing of the Congressional Record.

By order of the Joint Committee on Printing.

CHARLES McC. MATHIAS, JR., *Chairman.*

71-059 O-87-10 (Pt. 18)

identical circumstances here and we are being inconsistent. In fact, in the case of the Member from Indiana, there was a contest of the election, there was question about the validity of the election, and there was a very public contest. There is no contest in this matter, and I think those facts should be distinguished.

Mr. SENSENBRENNER. Further reserving the right to object, I disagree with the gentleman from Washington. This contest was resolved at the State level, and the certificate was issued by the secretary of state of Indiana.

But again, I will not prevent the people of the First District of Hawaii from being represented, since an election was held.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. ABERCROMBIE appeared at the bar of the House and took the oath of office.

The SPEAKER. You are a Member of the Congress of the United States, and congratulations, sir.

HOUR OF MEETING ON WEDNESDAY, SEPTEMBER 24, 1986

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 11 a.m. tomorrow.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

Mr. LOTT. Mr. Speaker, reserving the right to object, I will not object, but I do wish to thank the leadership for making that request. We do support it. It is so that we may have a conference, and we appreciate it.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

A WELCOME TO THE HONORABLE NEIL ABERCROMBIE

(Mr. AKAKA asked and was given permission to address the House for 1 minute.)

Mr. AKAKA. Mr. Speaker, it is a distinct honor for me to welcome to this body our newest Member of the House, a gentleman who boasts one of the most notable records of public service in the State of Hawaii, the Honorable NEIL ABERCROMBIE.

NEIL comes to Washington as one of the 50th State's most prominent legislators. A diligent member of Hawaii's State Legislature, NEIL's legislative skills have seen him through 4 years in the house and 8 years in the senate, where his leadership abilities have won him the chair of three influential committees.

NEIL ABERCROMBIE, a native of Buffalo, NY, first came to Hawaii in 1959 with a bachelor's degree in sociology from Union College. Ever conscious of the value of a sound education, NEIL furthered his studies at the University of Hawaii, earning a master of arts in sociology and a Ph.D. in American studies. Indeed, he has taken his appreciation for education to a professorial level, having taught sociology and American studies at the University of Hawaii, Leeward Community College, and Hawaii Loa College.

The same drive that has gained NEIL personal success has, in fact, been manifested in his commitment to the people of Hawaii, a commitment which is rewarded by the respect of his colleagues. They call him informed, cooperative, dedicated, articulate, and energetic. He is the driving force behind the Children's Advocacy Center, the first statewide program in the country for sexually abused children, the antiviolence bill for Hawaii's school campuses, the increase in research funds for graduate work at the University of Hawaii, and the champion of funding Hawaii's public library system. Surely, he boasts a record which would make any legislator proud.

Mr. Speaker, last Saturday the constituents of Hawaii's First Congressional District chose NEIL ABERCROMBIE to represent them for the duration of this 99th Congress. True to form, he has spared no time in responding to their call. I have no doubt that he will be a credit to this institution. I urge my colleagues to join me in extending a warm aloha and a sincere welcome to him today.

□ 1210

THE FAMILY AND MEDICAL LEAVE ACT IS A BAD BILL

(Mr. McCANDLESS asked and was given permission to address the House for 1 minute.

Mr. McCANDLESS. Mr. Speaker, the Family and Medical Leave Act of 1986 has been billed a benign, profamily piece of legislation. Its supporters maintain that H.R. 4300 is a simple extension of current Federal policies and imposes few new burdens on the private sector and small business. However, I would urge my colleagues to take a closer look at this legislation before casting their votes.

H.R. 4300 marks a radical departure from current public policy on employer provided benefits. Not only would the Family and Medical Leave Act mandate 18 weeks of unpaid leave for the care of a newly born, adopted, or seriously ill child or dependent parent, and not only would H.R. 4300 legislate up to 26 weeks of disability leave for workers themselves, but it would also require that employers continue insurance benefits while an employee is off and guarantee the restoration of that worker's original job or comparable position upon return.

The implications of this legislation are staggering. For the first time the Federal Government is involving itself in the intimate one-on-one dealings of employment negotiations, and in so doing it is shortchanging both employers and employees alike. By requiring employers to offer benefit packages including a possible total of 36 work weeks of leave per year, we are limiting the flexibility of each to mold that package to meet the needs of its employees. Other benefits such as savings and pension plans, health care options and extended vacations will be sacrificed on the alter of mandatory leave.

Mr. Speaker, the Family and Medical Leave Act is a bad bill and bad public policy, I urge my colleagues to vote against it.

HARRY S. CARVER III, 1932–86

(Mr. SMITH of Iowa asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Iowa. Mr. Speaker, it is with sadness today that I rise to inform the Members of the House of the death of Harry S. Carver III, the Comptroller of the Small Business Administration. Mr. Carver died of a heart attack Sunday morning, September 21, at his home in Annandale, VA.

He joined the Small Business Administration in 1967 in the Office of the Assistant Administrator for Administration. He subsequently was appointed Chief of the Budget Division and in 1980 was appointed Comptroller. Prior to his SBA service he was a budget analyst at the General Services Administration.

Mr. Carver was born in Baltimore, MD, grew up in Arlington, VA, and served in the U.S. Army from 1956 to 1958. He received a bachelor of arts degree from the College of William and Mary and a law degree from George Washington University. He is survived by his wife, the former Betty J. Wright, and three sons Harry, of Christensburg, VA, and John and Leslie, both of Annandale, his mother, Elisabeth Carver of Arlington, a sister, Anne Coirini of Symrna, GA, and two grandchildren.

I knew Harry well from my 4 years as chairman of the Small Business Committee and 6 years as chairman of SBA's appropriations subcommittee. During those 10 years, he always accompanied the Administrator to the hearings we conducted and more often than not was immediately able to respond to questions and supply the necessary information. His duties as Comptroller were many, but reduced to their simplest terms he was the

steward for the money appropriated to assist small business through SBA.

Harry Carver was a good steward, and he will be missed by all of us. Our sympathy and condolences go to his family and friends.

SOVIET DECEPTION ABOUT CHERNOBYL SUGGESTS NEED FOR CAUTION IN ARMS TALKS

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute.)

Mr. BROOMFIELD. Mr. Speaker, anyone who doubts the need for on-site inspection requirements in reaching agreements with the Soviets need only read the latest reports about the long-range fallout from the Chernobyl nuclear disaster.

Incredible as it may seem, U.S. scientists report that Chernobyl emitted as much or more long-term radiation as all of the nuclear tests and bombs ever exploded in the atmosphere.

It is significant that it was American and not Soviet scientists who released this information. The Soviets still have not taken responsibility for the immediate effects of the disaster on their neighbors in Europe much less acknowledge the long-term damage to the planet.

Mr. Speaker, how can we trust a government that seeks to hide a nuclear accident of these historic proportions? It's time for the Soviet leaders to tell the truth about Chernobyl.

In the meantime, their lack of truthfulness justifies President Reagan's cautious approach in negotiating nuclear arms agreements with the Soviets.

WEIRTON STEEL ESOP

(Mr. MOLLOHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MOLLOHAN. Mr. Speaker, when the men and women of Weirton Steel were told more than 3 years ago that they were part of a dying breed and their plant and their way of life was doomed, they didn't believe it.

Instead of letting their steel mill—one of the largest employers in the State—die, they fought back. They banded together under the battle cry "we can do it" and forged a plan that gave them 100-percent ownership of the mill in which generations have worked to support their families.

They voted 3 years ago today—September 23, 1983—by an 8-to-1 margin, to buy out the owners of the mill, thus creating America's largest 100-percent employee-owned industry under an employee stock ownership plan. The result has been recovery of the plant from the verge of extinction to the point where it is opening more blast furnaces, enjoying profits, and hiring new workers.

This isn't a story of economics as much as it is a story of people—people from schoolchildren to retirees who refused to let their heritage of hard work die as a victim of unfair foreign competition and weak economics. The difficulties with foreign competition persist—and will persist as long as the administration clings to the false promise of unlimited free trade—but these brave people have overcome the gloomy shadow of poor economics with persistence and leadership.

Today is celebrated widely in the Ohio Valley as an anniversary of a new beginning. I want to offer Weirton Steel and her people my personal congratulations. They have set an example for the rest of America to follow.

SUPPORT MARKETING LOANS FOR WHEAT, FEED GRAINS, AND SOYBEANS

(Mr. DAUB asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DAUB. Mr. Speaker, last week I introduced legislation to establish marketing loans for wheat, feed grains, and soybeans.

Both cotton and rice producers are using this concept with astounding results.

Rice exports: up 50 percent.

Cotton exports: the U.S. share of the world cotton market jumped from 10 to 29 percent. Expected sales are going from 2 million bales this year to 6 million bales.

With a new GATT round, we must demonstrate to the world that the United States is going to move grain. Either it'll move in a fair trade environment free of uncompetitive practices or it'll move in the current environment of unfair trade practices. But in either case, the American farmer's grain is going to sell.

We can't continue to pile up surpluses on top of each other depressing prices, increasing taxpayer program costs, and aggravating an already critical shortage of storage space in the Midwest.

I ask all of my colleagues, both rural and urban, to support this bill and give the American farmer the tool he needs to beat foreign competition head on. Only then will he retake what is rightfully his: unchallenged dominance of world markets.

VETERANS PROTEST ON THE CAPITOL STEPS

(Mr. MRAZEK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MRAZEK. Mr. Speaker, last year, I had the privilege of meeting a man with a strength of character unlike anyone I have ever met before. On December 7, 1968, Chaplain Charles Liteky was awarded a Congressional Medal of Honor for his bravery in the Vietnam war.

A year earlier, Charlie Liteky had crawled, without weapons, into enemy gunfire to personally carry to safety 23 men from his company who had been wounded in the firefight.

On Labor Day, 3 weeks ago, Charlie Liteky embarked on a fast here at the Capitol to protest not only United States policy in Central America, but also the apathy displayed by Americans toward what he believes could become another Vietnam.

He has been joined in this fast by three other veterans—two from the Vietnam war and one from World War II. Their fast is aimed at drawing the attention of the American people to the impact that $100 million in lethal assistance to the Contras in Nicaragua, the impact that sending those weapons will have on the people of Nicaragua.

The same unbreakable determination that allowed Charley Liteky to risk his life to save the lives of Americans in Vietnam, Mr. Speaker, has led him to shun the advice of others and embark upon a fast to try to prevent senseless deaths of people in Central America.

I urge my colleagues, no matter what their political persuasion, to talk to the veterans and this extraordinary man in the coming days. They are on the center steps of the east front of the Capitol from 3 o'clock to 7 o'clock every day.

IF YOU WANT THE DOLLAR TREATED WITH RESPECT ABROAD, YOU WILL HAVE TO TREAT IT WITH RESPECT AT HOME

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, how has it come to pass that with all the scientific progress in the world, the men who ruin the dollar cannot be prevented from continuing to destroy it? These men have set up the dollar as the whipping boy for our deep-seated economic troubles, which are fundamentally due to our past profligacy and to our failure to provide for the future with adequate savings and depreciation quotas.

So far the adverse effects of our profligacy and lack of foresight have been greatly mitigated by the generosity of foreigners, who have continued to treat our dollar with respect, in ac-

cumulating unprecedented dollar balances.

But how long can we expect foreigners to treat our dollar with respect, if we ourselves treat it with utter contempt, in trying to beat its value down on the foreign exchanges, in plain view of the whole world?

Unless we prevent the dollar, by fixing its gold content, from sliding further on skid row, foreigners may start dumping it, thereby destroying its remaining value completely, and in no time at all.

□ 1220

ONCE AGAIN JUSTICE IS SERVED

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DYMALLY. Mr. Speaker, last week, my faith in the American system of Justice was greatly strengthened. Ms. Sallie Robinson—former postmaster of Paramount, CA, and the first black and woman to serve in this high position in her area—had unsuccessfully petitioned three Postmasters General for reinstatement, after being prejudicially dismissed from the Postal Service in 1982.

After serving only 1 month in his new position. Postmaster General Preston Robert Tisch objectively reviewed the facts in Ms. Robinson's case. Taking into account the unusual support for Ms. Robinson expressed by Members of Congress—including Congressman HORTON, Congresswoman SCHROEDER, Congressman PASHAYAN, and subcommittee chairman MCCLOSKEY—Postmaster General Tisch agreed that Ms. Robinson should be restored to the Postal Service with all the dignity due a long-time, loyal employee.

Sallie Robinson soon will renew her outstanding career with the U.S. Postal Service and justice again will have been served.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 22, 1986.

Mr. PRESTON R. TISCH,
Postmaster General,
Washington, DC.

DEAR POSTMASTER TISCH: Words cannot adequately express to you my deep gratitude over your decision to reconcile the case of former Paramount Postmaster Sally Robinson.

My confidence in the American system of justice has been strengthened; and I know Mrs. Robinson and her family join me in the expression of satisfaction.

Again, I thank you for your willingness to meet with members of the Committee on Post Office and Civil Service to resolve this issue.

With very best wishes.

Sincerely,

MERVYN M. DYMALLY,
Member of Congress.

LET US PASS AN IMMIGRATION BILL

(Mr. PACKARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PACKARD. Mr. Speaker, the 99th Congress is at the last of the 11th hour, and we have done very little about immigration reform. The U.S. immigration agents expect approximately 4 million illegal aliens to cross our borders this year. Theoretically we would need to add eight new Members of Congress every year just to represent these people.

That would mean 40 new Members of Congress by the next reapportionment.

Four million people breaks down to 333,000 per month. That is almost double the amount of people in Arlington, VA, coming into the country every month.

Four million people per year amounts to the population of Lebanon or Norway or Israel. This figure is higher than the combined populations of Montana, Nevada, New Hampshire, Vermont, and Rhode Island all put together.

In my own district, and incidentally it would empty in 17 years all of the people out of Mexico, all of the people of Mexico. In my district in San Diego County and Orange County we have had a tragic increase in drugs, crime, prostitution, and social problems. And now I read in the San Diego Union that the aliens are preying on our schoolchildren by stealing their lunch money.

How long can we wait? It is imperative Congress pass immigration reform legislation now.

GIVE US A VOTE ON ACID RAIN BEFORE THE END OF THIS SESSION

(Mr. CONTE asked and was given permission to address the House for 1 minute and revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I've served in this House for 28 years, and during that time, I've been proudly associated with many national efforts to assist particular regions of the country.

When a flood hits in West Virginia, when an earthquake devastates California, when a drought disables the South, or when a major corporation is crippled in the Midwest, this House and the Congress as a whole have generously responded with significant Federal assistance.

But today, the House, is now denied the opportunity to respond to a potentially disastrous national threat to our environment.

Acid rain is wrecking havoc on our lakes, streams, and reservoirs. It's destroying our forests, buildings, and national monuments.

Acid rain is a national threat, but it's also a real disaster for the environment and the economy of an entire region of this country. In New England, you can visit hundreds of dead lakes. You can walk through severely damaged forests, and you can easily see the deterioration of many buildings and statues.

Despite this mounting damage, acid rain control legislation has been bottled up in the Energy and Commerce Committee, stalled by narrow economic interests. Even with a bipartisan group of 171 cosponsors and a favorable report from the subcommittee, the full committee leadership refuses to give the House a chance to address a serious problem affecting not only New England but the entire Nation.

Mr. Speaker, I have one request for my good friend JOHN DINGELL: Give us a vote on acid rain before the end of this session.

LET'S COOL THE RHETORIC—LET OUR DIPLOMATS DO THEIR JOB

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON Mr. Speaker, I have not been a supporter of the administration arms control policies; in fact, I have often wondered if there is an interest in arms control at all. Lately, however, there has been widespread criticism on both sides of the aisle of the administration's handling of the Daniloff affair.

Mr. Speaker, I will not join in that criticism, however justified it may be, because the future of the summit is at stake. I believe that a summit this year between the President and Secretary Gorbachev is critically important.

The President said yesterday that the negotiations on both Daniloff and the summit are at a very critical stage. His hint to us is "cool it."

Mr. Speaker, like all Americans, I want to see Nicholas Daniloff released but I also want a summit.

The administration, to their credit, has cooled down their "evil empire" talk lately. That is good.

So, Mr. Speaker, all experts and commentators, let's cool the rhetoric, the free advice, and the criticism. Let out diplomats do their job.

NO WAY TO DO BUSINESS

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, once again we find ourselves doing 1 whole year's work in less than 1 month. None

of the 13 regular appropriations bills has been enacted, requiring another infamous "continuing resolution."

This year's continuing resolution threatens to be the largest spending bill in American history. More than half of the $1 trillion Federal budget will depend on the fate of this bill—one conceived in 3 short weeks. We know all too well the imperfections that will result.

Early this year, I sent to all Members a questionnaire on continuing resolutions. Of the 124 who responded, two-thirds were vehemently against such bills. One Member said that CR's are immoral, illegal, fattening, and radioactive!

Let us make a different kind of resolution for the future—that the 100th Congress will fulfill its legislative duties responsibly as befits the greatest deliberative body in the world. By practicing the politics of delay, Mr. Speaker, we made the CR necessary and we disserve our Nation.

ESPIONAGE BY U.N. EMPLOYEES

(Mr. KLECZKA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLECZKA. Mr. Speaker, espionage by U.N. employees has reached almost epidemic proportions. On August 23, Gennaidy Zakharov was arrested for espionage and the CIA estimates that one-fourth of Soviet employees assigned to the United Nations are involved in intelligence activities. Of course, the United States is also concerned by the activities of employees from several non-Soviet-bloc countries. This espionage is neither in the best interests of the United States nor of the United Nations.

The United States has already taken measures to combat espionage by the employees of the different national missions. However, it is the responsibility of both the United States and the United Nations to eliminate espionage by the employees of the United Nations itself.

The United Nations can play a positive role in international affairs, but the widespread espionage activities of some of its employees undermines the organization's credibility. Since article 100 of the U.N. Charter prohibits espionage by U.N. employees the United Nations should not tolerate employees who work as spies.

I would like to encourage my colleagues to sign a letter I am sending to the U.N. Secretary General encouraging him to take actions to assure that article 100 is strictly enforced.

VOTE TO KEEP GOVERNMENT OUT OF AMERICAN BUSINESS—DEFEAT H.R. 4300

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, I ask my colleagues to check back home with the backbone of this great Nation—check with small business. What's on their mind? What concerns them most right now? They will tell you, what concerns them is Congress' new plan to again interfere with their business. How will we interfere this time? This time it's the yuppie or parental and medical leave bill, H.R. 4300.

Are these businesses cold and uncaring toward the American worker? Are they setting up sweat shops and breaking out whips to beat employees? Of course not! They want to be able to set up leave policies in their companies that suits them and their employees. They want to be able to attract good workers, keep them, and to be competitive in the national and international marketplace. But of course Congress again knows better. We think we know the rules that everyone should play by. But let's be realistic—we will help very few and hurt so many by slowing expansion, hurting job creation, causing business to be wary of hiring women of child-bearing age or people with disabilities, and reducing the benefits businesses offer to workers.

Before you come to the floor thinking you are voting for a bill that is all motherhood and apple pie—remember: Small business is the fruit in that apple pie. If you vote to rot that fruit, you won't have much of a pie. Vote to keep Government out of American business—defeat H.R. 4300.

STUDY FIRST, ACT LATER

(Mr. MILLER of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of Washington. Mr. Speaker, I rise to speak about a report adopted unanimously by the Committee on Government Operations this morning on the proposed sale of power marketing authorities. I worked on this report because my district has a strong interest in the Bonneville Power Administration, which has served our area long and well.

The administration last spring came in with a proposal in the 1987 budget to sell the Bonneville Power Administration.

The proposal, made without studies, that is what you call putting the cart before the horse. The bureaucrats came back to us after we had turned that down and said, "Well, we may have made up our minds but let us take the lead in studying this issue now anyway."

This report, adopted unanimously by the Committee on Government Operations this morning, says, "No way; if there is going to be a study, we, in Congress, are going to set the guidelines to make sure that all the impacts of any such sale are considered."

TAX BILL WILL HAVE SEVERE CONSEQUENCES IN THE LONG RUN

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, the most unsettling factors fueling mounting skepticism about the Rostenkowski-Packwood, 925-page tax overhaul bill are the Federal deficit and the state of our economy.

There is a growing fear that this tax bill—to be voted on in this House on Thursday of this week—will cause disruption in an already faltering economy, giving way to recession.

Yes, this tax bill will raise approximately $11 billion in additional revenues in 1987, but even the supporters of this bill admit it will lose at least $17 billion in 1988, adding to the staggering Federal debt.

I realize many colleagues plan to vote yes on the tax bill Thursday believing they cannot afford to vote against "long-awaited tax reform."

Those who vote "yes" on Thursday may receive immediate approval by many who believe this tax bill is what we need now.

I predict 1 year from today those who vote against this tax bill will be those who can proudly say they are not responsible for the bill's severe consequences to our Nation's economy and the increasing Federal debt.

I urge you to vote "no" on the tax bill this Thursday.

VOTE FOR FAIRNESS

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, many have spoken of our "historic opportunity" to reform the Tax Code. I want to remind this House that we do have a historic responsibility. The responsibility for making sound public policy.

To retroactively eliminate the 3-year basis recovery rule for public employees is not sound public policy. Under the conference report, public servants who have contributed funds over many years to their retirement plans, funds which have already been taxed, can no longer recover these funds in the first 3 years of retirement. As a result, these public servants, teachers,

firemen, policemen, and Federal employees—the people who educate our children, protect our families, and make this country work—could individually lose anywhere from $6,000 to $20,000. This bill forces public servants to finance the tax package to the tune of $1.8 billion in 1987 and $2 billion every year thereafter.

It is indefensible to make these changes retroactive. Last Friday I read a letter from a constituent who was ready to retire from his job at NASA, but stayed on in order to help the program recover. As a result, he did not retire before the retroactive July 1, 1986, date and will lose $17,000. Is this the way to reward dedication to our country?

The conference report before us today is not fair. The framers of the Constitution delegated the responsibility for taxation to Congress, the representatives of the people, to ensure that the Tax Code would be fair. The Founders fought rather than pay unfair taxes; the supporters of the motion to recommit ask only that we vote for fairness. Support the motion to recommit.

THE JOY OF SOBRIETY THROUGH POETRY

(Mr. CHANDLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHANDLER. Mr. Speaker, we have all seen the devastation wrought by alcoholism.

But thousands of men and women are recovering today and enjoying happy, healthy lives.

One of those is a friend of mine—a 79-year-old man, Jerry Kerns.

He expresses the joy of his sobriety through poetry. I would like to share one of this delightful man's works with you today.

Come on ol' man
Just try one.
You won't even have to buy one.
Hey bartender! Give ol' pop a little drink.

I appreciate it Bucco,
but you'll be the guy who's stucco with ol' drunko,
if I take that tasty drink.

'Cause it ain't the one you buy me,
it's the follow' ups that stymie,
social drinkers like the one you're talkin' to.

And the barkeep when on closin'
at 2 a.m. and I'm reposing'
'neath the booth will beg you
"Please take this drunk with you!"

Oh it's tempting just to linger,
and try a double finger,
of Old Crow or sompin' similar you see.
But when all the horse crap's finished,
and my brain somewhat diminished,
I'm the guy who has to stagger home with me.

—JERRY KERNS.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 4935

Mr. SMITH of Florida. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 4935.

The SPEAKER pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from Florida?

There was no objection.

RETIREMENT HEALTH PLAN ACT OF 1986

(Mr. ROWLAND of Connecticut asked and was given permission to address the House for 1 minute.)

Mr. ROWLAND of Connecticut. Mr. Speaker, as the 99th Congress comes to a close, I am pleased with the strides that we have made to protect the benefits of our senior citizens. However, there is still one major gap in health care coverage. That is, the lack of protection for retiree health benefits. Unlike pensions, health benefits are not protected by law and may be altered or eliminated at any time. This is occurring with alarming frequency in Connecticut's Fifth District and throughout the country.

Since February, I have been meeting with employee groups and representatives of corporations of all sizes in an effort to create a workable bill which protects retirees benefits while not unduly penalizing corporations. After much deliberation, I feel that we have devised an equitable solution to a very tough problem.

My bill, the Retirement Health Plan Act of 1986 amends ERISA to include health benefits and does not require companies to provide health benefits to retirees. Rather, it ensures that benefits be guaranteed for those whose retirement package includes health insurance.

Mr. Speaker, this bill puts legislative teeth into what up to now has been a moral obligation for employers. I encourage my colleagues to support this legislation.

VOTE AGAINST THE TAX FRAUD

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, there are those of us in Congress who have been attempting to stabilize the agricultural economy and send the producer a message saying, "Hang on, we are trying to help."

Now with a cruel twist, a contradictory action, some Members of Congress want to pass a tax reform package that will push the drowning producer's head under the water.

A recent article by journalist Marcia Krings was headlined "Tax Reform Package 'Monumental Mistake' for Agriculture Industry."

Allow me to quote:

Bud Leuthold, president of the National Association of Wheat Growers, said that this section will remove $300 million from the agricultural economy.

Kahle of the Pork Producers Council says elimination of carried-forward investment credits will cost the farm economy $1 billion.

Mr. Speaker, I urge all of my colleagues to vote against this tax fraud. And for those who would vote for it, I can only say it is absolutely necessary that this body have a recorded vote so that 1 year from now the voters can assess, and that they can accept the blame, disappointment and anger generated by this bill.

BUDGET AUTHORIZATION-APPROPRIATION BILL—"BAD"

(Mr. GREGG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREGG. Mr. Speaker, I rise today to clarify what I think is an error in the discussion which is occurring within the body recently. That is the fact that we are referring to the bill which is being taken up later this week as a continuing resolution. This bill is more appropriately a budget authorization appropriation bill, the acronym for which should be "BAD." It is a bill which has taken all the appropriation bills and merged them together, and then thrown into it a whole series of various personal projects and pork barrel proposals which have been around this House for quite a while.

It is totally inappropriate that the committees of this House that are authorizing committees and the committees of this House that are not part of the appropriating process should have their responsibilities and jurisdictions so totally usurped by this one major appropriations bill.

It seems to me that if we are going to have a budget process around here, it should be one in which all the Members of the Congress can participate, and this bill undermines that opportunity.

It is a bad bill, and it is one which we should reject.

SAFETY FOR OUR U.S. NAVY

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, tomorrow a memorial service will be held in my district, the Second Congressional District of Maryland, to honor the life of PO2c. Eric C. Sauerborn of the U.S. Navy who was killed by toxic fumes aboard his ship last Tuesday. He was one of two crew members fatally overcome by fumes in a chemical storage space aboard the

U.S.S. *Enterprise* off the coast of California.

At age 23, Mr. Sauerborn served his country with dignity and courage. As a member of the crew of the U.S.S. *Enterprise*, Mr. Sauerborn served in the U.S. armed services since March of 1983, and was a student at service schools before being assigned to sea duty.

As a result of this tragic accident, I am calling upon the Secretary of the Navy to conduct an investigation of ships carrying toxic chemicals and report to Congress on safety measures that will prevent crew members from being exposed to health threatening substances. The lives of the men and women who protect our shores from hostile aggression are our most valuable assets and must be ensured the safest working conditions possible.

During this time in history, maintaining a strong U.S. naval presence in the Pacific Ocean is vital to the preservation of democracy for the free world. Members of the U.S. armed services who serve their country in this capacity are an extension of freedom.

Mr. Speaker, I salute those who gave their lives to our country and in particular PO2c. Eric C. Sauerborn.

□ 1245

NATIONAL DAY OF RECOGNITION FOR MILITARY NURSES WHO WERE PRISONERS OF WAR

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, tomorrow will be a day of national recognition for American heroes who are women of our country that have served us as nurses and who spent horrible months and years as prisoners of war.

Today there are almost 45,000 American nurses in the Army Nurse Corps. Almost 9,000 in the Navy and thousands in the Air Force. They have a glorious tradition to uphold and they do it very well. There are eight names of American women on that beautiful memorial to our Vietnam veterans that died in the service of their country and in trying to bring freedom to that God-awful part of the world.

This tradition goes all the way back to World War I, but in World War II, dozens of American nurses from Corregidor, Bataan, also one nurse who was captured by the Germans from a plane crash, their great tradition will be honored tomorrow in this Congress, at the White House, at Arlington, at Kennedy Center that night with the CBS movie called "Women of Valor" that will be shown later this year in prime time.

I urge all of my colleagues to come to the well of the House tomorrow to learn the facts and to address with honor these women that are so deserving. The last one only retired from active duty in 1969. My hat is off to all of the women who serve this country in uniform, and on tomorrow, particularly on this day of recognition, to the Army and Navy Nurse Corps.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate is concluded on all motions to suspend the rules.

WILDLIFE SANCTUARY IN THE WEST INDIES FOR HUMPBACK WHALES

Mr. YATRON. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 67) calling for a wildlife sanctuary for humpback whales in the West Indies.

The Clerk read as follows:

H.J. RES. 67

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President shall, in concert with the International Whaling Commission, seek a treaty or other appropriate international agreement establishing a wildlife sanctuary for humpback whales in the West Indies, in the area encompassing the Turks Islands, Mouchoir Passage, Silver Bank Passage, Navidad Bank, and such additional areas in the West Indies as may be necessary to ensure the protection of the breeding grounds of the humpback whales.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from New York [Mr. SOLOMON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Joint Resolution 67, sponsored by Congressman BILL WHITEHURST, calls on the President, in concert with the International Whaling Commission, to seek a treaty or other international agreement to establish a wildlife preserve for humpback whales in the West Indies.

The humpback whale population has declined seriously in recent years. In fact, stocks have diminished from an estimated 100,000 to a low of 6,000. Of this, approximately 3,000 are of the northwest Atlantic stock which migrates to the West Indies every year.

The West Indies, particularly the coast of the Dominican Republic, is known to be the main breeding and calving ground for the humpback. Recent research indicates that this may be the only area that these humpbacks find suitable for their reproductive activities.

The International Whaling Commission declared a ban on the commercial killing of humpback whales some years ago. Nevertheless, humpback stocks continue to be in jeopardy of extinction, not only from nations defying the IWC moratorium, but also from toxic chemical pollution, dredging, landfill, drilling, mining, ocean dumping, boating, development, and offshore petroleum activities.

The Subcommittee on Human Rights and International Organizations, which I chair, has conducted hearings on international whaling issues, and the plight of the humpback is well-documented. Two years ago, a similar bill, House Joint Resolution 136, was passed by the House by voice vote under suspension and last week the Foreign Affairs Committee approved the bill unanimously.

I believe that House Joint Resolution 67 constitutes a meaningful effort to arrest the declining stocks of humpback whales. It authorizes no funds, complements the work of the IWC, and is consistent with U.S. policy and leadership with respect to international whale preservation.

I ask my colleagues to support this important measure.

I want to commend Congressman WHITEHURST for his continued interest and leadership on this matter, and I believe passage would be most gratifying, as he plans to leave Congress.

Mr. Speaker, I include letters from the Foreign Affairs Committee to Chairman JONES of the Committee on Merchant Marine and Fisheries regarding the jurisdiction of House Joint Resolution 67:

HOUSE OF REPRESENTATIVES
Washington, DC, September 23, 1986.

Hon. WALTER B. JONES,
Chairman, House Committee on Merchant Marine and Fisheries, Washington, DC.

DEAR MR. CHAIRMAN: We have received a copy of your September 18, 1986 letter to the Speaker of the House in which you have requested sequential referral of H.J. Res. 67 when the measure is reported from the Committee on Foreign Affairs. The Committee adopted the resolution unanimously on September 16 and hopes to expedite its passage in the House by bringing it up under suspension of the rules on Tuesday, September 23.

With respect to the interest of the Committee on Merchant Marine and Fisheries in the sequential referral of H.J. Res. 67, we take note of Clause (1)(n) of Rule X of the House which states that the Committee on Merchant Marine and Fisheries has jurisdiction over "fisheries and wildlife, including

research, restoration, refuges, and conservation" as well as "international fishery agreements" and that under Clause (1)(n) your Committee has traditionally exercised primary responsibility for the authorization of the Marine Mammal Protection Act. Without prejudice to your Committee's jurisdiction in considering H.J. Res. 67, as ordered reported by the Committee on Foreign Affairs, we hope you would be willing to agree to expedite the passage of the resolution and allow it to go forward on Tuesday under suspension of the rules.

Sincerely yours,

DANTE B. FASCELL,
Chairman, Foreign Affairs Committee.
GUS YATRON,
Chairman, Subcommittee on Human Rights and International Organizations.

COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC, September 23, 1986.

Hon. DANTE B. FASCELL,
Chairman, Committee on Foreign Affairs, Washington, DC.

DEAR MR. CHAIRMAN: This acknowledges your letter recognizing the jurisdiction of the Committee on Merchant Marine and Fisheries over H.J. Res. 67 which calls for the establishment of a wildlife sanctuary for Humpback Whales in the West Indies. In light of your letter and in recognition of the need to facilitate consideration of H.J. Res. 67, the Committee on Merchant Marine and Fisheries hereby waives its right to receive a sequential referral of this measure.

The Committee on Merchant Marine and Fisheries, under the rules of the House of Representatives and past precedents, has jurisdiction over matters relating to fisheries and wildlife, as well as international fishery agreements. In addition, the Committee on Merchant Marine and Fisheries is the authorizing Committee for the Marine Mammal Protection Act and has a long history of interest and participation in the International Whaling Convention and the conservation of whales.

While the Committee on Merchant Marine and Fisheries waives its right to receive a sequential referral of this resolution, we reserve the right to fully participate in any future consideration of this or similar measures by the House of Representatives.

With kind regards, I am,

Sincerely,

WALTER B. JONES,
Chairman.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me just commend my chairman of my Subcommittee on Human Rights and International Organizations and our staff for the work they have done on this legislation. I rise in strong support of it.

Mr. Speaker, I yield such time as he may consume to the sponsor of this legislation, the gentleman from Virginia [Mr. WHITEHURST], a gentleman who has served in this House for many, many years. He has our admiration and respect as much as any other Member that has ever served in this House, and unfortunately, he will be retiring this year.

Mr. WHITEHURST. I thank my colleague both for yielding to me and for his generous words.

Mr. Speaker, I also wish to thank the distinguished chairman of the subcommittee, the gentleman from Pennsylvania, for his industry in bringing this legislation before us. Also for the high competence that he has shown as the chairman of that subcommittee.

Mr. Speaker, the distinguished gentleman from Pennsylvania has already given a summary of the legislation, advising the House as to its provisions and what it will do. It would be superfluous of me to try and expand upon that. I just would like to say that this is a magnificent creature and it has shrunk to alarmingly low numbers now. This is an opportunity for this body to strike a blow for the preservation of the humpback whale.

In the past, I have had the privilege of supporting and sponsoring legislation protecting wildlife and endangered species. I do feel that it is fitting that one of the last official acts that I will have here is to be the sponsor of this legislation.

Just a few moments ago, a colleague of mine in the cloakroom made mention of this legislation, and he said, "This is a wonderful thing that we should be taking this kind of step and try to preserve this creature from ultimate extinction."

So I do encourage my colleagues to support it. Both this administration and the Government of the Dominican Republic support the resolution. I have every hope that it will get quick action in the other body if it is passed here this afternoon.

I thank my colleagues again for their courtesy in bringing this legislation up.

□ 1255

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SOLOMON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The Speaker pro tempore (Mr. DURBIN). The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and pass the joint resolution, (H.J. Res. 67).

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SENSE OF HOUSE TO SUPPORT GOALS OF THE FIRST EARTH RUN

Mr. YATRON. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 160) to express the sense of the House of Representatives that the people of the world should support and encourage the goals of the First Earth Run.

The Clerk read as follows:

H. RES. 160

Whereas an international torch relay, to be known as the First Earth Run, had been planned by David Gershon, the director of the 1980 Winter Olympic Torch Relay and one of the foremost organizers of international running events in the world;

Whereas the First Earth Run will encircle the world, and thus link the people of different nations, honor their common humanity, and promote the spirit of global cooperation needed to resolve the problems of the world, including hunger, poverty, and disease;

Whereas, between September 1986 and January 1987, during the First Earth Run, a flaming torch will be passed from runner to runner, traveling through nation after nation, and the torch will be used to ignite candles in communities worldwide;

Whereas the First Earth Run will begin and end at United Nations headquarters in New York, and thereby encircle the world with light;

Whereas people worldwide will share a common experience in the success of the First Earth Run, with its inspiring ceremony and symbolism;

Whereas sharing a common experience will encourage a new consciousness in the people of the world, and that new consciousness will perceive a united world and a united humanity;

Whereas the First Earth Run is an appropriate means to capture the imagination of the entire world with the message that the people of the world can and should take responsibility for their shared destiny; and

Whereas the people of the United States share with the people of the world the hopes and dreams embodied in the First Earth Run: Now, therefore, be it

Resolved, That the House of Representatives, believing that the First Earth Run will contribute to improve relations among the peoples of the world—

(1) supports the spirit of global cooperation reflected in the First Earth Run;

(2) declares that the people of all nations should be encouraged to support the goals and ideals of the First Earth Run and to extend their good will to all participants in the First Earth Run; and

(3) calls upon the leaders of all nations to provide such encouragement for the First Earth Run.

SEC. 2. The House of Representatives requests that the President convey to the leaders of other nations the policies expressed in this resolution.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from New York [Mr. GILMAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as chairman of the Subcommittee on Human Rights and International Organizations, I believe in the initiative proposed in House Resolution 160. This resolution asks the people of the world to support and encourage the goals of the First Earth Run—an international torch relay. This flaming torch is to be carried throughout the world, lighting the path for unity and cooperation among all nations. Its glow may symbolize hope for the hungry, poor, and diseased, and brighten the often dismal face of reality.

Beginning and ending at the United Nations headquarters in New York, this international event will highlight more than running or physical endurance. It instead focuses on the very best of humankind—the desire for a common good, the sharing of the dream of peace, and the resolution of international conflict. As runners from each country transport the torch, they will bring with them the desire of their countrymen and women to join in this universal celebration of life. The United States should be at the forefront of this special event. We have always tried to infuse the world with our desire for freedom and justice. What better way to alight the imagination of all the Earth's people than by sending them a message of harmony and good will.

Let me take this opportunity to commend Congressman MCHUGH and Congressman GILMAN for introducing this resolution. Both of these gentlemen have worked diligently toward illuminating the Congress on many issues involving human rights and the betterment of humanity everywhere.

Mr. GILMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support the resolution and urge its unanimous adoption.

Mr. Speaker, the resolution is noncontroversial nonpolitical, and similar to the resolutions we have adopted every 4 years to celebrate the opening of the Olympic games. It was introduced last year by the gentleman from New York [Mr. MCHUGH] and myself, and I believe all my colleagues can and will want to fully support it.

The resolution puts the House on record in support of the spirit of global cooperation reflected in the First Earth Run, an international torch relay that began last week at the United Nations and will circle the globe in the coming months. It encourages people in other nations to join us in supporting the ideas of the First Earth Run.

The torch relay reflects a vision that people throughout the world share a common humanity that can be cooperatively harnessed in addressing the shared problems we face, such as those of hunger, poverty, and disease.

The organizer of the event, Mr. David Gershon, served as director of the 1980 Winter Olympic Torch Relay and organized and led the Liberty Torch Bicentennial Relay.

The event itself is being supported in a variety of ways by a number of agencies, including UNICEF. It has been endorsed by many prominent organizations and individuals including our former colleague, Bradford Morse, the former UNDP Administrator, and by New York Governor Cuomo.

I hope that this resolution will be endorsed by my colleagues. Accordingly, I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. YATRON. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. MCHUGH].

Mr. MCHUGH. Mr. Speaker, first of all, I want to thank my distinguished friend, the gentleman from Pennsylvania [Mr. YATRON], the chairman of the subcommittee, for yielding to me and for bringing this resolution to the floor.

I also want to express my appreciation to my friend, the gentleman from New York [Mr. GILMAN], who is a cosponsor with me of this resolution, and urge the Members of the House to adopt it, hopefully unanimously.

Mr. Speaker, more than 2 years ago I was approached by a young man with a vision of a world motivated by a spirit of global cooperation and by renewed efforts toward resolving our common problems, including hunger, poverty, and disease.

That young man was David Gershon, a leading organizer of national and international running programs. It was his view that an international torch relay, one that would touch the lives of millions across the globe, could serve as a powerful catalyst to remind us of our shared humanity and thus ignite a new spirit of global cooperation.

He called this event the First Earth Run, and last week his vision became a reality as the First Earth Run was initiated at the United Nations in New York.

The resolution before us today would put the House of Representatives on record in support of the spirit of global cooperation reflected in the First Earth Run. It would also encourage leaders and people in other nations to join with us in supporting the goals of the First Earth Run, and to extend their good will to all those who will be participating in this event.

Mr. Speaker, in the coming weeks and months the world will be encircled in light as runners from different nations carry a flaming torch on a worldwide journey. That torch will be passed from runner to runner, traveling through nation after nation. It will be used to ignite candles in communities worldwide, thus linking the people of different nations and honoring their common humanity.

Eventually this torch will be carried back to the United Nations in New York, where closing ceremonies will be held later this year. Its successful conclusion will serve to remind all of us that we can and should cooperate in addressing the fundamental problems that we face as common inhabitants of this small planet.

This is a timely message, one that has been endorsed by many prominent organizations and individuals. They include organizations like UNICEF and Jaycees International, and individuals such as former UNDP Administrator Bradford Morse. In New York State, Governor Cuomo has proclaimed September 16 as First Earth Run Day.

In short, all of us who inhabit this planet will share a common experience in the coming months, one that will hopefully encourage a new consciousness that we can and should take responsibility for our shared destiny.

Events like this are truly inspiring, Mr. Speaker. But they do not take place without substantial commitment and hard work. The organizers of this event have spent years putting it together. They had to overcome massive logistical problems. They had to raise major sums of money to support the event. And they had to find others who shared the vision reflected in it, people who were willing to give of their time and energies to participate and insure its success.

The problems were enormous, but they have been overcome by the dedication, energy, and intelligence of all of those who participated in planning the First Earth Run.

Clearly, special credit is due to Mr. Gershon. Throughout the entire planning process, he has never lost the sense of vision that initially inspired the event.

That is not hard to understand if you know David Gershon as I do. David served as the director of the 1980 Winter Olympic Torch Relay. He organized and led the Liberty Torch Bicentennial Relay on an epic 9,000-mile journey through all 50 States, the longest nonstop relay in history. And he has organized or been a consultant in developing running events throughout North America, Europe, and Australia. For 4 years he served as associate coordinator for the New York City Marathon.

David has received numerous honors and awards for his activities, such as the U.N. Peace Medal "for efforts to develop greater global understanding and cooperation among people through sports" and the President's Council on Physical Fitness and Sports Honor Award "for outstanding

efforts to promote physical fitness and running in America."

Given his imagination, talent, and energy, it is not surprising that problems have been overcome and the First Earth Run is now a reality. It is an imaginative and nonpolitical event that has been carefully organized and planned, and it offers people throughout the world a new opportunity to affirm their common aspirations. These are aspirations we share, Mr. Speaker, and therefore it is entirely fitting that this House pass House Resolution 160. The First Earth Run is a timely reminder that all of us do share a common humanity. In an often dispirited world, this extraordinary event offers a rare opportunity for promoting international good will. It certainly deserves our wholehearted support, and I urge my colleagues to support this resolution.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GILMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the resolution, House Resolution 160.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

DESIGNATING THE ROSE AS THE NATIONAL FLORAL EMBLEM

Mr. GARCIA. Mr. Speaker, I move to suspend the rules and pass the Senate joint resolution (S.J. Res. 159) to designate the rose as the national floral emblem.

The Clerk read as follows:

S.J. RES. 159

Whereas the study of fossils has shown that the rose has been a native wild flower in America for over thirty-five million years;

Whereas the rose is grown today in every State;

Whereas the rose has long represented love, friendship, peace, and the devotion of the American people to their country;

Whereas the rose has been cultivated and grown in gardens for over five thousand years and is referred to in both the Old and New Testaments:

Whereas the rose has for many years been the favorite flower of the American people, has captivated the affection of human kind, and has been revered and renowned in art, music, and literature;

Whereas our first President was also our first rose breeder, one of his varieties being named after his mother and still being grown today; and

Whereas the Untied States is without a national flower; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the flower commonly known as the rose is designated and adopted as the national floral emblem of the United States of America, and the President of the United States is authorized and requested to declare such fact by proclamation.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. GARCIA] will be recognized for 20 minutes and the gentleman from Utah [Mr. HANSEN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of Senate Joint Resolution 159 to designate the rose as the national floral emblem of the United States. The designation of a national floral emblem lies at the center of one of the longest running debates. Congressional attempts to designate particular flowers as symbols of our Nation's history and traditions date as early as the 19th century. So why should we move to conclude this debate? The answer is quite simple. Interest in designating a national floral emblem has markedly increased over the past year. Public opinion polls show overwhelming support of the American people for the rose as our national flower.

Many Americans view the rose as a symbol for love, peace, friendship, courage, loyalty, and devotion. Different variations of the rose are grown in every State of the Union and it has become part of many of our country's official ceremonies. Many major Western countries have a national flower and it seems only appropriate that the United States join them by designating the rose as our national floral emblem.

□ 1305

Mr. HANSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as you may know, the action which we are about to take here today is totally unprecedented and may be controversial.

In some nations emblems are designated by law, in others emblems or symbols evolve in the course of the nation's history. In the United States Congress has neither defined nor designated a national symbol or emblem rather they have evolved in the course of many years.

Today we are setting a precedent by designating a national floral emblem. Congressional attempts to designate a particular flower as a symbol of our Nation dates back as early as the late 19th century.

Senate Joint Resolution 159 would designate the rose as the national floral emblem of the United States of America. The rose is easily recognized, attractive and I feel truly representative in that it is a native American flower. Mr. Speaker, I ask my colleagues to join me in supporting Senate Joint Resolution 159.

Mr. GARCIA. Mr. Speaker, I yield myself such time as I may consume, and I will be very brief.

I would just like to take this moment to congratulate our colleague, the gentlewoman from Louisiana, Mrs. LINDY BOGGS, for her work on behalf of the rose as a national emblem.

Mrs. BOGGS. Mr. Speaker, I appreciate the opportunity to present this statement in support of Senate Joint Resolution 159. For the purpose of designating the rose as the national floral emblem of the United States.

Senate Joint Resolution 159 is identical to a resolution I introduced, House Joint Resolution 385 which is cosponsored by 272 of our colleagues. The Senate measure was passed unanimously by that body last year.

Our country is unique among the major powers in the world in having no national flower. I am not acquainted with the circumstances under which other countries have made such designations, but I am confident that, among the reasons, there prevailed the feeling that a national flower could function as a symbol of the country—supporting the primary symbol, the flag.

For centuries, the rose, which is found all over the world, has held a high position in the hearts and minds of men. No flower has been more closely linked with human affairs than the rose.

It has affected the lives and customs of people and nations. Down through the ages of history, the influence of this bloom is recorded in religion, in art, in music, in song, in story, and in legend.

The rose has also a long and proud American history. Its fossils dating back 35 to 40 million years in Colorado and in other locations. When the *Mayflower* landed at Plymouth on a lovely June day, it was recorded that "the shore was fragrant like the smell of a rose garden, and happy children gathered strawberries and wild roses."

An early visitor noted their presence in New Amsterdam, and they were also grown in gardens of old Virginia, New England, and South Carolina.

In his book of physics, William Penn writes about their beauty and medicinal virtues. I understand that his heirs annually accepted a single rose in payment for rent on certain Pennsylvania properties.

There are several varieties of roses named for former Presidents and First Ladies of the United States.

Many of the most important national and international events, including the signing of significant legislation, occur in the White House Rose Garden.

The evolution of roses in the past and in the present must be credited to those who love the flower. Since the 19th century, a great revival in rose interest has taken place.

The work of rose hybridists has greatly enhanced the beauty, fragrance, and the varieties of roses that are now grown.

It seems, in fact, that it is almost possible to use the rose as an index of human progress. As civilizations have emerged, risen to their height and fallen, so has interest in the rose followed a parallel course.

There seems little question that the rose today is America's favorite bloom. Poll after poll demonstrates the truth of that statement.

Estimates range as high as 20 to 1 in gauging the favorite margin of America's preference of the rose in flower selection.

In fact, several States have designated the rose as their symbol.

Because of the many associations which surround the rose, and because it is clearly the overwhelming favorite of our people, I believe Congress should hesitate no longer in designating it as the national flower.

Such a designation would be particularly fitting because of its traditional association as a symbol of peace. It would equally demonstrate to the world our dedication to the ideals of love, courage, loyalty, and devotion—all of which are normally linked with the rose.

Perhaps the naming of the rose as our national flower could in its small way demonstrate to the world that we, Americans, as well as being strong and bold, retain an appreciation and love or beauty, of fragrance, of gentility, of the aesthetic, or finer things in life.

Mr. Speaker, no other flower could better symbolize the greatness and strength and energy of our country.

It is clear that we need a well-recognized floral emblem.

One that is native to our land.

One that can be grown and used in every corner of the country.

One that can be planted with dignity in small gardens as well as public lands. One that as a fresh flower can be used as a symbol of peace and welcome when we receive foreign visitors, and when we honor men and women of our own selection.

One that signifies love with its history, beauty and fragrance.

With its strong growth, its upright branches reaching for the Sun, its deep green foliage, and the occasional bite of a thorn, the rose tells of the people it should represent.

I, therefore, ask that my colleagues join the 272 cosponsors of this legislation and give favorable consideration to Senate Joint Resolution 159 which designates the rose as the national floral emblem.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of Senate Joint Resolution 159, a bill which would designate the rose as the national floral emblem.

We are a nation of people who take great pride in the symbols which represent us—the bald eagle, the stars and stripes, the Statue of Liberty—all emblems of this great country, attest to a nation of people pledged to freedom, justice, and equality. Like these symbols, the rose would provide us with another national emblem in which Americans could take pride. A native grown flower, which has been discovered in fossils 35 million years old, grown in every State in the Nation, a flower noted for its beauty, the rose seems the obvious choice as the official flower of the United States.

Not only for historic and esthetic reasons would the rose be the best choice for our national floral emblem, but also the rose is economically important to this country. As a matter of fact, the rose is very important to growers in my home State of California. California produces approximately half of tall roses grown for cut flower purposes in America. Eight million rose plants used for cut flowers are produced in California. In my district alone the value of roses in cut flower commodities is quite significant. I know that Californians like me would be most proud to recognize the rose as the official flower of the United States.

Mr. Speaker, I ask my colleagues to support Senate Joint Resolution 159 and recognize the rose as the national floral emblem of the United States.

Mr. HANSEN. Mr. Speaker, I yield back the balance of my time.

Mr. GARCIA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DURBIN). The question is on the motion offered by the gentleman from New York [Mr. GARCIA] that the House suspend the rules and pass the Senate joint resolution, Senate Joint Resolution 159.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate joint resolution was passed.

A motion to reconsider was laid on the table.

DWIGHT DAVID EISENHOWER CENTENNIAL COMMISSION

Mr. GARCIA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4302) to establish a Commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower, as amended.

The Clerk read as follows:

H.R. 4302

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that as the Nation approaches October 14, 1990, marking the 100th anniversary of the birth of Dwight David Eisenhower, it is appropriate to establish a national commission to contribute to the commemoration of that anniversary.

SEC. 2. ESTABLISHMENT.

There is established the Dwight David Eisenhower Centennial Commission (hereinafter in this Act referred to as the "Commission").

SEC. 3. DUTIES.

The Commission shall—

(1) in cooperation with the Eisenhower World Affairs Institute in the District of Columbia, the Eisenhower Foundation in Abilene, Kansas, and such other public or private entities as the Commission considers appropriate, encourage, plan, develop, and coordinate observances and activities commemorating the centennial of the birth of Dwight David Eisenhower; and

(2) submit recommendations to Congress relating to a joint meeting of both Houses of Congress to commemorate that centennial.

SEC. 4. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of—

(1) the President pro tempore of the Senate;

(2) the Speaker of the House of Representatives;

(3) 6 members of the Senate appointed by the President pro tempore of the Senate (of whom 3 shall be upon recommendation of the majority leader of the Senate and 3 shall be upon recommendation of the minority leader of the Senate);

(4) 6 members of the House of Representatives appointed by the Speaker of the House of Representatives (of whom 3 shall be upon recommendation of the majority leader of the House of Representatives and 3 shall be upon recommendation of the minority leader of the House of Representatives);

(5) 6 members appointed by the President; and

(6) the Archivist of the United States or his delegate.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) TERMS.—(1) Except as provided in paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) If any member of the Commission who was appointed as a Member of Congress or an officer in the executive branch ceases to be such a Member or officer, that individual may continue as a member of the Commission for not longer than the 30-day period beginning on the date such individual ceases to be such a Member or officer.

(c) PAY; EXPENSES.—(1) Members of the Commission shall serve without pay.

(2) Subject to the availability of appropriations, while away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in Government service are allowed travel expenses under section 5703 of title 5, United States Code.

(d) QUORUM.—Eleven members of the Commission shall constitute a quorum.

(e) CHAIR AND VICE CHAIR.—Members of the Commission shall select a chair and a vice chair from among its members.

(f) MEETINGS.—(1) Except as provided in paragraph (2), the Commission shall meet at the call of the chair or a majority of its members.

(2) The first meeting of the Commission shall be called by the Speaker of the House of Representatives and the President pro tempore of the Senate within 6 months after the date of the enactment of this Act.

SEC. 5. POWERS.

(a) EXECUTIVE DIRECTOR AND STAFF.—(1) The Commission may accept the services of an executive director and staff personnel only as provided in subsection (b)(1).

(2) Any individual providing services under paragraph (1) may be afforded travel expenses (including a per diem allowance in lieu of subsistence) subject to the same terms and conditions as apply under section 4(c)(2).

(b) DONATIONS.—(1) The Commission may accept, use, and dispose of gifts or donations of money, property, or personal services.

(2)(A) Any books, manuscripts, miscellaneous printed matter, memorabilia, relics, or other materials donated to the Commission which relate to the life of Dwight David Eisenhower—

(i) may be deposited for preservation in the Dwight David Eisenhower Library in Abilene, Kansas; or

(ii) subject to subparagraph (B), may otherwise be disposed of by the Commission in consultation with the Librarian of Congress and the Secretary of the Smithsonian Institution.

(B) Materials may not be disposed of under subparagraph (A)(ii) without the consent of the Dwight David Eisenhower Library.

(c) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take under this Act.

(d) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

SEC. 6. REPORTS.

(a) INTERIM REPORTS.—The Commission shall transmit interim reports to the President and each House of Congress no later than December 31 of each year. Each such report shall include a description of the activities of the Commission during the year covered by the report, an accounting of any funds received or expended by the Commission during such year, and recommendations for any legislation or administrative action which the Commission considers appropriate.

(b) FINAL REPORT.—The Commission shall transmit a final report to the President and each House of Congress no later than December 31, 1990. Such report shall include an accounting of any funds received or expended, and the disposition of any other properties, not previously reported.

SEC. 7. TERMINATION.

(A) DATE.—The Commission shall terminate on such date as the Commission may determine, but not later than December 31, 1990.

(b) DISPOSITION OF FUNDS AND PROPERTY.—(1) Any funds held by the Commission on the date the Commission terminates shall be deposited in the general fund of the Treasury.

(2) Any property, other than funds, held by the Commission on the date the Commission terminates shall be transferred to any department or agency of the United States authorized to accept donations of property, subject to the provisions of section 5(b)(2) (if and to the extent that such provisions apply to the property involved).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $50,000 for fiscal year 1987 to carry out this Act. Amount so appropriated shall remain available until expended.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. GARCIA] will be recognized for 20 minutes and the gentleman from Utah [Mr. HANSEN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. GARCIA].

Mr. Speaker, I stand before you today to ask support for H.R. 4302 to establish a Commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower.

October 14, 1990 marks the 100th anniversary of the birth of Dwight David Eisenhower, the 34th President of our country. A graduate of West Point, he rose to the rank of five-star general and was considered one of our great leaders during World War II. Throughout his military career, General Eisenhower was known as a man who cared deeply about his men and felt compassion for the victims of war. As President he sought to develop a strong domestic economy and to develop programs that would protect the disadvantaged.

Both as general and as President, Dwight David Eisenhower was a man of great character. He knew the importance of war, but also knew the necessity of peace. He had won a special place in the hearts of the American people, as very few have ever done. As a result of his achievements both as general and as President, it seems only appropriate that we should establish a Commission to celebrate and commemorate this man, who gave so much of himself to this country.

Mr. HANSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am very happy to rise in support of H.R. 4302, a bill to establish a Commission for the purpose of planning and encouraging the commemoration of the 100th anniversary of the birth of Dwight David Eisenhower.

President Eisenhower holds a prominent place in the history of 20th-century America. In his military career and as President of the United States, he commanded a broad respect from the American people. Few Americans have been held in such deep affection by their countrymen as was Dwight Eisenhower. His life was an example of the achievement that is possible in this Nation from modest beginnings. Observance of the centennial of his birth will remind us, as citizens of this democracy, that a life of dedicated and selfless public service is recognized in our national life and will be preserved in our national memory.

The establishment of a Commission to organize and coordinate the events remembering Dwight Eisenhower's life is entirely appropriate and I believe strongly that it should have our endorsement.

Mr. Speaker, I yield 7 minutes to the gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. Mr. Speaker, it is an honor to appear before the House today to voice my strong support for H.R. 4302, a bill to establish the Dwight David Eisenhower Centennial Commission for the purpose of encouraging, planning, developing, and coordinating observances and activities commemorating the 100th anniversary of the birth of President Eisenhower on October 14, 1890.

I would like to express my sincere thanks to the chairman of the Census and Population Subcommittee, Mr. GARCIA, and the ranking member, Mr. HANSEN, and their staffs for their invaluable assistance.

I would also like to thank the chairman of the full committee, Mr. FORD, and the ranking member, Mr. TAYLOR, for moving this important legislation through the full committee and onto the floor for consideration.

Mr. Speaker, I have had the privilege of representing the city of Abilene, KS, for the last 4 of my 6 years in Congress. As many of you know, Abilene is a small city with a colorful and proud past dating back to the cattle drives of the Old West.

Abilene has another important connection with history. It is the boyhood home of President Dwight David Eisenhower, our 34th President. It was also the site of his first major political speech. The Eisenhower Plaza in Abilene is the site of the house where the young Ike was raised, of the Dwight D. Eisenhower Library, the largest federally funded memorial to our 34th President, and of the Eisenhower Museum, and the Eisenhower Chapel, the President's final resting place.

The accomplishments of this great American make the people of Kansas proud to claim him as a native son. Eisenhower as general and as President led this Nation in times of war and in times of peace. As we look back to his Presidency, we have a fond remembrance of an era of peace and prosperity. Today, we see something of an Eisenhower renaissance and a reevaluation of the momentous Eisenhower years.

It is only fitting, therefore, that the Federal Government in general and the Congress in particular take the lead in honoring the memory of one of the great figures of the 20th century.

Mr. Speaker, H.R. 4302 is a straightforward piece of legislation to establish a Commission for the purpose of encouraging, planning, developing, and coordinating observances and activities commemorating the 100th anniversary of the birth of President Dwight David Eisenhower.

The Commission is charged with the responsibility of making recommendations to Congress for a joint meeting of both Houses of Congress.

In addition, the Commission is to cooperate with both public and private agencies, including the Eisenhower World Affairs Institute of Washington, DC, and the Eisenhower Foundation of Abilene, KS, in encouraging, planning, developing, and coordinating observances and activities commemorating the centennial of the birth of Dwight David Eisenhower.

The Commission is to be composed of 21 members. It is bipartisan in nature. Both the Speaker of the House and the President pro tempore of the Senate are to serve as members and are to appoint six members each. Three of the members from both bodies will be appointed in consultation with the minority leader of each body. Six members of the Commission will be appointed by the President of the United States and the Archivist of the United States or his representative is to serve as a member of the Commission.

The members of the Commission are to serve without pay and may appoint an executive director who will serve without compensation.

The Commission must submit an annual report, describing the activities and plans the Commission intends to undertake.

Mr. Speaker, the structure of the bill permits the widest possible participation of interested parties and individuals in planning and coordinating the centennial commemoration. It will also provide for support and assistance from the Commission to the interested agencies of the Federal Government as well as States, localities, and individuals around the Nation.

Further, the legislation will assure the full participation of both the Eisenhower World Affairs Institute here in Washington, DC, and the Eisenhower Foundation of Abilene, KS. Both groups are vitally interested in assisting with the hard work of planning this important commemoration.

Again, Mr. Speaker, I thank my colleagues for their assistance and support and urge the passage of this important legislation.

Mr. GARCIA. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I would just like to take this opportunity to say that I would like to congratulate our colleague, the gentleman from Kansas [Mr. ROBERTS] for his work on behalf of this bill.

I would also like to note that I think we had general support from the Kansas delegation and I think that goes far beyond just the State of Kansas. As a person who served in the Korean war I can always remember my mother saying how good it was to have General Eisenhower, because he is going to bring the boys back when we were there, and he certainly did.

I would just like the gentleman to know that is in my mother's memory when she was alive that Eisenhower fulfilled that promise, and I would say it was the efforts of the gentleman from Kansas and his delegation that made this possible.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana [Mrs. BOGGS].

Mrs. BOGGS. Mr. Speaker, I thank the gentleman for yielding.

I, too, would like to congratulate the gentleman from Kansas on the work that he has done on the memorial to our late beloved President Dwight Eisenhower.

Mr. SLATTERY. Mr. Speaker, I rise in support of H.R. 4032, legislation establishing the Eisenhower Centennial Commission. The Commission will plan and coordinate events and activities to honor President Eisenhower and celebrate the many accomplishments of this great man.

I commend my distinguished colleague who represents the big First District of Kansas, PAT ROBERTS, for his tireless efforts to make the Eisenhower Centennial Commission a reality.

Mr. Speaker, Dwight David Eisenhower grew to manhood in Abilene, KS, a community shaped by the aspirations and convictions of American pioneers. The values he learned there are Kansas values: Independence, hard work, common sense, and love of liberty; and these are the lessons that guided him as he led our Nation in war and in peace.

The life and career of Dwight Eisenhower truly personify the motto of the great State of Kansas: "Ad Astra Per Aspera," which translated is, "To the Stars Through Difficulty."

Mr. HANSEN. Mr. Speaker, I yield back the balance of my time.

Mr. GARCIA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. GARCIA] that the House suspend the rules and pass the bill, H.R. 4302, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the Senate joint resolution, Senate Joint Resolution 159, and on the bill, H.R. 4302.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

BAYOU SAUVAGE URBAN NATIONAL WILDLIFE REFUGE

Mr. THOMAS of Georgia. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5262) to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana, as amended.

The Clerk read as follows:

H.R. 5262

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES OF REFUGE

The purpose of the Bayou Sauvage Urban National Wildlife Refuge are—

(1) to enhance the populations of migratory, shore, and wading birds within the refuge;

(2) to encourage natural diversity of fish and wildlife species within the refuge;

(3) to protect the endangered and threatened species, and otherwise to provide for the conservation and management, of fish and wildlife within the refuge;

(4) to fulfill the international treaty obligations of the Untied States respecting fish and wildlife;

(5) to protect the archeological resources of the refuge;

(6) to provide opportunities for scientific research and environmental education, with emphasis being given to the ecological and other values of wetlands; and

(7) to provide opportunties for fish and wildlife oriented public uses and recreation in an urban setting.

SEC. 2. ACQUISITION AND ESTABLISHMENT OF REFUGE.

(a) ACQUISITION.—Within 4 years after the effective date of this Act the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall acquire the approximately 19,000 acres of lands and waters, and interests therein, located in Orleans Parish, Louisiana, that are depicted on the map entitled "Bayou Sauvage Urban National Wildlife Refuge", dated September 15, 1986, and on file at the United States Fish and Wildlife Service, Department of the Interior. The lands and waters, and interests therein, acquired under this subsection comprise the Bayou Sauvage Urban National Wildlife Refuge. The acquisition shall be made through donation, purchase with donated or appropriated funds, or exchange, or through any combination of the foregoing.

(b) ESTABLISHMENT.—At such time as sufficient lands and waters, and interests therein, have been acquired under subsection (a) to consitute an initial area that can be administered to carry out the purposes set forth in section 1, the Secretary shall establish the Bayou Sauvage Urban National Wildlife Refuge by publication of notice to that effect in the Federal Register.

(c) BOUNDARY ADJUSTMENTS.—The Secretary may make such adjustments with respect to the boundary of the Bayou Sauvage National Wildlife Refuge as may be necessary to facilitate the acquisition of lands and waters, and interests therein, for the refuge and to facilitate the administration of the refuge.

SEC. 3. ADMINISTRATION OF REFUGE.

(a) IN GENERAL.—The Secretary shall administer all lands and waters, and interests therein, acquired under section 2 in accordance with the provisions of the National Wildlife Refuge System Administration Act

of 1966 (16 U.S.C. 668dd-668ee) to carry out the purposes set forth in section 1. The Secretary may utilize such additional statutory authority as may be available to him for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive environmental education as he considers appropriate to carry out such purposes. Within 2 years after the effective date of this Act, the Secretary shall complete a master plan for the development of the Bayou Sauvage Urban National Wildlife Refuge.

(b) LIMITATION.—The provision, whether by contract or otherwise, within the Bayou Sauvage Urban National Wildlife Refuge of facilities for lodging or commerical retailing (other than for articles relating to the refuge) is inconsistent and incompatible with the primary and major purposes for which the refuge is established.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior—

(1) from funds not otherwise appropriated from the Land and Water Conservation Fund, such sums as may be necessary for the acquisition of lands and waters, and interests therein, for the Bayou Sauvage Urban National Wildlife Refuge; and

(2) $5,000,000 for the development of the refuge.

The monies appropriated under paragraphs (1) and (2) shall remain available until expended.

SEC. 5. EFFECTIVE DATE.

This Act takes effect on the later of the date of enactment of this Act or October 1, 1986.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Georgia [Mr. THOMAS] will be recognized for 20 minutes and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Georgia [Mr. THOMAS].

Mr. THOMAS of Georgia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5262 would establish the Bayou Sauvage Urban National Wildlife Refuge in Louisiana. The refuge would protect over 19,000 acres of wetlands and other waterfowl habitat within the city limits of New Orleans, LA.

Despite its proximity to the largest urban area in the State of Louisiana, the Bayou Sauvage area has been described by wildlife biologists as a "ready-made refuge." Of the 19,000 acres, approximately 13,000 acres are freshwater wetlands surrounded on all sides by levees. The remainder of the area is brackish wetlands bordering Lake Pontchartrain and Lake Borne. These wetlands already provide wintering habitat for 40,000 ducks and geese anually, predominately pintail, teal, scaup, mallards, and redhead ducks. Bald Eagles, brown pelicans, and peregrine falcons also frequent the area. Thousands of shore and wading birds inhabit the area and there are several rookeries. There is a sizable deer herd, as well as healthy populations of otter, muskrat, raccoon, and nutria. American alligators, once in danger of extinction, can be found in the ponds and marshes.

Because much of it is impounded, the area will become even more valuable for wildlife when water levels and habitat are managed by professional wildlife managers. In addition, the wetlands outside the impoundment could be protected and managed to maximize their value to estuarine fish species and to nourish the waters of Lakes Pontchartrain and Borne.

Mr. Speaker, this area would be an ideal national wildlife refuge regardless of where it was located. Its presence within the city limits of New Orelans, however, makes it even more valuable. It provides us with an opportunity to create a wetlands and wildlife education center that will provide a model for the country. For too long, we have undervalued wetlands. Swamps, marshes, and bogs have been for us wastelands, too often altered to provide what we considered to be a higher use. Too late, we are realizing that these areas provide us with nursery grounds for important fishery resources, habitat for waterfowl and other wildlife, provide flood and hurricane protection, abate pollution, and carry out many other complex functions. The Bayou Sauvage Refuge can serve as an environmental education center for the people of New Orleans and the Nation, helping us to better understand the value of our dwindling wetlands.

The refuge could also provide an opportunity for public recreation and we anticipate that, once developed to draw and educate visitors about wildlife, it would be a major attraction for people who want to fish, view wildlife, and, we hope, develop an appreciation for the incredible diversity and productivity of our Nation's wetlands.

Mr. Speaker, this refuge is being established in a unique manner. This area, one of the last large tracts of undeveloped land in New Orleans, has been the subject of various development schemes for almost 200 years. The last proposal, made by South Point, Inc., the owners of the property, would have drained more than 13,000 acres of the area for residential development. The environmental community in New Orleans objected strenuously to this plan. Rather than resorting to lawsuits and confrontation, these groups decided to sit down together, along witn the elected officials of the city of New Orleans, to resolve this issue. The result of their cooperative efforts will be an area that they can pass on to their children and grandchildren, a place for people from New Orleans and throughout the Nation to come, enjoy our abundant wildlife, and learn about conservation.

Finally, Mr. Speaker, I would note that this is not just a refuge for New Orleans. The North American Waterfowl Plan recently adopted by the United States and Canada calls for the protection of wintering habitat in the lower Mississippi Gulf Coast region if we are to maintain our waterfowl resource. The Bayou Sauvage Refuge would protect what some have called the best waterfowl marsh in southeast Louisiana and would be one more step toward achieving our habitat protection goals. By protecting these areas, we are making certain that people throughout the country will continue to be able to enjoy the spectacle of millions of birds making their annual migration between their summer breeding grounds on the northern prairies and their wintering grounds along our southern coasts. This legislation is important to all of us who care about our wildlife and I urge my fellow Members to support the bill.

Mr. YOUNG of Alaska. Mr. Speaker, I yield 5 minutes to the gentleman from Louisiana [Mr. LIVINGSTON], a strong supporter of this legislation.

Mr. LIVINGSTON. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of H.R. 5262, a bill to establish the Bayou Sauvage Urban National Wildlife Refuge just outside of New Orleans, LA.

I understand that there have been a number of arguments that I would like to clarify for the record on this bill, to the effect that the administration's opposition to this legislation was based solely on senatorial politics. I can assure the House that is not true. The administration's annual budget requests always deny roughly 99 percent of the funding for the national wildlife refuge land acquisition. In fact, over the last 2 years, the administration has requested only about $3 million, but it is the Congress that has always continued funding for land acquisition at selected national wildlife refuges.

Even so, Congress approved for construction and land acquisition for the national wildlife refuge only some $63 million in fiscal year 1986, and Congress is likely to approve for fiscal year 1987 only about $54 to $56 million. Given the scarce resources that the Wildlife and Fisheries Service has to allocate over the entire country, I can understand the administration's reluctance to embrace the creation of another refuge that is estimated to cost as much as $25 million over 4 years.

Nevertheless, I would like to urge the Members on my side of the aisle to support this legislation. I want to make it perfectly clear that the entire Louisiana delegation, Republicans and Democrats, supports this bill, and that

of course includes my colleague, Mr. HENSON MOORE, and myself.

In July, when my colleague, HENSON MOORE, hosted the Secretary of the Interior, Don Hodel, when he visited Louisiana, they personally viewed the tragic effects of the rapid loss of our coastal wetlands. Since then, Mr. MOORE and I have worked with the Secretary, with the conservationists, and other interested parties in an effort to secure administration support for this particular refuge.

In fact, the Secretary has assured us that the Department is expediting the necessary studies and project evaluations and is optimistic that the Bayou Sauvage site will be added to the National Wildlife Refuge System.

The site of this proposed refuge is now ably represented by my colleague, Mrs. LINDY BOGGS, who is the prime sponsor of this bill. But until 1984, I represented this area for 7 years. Throughout that time, and in fact since the 1950's local political leaders, environmentalists, developers, and citizens of the New Orleans East region could never agree to a comprehensive development plan for this area.

But for the first time in nearly 30 years, all of these diverse groups have finally come together. They have finally reached an agreement on this singular plan which is before us today for the future use of the valuable wetlands and wildlife habitat in New Orleans East. This legislation embodies that plan—and the plan actually pleases prodevelopment advocates and conservationists alike, and it is one that we should support.

Consequently, I urge my colleagues to pass this bill without further recourse.

Mr. THOMAS of Georgia. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Louisiana [Mr. BOGGS].

Mrs. BOGGS. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I would also like to thank my colleague, the gentleman from Louisiana [Mr. LIVINGSTON], who, as he said, for many years represented the district in which this refuge will be located, and which I have the honor of representing today. It is this type of cooperation that has been the hallmark of the Louisiana delegation, and I am very, very pleased to join with him in urging our membership to support H.R. 5262, this bill to establish the Bayou Sauvage Urban Wildlife Refuge in New Orleans.

Mr. Speaker, as a cosponsor of this legislation, I believe this refuge, which will be located in the district which I have the honor of representing, offers a tremendous opportunity to preserve one of the most important wetland habitats in the gulf coast region. The area is a key component of the estuary system of Lake Pontchartrain and Lake Borgne.

This legislation would authorize the acquisition of 19,000 acres of land in eastern New Orleans for one of the first major Federal wildlife refuges to be located wholly within the limits of a major American city. The area is an important wintering ground for 40,000 to 50,000 ducks. It provides nesting and feeding habitat to thousands of wading birds, shorebirds, and other birds. It serves as high quality habitat for deer, swamp rabbit, raccoon, nutria, muskrat, mink, and a host of other animals and it provides food, cover, and nursery habitat to many species of freshwater and estuarine fish and shellfish. The marshland that will be part of the refuge is a natural filter system that removes excess nutrients and pollutants from runoff entering Lake Pontchartrain.

This would be high-value wetlands no matter where it was located, however its proximity to the New Orleans metropolitan area and adjacent communities makes it an excellent outdoor classroom that could be used to educate thousands of children and adults on the value of our coastal marshes.

Last month the Subcommittee on Fisheries and Wildlife Conservation held a hearing in New Orleans to take testimony from the public regarding this proposal. Each of the witnesses spoke in support of this legislation, including representatives of the city government (Mayor Sidney Barthelemy and Councilman Johnny Jackson), the State government (Senator Jon Johnson), and interested individuals from the civic and conservation communities. As one individual put it:

H.R. 5262 represents one of the most intelligent, innovative and far-sighted proposals for harmonizing development and conservation that is to be found anywhere in America today.

Thus, the Bayou Sauvage Wildlife Refuge offers the opportunity to develop a wildlife refuge that will serve as a model for other similar projects in urban areas, as well as the opportunity to preserve 19,000 acres of valuable coastal wetlands habitat in an area that is losing an estimated 40 square miles of coastal wetlands annually to erosion and subsidence.

In bringing this legislation before the House, the Merchant Marine Committee had made several key recommendations that are essential to the success of the refuge. First, the refuge is to be managed to emphasize opportunities for environmental education and wildlife oriented public education. Second, all planning for the refuge is to be carefully coordinated with officials in the city of New Orleans and other interested parties in the business and environmental communities. Third, any development within the refuge is to be limited to activities that promote the purpose of the refuge. The bill specifically excludes the development of facilities for lodging or commercial retaining within the refuge.

The committee also strongly recommends that an easement or servitude be granted for the use of a channel adjacent to Bayou Sauvage for limited navigation that is compatible with the refuge. In addition, the committee expects the city of New Orleans to be offered the right of first refusal for the property in the unlikely event that Congress should consider disposing of the refuge lands.

In closing, Mr. Speaker, I would like to thank my colleague from Louisiana [Mr. BREAUX], for introducing this legislation and expeditiously moving it through the process and the gentleman from Georgia [Mr. THOMAS] for managing the bill today. In addition, we owe a special debt of gratitude to the current property owner, South Point, Inc., the Nature Conservancy, representatives of local government and the local environmental community, and the Merchant Marine Committee staff for their efforts and perserverance in the negotiations that have made the Bayou Sauvage Urban National Wildlife Refuge a reality. They have made possible the preservation for future generations of a very special treasure that is part of our natural heritage as Americans.

Mr. Speaker, I urge passage of H.R. 5262.

Mr. BREAUX. Mr. Speaker, as the author, along with Congresswoman BOGGS, of H.R. 5262, I am in strong support of this legislation. The establishment of the Bayou Sauvage Urban National Wildlife Refuge will be a tremendous benefit both to the city of New Orleans and to people throughout the country. It will protect 19,000 acres of wetlands and other wildlife habitat in an area that is actually in the city limits of New Orleans, LA. It will be an excellent addition to our National Wildlife Refuge System.

Mr. Speaker, at the end of every year, the "CBS Sunday Morning Show" with Charles Kuralt does a segment entitled "Gifts We Give Ourselves." In that segment, they show their television audience what refuges, parks, or wilderness areas have been established during the year. The title to the show is quite appropriate, for in establishing these areas, we really are giving ourselves, and our children, gifts of our own land.

The value of these gifts, in my opinion, far exceeds the price we pay in Federal funds. We buy areas like this, in part, to honor commitments to other countries. In 1916, the United States signed a treaty with Canada that recognized that the two countries were jointly responsible for the great flocks of waterfowl and other birds that traverse our two countries. Since that first treaty, we have signed similar treaties with Japan, Mexico and the U.S.S.R. All of those treaties call on us to protect the habitat necessary to sustain this international resource. The Bayou Sauvage Refuge, by protecting wintering habitat used by over 40,000 waterfowl annually. as well as

thousands of shore and wading birds, helps us to fulfill our international commitments.

We also purchase these areas, and particular wetlands, because of the benefits they provide the public. While wetlands have for years been considered wastelands and we have filled them, or worse, used them for dumping grounds, we have come to learn of their true value. They perform critical functions in the life cycle of many species of fish that are important to our commercial and recreational fishermen. They hold flood waters, abate pollution and carry out many of other complex functions. We have come to realize, perhaps too late, that protection of these areas is important to the economy as well as the environment.

Finally, Mr. Speaker, the purchase of these areas is, in a real sense, a patriotic act. We have recently celebrated the 100th anniversary of the Statue of Liberty, one of the symbols of the magnificent spirit of this country. That spirit is, I believe, nourished by this land. We have been fortunate to inherit a land that has not only fed us and provided raw materials for our homes and industry, it has also inspired us. The physical features of this land, the mountains, plains, and woodlands, have helped shape the character of our people.

Over the last 8 years, as chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, I have been fortunate to help deliver some of the gifts Congress has chosen to give the American people. We have provided a refuge off of the Connecticut coast that will protect terns and herons and other wildlife in one of the most populated areas of the country. We created a refuge across the country in Washington State that protects breeding areas of puffins and auklets. We have established a refuge in Alabama that protects a unique barrier island complex. We have enlarged refuges in North Carolina, Minnesota, and California. Finally, we have protected almost 100,000 acres of bottomland hardwoods in Louisiana, a remnant of the vast hardwood forest that once stretched from Illinois to New Orleans. These areas will not only protect our wildlife, they also will be places where we and our children can gain the inspiration and character necessary to conserve the American spirit.

The Bayou Sauvage Refuge will be a welcome addition to the refuge system. It will not only protect wildlife, it will provide a place of solace and inspiration. It is a small gift of the American land that we can give ourselves and our children.

□ 1330

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5262 will establish the Bayou Sauvage Urban National Wildlife Refuge near New Orleans, LA.

This area, approximately 19,000 acres of wetlands, closely situated to Louisiana's largest urban center, is prime wildlife habitat of primarily fresh and brackish marsh. Thousands of migratory waterfowl use this area as wintering grounds each year. Healthy populations of deer and furbearers can be found in the area as well as several endangered species, populations of nongame animals, and even alligators. This area is also significant for the fishery resources it supports, serving as nursing grounds for crab, shrimp, and finfish. Its close proximity to a large metropolitan area provides an excellent opportunity for public education and recreation.

I would like to point out the fine work of Congressman JOHN BREAUX, chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, along with Congresswoman LINDY BOGGS, the two sponsors of the bill, and Congressman BOB LIVINGSTON.

Mr. Speaker, I support the bill and urge its approval.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I thank the gentleman from Alaska for yielding. I want to join him and the Louisiana delegation in support of this legislation.

As the longest term senior member of the Migratory Bird Commission, we wholeheartedly endorse this refuge.

Mr. YOUNG of Alaska. Mr. Speaker, I thank the gentleman from Massachusetts for his comments, and I yield back the balance of my time.

Mr. THOMAS of Georgia, Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore [Mr. DURBIN]. The question is on the motion offered by the gentleman from Georgia [Mr. THOMAS] that the House suspend the rules and pass the bill, H.R. 5262, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. THOMAS of Georgia, Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5262, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

MAINE CENTRAL RAILROAD DISPUTE SETTLEMENT

Mr. FLORIO. Mr. President, I move to suspend the rules and pass the Senate joint resolution (S.J. Res. 415) to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute.

The Clerk read as follows:

S.J. RES. 415

Whereas the labor dispute between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company, and certain of the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees threatens essential transportation services of the Nation;

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained;

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers;

Whereas the President by Executive Order Numbered 12557 of May 16, 1986, pursuant to the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160), created a Presidential Emergency Board to investigate the dispute and report findings;

Whereas the recommendations of Presidential Emergency Board Numbered 209 for settlement of such dispute have not yet resulted in a settlement;

Whereas the extension of the provisions of section 10 of the Railway Labor Act (45 U.S.C. 160) for an additional 60-day period to such dispute provided by the joint resolution entitled: "Joint resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Company and the Portland Terminal Company labor-management dispute", approved August 21, 1986 (Public Law 99-385), has not yet resulted in a settlement of such dispute;

Whereas the advisory board established pursuant to section 2 of such joint resolution recommended that in the event that the parties to the dispute were unable to reach agreement on the dispute before September 13, 1986, the Congress should enact legislation directing the parties to accept and apply the recommendations of Emergency Board Numbered 209, and if such parties are unable to agree as to all necessary details in applying the recommendations of such Emergency Board, all such unsettled issues should be submitted to final and binding arbitration;

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not yet resulted in settlement of the dispute;

Whereas the Congress, under the Commerce Clause of the Consitution, has the authority and responsibility to ensure the uninterrupted operation of essential transportation services; and

Whereas the Congress in the past has enacted legislation for such purposes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the following conditions shall apply to the dispute referred to in Executive Order Numbered 12557 of May 16, 1986, between the common rail carriers, Maine Central Railroad Company and Portland Terminal Company (hereafter in this resolution referred to as the "carriers") and the employees of such carriers represented by the Brotherhood of Maintenance of Way Employees.

(1) The parties to such dispute shall take all necessary steps to restore or preserve the

conditions out of which such dispute arose as such conditions existed before 12:01 ante meridiem of March 3, 1986, execept as provided in paragraphs (2) through (4).

(2) The report and recommendations of Presidential Emergency Board Numbered 209 shall be binding on the parties and shall have the same effect as though arrived at by agreement of the parties under the Railway Labor Act (45 U.S.C. 151 et seq.), except that nothing in this joint resolution shall prevent a mutual written agreement by the parties to any terms and conditions different from those established by this joint resolution.

(3)(A) If there are unresolved implementing issues remaining with respect to the report and recommendations or agreement under paragraph (2) after ten days after the date of the enactment of this joint resolution, the parties to the dispute shall enter into binding arbitration to provide for a resolution of such issues.

(B) The National Mediation Board established by section 4 of the Railway Labor Act (45 U.S.C. 154) shall appoint an arbitrator to resolve the issues described in subparagraph (A). Except as provided in this joint resolution, such arbitration shall be conducted as if it were under section 7 of such Act, and any award of such arbitration shall be enforceable as if under section 9 of such Act.

(b) Within thirty days after the date of the enactment of this joint resolution, the binding arbitration entered into pursuant to paragraph (3) shall be completed.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. FLORIO] will be recognized for 20 minutes and the gentleman from New York [Mr. LENT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today, the House is considering Senate Joint Resolution 415, a resolution to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute. This legislation is identical to House Joint Resolution 728, which was approved by the Energy and Commerce Committee last Thursday.

On August 21, 1986, House Joint Resolution 683, Public Law 99-385, was enacted. This resolution provided for a cooling off period in the Maine Central labor dispute until September 18. The resolution required the establishment of a three-member board, appointed by the National Mediation Board, to study and make recommendations on the dispute.

On September 8, the three-member "Congressional Advisory Board" submitted its report. The board recommended that in "the absence of agreement between the parties disposing of this dispute no later than September 13, 1986, the Congress should enact legislation directing the parties to accept and apply the recommendations of "Presidential Emergency Board No. 209, the report further recommended that if the parties were unable to agree as to all necessary details in applying the recommendation, any unsettled issues should be submitted to arbitration.

The legislation before us would implement the report of the Congressional Advisory Board by imposing the recommendations of Emergency Board No. 209. The Emergency Board had recommended the railroad's proposal for job protection for then currently active employees, except that the protective allowance should be $26,000; that the parties should negotiate an agreement to provide for greater flexibility in assigning maintenance of way crews throughout the Maine Central Railroad Co. and Portland Terminal Co.; that the parties should agree to the results of national negotiations involving pay and health and welfare; and the parties should agree to handle previously proposed changes in work rules under orderly and peaceful procedures without resort to self-help.

As I noted, this legislation is indentical to the companion House bill, House Joint Resolution 728. Thus, the committee report accompanying House Joint Resolution 728 will serve as legislative history for this bill.

While I am not enthusiastic about legislating settlements to collective bargaining disputes, I believe this legislation is the best alternative. I urge its support.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I would like to commend the gentleman from New Jersey [Mr. FLORIO], chairman of the Subcommittee on Commerce, Transportation, and Tourism for quickly moving this legislation through the committee process and through the full Energy and Commerce Committee in a way that will avert a strike that could be a crippling railroad strike in the Northeast, and perhaps spreading to the rest of the Nation.

Mr. Speaker, the joint resolution before the House resolves a labor dispute that continues to threaten the continuity of rail service in the Northeast. This dispute has exhausted the procedures of the Railway Labor Act and continues to be unresolved, despite remaining at issue for over 2 years.

At this point in time, the parties are far from agreement. In August, the Congress passed House Joint Resolution 683 which extended the status quo for an additional 60 days and created a three member board to study and make recommendations on the dispute. It was the hope then that extension of the status quo would avert precipitous action and would encourage the parties to settle their differences. Unfortunately, the parties were unable to come to agreement. In accordance with the terms of the joint resolution, the Board made its report to Congress on September 8, recommending that the proposals of the Presidential Emergency Board be adopted.

The resolution before the House does just that. Of course, the parties are free to come to an agreement on their own initiative. While the Congress should be reluctant to intervene in a private dispute, the threat of a shutdown in rail service is very real and could impact the industry nationwide. Accordingly, I urge my colleagues to support this resolution.

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is important to acknowledge the contribution that the Maine delegation has made, and likewise a number of the members from the New York delegation and the Massachusetts delegation have been very supportive in a bipartisan way in helping to put this legislation together and bring it here in this expeditious fashion.

Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts [Mr. CONTE].

□ 1340

Mr. CONTE. Mr. Speaker, I rise in support of this resolution legislating a settlement between the Brotherhood of Maintenance of Way Employees and the Maine Central Railroad/Portland Terminal Co., which is a part of Guilford Transportation Industries. I particularly want to commend the gentleman from New Jersey [Mr. FLORIO] and the other members of the committee for their leadership in addressing this issue so promptly.

The terms of the settlement were established by a Presidential Emergency Board and were endorsed by a subsequent Congressional Advisory Board. This bill is necessary because Guilford has refused to accept the recommendations of these blue-ribbon panels. Guilford has time and time again resisted the Brotherhood's efforts to peacefully resolve the dispute. Unfortunately, there is now no choice but for Congress to intervene.

After 2 years of unproductive contract mediation, the Maine Central employees struck in March of this year. Secondary picketing of Guilford's other two railroads, the Boston and Maine and the Delaware and Hudson, occurred in April and affected over 1,400 union employees as well as countless shippers who relied on Guilford railroads to transport their products. Of special concern to me were the more than 350 employees in western Massachusetts on the Boston & Maine, who were idled by this dispute in Maine. In May, secondary picketing occurred at Conrail and threatened

the operation of America's entire rail system. A 60-day cooling off period was mandated and the President established an Emergency Board to investigate the dispute. In July, legislation that I cosponsored was enacted to mandate the appointment of a Congressional Advisory Board to further review the dispute, and to extend the cooling off period for another 60 days. That period ended last Friday, September 19.

The provisions of this resolution are very close to Guilford's own settlement offer in March, which the railroad now refuses to honor. Passage of the resolution would mean the implementation of the Boards' recommendations, including:

First, adherence to the national railway negotiations regarding rates for pay, healthcare, and welfare programs;

Second, work rule changes pursuant to the Railway Labor Act including mediation but excluding self-help measures such as strikes;

Third, severance pay of $26,000 per employee; and

Fourth, system production maintenance crew agreements for the Maine Central employees that are similar to those on Guilford's other two railroads.

Mr. Speaker, I cosponsored this resolution because I believe that those who negotiate in good faith—as the Brotherhood of Maintenance of Way Employees have done—deserve to be treated fairly. The Brotherhood, weeks ago, agreed to accept the recommendations of the Boards and has attempted to meet with Guilford several times. Guilford has disregarded the union's and the Boards' proposals long enough. The Brotherhood members have been subjected to months of financial instability and personal sacrifice. They have resisted a second strike thus far, notably limiting the disruption to interstate commerce which the Guilford dispute caused. Yet, Guilford's refusal to negotiate has disrupted the stability of Northeast rail traffic as shippers are forced to decline business or seek costlier means of transportation, and as other railroads are forced to reroute traffic that ought to move over Guilford's lines. Worst of all, Guilford has allowed a labor dispute in Maine to affect the lives and pocketbooks of laborers in western Massachusetts, New York, Pennsylvania, and Delaware.

I ask Congress to mandate that Guilford implement the reasoned and balanced settlement recommended by the two Boards, and urge the adoption of the resolution.

Mr. LENT. Mr. Speaker, I yield 4 minutes to the gentlewoman from Maine [Ms. SNOWE].

Ms. SNOWE. Mr. Speaker, I rise in strong support of Senate Joint Resolution 415, legislation bringing an end to the long and bitter Maine Central Railroad labor dispute.

Let me first express my great appreciation to my colleague from New Jersey [Mr. FLORIO] for his unfailing cooperation and swift action on this measure, to the gentleman from Kansas [Mr. WHITTAKER] and the gentleman from New York [Mr. LENT], who have been so instrumental in ensuring rapid consideration of this emergency legislation; and, of course, to Chairman DINGELL.

My colleagues, we are considering this legislation, which has the full support of the entire Maine congressional delegation, at a crucial point in time. Negotiations have reached an impasse, even though the union had agreed without hesitation to accept the settlement recommended by the Presidential Emergency Board and again by the Congressional Advisory Board.

Because of this impasse, with the expiration of the congressionally imposed cooling off period at midnight Thursday, no legal barriers prevent self-help measures being taken by either Guilford Industries, owners of Maine Central, or the Brotherhood of Maintenance of Way Employees.

Now, when the previous cooling off period expired, Guilford immediately promulgated a severe contract, one which the union obviously could not accept. Nonetheless, the BMWE withheld from exercising its right to strike for some 4 weeks while awaiting congressional and Presidential approval of the second cooling off period. It is unlikely and unfair that we should expect such lengthy unilateral forbearance in this instance.

Thus, we are faced with the prospect of a nationwide rail disruption, and no prospect of resolution of the labor-management dispute. Under these circumstances, we must take the steps specifically recommended by the Congressional Advisory Board: enact a legislative settlement to the dispute.

And, indeed, the legislation before us today addresses this dispute in a straightforward and fair fashion. It imposes the recommendations of not one, but two independently constituted emergency boards. The basis for these recommendations, I might point out to my colleagues, is an offer made originally by Guilford itself—one which the union agreed to, only to see Guilford reject its own proposal.

The legislation also provides for continuation of the cooling off period, and for binding arbitration of any unresolved issues within 30 days.

One key element of this legislation is the flexibility it provides for the disputing parties. If Guilford and the BMWE are able to reach a mutually satisfactory agreement following approval of this legislation, than that will supercede the provisions of this bill. As with earlier congressional approval of the cooling off period, we are today trying to resolve this situation while still allowing the collective bargaining process to work to the greatest extent possible.

What we are considering today, my colleagues, is neither novel nor without precedent. As recently as 1982 the Congress was forced to take a similar step. We acted decisively then in the face of a growing crisis; I believe the need is just as great to do so today.

Mr. Speaker, the freight and personal transportation services relied upon by millions across this Nation are at stake today. So, I strongly urge prompt passage of this legislation, and again thank my colleagues for their diligent and helpful action.

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, I rise in strong support of House Joint Resolution 728 offered by Mr. FLORIO, the distinguished chairman of the Subcommittee on Commerce, Transportation, and Tourism.

Although Congress should always be the court of last resort in labor-management disputes, I don't believe we really have any choice.

As many of you know, this issue has dragged on since March, without being solved despite two 60-day cooling off periods.

Congress simply could not adjourn this fall with the threat of a nationwide strike hanging over our heads.

Such a strike would involve more than the Maine Central, Boston & Maine, and Delaware & Hudson railroads in the Northeast.

It could spread to systems throughout the country, and it doesn't require that much imagination to think of the impact such a strike would have on our economy.

On the other hand, this legislation should bring this long-standing issue to a head in a way that is ultimately fair both to Guilford Industries and to the Brotherhood of Maintenance of Way Employees.

Specifically, this resolution implements the recommendations of the Presidential Board, first among them being binding arbitration on any unresolved issues.

This binding arbitration must be completed within 30 days.

I want to thank and commend the gentleman from New Jersey [Mr. FLORIO] and my good friend, the distinguished ranking minority member of the Energy and Commerce Committee, Mr. NORMAN LENT, for their work on this important piece of legislation.

□ 1350

Mr. LENT. Mr. Speaker, I yield 3 minutes to the gentleman from Maine [Mr. MCKERNAN].

Mr. MCKERNAN. Mr. Speaker, I rise in support of Senate Joint Resolution

415, a bill to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co., labor management dispute. The expeditious handling of this bill by the Committee on Energy and Commerce attests to its urgency.

I am extremely concerned, as are many other Members of this body, about the impact of the dispute between the Guilford railroad system and the Brotherhood of Maintenance of Way Employees [BMWE] in the Northeast and indeed the entire Nation. Although there has been some recent dialog between the two parties, an agreement remains elusive.

It is clear that the union has the legal and practical ability to initiate activities which could affect the national railway system. Therefore, because of concern that essential transportation services of the Nation may be disrupted by an escalation of this dispute, I believe that there is no alternative to congressional action to bring this dispute to an end.

Although the Congress has traditionally been reluctant to become unnecessarily involved in any specific collective bargaining process, there is precedent for congressional action in this regard, most notably the 1975 dispute involving the Norfolk-Southern Railroad in which Congress dictated specific wage levels.

While I support the collective bargaining process and have long felt that only those parties directly concerned should be involved, I do believe that it is incumbent upon the Congress to ensure that transportation systems essential to the commerce of this Nation remain open.

The legislation before us today imposes the recommendations made by a Presidential Emergency Board, recommendations later supported by a congressional advisory board established by legislation passed by this body less than 2 months ago. Not only have the provisions included in Senate Joint Resolution 415 been recommended by two independent panels after a thorough review of the issues, but aspects of the settlement provisions were offered by the railroad's management to the union 7 months ago.

Mr. Speaker, time is of the utmost importance. I believe that this legislation is fair and it provides an opportunity to put this dispute behind us. I therefore urge my colleagues to support this measure.

Mr. LENT. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of Senate Joint Resolution 415 (H.J. Res. 728), which imposes the recommendations of the emergency board created by President Reagan in the labor-management dispute involving the Maine Central Railroad Co. and the Portland Terminal Co. and the Brotherhood of Maintenance of Way Employees [BMWE]. I thank the distinguished gentleman from New Jersey [Mr. FLORIO] for his continued support of this vital measure. I also thank the gentleman from New York [Mr. LENT] for his enthusiasm and concern.

Reacting to gradual lay-offs of Maine Central track maintenance workers, BMWE began its dispute with the Guilford system in April 1984. After serving notice in April 1984 under the Railway Labor Act [RLA], the Brotherhood fell subject to a series of mandatory negotiations, all of which have failed. The parties to this action were further subject to two 60-day cooling off periods in which they were to maintain the status quo.

As these periods came to a close, the specter of secondary strikes became more prominent. In response to this threat, the President established an emergency board to investigate the dispute. The emergency board reported to Congress in the form of a series of recommendations, and set an October 1, 1986, deadline for the settlement of issues. If no agreement could be reached, these issues would be subject to final and binding arbitration.

Their recommendations would provide protection up to $26,000 for active employees, would further permit Guilford to establish systemwide maintenance production crews, and of heightened significance, would require all residuary issues to be settled by national negotiations.

Needless to say, the broad implications of this dispute place the northeastern, and possibly our national rail system, in jeopardy and further place BMWE workers in a precarious financial position. Of course, at any time the parties are free to initiate and implement their own agreement. But at this time, congressional action is strongly suggested as an interim measure until such self-initiated agreement can be reached.

The status quo period imposed by House Joint Resolution 683 expired last Thursday, and thus leaves the parties free from legal structures, and opens wide the possibility of utilizing self-help measures. The repercussions of such action are indeed serious. Thus, I urge my colleagues to join me in supporting Senate Joint Resolution 415, as a necessary interim measure in preventing interruption of rail services and creating financial instability for railway workers and their families.

Mr. LENT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FLORIO. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DURBIN). The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO] that the House suspend the rules and pass the Senate joint resolution (S.J. Res. 415).

The question was taken: and (two-thirds having voted in favor thereof) the rules were suspended and the Senate joint resolution was passed.

A motion to reconsider was laid on the table.

A similar House bill (H.J. Res. 728) was laid on the table.

GENERAL LEAVE

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous matter on the Senate joint resolution just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS, IN THE ENGROSSMENT OF SENATE JOINT RESOLUTION 415

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that in the engrossment of the Senate joint resolution (S.J. Res. 415), the Clerk be authorized to correct section numbers, punctuation, and cross references, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in passing this resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

RISK RETENTION AMENDMENTS OF 1986

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5225) to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes.

The Clerk read the title of the bill.

Mr. FLORIO. Mr. Speaker, I withdraw my motion and reoffer the bill with the committee amendment.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. FLORIO] withdraws his motion.

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5225) to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes as amended.

The Clerk read as follows:

H.R. 5225

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. REFERENCES IN THE ACT.

Whenever in this Act an amendment is expressed in terms of an amendment to a section, the reference shall be deemed to be a reference to the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 et seq.), unless otherwise provided.

SEC. 3. COVERAGE OFFERED BY RISK RETENTION GROUPS.

(a) EXPANSION OF COVERAGE.—Section 2(a) (15 U.S.C. 3901(a)) is amended—

(1) by striking paragraphs (1) and (3),

(2) by redesignating paragraph (2) as paragraph (1), and

(3) by inserting after paragraph (1), as so redesignated, the following new paragraphs:

"(2) 'liability'—

"(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

"(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

"(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

"(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

"(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);".

(b) DEFINITIONS.—Such section is further amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

"(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims, or

"(B) to pay other obligations in the normal course of business.".

SEC. 4. REQUIREMENTS RELATING TO RISK RETENTION GROUPS AND PURCHASING GROUPS.

(a) CHARACTERISTICS OF RISK RETENTION GROUPS AND THEIR MEMBERS.—(1) Section 2(a)(4) (15 U.S.C. 3901(a)(4)) is amended by striking "taxable as a corporation, or as an insurance company,".

(2) Subparagraph (A) of such section is amended by striking "product liability or completed operations liability risk exposure" and inserting "liability exposure".

(3) Subparagraph (C) of such section is amended to read as follows:

"(C) which—

"(i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any State, or

"(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986);".

(4) Such section is further amended—

(A) by striking "and" at the end of subparagraph (D), and

(B) by striking subparagraph (E) and inserting the following new subparagraphs:

"(E) which—

"(i) has as its members only persons who have an ownership interest in the group and which has as its owners only persons who are members who are provided insurance by the risk retention group; or

"(ii) has as its sole member and sole owner an organization which is owned by persons who are provided insurance by the risk retention group (hereinafter in this section referred to as 'secondary owners');

"(F) whose members or secondary owners are engaged in businesses or activities similar or related with respect to the liability to which such members or secondary owners are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations,

"(G) whose activities do not include the provision of insurance other than—

"(i) liability insurance for assuming and spreading all or any portion of the liability of its group members or secondary owners; and

"(ii) reinsurance with respect to the liability of any other risk retention group (or any members or secondary owners of such other group) which is engaged in businesses or activities so that such group or member or secondary owner meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

"(H) the name of which includes the phrase 'Risk Retention Group'.".

(b) CHARACTERISTICS OF PURCHASING GROUPS.—Section 2(a)(5) (15 U.S.C. 3901(a)(5)) is amended to read as follows:

"(5) 'purchasing group' means any group which—

'(A) has as one of its purposes the purchase of liability insurance on a group basis;

"(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

"(C) is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

"(D) is domiciled in any State;".

SEC. 5. CONCERNING SCOPE OF EXEMPTIONS RELATING TO RISK RETENTION GROUPS.

(a) IN GENERAL.—Section 3(b) (15 U.S.C. 3902(b)) is amended to read as follows:

"(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

"(1) liability insurance coverage provided by a risk retention group for—

"(A) such group; or

"(B) any person who is a member of such group;

"(2) the sale of liability insurance coverage for a risk retention group; and

"(3) the provison of—

"(A) insurance related services;

"(B) management, operations, and investment activities; or

"(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.".

(b) PLANS OF OPERATION, FEASIBILITY STUDIES, AND FINANCIAL STATEMENTS.—Section 3 (15 U.S.C 3902) is further amended—

(1) in subsection (a)(1)—

(A) by striking subparagraph (D) and redesignating subparagraphs (E), (F), and (G) as subparagraphs (D), (E), and (F), accordingly; and

(B) by striking all that follows after "documents or process" in subparagraph (D) (as redesignated) and inserting a semicolon; and

(2) by adding at the end of such section the following new subsection:

"(d) Each risk retention group shall submit—

"(1) to the insurance commissioner of the State in which it is chartered—

"(A before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

"(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

"(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

"(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

"(B) a copy of any revisions to such plan or study, as provided in paragaph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

"(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

"(A) a member of the American Academy of Actuaries, or

"(B) a qualified loss reserve specialist.".

(c) EXAMINATION OF FINANCIAL CONDITION.—Section 3(a)(1)(E) (as redesignated by subsection (b)) is amended—

(1) by striking clause (i);

(2) by redesignating clause (ii) as clause (i); and

(3) by adding at the end the following new clause:

"(ii) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;".

(d) COMPLIANCE WITH DELIQUENCY PROCEEDING ORDERS.—Section 3(a)(1)(F) (as redesignated by subsection (b)) is amended to read as follows:

"(F) comply with a lawful order issued—

"(i) in a delinquency proceeding commenced by the State insurance commission-

er if there has been a finding of financial impairment under subparagraph (E); or

"(ii) in a voluntary dissolution proceeding;".

(e) ADDITIONAL STATE LAW REQUIREMENTS.—Section 3(a)(1) (15 U.S.C. 3902(a)(1)) is further amended by adding at the end the following new subparagraphs:

"(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

"(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

"(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

" 'NOTICE

" 'This policy is issued by your risk retention group Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.' ".

SEC. 6. ADDITIONAL REQUIREMENTS RELATING TO PURCHASING GROUPS.

Section 4 (15 U.S.C 3903) is amended by adding at the end the following new subsections:

"(d)(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

"(A) shall identify the State in which such group is domiciled;

"(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

"(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

"(D) shall identify the principal place of business of the group.

"(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

"(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

"(1) which—

"(A) was domiciled before April 1, 1986; and

"(B) is domiciled on and after the date of the enactment of this Act,

in any State of the United States;

"(2) which—

"(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State, and

"(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

"(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

"(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

"(f) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.".

SEC. 7. CONCERNING AUTHORITY OF STATES TO ENJOIN CERTAIN CONDUCT.

Section 3 (15 U.S.C 3902), as amended by section 5(b) of this Act, is further amended by adding at the end the following new subsection:

"(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

"(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.".

SEC. 8. ADDITIONAL CLARIFICATION OF PERMISSIBLE STATE AUTHORITY.

(a) CLARIFICATION OF STATE AUTHORITY RESPECTING RISK RETENTION GROUPS.—Section 3 (15 U.S.C. 3902), as amended by sections 5(b) and 6 of this Act, is further amended by a adding at the end the following new subsections:

"(f)(1) Subject to the provisions of subsection (a)(1)(G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

"(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

"(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

"(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interst in a risk retention group whose members are insurance companies.".

(b) CLARIFICATION OF STATE AUTHORITY RESPECTING PURCHASING GROUPS.—Section 4 (15 U.S.C. 3903), as amended by section 6 of this Act, is further amended—

(1) in subsection (a), by inserting "and section 6" after "section"; and

(2) by adding at the end the following new subsections:

"(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this Act.

"(h) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court."

(c) OTHER CLARIFICATION.—The Act is further amended by adding at the end the following new section:

"CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

"SEC. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

"(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

"(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide coverage prohibited by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

"(d) Subject to the provisions of section 3(a)(4) relating to discrimination, nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

"(e) Nothing in this Act shall be construed to preempt the authority of a State to specify acceptable means for managing the liability of the State or its local governments (or any agency or political subdivision thereof). Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source, or through a broker, agent, purchasing group, or any other person.".

SEC. 9. INJUNCTIVE POWERS OF FEDERAL COURTS.

The Act, as amended by section 7(c) of this Act, is further amended by adding at the end the following new section:

"INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS

"SEC. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents, and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.".

SEC. 10. OVERSIGHT OF IMPLEMENTATION; REPORT TO CONGRESS.

(a) IN GENERAL.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups; and

(5) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

SEC. 11. EFFECTIVE DATE: APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment; and

SEC. 12. TECHNICAL AND CONFORMING AMENDMENTS.

(a) IN THE SHORT TITLE.—Section 1 (15 U.S.C. 3901, note) is amended to read as follows:

"SHORT TITLE

"SECTION 1. This Act may be cited as the 'Liability Risk Retention Act of 1986'."

(b) IN SECTION 2(b).—Section 2(b) (15 U.S.C. 3901(b)) is amended by striking "product liability and product liability insurance" and inserting "liability, personal risk liability, and insurance".

(c) IN SECTION 4(b).—Section 4(b) (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability of completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages," and inserting "liability insurance"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

The SPEAKER pro tempore. Is a second demanded?

Mr. LENT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. FLORIO] will be recognized for 20 minutes and the gentleman from New York [Mr. LENT] will be recognized for 20 minutes.

The Chairman recognizes the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5225, the Liability Risk Retention Act of 1986, is an important bill with desirable objectives. Mr. WYDEN and Mr. LENT are to be commended for the leadership they have provided on this issue.

The liability insurance crisis has produced many complaints to Congress. But because of the tradition of State responsibility for insurance, many are reluctant to have the Federal Government become involved.

One of the problems with State regulation, however, is the lack of uniformity and the obstacles some States have created for self-insurance groups and purchasing groups. This seems particularly unfortunate when traditional insurance is not available in many cases, yet businesses are prevented from self-help.

A consensus has developed, therefore, that Congress should act to help the States do what they cannot do for themselves. Congressional action is intended to help create some uniformity and remove obstacles created for risk retention groups by some States. I have sought to ensure that we avoid placing unjustified burdens on risk retention groups. I have also sought to ensure that the public is protected from commerical abuses. For example, the bill makes clear the authority of all the States to prevent commercial abuses such as deception and to intervene in a timely fashion to stop the operation of financially troubled risk retention groups.

The risk retention approach is worthwhile in creating alternatives and competiton that were not previously available. We should never be caught again in a situation where we have put all our insurance eggs in one basket.

At the same time, everyone realizes that the Risk Retention Act is not a cure-all. For example, not everyone will find the risk retention approach cost-effective. The unavailability of reinsurance and general economic instability will still cause difficulties.

For these reasons, it is important that we not conclude that there is nothing else that needs to be done. The Risk Retention Act itself may very well need fine tuning, as we see how it works in practice. Beyond that, we must work to improve the insurance climate for everyone, including risk retention groups. That means exploring ways—especially at the State level—of increasing reinsurance availability, protecting against the consequences of insolvency, obtaining better data on claims, improving risk abatement, and stabilizing interest rates.

Today is a beginning, and I congratulate my colleagues, Mr. LENT and Mr. WYDEN, for bringing us to this point.

I will now provide a brief description of the details of this legislation.

Legislation similar to the current bill, but limited to product liability and completed operations liability insurance, was enacted in 1981 as the Product Liability Risk Retention Act of 1981, Public Law 97-45. The 1981 law preempted certain State laws and regulations that tended to inhibit the formation of product liability risk retention groups and purchasing groups.

The current legislation expands the scope of this preemption to enable risk-retention and purchasing groups to provide not only product liability insurance, but all types of liability insurance, as defined in the bill. With respect to risk retention groups, the 1981 law contemplated that the State in which the group was chartered would retain its authority to regulate the group, while nonchartering States would have more limited regulatory authority. The current legislation retains this distinction, but augments the authority of nonchartering States to regulate solvency, trade practices and other matters.

Finally, because of the unique approach of the current legislation as far as Federal involvement with insurance is concerned and because of the yet to be tested removal of certain State regulatory provisions by the bill, it was believed important that Congress monitor closely the implementation of this legislation. Accordingly, H.R. 5225 requires the Secretary of Commerce to submit reports on implementation of the law to Congress in 1987 and 1989. The reports are to address such issues as whether the law helps resolve the insurance availability crisis and whether, in implementation of the law, the public is protected from unsound financial practices and other commercial abuses.

We in Congress will be monitoring these issues closely and expect the reports of the Secretary of Commerce to provide us with an additional tool for ensuring that the implementation of the risk retention legislation serves the public interest.

Mr. Speaker, I reserve the balance of my time.

Mr. LENT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all I want to commend the gentleman from New Jersey [Mr. FLORIO], for acquiescing to and supporting this legislation. It has been a long hard road for the gentleman from Oregon [Mr. WYDEN], the cosponsor of this legislation, and I. I do not think we could have been as successful as we have been, at least up to this point, had it not been for the guidance and support that was given to us by the gentleman from New Jersey [Mr. FLORIO]. In the same breath, Mr. Speaker, I do want to pay tribute to the gentleman from Oregon [Mr. WYDEN] for his leadership and his tenacity. Without those two qualities, which he has demonstrated time and again during the legislative process on this bill, I do not think we

would have reached the high plateau which we find ourselves on this afternoon.

Mr. Speaker, a liability horror story makes the news nearly every day—Roosevelt Island residents unable to use the Tramway, their main link to Manhattan; summer recreation programs curtailed or cancelled in Oregon; and Head Start centers forced to close in North Dakota and Texas. Many businesses cannot find insurance or they cannot afford it. If this crisis continues unchecked, literally every American will have been touched by it within a few short years.

The last liability crisis we faced as a Nation was in the late 1970's. However, it was generally limited to product manufacturers and distributors. In response to that crisis, Congress, enacted the Product Liability Risk Retention Act of 1981, which enabled product manufacturers, sellers, and distributors to pool their resources and self-insure. The law has been a boon to certain highly motiviated groups like homebuilders and wholesalers.

Clearly, the current crisis is a national problem of equal importance to that we faced in 1981. It too requires responsible Federal action, which should be taken rapidly. I believe that H.R. 5225, the Liability Risk Retention Act of 1986, which Congressman WYDEN and I introduced, provides such responsible action.

H.R. 5225 would allow individuals and businesses to pool together to form their own insurance cooperatives. It would also allow commercial insurance to be purchased on a group basis. The legislation stipulates that members of risk retention and purchasing groups must have similar liability. This will protect members from assuming unnecessary—and potentially costly—insurance risks. For example, nurses and nurse-midwives could pool together, but race car drivers and termite exterminators could not. To safeguard against potential abuse, each State insurance commissioner is provided authority to protect the public from any fly-by-night operations.

Without such legislation, current law requires groups wishing to issue general liability policies in more than one State to conform to each State's insurance regulations and financial requirements. This regulatory maze effectively prohibits the formation of risk retention groups. H.R. 5225, would provide a desperately needed alternative to the conventional insurance market, by allowing risk retention and purchasing to operate nationwide.

With Congress adjourning in a few weeks, it is time for the House to act. It would be a shame if this opportunity for consumer relief was lost in the thicket of the preadjournment House agenda.

No one pretends that risk retention and purchasing groups are a panacea. In this troubled time, however, it may be both the most and the least we can do.

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Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, as a cosponsor and advocate of this measure, I rise in strong support of H.R. 5225, the Product Liability Risk Retention Act of 1986, and I thank and commend my colleague from New York [Mr. LENT], the gentleman from Oregon [Mr. WYDEN], and the distinguished chairman of the subcommittee, Congressman from New Jersey [Mr. FLORIO] for the leadership they have provided on this vital issue.

The liability insurance crisis is one of the most pressing problems facing the 99th Congress. American businesses, professionals and municipalities, both large and small, are encountering three problems: availability of insurance, affordability of insurance coverage and adequacy of coverage. Manufacturers, doctors, nurses and nurse-midwives, restaurants and bars, mayors county executives, school boards, recreational centers, lawyers, retailers, and others throughout my congressional district have all contacted me to express their concern for the extent of the liability crisis and emphasize the importance of Federal action. Premiums for all types of insurance have skyrocketed over the last few years, many insurance policies upon renewal offer reduced coverage with higher deductibles, and some insurance seekers cannot find a company to insure them. The insurance crisis adversely affects not only those who are insured, but everyone, since these increasing premiums are eventually passed on to the consumer.

The legislation before us today will not solve all of these problems. The answer to the insurance crisis is complex and will require the insurance companies, trial lawyers, small business and municipal leaders, and consumer groups to work together to seek a solution satisfactory to all interested parties. In the interim, however, H.R. 5225 is a good short term solution for those who cannot find insurance, or who have to pay exorbitant premiums, to join with others with similar insurance needs and form risk retention groups. These groups can self-insure themselves at a relatively low cost, and function until a consensus is reached on how to resolve the liability crisis. This legislation is long overdue and is desperately needed by many who are presently operating without insurance, or who are woefully underinsured. Accordingly, I urge my colleagues to support suspending the rules and adopting H.R. 5225, thereby taking the first major legislative step in resolving the insurance crisis.

Mr. FLORIO. Mr. Speaker, I yield 5 minutes to the chief sponsor of the legislation, the gentleman from Oregon [Mr. WYDEN].

Mr. WYDEN. Mr. Speaker, first of all, I want to commend my two friends, the gentleman from New Jersey [Mr. FLORIO], and the gentleman from New York for getting us to this point today. The gentleman from New Jersey is, of course, one of the country's leading consumer advocates and, in my view, the reigning authority on insurance law on the Hill. I want to thank the gentleman for all his help in getting us here. The gentleman and his staff have an enormously busy schedule, and they made a great deal of time available to hammer this legislation out. I want to thank the gentleman at this time.

I want to also thank the gentleman from New York, who I have worked with so often on the Commerce Committee. I do not think anyone has an ability to help us on the Commerce Committee bring together a consensus so we can pass a piece of legislation better than the gentleman from New York. I just want to tell the gentleman it is always a pleasure to work with him.

Mr. Speaker, when this session began, every Member of this body got an avalanche of letters, calls, questions, and concerns about the high cost of liability insurance. And it really hasn't let up for a minute. Here we are in the last days of the session, and the bill before us is the one bill we've got that can help consumers fight high insurance costs—and still get signed by the President before this session comes to an end.

It's self-help measure that will give some bargaining power to the day-care centers, nurse-midwives, truckers, restaurants, small businesses, and other insurance consumers. The Federal role remains limited in this bill. It doesn't repeal the McCarran-Ferguson Act. It doesn't create any new bureaucracies, and it won't cost the Federal Government anything.

Groups that are priced out of the current market would benefit from this act in two important ways. First, this legislation would give a group sharing similar risks the opportunity to set up their own insurance cooperative. This cooperative would be chartered in one State and be able to operate nationwide under one set of rules. Because the establishment of an insurance cooperative is beyond the ability of certain groups, this legislation provides a second option. This second option would allow a group of insurance consumers with similar risks to pool their buying power and form a purchasing group that could find group coverage with a traditional insurance company. Both of these options would give insurance consumers greater leverage in the marketplace.

There has been some discussion about whether this legislation sufficiently protects consumers. In fact, State insurance commissioners will have more tools to protect consumers in a risk retention group under this bill than they do under more traditional forms of

insurance. These consumer protection measures are not meant to be used arbitrarily to frustrate the formation and operation of risk retention and purchasing groups. Under these provisions, a State should be able to protect the public without unduly hindering the operation of these groups.

Under this legislation, State insurance commissioners may go into a Federal court to enjoin any risk retention group from selling insurance if it is including ineligible parties, or is in danger of becoming insolvent. A commissioner may seek a nationwide order to shut down a group that should not be selling insurance. A commissioner could not do this to an insolvent traditional insurance company.

Also, these groups must file annual financial and loss reserve statements verified by outside accountants and actuaries. They must file these reports in the chartering State and send copies to any State in which the group is doing business. Only a handful of States require this third party verification of financial reports for traditional insurance firms.

In order to be chartered in any State, a risk retention group will have to file a plan of operations in that State. In addition, the group must also send a copy of that plan of operations to any State in which it will do business.

State commissioners can require these groups to participate in assigned risk pools, and to comply with State laws regarding deceptive, false, or fraudulent acts and practices.

This legislation provides that only persons who are members of the risk-retention group may have an ownership interest in the group. Alternatively, an organization comprised of insureds may be the sole member and owner of the risk-retention group. This type of indirect member ownership is found in presently operating risk-retention groups, and future groups may chose to form along the same lines. The intent of this section is to ensure that ownership is closely tied to the members served rather than to outside interests.

For purchasing groups that offer group policies for their members through a conventional insurance company, this legislation also requires that the groups be domiciled in the United States. In addition, the bill requires that purchasing groups notify the insurance commissioner in any State in which they intend to do business. This notification must include certain information about the group and its insurer. Purchasing groups must also designate the insurance commissioner as the agent for service of legal process.

This legislation is no cure-all, but it's a strong step in the right direction. Similar legislation has already passed the Senate by an overwhelming margin. The administration has indicated that it is in favor of risk-retention legislation. The White House Small Business Conference called on Congress to pass H.R. 5225. Our constituents have demanded that Congress act. Let's go home with something consumers can do to fight the high cost of liability insurance. This bill is it.

I thank my colleagues again, particularly the gentleman from New Jersey and the gentleman from New York, for getting us to this point.

Mr. FLORIO. Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, first I would like to commend the gentleman from New Jersey for the great leadership the gentleman has shown on this bill and on the entire issue of liability insurance.

I think today's bill is a very good one, a very necessary one. In a sense, it is an expansion on the Product Liability Risk Retention Act of 1981. That was an initiative authored by the chairman of the subcommittee, the gentleman from New Jersey. It is one bill that is very close to the bill that I originally introduced in 1978 dealing with the subject of product liability risk retention.

While today's bill is a very good one, I want to urge my colleagues not to rest on their laurels in passing today's legislation. It is necessary, it is a Band-aid, but it is not adequate to meet the appropriate Federal responsibility in dealing with the entire subject of the liability insurance crisis.

I do not think that we need much greater scrutiny of the insurance. I do think we need much greater data from the insurance industry in a central place within the Federal Government where it can be meaningful, relevant and useful.

I do think that appropriate regulation of the insurance industry in some instances is beyond the capacity of the individual States. I do think that we should be examining the appropriate role for other financial institutions in the subject of insurance, even if it is limited lines of insurance such as commercial lines as opposed to personal; even if it is reinsurance; as opposed to primary insurance.

We surely should be giving much closer scrutiny than we have to the whole subject of McCarran-Ferguson. We have had two Presidential commissions that have reviewed this subject, and both have said that McCarran-Ferguson is in need of considerable modification, if not repeal.

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I also believed that we probably should at some point in time, I am not suggesting that we ever will; certainly not in this Congress, have some Federal insurance commission because insurance is such an integral part of everyday life, of national life, of international life. It is beyond the capacity of the States.

I do not leave out either the appropriate type of tort reform. Not the type of tort reform being advocated by the Reagan administration; not the type of tort reform being advocated by the insurance industry, but a type of tort reform that recognizes that there are certain issues that are national or international in scope, that require uniformity, predictability, and certainty and for which there, perhaps, should be balanced Federal legislation.

Until we get to that point in time, today's legislation is the only legislation we can pass. It is an excellent bill; all should support it.

Mr. DAUB. Mr. Speaker, the risk-retention legislation before us today is an important first step in dealing with the liability insurance crisis. I commend the authors of this legislation and the members of the Committee on Energy and Commerce for reporting the bill.

To be sure, the expansion of risk-retention groups and purchasing groups will provide for more affordable insurance in the short term. Nonetheless, the long-term trends in terms of the cost of our tort system will continue to threaten the viability of these groups just as it will continue to raise the cost of all commercial liability coverages. We must recognize that while important, risk-retention legislation is not a simple solution to the complicated liability insurance availability and affordability problem.

While the first risk-retention legislation, the Product Liability Risk Retention Act of 1981, has had a positive effect in some cases, it certainly has not slowed growing national concern about the dramatic increases in the cost of product liability coverage. Rather, increasing caseloads and expanding concepts of tort liability continue to exert pressure on the cost of the tort system in this area. For instance, between 1974 and 1985, product liability cases filed in Federal district courts increased from 1,579 to 13,544—a 758-percent increase.

The long-term solution to this liability insurance crisis will have to include significant tort reforms in the product liability and other liability areas. During the 100th Congress, I hope that this body will make a concerted effort to establish necessary Federal tort reforms and to work with the States in providing some minimal safeguards to make the tort system more efficient.

I would also like to note that the committee included in this risk-retention legislation, certain important reporting requirements such that States can properly review the financial condition of risk-retention groups. Nothing can be more important in this process of exempting certain groups from State regulation, than mandatory reporting requirements which will help insure the financial stability of these groups. I would thus urge the committee to regularly conduct oversight hearings with respect to this issue to make sure that States have adequate information to protect the interests of the participants in those groups.

Mr. MILLER of California. Mr. Speaker, today I rise in support of H.R 5225, the Liability Risk Retention Act of 1986, which amends the Product Liability Act to allow businesses and individuals to form groups in order to facilitate purchase of liability insurance.

This is a necessary and timely bill.

Last year, the Select Committee on Children, Youth, and Families, which I am privileged to chair, held hearings to investigate the crisis in availability and affordability of insurance for child care providers. Since it began last summer, this crisis has grown, extending

the foster care, schools, Head Start Programs, and well-established, youth-serving agencies.

The burdens placed on these agencies have been unacceptable.

In June, at a California hearing, chaired by the State insurance commissioner, it was learned that until recently, 32 YMCA's in Orange County paid, altogether, $2,800 for liability coverage, Now, with lower claims limits, they must pay more than $80,000. What could justify such an outrageous increase?

According to the California Insurance for Child Care Project, 374,000 California youngsters are in child care facilities, including family day care homes. The mayor of Los Angeles, Tom Bradley, estimated in June that 70 percent of these were going without insurance because rates are so high.

We need a better approach.

The voluntary market assistance plan in California, Cal Care, clearly isn't working. The Los Angeles Times reported that of 473 applicants, out of the thousands without insurance, only 84 policies had actually been written under the plan as of June 1986, because many child care providers still cannot afford the rates being offered.

As alarming is the loss of liability insurance for foster care parents, who are often the last resort for children abused, neglected, or thrown away. The situation became so severe in California that foster care parents statewide went on strike, refusing to accept any more children until the State provided assistance with liability insurance.

In my own district of Contra Costa County, there are currently only 450 foster homes for 850 children. The county is concerned about the effect that the rising cost of liability insurance is having on the supply of foster care homes. According to the director of the county social services department, more foster parents are being lost by the county each year than are being gained. The county was able to pay for coverage for foster parents before the cost became so prohibitive.

In addition, it has been estimated that half of the 2,000 family day care providers in Contra Costa County are operating without insurance, and forcing parents to sign waivers of provider liability.

According to the Diablo Valley Day Care Providers Association, 35 family day care providers have shut down strictly because they couldn't afford the insurance.

During the past year, the Children's Foundation and the National Association for the Education of Young Children released their own surveys of child care centers and family day care homes nationwide. Similar to the findings of the select committee, they concluded that there is no actuarial basis for the cancellations or increases in premiums.

H.R. 5225 is a responsible, important action that Congress can take to alleviate some of the crisis, and I urge my colleagues to support it.

But we will need to continue our efforts on all fronts. We look to the States, which have the authority to regulate the insurance industry, for a responsible solution to this growing problem. We also await a responsible, voluntary response from the insurance industry itself. But time is running out.

There have been a few noteworthy attempts to solve the availability problem, but when it comes to cost, we've been told to wait and see.

American families, who depend on child care to go to work, to finish school, or to relieve daily stress, cannot wait another 2 or 3 years for the historical cycle in the insurance industry to correct itself. They need dependable and safe child care now. Foster care children should be guaranteed a safe and secure place to live.

The bill we are voting on today will address this crisis by enabling child care centers, family day care homes, foster parents, and other agencies which provide services to children and families to join together to purchase liability insurance on a group basis. Without this legislation, many States will continue to preclude these essential children-serving organizations from forming self-insurance cooperatives at all, and the insurance they need to protect the families they serve will remain out of their reach.

Mr. PICKLE. Mr. Speaker, I rise today in support of H.R. 5225, the Liability Risk Retention Act of 1986.

This legislation would expand the Product Liability Risk Retention Act of 1981 to make it easier for people who are unable to get general liability insurance at a reasonable price to group together to obtain this insurance coverage. Thus, the bill would help businesses, professionals, associations, State and local governments, and other organizations to form purchasing groups and self-insurance cooperatives for general liability coverage.

As chairman of the Subcommittee on Oversight of the Committee on Ways and Means, I conducted 4 days of hearings this past March on the liability insurance crisis.

I do not think that I exaggerate that those hearings are the most comprehensive ones held in this Congress. I concluded that the current insurance situation is in a crisis state and can only be solved through a four-pronged approach.

Any solution must include consideration of: First, some minimum Federal rules, such as expanding self-insurance; second, tighter State administrative and regulatory rules to ensure that consumers' concerns in the various States are addressed; third, a responsive insurance industry, including full disclosure of insurance profits, losses, and pricing strategies, as well as fourth, changes in the tort law and judicial process. We will only make headway with the insurance crisis when the Federal Government, the States, the insurance industry, and the lawyers and judges participate in a four-pronged solution. Jurisdiction should still be retained by the States.

I applaud my colleagues' efforts in providing a comprehensive solution in the area of self-insurance. While an important step forward, there is much work that remains undone. I urge each Member to vote in favor of the legislation before us. And let us continue to work together to further resolve the liability insurance crisis all Americans face today.

Mr. FLORIO. Mr. Speaker, I yield back the balance of my time.

Mr. WHITTAKER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO] that the House suspend the rules and pass the bill, H.R. 5225, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. FLORIO. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce be discharged from further consideration of the Senate bill (S. 2129) to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2129

Be it enacted by the Senate and House of Represenatatives of the United States of America in Congress assembled, That this Act may be cited as the "Risk Retention Amendments of 1986".

SEC. 2. Section 1 of the Product Liability Risk Retention Act of 1981 (hereinafter referred to as "the Act") (15 U.S.C. 3901, note) is amended—

(1) by striking "Product"; and

(2) by striking "1981" and inserting in lieu thereof "1986".

SEC. 3. (a) Section 2(a) of the Act (15 U.S.C. 3901(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) 'financially impaired' means that a risk retention group does not meet the minimum capital or surplus requirements, or both, of the State in which such group is chartered, or that such group has incurred losses that will deplete all or substantially all of its capital or surplus, or both, unless there is a reasonable prospect for replenishment of such capital or surplus, or both;";

(2) by striking paragraph (3), and by redesignating paragraph (2) as paragraph (3);

(3) by inserting immediately after paragraph (1), as amended by paragraph (1) of this subsection, the following:

"(2) 'hazardous financial condition' means a risk retention group that is not able or will not be able to (A) meet its obligations to its policyholders regarding known claims and reasonably estimated expected claims, or (B) pay its other obligations in the normal course of business, and there is no reasonable prospect for it to do so;";

(4) by redesignating paragraphs (4) through (6) as paragraphs (7) through (9), respectively;

(5) by inserting after paragraph (3), as so redesignated, the following:

"(4) 'liability insurance' means insurance covering an organization's legal liability for damages because of injuries to other per-

sons, damage to their property, or other loss or damage to such other persons arising out of its business, trade, products, services (including professional services), premises, or operations, but does not include (A) personal risk insurance or (B) workers' compensation and employers' liability insurance;

"(5) 'organization' means any association, business, corporation (whether for-profit or not-for-profit), professional corporation or partnership (including individual practitioners with respect to their business or professional activities), church, hospital, school, university, or other institution, or a State or local government (or agency of such a government);

"(6) 'personal risk insurance' means homeowners, tenant, private passenger non-fleet automobile, mobile home, and other liability and casualty insurance primarily for personal, family or household needs rather than for business or professional needs;";

(6) in paragraph (7), as so redesignated—

(A) by inserting "any group of units of local government or agencies thereof, or" immediately after "means";

(B) by striking ", Bermuda, or the Cayman Islands";

(C) in subparagraph (A), by striking "Product liability or completed operations";

(D) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively, and by inserting immediately after subparagraph (C) the following:

"(D) whose activities do not include the provision of any insurance except the insurance described in subparagraph (A) and reinsurance with respect to the risks of its own members or organizations whose businesses are similar or related with respect to the nature of their exposure to the risk of liability, as provided in this paragraph;

"(E) whose activities, subject to the limitations of subparagraph (B) of this paragraph, are permitted to such a group by the laws of its domicile, including management, operations, insurance and investment activities and the provision of loss control and claims administration (including loss control and claims administration services for uninsured risks retained by members of the group);";

(E) in subparagraph (F), as so redesignated, by striking "and";

(F) by amending subparagraph (G), as so redesignated, to read as follows:

"(G) whose members, businesses or activities are similar or related with respect to the nature of their exposure to the risk of liability stemming from any business, trade, product, services, premises, or operations which are related, similar, or common to such members; and"; and

(G) by adding at the end thereof the following:

"(H) the name of which includes the phrase 'Risk Retention Group';"; and

(7) by amending paragraph (8), as so redesignated, to read as follows:

"(8) 'purchasing group' means any group of persons—

"(A) which has as one of its purposes the purchase of liability insurance on a group basis; and

"(B) whose members, businesses or activities are similar or related with respect to the nature of their exposure to the risk of liability stemming from any business, trade, product, services, premises, or operations which are related, similar, or common to such members; and".

(b) Section 2(b) of the Act (15 U.S.C. 3901(b)) is amended—

(1) by striking "produce liability and product"; and

(2) by inserting "and personal risk insurance" immediately after "insurance" the second time it appears.

(c) Section 2 of the Act (15 U.S.C. 3901) is further amended by adding at the end thereof the following:

"(c) Nothing in this Act shall be construed to exempt a group authorized under this Act from the policy form or coverage requirements of any State no-fault automobile insurance law.

"(d) The authority to offer or provide insurance under this Act is limited to liability insurance. This Act does not authorize a risk retention group to provide, or a purchasing group to purchase, any other line of insurance.

"(e) Insurance provided under this Act shall not be construed to authorize coverage of punitive damages or intentional, fraudulent, or criminal conduct, to the extent that any such coverage is either prohibited by statute or has been declared unlawful by the highest court of the State whose law is applicable to a coverage claim.".

SEC. 4. (a) Subsection (a)(1) (C) and (D) and subsection (b) (1) and (2) of section 3 of the Act (15 U.S.C. 3902(a)(1) (C) and (D) and (b) (1) and (2), respectively) are amended by striking "product liability or completed operations".

(b) Section 3(a)(1)(D) of the Act (15 U.S.C. 3902(a)(1)(D)) is amended to read as follows:

"(D) submit to the State insurance commissioner of each State in which it is doing business a copy of the group's annual financial statement submitted to the State in which the group is chartered or licensed as an insurance company, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves by a person with the minimum qualifications of an associate of the Casualty Actuarial Society, a member of the American Academy of Actuaries, or a qualified loss reserve specialist;".

(c) Section 3(a)(1)(F) of the Act (15 U.S.C. 3902(a)(1)(G)) is amended—

(1) by striking "if—" and inserting in lieu thereof "if";

(2) by striking (i);

(3) by striking "(ii)";

(4) by striking "and" the second time it appears; and

(5) by adding at the end thereof the following: "any such examinations shall be coordinated to avoid duplication and unjustified repetition;".

(d) Section 3(a)(1)(G) of the Act (15 U.S.C. 3902(a)(1)(G)) is amended—

(1) by striking "the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of" and inserting in lieu thereof "there has been";

(2) by adding immediately before the semicolon the following: ", or comply with a lawful order issued in a voluntary dissolution"; and

(3) by inserting "and" immediately after the semicolon.

(e) Section 3(a)(1) of the Act (15 U.S.C. 3902(a)(1)) is amended by adding at the end thereof the following:

"(H) comply with an injunction if such injunction was issued by a Federal or State court of competent jurisdiction, after notice and opportunity for a hearing and the issuance of findings of fact and conclusions of law, upon a petition by the State insurance commissioner alleging that the group is in a hazardous financial condition or is financially impaired;".

(f) Section 3 of the Act (15 U.S.C. 3902) is amended by adding at the end thereof the following:

"(d) Nothing in this section shall be construed to affect the authority of any Federal or State court, upon the petition of a State, to enjoin—

"(1) the solicitation or sale of insurance by a risk retention group to the public or any person who is not eligible for membership in such group;

"(2) false, deceptive or fraudulent acts or practices in the solicitation or sale of insurance to a member or a prospective member of a risk retention group, or other fraudulent conduct by any such group;

"(3) the solicitation or sale of insurance by, or the operation of, a risk retention group that is in a hazardous financial condition; or

"(4) the solicitation or sale of insurance by, or the operations of, a risk retention group that within the previous five years has been found to have engaged, or whose officers, organizers or directors have been found to have engaged, in knowing and willful false, deceptive, or fraudulent conduct in violation of this Act or any other law, under circumstances that present a reasonable likelihood that such violation will be repeated.

In any proceeding under paragraph (3) of this subsection, all relevant evidence shall be admissible to prove the financial condition of a risk retention group.

"(e) Before any group may operate as a risk retention group in any State, such group shall furnish to the insurance commissioner of that State and each other State in which the group intends to do business a plan of operation or feasibility study which includes the coverages, deductibles, coverage limits, rates and rating classification systems for each line or classification of liability insurance that the group intends to offer. After it is chartered to operate, the risk retention group shall revise such plan or study if it intends to offer any additional lines or classifications of liability insurance.".

SEC. 5. (a) Section 4(b) of the Act (15 U.S.C. 3903(b)) is amended—

(1) in paragraph (1), by striking "product liability or completed operations liability insurance, and comprehensive general" and "which includes either of these coverages,"; and

(2) in paragraph (2), by striking "product liability or completed operations insurance, and comprehensive general".

(b) Section 4(c) of the Act (15 U.S.C. 3903(c)) is amended by adding at the end thereof the following: "A purchasing group may not purchase insurance from a risk retention group that is not domiciled in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.".

(c) Section 4 of the Act (15 U.S.C. 3903) is amended by adding at the end thereof the following:

"(d) Nothing in this section shall be construed to affect the authority of any Federal or State court, upon the petition of a State, to enjoin—

"(1) the solicitation or sale of insurance by an insurer, agent or broker to the public or any person who is not eligible for membership in such group;

"(2) false, deceptive or fraudulent acts or practices by an insurer, agent or broker in the solicitation or sale of insurance to a member or a prospective member of a purchasing group, or other fraudulent conduct by any such group or its insurer, agent or broker;

"(3) the solicitation or sale of insurance to, or the operation of, a purchasing group underwritten by an insurer that is in a hazardous financial condition; or

"(4) the solicitation or sale of insurance to, or the operation of, a purchasing group underwritten by an insurer or marketed by agents or brokers who within the previous five years have been found to have engaged in knowing and willful false, deceptive, or fraudulent conduct in violation of this Act or any other law, under circumstances that present a reasonable likelihood that such violations will be repeated.".

SEC. 6. The Act (15 U.S.C. 3901 et seq.) is amended by adding at the end thereof the following:

"REQUIREMENTS OF CERTAIN INSURANCE POLICIES

"SEC. 6. Any insurance policy issued by a risk retention group shall state the following in 10-point type:

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

"ENFORCEMENT

"SEC. 7. (a) for purposes of enforcing this Act, if the insurance commissioner of any State has reason to believe that a risk retention group or purchasing group has engaged or is engaging in conduct subject to State law under this Act or in conduct in violation of this Act in that State, the commissioner may make use of any of the powers permitted under the laws of such State regarding insurers admitted to do business in that State, except that if a commissioner seeks an injunction against a risk retention group or purchasing group because of conduct in violation of section 3(d) or section 4(d) of this Act, the commissioner shall obtain an order for such injunction from a Federal or State court of competent jurisdiction.

"(b) Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or from operating, in any State or in all States upon a finding by such court that such group is in a hazardous financial condition in accordance with section 3(d)(3) of this Act. Such order shall be binding on such group, its officers, agents, servants and employees, and upon persons acting in active concert with any of them who have actual notice of such order.".

SEC. 7. This Act shall take effect on the date of its enactment, except that the provisions of section 3(e) of the Act, as added by section 4(f) of this Act, shall not apply to any line or classification of liability insurance (as defined in the Product Liability Risk Retention Act of 1981, as amended by this Act) which was offered on the day before such date of enactment by any risk retention group which has been chartered and operating for at least three years before such date of enactment.

MOTION OFFERED BY MR. FLORIO

Mr. FLORIO. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FLORIO moves to strike out all after the enacting clause of the Senate bill, S. 2129, and to insert in lieu thereof the provisions of H.R. 5225 as passed by the House.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO].

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An Act to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5225) was laid on the table.

ASBESTOS INFORMATION ACT OF 1986

Mr. FLORIO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5369) to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the buildings and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes.

The Clerk read as follows:

H.R. 5369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asbestos Information Act of 1986".

SEC. 2. SUBMISSION OF INFORMATION BY MANUFACTURERS.

(a) REQUIREMENT.—Within 90 days after the date of the enactment of this Act, any person who manufactured, processed, or sold, before the date of the enactment of this Act, asbestos or asbestos-containing materials for use in buildings (or whose corporate predecessor manufactured, processed, or sold such asbestos or materials) shall submit to the Administrator the formulas (including mineral and chemical constituents), products types or classes, years of manufacture, and other identifying characteristics of the asbestos or materials.

(b) PUBLICATION.—Within 180 days after the date of the enactment of this Act, the Administrator shall publish the information submitted under subsection (a).

SEC. 3. BUILDING OWNER REQUIREMENTS.

(a) INSPECTION AND PRESERVATION OF SAMPLES.—Before commencing any civil action to recover costs or to seek other relief relating to the presence, abatement, or other management of asbestos or asbestos-containing material in a building, the owner of such building or his agent shall—

(1) preserve representative samples of asbestos or asbestos-containing materials present, abated, or otherwise managed in the building, and

(2) inspect such building to determine the type or class of asbestos or asbestos-containing material in the building and the year in which the building was constructed or renovated.

(b) SAMPLE ANALYSIS.—A building owner may provide for a chemical or other analysis of any sample of asbestos or asbestos-containing materials taken from the building under subsection (a). Any such analysis shall be carried out by a laboratory accredited under section 4. The cost of any such analysis may be taxed as court costs in any civil action relating to the presence, abatement, or other management of asbestos or asbestos-containing materials in the building.

(c) INCLUSION OF INFORMATION IN CIVIL ACTION.—The information developed under subsection (a) and the results of any analysis under subsection (b) shall be attached to the complaint in any civil action relating to the presence, abatement, or other management of asbestos or asbestos-containing materials in the building.

SEC. 4. PROTOCOLS AND LABORATORY ACCREDITATION BY NATIONAL BUREAU OF STANDARDS.

Within 180 days after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the Administrator and acting through the National Bureau of Standards, shall do each of the following:

(1) PROTOCOLS.—Develop and publish protocols for the taking, preservation, identification, and analysis of samples of asbestos-containing materials.

(2) LABORATORY ACCREDITATION.—Develop an accreditation program for laboratories which perform the analyses of samples submitted under section 3(b). The accreditation program shall conform with the protocol developed by the Secretary under paragraph (1) and shall require that any analysis under section 3(b) include analysis for asbestos content, the relative weight percentages of the other mineral constituents of the sample, and any other distinguishing characteristics which may be appropriate. The Secretary of Commerce shall publish periodically the names and addresses of laboratories accredited under this paragraph.

SEC. 5. SAVINGS PROVISION.

Nothing in this section affects or may be construed as affecting any right of a person to seek recovery of costs or to seek other relief relating to the presence, abatement, or other management of asbestos or asbestos-containing materials in buildings.

SEC. 6. DEFINITIONS.

For purposes of this Act—

(1) the term "abatement" means the removal, encapsulation, or enclosure of, or operations and maintenance activities relating to, asbestos or asbestos-containing materials in buildings;

(2) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(3) the term "asbestos" means—

(A) chrysotile, amosite, or crocidolite, or

(B) in fibrous form, tremolite, anthophyllite, or actinolite;

(4) the term "asbestos-containing material" means any material containing more than one percent asbestos by weight;

(5) the term "building" means any structure other than a residential structure with five or fewer residential units;

(6) the term "owner" when used with respect to a building means the owner of record or the person in whose name any litigation relating to the presence, abatement, or other management of asbestos-containing materials in such building is commenced or maintained, and does not mean a person whose ownership interest is limited to the

holding of a mortgage or other note with respect to such building; and

(7) the term "protocol" means the procedure developed by the Secretary of Commerce for taking, handling, preserving, and identifying samples of asbestos-containing materials and for testing and analyzing such samples to determine their principal mineral constituents.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. FLORIO] will be recognized for 20 minutes and the gentleman from Kansas [Mr. WHITTAKER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. FLORIO].

Mr. FLORIO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the House is now considering H.R. 5369, the Asbestos Information Act of 1986. The legislation, which has bipartisan support, was ordered reported by voice vote by the full Energy and Commerce Committee last week.

The bill, which was introduced by the ranking minority member of the full committee. Mr. LENT, and Mr. DOWDY, is directed at the problem of identifying the manufacturers of asbestos products found in public and commercial buildings. H.R. 5369 is a greatly improved version of an earlier bill, eliminating many of my concerns.

I applaud the improvements made by Mr. LENT, and Mr. DOWDY, although I am still troubled by the burden it may place on building owners. Nevertheless, I intend to support it. I urge my colleagues to do the same.

Mr. WHITTAKER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5369, the Asbestos Information Act of 1986. This legislation addresses what can only be described as a history of wasteful litigation proceedings in asbestos property damage cases. It is not unusual at all in these cases for plaintiffs to sue up to 50 asbestos manufacturers at one time, even though many of those manufacturers may not have even produced the type of asbestos product in question.

The result is unnecessary waste of court time and legal fees. H.R. 5369 attempts to address this situation in a very simple way: By requiring building owners who are going to file suit to preserve an asbestos sample and to provide very preliminary information on the kind of asbestos in their buildings when they file suit.

This information includes the year in which the building was built or renovated as well as general information on whether the asbestos is ceiling title or, for example, pipe insulation. The latter kind of information can be obtained by simple, visual inspection of the asbestos in the building.

Mr. Speaker, this legislation passed through the subcommittee and the full committee without opposition or amendment. The consensus behind this legislation reflects the fact that both building owners and manufacturers are ill-served by a system that prolongs the resolution of a case while litigation costs rise for both sides.

It has been estimated that as much as 90 percent of the expenditures in these cases goes toward lawyers' fees, expert consultants and witness fees. While only 10 percent actually goes toward compensating building owners.

Finally, it is also important to note that this legislation does not materially affect the rights of any party to the litigation nor does it affect State substantive law. Its only intent is to provide essential information earlier in the case so as to reduce unnecessary delay.

Mr. Speaker, I would like to thank the ranking minority leader, Mr. LENT, and the subcommittee chairman, Mr. FLORIO, for their help in moving this legislation forward.

I urge all of my House colleagues to support this legislation.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding to me.

Mr. Speaker, as I understand the description of the bill, I do not think there is a problem with it except I have a digest report that came out of our Republican conference indicating that the administration's view of this legislation is that the cost of establishing the protocols that are involved in it and developing the accreditation program is uncertain; that we do not have any kind of idea what those costs may be. Their contention is that those costs may be quite large.

Can we get some idea as to what costs we are talking about here; whether this is money that is going to come out of the taxpayers' pocket, and if so, how much?

Mr. WHITTAKER. It is our understanding, I believe the full committee's understanding, that much of the cost of this legislation is required as part of the Asbestos Hazard Emergency Response Act already. So we are not talking about a substantive, new amount of money having to be expended in this case.

Mr. WALKER. If the gentleman will continue to yield, do we have any idea as to how much it is going to cost? I mean CBO evidently has not given us an estimate. We have got it out here under suspension. Should we not at least have some idea as to what the cost is going to be if we are doing it this way and we have reservations on behalf of the administration, evidently OMB, about the cost of the matter?

Mr. WHITTAKER. If I may reclaim my time, I would identify that it has been estimated at approximately $2 million. However, the majority of this cost is, as I have reported earlier, already required and taken care of in the asbestos in schools legislation.

□ 1425

Mr. WALKER. Mr. Speaker, will the gentleman yield further?

Mr. WHITTAKER. Yes, Mr. Speaker.

Mr. WALKER. The totality of the cost of the bill is $2 million?

Mr. WHITTAKER. According to CBO's estimates, that is our understanding.

Mr. WALKER. According to the information I had here, there was no CBO estimate available when this particular report was done. We do have a CBO estimate at the present time?

Mr. WHITTAKER. Yes, that is correct.

Mr. WALKER. It is $2 million?

Mr. WHITTAKER. That is our understanding.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I am happy to yield to the gentleman from Arizona.

Mr. RUDD. Mr. Speaker, according to the information available to me, and it is along the lines of what my colleague has been pursuing, the information I have is that it requires the manufacturers of asbestos to provide information of their products to EPA and then directs that the National Bureau of Standards develop a protocol for analyzing asbestos samples as provided and to accredit laboratories to perform such testing. That is going to take a little bit of money, is it not?

Mr. WHITTAKER. If you stop and think that out, it is very much to the abestos manufacturers' interests to have that information on file because right now they are being dragged through courts needlessly for litigation, even though the attorney, the lawyer bringing suit, knew that that manufacturer was probably never even liable, but yet dragged him into court and required him to sustain those legal costs.

If that information was available, I cannot imagine an asbestos manufacturer not making that information available willingly so that they would not have to endure the harassment of being included in a suit when all parties well understood they were never even partly, or could even be likely responsible when they do not even make the kind of asbestos that the suit is dealing with.

Under the current system, they get dragged into it.

Mr. RUDD. I agree with my colleague on all of that, but I am confronted with the dilemma in my own State of Arizona. EPA, I felt, because of the faulty examinations that they have made in the past with regard to two kinds of asbestos—one is crocidolite, which is generally agreed is toxic and dangerous, but the kind that has been manufactured for over a half century in Arizona, and which has a great market everywhere has never been proven to be toxic, and that is chrysotile. What has happened is that they have lumped all of these together and I just have to make the point that EPA has not done its job well because they do not pursue their investigations far enough in order to alleviate the difference and the pain of wiping out chrysotile as well as crocidolite.

Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, I think the gentleman from Arizona [Mr. RUDD] is concerned with the original version of the bill that required much more reporting to EPA. That has been modified dramatically.

The gentleman's concerns are the concerns that others had as well. I am not sure what the gentleman was reading from, but I think, for the most part, it relates to a previous version that we have since corrected that would have EPA much more involved in the accumulation of the information than is the case with the bill that is before us.

Mr. RUDD. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I yield to the gentleman from Arizona.

Mr. RUDD. Mr. Speaker, I do appreciate the statement of the gentleman from New Jersey [Mr. FLORIO] and the work he has done on this. I rise in order to try to bring the attention of this subcommittee the problems that do exist that have not been alleviated and that the EPA has, in my opinion, intervened into the lives and the welfare of people to such an extent that it has caused great and serious damage for the well-being of the people in Arizona who make their living from this. It has been proven time and time again that it has not really caused any toxic damage to the people of that area.

I thank the gentleman very much for his comments and I thank the gentleman from Kansas [Mr. WHITTAKER] for yielding.

Mr. FLORIO. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Speaker, I thank the gentleman from New Jersey for yielding to several questions.

I have reviewed this legislation, and I was curious. On the requirement that a manufacturer submit information to the EPA, I take it from the language of this legislation, if it is passed, that those products that are manufactured after the date of the legislation would not have to be reported.

Mr. FLORIO. Mr. Speaker, if the gentleman will yield, the gentleman is correct.

Mr. DURBIN. Why?

Mr. FLORIO. That is the requirement that is contained in the law.

Mr. DURBIN. I am just curious as to whether we are making good policy if, in fact we say that any future asbestos-type product does not have to be reported to the EPA if, in fact, those that have been manufactured in past years, there should be a record of or an analysis of. I do not know why we draw this line.

Mr. FLORIO. This, of course, just deals with building materials.

Mr. DURBIN. Is the gentleman suggesting there might not be any new asbestos-type building materials manufactured?

Mr. FLORIO. EPA, as the gentleman is aware, is in the process of formulating regulations phasing out the use of asbestos as a building material. So the answer is yes.

Mr. DURBIN. Could I ask the gentleman further, is there any penalty for a company that would fail to report under the requirements of this act?

Mr. FLORIO. No, there is not.

Mr. DURBIN. If a company ignored the law that we pass, there would be no civil or criminal penalty?

Mr. FLORIO. That is correct.

Mr. DURBIN. Could I ask the gentleman why?

Mr. FLORIO. It was determined that this, of course, is an effort to try to reduce litigation. Most of these lawsuits entail joining everybody who made asbestos. It was thought that you would find a high degree of voluntary compliance because those who produced products that do not happen to be the subject of a particular litigation would have a direct, vested interest in submitting their product as a means of demonstrating that they are not appropriate defendants in pending litigation.

Therefore, the concept of the bill, as introduced by the gentleman from New York [Mr. LENT] and the gentleman from Mississippi [Mr. DOWDY], was that voluntary compliance would be in the self-interest of those you are attempting to obtain compliance on.

Mr. DURBIN. Do we not also have an obligation to the plaintiffs in the lawsuit who are seeking recovery for damages and injuries not to preclude them from the opportunity to recover?

Mr. FLORIO. That is not a consideration here. The plaintiffs are, almost uniformly, joining everyone who is even remotely involved, so that, in fact, the plaintiff files the lawsuit against everyone.

This is, in a way, a relatively easy way for a defendant to demonstrate that he is not an appropriate defendant. If the defendant chooses not to comply, he is then named anyway and does not have an expeditious way of getting himself out of litigation if he should not have been made a part of it.

Mr. DURBIN. If I could pursue this line of questioning, do I take it that this legislation applies to all civil actions, State and Federal, related to asbestos?

Mr. FLORIO. Yes.

Mr. DURBIN. I also take it from the language of section 3(a) that it is mandatory, requiring before you commend a civil action that you file with the court samples of the asbestos material and an inspection of the building?

Mr. FLORIO. The gentleman is correct.

Mr. DURBIN. What is the penalty for failure to file that mandatory sample or information?

Mr. FLORIO. You are not capable of filing the lawsuit.

Mr. DURBIN. I might suggest to the gentleman that there is a real problem then because section 5 of the savings provision says: "Nothing in this section affects or may be construed as affecting any right of a person to seek recovery." On the other section, the gentleman had made it mandatory that a plaintiff file the sample and the inspection report.

I think the gentleman is trying to have it both ways. The gentleman is saying to the plaintiff, you must file this information under the law and then he says later on, your failure to file shall not jeopardize your legal right to recovery.

What is the penalty if I am a defendant, if I am a defendant representing a corporation that has been sued and my plaintiff has not complied with your provisions in the act, has not provided a sample, has not provided a report? Can I file a motion to dismiss in any State or Federal court based on that?

Mr. WHITTAKER. Mr. Speaker, will the gentleman yield?

Mr. DURBIN. I am happy to yield to the gentleman from Kansas on that.

Mr. WHITTAKER. Mr. Speaker, I would like to clarify that the intent of the legislation, as well as spoken through what we are attempting to do here, is to just establish that it is the intent of Congress that this information be available in order to reduce the litigation.

It is not in any way preempting the plaintiff's right to go ahead and proceed with the suit as section 5, which the gentleman had commented on, fully states and assures. To an extent, it is an expression by the Congress that this is the intent of the Congress.

Mr. DURBIN. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I yield to the gentleman from Illinois.

Mr. DURBIN. Mr. Speaker, I would like to address both of my colleagues, the gentleman from New Jersey [Mr. FLORIO] and the gentleman from Kansas [Mr. WHITTAKER].

The use of the word "may" and the use of the word "shall" throughout this legislation, I am afraid, is going to be very confusing. The gentleman from Kansas has just suggested this is voluntary. We would like to suggest this be part of lawsuits, but I would ask him to then read section 3(c), which says: "The information developed under subsection (a)," which relates to samples and inspection, "and the results of any analysis under subsection (b) shall be attached to the complaint in any civil action relating to the presence, abatement, or other management of asbestos or asbestos-containing materials in the building."

Where does that leave me as a plaintiff in a lawsuit?

□ 1435

Am I required to attach it? If I am not required, why is the word "shall" in it, and if it is only voluntary, why is not the word "may" in there used?

Mr. WHITTAKER. The reason that it is written this way is to make certain that they do it.

Mr. DURBIN. Well, if that is the case, I would suggest to the gentleman that section 5, savings provisions, says to me as a plaintiff's attorney that there is no penalty if you do not comply. Your right to recover under any lawsuit is not affected by this legislation.

For the life of me, I cannot determine where this legislation is leading the plaintiffs and defendants in these causes of action.

I think it had a good intent initially, but I am afraid the use of the language "may" and "shall" throughout has made it almost impossible to enforce.

Mr. GILMAN. Mr. Speaker, will the gentleman yield?

Mr. WHITTAKER. I am happy to yield to the gentleman from New York.

Mr. GILMAN. Mr. Speaker, I rise in support of H.R. 5369, the Asbestos Information Act of 1986. I commend the gentleman from New York, my friend and colleague [Mr. LENT], the gentleman from New Jersey [Mr. FLORIO], and the gentleman from Kansas [Mr. WHITTAKER] for recognizing the need to refine our ability to identify the specific manufacturer or asbestos in question in a lawsuit or legal proceeding involving asbestos. This legislation is timely and well-conceived and I urge my colleagues' support.

The recent spate of asbestos litigation has in many cases, involved lengthy law suits hinged on the difficulty of proof. Under current tort law, a plaintiff suffering asbestos-related damages need not identify the specific supplier of the asbestos used in construction because such information is generally deemed to be unavailable or too difficult to obtain. If the defendants cannot prove that they did not or could not have provided the asbestos in question, they may be held liable, either individually, or jointly, for the full damages suffered. Indeed plaintiffs commonly sue as many as 50 asbestos manufacturers at one time.

H.R. 5369 addresses this problem by requiring building owners who decide to sue asbestos manufacturers to submit certain preliminary information to the court regarding the type of asbestos involved and the age of the building. It is hoped that these provisions will narrow the field of possible defendants in a case by eliminating those manufacturers who did not produce the class of asbestos in question. This measure additionally requires manufacturers, processors, or sellers of asbestos products to submit to EPA the formulas, product types or classes, years of manufacture and the identifying characteristics of their products within 90 days of enactment.

I am pleased that in this measure we have been able to address the concerns of both the manufacturers and victims of asbestos and urge my colleagues to adopt H.R. 5369, the Asbestos Information Act of 1986.

Mr. WHITTAKER. Mr. Speaker, we have no further requests for time, and I yield back the balance of our time.

Mr. FLORIO. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KOSTMAYER). The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO] that the House suspend the rules and pass the bill, H.R. 5369.

The question was taken.

Mr. DURBIN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. DURBIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

DEFENSE PRODUCTION ACT AMENDMENTS OF 1986

Mr. LAFALCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such Act, as amended.

The Clerk read as follows:

H.R. 5480

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Defense Produciton Act Amendments of 1986".

SEC. 2. EXTENSION OF THE DEFENSE PRODUCITON ACT OF 1950.

The first sentence of section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1989".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 711(a)(4) of the Defense Production Act of 1950 (50 U.S.C. App. 2161(a)(4)) is amended to read as follows:

"(4)(A) There are authorized to be appropriated for fiscal years 1987, 1988, and 1989 not to exceed $150,000,000 to carry out the provisions of section 303, except that not more than $30,000,000 is authorized to be appropriated for fiscal year 1987.

"(B) The aggregate amount of loans, guarantees, purchase agreements, and other actions under sections 301, 302, and 303 during fiscal years 1987, 1988, and 1989 may not exceed $150,000,000.".

SEC. 4. OFFSETS REPORTING REQUIREMENT.

Section 309 of the Defense Production Act of 1950 (50 U.S.C. App. 2099) is amended—

(1) by striking out "SEC. 309." and inserting in lieu thereof "SEC. 309. (a) REPORT REQUIRED.—";

(2) in the first sentence, by inserting "detailed" before "report"; and

(3) by adding at the end thereof the following new subsection:

"(b) INTERAGENCY STUDIES.—

"(1) IN GENERAL.—Each report under subsection (a) shall be based on requisite interagency studies designed to progressively capture—

"(A) the long-term as well as the short-term effects of offsets (with particular attention to the effects resulting from technology transfer associated with offset agreements); and

"(B) the direct and indirect effects of offsets on lower tier defense subcontractors and on nondefense industry sectors which may be adversely affected by offsets.

"(2) CONTENTS OF REPORTS.—Each report under subsection (a) shall contain an appropriate summary of—

"(A) the scope of the interagency studies conducted under paragraph (1); and

"(B) the findings and conclusions of the agencies involved in the interagency studies (including any differences in the conclusions drawn by such agencies).".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUMWAY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentleman from New York [Mr. LAFALCE] will be recognized for 20 minutes and the gentleman from California [Mr. SHUMWAY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. LAFALCE].

Mr. LAFALCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5480, as amended, would extend the authorities contained within the Defense Production Act of 1950 for 3 years, until September 30, 1989. The act is now scheduled to expire at the end of this month.

This act is critical to our national security, as it provides the sole legal authority for a number of essential programs designed to convert our peacetime economy into one which can support an intense national defense effort. For over 30 years, the Defense Production Act has enjoyed broad bipartisan support. Every administration and Congress since 1950 has recognized the necessity for legislation that enables the United States to maintain an adequate level of industrial preparedness and mobilization capability. Once again, we are moving forward in a spirit of cooperation and bipartisan consensus to ensure the reauthorization of this important legislation.

Title I of the DPA contains the authorities which the Department of Defense and other agencies utilize on a day-to-day basis to ensure priority performance of defense contracts and to implement programs to maintain the mobilization readiness of our industrial and material resources. In the absence of title I, delivery delays would develop, costs would escalate, and supply reliability would diminish. This legislation enables our government to keep the procurement, production, and deployment of national defense weapons systems on schedule. Title III of the act contains the authorities, and provides financial incentives, for expansion of domestic productive capacity and supply of materials necessary for the national defense.

The concept of a defense industrial base that is distinct from the broader industrial base is obsolete. Defense production includes a range of activities from the assembly of major weapons systems to the supply of small parts to the machining of already made parts. Our defense industrial base now consists of 25,000 to 30,000 prime contractors and 50,000 second and third tier contractors. But, the elements which comprise our defense industrial base are complex and often changing. Firms continually leave and enter the defense industrial base. The amounts and proportions of resources that contractors devote to defense change frequently.

Thus, the health of our defense sector is inextricably linked to the basic health of our industries. Defense production needs are often a small percentage of overall production but they draw from many different industries and demand specialized subproduction processes. Furthermore, defense systems are continually upgraded technologically and, since innovation is developed along the production learning curve, these systems depend on continued industrial production.

A significant portion of the manufacturing leadership the United States once enjoyed has left our shores. In particular, a number of industries which make up the second- and third-tier levels, of defense production, the subcontractor and supplier levels, have shrunken, and in some cases, virtually disappeared. These are the companies that supply the essential elements, components, parts, minerals, and materials to our prime defense contractors. As a result, the ability of our industrial base to meet the challenge of a serious mobilization effort is a matter of increasing concern. Our growing dependence on foreign sources for many of the basic materials, minerals, and processes may make our defense position more vulnerable. The reliability of some of these foreign sources cannot be assured.

Clearly we cannot return to the totally self-sufficient days of the past. Yet, the increase in international competition and the changing nature of U.S. production may have important implications for our national defense. Increased outsourcing, the proliferation of international joint ventures, and the deterioration of specific U.S. industries have strategic as well as economic consequences. Agencies responsible for the implementation of the DPA should be closely examining the constituent elements of our industrial base, their importance in maintaining defense preparendness, and the long-term outlook for key sectors. We need to have a clear picture of what industries and subsectors are essential to our defense preparedness and how we can ensure their vitality in this new international environment.

This bill would extend the DPA for 3 years. Despite the importance of the program, the committee does not believe that a longer extension would be appropriate. The authorities granted under the DPA are as broad as they are critical. Congress must adequately oversee how those broad authorities are being applied. The 3-year timeframe will provide the necessary program stability to allow administrators to engage in long-term planning, yet ensure that the Congress will closely monitor program implementation.

The committee is also concerned that excessive delays in the obligation of appropriated funds under this program are resulting from the role played by the Office of Management and Budget in reviewing the merits of individual projects. It is our view that that specific projects recommended by the Secretary of Defense and requested by the President in his budget and funded through the appropriations process by the Congress to further the national defense require only minimal processing by the Office of Management and Budget.

THE OFFSETS REPORTING REQUIREMENT

This act will also clarify the offsets reporting requirement established under the 1984 amendments to the Defense Production Act. These amendments require that the executive branch submit an annual report to the Congress indicating the types and magnitudes of offset agreements engaged in by U.S. companies, and the impact of these agreements on the defense preparedness, industrial competitiveness, trade and employment of the United States. The reporting requirement under DPA is the only means we now have of determining how the increasing demand for offsets is affecting defense preparedness and our competitive position.

The administration's first report was issued by OMB earlier this year. While the report was an important first step toward developing an information base on this issue, it was deficient in some respects. A subsequent audit performed by GAO indicated that the report did not adequately explore the impact of offset agreements on defense industry subcontractors and on nondefense industry sectors. These groups are commonly acknowledged to be most affected by offsets. Nor did the report focus sufficiently on the potential long-term effects of offsets, particularly as a result of technology transfer. These deficiencies limited the usefulness of the report for policy analysis.

The clarifying language in the bill will help to ensure that these issues are given greater attention in future reports. In these reports, the committee would expect the administration to attempt to obtain information useful in identifying and assessing specific impacts on subcontractors and nondefense industries, and longer term impacts resulting from technology transfer. Selected case studies might prove a useful approach.

The committee would also expect the executive branch to undertake another data collection effort in a timely manner. Prior to such an effort, an attempt should be made to refine the survey instrument to minimize any undue burdens placed on respondents in the course of the last data collection exercise and to better capture information in identified areas of concern. Special circumstances resulted in the ITC's playing a key role in the last data collection effort. In the committee's view, the ITC would not appear to be the most appropriate data collection agent for any future interagency study efforts.

It would be desirable to have one agency serve as the focal point for any future data collection effort. The committee believes that the Department of Commerce could usefully play a central role. The Department has both the necessary expertise in working

with industry and a long history of handling and protecting confidential business information. To assure the best possible report, the study should be assigned within Commerce to a professional data processing agency whose function and background clearly are suited to the task. The respected professional background of such an agency, and the business community's confidence in its handling of proprietary information, would help produce the quality results that the committee is looking for.

Obviously, several executive branch departments and agencies have legitimate interests in the offsets issue and unique vantage points from which to examine the impact of offsets. All of these different vantage points are critical to an understanding of the scope and complexity of the issue.

Since no one agency has sole responsibility for offsets policy, a well-coordinated interagency approach to the report continues to be the most desirable approach. The committee would expect that OMB would continue to play a coordinating role in producing a consensus document that nevertheless adequately incorporates the policy perspectives and concerns of all participating agencies.

In my view, problems that have arisen in attempting to balance differing policy perspectives on the offsets issue are symptomatic of problems with existing policy mechanisms that we will face increasingly in the years ahead. We have no effective mechanisms for integrating policies affecting our industrial base with other economic, trade, and defense policies. Nor do we have a means of assessing and balancing possibly competing strategic and economic policy perspectives. Different agencies are responsible for overseeing the military and civilian trade sectors, and no high-level forum exists in which to strike a balance. More basically, we have no effective mechanism at all for raising competitiveness issues to the forefront in our policymaking process.

Developing such a mechanism should be priority. In the short term, however, the committee would emphasize that any policy disagreements within the executive branch should not be resolved at the staff level within particular agencies. The committee expects the administration to ensure that the annual offsets reports adequately explicate and balance the differing policy perspectives advanced by participating agencies. Should any fundamental policy disagreements arise, it is the committee's belief that the Economic Policy Council, in conjunction with the National Security Council, could play an important role in striking a balance between competing policy perspectives, when necessary.

Mr. SHUMWAY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5480, the Defense Production Act Amendments of 1986, as amended by the committee amendment.

As the ranking Republican member of the Economic Stabilization Subcommittee on Banking, Finance and Urban Affairs, it is clear to me after listening to all of the testimony presented in the subcommittee hearing, that it is in our national interest to extend the Defense Product Act [DPA]. Defense preparedness is essential to our national security. The Federal Emergency Management Agency puts it quite succinctly:

> The Defense Production Act of 1950 is the cornerstone of the present legal structure for ensuring that we are prepared to meet national emergencies requiring the mobilization of the Nation's industrial and material resources. Its continuation is essential to the national defense.

This bill is fairly straightforward. It simply extends the DPA for 3 years until September 30, 1989; authorizes appropriations of $150 million over those 3 years; and provides for additional information to be included in the offsets reports which was originally required in the 1984 DPA amendments.

I am pleased to report to my colleagues that the administration supports passage of H.R. 5480 as amended and the extension of the DPA. The bill today represents a compromise between the administration, and the Congress, and the gentleman from New York [Mr. LAFALCE]. Mr. LAFALCE, chairman of the Economic Stabilization Subcommittee, deserves a great deal of credit for working with the House Members and the administration to produce the consensus legislation.

Mr. Speaker, I would urge my colleagues on this side of the aisle to vote with the administration and support the subcommittee bill as amended.

Mr. Speaker, I yield 3 minutes to the gentleman from Connecticut [Mr. MCKINNEY].

Mr. MCKINNEY. Mr. Speaker, I thank my friend, the ranking member of the Economic Stabilization Subcommittee for yielding this time. I want to congratulate him and the subcommittee chairman for their bipartisan efforts in producing this legislation which is so vital to our Nation's defense industrial base.

There is one point on which I would like to have the chairman provide some clarification for my benefit.

I would certainly agree with the gentleman from New York that the offsets issue is one which is not well understood, and presents some perplexing policy questions for our Government. Furthermore, I would agree that coordination between trade policymakers and those concerned with security issues leaves something to be desired.

I would express some concern, however, that in our efforts to understand this issue, we do keep in mind the importance of maintaining the confidentiality of information on specific transactions. Such information is not only regarded as proprietary from the perspective of individual companies, but also involves contracts with friendly governments, and hence can be sensitive internationally. I know that a number of U.S. agencies, such as the Internal Revenue Service and Bureau of the Census, have experience in collecting raw data, processing it, and making available to other agencies data that is needed for social and economic policy studies, while protecting the confidentiality of individual respondents. I would assume the same should be possible in this exercise.

Mr. LAFALCE. Mr. Speaker, will the gentleman yield?

Mr. MCKINNEY. I yield to the gentleman from New York.

Mr. LAFALCE. Mr. Speaker, I would assure the gentleman from Connecticut that I am very much aware of the concerns that he, other Members and representatives of industry have raised regarding the confidentiality risks associated with the reporting requirement. I respect those concerns. The casual treatment of important proprietary information serves no one's interest. Moreover, we must be careful not to make the concession granted individual deals the least common denominator of future transactions.

I believe that we can work together to secure the necessary information base the Congress and executive branch need without jeopardizing legitimate interests. I am sure the gentleman from Connecticut shares my faith in the ability of appropriate executive agencies to protect confidential business information. The Department of Commerce, for example, which I expect would play a key role in future data collection and analysis efforts, has both clear statutory mandates to protect such information and a long history of doing so.

Mr. MCKINNEY. Mr. Speaker, I thank the chairman of the Economic Stabilization Subcommittee for his answer. I think we have established the intent of this and that solves the problem.

I thank the ranking member for yielding.

Mr. SHUMWAY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LAFALCE. Mr. Speaker, I have no more requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by

the gentleman from New York [Mr. LAFALCE] that the House suspend the rules and pass the bill, H.R. 5480, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

NEBRASKA WILDERNESS ACT OF 1985

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 816) to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes, as amended.

The Clerk read as follows:

S. 816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That this Act may be cited as the "Nebraska Wilderness Act of 1985".

TITLE I—WILDERNESS

SEC. 101. In furtherance of the purposes of the Wilderness Act of 1964, certain lands in the Nebraska National Forest, which comprise approximately eight thousand one hundred acres, as generally depicted on a map entitled "Soldier Creek Wilderness—Proposed," dated February 1985, are hereby designated wilderness and, therefore, as a component of the National Wilderness Preservation System, and shall be known as the Soldier Creek Wilderness.

ADMINISTRATION OF WILDERNESS

SEC. 102. (a) Subject to valid existing rights and the provisions of subsection (b), the wilderness area designated under section 101 shall be administered by the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(b) In the administration of the wilderness in the State of Nebraska—

(1) grazing of livestock in wilderness areas established by this Act, if established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96-560; and

(2) the Secretary is directed to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in Nebraska in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.

MAPS AND DESCRIPTIONS

SEC. 103. As soon as practicable after the date of the enactment of this Act, the Secretary shall submit a map and legal description of the wilderness area designated by section 101 to the Committee on Energy and Natural Resources of the Senate and the Committee on Agriculture and the Committee on Interior and Insular Affairs of the House of Representatives. Such map and legal description shall have the same force and effect as if included in this Act, except that any clerical or typographical error in such map or legal description may be corrected. The Secretary shall place such map and legal description on file, and make them available for public inspection, in the office of the Chief of the Forest Service, Department of Agriculture.

WILDERNESS REVIEW CONCERNS

SEC. 104. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II); and

(2) the Congress has made its own review and examination of National Forest System roadless areas in the State of Nebraska and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Nebraska, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Nebraska;

(2) with respect to the National Forest System lands in the State of Nebraska, which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II), that review and evaluation shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in the State of Nebraska reviewed in such final environmental statement and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976; Provided, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Nebraska are implemented pursuantf protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Nebraska for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

TITLE II—PINE RIDGE NATIONAL RECREATION AREA

DESIGNATION OF PINE RIDGE NATIONAL RECREATION AREA

SEC. 201. Certain lands in the Nebraska National Forest, Nebraska, which comprise approximately six thousand six hundred acres, as generally depicted on a map entitled "Pine Ridge National Recreation Area—Proposed", dated September 1986, are hereby designated as the Pine Ridge National Recreation Area.

MAP AND DESCRIPTION

SEC. 202. As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and legal description of the national recreation area designated by this title with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such map and description may be made by the Secretary. Such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

ADMINISTRATION OF THE NATIONAL RECREATION AREA

SEC. 203. (a) Subject to valid existing rights, the Pine Ridge National Recreation Area designated by this title shall be administered by the Secretary of Agriculture in accordance with the laws, rules, and regulations applicable to the national forests in a manner compatible with the following objectives:

(1) the continuation of existing primitive and semiprimitive recreational use in a natural environment;

(2) preservation and protection of forest, aquatic and grassland habitat;

(3) production and conservation of special areas having uncommon or outstanding wilderness, biological, geological, recreational, cultural, historical or archeological, and scientific, or other values contributing to the public benefit;

(4) the continuation of existing livestock grazing uses;

(5) the control of noxious weeds and insects and prevention of their spreading onto the nearby private and Federal lands; and

(6) the control of fires and prevention of their spreading onto nearby private and Federal lands.

(b) The Secretary shall enter into a Memorandum of Agreement with local and state fire fighting agencies and individuals to assure the best utilization of the fire-fighting resources available in the nearby communities for control of fire in the national recreation area.

(c) The Secretary shall permit hunting, fishing, and trapping on lands and waters under the Secretary's jurisdiction within the boundaries of the national recreation area designated by this title in accordance with applicable laws of the United States and the State of Nebraska.

(d) Subject to valid existing rights, all Federal lands within the national recreation area are nearby withdrawn from location, entry, and patent under the United States mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto.

(e) Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Nebraska with respect to wildlife and fish in the national recreation area.

(f) Within eighteen months after the date of enactment of this Act, the Secretary shall develop and submit to the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a comprehensive management plan for the national recreation area designated by this title.

(g) In conducting the reviews and preparing the comprehensive management plan required by subsection (d), the Secretary shall provide for full public participation, and shall consider the views of all interested agencies, organizations, and individuals.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCANDLESS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes and the gentleman from California [Mr. McCANDLESS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 816, the Nebraska Wilderness Act, would protect two areas of national forest lands in Nebraska, designating one as wilderness and the other as a national recreation area.

The Interior Committee reported this bill favorably to the House with an amendment which was offered by the gentleman from Montana [Mr. MARLENEE], the ranking minority member of the Public Lands Subcommittee. I want to thank him for his successful efforts to find a workable resolution of how these two areas should be managed.

Both Representative SMITH, in whose district the two areas affected by this bill lie, and Senator EXON, the author of the bill, have agreed to the amendment, and we expect that if the House passes this bill today, it will be accepted by the other body and sent to the President in short order.

In short, Mr. Speaker, I urge my colleagues to support this legislation, and I reserve the balance of my time.

□ 1450

Mr. McCANDLESS. Mr. Speaker, I yield 5 minutes to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Speaker, I appreciate this opportunity to comment on S. 816, the Nebraska Wilderness Act.

This bill will designate 8,100 acres of federally owned land in Nebraska as the Soldier Creek National Wilderness Area and 6,600 acres as the Pine Ridge National Recreation Area.

I would like to express my special thanks to the chairman of the subcommittee, Mr. Seiberling, for holding a hearing in northwest Nebraska on this legislation.

The hearing provided the members of the subcommittee an invaluable opportunity to hear from the Nebraskans who will be most affected by this legislation.

At that hearing, held in August in Chadron, NE, a number of concerns were expressed by local residents about the danger of fire, insects, and noxious weeds spreading from the wilderness to nearby private land. For these reasons, most local people and organizations, including the country farm bureaus, the area stockgrowers, the county commissioners, the county weed board, and the area grazing associations testified against the wilderness legislation. And shortly after the hearing, the local chambers of commerce withdrew its support for the legislation.

Because these areas—and the Pine Ridge, in particular—are so small in size, the concerns expressed by these individuals and organizations are valid. In addition, the Pine Ridge area is irregular in shape, and private ranch and farm land is integrated throughout the wilderness land. In some places, private land is surrounded on three sides by what would have been a wilderness area, if the Senate-passed bill had been enacted.

As it now stands, however, this bill goes a long way toward meeting the concerns of the local people. With the changes that have been made, I think our farmers and ranchers can live with this bill.

In particular, the designation of Pine Ridge as a recreation area instead of a wilderness will provide a more flexible approach to the management of the area, and one that will give local residents the opportunity to actively participate in the development of a management plan.

The plan allows the Forest Service to tailor its management of each recreation area in a manner that is best suited to the special concerns and needs of both the land and of local residents.

Let me briefly run through some of the improvements made in this House bill, especially with respect to the Pine Ridge area.

First, local residents will have a say in the drafting of the management plan for the Pine Ridge National Recreation Area. And I intend to carefully follow the drafting of the management plan, to make sure the intent of the bill language is adhered to.

Second, the bill provides for the continuation of existing grazing privileges.

Third, the bill provides that the management plan will include provisions guaranteeing that fire, noxious weeds, and insects will be controlled to prevent spreading to adjacent farm and ranch land.

Fourth, the bill directs the Secretary of Agriculture to enter into an agreement with local and State firefighting agencies, as well as individuals, to ensure that nearby firefighting resources will be used in the most efficient manner possible. The agreement could grant indviduals, in certain instances, the authority to take immediate action to put out fires on the Federal land—without first obtaining Forest Service permission.

Similar firefighting protection is granted in report language for the Soldier Creek Wilderness Area, which is another relatively small parcel of land.

And finally, in some cases, motorized vehicles may be used on the land. The bill does not preclude the use of motorized vehicles for any purpose in the recreation area. And in the wilderness area, ranchers may continue to use their trucks to maintain the land for grazing purposes, with Forest Service permission.

Of course, no one is fully satisfied with a compromise.

But I believe that the final version of this bill will alleviate the concerns of local residents by giving them a say in the manner the areas are managed.

Mr. McCANDLESS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Montana [Mr. MARLENEE] has been detained. I wish to advise the House that Mr. MARLENEE, as the ranking minority member, is in favor of this legislation. The Forest Service is on record in favor of this legislation. We know of no opposition on this side.

Mr. Speaker, I yield back the balance of my time.

Mr. MARLENEE. Mr. Speaker, I rise in support of S. 816, a bill to designate 8,100 acres of national forest lands in Nebraska as wilderness and to designate another 6,600 acres as a national recreation area.

Both areas are in Congresswoman VIRGINIA SMITH's congressional district and she deserves a lot of credit for bringing the views of her constituents to the attention of the Interior Committee. Her objections to designation of the Pine Ridge area as wilderness led to our crafting a national recreation area designation for the area.

The NRA designation will allow for flexibility in management of the area which wilderness does not. The bill requires development of a management plan for the area with local input and gives specific guidance to the Forest Service to allow continued use of the area for grazing as well as adequate authority to control fires, insects, and noxious weeds.

Fire is a major concern to the ranchers in the area, many of whom have crop and pasture land adjacent to the areas. We instruct the Forest Service, both in the bill and the report, to enter into a memorandum of agreement with local and State firefighting agencies and individuals to assure the best utilization of the firefighting resources available.

Again, Mr. Speaker, I commend my colleague from Nebraska, Mrs. SMITH, for her tireless efforts in crafting a workable compromise. I also wish to thank the chairman of the Public Lands Subcommittee, Mr. SEIBERLING, for his willingness to accept our recommendations.

Mr. DAUB. Mr. Speaker, I rise in support of S. 816, the Nebraska Wilderness Act. As has been indicated, this measure designates the 6,600-acre Pine Ridge area as a national recreation area and the 8,100-acre Soldier Creek area as wilderness. Most importantly, I want to express my appreciation to the members of the House Interior Subcommittee on Public Lands for addressing the concerns of Congresswoman VIRGINIA SMITH—who represents the areas affected by S. 816—on this issue.

Although I represent a district that is over 400 miles from the area in northwestern Nebraska affected by S. 816, I have nonetheless received a large amount of input on this issue from all areas of Nebraska. The beauty and recreational opportunities that Nebraska's panhandle area offers are important to myself and to all Nebraskans, and the need to preserve these qualities is clearly an important issue in the State.

The original version of S. 816 mandated that both the Soldier Creek and Pine Ridge areas be designated as wilderness. I supported Congresswoman SMITH's position against the designation of the Pine Ridge area as wilderness because of the local concerns expressed to the Nebraska delegation with respect to the inflexibility of such a designation. In contrast, the national recreation area designation for Pine Ridge will provide more flexible management for the 6,100-acre area, while still preserving its wilderness and recreational features.

I think the Members would agree that it is important that the statewide interests that initiated the Nebraska wilderness proposal do not take precedence over the local concerns. Unlike the original version of S. 816, the bill we are considering today addresses the concerns of those actually affected by wilderness designation, and I again want to express my appreciation to the members of the Public Lands Subcommittee for this effort.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KOSTMAYER). The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the Senate bill, S. 816, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

The title of the Senate bill was amended so as to read: "A bill to establish the Pine Ridge National Recreation Area and Soldier Creek Wilderness in the State of Nebraska, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4216) to provide for the settlement of certain claims of the Papago Tribe arising from the operations of Painted Rock Dam, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4216

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Gila Bend Indian Reservation Lands Replacement Act".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that:

(1) section 308 of Public Law 97-293 authorizes the Secretary of the Interior to exchange certain agricultural lands of the Gila Bend Indian Reservation, Arizona, for public lands suitable for farming;

(2) an examination of public lands within a one-hundred-mile radius of the reservation disclosed that those which might be suitable for agriculture would require substantial Federal outlays for construction of irrigation systems, roads, education and health facilities;

(3) the lack of an appropriate land base severely retards the economic self-sufficiency of the O'odham people of the Gila Bend Indian Reservation, contributes to their high unemployment and acute health problems, and results in chronic high costs for Federal services and transfer payments;

(4) This Act will facilitate replacement of reservation lands with lands suitable for sustained economic use which is not principally farming and do not require Federal outlays for construction, and promote the economic self-sufficiency of the O'odham Indian people.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term:

(1) "Central Arizona Project" means the project authorized under title III of the Colorado River Basin Project Act (82 Stat. 887; 43 U.S.C. 1521, et seq.).

(2) "Tribe" means the Tohono O'odham Nation, formerly known as the Papago Tribe of Arizona, organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(3) "Secretary" means the Secretary of the Interior.

(4) "San Lucy District" means the political subdivision of the Tohono O'odham National exercising governmental functions on the Gila Bend Indian Reservation.

ASSIGNMENT OF TRIBAL LANDS; RETAINED RIGHTS

SEC. 4. (a) If the tribe assigns to the United States all right, title, and interest of the Tribe in nine thousand eight hundred and eighty acres of land within the Gila Bend Indian Reservation, the Secretary of the Interior shall pay to the authorized governing body of the Tribe the sum of $30,000,000—$10,000,000 in fiscal year 1988, $10,000,000 in fiscal year 1989 and $10,000,000 in fiscal year 1990—together with interest accruing from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on outstanding Federal obligations of comparable maturity, to be used for the benefit of the San Lucy District. The Secretary shall accept any assignment under this subsection.

(b) The Tribe shall be permitted to continue to hunt, fish, and gather on any lands assigned to the United States under subsection (a) of this section so long as such lands remain in Federal ownership.

(c) With respect to any lands of the Gila Bend Indian Reservation which the Tribe does not assign to the United States, the Tribe shall have the right to withdraw ground water therefrom from wells having a capacity of less than thirty-five gallons per minute and which are used only for domestic purposes.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. Effective October 1, 1987 there is authorized to be appropriated such sums as may be necessary to carry out the purposes of section 4.

USE OF SETTLEMENT FUNDS: ACQUISITION OF LANDS

SEC. 6. (a) The Tribe shall invest sums received under section 4 in interest bearing deposits and securities until expended. The authorized governing body of the Tribe may spend the principal and the interest and dividends accruing on such sums on behalf of the San Lucy District for land and water rights acquisition, economic and community development, and relocation costs. Such

income may be used by the Tribe for planning and administration related to land and water rights acquisition, economic and community development and relocation for the San Lucy District.

(b) The Secretary shall not be responsible for the review, approval or audit of the use and expenditure of the moneys referred to in this section, nor shall the Secretary be subject to liability for any claim or cause of action arising from the Tribe's use and expenditure of such moneys. No portion of such moneys shall be used for per capita payments to any members of the Tribe.

(c) The Tribe is authorized to acquire by purchase private lands in an amount not to exceed, in the aggregate, nine thousand eight hundred and eighty acres. The Tribe and the United States shall be forever barred from asserting any and all claims for reserved water rights with respect to any land acquired pursuant to this subsection.

(d) The Secretary, at the request of the Tribe, shall hold in trust for the benefit of the Tribe any land which the Tribe acquires pursuant to subsection (c) which meets the requirements of this subsection. Any land which the Secretary holds in trust shall be deemed to be a Federal Indian Reservation for all purposes. Land does not meet the requirements of this subsection if it is outside the counties of Maricopa, Pinal, and Pima, Arizona, or within the corporate limits of any city or town. Land meets the requirements of this subsection only if it constitutes not more than three separate areas consisting of contiguous tracts, at least one of which areas shall be contiguous to San Lucy Village. The Secretary may waive the requirements set forth in the preceding sentence if he determines that additional areas are appropriate.

(e) The Secretary shall establish a water management plan for any land which is held in trust under subsection (c) which, except as is necessary to be consistent with the provisions of this Act, will have the same effect as any management plan developed under Arizona law.

REAL PROPERTY TAXES

SEC. 7. (a) With respect to any private land acquired by the Tribe under section 6 and held in trust by the Secretary, the Secretary shall make payments to the State of Arizona and its political subdivisions in lieu of real property taxes.

(b) The Secretary is authorized to enter into agreements with the State of Arizona and its political subdivisions pursuant to which the Secretary may satisfy the obligation under subsection (a), in whole or in part, through the transfer of public land under his jurisdiction or interests therein, including land within the Gila Bend Indian Reservation of interests therein.

WATER DELIVERY

SEC. 8. If the tribe acquires rights to the use of any water by purchase, rental, or exchange within the State of Arizona, the Secretary, at the request of the Tribe, shall deliver such water, at no cost to the United States, through the main project works of the Central Arizona Project to any land acquired under section 5(c), if, in the judgment of the Secretary, sufficient canal capacity exists to convey such water: Provided, That deliveries of such water shall not displace deliveries of Central Arizona Project water. The rate charged to the tribe for water delivery shall be the same as that charged by the Central Arizona Water Conservation District pursuant to contracts entered into pursuant to the Colorado River Basin Project Act (43 U.S.C. 1521, et seq.). Nothing in this section shall be deemed to obligate the Secretary to construct any water delivery system.

WAIVER AND RELEASE OF CLAIMS; EFFECTIVE DATE

SEC. 9. (a) The Secretary shall be required to carry out the obligations of this Act only if within one year after the enactment of this Act the Tribe executes a waiver and release in a manner satisfactory to the Secretary of any and all claims of water rights or injuries to land or water rights (including rights to both surface and ground water) with respect to the lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the Tribe of such a waiver.

(b) Nothing in this section shall be construed as a waiver or release by the Tribe of any claim where such claim arises under this Act.

(c) The assignment referred to in section 4 and the waiver and release referred to in this section shall not take effect until such time as the full amount authorized to be appropriated in section 4 has been appropriated by the Congress and paid to the Tribe.

COMPLIANCE WITH BUDGET ACT

SEC. 10. No authority under this Act to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this Act which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1987.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCAIN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Arizona [Mr. UDALL] will be recognized for 20 minutes and the gentleman from Arizona [Mr. MCCAIN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL].

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. UDALL. Mr. Speaker, H.R. 4216 would provide for the replacement of lands of the Gila Bend Indian Reservation in southwestern Arizona.

The history of the Gila Bend Reservation and the need for this legislation is a long sad story.

Very briefly, in 1882, the United State created the reservation astride the Gila River for the O'odham Indians who had lived in the area for centuries.

In this century, the United States has constructed dams upstream and downstream from the reservation. The net effects on the reservation of operation of these dams include diminished water quality and quantity, and major flooding more frequent than anticipated.

A 1983 study authorized by Congress concluded that the flooding, which has occurred in a flowage easement condemned by the United States, has rendered all of the reservation's arable, irrigable land unsuitable for agriculture.

This unsuitability is a reflection of economics rather than quality of land and availability of water. The uncertainty of future flooding makes the repeated effort required to prepare the land for farming after floods a very poor investment.

A study of Federal lands within 100 miles of Gila Bend, completed in 1986, found no Federal land suitable for exchange and relocation of the tribe at reasonable cost.

The 800 members of the tribe at Gila Bend are thus without a land base that can sustain any reasonable farming or grazing economy. A majority of these people live in a 40-acre village where annual per capita income is barely $1,000. Unemployment is fully 80 percent, and significant economic opportunities in the nearby desert town of Gila Bend are simply nonexistent.

The tribe could bring a variety of legal claims against the United States for relief; however, these would be costly and offer no solution to the immediate need for a viable reservation.

H.R. 4216 would authorize three payments to the tribe of $10 million each, beginning in fiscal year 1988, to be used for acquisition and development of private lands and water rights. In return, the tribe would assign its interests to 9,880 acres of the 10,297-acre reservation to the United States, and waive and release all claims it has against the United States for past injuries to its land and water rights.

Although the $30 million figure may seem high, it is not unreasonable. The United States, as trustee for the tribe, has a responsibility to find replacement lands for the tribe. This is especially true in view of its own findings that development of the reservation's water and arable land, all of which is in a reservoir area, is not a prudent investment.

H.R. 4216 would relieve the United States of any obligation to pursue the tribe's extremely valuable reserved water rights in extensive and costly litigation to quantify water rights in the Gila River Basin.

Enactment would also leave the United States with no contingent liability to the tribe requiring construc-

tion of expensive irrigation systems or community infrastructure.

Given the funds to relocate and the flexibility to develop a variety of economic pursuits, the tribe's dependence on Federal transfer payments would be reduced.

Enactment of H.R. 4216 would provide the tribe with the equitable means to match the rhetoric of Indian self-determination and self-sufficiency.

I join with my colleague from Arizona and cosponsor of this legislation, JOHN MCCAIN, in strongly urging its passage by the House.

Mr. MCCAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as an original cosponsor of H.R. 4216, I rise in support of the bill to provide for replacement of certain lands on the Gila Bend Indian Reservation. The bill would authorize $10 million a year for 3 years so that the tribe may purchase a new land base and have capital for economic development. In return, the Tohono O'odham Tribe would assign all of its rights and interest to 9,880 acres of the reservation to the United States, and waive all its claims it has against the United States for past injuries, and transfer to the United States any claim it has to the Gila River.

Studies authorized by Congress in 1982 have found that, through no fault of the tribe, the present land base has been rendered useless. Because it is located in the flood reservoir of the Painted Rock Dam it has been subjected to major flooding which brought salt cedar thickets into the area. It is estimated that it would cost between $5 and $7 million to remove the salt cedars and repair the land for agriculture. Another study concluded that there are no public lands within a 100-mile radius of the reservation suitable for exchange, as provided in the 1982 act.

In 1982, Congress recognized that an injustice had been worked on the tribe, however, other methods of compensating the tribe have proved unworkable. We have concluded that it is in the best interest of the parties to abandon the reservation and seek new lands and economic development. It is very rare for the chairman and myself to support taking land out of reservation status. The Tohono O'odham people wish to make a new economic life, and H.R. 4216 would provide them that vehicle.

□ 1500

Mr. Speaker, I reserve the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MCCAIN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I am informed that the administration would oppose enactment of the bill we have before us because it would require the Federal Government to pay $30 million of taxpayer money based on the claim that the reservation has been rendered unusable as a result of flooding attributed to the operation of the Painted Rock Dam for which the tribe was compensated for any flooding when the United States purchased a flowage easement from the tribe that explicitly permitted the flooding of these reservation lands.

Moreover, these lands could be restored to the condition that they were in prior to the flooding at a nominal cost to the tribe. Successful farming operations are currently underway on other similarly situated previously flooded lands adjacent to the reservation.

Based upon those considerations, $30 million does seem like a considerable expense. So, therefore, the administration has indicated its opposition to this legislation, and I too would indicate that I would be opposed to the bill.

Mr. MCCAIN. Mr. Speaker, I yield myself such time as I may consume.

Also I will yield to my distinguished colleague, the gentleman from Arizona [Mr. UDALL] in just a moment. But I would like to respond to a couple of the statements made by the gentleman from Pennsylvania, if I might.

Thirty million dollars is indeed a great deal of money, Mr. Speaker.

I would like to mention that in return, the United States would receive full title to almost 10,000 acres with unquantified water rights. Additionally, the United States will forgo the costs of rehabilitating the lands, which is $5 million to $7 million initially, and $1 million to $2 million annually.

While it cannot be precisely measured, $30 million could be on the low side when we are looking at the overall costs.

As far as the administration claims that the tribe has already been paid, let me point out that the Corps of Engineers and the Bureau of Indian Affairs negotiated the amount for these flowage easements and did not allow the tribe to appeal. Thus the amount, which cannot be found in the tribe's accounts, was approximately one-half to one-third of that paid non-Indians. Further, the United States has a trust responsibility to provide these people the opportunity to succeed, not take advantage of them in self dealing.

As far as the issue of the land being able to be farmed, let me just point out that I have been unable to find any, nor do I believe my colleague from Arizona could find any similar areas that are being farmed in a flood zone. I do not see how it can be productive, and indeed if farming is taking place in flood zones it would be only for tax losses. That certainly is not the reason why the Tohono O'odham Tribe would be farming this land at this time.

Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. UDALL], my distinguished colleague who also is a cosponsor of this legislation. I am sure he would like to respond to the gentleman from Pennsylvania [Mr. WALKER].

Mr. UDALL. Mr. Speaker, the other gentleman from Arizona has made the points I wish to make in response to the gentleman from Pennsylvania.

It is not as though Uncle Sam could say to the Indians, "Goodbye; we flooded your lands and ruined them and made them unproductive, and now go fend for yourself." We have contingent legal obligations.

The tribe could and would take the Government to court. We might end up paying a lot more money than we will pay for this agreed upon settlement. And when it is all over, the United States will have the 10,000 acres of potentially valuable land that they do not have now.

So this is not a giveaway. There is justification for it, and I regret the administration has taken the narrow position they have.

Mr. MCCAIN. If I might reclaim my time, Mr. Speaker, I would just like to say also that the gentleman from Arizona and myself have urged all Indian tribes throughout this country, but also in Arizona, to involve themselves in negotiated settlements. Negotiated settlements are far better than litigation which sometimes takes 10, 20, 30 or 40 years, with the taxpayers bearing the burden of the enormous litigation costs.

I believe this settlement is in fairness to the U.S. Government, the taxpayers and the people of the Tohono O'odham Tribe. I think that if we reject this settlement it will send a signal throughout Indian country in this Nation that negotiated settlements are not a viable option.

When negotiated settlements are agreed to, they constitute a great savings to the taxpayers and relieve them of the burden of litigation from the tribes who have other pursuits which they need to engage in order to further their own development.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KOSTMAYER). The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and pass the bill, H.R. 4216, as amended.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

TOHONO O'ODHAM TAT MOMOLIKOT DAM SETTLEMENT ACT

Mr. UDALL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4217) to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4217

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Tohono O'odham Tat Momolikot Dam Settlement Act".

CONGRESSIONAL FINDINGS

SEC. 2. The Congress finds that—

(1) it is the policy of the United States to settle, wherever possible, the land claims of Indian tribes without costly and lengthy litigation;

(2) Tat Momolikot Dam was constructed in 1974 by the Corps of Engineers, Department of the Army, on lands belonging to the Tohono O'odham Indians to provide off-reservation flood protection to Pinal County, Arizona, and water conservation for the tribe;

(3) the O'odham agreed to grant appropriate rights to approximately five thousand three hundred and twenty-four acres of land for the Tat Momolikot project on condition that the United States provide certain water conservation, irrigation, fish and wildlife and other benefits to the tribe;

(4) the United States has failed to provide those benefits;

(5) as a result, the United States has failed to acquire appropriate rights to the lands required for the construction of the dam and its reservoir;

(6) the claims of the O'odham for damages for the use of tribal land by the United States without authorization by the tribe or compensation to it are the subject of prospective lawsuits against the United States;

(7) it is in the long-term interest of the United States and the Tohono O'odham Indians to provide a fair and equitable settlement of the claims of the O'odham for the injuries they have sustained;

(8) the settlement contained in this Act will—

(A) provide fair and equitable compensation and other valuable considerations to the Tohono O'odham Indians and the former residents of Tat Momoli village; and

(B) secure for the United States appropriate rights for Tat Momolikot Dam and its reservoir.

DEFINITIONS

SEC. 3. For the purposes of this Act, the term—

(1) "tribe" means the Tohono O'odham Nation, formerly known as the Papago Tribe of Arizona, organized under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 478);

(2) "Secretary" means the Secretary of the Interior; unless otherwise specified; and,

(3) "Tat Momolikot Dam" means the dam constructed by the Corps of Engineers, Department of the Army, on Santa Rosa Wash in the Sif Oidak District of the Sells Papago Reservation.

PAYMENTS TO TRIBE; LIMITS ON SECRETARY'S LIABILITY

SEC. 4. (a) If the tribe executes the waiver and release referred to in section 6(a)(1) and the grant of rights referred to in section 6(a)(2), the Secretary of the Treasury shall pay to the authorized governing body of the tribe the sum of $6,000,000 for the benefit of the tribe, together with interest accruing on such sum from the date of enactment of this Act at a rate determined by the Secretary of the Treasury taking into consideration the average market yield on Federal obligations of comparable maturity.

(b) The tribe shall invest sums received under this section in interest bearing deposits and securities until expended. The authorized governing body of the tribe may spend the principal and interest and dividends accruing on such sums for economic and community development and other tribal purposes: *Provided*, That the sum of $100,000 shall be distributed by the tribe, on a fair and equitable basis, among those six individuals who were heads of households residing at Tat Momoli village in 1969 and owned improvements at said village, or among their heirs. No portion of the funds received under subsection (a) shall be used for per capita payments.

(c) The Secretary shall not be responsible for the review, approval or audit of the moneys referred to in this section, nor shall the Secretary be subject to liability for any claim or cause of action arising from the Tribe's use and expenditure of such moneys.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. Effective October 1, 1987, there are authorized to be appropriated such sums as are necessary to carry out the purposes of section 4 of this Act.

WAIVER AND RELEASE OF CLAIMS

SEC. 6. (a) The Secretary shall be required to carry out his obligations under this Act only if, within one year after the date of enactment of this Act, the Papago Tribe executes—

(1) a waiver and release in a manner satisfactory to the Secretary of any and all claims arising from the use of tribal land in connection with the construction of Tat Momolikot Dam and its reservoir prior to the date of enactment of this Act; and

(2) a grant of appropriate rights for said dam and reservoir.

(b) The wavier and release referred to in subsection (a)(1) and the grant of appropriate rights referred to in subsection (a)(2) shall not take effect until such time as the funds authorized to be paid to the Tribe have ben appropriated and the payments referred to in section 4 have been made.

HAZARD REDUCTION

SEC. 7. Within two years after the date of enactment of this Act, the Secretary shall construct such fences and cattleguards in the immediate vicinity of Tat Momolikot Dam and its reservoir as may be necessary to protect livestock.

COMPLIANCE WITH BUDGET ACT

SEC. 8. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1987.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Arizona [Mr. UDALL] will be recognized for 20 minutes and the gentleman from Arizona [Mr. MCCAIN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Arizona [Mr. UDALL.].

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent to revise and extend my remarks, and that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4217 would settle a 12-year-old dispute between the Tohono O'odham Indians and the United States concerning construction of Tat Momolikot Dam and reservoir on the tribe's reservation in south centeral Arizona.

Congress authorized the dam in 1965 to provide flood control for communities and farms north of the reservation that has been severely damaged by floods in the 1950's.

The Tat Momolikot project called for the tribe to provide the land for the dam site and a flowage easement for the reservoir. The Corps of Engineers would build the dam, and the Bureau of Indian Affairs would build an irrigation project for the tribe that would also provide fish, wildlife, and recreation benefits.

After the dam was completed in 1974, the tribe realized that the Federal Government was not going to deliver the promised irrigation project and related benefits. Understandably, they refused to accept payment for the easement or provide rights to the dam site.

Twelve years later, the United States is still without appropriate land rights for one of the largest earthen dams in the country, the tribe has yet to benefit from the project.

At the Interior Committee's hearing on the bill, the administration proposed that the tribe forego the irrigation project and accept a cash settlement for the value of their land and

the flowage easement, with interest from 1972.

The tribe agreed, provided that the settlement include fair compensation for the loss of the irrigation project and related benefits. These benefits were a major reason the tribe agreed to the dam in the first place.

H.R. 4217 would provide a one-time $6 million payment to the tribe in fiscal year 1988. In return the United States would receive appropriate rights to the dam site and a flowage easement.

This settlement would relieve the United States of any obligation to construct and operate an irrigation project of dubious economic feasibility.

It would also relieve the tribe and the United States of the expense of litigating a solution to this situation.

H.R. 4217 provides a long overdue compromise that is both equitable and cost effective. I urge its adoption by the House.

Mr. McCAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as an original cosponsor I rise in support of H.R. 4217, a bill to settle a dispute arising out of the construction of the Tat Momolikot flood control project in the early 1970's. It would authorize a $6 million payment to the tribe as a replacement for the benefits promised to the tribe for allowing the construction of the dam on tribal lands. In return the tribe will waive all claims connected with the construction of the dam, and grant the Corps of Engineers all the appropriate rights and easements for the operation of the dam.

The dam was authorized in 1965 and completed in 1974. The tribe was to receive an irrigation project, recreation benefits, a fish hatchery, and other benefits. Because of several factors, including building the dam at a different site than originally agreed upon, there is very little water behind the dam—usually it is just a pool of mud. Because of this the tribe has refused to accept payment for the flowage easement, nor provide the appropriate legal rights for operation of the dam. H.R. 4217 would settle this dispute.

The administration has no objection to the bill, and I urge its speedy passage.

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Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. UDALL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DURBIN). The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and pass the bill, H.R. 4217, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PROVIDING PROCEDURES FOR REVIEW OF TRIBAL CONSTITUTIONS AND BYLAWS OR AMENDMENTS

Mr. UDALL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 1915) to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987).

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. McCAIN. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the gentleman from Arizona [Mr. UDALL], the chairman of the committee, to explain the bill.

Mr. UDALL. Mr. Speaker, H.R. 1915 is a bill which provides some guidelines for secretarial approval of tribal constitutions under the 1934 Indian Reorganization Act. Namely, the bill gives the Secretary of the Interior 180 days to call an election for the approval of a proposed tribal constitution. In the cases of amendments to existing constitutions, he is given 90 days.

This bill is really nothing more than a technical clarification of the 1934 act. The administration supported the bill during the committee's hearings on this bill and the committee incorporated all of the administration's recommendations when the bill was reported out of the committee.

This bill contains no authorization for additional appropriations of Federal funds.

Mr. McCAIN. Further reserving the right to object, Mr. Speaker, H.R. 1915 would require the Secretary of the Interior to call for an election to adopt or amend a tribal constitution within a certain timeframe upon a request from a tribe. The ninth circuit recently ruled that the Secretary must call these elections under current law. H.R. 1915 is supported by the administration and tribes, and I support the bill because Congress should authorize the procedural change in regulations, and not the courts.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the bill, as follows:

H.R. 1915

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 2. For the purpose of this Act, the term—

(a) "Secretary" shall mean the Secretary of the Interior, and

(b) "the Act" shall mean the Act of June 18, 1934 (48 Stat. 987).

SEC. 3. When a tribe requests the Secretary to call an election to ratify a constitution and bylaws or amendments thereto pursuant to section 16 of the Act, such election shall be called by the Secretary within ninety days of the receipt of such tribal request.

SEC. 4. If the Secretary refuses to approve or disapprove a tribal constitution and bylaws or amendments thereto within ninety days after such documents has been ratified by the tribe pursuant to an election called under section 16 of the Act, such approval shall be deemed to have been made.

SEC. 5. Whenever the Secretary refuses to approve pursuant to section 16 of the Act, any tribal constitution or bylaws or amendments thereto or other tribal laws requiring his approval under such constitution and bylaws, he shall provide the tribe with a legal analysis explaining why such document is in violation of Federal law.

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore. The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike out all after the enacting clause and insert in lieu thereof:

SECTION 1. For the purpose of this Act, the term:

(a) "Secretary" means the Secretary of the Interior;

(b) "the Act" means the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended; and

(c) "appropriate tribal request" means a request submitted by a tribal government under regulations prescribed by the Secretary.

SEC. 2. (a) The Secretary shall complete a formal technical and legal review of any tribal constitution proposed under the Act and call an election on the adoption of such constitution within 180 days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposed constitution is inconsistent with Federal law.

(b) The Secretary shall complete a formal technical and legal review of any tribal request to amend a constitution or to adopt new or amended bylaws and call an election for approval of such proposal within 90 days following the receipt of an appropriate tribal request for the election. Following completion of this review and prior to the requested election, the Secretary shall notify the tribe in writing whether the proposal is inconsistent with Federal law. A complete revision of an existing tribal constitution shall be subject to review pursuant to subsection (a) of this section and shall not be considered an amendment.

SEC. 3. Following tribal adoption of a proposed constitution, bylaws or amendments at an election called under section 2 of this Act, the Secretary shall approve or disapprove such proposal within 45 days after the election results are certified. If the Secretary does not approve or disapprove the pro-

posed constitution, bylaws, or amendments within the specified 45-day period, such proposal shall be considered approved by the Secretary for the purposes of the Act and any provision of a tribal constitution requiring approval by the Secretary.

SEC. 4. Whenever the Secretary refuses to approve pursuant to section 16 of the Act, any tribal constitution or bylaws or amendments thereto or other tribal laws requiring his approval under such constitution and bylaws, he shall provide the tribe with a legal analysis explaining why such document is in violation of Federal law.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 1915, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

SALT RIVER PIMA-MARICOPA JURISDICTION BILL

Mr. UDALL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 4900) to provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. McCAIN. Mr. Speaker, reserving the right to object, and I shall not object, I yield to the gentleman from Arizona [Mr. UDALL], the chairman of the committee, to explain the bill.

Mr. UDALL. Mr. Speaker, H.R. 4900 is a bill which would grant to the Salt River Pima-Maricopa Indian Community in Arizona criminal jurisdiction over anyone committing a misdemeanor offense on the reservation. This bill would improve the implementation of law and order on the reservation and might result in bringing to justice certain offenders who might not have otherwise been prosecuted. This bill does not call for the appropriation of additional Federal funds and has the support of the administration, the surrounding communities, the tribe, and the State of Arizona.

Mr. McCAIN. Mr. Speaker, further reserving the right to object, I sponsored the measure to grant the Salt River community criminal jurisdiction over non-Indians in order to bring equity to a situation in the east valley of the Phoenix metropolitan area.

Over 80,000 persons traverse the reservation each day, yet the tribe has no jurisdiction over these people to enforce their laws concerning public consumption of alcohol, dumping of trash on public and private lands, or traffic control. The bill is supported by the Governor of Arizona, the State attorney general, the county board of supervisors, and the mayors of all the surrounding non-Indian communities and the administration.

Mr. Speaker, this legislation is by no means precedent-setting but it is unique for a unique situation.

I thank the committee chairman for his assistance on the bill.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds that (a) the Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian Community to live in peace and prosperity with other persons in Arizona.

(b) The Salt River Pima-Maricopa Indian Community Reservation is located within the eastern end of the Phoenix-Scottsdale-Mesa-Tempe metropolitan area and many thousands of non-Indians from those communities regularly transverse the Salt River Pima-Maricopa Indian Community's reservation and the courts of the Salt River Pima-Maricopa Indian Community do not have the jurisdiction to control criminal activity by non-Indians within the Community.

(c) All persons have the right to appeal decisions concerning their constitutional protections, as defined by the Bill of Rights of the United States Constitution, to the Federal court system whether within the jurisdiction of a State or an Indian tribe.

(d) The Salt River Pima-Maricopa Indian Community has a long established court system where the judges serve fixed terms and do not serve at the pleasure of the Salt River Pima-Maricopa Indian Community Council.

(e) The Chief Judge of the Salt River Pima-Maricopa Indian Community Court is elected by a vote of the people and the juvenile and associate judges are appointed by the President of the Salt River Pima-Maricopa Indian Community subject to the confirmation of the Community Council.

(f) The Salt River Pima-Maricopa Indian Community has close relations with the municipalities surrounding it and the cities of Phoenix, Mesa, Tempe, and Scottsdale have endorsed the granting of jurisdiction provided in this Act, to address the unique enforcement situation surrounding the community.

SEC. 2. (a) The United States hereby grants to the Salt River Pima-Maricopa Indian Community the jurisdiction to try in the courts of the Salt River Pima-Maricopa Indian Community any persons who while within its territory commits a misdemeanor offense as defined by the criminal ordinances of the Salt River Pima-Maricopa Indian Community.

(b) The courts of the Salt River Pima-Maricopa Indian Community shall be bound by the applicable provisions of the Indian Civil Rights Act (Public Law 90-284, title II, sec. 202, 82 Stat. 77), which limits the penalties tribal courts can impose and awards persons within the jurisdiction of Indian tribes rights similar to those provided all citizens in the Bill of Rights of the United States Constitution.

COMMITTEE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The SPEAKER pro tempore. The Clerk will report the committee amendment in the nature of a substitute.

The Clerk read as follows:

Committee amendment in the nature of a substitute: Strike out all after the enacting clause and insert:

That the Congress hereby finds that:

(a) The Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian Community to live in peace and prosperity with other persons in Arizona.

(b) The Salt River Pima-Maricopa Indian Community Reservation is located within the eastern end of the Phoenix-Scottsdale-Mesa-Tempe metropolitan area and many thousands of non-Indians from those communities regularly transverse the Salt River Pima-Maricopa Indian Community's reservation.

(c) The courts of the Salt River Pima-Maricopa Indian Community do not have the jurisdiction to control criminal activity by non-Indians within the Salt River Pima-Maricopa Indian Reservation.

(d) All persons have the right to appeal decisions concerning their personal liberty to the Federal court system whether within the jurisdiction of a State or an Indian tribe.

(e) The Salt River Pima-Maricopa Indian Community has a long established court system where the judges serve fixed terms and do not serve at the pleasure of the Salt River Pima-Maricopa Indian Community Council.

(f) The Chief Judge of the Salt River Pima-Maricopa Indian Community Court is elected by a vote of the people and the juvenile and associate judges are appointed by the President of the Salt River Pima-Maricopa Indian Community subject to the confirmation of the Community Council.

(g) The Salt River Pima-Maricopa Indian Community has close relations with the municipalities surrounding it and the cities of Phoenix, Mesa, Tempe and Scottsdale has endorsed the granting of jurisdiction provided in this Act, to address the unique enforcement situation surrounding the community.

SEC. 2. (a)(1) The criminal ordinances of the Salt River Pima-Maricopa Indian Community which provide for misdemeanor of-

fenses shall have the force of law in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation and shall apply with respect to acts and omissions committed in such area by any person, without regard to whether such person is an Indian or the interests of any Indian are affected by such acts or omissions.

(2) The courts of the Salt River Pima-Maricopa Indian Community shall have exclusive jurisdiction over misdemeanor offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community by any person, without regard to whether such person is an Indian or the interests of any Indian are affected by such violation.

(3) Persons appearing before the Salt River Pima-Maricopa Indian Community Court shall be accorded the same rights, protections, privileges and immunities under the provisions of the Fourteenth Amendment to the United States Constitution as states are required to accord persons appearing before state courts and the Salt River Pima-Maricopa Indian Community or any official acting under its color of authority shall be liable at law or in equity in an action brought in the United States. District Court for the District of Arizona for the denial of such rights, protections, privileges and immunities.

(b) The provisions of subsection (a) shall be considered to be a limited extension of the sovereignty of the Salt River Pima-Maricopa Indian Community over persons who are not Indians or are not members of the Salt River Pima-Maricopa Indian Community. Neither the criminal ordinances of the Salt River Pima-Maricopa Indian Community, nor the application or enforcement of such ordinances with respect to such persons, may be considered Federal law, or the exercise of Federal law, for any purpose.

(c) The provisions of title II of Public Law 90-284 (25 U.S.C. 1301, et seq.) shall apply with respect to—

(1) the criminal ordinances of the Salt River Pima-Maricopa Indian Community,

(2) the application and enforcement of such ordinances, and

(3) the jurisdiction granted to the courts of the Salt River Pima-Maricopa Indian Community under subsection (a)(2).

(d)(1) Nothing in this Act may be construed to alter or affect—

(A) the applicability of any Federal law in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation,

(B) the ability, or responsibility, of the United States to enforce Federal laws in such area, or

(C) the jurisdiction of the courts of the United States over misdemeanor or other offenses committed in such area in violation of any Federal law.

(2) The courts of the United States shall not have jurisdiction (except to the extent necessary to carry out the provisions of title II of Public Law 90-284) over misdemeanor offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community, but such courts shall retain jurisdiction over any offense committed in such area in violation of Federal law, even if the act or omission that constitutes such violation of Federal law is also a violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community over which the courts of such Indian Community have jurisdiction.

(e)(1) Nothing in this Act may be construed to alter or affect—

(A) the applicability of any law of the State of Arizona in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation;

(B) the ability, or responsibility, of the State of Arizona to enforce the laws of the State of Arizona in such area; or

(C) the jurisdiction of the courts of the State of Arizona over misdemeanor or other offenses committed in such area in violation of any law of the State of Arizona.

(2) The courts of the State of Arizona shall not have jurisdiction over misdemeanor or offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community, but such courts shall retain whatever jurisdiction over any offense committed in such area in violation of any law of the State of Arizona that such courts would possess if this Act were not enacted, even if the act or omission that constitutes such violation of State law is also a violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community over which the courts of such Indian Community have jurisdiction.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the committee amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. The question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4900, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

GILA RIVER PIMA-MARICOPA JUDGMENT DISTRIBUTION

Mr. UDALL. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 5430) to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

Mr. McCAIN. Mr. Speaker, reserving the right to object, and I will not object, I yield to the gentleman from Arizona [Mr. UDALL], the chairman of the committee, to explain the bill.

Mr. UDALL. Mr. Speaker, H.R. 5430 is a bill which amends a plan providing for the use and distribution of funds awarded to the Gila River Pima-Maricopa Indian community by the U.S. Court of Claims. The plan which was submitted by the Secretary of the Interior became valid on August 10, 1986. This bill only provides that upon the request of the tribal government, the Secretary is authorized to proceed with a per capita distribution of no more than 80 percent of these funds. This amendment conforms to the wishes of the tribal government and the tribal members. There is no known opposition to this bill and this bill does not contain any authorization for the appropriation of Federal funds.

Mr. McCAIN. Mr. Speaker, further reserving the right to object, H.R. 5430 would implement a judgment distribution plan for the Gila River Indian Tribe consisting of 20 percent for tribal programs and 80 percent for per capita distribution. The tribe's final decision on this came after the proposal by the Secretary for a 100-percent tribal programming distribution necessitating this legislation. While I believe that per capitas may be a less desirable form of judgment fund distribution, I firmly believe we must approve the wishes of the tribal membership and the tribal council.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5430

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any previously approved plan for the use and distribution of the Ak-Chin, Salt River Pima-Maricopa, and Gila River Pima-Maricopa Indian communities judgment funds in docket 228 before the United States Claims Court, upon the request of the governing body of the Gila River Pima-Maricopa Indian community, as manifested by the appropriate tribal council resolution, the Secretary of the Interior shall make a per capita distribution not to exceed 80 per centum of the funds apportioned to the Gila River Pima-Maricopa Indian community, in a sum as equal as possible, to each member of the Gila River Pima-Maricopa Indian community born on or prior to and living on August 10, 1986.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to

revise and extend their remarks on H.R. 5430, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

COLORADO RIVER FLOODWAY PROTECTION ACT

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1246) to establish a federally declared floodway for the Colorado River below Davis Dam, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Colorado River Floodway Protection Act".

FINDINGS AND PURPOSES

SEC. 2. (a)— FINDINGS.—The Congress finds that—

(1) there are multiple purposes established by law for the dams and other control structures administered by the Secretary of the Interior on the Colorado River;

(2) the maintenance of the Colorado River Floodway established in this Act is essential to accomplish these multiple purposes;

(3) developments within the Floodway are and will continue to be vulnerable to damaging flows such as the property damage which occurred in 1983 and may occur in the future;

(4) certain Federal programs which subsidize or permit development within the Floodway threaten human life, health, property, and natural resources; and

(5) there is a need for coordinated Federal, State, and local action to limit Floodway development.

(b) PURPOSE.—The Congress declares that the purposes of this Act are to—

(1) establish the Colorado River Floodway, as designated and described further in this Act, so as to provide benefits to river users and to minimize the loss of human life, protect health and safety, and minimize damage to property and natural resources by restricting future Federal expenditures and financial assistance, except public health funds, which have the effect of encouraging development within the Colorado River Floodway; and

(2) establish a task force to advise the Secretary of the Interior and the Congress on establishment of the Floodway and on managing existing and future development within the Floodway, including the appropriateness of compensation in specified cases of extraordinary hardship.

DEFINITIONS

SEC. 3. (a) The term "Committees" refers to the Committee on Interior and Insular Affairs of the U.S. House of Representatives and the Committee on Environment and Public Works and the Committee on Energy and Natural Resources of the U.S. Senate.

(b) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than—

(1) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221);

(2) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(3) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(4) assistance for environmental studies, plans, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(5) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old-age, survivors, or disability insurance program.

Such term also includes flood insurance described in sections 1322 (a) and (b) of the National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572) as amended, on and after the dates on which the provisions of those sections become effective.

(c) The term "Secretary" means the Secretary of the Interior.

(d) The term "water district" means any public agency providing water service, including water districts, county water districts, public utility districts, and irrigation districts.

(e) The term "Floodway" means the Colorado River Floodway established in section 5 of this Act.

COLORADO RIVER FLOODWAY TASK FORCE

SEC. 4. (a) To advise the Secretary and the Congress there shall be a Colorado River Floodway Task Force, which shall include one representative of—

(1) each State (appointed by the Governor) and Indian reservation in which the Floodway is located;

(2) each county in which the Floodway is located;

(3) a law enforcement agency from each county in which the Floodway is located; and

(4) each water district in which the Floodway is located;

(5) the cities of Needles, Parker, Blythe, Bullhead City, Yuma, Laughlin, Lake Havasu City, Nevada (if and when incoprorated), and Mojave County, Arizona Supervisor District No. 2 (chosen by, but not a member of the Board of Supervisors);

(6) of the Chamber of Commerce from each county in which the Floodway is located;

(7) the Colorado River Wildlife Council;

(8) the Army Corps of Engineers;

(9) the Federal Emergency Management Agency (FEMA);

(10) the Department of Agriculture;

(11) the Department of the Interior; and

(12) the Department of State.

(b) The task force shall be chartered and operated under the provisions of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. I) and shall prepare recommendations concerning the Colorado River Floodway, which recommendations shall deal with:

(1) the means to restore and maintain the Floodway specified in section 5 of this Act, including, but not limited to, specific instances where land transfers or relocations, or other changes in land management, might best effect the purposes of this Act; and

(2) the necessity for additional Floodway management legislation at local, tribal, State, and Federal levels;

(3) the development of specific design criteria for the creation of the Floodway boundaries;

(4) the review of mapping procedures for Floodway boundaries;

(5) whether compensation should be recommended in specific cases of economic hardship resulting from impacts of the 1983 flood on property outside the Floodway which could not reasonably have been foreseen; and

(6) the potential application of the Floodway on Indian lands and recommended legislation or regulations that might be needed to achieve the purposes of the Floodway taking into consideration the special Federal status of Indian lands.

(c) The task force shall exist for at least one year after the date of enactment of this Act, or until such time as the Secretary has filed with the Committees the maps described in subsection 5(b)(2). The task force shall file its report with the Secretary and the Committees within nine months after the date of enactment of this Act.

COLORADO RIVER FLOODWAY

SEC. 5. (a) There is established the Colorado River Floodway as identified and generally depicted on maps that are to be submitted by the Secretary.

(b)(1) Within eighteen months after the date of enactment of this Act, the Secretary, in consultation with the seven Colorado River Basin States, represented by persons designated by the Governors of those States, the Colorado River Floodway Task Force, and any other interested parties shall:

(i) complete a study of the tributary floodflows downstream of Davis Dam;

(ii) define the specific boundaries of the Colorado River Floodway so that the Floodway can accommodate either a one-in-one hundred year river flow consisting of controlled releases and tributary inflow, or a flow of forty thousand cubic feet per second (cfs), whichever is greater, from below Davis Dam to the Southerly International Boundary between the United States of America and the Republic of Mexico.

(2) As soon as practicable after the determination of the Floodway boundary pursuant to this subsection, the Secretary shall prepare and file with the Committees maps depicting the Colorado River Floodway, and each such map shall be considered a standard map to be adhered to by all agencies and shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Commissioner of the Bureau of Reclamation, Department of the Interior, and in other appropriate offices of the Department.

(3) The Secretary shall provide copies of the Colorado River Floodway maps to (A) the chief executive officer of each State, county, municipality, water district, Indian tribe, or equivalent jurisdiction in which the Floodway is located, (B) each appropriate Federal agency, including agencies which regulate Federal financial institutions, and (C) each federally insured financial institution which serves the geographic area as one of its primary markets.

(c)(1) The Secretary shall conduct, at least once every five years, a review of the Colorado River Floodway and make, after

notice to and in consultation with the appropriate officers referred to in paragraph (3) of subsection (b), and others, such minor and technical mnodifications to the boundaries of the Floodway as are necessary solely to reflect changes that have occurred in the size or location of any portion of the floodplain as a result of natural forces, and as necessary pursuant to subsection (c) of section (7) of this Act.

(2) If, in the case of any minor and technical modification to the boundaries of the Floodway made under the authority of this subsection, an appropriate chief executive officer of a State, county, municipality, water district, Indian tribe, or equivalent jurisdiction, to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals.

LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE FLOODWAY

SEC. 6. (a) Except as provided in section 7, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Floodway established under section 5 of this Act.

(b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if—

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

EXCEPTIONS

SEC. 7. Notwithstanding section 6, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Colorado River Floodway for—

(a) any dam, channel or levee construction, operation or maintenance for the purpose of flood control, water conservation, power or water quality;

(b) other remedial or corrective actions, including but not limited to drainage facilities essential to assist in controlling adjacent high ground water conditions caused by flood flows;

(c) the maintenance, replacement, reconstruction, repair, and expansion, of publicly or tribally owned or operated roads, structures (including bridges), or facilities: *Provided,* That, no such expansion shall be permitted unless—

(1) the expansion is designed and built in accordance with the procedures and standards established in section 650.101 of title 23, Code of Federal Regulations, and the following as they may be amended from time to time; and

(2) the boundaries of the Floodway are adjusted to account for changes in flows caused, directly or indirectly, by the expansion;

(d) military activities essential to national security;

(e) any of the following actions or projects, but only if the Secretary finds that the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(1) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(2) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(3) Projects eligible for funding under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11).

(4) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications.

(5) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act Of 1974 (42 U.S.C. 5145 and 5146) and are limited to actions that are necessary to alleviate the emergency. Disaster assistance under other provisions of the Disaster Relief Act of 1974 (Public Law 93-288, as amended) may also be provided with respect to persons residing within the Floodway, or structures or public infrastructure in existence or substantially under construction therein, on the date ninety days after the date of enactment of this Act: *Provided,* That, such persons, or with respect to public infrastructure the State or local political entity which owns or controls such infrastructure, had purchased flood insurance for structures or infrastructure under the National Flood Insurance Program, if eligible, and had taken prudent and reasonable steps, as determined by the Director of the Federal Emergency Management Agency, to minimize damage from future floods or operations of the Floodway established in the Act.

(6) Other assistance for public health purposes, such as mosquito abatement programs.

(7) Nonstructural projects for riverbank stabilization that are designed to enhance or restore natural stabilization systems.

(8) Publicly or tribally financed, owned and operated compatible recreational developments such as regional parks, golf courses, docks, boat launching ramps (including steamboat and ferry landings), including compatible recreation uses and accompanying utility or interpretive improvements which are essential or closely related to the purpose of restoring the accuracy of a National Historical Landmark and which meet best engineering practices considering the nature of Floodway conditions.

(9) Compatible agricultural uses that do not involve permanent crops and include only a minimal amount of permanent facilities in the Floodway.

CERTIFICATION OF COMPLIANCE

SEC. 8. The Secretary of the Interior shall, on behalf of each Federal agency concerned, make written certification that each agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1985. Such certification shall be submitted on an annual basis to the U.S. House of Representatives and the U.S. Senate on or before January 15 of each fiscal year.

PRIORITY OF LAWS

SEC. 9. Nothing contained in this Act shall be construed to alter, amend, repeal, modify, interpret, or be in conflict with the provisions of the Colorado River Compact (45 Stat. 1057), the Upper Colorado River Basin Compact (63 Stat. 31), the Water Treaty of 1944 with the United Mexican States (Treaty Series 944, 59 Stat. 1219), the Flood Control Act of 1944 (58 Stat. 887), the decree entered by the Supreme Court of the United States in Arizona v. California, and others (376. U.S. 340), the Boulder Canyon Project Act (45 Stat. 1057), the Boulder Canyon Project Adjustment Act (54 Stat. 774; 43 U.S.C. 618a), the Colorado River Storage Project Act (70 Stat. 105; 43 U.S.C. 620), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501). Furthermore, nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, tribe, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State, tribal, or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State or tribe, so that the two cannot be reconciled or consistently stand together. Inconsistencies shall be reviewed by the task force, and the task force shall make recommendations concerning such local laws. This Act shall in no way be interpreted to interfere with a State's or tribe's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

SEPARABILITY

SEC. 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

REPORTS TO CONGRESS

SEC. 11. Within one year after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committees a report regarding the Colorado River Floodway, the task force's report, and the Secretary's recommendations with respect to the objectives outlined in section 4(b) of this Act. In making his report, the Secretary shall analyze the effects of this Act on the economic development of the Indian tribes whose lands are located within the Floodway.

AMENDMENTS REGARDING FLOOD INSURANCE

SEC. 12. (a) The National Flood Insurance Act of 1968, Public Law 90-448, title XIII (82 Stat. 572), as amended, is amended by adding the following section:

"Sec. 1322. (a) Owners of existing National Flood Insurance Act policies with respect to structure located within the Floodway established under section 5 of the Colorado River Floodway Protection Act shall have the right to renew and transfer such policies. Owners of existing structures located within said Floodway on the date of enactment of the Colorado River Floodway Protection Act who have not acquired National Flood Insurance Act policies shall have the right to acquire policies with respect to such structures for six months after the Secretary of the Interior files the Floodway maps required by section 5(b)(2) of the Colorado River Floodway Protection Act and to renew and transfer such policies.

"(b) No new flood insurance coverage may be provided under this title on or after a date six months after the enactment of the

Colorado River Floodway Protection Act for any new construction or substantial improvements of structures located within the Colorado River Floodway established by section 5 of the Colorado River Floodway Protection Act. New construction includes all structures that are not insurable prior to that date.

"(c) The Secretary of the Interior may by rule after notice and comment pursuant to 5 U.S.C. 553 establish temporary Floodway boundaries to be in effect until the maps required by Section 5(b)(2) of the Colorado River Floodway Protection Act are filed, for the purpose of enforcing subsections (b) and (d) of this section.

"(d) A federally supervised, approved, regulated or insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section: Provided, That prior to making such a loan, such institution determines that the loans or structures securing the loan are within the Floodway."

FEDERAL LEASES

SEC. 13. (a) No lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be granted after the date of enactment of this Act unless the Secretary determines that such lease would be consistent with the operation and maintenance of the Colorado River Floodway.

(b) No existing lease of lands owned in whole or in part by the United States and within the Colorado River Floodway shall be extended beyond the date of enactment of this Act or the stated expiration date of its current term, whichever is later, unless the lessee agrees to take reasonable and prudent steps determined to be necessary by the Secretary to minimize the inconsistency of operation under such lease with the operation and maintenance of the Colorado River Floodway.

(c) No lease of lands owned in whole or in part by the United States between Hoover Dam and Davis Dam below elevation 655.0 feet on Lake Mohave shall be granted unless the Secretary determines that such lease would be consistent with the operation of Lake Mohave.

(d) The provisions of subsections (a) and (b) of this section shall not apply to lease operations on Indian lands pursuant to a lease providing for activities which are exempted under section 7 of this Act.

(e) Subsections (a) and (b) of this section shall not apply to lands held in trust by the United States for the benefit of any Indian tribe or individual with respect to any lease where capital improvements, and operation and maintenance costs are not provided for by Federal financial assistance if the lessee, tribe, or individual has provided insurance or other security for the benefit of the Secretary sufficient to insure against all reasonably forseeable, direct, and consequential damages to the property of the tribe, private persons, and the United States, which may result from the proposed lease.

NOTICES AND EXISTING LAWS

SEC. 14. (A)(1) Nothing in this Act shall alter or affect in any way the provisions of section 702c of title 33, United States Code.

(2) The Secretary shall provide notice of the provisions of section 702c of title 33, United States Code, and this Act to all existing and prospective lessees of lands leased by the United States and within the Colorado River Floodway.

(b) Except as otherwise specifically provided in this Act, all provisions of the National Flood Insurance Act of 1968, as amended, and requirements of the National Flood Insurance Program ("NFIP") shall continue in full force and effect within areas wholly or partially within the Colorado River Floodway. Any maps or other information required to be prepared by this Act shall be used to the maximum extent practicable to support implementation of the NFIP.

(c) The Secretary shall publish notice on three successive occasions in newspapers of general circulation in affected communities of the provisions of section 12(a), (a) of this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. There is authorized to be appropriated to the Department of the Interior $600,000, through the end of fiscal year 1990, in addition to any funds now available to the Department to discharge its duties to implement sections 4 through 14 of this Act: Provided, That by mutual agreement, such funds shall be made available to the Federal Emergency Management Agency to discharge its duties under section 12 of this Act: Provided further, That the provisions of sections 6 and 7 of this Act shall not be affected by this section: And Provided further, in addition, Indian tribes may be eligible under Public Law 93-638 to contract for studies of Indian lands required under the provisions of this Act.

Mr. MILLER of California (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

Mr. CHENEY. Reserving the right to object, Mr. Speaker, it is not my intention to object. I have reserved the right for the purpose of yielding to the gentleman from California [Mr. MILLER] the distinguished chairman of the subcommittee.

Mr. MILLER of California. Mr. Speaker, I thank the gentleman from Wyoming [Mr. CHENEY] for all of his help on this legislation which he has sponsored before the committee.

Mr. Speaker, H.R. 1246 would authorize the Secretary of the Interior to establish a floodway on the Colorado River from below Davis Dam near Needles, CA, to the United States-Mexico boundary.

Under the bill, the Secretary would designate the boundaries of the floodway after considering the recommendations of a task force composed of Federal, State, and local officials established by the bill.

H.R. 1246 would prohibit Federal development-related assistance for new structures within the floodway. For existing structures, Federal flood insurance within certain limits would remain available. Residents of the affected areas would be allowed to build anywhere, but they would not be able to obtain Federal flood insurance and most forms of disaster assistance.

I would point out that the gentleman from Wyoming [Mr. CHENEY] is the author of the legislation. In addition, all the Governors of the Colorado River Basin States have formally endorsed the bill.

Mr. Speaker, I urge adoption of the Senate amendments.

Mr. CHENEY. Further reserving the right to object, Mr. Speaker, I would like to thank the distinguished chairman of the subcommittee, the gentleman from California [Mr. MILLER], who has been very cooperative in this effort.

This is an important piece of legislation that will cost no additional funds but will provide for improved management of the entire Colorado River system.

At this point I yield to the distinguished chairman of the full committee, the gentleman from Arizona [Mr. UDALL].

Mr. UDALL. Mr. Speaker, I wish to commend the gentleman from California, Mr. MILLER, and the gentleman from Wyoming [Mr. CHENEY], and their staffs, for the excellent work they have done on this legislation.

I support the motion to concur in the Senate amendments to the bill which I believe are meritorious.

When this bill was originally introduced, I said that the Colorado River needed a "consumer warning label." I still feel that way, and this bill is such a label.

It says that the Federal Government never again will be allowed to encourage any development on the Colorado River flood plain.

The bill designates the Colorado River floodway as an area where future Federal financial assistance will not be provided and bans direct or indirect Federal encouragement for any development within the flood plain.

The bill recognizes and grandfathers certain rights of owners of property already located in the floodway.

In addition, it establishes a task force of Federal, State, and local representatives to make recommendations to the Secretary of the Interior on a variety of subjects related to the floodway.

This legislation extends the solid public policy position taken by the Congress in providing similar limitations on Federal support for development in eastern coastal areas subject to frequent flooding.

I am pleased to support it.

□ 1520

Mr. UDALL. Mr. Speaker, I thank the gentleman from Wyoming for yielding, and I thank him for his work in developing this legislation over the past 2 years. I strongly support the

motion to concur in the Senate amendment.

Mr. CHENEY. Mr. Speaker, again let me thank my colleagues on both sides of the aisle on the committee, especially the chairman of the committee and the chairman of the subcommittee, for their help on this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. DURBIN). Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HOYER). Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 5 of rule I, the Chair will now put the question on each motion on which further proceedings were postponed earlier today in the order in which that motion was entertained. Votes will be taken in the following order: H.R. 5369, de novo, and H.R. 4216, de novo.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

ASBESTOS INFORMATION ACT OF 1986

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5369.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. FLORIO] that the House suspend the rules and pass the bill, H.R. 5369.

The question was taken.

Mr. DURBIN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 390, nays 4, answered "present" 1, not voting 37, as follows:

[Roll No. 401]

YEAS—390

Abercrombie	Downey	LaFalce
Ackerman	Dreier	Lagomarsino
Akaka	Duncan	Lantos
Alexander	Dwyer	Leach (IA)
Anderson	Dymally	Leath (TX)
Andrews	Dyson	Lehman (CA)
Annunzio	Early	Lehman (FL)
Anthony	Eckart (OH)	Leland
Applegate	Eckert (NY)	Lent
Archer	Edwards (CA)	Levin (MI)
Aspin	Edwards (OK)	Levine (CA)
Atkins	Emerson	Lewis (CA)
AuCoin	English	Lewis (FL)
Badham	Erdreich	Lightfoot
Barnard	Evans (IA)	Lipinski
Barnes	Evans (IL)	Livingston
Bartlett	Fascell	Lloyd
Barton	Fawell	Loeffler
Bateman	Fazio	Long
Bates	Feighan	Lott
Bedell	Fiedler	Lowery (CA)
Beilenson	Fields	Lowry (WA)
Bennett	Fish	Lujan
Bentley	Flippo	Luken
Bereuter	Florio	Lundine
Berman	Foley	Lungren
Bevill	Ford (MI)	Mack
Biaggi	Frank	MacKay
Bilirakis	Franklin	Madigan
Bliley	Frenzel	Manton
Boehlert	Frost	Marlenee
Boner (TN)	Fuqua	Martin (IL)
Bonior (MI)	Gallo	Martin (NY)
Bonker	Garcia	Martinez
Borski	Gaydos	Matsui
Bosco	Gejdenson	Mavroules
Boucher	Gekas	Mazzoli
Boulter	Gephardt	McCain
Brooks	Gilman	McCandless
Broomfield	Glickman	McCloskey
Brown (CA)	Gonzalez	McCollum
Brown (CO)	Goodling	McCurdy
Bruce	Gordon	McDade
Bryant	Gradison	McEwen
Burton (IN)	Gray (IL)	McHugh
Bustamante	Gray (PA)	McKernan
Byron	Green	McKinney
Callahan	Gregg	McMillan
Carney	Guarini	Meyers
Carper	Gunderson	Mica
Carr	Hall (OH)	Michel
Chandler	Hall, Ralph	Miller (CA)
Chapman	Hamilton	Miller (OH)
Chappell	Hammerschmidt	Miller (WA)
Cheney	Hawkins	Mineta
Clay	Hayes	Mitchell
Coats	Hefner	Moakley
Cobey	Hendon	Molinari
Coble	Henry	Mollohan
Coleman (MO)	Hertel	Monson
Coleman (TX)	Hiler	Montgomery
Collins	Hillis	Moody
Combest	Hopkins	Moorhead
Conte	Horton	Morrison (CT)
Cooper	Howard	Morrison (WA)
Coughlin	Hoyer	Mrazek
Courter	Hubbard	Murphy
Coyne	Huckaby	Murtha
Craig	Hughes	Myers
Crane	Hunter	Natcher
Crockett	Hutto	Neal
Daniel	Hyde	Nelson
Dannemeyer	Ireland	Nichols
Darden	Jacobs	Nielson
Daschle	Jeffords	Nowak
Daub	Jenkins	Oberstar
Davis	Johnson	Obey
de la Garza	Jones (NC)	Olin
DeLay	Jones (TN)	Ortiz
Dellums	Kanjorski	Owens
Derrick	Kasich	Oxley
DeWine	Kastenmeier	Packard
Dickinson	Kemp	Parris
Dicks	Kennelly	Pashayan
Dingell	Kildee	Pease
DioGuardi	Kleczka	Penny
Donnelly	Kolbe	Pepper
Dorgan (ND)	Kolter	Perkins
Dornan (CA)	Kostmayer	Petri
Dowdy	Kramer	Pickle
Porter	Shaw	Tallon
Price	Shelby	Tauke
Pursell	Shumway	Tauzin
Quillen	Shuster	Thomas (CA)
Rahall	Sikorski	Thomas (GA)
Rangel	Siljander	Torres
Ray	Skelton	Torricelli
Regula	Slattery	Towns
Reid	Slaughter	Traficant
Richardson	Smith (FL)	Traxler
Ridge	Smith (IA)	Udall
Rinaldo	Smith (NE)	Valentine
Ritter	Smith (NJ)	Vander Jagt
Roberts	Smith, Denny (OR)	Vento
Robinson	Smith, Robert (NH)	Visclosky
Rodino	Smith, Robert (OR)	Volkmer
Roe	Snowe	Waldon
Roemer	Snyder	Walgren
Rogers	Solarz	Walker
Rose	Solomon	Watkins
Rostenkowski	Spence	Waxman
Roth	Spratt	Weber
Roukema	St Germain	Weiss
Rowland (CT)	Staggers	Wheat
Rowland (GA)	Stallings	Whitehurst
Roybal	Stangeland	Whitley
Rudd	Stark	Whittaker
Russo	Stenholm	Whitten
Sabo	Stokes	Williams
Savage	Strang	Wirth
Saxton	Stratton	Wise
Schaefer	Studds	Wolf
Scheuer	Stump	Wolpe
Schneider	Sundquist	Wortley
Schroeder	Sweeney	Wyden
Schuette	Swift	Wylie
Schulze	Swindall	Yates
Schumer	Synar	Yatron
Seiberling		Young (AK)
Sensenbrenner		Young (FL)
Sharp		Young (MO)

NAYS—4

Durbin	Sisisky
Panetta	Weaver

ANSWERED "PRESENT"—1

Wilson

NOT VOTING—37

Armey	Foglietta	Latta
Boggs	Ford (TN)	Markey
Boland	Fowler	McGrath
Boxer	Gibbons	Mikulski
Breaux	Gingrich	Moore
Burton (CA)	Grotberg	Oakar
Campbell	Hansen	Skeen
Chappie	Hartnett	Taylor
Clinger	Hatcher	Vucanovich
Coelho	Holt	Wright
Conyers	Jones (OK)	Zschau
Dixon	Kaptur	
Edgar	Kindness	

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Mr. LELAND changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HOYER). Pursuant to the provisions of clause 5, rule I, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device may be taken on the additional motion to suspend the rules on which the Chair has postponed further proceedings.

GILA BEND INDIAN RESERVATION LANDS REPLACEMENT ACT

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 4216, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona [Mr. UDALL] that the House suspend the rules and pass the bill, H.R. 4216, as amended.

The question was taken.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 127, answered "present"1, not voting 46, as follows:

[Roll No. 402]

AYES—258

Ackerman	English	Levin (MI)
Akaka	Erdreich	Levine (CA)
Alexander	Evans (IL)	Lewis (CA)
Anderson	Fascell	Lewis (FL)
Annunzio	Fazio	Lipinski
Anthony	Feighan	Loeffler
Applegate	Fish	Long
Aspin	Flippo	Lowery (CA)
Atkins	Florio	Lowry (WA)
Barnes	Foley	Lujan
Bateman	Ford (MI)	Luken
Bates	Frank	Lundine
Bedell	Franklin	MacKay
Beilenson	Frost	Manton
Bennett	Fuqua	Marlenee
Bentley	Garcia	Martin (NY)
Bereuter	Gejdenson	Matsui
Berman	Gephardt	Mavroules
Boehlert	Gibbons	Mazzoli
Boggs	Glickman	McCain
Boner (TN)	Gordon	McCandless
Bonior (MI)	Gray (IL)	McCloskey
Bonker	Gray (PA)	McCurdy
Borski	Green	McHugh
Bosco	Guarini	McKernan
Boucher	Gunderson	Mica
Brooks	Hall (OH)	Michel
Brown (CA)	Hamilton	Miller (CA)
Bruce	Hayes	Miller (WA)
Bustamante	Hefner	Mitchell
Carper	Hendon	Moakley
Carr	Hertel	Mollohan
Chappell	Hiler	Moody
Cheney	Hillis	Morrison (CT)
Clay	Horton	Morrison (WA)
Coats	Howard	Mrazek
Coleman (TX)	Hoyer	Murphy
Collins	Huckaby	Myers
Conte	Hughes	Natcher
Cooper	Hunter	Neal
Coyne	Hyde	Nelson
Crane	Jacobs	Nowak
Crockett	Jeffords	Oberstar
Darden	Jenkins	Obey
Daschle	Johnson	Olin
Davis	Jones (NC)	Ortiz
de la Garza	Jones (TN)	Owens
Dellums	Kastenmeier	Packard
Derrick	Kemp	Panetta
DeWine	Kennelly	Parris
Dicks	Kildee	Pashayan
Dingell	Kleczka	Pease
Donnelly	Kolbe	Penny
Dorgan (ND)	Kostmayer	Pepper
Dowdy	Kramer	Perkins
Downey	LaFalce	Pickle
Durbin	Lagomarsino	Porter
Dwyer	Lantos	Price
Dymally	Leach (IA)	Pursell
Early	Lehman (CA)	Quillen
Eckart (OH)	Lehman (FL)	Rahall
Edwards (CA)	Lent	Rangel
Ray	Smith (IA)	Valentine
Reid	Smith (NJ)	Vento
Richardson	Snowe	Visclosky
Ridge	Solarz	Volkmer
Rodino	Spence	Waldon
Roe	Spratt	Walgren
Rose	St Germain	Watkins
Rostenkowski	Staggers	Waxman
Roth	Stallings	Weaver
Rowland (GA)	Stark	Weiss
Roybal	Stokes	Wheat
Rudd	Strang	Whitley
Russo	Studds	Whitten
Sabo	Swift	Williams
Savage	Synar	Wilson
Scheuer	Tauke	Wirth
Schneider	Tauzin	Wise
Schroeder	Thomas (GA)	Wolf
Schulze	Torres	Wolpe
Seiberling	Torricelli	Wyden
Sharp	Towns	Wylie
Sikorski	Traficant	Yates
Slattery	Traxler	Young (AK)
Smith (FL)	Udall	Young (MO)

NOES—127

Andrews	Frenzel	Robinson
Archer	Gallo	Roemer
AuCoin	Gaydos	Rogers
Badham	Gekas	Roukema
Barnard	Gingrich	Rowland (CT)
Bartlett	Goodling	Saxton
Barton	Gradison	Schaefer
Bevill	Gregg	Schuette
Biaggi	Hall, Ralph	Sensenbrenner
Bilirakis	Hammerschmidt	Shaw
Bliley	Henry	Shelby
Boulter	Hopkins	Shumway
Broomfield	Hubbard	Shuster
Brown (CO)	Hutto	Siljander
Burton (IN)	Ireland	Sisisky
Byron	Kanjorski	Skelton
Callahan	Kasich	Slaughter
Carney	Leath (TX)	Smith (NE)
Chandler	Lightfoot	Smith, Denny (OR)
Chapman	Livingston	Smith, Robert (NH)
Cobey	Lloyd	Smith, Robert (OR)
Coble	Lott	Snyder
Coleman (MO)	Lungren	Solomon
Combest	Mack	Stenholm
Coughlin	Madigan	Stratton
Courter	Martin (IL)	Stump
Craig	McCollum	Sundquist
Daniel	McDade	Sweeney
Dannemeyer	McEwen	Swindall
Daub	McKinney	Tallon
DeLay	Meyers	Thomas (CA)
Dickinson	Miller (OH)	Vander Jagt
DioGuardi	Molinari	Walker
Dornan (CA)	Monson	Weber
Dreier	Montgomery	Whitehurst
Duncan	Moorhead	Whittaker
Dyson	Nichols	Wortley
Eckert (NY)	Nielson	Yatron
Edwards (OK)	Oxley	Young (FL)
Emerson	Petri	
Evans (IA)	Regula	
Fawell	Rinaldo	
Fiedler	Ritter	
Fields	Roberts	

ANSWERED "PRESENT"—1

Gonzalez

NOT VOTING—46

Abercrombie	Fowler	McGrath
Armey	Gilman	McMillan
Boland	Grotberg	Mikulski
Boxer	Hansen	Mineta
Breaux	Hartnett	Moore
Bryant	Hatcher	Murtha
Burton (CA)	Hawkins	Oakar
Campbell	Holt	Schumer
Chappie	Jones (OK)	Skeen
Clinger	Kaptur	Strangeland
Coelho	Kindness	Taylor
Conyers	Kolter	Vucanovich
Dixon	Latta	Wright
Edgar	Leland	Zschau
Foglietta	Markey	
Ford (TN)	Martinez	

□ 1545

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes."

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GILMAN. Mr. Speaker, I was unavoidably detained on rollcall No. 402. Had I been present, I would have voted "aye" on H.R. 4216, settlement of Papago Tribe claims with regards to Painted Rock.

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 554 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 554

Resolved, That at any time after the adoption of this resolution, the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4154) to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five minute rule, said amendment shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 7 of rule XVI are hereby waived. No amendment to the bill or to said substitute shall be in order except the amendment by Representative Murphy of Pennsylvania printed in the report of the Committee on Rules on this resolution, and said amendment shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole but shall be debatable for not to exceed one hour, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto. At the conclusion of the consideration of the bill for amendment, the Committee shall rise report the bill to the House with such amendments as may have been adopted, and any Member

may demand a separate vote in the House on any amendment adopted to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

□ 1555

The SPEAKER pro tempore (Mr. HOYER). The gentleman from Florida [Mr. PEPPER] is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, for purposes of debate only, I yield 30 minutes to my able friend, the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 554 is a modified closed rule providing for the consideration of H.R. 4154, the Age Discrimination in Employment Amendments of 1986. The rule makes the amendment the nature of a substitute reported by the Committee on Education and Labor in order as the original text for the purpose of amendment. Only one amendment to the committee substitute would be in order under the provisions of the rule. The text of the amendment is included in the rules Committee report and may only be offered by Representative MURPHY of Pennsylvania. The amendment is not to be subject to amendment nor to a demand for a division of the question and is to be debatable for 1 hour—to be equally divided and controlled by Mr. MURPHY and an opponent of the amendment.

Finally, Mr. Speaker, the rule provides for one motion to recommit.

Mr. Speaker, H.R. 4154 is a bill which I introduced as an important step for the Congress to take in bringing age-based discrimination to an end in our country. In 1967, we took our first step toward that goal with the enactment of the Age Discrimination in Employment Act. That act prohibited employers from forcing any worker to retire because of his or her age if the employee was 65 years of age or younger. In 1978, Congress went one step further and adopted amendments to the act that raised the mandatory retirement threshhold to 70 in the private sector and—with the exception of a few specific occupations—outlawed mandatory retirement based on age as part of the Federal Government's employment policy.

H.R. 4154—the next step—would make age-based discriminating illegal in the workplace. No employer would be permitted to have an employment policy that requires workers to retire when they reach a certain age. As under current law, an employer can be exempted from the act's requirement if it can be shown that age is a bona fide occupational qualification for the job in question.

Mr. Speaker, I have always maintained that age discrimination is as detestable and unjust as racial, religious, or sex discrimination. Our society, which prides itself on a system that guarantees equality of opportunity and freedom of choice for all of its people, for too long has tolerated the mean and arbitrary indignity imposed upon our senior citizens when they—though of sound mind and able body—are told that they are too old to earn their living. For too long, we have chosen to accept the assumption that people of a certain age should be subjected to business policies that require retirement whether or not the employee chooses to retire. Mandatory retirement can be devastating to the self-esteem of people who take pride in their contributions and accomplishments. By permitting forced retirement we ignore those contributions and foolishly spurn valuable productive potential.

Mr. Speaker, when I was born in 1900, only 5 percent of the people in our country were over 65 years of age. Now that number is 11 percent.

In less than 50 years, almost 20 percent of the population in our country will be over 65 years of age.

These people have to live. Shall we help them to support themselves in honor and dignity, to continue to make a valuable contribution to their country, or should we make them subject to somebody else's support, public aid, in order to survive?

This is a very meaningful measure. We have limited in the Committee on Rules amendments to just the ones that were offered in the Committee on Education and Labor itself, at the request of the distinguished chairman of that committee.

One of the amendments that was offered in committee by the gentleman from Missouri [Mr. COLEMAN] has been eliminated at his request and we will have a colloquy here that will cover the subject of that amendment.

There is one amendment, the Murphy amendment, that would be properly debated and properly heard.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the able gentleman from Florida [Mr. PEPPER] introduced this bill and my congratulations to the gentleman. I think he is a living example of why this bill should be passed.

Far beyond the age of 70, as we celebrated his 86th birthday recently, the gentleman is going full-blast ahead. Just like the Navy ship that goes into battle, the gentleman is there and ready at all times to do likewise.

This is a good rule, Mr. Speaker, I urge its adoption as it is, and when the matter is debated on the floor of the House, I urge the passage of the bill.

Age creeps up on all of us, but most people remain very alert, able to perform their duties and their jobs, and they should not be put out to pasture for reasons of age alone.

Mr. Speaker, this measure would eliminate the age 70 forced retirement system. I recommend serious consideration by Members of this body and passage of the bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, it is with reluctance that I rise in opposition to the rule and request Members to vote against the previous question.

I certainly agree with the thrust of the bill, but I am concerned that we, again, are going to be hypocritical in this body. Those of us who have been involved on our committee with respect to the civil rights actions of this body have noted with alarm and concern that over the years, when we pass a civil rights bill, an antidiscrimination bill, we are very careful always to eliminate our own people.

We have done that consistently. The Civil Rights Act, for instance, does not apply to Federal employees.

□ 1605

The age discrimination bill that we are working on today allows one amendment to allow discrimination out in the public sector with our police officers and public safety officers, whereas in the Federal law we exempt them from the age discrimination law and thus sanction age discrimination.

We have a conflicting policy. Most Federal employees, are covered, but some are not. But most importantly and most egregious in my mind is the fact that we have traditionally carved out an exemption for congressional employees from coverage under our civil rights law, and here we do it again.

We tried in the committee to override the Federal exceptions, and to cover Congress, we believed it was appropriate, and the committee said, "Fine, we agree with you; but you have got to wait until we get to the floor to be able to do this. The rules will not allow us to do it in the committee, and we will support you on the floor."

So we go to the Rules Committee to get a rule, and, lo and behold, we cannot get a rule to allow the amendment. Now, I wonder why that is.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I thank the gentleman for yielding.

This is a very serious debate for this House floor. If the gentleman recalls at the markup in the full committee, the gentleman was there and he attempted to make this rule, to attach this to the bill, and as I recall we were told, just to show that this is not a partisan debate, by the other side, the chairman of the committee, that in

fact he thought that the amendment was germane and should be considered on the floor and he would, and subsequently did, advocate a rule—this is Chairman HAWKINS—that would allow this amendment to come before the body on the floor. Is that correct?

Mr. JEFFORDS. That is my understanding, Mr. Speaker, and I commend the chairman for taking that attitude. I think he is quite correct.

Then we find that we are frustrated at this moment, as we have been in the past, by not being able to do what I believe is so important for leadership in this country, to show an example of this Congress as to what we are requiring the rest of the country to do.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the chairman of the committee.

Mr. PEPPER. Mr. Speaker, I want to commend the gentleman from Vermont upon the attitude that he has taken.

In general, the gentleman was expressing the principles in which I believe; but I am hoping that we can keep this bill, if possible, just to a clean bill and then add a subsequent date when we come back in the new session, take up all the various amendments and changes that should be made in the exemptions.

As a matter of fact, I do not think there should be any age criteria in respect to employment. Qualifications, yes; requirements, yes; but not an arbitrary age number, and the gentleman's ideas are my ideas, but the only reason the Rules Committee did not make that kind of an amendment in order was because the chairman of the Committee on Education and Labor wanted to limit the amendments just to those that were offered in the committee.

I am hoping that the distinguished gentleman will come back again and help us after the new session begins to consider the whole subject of changes and exemptions and other exceptions that may be appropriate to the bill; but on this occasion, since we are so late in the session and I am afraid that additional amendments would mar the possibility of passage of our bill by the other body before the end of the session, and the end of this Congress, I am hopeful that we can keep this to a clean bill and vote to the subject of exceptions and amendments and exemptions in our next session.

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman for his support in what we are trying to do.

My own problem is that through my experience in this Congress trying and trying time and time again to get this body to live up to its own responsibilities in this issue is that if we do not do it now, there never will be another time, because to get it up before a committee or to get it acted upon after we have raised the issue in committee is impossible.

The SPEAKER pro tempore (Mr. WEAVER). The time of the gentleman from Vermont has expired.

Mr. QUILLEN. Mr. Speaker, I yield one additional minute to the gentleman.

Mr. PEPPER. Mr. Speaker, if the gentleman will yield further, I will guarantee the gentleman that as chairman of the Rules Committee I will have the support of the ranking minority member and we will give the gentleman a hearing and we will give the gentleman a rule next year.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, perhaps we are making progress, because I recall 2 years ago when we faced the same civil rights issue on whether to apply the law that prohibits discrimination to everybody else, whether to apply it to the Congress, we were at that time 2 years ago on the civil rights bill again promised hearings and promised votes, so I very much appreciate the chairman of the Rules Committee offering at some other time to make this in order.

I would suggest to the chairman of the Rules Committee and to others that we can make it in order today, this moment, this hour, this day, after 19 years this Congress in 1967 made it illegal, as we should have, to discriminate based on an arbitrary age. We have amended that law twice and we are amending it again today 19 years later.

I would suggest to the chairman of the Rules Committee and others that the time is today, 1986, to say that the basic civil rights laws of this Nation ought to apply to the Congress as an employer just like it applies to everyone else.

Mr. Speaker, I support this bill and I support the law. Age discrimination is illegal and ought to be illegal. The difficulty is that it is illegal for virtually every employer in this country except the Congress of the United States.

I support the bill, but I oppose the closed rule which would deny the Congress an opportunity to apply that law to Congress.

The bottom line is this. Discrimination based on age is illegal. It ought to be and it has been since 1967. It is illegal except for Congress as an employer. A dry cleaner may not discriminate based on age, but the House restaurant system might.

A city government may not discriminate, but the Library of Congress can and the Capitol Hill Security Police may.

The gas station, the steel plant, may not discriminate, nor should they be able to, but committee staff, personal staff, are not prohibited.

Is there legal discrimination in this Congress?

Yes, there is. The rules say that it is permitted. It is not excluded.

This is a crystal clear vote, Mr. Speaker. We will ask for a vote on the previous question so that the gentleman from Vermont [Mr. JEFFORDS] may offer an amendment to the rule to make in order one amendment to permit this body to vote on the first time this session that we will be able to vote on a basic civil rights law.

It is a crystal clear vote. A "yes" vote for the previous question will close the rule and a "yes" vote for every Member of this Congress means that that Member is voting that Congress should not be covered by the prohibition against discrimination and that everyone else should.

A "no" vote, and I urge a "no" vote on the previous question, will allow Congress then to vote to include Congress in the rule itself.

Now, a rule that provides waivers, a rule that is made in order is not only not unusual, it is usual. As I come to this House floor and vote on rules, it seems to me that three out of four rules, 75 percent of the rules that we consider, are not only open rules, as they should be, but they also provide waivers so that amendments that the House wants to consider that apply to that law are made in order, but this bill does not.

We were told in the subcommittee that there would be none in the subcommittee because of this amendment.

We were told in the full committee that while people said they supported the amendment, they did not support it at that time, in that committee and at that place, and so it was ruled germane, but outside the jurisdiction.

When we get to the House floor, and on the House floor it is clearly within our jurisdiction to apply the rules to everybody else but ourselves, but somehow it is not germane.

It was considered twice by the Rules Committee. The second time it was a divided vote. It was a bipartisan vote. Members on that side of the aisle as well as this side of the aisle voted to make this amendment in order. It is not a Republican issue, it is not a Democratic issue. It is an issue of right and wrong. It is an issue of fairness. It is an issue that after 19 years of other employers not being permitted to discriminate, it is time to apply that law to the Congress.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I will gladly yield to the chairman.

Mr. PEPPER. Mr. Speaker, does the able gentleman's amendment relate primarily to congressional employees?

Mr. BARTLETT. Yes, sir; to Congress as an employer.

Mr. PEPPER. I will say to the able gentleman what I said to the distinguished gentleman, his predecessor from Vermont, that we had hoped this bill could pass as a clean bill, go to the other body, be approved at this session of the Congress, and the United States of America could tell the world that in America in general, with a few exceptions, you are not forced out of your employment because of your age. If you have the ability mentally and physically or otherwise to meet reasonable qualifications, you may continue to do so however long the Lord may bless you with life.

Now, there are lots of people that would like to have amendments considered, but we had hoped at this time so late in the session as it is that we could keep the amendments down and have a clean bill.

The SPEAKER pro tempore. The time of the gentleman from Texas has expired.

Mr. QUILLEN. Mr. Speaker, I yield 1 additional minute to the gentleman from Texas.

Mr. PEPPER. Mr. Speaker, if the gentleman will yield further, may I just say one further word. Actually, I would be very much surprised if I learned there was a single Member of this House who had a policy of requiring the retirement of his or her employees on account of age. So far as I am aware, Members of the House employ their personnel on the ground of qualifications and they discontinue their employment whenever they think for reasons adequate to themselves they should not be retained in the employ of the Congressman or Congresswoman.

So the need, I would say to my friend, the need I think is not so great in the congressional employment field as it may be in some others.

I hope that the gentleman will defer persistence on this amendment until we can consider the whole subject of further amendments at a later time.

Mr. BARTLETT. Mr. Speaker, I respect the chairman a great deal. The whole subject has been considered for 19 years. It could have been in the original bill that the chairman introduced. It could have been made a part of the Education and Labor Committee report. It could have been made a part of the Rules Committee and it can be adopted today.

Mr. Speaker, I urge a "no" vote on the previous question.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, I rise in strong support of H.R. 4154, which will eliminate age-based mandatory retirement and recognize that everyone—regardless of age—is entitled to prove his or her individual ability to do a job. I have been an original, cosponsor of this legislation since it was introduced in 1982 by Congressman PEPPER, who I want to commend for his outstanding leadership on this issue.

I have received a substantial amount of input from my constituents in Nebraska who are reaching the age of 70 and who are able and willing to make a contribution to America's labor force. The bill we are considering today will ensure that such individuals all across the country will be able to put their wisdom and talents to use.

Mr. Speaker, it has been estimated that enactment of H.R. 4154 will add 195,000 more older workers to the labor force by the year 2000 than would be under current law. Thus, along with removing a legal hurdle for thousands of older Americans who want to work past the age of 70, this bill will ameliorate the impending labor shortage that this Nation faces due to the decline of young workers entering the labor force.

The most important point of this legislation is simple: Age is just a number. This bill grants the right to work to those Americans age 70 and older who want to and are capable of continuing employment. This is an essential effort, and I again want to commend Congressman PEPPER for his leadership on this issue.

□ 1620

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, I thank the gentleman from Florida for yielding time to me.

Mr. Speaker, on behalf of the chairman of the full Committee on House Administration and myself as chairman of the Subcommittee on Personnel and Police, what I want to do is to present the following comments to clarify the situation with regards to the law as it applies to the House of Representatives.

The gentleman from Texas [Mr. BARTLETT] is asking a very basic question here, and the question is: Should this law be applicable to the Congress? I think that all of us support the objectives of the gentleman from Texas. There should be no discrimination in employment as a result of age. But as a matter of constitutional separation of powers and as a matter that has been established by a number of court decisions, each Chamber of the Congress must adopt its own standards to carry out this objective.

I would point out to the gentleman the fact that the House does not at the present time have a nondiscrimination rule, rule XLIII. I would also point out that the Committee on House Administration just last week adopted an improvement to the grievance procedure establishing for the first time a grievance procedure that all of the officers of the House have to abide by when it comes to adverse actions, those including discrimination as well as adverse actions as a result of other reasons.

In keeping with the purpose of the gentleman's amendment, I have discussed this with the chairman, and the chairman, on behalf of the committee, will write to the Committee on Rules to ask that they not only implement the procedure that has been approved by the full committee on grievance, but also that they expand House rule XLIII to provide a specific prohibition on age discrimination. That is not the case today. The gentleman I think has raised a legitimate issue with regards to that being included under rule XLIII. At the present time it prohibits discrimination on the basis of race, color, religion, sex, or national origin. The move by the chairman would be to ask the Rules Committee to expand that requirement to cover age.

I would also point out that the circuit court of appeals very recently in the D.C. circuit has cited with approval the House provisions prohibiting employment discrimination. The opportunity for House employees seeking redress on account of age discrimination will thus be specifically provided for through an improved procedure within the branch and under House rules, and the House will have taken the ncessary action as envisioned by the Constitution to govern its own internal affairs through the exercise of its rulemaking power.

I support the objective of the gentleman, and I think all of us support that objective, but I would suggest that it is the responsibility of this institution to govern its own internal affairs, including its personnel policy, and that the action of the Committee on House Administration properly addresses that issue.

Mr. PEPPER. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. FORD], the able chairman of the distinguished Committee on Post Office and Civil Service.

Mr. FORD of Michigan. Mr. Speaker, the gentleman from Vermont [Mr. JEFFORDS] is one of the most respected members of our committee, and I do not frequently disagree with him. In this case, however, I am afraid that he is trying to move too quick and that while I cannot quarrel with what he would like to ultimately achieve, to do it in the way in which he wants to do it would cause us considerable difficulty.

If we do what he is suggesting today, we would change the law with regard to CIA employees, Foreign Service officers, air traffic controllers, law enforcement officers, prison guards, and the Secret Service Uniformed Division.

I have a letter from the Justice Department indicating that they are very strongly opposed to the elimination of

the age limitation, and they have 27,500 law enforcement people in that one Department that our committee is responsible for.

Very recently we passed, and the President signed, an entire new pension system for the Federal work force, and in that pension system we had to take into account the difference in the accrual rate for people who are mandated into retirement at a given age, like CIA agents and Foreign Service officers and border patrolmen and people in several specific categories. If we were to now eliminate the mandatory retirement before we could go back and change the accrual schedules, we would create an interesting kind of a budget problem, because we would be accruing in a discriminatory way for people in those occupations pension benefits that would in no way be actuarially sound.

If this is to be done, it should be done prospectively, with adequate time elapsing in advance to notify the Congress to make the necessary changes—the Congress and the President—in the pension laws that would accommodate such drastic changes. We are not talking about a few hundred people, we are talking about many thousands.

Mr. Speaker, I rise in support of House Resolution 554, the rule providing for the consideration of H.R. 4154. The rule has come under attack because it does not permit consideration of the so-called Jeffords amendment, but in truth, it would have been improper and unwise to make the Jeffords amendment in order.

The Jeffords amendment would, without hearings, agency comment, or any analysis by anyone familiar with the agencies that would be affected, eliminate the mandatory retirement ages for CIA employees, Foreign Service officers, air traffic controllers, law enforcement officers, prison guards, and the Secret Service Uniformed Division.

I can't believe that any Member of Congress would want to move blindly into this area and risk disrupting the operations of so many vital agencies. The Justice Department strongly opposes the change in retirement policy that Mr. JEFFORDS is advocating. On August 14, Assistant Attorney General John R. Bolton wrote to me that "the Department of Justice supports the use of chronological age as the most efficient way for law enforcement agencies to ensure a workforce in peak condition." Justice employs 27,450 Federal law enforcement officers, including FBI agents. Isn't it obvious that we should hold hearings and explore the effect of the Jeffords amendment before voting on it?

The gentleman from Vermont is my friend and I respect his sincerity on this matter, but I have to ask, why is he raising this issue now? Where was the gentleman in 1984 and 1985 when the Post Office and Civil Service Committee held 12 hearings on redesigning the Federal Employees' Retirement System? Why did he not raise the issue of retirement ages at an appropriate time and place, with the committee of jurisdiction?

As every Member knows, we recently enacted legislation to create a new retirement system which adopts the historical retirement ages for air traffic controllers, firefighters, and law enforcement officers. The new law includes more generous benefit accrual formulas that are pegged to those earlier than normal, mandatory retirement ages.

Mr. JEFFORDS' amendment would wreak havoc on the new retirement system. It would eliminate mandatory retirement ages without changing, or even allowing time to change, the benefit accrual formulas that go along with them. I guarantee that his amendment would have a negative budget impact on the Government.

The gentleman from Vermont can introduce legislation to achieve the effect he claims to want, but he has not done so. The Rules Committee was absolutely right not to allow the gentleman to circumvent normal procedures, to ignore committee jurisdiction, and to ignore the position of the agencies his amendment would affect.

I thank the Rules Committee and its chairman for their decision not to waive points of order and make the Jeffords amendment in order, and I urge my colleagues to support the rule.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, I want to inquire as to what the intentions of the gentleman from Michigan [Mr. FORD] are. In 1978, I believe, when these issues were raised, it was my understanding that the committee was going to look into these things and come forward with a program so that we would not be left with this hypocritical situation with a lot of Federal employees not being covered by the Age Discrimination Act.

It is 1986, and I wonder how that progress is coming, and where we stand with respect to that commitment at that time.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I would tell the gentleman that in 1984 and 1985 the Post Office and Civil Service Committee held 12 hearings. Some part of all 12 hearings devoted itself to the mandatory retirement provisions affecting different kinds of Federal employees, and that was all part of the preparation for writing the pension law.

The Senate did similar study on this, and Senator STEVENS and his committee, and I with my committee, have been up and down this road with OMB and with the Office of Personnel Management. We reached accommodations and agreements that were based on everybody's best judgment of what was best for the Federal work force.

We did not get into the philosophical argument about whether you should retire a CIA agent at 55 just because he is a CIA agent

Mr. QUILLEN. Mr. Speaker, I had previously advised the gentleman from Florida [Mr. PEPPER] that I had no further requests for time, but, Mr. Speaker, I yield 2 additional minutes to the gentleman from Vermont [Mr. JEFFORDS], and I yield 2 additional minutes to the gentleman from Texas [Mr. BARTLETT], at the conclusion of which I yield back the balance of my time.

Mr. JEFFORDS. Mr. Speaker, my approach to the rules does not include the problem that the gentleman is talking about, although I am deeply disturbed by that situation. We are raising only the issue of congressional employees at this time, so I would hope in general debate to be able to discuss further the issue that we are talking here.

I would hope that perhaps the gentleman from California is still here so that I could better ascertain what his commitment is to us, so that we can determine whether or not we want to pursue our defeat of the previous question. If the gentleman from California would enlighten us as to what kind of a commitment we are getting here with respect to including congressional employees under the protections of the Age Discrimination Act, if I am getting what I consider to be a victory here in a sense—certainly the gentleman's word is as good as gold as far as I am concerned—then I may be willing to withdraw my opposition to the previous question.

Mr. PANETTA. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from California.

Mr. PANETTA. Mr. Speaker, the point that I made is that under rule XLIII there is a provision under our House rules that prohibits discrimination on the basis of race, creed, color, or national origin, but it does not include age. I have discussed this with the chairman of the full committee, the gentleman from Illinois [Mr. ANNUNZIO], and we agreed that we will write the Committee on Rules and ask them to make that change to the House rules to include age as part of the prohibition under rule XLIII.

Mr. JEFFORDS. Mr. Speaker, it is my understanding that the chairman of the Committee on Rules certainly gave me his commitment that when this issue came up, and in an appropriate manner, that he would support it, and I would ask the chairman of the Rules Committee if he would support such a rules change.

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Florida.

Mr. PEPPER. Mr. Speaker, I cannot guarantee, of course, what my colleagues on the Rules Committee will do, but we will try to hear sympatheti-

cally any reasonable application for a rule.

Mr. JEFFORDS. As I understood the gentleman personally, I realize that he cannot commit the Rules Committee, but he personally would support a rule which did not allow discrimination on age?

Mr. PEPPER. I would support a rule for any fair consideration of further exemptions or amendments relative to this act.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Texas [Mr. BARTLETT] for 2 minutes.

Mr. BARTLETT. Mr. Speaker, I have an additional followup question for the gentleman from California in the same line, because it does seem to me that at least we have made some progress here today.

There are two issues, however. One is whether Congress should exempt itself from a law that it creates for everybody else, and under the gentleman's proposal, we would continue to be exempt from that law, and I want to say that even though I think we have made progress, I still do not think that that is a good idea, and I do not think that it is fair. I think that the laws ought to apply to Congress like everyone else.

□ 1630

But the second issue, as I understand the gentleman's commitment and the House Administration Committee's commitment is to hold hearings in the next session, early in the next session, to change or attempt to change a proposal to change House Rule 43 to include the prescription against discrimination based on age. The chairman of the Rules Committee has pledged to support that.

I would ask a followup question. It would be the intention of the committee to also hold a hearing and examine the issue as to how we can make the enforcement mechanism parallel the law itself so that employees have an effective right of appeal. Would the gentleman work with Members who feel strongly about that issue on the enforcement mechanism?

Mr. PANETTA. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from California.

Mr. PANETTA. Mr. Speaker, there are two reasons we are going to be writing the chairman of the Rules Committee. One is to implement a grievance procedure that has been approved by the House Administration Committee just last week that would require all of the House officers to implement a procedure that would provide a hearing, plus an appeals right to employees who are the victims of adverse action.

My hope would be to get that procedure in place and try to make that work. I would be happy to work with the gentleman and others who express a concern to make sure that the procedure works.

Mr. BARTLETT. Mr. Speaker, what would be the latest time that that would come back to the House floor?

Mr. PANETTA. Mr. Speaker, we would hope that that recommendation for a rules change would take effect at the beginning of the next session.

Mr. BARTLETT. I thank the gentleman.

I would say I think that this is half a loaf, but it is an indication of progress. One day the House will make applicable to the Congress the laws of this land, but perhaps not today.

Mr. PEPPER. Mr. Speaker, I yield such time as he may consume to the able gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. Mr. Speaker, I do not intend to take too much time. But the fact of the matter is that it was in 1977 when we started to have hearings. I remember Senator CLAUDE PEPPER, Congressman HAWKINS and myself and many others started to have hearings in conjunction with this issue. We never anticipated the revolutionary development that occurred. We embarked on this issue as a matter of principle, and we thought we would have major opposition from the large corporations throughout our Nation.

The fact is there has been a revelation and they have supported the principle and they have supported the legislation. In 1978 President Carter signed that bill.

Yes, we eliminated the mandatory 65 retirement for the private sector. We thought we would give the legislation some time to be digested, to see what the reaction would be. It was an uncertain situation.

So when people say we have been waiting 19 years and nothing has been happening, they are really not mindful of the facts. The facts are we embarked on this as an experiment and it developed successfully, unlike so many other congressional experiments we have started upon. But this is one initiative that has come its way.

But at the same time those who were victimized at 65 are now being victimized at 70, and that is why it is important to have this legislation passed.

We understand the gentleman's concern about congressional employees. But I think it has been made rather clear by the gentleman from California [Mr. PANETTA] that there are different levels within that group of congressional employees. The Department of Justice has made its point, and clearly for us to embark without giving the kind of serious attention that this initiative requires is not responsible legislation.

There is no question that Chairman PEPPER and Chairman HAWKINS and so many others have been seriously committed to this entire principle. It is developing and developing successfully. I can tell you in my own instance I have a young man of some 86 years of age on my staff in New York. He is there not because of age but because of ability. He is there not because of chronology but because of competence, and he is there because of talent, not tradition.

So the principle is being applied. I think there has been no case, to my knowledge, where congressional employees have been discriminated against because of age. It does not make sense.

But, in any event, to have that further safeguarded, there is a procedure being established. There is a rule established that is being enhanced upon. If we are to have a hearing next year, which is critical if you are going to deal with this matter at all, certainly not on this occasion in one fell swoop to bring all congressional employees without giving any consideration to the distinctions that have been clearly enunciated is not the responsible way to go.

This rule should be passed and this bill should be passed. It is a clear manifestation of congressional concern and intent. The administration supports it. I do not know of anyone that will oppose it.

But have faith in those who have carried this battle and who have carried the flag. Clearly we know about Senator PEPPER and about his commitment. Who can question it. Who can question his sincerity and his commitment. When he makes a request it should be heeded.

We all know the little games that some people play. But let us deal with the realities of the day. The champion of the seniors throughout our Nation is Senator CLAUDE PEPPER. He initiated this when people were not even thinking of it. He has brought it to this point.

Let us pass this as a tribute to him and his efforts. And also I guess we can share in some of the credit that goes around. But let us deal with it in a manner that our good colleague, Senator PEPPER, requests of us. We know that he is not saying anything to the detriment of any senior congressional employee or otherwise, and he is a perfect illustration of why we should not have any mandatory retirement anywhere, because it is his competence, his ability, his talent that have been silent tributes to this legislation.

I urge we vote for this rule and vote for it unanimously because I do not understand any opposition to it.

Mr. PEPPER. Mr. Speaker, I yield myself such time as I may consume to say that I am profoundly grateful to my friends here today who on the floor have uttered these grateful and

generous sentiments. I am very, very profoundly grateful to every one of you for your kind words.

Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. QUILLEN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 335, nays 66, not voting 31, as follows:

[Roll No. 403]

YEAS—335

Abercrombie	Davis	Henry
Ackerman	de la Garza	Hertel
Akaka	Dellums	Hiler
Alexander	Derrick	Hillis
Anderson	Dicks	Horton
Andrews	Dingell	Howard
Annunzio	DioGuardi	Hoyer
Anthony	Donnelly	Hubbard
Applegate	Dorgan (ND)	Huckaby
Aspin	Dornan (CA)	Hughes
Atkins	Dowdy	Hutto
AuCoin	Downey	Jenkins
Barnard	Duncan	Johnson
Barnes	Durbin	Jones (NC)
Bates	Dwyer	Jones (OK)
Bedell	Dymally	Jones (TN)
Beilenson	Dyson	Kanjorski
Bennett	Early	Kasich
Bentley	Eckart (OH)	Kastenmeier
Bereuter	Edgar	Kemp
Berman	Edwards (CA)	Kennelly
Bevill	Emerson	Kildee
Biaggi	English	Kleczka
Bilirakis	Erdreich	Kolter
Boehlert	Evans (IL)	Kostmayer
Boggs	Fascell	Kramer
Boner (TN)	Fazio	LaFalce
Bonior (MI)	Feighan	Lantos
Bonker	Fish	Latta
Borski	Florio	Leath (TX)
Bosco	Foley	Lehman (CA)
Boucher	Ford (MI)	Lehman (FL)
Brooks	Ford (TN)	Leland
Broomfield	Frank	Lent
Brown (CA)	Frost	Levin (MI)
Bruce	Fuqua	Levine (CA)
Bryant	Gallo	Lewis (CA)
Bustamante	Garcia	Lewis (FL)
Byron	Gaydos	Lipinski
Carper	Gejdenson	Livingston
Carr	Gephardt	Lloyd
Chandler	Gibbons	Long
Chapman	Gilman	Lowery (CA)
Chappell	Glickman	Lowry (WA)
Clay	Gonzalez	Lujan
Clinger	Goodling	Luken
Coats	Gordon	Lundine
Cobey	Gradison	MacKay
Coble	Gray (IL)	Manton
Coleman (MO)	Gray (PA)	Martin (NY)
Coleman (TX)	Green	Martinez
Collins	Guarini	Matsui
Conte	Gunderson	Mavroules
Cooper	Hall (OH)	Mazzoli
Coughlin	Hall, Ralph	McCandless
Coyne	Hamilton	McCloskey
Crockett	Hammerschmidt	McCurdy
Daniel	Hawkins	McDade
Darden	Hayes	McEwen
Daschle	Hefner	McGrath
Daub	Hendon	McHugh
McKernan	Regula	Staggers
McMillan	Reid	Stallings
Meyers	Richardson	Stangeland
Mica	Rinaldo	Stark
Michel	Ritter	Stenholm
Mikulski	Roberts	Stokes
Miller (CA)	Robinson	Stratton
Miller (OH)	Roe	Studds
Miller (WA)	Roemer	Sweeney
Mineta	Rogers	Swift
Mitchell	Rose	Synar
Moakley	Rostenkowski	Tallon
Molinari	Roth	Tauzin
Mollohan	Roukema	Thomas (CA)
Montgomery	Rowland (CT)	Thomas (GA)
Moody	Rowland (GA)	Torres
Moorhead	Roybal	Torricelli
Morrison (CT)	Rudd	Towns
Morrison (WA)	Russo	Traficant
Mrazek	Sabo	Traxler
Murphy	Savage	Udall
Murtha	Saxton	Valentine
Myers	Scheuer	Vento
Natcher	Schneider	Visclosky
Neal	Schroeder	Volkmer
Nelson	Schuette	Vucanovich
Nichols	Schulze	Waldon
Nowak	Schumer	Walgren
Oberstar	Seiberling	Watkins
Obey	Sensenbrenner	Waxman
Olin	Sharp	Weaver
Ortiz	Shelby	Weber
Owens	Sikorski	Weiss
Oxley	Sisisky	Wheat
Packard	Skeen	Whitley
Panetta	Skelton	Whittaker
Parris	Slattery	Whitten
Pashayan	Slaughter	Williams
Pease	Smith (FL)	Wilson
Penny	Smith (IA)	Wirth
Pepper	Smith (NE)	Wise
Perkins	Smith (NJ)	Wolf
Petri	Smith, Robert (OR)	Wolpe
Pickle	Snowe	Wortley
Porter	Snyder	Wyden
Price	Solarz	Wylie
Pursell	Solomon	Yates
Quillen	Spence	Yatron
Rahall	Spratt	Young (AK)
Rangel	St Germain	Young (FL)
Ray		Young (MO)

NAYS—66

Archer	Evans (IA)	Martin (IL)
Armey	Fawell	McCollum
Badham	Fiedler	McKinney
Bartlett	Fields	Monson
Barton	Franklin	Nielson
Bateman	Frenzel	Ridge
Bliley	Gekas	Schaefer
Boulter	Gingrich	Shaw
Brown (CO)	Gregg	Shumway
Burton (IN)	Hansen	Shuster
Callahan	Hopkins	Siljander
Carney	Ireland	Smith, Denny (OR)
Cheney	Jacobs	Smith, Robert (NH)
Combest	Jeffords	Strang
Courter	Kolbe	Stump
Craig	Lagomarsino	Sundquist
Crane	Leach (IA)	Swindall
Dannemeyer	Lightfoot	Tauke
DeLay	Loeffler	Walker
DeWine	Lott	Whitehurst
Dickinson	Mack	
Dreier	Madigan	
Edwards (OK)	Marlenee	

NOT VOTING—31

Boland	Foglietta	Markey
Boxer	Fowler	McCain
Breaux	Grotberg	Moore
Burton (CA)	Hartnett	Oakar
Campbell	Hatcher	Rodino
Chappie	Holt	Taylor
Coelho	Hunter	Vander Jagt
Conyers	Hyde	Wright
Dixon	Kaptur	Zschau
Eckert (NY)	Kindness	
Flippo	Lungren	

□ 1650

Mr. LIGHTFOOT changed his vote from "yea" to "nay."

Messrs. HILLIS, CLINGER, COBLE, COBEY, and McMILLAN changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

House Resolution 544 was laid on the table.

The SPEAKER pro tempore (Mr. WEAVER). Pursuant to House Resolution 554 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 4154, as amended

□ 1658

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4154), to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes, with Mr. KOSTMAYER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Under the rule, the first reading of the bill is dispensed with.

Pursuant to the rule, the gentleman from California [Mr. MARTINEZ] will be recognized for 30 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. MARTINEZ].

Mr. MARTINEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in wholehearted support of Mr. PEPPER's bill H.R. 4154, for the following reasons.

In subcommittee hearings, witnesses have demonstrated that in most jobs, age by itself has nothing to do with individual capacities, either physical or mental.

We all age differently.

In fact, look at the youthfulness, the energy, and exuberance of a 74-year-old President.

And the competence of the chairman whose bill this is.

We would be without benefit of the contributions made in latter years by these individuals if they had been forced to retire at an earlier age.

How much more will we lose if we continue to arbitrarily force people to retire when they are still able to do their jobs and want to?

This bill serves the best interests of everyone in the work force.

It allows for the exception and exceptional people whose abilities are as great as those of people who are half their age and want to continue to work.

This bill does not change the fact that workers who choose to retire early and take advantage of early retirement incentives provided by some employers can still do so.

But it allows a flexible policy that gives workers, so long as they can do their job, the opportunity to retire voluntarily, in a dignified manner, when he or she chooses.

It does away with an archaic policy of unsound and nonproductive thinking, the kind that allows workers to be cast off, after years of loyal effort, like useless baggage, the day they cross over some arbitrary date line.

I remind all of my colleagues, those that are younger and think you will last forever, and those that are old enough to know better, to remember that, like "the man from La Mancha," some people, with their last ounce of courage, still try to reach the unreachable star.

Please let us support older Americans and vote for H.R. 4154 without any amendments, as the distinguished chairman has requested.

Mr. JEFFORDS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Chairman, I rise in strong support of H.R. 4154, the Age Discrimination in Employment Act. And I want to thank my dear friend, CLAUDE PEPPER, for introducing this bill and my friends on the Education and Labor Committee for bringing this bill to the floor today.

Mr. Chairman, I think it would be good today if we stepped back and looked at what we are doing here. All we are saying is that employers cannot fire an employee only because they are over 70. That is all.

The last time we amended the ADEA, in 1978, we raised the cap from age 65 to age 70. Today, we carry that one important step further—we eliminate the cap entirely. This is a logical, a fair, a rational step.

Age alone has nothing to do with an employee's ability to work. There is no finer proof of that than right here in this House: our beloved CLAUDE PEPPER, at 86 years old, still going strong.

We should encourage senior citizens to stay in the work force as long as they want to. Older citizens bring experience and knowledge to their jobs.

I have worked to ensure that older Americans can stay in the work force—both by my strong support of the title V: Older Americans Employment Program, and tax bills to provide incentives for employers to hire older workers.

This bill achieves the same effect, and I am pleased to be able to support it.

Mr. PEPPER. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Florida [Mr. PEPPER], the chairman of the Committee on Rules.

Mr. PEPPER. I thank the gentleman for yielding.

Mr. Chairman, I thank the gentleman for his kind words and commend him; he has been one of the long-time stalwart, strong, dedicated supporters of this cause.

Mr. CONTE. I thank the gentleman.

□ 1705

Mr. MARTINEZ. Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Chairman, I would add only briefly to what I said in the presentation of the rule.

First, I have a statement here, nearly a page, of organizations, including all of the senior organizations, in strong support of this bill and calling for its enactment as a clean bill.

Second, today is the ninth anniversary of our passage in this House in 1978 of the bill eliminating age as a criterion of mandatory retirement for an employee of the Federal Government, and raising from 65 to 70 years of age, the age below which one cannot be mandatorily retired in private employment.

We have increased in number in this country, the elderly population, until we today have almost 11 percent of our people over 65 years. And the most rapidly growing group, percentagewise, of the elderly is the group above 85 years of age. Now that I am in that group, I hope I may endure for a long time with the other members of that select category.

Mr. Chairman, I want to express my strong understanding of the mover of the amendment that will be presented, the Murphy amendment. My father was a law enforcement officer. I know their dedication to their duty. I know the sacrifices that they make for the public interest, for the security of the people. I know what noble characters generally they are. So I am sympathetic.

But this bill contains a compromise in providing a study to determine whether or not there should be a qualification as a criterion for employment in police and law enforcement circles, rather than just an arbitrary criterion of age.

You and I know that age is not the criterion of qualification physically or mentally. There are many men 75 years of age I would dare say who would best a younger opponent in combat, because age does not determine the strength, either physically or mentally, of the individual. As George Bernard Shaw said, "Some people are old at 17; others are young at 70."

So I am hopeful that the municipalities and the State authorities of this country, in spite of the strong and dedicated and earnest effort of my colleagues here who are offering the amendment, I hope they will follow the example of Los Angeles and my home city of Miami. They do not have any criteria based on age to determine how long their employees can work for them. Just like the Army and the Navy and the Air Force, they have criteria: How fast can you run? How far can you run? How many pushups can you do? What strength do you have physically and otherwise. In other words, criteria that are really relevant. If a police officer has to wrestle with a man he is about to arrest and he resists, or course he needs to have the physical strength to accomplish his lawful purpose. But age is not the assurance of that one having that physical strength. Let the cities follow the example of Los Angeles and Miami and use criteria that are meaningful, just like the criteria that the armed services employ.

Mr. Chairman, this is going to be a great day in the Congress of America when the word goes out tonight, as I hope it will, that this House of the people had been so considerate of the older element of the people that we have given them assurance that as long as you are mentally and physically able to work and continue to build the great country to which you contributed so much, you may do so, notwithstanding the will of anybody else to the contrary in your case.

So this is a very important matter. I hope that the Members of this House are going to let us take up the matters of further amendment of exemption and take it up in the new session, whereas if we just pass a clean bill here tonight, I have every reason and every assurance from the chairmen of committees in the other body and the leaders of the Select Committee on Aging in the other body that they will take our clean bill, pass it immediately and then, thank God, the elderly people of America will be assured they can contribute to their own survival by virtue of the wisdom and the kindness of the Congress of the United States.

Mr. JEFFORDS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Chairman, it is a unique privilege and an honor to follow our distinguished friend and colleague, the gentleman from Florida, the author of this bill, and to rise as the ranking member of the Subcommittee on Employment and Opportunities and to add my wholehearted support to the legislation in front of us.

I would like to take an angle which is a little bit different than those which we normally contribute in this debate and which have been said before and will be said after me far more eloquently than I can.

But so often each and every one of us as Members of Congress are confronted by our senior citizens, many of them who legitimately and properly are concerned about their cost-of-living adjustments, many of them who are legitimately and properly concerned about their rights to early retirement, many of them who are legitimately and properly concerned about Medicare payments and the whole problems with our health care system, and that list can go on and on from one senior citizen program to another, legitimate concerns.

The difference between those concerns and today, my friends, is today the senior citizens of America are coming to the Congress of the United States and saying, "If we want to work, let us work. That is all. No more."

We pass this bill today when 11 percent of our population is 65 or over. By the year 2030, we will not be dealing with 11 percent; we will be dealing with 20 percent of our population 65 and over. As people live longer, as people are healthier, as we have shorter birth rates on the other end, frankly, we need these people. We need them badly in our workplace today. We are going to need them worse in the future. We need to make the determinations, not on age, but on ability. That is what we have before us today, the opportunity for the senior citizens of our country who want to work to continue to work and, as the chairman has said, for the determination to be made on ability, not in the year of our Lord in which you were born.

I join with the gentleman in support of the bill, and I join with the gentleman in opposition to the amendment which is going to be offered. The way to deal with it, as the gentleman so properly said, is deal with it based on ability, nothing more, nothing less.

Mr. HAMMERSCHMIDT. Mr. Chairman, will the gentleman yield?

Mr. GUNDERSON. I yield to the gentleman from Arkansas.

Mr. HAMMERSCHMIDT. Mr. Chairman, I rise in support of H.R. 4154, a bill which will eliminate all mandatory retirement age restrictions in employment for most private sector and certain public sector employees.

The right of older persons to continue working as long as they are capable is one that I strongly support. In 1977 I was a cosponsor, with my distinguished friend Mr. PEPPER, of the original legislation which increased the maximum age protection for private sector employees form age 65 to 70, and removed mandatory retirement for most Federal employees. The Age Discrimination in Employment Act Amendments [ADEA] of 1978 were a major step in transforming a national policy that did violence to our sense of dignity: The rejection of capable men and women from the work force based on an arbitrary factor—age.

At the time the 1978 amendments were being debated there were concerns about whether or not there would be a negative impact on women, minorities, and young persons trying to enter the work force. It is important to note that the Department of Labor studies indicate no measurable impact as a result of the 1978 ADEA amendments.

Today we must take the next logical step and eliminate age as a factor in employment. This legislation clearly expresses the country's concerns. In a 1981 Louis Harris poll, two-thirds of all business executives and 90 percent of all adults opposed a mandatory retirement age. Our own personal experiences force us to reject the thought that a person's judgment, intelligence, and productivity decline on some date on a calendar.

It would be very difficult to exaggerate the importance of work in our society. We live in a society in which work defines not only access to income but also self-esteem, status, and social participation. Furthermore, by forcing people to retire prematurely, we relegate them to additional, unnecessary years of reduced income. At present, retirement is almost always accompanied by a 50-percent reduction in income. This reduced income, coupled with increased longevity, adds up to a critical problem for many older Americans.

Passage of this legislation is a true indication of our commitment to a national retirement policy based on ability and performance, rather than a superficial, arbitrary measure such as age. I urge my colleagues to support this bill.

Mr. MARTINEZ. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from California [Mr. HAWKINS], the chairman of the full committee.

Mr. HAWKINS. Mr. Chairman, I rise in strong support of the bill, H.R. 4154, which amends the Age Discrimination in Employment Act [ADEA] by eliminating the age 70 cap. Enactment of this legislation would prohibit the arbitrarily forced retirement of thousands of individuals who are capable, productive members of the Nation's work force.

More than two decades ago, Congress enacted the Age Discrimination in Employment Act to promote the employment of older persons based on their ability to perform in the job rather than on age and to prohibit arbitrary discrimination in employment.

In 1978, I was pleased to join with my distinguished colleague, Mr. PEPPER, to amend the act by raising the upper age limit from 65 to 70 for most private sector employees. The bill also eliminated the age 70 cap for most Federal civilian workers. The 1978 amendments required the Secretary of Labor to conduct a study on the effect of raising the upper age limitation to 70 years of age and to evaluate the feasibility of eliminating the upper age limitation entirely.

More then 8 years have elapsed since Congress enacted the 1978 amendments. We have had years of experience with the age 70 limitation and have continued to evaluate the feasibility of eliminating the upper age limit entirely. Several years ago, the Department of Labor submitted a report to the Congress on the Age Discrimination in Employment Studies. The report stated,

> Employers have not experienced major administration difficulties or increased costs with mandatory retirement at age 70 and do not anticipate major changes in employee retirement patterns if mandatory retirement is eliminated.

H.R. 4154 in no way forces employers to retain workers who are no longer competent. They don't need us to help them get rid of incompetents. This bill merely insures that those Americans age 70 and over who desire to continue working and are able to continue performing in a competent fashion are not denied the basic human right to earn a living.

Mr. Chairman, I urge my colleagues to support H.R. 4154.

□ 1715

Mr. JEFFORDS. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri [Mr. COLEMAN].

Mr. COLEMAN of Missouri. I thank the gentleman for yielding me this time.

Mr. Chairman, I would like to engage my colleagues, Mr. PEPPER, who has long been identified with and has admirably championed this legislation, and Mr. HAWKINS, the distinguished chairman of the Education and Labor Committee, which reported this bill, in a discussion of an issue that I believe is critically important to the final outcome of this legislation—the impact that complete elimination of mandatory retirement would have on tenured college and university personnel.

As you know, officials from many colleges and universities throughout the country and their representatives in the Washington-based education associations are concerned about the consequences of uncapping for their institutions. I hope we will be able to agree that institutions of higher education deserve special consideration as this bill moves through the Congress.

Let me explain why special consideration is warranted and, indeed, desirable.

First, eliminating mandatory retirement would radically alter a system of tenure that has served the Nation well for many years. In return for a stipulated retirement age, tenure allows for indefinite employment of faculty, allowing them full opportunity to express their views in an environment of academic freedom. The consequences of uncapping mandatory retirement would lead many universities to consider ways of abolishing or limiting tenure. The loss or curtailment of tenure would jeopardize academic freedom which is so important to our country and constitute a setback to our system of higher education.

Second, absent a stipulated retirement age, the number of openings will be vastly reduced for talented young persons who seek to serve our national needs by becoming college and university teachers and researchers. The tremendous expansion of higher education during the late 1950's and 1960's created a "bulge" of faculty, the preponderance of whom will not reach retirement age until close to the turn of the century. This, coupled with declining enrollment of the traditional college-age population, creates enormous pressure on a system in which most new faculty openings occur only upon death or retirement of existing faculty. The postponement of retirement due to uncapping the mandatory retirement age would cut off a vital supply of new blood for our colleges and universities while depriving young people of a decent chance for a career in higher education.

Third, institutions of higher education, if they are to remain effective centers of teaching, learning, and research, require a continued influx of new faculty to regenerate ideas and develop new ways and creative ways of thinking. In some fields—mathematics is a particularly good example—most contributions are made toward the beginning of a professor's career. In all fields of inquiry, a balance of younger and experienced faculty is necessary to stimulate students and challenge conventional ways of thinking.

Finally, many faculty who want to continue teaching after retirement may do so. Most institutions have established mechanisms, such as annual reappointments, that enable faculty who have reached retirement age to continue to teach and to contribute to the academic community.

Mr. Chairman, I believe that these are compelling reasons not to abolish mandatory retirement for tenured faculty. Nevertheless, I appreciate that the chairman of the Rules Committee, who has so ably championed this legislation, and the chairman of the Education and Labor Committee, who has brought this bill to the floor, wish to bring a clean, unamended bill to conference with the other body and, in the interest of facilitating their desires, I do not intend to offer an amendment to the bill. However, I would like to ask both distinguished chairmen if they would entertain favorably such an amendment that may be enacted in the other body.

Mr. Chairman, I yield to the gentleman from Florida [Mr. PEPPER] for his response.

Mr. PEPPER. I thank the gentleman for yielding to me.

Mr. Chairman, I, too, recognize the special circumstances involving the tenure system at colleges and universities, as well as the concern that uncapping the retirement age might jeopardize systems of tenure and reduce the number of openings for new faculty. As my distinguished friend from Missouri is aware, the Age Discrimination in Employment Act Amendments of 1978, which raised the permissible retirement age from 65 to 70, provided for a temporary exemption for tenured faculty, through June 1982.

I have sought to work with representatives of the higher education and the aging community to reach a compromise on this issue, and legislation that I introduced last year, H.R. 522, included a temporary exemption. As my friend from Missouri noted, however, I believe that it is important to bring an unamended bill to conference. I would emphasize to my colleague, however, that I agree with his position and would certainly encourage my colleagues on a conference committee on this legislation to incorporate an amendment that addresses his concern if such a bill is brought to us from the other body.

Let me add that it might be wise for the Congress to authorize a study of the effects of uncapping on academic institutions. A study by a respected organization such as the National Academy of Sciences might verify the need for a cap or, indeed, it might arrive at creative new ways of resolving these issues.

Mr. COLEMAN of Missouri. Mr. Chairman, I thank the gentleman for his response and I now yield to the chairman of the Education and Labor Committee, the gentleman from California [Mr. HAWKINS].

Mr. HAWKINS. I thank the gentleman for yielding to me.

Mr. Chairman, although before the Rules Committee, as chairman of the Committee on Education and Labor, I advocated that certain amendments should be made in order, mainly those offered by Mr. BARTLETT, Mr. JEFFORDS, Mr. COLEMAN, and Mr. MURPHY, I did advocate that and did state my views rather strongly that the House should pass a clean bill.

I believe that consideration, in addition to that, should be given to providing for a study to determine what impact this legislation may have on institutions of higher education who employ faculty members under contracts of unlimited tenure.

Mr. COLEMAN of Missouri. Mr. Chairman, I appreciate my colleagues' interest and response and thank them for clarifying their position on this very important issue.

Mr. JEFFORDS. Mr. Chairman, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Vermont.

Mr. JEFFORDS. I thank the gentleman for yielding to me.

Mr. Chairman, I just want to commend the gentleman for his efforts in this regard. I am against exceptions, but I am not against phase-in periods. I understand the very difficult problems that we are creating for the tenured systems in our universities and commend the gentleman for his actions.

Mr. COLEMAN of Missouri. I thank the gentleman.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of H.R. 4154 because it will correct one of our Nation's most serious civil rights problems.

Every year millions of Americans are forced into unwanted and unnecessary retirement just because they reach the age of 70. This policy of forced retirement makes no sense. An arbitrary line, not the competency or talents of individuals, now determines employability. Just as we do not tolerate race or sex discrimination, we must not let distinctions based on age continue.

H.R. 4154 will end this discrimination against older Americans by eliminating age-based mandatory retirement and extending the protections of the Age Discrimination in Employment Act to all older people. It will not, of course, force senior citizens to work. But it does provide them with an important choice.

There is no question that many workers look forward to retirement and have no interest in working past the age of 70. H.R. 4154 continues to allow these people to enjoy a well deserved retirement. But experts have found that the majority of American workers do not want to be forced out of the work force. These Americans want the opportunity to earn a salary and share in the feeling of self-worth and dignity that comes from being employed.

Since mandatory retirement was eliminated for Federal workers in 1978, it is primarily private sector workers that are forced to retire upon reachin age 70. This arbitrary age limit not only denies older Americans equal opportunities and a fair chance

to participate in our society, but it also cheats our Nation of the invaluable resources of talent and experience that older workers possess.

I want to commend Congressman PEPPER for bringing this bill foward and for all his efforts on behalf of our Nation's senior citizens. We all owe him a tremendous debt for his tireless work and insistence that older Americans be treated fairly. By drafting H.R. 4154, he is providing a new, and long overdue, opportunity for millions of older citizens.

□ 1725

Mr. JEFFORDS. Mr. Chairman, I yield 3 minutes to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Chairman, I rise today in strong support of H.R. 4154, the Age Discrimination in Employment Amendments of 1986, and I commend my colleague from Florida, Mr. PEPPER, Mr. JEFFORD, and all members of the committee for all the work they have done to bring this landmark bill to the floor today.

This legislation is very basic, but its meaning and impact will be profound. The Age Discrimination in Employment Act [ADEA] currently protects most private sector workers and employees of State and local governments up to age 70 from being fired solely on the basis of their age. H.R. 4154 simply extends this same protection to workers age 70 and over, as well.

It is high time we wiped out discrimination and prejudice based on age. Our society has for years failed to recognize the true value of those Americans who have contributed most to this Nation. Forcing older workers out of their jobs solely because of their age is the most glaring evidence of this injustice.

The contributions of older Americans need not end at age 70. Productivity, ingenuity, sound judgment, and experience are as present, if not more present, in the older workers of this country as the younger.

In 1985, the National Commission for Employment Policy undertook an intensive study of older Americans in the workplace. The Commission found that for most older workers, age is an advantage in the job market. Their pay is higher, unemployment rates are lower, and job loss is less likely than for younger workers.

The Commission went on to say that "Older workers are a vital resource for the Nation. We believe it is critical that our private and public employment and retirement policies do everything possible to promote opportunities for those older Americans who want to work."

But despite the effectiveness of older workers this research reached the unfortunate but undeniable conclusion that age discrimination continues to exists.

Age discrimination robs the workplace of competent and productive employees, and, on a more personal level, it negatively effects the economic and psychological well-being of older Americans.

Mandatory retirement sends people the message that they are no longer useful to society.

Opponents of removing the mandatory retirement age cap have predicted that a variety of disastrous consequences will result if this measure goes into law. The same problems were predicted back in 1978 when Congress raised the age cap from 65 to 70 and removed the cap entirely for most Federal workers.

Contrary to predictions, however, women, youth, and minorities were not laid off in droves, managment, did not suffer, and productivity did not disminish. Few employers reported that older workers remaining on the job after the 1978 amendments were causing "promotional blockage or slowdowns."

A 1982 Department of Labor report indicated that, if the mandatory retirement age was eliminated altogether, its impact would be similar to the effect of the 1978 amendments. In other words, the impact of these older workers is not likely to cause problems.

But more important, transcending any debate over the impact of older Americans in the workplace is the overriding fact that they have a right to be there if they can and want to do the job.

This bill on the floor of the House today would in no way force older Americans to continue working if they choose not to, nor would it prohibit employers from releasing older workers who aren't performing. H.R. 4154 simply says that employers must judge a worker based on his or her ability to do the job.

It is as wrong to deny a person a job because of age as it is to deny persons work because of their race or sex or religion. Either you can do a job or you can't.

Please support this important effort.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. ROYBAL], the chairman of the Select Committee on Aging.

Mr. ROYBAL. Mr. Chairman, I rise in strong support of H.R. 4154, a bill to eliminate mandatory retirement, one of the final vestiges of age discrimination still permitted in the United States.

The House Committee on Aging has had several hearings throughout the country and we have been told, no matter where we go, that mandatory retirement is discriminatory. We have been told over and over again that it deprives a person of their personal rights.

But then we have also been told that not only are their personal rights involved, but that their personal dignity is also involved. We have testimony from men and women in their seventies and eighties who looked to be in their fifties, strong individuals who were forced to retire when they should not have been.

Because of this testimony, I have taken the position long ago, based on what I have heard and what I have seen, that mandatory retirement is discriminatory and that we must do everything we possibly can to see to it that the individual's merit is recognized, not on when he was born, but on his personal ability.

That is the only recognition that should be given that individual for any particular job.

I think that a good example of what we mean is the author of this bill, the gentleman from Florida [Mr. PEPPER], who came to this Congress 25 years ago after having served in the other body, 25 years ago at the age of 62, and during those 25 years, which will be this coming January 3, no one has been able to keep up with the gentleman.

If you do not believe that, try following this young man over a period of 12 hours or go with him on a trip anywhere in the world and I can guarantee that the gentleman has more energy than anyone who goes with him.

Mr. Chairman, I wish to rise in support of H.R. 4154, a bill which would eliminate mandatory retirement, one of the final vestiges of age discrimination still permitted under Federal law. I would like to take this opportunity to commend Representatives PEPPER's tireless efforts to extend Federal protection from age discrimination to all older workers, regardless of age. Moreover, my discussions with Mr. PEPPER have shown his strong interest in maintaining a bill which is unfettered by encumbering amendments which would attempt to exempt certain occupations from the broad coverage of this bill. Mr. PEPPER and I share a strong and abiding belief that the time has come to measure an individual not based on his age, but on his competence and his ability to perform. Only in this way can we as a nation assure that the promise of freedom and opportunity can and should extend to all persons based upon their ability rather than some artificial standard of age.

While I strongly embrace the thrust and requirements of this bill to end mandatory retirement, I must take note of the amendment which would seek to deny the protections of the Age Discrimination in Employment Act (ADEA) to police, firefighters and other public safety officers. Proponents of this amendment argue that age limitations are necessary to enable States and localities to maintain a "fit and vigorous" public safety work force. The bill which is before you today in no way prevents States and localities from maintaining

such an effective work force. Presently, the area does not prevent employers from discharging an individual who is unfit or incompetent. Moreover, age limitations are permitted by the ADEA if age can be shown to be a "bona fide occupational qualification." The study which has been incorporated into this bill as part of the "Martinez Compromise" will enable the Equal Employment Opportunity Commission to eventually determine whether specific age exemptions may be necessary for such public safety occupations. However, there is presently an abundance of scientific and medical evidence which suggests that age alone is not a significant determinant of an individual's ability to perform on the job. Research further indicates that:

Older police officers have a lower rate of civilian complaints.

Increased age contributes to knowledge and skill on the job, which is reflected by statistics which indicate that as age increases among firefighters, injury rates decline.

Medical and physical fitness testing are more accurate and cost-effective determinants of an individual's physical condition, risk of incapacitating illness and ability to perform than merely an individual's chronological age. Many physically fit older officers demonstrate better health and fitness profiles than out-of-shape younger officers.

It should be noted that nearly a third of all States have no hiring age limits, while 22 percent of the States have no retirement age at all. Even among States with mandatory retirement ages, the established age ranges from 50 to 70, indicating that there is little consensus of an appropriate age limit.

Some proponents for exempting State and local jurisdictions from elimination of mandatory retirement indicate physical fitness testing and training is prohibitively expensive and unreliable. The facts simply do not bear this out. Simply, there is no evidence that older public safety officers who have passed medical examinations and physical fitness testing cannot perform their jobs safely and effectively. At least 18 States and 10 major cities have instituted physical fitness and health programs for State law enforcement officers. These programs have increased the fitness levels of their employees, reduced factors associated with atherosclerotic heart disease, reduced injuries on the job, and reduced worker compensation claims and disability costs. Physical fitness testing and training need not be expensive. For example, in my city of Los Angeles, the fire department has set up a physical fitness training program covering 120 work locations at the cost of $5,000 per year. This program has reduced work-related disabilities which have previously been estimated to cost the city an average of $250,000 per year.

Some who support exemptions to this bill suggest that Federal protections against age discrimination are a violation of a State's rights. Again, this is simply not the case. The ADEA does not interfere with a State or local government's ability to prescribe reasonable qualifications for public safety officers or to discharge those individuals unfit to perform safely and effectively. A State or local government may under present law, establish a mandatory retirement age as long as it can demonstrate, through appropriate testing, that such an age limit represents a legitimate and bona fide occupational qualification. Requiring State and local governments to establish a reasonable basis for any such limits does not impair their ability to protect the public safety.

Finally, some argue that the present exemption for Federal public safety officers from requirements of the ADEA justifies a similar exemption for State and local governments. While it is true that such an exemption is afforded for Federal personnel, over one-half of the Federal agencies covered by this law and chosen not to set a maximum hiring age or a mandatory retirement age because such limits are inefficient and exclude well-qualified persons from employment. Moreover, GAO has criticized age limits for Federal public safety officers because age is such a poor predictor of physical and mental performance. I have introduced H.R. 1510 which would eliminate the mandatory retirement of Federal employees because I truly believe that age discrimination in the form of mandatory retirement should not be permitted in the Federal Government.

In closing, I strongly urge passage of H.R. 4154 to eliminate mandatory retirement and further urge you to vote against the pending amendment which seeks to prevent extending the protections of Age Discrimination in Employment Act to those employed by State and local jurisdictions.

Mr. JEFFORDS. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Chairman, today I rise in strong support of H.R. 4154, legislation to prohibit mandatory retirement solely based on a worker's age. I am pleased to be an original cosponsor of this bill and urge my colleagues to support this important legislation, without amendments. I commend Chairman PEPPER for his relentless efforts to end age discrimination in the workplace. Chairman PEPPER reminds us daily that age dos not preclude ability.

The opportunity to work is a basic American right and older Americans opportunity to work must be protected. If older Americans want to continue to work and earn a living when they are past the age of 70, there should be no obstacles barring them from doing so. I am proud that my home State of Iowa has taken a lead on eliminating age discrimination in the workplace. Iowa, along with a dozen other States, has already prohibited mandatory retirement. By passing H.R. 4154, we will send a clear message: Older workers across the Nation, not only in Iowa and a few other States, are equaly protected by the law. Employers may no longer maintain mandatory retirement policies based on age.

Older Americans are vital members of the work force. They represent extensive on-the-job experience, knowledge, and reliability. Older workers often play an important role in teaching and training younger workers. Studies of the relationship between job performance and age simply have not supported the assumption that ability deteriorates or declines with age. To the contrary, often age improves and enhances performance through increased productivity. Older Americans are vital to the entire work force of this country.

Currently, the ADEA, as amended, provides protection from age discrimination to workers aged 40 to 70. However, age may be considered a bona fide occupational qualification if an employer can demonstrate that the physical and/or mental skills required for a job are directly related to age. Many State and local governments maintain employment policies that include mandatory retirement of public safety officers at age 55. It is argued that this policy is justified because the Federal Government mandatorily retire Federal firefighters at 55, the FAA requires airline pilots to retire at age 60, et cetera. The connection between age and ability is arbitrary and virtually unfounded. I simply do not believe our laws should permit any sort of discrimination in the workplace, whether the employer is in the private or public sector.

This bill includes a comprehensive study of the impact age has on the ability to work in public safety jobs. Until there is concrete evidence that police and firefighters cannot perform their duties beyond the age of 55, the ADEA should not contain a special exemption for these occupations. Therefore, I urge you to defeat the Murphy amendment to provide an exception for State and local public safety officers.

It has been said that retirement is one of the most dramatic and difficult life changes that Americans experience. The law must not limit protection from age discrimination in employment. I strongly urge you to support H.R. 4154, without amendments, to finally eliminate an unjust and unfair employment practice—mandatory retirement solely based on a worker's age.

□ 1735

Well, if it is physical tasks in the performance of those tasks that is the problem, then let us have a test to measure that; but in no case is age in and of itself a fair test.

The testimony given before our committee suggested that age was in no case the best test that could be offered in order to determine whether or not an individual was correctly suited for the job. For that reason, it is fundamentally wrong for us on the basis of age to deny people the fundamental opportunity to work.

My own State of Iowa, Mr. Chairman, is a State that has been a leader in prohibiting mandatory retirement laws. I just want to tell you that it has not in any way hurt the people of

Iowa or hurt our economy or destroyed the business climate. Instead, we have found in our older workers a great source of energy, a source of experience, a source of initiative and new ideas. We have found in them help to train many younger employees. We have found great stability. They have been contributors to the economy of the State of Iowa.

If we have the courage today to pass this legislation without amendment, we will have taken not only a great step forward for older Americans, but also for the Nation as a whole.

Mr. Chairman, I urge passage of this legislation.

Mr. MARTINEZ. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding.

I have expressed some of my views in connection with this legislation during the debate on the rule; but as chairman of one of the subcommittees of the Select Committee on Aging where I have served with the gentleman from Florida [Mr. PEPPER] and the gentleman from California [Mr. ROYBAL] since its inception, I cannot help but reflect upon the earlier initiatives when we were doubtful as to the outcome and then the final enactment of the legislation in 1978.

We were concerned about the victims of the day. We knew we had an obligation to return after we determined whether or not the experience from this legislation could justify an extension. Clearly, over the past 9 years, we have had a satisfactory experience.

It is most ironic to think that the victims of that period, age 65, are now being victimized again at the age of 70.

Now, we have had hearing after hearing in just about every quarter of this land. One thing that comes through loud and clear is that when a person is required to retire involuntarily, it has a direct impact on the length of life and the state of their health. There is a precipitous drop that commences when they are compelled to retire.

Conversely, those who continue to work, continue in vigorous good health and oftentimes they are enhanced with the continuing experience.

I remember at one of the hearings, I think there was a representative of Cartier's, the owner of Cartier's said that his watch builders really were novices at 75 and they were really at their prime at 80 and 85. He had them present.

Imagine, if you will, if we had this mandatory retirement at age 65 what great value, what great resources we would lose.

I know this bill is going to pass. We are still left with some unfinished business, but I say let us not rush to judgment as far as the other areas are concerned. Let us deal with this additional phase. When we passed the original stage, there were people who said, "Hey, how about the rest of them? How about those who are older than 65? How about those who are 70 who are still productive and still want to work?"

We were told by Chairman PEPPER at the time and others that we would address the problem after we learned experience. It was new and novel. We did not know what impact it would have. We did not know whether there would be disaster or chaos or whatever would be the consequences, but we have had a happy experience. Anyone here at the time when we passed that legislation and who is here today would have to just indulge oneself in knowing they participated in one of the greatest pieces of landmark legislation in the history of this Congress, and to be here today, to be given the opportunity today to go further is indeed a privilege for myself.

Mr. Chairman, I once again want to congratulate former Chairman CLAUDE PEPPER who was the chairman emeritus and Chairman ROYBAL and Congressman HAWKINS and my good friend, the gentleman from Vermont [Mr. JEFFORDS] who works with me on the Education and Labor Committee.

Mr. JEFFORDS. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Chairman, I rise in support of H.R. 4154, age discrimination in employment amendments. I thank the gentleman from Florida [Mr. PEPPER] for introducing this needed legislation and for his continuous dedication to eliminating injustices to our senior citizens.

Mr. Chairman, the senior citizens of our Nation no longer constitute a small proportion of our population. In these modern times, people are fortunately living longer and are able to live productive and useful lives well past the age of 70. There is no reason to restrict them merely because they have reached the fabricated milestone of 65 or 70 years of age. H.R. 4154 eliminates all mandatory retirement age restrictions in employment for most private and public-sector employees, and prohibits discrimination on the basis of age. Furthermore, this bill requires continuation of coverage under an employer's health plan for workers age 70 and above; mandates that Labor and the Equal Employment Opportunity Commission [EEOC] conduct a study determining whether physical and mental fitness tests are valid measures of ability for police officers and firefighters; and authorizes the EEOC to issue guidelines on the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters. H.R. 4154 has received the support of such organizations as the AFL-CIO, the American Federation of Teachers, and the Gray Panthers. This measure is long overdue. The time is right to correct an injustice geared toward a rapidly increasing proportion of our population and to let our senior citizens decide for themselves whether they want to fly south for their winters.

While I do not condone discrimination on the basis of age, or on any other grounds, there may be instances where exceptions could be tolerated. Today my colleague from Pennsylvania [Mr. MURPHY] will offer an amendment to provide an exception for State and local firefighters and law-enforcement officials thereby allowing States to uphold age restrictions in employment for these workers. The Federal Government possesses the prerogative to maintain certain mandatory retirement ages when the occupation in question requires a certain amount of physical ability to protect the public safety. We must consider today whether our State and local governments should possess the same discretion.

Mr. Chairman, today we can take the final step to end treating our senior citizens as second-class citizens. We must grant the right to work to those Americans, regardless of age, who want to and are capable of continuing their employment. Accordingly, I urge our colleagues to join in adopting this legislation, H.R. 4154, in order to ensure fair treatment to all sectors of our Nation.

Mr. JEFFORDS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Chairman, I thank the gentlemen for yielding.

Of course, I could not resist the opportunity to ask the other side for time, since it is so rare that we are in such agreement with one another.

I would like to remind the Members of this body that the spirit of all existing civil rights legislation, that is the law of this land, says that a person should be hired, fired, promoted, compensated, terminated, not on the basis of extraneous consideration such as age, sex, race, but on the basis of their ability to perform the job. That is right. It is just. It is good for the employees. It is right for the employees and it is good for the employers.

This legislation today proposes to close the gap on existing civil rights legislation and the ethic of fairness and efficiency embodied.

I would ask the Members of this body to vote this bill through clean. Resist any amendments for any exceptions, whether they be for police protection, fire protection, or for academics. There is no reason to suppose that any person in any occupation whatsoever that is able to fulfill the requirements of that job based on performance standards should be terminated

on the basis of age to protect any system whatsoever, whether it be tenure or anything else. If the tenure system cannot stand up to fair, complete, and full legislation protecting the rights of American citizens against age discrimination, then the tenure system should be examined for what it lacks in there.

Do not compromise this ethic, this spirit, this necessary legislation to give all Americans, irrespective of their age, the right to the dignity and the freedom and the self-sufficiency guaranteed in this country.

Mr. Chairman, I ask for a no vote on all amendments and a yes vote on the legislation.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes, to close the debate, to the gentleman from Florida [Mr. PEPPER], chairman of the Committee on Rules.

Mr. PEPPER. Mr. Chairman, I wish in the warmest way to commend the distinguished chairman of the Education and Labor Committee, the gentleman from California [Mr. HAWKINS], and the distinguished chairman of the subcommittee handling this measure, the gentleman from California [Mr. MARTINEZ] for the magnificent way in which they have considered and brought to the floor of the House this important measure. They have handled it with excellence and deep dedication to the cause of the elderly of this country.

Mr. Chairman, if I may just make a personal reference, I was elected to the House when I was 62 years of age. If I had stopped serving in the public service, which is the chosen advocation of my life, I do not think I would have been living for the last several years.

It is good to have something to get up for in the morning, something to do, some challenge, that gives you somehow or other the impetus to carry on in spite of one's increasing years.

Do you realize there are over 13,000 people in the United States over a hundred years of age? To show you the spirit of the elderly, I met a man down in Texas the other day and in conversation with him he said, "You know, Mr. PEPPER, if you think you are to the end of your rope, do you know what you should do?"

I said, "No, what?"

He said, "Tie a rope on it and hang on."

That is the spirit of the elderly. They want to remain a vital part of this great country that they have helped build.

I had a hearing when I had the honor to chair the Aging Committee and I had seven witnesses, each one over 100. A lady was 100, a black man who had been a railroad locomotive fireman was 112. They all testified intelligently and keenly. I had them over to the House Dining Room for lunch. Some of them shared a little white wine with me. We had an animated conversation. They told some jokes, we told some, and they were a wonderful audience of Americans, every one of them over 100 years of age. One of them was a doctor 103 years old. They said he went to his office everyday in New Jersey.

So the elderly people are going to be heartened tonight when they hear the good news of this great House that they have confidence in the elderly. They are going to give them a chance to keep on building America.

Mr. JEFFORDS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is obviously difficult to follow the gentleman from Florida, the esteemed expert on this question, and probably the prime example in the country why we should not have age discrimination. I certainly commend the gentleman for all the work that he has done and understand why he wants to bring this bill through as soon as possible with no exceptions, and I agree on that aspect also.

I just want to make a couple final comments as to why this bill is needed. There is concern expressed by some that as we do this we are creating problems. There is no question that there may be some transition problems as we move forward; we look forward and see into the future, we may see that the number of workers in this country will probably be inadequate to meet our needs unless we make it possible and urge our senior citizens to work longer. As has been pointed out by the gentleman from Florida, the most rapidly increasing segment of our population includes senior citizens.

□ 1750

We need to make sure that every senior citizen has the opportunity to have the fullest life for the longest time. There should be no exceptions to the Age Discrimination Act. There may be some transition rules necessary with respect to tenured faculty, but there should also be no permanent exceptions.

I had intended and urged the Committee on Rules to allow me an amendment to override the exceptions for Federal workers. We had discussions earlier and we have a commitment now with respect to congressional employees. I also received a commitment from the chairman of the committee dealing with our Federal employees that he will entertain a bill from myself next session which will try to remove the exceptions that we have for the Federal work force.

We have tens of thousands of Federal employees who are excepted from the age discrimination rules, and that is wrong.

We do not need the Murphy exception. The law already recognizes an exception for BFOQ's—"bona fide occupational qualifications", when it is impossible or impractical to test individual employees. But we can test policemen and firefighters.

The same is true for the exempted Federal employees—the CIA, the Foreign Service, the Federal firefighters, or whatever. There is no reason that we should exempt them from this law, and I will pursue my efforts in this regard. I will continue to go forward to see that we remove all exceptions in the Federal law as we go into the next session.

But, following the lead of the chairman of the Committee on Rules, our distinguished friend from Florida, I understand the desire to move this through now so that we can get on with other matters. I know that we are reaching the end of this session, so considering that, I will certainly support the bill in its present form, even though I wish we would have other amendments.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. YOUNG of Florida. Mr. Chairman, I rise in support of H.R. 4154, the Age Discrimination in Employment Amendments of 1986.

As the sponsor of legislation to eliminate mandatory retirement for Americans over 70 and to prohibit the discrimination against any worker because of age, I would urge the passage of this long overdue legislation. According to census information, I represent the district with the highest concentration of Americans over 65. It is no surprise, then, that I know firsthand of the valuable contribution of older workers to our community and our local economy.

Pinellas County businessmen tell me they are anxious to hire older workers because of the unique experiences and skills they offer. For these employers, age is not a factor in hiring decisions. In fact, I can cite case after case of employees who make valauble contributions to their companies while working into their seventies, eighties, and beyond.

The Age Discrimination in Employment Act, enacted by Congress in 1967, prohibited age discrimination in employment for workers between 40 and 65 years of age. Congress wisely amended this legislation in 1978 to increase the upper-age limit to 70. We should take the final step today to end all age discrimination in the workplace by eliminating entirely the upper-age limit in this act.

Testimony presented to the Education and Labor Committee indicated that there are more than 800,000 Americans over 70 in the current work force. Undoubtedly, this figure would be higher if some workers were not forced into mandatory retirement at age 70 or left the work force voluntarily because they were denied certain promotions or benefits.

Employment decisions should be based entirely on a worker's skills, abilities, experience, and qualification, not on age, race, or sex. Federal law prohbitis the discrimination

against any worker due to race or sex, but still allows discrimination against workers over 70 because of age. The enactedment of the legislation we consider today would remove this last vestige of discrimination in our country.

Many older Americans want to continue to work past the age of 70. As a Nation which seeks to promote economic self-sufficiency and the right to apply for any job, we should be encouraging, not discouraging, workers, regardless of age, to fully utilize their skills. In this regard, Congress must do everything possible to prohibit discrimination based on an arbitrary age restriction.

These workers helped build and strengthen our Nation and our economy. They have contributed greatly to bettering our communities. We should openly welcome them as a valuable natural resource of our country and protect them from any discrimination that would threaten to force them from their jobs.

Mr. Chairman, I strongly recommend the adoption of this legislation and would urge its expeditient consideration by our colleagues in the Senate.

Mr. LEHMAN of Florida. Mr. Chairman, I would like to express my support for H.R. 4154, the age discrimination in employment bill. This bill would give private sector workers the freedom to continue working past the age of 70. Our older workers should be able to make employment decisions for themselves, free from age discrimination requirements. I hope that my colleagues will vote in favor of this important civil rights legislation.

Mr. FRENZEL. Mr. Chairman, I would like to invite the attention of this body to an amendment to the Age Discrimination in Employment Act that was included in similar legislation in the past, but is conspicuously missing from the bill before us today.

This amendment would give colleges and universities a 15-year exemption from Federal laws prohibiting mandatory retirement. Such a compromise between policymakers and college administrators would give institutions of higher learning the flexibility needed to overcome the severe demographic pressures that threaten the quality of tomorrow's college facilities.

I understand such an amendment was defeated in, of all places, the Education and Labor Committee, and that no such amendment can even be raised in this procedure today.

The great "bulge" of professors hired to teach the post-Sputnik, baby boom generation is already bottlenecking the recruitment and hiring process at many universities. Since department chairmen are only able to fill vacancies upon the retirement or death of a tenured faculty member, the opportunity to hire "fresh blood" is severely limited.

Besides compromising the quality of our corps of college educators, H.R. 4145 also represents a form of de facto discrimination against today's young people who wish to pursue an academic career. It is a sort of "pull-up-the-gang-plank-I'm-already-on-board" approach. I'd rather we worried more about tomorrow instead of yesterday.

Mr. Chairman, I'm disappointed that this body has not kept in mind the needs of American higher education in its legislation. The Ways and Means Committee's tax reform bill is a financial disaster for college and universities. This bill from the Education and Labor Committee is stifling to facility development.

I will support this bill today conditionally, in the hope that cooler heads, friendlier to education, will prevail in the other body. If the bill is returned without the education deferral, I will be obliged to resist its passage here.

Ms. SNOWE. Mr. Chairman, I rise in support of H.R. 4154 which protects older workers from mandatory retirement and other forms of age discrimination in employment. I am an original cosponsor of that legislation because I believe that the protections of the Age Discrimination in Employment Act should and must be extended to include workers who are 70 and over.

I further support the Martinez amendment which would direct the Department of Labor and the Equal Employment Opportunity Commission to evaluate fitness tests and programs and to propose standard criteria for periodic testing of public safety employees. I am concerned about the public safety, and I am convinced that fitness testing will assure that all police and firefighters are judged fairly upon their level of competence.

Ability, not age, should be the real measure of one's fitness for a job. Indeed, chronological age is a poor predictor of ability to perform work. To arbitrarily establish an age at which an individual is considered no longer fit to work is simplistic and such policies have broad implications for the health and welfare of the individual and of society.

For example, on an individual basis, a job may be the crucial difference between poverty and a small amount of economic security for older persons. Further, the loss of status associated with the loss of employment may result in both mental and physical deterioration. The ability to be a vital, contributing member of the community is an important element for each of us, regardless of age.

But the impact is not merely registered on the individual. On a societal level, discrimination against older workers and their exit from the labor force results in lost revenues to the tax and the Social Security Systems. Discrimination against older workers also means a loss in national productivity.

Indeed, mandatory retirement as a federally sanctioned mechanism permits the manipulation of the labor force at the expense of older workers. Such manipulation can and will create problems in the future as the labor pool of younger workers decreases.

In 1978, when Congress raised the age for mandatory retirement from 65 to 70, we heard that dire consequences would follow. I know of no such negative outcomes. We are again being asked to believe that by requiring employers to judge the level of capability of an individual to perform a job, we will create problems for industry and for the economy. I simply do not believe this.

I urge my colleagues to vote for H.R. 4154 with the Martinez amendment. I believe we, in Congress, cannot be in the position of condoning discrimination whether it is based on race, gender, or age.

Mr. FAUNTROY. Mr. Chairman, I rise in support of H.R. 4154, the age discrimination in employment measure which would eliminate all language stipulating an upper age limit on persons protected by the Age discrimination in Employment Act of 1967. This legislation would thus eliminate mandatory retirement for all covered employees.

H.R. 4154 would also require that employers continue coverage under the employer's group health plan for workers aged 70 and above.

All of these provisions are timely and appropriate in the light of the constituent response we have received. Statistics establish the fact that today people are living longer, healthier, more energetic and productive lives, which make this segment of our population a valuable resource to our Nation. These provisions speak to liberating that resource.

There are much needed safeguards in H.R. 4154 which address any questions raised about methods for ascertaining physical and mental readiness for activity in these years. The Department of Labor and the Equal Employment Opportunity Commission would be instructed under this bill to conduct a study within 18 months to determine if physical and mental tests are suitable and effective methods for evaluating the abilities and competencies of police and firefighters to carry out their responsibilities. Within 2 years of enactment, the Equal Employment Opportunity Commission would be required to issue guidelines for the administration of and the use of physical and mental tests to assess the abilities and competencies of police and firefighters to perform their jobs.

We are fortunate to have the inspired leadership of Congressman Claude Pepper championing this important issue of human and civil rights. He is an instructive example of the successes and energies H.R. 4154 would liberate for the benefit of all of us.

It is a privilege to join the House Education and Labor Committee in urging all my colleagues to vote in support of H.R. 4154.

We are voting on our future, as well.

Mr. McCAIN. Mr. Chairman, I rise in strong support of H.R. 4154, a bill to abolish mandatory retirement and other forms of age discrimination in employment. This bill is an amendment to the Age Discrimination in Employment Act [ADEA] of 1967. It extends protections currently available to those covered by the ADEA to all private sector workers aged 70 and over.

In 1978 a bill was passed raising the mandatory retirement age from 65 to 70 for most private sector workers and eliminating it altogether for Federal workers; 65 was an arbitrarily set number, as is 70. Yet, an estimated 51 percent of older workers outside the Federal Government face a mandatory retirement age of 70 or more. These Americans will lose their jobs, regardless of their ability or desire, solely on the basis of their age. Today's action will remedy this grievous inequity.

This legislation will not cost the Government anything. It is estimated that it will generate revenue—about $3 billion in the first year alone—because nearly 195,000 workers who would otherwise be retired would be contributing to their own economic support as well as to the Treasury and to Social Security funds.

Age discrimination contributes to unemployment and other financial and psychological problems of older Americans. A study con-

ducted by the Aging Committee a few years ago found that unemployment among workers age 55 and older is growing faster than among all other age groups. Once unemployed, older workers remain out of a job much longer than young adults. Those age 60 and older are three times as likely as all others to give up and withdraw from the work force once they have become unemployed. As a result, there are more than 334,000 discouraged workers over the age of 55. When these discouraged workers are added to the officially unemployed, the number of jobless older persons rises to more than 1.2 million.

A 1982 Labor Department study found that raising the retirement age from 65 to 70 had no significant negative impact and that eliminating retirement would likewise cause no major problems.

The attainment of a certain age should not automatically disqualify one from employment. We are constantly reminding ourselves that America's greatest resource is its people. Countless older Americans continue to make contributions to society, including the President, the Speaker, and several other Members of Congress. Passage of this legislation will allow us to make use the talents of all Americans, not just the limited skills of people under a certain arbitrary age limit.

Therefore, I urge my colleagues' strong support. This is the sort of legislation we should be spending more time on. Rather than expanding the deficit through new Federal programs, we should take advantage of this Nation's resources, especially human resources, in building a stronger economy and country.

Ms. OAKAR. Mr. Chairman, I rise today in strong support of H.R. 4154, legislation to amend the Age Discrimination in Employment Act of 1967 to make mandatory retirement illegal at any age. I am proud to be a cosponsor of this legislation, and I would like to commend my colleague, my friend, and my mentor, Senator CLAUDE PEPPER, for his tireless efforts to promote this bill and other legislation to protect older Americans.

Mr. Chairman, H.R. 4154 recognizes and embodies the principle that everyone, regardless of age, is entitled to prove his or her individual ability to do a job. Recently, Senator PEPPER's Subcommittee on Health and Long-Term Care of the House Aging Committee held a hearing on "Ability is Ageless." The subcommittee received testimony from countless, distinguished witnesses—ranging from comedian George Burns to Navy Rear Adm. Grace Hopper—all of whom are older than age 70 and all of whom are still making significant contributions to our society. We do a great disservice to these individuals, and to our entire Nation, by setting arbitrary age limits on everyone's ability to work.

H.R. 4154 does not require that anyone work beyond the age of 70 or beyond the age of normal retirement. Instead, it allows employees to continue in their jobs as long as they are able, according to their own needs and preferences. The legislation includes an amendment relating to State and local law enforcement and firefighting personnel and the special concerns about fitness that accompany their positions. The bill directs the Secretary of Labor and the Equal Employment Opportunity Commission to study and make recommendations to Congress on establishing Federal guidelines for the use of physical and mental fitness tests to ensure the competency of these public servants. This provision in H.R. 4154 should answer any questions that might be raised about possible threats to public safety from eliminating all mandatory retirement requirements.

Forcing people our of their jobs, simply because they have reached a certain age, clearly contradicts our Nation's civil rights protections. Thousands of Americans age 70 and older are vibrant and vital and want to continue working. The House of Representatives should act swiftly and firmly to protect their rights.

Mr. Chairman, I urge my colleagues to support H.R. 4154 and oppose all weakening amendments.

Mr. CHAPPELL. Mr. Chairman, today I rise in support of H.R. 4154, the Age Discrimination in Employment Act, which I have consponsored. In my view, this legislation is vitally needed and deserves the support of every Member of the House.

As my colleagues know, as a society, we are leading longer more productive lives than previous generations; however, workers are still subject to mandatory retirement rules just as their parents and grandparents were. There is no valid reason to require people to retire when they are still capable of contributing to their communities, their workplace and to their own well-being. We need only to look at history to find many examples of senior citizens performing some of their greatest work in later life. In truth, we do not need to look back in time, we need only to look around this body. We are indeed fortunate that many of us are not subject to mandatory early retirement, except of course when that is the expressed desire of our constituents at the polls. We in Congress are able to continue in our chosen line of work; but, sadly, the same cannot be said for countless individuals in the private sector.

H.R. 4154 would completely eliminate age-based mandatory retirement, recognizing that everyone is entitled to prove their ability to continue working. This legislation will not force anyone to continue working, nor does it prevent the employer from relieving a worker for valid and nondiscriminating reasons. Rather, it will create an atmosphere where the older worker can continue to provide input and the benefit of accumulated knowledge while maintaining their sense of accomplishment and pride.

In closing, Mr. Chairman, I ask that each of my colleagues consider the message we are sending if we overwhelmingly approve this legislation. We would, in essence, be saying to many older Americans "You can contribute, your services are valuable."I cannot speak for everyone here today; but that is the message I would like to send. So I again urge my colleagues to join me in support of H.R. 4154.

Mr. GALLO. Mr. Chairman, today we have taken a giant step forward in our efforts to end a discriminatory practice that has robbed us of the wisdom of experience in the workplace and has forced millions of able-bodied individuals to step aside based on a date on the calendar.

H.R. 4154 effectively ends age discrimination in the workplace by lifting the current age limit in Federal law, which says that a person who is 69 years old is protected by Federal law from being removed from his or her job because of age, but removes that protection the day he or she turns 70.

Since 1967, we have protected our citizens up to the age of 70 from age discrimination in employment. Since that time, the average life expectancy has risen by 2 years for men and by 5 years for women. We are hopeful that advancements in the medical sciences will allow that trend to continue.

Our laws must keep pace with the times. Our laws should recognize that age alone is not the basis for worth within the marketplace.

Clearly, some of us live longer and healthier lives than others. Some professions require quick reflexes that may slow with age. Those changes must be taken into account as an indivdual continues to hold certain types of jobs. But, that is an individual assessment of reflexes, and cannot be judged by looking at a birth certificate.

This legislation removes a barrier to productivity for millions of people whose reflexes do not reflect their chronolgical ages.

A list of productive individuals in their seventies, eighties, and nineties could fill pages in the CONGRESSIONAL RECORD.

We will all reach this point in our lives eventually, if we are lucky.

I ask you to imagine yourself in the position of a person who turns 70 and suddenly is told, "you are too old." You may not feel too old, but if you are told you are old too often, you begin to believe it and give up.

This bill says to our older, more experienced citizens, "You are not too old." This is something that we need to say.

I urge support for H.R. 4154.

Mr. MARTINEZ. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN (Mr. KOSTMAYER). Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment, and shall be considered as having been read. No amendment to the bill or to said substitute shall be in order except the amendment by Representative MURPHY of Pennsylvania printed in House Report 99-840. The amendment shall not be subject to amendment or to a demand for a division of the question, but shall be debatable for not to exceed 1 hour, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

The text of the committee amendment in the nature of a substitute is as follows:

AMENDMENT OFFERED BY MR. MURPHY

Mr. MURPHY. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. MURPHY:

H.R. 4154

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Amendments of 1986".

SEC. 2. AMENDMENTS TO ACT.

(a) COVERAGE UNDER GROUP HEALTH PLANS.—Subsection (g)(1) of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)), as added by section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "through 69" each place it appears and inserting in lieu thereof "or older".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 4 of the Age Discrimination in Employment Act of 1967, as added by section 802(b)(2) of the Older Americans Act Amendments of 1984, is amended by striking out "(g)(1)" in inserting in lieu thereof "(h)(1)".

(c) REMOVAL OF MAXIMUM AGE LIMITATION.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) in subsection (a) by striking out "but less than seventy years of age", and

(2) in subsection (c)(1) by striking out "but not seventy years of age,".

SEC. 3. STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS.

(a) STUDY.—Not later than 18 months after the date of enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall—

(1) conduct a study—

(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

(B) If such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests should satisfy, and

(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes—

(A) a description of the results of such study, and

(B) a statement of the recommendations developed under paragraph (1)(C).

(b) PROPOSED GUIDELINES.—Not later than 2 years after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness test to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

SEC. 4. EFFECTIVE DATE AND APPLICATION OF AMENDMENTS.

This Act and the amendments made by section 2 of this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

(1) which is in effect on June 30, 1986,

(2) which terminates after January 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

Page 4, strike line 4 and insert the following:

SEC. 2. AMENDMENTS RELATING TO MAXIMUM AGE.

Page 4, after line 22, insert the following:

SEC. 3. EMPLOYMENT AS FIREFIGHTER OR LAW ENFORCEMENT OFFICER.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end thereof the following new subsection:

"(i) It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken with respect to the employment of an individual as a firefighter or as a law enforcement officer.".

SEC. 4. DEFINITIONS.

Section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630) is amended by adding at the end thereof the following new subsections:

"(j) The term 'firefighter' means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

"(k) The term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, 'detention' includes the duties of—

"(1) employees of any penal institution; and

"(2) employees of any public health agency assigned to the field service of any penal institution;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of a State require frequent (as determined by the appropriate administrative authority) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation.".

Page 5, line 1, strike "SEC. 3." and insert "SEC. 5.".

Page 6, strike lines 7 and 8, and insert the following:

SEC. 6. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by

Page 6, after line 23, add the following:

(b) EFFECT ON EXISTING CAUSES OF ACTION.—The amendments made by sections 3 and 4 of this Act shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 as in effect before January 1, 1987.

Mr. MURPHY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. MURPHY] will be recognized for 30 minutes and a Member opposed will be recognized for 30 minutes.

Mr. JEFFORDS. Mr. Chairman, I am opposed to the amendment.

The CHAIRMAN. The gentleman from Vermont [Mr. JEFFORDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. Mr. Chairman, I, too, favor the basic concepts of this bill, and was here in the year 1978 when we broadened the age antidiscrimination legislation to permit us to allow employees to work up to the age of 70, and I favor the concept of extending that age limit.

I, too, agree with the gentleman from Florida [Mr. PEPPER], the gentleman from California [Mr. MARTINEZ], and the gentleman from California [Mr. HAWKINS] that there are many people of advanced age who have the capacity and the ability to continue working.

However, my amendment provides that public safety employees—firefighters and police officers—would still be subject to the jurisdiction of the States and local governments to determine whether or not they should be allowed to continue to work at any age.

I know that Congressional people can perhaps serve and do serve very admirably until age 87 and beyond. People serve in executive positions, in manual tasks. But I submit that we should not replace our opinions of what is good for the public sector and the public-safety employee in saying that people who are 87 years of age or 90 years of age should be chasing drug smugglers down the street or fighting in pitched battles combating fires and combating criminals.

My amendment therefore provides that State governments and local governments would have that discretion. Let us not impose our judgment on theirs. Let the local councilmen, the local and State legislator, determine whether or not the State trooper should be serving at 82 years of age or 70 years of age. Let them have that discretion as we originally intended in the act.

When we originally passed this act we did not intend to cover State and

municipal employees. The Supreme Court since that time has said that yes, since we did not exempt them, they are covered by the act.

I might say that at the time we passed the act in 1978 the Congress specifically exempted Federal public safety employees from the scope of the act, and we stated at that time that in certain types of particularly arduous law enforcement activity, there may be factual basis for believing that substantially all employees above a specified age are unable to continue to perform safely and efficiently the duties of those particular jobs. We believe that it is necessary to exempt Federal law enforcement officers and Federal firefighters. Why do we not allow that same discretion to those in the State legislatures and those on city councils?

I might add in closing my argument that the Fraternal Order of Police, the individual State troopers, sheriff's police officers and firefighters, the 45,000-member National Sheriffs Association, the International Association of Chiefs of Police, and the International Association of Firefighters, all agree that there should be an age limitation discussed and deliberated and decided locally, that there should be a mandatory age retirement for the colleagues that they are serving with.

Picture the fireman who is there on the line of duty in his thirties, and forties, and fifties, and now he has to serve alongside a person who is in his eighties and nineties and cannot force that person to be removed from the line of fire—the policeman who is out patrolling the beat with a patrolman alongside him who is 78 years of age and maybe not as quick as he was 20 years ago, and yet not be able to retire that person. That is why these associations are interested in serving with those persons on the line of duty with them who are as capable, who are as agile, and who are as able as they in protecting their own lives as well.

Mr. Chairman, I urge my colleagues to support this amendment. It would only provide the discretion to the local and State governments that we have decided here to exempt public safety employees from this act.

Mr. JEFFORDS. Mr. Chairman, I yield 20 minites to the gentleman from California [Mr. MARTINEZ] to be allocated as he sees fit.

Mr. MARTINEZ. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in opposition of the amendment offered by Mr. MURPHY, making an exemption in the Age Discrimination in Employment Act for police and firefighters.

The amendment would allow States and local governments to simply set an age at which to let people go even if they were capable of doing their job, without even setting standards of competency criteria.

Some departments already have done this to protect themselves from suits charging age discrimination.

And those that have are successful in cutting down the number of lawsuits, proving that testing a person's capability to do the job is better than having to prove in court they are innocent of age discrimination.

The cost to local government is that the burden of proof lies with them, and it still would be with Mr. MURPHY's amendment.

My amendment accepted in the full Education and Labor Committee offers the perfect solution to the concerns of those seeking a fit and competent safety officer work force. The amendment requires the Department of Labor and Equal Employment Opportunity Commission to undertake an 18-month study of competency criteria for police and firefighters, and, 6 months after the study, to issue guidelines on how to apply these criteria for State and local safety officers.

State and local governments would be allowed discretion in the degree and range of criterion used to measure their work force, but, these standards must be fitted to the specific requirements needed for the job and be applied uniformly to workers doing that particular type of job.

Thus, we would have only the most fit officers to rundown criminals and carry out victims from burning buildings.

My amendment not only provides us with the most competent safety workforce, but will also reduce costs currently associated with having to litigate each case of age discrimination or criterion application to the safety services.

The guidelines will make it clear how discrimination can be avoided in the work force, and when guidelines are not followed, what can await the employer in litigation.

This will reduce the current confusion over the problem of bona fide occupational exemptions to the age discrimination laws.

As Chairman PEPPER so ably points out, we would never allow State and local governments to base their employment decisions upon the factors of race, sex, national origin or religious belief, yet for age, we would allow State and local governments to arbitrarily set retirement limits having nothing to do with the capacity of the worker to perform the safety job.

I urge my colleagues to support the compromise Martinez amendment which was accepted in the full Education and Labor Committee and reject the amendment offered here.

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Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. PEPPER].

The CHAIRMAN. Without objection the gentleman from Florida [Mr. PEPPER] is recognized for 5 minutes.

There was no objection.

Mr. PEPPER. Mr. Chairman, as I said a few moments ago, I have the utmost sympathy for the sentiments that prompt the able gentleman from Pennsylvania [Mr. MURPHY] to offer his amendment. As I said, my father was a law enforcement officer. When I was growing up, I remember the nights that he lay out in the swamps trying to apprehend a culprit or one charged with commission of a serious crime. I remember the long hours he spent. I remember sometimes the physical demands as well as those of courage. I am proud to say that I remember the time when he stood alone against a mob that wanted to take a prisoner out of his hands, and they never took that prisoner.

So I know some of the qualifications that a police officer should have and that a fireman should have. We honor them for the noble and patriotic service they provide to our country.

But this bill provides a 2-year study by the Department of Labor and the Equal Opportunity Commission to determine whether or not real qualifications are not the proper criteria for the qualification of police officers and firemen in our country. I know the Federal people in that position are exempt. I hope that that may be subject for consideration next year when perhaps we will ourselves give consideration to amendments that may relate to exemptions and changes in the existing law. I have already said as chairman of the Rules Committee I will use my best offices to try to see to it that any matter of that character receives a fair hearing before the Rules Committee and before the House.

But the city of Los Angeles, one of the great cities of this country, my city of Miami of which I am proud, and there may be others, have adopted criteria that have to do with real qualifications. Age is not a real criterion of competence or qualification to be a police officer or a fireman. There are many men strong of physique, able of qualification to deal with a prisoner or any other combatant who may be far over the age of 65 or even 70. On the other hand, there are many men younger than 65 who do not have the physical requirements to deal with situations that may arise in the experience of a police officer or a fireman.

Los Angeles and Miami, to name only two cities in this country, have adopted real qualifications. How strong is the individual, how much endurance does he have, what capacity

does he have to meet challenge, or if necessary, combat. Those are criteria that our armed services employ. I have on my desk, which I failed to bring here today and had intended to, the requirements of the U.S. Navy. A young man in my office is a Reserve officer in the Navy. He had to take these tests a while ago, and he is just a young man in his thirties. He asked me how many pushups can you do, how fast can you run, how long can you run, what strength do you have, how do you oxidize your breath? In other words, what are your physical capacities to deal with the challenges that may arise. Those are real criteria, they are real qualifications. They have to deal with the merits of an officer's capacity.

That is what we are talking about. But to drop the arbitrary criteria of age is generally just an excuse to get rid of somebody they want to get rid of. All they have got to do is lay down the criteria that they want their employees to observe, and if they cannot meet them they are no longer qualified to carry out that important public responsibility.

So I want to say to my friends who, with the utmost conscientiousness and concern, and the utmost good faith have offered this amendment, I hope they will defer it at least to a later time next year maybe when we will be considering subjects of this character. Let us adopt a clean bill tonight, send it to the other body and see if we cannot get it enacted before the end of this session, and give Congress when it goes home this year the pride of being able to say to the elderly people of America, "We believe in you, we have confidence in you. You know your strengths and your capacities, and we are opening doors of opportunity to you that have been shut."

Imagine telling a man or women 70 years of age, mentally and physically alert, no, you cannot work. What is the individual to do? How is that individual to make a living? How is he or she to be supported?

Besides that, Mr. Chairman, it does something to you, just like taking your driver's license away from you to tell you you are not permitted to work.

I hope my friends will defer at least until a later time and not insist upon this amendment that they have in such good faith offered to us on this floor.

Mr. MURPHY. Mr. Chairman, I yield 7 minutes to the gentleman from New Jersey [Mr. RINALDO].

Mr. RINALDO. Mr. Chairman, I rise in support of the Murphy amendment and urge its adoption.

As the ranking minority member of the Select Committee on Aging, I strongly support this bill, because it ensures that job fitness is based on ability and not age.

I firmly believe that ability should be the criterion used to obtain and retain a job.

That is why I am a cosponsor of the legislation we are considering today, H.R. 4154, which would remove the age 70 cap from the Age Discrimination in Employment Act for all workers.

However, there is a fundamental omission in this bill.

Under current law, Federal agencies are permitted to establish mandatory retirement ages and minimum and maximum entry ages for Federal law enforcement officers and firefighters.

When Congress increased protections for older workers under the Age Discrimination in Retirement Act in 1978, it endorsed the concept that Federal public safety officers may reasonably be subject to retirement age limits unlike other occupations.

No consideration was given to State and local public safety officers at that time because they were not considered to be under the jurisdiction of the Age Discrimination in Employment Act.

The Murphy amendment would exempt State and local governments from the hiring and retirement provisions of the Age Discrimination in Employment Act in their employment of public safety officers. This would give them the same flexibility that Congress granted Federal agencies which employ law enforcement officers and firefighters.

There is absolutely no justification for applying one standard to Federal public safety personnel and another to State and local public safety personnel.

This is the only opportunity Congress will have to rectify the current inconsistency in the law that treats State and local public safety officers differently from their Federal counterparts.

The needs of public safety require that we take into account the rigorous demands made on those engaged in such a unique occupation requiring arduous physical activity.

Despite the claims of some, individualized testing is not a safe and reliable substitute for preestablished age limits for public safety officers.

Distinguished medical experts have testified before Congress that medical science and technology have simply not advanced to the point where we can safely remove age limitations and rely exclusively on individual testing.

In a hearing conducted by the House Select Committee on Aging last year, Dr. Donald Flinn of Texas Technical University Health Sciences Center stated that a uniform age at which airline pilots should retire is justified because, and I quote:

> No age-related psychophysiological index of intellectual and psychomotor functions exists at present.

Similarly, Col. Earl W. Ferguson, a former U.S. Air Force flight surgeon and military consultant to the Surgeon General of the U.S. Air Force, testified that firefighters above the age of 55, who may be required to exert themselves maximally as part of their job, are likely to have significant coronary artery disease which cannot be detected by testing.

Dr. Albert Antlitz, head of the division of cardiology and the Department of Electrocardiology at Mercy Hospital in Baltimore, also reported that most police officers 55 years of age and older are unable to carry out their duties safely and efficiently due to coronary disease not practically detectable by current medical techniques.

And in 1981, the National Institute on Aging reported back to Congress that we should maintain the age 60 rule for commercial airline pilots, completely rejecting the idea that medical tests could substitute for this age rule.

Mr. Chairman, as of March 1986, 33 States or localities have been or are being sued by the EEOC for the establishment of mandatory retirement or minimum hiring age laws.

These States and localities are often burdened by time-consuming and expensive litigation against private plaintiffs as well as the Equal Employment Opportunity Commission.

Jurisdictions wishing to retain the hiring and retirement standards they established for public safety officers prior to the EEOC versus Wyoming decision are now forced to engage in costly medical studies to support their standards.

We have a chance to remedy this problem and restore equity to this field by adopting the Murphy amendment.

The Murphy amendment would not permit State and local governments to make arbitrary employment decisions based on age because it applies only to the very narrow area of hiring and retiring law enforcement officers.

The Murphy amendment does not require a State or locality to establish a mandatory retirement age.

Rather, it would permit State and local governments to make decisions that they feel are in the best interest of public safety.

The Murphy amendment is supported by numerous State and local governmental organizations urging Congress to resolve the inconsistency between Federal law and State and local laws.

The Murphy amendment is strongly supported by the administration.

Supporting organizations also include the National Governors' Association, the National Conference of State Legislatures, the National League of Cities, and the National Association of Counties.

More significantly, the Murphy amendment is strongly endorsed by those whose careers and livelihoods will be most affected by this legislation—the individual State trooper, sheriff, police officer, and firefighter.

I urge my colleagues to support this amendment, and I yield back the balance of my time.

□ 1810

Mr. MARTINEZ. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. HAWKINS].

The CHAIRMAN. Without objection, the gentleman from California [Mr. HAWKINS] recognized for 3 minutes.

There was no objection.

Mr. HAWKINS. Mr. Chairman, I rise in opposition to the amendment offered by Mr. MURPHY seeking an exemption for State and local police and firefighters from our elimination of mandatory retirement requirements currently applicable to most private sector employees. I cannot state strongly enough my firm belief that the facts do not justify arbitrary mandatory retirement or maximum hiring age policies for any classification of employees.

Despite substantial progress toward rationalizing retirement based on age, we have faced, since the Supreme Court's holding in EEOC versus Wyoming, clarifying the applicability of Federal age discrimination protections to State and local governments, a resurgence of efforts to reimpose age related hiring requirements.

During this debate, we have heard the proponents of the Murphy amendment argue that age limitations are necessary to allow State and local governments to maintain a fit and able public safety work force, that physical fitness exams are cost prohibitive and unreliable, that, in any event, the matter should be left to the States and localities and that the present Federal exemption justifies similar treatment for State and local personnel. None of these arguments withstand close scrutiny.

The ADEA does not prevent employers from discharging an individual who is unfit or incompetent, indeed, limitations are allowed by the ADEA if age can be shown to be a "bona fide occupational qualification." An abundance of scientific evidence exists which shows that chronological age is a poor indicator of fitness and job performance. Doctors and physiologists have demonstrated that other factors, such as aerobic and muscular fitness and amount of body fat, are much better predictors of performance than is age.

Nearly one-third of all States have no hiring age limits and 22 percent have no retirement age. Even among States with mandatory retirement ages, the established age ranges from 50 to 70, indicating that there is no consensus on the necessary age limit. Physical fitness and medical testing have been shown to be a much more accurate and cost-effective determinant of an individual's physical condition, risk of incapacitating illness, and ability to perform a job. Doctors and physiologists have demonstrated that age cutoff standards, when used as a job selection criterion, may be discriminatory and unreliable. Many physically fit, older officers demonstrate better health and fitness profiles than out-of-shape qualified for a position is to test applicants and incumbents.

At least 18 States and 10 major cities have instituted physical fitness/health programs for State law enforcement officers—including the Los Angeles Fire Department. These programs have increased fitness levels, reduced factors associated with heart disease, reduced injuries on the job, and reduced worker compensation claims and disability costs.

Physical fitness testing and training is not cost-prohibitive. For example, the city of Los Angeles Fire Department was able to set up its physical fitness training program for about $5,000 for 120 work locations and has spent $5,000 a year to maintain it. This program has cut back on work-related disabilities which have been estimated to cost the city an average of $250,000.

The ADEA does not interfere with a State or local government's ability to prescribe reasonable qualifications for public safety officers or to discharge those individuals unfit to perform safely and efficiently irrespective of age.

If a State or local government could establish a retirement age limit as a legitimate occupational qualification, that age limitation would not violate the ADEA.

Merely requiring State and local governments to justify any hiring or retirement age limitation does not impair their ability to function.

And finally, the Federal occupations which allow early forced retirement do so based on a 1947 law which offered special early retirement incentives as a reward for enforcement personnel. That law is now obsolete. Half of the Federal agencies covered by the special early retirement program have chosen not to set maximum hiring ages or mandatory retirement ages because such limits are inefficient and exclude qualified personnel from employment.

We have said before, and must reaffirm now that "as a matter of basic civil rights, people should be treated in employment on the basis of their ability to perform a job * * *." The ADEA sought "to promote employment of older persons based on their ability rather than age." Mandatory retirement, in any sector, defeats this objective. The amendment proposed by Mr. MURPHY, though well-intended, is unwise and ill-advised. I must urge the Members of the House to vote against it.

Mr. MURPHY. Mr. Chairman, I yield 4 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Mr. Chairman, I rise in strong support of Mr. MURPHY's amendment to H.R. 4154 which would exempt State and local firefighters and law enforcement officers from the hire and discharge provisions of the Age Discrimination in Employment Act. It totally defies commonsense to lift the age cap from the DEA without providing an exemption for public safety officers. It is self-evident and unnecessary to even state the fact that public safety officers must have a certain amount of physical ability to properly carry out their jobs. Yet as obvious as this is, this bill would deny State and local governments the right to decide when the physical rigors demanded by their own officers' jobs require the setting of mandatory hiring and retirement ages.

Let me tell you in more detail why I believe it would be a serious mistake to pass H.R. 4154 without a police and fire exemption. I will start from the obvious and indisputable premise that there are some occupations affecting public safety which have unique demands requiring a certain amount of physical ability. Several years ago, a previous Congress considering the same issue we are considering today apparently recognized this fact. In 1978, Congress left standing laws establishing mandatory retirement ages and minimum and maximum hiring ages for certain Federal Government occupations, even though it removed the age cap for the retirement of Federal employees. Thus, Federal law enforcement and firefighting personnel must retire at age 55, air traffic controllers must retire at age 56, and Foreign Service officers must retire at 65. Commercial airline pilots are required by the Federal Aviation Administration to retire at 60. If the Federal Government is permitted to make special exemptions to the prohibition against mandatory retirement for particular occupations, then it is only intelligent and rational to provide the States with the same ability to make exemptions which they feel are necessary to protect public safety.

Furthermore, to refuse to allow States to make this exception when needed flies in the face of medical and scientific knowledge. Expert medical testimony provided both in trials on this issue and in congressional hearings has established that medical science has not advanced to the point where age limitations can be safely removed in occupations affecting public

safety. Experts have testified that no age-related psychophysiological index of intellectual and psychomotor functions currently exists, and similarly, that it is not possible to detect latent coronary artery disease—a disease which is much more prevalent at older ages—on an individualized basis. Further, it is established that exercise stress tests cannot reliably identify those suffering from significant coronary artery disease. In fact, a study of 900 Indiana State police officers showed that 94 percent of the persons suffering sudden cardiac death or acute myocardial infarction had a "normal" exercise test result. In short, there is at present no accurate means of assessing individual mental and physical functioning. Some tests can show that a particular individual definitely cannot perform the physical requirements of a public safety officer job, but no existing test can show that a particular individual definitely can perform the physical requirements of the job. At this point, age is the best predictor of physical functioning that exists.

Even though there is no means of accurately assessing mental and physical functioning on an individualized basis, State and local governments are currently being required to do just that. They are required to prove that particular individuals cannot perform the physical requirements of public safety officer jobs. In other words, they are forced to perform an impossibility in their defenses to many age discrimination lawsuits.

There has been an explosion of lawsuits against State and local governments challenging the validity of mandatory hiring and retirement ages for public safety officers. As of March 1986, the EEOC had filed suit against at least 33 State and local governments. Many additional suits have been filed by private plaintiffs as well. Decisions are split on these cases on the central issue of whether age is a bona fide occupational qualification [BFOQ] for public safety officer jobs. In cases where the court has ruled that the defendant government has not proved that age is a BFOQ, the government has no choice but to try to provide that particular individuals are not physically capable of performing the requirements of the job before they can retire them or refuse to hire them. But since no tests have yet been devised which can accurately assess or predict mental and physical functioning, the States are required to prove the unprovable.

In short, we should not require State and local governments to do something which we do not require the Federal Government to do and which, in fact, is impossible to do on a predictive basis—namely, prove BFOQ in every individual case. I urge Members to vote for the Murphy amendment so that State and local governments are given the same freedom the Federal Government has to make their own determinations regarding mandatory age limitations for hiring and retiring public safety officers.

□ 1820

Mr. MARTINEZ. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. LEHMAN].

The CHAIRMAN. Without objection, the gentleman from Florida is recognized for 1 minute.

There was no objection.

Mr. LEHMAN of Florida. Mr. Chairman, I rise in opposition to the Murphy amendment and in strong support for the Committee on Aging's legislation in opposition to mandatory retirement.

I want to commend the distinguished gentleman from California [Mr. MARTINEZ] for bringing this legislation to the floor today. Even more, I want to compliment and offer my admiration for my colleague from Florida [Mr. PEPPER] who has been the engine which has driven this legislation over the years and hopefully to its completion within the next few days and weeks.

My colleague, Mr. PEPPER, has so much compassion for many people and for the human condition that I think at this time the human condition and compassion for the human condition should not be limited by either age or by the job description of that person.

I therefore strongly urge my colleagues to vote "no" on the Murphy amendment and support this legislation in its passage.

Mr. MURPHY. Mr. Chairman, I yield 5 minutes to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, I rise in strong support of the amendment offered by my colleague and friend from Pennsylvania [Mr. MURPHY]. I want to offer my sincerest congratulations to him for the yeoman job he has done in focusing attention on this issue.

Mr. Chairman, I strongly support H.R. 4154 as a vital step in Congress' efforts to put an end to age discrimination. I supported the action taken by Congress in 1978 which removed the ADEA's age 70 cap for Federal workers, and believe that this effort should be expanded to include most public and private sector employees. Generally, age should not be a factor in determining one's right to employment or continued employment. It should be on the basis of merit and ability.

I firmly believe, though, that as a simple matter of public safety, special provisions must be made for those engaged in law enforcement and public safety. Federal agencies are permitted to establish special hiring and retirement guidelines for Federal public safety officers, firefighters, and other workers who must regularly endure extraordinary physical and mental stress. Air traffic controllers, for example, at the Federal level must retire at age 56. That is not obsolete—while Foreign Service officers must retire at age 65. That is not obsolete. Federal firefighters and law enforcement officers—including employees of the FBI, Secret Service, and Federal Prison System—must retire at age 55. That is not obsolete.

Until the Supreme Court decided, in 1983, that the ADEA could be applied to State and local governments, most States and localities had established similar guidelines with regard to the hiring and retirement of their public safety officers. While the Supreme Court's decision in the case of EEOC versus Wyoming had the laudable effect of extending ADEA coverage to the large majority of State and local employees whose jobs do not entail extraordinary physical stress, it had the undesirable side effect of robbing States and localities of the same ability as the Federal Government to ensure the public safety is preserved, that Congress has reserved for the Federal Government.

Congress did not allow an ADEA exemption for Federal public safety officers without careful deliberation. This exemption has been reconsidered as recently as 1978, when the ADEA was amended to eliminate mandatory retirement for other Federal employees. The House Education and Labor Committee's report on this legislation noted. And I quote, this is this committee's quote:

> Certain mental and physical capabilities may decline with age, and in some jobs with unusually high demands. Age may be considered a factor in hiring and retaining older workers. For example, jobs such as some of those in air traffic control and in law enforcement and in fire fighting have very strict physical requirements on which the public safety depends.

The corresponding Senate report included a similar observation, noting, and again I quote:

> In certain types of particularly arduous law enforcement activity, there may be a factual basis for believing that substantially all employees above a specified age would be unable to continue to perform safely and efficiently the duties of their particular jobs, and it may be impossible or impractical to determine through medical examinations, periodic reviews of current job performance and other objective tests the employees' capacity or ability to continue to perform the jobs safely and efficiently.

Clearly, there was a strong belief among those who had carefully studied the situation that Federal agencies should have the flexibility to establish retirement ages for their public safety personnel. It is equally clear to me that State and local governments should be allowed the same flexibility with regard to their public safety offi-

cers, as the Federal Government. The amendment offered by my colleague from Pennsylvania would do just that. What we are endeavoring to do here is set up two standards, one for the Federal Government and one for the State government. I do not think anybody would stand up here and argue that there is not tremendous stress on the part of employees in certain types of employment. The medical data that has been submitted reinforces what we have known all along, that in fact we cannot tell by tests objectively as to whether or not those that are carrying out public safety responsibilities, whether they put their lives and other lives in jeopardy. That is what is important about this particular class of employees, because it is not just their lives that are on the line; they in many instances are responsible for hundreds of lives.

Air traffic controllers, for instance, are responsible for hundreds of lives, as are police officers and firefighters. Do not create a dual standard, let us treat the States as we would have the Federal Government in fact treat those employees. That is all we are asking for, fairness.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon [Mr. WYDEN].

The CHAIRMAN. Without objection, the gentleman is recognized for 2 minutes.

There was no objection.

Mr. WYDEN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, first of all I think all the Members of this body know that the author of this amendment is one of the most decent, caring Members of this body, and I want him to know that I understand the sincerity with which he offers this amendment.

But I would just have to say, Mr. Chairman and colleagues, that passage of this amendment would send a very simple but extremely dangerous message to the American people. That message would be that even if you have the skills, the ability and the energy to be a firefighter or a police officer, we may not give you the chance to hold a job. It seems to me that that, Mr. Chairman and colleagues, is contrary to everything that our country stands for.

What our country stands for to me and I know to all the other Members of this body is if you have those skills and you have those abilities there really is not anything that we are going to cut you off from. Unfortunately, that is exactly what this amendment would do.

Mr. Chairman, that is why it is opposed by all the major organizations representing senior citizens.

The American Association of Retired Persons, for example, an organization that represents more than 20 million older people, feels that this would be a fundamental step backward in the fight against age discrimination.

So it seems to me that we ought to send a very simple message today, and that is that it is ability and not age that matters. We can do that if we pass the important legislation authored by the gentleman from Florida, the gentleman from California [Mr. HAWKINS], and reject this amendment.

Mr. JEFFORDS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to try to hopefully add some clarity to the issues here. First of all, I think it is important that we recognize that we are being asked here to take a step backward, to change what the present law is and to go back and say, "We are going to allow age discrimination in certain areas." That is what we are being asked to do here. That has been the law since 1967. It was not really until 1983 in the Supreme Court case in Wyoming versus EEOC that we understood that age discrimination was unlawful for State and local governments as well as for the private sector.

But let us take a look at some of those areas that have been discussed here. We have been given an image of airplanes falling out of the sky because of aging air traffic controllers; of police officers with canes, chasing criminals down the streets, and all that sort of thing. The law, however, already says that you can make employment decisions on the basis of age if there is legitimate medical evidence for it.

That is why in the case involving the FAA on pilots, the court said that there is sufficient evidence indicating that the public safety may be jeopardized after a pilot reaches a certain age, so age is a bona fide occupational qualification. So there is authority under existing law as interpreted to say that under certain circumstances in order to protect the safety of the public, you can say that experience has shown to use that age is a factor that can be a part of the qualifications.

□ 1835

On the other hand, the courts have said, that if a person is as fit for a job at age 55 or 60 as one who is younger, you cannot discriminate and arbitrarily set an age at which a person must retire.

The law is well designed; it is being well enforced. The law is being fairly interpreted by the Supreme Court and other courts. There is no need to change the law now.

Now there have been a lot of Federal exceptions. I think it is terrible that we have laws on the books that indicate that the Federal Government ought to be treated differently. As you heard earlier from the gentleman from Michigan in discussions with me, we will take that up next year. As the chairman of the committee has said, let us not get bogged down with amendments, and let us get a clean bill through. We will take up the issue as to whether or not these exceptions should be granted to the Federal employees next Congress.

Why are these Federal exceptions there? The Supreme Court took a look at that. They are there because they were there before the age discrimination law went into effect. The court held that because they did not reflect a finding that age was a BFOQ for the excepted jobs.

So let us be clear here. We are going to take a step backward if we vote for the Murphy amendment. We are going to say that the law that has been in effect for many years should be done away with, and that we should start discriminating against these individuals.

I say that this is not the time to take a step backward. There is no reason to take a step backward. We ought to be going forward as we are under this bill, and we ought to examine next year what we are doing in the Federal law, and take out of the law those exceptions which we now allow which ought not to be in there.

So I say vote down the Murphy amendment and vote in favor of the bill.

Mr. MARTINEZ. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. BIAGGI].

The CHAIRMAN. Without objection, the gentleman from New York [Mr. BIAGGI] is recognized for 2 minutes.

There was no objection.

Mr. BIAGGI. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I guess most of my colleagues understand that I spent almost a quarter of a century in the New York City Police Department. My interest with relation to law enforcement is an unflagging one and certainly deeply committed.

But let us look at the insides of this. To begin with, there is a deep principle, age discrimination. You think it stops simply because it comes to law enforcement?

I have spoken to heads of the various organizations of different police departments. They would rather not deal with it. Can I tell you why? Because there is division within the ranks. Some people would rather not have mandatory retirement and others would. The younger folks would rather have mandatory retirement so they can enhance their own promotional possibilities. The folks who have moved along in years, who are still quite capable by the way, resent the fact that they will be subjected to mandatory retirement.

So I understand there is not a blanket approval by law enforcement. There is division for the very reasons I have just said.

Let us talk to the basic purpose of the legislation. That is to extend this to 70 years of age. The gentleman from Florida [Mr. PEPPER] and the chairman here, Mr. MARTINEZ, want a clean bill, and so does Congressman HAWKINS. Why do we want a clean bill? They always want a clean bill.

Clearly there should be a study in connection with law enforcement, because I think there is some room for adjustments and for taking a lot of factors into consideration.

We are coming down to the end of the Congress. The commitment was sending a clean bill to the Senate. If we do that, the likelihood of them adopting our legislation is quite good. If we burden it with amendments, controversy develops. Controversy brings delay. If there is controversy, it may never come up. Do we want the bill or do we not want the bill?

What bill are we talking about? The bill in question with no amendments. We do not want it festooned. Others had amendments and understood the nature of this situation, and they deferrred to the chairman. There is a promise, a genuine commitment and a promise, that there would be hearings in the next Congress. I have never heard a commitment made by Chairman PEPPER and by Chairman HAWKINS that was not fulfilled.

I regret taking the position that I do, but I think that in a constructive and positive way a study of this issue could be productive and there could be appropriate time and movement on the legislation. But clearly, do you want the bill? Give it a clean bill. Send it to the other side and have the legislation passed.

Mr. MURPHY. Mr. Chairman, I yield the balance of my time to the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Chairman, I thank the gentleman for yielding this time to me, and I have no intention of taking more than just a couple of minutes. I just want to make a couple of points.

First of all, all the medical evidence demonstrates that physical fitness and abilities do decline with age. By age 50, approximately 70 percent of men have significant coronary artery disease in the form of at least 50 percent obstruction of one coronary artery.

In Indiana just recently, not very long ago, they took a look at police officers who had suffered heart attacks and they found that 94 percent of the Indiana State police officers who had suffered some coronary incident had scored normal on the department's exercise test.

The fact of the matter is we cannot determine objectively whether anybody at the age of 50 or 70 really has in fact significant coronary disease. It is very difficult to objectively determine.

Now the problem area that we have to deal with is police officers and firefighters and people like air traffic controllers.

Picture if you will a police car roaring to the scene of a crime with his partner supporting him and, unfortunately, suffers a heart attack and is unable to provide that support. He puts his partner in jeopardy and the citizens he is there to protect in jeopardy.

Picture if you will a fireman going to the scene of a fire and carrying the hose into the house, into a flaming inferno, to have the man holding the hose inside this building trying to get people suffering a heart attack and unable to get his partner out because he controlled the hose. He puts himself, he puts his partners, and he puts the people he is there to protect in danger.

That is why in years past we prudently made an exception for certain classes of individuals.

We are not saying for the States to do just that. All we are saying by the Murphy amendment is permit the States the same rights as the Federal Government. Why do we make a decision between the FBI and the Secret Service and the State police in New Jersey, or in Florida, or in New York or anywhere else? That is the point.

Mr. RINALDO. Mr. Chairman, will the gentleman yield?

Mr. HUGHES. I yield to the gentleman from New Jersey.

Mr. RINALDO. Mr. Chairman, I want to thank the gentleman for his comments.

It is very seldom that we can get together in this legislative body and anyone can take the floor and make the statement that there is an amendment that is supported both by the National Chamber of Commerce and the U.S. AFL–CIO. This amendment is supported by both of those groups.

This amendment happens to be supported by the International Association of Chiefs of Police, the International Brotherhood of Police Chiefs, the International Association of Attorneys General, the International Union of Police Organizations, the National Conference of State Legislators, the International Association of Firefighters, the National Sheriffs Association, the National League of Cities, the Fraternal Order of Police, the National Governors Association, and about 50 other agencies, including almost every recognized national law enforcement association in this country.

Mr. Chairman, I thank the gentleman very much for yielding, and hope that our colleagues will support the Murphy amendment.

Mr. HUGHES. Mr. Chairman, I want to thank the gentleman from New Jersey, who is the ranking Republican on the Select Committee on Aging, on which I too serve, for his leadershp. Both Mr. RINALDO and myself, and Mr. MURPHY and others who support this amendment abhor age discrimination. That is not the issue.

The issue is trying to apply a little commonsense, and that is what we are asking for, and fairness.

Mr. MARTINEZ. Mr. Chairman, I yield the balance of my time to the gentleman from Florida [Mr. PEPPER].

The CHAIRMAN. Without objection, the gentleman from Florida [Mr. PEPPER] is recognized for 4 minutes.

There was no objection.

Mr. PEPPER. Mr. Chairman, what we are talking about is applying the rule of sense.

Does my distinguished friend think only old folks have heart attacks? Young men have heart attacks as well. The young farmer and the young policeman are incapacitated from one disability or another.

□ 1845

I say let us adopt the standard of reason. Adopt some standard that is reasonable; that has a relationship to qualification. What if we made the standard whether we lost your hair or not? Would that be a reasonable standard? In other words, when you lose your hair, you must lose your job. That is a sign you are getting old, perhaps, because generally old folks lose their hair. Therefore, when you lose your hair, you lose your job. What would the people of this country say about that sort of criteria?

We are not trying to deprive the States or the local communities of the ability to make wise selection of their personnel. Keep them as long as they deserve to be kept, but what about a man 72 years old that is strong, vigorous? One of our colleagues here, BILL CHAPPELL, got a black belt a little while ago in the art of karate. How many young men would want to take BILL CHAPPELL on with his skill as a karate artist. I guess he is in his sixties or something like that.

What about the right of a man 71 years old? Capable, competent, physically active, mentally alert, good health, passes every medical test, what is going to be your excuse for getting rid of him. Oh, Mr. Smith, yes, you passed the last medical test. You are strong, all of your colleagues think of you as being an able and strong man; they are glad to be with you on a dangerous raid or mission. But you are 71 years old. What has that got to do with it? Am I not an American? Do I not have a right to make a living at my chosen profession? Why are you going to kick me out just because I am 71 years old if I passed all the tests

and met all the requirements and qualifications?

The gentleman was right; he said let us supply the rule of reason. Let us make reasonable criteria. The qualifications of holding a policeman's or a fireman's job. I respect those officials; we want those people to be alert and strong and capable. But let us make those tests, the tests that determine whether they are competent or not. Whether they are qualified. Just because they are 60 years old or 59 or 48 they do not meet the requirement. You think the police would hire a man if he walks in and says, "I am 32 years old, therefore I want my job." Wait a minute, Mr. Smith, we want to know if you can meet the tests. We have to have competent men who are on the police and fire department. You will have to pass a medical examination. You will have to go through certain requirements. You will have to satisfy the people that make these decisions that you are qualified. So they would not let him in at a young age just because he is young, why kick him out at an older age just because he is older if he is still doing a competent job?

That is all I say, let us supply the criteria of reason. Qualifications that are reasonable, meaningful, that really have something to do with one's ability to do the job.

With all respect to my friends, and they are some of the best friends I have here, I do hope that this amendment will not impede, as my distinguished friend here said, rapid acceptance, as I believe it will, of this bill when it goes to the other body if without amendmemt.

Mr. JEFFORDS. Mr. Chairman, I urge my colleagues to follow the advice of the gentleman from Florida.

Ms. OAKAR. Mr. Chairman, I rise in opposition to the amendment offered by Mr. MURPHY to H.R. 4154. I appreciate the gentleman's concern for the public safety which underlies this amendment. In fact, earlier this year, I consigned a letter with Congressman MURPHY urging the Committee on Education and Labor to consider amending H.R. 4154 as it applies to State and local law enforcement personnel and firefighters.

In response to that letter, the committee responded admirably. The result was a provision which was authored by my colleague, Congressman MARTINEZ, which was included in H.R. 4154. This provision directs the Department of Labor and the Equal Employment Opportunity Commission to study and make recommendations to Congress on the use of periodic fitness testing to determine the qualifications of these public safety personnel. Today, the city of Los Angeles is one entity which employs this kind of fitness testing for their local police and firefighters. That city has found that such testing is relatively inexpensive, and that it leads to improved fitness and lower rates of injury on the job among its public safety employees. Under H.R. 4154, the Federal Government would consider setting standards for the use of this kind of fitness testing in all State and local jurisdictions. Thus, we could ensure a fair and effective way of testing an individual's qualification to continue working in a public safety position.

I want to commend Congressman MARTINEZ and the members of the Committee on Education and Labor for developing this provision in H.R. 4154. I believe it satisfies the public safety concerns that have been raised as a result of Congress' intent to eliminate all mandatory retirement. Certainly, the Martinez provision answers the questions that were in my mind when I cosigned a July letter to the committee asking them to reconsider inclusion of police and firefighters in H.R. 4154's protections.

We do not need to force all State and local police and firefighters to retire upon reaching an arbitrary age limit. It is much more reasonable and much more equitable to apply a standard of fitness instead of a standard of age. To do otherwise violates the civil rights of those individuals of all ages who are competent to continue in their jobs.

Mr. Chairman, H.R. 4154, as amended by the Education and Labor Committee, adequately protects our public safety concerns while promoting civil rights. I respectfully urge my colleagues to vote against the Murphy amendment.

Mr. FAUNTROY. Mr. Chairman, I urge my colleagues to reject the amendment to H.R. 4154 which would permit State and local governments to set age requirements for police officers and firefighters.

The history of protecting the human and civil rights at the State and local level in our country has been less than reassuring.

I would urge that police officers and firefighters at the State and local level be afforded the same Federal protection against age discrimination in employment as are other workers.

A careful review of H.R. 4154 indicates there are ample safeguards to address issues of public safety and fitness of personnel in this legislation.

Let us all take our place on the side of this new era of recognition for the older person—an era in which their usefulness and contributions are made possible through this legislation's liberating provisions.

I urge you to vote against the Murphy amendment that would turn the clock back.

Mr. JEFFORDS. Mr. Chairman, I yield back the balance of my time.

Mr. MURPHY. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. MURPHY].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MURPHY. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 291, noes 103, not voting 38, as follows:

[Roll No. 404]

AYES—291

Abercrombie	Gilman	Murtha
Andrews	Gingrich	Neal
Annunzio	Glickman	Nelson
Anthony	Goodling	Nichols
Applegate	Gordon	Nielson
Archer	Gray (IL)	Nowak
Atkins	Green	Olin
Badham	Guarini	Ortiz
Barnard	Hall (OH)	Owens
Barnes	Hall, Ralph	Oxley
Barton	Hamilton	Packard
Bateman	Hammerschmidt	Panetta
Bates	Hansen	Parris
Bedell	Hefner	Pashayan
Bentley	Henry	Pease
Bereuter	Hertel	Penny
Bilirakis	Hiler	Pickle
Bliley	Hopkins	Porter
Boehlert	Horton	Price
Boggs	Howard	Pursell
Boner (TN)	Hoyer	Quillen
Bonker	Hubbard	Rahall
Borski	Huckaby	Ray
Boucher	Hughes	Regula
Boulter	Hunter	Richardson
Brooks	Hutto	Ridge
Broomfield	Hyde	Rinaldo
Brown (CA)	Ireland	Ritter
Brown (CO)	Jacobs	Roberts
Bruce	Jenkins	Robinson
Bryant	Johnson	Rodino
Burton (IN)	Jones (NC)	Roe
Bustamante	Jones (TN)	Roemer
Byron	Kanjorski	Rogers
Callahan	Kasich	Rose
Carney	Kastenmeier	Rostenkowski
Carper	Kemp	Roth
Carr	Kennelly	Roukema
Chandler	Kleczka	Rowland (CT)
Chapman	Kolbe	Rowland (GA)
Cheney	Kolter	Russo
Clinger	Kostmayer	Sabo
Coleman (MO)	LaFalce	Saxton
Combest	Lagomarsino	Schaefer
Cooper	Latta	Scheuer
Coughlin	Leath (TX)	Schroeder
Courter	Lent	Schuette
Coyne	Levin (MI)	Seiberling
Craig	Levine (CA)	Shaw
Crane	Lewis (CA)	Shelby
Daniel	Lewis (FL)	Shumway
Dannemeyer	Lightfoot	Shuster
Darden	Lipinski	Sikorski
Daschle	Livingston	Siljander
Davis	Lloyd	Sisisky
de la Garza	Loeffler	Skeen
Derrick	Long	Skelton
DeWine	Lott	Slattery
Dickinson	Lowery (CA)	Slaughter
Dingell	Lowry (WA)	Smith (NJ)
DioGuardi	Lujan	Smith, Denny (OR)
Donnelly	Luken	Smith, Robert (OR)
Dorgan (ND)	Lundine	Snyder
Dreier	Lungren	Spence
Duncan	Mack	Spratt
Dwyer	Marlenee	St Germain
Dyson	Martin (NY)	Staggers
Early	Matsui	Stallings
Eckart (OH)	Mavroules	Stangeland
Edgar	Mazzoli	Stark
Edwards (OK)	McCandless	Stenholm
Emerson	McCloskey	Strang
English	McCollum	Stratton
Erdreich	McCurdy	Stump
Evans (IA)	McDade	Sundquist
Fawell	McGrath	Sweeney
Fazio	McHugh	Swift
Feighan	McKernan	Swindall
Fiedler	McKinney	Tauzin
Fields	McMillan	Taylor
Fish	Meyers	Thomas (CA)
Flippo	Miller (CA)	Thomas (GA)
Florio	Miller (OH)	Torres
Foley	Mineta	Torricelli
Ford (MI)	Molinari	Traxler
Ford (TN)	Mollohan	Vander Jagt
Franklin	Monson	Visclosky
Frost	Montgomery	Volkmer
Fuqua	Moorhead	Vucanovich
Gallo	Morrison (CT)	Waldon
Gaydos	Morrison (WA)	Walgren
Gekas	Mrazek	
Gibbons	Murphy	

Walker	Wise	Yatron
Weber	Wolf	Young (AK)
Whitehurst	Wolpe	Young (FL)
Whitley	Wortley	Young (MO)
Wilson	Wylie	

NOES—103

Ackerman	Gejdenson	Rangel
Akaka	Gonzalez	Reid
Alexander	Gradison	Roybal
Anderson	Gray (PA)	Rudd
Armey	Gregg	Savage
Aspin	Gunderson	Schneider
AuCoin	Hawkins	Schumer
Bartlett	Hayes	Sensenbrenner
Beilenson	Hendon	Smith (FL)
Bennett	Hillis	Smith (IA)
Berman	Jeffords	Smith (NE)
Bevill	Jones (OK)	Smith, Robert (NH)
Biaggi	Kildee	
Bonior (MI)	Kramer	Snowe
Bosco	Lantos	Solarz
Chappell	Leach (IA)	Solomon
Coats	Lehman (CA)	Stokes
Cobey	Lehman (FL)	Studds
Coble	Leland	Synar
Coleman (TX)	MacKay	Tallon
Collins	Madigan	Tauke
Conte	Manton	Towns
Crockett	Markey	Traficant
Daub	Martin (IL)	Udall
DeLay	Martinez	Valentine
Dellums	McEwen	Vento
Dicks	Mica	Waxman
Dowdy	Miller (WA)	Weaver
Downey	Mitchell	Weiss
Durbin	Moody	Wheat
Dymally	Myers	Whitten
Edwards (CA)	Natcher	Williams
Evans (IL)	Pepper	Wyden
Frank	Perkins	Yates
Garcia	Petri	

NOT VOTING—38

Boland	Foglietta	Moakley
Boxer	Fowler	Moore
Breaux	Frenzel	Oakar
Burton (CA)	Gephardt	Oberstar
Campbell	Grotberg	Obey
Chappie	Hartnett	Schulze
Clay	Hatcher	Sharp
Coelho	Holt	Watkins
Conyers	Kaptur	Whittaker
Dixon	Kindness	Wirth
Dornan (CA)	McCain	Wright
Eckert (NY)	Michel	Zschau
Fascell	Mikulski	

□ 1905

Mr. BEVILL and Mr. McEWEN changed their votes from "aye" to "no."

Messrs. QUILLEN, PURSELL, WHITLEY, LOEFFLER, and ST GERMAIN changed their votes from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. HOYER] having assumed the chair, Mr. KOSTMAYER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 4154) to amend the Aged Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes, pursuant to House Resolution 554, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. JEFFORDS. Mr. Speaker, I demand a recorded vote.

The vote was taken by electronic device, and there were—ayes 394, noes 0, not voting 38, as follows:

[Roll No. 405]

AYES—394

Abercrombie	Burton (IN)	Dreier
Ackerman	Bustamante	Duncan
Akaka	Byron	Durbin
Alexander	Callahan	Dwyer
Anderson	Carney	Dymally
Andrews	Carper	Dyson
Annunzio	Carr	Early
Anthony	Chandler	Eckart (OH)
Applegate	Chapman	Edgar
Archer	Chappell	Edwards (CA)
Armey	Cheney	Edwards (OK)
Aspin	Clinger	Emerson
Atkins	Coats	Erdreich
AuCoin	Cobey	Evans (IA)
Badham	Coble	Evans (IL)
Barnard	Coleman (MO)	Fawell
Barnes	Coleman (TX)	Fazio
Bartlett	Collins	Feighan
Barton	Combest	Fiedler
Bateman	Conte	Fields
Bates	Cooper	Fish
Bedell	Coughlin	Flippo
Beilenson	Courter	Florio
Bennett	Coyne	Foley
Bentley	Craig	Ford (MI)
Bereuter	Crane	Ford (TN)
Berman	Crockett	Frank
Bevill	Daniel	Franklin
Biaggi	Dannemeyer	Frost
Bilirakis	Darden	Fuqua
Bliley	Daschle	Gallo
Boehlert	Daub	Garcia
Boggs	Davis	Gaydos
Boner (TN)	de la Garza	Gejdenson
Bonior (MI)	DeLay	Gekas
Bonker	Dellums	Gibbons
Borski	Derrick	Gilman
Bosco	DeWine	Gingrich
Boucher	Dickinson	Glickman
Boulter	Dicks	Gonzalez
Brooks	Dingell	Goodling
Broomfield	DioGuardi	Gordon
Brown (CA)	Donnelly	Gradison
Brown (CO)	Dorgan (ND)	Gray (IL)
Bruce	Dowdy	Gray (PA)
Bryant	Downey	Green
Gregg	McCurdy	Shaw
Guarini	McDade	Shelby
Gunderson	McEwen	Shumway
Hall (OH)	McGrath	Shuster
Hall, Ralph	McHugh	Sikorski
Hamilton	McKernan	Siljander
Hammerschmidt	McKinney	Sisisky
Hansen	McMillan	Skeen
Hawkins	Meyers	Skelton
Hayes	Mica	Slattery
Hefner	Miller (CA)	Slaughter
Hendon	Miller (OH)	Smith (FL)
Henry	Miller (WA)	Smith (IA)
Hertel	Mineta	Smith (NE)
Hiler	Mitchell	Smith (NJ)
Hillis	Molinari	Smith, Denny (OR)
Hopkins	Mollohan	
Horton	Monson	Smith, Robert (NH)
Howard	Montgomery	
Hoyer	Moody	Smith, Robert (OR)
Hubbard	Moorhead	
Huckaby	Morrison (CT)	Snowe
Hughes	Morrison (WA)	Snyder
Hunter	Mrazek	Solarz
Hutto	Murphy	Solomon
Hyde	Murtha	Spence
Ireland	Myers	Spratt
Jacobs	Natcher	St Germain
Jeffords	Neal	Staggers
Jenkins	Nelson	Stallings
Johnson	Nichols	Stangeland
Jones (NC)	Nielson	Stark
Jones (OK)	Nowak	Stenholm
Jones (TN)	Obey	Stokes
Kanjorski	Olin	Strang
Kasich	Ortiz	Stratton
Kastenmeier	Owens	Studds
Kemp	Oxley	Stump
Kennelly	Packard	Sundquist
Kildee	Panetta	Sweeney
Kleczka	Parris	Swift
Kolbe	Pashayan	Swindall
Kolter	Pease	Synar
Kostmayer	Penny	Tallon
Kramer	Pepper	Tauke
LaFalce	Perkins	Tauzin
Lagomarsino	Petri	Taylor
Lantos	Pickle	Thomas (CA)
Latta	Porter	Thomas (GA)
Leach (IA)	Price	Torres
Leath (TX)	Pursell	Towns
Lehman (CA)	Quillen	Traficant
Lehman (FL)	Rahall	Traxler
Leland	Rangel	Udall
Lent	Ray	Valentine
Levin (MI)	Regula	Vander Jagt
Levine (CA)	Reid	Vento
Lewis (CA)	Richardson	Visclosky
Lewis (FL)	Ridge	Volkmer
Lightfoot	Rinaldo	Vucanovich
Lipinski	Ritter	Waldon
Livingston	Roberts	Walgren
Lloyd	Robinson	Walker
Loeffler	Rodino	Watkins
Long	Roe	Waxman
Lott	Roemer	Weaver
Lowery (CA)	Rogers	Weber
Lowry (WA)	Rose	Weiss
Lujan	Rostenkowski	Wheat
Luken	Roth	Whitley
Lundine	Roukema	Whitten
Lungren	Rowland (CT)	Williams
Mack	Rowland (GA)	Wilson
MacKay	Roybal	Wirth
Madigan	Rudd	Wise
Manton	Russo	Wolf
Markey	Sabo	Wolpe
Marlenee	Savage	Wortley
Martin (IL)	Saxton	Wyden
Martin (NY)	Schaefer	Wylie
Martinez	Scheuer	Yates
Matsui	Schneider	Yatron
Mavroules	Schroeder	Young (AK)
Mazzoli	Schuette	Young (FL)
McCandless	Schumer	Young (MO)
McCloskey	Seiberling	
McCollum	Sensenbrenner	

NOT VOTING—38

Boland	Clay	English
Boxer	Coelho	Fascell
Breaux	Conyers	Foglietta
Burton (CA)	Dixon	Fowler
Campbell	Dornan (CA)	Frenzel
Chappie	Eckert (NY)	Gephardt

Grotberg	Michel	Sharp
Hartnett	Mikulski	Torricelli
Hatcher	Moakley	Whitehurst
Holt	Moore	Whittaker
Kaptur	Oakar	Wright
Kindness	Oberstar	Zschau
McCain	Schulze	

□ 1920

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARTINEZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 4154, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT AND CONSIDERATION OF CONFERENCE REPORT ON S. 1965, HIGHER EDUCATION AMENDMENTS OF 1985

Mr. WHEAT, from the Committee on Rules, submitted a privileged report (Rept. No. 99-870) on the resolution (H. Res. 557) waiving certain points of order against the conference report on the Senate bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5300, BUDGET RECONCILIATION ACT OF 1986

Mr. WHEAT, from the Committee on Rules, submitted a privileged report (Rept. No. 99-871) on the resolution (H. Res. 558) providing for the consideration of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, which was referred to the House Calendar and ordered to be printed.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO SIT ON TOMORROW, SEPTEMBER 24, 1986, DURING THE 5-MINUTE RULE

Mr. BOSCO. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation be permitted to sit during the 5-minute rule on Wednesday, September 24, 1986.

The SPEAKER pro tempore (Mr. MCCLOSKEY). Is there objection to the request of the gentleman from California?

There was no objection.

COMMUNICATION FROM THE HONORABLE OLYMPIA J. SNOWE, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable OLYMPIA J. SNOWE:

HOUSE OF REPRESENTATIVES,
Washington, DC, September 23, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, House of Representatives, H-204, U.S. Capitol, Washington, DC.

DEAR MR. SPEAKER: I have previously notified you of the receipt of a trial subpoena by a member of my district office staff issued by the Superior Court of the State of Maine.

After consultation with the General Counsel to the Clerk, pursuant to Rule L(50) of the Rules of the House of Representatives, I have determined that compliance with the subpoena is consistent with the privileges and precedents of the House.

Sincerely,

OLYMPIA J. SNOWE,
Member of Congress,
Second District, Maine.

□ 1930

COMMUNICATION FROM CHAIRMAN OF THE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

The SPEAKER pro tempore (Mr. MCCLOSKEY) laid before the House the following communication from the chairman of the Committee on Public Works and Transportation; which was read and, without objection, referred to the Committee on Appropriations:

COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION,
Washington, DC, September 18, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the provisions of the Public Buildings Act of 1959, as amended, the House Committee on Public Works and Transportation approved the following projects on June 25, 1986:

REPAIR AND ALTERATION

(1) Louisville, Kentucky, U.S. Post Office, Courthouse and Customhouse.
(2) PCB's, Various Buildings.
(3) 1986 Design Supplemental, Various Buildings.
(4) 1987 Design, Various Buildings.

CONSTRUCTION

(1) Miami, Florida, 11(b) Courts and Courts Related Activities.
(2) Columbus, New Mexico, Border Station.
(3) Charleston, South Carolina, U.S. Courthouse (revised).
(4) Oakland, California, Federal Building.

ACQUISITION

(1) Wellesley Island, New York, Border Station.

LEASES

(1) Defense Mapping Agency, Northern Virginia.
(2) Defense Mapping Agency, Kansas City, Missouri.
(3) Internal Revenue Service, Philadelphia, Pennsylvania.
(4) Environmental Protection Agency, Las Vegas, Nevada.
(5) Veterans Administration, Little Rock, Arkansas.
(6) NASA, New York, New York.

The original and one copy of the authorizing resolution is enclosed.

Every best wish.

Sincerely,

JAMES J. HOWARD,
Chairman.

TREASURY SECRETARY RECOMMENDS TAX PROPOSAL

(Mr. PICKLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PICKLE. Mr. Speaker, when the House-Senate conferees were finishing their work on the proposed tax reform measure last month, I asked U.S. Treasury Secretary James Baker what the proposal would do for our national investment and growth rates, the long-term employment rate, the deficit, our saving rates, and our trade imbalance.

I asked how this measure would be considered 5 years from now. Would it be an economically sound step for the U.S.A. to take now? I asked him to consult with the top economists in our country, the business men and women, the President's Economic Council.

Secretary Baker has replied to my request and recommends passage of the tax reform bill.

I would like to point out several of the estimates contained in Secretary Baker's letter.

First, the bill would increase long-term economic performance by at least 2 to 3 percent.

Second, it would increase real annual growth rate by 0.2 to 0.3 percentage points per year over the next decade.

Third, it would increase workers' real after-tax wages by more than 5 percent.

Fourth, it would increase employment in the long run by 2 to 3 percent.

These are just a few of the points raised by Secretary Baker. I would like to include the letter here in the RECORD for my colleagues to read. Here is Secretary Baker's report to me:

THE SECRETARY OF THE TREASURY,
Washington, September 18, 1986.

DEAR JAKE: Thank you for your September 10, 1986, letter requesting the economic impact analysis of the tax reform bill, which we discussed during the final Conference

Committee deliberations. Clearly, in addition to increasing public confidence in the fairness and integrity of our tax system, a major goal of tax reform is to improve the nation's economic well-being.

Since the Conference Committee action, the President's Council of Economic Advisers and Treasury economists have been studying the future effects of the Conference Bill. These economists, like many prominent outside economists, have concluded that the Conference Bill will have a positive overall effect on the nation's economy.

In particular, Administration economists estimate that the Conference Bill will increase long-run economic performance by at least 2-3 percent. This should increase the real annual growth rate by 0.2-0.3 percentage points per year over the next decade. Increased economic performance will result from the tax bill's improvement in the efficiency of capital stock allocation and households' consumption decisions, the increase in work (although leisure would be reduced), and the reduction in incentives to avoid taxes.

Administration economists also estimate that the reduction in marginal tax rates will increase workers' real after-tax wages by more than 5 percent and stimulate a 2-3 percent increase in long-run employment. This is equivalent to adding at least 2 million and perhaps more than 3 million new jobs to the U.S. economy. In the short term, there may be a slight rise in the official unemployment statistics as the additional workers entering the labor force look for and accept new jobs. But this statistical phenomenon should be understood as a mark of transition toward higher total employment.

In addition, Administration economists predict that the tax bill will improve the productivity of new investment. The bill will reduce the current variation in tax treatment of different assets, and will curtail the current law incentives to channel investment into less productive tax shelters. Lower marginal tax rates and reduced incentives to borrow will also lower nominal interest rates, which will help stimulate business investment.

There may be a slightly unfavorable effect on economic performance in the short term as a result of the uncertainty produced during passage of the tax bill, the staged reduction in marginal tax rates, and the adjustment process to a world where investors look to the economic, rather than tax, consequences of any investment. The staged reduction in marginal tax rates will delay part of the incentive to increase work until 1988. On the other hand, continuation of current law depreciation rules through the end of this year and higher marginal rates in 1987 than in 1988 provide incentives to invest in assets which can be written off rapidly. Quick passage of the tax bill will remove any remaining uncertainty. Administration economists believe that any net short-run negative effects of tax reform will be small, and could be absorbed by the economy without serious risk.

I should note, in addition, that the Conference Bill should help to reduce the Federal budget deficit. While the tax bill revenue estimates show the tax bill to be revenue neutral over the 1986-91 period, those estimates do not include the anticipated effects of increased tax collections and smaller transfer payments resulting from higher GNP and increased labor supply, or lower Federal borrowing costs due to lower nominal interest rates. Moreover, a number of economists expect the lower marginal tax rates to increase compliance with the tax laws and bring in additional revenue from the underground economy.

These across-the-board positive economic effects would themselves be sufficient to justify the passage of the tax bill. It must also be remembered, however, that these positive effects result from a bill that removes 6 million of the Nation's poor from the income tax rolls, and ensures that all taxpayers and corporations pay their fair share of the cost of government.

As you know well, economic forecasting is fraught with uncertainty, and economists often disagree. But it is reassuring that the Administration views are consistent with the views of many of the prominent economists who testified recently before the Joint Economic Committee. These economists shared the view that the bill will spur important long-term improvements in the economy. Although they expressed varying degrees of concern about the short-term impact of the bill, they generally agreed the long-term benefits outweigh any short-term costs.

I appreciate the long hours of serious work you and your colleagues have invested in the consideration of tax reform and the development of the Conference report. Now, as we approach the historic moment when the Congress can enact a tax reform bill that clearly increases fairness, I hope you will also agree that the bill promises satisfactorily to meet the other important objective we share: increasing the long-term health of the U.S. economy.

With best regards.

Sincerely,

JAMES A. BAKER III.

In his strong recommendation of this bill, I think it well to recap some of the estimates and beliefs Secretary Baker sees in the passage of the bill. In his opinion, the results would be:

First, increase long-term economic performance by at least 2 to 3 percent.

Second, increase real annual growth rate by 0.2 to 0.3 percentage points per year over the next decade.

Third, increase workers' real after-tax wages by more than 5 percent.

Fourth, increase long-run employment by 2 to 3 percent. This would be the equivalent to adding 2 to 3 million new jobs to the U.S. economy.

Fifth, a possible slight rise in unemployment in the short term, viewed as a transition toward higher total employment.

Sixth, lower nominal interest rates, resulting from lower marginal tax rates and reduced incentives to borrow, which will help stimulate business investment.

Seventh, the bill should reduce the Federal budget deficit through increased tax collections, smaller transfer payments resulting from higher GNP and increased labor supply, lower Federal borrowing costs and increased compliance with tax laws.

Eighth, ensures that all taxpayers and corporations pay their fair share of the cost of Government.

Mr. Speaker, this is an important analysis from our able Secretary of the Treasury. No one can be sure what effect this tax reform bill will have on our economy—now or 5 years down the road. No one can give you an absolute guarantee. My major concern has been, in addition to the fairness issue, that it will be sound economic policy in the long run. I am glad to share with my colleagues Secretary Baker's beliefs that this is a sound bill for our country.

COMMENTS OF THE HONORABLE JOHN D. DINGELL ON THE SUPERFUND CONFERENCE

(Mr. DINGELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. DINGELL. Mr. Speaker, on July 31, the Superfund conferees completed their work on the policy portions of the Superfund conference report. I believe the conferees achieved a remarkable compromise. The bill will result in a strong Superfund Program which will protect Americans from the horrors of toxic chemicals, but it will be a program which can be administered and enforced.

Once the tax portions of the Superfund Program have been completed, the conference report can be brought back to this Chamber for consideration. It has been understood that once program changes were set so that costs could be judged, the tax conferees would complete their work.

The tax committees have been under extreme pressure to complete the comprehensive tax reform bill. Now, I would urge my conference colleagues on Ways and Means Committee and their counterparts on the Senate Finance Committee to do everything they possibly can to complete the tax portion of the Superfund bill in the very near future.

My concern, quite frankly, arises from the fact that the administration has already threatened a veto of the Superfund bill. If that were to occur, I am confident that the House would override such a veto. Superfund is too important to the American people.

But if the Congress does not pass the conference report on Superfund in the very near future, there is a very real possibility that the President could pocket-veto the bill and deprive the Congress of an opportunity to override.

A strengthened Superfund Program is too important to fall victim to a strategy of delay that could culminate in a pocket veto.

I urge my colleagues on the tax committees to complete their work on a Superfund tax so that the conference report can be approved and we can assure that Congress has the last word on whether a strong Superfund bill becomes law.

Mr. Speaker, the Administrator of the Environmental Protection Agency has underscored the seriousness of the lack of Superfund moneys in a letter dated September 22, 1986. I would like to submit that letter for the RECORD.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, September 22, 1986.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you know, Congress has grappled with reauthorization of the Superfund law for two years. We have worked together for many months completing the substantive revisions to the statute.

Despite this accomplishment, we now face a situation which threatens the very existence of the Superfund program. Time is the single most critical factor working against a full, five-year reauthorization.

Only a few weeks remain before the 99th Congress adjourns. Should adjournment occur before reauthorization is accomplished, there will be no Superfund program when Congress returns next January.

In August 1985, I notified you that I would slow down Superfund operations while Congress completed final debate on reauthorization. No one imagined at that time that we would find ourselves 13 months later, still with no reauthorization and virtually no resources. Twice, Congress has provided interim funding, but these resources have been exhausted.

Superfund lost its momentum over a year ago. Virtually no new work has been started for months. Our emergency response program has operated at a drastically reduced level. We have stretched our limited resources as far as we could. Now, we have reached the end.

I am writing to stress to you just how critical the situation is. On October 1, in the absence of reauthorization, I will send 30-day termination notices to our Superfund contractors. These notices will result in the complete or partial termination of 12 contracts as of October 31, 1986. Once the notices have been sent, the government becomes liable for significant termination costs, even if more funds becomes available before October 31.

I am providing a list of contracts which will receive termination notices October 1 (Attachment A), along with a list of projects where on-going work will cease by the end of October (Attachment B).

Should Congress adjourn before completing reauthorization, I will also be forced to notify our employees and their unions that furloughs will begin to take place in late December. As part of this process, I will freeze all hiring and internal personnel actions agencywide, and terminate temporary employees.

The impact of a furlough would be felt agencywide. All Superfund employees would be directly affected. But civil service procedures enable employees with seniority and high performance ratings to take positions of other employees in the event of a reduction in force. We project half of EPA's employees would be impacted as furloughed Superfund employees exercise retention rights.

The situation is extremely serious. The consequences of a failure to complete reauthorization of Superfund in this session would be immediate and extensive. By January, all emergency response and long-term cleanup work at sites would have stopped. Many engineering studies underway or completed at National Priorities List sites would be outdated. All enforcement cases against polluters would be halted. Superfund employees would have been furloughed, and the impact of that process would disrupt the work of this agency and others far beyond that program.

Clearly, action on Superfund cannot wait. While it will only take a few months to totally dismantle this program, it will take years and many millions of dollars to rebuild it.

Thank you for your continued leadership in this matter. Please let me know if I can be of assistance in any way.

Sincerely,

LEE M. THOMAS,
Administrator.

ATTACHMENT A.—CONTRACTS TO BE TERMINATED ON SEPTEMBER 30, 1986 DUE TO CERCIA REAUTHORIZATION DELAYS

Contract No.	Contract title	Prime contractor	Subcontractors	Complete (C) or partial (P) termination
68-01-6939	REM II	Camp Dresser & McKee (CDM)	Woodward Clyde	P
			ICF	
			Clement Assoc.	
			Roy F. Weston	
			C.C. Johnson	
68-01-7090	Superfund Policy Support	CH_2M Hill	Versar	P
			ICF	
			Environ	
			Envir. Law Institute	
			Engineering & Economics Research, Inc.	
68-01-7250	REM III	Ebasco Services, Inc.	E.C. Jordan	P
			Environmental Science & Engineering	
			ICF	
			NUS Corp	
			AEPCO	
			C.C. Johnson	
			Technos, Inc.	
			Weston Geophysical Corp.	
			Environmental Testing & Certification Corp.	
			Aquatec, Inc.	
68-01-7251	REM IV	CH_2M Hill	Ecology & Environment	P
			Planning Research Corp.	
			Black & Veatch	
			ICF	
68-01-7054	National Priorities List Program	The MITRE Corp.	N/A	C
68-01-7253	Contract Lab Program Management	Viar	N/A	P
68-01-7159	QA/QC Support for Contract Lab Program	University of Las Vegas	N/A	P
68-03-3161	Aerial Imagery Interpretation & Analysis	Bionetics	N/A	P
68-03-3255	Emergency Environmental Response Unit	Enviresponse, Inc.	NUS Corp.	P
			Princeton Aqua Science	
68-03-3249	Collection and Analysis of Environmental Samples	Lockheed Engineering and Management Services Co. (LEMSCO)	N/A	P
68-03-3245	Remote Sensing	LEMSCO	N/A	P
68-03-3206	Hazardous Sample Repository	Northrop	N/A	P

N/A—Not available.

Note: Contracts in the Contract Laboratory Program [CLP] would not be terminated as we have met our minimum obligations under these contracts. However, additional work up to the contracts' maximums would not be ordered. This would significantly and adversely affect the 127 of our laboratory contracts.

ATTACHMENT B.—REMEDIAL PROJECTS WHERE WORK WILL STOP ON OCTOBER 31, 1986

Region I: Coakley Landfill, CT; Yaworski Lagoon, CT; Saco Tannery, ME; Cannons/Bridgewater, MA; Charles George, MA; Dover Municipal, MA; Iron Horse Park, MA; New Bedford, MA; Resolve, MA; Sullivan's Ledge, MA; Auburn Road, NH; Somersworth Landfill, NH; Davis Liquid, RI; and Stamina Mills, RI.

Region II: Bog Creek, NJ; Chemical Control, NJ; Chemical Insecticide, NJ; Cinnaminson, NJ; Combe Fill North, NJ; DeRewal Township, NJ; Ewan Property, NJ; Glen Ridge, NJ; Lipari Landfill, NJ; Montclair, NJ; Myers Property, NJ; Reich Farm, NJ; Roebling Steel, NJ; Syncon Resins, NJ; U.S. Radium, NJ; Vineland, NJ; Waldick, NJ; Katonah Well, NY; Marathon, NY; Robintech National Pipe, NY; Sarney Farm, NY; and Vega Alta, PR.

Region III: Kane and Lombard, MD; Southern Maryland Wood, MD; Amchem/Ambler, PA; Bruin Lagoon, PA; L.A. Clarke, VA; Leetown, WV; and Ordnance Works, WV.

Region IV: American Creosote, FL; and Tower Chemical, FL.

Region V: Byron Salvage Yard, IL; Cross Brothers, IL; LaSalle Electric, IL; Peterson Sand and Gravel, IL; Envirochem Corp., IN; Main Street Wellfield, IN; Marion Bragg Dump, IN; Ninth Avenue, IN; Northside Landfill, IN; Forest Waste, MI; G&H Landfill, MI; Mason County Landfill, MI; West K&L Avenue, MI; Arrowhead, MN;

Kummer Landfill, MN; New Brighton, MN; Oak Grove, MN; South Andover, MN; Coshocton, OH; Fultz, OH; Industrial Excess, OH; Laskin Poplar, OH; Miami County, OH; Powell Road, OH; Pristine, OH; Republic Steel, OH; Skinner, OH; Eau Claire, WI; and Mid-State, WI.

Region VI: Bayou Bonfouca, LA; Cleve Reber, LA; South Valley, NM; United Nuclear, NM; and French Limited, TX.

Region VII: Cherokee County, KS; Times Beach, MO; and Hastings Groundwater, NE.

Region VIII: California Gulch, CO; Central City, CO; Denver Radium, CO; Lowry Landfill, CO; Rocky Mountain Arsenal, CO; Sand Creek, CO; Anaconda Smelter, MT; East Helena Site, MT; Silver Bow, MT; and Sharon Steel, UT.

Region IX: Atlas Asbestos, CA; Coalinga Asbestos, CA; Iron Mountain, CA; Montrose, CA; Operating Industries, CA; Purity, CA; Selma, CA; South Bay, CA; and Stringfellow, CA.

Region X: Bunker Hill, ID; Northwest Transformer, WA; and Queen City Farms, WA.

THE ARMS AND RACE AMERICAN ECONOMIC DECLINE

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, for at least a decade, growing numbers of economists have been warning us that the two superpowers were risking a catastrophic economic decline if the costly upward spiral of the arms race is not arrested and reversed. The validity of these warnings becomes ever more apparent with each passing month.

As the United States nears the end of the seventh year of the greatest peacetime arms buildup in the Nation's history, we find a Federal trade deficit that has doubled in 5 years to over $2 trillion and that continues to expand at a staggering rate, despite increasingly desperate efforts to slow it down. We find an international trade deficit leaping upward month after month, with each month and each year setting a new record, despite a major devaluation of the dollar against Japanese and European currencies. The United States this year has become a net-debtor Nation for the first time in over 80 years, and currently owes the rest of the world over $400 billion. Our economic growth is virtually at a standstill. Basic industries, like steel, are on the verge of financial collapse. Millions of high-paying factory jobs have been lost to foreign competition. Agriculture is in a deepening depression, despite subsidies in the tens of billions of dollars per year.

By contrast, Japan, with a relatively small military budget—1 percent of GNP—is emerging as the world's leading creditor nation, with a continuing high rate of economic growth in industrial productivity. Other countries, like West Germany, are making similar strides in economic growth.

In a recent article discussing this situation, the distinguished economic writer Hobart Rowen cites recent studies indicating that the root cause of our economic distress is that, in his words, "We have borrowed to the hilt to finance a bloated military budget." The studies point out that Japan, by contrast, has learned that economic power is a greater force than military power. Mr. Rowen concludes as follows:

One should not conclude from this sad tale that the Japan-bashing protectionists are right. The solution to the decline of American global economic power is more basic: We must cut back the huge budget deficit and stop pouring the nation's wealth down a military drain. We must find ways of achieving arms control and detente with the Soviet Union, and thus regain the means to finance a revitalization of our own economy and that of the Third World.

As negotiations with the Soviets over arms control and reduction reach a critical stage and as provocations and confrontations mount on both sides, we would do well to keep our focus on arms control as the best hope of ending economic decline of both nations.

Tomorrow, I will offer comments on the economic decline of the Soviet Union, which in great measure is also attributable to its excessive concentration on military strength.

The full text of the Hobart Rowen article as printed in the Akron Beacon Journal of August 25, 1986, follows these remarks:

THINGS TO DO: CUT DEFICIT, CONTROL ARMS, SEEK DÉTENTE

(By Hobart Rowen)

WASHINGTON.—Few things so frustrate American politicians as Japan's rising economic power, especially as it contrasts with declining American influence. As the United States slips into unenviable debtor-nation status (we may owe the rest of the world $500 billion by the early 1990s), Japan emerges as the world's leading creditor nation, with prospective balances of a similar magnitude. They have the plus; we have the minus.

How did this dramatic change take place? In a compelling new essay published by the World Policy Institute, a New York think tank, Sherle R. Schwenninger and Jerry W. Sanders suggest that Japan's rise to the top illustrates "the central emerging reality of our time—namely, that geoeconomics is replacing geopolitics."

Japan has shown that a dedicated nation with a strong work ethic can gain power and status in the world without following the military route—the one they say has been chosen by the United States. Japan instead has placed its bet on industrial and technological development and trade. So far, it's paid off.

The authors charge that both the Reagan and Carter administrations devoted too great a proportion of U.S. financial and human resources to military competition with the Soviet Union. As a result, they "have eroded America's national economic strength, and thus its foreign-policy position. By most critical measures—competitiveness, productivity growth, capital investment, indebtedness—the U.S. economic position has deteriorated vis-a-vis that of many other industrialized countries, particularly Japan and West Germany."

This is a powerful indictment, even if the authors seem too easily taken in by Mikhail Gorbachev's slick diplomatic and political initiatives over the past year. There can be no contesting the fact that Reagan, influenced by the passionate anti-Soviet commitment of Defense Secretary Caspar Weinberger, has allowed an unrestrained military buildup that the nation hasn't been willing to pay for.

It's no exaggeration to say that we have borrowed to the hilt to finance a bloated military budget, and that this overcommitment is a root cause of our current economic distress.

Ironically, as Johns Hopkins professor David P. Calleo observes, David Stockman's tell-all book reveals that these puffed-up military spending figures were arrived at by mistake. But since no one wanted to confess that at the time, those spending targets were defended, approved and funded by Congress. That's sad and almost unbelievable, but true.

When Reagan took office in 1981, he promised to end the Carter malaise: He would balance the budget by 1984, reduce inflation, lower unemployment and promote economic growth. What the nation got, instead, is a debt-ridden domestic and world economy, ready to slip into a new recession. Yes, inflation has been reduced, but that is the result of the Federal Reserve's credit crunch that started in 1979, accompanied by collaspe of OPEC oil prices.

To pay for Weinberger's extravagances, the Reagan administration has not raised taxes but instead allowed the budget deficit to expand. Created in its wake are high interest rates and an overvalued dollar that in turn led to today's record trade deficits.

In a real sense, the budget deficit is being financed by the savings of people living abroad. Between 1982 and 1986, we borrowed more than $400 billion overseas, and that's the reason why we have become the world's largest debtor.

The most devastating result of all of this, Schwenninger and Sanders contend, is that countries that once turned to the United States will look more and more to Japan as the leading financial power. It can be assumed that if Japan, rather than the United States, is in a position to provide the capital to the rest of the world, it will also provide the technology, the capital goods and the managerial know-how. Financial power in this circumstance equates to economic power and both enhance a country's standing in the world.

One should not conclude from this sad tale that the Japan-basing protectionists are right. The solution to the decline of American global economic power is more basic: We must cut back the huge budget deficit and stop pouring the nation's wealth down a military drain. We must find ways of achieving arms control and detente with the Soviet Union, and thus regain the means to finance a revitalization of our own economy and that of the Third World.

To be sure, this won't derail the strong march of Japan toward world economic dominance. But it could slow down, and possibly reverse, our present sickening plunge.

A TRIBUTE TO CHARLES A. SEWELL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. CARNEY] is recognized for 5 minutes.

Mr. CARNEY. Mr. Speaker, I would like to take this time to pay tribute to Charles A. Sewell, the chief test pilot for Grumman Corp. and distinguished retired Marine aviator who recently lost his life in a plane crash in Connecticut.

Chuck Sewell had logged over 10,000 hours in more than 140 types of aircraft. After retiring from the Marine Corps he joined Grumman as an experimental test pilot in 1969. He was made chief test pilot in 1971 and named deputy director of flight test in 1974.

Mr. Sewell spent 20 years as a Marine Corps fighter pilot, retiring as a lieutenant colonel. He flew 110 combat missions over Korea and another 220 over North and South Vietnam and Laos. His decorations include the Legion of Merit, 2 Distinguished Flying Crosses, 15 Air Medals, and 2 Purple Hearts. He graduated from the U.S. Navy Test Pilot School, Patauxent River, MD.

His civilian awards include the 1973 and 1984 Kincheloe Award as Test Pilot of the Year from the Society of Experimental Test Pilots. He also won the 1974 Octave Chanute Award from the American Institute of Aeronautics and Astronautics and in 1983 was awarded the Lawrence B. Sperry Award from the Air Force Association. Chuck Sewell's most recent achievement was piloting the maiden flights of Grumman's forward-swept wing experimental plane known as the X–29. Chuck Sewell was a man who loved his job—that of testing and flying airplanes. He felt he was the luckiest man in the world because people actually paid him to fly. He often said, "I'd rather fly than sit behind the desk" and "I can't think of anything I'd rather do than fly."

Chuck Sewell was a gifted aviator with extremely high self-imposed standards of performance and a very interesting human being in other respects. His untimely death brings a tremendous loss of engineering skills and aeronautical engineering management capability. In short, he was an outstanding citizen, great patriot, good family man, and aviator par excellence. This tribute to his memory is small recompense for Chuck Sewell's service to this country.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WRIGHT (at the request of Mr. BOLAND), for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MCCANDLESS) to revise and extend their remarks and include extraneous material:)

Mr. CARNEY, for 5 minutes, today.

(The following Members (at the request of Mr. Bosco) to revise and extend their remarks and include extraneous material:)

Mr. HUTTO, for 5 minutes, today.

Mrs. COLLINS, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. COLLINS, for 60 minutes, on September 24.

Mr. BENNETT, for 60 minutes, on October 1.

Mr. BENNETT, for 60 minutes, on October 2.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mrs. BOGGS, on Senate Joint Resolution 159, in the House, today.

(The following Members (at the request of Mr. MCCANDLESS) and to include extraneous matter:)

Mr. GILMAN in three instances.
Mr. GINGRICH.
Mr. WHITEHURST.
Mr. CONTE.
Mr. DAUB in three instances.
Mr. LEWIS of Florida.
Mr. GREEN.
Ms. FIEDLER.
Mr. SHAW.
Mr. GEKAS.
Mr. MCCAIN.
Mr. COURTER in three instances.
Mr. MCDADE.

(The following Members (at the request of Mr. Bosco) and to include extraneous matter:)

Mr. RANGEL.
Mr. FRANK.
Mr. YATRON.
Mr. KILDEE.
Mr. FLORIO.
Mr. DYSON in two instances.
Mr. LANTOS.
Mr. HUBBARD.
Mr. DARDEN in two instances.
Mr. GUARINI.
Mr. COLEMAN of Texas in three instances.
Mr. ERDREICH.
Mr. SYNAR.
Mr. KOLTER in four instances.
Mr. WIRTH.
Mr. TORRES in two instances.
Mr. LEVINE of California.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

H.R. 4260. An act to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

S. 1963. An act to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, NM, to the New Mexico Institute of Mining and Technology;

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers;

S. 2759. An act relating to telephone services for Senators;

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day";

S.J. Res. 317. Joint resolution to designate the month of November 1986 as "National Hospice Month";

S.J. Res. 354. Joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week";

S.J. Res. 362. Joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week"; and

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship."

ADJOURNMENT

Mr. FRANK. Mr. Speaker, I move the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 30 minutes p.m.), under its previous order, the House adjourned until tomorrow, Wednesday, September 24, 1986, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4246. A letter from the Comptroller General of the United States transmitting reports on the status of budget authority the deferral of which the Congress disapproved in the Urgent Supplemental Appropriations Act for fiscal year 1986 (Public Law 99-349) (H. Doc. No. 99-269); to the Committee on Appropriations and ordered to be printed.

4247. A letter from the Secretary of Education, transmitting a copy of the final regulations for the National Direct Student Loan Program, pursuant to 20 U.S.C. 1232(d)(i); to the Committee on Education and Labor.

4248. A letter from the Secretary of Energy, transmitting the annual report on the State Energy Conservation Program for calendar year 1985, pursuant to 42 U.S.C. 6325; to the Committee on Energy and Commerce.

4249. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Everett Hillis Briggs, of New Hampshire, as Ambassador Extraordinary and Plenipontentiary of the United States of America to Argentina, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4250. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of

political contributions by Walter Edward Stadtler, of New York, as Ambassador Extraordinary and Plenipotentiary of the United States of America to the People's Republic of Benin, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4251. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Paul A. Russo of Virginia, as Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Commonwealth of Dominica; to St. Lucia; St. Vincent and the Grenadines; to Antigua and Barbuda and to St. Christopher and Nevis, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4252. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Donald K. Petterson, of California, as Ambassador Extraordinary and Plenipotentiary of the United States of America to Tanzania, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4253. A letter from the Comptroller General, General Accounting Office, transmitting a list of all reports issued by General Accounting Office during August 1986, pursuant to 31 U.S.C. 719(h); to the Committee on Government Operations.

4254. A letter from the Assistant Secretary of Transportation for Administration, transmitting notification of a proposed new Federal records system for the Federal Aviation Administration, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4255. A letter from the Director, Administrative Office of the U.S. Courts, transmitting a report on the activities of the Federal courts under the Equal Access to Justice Act of 1980; to the Committee on the Judiciary.

4256. A letter from the Chairman, U.S. Merit Systems Protection Board, transmitting a report entitled "Getting Involved: Improving Federal Management With Employee Participation," pursuant to 5 U.S.C. 1205(a)(3); to the Committee on Post Office and Civil Service.

4257. A letter from the Assistant Secretary of the Army (Civil Works), transmitting a report from the Chief of Engineers, Department of the Army, on Oswego River Watershed, NY, together with other pertinent reports; to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5369. A bill to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the buildings and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes (Rept. 99-863). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. House Joint Resolution 728. Resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute (Rept. 99-864). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5225. A bill to amend the Product Liability Risk Retention Act of 1981 to include coverage of other lines of liability insurance, and for other purposes; with an amendment (Rept. 99-865). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 1915. A bill to establish procedures for review of tribal constitutions and bylaw or amendments thereto pursuant to the Act of June 18, 1934 (48 Stat. 987); with an amendment (Rept. 99-866). Referred to the House Calendar.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 4568. A bill to clarify certain authorities of the Secretary of the Interior and of the Advisory Council on Historic Preservation, and for other purposes; with an amendment (Rept. 99-867). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 4900. A bill to provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community; with an amendment (Rept. 99-868). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5430. A bill to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan (Rept. 99-869). Referred to the Committee of the Whole House on the State of the Union.

Mr. BONIOR: Committee on Rules. House Resolution 557. A resolution waiving certain points of order against the conference report and against the consideration of such conference report, S. 1965, and act to reauthorize and revise the Higher Education Act of 1984, and for other purposes (Rept. 99-870). Referred to the House Calendar.

Mr. DERRICK: Committee on Rules. House Resolution 558. Resolution providing for the consideration of H.R. 5300, a bill to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987 (Rept. 99-871). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ROWLAND of Connecticut:

H.R. 5575. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the protection and delivery of benefits provided under private retirement health plans; jointly to the Committees on Education and Labor, and Ways and Means.

By Mr. ST GERMAIN:

H.R. 5576. A bill to provide for the stability of the domestic banking and thrift systems, to improve housing, to protect the American consumer of financial services, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. FASCELL:

H.R. 5577. A bill to amend Public Law 91-175; to the Committee on Foreign Affairs.

By Mr. FRANK:

H.R. 5578. A bill to amend title 5, United States Code, to provide that certain reserve service performed while in inactive-duty training status may be included as creditable military service for purposes of chapters 83 and 84 of such title; to the Committee on Post Office and Civil Service.

By Mr. GRAY of Illinois:

H.R. 5579. A bill to amend title 38, United States Code, to eliminate the means-test as it applies to provision of medical care to certain veterans with non-service-connected disabilities; to the Committee on Veterans' Affairs.

By Mr. PENNY:

H.R. 5580. A bill to establish the storage payment rate for grain in the farmer-owned reserve at an equitable level, and for other purposes; to the Committee on Agriculture.

By Mr. RICHARDSON:

H.R. 5581. A bill to provide for the study of the Anasazi Trail for potential designation as a national historic trail; to the Committee on Interior and Insular Affairs.

By Mr. SOLOMON:

H.R. 5582. A bill to amend the Immigration and Nationality Act; to the Committee on the Judiciary.

By Mr. WEAVER (for himself, Mr. AuCOIN, Mr. BONKER, Mr. WYDEN, and Mr. LOWRY of Washington):

H.R. 5583. A bill to protect and provide for the enhancement of the resources of the Columbia River Gorge, and for other purposes; jointly, to the Committees on Agriculture, and Interior and Insular Affairs.

By Mr. GARCIA:

H.J. Res. 735. A Joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day; to the Committee on Post Office and Civil Service.

By Mr. GONZALEZ (for himself and Mr. McKINNEY):

H.J. Res. 736. Joint resolution to provide for the temporary extension of certain programs relating to housing and community development, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. HUTTO (for himself and Mr. PEPPER):

H.J. Res. 737. Joint resolution to designate the week commencing February 9, 1987, as "National Burn Awareness Week"; to the Committee on Post Office and Civil Service.

By Mr. GUARINI (for himself and Mr. GIBBONS):

H. Con. Res. 393. Concurrent resolution expressing the sense of the Congress regarding the initiation of free trade area negotiations with the Republic of the Philippines; to the Committee on Ways and Means.

By Mr. ROSTENKOWSKI (for himself, Mr. GIBBONS, Mr. STARK, Mr. JONES of Oklahoma, Mr. JENKINS, Mr. DOWNEY of New York, Mr. GUARINI, Mr. RUSSO, Mr. ARCHER, Mr. VANDER JAGT, Mr. CRANE, Mr. FRENZEL, Mr. SCHULZE, Mr. WRIGHT, Mr. MICHEL, Mr. ASPIN, Mr. BONKER, Mr. FASCELL, Mr. FOLEY, Mr. HAMILTON, Mr. KEMP, Mr. LEATH of Texas, Mr. REID, Mr. ROTH, Ms. SNOWE, Mr. SOLARZ, Mr. GILMAN, Mr. YATRON, Mr. COURTER, Mr. LENT, Mrs. LLOYD, Mr. MADIGAN, Mr. PORTER, Mr. AKAKA, Mrs. COLLINS, Mr. GOODLING, Mr. HATCHER, Mr. LANTOS, Mr. LIPIN-

SKI, Mrs. MARTIN of Illinois, Mr. ROWLAND of Connecticut, Mr. WALKER, and Mr. DINGELL):

H. Res. 556. Resolution relating to the tariff on chocolate; to the Committee on Ways and Means.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

460. By the SPEAKER: Memorial of the legislature of the State of California, relative to the labor dispute between the Independent Federation of Flight Attendants and Trans World Airlines; to the Committee on Education and Labor.

461. Also, memorial of the legislature of the State of California, relative to the U.S. Travel and Tourism Administration; to the Committee on Energy and Commerce.

462. Also, memorial of the legislature of the State of California, relative to organ transplantation; to the Committee on Energy and Commerce.

463. Also, memorial of the legislature of the State of California, relative to commercial vehicle operator's licenses; to the Committee on Public Works and Transportation.

464. Also, memorial of the legislature of the State of California, relative to the Small Business Administration; to the Committee on Small Business.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 893: Mr. MRAZEK.

H.R. 1398: Mr. UDALL.

H.R. 1902: Mr. CLAY, Mr. BIAGGI, Ms. KAPTUR, Mr. BOUCHER, Mr. FASCELL, Mr. LEVIN of Michigan, Mr. PEPPER, Mr. BROWN of California, and Mr. LAFALCE.

H.R. 2365: Mr. GRAY of Pennsylvania.

H.R. 2902: Mr. WISE.

H.R. 3355: Mr. SCHEUER.

H.R. 3359: Mr. MILLER of Washington.

H.R. 4025: Mr. LOEFFLER, Mr. LEWIS of Florida, Mr. FIELDS, and Mr. DURBIN.

H.R. 4471: Mr. SWIFT.

H.R. 4612: Mr. MILLER of California, Mr. LUKEN, Mr. WORTLEY, Mr. MARTINEZ, Mr. HALL of Ohio, and Mr. EDGAR.

H.R. 4783: Mr. BROOKS and Mr. HORTON.

H.R. 4872: Mrs. BOXER.

H.R. 4922: Mr. LIPINSKI.

H.R. 4953: Mr. PETRI and Mrs. MARTIN of Illinois.

H.R. 4972: Mr. NOWAK, Mr. BARNES, and Mr. YOUNG of Florida.

H.R. 5257: Mr. WEBER.

H.R. 5397: Mr. GREEN.

H.R. 5413: Mr. SPRATT and Mr. DAVIS.

H.R. 5425: Mr. HOWARD.

H.R. 5471: Mr. DE LUGO and Mr. IRELAND.

H.R. 5483: Mr. WEBER, Mr. LIGHTFOOT, and Mr. BARTON of Texas.

H.R. 5488: Mr. LOTT.

H.R. 5499: Mr. TALLON, Mr. STANGELAND, Mr. ANTHONY, Mr. JONES of North Carolina, Mr. WHITTEN, Mr. WHITLEY, Mr. LIGHTFOOT, Mr. STALLINGS, Mr. COLEMAN of Missouri, and Mr. ROBERTS.

H.R. 5529: Mr. LUNGREN and Mr. LAGOMARSINO.

H.R. 5532: Ms. MIKULSKI and Mr. FIELDS.

H.R. 5538: Mr. LAGOMARSINO.

H.R. 5567: Mr. RANGEL.

H.J. Res. 7: Mr. MILLER of Ohio.

H.J. Res. 133: Mr. MOAKLEY, Mr. CRAIG, and Mr. WORTLEY.

H.J. Res. 316: Mr. BILIRAKIS, Mr. HYDE, Mr. TAUZIN, Mr. SCHAEFER, Mr. MCKERNAN, Mr. DONNELLY, Mr. GUARINI, Mr. SPENCE, Mr. GEJDENSON, Mr. FRANKLIN, Mr. HOPKINS, Mr. WHITTAKER, Mr. AKAKA, Mr. ANNUNZIO, Mr. FLORIO, and Mr. KILDEE.

H.J. Res. 514: Mr. OWENS, Mr. VANDER JAGT, Mr. DYSON, Mr. STUMP, Mr. KILDEE, Mr. WEBER, Mr. DASCHLE, Mr. SKEEN, Mr. SWINDALL, Mr. OLIN, Mr. CAMPBELL, Mr. SPENCE, Mr. SOLARZ, Mr. LEACH of Iowa, Mr. ROTH, Mr. JACOBS, Mr. MICA, Mr. DARDEN, Mr. MCHUGH, Mr. LUNDINE, Mr. CHAPPIE, Mr. ZSCHAU, Mr. MOORHEAD, Mr. DIXON, Mr. SMITH of Iowa, Mr. TORRES, Mr. HAYES, Mr. DORNAN of California, Mr. STARK, Mr. STRANG, Mr. PICKLE, Mr. SUNDQUIST, Mr. BROOMFIELD, Mr. BARNARD, Mr. FOWLER, Mr. ROSE, Mr. IRELAND, Mr. HATCHER, Mr. GREEN, Mr. PETRI, and Mr. MONTGOMERY.

H.J. Res. 524: Mr. MCEWEN, Mr. ASPIN, Mr. BATEMAN, Mr. WYLIE, Mr. DANIEL, Mr. JONES of North Carolina, and Mr. FAUNTROY.

H.J. Res. 602: Mr. LEVINE of California, Mr. WHITLEY, and Mr. BADHAM.

H.J. Res. 651: Mr. ACKERMAN, Mr. AKAKA, Mr. ANDERSON, Mr. ANTHONY, Mr. APPLEGATE, Mr. BADHAM, Mr. BATEMAN, Mr. BENNETT, Mrs. BENTLEY, Mr. BERMAN, Mr. BEVILL, Mrs. BOGGS, Mr. BONER of Tennessee, Mr. BONIOR of Michigan, Mr. BORSKI, Mr. BOUCHER, Mr. CARNEY, Mr. CARPER, Mr. CHAPPIE, Mr. COATS, Mr. COBEY, Mr. COELHO, Mr. CONTE, Mr. CONYERS, Mr. COURTER, Mr. CRAIG, Mr. DASCHLE, Mr. DE LUGO, Mr. DEWINE, Mr. DIOGUARDI, Mr. DOWDY of Mississippi, Mr. DYMALLY, Mr. DYSON, Mr. ECKERT of New York, Mr. FRENZEL, Mr. FEIGHAN, Mr. FROST, Mr. FOGLIETTA, Mr. FOLEY, Mr. FRANKLIN, Mr. GEKAS, Mr. HAMMERSCHMIDT, Mr. HUTTO, Mr. HYDE, Mr. JENKINS, Mr. KEMP, Mr. KOLTER, Mr. KOSTMAYER, Mr. LANTOS, Mr. LEACH of Iowa, Mr. LEHMAM of California, Mr. LENT, Mr. LEVIN of Michigan, Mr. LEWIS of California, Mr. LOWRY of Washington, Mr. LUKEN, Mr. LUNGREN, Mr. MCCAIN, Mr. MCCOLLUM, Mr. MCEWEN, Mr. MACKAY, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. MATSUI, Mr. MILLER of Washington, Mr. MINETA, Mr. MOLINARI, Mr. MOORHEAD, Mr. MURPHY, Mr. OBERSTAR, Mr. ORTIZ, Mr. OWENS, Mr. PACKARD, Mr. RINALDO, Mr. RODINO, Mr. ROWLAND of Georgia, Mr. SAVAGE, Mr. SHAW, Mr. SILJANDER, Mr. SKEEN, Mr. SNYDER, Mr. SOLARZ, Mr. STOKES, Mr. TRAFICANT, Mr. VALENTINE, Mr. WALGREN, Mr. WRIGHT, and Mr. YOUNG of Alaska.

H.J. Res. 655: Mr. ARCHER, Mr. BATEMAN, Mrs. BOGGS, Mr. CHAPPELL, Mr. DAVIS, Mr. DE LUGO, Mr. DONNELLY, Mr. EARLY, Mr. ENGLISH, Mr. FASCELL, Mr. FOWLER, Mr. FRANK, Mr. FROST, Mr. FUSTER, Mr. GEJDENSON, Mr. GRADISON, Mr. RALPH M. HALL, Mr. HAMILTON, Mr. HAYES, Mrs. HOLT, Mr. HOYER, Mrs. KENNELLY, Mr. KLECZKA, Mr. KRAMER, Mr. LIGHTFOOT, Mr. MCKINNEY, Mr. MATSUI, Ms. MIKULSKI, Mr. MOORE, Mr. PETRI, Mr. PICKLE, Mr. PRICE, Mr. SILJANDER, Mr. SKEEN, Mr. STRANG, Mr. STRATTON, Mr. SWINDALL, Mr. WHITTEN, Mr. WILSON, Mr. WYLIE, Mr. BUSTAMANTE, Mr. MCEWEN, Mr. SPENCE, and Mr. YATRON.

H.J. Res. 660: Mr. MARTINEZ.

H.J. Res. 699: Mrs. VUCANOVICH and Mr. BILIRAKIS.

H.J. Res. 700: Mr. RINALDO, Mr. PASHAYAN, Mr. ACKERMAN, Mr. BARNES, Mr. BEDELL, Mrs. BENTLEY, Mr. BERMAN, Mr. BIAGGI, Mr. BLAZ, Mr. BLILEY, Mr. BOSCO, Mr. BRYANT, Mr. CALLAHAN, Mr. CROCKETT, Mr. DAUB, Mr. DE LUGO, Mr. DWYER of New Jersey, Mr. EARLY, Mr. EVANS of Illinois, Mr. FAZIO, Mr. FEIGHAN, Mr. FLIPPO, Mr. FRENZEL, Mr. FROST, Mr. FUQUA, Mr. FUSTER, Mr. GUARINI, Mr. RALPH M. HALL, Mr. HAYES, Mr. HENRY, Mr. HORTON, Mr. KOSTMAYER, Mr. LEVIN of Michigan, Mr. LIPINSKI, Mrs. LLOYD, Mr. MACK, Mr. MANTON, Mr. MARTINEZ, Mr. MATSUI, Mr. MOAKLEY, Mr. MONTGOMERY, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. NIELSON of Utah, Mr. OWENS, Mr. ROE, Mr. SABO, Mr. SHAW, Mr. SMITH of Florida, Mr. STRANG, Mr. SWINDALL, Mr. THOMAS of Georgia, Mr. TOWNS, Mr. UDALL, Mr. VALENTINE, Mr. VOLKMER, Mr. WALDON, Mr. WAXMAN, Mr. WEBER, Mr. WIRTH, Mr. WOLF, and Mr. WORTLEY.

H.J. Res. 706: Mr. CRAIG, Mrs. BURTON of California, and Mr. HUBBARD.

H.J. Res. 709: Mr. BENNETT, Mr. MATSUI, Mr. EARLY, Mr. DE LA GARZA, Mr. FUQUA, Mr. LUNGREN, Mr. GREEN, Mr. REID, Mr. BARNES, Mr. LEWIS of Florida, Mr. LEHMAN of Florida, Mr. GUARINI, Mr. HUBBARD, Mr. DERRICK, Mr. BRYANT, Mr. YOUNG of Florida, Mr. MINETA, Mr. SCHEUER, Mr. DANIEL, Mr. OBEY, Mr. HOWARD, Mr. SHELBY, Mr. BILIRAKIS, Mr. WHITTAKER, Mr. JENKINS, Mr. MURTHA, and Mr. DASCHLE.

H.J. Res. 718: Mr. GALLO, Mr. LELAND, Mr. DASCHLE, Mr. SMITH of Florida, Mr. MRAZEK, Mrs. KENNELLY, Mr. BOUCHER, Mr. TRAFICANT, Mr. HENRY, Mr. FAZIO, Mr. MCCAIN, Mr. HORTON, Mr. ROE, Ms. OAKAR, Mr. WORTLEY, Mr. BRYANT, Mr. ROSE, Mr. FUSTER, Mr. SAVAGE, Ms. SNOWE, Mr. TOWNS, Mr. KLECZKA, Mr. NEAL, Mr. FUQUA, Mr. BOSCO, Mr. FAUNTROY, Mr. COBEY, Mr. BERMAN, Mr. OWENS, Mr. REID, Mrs. BENTLEY, Mr. WOLPE, Mr. LEVIN of Michigan, Mr. FOWLER, Mr. LIPINSKI, and Mr. DYMALLY.

H.J. Res. 733: Mr. MINETA, Mr. BUSTAMANTE, Mr. DIOGUARDI, Mr. FAZIO, Mr. REID, Mr. FAUNTROY, Mr. HATCHER, Mr. MATSUI, Mr. FOGLIETTA, Mr. PANETTA, Mr. JENKINS, Mr. LEVIN of Michigan, Mr. FOLEY, Mr. VOLKMER, Mr. LAFALCE, Mr. KOLTER, Mr. FUQUA, Mr. ROE, Mr. RAHALL, Mr. FRANK, Mr. RALPH M. HALL, and Mr. HENRY.

H. Con. Res. 233: Mr. FRENZEL.

H. Con. Res. 359: Mr. EDGAR, Mr. WALDON, Mr. ATKINS, and Mr. REID.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 4935: Mr. SMITH of Florida.

PETITIONS, ETC.

Under clause 1 of rule XXII:

484. The SPEAKER presented a petition of H.L. Richardson, Sacramento, CA, relative to safe and drug-free schools and communities; which was referred to the Committee on Post Office and Civil Service.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4300

By Mr. DELAY:

—Page 8, line 18, strike "during any 24-month period—" and insert "consecutive workweeks immediately following—".

Page 8, lines 20 and 22, strike "because of".

Page 9, line 1, strike "in order" and insert "the need arising".

—Page 9, line 16, and page 10, line 10, strike "unduly".

Page 9, line 7, strike "(3)" and insert "(2)".

—Page 9, line 19, strike "(1)".

Page 9, strike lines 23 through 25.

—Page 10, strike line 17 and all that follows through page 11, line 21 (and designate succeeding sections including references accordingly and amend the table of contents).

—Page 10, line 23, page 11, lines 7, 8, and 11, strike "26" and insert "8".

—Page 11, line 5, strike "(1)".

Page 11, strike lines 9 through 11.

—Page 12, strike line 3 and all that follows through page 13, line 2 (and redesignate the succeeding sections accordingly, including cross references thereto and amend the table of contents).

—Page 13, lines 10 and 11, strike "equivalent" and insert "the same".

—Page 13, strike line 3 and insert in lieu thereof the following:

SEC. 107. RESTORATION TO POSITION.

Page 13, strike line 4 and insert the following:

"(a) IN GENERAL.—Upon return".

Page 13, line 7, strike "(A)" and insert "(1)".

Page 13, line 10, strike "(B)" and insert "(2)".

Page 13, line 13, strike "(2)" and insert the following:

"(b) NO LOSS OF ACCRUED BENEFITS.—

Page 13, line 16, strike "(3) Except as provided in subsection (b), nothing" and insert "(c) NO ENTITLEMENT TO ADDITIONAL SENIORITY OR BENEFITS.—Nothing".

Page 13, strike line 23 through page 14, line 6.

Page 14, line 7, strike "(c)" and insert "(d)".

—Page 28, line 2, insert "and" after the semicolon.

Page 28, strike out lines 3 through 5.

Page 28, line 6, strike out "(3)" and insert "(2)".

Page 28, line 14, insert "or" after the semicolon.

Page 28, strike lines 15 through 19.

Page 28, line 20, strike "(4)" and insert "(2)".

—Page 28, strike lines 21 through page 29, line 22.

Page 29, lines 24 and 25 and page 30, line 16, strike "or 6333".

—Page 29, line 5, strike "26" and insert "8".

—Page 31, beginning on line 11, through page 35, line 3, strike title III of the Act.

—Page 31, lines 11 and 12, strike "AND MEDICAL".

Page 31, line 15, strike "and medical".

Page 31, line 21, and page 32, line 7, strike "and temporary medical leave".

Page 33, lines 1 and 2, strike ", temporary disability, and labor-management".

—Page 35, line 6, strike "(a) FEDERAL LAWS.—"

Page 35, strike lines 10 through 14.

—Page 10, line 5, strike "in a manner which is reasonable and practicable" and insert "6 months before the expected date of such birth or adoption".

—Page 36, after line 21, insert the following new section:

"SEC. 406. REPORT BY SECRETARY OF LABOR.

"The Secretary of Labor shall conduct a study on the effect of this Act on each category of the Standard Industrial Code of Business. The Secretary shall submit a preliminary report of the findings of the study within one year after the date of the enactment of this Act and shall submit a final report of such findings within two years after such date of enactment.".

—At the end of the bill add the following new title (and amend the table of contents accordingly):

TITLE V—COVERAGE OF EMPLOYEES OF CONGRESS

SEC. 501. ADMINISTRATION AND ENFORCEMENT BY APPROPRIATE COMMITTEES OF THE CONGRESS.

The Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate shall establish rules and procedures to apply the principles of this Act to the employees of the House of Representatives and of the Senate, respectively.

—Page 10, after line 16, insert the following new subsection:

(f) MARITAL STATUS.—No employee may take family leave under subsection (a)(1)(A) unless such employee is married to the parent of the son or daughter. Such requirement shall not apply if a parent of the son or daughter has died.

—Page 6, line 14, and page 8, lines 13 and 15, strike "15" and insert "1,000".

Page 8, line 14, strike "200" and insert "100".

SENATE—*Tuesday, September 23, 1986*

(Legislative day of Monday, September 15, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Our Father in Heaven, we want to thank you for the improvement of Mrs. Metzenbaum. We commend her to Thee this day, as well as the Senator and the family, and ask for a special blessing and encouragement in their lives, and restore her to fullness of health and strength.

*For rulers are not a terror to good works, but to the evil * * * for he is the minister of God for good. * * **—Romans 13:3-4.

Sovereign Lord of the nations, the people of the United States gave to their Government the mandate to establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty for themselves and their posterity. Grant that the 99th Congress will have done all in its power to fulfill its part in this destiny. Give to the Senators in these final days the wisdom of God, His guidance, and the courage to be faithful servants of the Lord in their response to the people's mandate. In the name of Him who was able to say to His Father in Heaven, "I have finished the work Thou gavest me to do." Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. I thank the distinguished Presiding Officer, the senior Senator from South Carolina [Mr. THURMOND].

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each, and we will reserve the time of the distinguished minority leader. That will be followed by special orders in favor of Senators HAWKINS, PROXMIRE, ROCKEFELLER, MURKOWSKI, and BAUCUS.

There will then be routine morning business, not to extend beyond 10:30, at which time we will begin consideration of the highway bill, S. 2405. It is my understanding that Senators interested in the mass transit issue met yesterday and have worked out some kind of agreement. Therefore, votes will occur during today's session. As yet, I cannot predict how long we might be in session this evening.

We will have our policy luncheons from 12 noon to 2 p.m. I ask unanimous consent that the Senate stand in recess between 12 noon and 2 p.m.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. That could be changed slightly on the front end, if we are making progress on the highway bill, because in our policy luncheon we never get started before 1 o'clock. So we may not need all of the 2 hours.

Following the policy luncheons, we will resume consideration of S. 2405.

Mr. EXON. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I yield.

Mr. EXON. With respect to the transportation bill, as the majority leader knows, there are those of us on both sides of the aisle who have been attempting to offer some kind of change in the speed limit. We seem to have the President on board. I was wondering if it would be possible for the majority leader to state what opposition, if any, there is among the Republican leadership with respect to the possibility of offering a simple, straightforward measure that those of us on both sides have been talking about, whereby we would propose a change to 65 miles per hour only on rural interstates and leave the 55-mile-per-hour limit on primary and secondary roads.

Does the majority leader have any feelings on this, and would he have any strong objections to such a measure being brought up under an appropriate vehicle?

Mr. DOLE. No. I think this appropriate vehicle is going to be up here at 10:30 a.m. I remember hearing a discussion between the Senator from Nebraska and the Senator from Idaho yesterday.

I think the Senator had a bill in for some time to do precisely that. But I am not certain, because I was not here all day yesterday, what Members on each side might have agreed to.

I hope we can bring it up, get a vote on it one way or the other, and then go on and finish the highway bill.

Mr. EXON. I would certainly hope we could accommodate the leader. I know both the majority and minority leaders are struggling trying to expedite things.

I hope we could enter into a time agreement with regard to debate and have an up or down vote.

I thank the majority leader for yielding for this consideration.

Mr. DOLE. I thank the Senator from Nebraska.

We will try to expedite that bill today, because we need to do that.

ECONOMIC SIGNALS

Mr. DOLE. Mr. President, today the Federal Open Market Committee meets for another review of the economy's performance. The Federal Open Market Committee has to decide whether to modify open market operations to influence the course of the economy. That is not an easy task, given the divergent views of how the economy is doing.

Last week the Commerce Department reported a revised GNP growth figure for the second quarter of 1986. It is really not very good: It shows the economy grew at a rate of only six-tenths of 1 percent in the period from April through June. In other words, the economy was still growing and creating jobs—but at the slowest rate since the end of the recession.

At the same time, inflation news continued to be good. In the same quarter, the GNP deflator rose at only a 1.8 percent annual rate—better than anything we have seen in the past two decades. And the Consumer Price Index figures released this morning, which rose two-tenths of 1 percent in August, reaffirm that.

Now Mr. President, there are lots of reasons to believe the economy is picking up a little bit in the current quarter. Unemployment is down; retail sales are up; and special auto financing deals are giving us a bit of a push. But even retail sales rose less than expected in August—0.8 percent.

NO CHANGE IN SIGNALS

In short, although the economy was weaker than we thought in the second quarter, the economy is still giving us mixed signals. There is nothing in the new numbers that justifies a change in the policy mix some of us have been advocating—that is, congressional action to comply with the Gramm-Rudman-Hollings antideficit law, and continued action by the Federal Reserve to nudge the world toward a

stable, lower interest rate environment.

Mr. President, I remain convinced that inflation is not a major threat now—and that stagnation continues to be the main threat to a healthy world economy.

WEIGHING THE FACTORS

A lot of fingers have been pointed to assign blame for our slow growth in 1986: Ranging from uncertainty over tax reform, to the downturn in the energy sector, to continuing problems with the farm economy. My own view is that all of these have played a role.

If that is correct, then we should continue along the policy path I have outlined. Most analysts expect that, sooner or later, the drop in the dollar, and the relaxation of interest rates, will limit our ability to attract outside capital to finance the borrowing needs of the United States. That is why it is encumbent upon us to cut our budget deficit.

So far as the deficit is concerned, the answer lies right here—and I call upon my colleagues in the Senate, and in the House, to act responsibly before the end of this session to make real reductions in the 1987 deficit, as the law requires us to do. That means final action on reconciliation, and hewing appropriations to responsible levels.

On the matter of lower interest rates, we in Congress have less direct ability to make a difference. But the Federal Reserve can.

So far this year, the Fed has shown real leadership, exercised through the device of discount rate cuts. I would urge my friends at the Federal Reserve not to abandon this weapon prematurely. Just last Wednesday, Fed Vice Chairman Manuel Johnson—as able a spokesman as the Board has ever had—said at a luncheon speech, that the signals in the economy did not justify an aggressive monetary policy. Many analysts read that as another message from the Fed that further rate cuts are unlikely.

Mr. President, I am second to no one in my regard for the Federal Reserve, and its distinguished Chairman, Paul Volcker. The Fed quite rightly, in my view, is empowered to make independent judgments on the economy. Nevertheless, I think it would be a mistake to rule out further rate cuts.

Vice Chairman Johnson cited the rise in previous metals prices, and some commodity prices, as well as the slight backup in interest rates in the financial markets, as important caution signals on the inflation front. Maybe they are—but we have been waiting all year for commodity prices to stabilize, as a sign the world economy is poised for continued growth. Just when that begins to happen, we hear that the change signals not growth, but inflation.

Mr. President, in my view it is much too soon to change the policy prescription, in light of a few blips in selected price factors. There are no convincing signs that underlying economic trends have changed; and it is wrong, in any event, to think that we can fine tune economic performance on a month-to-month basis. We have set off on the only reasonable course, given the uncertainties that affect the economic climate around the world. Let us keep on it.

DRUG LEGISLATION

(Mr. DOLE, on behalf of himself and other Senators, introduced two bills: the Drug Control Act and the Drug Free America Act. The remarks of Mr. DOLE, the statements of other Senators, and the text of the bills are printed later in today's RECORD under Introduced Bills and Joint Resolutions.)

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order the Senator from Wisconsin is recognized for not to exceed 5 minutes.

THE AGREEMENT DESIGNED TO STOP SURPRISE ATTACKS

Mr. PROXMIRE. Mr. President, what is the most likely prospect of superpower nuclear war? Answer: A conventional war in Europe. How could that happen? The Soviets might decide that the President of the United States, whoever he might be, would not risk a full fledged nuclear war. So we would not use our nuclear weapons to repel a sudden, swift Soviet sweep through Europe. The Soviets have a vast advantage in tanks, planes, and troops. They could strike against Western Europe as Hitler struck against France in 1939. Unless the NATO forces decided to take the big chance on incinerating the world, by striking back with nuclear weapons, the Soviets could conceivably reach the English Channel in a few days. Would a nuclear response by the NATO allies constitute a real option? Sure. The nuclear NATO response itself includes several options. The western allies could use tactical nuclear weapons to stop Soviet tanks and troops. Or as a demonstration of their will to go nuclear if necessary, they could nuke one or two Soviet cities, as the United States nuked Hiroshima and Nagasaki in 1945. Or they could set a 6-hour or 12-hour deadline for the withdrawal of Soviet troops with a nuclear response to follow if they failed. Obviously any of these nightmare scenarios could quickly end in the last war.

So what are we doing about it? Diplomats from NATO and the Warsaw pact on last Sunday, September 21, announced that they had reached an agreement designed to prevent either of the two great alliances from instigating a surprise attack in Europe. Representatives of the two alliances have been negotiating the agreement in Stockholm for the past 3 years. What kind of an agreement? For the first time both alliances would accept inspection of the other's military operations by the other side. This agreement ends a long, dry arms control period between the two superpowers that has gone on since 1979 when both signed the SALT II accord. The new agreement would reduce the likelihood of a surprise attack. It would play a more certain part in lessening the prospect of an accidental, mistaken interpretation by one side resulting in a response that could trigger a superpower war.

Both sides properly and necessarily engage in frequent maneuvers or training exercises. Thousands of troops, tanks, planes, and artillery are involved. Such exercises are essential to provide the kind of realistic training that will permit a military force to act effectively in actual combat. To achieve effective coordination it is necessary to have large and diversified forces take part. This is precisely the kind of military maneuver that might signal an invasion, for instance, by the Soviets of Western Europe. So how would the Stockholm agreement forestall such a prelude to superpower war? The two alliances have agreed to give warning of all maneuvers involving more than 13,000 troops. Further they would have to invite foreign observers if the maneuvers exceeded 17,000 troops.

The second aspect of the inspection involves prompt aerial observation—if either side believes the other is engaged in maneuvers that should have been but were not announced. The NATO position originally was that such inspections should be made by each alliance in the planes of that alliance. The Soviets insisted that the flights be in the planes of the alliance being inspected. NATO tried to compromise by suggesting that neutral planes from Sweden and Switzerland, for example, might be used. But the Soviets turned that down. NATO has now agreed with the Soviet Union that the inspection flights will be in the planes of the alliance being inspected. NATO has won the right for the inspectors to bring on board the observation and inspection equipment they want and to order the inspecting plane to fly wherever they wish, once they reach the area where the violation is expected.

Here is an arms control agreement that could be very valuable in forestalling what may be the prime prospect of a superpower nuclear war.

On Sunday, Karen De Young reported in the Washington Post that this is true although,

The Stockholm Treaty—will not dismantle a single nuclear weapon or authorize the removal of a single soldier from foreign soil.

Here is why:

The agreement is binding on the signatories. Prior notification and understandings in 1975 Helsinki and 1983 Madrid allowed for only voluntary compliance and then only for movements exceeding 25,000 troops. No penalties are provided in this new treaty but there is a "political" cost of noncompliance.

The agreement covers all of Europe starting at the Atlantic and including more than 1,000 miles of Soviet territory east of the Ural Mountains. Previous agreements only covered 150 miles of the Soviet Union.

It marks the first time the Soviets have agreed to on-site verification on demand. It . . . will set a precedent and provide a test case for compliance for other arms control proposals.

The west hopes it will demonstrate to the secretive and often paranoid Soviet military establishment that they can live with verification incursions deep into their own territory.

According to western military specialists it will provide priceless information about Soviet equipment, readiness, morale and training.

Most important, here is a treaty that significantly lessens the prospect of a sudden surprise attack by either superpower with conventional arms that could lead to nuclear war. The treaty deals with what in this Senator's judgment constitutes what has hitherto been the most likely way a superpower nuclear war might begin.

THE MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, the myth of the day is that the deficit next year—fiscal year 1987—will be $144 billion or $154 billion or even $164 billion. By law, the deficit is supposed to be $144 billion with a $10 billion cushion. But in fact, the deficit is going to be around $200 billion.

My guess is that we will comply, at least technically, with the provisions of the Gramm-Rudman law. But while complying with the letter of the law, we will violate its spirit. Our experience demonstrates that myths can be written into law.

How can we slip out from under the law? Take a look at the spending side of the budget. We can order that Government assets be sold and either overestimate the price or fail to carry through and make the sale. We can ignore the costs of new initiatives such as our efforts to combat drug abuse. We can underestimate the costs of agriculture programs. The Federal Government's budget contains literally thousands of accounts and many of them can be manipulated. And manipulate them we are.

We are about to do the same thing on the revenue side of the budget. Experts say that the new tax bill is revenue neutral. But in its first year, it brings in about $10 billion in additional revenues. In later years, it loses money. When the Senate passed its version of the tax bill, it specifically prohibited the use of this revenue windfall to reduce the deficit. The conference committee dropped this prohibition.

If we decide to use this money to meet the requirements of Gramm-Rudman, that will get us by the election. But it will put us that much deeper in the hole the next year. The chairman of the Senate Budget Committee looked at this temptation and wondered whether we would ever balance the budget.

Finally, we can and have adopted optimistic economic projections. If we assume that the economy is going to perform better than it does, then we can assume higher revenues and lower spending than will actually be the case. These assumptions are not so optimistic as to be incredible, but they are close.

Mr. President, this means that the deficit in fiscal year 1987 is going to be higher than $144 billion and not just a little higher. It is going to be much higher.

A higher deficit might not be all bad. Some highly respected economists are arguing that we might need a deficit in the range of $180 billion to avoid a recession. I happen to disagree with this assertion, but a sound argument to support it can be made.

But we should not do what we are apparently going to do. We should not play tricks on the American people by passing legislation which assumes that the deficit will be $144 billion when we know it is going to be higher. I know of no better way to encourage cynicism. That is no myth.

I yield the floor.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for not to exceed 5 mintues.

LET'S RECLAIM OUR NATIONAL FORESTS FROM THE MARIJUANA TRAFFICKERS

Mrs. HAWKINS. Mr. President, we have been compelled to surrender another bit of turf to drug smugglers. Nearly 1 million acres of our National Forest System have been abandoned as unmanageable because of the danger posed by marijuana cultivation. The U.S. Forest Service has neither the resources nor the authority to manage these areas properly. It's another flagrant example of our Government being outgunned, outspent, and outmanned by the drug merchants of death.

More than 20 percent of the marijuana grown in the United States is cultivated on land within our national forests. This is shocking. Marijuana growers are moving their illegal operations into the national forests at a fast pace for two interesting reasons. The success of the Federal drug interdiction program has driven scores of marijuana growers off other productive land. And the asset forfeiture principle has encouraged many growers not to jeopardize their own land but to grow their marijuana crops on somebody else's property, preferably land owned by the Federal Government. Further, some of the national forest acreage is so isolated it is easy to grow marijuana and harvest it undetected.

These criminals have taken to guarding their crops in a manner reminiscent of the way moonshiners harassed "revenooers" of the prohibition era. They are laying boobytraps to protect their crops from nosey forest rangers and curious visitors to the forests. These boobytraps include hand grenades detonated by trip wires, shotguns rigged to fire at chest level and pipe bombs set to explode when an intruder approaches an illegal marijuana patch. The drug merchants aren't fooling around. They mean business. The purpose of these boobytraps? To kill and maim.

The Forest Service, Mr. President, is woefully unprepared to handle situations like this. It does not have the manpower, the equipment and legal authority to cope with drug traffickers. I propose that we change this and give the Forest Service the tools it needs to drive the marijuana growers out of our national forests.

I have introduced legislation that would grant the Secretary of Agriculture authority to investigate, make arrests, and take other actions that may be necessary to locate, and destroy, marijuana crops on national forest land. The Secretary would also be empowered to prevent the processing, transporting and sale of marijuana or any other controlled substance on public land. To carry out these objectives, the Secretary would be given the authority to buy and distribute firearms to certain national forest employees. These designated employees would have the power to serve warrants, subpoenas and other legal processes for arrest, search, and seizure. They also would be given the authority to pursue suspects beyond the national forest borders.

Other provisions of the legislation I have introduced provides for a penalty of up to 5 years in jail and a fine of up to $5,000 for anyone carrying a firearm while manufacturing a controlled substance on Federal lands and a maximum penalty of 10 years and a $10,000 fine for any person who in-

stalls a life-threatening boobytrap on Federal property. One feature of the legislation is to provide up to $20 million to carry out this program, the money to come from national Forest Service revenues.

My proposal could be the steppingstone for opening another front on the war on drugs. It would complement President Reagan's clarion call to get tough on the criminals who grow and supply illegal drugs to our society. It is time to protect our rights, as well as our assets, in the national forests from the marijuana traffickers. And in the process, perhaps we could reclaim some of our children, our most precious asset.

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RECOGNITION OF SENATOR ROCKEFELLER

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized for not to exceed 5 minutes.

WEIRTON STEEL

Mr. ROCKEFELLER. Mr. President, today marks the third anniversary of an event which enabled the community of Weirton, WV, to avert a devastating blow to its economy. Faced with plans by National Steel to shut down its plant in Weirton, employees put together a deal to buy the steel mill and save their jobs.

On September 23, 1983, employees voted overwhelmingly to ratify a new contract, providing for an employee stock ownership plan [ESOP], and other major changes. Weirton Steel, with close to 8,000 employees, became the country's largest completely worker-owned company. Its success has set a stunning example: in an industry battered by steady losses of production and jobs, Weirton has made profits for 10 quarters in a row. There are now 8,500 employees at Weirton, and all workers previously on layoff have been recalled. Orders for its products have been strong enough to support a third blast furnace at Weirton, which just opened 2 weeks ago.

Weirton, under employee ownership, is obviously a well-managed company. But how has it been able to withstand the pressures which are ravaging so much of the domestic steel industry? How has Weirton coped with intense foreign competition, the effects of unfavorable exchange rates, and the general lack of growth in markets for steel?

A central reason, in my view, is the company's approach to labor-mangement relations. At Weirton, the ESOP is accompanied by a participatory style of management. Workers are involved in key company decisions: the independent union representing them has 3 seats on the 12-member board of directors, and the company has really worked at maintaining good lines of communications between executives and the shop floor.

Workers at Weirton are actively involved in solving problems—in finding ways to make production more efficient and improve product quality. The company's employee participation program has 106 teams, focused on the problems of individual departments. The aim is to draw on the talents and creativity of employees—of those closest to the production process—to devise the best ways of doing the job.

Industrial relations at the plant were not always cooperative. But Weirton's worker-owners quickly recognized that the mill's survival depended on everyone pulling together. The workers accepted a 20-percent reduction in wages and benefits at the time of the buyout, along with a 6-year freeze on their pay. The company instituted profit-sharing, and earlier this year it distributed $20 million—about one-third of the 1985 profits—to the 8,000 workers covered by the ESOP.

In a sense, the imminence of the plant shutdown gave the workers little alternative. But they took a risk in buying the mill; they could not count on being able to turn the company into a profitable operation. I am convinced that the ESOP played a pivotal role: besides enabling the workers to buy the plant, the ESOP directly strengthened the workers' financial stake in the company's success.

Productivity has improved at Weirton in the years under employee ownership. The company undertook extensive modernization plans, placing great emphasis on strategic planning. It has survived the cutthroat competition in steel by quickly establishing a reputation for quality and more sophisticated products—like the new Galfancoated, corrosion-resistant steel, Weirkote Plus, introduced in 1985. Weirton has also carved out certain niches in the market, becoming a leading producer of tinplate.

Looking ahead, I have confidence in Weirton's ability to face future challenges with the insight that has guided it these last 3 years. I will watch for continued advances in product development, in technology and production processes, in productivity. And I expect the company to remain an inspiration for American industry—a vivid example of the difference that worker participation and employee ownership can make. The old habits—of tense, conflict-ridden labor-management relations in many industries—may die hard. But Weirton's success is proof that the new, cooperative approaches work better—and can help revitalize this country's industrial landscape.

RECOGNITION OF SENATOR BAUCUS

The PRESIDING OFFICER. Under the previous order, the Senator from Montana is recognized for not to exceed 5 minutes.

GATT ROUND AGENDA

Mr. BAUCUS. Mr. President, the way I look at it, every problem presents an opportunity. Today, let me mention one problem and the opportunity it presents.

The problem is our international trade deficit. Many commentators, including Ambassador Yeutter, say that our trade deficit this year will go as high as $200 billion. Others estimate that it will be a little bit lower. But in any case, the deficit is going to be huge.

I think that we have an opportunity here, to improve our international trading system. Last week, our country took a big step toward fulfilling this opportunity when we agreed to a new GATT round agenda down at Uruquay.

For 20 years, the GATT—that is, the General Agreement on Tariffs and Trade—was the engine for worldwide economic growth. But recently it has become ineffective. Some experts say that GATT now stands for the "gentlemen's agreement to talk and talk."

The administration estimates that less than 50 percent of world trade is covered by GATT. Some economists estimate that the figure is as low as 10 percent.

That means that all remaining world trade is covered by rules of the game other than by GATT; namely, by no rules at all.

There are several specific problems with the GATT.

Its subsidy rules contain an agricultural loophole that's big enough to drive a combine through. As a result, we are seeing a vast global oversupply of grain.

In the United States alone, we have enough wheat in storage to bake seven loaves of bread for every man, woman and child on Earth.

The average British farmer gets 40 percent of his income from export subsidies. If we do not close that loophole, we are going to see an escalating agricultural subsidy war.

Another problem is that service industries like banking and insurance are not subject to the GATT. Service industries now account for almost three-fourths of U.S. employment. These industries must be part of GATT so we can pry open some foreign markets.

In addition, the GATT dispute mechanism is weak. It is ineffective. Cases languish for years without resolution because countries delay the process.

These are serious problems. They defy simple solutions. But they create a new opportunity to improve the fundamental features of the GATT and thereby expand trade. Experts say if GATT were strictly enforced, world trade would increase by 40 percent.

The agenda agreed to over the weekend in Uruguay provides a new beginning.

First and foremost, the administration succeeded in persuading other countries, notably the EEC, to agree to address agricultural subsidies. I was somewhat disappointed that agriculture was not formally put on a fast track, but the agenda does call for that if the negotiators agree. I hope that happens.

In services, I understand that the talks will not be conducted by signatories of GATT, but by a separate committee. I hope that this does not reduce the services negotiations to second place status. I hope, instead, that it is a promising compromise designed to get service negotiations underway.

But let me make it clear that I expect services to be part of any agreement. Anything less should be unacceptable to the United States.

Mr. President, this round is critically important to our economy.

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We must recognize that the world has changed. For most of our history, we enjoyed an insulated, bountiful market. Today we are thrust into a fiercely competitive global economy, a reality we simply cannot ignore.

Since 1970, the dollar volume of world trade has grown sevenfold.

Over 70 percent of our economy today is subject to import competition. Almost one-fifth of our industrial production is exported and over one million jobs are related to U.S. agricultural exports.

The stakes are high.

Last week's agreement in Punta del Este is a good start toward establishing a new set of international trade rules that give American companies a fair chance to compete.

I hope that we follow through aggressively, assiduously, and with perseverance, so that the trade rules are improved, all Nations can be treated more favorably, and world trade will progress.

Mr. President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR MURKOWSKI

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska [Mr. MURKOWSKI] is recognized for not to exceed 5 minutes.

JAPANESE MAJOR PROJECTS

Mr. MURKOWSKI. Mr. President, on September 11 I informed the Senate of the severe disparity between the open U.S. construction market and the Japanese market which remains closed. In 1985 Japanese construction firms won 1.8 billion dollars' worth of contracts for work in the United States. It is interesting to note that American firms won no contracts in Japan in 1985. Or in 1984, or in 1983. In fact, no American firm has won a contract in Japan in over 20 years.

Mr. President, I would like to refer to a chart to explain the circumstances of what is currently happening in Japan.

Japan has established a series of barriers which prohibit the entrance of foreign construction companies that are involved in design, engineering, and architecture. The reason for this, Mr. President, is Japan has built a trade barrier wall around itself, not allowing any outside-Japanese participation. This is done through interlinking between the Japanese Government and Japanese industry.

Make no mistake about it, Mr. President, this linkage is very real. It is traditional and it is very effective.

What it does, Mr. President, is it provides internally within the Japanese structure the ability to subsidize and promote a "Buy Japanese" policy.

Specifically, Mr. President, items that are constructed and engineered in Japan can be subsidized by Japanese taxpayers and sent out on the markets of the world. This includes the market in the United States, which has granted up to 1.8 billion dollars' worth of contracts to Japanese firms but are basically dumped on the United States market. This is the way it is done, through this trade barrier.

Let me proceed further, Mr. President.

In examining this situation, my Subcommittee on Foreign Relations has discovered a home market in Japan surrounded by impenetrable trade barriers. Within this home market is a Japanese industry coupled to the Japanese Government, receiving subsidies at the expense of the Japanese taxpayer and dumping excess capacity in the American market.

Let me give a recent example.

In the case of trash incinerator facilities, the Japanese Economic Journal reported that Japanese firms build them three times as cheaply overseas as they build them in Japan. The subsidy is provided at the expense of the Japanese taxpayer.

This summer Prime Minister Nakasone stated that foreign firms will be allowed to participate in major construction projects on a fair and equal basis. This was good news. However, the Japanese Government has been reluctant to translate Prime Minister Nakasone's assurances into a written understanding spelling out the principles of a nondiscriminatory system.

Mr. President, this is not the intention of the Prime Minister, and I am not being critical of the Prime Minister. The difficulty is real. The linkage between the Government of Japan and the business sector is still very prominent and very effective.

Given the internationally competitive strength of the United States industry in the area of airport construction and a growing services trade deficit with Japan, Japan's unwillingness to deliver with specific contractural opportunities in this market is unacceptable.

Mr. President, the United States is Japan's most important customer. Up to this point we have been reluctant to use the leverage of the world's largest open market to ensure equal treatment for our firms abroad.

Mr. President, a letter from me will be circulating today to all of my Republican and Democratic colleagues. It announces that when the Senate begins consideration of the continuing resolution, I plan to introduce an amendment to provide leverage for the U.S. Trade Representative and the Department of Commerce to obtain meaningful access for U.S. design, construction, and engineering firms to construction projects abroad.

The legislation I am introducing would apply a stringent "Buy America" rule to airports funded by the Airport and Airway Improvement Act of 1982 for constructors and products purchased under Government contracts. However, it permits an exception, if the Secretary of Transportation, in consultation with USTR, determines that:

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First, the country of origin of the products or the bidder is offering fair reciprocity in access to public or substantially publicly funded construction projects;

Second, the public interest would not otherwise be served;

Third, the products are not produced in the United States; or

Fourth, exclusion of foreign goods or contractors would raise cost by 50 percent.

This legislation is essential to provide USTR and the Department of Commerce with the leverage necessary to gain access for United States firms in the Japanese market. This legislation is balanced. It gives the administration the tools it needs to open the

Japanese market but it also gives needed discretion.

No honest firm need be affected by this legislation. It only applies to those foreign firms which are receiving an unfair competitive advantage from a closed home market. If you are not discriminating against American firms, there is no need to worry.

Mr. President, the Federal Aviation Administration plans to spend some $11 billion over the next decade on the rehabilitation of American airports.

My amendment set forth a challenge: Either cease unfair trade practices against American companies or forego participation in this project. The choice is simple.

Finally, Mr. President, when my amendment circulates this afternoon, I hope all my colleagues can support it.

The PRESIDING OFFICER (Mr. HATFIELD). The Senator's time has expired.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 10:30 a.m., with statements therein limited to 5 minutes each.

CONGRATULATIONS WEIRTON

Mr. LONG. Mr. President, today marks the 3d anniversary of a very special date in West Virginia. The 100-percent employee buyout of the Weirton Steel Division of National Steel.

Three years ago today, the final papers were signed establishing an employee stock ownership plan [ESOP] as the financing technique utilized to accomplish this historic feat. Since that time, the independent Weirton Steel Co. has not only survived but thrived. Like all steel producers, they are struggling, but they are facing far better than most, logging quarter after quarter profitability.

Under the buyout agreement, once the company reached $100 million in net worth, employees would begin sharing in profits in order to recoup a portion of the wage cuts necessary to make their buyout feasible. That benchmark was reached at the end of the second year, and in March 1986, 8,400 employees shared one-third ($20.8 million) of their company's profits. Weirton's employee-owners will share in one-half of the profits when the company's net worth reaches $250 million.

THE SPIRIT OF WEIRTON

Mr. President, several factors were intrumental in creating this success. ESOP financing, of course, played a crucial role. But that is only a part of the story. The real key to Weirton's success is the spirit of Weirton—the dedication and the motivation that these people have shown, their concern and genuine commitment to excellence has been the real secret.

Robert Loughhead, Weirton's farsighted and innovative president, has also been a determining factor. His management team provides the leadership and the personal commitment essential to long-lasting success. Their willingness to implement new work systems for employee participation is making Weirton a model for other industries struggling to find a management style capable of evoking the best that a company has to offer.

Working hand in hand with the independent steelworker's union, Weirton is emerging as a leader in labor-management relations. By recognizing the dignity of each person, and by working toward a management systems that enables each employee to make the fullest possible use of his or her capabilities, Weirton Steel Co. has become a leader in the pursuit of excellence.

Mr. President, Weirton Steel Co. represents more than just a commercial success. Make no mistake, that is important, and everyone involved—workers, supervisors, managers—everyone has the right to be justly proud. Yet the spirit of Weirton expands well beyond the Weirton work force. That spirit includes the entire community of Weirton, plus surrounding communities in Ohio and Pennsylvania. The success of Weirton represents the success of that entire valley; the spirit of Weirton is the spirit of a people who pulled together and have become stronger for the adverserity they weathered together.

That success is measured in several ways. Profitability is an important measure, and on that score, Weirton Steel Co. is an industry leader. Success is also measured by the number of jobs saved. I am happy to report that 100 percent employee-owned Weirton Steel Co. recently rehired the last employee still holding recall rights. Thus, they are now back up to a work force in excess of 8,500, and new hires will be from those who have never before worked at Weirton Steel.

Yet those are only the tangible signs of success; that is the kind of success every community hopes for and works for. But Weirton has gone beyond that. To their economic success, they have added a new ingredient, an ingredient that makes their economic success all the sweeter.

That success is measured not by their profitability, nor by the size of their payroll, but by a new-found spirit of community and commitment shared by those who have pulled together to create a success they all can share. This type of success is not the kind you can spend; that type of success is fleeting and monetary.

The success being created at Weirton is a type that will endure. It is the success of a new-found hope, of a shared sense of responsibility, of a rekindled spirit of shared purpose—in short, it is a success that is felt not so much in the pocketbook as in the heart.

That is the success I know other Senators join me in saluting. That is the success that will be most remembered. That is the success this remarkable community is creating. That is the spirit of Weirton.

STRONG SUPPORT FOR TAX REFORM

Mr. BRADLEY. Mr. President, today a number of groups joined Senator KENNEDY, Congressman CHARLES RANGEL, Congresswoman BARBARA KENNELLY, and me in urging prompt approval of the conference report on the Tax Reform Act of 1986. Excellent statements were made by the Children's Defense Fund, Common Cause, the American Association of Retired Persons, the Center for Budget and Policy Priorities, the League of Women Voters, the Citizens for Tax Justice, and the Coalition on Women and Taxes. I would like to share their comments with my colleagues and ask that their statements be printed in the RECORD.

The statements follow:

SEPTEMBER 19, 1986.

DEAR SENATOR: The undersigned national organizations strongly urge your support for the conference agreement on the Tax Reform Act of 1986.

We actively support the tax agreement as one of the most important pieces of legislation in years for low and moderate income families and elderly individuals. Among the reasons for our support, the bill:

Raises the tax thresholds substantially, thereby removing 6 million low income households and 700,000 elderly individuals from the federal tax rolls, and reduces the tax burdens of at least an additional 5 million lower income households substantially;

Improves the progressivity of the income tax system as a whole; although the average taxpayer in every income class will have their taxes reduced, the percentage reductions are much greater for those with low and moderate incomes than for the wealthy. The result is that the share of the total individual income tax burden goes down for all income classes below $50,000 a year but goes up for all income classes above this level.

The bill restores fairness and balance to the federal tax code which benefits all Americans.

We urge you to vote for the conference agreement.

Sincerely,

Cyril Brickfield, Executive Director, AARP; Marian Wright Edelman, President, Children's Defense Fund; Art Simon, President, Bread for the World; Barry Zigas, President, National Low Income Housing Coalition; Fred Wertheimer, President, Common Cause; Robert Greenstein, Executive Director, Center on Budget and Policy

Priorities; Robert S. McIntyre, Director, Federal Tax Policy, Citizens for Tax Justice; and Nancy N. Neuman, President, League of Women Voters of the United States.

COALITION ON WOMEN AND TAXES ON TAX REFORM

"The tax reform bill adopted by the Conference Committee is a victory for women in all kinds of families," said Nancy Duff Campbell, Chair of the Coalition on Women and Taxes, "and we are urging senators and representatives to vote for final passage of this sweeping measure."

"The bill responds to the needs of the many families that are headed by single parents or contain two earners and also responds to the needs of more traditional one-earner, two-parent families. It's a good mix of recognizing the differences in families and treating them all more fairly," Campbell continued.

Under the final bill, women and their families will gain because:

The bill cuts taxes at all income levels, with the largest percentage tax cuts going to low and moderate income taxpayers, many of whom are women;

The bill raises the tax threshold for most taxpayers above the poverty level through the higher personal exemption, increased standard deductions, and a greatly improved Earned Income Tax Credit for low income workers with children. This is extremely important because women and children are three fourths of our nation's poor;

The bill raises the tax threshold for elderly taxpayers further above the poverty level than under current law, through the additional standard deduction for the elderly and blind. The increased additional standard deduction for single elderly taxpayers is particularly helpful to women, who are over 71% of the elderly poor;

The bill makes the standard deduction for single heads of household significantly higher and closer to that for married couples, reducing the serious inequity between the taxes paid by heads of household (the overwhelming majority of whom are women) and married couples with the same income and family size;

The bill retains the dependent care tax credit targeted to low and moderate income taxpayers and exempts employer-provided dependent care assistance up to $5,000 from taxation. The majority of our nation's families are maintained by single parents or two-earner couples, many of whom must incur these expenses to work;

The bill expands pension protection for women by improvements in vesting, integration, and coverage requirements for tax-favored retirement plans.

The Coalition on Women and Taxes is a diverse group of over thirty-five women's, children's, religious, aging, civil rights and civic organizations which has worked together over the past year and a half to ensure that tax reform is responsive to women's needs concerns. Participating organizations endorsing H.R. 3838 include:

American Association of Retired Persons
American Association of University Women
American Baptist Churches, USA
Americans for Democratic Action
American Ethical Union
American Nurses Association
Association of Junior Leagues, Inc.
BPW/USA
Center for Budget and Policy Priorities
Center for Law and Social Policy
Center for Women Policy Studies
Children's Defense Fund
Children's Foundation
Church Women United
Church of the Brethren
Divorce Taxation Education, Inc.
League of Women Voters of the United States
Mexican American Legal Defense and Education Fund
NOW Legal Defense and Education Fund
National Black Child Development Institute
National Council of Senior Citizens
National Women's Law Center
National Women's Political Caucus
Older Women's League
Parents Without Partners
Pension Rights Center
Public Citizen
The Religious Network for Equality for Women (RNEW)
United Church of Christ, Office for Church in Society
General Board of Church and Society, United States Methodist Church
Villers Advocacy Associates
Washington Lawyers Committee for Civil Rights
Wider Opportunities for Women
Women's Equity Action League
Women's Legal Defense Fund
Women's Technical Assistance Project
YWCA of the USA, National Board

STATEMENT OF GRANT P. THOMPSON, EXECUTIVE DIRECTOR, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Today we stand on the brink of a great victory for the American taxpayer. But failure and defeat are also possible. The League of Women Voters comes before Congress and the nation today to call for passage of comprehensive tax reform.

The choices are easy:

Who needs protection the most: The single parent struggling to make ends meet or the millionaire pleading to protect a real-estate tax shelter?

Whom does Congress represent: The middle-income taxpayer who feels cheated every April 15th or the wealthy taxpayer whose lawyers and CPAs make April 15th just another day for a three-martini lunch?

What does this country need: Economic efficiency and fair taxation of business profits or special loopholes that warp economic and business decisions?

The choice is clear. Our members, located in every congressional district in America have studied the issues, considered the alternatives, and spoken clearly and strongly. Our members—along with millions of concerned citizens and hundreds of organizations, some of whom are represented here today—support the good work of members of Congress to achieve the goals of tax reform.

Tax reform has confounded the experts, fooled the skeptics and bamboozled the special interest lobbyists. It closes loopholes, eases unfair burdens on the poor, treats middle-income taxpayers equitably, and makes businesses and the superrich ante up their share.

On behalf of League members everywhere, I want to thank Senators Bradley and Kennedy and Congressman Rangel for their vision and perseverance. Their efforts, together with the work of many others in the House and Senate, have brought tax reform within reach.

All that remains is for other members of Congress to look up, see what the American people are saying, then vote for final passage of tax reform.

It's time to make tax history: League members everywhere are watching.

STATEMENT OF MARIAN WRIGHT EDELMAN, PRESIDENT, CHILDREN'S DEFENSE FUND, ON TAX REFORM ACT OF 1986

Support for American families and their children is too often long on rhetoric and short on positive action. But the Tax Reform Act of 1986 is different. It is one of the most beneficial pieces of legislation in decades for America's families—especially our most vulnerable working families and their children.

This historic legislation provides important tax relief and assistance to all types of families with children—traditional two parent families and single parent families, large families and small families.

Low-income working families with children—many headed by women—have a critical stake in the passage of the Tax Reform bill. A mother working hard at poverty level wages to support her two children will gain over $1,000 in income in 1988 if this bill is enacted. If it fails, she and many other low-income working parents struggling to maintain their independence and self-sufficiency will continue to pay 10 percent or more of their meager income in federal taxes.

We all want low income families to work. The Tax Bill provides these families with substantially increased income absolutely essential for the support of their children. The important expansion of the Personal Exemption and the Standard Deduction will once again exempt poverty level working families from federal income taxes. The major improvement in the Earned Income Tax Credit will offset a portion of the Social Security tax burden for millions of working poor families with children.

We understand that every community and interest group can find something in the Tax Bill to oppose—the oil and gas interests, real estate interests, federal retirees, private universities, and others. Yet we must not ignore the overriding benefit of the Tax Reform bill for families with children. It is in our national interest to restore the American family to the cornerstone of our federal tax system, and remove the anti-child, anti-family bias that has required our poorest working families to pay a scandalous amount of their income in federal taxes, while allowing many multi-billion dollar corporations to pay nothing—not one dime in federal income taxes.

It is for this reason that the Children's Defense Fund joins with many, many others in applauding the work of the House-Senate Conference Committee, its co-chairs Senator Packwood and Representative Rostenkowski, as well as Senator Bradley, Senator Kennedy, Representative Rangel and Representative Kennelly for their courageous efforts to reform our federal tax system in a fair and responsible manner.

The Tax Reform Act of 1986 is a critical pro-family measure, an essential anti-poverty measure, and a measure that adds a vital element of fairness and justice to our system of government. We urge all Members of Congress concerned about families and children to pledge their strong support for this legislation.

FINAL TAX REFORM BILL BETTER FOR WORKING POOR FAMILIES THAN HOUSE OR SENATE VERSIONS, NEW STUDY FINDS

The tax reform bill going later this month to the House and Senate floors would provide greater relief for low income families with children than would either the original House or Senate versions of the bill, according to a new analysis issued today by the Center on Budget and Policy Priorities.

The bill worked out in a House-Senate conference in August reduces tax burdens for low income families by more than $5 billion a year, cutting federal tax burdens by $1,057 for a married family of four with earnings at the poverty line and by $1,207 for a single-parent family of four at the poverty line, the Center said. For these families, the bill raises after-tax income about 10 percent (all figures are for tax liabilities for 1988, the first year the bill's low income provisions are fully effective).

The bill also raises the income level at which a four-person family starts owing income tax from $9,750 in 1988 under current law (more than $2,000 below the poverty line) to $15,060. By raising the tax thresholds substantially, the bill removes six million low income households from the federal income tax rolls. At least five million additional lower income households would receive significant tax cuts, the Center found.

"Our analysis indicates that this bill is more beneficial for low income working families than any other piece of legislation we have seen—or are likely to see again—for a number of years," said Robert Greenstein, the Center's director. "Those concerned with the economic status of working poor families ought to be leading the charge for the bill."

One of the most striking features of the bill, the Center reported, is the extensive relief it gives poor families from Social Security payroll tax burdens, as well as income tax burdens. In addition to removing income tax liabilities for virtually all families with children who have incomes below the poverty line, the bill also offsets 50 to 100 percent of the payroll tax burden for the vast majority of these families. The bill achieves this by greatly enlarging the earned income tax credit. (Low income families whose earned income credit exceeds their income tax liability receive a refund for the remaining value of their credit; these refunds are designed to help offset rising Social Security tax burdens on low income working families.)

The Center's analysis also addresses the issue of whether the bill is more progressive than the current tax code, funding that the issue is settled by new data from the Congressional Joint Committee on Taxation. The data show that while average taxpayers in every income bracket would receive a tax cut, taxpayers with incomes below $50,000 a year would pay a smaller share of total individual income tax collections than they do now. Taxpayers with incomes above $50,000 would shoulder a larger share of the individual income tax burden.

Examining specific types of low income families, the analysis finds that a married family of four with earnings at the poverty line ($11,937 in 1988) would owe $1,302 in federal income and payroll tax in 1988 under current law, but $245 under the tax reform bill.

For single-parent families—whose tax burdens are now higher than those of married families with the same level of income—the bill provides even greater relief. A single-parent family of four with earnings at the poverty line would owe $1,452 in income and payroll taxes in 1988 under current law, but $245 under the new bill.

A married family of four with earnings of $15,000 would receive an $826 tax reduction, while a single-parent family of four earning $15,000 would receive a $929 tax reduction.

For most of these families, the tax relief is greater under the conference bill than under either the House or Senate bills because the conference bill contains a larger earned income tax credit. For most families with children who have incomes between $5,700 and $16,000, the tax cut is approximately $100 larger under the final bill than under the House bill. Most families with children who fall into the $5,700 to $9,000 income would receive $100 more in relief than under the Senate bill.

While the final bill is more generous to the working poor than the House and Senate bills were, it is much less beneficial to the wealthy. The average tax cut for the very wealthy—those with incomes exceeding $200,000 a year—is less than half as large under the final bill as under the House and Senate bills, the Center's analysis found.

CONFERENCE AGREEMENT ON TAX REFORM OF MAJOR BENEFIT TO WORKING POOR

The tax reform bill reported by the Conference Committee targets well over $5 billion a year in tax relief to low income workers. No other legislation enacted by Congress in the past decade has transferred nearly this much money to low income Americans.

The conference agreement provides greater relief to many low income working families with children than did either the Senate or the House bill (and far more than the Administration proposal). In terms of its impact on low income families with children, the conference agreement is unequivocally better than either the House bill or the Senate bill.

The conference agreement permanently removes most families whose incomes fall below the poverty line from federal income tax rolls. Moreover, the vast majority of families with children who have incomes below the poverty line will have 50 to 100 percent of their Social Security payroll tax burden offset.

Tax reform will provide a family of four earning poverty level wages with a tax cut of more than $1,000, an amount equal to nearly 10 percent of this family's income.

Approximately six million families would no longer owe any federal income tax, and at least five million additional low income families would receive significant tax reductions.

Finally, new data from the Joint Committee on Taxation show that the conference agreement improves the progressiveness of the income tax system as a whole. Although the average taxpayer in every income class will have his or her taxes reduced, the percentage reductions are much greater for those with low and moderate incomes than for the wealthy. The result is that the share of the total individual income tax burden goes down for all income classes below $50,000 a year but goes up for all income classes above that level.

BIG GAINS FOR WORKING POOR

Unless tax reform is enacted into law, a family of four with earnings equal to the poverty line—earning less than $12,000 a year—would pay $1,302 [1] (nearly 11 percent of its income) in federal income and payroll taxes in 1988.[2]

This level is far above the level of the late seventies. For example, this same family would have paid $269 (four percent of its income) in total federal taxes a decade earlier, in 1978, and less than $200 (two percent of income) in 1979.

The conference agreement would provide this family with a tax cut of more than $1,000, reducing its federal tax burden from $1,302 to $245 (2.1 percent of the family's income). This represents a tax cut of more than 80 percent. More than two-thirds of this family's Social Security payroll tax would be offset. (Low income families whose Earned Income Tax Credit (EITC) exceeds their income tax liability receive refunds from the Treasury for the remaining value of the credit. These refunds are designed to offset the Social Security payroll tax.)

For working poor families with slightly higher income levels, the reductions are also significant.

A family of four with an income of $15,000 would have its federal taxes reduced by $826.

Further, the agreement would return the tax threshold—the point at which families begin to owe federal income taxes—to a point above the poverty line.

In recent years the tax threshold has fallen so that by 1988 a family of four whose income was only $9,750 (over $2,180 below the poverty line—a new low) would owe federal income taxes.

By contrast, if passed into law, the conference agreement would raise the threshold by more than $5,300 and would insure that a family of four could earn $15,060 (more than 125 percent of the poverty level) before it began to owe federal income taxes.

This level would rise in future years at the same rate as inflation, and the threshold would remain constant relative to the poverty line. As a result, poor families would never again be thrown onto the tax rolls by inflation.

Because it narrows the gap between the tax treatment of single heads of households and married couples, this bill provides even greater relief for single heads of households.

A single parent with three children and earnings equal to the poverty line would have her combined federal income and payroll taxes reduced by over $1,200 from $1,452 to $245—a cut of 83 percent. This is equal to more than 10 percent of this family's annual income.

This family would pay no federal income tax and would have the equivalent of more than seventy percent of its federal payroll taxes refunded to it.

Similarly, a single parent with one child earning poverty level wages would see her taxes reduced by $758, for a rise in after-tax family income of exactly 10 percent. This family would, in effect, pay no federal income tax and no federal payroll tax.

Even a single parent with three children with earnings of $20,000 a year would receive a tax cut of over $700.

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[1] The numbers in this analysis replace earlier projections and incorporate both the changes agreed to by the conference committee and the latest inflation estimates of Congressional Budget Office.

[2] 1988 is the first year the provisions of the tax reform bill would be fully effective.

FEDERAL INCOME AND PAYROLL TAXES COMBINED IN 1988

Earnings	Current law	Conference agreement	Difference
Married couple with two children:			
$11,937 (poverty level)	$1,302	$245	−$1,057
$15,000	1,938	1,112	−826
$20,000	3,053	2,582	−471
Single parent with three children:			
$11,937 (poverty level)	1,452	245	−1,207
$15,000	2,131	1,202	−929
$20,000	3,377	2,672	−705

TAX BILL EQUIVALENT TO A 10-PERCENT RAISE FOR MANY WORKING POOR FAMILIES

These gains are very significant. Many working poor families will see their after-tax incomes rise by as much as 10 percent, resulting in a subsantial improvement in their economic condition.

GAINS IN AFTER-TAX INCOME FOR POVERTY-LEVEL FAMILIES

Family type	Percent gain
Single parent, one child	+10.0
Married couple, two children	+8.8
Single parent, three children	+10.1

COMPARISON TO HOUSE AND SENATE BILLS

Low income working families with children (in certain income ranges) will receive a $100 larger Earned Income Tax Credit (EITC) under the conference agreement than they would have received under either the House or Senate passed versions of tax reform. (The credit is $100 larger than the House bill for those families with incomes between $5,700 and $16,000 and $100 larger than the Senate bill for those families with incomes between $5,700 and $9,000.) As a result, the large majority of poverty-level families will receive a refund that is $100 greater under the conference bill than they would have under the House bill and a significant number of poor families will receive an additional $100 in tax relief beyond what they would have received from the Senate bill.

Interestingly, while the conference agreement is better than either bill for those with low incomes, and is the same or better for the average middle income family, it provides far less of a tax cut to the wealthy than did either previous bill.

PERCENT CHANGE IN INCOME TAX LIABILITY

[In percent]

Income class (in thousands)	House bill	Senate bill	Conference agreement
$50 to 75	−7.4	−3.9	−1.7
$75 to 100	−5.7	−3.3	−1.0
$100 to 200	−7.3	−3.8	−2.4
$200 an above	−5.9	−4.7	−2.3

HOUSING

The treatment of low income housing in the conference agreement is a major step forward and represents a significant improvement over both the House and Senate bills and over current law.

The new low-income housing credit is deeply targeted, assuring that tax assisted low-income housing goes to those most in need.

The relative position of low income housing to other tax-advantaged investment (and particularly to other real-estate investment) is much improved.

The projects encouraged by the credit will tend to be smaller scale, and have greater involvement of community groups—exactly the type of project most recommended by advocates of low-income housing.

STATEMENT OF COMMON CAUSE PRESIDENT FRED WERTHEIMER IN SUPPORT OF TAX REFORM CONFERENCE REPORT.

Common Cause is pleased to join in offering our strong support for the historic tax reform legislation about to be considered by Congress.

For decades citizens—with good cause—have grown increasingly skeptical about our tax system and the way it treats the average taxpayer. Special tax preferences benefitting particular groups have grown in costs, from $37 billion in 1967 to more than $400 billion today. As these special preferences have dramatically increased, the tax system has grown more and more unfair.

Now Members of Congress are facing a once in a lifetime opportunity to restore fairness and fundamentally improve our tax system.

Any Member of Congress who votes against the pending tax bill will be voting against restricting dozens of loopholes that benefit powerful interest groups at the expense of the average taxpayer.

Any Member of Congress who votes against this tax bill will be voting to deny tax relief to those who most need it, the lowest income earners in our society.

Any Member of Congress who votes against this tax bill will be voting against requiring taxes to be paid by those wealthy individuals and profitable corporations who have avoided paying any share of the Nation's tax burden.

Any Member of Congress who votes against this tax bill will be voting against creating a new tax system that in practice will be more progressive, not less, than the present system.

Obviously the proposd new tax bill is not perfect; there is no nirvana. But no one should misunderstand what is at stake here. The vote on the pending tax reform legislation presents Members of Congress with the clearest opportunity they will ever get to choose between the general interests of all taxpayers and the various special interests of some taxpayers.

There are some who claim that Americans won't really care about this choice. We believe these critics are dead wrong and are missing a fundamental point.

Americans do care about basic fairness in the tax system. They do care about some taxpayers getting special tax breaks that everyone else has to pay for. They do care about taxpayers who can most afford it not paying any taxes at all.

In the end the bottom line choice for Members of Congress is very clear. Members can vote to perpetuate what has become a nationally discredited, loophole-ridden, unfair tax system. Or they can vote for a new start, a new tax system with far fewer loopholes, far greater equity, and far better treatment for the Nation's lowest income earners.

Common Cause urges Members of Congress to reject the status quo and vote for the future by supporting the pending tax reform conference report.

1988 TAXES UNDER CURRENT LAW AND TAX REFORM CONFERENCE FOR SINGLE PARENT FAMILY OF 3 WITH INCOME AT 1988 POVERTY LINE

	Current law	Conference report
Income	$9,393.00	$9,393.00
Personal exemptions (subtract) [1]	3,390.00	5,850.00
Total	6,003.00	3,543.00
Standard deduction (subtract)	2,610.00	4,400.00
Taxable income	3,393.00	[2] −857.00
Income tax liability	383.56	0.00
Earned income tax credit (subtract) [3]	196.48	872.00
Total income tax	187.08	−872.00

[1] (3 X amount for personal exemption).
[2] Or $0.00.
[3] Earned income tax credit (EITC) is determined on formula based on income of eligible family.

COMBINED FEDERAL TAXES FOR SINGLE PARENT FAMILY OF 3 UNDER CURRENT LAW AND TAX CONFERENCE REPORT IN 1988

	Amount/percent
Combined 1988 taxes under current law	$892.49
($705.41 Social Security Tax)	
($187.08 Income Tax)	
Percent of income	9.5
Combined 1988 taxes under tax conference report	−$166.59
($705.41 Social Security Tax)	
(−$872.00 Income Tax)	
Percent of income	−1.8
Tax savings under tax conference report	$1,059.08
($892.49+$166.59)	

1988 TAXES UNDER CURRENT LAW AND TAX REFORM CONFERENCE FOR 2 PARENT FAMILY OF 3 WITH INCOME AT 1988 POVERTY LINE

	Current law	Conference report
Income	$9,393.00	$9,393.00
Personal exemptions (subtract) [1]	3,390.00	5,850.00
Total	6,003.00	3,543.00
Standard deduction (subtract)	3,860.00	5,000.00
Taxable income	2,143.00	[2] −1,457.00
Income tax liability	235.73	0.00
Earned income tax credit (subtract) [3]	196.48	872.00
Total income tax	39.25	−872.00

[1] (3 X amount for personal exemption).
[2] Or $0.00.
[3] Earned income tax credit (EITC) is determined on formula based on income of eligible family.

COMBINED FEDERAL TAXES FOR 2 PARENT FAMILY OF 3 UNDER CURRENT LAW AND TAX CONFERENCE REPORT IN 1988

	Amount/percent
Combined 1988 taxes under current law	$744.66
($705.41 Social Security Tax)	
($39.25 Income Tax)	
Percent of income	7.9
Combined 1988 taxes under tax conference report	−$166.59
($705.41 Social Security Tax)	
(−$872.00 Income Tax)	
Percent of income	−1.8
Tax savings under tax conference report	$911.25
($744.66+$166.59)	

1988 TAXES UNDER CURRENT LAW AND TAX REFORM CONFERENCE FOR 2 PARENT FAMILY OF 4 WITH INCOME AT 1988 POVERTY LINE

	Current law	Conference report
Income	$12,041.00	$12,041.00
Personal exemptions (subtract) [1]	4,520.00	7,800.00
Total	7,521.00	4,241.00
Standard deduction (subtract)	3,860.00	5,000.00
Taxable income	3,661.00	[2] —759.00
Income tax liability	415.72	0.00
Earned income tax credit (subtract) [3]	0.00	648.90
Total income tax	415.72	—648.90

[1] (4 X amount for personal exemption).
[2] Or $0.00.
[3] Earned income tax credit (EITC) is determined on formula based on income of eligible family.

COMBINED FEDERAL TAXES FOR 2 PARENT FAMILY OF 4 UNDER CURRENT LAW AND TAX CONFERENCE REPORT IN 1988

	Amount/percent
Combined 1988 taxes under current law	$1,320.00
($904.28 Social Security Tax) ($415.72 Income Tax)	
Percent of income	11.0
Combined 1988 taxes under tax conference report	$255.38
($904.28 Social Security Tax) (—$648.90 Income Tax)	
Percent of income	2.1
Tax savings under tax conference report	$1,064.62
($1,320.00–$255.38)	

RELATIONSHIP BETWEEN POVERTY LEVEL AND INCOME TAX THRESHOLD FOR A FAMILY OF 4, 1975–88

Year	Poverty level (family of 4)	Income tax threshold	Percentage [1]
1975	5,500	6,692	(21.7)
1976	5,815	6,892	(18.5)
1977	6,191	7,533	(22.0)
1978	6,662	7,533	(13.1)
1979	7,412	8,626	(16.4)
1980	8,414	8,626	(2.5)
1981	9,287	8,634	7.0
1982	9,862	8,727	11.5
1983	10,178	8,783	13.7
1984	10,612	8,783	17.2
1985 (present law)	10,989	9,437	14.1
1988 (present law)	[2] 12,041	[2] 9,763	[2] 18.9
1988 (tax reform)	[2] 12,041	[2] 15,092	[2] (25.0)

[1] Percentage by which tax threshold falls below (exceeds) poverty level.
[2] Estimated.

Source: "Federal Tax Treatment of Individuals Below the Poverty Level," hearings, Joint Committee on Taxation, June 1985.

The PRESIDING OFFICER. In his capacity as the Senator from Oregon, the Chair observes the lack of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1100

Mr. SYMMS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAWKINS). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL-AID HIGHWAY ACT OF 1986

Mr. SYMMS. Madam President, I would like to announce to my colleagues that we are working to prepare a unanimous-consent agreement so that we can move forward with respect to the highway bill. We thought we were about to that point of asking unanimous consent to move forward. I am not asking for that now but I would like to announce to my colleagues what we are proposing to do, and we think we have worked out all of the difficulties except for one, is to, in a few minutes, ask unanimous consent to move forward with the consideration of the highway bill, with the budget waiver, and with an agreement that no amendment altering the method for distribution of the mass transit accounts or transferring mass transit accounts to the highway account shall be in order and no amendment altering the distribution from the highway account shall be in order. Then we would hope to be able to proceed.

We hope to be able to finish the highway bill yet today. It will probably take us several hours but once we get on the bill we will lay out the procedure. There will be three or four controversial amendments. There will be Senators who have projects they will wish to offer. There will be a project amendment.

I believe it is possible to do this highway bill yet today and complete action on it yet today.

I might say that Chairman STAFFORD is here on the floor at this time. We do have one area where we have an objection which has been raised and there are a couple of Senators who are going to meet off the floor to try to work out this one area in disagreement so that we may be able to proceed with the unanimous-consent agreement in a few moments.

I will be happy to yield to the distinguished chairman of the committee if he wishes to add anything.

Mr. STAFFORD. I thank the Senator for yielding.

I believe he has correctly stated our intention. We do have one objection to proceeding that we need to iron out. An effort will be made now to see if we can find some accommodation which will allow us to get unanimous consent to take up the highway bill and proceed as the Senator has stated.

□ 1110

Mr. SYMMS. I yield the floor, Madam President.

PROCEDURAL RESOLUTION OF HIGHWAY BILL DISPUTE

Mr. DIXON. Madam President, I want to take this opportunity to thank the distinguished chairman of the Transportation Subcommittee [Mr. SYMMS], the distinguished full committee chairman [Mr. STAFFORD], my good friend, the Senator from Texas [Mr. BENTSEN], the ranking Democrat on the Environment and Public Works Committee, and the distinguished ranking Democrat on the Transportation Subcommittee [Mr. BURDICK], for their willingness to work with all of us who have been concerned about the 85 percent amendment.

I think the agreement reached by our staffs yesterday is a good one. It is an agreement I am entirely comfortable with. I understand the concerns motivating this amendment, and I deeply appreciate the willingness of the sponsors of this amendment to forgo their opportunity to offer it to the highway bill.

I would also like to tell them that I have been working to try to move a substantial portion of gas tax funding for transit to the formula program, where it would be distributed to every State. I pledge to my colleagues that I will continue to pursue this initiative.

We are rapidly running out of time in this Congress. Putting the 85 percent amendment aside makes it possible to move much more rapidly on reauthorizing the highway and transit programs. Again, I thank my colleagues for their willingness to enter into an agreement that will make it possible to expedite consideration of the highway bill. With this issue out of the way. I will do everything I can to see that the Senate reaches passage of the bill today, if at all possible.

My staff has been engaged in considerable negotiation with the manager of the bill and the chairman of the committee, the ranking member, and others for a number of days. I want to make it perfectly clear that we are entirely in agreement with the unanimous-consent agreement that has been crafted by all the parties, which essentially would provide that the Symms amendment on the 85-percent figure would not be offered as part of this bill, nor would the Heinz-Dixon amendment on the $1.50 cap be offered as part of this bill. So I want to make it clear to my distinguished friend that we are not objecting to moving to this bill at the earliest opportunity. We are entirely satisfied with the unanimous-consent agreement.

Madam President, I have a committee meeting upstairs I should repair to very quickly, but my aide will be here on the floor. We are ready to proceed

whenever the distinguished manager of the bill is ready to proceed.

Mr. SYMMS. Madam President, I thank my distinguished colleague from Illinois and my distinguished colleague on the committee, the Senator from New Jersey [Mr. LAUTENBERG]. I shall take just a moment to express my personal disappointment with being unable to call up a fair share amendment. I have agreed not do to that because I believe that moving the highway legislation forward so that we get the $52 million in the pipeline and keep a sustained highway program is most important. Even though, as I say, I am disappointed I shall not be able to bring up that 85 percent return on the user fees paid into the mass transit account, I think my colleagues and I have come to what I believe is a reasonable compromise. They share my concern.

I believe the amendment would have helped to assure that we could reach an agreement with the House on the reauthorization of programs covered under this surface transportation assistance legislation. Also, the fair share amendment would help to assure that Congress would move this year toward a more equitable distribution of funds from the mass transit account.

However, out of concern that further delay on the highway bill may eliminate any hope of reaching an agreement with the House prior to adjournment, Senators STAFFORD, BENTSEN, BURDICK, and I have agreed not to offer the fair share amendment at this time. I hope that with this agreement we can count on the cooperation of Members on both sides of the aisle to work through amendments and move the bill toward final passage in an expeditious manner.

I say further, Madam President, that I hope my colleagues who now have an objection lodged against this bill and are working off the floor with the distinguished chairman of the committee, Senator STAFFORD of Vermont, will be able to resolve their differences so we can move forward with this bill.

I have said before and I say again that I know of nothing other than our national security and national defense measures that our Government can do to give more opportunity and more personal liberty for the citizens of the United States than having a good road network in this country so people may get in their automobiles and drive at their own convenience on good roads so they may have safe passage to their workplaces or wherever they choose to go, wherever they can afford to go.

I hope we can move forward with this bill because time is running on the clock. At the end of October, we will not have authorization to continue the apportionment to the States of those dollars that are badly needed. Every place you go in the United States, you see projects being worked on, road maintenance and road construction being done, finalization of projects. Those projects are all paid for in advance in the highway trust fund.

The money is in the trust fund. At this point, it has already been taken from the taxpayers and put into the trust and by taking it back, we provide economic activity and commerce in the country; so I think it is most important that we get this done. I appeal to all my colleagues. I hope they can reach a compromise with Senator STAFFORD on amendments that have caused them to put holds on the legislation. I hope we can move forward with this legislation.

Mr. LAUTENBERG. Madam President, I want to offer some comments, which originate as a result of the understanding of the problems that are attached to the mass transit amendment the Senator from Idaho proposed. I commend him for his restraint in not offering his allocation proposal for funds out of the mass transit account. That amendment would have been very damaging and might have endangered the movement of this bill.

I would have had no alternative but to oppose the bill if that amendment had been included. I agree with the distinguished Senator from Idaho: It is essential that this highway bill move forward. He and I agree on this. Restraint on both sides has led us to a situation where passage of this bill is likely. I hope the Senate will consider this bill promptly and pass it without delay.

The Senator from Idaho and others who share his viewpoint have highlighted the need for greater attention to the transit needs of small communities in rural States. In the Environment and Public Works Committee, when the amendment was considered there, I was open to carefully considering the transit needs of such communities, and I pledge that consideration again. While the amendment of the Senator from Idaho would have gone far beyond the transit needs of small communities, such needs are real and they deserve serious attention. I maintain that the transit program is a national program and as such, its impact must be national.

I stand willing to work with my colleague from Idaho and others on the small and rural State transit needs in the future.

Mr. SYMMS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1130

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WEICKER). Without objection, it is so ordered.

Mr. GORTON. Mr. President, first, I should like to congratulate the members of the Committee on Environment and Public Works for all the hard work they have put in on this highway reauthorization bill. I strongly support the product of the work of the distinguished Senators from Vermont, North Dakota, Idaho, and Texas.

There is no question but that we should deal with this issue up front and not as part of a continuing resolution. We do need a reauthorization of our highway bill so that the most important programs within this field can go forward with appropriate planning and with some confidence for the future.

I am not here this morning, however, to speak to that highway bill in general, but to one particular portion of it, section 117, the highway beautification amendments.

More than 20 years ago, in 1965, Congress rallied behind the example of our then First Lady, Ladybird Johnson, in an attempt to clean up the countryside. Congress enacted the Highway Beautification Act of 1965 as a part of the beautification program.

Unfortunately, it has been almost an unmitigated failure. In fact, I have a telegram which I just received from Mrs. Johnson and Laurance Rockefeller imploring Congress, once again, to act to protect the scenic beauty of our Nation's highways. I ask unanimous consent that the telegram be printed in the RECORD.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

DEAR SENATOR GORTON: The Highway Beautification Act which we proposed to Congress some twenty years ago needs to be strengthened to control the spread of billboards. The original intent can be realized by passage of provisions approved by the Senate Environment and Public Works Committee and contained in the Highway Reauthorization Act. We encourage your support of this reform which is needed to restore the scenic beauty of our Nation's roadways.

Sincerely,

MRS. LYNDON B. JOHNSON.
LAURANCE S. ROCKEFELLER.

Mr. GORTON. Mr. President, in spite of the passage of the 1965 act, we now have more billboards than ever before. From coast to coast, including many scenic areas in this country, the highways, which have been paid for by the taxpayers of the United States, are littered with massive billboards which obscure views of farms and forests, lakes and rivers, plains and de-

serts, mountains, and even our coastline.

The majority of these billboards are not used for the purpose of informing the traveling public, but for general advertising, often in the fields of alcohol and tobacco. While a handful of billboards have been removed under the provisions of the law as it exists at the present time, it is the American taxpayer who has footed the bill for this program. To date, more than $200 million has been paid to the billboard industry to take down old billboards; and, almost without exception, as soon as an old billboard is taken down, it is replaced nearby by a giant, new billboard, but the taxpayers of the United States are, nonetheless, out of their money. A 1984 investigation by the General Accounting Office found exactly this to be the case.

Our highways are a national resource. Taxpayers have an immense investment in them. They should also have the right to protect the beauty of the scenery that can be seen from those highways.

Back in the 1950's, President Eisenhower once said:

I am against those billboards that mar our scenery, but I don't know what I can do about it.

I think I can answer the query of the former President. We do know what can be done about it.

One of the first bills which I introduced as a junior member of our State legislature, along with the now other Senator from Washington, DAN EVANS, protected our interstate and scenic highways against billboards; and we now have billboard-free vistas from one end of our State to another.

In this section, we are simply attempting to allow other States to accomplish that goal as and when they wish to do so.

Section 117 of this bill, which was adopted by the committee, under the leadership of the distinguished chairman, the Senator from Vermont, by an overwhelming 11-to-4 vote, would do three things. Most important, it would return control over existing billboards to the States, where that control belongs, by giving the States a choice as to the method of compensation, either cash compensation or amortization, to be used when the States wish billboards to be taken down.

□ 1140

I wish to emphasize, Mr. President, that this does not require any State or any local community to act with respect to billboards in any way at all. If a particular State wishes to allow all of its present billboards to stand, it is permitted to do so. But if a State wishes to exercise control similar to those of Washington or Vermont or Hawaii, or something less sweeping, that State and, by delegation, local communities will have an opportunity which they lack under the present law.

The second goal of this bill is to place a moratorium on the construction of new billboards on our Interstate Highway System or on the primary Federal aid highway system.

Third, Mr. President, we do something in this amendment which we should not have to do, but have learned by grim necessity that we must, and that is to prohibit the cutting of trees and vegetation along public highway rights-of-way when that trimming or cutting is solely for the purpose of making billboards visible. We have found a great deal of self help, if we can call it that rather delicately in that connection, of people who want billboards more visible actually cutting down vegetation along public rights-of-way.

Support for this proposal is widespread. Secretary of Transportation Elizabeth Dole wants the law changed, stating that the present act "is unworkable and in great need of change."

Mr. President, I ask unanimous consent to have printed in the RECORD a letter which I received from Secretary Dole.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, DC, April 11, 1986.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SLADE: Thank you for your letter concerning reforms to the Highway Beautification Act. I agree with you wholeheartedly that the current law is unworkable and in great need of change.

When I testified before the Senate Committee on Environment and Public Works on March 6, I emphasized the importance of reforming the highway beautification program. We must end the federal compensation requirement and allow state amortization laws to control. We must reduce the cost of the program to taxpayers. We must tighten limitations on construction of new billboards in rural areas, where billboards intrude upon natural beauty. Equally important, we must end inappropriate interference with state and local zoning laws and billboard removal programs. We must simplify the program's administration.

The Department supports your efforts to gain enactment of these provisions, as well as other provisions consistent with our approach. Your efforts are even more important in light of changes considered by the House last year which would place additional financial burdens on taxpayers and perpetuate the current unworkable program which adds little to scenic beauty.

I look forward to workng with you and other members of the Senate you understand the high cost and small benefit of continuing the current highway beautification program to gain inclusion of mutually acceptable provisions in the Senate's highway bill.

The Office of Management and Budget advises that there is no objection to the submission of these views to the Congress.

With best wishes.

Sincerely,

ELIZABETH HANFORD DOLE.

Mr. GORTON. Mr. President, State and local governments also want the law changed. Organizations like the National League of Cities have endorsed the bill so that local governments, deriving their authority from their States, will once again be able to exercise their traditional rights to regulate billboards under their zoning authority.

It is a matter of some irony, Mr. President, that most States and local communities have less control over billboards than they do over tangible physical buildings in their own communities by reason of the present Federal law. They should be permitted to make their own decisions.

Mr. President, I should like to enter into the RECORD some of the letters I received from government officials, including the Governor of my own State, endorsing highway beautification, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF WASHINGTON,
OFFICE OF THE GOVERNOR
Olympia, WA, August 18, 1986.

Hon. SLADE GORTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SLADE: This is a reply to your recent letter describing Section 117 of S. 2405.

Under the existing structure of state government here in Washington the responsibility for administering highway billboard programs rests with the Washington Department of Transportation. That department is managed by the Washington State Transportation Commission, rather than the authority of the Governor. It is my understanding that the Department of Transportation does support the proposal outlined in your letter and that the department has discussed this issue with the northwest's other state transportation agencies.

I have referred a copy of your letter to the Secretary of the Washington Department of Transportation so that he may have the opportunity to provide more detailed comments.

Thank you for providing me this information regarding the pending legislation.

Sincerely,

BOOTH GARDNER,
Governor.

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF HIGHWAYS
& Transportation,
Richmond, VA, July 8, 1986.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: Thank you for your letter of June 27, expressing your views concerning Senate Bill 1494.

This Department will continue to strive to conserve the environment as we build roads and bridges in Virginia.

I appreciate your advising me of your position in this matter.

Sincerely,

RAY D. PETHTEL,
Commissioner.

D.C. DEPARTMENT OF PUBLIC WORKS,
Washington, DC., July 25, 1986.

Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR GORTON: This is in reply to your letter concerning reforms to the billboard provisions of the Federal Highway Beautification Act.

We, in the District of Columbia, are fortunate in that our billboard regulations are very stringent and all applications are thoroughly reviewed including in many cases a review by the Commission of Fine Arts. As a result, we have very few billboards within the District of Columbia.

However, even though we are not troubled by billboards, I must agree that they are objectionable when they intrude on national beauty. I agree that control before the fact is much better and cheaper than corrections afterwards. I also agree that S. 1494 would go a long way toward improving the safety and scenic beauty of federal highways.

Thank you for the opportunity to comment on S. 1494.

Sincerely yours,

JOHN E. TOUCHSTONE,
Director of Public Works.

COMMONWEALTH OF VIRGINIA,
Richmond, VA, August 27, 1986.

Hon. LLOYD BENTSEN,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. SLADE GORTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.
Hon. ROBERT T. STAFFORD,
U.S. Senate, Hart Senate Office Building, Washintgon, DC.
Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS BENTSEN, STAFFORD, MOYNIHAN and GORTON: Thank you for your recent letter concerning Section 117 of Senate Bill 2405, the Federal-Aid Highway Act of 1986.

The Virginia General Assembly has in the past enacted and amended state outdoor advertising laws to comply with federal mandates, including the 1978 amendment which clarified the intent of the Federal act to preclude localities from removing billboards along interstate and federal-aid primary highways through amortization.

The Commonwealth historically has proven its sensitivity to balancing the information needs of the traveling public with the preservation of natural scenic beauty along highways.

The Commissioner of the Department of Highways and Transportation, Mr. Ray D. Pethtel, is presently reviewing the several Congressional highway bills. I am taking the liberty of forwarding your letter to him for his information.

With kindest regards, I am

Sincerely,

GERALD L. BALILES,
Governor.

EXECUTIVE DEPARTMENT,
Annapolis, MD, August 20, 1986.

Hon. CHARLES MCC. MATHIAS, Jr.,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR MATHIAS: I am writing to communicate to you my support for the Highway Beautification amendments included in Section 117 of S. 2405, the Federal Aid Highway Act of 1986.

The Maryland Department of Transportation has reviewed the proposed section and has determined that it is one to which Maryland can offer full support.

The State Highway Administration has actively pursued the removal of nonconforming billboards and welcomes the flexibility provided the amortization authority in this legislation.

Maryland has expended its share of federal funding for cash compensation removal of nonconforming signs and has adopted the use of State approved logo signs. The proposed Section 117 of S. 2405 will enable us to resume the removal of nonconforming billboards and continue to carry out other highway beautification efforts.

Again, Maryland fully endorses Section 117 of S. 2405 as a means of providing information to the travelling public as well as providing and maintaining the natural scenic beauty along the nation's highways. I urge your support for this provision when S. 2405 is considered on the Senate floor.

Thank you for your assistance in our many and varied requests to your office. Should you have any questions regarding this legislation, please contact Transportation Secretary William K. Hellmann at (301) 859-7397.

Sincerely,

HARRY HUGHES,
Governor.

NEW YORK, NY,
September 18, 1986.

Senator SLADE GORTON,
U.S. Senate,
Capitol One, DC.

DEAR SENATOR GORTON: The Highway Beautification Act which we proposed to Congress some twenty years ago needs to be strengthened to control the spread of billboards. The original intent can be realized by passage of provisions approved by the Senate Environment and Public Works Committee and contained in the Highway Reauthorization Act. We encourage your support of this reform which is needed to restore the scenic beauty of our Nation's roadways.

Sincerely,

MRS. LYNDON B. JOHNSON,
LAURANCE S. ROCKEFELLER.

DEPARTMENT OF TRANSPORTATION,
Salem, OR, August 15, 1986.

Addressed individually to members of the Oregon congressional delegation:

The State of Oregon has been a leader in highway beautification. We are strongly affirming this in our support of the improvements to the Highway Beautification Act contained in Section 117 of S. 2405, the Federal Highway Act of 1986. We request you retain the language as it is now written and oppose any amendments to this Section.

We are positive that this bill, as amended, gives to the State an opportunity to solve its problems in a variety of ways. Oregon has invested a considerable amount in the protection of the beauty of its highways and we continue to support efforts to make a continuing improvement in the area of highway beautification. This bill provides to the State the necessary options to proceed to do whatever is in its interest.

Please support Section 117 of S. 2405 and oppose any destructive amendments.

FRED D. MILLER,
Director.

MINNESOTA DEPARTMENT OF TRANSPORTATION,
St. Paul, MN, August 14, 1986.

Hon. SLADE GORTON,
U.S. Senator, Senate Hart Office Building, Washington, DC.

DEAR SENATOR GORTON: Thank you for your letter of July 29 outlining the improvements to the Highway Beautification Act which you strongly support.

The Minnesota Department of Transportation (Mn/DOT) is in complete agreement with the improvements to the Highway Beautification Act which you describe, and we have so informed Minnesota's Congressional Delegation.

Thank you again for your letter of July 29 and for your outstanding efforts to provide states with needed flexibility in implementing the Highway Beautification Act.

Sincerely,

RICHARD P. BRAUN,
Commissioner.

EXECUTIVE CHAMBERS,
Honolulu, HI, August 21, 1986.

Hon. LLOYD BENTSEN,
Hon. ROBERT T. STAFFORD,
Hon. DANIEL PATRICK MOYNIHAN,
Hon. SLADE GORTON,
U.S. Senate,
Washington, DC.

DEAR SENATORS BENTSEN, STAFFORD, MOYNIHAN, and GORTON: Thank you for your letter of July 29, 1986, concerning the proposal to amend the Highway Beautification Act. The summary of major changes proposed in Section 117 of S. 2405 of the Federal Highway Act of 1986 to improve the Highway Beautification Act is greatly appreciated.

The State of Hawaii has been successful in effectively controlling outdoor advertising throughout the State for many years. We, therefore, welcome and support strong federal legislation which would further strengthen our position to regulate billboards.

Thank you for informing me of the proposed amendments.

With warm personal regards, I remain,

Yours very truly,

GEORGE R. ARIYOSHI,
Governor.

Mr. GORTON. Mr. President, environmental organizations want this law changed in the way in which section 117 proposes to change it. The Wilderness Society, the National Wildlife Federation, the National Resources Defense Council, the Environmental Defense Fund, the Sierra Club, the National Audubon Society, the Environmental Policy Institute, the Izaak Walton League of America, the National Parks and Conservation Association, the Friends of the Earth, the Coalition for Scenic Beauty, the Garden Clubs of America, the American Farmland Trust, the Environmental Policy Institute, the American Institute for Architects, and the American Plan-

ning Association have all endorsed the provisions of section 117.

I ask unanimous consent to have printed in the RECORD various letters which I have received from these environmental organizations.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SEPTEMBER 10, 1986.

Re New Federal Billboard Control Legislation.

DEAR SENATOR: As the chief executive officers of the major national conservation organizations in the U.S., we are writing to urge you to support reform of the Federal Highway Beautification Act, as contained in Section 117 of S. 2405, the Federal Aid Highway Act of 1986.

The highway beautification measures included in S. 2405 provide a reasonable and workable solution to the problem of pollution along our highways. The measure would halt the spread of billboard blight, end the billboard industry's $1 billion lien on the federal treasury, and return to state and local governments their constitutional right to regulate billboards under their own land use laws.

The current Highway Beautification Act is a costly failure. Unlike most environmental regulations that require polluters to pay for the clean-up of their own pollution, the 1965 Act requires taxpayers to pay the bill. The current law is so riddled with loopholes that despite spending over $200 million, billboard blight is now worse than ever.

Both the General Accounting Office and the Department of Transportation's Inspector General tell us that new billboards are going up five times as fast as old ones come down. Moreover, the law prevents states and localities from removing billboards using their own laws, and it allows billboard companies to destroy trees on public land.

Any law which allows thousands of new billboards to go up while forcing taxpayers to pay for removal of others offends plain common sense. The Act needs reform and The Highway Bill is the best vehicle for doing this.

The Senate legislation would:

Prohibit the construction of any new billboards along federal highways.

Ban tree-cutting done solely to make billboards more visible.

Return to state and local governments the power to regulate billboards using their own zoning authority.

Now is the time to reform the Highway Beautification Act. America doesn't need any more billboards. We urge you to join your colleagues on the Senate Environment and Public Works Committee in supporting section 117 of S. 2405.

Sincerely,

By the officers of the major national conservation organizations.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, September 9, 1986.

Hon. SLADE GORTON,
Senate Office Building,
Washington, DC.

DEAR SENATOR GORTON: You soon will be considering S. 2405, the Highway Bill. The National Wildlife Federation urges you to support provisions in this legislation which are designed to control the spreading blight of billboards along our Federal highways. We also urge you to oppose a proposed amendment to exempt the H-3 Hawaiian interstate highway from environmental and natural heritage requirements of the Department of Transportation Act.

Specifically, S. 2405 would: (a) ban all new billboards along federal interstate and primary highways, (b) prohibit the removal of trees and vegetation on the public right-of-way done only to make a sign more visible, (c) end mandatory payments to the billboard industry, and (d) restore local and state governments right to regulate existing billboards.

A Department of Transportation study in 1984 showed that liberally-interpreted billboard regulations have enabled more signs than ever to be erected. The economic burden of the required cash payments to the billboard industry caused only a small number of billboards to be removed. In 1983, for example, 13,522 signs were erected and only 2,235 were dismantled. The removal of nonconforming billboards has decreased 78 percent since 1979 because of enormous costs to the Federal government. Under the Gramm-Rudman-Hollings budget requirements, even less Federal money will be available.

The recently-adopted House version of the Highway bill does not improve the problem of billboard blight. We urge the Senate to follow the lead of the Environment and Public Works Committee by supporting the billboard reform provisions of section 117 when S. 2405 reaches the Senate floor. Only with your support can we make progress towards more scenic and safer highways.

The second issue of concern is an amendment to be offered by Senator Inouye to exempt H-3, a planned interstate highway in Hawaii, from the 4(f) environmental protection provisions of the Highway Act. A court injunction has stalled this billion-dollar highway on the grounds that it will impact an adjacent wilderness park. Since the Court of Appeals decision, important archeological sites also have been discovered in the path of the highway. Never before have the 4(f) statutes been overruled in the legislative process. Adopting an exemption for H-3 would establish a damaging precedent whereby Congress would be asked to set aside court decisions whenever highway planners are asked to examine prudent and feasible alternatives to destructive highway projects.

The H-3 highway, designed in the 1960's, does not meet the current transportation needs of the island of Oahu or the city of Honolulu. The Governor of Hawaii has the opportunity to transfer the allotted funds to finance a package of alternatives which would better address Honolulu's traffic problems and protect Hawaii's environmental and cultural heritage. We support the alternative use of these funds.

Please support the Environment Committee's billboard reforms as contained in S. 2405 and oppose Senator Inouye's amendment to exempt H-3 from environmental protection. S. 2405 is a good bill which should be left intact.

Sincerely,

JAY D. HAIR.

COALITION FOR SCENIC BEAUTY,
Washington, DC, September 19, 1986.

DEAR SENATOR: We commend your attention to the attached Washington Post article on the capture of the 1965 Highway Beautification Act by the billboard industry.

We also urge you to read the attached fact sheet on the relationship between billboards and tourism.

In a nutshell, state tourism officials say that "billboard blight is bad for business." Just think about it; the more every place in America comes to look like every other place the less reason there is to visit. On the other hand, the more a community does to enhance its unique set of scenic assets the more tourists it will attract. This is confirmed by a survey released last month by the President's Commission on Americans Outdoors. It reports that natural beauty is the most important criterion when tourists select a place to visit.

Finally, please be aware that in your mail today there is a mailgram from former First Lady Mrs. Lyndon B. Johnson and conservationist Laurance S. Rockefeller urging reform of the 1965 Highway Beautification Act.

Mrs. Johnson and Mr. Rockefeller first proposed the Highway Beautification Act over 20 years ago when they chaired the White House Conference on Natural Beauty.

A vote for the Committee reforms is a vote for states' rights, deficit reduction, and environmental quality. We urge your support for this modest but badly needed legislation.

Sincerely,

EDWARD MCMAHON,
Executive Director.

NATIONAL AUDUBON SOCIETY,
Washington, DC, September 16, 1986.

Re Federal Billboard Control.

DEAR SENATOR: On behalf of the 550,000 members of the National Audubon Society, I am writing to urge your support for the billboard control provisions contained in Section 117 of S. 2405, the 1986 Highway Bill.

The 1965 Highway Beauification Act has become a billboard proliferation act. Over the past 20 years more than $200 million has been paid to the billboard industry to take down old billboards which were then replaced with five times more new billboards.

The National Audubon Society urges you to end this wasteful subsidy to the billboard industry. We also urge you to support a ban on *new* billboard construction along federal roads.

Our federal highways are already lined with over 500,000 billboards. We don't need any more. A billboard moratorium will cost taxpayers no money, and will not affect any existing property rights, but it will halt the relentless spread of billboard blight along our roads.

The current law, by allowing thousands of new billboards to go up while forcing taxpayers to pay for the removal of others, offends plain common sense.

The time has come to reform the 1965 Highway Beautification Act. We urge your support for Section 117 of S. 2405 and your opposition to any weakening amendments.

Sincerely,

WILLIAM BUTLER,
Vice President for
Government Relations and Counsel.

THE GARDEN CLUB OF AMERICA,
New York, NY, September 17, 1986.

Re Billboard Control.

DEAR SENATOR: On behalf of the 15,000 members of the Garden Club of America, I am writing to urge your support for the billboard control provisions in Section 117 of S. 2405, the 1986 Highway Bill.

The Garden Club of America has long supported efforts to clean-up blight along

our highways. The 1965 Highway Beautification Act was intended to eliminate roadside pollution. However, the billboards that were supposed to disappear have instead proliferated.

Over the past 20 years taxpayers have paid the billboard industry over $200 million to stop polluting our highways. Despite this the U.S. General Accounting Office tells us that the "safety and scenic quality of our highways has declined".

The Senate Environmental and Public Works Committee proposes to restore the Highway Beaufification Act to its original purpose—protecting our landscape not the billboard industry.

The Garden Club of America urges your support for the modest reforms contained in the Committee proposal. Please help us save our scenery and stop the waste of taxpayers money by supporting the Committee reforms and opposing any weakening amendments.

Sincerely,

Mrs. Michael McIntosh,
Chairman, National Affairs and Legislation Committee.

American Farmland Trust,
Washington, DC, September 17, 1986.

Re Billboard Controls.

Dear Senator: On behalf of the staff and the more than 35,000 members of the American Farmland Trust (AFT), I am writing in support of the billboard control provisions in Section 117 of Senate Bill 2405.

AFT is a private non-profit organization dedicated to the conservation of America's agricultural land, soil and water resources. In order to enjoy the rural heritage and countrysides which we are working to preserve, our members utilize many facets of the federal-aid highway system. Indeed, many Americans cite driving for pleasure as their most frequent recreational activity. This enjoyment of our scenic rural vistas is seriously undercut by the proliferation of urban billboard blight. Continuing to subsidize such pollution with taxpayers' dollars is like rubbing salt into a wound.

There is an apt analogy to be drawn from the conservation title of the 1985 Farm Bill. The conservation reserve, sodbuster, and swampbuster provisions contained therein removed farm program support from individuals who insist on farming environmentally sensitive lands and thereby degrading our land and water resources.

We urge you and your colleagues to hold fast to the highway beautification provisions of S. 2405 in conference with members of the House. It was the Senate's tenacity which secured such strong conservation measures in the Farm Bill last year. We hope you will do the same on this important issue.

Sincerely,

James D. Riggle,
Director of State Projects and Field Operations.

Environmental Policy Institute,
Washington, DC, September 16, 1986.

Support for Billboard Reform, S. 2405, Highway Authorization Bill

Dear Senator: When the full Senate considers S. 2405, the 1986 Highway Authorization Act, we urge your support for the reforms contained in Section 117 that will improve the federal Highway Beautification Act passed in 1965.

Section 117 of this legislation will provide the following changes to an act that according to the Secretary of Transportation "is workable and in great need of change.":

Allow state and local governments to use their own zoning laws to remove billboards;

Ban tree cutting on public land (which is done solely to make billboards more visible);

Ban all new billboards along federal highways;

End federal payments to the billboard industry.

This is an industry that has done untold damage to the nation's environment while at the same time raiding the Federal treasury of hundreds of millions of dollars to further devastate the nation's landscape with new and larger billboards.

We feel that the reforms which were adopted by the Senate Environment and Public Works Committee by a vote of 11-4 represent the most balanced approach in the interests of the U.S. taxpayers and the environment. We urge you to vote with the Committee and reject any attempts to weaken or delete these necessary reforms.

Sincerely,

Michael Clark,
President.

The American Institute of Architects,
Washington, DC, September 9, 1986.

Hon. Slade Gorton,
U.S. Senate,
Washington, DC.

Dear Senator Gorton: As President of the American Institute of Architects, I am writing to request your support for the highway beautification provisions of S. 2405, the highway-aid reauthorization bill, as reported from the Senate Environment and Public Works Committee. The Committee position, expressed in an 11-4 vote, represents a seriously needed, and long overdue reform of the Highway Beautification Act of 1965. An attempt may be made to delete or water down these provisions, and we urge you to support the Committee bill.

The current act has failed to clean up billboard blight along federal highways. In fact, the act encourages billboards. Today, more signs are going up than coming down despite an expenditure of $200 million for sign removal. The money was paid to billboard owners who could use it for new sign construction. The cash compensation requirement for removal of the 112,000 nonconforming signs still standing maintains a billion-dollar, federal-state obligation to the billboard industry, while frustrating state and local authority to regulate land use. In addition, the law provides no control of billboard companies' routine destruction of public landscaping along public rights of way for more sign visibility.

The Committee bill would accomplish the following:

1. It would ban the new construction of off-premise billboards along federal highways, while leaving existing legal signs in place;

2. It would require the removal within 90 days of signs found to be illegal signs, and those purchased but still standing;

3. It would end the billion-dollar federal-state obligation for cash compensation of billboard owners for sign removal. By doing this, it would terminate the federal preemption of state and local land use regulations, and return to states and localities the decision about whether or not to remove nonconforming signs and the means to compensate owners if signs are to be removed. The cash compensation requirement is a special deal for billboards that other non-conforming land uses do not enjoy.

4. It would make illegal the industry practice of tree-cutting for billboard visibility along public rights of way;

5. It would require a state sign inventory and;

6. It would require establishment of sign guidelines for federal lands.

The provisions are right and reasonable. While not as strong as the provisions of S. 1494, introduced by Senator Slade Gorton, they will make a major improvement in the federal government's approach to effective billboard control.

Thank you for your attention to this matter.

Sincerely,

John Busby, Jr.,
FAIA, President.

American Planning Association,
Washington, DC, September 9, 1986.

Re Highway Beautification Provisions in S. 2405, the Federal-Aid Highway Act of 1986.

Hon. Slade Gorton,
Hart Senate Office Building,
Washington, DC.

Dear Senator Gorton: On behalf of the 21,000 members of the American Planning Association—who are planning practitioners and elected and appointed officials at all levels of government as well as concerned citizens, academicians and students—we urge you to support the billboard reform provisions in Section 117 without weakening amendments when the Senate acts on S. 2405, the Federal-Aid Highway Act of 1986.

Unlike other groups supporting billboard reform, our members, urban and regional planners, are on the firing line in the development and implementation of local zoning and sign codes. We are, therefore, most supportive of the provision in Section 117 which returns control over existing billboards to state and local governments. This provision allows state and local governments to remove billboards using their constitutional land use controls.

Another provision of Section 117 allows states and local governments to use amortization to compensate signowners as well as the option of letting the billboards remain. In order to give teeth to state and local land use controls, Section 117 eliminates the requirement for states to pay cash for billboard removal. It should be noted that many state courts have approved the removal of billboards under local land use laws without the need for cash payments.

Planners strongly feel that preserving the integrity of state and local land use decisions is of the utmost importance. Community goals embodied in countless land use decisions—made by elected officials—should not be subverted to benefit a special interest.

Another major point, in light of the national deficit and budget crunches felt at all levels of government, paying billboard owners to remove billboards while the funding for other critical domestic programs has been reduced, is unconscionable. It is senseless for American taxpayers to continue to pay for the removal of billboards, which, according to the General Accounting Office and the Inspector General of the U.S. Department of Transportation, amounts to approximately $1 billion. Under Section 117, states have the option of using Federal funds to remove billboards, but are not required to do so.

In addition, we seek your support for the moratorium on the construction of new billboards along Federal highways.

In light of the favorable billboard reform provisions contained in S 2405, which were approved by the Senate Committee on Environment and Public Works by an 11-4 vote, the Senate has an unprecedented opportunity to instill meaningful reform in legislation which is riddled with loopholes favoring the billboard industry. The vote before the Senate is even more critical since the House recently approved additional loopholes in the statute which is misnamed the "Highway Beautification Act." The Senate needs to send a strong message to the House in light of the House/Senate conference committee deliberations.

In conclusion, we urge you to vote for Section 117 without weakening amendments when S 2405 is debated on the Senate Floor.

If you have questions on our position, please do not hesitate to contact George T. Marcou, AICP, Deputy Executive Director, or Nancy Schamberg Willis, AICP, Director of Government Affairs, at 202/872-0611.

Thank you for the consideration of our position.

Respectfully submitted,

NORMAN KRUMHOLZ,
AICP President.

Mr. GORTON. Mr. President, overburdened taxpayers wish the law changed. Groups like the National Taxpayers Union have endorsed the bill to eliminate the billion dollar theoretical liability, at least, with which the present law has saddled the taxpayers.

I ask unanimous consent at this point to have printed in the RECORD a list of all organizations which have endorsed the legislation.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ORGANIZATIONS ENDORSING BILLBOARD REFORM

American Farmland Trust.
American Institute of Architects.
American Planning Association.
American Lung Association.
American Society of Landscape Architects.
Appalachian Mountain Club.
Center for Science in the Public Interest.
Coalition for Scenic Beauty.
Environmental Action.
Environmental Defense Fund.
Environmental Policy Institute.
Friends of the Earth.
Garden Clubs of America.
Izaak Walton League of America.
National Aububon Society.
National League of Cities.
National Parks and Conservation Association.
National Railroad Passengers Association.
National Recreation and Park Association.
National Taxpayers Union.
National Trust for Historic Preservation.
National Wildlife Federation.
Natural Resources Defense Council.
Preservation Action.
Sierra Club.
The Wilderness Society.

Mr. GORTON. Mr. President, at the time at which this original bill was passed, and at the time at which Congress offered the States aid and assistance in the form of money to compensate for the removal of billboards, we were not facing the overwhelming problems of huge Federal budget deficits which we face today.

It has been several years since any money has been appropriated for this purpose. It will certainly be many years in the future before it is appropriate for us to defer Federal money, which can be much more effectively used for higher priorities than the billboard removal, when billboard removal laws should be the provinces of the States themselves.

For that reason, for highway beautification reasons, for the principles of federalism and for the sacred principle of State and local control over what is largely and ought to be a State and local issue, I heartedly endorse the provisions of section 117 of this comprehensive highway bill.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1150

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I am here to indicate that we would like to get some action on something if we intend to leave here on October 3. We have been here since 9:30 this morning and have not done a thing yet.

I understand there will be an objection to the highway bill, so maybe the best way to do that is just bring that up and have somebody object and that would take care of the highway bill for the year. I hope that would not be the case, because it is very important. But I think we have to find out where the objections are. And if they feel that strongly about the provisions, then they certainly will object. I do not have any quarrel with that, but I think we need to find out one way or another, because we have a must list of legislation.

This is an item of particular importance. I know there are some controversial portions of it. So we might want to, before we recess, try to call that bill up and, if there is objection, we will forget about it.

We also would like to proceed to product liability at 2 o'clock. There may be a motion to table the motion to proceed. So at least we may be able to, depending on that vote, determine how much more time we wish to spend on product liability.

CFTC is a very important piece of legislation. I understand there may be an agreement in the works on that legislation, the Commodity Futures Trading Commission. It is in the clearance process. Hopefully we could dispose of that within a couple of hours.

FIFRA, the Federal—I will just stick with FIFRA, fungicide and insecticide and, what else, rodenticide; bugs, rats and other things. We are in the process of working that out, I guess. Hopefully, we can pass the FIFRA bill.

I know the Presiding Officer has a bill we could take up, hopefully, today on disabilities and handicapped employment.

So, if the managers would like me to make the request to bring the bill up and have it objected to, I will be happy to do that.

Mr. FORD. Will the majority leader yield?

Mr. DOLE. Yes.

Mr. FORD. I am one of the objectors. I say, very frankly and openly, that what I am trying to do is protect the small billboard people in my State who have asked me to give them some help. We have tried, in the last few minutes, to work out something. We have not hit the right chord yet. But there are several Senators that feel the same way I do.

I am not trying to be an obstructionist as it relates to the bill. I am trying to get in the posture of maybe working something out. If I cannot, I do not want to object to the whole highway bill, but we have loaded it up and that makes it controversial. I do not want to object to the contracting part of the highway bill. I would prefer we have a clean bill and go on with it so we would not have any controversy.

So, if the distinguished majority leader would give me at least until the 2 o'clock hour to see if I could work out something as it relates to an agreement of some kind—I doubt seriously we can, but hope springs eternal.

I do not want to object. I am just trying to take care of the small business people in my State. I am for stricter enforcement and lots of things, but I just do not believe we ought to put them out of business. And if you cannot grow, you wither. I would be hopeful that we could hold off until the 2 o'clock hour.

Mr. DOLE. I think I may have a similar view as the Senator from Kentucky. So I understand the problem, particularly as it relates to small towns. You could never find them without a billboard around.

In any event, I have no quarrel with that. I think the managers are willing to try to continue working.

Mr. BENTSEN. Mr. President, I, frankly, feel very strongly about the highway legislation and the Highway Beautification Act. I do not look on it as something extraneous or superfluous.

I think that we have to see if we cannot get control of the billboard situation. Now there are many honorable and conscienous billboard owners and

it is not our intent to hurt them at all. But there has been a great proliferation of signs since passage of the Highway Beautification Act. All you have to do is drive to the airport in Houston, TX, and see the most incredible clutter of billboards imaginable. I am one of those that, for a long time, has supported outright cash compensation. But, we have preempted the States' rights by taking away their constitutional right to use amortization. In this piece of legislation, we give them the right to either amortize the cost of removing billboards, if the State so desires, or to pay cash compensation.

I think we have an excellent piece of legislation. Frankly, I have a serious question that we are going to be able to work out a compromise, but I am quite willing to try. The reauthorization of our highway program is essential if we are to provide and maintain adequate transportation for our Nation. With very little time left in this session, we must move forward, and I would hope that this issue will not delay or, worse, kill the bill.

Mr. GORTON. Will the majority leader yield?

Mr. DOLE. Let me yield first to the distinguished chairman of the committee.

Mr. STAFFORD. Like my colleague, Senator BENTSEN, I would be willing to see if something can be worked out between now and 2 o'clock. I am a bit dubious that it can be.

I think the overriding importance of getting this highway bill up and enacted is critical to the highway needs of the 50 States and the Nation. But we will make the effort between now and 2 o'clock to see if we can find some accommodation.

Mr. DOLE. I yield to the Senator from Washington.

Mr. GORTON. Mr. President, I simply would echo the points made by the distinguished Senators from Texas and Vermont. This provision is not something which is incidental or that was crafted in an irrelevant manner. It relates directly to our highway program. It is a provision which had almost a three to one majority within the committee.

The real issue here, which the objectors have brought up, is whether or not we are going to be allowed to discuss either the highway bill as a whole, or highway beautification. Those of us who are proponents of highway beautification have not asked its opponents to gag themselves. As soon as this bill comes up, they can put up an amendment which would strike the entire provision. The Senate can debate it for a relatively short period of time and simply vote and make that decision.

The Senator from Kentucky let slip his views when he said that if the businesses he purports to represent cannot grow, they wither. Translated into English, that means he does not want billboard controls. He wants people to be able to put up more and more and more of them at all times.

That is a perfectly worthy point of view. I think we ought to be allowed to vote on whether or not that is the case.

This proposal, which is a part of this bill which the Senators from Texas and Vermont have drafted, does not require Kentucky or any other State to take billboards down. It simply says they can do what they wish and we will have a moratorium while we make that decision on new billboards. That is a reasonable position. I can also understand the opposition to it. But if there is opposition to it, let them come out on the floor and let them put in an amendment to strike section 117 and let us vote on it.

Mr. DOLE. Mr. President, if we cannot get an agreement on that one provision, at least maybe we could start on the bill.

Mr. FORD. I say to my friend, the majority leader, once you start on the bill, that provision is part of it.

Mr. DOLE. But you could prevent it. We are in a posture now where if anybody says that this is a bill that is not going to pass for 2 days means it probably is not going anywhere. We are looking at October 3. That means we have 9 days left.

Mr. FORD. I do not want to do that, I say to the majority leader.

I admire my distinguished friend from Washington who talks about sweetness and light here, but there is something underlying, and that is the ability for the small businessman to fight for his life. We here in this Congress continue to put our hand on top of the small businessman and now allow him to continue. He is not a giant. He is a David. He needs to have the opportunity.

But what we are saying is, he is going to put up more billboards. Well, if he is doing it and he is doing it right and we have stronger enforcement, why not?

So I am willing to wait until 2 o'clock. Maybe in that period of time we can find some language that might be acceptable to those who are adamantly opposed to my position. I am not adamant. I just want to stay with it a little longer.

Mr. SYMMS. Will the majority leader yield?

Mr. DOLE. Let me first ask unanimous consent that we may proceed beyond 12 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I yield to the Senator from Idaho.

Mr. SYMMS. I thank the distinguished majority leader. I would just like to say I hope we can work this out during the coming 2 hours.

□ 1200

As manager of this bill, I happen to have voted the same position that the Senator from Kentucky is taking. I might report to him, we had a very lengthy debate on that in the committee. Senator BURDICK and I both have discussed it and tried to put forward the position of the Senator from Kentucky. But we did not win. I know my State highway department is opposed to the billboard language that is in the bill, but they do not want to be slowing down the overall bill because of that. That happens to be my position.

If we can work out some compromise with the Senator from Kentucky, I hope the parties on both sides can do that. If not, I hope the Senator from Kentucky will be able to protect his points in some way.

I might say we do have to negotiate in the conference with the other body. Their position is very firm on this. Probably knowing how things work in Washington we will have some compromise between the House and the Senate on this issue.

I think the Senator's position is being well noted and those people will have an opportunity for some protection.

Mr. FORD. I might say to the distinguished majority leader that of the seven Senators on the floor it appears it is 4 to 3 in my favor.

Mr. DOLE. In any event, I certainly believe the highway bill is important. I know the members of the committee have spent a lot of time on this measure and we are not going to try to scuttle all that effort.

It will probably be that there will be a motion to table the motion to proceed on product liability at 2 o'clock and there will probably be a vote on that at 2:30. So we will have until about 2:45 to see if there is accommodation. If we cannot have one, I share the view with the chairman, that we should not sink the whole bill because of one provision. I understand the distinguished Senator from Kentucky has a legitimate concern. I do not quarrel with his efforts to try to prevail. But if we cannot get an agreement, maybe we ought to take up the bill because we really do want to complete action on it today if we can.

We hope to start on the drug bill on Thursday in the Senate. That could take all weekend.

I am still an optimist. Maybe everybody else has given up on getting out on the 3d. It seems to me it is within striking distance because we do not have that many must pieces of legislation. But this is an important piece of legislation. I hear it here and I hear it other places around Washington when I run into the Secretary of Transportation. So we will not give up on this yet.

RECESS UNTIL 2 P.M.

Mr. DOLE. Mr. President, I move that the Senate stand in recess until 2 p.m.

The motion was agreed to and the Senate, at 12:02 p.m., recessed until 2 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. WALLOP].

□ 1400

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

PRODUCT LIABILITY REFORM ACT

Mr. KASTEN. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the motion to proceed to the consideration of the Product Liability Reform Act.

Mr. KASTEN. I thank the Chair.

Mr. President, I strongly support the motion to proceed to S. 2760, the Product Liability Reform Act. Clearly, product liability reform is absolutely essential to provide justice and fairness to everyone in America who uses, sells, or manfacturers products.

While I believe an overwhelming majority of my colleagues support Federal product liability reform, some of them were opposed to proceeding on S. 2760 because of the arbitrary caps on a plaintiffs recovery which are currently in the bill.

However, Senators INOUYE, GORTON, KASSEBAUM, STEVENS, RIEGLE, and I have reached a bipartisan compromise agreement on a substitute to S. 2760 which would completely remove all caps on recovery.

Mr. President, I want to point out that we now have reestablished a bipartisan leadership group, a bipartisan core group of Senators. We are seeking to reestablish the strength that we had in the committee on a 16- to- 1 vote. I believe we can be successful. Today's vote is our effort to proceed to the consideration of S. 2760, and I simply want people to understand that what we are trying to do is to go back to the agreement which had been reached by a vote of 16 to 1.

The caps in S. 2760 are contained in the expedited settlement provisions of the bill, and our substitute would replace those settlement provisions with the settlement provisions which originally were adopted by the Commerce Committee by a vote of 16 to 1.

Our compromise not only eliminates a central objection of the consumer groups to this legislation, but it is supported by the National Association of Manufacturers, the Chamber of Commerce, the National Federation of Independent Businesses, the Business Roundtable, and many other business groups and associations. The administration also supports this amendment.

Because of the widespread support which this bipartisan compromise has already gathered, I am confident that it will be overwhelmingly adopted by the Senate when offered. While some of us will seek further amendments to S. 2760 on the floor—Senator LUGAR and I still intend to offer our fault defenses amendment, for example—our bipartisan compromise substitute eliminates the most controversial provisions of this legislation. I therefore urge my colleagues to move to the consideration of S. 2760, the Product Liability Reform Act, without delay.

When we begin hearings on product liability legislation about 5½ years ago, the liability crisis was in its infancy. We said at that time that this was an issue which could only be addressed federally, and that the failure of Congress to act on tort reform would result in unavailability and unaffordability of insurance. Congress did not act in the 97th Congress—or the 98th Congress—and the product liability crisis has worsened each year. Now, our mailboxes are filled with letters from large and small manufacturers who cannot find insurance for their products, consumers who cannot purchase needed medicines at reasonable prices, and product sellers who are dragged into every suit against a manufacturer even when there was clearly no negligence or fault on their part.

The product liability explosion is changing the American way of life. It is driving a diverse group of products—vaccines, football helmets, medical and construction equipment, and so forth—off the market. There has been a 758-percent increase in product liability suits in the past decade. The average jury verdict is up from under $400,000 to over $1.8 million in the same period. Small businesses are unable to pay skyrocketing insurance premiums. A survey in my State showed 10 percent of Wisconsin businesses might be forced out of business if something is not done. This is now a clear national crisis affecting everyone.

Last month, the delegates to the White House Conference on Small Business ranked the liability crisis as the No. 1 problem for small business today. The delegates, in an unprecedented action, passed a resolution calling on Congress to pass the specific legislation under consideration here today.

Also last month the National Governors' Association overturned a long-standing policy against Federal preemption of product liability laws and voted to support a Federal resolution to the product liability crisis.

Enactment of the legislation before this Chamber will help to lessen the pain of the product liability crisis. The statute of repose in this bill will end the "long tale of liability" problem which unfairly penalizes, almost exclusively, domestic product sellers and manufacturers.

The legislation before this committee would end workers compensation subrogation liens. This will greatly reduce transaction costs and benefit everyone except perhaps the attorneys who will no longer be necessary to pursue these liens.

This legislation also provides a uniform Federal fault standard for product sellers and provides that those who only sell products should not be liable for anyone's negligence except their own. This is only fair, and on the floor of the Senate, I hope we can extend this same fairness to product manufacturers as well. Senator LUGAR and I will offer a uniform fault standard amendment to do this.

This bill also provides a uniform 2-year statute of limitations. Unlike the statutes of limitations in many States, the 2 years does not begin to run until the claimant has had a chance to discover his injury. This is only fair and equitable.

I should say we have had a broad bipartisan consensus of support on this particular section.

In the legislation before us, we have taken important steps to control the abusive award of punitive damages. We have clarified the standard of proof to be "clear and convincing" evidence and provided that "conscious, flagrant indifference to the safety of persons" should be the standard of liability.

Due primarily to Senator KASSEBAUM'S leadership, we have provided a Government standards defense for punitive damages which will simply insure that manufacturers are not punished for following Federal laws.

While the committee did not adopt any amendment to place contingency fees on a sliding scale, we have given judges the power and the mandate to require those who bring frivolous suits to pay the other's full costs and attorney fees, and to punish those who intentionally delay the resolution of legitimate claims for no just purpose. I hope the judges and lawyers in America view this as what it is—a shot over the bow of the legal community warning about abuses which Congress wants corrected. I urge all attorneys to support the judges in their enforcement of these provisions. The filing of frivolous lawsuits has become a form of extortion which can no longer be tolerated.

Senator PRESSLER added a very important amendment which significantly reduces the inherent unfairness of the joint and several liability doctrine. The committee adopted Senator PRESSLER'S compromise position on this issue, and this will result in significant improvement in current law.

□ 1410

Mr. President, this bill, even as amended by our bipartisan compromise, is not perfect. Senator LUGAR and I intend to offer an amendment, and I know others are intending to offer amendments. Nevertheless, the bill before this Chamber as amended by our substitute is an excellent bill which is urgently necessary to help address the tort liability crisis. Our bipartisan substitute amendment will prevent the vote on product liability from becoming a referendum on caps. Ninety-five percent of our substitute bill is the product of an almost complete consensus of our committee. Now, any delay on this issue should be seen as what it is—an attempt by a tiny minority of trial attorneys to thwart reforms beneficial to all of us. I strongly urge my colleagues to vote to proceed to S. 2760, the Product Liability Reform Act.

Mr. GORTON. Mr. President, during the course of the debate of the motion to proceed, each side has spoken eloquently in defense of its position. The distinguished Senator from Wisconsin, who has put more hours, more effort, and more productive work into this proposal than any other single Member of the body, has eloquently described the need for product liability reform legislation and the need for a Federal role in such legislation. The distinguished Senator from South Carolina has spoken with great eloquence of the rights of individuals who are injured, generally through no fault of their own, and the necessity that such individuals have redress in the courts which is ready and have the potential for recovery which is adequate.

If I may note one feature of this debate, it would seem to me that the considerations espoused by both sides have great weight. Yet the debate on each side seems to a large extent to have been one-sided and not to have recognized that we are discussing a matter which ought greatly to trouble all of us.

I have, since the beginning of the discussion, since the beginning of my career in the Senate and on the Commerce Committee, been concerned about this issue and have attempted to search for what I consider to be an appropriate solution. I still find, after all of the study I have put into it, very, very good arguments on both sides of this issue. I do feel, however, that after a period of almost 6 years, the issue is important enough to the people of the United States that it ought to be debated on the floor of the Senate of the United States, that we ought not simply to have an abstract discussion of an idea, but that we ought to deal with specific proposals and with specific amendments. It is in part, at least, for that reason that I intend to cast my vote against the motion to table this motion to proceed.

There is an important role for the Federal Government in bringing some uniformity to this area, but we need to proceed cautiously. For example, the core bill from which this idea started, of which the Senator from Wisconsin has spoken, is something which I support enthusiastically. During the course of the debate in the Commerce Committee, however, there was evidence of interest in a proposal by the Senator from South Dakota [Mr. PRESSLER], which amended and which, for all practical purposes, repealed the general common law rule with respect to joint and several liability in this area of tort law only.

I opposed that change, in part because it seemed to me confusing to have a role for joint and several liability in some major areas of the law and to abolish it in others. The distinguished Senator from Kentucky [Mr. MCCONNELL] with some logic, proposes to go farther and abolish that rule with respect to all areas. At the present time, I would oppose such change or at least oppose having such a change imposed by the Federal Government. Nevertheless, even with that proposal having been adopted over my vote in the Commerce Committee, I would have voted in favor of this bill and to report this bill had it not been for the addition of title II, a form of settlement procedure.

The Senator from Wisconsin is entirely correct, I believe, in stating that the bill before the adoption of title II would in all probability have been approved by a 16-to-1 or 15-to-2 vote in that committee. Title II is so fundamentally flawed and so lacking in equity, however, that I was unable to approve a bill which included it. It is that prior broad consensus, in which I joined, that the Senator's amendment seeks to restore.

Title II would result in the overcompensation of some claimants and the undercompensation of other claimants. Because of that proposal, caps on settlements can be imposed unilaterally by a seller or manufacturer on a plaintiff simply by a particular form of a settlement offer. Both plaintiffs and defendants are forced into a game in which some relatively minor claimants will be relatively overcompensated and some people who have suffered extremely serious injuries will be undercompensated.

The proposal invites malingering, since failure to make a payment of a claim within 5 year shuts off future rights to such payment. I have set forth my views at greater length in my dissenting opinion on the committee report so I shall not amplify them here. In spite of my opposition to title II, however, Mr. President, I am willing to proceed to the consideration of the entire bill because I believe a majority of the Members of this Senate, if the Senator from South Carolina would permit them to vote on it, would agree and would follow the amendment by the Senator from Wisconsin, which would strip this back to a much more acceptable bill. I support the effort to do that now in part because I believe that it will indicate to the proponents of these unfair caps the level of opposition to that part of the proposal and that if we delete them in debate in this Congress, it is less likely that we will have to deal with caps, at least in any form similar to the present form, during, the course of the next Congress.

This bill stripped of title II may not be perfect but it certainly deserves thorough discussion in the Senate. I expect that it would deserve passage as well. The Senator from Wisconsin has pointed out that there will be additional attempts to expand the scope of the bill. That is precisely what debate on the Senate floor is all about. All of the proposals to expand the scope of the bill are ones which at the present time I shall oppose, but I am certainly willing to discuss them.

In addition, I may say that I have some proposals which I would make if we are successful in adopting the Kasten amendment. Senator GORE and I offered an amendment which included a settlement procedure which would reward a defendant who was willing to make interim payments for out-of-pocket losses on the part of plaintiffs and, thus, in my view, encourage settlement, but not with the meat-ax approach of title II of the present bill.

Finally, of all the members of the Committee on Commerce, Science, and Transportation, the member who can most significantly and sympathetically relate to people who are injured seriously is the distinguished Senator from Hawaii [Mr. INOUYE]. He made perhaps the most eloquent speech against the cap proposal which could possibly have been given to a group of his colleagues. He has, however, gone far beyond simply making that speech in voting against the bill in committee. He has now made a suggestion or a proposal for mandatory nonbinding mediation. I believe that proposal has a great deal of merit and should be considered quite carefully as a replacement for title II of the present bill.

What I have outlined, I hope, is the proposition that this is an important issue which deserves consideration by the Senate, that there are views on the floor of the Senate which vary from one extreme to another, but that those views can never be coordinated, they can never accommodate to one another without the right to debate the bill itself on its merits and debate specific amendments to it. I am confident that if the net result of a series

of amendments were a bill which is as obnoxious as the bill reported by the committee itself, it would likely be beaten on a vote on passage or would never come to a vote on passage. I am willing to accept that chance because this is a vitally important issue, one which should be debated by the Senate.

□ 1420

Mr. SIMON. Mr. President, no matter what happens on the immediate motion, I think all of us recognize that nothing is going to happen this year. We have a very real problem, and it is a problem we do not have the ability to deal with right now. You have two giant forces in collision, trial lawyers, and insurance companies. I would point out, as I did in the Judiciary Committee, that in the State of Illinois we used to have two giant forces in collision—the employer groups and the unions and unemployment compansation and workmen's compensation. We finally worked out an agreed bill process whereby the employers and the unions get together and they agree upon changes—they are not sweeping changes, but necessary changes, desirable changes—and the public in Illinois has been well served by that process.

In the committee meeting I asked the trial lawyers and the representatives of the insurance companies whether they would be willing to meet and consider this kind of a process, and they at least monetarily agreed that they might. I think those of us who are here, Members on both sides of the aisle, ought to ask representatives of those two groups to meet. You are not going to have the sweeping changes you have here. I do not think you are going to end up with a cap on pain and suffering, for example, but I think there are some changes on both sides that would serve the public interest.

Now, what kind of changes? Well, some kind of limitation on joint and several, some limitation on frivolous suits, some kind of a statute of limitation. The Senator from Kentucky [Mr. MCCONNELL] has made some innovative and good suggestions in the area of resolving disputes without going to court. On the trial lawyers' side, those are some of the things that can be considered. On the side of the insurance companies, among other things, there are two bases at which we have to look. One is the major modification, if not outright repeal, of McCarran-Ferguson. If two shoe stores in the hometown of the Senator from South Carolina [Mr. HOLLINGS] get together and set the price of shoes, they can be sent to prison for 3 years. If two insurance companies get together and set the price of insurance, it is all perfectly legal. Clearly that does not serve the public interest.

The second thing that is wrong is that we simply do not have an adequate data base. Trying to find out what is going on in this country in the insurance field is like grabbing at a balloon. It is just very, very hard to catch. We have 50 State regulators. Clearly, we need to be gathering data at the Federal level. We are the only Nation on the face of the Earth that does not have Federal Government control, National Government control of insurance. I do not advocate it. What I do advocate is that this industry is so important and its function is so important that the Federal Government ought to be able to gather information. I think that clearly ought to happen.

Again, I think we all recognize we are not going to pass a bill and have anything enacted this year. That should not mean this discussion is not serving a useful function. We ought to see if we cannot get together the two major parties in dispute, although the public ultimately needs to be served—the insurance companies and the trial lawyers—not to have the kind of sweeping changes we have here but some modest changes that I think will serve the public well.

Thank you, Mr. President.

Mr. MCCONNELL and Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I thank the Chair.

Mr. President, today the Senate votes to determine whether or not it will proceed to consider the merits of S. 2760, the Product Liability Reform Act. The real question is whether this body can afford to ignore the erosion of this Nation's tort law? Can we ignore the inability of so many of our constituents to obtain affordable insurance—or insurance at any price? Can we continue to ignore the reality of a judicial doctrine that casually dismisses fault and negligence as being virtually irrelevant in determining whether a defendant is liable? Can we simply shrug our collective shoulders when the scales of justice in this Nation no longer weigh the conduct of individuals, but instead weigh their pocketbooks? I for one say no.

Mr. President, S. 2760 is not a perfect bill. Should we have an opportunity to consider this bill on the Senate floor, I am sure there will be a number of amendments offered to improve it. Indeed, as I announced, I intend to be among those offering such amendments. The real issue is whether we have a responsibility, a duty, to address this matter, and then proceed to a vote on its merits. I for one say we owe this to the American public.

At the appropriate time, I will offer an amendment—which I filed yesterday—which would significantly broaden the scope of S. 2760. Rather than limiting reform to product liability litigation, my amendment, as most of you are aware, would comprehensivley address tort reform in general. It would apply to municipalities. It would apply to day care centers. It would apply to nurse midwifes. It would apply to the officers and directors of chairtable foundations. In short, it would apply across the board.

At this point, Mr. President, I am not going to delve into the merits of my comprehensive approach or go into the substantive provisions contained in my amendment. I will reserve that for a more appropiate time. What I do want to address, now, are a number of myths that opponents of tort reform constantly parade before us.

The first is the myth that holds the unfettered development of the common law as holy writ, and vilifies those who would, legislatively, impede this process as sacreligious. Well, pardon my irreverance, Mr. President, but that notion is simply nonsense.

For generation upon generation it has been the plaintiff's bar and civil libertarians who have sought legislative relief to "humanize" the exacting and formalistic demands of a rigid common law system. It was they who were responsible for urging the passage of State worker compensation laws to preempt the harsh regime of the so-called three evil sisters of the common law that virtually precluded any recoveries by a worker against his employer. Wrongful death and survivor statutes, modifications of sovereign immunity, the downfall of contributory negligence, warranty laws, dram shop acts, the adoption of strict liability in some jurisdictions, occupational disease legislation and so forth. When it pleases the bar, suddenly the sacred cow of the common law loses its sanctity.

Today, the common law pendulum has swung too far. It is not that certain classes of plaintiffs have too many rights; but rather that many defendants are being denied theirs. Americans have been led to believe, led to expect, that they will receive unlimited redress for any harm, regardless of fault. That system has become bankrupt—both economically and morally. The well has run dry.

Ultimately, Mr. President, it is the obligation of the elected representatives of the people to determine what is and what is not sound and equitable public policy. So let us proceed to do so.

Second, Mr. President, we are attacked for unconstitutionally denying the individual States the right to determine their own tort law separately. It is clear, I would think, that a basic sense of fairness, of equity would demand that we establish uniform standards—treating all our citizens equally before the law.

The question posed here, however, is whether the Constitution authorizes Congress to enact legislation establishing standards, not only for product liability law, but for general tort law as well.

To resolve all doubts, I asked the legal scholars at the Congressional Research Service to study this issue. Their report on the constitutionality of Federal tort reform concludes, affirmatively, that the commerce clause, unequivocally grants such authority to Congress. The following excerpt substantiates this:

Thus, if Congress can rationally conclude that tort suits constitute a class of activities that affects interstate commerce, then tort reform legislation would be within its commerce power, even as applied to tort suits that individually are purely intrastate. The Supreme Court has held that the business of insurance constitutes interstate commerce for purposes of the commerce clause * * * and, whether or not tort reform would in fact substantially affect the business of insurance, it would not appear irrational for Congress to conclude that it would. Consequently, there would seem to be little doubt that tort reform legislation would be within Congress' commerce power. The conclusion is reinforced by the fact that it has been 50 years since the Supreme Court has restricted congressional power to subject intrastate activity to Federal regulation.

At this point, Mr. President, I ask unanimous consent that this analysis be printed in the RECORD.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

THE CONSTITUTIONALITY OF FEDERAL TORT REFORM

A tort essentially is a civil (as distinct from a criminal) wrong, other than a breach of contract, that causes injury for which the victim may sue to recover damages. Torts include negligent acts, such as professional malpractice, and acts, such as selling defective products, for which one can be held strictly liable (liable even in the absence of negligence). Tort law at present is almost exclusively state law rather than federal law.

Individuals and organizations, such as doctors, product manufacturers, and municipalities, who purchase insurance against their being found liable for committing torts, reportedly are facing premium increases and insurance cancellations that have reached the crisis level. They and their insurers contend that problems in commercial liability insurance affordability and availability have been caused in large part by the increasing number and size of tort judgments, and they have lobbied their state and federal legislatures for various reforms. These include caps on noneconomic damages and on lawyers' contingent fees, and abolition of joint and several liability and of the collateral source rule.

Many state legislatures have enacted some of these reforms, but Congress at this time has not. This report considers the constitutionality of federal tort reform, without addressing any particular legislation. It concludes that, in general, there would appear to be no constitutional problem with federal tort reforms of the types mentioned above.

The Supremacy Clause of the United States Constitution (Art. VI, cl. 2) provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Under this provision, federal tort reform legislation would preempt state law, to the extent intended by Congress, provided such federal legislation was "in Pursuance" of the Constitution.

A federal law is constitutional if it is enacted pursuant to a power of Congress enumerated in the Constitution and if it does not contravene any provision of the Constitution. The enumerated power pursuant to which federal tort reform would be enacted is Congress's power "To regulate Commerce with foreign Nations, and among the several States" (Art. I, § 8, cl. 3). Two basic questions might be raised as to whether federal tort reform would fall within this power: (1) Is tort reform "commerce"?, and (2) assuming it is, would federal tort reform be constitutional as applied to purely intratstate torts?

The answer to both these questions would almost certainly be "yes", because the Supreme Court has held that Congress's power to regulate interstate commerce includes the power to regulate any activity that "exerts a substantial effect on interstate commerce" (Wickard v. Filburn, 317, U.S. 11, 125 (1942)), or is within a "class of activities . . . within the reach of federal power" (Perez v. United States, 402 U.S. 146, 154 (1971)). "[W]hen Congress had determined that an activity affects interstate commerce, the courts need inquire only whether the finding is rational." Hodel v. Virginia Surface Mining & Reclamation Association, Inc., 452 U.S. 264, 277 (1981). Moreover, Congress need not make "particularized findings" that an activity affects interstate commerce in order to legislate. *Perez, supra,* at 156. Thus, if Congress can rationally conclude that tort suits constitute a class of activities that affects interstate commerce, then tort reform legislation would be within its commerce power, even as applied to tort suits that individually are purely intrastate. The Supreme Court has held that the business of insurance constitutes interstate commerce for purposes of the Commerce Clause (*United State v. South-Eastern Underwriters Association,* 322 U.S. 533 (1944)), and, whether or not tort reform would in fact substantially affect the business of insurance, it would not appear irrational for Congress to conclude that it would. Consequently, there would seem to be little doubt that tort reform legislation would be within Congress's commerce power.

This conclusion is reinforced by the fact that it has been fifty years since the Supreme Court has restricted congressional power to subject intrastate activity to federal regulation. Rotunda, Nowak & Young, *Treatise on Constitutional Law: Substance and Procedure* § 4.9, n. 27 (1986). In its most recent case that addressed this issue, the Supreme Court held that a federal arson statute that by its terms applies to any "property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce" applied to a two-unit apartment building being used as rental property. *Russell v. United State,* 471 U.S.—, 105 S. Ct. 2455, 85 L.Ed.2d 829 (1985). The Court wrote: [T]he statute only applies to property that is "used" in an "activity" that affects commerce. The rental of real estate is unquestionably such an activity. We need not rely on the connection between the market for residential units and "the interstate movement of people," to recognize that the local rental of an apartment is merely an element of a much broader commercial market in rental properties. The congressional power to regulate the class of activities that constitute the rental market for real estate includes the power to regulate individual activity within that class.—105 S.Ct. at 2457-2458, 85 L.Ed.2d at 833.

In two less recent but more famous cases, the Supreme Court upheld the power of Congress under the Commerce Clause to enact Title II of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq., which prohibits racial discrimination in public accommodations. In *Heart of Atlanta Motel Inc. v. United States,* 379 U.S. 241 (1964), the Court held that the Act could constitutionally be applied to hotels, stating that the "only questions" were:

(1) Whether Congress had a rational basis for finding that racial discrimination by motels affected commerce, and

(2) If it had such a basis, whether the means it selected that evil are resonable and appropriate.—379 U.S. at 258. The Court, without a dissent (but with three concurring opinions), answered both questions in the affirmative.

Similarly, in *Katzenbach v. McClung,* 379 U.S. 294, 298 (1964), the Court upheld the application of Title II to a restaurant which it was not claimed that interstate travelers frequented but which "annually receiv[ed] about $70,000 worth of food that moved in commerce."

As noted above, a federal statute is constitutional if it is enacted pursuant to an enumerated power and if it does not contravene any provision of the Constitution. It does not appear, generally, that tort reforms of the types noted would contravene any provision of the Constitution (although particular provisions of legislation that might be proposed of course might). At one time it might plausiably have been suggested that limitations on tort recovery might violate the Fifth Amendment's protection against federal deprivations of property without due process of law. However, in 1978, the Supreme Court, upholding the Price-Anderson Act's limitation on liability for accidents resulting from the operation of private nuclear plants, wrote: Our cases have clearly established that "[a] person has no property, no vested interest, in any rule of common law." The "Constitution does not forbid the creation of new rights, or the abolition of old ones recognized by the common law, to attain a permissible legislative object," despite the fact that "otherwise settled expectations" may be upset thereby. Indeed, statutes limiting liability are relatively commonplace and have consistently been enforced by the courts.

Duke Power Co. v. Carolina Environmental Study Group, 438 U.S. 59, 88, n. 32 (1978) (citations omitted).

In 1985, the Supreme Court, without written opinions, upheld the constitutionality of California statutes that placed caps in medical malpractice cases on, respectively, noneconomic damages and lawyers' contingent fees. *Fein v. Permanente Medical Group,* 38 Cal.3d 137, 211 Cal. Rptr. 368, 695 P.2d 665 (1985), *appeal dismissed,* 106 S.Ct. 214, 88 L.Ed.2d 215 (1985); *Roa v. Lodi Medical Group, Inc.,* 37 Cal.3d 920, 211 Cal. Rptr. 77, 695 P.2d 164 (1985), *appeal dismissed,* 106 S.Ct. 421, 88 L.Ed.2d 352 (1985).

In conclusion, it appears that federal tort reform legislation, in general, would be constitutional.

HENRY COHEN,
Legislative Attorney.

Mr. McCONNELL. Mr. President, I would like to address the myth that tort reform would not affect the availability or affordability of insurance. Let me first note that I am as curious as any Member of this body in learning the degree of responsibility of the insurance industry in the onset of the current liability crisis. For that reason, my substitute bill would call for a GAO study to pursue this very issue. However, it is clear that this crisis is not the cynical farbrication of insurers.

The insurance industry, as you know, has been most reluctant to guaranty in advance that tort reform would instantly produce lower premiums, or guaranty in advance that the market for certain lines of insurance coverage would open up. I would submit that that is simply prudence on the part of an industry that has lost confidence in its ability to predict the development of the law.

However, there is growing evidence that the insurance industry will respond, in fact, to tort reform—especially to comprehensive tort reform. Within the past year or two, a few States have in fact passed comprehensive tort reform packages. In Washington State, for example, following major legislative enactments, the Fireman's Fund Insurance Co., announced that it would begin offering coverage to small and medium size municipalities, professional day care centers, and school districts. Prior to this, the Fireman's Fund considered these line of coverage to be uninsurable.

Similarly, in Connecticut, which also enacted a comprehensive reform act, the Hartford Insurance Group reponded by announcing a 10-percent rate reduction in municipal liability insurance. And in California, where proposition 51 significantly modified the deep pocket doctrine of joint and several liability, four major insurers returned to the municipal liability market.

So, Mr. President, I say to my colleagues that the means to substantially resolve this liability crisis is within our powers—should we choose to exercise this power. I would urge my colleagues not to allow this body to choose the path of impotence; but, rather to take up this vital issue of civil justice reform—and to address them now.

Mr. President, I, too, will vote no on the motion to table the motion to proceed, because I think this is an issue of great and national importance. Just recently, as several speakers have indicated, both today and yesterday, the White House Conference on Small Business called tort reform at the Federal level the No. 1 problem facing small business in America today.

Now the issue we are seeking to get on to the floor, of course, is product liability. The White House Conference on Small Business listed product liability reform at the Federal level as No. 9 on the agenda. So the bill we are seeking to get on to the floor today does not address what the White House Conference on Small Business says is the No. 1 problem, but it comes close.

I commend the distinguished chairman of the Commerce Committee, Senator DANFORTH; Senator KASTEN, who in many ways has been the father of this issue going back over the last three Congresses, Senator GORTON, and others who have conceded that we need to have some change and we need to have it at the Federal level.

The issue, of course, Mr. President, is the question of what kind of change. Clearly, it seems that this national crisis out in the land, a crisis of liability insurance unavailability and unaffordability, the litigation crisis which confronts our society in certain areas of tort law, medical malpractice, for example, lawsuits against municipalities, for example, lawsuits against chief executive officers and directors of corporations, for example, this litigation crisis which is clearly undeniable, has created an atmosphere in which it is very difficult for a large segment of our American business and civic community to function. What do we do about that crisis? Should the Federal Government deal with the problem? I think the answer is clearly yes, it is a Federal problem, a Federal problem stretching from shore to shore, and there is only one way, Mr. President, in my view to deal with that problem, and that is to pass comprehensive tort reform at the Federal level.

As I have said, should we be able to get S. 2760 to the floor, it would be my intention to offer an amendment in the nature of a substitute which essentially embodies the bill that I have previously advocated which is tort reform across the board at the Federal level. It does not, Mr. President, rewrite the substantive tort law of every State in the Nation, but it would provide some parameters, some reasonable parameters beyond which the courts could go at either the Federal level or the State level in awarding damages in these kinds of cases.

In my judgment, we will not have any predictability, we will not have reliability out in the land on this issue unless there are Federal standards established, and you can do that, Mr. President, without creating a new Federal department, without hiring any new Federal employees. We are talking here about simply establishing standards beyond which either the Federal courts or the State courts can go in these kinds of cases.

I think the crisis crys out for a Federal solution. I think the Federal Government has an appropriate role to play in this field, and should we be able to get an opportunity to vote on this, I would hope that a majority of my colleagues in the Senate would agree.

With regard to the distinguished Senator from Illinois, Senator SIMON, with whom I sit on Judiciary, Senator SIMON has been a very conscientious member of our committee and very interested in the whole subject. He mentioned—and I am sorry he has left the floor—the posibility of getting the parties together. He and I both tried that on several occasions and while I would not want to give up on that possibility, there are some players on this field who do not even think there is a problem. The American Trial Lawyers Association, for example, from the numerous meetings I have had with representatives from that group, are not even willing to concede we have a problem. And so until the parties across the board interested in this issue will at least concede there is a problem, it seems to me it may, just may be difficult to work out some compromise acceptable to all parties.

Further, the distinguished Senator from Illinois suggested that we have a problem with regard to data, and I agree. In the amendment in the nature of a substitute that I will offer, should I get the chance, we provide for a General Accounting Office study of insurance statistics so that we can get a better handle on just what the facts and figures are with regard to insurance availability and affordability.

So, Mr. President, in conclusion, I think this is an area of critical importance. We know the agenda is crowded going down the home stretch of the 99th Congress and some have said we just do not have time to deal with this. Well, it is a major crisis. It is the No. 1 crisis of American small business. People out in the land expect us to deal at least with the big issues, and for a large segment of the American public this is the biggest issue—bigger to them than the deficit, bigger to them than the continuing resolution, bigger to them than a whole lot of other problems we have before us in this body.

□ 1430

So let us not assume that this is not a major, major issue in America.

I hope the motion to table the motion to proceed will not be agreed to and that we will move to the consideration of S. 2760. If we do that, it will be my intention to offer an amendment in the nature of a substitute which will give us a chance to vote on comprehensive tort reform at the Federal level. That is what the situation demands we do.

Mr. HOLLINGS. Mr. President, I approach this particular matter of interest with a feeling of rendering unto Caesar that which is Caesar's.

Specifically, it is always amazing to me that this crowd up here in Washington that cannot do its normal functions wants to try to preempt the functions of other levels of government. Here is the crowd that cannot evolve a policy on arms control. They do not have a policy that has strong support on defense with the SDI. Both parties have come to the executive branch and said, "Let's get a policy on apartheid in South Africa." They cannot develop that. They cannot make an arrest of a spy without making it an international incident. They cannot regulate foreign commerce. We cannot pay our bills.

We have gone from the beginning of this administration from a $40 billion deficit to a $240 billion deficit. Now they are saying, "We find a crisis in your State."

There have been problems. This is a litigious society. Forty-three States have reacted with various treatments. Some of them have succumbed with caps—succumbed, if you please, to the $6.5 million insurance bamboozle and advertising program. And, yes, Wisconsin and Pennsylvania and Florida, which have followed with caps, have gotten higher insurance rates.

Those things come to mind when I hear about this so-called crisis of a litigation explosion and a crisis in excessive jury awards.

I do not live in a bubble or a vacuum. I go home practically every weekend. I would not say that the State of South Carolina is abnormal. I would say that it is outstanding.

I asked the judges, both State and Federal. And I know that in my State there is not a litigation explosion. I know that they are disposing of the docket. I know that there are not excessive jury awards. There are always some exceptions, but there is not any national problem.

Then I come here and I see that they want to really adulterate the Federal system through a minuscule portion of tort liability—namely, product liability. What do they do? They do not complain about the diversity and multiplicity of insurance companies having to be registered and licensed in the 50 States. Companies find no problem with that. They do not come with the multiplicity, the diversity, and the separateness of some 50 requirements of filing and review of each and every one of their policies for approval to be sold in that particular State.

There is a tremendous bureaucracy in the 50 States administering insurance. I have that problem as a State Governor, and I had a commission appointed. And we had to clean it all up when I saw how cumbersome and how burdensome and how costly it was.

So, speaking from experience, I do not find them worrying about the cost there. I do not find them coming here with a Federal cause of action. They do not give us Federal jurisdiction. They do not want that. They want to say, in a short, around-end advertisement—a bamboozle—"What we want you to do is put a cap here and put a finding there and all these so-called rules". And they are bipartisan.

I appear and talk now for the bipartisan opposition. There are Senators on both sides of the aisle. My bipartisan solution is to leave this problem where it exists and is being treated in a judicious fashion at the State level.

If we are to invade the tort system and handle our own affairs at the Federal level, then let us start, as the Senator from Illinois pointed out a moment ago, and do away with McCarran-Ferguson, the Federal protection against antitrust. Let's put the insurance companies on a competitive basis, and let them file the information with the Federal Insurance Commission. And let us regulate them at that particular level. Then, as a jury here—encompassed in the U.S. Senate—we, as jurors and Senators, can make a proper verdict on this matter of product liability. We never have been able to get the facts.

One of the Senators who voted for this legislation in the Commerce Committee said: "Now I'll join in, not for the bill, but I'll vote for it. Because there is an amendment in there that I can get some information. And if I can get the information, I'm willing to vote now, and I'll get the information later."

That is the procedure you have before the U.S. Senate today. They talk on and on about the litigation explosion and these other matters.

Mr. President, the insurance industry originally stated losses of over $5 billion in 1985, but it acknowledged a profit of at least $1.7 billion. They were challenged by the National Insurance Consumer Organization. The Department of Justice found that the industry net worth increase—when they were talking about losses—was $7.6 billion in 1985. According to the Best Insurance Stock Index, property casualty stock advanced 50 percent in 1985, and they are due to make a $90 billion profit in the next 10 years.

That is the crowd that is putting on the full court press with this to show nice bipartisanship and the "crisis" they find out there. They do not find any crisis in Congress paying its bills. They do not find any crisis in the matter of international trade. You cannot even get a trade bill. I have had one in the Finance Committee for the past 4 years now. You cannot get it out of the subcommittee. They find no crisis there with respect to the soaring deficit in the balance of trade.

We have a lot of problems this National Government could solve. But now they come here in the name of trying to cut down litigation, and they in fact will increase it.

How do they increase it? They say: "Wait a minute. We don't want this thing to go into a Federal court and have that one court administer the rules and what have you. We want 50 State jurisdictions to administer these rules. We will just take this bill—with the new terms of art and legal language to be interpreted by 50 separate State courts and State supreme courts and State jurisdictions—and thereupon, by the way, appeal that to the U.S. Supreme Court."

I question the constitutionality of this bill—as many constitutional lawyers have—and that is why we wanted to get it to the Judiciary Committee. Would they allow it to stay in the Judiciary Committee? They have had the upper hand. They would not allow the lawyers and those charged with the legal procedures in this land of ours to look at it in depth. They just referred it for a few days, to have a hearing and keep it going here for the full court press, because it is a political issue they have developed for the 1986 campaign.

□ 1440

In the matter of litigation, heavens above, I am a lawyer and I know how much they cost. I wish we here in the Congress could limit our spending to $100 an hour or $200 an hour.

These lawyers who are lobbying on this bill for all of these companies, the ones running all around out there in the hallways, are getting paid $300 and $500 an hour.

The poor little individual. Everybody is talking about civil rights. I do not know what happened to the Bob La-Follettes. I do not know what happened to the champions of individual rights around here like Paul Douglas and Sam Ervin. We do not think any more of individual rights in this National Congress of ours, particularly here in the U.S. Senate. If it is not civil rights and a big vote getter, then pass it on. Let us go ahead and do away with the jury system.

I would hate to be tried by this jury up here in the Senate. One thing's for sure—it would be a mistrial. By gosh, you would never get convicted. Excuse me, I amend that statement. I'd love to be tried by this group up here. They would never agree on anything. They just take political hit-and-run driving—make headlines and not headway—and come along with this particular bill and say that the poor individual should not have a lawyer. They want to get at that contingent fee. Oh, that nasty plaintiff lawyer.

Have they got a better system? Pay the plainfiffs' lawyers $100 an hour or put in the bill the same amount as the defendants' lawyers. Let the Government pay it, whatever it is, so we will have our right to a lawyer. We have a right to vote, a right to this, a right to that. Let us have a right to a lawyer.

Please do not take that seriously. I do not think the Government can afford that.

We have gone far enough in this debate.

I say to the Senator from Wisconsin on behalf of the Association of State Supreme Court Justices, on behalf of the Consumers Union, on behalf of the AFL-CIO, on behalf of the State attorneys general and the State legislators—I can go right on down all my particular organizations who have opposition and misgivings, even with the Senator's amendment.

So on behalf of those, I am willing to continue and I am getting the message indirectly that a motion to table is going to be made.

I think that this educational debate is pretty good because I had Senators come up who did listen in yesterday and say "I didn't understand what we were doing."

I know we have a terrible problem with respect to the litigious nature of society. It is in domestic cases, fraud cases, and everything else. But it is not a runaway jury.

The jury that found $2½ million down at the University of Georgia found about $400,000 actual damages, as you were, and $2 million punitive. It was cut in half by the judge and the plaintiff herself said, "I was surprised at that." But they were punishing institutional wrongdoing.

They can put caps if they want to around here and just make it sort of cash and carry. We know how casual business can become when it comes to individual safety. We know the *Challenger* case that is being developed on the front page of the New York Times this morning. They have put that case up from an engineering safety point. Never in the history of the National Aeronautics and Space Administration had they ever launched over the objection of a contractor and here they had two contractors' engineering sections say, "No, it is unsafe." But they ignored this objection and said, "This is a management decision." And we have lost seven heroes.

It is the best example of the runaway nature of American business and in any competitive business around this world. Theirs is not to save lives. Theirs is to make profits.

And we have in our system of jurisprudence the seventh amendment in the U.S. Constitution, tria by a civil jury. Every one of the 13 Original Colonies when they were asked to comment on the newly drafted Constitution, 6 of them came back with freedom of speech but every one of the 13 said we want to have that trial by jury.

This is trial by King, this product liability bill. Bam, bam, in and out, here are the rules, here is the thing. That is no justice at all.

What is the matter with the jury of our peers in our own hometowns? We want them to elect us, but we do not trust them to govern their own affairs.

So I am ready to continue the discussion.

I ask unanimous consent that when I am recognized to speak again on this matter it not be considered a separate speech.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I commend the Senator from South Carolina and the Senator from Wisconsin for their fine debate on this tough issue.

It has been a very well reasoned presentation by both of them. They both feel very strongly about it, and certainly the Senator from South Carolina has presented a good case against taking up the bill at this time.

I happen to embrace generally the philosophies of the Senator from South Carolina, but my admiration and respect for Senator KASTEN has been expressed many times on this floor.

When you get into debate or discussion with those two you want to have a "light lunch" and be prepared fully for your day's activities.

My colleague from South Carolina, Senator HOLLINGS, has presented a good case against taking up this bill at this time.

This bill, in the name of doing something for business in this country, makes an assault upon our tort system. This legislation would take away tort law from the States where it has been since the beginning of our Federal system.

For the very first time, the Congress would usurp the States traditional right to develop tort standards, and yet it would impose on the States the exclusive responsibility for applying federally created rules.

There is still a great deal we do not yet know about the liability insurance crisis. The insurance companies have been less than forthcoming about their current claims experience and other issues involving their recent profit-loss problems.

The General Accounting Office report concluded that during the past 15 years the property casualty insurance industry "had a net gain of $75 billion and was expected to experience a net gain before taxes of more than $90 billion over the years 1986 to 1990."

I have not seen any clear evidence that we are facing a lawsuit crisis in this country. Certainly there are glaring examples of what some would consider excessive jury awards, but this is not the norm—it is the exception.

A study by the National Association of Attorneys General Ad Hoc Committee on Insurance recently concluded that "the cyclical nature of the industry, and not changes in tort claims, is largely responsible for the current crisis."

In fact, the current tort system in this country provides many examples of judges eliminating or otherwise reducing the actual verdict—or even requiring new trials where original verdicts were too high.

Wide fluctuations in the insurance premiums have occurred—and will probably continue to occur—despite the fact that the evolution of tort law in the 50 States has been a slow and deliberate one—no dramatic changes there.

This bill contains unfair and unworkable provisions which would curtail the ability of injured consumers and workers to be awarded adequate compensation from a manufacturer responsible for designing an unreasonably dangerous product.

Title II of the bill establishes new settlement procedures with a cap on noneconomic damages. A manufacturer of a defective product effectively can impose the cap at will upon a seriously injured consumer or worker.

There is nothing in this legislation that will reduce insurance premiums.

Before we make sweeping changes in our tort law system, we should study other approaches such as possible changes to the McCarran-Ferguson Act.

McCarran-Ferguson leaves the supervision and regulation of insurance to the States—right where it should be in my mind—and exempts the insurance industry from certain sections of the antitrust laws.

It is ironic that at the same time some segments of the insurance industry call for tort reform—by Federal preemption of State law—the industry continues to resist Federal oversight of insurance.

Many are objecting to this legislation—hear the list of opponents: The Association of State Supreme Court Justices; Association of State Attorneys General, the National Conference of State Legislatures, the American Bar Association.

Mr. President, I believe we are surely ill-advised to consider this very significant piece of legislation in haste in these final, hectic days of the 99th Congress, and for the reasons I have stated, I move to table the motion to proceed to Calendar Order No. 856, S. 2760—the so-called Product Liability bill.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to proceed.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

I also announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

The PRESIDING OFFICER (Mr. ARMSTRONG). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 0, nays 96, as follows:

[Rollcall Vote No. 279 Leg.]

NAYS—96

Abdnor	Goldwater	Melcher
Andrews	Gore	Mitchell
Armstrong	Gorton	Moynihan
Baucus	Gramm	Murkowski
Bentsen	Grassley	Nickles
Biden	Harkin	Nunn
Bingaman	Hart	Packwood
Boren	Hatch	Pell
Boschwitz	Hatfield	Pressler
Bradley	Hawkins	Proxmire
Broyhill	Hecht	Pryor
Bumpers	Heflin	Quayle
Burdick	Heinz	Riegle
Byrd	Helms	Rockefeller
Chafee	Hollings	Roth
Chiles	Humphrey	Rudman
Cochran	Johnston	Sarbanes
Cohen	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Eagleton	Mathias	Wallop
Evans	Matsunaga	Warner
Exon	Mattingly	Weicker
Ford	McClure	Wilson
Glenn	McConnell	Zorinsky

NOT VOTING—4

Cranston	Inouye
Garn	Metzenbaum

So the motion to lay on the table the motion to proceed to the Product Liability Reform Act was rejected.

□ 1500

Mr. DOLE. Mr. President, I think the Senator from Wyoming wants to be recognized.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would like to comment on the perils of leadership here. The attempt to get a vote of some substance on the issue certainly went awry somewhere. I felt like a person who left a load of pumpkins on the outskirts of town. It was an experience, attempting to get to that vote of substance, much like a corncob on a conveyor belt on the way into a silo. I would not like to have that exercise again.

Hopefully, we will now hear a motion which will get us to a vote of substance, and there are several options. I know the leadership on this side is working with the Democratic leadership to get to the highway bill and to do this in a way where we can revisit later, this one, if possible.

I yield to the majority leader.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

The majority leader.

Mr. DOLE. Mr. President, I was thinking of that overwhelming vote. There is not much doubt about people's feelings. I do recall one vote of 0 to 96.

Mr. President, on that basis, I am perfectly willing to attempt to proceed. I will turn it over to the manager on this side, if he can be recognized.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KASTEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KASTEN. Mr. President, since no one objects to proceeding on this bill—the vote was just 96 to 0—I ask unanimous consent that the Senate proceed to consideration of S. 2760.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KASTEN. Mr. President, we find ourselves in a position in which there are objections——

The PRESIDING OFFICER. The Chair notes a persistent murmur in the Chamber. The Senate will be in order.

Mr. KASTEN. Mr. President, the unusual situation is that there is an overwhelming sense of support for some kind of Federal action on product liability. Our judgment is that there are at least 70 votes in favor. In other words, we could achieve cloture if we needed to. It might be even more. It might be that the votes in this body are roughly 80 to 20, or if we go back to our core proposal, it might be similar to what we had, a 16 to 1 vote in the committee.

Our judgment is that the votes could be in the neighborhood of 90 to 10. There are 10 or maybe 12 Senators who are not convinced that we need a Federal solution of any kind at all. There is an important group of people out there that also share that view. That is the trial lawyers.

With the exception of a small group of Senators and a small group of attorneys—because most attorneys support some kind of bill—we see America, particularly small business, crying out for some kind of solution. Whether, as the Senator from Illinois said earlier, what we need to do is work through these different questions or whether, as the Senator from Washington said earlier, going back to the core is what we need to do, and we need to get back to that point where we have a bipartisan bill, when we do begin consideration of this bill, it is my intention to come forward with a substitute that Senators INOUYE, GORTON, RIEGLE, KASSEBAUM, STEVENS, and I have cosponsored and introduced yesterday. It will be my intention that that would be the first vote we would have on this issue.

As I say, the votes are almost overwhelming. We find ourselves in a situation in which people do not want to go on record as against it but yet will object, in effect nullifying their own vote going the other way, on refusing to table.

I believe, because there are so many Senators who want to act on this bill and that it is the No. 1 small business issue facing us, we must proceed. We are not going to do it by continuing to fuss back and forth and take the time of the Senate. The only way I can see now that we can step forward and force the debate, in fact, force people to vote on the issue—and I believe the vote will be overwhelming—is to offer a cloture motion to limit the debate on the motion to proceed.

CLOTURE MOTION

Mr. KASTEN. Mr. President, I send a cloture motion to the desk and ask that it be read.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to S. 2760, the Product Liability Reform Act.

Bob Kasten, Jim Broyhill, Phil Gramm, Steve Symms, Don Nickles, Larry Pressler, Nancy Landon Kassebaum, Dick Lugar, Mitch McConnell, Jesse Helms, Pete Wilson, Jake Garn, Jim McClure, Chic Hecht, Jim Abdnor, Dan Quayle, Edward Zorinsky, and Lowell Weicker.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2638.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the House insist upon its amendments to the bill (S. 2638) entitled "An Act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees:

From the Committee on Armed Services for consideration of the entire Senate bill and House amendments (unless otherwise restricted): Mr. Aspin, Mr. Price, Mr. Bennett, Mr. Stratton, Mr. Nichols, Mr. Daniel, Mr. Montgomery, Mr. Dellums, Mrs. Schroeder, Mrs. Byron, Mr. Mavroules, Mr. Hutto, Mr. Skelton, Mr. McCurdy, Mr. Ray, Mr. Spratt, Mr. Dickinson, Mr. Whitehurst, Mr. Spense, Mrs. Holt, Mr. Hillis, Mr. Badham, Mr. Stump, Mr. Courter, Mr. Hopkins, and Mr. Davis.

As additional conferees from the Permanent Select Committee on Intelligence, solely when differences regarding intelligence-related activities are under consideration: Mr. Hamilton, Mr. Stokes and Mr. Cheney.

As additional conferees from the Committee on Foreign Affairs, solely for the consideration of sections 205(f), 952, 1205–1209, 1214–1217, 1228, 1231, and 1233 of the Senate bill and sections 1024 and 1041 of the House amendments: Mr. Fascell, Mr. Hamilton, Mr. Yatron, Mr. Solarz, Mr. Broomfield, and Mr. Gilman.

As an additional conferee, solely for the consideration of section 1032 of the House amendments and modifications committed to conference: Mr. Savage.

As additional conferees: solely for the consideration of sections 911 and 936 of the House amendments and modifications committed to conference: Mr. Mitchell and Mr. Broomfield.

As exclusive conferees, solely for the consideration of sections 109, 203, 205(a)(1), 1210, 1230, and 3114(a) of the Senate bill and sections 123, 128, 208, 215, 1061, 3013, and 3036 of the House amendments: Mr. Aspin, Mr. Price, Mr. Bennett, Mr. Dellums, Mrs. Schroeder, Mrs. Byron, Mr. Mavroules, Mr. McCurdy, Mr. Spratt, Mr. Fascell, Mr. Brown of California, Mr. Gephardt, Mr. Fazio, Mr. Dicks, Mr. AuCoin, Mr. Downey of New York, Mr. Markey, Mr. Bedell, Mr. Dickinson, Mr. Whitehurst, Mr. Spence, Mrs. Holt, Mr. Badham, Mr. Stump, Mr. Courter, Mr. Broomfield, Mr. Lagomarsino, Mr. Hyde, and Mr. Solomon.

As exclusive conferees, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendments: Mr. Mavroules, Mr. Bennett, Mr. McCurdy, Mr. Hertel, Mr. Sisisky, Mr. Spratt, Mrs. Schroeder, Mrs. Boxer, Mr. Wyden, Mr. Levine of California, Mr. Sikorski, Mr. Bryant, Mr. Courter, Mr. Dickinson, Mr. Kramer, Mr. Kasich, Mr. Bateman, Mr. Stump, and Mr. Hunter.

As exclusive conferees, solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendments: Mr. Price, Mr. Dellums, and Mr. Dickinson.

As additional conferees, from the Committee on Education and Labor, solely for the consideration of section 1002 of the Senate bill and section 2715 of the House amendments: Mr. Hawkins, Mr. Murphy, Mr. Clay, Mr. Williams, Mr. Weldon, Mr. Jeffords, Mr. Petri, and Mr. Bartlett.

As exclusive conferees, from the Committee on Education and Labor, solely for consideration of division F of the Senate bill and modifications committed to conference: Mr. Hawkins, Mr. Ford of Michigan, Mr. Kildee, Mr. Williams, Mr. Martinez, Mr. Owns, Mr. Boucher, Mr. Perkins, Mr. Goodling, Mr. Chandler, Mr. McKernan, and Mr. Fawell.

As exclusive conferees, solely for the consideration of division B of the Senate bill and division B of the House amendments: Mr. Dellums, Mr. Montgomery, Mr. Hutto, Mr. Leath of Texas, Mr. Hertel, Mr. Kramer, Mr. Dickinson, and Mr. Whitehurst.

As exclusive conferees, solely for the consideration of division D of the House amendments and modifications committed to conference: Mr. Aspin, Mr. Nichols, Mr. Skelton, Mr. Marvoules, Mr. Dickinson, Mr. Hopkins, and Mr. Kasich.

Mr. DOLE. Mr. President, I move that the Senate disagree to the House amendments and agree to the conference requested by the House, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. GOLDWATER, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, Mr. COHEN, Mr. QUAYLE, Mr. WILSON, Mr. DENTON, Mr. GRAMM, Mr. BROYHILL, Mr. NUNN, Mr. STENNIS, Mr. HART, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, and Mr. GLENN conferees on the part of the Senate.

Mr. DOLE. I move to reconsider the vote, Mr. President.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, what I hope to do now is ask unanimous consent that we might move to the consideration of the Federal-Aid Highway Act, S. 2405, and that we might then have the cloture vote on the motion just filed on Thursday of this week. I am not certain whether we can proceed to the highway bill but if there is no objection, I shall ask unanimous consent that the Senate now turn to consideration of Calendar 774, S. 2405, the Federal-Aid Highway Act of 1986.

The PRESIDING OFFICER. Is there objection?

Mr. FORD. Mr. President, reserving the right to object, I will not object, but I want to make a statement relating to my reservation.

I am not in favor of the proliferation of billboards. I am not in favor of the clutter that many of the billboards can cause. But I have talked to all of my small billboard operators in my State and they are concerned that the language in this bill will, for all practical purposes, put them out of business.

□ 1520

Some billboard owners, who have thousands of billboards across this Nation, are very much in favor of this bill and of the freeze, the cap on the number of billboards now in force. Small owners say that they will have no incentive now to try to increase their small business. They lose 10 percent of the location of their boards every year and therefore they have to find new locations. They say that in this bill we even regulate billboards on Indian lands, which is unconstitutional. They also say that eliminating their business without just compensation is unconstitutional.

Now, I am not a lawyer; therefore, I would not know the problems under the first and fifth amendments. But I do know that many of those people in my State are more than willing to accept stricter law enforcement. They are willing to do those things that would make the law enforceable. It would be my judgment, Mr. President, that if the House wins with their language then there will be a rush to build billboards and there may be twice as many billboards, if we would only listen to some of these small people who say, "Just give us an opportunity to grow. Just give us an opportunity to grow and take the cap off."

So, Mr. President, I am not opposed to a stricter law. I am not opposed to elimination of some billboard locations. I am just opposed to putting the foot on the neck of the small businessman and saying to him, "You cannot grow." Let me tell you what is going to happen. If they cannot grow, the big ones will get bigger because they will buy out the smaller ones.

In one of the towns in my State there are five billboards owned by one of the largest, if not the largest, billboard concerns in the country. For the last 3 years there has not been a piece of paper on any of those boards. They are there for one reason and one reason only, to put my small Kentucky businessmen out of business.

Oh, I have had calls from highway contractors, the commissioner of highways, environmentalists, everything, and you know the newspapers have been alerted—oh, they have been alerted—all over my State that Ford is getting ready to do this.

Well, one of the largest groups in my State in now owned by one of the largest billboard operators in my State. I wonder how they are going to write about how I talk today.

So, Mr. President, in the majority of cases we find that basically people do not object to billboards. I was handed this poll just completed in September 1986, and it gives a right interesting summary. It is a national poll, and it says that most annoying on highways is careless drivers, poor maintenance, construction, trucks, speed limits, litter, tolls, and 1 percent object to billboards. Least annoying, billboards, 37 percent. Most annoying is careless drivers.

Mr. President, I ask unanimous consent that this poll taken by Hamilton & Staff be printed in the RECORD.

The PRESIDING OFFICER. Is there objection to the request of the majority leader?

Mr. DOLE. Mr. President, I need to add to that request a couple of other things that do not relate to this. I want to thank the distinguished Senator from Kentucky.

Mr. FORD. May I get this in the record.

The PRESIDING OFFICER. The Chair would like to take them one at a time. Is there an objection to the request of the majority leader to go to the bill?

Mr. FORD. No. Go ahead.

Mr. BYRD. Mr. President, reserving the right to object—and I will not object—I will wait until the majority leader has completed his request.

Mr. DOLE. If the Senator will yield for 1 second?

Mr. FORD. Yes.

Mr. DOLE. Mr. President, in addition to asking unanimous consent that we proceed, that would be provided the following amendements not be in order: any amendment altering the method of distribution from the mass transit account or transferring mass transit account funds to highway purposes shall not be in order; any amendment altering the method of distribution from the highway account shall not be in order.

I also ask unanimous consent that no motions to recommit with instructions be in order.

The PRESIDING OFFICER. Is there objection to the request?

Mr. STEVENS. Reserving the right to object, we did have an amendment here I thought that did vary the distribution account.

Mr. BYRD. Mr. President, I remove my reservations.

The PRESIDING OFFICER. Is there objection to the request? If not, the majority leader's request is agreed to. Is there objection to the request of the Senator from Kentucky?

There being no objection, the report was ordered to be printed in the RECORD, as follows:

TABULAR REPORT A SURVEY OF ADULTS NATIONWIDE

PREFACE

The following tabular report is based on a survey of 1,003 adults nationwide. Telephone interviewing was conducted from September 17 through September 21, 1986.

This tabular report presents data that have been reweighted to reflect an accurate distribution of gender and age by area.

HOW TO READ THIS TABULAR REPORT

Always read down. The percentages in all the tables relate to the subgroups under which they appear. For example, in Table 1, under the heading Northeast, the figure 219 represents the number of respondents from the Northeast and the percentages below indicate the opinions of that subgroup on that particular question.

Respondent Must Own or Lease a Motor Vehicle; Terminate All Others

Is your personal vehicle used mostly for business or pleasure?

Business	40
Pleasure	53
Don't know	7

1. On another subject, many people find certain things annoying about driving on our roads and highways. I'd like to ask which of the following you find the most annoying when you travel by car. (Read Choices) (Record "Most").

1a. And which of those things do you find the least annoying—I can repeat the list if you'd like. (Record "Least")

	Most	Least
Litter along the roads	5	8
Careless drivers	37	2
Having to stop and pay tolls	1	13
Being slowed by construction on the road	12	10
Billboards alongside the road	1	37
Too many large trucks on the road	7	10
Laws regarding the speed limit	5	11
Pot holes and poor maintenance of roads	29	3
Don't know	3	6

2. Congress is now debating the regulation of billboards. Under a 1965 federal law, billboards on major highways can only be put up in commercial and industrial areas and only under certain conditions regarding the size and location of billboards. Which of the following actions would you support the Congress taking?

Continuing the current federal law that controls the size and location of billboards.—42.

Placing a freeze on the total number of billboards on interstate and primary highways but allowing older billboards to be replaced by new ones.—30.

Or

Banning all new billboards on interstate and primary highways entirely.—22.

(Vol) None—2.

Don't know—4.

3. Let's look at some areas that environmentalists consider to be major issues. Tell me how serious a problem you feel the following are to our environment . . . very serious, somewhat serious or not very serious?

	Very serious	Somewhat serious	Not very serious	D.K./No difference
a. Junk yards	23	34	40	3
b. Litter on streets and highways	39	40	21	
c. Billboards	8	24	66	2
d. Industrial air pollution	69	18	11	
e. Industrial water pollution	80	11	7	2
f. Toxic waste sites	83	9	6	2
g. Auto emissions	34	40	22	4
h. Risk to endangered species	53	26	17	4
i. Oil spills	63	21	13	3

4. Next, for each of the following things, please tell me whether they are things that you are very concerned about or not very concerned about?

	Very concerned	Not very concerned	Don't know
a. Television commercials	31	67	2
b. Advertising on buses, trains and train stations	7	86	7
c. The condition of the roads and highways in your state	75	24	1
d. Billboard advertising	16	82	2
e. Crime in your neighborhood	75	25	
f. What to do about the problem of hazardous waste	88	10	2
g. The federal deficit	80	17	3
h. The outlook for the economy over the next few years	84	15	1
i. Direct mail advertising	34	63	3

5. Here are some statements that have been made about billboard advertising. I'd like you to tell me if you agree or disagree with each of these. Here's the first one . . . (Read choices)

	Agree	Disagree	Don't know
a. Billboards can often be useful to drivers in finding restaurants, gas stations, lodging and other products or services	91	8	1
b. Most billboards are annoying and unattractive	25	72	3
c. Billboard advertising is often interesting and can help break up the monotony of long highway driving	69	30	1
d. I've never really thought much about billboards and don't have strong feelings about them one way or another	57	41	2

6. On another subject, some people consider themselves to be environmentalists while others think that other issues like economic development and creating new jobs are sometimes more important than protecting the environment. Do you consider yourself an environmentalist or do you think other issues are sometimes more important?

Environmentalist—34.

Other issues more important—56.

Don't know—10.

IF ENVIRONMENTALIST

6a. Would you say that you feel strongly about that position or not?

Yes, feel strongly—28.

No, not feel strongly—6.

Don't know—

NA—66.

Now, just a few questions for classification purposes only * * *

7. Could you please tell me—is your age between 18-24, 25-34, 35-49, 50-64, or 65 and over?

18 to 24	17
25 to 34	23
35 to 49	23
50 to 64	21
65—Up	16

8. Generally speaking, do you consider yourself a Democrat, Republican, or an Independent, or something else?

Democrat	32
Republican	29
Independent	27
Other	8

Don't know 4

9. Sex. (*Don't ask—Just record*):
Male 49
Female 51

10. Region. (*Don't ask—Just record*):

REGULATION OF BILLBOARDS

[In percent]

	Total	Region				Gender		Age					Party ID		
		North east	Mid west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem.	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Is your personal vehicle used for business or pleasure?															
Business	40	33	41	44	42	43	38	47	44	48	37	21	42	38	39
Pleasure	53	64	49	49	52	51	55	47	50	45	52	75	52	57	54
Don't know	7	3	10	7	6	6	7	5	6	7	10	4	6	5	7
Which is most annoying when you travel by car?															
Litter	5	6	6	4	3	6	4	2	4	7	5	5	5	6	5
Careless drivers	37	35	30	40	43	34	39	38	38	35	35	37	36	35	41
Stopping to pay tolls	1	3	0	1	1	2	1	1	2	2	1	1	1	1	2
Road construction	12	11	15	9	11	12	11	21	12	10	9	6	10	13	12
Billboards	1	1	1	2	1	1	2	1	1	3	1	1	1	0	2
Large trucks	7	9	5	7	9	5	9	2	4	5	12	14	9	7	6
Speed limits	5	3	7	5	5	7	3	4	5	5	6	5	5	5	6
Poor maintenance	29	29	34	29	23	30	29	31	31	31	27	26	30	30	25
Don't know	2	2	1	2	4	2	3	0	1	1	5	5	2	3	1
Which is least annoying when you travel by car?															
Litter	8	6	6	10	7	8	7	5	9	6	5	14	6	7	8
Careless drivers	2	1	1	2	5	2	2	4	1	1	1	4	1	3	1
Stopping to pay tolls	13	21	9	14	10	14	13	8	14	15	13	15	12	16	13
Road construction	10	8	10	10	13	10	11	13	8	8	13	8	8	10	12
Billboards	37	38	40	32	37	30	43	42	44	40	33	22	38	34	38
Large trucks	10	9	12	10	10	14	6	15	10	8	10	7	12	9	8
Speed limits	11	10	12	13	9	12	10	10	11	15	12	8	10	9	16
Poor maintenance	3	2	3	3	5	4	2	2	1	3	5	7	5	3	1
Don't know	6	5	6	6	4	7	5	1	2	4	8	15	6	7	3

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some what	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Is your personal vehicle used for business or pleasure?														
Business	40	42	41	36	40	41	43	25	39	43	41	42	42	40
Pleasure	53	54	51	55	54	52	52	66	54	51	53	51	51	54
Don't know	7	4	8	9	6	7	5	9	7	6	6	7	7	6
Which is most annoying when you travel by car?														
Litter	5	4	5	6	4	5	4	4	9	5	4	7	3	4
Careless drivers	37	39	35	34	33	39	38	32	35	36	37	40	44	34
Stopping to pay tolls	1	2	2	2	1	2	1	0	1	2	1	2	4	1
Road construction	12	11	15	8	12	11	12	7	3	10	13	9	8	13
Billboards	1	0	0	5	3	0	0	13	11	2	0	3	1	1
Large trucks	7	7	5	12	8	7	5	11	5	10	6	6	4	8
Speed limits	5	5	5	7	7	4	5	10	5	5	5	5	3	5
Poor maintenance	29	30	31	25	30	29	34	20	27	28	31	25	29	32
Don't know	2	3	1	1	2	3	2	2	4	2	2	2	4	2
Which is least annoying when you travel by car?														
Litter	8	5	7	10	8	8	6	5	15	8	7	5	6	9
Careless drivers	2	1	3	3	2	2	1	2	4	3	2	2	2	2
Stopping to pay tolls	13	9	12	23	13	13	10	25	18	21	10	16	14	12
Road construction	10	9	10	13	11	10	10	15	10	13	9	7	16	11
Billboards	37	46	40	17	32	40	45	17	16	29	42	37	33	37
Large trucks	10	11	8	10	11	9	10	4	11	5	12	12	8	9
Speed limits	11	10	11	15	14	10	10	21	17	12	10	15	14	10
Poor maintenance	3	2	4	5	3	3	2	7	3	4	3	2	3	4
Don't know	6	5	5	4	6	6	5	4	6	4	6	4	5	6

	Total	Region				Gender		Age					Party ID		
		North-east	Mid-west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem.	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Which action on regulation of billboards by Congress would you support?															
Continue controls	42	40	47	36	45	38	45	43	50	41	38	34	40	39	49
Allow replacement	30	26	34	31	26	26	33	39	29	35	25	22	31	34	25
Ban all new billboards	22	26	12	25	23	29	15	13	18	22	28	26	22	20	23
None	2	2	2	2	3	3	1	1	0	1	4	5	2	2	2
Don't know	5	5	5	6	3	4	6	4	3	2	4	13	5	5	1

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some-what	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Which action on regulation of billboards by Congress would support?														
Continue controls	42	100	0	0	37	45	51	16	10	29	51	40	52	41
Allow replacement	30	0	100	0	29	30	33	7	12	33	31	31	28	30
Ban all new billboards	22	0	0	100	27	18	10	71	68	33	12	25	14	21
None	2	0	0	0	2	2	2	2	4	1	2	2	1	2
Don't know	5	0	0	0	5	5	5	4	6	4	4	2	5	6

	Total	Region				Gender		Age					Party ID		
		North east	Mid West	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem.	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Billboards:															
Very serious	8	9	4	10	6	9	6	3	4	9	8	15	7	7	8
Somewhat serious	24	21	23	26	27	22	26	24	23	27	22	26	26	23	24
Not very serious	66	67	72	62	65	67	65	72	73	64	66	55	65	67	68
DK/no difference	2	3	1	2	1	2	2	1	0	1	4	4	1	2	1
Junk yards:															
Very serious	23	20	22	27	19	18	27	14	20	19	30	31	26	22	21
Somewhat serious	34	33	39	30	38	30	39	42	36	40	23	32	36	31	39
Not very serious	40	43	36	41	41	51	30	43	43	37	44	34	36	45	36
DK/no difference	3	3	3	2	2	2	3	1	2	4	4	3	2	2	4
Litter:															
Very serious	39	43	34	43	33	38	40	42	36	34	42	41	43	35	39
Somewhat serious	40	38	46	37	38	38	41	39	44	50	34	27	37	43	41
Not very serious	21	18	19	20	27	23	18	17	20	16	23	29	20	21	20
DK/no difference	1	0	1	1	1	1	1	2	0	0	0	4	0	1	0

	Total	Action for Congress			Interested in billboards		Billboards		Billboards serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Somewhat	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Billboards:														
Very serious	8	2	3	24	12	5	3	30	100	0	0	10	3	7
Somewhat serious	24	17	27	38	24	24	18	44	0	100	0	32	39	20
Not very serious	66	81	69	36	63	68	78	25	0	0	100	57	55	71
DK/No difference	2	1	1	2	1	3	1	0	0	0	0	1	4	2
Junk yards:														
Very serious	23	19	21	33	22	23	20	27	43	29	18	23	18	23
Somewhat serious	34	38	37	27	34	34	36	26	22	45	32	39	40	32
Not very serious	40	40	39	40	42	39	41	46	33	25	47	36	39	42
DK/No difference	3	3	3	0	2	3	3	2	2	2	3	2	3	3
Litter:														
Very serious	39	36	40	43	42	37	38	50	68	48	32	44	28	38
Somewhat serious	40	39	43	39	40	40	41	38	15	44	41	39	49	39
Not very serious	21	24	16	16	18	22	20	13	14	7	26	16	23	22
DK/No difference	1	1	0	2	0	1	1	0	3	0	1	0	0	1

	Total	Region				Gender		Age					Party ID		
		North-east	Mid-west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem.	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Industrial air pollution:															
Very serious	69	79	65	67	68	65	73	71	74	79	63	54	72	65	75
Somewhat serious	18	13	22	18	21	21	15	19	19	15	21	17	18	21	17
Not very serious	11	7	12	14	9	12	10	11	6	5	15	22	10	12	8
DK/No difference	1	2	1	1	2	2	1	0	0	1	1	7	1	2	0
Industrial water pollution:															
Very serious	80	86	79	76	79	78	82	83	83	87	77	65	80	76	86
Somewhat serious	11	8	12	12	8	13	9	7	12	9	12	12	10	13	8
Not very serious	7	4	7	9	9	8	7	9	4	4	7	16	7	8	6
DK/No difference	2	2	1	2	4	2	2	1	1	0	3	7	3	2	0
Toxic waste sites:															
Very serious	83	92	84	80	77	83	83	82	87	89	82	74	85	80	88
Somewhat serious	9	4	9	10	12	9	8	13	10	5	7	10	7	12	6
Not very serious	6	2	6	7	8	6	6	5	3	5	8	10	5	7	5
DK/No difference	2	1	1	3	2	2	2	0	0	1	3	6	2	2	1

	Total	Action for Congress			Interested in billboards		Billboards		Billboards serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Somewhat	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Industrial air pollution:														
Very serious	69	65	74	76	71	68	68	71	81	82	63	81	69	64
Somewhat serious	18	21	15	14	18	19	18	18	10	12	21	12	23	20
Not very serious	11	12	9	8	11	11	12	9	6	5	14	7	8	13
DK/No difference	1	1	2	1	1	2	2	2	2	1	1	0	0	2
Industrial water pollution:														
Very serious	80	79	82	84	83	78	78	81	84	87	77	92	78	75
Somewhat serious	11	11	9	10	9	12	11	13	7	9	11	4	17	13
Not very serious	7	9	6	5	7	8	9	2	5	2	9	3	3	10
DK/No difference	2	2	2	1	2	3	2	4	4	2	2	1	1	3
Toxic waste sites:														
Very serious	83	82	86	84	81	84	82	82	80	89	82	92	83	79
Somewhat serious	9	9	8	10	11	8	9	13	8	8	9	5	13	10
Not very serious	6	8	4	3	6	6	7	2	5	2	7	3	4	8
DK/No difference	2	1	1	3	2	2	2	4	7	1	2	1	0	3

	Total	Region				Gender		Age					Party ID		
		North east	Mid-west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	DEM	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Auto Emissions:															
Very serious	34	38	34	29	40	33	35	25	34	39	33	39	35	33	35
Somewhat serious	40	38	43	40	39	39	41	46	48	46	34	23	39	43	42
Not very serious	22	21	20	26	20	25	20	25	17	14	27	32	21	22	20
DK/No difference	3	3	3	5	1	3	4	4	1	1	6	5	4	2	2

	Total	Region				Gender		Age					Party ID		
		North east	Mid-west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	DEM	GOP	Ind.
Risk to endangered species:															
Very serious	53	60	51	53	50	51	56	63	59	59	46	37	57	48	58
Somewhat serious	26	24	32	24	24	29	23	22	29	30	23	23	22	31	27
Not very serious	17	11	15	19	22	16	17	13	10	10	23	29	16	18	12
DK/No difference	4	4	3	5	4	4	5	2	1	2	7	10	5	3	4
Oil spills:															
Very serious	63	73	61	62	57	61	66	59	67	69	62	56	67	57	67
Somewhat serious	21	19	24	20	24	23	19	22	22	24	20	17	20	24	21
Not very serious	13	7	13	16	18	14	13	19	10	7	14	22	11	16	11
DK/No difference	2	2	2	2	1	2	2	0	1	0	3	5	2	3	1

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some-what	Not	Solid	Some	Not
W/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Auto emissions:														
Very serious	34	32	29	44	33	35	29	51	54	42	29	42	27	31
Somewhat serious	40	41	46	35	40	40	44	30	22	49	40	42	49	39
Not very serious	22	24	20	18	24	22	24	19	18	6	28	15	25	25
DK/No difference	3	2	4	3	3	3	4	0	5	2	3	0	0	5
Risk to endangered species:														
Very serious	53	52	56	56	56	52	53	52	64	66	48	72	56	45
Somewhat serious	26	29	24	25	23	28	24	30	19	23	28	18	32	29
Not very serious	17	15	16	14	18	15	18	14	14	7	20	9	8	21
DK/No difference	4	3	4	5	3	5	5	4	3	4	4	1	3	5
Oil spills:														
Very serious	63	61	65	66	62	64	62	77	71	72	59	76	64	58
Somewhat serious	21	21	21	23	21	22	22	11	11	22	22	16	29	23
Not very serious	13	15	13	9	16	12	16	11	16	4	17	7	7	17
DK/No difference	2	2	1	2	1	3	1	2	1	2	2	1	0	2

	Total	Region				Gender		Age					Party ID		
		North east	Mid west	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Billboard advertising:															
Very concerned	16	18	11	20	16	17	15	14	11	16	20	22	18	17	16
Not very concerned	82	80	87	80	83	82	83	86	89	83	78	74	81	81	83
Don't know	1	2	1	1	2	1	1	0	0	1	1	4	1	2	1
Television commercials:															
Very concerned	31	29	29	32	34	27	34	19	25	29	35	47	33	33	26
Not very concerned	67	69	69	66	63	71	64	80	75	69	60	50	65	65	72
Don't know	2	2	2	2	3	2	2	1	0	2	5	4	2	2	2
Advertising on busses, trains and in stations:															
Very concerned	7	6	7	9	7	7	8	9	8	8	6	5	9	5	7
Not very concerned	86	87	87	82	87	87	84	90	91	87	82	76	85	85	86
Don't know	7	7	6	9	6	6	8	1	1	5	12	19	5	9	7

	Total	Action for Congress			Intrerested in billboard		Billboards		BNillboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some what	Not	Solid	some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Billboard advertising:														
Very concerned	16	6	17	37	24	11	9	54	62	28	7	21	14	15
Not very concerned	82	93	83	61	75	87	90	46	35	71	92	78	86	84
Don't know	1	0	0	3	1	2	1	0	4	1	0	1	0	2
Television commercials:														
Very concerned	31	24	35	37	37	27	26	43	43	39	26	30	34	31
Not very concerned	67	74	63	60	61	71	73	55	52	60	73	68	66	67
Don't know	2	2	2	2	2	2	1	2	5	2	1	3	0	2
Advertising on busses, trains and in stations:														
Very concerned	7	4	13	6	10	5	6	9	16	10	6	9	7	7
Not very concerned	86	90	81	84	83	88	89	85	73	83	89	87	90	84
Don't know	7	6	6	10	7	7	5	5	11	7	6	5	3	9

	Total	Region				Gender		Age					Party ID		
		North east	Mid west	South	West	Hen	Lomen	18–24	25–34	35–49	50–64	65 up	DEM	GOP	Ind.
N/VER	1003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
The condition of State roads and highways:															
Very concerned	75	78	77	74	68	74	75	84	82	74	70	62	80	72	74
Not very concerned	24	21	23	25	31	25	24	16	17	26	29	37	20	27	25
Don't know	1	0	1	1	1	1	1	0	0	1	1	2	0	1	1
Neighborhood crime:															
Very concerned	75	70	73	80	73	73	76	79	76	74	75	69	78	74	74
Not very concerned	25	30	27	19	27	26	24	21	23	25	25	31	22	26	26
Don't know	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
What to do about hazardous waste:															
Very concerned	88	92	89	89	80	89	88	86	92	90	90	80	90	86	92
Not very concerned	10	5	9	10	18	10	10	13	7	8	7	16	7	13	7
Don't know	2	3	2	2	2	2	2	1	1	1	3	4	3	1	2

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	anti	very	some-what	not	Solid	Some	Not
N/Ver	1003	416	301	217	406	597	577	50	77	244	663	277	65	661
The Condition of State roads and highways:														
Very concerned	75	74	78	73	77	73	77	61	67	80	74	76	73	74
Not very concerned	24	25	22	26	23	26	22	37	32	19	25	24	27	24
Don't know	1	1	1	1	0	1	1	2	1	1	1	0	0	1
Neighborhood crime:														
Very concerned	75	71	81	74	79	72	75	71	80	79	73	75	70	75
Not very concerned	25	29	19	25	21	28	25	29	20	21	27	25	30	25
Don't know	0	0	0	0	0	0	0	0	0	0	0	0	0	0
What to do about hazarous waste:														
Very concerned	88	90	86	90	87	89	88	98	94	95	85	96	85	85
Not very concerned	10	9	11	7	10	9	10	2	4	5	12	3	13	12
Don't know	2	1	2	3	2	2	2	0	2	1	3	1	1	3

	Total	Region				Gender		Age					Party Id		
		North-east	Mid-west	South	West	Men	Women	18–24	25–34	35–49	50–64	65up	Dem.	GOP.	Ind.
N/Ver	1003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
The Federal deficit:															
Very concerned	80	80	81	84	72	81	80	70	78	81	86	87	82	81	82
Not very concerned	17	18	15	13	28	16	18	28	19	18	12	9	16	17	17
Don't know	2	2	4	2	1	2	2	3	3	1	1	4	2	2	1
The outlook for the economy:															
Very concerned	84	83	84	87	78	79	88	80	87	85	84	81	91	77	87
Not very concerned	15	16	14	12	20	20	10	19	13	14	15	14	9	21	12
Don't know	1	1	2	2	1	1	1	1	0	1	1	5	1	2	1
Direct mail advertising:															
Very concerned	34	34	31	37	33	33	35	25	20	30	46	54	35	33	35
Not very concerned	63	64	67	60	65	65	62	75	78	69	50	41	63	65	63
Don't know	3	2	3	3	2	2	3	1	2	2	4	5	2	2	2

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some-what	Not	Solid	Some	Not
N/Ver	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
The Federal deficit:														
Very concerned	80	80	79	87	81	80	81	82	89	88	77	85	76	79
Not very concerned	17	19	19	12	17	17	18	18	8	10	21	14	24	18
Don't know	2	1	2	2	1	3	1	0	2	2	2	1	0	3
The outlook for the economy:														
Very concerned	84	84	86	83	85	83	87	77	83	87	83	87	76	83
Not very concerned	15	15	13	16	15	15	12	22	14	12	16	12	24	15
Don't know	1	1	1	1	1	2	1	2	3	1	1	1	0	2
Direct mail advertising:														
Very concerned	34	29	33	44	34	34	31	50	47	43	29	34	36	34
Not very concerned	63	70	65	54	63	63	66	50	46	55	69	64	63	63
Don't know	3	1	3	2	2	3	3	0	6	2	2	2	1	3

	Total	Region				Gender		Age					Party Id		
		North-east	South-west	Mid-west		Men	Women	18–24	25–34	35–49	50–64	65 up	Dem	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Billboards can be useful to drivers:															
Agree	91	86	96	92	90	90	93	93	92	91	94	87	90	94	90
Disagree	8	14	3	8	10	9	7	7	8	9	6	12	9	6	10
Don't know	0	0	1	0	0	0	0	0	0	0	0	1	1	0	0
Most billboards are annoying:															
Agree	25	31	21	26	25	29	22	24	19	25	29	32	26	26	26
Disagree	72	67	75	72	72	68	75	75	80	73	67	60	71	71	72
Don't know	3	3	4	2	3	3	3	1	0	3	3	8	3	3	1
Billboard advertising is often interesting:															
Agree	69	62	75	72	61	63	75	70	72	67	73	58	73	64	66
Disagree	30	36	24	26	38	36	23	29	27	32	25	37	26	33	32
Don't know	2	2	1	2	1	1	2	1	1	0	2	5	1	3	2
I haven't thought much about billboards and don't have strong feelings about them:															
Agree	57	57	58	54	58	54	59	55	57	54	57	60	54	61	55
Disagree	41	40	40	42	41	43	38	40	42	44	41	34	42	38	43
Don't know	3	3	2	4	1	3	3	5	1	3	2	5	4	2	2

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue	Freeze	Ban	Yes	No	Pro	Anti	Very	Some-what	Not	Solid	Some-what	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Billboards can be useful to drivers:														
Agree	91	95	96	79	88	93	100	0	75	86	95	89	93	92
Disagree	8	5	4	21	11	6	0	100	24	13	5	11	7	7
Don't know	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Most billboards are annoying:														
Agree	25	11	22	59	29	23	0	100	67	38	16	29	24	24
Disagree	72	87	76	39	70	73	100	0	32	59	82	69	75	72
Don't know	3	2	2	3	2	4	0	0	1	4	2	2	1	3
Billboard advertising is often interesting:														
Agree	69	78	77	40	65	71	100	0	32	57	77	62	75	71
Disagree	30	21	22	60	34	27	0	100	64	42	21	38	25	27
Don't know	2	1	1	1	1	2	0	0	4	1	1	1	0	2

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue	Freeze	Ban	Yes	No	Pro	Anti	Very	Somewhat	Not	Solid	Somewhat	Not
I haven't thought much about billboards and don't have strong feelings about them:														
Agree	57	61	57	47	0	95	57	33	32	56	59	53	54	58
Disagree	41	36	40	50	100	0	40	65	61	41	39	45	44	38
Don't know	3	3	3	2	0	5	3	2	6	3	2	2	2	4

	Total	Region				Gender		Age					Party ID		
		Northeast	Midwest	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem.	GOP	Ind.
N/VER	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Do you consider yourself an environmentalist or are other issues more important?:															
Environmentalists	34	41	32	34	29	34	34	36	36	41	28	26	33	30	41
Other issues important	56	49	57	56	61	55	56	58	56	50	58	60	58	58	51
Don't know	10	9	11	10	10	11	10	6	8	9	14	14	9	12	8
Do you feel strongly about that position?:															
Yes	28	33	25	27	26	28	27	26	29	33	26	21	27	23	33
No	6	8	7	6	3	5	7	10	7	7	2	4	5	6	7
Don't know	0	0	1	1	0	1	0	0	0	1	0	1	1	0	1
Not asked	66	59	68	66	71	66	66	64	64	59	72	74	67	70	59

	Total	Action for Congress			Interested billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Somewhat	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Do you consider yourself an environmentalist or are other issues more important?														
Environmentalists	34	35	34	36	38	31	34	48	37	47	29	100	100	0
Other issues important	56	55	58	53	52	58	57	41	48	47	60	0	0	85
Don't know	10	10	8	11	10	11	10	10	14	6	11	0	0	15
Do you feel strongly about that position?														
Yes	28	26	29	32	31	25	26	41	35	36	24	100	0	0
No	6	8	6	3	6	6	7	6	2	10	5	0	93	0
Don't know	0	1	0	1	1	0	0	2	0	1	0	0	7	0
Not asked	66	65	66	64	62	69	66	52	63	53	71	0	0	100

	Total	Region				Gender		Age					Party ID		
		Northeast	Midwest	South	West	Men	Women	18–24	25–34	35–49	50–64	65 up	Dem	GOP	wd.
N/Ver	1,003	219	274	350	159	491	511	170	230	230	210	160	320	293	269
Male	49	50	46	49	50	100	0	51	54	48	45	46	47	47	50
Female	51	50	54	51	50	0	100	49	46	52	55	54	53	53	50
18–24	17	15	18	19	14	18	16	100	0	0	0	0	16	17	14
25–34	23	24	24	22	21	25	20	0	100	0	0	0	18	25	25
35–49	23	24	22	22	26	22	23	0	0	100	0	0	24	19	29
50–64	21	23	19	23	18	19	23	0	0	0	100	0	27	17	22
65 up	16	14	18	14	19	15	17	0	0	0	0	100	14	23	9
Do you consider yourself:															
A Democrat	32	26	30	40	27	31	33	31	25	33	41	29	100	0	0
Republican	29	30	32	24	34	28	30	30	31	24	23	42	0	100	0
Independent	27	33	25	22	31	27	26	22	29	34	28	16	0	0	100
Other	8	9	9	7	4	9	6	9	11	5	5	8	0	0	0
Don't know	4	2	4	7	4	4	4	8	3	4	2	5	0	0	0
Northeast	22	100	0	0	0	23	21	19	23	23	24	20	18	23	27
Midwest	27	0	100	0	0	26	29	28	29	26	24	30	26	30	26
South	35	0	0	100	0	35	35	39	34	33	38	31	43	29	29
West	16	0	0	0	100	16	15	13	15	18	14	19	13	18	19

	Total	Action for Congress			Interested in billboards		Billboards		Billboards a serious issue			Environmentalists		
		Continue law	Freeze	Ban	Yes	No	Pro	Anti	Very	Some what	Not	Solid	Some	Not
N/VER	1,003	416	301	217	406	597	577	50	77	244	663	277	65	661
Male	49	45	43	65	52	47	44	53	57	45	50	50	42	49
Female	51	55	57	35	48	53	56	47	43	55	50	50	58	51
18–24	17	18	22	10	17	17	18	15	6	17	18	16	26	16
25–34	23	28	22	19	24	22	26	22	12	22	25	24	25	22
35–49	23	22	26	23	25	22	23	23	26	25	22	27	29	20
50–64	21	19	18	27	21	21	22	13	22	19	21	20	6	23
65 up	16	13	11	19	13	18	12	27	31	17	13	12	12	18
Do you consider yourself:														
A Democrat	32	31	33	33	33	31	34	33	29	35	32	32	27	33
Republican	29	27	33	27	27	31	28	26	27	28	30	25	28	31
Independent	27	32	22	29	29	26	26	29	27	26	28	32	33	24
Other	8	7	7	7	7	8	8	6	8	8	7	8	5	8
Don't know	4	3	4	4	4	5	4	6	8	4	4	4	6	4
Northeast	22	21	19	27	21	22	21	43	27	19	22	26	27	19
Midwest	27	31	31	15	27	28	29	2	13	26	30	24	31	28
South	35	31	36	41	36	34	36	34	47	37	33	34	35	35
West	16	17	14	17	16	16	14	21	13	18	15	15	7	17

SUMMARY

TABLE 1.—MOST/LEAST ANNOYING FACTORS IN HIGHWAY TRAVEL

[In percent]

	Total	Environmentalists
Most annoying:		
Careless drivers	37	40
Poor maintenance	29	25
Construction	12	9
Trucks	7	6
Speed limits	5	5
Litter	5	7
Tolls	1	2
Billboards	1	3
Least annoying:		
Billboards	37	37
Tolls	13	16
Speed limits	11	15
Construction	10	7
Trucks	10	12
Litter	8	5
Poor maintenance	3	2
Careless drivers	2	2

TABLE 2.—ATTITUDES TOWARD BILLBOARDS

[In Percent]

	Total	Environmentalists
Billboards are useful to drivers:		
Agree	91	89
Disagree	8	11
Billboard ads are often interesting:		
Agree	69	62
Disagree	30	38
Most billboards are annoying:		
Agree	25	29
Disagree	72	69
Haven't thought much about billboards:		
Agree	57	53
Disagree	41	45

TABLE 3.—ENVIRONMENTAL CONCERNS

[Total sample and in percent]

	Very serious	Somewhat serious	Not very serious
Toxic waste	83	9	6
Water pollution	80	11	7
Industrial air pollution	69	18	11
Oil spills	63	21	13
Endangered species	53	26	17
Litter	39	40	21
Auto emissions	34	40	22
Junk yards	23	34	40
Billboards	8	24	66

TABLE 4.—ENVIRONMENTAL CONCERNS

[Environmentalists and in percent]

	Very serious	Somewhat serious	Not very serious
Toxic waste	92	5	3
Water pollution	92	4	3
Industrial air pollution	81	12	7
Oil spills	76	16	7
Endangered species	72	18	9
Auto emissions	42	42	15
Litter	44	39	16
Junk yards	23	39	36
Billboards	10	32	57

TABLE 5.—ATTITUDES TOWARD BILLBOARD LEGISLATION

[In percent]

	Status quo	Freeze	Ban
Total	42	30	22
Area:			
Northeast	40	26	26
Midwest	47	34	12
South	36	31	25
West	45	26	23

TABLE 5.—ATTITUDES TOWARD BILLBOARD LEGISLATION—Continued

[In percent]

	Status quo	Freeze	Ban
Age:			
18 to 25	43	39	13
25 to 34	50	29	18
35 to 49	41	35	22
50 to 64	38	25	28
65 plus	34	22	26
Sex:			
Men	38	26	29
Women	45	33	15
Party Identification:			
Democrats	40	31	22
Republicans	39	34	20
Independents	49	25	23
Strong environmentalist	40	31	25
Not strong environmentalist	52	28	14
Non-environmentalist	41	30	21

BUDGET ACT WAIVER

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 870, Senate Resolution 459, waiving section 303(a) of the Congressional Budget Act with respect to S. 2405.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 459) waiving section 303(a) of the Congressional Budget Act of 1974, for the consideration of S. 2405.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 459) was agreed to.

Mr. DOLE. I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

The resolution (S. Res. 459) is as follows:

S. Res. 459

Resolved, That section 303(a) of the Congressional Budget Act of 1974 is hereby waived with respect to the consideration of S. 2405, the Federal-Aid Highway Act of 1986.

SEC. 2. This waiver is necessary so that multiyear highway legislation may be considered by the Senate. Highway authorizations are contract authority which when enacted create new spending authority. To consider this multiyear highway bill such a waiver is required by section 303(a).

Mr. DOLE. Mr. President, let me thank the distinguished Senator from Kentucky [Mr. FORD] for his willingness to let us proceed. I certainly share his views expressed about those who may be adversely impacted, and I appreciate his permitting us to move ahead. I also want to thank the distinguished minority leader and others who have cleared this bill for action. There has been a lot of negotiation since last Thursday on each side. This is a very important piece of legislation. We are now ready to proceed, I would say to the manager of the bill.

FEDERAL AID HIGHWAY ACT OF 1986

The PRESIDING OFFICER. The clerk will report the bill.

The legislative clerk read as follows:

A bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal-Aid Highway Act of 1986".

AUTHORIZATIONS

SEC. 102. The following sums are hereby authorized to be appropriated out of the Highway Trust Fund other than the Mass Transit Account—

(1) For the Federal-aid Interstate-Primary Program $8,150,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(2) For the Federal-aid urban system $750,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(3) For the Federal-aid secondary system in rural areas $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(4) For bridge replacement and rehabilitation under section 144 of title 23, United States Code, $1,500,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. All but $200,000,000 per fiscal year of each such authorization shall be apportioned as provided in 23 U.S.C. 144(e). Such $200,000,000 shall be obligated as provided in 23 U.S.C. 144(g)(2). The minimum percentage off-system bridge provisions of 23 U.S.C. 144(g)(2) shall continue effective in fiscal years 1987, 1988, 1989, and 1990;

(5) For carrying out the Federal lands highway program under section 204 of title 23, United States Code—

(A) For forest highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For public lands highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For Indian reservation roads, $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For park roads and parkways $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(6) For carrying out the territorial highway program under section 215(a) of title 23, United States Code—

(A) For the Virgin Islands, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For Guam, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For American Samoa, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For the Commonwealth of the Northern Mariana Islands, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(7) For carrying out section 402 of title 23, United States Code (relating to highway safety construction programs), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(8) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway construction safety research and development), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(9) For projects for the elimination of hazards under section 152 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(10) For projects for the elimination of hazards of railway-highway crossings on any public road under section 130 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

INTERSTATE SUBSTITUTE PROGRAM

SEC. 103. *(a)* Section 103(e)(4) of title 23, United States Code, is amended to read as follows:

"(4) INTERSTATE SUBSTITUTE PROGRAM.—

"(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

"(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road or both, which will serve the area or areas from which the Interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. *Federal-aid highway projects constructed under this paragraph shall be subject to provisions of this title applicable to the appropriate Federal-aid system. Off system highway projects constructed under this paragraph shall be subject to the provisions of this title applicable to Federal-aid secondary system projects.*

"(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983, except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

"(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof.

"(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

"(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects or for projects under any highway assistance program shall remain available in the State of apportionment or allocation for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year.

"(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments shall be in accordance with the latest adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

"(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

"(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, [1982,] *1983,* $257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs $700,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985, and $725,000,000 for the fiscal year ending September 30, 1986, and $650,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

"(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Twenty-five per centum of the funds made available by subparagraph (G) for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 per centum of such funds shall be apportioned in accordance with cost estimates.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September of 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised [Tables] *Table* 3, [and 4,] Committee Print [99-69] *99-171* of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary, (2) changes in the State estimates in the division of funds between substitute highway and transit projects, (3) approval of substitute projects, and (4) the allocation and apportionment of substitute highway funds in prior fiscal years and shall use the Federal share of such adjusted estimates in making apportionments for substitute highway projects *on October 1 or as soon as practicable thereafter* for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

"(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty per centum of the funds appropriated for each fiscal year beginning after September 30, 1983, for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised [tables 3 and] *Table* 4, Committee Print [99-69] *99-171* of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary under this paragraph, (2) changes in State estimates of the division of funds between substitute highway and transit projects, (3) approvals of substitute projects, and (4) the allocation and apportionment of substitute transit funds in prior fiscal years and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects *on October 1 or as soon as practicable thereafter* for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

"(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

"(ii) EXCEPTION.—In any State where the withdrawal of an Interstate route or portion thereof has been approved under this paragraph prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown on the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all Interstate routes in the State, as shown on such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph prior to enactment of such Federal-Aid Highway Act.

"(L) APPLICABILITY OF URBAN MASS TRANSPORTATION ACT.—

"(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

"(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provisions of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

"(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

"(O) LIMITATION OF SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

"(P) RIGHT-OF-WAY PAYBACK.—Of sums made available to the Secretary under this paragraph for a State, an amount equal to the amount expended in Federal funds to purchase right-of-way for the withdrawn route or portion thereof in every case where right-of-way has not been disposed of by the State as of the date of enactment of this sentence shall not be available for release by the Secretary until the right-of-way disposition decision has been made in accordance with 103(e)(5)(B), (6)(B), or (e)(7) of this title. The amount apportioned to each eligible State pursuant to this paragraph shall be based on the full remaining value of the sums made available under this paragraph as determined by the Secretary but the total of such apportionments shall not exceed the remaining value of such sums less the amount unavailable for release by the Secretary. Sums retained by the Secretary shall be made available for apportionment upon partial or full repayment of funds in accordance with section 103(e)(7) of this title or upon determination by the Secretary that, under section 103(e)(5)(B) or (6)(B), repayment is not required.".

RIGHT-OF-WAY PAYBACK

(b) Subsection 103(e) of title 23, United States Code, is amended by adding paragraph (10) as follows:

"(10)(A) Upon repayment by a State to the Treasurer of the United States of an amount as determined by the Secretary to be equal to the amount of Federal funds expended to acquire property for the Interstate System which was withdrawn from the Interstate System on or after September 1, 1985, in accordance with paragraph (4), such State shall be absolved of any further responsibility for repayment and will be deemed to have fully met all of the repayment requirements of paragraph (7) of this section.

"(B) The amount repaid to the United States under this paragraph shall be deposited to the credit of the appropriation for the Highway Trust Fund. Such repayment shall be credited to the unprogrammed balance of funds apportioned to such State in accordance with section 104(d)(1)(C) of this title. The amount so credited shall be in addition to all other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title."

APPORTIONMENT

SEC. 104. Section 104 of title 23, United States Code, is amended by (a) Striking in paragraph (f)(1) ", except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System." and inserting in lieu thereof a period and by relettering subsection (f) as subsection (b).

(b) Adding a new subsection (c) as follows:

"(c) On October 1 of each of the fiscal years, ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, the Secretary, after making deductions authorized by subsections (a) and (b) of this section, shall deduct one-quarter per centum of the remaining funds authorized to be appropriated for that fiscal year for the Federal-aid Interstate-Primary Program, the urban system, the secondary system, bridge replacement and rehabilitation, Interstate substitution highway projects, projects for the elimination of hazards of railway-highway crossings, and for projects for the elimination of hazards under section 152 of this title for the purpose of carrying out the objectives of the Strategic Highway Research Project under section 133 of this title."

(c) Repealing existing subsections (c) and (d).

(d) Existing subsection (b) is amended to read as follows:

"(d) On October 1 of each fiscal year the Secretary, after making the deductions authorized by subsections (a), (b), and (c) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for the fiscal year, among the several States in the following manner:

"(1) FOR THE FEDERAL-AID INTERSTATE-PRIMARY PROGRAM.—

"(A) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $3,000,000,000 remaining after making the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned in the ratio which the estimated cost of completing the Interstate System in each State bears to the sum of the estimated cost

of completing the Interstate System in all of the States as established in revised table 5, Committee Print [99-68] *99-170* of the Senate Committee on Environment and Public Works: *Provided*, That the Secretary shall on October 1, 1986, before making the apportionment required by this paragraph, adjust such Interstate Cost Estimate to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of Interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds and: *Provided*, That for each of the fiscal years 1987, 1988, 1989, and 1990, no State, including the State of Alaska, shall receive less than one-half per centum of the total apportionment under this paragraph (A). [Whenever amounts made available under this proviso in any State exceed the estimated cost of completing that State's portion of the Interstate System, and exceed the estimated cost of necessary resurfacing, restoration, rehabilitation, and reconstruction of the Interstate System within such State, the excess amount shall be eligible for expenditure on the primary system (other than the Interstate System), urban and secondary systems and for projects for the elimination of hazards under section 152 of this title.]

Amounts made available under this proviso shall be eligible for expenditure in the same manner as other Interstate-primary funds, for projects on the urban and secondary system, and for projects for the elimination of hazards under section 152 of this title.

"(B) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,800,000,000 remaining after making the deduction authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows 55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(k) of this title) in each State bears to the total of all such vehicle miles in all States. Notwithstanding the preceding sentence, no State excluding any State that has no Interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

"(C) Before making the apportionment under this paragraph (C), the Secretary shall set aside such sums as are necessary to carry out the provisions of subparagraph (C)(iv). For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,350,000,000 remaining after such set aside and after the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows:

"(i) The Secretary shall determine for each State the higher of the amount which would be apportioned to such State under a formula where (I) two-thirds would be apportioned, one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary; and one-third in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census with no State (other than the District of Columbia) to receive less than one-half per centum of each year's apportionment and the amount which would be apportioned to such State under a formula where (II) each State would be apportioned one-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

"(ii) The Secretary shall total the amounts determined for each State under paragraph (i) and shall determine the ratio which the amounts apportioned under this paragraph (C) bears to such total.

"(iii) The amount which shall be apportioned to each State under this paragraph (C) shall be the amount determined for such State under paragraph (i) multiplied by the ratio determined under paragraph (ii).

"(iv) No State shall receive an apportionment under this paragraph (C) which is less than the lower of (I), the amount which the State would be apportioned under the formula in paragraph (i)(I), and (II), the amount which the State would be apportioned under the formula in paragraph (i)(II). No State shall receive less than one-half per centum of the total apportionment under this paragraph (C).

"(2) For the Federal-aid secondary system one-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment.

"(3) For the Federal-aid urban system in the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.".

(e) Subsection (e) is amended to read as follows:

"(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums apportioned hereunder to each State for such fiscal year, and also the sums which have been deducted pursuant to subsections (a), (b), and (c) of this section. To permit the State to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.".

(f) Existing subsection (g) is amended to read as follows:

"(f) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State highway department, and is approved by the Secretary as being in the public interest, if the Secretary has received satisfactory assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.".

(g) Existing subsection (h) is repealed.

(h) Subsection [(h)] *(g)* is added as follows:

[“(h)(1)] *"(g)(1)* The amount apportioned in any fiscal year to each State in accordance with paragraph (2) or (3) of subsection (d) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (3) of subsection (d) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title without the approval of the local officials of such urbanized area.

"(2) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of any apportionment for any fiscal year shall be transferred to other apportionments.".

LETTING OF CONTRACTS

SEC. 105. *(a)* Section 112(b) of title 23, United States Code, is amended by inserting "or that an emergency situation exists" before the period at the end of the first sentence.

(b) Section 112 of title 23, United States Code, is further amended by adding at the end thereof the following new subsection:

"(f) LIMITATIONS CONCERNING SOUTH AFRICA ON AWARDS OF CONTRACTS.—A State or local governmental body that is a recipient of Federal funds under this title may prohibit or otherwise limit the award of contracts funded under this title by including in its contracts terms and conditions related to the contractor's business in South Africa in accordance with a State or local law if the State or local governmental body first enters into an aggreement with the Secretary that any costs incurred as a result of such prohibition or limitation which are in excess of the costs that would otherwise have been in-

curred with respect to such project under this title will not, for purposes of this title, be considered to be a cost of such project: Provided, That this subsection shall be null and void when apartheid law and policy is ended in South Africa.".

AVAILABILITY

SEC. 106. Section 118 of title 23, United States Code, is amended to read as follows:

"Sec. 118. Availability.

"(a) On and after the date that the Secretary has certified to each State the sums apportioned or allocated pursuant to an authorization under this title such sums shall be available for obligation under the provisions of this title.

"(b)(1) Sums apportioned for the Federal-aid Interstate-Primary Program, for the Federal-aid secondary system and for the Federal-aid urban system in a State shall continue available for obligation in that State for the appropriate program and system for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unobligated at the end of such period shall lapse.

"(2)(A) Sums apportioned for bridge replacement and rehabilitation in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the sums are authorized and any amounts apportioned remaining unobligated at the end of the period shall be allocated by the Secretary pursuant to section 144(g)(2) of this title.

"(B) Sums allocated for bridge replacement and rehabilitation in a State shall remain available for obligation in that State until the close of the fiscal year of allocation and any amount allocated remaining unobligated at the end of the period shall be reallocated by the Secretary pursuant to section 144(g)(2) of this title.

"(3) Sums apportioned or allocated for a particular purpose for any fiscal year shall be deemed to be obligated if a sum equal to the total of the sums apportioned or allocated to the State for such purpose for such fiscal year and previous fiscal years is obligated. Any funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds previously apportioned or allocated to the State and be immediately available for obligation.

"(c) Funds made available to the State of Alaska under this title may be expended for construction of access and development roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.".

INTERSTATE SYSTEM RESURFACING

SEC. 107. (a) Section 119(a) of title 23, United States Code, is amended by (1) striking "section 105 of the Federal-Aid Highway Act of 1978" and inserting in lieu thereof "section 129(k) of this title" and by (2) striking the next to the last sentence.

(b) Section 119(b) of title 23, United States Code, is amended by striking "for the Interstate system shall" and inserting in lieu thereof "shall", by (2) striking "equal to 10 per centum" and inserting in lieu thereof "of not more than 10 per centum", and by (3) striking "104" and inserting in lieu thereof "104(d)(1)(A)".

(c) Section 119(d) is repealed.

FEDERAL SHARE PAYABLE

SEC. 108. (a) Subsection (a) of section 120, title 23, United States Code, is amended by striking "financed with primary" and inserting in lieu thereof "financed with Interstate-primary" and by inserting "(other than the Interstate System)" after "primary system".

(b) Subsection (b) of section 120, title 23, United States Code, is repealed.

(c) Subsection (c) of section 120, title 23, United States Code, is amended by striking "provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to" and inserting in lieu thereof ", as designated in section 103 of this title and as designated prior to March 9, 1984, in section 139 (a) and (b) of this title financed with Interstate-primary funds shall not exceed".

(d) Subsection (f) of section 120 of title 23, United States Code, is amended by striking "shall not exceed 100 per centum of the cost thereof: *Provided*" and inserting in lieu thereof "on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable of a project on a system as provided in subsections (a) and (c) of this section: *Provided*, That the Federal share payable for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within thirty days after the actual occurrence may amount to 100 per centum of the costs thereof: *And provided further*".

(e)(1) The second subsection (i), subsection (j), and subsection (k) of section 120 of title 23, United States Code, are relettered as subsection (j), (k), and (l) respectively.

(2) The second subsection (i) of section 120, title 23, United States Code, relettered as subsection (j), is amended by inserting "104(b) and" before "307(c)".

(f) Subsection (b) is added to section 120 of title 23, United States Code, as follows: "Notwithstanding other provisions of this title, a State may contribute an amount in excess of its normal share on a project [constructed] under this title so as to decrease the Federal share payable on such project: *Provided*, That the use of this provision shall be subject to criteria established by the Secretary.".

(g) Section 120(f) of title 23, United States Code, as amended by this section is effective for all natural disasters or catastrophic failures which occur subsequent to enactment of this Act.

RELOCATION OF UTILITY FACILITIES

SEC. 109. Section 123(a) of title 23, United States Code, is amended to read as follows:

"(a) When a State pays for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary system including the Interstate System, or under a Federal-aid program, or under the State's safety improvement program for the elimination of hazards to the traveling public resulting from the utility facilities on or near the right-of-way of highways on the Federal-aid primary system including the Interstate system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are used on the project.".

EMERGENCY RELIEF

SEC. 110. Section 125 of title 23, United States Code, is amended by adding subsection (d) as follows:

"(d) For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Island shall be considered to be States and part of the United States, and the chief executive officer of each territory shall be considered to be a Governor of a State. The Secretary may expend funds from the sums authorized for this section for the repair or reconstruction of highways eligible for assistance under section 215 of this title: *Provided*, That obligations for projects under this subsection shall not exceed $5,000,000 in any fiscal year.".

VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM

SEC. 111. Section 127(a) of title 23, United States Code, is amended by striking "authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned" and inserting in lieu thereof "shall be apportioned under section 104(d)(1)(A) of this title" and by (b) adding after the word "lapse" the following: "if not released and obligated within the availability period specified in section 118(b)(1) of this title".

TOLL FACILITIES

SEC. 112. (a) Section 129 of title 23, United States Code, is amended by adding the following new subsections:

"(j)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978, on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the State's apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: *Provided*, That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.

"(k) Sums apportioned to a State for the Federal-aid Interstate-Primary Program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes [in use for more than five years] on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, a toll road subject to an agreement does not become

free to the public upon collection of sufficient tolls, as specified in the preceding sentence. Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.".

(b) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

RAILWAY-HIGHWAY CROSSINGS

SEC. 113. (a) Section 130 of title 23, United States Code is amended by adding subsections, (d), (e), (f), (g), and (h) as follows:

"(d) Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

"(e) At least half of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated for this section shall be available for obligation in the same manner as funds apportioned under section 104(d)(1) of title 23, United States Code.

"(f) 25 per centum of the funds authorized for this section shall be apportioned to the States in the same manner as sums apportioned under section 104(d)(2) of title 23, United States Code, 25 per centum of such funds shall be apportioned to the States in the same manner as apportioned under section 104(d)(3) of title 23, United States Code, and 50 per centum of such funds shall be apportioned to the States in the ratio that total rail-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized for this section shall be 90 per centum of the cost thereof.

"(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

"(h) Funds authorized for this section may be used to provide local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railroad crossings.".

(b) Section 203 of the Highway Safety Act of 1973 is repealed.

STRATEGIC HIGHWAY RESEARCH PROGRAM

SEC. 114. Title 23, United States Code, is amended by adding section 133 as follows:

[**"§ 133(a).**] ***"§ 133.*** **Strategic highway research program**

"(a) The sums provided by section 104(c) of this title shall be available for obligation when deducted to implement the Strategic Highway Research Program (SHRP). The Secretary is authorized to carry out the SHRP in cooperation with the State highway departments, as represented by the American Association of State Highway and Transportation Officials (AASHTO). The Secretary shall set standards to use the funds under this paragraph to conduct research, development and technology transfer activities determined to be strategically important to the national highway transportation system. The Secretary may provide grants to, and enter into cooperative agreements with, AASHTO and/or the National Academy of Sciences to conduct appropriate portions of the SHRP. Advance payments may be made as necessary to facilitate [such cooperative agreements.] *this program.* No State matching share is required for the sums made available under this section. The sums provided by this section shall be combined and administered by the Secretary as a single fund which shall be available for obligation for the same period as funds apportioned for the Federal-aid Interstate-Primary Program.

"(b) The Secretary shall transmit a report annually beginning on January 1, 1988, to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress which provides information on the progress and research findings of the Strategic Highway Research Program.

"(c)(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for injury, loss of property, personal injury, or death shall apply to any civil action against the National Academy of Sciences for injury, loss of property, personal injury, or death for any act or omission arising from activities conducted under or in connection with the Strategic Highway Research Program authorized under subsection (a) of this section.

"(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred. Employees of the National Academy of Sciences and other individuals appointed by the President of the National Academy of Sciences and acting on its behalf in connection with the Strategic Highway Research Program shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

"(3) Upon certification by the Attorney General that a suit is within the provisions of subsection (a), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceeding shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification of the Attorney General under this subsection shall be conclusive.".

SECTION 139 ROUTES

SEC. 115. The last sentence of section 139(a), the fourth sentence of 139(b), and the last sentence of section 139(c) of title 23, United States Code, are each amended by striking "sections 104(b)(1) and 104(b)(5)(B)" and inserting in lieu thereof "section 104(d)(1)".

OFF-SYSTEM BRIDGE PROGRAM

SEC. 116. Section 144, title 23, United States Code, is amended by adding a new subsection as follows:

"(n) Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway system for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under section 144 of title 23, United States Code, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under section 144, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the effective date of this section, from such State and local sources for such project in excess of 20 per centum of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under section 144, in accordance with procedures established by the Secretary.".

[ELIGIBILITY

[SEC. 117. Title 23, United States Code, is amended by adding section 153 as follows:

["§ 153. Eligibility

[State or local taxes which are based upon the amount of a federally assisted contract or which are assessed upon construction materials to be incorporated into a federally assisted project are not items eligible for Federal reimbursement under this title.".]

HIGHWAY BEAUTIFICATION

SEC. 117. (a) Section 131 of title 23, United States Code, is amended as follows—

(1) in subsection (b)—

(A) by striking "shall be reduced" and inserting in lieu thereof "may be reduced"; and

(B) by striking the words "equal to 10" in the second to last sentence, by inserting in lieu thereof "up to 5", and by striking the last sentence;

(2) in subsection (c)—

(A) by striking "(c)" and inserting in lieu thereof "(c)(1)" and redesignating clauses 1 through 5 as clauses A through E;

(B) by inserting at the end thereof the following new paragraphs—

"(2) As part of effective control, each State shall maintain an annual inventory of all outdoor advertising signs, displays, and devices required to be controlled pursuant to this section. Such inventory shall identify

all such signs as either illegal, nonconforming, or conforming under State law. An inventory shall not be required in States which the Secretary determines have a permit and enforcement system which requires a permit for all lawful signs required to be controlled by this section and identifies promptly all unlawful signs.

"(3) As part of effective control, each State shall assure that signs, displays, and devices required to be removed by this section shall be removed within ninety days of (A) the date upon which they become unlawful or if not unlawful, the date upon which they must be removed pursuant to State law, or (B), if eligible to receive compensation pursuant to this section or to be amortized, the date upon which cash compensation is paid, or the State amortization period ends.

"(4) As part of effective control, no State may allow or undertake any vegetation removal or other alteration of the highway right-of-way with the purpose of improving the visibility of any outdoor advertising sign, display or device located outside of the right-of-way.

"(5) As part of effective control, no State may permit any person to modify any outdoor advertising sign, display, or device which does not conform to subsections (c) or (d) of this section to improve its visibility or its useful life.

"(6) As part of effective control, signs, displays and devices carrying advertising which is required to include a warning label in other advertising media, pursuant to a federal law or regulation, shall be required to display such warning label so that it is plainly legible from the main traveled way of the highway.";

(3) in subsection (d) by striking "(d)", by inserting in lieu thereof "(d)(1)", and by adding at the end of the subsection the following:

"(2) After July 1, 1986, no new signs, displays or devices may be erected under the authority of this subsection. Any sign, display, or device lawfully erected under State law after July 1, 1986, and prior to the effective date of this section shall be treated as nonconforming.";

(4) in subsection (e) by amending subsection (e) as follows:

"(e) The Secretary shall not require a State to remove any lawfully erected sign, display, or device which does not conform to this section and is lawfully in existence on the date which this section becomes effective pursuant to section 117(b) of the Federal-Aid Highway Act of 1986. Nothing in this subsection shall prevent a State from removing any sign, display, or device.";

(5) in subsection (g) by amending subsection (g) to read as follows:

"(g)(1) The Secretary may participate in the costs incurred by a State for the following:

"(A) physically removing signs, displays, or devices that are located in areas required to be effectively controlled by this section and are illegal under State law or that are required by this section to be removed and that were lawfully created and have been lawfully maintained under State law.

"(B) acquiring signs, displays, or devices that are required by this section to be removed and that were lawfully erected and have been lawfully maintained under State law.

"(2) Payments made to a State by the Secretary may be made for the removal or acquisition of signs, displays, and devices located in areas adjacent to the Federal-aid primary system and the Interstate System from funds apportioned to such State under section 104(d)(1) of this title. For the removal or acquisition of signs, displays, or devices, the Federal share of any costs participated in under this subsection shall not exceed that set forth in section 120(a) for those adjacent to the Federal-aid primary system and that set forth in section 120(c) for those adjacent to the Interstate System.

"(3) A sign, display, or device acquired with funds made available pursuant to this section may be disposed of by sale or other means to a private party only if the State receives satisfactory written assurances that the material will not be used to construct or reconstruct an outdoor advertising sign, display, or device.";

(6) in subsection (h) by striking "(h)", by inserting in lieu thereof "(h)(1)", and by adding at the end the following new paragraph:

"(2) No outdoor advertising sign, display, or device shall be permitted by any Federal agency on all public lands or reservations owned or controlled by the United States, unless such sign, display, or device conforms to regulations issued by the Federal agency with jurisdiction over, or responsibility for, such land. Such regulations shall be at least as stringent as the requirements of this section and the requirements of the State in which the land is located. The regulations required by this subsection shall be developed in consultation with the Secretary of Transportation and shall be promulgated within 12 months of the effective date of this Act.";

(7) in subsection (k) by striking the words "Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing" and inserting in place thereof the word "Nothing".; and

(8) by repealing subsections (n) and (p).

(b) The amendments made by this section shall be effective on December 31, 1988.

MINIMUM ALLOCATION

SEC. 118. (a) Section 157(a) of title 23, United States Code, is amended to read as follows:

"(a) Beginning with fiscal year 1987, as soon as practicable after the date of enactment of the Federal-Aid Highway Act of 1986 and in each of the fiscal years thereafter, on October 1, *or as soon as possible thereafter,* the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title, amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs, except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1986.

(c) Title 23, United States Code, section 157(c) is amended by striking the "and" that precedes "September 30, 1986" and inserting after "1986" the following: ", September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

FEDERAL-AID INTERSTATE-PRIMARY PROGRAM

SEC. 119. Title 23, United States Code, is amended by adding section 159 as follows:

"§ 159. Federal-aid Interstate-primary program

"(a) It is the national policy to bring all elements of the primary system up to standards established pursuant to section 109 of this title. To accomplish this policy the Federal-aid Interstate-primary program shall consist of projects for the construction, reconstruction, rehabilitation, restoration, and resurfacing or improvement of the primary system as designated in section 103(a) of this title and the Interstate System as designated in section 103(c)(1) and section 139 of this title.

"(b) In approving projects under this section, the Secretary shall give [priority] consideration to projects to complete essential gaps on the Interstate System and for the reconstruction, rehabilitation, restoration, and resurfacing of existing highway facilities. Reconstruction may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed Interstate routes, including the acquisition of right-of-way where necessary.".

INCOME FROM RIGHTS-OF-WAY

SEC. 120. Title 23, United States Code, is amended by adding section 160 as follows:

"§ 160. Income from rights-of-way

"Net income that a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under this title shall be used by the State for projects eligible under this chapter.".

TERRITORIAL HIGHWAY PROGRAM

SEC. 121. Subsection (f) of section 215 of title 23, United States Code, is amended to read as follows:

"(f) The provisions of chapter 1 of this title that are applicable to Federal-aid Interstate-Primary Program funds and to projects on the Federal-aid primary system other than the Interstate System shall apply to funds authorized to be appropriated to carry out this section, to funds obligated under this section and to projects carried out under this section except as determined by the Secretary to be inconsistent with this section. There shall be designated in each territory, a territorial Federal-aid highway system which will include all highways eligible for funding under this section. The system shall be designated by the highway department of the territory and be subject to the approval of the Secretary. Funding provided under this section shall only be available for highway construction projects on the territorial Federal-aid system.".

BICYCLE PROJECTS ELIGIBILITY

SEC. 122. The second sentence of section 217(b)(1) of title 23, United States Code, is amended by inserting "and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title" after the word "title".

HIGHWAY PLANNING AND RESEARCH

SEC. 123. Section 307(c)(1) of title 23, United States Code, is amended by inserting after "section 104 of this title", the following: "and for highway projects, section 103(e)(4)".

NATIONAL HIGHWAY INSTITUTE

SEC. 124. Subsections (b) and (c) of section 321 of title 23, United States Code, are amended to read as follows:

"(b) Not to exceed one-quarter per centum of all Federal-aid Interstate-Primary Program funds, apportioned to a State under section 104 of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 75 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) Education and training of Federal, State, and local highway employees authorized by this section shall be provided by the Secretary at no cost to the States and local governments for those subject areas which are a Federal program responsibility, or, in the case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contract with public and private agencies, institutions, individuals and the Institute.".

RIGHT-OF-WAY DONATION

SEC. 125. (a) Notwithstanding any other provision of title 23, United States Code, the State matching share for a project under title 23, United States Code, may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the effective date of this subsection. *The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project.* For purposes of this subsection the fair market value of donated land shall be established after the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier. This subsection shall not apply to donations made by an agency of a Federal, State or local government. The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project to which the donation is applied.

(b) Section 323 of title 23, United States Code, is amended by—

(1) inserting after "Donations." an "(a)"; and

(2) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) may be made at any time during the development of a project: *Provided,* That any document executed as part of such donation *prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act shall* clearly [indicates] *indicate* that—

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

"(ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document.".

(c) Section 4651 of title 42, United States Code, is amended as follows:

(1) Insert after "programs" in the first sentence the following "to promote joint projects between States and landowners and other entities in order to maximize Federal and State dollars".

(2) Insert new paragraph (10) as follows:

"(10) Promotion of joint projects wherein private citizens and other governmental entities participate in the cost through land donations and/or financial contributions is consistent with Federal policy and should be encouraged by all Federal agencies. To this end donations of right-of-way and/or financial contributions by a State or other political subdivision, or any person is permissible.".

(d) Notwithstanding any other provision of law, the fair market value of any lands which have been or in the future are donated or dedicated to the State of California necessary for the right-of-way for relocation and construction of California State Route 73 in Orange County, California, from its interchange with Interstate Route I-405 to its interchange with Interstate Route I-5 shall be included as a part of the cost of such relocation and construction project and shall be credited first toward payment of the non-Federal share of the cost of such relocation and construction project. If the fair market value of such lands exceeds the non-Federal share of such relocation and construction project, then the excess amount, upon the request of the State of California, shall be credited toward the non-Federal share of the cost of any other project on the Federal-aid system in the State of California. To further the purposes of this section and section 323 of title 23, United States Code, any recorded irrevocable offer of dedication or donation of property within the right-of-way shall be considered as part of the State right-of-way acquisition for purposes of this section if such offer is irrevocable and effective no later than such time as the State of California requests final reimbursement for the Federal share. In no case shall the amount of Federal-aid reimbursement to the State of California on account of such relocation and construction project exceed the actual cost to the State for such project.

PROHIBITION AGAINST DISCLOSURE AND ADMISSION AS EVIDENCE OF STATE REPORTS AND SURVEYS

SEC. 126. Chapter 4 of title 23, United States Code, is amended by adding section 409 as follows:

"§ 409. Reports, surveys; disclosures; admission as evidence

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled with the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-highway crossings, pursuant to sections 130, 144, and 152 of title 23, United States Code, or for the development of any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence *in Federal or State court,* or considered for other purposes, in any action for damages arising from any [matter] *occurrence at a location* mentioned or addressed in such reports, surveys, schedules, lists or data.".

BUY AMERICA

SEC. 127. Section 165(a) of the Surface Transportation Assistance Act of 1982 is amended to read as follows:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, for projects whose total cost exceed $500,000, unless steel and manufactured products used in such projects are produced in the United States.".

REGULATION OF TOLLS

SEC. 128. (a) Section 4 of the General Bridge Act of 1906 (34 Stat. 85, 33 U.S.C. 494), as amended, is further amended by deleting the last sentence thereof.

(b) Section 17 of the Act of June 10, 1930 (46 Stat. 552, 33 U.S.C. 498a), as amended, is repealed.

(c) Section 1 of the Act of June 27, 1930 (46 Stat. 821, 33 U.S.C. 498b), as amended, is repealed.

(d) Sections 1-5 of the Act of August 21, 1935 (49 Stat. 670, 33 U.S.C. 503-507), as amended, are repealed.

(e) Sections 503 and 506 of the General Bridge Act of 1946 (60 Stat. 847, 848, 33 U.S.C. 526, 529), as amended, are repealed.

(f) Section 133 of Public Law 93-87 (87 Stat. 267, 33 U.S.C. 526a) is repealed.

(g) Section 6 of the International Bridge Act of 1972 (86 Stat. 732, 33 U.S.C. 535d) is repealed.

(h) Section 6(g)(4) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(4)) is repealed.

(i) Tolls for passage or transit over any bridge constructed under the authority of the Bridge Act of 1906, as amended, the General Bridge Act of 1946, as amended, and the International Bridge Act of 1972, shall be just and reasonable.

[MASS TRANSIT ACCOUNT MINIMUM ALLOCATION

[SEC. 129. (a) Notwithstanding any other provision of law, as soon as is practicable in each fiscal year, commencing with the fiscal year ending September 30, 1987, the Secretary shall allocate among the States from the appropriations made from the Mass Transit Account of the Highway Trust Fund for such fiscal year, amounts sufficient to insure that a State's percentage of total allocations from the Mass Transit Account for such fiscal year, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Mass Transit Account in the latest fiscal year for which data are available. For purposes of this section a State is any one of the 50 States and the District of Columbia.

[(b) Notwithstanding any other provision of law, amounts allocated pursuant to subsection (a) of this section shall be available for obligation when allocated for the fiscal year in which allocated plus the three succeeding fiscal years, shall be subject to the appropriate provisions of title 23, United States Code, and the Urban Mass Transportation Act of 1964, as amended, as determined by the Secretary of Transportation, and shall be available for obligation for any projects authorized by the Urban Mass Transportation Act of 1964, as amended, and for highway construction projects on any public road.]

INDIAN EMPLOYMENT AND CONTRACTING

SEC. 129. Section 140 of title 23, United States Code, is amended by adding the following:

"(d) Consistent with section 703(i) of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, July 2, 1964, nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.".

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SEC. 130. (a) CONTRACTING GOAL.—Except as the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this title or obligated under title 1 of Public Law 97-424 after the effective date of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—For the purposes of this section:

(1) "disadvantaged business enterprise" means a small business concern owned and controlled by socially and economically disadvantaged individuals;

(2) "small business concern" is defined by section 3 of the Small Business Act (15 U.S.C. 632), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $10 million, as adjusted by the Secretary for inflation; and

(3) "socially and economically disadvantaged individuals" is defined by section 8(d)(2)(C) of the Small Business Act (15 U.S.C. 637(d)(2)(C), except that women shall be presumed to be socially and economically disadvantaged individuals.

(c) TECHNICAL ASSISTANCE.—Amounts expended for technical assistance to benefit disadvantaged business enterprises may be used to meet up to 10 per centum of the amounts required to be expended on a contract or subcontract with a disadvantaged business enterprise under the provisions of this section.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern is a disadvantaged business enterprise for the purposes of this section. Such minimum uniform criteria shall include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) LEVEL OF EFFORT BY SUBCONTRACTORS.—(1) Amounts expended with a disadvantaged business enterprise for subcontracting work shall not be used to meet any part of the goal established by this section unless such enterprise performs with its own organization subcontract work amounting to not less than 30 per centum of the subcontract price not including materials and supplies.

(2) A State government may reduce the 30 per centum requirement of paragraph (1) for a particular contract if it determines that such a reduction would be in the public interest and that the level of effort by the disadvantaged business enterprise is consistent with industry practice by subcontractors for the type of work involved.

(3) Except for contracting arrangements approved in advance by the State government, any payments from a disadvantaged business enterprise to the prime contractor or any affiliate shall not be used to meet any part of the goal established by this section.

(f) PRIME CONTRACTS.—Except as the Secretary determines otherwise, amounts equal to not less than 5 per centum in 1988, not less than 7 per centum in 1989 and not less than 10 per centum in 1990, of the goal established by this section for a State shall be expended on contracts directly between a State government and a disadvantaged business enterprise.

(g) APPLICABILITY.—Section 105(f) of Public Law 97-424 shall not apply to amounts authorized under title 1 of such Act and obligated after the effective date of this Act.

RELEASE OF CONDITION RELATING TO CONVEYANCE OF A CERTAIN HIGHWAY

SEC. 131. Notwithstanding paragraph (1) of subsection (b) of section 146 of the Federal-Aid Highway Act of 1970 (84 Stat. 1739) and any agreement entered into under such subsection, no conveyance of any road or portion thereof shall be required to be made under such paragraph or agreement to the State of Maryland and the State of Maryland shall not be required to accept conveyance of any such road or portion. Funds authorized by such section may be obligated and expended without regard to any requirement of such paragraph or agreement that such conveyance be made.

WASTE ISOLATION PILOT PROJECT

SEC. 132. For the fiscal year ending September 30, 1986, and thereafter, there is authorized to be appropriated $58,000,000 to remain available until expended for the upgrading of certain highways in the State of New Mexico for the transportation of nuclear waste generated during defense-related activities.

OBLIGATION LIMITATION

SEC. 133. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $12,350,000,000 for fiscal year 1987;

(2) $12,350,000,000 for fiscal year 1988;

(3) $12,350,000,000 for fiscal year 1989; and

(4) $12,350,000,000 for fiscal year 1990.

These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(b) For each of the fiscal years 1987, 1988, 1989 and 1990, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(c) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b) for fiscal year 1987, and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(d) Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State;

(2) after August 1 of each of the fiscal years 1987, 1988, 1989, and 1990 revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, Federal lands highways, and the Strategic Highway Research Program.

HISTORIC BRIDGES

SEC. 134. (a) Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.

(b) The Secretary shall, in cooperation with the State, implement the programs described in section 144 of this title in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse and future study of historic bridges.

(c) The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(d) Reasonable costs associated with actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which continue to be used for motorized vehicular traffic shall be eligible as reimburseable project costs, including projects authorized pursuant to section 144 of [this] title *23*, provided that the load capacity and safety features of the resulting bridge are adequate to serve the intended use for the life of the facility. Funding pursuant to section 144 of this title for actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which are no longer used for motorized vehicular traffic shall not exceed the estimated cost of demolition.

(e) Any State which proposes to demolish a historic bridge for a replacement project with funds made available pursuant to section 144 of [this] title *23*, shall make the bridge available for donation to a State, locality, or responsible private entity provided such State, locality, or responsible entity enters into an agreement to—

(1) maintain the bridge and the features that give it its historic significance and

(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State high-

way agency harmless in any liability action. Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible project costs under chapter 1 of this title *23* up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this subsection shall thereafter not be eligible for any other funds authorized pursuant to this title.

(f) For purposes of this section, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(g) The Secretary of Transportation shall make appropriate arrangements with the Transportation Research Board of the National Research Council to carry out a study of the section 144 bridge program's effect on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

FOREST HIGHWAYS

SEC. 135. Notwithstanding section 202(a) of title 23, United States Code, the Secretary of Transportation shall, after making the transfer provided by section 204(g) of title 23, United States Code, on October 1, of each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, allocate 66 per centum of the remainder of the authorization for forest highways provided for that fiscal year by this Act in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted to (1) eliminate the 0.003,243,547 per centum for the State of Iowa to the State by deed executed May 26, 1964, and (2) redistribute the above percentage formerly apportioned to the State of Iowa for other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal years shall be allocated pursuant to section 202(a) of title 23, United States Code.

WILDFLOWERS

SEC. 136. Section 319 of title 23, United States Code, is amended by inserting an "(a)" after section 319 and inserting the following new subsection:

"(b) The Secretary shall require the planting of native wildflower seeds and/or seedlings as part of any landscaping project under this section. At least one-quarter per centum of the funds expended for landscaping projects shall be used for such plantings. The requirements of this subsection may be waived by the Secretary if the State certifies that such native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes. Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.".

COMBINED ROAD PLAN DEMONSTRATION PROGRAM

SEC. 137. (a) The Secretary of Transportation, in cooperation with up to 10 States, shall conduct a Combined Road [Program] *Plan* Demonstration to test the feasibility of approaches for combining, streamlining and increasing the flexibility in the administration of the Federal-aid secondary, Federal-aid urban and off-system urban and secondary bridge programs. The demonstration shall place as much responsibility as feasible with State and local governments including, but not limited to, the granting of design exceptions and the conduct of final inspections.

(b) As soon as is practicable, upon completion of the demonstration project, the Secretary of Transportation shall submit a report to the Congress evaluating the effectiveness of the demonstration and making needed recommendations.

CALIFORNIA EMERGENCY RELIEF

SEC. 138. Section 125(b) of title 23, United States Code, is amended by inserting after "$30,000,000" the following: "(or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986)".

PRIORITY PROJECTS

SEC. 139. (a) Notwithstanding any other provisions of title 23 pertaining to the transfer of Federal-aid program funds, the Secretary of Transportation shall carry out the following projects if requested by a State highway department and if designated as part of a Federal-aid system;

(1) The Broadway-Chinden Connector in Idaho, connecting Interstate-184 with Broadway Avenue, to increase the access to downtown Boise and the Interstate;

(2) U.S. 59 Highway Corridor in Texas, from Texarkana to Houston to Beeville;

(3) The Brunswick-Topsham Bypass in Maine, a limited access highway providing increased access from Interstate 95 to Brunswick Naval Air Station and Bath Iron Works;

(4) The Long Island Expressway Fourth Lane Study to examine the feasibility of adding a fourth lane in each direction to I-495 in New York;

(5) The Nassau Expressway in New York, extending from Burnside Avenue to Broadway;

(6) The Westchester Parkway in New York, to widen the segment between the Hawthorne Interchange and Washburn Road, reconstruct the southbound lanes in the vicinity of Pleasantville Road, and reconstruct the Pleasantville Road interchange;

(7) The Lockport Expressway in New York, to relocate the terminus of the Lockport Expressway (I-990) and construct an interchange at its new terminus at Millersport Highway in Erie County, New York;

(8) The Sunrise Highway in New York, from Wheeler Road to Veterans' Memorial Highway in the Town of Islip, Suffolk County, New York;

(9) The Southern Tier Expressway in Steuben County, New York;

(10) Fuhrman Boulevard, an access road which parallels Lake Erie along the outer harbor in the City of Buffalo, New York;

(11) Access highways to public recreation areas on certain lakes and State parks in order to accommodate present and projected traffic density—

(A) Morton County: $1.8 million for bridge replacement and access road to Sweetbriar and Crown Butte Lakes, North Dakota;

(B) Mercer County: $1.2 million for access road to Hazen Bay, Lake Sakakawea, North Dakota;

(C) Ransom County: $3.0 million for access road to Fort Ransom State Park, North Dakota;

(D) Benson/Ramsey Counties: $3.7 million for access road to Tri-County Park, Devils Lake Recreation Areas, North Dakota;

(E) Mountrail County: $2.8 million for access road to Parshall Bay, Lake Sakakawea, North Dakota;

(F) Emmons County: $5.9 million for access road to Lake Oahe and numerous bays, North Dakota;

(G) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near the city of Charlson, North Dakota;

(H) Grand Forks County: $.8 million for access road to Larimore Dam Recreation Areas, North Dakota;

(I) Grand Forks County: $1 million for access road to Fordville Dam Recreation Area, North Dakota;

(J) Steele County: $1.6 million for access road to Golden Lake Recreation Areas, North Dakota;

(K) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near U.S. Highway 85 south of the City of Williston, North Dakota;

(L) Bottineau/Renville Counties: $1.6 million for access road to U.S. Fish and Wildlife Lake Darling Refuge, North Dakota; and

(M) Mountrail County: $.6 million for access road to Van Hook Bay, Lake Sakakawea, North Dakota;

(12) Stark/Hettinger Counties: $8.1 million for secondary road improvements serving a regional grain terminal at Gladstone, North Dakota;

(13) For a new route from Los Alamos, New Mexico to Santa Fe, New Mexico;

(14) For work on U.S. 70 in the State of New Mexico from Las Cruces, New Mexico to Texico, New Mexico;

(15) A project on the Federal-aid urban system between a railroad line and a highway in the vicinity of Moorhead, Minnesota;

(16) A highway project in Pine City, Minnesota, to construct an interchange between a highway on the Interstate System and a county State-aid highway;

(17) A reconstruction of an access road to Voyageurs National Park, Minnesota;

(18) A highway project for the construction of an access road from County Road 413 in St. Louis County, Minnesota, to a recreational complex on the Bois Forte Chippewa Reservation (Vermilion Sector);

(19) A project for the design and site location for the replacement of the Bloomington Ferry Bridge, located in Hennepin and Scott Counties, Minnesota; and

(20) A project for construction of a highway connecting Aurora-Hoyt Lakes and Silver Bay, Minnesota.

(b) Each fiscal year before making any apportionment, the Secretary of Transportation shall approve from a State's apportionments under sections 104, 130, 144, and 152, of title 23, United States Code, such sums that may be requested by a State highway department to carry out projects required by this section in that State. A State highway department shall designate the apportionments from which sums are to be approved. The Federal share payable for sums approved from apportionments provided in paragraphs 104(d)(1)(A) and 104(d)(1)(B) shall not exceed the share provided in subsection 120(c) of title 23, United States Code; from apportionments provided in paragraphs 104(d)(1)(C), 104(d)(2) and 104(d)(3) shall not exceed the share provided in subsection 120(a) of title 23, United States Code; from apportionments provided in subsection 130(f) shall not exceed the share provided in subsection 130(f); from apportion-

ments provided in subsection 144(e) shall not exceed the share provided in subsection 144(f); and from apportionments provided in subsection 152(e) shall not exceed the share provided in subsection 152(d). Funds approved under this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended. Funds in excess of the amounts needed to complete a project shall be returned to the appropriate apportionment.

NEW JERSEY-PENNSYLVANIA TOLL COMPACT, DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION

SEC. 140. (a) OBLIGATION TO REPAY FEDERAL FUNDS INVESTED ON I-80.—

(1) The Delaware River Joint Toll Bridge Commission (hereinafter in this section referred to as the "Commission"), in conjunction with the State highway agencies of the Commonwealth of Pennsylvania and of the State of New Jersey, shall enter into an agreement with the Secretary of Transportation to repay to the Treasury of the United States any Federal funds which previously have been obligated or otherwise expended by the Federal Government with respect to the Delaware Water Gap Bridge on I-80. Such repayment shall be credited to the Highway Trust Fund.

(2) Upon such repayment, such States and the Commission shall be free of all restrictions contained in title 23, United States Code, and any regulation or agreement thereunder, with respect to the collection or imposition of tolls or other charges for such bridge or the use thereof.

(b) AGREEMENT TO CONSTRUCT I-78 BRIDGE AS A TOLL BRIDGE.—If the Commonwealth of Pennsylvania, the State of New Jersey, and the Commission determine to operate the uncompleted bridge under construction in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, on I-78 as a toll bridge, such States, the Commission, and the Secretary of Transportation shall enter into an agreement with respect to such I-78 bridge project as provided in section 129 of title 23, United States Code, notwithstanding the requirements of section 301 of such title or any existing agreement.

(c) COMMISSION'S AUTHORITY TO CHARGE TOLLS; RIGHT OF REVIEW BY FEDERAL AGENCIES PRESERVED.—The Commission's authority to fix, charge, or collect any fees, rentals, tolls, or other charges shall be as provided in its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f), but paragraph (c) of the supplemental agreement described and consented to in subsection (f) shall not be construed to eliminate the necessity for review and approval by any Federal agency, as may be required under applicable Federal law, to determine that the tolls charged by the Commission are reasonable and just consistent with the Commission's responsibilities under its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f).

(d) CONGRESSIONAL CONSENT NOT GRANTED TO TOLLS ON EXISTING NONTOLL BRIDGES.—Nothing in this section shall be construed to grant congressional consent to the imposition of tolls by the Commission on any existing and operating bridge under the Commission's jurisdiction on which tolls were not charged and collected on January 1, 1986.

(e) CONGRESSIONAL APPROVAL NOT APPLICABLE TO I-895 CORRIDOR.—Nothing in this section shall constitute congressional approval to construct any additional toll bridge in the previously designated I-895 corridor.

(f) CONSENT OF CONGRESS TO SUPPLEMENTAL AGREEMENT CONCERNING AUTHORITY OF COMMISSION.—

(1) The consent of the Congress is hereby given to the supplemental agreement, described in paragraph (2), concerning the Delaware River Joint Toll Bridge Commission, which agreement has been enacted by the Commonwealth of Pennsylvania on December 18, 1984, as Act 206, laws of 1984, and by the State of New Jersey on October 21, 1985, as Public Law 1985, chapter 342.

(2) The agreement referred to in paragraph (1) reads substantially as follows:

"SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

"Supplementing the Compact or Agreement Entitled Agreement Between the Commonwealth of Pennsylvania and the State of New Jersey Creating the Delaware River Joint Toll Bridge Commission as a Body Corporate and Politic and Defining its Powers and Duties, as Heretofore Amended and Supplemented, to Establish the Purposes for Which the Commission May Fix, Charge, and Collect Tolls, Rates, Rents, and Other Charges for the Use of Commission Facilities and Properties".

"The Commonwealth of Pennsylvania and the State of New Jersey do solemnly covenant and agree, each with the other, as follows:

"(a)(1) Notwithstanding any other provision of the compact hereby supplemented, or any provision of law, State or Federal to the contrary, as soon as the existing outstanding bonded indebtedness of the commission shall be refunded, defeased, retired, or otherwise satisfied and, thereafter, the commission may fix, charge, and collect tolls, rates, rents, and other charges for the use of any commission facility or property and in addition to any purpose now or heretofore or hereafter authorized for which the revenues from such tolls, rates, rents, or other charges may be applied, the commission is authorized to apply or expend any such revenue for the management, operation, maintenance, betterment, reconstruction, or replacement (a) of the existing non-toll bridges, formerly toll or otherwise, over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the act of the State of New Jersey approved April 1, 1912 (Chapter 297), and all supplements and amendments thereto, and the act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto and (b) of all other bridges within the commission's jurisdiction and control. Betterment shall include but not be limited to parking areas for public transportation services and all facilities appurtenant to approved projects.

"(2) The commission may borrow money or otherwise incur indebtedness and provide from time to time for the issuance of its bonds or other obligations for one or more of the purposes authorized in this supplemental agreement. The commission is authorized to pledge its tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loan or advances.

"(3) The authority of the commission to fix, charge, and collect fees, rentals, tolls, or any other charges on the bridges within its jurisdiction, including the bridge at the Delaware Water Gap, is confirmed.

"(4) The covenants of the State of New Jersey and the Commonwealth of Pennsylvania as set forth in Article VI of the compact to which this is a supplemental agreement shall be fully applicable to any bonds or other obligations issued or undertaken by the commission. Notwithstanding Article VI or any other provision of the compact, the State of New Jersey and the Commonwealth of Pennsylvania may construct a bridge across the Delaware River in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, within 10 miles of the existing toll bridge at that location. All the rest and remainder of the compact, as amended or supplemented, shall be in full force and effect except to the extent it is inconsistent with this supplemental agreement.

"(b) The commission is authorized to fix, charge, or collect fees, rentals, tolls, or any other charges on the proposed bridge to be constructed in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, in the same manner and to the same extent that it can do so for other toll bridges under its jurisdiction and control provided that the United States Government has approved the bridge to be a part of the National System of Interstate and Defense Highways with 90 percent of the cost of construction to be contributed by the United States Government, and provided further, that the non-Federal share of such bridge project is contributed by the commission. The commission is further authorized in the same manner and to the same extent that it can do so for all other toll bridges under its jurisdiction and control to fix, charge, and collect fees, rentals, tolls or any other charges on any other bridge within its jurisdiction and control if such bridge has been constructed in part with Federal funds.

"(c) The consent of Congress to this compact shall constitute Federal approval of the powers herein vested in the commission and shall also constitute authority to the United States Department of Transportation or any successor agency and the intent of Congress to grant any Federal approvals required hereunder to permit the commission to fix, charge, and collect fees, rentals, tolls, or any other charges on the bridges within its jurisdiction to the extent provided in subsections (a) and (b) and this subsection and the compact.

"(d) Notwithstanding the above provisions, the commission shall not fix, charge, or collect fees, rentals, tolls, or any other charges on any of the various bridges formerly toll or otherwise over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the Act of the State of New Jersey approved April 1, 1912 (chapter 297), and all supplements and amendments thereto, and the Act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto.

"(e) At any time that the commission shall be free of all outstanding indebtedness, the State of New Jersey and the Commonwealth of Pennsylvania may, by the enactment of substantially similar acts, require the elimination of all tolls, rates, rents, and other charges on all bridges within the commission's jurisdiction and control and, thereafter, all costs and charges in connection with the construction, management, operation, maintenance, and betterment of bridges within the jurisdiction and control of the

commission shall be the financial responsibility of the States as provided by law.".

MOTOR VEHICLE STUDY

SEC. 141. (a) The Secretary shall enter into appropriate arrangements with the Transportation Research Board (TRB) of the National Academy of Sciences to conduct a study of those motor vehicle issues noted in subsection (b) of this section. The TRB shall consult with the Department of Transportation, the State highway administrations, the motor carrier industry, highway safety groups, and any other appropriate entities.

(b) The study shall include an analysis of the impacts of the various positions that have been put forth with respect to each issue. The final report shall include best estimates of the effects on pavement, bridges, and highway safety, and the changes in transportation costs and other measures of productivity for various segments of the trucking industry resulting from adoption of each of the positions identified and analyzed. Related issues of permitting, weight enforcement, and data availability and reliability shall be addressed as appropriate. The issues to be addressed shall include but not be limited to:

(1) Elimination of existing, grandfather provisions of section 127, title 23, United States Code, which allow higher axle loads and gross vehicle weights than the 20,000-pound single axle load limit, 34,000-pound tandem axle load limit, and 80,000-pound gross vehicle weight limit maximums authorized by the Federal-Aid Highway Amendments of 1974 (Public Law 93-643), including permits for divisible loads and statutory provisions providing higher weights by formula, tolerance or statutory specification.

(2) Analysis of alternative methods of determining a gross vehicle weight limit and axle loadings for all types of motor carrier vehicles.

(3) Analysis of the bridge formula contained in section 127 of title 23, United States Code, in view of current vehicle configurations, pavement and bridge stresses in accord with 1986 design and construction practices, and existing bridges on and off the Interstate System.

(4) Establishment of a nationwide policy regarding the provisions of "reasonable access" to the National Network for combination vehicles established pursuant to the Surface Transportation Assistance Act of 1982.

(5) Recommend appropriate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula.

(c) The TRB shall submit a final report to the Secretary and the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section, not later than thirty months after appropriate arrangements are entered into under subsection (a). Appropriate arrangements shall be concluded within six months from the date of passage of this Act.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $500,000 per fiscal year for each of the fiscal years ending September 30, 1987, and September 30, 1988. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

RAIL-HIGHWAY CROSSINGS STUDY

SEC. 142. (a) The Secretary shall conduct a study of national highway-railroad crossing improvement and maintenance needs. The Secretary shall consult with the State highway administrations, the Association of American Railroads, highway safety groups, and any other appropriate entities in carrying out this study.

(b) The issues to be addressed by this study shall include but not be limited to:

(1) Examine any correlation which may exist between existing conditions at crossings and accident data at crossings.

(2) Examine existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints including delays of police, fire, and emergency medical services.

(3) Analysis of most cost effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State, local governments and railroads; cost effectiveness of the Railroad Relocation Demonstration Program (section 163 of the Federal-Aid Highways Act of 1973) compared to the Railroad-Highway Crossings program (section 203 of the Highway Safety Act of 1973); and the cost of upgrading existing equipment at crossings to the latest technology.

(4) Examine driver behavior at railroad-highway crossings and what technologies are most effective in changing behavior and preventing accidents.

(5) Examine what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors) has on railroad-highway crossing needs.

(6) Review any other potential costs associated with railroad-highway crossings including accident liability, increased truck size and wieght, and maintenance responsibilities.

(c) The Secretary shall submit a final report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section along with recommendations of how these needs can be addressed in a cost effective manner, not later than twenty-four months after the date of enactment of this section.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $600,000 for the fiscal year ending September 30, 1987, to remain available until expended. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

INTERIM AMENDMENTS

SEC. [139.] *143.* (a) Unobligated balances of Interstate construction funds apportioned or allocated to a State and available to a State on September 30, 1986, shall be available for obligation for Interstate construction projects or to convert Advance Construction Interstate projects until October 1, 1990. Federal Interstate construction funds shall not be used to reimburse the State under section 123(a) of title 23, United States Code, when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Projects constructed under this subsection are eligible for the Federal share payable provided in section 120(b) of title 23, United States Code. Interstate discretionary funds unallocated on September 30, 1986, shall be available for allocation until October 1, 1990.

(b) Unobligated balances apportioned to a State under section 104(b)(1) of title 23, United States Code and section 104(b)(5)(B) of title 23, United States Code, shall be available for obligation for projects under section 159 of title 23, United States Code.

(c) Unobligated balances apportioned to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under the provisions of section 108 of the Highway Improvement Act of 1982 shall be considered to have been authorized to be appropriated to carry out the provisions of section 215 of title 23, United States Code.

(d) Unobligated balances apportioned to a State under section 203 of the Highway Safety Act of 1973 shall be available for projects under section 130 of title 23, United States Code.

TECHNICAL AMENDMENTS

SEC. [140.] *144.* (a) Title 23, United States Code, is amended as follows:

(1) The tables of sections for chapters 1, 3, and 4 are amended by (A) striking:

"118. Availability of sums apportioned."
"127. Vehicle weight and width limitations—Interstate System."
"133. Repealed."
"146. Repealed."
"148. Development of a national scenic and recreational highway."
"151. Pavement marking demonstration program."
"155. Access highways to public recreation areas on certain lakes."
"156. Highways crossing Federal projects."
"213. Rama Road."
and
"219. Safer off-system roads.",

and by (B) inserting in lieu thereof, respectively,

"118. Availability."
"127. Vehicle weight limitations—Interstate System."
"133. Strategic highway research program."
"146. Carpool and vanpool projects."
"148. Repealed."
"151. Repealed."
"155. Repealed."
"156. Repealed."
"213. Repealed."
and
"219. Repealed."

and by (C) adding

"159. Federal-aid Interstate-primary program."
"160. Income from right-of-way."
and
"409. Reports, surveys; disclosures; admission as evidence.".

(2) Section 101(a) is amended by striking the definition of "park road" and inserting in lieu thereof "The term 'park road' means a public road that is located within, or provides access to, an area in the national park system, with title and maintenance responsibilities vested in the United States.".

(3) Section 106(c) is amended by striking "10" and inserting in lieu thereof "15" and by striking the second sentence.

(4) Section 107(b) is amended by striking "under section 108(b) of the Federal-Aid Highway Act of 1956" and inserting in lieu thereof "for Interstate construction or for the Interstate-primary program".

(5) Section 113 is amended by striking out "August 30, 1935" and inserting in lieu thereof "March 3, 1931" and by striking out "267a" and inserting in lieu thereof "276a".

(6) Section 115(a)(1) is amended by striking "interstate funds," and inserting in lieu thereof "Interstate-primary program funds," and by striking "funded under section 104(b)(5) of this title".

(7) Section 121(d) is amended by striking out "10" and inserting in lieu thereof "15", and by striking out the third sentence.

(8) The first sentence of section 122 is amended by inserting "or for substitute highway projects" before "and the retirement".

(9)(A) Section 125(b) is amended by striking out "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," each place it appears and inserting in lieu thereof "the Federal-aid highway systems, including the Interstate System".

(B) Section 125(c) is amended by striking out "routes functionally classified as arterials or major collectors" and inserting in lieu thereof "on any of the Federal-aid highway systems".

(10) Section 137(f)(1) is amended by striking "104(b)(5)(B)" and inserting in lieu thereof "104(d)(1)".

(11) Section 141(d) is amended by striking "104(b)(5)" and inserting in lieu thereof "104(d)(1)" the two places "104(b)(5)" appears and by inserting "-primary" after the word "Interstate".

(12)(A) Section 142(a)(1) is amended by (iii) striking "104(b)" and inserting in lieu thereof "104(d)".

(B) Section 142(a)(2) is amended by striking "104(b)(6)" the three places it appears and inserting in lieu thereof "104(d)(3)" in each place.

(C) Section 142(b) is amended by striking "paragraph (5) of subsection (b) of section 104" and inserting in lieu thereof "section 104(d)(1)".

(D) Section 142(c) is amended by striking "104(b)(6)" the two places it appears and inserting in lieu thereof in each place "104(d)(3)".

(13) Section 144(i) is amended by striking out the period at the end and inserting in lieu thereof "to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.".

(14) Section 146 is amended by striking "104(b)(1), 104(b)(2), and 104(b)(6)" and inserting in lieu thereof "104(d) (1), (2), and (3)".

(15) Sections 148, 151, 155, 156, 213, and 219 are repealed.

(16) Section 150 is amended by striking "(6) of subsection (b)" in two places and inserting in lieu thereof in each place "(3) of subsection (d)".

(17)(A) Section 152(e) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(B) Section 152(g) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

(18)(A) Section 154(e) is amended—

(i) by striking out "criteria which takes" and inserting in lieu thereof "criteria which take";

(ii) by inserting after "posted" the following: "on January 1, 1983,"; and

(iii) by inserting before "in accordance with" the following: ", and on highways built after such date with speed limits posted at fifty-five miles per hour,".

(B) Section 154(f) is amended by striking "each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal years, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years." and inserting in lieu thereof "sections 104(d)(1)(C), (2), and (3) of this title in an amount of up to 10 percent of the amount to be apportioned for the following fiscal year.".

(19)(A) Section 158(a)(1) is amended by striking "each of the sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1986".

(B) Section 158(a)(2) is amended by striking "each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1987."

(20)(A) The second sentence of section 204(b) is amended by inserting "the Secretary or" before the "Secretary of the Interior".

(B) Section 204(e) is amended by striking "88 Stat. 2205" and inserting in lieu thereof "88 Stat. 2203".

(21) Section 210(g) is amended by striking "Commerce" and inserting in lieu thereof "Transportation".

(22) Subsection (a) of section 215 of title 23, United States Code, is amended by striking from the first sentence the words "and American Samoa" and inserting in lieu thereof "American Samoa, and the Commonwealth of the Northern Mariana Islands".

(23) Section 217 is amended by striking "paragraphs (1), (2), and (6) of section 104(b)" the two places it appears and inserting in lieu thereof "sections 104(d) (1), (2), and (3)".

(24)(A) Section 307(c)(3) is amended by striking "(1), (2), and (3) of section 104(b)" and inserting in lieu thereof "(1) and (2) of 104(d)".

(B) Section 307(c)(5) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(C) Section 307(e) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Environment and Public Works Committee and the House Committee on Public Works and Transportation".

(25) Section 311 is amended by striking "(b)" and inserting in lieu thereof "(d)".

(26) Section 315 is amended by striking "204(d), 205(a), 207(b) and 208(c)" and inserting in lieu thereof "204(f) and 205(a)".

(27) Section 401 is amended by striking "and American Samoa." and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands.".

(28)(A) Section 402(c) is amended by (i) striking "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such" and inserting in lieu thereof "Such", by (ii), striking "After December 31, 1969, the" and inserting in lieu thereof "The", and by (iii) striking "and American Samoa" and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands".

(B) The last sentence of section 402(j) is amended by striking out "chapter" and inserting in lieu thereof "section".

(b)(1) Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by (A) inserting "and" before "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987", by (B) inserting a period after "1987", and by (C) striking ", and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1990.".

(2) Section 108(d) of the Surface Transportation Assistance Act of 1982 is amended by striking "this title," and inserting in lieu thereof "title 23, United States Code,".

(3) Section 163 of the Surface Transportation Assistance Act of 1982 is amended by striking "appropriated" and inserting in lieu thereof "apportioned".

(4) Section 163(o) of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(o) The Secretary of Transportation shall make biennial reports and a final report to the President, the Senate Committee on Environment and Public Works, and the House Committee on Public Works and Transportation with respect to activities pursuant to this section."

(5) Section 103(c) of the Federal-Aid Highway Act of 1978 is amended by striking "Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

EFFECTIVE DATE

SEC. [141.] *145.* Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

Mr. STAFFORD. Mr. President, I am pleased that the Senate begins consideration today of S. 2405, the Federal-Aid Highway Act of 1986. This legislation to reauthorize the program through fiscal year 1990 was introduced on May 6, 1986, by my distinguished colleagues: the chairman of the Transportation Subcommittee, Senator SYMMS; the ranking member of the committee, Senator BENTSEN; the ranking member of the subcommittee, Senator BURDICK; Transportation Subcommittee member, Senator ABDNOR; and myself.

I particularly commend Senator SYMMS for the leadership he has provided as chairman of the subcommittee in bringing S. 2405 to the floor. I also thank the distinguished ranking member of the committee, Senator BENTSEN, and the ranking member of the Transportation Subcommittee, Senator BURDICK. Without their help and cooperation, this bill would not be before us today. S. 2405 was reported unanimously by the Environment and Public Works Committee. This is an indication of the cooperative effort and support behind this legislation.

I, too, join the majority leader in extending thanks to the able Senator

from Kentucky (Mr. FORD), who has allowed us to go ahead.

Over 1 year ago, the Transportation Subcommittee began hearings on the reauthorization of the Federal-aid Highway Program, the Highway Trust Fund, implementation of the Surface Transportation Assistance Act [STAA] of 1982, the need for timely approval of the interstate cost estimate [ICE] and interstate substitute cost estimate [ISCE], and other important issues. The series of 10 hearings was completed on May 20 this year.

The 1982 act provided authorizations for fiscal years 1983 through 1986, increased the gasoline and other user taxes, and effectively doubled program funding levels. These increased revenues have helped bring about marked improvements in the condition of the Nation's transportation infrastructure. If we are to avoid disruptions in the highway program, new, multiyear reauthorization legislation must be enacted by this October 1. Motorists will continue to pay highway user taxes whether Congress meets that deadline or not, but it is only fair that the user fees paid by the motoring public are put to work on schedule. In addition, States must have the long-range funding security to sensibly plan large transportation projects.

Uncertainty and delays in funding can cost a State an entire construction season. The rehabilitation and construction needs on our highway system remain pressing. I hope my colleagues will agree on the importance of reauthorizing the highway program by the October 1 deadline so that funding which is so vitally important to all 50 States, the District of Columbia, Puerto Rico, and the territories continues uninterrupted.

S. 2405 provides $52.387 billion in new authorizations for the Federal-Aid Highway Program over a 4-year period from fiscal year 1987 through fiscal year 1990.

S. 2405 sets an annual obligation limitation of $12.350 billion for the Federal-Aid Highway Program. In addition, two categories, emergency relief and minimum allocation, are not subject to the obligation ceiling. Spending in these two categories is estimated to be $800 million per year. Over the 4-year period, States will be able to obligate approximately $52.6 billion, the total amount authorized by S. 2405. It is important that new authorizations not exceed the amount States are permitted to obligate each fiscal year. In recent years, authorizations have surpassed States obligation limitation with the result that States have approximately $6 billion in apportionments from previous years which they are not allowed to spend.

Earlier this year, we marked the 30th anniversary of the creation of the highway trust fund and the beginning of the National System of Interstate and Defense Highways. Back in 1956, it was believed that the interstate construction program would take 13 years and cost $27 billion. It is now 30 years and $112 billion later, and the Interstate System is over 97 percent complete. It is time to direct our attention and limited resources to other parts of the transportation network which have been neglected. I believe that a top priority must be completion of the Interstate System by 1990; until then major program changes of apportionment formula changes should not be made nor can the future Federal responsibility for the highway program be determined.

In order to complete the Interstate System by 1990 and give States additional flexibility and the ability to set their own priorities, S. 2405 provides a combined interstate-primary category funded at $8.15 billion per year.

I would like to briefly describe a few other major provisions of the Federal-Aid Highway Act of 1986. Through an automatic administrative release mechanism, States will be assured of stable, reliable funding for interstate construction and substitute projects. Congress will no longer need to approve an ICE and ISCE before these authorized funds can be released October 1 by the Department of Transportation to the States.

S. 2405 also provides for continuation of the one-half percent minimum for those 25 States which have completed or nearly completed their interstate construction program. I strongly believe that so long as the program exists, States which worked hard to finish their Interstate roads, often at the expense of other roads, should not be penalized for that early commitment.

I have had a longstanding interest in the Highway Beautification Program and its original aims to control billboards and preserve natural scenic beauty along our federally funded interstate and primary highways. S. 2405 restores to the States their constitutional right to remove nonconforming billboards by providing for amortization or cash compensation. It also provides a moratorium on the erection of new billboards, and addresses the problem of tree-cutting along highway rights-of-way for the purpose of making a billboard more visible. It offers much-needed and overdue reforms to the Highway Beautification Act.

S. 2405 continues a strong Federal participation in the bridge, secondary, urban, safety, minimum allocation, interstate substitution, Federal lands, and emergency relief programs.

At a time when highway needs continue to grow and revenues are shrinking, States need as much flexibility as possible in spending available funds. S. 2405 provides additional flexibility in numerous areas, including total transfer among interstate construction, interstate 4R and primary funds; a 50-percent transfer between urban and secondary funds; the use of interstate substitute funds on any public road; extension of the availability of interstate construction funds to 4 years and interstate substitute funds to 2 years; permission for States to use a State-funded bridge program as matching funds for their Federal-Aid Bridge Program; permission for up to 10 States to participate in a demonstration block grant program; restoration to the States of a choice of using cash compensation or amortization to remove billboards; and incentives for right-of-way donations from the private sector.

S. 2405 also provides for several new programs aimed at improving the effectiveness of the Federal-aid Highway Program. These include the combined Interstate-primary category; the Strategic Highway Research Program [SHRP], a major new research initiative; the Block Grant Demonstration Program; incentives for private sector participation in Federal-aid highway projects; and the planting of wild flowers along highway rights-of-way.

The Federal-aid Highway Program is 100 percent funded by highway user fees that accrue to the Highway Trust Fund. I believe these user fees, including the interest paid on the trust fund balance, should be spent on the Federal-aid highway system. A mechanism is in place called the Byrd amendment which prohibits deficit spending from the Highway Trust Fund. Spending from the Highway Trust Fund does not, therefore—and I emphasize this—contribute to the Federal deficit. The accounting system used by the Government looks strictly at revenues versus outlays for one particular year, and, therefore, the argument has been made that the trust fund has contributed to the deficit the last several years when outlays have exceeded revenues. This totally overlooks the fact that for many years income exceeded outlays and the highway account of the trust fund now has a $9.2 billion balance.

□ 1540

Highway user fees have been collected and were increased in 1982 with the promise that this money would be spent on improving the Federal-aid highway system. I believe this promise must be kept as the Highway Trust Fund is maintained to fund the highway program. However, since Congress has determined that the highway program must be subject to deficit-reducing efforts and the Gramm-Rudman-Hollings process, the committee has worked very hard at complying with the budget requirements. S. 2405 does comply with the Senate budget resolu-

tion and with reconciliation instructions. In order to be in compliance, the committee had to make reductions in the program compared to the funding levels authorized for the program in fiscal year 1986, the current fiscal year which ends October 1. This meant that some program needs could not be fully met, including some areas of the program that I know certain of my distinguished colleagues are very interested in.

In conclusion, Mr. President, there is very little time left before the program authorizations expire. Our network of highways and bridges is one of the largest and most remarkable infrastucture achievements in history, and it is certainly one of the most vital in terms of our economic and social well-being. I hope that we can move expeditiously in consideration of the legislation and achieve enactment of the Federal-Aid Highway Act by October 1.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. BURDICK. Mr. President, as ranking minority member of the Senate Environment and Public Works Transportation Subcommittee, I am pleased that the Senate floor has under consideration reauthorization of the 4-year highway program.

During this Congress, the committee held 10 days of hearings on the Federal-Aid Highway Program. Testimony was received from Members of Congress; the Congressional Budget Office; industry representatives; environmentalists; citizen groups; professional associations; and Federal, State, and local officials. Efforts were made to accommodate many of the suggestions provided by the hearings to improve the bill before the Senate today.

S. 2405 continues to apportion one-half percent of the $3 billion authorized for distribution under the interstate program to each State that has completed its portion of the Interstate System or has less than one-half of the national cost of completion remaining. Continuation of the minimum one-half percent apportionment is a fair method to deal with States that took seriously the national directive to place top priority on construction of the Interstate System and who concentrated their limited resources on that system early in the program's history, often at the expense of other roads.

State highway agencies are anxious for Congress to pass legislation prior to the program lapsing on September 30. I hope that we can meet this deadline. Though the differences between the House and Senate are large, Members are familiar with the positions taken by each House. Staff on both sides are setting up working arrangements to immediately proceed with conference activities.

If the deadline passes, and it appears that Congress cannot resolve its differences before adjournment, it can release already authorized interstate funds. States will be able to spend these funds along with their unobligated balances.

This approach, though, will not help the 25 States which benefit from the one-half of 1 percent provision. This provision is not part of the authorized interstate construction program and it lapses on September 30. Congress should extend this provision along with the release of interstate funds in order to guarantee each State a minimum amount of Federal highway dollars until a full program can be enacted into law.

Another issue of considerable important is the discussion of doubling the Federal gasoline tax to 19 cents a gallon to help meet the deficit reduction target under the Gramm-Rudman-Hollings budget law. The national highway program has profoundly changed the transportation patterns of this country, especially since the highway trust fund was created 30 years ago. If revenues generated from highway users are no longer dedicated for highway purposes, the basis of support for such taxes and level of funding for transportation needs may decline.

Any real move to increase the gas tax to defray the deficit will raise a storm of protest by States and the highway industry. They are already leary of the administration's and Congress's practice of unfairly capping the actual dollars States can spend each year from the highway trust fund.

Prior congressional action of placing the obligational limitation far below authorizations has created a program imbalance. This imbalance may trigger the Byrd amendment criterion of unfunded authorizations not exceeding 2 years' worth of revenues, even though the highway trust fund has a $9 billion to $10 billion cash balance.

According to CBO, there are two basic ways to redress this imbalance. First, future authorizations could be set below future obligation ceilings until the current backlog is reduced. A difference of about $800 million a year for the next 4 years would be necessary just to offset the gap that has developed over the past 4 years. Second, selected authorizations from previous years could be rescinded. This second option probably would not be popular because it may force States to adjust construction plans made on a previous commitment of Federal funds.

This bill selects the first option of reducing authorization levels in order to correct this imbalance. However, if Congress separates the highway program from the unified budget to avoid application of the budget deficit reduction law, more funds could be provided.

I, along with many State officials and some congressional colleagues, believe that these spending constraints are no longer defensible. However, efforts to increase the obligational limitation or to remove the highway trust fund from the unified budget have failed under various circumstances in both the House and Senate.

In previous highway bills, the Senate floor has included special purpose projects for selected States. Because of budget limitations and overwhelming national highway needs, such projects no longer can be funded at the expense of the overall program. This bill allows Congress to designate priority projects. Additional flexibility is provided to States by permitting them to use any funding category with the applicable match to build such a designated priority project. No new Federal funds are provided.

This is the best accommodation that can be provided Senators on their individual requests for special purpose projects. If the Senate and House overrides this approach and provides specific funds above a State's regular program share, other States will be hurt. The limited Federal dollars available will be simply redivided to accommodate the interests of a few States.

Because of the few remaining days available for enactment of a highway bill, I would urge my colleagues to vote in favor of this bill and refrain from any amendments which delay or alter current law distributing funds from the highway account.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, we are, of course, considering legislation to extend the highway program for 4 years and extend the mass transit program for 4 years. I do not think it is possible to overstate the importance of what we are doing.

The Federal highway program is, in its purest sense, about economic development and jobs. For Pennsylvania, my home State, its $500 million in annual commitment to highway repair means creating or preserving some 52,000 jobs a year. The $113 million that this bill provides for Pennsylvanians who ride the buses or manufacture the tires, engines, and other parts that keep those buses on the road.

But more than the 122,000 jobs in my State tied directly to the transportation system I have described, the Federal highway program has stimulated and encouraged greater economic activity because it has made transportation cheaper, surer and more efficient throughout my home State of Pennsylvania and, of course, across the Nation.

Mr. President, I would like to take this opportunity to thank the managers of the legislation, Senator STAF-

FORD, Senator BURDICK, and most importantly, the Senator from Idaho, Senator SYMMS, for their cooperation in several important areas of this legislation.

It is my strong belief that Senate floor action is possible today because of the important agreement that was made between myself and other Senators from States with large mass transit interests and with the Senator from Idaho, and as a result of that unanimous-consent agreement we entered into just a few minutes ago, there will be no amendments to change the formula distribution of the highway and transit funds, and let me say candidly that there was one amendment which the Senator from Idaho I think had planned to offer which would have had an extremely negative impact on my State and a large number of other States.

My home State of Pennsylvania alone could have lost some $108 million per year under that amendment which would have altered the distribution of mass transit funds.

Let me also say that I am grateful to the managers because, in addition to working that problem out and not changing the formulas, the managers have agreed to accept the 4-year mass transit authorizing legislation that my colleagues on the Senate Banking Committee and I developed as part of this bill, and in that regard I want to pay special tribute to the Senator from New York, Senator D'AMATO, who played a vital role in the development of the legislation.

I might also say that the committee has also agreed, and I am grateful to them, to accept as an amendment legislation I have introduced to provide assistance to citizens in communities victimized by natural disasters.

I just want to emphasize again the importance of that unanimous-consent agreement that we entered into a few minutes ago. That agreement explicitly provides that the Senator from Idaho would not offer his amendment regarding the use of the mass transit gas tax penny for highway purposes and in turn I agreed not to offer my amendment to cap State highway funds at 150 percent of gas tax revenues.

Mr. President, it is in everybody's interest to pass this highway bill by agreeing as we did not to offer these formula amendments.

I think we have ensured that this bill will be true to the long-held principles that Federal funds should be spent in areas where they are needed most. I mentioned that because yesterday I argued against the contention of some, including my distinguished colleague from Idaho that mass transit is somehow just a local need or some kind of minor local responsibility, and that in contrast to the Interstate Highway System which was asserted to be, and I do not disagree, a national responsibility, mass transit was very unimportant.

I must say, Mr. President, that I strongly disagreed with that interpretation.

I just want to say again that mass transit does not just serve the transportation needs of millions of American citizens. In fact, 9 out of 10 people in the United States have access to mass transit—9 out of 10. If that is not a national program, I do not know what is. That is one of the reasons last year our transit systems carried 8 billion riders—billion not million—that works out to about 34 trips per year for every American—man, woman, and child.

Now, according to some mass transit, which I have just said is available to some 200 million Americans, is not a national priority. I am glad we put that argument if not to bed at least to rest because I would ask if a service that is made available to some 200 million Americans is not a national priority, what is? And to anyone who argues that Congress should distribute mass transit moneys based solely on the basis of geography, I would simply warn that that viewpoint has dangerous implications for our national policymaking process. Let me just give you one example of what I mean.

Last year, after a great deal of debate and controversy, Congress enacted a comprehensive farm bill. It took us months to get there. It was years in the planning. It is an enormously expensive bill as we know.

Now, according to the U.S. Department of Agriculture, approximately 2.8 million farmers, in other words, just slightly more than 1 percent of the Nation's population, are going to participate in our various farm programs this year. Those programs will cost a total of some $31 billion. That is more than $1,500 for each participant—man, woman, and child.

Mass transit assistance, which is available to 90 percent of our Nation's population, will cost the Federal Government one-tenth that amount, $3 billion, or about $15 for every person who could use that service.

Once you accept the notion, and I am against it, that we should simply distribute money on a geographical basis, it is probably worth looking at what that would do to the farm program. Let us just take one of the biggest programs, the wheat program. USDA estimates that this year there will be in two States, Pennsylvania and Idaho, some 2,700 farmers in my State and some 7,000 farmers in Idaho who participate in the Wheat Program. Now, that means Idaho has more than twice as many participants as Pennsylvania, but Idaho's population is less than one-tenth as large as Pennsylvania.

So, if you want to apply the rule of geographic equity, well, let me tell you it would be terrific for the 2,700 participating wheat producers in Pennsylvania.

If you applied that logic to the programs of the Department of Defense, and I do note that the Southern and Western regions of our country have 56 percent of the Nation's population, 67 percent of our military bases, and 80 percent of our Nation's 2.3 million military employees, what that would mean is that we would have to transfer some 600,000 military employees out of the South and West, irrespective of the impact on our national defense if we accepted the notion that geography should rule.

□ 1550

Well, clearly, Mr. President, I do not believe any of us, not a single Member of this body, believes that what I have described would be rational. I am not saying that anybody is for it.

But my point is simply this: We have got to make decisions based on creating and providing funding for Government programs based on need. And that is what I think the managers of this bill have achieved, both in terms of highways and in terms of mass transit.

I am deeply grateful to the Senator from Idaho, to the Senator from Vermont, and to the Senator from North Dakota for their very hard work, for their understanding and their willingness to be conciliatory and helpful. Most of all, I am grateful to them because, through their leadership, Mr. President, we will have a highway program, we will have a mass transit program, and we will serve all our citizens and serve them well.

I yield the floor.

Mr. SYMMS. Mr. President, I am very pleased that we finally have reached the point where the full Senate can now begin consideration of S. 2405, the "Federal-Aid Highway Act of 1986," to reauthorize the Federal-Aid Highway Program. On July 23, the Committee on Environment and Public Works voted unanimously to report this bill from committee. I want to thank our distinguished chairman, Senator STAFFORD, the ranking member of the committee, Senator BENTSEN, and the ranking member of the Subcommittee on Transportation, Senator BURDICK, for their cooperation and untiring efforts in crafting this legislation and bringing it to the floor.

Mr. President, the current authorization for the Federal-Aid Highway Program will expire as the fiscal year ends in just a few days. Congress must approve expeditiously some version of the legislation before us today if we are to keep faith with highway users

and protect the Nation's investment in our highway system.

Mr. President, I have said many times that I know of no other program, other than National Security and National Defense, that actually avails more opportunity, more individual freedom and mobility to the American citizen than the availability of a good highway system, where they can drive their own automobile at their own pace, at their own schedule, where they wish to go; and where commerce can be trucked on the Interstate System to meet unique individual schedules that are necesary to keep this country operating from a sound economic standpoint; as well as for sound opportunities for people to be free and mobile to visit areas they wish to see in this country or places where they wish to work or for whatever purpose they choose. As long as they can afford to buy the gasoline and make the payments on their automobiles, they are relatively free to travel from coast to coast in this great country without being harassed or interdicted by law-enforcement agencies as long as they comply with safe and sane driving rules.

I might just announce to my colleagues that we do intend to make an effort here today to relax the 55-mile-an-hour speed limit on those rural interstates, so that people may not have to drive in constant concern of being in violation of the law.

S. 2405 authorizes $52.386 billion for the highway program during fiscal years 1987 through 1990. Total annual spending authority is approximately $13.2 billion, including an obligation limitation of $12.35 billion. All 50 States, the District of Columbia, Puerto Rico and the Territories participate in the highway program.

The bill includes a number of important changes in the highway program, most of which have been recommended by the administration. One of these changes is a new combined interstate-primary category funded at $8.15 billion per year. States will be able to use the funds in this category on any interstate construction project, interstate 4R project, or any construction or reconstruction project on the primary system. States that want to make a concerted effort to complete the interstate program by 1990 will be able to do so, while other States may choose to use their interstate-primary apportionments for necessary reconstruction of existing interstate segments or work on the primary system.

The committee bill also provides additional flexibility in other areas of the highway program. It allows a transfer of up to 50 percent between urban and secondary program funds; the use of interstate substitute highway funds on any public road; and the use of State-only funded bridge programs as matching funds for the States Federal-aid bridge program. Additionally, the legislation includes: First, a demonstration block grant program in which up to 10 States may participate; and second, a provision extending interstate construction fund availability to 4 years and interstate substitute fund availability to 2 years.

This, I think, will greatly enhance the continuity of highway spending and be more efficient for those highway dollars so that they will be utilized on a regular basis and we do not have the on again, stop and start that we have had, and the problem of passing those cost estimates through the Congress in the past. So this is a very important part of the bill.

Passage of S. 2405 also would eliminate the need for any future approval of the interstate cost estimate [ICE] or interstate substitute cost estimate [ISCE]. The bill directs the Department of Transportation to administratively adjust the ICE and ISCE which was approved by Congress last September and which will be used to apportion interstate construction funds on October 1, 1986. The adjusted ICE and ISCE will then be used to apportion interstate construction and interstate substitute funds for fiscal years 1987 through 1990. This will assure a stable, reliable source of interstate funds for the States.

This has been the position of both sides of the aisle in the Senate with respect to ICE and the interstate cost substitute estimates for the past three or four times that we have had this measure before the Senate on the floor. And this is an important measure because our argument is to try to keep a sustained program so we do not have work stoppages, start again, stop again. And we are, in fact, today getting more miles of road per dollar and the construction bids have been coming in very competitively and the taxpayers have been getting a good use of their highway users funds for the last 3 or 4 years because of the competition and because of the continuity of the program.

So this is another important part of this legislation and I think it is important that all Senators recognize that. We will be working very hard with our colleagues in the other body to adopt some of these measures for continuity in this program so we have a sustained highway program.

One of the most praiseworthy features of the bill, in my opinion, is the provision in the highway priority projects which the committee adopted in markup. And I thank my colleagues for making this possible. The committee amendment authorizes a State to use its regularly apportioned funds for any project listed in section 139, subsection (a) of the bill. No additional Federal funds are authorized for those projects, but States will have the opportunity to build the projects without being limited to a single funding category.

I believe the priority project amendment is sound fiscal and public policy. The growing number of demonstration projects—now up to 100 in the House bill at a total estimated construction cost of $4.2 billion—threatens to bog down consideration of highway legislation this year and could very well destroy the Federal-aid highway program in the near future if Congress does not act decisively to limit the number and cost of such projects. S. 2405 takes a necessary step to eliminate this very real threat to the highway program, and I hope it will be supported on the Senate floor and in conference with the House of Representatives.

Mr. President, S. 2405 is a good bill and with a few modifications it can be an even better bill. As I indicated earlier, spending authority is approximately $13.2 billion per year. That figure is too low. CBO estimates indicate that the authorization and spending levels in our bill will leave a balance in the highway account of the highway trust fund of more than $9 billion at the end of fiscal year 1990. The current cash balance is $9.18 billion, so the spending levels incorporated in this bill will do nothing to draw down that unreasonably high balance.

□ 1600

Mr. President, our distinguished chairman, Senator STAFFORD, spoke to that earlier. I share his point of view. We do have a problem with respect to the Budget Act and the unified budget, to accommodate that number. But I think what we need to recognize is that we should be spending somewhere in the neighborhood of $14 billion a year instead of $13 billion a year to work that balance down.

While I was unsuccessful in committee markup with an amendment to increase spending authority in the highway program, I continue to believe we should spend the money collected from highway users around the nation to construct and maintain our highway system.

I have been told that an amendment will be offered during floor consideration of the bill to increase the level of spending authority to a level the trust fund will support. This Senator will support that amendment, but it will require a budget waiver. I think all Senators should be advised of the fact that it may not be easy to accomplish that, but the fact is it would be good, sound public policy to raise the apportionment and authorization level of this legislation so that we could spend down that trust fund level instead of allowing it to maintain the $9 billion which sits in the trust fund.

As a matter of fact, the Senate earlier this year voted for a sense-of-the-

Senate resolution that directed us to try to achieve a goal of spending down the balance in the Federal highway trust fund.

In addition, I will join other Members in offering an amendment to reform the 55 mile-per-hour speed limit, and an amendment to raise the Davis-Bacon threshold of application as it relates to the Highway Program.

Mr. President, I hope the Senate will be allowed to debate these amendments and then take a vote, so that we can get on with what promises to be a very difficult conference with the House of Representatives. We cannot afford to delay if the Highway Program is to be reauthorized prior to the October adjournment. The Nation's unmet highway needs are tremendous, and the funds to meet those needs will be too little even if we act on time. But let us do at least that much and do it as soon a possible.

I recently received a letter signed by Governors of every State in the Union, informing Members of Congress of the importance the Governors place on this legislation. The final paragraph of the letter reads as follows:

While we must deal with other important issues, especially the need to reduce the deficit, the nation's surface transportation infrastructure cannot be placed on hold. We urge you, and the entire Congress, to make passage of the highway and transit reauthorization legislation one of your highest priorities when Congress convenes on September 8. We trust that you will do everything possible to enact this important legislation by October 1.

I ask my colleagues to consider just the logistical effort involved in getting 50 Governors to agree to sign the same letter. This was no small feat, but it was undertaken because the Highway Program is so important to the States. I urge my colleagues to heed the admonition of their Governors and help us move this bill as quickly as possible.

I ask unanimous consent that a copy of the letter to which I have referred be printed in the RECORD following my remarks. I also ask unanimous consent that a chart showing authorization levels and another chart showing State-by-State apportionments under S. 2405 be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SYMMS. I want to conclude by reiterating the fact that this bill provides $52.386 billion in authorizations over the next 4 fiscal years. Those funds are essential to the construction and maintenance of our highway system and, thereby, essential to the long-term strength of our economy.

But the funds authorized in this bill have a more direct and immediate impact on the economy as well.

Mr. President, I am not one who has ever made the agrument that the Federal Highway Program was a jobs program. But in reality, because of the fact that we have $9 billion sitting in the trust fund already that we are trying to spend out, it does mean jobs to thousands in every State of the Nation.

The $52-plus billion in this bill translates into more than 534,300 onsite highway construction jobs and more than 665,300 jobs in the highway supply industry, a total of more than 1,241,500 jobs, over the next 4 years.

It is true, Mr. President, that if the money were not spent on the highways, it might be spent on something else and maybe some of those people would work in some other occupations. But I know of nothing, as I said at the outset, that means more to the American citizens of all different occupations, all different points of view, than to have a good highway system that they can drive their automobiles on and be free to go anywhere they please.

Jobs are not the focal point of the bill we are considering, but they are among the welcome benefits of this user-financed program. I urge my colleagues to consider carefully the importance of this program as we begin our work on the pending legislation. Time is of the essence.

If there are Senators who have amendments, I might just say that it is the intention of the manager of the bill to lay down the speed limit amendment and then, at that point, temporarily set it aside, if there is no objection, and take an amendment which has been agreed to.

EXHIBIT 1

NATIONAL GOVERNOR'S ASSOCIATION,
Washington, DC, August 26, 1986.

Dear Member of Congress:

Through a model intergovernmental partnership, the states and the federal government have constructed a world-class Interstate highway system with major highway routes connecting states and communities and have worked to restore mass transit systems throughout the country. This partnership has been under strain in recent years, however, as Congress has not been able to approve in a timely manner legislation releasing highway and transit funds to the states.

Legislation reauthorizing the Federal highway and transit programs must be approved by Congress before October 1 of this year for states to maintain the tremendous investment and the momentum built up under the Surface Transportation Assistance Act of 1982. The Interstate system is not yet completed and the need to repair current highway and transit systems is as great as ever. State programs to improve our transportation infrastructure should not be subject to unnecessary funding delays and disruptions.

The timely enactment of this legislation is crucial to the states, who need predictability and continuity to develop their highway and transit programs and to plan for the future. It is also important to the construction industry which can ill afford uncertainty and disruption. Problems in recent years, such as the delayed enactment of the Interstate cost estimates, have taken their toll on the states and the construction industry.

Congress should also keep in mine that these funds are raised by taxes imposed on users and placed in a Trust Fund for transportation needs. They cannot be used for any other purpose. The truth is, however, these Trust Fund dollars are not being used. The Highway Trust Fund has a cash balance of over $9 billion. The states have more than $6 billion in past highway authorizations they are unable to spend because of the obligation limitations that have been placed on the funds as a fiscal constraint. While lowering the obligation ceiling may, on paper, enhance the financial picture, it is a misleading picture. The federal deficit is still in the $200 billion range, and roads across the Nation are not being built.

While we must deal with other important issues, especially the need to reduce the deficit, the nation's surface transportation infrastructure cannot be placed on hold. We urge you, and the entire Congress, to make passage of the highway and transit reauthorization legislation one of your highest priorities when Congress reconvenes on September 8. We trust that you will do everything possible to enact this important legislation by October 1.

Sincerely,

Governors Robert D. Orr, James R. Thompson, William A. O'Neill, Dick Thornburg, Thomas H. Kean, William J. Janklow, Richard W. Riley, Toney Anaya, Gerald L. Baliles, Michael S. Dukakis, James G. Martin, A.P. Lutali, Madeleine M. Kunin, George R. Ariyoshi, Anthony S. Earl, George Sinner, John Carlin, Norman H. Bangerter, John V. Evans, James J. Blanchard, John Ashcroft, William A. Allain, Joe Frank Harris, Mario M. Cuomo, Bill Clinton, Richard F. Celeste, John H. Sununu, Bob Graham, Michael N. Castle, Harry Hughes, Martha Layne Collins, Ted Schwinden, Edward D. DiPrete, Bill Sheffield, Rudy Perpich, Robert Kerrey, Terry Branstad, George C. Wallace, Victor G. Atiyeh, Edwin W. Edwards, Arch A. Moore, Jr., Joseph E. Brennan, Richard D. Lamm, Ed Herschler, Bruce Babbitt, Mark White, Booth Gardner, Lamar Alexander, Richard H. Bryan, George Deukmejian, and George Nigh.

TABLE T–1987 (REV—ICE 8/6/86) ESTIMATED APPORTIONMENTS FOR FISCAL YEAR 1987 INTERSTATE AND NON-INTERSTATE PROGRAMS FUNDS AUTHORIZED FOR MAJOR FEDERAL-AID PROGRAMS BASED ON S. 2405 AND USING ESTIMATED FISCAL YEAR 1985 HTF REVENUES FOR MINIMUM ALLOCATION

[In thousands of dollars]

State	Interstate and primary	Secondary	Urban	Bridge	Hazard elimination	Rail-highway crossings	Inter-highway transfers	Total appropria-tions	85 percent minimum allocation	Grand total
Alabama	175,310	12,240	9,418	25,084	3,044	3,472	0	228,568	0	228,568
Alaska	111,544	32,093	3,638	3,156	853	2,654	0	153,938	0	153,938
Arizona	102,123	9,514	9,398	3,156	2,285	1,674	114	128,264	0	128,264
Arkansas	71,591	10,444	4,442	20,760	2,060	2,589	0	111,886	28,024	139,910
California	727,442	23,189	92,137	41,236	14,673	10,903	2,034	911,614	51,432	963,046
Colorado	144,932	10,523	9,752	14,127	2,378	2,354	4,216	188,282	0	188,282
Connecticut	132,062	3,646	10,441	29,019	1,893	1,094	67,265	245,420	0	245,420
Delaware	39,360	2,911	3,638	3,156	853	537	0	50,455	0	50,455
District of Columbia	48,148	0	3,638	5,894	853	237	9,464	68,234	0	68,234
Florida	416,022	14,263	34,711	21,963	6,338	5,386	0	498,683	0	498,683
Georgia	251,623	15,611	13,844	28,678	4,086	4,861	7,040	325,743	5,697	331,440
Hawaii	129,241	2,911	3,638	3,156	853	429	0	140,228	0	140,228
Idaho	70,593	7,283	3,638	3,537	1,243	1,582	0	87,876	0	87,876
Illinois	200,699	16,766	39,928	42,336	7,627	8,761	50,315	366,432	0	366,432
Indiana	128,113	13,587	14,461	24,270	3,952	5,671	3,213	193,267	80,990	274,257
Iowa	87,457	12,937	6,618	31,213	2,777	4,160	18,652	163,814	0	163,814
Kansas	87,208	11,951	6,186	33,640	2,690	5,139	0	146,814	0	146,814
Kentucky	165,752	12,174	7,400	17,803	2,723	2,860	0	208,712	0	208,712
Louisiana	262,725	9,953	11,799	30,033	2,899	3,404	0	320,813	0	320,813
Maine	42,439	5,090	3,638	4,590	853	1,011	0	57,621	2,009	59,630
Maryland	168,637	5,456	14,315	22,908	2,577	1,635	49,207	264,735	0	264,735
Massachusetts	236,803	5,809	20,288	35,686	3,470	2,125	7,064	311,245	0	311,245
Michigan	225,580	17,652	27,435	21,066	6,273	6,223	0	304,229	0	304,229
Minnesota	174,633	14,743	11,002	20,331	3,557	4,518	2,400	231,184	0	231,184
Mississippi	80,810	10,565	4,639	22,681	2,126	2,428	0	123,249	14,647	137,896
Missouri	141,462	15,568	13,618	57,762	3,932	4,439	0	236,781	23,644	260,425
Montana	84,081	10,957	3,638	7,084	1,188	1,791	0	108,739	0	108,739
Nebraska	63,738	9,516	4,005	21,478	1,830	3,008	1,450	105,025	0	105,025
Nevada	57,214	7,072	3,638	3,156	901	883	0	72,864	0	72,864
New Hampshire	39,360	2,911	3,638	8,395	853	706	0	55,863	0	55,863
New Jersey	204,341	5,097	27,947	67,981	4,353	2,909	22,759	335,387	0	335,387
New Mexico	85,445	9,550	3,827	4,755	1,280	1,273	0	106,130	0	106,130
New York	241,854	17,638	62,967	126,258	10,689	6,848	145,264	611,518	0	611,518
North Carolina	159,129	18,174	11,273	33,113	4,176	4,329	0	230,194	88,563	318,757
North Dakota	54,754	7,235	3,638	6,373	1,270	3,026	0	76,296	0	76,296
Ohio	238,987	17,849	33,230	43,031	7,055	7,056	8,280	355,488	108,675	464,163
Oklahoma	88,682	11,796	8,096	31,769	2,814	3,488	0	146,645	34,645	181,237
Oregon	95,480	9,981	7,235	11,737	2,862	2,373	7,634	137,302	0	137,302
Pennsylvania	339,086	22,631	34,145	85,316	7,666	6,462	7,325	502,631	0	502,631
Rhode Island	39,360	2,911	3,638	4,595	853	483	43,826	95,666	0	95,666
South Carolina	116,818	9,219	6,683	11,771	2,368	2,905	0	149,764	15,340	165,104
South Dakota	61,388	7,837	3,638	6,833	1,156	1,908	0	82,760	0	82,760
Tennessee	129,291	13,465	11,374	52,732	3,385	3,412	16,765	230,424	39,893	270,317
Texas	521,407	36,397	46,996	51,910	10,682	11,461	0	678,853	245,690	924,543
Utah	122,901	6,498	5,115	3,156	1,307	1,353	0	140,330	0	140,330
Vermont	39,644	2,911	3,638	6,295	853	680	0	54,021	0	54,021
Virginia	225,741	13,453	14,742	18,440	3,594	2,971	1,051	279,992	0	279,992
Washington	207,797	9,930	12,605	27,028	3,100	3,211	0	263,671	0	263,671
West Virginia	58,387	7,526	3,638	26,433	1,430	1,798	0	99,212	0	99,212
Wisconsin	98,617	13,640	12,252	29,390	3,705	4,339	0	161,943	51,054	212,997
Wyoming	67,974	7,126	3,638	3,156	853	995	0	83,742	0	83,742
Puerto Rico	43,200	3,913	8,737	3,156	1,837	822	0	61,665	0	61,665
Total	7,906,985	582,112	727,631	1,262,582	168,928	170,636	475,338	11,294,212	790,250	12,084,464

ESTIMATED FISCAL YEAR 1987 APPORTIONMENTS FOR INTERSTATE, I–4, AND PRIMARY BASED ON S. 2405 WITH ICE, DATED AUG. 6, 1986

State	Interstate construction	I–4R	Primary	Total
Alabama	$85,967	$47,965	$41,378	$175,310
Alaska	14,553	23,178	73,813	111,544
Arizona	15,035	56,746	30,342	102,123
Arkansas	14,553	29,056	27,982	71,591
California	300,021	262,208	165,213	727,442
Colorado	57,469	54,500	32,963	144,932
Connecticut	72,687	34,418	24,957	132,062
Delaware	14,553	13,583	11,224	39,360
District of Columbia	23,234	13,583	11,331	48,148
Florida	244,989	96,634	74,399	416,022
Georgia	102,862	94,090	54,671	251,623
Hawaii	104,434	13,583	11,224	129,241
Idaho	26,901	25,396	18,296	70,593
Illinois	14,553	97,410	88,736	200,699
Indiana	14,553	61,617	51,943	128,113
Iowa	14,553	37,371	35,533	87,457
Kansas	14,553	39,765	32,890	87,208
Kentucky	75,857	50,843	39,052	165,752
Louisiana	176,283	48,071	38,371	262,725
Maine	14,553	13,583	14,303	42,439
Maryland	94,061	40,999	33,577	168,637
Massachusetts	159,336	33,389	44,078	236,803
Michigan	57,809	86,132	81,639	225,580
Minnesota	80,388	50,535	43,710	174,633
Mississippi	14,553	34,782	31,475	80,810
Missouri	14,553	75,747	51,162	141,462
Montana	14,553	43,170	26,358	84,081
Nebraska	14,553	23,853	25,332	63,738
Nevada	14,553	23,976	18,685	57,214
New Hampshire	14,553	13,583	11,224	39,360
New Jersey	119,652	31,853	52,836	204,341
New Mexico	14,553	45,648	25,244	85,445
New York	14,553	94,127	133,174	241,854
North Carolina	47,594	47,575	63,960	159,129
North Dakota	14,553	22,547	17,654	54,754
Ohio	28,420	117,848	92,719	238,987
Oklahoma	14,553	39,813	34,316	88,682

ESTIMATED FISCAL YEAR 1987 APPORTIONMENTS FOR INTERSTATE, I–4, AND PRIMARY BASED ON S. 2405 WITH ICE, DATED AUG. 6, 1986—Continued

State	Interstate construction	I–4R	Primary	Total
Oregon	$24,491	$41,595	$29,394	$95,480
Pennsylvania	159,283	73,266	106,537	339,086
Rhode Island	14,553	13,583	11,224	39,360
South Carolina	42,905	41,345	32,568	116,818
South Dakota	14,553	27,939	18,896	61,388
Tennessee	14,553	68,177	46,561	129,291
Texas	172,747	217,562	131,098	521,407
Utah	62,288	41,101	19,512	122,901
Vermont	14,553	13,867	11,224	39,644
Virginia	$103,203	$72,482	$50,056	$225,741
Washington	108,808	60,185	38,804	207,797
West Virginia	14,553	20,404	23,430	58,387
Wisconsin	14,553	36,105	47,959	98,617
Wyoming	14,553	36,139	17,282	67,974
Puerto Rico	0	13,583	29,617	43,200
Total	2,910,549	2,716,510	2,279,926	7,906,985

FEDERAL-AID HIGHWAY ACT OF 1986 AUTHORIZATIONS

[In millions]

	Fiscal year—			
	1987	1988	1989	1990
Interstate primary	8,150	8,150	8,150	8,150
I—Construction	(3,000)	(3,000)	(3,000)	(3,000)
I–4R	(2,800)	(2,800)	(2,800)	(2,800)
Primary	(2,350)	(2,350)	(2,350)	(2,350)
Secondary	600	600	600	600
Urban	750	750	750	750
Bridge	1,500	1,500	1,500	1,500
Minimum allocation	700	700	700	700
I—Subhighways	650	650	650	650
Emergency relief	100	100	100	100
Forest highways	50	50	50	50
Public lands highways	50	50	50	50
Parkways and park highways	75	75	75	75
Indian reservation roads	75	75	75	75
Rail-highway crossings	175	175	175	175
FHWA safety grants	10	10	10	10
FHWA R&D grants	10	10	10	10
Hazard elimination	175	175	175	175
Territorial highways	12	12	12	12
WIPP roads	58	(1)	(1)	(1)
Total authorizations	13,140	13,082	13,082	13,082
Obligation ceiling	12,350	12,350	12,350	12,350
Spending outside ceiling	858	800	800	800

[1] General funds.

Mr. SYMMS. Mr. President, it will be the intention of the manager to yield to the distinguished Senator from Texas, a very valuable and important member of our committee, who has an opening statement to make.

The Senator from New Jersey is here with a noncontroversial amendment. If there is no objection, we will take his amendment and then lay down the speed limit amendment.

Mr. BENTSEN. Mr. President, the highway reauthorization bill which comes before the Senate today contains provisions of great importance to our States and to the process of continuing the excellence of our Federal highway system. The Senate approved legislation with many of the same features last year, but because of differences with the other body and the very pressing needs to free construction funds, we agreed to approve a so-called clean interstate cost estimate and to return to the reauthorization bill this year.

What we have here is legislation that is the result of countless hours of hard work by members of the Environment and Public Works Committee, a milestone in the history of highway legislation of which the entire Senate can take pride. The key to this legislation is that with it, we recognize that the Nation's huge and successful Interstate System is in a period of transition, and we are taking steps to ensure that it continues its beneficial service in the future. The time has come to complete the remaining miles of interstate, and the time has come to free States that have completed their interstate segments to begin focusing on other highway priorities. This legislation provides that freedom to use these funds as needed.

As approved in the Senate last year, this legislation also includes a provision to modify the formula used to determine the 85-percent minimum allocation for the donor States. The Senate first agreed in 1982 that all States should receive back at least 85 percent of what they contribute to the trust fund. Unfortunately, because of a flawed formula, this has never been the case. Only apportioned funds are considered under the formula now in use, and as a matter of elemental fairness we have again included the more accurate and fair approach of using all apportioned and allocated funds in determining the 85-percent minimum return.

The legislation this year also includes a comprehensive provision which will allow States another option in our national efforts to improve the esthetics of our highways. In addition to declaring a moratorium on new billboards along interstate and primary highways, this legislation gives the States a choice to provide either cash or amortization to remove nonconforming billboards. Frankly, cash compensation for these billboards has not worked, and it won't work in this day of budget constraints, so this opportunity to use amortization is included to provide some relief from unsightly, obtrusive, and distracting billboards.

The committee has also included provisions which can reduce Federal outlays by millions of dollars each year by clarifying congressional intent and allowing the donation of right-of-way property in a timely manner. In recent years, administration decisions have all but precluded these donations prior to an environmental impact study. The legislation contains carefully crafted provisions which allow those

donations, but only under a program of strong safeguards to maintain the environmental protection process.

The legislation contains one other feature that the Senate has approved in the past. This is the provision for the planting of native wildflowers along our Nation's highways. Not only does this add beauty to the highway system, it is in keeping with the times in that it has the potential to reduce mowing, watering, and littering costs. It simply requires that States expend at least one-quarter of 1 percent of the Federal-aid landscaping funds for planting native wildflowers or shrubs. Where appropriate, waivers of this requirement are permitted.

Mr. President, the Senate has always been in the forefront in maintaining our outstanding Federal highway system. This legislation has been a long time coming, but its effects in the years to come will prove its value. It is a comprehensive bill which will do a very important job, and I wholeheartedly recommend it to my colleagues.

Mr. President, I yield to my distinguished friend from New Jersey.

Mr. LAUTENBERG. I thank the Senator from Texas. I believe the chairman of the committee, the Senator from Vermont, has a statement.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the committee amendments may be considered en bloc and agreed to en bloc and thereafter treated as original text for the purpose of further amendment.

The PRESIDING OFFICER (Mr. GORTON). Is there objection? Without objection, it is so ordered.

The committee amendments were considered and agreed to en bloc.

Mr. STAFFORD. Mr. President, as the Senate considers S. 2405, the highway authorization bill, I believe it would be instructive for the Members of the Senate to review a recent address given by a valuable member of our committee, Senator DAVE DURENBERGER, to the American Public Works Association. How the Federal Government funds infrastructure programs is a growing concern of the committee and will be a priority issue in the 100th Congress. As chairman of the Intergovernmental Relations Subcommittee of the Governmental Affairs Committee, Senator DURENBERGER has a special interest and expertise in these matters.

I ask unanimous consent that Senator DURENBERGER's remarks appear at this point in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

REMARKS BY SENATOR DAVE DURENBERGER, AMERICAN PUBLIC WORKS ASSOCIATION, NEW ORLEANS, LA, SEPTEMBER 21, 1986

Good morning, ladies and gentlemen. It is a pleasure and honor for me to be here as your guest this morning.

As I was coming down to New Orleans, I had the opportunity to review your program for the week. It is a very extensive program. I was impressed and intrigued with the wide scope of concerns that you will be considering this week. In looking through the many workshops and sessions that you have scheduled, I was struck by the overlap between your program here and the issues that I will face back in Washington as we wrap up the 99th Congress in the next ten days.

Your Congress, here in New Orleans, and the 99th Congress, back in Washington, are joined by shared concerns. Water resources, municipal water supply, wastewater treatment, stormwater runoff, highways, hazardous waste disposal, leaking underground storage tanks. All of these items from your agenda are also on the agenda for the Nation's lawmakers over the next few days.

The 99th Congress of the United States will pass an omnibus water resources bill before going home in October. After ten years, scores of legislative proposals and thousands of hours of hearings, meetings, floor debate and conference sessions, we are down to the one yard line. We are almost there. The bill we will send to the President is a cornucopia of public works. It both authorizes a long list of specific water resource projects and places in the law significant innovations in water resources policy including mandated cost sharing at the local level and new waterway users fees.

If there is any bad news at all on water resources, it is the loss of the municipal water supply loan and grant program that was proposed by the House. All though our negotiations, the Administration has insisted that there be no Federal assistance for community water supply. And the House proposal has been dropped by the water resources conference.

But I can't believe that will be the end of the subject. We will need to take a closer look again next year. For one thing the new amendments to the Safe Drinking Water Act—which were signed into law in June—will have a profound effect on municipal water supply. That new law requires disinfection and filtration for all municipal water supplies. It will also require treatment for a large number of systems that have tested positive for contamination by man-made chemicals—contamination that has not been effectively regulated up to now.

Another aspect of municipal water supply that we are only beginning to understand is the ground water contamination problem. Some 40,000 communities depend on ground water resources and in most of those communities water is delivered to the consumer without sophisticated treatment. These communities operate 240,000 ground water wells. As we come to a fuller understanding of the vulnerability of the ground water resource, many of these communities—too many—are going to be surprised to learn that their water is contaminated or threatened by pollution from man-made chemicals. New wells, deeper wells, protection for existing wells and treatment systems will be needed in thousands of small towns and communities over the next few years. And a Federal program to help the neediest of communities bring safety to the most basic necessity in life should get a fair hearing in the Senate.

I pledge to this Congress this morning that I will sponsor Senate legislation in the 100th Congress in Washington that will provide Federal assistance for municipal water supply. I will ask the Environment and Public Works Committee to take a closer look at the federal responsibility—to follow the Safe Drinking Water Act amendments—which promised safer water for the American people—with legislation that will provide the resources needed by your communities so that promise can be fulfilled.

The second part of my legislative report this morning is less welcome. It appears now that we will not complete action on the reauthorization of the Clean Water Act before the Congress adjourns. We have made very little progress in the conference meetings between the House and Senate. The last meeting of House and Senate members was in May. Since that time the Senate has sent the House a long list of proposals. We have offered to split the difference on many of the remaining issues. But we have had no reply from the House to those proposals.

So don't look for a Clean Water bill this year. That means there will be no extension of the authority to make grants for the wastewater treatment plants. And that will surely jeopardize the appropriations. In 1986 Congress appropriated $2.4 billion for the municipal construction grants program. But because of the delay of the Clean Water Act amendments, only $1.8 billion of the 1986 funds have been released to the States.

There are now indications that the remaining $600 million will never be released. It will be used instead to close the deficit gap of the Federal Government. And if we don't get a Clean Water bill now, we may face even larger losses next year. Anything that you can do personally in the remaining days of this Congress to bring this matter to the attention of the House would be much appreciated and to the great benefit of local governments all across the land.

There may be a small, silver lining in this cloud over the Clean Water Act. Having an extra year for the reauthorizaiton would give us the opportunity to do a thorough review of the stormwater runoff problem. I want you to know that I have every sympathy with the problems cities and towns will face if EPA requires a point source permit for every stormwater outfall in the country. Our cities just can't afford to go that route.

Within the past few weeks PEA, representatives of local government and the House and Senate committees have been working on a specific legislative proposal that may contain the seeds of compromise. I think that the essential elements of a resolution are first to include a system that allows general permits for stormwater systems . . . general permits for cities that are in compliance with a State-designed and implemented runoff program. And the second element is to focus only on those outfalls which are actually causing problems in meeting water quality standards. Let's narrow the scope of the program to the real problems before we slap on the regulations. It's next year for the Clean Water Act.

The third piece of legislation, and one that still has life in this Congress, is the highway bill. In fact, I will be leaving for the airport right after this session so that I can be back in the Senate to offer an amendment on the highway bill this afternoon. We expect to see that legislation bill on the floor of the Senate today . . . possibly tomorrow . . . and we have every reason to believe that we will be putting a four-year extension of the Federal Highway Program on the President's desk before going home.

On that highway bill, the amendment I intend to offer is an update of the Uniform Relocation Assistance Act. Those of you

who work this part of the public works system know that our current law is outdated. We have been trying since 1981, when the Senate first passed the URA amendments, to bring the relocation policy of the Federal Government into line with the needs that people and small businesses experience when they are displaced by public works projects. For the first time, this year, the House has passed a similar set of reforms to URA. It looks now, after five years of work, like the reforms that we have been promising will finally be accomplished.

The fourth and final item in my legislative report to you is the Superfund. That legislation has actually been pursued in two parts—one part of the Congress has been working on the substantive aspects of the program and another part has been working on the tax.

On the substance side we have completed an agreement between the House and the Senate. But on the tax side there is no agreement. In fact the conferees are very far apart. The Senate members want to finance Superfund with a new broad-based tax on a large sector of American industry. The Senate tax is basically a surcharge on the corporate income tax of large business. The House has proposed a much narrower financing scheme—focused on the chemical and petroleum industries. It may be that no agreement can be reached.

But if we do get a bill, Superfund will in the future look much more like a public works program than it has in the past. We are to the point at many Superfund sites across the country where the preliminary investigation and design work is done and we will be moving on to remedial action—moving dirt, building containment walls, pumping and treating contaminated water, capping landfills and paying contractors for real environmental protection.

Although there are only a few hundred Superfund cleanup sites on the National Priorities List—not every community has its own Superfund site, thank goodness—there is another part of this new law that many of you may have direct experience with. In the past Superfund has not included responses to releases of gasoline and other petroleum products. Leaks from underground storage tanks in particular have been excluded from the federal Superfund program.

But the new legislation will create an underground storage tank response program. Cleanup will be financed by a new tax on gasoline. We will raise the federal gasoline tax by one-tenth of a cent per gallon. This new tax will provide about $100 million per year which will be used by EPA to clean up leaking underground tanks. And cleanup is a big job. A recent study by EPA suggests that there may be as many as 189,000 leaking tanks at service stations and other small businesses across the country.

In talking with EPA about the steps to implement this new response program it has become clear that the Federal Government is just not equipped to handle the job alone. We don't have the people and we don't have the expertise. EPA is planning to rely on you—the public works departments and response experts of local governments and private contractors to accomplish this cleanup program. They indicate now that the tank program—more than any other federal response program enacted—will use the resources of and delegate the decisionmaking power to local government.

It is an opportunity for a new partnership. For the sake of our environment, our drinking water supplies and our ground water resources—and as the author of the underground storage tank response program in the new Superfund law—I hope that you will make your best effort to take full advantage of the new resources that are about to become available.

So there is much of immediate interest to your organization and to this 1986 Public Works Congress in New Orleans that will be occurring in the last ten days of the 99th Congress in Washington.

But on occasions like this we also need to look up from the immediate to the farther horizons. Much may happen in the last ten days of the 99th Congress. Some of it will be innovative and push the nation in new policy directions. Some of it will be purely parochial and small minded. But in all of the legislative hurly-burly I have just described, it is hard for me to discern any pattern—any one direction that is clearly and certainly the future of public works in America.

So the Congress—yours and mine—will do much in the next few days. But where are we headed?

On Thursday of this past week the National Council on Public Works Improvement issued its first report. The Council was created by the Congress in 1984 in response to the national infrastructure crisis. Members of the Council came to the hearing room of the Environment and Public Works Committee in the Senate to announce their initial views. I understand that a representative of the Council will be here with you this morning, as well. Since we will both have the benefit of a briefing on that report, I thought I would use it as a springboard for some comments on the long-term prospects for public works legislation in America.

Let me begin by saying that the National Council on Public Works Improvement has the potential to be one of the best Federal commissions that has ever been created. It comes at the right time. It has significant resources. It has experienced and committed members. It has a good staff. And it appears—if this first report is an indication—that the Council will conduct a thorough dialogue with the Congress during its two year lifetime.

So I am excited about the work of this Commission. But I am also troubled by its first report. Troubled not so much by what was in it, but what is not. Let me describe the report for you. In addition to a discussion of the many needs assessments that have been made since the infrastructure crisis first made headlines a few years ago, the report has three major chapters on the trends that will shape public works policy in the future.

One chapter is on new technology. It describes some interesting, but incremental changes in the technologies that will be available for public works improvement. That chapter has a clear message, but it is a modest message.

The report has a second chapter on infrastructure financing. That chapter also carries a clear message. It reports a major trend. It says that an ever larger share of the infrastructure burden is falling on local government. Well, you knew that. You didn't need some fancy Federal commission to tell you that the investment of the national government and the states in capital projects is falling . . . that the biggest public works spending now is on maintenance, a local responsibility, rather than new starts . . . that the high interest rates have driven public works out of the bond markets and back to general revenue financing . . . and that the trends in spending are away from programs like highways where the Federal matching rate is high and toward needs like water supply and solid waste disposal where there is no Federal presence at all. We knew all of that.

That clear message, tracing the public works dollar . . . each year more and more of which is a local government dollar . . . is in distinct contrast to the picture painted in the third chapter of the report . . . the chapter on public works policy . . . the chapter that is intended to outline roles and responsibilities for public works decisions. Here, there is no clear message. Policy points in all directions at once. Some of the power is flowing in the Federal direction . . . some moving toward local government . . . some falling out of the public sector altogether and into the private sphere.

Four years after we discovered the infrastructure crisis . . . and at a time when we are re-enacting all of the major public works programs at the Federal level . . . with a national blue-ribbon commission sifting the evidence for several months . . . we still can't get a clear message on who has responsibility for what infrastructure decisions in our federal system government. Where are we headed?

Let me suggest that the contrast made in this report between the chapter on financing, where the message is clear, and the chapter on responsibility, where the message is muddled, is an accurate reflection of our current public works policy. We have acknowledged as a nation our infrastructure crisis. What we have not done is set out a clear agenda of reform in response to that crisis. And as a result we are getting defacto reform. Reform by default.

Let me use tax reform as an example. Tax reform is an explicit reform. But it is not infrastructure reform. They didn't start the tax bill by outlining the appropriate definition of a public purpose for tax exempt bonds? That is not where we started.

We started by asking for the lowest individual income tax rate we could reach. Only after we got down to 27%, did infrastructure policy become a central piece in the debate. When we looked around to find the means to pay for our tax reform . . . the magic 27% . . . that's when we got serious about tax-exempt bonds. At the back end of the process. And the result will be higher infrastructure costs for local government.

The IDB volume caps will be tighter and the exempt purposes more limited. Local public works projects will compete with each other . . . and with public works projects in other communities . . . for room under the statewide volume caps. So we kept the decision on what is . . . and is not . . . a public purpose in Washington. We took your authority to define public purpose and in exchange sent you a larger share of the cost of public works.

That is in keeping with the pattern from the Council's report that I have been describing. That is infrastructure reform by default. The front end of the process was explicit tax reform. The back end of the process . . . the narrowing of the tax-exempt borrowing authority of local government . . . will have large consequences for the public infrastructure of this of this Nation. Consequences only poorly understood and momentarily considered by the tax committees as they hurried to find the means to pay for the radical tax reform that we had promised up front.

Let me use federalism reform as another example. Perhaps some of you can vaguely recall the outlines of the New Federalism that President Reagan proposed in his 1982 State of the Union message. The President asked for a grand swap of responsibilities between the Federal Government and the States and cities that would make the human services programs . . . the health and welfare programs . . . primarily the responsibility of the Federal Government while we at the national level withdrew from our public works grants and made infrastructure your responsibility.

I happen to be one who believes that there is a great deal of merit in that kind of sorting-out. In fact, some of us in the Senate and the House are continuing to pursue the notion of sweeping Federalism reform along these lines. But I must admit that in our discussions most of the attentionis on federalizing the health and welfare programs. We don't give nearly enough attention to the smooth transition of the public works authorities to State and local government.

There is a danger that federalism reform will become welfare reform at the front end and that once again infrastructure reform will not be done explicitly, but will be accomplished only through default. It does not have to be that way. There can be successful and valuable reforms in public works programs that shift more of the authority . . . and responsibility for financing . . . to the State and local level while also returning the resources necessary to support those programs.

For instance, the National Governors Association has been exploring legislation that would allow the States to buy out the highway program by raising their gasoline taxes in an amount sufficient to replace the Federal motor fuel tax. Infrastructure reform does not have to be the back end of the New Federalism. It can be designed as a fair exchange of responsibilities that is of advantage to all parties in our federal system.

Budget reform. You all know the result of budget reform. We created a unified budget. We developed an annual congressional budgeting process. We have Gramm-Rudman-Hollings to force us to abandon the low road of deficits. But what is the result? The Highway Trust Fund created for the purpose of channeling a dedicated excise tax to the specific purpose of public works investment . . . public works spending . . . has become one of the principal instruments of our budget reform . . . has become our national savings account.

Each year the Trust Fund has been asked to make a substantial contribution to deficit reduction. And billions have been taken from the highway projects of State and local governments to accomplish the explicit purpose of deficit reduction. At the back end the result has been a further shift of the infrastructure burden to State and local government.

It is time that we have infrastructure reform up front. It is time that we decide where public works policy in this country is headed.

Let me say that asking for explicit reform takes courage. Reform is not hanging on as tight as you can to everything you've got. You don't get reform by saying no, no, no. Reform means change. It is time that you propose change . . . across-the-board change . . . in the infrastructure policies of the Federal Government. It is time to ask that the Congress name explicitly the infrastructure commitments of the Federal Government. And pay for them from a budget dedicated solely to our national capital needs. It is time for a national capital budget.

Capital budgeting can be the focus for up front, infrastructure reforms. Capital budgeting is not the be all, and end all for our public works problems. It is not a panacea for the nation's infrastructure crisis. But it can be a tool that you can use in the national legislative process to end the muddle in public works policy.

I am not going to spend time this morning describing the advantages and disadvantages of capital budgeting. You are all more familiar with them than I. My level government has never known the discipline of the capital budgeting that you live with daily. But I am going to ask that next year . . . in the 100th Congress of this nation . . . you join with me in proposing that the Government of the United States adopt a capital budget and the accounting and financing policies that are appropriate to capital budgeting for our infrastructure needs.

It is my hope that when we once again face the hurly-burly that is always associated with the closing days of a Congress, our shared agenda will include legislation to move the public works commitments of the Federal Government into a dedicated capital budget. At the end of the next Congress, in addition to all the bills to extend this program and amend that one, our agenda should include a bill on the President's desk to implement a capital budget for America's infrastructure needs.

Thank you again for the honor of appearing as your guest today.

□ 1610

Mr. STAFFORD. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Chair.

AMENDMENT NO. 2611

Mr. LAUTENBERG. Mr. President, on behalf of myself and Senators HEINZ, SIMON, METZENBAUM, MOYNIHAN, and CRANSTON, I call up amendment No. 2611 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself and Mr. HEINZ, Mr. SIMON, Mr. METZENBAUM, Mr. MOYNIHAN, and Mr. CRANSTON proposes an amendment numbered 2611.

Mr. LAUTENBERG. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

After section 145, insert the following:

SEC. 146. Sections 146 through 168 of this Act may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 147. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 148. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 149. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 150. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 151. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 152. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 153. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 152(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 154. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 152(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: *Provided, however,* That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 155. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 152(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: *Provided,* That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of partial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 156. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local govern-

ments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 152(l) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 156(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 152(l) of this Act, is further redesignated as section 314.

SEC. 157. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"SEC. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: *Provided*, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 158. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 157 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: *Provided*, That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 156(c) and 157 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 152(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 157 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 159. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 157 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is unavailable, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 160. Section 408 of the Disaster Relief Act of 1974, (42 U.S.C. 5176), as redesignated by sections 156(c) and 157 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 161. Section 409(a) of the Disaster Relief Act of 1974, (42 U.S.C. 5177), as redesignated by sections 156(c) and 157 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursu-

ant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 162. (a) Section 410(b) of the Disaster Relief Act of 1974, (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 163. Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 164. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 156(c) and 157 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 165. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 11(c) and 12 of this Act, is deleted.

SEC. 166. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) as amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 152(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 152(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 152(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 152(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 152(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 152(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 157 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 157 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 156(c) and 157 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 152(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 152(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 152(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 167. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed or renumbered by sections 146 through 168 of this Act, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 168. (a) Except as provided in subsection (b), sections 146 through 168 of this Act shall take effect on October 1, 1986.

(b)(1) Sections 146 through 168 of this Act shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to October 1, 1986.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by sections 156(c) and 157 of this Act, (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisions had not been repealed, modified, or amended.

(3) Violations of statutory provisions or rules and regulations issued under the authority of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population."

Mr. LAUTENBERG. Mr. President, on April 18, the Federal Emergency Management Agency issued regulations that would in effect deny Federal disaster relief assistance to States and localities in 61 of the last 111 declared disasters. They would not have been eligible. Under these regulations, when a disaster is severe enough to warrant Federal assistance, localities would be called upon to pay 50 percent of the costs of replacing and repairing public facilities, instead of the 25 percent they pay under current practice.

I oppose the implementation of these regulations. Denying Federal assistance in time of need and increasing costs to local governments when they can least afford increased costs undermines the basic purpose of Federal disaster relief.

As ranking member of the Subcommittee on Regional and Community Development with jurisdiction over this program, I strongly oppose the imposition of these drastic changes through the regulatory process. If sweeping changes are to be made in the Disaster Relief Program, those changes should be made by the Congress, not by the bureaucracy.

Prior to the August recess, I had intended to offer an amendment to the debt ceiling bill to prevent these FEMA regulations from taking effect until Congress specifically authorized changes to existing law. The committee leadership urged me to withhold that amendment until this bill came to the floor, so that an amendment could be worked out which stopped the regulations and, further, authorized changes in the Disaster Relief Program. An important reason for choosing this vehicle is that this amendment will then go to conference with the proper House committee.

Mr. President, it is time for the Congress to exert control over the Disaster Relief Program. Passage of authorizing legislation is the way to do it. With the exception of one provision, this amendment has been adopted by the Senate on two previous occasions

without objection. This amendment enjoys broad public support. It brings stability and flexibility to the Federal Disaster Relief Program.

The one provision that was not included in this legislation in the past is a prohibition on the establishment of a purely per capita ability-to-pay formula for deciding which disasters will be declared and which will not. The Senate has already acted to prohibit this aspect of the proposed regulations. The fiscal year 1987 HUD and Independent Agencies appropriations bill, as approved by the appropriations Subcommittee on HUD and Independent Agencies, of which I am a member, also includes such a provision, which I sought along with 15 other Senators who joined me in writing to subcommittee Chairman GARN, asking that these regulations be stopped.

I ask unanimous consent that a copy of that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, July 21, 1986.

HON. JAKE GARN,
Chairman, Subcommittee on HUD-Independent Agencies, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR JAKE: On April 18, the Federal Emergency Management Agency (FEMA) published in the Federal Register proposed rules affecting the declaration of natural disasters and the distribution of disaster assistance. The impact of these proposed rules, which are scheduled to take affect in October, is far-reaching and dramatic.

Under the proposed rules, 61 of the last 111 disasters declared by the President would not have been declared. Communities hard hit by major shocks to their physical and economic systems would be expected to pay half of all clean-up and restoration costs. Under current practice, states and localities pay 25 percent of such costs.

The driving force behind these regulations is the desire of FEMA to save money on disaster relief. We do not support spending any more than is necessary for disaster relief. Nevertheless, federal assistance in times of disaster is a basic function of government. Profound changes in the procedures for the declaration of natural disasters and the distribution of assistance should not be accomplished by regulations. Such drastic alteratons in federal policy, if they are to be made at all, should be approved by the Congress and not be undertaken through administrative procedures.

We oppose the regulations issued by FEMA on April 18. We urge that the Subcommittee on HUD and Independent Agencies include a provision in the FY '87 HUD and Independent Agencies Appropriations bill prohibiting the implementation of these regulations. Such action would give the appropriate committees of the Congress time to review FEMA's recommendations and take appropriate action.

If changes are to be made in the federal disaster assistance program, they should be made with the full involvement of the Congress and not through the regulatory process.

Sincerely,
John C. Stennis, Arlen Specter, Wendell Ford, Larry Pressler, Donald W. Riegle, Jr., John D. Rockefeller, IV, James Abdnor, Alfonse M. D'Amato, Frank R. Lautenberg, John Heinz, Howell Heflin, Bill Bradley, Don Nickles, John Glenn, Paul Simon, Rudy Boschwitz.

Mr. LAUTENBERG. Mr. President, rejecting the regulations is not enough. In order to exert congressional control over this program, we need a comprehensive reauthorization of the Disaster Relief Program. The amendment I am offering is essentially the text of S. 2517, a comprehensive reform of the Disaster Relief Program, which was adopted by the Senate on two occasions.

This amendment represents a consensus on the Committee on Environment and Public Works. This issue has been considered by the committee at length. This legislation would not have been approved twice before but for the contributions of Senators HUMPHREY and BURDICK. Senator HUMPHREY has been a leader on this legislation as chairman of the Subcommittee on Regional and Community Development.

I am pleased to serve on that subcommittee with my distinguished colleague from North Dakota [Mr. BURDICK], who was long the chairman of the subcommittee and is really the father of the Federal Disaster Relief Program.

Mr. President, because this legislation has been before the Senate in the past it is not necessary to make extensive remarks on its details. I refer those with questions to Senate Report No. 98-448, the report on S. 2517, which was approved unanimously in 1984. The text of S. 2517 constitutes the bulk of this amendment.

It is my understanding that this amendment has been cleared on both sides and that the managers are prepared to accept it. If that is the case, I am prepared to move the amendment.

I shall just highlight the major features of this amendment.

This amendment will bring much-needed clarity and predictability to cost sharing in this program by authorizing a 25-percent local match. The requirement of this match will insure cost consciousness on the part of local governments while laying to rest the controversy surrounding the imposition of drastic cost increases imposed by regulation.

The amendment makes necessary exemptions in the case of catastrophic disasters which render communities incapable of meeting cost-sharing requirements.

The ability of FEMA to work with local communities on hazard mitigation designed to avoid future disaster relief payments will be enhanced by increasing the amount devoted to this purpose to 10 percent of the public restorative costs assumed by FEMA.

Localities sometimes find themselves no longer needing a public facility or building destroyed in a disaster, but in need of a building for an alternative purpose. Under current law, buildings may only be reconstructed if they serve their original purpose. Local governments need the flexibility to rebuild their communities in a manner that makes sense and not just follow the dictates of outmoded Federal regulations.

Mr. President, this amendment will enhance the ability of local governments to administer the individual and family grant program by providing additional assistance when a locality exceeds the present 3-percent cap on administrative reimbursements. The purpose of the Individual and Family Grant Program is to get emergency help to people quickly. The 3-percent cap has often served to extend the time in which assistance is delivered.

Finally, this amendment will make clear that disaster relief payments to those on public assistance must not be counted as income for the purpose of denying such public assistance. In addition, if a disaster results in extended unemployment and individuals affected have exhausted or are ineligible for unemployment assistance, this amendment will make such assistance available.

The impact of FEMA's proposed regulations on New Jersey would be devastating. In 1985, Hurricane Gloria hit the New Jersey coast. Portions of the State were declared a disaster area. The State received $3 million in Federal assistance to rebuild public facilities damaged by the hurricane. Under the proposed regulations, New Jersey would receive no relief whatsoever in the aftermath of such a hurricane because the extent of the damage did not exceed FEMA's arbitrary ability-to-pay threshold.

In 1984, the floods in northern New Jersey were national news. Communities in the Passaic River basin were under water for days. According to FEMA, under existing practice, New Jersey was entitled to $12.7 million in Federal assistance. Under FEMA's proposed changes, New Jersey communities would receive only 48 percent of what they are today entitled to.

This amendment will result in prudent and compassionate disaster assistance. Unlike FEMA's proposed regulations, this amendment embodies a commonsense approach to helping communities when they most need the help.

Mr. President, we have acted on this legislation in the past. There is broad censensus that this approach is preferable to the imposition of devastating regulations. I therefore hope that this

amendment will be accepted in the Senate and enacted into law this year.

● Mr. HEINZ. Mr. President, today I am pleased to offer this amendment along with Senator LAUTENBERG to improve the Federal Government's capability to assist people and municipalities victimized by natural disasters. This amendment is similar to legislation I introduced on June 19 that would codify current Federal Emergency Management Agency [FEMA] regulations which provide assistance for at least 75 percent of all damages sustained by local communities for public works, such as roads, bridges, sewer and water systems, in the wake of major tornadoes, floods, and other natural catastrophes. States and localities would provide the remaining assistance.

Our legislation would also prevent FEMA from implementing proposed regulations under which it would deny eligibility for assistance to communities by virtue of an arithmetic formula based on income or population. To date, this bill has 27 cosponsors.

This amendment is vital to thousands of communities across the country. It is necessary because FEMA earlier this year proposed regulations that would reduce the Federal share of public assistance from 75 to 50 percent, and would deny eligibility for assistance to communities in which the total damages in the State were less than $1 per capita.

These reductions would drastically limit both the number of instances and the amount of funds which would be provided to communities hit by disasters. Under the $1 per capita threshold, the last six Presidentially declared disasters in Pennsylvania would not have qualified for a disaster declaration and corresponding FEMA assistance, including last year's election day flooding in the Mon Valley, and the damage inflicted by Hurricane Gloria in central and eastern Pennsylvania last October.

Pennsylvania is by no means the only State which would be affected. Nationwide, 61 of the last 111 Presidentially declared disasters would have been ruled ineligible for assistance.

Mr. President, I know all too well from personal experience how important this type of assistance can be to localities and their citizens. In the past year, several areas of my home State of Pennsylvania have been devastated by a series of tornadoes and floods. During this period, a total of 187 municipalities in Pennsylvania experienced in excess of $15 million in eligible damages and received more than $10 million in public assistance from FEMA. Reducing the Federal share to 50 percent would have cost the Commonwealth an additional $4.1 million for public assistance in 1985. Furthermore, under the restrictive $1 per capita standard, none of these disasters would have qualified for public assistance, leaving the State and municipalities to shoulder the entire $15 million in damage to public property.

During the summer recess, I held four field hearings in my State of Pennsylvania to learn the extent of the problems that would be caused by FEMA's proposals. I held these hearings in Pittsburgh, Harrisburg, Johnstown, and Scranton, with my colleagues Congressmen TOM RIDGE and BILL CLINGER, who have introduced legislation similar to mine in the House, as well as Congressmen GEORGE GEKAS and JOE MCDADE. In every city we visited, we heard from local officials—from mayors, borough managers, emergency management officials—about the dire need for FEMA public assistance.

Mr. President, this amendment will preserve current levels of FEMA assistance that is sorely needed in communities across the Nation.

I want to express my gratitude to the chairman of the Environment and Public Works Committee, Senator STAFFORD, for his cooperation in this amendment. A major portion of the amendment consists of legislation drafted by the Public Works Committee that the Senate passed in the 98th Congress. I also thank Senators LAUTENBERG and HUMPHREY, the leadership of the Public Works Subcommittee, who have worked hard on developing this legislation.

I urge adoption of the amendment.●

Mr. SYMMS. Mr. President, I thank the distinguished Senator from New Jersey. On behalf of the majority, we are happy to accept the amendment.

Mr. LAUTENBERG. I thank the Senator.

Mr. BYRD. Mr. President, we have no objection.

Mr. SYMMS. Mr. President, we have no objection.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2611) was agreed to.

Mr. STAFFORD. I move to reconsider the vote by which the amendment was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2871

(Purpose: To amend the national maximum speed limit law)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS, for himself and others] proposes an amendment numbered 2871.

At the end thereof add a new section as follows:

SEC. . (a) Subsection 154(a) of title 23, United States Code, is amended—

(1) by inserting "other than a highway on the Interstate System located outside of an urbanized area of fifty thousand population or more, (2) a maximum speed limit on any highway within its jurisdiction on the Interstate System located outside of an urbanized area of fifty thousand population or more in excess of sixty-five miles per hour" immediately after "hour"; and

(2) by renumbering "(2)" as "(3)" at the two places "(2)" appears.

(b) Subsection 154(f) of title 23, United States Code, is amended by inserting "on public highways with speed limits posted at fifty-five miles per hour" immediately after "hour".

Mr. SYMMS. Mr. President, the amendment I have offered is the text of S. 2665, a speed limit bill which is cosponsored by Senators BURDICK, HECHT, ABDNOR, MELCHER, BENTSEN, COCHRAN, SIMPSON, DECONCINI, HATCH, BAUCUS, DOMENICI, WALLOP, MCCLURE, NICKLES, GRASSLEY, HUMPHREY, LAXALT, GRAMM, EXON, and myself. This amendment allows the States the authority to raise the speed limit up to 65 miles an hour on rural interstate outside of urbanized areas of 50,000 population or more.

Mr. President, this is a very modest proposal to reform the national maximum speed limit. I know of no law in this country, particularly west of the Mississippi, that causes more cynicism toward Big Brother in Washington than the seemingly unenforceable 55-mile-an-hour speed limit law. I can say that it is not just west of the Mississippi. All one has to do is drive on the interstates around this part of the country and one will find it is very difficult to feel safe at 55 miles an hour without being run over by the mass of traffic that is driving closer to 65 miles an hour.

As I said, this is a very modest proposal to reform this speed limit, relax it somewhat. It would not raise the speed limit on a single mile of rural interstate in the country but would grant the State officials that have the authority to do so, if they determine that certain miles of interstate highway in their jurisdiction can be driven safely at speeds up to 65. It does not mandate that they have to do so but it would give them the privilege to exert their own responsibility.

Legislation that goes at least this far to return regulation of speed limits to the States has been supported in policy statements, resolutions, or editorials by each of the following associations and newspapers—I think this is rather impressive:

The American Association of State Highway and Transportation, Officials [AASHTO]—which represents the transportation departments of the 50

States, the District of Columbia, and Puerto Rico.

The Western Governors' Association.

The National Conference of State Legislatures.

The California Highway Patrol—the agency charged with speed limit enforcement and traffic safety operations in the State of California.

The Citizens' Coalition for Rational Traffic Laws.

The United Busowners of America.

The Independent Truck Owner-Operators' Association.

The Owner-Operators Independent Drivers Association.

The American Motorcyclist Association.

The New York Times.

The Washington Times; and I would be remiss if I didn't mention the Idaho Stateman, the largest daily newspaper in Idaho.

I ask unanimous consent that editorials on speed limit reform from these three newspapers be placed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SYMMS. I want to emphasize for the record, Mr. President, what I believe to be a most significant policy position recently adopted by the secretaries and directors of our State transportation departments. AASHTO's policy statement, approved by more than a two-thirds vote of all AASHTO member departments, reads as follows:

> The Congress should amend the 55 mph law to allow the States to establish up to a 65 mph speed limit on rural limited access freeways, as the State may find appropriate.

I believe Members should know the position of our State transportation officials when considering such an important transportation issue.

Last, but certainly not least, among those who have offered support for this proposal is the President of the United States. Senator HECHT and I recently met with President Reagan to discuss the issue of speed limit reform, and he offered his full support for any legislative effort to return authority to the States to regulate speed limits.

Since that meeting the President has written to confirm his support for speed limit reform, and I ask unanimous consent that his letter to me be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. SYMMS. In addition, the President has written to the Nation's Governors informing them of his position on this issue. For the record, I want to read the last two paragraphs of that letter:

> For some time, I have believed that 1973's total preemption of State control over highway speeds is not longer justified. Instituted during a national energy emergency, the 55 mph limit was nonetheless a clear departure from the principles of federalism. Now, in view of changed conditions, I am prepared to support any reasonable relaxation of the current absolute rule that is consistent with the need for public safety.
>
> As a former Governor, I have the greatest confidence in the ability of the States to exercise this responsibility with the utmost regard for public safety. With Congress' cooperation, we will soon take a step toward a healthier balance between the two levels of our federal system.

I hope we will soon give the President that cooperation by returning to the States greater authority to regulate speed limits.

Mr. President, the Emergency Highway Energy Conservation Act, which established the 55-mile-per-hour national maximum speed limit, was enacted to conserve fuel during the 1973 Arab oil embargo. With the exception of a short period during World War II, the Federal Government had never before intervened in the States' responsibility to determine speed limit policy.

A 1984 study conducted by the Transportation Research Board [TRB], entitled "55; A Decade of Experience," concludes that the national maximum speed limit has served its original purpose. The amount of motor fuel saved in 1983 as a result of the 55-mile-per-hour speed limit was estimated at 167,000 barrels per day or about 1 percent of total consumption.

The TRB study also concludes that "55" has reduced the number of annual highway fatalities by 2,000 to 4,000 fatalities per year. While the authors of the report make it clear that any estimate of the safety benefits of lower speed limits are based on a number of assumptions which may or may not be accurate, I do not think anyone doubts that a lower speed limit on some of the Nation's highways has indeed saved lives. The questions presented here are: First, whether or not safety can be maintained on some highways if the speed limit is posted higher than 55; and second, whether or not the States can be trusted to make that judgment with a reasonable concern for public safety. Mr. President, in my opinion, the answer to both of these questions is unequivocally "Yes," and I offer this amendment based on that understanding of the issues involved.

Mr. President, the TRB report also indicates the 55-mile-per-hour speed limit requires about 1 billion additional hours of passenger time annually 1 billion hours, Mr. President. That is a lot of time that people could be spending at other pursuits. While it is difficult to assign a dollar value to this additional travel time, clearly it represents some economic loss in terms of reduced productivity.

The cost in terms of employee hours and funds expended by law enforcement agencies in an effort to enforce the 55-mile-per-hour speed limit is also significant. The lack of driver compliance and the threat of funding sanctions have forced States to devote an extraordinary amount of time and money monitoring speeds on roads posted at 55. Some States deploy up to 85 percent of their officers on 55-mile-per-hour roadways in an attempt to reduce the rate of noncompliance and, thereby, protect themselves against the loss of highway funds. This effort takes personnel, equipment, and funds away from other important enforcement efforts—for example, having the officers working at bar closing time on Friday and Saturday nights when most of the drinking and alcohol-related accidents take place. The fact is the California Highway Patrol testified to that end, that it was costing them $3 million in California alone and it was diverting their ability to keep the drunks off the highway because they had to use their officers' time for the compliance issue—10 o'clock on Tuesday morning, 10 o'clock on Wednesday morning, 10 o'clock on Thursday morning on endless stretches of freeways where there was no unsafe driving taking place. So I believe this where we can probably in some cases improve safety by having a more flexible attitude about the national speed limit of 55 miles an hour.

Despite a nationwide increase in enforcement efforts, the rate of noncompliance continues to grow. In 1985, five States reported noncompliance rates at or above 50 percent, at which point they become subject to funding sanctions. In addition, Secretary Dole has notified Arizona and Vermont that they may lose up to 10 percent of their fiscal year 1986 highway funds based on noncompliance rates for fiscal year 1984.

The lack of driver compliance is particularly notable on rural interstates. In 1985, more than 75 percent of drivers on those roads exceeded the speed limit, and the noncompliance figures are more than 85 percent on rural interstates in at least eight States. The rate of noncompliance raises a legitimate concern that widespread disrespect for speed limit laws has led to a growing disrespect for other traffic safety laws. In fact, Frank Francois, the Executive Director of AASHTO, cited this concern as a factor contributing to the Association's new policy position on "55." There is a belief among AASHTO members, he said, "That the growing noncompliance problem with the 55 mph speed limit is encouraging drivers to additionally ignore other traffic laws, many of which have a considerably more direct and larger impact on highway safety than does the 55 mph law."

This amendment, Mr. President, would allow States to raise the speed

limit to a reasonable level on highways that comprise, with the exception of urban interstates, the safest highway system in the country. The 33,910 miles of rural interstates are just 6 percent of the highways posted at 55 and they carry 19 percent of the traffic on those highways. Yet, the fatality rate on rural interstates is lower than that of any other highway system except urban interstates. In 1984, fatalities on rural interstates accounted for less than 5 percent of all highway fatalities.

Also, actual driving speeds are already well above 55 mph on rural interstates. In 1985, the average speed on rural interstates was 59.5 mph, and 23 States reported average speeds in excess of 60 mph on those highways. The 85th percentile speed on rural interstates in 1985 was 66 mph. The 85th percentile speed is the speed at or below which 85 percent of the vehicles are traveling. It is a speed measure commonly used in the process by which speed limits are established. Thirty-seven States reported an 85th percentile speed at or above 65 mph on rural interstates in 1985.

Based on these statistics, I believe we can expect only slight increases in actual driving speeds if States choose to raise the speed limit to 65 mph on rural interstates. Clearly, the speed at which one drives is based in large measure on the speed at which one feels comfortable driving. I do not believe for a minute that most Americans driving 65 or 70 mph on the interstates today will increase their driving speed by 10 mph if the posted limit is raised to 65. The question for most drivers is, "At what speed do I feel comfortable driving?" rather than, "How fast can I drive without getting pulled over by a State trooper?" When speed limits are posted at a reasonable level—and most highway engineers would use the "85th percentile" speed to define "reasonable"—speed variance is reduced, driver comfort is enhanced, and traffic safety is greatly improved.

□ 1630

Mr. President, on that point, with the advent of driver education in our school systems and the young drivers coming on, I have seen an improvement in the last 30 years in the quality of drivers. There is no question that there is much better sensitivity to safe operation of automobiles today—and I think that is good and we should encourage it—than there was 30 years ago. I believe that if we continue to work toward putting the responsibility for traffic safety on the person who is behind the steering wheel, we can do more in terms of reducing traffic fatalities, rather than by this arbitrary speed limit, which simply does not fit the vast stretches of the western freeways across Nebraska, Wyoming, the southern part of my State, across the wheat country, in eastern Washington. Those roads were designed to be driven on at 70 miles an hour. The automobiles were designed to be driven safely at 65 to 70 miles an hour. Certainly, we can accommodate that and still keep traffic safety.

Mr. President, I understand the concern about highway safety which many of my colleagues have raised in connection with this issue in the past and will raise again today. As chairman of the Environment and Public Works Subcommittee on Transportation, I share their interest in taking every reasonable step to make travel on our Nation's highways as safe as possible. I would only repeat that, as I see it, the primary questions to be answered when considering this amendment are: First, whether or not safety can be maintained on some highways if the speed limit is posted higher than 55, and second, whether or not the States can be trusted to make that judgment with a reasonable concern for public safety. I believe both questions can be answered affirmatively, and I urge my colleagues to vote for this amendment.

EXHIBIT 1

[From the Idaho Statesman]

RAISING RURAL SPEED LIMIT MAKES SENSE

"I can't drive 55," screams an otherwise forgettable rock lyric.

But the sentiment echoes that of millions of drivers who speed across the seemingly endless expanses covered by the nation's interstate highway system.

It's time those voices be heard. It's time to revise 55.

Sen. Steve Symms, R-Idaho, no friend of the double nickel, has genuine reason for optimism. For the first time since the mandatory 55-mph speed limit law was passed in 1974, there is growing sentiment for change.

Sen. Symms is co-sponsoring a bill to allow states to raise the speed limit to 65 mph on rural interstates—those running through areas with less than 50,000 population. In addition, Sen. Chic Hecht, R-Nev., has proposed letting states raise speed limits to 65 mph on all rural highways.

For his part, the president believes the country should return to the pre-1974 days when state and local governments set their own speed limits.

We have long supported the 55 mph speed limit, to save dwindling petroleum supplies, reduce accidents and save lives. Those benefits will be conserved if the 55 mph limit is kept for the relatively crowded urban freeways with their greater accident risks. Allowing higher speeds on desert highways will have minimal impact on fuel consumption and safety.

Sen. Symms maintains that gas usage won't increase dramatically under the higher speed limits because normal driving speeds on interstate highways exceed 55 mph anyway. National statistics bear that out.

Nor would safety be affected greatly. The National Research Council reported in 1984 that rural interstates—which comprise 6 percent of all 55-mph posted highways and carry 19 percent of the traffic—were among the nation's safest roads and concluded, "relaxing the 55 mph speed limit on these routes would have a proportionally greater effect on travel time (savings) than it would on safety."

Attractive also is the fact that the decision to raise speed limits would be left up to the individual states.

We won't go as far as President Reagan or Sen. Hecht propose. The temptation to raise all highway speeds to 65—or higher—after 12 years under the federal thumb might prove too much for many state legislators to resist.

One step at a time. If higher speed limits on rural interstates pass muster, then we can examine raising them on other rural highways. It's better to go slowly for the sake of safety.

[From the New York Times, Aug. 26, 1986]

DIFFERENT SPEEDS FOR DIFFERENT NEEDS

There are two things truly uniform about the national 55-mile-an-hour speed limit: it is uniformly violated and it is uniformly mocked. President Reagan, hoping to boost Republican prospects this fall, has endorsed repealing it in favor of limits set by the states. This change is warranted regardless of politics.

The national 55-mile limit is an idea whose time has passed. It is a nightmare of enforcement hypocrisy for the states. Virtually no one regularly keeps to the 55-mile limit. Yet Federal highway funds are still withheld from states that don't adequately enforce it.

The 55-mile limit is not useless. Far from it. It was adopted during the 1973 Arab Oil embargo to save fuel. It does that—as much as 2 percent a year. More important, it saves lives, perhaps as many as 4,000 a year. Those who want to keep the limit, like Joan Claybrook, former Administrator of the National Highway Traffic Safety Administration, contend that those saved lives are reason enough to retain it.

They're right, up to a point. The limit ought to be maintained on many roads—and most, if not all, of those 4,000 lives will still be saved. As for other highways the cost-benefit trade-offs are complex. Police agencies ought to decide, for instance, whether enforcing the limit is worth the loss of resources for tasks that might save more lives, like pursuing drunken drivers. There is good reason to believe that the 55-mile limit can be selectively and safely relaxed. Highway engineers in state after state have determined that on certain routes speed limits could be raised, to 65, without causing more accidents. Many highways, after all, were designed to be driven at speeds up to 70.

The main problem with the 55-mile limit is that it is universal. It treats sparsely traveled Interstate highways in Montana just like the Long Island Expressway, there traffic regulates speeds far more effectively than any law. Compare that with arrow-straight Interstates with not another car in sight all the way to North Platte. As Westerners frequently observe, on roads like that, falling asleep at the wheel from boredom is more of a danger than hitting another car.

The President does not endorse a particular speed limit bill, nor is there any reason to do so. Let each state decide on which roads the limit can safely be raised to 65. Common sense about safety is already uniform across the states; the exact speed limit need not be.

[From the Washington Times, Aug. 27, 1986]

PUSHING 55 OFF THE ROAD

Chances are that this Labor Day weekend you'll break the law more times than John Dillinger, Al Capone, and Ma Barker did in their combined outlaw careers. Again and again you'll drive over 55 mph on one of America's roads.

Maybe you'll also—yipes!—use a radar detector, thumbing your nose at the traffic police and, in the People's Republic of Virginia and the District of Columbia, violating local laws against such devices.

It's really frightening, when you think about it, that the federal government so easily turned us into a nation of scofflaws. Sure, the polls say that most people favor keeping the double-nickle, but flesh-and-blood Americans, unlike the statistical abstractions, are voting with their gas pedals.

With any luck this might be the nation's last lawless Labor Day. President Reagan is prodding Congress to ditch the 55 mph limit because, as he puts it, "the time has come to restore greater authority to the states in this area."

And the time is right, for a fact. Adjusted for inflation, gas prices are the lowest ever. Cars are built safer every year. In a few days our lawmakers will return from summer vacations in which, sources advise, right now, as you read this, the honorable ladies and gentlemen are themselves zipping along at 70 per. And ditching the 55 will earn every incumbent more votes this November.

Double-nickle partisans are putting the same old fake skid marks on the road. They say it "saves lives." Didn't traffic deaths decline from 1973 to 1974, the 55's first year? Sure, and a 40 mph limit probably would save even more, but whether such a restriction would be reasonable—well, that is something else again.

Recent years have witnessed a significant rise in fatal accidents caused by truck drivers falling asleep at the wheel. Truckers drive the same distances they used to, but the 55 mph limit requires them to drive more hours to reach the same destinations, inducing a dangerous fatigue. In such cases, 55 kills.

The 55 mph limit remains the law because congressional staffers and Washington opinion makers either don't drive, drive only in cramped cities like Washington, or drive cars like the Yugo that can't reach 55 mph even going downhill with the clutch in. It's time fed-up Americans told these sclerotic snails to stop holding the rest of us back.

EXHIBIT 2

THE WHITE HOUSE,
Washington, August 15, 1986.

Hon. STEVEN D. SYMMS,
U.S. Senate,
Washington, DC.

DEAR STEVE: I enjoyed our meeting this week, and the opportunity to review with you the issue of reforming the current national speed limit laws.

As I told you on Monday, I believe that the time has come to restore greater authority to the states in this area. To that end, I welcome proposals like those you and Senator Hecht have offered, or other reasonable reforms that would provide states enhanced ability to regulate highways within their jurisdictions.

As a former governor, I have great confidence in the sensitivity of the governors to the need for protecting public safety, and know that they will exercise with the greatest of care whatever level of control is ultimately returned to them.

Thanks for your leadership on this issue.

Sincerely,

RONALD REAGAN.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BURDICK. Mr. President, I support this amendment allowing State legislatures the flexibility of increasing the national speed limit on rural interstates to 65 miles per hour.

Pressure for change at the Federal level has mounted. For the first time, the Department of Transportation will withhold highway funds from two States—Vermont and Arizona. Others near the brink are Arkansas, Maine, Massachusetts, Maryland, Michigan, Missouri, Mississippi, Nevada, New Mexico, Oregon, and New Hampshire.

Nearly a dozen State legislatures, including North Dakota, have responded to public pressure to alter the impact of the Federal speed law. While my State has not openly challenged the Federal law by increasing the speed limit, it has lessened its enthusiasm for enforcement.

It is not alone. The three neighboring States have also dropped penalty points for speeders and issue small fines for those driving 15 miles over the limit. Fines vary from $5 in Montana, $10 in South Dakota and Minnesota, and $15 in North Dakota.

The DOT measures compliance with sensors embedded in pavement on various roads posted at 55. However, it does not use the actual speed counts recorded by the sensors to check for compliance. Rather it adjusts the figures, to try and keep every State in compliance.

The Federal Government should stop the nonsense of just counting the number of violators and playing the numbers racket. The Federal Government should be more concerned about violations where drivers are traveling far above the speed limit, rather than those involving speeds just above the limit.

Because States are concerned about losing up to 10 percent of their Federal highway dollars, they are concentrating their enforcement effort on the interstates. It makes no sense to have State troopers on the interstate at 10 in the morning, when they could be enforcing traffic safety laws on roads where accidents are more likely to occur. Adoption of this proposed amendment would make speed limit laws more enforceable and allow State enforcement agencies to use their personnel, equipment and limited funds, in a more efficient and effective manner.

Mr. LEAHY. Mr. President, I rise today to support Senator SYMMS' amendment to give the States discretion to increase the speed limit on safe rural interstate highways to 65 miles-per-hour. I rise also to oppose Senator HECHT's amendment to repeal the national speed limit, on rural roads altogether.

In 1974, Congress established the 55 miles-per-hour national speed limit to promote energy conservation and to save lives. The 55 miles-per-hour speed limit works and should be maintained. The speed limit saves 4,000 lives per year, according to the National Academy of Science. The speed limit also conserves 25 million barrels of oil a year.

The 55 miles-per-hour speed limit, however, is ineffective on rural interstate highways—ineffective not only at controlling speeds, but in achieving Congress' desire for safer, more energy efficient highways. And, enforcement of the speed limit on rural highways imposes an undue burden on police forces in small, rural States like Vermont.

Senator SYMMS' amendment is a bipartisan compromise. The amendment would give the States flexibility to raise the speed limit only on those rural interstates they determine are safe enough to be traveled safely at that speed. Rural highways are the safest component of our national highway system. The average speed on rural interstates is 66 miles-per-hour, yet less than 5 percent of all highway fatalities occur on rural highways.

The 55 miles-per-hour national speed limit is supposed to make highways safer. After 12 years of experience and numerous studies, it appears that we can meet our national interest in keeping highways safe and still permit an increased speed limit on safe rural highways.

However, some highways may not be safe with a maximum speed limit of 65 miles-per-hour. No one knows better the condition of rural interstates than the States. The States ought to have some flexibility to raise the speed limit on rural interstates that are safe and to restrict speeds on unsafe roads. The Symms amendment would not force States to raise the speed limit on rural interstates. It simply gives the States that option.

That is why the National Conference of State Legislatures and the American Association of State Highway and Transportation officials, the national organization of State highway departments, supports this amendment.

In addition, raising the speed limit on select, safe rural interstates will not compromise Congress' original intention in conserving energy. Rural interstates comprise only 6 percent of the total highway system. Raising the

speed limit on this small portion of the national highway system will not significantly affect the energy savings produced by the speed limit nationwide.

Finally, the current system of enforcing compliance with the national speed limit on rural highways imposes an enormous and inequitable burden on police forces in rural States, like Vermont. In order to avoid losing Federal highway funds, Vermont must devote 10 percent of all State police manhours to enforcing the speed limit on the 2 percent of our State's roads posted at 55 mph. Vermont and other small States do not have the resources to patrol rural interstates, simply to conform with wrongheaded Federal compliance regulations.

Eighty-five percent of Vermont's towns depend on the State police for primary police protection. If the State police must devote 10 percent of its time to chasing speeders, police protection in the majority of Vermont's towns is going to suffer. So to will efforts to crack down on drunk drivers be weakened.

As a States attorney, I saw far too many of my State's young people killed in drunk driving accidents. I went personally to those accidents. I also had the good fortune of working with Vermont's extremely well trained police officers. Vermont's State police men and women should be freed up to protect the public—to protect our children from drunk drivers and our communities from thiefs and drug pushers. Tying up State police troopers to bring highway funds to rural States is unfair to the officers and unfair to those they protect.

The national speed limit saves energy and lives. It should be maintained.

However, giving Governors the flexibility to raise the speed limit will ease the burden on small States of enforcing the national speed limit on rural interstates and will not compromise Congress' original intention in making our highways safer and more energy efficient.

I urge the Senate to defeat the amendment to eliminate the national speed limit on rural roads altogether and instead to adopt Senator SYMMS' compromise amendment.

Mr. STEVENS. Mr. President, I understand the Senator's amendment would permit raising the speed limit up to 65 miles-per-hour for any rural portion of the Interstate System. I wish to ask whether it is the intent of the amendment's sponsor that this provision shall apply to all States with highways designated as part of the Interstate System, and that this would include those rural portions in Alaska designated as part of the Interstate System for the 4R allocation.

Mr. SYMMS. I thank the Senator for his question. He is correct about the meaning of this provision, including the portion pertaining to the effect on highway routes in Alaska.

Mr. DOLE. Mr. President, I rise today in support of Senator SYMMS amendment to raise the 55 mile per hour speed limit. I believe it is time for the Federal Government to allow the States the option to raise the speed limit on rural interstate highways. Anyone traveling a rural stretch of interstate highway knows how frustrating it can be to be traveling at 55 miles-per-hour on an open stretch of road.

Opponents claim that the speed limit has led to a reduced number of highway accidents. However, statistics show that 85 percent of the motorists are currently driving in the 66-mile-per-hour range. I feel it is doubtful that giving the States the authority to raise the speed limit will lead to a substantial increase in the number of accidents and remind my colleagues, that this amendment does not extend the option of raising speed limits in urban areas, where the potential for serious accidents is much higher.

Currently, Mr. President, a number of States are using a large share of their State police force to patrol highways in order to meet Federal compliance standards. For example, it is estimated that 85 percent of California's highway patrol officers are used for speed compliance. No one can argue that these officers could be far better used to fight other types of crime. This amendment will help foster greater public acceptance of speed limit laws and enable law enforcement agencies to devote more resources to policing those highways which present the greatest hazard to the public.

I commend the efforts of those who are offering the amendment and urge its adoption.

AMENDMENT NO. 2870

(Purpose: To limit the 55 mile per hour speed limit to urbanized areas)

Mr. HECHT. Mr. President, I call up my amendment numbered 2870, which is at the desk.

The PRESIDING OFFICER. The second-degree amendment of the Senator from Nevada will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. HECHT] proposes an amendment numbered 2870 to amendment numbered 2871.

Mr. HECHT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1, strike out lines 4 through 13 and insert in lieu thereof the following:

(1) by inserting "in any urbanized area" after "fifty-five miles per hour" in clause (1),

(2) by striking out "or" at the end of clause (1),

(3) by redesignating clause (2) as clause (3),

(4) by inserting after clause (1) the following new clause: "(2) a maximum speed limit on any other public highway within its jurisdiction, as designated by the Governor or other appropriate State official, in excess of sixty-five miles per hour, or", and

(5) by striking out "clause (2) of" in the last sentence and inserting in lieu thereof "clause (3) of".

(b) Subsection (f) of section 154 of title 23, United States Code, is amended by inserting "in any urbanized area" after "55 miles per hour" the first place it appears.

(c) Section 154 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) For purposes of this section, the term 'urbanized area' means any area identified as an urbanized area in the Federal census of 1980.".

□ 1640

Mr. HECHT. Mr. President, on January 31, 1985, I introduced legislation, S. 329, which is currently cosponsored by 20 of my colleagues, for the purpose of changing the 55-mile-per-hour speed limit law. My reasons for doing so stemmed from the seemingly endless pleas of the citizens of Nevada for relief from a law which they felt to be unnecessary, an intrusion in the lives of free-spirited Americans, and, overall, a nuisance. Today, more than ever before, the need for this legislation, which is embodied in the perfecting amendment I have offered to the Symms amendment, is obvious, given the unenforceability of 55, the fact that the American public violates 55 on a wholesale basis, and the fact that the original reason for the law is history. With this in mind, Mr. President, I believe there is no other course but for Congress to take a long overdue look at the 55-mile-per-hour law and realize it's ripe for modification.

Mr. President, we are all aware that when the 55-mile-per-hour law was passed, the United States was experiencing a period of national crisis. There is also no question that upon enactment of 55, highway fatalities decreased 15 percent. But it is an equally established fact that over the life of 55, motorists have continually driven faster, and contrary to the speed kills argument, highway fatality rates have actually declined. In fact, for numerous reasons, America's fatality rate is lower today than the period immediately following enactment of 55.

One other reason for changing the 55-mile-per-hour law, and I think the most important, Mr. President, is the simple matter of States' rights. Upon placing 55 on the books, the Federal Government once again entered into the private lives of each and every one of us. Washington stepped in to tell us what we could, and could not, do and, even more distressing, Mr. President, the Federal Government threatens daily to take away highway funding if States fail to enforce 55. In an era of

placing premier emphasis on returning Government back to the people, Congress continues to maintain a law that smacks of unneeded intrusion into our daily lives. This must be changed.

Mr. President, prior to the August recess, my distinguished colleague, Senator SYMMS, and I met with President Reagan to discuss this issue. We are all aware that he has long been a supporter of States' rights and he indicated to us during that meeting that he supported our effort to modify the current 55-mile-per-hour law.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the President.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, August 15, 1986.

Hon. CHIC HECHT,
U.S. Senate,
Washington, DC.

DEAR CHIC: I enjoyed our meeting this week, and the opportunity to review with you the issue of reforming the current national speed limit laws.

As I told you on Monday, I believe that the time has come to restore greater authority to the states in this area. To that end, I welcome proposals like those you and Senator Symms have offered, or other reasonable reforms that would provide states enhanced ability to regulate highways within their jurisdictions.

As a former governor, I have great confidence in the sensitivity of the governors to the need for protecting public safety, and know that they will exercise with the greatest of care whatever level of control is ultimately returned to them.

Thanks for your leadership on this issue.

Sincerely,

RONALD REAGAN.

Mr. HECHT. I think his letter says it all.

Mr. President, the amendment I am offering today merely allows our States the right to raise the speed limit up to 65-miles-per-hour on rural highways. I want to emphasize that Mr. President, my amendment simply allows our States the right to set speed limits up to 65-miles-per-hour on highways they deem appropriate. If the Governor of New Jersey or Ohio or Even Nevada feels he or she cannot allow drivers in his or her State to drive 65, under this amendment, they would have the right to maintain the speed limit at 55. All we are asking is that if a State so chooses, it be given the right to raise speed limits up to 65 on roads outside urban areas which we define as 50,000 people or more. It's as simple as that.

Mr. President, compliance figures show that over 75 percent of all drivers today exceed the 55 mile-per-hour limit. Obviously, something must be changed to bring reality and common sense back to this issue. It is with this intent that I originally introduced S. 329, and is why I offered it as an amendment to that of my good friend from Idaho.

I urge my colleagues to join me in supporting this amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. EXON. Mr. President, I have been listening with great interest to the speech offered by my friend and colleague from the State of Idaho and I am an enthusiastic original cosponsor of his amendment. So I rise in support of the original amendment but not in support and encourage my colleagues not to vote for the amendment offered by my other good friend and colleague from Nevada for the reasons that I will try and explain.

Mr. President, the speed limit bill offered by the Senator from Idaho, the Senator from North Dakota, and myself, and I suppose others, will simply raise the speed limit on rural interstates, and I emphasize rural interstates, only to 65 miles per hour. It would do nothing to change the current national speed limit of 55 miles per hour on primary and secondary roads.

I believe this change to be prudent, thoughtful and necessary, given the overwhelming fact that States simply are not enforcing the current 55-mile-per-hour limit.

I also firmly believe that this change will not, and I emphasize not, adversely affect or impact interstate highway safety.

As my collegues know, I have been keenly interested in this issue for many months and have done a great deal of studying and a great deal of speaking on it.

In April I introduced legislation which sought to raise the current speed limit in the whole interstate system to 70 miles per hour. It seems to me that this 65 is a reasonable proposal. In fact, Mr. President, when I introduced the 70-mile-per-hour limit I did that with the thought in mind it would be convenient and comfortable to work down to 65 miles per hour which I was prepared at that time to compromise upon. That is where we are today with the original amendment before us.

I am fully aware that there are many, both in and outside Congress, who have reservations about this proposal and I hope that during this discussion on the floor of the Senate we can bring some reason, some rationality into some of the opposition that undoubtedly has been stated over and over again and very likely will come up on the floor of the Senate during this debate.

Even though I believe a 65-mile-per-hour limit on the interstate system is a very modest step forward, it would only affect rural interstate systems, those outside population centers of 50,000 inhabitants or more.

Mr. President, the facts are in. The motoring public is systematically ignoring the current national requirement of 55 miles per hour on the rural interstate system as if it did not exist. And if, for no other reason, to encourage respect for law and order I think that the national speed limit should be in tune with the time.

I emphasize, Mr. President, that this bill does not mandate an increase in the speed limit of 55 miles per hour for any State in the Union. All that it does is give the option, the authority, if you will, Mr. President, to the States to raise the speed limit to 65 miles per hour on their rural interstates and rural interstates only, exclusive of other roads. It gives them that option. So it might well be that the speed limit would still remain 55 miles per hour everywhere. I think that would not be the case but I use that example simply to spell out that this is a keen States rights issue.

We are simply telling the States that if you want to, through your legislative process and with the approval of the Governors of the States, you have a right to bring the speed limit on the rural interstates up to the speed where the traveling public is presently traveling.

When this law of 55 miles per hour on all roads in the United States was enacted in 1974 it was done in response to a serious energy crisis and we all remember that. Today we have a completely different situation. I would simply say that if we subsequently encounter another energy shortage we may have to again cut back the speed limit, if that is in the national security and economic interest of the United States.

Today most of us in this body who drive know that the traveling public has and continues to ignore the 55-mile-per-hour limit. Furthermore, the enforcement agencies of the States are not enforcing this law on the Interstate System.

During the weeks since I introduced my legislation, I wrote each of the State highway patrols and asked for their breakdown on information on their enforcement of the 55-mile-per-hour speed limit both on their interstates and on their primary and secondary roads during the year 1985. I further asked for fatal accident statistics on the Interstate System and the contributing cause of these fatalities for the same period.

I can say to my colleagues that the overwhelming evidence shows that actual enforcement of the speed limit begins not at 56 miles per hour as the present Federal mandate prescribes, but at 65 miles per hour on the Interstate System. Furthermore, the fatal accidents on the Interstate System,

those States which could provide me with contributing causes, showed only a small proportion were due to excessive speeds.

As example, I would like to cite the figures from Nebraska which is typical of the current enforcement situation and the statistics in Nebraska are simply these: that over 90 percent of all the highway fatalities in Nebraska occur on primary and secondary roads. Stated another way, Mr. President, less than 10 percent of all of the highway deaths in Nebraska for 1985 and preceding years, less than 10 percent of those deaths occurred on the Interstate System where a tremendous volume of traffic moves.

In Nebraska, to cite you a little history, in the 1970's we enacted legislation which actually encourages violation of the 55-mile-per-hour law.

□ 1650

I remember it well, Mr. President, since, as Governor, I vetoed the bill that the legislature passed, which simply said, in short, that you could go 65 miles-per-hour on the Interstate System in Nebraska and you could do that because if you were caught it would not cost you any points on your driver's license and the maximum fine that you could be assessed was $10.

Mr. President, I vetoed that bill because I thought at the time that we had that national emergency that energy conservation overrode every other reasonable consideration.

The Nebraska Legislature, in its wisdom or lack thereof, overrode the veto of then-Governor Exon and ever since that time, well over 10 years now, the effective, known, well-established speed limit on the interstate has been 65 miles per hour. There has been no pretense of enforcement of any other speed limit on the interstate.

So I can simply say to you that Nebraska citizens and the drivers of Nebraska and every other State in the Union have simply, over time, ignored whatever pretense there ever was of the 55-mile-per-hour speed limit.

I know of other States that are taking similar action, and of the lax enforcement of the law that is going on all across this country, some which have already been cited by the managers of the bill.

I would like to review for just a few moments in some detail just what Nebraska's statistics show, because they are extremely indicative, Mr. President, of what is going on. During 1986, there were 207 fatal accidents in Nebraska. Of those, only seven—I repeat, seven—occurred on the interstate system. That turned out to be a percentage for 1985 of only 3.4 percent. Yet, in not one of those fatal interstate accidents was speed cited as a contributing cause.

Now, let me sum that up again. Less than 5 percent of all fatalities in Nebraska in 1985 occurred on the interstate, where it has been well established, Mr. President, that the average speed is somewhere between 63 and 75 miles per hour. And yet, with that 3.4 percent who were killed on the interstate, speed was not recorded by the State Patrol as a contributing factor in any one of those accidents.

Nationally, during the same period, there were 39,622 accidents occurring during 1984. And only 3,749, or 9.4 percent of all of the fatal accidents nationally occurred in the interstate system, which meant that over 90 percent of all fatalities occurred on primary and secondary roads.

Once again, I emphasize, Mr. President, that the amendment offerred by the Senator from Idaho, cosponsored by the Senator from North Dakota and myself, does nothing to change the 55 miles per hour on the primary and secondary roads.

Even though contributing factor statistics are not completely available for all States on an individual basis, I would not hesitate to say for one moment that what these statistics show clearly is that the Interstate System was a road built for higher speeds than primary and secondary roads.

Now anyone, even those just getting their driver's license when they become 16 years of age, quickly realizes how much safer you are on an interstate highway system, where you have two lanes going in the same direction, where head-on collisions are all but eliminated. Now compare, if you will, Mr. President, the reasonableness of it or try and explain it to a 16-year-old, or a 60-year-old, that we have the same 55-mile-per-hour speed limit on the primary and secondary roads, which are essentially two-lane highways, with cars going in the opposite direction, supposedly at 55 miles per hour, which amounts to 110 miles per hour in head-on crashes, impactwise. You quickly get the picture, Mr. President, how much safer the Interstate System is.

Likewise, I would remind all that on the Interstate System we have controlled entrances and controlled exits from that highway. And we have no right-angle turns where roads are coming directly on to that interstate or blind spots which cause a high percentage of our deaths and accidents.

The point that I am trying to make, Mr. President, is that it is ridiculous on its face to maintain that the same speed of safety is at 55 miles per hour on the interstate as it is on the primary and on the secondary roads.

Mr. President, while I might be somewhat restrained from talking at great length on the so-called safety factor involved with the speed limit matter, I do believe that there is a general myth involved which I think we proponents need to quell. I wish to cite for my colleagues some statistics regarding highway fatalities which appeared in a Wall Street Journal article in April. It seems that highway deaths have been on the downward trend since the beginning of automobile travel.

In 1922, about 18 people died in accidents for every 100 miles of driving. By the end of World war II, the rate had dropped nearly in half. Although highway speeds increased, fatality rates continued to fall on an average of 3.1 percent a year since then. That is because, essentially, highways are safer—such as the interstate system. We have safer cars, we have seatbelts, and we have better trained drivers. All of these things go in to make up highway safety as we know it.

Now, speed does kill. Unreasonable speed will always kill. What we are talking about, Mr. President, is what is reasonable speed given the conditions of the road, the construction of the road and, last, but not least, Mr. President, what is the normal speed on which most vehicles are traveling on that particular road?

I think it is very important, Mr. President, that the President of the United States has indicated his support for returning authority to set speed limits back to the States. The Senator from Nevada made that point in his remarks in offering his amendment that, once again, I state I will vote against.

I applaud the President for taking this position and wholeheartedly concur in his reasoning that the States are best suited to regulate speeds within their borders, within certain dictates, in the view of this Senator, as outlined by the Federal Government.

After I introduced my speed limit legislation in April, I wrote to the President requesting his views on this issue. I received a reply from the President in July, which I ask unanimous consent to have printed in the RECORD at this point, along with the article from the Wall Street Journal.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, July 18, 1986.

Hon. J. JAMES EXON,
U.S. Senate, Washington, DC.

DEAR JIM: I want to thank you for bringing the matter of the 55 mile per hour speed limit to my personal attention. After receiving your letters and after our conversation, I asked my staff to do some serious thinking on the matter. Secretary Dole and the Cabinet Council for Domestic Policy have been studying the issue thoroughly. When I receive their final recommendation and findings, I will review them and decide how next to proceed.

I appreciate your continued interest in this issue, and welcome receiving your

thoughts on the laws governing the 55 mile per hour speed limit.

Sincerely,

RON.

P.S. Jim, I'm serious about this, we are taking a good hard look.

[From the Wall Street Journal, Apr. 28, 1986]

DOES 55-MPH SPEED LIMIT SAVE LIVES? MORE DRIVERS ARE DOUBTFUL

(By Damon Darlin)

The 55 miles-per-hour speed limit, which has already lost its appeal as a fuel saver, might not be the life saver it is cracked up to be either.

That, at least, is the argument of a small but increasingly ardent group of statisticians, academics and performance-car buffs. They want to raise the speed limit, and are attracting a growing audience by contending that the correlation between lower speed limits and fewer highway fatalities is weak.

If the government really wants to cut highway deaths, they argue half facetiously, it should foment a recession, for that's when deaths have declined most in the past. Their serious suggestions; include enforcing seat belt and drunk driving laws, and assuring that vehicles move in traffic at a uniform speed be it high or low. "Americans have been brainwashed into believing 55 saves lives," complains James Baxter, a Wisconsin lobbyist who is trying to form a nationwide group of anti-55ers.

Brainwashed or not most Americans do believe that. Fully 70 percent of Americans want to keep 55, a Wall Street Journal/NBC News nationwide opinion poll found, and even 34 percent of those who admit they speed agree. Transportation Secretary Elizabeth Dole wants to keep it too; "I am in favor of retaining anything that saves lives," she says.

'MONEY IS RIDING ON IT'

Nonetheless, if ever there was a time for the anti-55 forces, it is now. Gasoline prices are lower, adjusted for inflation, than they were before the 1973 oil crisis that provoked 55. What's more, within a few months the federal government may withhold millions in federal highway funds from states that its says don't enforce the speed limit. If the threat becomes reality, the resulting outcry may carry more weight than any statistical evidence. "Normally, pointy-headed things are ignored," says Charles A. Lave, an economist at the University of California-Irvine who favors lifting the speed limit. "But this time a lot of money is riding on it."

The highway fatality rate has been trending downward since the horseless carriage began appearing on roads. In 1922 about 18 people died in accidents for every 100 million miles traveled. By the end of World War II that rate had dropped nearly in half. And although highway speeds were increasing, fatality rates continued to fall an average of 3.1 percent a year since then. That's because of safer highways—such as the Interstate system—safer cars, more experienced drivers and better emergency care.

But a peculiar thing happened in 1974. The fatality rate dropped 15.3 percent to 3.6 fatalities per 100 million miles, the sharpest drop ever. The most obvious explanation was the lower speed limit adopted nationwide in March of that year. Federal Department of Transportation (DOT) statisticians estimated that more than 9,000 lives were saved that year, and they pinned the medal on 55.

Then another peculiar thing happened. Drivers started ignoring the "double nickel," and average highway speeds crept up again—but the fatality rate dropped more than 25 percent in the next decade. The fatality rate dropped a whopping 12.7 percent in 1982 alone, even though the speed limit didn't change from the year before.

RECREATIONAL DRIVERS

Explaining this phenomena is fueling the debate between the pro-55 and anti-55 forces. Although it may sound silly at first, the sharp drop in the fatality rate may actually be more closely related to economies than to speed limits. The oil embargo of 1973-74 kept recreational drivers off the roads. Statistically, they tend to have more accidents if only because they tend to be tired and traveling unfamiliar roads.

There is substantial historical evidence. For instance, in 1946, as speeds went up after wartime gasoline conservation ended, the fatality rate dropped 12.7 percent, and then fell 10 percent more in 1947. A recession also kicked in at the same time. The great economic boom of the early 1960s also saw the highway fatality rate rise, but it dropped during the recession in 1982. In fact, a 1983 DOT study demonstrated that 98 percent of the variation in annual highway fatalities could be accounted for by an equation incorporating such economic factors as unemployment.

Mr. Lave of the University of California uses a different analysis to explain why states with speeding drivers can have lower fatality rates. He argues that it isn't speed that causes accidents, but cars going either much faster or slower than other traffic. "Patrolmen ought to pay as much attention to slow drivers and they do to fast ones," he says. Mr. Lave recommends that states return to an old policy of setting speed limits for a certain highway near the speed most people traverse it, what highway engineers call the 85th-percentile rule.

In 1984, the national 85th-percentile speed was 67.7 mph, which makes Mr. Lave's speed variance study unpopular with those who favor keeping the 55-mph limit."He doesn't hesitate to talk about things he doesn't know anything about," says Patricia F. Waller, associate director for driver studies at the University of North Carolina's Highway Safety Research Center. She says it makes more sense to have fast drivers slow down than have slow drivers, who tend to be elderly, speed up, because when accidents do occur more damage is done at high speeds.

SLOWER DRIVERS

"It's hard to look at the data and say speed isn't a factor in highway fatalities," says Damian J. Kulash, the assistant director for special projects at the National Research Council. He says the economic speed variance study makes sense, but adds that 55 has helped narrow the range of highway speeds. The nonprofit research group published a study of the speed limit that concluded that despite the dissenting arguments, 55 saves between 2,000 and 4,000 lives each year. And though it found that in 39 states the average speed is above 55, drivers go slower than they did before 1974. The average speed on rural interstates in 1985 was 59.6 mph, down from 65 mph in 1973.

And importantly, speeds are much lower on the primary and secondary roads that aren't designed for high-speed travel. "There has been a substantial behavior change," says Mr. Kulash.

The study also recommended that 55 could be lifted on rural interstates where driving long distances at slow speeds can be onerous. The idea, which should appeal to a government interested in turning more decisions over to the states, has drawn little reaction. Nervous about appearing to come out against safety, the DOT hasn't asked Congress to change the law making states enforce 55 at the risk of losing up to 10 percent of their federal highway funds.

DOT officials say it isn't their fault. "It's not that we are sticking to our guns," says Philip Haseltine, Transportation's deputy assistant secretary for policy and international affairs. "It's that there is no consensus for change." Counters Rep. Daniel Glickman of Kansas, who is leading efforts to raise the speed limits on rural interstates, "Secretary Dole has abdicated her responsibility on this issue."

The threat of losing federal money may hasten some politicians to act. Mrs. Dole is expected to decide in the next few weeks whether to withhold federal funds from Vermont and Arizona because studies show those two states have the highest portion of drivers who exceed the limit. If she does, says Mr. Haseltine, Eastern states may show less reluctance to join the cause because many, such as Maine, are just as vulnerable to the charge that 55 isn't enforced.

But few states have gone as far as Nebraska. Earlier this month, the state legislature voted to raise its interstate speed limit to 70 mph. The governor vetoed the bill because it would have cost the state $130 million in federal funds.

Mr. EXON. Mr. President, I conclude by urging my colleagues to support the pending amendment, the original amendment, offered by the Senator from Idaho, with my full concurrence and my support, after we have discussed this for several days.

□ 1700

We are giving the States the option and the option only to increase their rural interstate speeds. I emphasize once again the option to increase the rural interstate speeds on the interstate highway only up to 65 miles per hour. We would be taking an action which I believe would be in the best interests of all the States. Let us give the States the option by doing so, and express our trust that they will apply this change in a reasonable fashion.

I believe that a 65-mile-per-hour speed limit in the rural interstate system would be far easier to enforce, and I urge all States which may use or employ this option to enforce it vigorously lest this Congress come back and tighten the laws once again.

Mr. President, safety is tremendously important. And also devising the laws of the land to meet what the people think is also reasonable. And I would simply say that if we enact the original amendment that I referred to that I am a cosponsor of, what we would simply be doing is authorizing the speed by which people are currently traveling on the interstate. I think that would have no adverse effect whatsoever on safety. And I believe it would be a significant contribution to

people respecting the posted speed limits.

The facts of the matter are, though, and all should understand this, that people drive to enforced speed limits—enforced speed limits, Mr. President. They do not drive to what necessarily is posted if it is not reasonable.

I urge support.

Mr. LONG. Will the Senator yield at that point?

Mr. EXON. I am glad to yield to my friend from Louisiana.

Mr. LONG. Mr. President, permit me to say to the Senator that I am informed—and I believe it to be correct—that the average speed on the interstate highway is 62 miles an hour. A lot of people are driving a lot more than that. This is one Senator. I drove in from Virginia Monday afternoon. I drove in, let us say, coming into town about 7 o'clock. That Highway 66 was utterly packed, and I honestly do not know that I can say anybody was driving 55 miles an hour. A person is in danger of traveling at 55. People are zooming past him on both sides on a big highway like that.

The public out there thinks 55 miles an hour is ridiculous. It was passed in a fuel conservation matter which is no longer relevant. They are all driving faster than the 55. This thing breeds a contempt for the law. When you pass something that makes no sense, it creates enormous numbers of people out there that are uniformly violating it. Why do you want to make law violators out of law-abiding people that would like to see it put at some point that makes sense and then enforce it. But to have it the way it is now where it is a joke, and everybody routinely violates it. It just makes no sense at all.

I certainly hope that we at least move it up to the point where you would respect the way people are driving, and what they are actually doing is risking even getting a traffic ticket.

So what the Senator is urging in my judgment makes all the sense in the world, rather than trying to make law violators out of the entire American public out there—certainly let us say 70 percent of them—when all one needs to do is put the law in whether or not people think of it where you can enforce it, but where it makes a little bit of sense. In the meanwhile it is creating all kinds of havoc in the country.

I certainly hope we respect the rights of the States to have something to say about it.

Mr. EXON. Mr. President, I appreciate the usual informative judgment of our great friend and colleague from Louisiana. And I think he comes right to the point very clearly. While he was talking I happened to think of some of the other statistics that are coming to mind that have been developed during a rather extensive study that I have done on this matter, which, once again, proves the point that the Senator was making.

It is simply this: I drove from Lincoln, NE, during the last recess, in a car to Washington, DC, a 2½-day drive. I drove at different speeds to find out the speed people were driving. I quickly found that on the Interstate System where I travel almost exclusively I felt endangered if I drove 55 miles per hour. I was a menace on the highway, I say to my friend from Louisiana, and he is nodding his head.

Mr. President, I finally figured out that the truckers do what the enforced speed limit was. And when a truck passed me, I then speeded up to the speed of that truck. I found out, interestingly enough, that everybody else on that road was driving at the speeds of the trucks, which was somewhere between 63 miles per hour and up to 68 and 69 miles per hour. I never saw during that 1,200-mile drive while almost every person that I saw driving a truck or an automobile, save one, anyone going 55 miles per hour, and I admired him for it, but it was a truck that was driving 55 miles per hour, and do you know what? There were 17 cars back of him as others tried to pass and it was a highway hazard.

So that traffic should be moving essentially at the same speed and the same direction at a resonable speed to make it safer for all of us.

One other thing I would like to get at. I was not here then. But when the Senate passed that Highway Act in 1974, Mr. President, they built in maybe intentionally—those of you who voted for it—at that time a system which invited the public to violate the law because in that 1974 law that we are trying to repeal for the first time here today, it said that 49.9 percent of the people in a State could violate the speed limit but if 50 percent violated the speed limit, they started to lose a portion of their highway funds.

Imagine what a traffic nightmare and enforcement policy that is for the State patrols and the State enforcement agencies all across this land.

I think possibly somewhere along the line, if we had more time, I have some other amendments to this bill. I would like to see eventually it to come to reducing that 50-percent requirement for compliance before you start to lose funds to get that down to 15 or 20 percent. Then when we have a 65-mile-per-hour speed limit we mean 65 miles per hour. If the average speed in that State is more than 10 or 15 percent of that speed, they start losing funds. I am simply saying, Mr. President, it is time we quit kidding ourselves and the American people with a 55-mile per hour on the Interstate System only. I emphasize once again that if we pass this amendment all that we would be doing is legalizing the speed on the rural Interstate System essentially where it is now.

I yield the floor.

Mr. HUMPHREY and Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, I have to say to my friend from Nebraska that probably different people have different experiences on the highways. Over the last recess I drove to Vermont and back. I utilized the Interstate System through Maryland, through Pennsylvania, through New York, and in Vermont. While I will have to say not everybody was going 55, I did not feel a menace on the highway traveling at that speed. For certain reasons I am particularly careful to travel at that speed I might say. But most people in the States I have named on the Interstate System—I traveled to and from Vermont and that covered about a thousand miles—were traveling I would say less than 60 miles an hour. Probably they were not all going 55. But most of them were going under 60.

□ 1710

I have supported the 55-mile-per-hour speed limit ever since it was temporarily established in 1974 as a conservation measure in response to the 1973 Arab oil embargo. I strongly oppose the amendment, as amended, being offered to raise the speed limit.

Since 1974 many studies have been undertaken to substantiate or refute claims that the 55-mile-per-hour speed limit is responsible for reducing traffic fatalities and serious injuries, and conserving fuel. Undoubtedly, there are several factors that have contributed to the saving of lives and to energy conservation. However, I am convinced that the 55-mile-per-hour speed limit has contributed significantly to saving lives as well as conserving fuel.

According to the National Academy of Science Transportation Research Board's study, "55: A Decade of Experience," the 55-mile-per-hour speed limit has saved 2,000 to 4,000 lives per year. This means between 1974 and 1985 between 20,000 and 36,000 people's lives have been saved. The 55-mile-per-hour speed limit has prevented an even greater number of severe injuries, and prevented between 35,000 and 62,000 less serious injuries. Accidents occurring at faster speeds, of course, result in more severe injuries, more pain and suffering, and far higher medical bills, legal and court costs, and motor vehicle repair costs.

Automobiles can be lethal, and the higher the speed, the less protection seat belts and other driver protection devices can provide. The Interstate Highway System may be designed for speeds higher than 55, but drivers and smaller cars are not. Smaller, lighter

cars give less protection in crashes. Drivers have better control of their vehicles at reduced speeds and more time to avert hazards and avoid accidents. I believe we should preserve and enhance every existing means for making roads safer and lessening risks for drivers.

I might add, Mr. President, that I have very recently received a communication from the Governor of Vermont asking that we retain the 55-mile-per-hour speed limit and doing so in face of the fact that Vermont is one of those States that in 1985 apparently was not quite in compliance with the 55-mile-per-hour speed limit. So we believe in the speed limit even if we have to pay a little penalty for doing so.

While it is a fact that not everyone is driving 55, the 55-mile-per-hour speed limit remains a strong deterrent to excessive speeding. National public opinion polls taken since the passage of 55 continue to show that a large majority of American drivers support the 55-mile-per-hour speed limit. In a recent Wall Street Journal/NBC News nationwide poll, 70 percent of Americans surveyed voted to keep 55, including many who admit they speed. And there will always be those who speed no matter what the speed limit is. If the speed limit is raised to 65 miles per hour, there will be those who believe that means they can drive 75 miles per hour.

The argument has been made that increasing the speed limit to 65 will save time and provide economic benefits. The TRB study shows, first of all, that 62 percent of all trips are not work related. Even if there is a savings in travel time of 7 hours per motorist per year, as someone has calculated. Most trips are short ones and for nonwork purposes. On average, a motorist could save 3 minutes per trip. Economists argue that such small time losses have essentially no value. I think a few minutes here and there is a small price to pay to save a life.

The TRB report states that if the speed limit were raised on rural interstates, there would be about 500 more deaths each year. That is a terrible tradeoff for the families of those killed. Without 55 altogether, there would be an additional death every 2 to 4 hours and a marked increase in serious and incapacitating injuries every hour.

Fifty-five does save lives, and, of course, it saves energy too. It is easy to forget those long, frustrating gas lines we went through in the 1970's. Energy is a limited resource. The attitude that there is plenty for us is an attitude that is irresponsible and unfair to our children and grandchildren because it is their share of energy we will be using.

According to Department of Transportation studies, cars get from 17 to 40 percent better gas mileage at 55 than at 70. Other tests show that most trucks get up to 27 percent better gas mileage at 55. Because of the 55-mile-per-hour speed limit, there are now approximately 167,000 barrels of oil saved per day, and that helps with energy conservation, the trade balance, and independence from foreign oil producers.

There have been some major changes since the enactment of 55 in 1974. The size of cars has become significantly smaller. Many of these cars are not designed to handle well at high speeds. We also have a new generation of drivers who have been licensed since the 55-mile-per-hour speed limit and have never driven with higher speed limits. At the same time, we have the highest percentage ever in our population mix of those over 65 years of age.

A variety of groups continue to support the 55-mile-per-hour speed limit and point out its benefits. The American Public Health Association with a membership of 50,000 public health officials and community health leaders opposes any weakening of 55. They cite a 60-percent reduction in paralyzing spinal cord injuries as a direct result of the 55-mile-per-hour speed limit.

According to an actuarial study done by the New England Mutual Life Insurance Co., life expectancy increased by 1.8 years from 1972 to 1976. They note that medical progress and better self-care helped, but that the 55-mile-per-hour speed limit was the chief reason. Between 1976 and 1979, average life expectancy increased by an additional 1.6 years.

The American Insurance Association is also on record in strong support of retaining 55. They point to the TRB study finding that $65 million is saved per year in medical and welfare assistance programs because of the 55-mile-per-hour speed limit.

The American Trucking Associations has said, "There is a very strong possibility that increasing the speed limit could result in heavy cost burdens for the trucking industry and a loss of the safety and fuel efficiency benefits that have been derived from 55." The United Parcel Service has locked monitors on each of its vehicles to assure that drivers observe the 55 mile-per-hour speed limit. UPS believes that the safety, fuel efficiency, and productivity benefits of 55 are incontroversible.

The National Safety Council supports the 55-mile-per-hour speed limit on behalf of the National Coalition to Support the 55 MPH Speed Limit, a broad-based group of public health, highway safety, and related organizations including Mothers Against Drunk Driving, American Academy of Pediatrics, Epilepsy Foundation of America, International Association of Chiefs of Police and others.

In conclusion, I believe that the reasons for maintaining the 55-mile-per-hour speed limit far outweigh the arguments to change the law. I wholeheartedly agree with the National Safety Council's view that 55 is "still this Nation's best single device for saving lives and preventing injuries from motor vehicle accidents." Increasing the speed limit to 65 miles per hour will kill people every day. The chance of a fatal injury in an accident is twice as great at 65 as at 55.

Mr. President, I think it is too much of a price to pay to go faster just to save 7 hours a year or 3 minutes a trip and lose 2,000 to 4,000 people a year. I think of the outcry that would occur in this country, Mr. President, if just, for example, 2,000 American lives were lost in Central America for some unforeseen reason.

□ 1720

The outcry would be unbelievable. Yet we are looking here at a proposal that the Transportation Safety Board observed would cost 2,000 more lives per year. That is more of a price than I am willing to pay. I do not believe that taking the chance is worth the few minutes that someone may save. It is much more important to get to our destination safely than not to get there at all.

Mr. President, I urge my colleagues to defeat this amendment as amended.

(Mr. GOLDWATER assumed the chair.)

Mr. HUMPHREY. Mr. President, the national speed limit is an irrational policy and violates simple common sense. It is time to deep-six the double nickel.

I am pleased to join Senators SYMMS and HECHT as an original cosponsor of this amendment. Over the past several weeks, I have devoted considerable effort to promoting this proposal.

Though Americans profess support for the 55-mile-per-hour law, respected statistics tell another story. According to a study by the Transportation Research Board, the average speed of motorists on rural interstates has increased from just over 57 miles per hour in 1974 to 59.1 miles per hour in 1983. Some States have reported noncompliance with the speed limit law on their rural interstate highways to be as high as 80 or even 90 percent. In my own State, monitoring devices have registered noncompliance with the law as high as 85 percent.

But mass disobedience is not the reason that we should change the law. In this case, there are three important reasons to end this highway hypocrisy:

STATES' SOVEREIGNTY

It's simple common sense that States should set the speed limits on their own roads, because States know their

roads the best. It is a simple fact of life that every time Washington tries to tailor one suit for all States, invariably it is too tight in some places. So it is with "55." It just does not suit our vast expanses of lightly traveled interstates, whether they are in the desert Southwest or in rural New England.

The National Conference of State Legislators, at its recent convention, has said as much. This group—representing over 7,000 legislators—recently passed a resolution calling for outright repeal of the "55" law. The legislators said: "State officials are eminently more qualified to determine appropriate speeds within their States based on individual State circumstances."

Legislation to change the speed limits has been introduced or enacted in 22 State legislatures over the past 2 years. I will submit that list for the RECORD.

State highway officials also agree. Their national group, the American Association of State Highway and Transportation Officials—representing the transportation departments of all 50 States, the District of Columbia, and Puerto Rico—have called upon the Congress to allow State discretion in setting speed limits on rural highways. The recently passed statement by that group says: "The Congress should amend the 55-mile-per-hour law to allow the States to establish up to a 65-mile-per-hour speed limit on rural limited access freeways, as the States may find appropriate."

Mr. President, a number of our Governors agree. The Western Governors Association has endorsed the amendment. Governors from other parts of the country have also endorsed this concept. And the Nation's most prominent former Governor, Ronald Reagan, backs the idea. The President said to my colleague, Senator SYMMS:

> I believe the time has come to restore greater authority to the States in this area. To that end, I welcome the proposals like those you and Senator HECHT have offered, or other reasonable reforms that would provide State enhanced ability to regulate highways within their jurisdictions.

The President also said:

> As a former Governor, I have great confidence in the sensitivity of the Governors to the need for protecting public safety, and know that they will exercise with the greatest of care whatever level of control is ultimately returned to them.

ENFORCEMENT PRIORITIES

Because of the requirements of the present law, States are forced to spend considerable amounts of very limited public safety resources enforcing the national speed limit law. If States do not achieve certain compliance levels, then they are subject to sanctions from the Federal Government, including withholding of Federal highway funds. Several States have been so threatened by the U.S. Department of Transportation.

Mr. President, imagine if half the police officers who are now staked out behind bushes, armed with radar guns, focused instead on apprehending drunken drivers. Surely, it would be a more sensible use of law enforcement resources and would probably save even more lives than nitpicking over the 55-mile-per-hour speed limit, and apprehending drivers who are traveling at safe and reasonable speeds.

A State highway official recently observed,

> The growing noncompliance problem with the 55-MPH speed limit is encouraging drivers to additionally ignore other traffic laws, many of which have a considerbly more direct and larger impact on highway safety than does the 55-MPH law.

COMMON SENSE

Higher speed limits on certain roads will not compromise highway safety. Over the past several years, highway speeds have been increasing while traffic fatalities have decreased.

Mr. President, my colleagues will recall the situation before 1974, when speed limits considerably higher than 55 miles per hour were posted all over the country. Surely, Senators will agree that 65 miles per hour is a safe and reasonable speed for most drivers on most highways.

In addition, permitting States to increase the speed limits on their rural interstates would save as much as 445 million manhours annually. Those who travel our highways for a living—salesmen, truckers, and so forth—attest to the enormous potential benefits of raising the speed limit. The president of the owner-operator Independent Drivers Association of America recently told me:

> Our research has established that the average cost to an owner-operator trucker of complying with the 55 MPH as opposed to a 65-MPH limit is approximately $15,000 per year in gross revenue. In order to make up for this lost revenue (which he must do to survive in today's competitive environment), the trucker would have to work approximately an additional 52 seven-hour working days per year. . . .

Further, it has been estimated that a traveling salesman who drives 50,000 miles per year—not an unlikely amount—the difference between driving at 55 and 70 miles per hour equals 1 full working month per year.

Mr. President, the hypocrisy of the national speed limit paves over States' rights, distorts enforcement priorities, and violates common sense. Let us put this to an end.

Mr. President, I suppose nothing could be more boring than belaboring the obvious, so I shall reduce my remarks to the essential level. It is belaboring the obvious because it is perfectly obvious to the vast majority of Americans that it is time to remove this "temporary" speed limit restriction, placed now 13 years ago, this temporary 13-year restriction on speed limits. Indeed, I think it is obvious, I would hazard a guess, to a majority of Senators in this body. I rather imagine that this amendment will pass, or one of them, or the two combined because the provisions they embody are long overdue.

The proponents of keeping the status quo—that is, the temporary permanent 55-mile-an-hour speed limitation—like to cite the polls in which a majority of Americans profess to support the 55-mile-per-hour speed limit. But we in politics, of all people, know that in polling, all things depend upon the way in which the questions are asked. If the question is asked, "Do you comply with the speed limit", if they were honest, the majority of Americans would say no because scientific measurements of compliance show us that in fact they do not, and by increasing margins, Americans exceed the 55-mile-per-hour temporary 13-year-old speed restrictions.

Interestingly enough, while the average speed has been going up year after year, notwithstanding the temporary 13-year-old speed restriction, highway fatalities have been coming down. What does that tell us? It tells us there is not a direct link between speed and safety that is not influenced by other factors—other factors being, for instance, the presence of drunk drivers on our roads. The thinking of those of us who seek to remove this temporary 13-year-old restriction is this: That if we can free up our police resources from nitpicking the over 55 day after day so States do not have to worry about "Big Brother" looking over their shoulders with respect to compliance so States do not have to worry about losing Federal highway funds, the withholding of which the Federal Government uses to coerce the States to coerce their citizens to comply with this temporary 13-year-old speed restriction—if those resources were freed up, some of them could be better applied to insuring that when we are out there complying with a reasonable and safe speed limit, we are not surrounded by drunk drivers. That is, these police resources could be used to apprehend drunk drivers instead of nitpicking on an unreasonable temporary 13-year-old speed restriction.

Some States may wish, as apparently is the case of the State of Vermont, according to the Governor, to remain at 55 miles per hour. Fine. Under the legislation pending, both of these amendments—Senator HECHT is on the floor. I am sure he is prepared to address his own proposal. But I know with respect to the Symms amendment, of which I am a cosponsor, this could be an elective matter. Vermont could stay at 55 if it wants. In other States where conditions are different, dry highways and so on, those States could raise their speed limits up to a

maximum of 65 under the Symms amendment or, under the Hecht amendment as I think I understand it, they would be free to set limits themselves according to their judgment.

The National Conference of State Legislators, at its recent convention, has called for the elimination of the 55-mile-per-hour law, saying:

State officials are eminently more qualified to determine appropriate speeds within their States based on individual State circumstances.

That is a statement of the obvious.

State highway officials, not only legislators, also agree. Through their group, the American Association of State Highway and Transportation Officials, they likewise have called upon Congress to allow State discretion, instead of this temporary 13-year-old artificially imposed restriction.

Western Governors agree, as do Governors in other parts of the country, including the Governor of New Hampshire, the State which I am privileged to represent.

The time has come to restore authority to the States and to let them apply a reasonable speed limit. Let us remember, these highways are designed for 70 miles per hour. They were designed and built at great expense to accommodate an average speed of up to 70 miles per hour.

There is also the matter of efficiency, Mr. President, saving man-hours. I recognize—and let us be frank, let us be honest—that we are talking about a tradeoff between increased efficiency and safety. Yes, that is true. That is true in aviation. You can build a perfectly safe airplane, as the Senator from Arizona, now presiding, knows perfectly well, that would have almost no chance of crashing except for one thing: Nobody would be able to ride in it because it would be so heavy and expensive to operate. So in aviation as in any mode of transportation, we ought to say to the American people, you are big boys and girls; you should decide within reasonable bounds on this matter of trading off efficiency and safety.

Yes, speed kills, and 55 is safer than 65, but 45 would be safer than 55. Why not just bar Americans from using their automobiles altogether? We know better than they what is good for them, do we not? We are the coercive Utopians. We all know what Utopia is. Why not just say to the American people, you cannot use your cars anymore?

Yes, there is a tradeoff here in raising the speed limit from 55 to 65, but let us remember that tradeoff is seasoned by freeing up resources that can be applied to an even more pernicious problem than exceeding 55 miles per hour, namely drunk driving.

Mr. NICKLES. Will the Senator yield for a question?

Mr. HUMPHREY. I am happy to yield.

Mr. NICKLES. The legislation which we have before, us, the amendment of the Senator from Nevada of which I am a cosponsor, allows the States to increase to 65 on some highways. But if those States felt safety was really in jeopardy and it was not in the public's interest, they could still leave it at 55. It would be the States making that decision instead of Washington, DC. Is that not correct?

Mr. HUMPHREY. That is correct. Certainly, the Senator from Nevada is better able to answer.

Mr. HECHT. Will the Senator yield on that?

Mr. SYMMS. Will the Senator yield?

Mr. HUMPHREY. I yield to the Senator from Nevada.

Mr. HECHT. The Senator is correct. It is strictly a States rights issue. The States can increase it or keep it at 55 in urban areas, but it is strictly a States rights issue.

Mr. SYMMS. I thank the Senator and I thank the other Senators who have spoken in favor of the proposition. What this will do is simply give the States the authority to relax their speed limit up to 60 on certain roads. That would mean that they would probably have to go to their State legislature and get a law passed in the State to raise the speed limit. For example, the Governor of Pennsylvania has already spoken to this.

□ 1730

For example, the Governor of Pennsylvania has already said that as long as he is Governor of Pennsylvania, he will use his abilities as Governor to see that they do not raise the speed limit above 55. I have no quarrel with that. We are not trying to force it down their throats. We are not trying to say that the people on the banks of the Potomac know best what the speed limit should be; we will let the people on the banks of the Snake River or the Clearwater River or somewhere else decide whether it should be raised to 65 or not. If New Jersey and Pennsylvania and the other States that have highly traveled roads do not wish to raise the speed limit, they will not be forced to do it. Just give them permission. It is an example of federalism.

Mr. HUMPHREY. Mr. President, I end as I began. There is nothing more boring than belaboring the obvious. It is obvious that it is time to get rid of this 13-year-old, arbitrary provision and restore flexibility and sovereignty to the States to set reasonable speed limits so that, among other things, they can concentrate on apprehending drunken drivers. I thank the Chair.

Mr. PROXMIRE. Mr. President, I rise in opposition to both the Hecht second-degree amendment and the first-degree amendment of Senator SYMMS.

If the Senate raises the speed limit to 65 miles per hour on rural interstate highways, we will be in effect signing death warrants for the lives of 500 or more men, women, and children each year. We will be accessories in the maiming and injuring of thousands of others in highway injuries every year.

A Transportation Research Board study estimated that these deaths and injuries will be some of the tragic results of increasing to 65 miles per hour the speed limit on our Nation's 31,500 miles of rural interstate highways.

The economic losses to the Federal Government of such increased carnage on our Nation's roads will run into millions of dollars. The taxpayers will be forced to bear the costs of increased Medicare, Medicaid, disability and other aid programs.

But this Federal cost would pale in comparsion to the overall cost to society associated with the increased highway deaths and injuries. I hope my colleagues will think for a moment about the increased burden on health insurance plans, lost family income, rehabilitation services, funeral costs, pain and suffering, and ultimately, the heavy emotional costs to other family members as a result of bereavement and the necessity of caring for the injured and disabled.

While experts may disagree as to the exact relationship between increased speed and fatal accidents, there is no question that the probability of a fatality occurring in a crash increases with speed. It has been estimated that the likelihood of a fatality doubles as speed increases from 45 to 60 miles per hour. It again doubles as the speed increases from 60 to 70 miles per hour.

Higher speeds are likely to result in less safe driving simply because of the physics of automobile in motion. When traveling at a high rate of speed, a car moves a greater distance during the time it takes for the driver to react to a perceived problem. In general, a driver's ability to steer safely around curves diminishes with speed. After recognizing a problem, the distance required to stop a vehicle by braking increases with speed.

Finally, crash severity increases disproportionately with speed at impact.

The 55-mile-per-hour speed limit tends to reduce the speed differentials among vehicles. Differential speed among cars traveling on the same highway is extremely hazardous and higher speed limits tend to aggravate the problems associated with speed variations.

Mr. President, right now OPEC is struggling to regain leverage over world energy markets. By increasing the speed limit we will be in a small but significant way playing into their

hands. Retaining the 55-mile-per-hour speed limit would save approximately 167,000 barrels of petroleum every day. This accounts for 2 percent of the Nation's fuel consumption.

Now, I want to reiterate, emphasize, underline what my good friend from Vermont said earlier.

Public opinion polls show that approximately three quarters of the public supports the 55-mile-per-hour speed limit. The reason for this continued support is very simple. People realize that the current law imposes very minor inconveniences to the public compared to the benefits.

On average, an American driver spends only 7 hours a year more in his car because the speed limit is 55 rather than 65 miles per hour. In most cases, the amount of additional time per trip is no more than a couple of minutes.

There are those who would argue that there cannot be such widespread public support for 55, because so many drivers are breaking the law and going faster.

We have heard that over and over again. We heard that from my good friend from Idaho. We heard that from the Senator from Nebraska and others.

The answer to that is quite simple. No matter what the speed limit is, many people are going to exceed it by 5 to 10 miles per hour. If we raise our speed limit to 65 miles per hour, the average flow of traffic would move at 70 to 75 miles per hour.

That is not a theory. That is a fact. It is certainly the case when we look at the experience in European nations where the speed limit of even 80 milies per hour tends to be exceeded by 5 or 10 miles per hour by many motorists. I talked to a good friend who recently traveled in Europe. He said he was cruising along at 80 miles an hour and everybody was passing him. Now, what makes us think, if we make it 65, everybody all of a sudden is going to become law abiding. We will have exactly the same problem only at a higher speed. And that is why the National Transportation Safety Board makes that estimate.

Mr. President, clearly the benefits are small and the costs incredibly high of raising the speed limit to 65 miles per hour. I strongly urge my colleagues to reject it.

Several Senators addressed the Chair.

Mr. ABDNOR. Mr. President, I am happy to say I am a cosponsor of the amendment offered by my friends and colleagues, Senators HECHT and SYMMS, to allow Governors of States to raise the speed limit to 65 miles per hour.

The amendment offered by Senator SYMMS would allow Governors to raise the speed limit to 65 miles per hour on stretches of rural interstate highway while the perfecting amendment offered by Senator HECHT would allow Governors to raise the speed limit to 65 miles per hour on any rural highway.

The current 55 miles-per-hour national speed limit law is a symbol of absolute ridiculousness coming from Washington. South Dakotans ask, "Why do we allow bureaucrats in Washington or big urban-State Congressmen to set the speed limit in South Dakota? These people probably never have driven a mile in the countryside and have no idea how ridiculous it is to drive 55 miles per hour on virtually trafficless roads."

I submit to all in this Chamber that South Dakotans are absolutely right. Let me ask opponents of this measure if they ever have driven in South Dakota and other Western States. Have they ever driven 40 miles just to get to the nearest town or city? Have they ever driven 100 miles or more and encountered only a half-dozen cars or less?

I don't believe they have, or else they would be supporting this measure.

In the State of South Dakota, where about one-third of the population lives in two cities separated by 375 miles of open interstate highway, a change in the 55-miles-per-hour speed limit to up to 65 miles per hour would do the people a great service. I do believe that there is a significant, though perhaps not measurable, economic loss in terms of productivity. A study released in 1984 by a Transportation Research Board [TRB] states that the 55-miles-per-hour speed limit requires about 1 billion additional hours of passenger time annually—7 hours driving per year per licensed driver. That time could just as easily be spent in a productive manner, whether it be in employment or in recreation.

The Symms amendment defines a rural interstate highway as "those interstate highways located outside an urbanized area of 50,000 population or more." In 1984, fatalities on rural interstates accounted for less than 5 percent of all highway deaths. Also there are only 33,910 miles of interstate highway that qualify as rural; and thus, only 6 percent of all highways currently posted at 55 miles per hour will be effected and these highways carry only 19 percent of all traffic. Another very important aspect of the safety issue is the fact that interstates were originally engineered for higher speeds, and thus could accommodate the changes made.

Besides the expense to the traveler, the 55-mile-per-hour speed limit also impinges a significant cost to the law enforcement agencies in terms of employee hours of funds. The lack of driver compliance and the threat of funding sanctions have forced States to devote an extraordinary amount of time and money monitoring speeds on roads posted at 55. The lack of driver compliance with the law is particularly notable on rural interstates; and nationwide, the rate of noncompliance continues to increase despite stringent enforcement efforts.

Modification of the speed limit to 65 miles-per-hour would enable the individual drivers to determine their own safe pace while still complying with the laws of the highways. I have seen data to indicate that only slight increases in actual driving speeds would result if States choose to raise the speed limit to 65 miles per hour on rural interstates. Adoption of this proposal would make speed limit laws more enforceable and allow State enforcement agencies to use their personnel, equipment, and limited funds in a more efficient and effective manner—like combating the drunk driving situation.

Now, I realize that South Dakota's highway situation is not the norm; each State has its own unique problems. It is in this respect that I have always been a supporter of State rights. Returning the right to establish the maximum speed limit back to the individual States is then, in my opinion the best way to govern the highways of our Nation in order to provide the transportation service the roads were designed for, as well as to protect the individual commuters.

I urge the Senate's adoption of the Symms amendment as modified by the Hecht amendment.

Mr. President, I do not know if it is legal or not, but my State legislature, with the help of the Governor, has passed a new provision that if you are picked up on the interstate for speeding up to, I think it is 70 miles an hour, you get a charge of wasting gasoline, which is a $10 fine and court costs, plus it does not count against your driving record.

Now, they have seen fit to do this, and I think the people of South Dakota have applauded such a measure. I do not know how it came about, but I do know this. I heard the previous speaker say that if you set it at 65, they are going to go 75. That is a lot of hogwash. If they really believe 65 is a fair speed limit, I think the police will arrest anyone who exceeds that. But if they know it is ridiculous to have a 55-mile-an-hour speed limit, I think they do look the other way because they feel foolish for pulling somebody over on interstate highways with nothing coming and telling them, "My, my, you are going 10-miles-an-hour too fast at 65."

I voted to support a uniform beer drinking age because I think that is serious business; where people can go from one State to another, you have to have a uniform law. But it would seem to me that in this day and age where we have such a variance in

living conditions, changes in population centers from one State to another, somewhere along the line we would finally conclude that maybe, the people who are elected by the people of the respective States to the State legislature and the Governor, who has to be responsible to that State, would have enough responsibility that they would know what best fits that State and where the speed limit should be set.

□ 1740

It seems to me that the more we talk about States rights, it is like we talk about "Buy American," and then we buy everything from other countries. We do a better job of talking than we do of following. If we really believe in this, it would be one thing, I just cannot believe that some of the people who are opposing this legislation are not guilty once in a while of getting their car up to 65-miles-an-hour when they forget themselves and go down the highway.

I think it would be a great mistake to the drivers of this Nation if we did not adopt one of the amendments before us. I urge the Members of this Chamber to give every consideration and take into account all the facts. Maybe New York City or maybe California, with all their people, might have a need for a 55-mile-per-hour speed limit. I would not be about to tell California what they should do. I can tell the Members of this body that a 65-mile-an-hour speed limit is a very fitting and proper and safe speed limit for South Dakota.

Mr. NICKLES. Mr. President, I will make my remarks brief. I think most of the comments pertaining to these two amendments, which I think are good amendments—and I am proud to be a cosponsor of both—have been made, and I do not plan to repeat them.

A couple of quick points: Again, we are not raising the speed limit to 65. We are basically saying that the States have the authority to raise the speed limit to 65.

On the question of safety, I have a great deal of confidence that individuals in the States—the Governors and the State legislators—can make those decisions better than we can. If they decide, in their collective wisdom, in the State of Oklahoma or in the State of Vermont, to leave the speed limit at 55, that is fine. They may decide, in their wisdom, to lower it, and maybe they can save more lives, and that may be true, and that is fine as well. But let us allow them to make those decisions and not preempt that decision or not tell them that if they exceed 55 and happen to be surveyed on such a particular day, they will lose 10 percent of their Federal highway funds. Those funds are not really Federal funds. They come from the States, themselves.

It bothers me and many others who served in the State legislature to see the Federal Government always threatening to withhold a certain percentage of moneys if States do not comply with this particular regulation.

It is said that a couple of States are not in compliance. In my State of Oklahoma, 1 year we were surveyed and they said we were doing a bad job, and if we did not do a better job and crack down, we would lose a certain percentage of these Federal funds, which are really State funds. The next time we were surveyed, we were doing fine. The outcome depends on what day they survey you.

Let us not make that decision. Let us allow the Governors of those States and the legislators, who know the States best, to make that decision. No doubt there are different needs. In the western part of my State, I think we would be very excited about this. In the eastern part of the State, it is hilly and the roads are winding. There, I do not know. Regardless, I do not think we should be making the speed limit decisions for them.

I have a great deal of confidence in the departments of public safety of each State to decide which roads and highways should qualify for higher limits. They may all decide to leave it at 55. We have heard people say that three-fourths of the American people are in favor of keeping the speed limit at 55. If so, that is great. If all the States want to leave it at 55, that is fine with this Senator. But, let us not threaten to withhold 10 percent or a certain percentage of the money for those States if they do not comply on a particular survey.

I yield the floor.

Mr. BAUCUS. Mr. President, I am a cosponsor of the Symms amendment, and this is why.

It is important to remind ourselves that our country is not uniform. Different parts of the country have different characteristics. No two States are alike.

We very much pride ourselves, in our country, on the unique heritage of each State. It means a lot to us. We are proud to be Senators from the State of Vermont or the State of Idaho or the State of Montana.

The fact is that at the present time and under present circumstances, the national requirement for 55 miles per hour on all highways is dated, it is outmoded and it is anachronistic. It does not make sense today. It may have made sense in 1973, with the OPEC embargo, but it does not make sense today.

The present requirement is an example of easterners foisting a solution on the West that makes no sense in the West. A lot of us in the West are proud of America, but, after all, Washington, DC, is on the east coast. Washington is different from other parts of the country. It is different from Denver, CO; Seattle, WA; Boise, ID.

The fact is that our Nation's Capital, to some degree, tends to pass laws that reflect Washington. Too many of the people who make decisions live in Washington and spend time in Washington instead of other parts of the country.

The 55-mile-an-hour speed limit reminds me of other actions the U.S. Government has taken, with very good intentions, but which do not make sense in the West.

A good example is the Homestead Act. In the early 1800's, the U.S. Congress, in its wisdom, passed the Homestead Act: 160 acres for any person willing to go out and work it and stay on it. That makes sense in the East. It makes sense in Appalachia. It makes sense in other parts of America. But it did not make sense west of the 98th meridian to the Rocky Mountains. Why? Because it does not rain out there.

Those who have been west of the 98th meridian, who have lived in that part of our country, realize it does not rain very much. The average rainfall in my State of Montana is about 15 or 16 inches. Here in Washington, DC, it is about 40 inches. Someone once said that the annual precipitation is 45 inches. The point is it rains here.

Where it does not rain, people do not live. There may be a few jackrabbits in the West, there may be a few coyotes, there may be some sagebrush, but there are not a lot of people. There is a lot of space.

A lot of homesteaders went belly up. They did not know the weather conditions or about the droughts. They went out West and homesteaded, and the Western landscape today is littered with old homesteads. I know that is not the sole reason why few homesteaders made it, but it is a major reason.

It was a well-intended law, providing for 160 acres, but we in the West know that you know that you need more than 160 acres to make a living, because you need greater space to carry more livestock or raise more crops.

□ 1750

You just need more than 160 acres in the West. That is more than you need in the East.

So here we are with a 55-mile-per-hour speed limit. It probably does make sense in the East to have a 55-mile-per-hour speed limit on the interstates.

The Senator from Vermont, a very wise Senator, a man we respect deeply in this body—told us this afternoon of his drive from Vermont to Washington, DC. He explained how folks were going 55 to 60 miles per hour. They

were not speeding too much. Most folks pretty much observe the speed limit.

That is not the West. There are a lot more cars on the highway between Vermont and Washington, DC, than on the interstates in the West.

I see more cars driving from my house in Georgetown to Capitol Hill, 6 miles away, than I do driving on an interstate highway from Billings, MT, to Miles City, MT, 145 miles away. That is a fact. I see many more cars in the 6-mile drive here than I do on a 145-mile interstate highway in Montana.

I do not think folks here have a conception of the sense of space and distance we have in the West. The distance across just my State, Montana, is the same as driving from Washington, DC, to Detroit. There are a lot of cars between Washington, DC, and Detroit or from here to Atlanta, GA, but not very many if you are driving across Montana that same distance.

Mr. President, there just is not much traffic on interstate highways in the West. The fact is, you almost go to sleep because there are no cars on the road.

It just makes sense, therefore, not to impose 55 miles an hour on parts of the country.

Mr. President, I must tell Senators from Eastern States that this is one stupid, idiotic Federal provision that just bothers the daylights out of a lot of us in the West.

Most of the fatalities are on noninterstate highways, by far. I will be frank to say I have some reservations about the perfecting amendment but the basic underlying Symms amendment dealing with interstate highways alone and giving States the authority to raise the speed limit to 65, I say makes eminent sense.

I also suggest everybody has his facts and figures to support any position, but that most of the reduction in highway fatalities in our country are due to factors other than the speed limit. I think seatbelts, in part, tremendous efforts of MADD [Mothers Against Drunk Drivers] and other efforts to get drunken drivers off the road have been reasons the fatalities have come down.

I can go through all the other arguments. There are lots of others that I can point to. I know people in the East get a little upset about it—is it safe to drive 55?—and so forth. Mr. President, that is the East. That is where there are lots of folks, lots of people, and lots of cars. Out in the West, we do not have that.

I also suggest that if the limit were raised to 65 in some States, people would not go over 65, because 65 makes sense. If people do go over 65, let us address that. Let us have tough enforcement procedures. That is another day.

What we are dealing with at the present moment is a statute which I say makes no sense whatsoever.

Fundamentally, the present law is an example of good intention. It is good intention but it reminds me of two of the most worrisome phrases in the English language—one is, "the check is in the mail," and the other is, "I'm from Washington and I am here to help you."

This present 55-mile-an-hour limit is an example of Eastern or majority rule, "I am here to help you," but in most States in the West, it does not make sense. The States should have the right to so choose.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, a great deal has been said today already, but there are a couple of points I would like to make on this issue.

First of all, I think it is important to go back and look at the logic that was used in adopting the 55-mile-an-hour speed limit, because it is critical to this debate.

In 1973, we were under price controls in the oil industry. Then the Arab oil embargo occurred. Because of price controls, the United States had an oil shortage that Western Europe did not have, producing lines at our gas stations, and a national crisis. In Western Europe, the market was working; they had no lines. The same was true in Japan.

Based on the argument of overriding national interest, Congress, at the urging of the President, mandated a 55-mile-an-hour speed limit overriding States' sovereignty because of a commanding national interest in saving energy.

Now, I submit, Mr. President, that that logic and those circumstances no longer exist today. While it could be argued in 1973 that we ought to force everybody to drive no more than 55 miles an hour to save energy because people were waiting in long lines for gasoline, that is not the case today.

We have had a great deal of discussion about the fact that people are not abiding by the law. They obviously are not, because in the West, at 55 miles an hour, you will never get there. If you set out driving west in Texas at 55 miles an hour, you are going to get discouraged before you get where you are going. You are also, in all likelihood, if you are abiding by the law, going to get run over before you get there, because the truth is that people are not driving 55 miles an hour. We are producing, in the process, contempt for the law and making the whole process of trying to enforce speed limits a farce.

So the point I want to make, Mr. President, is that the national crisis that induced Congress to override the States has passed.

All the proposed amendments say is that in rural areas on interstate highways, or according to the other amendment on improved highways, the States can set their own rules.

All this does is allow States to look at the circumstances, to gauge the density of traffic, to gauge the safety factors, and to make a decision based on their own individual circumstances.

I cannot speak for anybody else's State but my own, but I do not believe that people are abiding by the 55-mile-an-hour speed limit in rural areas on interstate highways in my State despite our best effort to enforce the law.

I think, second, that the 55-mile-an-hour limit causes an unevenness in traffic speeds that is itself dangerous, and I think allowing us to set out in law speed limits that meet our circumstances makes sense.

So I urge those who live in different parts of the country who want to preserve the 55-mile-an-hour speed limit to do that, but to allow those of us who live where there are huge driving distances to set a speed limit that makes sense, that we can enforce, that will be respected.

So I urge my colleagues to support both, and if not both, one of these amendments.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I rise in opposition to this amendment.

There are several things that we do know about the 55-mile-an-hour speed limit which is now a Federal requirement.

We know that in 1973, the year before 55 became effective, there were 55,000 deaths on our Nation's highways. We know that in 1974, the year the 55-limit was imposed, those deaths dropped significantly to 46,000 and have stayed at or below that level since that time.

We know that in 1973, deaths per hundred million vehicle miles traveled stood at 4.24. In 1984, that figure was down to 2.48.

We know that the National Research Board extensively studied 10 years of experience with 55 and found it saved between 2,000 to 4,000 lives per year.

We know that the American people support the 55-mile-an-hour speed limit and oppose its elimination. In 1974, with the energy crisis brought on by the Arab oil boycott, 73 percent favored 55 as an energy conservation measure.

□ 1800

In 1986, however, with no energy crisis and only its safety factor to recommend it, still 66 percent of the American people continued to support a speed limit of 55 miles an hour.

Mr. President, as sure as we are here, there are people out there who

support 55 and drive 60. And we know that when the speed limit is raised to 65—the example used by the Senator from Texas before when he said that what we have done is breed contempt of the law by not enforcing it—the fact of the matter is that once that limit gets to 65, we will be looking at those who would still maintain contempt for the law and drive at 75 or 80. If it is going to be enforced, it should be enforced at 55 just as it should be in the event that this limit is raised.

We hear from the proponents that this is Federal interference in the State's decision to control its highways. Well, we have seen that argument so many times. If we do not want tandem trucks on our highways, we lose Federal highway funding. And there are so many other instances where the Federal Government steps in on behalf of the safety and well-being of the people who travel across our highways that I think the argument falls slightly short of convincing.

Mr. President, we have heard several references to the Eastern interests in this. My interest is, yes, in the East, but it is also in the well-being of the citizens of our country. And the one thing that overrides all other decisions, be they States rights or abundant energy—and the energy argument does not hold if you read the forecasts for the long-term—the overriding issue and the overriding responsibility for those of us here in this body, who represent all the American people in addition to those who live in our States, is that there is a significant safety factor. We are talking about an increase in the deaths on the highways. We are talking about an increasing number of crippling injuries.

If we had a plane crash this day and 300 or 400 people were killed, the Nation would be in mourning. And every one of those families would be shocked and saddened by that tragedy. And the funeral of those persons who are killed daily on the highways, outnumbering that of any major airplane accident who are killed each year, have the same saddened circumstance and the same shock at the funeral that they have in the event that the death occurs in an air crash.

So it is no different. We are talking about life saving. That is the issue. I hope that we will defeat this amendment. I think it is important that we continue to do whatever we can to protect the lives and well-being of our citizens and that we not take the short-term perspective that says there is an abundance of energy today. But if we continue to use it at an accelerated rate, we are all going to be standing here one day wringing our hands and trying to figure out how we save the energy that we squandered away at a period of time when it should have been preserved and saved so, for the long-term good of the country, we have it available.

I yield the floor.

Mr. BENTSEN. Mr. President, I have supported the 55-mile-an-hour speed limit law. I think at the time we instituted this national speed limit, it served a very useful purpose. We had our long lines at the gas pumps. We were at the mercy of OPEC and we were trying to get better gasoline mileage. That was a fine objective for the country at that time.

I still support the 55-mile-an-hour speed limit, but I think it ought to be limited to those urban areas where you have a substantial amount of congestion. I certainly think it is warranted in rural areas where you have narrow and winding roads. I have driven on some of those roads very recently up in Maine, where you really do not have much in the way of long-term visibility. It is difficult at times to see what is coming. And when you have an 18-wheeler coming at you, you want to be sure that you are going at a slow and reasonable speed.

But when you get to the rural interstate, where you look at vast expanses such as we have throughout the West, where cars are few and far between, I think it is very difficult to justify the 55-mile-an-hour speed limit.

I think the Senator from Idaho has brought forth a very reasonable compromise on this issue. It is time to fine tune this law and adjust it to what the realities are today and what we have learned throughout the years. It is time for us to provide greater flexibility to the States by allowing them at their discretion to increase the speed limit on rural interstates where it makes sense to do so.

One of the problems we face with the budget constraints today is the fact we do not have as many law enforcement officials as we would like checking on traffic, trying to save lives. Most of our law enforcement agencies are spread pretty thin. Then we put them in rural areas where they really do not have dangerous situations to deal with which is a mistake. On urban, congested highways and narrow country roads, enforcement efforts to maintain 55 miles an hour makes sense, but so does increased effort to stop drunk driving.

I think we ought to concentrate on some of these drunk drivers and try to see that we use our law enforcement officials in a more productive way.

Rural interstates comprise only 6 percent of all highways posted at 55 miles an hour, and they carry about 19 percent of all traffic on highways posted at 55 miles an hour. Yet, the fatality rate on rural interstates is lower than that of most other highway systems.

In 1984, fatalities on rural interstates accounted for less than 5 percent of all highway fatalities. They are among the safest roads around. Rather than concentrating our scarce resources on making the safest roads safer, let us concentrate those resources on much more dangerous problems like drunk driving.

I urge the adoption of the amendment.

Mr. SIMPSON. Mr. President, I was an original cosponsor of the 55-mile-an-hour speed limit repeal. Senator Hayakawa and I started that effort when I came to this body, and we did not meet with success. This, I think, has every evidence of meeting with better success. I think both of the amendments are thoughtful.

I know that this ground has been covered in this debate today, but this measure has been with us now for 12 years. It was conceived in the emotional wake of the national energy crisis. We were convinced of the argument "55 saves lives." Now it has grown into a States rights issue—whether we like that or not, it certainly is one.

Many States, including my native State of Wyoming, maintain that each State has a sovereign right to do this, to set the speed limit within their own boundaries—they know best—and that the law should be repealed.

I really do not take issue with the argument that the 55-mile-an-hour speed limit does help to save lives and does save fuel. Let us just say that is a given. I will say that might be a fact one would take, I believe, judicial notice of if one were on the bench.

However, while the fatality rates have decreased since 1974, the average driving rates have increased. In 1984, the fatalities on the rural interstates were about 5 percent of the total highway fatalities in the United States.

The thing that still galls all of us from the West is this issue of blackmailing those States that do not adopt the national speed limit. I think that is very misguided.

We have made numerous attempts to repeal this. We do not get very far. I think this approach is worth our best consideration. The backers of the limit always win out. These amendments—which I cosponsor—that you are debating now, I think, are realistic compromises, and will meet the goals of saving lives, conserving fuel, and allowing each State to determine what is best suited to its own particular geographical area.

In my State, we have 6,000 miles of highway posted at 55 miles an hour. We have a population of 450,000 people and an area of 100,000 square miles.

□ 1810

So we really do rattle around in there. We have 100,000 square miles with 6,000 miles of highway. You would have to see some of that unique area. We love it. We get so we enjoy

driving between Shoshoni and Casper where there is not anything except a couple of little stops for entertainment and refreshment, humoring one's functions. That is what we have in that stretch—maybe four places.

In Massachusetts they have 789 miles of highway posted at 55 miles an hour, and a population of almost 6 million. It does not fit. One does not fit the other. Obviously it costs Wyoming far more per capita to have the same effective level of traffic law enforcement that they have in Massachusetts. We could not afford that. There is no way we could put that many people on 6,000 miles of road.

So they are not the same. And I respectfully suggest that we all get into provincial stuff here. That is part of our job. But try I-95 out here. You can really get whistled down out there. They will pass you like a freight train would a tramp when you get out on that highway—70 miles an hour. I-495, the beltway, that is just kind of a revolving suction pump. You can get sucked up out there. That at least does not happen to us unless we have 70 mile-an-hour winds in Wyoming. So those are the problems that we have.

I think there are very definite reasons why we ought to give these States the opportunity to do this themselves. Who would know better what is rural, what is urban, what is best for them? Keep it in the metropolitan areas if they like that, in cities of 50,000 if they like that, in rural areas if they like that. Those are very real things. I think these two amendments are going to prevent us from just snickering at the law, kids in the back of the car saying to the old man, "You are going 70 miles an hour," and the old man is giving them the moral lecture on doing it right, and so on. It is just an impossible situation.

Well, I think it is time to recognize that we have some special, special situations in the rest of the United States, and they are very real. They are very honest. Nobody is trying to snow anybody. The 55-mile-per-hour speed limit is just absolutely impractical. It is a laugher, an absolute laugher out in our part of the country. We just as well should dispose of it, get on with a little States rights, and do a little business.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER [Mr. GRAMM]. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that two editorials appearing in the New Jersey papers be made part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Newark Star-Ledger, Aug. 29, 1986]

LEAVE WELL ENOUGH ALONE

Another effort is under way in Congress to raise the federal 55-mile-an-hour speed limit, but the latest move may have more momentum going for it than similar past initiatives. This time President Reagan has gotten into the act, taking sides with senators from Western states who sponsored a bill that would raise the limit to 65 miles an hour.

In supporting the measure drafted by Sens. Steven Symms (R-Idaho) and Quentin Burdick (D-N.D.), the President said he believes the "time has come to restore greater authority to the states in this area . . . I welcome proposals that would provide states enhanced ability to regulate highways within their jurisdiction."

Raising the speed limit no doubt would be welcomed, too, by a number of Western states, which for years have been campaigning to abolish the current safe and sane 55 mph limitation. For the President and senators from rural regions who are up for reelection their support of higher highway speeds makes for good politics.

But it conversely makes for poor highway safety, the verifiable experience of the sensible lower speed limit that was put into effect during the Arab oil boycott in the mid-1970s as an energy conservation measure. It turned out to have far greater benefits in terms of human life—a dramatic, sustained reduction in highway traffic deaths.

The negative reaction of New Jersey and New York officials to the President's endorsement of raising the speed limit cited the life-saving aspect of the nation's 11-year-old experience with the lower speed regulation. Rep. James Howard, a New Jersey Democrat who was one of the sponsors of the 55 mph speed law, has indicated he would seek to head off the newest efforts to repeal it.

Proponents of a higher speed limit argue that the current curb is too low for rural roads, that it is frequently breached and that it denies energy savings to truckers on long hauls. Rural roads, as a matter of fact, are more hazardous than multilane highways, and the energy savings are hardly a rational tradeoff for substantially lower traffic fatalities.

Congressman Howard has estimated that the lower speed limit has saved between 5,000 and 9,000 lives a year, prevented 90,000 paralyzing spinal injuries and reduced accident-related trauma by 70 percent. These statistics make out a compelling human case for retaining the 55 mph limit.

As New York Mayor Ed Koch cogently noted in response to the President's support for raising the speed limit, "If the law ain't broke, why fix it?" The mayor said it all.

ELECTION-YEAR HANDOUTS

The National Review says there are 12 to 14 reasons that President Reagan has decided to subsidize wheat sales to the Soviet Union. That's the number of Republican senators up for reelection this year in the hard-pressed Farm Belt. One might add that there are a dozen or so reasons for raising the 55-mile-an-hour speed limit, as the president is also proposing. That's roughly the number of senatorial elections in the American West, where the 55-mile limit is about as popular as Moammar Gadhafi.

Anyone who has ever driven across Wyoming or North Dakota will have no trouble understanding why. The highways in those rectangular states are as straight, flat, and empty as an airport runway. They converge on a single point on the horizon like a textbook illustration of the principle of perspective. They weren't built to be traveled at 55, and everyone knows it—the motorists who routinely press the accelerator to the floor, the highway police who don't even blink when somebody whizzes by 15 miles over the limit, and the state legislators who see the issue as proof that Washington has no idea what it's doing, as usual.

After ignoring these complaints for nearly six years, Mr. Reagan has suddenly opened his ears and is paying heed. Since each state has two senators, regardless of population, a vote for U.S. senator from Wyoming is worth about the same as 35 votes for U.S. senator from New York. So in a midterm election year, any president becomes awfully solicitous of the sparsely populated states in the Farm Belt and the West.

It's understandable, but unfortunate. In the case of subsidizing wheat sales to the Soviet Union, it means subsidizing the Soviet Union—which, if nothing else, makes a mockery of the administration's anti-Communits oratory. Why tighten the embargo on Cuba (as the White House has recently done) when subsidized grain sales give Moscow the economic leeway to provide Havana with more aid? What's more, financing wheat sale at below-market rates is an invitation to the kind of beggar-thy-neighbor international trade competition that has already beset the world oil market. Unless the administration wants to see the world's grain exporters follow oil producers like Mexico and Nigeria down the path to bankruptcy, it shoud quit handing out political favors of this sort.

As for higher speed limits, their proponents have marshaled some clever arguments. Sen James Exon, D-Neb., says that of his state's 237 highway fatalities last year, only 11 occurred on interstates, and in none of those did the police say the reason was excessive speed. For the country as a whole only about 10 percent of all auto fatalities occur on the interstates.

But this doesn't mean that a higher speed limit would have no effect on the death toll. Bear in mind that drivers tend to exceed the limit now; state troopers seldom stop a speeder doing less than 65 or 70. If the limit were raised to 65, as Senators Steven Symms, R-Idaho, and Chic Hecht, R-Nev., propose, the effective speed limit would be 75 or 80.

Furthermore, trucking deregulation has put more rigs on the road, many of them extra-long, double-trailer monsters that have a tendency to jackknife even at today's reduced speeds. Raising the speed limit would reduce the margin of safety even further. OPEC would love the new limits, since they'd mean that millions of gallons more gas would be guzzled. But undertakers would love them too.

Mr. DANFORTH. Mr. President, I wanted to wait until last to speak because I thought maybe some other Senators might want to be heard before I made a tabling motion which I am about to do.

Mr. President, first to address some of the arguments that have been made on the amendments, States right: it is said that a 55-mile-an-hour Federal maximum speed limit violates the principles of State rights but a 65-mile-an-hour maximum speed limit is within the principles of State rights. It

is a little bit pregnant as an argument. If we were addressing the question of State rights we would have a simple repeal, not simply moving the speed limit from one level to another.

As a matter of fact, these amendments do not meet any State rights standard. They simply set a higher limit. And the Federal Government has long been involved in areas of highway safety. The Federal Government sets all kinds of highway safety standards. We have gotten involved in blood alcohol content regulation, we have gotten involved in regulating tires, padded dashboards, safety glass, and on and on. There is nothing unusual about the Federal Government getting into the business of highway safety.

With respect to time savings, it has been argued, well, this is going to save a lot of time—1 billion hours a year or some such thing it is argued. But when you divide it all up, it equals 1 minute per driver per day that would be saved by increasing the speed limit to 65.

It is said that there is a great groundswell of popular support for increasing the speed limit. Yet a Gallup poll that was taken last June shows that 66 percent of the people of this country favor the 55-mile-an-hour speed limit. So the public apparently does not share the enthusiasm of the advocates for increasing the speed limit.

Mr. President, the biggest issue, of course, is safety. And on this there is no doubt. The Senator from New Hampshire in arguing for these amendments conceded the fact that a 55-mile-an-hour speed limit is safer than a 65-mile-an-hour speed limit.

Of course some people drive faster than 55 miles an hour. People would drive faster than 65 miles an hour. When the speed was 70 miles an hour, I can remember lead-footing it across the State of Missouri considerably over 70 miles an hour. But the fact of the matter is that people do drive slower with lower speed limits, even though everybody does not necessarily obey the speed limits.

The National Safety Council has estimated that 600 to 1,000 lives would be lost by raising the speed limit on rural roads to 65 miles an hour. That is not an argument by some Senator on the floor of the Senate. This is not some politician making an argument. This is people who are in the business of trying to analyze the effects of legislation on safety. They claim that 600 to 1,000 lives a year would be lost by moving the speed limit to 65 miles an hour.

With respect to chances of surviving an accident, driving 55 miles an hour, if you are in an accident, your chances are 1 in 2 of surviving. If you are driving 70 miles an hour, your chances of surviving are 1 in 30.

The American Medical Association estimates that the effect of reducing the speed limit from 70 to 55 reduced spinal chord injuries in automobile accidents by 60 percent. That is the big issue before us, Mr. President. It is not States rights. We are going to have Federal regulation of speed limits no matter what we do. The issue is human lives; the saving of human lives, 600 to 1,000 of them a year every year that this would be in effect.

Mr. President, I move to table the Symms amendment.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Missouri to lay on the table the amendment of the Senator from Idaho. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

□ 1820

Mr. SIMPSON, I announce that the Senator from Utah (Mr. GARN] is necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 40, nays 57, as follows:

[Rollcall Vote No. 280 Leg.]

YEAS—40

Boschwitz	Gore	Pell
Bradley	Gorton	Proxmire
Byrd	Hatfield	Riegle
Chafee	Hawkins	Rockefeller
Chiles	Heinz	Roth
Cohen	Hollings	Sarbanes
D'Amato	Kasten	Simon
Danforth	Lautenberg	Specter
Dixon	Levin	Stafford
Dodd	Mathias	Trible
Eagleton	Mattingly	Warner
Evans	Metzenbaum	Weicker
Ford	Mitchell	
Glenn	Moynihan	

NAYS—57

Abdnor	Gramm	McConnell
Andrews	Grassley	Melcher
Armstrong	Harkin	Murkowski
Baucus	Hart	Nickles
Bentsen	Hatch	Nunn
Biden	Hecht	Packwood
Bingaman	Heflin	Pressler
Boren	Helms	Pryor
Broyhill	Humphrey	Quayle
Bumpers	Johnston	Rudman
Burdick	Kassebaum	Sasser
Cochran	Kennedy	Simpson
DeConcini	Kerry	Stennis
Denton	Laxalt	Stevens
Dole	Leahy	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Wallop
Exon	Matsunaga	Wilson
Goldwater	McClure	Zorinsky

NOT VOTING—3

Cranston	Garn	Inouye

So the motion to lay on the table amendment No. 2871 was rejected.

□ 1840

Mr. SYMMS. I move to reconsider the vote by which the motion was rejected.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. May we have order that I might ask the distinguished majority leader what the schedule is for the rest of the evening and tomorrow.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. If we may have order, Mr. President.

Now if I might inquire of the distinguished majority leader what his plans are for the rest of the evening and tomorrow.

Mr. DOLE. Mr. President, I thank the distinguished minority leader for making the inquiry. It is my understanding we are going to have two rapid fire votes here, one on the Hecht amendment and then on the Symms amendment, and then after that——

Mr. SYMMS. If the minority leader will yield, I might say to the majority leader, if we dispose of the Hecht amendment, then the parliamentary situation is that we go ahead and vitiate the vote on the Symms amendment because we have just literally had a vote on the Symms amendment.

Mr. DOLE. Are there other amendments that require votes?

Mr. SYMMS. Then I think it is the intention of the managers of the bill to take the noncontroversial amendments for the next hour, I would think it might take. There are some project amendments and others. And then there will be some controversial amendments. Again there will be the amendment on the Davis-Bacon and one on toll financing that will probably require record votes, but I believe we can complete this legislation today.

Mr. BYRD. Mr. President, it sounds to me as though there are going to be one or two immediate votes and then I infer from what the distinguished manager of the bill is saying that there will be a window during which time noncontroverisal amendments will be called up, and that there are one or two quite controversial amendments still out there; that after that window, if I may use the word, the Senate will go back to those and there will be further rollcall votes this evening, if I am correct.

Mr. DOLE. Right.

Mr. BYRD. Could the distinguished majority leader indicate, or the distinguished Senator from Idaho, what kind of a timeframe is planned for such a window?

Mr. DOLE. We will have two votes. I would think the second vote would occur a little after 7 and then those who had commitments could make those commitments. Then I would guess we will be an hour and 15, an hour and 20 minutes, maybe until 8:30—8:30—where we will be working on noncontroversial amendments, and I assume there will be some debate on the next controversial amendment, so there may not be a vote until after 8:30.

Mr. CHILES. I think the distinguished ranking member or chairman of this bill said something about a vote on the toll amendment. I think the time could go very quickly on that. I wonder if there is any way of getting that in before the so-called window because I would be satisfied to take 10 minutes or so.

Mr. DOLE. I think we have a particular problem. There is some difficulty getting into one of these events after a certain time because of the Secret Service. But we could take it up right at 8:30.

Then let me further respond to the distinguished minority leader——

Mr. CHILES. If we only had the one vote, if we did not have the two votes—in other words, if the yeas and nays were vitiated on the final Symms amendment—it would be possible to get it up?

Mr. DOLE. I think what we would like to do, if we can agree, would be to go ahead and have the two votes, take the noncontroversial amendments, do the debate on the amendment of the Senator from Florida, and be prepared to be back here by 8:45 ready to vote, ready to vote, and also any other amendments that may be offered. We would like to finish this bill tonight.

I would say in further response to the minority leader, we really only have tomorrow, as I look at the calendar, to do all these other things that people have been wanting to do, the CFTC authorization, so-called FIFRA, intelligence authorization. All of those are going to take 2 or 3 hours apiece. On Thursday, we will start on, hopefully, a consensus drug package which will take Thursday, Friday, and probably part of Saturday.

I am advised by the distinguished chairman of the Appropriations Committee that he believes he will be ready to move on the continuing resolution on Monday.

He also believes, optimistically, he can conclude action on that by Tuesday evening.

Somewhere in that time we also need to work in the tax reform conference report, and the reconciliation, and then sometime next week there will be a debt limit conference report.

Then we have the Claiborne impeachment, but that will not be available until next Thursday, week from this Thursday.

I did confer with the Speaker by telephone today. He still believes we can conclude our business by October 3.

Mr. KENNEDY. Will the leader yield?

Mr. BYRD. I will for additional colloquy.

Mr. KENNEDY. As the leader probably knows, today is day 7 of the 10-day constitutional requirement to consider the apartheid bill. The time runs out on Friday night. I am still hopeful that the President will follow the urgings of the chairman of the Foreign Relations Committee and others to sign that bill. But if there were to be a veto, there is an expectation the House would act on it Monday. I would just ask the majority leader what kind of assurances can we have that we would be able to consider an override of the veto should that matter come back to the Senate.

Mr. DOLE. We will do it as expeditiously as we can. I understand they may take it up Tuesday on the House side, maybe Monday. We would act as quickly as we could when it arrived in the Senate. If we were in the middle of something, we would like to complete action on that, but we are not going to delay it at all.

Mr. KENNEDY. I thank the Senator.

Mr. MATSUNAGA. Will the distinguished minority leader yield?

Mr. BYRD. Yes, I yield. Mr. President, if the Chair will protect my right to the floor, I yield to the distinguished Senator from Hawaii (Mr. MATSUNAGA).

Mr. MATSUNAGA. As has been indicated to the minority leader, and I suppose the majority leader knows about this also, Senator INOUYE is still in flight, on his way back from Hawaii, and has an amendment to the highway bill. That may take a little while in debate. There will be some opposition, I understand. Of course, Senator SYMMS knows about that. He will be here about 9 o'clock.

Mr. DOLE. We will protect the Senator from Hawaii. I understand that he is due back about 9 o'clock, which will be just about right.

Mr. MATSUNAGA. I just want assurances that his rights will be protected.

Mr. BYRD. His rights will be protected.

I ask this of the distiguished majority leader: In the event that the continuing resolution should reach the Senate on Thursday rather than Friday, I wonder if the distinguished chairman of the Appropriations Committee would be in a position then to proceed with that matter on Friday.

Mr. DOLE. The chairman is here. He indicated that he would rather do that on Monday, for a number of reasons.

Mr. HATFIELD. First of all, if the Senator will yield, the latest report we have is that the House of Representatives, it is hoped, would take up the continuing resolution on Thursday. If that is the situation, then we would call a meeting of the Appropriations Committee on the Senate for Friday. I am sure it will take us a major part of 1 day to mark up a Senate version of the continuing resolution.

Having had experience on the floor of moving toward a deadline, we find that matters often are not really expedited until we are on the day of the deadline. So I am not so sure that we gain anything, even if the bill were here earlier, to take it up on Friday or Saturday.

Rather, I do feel that the House will complete it by Thursday, that we could then take it up on Monday and face the deadline Tuesday night. I do not think we will make that deadline in terms of the conference.

Therefore, I would imagine that a second continuing resolution stripped down—merely a 2-day extension—would be sent over to us from the House, in order then to give the two committees a chance to go to conference and get the conference report back. That is an optimistic scenario.

Mr. BYRD. I asked the question because we are going to have two deadlines converging on us at the same time—the expiration of the debt ceiling at some point.

Mr. DOLE. That may be about the 30th of September. I have a letter which I will place in the RECORD later today from the Treasury Secretary, James Baker, indicating that if we cannot complete action, he would need some small extension so that he is not required to disinvest funds.

Mr. BYRD. So that would be on Tuesday.

Mr. WALLOP. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. WALLOP. I direct the question to the majority leader through the minority leader. I heard the assurances that the majority leader gave the Senator from Massachusetts about the South Africa veto or override. Does that include all circumstances, one in which cannot envision Contra aid passing this session?

Mr. DOLE. I did not say when it would be completed. I said it would be brought up.

Mr. WALLOP. I thank the majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent to have printed in the RECORD the letter I have received from the Secretary of the Treasury dated September 22, 1986.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF THE TREASURY
Washington, DC, September 22, 1986.

Hon. ROBERT DOLE,
Majority Leader, U.S. Senate, Washington, DC.

DEAR BOB: When Congress passed the present debt limit increase to $2,111 billion on August 15, you remarked that the increase would in effect expire on September 30. This letter is to confirm that, as of September 30, the government will have to cease some of its normal financial operations unless a further increase in the debt limit is enacted into law on or prior to that date.

On September 30, Treasury is required to transfer to the Civil Service Retirement and Disability Fund approximately $17.6 billion. Our current debt projections indicate that without a debt limit increase we would be unable to invest approximately $8 billion of that transfer. The Civil Service fund would lose approximately $200,000 per day for each $1 billion not invested.

On October 1, Treasury is required to transfer to the Department of Defense Military Retirement Fund approximately $11.2 billion and to the Social Security trust funds for the October normalized tax transfer, approximately $14.1 billion. If a debt limit increase is not enacted on or prior to October 1, we would be unable to invest substantially all of those amounts. The military fund would lose interest at approximately the same rate as the Civil Service fund; because of the structure of the normalized tax transfer, the Social Security funds would not lose any interest earnings directly as a result of the non-investment.

These actions are undesirable because, while interest losses that do occur can be corrected in subsequent legislation, they cause concern and confusion to people participating in the programs represented by the trust funds, especially Social Security recipients. Also, during the period when the trust funds cannot be fully invested there will be a material adverse effect on orderly financial operations of the government in that financings will be restricted to the level of maturing debt, resulting over time in our running out of cash.

I urge you to enact an increase in the debt limit, to $2,352 billion to reflect the Mid-Season Review, prior to September 30, so that these negative effects can be avoided. In the meantime, we plan to conduct our financings as normal.

In you do not contemplate completion of this matter by the Congress by September 30, a partial increase to $2,141 billion would allow us to invest all the trust funds, but would still require the larger increase before adjournment.

Sincerely,

JAMES A. BAKER, III.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. BYRD. I yield.

Mr. SARBANES. Has the manager of the highway bill indicated what he anticipates the schedule will be subject to the window and how long it will take to complete the bill—whether it is the intention to complete the bill this evening and, if so, how long that will take?

Mr. SYMMS. If the minority leader will yield, I think it would take somewhere between 1 and 2 hours on the Davis-Bacon amendment, probably 20 minutes or 30 minutes on the toll amendment, if the Senator from Florida has that; then the H-2 amendment of Senator INOUYE, and it may take another hour. He will want to make his case, and he will take at least 45 minutes, I think. There will be opposition to that amendment—not by this Senator, but by other Senators who will oppose it.

Mr. DODD. Mr. President, will the minority leader yield?

Mr. BYRD. I yield.

Mr. DODD. I ask the majority leader—we have had a chance to talk about this privately. There was a discussion about doing something on the Philippines. The House last week voted narrowly to provide some $200 million to the Aquino government. I know the majority leader has had some concerns. The State Department is anxious for us to do something. I do not know whether that is still their position. Is there a possibility that we might do something in the Senate on the matter?

Mr. DOLE. I intend to visit tomorrow with Secretary Shultz on that matter. He has an interest in doing something on that. He also has an interest in doing something on Contra aid.

Mr. BYRD. Mr. President, I thank the distinguished majority leader and the Senator from Idaho.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the second-degree amendment. On this question the yeas and the nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 36, nays 60, as follows:

[Rollcall Vote No. 281 Leg.]

YEAS—36

Abdnor	Grassley	Melcher
Andrews	Hatch	Murkowski
Armstrong	Hecht	Nickles
Baucus	Heflin	Pressler
Bingaman	Helms	Pryor
Boren	Humphrey	Rudman
Broyhill	Johnston	Simpson
Cochran	Laxalt	Stevens
Denton	Long	Symms
Domenici	Lugar	Thurmond
Goldwater	Matsunaga	Wallop
Gramm	McClure	Wilson

NAYS—60

Bentsen	Byrd	DeConcini
Biden	Chafee	Dixon
Boschwitz	Chiles	Dodd
Bradley	Cohen	Dole
Bumpers	D'Amato	Durenberger
Burdick	Danforth	Eagleton
Evans	Kennedy	Proxmire
Exon	Kerry	Quayle
Ford	Lautenberg	Riegle
Glenn	Leahy	Rockefeller
Gore	Levin	Roth
Gorton	Mathias	Sarbanes
Harkin	Mattingly	Sasser
Hart	McConnell	Simon
Hatfield	Metzenbaum	Stafford
Hawkins	Mitchell	Stennis
Heinz	Moynihan	Trible
Hollings	Nunn	Warner
Kassebaum	Packwood	Weicker
Kasten	Pell	Zorinsky

NOT VOTING—4

Cranston	Inouye
Garn	Specter

So the amendment (No. 2870) was rejected.

Mr. SYMMS. I move to reconsider the vote by which the amendment was rejected.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2871

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Idaho, Mr. SYMMS. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Indiana [Mr. QUAYLE], the Senator from Pennsylvania [Mr. SPECTER], and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON], the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Hawaii [Mr. INOUYE] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 36, as follows:

[Rollcall Vote No. 282 Leg.]

YEAS—56

Abdnor	Goldwater	McClure
Andrews	Gorton	McConnell
Armstrong	Gramm	Melcher
Baucus	Grassley	Murkowski
Bentsen	Harkin	Nickles
Biden	Hart	Nunn
Bingaman	Hatch	Packwood
Boren	Hecht	Pressler
Broyhill	Heflin	Pryor
Bumpers	Helms	Riegle
Burdick	Humphrey	Rudman
Cochran	Johnston	Sasser
DeConcini	Kennedy	Simpson
Denton	Kerry	Stennis
Dole	Laxalt	Symms
Domenici	Leahy	Thurmond
Durenberger	Long	Wallop
Exon	Lugar	Wilson
Ford	Matsunaga	

NAYS—36

Boschwitz	D'Amato	Glenn
Bradley	Danforth	Gore
Byrd	Dixon	Hatfield
Chafee	Dodd	Hawkins
Chiles	Eagleton	Heinz
Cohen	Evans	Hollings

Kasten	Mitchell	Sarbanes
Lautenberg	Moynihan	Simon
Levin	Pell	Stafford
Mathias	Proxmire	Trible
Mattingly	Rockefeller	Warner
Metzenbaum	Roth	Weicker

NOT VOTING—8

Cranston	Kassebaum	Stevens
Garn	Quayle	Zorinsky
Inouye	Specter	

So the amendment (No. 2871) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. EXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2872

(Purpose: To authorize appropriations to carry out the Urban Mass Transportation Act of 1964, and for other purposes.

Mr. HECHT. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nevada (Mr. HECHT) for himself and Mr. GARN, Mr. HEINZ, Mr. MATTINGLY, Mr. GORTON, Mr. DIXON, Mr. DODD, Mr. RIEGLE, Mr. CRANSTON, Mr. SASSER, and Mr. SARBANES, proposes an amendment numbered 2872.

Mr. HECHT. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

TITLE II—MASS TRANSIT AUTHORIZATIONS

SEC. 201. (a) Section 21 of the Urban Mass Transportation Act of 1964 is amended—

(1) in subsection (a)(1), by striking out "and $3,050,000,000 for the fiscal year ending September 30, 1986, and funds" and inserting in lieu thereof the following: "$3,050,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for fiscal year 1987, $1,990,000,000 for fiscal year 1988, $1,993,000,000 for fiscal year 1989, and $1,996,000,000 for fiscal year 1990. Funds";

(2) in subsection (a)(2)(B), by striking out "and $1,100,000,000 for fiscal year 1986" and inserting in lieu thereof "$1,100,000,000 for fiscal year 1986, and $1,000,000,000 for each of the fiscal years 1987 through 1990";

(3) in subsection (a)(4), by striking out "In each of the fiscal years 1984, 1985, and 1986" and inserting in lieu thereof "In each of the fiscal years 1984 through 1990";

(4) in subsection (a)(5), by striking out "1984, 1985, and 1986" and inserting in lieu thereof "1984 through 1990"; and

(5) in the first sentence of subsection (b), by striking out "and" before "$90,000,000" and by inserting before the period at the end the following: ", such sums as may be appropriated for fiscal year 1987, and $46,000,000 for each of the fiscal years 1988 through 1990".

(b) Section 4(g) of such Act is amended by striking out "and" before "$400,000,000" and by inserting after "September 30, 1986," the following: "such sums as may be necessary for fiscal year 1987, and $200,000,000 for each of the fiscal years 1988 through 1990,".

NEWLY URBANIZED AREAS

SEC. 202. The last sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting "authorized" after "its".

LEASED PROPERTY

SEC. 203. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction. The Secretary shall publish regulations under the preceding sentence in proposed form in the Federal Register for public comment not later than 60 days after the date of enactment of this sentence, and shall promulgate such regulations in final form not later than 120 days after such date of enactment.".

DEFINITION OF ASSOCIATED CAPITAL ITEM

SEC. 204. The last sentence of section 9(j) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and materials" and inserting in lieu thereof ", tires, tubes, materials, and supplies"; and

(2) by striking out "1 per centum" and inserting in lieu thereof "one-half of 1 per centum".

OVERHAUL-RECONSTRUCTION

SEC. 205. (a) Section 12(c)(1) of the Urban Mass Transportation Act of 1964 is amended by inserting "(A)" after "such term also means" and by inserting before the semicolon at the end thereof the following: ", (B) any bus remanufacturing project which extends the economic life of a bus eight years or more, and (C) and project for the overhaul of rolling stock (whether or not such overhaul increases the useful life of the rolling stock)".

(b) Section 9(j) of such Act is amended—

(1) by inserting "(1)" before "Grants"; and

(2) by adding at the end the following new paragraphs:

"(2) A project for the reconstruction (whether by employees of the grant recipient or by contract), of any equipment and materials each of which, after reconstruction, will have a fair market value no less than one half of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.

"(3) Notwithstanding any other provision of this section—

"(A) a grant, or that portion of a grant, for a project under the second sentence of paragraph (1);

"(B) a grant covering the costs of associated capital maintenance items having a value of less than 1 per centum but more than ½ of 1 per centum of current fair market value of rolling stock described in the last sentence of paragraph (1); and

"(C) a grant under paragraph (2);

shall be subject to the Federal grant limitation contained in the second sentence of subsection (k)(1).".

(c) Section 3(a)(2)(A)(iii) of such Act is amended by inserting before the period the following: ", and will maintain such facilities and equipment".

PROJECT MANAGEMENT OVERSIGHT

SEC. 206. The Urban Mass Transportation Act of 1964 is amended by inserting at the end thereof the following new section:

"PROJECT MANAGEMENT OVERSIGHT

"SEC. 24. (a)(1) The Secretary may use as much as is necessary of the funds made available for each fiscal year by sections 21(a)(1), 21(a)(2)(B), and 4(g) of this Act, and section 14(b) of the National Capital Transportation Act of 1969 to contract with any person for the performance of project management oversight. Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying out the contract.

"(2) Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide the Secretary and a contractor chosen by the Secretary in accordance with paragraph (1) such access to its construction sites and records as may be reasonably required.

"(b) As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (c).

"(c) A project management plan may, as required in each case by the Secretary, provide for—

"(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

"(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

"(3) a construciton schedule;

"(4) a document control procedure and recordkeeping system;

"(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

"(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

"(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

"(8) materials testing policies and procedures;

"(9) internal plan implementation and reporting requirements;

"(10) criteria and procedures to be used for testing the operational system or its major components; or

"(11) periodic updates of the plan, especially with respect to such items as project budget and project schedule, financing, ridership estimates, and where applicable, the status of local efforts to enhance ridership in cases where ridership estimates are contingent, in part, upon the success of such efforts; and

"(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

"(d) The Secretary shall promulgate such regulations as may be necessary to implement the provisions of this section. Such regulations shall be published in proposed

form for comment in the Federal Register and shall be submitted for review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 60 days after the date of enactment of this section, and shall be promulgated in final form not later than 120 days after the date of enactment of this section. Such regulations shall, at a minimum, include the following:

"(1) A definition of the term 'major capital project' for the purpose of subsection (b). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

"(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

"(e) The Secretary shall approve a plan submitted pursuant to subsection (b) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall inform the recipient of the reasons therefor and as to how much more time is needed for review to be completed. If a plan is disapproved, the Secretary shall inform the recipient of the reasons therefor.".

Mr. HECHT. Mr. President, I offer this amendment in behalf of myself and the chairman of the Banking Committee, Senator GARN, Senators HEINZ, MATTINGLY, GORTON, DIXON, DODD, RIEGLE, CRANSTON, and SASSER, which reauthorizes the programs under the Urban Mass Transportation Act of 1964 through September 30, 1990, and provides for minor modification of programs to help them operate more efficiently.

While this amendment does not represent the wishes of many on the committee, it does represent the views of a majority of the committee to reaffirm congressional commitment to the mass transit needs of our Nation, and remains consistent with our objectives of budget responsibility.

Mr. LAUTENBERG. Mr. President, I rise to engage the Senator from Nevada [Mr. HECHT] who is offering this mass transit title, in a colloquy.

In 1982, New Jersey's statewide transit agency, New Jersey Transit, suspended service on a rail line from Lindenwold to Atlantic City, NJ. The route miles represented by that line are no longer figured in the calculation of New Jersey's formula allocations out of the section 9 formula program.

Work has begun to reinstitute service on that line. Amtrak is revitalizing the line as part of a federally funded project, the Atlantic City rail line project. New Jersey Transit will be reinstituting commuter service on the line as well. In fact, New Jersey Transit was required to reinstitute such service as a precondition to the approval of the Atlantic City rail line project.

Given these circumstances, it is my view that once service is reinstituted, the route miles from Lindenwold to Atlantic City should be counted as part of the New Jersey Transit Commuter System. Language to this affect is included in the report filed by the House. Could the Senator from Nevada indicate to me how the Committee on Banking, Housing, and Urban Affairs, with jurisdiction over mass transit, might view this issue.

Mr. HECHT. I would say to the Senator from New Jersey that this matter is not addressed by the amendment I am offering on behalf of the committee. The Senator makes a good case for the inclusion of these route miles as part of the section 9 program.

We will be going to conference with the House on this bill and can examine this issue closely in the context of that conference. I appreciate the Senator bringing this matter to the committee's attention.

Mr. LAUTENBERG. I appreciate the Senator's assurance that this issue will be resolved in conference and I look forward to working with him toward that end.

Mr. GORTON. Mr. President, the amendment now before the Senate will extend authorizations for public transit programs for the next 4 years. The Mass Transit Program is of enormous benefit and importance to our country, and I urge my colleagues to support this amendment.

The Senate bill preserves existing law on the Buy America provisions applicable to the transit program. The House, however, has passed a transit reauthorization bill changing this provision.

Under current law, transit rolling stock purchased with Federal funds is subject to a 50 percent American content requirement. The requirement is waived if a bidder out of compliance with the standard comes in with a price more than 10 percent below the price of bids that do comply. The 50 percent standard also can be waived if the Secretary of Transportation finds that equipment produced by manufacturers in compliance with the standard is not available.

In H.R. 3129, the House proposes to change the American content standard to 85 percent and the cost differential to 25 percent. Instead of protecting and creating American jobs, the House provision hurts American workers and places a costly burden on Federal and local governments and transit authorities.

A good example is the effect the House's provision would have on Seattle, WA. The Municipality of Metropolitan Seattle, better known as METRO, is preparing to purchase 236 buses of an innovative dual-mode design to run in a new downtown bus tunnel. METRO has received two responsive bids to construct the buses. One bidder, MAN, already has a U.S. plant in Cleveland, NC. The other, Breda, is considering opening a plant in the Seattle area if it wins the contract. In either case, American workers would benefit. Under the House bill, however, neither bidder would qualify. METRO would be unable to use transit funds for the purchase of these buses, and potential American jobs would be lost. An important transit project would be hurt while the benefits sought by the Buy America provisions for American workers would not be obtained.

I would like to ask the floor manager of this amendment, Mr. HECHT, to keep these concerns in mind when this bill goes to conference.

Mr. HECHT. I thank the distinguished Senator from Washington for bringing this issue to the Senate's attention. I appreciate the need for mass transit grantees to have the flexibility to utilize the best options available in completing transit projects. I assure the Senator that I will do what I can to preserve this flexibility in conference. I understand the House bill retroactively applies its new restrictions to contracts entered into after July 1, 1986, and applies to manufacturing plants already built in the United States. I further understand METRO has not yet awarded its bus contract, and one bidder does not currently have a manufacturing plant in the United States. I understand these special problems in this situation.

Again, I thank the Senator for raising these concerns. I will keep your views in mind when this bill goes to conference, and do the best I can to address your concerns.

Mr. GORTON. Mr. President, I thank the Senator for his remarks, and appreciate his attention to this important issue.

REAUTHORIZING FEDERAL TRANSIT ASSISTANCE

Mr. DIXON. Mr. President, I am pleased to join my distinguished colleague, the gentleman from Nevada [Mr. HECHT], in bringing this amendment before the Senate. While the shortness of time did not permit a formal markup of the amendment in the Banking Committee, it does represent a consensus of the committee. It is cosponsored by 10 Banking Committee members, including the distinguished chairman of the committee, the gentleman from Utah [Mr. GARN], and almost all of the committee's Democratic members.

This a very simple amendment. It makes no changes in the basic structure of the Federal Transit Program. It simply reauthorizes Federal transit assistance for the next 4 years—as does the highway bill now before us.

Importantly, it is a hold-the-line amendment. It reauthorizes the Tran-

sit Program at the levels assumed in the fiscal year 1987 budget resolution and the next 3 years. As my colleagues know, the budget resolution basically assumed a freeze in transit spending over the next 4 years. In fact, it assumes funding levels slightly below the freeze level. This amendment is fully in accordance with those assumptions. It permits no growth in transit spending.

Under this amendment, therefore, transit will continue to be doing its part to help us meet Gramm-Rudman-Hollings deficit reduction targets. This is true for two major reasons:

First, transit spending has declined by more than $1.2 billion per year since fiscal 1981, in spite of the fact that, in 1982, Congress allocated one penny of the increase in gas taxes to transit to increase transit spending.

Second, the mass transit account could currently support capital spending levels of $1.5 billion to $1.7 billion per year, instead of the less than $1 billion now being made available in the latest Senate-passed DOT appropriations bill. The surplus the mass transit account is now generating, therefore, between $500 million and $700 million per year, are essentially being used to reduce the deficit instead of being used to meet transit spending needs.

It's important to remember, Mr. President, that while Federal support for transit has declined, the need for transit assistance has not declined. Given the broad cuts in a variety of Federal programs, including revenue sharing, cities and towns around the Nation are having increasing difficulty in finding the money to buy new buses or rail cars, to repair old ones, or the rehabilitate and maintain subways or commuter rail systems. Communities have been forced to increase fares, to reduce service, and to defer maintenance in an attempt to continue to meet their citizens' need for public transportation.

It is also important to remember that cities and towns rely on a combination of transit and highway spending to meet their overall transportation needs. Most cities do not get sufficient Federal highway assistance to meet these needs, or even to provide them with some equity for the taxes they send to Washington to finance the highway program. In many major cities, even unlimited highway funding would not help. More roads would simply mean more traffic congestion. It is only the combination of transit spending and highway spending that enables them to maintain a transportation system that works.

The amendment now before us does not begin to meet the real need for transit spending. A strong case can be made for significantly higher spending levels, particularly since the mass transit account would support higher spending.

It is far from perfect in other ways as well. In my view, for example, we should be allocating a substantial portion of the mass transit account funds—the gas tax money—under the formula grant program, rather than leaving the allocation of these funds to the discretion of the Secretary of Transportation.

However, Mr. President, I am a political realist. I know that our current budget situation simply does not permit funding increases. I also know that we are aobut out of time in this Congress, so that there is no longer time to propose significant changes in the transit program, if we hope to conclude action on reauthorization legislation before we leave town.

I strongly urge my colleagues, therefore, to join me in supporting this limited, but vitally important, amendment. It will not end the malnutrition that plagues the Federal transit program, but it will enable transit systems around the country to continue to survive, to continue to serve those who don't have automobiles, or who need transit to get to their jobs, or to school, or to the hospital. The amendment is nothing more than a simple extension of the Federal commitment to mass transit for 4 years. It is fiscally responsible, and we must act on it. I urge the Senate to adopt the amendment.

Mr. RIEGLE. Mr. President, I am pleased to join as a cosponsor of this amendment to extend the authorization of the Urban Mass Transportation Act.

Mass transit is a key element in our national transportation system. It not only delivers a necessary public service, it provides an indispensable part of the Nation's economic infrastructure. Public transit in recent years has become important not only in our large cities, but also in many of our smaller cities, towns, and rural communities in all parts of the country.

Over the past 21 years, Federal mass transit policy has drawn local communities, States, the Federal Government, and private industry into strong partnerships to enhance the mobility of Americans and to develop regional economies. That partnership has done much to turn around a costly decline of American mass transit that occurred in the 1950's and 1960's.

Most of us can remember the destructive spiral of fare increases, service cutbacks, ridership declines, and rising deficits that damaged public transit systems and led to the demise of private transit operations not too many years ago. That was a costly error that must not be allowed to recur.

Federal support for mass transit in recent years has been a sound investment in a valuable national asset.

Under the current budget crisis, it is particularly important that the Senate continue to take the long view and maintain a level of support for mass transit that is necessary for the public transit system to strengthen the national economy.

This amendment would extend authorization for Federal mass transit assistance, which is due to expire at the end of this month, just about 1 week from now.

The amendment would not make all of the strengthening changes in the UMTA Program that I and other supporters of mass transit would prefer to see enacted. But this amendment is important because it will help prevent costly disruptions and confusion for mass transit systems in every region of the country.

This is a modest amendment that is fiscally very responsible. It provides funding at "such sums as are necessary" for the coming fiscal year—an approach that is intended to accommodate the funding levels contemplated in the Department of Transportation appropriations bill that passed the Senate on September 17. For the subsequent 3 years, the amendment would authorize funding levels that are fully consistent with the budget resolution.

The amendment would make several refinements to existing law that will make the Urban Mass Transportation programs more flexible and efficient. It would permit local transit authorities to use construction grants for leasing facilities and equipment where leasing is the most cost-effective approach.

The amendment would expand the definition of items that can be financed with capital grants. And it would authorize the Department of Transportation to oversee the construction of large projects and help make sure that they are well-planned, well-managed, and soundly constructed.

I urge my colleagues to join me in support of this amendment.

Mr. SASSER. Mr. President, I would like to take this opportunity to discuss briefly the urban mass transit reauthorization amendment being offered here today.

This amendment is a consensus measure. It is within the budget guidelines of the Budget Committee, and within the funding levels adopted by the Appropriations Committee. It has the support of the American Public Transit Association, the parent association of many of our local transit systems. And it has the support of the majority of the members of the Banking Committee. This support was not given lightly—at least by this Senator—but given knowing that, without this support, passage of this essential

reauthorizing legislation this legislative session would be jeopardized.

Certainly the urban mass transit reauthorization amendment before us today is not perfect. In particular, I am disappointed that we were not able to restore the 3-for-2 capital-for-operating trade-in option that expired at the end of fiscal year 1984. This option allowed transit systems to supplement Federal operating assistance, which has been steadily shrinking due to the operating fund "CAP". This option is of extreme importance to small and mid-sized systems. It could well save the service of some smaller transit systems in the near future, particularly given current budget restraints. Fortunately, the House bill reinstates this option, and I hope my colleagues will agree with me on the need to accept this House provision in conference.

While the amendment before us today offers some small concessions in the use of formula funds for operating purposes, it is unlikely to be enough. Operating assistance is the lifeblood of small and mid-sized public transit systems. For those transit authorities that rely primarily on busses, which includes all of the Tennessee transit systems, it is operating—not capital—funding under the section 9 program that is essential to their economic vitality.

Mass transit has done its share toward budget reduction. Since 1981, Federal transit aid has been cut 24 percent, or more than $1 billion. Transit authorities have been forced to impose budget reducing measures. For instance, since 1983, Knoxville's Transit System has been forced to reduce service miles by 31 percent and to raise fares by 25 percent. All of Knoxville's transit employees have faced wage and benefit reductions this year, equalling an 8-percent reduction in labor costs. Total budgeted expenses of Ktrans are down $563,848 from last year. Indeed, passengers and employees alike of the Knoxville Transit System have tightened their belts to the last hole in order to keep the system a viable one.

Mr. President, we need continued Federal assistance for mass transit systems. We need to enable municipalities to continue to furnish services to those dependent on mass transit—those persons least able to afford private transportation, and the elderly, and the handicapped. And we need operating assistance, to allow our smaller transit systems to continue present levels of vital transit service.

While this amendment provides less assistance than is truly needed by small and mid-sized transit systems, there will be an opportunity in conference to make improvements to the legislation. The Banking Committee has put together a consensus package that can pass this Chamber, and I believe we owe it to our transit systems—and our transit passengers across this country—to do that. I urge my colleagues to support this amendment.

Mr. PROXMIRE. Mr. President, while I do not want to delay passage of important legislation, I do want my colleagues to know that I still believe—strongly believe—that it is a mistake to continue to subsidize transit operating costs. Subsidizing local operations has not, and will not, improve the transit industry. Subsidizing local operations has, and will continue to add to the Federal debt. We're struggling hard to meet the Gramm-Rudman target this year, and we're being warned that this year is going to seem like a cakewalk compared to what we face next year.

Mr. President, operating subsidies have addicted local transit operators. It's time we cure that addiction and help local transit roll on its own wheels. Congress ought to phase out Federal assistance for operating expenditures over the next 4 years, instead of continuing them. At a time when the costs of operating the Federal Government exceed the revenues it has available, it makes no sense to continue subsidizing the costs of local transit operations, when they exceed their revenues. Federal subsidies for transit operating costs simply do not make sense at this time. In fact, they don't make sense any time.

It did make sense for the Federal Government to support the development of transit systems. It has made sense for the Federal Government to aid local communities because of the amount of capital investment that is needed for transit development. But, it's one thing to get community transit started, and another to keep it going. No one ever promised that the Federal Government would pay all the bills. The Federal transit program was not enacted as a handout. It envisioned Federal help in starting up local systems. But it also envisioned a local responsibility for keeping it going.

The payment of operating costs was assumed to be a local responsibility until 1974. The energy crisis brought the call for Federal operating assistance to keep transit fares low so that ridership would be encouraged. Operating subsidies were to be an emergency transfusion, and not a permanent fix. It was generally acknowledged that transit was "sick," inefficient, and providing poor service. Congress was told that operating subsidies would sustain the patient until surgery was performed. Well, a dozen years have passed, and there is little evidence that a sick transit industry has been rejuvenated. What has happened is that operating subsidies have become a way of life for the industry. There is no talk of ending Federal operating subsidies, only talk of how to increase them.

The industry, after some $10 billion in Federal aid, does not show the major productivity increase needed to turn the industry around. While statistics can be selected to support most any agrument, they haven't recorded a convincing argument for continuing Federal subsidies for operations. Department of Transportation studies have convinced the administration that today's transit problems are, at least in part, the result of too much Federal subsidy, rather than too little. The administration proposed this year to kick the habit of paying for local transit fares. I say it's time for Congress to support the administration.

Recent studies show that less than one dollar out of four paid out in Federal subsidies directly benefit transit riders. DOT studies indicate that three out of every four dollars in Federal aid have gone for services that weren't needed, for wages that rose faster than the cost of living, for fares that were lower than the fares were before Federal aid was enacted, and productivity that declined. With such findings, who needs to waste more Federal taxpayer dollars?

It is held that transit subsidies are needed to help the poor and elderly. But DOT studies show that the great majority of those receiving transit subsidies are not poor, and that transit subsidies don't address the transportation problems of the poor very well. The conclusion drawn is that Federal operating subsidies are expensive and irrational.

Finally, let me say what I'm sure almost all of us have heard at one time or another from our constituents. "Why should I pay the subway or bus fare for someone who lives clear across the country?" I say there's no good answer. We ought to stop subsidizing the costs of local transit operations.

Mr. HECHT. Mr. President, I understand that the amendment is acceptable to the managers of the bill on both sides of the aisle. I urge its adoption.

Mr. SYMMS. Mr. President, the amendment the distinguished Senator from Nevada offers is acceptable to the managers of the bill. I have discussed this with Senator BURDICK. He is in support of it. It is acceptable to the majority and the minority. We accept the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2872) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HECHT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2873

Mr. TRIBLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Virginia [Mr. TRIBLE] proposes an amendment numbered 2872.

Mr. TRIBLE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, insert the following:

Sec. . CUMBERLAND GAP NATIONAL HISTORICAL PARK, VIRGINIA

(a) Section 160(a) of the Federal-Aid Highway Act of 1973 (87 Stat. 278) is amended by adding the following new sentences at the end thereof: "After completion of the reconstruction and relocation of Route 25E through the Cumberland Gap National Historical Park (including construction of a tunnel and the approaches thereto), funds available for parkways in subsection (a) of section 101, title 23, United States Code, shall be available to finance the cost of upgrading from 2 lanes to 4 lanes a highway providing access from such route through that portion of the Cumberland Gap National Historical Park which lies within the State of Virginia. The project, including any environmental impact statements, referred to in the preceding sentence shall not delay or affect in any way the reconstruction and relocation of Route 25E (including construction of a tunnel and approaches thereto)."

(b) Subsection (b) of section 160 of such Act is amended by inserting after "rights-of-way" the following: "including approaches in the State of Virginia".

Redesignate succeeding sections of Title I accordingly and conform the table of contents accordingly.

Mr. TRIBLE. Mr. President, this amendment to S. 2405 authorizes the widening of U.S. Route 58 in the Virginia section of the Cumberland Gap National Park from 2 to 4 lanes.

The Federal Highay Act of 1973 authorizes the reconstruction of U.S. Routes 25 and 58 inside the Cumberland Gap National Park in the States of Virginia, Kentucky and Tennessee. That project includes the abandonment of U.S. Route 25 inside Virginia and the construction of the Cumberland Gap Tunnel linking Tennessee and Kentucky. Only a 2-lane road is now envisioned from this new roadway through the National Park in Virginia.

This 2-lane road will not be adequate to handle the expected traffic once the tunnel is completed. The expansion of Route 58 from 2 to 4 lanes is essential to meet the demands of travelers and commerce.

This amendment extends the existing authorization for the tunnel project to include a 4-lane route 58 for a distance of approximately 2.2 miles from the relocated tunnel road through the Cumberland Gap Park in Virginia. This project has already been approved in the House of Representatives with the support of the Representatives from Virginia, Tennessee, and Kentucky.

The language of the amendment provides that this project will not begin until after the tunnel and approach roads have been constructed. It will not adversely affect the timely completion of the tunnel.

Mr. President, this amendment has been reviewed by the chairman of the Committee on Environment and Public Works, the chairman and ranking member of the Subcommittee on Transportation and that they are willing to accept this amendment.

Mr. McCONNELL. Mr. President, will the Senator from Virginia yield?

Mr. TRIBLE. I am pleased to yield to the distinguished Senator from Kentucky.

Mr. McCONNELL. Can the Senator assure me that this amendment will not delay the timely completion of the tunnel project or compete with the tunnel for funds?

Mr. TRIBLE. Yes, I can. The language of this amendment allows the widening of U.S. Route 58 only after the tunnel project is finished. The tunnel and the approach roads will be constructed first and then parkway funds can be made available for the road widening.

Mr. McCONNELL. If an additional environmental impact statement is required for the project in the Senator's amendment, it will not be interpreted to require any additional environmental impact statements for the tunnel project now under construction?

Mr. TRIBLE. That is correct. Any environmental impact statement required by my amendment will be separate and apart from any EIS that has already been performed for the tunnel project now under construction. The conducting of an environmental impact statement for the project envisioned in my amendment cannot be considered a reason for further delay in the building of the tunnel.

Mr. McCONNELL. With that understanding, I am pleased to support the amendment of the Senator from Virginia.

Mr. TRIBLE. I thank the distinguished Senator from Kentucky for his support and assistance on a project that is very important for our States of Kentucky and Virginia as well as the State of Tennessee.

Mr. President, this amendment has been reviewed by the chairman and the ranking member. I am told this amendment has been found acceptable.

Mr. SYMMS. Mr. President, we have reviewed the amendment of the distinguished Senator from Virginia. Both Senator BURDICK and myself, for the majority and the minority, accept the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2873) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TRIBLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2874

(Purpose: To provide for a 4-year extension of the Highway Trust Fund taxes, and for other purposes)

Mr. SYMMS. Mr. President, I rise at this time to offer the Finance Committee amendment to S. 2405 on behalf of Mr. PACKWOOD and the Finance Committee, which will pay for this legislation.

I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for Mr. PACKWOOD, proposes an amendment numbered 2874.

Mr. SYMMS. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 96, after line 14, insert the following new title:

TITLE II—HIGHWAY REVENUE ACT OF 1986

SEC. 201. SHORT TITLE.

This title may be cited as the "Highway Revenue Act of 1986".

SEC. 202. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND TAXES AND RELATED EXEMPTIONS.

(a) EXTENSION OF TAXES.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1982":

(1) Section 4041(a)(3) (relating to special fuels tax).

(2) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(3) Section 4071(d) (relating to tax on tires and tread rubber).

(4) Section 4081(b) (relating to gasoline tax).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(b) EXTENSION OF EXEMPTIONS, ETC.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "'1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(b)(2)(c) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(f)(3) (relating to exemption for farm use).

(3) Section 4041(g) (relating to other exemptions).

(4) Section 4221(a) (relating to certain tax-free sales).

(5) Section 4483(f) (relating to exemption for highway use tax).

(6) Section 6420(h) (relating to gasoline used on farms).

(7) Section 6421(h) (relating to tax on gasoline used for certain nonhighway purposes or by local transit systems).

(8) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(9) Section 6427(m) (relating to fuels not used for taxable purposes).

(c) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Paragraph (1) of section 6412(a) of the Internal Revenue Code of 1954 (relating to floor stocks refunds) is amended—

(A) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(B) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Paragraph (2) of section 6156(e) of such Code (relating to installment payments of tax on use of highway motor vehicles) is amended by striking out "1988" and inserting in lieu thereof "1992".

SEC. 203. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsections (b), (c), and (e) of section 9503 of the Internal Revenue Code of 1954 (relating to Highway Trust Fund) are each amended—

(1) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(b) EXPENDITURES FROM HIGHWAY TRUST FUND.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from Highway Trust Fund) is amended by striking out "or" at the end of subparagraph (B) and by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) authorized to be paid out of the Highway Trust Fund under the Federal-Aid Highway Act of 1986, or

"(D) hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A), (B), or (C) as in effect on December 31, 1986.".

(c) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Subsection (b) of section 201 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-11) is amended—

(1) by striking out "1988" and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

SEC. 204. REDUCTION IN EXCISE TAX EXEMPTION FOR QUALIFIED METHANOL AND ETHANOL FUELS.

(a) IN GENERAL.—Subparagraph (A) of section 4041(b)(2) of the Internal Revenue Code of 1954 (relating to exemption for qualified ethanol and methanol fuels) is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel, subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents'.".

(b) CONFORMING AMENDMENT.—The heading for section 4041(b) of the Internal Revenue Code of 1954 is amended by striking out "Exemption" the second place it appears and inserting in lieu thereof "Reduction in Tax".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 205. TECHNICAL CORRECTIONS.

(a) REFUND OF ENTIRE DIESEL FUEL TAX WITH RESPECT TO SCHOOL BUSES.—

(1) IN GENERAL.—Paragraph (2) of section 6427(b) of the Internal Revenue Code of 1954 (relating to intercity, local, or school buses) is amended by redesignating subparagraphs (B) and (C) as Subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagaraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 6247(b)(2) of such Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(B) The heading for subparagraph (C) of section 6427(b)(2) of such Code, as redesignated by paragraph (1), is amended by striking out "Exception" and inserting in lieu thereof "Exception for certain intracity transportation".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in section 915 of the Tax Reform Act of 1984.

(b) CERTAIN TRANSFERS FROM HIGHWAY TRUST FUND TO BE MADE PROPORTIONATELY FROM MASS TRANSIT ACCOUNT.—Subsection (e) of section 9503 of such Code (relating to establishment of Mass Transit Account) is amended by adding at the end thereof the following new paragraph:

"(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

"(A) IN GENERAL.—Transfers under paragraphs (2), (3), and (4) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred to such Accounts under this section.

"(B) HIGHWAY ACCOUNT.—For purposes of subparagraph (A), the term 'Highway Account' means the portion of the Highway Trust Fund which is not the Mass Transit Account.".

Mr. SYMMS. Mr. President, this is a Finance Committee amendment to S. 2405. The committee amendment, the "Highway Revenue Act of 1986," provides the following:

First, a 4-year extension—through September 30, 1992—of the present law highway trust fund excise taxes and the authority to spend from the trust fund;

Second, a reduction in the current exemption from the fuels excise tax for neat methanol and ethanol fuels, from 9 cents to 6 cents per gallon;

Third, a full refund of 15 cents per gallon of the diesel fuel tax for all school buses; and

Fourth, an update of the highway trust fund statute to reflect trust fund authorization purposes in S. 2405.

Mr. President, I ask unanimous consent that an explanation of the committee amendment be printed in the RECORD in its entirety. This explanation, which was prepared by the Joint Committee on Taxation, provides the legislative history for the committee amendment.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF REVENUE TITLE ("HIGHWAY REVENUE ACT OF 1986") TO S. 2405

INTRODUCTION

The following is an explanation of the committee amendment approved by the Committee on Finance on September 18, 1986, to extend the present-law highway-related excise taxes and the Highway Trust Fund expenditure authority for four years (through September 30, 1992). The committee amendment is to be offered as the revenue title to S. 2405, the Federal Highway Act of 1986, when the bill is considered by the Senate.

This committee explanation of the revenue title to S. 2405 is intended to be a part of the official legislative history of the committee amendment.

The first part is a summary of the committee amendment and background. The second part is the explanation of the provisions of the committee amendment. The third part presents the estimated budget effects of the Highway Trust Fund, as well as the vote of the committee.

I. BACKGROUND AND SUMMARY

A. BACKGROUND ON LEGISLATION

On August 5, 1986, the Senate Committee on Environment and Public Works reported a four-year extension of the Highway Trust Fund authorizations (Highway Account) in S. 2405.[1] The Administration requested that the Committee on Finance extend the present law Highway Trust Fund excise taxes for four years (through September 30, 1992) to finance the four-year trust fund authorizations included in H.R. 2405 (for fiscal years 1987-1990).[2] The Highway Trust Fund revenues currently expire after September 30, 1988, which is two years beyond the current fiscal year 1986 authorization expiration generally for present-law Highway Trust Fund authorizations.

The Committee on Finance held a public hearing on the proposed extension of the Highway Trust Fund excise taxes on September 18, 1986, and marked up a committee amendment (to be offered as the revenue title to S. 2405) on September 18, 1986.

B. SUMMARY OF COMMITTEE AMENDMENT

Present law highway trust fund excise taxes

Excise taxes are imposed on gasoline and diesel and other motor fuels, trucks and truck trailers, heavy tires, and heavy highway vehicles. Revenues from these highway-related excise taxes are deposited in the Highway Trust Fund. Revenues equivalent to one cent per gallon from the taxes on highway motor fuels go into the Mass Transit Account in the Highway Trust Fund. The other highway excise tax revenues go into the Highway Account of the Trust Fund.

The Highway Trust Fund taxes are currently scheduled to expire after September 30, 1988. (See Table in Part II, below.) Also, authority to expend from the Highway Trust Fund expires after September 30, 1988.

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[1] Federal-Aid Highway Act of 1986 (S. Rept. 99-369).

[2] See testimony of the Administrator of the Federal Highway Administration (Ray A. Barnhart) and the Deputy Assistant Secretary of the Treasury for Tax Policy (Dennis Ross) at the Committee on Finance public hearing on September 18, 1986. (See also S. 2189, introduced at the request of the Administration.)

Committee amendment

The committee amendment includes the following provisions:

(1) The present law Highway Trust Fund excise taxes, and the authority to spend from the Trust Fund, are extended for four years (through September 30, 1992).

(2) The nine-cents-per-gallon exemption from the special fuels excise tax for neat methanol and ethanol fuels is reduced to six cents per gallon, as provided in H.R. 3838, effective on January 1, 1987.

(3) The technical correction provision in H.R. 3838 with respect to providing a full refund of 15 cents per gallon of the diesel fuel tax for all school buses is included.

(4) The Highway Trust Fund statute is updated to reflect trust fund authorization purposes in S. 2405.

II. Explanation of Committee Amendment

A. Extension of Highway Trust Fund Excise Taxes

Present law

Excise Taxes

Excise taxes are imposed on gasoline and diesel and other motor fuels, trucks and truck trailers, heavy tires, and heavy highway vehicles. Revenues from these highway-related excise taxes are deposited in the Highway Trust Fund. The taxes currently are scheduled to expire after September 30, 1988. Deposits of pre-October 1, 1988, excise tax liabilities will continue to go into the Trust Fund for an additional nine months (through June 30, 1989).

The table below shows the present-law tax rate schedule for the Highway Trust Fund excise taxes.

PRESENT-LAW HIGHWAY TRUST FUND EXCISE TAXES

(Through Sept. 30, 1988)

Tax (and code section)	Tax rate
Motor fuels:	
Gasoline (sec. 4081)	9 cents per gallon.
Special motor fuels (sec. 4041(b)).	9 cents per gallon.
Diesel fuel (sec. 4041(a))	15 cents per gallon.
Trucks and trailers: Trucks (over 33,000 lb.) and trailers (over 26,000 lb.) (sec. 4051).	12 percent of retail price.
Tires for highway vehicles (sec. 4071):	
40 lb or less	No tax.
40–70 lb	15 cents/lb over 40 lb.
70–90 lb	$4.50, plus 30 cents/lb over 70 lb.
Over 90 lb	$10.50, plus 50 cents/lb over 90 lb.
Use tax on heavy highway vehicles (sec. 4481):	
Under 55,000 lb	No tax.
55,000–75,000 lb	$100, plus $22/1,000 lb over 55,000.
Over 75,000 lb	$550.

Exemptions

In general.—General exemptions are provided from the highway excise taxes for otherwise taxable articles used by State and local governments and tax-exempt educational organizations, and for exported articles. There is also an exemption from the fuels taxes for fuels used on a farm for farming purposes, and for off-highway business use (other than boating and noncommercial aviation use).

Certain neat alcohol fuels.—A 9-cents-per-gallon exemption is provided for neat methanol and ethanol fuels which contain at least 85 percent alcohol produced from a substance other than petroleum or natural gas. A 4-1/2-cents-per-gallon exemption is available for such alcohol fuels produced from natural gas. These alcohol fuels tax exemptions are scheduled to expire after December 31, 1992.

Diesel fuel used in buses.—A complete refund is provided of the 15-cents-per-gallon excise tax paid on diesel fuel which is used by private contractors to provide scheduled local bus service to the general public over regular routes. The Tax Reform Act of 1984 inadvertently failed to provide a complete refund when private contractors supply school bus service, the diesel fuel for which would be tax-exempt if the service were supplied by a State or local government or nonprofit school. The effective excise tax rate on this fuel is 3 cents a gallon (tax of 15 cents a gallon, less refund a 12 cents a gallon), the effective rate that generally applies to diesel fuel used in privately operated buses.

Reasons for change

The Senate Committee on Environment and Public Works has reported a bill (S. 2405) providing Federal-aid highway authorizations from the Highway Trust Fund for fiscal years 1987–1990. The Committee on Finance is aware that the anti-deficit provisions governing trust fund authorizations will require reduction in highway spending commitments beginning on October 1, 1986, unless action is taken to provide further funding for the Trust Fund. The committee believes that continued funding for the building and maintenance of our Nation's highway system is an important national objective and that a four-year extension of the present Highway Trust Fund excise taxes is, therefore, appropriate at this time.

Explanation of provisions

Extension of Highway Excise Taxes

The committee amendment extends the present Highway Trust Fund excise taxes for four additional years, through September 30, 1992. (See current taxes and rates in the table, above.)

Exemptions

The committee amendment further includes two highway-related excise tax provisions included as part of the pending tax reform conference agreement legislation (H.R. 3838). First, the committee amendment reduces the exemption from the special fuels excise tax for neat alcohol fuels (e.g., fuels 85 percent or more ethanol or methanol) derived other than from petroleum or natural gas from 9 cents to 6 cents per gallon.

Second, the committee amendment includes a technical amendment (as in the conference agreement on H.R. 3838) allowing a full 15-cents-per-gallon refund of excise tax paid on diesel fuel used in school buses while engaged in the transportation of students and school employees.

Effective dates

The highway excise tax extension provisions of the committee amendment apply to taxable transactions occurring after September 30, 1988, and before October 1, 1992. The provision relating to neat alcohol applies to transactions after December 31, 1986. The technical provision affecting the fuels tax exemption for school buses is effective as if included in the Tax Reform Act of 1984.

B. Highway Trust Fund Expenditure Authority

Background and present law

Overview

The Highway Trust Fund and the related highway excise taxes have been extended four times since 1970: a five-year extension in the Federal Aid Highway Act of 1970 (from September 30, 1972 through September 30, 1977), a two-year extension in the Federal Aid Highway Act of 1976 (through September 30, 1979), a five-year extension in the Surface Transportation Assistance Act of 1978 (through September 30, 1984), and a four-year extension in the Surface Transportation Assistance Act of 1982 (through September 30, 1988).

The Highway Trust Fund authorizations in the 1982 Act generally were for fiscal years 1983–1986. Thus, the revenues deposited in the Trust Fund lag behind the authorization period by two years. This is due to the lead time required between the time a project is authorized or obligated and the time when money is needed to pay for it. An anti-deficit provision (i.e., the "Byrd Amendment") requires that highway apportionments be reduced when unfunded authorizations exceed estimated Trust Fund receipts (tax revenues and interest earned by the Fund) in the following 24-month period.

In the 1982 Act, the Highway Trust Fund statute was codified in the Internal Revenue Code (sec. 9503), effective January 1, 1983.

Trust Fund Expenditure Purposes

The 1982 Act established two Accounts within the Highway Trust Fund: the Highway Account and the Mass Transit Account. Amounts may be paid from the Highway Trust Fund through September 30, 1988, as provided in appropriation Acts, to meet obligations incurred in carrying out the purposes of the Trust Fund. Obligations may be incurred for the purposes specified in the Highway Revenue Act of 1956, the Surface Transportation Assistance Act of 1982, or any law enacted thereafter, for a general purpose authorized under these Acts as in effect on December 31, 1982. Thus, any new general expenditure purpose from the Trust Fund requires a Code amendment.

Highway account expenditures

The general highway-related programs authorized from the Highway Trust Fund include the following:

Interstate highway construction and resurfacing and repair

Federal-aid highways, including primary and secondary systems, urban systems

Forest and public lands highways, scenic highways, parkways, Indian roads

Highway hazard elimination projects

Bridge replacement and rehabilitation

Emergency (disaster) relief

Rail crossings and demonstration projects

Traffic control and traffic signal demonstration projects

Intermodal urban demonstration projects

Carpool and vanpool grants

Pedestrian walkways on highway rights of ways and bikeways

Highway-related safety grants

Motor carrier safety grants

Highway safety research and development

National Highway Traffic Safety Administration for a share of traffic safety programs

Certain highway-related administrative costs

Mass transit account expenditures

The Mass Transit Account in the Trust Fund is financed from the revenue equivalent of one cent of the tax on highway motor fuels. Amounts in the Mass Transit Account are available for making capital expenditures authorized under section 21(a)(2) of the Urban Mass Transportation Act. An anti-deficit provision is provided so that unfunded transit authorizations may not exceed estimated account receipts for the

following 12 months (compared to 24 months for the Highway Account).

Trust Fund Authorizations in Committee on Environment and Public Works Bill (S. 2405)

The Senate Committee on Environment and Public Works has reported a four-year reauthorization bill (S. 2405) for Highway Trust Fund (Highway Account) expenditure programs, for fiscal years 1987–1990. The current trust fund authorization programs generally are provided through fiscal year 1986, as enacted in the 1982 Act.

Highway and highway safety program authorizations from the Trust Fund under S. 2405 for fiscal years 1987–1990 total $52.3 billion ($13.1 billion per year). This compares with $14.8 billion authorized for fiscal year 1986 (after the 4.2 percent budget cutback under the "Gramm-Rudman-Hollings" statute). (Mass transit authorizations from the Mass Transit Account in the Trust Fund have not yet been reported by the Senate Committee on Banking, Housing, and Urban Affairs.)

Reasons for change

The Committee on Finance agrees that expenditure authority for the Highway Trust Fund should be extended for four years (through September 30, 1992) to parallel the four-year Highway Trust Fund authorizations (Highway Account) included in S. 2405 as reported by the Senate Committee on Environment and Public Works and the four-year extension of the highway excise taxes (discussed in II.A., above.

Explanation of provision

The committee amendment provides a four-year extension of the authority to make expenditures out of the Highway Trust Fund (through September 30, 1992), and updates the Trust Fund statute and reflect the trust fund authorization purposes included in S. 2405 as reported by the Senate Committee on Environment and Public Works.

Effective dates

The provision extending the trust fund expenditure authority is effective for the period, October 1, 1988 through September 30, 1992. The updating of the Trust Fund statute is effective on October 1, 1986.

III. BUDGET EFFECTS OF COMMITTEE AMENDMENT AND VOTE OF THE COMMITTEE

A. BUDGET EFFECTS

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the budget effect of the Committee amendment.

The committee amendment will not effect net fiscal year budget receipts, as the extension of present law Highway Trust Fund excise taxes is included in the baseline budget assumption for budget estimating purposes by the Congressional Budget Office.

The revenue effect of the committee amendment on the Highway Trust Fund tax receipts is shown in the following table. The four-year extension of present law highway excise taxes is projected to provide $58.4 billion in additional tax revenues to the Trust Fund through fiscal year 1992. In addition, the Trust Fund will earn interest on investments of its cash balance.

ESTIMATED HIGHWAY TRUST FUND RECEIPTS UNDER COMMITTEE AMENDMENT, FISCAL YEARS 1988–92

[In millions of dollars]

Tax source	1988 [1]	1989	1990	1991	1992	1988–92
Gasoline and special motor fuels		8,961	9,022	9,110	9,199	36,292
Diesel fuel		3,127	3,221	3,337	3,457	13,142
Trucks and trailers		1,446	1,527	1,653	1,789	6,415
Heavy vehicle use tax	347	473	490	510	126	1,599
Tires		269	278	290	303	1,140
Total tax receipts	347	14,276	14,538	14,900	14,874	58,935
Less fiscal year 1989 tax receipts attributable to pre-extension tax liabilities		−547				−547
Net increase in trust fund tax receipts due to extension	347	13,729	14,538	14,900	14,874	58,388

[1] The fiscal year 1988 amount of $347 million is received during the last 3 months of fiscal year 1988 as a result of extending the heavy vehicle use tax beyond September 30, 1988. (The taxable period for the highway use tax is July 1–June 30.)

B. VOTE OF THE COMMITTEE

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the vote of the Committee on Finance on the motion to approve the committee amendment, to be offered as an amendment to S. 2405. The committee amendment was approved by voice vote.

Mr. SYMMS. Mr. President, I urge my colleagues to support the amendment so we can pay for this legislation.

The PRESIDING OFFICER. Is there further debate on the amendment?

MR. SYMMS. Mr. President, I might say that the ranking minority member of the subcommittee [Mr. BURDICK] supports this amendment also.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2874) was agreed to.

Mr. SYMMS. I move to reconsider the vote.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2875

(Purpose: To require a feasibility study of establishing a ferry boat in the vicinity of Springfield, South Dakota.)

Mr. STAFFORD. Mr. President, I send an amendment to the desk for Senator PRESSLER, Mr. ABDNOR, Mr. ZORINSKY, and Mr. EXON and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD] for Mr. Pressler and Mr. Abdnor, Mr. Zorinsky, and Mr. Exon, proposes an amendment numbered 2875.

Mr. STAFFORD. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 86, between lines 19 and 20, insert the following:

FERRY BOAT SERVICE STUDY

SEC. —. (a) The Secretary of Transportation in consultation with the highway departments of the States of Nebraska and South Dakota, shall conduct a study to determine the feasibility and cost of establishing public ferry boat service on the Missouri River which connects a Federal-aid highway in the Vicinity of Niobrara, Nebraska with a Federal-aid highway in the vicinity of Springfield, South Dakota, and which meets the requirements of section 129(g) of title 23, United State Code.

(b) Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under this section together with any recommendations the Secretary may have concerning the establishment of the ferry boat service described in subsection (a).

Mr. STAFFORD. Mr. President, I offer this amendment on behalf of Mr. PRESSLER and his colleague from South Dakota, and the colleagues from the neighboring State of Nebraska, to offer an amendment to S. 2405, the Federal-Aid Highway Act of 1986. This amendment directs the Secretary of Transportation to study the feasibility of establishing ferry boat service on the Missouri River between Springfield, SD and Niobrara, NE.

Mr. President, the need for this study is self-evident when one considers that the residents of this region of South Dakota and Nebraska are forced to travel up to 85 miles to go from one side of the river to a similar point on the other side. Because of the width and volatile nature of the Missouri in this area, building a bridge appears to be infeasible. Until recently a private ferry was operating in this area, but that service was recently abandoned. That abandonment severs an important transportation, econom-

ic, and personal link between the citizens of these two States and these neighboring communities.

The cost of this amendment is minimal. In conjunction with the South Dakota and Nebraska highway departments, the Secretary would merely study whether it would be cost-effective to re-establish some type of ferry service. There is no further obligation than to conduct this study. The record should reflect that the ferry landing on the South Dakota side of the river is at a community called Running Water, but the nearest incorporated town is Springfield, SD.

Mr. ZORINSKY. Mr. President, I am pleased to speak in support of the amendment to S. 2405 to require a feasibility study for reestablishing ferry boat services across the Missouri River between Niobrara, NE and Running Water, SD. A private ferry service was in operation in this area until about 18 months ago when the ferry was damaged.

I want to emphasize that this amendment, offered by the two distinguished Senators from South Dakota and Senator EXON and myself from Nebraska, requires a U.S. Department of Transportation cost study only, and in no way obligates the two affected States to follow any particular course of action. A previous U.S. DOT study indicated that it would be impracticable to build a bridge across the Missouri River at this location because of its extreme width. The private ferry service eliminated considerable travel time, and I believe that it is entirely appropriate at this juncture to require a DOT study of a Government-supported ferry in this region.

I urge my colleagues to support this important amendment for the States of Nebraska and South Dakota.

Mr. STAFFORD. I understand that this amendment is agreeable to the managers of the bill on both sides of the aisle. I particularly say it has the approval of Senator BURDICK, the ranking minority member, and I believe it is acceptable to the majority.

Mr. SYMMS. Yes, Mr. President, I am happy to accept the amendment.

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The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2875) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2876

(Purpose: To allow a substitute transit project in Oregon)

Mr. STAFFORD. Mr. President, I now send an amendment to the desk on behalf of Senator HATFIELD and ask that it be stated and immediately considered.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for Mr. HATFIELD, proposes an amendment No. 2876.

Mr. STAFFORD. Mr. President, I ask unanimous consent that further reading of the amendment may be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 86, between lines 19 and 20, insert the following:

SUBSTITUTE TRANSIT PROJECT IN OREGON

SEC. . (a) Notwithstanding any other provision of law, upon the joint request of the Governor of the State of Oregon and the local governments concerned, the Secretary may approve a substitute transit project for construction of a light rail transit system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.

(b) Upon approval of any substitute transit project under subsection (a), the cost of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(c) By September 30, 1989, any substitute transit project approved under subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for any such project.

(d)(1) A substitute transit project approved under subsection (a) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) Unobligated apportionments for the Interstate System in the State of Oregon shall, on the date of approval of a substitute transit project under subsection (a), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by Congress.

(3) The Secretary shall administer this section through the Federal Highway Administration.

(f) For purposes of this section, the term "eligible interstate lanes" means any bus lanes which are to be constructed on Interstate Route 205 in Oregon.

Mr. STAFFORD. Mr. President, this amendment gives the city of Portland, OR flexibility to use funds they currently have available for bus lanes on Interstate 205, for alternative light rail transit if they so choose. It gives them no additional funds.

I believe that this amendment is acceptable to the managers of the bill. I am advised it is by Senator BURDICK and I believe it may be by Senator SYMMS.

Mr. SYMMS. If the Senator will yield, that is correct. I discussed this with Senator HATFIELD and we have looked it over and the amendment is agreeable.

Mr. HATFIELD. Mr. President, the amendment I am offering today is quite simple and straightforward. The Interstate Highway System is nearly complete in Oregon. One of the last sections of interstate highway was finished earlier this year. A light rail project, which replaced a planned freeway that would have divided Portland neighborhoods, was dedicated just this month. This new light rail system was financed in part by using interestate cost estimate [ICE] transfer funds.

One of the only remaining projects in the Interstate System in Oregon is a proposed transit corridor running adjacent to the newly-completed I-205 freeway between Foster Road and Airport Way. This segment of I-205 was designed to accommodate a transit corridor. A right-of-way has been set aside for eventual construction of the needed facility. The ICE includes funding for a busway in this right-of-way. State and local officials as yet are undecided whether the region's transportation needs would be better served by the busway or a light rail system.

My amendment simply allows the State of Oregon and the Portland Metropolitan Area Transit Authority, Tri-Met, the option to use the ICE money which already has been dedicated for the bus lane for light rail along the same corridor. I have written assurance both from the State of Oregon and Tri-Met that if they choose the light rail option, they will not seek Federal highway funds in excess of what already has been set aside in the ICE for the completion of the project.

Mr. President, I would ask unanimous consent to insert letters from those officials in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

DEPARTMENT OF TRANSPORTATION,
TRANSPORTATION BUILDING,
Salem, OR, September 22, 1986.

Hon. MARK O. HATFIELD,
U.S. Senator, Hart Senate Office Building, Washington, DC.

The Oregon Department of Transportation supports statutory language which would permit the withdrawal of the Interstate 205 Busway, presently included in Oregon's Interstate Cost Estimate.

We appreciate congressional concerns about limiting the contribution from FAIX funds for a substitute transit project to an amount equivalent to the Busway as currently defined. We would not object to and would honor such a limitation insofar as it was not construed as restricting the region's freedom to seek other federal funds for a project such as UMTA funding.

ROBERT N. BOTHMAN,
Deputy Director.

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON,
Portland, OR, September 22, 1986.

Senator MARK HATFIELD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATFIELD: Thank you very much for your interest and support in giving this region some needed flexibility in transportation planning by way of your amendment to the Surface Transportation Act.

Tri-Met supports the proposed statutory language which would permit withdrawl of the I-205 bus lanes now included in the Oregon Interstate cost estimate.

Tri-Met understands the reasonable concern that FAIX funds for a future rail project be limited to an amount equal to the bus lanes as currently defined.

Tri-Met would honor such a limit with the understanding that it does not prevent the region from seeking other federal funds for which the project would be eligible. The region expects that it's rail projects are eligible for funding under UMTA's Section 3 and Section 9 programs or from the region's present E-4 allocation.

Sincerely,

JAMES E. COWEN,
General Manager.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2876) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2877

(Purpose: To authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes)

Mr. SYMMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, on behalf of Senators STAFFORD, SYMMS, DOLE, HECHT, HAWKINS, MATTINGLY, HOLLINGS, DANFORTH, BUMPERS, BYRD, ROCKEFELLER, TRIBLE, DANFORTH, LAXALT, HUMPHREY, JOHNSTON, QUAYLE, SPECTER, LONG, NUNN, EAGLETON, CHILES, SASSER, GORE, BENTSEN, BURDICK, and WARNER, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for Mr. STAFFORD and others, proposes an amendment numbered 2877.

Mr. SYMMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 73, after line 16, add the following:

(21) Interstate connector from I-95 near Florence, South Carolina to U.S. 17, north of Myrtle Beach, South Carolina to allow increased access to the Grand Strand.

(22) The South Carolina portion of the Bobby Jones Expressway by-pass from I-20 near North Augusta, South Carolina south across the Savannah River into Georgia, where it connects with I-520.

(23) Up to $14.5 million to carry out a highway project in the vicinity of Sanford, Florida, to demonstrate methods of reducing costs and expediting construction of an interchange between Florida State Route 46A and a highway on the Interstate System by contracting with a private consultant to design and construct such project.

(24) To reconstruct and rehabilitate the Eugene Talmadge Memorial Bridge, a functionally obsolete bridge which is located in Savannah, Georgia and crosses the Savannah River.

(25) In Lawrence, Kansas, a by-pass project which is a model for its cost-sharing arrangement and economic development goals.

(26) In Wichita, Kansas, the replacement of a conventional intersection of two heavily travelled streets at Kellogg and Oliver with a new low-cost European fly-over design for the interchange.

(27) In Olathe, Kansas, the 119th Street Interchange to correct a dangerous interchange.

(28) In Emporia, Kansas, a new Prairie Street overpass to overcome existing flood conditions.

(29) In Sparks, Nevada, for the purpose of demonstrating the efficacy of improving traffic flow conditions on various adjacent interchanges and local streets by constructing a new interchange and approaches on an east-west highway on the Interstate System and a four-lane highway not on such system which could serve as a beltway.

(30) In the State of Arkansas on a segment of a north-south highway on the Federal-aid primary system from the vicinity of the junction of Interstate routes I-40 and I-540 to the boundary between the State of Arkansas and Missouri in the vicinity of Bella Vista, Arkansas.

(31) In the vicinity of Fort Smith, Arkansas, to widen a segment of the Federal-aid urban system and improve signalization.

(32) In the vicinity of Jonesboro, Arkansas for the construction of four grade separations on a four-lane bypass route for demonstrating methods of improving highway safety.

(33) In Kansas City, Missouri, the South Midtown Roadway, a north-south route on the Federal-aid Primary System.

(34) In St. Charles County, Missouri, a bypass highway to connect an east-west Interstate route with the Interstate beltway around St. Louis, Missouri.

(35) A segment of north-south highway on the Federal-Aid Primary System from the vicinity of Carthage, Missouri, to the boundary between the States of Arkansas and Missouri in the vicinity of Noel, Missouri, increasing the number of lanes on such segment from two to four.

(36) A 106-mile highway on the Federal-aid Primary System in Missouri, beginning in the vicinity of Columbia and ending in the vicinity of Lancaster.

(37) Construction of the New River Parkway in West Virginia, a two-lane scenic highway through the New River Gorge National River area connecting with Interstate 64.

(38) To improve the Peachtree Industrial Boulevard from I-285 to S.R. 141 in Atlanta, Georgia.

(39) A ten mile extension from the Blue Ridge Parkway to the Explore Project (a 5,000 acre tourist destination located in the Roanoke Valley in western Virginia).

(40) The restoration of the Martin Luther King bridge connecting the metro east area in Illinois and St. Louis, Missouri.

(41) The improvement of the Boulder Highway in Henderson, Nevada creating a landscaped environment.

(42) Highway bridge at Lock & Dam 4 near Pine Bluff, Arkansas.

(43) The extension of I-49 for. 6.7 miles in the Shreveport and Lafayette, Louisiana vicinities.

(44) The Cline Avenue/I-94 Interchange in East Chicago, Indiana.

(45) The demonstration of the state of the art highway technologies on U.S. 220 in Blair County, Pennsylvania.

(46) The Basin Street Railroad Crossing. To secure funding for a railroad grade crossing project in Allentown, Pennsylvania.

(47) The Southern Expressway project in Pittsburgh, Pennsylvania. To enable traffic to bypass airport and local roads that access the Pittsburgh Airport.

(48) The Ebsenberg Bypass. To divert traffic from Route 219 in Ebsenberg, Pennsylvania, to a 5.1 mile relocated segment.

(49) The Chambersburg, Pennsylvania interchange project, located in Franklin County. To relieve traffic congestion at an existing interchange on a north-south interstate route and to provide access to Chambersburg, Pennsylvania.

(50) The Chadville, Pennsylvania highway project. To relocate and reconstruct a 3.5 mile segment of the Federal-aid primary system from the vicinity of Chadville, Pennsylvania, to Fairchance, Pennsylvania.

(51) The Kittanning-Brookville, Pennsylvania project. To reconstruct approximately 30 miles of a two-lane on the Federal-aid primary system between Kittanning and Brookville, Pennsylvania.

(52) The Johnstown Flood National Memorial project. To upgrade a narrow, 1.3 mile access road to the Johnstown Flood National Memorial, near Johnstown, Pennsylvania.

(53) The Seltice Way project located in Post Falls, Idaho. The reconstruction project of Seltice Way through the City of Post Falls, beginning at Pleasant View Road and ending at Huetter Road.

(54) The US—20/26 Highway Project, located on US—20/26 and US—20 between the

Idaho National Engineering Laboratory (INEL) site and the city of Idaho Falls, Idaho.

(55) A highway project in the vicinity of Southeast Baton Rouge, Louisiana, for the purpose of demonstrating methods by which (a) the widening of the on and off ramps of a full diamond interchange on the Interstate System, and (b) the widening and Improvement of the approaches on both sides of the Interstate System, including access ramps and turnouts therefrom, of a two lane highway not on such system and construction of a school bus loading area immediately adjacent thereto, and (c) the coordination of a partial relocation of a two lane highway not on such system, will enhance the economic development of the area while removing safety hazards, reducing traffic congestion at the Interstate Interchange, at the entrances to a large commercial development and a school, including the entrances to the school bus loading zone.

(56) A highway project in the vicinity of East Lafayette Parish, Louisiana, for the purpose of demonstrating the benefits of a full diamond interchange connecting Louisiana Avenue on the west bank of Bayou Vermillion to the Interstate System to improve traffic flow and highway safety in the City of Lafayette.

(57) A highway project in the vicinity of East Lafayette, Louisiana for the purpose of demonstrating the benefits of providing access to the Interstate System from a state highway not on such system.

(58) The New Sewickly project, located in the townships of New Sewickly and Conway, Pennsylvania. To construct a two-lane highway between the two municipalities.

(59) A grade separation over a rail highway crossing at the intersection of U.S. 41 and Causeway Boulevard in the vicinity of Tampa, Florida, to relieve motor vehicle congestion resulting from the transportation of freight to and from areas for the transshipment of waterborne commerce.

(60) A highway project to demonstrate methods of improving highway safety by making improvements to a road providing direct access from the Fort Campbell Military Reservation to the City of Clarksville, Tennessee.

(61) To perform a study to determine the benefits and cost associated with making Route 22 West from Ebensburg, Pennsylvania to Pittsburgh, Pennsylvania a four land road. Preliminary design and engineering is to be included in this study. This segment of Route 22 is a dangerous road which varies from two to three to four lanes. A four lane road would benefit commerce and safety. This project should be granted priority status for construction funds.

(62) To perform a study to determine the benefits and costs associated with making Route 219 from Somerset, Pennsylvania to the Maryland border a four lane highway. Preliminary design and engineering is to be included in this study. This segment, currently a two lane road, would connect with two four lane segments to provide a major Appalachian thoroughfare and result in jobs and safety benefits. This project should be granted priority status for construction funds.

(63) To perform a study to determine the benefits and costs associated with creating a four lane highway from Route 56 in Johnstown, Pennsylvania to Route 22. Preliminary design and engineering is to be included in this study. This project should be granted priority status for construction funds.

(64) $184,000 is needed to perform emergency repair to the Calhoun Bridge (Morrisville to Trenton, Pennsylvania). An accident caused structural damage which necessitated closing the bridge until repairs can be accomplished. Twenty thousand cars per day that were regular users of the bridge are inconvenienced and many businesses located at this bridge are inconvenienced as a result. This project should be granted priority status for construction funds.

(65) To perform a study to determine the benefits and costs associated with making Route 15 from Hunterstown, Pennsylvania to the Maryland Border four lanes. This segment is currently two lanes and connects two four lane segments. Many deaths occur on this dangerous stretch of highway. This project should be granted priority status for construction funds.

(66) Cline Avenue Interchange Improvement Project in East Chicago, Indiana for the reconstruction of an interchange at the intersection of Cline Avenue and the Borman Expressway.

(67) Hammond Railroad Relocation Project in Hammond, Indiana to complete acquisition of right-of-way and construction of the Hohman Avenue underpass to improve transportation and economic benefits to the community.

(68) Lafayette Railroad Relocation in Lafayette, Indiana to reroute rail traffic to a single corridor with few crossings reducing the threat posed to the safety of the local citizens by over 40 rail-highway intersections.

(69) U.S. 75 North Central Expressway Extension—combines several individual projects which involve construction of additional lanes, more efficient interchanges, and improved bridge structures for added capacity and safer travel on a Federal-aid Primary System highway. Improvements to this major north-south route in north central Texas near Dallas would cover 15.4 miles of highway from Interstate 635 in Dallas County to State Highway 121 in Collin County. Cost of the project is estimated at $134.5 million.

(70) Interstate Highway 30 Interchange ("West Leg")—Ft. Worth, Texas—reconstructs and widens a critical interchange involving major, heavily-traveled East-West and North-South Interstate Highways (IH 30 and IH 35, respectively).

Mr. SYMMS. Mr. President, this amendment is a package of highway and bridge projects to be added to section 139, subsection (a) of the bill as reported by the committee. Section 139 is our priority project provision which authorizes a State to use any of its regularly apportioned highway funds for a project identified in the bill as a priority project. While no additional Federal funds are provided for these projects, States will have the maximum possible funding flexibility if they choose to build these projects using their regularly apportioned Federal-aid highway funds. Members who have requested that projects in their State be included as priority projects are cosponsors of this amendment.

Over the last several years, the numbers of "demonstration projects" has mushroomed to the point where H.R. 3129, the House highway bill, contains about 100 such projects at an estimated total construction cost of $4.2 billion. All of the House projects are funded entirely with Federal dollars, and that will mean a significant reduction in the regular Federal-aid highway program where the needs already far outweigh available funds.

Secretary Dole in a letter to the House Public Works Committee says, "The administration strongly opposes special interest projects that distort local and State priorities, particularly those that require little or no matching commitment of funds. In a time of budget austerity, it is particularly important that local and State officials have the opportunity to use Federal assistance for their highest priority projects."

Also opposed is the American Association of State Highway and Transportation Officials. AASHTO recommends, "Special demonstration projects outside of normal authorizations should be eliminated. The ongoing drain of these projects on the Highway Trust Fund is significant and should not continue."

Recently the Wall Street Journal ran an article on the House highway bill, saying: "Many critics argue that the projects represent blatant pork-barrel spending—which has been relatively unusual in the Federal-aid highway program, although common in the water-projects program. Others say the special projects violate the tradition of letting the States set their own highway priorities. The issue is so contentious that it could imperil passage of final highway legislation this year."

Highway demonstration projects were the subject of a Washington Post lead editorial a few weeks ago entitled "Paved With Gold." According to the editorial, "The crest of the House Public Works Committee should be a cement truck emblazoned on a field of votes. The latest example is the highway bill the House passed as it was leaving town. The bill * * * bespeaks an astonishing interest in research. There are about 100 demonstration projects—roughly one for every fourth congressional district. The estimate is that they would eventually cost $4.2 billion."

I believe that S. 2405 provides a better approach. Throughout its history, the Federal-aid highway program has been successful because of a strong Federal-State partnership. Section 139 allows for the designation of high priority projects at the Federal level, but States will make the actual request to the Secretary of Transportation. In each case, funding will come from a State's regular Federal-aid apportionment. A State will be able to choose funds from any Federal-aid category, and the match requirement will then be based on the category of Federal-aid apportionment used.

The priority projects listed in S. 2405, section 139 will not lead to additional Federal spending. Funding must come from a State's existing, regular apportionment. All such projects must be on the Federal-aid system and must meet all the requirements of title 23. I urge my colleagues to support the more reasonable and fiscally responsible approach to projects contained in S. 2405.

We have worked with various Senators to accept the so-called demonstration projects that they had in their States, and they are part of this amendment. But the State will make the determination as to which highway funds it will apportion for it and it will not reduce the amount of money that is available to apportion out through the formula system that we have developed over the years in the Federal-State Highway Program. I think it is an important amendment and I urge its support by my colleagues.

Mr. WARNER. Mr. President, I rise as a cosponsor of the chairman's amendment authorizing the construction of a scenic parkway along the Roanoke River in Virginia as a demonstration project in S. 2405.

The 25-mile parkway road will intersect Interstate 81, travel through downtown Roanoke, cross the Blue Ridge Parkway, connect the Explore project, and extend beyond to the Booker T. Washington National Monument.

The Explore project will be a 5,000 acre tourist destination located in the Roanoke Valley that will consist of a zoological park and cultural activities depicting the westward movement beginning with the Lewis and Clark expedition commissioned by President Thomas Jefferson.

This parkway will be the link to our Nation's second most popular national park site, the Blue Ridge Parkway, the unique Virginia Museum of Transportation, the ambitious Explore project, and one of our most important monuments to Black heritage.

Further this parkway will protect the Blue Ridge Parkway from encroaching development from the Roanoke metropolitan area, as well as protect the flood plain of the Roanoke River.

I am convinced this parkway will act as a model and stimulus for the construction of similar parkways. I urge my colleagues to adopt this committee amendment.

ROANOKE PARKWAY DEMONSTRATION PROJECT

Mr. TRIBLE. Mr. President, this amendment authorizes the Roanoke Parkway as a demonstration project in the Senate highway bill.

The construction of this parkway is the key element of an ambitious conservation, preservation, and beautification project which is supported by all local governments, and the Commonwealth of Virginia. The complete project envisions a major zoo, a transportation museum, and other attractions.

I want to emphasize that this undertaking is a true demonstration project. It would develop design criteria for highways, park roads, and scenic parkways in urban areas throughout America. This development could act as a model for similar projects intended to preserve, protect, and increase public access to priceless natural assets.

In addition, construction of the parkway will add to the luster of one of our Nation's premier tourist attractions the Blue Ridge Parkway. The park planned on either side of the parkway will protect the Blue Ridge Parkway from encroachment by development. Moreover, the project will include a visitors center providing information about the entire region.

Twenty million dollars is a small price to pay for the benefits. It will protect the Roanoke River flood plain, an area that was so heavily damaged by extensive flooding last year. It will lead to acquisition of 5,000 acres of park land, enhance the quality of life and economic growth in western Virginia, and bring about 700 new jobs. This Federal funding will leverage a minimum of $20 million in State money and stimulate over $30 million in private investments.

A recent issue of Southern Living magazine features an article on western Virginia, aptly describing the valley of the Blue Ridge as America's "first frontier." The American move westward was engineered by such western Virginians as Lewis and Clark, Thomas Jefferson, Thomas Walker, Sam Houston, Cyrus McCormick, and Abraham Lincoln's father. This parkway will assist us in preserving this precious legacy.

The project will make a major contribution to history, education, recreation, conservation, and research and I urge its authorization.

Mr. MATTINGLY. Mr. President, this amendment will rectify a serious problem that currently exists. The Eugene Talmadge Memorial Bridge spans the Savannah River in Savannah, GA. Back on July 23, 1983, a vessel participating as part of a rapid deployment force exercise struck and severely damaged the bridge, which is a two-lane structure constructed in 1954. The bridge was rendered useless for 90 days.

Now, Mr. President, this accident provided evidence of the severe hardships caused by the present bridge. The role of Savannah as an international transportation center is an established and growing one. But the bridge provides a serious and dangerous impediment.

The amendment being offered to the highway reauthorization bill today will correct this unfortunate situation. It will designate the Talmadge Bridge as a priority project under section 139 of the bill. There is no question that the Talmadge Bridge qualifies as a "priority project." This is due to several reasons, some of which I would like to address.

The trend today is toward larger ships calling on fewer ports. As the dimensions of these vessels increase, the safety window for traversing beneath a bridge such as the Talmadge Bridge decreases. Even if a vessel will theoretically clear the bridge at mean high water, winds and varying higher tides can reduce the clearance to a collision condition.

The Port of Savannah is the leading port for foreign trade among the 10 mainland South Atlantic ports. Savannah and Brunswick, the two deepwater ports in Georgia, lead the South Atlantic area in cargo handled in foreign commerce. Georgia's transportation facilities continue to be one of the top reasons cited by foreign investors for locating in Georgia.

The continuing presence of this style of bridge, with its serious height constraint, will choke foreign trade at this port and will be detrimental to the entire South Atlantic, the east coast, and the 25-State trade hinterland. With trade implications for the United States foremost in our minds now, I believe we must work to make absolutely certain our ports are as usable and conducive to trade as possible.

Also, the present bridge has a serious negative impact on the national military capability of our country. The U.S. Army 24th Infantry Division is based at Hunter Army Airfield in Savannah and nearby Fort Stewart in Hinesville, GA. The Marine Corps recruit training depot is also very close, sitting just across the river at Parris Island, SC. Timely movement of the troops of both the Marine Corps or the rapid deployment forces would be severely constrained by the inadequate height of the Talmadge Bridge, as documented by historical incidents.

These are just a few of the reasons the Talmadge Bridge qualifies as a priority project under this bill. As the distinguished chairman of the Environment and Public Works Committee, Senator STAFFORD, and the distinguished chairman of the Transportation Subcommittee, Senator SYMMS, are well aware, I have been working on solving this problem for a long time. It has been a priority project of mine all along, and am pleased it is being included as a priority project in the bill we are considering today.

Mr. President, I would like to add my appreciation for the hard work of the distinguished chairman and my colleagues on the committee in bringing this bill to the Senate floor today. As we all know, the Federal-Aid High-

way Program must be reauthorized by October 1, 1986. It is essential to our Nation's continued strong transportation system that we do so, and I commend them on their tremendous job in meeting this challenge.

Mr. HOLLINGS. Mr. President, I am pleased to join with the leadership of the committee today in cosponsoring an amendment to S. 2405, the Federal-Aid Highway Act of 1986, authorizing Federal funding for certain critical highway projects that otherwise might not receive the moneys they need.

I am particularly pleased that this amendment includes two projects of extreme importance to my constituents in South Carolina. The first is the authorization of Federal funding for a connector between I-95 near Florence, SC, and U.S. 17 near Myrtle Beach, which is located on the Grand Strand. This 69-mile highway segment would enable thousands of tourists to avoid the tremendous traffic jams they now face when making their way to the beaches of the Grand Strand every summer weekend.

The second South Carolina project included in this amendment is authorization for the completion of the Bobby Jones Expressway, a bypass along I-20 circling the Greater Augusta, GA-North Augusta, SC, area. This project is also critical to our State, as areas around U.S. 25, South Carolina Highway One, I-20, North Augusta, Belvedere and Clearwater are growing by leaps and bounds. Properties are being developed. Access is needed as soon as possible to ensure that the economic growth in these areas is not constrained by traffic congestion.

Without this amendment, which will allow the use of 90 percent Federal funding, these projects would take years to complete and would result in the loss of jobs and revenues from tourism and development.

I want to thank the committee leadership, Senators STAFFORD and BENTSEN, for their assistance in accepting these projects as a part of this amendment and this important bill. We have demonstrated the need and they know its important to South Carolina.

Mr. JOHNSTON. Mr. President, as the date for expiration of the Federal-Aid Highway Program draws near, I am relieved that the Senate is finally considering legislation to reauthorize the program for an additional 4 years. Reauthorization of the program in a timely manner will allow the States to continue to receive the funding that is so desperately needed to maintain our country's infrastructure. In this regard, I am pleased that the committee has recognized that additional highway needs have arisen since adoption of the Surface Transportation Assistance Act of 1982 [STAA] and is willing to give the States flexibility to meet these needs with the Federal funds that are currently available to the State for road construction and repair purposes. I regret that given the current fiscal deficit, the committee does not feel it can earmark extra funding for the needs; however, I hope that we will be able to correct this problem in the future.

Mr. President, since adoption of the STAA Louisiana has developed a number of highway-related problems that deserve immediate attention. Four of these projects are included in the committee amendment. I am thankful to the committee for agreeing to include them in the pending amendment. Specifically, the amendment will give the State authority to use all of its highway funds to extend I-49 in the Shreveport and Lafayette vicinities, four lane Siegen Lane in Baton Rouge and construct two interchanges to I-10 in Lafayette. I would like to briefly describe the need for these projects to my colleagues.

In the early 1970's, Congress authorized construction of I-49 in Louisiana. I-49 is 206 miles long and it is the only major north-south highway in the State. It begins at an intersection with I-10 in Lafayette and extends in a northerly direction to its termination with I-20 in Shreveport. Shreveport is my home town and it is located in the northwest corner of the State.

The problem, Mr. President, is that when we authorized I-49, we connected I-10 in southcentral Louisiana with I-20 in north Louisiana. However, both of these termination points empty the traffic from the interstate into the middle of a major city. By extending I-49 approximately 3 miles in each direction, we can alleviate this problem and vastly improve our National Defense Highway System.

As I mentioned, Mr. President, without these extensions the traffic from I-49 will empty into the middle of busy cities. For example, if we do not extend the northern terminal of I-49 from I-20 to I-220, the I-49 traffic will have to use city streets to reach the next controlled access route. Most likely, motorists will use Allen and Western, two small roads near the present terminal of I-49 in Shreveport. I am very familiar with both of these roads.

Current plans call for making Allen a one-way road going south and Western a one-way road going north. Presently, the traffic flow is about 3,400 vehicles per day on Allen and about 6,300 vehicles per day on Western. Upon completion of I-49 in the Shreveport area, traffic is expected to increase to approximately 13,083 vehicles per day on Allen and to 17,667 vehicles per day on Western. That means that when I-49 is completed, three times as many vehicles will be dumped into downtown Shreveport. Mr. President, Allen and Western are your typical city streets. They are very small, modest streets and the projected increase in traffic on them will create an impossible traffic situation.

Alternatively, to reach I-220 a motorist could take I-20 to Market Street. However, if he went down Market Street, he would have to travel through 12 traffic lights in the heart of downtown Shreveport. Consequently, the present design of I-49 defeats the reason for having an interstate road because you will be dumping traffic into the middle of a city.

Mr. President, the situation in Lafayette is equally as difficult as the situation in Shreveport. Presently, I-49 terminates at an intersection with I-10 in Lafayette. A 3-mile stretch of road, known as the Evangeline Thruway, then connects I-49 with U.S. 90, the major east-west highway in southern Louisiana.

The Evangeline Thruway sounds like a substantial road and it was a good road when it was built. However, the thruway is currently handling 1.49 times the traffic it was designed to handle and it is terribly congested. Mr. President, the Evangeline Thruway is presently servicing 45,000 vehicles per day. Once I-49 is completed, it is expected to service from 60,000 to 65,000 vehicles per day.

Moreover, Mr. President, the Evangeline Thruway intersects with 27 different roads. Nine of these intersections are major intersections, with traffic at these intersections being controlled by stop lights. At the remaining 18 intersections, traffic entering the Evangeline Thruway is controlled by stop signs.

Mr. President, I do not know of any noncontrolled access road in the country that can service traffic of this magnitude. It is virtually impossible to cross a road that is servicing 60,000 to 65,000 vehicles per day. The situation is a mess now and if we do not do something about it we are going to have a gridlock.

Mr. President, Lafayette has grown very quickly from a small sleepy country town to the capital of the oil industry in Louisiana. In fact, last year a New York Times article stated that Lafayette is one of the Nation's fastest growing metropolitan areas, having grown 19 percent since 1980. Because of the fast pace at which this town has grown, the roads were not designed for easy access or for heavy concentrations of traffic. Consequently, today, Lafayette is a mess in terms of traffic control and this situation will deteriorate further unless we do something about it.

Mr. President, the House has also recognized the seriousness of this situation and has authorized $40 million for preliminary engineering and design work. I hope the conferees will be able to favorably resolve this issue.

Mr. President, the committee amendment also authorizes Federal funding for the construction of two interchanges to I-10 in Lafayette. Both of these ramps are located on the East Side of the city and will serve as a near-term solution to the traffic situation on Evangeline Thruway. One of the interchanges will connect Louisiana Avenue on the west bank of Bayou Vermilion to I-10. The second interchange will provide access to the Interstate System from Louisiana Highway 354.

Finally, Mr. Chairman, the committee amendment authorizes the four laning of Siegen Lane near I-10 in Baton Rouge. This project is an excellent example of State, private, and Federal interests working together to meet our ever-growing highway needs. Siegen Lane is currently a two-lane road located in an area that is rapidly growing. Mall Properties, Inc., is currently constructing a 1.2-million-square-foot regional mall on a 400-acre site adjacent to Siegen Lane. Rush hour traffic jams are already an everyday occurrence on this section of Siegen Lane and will only grow once the mall is completed. This mall is projected to provide more than 2,000 construction and 2,000 permanent jobs. State and private interests have already committed one-half to three-fourths of the funds that are necessary to four lane Siegen Lane. Consequently, I appreciate the committee's willingness to address this need in S. 2405.

Mr. BYRD. Mr. President, I support this amendment, which includes provisions to authorize construction of the New River Parkway. This parkway will be a new two-lane scenic highway that would connect with I-64 and run through the New River National River Area.

The New River Gorge has been called the Grand Canyon of the East. It is the premier white water rafting spot east of the Colorado Rockies. The natural beauty of this area is not found in many other places in this country. Those traveling the parkway will be able to see Sandstone Falls, which is the most significant geologic fault on the New River. Some claim that the New River is the oldest river in the world.

The construction of the New River Parkway will not only enable people to enjoy this natural beauty, but it will also open up the area to greater tourism, and provide economic benefits to a State that has suffered from high, long-term unemployment.

I urge the adoption of this amendment.

PRIORITY PROJECTS

Mr. SPECTER. Mr. President, at this time I wish to speak in support of projects of great importance to my State of Pennsylvania, which were listed as priority projects pursuant to section 139 of S. 2405 at my request. These projects will benefit from the improved flexibility given the States in financing them through any Federal-aid funding category.

EBENSBURG BYPASS

Construction of the Ebensburg Bypass in Cambria County will require $28 million between 1987 and 1991. Currently traffic on Route 219 is abruptly forced off the multilane, limited-access highway and onto local streets, where it is consequently immersed in local traffic where Route 422 crosses it at Ebensburg. Construction, for which the Pennsylvania Department of Transportation has already begun engineering, would divert traffic to a relocated 5.1-mile segment.

ROUTE 220

Construction of Route 220 in Blair County will require $90 million over the life of the Federal Aid Highway Act of 1986. The project will demonstrate the cutting edge of techniques to guide drivers, such as pavement markings and vegetation, which greatly enhance highway safety. An anticipated 10,000 cars daily will benefit from improvements on this new segment, which will close the only gap—11.9 miles—in the multilane limited-access road connecting the Pennsylvania Turnpike and the Tyrone Bypass.

BASIN STREET RAIL CROSSING

Traffic tieups where Basin Street in Allentown intersects a Conrail grade crossing have plagued the Lehigh Valley for more than a decade. This crossing has restricted the traffic flow in East Allentown significantly and has hampered economic development in the area for many years. The project would require $6 million over 3 years, and is no less deserving of consideration today than when I originally requested its inclusion 2 years ago.

SOUTHERN EXPRESSWAY

A project deserving of priority designation is the Southern Expressway, which will serve the most important economic development project in western Pennsylvania, the Pittsburgh Airport Midfield Terminal. The Southern Expressway, which will require $5.5 million in 1987 for preliminary engineering and design, is an essential element of the airport improvements, as it will enable traffic to bypass airport and local roads that hamper access to the Pittsburgh Airport.

NEW SEWICKLY TO CONWAY

A project very worthy of mention is construction of a two-lane highway between the township of New Sewickly and the borough of Conway. This project will demonstrate methods of accommodating increasing truck traffic and improving highway safety, and will require $13.4 million in 1990.

JOHNSTOWN ACCESS ROAD

A sum of $720,000 authorized to be spent in 1987 will enable the State to upgrade a 1.3-mile access road to the Johnstown Flood National Memorial in the vicinity of Croyle Township, PA.

KITTANING TO BROOKVILLE

I have requested that $2 million be spent over the life of this bill to reconstruct approximately 30 miles of a two-lane road on the Federal-aid primary system between Kittaning and Brookville, PA. The cost-effective method proposed will improve a rural highway so that it will be better able to accommodate wider and longer trucks.

CHAMBERSBURG INTERCHANGE

Also, $5 million in 1988 will pay for construction of an interchange on a north-south interstate route providing access to Chambersburg, PA. Completion of this project will relieve traffic congestion on an existing interchange on Interstate 81. This project is crucial to maintaining and attracting business and jobs to the area around the interchange.

U.S. 119–CHADVILLE TO FAIRCHANCE

Also, $7.5 million spent between 1989 and 1991 would provide for the relocation and reconstruction of a 3.5-mile segment of U.S. 119 from the vicinity of Uniontown Bypass at Chadville, PA, to Pennsylvania Legislative Route 26082 in the vicinity of Fairchance. Construction, it is predicted, will enhance development of a major industrial site in the region.

CALHOUN STREET BRIDGE—MORRISVILLE TO TRENTON

A sum of $180,000 is needed for emergency reconstruction of a bridge between Morrisville, PA, and Trenton, NJ, that was made impassable after being struck by a vehicle; 20,000 vehicles daily that would ordinarily use the bridge cannot do so, a tremendous negative impact on local businesses.

ROUTE 219—SOMERSET, PA, TO THE MARYLAND BORDER

I am requesting a study to investigate the costs and benefits and to perform preliminary design and engineering, as well as grant priority status for construction of a project to connect two four-lane segments and make a complete throughway from Johnstown to the Maryland border by making the two-lane segment of Route 219 between Somerset, PA, and Maryland a four-lane highway. The road would greatly aid economic growth in the area.

ROUTE 22—EBENSBURG TO PITTSBURGH

I am requesting a study that would investigate the cost and benefits of making Route 22 between Ebensburg and Pittsburgh completely four lane. Preliminary design and engineering and priority status for construction funds would be authorized. This road is a very dangerous thoroughfare that goes from two to three to sometimes four lanes. Yet, it is heavily relied upon by the southwestern Pennsylva-

nia region for commerce and transportation. The people along this route have long suffered the hazards and inconvenience of this road, which also hinders economic growth.

ROUTE 56 TO ROUTE 22

I am requesting a study that would investigate making Route 56 near Johnstown a four-lane connector to Route 22. This is currently a dangerous two-lane route that hampers commerce in an economically distressed region. Preliminary design and engineering and priority status for construction funds would be authorized.

ROUTE 15—HUNTERSTOWN, PA, TO THE MARYLAND BORDER

I am requesting a study that would address making a two-lane stretch of Route 15 between Hunterstown and the Maryland border a four-lane road. This would connect two four-lane segments. The current two-lane highway has a very high fatality rate and should be upgraded to improve safety and aid commerce and jobs in the area—preliminary design and engineering and priority status for construction funds would be authorized.

As you can see, the priorities in my State are many and varied. Yet, they bear common themes of sparking industrial development, improving safety and highway technologies, and completing missing links in the Commonwealth's transportation network. As Pennsylvania serves as the keystone to commercial transportation in the Northeast, giving priority treatment to the project benefits the Nation as well. I would like to thank the distinguished chairman of the Environment and Public Works Committee, and the distinguished chairman of its Subcommittee on Transportation, for their cooperation in my efforts to secure this priority designation for these projects. Naturally, I will appreciate their best efforts at preserving this special treatment for the Pennsylvania projects I have described as S. 2405 moves through the conference.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

Mr. SYMMS. I might just say, Mr. President, before the vote is taken, that the distinguished ranking member of the committee, Senator BURDICK, supports this amendment and is also a cosponsor of it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2877) was agreed to.

Mr. SYMMS. I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 2000

AMENDMENT NO. 2878

Mr. STAFFORD. Mr. President, on behalf of Senator DURENBERGER, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. STAFFORD], for Mr. DURENBERGER, proposes an amendment numbered 2878.

Mr. STAFFORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER (Mr. BROYHILL). Without objection, it is so ordered.

The amendment is as follows:

At the end thereof add the following new part:

PART —

SEC. 1. That this Act may be cited as the "Uniform Relocation Act Amendments of 1986."

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. (a) Section 101(1) (42 U.S.C. 4601(1)) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter the "Uniform Act") is amended by striking out "(except the National Capital Housing Authority)" and "(except the District of Columbia Redevelopment Land Agency)".

(b) Section 101(3) of the Uniform Act (42 U.S.C. 4601(3)) is amended to read as follows:

"(3) The term 'State agency' means any entity which has eminent domain authority under State law.".

(c) Section 101(4) of the Uniform Act (42 U.S.C. 4601(4)) is amended by inserting, "or mortgage interest subsidy to a person" after "insurance".

(d) Section 101(6) of the Uniform Act (42 U.S.C. 4601(6)) is amended to read as follows:

"(6) The term 'displaced person' means—

"(A) except as provided under paragraph (E) (with respect to a utility on real property under the control or ownership of a State or local agency), any person who moves from real property, moves personal property, or moves a business or farm operation, as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance;

"(B) solely for the purpose of subsections (a) and (b) of section 202 and of section 205, any person who moves from real property or moves personal property from real property—

"(i) as a direct result of the written notice of intent to acquire or the acquisition of other real property, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; and

"(ii) as a direct result of rehabilitation or demolition for a program or project undertaken by a Federal agency or with Federal financial assistance, where the person is a residential tenant, farm operation, or a small business and where the head of the displacing agency determines that such displacement is permanent;

"(C) solely for the purpose of subsections (a) and (b) of section 202 and of any other provisions of this Act which the head of the displacing agency may prescribe, any other person who is a residential tenant, farm operation, or small business and who the head of the displacing agency determines will be permanently displaced as a direct result of a program or project undertaken by a Federal agency or with Federal financial assistance;

"(D) any person who is eligible for relocation assistance under paragraphs (A), (B), or (C) of this subsection, unless such person has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act; or

"(E) solely for the purpose of subsections (d) and (e) of section 202, any utility company which moves its facilities from real property under the ownership or control of a State or local agency.".

(e) Section 101 of the Uniform Act (42 U.S.C. 4601) is amended by adding at the end thereof the following new subsections:

"(10) The term 'suitable replacement dwelling' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally similar; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"(11) The term 'displacing agency' means any Federal agency, State or State agency utilizing Federal financial assistance or, for the purposes of paragraphs (B) and (C) of section 101(6), any person furnished Federal financial assistance which causes a person to be a displaced person.

"(12) The term 'lead agency' means the Federal department, agency, or other entity designated by the President to coordinate implementation of the Uniform Act under section 213 of this Act.

"(13) The term 'appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.".

TITLE II—UNIFORM RELOCATION ASSISTANCE

SEC. 201. Section 201 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621), and its catchline are amended to read as follows:

"DECLARATION OF FINDINGS AND POLICY

"SEC. 201. (a) The Congress finds and declares that—

"(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

"(2) displacement occurs in a variety of social, economic, geographic, and legal circumstances;

"(3) relocation assistance policies must provide for sufficient flexibility to assure fair, uniform, and equitable treatment of all affected persons;

"(4) the displacement of businesses often results in their closure; and

"(5) minimizing the adverse impact of displacement of businesses is essential to maintaining the economic and social well-being of communities.

"(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance, in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

"(c) It is the intent of Congress that—

"(1) the primary purpose of this title is to minimize the hardship of displacement on persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance;

"(2) Federal agencies shall carry out this law in a manner which minimizes waste, fraud, and mismanagement;

"(3) the administration of this Act shall, to the maximum extent feasible, minimize unnecessary administrative and program costs borne by States and State agencies through the promulgation of economical regulatory requirements and the delegation of substantial administrative discretion to State and local governments;

"(4) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act; and

"(5) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals.".

MOVING AND RELATED EXPENSES

SEC. 202. (a) Section 202(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622(a)) is amended—

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

"(a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—";

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced nonprofit organization or small business at its new site, but not to exceed $10,000.".

(b) Section 202(b) of the Uniform Act (42 U.S.C. 4622(b)) is amended by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.".

(c) Section 202(c) of such Act (42 U.S.C. 4622(c)) is amended to read as follows:

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business is renting displacement property to others shall not qualify for this payment.".

(d) Section 202 of the Uniform Act (42 U.S.C. 4622) is amended by adding at the end thereof the following new subsections:

"(d)(1) For the purposes of this section and section 101(6)—

"(A) The term 'cost of relocation' shall include the entire amount paid by the utility company properly attributable to a relocation after deducting any betterment in the relocated utility and any salvage from the old utility.

"(B) The term 'utility' means any electric, gas, water, steam power or materials transmission or distribution system, any transportation system, or any communications system (including cable television), and any fixtures, equipment, or other property appropriate to the operation, maintenance, or repair of the foregoing. A utility may be publicly, privately, or cooperatively owned.

"(2) Except when provided otherwise by Federal law, whenever a federally assisted program or project undertaken by a displacing agency other than a Federal agency will result in the displacement of a utility from property under the ownership or control of a State or local agency, the head of the displacing agency shall provide a payment to the utility company pursuant to State or local law or a written contract, if any, between the utility company and the State or local agency, but in no event shall such payment exceed the actual reasonable cost of relocation of such utility.

"(3) Nothing in this subsection shall supercede a State or local law or a written contract between a utility company and a State or local government, or require a payment to be made where none is required under State or local law or a written contract.

"(4) Nothing in this subsection shall deprive a utility company of its rights under State or local law.

"(5) Nothing in this subsection shall require a Federal agency to increase its payment if the increased payment is attributable to a contract or contract amendment that is made in anticipation of the Federal payment.

"(6) Nothing in this subsection shall require a Federal payment in excess of the payment that a State or local agency would pay if no Federal funds were involved.

"(7) Nothing in this subsection confers jurisdiction on a court of the United States (as defined in section 451 of title 28, United States Code) to review any action of a displacing agency in carrying out this subsection or to review the right of a utility company to be compensated under State or local law.

"(e) Whenever a program or project directly undertaken by a Federal agency will result in the displacement of a utility as the result of Federal acquisition of real property under the ownership or control of a State or local agency, the head of the Federal agency shall either relocate the utility with the utility company's consent, or provide a payment to the utility equal to the actual reasonable cost of relocation of such utility. Such relocation or such payment shall not be required when it is provided otherwise by a Federal law, or a Federal regulation promulgated prior to March 17, 1983, or a contract or agreement with a Federal agency.".

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. Section 203(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)) is amended—

(1) by striking out "Federal" in paragraph (1) and inserting in lieu thereof "displacing";

(2) by striking "$15,000" and inserting in lieu thereof, "$22,500";

(3) by striking out "acquired by" and all that follows through "market" in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a suitable replacement dwelling";

(4) by striking out paragraph (1)(B) and inserting in lieu thereof the following:

"(B) The amount, if any, which will compensate such person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such suitable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling."; and

(5) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a suitable replacement dwelling within one year of such date.".

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended to read as follows:

"REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

"SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling unit not eligible to receive a payment under section 203 which was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of such dwelling, or, where displacement is not caused by acquisition, any other event which the head of the lead agency may prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed three years, a suitable replacement dwelling. For a person whose income exceeds 50 per centum of the median income of the area, as determined

by the Secretary of Housing and Urban Development, the amount referred to shall equal the lesser of (i) $4,500 or (ii) 36 times the amount obtained by subtracting the monthly housing costs for the displacement dwelling from the monthly housing costs for a suitable replacement dwelling. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments.

"(b) Any displaced person eligible for payments under subsection (a) of this section may elect to receive in lieu thereof either Federal low income housing assistance or similar State or local governmental assistance if such assistance is available at the time of displacement and such person is otherwise eligible for such assistance. The failure of any such person to make such an election shall be considered when evaluating the eligibility of such person for any Federal or federally assisted low income housing assistance program during the three years following the date on which such person received the payment authorized under subsection (a) of this section.

"(c) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a downpayment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. A displaced homeowner who has occupied the displacement dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling may, at the discretion of the head of the displacing agency, be eligible for the maximum payment allowed under this subsection: *Provided*, That such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person occupied the displacement dwelling for one hundred and eighty days immediately prior to the initiation of such negotiations.".

RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

SEC. 205. Section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4625) and its catchline are amended to read as follows:

"RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

"SEC. 205. (a) The head of any displacing agency shall assure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

"(b) The Secretary of Housing and Urban Development shall assign a high priority for assistance under the programs referred to in sections 204(b) and 206(b) of this Act to persons eligible under such sections. To the extent practicable, the Secretary shall require that federally assisted State and local governmental low income housing assistance programs assign priority for assistance to such persons. To the extent practicable, the Administrator of the Small Business Administration and the heads of other Federal agencies administering programs which may be of assistance to displaced persons shall make available technical assistance under subsection (c)(5) of this section and expedite the applications for such assistance by such persons.

"(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

"(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

"(2) provide current and continuing information about sales prices and rental charges on suitable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

"(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a suitable replacement dwelling;

"(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

"(5) supply information concerning other Federal programs which may be of assistance to displaced persons, and technical assistance to such persons in applying for assistance under such programs;

"(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

"(7) assure that a one hundred and eighty day homeowner-occupant is given a reasonable opportunity to remain in such occupancy status.

"(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

"(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may by agreement designate one such agency as the cognizant Federal agency whose procedures shall be utilized to implement the activities. If such agreement cannot be reached, then the head of the lead agency shall designate one such agency as the cognizant agency. Such related activities constitute a single program or project for purposes of this Act.".

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. Section 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626) is amended to read as follows:

"HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

"SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because suitable replacement dwellings are not available, and the need of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the lead agency shall require that this section may be used to exceed the payment ceilings established in sections 203 and 204 only on a case-by-case basis, for good cause.

"(b) Whenever housing replacement as a last resort will result in the provision of housing for persons who are otherwise eligible for low income housing assistance, the requirement that the displacing agency provide suitable replacement housing may be met through such assistance as the provision of a certificate of family participation under the existing section 8 housing program pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437f).".

CERTIFICATION

SEC. 207. (a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 210. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any grant to or contract or agreement with a displacing agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such agency that—

"(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 of this title shall be provided to such displaced person;

"(3) within a reasonable period of time prior to a displacement, suitable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3) of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title and title I of this Act, with the exception of sections 208 and 211 of this title, by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title and title I: *Provided*, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title and title I, particularly with respect to the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to such persons in such categories.

"(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of such certification, and a State agency shall make available any information required for such purpose. The head of a Federal agency, after consultation with the head of the lead agency, may withdraw his acceptance of the certification for good cause: *Provided*, That the State government is given due notice prior to taking any such action and is given a reasonable opportunity to demonstrate why such action should not be taken.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general pur-

pose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under the Act.

"(d) The head of a Federal agency may withhold his approval of any grant, contract, or cooperative agreement with any displacing agency found to have intentionally circumvented a State law adopted under subsection (b) of this section.".

FEDERAL SHARE OF COSTS

SEC. 208. (a) Section 211(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4631(a)) is amended to read as follows:

"(a) The cost to a displacing agency of providing payments and assistance pursuant to titles II and III shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program costs.".

(b) Section 210(b) of the Uniform Act (42 U.S.C. 4631(b)) is amended by striking out and all that follows "required by" and inserting in lieu thereof "State law which is determined by the head of the lead agency to have substantially the same purpose and effect of such payment under this section.".

REGULATION

SEC. 209. Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) and its catchline are amended to read as follows:

"REGULATION

"SEC. 213. (a) The President shall designate a lead agency.

"(b) The head of the lead agency shall—

"(1) develop, publish, and promulgate, with the active participation of other Federal agencies responsible for funding relocation and acquisition actions, and in full coordination with State and local governments, such rules as may be necessary to carry out this Act;

"(2) assure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency, or a State or State agency with Federal financial assistance;

"(3) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

"(4) perform other duties as may be provided by law as relate to the purposes of this Act.

"(c) The rules promulgated pursuant to subsection (b) shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I.".

TRANSFER OF SURPLUS PROPERTY

SEC. 210. Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4638) is amended by inserting "net" after "all".

REPEALS

SEC. 211. Sections 214, 215, 217, and 219 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4634, 4635, 4637, and 4639) are hereby repealed.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. (a) Section 301(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651(2)) is amended by inserting the following before the period at the end thereof: ", except that the head of the lead agency may prescribe a procedure which forgoes the appraisal".

(b) Section 301(9) of the Uniform Act (42 U.S.C. 4651 (9)) is amended to read as follows:

"(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the acquiring agency shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the acquiring agency has determined has little or no value or utility to the owner.".

(c) Section 301 of the Uniform Act (42 U.S.C. 4651) is amended by adding at the end thereof the following subsection:

"(10) A person whose real property is being acquired in connection with a project under this title may, after the person has been fully informed of his right to receive just compensation of such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor to an acquiring agency, as said person shall determine.".

CERTIFICATION

SEC. 302. Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 305. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on or after the effective date of this title, unless he receives satisfactory assurances that—

"(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies under section 301 of this title and the provisions of section 302 of this title; and

"(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title: *Provided*, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title.

"(2) The head of the lead agency in coordination with other Federal agencies shall from time to time monitor State agency implementation of such certification and the State agency shall make available any information required for such purpose. The head of the lead agency shall by regulation develop criteria for withdrawal of acceptance of a certification.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under this Act.".

TITLE IV—EFFECTIVE DATE

SEC. 401. (a) Section 209 of the Uniform Act takes effect on the date of its enactment.

(b) The remainder of this Act takes effect either twenty-four months from the date of its enactment or when a State agency makes such provisions applicable under State laws, whichever is earlier.

Mr. STAFFORD. Mr. President, this amendment is really from the Committee on Governmental Affairs and has three times been reported, and the Senate has three times unanimously passed essentially identical language to that which is being proposed to the Senate at this moment.

The Senate last passed this amendment as separate legislation on August 1, 1985. The amendment would comprehensively reform the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. If enacted into law, this amendment will make the administration of this 1970 act more equitable and efficient at all levels of government.

The 1970 law creates certain rights and entitlements for property owners and tenants. The act establishes basic acquisition procedures as well as minimum levels of compensation, such as for moving expenses, reimbursement for the additional cost of relocating to comparable replacement housing, and advisory services during the relocation process.

The Uniform Relocation Act Amendments were developed jointly by the Subcommittee on Intergovernmental Relations and OMB's Intergovernmental Affairs staff in full and open consultation with key Federal agencies, State and local governments, professional organizations whose members implement the Uniform Act, and organizations representing the interests of displaced tenants. The result is a bill which comprehensively addresses a core of issues around which there is broad consensus.

The amendments promote flexibility and local discretion, broaden the act's coverage, raise benefit levels across the board, and provide for a variety of management reforms designed to achieve modest programmatic and administrative savings.

Mr. DURENBERGER. Mr. President, this amendment will comprehensively reform the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. If enacted into law, this amendment will make the administration of this 1970 act

more equitable and efficient at all levels of government.

The Committee on Governmental Affairs has three times reported, and the Senate has three times unanimously passed, essentially identical legislation to that I am proposing today. The last time the Senate passed this amendment as separate legislation was on August 1, 1985.

Thereafter, the House passed its own amendments to the Uniform Relocation Assistance Act as part of its legislation, H.R. 3129, The Surface Transportation and Uniform Relocation Assistance Act of 1986.

As all who have ever been displaced by a Federal project know, the Uniform Relocation Assistance Act occupies an important place in our system of laws; it protects individuals from having to bear a disproportionate cost of well-intentioned programs designed to benefit the public.

This 1970 law creates certain rights and entitlements for property owners and tenants. The act establishes basic acquisition procedures as well as minimum levels of compensation, such as for moving expenses, reimbursement for the additional cost of relocating to comparable replacement housing, and advisory services during the relocation process.

Yet, despite its laudable objectives injecting fairness, equity, and compassion into Federal property acquisition procedures, the act has become badly dated. Since 1970, inflation has eroded benefit levels, and court decisions have eliminated coverage in many housing programs. Meanwhile, limitations in the original scope of the act, and oversights in its drafting, have resulted in windfalls for some displaced persons, even while others may receive inadequate assistance or in some cases, nothing at all.

Significantly, it is not just the Federal Government that bears the burdens caused by the inequities and other problems of the 1970 act. Historically, over 90 percent of all actions required under the act are carried out by State and local agencies as a condition of Federal housing and transportation grants-in-aid. It is no coincidence, therefore, that State and local administrators who implement the act on a daily basis have led the way in proposing many long-overdue reforms incorporated into these amendments.

The Uniform Relocation Act Amendments were developed jointly by the Subcommittee on Intergovernmental Relations and OMB's intergovernmental affairs staff in full and open consultation with key Federal agencies, State and local governments, professional organizations whose members implement the Uniform Act, and organizations representing the interests of displaced tenants. The result is a bill which comprehensively addresses a core of issues around which there is broad consensus.

The amendments promote flexibility and local discretion, broaden the act's coverage, raise benefit levels across the board, and provide for a variety of management reforms designed to achieve modest programmatic and administrative savings. Congressional Budget Office estimates indicate that this agenda can be achieved at no significant additional increase of Federal expenditures.

These amendments have no opponents. They enjoy the support of the Reagan administration and all of the major State and local interest groups, including the National Governors' Association, the National League of Cities, the National Association of Counties, the United States Conference of Mayors, the National Association of Housing and Redevelopment Officials, and the American Association of State Highway and Transportation Officials. They are supported by representatives of tenants, small business, and utilities.

Mr. President, like an old automobile that has served its owners well, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is in need of a tuneup and a few major repairs. Nobody has suggested that the act should be traded in for a new model, or that it should be junked. Accordingly, the amendments may be likened to an overhaul. Like any prudent driver, the Congress should not forget such needed repairs in the effort to rebuild our roads, bridges, and other capital facilities. The people and State and local governments, whose interest and well-being are at stake in this matter, must not be made casualties of the "accidents" which, most surely, will otherwise continue to occur.

Mr. STAFFORD. Mr. President, I understand that this amendment is acceptable to Senator BURDICK, the minority manager, as well as to the majority manager.

Mr. SYMMS. That is correct.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2878) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RESEARCH ON A PRODUCT DESIGNED TO IMPROVE THE LIFE OF CEMENT OVERLAYS

Mr. SYMMS. Mr. President, I recently had the opportunity to visit with some constituents who are developing a new product which they believe to be a cost-effective method of increasing the strength and flexibility of cement overlays on highways and airport runways. The product, called FlexCrete, is a fiber reinforced material made with special additives which bond to cement and allow the composite to flex without cracking. The fibrous material improves the strength and durability of cement overlays by transferring stress laterally rather than vertically.

While some testing has been completed on FlexCrete, I believe its potential cost-saving impact on highway resurfacing projects warrants further and more in-depth testing. Over the next years, resurfacing and reconstruction of our Nation's interstate highway system will be taking a large share of all Federal-aid highway funds. It is essential that we develop new materials and technology to improve the longevity of our highway system.

I encourage the Federal Highway Administration and State highway departments to test this new product to determine more exactly what its economic and technological benefits to the highway program may be. If preliminary test results are an accurate indication of FlexCrete's reinforcing strength, this product will dramatically improve our highway reconstruction program.

OFF-STREET UNIFORM TRAFFIC CONTROL DEVICES

Mr. President, I want to note a growing concern about traffic safety on private property where the public is invited to travel for purposes of business. Research indicates that accidents and fatalities on private property have risen in conjunction with a rise in the volume of business-related traffic on such property, and these accidents and fatalities are attributable, in part to the lack of uniform traffic control devices.

The Uniform Vehicle Code addresses this problem and section 15-117 states "no person shall erect or maintain in any area of private property where the public is invited to travel any sign, signal, marking or other device intended to regulate, warn, or guide traffic unless it conforms with the State manual and specifications adopted under section 15-104." Business owners should be aware that they incur additional responsibility for public safety when they own property on which the public is invited to travel for purposes of business. The erection of uniform traffic control devices will reduce the business owner's liability if a traffic accident occurs on his or her property.

I encourage State departments of transportation and interested private parties to inform business owners about the public safety concerns and liability problems associated with a lack of uniform traffic control devices. I believe the resolution of this traffic safety problem will serve the best in-

terests of business owners and the motoring public alike.

Mr. President, I see no one on the floor seeking recognition, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 2110

Mr. STAFFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2879

(Purpose: To request the Board of Engineers for Rivers and Harbors to review certain reports regarding the United States Route 13 Relief Route)

Mr. STAFFORD. Mr. President, on behalf of Senator ROTH of Delaware, I send an amendment to the desk and ask that it be stated and for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Vermont [Mr. STAFFORD] for Mr. Roth proposes an amendment numbered 2879.

On page 86, between lines 19 and 20, insert the following:

REVIEW OF REPORTS ON UNITED STATES ROUTE 13 RELIEF ROUTE

SEC. . The Congress requests the Board of Engineers for Rivers and Harbors of the United States Army Corps of Engineers to review—

(1) the report of the State of Delaware and the Federal Highway Administration for the United States Route 13 Relief Route; Project No. F-1001(16), Contract #83-110-01,

(2) the report of the Chief of Engineers on the Inland Waterway from the Delaware River to Chesapeake Bay, Delaware and Maryland, printed as House Document Number 63-196, and

(3) other subsequent pertinent reports, for the purpose of determining how to best modify the existing canal project to provide a new structure for the selected alignment of the United States Route 13 Relief Route.

Mr. STAFFORD. Mr. President, I allowed the clerk to read the amendment because that seemed to be the simplest way of explaining it, and I understand it is acceptable to the managers of the bill, to Senator QUENTIN BURDICK for the minority and Senator SYMMS for the majority.

Mr. SYMMS. Mr. President, I accept the amendment. The amendment is agreeable.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment offered by the Senator from Vermont.

The amendment (No. 2879) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURDICK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2880

(Purpose: To allow the value of certain donations to be credited toward the State matching share for an off-system or a Federal-aid secondary system bridge project)

Mr. SYMMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 2880.

Mr. SYMMS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

S. 2405, as reported August 5, 1986, is amended by adding at the end thereof the following section:

STATE MATCHING SHARE

SEC. . Notwithstanding title 23, United States Code, the State matching share for the Calder Bridge project across the St. Joe River, 19 miles east of St. Maries, Idaho, including approaches, under title 23, United States Code, may be credited by the fair market value of land incorporated into the project, where such land is in addition to existing public right-of-way and such land is lawfully donated to the State or local government after the effective date of this section, and may be credited by the fair market value of construction on the project performed by or donated to the State or local government after the effective date of this section.

Mr. SYMMS. Mr. President, this amendment has had the approval of both the majority and minority side of the committee and a brief explanation of this amendment is that this amendment allows the State of Idaho to credit the value of donated land for public right-of-way and the value of donated equipment, material, and labor to the State matching share for the Calder Bridge project in north Idaho. By utilizing this "soft match" provision, the local highway district will be able to proceed with this badly needed bridge project which has been delayed because of insufficient cash reserves to meet the State matching requirement.

Federal-aid bridge projects on and off the Federal-aid system are funded at an 80-20 Federal-State match. On bridge projects, as on other Federal-aid highway projects, the State is reimbursed for the Federal share of a contract after the contract has been paid with State or local funds. Current law permits such reimbursement only for cash outlays.

In many cases, the economic importance of a bridge is such that private parties are willing to donate land and construction work if such donations can count toward the State share of the project and, thereby, reduce or eliminate the cash outlay required of the State or local government. I want to thank the leadership for agreeing to accept this important amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Idaho.

The amendment (No. 2880) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURDICK. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MAXICUBE VEHICLE

Mr. SPECTER. I would like to engage in a discussion with the distinguished chairman of the Transportation Subcommittee to discuss an issue of importance.

Mr. SYMMS. Please do.

Mr. SPECTER. H.R. 3129, Surface Transportation and Uniform Relocation Assistant Act of 1986, as reported from the House, gave a classification to a vehicle that is manufactured in my home State, called the maxicube vehicle. Essentially this system, allows through-loading of the trailer, better and safer turning radius and handling characteristics and more volume for low-density products, thereby providing a more economical usage. It reportedly conforms to all current Federal standards.

The maxicube vehicle was patented after the establishment of the regulatory categories for truck and related items in the Surface Transportation Assistance Act of 1982. The years of delay in studying a classification by the U.S. Department of Transportation have and will cause extreme problems for the manufacturer and those who depend upon the company for jobs.

Thirty-two States have approved this vehicle. Twelve States have not been willing to define the system under current Federal law and therefore will not make any determination at all with regard to the licensing of the system.

The amendment to classify the system makes no exceptions for weight or length.

Mr. SYMMS. I appreciate the gentleman from Pennsylvania's comments and interest.

Mr. SPECTER. I urge the Senator to consider accepting the House language on maxicube during conference.

Mr. SYMMS. I assure the Senator that his request will be carefully considered.

Mr. SYMMS. Mr. President, I see the distinguished Senator from Arkansas is on the floor. I think he may be ready to go with an amendment.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

AMENDMENT NO. 2881

Purpose: To amend section 144 of title 23, United States Code, to give States the authority to use a portion of their bridge replacement funds to replace ferryboat operations, bridges destroyed prior to 1960, or low-water crossings.

Mr. BUMPERS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] proposes an amendment numbered 2881.

Mr. BUMPERS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 42, following line 25, add the following:

SEC. . (a) Section 144, Title 23, United States Code, is further amended by adding a new subsection as follows:

"(o)(1) Notwithstanding any other provision of this section or of any other provision of law, any State may utilize any of the funds provided under this section to construct any bridge which—

"(A) replaces any low-water crossing (regardless of the length of such low-water crossing),

"(B) replaces any bridge that was destroyed prior to 1960, or

"(C) replaces any ferry which was in existence on January 1, 1984.

"(2) The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.".

"(b) The amendment made by subsection (a) shall apply to funds apportioned to the States for fiscal year 1987 or for any subsequent fiscal year.

Mr. BUMPERS. Mr. President, today I am offering an amendment to the highway bill which will not cost a single extra cent in Federal dollars, but will instead give States greater options in using their section 144 bridge replacement funds.

My amendment is the same as a bill I introduced early in the 99th Congress, S. 841. It will give States the option of using a portion of their bridge replacement funds to replace ferryboat operations, to replace bridges destroyed prior to 1960, and to replace low water crossings. The committee previously included this provision in S. 391, which was passed by the Senate, and during the last Congress the Senate adopted this same language as an amendment to S. 3024. In both cases, unrelated problems in conference prevented the provision from being enacted into law.

Passage of this amendment is critically important to States like Arkansas, where old ferries are structurally deficient, functionally obsolete and expensive to continually maintain. The cost of operating and maintaining the four remaining ferries in Arkansas is approximately $3 million a year, and statistics on their operation indicate they are unreliable and inefficient. Between 1978 and 1982, a total of 19 accidents occurred on these four ferries, resulting in a total of 873 days closed. My amendment would allow States to use their bridge replacement funds to replace these ferry operations, and this would certainly improve safety and transportation for citizens in rural areas of Arkansas and throughout our country.

Another provision would allow States to use these funds to replace structures destroyed prior to 1960 but never replaced. Although this is certainly a small category of bridges, it is nonetheless a very important one for Arkansas.

In the 1950's, a bridge on what is now County Road No. 19 in northeast Arkansas was destroyed by fire. The former bridge spanned the Spring River and served as an importnat link connecting U.S. Highways 62 and 63 between Lawrence and Randolph Counties. When the bridge was destroyed, the Federal Bridge Replacement Program had not yet been enacted, and the State of Arkansas and the counties in which the bridge was located simpy did not have the resources to replace the bridge.

The Federal Highway Administration has denied Arkansas' request that the Spring River Bridge be added to the special bridge replacement list. That means that the only funds available for reconstruction are from the Federal secondary program. Lawrence and Randolph Counties each receive approximately $69,000 annually from this fund and would therefore have to spend every dime of these funds for 15 years to meet the estimated $1.5 million bridge replacement cost and $580,000 approach cost. That expenditure would virtually ensure that no other roadway repair work could be undertaken. My amendment would allow the State to have the authority to direct a portion of the State's section 144 funds to replace this critically needed bridge.

The final provisions of my amendment would allow these funds to be used to replace low water crossings with bridges. A low water crossing is usally a concrete slab with a drainage pipe, located in a creek bed and designed to withstand periodic flooding. They are often built in rural areas, and are usually designed to serve relatively few vehicles. However, when development occurs, the flooded low water crossings seriously impede traffic because motorists are often prevented from using routes for days at a time until the flood recede. The Federal Highway Administration will review on a case-by-case basis the eligibility of low water crossings over 20 feet long for bridge replacement. However, the FHWA will not even consider funding for crossings under 20 feet long. My amendment will make all low water crossings eligible for the Federal Bridge Replacement Program, regardless of length, a change I feel is long overdue.

Mr. President, I want to emphasize that none of the provisions of my amendment would create a new category of Federal funding, nor would they have a budget impact. They would simply giver the States greater latitude to decide how their Federal bridge replacement funds would be spent. States know best what their highway needs are, and this amendment will give them the opportunity to meet their needs with greater flexibility while following Congress' intent. I appreciate the committee's and the Senate's adoption of this language in the past, and I again ask for your favorable consideration of my bridge replacement amendment.

I simply want to repeat that the genesis of this amendment is the fact that we still have four ferries in Arkansas. The bridges to replace them would be expensive and all we are asking for is that we be given discretion to use some of our bridge replacement money to replace these ferries which are much, much more dangerous according to both the Federal Highway Administration and the Arkansas State Highway Department than most of our co-called unsafe bridges.

I think this has been cleared with the managers of the bill, so that this amendment can be adopted.

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The PRESIDING OFFICER. Is there further debate?

Mr. SYMMS. Will the Senator yield?

Mr. BUMPERS. Certainly.

Mr. SYMMS. Just to make the record clear, this has already passed the Senate on two or three previous occasions?

Mr. BUMPERS. On two separate occasions. As I say, for totally unrelated reasons, it has been stopped in conference both times. I hope it will survive this time.

Mr. SYMMS. I have no objection to the amendment.

Mr. BUMPERS. I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas [Mr. BUMPERS].

The amendment (No. 2881) was agreed to.

Mr. BUMPERS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURDICK. I move to lay the motion on the table.

The motion to lay on the table is agreed to.

Mr. BUMPERS. Mr. President, today we are considering the Federal Aid Highway Act of 1986, and I want to take this opportunity to comment on some items contained in the bill which are of importance to Arkansas.

This bill contains a committee amendment, of which I am a cosponsor, providing authorization for certain projects to be constructed. Under the terms of the amendment, no new Federal funds are to be made available for the projects. Instead, States will have the authority to draw the Federal portion of the funding from any of its other regular Federal highway account allocations. The normal State match will then be required as always. The State will have the right to choose which account the funding will be drawn from and to determine its own priorities in carrying out projects. Although I am disappointed that no new Federal funds have been provided for these projects, I am hopeful that when the conference with the House takes place, a compromise may be reached which will in fact provide some level of new funding to facilitate the construction of these vitally important projects.

I am pleased that the committee amendment contains, at my request, authorization for critical improvements on U.S. Highway 71 in northwest Arkansas and Waldron Road in Fort Smith, AR, four grade separations on a four-lane bypass route in Jonesboro, AR, and a bridge at lock and dam 4 on the Arkansas River at Pine Bluff, AR.

Earlier in the 99th Congress, I introduced bills to authorize the Highway 71 and Waldron Road projects. Highway 71 continues to be absolutely critical. Improvements on this most important primary route in northwest Arkansas are essential to save lives and to adequately serve the rapidly growing population of the Ozark region of Arkansas and Missouri. My bill—S. 384, and this amendment, will authorize the building of a safer road so that we may reduce the ever-increasing numbers of tragedies that are becoming all too commonplace along this route. An improved, safer road is absolutely critical to the economic future of Arkansas. This is the major north-south route through the western-most part of the Ozark Mountains, and this region is one of the fastest growing regions in the country. Highway 71 serves a very mountainous area, making travel extremely hazardous. Fatal accidents on this road are five times the State average. This matter is of primary importance to my State, and it is imperative that a new Highway 71 be built.

The committee amendment also authorizes improvements on Waldron Road in Fort Smith, AR. As with Highway 71, I also introduced a separate bill for this purpose, S. 383. Fort Smith is Arkansas' second largest city, and experiences monumental traffic tie-ups along this major north-south route. Traffic moves at a crawl; accidents are frequent; property damage is heavy; and economic growth is adversely affected. Waldron Road serves the area with the highest concentration of commercial development in Forth Smith. It also intersects Grand Avenue, which is connected to Interstate 540 by an interchange, and Rogers Avenue, or Arkansas State Highway 22. These intersections are among the most congested in the entire State. My bill and this amendment would authorize the acquiring of a right-of-way, widening the road to four, and in some places, five, lanes, and installing improved signalization. The city is in critical need of assistance, and I am glad the authorization for improvements to Waldron Road has been included.

Another item included in the committee's amendment is the authorization for construction of four grade separations, or overpasses, in a four-lane bypass route in the vicinity of Jonesboro. This U.S. Highway 63 bypass was constructed in 1979 as a project to demonstrate methods of improving highway safety by providing controlled access on an existing route. These four overpasses will complete that original project. This route around the southern and western part of Jonesboro handles a tremendous amount of traffic in a heavily congested commercial area. The State highway department feels that upgrading the bypass route by adding these additional overpasses is of utmost importance in order to preserve the route so that it doesn't become obsolete and lead to the need for a new route entirely.

A final item of importance to Arkansas included in the committee amendment is the authorization for construction of a bridge over lock and dam 4 on the Arkansas River in the vicinity of Pine Bluff, AR. This study has been proposed, reviewed and studied for over 20 years, and the highway department studies have all consistently indicated that the bridge and associated highway work are greatly needed and would be cost effective. Because of the need to alleviate increasingly severe traffic congestion, to accommodate rapidly growing industrial expansion and to divert the transportation of hazardous materials, there is a tremendous need for a highway bridge across the Arkansas River at lock and dam 4 near Pine Bluff. This bridge would connect U.S. Highway 65 at Pine Bluff with U.S. Highway 79 near Altheimer, AR. In conjunction with the building of this bridge, approximately 9½ miles of road improvements would be undertaken. The availability of Federal assistance is imperative for this project to be undertaken, and I am therefore very glad it has been included in the committee amendment.

Again, Mr. President, I want to express my appreciation to the committee for recognizing the importance of these items and including them in the amendment. I certainly recognize the necessity of controlling excessive spending. I do, however, fully believe these vitally important projects must be built in order to meet very critical needs. Therefore, I continue to hope a compromise may be reached in conference which will allow additional funding to be available.

Thank you, Mr. President.

LOUISIANA-ARKANSAS-MISSOURI HIGHWAY FEASIBILITY STUDY

Mr. JOHNSTON. Mr. President, section 160 of H.R. 3129, the House companion bill to S. 2405, authorizes the Secretary of Transportation to carry out a study of the feasibility and necessity of constructing to appropriate standards a proposed highway which would link Shreveport, LA to Kansas City, MO by way of Texarkana, Fort Smith and Fayetteville, AR. This study would update a previous feasibility study that was conducted under section 143(6) of the Federal-Aid Highway Act of 1973.

The proposed highway would start at the present termination point of I-49 in Shreveport. As my colleagues are aware, I-49 is the only major north-south highway in Louisiana and its construction is one of the State's priority highway projects. Shreveport is a growing city located in the northwest corner of the State. During the past 13 years, the population of the Shreveport/Bossier City area has increased from 226,000 to 266,000 and it is projected to grow to 350,000 by the year 2000. This growth is attributable to two factors: first the creation of new jobs due to industrial growth; and second, city expansion due to annexation.

Almost daily, city officials meet with industry representatives regarding the possibility of relocating or expanding business in Shreveport. In many instances, these talks have been successful. For example, last year AT&T closed its last U.S.-based household phone manufacturing plant and moved the entire operation to Asia. That plant was located in Shreveport and the move resulted in the loss of over 3,000 jobs. In an effort to turn this depressing situation into a positive situation, city officials went to New Jersey and convinced AT&T that they should import their finished products and component parts to Shreveport for distribution around the United States. After careful study AT&T acknowledged the benefits of operating in Shreveport and decided to locate a warehouse and distribution center in Shreveport to service all the

the United States east of the Rocky Mountains.

The AT&T story is an example of successful negotiations; however, the city's outreach program does not always lead to industrial growth in Shreveport and one of the most common reasons given for a negative decision is the lack of a major highway linking Shreveport with major cities to the north.

Mr. President, the Corp of Engineers is currently developing the Red River navigation and port facilities in Shreveport. When this project is completed, Shreveport will be the northern most terminal on this waterway which will connect to our inland waterways system and our deep water ports. Many companies located in Texas, Arkansas, and Oklahoma are expected to truck their product to the Red River port in Shreveport. Construction of the proposed road will certainly facilitate this effort.

Both the House and Senate highway reauthorization bills recognize the need for a portion of this road by authorizing a 3.6 mile extension of I-49 in Shreveport. I certainly hope that time and money will eventually permit us to continue construction of the Interstate to Kansas City, MO. However, over a decade has passed since the first feasibility study of this project was conducted and time may have altered some of the findings of that study. Therefore, I would argue that it is prudent to update the earlier feasibility study at this time. Such action will assure that we go forward with this project in an effective and cost-efficient manner and I urge the distinguished committee leaders to retain authorization for this study in the final highway reauthorization bill.

Mr. STAFFORD. The Senator from Louisiana has certainly made us aware of the need for a north-south highway linking Shreveport with Kansas City and I can assure the Senator that I will carefully consider this matter in conference.

Mr. BENTSEN. Construction of a major highway between Shreveport and Kansas City will provide greater access to southeast Texas and therefore benefit my constituents in that area of the State. I agree that updating the 1973 feasibility study is a prudent step toward completion of this highway and I will do what I can to see that the Senator's concern is adequately addressed in conference.

Mr. BURDICK. I want to assure that Senator from Louisiana that I understand the importance of this study to the continued construction of the Interstate System in his State and I hope we will be able to accommodate his concern in conference.

Mr. SYMMS. I think the request of the Senator from Louisiana is reasonable and I am willing to see that this matter is thoroughly examined in conference.

Mr. JOHNSTON. I thank my distinguished colleagues for their assurances.

STRATEGIC HIGHWAY RESEARCH PROGRAM ACTIVITIES

Mr. SIMPSON. Mr. President, I have a matter of clarification regarding section 114, the Strategic Highway Research Program. Would the distinguished Senator from North Dakota, Mr. BURDICK, be willing to respond to some questions of a clarifying nature.

Mr. BURDICK. I would be happy to respond to the Senator.

Mr. SIMPSON. Under section 114, we seem to be moving away from the current research and development program and the emphasis it places on highway development and moving toward R&D activities that preserve the existing network of highways. As part of this new direction, we identify priority research issues. Would the Senator please clarify for me the kinds of research he envisions for the Strategic Highway Research Program [SHRP]?

Mr. BURDICK. The Senator is correct when he indicates that section 114 moves our R&D effort into new areas. Thirty years ago, at the outset of the Interstate Highway Program, a highway research program was started. This was the American Association of State Highway Officials [AASHO] road test. Now as the interstate nears completion and the emphasis shifts to preserving the existing investment and maintaining a mature road network, another major research initiative is needed. The priority research areas for SHRP will include: asphaltic materials, pavement performance, maintenance cost effectiveness, bridge concrete protection, cement and concrete, and chemical control of snow and ice.

The Secretary will carry out SHRP in cooperation with State highway and transportation departments, as represented by the American Association of Highway and Transportation officials. The Secretary will set standards for the use of the research funds.

Mr. SIMPSON. One of the major problems we face today is the premature deterioration of our asphalt pavements. A major contributor to this problem is still our lack of full knowledge about the fundamental material and physical and chemical properties that make up the asphalt used in the highway system. The ability to develop asphalt pavements that can withstand the stresses of everyday use for longer time periods could contribute to the preservation of the highway network as well as minimizing maintenance costs. Would research into, and the demonstration of, asphalt composition as it relates to physical and engineering properties that control pavement performance be considered the kind of activities the SHRP Program is to understake?

Mr. BURDICK. Yes, this is precisely the kind of research the committee had in mind when it discussed prevention of premature deterioration of our Nation's highway system. The Secretary has the flexibility of using SHRP funds to acquire necessary equipment to expedite important research activities of a unique nature such as new and innovative asphalt processes. These research activities are intended to include actual demonstration of research findings, for example test strips of asphalt pavements, or methods for characterizing additives. This type of research will implement one of SHRP's primary goals of collecting research data and results from actual large-scale tests that can be varied under field conditions. This way, State highway agencies will be able to transfer SHRP findings as new technology without unnecessary delay.

Mr. SIMPSON. Is the gentleman then indicating that equipment and instruments that would enable collection, analysis, and evaluation of data related to making studies of physical and rheological properties on asphalts and asphalt-aggregate mixtures under precisely controlled temperature and loading conditions would be eligible for funding under SHRP? I am speaking specifically of instruments such as the automated elastomer test systems.

Mr. BURDICK. It would be my understanding that if such equipment were necessary to conduct testing research on design pavement performance criteria, SHRP funds may be used.

Mr. SIMPSON. This is exactly what I am seeking clarification on and I very much thank the distinguished Senator from North Dakota.

AMENDMENT NO. 2882

(Purpose: Top authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.)

Mr. SYMMS. Mr. President, I send an amendment to the desk on behalf of Senator STAFFORD, Senator BENTSEN, Senator BURDICK and myself, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS], for himself, Mr. STAFFORD, Mr. BENTSEN, and Mr. BURDICK, proposes an amendment numbered 2882.

Mr. SYMMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

S. 2405 is amended by adding at the end thereof the following section:

ADVANCE CONSTRUCTION

SEC. . (a) Section 115 of title 23, United States Code, is amended by striking the title and inserting in lieu thereof "Advance construction."

(b) Paragraph (a) of section 115 of title 23, United States Code, is amended to read as follows:

"(a) When a State has obligated all the highway substitute, urban, secondary or bridge funds, as the case may be, apportioned or allocated to it or has used or demonstrates that it will use the obligation authority allocated to it, and proceeds to construct a highway substitute, urban, secondary or bridge project without the aid of Federal funds in accordance with all procedures and all requirements applicable to a project, except insofar as procedures and requirements limit a State to the construction of a project with the aid of funds previously apportioned or allocated to it or limit a State to the construction of a project with obligation authority previously allocated to it, the Secretary, upon approval of an application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned or allocated to the State, or when additional obligation authority is allocated to the State if—

(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

(B) the project conforms to the applicable standards under section 109 of this title."

(c) Paragraph (b)(1) of section 115 of title 23, United States Code, is amended to read as follows:

"(b)(1) When a State proceeds to construct any project on the Federal-aid primary system including the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to projects on the Interstate System or the primary system, as the case my be, except insofar as the procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of the application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State if—

(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

(B) the project conforms to the applicable standards under section 109 of this title.".

(d) Paragraph (b)(3) of section 115 of title 23, United States Code, is amended by inserting "on the Interstate System" after "project" the first place that "project" appears.

(e) Section 115 of title 23, United States Code, is further amended by adding new subsection (d) as follows:

"(d) The Secretary may not approve an application under this section if the amount of approved applications in the category of funds involved exceeds the total of that category of unobligated funds apportioned or allocated to a State, plus such State's expected apportionment of that category of funds from existing authorization plus an amount equal to such States expected apportionment of that category of funds for one additional fiscal year.

S. 2405, as reported on August 5, 1986, is further amended by (1) inserting "115. Construction by States in advance of apportionment." in paragraph 144(a)(1)(A) on line 5, page 88, by (2) inserting "115. Advance Construction." in paragraph 144(a)(1)(B) on line 7, page 88, by (3) striking paragraph 144(a)(6), lines 15, 16, 17, and 18 of page 88, and by (4) renumbering paragraphs of subsection 144(a) as appropriate.

Mr. SYMMS. Mr. President, this amendment has been agreed to by the entire Public Works Committee. It does two things: No. 1, it gives the States additional flexibility for using the Advance Construction Program. No. 2, it continues the Access to Lakes Program which the distinguished Senator from North Dakota has had a long interest in. It has been agreed to by both sides.

The PRESIDING OFFICER. Does the Senator from North Dakota seek to be recognized on this amendment?

Mr. BURDICK. Mr. President, I support the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Idaho [Mr. SYMMS].

The amendment (No. 2882) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURDICK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2883

Mr. CHILES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES], for himself, Mr. THURMOND, Mr. NUNN, Mr. DIXON, Mr. BENTSEN, Mr. SIMON, Mr. HUMPHREY, Mr. MATHIAS, Mrs. HAWKINS, Mr. SARBANES, Mr. DOLE, and Mr. SPECTER, proposes an amendment numbered 2883.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

S. 2405, as reported on August 5, 1986, is amended as follows:

Strike page 35, line 1 through page 37, line 4 and insert in lieu thereof:

TOLL ROADS, BRIDGES, TUNNELS AND FERRIES

SEC. 111. (a)(1) Section 301 of title 23, United States Code, is repealed.

(2) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

(b) Section 129 of title 23, United States Code, is amended to read as follows:

"SEC. 129. Toll Roads, Bridges, Tunnels and Ferries.

"(a) Except as provided in this section all highways constructed, reconstructed, rehabilitated, restored, or resurfaced under the provisions of this title shall be free from tolls of all kinds.

"(b) The Secretary may permit Federal participation, on the same basis and in the same manner as in the construction of free highways under this chapter, in the construction of any new toll highway, bridge or tunnel other than a highway on the Interstate System; in the reconstruction of any existing highway, bridge or tunnel to expand its capacity, other than a highway, bridge or tunnel on the Interstate System; or in the construction, reconstruction or acquisition of any toll bridge or toll tunnel; upon compliance with the conditions contained in this section *provided* That the Federal share payable for the construction or reconstruction of a toll highway, bridge or tunnel shall not exceed 35 per centum. The highway, bridge, tunnel, or approach thereto must be publicly owned and operated. Federal funds may participate in the approaches to a toll bridge or toll tunnel whether the bridge or tunnel is to be or has been constructed, or acquired, by the State or other public authority. For purposes of this section the term "new toll highway bridge or tunnel" shall mean initial construction of a highway bridge or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway after it is open to traffic. The State Highway Department must agree, for toll bridges, tunnels and highways, that toll revenues will be used only on the facility tolled, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance and debt service of the facility including resurfacing, reconstruction, rehabilitation, and restoration. Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this subsection once only for the original construction, reconstruction, or acquisition. Toll mileage created under this subsection shall not be used to increase a State's apportionment under any apportionment formula.

"(c) Funds authorized for use on any of the Federal-aid systems including the Interstate System shall be available for obligation on projects approaching any toll road, bridge, or tunnel to a point where the approach enters the main lanes of the toll facility or toll plaza, whichever occurs first. Construction, reconstruction, or relocation of toll collection equipment, facilities, plaza, or related facilities shall not be eligible for Federal funds. The Secretary may permit Federal participation in any engineering and fiscal assessments, traffic analyses, and preliminary design analyses necessary to determine whether a privately owned toll road, toll bridge, or toll tunnel shall be acquired by a State or political subdivision thereof.

"(d)(1) The Secretary may permit Federal participation under this title in the con-

struction of a ferryboat, whether toll or free, subject to the following conditions:

"(A) It is not feasible to build a bridge, tunnel, combination bridge-tunnel, or other normal highway structure in lieu of use of the ferry.

"(B) The operation of the ferry shall be on the Federal-aid primary system other than the Interstate System or the Federal-aid secondary system.

"(C) The ferry shall be publicly owned and operated.

"(D) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and repair.

"(E) The ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operation between the island which comprise the Commonwealth or Puerto Rico, operations between the State of Maine and its off-shore islands, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operation shall be in any foreign or international waters.

"(F) The ferry shall not be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to the State. Any amount credited shall be in addition to other funds apportioned to the State and shall be available for obligation in accordance with the provisions of this title.

"(2) The Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, on the Federal-aid primary system other than the Interstate System or the Federal-aid secondary system. The ferry may be either publicly or privately owned and operated, but the operating authority and amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition, including debt service, than to actual and necessary costs of operation, maintenance, repair, and replacement.

"(e) Sums apportioned to a State for the Federal-aid Interstate-primary program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lein against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, a toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.

"(f)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978 on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the States' apportionment for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: *Provided*, That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.".

(c) Upon the request of a State and upon entering into an agreement that toll revenue will be used only on the facility tolled, construction and reconstruction costs, or for the costs necessary for the proper operation and debt service of the facility, including resurfacing, reconstruction, rehabilitation, and restoration, pursuant to section 129(b) of title 23, United States Code, as amended by this section, the Secretary of Transportation may void an agreement entered into prior to the enactment of this section under section 129 (a) (d) or (e) of title 23, United States Code. The Secretary shall issue rules and regulations regarding the voiding of such agreements which shall be limited to insuring future operation and maintenance of the tolled facility.

S. 2405 is further amended by striking "provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978" on page 22, lines 18 and 19 and on pages 22 and 23, lines 25 and 1.

Mr. CHILES. Mr. President, this amendment has been cleared by Senator STAFFORD, the chairman of the Senate Committee on Environment and Public Works, and Senator BENTSEN, the ranking member of the committee. It is cosponsored by Senators THURMOND, NUNN, DIXON, BENTSEN, SIMON, HUMPHREY, MATHIAS, HAWKINS, SARBANES, DOLE, and SPECTER.

This amendment would permit the combination of the toll financing and Federal-aid highway funds to be used to construct, operate, and maintain new, noninterstate roads, bridges, and tunnels when these new facilities are necessary for the purpose of expanding highway capacity. This amendment could be used only for new highways or to expand existing highways—it could not be used for routine repair and maintenance work.

For the last 20 years, the steady trend in highway spending has been toward maintenance of highways and with exception of interstate construction, very little new construction has occurred. Today, for example, according to CBO, only about 10 percent of Federal highway funds are available to help States and new localities add new capacity to their highway networks. Not only has there been a dramatic shift away from new construction, but Federal spending for highways actually peaked in 1965 and since 1981, we have been making significant reductions to the obligation ceiling for the highway program. While the need for Federal funds for highway improvements exceeds $20 billion a year through fiscal year 1990, the current obligation ceiling of $13.1 billion falls well short of the mark.

This amendment, therefore, gives the States the added flexibility of using tolls to raise the necessary additional revenues to build new and expanded facilities to help address the many bottleneck situations that exist around the country. With the enormous population growth that is occuring in Florida and other States, this new flexibility will help the States strike a better balance between maintaining our existing highways and building new highways to help solve congestion problems.

This provision includes several features to limit the use of tolls to those few special situations where expanded highway capacity is needed. The amendment includes features to limit the use of new tolling to densely populated corridors, the noninterstate roads—to be used only at a State's option—and to be used only for projects that would increase highway capacity. The amendment further limits the Federal contribution to 35 percent of the project cost and would limit the use of toll revenues only to the toll facility. No State will receive a greater share or a greater absolute amount of the Federal-aid highway funding because of the use of this provision. In other words, while the State would be permitted to use its Federal highway aid moneys together with revenues raised by new tolls, the Federal money would necessarily come from a State's existing apportionments and a State could contribute only 35 percent of the total cost of such projects from its Federal-aid highway money. The revenues raised from the new tolls would have to be at

least 65 percent of the total project cost.

Mr. President, this provision has been worked out carefully with the administration and the chairman and ranking member of the Committee on Environment and Public Works. The administration supports the amendment and, in fact, has supported legislation providing a much broader, unrestricted tolling authority. As we continue to reduce Federal funding for our highways in view of our deficit situation, this amendment, I believe, is essential to providing the States with the added resources and flexibility to take care of the many bottleneck traffic snarl situations that exist in many areas across the country.

Mr. President, this toll amendment has been supported by the administration and by a large number of interested groups. For example, it is supported by:

The American Association of State, Highway and Transportation Officials;

The National Governor's Association;

The National Conference of State Legislatures;

The National Association of Regional Councils;

The American consulting Engineers Council;

The American Transportation Advisory Council;

The International Bridge, Tunnel and Turnpike Association; and

The Associated Builders and Contractors.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point letters from Secretary Dole and Mr. Charles E. Hawkins, of the Associated Builders and Contractors, who are supporting this amendment. Additionally, I ask unanimous consent to have printed in the RECORD at this point key quotes from the various organizations who support this provision.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF TRANSPORTATION,
Washington, DC, September 18, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC

DEAR BOB: The Senate will be debating S. 2405, the Federal-Aid Highway Act of 1986, in the near future. It is important to enact multiyear reauthorization legislation this year to ensure that the highway program continues uninterrupted. The administration is pleased with the general direction of the bill, particularly that the Committee on Environment and Public Works has recognized the need for constraints on Federal spending and has not included additional funding for special interest projects. I would like to offer specific comments on several important issues related to the bill.

I urge you to oppose any amendments that further increase the authorization levels in the bill for highway programs. As it stands, the bill's funding levels are in compliance with the Congressional Budget Resolution and the Senate's reconciliation bill. We also oppose adding provisions which would authorize funding for transit programs from the general fund beyond fiscal year 1986. The discretionary transit program only benefits 20 States. We support a more equitable distribution as detailed in our block grant proposal, S. 2189.

I urge you to support section 117 of the bill which would revise the current unworkable billboard laws to give States the flexibility to control unwanted billboards and eliminate the costly requirement for Federal compensation. These provisions will greatly simplify the current program and reduce the cost of the program to taxpayers. The bill would end inappropriate Federal interference with State and local zoning and billboard laws and allow nonconforming billboards to be treated similarly to all other classes of land uses traditionally subject to State law.

I believe that the bill would be enhanced greatly if it were amended to permit States to use toll financing in conjunction with Federal funds for the construction of new highway facilities. This change would increase funds available for highway construction without additional Federal user fees. In many States, such funding flexibility would enable States to construct projects that they would otherwise be unable to finance. I support efforts in the Senate to develop a consensus toll amendment.

The Office of Management and Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of these views for the consideration of the Congress.

Sincerely,

ELIZABETH HANFORD DOLE.

ASSOCIATED BUILDERS AND CONTRACTORS, INC.,
Washington, DC, September 19, 1986.

DEAR SENATOR: On behalf of the Associated Builders and Contractors, I would like to call your attention to a toll amendment which is anticipated to be offered during Senate Floor consideration of the Federal-aid Highway Act of 1986 on September 22.

ABC supports the Chiles-Thurmond toll amendment and applauds their efforts to relax the existing ban on using federal money to construct, operate and maintain toll roads. With increased highway construction and maintenance costs combined with reduced spending levels for the highway program due to the Federal budget deficit, it is important that an alternative be provided to the states to assist them in meeting their burgeoning highway needs.

By allowing States the option to combine toll financing and federal-aid funds on new, non-Interstate roads and bridges, necessary but costly construction could be accelerated and completed sooner. Another advantage is that by requiring a minimum 65% state share, federal-aid could be provided on a more limited basis for toll roads than non-toll roads and thereby make tax receipts available for other important highway projects. Presently the federal-to-local matching ratio for non-Interstate construction is 75 to 25.

The costs for toll roads are recovered through the money paid by the actual users. This money would then be used for the long-term maintenance and operation of only that facility. This would assist in reducing the pressure on the already overburdened Highway Trust Fund for maintenance costs on non-Interstate roads and bridges.

ABC believes that it is time to change the current law to give states the option to use a combination of Federal-aid money and toll financing on new, non-Interstate roads and bridges and we request your support for the Chiles-Thurmond toll amendment.

Sincerely,

CHARLES E. HAWKINS, III, CAE,
Vice President,
Government Relations.

"State transportation agencies should be permitted to develop toll highways in conjunction with the use of federal funds on federally aided projects as they are now permitted to do with regards to toll bridges and toll tunnels."—American Association of State Highway and Transportation Officials (AASHTO)

"States should not be constrained from adopting financing measures that would better enable them to carry out their highway programs."—National Governor's Association (NGA)

"Congress should allow the use of toll financing on federal-aided highways and bridge projects, as is currently permitted on certain federally-aided bridges and tunnels."—National League of Cities (NLC)

"NCSL continues to believe that toll financing provides one of the best methods of supplementing highway trust fund revenue. State governments should be allowed the option of using toll revenues for the state share. The existing requirement to payback the federal government when an existing road is tolled should be eliminated. Tolls should be allowed to remain in place after the debt has been retired."—National Conference of State Legislatures (NCSL)

"Transportation agencies should be permitted to use toll highways in conjunction with use of federal funds on federally aided projects with the approval of the affected general purpose local governments."—National Association Regional Councils (NARC)

"ACEC supports the option of using federal-aid funds to construct new toll roadways. We believe that in an era of scarce tax dollars, toll roads are a viable option for improving our transportation infrastructure. We support restricting the use of toll revenues solely for highway and/or other transportation purposes."—American Consulting Engineers Council (ACEC)

"State transportation agencies and others should be permitted to develop new toll highways and bridges where such projects are feasible."—American Transportation Advisory Council (ATAC)

"The IBTTA urges its members to reexamine their existing policies to make certain they are taking full advantage of the benefits provided by the toll financing concept and supporting the implementation of additional toll facilities as a meaningful and effective alternative to, or supplement to, tax revenues for the financing of construction and maintenance."—International Bridge, Tunnel and Turnpike Association (IBTTA)

Mr. SPECTER. Mr. President, I support the pending amendment to S. 2405, of which I am a cosponsor, which will permit the combination of toll financing and Federal aid funds to be used to construct, operate, and maintain new noninterstate roads, bridges, and tunnels when these new facilities are necessary for the purpose of ex-

panding highway capacity. I have introduced legislation to increase the States' available highway funding through an increased obligation ceiling. This would allow the $10 billion balance in the trust fund to be reduced while getting funds out for road construction and repair where they are needed. However, even if that legislation were enacted there would still be highway needs that the trust fund just does not have sufficient funds to meet.

This tolling amendment provides an alternative way of financing new highway noninterstate construction, and reconstruction of existing noninterstate toll roads.

It would allow a 35 percent Federal contribution to be used in combination with toll revenues. This creative legislation will allow much needed roads to be built that might have not been built, or might have been long delayed without it. The amendment also clearly states that State Highway Departments must agree that toll revenues will be used only on the facility tolled. It does not allow roads under this clause to be revenue sources for other projects or the State treasury.

A project in my home State provides an example of the benefits of a tolling provision as contained in this amendment.

A major priority for Pennsylvania's transportation system is the construction of the Mon Valley and Fayette County Expressway in southwestern Pennsylvania. Construction of this road would provide needed access for residents and communities in this portion of our State to the city of Pittsburgh and to the Interstate Highway System. More importantly, by creating nearly 10,000 construction jobs and providing economic incentives for industries to locate along this corridor, construction of the expressway would provide desperately needed help for some of the most economically distressed communities, not only in Pennsylvania but in the Nation as a whole.

Currently, the Mon-Fayette Expressway is part of the Pennsylvania Turnpike Extension project, to be financed by toll revenues. However, given the $750 million cost of this project, it will be difficult, if not impossible, to complete the project with toll revenues alone. Legislation to remove the prohibition on Federal financing for the construction of new toll roads would greatly improve the likeihood that the expressway will be completed. And this legislation does that by allowing a 35 percent Federal match for the project cost.

Many situations like the Mon Valley Expressway exist nationwide and passage of this legislation would provide an answer and a means for many potential projects. I urge my colleagues to vote for this amendment.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. STAFFORD. Mr. President, I support the amendment offered by my distinguished colleague from Florida [Mr. CHILES].

The Committee on Environment and Public Works Committee received testimony on alternative methods of financing the Federal-Aid Highway Program in hearings held over the past 2 years in preparation for the reauthorization of the highway program. The method most often proposed was increasing the States' ability to mix Federal-aid funds with toll revenues in constructing new highways.

It is clear to me that the Federal Government will not be able, in the foreseeable future, to provide sufficient funds to meet all the States' highway needs. I also believe there will be no increase in the Federal gas tax and other highway user fees for a long time. Some form of Gramm-Rudman-Hollings budget reductions will also be necessary for several years if the Federal deficit is going to be brought under control.

For these reasons, I believe we must provide States with the flexibility to meet their growing highway needs and allow them to pursue alternative means of financing these needs. This amendment would permit those States who want to make more use of toll financing to provide certain facilities to do so by combining toll revenues and Federal-aid apportionments. This provision will not require States to use this mechanism; it only provides the option if the State wants to use it. Many States will not build additional toll roads for a variety of reasons, but there are a number of States who believe this is a feasible way of providing additional capacity, particularly in congested areas or areas experiencing a rapid growth in population.

There are those who would argue that toll financing is double taxation. The fact is that we are not collecting sufficient taxes to provide the kind of highway facilities our mobile, car-dependent citizens have come to expect. To fix all the roads and eliminate all the congestion experienced during rush hours and other times of the day across the country would cost far more than we are now collecting in highway user fees. People have shown by their driving habits that they are willing to pay tolls rather than use an existing free road if they believe they are saving time or getting premium service.

Therefore I support this amendment which will give the States another alternative in financing transportation facilities.

Mr. BENTSEN addressed the Chair.

THE PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I support the amendment by the distinguished Senator from Florida. I think it will provide a service by giving States an extra option, and therefore more flexibility in their highway program to meet their needs.

Tolls can be used in an area with particularly high density traffic, an urban area. Some of these needed roadways are quite expensive. Here we are talking about the State coming up with 65 percent of the funds and the Federal Government coming in with 35 percent. We are not talking about any increase in the apportionment to that particular State but we are saying to them, "If you have a problem that is so difficult that you really need the additional help, and if you are willing to come up with 65 percent of the money required, that is sufficient to proceed with the project." The local community would in effect be saying this is really necessary for them to provide adequate transportation to people in that community.

If they will tax themselves to that extent, then it must be a worthy project.

I am delighted to support it and I hope the Senate will accept it.

The PRESIDING OFFICER. Is there further debate on the amendment.

Mr. SYMMS addressed the Chair.

Mr. SYMMS. Mr. President, I will be very brief. I just want to make a couple of points. I think I can count the votes and in looking here on the floor it looks like it would be about 3 to 1. I think that may be about the attitude throughout the Senate from talking to my colleagues and the whip check, and so forth, that we have taken.

I would just like to make the point that we have had the Highway Trust Fund for 30 years and have never before allowed States to use Federal aid funds on toll roads unless they agree to remove the tolls once the bonds are paid off. That is point No. 1.

□ 2050

Point No. 2: We are concerned that allowing the construction of toll roads on the Federal-aid system presents a legitimate argument and I agree to that, that we are allowing double taxation of highway users traveling over toll roads. I hear the arguments of my colleagues and I know there is a need for road improvements throughout the country and means to finance them. But I think we have to recognize that there will be interstate commerce, truckers, and others, who will be paying Federal highway user fees, Federal excise taxes, and other taxes. Then they will be caught and have to pay again to drive over a certain stretch of road.

If I understand my colleague from Florida right, his amendment does not include the interstates.

Mr. CHILES. That is right, Mr. President.

Mr. SYMMS. It is separate roads and only by State choice.

Mr. CHILES. That is correct.

Mr. SYMMS. Mr. President, I think we should let the record show that there is at least one Senator here who is not in favor of the amendment. As I said, I can count the votes. I think that I hear the wishes of my colleagues and I think I have a great deal of sympathy for some of their arguments.

I have a great deal of sympathy for the flexibility that is needed in certain highly congested areas and sympathy for the fact that we need to find some way to improve the highway systems and let the users pay for it. A toll road is an efficient way to do it. But in my part of the country, the Pacific Northwest, we are heavily dependent on truck transportation to ship our products to the markets, and I am constrained to oppose the amendment.

Mr. THURMOND. Mr. President, I rise today as a cosponsor and strong supporter of this amendment which would permit the combination of toll financing and Federal-aid funds on new and existing noninterstate roads at the option of States.

Many States, including my home State of South Carolina, have significant highway development needs which they are unable to undertake, given present budgetary constraints. Toll financing would change that situation in two ways. First, this amendment would enable valuable highway projects to be built many years sooner than would otherwise be possible. Second, it offers the potential for improved project selection because of the cost-effectiveness test that toll projects must pass in competing for capital in the municipal bond market.

Mr. President, current law prohibits the use of tolls on any new or existing road built with Federal funds. This restriction dates back to 1916 which was the beginning of the modern highway system. Despite these early restrictions, Congress, beginning in 1927, granted a number of exceptions to the Federal no-toll policy. Presently, these exceptions permit the use of Federal money to construct toll bridges and tunnels and their approaches on the Federal highway network. Congress has also granted exceptions to its no-toll policy on a case-by-case basis. In each case, however, legislation has been necessary, requiring payback of Federal funds used in exchange for release from the no-toll provision.

The amendment which I am cosponsoring would extend current law to permit Federal participation in the toll financing of roads. The use of toll financing, would, however, be at the option of the State.

There are several major limitations contained in this amendment.

First, tolls would be limited to new or existing noninterstate roads. Tolls placed on existing noninterstate roads would only be permitted for the purpose of expanding capacity.

Second, Federal aid for toll road projects would be much less than it is for nontoll projects. This amendment provides for a 35- to 65-percent Federal-to-local match for new toll roads, rather than the current 75- to 25-percent Federal-to-local match for normal noninterstate highway construction.

Third, revenues received from a toll road under this amendment would be strictly limited to reimbursement of construction costs for that toll road.

Fourth, tolls would be permitted to continue after bonds have been repaid as long as all toll revenues are only applied to the operation and maintenance of that particular facility. The facility would not be eligible for any Federal-aid funds other than the initial construction or reconstruction funds as long as any tolls are being collected.

Finally, no new toll mileage created by this provision will be counted in any Federal apportionment formula. Because of these limitations, States would be compelled to carefully scrutinize proposed projects and proceed with toll financing only on the most cost-effective projects.

Many States would benefit from this alternative method of financing, it is cost-effective and gives States more discretion in this important area.

In this ERA of budgetary restraint, passage of this amendment would represent a step forward in addressing pressing highway needs.

I urge my colleagues to support this amendment.

Mr. CHILES. Mr. President, I urge the adoption of the amendment.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 2882) was agreed to.

Mr. BENTSEN. I move to reconsider the vote.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WEICKER. I would like to discuss with the distinguished chairman of the Environment and Public Works Committee and with my colleague, Mr. DODD, a concern that involves a company and over 400 employees in Connecticut. As my colleagues are aware, the House has considered and passed H.R. 3129, the Surface Transportation and Uniform Relocation Assistance Act of 1986, which reauthorizes Federal highway and urban mass transit programs. Section 131 of the House bill would require manufacturers of buses and subway cars being funded by urban mass transit grants to increase the percentage of domestic materials from the present 50-percent standard to 85 percent. Saab-Scania of Orange, CT, like many companies throughout the Nation would be adversely affected by this provision.

Mr. DODD. I recognize and share my colleague's concerns that this provision may hurt the many manufacturers of transit equipment and the thousands of employees throughout this country that depend upon these companies for their livelihood. Scania, of Connecticut, employs over 400 workers and relies on hundreds of American suppliers in the production of buses. Like other companies in this industry, they have all complied and in good faith observed the law requiring their products, being UMTA funded buses and rail cars, to contain at least 50 percent domestically produced material. It was Congress' intent in 1982 to encourage transit equipment manufacturers to operate in this country and to insure the inclusion of American labor and material in the production of transit equipment. Today, I believe this has resulted in a successful partnership and has spurred growth in this industry.

Mr. WEICKER. I agree with my colleague. To suddenly change the present standards would seriously disrupt this industry and lead to the potential closing of many facilities nationwide. I ask the distinguished chairman his thoughts on this important matter.

Mr. STAFFORD. I would like to thank my distinguished colleagues for their remarks and interest in this issue. I am equally concerned and recognize the potential in impacting the large proportion of transit companies and manufacturers across the country. Vermont is the site of a large rail car manufacturer that could well be affected along with hundreds of Vermont employees. I had earlier related to you my concern in the threat of losing such a significant number of jobs for the State. I assure my colleagues from Connecticut that I will prevent this from occurring. I want to urge all of my colleagues to recognize the potential for harm from such hasty changes in the requirements that these companies have been operating by. I feel confident that a careful review of this issue will guide the Senate in its opposition to the House passed provision.

INTERSTATE RESTORATION

Mr. HEINZ. I rise for the purpose of engaging in a colloquy with the distinguished manager of the bill with regard to the Interstate 4R Program. As the manager knows, I have introduced legislation, along with Senator SPECTER and Senator SIMON, S. 2643, that would set aside $300 million out of the Interstate 4R Program, for discretionary spending. This legislation

would activate the Interstate 4R Discretionary Program which we enacted as part of the Surface Transportation Act of 1982, but which has never received any funds.

Discretionary funding would help States address the glaring restoration and reconstruction needs on our Interstate Highway System. According to the Secretary of Transportation, by the year 2000, virtually all of the Nation's Interstate System will require substantial investment in order to maintain serviceability. The total dollar amount needed to eliminate 4R deficiencies through 2000 is approximately $300 billion, nearly three times the amount that taxpayers have spent to construct the Interstate Highway System over the past 30 years. Furthermore, the Federal Highway Administration has estimated that almost 30 percent of the Interstate System is "barely tolerable for high-speed traffic."

In my State of Pennsylvania, a viable discretionary program would enable funds to be spent on such important projects as Interstate 80 in Clearfield and Centre Counties, Interstate 81 in Schuylkill County, and Interstate 95 in the Philadelphia metropolitan area. These projects are too extensive and expensive to be financed out of regular formula apportionments.

Clearly, States need alternative methods to fund interstate reconstruction needs. Our legislation would provide just such an alternative method without increasing Federal spending. I understand that a version of this legislation is contained in the House version of the highway bill. I am interested in clarifying at this time whether the manager would consider adopting the 4R discretionary proposal during the House-Senate conference on the highway bill.

Mr. SPECTER. I would like to associate myself with the comments of my colleague from Pennsylvania. As a cosponsor of the original legislation, I have a concern that the current allocation of 4R funds does not meet the needs of the Nation's highway system.

When we introduced S. 2643 on July 15, we made detailed statements on the need for such a program and Senator HEINZ has just restated some of those key points.

To elaborate, our State of Pennsylvania will reportedly require nearly $1 billion worth of repair work on its 1,500 miles. But the current funding formula, at best, would provide my State with approximately one-third the amount required. The necessary reconstruction of I-80 added to the reconstruction of the Schuylkill Expressway, I-76 in Philadelphia would exhaust the available funding. It is, therefore, important that a method is created to address such problems. The discretionary program that we introduce in S. 2643 would provide a positive step toward alleviating 4R problems nationwide. I request that the manager consider accepting the 4R discretionary proposal during the House-Senate conference on the highway bill.

Mr. STAFFORD. I appreciate the comments of the Senators from Pennsylvania. I share their concern for interstate restoration needs on our Interstate Highway System. I would be prepared to give every consideration to their proposal to provide funding for the 4R discretionary program during the House-Senate conference on the highway bill.

Mr. SPECTER. I thank the distinguished Senator.

Mr. HEINZ. I thank the distinguished manager for this consideration.

THE INTERSTATE 4-R PROGRAM

Mr. PRESSLER. Mr. President, as I am sure the distinguished Senator from Vermont knows, the House version of the Highway bill contains provisions which dramatically modifies the formula apportioning interstate 4R funds. The current formula is based 55 percent on interstate land miles and 45 percent on interstate vehicle miles traveled. The House revisions would base 50 percent of the formula on interstate vehicle miles traveled, 25 percent on gasoline consumption, and 25 percent on diesel fuel consumption. Such a formula unfairly discriminates against less populous States like South Dakota.

Changing the funding formula in this way flies in the face of the philosophy and goals of this important highway program. The current 4R formula has been modified previously to the detriment of the rural States. Rural States cannot afford further deterioration of the formula. This mechanism should not be changed. Specifically, a formula based largely on fuel consumption instead of interstate land miles will unfairly penalize those States, such as my home State of South Dakota, which have smaller populations but longer expanses of highway to maintain.

The fact that South Dakota has a much smaller number of residents than many other States does not automatically mean that our portion of the interstate system does not need as much repair. To the contrary, those long expanses of highway stretching across the open plain are exposed to some of the harshest environmental conditions in the country. In addition, our roads form some of the country's major truck routes. With over-the-road vehicles becoming longer and heavier each year, we will need more money not less to maintain the interstates in proper condition. For these and many other reasons I would strongly object to any efforts to change the 4R formula, and would like to make certain that the Senate has a clear position on this issue going into conference committee with the House. I would inquire of the distinguished committee chairman as to his views on this matter.

Mr. STAFFORD. Mr. President, allow me to respond to my distinguished colleague from South Dakota by saying that the committee does not feel it is an appropriate time to change the formula for apportionment of interstate 4R funds. The existing formula is meeting the needs of the States and providing adequate resources for the restoration, rehabilitation, resurfacing and reconstruction of the interstate system. The committee will strongly oppose any change in the interstate 4R formula, either on the floor of the Senate or in conference committee. A review of apportionment formulas is not appropriate until the interstate system is completed and future Federal interest in the highway program is determined.

Mr. PRESSLER. Mr. President, I am encouraged by the chairman's response and thank him for taking the time to address my concerns.

BRIDGE REPLACEMENT AND REHABILITATION

Mr. SPECTER. I would like to engage in a discussion with the distinguished Senator from Vermont [Mr. STAFFORD] regarding funding for the Federal bridge replacement and rehabilitation program. We all recognize that bridges play a key role in America's economic prosperity and defense preparedness. Unfortunately, I am concerned that the proposed funding levels in S. 2405 represent a weakening of the Federal commitment to improving our Nation's bridges.

A continued, strong Federal role in bridge replacement and rehabilitation is key to maintaining the momentum which has developed in recent years to address the problem of deficient bridges. Tremendous effort has been made nationwide to rehabilitate deteriorating structures, but there is much left undone. The U.S. Secretary of Transportation's October 1985 report to Congress on the bridge program states that "* * * the [Highway Bridge Replacement and Rehabilitation Program] program, as currently funded, is just keeping pace with accruing bridge needs."

In my State of Pennsylvania, a massive bridge replacement and rehabilitation program was undertaken in 1983, utilizing Federal, State, and local funding. The program has been so successful that a second phase has been recently authorized. In all, the program now covers more than 4,500 bridge improvements at a total estimated cost of $3 billion.

Other similar bridge initiatives are underway throughout the United States which depend in varying degrees on Federal assistance. S. 2405

provides authorizations of $1.5 billion per year for bridges over the period 1987-90, a reduction of more than 25 percent from the $2.050 billion authorized for fiscal year 1986 by the Surface Transportation Assistance Act of 1982.

Restoring the funding for the repair and replacement of bridges would not increase the deficit. Funded by user fees, the Highway Trust Fund is self-supporting and is prevented by law from spending more than it takes in. The proposed bridge funding reduction in S. 2405 is bound to have adverse impacts not only on my home State of Pennsylvania, but on many other State bridge programs.

I request that the distinguished Senator give every consideration to increasing the bridge replacement and rehabilitation to the higher House figure in conference for the reasons that I have stated.

Mr. STAFFORD. The Senator from Pennsylvania brings some very important points to light in his discussion. I do support a strong bridge program, but I was faced with funding levels that forced me to make cuts in programs. I will, however, consider increasing the bridge program obligation ceiling in conference.

Mr. SPECTER. I thank the distinguished bill manager.

AMENDMENT NO. 2884

(Purpose: To raise the emergency relief cap)

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 2884.

On page 69, section 138, line 3, strike "inserting after" and insert "striking" in lieu thereof; and insert after "$30,000,000" the phrase "and inserting in lieu thereof $55,000,000 and".

Mr. BYRD. Mr. President, this amendment would raise the cap on funding under the Emergency Relief Program from $30 million to $55 million in a given year per disaster in a State.

Last November, West Virginia was hit by devastating floods. Of the 55 counties in my State, 29 were declared disaster areas. One of the major problems West Virginia experienced was the replacement of bridges and roads that were washed away by the floods. The access to and from many towns was obliterated. Fortunately, I was able to offer an amendment to the fiscal year 1986 continuing appropriations resolution, which was adopted with the support of this body, to raise the cap on emergency relief funding from $30 to $55 million.

However, what if there had not been a vehicle at hand? What if Congress had not been in session? What if the Congress had recessed? There would have been delays in the release of this money until legislative action to raise the cap could be taken.

As a matter of fact, there would not have been any release above the figure of $30 million if that cap had not been raised. Whole communities would not have been able to begin their rebuilding effort.

It is because of my concern over possible delays in raising this cap when a State is in a disaster situation and the need is immediate, Congress may not be in session. there may not be a vehicle at hand, but the need is there—that I offer this amendment today to raise the cap on the amount of emergency relief a State may receive in any one year per disaster from $30 to $55 million.

The Congressional Budget Office advises that this amendment has no cost impact inasmuch as it does not raise the authorization level; it merely raises the amount an individual State can receive in a year for bridge and road reconstruction and repair under the Emergency Relief Fund.

This will be a raising of the cap. I have discussed this with both managers. I hope they will be prepared to accept the amendment.

Mr. BENTSEN. Mr. President, I have discussed the amendment with the distinguished minority leader. I think it is an advantageous amendment that will be helpful and will correct a figure that has been at too low a level. I remember the devastating floods in West Virginia and the great job the Senator did in responding to his constituency and the devastation that took place there. I think he has made some excellent arguments and I, for one representing the minority managing the bill, am pleased to support the amendment.

Mr. BYRD. I thank the distinguished minority Member for his support of the amendment.

Mr. SYMMS. Mr. President, I also support the amendment. I point out that the Senator from West Virginia is quite right: In each instance where we have major disasters and emergencies with highway funds—and not only West Virginia but Utah, and California comes to my mind in the short time I have been on this committee that has happened, where we have to come in and ask for legislation to lift the cap.

I think the cap now going to $55 million is probably a much more appropriate number than the current cap in the law. I support it.

Mr. BYRD. I thank the distinguished Senator from Idaho, the manager of the bill, for his support.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2884) was agreed to.

Mr. BYRD. I move to reconsider the vote by which the amendment was agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I might say for the benefit of any of our colleagues who may be watching or listening through the speaker boxes that we have reached the point now where there are only two amendments to the bill left. One is my amendment on the Davis-Bacon threshold, to raise the threshold from the current $200,000 to $250,000. The other amendment is the H-3 amendment from Hawaii.

Those are the only two amendments that the managers know of that remain to be acted upon. I think they will both require record votes. It is my understanding that the opposition to the Davis-Bacon threshold amendment have agreed to a 40-minute time agreement, equally divided, so we can resolve that if there is no other objection. I do not know whether we are in a position to ask for that time agreement or not.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 2100

Mr. SYMMS. Mr. President, I ask unanimous consent that the quorum call be suspended.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2885

(Purpose: To establish a $250,000 minimum for application of Davis-Bacon wage rates to contracts for Federal-aid highway construction)

Mr. SYMMS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 2885.

At the end thereof add a new section as follows:

SEC. . Subsection (a) of section 113 of title 23, United States Code, is amended by striking out "subcontractors on" and inserting in lieu thereof "subcontractors under any contract or subcontract in excess of $250,000 for".

Mr. SYMMS. Mr. President, I might make an inquiry of the distinguished Senator from Massachusetts. I was led to believe earlier that there might be the possibility of having a time agreement on this amendment. If that is agreeable, I would be happy to enter

into a time agreement of 40 minutes equally divided.

Mr. KENNEDY. That would be satisfactory, Mr. President.

Mr. BYRD. Mr. President, will the distinguished Senator add to his request that no amendment to the amendment be in order?

Mr. SYMMS. I ask unanimous consent then that we have a 40-minute time agreement equally divided with the distinguished Senator from Massachusetts holding 20 minutes and the Senator from Idaho 20 minutes and that no amendments be in order to the amendment.

The PRESIDING OFFICER. Is there any objection to the request? Without objection, the time will be limited on the debate on this amendment to 40 minutes equally divided between the Senator from Idaho and the Senator from Massachusetts, and there will be no amendments to the amendment.

The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, I yield myself such time as I may use.

Mr. President, the amendment is a simple, straightforward amendment that increases the Davis-Bacon threshold for federally assisted highway projects from $2,000 to $250,000.

My colleagues might be surprised at this attempt because it defies conventional wisdom that "Congress does nothing controversial before an election." I assure my colleagues that I would prefer a million dollar threshold, but a favorable vote will send all parties a strong signal that the Senate is indeed serious about looking into Davis-Bacon reforms in the future.

It is unconscionable that the current $2,000 threshold has never been adjusted upward in the 55 years since the inception of the Davis-Bacon Act.

The CBO estimates that this modest change will result in a taxpayer savings of $38 million in outlays over the next 5 fiscal years—$38 million only to raise the threshold to $250,000. Besides this actual savings, approximately 32 percent of the total number of contracts will be exempt from the Davis-Bacon Act. This is a tremendous benefit, Mr. President, to small business, and it is in keeping with the recent requests of the White House Conference on Small Business to rid small business of the Davis-Bacon Act.

Now, Mr. President, who benefits from this amendment? First off, it is the taxpayer and the small local contractors that would gladly bid for the small highway contracts should the threshold be increased.

The Senate has spoken three times in recent years on Davis-Bacon. With each proposal, an increasing number of Senators have seen fit to support Davis-Bacon changes. Recently, this body accepted a $250,000 threshold for military construction projects. We should do the same here.

This amendment partially implements one of the recommendations of the Grace Commission, and as such it is strongly supported by the Council for Citizens Against Government Waste, the lobbying organization founded to support implementation of that Commission's cost-saving recommendations. It is also supported by the construction contracting industry, the NFIB, and other industry-related and public-interest organizations.

□ 2110

Mr. President, it will provide significant budgetary savings without increasing taxes or cutting services. It is estimated that it will reduce DOT outlays $45 million in 1987 and $1 billion over the fiscal years 1987 through 1990. CBO estimates that this amendment will reduce DOT authority $357 million and $38 million in outlays.

Mr. President, I say to my colleagues that this is an important amendment. It is a very modest step. When you think about the fact that it has been over 50 years since the $2,000 thresold was set, to move it up to $250,000 is a very modest step, and it would set us on a trend of doing something that would be good for the taxpayers, good for competition, good for small business, and therefore it will be good for jobs and opportunities for people working in construction.

I urge the adoption of the amendment, and I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. TRIBLE). Who yields time?

Mr. KENNEDY. I yield myself such time as I may require.

Mr. President, I rise in strong opposition to the amendment offered by Senator SYMMS of Idaho. Time and again we have been forced to deal with the issue of Davis-Bacon in the context of limited floor debate, tossing about fanciful figures on projected cost savings and inflammatory rhetoric about what the Davis-Bacon Law does and does not do.

Only last month, on the DOD authorization bill, we faced this issue here on the floor. The Armed Services Committee had included amendments gutting two of our most important prevailing wage laws. This body decisively rejected the assault on the Service Contract Act, yet retained the language which removed prevailing wage protections for thousands of construction workers.

The Committee on Environment and Public Works wisely rejected the Senator from Idaho's amendment in committee, as should this body. This absurd attempt to gut our prevailing wage laws in a piecemeal fashion—I remind my colleagues there are some 70 statutes containing Davis-Bacon protection, of which this is but one—will do nothing to improve the law and much to confuse the issue, wasted our time, and cause an administrative nightmare.

I want to remind my colleagues just what it is we are discussing here today. We are discussing a principle which is as important and fundamental today as in any time since the original passage of the act.

The principle is this: The money raised by taxing the working men and women of this country should not be used to drive down their wages. The power of the Federal Government should not be used to help impoverish its citizens. As Representative Bacon—a Republican—put it 60 years ago:

> The Federal Government should not engage in construction work in any State and undermine the labor wages paid in that State. The least the Federal Government can do is comply with the local standards of wages and labor prevailing in the locality where the building construction is to take place.

I will briefly raise and answer three questions about this amendment:

First, will it save significant sums of money? No.

Second, does the administration support this amendment? No.

Third, is this Davis-Bacon reform or repeal? It is not reasonable reform—it repeals these basic protections for thousands of workers.

First, this amendment will not save the exotic sums its proponents claim.

Over the last several years, there have been several studies which purport to demonstrate how much would be saved by increasing the threshold of the Davis-Bacon Act. These estimates fluctuate wildly, and the only consistent factor in these studies is that none of these studies took productivity differences into account, a factor all experts agree is significant.

The recent CBO studies assume a 3.3-percent savings if Davis-Bacon provisions were not to apply to construction projects. This figure flies in the face of the contracting experience when Davis-Bacon was actually suspended in 1971. In that year, over 1,000 contracts were rebid without Davis-Bacon. The costs savings were nowhere near the 3.3-percent figure we see from the CBO estimates. The actual savings, while operating under total repeal of Davis-Bacon by Executive order, was only six-tenths of 1 percent.

If the ostensible goal of this amendment is to save money, the proponents will be sorely disappointed. If the goal is to gut the law under the guise of cost savings, the proponents will have achieved their goal.

Second, does the administration support this amendment?

The answer is no. Even this administration has not recommended raising the threshold for highway construction to that which senator SYMMS is

recommending. In fact, the Symms amendment would raise the threshold to a level 2½ times the level recommended by the administration.

Third, the last question, whether this amendment is reform or an attempt to repeal Davis-Bacon, is the most important one we must face up to. Under the guise of adjusting the threshold to account for inflation, the proponents are pushing an amendment which would raise the threshold 18 times higher than would be the amount necessary to adjust for the impact of inflation.

I might point out the distinguished Senator from Idaho was the first additional cosponsor to the bill introduced by Senator NICKLES which would have raised the Davis-Bacon threshold to the absurd figure of $1 million. When we debated prevailing wages during consideration of the DOD authorization bill 1 month ago, Senator GRAMM admitted he supported outright repeal of our prevailing wage laws.

I strongly disagree with the Senator from Texas's stated goal, but at least he admitted that his ultimate goal is total repeal.

That is what we will be doing if we adopt this amendment. We will be repealing prevailing wage protections for thousands of workers. I do not buy the argument that this amendment will only hurt a small percentage of workers covered by the act. The thrust of the amendment is to attempt to save money by exempting employers from the simple requirement that they pay the prevailing wage in a given locality; that the Government will reward, with lucrative contracts, those employers who can be the most egregious wage exploiters in the marketplace. The more an employer can rachet down the wages of his or her employees, the greater the reward.

There is some merit to the argument that the $2,000 threshold may need to be adjusted to account for inflation since passage of the original Davis-Bacon Act. When the House took up the Defense bill, the House passed an amendment which adjusted the threshold to $25,000, and included some important contract fragmentation protections within the amendment. The chairman of the Labor Standards Subcommittee, the distinguished Mr. MURPHY, gave his solemn word on the House floor that he would hold hearings this year, and that a Davis-Bacon bill will move next year through his subcommittee.

Chairman MURPHY repeated his promise that same afternoon when the House was considering the Surface Transportation Act, and upon receiving those assurances, Representative STENHOLM withdrew his Davis-Bacon amendment.

Chairman MURPHY has kept his word. Last week his subcommittee held one Davis-Bacon hearing, and another one is scheduled next week.

For those who are sincere in seeking to adjust the threshold of our prevailing wage laws, I think that will come to pass in the next Congress. For those who seek to undermine one of our most important wage laws by exempting a majority of contracts from its coverage, then vote for this amendment. But do not do so under the pretense of reform or reasonable adjustment. Do so with the clear understanding that you are seeking effective repeal of wage protections for thousands of workers. And do so knowing that next year there will be legislation adjusting the threshold for the entire Davis-Bacon Act.

□ 2120

Mr. President, I reserve the remainder of my time.

Mr. SYMMS. Mr. President, how much time is remaining?

The PRESIDING OFFICER. The Senator has 16 minutes and 30 seconds.

Mr. SYMMS. Mr. President, I yield myself about 30 seconds.

Mr. President, I just want to make one thing clear here for all of our colleagues that in the Environment and Public Works Committee we voted on a threshold of $500,000 and it is true that was not accepted by the committee. I believe the vote was 8 to 6 on a $500,000 threshold.

This is a quarter of a million dollars threshold, $250,000, so it is a different issue than we addressed in the committee.

Mr. President, I now yield 5 minutes to the distinguished junior Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas [Mr. GRAMM].

Mr. GRAMM. Mr. President, I thank the distinguished Senator from Idaho for yielding.

Mr. President, I do not think this amendment needs a lot of debate. We have debated it on the floor of the Senate several times since I have been here.

In the armed services authorization bill we raised the threshold level to $250,000. This was not done to gut any labor laws, but to provide economy and efficiency in procurement.

I find it peculiar, Mr. President, that we have these passionate orations about helping working people when those who are benefiting are making far above the national average. Davis-Bacon produces absurd results. We create artificially high wages and then pay them by taxing working people who are being paid at the market rate. We use the taxpayers' money to inefficiently subsidize those who have been granted a special favor by Government.

I think, Mr. President, that we should move to raise the threshold of Davis-Bacon in the highway bill.

I have no doubt about the fact that the results produced by this amendment will, No. 1, produce greater efficiency and economy in highway construction. We will get more for the taxpayers' money. Since the average working taxpayer makes less money than the people covered by Davis-Bacon, I cannot help but believe that this amendment will be supported by those who are really interested in helping the people who do the work and pay the taxes and pull the wagon and make America work.

Second, Mr. President, an unintended effect of the Davis-Bacon provisions is that they prevent many small businesses, including many which are minority owned, from winning Government contracts. These small businesses cannot afford to pay the union scale, because to be competitive in non-Government areas, they must be competitive in procurement of labor. Hence, small businesses find themselves in the position of having to keep two sets of books, to pay one set of wages when they are working for the Government, another set when they are working in the private sector.

As my colleagues are aware, some studies have shown that the effective wage under Davis-Bacon and the effective labor costs can be 25 and in some cases 40 percent above the market rate.

The result of that, Mr. President, is that we keep small business out of Government contracting. Those who have gone out, learned a skill, gone into business for themselves, and who would like to do small jobs for the Federal Government, find themselves unable to do business with the Government.

So, my colleagues, the issue here is this: In an era of tight budgets and a tight economy do we want to continue to use taxpayers' dollars to give an outright subsidy to one special interest group that has been granted special privilege by Congress in the past? Do we have the right to effectively steal the taxpayers' money to shower favors on one favored group or should we ask this group, like other groups, to compete in the marketplace, to let wages be set by supply and demand? When this market system, Mr. President, built the economy and generated the incomes that we tax to pay for new highways, why do we reject this very system in building the highways?

I submit, Mr. President, there is no logic to that. Only the sheer political power of those who benefit from this special privilege can explain that.

So I call on my colleagues to follow the same logic we did in defense procurement. Let us strip away this vestige of special interest that may have

made sense in another era but does not make sense today.

I ask my colleagues, who are concerned about working people, to remember that those who claim the special privilege of being paid above the market wage are earning more than the average taxpayer who is asked to subsidize them. You are not protecting the working man with this bill. You are protecting people who make far more than the average working citizen does. And why do they? Because they are strong in the halls of Congress, that is why. I think that is not right.

And I congratulate my distinguished colleague from Idaho who, through his leadership earlier today, has enabled the States—if the bill is accepted by the House—to raise their speed limits to 65 miles an hour so we can get the working people of the country to work. Now we have an opportunity to give everybody who wants it the chance to get out and compete for the chance to work in building the highways of the Nation, to let the small independent contractor have part of that job. I commend this amendment to my colleagues and I urge that it be adopted.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I welcome the debate with my good friend from Texas on this issue.

Once again he has stated what the amendment does not do and then the difference with it in a very eloquent statement and comment, and tonight like the last time that we debated this issue his statement about the facts just far belie the current condition.

The average median income for the American working person is $23,400. The average building and construction tradesman is $17,000. These are union persons. It is $13,000 if they are not.

So he talks about this privileged group of Americans that are providing for their families. They are not even making the median income, and that is understood hopefully by the Senator from Texas, and others, because the work in the construction area is seasonal work and a seasonal occupation.

What is the purpose of Davis-Bacon? It is just to assure whatever the prevailing wage is in the local communities that that will not be undermined in order to ensure that we are going to have good quality work which the average taxpayer is going to be paying for.

We are trying to make sure that the Federal Government is not going to be an instrument for driving wages down so far that it makes it untenable for average family workmen to be able to provide for their families when they are the ones that are contributing the money to build that particular road.

If you have efficiencies then do it with efficient management and productivity.

But as we pointed out before, the Senator from Idaho and the Senator from Texas can quote all kinds of studies. The practical fact of the matter is when this legislation was suspended for a period of time the savings were de minimis, and the fact remains as well we have instance after instance after instance where you have different contracting works, where the contractors buy their way in on a particular bid and then with shoddy workmanship the American taxpayer pays a great deal more in order to bail that contract out.

We have made that case time in and time out, Mr. President.

The HUD study: the Office of the Inspector General of HUD conducted a national regional audit of the Department's Davis-Bacon enforcement program describing in detail the manner in which the lack of enforcement in Davis-Bacon is directly correlated to the employment of lower waged workers, shortcut construction methods, and poor quality work and excessive maintenance costs. That is what you are talking about. The Inspector General of HUD has found these results: short-cut construction methods leading to poor quality work and excessive maintenance costs.

So this is what we are up with at this hour of the night. The figures and savings are basically misleading because practical experiences show that they are basically fraudulent, that the examples that they give in terms of what will result, in terms of savings, and in terms of workmanship, just do not comply with the facts and even the studies that have been done by those individuals even within this administration.

The President does not support it. This is not the time to deal with it. I would hope that this amendment would be defeated.

Mr. President, I reserve the remainder of my time.

How much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 8 minutes and 16 seconds remaining.

Who yields time?

□ 2130

If no one yields time, time will apply against both sides.

Mr. SIMON. Mr. President, I rise to speak against the amendment proposed by the Senator from Idaho.

We have discussed the pros and cons of changing the Davis-Bacon threshold previously on the floor of the Senate.

There are several arguments which detractors use to speak against the continuation of the present threshold of the Davis-Bacon Act:

The bill is a depression measure which has long since outlived its usefulness.

It interferes with the workings of a free competitive market. The act is designed to protect local wage standards by preventing migratory contractors from picking off Government construction contracts and bringing in low-paid itinerant workers.

The act is inflationary because it results in Federal and federally assisted construction contracts costing more than other contracts.

It gives unfair advantage to union employers over nonunion in bidding for Government construction projects.

The act impedes entry of minority groups into the construction industry.

In truth, the arguments against amending the Davis-Bacon Act are more powerful than those in favor of this amendment:

The Davis-Bacon Act is needed more now than ever. It is more than simply depression legislation. Only 30 percent of construction labor is currently unionized, whereas 50 percent was unionized in 1978. The work is highly seaonal, and therefore is not a full-time, year-round position.

The act prevents cutthroat competition and promotes fair competition based on decent labor standards. It encourages maximum possible competition in bidding for Government contracts, including wage competition and competition from nonlocal construction. The act follows established Federal Government policy to pay prevailing wages and is not interference. There are several prevailing wage laws including Davis-Bacon, the Walsh-Healy Public Contracts Act, and, of course, the McNamara-O'Hara Service Contract Act.

Evidence shows that employers who cut corners on wages cut corners on quality. It is definitely not inflationary—in fact, it may prove just the opposite by doing several things: First, preventing awards to incompetent contractors; and second, decreasing industrial strife through maintaining decent labor standards through helping more Americans live healthier and fuller lives. While raising the threshold may lower the initial cost of a project, it may not lower the overall cost, due to incompetent, inexperienced labor doing shoddy work. If Davis-Bacon costs as much as its detractors say, why is it that 44.7 percent of the 3,358 wage decisions examined in the first 4 months of this year provide a wage rate below the poverty level recognized by the U.S. Census Bureau. If this figure were calculated on the average number of hours worked in construction, it would have been greater than 44.7 percent.

The advantage really moves to nonunion contractors, since most construction projects, especially Federal ones, are highly specified in terms of what types of materials are to be used. Therefore, competition in bidding

shifts onto labor costs—providing an unfair advantage to nonunion contractors. During the first 4 months of 1986, 2,799 project wage decisions were made, only 26.2 precent of which were union; 559 area wage decisions were made; only 42.6 percent were union rates. Of all the decisions issued by the Department of Labor in this time period, only 26.2 percent were union.

To repeal or weaken the Davis-Bacon Act would adversely affect apprenticeship programs in the construction industry and hurt minority groups. The first thing to go in extreme cost-cutting measures would be the training/apprenticeship programs. Many of these employees are minorities.

Mr. President, I think that these arguments speak for themselves. We certainly don't need to amend the Davis-Bacon Act in this bill, a bill to provide Federal aid for highways.

Mr. MURPHY, the chair of the Labor Standards Subcommittee in the other body, has held hearings on Davis-Bacon reform. He will consider a complete reform of Davis-Bacon. We all agree that some type of reform may be needed. However, I think we should allow the professionals in the Building Trades and the Labor Department decide the specifics of matters such as this, and then we can enact those decisions arrived at through negotiations, reason, and respect for all parties involved.

Mr. METZENBAUM. Mr. President, I rise to oppose the section in the Federal Aid Highway Act of 1986, which exempts projects under $500,000 from the "Buy America" statute. This exemption will result in fewer bridges and highways being built with American-made materials. This exemption will cost American jobs.

We have no business undermining efforts to ensure that federally funded highway projects are contracted to American firms and that the steel and other materials used in these projects are American made. It makes little sense for the Senate to put a loophole in the "Buy America" statute which will contribute to the escalating trade deficit.

Let's save jobs—not send them overseas.

I will not offer an amendment to strike the $500,000 exemption, because I am confident that the House conferees will not agree to this loophole, and that it will be struck from the final bill.

Mrs. HAWKINS. Mr. President, I rise in strong support of the amendment offered by my distinguished colleague from Idaho, Senator SYMMS. Indeed, I would go even further and repeal the Davis-Bacon Act altogether.

In 55 years, the act has not been changed. Yet, the times have changed, our economy has changed, most labor and management laws have changed, but the Davis-Bacon Act has remained the same. To put it simply, the Davis-Bacon Act is out of date and it is costing our constituents a lot of money.

The Davis-Bacon Act was first adopted in 1931 to promote fairness and consistency in the construction industry. I am all for fair wages and consistent treatment of laborers, but I believe that the Davis-Bacon Act is counterproductive. The act now provides the prevailing excuse for unfairness and inconsistency in the construction industry as well as an empty pocketbook for taxpayers.

The Davis-Bacon Act was designed to insure that laborers on Federal and federally assisted construction projects were paid the prevailing wage. Fifty-five years ago a determination of a prevailing wage was a necessary tool to protect workers. However, today workers are protected from exploitation by the Taft-Hartley Act, the Fair Labor Standards Act, the Walsh-Healy Act, and scores of State and local laws. Today, the Davis-Bacon Act inflates the cost of Federal and private construction.

At a time when the goal of reducing the budget deficit remains crucial for sound and continued economic growth, we must either revise or repeal outdated laws. This amendment would make such needed revisions by raising the dollar threshold of Federal highway construction contracts covered by the act from $2,000 to $250,000. This modest increase will give greater latitude to the contracting officers of the various Federal agencies in awarding small contracts more quickly and efficiently. We recently took the positive step to reform the Davis-Bacon Act for Defense Department construction contracts. We should do the same for highway contracts. I urge my colleagues to support the Symms amendment.

Mr. KENNEDY. Mr. President, I am prepared to yield back the remainder of my time.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SYMMS. Mr. President, I yield back all of my time.

Mr. KENNEDY. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment of the Senator from Idaho. The yeas and nays have been ordered and the clerk will call the roll.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Idaho [Mr. SYMMS]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Mississippi [Mr. STENNIS], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 49, nays 46, as follows:

[Rollcall Vote No. 283 Leg.]

YEAS—49

Abdnor	Gramm	Nunn
Armstrong	Grassley	Pressler
Bentsen	Hatch	Pryor
Boren	Hatfield	Quayle
Boschwitz	Hawkins	Roth
Broyhill	Hecht	Rudman
Bumpers	Helms	Simpson
Chiles	Hollings	Stafford
Cochran	Humphrey	Symms
Cohen	Kassebaum	Thurmond
DeConcini	Kasten	Trible
Denton	Laxalt	Wallop
Dole	Lugar	Warner
Domenici	Mattingly	Wilson
Evans	McClure	Zorinsky
Exon	McConnell	
Gorton	Nickles	

NAYS—46

Andrews	Gore	Metzenbaum
Baucus	Harkin	Mitchell
Biden	Hart	Moynihan
Bingaman	Heflin	Murkowski
Bradley	Heinz	Packwood
Burdick	Inouye	Pell
Byrd	Johnston	Proxmire
Chafee	Kennedy	Riegle
D'Amato	Kerry	Rockefeller
Danforth	Lautenberg	Sarbanes
Dixon	Leahy	Sasser
Dodd	Levin	Simon
Durenberger	Long	Stevens
Eagleton	Mathias	Weicker
Ford	Matsunaga	
Glenn	Melcher	

NOT VOTING—5

Cranston	Goldwater	Stennis
Garn	Specter	

So the amendment (No. 2885) was agreed to.

□ 2150

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, may we please have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Hawaii.

□ 2200

Mr. STAFFORD. Mr. President, I wonder if the Senator from Hawaii will yield to me for an inquiry?

Mr. INOUYE. I shall be very happy to yield to the Senator from Vermont.

Mr. STAFFORD. It is my understanding that the able Senator from Hawaii is about to offer an amendment with respect to H-3, a highway on the island of Oahu.

Mr. INOUYE. The Senator is correct.

Mr. STAFFORD. I wonder if the Senator would be amenable to a time agreement between us on this issue?

Mr. INOUYE. I should be very happy to have a time agreement.

Mr. STAFFORD. I suggest for the Senator's consideration 1 hour and 20 minutes or 40 minutes to a side, equally divided. Possibly, we shall not need to use it all but we can agree on that.

Mr. INOUYE. That is very satisfactory and that no amendments to the amendment be in order.

Mr. STAFFORD. Mr. President, I amend the request to add that no amendments be in order to the amendment.

Mr. JOHNSTON. Reserving the right to object, and I shall not object, is that 1 hour and 20 minutes?

The PRESIDING OFFICER. The unanimous-consent request is that there be 1 hour and 20 minutes equally divided.

Mr. INOUYE. I assure my friend that we should be finished in about 50 minutes.

The PRESIDING OFFICER. Is there any objection? Without objection, it is so ordered.

AMENDMENT NO. 2886

(Purpose: To provide an exemption from section 4(f) of the Federal Aid Highway Act for the H-3 Highway in Hawaii)

Mr. INOUYE. Mr. President, I call up my amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for himself and Mr. MATSUNAGA, proposes an amendment numbered 2886.

Mr. INOUYE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10-7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

Mr. INOUYE. Yes, Mr. President, it all began in the summer of 1959. At that time, Hawaii was a territory and in August we became a State. At the time of statehood the people of Hawaii were paying highway taxes to support the interstate defense highway system as did all of our brothers and sisters in the 48 States. But there was one little difference: we paid taxes and received no benefits. So, when Hawaii became a State, a measure was submitted by the Hawaii delegation and in 1960, our colleagues in Congress, in their wisdom, included Hawaii in the Interstate Highway System.

Soon after that, the director of transportation in the State of Hawaii met with the Federal Highway Administrator and began discussions on the three highways on the island of Oahu: H-1 to run east to west on the island of Oahu, from, as we say, from Koko Head to Ewa; H-2 running north to south, from Halekou to Waipahu; and H-3, the highway in question to run from Pearl Harbor, our Nation's most important naval facility in the Pacific, to Kaneohe Marine Base. In order to make this route, this highway had to go through the Koolau Mountains.

The plans were drawn and in 1965, the State of Hawaii, together with the Highway Administration, was set for its ground breaking. But in the summer of 1965, we were faced with an unusal rainstorm in the Kaneohe area. As a result, the U.S. Corps of Engineers suggested to the Highway Administration that this certain section—which, incidentally, covered the route—be declared a flood plain. So, once again, they went back to the drawing board.

This time, the highway, instead of going straight from Pearl Harbor to Kaneohe, went around this flood plain. It was rerouted. The State of Hawaii and the city and county of Honolulu, being concerned that the property owners in the flood plain might, notwithstanding the danger of the flood, build homes and other improvements, therefore went to court under the power of eminent domain and purchased this parcel, this huge acreage. The city and county purchased some of the property right up to the highway to make certain that no one would intrude into this area and build in the danger zone.

Since we thought this was a great event, we named the park Ho'omaluhia Park. We created the park, the Ho'omaluhia Park.

I remind some of my colleagues who were here in 1968 that at that time, the highway bill was being debated and one of our colleagues from Texas, Mr. Yarborough, being concerned that highways were being planned intruding into parkland, cutting through parks, taking away parklands, therefore came up with this provision which is now called 4(f). That in essence said no highway may take or go through any park, Federal, State, or local. The park in question during the debate was the so-called Glover-Archbold Park in this vicinity.

Senator Mansfield participated in this debate and I would like to share his words with my colleagues. Senator Mansfield spoke of the need to prevent "penetrating through Glover-Archbold Park." His colleague, Senator Metcalf, expounded that "national parks are sacrosanct and we are not going to go through a recreational area."

I say to my dear friends, keep in mind that when the highway was drawn, there was no park. The State of Hawaii, out of the goodness of their heart, purchased the acreage and named it a park. If the State of Hawaii decided to let the property owners, at their own risk, develop that land and not call it a park, H-3 would be completed today. In fact, of the 74 provisions in the law applying to highways in the United States, the State of Hawaii has meticulously abided with 73. The 74th is 4(f), which we have long felt, and the Highway Administrator concurs, has no application to H-3.

Mr. BENTSEN. Would the Senator yield?

Mr. INOUYE. I shall be very happy to yield.

Mr. BENTSEN. The Senator from Texas has a very personal knowledge of that provision of the law. When this Senator came to this body, we had had for many years an unfinished highway ramp looking like a launching pad on one side of a park in the city of San Antonio and another ramp looking like a launching pad on the other side of the park. This same provision of the law was stopping the completion of a major highway project across San Antonio because it took about 3 acres off the corner of a park.

Conformance with this provision would have caused a realignment of the route. We had a very strong and very bitter fight over this requirement and many of those people who opposed the project now travel on that highway across the city of San Antonio. They save about an hour being transported across it and back again. Now they are quite enthusiastic about that. So we had a very happy resolution of it.

We have to look at these things realistically and practically in trying to do what is best for most of the people.

I have looked at the Senator's project and believe it is a reasonable proposal.

□ 2210

Mr. INOUYE. I thank the Senator very much.

Mr. BURDICK. Will the Senator yield?

Mr. INOUYE. I will be very happy to yield.

Mr. BURDICK. The Senator referred to the park. Is it not a fact that when this road area was laid out, there actually was no park?

Mr. INOUYE. No park at all.

Mr. BURDICK. In other words, it was created to run along the proposed way of the road.

Mr. INOUYE. That is right.

Mr. BURDICK. And now that you have the authority, after all these years, and the park is developed, they say do not destroy it. Is that right?

Mr. INOUYE. That is right. This highway has not taken a square inch of parkland. In fact, we created this parkland. But the ninth circuit court used a strange argument. It said in essence that the users of this park would be denied full use because of noise and air pollution caused by vehicles on the highway.

When the drafters of 4(f) came before the Senate in 1968, there was no concern about air or noise pollution. It was simply and directly a situation where a highway went through or took land from a park. We created the park.

It has also been suggested that if this amendment is permitted to go through, we would set a dangerous and terrible precedent. I would like to remind my colleagues just a few years ago we voted to exempt the Tellico Dam construction; 4(f) was included in that. We also exempted in 1981 the Conrail Assistance Act; in 1983, the Alaska railroad transfer; then in 1973 Alaska pipeline certification, Rock Island Railroad construction.

Second, it has been suggested that this is an expensive endeavor; it is going to cost millions. There is no question highways are going to cost hundreds of millions of dollars, but the funds have already been appropriated. I would like to read the list of those highways that are either now under construction or about ready to be completed:

H-3 is 16.1 miles in length, cost per mile $49 million. That is a lot of money—$49 million.

I-95 in Baltimore is 1.7 miles long, $518 million per mile. Keep in mind, Hawaii is $49 million; I-90 in Massachusetts, 3.2 miles long, $198 million per mile; I-264, Norfolk, VA, slightly less than a mile long, $119 million per mile; I-595 in Florida, 4.2 miles, $109 million; I-90 in Seattle, 6.4 miles long, $117 million per mile.

Mr. President, I could go on and on.

We have been waiting since statehood—the Governor of Hawaii, the legislature of Hawaii, the Oahu plan, the State plan. We went to the trouble of taking a poll in order to impress upon my colleagues that the majority of the people of Hawaii support this—70 percent. I am not suggesting that, since this highway happens to be in Hawaii, we can do whatever we want with it. No. But I want my colleagues to know that we have met every concern possible, whether it be endangered species or environmental concerns. It is just 4(f). And feel we have a proper case before us.

The highway administrator says this is one of the better planned highways. And for those of you who have visited my State, you would know that one of the most thriving communities is on the so-called windward side, 124,000 people live there and daily 97,000 cars go back and forth.

Now, if you want to see a traffic jam that would make Washington look like child's play, drive out from Kaneohe to Honolulu. If you want to get to your office at 8 o'clock in the morning, you better start at 5:30 in the morning.

Mr. President, I hope that my colleagues will go along with this. We are not asking for too much. And time is of the essence because while I stand here the clock is ticking. September 30 is the deadline. If we do not get this exemption by then, then all the plans that we have made since 1960 will have to go down the drain. And so I ask all of you to give Hawaii your concern and consideration.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. INOUYE. I will be happy to yield.

Mr. DOMENICI. Does the Senator have the exact language of section 4(f) in front of him? What does it say?

Mr. INOUYE. Section 4(f) states:

It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After August 23, 1986, the Secretary shall not approve any program or project which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

Mr. DOMENICI. And that is what the Senator is asking us to waive so you can build this project?

Mr. INOUYE. That is right.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. INOUYE. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. STAFFORD. Mr. President, there is an old saying that it is a mighty thin pancake that does not have two sides. I cannot tell you how much I regret finding myself in a position of opposing the two very able Senators from Hawaii, who I consider two of the finest men I know in this body. But such is life.

Granting an exemption for the H-3 interstate project in Hawaii would set a terribly dangerous and damaging precedent. I must strongly oppose the amendment from the Senator from Hawaii [Mr. INOUYE].

This is not a vote on Hawaii. H-3 happens to be in Hawaii which I think many of us regard as a national treasure, and I have the deepest respect and personal affection for the two Senators from Hawaii. But this vote goes far beyond Hawaii. It is a vote that will affect the entire Nation in many ways.

This country has built a magnificent highway system and they have done it under the umbrella of laws that Congress determined were important to protect the long term, overall public good as well as providing the best transportation facilities in the world. We have a responsibility to protect the integrity of that system that has worked so well up to now.

There are many reasons to vote against such an exemption. Let me give you a few.

First, section 4(f) requirements have been the cornerstone of environmental law that has assured responsible Federal highway planning for 20 years. All other highway projects that have gone forward with Federal funding have met the requirements of section 4(f). If this project is exempted from 4(f) requirements, several parkland and archaeological sites will be stripped of all Federal environmental protection. Decisions affecting our environment are so important because once something is destroyed, it can never be replaced.

Alan Boyd, the first Secretary of Transportation, stated in a letter to me:

As the nation's first Secretary of Transportation, I honored, and all my successors have continued to honor, a Congressional directive to preserve our natural and cultural environment . . . For twenty years every State, county and municipality has had to meet the strict test of section 4(f). In that time it has protected hundreds of sensitive environmental areas and thousands of historic resources. No one project is more im-

portant than the continuing integrity of section 4(f) and the places it protects.

John Volpe, another past Secretary of Transportation wrote:

Every Secretary of Transportation has struggled to implement section 4(f) in a fair and uniform manner, often in the face of strong political pressure to provide exceptions. The ability of a project proponent to circumvent this law through a legislative exemption would seriously undermine the ability of any Secretary of Transportation to enforce our Federal transportation laws in a consistent manner.

I ask unanimous consent that the full text of both letters be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL TRUST
FOR HISTORIC PRESERVATION,
Washington, DC, July 7, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As the nation's first Secretary of Transportation, I honored, and all my successors have continued to honor, a Congressional directive to preserve our natural and cultural environment. This directive comes in section 4(f) of the Department of Transportation Act of 1966. This section directs each Secretary to deny approval to any transportation project that would involve the destruction of parks, historic sites and other heritage resources unless there are no feasible or prudent alternatives.

Following 20 years of successes, it is my understanding that your Committee will be asked to approve an amendment to exempt an Hawaiian highway link known as H-3 from section 4(f) during your upcoming mark up of S. 2405. If approved, I believe that this would be the first ever exemption made to section 4(f). On behalf of the National Trust for Historic Preservation, I urge you to reject this unwise precedent.

Were the committee to agree to this exemption, the committee would be inviting future exemption requests. Inevitably, the committee would become embroiled in dozens of controversial transportation projects where, as here, arguments of transportation necessity are placed against evidence of direct and severe destruction of environmental and historic resources.

Congress acted wisely in creating section 4(f) to set a clear and unequivocal standard and to place enforcement of that standard in the hands of the Secretary of Transportation. For twenty years every state, county and municipality has had to meet the strict test of section 4(f). In that time it has protected hundreds of sensitive environmental areas and thousands of historic resources. No one project is more important than the continuing integrity of section 4(f) and the places it protects. An exemption amendment, if offered, should be rejected.

Sincerely,

ALAN S. BOYD,
Chairman.

JULY 14, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: It is my understanding that your committee will be asked to exempt Interstate H-3, a 10.7-mile interstate highway project through the Koolau Mountains on the Island of Oahu, from coverage under section 4(f) of the Department of Transportation Act, 49 U.S.C. § 309. As a former Secretary of Transportation, I urge you to oppose this proposed exemption.

In the 20 years since section 4(f) was enacted in 1986, no exemptions have been granted. As Secretary of Transportation, I supported the uniform application of section 4(f) to all federally-assisted transportation projects and both my successors and predecessors have done likewise. Now is not the time to establish a precedent of selective application. Moreover, an exemption for H-3 would be overturning a court decision upheld by the United States Supreme Court. Apart from the adverse precedential effect such an exemption would have on future 4(f) projects, respect for our judicial process argues against this proposed amendment.

Every Secretary of Transportation has struggled to implement section 4(f) in a fair and uniform manner, often in the face of strong political pressure to provide exceptions. The ability of a project proponent to circumvent this law through a legislative exemption would seriously undermine the ability of any Secretary of Transportation to enforce our federal transportation laws in a consistent manner. I urge you, and your committee, to reject any proposed 4(f) exemption for Interstate H-3.

Sincerely,

JOHN A. VOLPE.

□ 2220

Mr. STAFFORD. Mr. President, the U.S. Ninth Circuit Court permanently enjoined the H-3 project because they believed the record did not show that there was no feasible and prudent alternative to impacting Ho'omaluhia Park which is protected by 4(f).

I apologize to my colleagues from Hawaii if I mispronounce the name of the park.

According to the court, there are other alternatives to building H-3 and to using the State's preferred alignment which have not been adequately considered.

However, the park is not the only 4(f) property affected by this highway. It will also take land from the Pali golf course which is protected parkland. A significant archeological site, the Luluku site, has also been identified and will be impacted by the highway.

According to Joseph Kennedy, president of the Society for Hawaiian Archaeology:

The site has considerable historical, archaeological and cultural significance because it is one of the finest examples of an intact taro agricultural system to be found anywhere in the Hawaiian Islands and also one that exhibits a remarkable stratigraphic profile.

He goes on to say:

H-3 could destroy the Luluku Site which was discovered late in the planning process.

The Bishop Museum, which is under contract by the Hawaii Department of Transportation to survey the Luluku site, states that "The Luluku archaeological sites are among the most extensive windward agricultural complexes recorded in the Hawaiian Islands."

In evaluating the available information on the Luluku site, Jacquelin Miller, acting associate director of the Environmental Center at the University of Hawaii at Manoa says

In a meeting with the Culture and Education Committee, Office of Hawaiian Affairs (March 1986), Dr. Jane Wheeler presented her recent findings concerning new dates which have been obtained through her continued research in this area. If confirmed, these dates would represent some of the earliest dates recorded concerning human occupation of the Hawaiian Islands. Thus, the importance of this new evidence from continued research at Luluku cannot be overestimated.

Mr. Don D. Fowler, president of the Society for American Archaeology states,

The site is clearly a very significant archaeology site since it has the potential to provide a great deal of useful information on the early period of human occupation and the development of agricultural practices in the Hawaiian Islands. The question of comparability of significance cannot be answered in a meaningful fashion until more excavation and research has been done. As noted above, the report indicates great potential, but the research has to be done first to test that potential. There are other agriculturally related archaeological sites in Hawaii and elsewhere in Polynesia. But they are rare. Most have long since been destroyed by the elements or later human activity. Because of this, the Luluku site takes on added significance as a potential source of information.

The Luluku site obviously has great potential as one of the most important archaeology sites of its kind in existence. If a waiver from 4(f) is granted from H-3, this site will receive no protection from Federal law.

I have received letters from native Hawaiian groups expressing opposition to a 4(f) exemption for H-3 because of their concern for the protection of the Luluku site. I ask unanimous consent that letters from the following organizations be printed in the RECORD at this point: The Congress of the Hawaiian People; State of Hawaii Office of Hawaiian Affairs; Oahu Council; Queen Emma Hawaiian Civic Club; the Native Planters; the Council of Hawaiian Organizations.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

THE CONGRESS OF THE HAWAIIAN PEOPLE,
Aiea, HI, September 5, 1986.

Hon. Senator ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The Congress of the Hawaiian People opposes any proposed exemption from Federal 4(f) law relating to the construction of Interstate H-3 in Hawaii.

Our organization supports the preservation of the Luluki Archaeological District in Windward Oahu. The entire district is considered part of our Hawaiian heritage and,

therefore, is sacred to us. We firmly believe that no portion of the district should be used for highway purposes.

We have, over the years, been a strong advocate for actual preservation of several archaeological sites, including Kaloko Fish Pond on the Big Island of Hawaii and Kawainui Marsh in Kailua, Oahu.

Please help us preserve these precious reminders of our past so that our children, for generations to come, may enjoy these treasures left to us by our ancestors, Mahalo nui loa.

Aloha Me Kealoha Pumehana,
IRENE DUPONT,
Representative,
The Congress of the Hawaiian People.

STATE OF HAWAII,
OFFICE OF HAWAIIAN AFFAIRS,
Honolulu, HI, July 21, 1986.

Hon. ROBERT STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The Board of Trustees of the Office of Hawaiian Affairs of the State of Hawaii unanimously opposes the proposed legislation which would exempt interstate highway H-3 from 23 USC 138 and 49 USC 303.

The Office of Hawaiian Affairs is a unique governmental institution created in 1978 by amendments to the Constitution of the State of Hawaii. The Office of Hawaiian Affairs was created by all of the people of Hawaii for one purpose; to better the conditions of native Hawaiians. Native Hawaiians are now a minority in their own land and at the bottom of the State's socio-economic ladder. To accomplish this difficult purpose the voters wisely made the Office of Hawaiian Affairs independent of the Executive Branch of government. The Office of Hawaiian Affairs is coequal with the Executive, Judicial and Legislative branches of government. its affairs are directed by a Board of Trustees elected by voters of Hawaiian descent. The Hawaii Constitution also provides that the revenue of the Office of Hawaiian Affairs is independent of the legislative appropriation process and is derived from a small percentage of the rents and profits derived from former crown and government lands. A century ago those lands were taken from the Hawaiian people when non-native sugar planters and others overthrew the Hawaiian monarchy.

The Office of Hawaiian Affairs is the branch of the Government of the State of Hawaii which is the duly elected voice of the Hawaiian people. The Trustees' concern is not limited to improving the economic conditions of Native Hawaiians. The Hawaiian people are proud of their history and determined to protect their culture. The Office of Hawaiian Affairs views the preservation of places of historical and cultural importance to the Hawaiian people to be equally as important as economic concerns.

A significant component of the dwindling archeological and cultural legacy of the Hawaiian people will be destroyed if Senator Inouye's bill to exempt proposed interstate highway H-3 from the application of the 4(f) statutes (23 USC 138 and 49 USC 303) becomes law.

In 1985 the Office of Hawaiian Affairs learned that the State Department of Transportation had suppressed the discovery of a major archeological complex at Luluku on Windward Oahu which lay directly in the path of H-3. After the State's efforts to cover up the significance of the find were exposed the archeological survey which was made public revealed that some of the sites within the Luluku Archeological Complex date back to the 4th Century A.D.—one of the earliest dated archeological sites in the Hawaiian Islands. In what it euphemistically calls "salvage", the Hawaii Department of Transportation callously proposes to destroy all but two sites within the Luluku Archeological Complex to build an interchange for H-3. The two remaining sites would be encircled by an interchange off ramp thereby destroying the context and integrity of even the two remaining sites. What may well be the last remaining archeological link with the earliest settlement of Hawaiians in the islands will have been irretrievably lost. Hawaiians did not build statues or other monumental structures but the links to their past are as important to Hawaiians as is the Statue of Liberty to all Americans and Hawaiian archeological and cultural sites are no less deserving of protection and preservation.

The State Department of Transportation obdurately refused to reroute H-3 along a court approved alignment which would completely avoid the Luluku Archeological Complex (and coincidentally also would avoid nearby Ho'omaluhia Park and the Pali Golf Course). Because of the State DOT's intransigence the Board of Trustees of the Office of Hawaiian Affairs unanimously authorized the filing of a lawsuit to prevent the destruction of the Luluku Archeological Complex. That suit, which is now pending in the U.S. District Court for the District of Hawaii, relies upon the 4(f) statutes—the only statutes which protect historic sites from destruction by highways.

You are being asked to approve a bill which will deny the Office of Hawaiian Affairs the ability to protect one of the most significant Hawaiian archeological discoveries of this century.

For this reason the Board of Trustees of the Office of Hawaiian Affairs unanimously has adopted a resolution opposing the proposed exemption of H-3 from the 4(f) statutes.

Gentlemen, Hawaiian culture and history must be protected. Do not deny us the protection available to other Native Americans.

With much aloha,
THE BOARD OF TRUSTEES OF
THE OFFICE OF HAWAIIAN AFFAIRS.

OAHU COUNCIL,
Honolulu, HI, July 10, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senator, Chairman, Committee on Environmental and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: Our organization is made up of native Hawaiians, deeply concerned with the social, health and economic status of native Hawaiians and the preservation of unique elements of our Hawaiian culture. As you probably already know, our organization is strongly opposed to special legislation which would exempt Interstate H-3 from the protections of Section 4F to the detriment of native Hawai'i historical or archeological sites.

The recent celebration of the 100th anniversary of the Statue of Liberty carried with it a recurring theme: America is a land of immigrants! Hawai'i has a similar history, of course, and the mixture of immigrant peoples and their cultures here is a hallmark of modern Hawai'i. This is a positive result of that immigration.

There is a negative side to the story, however.

In 1778, when Captain James Cook arrived in Hawai'i, some of his crew estimated the native Hawaiian population at 300,000. Present here was a highly-complex culture founded on a stable land tenure system, a thriving cooperative subsistence economy, a sophisticated societal hierarchy, religious practices which controlled every facet of daily life, and an established political and governmental system.

As a direct result of western impact and an infusion of western diseases, concepts, politics and a whole new social order, this scene was rapidly changed.

By 1893, when the Hawaiian monarchy was overthrown, the native Hawaiian population stood at 34,000! Gone were the land tenure system (and ownership of much of the land), the cooperative subsistence economy, the religion, the social hierarchy and, of course, the government itself. The trappings of the culture were put on display in museums to be taken out and dusted off now and then for dramas and pageants. While hula and ancient chant had entertained and pleased us and our gods, they were now ridiculed as licencious.

The shift from a heavy usage of the Hawaiian language to an obligatory use of English, combined with the influx of non-English speaking immigrants from around the globe, resulted in a loss of general fluency in the Hawaiian language and an incomplete learning of English. Anthropology tells us of the importance of a language to a culture. Obviously, a language is fused irretrievably with the culture from which it springs. It is also obvious that certain cultural aspects cannot even be expressed fully without the use and understanding of the language best designed to articulate them.

In the days following the overthrow of the Kingdom, a strong emphasis was placed officially upon the "Americanization" of Hawai'i. Politically, the leaders of the provisional government (who became the leaders of the Republic of Hawai'i) needed to show that Hawai'i would be ripe for annexation. To stress Americanism and downplay the importance of any of the other cultures represented (and certainly the native one) was of total importance. Thus, from 1893 until Hawai'i became a state in 1959, a major policy of its government was to prove, beyond a reasonable doubt, that Hawai'i, despite its multi-cultural population, was just another "slice of American apple pie".

To do this, the efficacy and influence of the Hawaiian culture had to be drastically reduced. The same was true of the immigrant cultures represented in Hawai'i and whose cultures also felt the impact. Happily for them, transfusions of fresh cultural knowledge and experience were readily available from their homelands. For Hawaiians, the source of their culture was the primary target of these attacks. This was their homeland. Where was the cultural replenishment expected to come from?

The whole existence of the Hawaiians as a People, complete with a culture, a standing, an ethnic foundation, was in jeopardy. Actually, the loss of the land and loss of sovereignty, added up to a complete loss of status for the Hawaiian.

In the past 20 years, native Hawaiians, with the generous help of others, have been joined in a pervasive effort to restore and replenish our culture. We have replanted roots torn from the soil, nurtured sickly growth and gloried in how our sprouts grow strong and tall.

The preservation of sites like the Luluku complex which lies in the path of the H-3

freeway is at the heart of our effort to find the remnants of our culture and piece them painstakingly together again. If Luluku is fractured by the cloverleaf planned to be constructed in its midst, yet another irretrievable shard of our Hawaiian culture will be lost.

So, the issue here is broader, really, than enacting a case-by-case exemption to a wise law; which in itself is an unjustifiable act. The issue encompasses yet another eroding of the pitiful remnants of a once majestic culture.

Do not let it happen!

We implore you to defeat this measure.

'O au no, me ka 'oia'i'o,

H.K. BRUSS KEPPELER,
Pelekikena (President).

QUEEN EMMA HAWAIIAN CIVIC CLUB,
Pearl City, HI, August 28, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senator, Chairman, Comm. on Environmental and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: The Queen Emma Hawaiian Civic Club is made up of native Hawaiians active in the betterment of the lot of native Hawaiian people in the State of Hawai'i. Part of this effort has a direct relationship to the preservation of our Hawaiian culture and historic sites.

Such a site is Luluku in the Kane'ohe District of the Island of O'ahu, State of Hawai'i. There at Luluku is a single site of enormous cultural value. Luluku, an integrated community containing many features of importance to us and worthy of preservation.

The State of Hawai'i Department of Transportation has planned a major highway interchange that will, if built, slice Luluku into bits and pieces.

Normally, the so-called "4F provisions" would protect Luluku. Pending in Congress is a measure which would exempt this highway (and the interchange) from the 4F protections.

We feel that this measure would set a very dangerous precedent and would sound the death knell for Luluku.

Please help us to defeat this measure.

Yours for,

QUEEN EMMA HAWAIIAN CIVIC CLUB,
Shirley K. Kamakele for Historic Sites Committee, Charles Ogata, Chairman.

THE NATIVE PLANTERS,
Honolulu HI

Re proposed Exemption TH3 Freeway.

REPRESENTATIVE JAMES HOWARD, Senator ROBERT STAFFORD,
Washington DC

GENTLEMAN: I am writing to you in my capacity as President of The Native Planters, a nonprofit organization incorporated for the primary purpose of protecting the agricultural practices of traditional Hawaiian planters.

We are strongly opposed to the current efforts on the part of the Hawaii delegation to obtain an exemption to the provisions of the 4(f) statutes, 23 USC 138, 49 USC 303.

This exemption sets dangerous and bad precedent for Hawaii and all other States who may benefit from federally funded highway projects. In addition, the exemption would result in the destruction of the archeological sites commonly known as the Luluku sites which are part of the rich cultural legacy left for the benefit of all of Hawaii's people. The exemption would reduce the amount of land currently needed for park use in the area, and deprive the people of windward Oahu of open space which is badly needed.

Although the Luluku sites are not the only archeological evidence remaining on windward Oahu, they are the only remaining example of an integrated settlement and agricultural area which remain intact. These sites provide taro planters and other natives with a blueprint which has and is currently being used as an example of planting techniques.

Please oppose this exemption. Hawaii is made up or several small and heavily developed and populated islands. This exemption means that there is a possibility in the future that our park lands and other areas of archeological significance will be paved over for federally funded highways.

Sincerely,

MILILANI B. TRASK,
President.

THE COUNCIL OF HAWAIIAN ORGANIZATIONS,
September 5, 1986.

Hon. ROBERT T. STAFFORD,
US Senate, Washington, DC

Dear SENATOR STAFFORD: The Council of Hawaiian Organizations is a coalition of groups representing over 15,000 members of native Hawaiian ancestry. We ask your help in opposing any exemption from Federal law that would permit the destruction of an ancient Hawaiian archeological complex which lies in the path of the proposed Interstate H-3 freeway in Hawaii.

We disagree with the Hawaii Transportation Department's contention that the Luluku Archeological Complex can be divided into 17 individual sites; the ancient Hawaiian methods of irrigation cannot be properly studied on a piecemeal basis.

We further disagree with their contention that Luluku's historic sites would be protected by the freeway project; on the contrary, 15 of the sites would be destroyed by the freeway interchange.

The issue of Luluku's historic significance has been sadly avoided by those who would promote H-3 in Congress. Our Council was deeply disappointed recently when we invited members of Hawaii's Congressional Delegation to Luluki (during the recess) for a briefing and tour of the historic sites. They did not have the courtesy to attend, neither did they even send a representative to personally inspect this precious remnant of our Hawaiian history.

It was a sad day for our Hawaiian people, and it reflects the attitude of State officials and the Department of Transportation, whose priorities have been held more highly than the history and culture of Native Hawaiians.

It is our judgment that Luluku must and shall be surveyed, studied, and hopefully preserved as a contiguous complex, one of the most significant discoveries of Hawaiian history in this century. Please oppose any amendment that would allow this desecration of our Hawaiian heritage.

Mahalo,

LOUIS AGARD,
Council of Hawaiian Organizations.

Mr. STAFFORD. Second, Mr. President, I am concerned about the potential cost and long-term nature of this interstate project at a time when we are saying it is time to complete the interstate program after 30 years and address other pressing needs of the highway system. If this project could all be built today it will cost over $800 million for a few miles. According to the Hawaii State Department of Transportation director, H-3 may not be open to traffic until the year 2008.

At the same time, there are now 25 States that are one-half percent minimum States for the purpose of interstate construction apportionments. This means that these States are essentially finished with their interstate system and have anywhere from zero to one-half percent of the remaining cost to complete the entire interstate left in their particular State. Up until now, all States have received at least one-half percent minimum apportionment of interstate construction funds regardless of their remaining cost to complete.

However, both the highway legislation passed by the House and that proposed by the administration eliminates the one-half percent minimum. These 25 States could face the prospect of having the interstate construction program continue to fund long-term, high cost projects, like H-3 for many years without being able to participate in the largest Federal-aid highway category if the one-half percent minimum for the interstate construction program is eliminated.

Third, there are further potential additional costs and health effects that could result from the construction and use of H-3 near the Omega Station which provides the communication system for our nuclear submarines around the world. The Navy raised objections to the collocation when it owned the Omega site and the U.S. Coast Guard which now owns the facility agreed to the location only after the State of Hawaii agreed to assume all liability for any problems during the construction and use of the highway, as well as for any potential interference with transmission signals.

In a letter from Mr. P.A. Yost, admiral, U.S. Coast Guard Commandant, he states that the Coast Guard's position with regard to collocation is as follows:

> The U.S. Coast Guard does not object to the collocation of Hawaii Interstate H-3 with the OMEGA Navigation Station at Kaneohe, Hawaii provided the State of Hawaii determines that no harmful radiation or shock hazards exist and provided the proper use and quality of the navigational signal provided by the OMEGA station is not diminished. Further, the State must accept full liability for any problems, injuries, or long-term health effects during construction or use of the highway because of the proximity of the OMEGA station and must assume full liability for any problems, interference or damage caused to the OMEGA station of the OMEGA signal.

No one has given us any assurance as to a maximum of additional costs the Federal Government would be exposed to if there are problems. Nor have they told us how much it will cost to make sure there are no prob-

lems. The Federal Government will have to bear 90 percent of whatever these costs are. Because of the electric field around this installation, consultants have told the State extraordinary measures will have to be taken to protect construction workers and highway users, but there is disagreement among the experts as to what these measures are and what the potential problems could be.

□ 2230

Mr. Wayne Yamasaki, director of the Hawaii Department of Transportation stated in a letter to me:

We are unable to present to you specific costs of the mitigating measures. The present injunction on the H-3 project has prohibited design on the section of highway in Haiku Valley. However, we feel that the costs will be minimal because the primary electric shielding device will consist of wires strung between the light standards of the viaduct in Haiku Valley. The controlled access feature of Interstate highways will provide the necessary security for operating personnel within the facility and the motorists.

According to a report done by Kershner & Wright on the collocation of H-3 and the Omega Station, the principal items of concern regarding collocation include:

1. "Ground current changes could result from the grounding of parts of the highway, especially the viaduct and the ventilation structure and its equipment.

2. Degradation of the ground plane may result from damages to it during construction and/or a requirement to alter or completely remove a section of its elements for the viaduct and the State access road . . . The relatively shallow burial depth of the conductors of the ground plane will not permit the use of heavy construction equipment within the area without special precautions.

3. Signal re-radiation potentialy caused by components of the viaduct and/or ventilation structure acting as an antenna.

4. Reduction in effective antenna height.

5. Electromagnetic noise.

6. Additional factors that could cause signal strength losses or changes in the characteristics of the transmitted signal.

7. Electric shock to personnel on the highway as a result of induced voltages on vehicles, singularly and combined, resulting from an accident, or from vehicles stopping for any other reason and the occupants getting out.

8. Physiological effects to persons, such as wearers of pacemakers or other electronic adjuncts assisting body functions.

In addition the study discusses potential problems with blasting operations and use of explosive mixtures.

The Kershner & Wright report concludes that with corrective measures and special procedures, the hazards involved in construction and operation of the highway can be controlled or maintained at negligible levels.

There are other experts in the field who are not as convinced with this conclusion, however, or who are concerned about the potential costs which may be incurred to protect construction workers, users of the highway and the Omega Station.

For example, Dr. Mark Hagmann, an electrical engineer who was a visiting professor at the University of Hawaii during 1981–82, raises questions about shielding which has been recommended for the highway. He states:

An electromagnetic shield must not be thought of as deflecting energy in the manner that an umbrella deflects rain. A shield is itself an antenna and creates a flow of electric current where none existed previously. There are many practical problems caused by a shield. For example great care would have to be taken to prevent lethal shocks at the time that the large sections of a shield are joined together during construction. Any gap in such a shield, which may be due to weathering, corrosion, or other causes, will create arcing, thus constitute both a fire hazard and a shock hazard of greater magnitude than that present without the shield. The shield would not be in place to protect the hundreds of workers present during the construction phase.

I have received a letter from Mr. Paul Lane, Hawaii representative for Medtronic Inc., where he states:

As a representative of Medtronic Inc. the largest manufacturer of cardiac pacemakers in the world, we are concerned that, due to the type and strength of the signal generated in the immediate area of the antenna, people who wear pacemakers may have the pacemakers turned off during transit in the area of the Omega station.

I also received a letter from Dr. Glenn M. Stahl who is in family practice in Hawaii. His letter states:

I have several health and safety concerns regarding this freeway. The proposed route currently runs beneath the Coast Guard Omega Station, a microwave emitting navigational tracking station. There have been several reports of electrical shocks coming out of that station. Microwaves have also been implicated in the malfunction of heart pace-makers as well as in the formation of cataracts. There are many unknowns regarding microwaves and the state's environmental report on H-3 seems to skirt these unknowns almost in a "what we don't know can't hurt us" approach.

I ask unanimous consent that the full text of Dr. Hagmann's report and the letters from Mr. Paul Lane and Dr. Glenn Stahl be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HEALTH AND SAFETY PROBLEMS IN COLLOCATION OF H-3 WITH THE COAST GUARD OMEGA STATION

(Prepared for the Committee on Environment an Public Works of the U.S. Senate by Mark J. Hagmann, Ph.D.

I. PERSONAL BACKGROUND

I am an electrical engineer who has specialized in the interaction of electromagnetic fields with the human body for the last 10 years. I received the Ph.D from the University of Utah in 1978 with my dissertation on "Numerical Studies of Absorption of Electromagnetic Energy by Mann" and have had 36 publications regarding my research. I am currently employed as a Senior Staff Fellow at the National Institute of Health, but this report gives only my own views and does not necessarily reflect official HHS opinion.

I first became aware of some of the problems associated with the construction of H-3 when I read the Kershner & Wright reports which had been prepared for the State of Hawaii in 1978 and 1979. I visited the Coast Guard Omega station in Haiku valley Oahu several times during 1981–1982 while I was a visiting professor at the University of Hawaii. I am well aware of the shock hazards present in the field of the transmitter since I received a severe jolt on one occasion when I attempted to enter a van in the main parking lot.

[Figures mentioned are not reproducable for the Record.]

II. BRIEF DESCRIPTION OF THE OMEGA STATION AND PROPOSED H-3 ROUTING

Figure 1 of this report is a map showing the proposed route of H-3 through the antenna system of the Omega station. Elevations showing two spans of the routing are shown in Fig. 2. The Viaducts would be more than 100 feet above the ground as shown in Fig. 3.

The Omega station broadcasts a sequence of signals in the frequency range of 10-14 kilohertz (kHz). Operation at very low frequencies (VLF) is necessarily low in efficiency so a power of 135 kilowatts (kW) is required for the production of a signal of 10 kW. This means that a power of 125 kW is dissipated in the ground and antenna system.

The electric field intensity measured near the Omega station is as strong as 900 volts/meter (v/m). The Kershner & Wright report of 1979 bives an estimate as high as 1200 v/m on the proposed road surface. The balance of this paper will list some of the problems and hazards associated with the construction and operation of a highway through such strong fields.

III. PROBLEMS AND HAZARDS ASSOCIATED WITH SHIELDING THE HIGHWAY

The Kershner & Wright report recommended that the portion of the highway beneath the antenna spans (approximately three-fourths of a mile) be provided with shielding to protect motorists from the electromagnetic fields. It was suggested that a series of bridge cables placed over the highway to reduce the field strength to approximately 300 v/m. To my knowledge there is no highway in the world that has electromagnetic shielding so this constitutes a new, unproven technology.

An electromagnetic shield must not be thought of as deflecting energy in the manner that an umbrella deflects rain. A shield is itself an antenna and creates a flow of electric current where none existed previously. There are many practical problems caused by a shield. For example great care would have to be taken to prevent lethal shocks at the time that the large sections of a shield are joined together during construction. Any gap in such a shield, which may be due to weathering, corrosion, or other causes, will create arcing, thus constitute both a fire hazard and a shock hazard of greater magnitude than that present without the shield.

The shield would not be in place to protect the hundreds of workers present during the construction phase. Mr. Boynton Hagaman, a consultant for the State of Hawaii, has suggestd that the workers wear protective suits made of metallized cloth to protect them from the electric field. The high temperature and humidity at the site cause

me to doubt that the workers would use such clothing.

IV. PROBLEMS AND HAZARDS ASSOCIATED WITH CONSTRUCTION OPERATIONS

Construction of the proposed highway would certainly require some movement of earth for placement of footings for the viaduct. Excavation in the area would interrupt the radial ground system, which is a dense network of buried copper cables that extends outward to a distance of 1100 feet from the transmitter building. Cutting and jumpering of these cables would require great care since the magnitude of the current in the ground return is necessarily equal to that in the antenna itself, which is about 500 Amperes.

The Kershner & Wright reports mention that care must be used to avoid electric sparks during refueling operations during the construction phase. This would also be true for the completed highway unless substantial shielding is used.

Dangerous currents would be induced in large tall metallic structures. This would cause serious difficulties during the construction of the viaduct which is approximately 115 feet high as shown in Fig. 3. Vertical sections of reinforcing rod would become antennas themselves so they must be placed and tied with great care. A potential of at least 11,000 volts would be expected between the top of the viaduct and the ground. Substantial currents would flow in this system so it is incorrect to compare the shock hazard with the minor effects of static electricity. Large currents would also flow through a crane used during construction. A large spool of wire would act as a loop antenna and thus could receive a substantial voltage by coupling to the magnetic field present in the antenna system.

These are only a few of the problems that might be associated with construction operations. It would be impossible to make a complete list and human error would greatly compound the potential problems and hazards. Qualified engineers would be required for continual supervision of the workers during construction as well as in some aspects of maintenance.

V. INTERFERENCE WITH ELECTRONIC EQUIPMENT

I have discussed the possible effects of the Omega signal on cardiac pacemakers with Mr. John Dostalek, Director of Technical Services, Medtronics (Minneapolis, Minn., phone 612-574-4000). The following is a summary of the major points which he made during the converstion:

1. There is limited knowledge concerning the response of pacemakers to electromagnetic interference.

2. He has studied the Medtronics devices but there are at least 25 manufacturers world-wide and the sensitivity to interference of the different units has differed by a factor of 100 in some of the tests.

3. The Medtronics pacemakers are designed to work with interfering signals as strong as 200 v/m but the effects of pulsing in the Omega transmission are unknown.

4. He feels that testing done to date is inadequate for determining the sensitivity of pacemakers to the Omega signal. Proper testing must include pacemakers from different manufacturers with exact duplication of the Omega signal.

5. Differences between the sensitivities of pacemakers from different manufacturers, and the effects of pulsing, have caused him to suggest that the electric field intensity be limited to 30 v/m on the highway.

Tests have been conducted at the GM Technical Center in Milford, Michigan to determine effects of the electromagnetic fields of the Omega station on the electronic systems in GM cars. Engineers at both GM and Ford have said that the possible effects could range from not being noticeable to total immobility of the vehicle. I am not aware that any such problems have yet occured with vehicles at the Omega station but this issue may become significant in the future due to the increasing complexity of the electronic circuits used in automobiles.

VI. NONTHERMAL EFFECTS OF ELECTROMAGNETIC RADIATION

Numerous hematopoietic (blood), neuroendocrine (glandular) and neural (nervous system) effects have been reported when animals have been exposed to relatively weak electromagnetic fields. Different effects have been seen with microwaves and power frequencies but I know of no study made at a frequency within a factor of 100 of those used by Omega. William McEnroe made a study for the U.S. Coast Guard in May of 1980 entitled "Electromagnetic Radiation Survey of U.S. Coast Guard Omega Loran-C (Navigation) and Communication Stations." In his report he states that, "NIOSH believes there is sufficient documentation of such effects to cause concern."

The health effects of long-term exposure to electromagnetic radiation at the VLF frequencies of the Omega station are unknown at the present time. Measurements reported by McEnroe show that the electromagnetic fields within the transmitter building, where the coastguardsmen work, are considerably weaker than those outside the building. Such attenuation would be expected since the concrete walls of the building appear to be about six feet thick. For this reason studies of the personnel at the Omega Station would be of interest but would have little bearing regarding the effects of long-term exposure on construction workers. There is no agreement among experts as to whether or not such effects would alter the health of construction workers.

VII. CONCLUSIONS

Because of the many unknowns I feel it is wise to allow a reasonable margin of safety in limiting human exposure to electromagnetic fields. I recently spoke with Mr. John Mitchell, Chief of the Radiation Physics Branch at the School of Aerospace Medicine at Brooks Air Force Base (San Antonio, Texas, phone 512-536-3582). He has recommended a 50 v/m guideline for general population exposures to very low frequency (VLF) radiation. The limit is cited in a generic environmental impact statement for the Air Force's Ground Wave Emergency Network (GWEN) communication system. The GWEN system will operate at 150-175 kHz, which is relatively close to the frequencies used by Omega.

It should be clear that the H/3/Omega collocation is not a normal construction project but has many hidden costs and hazards. Based on my personal experience and research I believe that serious hazards would be present during both the construction and use of the proposed H-3 due to the strong electromagnetic fields near the U.S. Coast Guard Omega station located in Haiku Valley.

MEDICAL CONSULTANTS
OF THE PACIFIC, INC.,
Honolulu, HI, July 12, 1986.

Hon. ROBERT STAFFORD,
U.S. Senate, Hart Building, Washington, DC.

Subject: S-2467 Highway H-3/Omega Station, potential problem.

DEAR SENATOR STAFFORD: During the last three years, in many ways, the State of Hawaii has been advised of a potential hazard for a segment of the population if the H-3 Freeway is allowed to pass through the Omega Station transmitting antenna without proper shielding.

As a representative of Medtronic Inc. the largest manufacturer of cardiac pacemakers in the world, we are concerned that, due to the type and strength of the signal generated in the immediate area of the antenna, people who wear pacemakers may have the pacemakers turned off during transit in the area of the Omega antenna.

Letters from Medtronic and Cardiologists, indicating concern for these patients, have been submitted to the State as long as three years ago. I have pesonally testified in Federal Court and to the State Senate Committee on Health as well as at town meetings in an attempt to protect these pacemaker wearers via proper shielding of the freeway in the area of the antenna.

In the final draft of the H-3 freeway, the State of Hawaii agreed to shield the roadway to 200 volts/meter, whereas previously it had been documented that there would be 1200 volts/meter at the level of the highway. Medtronic recommended shielding to 30 volts/meter. Medtronic pacemakers are designed to withstand a maximum of 200 volts/meter. This information is contained in letters from Medtronic Inc., Minneapolis, Minnesota.

If the highway is allowed to proceed without shielding and if pacemakers are shut off when the wearers need them, what will happen? If they are driving and pass out due to slow, irregular or no heart stimulation there could be accidents or worse. Would the State then be legally responsible? This potential problem has been published several times in various local and national publications so the problem is recognized in Hawaii and nationally.

I have intentionally been general in the information as I feel that more detailed data should be obtained from the Medtronic Radiation Laboratory in Minneapolis. However, if you wish I will submit previous publications and correspondence concerning this potential hazard.

Personally, I do not care one way or the other about the H-3 freeway but I am concerned about what might happen to pacemaker wearers if the freeway is not rerouted or adequately shielded. Please take this into consideration when voting or discussing S-2467.

Sincerely,

PAUL LANE,
Hawaii Representative for Medtronic Inc.

KANEOHE BUSINESS
AND PROFESSIONAL CENTER,
Kaneohe, HI, September 10, 1986.

Hon. ROBERT STAFFORD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR STAFFORD: I am a family physician in Kaneohe, Hawaii, the principal suburban area impacted by the proposed H-

3 "interstate" freeway. I have several health and safety concerns regarding this freeway.

The proposed route currently runs beneath the Coast Guard Omega Station, a microwave emitting navigational tracking station. There have been several reports of electrical shocks coming out of that station. Microwaves have also been implicated in the malfunction of heart pace-makers as well as in the formation of cataracts. There are many unknowns regarding microwaves and the state's environmental report on H-3 seem to skirt these unknowns almost in a "what we don't know can't hurt us" approach.

I would urge your cautious consideration of the above and reject the environmental exemption sought for the H-3 freeway.

Sincerely yours,

GLENN M. STAHL, M.D.

Mr. STAFFORD. Finally, I am convinced after listening to both sides that there is deep disagreement within the State on the best way to meet Hawaii's transportation needs.

The immediate past Lieutenant Governor of Hawaii has written to me, "In terms of Hawaii, the Interstate H-3 is an obsolete project, planned in the 1960's when the windward side of Oahu was to be the location of the 2d urban center with a planned population of 250,000. With the adoption of the land use ordinances of the city and county of Honolulu, windward Oahu will remain suburban and agricultural * * *."

The mayor of the city and county of Honolulu, which includes the entire island of Oahu, has written me the following, "Changing times and conditions have negated the need for this freeway as part of the Interstate Highway System. Instead, we urge the withdrawal of H-3 from the Interstate System with authorization for us to utilize the funds for much needed substitute transportation projects. * * * Also note that H-3, which would tunnel through our Koolau Mountain Range, serves only 15 percent of Oahu's population; 85 percent of our population reside on the leeward side, where serious traffic congestion and transportation problems exist."

The city's transportation director, city council members, Hawaiian State legislators, and neighborhood boards have all made the point that H-3 will not address the real transportation needs of the island. I ask unanimous consent that letters from these individuals and groups be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

HONOLULU, HI,
June 24, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senator, Chairman, Committee on Environment and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: Aloha from Hawaii! I am our State's immediate past Lt. Governor, and I am writing you regarding the proposed 4(f) exemption bill offered by Senator Daniel Inouye. May I express to you as strongly as I can the conviction that this bill would not be in the best interest of Hawaii or of the nation.

In national terms, to exempt a specific project from environmental legislation after the courts have determined there is a violation would seem contrary to the basic philosophy behind environmental laws.

In terms of Hawaii, the Interstate H-3 is an obsolete project, planned in the 1960s when the windward side of Oahu was to be the location of the 2nd urban center with a planned population of 250,000. With the adoption of the land use ordinances of the City and County of Honolulu, Windward Oahu will remain suburban and agricultural, with the population capped at approximately 150,000 through municipal land use restrictions. Under these ordinances, the 2nd urban center has been specifically designated elsewhere.

Windward Oahu residents have primary concerns in terms of preserving the agricultural land, but also of improving the traffic situation to downtown Honolulu during morning and evening rush hours. H-3 does nothing for either concern except make them worse. Running as it does from Kaneohe to Aiea, H-3 will not help the commuters driving to downtown Honolulu. The new growth areas in Leeward and Central Oahu desperately need an improved transportation infrastructure. H-3 will drain away all of the federal and a substantial portion of the State highway funds leaving little for the Leeward/Central area and the rest of Oahu. The situation in the Leeward and Central areas is approaching what City Planning Director Donald Clegg calls a "traffic castastrophe."

In my view, the 9th Circuit Court of Appeals correctly applied the 4(f) protection of the law to the Hoomaluhia Park. The Court directed DOT to consider "no-build"—that is not building the highway while implementing other improvements such as increased bus service, overpasses, etc. Their decision was upheld by the full 9th Circuit, and the U.S. Supreme Court denied review of this decision. In the face of this judicial action, an exemption for H-3 would undermine both the rule of law and separation of powers.

There are a number of unresolved issues in addition to the Hoomaluhia Park question that make H-3 a bad project such as the collocation of H-3 with the Coast Guard Omega Station and the environmental damage to the Haiku and North Halawa Valleys.

May I therefore respectfully urge that you vote against the proposed 4(f) exemption.

Thank you very much.

Sincerely,

JEAN KING.

OFFICE OF THE MAYOR,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, September 11, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: Regarding pending Senate action on the 1986 Highway Bill, S. 2405, I want to notify you that the Honolulu City Administration is opposed to a waiver of Section 4(f) which would permit the construction of H-3. Changing times and conditions have negated the need for this freeway as part of the Interstate Highway System. Instead, we urge the withdrawal of H-3 from the Interstate System with authorization for us to utilize the funds for much needed substitute transportation projects.

Please note that the City and County of Honolulu has jurisdiction over the entire Island of Oahu which includes 80 percent of the State of Hawaii's population. Also note that H-3, which would tunnel through our Koolau mountain range, serves only 15 percent of Oahu's population; 85 percent of our population reside on the Leeward side, where serious traffic congestion and transportation problems exist. The City and County of Honolulu is responsible for Oahu's public transit system and for 80 percent of all the roads and highways.

In view of the long history of this project and the current transportation needs facing Honolulu, we request your support for the withdrawal of H-3 from the Interstate System and the earmarking of these funds for substitution of Honolulu's critical transportation projects.

If you have any questions regarding this matter, please contact our representative in Washington, Mr. David Weiman, telephone number (202) 797-9119. We look for your support.

Warm personal regards.

Sincerely,

FRANK F. FASI.

[From the Honolulu Advertiser, Sept. 10, 1986]

CITY POLL FINDS 49 PERCENT BACK H-3 ALTERNATE

(By Floyd Takeuchi)

A recently completed Fasi administration poll supports an August Honolulu Advertiser Hawaii Poll finding that a majority of Oahu residents support the proposed H-3 Freeway.

But if given a choice between H-3 or other transportation improvements, the city poll also found, nearly 50 percent of the 421 registered voters surveyed would abandon the freeway and back substitute projects.

Mayor Frank Fasi yesterday announced the results. The poll was conducted by city Chief Planning Officer Donald Clegg.

The Fasi administration strongly opposes completion of the trans-Koolau freeway. It is pushing for transfer of $716 million in federal funds earmarked for H-3 to other highway projects and a Honolulu rail mass transit system.

Fasi yesterday said he would inform U.S. senators of the poll results. The Senate is poised to consider a request by Hawaii Sen. Daniel Inouye to exempt H-3 from federal environmental regulations.

Fasi's poll asked two questions: The first was: "Should we build a new H-3 Freeway between Honolulu and Windward Oahu."

The response: 62 percent said yes; 26 percent said no; 12 percent were undecided.

(The Advertiser's Hawaii Poll found that a record 68 percent favored completion of the freeway; 21 percent said no; and 11 percent were undecided.)

Of those who answered "yes" on the first question, the Fasi poll asked a second question:

"If you knew that H-3 will join H-1 at Halawa and not go to downtown Honolulu, and that there is not enough money to build both H-3 and other projects, that the money could be transferred to other projects to relieve traffic including (improvements to Pali, Likelike, Kalanianaole and other highways, and starting construction of a rapid transit system), would you still be in favor of building H-3?"

The administration poll found that 33 percent favored completion of H-3; 49 percent were opposed; 18 percent were undecided.

CITY COUNCIL,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, September 2, 1986.

Hon. Senator Robert T. Stafford,
U.S. Senate, 133 HSOB, Washington, DC.

I'd like to ask that you not vote to exempt Hawaii's H-3 project from Federal 4F regulations.

I believe that the 4F regulations are correct and do protect an important wilderness park area.

Beyond this, however, I continue to believe this is not the best use of $700 million to improve transportation on this island. The whole island is the City and County of Honolulu.

We have traffic problems all over. The number of trips to be provided by this highway is nowhere near the number of trips we need on the leeward side of the island where most of our jobs, population and growth are now and are planned.

I believe the money should be transferred to projects which would truly relieve the traffic problems.

Sincerely,

MARILYN BORNHORST, *Chair.*

OFFICE OF THE MAYOR,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, November 6, 1985.

Hon. ROBERT STAFFORD,
U.S. Senator, 415 Hart Building, Washington, DC

Attention Jan Lauver.

DEAR SENATOR STAFFORD: We, the undersigned, are opposed to the proposed action of the Congress to circumvent and make null and void the purposes and/or intent of Section 138 of Title 23, United States Code, and Section 303 of Title 49, United States Code as relating to the proposed construction of a Hawaii State Highway known as H-3.

We are in complete agreement that this issue should be resolved at the local level. There has not been an opportunity for state and local legislative bodies to establish priorities and current policies on how limited Federal funds should be spent vis-a-vis H-3 as opposed to transit needs in our major highways H-1, H-2, and the current trans-Koolau corridor which serve more than 80% of our motoring public.

FRANK F. FASI,
Mayor.
PASTY T. MINK,
MARILYN BORNHORST,
WELCOME C. FAWCETT,
Council Members.

HOUSE OF REPRESENTATIVES,
THE THIRTEENTH LEGISLATURE,
Honolulu, HI, May 14, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Environment and Public Works Committee, U.S. Senate, Senate Hart Building, Washington, DC.

DEAR SENATOR STAFFORD: We are writing to reaffirm our opposition to any Congressional exemption for Interstate H-3 in Hawaii. The matter has been adjudicated and the State of Hawaii should be made to follow the spirit and intent of the law, in particular the 4(f) provision of the Surface Transportation Act. Alternatives, including those singled out by the U.S. Ninth Circuit Court of Appeals, are available to address the same traffic problems as H-3. They should be implemented, not H-3.

Respectfully yours,

ROBERT S. NAKATA.
DAVID M. HAGINO.
MAZIE HIRONO.
BILL PFEIL.
RUSSELL BLAIR.
JAMES T. SHON.
KINA'U BOYD KAMALI'I.
VIRGINIA ISBELL.

KALIHI-PALAMA
NEIGHBORHOOD BOARD NO. 15,
Honolulu, HI, February 11, 1986.

Subject: Reallocation of Hawaii Interstate (H-3) Freeway Funds

Hon. Congressman James Howard,
Cannon House Building, Room 131, Washington, DC.

DEAR CONGRESSMAN HOWARD: The Kalihi-Palama Neighborhood Board wishes to express its support of a mass transit system for Hawaii, provided that H-3 funds can be transferred to finance the mass transit project.

The Kalihi-Palama Neighborhood Board is an elected community group whose constituency would be affected by decisions on H-3. The Kalihi-Palama area is situated next to downtown Honolulu and bears the brunt of traffic enroute to town. This Board feels that, without mass transit, our roads will be widened further and divide our community. This Board also believes mass transit would alleviate some of the traffic congestion in our area.

The Board stands in favor of both H-3 and mass transit. However, the Board places a higher priority on mass transit due to the pressing needs of our community.

Thank you for the opportunity to comment. We trust you will take our concerns into consideration.

Sincerely,

CHRISTINA B. ARIOLA-HELLER.

WAIPAHU NEIGHBORHOOD BOARD NO. 22,
Waipahu, HI.

RESOLUTION

Whereas, while $750 million has been set aside by the U.S. Government for the development and construction of the H-3, trans-Koolau Interstate Freeway, the project may not be able to proceed for failure to comply with Federal regulations; and

Whereas, should the H-3 Freeway project not be able to proceed, the State and City and County of Honolulu have until September 30, 1986, to suggest alternative projects which might be funded with H-3 funds; and

Whereas, planned improvements to the H-1 and H-2 Freeway corridors in Leeward and Central Oahu deserve immediate funding through available H-3 monies because of heavily-congested and near stalled conditions therein and because existing and planned population growth on Oahu—and the concomitant increase in generated traffic and traffic congestion—will continue to take place in Leeward and Central Oahu rather than in Windward Oahu by both market and public policy choice.

Whereas, traffic problems within the H-1 and H-2 corridors in Leeward and Central Oahu are reaching crisis levels while there appears to be reasonable solutions to ease traffic congestion over the Likelike and Pali Highways without building the H-3 Freeway.

Whereas, the use of some H-3 funds to develop a light rail rapid transit system to serve Leeward, Central and West Oahu also would ease heavy traffic congestion within the H-1 and H-2 Freeway corridors as well as efficiently support planned population within these areas; and

Whereas, use of some H-3 funds to finance needed improvements to the Waiawa (H-1) Freeway Interchange, a new Interchange on the H-2 Freeway to service the Mililani community, a new Paiwa Street/H-1 Freeway Interchange in Waipahu and improvements to the Kunia (H-1) Freeway Interchange will directly benefit our community by facilitating the revitalization and modernization of Waipahu; and

Whereas, diversion of H-3 funds towards the development of a light rail rapid transit system and needed improvements within the H-1 and H-2 corridors can be shown to generate a greater number of construction and service jobs for more local businesses than would a single major contract for H-3 construction; now, therefore,

Be It Resolved by our Waipahu Neighborhood No. 22 that we support identification by the State of Hawaii and City and County of Honolulu of those improvements to the H-1 and H-2 Freeway corridors cited above as alternative projects for funding by available H-3 funds; and

Be It Further Resolved that we also support commitment of adequate, available H-3 funds towards the development of a light rail rapid transit system which will effectively serve Leeward, Central and West Oahu; and

Be It Further Resolved that we respectfully urge Hawaii's Congressional Delegation and appropriate Federal, State and City officials to pursue commitment of available H-3 funds to needed improvements to the H-1 and H-2 Freeway corridors and development of the aforesaid light rail rapid transit system; and

Be It Finally Resolved that copies of this Resolution be transmitted to Hawaii's Congressional Delegation, Governor George Ariyoshi, Mayor Frank F. Fasi, City Council Chair Marilyn Bornhorst, Councilmember Patsy T. Mink, Councilmember Randy Iwase, the City Managing Director, the Director of the State Department of Transportation, the Director of the City Department of Transportation Services, the City's Chief Planning Officer, State Senators Joe Kuroda, Ben Cayetano, Patsy Young and House Representatives Mits Shito, Mike Crozier, Paul Oshiro, and Daniel Kihano, and other Neighborhood Boards.

Offered by:

Cal Kawamoto, Chair; David Kaufman, Vice Chair; Kenneth Thomas, Secretary; C.O. Anderson, Treasurer; and members Tony Ballesteros; Lehualani Hale; Brigido Daproza; Milton Maekawa; Pete Pascua; P.C. Domingo; Burt Garcia; Irene Elston; Laura Mariano; James Gee; Tommy R.C. Tupinio.

RESOLUTION

Whereas, the Federal Government has designated $750 million for construction of the H-3 trans-Koolau freeway, the project may not be able to proceed for failure to comply with Federal regulations; and

Whereas, the State of Hawaii and the City and County of Honolulu have until September 30, 1986 to decide whether to proceed with the H-3 under its present status or to substitute alternative transportation plans for the funds; and

Whereas, peak hour traffic through the Waiawa-Aiea corridor is approaching critical levels, and any additional development in Central and West Oahu is expected to have

an adverse impact on traffic conditions in the Pearl City area.

Be it resolved that Pearl City Neighborhood Board No. 21 fully supports Mayor Frank Fasi's administration in its proposal to substitute alternative plans for the allocated H-3 Federal funds, and divert such funds to resolve Leeward and Central Oahu's transportation crisis.

Be it further resolved that copies of this resolution be forwarded to Governor George Ariyoshi, Mayor Frank Fasi, Senator Ben Cayetano, City Council Chairperson Marilyn Bornhorst, State Transportation Director Wayne Yamasaki, City Transportation Services Director John E. Hirten, and members of Pearl City Neighborhood Board No. 21.

MEMORANDUM—MARCH 24, 1986

From: Albert K. Fukushima, chairman.
Subject: Reallocation of H-3 funds to alternative transportation projects.

Attached for your information is a resolution "Pertaining to Substitution of Alternative Transportation Plans for the Allocated Federal H-3 funds," which was approved by a vote of 9-1-2.

We would encourage immediate positive action be taken on this very urgent and important matter.

MILILANI/WAIPIO/MELEMANU NEIGHBORHOOD BOARD NO. 25,
Mililani, HI, March 3, 1986.

Hon. GEORGE R. ARIYOSHI,
Governor, State Capitol, Honolulu, HI.

DEAR GOVERNOR ARIYOSHI: At its regular meeting on February 26, 1986 the Mililani/Waipio/Melemanu Neighborhood Board unanimously (14-0) adopted the following resolution:

Whereas, Mililani/Waipio/Melemanu Neighborhood Board No. 25 has continuously monitored traffic and transportation problems through the years as one of its primary concerns; and

Whereas, the Board adopted, at its regular meeting on August 24, 1983, a resolution stating that the Kipapa Gulch segment of Kamehameha Highway (Roosevelt Bridge and its approaches) was one of the most dangerous stretches of arterial road in the entire state, with accidents and injuries averaging over 30 (plus two (2) deaths) a year; and

Whereas, the following day (August 25, 1983), the Board wrote to the State Director of Transportation about these concerns, asking that his department, (a) begin designing and planning to make Kamehameha a divided highway, including the Bridge, from Lanikuhana Avenue down to the H-1 junction, and (b) provide it with emergency call-boxes and better lighting; and

Whereas, the only apparent response has been the installation of call-boxes—late in 1985; and

Whereas, in July 1985, Neighborhood Board No. 25 sounded the alarm when, in a comprehensive opinion survey (2,000 responses), only one Mililani resident out of three favored the expansion of the town mauka of H-2 Freeway and even less supportive of the Waikele and Waiawa proposals because of worsening traffic congestion—a concern also widely voiced in write-in opinions; and

Whereas, on October 11, 1985, Neighborhood Board No. 25 intervened before the State Land Use Commission to plead that approval not be granted to Amfac on its Waikele development until the petitioner fulfills a number of specific conditions dealing with transportation impacts and concerns; and

Whereas, the Board adopted, at its regular meeting on October 23, 1985, a resolution taking notice of the Central-Leeward population growth, with many huge developments in the offing, and the inadequacy of the current highway/bus network to handle it, with a predicament even today approaching gridlock during peak hours; and

Whereas, the October Resolution requested a moratorium on new developments until responsible State and City and County departments take a number of certain immediate and long-range actions to rectify the inadequacy of the present transportation network; and

Whereas, senior City and County officials last month requested Neighborhood Board to support the transfer of H-3 funds to meet immediate island-wide transportation needs, particularly to include a rapid transit system from Waikiki to Aloha Stadium; and

Whereas, the Board has historically not taken a formal position on issues that are of direct and primary concern of another Board's area; now, therefore, be it

Resolved, while the Board continues to feel it inappropriate to take a position on H-3, the Board wishes to go on record officially encouraging senior State and city officials to begin immediately to cooperate, consult, plan, and implement a reasonable transportation program which meets Central and Leeward Oahu needs. This program should involve all levels of government, as much citizen participation as possible, and assistance and advice from developers; and should eschew duplication and competing effort, confrontation and conflict.

Sincerely,

SAMUEL S.H. LEE,
Chair.

KAHALUU NEIGHBORHOOD BOARD NO. 29,
Kaneohe, HI, January 13, 1986.

Subject: HR 3659. Relating to exemption of interstate H-3.

Hon. Congressman JAMES HOWARD,
House Building,
Washington, DC.

DEAR CONGRESSMAN HOWARD: The Kahalu'u Neighborhood Board is in opposition to HR 3659 and recommends that this bill be defeated. We believe this bill has far reaching and precedent setting consequences if it is passed.

The Kahalu'u Neighborhood Board is an elected community group which has a constituency that will be certainly impacted by the development of the Interstate H-3.

The Board, while being opposed to the development of the Interstate H-3, believes that the passage of HR 3659 has much broader implications than the mere exemption of federal regulations to environmental laws.

Thank you for your consideration.

Sincerely,

CHESTER KOGA.

KOOLAULOA NEIGHBORHOOD BOARD NO. 28,
Hauula, HI, March 14, 1986.

To: Governor, State of Hawaii, Mayor, City and County of Honolulu, Members, Hawaii State Legislature, Members, Honolulu City Council, Neighborhood Boards.
From: Creighton U. Mattoon, Chair, Transportation Committee.
Subject: Transfer of H-3 Funds.

At the present time it would seem that the question of whether or not we need H-3 has become moot. Construction has been halted by the Courts and time is running out while the State of Hawaii faces the almost certain fate of losing 700 million dollars in highway funds if it does not establish alternative uses to which these Federal monies may be applied. There are numerous proposed projects aimed at fulfilling Oahu's transportation needs which would definitely benefit. Some worthy projects include fixed rail systems, revised bus systems, shuttle systems, highway improvement and maintenance, interchange construction, reversible lanes, ferry systems, and high surf protective measures.

At its regular meeting on March 13, 1986 the Koolauloa Neighborhood Board No. 28 adopted the following position:

The Koolauloa Neighborhood Board No. 28 is concerned about the critical situation which currently exists pertaining to the potential loss of 700 million dollars in highway funds and urge that the City and the State take the necessary steps to insure that funds allocated for H-3 may be readily transferred so that solutions to Oahu's transportation problems may be effected.

CREIGHTON V. MATTOON.

NOVEMBER 3, 1985.

Re: H-3 exemption.
Senator DANIEL INOUYE,
U.S. Senate,
Washington, DC

DEAR MR. INOUYE: The Waiahole Waikane Community Association throughout the past decade has consistently opposed the H-3 freeway due to the irreparable damage that will occur to our environment. Overwhelming evidence have been presented in public hearings to this effect.

In view of this, it is logical that no exemption should be granted.

Sincerely,

DAVID Y. CHINEN,
President.

KA'A'AWA COMMUNITY ASSOCIATION,
Ka'a'awa, HI, June 17, 1986.

Re: Hearings on S. 2405.
Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC

DEAR SENATOR STAFFORD: The Ka'a'awa Community Association represents a residential area of approximately 500 families who may have adverse impacts of many kinds which may be created if the proposed H-3 freeway were to be built in Honolulu, HI. We have consistently opposed the construction of this highway as it will have a destructive impact on our natural and social environment caused by opening up a rural area to development and may force its present residents to move away because of economic pressures. All of this disruption may be created by a highway which will not even meet the transportation needs which it alleges to address.

We urge you and your committee to stand firm and to resist the "die-hards" attempts to build this unnecessary highway which continues, even after the courts have upheld certain Federal laws which prohibits the completion of H-3.

Thank you for your attention to our concerns.

Very truly yours,

BRION B. KANDA,
President.

WAIAHOLE & WAIKANE
COMMUNITY ASSOCIATION,
Kaneohe, HI, September 4, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC

DEAR SENATOR STAFFORD: The Waiahole-Waikane Community Association has, since its inception, opposed the H-3 Freeway due to its detrimental effects on the Windward side of the island of Oahu.

Our organization is composed of farmers and residents of the Waiahole and Waikane Valleys, a heavily agricultural area on Windward Oahu.

We request that no exceptions be granted to the Department of Transportation, State of Hawaii, that would exempt this project from Federal law.

Sincerely,

DAVID Y. CHINE,
President.

JULY 13, 1986.

Reference: Senate bill 1796.
Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Senate Office Building, Washington, DC

DEAR SENATOR STAFFORD AND MEMBERS OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS: As an elected member of the Kaneohe Neighborhood Board, representing sub-District #5, I am in total opposition to Hawaii's Congressional delegations, the State of Hawaii's Department of Transportation, and the "We all Need H-3" organizations request to exempt Interstate H-3 from all environmental laws. This bill, and its companion request in the House of Representatives, is an attempt to circumvent the Federal Appeals Court's decision that if the 4 (f) statement violates environmental laws—a decision that has been upheld by the U.S. Supreme Court.

On April 3, 1986, the Hawaii Congressional delegation received 35,000 signatures from Hawaii residents, supporting the construction of Interstate H-3. This cleverly drafted petition was written to obtain signatures from frustrated commuters. Nowhere in the petition or the signed letters does it clearly state that these citizens are supporting the exemption of this highway from all Federal environmental laws.

Senator Stafford, on May 8, 1986, the Honolulu Star-Bulletin reported the refusal by the Honolulu City Council to grant the Waiola Estates project, a 1500 affordable home project, exemptions from State environmental laws. However, three days later, five of the nine members of the City Council, urged your committee to pass Senate Bill 1796. As an astute voter, I find this very amusing; as a taxpayer, I am appalled at their support of this $800 million white elephant and their total disregard for Federal environmental laws.

In the Carrier, a publication mailed to each citizen from the State of Hawaii's Department of Transportation, Senator Matsunaga expounds the words inscribed on the east side of the State Capitol, "Here the People rule." Should the State of Hawaii be granted this exemption to construct this "go-nowhere" highway, I believe the Capitol inscription should be changed to read, "Here the Biggest Lobbyist Rule"!

I congratulate you, Senator Stafford, for the position you have personally taken on this bill. I would certainly appreciate a response from the rest of your committee on this "special treatment" bill that has a potential to add several more species to the extinct list.

EDWIN B.G. TAYLOR, Jr.

Mr. STAFFORD. A poll recently conducted by the city showed that if given a choice between H-3 or other transportation improvements, nearly 50 percent of the 421 registered voters surveyed would abandon the freeway and back substitute projects.

I do not believe that anyone can dispute that there is significant, deep and broad opposition to this project in the State of Hawaii from organized groups and individual citizens for a variety of reasons.

I have received many, many letters in opposition to an exemption for H-3 both from individual Hawaiians and from organizations within Hawaii and national organizations. I ask unanimous consent that the following letters be placed in the RECORD following my statement:

No. 1. Mr. Tom Nekota, director of the department of parks and recreation of the city and county of Honolulu.

No. 2. East Oahu County Farm Bureau.

No. 3. Society for Hawaiian Archaeology.

No. 4. Ms. Muriel B. Seto, executive director of Hawaii's Thousand Friends.

No. 5. Mr. John M. Agard, State president of the Congress of the Hawaiian People.

No. 6. Natural Resources Defense Council.

No. 7. Environmental Policy Institute.

No. 8. Martha W. Black, Hawaii State legislative chair, Hawaii Pacific Division of American Association of University Women.

No. 9. Hawaii Audubon Society.

No. 10. Hawaiian Botanical Society.

No. 11. Life of the Land.

No. 12. National Recreation and Park Association.

No. 13. Friends of the Earth.

No. 14. Ms. Marion Kelly, anthropoligist.

No. 15. Clean Water Action.

No. 16. National Wildlife Federation.

No. 17. Sierra Club, Hawaii chapter.

No. 18. Luluku Banana Growers Association.

No. 19. The Outdoor Circle.

No. 20. Hotel Employees and Restaurant Employees Union, local No. 5.

No. 21. Conservation Council for Hawaii.

No. 22. The League of Women Voters in Hawaii.

No. 23. League of Conservation Voters.

No. 24. National Audobon Society.

No. 25. National Trust for Historic Preservation.

No. 26. Sierra Club.

No. 27.The Izaak Walton League of America.

No. 28. National Parks and Conservation Association.

No. 29. National Association of Railroad Passengers

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STAFFORD. An argument has been made that because of cooperation in planning the H-3 interstate highway and the Ho'omaluhia Park, an exemption to 4(f) should be granted. While I believe cooperative planning should be encouraged, such planning alone does not meet the section 4(f) requirements. There is also a difference of opinion among those involved in the planning of the park and the highway on the process which took place.

I ask unanimous consent that a memorandum from Rom Duran, who was deputy director of the Department of Parks and Recreation when the Ho'omaluhia Park project was initiated, to John E. Hirten, director of transportation services for the city and county of Honolulu, be printed in the RECORD.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF TRANSPORTATION SERVICES, CITY AND COUNTY OF HONOLULU, HONOLULU MUNICIPAL BUILDING,
Honolulu, HI, November 7, 1985.

MEMORANDUM

To: John E. Hirten, Director
From: Rom Duran
Subject: Senator Inouye's remarks on H-3/ Ho'omaluhia Park.

I was startled to read the Senator's news release dated October 31, 1985, that stated in part that Ho'omaluhia Park was created as a part of the H-3 Project. This is a totally inaccurate statement.

When the Ho'omaluhia Project was initiated, I was the Deputy Director of the Department of Parks and Recreation in charge of park planning, land acquisition, design, and construction. According to my best recollection, there were two 100-year rain storms, occurring about one year apart, that hit Kaneohe in the mid-1960s. Each storm flooded a small new subdivision adjacent to the Kaneohe stream. The second storm caused the deaths of an infant and a grandmother.

Then Councilman Fasi influenced the City to pay the homeowners for their houses and vacate the area. The Corps of Engineers became involved, conducted a feasibility study, and prepared plans for a flood control project. The plan called for an earthen dam, a 30-acre lake and a 100-acre flood basin. However, the cost/benefit ratio was not favorable enough to approach Congress for funds, so the City's Chief Engineer, Kazu Hayashida, asked the Parks Department to consider recreation development of the 100-acre flood basin. Congress looked with favor on multi-purpose projects at that time.

We decided that because of its natural charm and peaceful character, it was best suited for a mountain camping, ecologial and botanical park. So we planned the park to the Makai boundary of the H-3 alignment and proposed a 100- to 150-foot strip abutting the H-3 alignment as a noise bar-

rier. That brought the total area of the flood control/mountain park to about 400 acres. The project was approved by Congress, and the City received a completely developed park at 50 percent of cost. Ironically, the only involvement of State Department of Transportation was its repeated refusal to allow access from Likelike Highway or Kamehameha Highway because it would interfere with the H-3 Project. We were ultimately forced to use Luluku Road in the Keapuka Subdivision as the main access to the Park, something which was vehemently opposed by residents of the subdivision.

Inouye stated "if H-3 had not been planned, there would be no park there at all." I say if H-3 had not been planned, Ho'omaluhia Park would have been larger, better designed, and would have had adequate access.

What I have said can be documented by the local U.S. Corps of Engineers office or through a review of the Department of Parks and Recreation files. John Palaski, Bob McGoffland, Harvey Young, and others were with the Corps of Engineers' staff at that time and could verify this also.

Coincidentally, we named the park "Ho'omaluhia" which translates to "place of peace, tranquility, etc."

ROM DURAN.

Mr. STAFFORD. In this memorandum Mr. Duran states, "Ironically, the only involvement of State Department of Transportation was its repeated refusal to allow access from Likelike Highway or Kamehameha Highway because it would interfere with the H-3 Project . . . I say if H-3 had not been planned, Ho'omaluhia Park would have been larger, better designed, and would have had adequate access."

I also ask unanimous consent that a letter from Marilyn Bornhorst, councilmember of the Honolulu City Council, and John Hirten, director of the department of transportation services for the city and county of Honolulu, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CITY COUNCIL,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, November 13, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR CHAIRMAN STAFFORD: I understand that proponents of H-3 are saying it's unfair for the courts to rule H-3 can't intrude on the peace and serenity of Ho'omaluhia Park because Ho'omaluhia Park wouldn't be there if it hadn't been for H-3. This is not true history.

The disastrous Keapuka floods of the late 1960s led to the request to the Army Corps of Engineers for help in flood control. When the cost benefit analysis of spending so much Federal money for a flood control dam was made, it was determined that the cost benefit was not enough for Congress to appropriate so much money. However, it was then part of the Federal policy that the Federal government would provide money for recreational amenities surrounding flood control dams if the local community wanted recreation. The Parks Department then joined with the Department of Public Works and requested that the hundred acres surrounding the thirty-acre lake be used for recreation in times when it was not inundated by severe floods. The Federal government agreed to add an even larger amount of park space to the flood control area. However, because H-3 was already planned in the vicinity, the boundaries of the park were limited to the alignment of H-3. When this new park amenity was added, the cost benefit ratio for the flood and recreation was satisfactory to the Federal government and the Keapuka flood control project was allowed to go forward. It can be argued that if the H-3 alignment hadn't already been in place, the park might have been extended even farther.

Thus, it is fair to say that the Keapuka flood control project couldn't have been funded by the Federal government without the supporting amenity of this beautiful, peaceful park area. It is not fair to say that Ho'omaluhia Park would not be in place if H-3 hadn't been planned.

Sincerely,

MARILYN BORNHORST,
Councilmember.

DEPARTMENT OF
TRANSPORTATION SERVICES,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, September 5, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR SENATOR STAFFORD: The House Surface Transportation Act H.R. 3129 includes a waiver of Section 4(f) for Hawaii's H-3. The proponents of H-3 argued that the Ninth Circuit Court exceeded its authority when it rendered its opinion that H-3 had a "constructive taking" of Ho'omaluhia Park. The special waiver is suppose to rectify that action.

However, an analysis of the Corps of Engineers' decision for expanding the park clearly indicates that a "buffer zone" was not authorized and does not exist. Therefore, H-3 does impact on the usable portion of the park and in fact passes very close to a number of park facilities. Consequently, a waiver of Section 4(f) would be inappropriate. Furthermore, H-3 serves a district with only 15% of our population.

I would appreciate your taking a moment to review the enclosed material for your own satisfaction.

Sincerely,

JOHN E. HIRTEN.

Enclosure

THERE IS NO 'BUFFER ZONE'!

Testimony and public statements by our U.S. Senators and Representatives, the Governor as recently as August 2, 1986, State Senator Mary George, the Honolulu Star-Bulletin and others still adhere to the erroneous idea that there is a 'buffer zone' between Ho'omaluhia and the H-3. The attached series of U.S. Army Corps of Engineers memos in the year 1973 should serve to indicate how this misunderstanding arose and help to set the record straight.

Page A-2 and A-3: Memo (18 July 1973) Pacific Ocean Division, COE (Chief of Engineers), to COE, Washington stating that land area for the project as of 1/73 was 115 acres and requesting additional 115 acres. Item 5, page A-3, indicates City ("local sponsoring agency") wanted to acquire additional land "as a buffer or for future needs." Item 6, page A-3, however, indicates additional acreage is needed for recreational developments and to avoid excessive damage to the land from intensive recreational usage. Item 7 also mentions avoidance of urbanization between H-3 and Park boundaries.

Page A-4: Memo (20 August 1973) COE, Washington to Pacific Ocean Division, COE. Item 1: Acquisition of additional acreage is not justified. Item 2: Acquisition of land for buffer purposes not authorized.

Page A-5, A-6 and A-7: Memo (18 December 1973) Pacific Ocean Division, COE, to COE, Washington, Item 1a: Further indication that additional acreage is needed for recreation purposes and prevention of adverse land impacts. Item 1b: Mention of archaeological investigation of pre-contact terrace complex "along Phase I boundary" (?Luluku?) and sponsor's (City's) desire to include site as part of recreation program. Item 1c: Establishing equestrian facilities and trails not previously included in an area minimizing incompatible use conflicts. Item 1d: Administration and nursery area needed and requires additional acreage. Item 1e: Movement of road alignment requires additional acreage. Item 1f: Need to replace overlook site (taken by HECo lines), loss of design camping ridges to flood control with need to acquire additional lands to compensate for these losses, and need for minimal vehicular intrusion influencing shifting of road are all additional reasons for acquisition.

Page A-1: Memo (27 December 1973) COE, Washington to Pacific Ocean Division, COE. "Acquisition of 230 acres for recreation purposes under PL 89-72 authority at the Kaneohe-Kailua Area project is approved.

All of these items would indicate that acquisition was for many reasons but not for a buffer zone. These items were all added to the project with the further inclusion of the water tank for the garden's water system on the overlook site (Item 1f). All are in use for recreation now with some abutting the H-3 alignment.

It should be further noted that these memos transpired in 1973. Final plans included all these items when construction began in 1975. The bulk of the construction was completed in 1980 when the City and County began planting botanic specimens and conducting environmental and ethnobotanic program per contract agreement at Ho'omaluhia. Ho'omaluhia has been open to the public since March 1982. The collection is already considered to have potential as a world class tropical rain forest tree presentation with nothing comparable in America or in few other parts of the world.

The much-touted "buffer zone" existed formally for slightly over one month, ending August 20, 1973. There is no 'buffer zone'!

DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS,
Honolulu, HI, July 19, 1973.

Subject: Kaneohe-Kailua Area, Cahu, Hawaii—Proposed Increase in Recreation Land Acquisition.

1. The following are the bases for establishing cost sharing for increased acreage of recreation lands in connection with the authorized dam and reservoir project for flood control and allied purposes, Kaneohe-Kailua Area, Oahu, Hawaii. Please furnish your views by 1 August 1973 so that the local sponsoring agency may be informed accordingly.

2. *Authorization and House Document.* The project plate 1, was authorized by the Flood Control Act of 1970, Public Law 91-611, 91st Congress, 1st Session, approved 31

December 1970. The Chief of Engineers' report dated 23 November 1970, which is published as House Document No. 92-141, 92nd Congress, 1st Session, recommends construction of a dam and reservoir on Kamooalii Stream for flood control, general recreation and fish and wildlife enhancement, together with channel improvements near the mouth of Kaneohe Stream. House Document No. 92-141 will be referred to in this letter as the project document.

3. *Previously Submitted DM's.* DM's submitted are as follows:

a. Hydrology, DM No. 1, submitted September 1972.

b. Phase I, Plan Formulation, DM No. 2, submitted January 1973.

4. *Recreation Lands and Costs.* The following table provides the proposed land acreage and its cost estimate at different stages of project planning. The cost of these lands would be shared in accordance with the provisions of the Federal Water Project Recreation Act of 1965, PL 89-72.

Stage	Date	Acreage	Cost estimate
Project authorization	December 1970	75	$205,000
Phase I report	January 1973	115	315,000
Phase II report	January 1974	230	750,000

Subject: Kaneohe-Kailua Area, Oahu, Hawaii—Proposed Increase in Recreation Land Acquisition, July 18, 1986.

5. *Basis for Land Requirement as Described in the Project Document.* The steeply rising valley walls limit recreation development to about 75 acres (plate 2) on the southern reservoir rim. The remaining land between the recreation area boundaries and the proposed H-3 highway has limited development potential and its acquisition by the local sponsoring agency as a buffer zone or for future needs would be desirable.

6. *Basis for Land Requirement as Described in Phase I Report.* Recent on-site studies and recreation analysis indicated that an increase in acreage to 115 acres would be needed to maintain a high quality recreational development. The recreation plan presented in the project document was based on a high density type of development. In view of the expected high level of use, the potential for deterioration of the recreation resource would be great under this type of development. The present plan was therefore developed following reanalysis of the recreational requirements and needs based on lower densities. This resulted in the requirement for additional acreage. Furthermore, the City and County of Honolulu has indicated a strong willingness to obtain the additional area between the proposed H-3 highway and the flood control reservoir project boundaries. This would increase the overall open space and enhance "natural state" qualities.

7. *Recent Development.* Based on the desirability of acquiring all lands between the proposed flood control reservoir and the highway projects, the local sponsoring agency has initiated mapping and appraisal work to determine a firm cost for the project lands. Although the recreation possibilities are limited, urbanization between the two proposed projects would be totally prevented, thereby maintaining the natural and open space environment.

8. *Overall Perspective.* In addition, acquisition of the additional lands would serve at least two other important purposes: It would provide space flexibility in relocating the existing powerlines and structures traversing much of the proposed recreation sites, and it would provide lands on site for banana cultivation in exchange for about 30 acres of banana areas which will be eliminated because of the recreation development. If the additional lands are not acquired, severance damages to the banana growers may be higher than estimated earlier.

9. *Conclusion.* In view of the foregoing, all lands extending to the proposed H-3 highway should be acquired for the reservoir project, and the additional cost of acquisition will be shared in accordance with PL 89-72.

LEONARD EDELSTEIN,
Colonel, Corps of Engineers,
Acting Division Engineer.

Subject: Kaneohe-Kailua Area, Oahu, Hawaii—Proposed Increase in Recreation Land Acquisition

DA: Office of the Chief of Engineers, Washington, DC. 20314 August 20, 1973.

To: Division Engineer, Pacific Ocean.

1. Acquisition of the additional acreage as described in the basic letter is not considered appropriate under PL 89-72 authority in view of its stated limited recreational use which indicates questionable economic justification for development of even minimal recreational facilities. It is also noted that the City and County of Honolulu are actively considering the purchase of these lands for the purpose of preserving and enhancing the "natural state" qualities of the area. If local interests intend to pursue this matter based upon their own justification criteria, Corps activities should be fully coordinated with them.

2. There is no general or specific authority which provides for the acquisition of lands for buffer zones or environmental protection and/or enhancement. Land is acquired only for authorized project purposes.

NORMAN E. JANSEN,
Chief, Planning Division
(For the Chief of Engineers).

Subject: Kaneohe-Kailua Area, Oahu, Hawaii—Proposed Increase in Recreation Land Acquisition.

DA: Pacific Ocean Division, Corps of Engineers, Building 96, Fort Armstrong, Honolulu, HI 96813, December 18, 1973.

To: HQDA (DAEN-CWP-W) Washington, DC 20314.

1. Further information is provided to clarify the need for additional recreation lands and to request reconsideration of recommended acquisition of these lands. Although the basic letter mentioned "buffer zone" value of the additional lands, those additional lands are considered necessary as an integral part of the authorized recreation development. Factors arising after submittal of the basic letter require the taking of additional lands for project recreation purposes. These factors, described below, are the result of the use and design load evaluations, archaeological and wildlife study recommendations, coordination with the City and County of Honolulu, public participation activities, and acquisition of two remnant parcels.

a. As indicated in comment 4e of DAEN-CWP-W 1st Ind., subject, "Kaneohe-Kailua Area, Oahu, Hawaii—General Design Memorandum No. 2, Phase I, Plan Formulation for Flood Control and Allied Purposes," dated May 4, 1973, the average annual visitation was used to compute recreation loads and land requirements. Reevaluation of facility and land requirements based upon initial and ultimate visitation as required by this indorsement revealed that lands were insufficient for meeting ultimate visitation requirements. A comparison of the acreage required under ultimate development based upon earlier Phase I and current Phase II calculations is shown as follows:

RECREATION LANDS REQUIRED

Activity	Phase I (average annual visitation)	Phase II (ultimate visitation)
Picnicking	45	96
Family camping	30	46
Group camping	30	45
Miscellaneous	10	20
Total acres	115	207

Without additional lands, densities under ultimate visitation requirements would exceed Phase I densities by 120 percent in the picnic area and 50 percent in the camping areas. Due to high rainfall (65 to 75 inches per year) and soil and vegetative conditions, ultimate visitation densities without additonal lands would quickly result in deterioration of lands. Coordination with the public and City and County of Honolulu personnel has indicated such densities would not be acceptable. The accommodation of recreation use and claiming of project benefits required moving the road alignment southwest to provide further acreage for day use parking and for family camping areas. This also required the taking of the large ridge at the eastern end of the site for group camping. With these additional acres public use would not have an adverse impact on the site.

b. Further archaeological investigation by the Bishop Museum (under the auspices of the National Park Service) revealed a significant pre-contact age agricultural terrace complex located along the Phase I project boundary. In view of these entities' recommendations that this site be preserved and restored, and the project sponsor's desire to include it as a part of the recreation program, it is considered appropriate that this site be acquired.

c. Coordination activities during the preparation of the master plan revealed public interest in establishing equestrian facilities and trails. Facilities and trails could be provided at the upward, peripheral areas of the site, minimizing incompatible use conflicts.

d. To provide better maintenance, operational control, and service to the park, an administration center is considered essential. The administration center will also serve as the center for an extensive interpretive program which the site affords. Additional lands are necessary for this purpose. An administration area was not included in the Phase I GDM.

e. New topographic surveys and more intensive field reconnaissance during master plan preparation has revealed the necessity to shift the road at several locations to reduce major cuts and fills and adverse impacts on environmental features. Such findings were not evident during Phase I investigations due to the very rugged topography and dense vegetation in certain areas of the site.

f. Several other factors also influenced the need for additional lands. Construction of a powerline by Hawaiian Electric Company following submittal of the Phase I GDM has resulted in destruction of the ridge proposed as a secondary overlook. A new location for

the overlook, at the highest elevation in the area affords spectacular views throughout the site. This knoll is situated just outside previously approved project boundaries. Recent studies proved some of the material within the permanent pool to be unsuitable for borrow for construction of the dam, necessitating the use of the ends of camping ridges for borrow. Use of these areas and the associated cuts and loss of vegetation reduced the amount of lands suitable for camping sites and will require additional lands to compensate for these losses. The desires of the public and the City and County of Honolulu to have minimal vehicular intrusion in active use areas also influence shifting of road alignments.

2. As shown in subparagraph a. above, the required Phase II recreational development plan calls for approximately 207 acres, which is an increase of 92 acres over Phase I requirements. In light of the proposed H-3 Freeway construction, land acquisition requirements for the park development would result in two remnant parcels totaling 23 acres. In accordance with uniform real property acquisition policy (ER 405-1-663, 30 Jan. 73, it is recommended that these parcels also be acquired. These remnants are shown on enclosure 2.

3. The taking of additional lands is considered by the City and County of Honolulu and this office as necessary to accommodate recreation development and minimize adverse project impacts. Based upon the factors discussed above, acquisition of 230 acres for recreation purposes is recommended. Subject to approval of this recommendation, the detailed justifications will be presented in the Phase II GDM.

4. Early concurrence in this course of action is requested.

LEONARD EDELSTEIN,
Colonel, Corps of Engineers
(For the Division Engineer).

SUBJECT: Kaneohe-Kailua Area, Oahu, Hawaii—Proposed Increase in Recreation Land Acquisition.

DA, Office of the Chief of Engineers, Washington, DC. 20314, December 27, 1978.

To: Division Engineer, Pacific Ocean.

Acquisition of 230 acres for recreation purposes under PL 89-72 authority at the Kaneohe-Kailua Area project is approved.

——— ———,
Chief, Planning Division
(For the Chief of Engineers).

Mr. STAFFORD. Councilmember Bornhorst contends that "It is not fair to say that Ho'omaluhia Park would not be in place if H-3 hadn't been planned." Mr. Hirten states that, "an analysis of the Corps of Engineers' decision for expanding the park clearly indicates that a 'buffer zone' was not authorized and does not exist."

□ 2240

There has been disagreement on the cost-benefit ratio of H-3. In an earlier review of proposed H-3 alignments, the Department of Transportation estimated low benefit-cost ratios. Recently, Hawaii State Senator Mary George requested Parsons, Brinckerhoff, Quade and Douglas, the engineering consultants to the State Department of Transportation for H-3, to do a cost-benefit ratio estimate.

I ask that a letter to Senator Mary George from Honolulu Mayor Frank Fasi raising questions about and discussing this analysis be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF THE MAYOR,
CITY AND COUNTY OF HONOLULU,
Honolulu, HI, July 16, 1986.

Hon. MARY GEORGE,
Senate, Thirteenth Legislature, State of Hawaii, State Capitol, Honolulu, HI.

DEAR MARY: I was surprised to learn of a so-called revised "benefit/cost analysis" which you requested from Parsons, Brinckerhoff, Quade and Douglas (PBQD) for your justification of H-3. I understand PBQD is the engineering consultant to the State Department of Transportation for H-3 and has been for about 10 years.

I asked my Chief Planning Officer and my Director of Transportation Services to review this special study. They informed me that a report does not exist and there is no explanation of the method used to arrive at its conclusion. Nevertheless, they analyzed what information was available and concluded there are a number of very glaring mistakes.

1. The consultants did not consider a benefit/cost comparison with any other alternatives, as did the first Federal Highway Administration study, which compared 11 alternatives to H-3. In that report, other alternatives fared better than H-3.

2. The study did not presume any improvements to Pali and Likelike Highways, thereby presenting the worst case as the baseline.

3. The study apparently assumed a delay factor of three or more hours on Pali and Likelike Highways in order to arrive at the cost savings attributed to delay time.

4. The study only calculated cost savings to those riders caught in the peak hour traffic on Pali and Likelike Highways. In fact, with the exception of peak hour periods, both highways are virtually free of any congestion and almost underused during most of the day.

5. The study and your news release implied that these were dollar benefits to the State, when in fact they are benefits only to the individual riders and, in this case, only to the projected 31,000 vehicle trips per day projected for H-3 in the Year 2000.

Therefore, the referred to benefit of H-3 is virtually meaningless when applied to the total cost of H-3 versus the total benefits of all windward travelers, and even more deceiving when related to islandwide transportation needs.

Clearly, the study and your news release did nothing to clarify information about H-3—on the contrary, it added to the confusion of the average person by implying that this project had benefits to the community, when in fact the benefits refer only to a very limited number of travelers, namely, those who may use H-3.

Because this is such an important matter, I am taking the liberty of sending copies of this letter to the news media so they may better inform the community on this issue.

Sincerely,

FRANK F. FASI.

Mr. STAFFORD. The Mayor takes issue with the new cost-benefit ratio analysis and concludes:

Therefore, the referred to benefit of H-3 is virtually meaningless when applied to the total cost of H-3 versus the total benefits of all windward travelers, and even more deceiving when related to islandwide transportation needs.

Finally, there have been other requests for exemptions from 4(f) for highway projects but they have not been granted. Through Republican and Democratic administrations and Congresses 4(f) has been preserved as one of this country's most important environmental laws which I believe has done more than any other environmental law to guarantee that environmentally and fiscally responsible highways are built, as they have been built. I might add, 4(f) does not apply to construction of dams nor of railroads.

Several examples have been given of highway projects which have received 4(f)-related exemptions. In fact, Congress passed legislation which maintained the application of 4(f). In the case of the Three Sisters Bridge, Congress passed legislation in 1968 requiring the construction of this bridge in the District of Columbia. However, the courts found that section 4(f) requirements remained applicable to the construction of the bridge.

In 1973 Congress passed legislation permitting Texas to repay Federal funds expended on the San Antonio North Expressway and end the project as a Federal project rather than provide a 4(f) exemption for a project built with Federal funds.

In 1973 Congress also passed legislation requiring a portion of Interstate 93 through Franconia Notch as a two-lane parkway at less than interstate geometric and construction standards so that it could comply with 4(f) requirements.

Mr. President, given these compelling reasons, I think it would be extremely unwise to overturn a court decision which has been reviewed all the way to the Supreme Court. Our system of Government's success depends on the respect we have for our judicial process. I believe the case has not been made in this instance to warrant jeopardizing the system.

For every court decision rendered, there is someone who disagrees with the decision for what they believe are legitimate and meritorious reasons. If every such appeal were granted, there would be chaos. We have asked all other highway projects built with Federal funds to abide by those decisions, including most recently Westway. Now I believe we must ask H-3 to live within those same guidelines.

Therefore, with regret, I urge my colleagues to vote against an exemption from 4(f) for H-3.

EXHIBIT 1

DEPARTMENT OF PARKS AND RECREATION,
Honolulu, HI, July 18, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, Washington, DC.

DEAR SENATOR STAFFORD: I have been asked to comment on and give you some background and facts about our Ho'omaluhia Park which would be impacted if H-3 were built.

Several years ago, the Department of Parks and Recreation had a rare opportunity to develop a truly unique park at 50% of its development cost, to be added to our inventory of beach and neighborhood parks. Until that time, our park system was ocean and urban oriented. The availability of Ho'omaluhia afforded the City and County the ability to create a sizable mountain park far removed from the influences of an urban environment. At that time, the U.S. Army Corps of Engineers was studying the feasibility of a flood control project where two damaging floods had recently occurred. In order to improve the cost benefit ratio of that project, a dual purpose approach to include recreational uses was proposed.

A field inspection of this unspoiled landscape at the base of the verdant Koolau mountains inspired our park planners to endorse the project and enthusiastically design a natural mountain park for camping, hiking, biking, and nature study. The natural plateaus on top of the ridges leading to the mountain that overlooked the lake created by the earthern dam were designated as overnight camping and cooking sites. In addition to comfort stations throughout the 400-acre park, a cluster of buildings at the park entrance on the lake side of the dam was to provide Administration offices, a lecture-meeting hall for nature study groups, and, for day and evening community use, and a nursery and maintenance facility. Our long range plan is to plant trees and shrubs native to different countries with similar climatic and environmental conditions in separate areas in order to create an ethnobotanical effect. We even included a small corral and riding trails that would eventually connect to a system of horseback riding trails on the Windward side. Fishing derbies for children are also planned in the future.

Public use and enjoyment of the park has been overwhelming. Although isolated in its mountain character, Ho'omaluhia is a 10-minute drive from Kailua and Kaneohe and a 20 minute drive from Honolulu. Classrooms of children visit the park to spend the day with our interpretive guides.

It would be devastating to the park's environment if the urban noise of motorcycles, cars, trucks, buses, and occasional emergency vehicles were to intrude on the park and replace the sound of birds in the mornings and the croaking of frogs in the evenings and if the smell of exhaust fumes were to replace the sweet fragrance of ginger as a result of H-3 being constructed abutting the park's mountain boundary. The calm, undisturbed character of the area led us to name the park Ho'omaluhia, which, in Hawaiian, means "to make a place of peace and tranquility." We strongly oppose any waiver of Section 4(b) which to date has protected us from the urban onslaught of the freeway.

Sincerely,

TOM NEKOTA,
Director.

EAST OAHU COUNTY FARM BUREAU,
Kaneohe, HI, September 4, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The East Oahu County Farm Bureau is on record with the House and would like to take this opportunity to inform members of the Senate that we oppose the exempting of the H-3 freeway from federal law. We are opposed to the precedent which such an exemption would set.

We strongly urge you to vote against any amendment that would exempt H-3 from environmental laws.

Sincerely,

GRANT HAMACHI,
President.

SOCIETY FOR HAWAIIAN ARCHAEOLOGY,
Honolulu, HI, November 14, 1985.

Hon. ROBERT T. STAFFORD,
Chairman, Environment and Public Works Committee, Washington, DC.

DEAR SENATOR STAFFORD: Enclosed is a Resolution which was recently passed by the members of the Society for Hawaiian Archaeology at its October General Membership meeting.

We sincerely hope that you will act favorably regarding the concerns listed in the Resolution and we anxiously await the decision of your committee.

Your truly,

JOSEPH KENNEDY,
President.

RESOLUTION

Whereas, The Society for Hawaiian Archaeology is the organization representing the professional archaeologists in the State of Hawaii, and

Whereas, The Society takes no official position for or against the H-3 Freeway, and

Whereas, The Society is aware that Bill S. 1796 currently before the United States Congress will allow construction of the H-3 Freeway notwithstanding any provisions of Federal law, and

Whereas, The Society is aware that significant archaeological sites which are potentially eligible to the National Historic Places Register are located within the proposed Highway corridor in the Luluku area, and

Whereas, the archaeological report detailing the signficance of these sites will not be given the consideration for preservation or mitigation which they deserve and could be destroyed without further discussion.

Now, therefore, be it resolved that The Society for Hawaiian Archaeology, by unanimous vote at its October General Membership Meeting, is *opposed* to Bill S. 1796, and

Be it further resolved that The Society requests that a copy of the report on the archaeological investigations in the Luluku area be forwarded to them by the Federal Highways Administration for peer review, and

Be it further resolved that copies of this Resolution be forwarded to Hawaii's Congressional Delegation and to the relevant officials and agencies of the City and County of Honolulu, the State of Hawaii, the Honorable George R. Ariyoshi, Governor of the State of Hawaii, the Federal Government and other private institutions.

HAWAII'S THOUSAND FRIENDS,
Honolulu, HI, September 5, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: We continue to urge denial of any exemption from Section 4(f) of Federal environmental laws for the proposed H-3 freeway in Hawaii. As a citizen planning organization, we protest the sophistry inherent in the request for exemption and in its presentation to Congress. There is a great irony in the fact that Hawaii's Congressional delegation could be the first to assist in establishing such an ominous precedent, since our Hawaii environment is among the most unique fragile in the United States and, indeed, in the world. If the nation's environmental laws are to be flouted in Hawaii, no treasured resource is safe in any state.

Intelligent land use and transportation planning must remain flexible in the face of changing needs and perceptions. Long-range Honolulu planning is quite different today from that of two decades ago when this unfortunate project became cast in political concrete. The federal monies reserved for H-3 are desperately needed to alleviate intolerable traffic conditions along our Leeward O'ahu corridors which have been urbanized in the intervening years, rather than the Windward areas H-3 was intended to serve. Now, a "secondary urban center" is to be developed beyond Pearl Harbor on the leeward plain, to accommodate another 50,000 residents. City planners and many responsible organizations are in agreement that existing and future transportation needs will be better served by upgrading existing trans-Koolau highways and by building new systems to accommodate current planning in the leeward area.

MURIEL B. SETO,
Executive Director.

THE CONGRESS OF THE
HAWAIIAN PEOPLE,
Aiea, HI, July 4, 1986.

Senator ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works Hart/Senate Office Building, Washington, DC.

DEAR SENATOR STAFFORD: The Congress of the Hawaiian People opposes the proposed exemption related to the construction of H-3 in Hawaii.

Our organization supports the preservation of the Luluku Archaelogical District in Windward Oahu. The entire district is considered part of our Hawaiian heritage and therefore, sacred to us. We firmly believe that no portion of the district should be used for highway purposes.

We have, over the years, been a strong advocate in actual preservation of several archaelogical sites including Kaloko Fish Pond on the Big Island and Kawainui Marsh in Kailua, Oahu.

Please help us preserve these precious reminders of our past so our children, for generations to come, may enjoy these treasures left to us by our ancestors. Mahalo nui loa.

Aloha Me Kealoha Pumehana,

JOHN M. AGARD,
State President.

NATURAL RESOURCES DEFENSE COUNCIL,
New York, NY, July 21, 1986.

Hon. ROBERT T. STAFFORD,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR STAFFORD: On July 22 at a mark-up of S. 2405, the 1986 Highway Bill, an amendment will be offered to exempt Interstate H-3 in Hawaii from Section 4(f) of the Transportation Act. NRDC oppose this exemption.

The 4(f) provision has been a mainstay of the national program for effective transportation planning. It has, over the years, prevented unsound development from Franconia Notch to the Florida Everglades. This is not the time to begin exempting individual programs from a provision of law that has for years carefully balanced the needs of transportation with those of preservation of critical park and natural resources.

We strongly urge you to oppose this end run around a critical statutory provision that has long served the Nation well.

Very truly yours,

ERIC A. GOLDSTEIN,
Senior Attorney.

ENVIRONMENTAL POLICY INSTITUTE,
September 8, 1986.

Re: 1986 Highway Bill.

DEAR SENATOR: When the 1986 Highway Bill comes to the Senate floor, you will have the opportunity to vote on a billion-dollar interstate highway in Hawaii (H-3) whose sponsors want exempted from cultural and environmental protection law.

The Environmental Policy Institute urges you to vote against the Inouye amendment to exempt H-3 from Federal law. H-3 is as 10-mile interstate which would have major environmental and cultural impacts. These impacts include:

Destruction of aquifer recharge areas in Halawa Valley;

Destruction of the site of native Hawaiian agricultural terraces, shrines, and burial grounds in the archaeologically significant Luluku area;

Noise, sedimentation, and visual impact on a 300-acre Wilderness park;

Bisection of an important greenbelt and destruction of a world-famous scenic view from the Pali Lookout; and

Damage to worker health and highway users from the close promixity of H-3 to the Coast Guard's OMEGA navigation transmitter facility, a powerful source of electromagnetic radiation which has to operate 24 hours a day.

H-3 is an environmental and fiscal disaster which in no way addresses current transportation needs of Honolulu. There are many attractive "trade-in" transportation projects which Hawaii could pursue.

Congress has never allowed a highway to be exempted from the environmental provisions of transportation law. We ask that you vote against special exemptions for this Hawaii interstate.

Sincerely,

BRENT BLACKWELDER,
Vice President.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Honolulu, HI, July 17, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: AAUW supports integrated long term planning for Hawaii. Construction of the H-3 is strongly opposed here by many citizens, neighborhod boards and public interest organizations because it harms the environment, and will not do what it was originally intended to do.

Environmental and zoning regulations should not be set aside lightly whether the project is seen as "good or bad". This project happens to be harmful it will destroy a beautiful valley; put huge concrete constructions high in the valley's vista destroying its beauty; harm indigenous plant and animal life; drill into the dykes which store our water and introduce fumes which will harm this pristine area.

The H-3 idea is outdated. It was conceived twenty years ago well before Hawaii had formulated, publicly discussed and passed its State Development Plans. H-3 does not go to the areas planned for development and does not connect in a meaningful way to any areas of traffic congestion in order to relieve serious problems. In fact, the H-3 goes nowhere except to private interests relating to land and construction.

The petitions which were forwarded to Washington do not come from an informed islandwide public petition drive based on information but from a concentrated area of self interest who do not realize that H-3 funds spent where they are truly needed will provide an equal number of jobs and will stimulate the efficiency, convenience and true welfare of motorists in this car clogged island far better than H-3 which does not connect with the vital transportation corridors that citizens use every day.

Thank you for your attention to this matter. Please transfer H-3 funds to needed highway construction.

Sincerely,

MARTHA W. BLACK,
Hawaii State Legislative Chair, Hawaii Pacific Division of American Association of University Women.

HAWAIIAN BOTANICAL SOCIETY,
Honolulu, HI, July 11, 1986.

Representative JAMES HOWARD,
Chairman, Committee on Public Works and Transportation, Washington, DC.

DEAR REPRESENTATIVE HOWARD: The Hawaiian Botanical Society is an organization interested in Hawaiian botany. Over the years we have been particularly concerned with the status of Hawaii's native ecosystems many of which have been severely impacted. We have also understood the necessity for careful planning in land utilization and have appreciated the use of environmental impact statements as a vital tool in managing this scarce resource.

We are very concerned about a possible precedent that will be set if the 4(f) provision of the Federal Transportation Act were set aside to allow the construction of Interstate H-3. We therefore would urge you to vote against H.R. 3129.

Sincerely,

R.S.N. YEE,
Vice President.

LIFE OF THE LAND,
July 11, 1986.

Senator ROBERT STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR SENATOR STAFFORD: I am writing you on behalf of our 500 members in the state of Hawaii.

We object to the 4(f) provision exemption proposed for the H-3 Interstate Highway. The 4(f) exemption would set a bad precedent, leaving the door open for other states to ask for such an exemption as well. Clearly, when Congress created the provision, it was meant to protect park and historic lands, not to be exempted.

Proposed Interstate Highway H-3 would severely impact on Ho'omaluhia Park and take four acres from another park.

There also is a major historic and archaeological site in the path of the proposed Interstate highway. Luluku is a native Hawaiian agricultural terrace complex with irrigation systems, shrines, and burial grounds tentatively dating back to 339. The Keeper of the National Register has declared the complex eligible for listing on the National Register of Historic Places. The complex seems to be the oldest known Hawaiian agricultural system.

The 4(f) provision would protect not only the parks but also this historic complex. The Hawaii Department of Transportation plans to destroy over 90% of the complex and surround the remainder with an off ramp loop thereby utterly destroying the integrity of the site. The Hawaii DOT only agreed to study Luluku after community pressure was applied and then the Hawaii DOT tried to suppress the resulting study. Currently, the Bishop Museum is studying Luluku and will release a report by the end of the year.

Hawaii and specifically the island of Oahu, does not need a third North-south corridor cutting through the Koolau mountain range. The bulk of the traffic and traffic congestion occurs in an east-west direction on this island. As federal highway funding is limited, it would behoove Congress to maximize the most efficient use of those funds. The proposed H-3 Highway is simply not efficient and may very well create an even greater traffic snarl.

While H-3 may not be the smartest idea to come down the pike, it doesn't make sense to compound the error by granting the project an exemption from 4(f) and thereby allowing the Hawaii DOT also to destroy parks and historic sites.

Thank you for your time and consideration.

Sincerely,

ANNE STURGIS,
Outreach Director.

NATIONAL RECREATION AND PARK ASSOCIATION,
July 21, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Environment and Public Works Committee, Washington, DC.

DEAR SENATOR STAFFORD: It has recently been brought to the attention of the National Recreation and Park Association (NRPA) that an amendment will be offered during the mark-up of S. 2405, the 1986 Highway Bill.

The above amendment, to which NRPA stands firmly opposed, would seek to exempt section H-3 of Hawaii's interstate highway system from section 4(f) law under the Department of Transportation Act (49 U.S.C. 309).

The implementation of section 4(f) law under the Department of Transportation Act has been extremely successful in the past. In fact, in a January 7, 1986 Federal Register notice, the Department of Transportation Federal Highway Administration stated, "Over the last decade, *this legislation [section 4(f)] has proven to be very effective in achieving its intended purpose,*" (51 FR 697) (emphasis added).

Congress ought not provide the tools to chip away at that which Congress created. The 4(f) statute ought not be diluted by au-

thorizing exemptions from its mandates. Furthermore, it would appear that this is a states rights issue. Authorizing an exemption to the 4(f) legislation would likely do no less than set a particularly bad precedent, and open the floodgates to further gnawing away for the sake of specialized state interests.

On behalf of NRPA and its 50 state affiliates, we thank you for this opportunity to voice our opposition to the proposed "H-3 exemption" amendment to S. 2405.

The National Recreation and Park Association is a private, nonprofit, membership organization comprised of nearly 19,000 park and recreation practitioners, administrators, academicians, and concerned citizens nationwide.

We applaud the members efforts of the Environment and Public Works Committee in acting to preserve, protect, and use wisely this nation's natural resources for this and future generations.

Respectfully yours,

JEANNE C. KLOBNAK,
Coordinator, NRPA Americans Outdoors Project.

FRIENDS OF THE EARTH,
Washington, DC, September 15, 1986.

Subject: S. 2405, Which Includes Language to Exempt the H-3 Freeway From Federal Law.

To the Members of the U.S. Senate:

GENTLEMEN: Our organization is deeply concerned about proposed legislation now before you which poses a serious threat to an entire body of environmental law enacted over the past twenty years. This threat is the "H-3 exemption" amendment to be offered to S. 2405.

The proposed exemption for Interstate H-3 in Hawaii will remove a major wilderness park, a major prehistoric Hawaiian archaeological complex, and a public golf course from the protection of Section 4(f) of Federal environmental law.

Passage of this 4(f) exemption would set a terrible precedent, opening the door to similar requests from around the country for environmentally damaging projects. We have all witnessed the disastrous effects of past actions which have flouted those laws designed to protect the health and safety of our nation's environment and our communities.

In the case of the H-3 project, this highway will damage or destroy irreplaceable flora, fauna, and forest areas along every foot of its 11-mile route. The environmental issues surrounding H-3 are almost too numerous to mention. The four-foot stack of Environmental Impact Statements required for this project clearly identifies the serious environmental consequences for two major valleys supporting valuable watersheds. These areas are key sources of drinking water supply in Honolulu—which has 80% of the state's entire population.

The 9th Circuit Court of Appeals has ruled that the highway adversely affects a major wilderness park alongside its route, and that the State of Hawaii does indeed have a "prudent and feasible" alternative to this project.

Waiving provisions of important Federal law to allow such environmental degradation makes no sense whatsoever, especially when leaders of Honolulu County—in which the project would be built—contend that the highway will not solve the transportation needs of that island. The county has submitted a list of numerous other traffic-related construction projects that are sorely needed to ease traffic congestion both on the corridor (Windward to Leeward Oahu) H-3 would address, as well as throughout the heavily-populated urban core of the island.

Health and safety concerns have also been raised by the routing of the proposed highway through the near field of the Coast Guard's OMEGA navigation station antenna, in one of those valleys (Haiku). It is clear that there are many unresolved issues associated with this "collection"—shock, radiation, and interference with electronic equipment such as pacemakers; many hidden costs and potential problems remain.

In this, the 20th anniversary of the enactment of Section 4(f) into Federal law, we urge your Committee to hold fast to the letter and spirit of the law, and allow no exemption for H-3. Thank you.

Sincerely yours,

L. GEOFFREY WEBB,
Acting Executive Director.

JULY 15, 1986.

Senator ROBERT STAFFORD,
Chair, Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR SENATOR STAFFORD: This letter is written to express our wish that you not allow the State of Hawai'i any exemptions to the laws that protect our environment.

We are appalled that the Senators and Representatives of the State of Hawai'i to the U.S. Congress are so blinded by political back-scratching that they are willing to sacrifice our environment and important Hawaiian cultural sites for their short-sighted selfish purposes.

This monster, highway H-3, if built, will destroy at least a dozen acres of the most important wet-land agricultural terracing on the Island of O'ahu, as well as ruin our most beautiful windward O'ahu mountain park, Ho'omaluhia Park.

It has been pointed out by others that 1. present congestion lasts only for about two hours on workday mornings and afternoons; 2. congestion builds at the outflow end of the present highways; 3. final approval of H-3 would stimulate increased urban development and result in highway use build up so much that by the time H-3 would be completed in 10 years, highway use would only fall back to present levels; and 4. as planned, H-3 would deliver thousands of cars into one of the most congested highways on O'ahu, which would result in greater traffic problems on the leeward coast of O'ahu.

The City administration has specific plans for solving some of these problems and the funds should be redirected to it.

Please do not vote to allow the State of Hawai'i exemptions from our environmental laws.

Sincerely,

MARION KELLY,
Anthropologist.

CLEAN WATER ACTION,
September 11, 1986.

Re: Proposed Waiver of Section 4(f) of the Department of Transportation Act as Applied to Hawaiian Highway "H-3"

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: It is expected that Senators Inouye and Matsunaga will offer an amendment to the Surface Transportation Bill, S.B. 2405, when the bill is brought to the floor. The amendment will repeal environmental protections, promote a major boondoggle, and require Senators to vote for or against "a judicially prohibited" highway of 10.7 miles. The H-3 amendment will exempt the Hawaiian H-3 Highway from Section 4(f) of the Department of Transportation Act of 1966.

Exemption of H-3 from Section 4(f) would mean circumvention of the environmental protections that the courts have consistently upheld in the twenty years since Congress passed the 4(f) laws in 1966. Section 4(f) provides for the preservation of "public park and recreation lands, wildlife and waterfowl refuges, and historic sites," prohibiting highway projects unless "there is no feasible and prudent alternative."

The H-3 exemption amendment will have a court-stripping impact, overturning a 1984 permanent injunction against H-3, that upheld Section 4(f), and found there was "a prudent alternative." An H-3 exemption from Section 4(f) would set a dangerous precedent.

The H-3 is a boondoggle—10.7 miles at a cost of close to one billion dollars. H-3 will be one of the most expensive highway segments. The H-3 project was first planned over twenty years ago, assuming population growth patterns that have not developed as envisioned back then. Expenditure of H-3 monies will mean that these monies will not be available to meet contemporary transportation needs—that would remain unmet by the H-3.

Highway users, and workers involved in the construction of the H-3, will be exposed to serious health and safety hazards from the low frequency electromagnetic radiation emitted by the OMEGA station, in Haiku Valley. The OMEGA station is the U.S. Coast Guard's navigation transmitter facility that communicates with submarines around the world. The H-3 is routed through Haiku Valley, subjecting all who use the H-3 to the electromagnetic radiation. Such radiation is a known, long-term health hazard that is potentially carcinogenic. There is evidence that the OMEGA station's signals will interfere with such sensitive devices as heart pacemakers, hearing aids, electronic circuitry in modern automobiles, and detonation devices in explosives.

For these reasons, Clean Water Action urges you to vote against the exemption, if offered. Your action will encourage the State of Hawaii to "trade-in" H-3, for other transportation projects.

And Clean Water Action appreciates the leadership you have brought to this issue.

Sincerely,

DAVID R. ZWICK,
Executive Director.

NATIONAL WILDLIFE FEDERATION,
Washington, DC, September 9, 1986.

Hon. ROBERT T. STAFFORD,
Washington, DC.

DEAR SENATOR STAFFORD: You soon will be considering S. 2405, the Highway Bill. The National Wildlife Federation urges you to support provisions in this legislation which are designed to control the spreading blight of billboards along our Federal highways. We also urge you to oppose a proposed amendment to exempt the H-3 Hawaiian interstate highway from environmental and natural heritage requirements of the Department of Transportation Act.

Specifically, S. 2405 would: a) ban all new billboards along federal interstate and primary highways, b) prohibit the removal of trees and vegetation on the public right-of-way done only to make a sign more visible, c) end mandatory payments to the billboard

industry, and d) restore local and state governments right to regulate existing billboards.

A Department of Transportation study in 1984 showed that liberally-interpreted billboard regulations have enabled more signs than ever to be erected. The economic burden of the required cash payments to the billboard industry caused only a small number of billboards to be removed. In 1983, for example, 13,522 signs were erected and only 2,235 were dismantled. The removal of nonconforming billboards has decreased 78% since 1979 because of enormous costs to the Federal government. Under the Gramm-Rudman-Hollings budget requirements, even less Federal money will be available.

The recently-adopted House version of the Highway Bill does not improve the problem of billboard blight. We urge the Senate to follow the lead of the Environment and Public Works Committee by supporting the billboard reform provisions of section 117 when S. 2405 reaches the Senate floor. Only with your support can we make progress towards more scenic and safer highways.

The second issue of concern is an amendment to be offered by Senator Inouye to exempt H-3, a planned interstate highway in Hawaii, from the 4(f) environmental protection provisions of the Highway Act. A court injunction has stalled this billion-dollar highway on the grounds that it will impact an adjacent wilderness park. Since the Court of Appeals decision, important archaeological sites also have been discovered in the path of the highway. Never before have the 4(f) statutes been overruled in the legislative process. Adopting an exemption for H-3 would establish a damaging precedent whereby Congress would be asked to set aside court decisions whenever highway planners are asked to examine prudent and feasible alternatives to destructive highway projects.

The H-3 highway, designed in the 1960's, does not meet the current transportation needs of the island of Oahu or the city of Honolulu. The Governor of Hawaii has the opportunity to transfer the alloted funds to finance a package of alternatives which would better address Honolulu's traffic problems and protect Hawaii's environmental and cultural heritage. We support the alternative use of these funds.

Please support the Environment Committee's billboard reforms as contained in S. 2405 and oppose Senator Inouye's amendment to exempt H-3 from environmental protection. S. 2405 is a good bill which should be left intact.

Sincerely,

JAY D. HAIR.

SIERRA CLUB, HAWAI'I CHAPTER,
Honolulu, HI, July 31, 1986.

Representative JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE HOWARD: The Sierra Club, Hawai'i Chapter, is disappointed that an exemption for the proposed H-3 Interstate project is found in Title I, Section 134 of H.R. 3129, the House Federal Aid Highway Act of 1986.

Titled "Removal of Limitations on Project Approval," this section authorizes the building of H-3 "notwithstanding any other provision of Federal law.". Such an exemption would permit circumvention of environmental and other laws which protect us all and would set a dangerous and damaging precedent.

The Sierra Club, along with a broad based coalition of citizen groups, has been against the construction of H-3 and was involved in litigation to prevent the proposed highway from crossing through conservation districts. The thrust of our opposition has focused on degradation of water, flora, fauna and other natural resources in the Ko'olau Mountains, physical damage to North Halawa and Haiku valleys and adverse impacts on Ho'omaluhia Park. We also oppose the proposed highway because it would be contrary to the City and County of Honolulu General Plan policies for population distribution on O'ahu, would be socially and economically disruptive to Windward O'ahu communities and would destroy extensive and significant archeological sites at Luluku.

In his July 25th letter to Hawai'i Governor George Ariyoshi and Honolulu Mayor Frank Fasi, Senator ROBERT STAFFORD, Chairman of the Committee on Environment and Public Works, has recommended that the State and City "work together to fashion a new joint plan . . . that addresses contemporary transportation needs. . .". He further states that if interstate funds are withdrawn he would work toward ensuring that substitute projects are incorporated into S. 2405, the Senate Federal Aid Highway Act of 1986.

In conclusion, we oppose this destructive and inappropriate highway and, therefore, must urge the removal of any reference to an exemption for H-3 in H.R. 3129. Instead, we support a cooperative effort to transfer funds to desirable and needed alternative transportation projects.

Sincerely,

ED STEVENS,
Transportation Liaison.

LULUKU BANANA GROWERS ASSN.,
Kaneohe, HI, September 3, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: The Luluku Banana Growers Association respectfully requests that you oppose any amendment before the Senate which would exempt the Interstate H-3 freeway project (Hawaii) from Federal law. We fear that any kind of exemption from law will provide the nation with dangerous precedent.

The Ninth Circuit Court of Appeals in San Francisco, Calif., has deemed that the H-3 violates environmental laws, and the United States Supreme Court has refused to hear the State of Hawaii's appeal. This is a clear indication that the H-3 project is illegal. Consequently, the project should be made to comply with the laws, instead of being exempted from them.

We feel very strongly that NO EXEMPTIONS should be granted and that the H-3 should either be required to conform with environmental laws, or the funds designated for this project be transferred to alternate transportation projects in Hawaii.

Yours respectfully,

FRED SHIROMA,
President.

[Mailgram]

Hon. ROBERT STAFFORD,
Environment and Public Works Committee, U.S. Senate, Washington, DC.

The Outdoor Circle, a civic organization of 3,000 members, dedicated to the preservation of Hawaii's natural beauty, strongly opposes S. 2467 which would make an exemption to the Federal highway standards to permit the construction of the controversial outdated H-3 Highway. This highway would encroach upon our public parks and open spaces and mar Hawaii's scenic beauty.

MRS. THEODORE CROCKER,
President.

HOTEL EMPLOYEES & RESTAURANT EMPLOYEES, LOCAL 5, AFL-CIO,
Honolulu, HI, July 11, 1986.

Re proposed exemption of Interstate H-3 project.

Senator ROBERT T. STAFFORD,
Chairman, Environment and Public Works Committee, Washington, DC.

DEAR SIR: I personally and as a representative of the Hotel Employees & Restaurant Employees Union, Local 5, am deeply concerned about the proposed exemption of the H-3 freeway project from federal law.

Living in an island state like Hawaii, it is critical that good decisions are made to give us jobs as well as make the best use of our limited financial and natural resources.

Rather than exempt H-3 from federal law, we ask that Congress instead provide for the substitution of other Hawaii construction projects which would better address the serious transportation needs of our community.

This would result in the same number of jobs for our work force, offer a better cost-benefit ratio for the use of federal dollars, and allow the preservation of those valuable natural resources which make Hawaii so attractive to the millions of people who choose this island as a visitor destination each year.

I ask your help in defeating the exemption for H-3, and that you substitute other Oahu transportation projects in its place in federal legislation now before you.

Sincerely,

ANTHONY RUTLEDGE,
Financial Secretary-Treasurer.

CONSERVATION COUNCIL FOR HAWAII,
September 9, 1986.

Hon. ROBERT STAFFORD,
U.S. Senate.

DEAR SENATOR STAFFORD: As you struggle to make our Federal government spend within the ability of taxpayers to fund it, the best savings can come from the cancellation of functionless CIP projects. Local newspaper cartoonists draw Highway H-3 as a dinosaur because the Federal courts have decreed it as "outlaw highway", fit for the legal boneyard.

Since 1973, together with the 4½ million member National Wildlife Federation, we have strongly supported more economical alternatives to Interstate H-3 which conform to environmental laws. We must oppose the attempt by Hawaii's retiring Governor to exempt this park-polluting, pork barrel highway from the federal standards enforced for all states.

Legal compliance is a duty and privilege of statehood that Hawaii assumed in 1959. (If the H-3 highway were really needed, the Governor could opt to build it entirely with state funds.)

A December 1982 study by the CBO documented that of 168 interstate projects, H-3 was the 3rd most subsidized. For every dollar of taxes spent, only 22 cents of service results! The Washington Post reported July 22 that each car trip would be subsidized to the tune of $3.30. Our people believe that the realities of shrinking transportation dollars and the fact that the

nation simply cannot afford all we once throught we could—that this requires a NO vote on any exemption for H-3.

Senator, when you appose the "end-run" of environmental laws, you can point to several cost-effective options commuters could be riding on a decade before the H-3 monster would be open.

We urge you to save money, save our park and historic sites and say NO to 4(f) exemptions.

Sincerely,

STEVEN L. MONTGOMERY, Ph.D.,
President,
Oahu Island Chapter.

THE LEAGUE OF WOMEN VOTERS
IN HAWAII,
May 20, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Senate Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR SENATOR STAFFORD: In November of 1985, the League of Women Voters of Hawaii and the League of Women Voters of the United States presented our view on the possibility of exempting the Oahu (Hawaii) H-3 highway from federal environmental regulations.

Our opposition to such an exemption is not based on the merits, or lack thereof, of the highway. Rather, it is based on our belief that individual projects should not be exempted from federal environmental regulations by specific acts of Congress. The League believes that transportation planning and construction should weigh all social and environmental costs.

The League of Women Voters of Hawaii urges you to make certain that no such exemption is placed in any legislation which you are now considering. Such an exemption would set a very dangerous precedent.

Please find enclosed a copy of the November 8, 1985 Memorandum. We hope you will take into account all the points which were made then once again.

Sincerely yours,

ANN F. LEE,
President.

LEAGUE OF WOMEN VOTERS
OF THE UNITED STATES,
Washington, DC, November 8, 1985.

To: Members of the Senate Committee on Environment and Public Works.

From: Dorothy S. Ridings, President, League of Women Voters of the United States and Anne F. Lee, President, League of Women Voters of Hawaii.

Re the H-3 highway extension in Hawaii, S. 1796.

The League of Women Voters of the United States and the League of Women Voters of Hawaii oppose the passage of S. 1796, a bill that exempts an extension of the H-3 highway on the island of Oahu from federal environmental regulations. Our strong opposition is not based on the merits, or lack thereof, of the highway. It is based on our belief that individual projects should not be exempted from federal environmental regulations by specific acts of Congress. The League believes that transportation planning and construction should weigh all social and environmental costs. S. 1796 would undermine this process.

If passed, this bill would set a dangerous precedent. We believe that it is not in the best interest of the country or the Congress for a legislative body to act to bypass laws enacted to protect the public health and the environment. Even in a case where there is a pressing national interest, this would be a serious step. In a case such as this, where there is no pressing national interest in the H-3 highway extension, an exemption is totally unwarranted.

Passage of S. 1796, even at the subcommittee level, could encourage many others to deluge the committee and the Congress with requests for special exemptions. Anyone who lost in court, after receiving due process and fair treatment, could turn to Congress for special favors. If individuals find the regulations and standards of environmental laws problematic, we believe the proper course for these individuals is to seek changes in the law. We do not find these regulations problematic and believe they will be rendered useless if special exemptions are given by Congress. Special exemptions make a mockery of the legislative process and can only result in laws devoid of substance. We urge you to oppose this bill.

LEAGUE OF CONSERVATION VOTERS,
Washington, DC, September 3, 1986.

DEAR SENATOR: Shortly after the Senate reconvenes on September 8th, the Federal Aid to Highways Act of 1986 will be considered on the Senate floor. It is expected that an amendment will be offered to exempt a controversial highway proposed in Hawaii known as "H-3" from environmental laws that prohibit federally funded highways from destroying parks and culturally and recreationally significant lands, where clear alternatives exist.

If enacted, this exemption would create a very dangerous precedent. Not only would H-3 be the most expensive highway ever built, but it also will not meet Hawaii's most pressing transportation needs. Clearly, other proposed highway segments across the nation that are far more meritorious than H-3 could claim a need for a similar exemption in the future.

In view of the potential impact that the H-3 exclusion amendment could have on future highway projects, next week's vote on this issue will clearly be one of the key environmental votes of this session of Congress. While the final decision will be made by the League's Board of Directors, I will be recommending that the vote on the H-3 exclusion amendment be included in this year's League of Conservation Voters voting chart, scheduled for release in early October.

I urge you to closely examine the merits of this issue before casting your vote on the H-3 amendment next week.

Sincerely,

ALDEN MEYER,
Executive Director.

NATIONAL AUDUBON SOCIETY,
Washington, DC, September 5, 1986.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR STAFFORD: In all probability, Senators Inouye and Matsunaga will introduce an amendment on the floor of the Senate to S. 2405 to exempt Hawaiian Highway H-3 from § 4(f) of the Department of Transportation Act. H-3 is a 10.7-mile highway which, if constructed as planned, will adversely affect Oahu's largest inland park and destroy both a public golf course and a recently discovered native Hawaiian burial ground, considered to be a major archeological find.

Section 4(f) declares it to be national policy that "special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites" and prohibits the Secretary of Transportation from approving any program or project "which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance . . ., or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use."

The effect of the exemption would be to relieve the Secretary of Transportation from making the findings required by § 4(f) and thus to authorize the destruction of these important park and cultural resources. The exemption will overturn a 1984 decision by the U.S. Court of Appeals for the Ninth Circuit holding that construction of the highway violated § 4If). *Stop H-3 Association* v. *Dole,* 740 F.2d 1442 (9th Cir. 1984). The U.S. Supreme Court refused to entertain the state's appeal of that decision.

Enactment of the proposed exemption will also moot a pending case brought by the State of Hawaii's Office of Hawaiian Affairs under § 4(f) to protect the hawaiian archaeological site and burial ground from destruction by the highway.

The National Audubon Society opposes such an intrusion by Congress into the workings of the judicial branch. The proposed exemption, if enacted, will be the first time in 20 years that an exemption to this law has been made. The exemption will serve as an unfortunate precedent for other requests for similar relief from this law and other environmental laws and will embroil Congress in a never-ending parade of controversial transportation projects.

Despite the obvious environmental problems with the proposed highway and the lack of justification for an exemption authorizing its construction, proponents of H-3 argue that the courts committed a grievous error, because the park was "created to stop the highway." This argument eggregiously misstates the facts. The park was created, with federal funds, as part of a U.S. Army Corps of Engineers flood control project. Proponents of H-3 cloud the issue by pointing to the fact that the flood control project was created at approximately the same time that the Department of Transportation was making a determination on the alignment of H-3. In point of fact, contemporaneous memoranda show that the park would have been *larger* but for H-3. In other words, the road limited the park, not the other way around.

Because H-3 would not physically occupy any parkland and only run along its borders, project supporters also argue that the U.S. Court of Appeals misconstrued § 4(f) by finding a "constructive taking" of the park by the highway. "Constructive taking" by noise, construction debris, air, and water pollution, as well as limits to access, is a concept that existed well before this case. The courts adequately described the factual basis for such a finding here. Indeed, project proponents did not appeal this interpretation of 4(f) when they had the opportunity to do so.

Even conceding arguendo that constructive taking of the park is not enough to trigger § 4(f), another public facility, a local golf course adjacent to the park, as well as the

Hawaiian burial ground will be *physically* taken by the highway. Section 4(f) applies as well to these other public facilities.

Reasonable and prudent alternatives to the highway responsive to local transportation needs exist at considerable savings to taxpayers and the environment.

If built, this project will cost the taxpayers more than $1 billion without solving the perceived problem. It is opposed by Honolulu's mayor, who believes the highway will adversely affect the city's transportation control plan. For the foregoing reasons, the National Audubon Society urges you to vote against the exemption, if offered. In so doing, you will be encouraging the State of Hawaii to "trade-in" H-3, pursuant to existing transportation law and policy, for other projects, making available to the State three-quarters of a billion dollars to solve its transportation problems.

Sincerely,

WILLIAM A. BUTLER
Vice President for Government Relations and Counsel.

NATIONAL TRUST OF HISTORIC PRESERVATION,
Washington, DC, March 28, 1986.

Hon. ROBERT STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate Washington, DC.

DEAR SENATOR STAFFORD: Thank you for requesting the assistance of the National Trust for Historic Preservation in your consideration of the H-3 Interstate highway project legislation proposed by Senator Inouye. As we stated in our letter to you of November 27, 1985, the National Trust strongly opposes this legislation, which would create an unprecedented exemption from federal laws essential to the preservation of the nation's cultural heritage.

You specifically ask several questions regarding the significance of and project impacts on the Luluku site, and archeological complex located in the vicinity of the proposed highway alignment. Under the National Historic Preservation Act, the National Park Service (NSP), Department of the Interior, establishes criteria for identification, evaluation, and appropriate treatment of cultural properties and maintains the National Register of Historic Places. The National Register is the nation's inventory of historic and prehistoric properties of local, state, or national significance. Thus, NPS sets the standards applied in the national preservation program and used to comply with federal preservation laws. Given this role in the national preservation program, the NTHP looks to the NPS for the answers to your inquiries.

On March 4, 1986, NPS determined that the Luluku archeological district satisfies criteria of cultural significance and is eligible for listing in the National Register. As part of its determination, NPS found the Luluku district to include five areas of significance and seventeen sites. A copy of the determination and findings is attached.

As a result of the NPS's determination, the proposed waiver, if enacted, would set a dangerous precedent by denying the protections of Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act of significant historic sites. These laws were enacted to ensure that the effects of federal actions on cultural resources are considered as an integral factor of federal consideration prior to project commitment. The exemption currently proposed is intended to prevent this planning process and any assessment of possible alternatives to site destruction.

The National Trust urges the Committee to reject the proposed exemption from compliance with federal environmental law and to reaffirm Congressional commitment to preservation of the nation's heritage.

Sincerely,

J. JACKSON WALTER,
President.

SIERRA CLUB,
Washington, DC, July 21, 1986

Hon. ROBERT T. STAFFORD,
Chairman, Senate Committee on Environment and Public Works, Washington, DC.

DEAR MR. CHAIRMAN: It is our understanding that the Environment and Public Works Committee is scheduled to mark-up the Federal-Aid Highway Act of 1986, S. 2405, on Tuesday, July 22. During mark-up, an amendment will be offered to exempt the H-3 Interstate Highway is Hawaii from 23 U.S.C. and 49 U.S.C. 303, commonly referred to as Section 4(f). The Sierra Club strongly opposes an open-ended exemption from 4(f) for the H-3 highway.

If the amendment passes, it would be the first time a highway project has received a blanket exemption from the requirements of Section 4(f) in all the years of constructing the national highway system. We believe that the circumstances of this project do not warrant the creation of a dangerous precedent for future highway projects that may come in conflict with the requirements of Section 4(f).

We believe that the H-3 project no longer meets the transportation needs of Oahu Island, poses serious health threats to its users, and is excessively costly. However, major issue concerns the 9th Circuit Court of Appeals ruling that H-3 as proposed would represent a "constructive use" of park lands. While the amendment providing an exemption for Section 4(f) purports simply to overturn this controversials decision, it in fact is far broader. The amendment would exempt the H-3 projects from any other requirements under Section 4(f) that are clearly meritorious. Regardless of your view on the Court of Appeals' application of "constructive use," we urge you to oppose the amendment because it is not limited to reversing the effect of the court ruling.

Section 4(f) is one the most important laws among those designed to protect our environment and historic resources. We urge you to oppose the passage of amendments to provide a blanket waiver of Section 4(f) for the H-3 project.

Sincerely,

J. MICHAEL MCCLOSKEY,
Chairman.

THE IZAAK WALTON LEAGUE OF AMERICA, INC.,
Minneapolis, MN, September 8, 1986.

DEAR SENATOR: The full Senate will soon be considering the Surface Transportation Act (S. 2405). At that time, Senators Matsunaga and Inouye will likely offer an amendment to exempt a 10.7 mile section of Hawaiian Highway H-3 from section 4(f) of the Department of Transportation Act. On behalf of the members of the Izaak Walton League of America, I urge you to oppose this amendment.

H-3, if constructed as planned, would adversely affect a public park and destroy both a public golf course and a native Hawaiian burial ground, a major archaeological site. Section 4(f) ensures that publicly owned land such as public parks, recreation areas, historical sites and wildlife refuges be protected from such projects unless there is no feasible or prudent alternative. For the last 20 years, section 4(f) has stood as a sound policy tool in protecting these public resources from unnecessary destruction. No project has ever been exempted from this provision of the law and the League is very concerned that an exemption for H-3 would set a precedent leading the way for many similar destructive projects in the future.

This exemption is not only unprecedented but it is also unwarranted. There are alternative proposals to H-3 which would better serve the transportation needs of the island of Oahu and which are both environmentally sound and less expensive.

Defeating the amendment will encourage the state of Hawaii to "trade in" H-3, thereby entitling the state to funds necessary to address the crucial transportation needs of the island of Oahu. H-3 will not address these needs, but instead will destroy important park land, recreational facilities, and historic sites. Please vote against any exemptions to section 4(f). Thank you for considering our views on this issue.

Sincerely,

DAVID DICKSON,
Conservation Associate.

NATIONAL PARKS AND CONSERVATION ASSOCIATION,
Washington, DC, July 18, 1986.

ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR CHAIRMAN STAFFORD: On Tuesday, July 22, at the markup of S. 2405, the 1986 Highway bill, you will be asked to vote on a proposed amendment exempting interstate H-3 in Hawaii from Sec. 4(f) of the Department of Transportation Act, 49 U.S.C., Sec. 309. I urge you to vote no to this proposed exemption.

Sec. 4(f) is one of the most important environmental laws protecting our national, state and local parks from unnecessary destruction from federally constructed or federally permitted transportation projects. This law, as you know, prohibits the use of park lands for such projects if a feasible and prudent alternative exists to such use. This law has been applied to protect such important resources as the Florida Everglades from a jetport location and Franconia Notch, New Hampshire, from a highway project. No exemptions from 4(f) have been allowed in the 20 years since its enactment in 1966.

We would greatly appreciate your opposition to this proposed exemption. Thank you for your attention to this matter.

Sincerely,

PAUL C. PRITCHARD,
President.

NATIONAL ASSOCIATION OF RAILROAD PASSENGERS,
Washington, DC, July 7, 1986.

Senator ROBERT STAFFORD,
Hart Building, U.S. Senate, Washington, DC.

DEAR SENATOR STAFFORD: We are writing to express our opposition to Interstate H-3 in Hawaii and to urge you to oppose any efforts to exempt H-3 from federal laws such as Section 4(f) of the DOT Act of 1966. An exemption would undermine the integrity of the legal provision in transportation law that protects our nation's public lands and

historic sites. Moreover, H-3 is neither the best nor the most cost-effective solution to Oahu's transportation problems. Viable alternatives exist which better address mobility needs without destroying Oahu's magnificent tropical landscape and archeological sites of national historic importance.

H-3 is currently enjoyed by Court order from further construction because it violates the legal provision—Section 4(f)—that has successfully safeguarded our public lands and historic sites from intrusion by unnecessary and environmentally unsound transportation projects. Section 4(f) explicitly prohibits the taking of such lands if there is a "prudent and feasible alternative." The U.S. Ninth Circuit Court of Appeals found that H-3 violates Section 4(f) and ruled that "prudent and feasible alternatives" exist. It enjoined further construction on the highway. The U.S. Supreme Court, by refusing to hear the case, has let stand the 9th Circuit Court decision.

H-3 involves three distinct 4(f) properties. H-3 will take land from one park; it will irreparably degrade Ho-omaluhia Park, the largest County park on Oahu enjoyed for hiking, camping and riding and home to abundant tropical vegetation and many unique island species, and; H-3 will run directly through a major archeological complex (the Luluku Archeological Complex) which has been determined eligible for listing on the National Register of Historic Places.

No highway has ever been exempted from Section 4(f) and H-3 must similarly abide by our federal laws. If an exemption were provided, it would set a dangerous precedent and surely Congress will find itself having to spend time in future years on similar requests for other unworthy projects seeking to circumvent our laws. Clearly, the H-3 exemption is a national, not local, issue.

Interstate H-3, moreover, is not the best transportation solution for Oahu's traffic problems. Alternatives to the highway exist and are supported by the Mayor of Honolulu, the Director of Transportation for Honolulu City and County, members of the City Council, numerous citizen organizations and Neighborhood Boards representing over 200,000 Hawaiian citizens.

Two major highways already link downtown Honolulu with the Windward side of the island. As the Director of Transportation for Honolulu City and County has stated to the Environmental and Public Works Committee, these highways could be improved—through grade-separated intersections and contra-flow auto and bus lanes if necessary—to relieve traffic at a fraction of the cost of H-3. And, H-3 effectively eliminates the ability to alleviate growing traffic congestion on the Leeward side of the island, where the majority of the population resides and works. In fact, H-3 is contrary to the new Oahu General Plan (1977) because it will open up the windward side to development and growth while the Plan directs growth to the Leeward side (Second City; see attached maps). If H-3 were traded-in, the money would not only support needed highway improvements, but the addition of substantial new mass transit service in Honolulu's main traffic corridor, bringing benefits to the majority of the island's population, not just a few.

We urge you to preserve the integrity of legal provisions protecting our nation's public lands and historic sites and to provide the best transportation system for Hawaii's citizens. We urge you to reject an exemption for H-3.

Sincerely,

HARRIET PARCELLS,
Transportation Associate.

The PRESIDING OFFICER. Who yields time?

Mr. INOUYE. Mr. President, I am here today to address an issue of great importance to the State of Hawaii.

The State of Hawaii, together with the Federal Highway Administration, has been trying to build the Defense and Interstate Route H-3 for over 25 years. During this time period, the H-3 highway project has been extensively planned and replanned by the State to take all environmental issues into consideration.

Specific environmental questions raised by concerned groups in the State have been addressed and considerable accommodations have been made. The State has met and surpassed the requirements of a myriad of Federal and State environmental laws, including the National Environmental Protection Act and the Endangered Species Act in the planning of H-3. Indeed, 73 out of 74 statutes and regulations on which H-3 has been challenged have been dismissed by the courts. Only a controversial interpretation of section 4(f) of the Federal Highway Act has stopped construction of H-3.

I am including with my statement today, Mr. President, a complete list of the environmental laws complied with and planning and conservation activities undertaken by the State in relation to H-3. As this list demonstrates, a great deal of thought and planning has been done by the State to go that extra mile to satisfy all environmental concerns.

Despite this impressive record of planning and accommodation, the H-3 project has been stopped by the Ninth Circuit Court's controversial ruling regarding section 4(f) of the Federal Aid Highway Act. The court found H-3 to be "taking" of the adjacent park, even though no land is physically taken by the highway.

Based on the legislative history of this act, however, it seems quite clear that Congress, through 4(f), expressed its intention that new interstate highways should not go through, or take from park land. In the original debate on the 4(f) amendments in 1968, Senator Mansfield spoke of the need to prevent "penetrating through Glover-Archibald Park," while Senator Metcalf expounded that "National Parks are sacrosanct and we are not going to go through a recreational area." Indeed, there is no legislative history indicating that Congress intended 4(f) to apply to a case such as H-3 in which no park land was taken.

In fact, with H-3 the opposite is the case. In the planning of the H-3 project, the State actually created park land—the Hoomaluhia Park—adjacent to the highway route and provided for a buffer zone to assure that there would be no development between the two. The park was later expanded to the boundary of the highway route to further protect the undeveloped status of this land. The State also established a common right-of-way for the park and highway and coordinated hydraulic and landscape design between the two.

Despite this detailed coordination, however, the Ninth Circuit Court found H-3 to be "taking" of the park—the park the State in fact created—because of possible noise and air pollution. It seems very ironic, Mr. Chairman, that by creating a park the State has run into these environmental problems. If the park had not been created and expanded, there would be no problem and H-3 would be underway now.

In the Environment and Public Works Committee's hearings on H-3 this year, there was a good deal of attention given to the archaeological sites located near a proposed interchange of the highway.

A detailed study of these sites was done by the Bishop museum, the preeminent authority on these matters in Hawaii, for the State DOT and sent to the Federal Highway Administration. Upon reviewing this report, the FHWA—at my urging—submitted it to the keeper of the national register so that a determination of significance, and a plan for preservation of these sites could be initiated. In March, the keeper declared the sites eligible for inclusion in the national register under criteria "D" i.e., sites that are likely to yield important historical information and artifacts, but for which preservation is not recommended.

The State has agreed to go further than this, however, by volunteering to modify the highway plans to avoid these sites altogether and purchase the private land they are on and provide for the preservation of the key sites.

As status "D" sites, these sites are not under the purview of section 4(f) per a Federal Highway Administration regulation which was recently upheld in Belmont versus Dole, a case with remarkable similarities to H-3. The sites are protected, however, through section 106 of the National Historic Preservation Act.

With the keeper's recommendation, the State is committed by the "106 process" to consult with the advisory council on historic preservation to plan for the protection of the sites, and plans for this consultation process are already being made. For this preservation to ever occur, however, the section 4(f) exemption we seek must first be obtained. Without it, these

sites will remain on private land with no protection or means of recovery.

Mr. President, I would like to stress at this point our sincere belief that Hawaii needs H-3 now more than ever.

By the year 2000, the traffic level between Honolulu and the windward side of the island will rise from 90,000 to 120,000 vehicles a day. If H-3 is not built, the two roads currently connecting these points will be completely unable to handle this increased load. According to the latest projections, the peak traffic period on these roads would increase to 8 hours a day, creating an almost constant traffic jam. Besides the obvious choking effect this would have on Hawaii's transportation flows, it would also have important defense implications.

H-3 connects the naval base at Pearl Harbor and the Kaneohe Marine Corps Air Station, and we all know how vital ready access between key military bases is to our defense needs. I would like to submit for the RECORD letters recently sent to the State DOT by the senior military commanders in the Pacific expressing their unqualified support for H-3.

In closing I would like to stress how important timely consideration of our legislation is.

We are offering this legislation as an amendment to the Surface Transportation Act of 1986 today, as we are faced with a pressing deadline for the use or transfer of our interstate funds. If H-3 is not considered promptly, the chances of this highway ever being built are gravely endangered. On September 30 of this year, the deadline for transfer of H-3 funds will be reached, and absent any action by Congress, this well-planned and much needed highway will never be built and the traffic problems that plague the residents of Oahu's windward side will likely never be solved.

I do not want this to happen to the people of Hawaii, Mr. President, as I am sure no Member of the Senate would want it to happen to his constituents. I urge my colleagues to support our request to avoid such a major disappointment for Hawaii.

Mr. President, I ask unanimous consent that the issues raised by the chairman and my responses thereto be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ISSUE 1: PRECEDENT/FLOODGATES

This issue affects the entire nation and all Federal highway projects in the future. It would set a terribly dangerous and damaging precedent.

RESPONSE

1) The case of H-3 and Hoomaluhia Park is a very unique example of years of coordination between government agencies to collocate a highway, H-3, and a park, Hoomaluhia Park, adjacent to each other. In fact, this effort to collocate H-3 and Hoomaluhia Park, is a good example of the kind of enlightened planning that should be encouraged.

2) If Congress fails to act on this issue, the "terribly dangerous and damaging precedent" that would be set is the clear signal to transportation planners that they should not permit parks to be constructed alongside their transportation facilities, and that joint planning is not encouraged. This has already happened in Hawaii. Because of the H-3 decision, the State has objected to the expansion of a county park toward the boundaries of an existing State highway, for fear that future planned widening of that highway could be adversely affected.

3) Congress has in the past granted projects exemptions from our federal environmental laws, including Section 4(f): (A) Tellico Dam, (B) Alaska Pipeline, (C) Alaska Railroad Transfer, (D) Conrail Assistance Act, (E) San Antonio Expressway.

In spite of the fact that these exemptions have been granted, the record clearly shows that the granting of these exemptions has not resulted in a flood of exemptions being granted by Congress. The fact is there has been no precedent set.

4) To concede the issue of precedent would be to admit that Congress will allow an injustice of a serious nature to stand because of a concern that in the future it will not be able to distinguish similar injustices (Senator Domenici, CONGRESSIONAL RECORD, March 15, 1973, page 8189).

ISSUE 2: UNDERMINING SECTION 4(F)/ ENVIRONMENTAL LAWS

"Section 4(f) requirements have been the cornerstone of environmental law that has assured responsible Federal highway planning for 20 years."

RESPONSE

1) Hawaii is known for its concern and actions regarding protection of our environment. The planning for H-3 is a clear reflection of this concern and care for our environment. Seventy-three out of seventy-four applicable Federal laws and regulations have been satisfied. The remaining Federal law is Section 4(f), which our Federal Court system has clearly misapplied in the case of H-3, and which only Congress can correct in this unique instance of H-3.

2) The State of Hawaii has never tried to circumvent or undermine Secton 4(f). As a matter of fact, in the case of H-3, a previous 1977 Section 4(f) action resulted in the alignment of H-3 being shifted from Monalua Valley into North Halawa Valley, at an added cost to the project of $110 million in 1976 dollars.

3) The present problem with H-3 is clearly a misapplication of H-3. Even the highly respected Congressional Research Service, in a July 14, 1986 analysis on the "Application of Section 4(f) of the Department of Transportation Act to Interstate H-3 in Hawaii," stated that,

". . . there is a question of whether a 4(f) finding is required when highway and park planning were coordinated, and when park boundaries were expanded to create a park buffer between the highway and the park's principal use area. Here there are indications in both legislative history and case law that the protections were designed for existing 'established' parks, and may be inapplicable under the posited fact situation."

4) Section 4(f) encouraged the protection of our parklands. If protection of our parklands is important, then creation of new parklands must be equally as important. No one had disputed the fact of coordinated and cooperative efforts on the part of the H-3 highway planners in working toward the creation of this new park called Hoomaluhia. The creation of new parklands clearly meets the spirit of Section 4(f) and perhaps takes it one step further in expanding the philosophy of Section 4(f).

ISSUE 3: PROTECTION FOR ARCHAEOLOGICAL SITES

If this highway project is exempted from Section 4(f) requirements, it will mean that several park and archaeological sites would be stripped of all Federal environmental protection in a construction project made possible only by Federal funding.

RESPONSE

1) The H-3 project has already satisfied a myriad of Federal laws and regulations. The action being requested only exempts H-3 from Section 4(f). All other Federal and State laws and regulations remain in force, to include, the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, etc.

2) In addition since over 90 percent of the length of H-3 is to be located through the States' vast Conservation District, which is under the jurisdiction of the States' Board of Land and Natural Resources (BLNR), the BLNR is given statutory authority to insure that all uses within the Conservation District be compatible with the goals and objectives of the Conservation District. In this regard, it should be noted that Hoomaluhia Park, Pali Golf Course, and all identified archaeological sites are situated within this Conservation District.

3) For archaeological sites, in addition to the protections of the National Historic Preservation Act, the BLNR has required (Findings of Fact, Conclusions of Law, Decision and Order of the Board of Land and Natural Resources, dated November 18, 1983) that an archaeologist be on-site during the construction of H-3, and that this archaeologist shall have the authority to stop construction activity in the event that an archaeological site is uncovered, and work shall not commence until such time as the State's Historic Preservation Officer has made a determination on the site E.G. preserve the site in place, preserve the site through relocation, or salvage the site.

4) As for parklands, the BLNR has placed seven conditions on the construction of H-3 adjacent to Hoomaluhia Park, to insure that all of the previously agreed to colocation design features (Landscaping, trail crossings, noise berms, etc.) are carried out.

5) The construction of H-3 adjacent to Pali Golf is 60 percent completed and all agreed to mitigation measures such as visual screening through appropriate landscaping, and the construction of rock walls for security and screening are included in the construction plans. These plans were reviewed and approved by the BLNR prior to commencement of construction.

ISSUE 4: HAIKU-OMEGA ELECTROMAGNETIC FIELD

"I am concerned with the potential of additional costs and health effects that could result from the construction and use of H-3 near the OMEGA Station that provides the communication system for our nuclear submarines around the world. The U.S. Coast Guard agreed to the location only after the State of Hawaii agreed to assume all liability for any problems during the construction and use of the highway, as well as for any potential interference with transmission signals. The Federal Government could be exposed to significant additional costs

since it provides 90 percent of the funds for H-3."

RESPONSE

1) The alignment of H-3 through the OMEGA-Haiku transmitter facility resulted because of the realignment of H-3 out of Moanalua Valley and into North Halawa Valley, which realignment was the result of Section 4(f) action. An alternative to avoid the OMEGA-Haiku facility would have resulted in an increase in the cost of H-3 of over $60 million, this due to the longer length of tunnels required to avoid OMEGA-Haiku. The added cost of OMEGA protection measures is $200,000 as reflected in the 1985 Interstate Cost Estimate (ICE).

2) The concern over health effects has been addressed through special studies, and in a July 6, 1982 letter the U.S. Coast Guard stated that their concerns over the possible biological effects of OMEGA's electromagnetic field were satisfied. The conclusion of the studies conducted by Dr. Arthur W. Guy, head of the University of Washington's Bioelectromagnetic Laboratory of the School of Medicine, was that H-3 could be safely constructed and operated in Haiku Valley. In fact, as a result of Dr. Guy's work, it was found that people living and working in the Kapiolani Boulevard business district near Waikiki, an area surrounded by several TV and radio towers, were exposed to an equivalent of over one million times more absorption rate of electromagnetic radiation than would the H-3 construction workers and users of H-3 in Haiku Valley. Further, that based on the median U.S. population exposure levels to FM radio and TV signals, half of the U.S. population is currently exposed to over 100 times higher levels of absorption rate of electromagnetic radiation than would the construction workers and users of H-3 in Haiku Valley.

3) Seven heart pacemakers from three major manufacturers of pacemakers were tested to determine if the Haiku-OMEGA signal would have any effect on their operation. These three pacemaker manufacturers cover approximately 90% of the pacemaker implants in Hawaii. The conclusion of this study is that pacemaker wearers may safely use H-3.

4) In 1983, Mr. Kawabata, an electrical engineer working on the design of that section of H-3 that goes through Haiku Valley, made several on-site visits to Haiku Valley. Mr. Kawabata who is a pacemaker wearer, said he felt fine and didn't notice anything different.

5) Haiku-OMEGA is a facility open to the public daily from 9:00 a.m. to 4:30 p.m. The public may drive into the facility and park next to the control building, the site of highest measured electric field strength. Picnic tables are available, and Coast Guard personnel have set up a basketball net as well as a tiny tot playground on one side of the building. It should be noted that the maximum field strength at the parking lot is 1000 volts/meter, five times greater than at the H-3 location in Haiku Valley.

6) The automobile is a very good shield. Field measurements of the electromagnetic field taken inside and outside of an automobile at the parking lot adjacent to the Haiku-OMEGA control building produced an outside field strength of 1000 volts/meter and a field strength of nearly zero inside the automobile.

7) Additional studies have also been prepared on the feasibility of constructing H-3 through OMEGA-Haiku without affecting the stations' operation. These studies were prepared by an engineer who designed Haiku-OMEGA and supervised its construction. The study concluded that H-3 can be constructed through OMEGA-Haiku with no adverse effect on the operation and performance of the station. It should be noted that in the early 1970's OMEGA-Haiku was built over a then operating smaller VLF transmitter while the smaller station remained in operation.

8) The requirement that the State execute a hold harmless clause was imposed by the U.S. Coast Guard in 1978, well before any of the studies on this issue were initiated. The State has continued to respect the Coast Guard's requirement, in spite of the fact that the State is fully satisfied that H-3 can be safely constructed and operated in Haiku Valley.

9) As to the liability of the Federal Government over personal injury lawsuits arising out of the construction and use of H-3, under current law there is no Federal participation.

ISSUE 5: DISAGREEMENT ON H-3 IN HAWAII

There is deep disagreement within the State on the best way to meet Hawaii's transportation needs. I am also convinced that the H-3 project, as conceived almost 30 years ago, no longer addresses the changing transportation needs of the Island. This point has been made by many from Hawaii.

RESPONSE

I. The disagreement on H-3 rests with a very small minority, which happens to be vocal. The fact is that support for H-3 comes from both local and national levels:

Hawaii: (1) Over 36,000 signatures in favor of H-3 were collected on a petition over a period of 3 weeks.

(2) Over 15,000 letters supporting construction sent to Senator Stafford.

(3) Political leaders: (a) Unanimous Congressional delegation, (b) Governor and past Governor, (c) Lieutenant Governor, (d) State Senate Resolution (bipartisan), (e) State Legislature (bipartisan), (f) Majority of City Council (bipartisan).

(4) Military: (a) CINC Pacific Forces, (b) Commander, Western Army Command, (c) Commander, Kaneohe Marine Corps Air Base, (d) Commander, Barbers Point NAS, (e) State Adjutant General.

(5) Community: (a) Honolulu Advertiser poll of August 7, 1986: Over 75% of residents who live either end of H-3, 68% of total island residents.

National: (1) Department of Defense, (2) Department of Transportation, (3) Secretaries of Transportation of 35 States, (4) Sixteen national organizations representing users, manufacturers, construction, and labor.

II. H-3's need is reflected by the overwhelming public support it enjoys as well as the fact that it is reflected on the current State Transportation Functional Plan, on the Oahu General Plan, and Oahu Metropolitan Planning Organization's Long Range Transportation Plan. In addition the State Legislature has passed a continuation of fuel/weight/registration taxes to assure the local share to construct H-3.

ISSUE 6: PALI GOLF COURSE

If the exemption is granted, it will permit H-3 to be built through the Pali Golf Course, a public golf course.

RESPONSE

1) The Pali Golf Course encompasses approximately 220 acres, not all of which is playing area. The H-3 Project uses approximately 4 acres of golf course land. This land was well away from the playing area in an unmaintained low gully that was subject to flooding.

2) This piece of land was acquired by the State from the City and County of Honolulu in 1975. H-3 construction (Halekou Interchange) on this land commenced in February 1983, and is currently 60% completed. Construction work on this interchange was stopped by court injunction in 1984. The acquisition of this land and subsequent construction of the interchange has not affected golf course operation.

ISSUE 7: ALTERNATIVES TO H-3

There are a combination of transportation alternatives that have been suggested that would not violate Section 4(f) and would be more responsive to local needs.

RESPONSE

1) Hawaii has for many years had a comprehensive long-range transportation plan to solve our present and future transportation needs. The completion of H-3 is an integral part of this long-range plan as reflected by the fact that H-3 is currently reflected on the:

(A) Oahu Metropolitan Planning Organization's Long-Range Transportation Plan.

(B) State Plan's Transportation Functional Plan as adopted by resolution of the State Legislature.

(C) Oahu General Plan's Development Plans as adopted by County ordinance.

2) Upgrading the two existing trans-Koolau highways, Pali and Likelike, will not solve the need to connect the windward area with the Pearl Harbor area. Further, upgrading the existing Pali and Likelike Highways will result in over ten separate Section 4(f) situations involving parks, recreation areas, and historic sites.

3) The suggestion of building a rail transit system through downtown Honolulu as an alternative to H-3 involves 21 Section 4(f) situations of which 6 involve direct 4(f) takings such as destruction of historic buidings and acquisition of parklands (source: 1982 EIS for Honolulu Area Rapid Transit funded by UMTA). This proposed rail system does nothing to solve the trans-Koolau traffic problem. Also, there has been no local approval of a rail system, which UMTA has clearly stated will be considered a new start, and the cost estimates for the system have been questioned.

ISSUE 8: COSTLY PROJECT

H-3 is exorbitantly expensive. At a projected cost of nearly $1 billion for 10.7 miles H-3 would be the most expensive federal highway ever constructed.

RESPONSE

1) The uncompleted 10.7 miles section of H-3 is estimated to cost $69 million per mile. The cost per mile of the entire 16.1 mile long H-3, including the completed sections of H-3, is $49 million per mile.

2) Based upon cost figures obtained from the Federal Highway Administration, there are several other interstate segements that will cost more than H-3 (e.g. Maryland, Massachusetts, Virginia, Washington, Florida, District of Columbia, Pennsylvania, California).

3) A significant point to note is that major increases in the cost of H-3 have been the result of prior Section 4(f) actions. First, there have been the years of delay to the project due to court-imposed injunctions (Moanalua Valley 4(f)-March 1976 to April 1982; Hoomaluhia 4(f)-November 1983 to present). Second, as a result of the Moanalua Valley 4(f) action in 1977, the alignment

of H-3 was shifted from Moanalua Valley, (a valley considered likely to be historic), to North Halawa Valley. This shift increased the cost of the project by $110 million in 1976 dollars. Finally, if H-3 is realigned to avoid Hoomaluhia Park as suggested by the court, the cost of H-3 will be increased by another $60 million.

The construction of the H-3 tunnel through the Koolaus will destroy the dike compartments in the mountains, the source of Oahu's drinking water.

RESPONSE

(1) The planning for H-3 has been extensively coordinated with the two expert water agencies in the State—the State's Division of Water and Land Development and the County's Board of Water Supply.

(2) In his 1982 decision, U.S. District Court Judge Samuel King stated that: "It is clear from the testimony and other evidence produced at trial that the Defendants did circulate the North Halawa Valley Supplemental EIS to the Board of Water Supply, and that the concerns of the Board of Water Supply were resolved."

(3) Judge King also stated that: "Any remaining doubts as to the project's potential groundwater impacts are alleviated by the following condition to the Secretary of Transportation's concurrence in the EIS: That the final design be coordinated with the Honolulu Board of Water Supply to assure that groundwater impacts are avoided and that coordination with Board will continue throughout construction of the project."

(4) The construction of two existing highway tunnels on the Pali and Likelike Highways have not resulted in any destruction of the dike water compartments in the Koolaus.

ISSUE 10: BENEFIT-COST RATIO

H-3 has an inequitable benefit-cost ratio of 0.22 to 1.

RESPONSE

1) A 1979 User Benefit/Cost Study prepared by the Office of Highway Planning of the Urban Planning Division of the Federal Highway Administration concluded that H-3 has a benefit/cost ratio between 1.05 to 1.26 depending upon the ratio of transit usage.

2) A 1986 revised benefit/cost study, which takes into account more factors such as lengthening of the period of congestion, specific intersection congestion, etc. has concluded that H-3 has a 5.52 to 1 benefit/cost ratio. The Federal Highway Administration has reviewed this new study's methodology and results and concurred with both.

3) As a result of this new ratio the National Taxpayer's Union in a letter dated July 17, 1986 has retracted its earlier opposition to H-3.

ISSUE 11: COMPARISON TO NEW YORK'S WESTWAY

H-3 is another Westway.

RESPONSE

An examination of the facts reveals that efforts to compare H-3 to New York's Westway Project are without foundation:

1) H-3 involves the construction of a 4-lane interstate and defense highway. H-3 displaces no one, and does not require the redevelopment of any area.

2) All environmental permits required to construct H-3 have been obtained and have further been cleared through court action. Indeed H-3 has been cleared from 73 of 74 applicable Federal environmental laws and regulations by our courts. Only a controversial interpretation of Section 4(f) is stopping construction. The Westway Project involved a controversy over a Corps of Engineers dredging permit as it pertains to the spawning grounds of the striped bass.

3) The cost of H-3 is significantly less than that of the Westway Project. H-3 is estimated to cost $742 million for the 10.7 mile uncompleted gap ($69 million per mile). The Westway was estimated to cost approximately $2 billion for a 4 to 5 mile length (about $500 million per mile).

Mr. INOUYE. Mr. President, I yield 10 minutes to my colleague from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. Matsunaga.

Mr. MATSUNAGA. Mr. President, as cosponsor of the amendment I rise in strong support of it. I would like to emphasize the fact that H-3 is not an environmental issue. H-3 does not violate environmental laws. The H-3 design incorporates numerous environmental mitigation features.

H-3 has complied with these environmental regulations: the Clean Water Act, the Safe Drinking Water Act, the Noise Pollution Act the Endangered Species Act and those concerning air quality, wildlife, farmland, energy, flood plains, esthetics, joint development, historic and archaeological preservation, general environmental requirements, public involvement, and design location.

The history of H-3, as it comes before this body today, is that the District Court of Hawaii supported the State on all 74 issues it was held up to. On appeal to the ninth circuit court of appeals, the ninth circuit court upheld the district court on 73 issues and reversed only one, and that was on the application of 4(f). And what did the ninth circuit court say? That there was a taking of a park; that is, a constructive taking of the park. And it even cited as precedent a case in California, where the roadway went right through the middle of a park. Here, no park existed at the time that the highway was planned and the park was extended to the highway in order to protect the park.

Courts do make mistakes. We have a great system of three independent divisions of government. Here is a case where the judiciary made a mistake and refuses to correct its mistake, so it is up to the legislative body to put forth the original intent of the law which has been misinterpreted by the court.

This is what we are asking this body to do today, to go back and spell out in understandable language the intent of the law, 4(f) in particular, as it applies to the H-3 highway in Hawaii. We say there was a misapplication of judicial decision and a misinterpretation of the law. So let us make the law clear that what the court decided was not intended by the legislative body. This is what we are asking.

There were several points made by the chairman of the committee opposing the measure. He said, for example, that it would set a bad precedent. Well, actually, as was pointed out by my senior colleague, this will not set any precedent at all. As a matter of fact, there were other cases of exemptions from environmental laws which have been in effect and have set no precedent at all. And this, the language of the amendment we are proposing, will be limited strictly to Hawaii's case and will not in anyway set any precedent whatsoever.

Now there was a point also made about protection for archaeological sites. And the Luluku sites were specifically mentioned here. Well, the highway does not in any way disturb Luluku. What some of the native Hawaiian groups are fearful of is that the highway would go through Luluku. In fact, the highway as planned goes around the archaeological site. If it had not been for the planned highway, this would not have come to the attention of the community. And it is provided that there will be an archaeological expert at the site whenever construction takes place in order to protect archaeological sites. If it were not for the highway Luluku, could not be protected; there are plans by the private sector to take over the Luluku area and possibly turn it into a golf course. So that actually, the fact that H-3 is being built will in fact protect Luluku.

Now, there was also mention made about the dangers of electromagnetic fields there. Well, let me point out that a study by Dr. Arthur W. Guy, head of the University of Washington's Bioelectromagnetic Laboratory of the School of Medicine, concluded that H-3 could be safely constructed and operated in Haiku Valley. As a matter of fact, it was found in his study that people living and working in the Kapiolani Boulevard business district, near Waikiki, an area surrounded by several TV and radio towers, were exposed to an equivalent of over one million times more electromagnetic radiation rates of absorption than would the H-3 construction workers and users of H-3 in Haiku Valley.

In addition, we are talking about 40-mile long low-frequency waves, ladies and gentlemen. We are not talking about lethal microwaves.

Mention was also made about the effects the electromagnetic field would have on wearers of pacemakers. Seven heart pacemakers from three major manufacturers of pacemakers were tested to determine if a Haiku-Omega signal would have any effect on the operation. These three pacemaker manufacturers cover approximately 90 percent of pacemaker implants in Hawaii.

The conclusion of this study is that pacemaker wearers may safely use H-3. As a matter of fact, there is the case of a Mr. Kawabata, an electrical engineer working on the design of that section of H-3 that goes through Haiku Valley. He makes several on site visits to Haiku. Mr. Kawabata is a wearer of a pacemaker. He said he felt fine. He felt no different being there as being elsewhere.

So that scare tactic has been made by those who are doing everything possible to oppose H-3.

The PRESIDING OFFICER. The Senator's 10 minutes has expired.

Mr. INOUYE. Mr. President, I yield 1 minute to the Senator from Hawaii.

The PRESIDING OFFICER. The Senator is recognized for an additional 1 minute.

Mr. MATSUNAGA. Mr. President, it also should be noted that in a recent poll taken, the overwhelming majority of the people of Hawaii support the construction of H-3. And also in support of H-3 are: The Commander in Chief of the Pacific, the Commander of the Western Army Command, the Director of Civil Defense, the Hawaiian Department of Transportation, and our own Department of Transportation headed by Secretary Dole.

And, in addition, as to local support, it was a tremendous experience when in April of this year we were presented—when I say "we," the Hawaiian congressional delegation—with a petition containing 35,000 signatures which were gathered within a short period of about 3 weeks.

Then I also say this for those who are concerned about what their States say. The State transportation officials of the following States have endorsed H-3: Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Maine, Arizona, Maryland, Massachusetts, Alaska, Missouri, Oregon, Nebraska, North Carolina, Arkansas, California, Pennsylvania, Wisconsin, West Virginia, Washington, Virginia, Texas, New Hampshire, Nevada, Mississippi, Minnesota, Utah, Michigan, Alabama, Iowa, Illinois, and of course, Hawaii.

Mr. President, I ask unanimous consent that the letter signed by the transportation officials of these respective States be made part of the record.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATEMENT OF SUPPORT FOR CONGRESSIONAL REVIEW OF SECTION 4(F) APPLICATION TO INTERSTATE ROUTE H-3

We, the undersigned State Highway Officials, support the State of Hawaii's efforts to seek Congressional assistance for the H-3 Interstate Highway.

All States share with Congress a concern for the importance of protecting our nation's parklands. We are simultaneously charged with a responsibility to provide for the judicious exercise of administrative judgement and by encouraging the coordination of park and highway planning to the greatest extent possible.

In a Ninth Circuit opinion (Stop H-3 Association v. Dole, et. al., 740 F.2d 1442 (1984)) the Court of Appeals has rendered a decision that appears to have over-reached. Congressional review is the only remedy remaining for correcting this apparent misapplication.

The States and others have historically turned to Congress to correct perceived injustices. We urge the enactment of appropriate legislation to correct the apparent misapplication of Section 4(f) as related to Interstate and Defense Route H-3.

Joe Dolan, Colorado; Gary B. Homewood, Delaware; Thomas E. Drawdy, Florida; Thomas D. Moreland, Georgia; E. Dean Tisdale, Idaho; John P. Isenbarge, Indiana; John B. Kemp, Kansas; and Gedeon G. Picher, Maine.

Harry A. Reed, Arizona; William K. Hellmann, Maryland; Robert T. Tierney, Massachusetts; Richard J. Knapp, Alaska; T. L. Waters, Jr., North Carolina; Henry C. Gray; Arkansas; Robert Datel, California; and Thomas D. Larson, Pennsylvania.

Wayne Muir, Missouri; Fred D. Miller, Oregon; Raymond H. Hogrefe, Nebraska; Leno Menghini, Wyoming; Lowell B. Jackson, Wisconsin; and William S. Ritchie, Jr., West Virginia.

Duane Berentson, Washington; Howard Newlon, Virginia; Mark G. Goode, Texas; Edgar W. Huckins, New Hampshire; William D. Hurley, Utah; James P. Pitz, Michigan; Ray D. Bass, Alabama; and Warren B. Dunham, Idaho.

Ronald W. Hill, Nevada; James D. Quin, Mississippi; Richard P. Braun, Minnesota; Carla J. Berroyer, Illinois; and Wayne J. Yamasaki, Hawaii.

Mr. MATSUNAGA. Clearly, Mr. President, the need and support for H-3 are beyond question. But before closing, I would like to address the matter of cost. Opponents have asserted that H-3 will be the most expensive per-mile segment of interstate highway ever built. This is patently false: I have here in my hand a list of at least nine other projects which cost more, some by many orders of magnitude.

Mr. President, I ask unanimous consent that this list also be made a part of the record.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H-3 IS NOT THE MOST EXPENSIVE PER-MILE SEGMENT OF THE INTERSTATE EVER BUILT

H-3 is not the most expensive per-mile segment of Interstate highway ever built. The following are examples of the cost of some other highways: [1]

Project	Location	Length (mi)	Cost per mile (millions)
I-95	Baltimore	1.7	518
Westway [2]	New York	4.2	475
I-90	Massachusetts	3.2	198
I-264	Norfolk, VA	0.8	119
I-90	Seattle	6.4	117
I-595	Florida	4.2	109
I-295	Washington, DC	1.3	97
I-664	Virgina	7.0	80
I-676	Pennsylvania	1.6	78
H-3 (uncompleted section).	Oahu	10.7	69
H-3 (Total completed & uncompleted sections).	Oahu	16.1	49
I-105	Los Angeles	17.3	64

[1] Interstate Branch, Federal Highway Administration.
[2] Withdrawn.

Mr. MATSUNAGA. Mr. President, opponents have also contended that H-3 is too expensive given the current budget deficit we face. It is important to understand, however, that Congress has already authorized funds for H-3, and, that the moneys allocated to H-3 will be spent even if H-3 is not built. The funds would merely be transferred to other less-needed projects, and the problems H-3 seeks to address will go unresolved.

Mr. President, on behalf of the people of Hawaii, I urge my colleagues to support this worthy amendment.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator's additional minute has now passed.

Mr. MATSUNAGA. I thank the President.

Mr. INOUYE. I yield time to my distinguished friend from North Dakota.

Mr. BURDICK. Mr. President, central to prior court proceedings on this highway project, is whether the courts have correctly interpreted the Federal 4(f) issue. In this case, it is my opinion that the 20-year-old Federal law designed to protect parks and historic areas from highway intrusions has been incorrectly applied. To find otherwise, would provide a chilling effect on other State and local entities from planning together.

The leadership of the Senate Environment and Public Works Committee argued against Hawaii's Senators last year on their effort to place a far more reaching provision on the 1986 Department of Transportation's budget. The committee, as promised, held a hearing and received testimony from numerous witnesses.

I am sure that each Member of the Senate has received many letters and office visits by supporters and opponents of H-3. It would seem that for every conceivable argument raised there is an adequate response.

This issue even has the National Taxpayers Union confused. In a May 20 statement, it opposed H-3 because it had an inequitable benefit cost ratio: 0.22-1. Subsequently, a new cost benefit study has shown a benefit ratio of greater than 5 to 1. Still another study conducted in 1979, shows a cost-benefit ratio of approximately 1 to 1. The Taxpayers Union concluded that "after studying these contradictory analyses, they are unable to find sufficient information to make a judgment."

If this amendment passes, I certainly will work with those opposed to the project, to make it clear in an eventual

conference report that this action should not diminish national application of 4(f).

The State of Hawaii has not made a light decision. It has decided to go ahead with H-3 with the risk of losing $600 million for alternative mass transit or substitute highway projects. It is clear that if the public officials have made a mistake in judgment and the September 30 deadline passes, the State has no recourse.

Because they are taking such a big gamble, I believe it is only fair to our colleagues from Hawaii they receive support on this issue.

I at this time, ask unanimous consent to place in the RECORD, a letter from the Governor of Hawaii supporting the project.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE CHAMBERS,
Honolulu, Sept. 8, 1986.

Hon. QUENTIN N. BURDICK,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BURDICK: I am writing on behalf of the people of Hawaii to ask your support of an amendment that may be introduced on the Senate floor by Hawaii Senators Daniel K. Inouye and Spark M. Matsunaga requesting an exemption from the Surface Transportation Act that will allow for completion of the State's 51.2 mile Interstate and Defense Highway System.

The exemption will specifically remedy what I believe to be a misapplication of the 4(f) statute as applied by the 9th Circuit Court of Appeals to Hawaii Interstate H-3. The Court overrode the District Court decision and ruled that since the H-3 and the park have coterminus boundaries that this represents "use" of the park and applied 4(f) provisions to halt construction. The truth is that the boundaries of the park were extended by state, county and federal agencies to the highway alignment to serve as a natural buffer against residential development along the boundary of the park.

The State of Hawaii has played a leadership role in land use planning with its comprehensive State Plan, functional plans and county development plans.

We are particularly proud of the planning that took place over many years and by many agencies to develop the boundaries of the H-3 and the park so that detrimental urban development would not impact the park environment. Who could possibly have foreseen that this careful planning would backfire due to the court's interpretation of 4(f)?

It is essential that construction of the H-3 begin as soon as possible to complete the Interstate System in Hawaii and to provide traffic relief for the many thousands of Windward residents who must commute daily from their residential communities to job centers in central, leeward and downtown Honolulu. The present two traffic corridors through the Koolau mountains have been operating above capacity since 1982 resulting in tremendous rush-hour traffic jams.

The H-3 has strong bipartisan support from the State Legislature and the City Council, as well as 70-80 percent of the residents of Oahu, as proven most recently by the Honolulu Advertiser "Hawaii Poll." The full House of Representatives approved such an exemption on August 15.

Members of my staff will be in Washington in September and will be pleased to answer any questions you may have. A "yes" vote from you on the amendment proposed by our Hawaii delegation will help us remedy the misapplication of 4(f) and allow us to complete our Interstate highway system.

With warm personal regards, I remain,
Yours very truly,
GEORGE R. ARIYOSHI.

Mr. BURDICK. I would like to quote a portion of that letter. It states as follows:

The H-3 has strong bipartisan support from the State legislature and the city council, as well as 70-80 percent of the residents of Oahu, as proven most recently by the Honolulu Advertiser "Hawaii Poll." The full House of Representatives approved such an exemption on August 15.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I yield 4 minutes to the distinguished chairman of the Transportation Subcommittee.

The PRESIDING OFFICER. The Senator from Idaho Mr. [SYMMS].

Mr. SYMMS. Mr. President, the distinguished chairman of the committee spoke earlier in opposition to this amendment and in most highway issues he and I have seen eye to eye, but as he stated, there are two sides to every pancake. And I am sorry to have to rise and differ with my distinguished chairman. But I see this issue much differently. I would like to make a couple of brief comments on why.

I support what my two colleagues from Hawaii and trying to do. I want to make my points very briefly. The first point is, in my opinion, I believe the courts have misapplied section 4(f). My subcommittee has held two hearings on this project at which time much information was presented. It is clear from the record in my opinion that what we have before us is a situation where a new highway, H-3, was realigned to provide space for a new county park, and subsequent planning and design of both are being extensively coordinated.

Then, because construction of the park proceeded prior to construction of the section of H-3 that runs along one boundary of the park, the courts have stopped the H-3 project for what they claim is lack of compliance with section 4(f).

□ 2300

This is clearly a misapplication of section 4(f). These people in Hawaii have provided us with an outstanding example of the type of coordinated planning that we in Congress should encourage. Should we not be encouraging the joint and coordinated development of highways and parks? To me this kind of civic action should be encouraged.

The Congressional Research Service in a July 14, 1986, analysis on the application of section 4(f) of the Department of Transportation Act to interstate route H-3 states that:

. . . there is a question of whether a 4(f) finding is required when highway and park planning were coordinated, and when park boundaries were expanded to create a park buffer between the highway and the park's principal use area. Here, there are indications in both legislative history and case law that the protections were designed for existing, "established" parks, and may be inapplicable under the posited fact situation.

The second point I would like to address is the level of support for this project. I am sure that all of you have received a lot of mail on this issue. I believe there is strong public support in Hawaii for this project. Local government leaders, business, labor, and most importantly, the large majority of the citizens all want this project to be completed.

During my visit to Hawaii less than a year ago, I confirmed that our military leaders also support the construction of H-3, and indeed one of the purposes of our interstate highway system is to serve our Nation's defense needs. In addition to this local support from Hawaii, the U.S. Department of Transportation has steadfastly supported the completion of H-3 and the granting of the requested waiver from 4(f).

The last point I would like to make is that even if H-3 is not built, Federal moneys will still be spent since the State of Hawaii can, by the 30th of this month, elect to withdraw H-3 and proceed with substitute projects in lieu of H-3. Should Hawaii elect to move in this direction, they will add approximately $715 million to our current backlog of substitute project obligations.

In conclusion, Mr. President, it appears to me that the only thing holding up the H-3 project is a clear misapplication of section 4(f) by our courts. In this situation, Congress has the right and the obligation to step in and correct this situation. I ask my colleagues to support this amendment offered by my colleagues from Hawaii.

I ask unanimous consent that letters I have received from Dean Tisdale, the director of the Idaho Transportation Department, and Les Lamm, the president of the Highway Users Federation, be placed in the RECORD. Both of those gentlemen have written to ask that I support the amendment offered by the Senators from Hawaii.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HIGHWAY USERS FEDERATION,
Washington, DC, September 17, 1986.

Hon. STEVE SYMMS,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR SYMMS: The Highway Users Federation strongly supports Congressional

action to permit resumption of construction of Interstate Route H-3.

This important route will vastly improve the safety and convenience of travel on Oahu. It has gone through myriad technical reviews, public hearings and court contests over a 26-year planning period.

We join the Highway Users leadership of Hawaii and the ten Western States in urging favorable action on this matter in the current highway legislation.

Sincerely,

LESTER P. LAMM.

STATE OF IDAHO,
TRANSPORTATION DEPARTMENT,
Boise, ID, September 15, 1986.

Hon. STEVEN D. SYMMS,
U.S. Senate, Senate Hart Building, Washington, DC.

Subject: S. 2405, Amendment concerning Hawaii Interstate Highway H-3.

DEAR SENATOR SYMMS: Hawaii's Senators Inouye and Matsunaga plan to offer an amendment concerning the subject highway when S. 2405 reaches the Senate floor. At issue is whether Route H-3 violates Section 4(f) of the Department of Transportation Act of 1966, by constructively taking park lands.

I agree with Director Wayne Yamasaki, of the Hawaiian Department of Transportation, that Section 4(f) has been misapplied in this case and I recently signed a Statement of Support for Congressional review of the Ninth Circuit Court's fundings in the matter.

I ask you to support the floor amendment when it is introduced by Hawaii's Senators. I am enclosing a brochure on the subject for your information.

Sincerely,

E. DEAN TISDALE,
Director.

WHY H-3 NEEDS THE 4(f) WAIVER

WHAT IS H-3

H-3 is a segment of the Interstate and Defense Highway System in the State of Hawaii. The 51.5 mile Hawaii Interstate and Defense Highway was authorized by Congress and consists of three interconnected routes, namely H-1 (27.2 miles), H-2 (8.2 miles) and H-3 (16.1 miles).

H-1 and H-2 are completed.

A total of 5.4 miles of H-3 is complete with 10.7 miles yet to be constructed.

WHY IS H-3 NEEDED

Admiral Ronald J. Hays, Commander in Chief, U.S. Pacific Command, states: "The DOD supports the construction of Interstate H-3 Freeway. A limited access highway connecting the Kaneohe Marine Corps Air Station with the Pearl Harbor Naval Base will greatly facilitate the movement of people and material from the Air Station to Pearl Harbor. In the event of a rapid deployment, the highway would be beneficial in supporting our nation's defense needs."

The Hawaii State Department of Transportation (HDOT) projects that the daily commuter and commercial traffic traversing the Koolau mountain range on the Island of Oahu will reach 120,000 vehicles per day by the year 2008.

Pali and Likelike Highways, the two existing trans-Koolau highways, are operating over capacity right now.

H-3 is on: The Oahu Metropolitan Planning Organization (OMPO) approved long-range transportation plan, Transportation Functional Plan adopted by the State of Hawaii Legislature, and The Public Facilities Map of the approved development plans for the City and County of Honolulu.

LOCAL SUPPORT AND COMMITMENT

U.S. Senators Daniel K. Inouye and Spark M. Matsunaga;

U.S. Congressmen Daniel K. Akaka and Cec Heftel;

Governor George R. Ariyoshi, State of Hawaii;

The Hawaii State Legislature. Resolutions show broad bi-partisan support;

A bi-partisan majority of the City Council of the City and County of Honolulu;

A Hawaii coalition of supporters of H-3 (citizens, labor unions, industry groups) gathered 35,000 signatures and 15,000 individual letters and personally delivered them to the Honorable Robert T. Stafford and the Honorable James T. Howard;

Independent polls on Oahu show that 70 to 80 percent of the people support the construction of H-3. The level of support has increased and broadened over the years; and

The strongest commitment to construct H-3 by the people of Hawaii is the passage of a comprehensive package of highway user taxes by the State Legislature to fund the local match of the Federal funds authorized by Congress.

H-3 IS NOT AN ENVIRONMENTAL ISSUE

State of Hawaii has a strong environmental record.

The courts found that H-3 has met 71 environmental statutes and regulations including: *National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, Clean Water Act, Clean Air Act.*

H-3 has compiled an impressive record of planning and accommodation addressing all environmental issues.

The State Board of Land and Natural Resources, the legal guardian of conservation lands in the State of Hawaii, has applied environmental protections far beyond Federal statutes.

The Luluku area has been studied by the Bernice P. Bishop Museum, the preeminent archaeological institution in the Pacific. Agricultural terraces found by the Museum have been submitted to the Keeper and an eligibility determination was made for a discontiguous district. The sites recommended for preservation by Bishop Museum will be avoided by H-3. Further protection will be provided by the Section 106 process of the National Historic Preservation Act.

WHAT'S STOPPING H-3

The opponents of H-3 have waged a protracted legal and public campaign against the building of H-3 primarily to oppose growth on the Windward side of the Island of Oahu.

The U.S. Ninth Circuit Court of Appeals in August, 1984, overturned a District Court decision and imposed an injunction stopping construction of H-3 on a controversial interpretation of Section 4(f) of the U.S. Department of Transportation Act.

The Court's review ignored the intensive planning (over 20 years) between a regional park (Hoomaluhia) and H-3. State studies concluded that the air and noise levels in the park are within Federal standards.

H-3 will not take one square inch of park land.

Ironically, the park area *created* by H-3 is now stopping H-3 from being built.

NOT A PRECEDENT

Under special circumstances, Congress has granted waivers to environmental laws.

Because the circumstances were demonstratively special, no "floodgates" were opened.

Some previous examples of environmental law waivers for various types of exemptions include:

Total Exemption—Tellico Dam Construction (P.L. 96-69 Title IV) Snail Darter case. Congress gave full clearance of environmental laws after Supreme Court halted project.

4(f) Exemption—Alaska Railroad Transfer (45 U.S.C. Sec. 1212) Freed State from 4(f) requirements in placement of railroad.

National Environmental Protection Act (NEPA) Exemption—Alaska Pipeline Certification (43 U.S.C. Sec. 1652) Congress stated that the project's EIS was acceptable, and the pipeline should be built.

4(f)-Related Highway Exemption—San Antonio Expressway (P.L. 93-87 Sec. 1543) Withdrew this segment from the Federal Aid system so that 4(f) challenge could be avoided.

OTHER RELEVANT FACTS

H-3 is and has always been in the Interstate Cost Estimate (ICE) authorized by Congress.

H-3 is revenue neutral.

H-3 has a very favorable benefit to cost ratio.

Mr. SYMMS. I thank the distinguished Senator from Hawaii and I yield back any time remaining.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. STAFFORD. Mr. President, I yield such time of the 13 minutes remaining to me as the Senator from Rhode Island requires.

Mr. CHAFEE. Mr. President, I join the distinguished chairman of the Environment and Public Works Committee in opposing this amendment, which would exempt the highway in Hawaii from section 4(f) of the Department of Transportation Act.

Section 4(f) is an extremely important environmental provision. It has been part of our law since 1966, 20 years.

What this provision does is it requires that the Transportation Secretary reject a project, such as a highway, which uses publicly owned land from a public park unless—and there is an escape hatch and the escape hatch is as follows—unless there is no feasible or prudent alternative to use of such land. This requires an analysis of alternatives which is similar to that which is required under the Endangered Species Act or the water dependency test of section 404.

Largely because of section 4(f), which is the section we are discussing here, federally funded highways have been planned and built over the past 20 years in such a way as to avoid the unnecessary destruction of parks, unnecessary destruction of wildlife refuges, or of recreational areas.

These valuable public lands may be destroyed only, and this is the point that we wish to make, when neither a

feasible nor prudent separate design for routing of a highway can be found.

That does not mean you can never go through a park. You can go through a park, but only if there is no feasible or prudent alternative to going through, in this case, the park.

In the case of interstate H-3 in Hawaii, the Ninth Circuit Court of Appeals held that the Department of Transportation failed to meet the stringent requirements of section 4(f) because sufficient consideration was not given to two alternatives.

The Supreme Court upheld this finding in denying certiori.

This is not something that has just come up all of a sudden. This thing has been debated and carefully debated and has gone up to the circuit court and the circuit court said, "No; you cannot do that, Hawaii. You have to go back and search these prudent alternatives, to see if there is a prudent alternative, and come to us and prove that these alternatives are not the way to do it. In other words, you have not done your homework. Absent doing that, no, you cannot go through this park."

Instead of conducting these alternative analyses the Hawaii Department of Transportation now seeks through the Congress—they passed it in the House and they now come to the Senate—to overturn the court's ruling and to exempt H-3 from the provisions of this very important 20-year-old statute.

It has been pointed out there is massive public support in Hawaii for this. I do not doubt that. I suspect there is. Here is an $800 million highway that is going to be built and it is going to cut down time—and true it does go through a park, it skirts a park; it is against the law as it now exists—it is going to cut down the drive time. That is the way it is in all too many instances. But thank goodness this Congress passed 4(f) some years ago and that has protected a host of parks throughout the country and wildlife refuges and recreational areas. Thank goodness that is on the books.

All we are saying is, "Hawaii, abide by the rules. Do not try and shortcut. Examine these alternatives and see that those are not prudent nor feasible."

It has been mentioned, "Do not worry about the precedent. That is all right. This will not happen again. We will do this and that is the end of it."

But I think there is a risk of precedent in dismantling the effectiveness of this statute when another State has the same situation. They are going to say, "Go to the Congress. They will fix it up. They will show you a way around this law."

So for these reasons and because I think we are all interested in less damaging alternatives, a search for less damaging alternatives as the way to go, as a means of protecting vital national resources, I would hope, as much as I do respect the proponents of this amendment, that it would be rejected.

The PRESIDING OFFICER. Who yields time?

Mr. INOUYE. I yield 2 minutes to the Senator from Oklahoma.

Mr. BOREN. Mr. President, I support the amendment offered by my colleagues from Hawaii. The much needed H-3 highway project has been delayed by litigation for over 14 years, despite consistent 70 percent popular support of the people of Hawaii, the bipartisan backing of the Governor's office, the entire congressional delegation, the State senate and house of representatives, and the majority of the Honolulu City Council. Why?

The Ninth Circuit Court of Appeals, in a decision handed down in 1984, found H-3 to be a "taking" of an adjacent park, even though no parkland is physically taken by the highway. The court found H-3 to violate section 4(f) of the United States Department of Transportation Act (23 U.S.C. 138). This interpretation of section 4(f) was so unusual as to attract the attention of the Oklahoma Department of Transportation. The director of Oklahoma's Department of Transportation has written me to express his dismay at the court's misapplication of section 4(f) to the H-3 project.

Indeed, Mr. President, the State of Hawaii actually created the park in question to provide a buffer zone and insure that no development would take place between the park and H-3. The State of Hawaii has also established a common right-of-way for the park and highway and has coordinated hydraulic and landscape design between the two. Finally, the State of Hawaii has met or exceeded all Federal and State air and noise standards. I fail to see how the court can view this as a "taking." I urge my colleagues to support this amendment and allow the State of Hawaii to meet and address their transportation needs in an orderly more timely fashion.

The PRESIDING OFFICER. Who yields time?

□ 2310

Mr. DOLE. Mr. President, let me indicate to my colleagues that this will be the last rollcall vote tonight. They are going to take the amendment of the distinguished Senator from Iowa [Mr. HARKIN]. That amendment is acceptable, as I understand. That will, I hope, leave just one amendment, if we get a time agreement on the Cochran amendment. The one we cannot get a time agreement on is the motion to strike the Moynihan language. I am afraid if we do not work out something on that, there will not be a highway bill.

The PRESIDING OFFICER. Who yields time?

Mr. INOUYE. Mr. President, I am prepared to yield back my time.

Mr. STAFFORD. Mr. President, I am prepared to yield back my time.

I move to lay the amendment of the Senator from Hawaii on the table.

Mr. INOUYE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment of the Senator from Hawaii on the table. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Delaware [Mr. ROTH] and the Senator from Pennsylvania [Mr. SPECTER] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 16, nays 78—as follows:

[Rollcall Vote No. 284 Leg.]

YEAS—16

Abdnor	Heinz	Proxmire
Chafee	Humphrey	Simpson
Cohen	Lautenberg	Stafford
Durenberger	Leahy	Zorinsky
Evans	McConnell	
Gorton	Mitchell	

NAYS—78

Andrews	Glenn	McClure
Armstrong	Gore	Melcher
Baucus	Gramm	Metzenbaum
Bentsen	Grassley	Moynihan
Biden	Harkin	Murkowski
Bingaman	Hart	Nickles
Boren	Hatch	Nunn
Boschwitz	Hatfield	Packwood
Bradley	Hawkins	Pell
Broyhill	Hecht	Pressler
Bumpers	Heflin	Pryor
Burdick	Helms	Quayle
Byrd	Hollings	Riegle
Chiles	Inouye	Rockefeller
Cochran	Johnston	Rudman
D'Amato	Kassebaum	Sarbanes
Danforth	Kasten	Sasser
DeConcini	Kennedy	Simon
Denton	Kerry	Stevens
Dixon	Laxalt	Symms
Dodd	Levin	Thurmond
Dole	Long	Trible
Domenici	Lugar	Wallop
Eagleton	Mathias	Warner
Exon	Matsunaga	Weicker
Ford	Mattingly	Wilson

NOT VOTING—6

Cranston	Goldwater	Specter
Garn	Roth	Stennis

So the motion to lay on the table was rejected.

□ 2330

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the motion to table was rejected.

Mr. MATSUNAGA. I move to lay that motion on the table. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment.

The amendment (No. 2886) was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BURDICK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2887

(Purpose: To authorize a study of the feasibility and necessity of constructing a highway along a route from Shreveport, LA, to Kansas City, MO)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON, for himself and Mr. LONG] proposes an amendment numbered 2887.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 86 following line 19, insert the following:

"SEC. . HIGHWAY FEASIBILITY STUDY.

"(a) STUDY.—The Secretary, in cooperation with the States of Louisiana, Arkansas, and Missouri, shall study the feasibility and necessity of constructing to appropriate standards a proposed highway along a route from Shreveport, Louisiana to Texarkana, Fort Smith, and Fayetteville, Arkansas, and Carthage and Kansas City, Missouri. Such study shall update the feasibility study conducted under section 143(6) of the Federal-Aid Highway Act of 1973.

"(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section."

Mr. JOHNSTON. Mr. President, this amendment has been cleared on both sides. It provides for a study by the Secretary of I-29 north, in cooperation with the States of Louisiana, Arkansas, and Missouri to study the feasibility and necessity of constructing to appropriate standards a proposed highway along a route from Shreveport, LA, to Texarkana, Fort Smith, and Fayetteville, AR, and Carthage and Kansas City, MO.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2887) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2888

(Purpose: To express the sense of the Congress regarding the use of rock salt on highways)

Mr. HARKIN. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 2888.

Mr. HARKIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 86, between lines 19 and 20, insert the following:

USES OF ROCK SALT ON HIGHWAYS

SEC. . (a) The Congress finds that—

(1) the use of rock salt to remove ice from the highways causes considerable damage to the highways, bridges, automobiles, and trucks,

(2) rock salt also causes damage to equipment and buildings near highways,

(3) rock salt causes considerable damage to the environment,

(4) all of these costs are real costs borne by the taxpayers, although such costs may not be paid directly to the government, and

(5) calcium magnesium acetate is an effective deicing material which does not cause the corrosion and environmental damage associated with rock salt.

(b) It is the sense of the Congress that the States and local governments should consider the full cost of using rock salt on the highways, including the damage to highways, vehicles, equipment, buildings, and the environment, in calculating the real cost of deicing materials and the use of calcium magnesium acetate as an alternative deicing material.

Mr. HARKIN. Mr. President, all of us from areas where snow falls are well aware of the corrosive impact of the rock salt that is placed on our highways It rusts our cars. It destroys our bridges and roads. It damages our shoes. It also causes serious environmental problems. The damage caused by rock salt does not end at the edge of the highway. The runoff from rock salt causes major problems to machinery and buildings along highways. This means the early retirement of expensive equipment, and the periodic failure of equipment causing the loss of millions of dollars in damage. Also, rock salt goes into the groundwater causing health problems in certain areas—11 States have reported groundwater contamination from rock salt.

The costs of using rock salt are not small. It causes major damage to bridges and roads estimated to cost over a billion dollars per year. There are long-term costs to privately owned autos and trucks estimated to cost $3 billion per year or more. There are costs that automobile and truck owners must pay because of action taken by the Government to clear the highways of ice and snow.

Now, we must deice the highways. For a long time, there was simply no alternative to rock salt. Now, we do have an alternative: calcium magesium acetate. It removes the ice, but most importantly it does not have the corrosive properties of rock salt, nor cause the damage to the environment that rock salt causes. Admittedly, it does at the present time have a higher immediate cost, but I believe the overall costs of using calcium magnesium acetate may be substantially less than using rock salt.

The Iowa Highway Department spent $2.3 million on rock salt for the last winter. But, the greatest cost for deicing was not that $2.3 million. It was the amount paid by the owners of the vehicles used on those roads and were damaged by the salt. In addition, there are the costs of damage to the highways themselves by the salt, and damage to the environment.

My amendment simply says that it is the sense of the Congress that States and local governments should consider the full costs of the rock salt they use, not just their immediate costs.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2888) was agreed to.

Mr. HARKIN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2889

Mr. SYMMS. Mr. President, I have a technical amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 2889.

Mr. SYMMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 6, of the Chiles Amendment No. 2883, strike the last three lines and insert in lieu thereof the following:

On page 22, lines 18 and 19, strike "provided for in section 129(e) of this title" and insert in lieu thereof: "provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978.

On page 22, line 25, strike all through "title)" on page 23, line 1, and insert in lieu thereof: "provided for in section 129(e) of

this title and section 105 of the Surface Transportation Assistance Act of 1978.

Mr. SYMMS. Mr. President, this amendment is purely technical in nature and deals with the Chiles amendment which has been adopted.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2889) was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the Chiles amendment is appropriately amended.

Mr. DOLE. Mr. President, I want to commend the efforts of the distinguished chairman of the Committee on Environment and Public Works, Senator STAFFORD, and the subcommittee chairman, Senator SYMMS, for all their hard work on this legislation. I am aware of the long hours and difficult negotiations that go with a bill such as this. The Senator from Kansas appreciates their efforts.

The Federal-Aid Highway Act of 1986 is important to our entire country and, in my opinion, is a definite improvement over the House companion legislation. Two provisions of the Senate bill are particularly important to me: the provision continuing the one-half percent interstate completion apportionment, and the provision continuing the current foumula used to determine interstate 4R apportionments. I hope the members of the conference committee will be successful in allowing these Senate provisions to prevail.

KANSAS DEMONSTRATION PROJECTS

Mr. President, an amendment offered by the distinguished Senator from Idaho contains four demonstration projects that are high-priority highway projects in my home State. One project is the construction of an interchange at 119th Street and Interstate 35 in the city of Olathe, KS. Johnson County, KS is one of the fastest growing areas in the Nation. The volume of traffic on I-35 has virtually outstripped the ability of the roads and bridges to safety and expeditiously move that traffic. During the evening rush hour traffic backs up on I-35 in the left-hand lane and cross traffic turning movements are required by all traffic exiting and entering onto the south bound I-35 lanes. These conditions have the potential for causing serious multicar accidents. No other interchange with a similar design can be found anywhere in the interstate system.

The Olathe project is financially unique in that the city is acting as project manager utilizing a combination of funding sources such as benefit districts, funds already allocated for the relocation of that section of I-35, and city-at-large funds. In addition, the city's proposal calls for recouping part of the cost of construction, because the design of the new interchange will allow for commercial development between the off-ramp and the frontage road.

The city of Lawrence, KS has lined up strong support and cost-sharing for a new bypass around the western portion of the city. This project would include an interchange off I-70, the Kansas Turnpike, and an improved access road to the Clinton Lake area, connecting into the South Lawrence Trafficway. The project sets a good example for cost sharing, as the city, county, and turnpike authority have committed themselves to providing more than 50 percent of the total project funds. This trafficway is needed because the existing roads through the city of Lawrence do not have the capacity to handle an increase in traffic. Also, local planning studies of the future growth patterns in and around Lawrence indicate the primary growth will continue to occur to the west of the city.

Another demonstration project will help fund the replacement of a conventional intersection of two heavily traveled streets—Kellogg and Oliver—in Wichita, KS with a fly-over type interchange. The current average daily traffic count in this area is 36,000 vehicles per day on Kellogg and 15,000 vehicles per day on Oliver. The interchange would be of a European design, the first of its type built in an urbanized area in the United States. It will demonstrate how to build a low-cost interchange in a highly urbanized area.

Another project helps with the replacement of two deteriorating underpasses in Emporia, KS. The existing underpasses were built nearly 80 years ago to carry railroad traffic over Prairie Street. In 1936 the traffic census through these underpasses was 376 vehicles a day, whereas today, the average daily count has risen well over 4,391 vehicles per day. By the year 1990, it is estimated 5,400 vehicles will pass through these structures. During times of heavy rainfall, storm water seeks relief through the underpass, thereby rendering the facility impassible for any vehicular traffic and virtually cutting off all access to the city's southwest quadrant. The city of Emporia has been unable to obtain traditional Federal highway bridge replacement funding because the bridges are privately owned by the Santa Fe Railroad. This legislation will enable a badly needed overpass to be built in the general vicinity.

CONCLUDING REMARKS

Mr. President, the Federal-aid highway program has stood for more than 60 years as a model for partnerships between the Federal and State Governments and has financed the construction of the world's finest highway system. Once again, I commend the efforts of those responsible for this piece of legislation, and urge its swift passage.

Mr. HELMS. Mr. President, section 117 of the Federal-Aid Highway Act, as reported by the Committee on Environment and Public Works, proposes to remove the requirement in the Highway Beautification Act of 1965 that States pay just compensation upon the taking of outdoor advertising signs. I believe that principles of fundamental fairness, if not constitutional law, require that the just compensation requirement should be retained.

Mr. President, on September 16, 1965, when Senator Everett Dirksen offered his amendment to the Highway Beautification Act to require the payment of just compensation, he said,

> I take 30 seconds to say that this is a restatement of the principles laid down in article V of the Bill of Rights in the Constitution, and I trust that the Senator from West Virginia will accept it.

Senator Jennings Randolph responded,

> I believe that the just compensation features of the Senate bill 2084 are clear and conclusive on this point; but it is a restatement, and I agree, and join the Senator from Illinois in accepting the amendment.

Mr. President, it is clear from the statements of Senators Dirksen and Randolph that the just compensation requirement contained in the Highway Beautification Act was based on the fifth amendment prohibition against the taking of private property for public use without just compensation. In both the Senate and House reports on the bill, there was a strong congressional sentiment expressed that "in all equity and fairness, compensation must be paid to those individuals who will lose their signs."

Mr. President, there is a place and, indeed, a need for legally erected and maintained billboards. For Government to attempt to legislate out of business an industry which poses no health problems, is of economic value to millions of citizens, and provides a valuable source of commercial and noncommercial expression, is a blatant violation of both the first amendment to the Constitution and our heritage of free enterprise. This body has no power to destroy a legitimate, useful industry upon which thousands of businesses and individuals rely as a medium of communication to the public.

No one objects to regulation. I fully support the tough, fair regulation of

billboards. I also support the prompt removal of illegal and nonconforming billboards, as intended in the original Highway Beautification Act. Since 1965, over 80 percent of the signs targeted for removal by the Highway Beautification Act have been removed.

The States have not been required to pay compensation to remove signs which were illegal at the time of the act. Nevertheless, a 1985 GAO report indicates that there are still thousands of illegal signs along our highways. Those signs can be and should be immediately removed.

Those signs which were legally erected, but didn't conform with the 1965 act, have been removed pursuant to the fundamental principle of fairness, if not a constitutional law, that people should receive just compensation when the Government takes their property. When the Government takes an individual's property for the public good, the public should bear the cost for the individual's loss. That is a principal which I support. If we continue to require States to remove billboards which were legally erected and have been lawfully maintained, we should continue to require that they observe that principle.

Finally, some people argue that this is a States rights issue—that it should be up to the States whether or not to compensate billboard owners for the taking of their property. If we are to argue about States rights, let's be consistent and remove all of the requirements that this amendment places on the States—such as the requirement that States maintain an inventory of billboards along interstate and primary highways; the requirement that States remove illegal and nonconforming signs within 90 days of the date on which they can first be removed; the requirement that the States prevent the removal of vegetation in the highway right-of-way to improve the visibility of a sign; the requirement that the States prevent owners of billboards from making improvements to illegal or nonconforming signs; and the requirement that States require billboards to carry warning labels for products that require warning labels when advertised in other media.

That does not mean that I necessarily disagree with these requirements—some of them may be necessary to effectively regulate the use of billboards. But if we determine that the regulation of billboards is strictly a State issue, we should let the States decide which requirements to impose.

Mr. President, when this bill goes to conference, I encourage the Senate conferees to drop the language in section 117 which would repeal the just compensation requirement.

AMENDMENT NO. 2883

Mrs. HAWKINS. Mr. President, I rise in support of this amendment which would permit the combination of toll financing and Federal-aid funds in the construction, operation, and maintenance of new noninterstate roads, bridges, and tunnels. I have cosponsored this amendment as it provides a sensible option for financing our ever-growing infrastructure needs.

In my own State of Florida, an exploding population places increasing demands on our highway network. Many of our roads are crumbling and in dire need of repair. The need for increased capacity is unending. However, as the construction of new highways is not always possible in Florida, particularly in highly congested and developed urban corridors, the ability to toll finance major enhancements to existing highways and bridges is extremely critical.

Across the Nation, many new roads are needed and many older roads require heavy reconstruction. Since 1956, vehicle miles traveled in the United States have risen 165 percent while motor-fuel consumption has increased only 128 percent. Because vehicles are using less fuel for trips, the Highway Trust Fund receives proportionately less revenue than in the past for each penny of the gas tax. Compounding this diminishing source of revenue are the fiscal restraints imposed by Gramm-Rudman.

Yet, we continually need more funds to improve our infrastructure. More than 68 percent of all paved roads in the United States are deficient and need surface repairs. Nearly 44 percent of America's bridges over 20 feet in length are substandard and either need to be completely replaced or undergo major rehabilitation.

This amendment addresses these needs and provides a new alternative to financing the construction and maintenance of our national transportation infrastructure. I urge my colleagues to support this amendment.

Mr. KASTEN. Mr. President, I rise today in support of the Federal-Aid Highway Act of 1986. I commend the committee for the excellent job that they have done in putting together this comprehensive package that will continue to improve and expand our nationwide highway system.

As debate on this bill continues, I want to voice my strong support for provisions contained within the package that would guarantee 85 percent in minimum allocations for all apportionments.

Mr. President, many States are downright shortchanged by the current apportionment system. Even though we passed an 85-percent minimum allocation in the past, this provision does not apply to all apportionments, and therefore, my home State of Wisconsin receives only about 81 percent of the funds which it contributes to the system.

This is patently unfair. This new highway bill gives the Senate the opportunity to recognize and rectify this problem. There is no doubt by this Senator that the Senate will see fit to correct this situation by supporting the strong language that Senator SYMMS and Senator BENTSEN have worked to include in this bill.

Mr. President, again, I am pleased to support this overall package.

HEINZ/LAUTENBERG FEMA AMENDMENT

Mr. WILSON. Mr. President, I want to take this opportunity to highlight my concerns regarding the Federal Emergency Management Agency's proposed rule changes. These regulations would significantly affect the declaration of natural disasters and the distribution of disaster assistance.

Mr. President, FEMA has proposed unprecedented and drastic changes impacting Federal disaster assistance to the public and private sectors. During the last 5 years, State and local governments have seen this level of Federal assistance go from 100 percent to 75 percent; now, FEMA wants to reduce this level by one-half of its original share. The new formula would reduce the Federal share to 50 percent and make Federal assistance available only when a State's total damages are more than $1 per capita—for California this represents almost $27 million.

In its attempt to achieve budget savings, the Federal Government would once again saddle State and local governments with an unfair burden that would undoubtedly constrain, and thus jeopardize, the absolutely essential process that must occur after the onslaught of a natural disaster.

Since 1976, Mr. President, California has suffered through 38 states of emergency, 20 of which had been declared Federal disasters by the President. The total amount of Federal aid available to California was $288.7 million. Under FEMA's proposed rule changes, however, only 10 of these Presidentially declared disasters would qualify for Federal disaster assistance. Since 1982, these figures would represent a loss of $117 million in qualifiable Federal disaster assistance to California's communities.

Mr. President, substantially eroding this public assistance to devastated communities and towns goes against common sense because many small localities simply do not have the tax base to completely restore the millions of dollars in public investment invested over years, but destroyed by mother nature in a single hour or day.

It would appear that the driving force behind these regulations is the desire of FEMA to save money on disaster relief. Mr. President, my commitment to deficit reduction is overriding—I do not support spending anymore than is necessary for disaster relief. Nevertheless, Federal assistance in times of disaster is a basic function of government. Congress cannot

expect local communities, flat on their backs from an act of God, to at least double their contribution as the Federal Government retreats from its role.

In our efforts to achieve deficit reduction, I would continue to urge Congress to give careful consideration to the full ramifications of the cumulative impact that deficit reduction will have on local governments.

For all of these reasons, I support this amendment and urge my colleagues to give it their most careful consideration.

Mr. MOYNIHAN. Mr. President, I want to commend my colleagues on the Transportation Subcommittee, Senators BENTSEN, BURDICK, SYMMS, and our chairman, Senator STAFFORD, for assembling an excellent highway bill. I believe that this year's bill offers a number of reforms which will strengthen our infrastructure programs, and which will provide necessary flexibility to the States to allocate funds to projects which meet local needs.

The Federal Highway Act of 1986, S. 2405, would provide $52 billion from the Highway Trust Fund over 4 years for use by States on interstate highways, urban and secondary roads, bridge replacement and rehabilitation, as well as funds for forest highways, park roads, and Indian reservation roads. Also included in this legislation is Federal money for the Federal Highway Administration's safety research and construction programs.

Of the approximately $13 billion which the Highway Act will provide nationally per year for 4 years, New York State will receive approximately 5 percent of the total. It will receive approximately 30 percent, or $147 million of the Interstate Substitute Program; 10 percent, or $15 million, of the Bridge Repair Program, and 8.4 percent, or $63 million, of the Federal Aid Urban Systems Program.

So New York will receive a goodly share of funds from this legislation. In fact, New York receives almost $1 back for every dollar it pays into the Highway Trust Fund. This, in contrast to some other Federal programs where New York receives less than its fair share.

NEW YORK: A MODEL FOR THE INTERSTATE SYSTEM

New York State built its thruway on its own, during the administration of Governor Thomas E. Dewey. The New York State Thruway is the first true segment of the Interstate and Defense Highway System which was conceived on President Franklin Roosevelt's watch. It was built as a toll road. Then, in 1956, the Interstate System was established by Congress at the urging of President Eisenhower. An inspired civil engineer, Bertram D. Tallamay, having built the thruway, went from Albany to Washington to build the Nation's system.

With this difference: for the rest of the Nation, the Interstate was to be toll free, financed by gasoline taxes. Driving the thruway, New Yorkers would pay tolls for the construction of their part of the system, and taxes to build the rest.

One does not need to know much of the economic history of New York to know the pioneering role of its transportation system, up the Hudson River, and across to the great inland lakes. With the opening of the Erie Canal in 1825, the national waterway transportation system was begun. Next came the second railroad west, and now the first postwar superhighway. But, set in our ways—the Erie Canal had been financed with tolls, the New York Central Railroad was privately owned—we failed to consider what the impact of toll roads might be for us, and toll-free roads elsewhere. The Interstate was to be, after all, the largest public works program in history.

Charlie Buckley, a New Yorker, was chairman of the House Committee on Public Works in 1956. It would have been quite manageable for him to insist that the Federal Government assume the cost of the thruway. It wasn't done. Not until 1978 did we get any legislative relief—and it took us 2 years to accept that. Public Law 95-599 provides that beginning in 1996 New York Federal Thruway tolls will be entirely removed. In the meantime, the State will receive $538 million in maintenance money. But 40 years of tolls is a long time.

MASS TRANSIT PROVISIONS

I have long been concerned that New York in particular and the Northeast in general receive an adequate return on tax dollars contributed to the Federal Treasury. Therefore, I was pleased that the Environment and Public Works Committee agreed to strike section 129 of the Transportation Subcommittee's bill. I, with Senator LAUTENBERG, cosponsored the amendment to strike the provision. This so-called 85 percent minimum provision would have allowed States to raid the mass transit account, funded by 1 cent out of the 9 cents per gallon gasoline tax.

This would have taken money from States such as New York, with the greatest transit needs, and transferred it to States with little or no transit needs. New York would have lost more than $80 million in the first year if this provision became law.

So whole Federal spending for transit decreased by more than 25 percent from fiscal year 1981 to fiscal year 1987, and highway expenditures increased by more than 40 percent during the same time period, this provision would have greatly widened this gap.

Both large and small transit systems are increasingly unable to meet their financing needs. Maintenance and needed improvements have been deferred. Service has been cut. Yet the amendment would have cut discretionary capital funding for a number of major transit systems by up to 70 percent or more. It would have taken away well over $600 million from these systems and the millions of passengers they serve. I am pleased that we were able to thwart this unwise provision.

OTHER PROVISIONS OF PARTICULAR SIGNIFICANCE TO NEW YORK

This legislation contained several other amendments that I sponsored which are of special interest to New York:

Westway funds.—This legislation would save from lapsing approximately $90 million in Federal funds originally earmarked for Westway rights-of-way and easements so that they could be used for other highway projects in New York.

Anti-apartheid support.—This provision would allow State and local governments to give contractual preference to firms that do not conduct business with South Africa. This amendment allows the city of New York to implement Local Law 19, which permits the awarding of contracts to firms exceeding the lowest bid by as much as 5 percent if they do not conduct business with the apartheid regime in South Africa. The city itself would absorb the cost of the 5-percent difference. Without the amendment, the U.S. Department of Transportation would have denied Federal funds for contracts that were not awarded to the lowest bidder.

Fiber optic installation.—The bill includes language from the committee report stating that the committee recognizes the important economic development opportunities presented by the installation of fiber optic cabling along interstate rights-of-way, and urging the Secretary of Transportation to permit such installation. Recently, at my request, the U.S. Department of Transportation allowed a fiber optic cable to be installed along a 6-mile portion of the New York State Thruway. To enhance high-speed communications between university centers, businesses and others, I have asked Secretary DOLE to permit similar installations along the rest of the thruway and throughout the country's Interstate System.

Highway beautification.—The legislation also includes provisions that would allow States using Federal highway money to compensate billboard owners who remove their signs or, instead of cash compensation, allow the depreciation of billboards and removal over several years. The amendment also requires the State to promptly remove illegal billboards or face reduc-

tion of Federal highway aid by as much as 5 percent. The amendment also prohibits cutting of trees on Federal rights-of-way, a practice some billboard operators use to enhance the visibility of their signs.

I urge my colleagues to take note of the fine work done by my fellow committee members and ask that they support the passage of this worthy legislation.

Mr. WILSON. Mr. President, I wish to congratulate the distinguished leadership for their heroic efforts to get the highway bill to the floor for consideration. The importance of this legislation to California cannot be overdramatized. The $1 billion in highway funds which it will authorize annually for my State are vital to construction and maintenance of the commercial lifelines Californians rely on daily.

Mr. President, I take this opportunity to highlight the importance of maintaining a strong commitment to completion of the Interstate Highway System. Much has been achieved since the program was inaugurated some 30 years ago. Though close to completion, vital segments of the Interstate System remain to be built and I am hopeful that Congress will maintain the requisite commitment, through 1992, to see the Interstate System properly finished.

I thank Chairman STAFFORD for including language in this legislation raising the single State cap on the Emergency Highway Fund. Both the House and Senate committees were able to advance this provision through the surface transportation vehicle. I appreciate very much the commitment of the chairman to see this provision adopted.

I am pleased to see billboard removal provisions included in this legislation. My association with the effort to preserve open spaces along highways extends more than a decade. I believe that the decision to return authority for billboard control to the States is a good one—the effort to strengthen the 1965 Highway Beautification Act, one long overdue.

Mr. President, the committee bill contains a basic change in the provisions regarding funding of demonstration projects. I understand that the chairman and his committee will resist amendment now and will seek to persuade House colleagues in conference to compel the funding of so-called demonstration projects from the State's formula allocation of gas tax funds at the State's discretion. I will only say to the chairman that, should a compromise with the House instead continue funding demonstration projects from appropriated nongas-tax funds, there are a number of projects in California which are deserving of attention. I know that the chairman intends to resolve this matter in conference, and I would seek his assurance that where possible these projects might be permitted to move forward.

Mr. SYMMS. I understand the interest of my colleague from California in demonstration projects in his State and will attempt to resolve this issue in conference.

Mr. WILSON. If I might clarify one further point with the distinguished floor leader, it is my understanding that S. 2405 requires funds for demonstration projects to be taken out of a State's regular apportionment of highway formula money, but that the State has the flexibility to use whatever Federal aid funds it gets to finance these projects. In other words, if a project is on the primary system, a State would not be forced to use primary funds to pay for it, but could use other Federal funds to finance the project. Am I correct in this interpretation?

Mr. SYMMS. The distinguished Senator from California is correct.

Mr. WILSON. I thank the chairman for his assurances and clarification of this point.

TALMADGE BRIDGE

Mr. NUNN. Mr. President, I rise to express my sincere appreciation to the distinguished managers of the bill, Senators SYMMS and BENTSEN, and the chairman of the Environmental and Public Works Committee, Senator STAFFORD, for their cooperation in accepting an amendment to the Federal-Aid Highway Act of 1986 which is of tremendous significance, not only to the economy of my State of Georgia, but also the entire Southeast United States

The amendment, which my colleague, Senator MATTINGLY and I have cosponsored, would provide the State of Georgia with the flexibility to earmark a portion of its regular Federal highway allocation for a special priority project, replacement of the Eugene Talmadge Memorial Bridge in Savannah, GA. Under the amendment's unique financing provision, my State—and others with similar high priority projects—would be permitted to use their regular apportionment from the highway trust fund for special projects mentioned in the bill. The Talmadge Bridge is one such project.

The Georgia State Legislature has already acted to earmark $36 million—40 percent—of the project's $90 million total cost. However, these funds are contingent upon congressional approval of the remaining funds.

The role of Savannah as an international transportation center is an established and growing one. As the leading foreign commerce port on the U.S. South Atlantic, Savannah generates over 30,000 port service and user jobs in the State of Georgia alone, with thousands more throughout the entire Southeast. The benefits in terms of tax revenues and economic impact are immense.

Studies undertaken by the University of Georgia demonstrate that in a period from now until the year 2010, the height constraint of the Talmadge Bridge will cost the State an estimated $2.5 billion in lost personal income, $1.3 billion in lost retail sales, and $149 million in lost State and local tax revenue. Further, the number of lost jobs range from 105 in 1981 to 1,625 in the year 2010. These figures will only worsen if nothing is done to improve the situation.

The vertical clearance of the bridge also poses a clear and present danger to navigation of the larger classes of vessels seeking to access the inner reaches of the Savannah Harbor. An incident involving the vessel *Admiral William M. Callaghan* graphically displays this safety problem. In the summer of 1983, in an attempt to expedite the loading of military equipment during an Army rapid deployment exercise, the *Callaghan* collided with the Talmadge Bridge, tearing out the understructure and rendering the bridge useless for 90 days.

Mr. President, while this amendment does not provide any new funds for replacement of the Talmadge Bridge, it is nevertheless a step in the right direction. I am encouraged that, with adoption of this amendment, the Talmadge Bridge replacement project is included in both the House- and Senate-passed versions of the Federal-Aid Highway Act of 1986. It is my sincere hope that conferees will seriously consider the merits of this project and decide to fund it.

Again, Mr. President, I appreciate the willingness of the distinguished managers of this legislation to accommodate us in this matter.

Mr. ABDNOR. Mr. President, I am particularly gratified and pleased that the bill we now have before us, the highway bill, does not contain pork-barrel projects which rob the highway trust fund and all States which don't play pork-barrel politics.

As my colleagues are aware, the issue of pork-barrel demonstration projects has been an issue with which Congress has wrestled for years. Two years ago, over $18 billion in highway funds were stalled in Congress because Members of the House and Senate went on a "feeding frenzy" and attached several billion dollars' worth of pork-barrel projects to a simple bill which was needed to release desperately needed highway funds to States.

Because of these porkish projects, road repair and construction in our States slowed down and in some cases halted, the highway construction industry was crippled, and the motoring public was cheated out of the benefits of their gas-tax payments.

71-059 O-87-17 (Pt. 18)

I am proud to say that it was I who broke the logjam which had stalled the release of highway funds. Very simply, I offered an amendment in committee which stripped all pork-barrel projects out of the bill. Due to my amendment and the growing pressure from States, the construction industry, and the motoring public, the House was embarrassed into doing the same.

This spring as the Environment and Public Works Committee was considering this bill, I informed my colleagues that I would offer an amendment to strip any demonstration projects which were included in this bill. I then proposed to Senator SYMMS, chairman of the Transportation Subcommittee, that we could resolve this issue by placing language in the bill which mandated that funding for any demonstration projects must come from a State's regular apportionment of funds. Thus, no State gets more than it deserves, the integrity of the highway trust fund is preserved, and State's which don't participate in pork-barrel politics aren't shortchanged. That language was included in this bill.

Unfortunately, the Houe of Representatives still is engaged in pork-barrel politics. In its bill it has included several billion dollars' worth of demonstration projects. It is my intention to fight to keep the Senate language in conference with the House and I hope that all Senate conferees will vow to do the same.

Mr. ABDNOR. Mr. President, I would like to voice my opposition to the section in the highway bill dealing with highway beautification. In my estimation, the provisions contained in this bill would be devastating to the small tourism-related businesses, restaurants, hotels and motels, campgrounds, and other businesses which rely on the motoring public for their economic welfare.

When the Environmental and Public Works Committee considered including the highway beautification provisions in this bill, I voiced my strong objections and concerns. I think it is safe to say that I was the outspoken opponent to the billboard amendment offered by our distinguished chairman, Senator STAFFORD, our ranking member, Senator BENTSEN, and others. Unfortunately, opponents of the billboard amendment lost that vote 9 to 4.

I believe the chairman's motives were and are well-intentioned but I must point out how devastating his amendment will be to the tourism industry, small and large tourism businesses, hotel owners, campground owners, cafe and restraurant owners, and others who rely upon outdoor advertising.

There are four parts to this amendment which I find most objectionable. First, the provisions would allow no new sign erections in commercial or industrial areas whether zoned or unzoned. In order to comply with the existing Highway Beautification Act, States already have severely restricted the locations where conforming billboards can be erected.

For instance, in my home State of South Dakota, only 8.7 percent of the frontage of our rural interstate is recognized as acceptable for the erection of billboards, even if zoned commercial or industrial. To allow for conforming signs to be erected as nonconforming signs are removed would impose a tremendous burden on South Dakota and other States. The provisions in this amendment would have a devastating short- and long-term economic impact on tourism and roadside businesses which rely heavily on outdoor advertising.

Second, I object to the use of Federal-aid construction funds for the acquisition and removal of signs. I strongly oppose the use of highway funds for purposes other than the construction and maintenance of highways. Utilizing funds badly needed to maintain the Nation's highways for social purposes such as billboard removal is not in the best interest of our citizens.

Third, I object to the manner in which these provisions were proposed—without any hearings and without giving all parties the opportunity to testify. A proposal so drastic which would affect thousands of business owners across the country should only be considered after they have had the opportunity to testify and voice their concerns. No hearings have been held on the changes made by section 117, the thousands of legitimate business owners whose economic livelihood is at stake haven't been given the opportunity to testify, and those of us on the Environment and Public Works Committee and in the Senate haven't been afforded the chance to hear their concerns.

Fourth, and finally, I resent that once again the Federal Government is dictating to States what they can and cannot do. Supporters of section 117 argue that it is pro-States' rights—that it gives control to States. I realize fully that the intent is to give States more flexibility in removing billboards if they so choose, but how about in a reverse scenario? Do we allow States to erect billboards if they so choose? Does this amendment mean that States will have the authority to decide for themselves if they want billboards or not? Unfortunately, the answer to these questions is a resounding no.

Under the provisions contained in section 117, the Federal Government will continue to dictate outdoor advertising policy to States. Those who make a States' rights argument in support of these provisions should stop kidding themselves. Section 117 doesn't give States rights. It is just a continuation of policy by big brother—the Federal Government.

Mr. President, I once again express my adamant opposition to section 117 of this bill and vow to try to make changes in this section when Senate and House conferees meet. If the provisions in section 117 aren't changed, I fear that the tourism businesses, restaurants, motels, campgrounds, and other small business owners that depend on outdoor advertising will be forever injured.

Mr. DOLE. Mr. President, I hope we might be on this bill tomorrow at 10 o'clock. If there is no objection, I ask unanimous consent that at 10 a.m. tomorrow, the Senate resume consideration of S. 2405, the highway bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I understand that there is no disagreement, that we could start with the Cochran amendment, 1 hour equally divided, if it is agreeable to the managers on each side.

Mr. SYMMS. That is agreeable with this manager.

Mr. BURDICK. It is agreeable with the minority.

□ 2340

Mr. BYRD. Mr. President, will the distinguished majority leader include in his request that no other amendments be in order to that amendment?

Mr. DOLE. I include that in my request.

Mr. MOYNIHAN. I did not quite hear what was the agreement.

Mr. DOLE. One hour, equally divided, on the Cochran amendment which is a Buy America amendment on cement, that there be no other amendment in order to the amendment.

Mr. MOYNIHAN. To that amendment?

Mr. DOLE. To that amendment.

Mr. MOYNIHAN. I understand.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, that will give us something to start on in the morning at 10 o'clock. I advised Senator COCHRAN to be here at 10 o'clock. We will probably come in at 9:30 a.m. tomorrow.

We would hope those who have special orders will let us try to work those out during the day because it is really pretty hard to stay here to midnight every night and spend an hour in the morning on special orders. We will try to accommodate all Senators throughout the day tomorrow, those who have special orders.

I am advised that the distinguished Senator from Wyoming, Senator WALLOP, will contact the Senator from New York in the morning and see if there is some way to resolve the problem.

Mr. MOYNIHAN. I am happy to talk with my friend.

Mr. DOLE. I thank the Senator.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond 11:55 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SHULTZ LETTER ON ARMS CONTROL AND OTHER ISSUES

SHULTZ LETTER FOCUSES ON ARMS CONTROL ISSUES

Mr. DOLE. Mr. President, I want to share with the Senate a letter which I just received from Secretary Shultz, dealing with a large number of very important issues addressed in this year's DOD authorization bills. I would commend the letter, especially, to the members of the Senate Armed Services Committee, who are in the process of conferencing this legislation.

In this letter, the Secretary sounds a loud alarm bell about a number of provisions in either the Senate or House versions of the bill—particularly provisions dealing with nuclear testing, SALT II, SDI funding, allied participation in SDI, chemical weapons modernization and Asat.

SHULTZ MAKES COMPELLING CASE

While there may be one or two points in the letter on which I would take issue with the Secretary, I am fully in agreement with him on almost all of his positions. Above all, I absolutely agree with his two main points: That this Congress ought to support the general thrust of the President's national security policies, which have done so much for the country; and that this is the time, above all other times, that we ought to rally behind the President and avoid undercutting him—since for the first time we may be getting down to the kind of serious arms control talks that the President's policies have made possible.

If this Congress ends up legislating the positions that the House has passed or is contemplating on nuclear testing, forced compliance with SALT II and a ban on all Asat tests; if we go through with such Senate provisions as the one which cuts our allies totally out of the SDI R&D effort; if we emasculate the SDI Program by authorizing unrealistically low levels of funding—then we have done two things. First, we have almost guaranteed a Presidential veto and gotten ourselves in one of those unhealthy and messy end-of-the-session situations where we all—the President and the Congress alike—will probably come out losers. And, far more important, we may be compromising the best chance we have had in a decade for meaningful progress on nuclear arms control and reductions.

CONGRESS OUGHT TO SUPPORT PRESIDENT

Mr. President, it boils down to these three simple propositions. We have one President, who is supposed to speak for us all in setting U.S. national security policy. That President has done an outstanding job of advancing our national security interests and setting the stage for potential progress on arms control. And that President deserves the strong support of this Congress in finishing off the job he has so ably begun.

Mr. President, I ask unanimous consent that the full text of the Secretary's letter to me be printed in the RECORD, and I strongly urge all Senators to give it their most thoughtful attention.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE SECRETARY OF STATE,
Washington, September 19, 1986.

Hon. ROBERT DOLE,
U.S. Senate.

DEAR BOB: The foremost responsibility of every Administration is to ensure the national security. This Administration, with the cooperation and support of the Congress and the American people, has developed a comprehensive framework for peace and security. This framework is based on a strong national defense, a vigorous pursuit of genuine arms control to bring about real and stabilizing reductions in nuclear weapons, and exploration of the possibility of developing an alternative to our total reliance on the threat of nuclear retaliation as the basis of deterrence.

Our comprehensive framework has served as well. We are today a stronger, more confident nation. The Soviets have come to understand that we are not going to disarm unilaterally; they have returned to the bargaining table for negotiations in a variety of fora.

At the same time, we have strengthened the NATO Alliance. Western unity is essential to our efforts to maintain collective security and to negotiate effectively with the Soviet Union. This unity—all the more remarkable given real differences on economic issues and differing perspectives on important issues such as how best to deal with international terrorism—should not lightly be put in jeopardy. That, however, would be precisely the effect of amendments to the DOD Authorization Bill which would arbitrarily change the rules on the Allies in two politically sensitive areas: SDI participation and chemical weapons modernization.

We remain hopeful that the arms control process can now be given some momentum. The Soviets for the first time have made proposals for actual reductions in strategic nuclear weapons. While these proposals are still tied to unacceptable definitions and conditions, they offer the potential for reaching agreements which would be in the interest of both East and West. As the President noted during his June 19 address at Glassboro, this could be a moment of opportunity for real arms reductions and a turning point in the U.S.-Soviet relationship. It is in this spirit that the President wrote to General Secretary Gorbachev in July, with new U.S. arms control proposals.

Now, this is all at risk. The effect of some Congressional actions would be to upset this framework, despite its obvious success in strengthening deterrence and in bringing the Soviets back to the bargaining table.

The Conference Committee on the Fiscal Year 1987 Department of Defense Authorization Bill is facing decisions of historic proportions, decisions which will have serious implications for the security of this country. Fundamentally, the Conference must decide whether we will support a strong national defense which has enabled us to bargain with the Soviets from a position of confidence and strength, or whether we will undermine the positions of our negotiators by giving the Soviets, without any requirement for reciprocity, what they have been unable to achieve through negotiations in Geneva.

I would like to comment specifically on some of the major arms control issues under consideration:

Nuclear Testing: We strongly oppose nuclear testing limitations. Such limits are not in the security interest of the U.S. or our friends and allies. Nuclear weapons will remain for the foreseeable future a key element of our deterrent. As long as we must rely on nuclear weapons to deter aggression, some testing will continue to be required to ensure the continued reliability, safety and effectiveness of these weapons.

Moreover, the Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty, as currently drafted, lack adequate provisions for verification. Our highest priority in the area of nuclear testing limitations is reaching agreement on essential improvement of these verification provisions. We hope that the ongoing expert-level discussions will lead to the needed improvement of these treaties so they can be submitted to the Senate for ratification. Imposition of arbitrary and unverifiable testing limits now would seriously undercut these efforts.

SALT II: The Administration opposes legislation requiring future decisions on the levels of our strategic forces to be made on the basis of selected provisions of a flawed and expired treaty, which the Soviets are violating. Rather, the Administration believes that future U.S. decisions regarding our strategic force structure must reflect the nature and magnitude of the threat posed by the Soviet Union and the need to maintain a credible strategic deterrent. Enactment of such legislation would jeopardize necessary modernization of the U.S. strategic deterrent and would signal the Soviets that they need not take seriously their arms control obligations and commitments, that they can pick apart arms control agreements and discard limitations they find inconvenient.

Such legislation would also undercut the President's May 27 decision on U.S. interim restraint policy which seeks to substitute a truly mutual framework of restraint for one which was not working. As the President has made clear, the U.S. will continue to exercise utmost restraint, seeking to meet our strategic needs by means that minimize incentives for a continued Soviet buildup. Assuming no significant change in the threat we face, we will not deploy more strategic nuclear delivery vehicles or more strategic ballistic missile warheads than the Soviet Union. Of course, no policy of interim restraint can become an adequate substitute for an agreement on deep, equitable and effectively verifiable reductions in offensive nuclear arms. Such reductions remain our top arms control priority.

SDI Funding: SDI is a crucial element of our national security policy in responding to the Soviet strategic threat. It offers the only hope of moving the world away from dependence on threats of destruction to deter war. Significant reductions in funding would signal to the Soviets a lack of resolve.

After five rounds of stalemate at Geneva due to the unwillingness of the Soviet Union to acknowledge their own commitment to strategic defense and their longstanding activities in this area, we finally are making progress.

We have sent General Secretary Gorbachev a new proposal designed to allay the Soviets' professed concerns and fully protect our SDI program. It would also facilitate movement toward what other arms control agreements have never delivered—real nuclear arms reductions—and agreement on a transition to a safer world based on the introduction of effective strategic defenses, should they prove feasible.

Allied Participation in SDI: We oppose restrictions on Allied participation in SDI as contained in the Senate bill. U.S. and Allied security are indivisible. The SDI program reflects this fact. In March, 1985, Secretary Weinberger invited 18 of our friends and allies to participate in SDI research. We have reached agreement with the governments of Great Britain, West Germany, and Israel on SDI participation, and we expect to sign a similar agreement with Italy soon. Moreover, the Japanese government decided on September 9 that Japanese participation in SDI research will further enhance mutual cooperation under the Japan-United States Security Treaty and decided to begin consultation with us to work out the modalities of participation. The Senate amendment would totally undercut our friends in all these countries.

Beyond this, the amendment is pure protectionism—always a short-sighted policy, but especially dangerous when it involves the national security. This amendment would cheat American taxpayers by restricting our ability to award SDI contracts through open, competitive procurement. Moreover, by foreclosing our ability to take advantage of Allied technical expertise, the amendment would slow progress in SDI research and increase costs. Also, this amendment would undermine our efforts to secure better Allied cooperation in defense matters.

Chemical Weapons Modernization: The Administration opposes legislation which would delay the procurement of binary chemical weapons and require the deployment of binary weapons to Europe to replace unitary weapons there. A legislative requirement for such deployment, which General Rogers, among others, has said is unnecessary, would send a disturbing signal to our European Allies and would serve to erode their confidence in steady American leadership. It would leave an impression akin to that generated during the neutron bomb crisis that the commitments already taken by NATO Allies at some political cost are not appreciated or recognized by the U.S.

Partially as a result of American resolve to modernize its aging retaliatory stockpile, we and the Soviets have made some progress this summer toward the achievement of a comprehensive and effectively verifiable global ban on chemical weapons. Lack of resolve to move ahead with our chemical weapons modernization program as scheduled would not only prolong our inadequate deterrent posture in this area, but would also send mixed signals to the Geneva negotiations resulting in further Soviet intransigence in negotiating effective verification measures for the global elimination of these weapons—our foremost goal.

Asat: The Administration opposes House legislation which would continue a moratorium on tests against objects in space. Our ASAT program is critical to denying the Soviets the unilateral use of sophisticated space-based systems to target our land and sea forces in times of conflict. More importantly, our ASAT program, even though it is still in the testing stage, is the only near term deterrent to the Soviet ASAT, which is already operational. We should not help the USSR achieve its goal of avoiding a U.S. ASAT threat while maintaining its own fully operational capability.

In addition to the arms control provisions of this bill, there are other foreign policy issues of serious concern to the Administration:

Foreign Missions Act Amendment: This Senate amendment is unacceptable. It would render meaningless an important aspect of our policy of differentiation among Eastern Bloc countries. The amendment would invite retaliatory measures by the affected countries and could, in the end, seriously impair the entire range of our diplomatic, consular, cultural, and intelligence activities in Eastern Europe. The amendment would also adversely affect our flexibility in dealing with Cuba.

Nicaragua: A House provision would prohibit the introduction of U.S. troops into combat in Nicaragagua, except under certain specified conditions. We oppose this amendment which would unduly limit the President's constitutional authority as Commander-in-Chief to respond in a timely manner to events which in his judgment require the expenditious use of U.S. armed forces in order to stabilize a crisis situation.

We believe that concerns expressed by this amendment have been addressed by the war powers resolution. While we do not believe that the withdrawal provisions of the war powers resolution are constitutional, we do believe that the reporting and consultation provisions of the act ensure adequate congressional involvement in the deployment of U.S. armed forces abroad.

Burden Sharing Amendment to the Military Construction bill: The Administration shares Congressional concern that our allies bear their fair share of the defense burden. However, this amendment creates a duplicative Congressional reporting requirement for DOD without advancing this objective. We, therefore, oppose this amendment.

NATO Arms Cooperation: The Administration strongly supports inclusion of requested funds for NATO cooperative research and development as contained in the Senate bill. This FY 1986 initiative of Senator Nunn deserves continued support because of its contribution to increased rationalization, standardization and interoperability.

There is also a jurisdictional matter which affects foreign policy:

Executive Branch Jurisdiction on Nuclear Proliferation: The Senate version of the bill would allow the Secretary of Defense to have, upon request, all information regarding nuclear proliferation matters which the Secretaries of Energy and State may have. This provision is an intrusion by Congress into the management of the Executive Branch. The Department of State regards the provision as wholly inappropriate and strongly opposes this legislation. I am committed, and I will assure, that the Department of State will share with the Department of Defense all information necessary for it to fulfill effectively its responsibilities in the nuclear area.

As I have noted in this letter, many of the provisions in this legislation are a threat to the foreign policy and national security interests of this country. I ask you to use your influence to bring about responsible changes to this legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

GEORGE P. SHULTZ.

THE GENERAL REVENUE SHARING PROGRAM

Mr. HEFLIN. Mr. President, I rise to voice my strong support for legislation to reauthorize the General Revenue Sharing Program.

When the House Appropriations Committee marked up the continuing resolution for fiscal year 1987, a provision was adopted to fund revenue sharing for an additional year at a level of $3.4 billion.

A bill is also pending on the legislative calendar to reauthorize this important program at its current authorization level of $4.6 billion per year for another 3 years, but the Senate version of the legislation is still pending in the Financial Committee. The Senate measure extends revenue sharing for local governments through fiscal year 1991.

I am a joint sponsor of the Senate legislation and I call upon each Member of the Senate to join me right now in taking an affirmative stand to pass this revenue sharing bill.

If we do not extend the Revenue Sharing Program before the end of this fiscal year, the immediate result will be huge increases in property taxes and sharp cuts in basic public services back home. Without revenue sharing, many counties, cities and townships across this great Nation would have little hope of improving their educational systems or maintaining the infrastructure that is necessary for economic growth.

Since the Revenue Sharing Program began in 1972, it has been an integral part of a long-range plan to return government control to the people through their local, city and county governments. In fact, it has served as the Government's most effective vehicle for returning Federal tax dollars to our local communities to be used by these local units of governments to meet the needs of the people of the cities, towns, and counties.

At present levels, counties and municipalities in my home State of Alabama receive $70 million in revenue sharing funds, money which is used to provide valuable services to the citizens. Without the Revenue Sharing

Program, our local governments will find it impossible to maintain their present level of services without any increase in revenues from other sources. While I vigorously support the efforts of Congress to reduce the Federal deficit, it is my firm belief that it will not serve the Nation's interest in the long term to pass the debt on to the local level.

It is tremendously important that the Members of Congress stop dragging their feet on revenue sharing; you either support the efforts of local government officials back home or you do not. I, for one, want to make it crystal clear that I, wholeheartedly, support the expeditious adoption of legislation to reauthorize revenue sharing by the Congress.

I do not intend to stand by and allow the rug to be pulled out from under the feet or our dedicated local government officials. I am going to continue to fight side-by-side with our mayors, county commissioners, and other local government officials to see to it that our citizens receive a fair return on their Federal tax dollar.

There is a vital principle at stake. General revenue sharing was designed to reinforce total participation by local governments in the Federal system by giving local governments a share in the broad Federal tax base. The support for general revenue sharing means support for local governments' role as a full partner in the national intergovernmental process.

Revenue sharing pays for services that are critical and basic to local governments and their citizenry. If the Congress does not reauthorize general revenue sharing, our local governments will be forced to make untenable choices between tax increases and service cuts.

Let me assure each Member of this body, the distinguished Members of the House of Representatives, and most importantly the American people, that revenue sharing funds have not been wasted. When you talk about revenue sharing you are talking about money well spent.

When the President signed the 1983 reauthorization bill into law, he said, "The Federal Government never spent money more wisely than by devoting it to revenue sharing". I could not agree more with the President. His statement is as true now as it was then.

Revenue sharing has been used to pay for basic essential needs of the citizens of this Nation. A full 18.5 percent of all revenue sharing funds go to pay for police protection. With crime escalating at a very alarming rate, I challenge any Member of Congress to return to his or her home State and try to convince neighbors, families, and friends, that police protection is not an essential service. If the local police are to fight crime and do their jobs well in protecting the citizens, we need to help them and we have an opportunity to help the local police forces by keeping the Revenue Sharing Program alive.

On an annual basis, revenue sharing pumps 14 percent of its funds back into the States for highways and 9 percent of revenue sharing is used for fire protection. Other necessary services which are paid for with revenue sharing funds include sanitation and sewage, housing for the elderly, health care, and hospital, just to name a few.

Without revenue sharing funds our local people will experience numerous hardships and disruptions in services right in the middle of their budget cycles. If we do not reauthorize revenue sharing at this time we will be rendering a grave disservice to our cities, counties, and States. And it would be harmful to the people who rely on the services provided through revenue sharing.

Federal spending should be curtailed through the elimination of Government waste and abuse of tax dollars, not by slashing necessary programs that have a proven track record like revenue sharing.

I urge each Member of Congress to join me in supporting full reauthorization of the General Revenue Sharing Program without reductions in funding.

Mr. President, I ask unanimous consent that a resolution which was adopted by the Association of County Commissioners of Alabama petitioning Congress to support the continuation of the General Sharing Program, be included in the RECORD along with my remarks.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, the general revenue sharing program has proven to be an efficient means of returning tax dollars to local governments and thereby allowing those governments to provide essential services to the people; and

Whereas, the present administration and Congress of the United States have proposed to terminate the funding of the general revenue sharing program; and

Whereas, Alabama's citizens will be adversely affected by the discontinuance of the general revenue sharing program; now therefore

Be it resolved by this 58th Annual Convention of the Association of County Commissions of Alabama That the U.S. Representatives and Senators representing Alabama are hereby petitioned to support the continuation of the general revenue sharing program.

Be it further resolved, That copies of this resolution be transmited to all of Alabama's U.S. Representatives and Senators.

In witness whereof, the Association has caused this Resolution to be executed in its name and on its behalf by its President and Executive Director and has caused its corporate seal to be impressed thereon, all on this 9th day of May, 1986.

DRUG ENFORCEMENT ACT OF 1986

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader on behalf of Senator DOLE, I ask unanimous consent that S. 2850 be read for the first time.

The PRESIDING OFFICER. Is there objection?

The clerk will then read.

The legislative clerk read as follows:

A bill (S. 2850) to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes.

Mr. SIMPSON. I now ask, Mr. President, for its second reading.

Mr. BYRD. Mr. President, under rule XIV, I am constrained to object.

The PRESIDING OFFICER. Objection is heard.

Mr. SIMPSON. Then the bill will be read a second time on the next legislative day, is that correct?

The PRESIDING OFFICER. Yes.

ORDER TO HOLD S. 2840 AT THE DESK UNTIL THE CLOSE OF BUSINESS, WEDNESDAY, SEPTEMBER 24, 1986

Mr. SIMPSON. Mr. President, I ask unanimous consent that S. 2840, Superfund, be held at the desk until the close of business on Wednesday, September 24.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ORDER TO PLACE H.R. 5548 ON THE CALENDAR

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 5548, the Export-Import Bank bill, and I ask that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER TO HOLD S. 2862 AT THE DESK

Mr. SIMPSON. Mr. President, I send the enclosed bill to the desk on behalf of Senator THURMOND, and others, and ask that it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER THAT THE SECRETARY OF THE SENATE REQUEST THE HOUSE OF REPRESENTATIVES TO RETURN TO THE SENATE HOUSE JOINT RESOLUTION 686

Mr. SIMPSON. Mr. President, I send the following order to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

Ordered, That the Secretary of the Senate be directed to request the House of Representatives to return to the Senate the bill (H.J. Res. 686) entitled "Joint resolution to designate August 12, 1986, as 'National Civil Rights Day' ".

The PRESIDING OFFICER. Without objection, the order is agreed to.

ORDERS FOR WEDNESDAY, SEPTEMBER 24, 1986

RECESS

Mr. SIMPSON. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Wednesday, September 24, 1986.

ROUTINE MORNING BUSINESS

Following the recognition of the two leaders under the standing order, I ask unanimous consent that there be a period for the transaction of routing morning business not to extend beyond the hour of 10 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SIMPSON. At 10 a.m., the Senate will resume consideration of S. 2405, the highway bill. The Senate could also be asked to turn to any of the following items: the commodity futures trading bill, S. 2045; S. 2792, the FIFRA legislation, fungicide, insecticide, and whatever the various things that go with that peculiar legislation are; Calendar No. 804, S. 2477, the intelligence authorization; or any legislative or executive items that can be cleared.

I believe the majority leader has indicated that votes could be expected to occur throughout the day on Wednesday.

The PRESIDING OFFICER. Without objection, all of that is ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 2:14 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1963. An act to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology;

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers;

S. 2759. An act relating to telephone services for Senators;

H.R. 4260. An act to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes;

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day";

S.J. Res. 317. Joint resolution to designate the month of November 1986 as "National Hospice Month";

S.J. Res. 354. Joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week";

S.J. Res. 362. Joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week"; and

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:58 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, without amendment:

S.J. Res. 159. Joint resolution to designate the rose as the national floral emblem; and

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5229. An act to amend the Land Remote-Sensing Commercialization Act of 1984;

H.R. 5407. An act to amend the United States Grain Standards Act to encourage the provision of grain of high quality to both foreign and domestic buyers, to better define the purposes of the official United States standards for grain, to provide for improved regulation of dockage and foreign material in grain, and for other purposes; and

H.R. 5465. An act to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent, and referred as indicated:

H.R. 5229. An act to amend the Land Remote-Sensing Commercialization Act of 1984; to the Committee on Commerce, Science, and Transportation.

H.R. 5407. An act to amend the United States Grain Standards Act to encourage the provision of grain of high quality to both foreign and domestic buyers, to better define the purposes of the official United States standards for grain, to provide for improved regulation of dockage and foreign material in grain, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5465. An act to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances; to the Committee on Energy and Natural Resources.

MEASURES PLACED ON THE CALENDAR

The Committee on Banking, Housing, and Urban Affairs was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 5548. An act to amend the Export-Import Bank Act of 1945.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent until the close of business on September 24, 1986:

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3766. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit; Federal Crop Insurance Corporation's Financial Statements for 1985 and 1984;" to the Committee on Agriculture, Nutrition, and Forestry.

EC-3767. A communication from the President of the United States transmitting, pursuant to law, a statement of policy regarding Federal management and use of our Nation's renewable forest and rangeland resources for fiscal year 1986-90; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3768. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Urban Mass Transportation Quarterly Report for the third quarter of Fiscal Year 1986; to the Committee on Banking, Housing, and Urban Affairs.

EC-3769. A communication from the assistant legal adviser for treaty affairs, Department of State, transmitting, pursuant to law, a report on international agreements other than treaties entered into by the

United States in the 60 days prior to September 19, 1986; to the Committee on Foreign Relations.

EC-3770. A communication from the District of Columbia auditor, transmitting, pursuant to law, a report entitled "Revenue Report for July, 1986"; to the Committee on Government Affairs.

EC-3771. A communication from the Assistant Secretary for Administration, Department of Transportation, transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3772. A communication from the Director of the Administrative Office of the U.S. Courts, transmitting, pursuant to law, a statement covering the 12-month period ending June 30, 1986, on the activities of the Federal Courts under the Equal Access to Justice Act of 1980; to the Committee on the Judiciary.

EC-3773. A communication from the Chief Justice of the United States, as Chairman of the Commission on the Bicentennial of the U.S. Constitution, transmitting, pursuant to law, the Second Report of the Commission; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S. 1140. A bill to amend the antitrust laws in order to preserve and promote wholesale and retail competition in the retail gasoline market and to protect the motoring safety of the American public (Rept. No. 99-467).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with amendments:

S. 2118. A bill to provide for the distribution of funds appropriated to pay a judgment awarded to the Sisseton and Wahpeton Tribes of Sioux Indians in Indian Claims Commission dockets numbered 142 and 359, and for other purposes (Rept. No. 99-468).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, without amendment:

S. 2750. A bill to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes (Rept. No. 99-469).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

H.R. 1344. A bill to provide for the restoration of Federal recognition to the Ysleta del Sur Pueblo and the Alabama and Coushatta Indian Tribes of Texas, and for other purposes (Rept. No. 99-470).

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

S. 2062. A bill to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse" (Rept. No. 99-471).

S. 2788. A bill to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building" (Rept. No. 99-472).

By Mr. ROTH, from the Committee on Governmental Affairs, with amendments:

H.R. 2946. A bill to establish an independent jury system for the Superior Court of the District of Columbia (Rept. No. 99-473).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment:

H.R. 3526. A bill to provide for the settlement of certain claims respecting the San Carlos Apache Tribe of Arizona (Rept. No. 99-474).

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

H.R. 4531. A bill to extend the Wetlands Loan Act, and for other purposes (Rept. No. 99-475).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

S. 2534. A bill to authorize the acquisition and development of a mainland tour boat facility for the Fort Sumter National Monument, SC, and for other purposes (Rept. No. 99-476).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

H.R. 3578. A bill to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes (Rept. No. 99-477).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

H.J. Res. 17. Joint resolution to consent to an amendment enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920 (Rept. No. 99-478).

By Mr. STAFFORD, from the Committee on Environment and Public Works, with amendments:

S. 2799. A bill to consolidate and improve Federal laws providing compensation and establishing liability for oil spills (Rept. No. 99-479).

By Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 2855. An original bill to extend the expiration date of the Defense Production Act of 1950 (Rept. No. 99-480).

By Mr. LUGAR, from the Committee on Foreign Relations, with an amendment:

H.R. 2957. A bill to amend the Foreign Assistance Act of 1961 to protect tropical forests in developing countries (Rept. No. 99-481).

By Mr. LUGAR, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

H.R. 2958. A bill to amend the Foreign Assistance Act of 1961 to protect biological diversity in developing countries (Rept. No. 99-482).

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

H.R. 4555. A bill to designate the Federal building at Spring and High Streets in Columbus, OH, as the "John W. Bricker Building".

By Mr. ROTH from the Committee on Governmental Affairs, without amendment:

S. 2433. A bill to amend the Office of Federal Procurement Policy Act to provide a simplified competitive acquisition technique for certain Federal Government procurements; to amend the Federal Property and Administrative Services Act of 1949 to prescribe a preference for the procurement of commercial and commercial-type products to meet the needs of civilian agencies of the Federal Government; and to require a test program to determine the advisability of increasing the threshold amount for requiring certain notice of solicitations.

By Mr. ANDREWS from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2676. A bill to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Puama, and Pala Bands of Mission Indians in San Diego County, CA, and for other purposes. Pursuant to the order of July 22, 1986, referred to the Committee on Energy and Natural Resources for a period not to exceed 15 calendar days.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance:

Thomas B. Wells, of Georgia, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolution were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. DOLE (for himself, Mr. DENTON, Mr. NICKLES, and Mr. WARNER) (by request):

S. 2849. A bill to foster a drug-free Federal workplace, to promote excellence in American education by achieving and maintaining a drug-free environment in our Nation's schools, to extend and make improvements in substance abuse service programs, to strengthen drug interdiction efforts through better international cooperation, to enhance domestice law enforcement capabilities in the war on illegal drugs, to encourage and enhance the use of private sector initiatives in a concerted campaign of public education on the dangers of illegal drug use, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. THURMOND, Mr. ABDNOR, Mr. BROYHILL, Mr. COCHRAN, Mr. D'AMATO, Mr. DANFORTH, Mr. DENTON, Mr. DOMENICI, Mr. GRAMM, Mr. HATCH, Mrs. HAWKINS, Mr. HEINZ, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. McCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. QUAYLE, Mr. ROTH, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. TRIBLE, Mr. WARNER, and Mr. WILSON):

S. 2850. A bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes; read the first time.

By Mr. HELMS (by request):

S. 2851. A bill to amend the Federal Crop Insurance Act to improve the administration of such Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. TRIBLE:

S. 2852. A bill to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BROYHILL:

S. 2853. A bill to provide for reciprocity in international trade in large electrical equipment; to the Committee on Finance.

By Mr. HEINZ:

S. 2854. A bill to authorize the donation of certain non-federal lands to Gettysburg National Military Park and to require a study and report on the final development of the park; to the Committee on Energy and Natural Resources.

By Mr. HEINZ from the Committee on Banking, Housing, and Urban Affairs.

S. 2855. An original bill to extend the expiration date of the Defense Production Act of 1950; placed on the calendar.

By Mr. HEINZ (for himself, Mr. ZORINSKY, Mr. D'AMATO, and Mr. ANDREWS):

S. 2856. A bill to implement the United States-European Communities Agreement on Citrus and Pasta, and for other purposes; to the Committee on Finance.

By Mr. GRAMM (for himself, Mr. NICKLES, Mr. MCCLURE, Mr. DOLE, Mr. STEVENS, Mr. MURKOWSKI, Mr. COCHRAN, Mr. HELMS, Mr. SIMPSON, and Mr. WALLOP):

S. 2857. A bill to revitalize oil and gas production in the United States; to the Committee on Finance.

By Mr. D'AMATO:

S. 2858. A bill to prohibit United States payments to the United Nations on or after October 1, 1987, unless certain United Nations files have been made available to appropriate law enforcement officials; to the Committee on Foreign Relations.

By Mr. MATSUNAGA:

S. 2859. A bill for the relief of Imelda Villanueva Locquiao; to the Committee on the Judiciary.

By Mr. MATSUNAGA:

S. 2860. A bill to amend the Tariff Act of 1930 regarding the customs administration of duty-free sales enterprises; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. METZENBAUM):

S. 2861. A bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias; to the Committee on Labor and Human Resources.

By Mr. SIMPSON (for Mr. THURMOND) (for himself, Mr. HELMS, Mr. HOLLINGS, and Mr. BROYHILL):

S. 2862. A bill for the relief of the Carolinas Cotton Growers Association, Inc.; ordered held at the desk.

By Mr. PACKWOOD (for himself, Mr. BRADLEY, Mr. DOLE, Mr. DECONCINI, Mr. DIXON, Mr. DURENBERGER, Mr. GOLDWATER, Mr. HOLLINGS, Mr. KERRY, Mr. LAUTENBERG, Mr. MOYNIHAN, Mr. PELL, and Mr. THURMOND):

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOLE (for himself, Mr. DENTON, Mr. NICKLES, and Mr. WARNER) (by request):

S. 2849. A bill to foster a drug-free Federal workplace, to promote excellence in American education by achieving a drug-free environment in our Nation's schools, to extend and make improvements in substance abuse service programs, to strengthen drug-interdiction efforts through better international cooperation, to enhance domestic law enforcement capabilities in the war on illegal drugs, to encourage and enhance the use of private sector initiatives in a concerted campaign of public education on the dangers of illegal drug use, and for other purposes; to the Committee on the Judiciary.

DRUG-FREE AMERICA ACT OF 1986

Mr. DOLE. Mr. President, on behalf of the administration, I introduce an omnibus anti-drug package, the Drug-Free America Act of 1986.

I want to commend President Reagan and all those in the executive branch for putting together this timely and thoughtful piece of legislation. For many years, both the President and Mrs. Reagan have shown their commitment to fighting drug abuse. And this package is the culmination of those efforts.

A number of the proposals contained in the administration bill are included as drafted, or modified, in the Senate Republican drug package that was also introduced today. And I feel confident that many portions of the administration's bill ultimately will appear in drug legislation passed by Congress.

Mr. President, again, let me congratulate the administration for its focused and responsible approach to fighting drug abuse. With the White House, and both Houses of Congress working together, we can come up with the kind of national anti-drug policies that will be effective both in cost and results.

The bill is as follows:

S. 2849

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That titles I through VI of this Act may be cited as "The Drug-Free America Act of 1986".

TITLE I—DRUG FREE FEDERAL WORKPLACE ACT OF 1986

SEC. 101. This Title may be cited as the "Drug-Free Federal Workplace Act of 1986."

THE DRUG-FREE AMERICA ACT OF 1986

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Sec. 601. Title
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Sec. 603. Domestic Release of USIA Material on Illegal Drugs

FINDINGS

SEC. 102. THE CONGRESS FINDS AND DECLARES THAT—

(a) Illegal drug use is having alarming and tragic effects upon a significant proportion of the national workforce and results in billions of dollars of lost productivity each year.

(b) Employers are concerned with the well being of their employees, and the need to maintain employee productivity.

(c) The Federal Government as the largest employer in the nation can and should show the way toward achieving drug-free workplaces through a program designed to get the message to drug users that drug use will not be tolerated in the federal workplace.

(d) Drug use by persons responsible for the safe transportation of people and goods has the potential to cause the loss of many lives and millions of dollars of property damage. Any harm created by drug impairment can extend far beyond the harm caused to the individual drug user.

SEC. 103. AMENDMENTS TO THE REHABILITATION ACT.—

(a) Subparagraph (7)(B) of section 706 of title 29, United States Code, is amended:

(i) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The", and

(ii) by striking out the second sentence and inserting in lieu thereof the following:

"The term "handicapped individual, does not include any individual who uses, or is addicted to, illegal drugs; *Provided however,* That an individual who is otherwise handicapped shall not be excluded from the protections of this Act if he also uses or is also addicted to drugs. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term "handicapped individual, does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(b) Section 706 of title 29, United States Code, is further amended by adding the following new subsection to the end thereof:

"(16) The term, illegal drugs, means controlled substances, as defined by Schedules I and II, section 802(6) of title 21, United States Code, the possession of or distribution of which is unlawful under chapter 13 of title 21, United States Code."

SEC. 104. AMENDMENT TO THE CIVIL SERVICE REFORM ACT.—Section 2302(b)(10) of title 5, United States Code, is amended by striking out "United States" and inserting in lieu thereof:

"United States; and nothing in this paragraph shall be construed to permit or require the employment of an applicant or employee who uses a controlled substance as defined by Schedules I and II, section 802(6) of title 21, the possession of or distribution of which is unlawful under chapter 13 of title 21."

SEC. 105. TECHNICAL AND CONFORMING PROVISIONS.—(a) The provisions of this Act shall supersede any inconsistent federal law, rule or regulation.

(b) This Act shall become effective on its date of enactment and shall apply to any pending litigation.

TITLE II—DRUG-FREE SCHOOLS ACT OF 1986

SEC. 201. This title may be cited as the "Drug-Free Schools Act of 1986 (The Zero-Tolerance Act)".

FINDINGS

SEC. 202. The Congress finds the following:

(1) Drug use is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well.

(2) The use of drugs by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(3) The tragic consequences of drug use by students are felt not only by the students themselves and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality.

(4) Among our cultural institutions, schools, assisted by parents and the community, have a special responsibility to assist in combating the scourge of drug use by adopting and applying firm but fair drug policies.

(5) That prompt action by our Nation's schools can bring us significantly closer to the goal of a drug-free generation.

(6) Educational institutions should establish clear policies to ensure that illegal drug users will be held accountable for their actions.

(7) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier educational environment, increase productivity, improve public safety, and protect fellow students, faculty and employees.

(8) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs while protecting nondrug-using students, faculty and employees from the harm caused by illegal drug users.

SEC. 203. PURPOSE.—The purpose of this Act is to assist State and local educational agencies to establish a drug-free learning environment within elementary and secondary schools and to prevent drug use among students in such schools.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this Act there are authorized to be appropriated $100,000,000 for fiscal year 1987 and such sums as may be necessary for each of the four succeeding fiscal years.

SEC. 205. RESERVATIONS AND ALLOTMENTS.—(a) From the funds appropriated under section 204 for any fiscal year, the Secretary shall reserve 20 per centum for national programs under section 210.

(b)(1) From the remainder of the amount appropriated to carry out this Act for each fiscal year after the application of subsection (a), the Secretary may reserve up to one per centum for projects authorized by this Act in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(2) The Secretary shall allot the funds reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for assistance under this Act.

(c)(1) From the remainder of the amount appropriated to carry out this Act for each fiscal year after the application of subsections (a) and (b), the Secretary shall allot to each State an amount which bears the same ratio to that remaining amount as the number of children aged five to seventeen, inclusive, in the State bears to the number of such children in all States. The number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to the Secretary.

(2)(A) The Secretary may reallot all or a portion of the State's allotment for any fiscal year if the State does not submit a State application under section 206, or otherwise indicates to the Secretary that it does not need or cannot use the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallotments.

(B) The Secretary may reallot funds on a competitive basis to one or more States that demonstrate a current need for additional funds under this Act. Any funds reallotted to another State shall be deemed to be part of its allotment for the fiscal year in which the funds are reallotted.

(d) For the purpose of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

SEC. 206. STATE APPLICATIONS.—(a) Any State desiring to receive a grant from funds allotted under section 205 for any fiscal year shall submit to the Secretary a State application which meets the requirements of this section.

(b) Each State application shall—

(1) cover a period of three fiscal years;

(2) be submitted at the time and in the manner specified by the Secretary; and

(3) contain whatever information the Secretary may reasonably require, including—

(A) assurances that—

(i) the State educational agency will be responsible for the administration, including supervision, of all State and local projects supported by the State's grant and shall maintain whatever fiscal control and fund accounting procedures are necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State under this Act;

(ii) the State educational agency will distribute at least 90 per centum of its allotment on a competitive basis to local educational agencies to pay the Federal share of the costs of local projects under section 208;

(iii) the State educational agency will provide for continuing administrative direction and control by a public agency over funds under this Act used to benefit teachers, school administrators, and students in private nonprofit elementary and secondary schools; and

(iv) no more than 5 per centum of the amount allotted to a State under section 205(c) will be used for State administration; and

(B) descriptions of—

(i) the priorities and goals the State has selected for the use of funds under this Act during the period of the State application;

(ii) how, in establishing its priorities and goals under the State plan, the State has taken into account the needs of those public and private nonprofit elementary and secondary schools which desire to have their teachers, school administrators, and students participate in projects under this Act;

(iii) the procedures and criteria the State will use to select local projects to be supported under this Act from among the applications received;

(iv) how parents, local educational agencies, private nonprofit elementary and secondary schools, law enforcement agencies, the courts, State agencies engaged in preventing drug abuse, drug and alcohol treat-

ment programs, and other interested community resources have been involved in the development of the State's priorities and goals under the State application;

(v) the projects the State will carry out with the portion of its allotment not distributed to local educational agencies or used for State administration; and

(vi) the procedures the State will adopt to ensure compliance with section 209.

(c) Each State application after the first must contain information on the State and local projects carried out under the preceding State application, including data on the number and characteristics of persons who participated, and an assessment of the degree to which those projects accomplished the goals described in the State application.

SEC. 207. STATE PROJECTS.—(a) The State educational agency shall use that portion of its allotment that is not distributed to local educational agencies or used for State administration for State projects under this section.

(b) Funds under this section shall be used to—

(1) provide inservice training for teachers and schools administrators relating to—

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) develop, disseminate, and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(3) support State activities designed to enhance the involvement of parents in preventing drug and alcohol use among students, through such activities as educating parents about the symptoms and effects of drug use;

(4) establish cooperative programs between the schools and law enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources;

(5) collect and disseminate information about drug and alcohol use by students;

(6) provide technical assistance to local educational agencies under this Act; or

(7) support any other State project, consistent with the purposes of this Act, that the State deems necessary to achieve and maintain a drug-free environment that is conducive to learning in the elementary and secondary schools of that State.

SEC. 208. LOCAL PROJECTS.—(a) To apply for an award under this Act, a local educational agency shall submit to the State educational agency a plan which describes how the local educational agency will achieve and maintain drug-free elementary and secondary schools. Each plan must be for a period of three years. In addition, the plan must describe for grades kindergarten through 12—

(1) the extent and nature of the current drug and alcohol problem in the schools of the local educational agency, including detailed information which shows—

(A) the number or percentage of students who use drugs or alcohol;

(B) the grade level of those students;

(C) the type of drugs they use; and

(D) how the local educational agency obtained this information;

(2) the local educational agency's drug and alcohol policy, including an explanation of (A) the disciplinary practices and procedures it will strictly enforce to eliminate the sale or use of drugs and alcohol on school premises; and (B) how it will inform students that drug use is both harmful and wrong;

(3) the drug and alcohol prevention curricula, counseling programs, and teaching materials the local educational agency will adopt, including an explanation of why these curricula, programs, and materials are appropriate in light of the current drug and alcohol problem in the local educational agency;

(4) the inservice training the local educational agency will provide for teachers and school administrators, including an explanation of why this inservice training is appropriate in light of the current drug and alcohol problem in the local educational agency;

(5) how the local educational agency's plan was developed and will be implemented with the involvement of local community resources, including parents, law-enforcement agencies, the courts, and drug and alcohol treatment programs;

(6) how the local educational agency will monitor the effectiveness of its plan; and

(7) how the plan, if successful, will be continued after Federal assistance under this Act terminates.

(b)(1) In order to apply for funds under this Act for the second and third year of its plan, a local educational agency shall submit to the State educational agency an annual progress report at the end of the first and second years of its plan, as appropriate. Each annual progress report must describe in detail—

(A) the local educational agency's significant accomplishments under the plan during the preceding year;

(B) the extent to which the original objectives of the plan are being achieved, including a reduction in the number of students who use drugs; and

(C) any modifications of the plan that are appropriate.

(2) No local educational agency may receive funds under this Act for the second or third year of its plan unless its annual progress report shows that the local educational agency is making reasonable progress toward accomplishing the purposes of this Act.

(3) At the end of the third year of its plan, the local educational agency shall submit to the State educational agency a final report which assesses the effectiveness of the three-year plan in meeting its objectives. Each final report must contain information which indicates the extent to which the plan has succeeded in achieving and maintaining schools that are drug-free.

(c) A local educational agency shall use funds under this section, in accordance with its plan, to—

(1) provide inservice training for teachers and school administrators relating to—

(A) the authority of teachers and school administrators to maintain an orderly school environment that is conducive to learning, including their authority to detect and discipline students using drugs and alcohol;

(B) the causes and effects of drug and alcohol use by elementary and secondary school students;

(C) the identification and treatment of such students; and

(D) effective techniques for instructing and counseling such students;

(2) support increased security measures in schools;

(3) develop and implement curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(4) involve parents, teachers, and school administrators in preventing drug and alcohol use among students, through such activities as educating those parents, teachers, and school administrators about the symptoms and effects of drug use;

(5) establish cooperative programs between local law-enforcement agencies, the courts, drug and alcohol treatment programs, and other community resources; or

(6) support any other local project consistent with the purpose of this Act, that the local educational agency deems necessary to achieve and maintain a drug-free environment that is conducive to learning in its elementary and secondary schools.

(d) The Federal share of the cost of a local project under this Act may not exceed 67 per centum.

SEC. 209. PARTICIPATION OF PRIVATE SCHOOL TEACHERS, SCHOOL ADMINISTRATORS, AND STUDENTS.—(a)(1) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools in the State, the State educational agency shall ensure equitable participation in the purposes and benefits of State projects under section 207 for teachers, school administrators, and students in such schools.

(2) To the extent consistent with the number of children who are enrolled in participating private nonprofit elementary and secondary schools located in the school district of a local educational agency, that local educational agency shall ensure equitable participation in the purposes and benefits of local projects under section 208 for teachers, school administrators, and students in such schools.

(b) To satisfy the requirements of subsection (a), a State educational agency or a local educational agency shall—

(1) consult with appropriate private nonprofit school representatives during the design and development of the project to determine which schools desire to participate in the project and the needs of the teachers, school administrators, and students in those participating schools, and

(2) then provide, as appropriate, benefits authorized by this Act for teachers, school administrators, and students in such schools.

(c) No funds under this Act may be used—

(1) for any religious worship, proselytization, or activity of a school or department of divinity, or

(2) to provide or improve any program of religious instruction.

SEC. 210. NATIONAL PROGRAMS.—(a) The Secretary shall use funds reserved under section 205(a) to carry out national programs designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this section with the Secretary of Health and Human Services.

(b) The Secretary shall use funds under this section to—

(1) collect and disseminate information about drug and alcohol use among students in elementary and secondary schools;

(2) collect and disseminate information on effective curricula, counseling programs, and teaching materials to prevent drug and alcohol use;

(3) conduct research on the effects of drug and alcohol use on elementary and secondary education;

(4) conduct workshops and seminars to encourage greater cooperation between schools and the community, including parents, law-enforcement agencies, the courts, and social service agencies; or

(5) carry out any other national level project or activity, consistent with the purposes of this Act, that the Secretary deems necessary to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools.

SEC. 211. DRUG TESTING IN EDUCATIONAL INSTITUTIONS.—It shall not be unlawful under Federal statute or regulation for any educational institution—

(a) to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs;

(b) to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs;

(c) to refuse enrollment to applicants for admission who use illegal drugs; or

(d) to take disciplinary action against students, including suspension or expulsion, who use illegal drugs whether or not the use occurred at the educational institution.

SEC. 212. USE OF FUNDS.—Federal funds made available to a State or local educational agency under this Act shall be used to supplement and, to the extent practicable, increase the amount of non-Federal funds that would, in the absence of such Federal funds, be made available for the purposes of this Act, and in no case to supplant such non-Federal funds.

SEC. 213. CONFORMING AMENDMENTS.—Section 583(b) of Education Consolidation and Improvement Act (20 U.S.C. 3851(b)) is amended by—

(1) inserting an "and" at the end of paragraph (2);

(2) striking out paragraph (3); and

(3) redesignating paragraph (4) as paragraph (3).

SEC. 214. DEFINITIONS.—The definitions of terms used in this Act shall be the same definitions given those terms under section 595 of the Education Consolidation and Improvement Act (20 U.S.C. 3875).

SEC. 215. EFFECTIVE DATE.—The provisions of this Act shall take effect upon enactment.

TITLE III—SUBSTANCE ABUSE SERVICES AMENDMENTS OF 1986

SEC. 301. (a) This title may be cited as the "Substance Abuse Services Amendments of 1986".

(b) The amendments in this title apply to the Public Health Service Act.

SEC. 302. EXTENSION OF BLOCK GRANT.—Section 1911 is amended—

(1) by striking out "and" after "1986,", and

(2) by inserting before the period the following: ", $490,000,000 for fiscal year 1988, and such sums as may be necessary for each of the four succeeding fiscal years".

SEC. 303. ELIMINATION OF CERTAIN BLOCK GRANT EARMARKS.—(a) Section 1916(c) is amended by striking out paragraphs (2), (7), (8), (14), and (15).

(b) Subsections (g) and (h) of section 1916 are repealed.

(c) The second sentence of section 1917(a)(1) is amended—

(1) by striking out clause (C) through the comma, and

(2) by redesignating clause (D) as (C).

(d) The amendments made by the preceding subsections apply to appropriations for fiscal year 1988 and succeeding fiscal years.

TITLE IV—DRUG INTERDICTION AND INTERNATIONAL COOPERATION ACT OF 1986

Subtitle A—International Forfeiture Enabling Act 1986

SEC. 401. This subtitle may be cited as the "International Forfeiture Enabling Act of 1986.

SEC. 402. FORFEITURE RELATING TO FOREIGN UNLAWFUL DRUG ACTIVITIES.—(a) Part E of the Controlled Substances Act is amended by adding after section 516 a new section 517 (21 U.S.C. 887) to read as follows:

"SEC. 517. FORFEITURE RELATING TO FOREIGN UNLAWFUL DRUG ACTIVITIES.—(a) The following property located within the jurisdiction of the United States relating to an unlawful drug activity committed within the jurisdiction of a foreign country shall be subject to forfeiture to the United States:

"(1) any property constituting, or derived from, any proceeds obtained, directly or indirectly, as a result of the unlawful drug activity; and

"(2) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the unlawful drug activity; except that no property shall be forfeited under this section, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

"(b) Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881 of this title shall apply to forfeiture under this section.

"(c) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a) of this section may also be transferred to a foreign country pursuant to an international agreement providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(d) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(e) As used in this section—

"(1) the term 'property, includes real property' including things growing on, affixed to, and found in land, and tangible and intangible personal property, including rights, privileges, interests, claims, and securities; and

"(2) the term 'unlawful drug activity' means any act or activity constituting a drug offense under the laws of a foreign country within whose jurisdiction such act or activity occurred, punishable by death or imprisonment for a term exceeding one year, which would be punishable by this chapter by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(f) A certified order or judgment of forfeiture by a court of complete jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(g) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(h) The provisions of subsections (f) and (g) of this section shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.".

(b) The Table of Sections at the beginning of chapter 13 of title 21 is amended by adding at the end thereof the following new item:

"887. Forfeiture Relating to Foreign Unlawful Drug Activities.".

Subtitle B—Mansfield Amendment Repeal Act of 1986

SEC. 411. This subtitle may be cited as the "Mansfield Amendment Repeal Act of 1986".

SEC. 412. REPEAL.—Subsection 481(c) of the Foreign Assistance. Act of 1981, as amended, (22 U.S.C. 2291(c)) is repealed.

Subtitle C—Narcotic Traffickers Deportation Act of 1986

SEC. 421. This subtitle may be cited as the "Narcotic Traffickers Deportation Act of 1986.

Sec. 422. DEPORTATION.—Subsection (a)(11) of Title II of Chapter 477 of the Act of June 27, 1952 (8 U.S.C. 1251), as amended, is further amended to delete all language which follows "has been convicted of a violation of and to insert in its stead, "any provision of the Controlled Substances Act, the Controlled Substances Import and Export Act, the Act of September 15, 1980 (Pub. L. 96-350, 94 Stat. 1159-60), or any other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances."

Subtitle D—Customs Enforcement Act of 1986

SEC. 423. This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART A—TARIFF ACT AMENDMENTS

SEC. 424. Section 401, Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(a) by deleting the period in subsection (c) and inserting the phrase ", and monetary instruments as defined in section 5312 of title 31, United States Code.";

(b) by adding new subsections (m) and (n) to read as follows:

"(m) CONTROLLED SUBSTANCE.—The term "controlled substance" means controlled substance as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))."

"(n) PROHIBITED AND RESTRICTED.—The terms "prohibited" and "restricted" when used in connection with the importation of merchandise are interchangeable and refer to merchandise, the importation of which is not legally permitted, or, which may only be imported under certain conditions or with certain permits or other documents and all the conditions have not been complied with or the permits or documents lawfully obtained.".

SEC. 425. Section 433, Tariff Act of 1930, as amended (19 U.S.C. 1433), is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL.

"(a) The master of any vessel from a foreign port or place, or of a foreign vessel from a domestic port, or of a vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made, arriving at any port or place within the United States or the Virgin Islands shall immediately report the arrival of the vessel at the nearest customs facility or such other place as the Secretary of the Treasury may prescribe in regulations. The Secretary may by regulation prescribe the manner in which arrival shall be reported and may extend the time, not to exceed twenty-four hours after the arrival of the vessel, in which to report arrival.

"(b) Any vehicle arriving in the United States shall cross the border only at a point designated by the Secretary and the person in charge of the vehicle shall immediately report its arrival and present the vehicle, all persons and merchandise (including baggage) on board, for inspection to the customs officer at the customs facility designated for that crossing point, unless otherwise authorized by the Secretary.

"(c) The pilot of any aircraft arriving in the United States shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may be regulation prescribe.

"(d) No vessel, vehicle or aircraft shall depart from the port, place, or airport of arrival, nor discharge any merchandise (including baggage) or passengers, except in accordance with regulations prescribed by the Secretary, unless otherwise authorized by law.

"(e) The master, person in charge of a vehicle, or aircraft pilot shall present to customs officers such documents, papers, or manifests as the Secretary by regulation may prescribe.".

SEC. 426. Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL REPORTING AND ENTRY REQUIREMENTS.

"(a) Any master, person in charge of a vehicle, or aircraft pilot—

(i) who fails to report arrival as required by section 433 of this Act or regulations promulgated thereunder;

(ii) who fails to make entry as required by sections 434 or 435 of this Act or regulations promulgated under those sections or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509) or section 644 of this Act;

(iii) who departs from the place of arrival or the designated customs facility without appropriate authorization; or

(iv) who presents any forged, altered or false document or paper to a customs officer without revealing the true facts—

shall be subject to a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation shall be subject to seizure and forfeiture.

"(b) Any master, person in charge of a vehicle, or aircraft pilot who willfully commits any violation enumerated in subsection (a) shall be liable to an additional fine of not more than $2,000 and imprisonment for not more than one year, or both, and if the conveyance has, or is discovered to have had, on board any merchandise (sea stores, or the equivalent for conveyances other than vessels, excepted,) the importation of which into the United States is prohibited or restricted (and all conditions have not been complied with), or any controlled substances, spirits, wines, or other alcoholic liquors, such person shall be liable to an additional fine of not more than $10,000 and imprisonment for not more than five years, or both.

"(c) If any merchandise (sea stores, or the equivalent for conveyances other than a vessel, excepted) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable to a penalty equal to the value of the merchandise and the merchandise shall be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of the controlled substances listed in section 584 of this Act, the master, person in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.".

(b) Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—(i) by deleting "shall be liable to a penalty of $5,000," after "vessel,"

(ii) by deleting "$500" and inserting in lieu thereof "$5,000 for the first violation, and $10,000 for each subsequent violation,"

SEC. 427. Section 454, Tariff Act of 1930, as amended (19 U.S.C. 1454), is amended by striking "$500 for each" and inserting in lieu thereof "$1,000 for the first passenger and $500 for each additional".

SEC. 428. Section 459, Tariff Act of 1930, as amended (19 U.S.C. 1459), is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) All persons arriving in the United States other than by vessel, vehicle or aircraft shall enter the United States only at a border crossing point designated by the Secretary and shall immediately report their arrival and present themselves and all articles accompanying them for inspection to the customs officer at the customs facility designated for that crossing point, unless otherwise authorized by the Secretary or pursuant to regulations. No person may depart from the place of arrival until authorized by the appropriate customs officer.

"(b) All passengers and crew members aboard a conveyance arriving in the United States shall remain aboard the arriving conveyance until authorized by the appropriate customs officer or pursuant to regulations. Upon departing the conveyance, they shall immediately report to the designated customs facility together with all articles accompanying them and remain there until the appropriate customs officer has authorized them to depart.

"(c) Persons aboard a conveyance whose arrival was not made or reported in accordance with the provisions of sections 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958 (19 U.S.C. 1433, 1644 or 49 U.S.C. App. 1509), or the appropriate regulations, are obligated to immediately notify customs and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived and present their property for customs examination and inspection.".

SEC. 429. Section 460, Tariff Act of 1930, as amended (19 U.S.C. 1460), is amended to read as follows:

"SEC. 460. PENALTIES FOR FAILURE TO REPORT, ETC.

"(a) Any person subject to section 459 (19 U.S.C. 1459) of this Act who:

(1) fails to report arrival as required;

(2) departs from the customs facility without authorization; or

(3) presents any forged, altered, or false documents or paper to a customs officer without revealing the true facts—

shall be subject to a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(b) Any person who willfully commits any violations enumerated in (a) above shall be liable to an additional fine of not more than $2,000 and imprisonment for not more than one year, or both.".

SEC. 430. Section 491, Tariff Act of 1930 (19 U.S.C. 1491) is amended by—

(a) deleting "one year" and substituting in lieu thereof "six months"; and

(b) inserting the following new subsection (c) at the end thereof:

"(c) At the end of the six month period set forth in subsection (a), title to the merchandise shall be deemed to have vested in the United States. In lieu of sale, merchandise may be retained for official use or otherwise disposed of in accordance with regulations. If the property is retained for official use in lieu of sale, the receiving agency shall pay an interested party making timely and proper claim the same amount as such party would be entitled to receive if the goods had been sold. The decision of the Secretary as to the value shall be final on all parties.".

SEC. 431. Section 492, Tariff Act of 1930 (19 U.S.C. 1492) is amended by inserting ", retained for official use or otherwise disposed of" after "destroyed".

SEC. 432. Section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), is amended by striking the phrase "required to be kept under section 508 of this Act (19 U.S.C. 1508)", wherever it appears.

SEC. 433. Section 526(e)(3) of the Tariff Act of 1930 (19 U.S.C. 1526(e)(3)) is amended by striking "1 year" and inserting "60 days".

SEC. 434. Section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) is amended—

(a) by striking all of subsection (b);

(b) by deleting the subsection designation "(a)" preceding the first paragraph;

(c) by substituting "$1,000" for "$500" wherever it appears; and

(d) by substituting "$200", "$500," and "$1,000" for "$10", "$25" and "$50" respectively wherever they appear.

SEC. 435. Section 586, Tariff Act of 1930 is amended—

(a) by substituting "$10,000" for "$1,000" wherever it appears;

(b) by deleting "one league of the coast of the United States" and inserting "Customs waters" and by substituting "15 years" for "2 years" in subsection (e).

SEC. 436. The Tariff Act of 1930 is amended by adding a new section 590 (19 U.S.C. 1590) to read as follows:

"SEC. 590. AVIATION SMUGGLING.

"(a) It shall be unlawful for the pilot of any aircraft to transport, or for any person on board any aircraft to possess, merchandise knowing or intending that it be introduced into the United States contrary to law.

"(b) It shall be unlawful for any person to transfer any merchandise between an aircraft and a vessel on the high seas or in the Customs waters of the United States if such person has not been authorized by the Secretary to make such transfer—

(1) if the aircraft is owned by a citizen of the United States or is registered in the United States or the vessel is a vessel of the United States as defined in section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)) and the merchandise consists of controlled substances, spirits, wines, or other alcoholic liquors or other merchandise, the importation of which into the United States is prohibited or restricted or

(2) regardless of the nationality of the vessel or aircraft, under circumstances indicating the purpose of the transfer is to render it possible that such merchandise or any part thereof may be introduced or attempted to be introduced into the United States contrary to law.

"(c) Any person who violates any provision of this section shall be liable to a civil penalty equal to twice the value of the merchandise but not less than $10,000 and, in addition, to a fine of not more than $10,000 and imprisonment for a period of not more than 5 years or both if the merchandise involved was not a controlled substance, and a fine of not more than $250,000 and imprisonment for a period of not more than 20 years or both, if it is a controlled substance.

"(d) Any vessel or aircraft used in connection with, or to aid or facilitate, any of the foregoing unlawful acts whether or not any person is charged in connection with such acts shall be seized and civilly forfeited in accordance with the customs laws.

"(e) For purposes of this Act, any one of the following acts when performed within 250 miles of the territorial sea of the United States shall be prima facie evidence that the transportation or possession of merchandise was in violation of law, and shall be presumed to constitute circumstances indicating the purpose of the transfer referred to in subsection (b)(2) is to render it possible that such merchandise or any part thereof may be introduced or attempted to be introduced into the United States contrary to law, and for purposes of subsection (d) of this section or Section 596 of this Act the following acts shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate a violation:

(1) the operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law or regulation;

(2) the presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law or regulation;

(3) the failure to identify correctly the vessel by name, country of registration or the aircraft by registration number and country of registration when requested to do so by a Customs officer or other government authority;

(4) the external display of false registration numbers, false country of registration or false name (for a vessel);

(5) the presence on board of unmanifested merchandise, the importation of which is prohibited or restricted;

(6) the presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or other international treaty;

(7) the presence of any compartment or equipment which is built or fitted out for smuggling; or

(8) the failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 437. Section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) is amended as follows:

(a) Paragraph (c)(4) is amended by—(1) deleting the words "a formal" and inserting "an inquiry or" in lieu thereof, and inserting the phrase "(unless the merchandise is restricted or prohibited)" after the word "seized.";

(b) Paragraph (c)(5) is amended by adding the following at the end thereof: "Prohibited and restricted merchandise shall be subject to forfeiture without regard to whether a penalty has been assessed or whether such action is necessary to secure payment of a penalty. Such merchandise shall be forfeited in accordance with the procedures set forth in sections 602 through 621 of this Act (19 U.S.C. 1602-1621) except that any necessary judicial proceedings may be commenced in the Court of International Trade prior to, during or subsequent to penalty collection proceedings."

SEC. 438. The Tariff Act of 1930 is amended by inserting a new section 593 between section 592 and 594 (19 U.S.C. 1592 and 1594) to read:

"SEC. 593. PENALTIES FOR FALSE DRAWBACK AND REFUND CLAIMS, ETC.

"(a) PROHIBITED ACTS.—No person by fraud, gross negligence or negligence shall make any materially false written or oral statement, or make or submit to a government agency any materially false entry, claim, certificate, application, declaration or other paper or engage in any materially false act or make any material omission—

(1) which seeks or affects the payment or credit to that person or others of any drawback payment, refund of duties, allowance, or rebate; or

(2) which relates to merchandise which is to be exported contrary to law.

"(b) It shall be unlawful for any person to aid or abet any other person to violate subsection (a).

"(c) PROCEDURES.—The pre-penalty and penalty procedures set forth in section 592(b) shall apply to alleged violations of this section.

"(d) MAXIMUM PENALTIES.—(1) Fraud. A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the domestic value of the merchandise.

"(2) GROSS NEGLIGENCE.—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not be exceed—

(A) the lesser of—

"(i) the domestic value of the merchandise, or

"(ii) four times the duties, refunds, rebates drawback or allowances of which the United States is or may be deprived, or

"(B) if the violation did not involve duties, refunds, rebates, drawback or allowances, 40 percent of the dutiable value of the merchandise.".

(3) NEGLIGENCE.—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

"(A) the lesser of—

"(i) the domestic value of the merchandise, or

"(ii) two times the duties, refunds, rebates, drawback or allowances of which the United States is or may be deprived, or

"(B) if the violation did not involve duties, refunds, rebates, drawback or allowance, 20 percent of the dutiable value of the merchandise.".

SEC. 439. Section 594, Tariff Act of 1930, (19 U.S.C. 1594) is amended to read:

"SEC. 594 SEIZURE OF CONVEYANCES.

"(a) Whenever a vessel, vehicle or aircraft, or the owner, master, pilot, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs laws of the United States, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the Customs laws, with the proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining and selling the property being held for the account of any interested parties.

"(b) No conveyance used by any person as a common carrier in the transaction of business as such common carrier shall be subject to seizure or forfeiture under the Customs laws, for violations relating to—

(1) merchandise contained in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

(2) in the conveyance's cargo if such cargo is listed on the manifest and the marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator or the master, pilot, conductor, driver or other person in charge, participated in or had knowledge of the violation or was grossly negligent in preventing or discovering the violation.

"(c) If any prohibited merchandise or controlled substances are found to be or have

been on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers which are unmanifested (or not shown on bills of lading or airway bills), or whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills), or if such prohibited merchandise or controlled substances are found to be or to have been concealed in or on the conveyance, but not in the cargo, the conveyance shall be seized, and after investigation, forfeited unless it appears to the satisfaction of the Secretary of the Treasury, or his designee, that neither the master (or pilot or other person in charge) nor any of the officers, petty officers, or cabin attendants nor the owner or operator of the conveyance knew, or by the exercise of the highest degree of care and diligence, could have known that such prohibited merchandise or controlled substances were on board.

"(d) For purposes of this section—

"(1) the term "owner or operator" includes a lessee or person operating a conveyance under a rental agreement or charter party and the officers and directors of a corporation, station managers and similar supervisory ground personnel employed by airlines, one or more partners of a partnership, representatives of the owner or operator in charge of the passenger or cargo operations at a particular location, and other persons with similar responsibilities;

(2) the term "master" and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported.

"(e) When a common carrier has been seized in accordance with the provisions of subsection (c) and it is subsequently determined that it will be released, the conveyance shall be liable for the costs and expenses of the seizure and detention.".

SEC. 440. Section 595, Tariff Act of 1930, as amended, (19 U.S.C. 1595) is amended—

(a) in subsection (a), by inserting "(1)" before "any merchandise";

(b) by inserting the following after "contrary to law,"

"(2) any property which is subject to forfeiture under any provision of law enforced or administered by the Customs Service, or (3) any documents, containers, wrappings, or other articles which are evidence of violations of any law enforced or administered by the Customs Service,";

(c) by deleting "United States commissioner" and inserting in lieu thereof "Federal magistrate";

(d) by inserting "or other article named in the warrant" after "merchandise" and before the colon; and

(e) by deleting "such merchandise" in the proviso and inserting in lieu thereof the phrase "any merchandise or other article subject to forfeiture".

SEC. 441. Section 596, Tariff Act of 1930, as amended (19 U.S.C. 1595a) is amended—(a) by striking "the proviso to" in subsection (a) and inserting in lieu thereof "subsections (b) or (c) of"; (b) by inserting a new subsection (c) to read:

"(c) Any merchandise introduced or attempted to be introduced into the United States contrary to law shall be seized and forfeited.".

SEC. 442. Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by—

(a) adding at the end thereof, a new subsection "(c)" to read as follows:

"(c) When property has been seized by the Secretary of the Treasury under a law enforced or administered by the Customs Service, or otherwise acquired pursuant to section 605 of this Act, and relief from the forfeiture is granted by the Secretary, or his designee, upon terms requiring deposit or retention of, a monetary amount in lieu of the forfeiture, the amounts recovered shall be treated in the same manner as the proceeds of sale of a forfeited item."; and

(b) adding at the end thereof, a new subsection "(d)" to read as follows:

"(d) In any judicial or administrative proceedings to forfeit property under any law enforced or administered by the Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture, incurred by customs or the Coast Guard after the seizure, but prior to the institution of, or during the proceedings shall be a priority claim in the same manner as court costs and marshal's expenses.".

SEC. 443. Section 619, Tariff Act of 1930, (19 U.S.C. 1619) is amended:

(a) by inserting "not more than" between the words, "of" and "25 per centum" in the first and third sentences; and

(b) by striking out the phrase, "In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs."

SEC. 444. Section 621, Tariff Act of 1930, as amended (19 U.S.C. 1621) is further amended by inserting at the end thereof the following sentence: "For purposes of this section, an action to recover a pecuniary penalty is deemed to have been commenced when the appropriate Customs officer issues a penalty notice.".

SEC. 445. Section 622, Tariff Act of 1930 (19 U.S.C. 1622) is amended by striking the period at the end thereof and inserting the following: ", or to comply with international obligations.".

SEC. 446. The Tariff Act of 1930 is amended by adding a new Section 628 (19 U.S.C. 1628) to read as follows:

"SEC. 628. EXCHANGE OF INFORMATION.—The Secretary of the Treasury is authorized to promulgate regulations authorizing Customs officers to exchange information or documents with foreign Customs and law enforcement agencies when the exchange of information is reasonably believed to be necessary to:

"(a) insure compliance with any law or regulation enforced or administered by the U.S. Customs Service;

"(b) verify the accuracy of information provided to the Treasury Department or the U.S. Customs Service where such information is used in making determinations concerning the classification, value, country of origin, quota allocability, admissibility, or other characteristics of imported merchandise, relevant to the laws and/or regulations enforced or administered by U.S. Customs;

"(c) administer or enforce multilateral or bilateral agreements to which the United States is a party; or

"(d) assist in investigative, judicial and quasi-judicial proceedings in the United States."

"(e) an action comparable to any of those described in paragraph (a) to (d) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.".

SEC. 447. The Tariff Act of 1930 is amended by inserting a new section 629 (19 U.S.C. 1629) to read as follows:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.—(a) When authorized by treaty or executive agreement, the Secretary of the Treasury may station customs personnel in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) Customs officers stationed in a foreign country pursuant to subsection (a) may exercise such functions and perform such duties, including inspections, searches, seizures and arrests as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) The Secretary may, by regulation, require compliance with the customs laws and regulations in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station were a port of entry within the customs territory of the United States.

"(d) When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the Customs territory to the United States to be proceeded against under the customs laws.

"(e) The Secretary of State, in coordination with the Secretary of the Treasury, is authorized to enter into agreement with foreign countries authorizing the stationing in the United States of foreign customs officials (if similar privileges are given in their country to U.S. officials) for the purpose of insuring that persons and merchandise going directly to that country comply with that country's customs laws and other laws governing the importation of merchandise. Any foreign customs officials stationed in the United States may exercise such functions and perform such duties as United States officials may be authorized to perform under reciprocal provisions.

"(f) When foreign customs officials are stationed in the United States in accordance with subsection (e), and provided that similar provisions are applied to U.S. officials stationed in that country:

(1) The provisions of 18 U.S.C. 111 and 1114 shall apply as if the officers were named in that statute;

(2) Any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

SEC. 448. The Tariff Act of 1930 is amended by adding a new section 630 (19 U.S.C. 1630) to read as follows:

"SEC. 630. AUTHORITY TO CONDUCT COMMERCIAL COVER.—(a) The Commissioner of Customs may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support investigative activities of the U.S. Customs Service. Such commercial entities may be established only upon written certification by the Commissioner or his designee that commercial cover is necessary to the conduct of authorized investigative activities.

"(b) The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. To this end, laws applicable to federal appropriations, federal property management, federal acquisitions, federal employment and government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Commissioner of Customs or his designee for the purpose that the application of such laws would risk the compromise of a commercial cover.

"(c) The Commissioner of Customs, or his designee, are authorized to deposit and withdraw funds appropriated for the U.S. Customs Service used to conduct commercial cover and funds generated by the business entities authorized by this section in banks or other financial institutions.

"(d) Funds generated by such business entities may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(e) Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under the provisions of this section, the funds, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.".

PART B—MISCELLANEOUS PROVISIONS

SEC. 449. Section 201, of the Act of August 5, 1935 (19 Stat. 521, 19 U.S.C. 1432a) is amended by inserting the following after the words "hovering vessel"—"or has received merchandise while in the customs waters beyond the territorial sea, or has received merchandise on the high seas,".

SEC. 450. Section 12109 of title 46, United States Code is amended by inserting a new sentence in subsection (b) after the existing sentence to read:

"Such vessel must, however, comply with all customs requirements for reporting arrival pursuant to section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such a pleasure vessel shall be subject to all applicable customs regulations.".

SEC. 451. Section 902 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472) is amended by adding at the end of section 902 the following new subsection (r):

"(r) OPERATING AIRCRAFT OR SERVING AS AIRMAN WITHOUT VALID REGISTRATION OR CERTIFICATE.—A person shall be subject to a fine of not more than $5,000 or to imprisonment not exceeding two years, or both, who—

"(1) being the owner of any aircraft eligible for registration under this chapter, knowingly and willfully operates or navigates or attempts to operate or navigate or permits any other person to operate or navigate any such aircraft (A) without registering such aircraft as required by section 501 of this Act (49 U.S.C. App. 1401), (B) during any period in which the aircraft certificate or registration has been suspended or revoked by the Adminstrator, or (C) without proper authorization to operate or navigate the aircraft without registration for a period of time after transfer ownership;

"(2) operates or navigates or attempts to operate or navigate an aircraft eligible for registration under this chapter knowing that such aircraft (A) is not registered as required by this chapter, (B) that the aircraft certificate of registration is suspended or revoked or (C) is without proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(3) knowingly and willfully serves or attempts to serve in any capacity as an airman in connection with any aircraft without a valid airman certificate authorizing him to serve in such a capacity; or

"(4) knowingly and willfully employs for service or utilizes in connection with any aircraft any airman who does not possess a valid airman certificate authorizing him to serve in such capacity.".

SEC. 452. Section 904(a), Federal Aviation Act of 1958 (49 U.S.C. App. 1474(a)), is amended by—

(1) deleting the amount "$500" wherever it appears and by inserting in its place the amount "$5,000";

(2) by adding after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is found on board of, or to have been unladen from, an aircraft subject to section 1109 (b) and (c) of this Act (49 U.S.C. App. 1509(b), (c)), the owner or person in charge of the aircraft shall be subject to the penalties provided for in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584),"; and

(3) by deleting the third sentence and inserting in lieu thereof: "In case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

SEC. 453. Section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509) is amended by adding at the end thereof the following new subsection:

"(f) REPORTING TRANSFER OF OWNERSHIP.—Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer of conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regulation provide. The filing of a notice under this subsection shall not relieve any person from the filing requirements under sections 501 or 503 of this Act (49 U.S.C. App. 1401, 1403).".

SEC. 454. Section 3071 of the Revised Statutes (19 U.S.C. 507) is amended to read as follows:

"(a) Every customs officer, shall, at the time of executing any of the powers conferred upon him, make known, upon being questioned, his character as an officer of the Federal Government, and shall have the authority to demand the assistance of any person making an arrest, search or seizure authorized by any law enforced or administered by customs officers, where such assistance may be necessary; and if such person shall, without reasonable excuse, neglect or refuse so to assist, upon proper demand, he shall be deemed guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person, not an officer or employee of the United States, who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance where the assisting person acts an a ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 455. Section 5316(a)(2) of title 31, United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000."

PART C—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 456. Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(a) by changing the caption to read, "Possession, manufacture or distribution, for purposes of unlawful importation.";

(b) by designating the second sentence as subsection "(c)";

(c) by designating the first sentence as subsection "(a)";

(d) in subsection "(a)" by inserting "or into waters within a distance of twelve miles of its coast" after the words "United States" wherever they appear;

(e) by inserting a new subsection "(b)" to read as follows:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States to manufacture or distribute or possess with intent to manufacture or distribute a controlled substance.".

PART D—AMENDMENTS TO THE CRIMINAL CODE

SEC. 457. (a) Chapter 2 of Title 18, United States Code, is amended by adding at the end thereof the following new sections:

"SEC. 36. OPERATION OF AIRCRAFT WITHOUT LIGHTS.—Whoever knowingly and willfully operates an aircraft in violation of any rule, regulation or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation and/or anticollision lights shall be subject to a fine of not more than $5,000 or imprisionment not exceeding two years, or both.

"SEC. 37. ILLEGAL FUEL INSTALLATIONS ABOARD AIRCRAFT.—(a) It shall be unlawful for any person to knowlingly make a fuel tank or fuel system installation aboard an aircraft, or to operate any aircraft with a fuel tank or fuel system installation aboard, unless such tank or installation is in accordance with all applicable rules, regulations or requirements of the Administrator of the Federal Aviation Administration, including inspection and approval. Any person violating this section shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both. Unless exempted by the Administrator of the Federal Aviation Administration, by regulation, authorization from the Federal Aviation Administration to have an auxiliary fuel tank or system installation or modification shall be aboard the aircraft whenever it is operated and such authorization must be shown to any Federal, state, or local law enforcement officer upon request. Failure to have such authorization aboard shall create a presumption that the installation is unlawful.

"(b) Any unlawful fuel tank or fuel system installation and the aircraft in which it is installed shall be subject to seizure and civil forfeiture. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are

imposed upon customs officers or any other person with respect to the seizure and forfeiture of property under the customs laws may also be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.".

(b) The table of sections for Chapter 2 of Title 18 of the United States Code is amended by adding at the end thereof the following:

"36. Operation of aircraft without lights."
"37. Illegal fuel installation aboard aircraft.".

SEC. 458. The Act of August 11, 1955, as amended (21 U.S.C. 967-969 (1982 ed.)), is amended—(a) by deleting the words "of controlled substances" from the heading in section 1;

(b) by redesignating sections 1 (21 U.S.C. (1982 ed.) 967), 2 (21 (U.S.C. (1982 ed. 968), and 3 (21 U.S.C. 1982 ed.) 969), as subsections (a), (b), and (c) respectively;

(c) in redesignated subsection (a) by striking the phrase "Section 545 of title 18 (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in Section 102 of Controlled Substances Act (21 U.S.C. 802)): and substituting in lieu thereof "any law relating to the importation or exportation of any merchandise";

(d) by adding the words, "and pay the costs of the proceeding" after the word "investigation" in the second sentence of redesignated subsection (c);

(e) by resignating the Act of August 11, 1955 as a new section 631 of the Tariff Act of 1930 1.19 U.S.C. 1631).

SEC. 459. Section 13031(f)(2)(A) of the Consolidated, Omnibus Budget Reconciliation Act of 1985, PL 99-272, is amended to read as follows:

"The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services which were reimbursable prior to April 7, 1986 and for which the recepient of such services is not now required to reimburse the Secretary of the Treasury.

Subtitle E—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 461. This subtitle may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 462(a). The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350: 94 Stat. 1159), is amended by striking everything immediately after the enacting clause and inserting in lieu thereof the following:

"(b) Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal wellbeing of the United States.

"SEC. 2(a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) a vessel of the United States means:

"(1) a vessel documented under chapter 121 of title 46, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with Article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c) For purposes of this section, 'vessel subject to the jurisdiction of the United States' includes:

"(1) a vessel without nationality. A vessel without nationality includes:

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the claimed flag State. Such claim may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of the claim of registry by the claimed flag State may be proved by certification of the Secretary of State or his designee;

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel. For purposes of this section, a claim of nationality or registry only includes:

"(i) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with Article 5 of the 1958 Convention on the High Seas;

"(ii) flying its flag state's ensign or flag; or

"(iii) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(2) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of Article 6 of the Convention on the High Seas;

"(3) a vessel registered in a foreign country where the flag state has consented or waived objection to the enforcement of United States law by the United States. Such consent or waiver by the flag state may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or his designee;

"(4) a vessel located within the customs waters of the United States;

"(5) a vessel located in the territorial waters of another State, where the State consents to the enforcement of United States law by the United States. Such consent may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or his designee.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of his duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States District court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) apply to terms used in this Act."

SEC. 463. Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

SEC. 464. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (2I U.S.C. 801 et seq.).

TITLE V— ANTI-DRUG ENFORCEMENT ACT OF 1986

Subtitle A—Drug Penalties Enhancement Act of 1986

SEC. 501. This subtitle may be cited as the "Drug Penalties Enhancement Act of 1986."

SEC. 502. Sections 401(b)(1)(A) and (B) of the Controlled Substances Act (21 U.S.C. 841 (b)(1)(A) and (B) are amended to read as follows:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);";

"(iii) 25 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substances containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 500 kilograms or more of a mixture or substance containing a detectable amount of marihuana; such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death results from the use of such substance shall be not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least four years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least eight years in addition to such term of imprisonment. Notwithstanding the prior sentence and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(B) In the case of a controlled substance in schedule I or II, except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence."

SEC. 503. Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(a)(1) In subsection (b), paragraph (1)(C) is amended by striking out the phrase "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out the phrase "a fine of not more than $100,000" and inserting in lieu thereof the phrase "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(2) In subsection (b), paragraph (1)(C) is further amended by inserting "except in the case of 100 marihuana plants or more regardless of weight," after "marihuana," the first place it appears.

(b) In subsection (b), paragraph (2) is amended by striking out the phrase "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual" and by striking out the phrase "a fine of not more than $50,000" and inserting in lieu thereof a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(c) In subsection (b), paragraph (3) is amended by striking out the phrase "a fine of not more than $10,000 and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out the phrase "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(d) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed

"(A) the amount authorized in accordance with this section,

"(B) the amount authorized in accordance with the provisions of title 18, United States Code,

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual,

or both."

(e) Subsection (d) is amended by striking out the phrase "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

SEC. 504. (a) Section 3553 of Title 18 of the United States Code is amended by adding the following at the end thereof:

"(e) Limited authority to impose a sentence below a statutory minimum.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994.".

(b) The amendment made by this section shall take effect on the date of the taking of section 3553 of title 18, United States Code.

SEC. 505. Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 506. (a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence."

(b) The amendment made by this section shall take effect on the date of the taking effect of Rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 507. (a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 508. (a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"SEC. 225. Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 509. (a) Subsection (a) of section 3583 of title 18 of the United States Code is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(b) Subsection (b) of section 3583 of title 18 of the United States Code is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(c) Subsection (e) of Section 3583 cf title 18 of the United States Code is amended—

(1) so that the catchline reads as follows: "Modification of Conditions or Revocation.";

(2) in paragraph (2) by striking out "or" after the semicolon;

(3) in paragraph (3) by striking out "title." and inserting "title; or" in lieu thereof; and

(4) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for the time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of Rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(d) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 510. Subsection (3) of section 994(a) of title 28 of the United States Code is amended by inserting "and revocation of supervised release" after "supervised release".

SEC. 510A. Section 511 of title ii of the Comprehensive Drug Abuse Prevention Act of 1970 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in Schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 511. This subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 512. Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"§ 844. Penalty for simple possession

"(a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this subsection, or a prior conviction for any drug or narcotic offense chargeable under this title or title III or under the law of any state, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than two years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this subsection, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any state or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than ninety days but not more than three years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be taxed the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in 28 U.S.C. §§ 1918, 1920, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provisions of title 18 that the defendant lacks the ability to pay.

"(b) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title."

Subtitle C—Continuing Drug Enterprise Penalty Act of 1986

SEC. 521. This subtitle may be cited as the "Continuing Drug Enterprise Penalty Act of 1986".

SEC. 522. Subsection 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended as follows:

(a) by striking out the phrase "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(b) by striking out the phrase "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual".

SEC. 523. Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(a) by redesignating subsections (b) and (c) as (d) and (e), respectively;

(b) by inserting the following new subsections after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in section 401(b)(1)(A) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(A) of this Act."

"(c) Any person who engages in a continuing criminal enterprise shall be imprisoned for life or sentenced to death, and fined in accordance with subsection (a), if, while so engaged, such person—

"(1) intentionally kills another person; or

"(2) intentionally participates in an act, contemplating that the life of a person will be taken or intending that lethal force will be used in connection with a person, other than one of the participants in the offense, and the victim dies as a direct result of the act."; and

(c) by adding at the end the following:

"(f) A person who has been found guilty of an offense under this section shall be sentenced to death if, after consideration of the factors set forth in subsection (g) in the course of a hearing held pursuant to subsection (h), it is determined that imposition of a sentence of death is justified.

"(g) Factors to be considered in determining whether a sentence of death is justified—

"(1) MITIGATING FACTORS.—In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(A) the defendant was less than eighteen years of age at the time of the offense;

"(B) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(C) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution;

"(D) the defendant is punishable as a principal (as defined in section 2(a) of title 18, United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge. The jury, or if there is no jury, the court, may consider whether any other mitigating factor exists.

"(2) AGGRAVATING FACTORS.—In determining whether a sentence of death is justified, the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(A) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized;

"(B) in the commission of the offense or in escaping apprehension for the offense, the defendant knowingly caused the death of, or created a grave risk of death to, another person in addition to the victim;

"(C) with respect to subsection (b)(1), the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction or attempted infliction of serious bodily injury or death upon another person;

"(D) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(E) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value or the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(F) the defendant committed the offense against a judge, a law enforcement officer, or an employee of a penal or correctional institution, while that victim was performing offical duties or because of that victim's status as a public servant of the United States, a State, or political subdivision thereof. For purposes of this paragraph the term 'law enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense; and

"(G) the violation of this chapter in relation to which the conduct described in subsection (c) occurred was a violation of section 405, 405A, 405B.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(h) Special hearing to determine whether a sentence of death is justified—

"(1) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in this section, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this section, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(A) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this section; and

"(B) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(2) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under paragraph (1) and the defendant is found guilty of an offense described in this section, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(A) before the jury that determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury that determined the defendant's guilt was discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government.

A jury impaneled pursuant to subparagraph (B) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(3) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under subsection (g). Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(4) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, whether or not required to be considered under subsection (g). The jury must find the existence of a mitigating or aggravating factor by a unanimous vote.

"(5) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of an offense described in this section, an aggravating factor required to be considered under subsection (g) is found to exist, the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors found to exist sufficiently outweigh all the mitigating factors found to exist to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(6) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under paragraph (5), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under paragraph (5), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"(i) Imposition of a sentence of death. Upon a finding under paragraph (5) of subsection (h) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under paragraph (5) of subsection (h) that a sentence of death is not justified, or under paragraph (4) of subsection (h) that no aggravating factor required to be found exists, the court shall impose a sentence of life imprisonment.

"(j) Review of a sentence of death—

"(1) APPEAL.—In a case under this section in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(2) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(A) the evidence submitted during the trial;

"(B) the information submitted during the sentence hearing;

"(C) the procedures employed in the sentencing hearing; and

"(D) the special findings returned under paragraph (4) of subsection (h).

"(3) DECISION AND DISPOSITION.—

"(A) If the court of appeals determines that—

"(i) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(ii) the information supports the special finding of the existence of an aggravating factor considered under subsection (g) it shall affirm the sentence.

"(B) In any other case, the court of appeals shall remand the case for consideration under subsection (h) or for imposition of a sentence of life imprisonment, as appropriate.

"(C) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(k) Implementation of a sentence of death. A person who has been sentenced to death pursuant to the provisions of this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"(l) Use of State Facilities. A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.".

Subtitle D—United States Marshals Service Act of 1986

SEC. 524. This Subtitle may be cited as the "United States Marshals Service Act of 1986".

SEC. 525. Sections 561, 562, 564, 565 and 566 of Title 28, United States Code, are amended to read as follows:

"§ 561. United States Marshals Service

"(a) There is hereby established a United States Marshals Service as a bureau within the Department of Justice under the authority and direction of the Attorney General. The United States Marshals Service (hereinafter referred to in this title as the "Service") shall be headed by a Director appointed by the Attorney General.

"(b) The Director of the United States Marshals Service (hereinafter referred to in this title as the "Director") shall exercise the powers and duties set out in this title and as may be vested in the Director pursuant to statute or by delegation of the Attorney General.

"(c) The President shall appoint, by and with the advice and consent of the Senate, a United States Marshal for each judicial district of the United States, except that any Marshal appointed for the Northern Mariana Islands may at the same time serve as Marshal in another district. Each United States Marshal shall be an official of the Service and shall serve under the direction and subject to the coordination of the Director.

"(d) Each Marshal shall be appointed for a term of four years. On expiration of that term, unless a Marshal shall resign or be removed by the President, a Marshal shall continue to perform the duties of that office until a successor is appointed and qualified or until a person is designated to act as Marshal in accordance with Section 562.

"(e) The Director shall designate places within a judicial district for the official station and offices of each Marshal. Each Marshal shall reside within the district for which such Marshal was appointed, except that—

"(1) the Marshal for the District of Columbia and for the Southern District of New York may reside within 20 miles thereof; and

"(2) any Marshal appointed for the Northern Mariana Islands who at the same time is serving in the same city in another district may reside in such other district.

"(f) The Director is authorized to select, appoint, employ, and fix compensation for Deputy Marshals and such officials and employees as shall be necessary to carry out the powers and duties of the Service and may designate such Deputy Marshals as law enforcement officers, in accordance with the policies and procedures the Director shall establish. Deputy Marshals, officials and employees are subject to disciplinary action, including removal, by the Director.

"(g) The Director shall supervise and direct the United States Marshals Service in the performance of its duties, including criminal investigations, and in accounting for public moneys. Each official of the Service shall report any official proceedings, receipts, and disbursements and the condition of the office under the purview of such official as the Director requires.

"(h) The Director may delegate to any other official of the Service the authority to carry out the functions of the Director.

"(i) There are authorized to be appropriated such sums as may be necessary to exercise the powers and duties of the United States Marshals Service.

"§ 562. Vacancies

"(a) In the case of a vacancy in the office of United States Marshal, the Attorney General may designate a person to perform the functions and act as Marshal. The Attorney General shall not designate to act as Marshal a person whose appointment by the President to that office the Senate has refused to give its advice and consent.

"(b) Such person designated by the Attorney General may serve until the earliest of the following events:

"(1) the entry into office of a United States Marshal appointed by the President, pursuant to Article II, Section 2 of the constitution;

"(2) the expiration of the thirtieth day following the end of the next session of the Senate; or

"(3) if such designee of the Attorney General is appointed by the President pursuant to section 561(c), said designee may serve until the expiration of the thirtieth day following the refusal of the Senate to give its advice and consent to the appointment by the President.

"§ 564. Powers as Sheriff

"An official of the Service, in executing the laws of the United States within a State, may exercise these same powers which a sheriff of the State may exercise in executing the laws thereof.

"§ 565. Expenses of United States Marshals Service

"The Service is authorized to—

"(a) establish procedures and to pay for:

"(1) the actual and necessary expenses associated with the offices established under section 561;

"(2) the expense of transporting prisoners, including the transporting between the United States and foreign countries persons charged with crime, and including the cost of necessary guards and the travel and subsistence expenses of prisoners and guards;

"(3) the lease, acquisition, maintenance, and operation of aircraft and the lease and acquisition of law enforcement and passenger motor vehicles without regard to the general purchase price limitation for any current fiscal year and including the operation and maintenance for official use of vehicles seized and forfeited to the U.S. government;

"(4) supervision of United States prisoners in non-federal institutions;

"(5) the purchase of firearms and ammunition and attendance at firearms matches and law enforcement competitions;

"(6) payment and rewards and the purchase of evidence and payments for information;

"(7) other necessary expenditures as required by law; and

"(b) enter into contracts and cooperative agreements, as authorized by the Attorney General, including personal services contracts for security guards and for the service of government process in lieu of service by U.S. Marshals or Deputy Marshals.

"§ 566. Powers and duties

"(a) The United States Marshals Service shall provide for the safety and security of the Federal courts of the United States, including, but not limited to, the protection of the courtroom, prisoners, juries, judicial chambers, and protection of the judiciary. In accordance with the policies established by the Judicial Conference of the United States, United States Marshals, may, in the discretion of the respective courts, be required to attend any session of court. The United States Marshals Service shall provide other assistance in accordance with the policies established by the Judicial Conference of the United States after consultation with the Attorney General.

"(b) Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process and orders issued under the judicial authority of the United States and shall command all necessary assistance to execute its duties.

"(c) The Director, United States Marshals, and other law enforcement officers of the United States Marshals Service may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

"(d) The United States Marshals Service is authorized to conduct and investigate fu-

gitive matters, domestic and foreign, as directed by the Attorney General."

SEC. 526. Title 28 United States Code, is amended—

(a) by striking out sections 567, 568, 569, and 570;

(b) by renumbering sections 571, 572, 573, 574, 575, and 576 to read 567, 568, 569, 570, 571, and 572, respectively; and

(c) by adding the following new section:

"§ 573. Authorization for Certain Witness Security Expenses

"The expenses incurred for the use of facilities in the protection of witnesses, and planning, construction, renovation, maintenance, remodeling, and repair of buildings and the purchase of equipment incident thereto for protected witness testifies shall be paid from appropriations available to the Marshals Service."

SEC. 527. Section 1921 of Title 28, United States Code, is amended to read as follows:

"§ 1921. United States Marshals, fees

"(a)(1) The United States Marshals or Deputies shall routinely collect, and a court may tax as costs, fees for the following:

"(A) serving a writ of possession, partition, execution, attachment in rem, or libel in admiralty, warrant, attachment, summons, complaints, or any other writ, order or process in any case or proceedings;

"(B) serving a subpoena or summons for a witness or appraiser;

"(C) forwarding any writ, order, or process to another judicial district for service;

"(D) the preparation of any notice of sale, proclamation in admiralty, or other public notice or bill of sale;

"(E) the keeping of attached property (including boats, vessels, or other property attached or libeled), actual expenses incurred, such as storage, moving, boat hire, or other special transportation, watchmen's or keepers' fees, insurance, and an hourly rate including overtime for each Deputy Marshal required for special services, such as guarding, inventorying, and moving;

"(F) copies of writs or other papers furnished at the request of any party;

"(G) necessary travel in serving or endeavoring to serve any process, writ, or other, except in the District of Columbia, with mileage to be computed from the place where service is returnable to the place of service or endeavor; and

"(H) overtime expenses incurred by Deputy Marshals in the course of serving or executing civil process.

"(2) The Marshals shall collect, in advance, a deposit to cover the initial expenses for special services required under subparagraph (E), and periodically thereafter such amounts as may be necessary to pay such expenses until the litigation is concluded. This paragraph applies to all private litigants, including seaman proceeding pursuant to section 1916 of this title.

"(3) For purposes of subparagraph (G), if two or more services or endeavors, or if any endeavor and a service, are made in behalf of the same party in the same case on the same trip, mileage shall be computed to the place of service or endeavor which is most remote from the place where service is returnable, adding thereto any additional mileage traveled in serving or endeavoring to serve in behalf of that party. If two or more writs of any kind, required to be served in behalf of the same party on the same person in the same case or proceeding, may be served at the same time, mileage on only one such writ shall be collected.

"(b) The Attorney General shall from time to time prescribe by regulation the fees to be taxed and collected under subsection (a). Such fees to the extent practicable, reflect the actual and reasonable cost of the service provided.

"(c)(1) The United States Marshals Service shall collect a commission of 3 per centum of the first $1,000 collected and 1½ per centum on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, set off, or otherwise, and receiving and paying over money, except that the amount of the commission shall be within the range set by the Attorney General. If the property is not disposed of by Marshal's sale, the commission shall be in such amount, within the range set by the Attorney General, as may be allowed by the court. In any case in which the vessel or other property is sold by a public auctioneer, or by some party other than the Marshal or his Deputy, the commission authorized under this subsection shall be reduced by the amount paid to such auctioneer or other party. This subsection applies to judicially ordered sales and execution sales, without regard to whether the judicial order of sale constitutes a seizure or levy within the meaning of State law.

"(2) The Attorney General shall prescribe from time to time regulations which establish a minimum and maximum amount for the commission collected under paragraph (1).

"(d) The United States Marshals may require a deposit to cover any of the fees and expenses prescribed under this section.

"(e) Without regard to the provisions of 31 U.S.C. § 3302, the United States Marshals Service is authorized to credit amounts from fees and expenses collected (including amounts for overtime expenses) for the service of civil process, including complaints, summonses, subpoenas, and similar process and seizures, levies, and sales performed by the Marshals to its current appropriation account (Salaries and Expenses, United States Marshals) for purposes, only, of carrying out those activities.".

SEC. 528. Chapter 301 of Title 18, United States Code, is amended to add the following new section:

"§ 4013. Support of United States Prisoners in non-Federal institutions

"(a) The Attorney General or his designee is authorized to make payments from appropriations available to the United States Marshals Service for:

"(1) the necessary clothing;

"(2) medical aid and necessary guard hire; and

"(3) payment of rewards for assistance in the capture of information leading to the capture of a federal fugitive.

"(b) The Attorney General or his designee is authorized to enter into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation, acquisition of equipment, supplies, or materials required to establishing acceptable conditions of confinement and detention services in any state or local jurisdiction which agrees to provide guaranteed bed space for federal detainees within that correctional system, in accordance with regulations issued by the Attorney General and which are comparable to the regulations issued under 18 U.S.C. § 4006, except that amounts made available for this purpose shall not exceed the average per-inmate-cost of constructing similar confinement facilities for the federal prison population; and, provided further that the availability of such federally assisted facility shall be assured for housing federal prisoners and the per diem rate charged for housing such federal prisoners shall not exceed allowable costs or other conditions specified in the contract or cooperative agreement."

Subtitle E—Controlled Substances Import and Export Penalties Enhancement Act of 1986

SEC. 531. This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 532. Sections 1010(b)(1) and (2) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1) and (2)) are amended to read as follows:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 25 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 500 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an in-

dividual or $10,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least four years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least eight years in addition to such term of imprisonment. Notwithstanding the prior sentence and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be sentenced to a term of imprisonment of not more than 20 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 533. Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out the phrase "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,"

Subtitle F—Juvenile Drug Trafficking Act of 1986

SEC. 541. This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986."

SEC. 542. Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows: "Employment of minors in controlled substance trafficking.

"SEC. 405B. (a) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age is punishable by a term of imprisonment, or a fine, or both, up to twice that authorized by section 401(b) of this Act, and at least twice any special parole term authorized by section 401(b) of this Act, for a first offense.

"(b) Any person at least twenty-one years of age who violates section 401(a)(1) of this Act while acting in concert with a person under twenty-one years of age, after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this Act for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this Act for a first offense under that section.

"(c) In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this Act shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.".

SEC. 543. Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by deleting the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

SEC. 544. Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

SEC. 545. The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following: "405B. Employment of minors in controlled substance trafficking.".

SEC. 546. Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended, in subsection (a), by adding after the word "distributing" the words "or manufacturing" and by striking the words "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

Subtitle G—Chemical Diversion and Trafficking Act of 1986

SEC. 551. This subtitle may be cited as the "Chemical Diversion and Trafficking Act of 1986".

SEC. 552. Title II of the Comprehensive Drug Abuse Prevention and Control Act is amended by adding a new Section 311 (21 U.S.C. 831):

"SEC. 311. (a)(1) Except as provided under paragraph (3) of this subsection any person who manufactures, distributes, imports or exports a substance listed under subsection (d) shall maintain records and make reports as the Attorney General may by regulation require concerning the distribution, sale, importation or exportation of said listed substances. Such records shall be in a form such that they are readily retrievable from ordinary business records and shall be kept and made available, for at least 5 years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. In establishing regulations concerning required records and reports, the Attorney General may establish a threshold quantity for recordkeeping and reporting requirements for each listed chemical. The Attorney General may include in the information required to be maintained or reported the following:

"(A) The quantity, form, and manner in which, and date on which, the substance was distributed, imported or exported.

"(B)(i) In the case of the distribution or exportation to an individual, the name, address, and age of the individual and the type of identification presented to confirm the identity of the individual.

"(ii) In the case of the distribution or exportation to an entity other than an individual, the name and address of the entity and the name, address, and title of the individual ordering or receiving the substance and the type of identification presented to confirm the identity of the individual and of the entity.

"(2) Except as provided under paragraph (3) of this subsection, no person may distribute or export a substance listed under subsection (d) unless the recipient or purchaser presents to the distributor a certification of lawful use and identification, to establish the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents), of such a type as the Attorney General establishes by regulation.

"(3) It shall be unlawful to purchase a reportable amount of any chemical listed under subsection (d) in units small enough so that the making of records or filing of reports under this section is not required for the purpose of evading the recordkeeping or reporting requirements created by this section and the regulations promulgated thereunder.

"(4) Under such conditions and to such extent as the Attorney General establishes, paragraphs (1), (2) and (3) shall not apply to—

"(A) the distribution of listed substances between agents or employees within a single facility (as defined by the Attorney General), if such agents or employees are acting in the lawful and usual course of their business or employment;

"(B) the delivery of listed substances to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution or importation of substances to a third person, this subparagraph shall not relieve the distributor or importer from compliance with paragraph (1) or (2); or

"(C) any distribution or importation with respect to which the Attorney General determines that the reports or records required by paragraph (1) or the presentation

of identification or certification required by paragraph (2) is not necessary for the enforcement of this subchapter.

"(b) It shall be unlawful:

"(1) to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any substance listed under subsection (d) unless the substance is imported for commercial, scientific or other legitimate uses, and—

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

"(2) It shall be unlawful to export from the United States to any other country a substance listed under subsection (d) unless there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, commercial, scientific, or other legitimate purposes and—

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

"(c) The Attorney General may by rule:

"(1) Add substances to paragraph (d) if—

"(A) he finds that such substance is a precursor or essential chemical which can be used to manufacture a controlled substance,

"(B) such substance is being used in the manufacture of controlled substances in violation of this title, and

"(C) he finds that the inclusion of such substance in subsection (d) is necessary to curtail the manufacture of controlled substances in violation of this title.

"(2) Delete a substance listed in subsection (d) if he finds that its listing no longer meets the criteria set forth in paragraph (1).

"(d) The provisions of this title shall apply to the following:

"(1) Precursor chemicals

(A) N-Acetylanthranilic Acid

(B) Anthranilic Acid

(C) Ergotamine tartrate

(D) Ergonovine maleate

(E) Phenylacetic acid

(F) Ephedrine

(G) Pseudoephedrine

(H) Benzyl cyanide

(I) Benzyl chloride

(J) Piperidine

"(2) Essential chemicals

(A) Potassium permanganate

(B) Acetic anhydride

(C) Acetone

(D) Ethyl ether

"(e) Any information which is reported to or otherwise obtained by the Attorney General under this section and which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (4) thereof shall be considered confidential and shall not be disclosed, except that such information may be disclosed to officers or employees of the United States concerned with carrying out this title or title III or when relevant in any proceeding for the enforcement of this title or title III or when necessary to meet U.S. treaty obligations.

"(f) For the purposes of this title:

"(1) The term 'import' has the same meaning given such term in section 1001 of title III (21 U.S.C. 951 (a)(1)).

"(2) The term 'customs territory of the United States' has the same meaning given such term in section 1001 of title III (21 U.S.C. 951(a)(2)).

"(g) No person may distribute, sell, import, export, or otherwise transfer to another person any commercial tableting machine or encapsulating machine unless the purchaser, recipient, transferee, or his agent presents to the distributor or supplier a certification of lawful use and identification to confirm the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents) or such a type as the Attorney General by regulation may establish.

"(h) Any person who distributes, sells, imports, exports or otherwise transfers to another person any commercial tableting machine or encapsulating machine shall report the transfer to the Attorney General in such a form as the Attorney General may by regulation require. The Attorney General may require such information as the date of sale or transfer, name and address of transferee, purpose for which equipment is intended, serial numbers and make/model of equipment.".

SEC. 553. (a) Section 401(d)(1) (21 U.S.C. 841(d)(1)) of the Controlled Substances Act is amended by—

(1) deleting the word "piperidine" and replacing it with the words "precursor chemical or essential chemical listed under section 311(d)"; and

(2) deleting the word "phencyclidine" and replacing it with the words "any controlled substance".

(b) Section 401(d) (2) (21 U.S.C. 841(d)(2)) of the Controlled Substances Act is amended by—

(1) adding the words "or distributes" after the word "possesses";

(2) deleting the word "piperidine" the first place it appears and replacing it with the words "precursor chemical or essential chemical listed under section 311(d)";

(3) deleting the word "piperidine" the second place it appears and replacing it with the words "precursor chemical or essential chemical"; and

(4) deleting the word "phencyclidine" and replacing it with "any controlled substance".

(c) Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by—

(1) deleting "or" in paragraph (1);

(2) adding new paragraphs (3) and (4) after paragraph (2) as follows:

"(3) imports or exports a precursor or essential chemical listed under section 311(d) except as provided for by this Act, or

"(4) possesses any precursor chemical or essential chemical listed under section 311(d), with knowledge that the recordkeeping or reporting requirements of section 311(a) of this title or regulations issued thereunder have not been adhered to".

SEC. 554. Section 402(a)(9) (21 U.S.C. 842(a)(9)) of the Controlled Substances Act is amended by—

(1) deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under section 311(d)";

(2) adding after the citation "section 310(a)(2)" the phrase "or section 311(a)(2)"; and

(3) adding "or certification" after "identification".

SEC. 555. Section 403(a) (21 U.S.C. 843(a}) of the Controlled Substances Act is amended by—

(1) in paragraph (4)(B) by deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under section 311(d)";

(2) in paragraph (4)(B) by adding after the citation "Section 310(a)" the phrase "or section 311(a)";

(3) in paragraph (4)(B) by adding "or certificate" after "identification" where it appears;

(4) in paragraph (4)(B) by striking out "or" after the semicolon; and

(5) by adding the following paragraphs after paragraph (5) as follows:

"(6) possesses any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules with intent to manufacture a controlled substance except as authorized by this subchapter; or

"(7) manufactures, distributes, sells, or imports any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules knowing, or having reasonable cause to believe, that they will be used to manufacture a controlled substance except as authorized by this subchapter.".

SEC. 556. Section 511(a) of the Controlled Substances Act (21 U.S.C. 881) is amended by adding a new subsection (9) as follows:

"(9) all chemicals listed under Section 311(d) which have been imported, exported, manufactured, possessed, distributed or intended to be distributed, in violation of this title, as well as all conveyances and equipment, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any way facilitate the transportation, sale, receipt, possession, or concealment of precursor chemicals and essential chemicals in violation of this title, except as provided for under paragraph (4) (A) and (B) above.".

SEC. 557. The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances. This program shall include appropriate controls on the purchase, sale, importation and exportation of these chemicals and development of cooperative efforts with foreign drug control authorities.

SEC. 558. Section 102 (21 U.S.C. 802) of the Controlled Substances Act is amended—

(1) in paragraph (11), by adding after the words "a controlled substance" the words "or a precursor chemical or essential chemical listed under Section 311(d)";

(2) by adding a new paragraph (31) as follows:

"(31) The term "precursor chemical" means a substance that may be used in the chemical process of manufacturing controlled substances and which is incorporated into the final product and is therefore critical to its manufacture."; and

(3) by adding a new paragraph (32) as follows:

"(32) The term "essential chemical" means a substance that may be used in the chemical process of manufacturing controlled substances as a solvent, reagent or catalyst.".

SEC. 559. Section 310 (21 U.S.C. 830) of the Controlled Substances Act is amended by adding the words ", ephedrine, or phenylacetic acid" after each reference to piperidine in subsection (a).

SEC. 560. Section 506(A) (21 U.S.C. 876(a)) of the Controlled Substances Act is amended by adding after the words "with respect

to controlled substances," the words "precursor chemicals or essential chemicals,".

Subtitle H—Money Laundering Crimes Act of 1986

SEC. 561. This subtitle may be cited as the "Money Laundering Crimes Act of 1986".

SEC. 562. (a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or a transaction described in subsection (a)(2) is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the phrase 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder; and

"(7) the term 'specified unlawful activity' means

"(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 545 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title; or

"(E) Except where jurisdiction attaches pursuant to subsection (f), an offense under section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1702 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

"§ 956. Laundering of monetary instruments".

SEC. 563. (a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include the name or names of and other identifying information concerning the individuals and accounts involved in and the nature and a description of the suspected illegal activity sufficient to enable the Government authority to obtain access to or copies of such information pursuant to law. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any constitution, law, or regulation of the United States or any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 564. (a) Section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority

"(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

"(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (c);

"(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

"(3) for the purpose of any investigation which, in the opinion of the Secretary, is necessary and proper to enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of or examine records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation;

"(b) A summons may be issued under paragraph (3) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than five hundred miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

"(d) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

"(e) In the case of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation gave rise to the summons is being or has been carried on or of which the person summoned is an inhabitant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary of his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.".

(b)(1) Paragraph (1) of subsection (a) of section 5321 of title 31, United States Code, is amended to read as follows:

"(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.".

(2) Subsection (a) of section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

"(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

"(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

"(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $1,000.

"(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction.

"(7) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission) willfully violating section 5313 of this subchapter. A civil penalty under this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) involved in the violation of section 5313 of this subchapter. A civil penalty under this paragraph is reduced by any amount forfeited under subsection 5317(d) of this subchapter.".

(c) Subsection (b) of section 5321 of title 31, United States Code, is amended to read as follows:

"(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction on which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later.".

(d) Subsection (c) of section 5321 of title 31 is amended to read as follows:

"(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317(c) or (d) of this subchapter or may mitigate any civil penalty under subsection (a) of this section.".

(e) Subsection (b) of section 5322 of title 31, United States Code, is amended by striking out "pattern of illegal activity involving transactions of more than $100,000" and inserting in lieu thereof "pattern of any illegal activity involving more than $100,000", and by striking out "5" and inserting in lieu thereof "10".

(f) Section 5312(a)(3)(B) of title 31, United States Code, is amended by striking the period at the end thereof and inserting in lieu thereof: "whether or not in bearer form.".

(g) Section 5312(a)(5) of title 32, United States Code, is amended to read as follows:

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.".

(h) Subsection (a) of section 5313 of title 31, United States Code, is amended by adding at the end thereof the following: "No person shall, for the purpose of evading the reporting requirements of this subsection—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection;

"(2) cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact; or

"(3) structure or attempt to structure or assist in structuring a transaction.".

(i) Subsection 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(j) A new subsection 5317(d) of title 31, United States Code, is added as follows:

"(d)(1) United States coin and currency (or other monetary instrument as the Secretary may prescribe) or any interest in other property, including any deposit in a financial institution traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) of this subchapter, may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer, or employee thereof. No property or interest in property shall be forfeited under this subsection to the extent of an interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge of that owner.

"(2) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the custom laws, the disposition of such property or the proceeds from the sale of such property, the remission or mitigation of such forfeitures, and the compromise of claims (The Tariff Act of 1930, as amended, § 602 et seq.), insofar as they are applicable and not inconsistent with the provisions of

this subsection, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer shall be performed by such persons as may be authorized or designated for that purpose by the Secretary of the Treasury.".

SEC. 565. Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. § 1829(b)) is amended to read as follows:

"(b) Regulations and penalties

"(1) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(2) For each willful violation of any regulation issued by the Secretary pursuant to paragraph (1) of this subsection, the Secretary may impose on any bank and partner, director, officer or employee of a bank who participates in the violation, a civil penalty not to exceed $10,000. Such penalties will be assessed, mitigated and collected in accordance with the provisions of 31 U.S.C. § 5321 (b) and (c).

"(3) Whoever willfully violates any regulation issued by the Secretary pursuant to paragraph (1) of this subsection shall be fined not more than $250,000 and imprisoned for not more than 5 years, or both.".

SEC. 566. (a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments)," after "section 1955 (prohibition of business enterprises of gambling),".

SEC. 567. (a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.
"§ 981. Civil Forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(2) No property shall be forfeited under this section to the extent of the interest of an owner by reason of any act of omission established by that owner to have been committed without the knowledge of that owner.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or by the Secretary of the Treasury, upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

"The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

"(1) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign

country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(k) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)-(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 981".

Subtitle I—Controlled Substances Technical Amendments Act of 1986

SEC. 571. This subtitle may be cited as the "Controlled Substances Technical Amendments of 1986".

SEC. 572. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 573. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 574. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 575. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 576. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 577. Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

Subtitle J—Controlled Substances Analogs Enforcement Act of 1986

SEC. 581. This subtitle may be cited as the "Controlled Substances Analogs Enforcement Act of 1986 .

SEC. 582. Part D of the Controlled Substances Act is amended by adding after section 403 the following new section 403A (21 U.S.C. 843):

"SEC. 403A. PROHIBITED ACTS D.—Any person who knowingly or intentionally manufactures with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $25,000, or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.".

SEC. 583. Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following new paragraphs:

"(31) The term 'controlled substance analog' as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedules I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedules I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonines, quinazolinones, substituted indoles, and arylcycloalkylamines.

"(32) The term 'human consumption' includes applications, injection, inhalation, or ingestion.".

SEC. 584. The analysis of part D of the Controlled Substances Act is amended by inserting after the item relating to section 403 the following:

"403A. Prohibited Acts D.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 585. Title 18 of the United States Code is amended as follows:

(a) Section 1791 is amended—

(1) in subsection (a)(1) by—

(A) redesignating subparagraphs (E) and (F) as (F) and (G), respectively; and

(B) inserting the following new subparagraph after subparagraph (D):

"(E) a controlled substance analog as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);" and

(2) in subsection (b)(3) by—

(A) striking out "or" the second place it appears and inserting in lieu thereof a comma; and

(B) inserting ", or (1)(F)" after "(1)(E)".

(b) Section 1952(b)(1) is amended by—

(1) striking out "or" the first place it appears and inserting a comma in lieu thereof;

(2) inserting ", or controlled substance analogs" after "substances"; and

(3) striking out "(6)".

(c) Section 2118 is amended—

(1) in subsection (a) by inserting ", or controlled substance analog all or part of which controlled substance analog is intended for human consumption," after "substance";

(2) in subsection (b) by—

(A) inserting "or controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance" the first place it appears; and

(B) inserting "or controlled substance analog" after "substance" the second place it appears; and

(3) in subsection (e)(1) to read as follows:

"(1) the terms 'controlled substance', 'controlled substance analog', and 'human consumption' have the meaning prescribed for those terms by section 102 of the Controlled Substances Act (21 U.S.C. 802);".

(d) Section 3142(c)(2)(I) is amended by inserting "or controlled substance analog" after "substance".

(e)(1) Section 3563(b)(8), as enacted by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by inserting "or controlled substance analog" after "substance".

(2) The amendment made by this subsection shall take effect on the date of the taking effect of such section 3563(b)(8).

(f)(1) section 3607 is amended—

(A) in subsection (a) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. 843) or" after "of" the first place it appears;

(B) in subsection (a)(1) by inserting "or controlled substance analog" after "substances"; and

(C) in subsection (c) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. § 843A) or" after "of" the first place it appears.

(2) The amendments made by this subsection shall take effect on the date of the taking effect of section 3607.

SEC. 586. The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 102(11) (21 U.S.C. 802(11)) is amended by inserting "or a controlled substance analog" after "substance" each place it appears.

(b) Section 307(f) (21 U.S.C. 827(f)) is amended by inserting "and controlled substance analogs" after "substances".

(c) Subsections (a) and (b) of section 405 (21 U.S.C. 845) are amended by—

(1) inserting "or section 403A" after "401(a)(1)";

(2) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(3) inserting "in the case of a controlled substance or section 403A in the case of a controlled substance analog" after "section 401(b)" the first place it appears.

(d) Section 405A (21 U.S.C. 845A) is amended—

(1) in subsection (a) by—

(A) inserting "or section 403A" after "401(a)(1)";

(B) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(C) striking out "841(b) of this title and inserting in lieu thereof 401(b) in the case of a controlled substance or section 403A in the case of a controlled substance analog"; and

(2) in subsection (b) by—

(A) inserting "or section 403A" after "401(a)(1)"; and

(B) inserting "or a controlled substance analog" after "substance" the first place it appears.

(e) Section 501(c) (21 U.S.C. 871(c)) is amended by inserting "or controlled substance analogs" after "substances".

(f) Section 503 (21 U.S.C. 873) is amended—

(1) in subsection (a) by—

(A) inserting "and controlled substance analogs" after "substances" each place it appears; and

(B) inserting "and controlled substance analog" after "substance" each place it appears; and

(2) in subsection (d)(1)(A) by inserting "and controlled substance analogs" after "substances".

(g) Section 504 (21 U.S.C. 874) is amended by inserting "and controlled substance analogs" after "substances".

(h) Section 506(a) (21 U.S.C. 876(a)) is amended by inserting "or controlled substance analogs" after "substances".

(i) Section 509 (21 U.S.C. 879) is amended by inserting "or controlled substance analogs" after "substances".

(j) Section 511 (21 U.S.C. 881) is amended—

(1) in subsection (a) by—

(A) inserting "or controlled substance analogs" after "substances" each place it appears; and

(B) inserting "or controlled substance analog" after "substance" each place it appears;

(2) in subsection (f) by inserting "and all controlled substance analogs" after "schedule I" each place it appears; and

(3) in subsection (g)(1) by inserting "or controlled substance analogs" after "II."

(k) Section 515 (21 U.S.C. 885) is amended—

(1) in subsection (c) by inserting "or controlled substance analogs. after "schedule I"; and

(2) in subsection (d) by inserting "or controlled substance analogs" after "substances".

(l) Section 516(b) (21 U.S.C. 886(b)) is amended by inserting "or ccntrolled substance analogs" after "substances".

SEC. 587. Section l of the Act of September 15, 1980 (21 U.S.C. 955a) is amended as follows:

(a) Subsections (a), (b), and (c) are amended by inserting "or a controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance".

(b) Subsection (e) is amended by inserting "or controlled substance analog" after "substance" each place it appears.

(c) Subsection (g) is amended—

(l) in paragraph (1) by inserting "involving a controlled substance" after "section";

(2) in paragraph (2) by inserting "involving a controlled substance" after "Act"; and

(3) by adding the following new paragraph after paragraph (2):

"(3) Any person who commits an offense defined in subsection (a), (b), or (c) of this section involving a controlled substance analog shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both.".

SEC. 588. Section 280E of the Internal Revenue Code of 1954 (26 U.S.C. 280E) is amended by inserting "or controlled substance analogs (within the meaning of section 102 of the Controlled Substances Act (21 U.S.C. 802)" after "Act)."

SEC. 589. Section 994 of title 28 of the United States Code is amended as follows:

(a) Paragraphs (1)(B) and (2)(B) of subsection (h) are amended by—

(1) striking out "section" the first place it appears and inserting in lieu thereof "sections";

(2) inserting "and 403A" after "401"; and

(3) inserting "and 843A" after "841".

(b) Paragraph (5) of subsection (i) is amended by—

(1) inserting ", 403A," after "401;

(2) inserting ", 843A," after "841; and

(3) inserting "or controlled substance analog" after "substance".

SEC. 590. Section 902q of the Federal Aviation Act of 1958 (49 U.S.C. 1472q) is amended by—

(a) inserting "or controlled substance analog" after "substance" each place it appears; and

(b) striking out the second sentence and inserting in lieu thereof:

"For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Subtitle K—Asset Forfeiture Amendments Act of 1986

SEC. 591. This subtitle may be cited as the "Asset Forfeiture Amendments Act of 1986".

SEC. 592. (a) Subsection (c)(1) of section 524 of Title 28 of the United States Code is amended—

(1) by redesignating subparagraph (A) as subparagraph (A)(i); and

(2) by inserting the following after subparagraph (A)(i) as so redesignated:

"(ii) the payment of non-case specific, program-related expenses for contracting for services related to the processing of and accounting for forfeitures;".

(b) Subsection (c)(1)(E) of section 524 of Title 28 of the United States Code is amended—

(1) by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after "for official use by"; and

(2) by striking out "and" after the semicolon.

(c) Subsection (c)(1)(F) of section 524 of Title 28 of the United States Code is amended by striking out "Act." and inserting "Act; and" in lieu thereof.

(d) Subsection (c)(1) of section 524 of Title 28 of the United States Code is amended by inserting the following new subparagraph after subparagraph (F):

"(G) for the payment of non-case specific, forfeiture program-related expenses for training and printing.".

(e) Subsection (c)(8) of section 524 of Title 28 of the United States Code is amended by striking out "For fiscal years 1984, 1985, 1986, and 1987" and inserting in lieu thereof "Through fiscal year 1991".

SEC. 593. (a) Section 1963 of Title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;
the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

(b) Section 413 of Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;
the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

Subtitle L—Exclusionary Rule Limitation Act of 1986

SEC. 594. This subtitle may be cited as the "Exclusionary Rule Limitation Act of 1986".

SEC. 595. Chapter 223 of Title 18, United States Code, is amended by adding the following two sections:

"§ 3508. Limitation of the fourth amendment exclusionary rule

"Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was undertaken in an objectively reasonable belief that it was in conformity with the fourth amendment. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief, unless the warrant was obtained through intentional and material misrepresentation.

"§ 3509. General limitation of the exclusionary rule

"Except as specifically provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded in a proceeding in a court of the United States on the ground that the evidence was obtained in violation of a statute or rule of procedure, or of a regulation issued pursuant thereto.".

SEC. 596. The table of sections of chapter 223 of Title 18, United States Code, is amended by adding at the end thereof:

"3508. Limitation of the fourth amendment exclusionary rule.
"3509. General limitation of the exclusionary rule.".

TITLE VI—PUBLIC AWARENESS AND PRIVATE SECTOR INITIATIVES ACT OF 1986

SEC. 601. This title may be cited as the "Public Awareness and Private Sector Initiatives Act of 1986".

SEC. 602. (a) Notwithstanding any other provision of law, an agency may contract for property or services designed primarily to warn of the dangers of illegal drug use without complying with any requirement for competition in federal procurement, so long as at least 50% of the actual, reasonable costs of providing the property or service are being donated to the government.

(b) The provisions of this section shall take effect upon enactment and remain in effect for a period of two years thereafter.

SEC. 603. (a) Section 1461 of title 22 is amended to insert, after the word "office" in the parenthetical, the following: "or any information warning of the hazards of illegal drug use"

(b) The provisions of this section shall take effect upon enactment.

By Mr. DOLE (for himself, Mr. THURMOND, Mr. ABDNOR, Mr. BROYHILL, Mr. COCHRAN, Mr. D'AMATO, Mr. DANFORTH, Mr. DENTON, Mr. DOMENICI, Mr. GRAMM, Mr. HATCH, Mrs. HAWKINS, Mr. HEINZ, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. MCCONNELL, Mr. MURKOWSKI, Mr. NICKLES, Mr. QUAYLE, Mr. ROTH, Mr. SIMPSON, Mr. SPECTER, Mr. STEVENS, Mr. TRIBLE, Mr. WARNER, and Mr. WILSON):

S. 2850. A bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes; read the first time.

DRUG ENFORCEMENT ACT OF 1986

Mr. DOLE. Mr. President, today I join a number of my colleagues in introducing the Drug Control Act—a package of initiatives designed to take a tough, but fiscally responsible approach to eliminating drug abuse.

Bipartisan staff discussions are already underway to see if we can quickly meld the best elements of the Senate Democratic proposal with the administration and the Republican package.

Congress does have a role to play—an essential role—in eradicating illegal drugs and educating our kids about the terrible dangers drugs pose. We need to take a tough yet responsible approach—and that is what the Drug Control Act does.

We are not Johnny-Come-Latelys to the drug issue. Senate Republicans sponsored and voted for a long list of antidrug legislation during 1985 and 1986. Legislation, I might add, the House left sitting on the shelf.

During the past few weeks my colleagues and their staff combed through the raft of proposals offered by the administration, the House, Senate Democrats plus a number of innovative and constructive ideas from our Members. The final product—the Drug Control Act of 1986—contains the very best of these items. We didn't go wild—either on price or policy. The cost of this package is less than half that of the House bill. And the new policy initiatives have the potential for doing the job on drugs, without going overboard.

I claim pride of authorship for the tax checkoff provisions in the package. When asked if they were willing to pay for Government antidrug programs, Americans answered with an unequivocal "yes." So this bill would set up an "antidrug trust fund," which taxpayers could contribute to by designating all or part of their tax refund. I can't tell you exactly how much money it would raise. But I do know, that about 80 million Americans receive tax refunds. And if only one-half of them contributed $5, the trust fund would net $400 million annually.

Literally dozens of Senators and many staff members offered time, energy, and expertise to this effort. Because of their commitment, this bill provides the tough sensible approach to drug abuse Americans are demanding.

Mr. President, in my view, this isn't a contest to see which political party wins the antidrug race. The victims of drug abuse couldn't care less. We stand ready to work with the Democratic leadership in both Houses to produce the best bill for America.

Mr. President, I ask uanimous consent that the text of the bill and a summary of the bill be printed in the RECORD.

There being no objection, the bill and summary were ordered to be printed in the RECORD, as follows:

S.2850

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drug Enforcement Act of 1986".

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TITLE I—WHITE HOUSE INITIATIVE AGAINST DRUGS

Subtitle A—Drug-Free Federal Workplace Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Federal Workplace Act of 1986".

SEC. 1102. FINDINGS.

The Congress finds and declares that—

(1) illegal drug use is having alarming and tragic effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

(2) employers are concerned with the well-being of their employees, and the need to maintain employee productivity;

(3) the Federal Government as the largest employer in the Nation can and should show the way toward achieving drug-free workplaces through a program designed to get the message to drug users that drug use will not be tolerated in the Federal workplace;

(4) drug use by persons responsible for the safe transportation of people and goods has the potential to cause the loss of many lives and millions of dollars of property damage. Any harm created by drug impairment can extend far beyond the harm caused to the individual drug user; and

(5) employers should not be required to hire an individual who due to use of or addiction to drugs or alcohol is incapable of performing the job for which he or she is applying.

SEC. 1103. AMENDMENTS TO THE REHABILITATION ACT OF 1973.

(a) Paragraph (7)(B) of section 7 of the Rehabilitation Act of 1973 is amended by—

(1) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The"; and

(2) by striking out the second sentence and inserting in lieu thereof the following: "The term 'handicapped individual' does not include any individual who uses, or is addicted to, illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of this Act if he also uses or is also addicted to drugs. For purposes of sections 503 and 504 of this Act as such sections relate to employment, the term 'handicapped individual' does not include any individual who is an alcoholic whose current use of alcohol interferes with such an individual's performance of the duties on the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) Section 7 of such Act is amended by adding at the end thereof the following new paragraph:

"(16) The term 'illegal drugs' means controlled substances, as defined by schedules I and II, section 802(6) of title 21, United States Code, the possession of or distribu-

tion of which is unlawful under chapter 13 of title 21, United States Code.".

SEC. 1104. PROHIBITED PERSONNEL PRACTICES.

Section 2302(b)(10) of title 5, United States Code, is amended to read as follows:

"(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that—

"(A) nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; and

"(B) nothing in this paragraph shall be construed to permit or require the continued employment or the employment of an employee or applicant who uses a controlled substance (as defined in section 102 of the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 802)) included in schedule I or II of such Act (84 Stat. 1247; 21 U.S.C. 812) the possession or distribution of which is unlawful under title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1242; 21 U.S.C. 801); or".

SEC. 1105. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes set forth in subsection (b).

(b) The program established under this section shall be designed so as to provide information to Federal employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law, rule, or regulation, and any administrative actions (permissive or mandatory), relating to the use of alcohol or drugs by a Federal employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers.

SEC. 1106. TECHNICAL AND CONFORMING PROVISIONS.

The provisions of this subtitle shall supersede any inconsistent Federal law, rule, or regulation.

Subtitle B—Drug-Free Schools Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools Act of 1986 (the Zero-Tolerance Act)".

SEC. 1202. FINDINGS.

The Congress finds that:

(1) Drug use and alcohol abuse is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well.

(2) The use of drugs and the abuse of alcohol by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(3) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality.

(4) Among our cultural institutions, schools, assisted by parents and the community, have a special responsibility to assist in combating the scourge of drug use and alcohol abuse by adopting and applying firm but fair policies.

(5) Prompt action by our Nation's schools can bring us significantly closer to the goal of a drug-free generation.

(6) Educational institutions should establish clear policies to ensure that illegal drug users and alcohol abusers will be held accountable for their actions.

SEC. 1203. PURPOSE.

The purpose of this subtitle is to assist States in their efforts to establish a drug-free learning environment and to prevent drug use and alcohol abuse among students.

SEC. 1204. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this subtitle, there are authorized to be appropriated $100,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

SEC. 1205. RESERVATIONS AND ALLOTMENTS.

(a) The Secretary shall reserve 20 per cent of the amounts appropriated under section 1204 for any fiscal year for national programs under section 1209.

(b)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsection (a) for such fiscal year, the Secretary may reserve up to 1 per cent for allotments to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The Secretary shall allot the amounts reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, on the basis of need for amounts to carry out the activities described in section 1207.

(c)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsections (a) and (b) for such fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the State bears to the total number of such children in all States. For purposes of this subsection, the number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to the Secretary.

(2)(A) The Secretary may reallot all or a portion of the State's allotment under paragraph (1) for any fiscal year if the State does not submit a State application under section 1206, or otherwise indicates to the Secretary that it does not need or cannot use the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallotments.

(B) The Secretary may reallot amounts available under subparagraph (A) for a fiscal year on a competitive basis to one or more States that demonstrate a need for additional amounts to carry out the activities described in section 1207. Any funds reallotted to a State under this subparagraph shall be deemed to be part of its allotment under this subtitle for the fiscal year in which the funds are reallotted.

(3) For purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 1206. PAYMENTS UNDER ALLOTMENTS TO STATES.

(a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1205 from amounts appropriated for that fiscal year.

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

SEC. 1207. USE AND DISTRIBUTION OF FUNDS.

(a) At least 50 percent of the total amount paid to a State under section 1206 for a fiscal year from its allotment under section 1205 for such fiscal year shall be used by the State educational agency in accordance with subsection (c).

(b) After the application of subsection (a), the remainder of the amount paid to a State under section 1206 for a fiscal year from its allotment under section 1205 for a fiscal year shall be used by the chief executive officer of a State for drug abuse and alcohol abuse prevention and education activities primarily directed toward students in elementary, secondary, and postsecondary schools. Such activities may include:

(1) Grants to local governments or other public and nonprofit private entities in the State for the improvement of—

(A) local programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education which will be conducted in elementary, secondary, and postsecondary schools, and

(B) training programs for teachers, parents, local law enforcement officials, and judges.

(2) The development and distribution of educational materials, including media campaigns, aimed at a drug-free America.

(3) Education and primary prevention programs for high risk youth.

(4) The procurement and development of curricula and other educational materials.

(5) Activities to increase drug abuse and alcohol abuse education and prevention efforts targeted at children and youth in kindergarten through the twelfth grade.

(c)(1) The State educational agency of a State shall use 90 percent of the amounts available to such agency under subsection (a) for grants to, and contracts with, local educational agencies in the State.

(2) Any amounts available to a State educational agency after the application of paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education which will be conducted in elementary, secondary, and postsecondary schools;

(B) training programs for teachers, parents, local law enforcement officials, and judges; and

(C) the activities described in paragraphs (4) and (5) of subsection (b).

(3) Any amounts made available to a local educational agency pursuant to a grant or contract under paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) the activities described in subparagraphs (A) and (B) of paragraph (1) of this subsection and in paragraphs (4) and (5) of subsection (b); and

(B) activities to encourage the involvement of parents in the fight against drug abuse and alcohol abuse.

(4) A State educational agency or a local educational agency shall not use amounts made available to such agency under this subtitle for the activities described in paragraphs (1), (2), and (3) of subsection (b).

(d) Any program supported with amounts paid to a State under section 1206 shall, where appropriate, provide information to individuals about local drug abuse and alcohol abuse treatment programs.

(e) Any materials produced or distributed with amounts paid to a State under section 1206 shall reflect the message that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

SEC. 1208. STATE APPLICATIONS.

(a) In order to receive an allotment under subsection (b) or (c) of section 1205 for a fiscal year, a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the amounts paid to the State under section 1206 in accordance with the requirements of this subtitle.

(b) Each application submitted under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at a time, in such manner, and contain such information, as the Secretary may require; and

(3) contains assurances that no more than 5 per cent of the total amount paid to a State under section 1206 for a fiscal year will be used for by the State and the State educational agency to pay the costs of administering programs under this subtitle; and

(4) contain assurances that the Federal funds made available under this subtitle for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this subtitle and will in no event supplant such State, local, and other non-Federal funds.

SEC. 1209. NATIONAL PROGRAMS.

(a) The Secretary shall use the amount reserved under section 1205(a) for a fiscal year to carry out national programs designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this subsection with activities conducted by the Secretary of Health and Human Services, the Secretary of Labor, the Director of ACTION, and the heads of other appropriate agencies.

(b) The Secretary shall use amounts available under this subsection to—

(1) collect and disseminate information about drug use and alcohol abuse among students in elementary and secondary schools;

(2) develop curricula for schools which warn against the use of drugs and the abuse of alcohol;

(3) provide training or technical assistance to States consistent with the purposes of this subtitle;

(4) coordinate drug abuse and alcohol abuse education and prevention efforts with similar efforts by other Federal agencies; and

(5) collect data concerning, and evaluate, programs that reduce drug abuse and alcohol abuse among students.

SEC. 1210. DRUG TESTING IN EDUCATIONAL INSTITUTIONS.

(a) Notwithstanding any other provision of law, it shall not be unlawful under Federal statute or regulation for any educational institution—

(1) to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs;

(2) to conduct drug testing of its students or applicants for admission to determine if such students or applicants use illegal drugs;

(3) to refuse enrollment to applicants for admission who use illegal drugs; or

(4) to take disciplinary action against students, including suspension or expulsion, who use illegal drugs whether or not the use occurred at the educational institution.

(b) If any State, by law or regulation, prohibits drug testing of the students at a school or applicants for admission to a school to determine if such students or applicants use illegal drugs, the Secretary may withhold payments to a State under section 1206 for a fiscal year until such time as laws or regulations are revised to remove such prohibition.

SEC. 1211. INTERAGENCY COORDINATION.

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, and the Director of ACTION shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, and ACTION, respectively, to coordinate interagency drug abuse activities.

SEC. 1212. CONFORMING AMENDMENTS.

Section 583(b) of Education Consolidation and Improvement Act (20 U.S.C. 3851(b)) is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out paragraph (3); and

(3) redesignating paragraph (4) as paragraph (3).

SEC. 1213. DEFINITIONS.

(a) The definitions of terms contained in section 595 of the Education Consolidation and Improvement Act shall apply to this subtitle.

(b) For purposes of this subtitle, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is a victim of physical, sexual, or psychological abuse;

(2) has dropped out of school;

(3) has become pregnant;

(4) is economically disadvantaged;

(5) has committed a violent or delinquent act;

(6) has experienced mental health problems;

(7) has attempted suicide;

(8) is disabled by injuries; or

(9) is identified as a child of a substance abuser.

Subtitle C—Substance Abuse Services

SEC. 1301. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Substance Abuse Services Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 1302. EXTENSION OF ALCOHOL, DRUG, ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) Section 1911 is amended—

(1) by striking out "and" after "1986," and

(2) by inserting before the period a comma and "$600,000,000 for fiscal year 1988, $630,000,000 for fiscal year 1989, $660,000,000 for fiscal year 1990, and $695,000,000 for fiscal year 1991.".

(b)(1) Title XIX is amended by inserting after section 1912 the following new section:

"GRANTS TO STATES FOR SUBSTANCE ABUSE TREATMENT PROGRAMS

"SEC. 1912A. (a) Of the amount appropriated under section 1911 for a fiscal year, the Secretary shall reserve $100,000,000 for such fiscal year for grants to States which demonstrate need for funds (in addition to the funds allotted to States under section 1913) to conduct substance abuse treatment programs. The Secretary shall use at least 40 percent of the amounts reserved under the preceding sentence for any fiscal year for grants to States for substance abuse treatment programs for high risk youth.

"(b) For purposes of subsection (a)—

"(1) the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

"(A) is a victim of physical, sexual, or psychological abuse;

"(B) has dropped out of school;

"(C) has become pregnant;

"(D) is economically disadvantaged;

"(E) has committed a violent or delinquent act;

"(F) has experienced mental health problems;

"(G) has attempted suicide;

"(H) is disabled by injuries; or

"(I) is identified as a child of a substance abuser; and

"(2) the term 'substance' means any drug or alcoholic beverage.

"(c) No grant may be made by the Secretary under subsection (a) unless an application therefor has been submitted by a State to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain and be accompanied by such information, as the Secretary may require.".

(2) The heading for section 1912 is amended by adding at the end thereof the following: "FOR TRAINING AND RETRAINING OF MENTAL HEALTH SERVICES WORKERS".

SEC. 1303. ELIMINATION OF CERTAIN BLOCK GRANT EARMARKS.

(a) Section 1916(c) is amended by striking out paragraphs (7) and (8).

(b) The amendment made by subsection (a) shall take effect on October 1, 1987.

SEC. 1304. WITHHOLDING OF BLOCK GRANT FUNDS.

If the possession or distribution of a drug is an offense under the Controlled Substances Act, and if, under the laws of a State the possession or distribution, respectively, of such drug is not a criminal offense, the Secretary of Health and Human Services may withhold the allotment of the State under title XIX of the Public Health Service Act for any fiscal year until the laws of the State are amended to provide that the possession or distribution, respectively, of such drug is a criminal offense.

SEC. 1305. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the Institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 1306. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by section 1305 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

SEC. 1307. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 1308. CHILD ABUSE REPORTING.

(a) Section 523(e) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" before "The"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State authorities.".

(b) Section 527(e) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" before "The"; and

(3) by adding at the end thereof the following new paragraph:

"(2) The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State authorities.".

SEC. 1309. SUICIDE.

Section 501 is amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall—

"(A) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(B) make such information generally available to the public and health professionals.

"(2) By January 1, 1988, and every 3 years thereafter, the Secretary shall report to the Congress on the activities undertaken under paragraph (1) during the period reported on and shall include in each such report an assessment of the effectiveness of such activities.".

SEC. 1310. PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS.

(a) Section 503 is amended by adding at the end thereof the following new subsection:

"(e)(1) The Secretary, acting through the Institute and in consultation with the Director of the Office on Smoking and Health, shall prepare for distribution announcements for television to educate the public, particularly women, concerning the dangers resulting from cigarette smoking by women. In the preparation of such announcements, the Secretary shall, to the extent feasible, use appropriate private organizations and business concerns.

"(2) Of the amount appropriated under section 517 for each of the fiscal years 1987, 1988, and 1989, $250,000 shall be available to carry out paragraph (1) for such fiscal year.".

(b) Section 517 (as amended by section 1307(b) of this Act) is further amended by inserting "section 503(e) and" before "this subpart".

SEC. 1311. NATIONAL PLAN TO COMBAT DRUG ABUSE.

By October 1, 1988, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat drug abuse. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat drug abuse;

(2) an analysis of the social and economic costs of drug abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for drug abuse, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from drug abuse; and

(C) to meet other costs resulting from drug abuse, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of drug treatment and rehabilitation into the Nation's health care system;

(4) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(5) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of drug abuse;

(6) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (5) and estimates of savings in resources that can be anticipated from the achievement of such goals and objectives.

SEC. 1312. CLEARINGHOUSE.

The Secretary of Health and Human Services, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, school systems, and the general public. The clearinghouse shall—

(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

SEC. 1313. STUDY ON ALKYL NITRATES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs, should conduct a study on alkyl nitrates and report to the appropriate committees of the Congress recommendations concerning whether alkyl nitrates should be treated as a drug under the Food, Drug, and Cosmetic Act.

Subtitle D—Drug Interdiction and International Cooperation

PART I—MANSFIELD AMENDMENT

SEC. 1411. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1), by striking out in the first sentence "engage or participate in any direct police arrest action in any foreign country" and inserting in lieu thereof "directly make an arrest in any foreign country as part of any foreign police action"; and

(2) by amending paragraph (2) to read as follows:

"(2) Nothing in paragraph (1) prevents such employee or officer—

"(A) from being present at the scene of an arrest or otherwise assisting foreign officers in making an arrest; or

"(B) from taking direct action to protect life or safety if exigent circumstances arise in the course of an arrest which are unanticipated and which pose an immediate threat to United States or foreign officers or to members of the public.".

PART II—NARCOTICS TRAFFICKERS DEPORTATION ACT

SEC. 1421. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addition-sustaining opiate" and inserting in lieu thereof "any law or regulation or a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this part, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this part.

PART III—CUSTOMS ENFORCEMENT

SEC. 1431. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

Subpart A—Tariff Act Amendments

SEC. 1432. CONTROLLED SUBSTANCES DEFINED.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by striking out the period in subsection (c) and inserting in lieu thereof "and monetary instruments as defined in section 5312 of title 31, United States Code.",

(2) by striking out the following: "For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.",

(3) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term",

(4) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel,

"(B) has received merchandise while in the customs waters beyond the territorial sea, or

"(C) has received merchandise on the high seas,

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.", and

(5) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given to such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).".

SEC. 1433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—

"(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not beyond 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—

"(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall, present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.".

SEC. 1434. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c) of section 433;

"(2) to present any forged, altered, or false document or paper to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or

"(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of the preceding paragraphs.

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who violates any provision of subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who willfully commits any violation enumerated in subsection (a) shall be liable for an additional fine of not more than $2,000 or imprisonment for not more than 1 year, or both, and if the conveyance has, or is discovered to have had, on board—

"(1) any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, or

"(2) any controlled substances, spirits, wines, or other alcoholic liquors,

such person shall be liable for an additional fine of not more than $10,000 and imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any controlled substance is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for an additional penalty equal to the value of the merchandise and the merchandise shall be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of the controlled substances listed in section 584 of this Act, the master, person in charge of a vehicle, or pilot shall be liable for the penalties prescribed in that section.".

(b) Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting in lieu thereof "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 1435. PENALTY FOR UNLOADING OF PASSENGERS.

Section 454 of the Tariff Act of 1930 (19 U.S.C. 1454) is amended by striking out "$500 for each" and inserting in lieu thereof "$1,000 for the first passenger and $500 for each additional".

SEC. 1436. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false documents or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $1,000 for the first violation, and $2,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally commits any violation described in subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) Section 460 of the Tariff Act of 1930 (19 U.S.C. 1460) is repealed.

SEC. 1437. PENALTY FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—

"(1) Any article which—

"(A) is not included in the declaration and entry as made, and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required,

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article, and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—

"(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary, in consultation with the Attorney General of the United States, to be equal to

the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 1438. FALSE MANIFESTS; LACK OF MANIFESTS.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000",

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000",

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500", and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 1439. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" each place it appears and inserting in lieu thereof "$10,000",

(2) by striking out "two years" in subsection (e) and inserting in lieu thereof "15 years", and

(3) by striking out "within one league of the coast" in subsection (e) and inserting in lieu thereof "within customs waters".

SEC. 1440. AVIATION SMUGGLING.

The Tariff Act of 1930 is amended by inserting after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It shall be unlawful for the pilot of any aircraft to transport, or for any person on board any aircraft to possess, controlled substances knowing or intending that the controlled substances will be introduced into the United States unlawfully.

"(b) SEA TRANSFERS.—It shall be unlawful for any person to transfer controlled substances between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)), or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such controlled substances, or any part thereof, to be introduced into the United States unlawfully.

"(c) PENALTIES.—

"(1) Any person who violates any provision of this section shall be civilly liable for a fine equal to twice the value of the controlled substance involved but not less than $10,000 and, in addition to such civil penalty, shall be liable for a fine of $250,000 or imprisonment for a period of 20 years, or both.

"(2) For purposes of this subsection, the value of any controlled substance shall be determined in accordance with section 497(b).

"(d) SEIZURE AND FORFEITURE.—Any vessel or aircraft used in connection with, or in aiding or facilitating, any of the unlawful acts described in this section (whether or not any person is charged in connection with such acts) shall be seized and civilly forfeited in accordance with the customs laws.

"(e) INTENT OF TRANSFER OF CONTROLLED SUBSTANCES.—For purposes of this Act, any one of the following acts, when performed within 250 miles of the territorial sea of the United States shall be prima facie evidence that the transportation or possession of controlled substances was unlawful and shall be presumed to constitute circumstances indicating that the intent of the transfer is to make it possible for such controlled substances, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (d) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) the operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law;

"(2) the presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law;

"(3) the failure to correctly identify—

"(A) the vessel by name and the country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority;

"(4) the external display of false registration numbers, false country of registration, or, in the case of a vessel, false name;

"(5) the presence on board of unmanifested merchandise, the importation of which is prohibited or restricted;

"(6) the presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or any other international treaty;

"(7) the presence of any compartment or equipment which is built or fitted out for smuggling; or

"(8) the failure of a vessel to stop when hailed by a customs officer or other government authority.".

SEC. 1441. SEIZURE OF CONVEYANCES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft, or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft,

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure or forfeiture under the customs laws for violations relating to merchandise contained—

"(1) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(2) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) CONTROLLED SUBSTANCES ON CONVEYANCE.—If any controlled substances are found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it appears to the satisfaction of the Secretary that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such controlled substances were on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party;

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.".

SEC. 1442. SEARCHES AND SEIZURES.

Subsection (a) of section 595 of the Tariff Act of 1930 (19 U.S.C. 1595) is amended to read as follows:

"(a)(1) If any officer or person authorized to make searches and seizures shall have cause to suspect the presence of—

"(A) any merchandise upon which the duties have not been paid or which has been otherwise brought into the United States contrary to law,

"(B) any controlled substance which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service, or

"(C) any documents, containers, wrappings, or other articles which are evidence of violations of the Controlled Substances Import and Export Act,

in any dwelling house, store, or other building or place, such officer or person may apply, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate for a warrant and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other building or place at night or by day,

and to search for and seize such merchandise or other article named in such warrant.

"(2) If any house, store, or other building or place is located upon or within ten feet of the boundary line between the United States and a foreign country and any merchandise or other article subject to forfeiture is found in such house, store, or other building or place, the portion of such house, store, or other building or place that is within the United States may be taken down or removed.".

SEC. 1443. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "in the proviso to section 594" and inserting in lieu thereof "in subsection (b) or (c) of section 594",

(2) by adding at the end thereof the following new subsection:

"(c) Any controlled substance that is or has been introduced, or attempted to be introduced, into the United States contrary to law shall be seized and forfeited.".

SEC. 1444. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under a law enforced or administered by the United States Customs Service, or otherwise acquired under section 605 of this Act, and relief from the forfeiture is granted by the Secretary upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the United States Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the United States Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 1445. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

"(a) IN GENERAL.—

"(1) If any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person, and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section shall not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.

"(f) CONTROLLED SUBSTANCES.—For purposes of this section, the value of a controlled substance shall be determined in accordance with section 497(b).".

SEC. 1446. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", or to comply with international obligations.".

SEC. 1447. EXCHANGE OF INFORMATION.

The Tariff Act of 1930 is amended by inserting after section 627 the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"The Secretary of the Treasury may prescribe regulations authorizing customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law related to controlled substances that is enforced or administered by the United States Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; or

"(4) assist a foreign customs or law enforcement agency in taking any action comparable to any of those described in paragraph (1), (2), or (3), or in relation to any proceeding in a foreign country.".

SEC. 1448. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station were a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory of the United States to be proceeded against under the customs laws.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) the provisions of sections 111 and 1114 of title 18, United States Code, shall apply as if the foreign officials were designated in those sections;

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be liable for a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.".

SEC. 1449. COMMERCIAL COVER.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 630. AUTHORITY TO CONDUCT COMMERCIAL COVER.

"(a) IN GENERAL.—The Commissioner of Customs may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support investigative activities of the United States Customs Service. Such commercial entities may be established only upon written certification by the Commissioner of Customs or a delegate of the Commissioner of Customs that commercial cover is necessary to conduct authorized investigative activities.

"(b) ESTABLISHMENT AND OPERATION.—The establishment and operation of commercial

entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. Laws applicable to Federal appropriations, Federal property management, Federal acquisitions, Federal employment and Government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Commissioner of Customs, or any delegate of the Commissioner of Customs, that the application of such laws would compromise a commercial cover.

"(c) WITHDRAWAL AND DEPOSIT OF FUNDS.—The Commissioner of Customs, or any delegate of the Commissioner of Customs, is authorized to deposit and withdraw in banks and other financial institutions—

"(1) funds appropriated for the United States Customs Service that are used to conduct commercial cover, and

"(2) funds generated by the business entities authorized by this section.

"(d) USE OF FUNDS GENERATED BY COMMERCIAL COVER.—

"(1) Funds generated by any business entities authorized by this section may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(2) Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under this section and after the payment of all obligations incurred with respect to such commercial cover, any remaining funds described in paragraph (1) or (2) of subsection (c) shall be deposited in the Treasury of the United States as miscellaneous receipts.".

Subpart B—Miscellaneous Provisions

SEC. 1451. RECREATIONAL VESSELS.

Subsection (b) of section 12109 of title 46, United States Code, is amended by adding at the end thereof the following new sentence: "Such vessel must, however, comply with all customs requirements for reporting arrival pursuant to section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such vessel shall be subject to all applicable customs regulations.".

SEC. 1452. PROVISION OF ASSISTANCE TO CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes (19 U.S.C. 507) is amended to read as follows:

"(a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government, and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If such person shall, without reasonable excuse, neglect or refuse to assist the customs officer upon proper demand, such person shall be guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 1453. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1454. SMUGGLING INVESTIGATIONS.

Section 3 of the Act of August 11, 1955 (69 Stat. 684; 21 U.S.C. 969), is amended by inserting "and pay the costs of the proceeding" after "investigation" in the second sentence.

Subpart C—Amendments to the Controlled Substances Import and Export Act

SEC. 1458. UNLAWFUL IMPORTATION.

(a) Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "Possession," in the heading,

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall",

(3) by striking out "This section" and inserting in lieu thereof "(c) This section",

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a), and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States to—

"(1) manufacture or distribute a controlled substance, or

"(2) possess a controlled substance with intent to distribute.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

Subpart D—Amendments to the Criminal Code

SEC. 1459. OPERATION OF AIRCRAFT WITHOUT LIGHTS; ILLEGAL FUEL TANK INSTALLATIONS.

(a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 36. Operation of aircraft without lights

"Whoever knowingly and willfully operates an aircraft in violation of any rule, regulation or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation and/or anticollision lights shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both.

"§ 37. Illegal fuel installations aboard aircraft

"(a) It shall be unlawful for any person to knowingly make a fuel tank or fuel system installation aboard an aircraft, or to operate any aircraft with a fuel tank or fuel system installation aboard, unless such tank or installation is in accordance with all applicable rules, regulations or requirements of the Administrator of the Federal Aviation Administration, including inspection and approval. Any person violating this section shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both. Unless exempted by the Administrator of the Federal Aviation Administration, by regulation, authorization from the Federal Aviation Administration to have an auxiliary fuel tank or system installation or modification shall be aboard the aircraft whenever it is operated and such authorization must be shown to any Federal, State, or local law enforcement officer upon request. Failure to have such authorization aboard shall create a presumption that the installation is unlawful.

"(b) Any unlawful fuel tank or fuel system installation and the aircraft in which it is installed shall be subject to seizure and civil forfeiture. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon customs officers or any other person with respect to the seizure and forfeiture of property under the customs law may also be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.".

(b) The table of sections for chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following:

"36. Operation of aircraft without lights."
"37. Illegal fuel installation aboard aircraft.".

Subpart E—Denial of Trade Benefits to Uncooperative Drug Source Nations

SEC. 1460. SHORT TITLE.

This subpart may be cited as the "Narcotics Control Trade Act".

SEC. 1461. DETERMINATIONS REGARDING UNCOOPERATIVE DRUG SOURCE NATIONS.

(a) The President, after taking into account the factors set forth in subsection (b), shall determine if any foreign country, during any fiscal year commencing after September 30, 1986—

(1) was a direct or indirect source of one or more illicit narcotic and psychotropic drugs and other controlled substances that is significantly affecting the United States; and

(2) did not cooperate with the United States Government in preventing narcotic and psychotropic drugs and other controlled substances from significantly affecting the United States.

(b) For purposes of making a determination under subsection (a) regarding a foreign country, the President shall take into account the capabilities, effort, and progress of that country in—

(1) limiting legal narcotic crop production to levels required for legal purposes;

(2) licensing legal narcotic crop production and effectively controlling it to prevent significant diversion to the illicit traffic;

(3) limiting the legal manufacture of narcotic and psychotropic drugs and other controlled substances to levels required for medical purposes and effectively controlled manufacture to prevent significant diversion to the illicit traffic;

(4) detecting and eradicating the illicit cultivation of narcotic crops, and

(5) suppressing the illicit manufacture, processing, and traffic of narcotic and psychotropic drugs, under the control of the Single Convention of Narcotic Drugs of 1961 as amended by the 1972 Amending Protocol or the Controlled Substances Act of 1970 or

the Convention on Psychotropic Substances of 1971.

(c) The President shall submit to each House of the Congress the name of each foreign country regarding which an affirmative determination is made under subsection (a). The submission must be made on the first day on which both Houses are in session after the close of the fiscal year with respect to which the determination is made.

SEC. 1462. TARIFF TREATMENT OF PRODUCTS OF UNCOOPERATIVE DRUG SOURCE NATIONS.

(a) The President shall, with respect to each foreign country regarding which an affirmative determination is made under section 1461(a) and to the extent considered necessary by the President to achieve the purposes of this subpart, deny to any or all of the products of that country tariff treatment under title V of the Trade Act of 1974 (the Generalized System of Preferences), the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

(b) The action taken by the President under subsection (a) shall apply to the products of a foreign country that are entered, or withdrawn from warehouse for consumption, during the period that—

(1) begins on October 1 of the fiscal year occurring after the fiscal year with respect to which an affirmative determination regarding that country was made under section 1461(a); and

(2) ends on the day on which the determination is cancelled under section 1464.

SEC. 1463. PROGRESS REPORTS.

The President shall include as a part of the annual report required under section 481(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(1)) an evaluation of progress that each major drug source nation has made during the reporting period in achieving the objectives set forth in section 1461(b).

SEC. 1464. CANCELLATION OF DETERMINATIONS.

If the President considers that a foreign country regarding which an affirmative determination was made under section 1461(a) has made significant progress, and will continue to make progress, in remedying those acts, programs, or policies on which that determination was based, the President may cancel the determination. The President must immediately notify each House of Congress of each cancellation made under this section.

SEC. 1465. DEFINITION.

For purposes of this subpart, the term "narcotic and psychotropic drugs and other controlled substances" has the meaning given to that term by section 481(i)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(3)).

SEC. 1466. CONFORMING AMENDMENTS.

(a) Section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended—

(1) by striking out paragraph (5);

(2) by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively; and

(3) by striking out "(5)," in the last sentence.

(b) Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended—

(1) by inserting "and" after the semicolon at the end of paragraph (5);

(2) by striking out paragraph (6); and

(3) by redesignating paragraph (7) as paragraph (6).

[TITLE I—SUBTITLE D—PART IV]

PART IV—MARITIME DRUG LAW ENFORCEMENT PROSECUTION IMPROVEMENTS ACT OF 1986

SEC. 1471. SHORT TITLE.

This part may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 1472. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159), is amended by striking all after the enacting clause and inserting in lieu thereof the following:

"That Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 2. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) A vessel of the United States means—

"(1) a vessel documented under chapter 121 of title 46, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c) For purposes of this section, 'vessel subject to the jurisdiction of the United States' includes—

"(1) a vessel without nationality. A vessel without nationality includes:

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the claimed flag state. Such claim may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of the claim of registry by the claimed flag state may be proved by certification of the Secretary of State or his designee;

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel. For purposes of this section, a claim of nationality or registry only includes:

"(i) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(ii) flying its flag state's ensign or flag; or

"(iii) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(2) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the Convention on the High Seas;

"(3) a vessel registered in a foreign country where the flag state has consented or waived objection to the enforcement of United States law by the United States. Such consent or waiver by the flag state may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or his designee;

"(4) a vessel located within the customs waters of the United States;

"(5) a vessel located in the territorial waters of another state, where the state consents to the enforcement of United States law by the United States. Such consent may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or his designee.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of his duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C 801 et seq.).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of

1970 (21 U.S.C. 801 et seq.) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.).".

Subtitle E—Anti-Drug Enforcement

PART I—DRUG PENALTIES ENHANCEMENT ACT OF 1986

SEC. 1511. SHORT TITLE.

This part may be cited as the "Drug Penalties Enhancement Act of 1986".

SEC. 1512. CONTROLLED SUBSTANCES ACT PENALTIES.

Subsections (b)(1)(A) and (b)(1)(B) of section 401 of the Controlled Substances Act (21 U.S.C. 841(b)(1) (A) and (B)) are amended to read as follows:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

"(iii) 25 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substances containing a detectable amount to phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 500 kilograms or more of a mixture or substance containing a detectable amount of marihuana,

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding the prior sentence and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

"(B) In the case of a controlled substance in schedule I or II, except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the preceding sentence and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1513. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1)(A) In subsection (b), paragraph (1)(C) is amended by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(B) In subsection (b), paragraph (1)(C) is further amended by inserting "except in the case of 100 marihuana plants or more regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(5) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in ac-

cordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

SEC. 1514. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(e) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 1515. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 1516. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.".

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 1517. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1518. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"SEC. 225. Section 1010 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1519. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (e) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "**Modification of conditions or revocation.**";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Subsection (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release."

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1970 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

PART II—DRUG POSSESSION PENALTY ACT OF 1986

SEC. 1521. SHORT TITLE.

This part may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1522. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this subsection, or a prior conviction for any drug or narcotic offense chargeable under this title or title III or under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum or $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this subsection, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be taxed the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

PART III—DEATH PENALTY AND CONTINUING DRUG ENTERPRISE

Subpart A—Death Penalty

SEC. 1531. PROCEDURE FOR IMPOSITION OF THE DEATH PENALTY.

Part II of title 18 of the United States Code is amended—

(1) by adding the following new chapter after chapter 227:

"CHAPTER 228—DEATH SENTENCE

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(a) an offense described in section 794 or section 2381 of this title;

"(b) an offense described in section 1751(c) of this title, if the offense, as determined beyond a reasonable doubt at the hearing under section 3593, constitutes an attempt to kill the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President; or

"(c) any other offense for which a sentence of death is provided, if the defendant, as determined beyond a reasonable doubt at the hearing under section 3593—

"(1) intentionally killed the victim;

"(2) intentionally inflicted serious bodily injury that resulted in the death of the victim; or

"(3) intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act;

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified.

"§3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) the defendant was less than eighteen years of age at the time of the offense;

"(2) the defendant's mental capacity was significantly impaired, although the impairment was not such as to constitute a defense to prosecution;

"(3) the defendant was under unusual and substantial duress, although not such duress as would constitute a defense to prosecution; and

"(4) the defendant was an accomplice who participation in the offense was relatively minor.

The jury, or if there is no jury, the court, may consider whether any other mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(a), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the defendant has previously been convicted of another offense involving espionage or treason for which either a sentence of life imprisonment or death was authorized by statute;

"(2) in the commission of the offense the defendant knowingly created a grave risk of substantial danger to the national security; and

"(3) in the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (b) or (c), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) the death, or injury resulting in death, occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property in interstate commerce by explosives), section 1118 (prisoners serving life term), section 1201 (kidnaping), or section 2381 (treason) of this title, or section 902 (i) or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472 (i) or (n)) (aircraft piracy);

"(2) the defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute;

"(3) the defendant has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person;

"(4) the defendant, in the commission of the offense, or in escaping apprehension for the offense knowingly caused the death or created a grave risk of death to one or more persons in addition to the victim of the offense;

"(5) the defendant committed the offense in an especially heinous, cruel, or depraved manner;

"(6) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value;

"(7) the defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value;

"(8) the defendant committed the offense after substantial planning and premeditation to cause the death of a person or commit an act of terrorism;

"(9) the defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice-President-elect, the Vice-President-designate, or, if there is no Vice President, the officer next in order of succession to the office of the President of the United States, or any person who is acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A) of this title, if he is in the United States on official business; or

"(D) a Federal public servant who is a judge, a law enforcement officer, or an employee of a United States penal or correctional institution—

"(i) while he is engaged in the performance of his official duties;

"(ii) because of the performance of his official duties; or

"(iii) because of his status as a public servant.

For purposes of this subparagraph, a 'law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; or

"(10) the violation of section 408 of the Controlled Substances Act in relation to which the conduct described in section 848(c) occurred was a violation of section 405, 405A, or 405B of the Controlled Substances Act.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—If, in a case involving an offense described in section 3591, the attorney for the government believes that the circumstances of the offense are such that a sentence of death is justified under this chapter, he shall, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, sign and file with the court, and serve on the defendant, a notice—

"(1) stating that the government believes that the circumstances of the offense are such that, if the defendant is convicted, a sentence of death is justified under this chapter; and

"(2) setting forth the aggravating factor or factors that the government, if the defendant is convicted, proposes to prove as justifying a sentence of death.

The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—If the attorney for the government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of Rule 32(e) of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under this section is necessary; or

"(3) before the court alone, upon the motion of the defendant and with the approval of the attorney for the government. A jury impaneled pursuant to paragraph (2) shall consist of twelve members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to any matter relevant to the sentence, including any mitigating or aggravating factor permitted or required to be considered under section 3592. Information presented may include the trial tran-

script and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to a mitigating or aggravating factor may be presented by either the attorney for the government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the government and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in the case of imposing a sentence of death. The attorney for the government shall open the argument. The defendant shall be permitted to reply. The attorney for the government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the information.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return a special finding as to each mitigating and aggravating factor, concerning which information is presented at the hearing, required to be considered under section 3592. The jury must find the existence of a mitigating or aggravating factor by a unanimous vote, although it is unnecessary that there be a unanimous vote on any specific mitigating or aggravating factor if a majority of the jury finds the existence of such a specific factor.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(a), an aggravating factor required to be considered under section 3592(b) is found to exist pursuant to subsection (d); or

"(2) an offense described in section 3591 (b) or (c), an aggravating factor required to be considered under section 3592(c) is found to exist pursuant to subsection (d);

the jury, or if there is no jury, the court, shall then consider whether all the aggravating factors contributing to a unanimous vote sufficiently outweigh all the mitigating factors contributing to a unanimous vote justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factors alone are sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"(f) SPECIAL PRECAUTION TO ASSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that consideration of the race, color, national origin, creed, or sex of the defendant was not involved in reaching the juror's individual decision.

"§3594. Imposition of a sentence of death

"Upon a finding under section 3593(e) that a sentence of death is justified, the court shall sentence the defendant to death. Upon a finding under section 3593(e) that a sentence of death is not justified, or under section 3593(d) that no aggravating factor required to be found exists, the court shall impose any sentence other than death that is authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without parole.

"§3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time specified for the filing of a notice of appeal. An appeal under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—(1) If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of an aggravating factor required to be considered under section 3592;

it shall affirm the sentence.

"(2) In any other case, the court of appeals shall remand the case for reconsideration under section 3593.

"(3) The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§3596. Implementation of a sentence of death

"A person who has been sentenced to death pursuant to the provisions of this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the latter State in the manner prescribed by such law. A sentence of death shall not be carried out upon a woman while she is pregnant.

"§3597. Use of State facilities

"A United States marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.";

(2) by repealing sections 3566 and 3567;

(3) in the chapter analysis of part II, by adding the following new item after the item relating to chapter 227:

"228. Death sentence ..... 3591";

and

(4) in the section analysis of chapter 227, by amending the items relating to sections 3566 and 3567 to read as follows:

"3566. Repealed.

"3567. Repealed.".

SEC. 1532. OTHER AMENDMENTS TO TITLE 18.

(a) Section 34 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

(b) Section 794(a) of title 18, United States Code, is amended by changing the period at the end of the section to a comma and by adding immediately thereafter the words "except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 of this title that the offense directly concerned nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large-scale attack; war plans; communications intelligence or cryptographic information; sources or methods of intelligence or counterintelligence operations; or any other major weapons system or major element of defense strategy.".

(c) Section 844(d) of title 18, United States Code, is amended by striking the words "as provided in section 34 of this title".

(d) Section 844(f) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

(e) Section 844(i) of title 18 of the United States Code is amended by striking the words "as provided in section 34 of this title".

(f) The second paragraph of section 1111(b) of title 18 of the United States Code is amended to read as follows:

"Whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life;".

(g) Section 1116(a) of title 18 of the United States Code is amended by striking the words "any such person who is found guilty of murder in the first degree shall be sentenced to imprisonment for life, and".

(h) Section 1201 of title 18 of the United States Code is amended by inserting after the words "or for life" in subsection (a) the words "and, if the death of any person results, shall be punished by death or life imprisonment".

(i) The last paragraph of section 1716 of title 18 of the United States Code is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the paragraph.

(j) Subsection (c) of section 1751 of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to kill or kidnap any individual designated in subsection (a) of this section shall be punished (1) by imprisonment for any term of years or for life, or (2) by death or imprisonment for any term of years or for life, if the conduct constitutes an attempt to kill the President of

the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President.".

(k) The second to the last paragraph of section 1992 of title 18, United States Code, is amended by changing the comma after the words "imprisonment for life" to a period and deleting the remainder of the section.

(l) Section 2031 of title 18, United States Code, is amended by deleting the words "death, or".

(m) Section 2113(e) of title 18, United States Code, is amended by striking the words "or punished by death if the verdict of the jury shall so direct" and inserting in lieu thereof the words "or if death results shall be punished by death or life imprisonment".

(n) The provisions of chapter 228 of title 18, United States Code, as added by this part, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801).

(o) Subsection (a) of section 1952A of title 18, United States Code, is amended by striking out: "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both." and inserting in lieu thereof: "and if death results, shall be punished by death or life imprisonment, or shall be fined under this title, or both.".

(p) Paragraph (1) of subsection (a) of section 1952B of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine or not more than $250,000, or both; and for kidnaping, by imprisonment for any item of years or for life, or shall be fined under this title, or both;".

(q) Subsection (a) of section 1203 of title 18, United States Code, is amended by striking "." and inserting in lieu thereof: "and, if the death of any person results, shall be punished by death or life imprisonment.".

SEC. 1533. MURDER BY A FEDERAL PRISONER.

Chapter 51 of title 18, United States Code, is amended—

(1) by adding at the end thereof the following:

"§1118. Murder by a Federal prisoner

"(a) Whoever, while confined in a Federal correctional institution under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of parole.

"(b) For the purposes of this section—

"(1) 'Federal correctional institution' means any Federal prison, Federal correctional facility, Federal community program center, or Federal halfway house;

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least fifteen years and a maximum of life, or an unexecuted sentence of death;

"(3) 'murders' means committing first degree or second degree murder as defined by section 1111 of this title."; and

(c) by amending the section analysis to add:

"1118. Murder by a Federal prisoner.".

SEC. 1534. AMENDMENT TO FEDERAL AVIATION ACT.

Section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1473), is amended by striking subsection (c).

SEC. 1535. DEATH PENALTY UNDER THE CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by adding the following after subsection (b), as added by part B of this part:

"(c) Whoever, while engaged in a continuing criminal enterprise, kills another person shall be punished by life imprisonment or by death.".

Subpart B—Continuing Drug Enterprise Act of 1986

SEC. 1536. SHORT TITLE.

This part may be cited as the Continuing Drug Enterprise Act of 1986".

SEC. 1537. INCREASED PENALTIES.

Subsection 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended as follows:

(1) by striking out the phrase "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out the phrase "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual".

SEC. 1538. DEATH PENALTY.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsections after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(A) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(A) of this Act."

PART IV—CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT PENALTIES ENHANCEMENT ACT OF 1986

SEC. 1541. SHORT TITLE.

This part may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1542. ENHANCED PENALTIES.

(a) Paragraphs (1) and (2) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b) (1) and (2)) are amended to read as follows:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 25 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 500 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding the preceding sentence and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment imposed therein.

"(2) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be sentenced to a term of imprisonment of not more than 20 years and if death results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(3) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out the phrase "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

PART V—JUVENILE DRUG TRAFFICKING ACT OF 1986

SEC. 1551. SHORT TITLE.

This part may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1552. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER TWENTY-ONE YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) Except as authorized by this title, it shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to violate any provision of this title; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to assist in avoiding detection or apprehension for any offense of this title by any Federal, State, or local law enforcement official.

"(b) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title is punishable by a term of imprisonment, or a fine, or both; up to twice that authorized by section 401(b) of this title, and at least twice any special parole term authorized by section 401(b) of this title, for a first offense.

"(c) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section.

"(d) Any person who violates subsection (a)(1) or (a)(2)—

"(1) by knowingly providing or distributing to any person under twenty-one years of age or any pregnant individual with any controlled substance; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this title shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.".

SEC. 1553. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by deleting the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

(c) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1554. DISTRIBUTION OF A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A COLLEGE.

Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended, in subsection (a), by adding after the word "distributing" the words "or manufacturing" and by striking the words "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

PART VI—CHEMICAL DIVERSION AND TRAFFICKING ACT OF 1986

SEC. 1561. SHORT TITLE.

This part may be cited as the "Chemical Diversion and Trafficking Act of 1986".

SEC. 1562. OFFENSE.

Part C of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"CHEMICAL DIVERSION AND TRAFFICKING

"SEC. 311. (a)(1) Except as provided under paragraph (3) of this subsection any person who manufactures, distributes, imports or exports a substance listed under subsection (d) shall maintain records and make reports as the Attorney General may by regulation require concerning the distribution, sale, importation or exportation of said listed substances. Such records shall be in a form such that they are readily retrievable from ordinary business records and shall be kept and made available, for at least 5 years, for inspection and copying by officers or employees of the United States authorized by the Attorney General. In establishing regulations concerning required records and reports, the Attorney General may establish a threshold quantity for recordkeeping and reporting requirements for each listed chemical. The Attorney General may include in the information required to be maintained or reported the following:

"(A) The quantity, form, and manner in which, and date on which, the substance was distributed, imported or exported.

"(B)(i) In the case of the distribution or exportation to an individual, the name, address, and age of the individual and the type of identification presented to confirm the identity of the individual.

"(ii) In the case of the distribution or exportation to an entity other than an individual, the name and address of the entity and the name, address, and title of the individual ordering or receiving the substance and the type of identification presented to confirm the identity of the individual and of the entity.

"(2) Except as provided under paragraph (3) of this subsection, no person may distribute or export a substance listed under subsection (d) unless the recipient or purchaser presents to the distributor a certification of lawful use and identification, to establish the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents), of such a type as the Attorney General establishes by regulation.

"(3) It shall be unlawful to purchase a reportable amount of any chemical listed under subsection (d) in units small enough so that the making of records or filing of reports under this section is not required for the purpose of evading the recordkeeping or reporting requirements created by this section and the regulations promulgated thereunder.

"(4) Under such conditions and to such extent as the Attorney General establishes,

paragraphs (1), (2), and (3) shall not apply to—

"(A) the distribution of listed substances between agents or employees within a single facility (as defined by the Attorney General), if such agents or employees are acting in the lawful and usual course of their business or employment;

"(B) the delivery of listed substances to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business; but where such carriage or storage is in connection with the distribution or importation of substances to a third person, this subparagraph shall not relieve the distributor or importer from compliance with paragraph (1) or (2); or

"(C) any distribution or importation with respect to which the Attorney General determines that the reports or records required by paragraph (1) or the presentation of identification or certification required by paragraph (2) is not necessary for the enforcement of this subchapter.

"(b) It shall be unlawful:

"(1) to the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any substance listed under subsection (d) unless the substance is imported for commercial, scientific or other legitimate uses, and—

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

"(2) It shall be unlawful to export from the United States to any other country a substance listed under subsection (d) unless there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, commercial, scientific, or other legitimate purposes and—

"(A) In the case of substances listed in subsection (d)(1), pursuant to a permit issued by the Attorney General, or

"(B) In the case of substances listed in subsection (d)(2), pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe.

"(c) The Attorney General may by rule:

"(1) Add substances to paragraph (d) if—

"(A) he finds that such substance is a precursor or essential chemical which can be used to manufacture a controlled substance, and

"(B) such substance is being used in the manufacture of controlled substances in violation of this title, and

"(C) he finds that the inclusion of such substance in subsection (d) is necessary to curtail the manufacture of controlled substances in violation of this title.

"(2) Delete a substance listed in subsection (d) if he finds that its listing no longer meets the criteria set forth in paragraph (1).

"(d) The provisions of this title shall apply to the following:

"(1) Precursor chemicals:

"(A) N-Acetylanthranilic acid;

"(B) Anthranilic acid;

"(C) Ergotamine tartrate;

"(D) Ergonovine maleate;

"(E) Phenylacetic acid;

"(F) Ephedrine;

"(G) Pseudoephedrine;

"(H) Benzyl cyanide;

"(I) Benzyl chloride; and

"(J) Piperidine.

"(2) Essential chemicals:

"(A) Potassium permanganate;

"(B) Acetic anhydride;

"(C) Acetone; and

"(D) Ethyl ether.

"(e) Any information which is reported to or otherwise obtained by the Attorney General under this section and which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5 by reason of subsection (4) thereof shall be considered confidential and shall not be disclosed, except that such information may be disclosed to officers or employees of the United States concerned with carrying out this title or title III or when relevant in any proceeding for the enforcement of this title or title III or when necessary to meet United States treaty obligations.

"(f) For the purposes of this title—

"(1) the term "import" has the same meaning given such term in section 1001 of title III (21 U.S.C. 951 (a)(1)); and

"(2) the term 'customs territory of the United States' has the same meaning given such term in section 1001 of title III (21 U.S.C. 951(a)(2)).

"(g) No person may distribute, sell, import, export, or otherwise transfer to another person any commercial tableting machine or encapsulating machine unless the purchaser, recipient, transferee, or his agent presents to the distributor or supplier a certification of lawful use and identification to confirm the identity of the recipient or purchaser (and any entity which the recipient or purchaser represents) or such a type as the Attorney General by regulation may establish.

"(h) Any person who distributes, sells, imports, exports or otherwise transfers to another person any commercial tableting machine or encapsulating machine shall report the transfer to the Attorney General in such a form as the Attorney General may by regulation require. The Attorney General may require such information as the date of sale or transfer, name and address of transferee, purpose for which equipment is intended, serial numbers and make/model of equipment.".

SEC. 1563. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Section 401(d)(1) (21 U.S.C. 841(d)(1)) of the Controlled Substances Act is amended by—

(1) deleting the word "piperidine" and replacing it with the words "precursor chemical or essential chemical listed under section 311(d)"; and

(2) deleting the word "phencyclidine" and replacing it with the words "any controlled substance".

(b) Section 401(d)(2) (21 U.S.C. 841(d)(2)) of the Controlled Substances Act is amended by—

(1) adding the words "or distributes" after the word "possesses";

(2) deleting the word "piperidine" the first place it appears and replacing it with the words "precursor chemical or essential chemical listed under section 311(d)";

(3) deleting the word "piperidine" the second place it appears and replacing it with the words "precursor chemical or essential chemical"; and

(4) deleting the word "phencyclidine" and replacing it with "any controlled substance".

(c) Section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) is amended by—

(1) deleting "or" in paragraph (1);

(2) adding new paragraphs (3) and (4) after paragraph (2) as follows:

"(3) imports or exports a precursor or essential chemical listed under section 311(d) except as provided for by this Act, or

"(4) possesses any precursor chemical or essential chemical listed under section 311(d), with knowledge that the recordkeeping or reporting requirements of section 311(a) of this title or regulations issued thereunder have not been adhered to".

(d) Section 402(a)(9) (21 U.S.C. 842(a)(9)) of the Controlled Substances Act is amended by—

(1) deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under section 311(d)";

(2) adding after the citation "section 310(a)(2)" the phrase "or section 311(a)(2)"; and

(3) adding "or certification" after "identification".

(e) Section 403(a) (21 U.S.C. 843(a)) of the Controlled Substances Act is amended by—

(1) in paragraph (4)(B) by deleting the word "piperidine" and replacing it with the words "a precursor chemical or essential chemical listed under section 311(d)";

(2) in paragraph (4)(B) by adding after the citation "section 310(a)" the phrase "or section 311(a)";

(3) in paragraph (4)(B) by adding "or certificate" after "identification" where it appears;

(4) in paragraph (4)(B) by striking out "or" after the semicolon; and

(5) by adding the following paragraphs after paragraph (5) as follows:

"(6) possesses any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules with intent to manufacture a controlled substance except as authorized by this subchapter; or

"(7) manufactures, distributes, sells, or imports any drug manufacturing equipment, tableting or encapsulating machines, or gelatin capsules knowing, or having reasonable cause to believe, that they will be used to manufacture a controlled substance except as authorized by this subchapter.".

(f) Section 511(a) of the Controlled Substances Act (21 U.S.C. 881) is amended by adding a new subsection (9) as follows:

"(9) all chemicals listed under section 311(d) which have been imported, exported, manufactured, possessed, distributed or intended to be distributed, in violation of this title, as well as all conveyances and equipment, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any way facilitate the transportation, sale, receipt, possession, or concealment of precursor chemicals and essential chemicals in violation of this title, except as provided for under paragraph (4) (A) and (B) above.".

(g) Section 102 (21 U.S.C. 802) of the Controlled Substances Act is amended—

(1) in paragraph (11), by adding after the words "a controlled substance" the words "or a precursor chemical or essential chemical listed under section 311(d)";

(2) by adding a new paragraph (31) as follows:

"(31) The term "precursor chemical" means a substance that may be used in the chemical process of manufacturing controlled substances and which is incorporated

into the final product and is therefore critical to its manufacture."; and

(3) by adding a new paragraph (32) as follows:

"(32) The term "essential chemical" means a substance that may be used in the chemical process of manufacturing controlled substances as a solvent, reagent or catalyst.".

(h) Section 310 (21 U.S.C. 830) of the Controlled Substances Act is amended by adding the words, "ephedrine, or phenylacetic acid" after each reference to piperidine in subsection (a).

(i) Section 506(A) (21 U.S.C. 876(a)) of the Controlled Substances Act is amended by adding after the words "with respect to controlled substances," the words "precursor chemicals or essential chemicals,".

SEC. 1564. DRUG PROGRAM BY ATTORNEY GENERAL.

The Attorney General shall maintain an active program, both domestic and international, to curtail the diversion of precursor chemicals and essential chemicals used in the illicit manufacture of controlled substances. This program shall include appropriate controls on the purchase, sale, importation and exportation of these chemicals and development of cooperative efforts with foreign drug control authorities.

PART VII—ASSETS FORFEITURE AMENDMENTS ACT OF 1986

SEC. 1571. SHORT TITLE.

This part may be cited as the "Asset Forfeiture Amendments Act of 1986".

SEC. 1572. DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.

(a) Subsection (c)(1) of section 524 of title 28, United States Code, is amended—

(1) by redesignating subparagraph (A) as subparagraph (A)(i); and

(2) by inserting the following after subparagraph (A)(i) as so redesignated:

"(ii) the payment of non-case specific, program-related expenses for contracting for services related to the processing of and accounting for forfeitures;".

(b) Subsection (c)(1)(E) of section 524 of title 28, United States Code, is amended—

(1) by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after "for official use by"; and

(2) by striking out "and" after the semicolon.

(c) Subsection (c)(1)(F) of section 524 of title 28, United States Code, is amended by striking out "Act." and inserting "Act; and" in lieu thereof.

(d) Subsection (c)(1) of section 524 of title 28 of the United States Code is amended by inserting the following new subparagraph after subparagraph (F):

"(G) for the payment of non-case specific, forfeiture program-related expenses for training and printing.".

(e) Subsection (c)(8) of section 524 of title 28 of the United States Code is amended by striking out "For fiscal years 1984, 1985, 1986, and 1987" and inserting in lieu thereof "Through fiscal year 1991".

SEC. 1573. SUBSTITUTE ASSETS.

(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

PART VIII—EXCLUSIONARY RULE LIMITATION ACT OF 1986

SEC. 1581. SHORT TITLE.

This part may be cited as the "Exclusionary Rule Limitation Act of 1986".

SEC. 1582. AMENDMENT TO CHAPTER 223 OF TITLE 18.

(a) Chapter 223 of title 18, United States Code, is amended by adding at the end thereof the following two sections:

"§ 3508. Limitation of the fourth amendment exclusionary rule

"Evidence which is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was undertaken in an objectively, reasonable belief that it was in conformity with the fourth amendment. A showing that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of such a reasonable belief, unless the warrant was obtained through intentional and material misrepresentation.

"§ 3509. General limitation of the exclusionary rule

"Except as specifically provided by statute or rule of procedure, evidence which is otherwise admissible shall not be excluded in a proceeding in a court of the United States on the ground that the evidence was obtained in violation of a statute or rule of procedure, or of a regulation issued pursuant thereto.".

(b) The table of sections of chapter 223 of title 18, United States Code, is amended by adding at the end thereof:

"3508. Limitation of the fourth amendment exclusionary rule.

"3509. General limitation of the exclusionary rule.".

Subtitle F—Public Awareness and Private Sector Initiatives Act of 1986

SEC. 1601. SHORT TITLE.

This subtitle may be cited as the "Public Awareness and Private Sector Initiatives Act of 1986".

SEC. 1602. CONTRACT AUTHORITY.

(a) Notwithstanding any other provision of law, the head of an agency of the Federal Government is not required to use competitive procedures in the procurement of property or services by such agency if—

(1) such property or services are to be used primarily for the purpose of conducting a public education program to publicize the dangers of illegal drug use;

(2) at least 50 per cent of the reasonable value of such property or services is donated, in cash payments or in kind, to the Government for such purpose; and

(3) the agency procures such property or services within 2 years after the date of enactment of this subtitle.

(b) As used in subsection (a), the term "competitive procedures" has the same meaning as is provided in section 4(1)(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)(6)).

(c) The provisions of this section shall take effect upon the date of enactment of this subtitle and remain in effect for a period of two years thereafter.

SEC. 1603. AMENDMENT TO THE [ACT IN SECTION].

(a) Section 501 of the United States Information and Educational Exchange Act of 1948 is amended by inserting in the second sentence after "Office" the following: "or any information warning of the hazards of illegal drug use".

(b) The provisions of this section shall take effect upon the date of enactment of this subtitle.

TITLE II—PENDING SENATE INITIATIVES AGAINST DRUGS

Subtitle A—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 2101. SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. 2102. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) striking out the matter following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Subtitle B—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 2201. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisioned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to affect the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs ..... 341".

Subtitle C—Controlled Substances Technical Amendments

SEC. 2301. TECHNICAL AMENDMENTS.

(a) Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

(b) Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

(c) Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

(d) Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

(e) Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees, except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

(f) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

Subtitle D—Indian Juvenile Alcohol and Drug Abuse Prevention

SEC. 2401. SHORT TITLE.

This subtitle may be cited as the "Indian Youth Alcohol and Substance Abuse Prevention Act".

PART I—INTERDEPARTMENTAL AGREEMENT

SEC. 2411. AGREEMENT.

(a) The Secretary of Health and Human Services shall take action to enter into a written agreement with the Secretary of the Interior to—

(1) coordinate the Bureau of Indian Affairs and Indian Health Service Indian youth alcohol and substance abuse programs existing on the date of enactment of this Act and programs established by this Act;

(2) identify Federal, State, local, and private resources to combat Indian youth alcohol and substance abuse;

(3) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate Indian youth alcohol and substance abuse-related services at each administrative level;

(4) authorize the Bureau of Indian Affairs agency superintendents and education superintendents and the Indian Health Service service unit directors to enter into agreements described in section 2412; and

(5) provide for biennial review of such agreement of the Secretary of Health and Human Services and the Secretary of the Interior.

(b) The agreement under subsection (a) shall be submitted to Congress and published in the Federal Register within 90 days of the date of enactment of this Act.

SEC. 2412. COORDINATION OF RESOURCES AND SERVICES.

(a) After publication in the Federal Register of the agreement entered into under section 2411, any Indian tribe may submit a written request to the Secretary of Health and Human Services to coordinate resources and services related to Indian youth alcohol and substance abuse prevention, identification, education, treatment, and followup care.

(b) Within 90 days of receipt of a written request of any Indian tribe submitted under subsection (a), the Secretary of Health and Human Services, in consultation with the Secretary of the Interior, shall—

(1) enter into an agreement with such tribe to identify and coordinate the responsibilities and referral resources of all agencies and programs providing youth alcohol and substance abuse-related resources or services within the service area of such tribe; and

(2) review and modify such agreement, as necessary, to reflect changes in the availability of resources and services related to youth alcohol and substance abuse prevention, identification, education, treatment, and followup care.

(c) Any contracts, grants, or cooperative agreements made to carry out subsection (b) shall be consistent with existing laws and regulations.

PART II—EDUCATION

SEC. 2421. BUREAU OF INDIAN AFFAIRS SCHOOLS.

(a) The Secretary of the Interior shall require Bureau of Indian Affairs schools, and schools operated under any contract entered into with the Bureau of Indian Affairs, to provide a program of instruction regarding alcohol and substance abuse to students in kindergarten and grades 1 through 12.

(b) The program required under subsection (a) shall be developed in consultation with the Indian tribe or tribes or school board or boards designated by such tribe or tribes that will be served by such program and with appropriate education and health personnel at the local level.

(c) Schools providing programs of instruction under subsection (a) shall include family participation in the instruction where feasible.

SEC. 2422. NEWSLETTERS

The Secretary of Health and Human Services shall, within 9 months of the date of enactment of this Act, begin publishing an alcohol and substance abuse newsletter in cooperation with the Department of the Interior and the Department of Education which shall report on Indian alcohol and substance abuse projects and programs. The newsletter shall be published once in each calendar quarter and shall be circulated without charge to schools, tribal offices, Bureau of Indian Affairs agency and area offices, Indian Health Service area and service unit offices, Indian Health Service alcohol programs, and other entities providing alcohol and substance abuse-related services or resources to Indian people.

SEC. 2423. FELLOWSHIPS FOR INDIAN STUDENTS.

Subsection (a) of section 423 of the Indian Education Act (20 U.S.C. 3385b(a)) is amended by inserting "clinical psychology," after "medicine,".

PART III—FAMILY AND SOCIAL SERVICES

SEC. 2431. TRAINING AND INSTRUCTION.

(a) Any initial training program for new community health representatives and community health aids funded under the authority of the Act of November 2, 1921 (25 U.S.C. 13) shall include not less than 40 hours of instruction in the area of alcohol and substance abuse and shall include training in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance

abuse, and the causes and effects of fetal alcohol syndrome.

(b)(1) The Secretary of Health and Human Services shall, either directly or through contract, make available instructions in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to—

(A) personnel at schools operated under any contract entered into the Bureau of Indian Affairs,

(B) personnel of programs operated under any contract entered into with the Indian Health Service,

(C) personnel of the Bureau of Indian Affairs,

(D) personnel of the Indian Health Service, and

(E) supervisors of emergency shelters described in section 2441(b)(1),

who are responsible for, or work with, Indian youth.

(2) Upon request, the Secretary of Health and Human Services shall offer the instruction described in paragraph (1) to—

(A) members of school boards or designated school personnel who—

(i) govern, or are associated with, any school at which at least 20 percent of the enrollment consists of Indian students, and

(ii) are responsible for, or work with, Indian youth;

(B) personnel of urban Indian centers, which are funded pursuant to section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603), who are responsible for, or work with, Indian youth;

(C) judges of tribal courts and courts of Indian offenses;

(D) personnel associated with any tribal, State, or Federal Court who are responsible for, or work with, Indian youth;

(E) Bureau of Indian Affairs law enforcement personnel; and

(F) members of local community and tribal organizations or educational or health institutions responsible for, or working with, Indian youth.

(3) The Secretary of Health and Human Services shall provide the instruction described in paragraph (1) within integrated programs for all participants in local Indian communities, whenever practicable.

(4) The Secretary of Health and Human Services—

(A) may provide the instruction described in paragraph (1) at no expense to the participants or to the employers of the participants, or

(B) may charge a fee for the provision of such instruction to a participant.

If such a fee is charged, the amount of such fee shall not exceed the direct costs incurred by the Secretary of Health and Human Services in providing such instruction to the participant.

(5) The Secretary of Health and Human Services shall coordinate the planning of the instruction described in paragraph (1) with the Secretary of the Interior.

PART IV—LAW ENFORCEMENT

SEC. 2441. PLACEMENT; LICENSING OF SHELTERS.

(a) The Secretary of the Interior, in consultation with the Attorney General of the United States, shall—

(1) promulgate guidelines under which any tribal or Federal law enforcement officer shall, for the benefit of any Indian youth arrested for an offense in which the abuse of alcohol or substances was a contributing factor, place such Indian youth in an emergency shelter licensed under subsection (b), a community-based alcohol or substance abuse treatment facility, or any other medical or detention facility, and

(2) make these guidelines available to any State which exercises criminal jurisdiction over any part of Indian country pursuant to Federal law.

(b)(1) By no later than the date that is 210 days after the date of enactment of this Act, the Secretary of Health and Human Services, with the concurrence of the Secretary of the Interior, shall establish standards for the licensing of temporary emergency shelters to house, whenever appropriate, Indian youth apprehended by any law enforcement officer for any offense in which the abuse of alcohol or substances was a contributing factor.

(2)(A) Indian tribes may elect to adopt the standards prescribed by the Secretary of Health and Human Services under paragraph (1) and issue licenses to temporary emergency shelters that qualify under such standards. If an Indian tribe does not elect to perform the function of licensing temporary emergency shelters in accordance with such standards, such function shall be performed by the Secretary of Health and Human Services.

(B) Any license issued under subparagraph (A) shall be subject to renewal on an annual basis and, if an emergency shelter fails at any time to comply with the standards prescribed under paragraph (1), such license shall be revoked by the Indian tribe that issued such license or, if the Indian tribe fails to act, by the Secretary of Health and Human Services.

(3) An emergency shelter may be licensed under paragraph (2) only if the individual supervising such shelter has completed the training described in section 2431(b)(1).

SEC. 2442. TRIBAL COURTS; SENTENCING AND FINES.

Paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year or a fine of $5,000, or both".

SEC. 2443. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall—

(1) be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974, and

(2) include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or substance related offenses.

The development of such Model Code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of such Model Code, the Secretary of the Interior shall make copies of such Model Code available to each Indian tribe.

SEC. 2444. LAW ENFORCEMENT SERVICES.

(a) For the purpose of maintaining law and order and of protecting persons and property within Indian country (within the meaning of section 1151 of title 18, United States Code), the Secretary of the Interior (hereafter in this section referred to as the "Secretary") may charge any officer or employee of the Department of the Interior with law enforcement responsibilities and may, to the extent the Secretary deems appropriate, authorize such officer or employee to—

(1) carry firearms within Indian country and while transporting prisoners or on other official duties outside Indian country;

(2) secure and execute or serve within Indian country any order, warrant, subpoena, or other process which is issued under the authority of the United States or of an Indian tribe;

(3) make an arrest without a warrant—

(A) for any offense committed against the United States within Indian country that is committed in the presence of the officer or employee,

(B) for any offense committed against the United States within Indian country that constitutes a felony if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a felony, or

(C) for any offense committed within Indian country against an Indian tribe that has commissioned the officer or employee to enforce the laws of the Indian tribe if the officer or employee has reasonable grounds to believe that the person to be arrested is committing the offense in the presence or view of the officer or employee;

(4) offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense committed within Indian country or in the apprehension of an offender;

(5) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is material or relevant to the enforcement within Indian country of the laws of the United States or of any Indian tribe that has commissioned the officer to enforce the laws of the Indian tribe;

(6) upon request, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement of the laws, ordinances, or regulations which they administer or enforce, but no Indian tribe, State, or political subdivision shall be deprived, by this section or by any such request, of any civil or criminal jurisdiction it may have; and

(7) perform any other law enforcement duty that the Secretary may designate.

(b)(1) The Secretary may utilize by agreements, with or without reimbursement, such personnel, services, and facilities of any Federal, tribal, State, or local governmental agency as the Secretary deems necessary and appropriate for effective enforcement of any Federal or tribal laws in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in subsection (a) as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United State Code, an employee of a tribal, State, or local governmental agency shall be considered an eligi-

ble officer while acting in the capacity of an officer commissioned pursuant to this section.

(c) The Secretary may make and publish such rules and regulations as the Secretary deems necessary or proper for officers or employees of the Department of the Interior charged with law enforcement responsibilities and for employees of any Federal, tribal, State, or local governmental agency whose services are being utilized pursuant to subsection (b).

(d)(1) Nothing in this section shall be construed to invalidate any delegations of authority or law enforcement commissions issued by the Secretary, or any delegate of the Secretary, prior to the date of enactment of this Act.

(2) The authorities provided by this section are in addition to, and not in derogation of, any existing authorities. Nothing in this section shall be construed to alter in any way the law enforcement, or investigative, or judicial authorities of any Indian tribe, State, or political subdivision thereof, or of any department, agency, court, or official of the United States other than the Department of the Interior and agencies or officials thereof.

(e) Notwithstanding section 5901(a) of title 5, United States Code, the uniform allowance for Bureau of Indian Affairs law enforcement officers shall not exceed $400 annually.

PART V—YOUTH ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION.

SEC. 2451. STUDY.

The Secretary of Health and Human Services, in consultation with Indian tribes, shall, within 1 year of the date of enactment of this Act, complete a study to determine—

(1) the scope of the Indian youth alcohol and substance abuse problem and its estimated financial and human costs;

(2) the size of the Indian youth population in need of residential alcohol and substance abuse treatment;

(3) the location of residential facilities at which such treatment is available or could be made available; and

(4) the cost of providing such treatment.

SEC. 2452. COST ESTIMATES.

When the budget for the Indian Health Service for each fiscal year beginning with fiscal year 1989 is submitted to the Congress, the Secretary of Health and Human Services shall submit to the appropriate committees of the Congress, a detailed estimate of the cost of providing, under existing authority, comprehensive Indian youth alcohol and substance abuse treatment services, including detoxification and counseling services, and followup care in Indian Health Service facilities and in health facilities operated under any contract entered into with the Indian Health Service.

SEC. 2453. USE OF EXISTING FACILITIES.

(a)(1) The Secretary of Health and Human Services shall, in consultation with Indian tribes, identify and utilize whenever possible existing—

(A) facilities owned by the Federal Government or by an Indian tribe, or

(B) local community or private hospitals or other appropriate facilities,

that would be suitable for use as residential alcohol and substance abuse treatment centers for Indian youth in order to meet the needs identified in the study conducted under section 2451.

(2) Any facility described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency, or the local government unit, having responsibility for the facility.

(3) The Secretary of Health and Human Services may, directly or by contract, renovate any federally owned or federally funded facility described in paragraph (1). Any such renovation shall conform with such terms and conditions as have been agreed upon under paragraph (2).

(b) The Secretary of the Interior shall identify for the Secretary of Health and Human Services any existing Bureau of Indian Affairs facilities which may be suitable for residential alcohol and substance abuse treatment centers for Indian youth.

(c) If the facilities identified and utilized under subsections (a) and (b) do not adequately meet the treatment needs identified in the study conducted under section 2451, the Secretary of Health and Human Services shall—

(1) begin including requirements for new construction on the construction priority list which is published annually in the Federal Register, and

(2) within 2 years of the date of enactment of this Act, advise the appropriate committees of Congress as to the cost required to construct such facilities as the Secretary of Health and Human Services finds necessary to meet such treatment needs.

PART VI—MISCELLANEOUS PROVISIONS

SEC. 2461. DEFINITIONS.

For purposes of this subtitle—

(1)(A) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaska Claims Settlement Act (43 U.S.C. 1601, et seq.) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) For purposes of section 2412, the term "Indian tribe" includes an urban center (within the meaning of section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603)).

(2) The term "agency" means the local administrative entity of the Bureau of Indian Affairs, operated directly or by contract, serving one or more Indian tribes within a defined geographic area.

(3) The term "service unit" means the local administrative entity of the Indian Health Service, operated directly or by contract, serving one or more Indian tribes within a defined geographic area.

(4) The term "youth" means a person who is 19 years or younger.

SEC. 2462. REGULATIONS.

The Secretary of the Interior and the Secretary of Health and Human Resources are authorized to prescribe such regulations as may be necessary to carry out the provisions of this subtitle.

SEC. 2463. ALLOCATIONS.

The funds appropriated under the authority of this subtitle shall be allocated on the basis of need.

SEC. 2464. AUTHORIZATION OF APPROPRIATIONS.

(a) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subtitle.

(b) Notwithstanding any other provision of law, the receipts from any fees charged under section 2431(b)(4)(B) for the provision of instruction shall, in lieu of being deposited in the general fund of the Treasury of the United States, be credited as a refund to the appropriation from which the expenses of such instruction were paid.

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

SEC. 2501. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogs' Enforcement Act of 1986".

SEC. 2502. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 403 the following new section 403A (21 U.S.C. 843):

"§ 403A. Prohibited acts D

Any person who knowingly or internationally manufactures with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $25,000, or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.".

SEC. 2503. DEFINITION.

Section 102 of the Controlled Substance Act (21 U.S.C. 802) is amended by adding at the end thereof the following new paragraphs:

"(31) The term 'controlled substance analog' as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedule I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedule I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonines, quinazolinones, substituted indoles, and arylcycloalkylamines.

"(32) The term 'human consumption' includes application, injection, inhalation, or ingestion.".

SEC. 2504. TECHNICAL AMENDMENT.

The analysis of part D of the Controlled Substances Act is amended by inserting after the item relating to section 403 the following:

"403A Prohibited acts D.".

Subtitle F—Department of Defense Drug Interdiction

SEC. 2601. DRUG ENFORCEMENT EQUIPMENT, OPERATIONS, AND INTELLIGENCE GATHERING.

(a) There are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987, the sum of $212,115,000 as follows:

(1) For procurement, refurbishment, or upgrading of aircraft, radar, and related systems, $187,500,000.

(2) For operation and maintenance of aircraft used in carrying out drug interdiction missions, $12,615,000.

(3) For enhanced intelligence collection activities concerning illegal importation into the United States of drugs originating in South America, $12,000,000.

(b) The Secretary of Defense shall make available, subject to the provisions of chapter 18 of title 10, United States Code, to such agencies of the Federal Government as may be directed by the Chairman of the National Drug Enforcement Policy Board established by the National Narcotics Act of 1984 any aircraft, radar, and related equipment procured, refurbished, or upgraded with funds appropriated pursuant to authorizations in subsection (a).

(c) Each agency to which aircraft, radar, or related equipment are made available pursuant to subsection (b), shall have the responsibility for operation and maintenance costs attributable to such aircraft, radar, or related equipment. The responsibility for such costs shall commence upon receipt by such agency of such aircraft, radar, or related equipment, or, in the case of radar or equipment installed other than on aircraft, upon the completion of the installation of such radar and equipment.

(d) Amounts authorized to be appropriated to the Department of Defense for fiscal year 1987 or any prior fiscal year for procurement of equipment for the enhancement of authorized drug enforcement activities of the Department of Defense under subsection (a) or any other provision of law may be obligated and expended for such purpose only if the Secretary of Defense determines that the equipment—

(1) is fully supportable within the existing service support system of the Department of Defense; and

(2) reasonably relates to an existing military, war reserve, or mobilization requirement.

SEC. 2602. COAST GUARD ACTIVITIES.

(a) Unless required elsewhere in law, the amounts appropriated to the Department of Defense for fiscal year 1987, $15,000,000 shall be transferred to the Secretary of Transportation and shall be available only for the purpose of carrying out section 379 of title 10, United States Code (as added by subsection (b)), relating to the assignment of members of the Coast Guard to duty on naval vessels.

(b)(1) Chapter 18 of title 10, United States Code, is amended by inserting after section 378 the following new section:

"§ 379. Assignment of personnel to naval vessels for drug enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation may provide that there be assigned on board surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have power to arrest, search, and seize property and persons suspected of violations of law.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions) as—

"(1) may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be available for assignment each fiscal year to duty as provided in subsection (a).

"(d) As used in this section, the term 'drug-interdiction area' means in area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 378 the following new item:

"378. Assignment of personnel to naval vessels for drug enforcement purposes.".

(c)(1) Section 1421 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 750) is repealed.

(2) The repeal made by paragraph (1) shall take effect on October 1, 1986.

SEC. 2603. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES.

(a) Not later than March 1, 1987, the National Drug Enforcement Policy Board shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the manner and the extent to which the Department of Defense should be involved in United States law enforcement activities relating to the control and reduction of drug abuse. The Board shall include in such report—

(1) its recommendation for a 5-year funding plan for the participation of the Department of Defense in United States drug law enforcement activities; and

(2) a description of the functions which members of the Armed Forces under the jurisdiction of the Secretary of Defense may appropriately perform in the national effort to control and reduce drug abuse, including the interdiction of illegal drugs.

(b) Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of (1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse, (2) the types of drug education programs that are currently being provided in such schools, (3) whether additional drug education programs are needed in such schools, and (4) the extent to which drug education programs for youth in grades K through 12 include or should include preventative peer counseling classes.

SEC. 2604. DRIVING WHILE IMPAIRED BY DRUG INTOXICATION TO BE PUNISHABLE UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

Section 911 of title 10, United States Code, is amended by striking out "drunk," and inserting in lieu thereof "drunk or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),".

SEC. 2605. DRUG INTERDICTION ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS.

Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.".

Subtitle G—Money Laundering Crimes Act of 1986

SEC. 2701. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Crimes Act of 1986".

SEC. 2702. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to facilitate the carrying on of specified unlawfully activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the locations, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than 20 years, or both.

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in paragraph (1) or (3) of subsection (a) or a transportation described in paragraph (2) of subsection (a) is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the phrase 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder; and

"(7) the term 'specified unlawful activity' means

"(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 545 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title; or

"(E) except where jurisdiction attaches pursuant to subsection (f), an offense under section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1702 et seq.), and the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

"1956. Laundering of monetary instruments".

SEC. 2703. AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

(a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include the name or names of and other identifying information concerning the individuals and accounts involved in and the nature and a description of the suspected illegal activity sufficient to enable the Government authority to obtain access to or copies of such information pursuant to law. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 2704. AMENDMENTS TO TITLE 31 OF THE UNITED STATES CODE.

(a) Section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority

"(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

"(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (c);

"(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

"(3) for the purpose of any investigation which, in the opinion of the Secretary, is necessary and proper to enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of or examine records (including books, papers, documents, and tangible things which constitute or contain evidence) relevant or material to the investigation;

"(b) Subject to the customer notification procedures of the Right to Financial Privacy Act of 1978, a summons may be issued under paragraph (3) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any state or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

"(d) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

"(e) In the of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation gave rise to the summons is being or has been carried on or of which the person summoned is an inhabitant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary of his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of

the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.".

(b)(1) Paragraph (1) of subsection (a) of section 5321 of title 31, United States Code, is amended to read as follows:

"(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.".

"(2) Subsection (a) of section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

"(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

"(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

"(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $500.

"(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction.

"(7) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission) willfully violating section 5313 of this subchapter. A civil penalty under this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) involved in the violation of section 5313 of this subchapter. A civil penalty under this paragraph is reduced by any amount forfeited under subsection 5317(d) of this subchapter.".

(c) Subsection (b) of section 5321 of title 31, United States Code, is amended to read as follows:

"(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction on which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later."

(d) Subsection (c) of section 5321 of title 31 is amended to read as follows:

"(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317 (c) or (d) of this subchapter or may mitigate any civil penalty under subsection (a) of this section.".

(e) Subsection (b) of section 5322 of title 31, United States Code, is amended by striking out "pattern of illegal activity involving transactions of more than $100,000" and inserting in lieu thereof "pattern of any illegal activity involving more than $100,000", and by striking out "5" and inserting in lieu thereof "10".

(f) Section 5312(a)(3)(B) of title 31, United States Code, is amended by striking the period at the end thereof and inserting in lieu thereof: "whether or not in bearer form.".

(g) Section 5312(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.".

(h) Subsection (a) of section 5313 of title 31, United States Code, is amended by adding at the end thereof the following: "No person shall, for the purpose of evading the reporting requirements of this subsection—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required by this subsection;

"(2) cause or attempt to cause a domestic financial institution to file a report required by this subsection that contains a material omission or misstatement of fact; or

"(3) structure or attempt to structure or assist in structuring a transaction.".

(i) Subsection 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(j) A new subsection 5317(d) of title 31, United States Code, is added as follows:

"(d)(1) United States coin and currency (or other monetary instrument as the Secretary may prescribe) or any interest in other property, including any deposit in a financial institution traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) of this subchapter, may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the securities and Exchange Commission or a partner, director, office, or employee thereof. No property or interest in property shall be forfeited under this subsection to the extent of an interest of an owner by reason of any act or omission established by that owner to have been committed or omitted without the knowledge of that owner.

"(2) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the custom laws, the disposition of such property or the proceeds from the sale of such property, the remission or mitigation of such forfeitures, and the compromise of claims (the Tariff Act of 1930, as amended, §602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this subsection, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer shall be performed by such persons as may be authorized or designated for that purpose by the Secretary of the Treasury.".

(k) The table of sections at the beginning of chapter 53, subchapter II, of title 31, is amended by striking "5318. Compliance and exemption." and inserting in lieu thereof "5318. Compliance, exemptions and summons authority."

(l) Subsection (c) of section 5322 of title 31, United States Code, is amended by striking out "5318(2)" each time it appears and inserting in lieu thereof "5318(a)(2)"

SEC. 2705. PENALTIES UNDER FEDERAL DEPOSIT INSURANCE ACT.

Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829(b)) is amended to read as follows:

"(b) REGULATIONS AND PENALTIES.—(1) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(2) For each willful violation of any regulation issued by the Secretary pursuant to paragraph (1) of this subsection, the Secretary may impose on any bank and partner, director, officer or employee of a bank who participates in the violation, a civil penalty not to exceed $10,000. Such penalties will be assessed, mitigated and collected in accordance with the provisions of section 532 (b) and (c) of title 31, United States Code.

"(3) Whoever willfully violates any regulation issued by the Secretary pursuant to paragraph (1) of this subsection shall be fined not more than $250,000 and imprisoned for not more than 5 years, or both.".

SEC. 2706. MONEY LAUNDERING AS A PREDICATE OFFENSE.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments)," after "section 1955 (prohibition of business enterprises of gambling),".

SEC. 2707. FORFEITURE.

(a) Title 18 of the United States Code, is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.

"981. Civil Forfeiture.

"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act of omission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

"The Attorney General or the Secretary of the Treasury, as the case may be shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

"(1) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under this subchapter, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under this subchapter to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity

giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(k) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(c) and (e)–(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture ..... 981".

TITLE III—NEW INITIATIVES AGAINST DRUGS

Subtitle A—White House Conference on Drug Abuse, Education, Prevention, and Treatment

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "White House Conference on Drug Abuse, Education, Prevention, and Treatment Act of 1986".

SEC. 3002. AUTHORIZATION OF CONFERENCE.

Within 6 months after the date of enactment of this Act, the President shall call and conduct a White House Conference on Drug Abuse Education, Prevention, and Treatment (hereinafter referred to in this subtitle as the "Conference") to carry out the purposes described in section 3003.

SEC. 3003. PURPOSE OF CONFERENCE.

(a) The purposes of the Conference are—

(1) to share information and experiences in order to advance our national commitment to a drug free society;

(2) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to explore what remains to be accomplished to end drug abuse; and

(3) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free.

(b) The Conference shall specifically review—

(1) the essential role of parents and family members in preventing the basic causes of drug abuse and in helping drug abusers regain control of their lives and their future;

(2) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(3) the role of the news media, the entertainment industry, academic institutions, professional and amateur sports, the health profession, the legal profession, the teaching profession, the business community, and labor unions in contributing to our Nation's drug problem and to solutions to the problem; and

(4) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs.

SEC. 3004. CONFERENCE PARTICIPANTS.

(a) In order to carry out the purposes specified in section 3003, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment. The President shall—

(1) ensure the active participation in the Conference of the heads of appropriate executive and military departments, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, and the Secretary of Transportation; and

(2) provide for the involvement in the Conference of other appropriate public officials and representatives of private entities, particularly parents' groups which have been active in the fight against drug abuse.

(b) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. 3005. PLANNING AND ADMINISTRATION OF CONFERENCE.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b)(1) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(2) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

SEC. 3006. FINAL REPORT.

Not more than 6 months after the date on which the Conference is convened, a final report of the Conference shall be submitted to the President and the Congress. The report shall include the findings and recommendations of the Conference and shall be available to the public.

SEC. 3007. AVAILABILITY OF FUNDS.

There are authorized to be appropriated such sums as may be necessary to carry out this subtitle. Amounts appropriated under this section shall remain available until expended. New spending authority or authority to enter contracts as provided in this subtitle shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

Subtitle B—Commerce

PART I—RAILROAD SAFETY

SEC. 3051. RAILROAD SAFETY.

Section 202 of the Federal Railroad Safety Act of 1970 (42 U.S.C. 431) is amended by adding at the end thereof the following:

"(l) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(1) to the extent permitted by law, require that all railroad employees responsible for safety-sensitive functions be subject to testing on a random basis for the presence of alcohol and controlled substances;

"(2) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, and track and related structures;

"(3) consider disqualification for an established period of time of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(4) consider disqualification for an established period of time of any employees determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, orders, or standards issued under this Act.".

PART II—AIR SAFETY

SEC. 3061. AIR SAFETY.

(a)(1) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"TESTING FOR CONTROLLED SUBSTANCES AND ALCOHOL

"REQUIREMENT OF TESTING

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations establishing a program which requires air carriers to conduct pre-employment, periodic recurring, and post-accident testing of airmen and crewmembers for the presence of controlled substances or alcohol in their blood or urine. The Administrator shall establish such a program applicable to employees of the Federal Aviation Administration whose duties include responsibility for safety of flight operations.

"(2) To the extent permitted by law, the Administrator shall require random testing as part of the programs established under paragraph (1) of this subsection.

"PROHIBITION ON SERVICE

"(b)(1)(A) No air carrier shall permit any individual who is determined to have used a controlled substance without lawful authorization after the date of enactment of this section to serve as an airman or crewmember unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(B) In the case of any airman or crewmember determined by the Administrator to have used a controlled substance without lawful authorization after the date of enactment of this section who refuses to undertake or fails to complete a rehabilitation program described in subsection (c) of this section, who has previously undertaken,

completed or failed to complete such a rehabilitation program, or who has been determined by the Administrator to have served as an airman or crewmember while impaired by or under the influence of a controlled substance, the Administrator may revoke the airman certificate of such an airman or, in the case of a crewmember, prohibit such individual from serving as a crewmember.

"(2)(A) The Administrator shall not permit any employee of the Federal Aviation Administration whose duties include responsibility for safety of flight operations who is determined to have used a controlled substance without lawful authorization after the date of enactment of this section to perform any such duties unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(B) In the case of any employee of the Federal Aviation Administration whose duties include responsibility for safety of flight operations determined by the Administrator to have used a controlled substance without lawful authorization after the date of enactment of this section who refuses to undertake or fails to complete a rehabilitation program described in subsection (c) of this section, who has previously undertaken, completed or failed to complete such a rehabilitation program, or who has been determined by the Administrator to have performed duties which include responsibility for safety of flight operations while impaired by or under the influence of a controlled substance, the Administrator shall not permit such employee to perform any such duties.

"REHABILITATION PROGRAM

"(c)(1) Each air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and treatment of airmen and crewmembers in need of assistance in resolving problems with the use of controlled substances or alcohol. Each air carrier is encouraged to make such program available to all of its employees other than airmen and crewmembers. Nothing in this subsection shall preclude any air carrier from establishing a program under this subsection in cooperation with any other air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and treatment of those employees of the Federal Aviation Administration whose duties include responsibility for safety of flight operations who are in need of assistance in resolving problems with the use of controlled substances or alcohol.

"EFFECT ON OTHER REGULATIONS

"(d) Nothing in this section shall preclude the Administration from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of controlled substances or alcohol by airmen or crewmembers.

"DEFINITIONS

"(e) For the purpose of this section, the term 'controlled substance' has the meaning given such term by section 102(b) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(2) The Administrator of the Federal Aviation Administration shall amend section 91.11 of the Federal Aviation Regulations (14 CFR 91.11) to include mechanics and other employees directly responsible for the safety of flight operations as crewmembers for purposes of such section.

(3) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Testing for controlled substances and alcohol.
"(a) Requirements of testing.
"(b) Prohibition on service.
"(c) Rehabilitation program.
"(d) Effect on other regulations.
"(e) Definitions.".

(b)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(b)) is amended by adding at the end thereof the following:

"(3) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who—

"(A) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(B) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(C) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(D) obtains an aircraft registration certificate from the Administrator by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401) is amended by adding at the end thereof the following:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate or registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 501. Registration of aircraft nationality." is amended by adding at the end thereof the following:

"(g) Inspection by law enforcement officers.".

(c)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with transportation described in paragraph (2) and with knowledge of such transportation, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity; and

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity.

"(2) The transportation referred to in paragraph (1) is the transportation by aircraft of any controlled substance where such transportation is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102(5) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 902. Criminal penalties." is amended after the item relating to subsection (q) to read as follows:

"(q) Violations in connection with transportation of controlled substances.".

(d) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" wherever it appears and by inserting in lieu thereof "$5,000";

(2) by inserting immediately after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109 (b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(e)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer or conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regu-

lation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements of section 501 or 503 of this Act.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 1109. Application of existing laws relating to foreign commerce." is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

PART III—COMMUNICATIONS

SEC. 3071. COMMUNICATIONS.

The Federal Communications Commission shall, notwithstanding any other provision of law, assist in the enforcement of or efforts to enforce any provision of Federal law which prohibits the use or distribution of any controlled substance by seizing any communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.) that was owned by or licensed to any person who used such equipment for purposes of using or distributing any such substance. In addition, the Federal Communications Commission shall revoke any license issued to any person under the Communications Act of 1934 who is found to have acted under such license for the purpose of using or distributing any controlled substance in violation of any provision of Federal law.

PART IV—HIGHWAY SAFETY

Subpart A—Commercial Motor Vehicle Safety Act of 1986

SEC. 3081. SHORT TITLE.

This subpart may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

SEC. 3082. PURPOSE.

The purpose of this subpart is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by increasing inspections of commercial motor vehicle operators and the equipment they operate.

SEC. 3083. DEFINITIONS.

As used in this subpart, the term—

(1) "commerce" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considers appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

SEC. 3084. NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE.

(a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications, and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial motor vehicle in commerce in the type of vehicle such person operates or will operate, except that the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations, and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month, and year), sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications, and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this subpart if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) The provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection

shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked, or canceled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked, or canceled for cause by a State, whichever is earliest.

(B) If any such person is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(c) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) until the information system established under section 5 of this Act provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation, or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section 3085(b)(2) of this subpart;

(5) when the information system established under section 3085 of this subpart allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section 3085(d) of this subpart, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such person such a license to determine the driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked, or canceled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked, or canceled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked, or canceled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke, or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditure of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which receives a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of one year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in

compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subparagraph (A) of this paragraph, the State complies with the provisions of this section, the Secretary shall, on the day following the date on which such State complies, apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United States Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

SEC. 3085. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.

(a) Not later than January 1, 1989, the Secretary, after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification, and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial motor vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked, or canceled for cause, or has been convicted under the laws of any State for (A) operating a commercial motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide identification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, make available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked, or canceled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked, or canceled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of information, as provided in paragraphs (4) and (5) of section 3084(c) of this Act.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

SEC. 3086. FREQUENT INSPECTIONS.

(a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or

test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For purposes of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

SEC. 3087. AUTHORIZATIONS OF APPROPRIATIONS.

(a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking "1988." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this subpart shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

Subpart B—Motor Vehicle Safety

SEC. 3091. MOTOR VEHICLE SAFETY.

(a) The Congress finds that—

(1) the use of controlled substances by an operator of a motor vehicle impairs the ability of such an operator to operate a motor vehicle in a safe manner;

(2) currently, the most effective procedure for testing whether such an operator is under the influence of a controlled substance is a test which measures the content of any such substance in the blood of such operator;

(3) several States have enacted laws providing for the administration of such tests, under proper medical supervision, where a law enforcement officer of such State has a reasonable basis for believing that an operator of a motor vehicle is under the influence of a controlled substance; and

(4) such State laws are effective in promoting the safe operation of motor vehicles because such laws provide for the suspension or revocation of a license to operate a motor vehicle if the operator refuses to submit to such testing.

(b) It is therefore the sense of the Senate that the States should, as expeditiously as possible, enact laws and adopt procedures which provide for the administration of tests which measure the content of controlled substances in the blood of any operator of a motor vehicle upon the direction of a law enforcement officer when such officer has reasonable grounds to believe that the operator is under the influence of a controlled substance, and provide for the suspension or revocation of a license to operate a motor vehicle if the operator refuses to submit to such testing.

(c) As used in this section, the term "controlled substance" has the meaning given to such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).

Subtitle C—Harmful Inhalants

SEC. 3101. OFFENSE.

(a) Part I of title 18 of the United States Code is amended by adding after chapter 53 the following new chapter:

"CHAPTER 54—HARMFUL INHALANTS

"Sec.
"1181. Harmful inhalants.

"§ 1181. Harmful inhalants.

"(a) It shall be unlawful for any person to sell, offer to sell, or advertise for sale to any person any material, product, or article containing any substance having a property of releasing vapors or fumes, which has been or is intended to be transported in interstate commerce or deposited in the mails, if he has knowledge or is in the possession of such facts that he should have knowledge that the material, product, or article sold or offered will be used for the purpose of intentionally smelling or inhaling the vapors or fumes from the substance for the purpose of producing in any person a condition of intoxication or inebriation.

"(b) Any violation of subsection (a) shall be punishable by imprisonment of not more than 5 years, or a fine of not more than $250,000, or both.".

(b) The table of chapters for part I of title 18, United States Code is amended by inserting after the item for chapter 53 the following new item:

"54. Harmful Inhalants..... 1181".

Subtitle D—Action Grants

SEC. 3151. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (such as, but not limited to, grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

SEC. 3151. [NOT SUPPLIED]

Subtitle E—Habeas Corpus Reform

SEC. 3201. SHORT TITLE.

This subtitle may be cited as the "Reform of Federal Intervention in State Proceedings Act of 1985".

SEC. 3202. FAILURE TO RAISE CLAIM.

Section 2244 of title 28, United States Code, is amended by adding at the end thereof the following new subsections:

"(d) When a person in custody pursuant to the judgment of a State court fails to raise a claim in State proceedings at the time or in the manner required by State rules of procedure, the claim shall not be entertained in an application for a writ of habeas corpus unless actual prejudice resulted to the applicant from the alleged denial of the Federal right asserted and—

"(1) the failure to raise the claim properly or to have it heard in State proceedings was the result of State action in violation of the Constitution or laws of the United States;

"(2) the Federal right asserted was newly recognized by the Supreme Court subsequent to the procedural default and is retroactively applicable; or

"(3) the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the procedural default.

"(e) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of the following times:

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 3203. APPEAL OF HABEAS CORPUS PROCEEDING.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 of this title before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255 of this title,

unless a circuit justice or judge issues a certificate of probable cause.".

SEC. 3204. APPLICATION AND WRIT OF HABEAS CORPUS.

Federal Rule of Appellate Procedure 22 is amended to read as follows:

"RULE 22.

"HABEAS CORPUS AND § 2255 proceedings

"(a) Application for an Original Writ of Habeas Corpus. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) Necessity of Certificate of Probable Cause for Appeal. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the government or its representative, a certificate of probable cause is not required.".

SEC. 3205. EXHAUSTION OF REMEDIES.

Section 2254 of title 28, United States Code, is amended by redesignating subsections "(e)" and "(f)" as subsections "(f)" and "(g)", respectively, and is further amended—

(1) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the States.";

(2) by redesignating subsection "(d)" as subsection "(e)", and amending it to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence."; and

(3) by adding a new subsection (d) reading as follows:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings.".

SEC. 3206. STATUTE OF LIMITATIONS.

Section 2255 of title 28, United States Code, is amended by deleting the second paragraph and the penultimate paragraph thereof, and by adding at the end thereof the following new paragraphs:

"When a person fails to raise a claim at the time or in the manner required by Federal rules of procedure, the claim shall not be entertained in a motion under this section unless actual prejudice resulted to the movant from the alleged denial of the right asserted and—

"(1) the failure to raise the claim properly, or to have it heard, was the result of governmental action in violation of the Constitution or laws of the United States;

"(2) the right asserted was newly recognized by the Supreme Court subsequent to the procedural default and is retroactively applicable; or

"(3) the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence prior to the procedural default.

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of the following times:

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

Subtitle F—Armed Career Criminals

SEC. 3251. SERIOUS DRUG OFFENSES.

(a) The second sentence of subsection (a) of section 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.C.S. App. 1202(a)) is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a crime of violence or a serious drug offense, or both,".

(b) Subsection (c) of section 1202 of title VII of such Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof:

"(8) 'serious drug offense' means an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a et seq.); and

"(9) 'crime of violence' means any offense punishable by imprisonment for a term exceeding one year that—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle G—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 3301. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 3302. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service as part of a scheme to sell any item which constitutes drug paraphernalia; or

(2) to offer for sale and transportation in interstate or foreign commerce any item which constitutes drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes, but is not limited to, items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetimines into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) manufacturers, wholesalers, jobbers, licensed medical technicians, technologists, nurses, hospitals, research teaching institutions, clinical laboratories, medical doctors, osteopathic physicians, dentists, chiropodists, veterinarians, pharmacists, or embalmers in the normal lawful course of their respective businesses or professions and common carriers or warehousers or their employees engaged in the lawful transportation of such items;

(2) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; and

(3) any person or entity that, in the normal lawful course of business, imports, exports, transports, or sells through the mail or by any other means any pipe, paper, or accessory primarily intended or designed for use with tobacco products.

For purposes of clause (3), any pipe with a bowl depth of one-half inch or greater shall be presumed to be intended or designed for use with tobacco products.

SEC. 3303. EFFECTIVE DATE.

This subtitle shall become effective ninety days after the date of enactment of this subtitle.

Subtitle H—International Narcotics Control

PART I—INTERAGENCY COORDINATING COMMITTEE

SEC. 3351. INTERAGENCY COORDINATING COMMITTEE.

(a) It is the sense of the Congress that the drug problem should be a high-priority national intelligence collection and action target.

(b)(1) There is established an Inter-Agency Coordinating Committee for Drug-Related Intelligence Collection and Action (hereafter in this subsection referred to as the "Committee"), which shall be composed of one representative from each of the following intelligence agencies and from the intelligence component of each of the following elements of the United States Government, to be selected by the head of such agency or element:

(A) The Central Intelligence Agency.

(B) The Department of Defense.

(C) The Defense Intelligence Agency.

(D) The National Security Agency.

(E) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(F) The Department of State.

(G) The Department of the Treasury.

(H) The Department of Energy.

(I) The Federal Bureau of Investigation.

(J) The Drug Enforcement Administration.

(2) The function of the Committee is—

(A) to set goals and targets and their degree of priority for drug-related intelligence collection and action;

(B) to coordinate the drug-related activities of the intelligence components referred to in paragraph (1); and

(C) to report to the Director of Central Intelligence on its activities in carrying out clauses (A) and (B).

(c) Not later than 12 months after the date of enactment of this Act, and every 12 months thereafter, the Director of Central Intelligence shall prepare and transmit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a detailed report in classified form describing—

(1) what the intelligence components of the United States Government have done during the preceding 12-month period to halt the flow of illegal drugs;

(2) what such intelligence components intend to do during the following 12-month period to halt the flow of illegal drugs; and

(3) what actions could be taken to halt the flow of illegal drugs if additional resources were made available to such intelligence components.

PART II—DECLARATION; POLICY

SEC. 3361. DECLARATION; POLICY.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization (NATO) in cooperative drug programs.

PART III—REPORT

SEC. 3371. REPORT.

(a) Not later than 12 months after the date of enactment of this Act, and every 12 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and the identities of officials whose activities caused such country to be so listed.

(b) No United States assistance may be furnished to the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of, any country listed under subsection (a)(1) unless the President certifies to the Congress that—

(1) overriding national interests require the provision for such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) For purposes of this section, the term "United States assistance" has the same meaning as is given to such term by section 481(i)(4) of the Foreign Assistance Act of 1961.

PART IV—INTERNATIONAL NARCOTICS CONTROL ACT OF 1986

SEC. 3381. SHORT TITLE.

This part may be cited as the "International Narcotics Control Act of 1986".

Subpart A—International Narcotics Control Assistance Program

SEC. 3382. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress (A) a budget request for the appropriation of those funds, and (B) a plan showing how the requested funds will be used, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under chapter 8 of part I of this Act (22 U.S.C. 2291 et seq.; relating to international narcotics control). These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. 3383. RETENTION OF TITLE TO AIRCRAFT PROVIDED TO MEXICO FOR NARCOTICS CONTROL PURPOSES.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new section:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft made available to Mexico under this chapter at any time after the enactment of this section (including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986) shall be provided only on a lease or loan basis.".

SEC. 3384. RECORDS OF AIRCRAFT USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program), as amended by the preceding section of this part, is further amended by adding at the end the following new section:

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to Mexico under this chapter, including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986 and aircraft made available under this chapter before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. 3385. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 3386. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

Subpart B—Improving Law Enforcement and Other Narcotics Control Activities Abroad

SEC. 3388. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. 3389. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 3390. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 3391. ADMINISTRATION OF JUSTICE.

(a) The Congress of the United States finds that an essential element in controlling the production and trafficking in illicit drugs in Latin America and the Caribbean are strengthened national and regional institutions concerned with the effective, humane, and professional administration of justice.

(b) Section 534 of the Foreign Assistance Act of 1961 is amended—

(1) by amending subsection (b)(3) to read as follows:

"(3) programs to enhance investigative, forensic, enforcement, corrections, and related ancillary functions integral to humane and effective professional systems of criminal justice;"; and

(2) by amending subsection (e) to read as follows:

"(e) Assistance under this section may be provided without regard to section 660 of this Act and, in the case of participation in regional and multilateral projects and activities, without regard to any other provision of law. Each notification under subsection (d) with respect to assistance that would be prohibited but for the enactment of this subsection shall specify why the assistance should be provided notwithstanding an otherwise applicable prohibition.".

(c) Notwithstanding section 660 of the Foreign Assistance Act of 1961, of amounts made available for fiscal year 1987 to carry out section 534 of the Foreign Assistance Act of 1961 (22 U.S.C. 2346c; relating to the administration of justice program), up to $2,000,000 is authorized to be used to provide Colombia or any other country in the region such assistance as such country may request for the protection of judicial or other officials who are, or may be, targets of narcoterrorist attacks. Such assistance may include assistance to increase the investigative, judicial, or prosecutorial capabilities of such country with respect to narcoterrorist attacks.

(d) At the end of subsection 116(e)(1) of the Foreign Assistance Act of 1961 (relating to funds to promote adherence to and respect for human rights) add the following new sentence: "Nothing in section 660 of this Act shall preclude the participation in programs or activities authorized under this subsection of individuals who are members of the police or other law enforcement forces of a foreign government or who are engaged in the administration of foreign penal institutions.".

SEC. 3392. MONEY LAUNDERING AND MUTUAL LEGAL ASSISTANCE TREATIES.

Section 481 of the Foreign Assistance Act of 1961 is amended—

(1) in the text of subsection (h)(1) above clause (A), by inserting after "United States" the second place it appears the following: ", or if the President determines that a country has failed to take adequate steps to prevent and punish the laundering in that country of drug-related profits or drug-related monies";

(2) in subsection (h)(2)—

(A) by redesignating paragraph (2) as paragraph (2)(A); and

(B) by adding at the end thereof the following new subparagraph:

"(B) The President shall also consider whether such government has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by the enactment and enforcement of laws prohibiting such conduct, the willingness of such government to enter into mutual legal assistance agreements with the United States governing money laundering, and the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.";

(3) in clause (B) of subsection (h)(3), by inserting after "controlled substances" the following: ", or to enforce prohibitions on the laundering in that country of drug-related profits or drug-related monies"; and

(4) by adding at the end of subsection (e) the following new paragraph:

"(6) Each report pursuant to this subsection shall identify those countries which are significant centers of drug-money laundering and shall contain a description of the plans, programs, and timetables adopted by such country for the deterrence, prevention, and punishment of acts involving the laundering of drug-related profits and drug-related monies in that country and a discussion of the adequacy of the legal and law enforcement measures taken and the accomplishments achieved in accordance with these plans.".

SEC. 3393. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a)(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) Section 611(2) of the International Security and Development Cooperation Act of 1985 is amended to read as follows:

"(2) For fiscal year 1987—

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking countrywide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond, and is making substantial progress towards the plan's objectives including eradication of illicit coca crops

and effective use of United States assistance.".

SEC. 3394. AERIAL AND OTHER SURVEYS FOR ESTIMATING ILLICIT NARCOTICS PRODUCTION OVERSEAS.

(a) In order to enhance the strategic planning of the United States to combat illicit narcotics production and trafficking worldwide, the President shall, within 60 days after the date of enactment of this Act, submit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report (on a classified basis if necessary) on a plan for using the funds available to the Central Intelligence Agency and the Department of Defense to conduct within one year a comprehensive set of aerial and other surveys of every major illicit drug producing country sufficient to establish a highly reliable estimate for each such country of (1) total hectarage of illicit crops under cultivation, (2) harvests and yields of illicit crops, and (3) hectares of illicit crops eradicated.

(b) For purposes of this section, the term "major illicit drug producing country" has the same meaning as is given to it by section 481(i)(2) of the Foreign Assistance Act of 1961.

SEC. 3395. MULTILATERAL DEVELOPMENT BANK FUNDS.

The Secretary of the Treasury shall instruct each United States Executive Director or other representative to each multilateral development bank to vote against any loan or other utilization of the funds of the respective bank for the benefit of any major illicit drug producing country, as defined in section 481(i)(2) of the Foreign Assistance Act of 1961, unless the President has certified, not more than six months previously, to the Secretary of the Treasury and the Congress that such country has cooperated with the United States in eradicating illicit drug production and interrupting the flow of illicit drugs to the United States.

Subpart C—Drug Education Programs Abroad

SEC. 3396. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons, programs and international visitor programs involving students, educators, and scientists.

SEC. 3397. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 3398. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

Subtitle J—Anti-Drug Trust Fund

SEC. 3401. DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND.

(a) Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part:

"PART IX—DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) IN GENERAL.—With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) any amount of an overpayment of such tax for such taxable year, or

"(2) in the absence of any overpayment of such tax, any contribution which the taxpayer includes with such return,

be paid over to the Anti-Drug Trust Fund.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) DESIGNATED AMOUNTS NOT DEDUCTIBLE.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(d) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if late, the date the return is filed.".

(b) Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9505. ANTI-DRUG TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Anti-Drug Trust Fund', consisting of such amounts as may be appropriated or credited to the Anti-Drug Trust Fund as provided in this section and section 9602(b) (relating to crediting of interest, etc.).

"(b) TRANSFERS TO ANTI-DRUG TRUST FUND.—There are hereby appropriated to the Drug Addiction Prevention Trust Fund amounts equivalent to the amounts designated under section 6097 and received in the Treasury.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Anti-Drug Trust Fund shall be available as provided by appropriation Acts, for making expenditures to carry out the purposes of the Drug Enforcement Act of 1986.".

(c)(1) The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"PART IX. Designation of overpayments and contributions for Anti-Drug Trust Fund.".

(2) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9505. Anti-Drug Trust Fund.".

(d) The amendments made by this section shall take effect on January 1, 1987.

Subtitle K—Freedom of Information Act

SEC. 3451. LAW ENFORCEMENT.

(a) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any natural person;".

(b) Section 552(a) of title 5, United States Code, is amended by adding after paragraph (6) thereof the following new paragraph:

"(7) Nothing in this section shall be deemed applicable in any way to the informant records maintained by a law enforcement agency under an informant's name or personal identifier, whenever access to such records is sought by a third party according to the informant's name or personal identifier.".

SEC. 3452. ORGANIZED CRIME.

Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Nothing in this section shall be deemed applicable to documents compiled in any lawful investigation of organized crime, designated by the Attorney General for the purposes of this subsection and conducted by a criminal law enforcement authority for law enforcement purposes, if the requested document was first generated or acquired by such law enforcement authority within five years of the date of the request, except where the agency determines pursuant to regulations promulgated by the Attorney General that there is an overriding public interest in earlier disclosure or in longer exclusion not to exceed three years. Notwithstanding any other provision of law, no document described in the preceding sentence may be destroyed or otherwise disposed of until the document is available for disclosure in accordance with subsections (a) and (b) of this section for a period of not less than ten years.".

Subtitle L—National Forest System Drug Control

SEC. 3501. REPEAL OF LIMITED ARREST AUTHORITY.

That part of the first paragraph of the subsection designated "General Expenses, Forest Service" under the heading

"FOREST SERVICE" in the Act of March 3, 1905 (33 Stat. 861, 873 as amended; 16 U.S.C. 559), relating to arrest authority relative to the National Forests, is hereby repealed.

SEC. 3502. AUTHORIZATION OF GENERAL ARREST AUTHORITY.

(a) Officers and employees of the Forest Service of the Department of Agriculture shall have authority both within and outside the boundaries of the National Forest System—

(1) to conduct investigations of violations of the laws and regulations relating to the National Forest System; and

(2) to make arrests for violations of the laws and regulations relating to the National Forest System that are committed on or that threaten National Forest System lands.

(b) In exercising the investigative authority provided by subsection (a), the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed.

SEC. 3503. FIREARMS AUTHORITY.

(a) The Secretary of Agriculture (in this Act referred to as the "Secretary") is authorized to designate officers and employees of the Forest Service, when engaged in the performance of their duties—

(1) to carry firearms;

(2) to serve warrants and other process issued by a court or officer of competent jurisdiction for the enforcement of the laws and regulations relating to the National Forest System;

(3) to search any person, place, or conveyance according to Federal law or rule of law; and

(4) to seize any evidentiary item as provided for by Federal law.

(b) The Secretary is authorized to designate employees of other Federal agencies to assist the Forest Service in carrying out the Secretary's law enforcement responsibilities in connection with the administration and regulation of the use and occupancy of the National Forest System. Such designated employees shall have the law enforcement authorities provided to officers and employees of the Forest Service by this subtitle.

SEC. 3504. ENFORCEMENT OF CONTROLLED SUBSTANCES ACT.

(a) The Secretary is authorized to designate officers and employees of the Forest Service to investigate and enforce, both within and outside the boundaries of the National Forest System in connection with the administration and occupancy of the National Forest System, section 401 of the Controlled Substances Act (84 Stat. 1242, 1260, as amended; 21 U.S.C. 841).

(b) In connection with the administration and regulation of the use and occupancy of the National Forest System, the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation and enforcement of section 401 of the Controlled Substances Act (84 Stat. 1242, 1260, as amended; 21 U.S.C. 841) and State drug control laws or ordinances both within and outside the boundaries of the National Forest System.

SEC. 3505. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Section 401 of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person found to be in possession of a firearm while manufacturing a controlled substance on Federal property shall be sentenced to a term of imprisonment for not more than five years and shall be fined not more than $5,000. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection such person shall be sentenced to a term of imprisonment of not more than ten years and shall be fined not more than $10,000, or both.

"(2) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured shall be sentenced to a term of imprisonment for not more than ten years, and shall be fined not more than $10,000. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection such person shall be sentenced to a term of imprisonment of not more than twenty years and shall be fined not more than $20,000. For purposes of this subsection, 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by an action of any unsuspecting person making contact with the device. Boobytraps include guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wire with hooks attached.".

SEC. 3506. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated not to exceed $20,000,000 for each fiscal year to carry out the provisions of section 3504 of this subtitle. Notwithstanding any other provision of law and to the extent the sum authorized for each fiscal year by the preceding sentence is not appropriated, the Secretary of Agriculture is authorized to fund activities under section 3504 of this subtitle by using moneys received from the sale of products from or for the use of National Forest System lands which moneys shall be available without further appropriation.

Subtitle M—Authorization of Appropriations for Drug Law Enforcement

SEC. 3600. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $427,000,000 of which $15,000,000 shall be for an All Source Intelligence Center; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expense of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $805,807,000 of which $179,000,000 shall be for the construction of Federal penal and correctional institutions.

(c) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $88,000,000.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $54,500,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

Subtitle N—Controlled Substances Production Control

SEC. 3651. CONTROLLED SUBSTANCES PRODUCTION CONTROL.

Section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a) is amended—

(1) in subsection (b), by striking out "four" each place it appears in paragraphs (1) and (2)(A) and inserting in lieu thereof "nine";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection:

"(c)(1) The Secretary shall pay a reward, in such amount as the Secretary shall determine, for information leading to the conviction of any person—

"(A) who receives a program benefit described in subsection (b); and

"(B) who is subsequently determined to be ineligible for the benefit as the result of the conviction.

"(2) The reward shall be paid out of funds not expended as the result of the ineligibility of the person for the program benefit under this section.".

Subtitle O—State and Local Narcotics Control Assistance

SEC. 3701. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 3702. OFFICE OF JUSTICE ASSISTANCE DRUG GRANT PROGRAM.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"FUNCTION OF THE ATTORNEY GENERAL

"SEC. 1301. The Attorney General shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Attorney General is authorized to make grants under this part to States for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons,

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime labs), personnel training, and supplies for more widespread prosecution of persons accused of violating such State laws and to pay operating expenses in connection with such prosecution,

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State laws, to pay operating expenses in connection with such adjudica-

tion, and to provide quickly temporary facilities in which to conduct adjudications of such cases,

"(4) provide additional correctional facilities (including the expansion of existing prisons) for the detention of persons convicted of violating State laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State laws, and

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. (a) To request a grant under section 1302, the chief executive officer of a State shall submit to the Attorney General an application at such time and in such form as the Attorney General may require. Such application shall include a statewide strategy for the enforcement of State laws relating to the production, possession, and transfer of controlled substances. Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Bureau or to the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"(b) Applications for a grant under this section shall include a certification that the State will expend from its own funds for the purposes for which the grant is made an amount equal to the amount of the grant.

"REPORTS

"SEC. 1304. (a) Each State which receives a grant under section 1302 shall submit to the Attorney General, for each year in which any part of such grant is expended by a State or local government entity, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303, and

"(2) such other information as the Attorney General may require by rule.

Such report shall be submitted in such form and by such time as the Attorney General may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of such grants made to such State for such fiscal year,

"(2) the amount of such grants expended for each of the five general purposes specified in section 1302, and

"(3) a summary of the information provided in compliance with subsection (a)(1).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1305 (a) If any part of a grant made under section 1302 is used for any purpose other than the purpose for which such part is received by a State, or by a State or local government entity, then the State which received such grant shall promptly repay to the Attorney General an amount equal to such part.

"(b)(1) Each State which receives a grant under section 1302 shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Attorney General may require by rule to facilitate an effective audit.

"(2) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of State and local government entities which receive any part of a grant, made under section 1302 if, in the opinion of the Attorney General or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1306. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Bureau, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended—

(A) by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M", and

(B) by striking out "part D" each place it appears and inserting in lieu thereof "parts D and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1306, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Attorney General.
"Sec. 1302. Description of drug law enforcement grant program.
"Sec. 1303. Applications to receive grants.
"Sec. 1304. Reports.
"Sec. 1305. Expenditure of grants; records.
"Sec. 1306. State office.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $100,000,000 for fiscal year 1987, $100,000,000 for fiscal year 1988, and $100,000,000 for fiscal year 1989, to carry out the programs under part M of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle P—Study on the Use of Existing Federal Buildings as Prisons

SEC. 3751. STUDY REQUIRED.

(a) The Administrator of General Services and the Secretary of Defense shall jointly conduct a study to identify any building owned or operated by the United States which could be used, or modified for use, as a prison by the Federal Bureau of Prisons.

(b) Within 180 days after the date of enactment of this Act, the Administrator of General Services and the Secretary of Defense shall transmit to the President and the Congress a report on the study conducted pursuant to subsection (a).

Subtitle Q—Drug Law Enforcement Cooperation Study

SEC. 3801. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle R—Drug Interdiction

SEC. 3851. EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

Subsection (c) of section 374 of title 10, United States Code, is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations, including to transport such officials into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft when such pursuit began outside such land area,

if the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory or possession of the United States) for the purpose of—

"(i) identifying such vessels and aircraft; and

"(ii) monitoring and communicating the location and movement of such vessels and aircraft until Federal, State, and local law enforcement officials can assume such responsibilities,

if the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3852. BORDER INTERDICTION AUTHORIZATION.

There is authorized to be appropriated for fiscal year 1987 for the Customs Service, the Attorney General, the Coast Guard, and such other agencies as determined by the National Drug Enforcement Policy Board $273,000,000 for use to interdict illegal drugs along the southern border of the United States.

Subtitle S—Arrest Authority for INS Officers

SEC. 3901. ARREST AUTHORITY FOR INS OFFICERS.

(a) Title II of the Immigration and Nationality Act is amended by adding at the end thereof the following new section:

"GENERAL ARREST AUTHORITY

"SEC. 294. Any officer of the Service as the Attorney General shall designate may—

"(1) carry a firearm;

"(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;

"(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

"(4) perform any other law enforcement duty that the Attorney General may designate.".

(b) The table of contents of such Act is amended by inserting after the item relating to section 293 the following new item:

"Sec. 294. General arrest authority.".

Subtitle T—Improved Drug Crime Reporting

SEC. 3951. IMPROVED DRUG CRIME REPORTING.

(a) The Congress—

(1) finds that—

(A) the Bureau of Justice Statistics currently conducts one of the largest public opinion survey programs in the world, the National Crime Survey;

(B) this survey, conducted by the Census Bureau, involves detailed field surveys of 60,000 households and more than 100,000 individuals who are interviewed twice a year to measure the amount of crime actually occurring (crime victimization), as opposed to that reported to police through the uniform crime reporting system;

(C) currently the National Crime Report does not gather data involving drug abuse or victimization;

(D) further, the Bureau of Justice Statistics does not act as a clearinghouse for the gathering of data generated by Federal, State, local enforcement and together criminal justice agencies on their drug enforcement activities; and

(E) to obtain a comprehensive understanding of the dimensions of our crime problems and enforcement activities, one must sift through the annual reports of numerous agencies; and

(2) based on findings in paragraph (1) the purpose of this Act is to create a comprehensive and timely data base of the dynamics of the drug crisis.

(b)(1) The Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, State, and local statistics gathering groups, shall compile and publish comprehensive data on drug trafficking and abuse.

(2) For purposes of carrying out the provisions of paragraph (1), the authorization for the Bureau of Justice Statistics for fiscal year 1987 is increased by $3,000,000.

SEPTEMBER 23, 1986.

FINAL SUMMARY—DRUG CONTROL ACT OF 1986

TITLE I. WHITE HOUSE LEGISLATION WITH SUGGESTED CHANGES NOTED

A. Drug Free Federal Workplace Act of 1986

This title amends the Rehabilitation Act and the Civil Service Reform Act to make sure they do not bar agencies from taking disciplinary action against Federal employees found to be using illegal drugs. Also it makes sure the term "handicapped", for purposes of qualifying for benefits, does not include someone whose only handicap is current addiction to, or use of, illegal drugs or alcohol.

The Senate Bill deletes the provision relating to pending litigation.

The Senate Bill adds House language which instructs OPM to educate Federal employees as to the dangers of drug abuse and to the availability of treatment and prevention programs.

B. Drug-Free Schools Act of 1986

The Bill contains a provision which authorizes a new $100 million state-administered grant program to establish drug-free learning environments. The Bill also makes clear that Federal law would not bar an educational institution from conducting a program of drug testing. The Administration's language has been modified to remove many of the reporting requirements and restrictions on the use of the funds.

Additionally, the Bill requires the designation of an official for drug abuse activities at several departments. Further, it prohibits the awarding of Federal funds under this Title to states who prohibit drug testing in educational institutions.

C. Substance Abuse Services Amendments of 1986

The Administration's Bill eliminated various restrictions now imposed on the states concerning the use of funds under the alcohol and drug abuse and mental health services grant.

The Senate Bill would authorize appropriations for the alcohol, drug abuse and mental health services block grant of $600 million for fiscal year 1988, and 5% increases for fiscal year 1989 through 1992. Of these funds, the Secretary, acting through the Alcohol, Drug Abuse and Mental Health Administration, shall reserve $100 million for existing state alcohol and drug abuse treatment programs. Of this reserved amount, 40 percent will be available for programs for "at-risk" youth.

The Bill also eliminates various restrictions now imposed on states on the uses of funds under the Alcohol and Drug Abuse and Mental Health Services Block Grant.

The Senate Bill grants the Secretary of Health and Human Services the authority to withhold a State's alcohol, drug abuse and mental health service block grant funds if the State decriminalizes the possession or distribution of harmful drugs.

Another provision tracks previously reported legislation from the Senate Committee on Labor and Human Resources, S. 2595, "The Alcohol, Drug Abuse and Mental Health Amendments of 1985" with certain modifications. The modifications which include the following:

"One year reauthorization at $116 million for the National Institute of Drug Abuse and $69 million for the National Institute on Alcohol Abuse and Alcoholism; deletion of section 10 and 11; addition of the following provisions:"

The Bill further requires that the Secretary of Health and Human Services shall prepare a National Plan to Combat Drug Abuse.

The Bill establishes an Alcohol and Drug Abuse Clearinghouse for the dissemination of materials concerning education and prevention of drug abuse.

Additionally we require the Secretary of Health and Human Services, through the FDA, to conduct a study of alkyl nitrates and report to the appropriate Congressional committees as to whether this substance should be treated as a drug under the Food, Drug and Cosmetic Act. Further, no funds under this portion will be available to any state which decriminalizes possession of controlled substances.

D. Drug Interdiction and International Cooperation International Forfeiture Enabling Act of 1986

This subtitle of the Administration package permits forfeiture of property within the United States acquired from foreign unlawful drug activities. The language from the subtitle has been tracked in substantial part in S. 2683, the "Money Laundering Crimes Act of 1986", which was included in the Senate Democrat package. The House package includes a similar provision passed as a McCollum amendment. The Senate passed S. 2683 as an amendment to the Debt Ceiling Bill by a vote of 98–0. This provision is folded into the money laundering title. It is essentially duplicative of that subtitle and need not be included as a separate subtitle.

1. Mansfield Amendment

This section repeals the "Mansfield Amendment" which prohibits officers and employees of the United States from participating in narcotics arrests in foreign countries, and from the interrogation or presence at the interrogation of a United States person arrested in a foreign country with respect to narcotics control, without the writ-

ten consent of the person being interrogated.

The Senate Bill strikes the Administration provision and inserts the Murkowski Bill which modifies the Mansfield Amendment by repealing the prohibition against U.S. drug agents being present during an arrest. U.S. drug agents may be present at the interrogation of a U.S. citizens only upon the consent of that citizen.

2. Narcotic Traffickers Deportation Act of 1986

This section simplifies the current provisions of the Immigration and Nationality Act authorizing the exclusion and deportation of individuals convicted of drug related crimes, and specifies the violation of foreign drug laws as grounds for deportation or exclusion. The House Bill was amended by Congressman Lungren and includes the Administration language. The Senate Democrat Bill does not address this matter. The Senate Bill incorporates the concept of the Administration proposal but uses the language offered by Congressman Lungren.

3. Customs Enforcement Act

This subtitle makes a number of changes in the laws governing Customs including increasing certain civil penalties and changing the rules relating to the sale of seized assets. The Bill also substantially increases penalties relating to unmanifested drugs and other merchandise, grants the Secretary specific authority to operate customs facilities in foreign countries and grants the authority to extend U.S. Customs laws to foreign locations with the consent of the country concerned.

The Senate Bill modifies the language to provide severe penalties directed at those involved in the illegal transportation of drugs. Penalties are not inadvertently imposed on those aircraft owners/operators/pilots who are unconnected with the illegal drug trade. An additional modification clarifies that aircraft owners and operators are liable for fines only when they participated in or were aware of the use of their aircraft for the transportation of illegal drugs.

4. Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

This section resolves prosecutorial problems, which arise during criminal trials, resulting from the execution of existing authority which allows the Coast Guard to stop and board certain vessels at sea and make arrests and seizures for violations of U.S. laws.

E. Anti-Drug Enforcement

It is important to note that under the Sentencing Reform Act of 1984, beginning November 1, 1987, Federal courts will be required to use guidelines established by the United States Sentencing Commission. Amendments seeking to impose specific sentences and/or fines for specific violations will severely damage the effort to bring consistency to fixing sentences at a level to meet the crime.

1. Drug Penalties Enhancement Act of 1986

This section sets forth a series of amendments to stiffen penalties for large-scale domestic drug trafficking. The House Bill also increases penalties for such traffickers. The House Bill was subject to extensive amendment on the Floor, resulting in a patchwork of fines and penalties with no coordination or consistency. Furthermore, there has been no effort to take into account sentencing guidelines which are soon to be released by the U.S. Sentencing Commission. Accordingly, the House penalties may negate the work of the Commission in developing such guidelines. Likewise, the Senate Democrats Bill includes a section to provide for stiffer penalties. The Administration's penalty provisions in this section have been developed to take the guidelines into account.

2. Drug Possession Penalty Act

This section rewrites the penalty provisions for simple possession of controlled substances. These stiff new penalties include increased fines, mandatory imprisonment for second time offenders, and repeal of pre-trial diversion for first offenders. The House Bill makes minimal changes to penalties for simple possession. The Senate Democrat Bill increases penalties for simple possession offenses.

3. Death Penalty and Continuing Drug Enterprise

This section provides for imposition of the death penalty for commission of certain criminal offenses. The offenses include an intentional killing while engaged in a continuing drug enterprise, assassination or attempted assassination of the President, murder for hire, murder by a Federal prisoner serving a life sentence, and murder or loss of life arising out of a hostage taking situation. In addition, this subtitle sets up constitutional procedures for the imposition of the death penalty for all crimes for which the death penalty is currently provided. Among others, current law provides for imposition of the death penalty for commission of the crimes of treason, espionage, murder, and aircraft piracy. The House Drug Bill provides for the death penalty only when an individual intentionally kills another while engaged in a continuing drug enterprise. The Administration's language which is similar to the House Bill is included in the Senate Bill. Additionally, the Senate Drug Bill contains the provisions of S. 239, which was reported by the Senate Judiciary Committee and is pending on the Senate Calendar. Similar legislation passed the Senate in 1984.

United States Marshals Service Act of 1986

This section is substantially the same as S. 2044, introduced at the request of the Department of Justice and pending in the Judiciary Committee. The Bill has been the subject of strong opposition from the Federal judiciary. The substance of the subtitle is only peripheral to drug enforcement and perceived by some to threaten courtroom security. Neither the House nor the Senate Democrat Bill contain any similar provision. This section is not included.

4. Controlled Substances Import and Export Penalties Enhancement Act of 1986

This section generally conforms penalties for import and export violations to those established elsewhere in the Administration's proposal. Once again, in an effort to strive for consistency and encourage a comprehensive approach to the drug penalty structure, the Administration's provisions are incorporated as part of the Senate Bill.

5. Juvenile Drug Trafficking Act of 1986

This section provides for additional penalties for persons who make use of juveniles in drug trafficking. Both the House Bill and the Senate Democrat Bill address this same issue. The House language makes it a crime for the adult offender to "employ, use, persuade, induce, entice or coerce a person under eighteen" to commit drug offenses, whereas the Administration's language requires that the juvenile "act in concert" with the adult offender. The Senate proposal incorporates the best features from both the House Bill and the Administration's language. It also incorporates language from the Senate Democrats providing enhanced penalties for distribution to minors and adds a new concept providing for enhanced penalties for knowingly distributing to a pregnant individual.

6. Chemical Diversion and Trafficking Act of 1986

This section establishes a new system of control over the sales of certain precursor and essential chemicals in the manufacture of illegal drugs through new record keeping, reporting, and identification requirements designed to keep these chemicals out of the hands of illegal drug manufacturers. The House package only provides for a study to determine the need for legislation or regulation to control the diversion of legitimate precursor and essential chemicals to the illegal manufacture of drugs. The Senate Democrat package does not include any like provision.

Money Laundering Crimes Act of 1986

This section of the Administration package provides an offense for laundering the proceeds of certain specified crimes. This section closely tacks the language of S. 2683, which has passed the Senate and is also part of the Senate Democrat package. The House package includes a slightly different money laundering bill. S. 2683 was the subject of give-and-take compromise with the Minority in order to develop consensus legislation. It is very positive legislation, however, the Administration's language is preferred. The Administration's bill differs from S. 2683 in that it provides: enhanced protection for financial institutions which disclosed information; broader summons authority for the Treasury Department; and, forfeiture authority under title 31 rather than title 18. The Senate bill adopts the Administration's language with certain minor amendments. Since this measure has been passed in large measure by the Senate, it appears in the text of the Bill in Title II.

Controlled Substances Technical Amendments Act of 1986

This section makes technical corrections to the Controlled Substances Act. The provisions of this subtitle were passed by the Senate when it passed S. 1236 on April 17, 1986. The provisions of this subtitle are included in the House Drug Bill and the Senate Democrat Drug Bill. The provisions of the Administration's Drug Package is included in the Senate Bill. Since this measure has been passed by the Senate, it appears in the text of the Bill in Title II.

Controlled Substances Analogs Enforcement Act of 1986 (Designer Drugs)

This section makes it unlawful to manufacture with the intent to distribute, or to possess "designer drugs" intended for human consumption. Since this measure has been passed by the Senate, it appears in the text of the Bill in Title II.

The Administration provision is identical to S. 1437 as it passed the Senate last December, with the exception of the addition of conforming amendments. These conforming amendments incorporate the prohibition of controlled substances analogs elsewhere in the criminal code where reference is made to controlled substances.

The House Bill contains a provision similar to S. 1437; however, the definition of controlled substances analog set forth in H.R. 5246 is problematic. The Senate Bill sets forth language almost indentical to S. 1437 except that the fines are increased

from $250,000 to $500,000 for an individual and $2 million other than individuals.

7. Assets Forfeiture Amendments Act of 1986

This section of the Administration package provides for the forfeiture of substitute assets where the proceeds of a specified crime are lost, beyond judicial reach, substantially diminished, or commingled. This subtitle goes beyond the other proposals in the Senate Democrat package and the Senate-passed S. 2683, both of which only provide for the forfeiture of traceable assets. The House package does not provide for the forfeiture of traceable or substitute assets.

8. Exclusionary Rule Limitation Act of 1986

This section contains limitations on the exclusionary rule under which Federal courts have in the past suppressed or excluded otherwise admissible evidence because of a determination that it was obtained in an illigal manner. This proposal is similar to S. 1784 which passed the Senate in the 98th Congress and to S. 237 introduced by Senator Thurmond in the current Congress. The Administration's language is preferable in that it incorporates a standard which conforms most closely to case law decided by the Supreme Court. The House Bill was amended to provide for a limited exception to the exclusionary rule. The Senate Democrat Bill contains no such provision.

F. Public Awareness and Private Sector Initiatives of 1986

This section creates a narrow, two year exemption from the Competition in Contracting Act to allow payment of out-of-pocket expenses for media and publication preparation where at least 50 percent of the costs are borne by the private sector. It also creates a narrow exemption to the current prohibition against releasing, for domestic audiences, United States Information Agency films, television spots, publications, etc.

TITLE II. PREVIOUS SENATE INITIATIVES AGAINST DRUGS

A. S. 630—Federal Drug Law Enforcement Agent Protection Act of 1986. This Bill provides rewards to those assisting with the arrest and conviction of persons guilty of killing or kidnapping a Federal drug agent.

B. S. 850—Common Carrier Operation Under the Influence of Alcohol or Drugs. A bill to make it a Federal criminal offense to operate or direct the operation of a common carrier while intoxicated as a result of using alcohol or drugs.

C. S. 1236—Controlled Substances Technical Amendments. Technical amendments to the Comprehensive Crime Control Act of 1983, as modified.

D. S. 1298—Indian Juvenile Alcohol and Drug Abuse Prevention Act, with a modification adding additional law enforcement language for the Bureau of Indian Affairs.

E. S. 1437—controlled Substances Analogs' Enforcement Act of 1986. So-called Designer Drug Enforcement Act as modified. Includes conforming amendments suggested by the Administration.

F. S. 2638—DOD Authorization Drug Interdiction. The bill includes the authorization language contained in the Department of Defense Authorization for fiscal year 1987, which provides $227 million for drug interdiction by the U.S. Customs Service and the U.S. Coast Guard. The Senate Bill also calls for a study of drug use, treatment and education at schools operated by the Department of Defense. It also includes language to include driving while impaired to the U.S. Code of Military Justice.

G. S. 2683—Money Laundering Crimes Act of 1986.

TITLE III. NEW INITIATIVES AGAINST DRUGS

A. White House Conference

Establishes a White House Conference on Drug Abuse, Education, Prevention and Treatment. Both the House Bill and the Senate Democrat Bill call for a White House Conference.

B. Commerce

1. Railroad Safety

FRA is directed to establish a program for the random drug testing of railroad engineers and all employees directly responsible for the safety of railroad operations.

2. Air Safety

FAA is required to include in any "drug free workplace program", a requirement that all air traffic controllers and other agency personnel directly involved in air safety submit to random drug testing. FAA is also directed to establish a program for the testing of airline pilots, mechanics, and all employees directly responsible for the safety of flight operations.

The bill also adopts the House provision which, establishes a Federal violation for the use of a forged or altered aircraft registration in conjunction with transporting controlled substances. Allows states to establish criminal penalties for the use or attempted use of forged or altered aircraft registration. States are allowed to provide for the seizure of aircraft.

3. Communications

The Federal Communications Commission is authorized to revoke licenses and seize communications equipment used in drug related activities.

4. Highway Safety

The bill would establish a single, uniform license for commercial bus and truck drivers. This would prevent commercial drivers who have had licenses suspended or revoked in one state, perhaps for alcohol or drug-related incidents, from "forum shopping" and obtaining a new license in another state.

The Bill would use a withholding of Federal highway funds to encourage states to participate in the uniform licensing system. And would also: (1) increase from $20 million to $60 million the authorization for the Motor Carrier Safety Assistance Program, some of such increase to be used for roadside testing of drivers for alcohol and drug impairment; (2) authorize funding for the establishment of computer links between states to communicate commercial driver license information, including prior drug and alcohol use; and (3) use of withholding of Federal highway funding to encourage the states to set .04 Blood Alcohol Content as the maximum acceptable level for commercial drivers (this is the standard used for airline pilots and railroad engineers). The bill is very similar to S. 1903, which was reported unanimously by the Commerce Committee.

The Senate Bill also contains resolution language that calls upon the states to administer, where there is cause to do so, tests of drivers suspected of driving under the influence of controlled substances.

C. Harmful Inhalants

This section suggested by Senator Roth makes it illegal to sell or advertise substances for the purpose of becoming intoxicated. The section only applies where the substance has traveled or is intended for travel in interstate commerce or the mails.

The section provides for a sentence of five years and a $250,000 fine.

D. Action Grants

Current law authorizes approximately $2 million under the direction of ACTION for volunteer demonstration projects, of which about $500,000 is currently allocated to drug abuse prevention, education and treatment through the use of volunteers. This provision would increase the current authorization by $3 million, which would be earmarked for expansion of the drug program.

E. Habeas Corpus Reform

This section would curb the current abuse of habeas petitions by providing that a Federal court may dismiss a petition if it has been fully and fairly reviewed by the state court. This bill would also promote finality of state court decisions by requiring that habeas petitions be filed within a certain period of time. S. 2301, which is identical to the language included in this Bill, is pending on the Senate Calendar.

F. Armed Career Criminals

The bill includes the language of S. 2312. Present law defines an armed career criminal as an individual who has three or more convictions for "robbery or burglary". Under current law, if a career criminal is convicted of possession of a firearm, he must be sentenced to 15 years. S. 2312, which was reported by the Senate Judiciary Committee, redefines an armed career criminal as an individual who has three or more convictions "for a crime of violence" or "a serious drug offense, or both". The Administration package made no reference to armed career criminals. The House package and the Senate Democrat package both contain subtitles relating to career criminals. They are substantially similar to S. 2312.

G. Prohibition on the Interestate Sale and Transportation of Drug Paraphernalia

S. 713, the Mail Order Drug Paraphernalia Control Act, prohibits the sale and transportation of drug paraphernalia through the services of the Postal Service or in interstate commerce. It also provides for the seizure, forfeiture, and destruction of drug paraphernalia. The Administration package does not include any drug paraphernalia reference. Representative Levine offered an amendment to the House package which is substantially similar to S. 713.

H. International Narcotics Control Act of 1986

1. Retention of Title to Aircraft Provided to Mexico

The Bill designates the drug problem as a high-priority national intelligence collection and action target and directs the establishment of an inter-agency coordinating committee with representatives from all intelligence collection and analysis agencies, to set and prioritize drug-related intelligence collection and action goals and targets and coordinate the various drug-related activities of these agencies. The Bill also requires an annual, classified report from the DCI to the Intelligence Committees of both Houses, outlining what US intelligence has done about drugs the preceding year; what it will do in the coming year; and what it could do if additional resources were provided.

Given the skyrocketing cost for maintenance of U.S. supplied eradication and interdiction aircraft in Mexico, as well as the inefficiencies of the program, a section was added which states the United States shall

retain title of aircraft and lease them to the Mexican government (modification of House provision).

2. Improving Law Enforcement And Other Narcotics Control Activities Abroad

a. Requires the President to submit an annual report to the Congress listing any country:

1. Which engages in or facilitates the production or distribution of illegal drugs.

2. Any senior officials of which do so.

3. In which U.S. drug enforcement agents have suffered or been threatened with violence.

4. Which has refused reasonable U.S. requests for cooperation in anti-drug programs, including aerial "hot pursuit."

b. No U.S. aid shall be given, and U.S. representatives to multilateral development banks shall oppose all aid from those banks, to all countries listed, unless the President certifies:

1. There is overriding national interest in providing such aid.

2. The drug aid will encourage better cooperation on drug programs.

3. The government of the country has adequately dealt with cases of violence against U.S. drug enforcement agents.

Food aid and drug enforcement aid would be excluded from the prohibition.

c. Drugs are declared a national security problem and the President is urged to explore the possibility of engaging such essentially security-oriented organizations as NATO in cooperative drug programs.

d. Amends Foreign Assistance Act requiring that willingness of foreign countries to enter into Mutual Legal Assistance Treaties with the United States in order to combat money-laundering should be factored into Presidential determinations of foreign assistance.

e. Modifies FY 1987 conditions on assistance to Bolivia in recognition of Bolivian cooperation with the United States during Operation Blast Furnace. Places near term emphasis on continued Bolivian cooperation on interdiction efforts and later assistance on Bolivia's progress in meeting illicit crop eradication goals.

f. Requires that intelligence agencies conduct a sufficient number of aerial and other surveys to insure that a reliable estimate of illicit crop production levels may be made for the major producing countries.

g. Strengthens the Latin American Administration of Justice program and permits human rights training funds to be provided foreign police forces.

h. Various technical amendments.

J. Anti-Drug Trust Fund

When taxpayers file their income tax returns, they would be allowed to designate that all or part of any refund due be contributed to a Drug Addition Prevention Trust Fund. Taxpayers may also make additional contributions to the Trust Fund at the time they file their tax returns.

K. Freedom of Information Act

This section will prohibit public disclosure of law enforcement investigative information that could reasonably be expected to alert drug dealers and organized crime of law enforcement activity related to them. A Drug Enforcement Administration study found that 14% of all drug enforcement investigations were significantly compromised or canceled due to public disclosure of information related to these investigations and informants involved in them. The Director of the FBI and the Department of Justice support this legislation. As well, this language was unanimously approved by the Senate in the 98th Congress. The House Drug Bill makes no reference to this problem with the Freedom of Information Act.

L. National Forest System Drug Control

Grants general arrest authority to and permits the carrying of firearms by designated Forest Service personnel. Authorizes Forest Service personnel to enforce the Controlled Substances Act. Prohibits the possession of a firearm or the placement of boobytraps on Federal property where a controlled substance is manufactured.

M. Authorization of Appropriations for Drug Law Enforcement

1. Drug Enforcement Administration

The FY 1987 Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill appropriated $427 million for the DEA, this is $15 million more than was appropriated by the House. We recommend an additional $45 million be authorized.

2. Federal Prison System

The Senate FY 1987 Commerce, Justice, State Appropriations bill appropriated $129 million for prison construction compared to $122.5 million in the House bill. We recommend an additional $50 million be appropriated for these purposes.

Additionally, we would recommend that an additional $28 million be appropriated to finance the subsistance costs, medical care, and prison guards associated with an increased prison population.

3. The Judiciary, Defender Services

The FY 1987 Senate Commerce, Justice, Appropriations bill, etc., appropriated $70 million as compared with the House bill which appropriated $68.3 million. We would recommend an additional $18 million be appropriated.

4. The Judiciary, Fees for Jurors and Commissioners

The Senate FY 1987 Commerce, Justice, etc., Appropriations Bill appropriated $47 million as compared to the $44.6 million appropriated by the House. We would recommend an additional $7.5 million be appropriated.

5. Drug Education Program Abroad

Authorizes an additional $3 million for AID and $2 million for USIA devoted solely for drug education programs abroad.

6. Narcotics Control Assistance

The bill increases the narcotics foreign assistance authority for FY 1987 by $45 million, $10 million of which is for eradication and interdiction aircraft for use primarily in Latin America (modifiction of House provision).

Additionally, $1 million of narcotics assistance funds in earmarked for research on developing an aerial herbicide for coca (House provision).

N. Controlled Substances Production Control

Extends currenty exclusion from receiving payments or loans if found guilty of cultivation of controlled substances from 4 years to 9 years, and establishes rewards for information leading to the conviction of those cultivating controlled substances.

O. State and Local Narcotics Control Assistance

Provides $100 million in grant funds, in a 50% matching formula, to state and local enforcement agencies to be used for investigation, arrest, and prosecution of drug offenders.

P. Studies

1. Study on the Use of Existing Federal Buildings as Prisons

The Administrator of General Services and the Secretary of Defense shall jointly conduct a study to identify any building owned or operated by the United States which could be used, or modified for use, as a prison by the Federal Bureau of Prisons.

2. Drug Law Enforcement Cooperation Study

The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and state and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations. The Board Shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

3. Uniform Crime Reports and National Victimization Survey

Directs the inclusion of drug offenses as Part I offenses in the Uniform Crime Report, and expands the National Victimization Survey to include victimization of drug use.

4. Narcotic Assistance Study

GAO is mandated to conduct a study of our narcotic assistance programs (House provision).

R. Border Interdiction

1. Department of Defense

The first section, by slightly amending existing statutes, provides for the limited use of the military in drug interdiction. Current law allows the use of military equipment and personnel to enforce violations of the Controlled Substances Act, upon the declaration of an emergency circumstance by the Attorney General and Secretary of Defense. An emergency circumstance "may be determined" to exist only when (1) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and (b) enforcement of the law would be seriously impaired if assistance was not provided. The Senate bill changes the language to state: "an emergency circumstance exists when . . ."

Further, current law provides that the military may not be used to interdict or to interrupt the passage of vessels or aircrafts. The Senate Bill allows military personnel to intercept for the purpose of identifying, monitoring, and communicating the location and movement of vessels until such time as Federal, state, or local law enforcement officials can assume responsibility.

2. Additional Funds for Southern Border Initiative

The Administration has identified a need for a total of $400 million for the Southwest Border Initiative. In addition, the Administration believes the Southeast Border Initiative may cost $100 million. Title II of the Senate bill provides $227 million contained in the Senate-passed DOD Authorization Bill, an additional $273 million is provided for a Southern Border Initiative, bringing the total to $500 million.

Civil Penalty for Importing Drugs

For purpose of assessing a civil penalty for the illegal importation of controlled substances, the Customs Service is authorized to assign a value equal to the street value of the controlled substance. And the civil penalty for such importation will be two times the street value. This is relevant also to the

payments to informants since their informants fee will be based on such a street value.

Immigration and Naturalization Service

Provides general, as opposed to limited, arrest authority to agents in the Immigration and Naturalization Service.

Tariff Changes

The bill also includes a provision which requires that GSP status be withdrawn from countries that do not cooperate in drug control efforts.

Cap Removal From Forfeiture Funds

The Department of Justice has a forfeiture fund generated from seizures of assets in drug related prosecutions. The assets consists of cash and proceeds of sales of these assets. By law, these funds can be used for certain law enforcement purposes. However, there is a cap, administered by the Appropriations Committee, on how much of the funds can be used each year. This cap undercuts the basic purposes of the funds to have the seized proceeds of criminal activities help finance the war on crime.

The Senate Bill would remove the cap on the fund and would remove it from the budget allocation process. The bill would not prevent the funds from being sequestered, if there were a sequester.

Mr. THURMOND. Mr. President, I rise today in support of the comprehensive antidrug package introduced by the Senate Republicans.

Drugs are menacing our Nation. The drug problem is undoubtedly one of the most serious facing this country. The facts about drug abuse are brutal. There are about 500,000 hard-core heroin users in the United States. There are between 4 and 5 million Americans who use cocaine. From 1975 to 1984, the amount of cocaine smuggled into the United States quadrupled. In 1984, the drug empire brought into the United States 10 tons of heroin, 85 tons of cocaine, and about 15,000 tons of marijuana. This does not include the substantial domestic production of narcotics.

The cost of drugs on our society is tremendous; in 1983 the estimated total cost was almost $60 billion, based on the cost of treatment and support, mortality, reduced productivity, lost employment, and related costs. Drugs on the job and in the school are quite pervasive and of most concern. Drug dependent workers are 38 percent less productive than their peers, according to a National Institute on Drug Abuse study. In 1985, 61 percent of all high school seniors had tried at least one or more illicit drug.

We are beginning to see a fundamental change in the attitude of the American people toward the use of illegal drugs. Across the country individual citizens, private organizations, community groups, public agencies are all working to reestablish a moral climate in which drug use is not just illegal, but socially and ethically unacceptable. One highly visible example is the work of First Lady Nancy Reagan. With her help, 10,000 "Just Say No" clubs have been established across the country. The campaign against drugs has made front page news and has been the hot topic on talk shows lately.

Today the Senate Republicans are introducing a comprehensive drug bill. This is not a new initiative for the Senate, but rather a continuation of our long-term efforts to deal with this national crisis. We are proud of our record in this regard.

Since the elections of 1980, when the Republicans won a majority in the Senate, the Congress has:

Passed the Comprehensive Crime Control Act of 1984, making it a Federal crime to distribute a controlled substance—an illegal drug—within 1,000 feet of a school;

Enacted the International Narcotics Control Act of 1985;

Dramatically strengthened interdiction and enforcement;

Established the National Drug Enforcement Policy Board to focus the national campaign against illegal drugs;

Barred money for any country certified by the President as failing to take adequate measure to prevent cultivation or transfer of narcotics;

Passed the Military Justice Act of 1983, which made drug dealing in the Armed Forces punishable by court martial;

Directed Attorney General to draft model law for States to act against cocaine "freebase" houses as centers of the drug trade;

Made illegal the investment of income from a felony drug offense; and

Reformed the lenient Federal bail system, so that drug abuse by a convicted person will be considered in bail decisions—Bail Reform Act of 1984.

The Senate has continued its aggressive campaign against drug abuse in this Congress. Unfortunately, the House has failed to act on many of these important Senate-passed bills:

In March 1985, the Senate passed the Federal Drug Law Enforcement Agent Protection Act, to provide rewards to anyone who helps in the arrest and conviction of persons guilty of killing or kidnaping a Federal drug agent.

In November 1985, the Senate passed a bill making it a Federal criminal offense to operate or direct the operation of a common carrier while intoxicated or under drug influence.

Last April, the Senate passed S. 1236, tightening up on penalties for certain drug-related crimes.

Last December, the Senate passed the Indian Juvenile Alcohol and Drug Abuse Prevention Act.

Last December, the Senate passed S. 1437, a bill to fight the spread of "designer drugs."

Last July, the Senate adopted a D'Amato amendment to House Joint Resolution 668 that cracks down on the money laundering essential to the operations of the drug empire.

The legislation being introduced by the Senate Republicans today incorporates these bills as well as:

A constitutional procedure for the imposition of the death penalty;

Limitation on the exclusionary rule;

Habeas corpus reform;

Enhanced penalties for large-scale drug trafficking;

Enhanced penalties for possession of drugs; and

Authorization of moneys for construction of one new prison.

We expect to see quick action on this bill in the Senate and hope our colleagues in both the Senate and the House will join us in sending a powerful bill to the President's desk.

● Mr. MATTINGLY. Mr. President, I am pleased to join the majority leader and a number of my colleagues in cosponsoring the Drug Control Act today and hope that the full Senate will soon consider a comprehensive drug control measure such as this.

Many of us have been asserting for a long time that the drug problem in America is the most serious that we face—that it is a crisis. The American people have told us that they believe it to be so. While putting an end to the drug crisis will require a cooperative effort among us all—parents, teachers, young people, community, business and church leaders, and elected officials—we in Congress have a special responsibility. We must lead and we must act.

This legislation represents a coordinated and comprehensive approach. It addresses the areas of education, prevention and treatment, interdiction, enforcement, international cooperation, criminal and civil penalty, and judicial reform. All are important components of this overall strategy and deserve our attention. I want to speak briefly about one of those areas today.

Over the past several years I have spoken often with my fellow Georgians about the drug issue, and I have asked what steps they think ought to be taken to rid this country of drugs. Time and again, my constitutents have replied that they believe that stricter penalties should be enacted for those who traffic in drugs—those who put profit above all else, who tear apart the fabric of our society and destroy lives. I believe that enhanced and stricter penalties are an essential part of this bill.

I am particularly pleased that the package contains a provision which will provide for the imposition of the death penalty for those who intentionally cause the death of another in the course of a continuing criminal enterprise drug offense. I have introduced separate legislation, S. 2805, dealing with the issue, and our colleagues in the House of Representatives recently

passed a similar amendment by an overwhelming margin.

The death penalty for drug dealers provision is targeted to drug kingpins—in my view the most vicious of criminals whose actions are often violent and put the public, especially innocent children, at risk. I cannot think of words strong enough to describe the contempt I, and I believe the majority of the American public, feel toward them.

Mr. President, there will be opportunity during debate on the drug control package to discuss this and other provisions in greater detail. At this point I would just say again that I am pleased to be part of this effort. I believe we have the strong support of the American people and a responsibility to them to act.●

● Mr. ABDNOR. Mr. President, I am pleased to join with the distinguished majority leader, Senator DOLE, and others in sponsoring the Drug Control Act of 1986.

Mr. President, this legislation is essential to a well-targeted, comprehensive war on drugs. We must all work together to rid our society of the serious drug problem which threatens to destroy our Nation's future. I wish to emphasize, however, that many of us have already been engaged in the battle against drugs. For the past 5 years, our First Lady, Nancy Reagan, has devoted her time and attention to convincing our youth to "Just Say No" to drugs. I commend Mrs. Reagan for her dedication to this effort and I look forward to her leadership and guidance as we all work together to escalate the war on drugs.

Another woman has demonstrated great leadership in fighting substance abuse since coming to the U.S. Senate: Senator PAULA HAWKINS has been building her militia against drugs for nearly 6 years. As the chairman of the Senate Labor and Human Resources Subcommittee on Children, Family, Drugs and Alcoholism, I know we can count on her continued vigilance in our Nation's attack on drugs.

As the chairman of the Senate Appropriations Subcommittee on Treasury, Postal Service, and General Government, I, too, have been in the front lines of the fight against illegal drugs. The distinguished Senator from Arizona, Senator DECONCINI, who serves as ranking minority member of the subcommittee, and I have fought to provide the Customs Service with the manpower and equipment it needs to curb the flow of illegal drugs across our Nation's borders—I say "fought," Mr. President, because we have had sharp disagreements with the administration over funding for this vital agency. Now, given the sincere, personal commitment of President and Mrs. Reagan to the war on drugs, I am hopeful those disagreements are well behind us.

Mr. President, I am privileged to work closely with my friend from Arizona who also serves with Senator HAWKINS as cochair of the Senate Drug Enforcement Caucus. He is truly a leader in the fight against drugs. The success we have had to date, and the degree to which we succeed in curtailing drug abuse via this new legislative initiative, is dependent upon a strong, bipartisan commitment to the war on drugs.

While a great deal of my personal involvement in combating drug abuse has centered on the interdiction aspects of the problem, I cannot overemphasize the need for a three-pronged attack on drugs: Interdiction, education for prevention, and intervention/treatment. No matter how effective our interdiction efforts, we will never succeed in stopping the flow of illegal drugs as long as the tremendous demand for drugs persists. Thus, education for prevention is a key element in our war on drugs. It offers the most effective, yet least expensive, means for fighting substances abuse.

We must do all we can to provide help to the victims of substance abuse. Effective treatment programs must be coupled with appropriate intervention efforts. While I support tougher penalties for those who process, traffic, and sell illegal substances, I believe we must facilitate an environment in which those who suffer from substance abuse are encouraged to seek help.

Finally, we must continue to improve our interdiction efforts, not only through enhancement of our enforcement capabilities, but also by working with the countries whose economies have come to depend on the illegal drug trade.

Mr. President, this legislation calls for such a three-pronged attack. I look forward to working with the majority leader and our colleagues from both sides of the aisles to approve as quickly as possible a comprehensive strategy to combat substance abuse—abuse of both drugs and alcohol. During hearings I conducted in August 1985 in Rapid City and Sioux Falls, SD, witnesses testified that in South Dakota, alcohol abuse is more prevalent than abuse of illegal drugs, and the problem on our Indian reservations is acute.

In conclusion, Mr. President, I believe the following statements from two high school students, who testified at my Rapid City hearing concerning their efforts to reach out to younger children who might be tempted to use drugs or alcohol, illustrate the seriousness of this threat to our youth:

Michelle: "Well, a girl told us . . . she tried angel dust when she was 8 years old."

Kim: "Michelle said earlier that it needs to start in kindergarten, the education. I think we did it with smoking and we have . . . far fewer people smoking. I think it has to start in kindergarten and it has to be emphasized all the way through. It's too late really in junior high."

Let's not wait until it's too late. Let's devote the time, the attention, and the resources necessary to wage a successful war on drugs now.●

● Mrs. HAWKINS. Mr. President, I support the Drug Control Act of 1986 of which I am proud to be a cosponsor. It is a good bill, a comprehensive bill aimed at dealing telling blows to the multibillion-dollar a year illegal narcotics industry. We need tough antidrug legislation and we need it now. I thoroughly agree with our distinguished majority leader when he says: "People want answers, not just politics." People do want answers to the drug scourge which is engulfing our Nation, leaving in its wake spent bodies, broken homes, economic chaos and corruption of our institutions. The American people want answers, and they want results. They are tired of talking, and research, and statistics. They are tired of authorities wringing their hands, saying they are powerless to do anything. The proliferation of drugs is a national issue which demands a national solution. The people are looking to Washington to provide the leadership needed to fuel an all-out offensive in the war against drugs.

This bill provides tougher penalties for drug-related activities and transportation of illicit narcotics. We need to get the message through loud and clear to the smugglers that we are not going to tolerate drug trafficking. We have had enough. The bill cracks down on money laundering, which is financial sleight-of-hand that enables traffickers to conceal the assets of their nefarious business and to finance further expansion of their operations. The bill sends a signal to those who would profit from "designer drugs"—chemical look-alikes which produce the same effect as dangerous and illegal narcotics.

The bill paves the way for the U.S. Government to take disciplinary action against Federal employees who use drugs and gives the green light to schools to test students for drug use.

Mr. President, I said this is a good bill. It is not a perfect bill. I have some reservations. Even with passage of this bill, I don't think we would be putting enough resources into the fight. The war on drugs needs more ammunition. In my opinion, the proposed allocation for drug education is not adequate. The campaign against drugs has got to start in the home and the schools. If we wait until kids hit the streets as teenagers, it's too late.

In addition, I believe that it is essential that we make more effective use of the military in the war on drugs. We have come a long way in the past 2

years on this point, but not far enough. This bill would empower our Armed Forces to track and identify planes and ships suspected of carrying drugs. It is disappointing to me that it does not go further—I would like to see the military seize drug-carrying aircraft and boats at our borders.

Mr. President, this is a solid bill in need of some important additions. But it is a good start, and on that basis it has my support.●

● Mr. DENTON. Mr. President, I rise to express my strong support for the Drug Control Act of 1986. I am proud to be an original cosponsor of this legislation, which represents the combined efforts of the Senate and the Reagan administration for addressing the problem of illegal drug use in our society.

The problem is one of massive proportions, a malignant cancer which is infecting every segment of our society—and the cancer continues to grow.

The use of illegal drugs has had a debilitating effect on a whole generation. Billions of untaxed dollars are diverted to the coffers of organized crime. Theft, burglary, robbery, and even murder increase as drug users turn to crime to support their addictions. Law enforcement agencies are forced to spend more of their precious resources fighting drug trafficking and drug related crime at a time in our Nation's history when unprecedented budget deficits have strained those resources to their absolute limits.

The battle against drug abuse must be waged on many fronts, both at home and abroad, and the legislation introduced today is an attempt to confront the enemy in all its heinous forms.

Domestically, the bill contains provisions to help rid the workplace and our schools of illegal drugs. Drug use adversely affects the performance of workers in all levels of both the public and private sectors of the work force, which ultimately erodes the productivity of our national economy. In addition, persons impaired by drug use seriously jeopardize the safety of their coworkers in many instances. The bill would amend Federal law to assist both the Government and private employers in getting rid of drugs in the workplace.

Recognizing that the individual States are on the front lines of dealing with the day-to-day problems of drug abuse prevention and treatment, the bill authorizes Federal block grant funds to the States for alcohol, drug abuse, and mental health services. The bill also eliminates various restrictions on the use of those funds, thus giving the States the flexibility they need in combating alcohol and drug abuse.

The bill will also assist the States in ending drug use in elementary and secondary schools through programs designed both to prevent drug abuse and to detect and treat those students who are already using drugs.

It is in our schools that we see perhaps the most tragic dimension of the problem of drug abuse. Here, drug dealers prey upon the most vulnerable members of our society. Many young lives which should, by all rights, be flourishing in the school environment are robbed of their minds, their health, and their ambition by the poison of drugs. Here the criminal and inhumane greed of the drug dealers is most starkly revealed.

It is the motivation for these dealers of death that must be impaired. Their expectation of profit must be clearly outweighed by the certainty of strong punishment for their activities.

The Drug Control Act provides much stronger penalties for drug dealing which are designed to strike at the sources of the illicit traffic. The bill increases the maximum prison terms and provides for mandatory minimum prison terms for large-scale drug traffickers. It also provides for the imposition of the death penalty on those who commit murder in connection with continuing drug enterprises and other serious crimes.

As important as stiffer penalties are, they will be meaningful only if we can ensure the certainty and finality of criminal convictions through the judicial process. In that regard, the bill makes two much-needed reforms. First, it modifies the exclusionary rule by providing for the admissability at trial of evidence obtained in the reasonable, good faith belief that the search or seizure which produced the evidence was in conformity with the requirements of the fourth amendment to the Constitution. Far too often, the exclusionary rule has resulted in a windfall for the criminal, who walks away from court unscathed despite the existence of reliable evidence of guilt.

Second, the bill would promote the finality of State court judgments by requiring that habeas corpus petitions be filed within a certain period of time and providing that a Federal court may dismiss a petition if it has been fully and fairly reviewed by a State court.

The flow of illegal drugs into the United States cannot be curbed without the involvement of many other countries. Accordingly, the bill contains provisions to promote U.S. cooperation with foreign governments and law enforcement agencies in combatting illegal drug production and trafficking. It also provides for the curtailment of U.S. aid to countries which refuse to cooperate with our antidrug programs.

The Drug Control Act of 1986 recognizes the complexity of the drug problem and takes the necessary multidimensional approach to it. It is intended to help cut off the supply of illegal drugs while, at the same time, drying up the demand for them in this country. In short, it will provide the means "to fight to win" against drug trafficking and abuse.

This legislation is the last opportunity the 99th Congress has to deal comprehensively with the massive national problem of drug abuse—a problem which has reached crisis proportions. We must not fail to act in the face of this clear and present danger to the national welfare.

I urge my colleagues to support prompt enactment of the Drug Control Act of 1986.●

● Mr. COCHRAN. Mr. President, I am pleased to be an original cosponsor of important legislation being introduced today to combat the problem of illegal drug use and drug trafficking.

The trafficking of illegal drugs continues to be the major crime problem facing this Nation. The Gulf Coast States, including my own State of Mississippi, remain the prime entry points for most of the drug smuggling activity.

Mississippi experienced an alarming increase in drug seizures from 1985 to 1986. According to the Mississippi Bureau of Narcotics, cocaine seizures increased by 36,694 percent in 1 year—from 2,359 grams of cocaine seized in 1985, to 868,066 grams of cocaine seized in 1986.

The amount of marijuana seized in Mississippi increased by 277 percent in 1 year—from 11,183 pounds in 1985, to 42,161 pounds in 1986. The bureau reports similar increases in drug seizures involving other kinds of illegal substances: a 1,225 percent in seized hallucinogens, such as LSD; a 188 percent increase in seized narcotics, and a 203 percent increase in seizures of other types of illegal drugs.

These figures indicate that our local, State, and Federal drug enforcement agencies have been working hard, and should be commended for their persistent efforts in the war against drugs. The Drug Enforcement Administration, the U.S. Customs Service, the U.S. Coast Guard, the FBI, and the Organized Crime and Drug Enforcement Task Forces are our Nation's frontline agencies leading the fight against drug trafficking.

But, despite the efforts of our drug enforcement agencies, and efforts of the Congress in providing additional funds for drug interdiction, illegal drugs remain a very grave threat to our Nation. More must be done, not just by law enforcement agencies, but by every segment of our society, to eliminate this threat.

This legislation will provide resources and direction for working toward a total coordination of activities—in law enforcement, education, prevention programs and treatment programs—to arrest the drug problem.

I am pleased that the legislation being introduced today provides additional resources for law enforcement efforts at the State and local levels against drug trafficking. It is vital to drug enforcement that this bill stiffens penalties for drug crimes and eases the exclusionary rule on the use of seized evidence.

I believe it is crucial that the legislation also provides additional resources for eliminating drug use in the schools and the workplace. It also provides grants to the States for enhancing drug abuse treatment capacity.

I am particularly pleased that the bill provides financial assistance to communities to assist them in integrating efforts to reduce drug abuse and to build upon existing public and private sector institutions. I am hopeful that we will be able to expand these initiatives by providing additional support to community-based prevention programs which are proven to be effective.

Mr. President, the national crusade initiated by the President and Mrs. Reagan against illegal drugs has created a surge of enthusiasm and participation. In the State of Mississippi, a task force is working to form a statewide Alliance Against Drugs, involving all phases of the public and private sector in a program of information, education, legislation, prevention, and prosecution in drug matters.

The President has provided the essential leadership necessary to attack the drug problem that is sweeping our Nation. I hope the Senate will approve this legislation promptly so that these initiatives may be implemented to achieve our goal of a drug-free society.●

● Mr. NICKLES. Mr. President, I rise today to join my many colleagues in the Senate in the national war on drugs and drug abuse, and as a cosponsor of needed legislation designed to stem a rising threat to our Nation.

As a parent of four children, there are a number of provisions of this legislation which I feel speak specifically to their increased safety from drug peddlers and the drug culture in general. Making it a crime for the adult drug offender to employ or use a person under 18 to assist in committing drug offenses and providing enhanced penalties for distribution to minors can keep the drug pushers out of our schoolyards. Making it illegal to sell drug paraphernalia through the mails will certainly lessen availability of such devices to our young people. Drug education programs that teach children to say no and to understand why, and the pursuit of drug-free learning environments are goals which we can all agree to work toward—and we must.

As a citizen who believes that the first responsibility of government should be to protect its people, the provisions in these bills which relate to taking career criminals off the streets, putting them behind bars, and confiscating the fruits of their criminal enterprise make sense to me. Taking the shackles off of our law enforcement officers by clarifying the admissibility of evidence and modifying laws which govern our customs officials will provide greater flexibility in protecting law-abiding citizens from criminals.

Mr. President, the administration, the Congress, and the American people have admitted that there is a serious problem with drugs. In any treatment program, admitting the problem is the first and toughest step. Now let us pass this legislation, mobilize our inner strength, and work toward a cure.●

By Mr. HELMS (by request):

S. 2851. A bill to amend the Federal Crop Insurance Act to improve the administration of such act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL CROP INSURANCE ACT OF 1986

● Mr. HELMS. Mr. President, I am today introducing, at the request of the Secretary of Agriculture, a bill to amend the Federal Crop Insurance Act. The bill would gradually shift the provision of crop insurance to the private sector, with the Federal Crop Insurance Corporation providing needed reinsurance. Government premium subsidies would also be phased out over time.

Mr. President, I ask unanimous consent that the text of the bill and a short explanation of its provisions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2851

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Crop Insurance Act of 1986".

SEC. 2. REFERENCES TO THE FEDERAL CROP INSURANCE ACT.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

SEC. 3. CAPITAL STOCK OF CORPORATION.

Section 504 (7 U.S.C. 1504) is amended to read as follows:

"SEC. 504. (a) The Corporation shall have a capital stock of $1.00 subscribed by the United States. Such subscription shall be deemed to be paid.

"(b) Within 30 days after the date of enactment of the Federal Crop Insurance Act of 1986, the Secretary of the Treasury shall cancel, without consideration, receipts for payments for or on account of the stock of the Corporation outstanding immediately prior to such date of enactment. Such receipts shall cease to be liabilities of the Corporation.".

SEC. 4. GENERAL POWERS OF CORPORATION.

(a) DATA FOR ACTUARIAL BASES.—Section 506(h) (7 U.S.C. 1506(h)) is amended by inserting ", and reinsurance of insurers of," after "on".

(b) USER FEES.—Section 506 is further amended—

(1) by redesignating subsections (i), (j), and (k) as subsections (j), (k), and (l), respectively; and

(2) by inserting after subsection (h) the following new subsection:

"(i) may provide such services as may be appropriate to the crop insurance industry on a user fee basis;".

(b) FUNDS AND ASSETS.—Section 506 is further amended—

(1) by striking out "and" at the end of subsection (k) (as redesignated by subsection (b)(1));

(2) by striking out the period at the end of subsection (l) (as redesignated by subsection (b)(1)); and

(3) by adding at the end thereof the following new subsections:

"(m) may borrow money pursuant to section 516; and

"(n) except as provided in subsections (a)(2) and (c) of section 516, may use, in the conduct of the business of the Corporation (including payment of administrative and operating expenses), all funds and other assets of the Corporation, including premium income, capital and net earnings from the income, and all funds and other assets that have been or may hereafter be transferred or allocated to, borrowed by, or otherwise acquired by the Corporation.

SEC. 5. PERSONNEL OF CORPORATION.

(a) APPLICATION OF EMPLOYEES' COMPENSATION LAW.—Section 507(b) (7 U.S.C. 1507(b)) is amended by striking out ", including the employees of the committees and associations referred to in subsection (c) of this section and the members of such committees".

(b) USE OF PRIVATE INSURANCE AGENTS AND BROKERS.—Subsection (c) of section 507 is amended to read as follows:

"(c)(1) In the administration of this title, the Corporation shall encourage the sale of Federal crop insurance through licensed private insurance agents and brokers.

"(2) Until September 30, 1990, the Corporation shall provide such agent or broker with indemnification, including costs and reasonable attorney fees, for errors or omissions on the part of the Corporation or a contractor of the Corporation for which the agent or broker is sued or held liable, except to the extent the agent or broker has caused the error or omission.".

"(c) MAXIMUM NUMBER OF FULL-TIME EMPLOYEES.—Section 507 is further amended by adding at the end thereof the following new subsection:

"(g) Effective beginning October 1, 1990, the Corporation may employ not more than 50 permanent, full-time employees for the purpose of carrying out the activities authorized in this title.".

SEC. 6. AGRICULTURAL COMMODITY CROP INSURANCE.

(a) INSURANCE AGAINST LOSS.—The first sentence of section 508(a) (7 U.S.C. 1508(a)) is amended by striking out "to insure" and inserting in lieu thereof "until September 30, 1990, to provide for insurance for".

(b) PREMIUMS.—Subsection (b) of section 508 is amended to read as follows:

"(b)(1) To fix adequate premiums for insurance operations authorized in subsection (a) at such rates as the Board considered actuarially sufficient to—

"(i) cover claims for losses on such insurance;

"(ii) establish as expeditiously as possible a reasonable reserve against unforeseen losses; and

"(iii) cover all administrative and operating costs of the Corporation, including costs reimbursed under section 506(i) and subsection (h) of this section.

"(2)(A) For the purpose of encouraging the broadest possible participation in the insurance program by producers, the Board may adjust producer premiums and enter into sales and service contracts and reinsurance agreements.

"(B) For such purposes, the Board may pay not more than—

"(i) in the case of fiscal year 1987, 33 percent of a premium;

"(ii) in the case of fiscal year 1988, 18 percent of a premium;

"(iii) in the case of fiscal year 1989, 8 percent of a premium; and

"(iv) in the case of fiscal year 1990, 4 percent of a premium.

"(3) A producer may delete from any policy of insurance provided under this title coverage against losses caused by hail and fire and obtain such coverage from another insurer. The Corporation shall provide for an actuarially sound adjustment in the insurance rate of the producer to be applied on the submission of notice in writing of such substitute coverage.

"(4) The Board may enter into agreements with any State or State agency under which such State or agency may pay to the Corporation a subsidy to reduce the portion of the premium paid by producers in the State.

"(5) The premium of a producer shall be collected at such time or times and shall be secured in such manner as the Board may determine.".

(c) REINSURANCE.—Subsection (e) of section 508 is amended to read as follows:

"(e)(1) And directed, notwithstanding any other provision of this title, to provide reinsurance, to the extent necessary and practicable, on such terms and conditions as the Board may determine to be consistent with sound reinsurance principles, to insurers including private insurance companies or pools of such companies, reinsurers of such companies, or State or local governmental entities, including any political subdivisions thereof, that insure producers of any agricultural commodity under a plan or plans acceptable to the Corporation.

"(2) After September 30, 1990, such reinsurance shall be sustained by paid premiums. The Board shall establish and collect such premiums in such manner as the Board determines is appropriate.".

(d) MISCELLANEOUS.—Section 508 is further amended—

(1) in subsection (f), by inserting "encourage the crop insurance industry to" after "To";

(2) by striking out subsections (g) and (h);

(3) by redesignating subsection (i) as subsection (g);

(4) in subsection (g) (as redesignated by paragraph (3)), by striking out the second, third, and fourth sentences; and

(5) by adding at the end thereof the following new subsections:

"(h) Through the Board, to establish and collect such fees as may be necessary and appropriate for services provided by the Corporation to comply with subsections (h) and (i) of section 506 and subsections (e) and (g) of this section, except that no such fees shall be collected prior to October 1, 1987.

"(i) The authority provided in subsections (a) and (b) shall expire on September 30, 1990.".

(e) CONFORMING AMENDMENT.—Section 518 (7 U.S.C. 1518) is amended by striking out "subsection (a) or (i) of section 508" and inserting in lieu thereof "subsection (a) or (g) of section 508".

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

(a) OPERATING AND ADMINISTRATIVE COSTS.—Section 516(a)(1) (7 U.S.C. 1516(a)(1)) is amended—

(1) in the first sentence—

(A) by inserting "until September 30, 1990," after "appropriated"; and

(B) by striking out "interest on Treasury notes and other obligations" and inserting in lieu thereof "principal and interest on Treasury notes and other obligations (but appropriated funds may be used to redeem notes or obligations made by the Corporation to the Secretary of the Treasury only after all other sources of funds available to the Corporation, including funds available from premiums, are used to the fullest extent possible to redeem such notes or obligations)"; and

(2) by striking out the last sentence.

(b) NET GAINS.—Paragraph (2) of section 516(a) is amended to read as follows:

"(2) In the event the Corporation earns a net realized gain for any year, the full amount of such gain shall be held on deposit in the Treasury and shall remain available to the Corporation without fiscal year limitation, except that any such gains must first be utilized to the fullest extent possible to repay any outstanding debt or other obligations to the Treasury incurred by the Corporation.".

(c) EMERGENCY FUNDING.—Section 516 is amended—

(1) by striking out subsection (c); and

(2) by redesignating subsection (d) as subsection (c).

(d) BORROWING AUTHORITY.—Section 516(c) (as redesignated by subsection (c)(2)) is amended—

(1) in the first sentence, by striking out "Except as provided in subsection (c), if at any time" and inserting in lieu thereof "Only when";

(2) in the second sentence, by striking out "or the issuance of capital stock under section 504 of this title" and inserting in lieu thereof ", appropriations made under this section, or any other source"; and

(3) by striking out the last sentence and inserting in lieu thereof the following new sentence: "The total amount of all money borrowed by the Corporation under this subsection shall not at any time exceed $500,000,000.".

(e) CANCELLATION OF OBLIGATIONS.—Section 516 (as amended by subsection (c)(2)) is amended by adding at the end thereof the following new subsection:

"(d) Within 30 days of the date of enactment of the Federal Crop Insurance Act of 1986, the Secretary of the Treasury shall cancel without consideration—

"(1) all obligations of the Commodity Credit Corporation for funds extended under subsection (c) (as in effect immediately before such date of enactment); and

"(2) any outstanding obligations of the Federal Crop Insurance Corporation for borrowings made under subsection (c) (as in effect immediately before such date of enactment).".

SHORT EXPLANATION OF THE CROP INSURANCE ACT OF 1986

SECTION 3

Section 504 of the Federal Crop Insurance Act (the Act) as amended in 1980, established the Federal Crop Insurance Corporation (FCIC) as a capital stock corporation of the United States with an authorized subscription of $500 million in Treasury funds. As of the date of the introduction of this bill, the entire subscription has been received. Due to catastrophic losses to crops in several areas of the country during 1983, 1984, and 1985, the Corporation paid out all of the funds realized from the stock subscription and had to borrow additional funds in Fiscal Year 1985. Further borrowing has been necessary during Fiscal Year 1986 to meet indemnification requirements.

Section 3 of the bill would revise Section 504 of the Act to retain the corporate structure for FCIC, create a subscription base of one dollar, and would, in subsection (b), cancel the $500 million obligation without consideration. The effect of this language would be to maintain the FCIC's semi-autonomous operating posture, but prepare the way for altering the method used to fund its operations. The Corporation has exhausted its capital authority and is utilizing a roundabout vehicle (borrowing through the Commodity Credit Corporation /CCC/) for additional indemnification revenue as needed.

SECTION 4

Section 4 of the bill would revise Section 506 of the Act to authorize the FCIC to provide appropriate services to the insurance industry, specifically including reinsurance services, on a user fee basis as the shift to private sector direct insurance resources is made.

To remedy the economic situation which the Corporation faces currently, and which it may face in the future, Section 4 also would authorize the Corporation to borrow money and require the Corporation to utilize receipts from premium payments and all other assets and funds of the Corporation, except funds borrowed from the Treasury to pay unanticipated indemnities, to pay or reimburse administrative and operating expenses of the Corporation. As the Corporation makes adjustments to meet the phase-out requirements established in Section 6 of this legislation, it is necessary that authority exist for the utilization of funds collected through premiums, in addition to the user fees established in the proposal, to reflect the increasing need that such funds meet operational costs in addition to indemnification requirements.

SECTION 5

By revising Section 507(c) as provided in this section, the Corporation would be clearly directed to encourage the shift of crop insurance business to the private sector. In requiring the use of licensed private agents and brokers, it is the intent of the bill to simplify the process of transferring the direct insurance business upon the termination of Corporation involvement in such operations by FY 1991. In addition this language continues to provide, until FY 1991, indemnification for its private sector partners against errors and omissions for which the Corporation is held at fault. For the reinsurance activities contemplated after the transfer of direct writing operations, the bill would further limit the Corporation to minimal staffing.

SECTION 6

Section 508 of the Act authorizes and regulates the provision of insurance on crops by the Corporation. A major element of the 1980 amendments to the Act was contained in subsection (e) of Section 508 where the Corporation was "directed, to provide reinsurance * * * to the maximum extent practicable * * * to insurers including private insurance companies * * *" This effort to include the insurance industry in the crop insurance program was designed to broaden the utilization of insurance by producers and to make it a part of sound economic planning by America's farmers. The increase in premium base since 1980, in crops and areas protected, and in the use of the private insurance market for the delivery of such protection convinces the Corporation that this effort is succeeding. For crop year 1985, more than 70% of policies sold were sold by private companies reinsured by FCIC.

Today fully 40% of America's agricultural producers participate in some form of insurance program—multiple peril or fire and hail depending on their individual need for protection. The trend in agricultural economics is toward using insurance as a planning tool, and such insurance is more and more required by grantors of credit in the agricultural community. With the elimination of most of the disaster grant and low-interest loan programs previously available to farmers, the prudent producer protects his crop investment with insurance in the same manner as his home and his car.

It is anticipated that this growth will continue and permit amortizing administrative costs over a greater base thus limiting increases in individual producer costs (premiums), and that greater experience in actuarial analysis will further refine premium rate setting.

Thus Section 6 of this Bill would provide for the termination of direct writing operations by the Corporation on September 30, 1990, and would, in subsection (b), amend Section 508 to establish a schedule of percentage reductions of producer premium subsidy support over a period ending in Fiscal Year 1990. The language would also require the Corporation to adjust premium to include all expenses of the insurance program and require FCIC's private sector partners to gradually assume their own operational costs. This action will permit an orderly transfer of direct insurance provider functions. In addition, the language will more accurately reflect that the current subsidy to the producer substantially exceeds the nominal percentage contained in the 1980 Act and require accounting procedures more consistent with normal insurance provider requirements.

Technical corrections to several subsections of Section 508 clarify that the role of the Corporation will increasingly be to encourage and facilitate private sector program development. Subsection (d) of Section 6 directs the Board of the FCIC to impose fees for the services provided to the private sector beginning with Fiscal Year 1987.

Section 6 of the Bill would also mandate the withdrawal of the FCIC from all direct insurance operations by September 30, 1990, and clarify that the authority for reinsurance which remains is to be exercised as necessary and at no cost to the government.

SECTION 7

Section 7 of this proposal would amend Section 516 to address the question of funding for the Corporation as it proceeds toward the termination of direct government involvement in the crop insurance business. The Corporation would be authorized to retain net realized gain and would be required to use such funds to meet outstanding debt and to reduce regular funding needs prior to establishing its reserve for excess loss.

Section 7 would also eliminate the current authority of the Corporation to borrow funds from the Commodity Credit Corporation to meet indemnification needs and would direct the cancellation of obligations of the FCIC to the CCC, and of CCC to the Treasury, for funds extened to FCIC previously under Section 516(c). The language would also cancel, as of the date of enactment, all other outstanding FCIC obligations for borrowing.

Finally, the language in Section 7 would complement Section 4 in permitting reimbursement of borrowings from any available funds. Also, such borrowings could be reimbursed from appropriations until the transfer of direct insurance operations and support is accomplished in Fiscal Year 1990. After that time, this borrowing authority would provide a source of funds for uncapitalized reinsurance operations on a limited, premium reimbursed, basis. In addition to clarifying the general borrowing authority provided in Section 4 of the bill, Section 7(d)(4) would amend Section 516 to limit the outstanding borrowings of the Corporation to $500,000,000.●

By Mr. BROYHILL:

S. 2853. A bill to provide for reciprocity in international trade in large electrical equipment; to the Committee on Finance.

LARGE ELECTRICAL EQUIPMENT TRADE AND ACCESS ACT

● Mr. BROYHILL. Mr. President, I am today introducing S. 2853, the Large Electrical Equipment Trade and Access Act of 1986, which can help to establish fairness in the international trade of large electrical equipment. I hope this measure will become law as promptly as possible, either as an amendment to a Senate omnibus trade bill or as a separate bill.

This change in trade law is necessary to provide some economic justice for a U.S. industry which has been subject to unfair international competition for more than 30 years. The injustice is plain—Japan and European countries which have the industrial capability to manufacture large steam turbine generators and large power transformers will not buy American-made large steam turbine generators or large power transformers. Yet, Japanese and European manufacturers of these products have open access to sell these machines to all electric utilities in the United States.

The countries of Europe and Japan that can make large electrical equipment have productive capacity in excess of their national requirements. They expect to export, so they can keep their workers employed and their business profitable. Because their home markets are sheltered by their governments from American and other international competition, they can and do sell large electrical equipment to their home utilities at prices significantly higher than prices they quote to American utilities. With the acquiescence of their governments, consumers of electricity in Europe and Japan help to pay high prices for the machines that provide them electricity, and thus subsidize their national manufacturers of electrical equipment to the detriment of American manufacturers and their employees.

When an American utility buying a large steam-turbine generator or large power transformers receives a bid from a European or Japanese manufacturer which is 25 or 30 percent lower than their home market price and also below the bids of American suppliers, an American bidder has little chance to win the order. The high prices received in foreign-closed home markets provide revenue to help European and Japanese companies cover their large factory overhead expense and their research and development expense, assisting them to offer lower, marginal prices to American utilities. American manufacturers have no such protected market to provide them similar benefits.

American manufacturers of large electrical equipment have urged our Government many times to negotiate fairness in international trade of this equipment, but there has been no meaningful move toward fairness.

United States manufacturers requested reciprocity of access to markets in Europe and Japan for this equipment during the Kennedy round of trade negotiations. What they got was like a slap in the face. The United States reduced its import duties on large electrical equipment into our open market by about 50 percent. European countries and Japan reduced their import duties on such equipment, but knew full well they intended to permit no imports from the United States. Our Government has done nothing to obtain relief for American manufacturers from this trade legerdemain.

U.S. electrical equipment manufacturers also sought relief from this lack of foreign market access after the Kennedy round; again at the beginning of the Tokyo round; during the Tokyo round and afterward, all to no avail.

The purchasing procedures of utilities in Europe and Japan are quite different from the competitive buying procedures of United States utilities. Closed negotiations with national suppliers, without competitive bidding or publication of prices, are customary in Europe and Japan, making it very difficult for American companies to obtain evidence necessary to invoke United States antidumping and subsidy laws.

U.S. manufacturers of large electrical equipment have suffered from the years of declining volume of orders by United States utilities following the petroleum boycotts of the 1970's. When United States utilities begin to buy new steam turbine generators and power transformers, we in the United States cannot afford to allow European and Japanese manufacturers to preempt our market with discriminatory, one-way trade in large electrical equipment to the continued detriment of American labor and industry.

Here in the United States the world's highest standard of living could not exist without our national electrical system, which is superior to the systems of other countries. We need American large equipment manufacturers in order to maintain our national electrical grid as the best in the world, and I am afraid we will not have a U.S. electrical equipment industry to serve our needs unless our national policies of open trade for everyone in the world except Americans can be made fair for our own workers and companies.

I am not advocating high tariffs or closed American markets for electrical equipment, but I do advocate fairness and full international reciprocity of market access for American manufacturers. That is what I am seeking for U.S. manufacturers of large electrical equipment, and I hope the Senate, the whole Congress, and the President will support this legislation.

BRIEF SUMMARY OF THE PROVISIONS OF THIS BILL

1. The President is required within three months after the effective date of the legislation to initiate negotiations aimed at full market access with each foreign country in which large power transformers or large steam generators are produced, except those countries as to which the President can certify that U.S. manufacturers have access to that market substantially equivalent to the foreign manufacturers' access to the U.S. market. No such certification can be made unless U.S. manufacturers have in fact made sales in the foreign market.

2. The President is to report annually to the Congress on the negotiations, and the negotiations are to continue with each country until a satisfactory resolution is reached which grants fully competitive market access to U.S. producers.

3. Until the negotiations end successfully as to a particular country, a petition under the antidumping law may be filed against that country without home market price data, relying on the presumption that the closed market creates a price level higher than the prices of sales to the United States.

4. Also, until the negotiation with respect to a given country is successfully concluded, the antidumping investigation on large power transformers or large steam turbine generators with respect to that country are to be conducted under a presumption of 50 per cent dumping margins, which presumption would be rebuttable by the submission of fully verified information establishing a different foreign market value.●

By Mr. HEINZ:

S. 2854. A bill to authorize the donation of certain non-Federal lands to Gettysburg National Military Park and to require a study and report on the final development of the park; to the Committee on Energy and Natural Resources.

GETTYSBURG NATIONAL MILITARY PARK EXPANSION

● Mr. HEINZ. Mr. President, I rise on this occasion to introduce a bill which would authorize the addition of 31 acres to the Gettysburg National Military Park. This tract of land, known as the Taney Farm, has been donated by the Gettysburg Battlefield Preservation Association [GBPA], a nonprofit organization. The GBPA acquired this property in 1984 and wishes to donate it at no cost to the National Park Service. The National Park Service is seeking the authority to accept this donation.

Similar legislation, H.R. 4259, to permit this donation passed the House of Representatives on July 16, 1986, by a vote of 408 to 1. H.R. 4259 had the benefit of a hearing in the U.S. House of Representatives by the National Parks and Recreation Subcommittee of the Committee on Interior and Insular Affairs. The bill was reported favorably.

During consideration of H.R. 4259 in the House of Representatives, the issue of the park's permanent boundaries arose. Under both the legislation which I am introducing and that passed by the House, any future acquisitions to the park would be subject to the full legislative process just as the Taney Farm donation has been.

The second part of my bill enacts a freeze on further acquisitions by the Gettysburg National Military Park until the National Park Service has concluded a study defining the final development of the park and has submitted a complete report with a recommendation to the Congress regarding the final development of the Gettysburg National Military Park.

In addition, in conducting its development study, the National Park Service will consult with members of the community and their elected representatives at all levels of government, as well as interested historians and historical groups.

The Gettysburg National Military Park was established on February 11, 1895, to commemorate onsite one of the greatest battles of the Civil War. For 3 days from July 1 to 3, 1863, a gigantic struggle between 75,000 Confederate and 97,000 Union troops raged about the town and resulted in 51,000 casualties. The Taney Farm played a significant role in the battle for Culp's Hill on the late afternoon and evening of July 2 and the morning of July 3.

The Taney Farm has no existing historical structures related to the battle which would require perpetual care; its acquisition would not significantly increase the park's maintenance costs. The inclusion of the Taney Farm in the Gettysburg Park was identified as a "critical area" in preserving the scenic and historic values of the park by the President's Advisory Council on Historic Preservation in a 1977 report.

I urge all my colleagues to support this noncontroversial legislation.●

By Mr. HEINZ (for himself, Mr. ZORINSKY, Mr. D'AMATO, and Mr. ANDREWS):

S. 2856 a bill to implement the United States-European Communities Agreement on Citrus and Pasta, and for other purposes; to the Committee on Finance.

IMPLEMENTATION OF UNITED STATES-EUROPEAN COMMUNITIES AGREEMENT ON CITRUS AND PASTA

● Mr. HEINZ. Mr. President, just over 1 month ago, the news broke that the "Pasta war" was over. Last November, the administration made pasta its weapon of choice, imposing stiff tariffs on illegally subsidized imports of European Community pasta, in retaliation for EC intransigence over the longstanding dispute over the discriminatory tariffs on U.S. citrus exports to the EC. The prevailing assumption is that when the citrus conflict concluded, the pasta problem also ended. Nothing could be further from the truth.

This body should not be willing to sacrifice the $1 billion domestic pasta industry based on EC assurances that they will negotiate the issue in good faith. In fact, history tells us that we should have little, if any, faith in the European Community when it comes to pasta imports.

Over the last 10 years, Italian pasta imports have jumped more than tenfold. The reason is not that Italian pasta is inherently superior to domestic pasta—in fact we can produce it as cheaply as anyone—but rather that Italian pasta sells for at least 15 to 25 percent less than pasta made in the U.S.A. thanks to illegal subsidies paid to Italian pasta makers.

In 1981, U.S. pasta makers sought relief through normal GATT channels and apparently won. In 1983, a GATT panel rules that EC subsidization of pasta violated the subsidies code prohibition on the subsidization of processed agricultural products. Despite this ruling, the EC continued to provide these illegal subsidies to help European producers, to the detriment of U.S. industry and U.S.-EC relations. In fact, following our retaliation last November, the EC response was to increase its subsidies to 60 to 70 percent of the cost of pasta, compensating for the retaliatory tariffs.

Yet, despite this 176 percent increase in subsidy levels, the administration seems about to put the U.S.

pasta industry on hold for yet another year.

Mr. President, we cannot allow this to happen. The domestic pasta industry has acted in good faith, seeking to resolve its disputes through due process. Unfortunately, this "process" did not do the job. Neither will the recent agreement made between the administration and the EC. Therefore, the legislation I am introducing today will link the reduction of duties on olive and cheese products, which are part of the citrus agreement, to duty increases on pasta products equal to the subsidies the EC is providing.

While this is not the course of action I prefer, the EC appears unwilling to provide any relief to the U.S. pasta industry on its own despite the GATT panel finding against it. We are committed to improving relations with our European trading partners, but not through unilateral giveaways. With the agricultural and industrial sectors struggling to overcome the trade deficit, this body must push the administration and the EC to remove the barriers to fair trade, especially when those barriers fly in the face of established international rules. Perhaps the parties involved will take this cue to reach an amicable agreement, one that will treat all sides, and all interests, equitably. The old dictum is "Action speaks louder than words." Hopefully, our actions on behalf of the hard-pressed pasta industry will lead to a meaningful, productive, and fair resolution of this crucial issue. Should agreement be reached, then the administration is free to submit legislation to remove the additional duty, and I am confident Congress will act on it immediately.●

By Mr. D'AMATO:

S. 2858. A bill to prohibit United States payments to the United Nations on or after October 1, 1987, unless certain United Nations files have been made available to appropriate law enforcement officials; to the Committee on Foreign Relations.

RELEASE OF CERTAIN UNITED NATIONS FILES

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation that will allow responsible law enforcement officials, both here and abroad, access to the 36,810 War Crimes Commission files now kept at the United Nations in New York.

In 1948, the War Crime Commission finished its mission and tranferred its records to the care of the United Nations. Since that time, Mr. President, only four files have been opened: Adolf Eichmann, Claus Barbie, Josef Mengele, and, most recently, Kurt Waldheim. I find this situation unacceptable. Such significant records of our past should not be so easily forgotten.

For nearly 5 years, the War Crime Commission gathered information on suspected war criminals, amassing close to 40,000 files. Of this number, 24,500 were given an "A" rating, meaning that the Commission believed that there was enough evidence for prosecution and conviction on the charge of war crimes against humanity.

Somewhere in the bowels of the U.N. is the most ambitiously gathered information on Nazi war criminals. Unfortunately, U.N. policy severely restricts access to these files and valuable evidence on some of the most heinous war criminals of all time is being suppressed.

Mr. President, my legislation would withhold our contributions to the United Nations after fiscal year 1987 unless the U.N. releases for inspection all 36,810 War Crime Commission files to law enforcement personnel with a legitimate jurisdiction in this area. In 1984, the U.N. received over $1 billion from the United States for operating expenses, specialized agencies, and voluntary contributions to international organizations. My interest, however, is not to reduce funds for the operations of the United Nations. I am well aware of that institution's funding problems. We must, however, impress upon the body the importance of making those files available for proper examination.

As one of the nation-members of the War Crimes Commission, the United States must lead the fight to make these war crimes files more accessible. Although the master list of names is available to some nations, and any nation may request—but not necessarily receive—a particular file, it is unconscionable that law-enforcement officials do not have open access to the files themselves. There is no reason why responsible law-enforcement officials with jurisdiction in this area should not be able to review any or all of these files for investigatory purposes.

Although some worry that information on these files may be inaccurate, I believe that it would be a bigger miscarriage of justice to continue to shield these files from proper inspection. The files themselves may not be enough to indict a suspected war criminal, but they would prove to be invaluable supporting evidence. We would be seriously derelict to continue to neglect a major source of possible evidence to assist in bringing a Nazi war criminal to justice. Current access to these files are now so restricted and difficult that it has had a chilling effect on efforts to obtain information of possible war criminals.

By ignoring these files, Mr. President, we ignore the past. We have heard many times that "we must not forget the Holocaust." But that is what the U.N. would have us do by continuing to restrict access to the war crimes files. If there is information in those files that will aid in the apprehension and the bringing to justice of Nazi murderers who now walk free, then such information must be made readily available.

Mr. President, I strongly urge my colleagues to support this important piece of legislation and I ask for expeditious review by the Senate Foreign Relations Committee. I also ask unanimous consent that the full text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows

S. 2858

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, on or after October 1, 1987, no payment may be made by the United States to the United Nations or any specialized agency thereof unless the United Nations has released for inspection to all requesting law enforcement officials with a legitimate jurisdiction in this area, whether within or outside the United States, all 36,810 charge files in the custody of the United Nations which relate to suspected Nazi war criminals.●

By Mr. MATSUNAGA:

S. 2860. A bill to amend the Tariff Act of 1930 regarding the customs administration of duty-free sales enterprises; to the Committee on Finance.

DUTY-FREE SALES ENTERPRISE ACT

Mr. MATSUNAGA. Mr. President, today I am introducing the Duty-Free Sales Enterprise Act of 1986, which would for the first time, provide statutory guidelines for the regulation of duty-free stores. My dear friend and colleague from Hawaii, Congressman DANIEL AKAKA, has introduced a companion measure in the House as H.R. 5411.

This bill is the product of many months of work by representatives of the duty-free industry, the U.S. Customs Service, and my office. While this legislation is particularly helpful to the State of Hawaii, it is also important for the Nation as a whole as there are more than 100 duty-free stores nationwide, including stores at every major international airport and major land border crossing.

The bill amends section 555 of the Tariff Act of 1930, a provision regarding customs bonded warehouses. Duty-free sales enterprises, as operated in the United States, are bonded warehouses covered by special customs procedures wherein merchandise is offered for sale to travelers leaving the United States, without payment of U.S. duties and taxes. Because such enterprises operate as retail stores, the general statutory and regulatory provisions governing bonded warehouses are in many cases inappropriate. This act establishes guidelines specifically designed for the unique characteristics of duty-free sales enterprises.

Duty-free sales enterprises were statutorily provided for by section 205 of the Trade and Tariff Act of 1984.

However, there are no statutory guidelines for the opeation of such enterprises, nor are they provided for by regulation. Until now, the administration of duty-free sales enterprises has been accomplished by means of Customs' internal directives and circulars.

Duty-free sales enterprises benefit the United States in a number of ways. They pay substantial concession fees to international airport operating authorities which constitute a significant percentage of total airport revenues. Duty-free operations located outside of airports pay substantial concession fees to other local governmental entities. Duty-free enterprises also induce foreign visitors to increase their overall expenditures in the United States. This makes duty-free stores one of a decreasing number of U.S. businesses which contribute positively to the U.S. balance of payments. Moreover, duty-free operations actually attract tourists to the United States, thereby benefiting other U.S. industries, including airlines, hotels, and restaurants. This bill is designed to preserve these benefits to the United States.

The bill sets forth various operating procedures for duty-free stores and authorizes the Secretary of the Treasury to promulgate regulations based on these guidelines. Duty-free stores, for the first time, are specifically authorized to sell and deliver duty-free goods for exportation. Several limitations are placed on duty-free stores, including their physical location, quantities of goods which may be sold to any one individual, and notification requirements to purchasers of the United States and foreign customs law treatment of duty-free merchandise. The bill also outlines the various means by which duty-free merchandise may be delivered to purchasers, and requires that local governmental concessions be obtained when necessary.

I urge my colleagues to support this measure which will provide much-needed legislative guidelines for the proper regulation of the duty-free industry, a valuable segment of the national economy.

By Mr. GRASSLEY (for himself and Mr. METZENBAUM):

S. 2861. A bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias; to the Committee on Labor and Human Resources.

ALZHEIMER'S DISEASE AND RELATED DEMENTIAS SERVICES RESEARCH ACT

● Mr. GRASSLEY. Mr. President, today I am introducing a bill, on behalf of myself and Sentators METZENBAUM, HAWKINS, and KERRY, which if passed, will provide authority for the support of distinguished senior investigator of services relevant research on Alzheimer's disease, and information dissemination and educational activities with respect to Alzheimer's disease. The bill would also upgrade the coordination in the Department of Health and Human Services of all research on Alzheimer's disease, and provide for advice to the Department and to the Congress and the public from an adivsory panel of knowledgeable people. Senator METZENBAUM and his staff have worked hard on this bill, and authored several of the bill's provisions. Representative SNOWE and her staff also share authorship of several of the bill's provisions which were introduced separately in the House of Representatives by her as H.R. 5553 on September 18, and by me, for myself and Mrs. HAWKINS, in the Senate on September 19, 1986 as S. 2846.

Mr. President, as most of my colleagues know, Alzheimer's disease is terrible costly. An estimated 1.5 million people have severe dementia and another 1-to-5 million have mild to moderate dementias. The emotional burden on the families of those with Alzheimer's disease is heavy and destructive. The financial cost is great for Alzheimer's disease some estimates of the direct cost to the Nation of caring and other dementia victims run as high as $40 billion. Recently, at a hearing on Alzheimer's disease of the Subcommittee on Aging, a witness from the Office of Technology Assessment estimated that people with dementia constitute probably somewhere between 60 and 70 percent of those who stay in nursing homes longer than 3 months. As invariably noted, correctly, in discussion of dementia, the number of those with it will increase. By the year 2000, it is estimated that the number of those with severe dementia will increase by 60 percent.

Therefore, Mr. President, we must continue to place a high priority on discovering the cause of this disease, and on finding ways to assist families and other caregivers who have the responsibility of caring for Alzheimer's disease victims. The bill we are introducing today will do this in several ways.

First, the bill would authorize the existing Secretary's Task Force on Alzheimer's Disease, created administratively by Secretary Heckler and continued under Secretary Bowen. The bill gives the same mandate to the task force as that given it by Secretary Heckler, but also requires it to report to the Congress and the public at least annually and requires it to assist the three agencies in the development of a plan for the expenditure of the $6 million authorized for services relevant research. No additional funds are provided for the task force. By authorizing the Secretary's Task Force on Alzheimer's Disease as a Council of the Department or the 5-year authorization period, we will increase the status of, and emphasis placed on, the problem of Alzheimer's disease in the Department. The present task force has worked well and has certainly made an important contribution to the increased emphasis placed on Alzheimer's disease and related dementias in recent years; the authorization of this Council by the Congress and the requirement that it report annually to the Congress and the public will serve to reinforce the high priority which should be placed by the Department on dealing with dementia and the problems it creates. This Council would also be required to assist the National Institute on Aging, the National Institute of Mental Health and the National Center for Health Services Research in making the plan they will be required to make prior to spending any of the money authorized by this bill. I hope that this provision will help to assure that there is adequate coordination within the Department of the research activities related to Alzheimer's disease. No funds are provided for this activity.

Second, the bill would create an advisory panel of knowledgeable individuals from the private or State/local government sectors to advise the Department, the Congress and the public on emerging issues and future priorities with respect to Alzheimer's disease. This group would complement the Secretary's task force by providing additional views, for consideration of the Secretary, which are unfettered by the institutional commitments of Federal agencies. It would also provide the Congress with a knowledgeable single source of advice and recommendations with respect to Alzheimer's disease and related dementias. The bill would provide $100,000 annually for this panel. It is my hope that, between the Secretary's task force and the outside advisory group, the Alzheimer's effort of the Federal Government will be better coordinated and focused on the highest priority activities.

Third, it authorizes the National Institute on Aging to make awards to senior investigators who have distinguished records in biomedical research on Alzheimer's disease. Such individuals would be recommended by the National Advisory Council on Aging, the longstanding advisory group for the NIA, and would be chosen by the Institute. The Institute would be able to continue the support of the individuals chosen for such awards for up to 7 years without requiring from them lengthy and elaborate research proposals. In this way, it is our hope that such individuals will be able to devote the time usually consumed by proposal preparation to research and training. Such individuals would also be able to use some of the funds provided them by the agency to train exception-

ally promising young biomedical researchers who are interested in working on Alzheimer's disease or related dementias. The bill authorizes $5 million annually for this program.

Fourth, the bill authorizes a program of services-relevant research on Alzheimer's disease and related dementias. Although our effort in biomedical research on Alzheimer's disease and related dementias is up and running, our effort is directed to better understanding of how to take care of people with Alzheimer's disease in the here and now—on services-relevant research, in other words—is minimal. In a survey of relevant Federal agencies conducted by the subcommittee, we found that, in contrast to the $50 million being spent for basic biomedical research, only about $500,000 to $1 million is being spent on services-relevant research focused on those with dementia. It is true that these figures do not include research on long-term care systems which may have implications for caring for people with Alzheimer's disease; they include only research specific to caring for Alzheimer's disease victims. While we must look to biomedical research for eventual solutions to the problem of Alzheimer's disease and related dementias, we must look to services-relevant research to help us better understand how to take care of the great numbers of people who are presently afflicted with dementia.

The bill we are introducing today authorizes annually $2 million each for the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research for the support of services-relevant research which falls within the general mandate of each agency.

Fifth, the bill would authorize the National Institute on Aging to spend $1.5 million for the dissemination of information about current research efforts in the Federal Government and about services available for the care of people with Alzheimer's disease. The National Institute on Aging would be able to support an external clearinghouse which would have the capacity to respond to inquiries about available services. The problem of getting information about what services are available is invariably cited by the families of dementia victims as one of the most serious they face. Although there will be obvious limits to what such a clearinghouse activity can do in the way of direct assistance to victims and their families, judicious organization and priority setting by the agency and whatever outside group is chosen to implement this aspect of the bill should enable them to make a real difference to victims and their families.

Sixth, the bill would authorize $1 million annually to the National Institute on Aging to conduct education activities with respect to Alzheimer's disease. These activities would be directed toward caregivers and toward other categories of workers, primarily safety and transportation workers, who might in the course of their duties encounter dementia victims and be unable, without some knowledge of the disease, to respond appropriately.

The bill authorizes all the activities I have described for 5 years, 1987–91; funds would be provided, however, for 4 years, 1988–91. The total amount of money authorized on an annual basis is $12.4 million.

Mr. President, I think the program contemplated by the bill we are introducing today, for a relatively small amount of money, can help us continue the remarkable progress we have made in recent years against this disease.

Mr. President, I ask unanimous consent that a summary and the text of the bill be printed in the RECORD after my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2861

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alzheimer's Disease and Related Dementias Services Research Act of 1986".

FINDINGS

SEC. 2. The Congress finds that—

(1) best estimates indicate that between 2,000,000 and 3,000,000 Americans presently have Alzheimer's disease or related dementias;

(2) estimates of the number of individuals afflicted with Alzheimer's disease and related dementias are unreliable because current diagnostic procedures lack accuracy and sensitivity and because there is a need for epidemiological data on incidence and prevalence of such disease and dementias;

(3) studies estimate that between one-half and two-thirds of patients in nursing homes meet the clinical and mental status criteria for dementia;

(4) the care for individuals with Alzheimer's disease and related dementias falls primarily on their families, and such care is very often financially and emotionally devastating;

(5) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

(6) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias and more progress can be expected in the near future, there is little likelihood of a breakthrough in the foreseeable future which would eliminate or substantially reduce the number of individuals with such disease and dementias or the difficulties of caring for such individuals;

(7) attempts to reduce the emotional and financial burden of caring for dementia patients is impeded by a lack of knowledge about such patients, how to care for such patients, the costs associated with such care, the effectiveness of various modes of care, the quality and type of care necessary at various stages of the disease, and other appropriate services that are needed to provide quality care;

(8) the results of the little research that has been undertaken concerning dementia has been inadequate or the results have not been widely disseminated;

(9) more knowledge is needed concerning—

(A) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias;

(B) the development of methods for early diagnosis, functional assessment, and psychological evaluation of individuals with Alzheimer's disease for the purpose of monitoring the course of the disease and developing strategies for improving the quality of life for such individuals;

(C) the understanding of the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design, delivery, staffing, and mix of such services and the coordination of such services with other services, and with respect to the relationship of formal to informal support services;

(D) the understanding of optimal methods to combine formal support services provided by health care professionals with informal support services provided by family, friends, and neighbors of individuals with Alzheimer's disease, and the identification of ways family caregivers can be sustained through interventions to reduce psychological and social problems and physical problems induced by stress;

(E) existing data that are relevant to Alzheimer's disease and related dementias; and

(F) the costs incurred in caring for individuals with Alzheimer's disease and related dementias;

(10) it is imperative to provide appropriate coordination of the efforts of the Federal Government in the provision of services for individuals with Alzheimer's disease and related dementias;

(11) it is important to increase the understanding of Alzheimer's disease and related dementias by the diverse range of personnel involved in the care of individuals with such disease and dementias; and

(12) it is imperative that the Social Security Administration be provided information pertaining to Alzheimer's disease and related dementias, particularly for personnel in such Administration involved in the establishment and updating of criteria for determining whether an individual is under a disability for purposes of titles II and XVI of the Social Security Act.

TITLE I—COUNCIL ON ALZHEIMER'S DISEASE

ESTABLISHMENT

SEC. 101. (a) There is established in the Department of Health and Human Services (hereinafter referred to as the "Department") the Council on Alzheimer's Disease (hereinafter referred to as the "Council"). The Council shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the United States;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute of Allergy and Infectious Diseases;

(5) the Director of the National Institute of Mental Health;

(6) the Director of the National Institute of Neurological and Communicative Diseases and Stroke;

(7) the Director of the National Institute on Aging;

(8) the Commissioner on Aging;

(9) the Administrator of the Health Care Financing Administration (or the designee of such Administrator);

(10) the Director of the National Center for Health Services Research and Health Care Technology Assessment;

(11) the Administrator of Veterans' Affairs (or the designee of such Administrator); and

(12) such additional members as the Secretary of Health and Human Services (hereinafter referred to as the "Secretary") considers appropriate.

(b) The Secretary shall select a Chairman for the Council from among its members.

(c) A majority of the members of the Council shall constitute a quorum, but a lesser number may hold hearings.

(d) The Council shall meet periodically at the call of the Chairman, but not less than twice each year.

(e) The Secretary shall appoint an Executive Secretary for the Council and shall provide the Council with such additional administrative staff and support as may be necessary to enable the Council to carry out its functions.

FUNCTIONS

SEC. 102. (a) The Council shall—

(1) coordinate continuing research conducted by or through the Department on Alzheimer's disease and related dementias;

(2) establish a mechanism for the sharing of information among all officers and employees of the Department involved in carrying out programs serving elderly individuals;

(3) identify the most promising areas of research concerning Alzheimer's disease and related dementias;

(4) establish mechanisms to use the results of research concerning Alzheimer's disease and related dementias in the development of policies, programs, and means to improve the quality of life for older Americans; and

(5) assist the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment in developing and coordinating the plans for research required under title IV, and in making revisions in such plans.

(b)(1) Not later than 9 months after the date of enactment of this Act, the Council shall transmit to the Congress and make available to the public a report detailing the plans for research prepared by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment under title IV. Such report shall—

(A) describe, insofar as feasible, the activities to be carried out under such title during each of the fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) ensure that activities carried out under such title are coordinated with, and use, to the maximum extent feasible, the resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other centers supported by Federal funds involved in research on Alzheimer's disease and related dementias, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within 1 year after the date on which the report required by paragraph (1) is transmitted to the Congress, and annually thereafter, the Council shall transmit to the Congress, and make available to the public, a report on—

(A) the revisions made by the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research and Health Care Technology Assessment in the plans for research required by title IV;

(B) progress made by research sponsored by the Federal Government on Alzheimer's disease and related dementias; and

(C) new directions in research on Alzheimer's disease and related dementias which the Council considers potentially important.

TITLE II—ADVISORY PANEL ON ALZHEIMER'S DISEASE

ESTABLISHMENT OF PANEL

SEC. 201. (a) There is established in the Department the Advisory Panel on Alzheimer's Disease (hereinafter referred to as the 'Panel'). The Panel shall be composed of—

(1) 15 voting members appointed by the Director of the Office of Technology Assessment, of which—

(A) 3 shall be individuals who are biomedical research scientists with demonstrated achievements in biomedical research relating to Alzheimer's disease, including at least one individual who is a researcher at a center supported under section 445 of the Public Health Service Act;

(B) 3 shall be individuals with demonstrated achievements in research relevant to services for the care of individuals with Alzheimer's disease and related dementias;

(C) 3 shall be individuals who are providers of services, or administrators of organizations which provide services, for individuals with Alzheimer's disease and related dementias and their families;

(D) 3 shall be individuals who are experts in the financing of health care services and long-term care services, including one individual who is a representative of private health care services insurers; and

(E) 3 shall be representatives of national voluntary organizations which are concerned with the problems of individuals with Alzheimer's disease and related dementias and their families; and

(2) the Chairman of the Council, the Director of the National Institute on Aging, the Director of the National Institute of Mental Health, the Director of the National Center for Health Services Research and Health Care Technology Assessment, and the Commissioner on Aging, who shall be nonvoting ex officio members.

(b) The Director of the Office of Technology Assessment shall appoint members to the Panel under subsection (a)(1) within 90 days after the date of enactment of this Act.

(c) The Secretary shall appoint a Chairman of the Panel from among the members appointed under subsection (a)(1).

(d) Members of the Panel shall serve for the life of the Panel. A vacancy on the Panel shall be filled in the same manner as the original appointment was made. A vacancy on the Panel shall not affect its powers.

(e) A majority of the members of the Panel appointed under subsection (a)(1) shall constitute a quorum, but a lesser number may hold hearings. The Panel may establish such subcommittees as the Panel considers appropriate.

(f) The Panel shall meet at the call of the Chairman, but not less than twice per year.

(g) The Executive Secretary of the Council shall serve as Executive Secretary of the Panel. The Secretary shall provide the Panel with such additional administrative staff and support as may be necessary to enable the Panel to carry out its functions.

(h) Each member of the Panel appointed under subsection (a)(1) shall receive compensation at a rate of $100 per day for each day, including travel time, that such member is engaged in duties as a member of the Panel. While away from their homes or regular places of business in the performance of duties as a member of the Panel, members of the Panel appointed under subsection (a)(1) shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5, United States Code.

FUNCTIONS OF THE PANEL

SEC. 202. (a) The Panel shall assist the Secretary and the Council in the identification of priorities and emerging issues with respect to Alzheimer's disease and related dementias and the care of individuals with such disease and dementias. The Panel shall advise the Secretary and the Council with respect to the identification of—

(1) emerging issues in, and promising areas of, biomedical research relating to Alzheimer's disease and related dementias;

(2) emerging issues in, and promising areas of, research relating to services for individuals with Alzheimer's disease and related dementias and their families;

(3) emerging issues and promising initiatives in home and community based services, and systems of such services, for individuals with Alzheimer's disease and related dementias and their families; and

(4) emerging issues in, and innovative financing mechanisms for, payment for health care services and social services for individuals with Alzheimer's disease and related dementias and their families, particularly financing mechanisms in the private sector.

(b) The Panel shall prepare and transmit to the Congress, the Secretary, and the Council, and make available to the public, an annual report. Such report shall contain such recommendations as the Panel considers appropriate for administrative and legislative actions to improve services for individuals with Alzheimer's disease and related dementias and their families and to provide for promising biomedical research relating to Alzheimer's disease and related dementias.

AUTHORIZATION OF APPROPRIATIONS

SEC. 203. To carry out this title, there are authorized to be appropriated $100,000 for each of the fiscal years 1988 through 1991.

TITLE III—AWARDS FOR LEADERSHIP AND EXCELLENCE IN ALZHEIMER'S DISEASE AND RELATED DEMENTIAS

AWARDS AUTHORIZED

SEC. 301. (a) The Director of the National Institute on Aging shall make awards to senior researchers who have made distinguished achievements in biomedical research in areas relating to Alzheimer's disease and related dementias. Awards under

this section shall be used by the recipients to support research in areas relating to such disease and dementias, and may be used by the recipients to train junior researchers who demonstrate exceptional promise to conduct research in such areas.

(b) The Director of the National Institute on Aging may make awards under this section to researchers at centers supported under section 445 of the Public Health Service Act and to researchers at other public and nonprofit private entities.

(c) The Director of the National Institute on Aging shall make awards under this section only to researchers who have been recommended for such awards by the National Advisory Council on Aging.

(d) The Director of the National Institute on Aging shall establish procedures for the selection of the recipients of awards under this section.

(e) Awards under this section shall be made for a one-year period, and may be renewed for not more than six additional consecutive one-year periods.

AUTHORIZATION OF APPROPRIATIONS

SEC. 302. To carry out this title, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1991. Amounts authorized to be appropriated under this section are in addition to amounts authorized to be appropriated for biomedical research relating to Alzheimer's disease and related dementias under title IV of this Act and under other provisions of law.

TITLE IV—RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND THEIR FAMILIES

PART A—RESPONSIBILITIES OF THE NATIONAL INSTITUTE ON AGING

RESEARCH PROGRAM AND PLAN

SEC. 401. (a) The Director of the National Institute on Aging shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute on Aging shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute on Aging shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 402. The Director of the National Institute on Aging shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 403. To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

PART B—RESPONSIBILITIES OF THE NATIONAL INSTITUTE OF MENTAL HEALTH

RESEARCH PROGRAM AND PLAN

SEC. 411. (a) The Director of the National Institute of Mental Health shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for research concerning—

(i) mental health services and treatment modalities relevant to the mental, behavioral, and psychological problems associated with Alzheimer's disease and related dementias;

(ii) the most effective methods for providing comprehensive multidimensional assessments to obtain information about the current functioning of, and needs for the care of, individuals with Alzheimer's disease and related dementias;

(iii) the optimal range and cost-effectiveness of community and institutional services for individuals with Alzheimer's disease and related dementias and their families, particularly with respect to the design of such services, appropriate staffing for the provision of such services, the timing of such services during the progression of such disease or dementias, and the appropriate mix and coordination of such services;

(iv) the efficacy of various special care units in the United States for individuals with Alzheimer's disease, including an assessment of the costs incurred in operating such units, appropriate standards to be used by such units, and the measurement of patient outcomes in such units;

(v) methods to combine formal support services provided by health care professionals for individuals with Alzheimer's disease and related dementias with informal support services provided for such individuals by their families, friends, and neighbors, including services such as day care services, respite care services, home care services, and nursing home services, and an evaluation of the services actually used for such individuals and the sources of payment for such services;

(vi) methods to sustain family members who provide care for individuals with Alzheimer's disease and related dementias through interventions to reduce psychological and social problems and physical problems induced by stress; and

(vii) improved methods to deliver services for individuals with Alzheimer's disease and related dementias and their families, including services such as outreach services, comprehensive assessment and care management services, outpatient treatment services, home care services, respite care services, adult day care services, partial hospitalization services, and nursing home services; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Institute of Mental Health shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Institute of Mental Health shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 412. The Director of the National Institute of Mental Health shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 413. To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

PART C—RESPONSIBILITIES OF THE NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

RESEARCH PROGRAM AND PLAN

SEC. 421. (a) The Director of the National Center for Health Services Research and Health Care Technology Assessment shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b)(1) Within 6 months after the date of enactment of this Act, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council a plan for the research to be conducted under subsection (a). The plan shall—

(A) provide for the inventory and analysis of existing data and studies relevant to Alzheimer's disease and related dementias, including data and studies available through the Health Care Financing Administration, the Administration on Aging, the National Center for Health Statistics, the Office of Human Development Services, the Office of the Assistant Secretary for Planning and

Evaluation, and the Veteran's Administration;

(B) provide for research concerning the costs incurred by individuals with Alzheimer's disease and related dementias in obtaining services, particularly services which are essential to such individuals and which are not needed by other patients under long-term care;

(C) provide for research on the costs of various interventions to provide services for individuals with Alzheimer's disease and related dementias and their families;

(D) provide for research on the cost-effectiveness of various service interventions for individuals with Alzheimer's disease and related dementias and their families; and

(E) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and dementia, including centers supported under section 445 of the Public Health Service Act, centers supported by the National Institute of Mental Health on psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the National Center for Health Services Research and Health Care Technology Assessment shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) In preparing and revising the plan required by subsection (b), the Director of the National Center for Health Services Research and Health Care Technology Assessment shall consult with the Chairman of the Council and the heads of agencies within the Department.

DISSEMINATION

SEC. 422. The Director of the National Center for Health Services Research and Health Care Technology Assessment shall disseminate the results of research conducted under this part to appropriate professional entities and to the public.

AUTHORIZATION OF APPROPRIATIONS

SEC. 423. To carry out this part, there are authorized to be appropriated $2,000,000 for each of fiscal years 1988 through 1991.

TITLE V—DISSEMINATION

CLEARINGHOUSE ON ALZHEIMER'S DISEASE

SEC. 501. (a) The Director of the National Institute on Aging shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the "Clearinghouse"). The purpose of the Clearinghouse is the dissemination of information concerning services available for individuals with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).

(c) The Director of the National Institute on Aging, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under title IV.

DISSEMINATION PROJECT

SEC. 502. (a) The Director of the National Institute on Aging shall make a grant to, or enter into a contract with, a national organization representing individuals with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b).

(b) The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (1), and information concerning Federal programs, services, and benefits for individuals with Alzheimer's disease and related dementias and their families.

(c) The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2), and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) In order to receive a grant or contract under this section, an organization shall submit an application to the Director of the National Institute on Aging. Such application shall contain—

(1) information demonstrating that such organization has a network of contacts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1);

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) without a grant or contract from the Federal Government; and

(3) such other information as the Director may prescribe.

AUTHORIZATION OF APPROPRIATIONS

SEC. 503. To carry out this title, there are authorized to be appropriated $300,000 for each of the fiscal years 1988 through 1991.

TITLE VI—EDUCATIONAL ACTIVITIES

PROVIDING INFORMATION FOR PERSONNEL OF THE SOCIAL SECURITY ADMINISTRATION

SEC. 601. (a) The Secretary shall develop a mechanism to ensure the prompt provision of the most current information concerning Alzheimer's disease and related dementias to the Commissioner of Social Security, particularly information which will increase the understanding of personnel of the Social Security Administration concerning such disease and dementias.

(b) The Commissioner of Social Security shall ensure that information received under subsection (a) is provided to personnel of the Social Security Administration, particularly personnel involved in the process of determining, for purposes of titles II and XVI of the Social Security Act, whether an individual is under a disability.

EDUCATION PROGRAMS FOR PROVIDERS OF CARE FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE

SEC. 602. The Director of the National Institute on Aging, through centers supported under section 445 of the Public Health Service Act, professional associations, and continuing education programs, shall conduct education and information dissemination activities concerning the special problems of individuals with Alzheimer's disease and their families. Such activities shall be designed to enhance the understanding of such problems by individuals who provide care for individuals with Alzheimer's disease and related dementias, including physicians, nurses, psychologists, social workers, occupational therapists, nursing home administrators, nurses, and health care aides.

EDUCATION PROGRAMS FOR SAFETY AND TRANSPORTATION PERSONNEL

SEC. 603. The Director of the National Institute on Aging, through centers supported under section 445 of the Public Health Service Act, training academies, and continuing education programs, shall conduct education and information dissemination activities concerning Alzheimer's disease and related dementias for personnel involved in ensuring the public safety and providing public transportation. Such activities shall be designed to enhance the ability of such personnel to respond appropriately to individuals with Alzheimer's disease and related dementias whom such personnel may encounter in the course of their employment.

AUTHORIZATION OF APPROPRIATIONS

SEC. 604. To carry out this title, there are authorized to be appropriated $1,000,000 for each of the fiscal years 1988 through 1991.

SUMMARY OF THE BILL

Authorization period: Five years (1987-1991); funding provided for four years (1988-1991).

Amount authorized: $12.4 million annually; 49.6 over four years of the authorization period.

Title I: Establishes the Secretary's Task Force on Alzheimer's Disease. No money is provided for this.

Title II: Establishes an Advisory Council on Alzheimer's Disease which will advise the Secretary, the Task Force and the Congress. The money provided for this is $100,000 per year for four years of the authorized period (1988-1991). Members to be selected by the Office of Technology Assessment with the exception of four administration officials who will be ex officio members. Secretary to choose chairman. Executive Secretary of the Task Force (Title I) also to be Executive Secretary of the Advisory Council. Must report annually to Secretary and Congress, making recommendations. Purpose is to advise Secretary and Congress on emerging issues and future priorities with respect to Alzheimer's Disease and related dementias and the care of victims of dementia.

Title III: Establishes a $5 million authorization for the National Institute on Aging to establish a program of support for senior investigators with records of distinguished accomplishment in bio-medical research with respect to Alzheimer's Disease. Support may be renewed for one-year periods up to seven years. Individuals to be chosen on the basis of past accomplishment by the National Institute on Aging on the advice of the National Advisory Council on Aging. Such awards may be made to individuals presently in the Institute's Center program or to any other senior investigator with a record of distinguished achievement in Alzheimer's Disease biomedical research. Investigators chosen may use some part of the funds they receive to train younger investigators of exceptional promise. Investigators chosen must commit themselves to use the support provided to conduct biomedical research on Alzheimer's Disease.

Title IV: Establishes a health services research program on Alzheimer's Disease, authorizing $6 million per year (1988-1991), $2 million for each of the three participating agencies: the National Institute on Aging, the National Institute of Mental Health, and the National Center for Health Services Research.

Title V: Establishes an information dissemination program, authorizing the National Institute on Aging to spend $300,000 per year (1988-1991) to establish a clearinghouse on information about research on Alzheimer's Disease and about programs designed to assist dementia victims and their families.

Title VI: Authorizes $1 million per year for the National Institute on Aging to undertake education and information dissemination activities designed to enhance the understanding, by care providers and other personnel who might come in contact with dementia victims in the course of their duties, of the special problems of dementia patients and their families. The money would be used to complement an existing program which at the moment operates at a minimal level.●

● Mr. METZENBAUM. Mr. President, my concern for the victims of Alzheimer's Disease and their families is long standing. In this 99th Congress alone, I have introduced two bills, cosponsored by some of my colleagues. S. 1835 introduced in November 1985 and S. 2183 introduced in March 1986 are comprehensive bills to provide for research, and for assistance in alleviating the suffering of victims of Alzheimer's disease and their families.

Today, I am pleased to sponsor, along with my colleague, Mr. GRASSLEY, the Senator from Iowa, a bill which has the support of the majority of the members of the Subcommittee on Aging and the Committee on Labor and Human Resources. It has the strong support, also, of the family care-givers across the Nation, and the professional community involved with Alzheimer's disease.

I have spoken several times on the Senate floor concerning the physical, mental, emotional and financial devastation wrought by this tragic disease. And I have urged legislation designed to strengthen and make more coherent our national response to this growing public health problem.

The statistics are appalling. It is estimated that approximately 2.5 to 3 million Americans suffer today from Alzheimer's disease at a cost of $40 billion annually. According to the Public Health Service, Alzheimer's strikes 1 of every 20 people between the ages of 65 and 75. And beyond the age of 80, it afflicts one of every five. It is the fourth leading killer of adults in this country, and it turns the hoped-for "golden years" into nightmare years.

When we relate the figures for Alzheimer's disease with those for projected life expectancy, the nightmare threatens to overwhelm us along with our health care institutions. More and more of us are living into our eighties, nineties, and even hundreds. It has been estimated that more than 1 of every 10 Americans—some 13 percent of us—will be over 65 by the year 2000, with the number of victims of severe dementia increasing by 60 percent. The prospect of millions of demented adults requiring long-term care costing many billions of dollars is a real and frightening possibility. And I am not now speaking of the individual tragedies underlying the statistics.

As the large population of yesteryear's "baby boomers" become the seniors of tomorrow, this Nation must be prepared to deal with the inevitable health care needs of the dramatically growing numbers of older Americans.

Medical science has extended the lifespan; but, I believe, given the necessary resources, medical science, and health services research can eliminate the tragedy of Alzheimer's disease, improve the quality of life in our later years, and reduce the tremendous financial burden on caregivers and the health care system.

The bill Senator GRASSLEY and I are introducing today underscores the critical need for expansion of both biomedical and health services research. The "Alzheimer's Disease and Related Dementias Services Research Act of 1986" provides for grants for outstanding biomedical researchers, and grants for health services research through the National Institute on Aging, the National Institute on Mental Health and the National Center for Health Services Research. It provides for dissemination services for the professional and lay communities, including a national clearinghouse. In addition, it provides for educational activities relevant to a wide range of personnel involved in Alzheimer's disease—from Social Security disability examiners and safety and transportation personnel—to nursing home administrators and aides—to physicians, nurses, social workers, occupational and physical therapists, and psychologists.

To guide these efforts, the bill establishes in the Health and Human Services Department an Interagency Council on Alzheimer's Disease and Related Dementias. The council would serve as a catalyst for agency programs and activities, and would report to the President and the Congress.

The bill provides also for an advisory panel to be composed of representatives from the research and medical communities, health care providers, health financing experts, voluntary organizations and other groups concerned with Alzheimer's disease, family caregivers and interagency council representatives. The primary purpose of the panel is to assist the Secretary and the council in identifying future priorities and emerging issues with respect to Alzheimer's disease and related dementias, and priorities and issues in the care of victims.

Mr. President, the intent of this legislation is to promote a coordinated, comprehensive and compassionate approach to a public health concern that threatens to overwhelm our Nation's health care system. If we are to avoid disaster, we must address the problem immediately. Senator GRASSLEY and I welcome the support of our colleagues on this issue which cuts across racial, cultural, economic and political boundaries.●

By Mr. SIMPSON (for Mr. THURMOND, for himself, Mr. HELMS, Mr. HOLLINGS, and Mr. BROYHILL):

S. 2862. A bill for the relief of the Carolinas Cotton Growers Association, Inc.; ordered held at the desk pending further disposition.

RELIEF OF CAROLINAS COTTON GROWERS ASSOCIATION, INC.

● Mr. THURMOND. Mr. President, I rise today to introduce legislation to provide relief for the Carolina Cotton Growers Association, an agricultural cooperative association, which was injured as a result of the misgrading of the 1980 cotton crop by the Department of Agriculture. This legislation would permit the association to bring suit against the Federal Government in the U.S. Claims Court within 1 year of enactment of this legislation. Under this bill, the Government would be liable to the same extent as a private individual would be liable under like circumstances. However, the Government would not be liable for prejudgment interest or punitive damages.

The association consists of over 50,000 members, who currently use, or in the past have used, the association to market the cotton they have produced. A typical member is a family farmer whose scale of operation ranges from the production of only a few bales of cotton each year to those producing over a thousand bales per year. The association first purchases cotton at a rate slightly below the price quoted on the New York Cotton Exchange and later sells it at a price

equal to or slightly higher than the quote price.

The Agricultural Marketing Service of the U.S. Department of Agriculture, or a predecessor agency, has graded the cotton for the last 40 years. In 1980, the Department of Agriculture consolidated the North and South Carolina offices in Florence, SC. As a result, many experienced personnel resigned or retired, leaving the Agriculture Department with a smaller, less experienced staff, which, in part, explains the overgrading of the cotton crop which occurred in February 1981. The association was not able to resell the cotton at the purchase price, and ultimately lost over $3.8 million from losses on sales, storage costs for inventory not sold, and other expenses.

The association has now exhausted all administrative and judicial remedies. The Government has successfully asserted its defenses available under the Federal Tort Claims Act. Congress is now the only place that these aggrieved farmers can turn for relief. S. 2067 was introduced in the Senate in the 98th Congress, but did not pass, in part, because the association had not exhausted all available judicial remedies. As I stated, that has now been done. The legislation which has been drafted does not reimburse the association, it merely allows the association to seek redress in the Claims Court, where their legal and equitable claims can be heard. I urge my colleagues to support this bill.●

By Mr. PACKWOOD (for himself, Mr. BRADLEY, Mr. DOLE, Mr. DECONCINI, Mr. DIXON, Mr. DURENBERGER, Mr. GOLDWATER, Mr. HOLLINGS, Mr. KERRY, Mr. LAUTENBERG, Mr. MOYNIHAN, Mr. PELL, and Mr. THURMOND):

S.J. Res. 418. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; to the Committee on the Judiciary.

NATIONAL WOMEN IN SPORTS DAY

● Mr. PACKWOOD. Mr. President, I rise today to introduce a joint resolution which would designate February 4, 1987, as National Women in Sports Day. In the House of Representatives, a similar resolution will be introduced by Congresswoman OLYMPIA SNOWE.

Although the history of women in sports is rich and long, there has been little national recognition of the significance of women's athletic achievements. Over the last 15 years, women athletes in our country have become more and more visible. They serve as examples of the avenues available through which women of America may develop physical fitness, self-discipline, initiative, confidence, and leadership skills. National Women in Sports Day will recognize the importance of these athletic achievements to our country.

Today women represent 30 percent of all college student athletes, and over 10,000 of these women attend college on athletic scholarships. However, the athletic opportunities for male students at collegiate and high school levels still far exceeds those for female students. It is time to recognize these inequities still exist, while highlighting how far women have come in their athletic achievements.

I invite all my colleagues to join me in recognizing our women athletes. I ask unanimous consent that at the conclusion of my remarks the joint resolution be printed in full.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 418

Whereas women's athletics is one of the most effective avenues available through which women of America may develop self-discipline, initiative, confidence, and leadership skills;

Whereas support and fitness activity contributes to emotional and physical well-being and women need strong bodies as well as strong minds;

Whereas the history of women in sports is rich and long, but there has been little national recognition of the significance of women's atheltic achievements;

Whereas the number of women in leadership positions of coaches, officials, and administrators has declined drastically over the last decade and there is a need to restore women to these positions to ensure a fair representation of women's abilities and to provide role models for young female athletes;

Whereas the bonds built between women through athletics help to break down the social barriers of racism and prejudice;

Whereas the communication and cooperation skills learned through athletic experience play a key role in the athlete's contributions at home, at work, and to society;

Whereas women's athletics has produced such winners as Flo Hyman, whose spirit, talent, and accomplishments distinguished her above others and exhibited for all of us the true meaning of fairness, determination, and team play;

Whereas early motor-skill training and enjoyable experiences of physical activity strongly influence life-long habits of physical fitness;

Whereas the athletic opportunities for male students at the collegiate and high school level remain significantly greater than those for female students; and

Whereas the number of funded research projects focusing on the specific needs of women athletes is limited and the information provided by these projects is imperative to the health and performance of future women athletes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That February 4, 1987, is hereby designated as "National Women in Sports Day", and the President is authorized and requested to issue a proclamation calling upon local and State jurisdictions, appropriate Federal agencies, and the people of the United States to observe the day with appropriate ceremonies and activities.●

● Mr. BRADLEY. Mr. President, I rise to join the Senator from Oregon [Mr. PACKWOOD] in introducing a joint resolution to designate February 4, 1987, as National Women in Sports Day. Joining us in cosponsoring are the Senators from Illinois [Mr. DIXON], Arizona [Mr. DECONCINI], New York [Mr. MOYNIHAN], and South Carolina [Mr. HOLLINGS]. A similar resolution is being introduced today in the House of Representatives by Congresswoman OLYMPIA SNOWE.

Although the history of women in sports is rich and long, there has been little national recognition of the significance of women's athletic achievements. Over the last 15 years, several women athletes in our country have emerged as international figures. Their talent, determination, and dedication serve as an example for all Americans. National Women in Sports Day will recognize the importance of these athletic achievements to our country.

Today, over 10,000 women attend college on athletic scholarships. Women represent 30 percent of all college athletes, yet the athletic opportunities available to male students at collegiate and high school levels remain significantly greater than those for female students. It is time to acknowledge the existence of such injustices, while emphasizing the progress women have made in the athletic community.

Over the last decade, there has been a decline in the number of women in athletic leadership positions of coaches, officials, and administrators. Women need to be restored to these positions in order to ensure equitable representation of women's abilities and to provide role models for young female athletes.

Mr. President, athletic fitness contributes to emotional as well as physical health. Women's athletics is one of the most effective avenues available through which women of America may develop self-discipline, initiative, and confidence, as well as acquire leadership, communication, and cooperation skills. The bonds built between women through athletics help to break down social barriers of racism and prejudice. The positive effects of participation in athletics are bound to carry over to the athlete's contribution at home, at work, and to society.

Mr. President, I cannot conclude without saying a few words about the exemplary work of the Women's Sports Foundation. This organization, chaired by Donna DeVarona and headed by Carol Mann, has provided a range of services to women athletes and the public at large. The foundation provides training grants, educational opportunities and support to aspiring women athletes. This organization has done more than any other entity in focusing attention on the needs as well as the accomplishments

of women athletes. I am sure that the Women's Sports Foundation will be involved in the activities that take place in conjunction with this resolution.

In order to recognize the accomplishments of many great female athletes as well as to encourage participation in women's athletics on all levels, I urge my colleagues to support this joint resolution.●

ADDITIONAL COSPONSORS

S. 1107

At the request of Mr. NUNN, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 1107, a bill to authorize the Society of the Third Infantry Division to erect a Memorial in the District of Columbia or its environs.

S. 1296

At the request of Mr. MATHIAS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1296, a bill to amend the Immigration and Nationality Act to modify the requirement for naturalization of an understanding of the English language.

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from Illinois [Mr. SIMON], the Senator from Michigan [Mr. RIEGLE], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 1456, supra.

S. 1543

At the request of Mr. MATHIAS, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 1543, a bill to protect patent owners from importation into the United States of goods made overseas by use of a U.S. patented process.

S. 1817

At the request of Mr. TRIBLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1817, a bill to suspend temporarily most-favored-nation treatment to Romania.

S. 2597

At the request of Mr. DANFORTH, the name of the Senator from Arizona [Mr. GOLDWATER] was added as a cosponsor of S. 2597, a bill to amend the Tariff Schedules of the United States to provide a temporary suspension of the duties imposed on certain extracorporeal shock wave lithotripters.

S. 2604

At the request of Mr. HEINZ, the name of the Senator from North Dakota [Mr. ANDREWS] was added as a cosponsor of S. 2604, a bill to amend the Social Security Act with respect to the standards for participation of skilled nursing facilities and intermediate care facilities under the Medicare and Medicaid Programs, to amend the Older Americans Act of 1965 with respect to the ombudsman program, and for other purposes.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

S. 2781

At the request of Mr. EVANS, the names of the Senator from Washington [Mr. GORTON], the Senator from New Mexico [Mr. DOMENICI], the Senator from Tennessee [Mr. SASSER], the Senator from Michigan [Mr. RIEGLE], and the Senator from Pennsylvania [Mr. SPECTER] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2802

At the request of Mr. TRIBLE, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2802, a bill to prohibit foreign assistance to countries which fail to take steps to prevent and punish the laundering of drug-related profits in their territory, and for other purposes.

S. 2847

At the request of Mr. COCHRAN, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 2847, a bill to amend the Agricultural Act of 1949 to provide certain agricultural program adjustments, and for other purposes.

SENATE JOINT RESOLUTION 348

At the request of Mr. GLENN, the name of the Senator from Maine [Mr. MITCHELL], the Senator from Vermont [Mr. LEAHY], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day."

SENATE JOINT RESOLUTION 375

At the request of Mr. LEVIN, the names of the Senator from California [Mr. CRANSTON], the Senator from Alabama [Mr. DENTON], the Senator from Kansas [Mr. DOLE], the Senator from Nebraska [Mr. EXON], the Senator from Florida [Mrs. HAWKINS], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Vermont [Mr. LEAHY], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Georgia [Mr. NUNN], the Senator from Arkansas [Mr. PRYOR], the Senator from South Carolina [Mr. THURMOND], the Senator from Virginia [Mr. TRIBLE], the Senator from Virginia [Mr. WARNER], the Senator from Connecticut [Mr. WEICKER], the Senator from California [Mr. WILSON], and the Senator from Nebraska [Mr. ZORINSKY] were added as cosponsors of Senate Joint Resolution 375, a joint resolution designating the week beginning September 21, 1986, as National Adult Day Care Center Week."

SENATE JOINT RESOLUTION 391

At the request of Mr. LUGAR, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Joint Resolution 391, a joint resolution to designate August 12, 1986, as "National Civil Rights Day."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the name of the Senator from Vermont [Mr. STAFFORD] was added as a cosponsor of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 409

At the request of Mr. LUGAR, the names of the Senator from Michigan [Mr. RIEGLE], the Senator from Illinois [Mr. SIMON], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Joint Resolution 409, a joint resolution to designate October 6, 1986, as "German-American Day."

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the names of the Senator from South Carolina [Mr. THURMOND] and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the names of the Senator from Alabama [Mr. DENTON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Arkansas [Mr. PRYOR], the Senator from Michigan [Mr. RIEGLE], and the Senator from Rhode Island [Mr. PELL] were added as cosponsors of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

AMENDMENT NO. 2611

At the request of Mr. LAUTENBERG, the name of the Senator from Califor-

nia [Mr. CRANSTON] was added as a cosponsor of amendment No. 2611 proposed to S. 2405, a bill to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

AMENDMENTS SUBMITTED

FEDERAL-AID HIGHWAY ACT

HECHT (AND HUMPHREY) AMENDMENT NO. 2870

(Ordered to lie on the table.)

Mr. HECHT (for himself and Mr. HUMPHREY) submitted an amendment intended to be proposed by him to an amendment intended to be proposed by Mr. SYMMS to the bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; as follows:

On page 1, strike out lines 4 through 13 and insert in lieu thereof the following:

(1) by inserting "in any urbanized area" after "fifty-five miles per hour" in clause (1),

(2) by striking out "or" at the end of clause (1),

(3) by redesignating clause (2) as clause (3),

(4) by inserting after clause (1) the following new clause: "(2) a maximum speed limit on any other public highway within its jurisdiction, as designated by the Governor or other appropriate State official, in excess of sixty-five miles per hour, or", and

(5) by striking out "clause (2) of" in the last sentence and inserting in lieu thereof "clause (3) of".

. (b) Subsection (f) of section 154 of title 23, United States Code, is amended by inserting "in any urbanized area" after "55 miles per hour" the first place it appears.

(c) Section 154 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) For purposes of this section, the term 'urbanized area' means any area identified as an urbanized area in the Federal census of 1980.".

SYMMS (AND OTHERS) AMENDMENT NO. 2871

Mr. SYMMS (for himself, Mr. EXON, Mr. HUMPHREY, Mr. HECHT, Mr. BURDICK, Mr. ABDNOR, Mr. MELCHER, Mr. BENTSEN, Mr. COCHRAN, Mr. SIMPSON, Mr. DECONCINI, Mr. HATCH, Mr. BAUCUS, Mr. DOMENICI, Mr. WALLOP, Mr. MCCLURE, Mr. NICKLES, Mr. GRASSLEY, Mr. LAXALT, and Mr. GRAMM) proposed an amendment to the bill S. 2405, supra; as follows:

At the end thereof add a new section as follows:

SEC. . (a) Subsection 154(a) of title 23, United States Code, is amended—

(1) by inserting "other than a highway on the Interstate System located outside of an urbanized area of fifty thousand population or more, (2) a maximum speed limit on any highway within its jurisdiction on the Interstate System located outside of an urbanized area of fifty thousand population or more in excess of sixty-five miles per hour" immediately after "hour"; and

(2) by renumbering "(2)" as "(3)" at the two places "(2)" appears.

(b) Subsection 154(f) of title 23, United States Code, is amended by inserting "on public highways with speed limits posted at fifty-five miles per hour" immediately after "hour".

HECHT (AND OTHERS) AMENDMENT NO. 2872

Mr. HECHT (for himself, Mr. GARN, Mr. HEINZ, Mr. MATTINGLY, Mr. GORTON, Mr. DIXON, Mr. DODD, Mr. RIEGLE, Mr. CRANSTON, and Mr. SASSER) proposed an amendment to the bill S. 2405, supra; as follows:

At the end of the bill, add the following:

TITLE II—MASS TRANSIT

AUTHORIZATIONS

SEC. 201. (a) Section 21 of the Urban Mass Transportation Act of 1964 is amended—

(1) in subsection (a)(1), by striking out "and $3,050,000,000 for the fiscal year ending September 30, 1986, and funds" and inserting in lieu thereof the following: "$3,050,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for fiscal year 1987, $1,990,000,000 for fiscal year 1988, $1,993,000,000 for fiscal year 1989, and $1,996,000,000 for fiscal year 1990. Funds";

(2) in subsection (a)(2)(B), by striking out "and $1,100,000,000 for fiscal year 1986" and inserting in lieu thereof "$1,100,000,000 for fiscal year 1986, and $1,000,000,000 for each of the fiscal years 1987 through 1990";

(3) in subsection (a)(4), by striking out "In each of the fiscal years 1984, 1985, and 1986" and inserting in lieu thereof "in each of the fiscal years 1984 through 1990";

(4) in subsection (a)(5), by striking out "1984, 1985, and 1986" and inserting in lieu thereof "1984 through 1990"; and

(5) in the first sentence of subsection (b), by striking out "and" before "$90,000,000" and by inserting before the period at the end the following: ", such sums as may be appropriated for fiscal year 1987, and $46,000,000 for each of the fiscal years 1988 through 1990".

(b) Section 4(g) of such Act is amended by striking out "and" before "$400,000,000" and by inserting after "September 30, 1986," the following: "such sums as may be necessary for fiscal year 1987, and $200,000,000 for each of the fiscal years 1988 through 1990,".

NEWLY URBANIZED AREAS

SEC. 202. The last sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting "authorized" after "its".

LEASED PROPERTY

SEC. 203. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction. The Secretary shall publish regulations under the preceding sentence in proposed form in the Federal Register for public comment not later than 60 days after the date of enactment of this sentence, and shall promulgate such regulations in final form not later than 120 days after such date of enactment.".

DEFINITION OF ASSOCIATED CAPITAL ITEM

SEC. 204. The last sentence of section 9(j) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and materials" and inserting in lieu thereof ", tires, tubes, materials, and supplies"; and

(2) by striking out "1 per centum" and inserting in lieu thereof "one-half of 1 per centum".

OVERHAUL-RECONSTRUCTION

SEC. 205. (a) Section 12(c)(1) of the Urban Mass Transportation Act of 1964 is amended by inserting "(A)" after "such term also means" and by inserting before the semicolon at the end thereof the following: ", (B) any bus remanufacturing project which extends the economic life of a bus eight years or more, and (C) any project for the overhaul of rolling stock (whether or not such overhaul increases the useful life of the rolling stock)".

(b) Section 9(j) of such Act is amended—

(1) by inserting "(1)" before "Grants"; and

(2) by adding at the end the following new paragraphs:

"(2) A project for the reconstruction (whether by employees of the grant recipient or by contract), of any equipment and materials each of which, after reconstruction, will have a fair market value no less than one half of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.

"(3) Notwithstanding any other provision of this section—

"(A) a grant, or that portion of a grant, for a project under the second sentence of paragraph (1);

"(B) a grant covering the costs of associated capital maintenance items having a value of less than 1 per centum but more than ½ of 1 per centum of current fair market value of rolling stock described in the last sentence of paragraph (1); and

"(C) a grant under paragraph (2);

shall be subject to the Federal grant limitation contained in the second sentence of subsection (k)(1).".

(c) Section 3(a)(2)(A)(iii) of such Act is amended by inserting before the period the following: ", and will maintain such facilities and equipment".

PROJECT MANAGEMENT OVERSIGHT

SEC. 206. The Urban Mass Transportation Act of 1964 is amended by inserting at the end thereof the following new section:

"PROJECT MANAGEMENT OVERSIGHT

"SEC. 24. (a)(1) The Secretary may use as much as is necessary of the funds made available for each fiscal year by sections 21(a)(1), 21(a)(2)(B), and 4(g) of this Act, and section 14(b) of the National Capital Transportation Act of 1969 to contract with any person for the performance of project management oversight. Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying cut the contract.

"(2) Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide the Secretary and a contractor chosen by the Secretary in accordance with

paragraph (1) such access to its construction sites and records as may be reasonably required.

"(b) As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (c).

"(c) A project management plan may, as required in each case by the Secretary, provide for—

"(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

"(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

"(3) a construction schedule;

"(4) a document control procedure and recordkeeping system;

"(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

"(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

"(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

"(8) materials testing policies and procedures;

"(9) internal plan implementation and reporting requirements;

"(10) criteria and procedures to be used for testing the operational system of its major components; or

"(11) periodic updates of the plan, especially with respect to such items as project budget and project schedule, financing, ridership estimates, and where applicable, the status of local efforts to enhance ridership in cases where ridership estimates are contingent, in part, upon the success of such efforts; and

"(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

"(d) The Secretary shall promulgate such regulations as may be necessary to implement the provisions of this section. Such regulations shall be published in proposed form for comment in the Federal Register and shall be submitted for review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 60 days after the date of enactment of this section, and shall be promulgated in final form not later than 120 days after the date of enactment of this section. Such regulations shall, at a minimum, include the following:

"(1) A definition of the term 'major capital project' for the purpose of subsection (b). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

"(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

"(e) The Secretary shall approve a plan submitted pursuant to subsection (b) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall inform the recipient of the reasons therefor and as to how much more time is needed for review to be completed. If a plan is disapproved, the Secretary shall inform the recipient of the reasons therefor.".

TRIBLE AMENDMENT NO. 2873

Mr. TRIBLE proposed an amendment to the bill S. 2405, supra; as follows:

SEC. . CUMBERLAND GAP NATIONAL HISTORICAL PARK, VIRGINIA.—

(a) Section 160(a) of the Federal-Aid Highway Act of 1973 (87 Stat. 278) is amended by adding the following new sentences at the end thereof: "After completion of the reconstruction and relocation of Route 25E through the Cumberland Gap National Historical Park (including construction of a tunnel and the approaches thereto), funds available for parkways in subsection (a) of section 101, Title 23, United States Code, shall be available to finance the cost of upgrading from 2 lanes to 4 lanes a highway providing access from such route through that portion of the Cumberland Gap National Historical Park which lies within the State of Virginia. The project, including any environmental impact statements, referred to in the preceding sentence shall not delay or affect in any way the reconstruction and relocation of Route 25E (including construction of a tunnel and approaches thereto."

(b) Subsection (b) of section 160 of such Act is amended by inserting after "rights-of-way" the following: "including approaches in the State of Virginia".

Redesignate succeeding sections of Title I accordingly and conform the table of contents accordingly.

PACKWOOD AMENDMENT NO. 2874

Mr. SYMMS (for Mr. PACKWOOD, on behalf of the Committee on Finance) proposed an amendment to the bill S. 2405, supra; as follows:

On page 96, after line 14, insert the following new title:

TITLE II—HIGHWAY REVENUE ACT OF 1986

SEC. 201. SHORT TITLE.

This title may be cited as the "Highway Revenue Act of 1986".

SEC. 202. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND TAXES AND RELATED EXEMPTIONS.

(a) EXTENSION OF TAXES.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(a)(3) (relating to special fuels tax).

(2) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(3) Section 4071(d) (relating to tax on tires and tread rubber).

(4) Section 4081(b) (relating to gasoline tax).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(b) EXTENSION OF EXEMPTIONS, ETC.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(f)(3) (relating to exemption for farm use).

(3) Section 4041(g) (relating to other exemptions).

(4) Section 4221(a) (relating to certain tax-free sales).

(5) Section 4483(f) (relating to exemption for highway use tax).

(6) Section 6420(h) (relating to gasoline used on farms).

(7) Section 6421(h) (relating to tax on gasoline used for certain nonhighway purposes or by local transit systems).

(8) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(9) Section 6427(m) (relating to fuels not used for taxable purposes).

(c) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Paragraph (1) of section 6412(a) of the Internal Revenue Code of 1954 (relating to floor stocks refunds) is amended—

(A) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(B) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Paragraph (2) of section 6156(e) of such Code (relating to installment payments of tax on use of highway motor vehicles) is amended by striking out "1988" and inserting in lieu thereof "1992".

SEC. 203. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsections (b), (c), and (e) of section 9503 of the Internal Revenue Code of 1954 (relating to Highway Trust Fund) are each amended—

(1) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(b) EXPENDITURES FROM HIGHWAY TRUST FUND.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from Highway Trust Fund) is amended by striking out "or" at the end of subparagraph (B) and by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) authorized to be paid out of the Highway Trust Fund under the Federal-Aid Highway Act of 1986, or

"(D) hereafter authorized by a law which does not authorize the expeniture out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A), (B), or (C) as in effect on December 31, 1986.".

(c) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Subsection (b) of section 201 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-11) is amended—

(1) by striking out "1988" and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

SEC. 204. REDUCTION IN EXCISE TAX EXEMPTION FOR QUALIFIED METHANOL AND ETHANOL FUELS.

(a) IN GENERAL.—Subparagraph (A) of section 4041(b)(2) of the Internal Revenue Code of 1954 (relating to exemption for qualified ehtanol and methanol fuels) is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel, subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents'.".

(b) CONFORMING AMENDMENT.—The heading for section 4041(b) of the Internal Revenue Code of 1954 is amended by striking out "Exemption" the second place it appears and inserting in lieu thereof "Reduction in Tax".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 205. TECHNICAL CORRECTIONS.

(a) REFUND OF ENTIRE DIESEL FUEL TAX WITH RESPECT TO SCHOOL BUSES.—

(1) IN GENERAL.—Paragraph (2) of section 6427(b) of the Internal Revenue Code of 1954 (relating to intercity, local, or school buses) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subparagraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 6427(b)(2) of such Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(B) The heading for subparagraph (C) of section 6427(b)(2) of such Code, as redesignated by paragraph (1), is amended by striking out "Exception" and inserting in lieu thereof "Exception for certain intracity transportation".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in section 915 of the Tax Reform Act of 1984.

(b) CERTAIN TRANSFERS FROM HIGHWAY TRUST FUND TO BE MADE PROPORTIONATELY FROM MASS TRANSIT ACCOUNT.—Subsection (e) of section 9503 of such Code (relating to establishment of Mass Transit Account) is amended by adding at the end thereof the following new paragraph:

"(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

"(A) IN GENERAL.—Transfers under paragraphs (2), (3), and (4) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred to such Accounts under this section.

"(B) HIGHWAY ACCOUNT.—For purposes of subparagraph (A), the term 'Highway Account' means the portion of the Highway Trust Fund which is not the Mass Transit Account.".

PRESSLER (AND OTHERS) AMENDMENT NO. 2875

Mr. STAFFORD (for Mr. PRESSLER, for himself, Mr. ABDNOR, Mr. ZORINSKY, and Mr. EXON) proposed an amendment to the bill S. 2405, supra; as follows:

On page 86, between lines 19 and 20, insert the following:

FERRY BOAT SERVICE STUDY

SEC. . (a) The Secretary of Transportation in consulation with the highway departments of the States of Nebraska and South Dakota, shall conduct a study to determine the feasibility and cost of establishing public ferry boat service on the Missouri River which connects a Federal-aid highway in the Vicinity of Niobrara, Nebraska with a Federal-aid highway in the vicinity of Springfield, South Dakota, and which meets the requirements of section 129(g) of title 23, United States Code.

(b) Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under this section together with any recommendations the Secretary may have concerning the establishment of the ferry boat service described in subsection (a).

STAFFORD (AND HATFIELD) AMENDMENT NO. 2876

Mr. STAFFORD (for himself and Mr. HATFIELD) proposed an amendment to the bill S. 2405, supra; as follows:

On page 86, between lines 19 and 20, insert the following:

SUBSTITUTE TRANSIT PROJECT IN OREGON

SEC. . (a) Notwithstanding any other provision of law, upon the joint request of the Governor of the State of Oregon and the local governments concerned, the Secretary may approve a substitute transit project for construction of a light rail transit system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.

(b) Upon approval of any substitute transit project under subsection (a), the costs of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(c) By September 30, 1989, any substitute transit project approved under subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for any such project.

(d)(1) A substitute transit project approved under subsection (a) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) Unobligated apportionments for the Interstate System in the State of Oregon shall, on the date of approval of a substitute transit project under subsection (a), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by Congress.

(3) The Secretary shall administer this section through the Federal Highway Administration.

(f) For purposes of this section, the term "eligible interstate lanes" means any bus lanes which are to be constructed on Interstate Route 205 in Oregon.

STAFFORD (AND OTHERS) AMENDMENT NO. 2877

Mr. SYMMS (for Mr. STAFFORD, for himself, Mr. SYMMS, Mr. DOLE, Mr. HECHT, Mrs. HAWKINS, Mr. MATTINGLY, Mr. HOLLINGS, Mr. DANFORTH, Mr. BUMPERS, Mr. BYRD, Mr. ROCKEFELLER, Mr. TRIBLE, Mr. LAXALT, Mr. HUMPHREY, Mr. JOHNSTON, Mr. QUAYLE, Mr. SPECTER, Mr. LONG, Mr. NUNN, Mr. EAGLETON, Mr. CHILES, Mr. SASSER, Mr. GORE, Mr. BENTSEN, Mr. BURDICK, and Mr. WARNER) proposed an amendment to the bill S. 2405, supra; as follows:

On page 73, after line 16, add the following:

(21) Interstate connector from I-95 near Florence, South Carolina to U.S. 17, north of Myrtle Beach, South Carolina to allow increased access to the Grand Strand.

(22) The South Carolina portion of the Bobby Jones Expressway by-pass from I-20 near North Augusta, South Carolina south across the Savannah River into Georgia, where it connects with I-520.

(23) Up to $14.5 million to carry out a highway project in the vicinity of Sanford, Florida, to demonstrate methods of reducing costs and expediting construction of an interchange between Florida State Route 46A and a highway on the Interstate System by contracting with a private consultant to design and construct such project.

(24) To reconstruct and rehabilitate the Eugene Talmadge Memorial Bridge, a functionally obsolete bridge which is located in Savannah, Georgia and crosses the Savannah River.

(25) In Lawrence, Kansas, a by-pass project which is a model for its cost-sharing arrangement and economic development goals.

(26) In Wichita, Kansas, the replacement of a conventional intersection of two heavily travelled streets at Kellogg and Oliver with a new low-cost European fly-over design for the interchange.

(27) In Olathe, Kansas, the 119th Street Interchange to correct a dangerous interchange.

(28) In Emporia, Kansas, a new Prairie Street overpass to overcome existing flood conditions.

(29) In Sparks, Nevada, for the purpose of demonstrating the efficacy of improving traffic flow conditions on various adjacent interchanges and local streets by constructing a new interchange and approaches on an east-west highway on the Interstate System and a four-lane highway not on such system which could serve as a beltway.

(30) In the State of Arkansas on a segment of a north-south highway on the Federal-aid primary system from the vicinity of the junction of Interstate routes I-40 and I-540 to the boundary between the State of Arkansas and Missouri in the vicinity of Bella Vista, Arkansas.

(31) In the vicinity of Fort Smith, Arkansas, to widen a segment of the Federal-aid urban system and improve signalization.

(32) In the vicinity of Jonesboro, Arkansas for the construction of four grade separations on a four-lane bypass route for demonstrating methods of improving highway safety.

(33) In Kansas City, Missouri, the South Midtown Roadway, a north-south route on the Federal-aid Primary System.

(34) In St. Charles County, Missouri, a bypass highway to connect an east-west Interstate route with the Interstate beltway around St. Louis, Missouri.

(35) A segment of north-south highway on the Federal-Aid Primary System from the vicinity of Carthage, Missouri, to the boundary between the States of Arkansas and Missouri in the vicinity of Noel, Missouri, increasing the number of lanes on such segment from two to four.

(36) A 106-mile highway on the Federal-aid Primary System in Missouri, beginning in the vicinity of Columbia and ending in the vicinity of Lancaster.

(37) Construction of the New River Parkway in West Virginia, a two-lane scenic highway through the New River Gorge National River area connecting with Interstate 64.

(38) To improve the Peachtree Industrial Boulevard from I-285 to S.R. 141 in Atlanta, Georgia.

(39) A ten mile extension from the Blue Ridge Parkway to the Explore Project (a 5,000 acre tourist destination located in the Roanoke Valley in western Virginia).

(40) The restoration of the Martin Luther King bridge connecting the metro east area in Illiniois and St. Louis, Missouri.

(41) The improvement of the Builder Highway in Henderson, Nevada creating a landscaped environment.

(42) Highway bridge at Lock & Dam 4 near Pine Bluff, Arkansas.

(43) The extension of I-49 for 6.7 miles in the Shreveport and Lafayette, Louisiana vicinities.

(44) The Cline Avenue/I-94 Interchange in East Chicago, Indiana.

(45) The demonstration of the state of the art highway technologies on U.S. 220 in Blair County, Pennsylvania.

(46) The Basin Street Railroad Crossing. To secure funding for a railroad grade crossing project in Allentown, Pennsylvania.

(47) The Southern Expressway project in Pittsburgh, Pennsylvania. To enable traffic to bypass airport and local roads that access the Pittsburgh Airport.

(48) The Ebsenberg Bypass. To divert traffic from Route 219 in Ebsenberg, Pennsylvania, to a 5.1 mile relocated segment.

(49) The Chambersburg, Pennsylvania interchange project, located in Franklin County. To relieve traffic congestion at an existing interchange on a north-south interstate route and to provide access to Chambersburg, Pennsylvania.

(50) The Chadville, Pennsylvania highway project. To relocate and reconstruct a 3.5 mile segment of the Federal-aid primary system from the vicinity of Chadville, Pennsylvania, to Fairchance, Pennsylvania.

(51) The Kittanning-Brookville, Pennsylvania project. To reconstruct approximately 30 miles of a two-lane on the Federal-aid primary system between Kittanning and Brookville, Pennsylvania.

(52) The Johnstown Flood National Memorial project. To upgrade a narrow, 1.3 mile access road to the Johnstown Flood National Memorial, near Johnstown, Pennsylvania.

(53) The Seltice Way project located in Post Falls, Idaho. The reconstruction project of Seltice Way through the city of Post Falls, beginning at Pleasant View Road and ending at Huetter Road.

(54) The US-20/26 Highway Project, located on US-20/26 and US-20 between the Idaho National Engineering Laboratory (INEL) site and the city of Idaho Falls, Idaho.

(55) A highway project in the vicinity of Southeast Baton Rouge, Louisiana, for the purpose of demonstrating methods by which (a) the widening of the on and off ramps of a full diamond interchange on the Interstate System, and (b) the widening and improvement of the approaches on both sides of the Interstate System, including access ramps and turnouts therefrom, of a two lane highway not on such system and construction of a school bus loading area immediately adjacent thereto, and (c) the coordination of a partial relocation of a two lane highway not on such system, will enchance to the economic development of the area while removing safety hazards, reducing traffic congestion at the Interstate Interchange, at the entrances to a large commercial development and a school, including the entrances to the school bus loading zone.

(56) A highway project in the vicinity of East Lafayette Parish, Louisiana, for the purpose of demonstrating the benefits of a full diamond interchange connecting Louisiana Avenue on the west bank of Bayou Vermillion to the Interstate System to improve traffic flow and highway safety in the City of Lafayette.

(57) A highway project in the vicinity of East Lafayette, Louisiana for the purpose of demonstrating the benefits of providing access to the Interstate System from a state highway not on such system.

(58) The New Sewickly project, located in the townships of New Sewickly and Conway, Pennsylvania. To construct a two-lane highway between the two municipalities.

(59) A grade separation over a rail highway crossing at the intersection of U.S. 41 and Causeway Boulevard in the vicinity of Tampa, Florida, to relieve motor vehicle congestion resulting from the transportation of freight to and from areas for the transshipment of waterborne commerce.

(60) A highway project to demonstrate methods of improving highway safety by making improvements to a road providing direct access from the Fort Campbell Military Reservation to the City of Clarksville, Tennessee.

(61) To perform a study to determine the benefits and cost associated with making Route 22 West from Ebensburg, Pennsylvania to Pittsburgh, Pennsylvania a four lane road. Preliminary design and engineering is to be included in this study. This segment of Route 22 is a dangerous road which varies from two to three to four lanes. A four lane road would benefit commerce and safety. This project should be granted priority status for construction funds.

(62) To perform a study to determine the benefits and costs associated with making Route 219 from Somerset, Pennsylvania to the Maryland border a four lane highway. Preliminary design and engineering is to be included in this study. This segment, currently a two lane road, would connect with two four lane segments to provide a major Appalachian thoroughfare and result in jobs and safety benefits. This project should be granted priority status for construction funds.

(63) To perform a study to determine the benefits and costs associated with creating a four lane highway from Route 56 in Johnstown, Pennsylvania to Route 22. Preliminary design and engineering is to be included in this study. This project should be granted priority status for construction funds.

(64) $184,000 is needed to perform emergency repair to the Calhoun Bridge (Morrisville to Trenton, Pennsylvania). An accident caused structural damage which necessitated closing the bridge until repairs can be accomplished. Twenty thousand cars per day that were regular users of the bridge are inconvenienced and many businesses located at this bridge are inconvenienced as a result. This project should be granted priority status for construction funds.

(65) To perform a study to determine the benefits and costs associated with making Route 15 from Hunterstown, Pennsylvania to the Maryland border four lanes. This segment is currently two lanes and connects two four lane segments. Many deaths occur on this dangerous stretch of highway. This project should be granted priority status for construction funds.

(66) Cline Avenue Interchange Improvement Project in East Chicago, Indiana for the reconstruction of an interchange at the intersection of Cline Avenue and the Borman Expressway.

(67) Hammond Railroad Relocation project in Hammond, Indiana to complete acquisition of right-of-way and construction of the Hohman Avenue underpass to improve transportation and economic benefits to the community.

(68) Lafayette Railroad Relocation in Lafayette, Indiana to reroute rail traffic to a single corridor with few crossings reducing the threat posed to the safety of the local citizens by over 40 rail-highway intersections.

(69) U.S. 75 North Central Expressway Extension—combines several individual projects which involve construction of additional lanes, more efficient interchanges, and improved bridge structures for added capacity and safer travel on a Federal-aid Primary System highway. Improvements to this major north-south route in north central Texas near Dallas would cover 15.4 miles of highway from Interstate 635 in Dalls County to State Highway 121 in Collin County. Cost of the project is estimated at $134.5 million.

(70) Interstate Highway 30 Interchange ("West Leg")—Ft. Worth, Texas—reconstructs and widens a critical interchange involving major, heavily-traveled East-West and North-South Interstate Highways (IH 30 and IH 35, repectively).

DURENBERGER AMENDMENT NO. 2878

Mr. STAFFORD (for Mr. DURENBERGER) proposed an amendment to the bill S. 2405, supra; as follows:

At the end thereof add the following new part:

PART —

SECTION 1. That this Act may be cited as the "Uniform Relocation Act Amendments of 1986."

TITLE I—GENERAL PROVISIONS

DEFINITIONS

SEC. 101. (a) Section 101(1) (42 U.S.C. 4601(1)) of the Uniform Relocation Assistance and Real Property Acquisition Policies

Act of 1970 (hereinafter the "Uniform Act") is amended by striking out "(except the National Capital Housing Authority)" and "(except the District of Columbia Redevelopment Land Agency)".

(b) Section 101(3) of the Uniform Act (42 U.S.C. 4601(3)) is amended to read as follows:

"(3) The term 'State agency' means any entity which has eminent domain authority under State law.".

(c) Section 101(4) of the Uniform Act (42 U.S.C. 4601(4)) is amended by inserting, "or mortgage interest subsidy to a person" after "insurance".

(d) Section 101(6) of the Uniform Act (42 U.S.C. 4601(6)) is amended to read as follows:

"(6) The term 'displaced person' means—

"(A) except as provided under paragraph (E) (with respect to a utility on real property under the control or ownership of a State or local agency), any person who moves from real property, moves personal property, or moves a business or farm operation, as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance;

"(B) solely for the purpose of subsections (a) and (b) of section 202 and of section 205, any person who moves from real property or moves personal property from real property—

"(i) as a direct result of the written notice of intent to acquire or the acquisition of other real property, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; and

"(ii) as a direct result of rehabilitation or demolition for a program or project undertaken by a Federal agency or with Federal financial assistance, where the person is a residential tenant, farm operation, or a small business and where the head of the displacing agency determines that such displacement is permanent;

"(C) solely for the purpose of subsections (a) and (b) of section 202 and of any other provisions of this Act which the head of the displacing agency may prescribe, any other person who is a residential tenant, farm operation, or small business and who the head of the displacing agency determines will be permanently displaced as a direct result of a program or project undertaken by a Federal agency or with Federal financial assistance;

"(D) any person who is eligible for relocation assistance under paragraphs (A), (B), or (C) of this subsection, unless such person has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act; or

"(E) solely for the purpose of subsections (d) and (e) of section 202, any utility company which moves its facilities from real property under the ownership or control of a State or local agency.".

(e) Section 101 of the Uniform Act (42 U.S.C. 4601) is amended by adding at the end thereof the following new subsections:

"(10) The term 'suitable replacement dwelling' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally similar; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"(11) The term 'displacing agency' means any Federal agency, State or State agency utilizing Federal financial assistance or, for the purposes of paragraphs (B) and (C) of section 101(6), any person furnished Federal financial assistance which causes a person to be a displaced person.

"(12) The term 'lead agency' means the Federal department, agency, or other entity designated by the President to coordinate implementation of the Uniform Act under section 213 of this Act.

"(13) The term 'appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.".

TITLE II—UNIFORM RELOCATION ASSISTANCE

SEC. 201. Section 201 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621), and its catchline are amended to read as follows:

"DECLARATION OF FINDINGS AND POLICY

"SEC. 201. (a) The Congress finds and declares that—

"(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

"(2) displacement occurs in a variety of social, economic, geographic, and legal circumstances;

"(3) relocation assistance policies must provide for sufficient flexibility to assure fair, uniform, and equitable treatment of all affected persons;

"(4) the displacement of businesses often results in their closure; and

"(5) minimizing the adverse impact of displacement of businesses is essential to maintaining the economic and social well-being of communities.

"(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance, in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

"(c) It is the intent of Congress that—

"(1) the primary purpose of this title is to minimize the hardship of displacement on persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance;

"(2) Federal agencies shall carry out this law in a manner which minimizes waste, fraud, and mismanagement;

"(3) the administration of this Act shall, to the maximum extent feasible, minimize unnecessary administrative and program costs borne by States and State agencies through the promulgation of economical regulatory requirements and the delegation of substantial administrative discretion to State and local governments;

"(4) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act; and

"(5) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals.".

MOVING AND RELATED EXPENSES

SEC. 202. (a) Section 202(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622(a)) is amended—

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

"(a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—";

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced nonprofit organization or small business at its new site, but not to exceed $10,000.".

(b) Section 202(b) of the Uniform Act (42 U.S.C. 4622(b)) is amended by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.".

(c) Section 202(c) of such Act (42 U.S.C. 4622(c)) is amended to read as follows:

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business is renting displacement property to others shall not qualify for this payment.".

(d) Section 202 of the Uniform Act (42 U.S.C. 4622) is amended by adding at the end thereof the following new subsections:

"(d)(1) For the purposes of this section and section 101(6)—

"(A) The term 'cost of relocation' shall include the entire amount paid by the utility company properly attributable to a relocation after deducting any betterment in the relocated utility and any salvage from the old utility.

"(B) The term 'utility' means any electric, gas, water, steam power or materials transmission or distribution system, any transportation system, or any communications system (including cable television), and any fixtures, equipment, or other property appropriate to the operation, maintenance, or repair of the foregoing. A utility may be publicly, privately, or cooperatively owned.

"(2) Except when provided otherwise by Federal law, whenever a federally assisted program or project undertaken by a displacing agency other than a Federal agency will result in the displacement of a utility from property under the ownership or control of a State or local agency, the head of the displacing agency shall provide a payment to the utility company pursuant to State or local law or a written contract, if any, between the utility company and the State or local agency, but in no event shall such payment exceed the actual reasonable cost of relocation of such utility.

"(3) Nothing in this subsection shall supercede a State or local law or a written contract between a utility company and a State or local government, or require a payment to be made where none is required under State or local law or a written contract.

"(4) Nothing in this subsection shall deprive a utility company of its rights under State or local law.

"(5) Nothing in this subsection shall require a Federal agency to increase its payment if the increased payment is attributable to a contract or contract amendment that is made in anticipation of the Federal payment.

"(6) Nothing in this subsection shall require a Federal payment in excess of the payment that a State or local agency would pay if no Federal funds were involved.

"(7) Nothing in this subsection confers jurisdiction on a court of the United States (as defined in section 451 of title 28, United States Code) to review any action of a displacing agency in carrying out this subsection or to review the right of a utility company to be compensated under State or local law.

"(e) Whenever a program or project directly undertaken by a Federal agency will result in the displacement of a utility as the result of Federal acquisition of real property under the ownership or control of a State or local agency, the head of the Federal agency shall either relocate the utility with the utility company's consent, or provide a payment to the utility equal to the actual reasonable cost of relocation of such utility. Such relocation or such payment shall not be required when it is provided otherwise by a Federal law, or a Federal regulation promulgated prior to March 17, 1983, or a contract or agreement with a Federal agency.".

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 203. Section 203(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)) is amended—

(1) by striking out "Federal" in paragraph (1) and inserting in lieu thereof "displacing";

(2) by striking "$15,000" and inserting in lieu thereof, "$22,500";

(3) by striking out "acquired by" and all that follows through "market" in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a suitable replacement dwelling";

(4) by striking out paragraph (1)(B) and inserting in lieu thereof the following:

"(B) The amount, if any, which will compensate such person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such suitable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling."; and

(5) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a suitable replacement dwelling within one year of such date.".

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 204. Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended to read as follows:

"REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

"SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling unit not eligible to receive a payment under section 203 which was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of such dwelling, or, where displacement is not caused by acquisition, any other event which the head of the lead agency may prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed three years, a suitable replacement dwelling. For a person whose income exceeds 50 per centum of the median income of the area, as determined by the Secretary of Housing and Urban Development, the amount referred to shall equal the lesser of (i) $4,500 or (ii) 36 times the amount obtained by subtracting the monthly housing costs for the displacement dwelling from the monthly housing costs for a suitable replacement dwelling. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments.

"(b) Any displaced person eligible for payments under subsection (a) of this section may elect to receive in lieu thereof either Federal low income housing assistance or similar State or local governmental assistance if such assistance is available at the time of displacement and such person is otherwise eligible for such assistance. The failure of any such person to make such an election shall be considered when evaluating the eligibility of such person for any Federal or federally assisted low income housing assistance program during the three years following the date on which such person received the payment authorized under subsection (a) of this section.

"(c) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a downpayment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. A displaced homeowner who has occupied the displacement dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling may, at the discretion of the head of the displacing agency, be eligible for the maximum payment allowed under this subsection: *Provided*, That such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person occupied the displacement dwelling for one hundred and eighty days immediately prior to the initiation of such negotiations.".

RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

SEC. 205. Section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4625) and its catchline are amended to read as follows:

"RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

"SEC. 205. (a) The head of any displacing agency shall assure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

"(b) The Secretary of Housing and Urban Development shall assign a high priority for assistance under the programs referred to in sections 204(b) and 206(b) of this Act to persons eligible under such sections. To the extent practicable, the Secretary shall require that federally assisted State and local governmental low income housing assistance programs assign priority for assistance to such persons. To the extent practicable, the Administrator of the Small Business Administration and the heads of other Federal agencies administering programs which may be of assistance to displaced persons shall make available technical assistance under subsection (c)(5) of this section and expedite the applications for such assistance by such persons.

"(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

"(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

"(2) provide current and continuing information about sales prices and rental charges on suitable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

"(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a suitable replacement dwelling;

"(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

"(5) supply information concerning other Federal programs which may be of assistance to displaced persons, and technical assistance to such persons in applying for assistance under such programs;

"(6) provide other advisory services to displaced persons in order to minimize hard-

ships to such persons in adjusting to relocation; and

"(7) assure that a one hundred and eighty day homeowner-occupant is given a reasonable opportunity to remain in such occupancy status.

"(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

"(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may by agreement designate one such agency as the cognizant Federal agency whose procedures shall be utilized to implement the activities. If such agreement cannot be reached, then the head of the lead agency shall designate one such agency as the cognizant agency. Such related activities constitute a single program or project for purposes of this Act.".

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. Section 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626) is amended to read as follows:

"HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

"SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because suitable replacement dwellings are not available, and the need of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The head of the lead agency shall require that this section may be used to exceed the payment ceilings established in sections 203 and 204 only on a case-by-case basis, for good cause.

"(b) Whenever housing replacement as a last resort will result in the provision of housing for persons who are otherwise eligible for low income housing assistance, the requirement that the displacing agency provide suitable replacement housing may be met through such assistance as the provision of a certificate of family participation under the existing section 8 housing program pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437f).".

CERTIFICATION

SEC. 207. (a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 210. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any grant to or contract or agreement with a displacing agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such agency that—

"(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 of this title shall be provided to such displaced person;

"(3) within a reasonable period of time prior to a displacement, suitable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3) of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title and title I of this Act, with the exception of sections 208 and 211 of this title, by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title and title I: *Provided*, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title and title I, particularly with respect to the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to such persons in such categories.

"(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of such certification, and a State agency shall make available any information required for such purpose. The head of a Federal agency, after consultation with the head of the lead agency, may withdraw his acceptance of the certification for good cause: *Provided*, That the State government is given due notice prior to taking any such action and is given a reasonable opportunity to demonstrate why such action should not be taken.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under the Act.

"(d) The head of a Federal agency may withhold his approval of any grant, contract, or cooperative agreement with any displacing agency found to have intentionally circumvented a State law adopted under subsection (b) of this section.".

FEDERAL SHARE OF COSTS

SEC. 208. (a) Section 211(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4631(a)) is amended to read as follows:

"(a) The cost to a displacing agency of providing payments and assistance pursuant to titles II and III shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program costs.".

(b) Section 210(b) of the Uniform Act (42 U.S.C. 4631(b)) is amended by striking out and all that follows "required by" and inserting in lieu thereof "State law which is determined by the head of the lead agency to have substantially the same purpose and effect of such payment under this section.".

REGULATION

SEC. 209. Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) and its catchline are amended to read as follows:

"REGULATION

"SEC. 213. (a) The President shall designate a lead agency.

"(b) The head of the lead agency shall—

"(1) develop, publish, and promulgate, with the active participation of other Federal agencies responsible for funding relocation and acquisition actions, and in full coordination with State and local governments, such rules as may be necessary to carry out this Act;

"(2) assure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency, or a State or State agency with Federal financial assistance;

"(3) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

"(4) perform other duties as may be provided by law as relate to the purposes of this Act.

"(c) The rules promulgated pursuant to subsection (b) shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I.".

TRANSFER OF SURPLUS PROPERTY

SEC. 210. Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4638) is amended by inserting "net" after "all".

REPEALS

SEC. 211. Sections 214, 215, 217, and 219 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4634, 4635, 4637, and 4639) are hereby repealed.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 301. (a) Section 301(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651(2)) is amended by inserting the following before the period at the end thereof: ", except that the head of the lead agency may prescribe a procedure which forgoes the appraisal".

(b) Section 301(9) of the Uniform Act (42 U.S.C. 4651 (9)) is amended to read as follows:

"(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the acquiring agency shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the acquiring agency has determined has little or no value or utility to the owner.".

(c) Section 301 of the Uniform Act (42 U.S.C. 4651) is amended by adding at the end thereof the following subsection:

"(10) A person whose real property is being acquired in connection with a project under this title may, after the person has been fully informed of his right to receive

just compensation of such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor to an acquiring agency, as said person shall determine.".

CERTIFICATION

SEC. 302. Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 305. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on or after the effective date of this title, unless he receives satisfactory assurances that—

"(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies under section 301 of this title and the provisions of section 302 of this title; and

"(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title: *Provided*, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title.

"(2) The head of the lead agency in coordination with other Federal agencies shall from time to time monitor State agency implementation of such certification and the State agency shall make available any information required for such purpose. The head of the lead agency shall by regulation develop criteria for withdrawal of acceptance of a certification.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under this Act.".

TITLE IV—EFFECTIVE DATE

SEC. 401. (a) Section 209 of the Uniform Act takes effect on the date of its enactment.

(b) The remainder of this Act takes effect either twenty-four months from the date of its enactment or when a State agency makes such provisions applicable under State laws, whichever is earlier.

ROTH AMENDMENT NO. 2879

Mr. STAFFORD (for Mr. ROTH) proposed an amendment to the bill S. 2405, supra; as follows:

On page 86, between lines 19 and 20, insert the following:

REVIEW OF REPORTS ON UNITED STATES ROUTE 13 RELIEF ROUTE

SEC. . The Congress requests the Board of Engineers for Rivers and Harbors of the United States Army Corps of Engineers to review—

(1) the report of the State of Delaware and the Federal Highway Administration for the United States Route 13 Relief Route; Project No. F-1001(16), Contract #83-110-01,

(2) the report of the Chief of Engineers on the Inland Waterway from the Delaware River to Chesapeake Bay, Delaware and Maryland, printed as House Document Number 63-196, and

(3) other subsequent pertinent reports, for the purpose of determining how to best modify the existing canal project to provide a new structure for the selected alignment of the United States Route 13 Relief Route.

SYMMS AMENDMENT NO. 2880

Mr. SYMMS proposed an amendment to the bill S. 2405, supra; as follows:

S. 2405, as reported August 5, 1986, is amended by adding at the end thereof the following section:

STATE MATCHING SHARE

SEC. . Notwithstanding title 23, United States Code, the State matching share for the Calder Bridge project across the St. Joe River, 19 miles east of St. Maries, Idaho, including approaches, under title 23, United States Code, may be credited by the fair market value of land incorporated into the project, where such land is in addition to existing public right-of-way and such land is lawfully donated to the State or local government after the effective date of this section, and may be credited by the fair market value of construction on the project performed by or donated to the State or local government after the effective date of this section.

BUMPERS AMENDMENT NO. 2881

Mr. BUMPERS proposed an amendment to the bill S. 2405, supra; as follows:

On page 42, following line 25, add the following:

SEC. . (a) Section 144, title 23, United States Code, is further amended by adding a new subsection as follows:

"(o)(1) Notwithstanding any other provision of this section or of any other provision of law, any State may utilize any of the funds provided under this section to construct any bridge which—

"(A) replaces any low-water crossing (regardless of the length of such low-water crossing),

"(B) replaces any bridge that was destroyed prior to 1960, or

"(C) replaces any ferry which was in existence on January 1, 1984.

"(2) The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.".

(b) The amendment made by subsection (a) shall apply to funds apportioned to the States for fiscal year 1987 or for any subsequent fiscal year.

SYMMS (AND OTHERS) AMENDMENT NO. 2882

Mr. SYMMS (for himself, Mr. STAFFORD, Mr. BENTSEN, and Mr. BURDICK) proposed an amendment to the bill S. 2405, supra; as follows:

S. 2405 is amended by adding at the end thereof the following section:

ADVANCE CONSTRUCTION

SEC. . (a) Section 115 of title 23, United States Code, is amended by striking the title and inserting in lieu thereof "Advance construction".

(b) Paragraph (a) of section 115 of title 23, United States Code, is amended to read as follows:

"(a) When a State has obligated all the highway substitute, urban, secondary or bridge funds, as the case may be, apportioned or allocated to it or has used or demonstrates that it will use the obligation authority allocated to it, and proceeds to construct a highway substitute, urban, secondary or bridge project without the aid of Federal funds in accordance with all procedures and all requirements applicable to a project, except insofar as procedures and requirements limit a State to the construction of a project with the aid of funds previously apportioned or allocated to it or limit a State to the construction of a project with obligation authority previously allocated to it, the Secretary, upon approval of an application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned or allocated to the State, or when additional obligation authority is allocated to the State if—

(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

(B) the project conforms to the applicable standards under section 109 of this title."

(c) Paragraph (b)(1) of section 115 of title 23, United States Code, is amended to read as follows:

"(b)(1) When a State proceeds to construct any project on the Federal-aid primary system including the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to projects on the Interstate System or the primary system, as the case may be, except insofar as the procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of the application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State if—

(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

(B) the project conforms to the applicable standards under section 109 of this title.".

(d) Paragraph (b)(3) of section 115 of title 23, United States Code, is amended by inserting "on the Interstate System" after "project" the first place that "project" appears.

(e) Section 115 of title 23, United States Code, is further amended by adding new subsection (d) as follows:

"(d) the Secretary may not approve an application under this section if the amount of approved applications in the category of funds involved exceeds the total of that category of unobligated funds apportioned or allocated to a State, plus such State's expected apportionment of that category of funds from existing authorizations plus an amount equal to such States expected apportionment of that category of funds for one additional fiscal year.

S. 2405, as reported on August 5, 1986, is further amended by (1) inserting "115. Construction by States in advance of apportionment." in paragraph 144(a)(1)(A) on line 5, page 88, by (2) inserting "115. Advance Construction." in paragraph 144(a)(1)(B) on line 7, page 88, by (3) striking paragraph 144(a)(6), lines 15, 16, 17, and 18 of page 88, and by (4) renumbering paragraphs of subsection 144(a) as appropriate.

CHILES (AND OTHERS) AMENDMENT NO. 2883

Mr. CHILES (for himself, Mr. THURMOND, Mr. NUNN, Mr. DIXON, Mr. BENTSEN, Mr. SIMON, Mr. HUMPHREY, Mr. MATHIAS, Mrs. HAWKINS, Mr. SARBANES, Mr. DOLE, and Mr. SPECTER) proposed an amendment to the bill S. 2405, supra; as follows:

TECHNICAL ASSISTANCE

S. 2405, as reported on August 5, 1986, is amended as follows:

Strike page 35, line 1 through page 37, line 4 and insert in lieu thereof:

TOLL ROADS, BRIDGES, TUNNELS AND FERRIES

SEC. 111. (a)(1) Section 301 of title 23, United States Code, is repealed.

(2) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

(b) Section 129 of title 23, United States Code, is amended to read as follows:

"SEC. 129. TOLL ROADS, BRIDGES, TUNNELS AND FERRIES.—

"(a) Except as provided in this section all highways constructed, reconstructed, rehabilitated, restored, or resurfaced under the provisions of this title shall be free from tolls of all kinds.

"(b) The Secretary may permit Federal participation, on the same basis and in the same manner as in the construction of free highways under this chapter, in the construction of any new toll highway, bridge or tunnel other than a highway on the Interstate System; in the reconstruction of any existing highway, bridge or tunnel to expand its capacity, other than a highway, bridge or tunnel on the Interstate System; or in the construction, reconstruction or acquisition of any toll bridge or toll tunnel; upon compliance with the conditions contained in this section: *Provided*, That the Federal share payable for the construction or reconstruction of a toll highway, bridge or tunnel shall not exceed 35 per centum. The highway, bridge, tunnel, or approach thereto must be publicly owned and operated. Federal funds may participate in the approaches to a toll bridge or toll tunnel whether the bridge or tunnel is to be or has been constructed, or acquired, by the State or other public authority. For purposes of this section the term "new toll highway, bridge or tunnel" shall mean initial construction of a highway bridge or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway after it is open to traffic. The State Highway Department must agree, for toll bridges, tunnels and highways, that toll revenues will be used only on the facility tolled, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance and debt service of the facility including resurfacing, reconstruction, rehabilitation, and restoration. Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this subsection once only for the original construction, reconstruction, or acquisition. Toll mileage created under this subsection shall not be used to increase a State's apportionment under any apportionment formula.

"(c) Funds authorized for use on any of the Federal-aid systems including the Interstate System shall be available for obligation on projects approaching any toll road, bridge, or tunnel to a point where the approach enters the main lanes of the toll facility or toll plaza, whichever occurs first. Construction, reconstruction, or relocation of toll collection equipment, facilities, plaza, or related facilities shall not be eligible for Federal funds. The Secretary may permit Federal participation in any engineering and fiscal assessments, traffic analyses, and preliminary design analyses necessary to determine whether a privately owned toll road, toll bridge, or toll tunnel shall be acquired by a State or political subdivision thereof.

"(d)(1) The Secretary may permit Federal participation under this title in the construction of a ferryboat, whether toll or free, subject to the following conditions:

"(A) It is not feasible to build a bridge, tunnel, combination bridge-tunnel, or other normal highway structure in lieu of use of the ferry.

"(B) The operation of the ferry shall be on the Federal-aid primary system other than the Interstate System or the Federal-aid secondary system.

"(C) The ferry shall be publicly owned and operated.

"(D) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and repair.

"(E) The ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the State of Maine and its off-shore islands, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operation shall be in any foreign or international waters.

"(F) The ferry shall not be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to the State. Any amount credited shall be in addition to other funds apportioned to the State and shall be available for obligation in accordance with the provisions of this title.

"(2) The Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, on the Federal-aid primary system other than the Interstate System of the Federal-aid secondary system. The ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

"(e) Sums apportioned to a State for the Federal-aid Interstate-primary program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, a toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.

"(f)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978 on a Federal-aid system in a State shall biennially certify to the governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the States' apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: *Provided*, That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.".

(c) Upon the request of a State and upon entering into an agreement that toll revenue will be used only on the facility tolled, construction and reconstruction costs, or for the costs necessary for the proper operation and debt service of the facility, including resurfacing, reconstruction, rehabilitation, and restoration, pursuant to section 129(b) of title 23, United States Code, as amended by this section, the Secretary of Transporta-

tion may void an agreement entered into prior to the enactment of this section under section 129(a), (d) or (e) of title 23, United States Code. The Secretary shall issue rules and regulations regarding the voiding of such agreements which shall be limited to insuring future operation and maintenance of the tolled facility.

S. 2405 is further amended by striking "provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978 on page 22, lines 18 and 19 and on pages 22 and 23, lines 25 and 1.

BYRD AMENDMENT NO. 2884

Mr. BYRD proposed an amendment to the bill S. 2405, supra; as follows:

On page 69, section 138, line 3, strike "inserting after" and insert "striking" in lieu thereof; and insert after "$30,000,000" the phrase "and inserting in lieu thereof $55,000,000 and".

SYMMS AMENDMENT NO. 2885

Mr. SYMMS proposed an amendment to the bill S. 2405, supra; as follows:

At the end thereof add a new section as follows:

SEC. . Subsection (a) of section 113 of title 23, United States Code, is amended by striking out "subcontractors on" and inserting in lieu thereof "subcontractors under any contract or subcontract in excess of $250,000 for".

INOUYE (AND MATSUNAGA) AMENDMENT NO. 2886

Mr. INOUYE (for himself and Mr. MATSUNAGA) proposed an amendment to the bill S. 2405, supra; as follows:

At the appropriate place, insert the following:

SEC. . The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

JOHNSTON (AND LONG) AMENDMENT NO. 2887

Mr. JOHNSTON (for himself and Mr. LONG) proposed an amendment to the bill S. 2405, supra; as follows:

On page 86 following line 19, insert the following:

"SEC. . HIGHWAY FEASIBILITY STUDY.

"(a) STUDY.—The Secretary, in cooperation with the States of Louisiana, Arkansas, and Missouri, shall study the feasibility and necessity of constructing to appropriate standards a proposed highway along a route from Shreveport, Louisiana to Texarkana, Fort Smith, and Fayetteville, Arkansas, and Carthage and Kansas City, Missouri. Such study shall update the feasibility study conducted under section 143(6) of the Federal-Aid Highway Act of 1973.

"(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section."

HARKIN AMENDMENT NO. 2888

Mr. HARKIN proposed an amendment to the bill S. 2405, supra; as follows:

On page 86, between lines 19 and 20, insert the following:

USE OF ROCK SALT ON HIGHWAYS

SEC. . (a) The Congress finds that—

(1) the use of rock salt to remove ice from the highways causes considerable damage to the highways, bridges, automobiles, and trucks,

(2) rock salt also causes damage to equipment and buildings near highways,

(3) rock salt causes considerable damage to the environment,

(4) all of these costs are real costs borne by the taxpayers, although such costs may not be paid directly to the government, and

(5) calcium magnesium acetate is an effective deicing material which does not cause the corrosion and environmental damage associated with rock salt.

(b) It is the sense of the Congress that the States and local governments should consider the full cost of using rock salt on the highways, including the damage to highways, vehicles, equipment, buildings, and the environment, in calculating the real cost of deicing materials and the use of calcium magnesium acetate as an alternative deicing material.

SYMMS AMENDMENT NO 2889

Mr. SYMMS proposed an amendment to the bill S. 2405, supra; as follows:

On page 6, of the Chiles amendment No. 2883, strike the last three lines and insert in lieu thereof the following:

On page 22, lines 18 and 19, strike "provided for in section 129(e) of this title" and insert in lieu thereof: "provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978".

On page 22, line 25 beginning with "provided", strike all through " title)" on page 23 line 1, and insert in lieu thereof: "provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978".

HECHT AMENDMENT NO. 2870

Mr. HECHT proposed an amendment to an amendment proposed by Mr. SYMMS to the bill S. 2405, supra; as follows:

On page 1, strike out lines 4 through 13 and insert in lieu thereof the following:

(1) by inserting "in any urbanized area" after "fifty-five miles per hour" in clause (1),

(2) by striking out "or" at the end of clause (1),

(3) by redesignating clause (2) as clause (3),

(4) by inserting after clause (1) the following new clause: "(2) a maximum speed limit on any other public highway within its jurisdiction, as designated by the Governor or other appropriate State official, in excess of sixty-five miles per hour, or", and

(5) by striking out "clause (2) of" in the last sentence and inserting in lieu thereof "clause (3) of".

(b) Subsection (f) of section 154 of title 23, United States Code, is amended by inserting "in any urbanized area" after "55 miles per hour" the first place it appears.

(c) Section 154 of title 23, United States Code, is amended by adding at the end thereof the following new subsection:

"(i) For purposes of this section, the term 'urbanized area' means any area identified as an urbanized area in the Federal census of 1980.".

NOTICES OF HEARINGS

SENATE IMPEACHMENT TRIAL COMMITTEE

Mr. MATHIAS. Mr. President, I wish to announce that the Senate Impeachment Trial Committee, appointed upon the adoption of Senate Resolution 481, pursuant to rule XI of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, will meet in the caucus room of the Russell Senate Office Building (SR-325) on Tuesday, September 23, 1986 at 9 a.m. to continue to receive evidence and take testimony in the impeachment trial of the Honorable Harry E. Claiborne.

For further information concerning this meeting, please contact Tony Harvey or Byron Hoover of the Senate Impeachment Trial Committee staff at extension 40291.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that on Wednesday, September 24, 1986, at 2 p.m., the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, to continue receiving testimony on the nomination of Thomas John Josefiak, of Virginia, to be a member of the Federal Election Commission for a term expiring on April 30, 1991. The Rules Committee previously held a hearing on Mr. Josefiak's nomination on August 5, 1986.

For further information regarding this nomination hearing, please contact Carole Blessington of the Rules Committee staff on 224-0278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON THE JUDICIARY

Mr. KASTEN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, September 23, in order to receive testimony on home video recording.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON PUBLIC LANDS, RESERVED WATER, AND RESOURCE CONSERVATION

Mr. KASTEN. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands, Reserved Water and Resource Conservation, of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, September 23, to hold a hearing to consider the following legislation:

S. 2029 and H.R. 4090, to establish the Big Cypress National Preserve Addition in the State of Florida, and for other purposes;

S. 2442 and H.R. 4811, to establish the San Pedro Riparian National Conservation Area in Cochise County, Arizona, in order to assure the protection of the riparian, wildlife archaeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area, and for other purposes;

H.R. 2921, to authorize the Secretary of Agriculture to issue permanent easements for water conveyance systems in order to resolve title claims arising under acts repealed by the Federal Land Policy and Management Act of 1976, and for other purposes; and

S. 2707 and H.R. 2826, to amend the Wild and Scenic Rivers Act by designating a segment of the Horsepasture River in the State of North Carolina as a component of the Wild and Scenic Rivers System.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ABORTION AND INFORMED CONSENT: FLORIDA

● Mr. HUMPHREY. Mr. President, Mary Sue's letter provides another example of a woman receiving inadequate preabortion counseling, and profoundly regretting her decision. Those responsible for not informing her are partially accountable for her remorse. Too many women have suffered this indignity: No true informed consent.

Many abortion counselors ostensibly withhold information from women with unplanned pregnancies to protect them from increased anxiety, fear, guilt, et cetera. Mary Sue demonstrates that this is a grossly shortsighted theory of counseling. People cannot make intelligent decisions if they are not given all the facts. This is particularly important in decisions with long-term consequences like abortion. Women who have written my office insist that they were not prepared for what they later encountered as a result of their abortion.

Mr. President, there is a strange conspiracy of silence among abortion advocates in this matter. They deny that Mary Sue's experience is common, though there is overwhelming evidence to the contrary. They claim to promote choice but they are not outraged by such paternalistic behavior. This is the flight of hypocrisy, and I refute the fantasy that these people are prochoice. They are not. They are in fact for abortion, and unless they join in the battle against exploiting pregnant women they reveal their intellectual dishonesty to all.

I hope my colleagues from Florida, indeed all my colleagues, will read this letter, and realize that women do not currently receive sufficient information about abortion decisions. We must see to it that in the future they do. I ask all my colleagues to join me in supporting S. 2791, requiring informed consent of all women contemplating abortion.

The letter follows:

MONDAY, JUNE 2, 1986.

DEAR SENATOR HUMPHREY: I have always felt that an informed decision is the best decision because it considers an entire outcome that effects a change wholly. We can not make good decisions without understanding their origins, examining all the alternatives and realizing the consequences resultant from our choices.

I have had an abortion. I have counselled many women who have had abortions. I have written a book describing the intensity of their dilemma and the desperateness of their choice. Those of us who have found ourselves in abortion-considering positions have not employed good decision-making skills. The events that led to this decision did not reflect choices that were beneficial for the entire individual. The "simple" abortion solution often masks a complicated future problem.

Education prepares all people for their future—one they choose and commit to by election. An informed consent law will definitely aid women in selecting an outcome which will bring happiness to a prepared future and teach them skills which they will continually call upon in an active pursuit of their own American dream.

Sincerely,

MARY SUE GUISEPPI,
Florida.●

CALL TO CONSCIENCE ON SOVIET JEWRY

● Mr. STAFFORD. Mr. President, I rise to participate with many of my colleagues in the Congressional Call to Conscience on behalf of the 350,000 Soviet Jews who seek the right to emigrate, primarily to Israel.

I want to add my voice to the eloquent words of those who have spoken out to bear witness to the suffering of these brave prisoners of conscience. I can only hope that our collective pleases will improve the chances of freedom of those who are refused the right to leave the Soviet Union.

As free people, we reaffirm our demand that the Soviet Union respond to international conventions and humanitarian concerns by granting Soviet Jews the right to free movement beyond the borders of the Soviet Union.

A recent mailing by the Union of Councils for Soviet Jews serves to remind us all of the plight of those in spiritual and physical exile in the Soviet Union and I ask that a copy of that mailing be printed in the RECORD.

The material follows:

THE GALINA ZELICHENOK CASE

DEAR FRIEND: One of my UCSJ officers just received a desperate phone call from Galina Zelichenok.

It took several minutes for Galina to regain her composure when she managed to get through.

But her message was very clear and straightforward—"You must save my husband's life."

The moment I received the message, I sat down to write this urgent communication to you. If there were a way I could hand-deliver it, I would. Because I fear by the time it reaches you, it may be too late.

You will understand my fear when you hear the story of Galina and Alec Zelichenok.

On June 4, 1985, Hebrew teacher Alec Zelichenok learned that his latest application to leave the Soviet Union (he's been trying since 1978) has been refused for life.

Days later, Alec was dragged from his home by the KGB, charged with "defaming the Soviet State," sentenced to three years in prison and thrown into a cell kept at a suffocating 104 degrees.

Galina, legally blind, has to continue the struggle alone.

She learned Alec was being transported to the bitter cold North, against doctors' recommendations. They warned that if he doesn't receive medical treatment soon, he has little chance for survival. (Alec's blood pressure has reached 190/110—we fear he may die, as his father did, of a stroke.)

Somehow Galina managed to visit him. What she saw horrified her.

Alec has lost fully one-third of his body weight. Galina said his skin felt like dry, cracked parchment. And he is going blind from forced prison work in inadequate light.

So the moment she returned home she placed the call to us.

She told us that right now we're their only hope.

We hadn't planned to write you at this time. But Galina's phone call made us realize how serious Alec's condition has become.

And it grows worse each day.

We need you to help us in this dire emergency. We're asking for a gift of $36 or $72 to mount a "no holds barred" campaign to save Alec.

We chose these numbers because they are increments of 18, the number that represents life in Judaism.

That's what we're fighting for—Alec's life. And Galina's too. Already the Soviet government has made her a "leper." People are warned not to associate with her or they may end up in prison like Alec.

Working on behalf of Alec and all of the Jewish Prisoners of Conscience and Refuseniks is what the UCSJ is all about. We've been doing it for sixteen years. Your funds enable us to keep up the struggle.

We haven't a moment to lose. And we need you. Join us today.

Sincerely,

MOREY SCHAPIRA,
President, UCSJ.

(P.S. Press reports indicate that Soviet Premier Gorbachev (who recently said, "the so-called [Jewish] problem—in the Soviet Union does not exist") may allow certain Jews to emigrate. We have heard these promises before. But words won't save Alec or thousands of Soviet Jews like him. Don't give up the fight.)●

THE GOVERNORS' REPORT—TIME FOR RESULTS

● Mr. SIMON. Mr. President, Mary Hatwood Futrell, the respected president of the National Education Association, recently had a column in the Washington Post referring to the action by the Nation's Governors.

I have yet to read the full text of Time for Results, put out by the Nation's Governors, but I shall soon.

On the basis of excerpts I have seen, it clearly is a step forward.

Both Mary Futrell and the president of the American Federation of Teachers, Al Shanker, deserve credit for working with the Governors to achieve this result.

I urge my colleagues to read Mary Futrell's column, and I ask that it be inserted in the RECORD.

The column follows:

TO THE GOVERNORS, WITH GRATITUDE

There are times—rarely to be sure—when one senses that the national landscape is shifting, that freshness is replacing all staleness, that (to borrow the young Bob Dylan's fractured prose) the times are a-changin'.

Last weekend was one of those times. I attended the National Governors' Association conference in Hilton Head, South Carolina. During my stay, I became increasingly impressed by the willingness of our nation's governors to become students of education. And I saw first hand that they are model students: dedicated, studious, inquisitive.

The governors have not always recognized classroom practitioners as reform experts, as mentors for their course of study. They do now. And they are listening attentively.

During their months of deliberation, as they prepared Time for Results: the Governors' 1991 Report on Education, our state governors demonstrated—by word and by deed—the importance of teacher involvement in the education reform movement. In hearings throughout the country, they turned to educators as partners. They sought the counsel of those who know the problems our schools today confront as daily realities.

This enlightened approach explains, more than anything else, the uncommon common sense of the document the governors produced. Their report does not pretend to present the final word on education reform. Much of it is tentative rather than definitive. But the bulk of the proposals derserve serious consideration and, in many cases rapid implementation.

Time for Results, for example, calls for an end to the emergency certification of teachers. The report states that this practice, which threatens to make a mockery of education reform efforts, must end—and must end immediately.

Time for Results also gives long overdue attention to children at risk, children primed for academic failure and en route to despair. The report is studded with concrete proposals to meet this challenge to America's economic security and national well-being. Time for Results outlines an action agenda that addresses the needs of children victimized by poverty, discrimination, and home environments that diminish self-esteem and stifle potential.

Time for Results offers proof positive that, as students, our nation's governors are astute. I would welcome them in my classroom. And although I have always been tough with grades, I would not hesitate to grant the governors high marks. I salute their performance.

What I witnessed during last week's National Governors' Association conference was nothing less than a tribute to the integrity of our nation's state leaders. I witnessed the triumph of public-spirited sentiments over mean-spirited partisanship. I particpated in a forum that renewed my hope as an educator and convinced me that all of us who serve in our public schools can count among our allies the chief state executives throughout our nation.

My time at the Governors' Association meeting convinced me that our state governors—regardless of political persuasion—now understand that teachers and principals, superintendents and school board members, are not "enemies" but rather the last best hope of all who are determined to transform a nation at risk into a nation prepared.

Our nation's governors are committed to action. They're ready to make tough decisions. They have elevated the people's mandate for fundamental reform above all political posturing. They have vowed to subordinate making headlines to making headway.

As the governors return to their home states, the task they confront is to mobilize the support of caring and concerned citizens. They know that meaningful results demand a continuation of the studiousness—the willingness to listen and learn—that they have so admirably displayed during the past year. I have no doubt that the governors are prepared for this challenge. And I can assure them that NEA members and our Association leaders in their states will be there—as zealous allies, as constructive critics, as grateful collaborators.

We NEA members, men and women who have dedicated our careers to our nation's public schools and our nation's children, will do our part. Not as yea-sayers. Not as nay-sayers. But as partners in the quest for a better America.●

REAUTHORIZATION OF FHA INSURANCE

● Mr. RIEGLE. Mr. President, as we approach the closing hours of the 99th Congress, each passing day shuts another door on our ability to take important legislative action.

One item that must not be allowed to fall through the cracks in a final rush to adjournment is extension of FHA's authority to insure home mortgages. That authority is due to expire at the end of this month—just over a week from now.

For the last year, Congress has repeatedly extended FHA mortgage insurance through a series of short-term, stop-gap measures. The result has been nothing less than shameful. FHA has been shut down six times—for a total of 51 days. And that unprecedented failure has occurrred at a time when demand for FHA insurance has been the highest in history.

Demand for FHA insurance remains high today. About 6,000 to 7,000 applications are currently being received every day. FHA mortgage commitments are running at $7 billion every month.

According to the Wall Street Journal of September 18, 1986, mortgage lenders now expect another large surge in home mortgage demand soon. If interest rates begin rising again, as many experts now expect, a rush of applications is likely.

I believe it would be grossly irresponsible to let FHA authority expire once again. The finances of tens of thousands of families would be thrown into turmoil as their mortgage closings are delayed or their commitments expire.

Each delay in an FHA mortgage rarely hits only the family applying for that mortgage. It usually creates a whole chain of disruptions in other home sales, as the delay in one mortgage closing causes several other closings to be put off—and some to fall through.

Each shutdown of FHA, therefore, hurts families who want to buy a home, families who are trying to sell a home, and families who want to refinance their mortgage to bring down their housing costs. This year's interruptions in FHA insurance already have affected an estimated 20,000 or more families in my own State of Michigan alone.

Another shutdown of FHA, which now looms dangerously close, would harm tens of thousands of additional families and businesses across the country. It would bring an outcry of even greater frustration and anger than we have already heard.

Another shutdown would disrupt home sales and home building. It would introduce more uncertainly and confusion to housing finance. It would harm the entire housing industry, one of the main engines of economic recovery. And it would inflict this harm just when some disturbing signs of weakness are already beginning to reappear in housing markets.

Another interruption must not be allowed to occur. One solution would be to give FHA permanent authority to insure home mortgages so that it can no longer be treated as a political football. I support that. In past years permanent authority was not necessary because Congress routinely acted to keep FHA mortgage insurance available to American homebuyers. Sadly, that has not occurred this past year. I therefore believe that, in this environment, permanent authority for FHA insurance should be provided.

Some feel the other body would vigorously oppose any such permanent authorization. I hope that is not the case, but if it is, FHA authority should be extended through the end of fiscal year 1987 at a very minimum. And that should be done soon to provide the stability and confidence that are necessary for a healthy market in home sales.

I therefore urge my colleagues to ensure early extension of FHA home mortgage insurance, and I call upon the Senate leadership to schedule floor action on this vital legislation so that it can be signed by the President before the end of this month.

SUPPORT OF FEDERAL CHARTER TO THE ARMY AND NAVY UNION OF THE UNITED STATES

● Mr. D'AMATO. Mr. President, I am pleased to rise today to lend my support to S. 1456, legislation granting a Federal charter to the Army and Navy Union of the United States of America. This veterans' organization, which the House of Representatives has already endorsed to receive a Federal charter, deserves the same support in the Senate.

The Army and Navy Union of the United States of America is the oldest veterans' organization of its type in the country. Now 8,400 strong, and with posts in 10 States including New York, New Jersey, Ohio, and the District of Columbia, the Army and Navy Union's membership is not limited to any particular form, date, branch, place, or nature of military service performed. It is an organization concerned about the health and welfare of all of America's veterans.

Founded in 1886, it was established to launch a coordinated effort to assist our soldiers returning from war—and indeed it has. Throughout its existence, the Army and Navy Union has labored hard for the enactment of fair and equitable laws to provide pensions, Medicare, and other vital benefits to veterans. Its members are all volunteers, freely giving their time and assistance to such needs as burial escorts and ceremonial honor guards at veterans' funerals and performing charitable work at VA hospitals.

The Army and Navy Union can be proud of a long and distinguished history of service to veterans and their dependents. It also can be proud of its long and distinguished list of members, both past and present, including 41 recipients of the Congressional Medal of Honor, President William McKinley, Supreme Court Justice Harold Burton, Senator Charles Dick of Ohio, and Nobel Peace Prize Laureate Dr. Ralph J. Bunche.

Mr. President, in times of war, the members of the Army and Navy Union came forward and risked their lives for the preservation of democracy. Today, they serve their communities in less dramatic, but equally important, ways. I urge my colleagues on the Judiciary Committee to report this legislation to the full Senate for speedy passage because it is time that these brave patriots receive the recognition this legislation would bestow, and which they have earned.●

A TRIBUTE TO CHARLES A. SEWELL

● Mr. D'AMATO. Mr. President, I rise today to deliver to the Senate and, indeed, to the Nation a sad message. Charles A. Sewell, the chief test pilot for Grumman Corp. and a distinguished retired Marine aviator, recently lost his life in a plane crash in Connecticut.

Chuck Sewell was a gifted aviator who loved to fly. He had logged over 10,000 hours of flight in more than 140 types of aircraft. After retiring from the Marine Corps, he joined Grumman as an experimental test pilot. His excellence as an aviator and as an individual elevated him to chief test pilot in 1971 and, shortly thereafter, to deputy director of flight tests in 1974.

Chuck Sewell had extremely high self-imposed standards of performance. His devotion to flying and dedication to excellence were as much a part of him at Grumman as they were during his distinguished military career.

Chuck Sewell spent 20 years as a Marine Corps fighter pilot, retiring as a lieutenant colonel. He flew 110 combat missions over Korea and another 220 over North and South Vietnam and Laos. His decorations were many and impressive: the Legion of Merit, 2 Distinguished Flying Crosses, 15 Air Medals, and 2 Purple Hearts.

He graduated from the U.S. Navy Test Pilot School in Patuxent River, MD. His pursuit of excellence never wavered, and after risking all for his country, he continued to give 100 percent of himself to his job as a civilian. He was awarded the 1973 and 1984 Kincheloe Award as test pilot of the year from the Society of Experimental Test Pilots. He won the 1974 Octave Chanute Award from the American Institute of Aeronautics and Astronautics, and in 1983, he was awarded the Lawrence B. Sperry Award from the Air Force Association. Chuck Sewell's most recent achievement was piloting the maiden flights of Grumman's forward swept wing experimental plane, known as the X-29.

Chuck was a man who loved life and loved his job—testing and flying airplanes. He felt he was the luckiest man in the world because people actually paid him to fly. He was often heard saying, "I'd rather fly than sit behind a desk—I can't think of anything I'd rather do than fly."

His untimely death is a tremendous loss of engineering skills and aeronautical engineering-management capability. In short, he was an outstanding citizen, a great patriot, a good family man, and an aviator par excellence. Our tribute to Chuck's memory is small recompense for his service to this country.

TARIFFS ON IMPORTED PASTA

● Mr. D'AMATO. Mr. President, I rise today as an original cosponsor of legislation introduced by my distinguished colleague from Pennsylvania. This legislation, which would reimpose tariffs on imported pasta, is essential in light of the fact that the European Community continues to illegally subsidize its pasta exports, despite a 1983 GATT panel decision that these pasta subsidies are in violation of the GATT Subsidies Code. United States tariffs on imported pasta were recently lifted when bilateral talks between the United States and the European Community produced an agreement on citrus.

Unfortunately, no settlement has been reached on the pasta controversy. The legislation which Senator HEINZ has proposed would tie United States tariffs on imported pasta to the actual European Community subsidy. This floating tariff would be adjusted monthly and would terminate when the illegal subsidies case.

As of September 1, 1986, the European Community pasta subsidies were at a record high of 16.2 cents per pound, almost 70 percent of the wholesale price of Italian imports. The elimination of United States tariffs in the face of record high subsidies poses a major threat to United States production of pasta since it could enable Italian producers to sell in this market at prices below the United States cost of production. It is critical that the United States-European Community dispute on pasta be resolved as quickly as possible. The domestic pasta industry will face serious injury if it must compete indefinitely with a product that is subsidized at more than two-thirds of the wholesale imported price.

Annual retail sales of pasta in the United States amount to over $1 billion; Americans consume approximately 2 billion pounds of pasta each year. The domestic pasta industry directly employs about 10,000 people in 24 States and thousands more in various supplier industries related to agriculture and food processing. My State of New York is home to many major pasta manufacturers. However, the industry can no longer compete against the treasuries of foreign nations and desperately needs the relief afforded by this legislation.

Mr. President, I implore my colleagues to consider this bill seriously and to give it the support it deserves. It is essential that our trade negotiators have sufficient leverage when they begin negotiating an agreement with the European Community concerning fairer trade practices.●

"MOTHERS FOR FREEDOM"

● Mr. D'AMATO. Mr. President, as Soviet Foreign Minister Shevardnadze was meeting with Secretary of State Shultz last Friday, a group of four women made their way through the Halls of Congress on an urgent mission. The four represent "Mothers for Freedom," a recently formed organization of 200 Israeli women whose sons and daughters have been denied per-

mission to be reunited with them by Soviet authorities. Many of these mothers have not seen their children for 10 years.

Their message is simple—let us enjoy our loved ones during our remaining years. Each of these cases is a human tragedy. They remind us that the Soviets continue to violate their human rights commitments under the Soviet Final Act and other international agreements. As Chairman of the Commission on Security and Cooperation in Europe. I urge my colleagues to support efforts such as those of "Mothers for Freedom" to bring about improved Soviet human rights compliance. As we prepare for the Vienna CSCE follow-up meeting, scheduled to open on November 4, it is important that we document Soviet violations.

Accordingly, Mr. President, I ask that a copy of a statement by "Mothers for Freedom" and a special appeal issued by Dr. Vanda Osnis, Asya Ploschanskaya, Frida Lemberg, and Katzia Rather be printed in the RECORD.

The material follows:

STATEMENT BY "MOTHERS FOR FREEDOM"

Over 200 mothers whose children are prisoners behind the Iron Curtain are waiting for their sons and daughters to be freed and return home. Half of them have not seen their children for more than ten years; some are elderly mothers of only children who were torn from them and are asking to see them in the autumn of their lives; other mothers were not so fortunate.

Eighty-four of the mothers joined together and founded "Mothers for Freedom" (mothers of refuseniks in the Soviet Union who were separated from their children). Together they are struggling for family reunification. Many other mothers did not join this initiative for fear that such activity would bring harm to their children.

Never was the consept of family reunification as immediate and direct as in the case of "Mothers for Freedom". They are asking to once again live with their sons, with their daughters—their offspring. They are seeking to reach public opinion around the world. They are certain that their struggle for family reunification will gain the support of all organizations that are engaged in humanitarian aide.

The attached booklet lists all the refusenik sons and daughters of "Mothers for Freedom" in the Soviet Union. It details the immigration request dates and the grounds for refusal cited by the Soviet authorities. Also included are descriptions of the injuries and the agonies undergone by the refuseniks who are waging their struggle behind the Iron Curtain.

The enlightened world cannot remain silent in the face of this human document. When "Mothers for Freedom" was created in order to act for the release of their children, the struggle on behalf of the refuseniks was lent a human dimension to which only the insensitive will be unwilling to lend a hand. The struggle of these mothers is the struggle of all mothers everywhere.

REFUSENIKS IN THE U.S.S.R. WHOSE MOTHERS LIVE IN ISRAEL

Abramovich Galina, MSSF, Bendery, 1979.
Achildiev Yisrael, Tashkent, 1978.
Aleshkovsky Iosif, Leningrad, 1980.
Averbukh Aron, Kistinev, 1980.
Bialy-Ratner Yudith, Moscow, 1977.
Bogomolny Binyamin, Moscow, 1972.
Borodiansky Mark, Kiev, 1972.
Braun Gelena, Mukachevo, 1975.
Brekhman, Eva, Kishinev, 1901.
Budman Efim, MSSR, Orgeev, 1979.
Doks Bella, Vinnitsa, 1979.
Drigant Boris, Moscow, 1979.
Edidovich Khaim, Riga, 1972.
Elbert-Mizrukhina Inna, Kiev, 1976.
Faingersh Michail, Kishinev, 1979.
Farber Elena, Bak, 1981.
Feldman Gennady, Minsk, 1976.
Finkelstein Salomon, Chernovtsy, 1972.
Fiskin Alexander, Moscow, 1982.
Fiskin Yuri, Moscow, 1978.
Frumker Michail, Chernovtsy, 1974.
Fuks Zinovy, Odessa, 1980.
Gimelfarb Oleg, Chernovtsy, 1978.
Ginovker Andrey, Novosibirsk, 1977.
Goldman Boris, Kishinev, 1979.
Grauer Mark, Chernovtsy, 1972.
Israilova Tamila, Azerb, SSR, Sumgait, 1980.
Israilov, Alexander, Derbent, 1979.
Kandinov Yakov, Tashkent, 1974.
Kaplan Yosef, Kishinev, 1978.
Karolin Yuly, Leningrad, 1976.
Katanov Leila, Tashkent, 1979.
Katz Tsilia, Kishinev, 1972.
Kazakovsky Faina, Lvov, 1978.
Khanukaev Izro, Derbent, 1982.
Kirpichnikov Tzvita, Mukachevo, 1979.
Koleminsky Anna, Ukr. SSR, Kolomiya, 1975.
Konstantinovskaya Dora, Gruz. SSR, Rustavi, 1981.
Kraitman Volf, Moscow, 1983.
Kravtsov Alexander, Moscow, 1984.
Kreidelman Leva, MSSR, Orgeev, 1975.
Kroitor Fania, Kishinev, 1979.
Kuperman, Eleanora, Kishinev, 1978.
Leiderman Grigory, Kishinev, 1976.
Leites Inna, Leningrad, 1979.
Lemberg Grigory, Riga, 1972.
Levin Grigory, Leningrad, 1977.
Levin Zakhary, Leningrad, 1976.
Levinson Roman, Minsk, 1980.
Lieberman Moisey, MSSR: Bendery, 1976.
Lobovikov-Rozhanskaya Inna, Leningrad, 1979.
Lozover Nadezhda, Ukr. SSR, Artsiz, 1978.
Lurie Yudith, Moscow, 1979.
Lvovsky Ada, Moscow, 1971.
Manashirov Yaangil, Derbent, 1975.
Markman Abram, Minsk, 1976.
Melamed Frada, Moscow, 1981.
Mermershtein Bertalon, Uzhgorod, 1984.
Mermershtein Vilmosh, Ivano-Frankovsk, 1980.
Moonblit Aaron, Kishinev, 1978.
Muchnik Naum, Ukr. SSR, Novoselitsy, 1979.
Osnis Marat, Chernovtsy, 1972.
Piskareva Margarita, Dnepropatrovsk, 1979.
Poliakova Larisa, Odessa, 1981.
Prepelitsky Srul, Kishinev, 1975.
Priven Ida, Mosk. Obl., Lubertsy, 1981.
Rabinovich Vladimir, Moscow, 1979.
Rakhlenko Yakov, Moscow, 1972.
Reingold Bella, Minsk, 1979.
Rosenstein Natalia, Moscow, 1973.
Saplitskas Bentsion, Donetsk, 1980.
Shapiro Lev, Leningrad, 1977.
Shaulsky Marina, Cheliabinsk, 1979.
Sherbaum Valery, Mosh. obl., Lubertsy, 1976.
Shifrin Semyon, Ukr. SSR, Zhdanovo, 1977.
Shvartsband Grigory, Riga, 1976.
Smirnova Manya, Leningrad, 1980.
Tabachnik Efim, Kishinav, 1977.
Tonkonogy Moisay, Odessa, 1973.
Uchital Ilya, Kiev, 1973.
Vaiser Ida, Beltsy, 1978.
Verteim Regina, Odessa, 1982.
Yakshina Lubov, Nakeodka, 1978.
Yusim Stalina, Leningrad, 1978.
Yuzefovich Ekaterina, Moscow, 1980.
Zapesochny Alexander, Leningrad, 1976.
Zaretsky Iosef, Moscow, 1978.
Zhizhimsky Iosef, Kishinev, 1979.

APPEAL TO LET OUR CHILDREN GO

We are four mothers appealling to you for the safe and immediate return of our sons and daughters. We ask only to be reunited with our beloved children so that we may once again have the chance to pass a word, share a smile, and know the warmth of an embrace from the children we brought into the world.

For some of us, it has been more than 14 years since we last had that joy. But it is impossible to measure the depth of our loss in terms of years. The time that has passed since we were with our children is immeasureable—it can never be replaced. Letters and photographs cannot begin to fill the emptiness we feel. We have not been allowed to share in the joy of a child's marriage, a grandchild's first steps, or his first day at school. Nor have we been able to come together, as a family does in times of crisis, to help one another through personal tragedy. We are broken women. Not a day, not an hour goes by when we can erase the thoughts of our children and their suffering from our minds. Not only are our children being held hostage, but so are we. There can be no normalcy in our lives until we are reunited with our loved ones.

We, four "Mothers For Freedom," represent over 200 mothers of "refuseniks." On behalf of all our sons and daughters, we ask that the Soviet Union abide by its signature to the Helsinki Accords and allow our families to be reunited. In this way alone will we again be made whole.

Our children are not criminals, nor do they hold states secrets. Their only crime is wanting to join their families in the land of their forefathers—Israel. We beg of you, do not deny them of this right. We beg of you, do not deny us of our lives.

Mothers, children:

Dr. Vanda Osnis—Kfar Saba, Israel, Marat Osnis & family.

Asya Ploschanskaya—Jerusalem, Israel, Natalia Rosenshtein & family.

Frida Lemberg—Tel Aviv, Israel, Grigory Lemberg & family.

Katzia Ratner—Rechovot, Israel, Judith Ratner-Bialy & family.

APPEAL FOR MARAT OSNIS AND FAMILY

I appeal to you with a request to help me be reunited with my only son, Marat Osnis, his wife, and their two children.

Marat and his family have been refused exit visas since March of 1972, more than 14 years ago. A computer engineer, Marat has not worked in his profession since 1971. His denial to emigrate was due to his so-called access to secret information at work. Marat never even held security clearance during his time there. Marat's wife, Klaudia, was expelled from the University in 1972, immediately after they applied to emigrate.

Since 1972, Marat and his family have been denied visas every six months. Once, he was told he would be allowed to leave after ten years had elapsed from the time

he held his computer position. It is now *14* years later and they are still waiting.

In March of this year, Marat's father, on the verge of death, underwent a serious blood vessel operation. Though Marat submitted medical certificates about his father's illness, so that he might come to his father's bedside, he was again refused permission to leave the Soviet Union.

The 14 years we have been in Israel have been years of tension and endless waiting. It is hard to describe the suffering of a mother separated from her only son and deprived of the natural right to being able to embrace her grandchildren. The separation from our son and his family has had serious repercussions on both our physical and mental health. Adding to our sorrow, during these past years we lost two of our near and dear ones: both my mother and brother passed away.

I appeal to you with a request to do everything possible to help us realize our dream—to be reunited with our son, daughter-in-law, and the grandchildren we have never seen, so that we may live in peace with them in Isreal.

Thank you very much for your help.

Sincerely,

DR. VANDA OSNIS,
Kfar Saba, Israel,
September 1986.
MARAT AND KLAUDIA OSNIS,
Ordzhonikidze 11, apt. 5
Chernovtay,
UKRSSR, U.S.S.R.

APPEAL FOR NATALIA ROSENSHTEIN AND FAMILY

I am appealing to you for your help in obtaining the release of my daughter, Natalia Rosenshtein, and her family, from the Soviet Union.

For nine long years, I have been separated from my only daughter and her family. Natalia, her husband Grigory, and their two sons have been waiting for exit visas to Israel since October of 1973. They have been refused on the gounds of being privy to "state secrets." Grigory, a cyberneticist, has not worked in his profession since 1972 and Natalia left her job as a landscape architect in 1971. Both have taken odd jobs in order to support their family.

Natalia and Grigory are among the leading Jewish activists in Moscow. They have signed numerous collective letters and petitions addressed to Soviet and Western officials on behalf of Soviet Jews who have been denied permission to emigrate to Israel. In 1978, Natalia helped organize a group of women "refuseniks" to protest to the Central Committee of the Communist Party their continued refusal to issue exit permits.

The Rosenshteins, a religious family, are constantly harassed by the KGB. Their telephone was disconnected, their mail is intercepted, they have been held under house arrest, and they are kept under close surveillance.

I have been living in Israel since 1977 when I received my exit visa. I have no close relatives in Israel—Natalia is my only daughter. I have two grandsons and three great-grandchildren whom I have never seen. The years pass by and my health is deteriorating. My only wish is to be reunited in Israel with my beloved family.

Thank you for your help in this very urgent matter.

Greatfully,

ASYA PLOSHCHANSKAYA,
Jerusalem, Israel,
September 1986.
NATALIA AND GRIGORY ROSENSHTEIN,
Butlerova 2/1, Apt. 69,
Moscow 117485,
RSFSR, U.S.S.R.

APPEAL FOR GRIGORY LEMBERG AND FAMILY

I, Frida Lemberg, appeal to you for help in my efforts to be reunited with my son, Grigory Lemberg, a resident of Riga. He is my only son still remaining in the Soviet Union.

My husband and I moved to Israel in 1978 after waiting six years for an exit visa. Grigory, who applied for an emigration visa together with us in 1972, was denied permission. Today, the authorities are still denying him his right to leave the Soviet Union, so that he may join his parents and two brothers in Israel.

Grigory served in the army from 1965 until 1967. OVIR claims he had access to secrets while in the army. However, as a mechanic, he served in a construction unit. After so many years, 19 years, could this possibly be a valid reason for denying him the right to leave?

We, his elderly parents, have been appealing to Soviet and Western leaders, and to international bodies, asking for help in our simple request: to be reunited with our son, so that we may all live together in Israel. How can we live normal lives when our son and his family are so far away and when we are denied their love and support?

We are no longer young. The years of waiting for our exit visas and the long years of waiting for Grigory to join us, filled with uncertainty and worry, have affected our health severely. We fear that we may never see our son again.

We therefore appeal to political leaders, to mothers and fathers, to all men of good will—help us! Help us to see our children again. Help us to live the rest of our lives in peace and quiet. Help us be reunited with our family!

Thank you for your concern.

Sincerely,

FRIDA LEMBERG.
GRIGORY AND LEILA LEMBERG.

APPEAL FOR JUDITH RATNER-BIALY AND FAMILY

I would like to tell you about the harsh difficulties endured by my daughter, Judith Ratner-Bialy, and her family, in their struggle for permission to come to Israel.

Judith and her family have been in refusal for more than nine years. The reason given for their first refusal was that Judith's husband, Leonid, worked as an electronics engineer in an institute where secret work was being done—even though he had nothing to do with this work. Leonid was fired from his job in 1971 when my late husband and I applied to OVIR for permission to make aliyah. Judith worked at a metallurgical institute of the Soviet Academy of Sciences after receiving a Ph.D. equivalent. She was fired from there in 1973 when my husband and I received our exit visas. Later, when she was reinstated at the institute, it was at a technician's level, at one-fourth a scientist's salary. Judith has not worked since 1977 when she and Leonid submitted their emigration application to OVIR.

In 1979, Judith was badly injured in an automobile accident while she was accompanying her elderly aunt to the airport, to leave for Israel. The older woman was killed instantly. Judith sustained multiple fractures in an arm and leg. She underwent five operations that year in order to correct the damage. Despite this, Judith is left with chronic pains, a leg which is now shorter by 4 centimeters, and limited use of her hand. She urgently needs an operation, since now her healthy leg is becoming deformed. The small disability pension which Judith received was abruptly cut off two years ago. Over the past six years, Leonid suffered four heart attacks. The last one was severe and he probably will not be able to return to work.

Finally, a word about myself, I am alone since my husband's death in 1978. I am 81 years old and suffer from several health ailments. It is very hard for me alone, without my daughter, son-in-law, and grandsons. We want each other and we need each other.

We have been separated from each other for 13 years. Separated, while our lives, theirs and mine, are full of each other. We want, more than anything else, to be together in Israel, their true homeland, which they love with all their hearts and souls, as do I.

Please try to help us, that we may be together again—now, while there is still time.

Thank you for your help.

Sincerely,

KATZIA RATNER.
JUDITH AND LEONID BIALY.●

ADULT LITERACY AWARENESS MONTH

● Mr. BINGAMAN. Mr. President, at this time I invite the attention of my colleagues to Senate Joint Resolution 358, a bill to designate September 1986 as Adult Literacy Awareness Month. I commend my distinguished colleague from Pennsylvania [Mr. HEINZ] for sponsoring this bill, which became Public Law 408 on August 17, 1986.

I feel it is of great importance to us all to be aware of the problem of illiteracy in our Nation today. It is estimated that 17 percent of graduating high school seniors are functionally illiterate, and that 55 percent of our Nation's 17-year-olds have trouble reading academic textbooks. These percentages increase in minority groups. In the country as a whole, according to the English language proficiency survey, there are approximately 17 to 21 million illiterate adults.

These statistics are staggering. It is difficult to understand how a child can graduate from high school not knowing how to read or write. It is also quite sad that so many Americans cannot read a newspaper or simple directions or a menu in a restaurant.

Illiteracy hurts not only the individual, but society as a whole. It often leads to drug or alcohol abuse, crime, and prison. We continually find a very high rate of illiteracy among people on public assistance and in criminal institutions. This creates a great financial burden on our society.

The problem of illiteracy does not stop with its victim alone. It can also hurt those close to him. Illiterate parents cannot contribute fully to the development and education of their children. Studies show that preschool-age children that are read to by their parents are more likely to have an interest in reading as they grow older. Therefore, an illiterate parent can impede the future literacy of the child. In addition, a parent who is unable to read school notices and reports about their child's academic progress further puts his child at a disadvantage.

There are no quick-fix solutions for the problem of illiteracy in America. But, public awareness of the problem is a necessary beginning to attack and eventually, eliminate illiteracy in our nation.●

NAUM AND INNA MEIMAN: THE FREEDOM TO LIVE

● Mr. SIMON. Mr. President, our great Nation is based on the theory of democracy. What does this mean to the citizens of the United States? It means freedom of choice: to choose our Government's leaders, to choose our place of residence, to choose to practice any religion or none, to choose our profession, to choose medical treatment and doctors. In sum, democracy means the freedom to live.

Soviet Jews living in the Soviet Union do not have any of these liberties. My good friends, Naum and Inna Meiman, have been attempting to emigrate to Israel for more than a decade. Although the Meimans have not broken any laws, they are treated like common criminals. Their home has been ransacked, their telephone has been disconnected, and they have been followed when leaving their apartment.

The Meiman's quest to emigrate is crucial. Inna is deathly ill with cancer. After removing four tumors from Inna's spine, the Soviets say that there is nothing more they can do. Experimental treatment does exist in the West, but the Soviet Government has not yet granted them a visa to obtain the treatment.

I strongly urge the Soviets to permit the Meimans to emigrate to Israel.●

□ 2350

ORDER OF BUSINESS

Mr. SIMPSON. Mr. President, I inquire of the Democratic leader if he has any further business to conduct.

Mr. BYRD. I do not believe the distinguished acting Republican leader is propounding a request.

Mr. SIMPSON. At the early part, I thought that was granted.

Mr. BYRD. I thought it was also.

The PRESIDING OFFICER. To the extent that the statement of the acting Republican leader was advisory, that would not be included in the unanimous-consent request.

Mr. BYRD. I thank the Chair. I thank the distinguished acting Republican leader.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SIMPSON. Mr. President, in accordance with the previous order I move that the Senate stand in recess until the hour of 9:30 a.m. on Wednesday, September 24, 1986.

Thereupon, at 11:50 p.m., the Senate recessed until tomorrow, Wednesday, September 24, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 23, 1986:

THE JUDICIARY

Douglas H. Ginsburg, of the District of Columbia, to be U.S. circuit judge for the District of Columbia Circuit, vice J. Skelly Wright, retired.

Alex T. Howard, Jr., of Alabama, to be U.S. district judge for the Southern District of Alabama vice a new position created by Public Law 98-353, approved July 10, 1984.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rear Adm. Wesley V. Hull. NOAA, to the grade of rear admiral while serving as Director, Charting and Geodetic Services, National Ocean Service, National Oceanic and Atmospheric Administration.

IN THE COAST GUARD

The following Regular officers of the U.S. Coast Guard for promotion to the grade of captain:

James A. Sanial, Jr.
Gerald J. Zanolli
Roger G. Love
Charles G. Hill, Jr.
Stanley E. Burgess
Gerard Barton
Joseph J. McClelland, Jr.
John E. Williams
Richard R. Cottingham
Ronald L. Blake
Robert A. Melvin III
John C. Maxham
John F. Milbrand
Dennis J. Shaw
Michael C. Grace
Richard E. Peyser
Joseph R. Hoosty
Robert S. Duncan, Jr.
John C. Carney, Jr.
Harry H. Dudley
Jerald H. Heinz
Donnie D. Polk
Jonathon Collom
Harry W. Tiffany
Kenneth J. Allington
John G. Busavage
Anthony C. Alejandro
Joseph O. Bernard
Stanley Winslow
Eric J. Staut
John R. Felton
Edward J. Barrett
Henry D. Jacoby
James T. Robertson
David F. Withee
Donald F. Murphy
Ronald J. Marafioti
Richard P. Oswitt
Gerald L. Underwood
David A. Jones
Jeffrey J. Hamilton
Richard W. Wright
Philip J. Cardaci
Paul E. Busich
Kenneth C. Hollemon
Imants J. Leskinovitch
John L. Parker
Robert J. D'Pezio
Kevin J. Barry
Richard B. Franks III
Charles B. Newlin
William Y. Clark II
Francis X. Owens
Robert C. North
William E. Wade, Jr.
Henry J. Dresch
Terry W. Sinclair
Brian C. Sonner
Robert F. Powers
Fred L. Ames
James M. MacDonald

The following Reserve officers of the U.S. Coast Guard to be permanent commissioned officers in the grade indicated:

To be lieutenant commander

Don M. Wrye

To be lieutenant

George M. Flood
Donald L. Gaskill
Laroy E. Cadiz

To be chief warrant officer

John N. Herlong
Raymond J. Leyko

The following-named officer to be a permanent commissioned officer in the Coast Guard having been found fit for duty while on the temporary disability retired list in the grade of lieutenant commander:

William A. Danner

IN THE NAVY

The following-named officer, under the provisions of title 10, United States Code, section 5150, to be reappointed as Chief of Naval Research.

Rear Adm. John B. Mooney, Jr., xxx-xx-x... [redacted]/1120, U.S. Navy.

IN THE MARINE CORPS

The following-named Marine Corps Enlisted Commissioning Education Program graduates for permanent appointment to the grade of second lieutenant in the U.S. Marine Corps, pursuant to title 10, United States Code section 531:

Ronnie A. Crawford, xxx-...
John A. Decato, xxx-...
Blayne H. Spratlin, xxx-...

EXTENSIONS OF REMARKS

DRUG BUST: EDITORIALS RAID DRUG BILL

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mrs. SCHROEDER. Mr. Speaker, a couple of weeks ago the House voted on an omnibus drug package. When the bill came to the floor, it was a good bill with strong drug enforcement and drug education provisions. Unfortunately, some Members took advantage of the political season and piled on amendments that went far beyond the scope of the bill and the Constitution.

To the Members who resisted this political stampede, I salute you. While your opponents may take cheap shots at your vote, know that editorial boards from around the Nation are applauding you for standing up for a sensible drug policy.

I submit two editorials from the two Denver papers:

[From the Denver Rocky Mountain News (CO), Sept. 18, 1986]

WASHINGTON'S SOLUTION TO DRUGS SMACKS OF A POLITICAL STAMPEDE

Few sights are as unedifying as packs of Washington politicians baying in pursuit of an issue less than two months before an election. The spectacle is on now and its title is "Our War Against Drugs."

Quite simply, the idea is that this will help a candidate to declare on the bustings: "I voted against drug abuse." And thus no lack of money or risk of bad law will stop the president and Congress from rushing through a drug bill.

To her credit, at least one member of the Colorado delegation has resisted the stampede. Rep. Pat Schroeder has taken a close look at President Reagan's plan to test tens of thousands of federal workers for drugs and found it wanting. Given the scope of testing sought by the president, she says, the program could cost $300 million and not the $56 million Reagan has suggested.

For that much money Congress could double the size of the U.S. Drug Enforcement Agency, Schroeder argues.

Why the high cost? In part because the president has defined employees in "sensitive" jobs—those eligible for drug tests—as people dealing with national security or classified information, those appointed by the president, whose work affects public health or safety, and those whose position requires "a high degree of trust and confidence." By such standards, over a million workers might be required to hand over a urine specimen for analysis.

The tests themselves won't be the only cost, either. Treatment will follow for some employees and many others will no doubt file lawsuits whether or not they're guilty.

And for what purpose will all this money be spent and suspicion generated? There is no evidence that drug abuse is growing among federal workers. Quite the contrary. Since the use of all illegal substances except cocaine has been on the decline nationally for the past five or six years—despite hysterical statements to the contrary by politicians—use among federal workers has probably been declining, too. Unfortunately, our elected officials are several years late in launching their crusade.

This is not to argue against all drug tests. There are sensitive jobs—those involving spying and intelligence, for example—where the government should not risk having a single employee dependent on drugs. Moreover, tests for drugs should be required whenever probable cause exists that an employee has been using them.

Blanket testing of the sort proposed by Reagan, however, is an overreaction so long as most drug use is on the wane. Among other things, widespread mandatory tests would poison the work atmosphere, submit innocent employees to personal indignity and foster the notion that employers may indiscriminately probe into the personal life of their workers.

To be fair, Congress hasn't been much more restrained in its approach to the drug problem. Some bits and pieces in congressional proposals could be useful, such as cracking down on launderers of drug profits and continuing to educate youths on narcotics' dangers. But other provisions are wasteful or useless: A White House conference on drugs (yes, another one), a study on drug-use and highway safety (it causes accidents) and appointment of an anti-drug "czar" (our last czar was for energy and we promptly got gasoline lines).

A more sensible way to crack down on drugs is to insist on heavier penalties for dealers and some categories of users, beef up border patrols, treatment programs and educational efforts; and continue to marshall peer pressure in all social settings, from school to executive parties. Drug use is undoubtedly a scourge in the United States, but progress against it has already begun. Further success doesn't depend on the draconian solutions now advocated.

[From the Denver Post, Sept. 14, 1986]

DRUG BILL IS "LEGISLATIVE EQUIVALENT OF CRACK"

The three-year, $4 billion package of anti-drug measures passed by the House of Representatives last week was well described by Massachusetts Rep. Barney Frank as "the legislative equivalent of 'crack.' There is a short-term high, but some dangerous long-term consequences."

Sadly, most of Frank's colleagues aren't worried about the long term, but the next term—the term they hope to win in November by boasting now about how "tough on drugs" they are.

The problem with both the House bill and much of the Reagan administration's own anti-drug rhetoric which preceded it is simply that this "war" on drugs apparently contains more talk than attack. There are, of course, some good things in the bill, notably increases in the budget for law-enforcement agencies, efforts to improve drug-abuse education and treatment programs, and greater efforts at eradication of foreign crops. But overall, the bill lacks a sense of strategy and purpose—because no one took the time for an informed discussion of how a truly effective anti-drug campaign should be waged.

As a voice that has long crusaded against drug abuse, we have a question for these born-again, anti-drug zealots: namely, "Where have you been for the last 20 or 30 years?"

We're no friends of "crack." But is it really all that much more frightening than LSD, amphetamines and the other drugs that have filtered through American society since the '60s? In a few short years, our politicians have gone from promising to "decriminalize" marijuana to boasting of the fact that the new drug bill calls for the death penalty in certain circumstances.

The cold fact is that there is no sudden and spreading drug epidemic. The only thing different in 1986 from 1985 is that a few faddish news magazines and television shows discovered a new "trend," the cocaine derivative known as "crack"—and gave it the same breathless hype they give everything from a new Hollywood starlet to Cabbage Patch dolls. Instead of questioning the lack of sober statistics demonstrating an upswing in illegal drug traffic or in the numbers of addicts, Congress simply threw a few billion dollars and a torrent of rhetoric at the problem.

America has a serious problem in illicit and dangerous drugs and alcohol abuse. But the election-year special cobbled up by the House and the administration in response to this latest mass media feeding frenzy does nothing to provide the serious answers we need before we can make real progress against the enemy within our nation's veins.

WORKERS HONOR EMPLOYERS IN UNIQUE LABOR DAY CELEBRATION

HON. THOMAS J. TAUKE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. TAUKE. Mr. Speaker, it was my pleasure to participate in a unique labor celebration during the recent Labor Day weekend. In my hometown of Dubuque, IA, a group of dedicated employees decided to honor the employers of their company rather than honoring their own work efforts.

Early this year, two employees of the H&W Motor Express Co. in Dubuque, came into my distirct office to get my feedback on an idea they had to honor the 60th anniversary of the firm. They wanted to throw a Labor Day celebration to honor the two widows of the company's founders. And they wanted their fellow employees, not the company to pick up the tab—including the purchase of an $80,000 chrome-wheeled, top-of-the-line tractor-trailer.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

The excitement that Wayne Strohmeyer, who has been with the firm 14 years, and Fred Roling, a 13-year veteran of the company displayed, caught not only my attention, but the attention of their fellow workers. The pair visited all 18 of H&W's terminals in seven Midwestern States to sell employees on donating $300 each for the rig and celebration. The result: 87 percent of the Dubuque-based trucking company's 450 employees donated to total of $137,000.

On August 31, the dream that these two dedicated employees had described to me became a reality. In Dubuque's Five Flags Auditorium the keys to a brand new tractor-trailer were presented to Marie Haas and Mary Wissel, the 78-year-old widows of the company's two founders, Urban J. Haas and Cyril Wissel. Both Marie and Mary serve as vice presidents on the corporation's board of directors and work in the office on an almost daily basis. The new rig will haul freight just like the rest of H&W's 900-unit fleet.

Moreover, some 700 H&W employees, retirees and spouses took part in the 3-day celebration that Wayne and Fred spent 1,500 hours of their own time organizing over the past 18 months.

Mr. Speaker, I had the honor of taking part in the employees' presentation of the tractor-trailer to their employers. And I had the unique privilege of experiencing firsthand the fruits of accomplishment that can be achieved through good labor-management relations.

I was genuinely moved when the employees of H&W, under Wayne's and Fred's leadership, stood up, shouted, and applauded their appreciation to their employers when the rig was presented. It illustrated to me what the American dream is all about—working together to accomplish a common goal.

I commend to my colleagues the following article which appeared in the August 31, 1986 issue of the Dubuque (IA) Telegraph Herald, "Hats Off—H&W Workers To Honor Their Employer."

HATS OFF—H&W WORKERS HONOR THEIR EMPLOYER

(By Rich Kirchen)

This Labor Day weekend, the employees of H&W Motor Express Co. are turning the tables.

Instead of honoring their own work efforts, they're saluting their employer—in a big way.

How big?

As big as the chrome-wheeled, top-of-the-line tractor-trailer they will give the company this evening in ceremonies at the Five Flags Center in downtown Dubuque.

As big as hiring country singer Janie Fricke to sing after tonight's private banquet.

As big as raising $300 each for the truck and events from 87 percent of the Dubuque-based truckers' 450 employees.

"It is unusual," says Urban R. "Skip" Haas, president of H&W. "I'm not aware of any other trucking companies that had this happen to them."

H&W employees credit the company with paying good wages—perhaps second only to Deere & Co. among Dubuque employees—and providing job security. They say although the company has grown over the years from a small family operation, some of the family heart remains.

The three days of activities result largely from the perseverance of two H&W truck drivers, Wayne Strohmeyer and Fred Roling, who donated 1,500 hours of their own time to raise $137,000 and organize the event.

Strohmeyer, 47, who has been with H&W 14 years, and Roling, 45, a 13-year veteran, both have fond memories of working for one of the company's founders, Cyril Wissel, who died in 1976. The other founder, Urban J. Haas, died in 1961.

H&W has about 130 employees in Dubuque based at offices and a terminal and garage at 3000 Jackson St.

Strohmeyer got the idea to buy the truck a few years back when Delta Air Lines employees bought their company a new jet.

Strohmeyer and Roling visited all 18 of H&W's terminals in seven Midwestern states to sell employees on donating $300 each for the truck and celebration. It took prodding, and some workers refused to participate, but most of the employees—both union and non-union—responded.

The twosome also negotiated with manufacturers for a good deal on the gift truck's engine, cab, tires and trailer. They say the truck is worth $90,000, but won't disclose how much they paid.

The names of all current and former H&W employees who contributed to the truck fund appear as decals on the side of the red-and-white trailer. H&W will use the truck to haul freight, just like the rest of its 900-unit fleet.

About 700 H&W employees, retirees and spouses were expected for the weekend activities, which opened Saturday with an all-day picnic at Swiss Valley Park southwest of Dubuque.

Saturday night, the group socialized and danced to live music at Five Flags Center. Today's activities include brunch aboard the Mississippi Belle II, prime rib banquet at Five Flags, Fricke in concert and more dancing. Monday, H&W employees will march in the Dubuque Labor Day parade downtown at 10 a.m.

Marie Haas and Mary Wissel, both 78, widows of H&W's founders, say they're overwhelmed by the employee salute. The women serve as vice presidents on the corporations's board of directors and work in the office almost daily.

"Our appreciation of what they've (the employees) done is just unbounded," says Marie Haas.

"I just can't believe it, but it's reality now," says Mary Wissel.

Urban J. Haas and Cyril Wissel founded H&W nearly 60 years ago in the back of Wissel's Meat Market at 19th and Jackson streets.

Through the 1950s and 1960s, H&W grew by buying other trucking companies and expanding its service territory. Acquisitions continued into the early 1980s.

H&W has survived deregulation of the trucking industry, which broke many smaller trucking firms, with its operations orientation and pricing acumen, says Skip Haas. H&W is a common carrier, serving customers including FDL Foods Inc. and the John Deere Dubuque Works.

H&W has been able to maintain its relatively high wages during deregulation while other trucking firms sought wage concessions. Haas says. The company's latest contract with the Teamsters union has truck drivers' wages at $14.21 an hour.

Tom Dougherty, 61, who retired as an H&W trucker in December, says Haas and Wissel "had a heart" for their employees and understood the problems of truck drivers.

Leo Neuses, a mechanic for 32 years, recalls how the company would "help you along a bit" if an employee was short on cash.

Mechanic Gary Treirweiler, with H&W for 14 years, says if a trucker couldn't drive because of an injury, the company would try to find an off-the-road position instead of "throwing you out the door."

In recent years, increased competition in the trucking industry and tougher union-management stands have strained relations between the company and union, some employees say. But employees still consider H&W "a good outfit to work for," as Neuses says.

Says Trierweiler, "They've been good to me."

NATIONAL FIREFIGHTERS DAY

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. ASPIN. Mr. Speaker, as National Firefighters Day, October 8, approaches, I would like to take this opportunity to thank the cosponsors of House Joint Resolution 479. Without their support, this much deserved day of recognition would never take place.

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DRUG FRENZY

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. EDWARDS of California. Mr. Speaker, as we witnessed the consideration of the omnibus antidrug bill 2 weeks ago, many Members knew that the people of this country were being ill-served by amendments that ran roughshod over civil liberties and other longstanding constitutional principles, but few were willing to risk being labeled soft on drugs. In the aftermath, editorials from across the country have expressed dismay at the outcome, calling it election year posturing. The Washington Post, USA Today, and my own hometown newspaper, the San Jose Mercury News, among others, have criticized amendments on the death penalty, the use of the military, or the use of illegally seized evidence as dangerous and unnecessary overractions. I submit these editorials for the RECORD:

[From the Washington Post, Sept. 16, 1986]

CLINKERS IN THE DRUG CRUSADE

The momentum of the war against illegal drugs is growing. Over the weekend, President and Mrs. Reagan made a joint television appearance exhorting the public, in a sensible way, to help "create an outspoken intolerance for drug use." "I implore each of you," said Nancy Reagan, "to be unyielding and inflexibile in your opposition to drugs." The speech was followed by a press release from Education Secretary Bennett's office describing a booklet the department has prepared for schools. It offers suggestions that are tough and practical and will be helpful to parents, teachers and administrators who want to do something about drugs in school.

On Monday, the administration sent legislation to the Hill, and the president signed an executive order. We will have more to say later about both. For now, our concern is on the speed of this juggernaut, our fear that not enough time and consideration are being given to each aspect of the various legislative packages and our strong opposition to some of the amendments adopted by the House. It must have been hard to stand up to the pressure there when politically popular legislation was being considered. In two days of misplaced fervor members outdid each other in excoriating narcotics traffickers and piling on the penalties. The way things were going, if someone had offered an amendment to execute pushers only after flogging and hacking them, it probably would have passed. But while legislators were making a pre-election record of how tough they could be on this issue, thoughtful consideration and respect for civil liberties were put on hold.

It may or may not be a good idea to increase the national effort against illegal drugs by billions. But because the package was put together in six weeks and rushed through the House in two days, it's hard to know whether each item in the bill is really needed, worth the money or—most important—will work. But it is clear that some provisions are terrible. Those who favor the death penalty and a significant change in the exclusionary rule succeeded in putting both on the bill. The president's package asks for similar legislation. Members also directed the president to use the armed forces in the criminal law enforcement effort. This far-reaching decision was made after minimal debate and against the advice of responsible administration officials.

Substantial minorities voted against the most controversial amendments. But when the chips were down, only 16 members had the guts to vote against the final bill. Rep. Philip Crane opposed on budget grounds and 15 Democrats objected for civil liberties reasons. They are: Reps. Clay, Conyers, Crockett, Dellums, Edwards of California, Frank, Gonzalez, Lowry, Mitchell, Roybal, Sabo, Savage, Stokes, Weaver and Weiss. They may take some heat in the coming political campaign, but they were right.

[From USA Today, Sept. 15, 1986]

LET'S ALL GET MAD, WIN WAR ON DRUGS

We're mad as hell about drugs. And we want to do something about it. Now.

In that fighting spirit, President and Mrs. Reagan Sunday night urged us all to join them in the war against drugs.

And the House of Representatives, responding to public indignation, last week passed a sweeping anti-drug bill.

Why are we rushing to the front lines now?

Because the public, like a slumbering giant rudely awakened, wants action. Polls indicate most people worry more about illegal drugs than anything, even the threat of war.

In short, people are fed up. They're weary of drugs sold on streets and in schoolyards. Parents are tired of worrying about their children. They're repulsed by huge fortunes reaped by scum who sow suffering and death.

Drugs are everywhere. Here's a one-day sample:

Two New Mexico children, like a California girl earlier, turn in their parents for drug possession. At the University of Virginia, more than half the undergraduates say they've tried illegal drugs. In Manville, N.J., two councilmen are accused of running a drug ring. In Dade County, Fla., a 21-year-old man is charged with a dozen crimes in 10 days to feed his habit.

The cost in human misery is discouraging: Drug-related deaths doubled from 1983 to 1985. The financial cost is dismaying: As high as $110 billion each year in crime, health care, and lost productivity.

Yet, in the face of all this evidence, there are those who ignore the facts. They wouldn't fight drugs, they'd quit and legalize drugs. Well, they deserve to be ignored.

Our elected representatives have gotten the message. Their reaction is the House bill that would turn our soldiers into narcs and allow illegally obtained evidence to be used in court. That is an overreaction. Those provisions need to be reconsidered.

Individual rights must be preserved. Where there's a threat to health or safety and clear evidence of drug use, employers have a right to require drug tests. But all drug testing must be very carefully monitored to prevent abuses.

Drug tests aren't perfect. That's why wholesale testing will do more harm than good. And the case has not been made that it's necessary to require drug tests for the majority of federal workers.

A limited role for the military is appropriate, but if soldiers are turned into full-time drug cops, they'll have a hard time defending us. And if evidence is used in court, it must be obtained legally.

Yes, drug abuse is an epidemic. But it demands responsible, rational solutions—not hysteria.

To be effective, we must attack the drug problem from all angles: Cut off supply, eliminate demand. That means more police officers, more judges, and more jails. It means more education about the dangers of drugs, more counseling, and more rehabilitative services.

Yes, we can win this war. But to do it, let's get mad, not go crazy.

[From the San Jose Mercury News, Sept. 17, 1986]

HIGH ON CRUSADING

The Reagans have called on the nation to slay the drug monster. Sunday night's sermon was sensible; Monday morning's crusade less so.

Obviously, a homily from the First Family won't inspire drug abusers to cast cocaine from their lives, but that does not make the sermon useless. Encouragement from the White House can strengthen the resolve of parents and school administrators to get tough on drugs and shame the news and entertainment industries to stop glamorizing drugs.

Drug abuse blights individual lives and economic productivity. Society should fight it with police and public opinion.

Among politicians, the public opinion battle has been won, and the victors are running riot. It's not enough just to be for action. It has become a crusade, and damn the consequences to civil liberties, the budget deficit or any rational relation of means to ends.

The House has passed a bill that would use the military to seal the borders, allow courts to consider illegally seized evidence and authorize the death penalty for drug-related murders.

The president followed up his speech with a proposal for mandatory testing of as many as 1.1 million federal employees, and increased allocations for law enforcement, treatment and education programs.

These get-tough solutions ignore constitutional problems with using the military and with the suspension of search-and-seizure protections.

Mandatory testing fosters an atmosphere of suspicion and institutes a guilty-until-proved-innocent standard.

There are technical problems as well. The error rate on drug testing is at least 3 percent. If 1.1 million federal employees are tested, 33,000 are going to get a faulty test result. The test will make no determination whether their drug use affects their job performance.

Forgotten in the anti-drug high is America's previous experience in outlawing a widely used drug that caused grave social problems.

"Alcohol is the drug which causes the greatest range of acute and chronic medical and social problems," says the White House Drug Abuse Policy Office. Lost in the hysteria generated by politicians and the news media is the fact that drug use is not at its peak in this country.

With the exception of cocaine, a survey of college students for the National Institute of Drug Abuse found that use of illegal drugs on college campuses has declined since 1980.

The federal Alcohol, Drug Abuse and Mental Health Administration has found no increase in drug users.

Research shows that the number of users of cocaine also has remained steady—about 17 percent had used it within the past year. Those users, however, are taking heavier doses and more potent formulations, like crack. As a result, cocaine-related deaths and illnesses have tripled.

The amount of cocaine smuggled into the United States in 1985 was four times that smuggled in 1980, the Los Angeles Times reported.

That is all cause for concern, not panic. The president continues to emphasize reducing the supply of drugs, proposing an additional $500 million for drug interdiction at the border. The interdiction budget already had been nearly doubled from 1982 to 1985.

Drug patrols and big drug banks are visible and popular. They also have the advantage of suggesting that America's drug problem is solely the result of smugglers and pushers luring Americans into the drug den. But the supply is only there because the demand is there.

Reducing demand is a slow process of treatment and education and shifting public opinion. On Monday, Reagan proposed $250 million to boost drug treatment and education programs. His administration had cut those programs almost in half since 1982.

Nancy Reagan's "Just say no" is the expression of an attitude that needs to be translated in policy. It has the virtue of recognizing that the blame for America's drug use lies with Americans.

THE STATELESS OF CYPRUS

HON. MARK D. SILJANDER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. SILJANDER. Mr. Speaker, last week, Rauf Denktash, leader of the Turkish Cypriot community visited the United States. The Wall Street Journal accurately captures the significance of this event.

I commend this editorial to the attention of my colleagues.

THE STATELESS OF CYPRUS

When President Rauf Denktash of the "Turkish Republic of Northern Cyprus" arrived in the U.S. last week, he and his entourage were given visas stamped "stateless persons." That is because the U.S. recognizes only the Greek Cypriot government. The U.S. should reconsider that policy.

The problem of Cyprus can be summed up in two words, Andreas Papandreou. The last thing the socialist Greek premier wants is a resolution of the island's differences. He would lose his opportunity to accuse Turkey of devious intentions, which he does to distract Greeks from their decrepit economy. Just as important, he would lose the collusion of the U.S. Congress. Since Turkey's 1974 military intervention, U.S. aid has been held to a 10:7 ratio for Turkey and Greece. That allows Mr. Papandreou to influence military aid to Turkey by not making full use of his own.

Cyprus is not Lebanon nor Northern Ireland. The Turkish intervention effectively separated the island's two nationalities who, for 14 years, had been periodically pitted against each other by a succession of demagogues. The Turkish minority—about 20%—is not asking for equal government representation. It wants the system promised by the 1960 independence constitution that was signed by Britain with Greece and Turkey as guarantors. This would still give Greeks the presidency and the upper hand in the legislative bodies. If Turkish rights could be secured, Mr. Denktash would be willing for his government, now recognized only by Turkey, to be temporary.

It is one of the great myths of our time that Turkey is behind the troubles. Athens, not Ankara, is the enemy of Cyprus. In 1974, the Greek colonels staged a coup on the island to encourage mainland interest in unification. They replaced Archbishop Makarios with a convicted pro-unification terrorist. This led to bloodshed and the arrival of troops from Turkey. A Greek appeals court in 1979 said that, "Turkey, as one of the guarantor powers, had the right to fulfil her obligations. The real culprits are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention."

Mr. Denktash told Journal editors that his problems are not so much with current Greek Cypriot leader Spyros Kyprianou as with Mr. Papandreou, who has blocked all compromise proposals by U.N. Secretary General Perez de Cuellar. Mr. de Cuellar proposes more talks this month, but Mr. Papandreou says he wants an international conference instead. Coincidence no doubt, but the Soviets have seconded the motion for a conference. Their goal is to remove Turkish troops and two British bases that are major Middle East listening posts for the West.

The Greek Cypriots have nothing to gain from a divided economy, which has reduced trade between the two communities to smuggling. Nor is it in their interest to edge, along with Mr. Papandreou, toward the outer limits of NATO. Nicosia has bravely jailed terrorists who murdered Israeli tourists and has helped with U.S. military maneuvers in the area.

The Greek colonels should have taught Mr. Papandreou that the jingo approach to Cyprus won't save a faltering government in Athens. But so far he hasn't taken the hint.

The U.S. should recognize the Denktash government while encouraging the Greek Cypriots to separate themselves from Mr. Papandreou. This could be just the stick to prod Athens into letting Cyprus be Cyprus.

TRIBUTE TO NELLO BONACCI

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 22, 1986

Mr. SMITH of New Jersey. Mr. Speaker, it is a great pleasure for me to report that Nello Bonacci, chairman and chief executive officer of AAA Trucking Corp., Hamilton Township, Mercer County, has been named 1986 "New Jersey Motor Truck Association Man-of-the-Year." Mr. Bonacci will be honored by NJMTA at a dinner-dance on Saturday, September 27, at the Pines in Edison NJ.

Nello Bonacci is the sixth son and seventh child of Eugene and Rose Bonacci. He and his brothers, Harry, Marius, Albert, Charles, and Samuel, founded Bonacci Express Co., forerunner of AAA Trucking Corp., in 1931.

A U.S. Army veteran of World War II, Nello Bonacci rose in AAA Trucking Corp. and in 1971 was named assistant to the president. In this capacity, he assisted his brother Charles in the day-to-day operations of the growing interstate truck operation.

After the death of Charles Bonacci in 1975, Nello assumed the presidency of the corporation. The revenues of AAA Trucking Corp. have grown consistently during his tenure as president and more recently as chairman of the board, continuing a remarkable record of 51 years of profitable operations. A veteran of 55 years in the trucking business, Nello Bonacci today continues active administration of AAA Trucking Corp.

As active and successful a businessman as Nello Bonacci has been for more than five decades, he has always found time to serve his community. In addition to his numerous memberships in trucking associations, Nello Bonacci has been very active in the Saint Ann's—Lawrenceville—building fund campaign.

Nello Bonacci has also been a strong supporter of the George Pellettieri Home for the Aged, Boys' Towns of Italy, the Fermi Federation, and the Congress of Italian-American Organizations. He is also a past member of the Knights of Columbus Lawrenceville Council No. 7000, and Lawrenceville Elks Lodge No. 2412.

In 1950, Nello Bonacci married Mary Cingolani. Their son Gary was born a year later. Nello is the grandfather of Gina and Nicole, daughters of Gary and Elizabeth Bonacci.

Mr. Speaker, I am proud to call Nello Bonacci, Gary Bonacci, and other members of the Bonacci family my friends. Nello has instilled in Gary his commitment to service—both to AAA Trucking Corp. and to the larger community.

AAA Trucking Corp. is a vibrant part of the business community in central New Jersey. They employ hundreds of people and provide valuable services to businesses and consumers. It is, therefore, very fitting that the man who is largely responsible for this success story—Nello Bonacci—is being honored as "Man-of-the-Year" by the New Jersey Motor Truck Association.

Nello Bonacci, along with his family, friends, and associates, has every reason to be proud of his outstanding accomplishments. I share those proud sentiments, as I wish Nello Bonacci and his outstanding company continued success and much happiness.

PLIGHT OF CUBAN POLITICAL PRISONERS

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. RICHARDSON. Mr. Speaker, today, I would like to bring to the attention of my colleagues the continuing plight of Cuban political prisoners. The recent release of approximately 65 political prisoners and their family members, totaling 111 people, is an action to celebrate. We must not forget, however, the tragedies of the many, many other Cubans who want nothing in life but to be free. The publication of Armando Valladares' powerful book, "Against All Hope," clearly and graphically illustrates the horrors of Castro's prisons. The plight of people imprisoned there, as well as those former Cuban political prisoners who have fled Cuba for other countries cannot and should not be ignored. To many of these people, the United States stands as a beacon of freedom in the darkness of their imprisonment. It is therefore with great sadness that I point out to my colleagues the administration's untenable position regarding many Cuban political prisoners. For example, the administration will not grant visas to Cubans who have escaped from Cuba to other countries such as Mexico or Panama. This policy slams the door on these people, and in effect, turns them back over to Castro.

I believe that this policy is unfair and cruel. I hope to offer an amendment to the Immigration bill which would address this problem. My amendment would prevent the Immigration and Naturalization Service from denying visas to the United States to Cuban political prisoners who have left Cuba for other countries. I urge my colleagues to support this amendment. The Cubans have suffered enough—we should open our doors to these political prisoners who have experienced such adversity, and who yearn for the freedom which this country offers.

I respectfully request to have two relevant articles on Cuba submitted for the RECORD. These articles, one by Wayne S. Smith and one by Frank Calzon, recently appeared in the New York Times. They are thought-provoking, and I urge my colleagues to read them carefully. Thank you.

WHAT TO DO ABOUT THE CUBANS

LET MORE COME HERE

(By Wayne S. Smith)

WASHINGTON.—It is 1965. An East German family has bribed a guard to let them over the wall. They approach it apprehensively, but, sure enough, the guard turns his back. Homefree, they think. They scramble to the top of the wall. To freedom? Not on your life. American M.P.'s waiting on the other side turn them back. The next day, the United States proudly announces that it has stopped the traffic in human lives. From now on, all refugees will be turned back.

Sound incredible? Not at all. The Reagan Administration has just announced a policy that has precisely that effect on Cuban refugees: it turns them back. Henceforth, no visas will be issued to Cubans who reach third countries such as Mexico and Panama: Why? Because the Administration claims that some of those Cubans have had to bribe "Cuban and other foreign officials" to get to third countries. So, to save some of them from paying bribes, the Administration will refuse entry to all, thus effectively keeping them inside the wall, for in most cases they can only get to third countries if there is a chance of getting a visa on to the United States.

Who does this new policy punish most? Obviously, the innocent Cuban citizens trying to join their families in the United States. Does such a policy—which hardly even inconveniences the Castro regime—make any sense? Of course not, but it is perfectly consistent with previous Reagan Administration actions toward Cubans who wish to leave the island.

In 1981, for example, it refused to accept some 2,000 former political prisoners the Carter Administration had agreed to process as refugees. All were anti-Communists who had suffered for their convictions. Yet the Reagan Administration reneged on the commitment.

For some four years also, the Administration flatly refused to issue visas in Havana to hundreds of divided Cuban families. These were often cases in which one spouse was a legal resident of the United States while the other, with the children remained in Cuba. Immigration petitions were on file and all papers were in order. The families could have been reunited immediately. The Administration said no. Why? At first, it offered no rationale at all. After two years, it came up with the story that its refusal to issue visas in Havana was designed to force Cuba to negotiate an immigration agreement and the return of the criminals dumped here during the Mariel exodus.

It was a good story—except that it wasn't true. We did not have to press the Cubans to negotiate these issues. They had been offering to do so since January 1981. We had ignored them—and continued to ignore them until 1984, all the while maintaining that we were trying to press *them* to talk.

Finally, in 1984, the Administration got around to taking up the Cuban offer. An agreement was quickly reached, but with the inauguration of Radio Marti only months later the Castro regime, in a snit, suspended it. Now, by closing the last loophole—the possibility of emigrating through a third country—the Administration has completed Fidel Castro's work for him yet somehow wants us to believe it is trying to pressure him to reinstate the 1984 agreement.

Beneath the thin surface rationale in all these cases lies a common Pavlovian response. The Administration seems incapable of responding to any problem related to Cuba with other than punitive measures. Never mind that those measures may harm the innocent far more than the Castro regime. The human lives involved are simply not considered.

The Reagan Administration talks all the time about its sympathy for Cuban dissidents, but there is a great gap between the President's rhetoric and his actions. In the human rights field, his Administration has not a single accomplishment in Cuba. The Carter Administration got out thousands of political prisoners. Senator Edward M. Kennedy, Jacques Cousteau and the American Roman Catholic bishops, among others, have brought about the release of dozens of others. The Reagan Administration, not even one. Worse, it has added to the burden disaffected Cubans alredy must bear. It is not a record to be proud of. With a friend like Ronald Reagan, Cuban dissidents don't need any enemies.

GO BEYOND EMBARGO

(By Frank Calzon)

WASHINGTON.—The real news about United States-Cuban relations these days is not the Administration's announcement that it will tighten the 26-year-old trade embargo against Cuba, but how little the Administration is willing to do in the face of Fidel Castro's provocation.

Mr. Castro's ability to harm United States interests has been underestimated for many years. Consider one case being heard before a Federal court in Hartford, Conn., involving 17 terrorists accused of a Wells Fargo robbery in 1983. According to the Federal Bureau of Investigation, the leader of the group, Victor Manuel Gerena, has been given sanctuary in Cuba, some of his weapons were provided by Havana and a portion of the $7 million heist is "in the custody and care of the Cuban Government."

Nor is this an isolated case. In 1982, senior Cuban officials, including the head of the Cuban Navy, were indicted by a Federal grand jury for facilitating narcotics smuggling into the United States. Such "narcotraffickers" stop in Cuba for refueling and repairs, protected from the United States Coast Guard by the Cuban Navy, and they pick up weapons on the way back to South America.

Recent reports also indicate that Mr. Castro is stepping up Cuban military activity abroad—in Nicaragua, Angola and Ethiopia.

Most of this disruptive and anti-American activity took place after the opening of the United States diplomatic mission in Havana. This first step toward normalization of relations has apparently done nothing to restrain the Cubans. And the interests section has had difficulty carrying out even routine diplomatic duties: the Cuban-born United States citizens who travel to the island enjoy no American protection because Mr. Castro refuses to acknowledge their citizenship, and several American diplomats have been harassed.

How can the Reagan Administration make Mr. Castro feel the force of United States displeasure? There are several options.

Reinstitute the ban against foreign ships docking in United States ports after visiting Cuba.

Explore the possibility of beaming television programs to the island. Given the popularity of Radio Marti, television programs would surely be an instant success.

Expand the trade embargo against Cuba to Angola. Regulations on the books already prohibit commerce and financial transactions with "any territory . . . controlled or occupied by [Cuban] military, naval or police forces."

Actively promote the redirection of trade by America's allies from Cuba to the developing democratic nations in the Caribbean.

As for immigration problems involving Cuba, the most effective solution would be to close the interest section in Havana if the Cubans are unwilling to be more forthcoming.

For some 10 years, the United States has sought a less confrontational relationship with Havana. In 1975, Henry A. Kissinger said he saw "no virtue in perpetual antagonism." Mr. Castro's response was to send troops to Angola, President Jimmy Carter tried again, and Mr. Castro shipped 20,000 troops to Ethiopia, intensified operations in Central America and engineered the Mariel boatlift.

Even President Reagan made some effort in his first years in office, initiating high level meetings between Cuban and American officials. Yet Mr. Castro still nurses the hostility he expressed in a letter from his guerrilla hideout in 1958: "When this war is over . . . I'll start a much longer and bigger war of my own: the war I am going to wage against the Americans. I realize that will be my true destiny."

In 1962, the United States assured the Soviet Union that it would not invade Cuba. These assurances have served Mr. Castro well, allowing him to consolidate his power at home and abroad. Why doesn't Washington give notice now that it no longer abides by that understanding? America need not commit itself to any particular course, but there is no reason to allow Mr. Castro to deploy thousands of troops overseas in the certainty of United States passivity.

President Reagan's decision to strengthen the trade embargo is a good start, but it is hardly commensurate with Fidel Castro's provocations.

THE 100TH ANNIVERSARY OF UNIVERSITY OF MARYLAND EASTERN SHORE

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. DYSON. Mr. Speaker, I rise today on behalf of the citizens of Maryland's First Congressional District to extend my sincere congratulations to the University of Maryland Eastern Shore on its 100th anniversary celebration. From its humble beginnings in September 1886, this university has grown into one of the finest educational institutions in the State.

UMES was founded in 1886 as a high school. The first students were put to work cleaning the grounds and making repairs to the first structure on campus, an old colonial dwelling. There were only 9 students in the first enrollment which increased to 37 in a short period of time. The first teachers were Benjamin O. Bird, the principal, his wife, Portia Bird, and an assistant named Jacob C. Dunn. These people were most certaintly educational pioneers.

The university has had several names in its history. These have included: the Delaware Conference Academy, the Industrial Branch of Morgan College, Princess Anne Academy, Eastern Branch of the Maryland Agricultural College, Princess Anne College, and Maryland State College. Despite the many changes in curriculum goals set forth in its various colleges, UMES has continued to grow and to serve the changing educational needs of the surrounding communities.

The Methodists were the moving force behind the founding of the college and administered it until the State of Maryland assumed control in 1936. That same year the small high school became a 4-year college.

After the Second World War, the college grew dramatically. Today the universtity offers 13 undergraduate degree programs in 3 major divisions of arts and sciences, professional studies, and agricultural services. There are now graduate degrees offered in computer science, special education, guidance and counseling, agriculture, and marine estuarine-environmental science. In addition, there are several cooperative programs offered in conjunction with other universities.

The progress which has been attained by UMES in its first 100 years is only the beginning. I extend my heartiest congratulations and best wishes for continued success to the students, alumni, faculty, staff, and the many supporters of the Universtity of Maryland Eastern Shore.

TRIBUTE TO MICHAEL COLES

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. DARDEN. Mr. Speaker, Michael Coles not only is a successful businessman; he exemplifies personal determination to overcome adversity, as well as a keen sense of justice for all, regardless of race or sex. It is fitting that the National Women's Political Caucus selected Mr. Coles, a resident of the Seventh District of Georgia, to receive its "Good Guy Award" recently here in Washington.

Michael Coles attained prominence in the business community as cofounder and chairman of the board of the Great American Chocolate Chip Cookie Co., which today is the largest cookie retailer in the world.

Mr. Coles long has been active in the fight for civil rights for women and minorities. He was a marcher in the civil rights movement of the 1960's. He has been an ardent supporter of the equal rights amendment, and has made other efforts to secure equal rights for women through both State and Federal legislation.

His continued success as a world-class ultra-marathon bicyclist is remarkable when you consider that a near-fatal cycling accident in 1977 left one leg so badly broken that doctors feared he would never walk again unaided. Mr. Coles fought back with an exhausting, self-prepared rehabilitation program.

In 1983 and 1984, he set consecutive world records for cross-country cycling; his 2,600-mile journey from Savannah GA, to San Diego, CA, in 1984 was completed in just 11 days.

Of course, a man's success often must be attributed, to some extent, to the backing he receives from others. Michael Coles' achievements in so many fields would not be possible without the steadfast support of his family, especially from his wife, Donna.

Mr. Speaker, Michael Coles has said that "the greatest disappointments are caused by self-imposed limits." He ensures against disappointment for himself by setting—and achieving—only the highest standards for his own performance.

INNOVATIVE AND WORTHWHILE PROGRAM

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. CONTE. Mr. Speaker, on Sunday, September 14, 16 young Panamanian students arrived at Holyoke Community College in my district to begin their education in the United States as participants in the Central America Peace Scholarship Program, which is administered by Georgetown University for the Panama Mission of the Agency for International Development. I am very pleased that Holyoke Community College is one of the excellent 2-year institutions in this country where these students will not only receive the finest academic instruction, but where they will gain an understanding and appreciation of American values, institutions, and democratic ideals. This program has my strong support, and I warmly commend our Ambassador to Panama Authur H. Davis, the A.I.D. Mission Director Ronald Levin, and Father Harold Bradley of Georgetown University for this innovative and worthwhile program.

I would like to insert for the RECORD an article that appeared on Sunday, September 14 in Panama's Star and Herald.

152 RP STUDENTS DEPART TO STUDY AT U.S. EXPENSE

A total of 152 young Panamanian men and women will leave this country today and Monday to begin a five-year program of college level studies in the United States under the Central American Peace Scholarship program (CAPS) sponsored and paid by the U.S. government.

U.S. Ambassador to Panama Arthur H. Davis invited the prospective college graduates to his residence Friday night to send them off on this venture with encouraging remarks and a typical American barbecue.

"The U.S. Embassy is proud to be able to offer you the opportunity to receive a complete undergraduate education in the United States," Davis told the group assembled in the foyer of his residence in Panama City.

"Through these scholarships, you and many more young Panamanians will be educated and trained to help in the development of your country.

The students were the first undergraduates selected under the CAPS program

which is sponsored by the U.S. government through the Agency of International Development (AID).

"I am very touched," commented Carlos Thompson, 22, one of 16 CAPS fellows from Colon who attended the Friday night affair.

A temporary Panama Canal Commission employee at Gatun Locks, and part-time student at Colon's Technical University Thompson said it was his mother and a good friend who encouraged him to apply for the scholarship that will pay all his study costs.

A total of 5,000 applicants were screened and selected on the basis of their leadership potential, academic excellence or professional achievement and a proven interest in development activities.

The final selection of fellows took place in Panama City by a committee composed or representatives of USAID, U.S. Information Service, the U.S. Embassy and Panamanians of recognized merit.

Thompson said he wants to get a degree in computing science and return to Panama as a programmer. Before he reaches his goal, he has to complete nine months of intensive English courses at Fort Scott Community College in Kansas. If he passes the Test Of English as a Foreign Language at the conclusion of the course, he can apply at a U.S. university to complete a bachelors degree under the CAPS program.

All students, selected from eight of Panama's nine provinces, will attend community colleges in several states, before being placed in a four-year university program.

In addition to the students from Colon, 21 were selected from Cocle eight from Bocas del Toro, 24 from Chiriqui, 16 from Herrera, 12 from Los Santos, 30 from Panama and 25 from Veraguas.

Candidates expressed an interest in such varied fields of study as accounting, biomedical engineering, hospital administration, fine arts, and many others.

CAPS has as its goal to increase the number of public and private sector individuals studying in the United States and is intended to benefit talented young people with limited financial resources who represent widely disparate segments of Panamanian society, according to the U.S. Embassy.

"I would like to thank the U.S. Government for the opportunity," Thompson said Friday night.

"We will put in an extra effort (as Panamanian students abroad)", he said. "We won't let Panama down."

DR. DWIGHT M. LINDSAY

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. HUBBARD. Mr. Speaker, I want to take this opportunity to express my appreciation and offer my congratulations to one of Kentucky's most outstanding educators, Dr. Dwight M. Lindsay of Georgetown, KY.

Since Georgetown College first opened its doors in 1829, thousands of students have had the opportunity to learn and develop at one of the Nation's great institutions of higher learning, located at Georgetown, KY.

Of course, an educational institution is only as great as its educators, and Georgetown College is no exception. It is to one of Georgetown College's most notable professors that I wish to pay tribute today.

For 38 years Georgetown College has been privileged to have Dr. Dwight Lindsay as an educator. Dr. Lindsay first came to Georgetown after receiving his A.B. degree from Hanover College of Indiana in 1947. While working toward his M.S. at the University of Kentucky in neighboring Lexington, Dr. Lindsay began what would become a lifelong career at Georgetown College.

Dr. Lindsay's commitment toward the scientific community is most noted by his membership and activities in numerous scientific associations and organizations. As chairman of the biology department at Georgetown College, he chaired a premedicine committee and program for his students equaled only by a few others. This is best said by noting the fact that Dr. Lindsay has not had a medical school failure by any of his students during the past 19 years. His former students include such noted physicians as the current president of the Kentucky Medical Association, Dr. Wally Montgomery of Paducah, and his predecessor, Dr. Charles Smith of Louisville.

On this past April 11, Georgetown College and a host of alumni and community friends honored Dr. Lindsay who, after 38 years of commitment and dedication to the college, had earlier announced his retirement effective at the end of the semester. Georgetown College can be proud of Dr. Lindsay's efforts and accomplishments. His work and counsel with Georgetown's premed students has brought notable attention to the college's premed program and will be missed and remembered by all of us who are close to Georgetown College.

This Member of Congress attended Georgetown College 4 years, beginning in September, 1955, and graduating there in May of 1959.

Dr. Dwight Lindsay was one of my professors at the college. I believe it is obvious I am one of his admirers.

Best wishes to Dr. Dwight Lindsay, his lovely wife Helen and their family.

SOUTH AFRICA IS THE WRONG ALLY

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. OWENS. Mr. Speaker, the Civil Rights Journal commentary of the United Church of Christ for September 5, 1986 addresses an issue which should concern us all—the apparent collaboration of the United States and the Republic of South Africa in the undermining of black states in southern Africa. Although one cannot conclude that such collaboration exists from the American perspective, it behooves us to consider just how our actions look to others in Africa as well as in the rest of the world. The administration's steadfast refusal to support meaningful sanctions against South Africa makes it appear that we support the apartheid regime there both domestically as well as in their actions against their neighbors. This perception will ultimately harm us and it must be altered as quickly as possible by actions which make it clear that we find apartheid abhorant and we find the bullying of South Africa's neighbors wrong.

UNITED STATES AND SOUTH AFRICA UNITE AGAINST BLACK AFRICA

South Africa and the United States have clearly perfected the old one-two punch against the independent Black states of southern Africa. The "front-line" states recently called for sanctions against South Africa, at great risk to their own economic survival. And, as a result, they have become the object of increased efforts to destabilize their countries from both South Africa and the U.S.

South Africa threw the first punch by increasing import taxes and setting up a blockade, a most effective move since the only overland trading route for these Black "front-line" countries goes through South Africa. And, of course, South Africa insured this by consistently bombing construction of the Tanzam railway, which would have bypassed that racist regime.

Now the Reagan Administration has delivered another below-the-belt punch by announcing that it will halt all new U.S. aid to Zimbabwe, a key "front-line" country. This means that Zimbabwe, which borders South Africa, will be deprived of $33 million in critical U.S. aid at a time when it is fighting for its very life.

And what reason did the Reagan Administration give for its decision? Well, back in July a Zimbabwean cabinet minister criticized this country's refusal to impose sanctions against South Africa. Now, 2 months later, the Administration labels the criticism a lack of "diplomatic civility" on Zimbabwe's part and uses it as an excuse to cut Zimbabwe off at the knees.

The severance of aid to Zimbabwe at this critical time is consistent, however, with overall U.S. policy in southern Africa. For the Administration also arms and finances the terrorist rebel forces of Savimbi, thus helping to destabilize the important front-line nation of Angola.

It has become clear that constructive engagement is more than a policy which effects (or more appropriately, which supports) the apartheid regime of South Africa. More broadly, constructive engagement is also designed to topple the independent Black nations of southern Africa because they refuse to back this country's inhumane policies there.

The arrogant racism of the Reagan Administration's Africa policy is simply an extension of its racist domestic policy. The same folks who are trying to cut affirmative action and minority Small Business Administration set-asides here are also trying to overthrow legitmate Black governments over there.

This is why Jesse Jackson's fact-finding tour of southern Africa is so important. Jesse has emphasized the contradictions of this Administration's policies. He has also focused the spotlight on the realities of southern Africa.

For example, a lengthy Washington Post article on the Jackson trip noted, "As he [Jesse] traveled farther, into Mozambique and Zambia, Jackson was told how Pretoria-backed rebels had severed the landlocked front-line states' alternative transportation routes to the sea through Mozambique and Angole, forcing them into greater dependence on South Africa's transport netowrk."

It is essential that we combat Mr. Reagan's fantasy interpretation of the South

African situation with the grim reality. And the reality is that unless this country steps up—rather than withholding—its aid to the independent states of southern Africa, those countries will fall under South Africa's domination. We must not sit back and allow Ronald Reagan and P.W. Botha to double-term against the legitimate forces of history.

This is Benjamin F. Chavis, Jr. of the United Church of Christ for Civil Rights Journal.

THE STATELESS OF CYPRUS

HON. G. WILLIAM WHITEHURST

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. WHITEHURST. Mr. Speaker, an editorial which appeared in the Wall Street Journal of September 22, 1986, raised some excellent points with regard to the ongoing troubles on the island of Cyprus, and I am pleased to share these comments with my colleagues at this point in the RECORD.

The artificial ratio of 10 to 7 is obnoxious to the Republic of Turkey, whose needs should be judged strictly on their own merits and on the basis of their contributions to U.S. security. Turkey is a linchpin in our NATO defense. The Turks, and they alone, block Soviet access to the Mediterranean, which is the key to control of Europe. They provide NATO with 820,000 active-duty troops, second only to the United States, and serve to tie down 45 Warsaw Pact divisions. In addition, Turkey gives us indispensable listening posts on the Soviet border, enabling us to detect nuclear tests and troop movements, and gain other data particularly valuable to our Sixth Fleet, and Turkey accomplishes a crucial NATO role with World War II destroyers, antitank weapons from the Korean and Second World Wars, and fighter aircraft of which 75 percent are over 15 years old. I feel very strongly that Turkey's needs should be judged objectively. Attempts to link them to any other country are unnecessary and gratuitous and, perhaps even worse, inimical to the best interests of both NATO and the United States.

As this editorial makes clear, Mr. Speaker, the 10:7 ratio is also not in the best interests of Cyprus, and we, in the Congress, have the responsibility, and should have the courage, to take the steps recommended by the Journal editorial, and thereby do what is best not only for ourselves and NATO, but for all of the people of Cyprus, as well.

I urge my colleagues to read this editorial carefully and end our collusion with Mr. Papandreou.

[From the Wall Street Journal, Sept. 22, 1986]

THE STATELESS OF CYPRUS

When President Rauf Denktash of the "Turkish Republic of Northern Cyprus" arrived in the United States last week, he and his entourage were given visas stamped "stateless persons." That is because the United States recognizes only the Greek Cypriot government. The United States should reconsider that policy.

The problem of Cyprus can be summed up in two words, Andreas Papandreou. The last thing the socialist Greek premier wants is a resolution of the island's differences. He would lose his opportunity to accuse Turkey of devious intentions, which he does to distract Greeks from their decrepit economy. Just as important, he would lose the collusion of the U.S. Congress. Since Turkey's 1974 military intervention, U.S. aid has been held to a 10:7 ratio for Turkey and Greece. That allows Mr. Papandreou to influence military aid to Turkey by not making full use of his own.

Cyprus is not Lebanon nor Northern Ireland. The Turkish intervention effectively separated the island's two nationalities who, for 14 years, had been periodically pitted against each other by a succession of demagogues. The Turkish minority—about 20%—is not asking for equal government representation. It wants the system promised by the 1960 independence constitution that was signed by Britain with Greece and Turkey as guarantors. This would still give Greeks the presidency and the upper hand in the legislative bodies. If Turkish rights could be secured, Mr. Denktash would be willing for his government, now recognized only by Turkey, to be temporary.

It is one of the great myths of our time that Turkey is behind the troubles. Athens, not Ankara, is the enemy of Cyprus. In 1974, the Greek colonels staged a coup on the island to encourage mainland interest in unification. They replaced Archbishop Makarios with a convicted pro-unification terrorist. This led to bloodshed and the arrival of troops from Turkey. A Greek appeals court in 1979 said that, "Turkey, as one of the guarantor powers, had the right to fulfill her obligations. The real culprits are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention."

Mr. Denktash told Journal editors that his problems are not so much with current Greek Cypriot leader Spyros Kyprianou as with Mr. Papandreou, who has blocked all compromise proposals by U.N. Secretary General Perez de Cuellar. Mr. de Cuellar proposes more talks this month, but Mr. Papandreou says he wants an international conference instead. Coincidence no doubt, but the Soviets have seconded the motion for a conference. Their goal is to remove Turkish troops and two British bases that are major Middle East listening posts for the West.

The Greek Cypriots have nothing to gain from a divided economy, which has reduced trade between the two communities to smuggling. Nor is it in their interest to edge, along with Mr. Papandreou, toward the outer limits of NATO. Nicosia has bravely jailed terrorists who murdered Israeli tourists and has helped with U.S. military maneuvers in the area.

The Greek colonels should have taught Mr. Papandreou that the jingo approach to Cyprus won't save a faltering government in Athens. But so far he hasn't taken the hint.

The United States should recognize the Denktash government while encouraging the Greek Cypriots to separate themselves from Mr. Papandreou. This could be just the stick to prod Athens into letting Cyprus be Cyprus.

MIDDLETOWN LIONS CLUB

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. GILMAN. Mr. Speaker, I am pleased to call to the attention of our colleagues that the Lions Club of Middletown, NY, will be celebrating its 50th anniversary this weekend.

The Middletown Lions are affiliated with Lions Clubs International, a worldwide organization of over 1.35 million members, and some 35,000 affiliated clubs.

I am certain that every Member of Congress is aware of the fine works performed in their home districts by our Lions—their programs designed to improve our environment, their citizenship, educational and public speaking programs, work with the deaf, international understanding programs, international youth camp programs, and their activities designed to bring all of us closer together.

In Middletown, NY, the Lions are especially noted for their "Lions Journey for Sight," which they sponsor every summer. Men, women, and children of all ages walk, run, or bicycle a 20-kilometer course in support of the sightless. The funds raised at this noteworthy event are used for diabetes research, the greatest cause of blindness in our Nation, and for research for other sight-related problems.

The Lions, although deserving the thanks of all of us for their many worthwhile programs, have become especially well known for their work on behalf of the sight impaired and the sightless. For this, our hats are off to them.

As the Middletown Lions—and their women's auxiliary, the Lionesses—prepare to celebrate the anniversary of their founding in 1936, I invite my colleagues to salute them for their worthy projects and good works, and wish them continued success in all of their future endeavors.

ANNA MULLER—NEW MEXICO SMALL BUSINESS CHAMPION

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. RICHARDSON. Mr. Speaker, I rise today in tribute to a very special woman, Anna Muller, president of National Economic Development Associates [NEDA], Inc., in Albuquerque, NM. Ms. Muller has dedicated 16 years of her professional career to assisting minority entrepreneurs establish and successfully operate their business. It is, in part, through her diligence and perseverance that the small business community in my State continues to expand and prosper.

Mr. Speaker, National Economic Development Associates, Inc., with Anna Muller at the helm, is recognized as a builder of companies, throughout the Third Congressional District. I would like to take this opportunity to acknowledge and salute Ms. Muller's outstanding contributions. Her company has sponsored many conferences, in areas of New Mexico currently

facing high unemployment and unstable economic conditions. She provides assistance in the areas of capital development and financing; marketing and advertising; procurement and contracting; computer networking; construction contracting; financial and production management; and accounting and tax planning. As we all know, giving advice that gets results in any of these areas requires a high degree of professional skill.

Through her long and creditable record she has earned the respect of procurement personnel in both the private and public sectors. Her planning and coordinating skills; her public speaking abilities and her political savvy are a tremendous asset to the State of New Mexico.

In praise of her accomplishments I call on all my colleagues in the U.S. Congress to join me in congratulating NEDA and Anna Muller, and in wishing her continued success in making New Mexico a better place in which to live.

TRIBUTE TO LEO MIDDLETON

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. DYSON. Mr. Speaker, I rise today with great regret to note the passing of a good friend and a respected citizen of Waldorf, MD, Mr. Leo Middleton. Throughout his life, he worked to make his community a better place to live. Mr. Middleton was the founder of Tri-County Federal Savings and Loan. His institution was responsible for providing money so that many families in southern Maryland could build homes, start and expand business, pay for higher education, and meet family emergencies.

Mr. Middleton lived his life with vigor and vitality and he was always ready to pitch in when anyone was in need. As one of 10 children he learned the value of sharing. He was always giving his time and energy to civic needs and charitable activities. He was a charter member of the Lions Club International, a former member of the Waldorf Volunteer Fire Department, a member of the St. Vincent de Paul Society, the Charles County Historical Society, and the Society for the Restoration of Mt. Carmel.

I would like to extend my condolences to Mrs. Middleton and their six children. He will be missed by all of the citizens of southern Maryland.

THE 150TH ANNIVERSARY OF THE CAVE SPRING BAPTIST CHURCH

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. DARDEN. Mr. Speaker, the people who settled the community of Cave Spring, GA, early in the 19th century recognized the paramount importance of religion and education in the life of their new community. They established Cave Spring Baptist Church to meet the spirtual needs of the people. The church congregation, in turn, established Hearn School—now Hearn Academy—to provide educational opportunities.

It was through the direct influence of O.P. Fannin, one of the principals of Hearn School, that the Georgia School for the Deaf was established at Cave Spring in 1847. Mr. Fannin had become acquainted with the special needs of deaf students when four deaf children were admitted to Hearn School a year earlier.

I recently had the honor of participating in the sesquicentennial celebration of Cave Spring Baptist Church. The members of that congregation can be justifiably proud of the role their church has played in the spiritual and educational growth of the community.

Mr. Speaker, I invite my colleagues to join me in congratulating the people of Cave Spring Baptist Church on the 150th anniversary of that institution, and to send best wishes for the future of that church tc the congregation and its pastor, the Reverend Glen Puckett.

ABUSES IN THE DRUG BILL

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. FRANK. Mr. Speaker, a great deal of good work has been done by Members of the House on the problem of drugs, and the majority and minority leaders, and the chair of the House Select Committee on Narcotics, Mr. RANGEL, deserve credit for their efforts to forge a legislative response to a terrible problem. But unfortunately, the actions taken by the House when this bill came to the floor resulted in a poor piece of legislation which will damage the drug traffic less than it will damage some basic principles of our Government. I believe the editorial in the Boston Globe from September 15 makes that point well, and I ask that it be printed here.

ABUSES IN THE DRUG BILL

In the election-year stampede to crush the drug menace, the US House has trampled upon civil liberties and wrapped dangerous precedents in a dust cloud of righteous fervor.

Eager to show their constituents how tough they are, House members have fallen into a trap created by their exaggerated rhetoric, and have approved several amendments of dubious constitutionality.

U.S. Rep. Peter W. Rodino Jr. of New Jersey, hardly a radical man, tried to shake some sense into the legislative warriors: "Today we have been fighting the war on drugs. And now it seems to me the attack is on the Constitution of the United States."

His warnings were ignored. The House ordered the president to use the military to stop the flow of drugs into the country and eradicate the traditional line between military and civilian law enforcement. Another amendment would change the exclusionary rule and permit the introduction of illegally obtained evidence in cases where police acted in good faith but made an error. The death penalty would be imposed for a killing in the course of a drug-related crime.

Drugs threaten the fabric of society. Drug abuse shows no respect for class, racial or economic lines. A major investment of resources and effort is necessary to keep narcotics out of the country, track and punish traffickers and pushers, educate young people of the dangers and provide treatment to addicts.

Yet, macho measures that undermine principles that make America strong are more likely to sabotage a much-needed federal response to the drug problem. Although this bill was patched together in an election season to preempt the Republican-controlled Senate and the White House, it contains worthwhile provisions that are obscured by the controversial amendments.

It increases money for enforcement by the police and the federal Drug Enforcement Administration. It provides funding for drug-education programs modeled on Governor Dukakis' Alliance Against Drugs. It restores funding for drug-abuse and treatment programs. It attempts to stop the drug trade at the source by penalizing drug-producing countries that refuse to cooperate with drug eradication.

Rep. Brian Donnelly of Massachusetts said that "mob mentality" ruled when the House considered the bill. A mob cannot make lasting and effective law. Congress must not sacrifice the substance of this bill to excessive zeal.

OUR MISSING CHILDREN PROGRAM

HON. MARTY RUSSO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. RUSSO. Mr. Speaker, today I would like to commend to the attention of my colleagues an excellent legislative action program begun in my district which is designed to recover children who have been kidnapped or who have decided to run away. Our Missing Kids, a not-for-profit organization supported solely by private funds, believes that flagging birth certificates and school records of missing children is a key to tracing perhaps as many as half of all youngsters who are abducted or run away from home. I agree.

This straightforward and workable approach to locating missing children was the brainstorm of Jerry Harmon. He is a retired Cook County sheriff's lieutenant who spent many years investigating missing children cases and he is now a consultant to the Burbank Police Department in the Third District. In 1985, Our Missing Kids was started by Harmon, Burton Odelson, and Chief Robert Erickson and has won the support and assistance of the Veterans of Foreign Wars, the Elks, Sertoma, and political leaders in Illinois. Citizens in other States are volunteering to start similar citizens groups to propose and promote laws to flag birth certificates and school records of missing kids.

According to Mr. Odelson, an Oak Lawn attorney who has been named national coordinator for Our Missing Kids:

The vast majority of missing kids are taken by one parent or another, are runaways, or have been taken out of state to be raised by someone who has no intention of doing them bodily injury. . . . Our goal is to

attack the large percentage of missing children cases. If someone abducts a child and attempts to enroll that kid in a school he would need a birth certificate.

This program can only work with full success if all 50 States are using it. The legislation Our Missing Children promotes is sound and I urge my colleagues to look at it and push for it in their own State, as we have in Illinois. The legislation would:

First, require the State registrar of vital statistics to flag a birth certificate on missing persons age 17 and younger.

Second, require schools to flag a student's records, age 17 and younger.

Third, require law enforcement agencies to flag a birth certificate at the State registrar of vital statistics office of any missing person age 17 and younger.

Fourth, require law enforcement agencies to flag a student's file of any missing person age 17 and younger at his or her school.

Fifth, require parents, or whoever has custody or control over a child, age 17 and under, to provide the school with recent certified copy of the birth certificate.

Mr. Speaker, there are 2 million missing children in this country. With the Our Missing Children Program in place how much anguish we could eliminate, and how many children would not be denied the truth of their rightful place in the world. Under the our missing children system, when a child disappears, the police immediately notify the local county clerk where the child's birth certificate is located, and the clerk then flags the certificate, which means no one at any time can obtain a certified copy, no matter the reason, without authorities being notified. Policy inform the school district of the child's disppearance and the records are flagged—if anyone requests a copy of those records, school officials would be required to notify policy immediately.

As Jerry Harmon has stated:

Our goal is to find children who are alive, children living by themselves or with adults and who may not know their true identities.

It's a worthy and timely goal. I applaud Our Missing Children and hope that others learning of this program and the fine work of these dedicated citizens will take action to implement it in their own State.

A CONGRESSIONAL SALUTE TO HARRY FRANTZ

HON. GUS YATRON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. YATRON. Mr. Speaker, I rise today to pay tribute to my good friend, Mr. Harry Frantz. On October 11, 1986, a dinner and party will be held to honor Harry on the occasion of his retirement after 35 years of service with the Social Security Administration.

Harry has had a long and distinguished career with the Social Security Administration. After a tour of duty with the Navy and his graduation from Kutztown University in 1950, Harry taught school for 1 year. He joined the ranks of Social Security employees in March 1951 as a claims representative trainee in the Wilmington, DE, office. In recognition of Harry's commitment to SSA, he rapidly advanced up the promotion ladder. He became supervisor of the Wilmington office and, in 1960, he was promoted to assistant manager of the Geneva, NY, office and later served in the same position in Binghamton, NY. In 1966, Harry was promoted to manager of the Williamsport, PA, office and transferred to the Reading, PA, office as manager in 1980.

Harry's compassion, integrity and commitment to public service have been widely acknowledged and appreciated by all those he has assisted over the years. His dedication has also been recognized by his colleagues at Social Security. During his career with SSA, he has received a high quality increase and three superior work performance awards. In 1978, he received the Commissioner's Citation, the Administration's highest award. In addition to these many honors, Harry has been active with the Management Association Council at the local, regional and Federal levels.

Harry was born and raised in the area and was especially well-known for this athletic ability. He lettered in three sports while attending Kutztown and later played semipro baseball. I can personally attest to Harry's skills as we were teammates on the Kutztown football team. He remains an avid sports fan and is also active in a number of community organizations. He has been a member of the Kiwanis board of directors for 3 years and has served on the board of directors of the Berks County Senior Citizens' Council for 5 years. These activities are further evidence of Harry's commitment to assisting the area's senior citizens.

Retirement will give Harry more time to spend with his wife, Marcene, and their three children and seven grandchildren. I am sure that he will also devote more time to his hobbies of collecting coins, Depression-era glass and antiques. Harry will be able to look back with pride on a career of selfless, dedicated public service which provides a shining example for all to emulate. I know that my colleagues will join me in honoring Harry Frantz and in wishing him and his family continued success and good fortune in the years to come.

BATTLE HYMN OF AGING

HON. HAL DAUB

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. DAUB. Mr. Speaker, I appreciate this opportunity to insert in the RECORD the "Battle Hymn of Aging." I think Members of Congress and older Americans alike will appreciate the message conveyed:

BATTLE HYMN OF AGING

(Tune of Battle Hymn of the Republic)

We reach the age of sixty-five,
Our golden years are here,
They tell us that the age begins
A happy new career, for now our Uncle Sam becomes
Our permanent cashier
As we go marching on.

(Chorus)

Glory, Glory Hallelujah,
Glory, Glory Hallelujah,
As we go bravely on.

Our Social Security from
Baltimore is sent,
We buy a little bit of food and
Maybe pay the rent,
And after that we're really broke,
Yes, left without a cent,
But we'll go bravely on.

(Chorus)

And as for checks from Medicare,
Will someone tell us how
They always find some doctor bills
They sadly disallow.
And dental cost, as well we know,
They wholly disavow,
But we'll go bravely on.

(Chorus)

We don't know how we make it
As we live from day to day,
With income fixed, and prices up,
There is always more to pay,
So minding our arthritis,
Let's get on our knees and pray
That we'll go bravely on.

(Chorus)

And first of all, let's thank the Lord
That we are still alive,
The dreams we have may still come true,
When we are ninety-five.
So please, Dear Lord, give us the
Strength our troubles to survive—
As we go bravely on.

DALY CITY, CA, CELEBRATES 75 YEARS OF PROGRESS

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. LANTOS. Mr. Speaker, I am delighted to bring to the attention of this House the celebration of the 75th anniversary of the incorporation of Daly City, CA.

Following the earthquake and fire that devastated San Francisco in 1906, families sought refuge on a dairy farm owned by John Daly just south of the city of the San Francisco Peninsula. The farm became the focal point for the establishment of a new community—Daly City—which was incorporated March 22, 1911.

The population of Daly City has grown from 2,900 at the time it was incorporated to its present size of 82,000. This outstanding family-oriented community continues to welcome new residents of many nationalities and backgrounds. This rich cultural mix typifies the unique ethnic heritage of our country.

Daly City has won national recognition as a convenient and affordable residential community. The Westlake Neighborhood of Daly City was selected by Ladies Home Journal as one of the "Fifteen Best Suburbs" in the United States. The magazine described Daly City as follows: "Many bay area communities are swankier, but this comfortable middle-class area offers a stimulating cross-section of people and excellent transportation."

In 1984, Daly City received the City Livability Award of the U.S. Conference of Mayors. This national honor was given in recognition of Daly City's creative use of the arts in an urban

environment to foster "improve economic vitality of the community."

Mr. Speaker, I invite you and the Congress of the United States to join me in extending congratulations to the citizens of Daly City as they celebrate their 75th anniversary. Daly City is justly proud of its growth and progress over its past three-quarters of a century. The city and its citizens now face a bright future with enthusiasm and confidence.

KILDEE PAYS TRIBUTE TO ST. NICHOLAS ORTHODOX CHURCH

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. KILDEE. Mr. Speaker, I would like to bring to the attention of my colleagues and the Nation an event that will be held October 12, 1986, in Burton, MI, commemorating the founding of the St. Nicholas Orthodox Church. On this day, the St. Nicholas Orthodox Church will celebrate its 70th anniversary.

Historic St. Nicholas Orthodox parish can trace its beginnings in Flint to the determined efforts of a handful of devout Slavic immigrants beginning in the early 1900's. In 1916, under the leadership of the church's first rector, Father N. Nikolenko, the St. Nicholas Orthodox parish became a reality. A church was soon built and the parish began to grow. Since that time, through good times and through bad, the St. Nicholas Orthodox Church has been an unwavering source of spiritual strength and enrichment for its parishioners and has reached out to extend its love and service to the entire community. Through its 70 years in existence, the church has managed to preserve the rich and varied ethnic roots of many diverse cultures. Since 1916, the St. Nicholas parish has served as a catalyst for community ethnic activities and it remains a model for the propagation of good will and Christian fellowship within the Seventh Congressional District.

Mr. Speaker, the St. Nicholas Orthodox Church continues to serve as a blessed place of worship and a wellspring of faith and inspiration for its parishioners. Under the spiritual leadership of its current rector, the Very Reverend Father Raphael Biernacki, St. Nicholas continues to foster both Christian and ethnic values within the community. It is a great honor for me to pay tribute to this distinguished church on the occasion of its 70th brithday, and in the words of the church, "Slava Isusu Christu! Slava Vo Viki!"

FAST PITCH SOFTBALL HONORED

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. FLORIO. Mr. Speaker, I rise today to recognize 10 individuals from New Jersey, the first 10 inductees into the South Jersey Fast Pitch Softball Hall of Fame Association, Charles Bittner, Robert Brennan, Charles Brey, Austin Burke, Paul Cuneo, Anthony Martin, Edward McHugh, Anthony Ramick, Thomas "Dick" Scarduzio (posthumously), and James Vandy.

While fast pitch softball has long been a favorite amateur sport for millions of Americans, many outstanding players have never been properly recognized.

The South Jersey Fast Pitch Softball Hall of Fame Association was recently organized, under the aggressive leadership of Joe Brennan, to honor these fine athletes.

On Wednesday, September 24, 1986, the association will induct its first 10 members, all of whom are recognized as south Jersey's greatest fast pitch softball players ever to play the game.

Mr. Speaker, I am sure our colleagues would be pleased to join with me, the South Jersey Fast Pitch Softball Association, and all softball fans throughout south Jersey in recognizing these 10 accomplished atheletes, not only for their athletic abilities, but also for their commitment to keeping this great American pastime alive in south Jersey.

A PROUD DAY IN INDIANA

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. KOLTER. Mr. Speaker, we so often hear about the negative aspects of American industry, that I rise without hesitation today to point out one very positive event that deserves recognition not only throughout the American business and labor community, but here in Washington before Congress as well.

On August 22, 1986, Fisher Scientific Instrument Manufacturing Division, 1410 Wayne Avenue, Indiana, PA, celebrated 2 million consecutive hours without a lost-time injury.

Many of my colleagues here are businessmen or former businessmen, many are former employees—both white and blue collar—of large and small industry, and they know as I do that this is a special accomplishment.

An event such as this one is an unusual milestone in today's industrial environment.

I extend my congratulations, and the wishes of my colleagues, to Fisher Scientific on this achievement. As Americans, we here in Congress are very proud to point to this fine example of American performance as yet another illustration that American industrial ability is not nearly as tarnished as the naysayers indicate.

From the floor of the House of Representatives to my friends at Fisher Scientific—both rank and file—I thank you for bringing such distinction to the Fourth Congressional District and I admire your ability to provide and keep a safe working place.

THE DRUG WAR

HON. NEWT GINGRICH

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. GINGRICH. Mr. Speaker, I recently came across an exciting and innovative approach to fighting the drug war. Mac Collins has found an inexpensive yet cost-effective way to deter drug use and make our streets safer. I would like to take this opportunity to share his proposal with my colleagues:

JONESBORO, GA.—Declaring that "we are in an open war on drugs," Georgia State Senate candidate Mac Collins proposed today a legal weapon for immediate combat—confiscating of vehicles and drivers' licenses of drug users.

"We need to jerk the wheels right out from under them," Collins said. "It's legally possible. If we can do it for spotlighting deer while hunting at night, we can do it for drug possession.

"All we have to do is get mad enough—have the guts to stop this threat that brings death and the ruining of young lives."

Collins said that "if President Reagan were to ask me what he should say Sunday night to the nation on our drug abuse problem, I'd tell him we've got to come down as hard on drug demand as drug supply. We've got to make the penalties for drug possession and use hurt," he said emphatically.

A Republican candidate for Georgia's 17th State Senate district, Collins is pushing that very answer in his upbeat, issue-laden campaign in Georgia's Clayton, Henry and Butts counties.

Collins will introduce legislation to confiscate vehicles and drivers' licenses for 60-90 days for first offenders, with tougher permanent confiscation of autos for subsequent offenses. "We're going to make the penalties for drug possession in Georgia hurt. If they're going to carry drugs in Georgia, they better carry busfare.

"Until we go after the drug demand side of the problem—the drug user—as well as the drug supply aspect, we're not going to really make a dent in drug abuse."

The self-made businessman said that "we will continue to pour millions of dollars into the fight and still leave our law enforcement people with one arm tied behind them.

"If we're going to win this thing, we're going to have to intervene in the marketplace for drugs."

Collins, the father of four teenagers, said a large part of the problem is judicial perception of the public's feeling about possession of drugs. "You will not get to a youngster any quicker than jerking the wheels out from under them. We have raised our children with a lot of communication, attention and love—and at times, tough love."

Collins said the answer to the war on drugs lies no further than the bench in the closest courtroom. "I'm angry. Parents everywhere are angry. It's time to tell judges to put aside their close association with those fancy defense lawyers, take off their Gucci's, put on their brogans and help us get to work on drug abuse."

Collins pointed out that the cost of this war "right now every year is a staggering $1.6 billion." Last year the United States spent in its war on drugs $300 million on drug education, treatment and research and

$1.3 billion annually on trying to stop the surge of illegal drug shipments by encouraging foreign farmers to replace marijuana, poppy and coca-leaf plants with other crops.

The Jackson, Georgia businessman, whose logging trucks roll over two-thirds of the state, said Georgia—outside of Atlanta—is no different from middle America. "We're ready to deal with drug abuse, and we want to do it now."

Collins believes the advent of new, low cost, playground-access killer drugs impacts not only with national security seriousness, but ranks as an insidious threat to the nation's welfare "on a level with the medieval plagues."

Interdiction in the drug marketplace, the illegal drug demand side of the equation, he says "is what we've not been doing. Continuing on that course is a losing situation."

Collins doesn't minimize the benefits of drug education, interdicting drug supply and traffickers, testing and rehabilitation.

Effectively, he said, "we're reaching for penalties beyond the local county court for youngsters or anyone else found using drugs. If they have drugs on their person while in a vehicle, regardless of evidence of trafficking—just simple possession—they're going to lose the automobile and their driver's license.

"When they come home without that car their parents are still paying on for them, coming before the judge is going to be a remote concern, compared to what we used to call 'woodshed justice,' " he said.

Collins said when he first proposed his drug measure, a young reporter asked what a woodshed was.

"I thought to myself at the time, that might be part of the problem," he mused.

H.R. 5520, EXPANSION OF THE EDUCATION OF THE HANDICAPPED ACT

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. MILLER of California. Mr. Speaker, I am delighted that the House has passed H.R. 5520 which expands the Education for the Handicapped Act to include infants and young children. Public Law 94-142 was enacted by Congress more than a decade ago, to assure that all disabled children have access to a free, appropriate public education. As a coauthor of that landmark legislation, I am proud that important strides for disabled children ages 5 to 18 have been made over the last 10 years.

While we can be proud of that effort, major improvements must be made in this law. We believed in 1976 that the law's protections should extend at a minimum to 3 year olds. Now, we have evidence that programs working with infants from birth can be even more effective.

I support the current legislation, H.R. 5520, because it makes important advances over current law. Much of the legislation reflects what the Select Committee on Children, Youth, and Families learned—that early intervention, right from the start, works and is cost-effective. By improving the incentives for States to offer preschool programs for disabled children ages 3 to 5, and linking it more closely with Public Law 94-142 protections, and by initiating a new program for infants to 2 year olds, we take another step forward.

I am concerned, however, that we have still not gone far enough. Programs for 3 to 5 year olds, or for infants to 2 year olds, will still not be mandatory. A decade after the passage of Public Law 94-142, only 19 States mandate services for all 3 to 5 year olds, and very few States offer services for infants. Given the tremendous success that Public Law 94-142 has had for older children, and given all the evidence that early intervention works and is cost-effective, we should be providing the same assurances that 3 to 5 year olds will be able to receive a free, appropriate public education, giving infants a fair chance to thrive.

My final concern about the infants to 2-year-olds program is that the inclusion of "at-risk" infants is left to State discretion. We have evidence that there may be a growing number of infants who may not have a definitive diagnosis at birth, but who are still at risk of developing a long-term, possibly severe disability. My own district of Contra Costa County, CA, serves as an example of what can be done to serve handicapped and at-risk infants and children when there is a commitment to do so. A few examples include the Miller Centers East and West, the Lynn Center, We Care, and Therapeutic Nurseries, which all provide early intervention for infants and toddlers who are developmentally delayed, disabled, or at risk of abuse or neglect, or of developing a disabling condition.

In addition, parents of infants to 2 year olds should be afforded the same protections as all other children served under Public Law 94-142, including mandatory parental involvement at IEP meetings, rights to an administrative hearing, and finally all the rights accorded under due process. The current legislation falls short in these areas, in my opinion.

I would hope that as we move forward on this important legislation, we remember there is still a long way to go. I commend the chairman for moving this bill in a timely fashion. Despite my concerns, this is overall a much needed piece of legislation.

TRIBUTE TO THE ALLEGHENY COUNTY LABOR COUNCIL ON ITS 25TH ANNIVERSARY

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. KOLTER. Mr. Speaker, I rise with pride today to call your attention to a very significant anniversary taking place this month of September 1986. I refer to the 25th anniversary of the founding of the Allegheny County Labor Council.

The council's formation reaches into the past when, in 1955, the American Federation of Labor and the Council of Industrial Organizations joined forces. In response, the Pittsburgh CIO's and AFL's began merger talks that took 6 years, coming to a close in 1961 when two AFL groups and two CIO groups—all from the Pittsburgh and McKeesport areas—agreed to become the Allegheny County Labor Council.

As Paul Stackhouse, Sr., the council's initial first executive vice president and current president, related, the merger took diplomacy and courage as the two labor groups intertwined their separate ideologies for the common good. "I think God intervened," Mr. Stackhouse said of the merger's success.

Now, for 25 years, the labor council has served the needs of working men and women in Pittsburgh and Allegheny County, especially during the recent trying economic times in western Pennsylvania. Their efforts are to be commended and I hereby do so.

Today, I put before the U.S. House of Representatives my pride and appreciation of the Allegheny County Labor Council on this special occasion. I wish them many more anniversaries because they deserve it, and most importantly, the working people of western Pennsylvania will benefit.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS OF 1986

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. RANGEL. Mr. Speaker, I rise in support of H.R. 5259, the Alcohol, Drug Abuse and Mental Health Amendments of 1986. This bill would reauthorize the research programs of the National Institute on Drug Abuse for 3 more fiscal years, fiscal year 1987, fiscal year 1988, and fiscal year 1989, with such sums as may be necessary. This will assure NIDA ample budget authority and treat the agency like most other Federal health research agencies which do not have specific authorization levels.

A specific authorization level establishes a ceiling on appropriations that can unduly restrict funding for critical research needs. For example, in 1986 the $74 million authorization ceiling for NIDA research was insufficient to accommodate both proposed congressional funding increases and administration requests for additional AIDS research funds for NIDA. The ceiling, coupled with Gramm-Rudman cuts, forced NIDA to reduce its support for individual research projects by 15 to 50 percent. Clearly, we cannot expect to maintain a top quality drug abuse research program when funding is so unstable.

Drug abuse research is vital if we are to have an adequate understanding of the physical and psychological effects of various drugs. Such research is also essential to improving the effectiveness of drug abuse prevention and treatment efforts. NIDA's research programs are an essential part of a national anti-drug abuse strategy.

Section 12 of H.R. 5259 revises the statutory authority for the Alcohol, Drug Abuse, and Mental Health Services [ADMS] block grant to change from 1984 to 1985 the base year used for calculating a State's minimum allotment. The effect of this change is to require that any reduction in block grant funding in future years be allocated equally among all States.

In 1984, Congress enacted legislation to revise the ADMS block grant allotment formu-

la to reflect an allocation based upon the relative population and per capita income of the States. Under this new formula, which was intended to provide a more equitable distribution of block grant funds, about half the States receive a large share of available moneys. Correspondingly, the proportionate shares of the other States are reduced. My own State of New York receives a smaller share of block grant funds under the new formula, even though drug abuse problems in New York are among the most serious in the Nation. Moreover, the amount of State funds that New York allocates to drug abuse on a per capita basis is triple the average of all the States. New York spends more State funds on a per capita basis for drug abuse programs than all but two other States.

Congress realized that, absent substantial additional appropriations, immediate implementation of the new formula would cause significant disruptions in existing services in those States receiving reduced allotments. To maintain a stable base of funding that States could rely on, and to avoid disruptions in services, Congress provided for a gradual transition to the new formula.

Specifically, Congress included a "hold harmless" provision so that no State would receive less in 1985 and subsequent years than it had received in 1984 under the old formula. Only amounts exceeding $462 million, the 1984 appropriation, were to be allocated according to the new formula.

In 1985, the $490 million appropriated for the block grant exceeded the 1984 level by $28 million. As a result of the transition rules, this entire increment was allocated only to those States receiving an increased share under the new formula.

In 1986, $490 million was again appropriated for the block grant. Due to the 4.3-percent Gramm-Rudman cut, however, this amount was reduced to $468 million. Because of the "hold harmless" provision, the Department of Health and Human Services determined that the 4.3-percent reduction should not be applied equally to all State allocations because to do so would reduce awards to States like New York below their 1984 allotment. Instead, reductions were taken only from those States that were eligible for incremental funding under the new formula. The reductions affected only the size of the incremental awards these States received.

Section 12 will require that any future reductions in block grant funds be applied equally to all States. I cannot support this provision. It will in effect eliminate the "hold harmless" provision that Congress believed was essential to avoid disruption of services during transition to the new formula for allotting funds among the States. It also forces States like New York to bear the burden of funding cuts even though they have not shared in any funding increases. I fail to see the equity in this approach.

Some will argue that the consequences of Gramm-Rudman could not have been foreseen when Congress enacted the "hold harmless" provision. This is true, but even without Gramm-Rudman, the same result could have occurred through the normal appropriations process if 1986 funding had not at least matched the 1985 level. Such a result was clearly foreseeable at the time Congress enacted the "hold harmless" provision. Nonetheless, Congress decided that avoiding disruptions in existing services was a more important goal.

The basic problem is that current funding is inadequate to meet the enormous demands for drug abuse services. Inequities will exist in whatever formula Congress devises until we commit the resources to provide drug abuse treatment to all those who need and want it. Instead, Federal support for drug abuse services has declined by over 40 percent since 1980.

The Omnibus Drug Enforcement, Education, and Control Act of 1986, passed by the House on September 11, provides an additional $200 million for drug abuse treatment and $50 million in new funds for community prevention activities. If enacted, these funds will help eliminate waiting lists for treatment and alleviate some of the serious strains under which State drug abuse services agencies are now forced to operate. In the meantime, however, I cannot support the ADMS block grant formula revision in section 12 of H.R. 5259.

Section 5 of H.R. 5259 amends title V of the Public Health Service Act to authorize the Administrator of ADAMHA to expedite research on a disease or disorder determined by the Secretary of HHS to constitute a public health emergency. I support inclusion of this provision in the bill which could be used to speed up research on such public health emergencies as acquired immune deficiency syndrome [AIDS] and the current national epidemic of crack cocaine use.

Mr. Speaker, the problem of drug abuse is currently a subject of intense national interest. H.R. 5484, the Omnibus Drug Enforcement, Education, and Control Act of 1986, is a comprehensive, bipartisan measure, that would provide much needed additional resources for drug abuse education, treatment, and narcotics law enforcement and interdiction. It would provide increased penalties for drug trafficking offenses and authorize the President to deny trade preferences to drug source nations which do not cooperate with the United States in reducing their illicit narcotics production.

Mr. Speaker, the final legislative content of any omnibus drug bill which will be enacted into law this year is not yet known; however, the House bill did not include provisions to extend NIDA's research. I support enactment of H.R. 5259, notwithstanding my objections to section 12, because it authorizes funds to continue the important work of the National Institute on Drug Abuse for 3 more fiscal years. I urge Congress to appropriate sufficient amounts to support a vigorous research program without the threat of crippling cuts that have plagued NIDA's efforts in recent years.

GEORGE WILL: DOWNHILL TO A SUMMIT

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. COURTER. Mr. Speaker, in the following Newsweek article, columnist George Will expresses with great clarity the pathetic situation the administration has gotten itself into by refusing to see how the Daniloff hostage taking is linked to the proposed summit. It has become painfully obvious that Gorbachev is treating the President of the United States with the disdain normally reserved for rulers of petty principalities.

What is so disturbing about Gorbachev's contempt for the President is not just the dishonor but what that contempt tells us about Moscow's state of mind and future intentions.

Hitler described Premier Daladier of France as a "miserable worm" after the Munich summit of 1938. Daladier and Chamberlain convinced him at Munich that they would tolerate any act of contempt rather than break the peace of Europe. And indeed, by ignoring Hitler's contempt, France and Britain made it certain that European peace would be breached within 12 months.

The arrogance of aggressors is ignored only at the cost of endangering world stability and peace. From this perspective, the administration's insistence on separating the Daniloff crisis from its relentless pursuit of a "no price is too high" summit has truly cast a pall over the future of relations between the world's great thermonuclear powers. One shrinks from spelling out the possible consequences of Gorbachev's humiliation of President Reagan.

DOWNHILL TO A SUMMIT

Like a cat crouched in front of a mouse's hole, Gorbachev waits. He is poised to make a leisurely meal of the Reagan administration as it staggers through the Daniloff debacle and toward a summit. Regarding Daniloff and summits, George Bush has weighed in with wonderment; "I don't understand this linkage in people's minds about the summit." Perhaps it is pointless to try to explain the obvious to people who need the obvious explained, but Bush should consider this. When we bombed Libya, the Soviets canceled a Shultz-Shevardnadze meeting. When they made an American a hostage, we did not let that disrupt a meeting. Who looks incontinently eager?

When one side signals an immoderate desire for a summit, the other side can exercise disproportionate control over the summit agenda, and hence the outcome. With Bush and others signaling that not even hostage taking dampens the administration's desire for agreements with the hostage takers, we are headed for a summit devoted disproportionately to arms control rather than such "peripheral" issues as human rights and regional strife, as in Afghanistan. The Soviet side can sit there like a row of stumps, serene in the confidence that concessions will be forthcoming from the U.S. side, which has accepted summitry as the key to foreign policy and has allowed Gorbachev to make arms control agreements a precondition for summitry. Arms control on such Soviet terms may translate

into crippling restrictions on the strategic-defense initiative. No wonder support for SDI, as measured by congressional willingness to vote funds, is eroding. Notice: the signal sent by dithering in the Daniloff affairs is a thread in a seamless web of ominous events.

Cornered bear: "Proof" of Daniloff's guilt may be forthcoming from a regime that doctors photos to erase images of one of its founders (Trotsky). Then, perhaps, a deal will be struck for his release. But no deal can undo the damage done by the administration's having communicated to Soviet negotiators an overriding hunger for a summit. Surely that hunger explains the reluctance to retaliate. The day Daniloff was arrested the U.S. government should have expelled all "Soviet journalists"—pardon the oxymoron—and given Gorbachev a list of other sanctions that would be applied, a new one each day.

Explaining why the administration did not retaliate, a U.S. official said: "The bear when cornered is ferocious." Ah. We have the Soviet Union cornered. It is still holding Daniloff and has suffered nothing noticeable, and only Gorbachev can, when it suits him, get Reagan off the hook on which Reagan impaled himself by doing all the things his aides said would not be done. He allowed linkage between the cases of Daniloff and the alleged spy Zakharov; he allowed the semiswap that treated the cases as equivalent; he broke linkage between Daniloff and a summit. But at least we've got'em cornered.

Gorbachev's hostage taking is an act characteristic and costless. Nora Beloff, a reporter expelled from Moscow in 1978, notes that Gorbachev was a political functionary at Moscow University in January 1953, during the anti-Semitic frenzy of Stalin's "doctor's plot." Beloff says Gorbachev "treated the assembled law faculty to such a virulent diatribe against 'Zionists and cosmopolitans'. . . that one liberal professor committed suicide and other teachers and students disappeared from view." Gorbachev's treatment of Daniloff is a thuggish act by a thug but is hardly a blunder. It has cost Gorbachev nothing and has cost the Reagan administration its reputation as restorer of national self-respect.

Early in this crisis The Washington Post warned against settling into "that bemused state of mind whereby we subtly transform an outrage into a way of life." Yet the sky is dark with to-ing and fro-ing Americans visiting Moscow about cooperation in space, fusion energy, trade, science, technology, even housing.

Display of disdain: Last Thursday, in an unprecedented display of disdain for a U.S. president, Gorbachev personally and in public branded Daniloff a spy. There had been calculated insult in the indictment of Daniloff after Gorbachev received Reagan's personal letter stating that Daniloff is not a spy. But that insult was eclipsed when Gorbachev personally and publicly insisted that Reagan is a liar. Gorbachev did that at the moment Shevardnadze was arriving in Washington. Clearly the administration policy regarding Daniloff has produced in the Soviet leadership the most dangerous attitude: contempt.

The day after Gorbachev's insult, Reagan saw Shevardnadze. This may have been done, in part, for domestic consumption—to convince conservatives that Reagan is quite cross about Daniloff. However, conservatives are concerned about Reagan's policy, not his passion. The disjunction between the two things is garbling the administration's message domestically. The day of Gorbachev's insult, Reagan had barnstormed for Senate candidates down south, where he said that under his administration America has taken off the "Kick me" sign and replaced it with "Don't tread on me." Reagan knows how thoroughly his political vitality is bound up with the nation's sense of having put behind it an era of humiliations. That sense is perishable and if it goes, so will Reagan's sway in Congress and the country.

Some Republicans, myopically focused on the task of keeping control of the Senate, are holding their breath, waiting to see if Democrats can summon the intellectual steel to subject the administration's policy to the withering analysis it deserves. Unfortunately, Republicans can relax. The parties are indistinguishable in their paralyzing belief that———fill in the blank with one of these: the invasion of Czechoslovakia, the invasion of Afghanistan, the crushing of Solidarity, the KAL massacre, the murder of Major Nicholson, the kidnapping of Daniloff should not be allowed to interfere with———fill in the blank with one of these: summitry, detente, the arms-control "process." Henceforth it will be hilarious to hear Republicans stammering through their standard rhetoric about Democrats being too irresolute to govern America now that it is—remember?—"back and standing tall."

PAYING TRIBUTE TO A COMMUNITY LEADER

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. KOLTER. Mr. Speaker, I rise to commend and honor one of the fine residents of my Fourth District of Pennsylvania.

Arthur Daellenbaugh, chief of police of SNJP Borough near Wampum, has served the citizens with excellence for over 30 years.

Active in area law enforcement since 1953, Mr. Daellenbaugh served 20 years as a justice of the peace for Big Beaver Borough, and has been chief of police for Enon Valley Borough and assistant chief of the borough of New Galilee.

Mr. Daellenbaugh is now constable for Big Beaver Borough and chief of police for life for the borough of SNPJ, a distinction Mr. Daellenbaugh received some time back.

As he nears age 60, Mr. Daellenbaugh—a resident of Big Beaver Borough his entire life—can also look back on a number of awards and certificates he has received for his outstanding service throughout his career. He has received honors from a number of Pennsylvania State Governors, the Kentucky Colonel Award, the Colonel Award, the Aide de-Camp Award and has been named an honorary citizen of many States and cities.

I rise before the House of Representatives today to call attention and to praise this distinguished constituent and to wish Mr. Arthur Daellenbaugh the very best of times as he continues to serve the communities he represents.

PORNOGRAPHY VICTIMS PROTECTION ACT

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. GREEN. Mr. Speaker, I recently introduced H.R. 5509, the Pornography Victims Protection Act of 1986. This act would amend chapter 18 U.S.C. pages 2251-2255, "Sexual Exploitation of Children," so as not only to strengthen present laws on that subject, but also to add new provisions prohibiting the coercion of any person, adult or minor, to engage in sexually explicit conduct for the purpose of producing pornographic materials. It would impose both civil and criminal penalties on those engaging in such coercion, and would make civil remedies available to those who were so coerced. The legislation avoids any first amendment problems since the bill specifically deals with "conduct," not "content." I believe that this bill would be a major step forward in the campaign against the sexual exploitation of children and women.

Because of the complex nature of this subject, I asked the American Law Division of CRS to do a section-by-section analysis of H.R. 5509.

The text of the analysis follows:

H.R. 5509

SECTION 1. SHORT TITLE

This section states that the Act may be cited as the "Pornography Victims Protection Act of 1986."

SECTION 2. SECTION 2251 AMENDMENTS

This section proposes amendments to 18 U.S.C. § 2251, "Sexual exploitation of children" and changes its title to "Sexual exploitation."

The section amends subsection 2251 (a) and (b), relating to child pornography, to include situations where a person knows or has reason to know that the minor involved in producing such pornography was transported in interstate or foreign commerce for this purpose. The prohibitions contained in these subsections presently apply only when those involved know or have reason to know that the pornography will be transported in interstate or foreign commerce, or will be mailed. Subsection (a) applies to any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct; while subsection (b) applies to any parent, legal guardian, or person having custody or control or a minor who knowingly permits the minor to participate in the above activties.

Regulation of visual depictions of minors engaged in sexual activity even where such material is not legally obscene is authorized under a 1982 Supreme Court decision, *New York* v. *Ferber*.[1] While Congress does not have general authority to legislate on this topic, the present law and the proposed amendment are based on its authority to regulate interstate and foreign commerce,[2]

[1] 458 U.S. 747 (1982).

[2] U.S. Const. Art. 1, § 8, cl. 3.

and to oversee the operation of the postal service.[3] Thus the federal prohibitions apply only to material which moves in interstate or foreign commerce, and/or is sent through the mail.

The Act also proposes a new subsection 2251(c), which would prohibit a person from coercing, intimidating, or fraudulently inducing an individual 18 years of age or older to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct. It would apply to material sent through the mail and/or moving in interstate or foreign commerce, the same as under subsections 2251(a) and 2251(b), supra.

This subsection also contains a listing of facts or conditions which it states shall not, without more, negate a finding of coercion under the subsection. These include (1) that the person involved is or has been a prostitute; (2) that the person is connected by blood or marriage to anyone involved in or related to the making of the pornography; (3) that the person has previously had, or been thought to have had, sexual relations with anyone, including anyone involved in or related to the making of the pornography; (4) that the person has previously posed for sexually explicit pictures for or with anyone, including anyone involved in or related to the making of the pornography at issue; (5) that anyone else, including a spouse or other relative, has given permission on the person's behalf; (6) that the person actually consented to a use of the performance that is changed into pornography; (7) that the person knew that the purpose of the facts or events in question was to make pornography; (8) that the person signed a contract to produce pornography; or (9) that the person was paid or otherwise compensated.

Again, the above factors are stated to not, *without more*, negate a finding of coercion (emphasis added). This means that the person charged with coercion can introduce evidence as to their existence; however, the mere fact of their existence will not be sufficient to refute the charge.[4] This provision reflects the view that a person can in fact be coerced into making pornography notwithstanding the existence of any of these factors.

Penalties for violations of this section would remain the same: maximum penalties for individual violators are a $100,000 fine and 10 years imprisonment, for a first offense; and a $200,000 fine and 15 years imprisonment (2 years minimum), for each subsequent offense. An organization which violates this section can be fined not more than $250,000.

SECTION 3. SECTION 2252 AMENDMENTS

This section amends 18 U.S.C. § 2252, "Certain activities relating to material involving the sexual exploitation of minors," to encompass the coercion prohibitions to be included in 18 U.S.C. § 2251, supra. The prohibitions include knowingly transporting or shipping in interstate or foreign commerce or mailing the prohibited material, or knowingly receiving or distributing any material which was so transported, shipped, or mailed. Present penalties, which are the same as under § 2251, supra, would remain the same. The new section heading would be "Certain activities relating to material involving sexual exploitation."

SECTION 4. CIVIL REMEDIES

This section adds new 18 U.S.C. §§ 2255 to 2260, relating to civil remedies. [Present § 2255, definitions for the chapter, is not amended and becomes § 2261.] New § 2255 authorizes federal district courts to prevent and restrain violations of §§ 2251 or 2252, by issuing appropriate orders, including ordering any person to divest himself of any direct or indirect interest in any legal or business entity; imposing reasonable restrictions on the future activities or investments of any person, including prohibiting such person from engaging in the same type of legal or business endeavor; or ordering the dissolution or reorganization of any legal or business entity after making due provision for the rights of innocent persons.

The Attorney General or any person threatened with loss or damage due to violations of §§ 2251 or 2252 may institute proceedings under this section. The court hearing the case may enter restraining orders or prohibitions, or take any other actions, including the acceptance of satisfactory performance bonds, as it deems proper pending its final determination.

Any victim of a violation of §§ 2251 or 2252 who suffers physical injury, emotional distress, or property damage as a result of such violation may sue to recover damages in any appropriate federal district court [see discussion of new § 2257, infra], and shall recover triple damages if a violation is found.

For purposes of this section, violations are to be determined by a preponderance of the evidence. Successful plaintiffs are entitled to recover the cost of the suit, including a reasonable attorney's fee, from those found guilty of a violation.

Proposed § 2250(d) states that a defendant found guilty in any criminal proceeding brought by the United States under this chapter is estopped from denying the essential allegations of the criminal offense in any subsequent civil proceeding. Since the standard of proof in criminal cases, "beyond a reasonable doubt," is stronger than the "preponderance of the evidence" standard contained in proposed § 2255, this relieves the plaintiff from having to establish those facts which have already been proven under a higher standard of proof in a finalized criminal proceeding.

Proposed subsection (e) states that nothing in this section shall be construed to authorize any order restraining the exhibition, distribution or dissemination of any visual material without a full adversary proceeding and a final judicial determination that the material contains a visual depiction of sexually explicit conduct, as defined by 18 U.S.C. § 2261 [currently § 2255], engaged in by a minor or by a person who was coerced, intimidated, or fraudulently induced to engage in such sexually explicit conduct.

Material depicting minors engaged in sexual activity can be regulated by the government under *New York* v. *Ferber*, supra. However, there is no reported caselaw which would authorize the prohibition of constitutionally protected material[5] because one or more of the persons depicted has been coerced into participating in its production. It may be that the reasoning in *Ferber* could be extended to cover this situation, in that a coerced adult could be analogized to a child and thus found to be equally entitled to government protection. A challenged depiction might also be found to violate a victim's right of privacy, or to present the victim in a "false light," as discussed by the Supreme Court in a 1967 Supreme Court decision, *Time, Inc.* v. *Hill*.[6] The degree of constitutional protection, if any, afforded to such material is simply uncertain at this time.

Proposed § 2256 imposes a civil penalty of $100,000 on any person found to violate §§ 2251 or 2252 by a preponderance of the evidence, as well as forfeiture of any interest in property described in § 2254 [basically material or equipment used in producing, reproducing, transporting, shipping or receiving the proscribed material; the material itself; and property constituting or derived from gross profits or other proceeds obtained from a violation of the statute, except that no owner shall forfeit material for acts or omissions committed without his knowledge or consent]. If the United States Attorney General prevails in an action for recovery of this civil penalty or forfeiture, he may also recover the cost of the suit, including a reasonable attorney's fee.

If the identity of any victim of a violation is established prior to the award of a civil penalty made to the United States under this section, the penalty shall be paid to that victim, or apportioned among them, as appropriate.

Proposed § 2257 discusses venue and process requirements. It states that any civil action or proceeding brought under this chapter may be instituted in the district court of the United States for any district in which the defendant resides, is found, has an agent, or transacts his affairs. If the ends of justice require that other parties residing in other districts be brought before the court, the court may summon such parties, and process for that purpose may be served in any federal judicial district by the marshall of that district.

Subpoenas are authorized to compel the attendance of witnesses from other districts; however, no subpoena may be issued for service upon an individual who resides in another district at a place more than 100 miles from the place at which the court is held, unless approved by a judge of that court. All other process in any action or proceeding under the chapter may be served as discussed above.

Expedition of actions brought under this chapter is authorized under proposed § 2258 if the Attorney General files with the clerk

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[3] U.S. Const. Art. 1, § 8, cl. 7.

[4] This is in contrast to Indianapolis and Marion County, Indiana, Code §§ 16-1 to 16-27, added by City-County Ordinance No. 24, 1984, which defined pornography depicting abuse of women as a form of sex discrimination, and hence a civil rights violation. That ordinance contained a lengthy listing of facts and conditions, roughly comparable to those in H.R. 5509, which were flatly stated not to constitute a defense to the charge of coercion into pornographic performance, one of the acts prohibited by the ordinance. Such a flat prohibition is constitutionally problematic, in that a person accused of violating the ordinance might find it extremely difficult to counter the accusation without relying on one or more of these factors as part of his or her defense and could thus be found guilty of a violation even where none had occurred. The ordinance was held unconstitutional on other grounds, without consideration of this point, in *American Booksellers Ass'n* v. *Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd* 106 S.Ct 1172 (1986).

[5] While obscene material has no constitutional protection, *Roth* v. *United States*, 354 U.S. 476 (1957), the definition of what material is legally obscene is quite narrow. As set forth in *Miller* v. *California*, 413 U.S. 15, 23 (1973), obscenity exists only where the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law; and the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Thus much pornographic (erotic) material is not legally obscene, and thus enjoys constitutional protection.

[6] 385 U.S. 374 (1967).

of the court in which such a case is pending a certificate stating that in his opinion the case is of general public importance. A copy of that certificate is to be furnished immediately to the chief judge or presiding district judge of that district, who is to immediately designate a judge of the district to hear and determine the action. That judge in turn is to assign the action for hearing as soon as practicable and hold hearings and make a determination as expeditiously as possible.

Proposed § 2258 states that in any proceeding ancillary to or in any civil action instituted under this chapter, the proceedings may be opened or closed to the public at the discretion of the court after consideration of the rights of affected persons. This provision could conceivably lead to a constitutional challenge based on how it was applied in a particular case, in that the Supreme Court has generally been reluctant to uphold closed judicial proceedings.[7] However, the case which appears to be most analogous to that which would arise under the proposal, *Globe Newspaper Co.* v. *Superior Court for the County of Norfolk*,[8] lends credence to the view that this language would in fact pass constitutional muster. This case invalidated a Massachusetts statute which required, under all circumstances, the exclusion of the press and public during the testimony of a minor victim in a sex-offense trial. Massachusetts offered as justification its interest in protecting minor victims of sex crimes from further trauma and embarrassment, and its interest in encouraging such victims to come forward and testify in a truthful and credible manner. The Court found that the first interest, though compelling, was not sufficient to justify a mandatory closure rule. Rather, the trial court should be permitted to determine on a case-by-case basis whether the state's legitimate concern for the minor victim's well-being necessitated closure—the approach adopted in H.R. 5509. (The second contention was rejected out-of-hand.) Still, it is possible that closure in a particular case could result in judicial challenge.

Under proposed § 2260, a civil action under §§ 2255 or 2256 (civil remedies and civil penalties) must be brought within six years from the date the violation is committed. If the victim is a minor on the date the violation occurs, the statute of limitations is tolled for this purpose during the period of the victim's minority.

SECTION 5. CLERICAL AMENDMENT

This section amends the table of sections at the head of chapter 110 of title 18, United States Code, as well as the table of chapters for that title, to conform with these amendments.

SECTION 6. SEVERABILITY

This section adds a new § 2262 to title 18. It is a standard severability clause, stating that if any part of the chapter, or its application to any person or circumstances, is held invalid, the other parts of the chapter and their application to other persons or circumstances shall not be affected.

[7] E.g., *Richmond Newspapers Inc.* v. *Virginia*, 448 U.S. 555 (1980); *Press-Enterprise Company* v. *Superior Court of California for the County of Riverside*, 106 S.Ct. 2735 (1986).

[8] 457 U.S. 596 (1982).

PERSONAL EXPLANATION

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. LEWIS of Florida. Mr. Speaker, due to an emergency situation, I was unable to record my votes on the following: Rollcall vote No. 398, a substitute amendment offered by Mr. PANETTA to the amendment offered by Mr. ROBERTS regarding uniform tolerance and; rollcall vote No. 400, final passage of H.R. 2482, the Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1986. Had I been present, I would have voted "nay" for rollcall vote No. 398, and "yea" for rollcall vote No. 400.

HONORING A SPECIAL PERSON

HON. JOE KOLTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. KOLTER. Mr. Speaker, today I rise before the House of Representatives to honor a constituent of my Fourth District of Pennsylvania, Mrs. Vekasy Zoltani. Mrs. Zoltani has recently retired from her position as postmaster of Conway after 22 years of loyal service. She will now have the time to enjoy the company of her twin daughters and her five grandchildren.

Mrs. Zoltani has been a citizen of this area for nearly 40 years. She attended Geneva College and later went on to become the 13th postmaster of Conway in May 1964. It was shortly after her appointment that she began working toward the eventual relocation and expansion of the town's postal facilities. The efficiency of Conway's postal service is largely due to the concerted and persistent efforts of Mrs. Zoltani.

Mrs. Zoltani told me that her fondest memory as postmistress will be the yearly programs she sponsored for the town's schoolchildren. She and a postal carrier would instruct the children as to the proper manner of addressing mail as well as the importance and the privacy of the mail. As a result of her program, Mrs. Zoltani is proud to say there has been little or no vandalism of the mail or mailboxes in the town of Conway.

The community will certainly miss Mrs. Zoltani's proven skill as postmistress and her willingness to expand her role as public servant. I am proud to share with my colleagues, Mr. Speaker, the achievements of such a fine and dedicated individual as Mrs. Vekasy Zoltani of the Fourth District of Pennsylvania.

THE VOICE OF AMERICA IS AT RISK

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. COURTER. Mr. Speaker, at times it appears that in the so-called war of ideas the United States is ready to acquiesce in its own disarmament. The marked neglect of international radio broadcasting during the 1970's is not by any means still characteristic of administration policy, and some progress has been made in very recent years. And yet it is still usually true that in both bodies of the Congress those who would assure the budgets of the Voice of America, Radio Free Europe, and Radio Liberty are made to fight every time authorization and appropriation cycles occur. There is no good reason for that. And it contradicts the President's policy of bringing the aging and even ancient equipment of our broadcasters up to date with a wide-ranging modernization program.

Alexander Solzhenitsyn once said—and I am afraid that we in Congress continue to prove—that the West has no comprehension of what immense power our factual, fair broadcasts have in countries where the official media are purveyors of lies.

Since the Appropriations Committee of the other body recently zeroed out all modernization funds for the VOA, and since Members of the House will undoubtedly be given a chance to review that decision in conference later this year, I would like my colleagues to read the following article by a distinguished former Director of the Voice of America, Mr. Ken Tomlinson.

[From the Washington Times, Sept. 22, 1986]

PUTTING THE VOA AT RISK

We were eyeball-to-eyeball with David Stockman in the Cabinet Room of the White House. The issue was the future of the Voice of America modernization program, and I was about to experience the most enjoyable moment in my government career.

Using the same tactics that had delayed VOA modernization through four administrations, the forces of inertia at the Office of Management and Budget were trying to scuttle our $1.2 billion plan to rebuild the nation's international radio voice. Mr. Stockman, oblivious to the importance of VOA modernization and a construction budget for new transmitter sites, was arguing OMB's case before the White House budget appeals board.

Charles Wick, then U.S. Information Agency director, pulled out the text of a 1980 speech in which candidate Ronald Reagan had blasted Jimmy Carter for having campaigned for radio modernization and then turned his back on new funding for VOA, Radio Free Europe, and Radio Liberty. "I pledge to you that a Reagan administration will work with the Congress to turn this sorry situation around," he had said.

Mr. Stockman blinked—and life was breathed into VOA modernization. OMB agreed to a $1.2 billion plan to be funded over the next five years. Since there was nearly unanimous bipartisan support for radio modernization on Capitol Hill, I left office nine months later confident that the program to rebuild VOA could not be stopped.

Now I fear I was wrong.

In recent days, the Senate Appropriations Committee wiped out every penny of the $131 million the administration was seeking for the modernization program for FY 1987. Most of the $80 million being asked to begin modernization for RFE/RL was eliminat-

ed—jeopardizing the key joint site planned for Israel. The administration-generated momentum for radio modernization appears to have dried up.

Meanwhile, it is no secret that morale at VOA has plummeted. The Voice has had a confirmed director for only four months since I left in September of 1984. And I am the only VOA director to have celebrated one year in office since the early days of the Carter administration—a dubious distinction if I ever heard one.

Surely, the time has come to recognize that something is seriously wrong—and something somehow has to be changed.

The case for radio modernization is irrefutable. Both conservatives and liberals recognize that VOA and RFE/RL represent the *only* means we have to communicate what is happening in the world—not to mention our position and values—directly to the peoples of the world. That every citizen of the Soviet bloc countries has, through VOA, constant access to current affairs is a very real check on the power of totalitarian leaders as well as a key to world peace.

Sadly, in our media-saturated society, it is difficult for us to comprehend how critical international radio is—especially in times of crisis—to countless millions around the globe.

Chernobyl. Nicholas Daniloff. KAL-007. Afghanistan. Accurate information on these events is available to people living in the Soviet bloc, as well as to others living under authoritarian regimes around the world, only because of international broadcasting.

Can USIA television replace VOA as our Voice to the world? Not in the foreseeable future. As laudable as are efforts to upgrade USIA's television service, it is against international accords (even if technically feasible) for one country to beam a television signal directly into another without permission of the host government. And shipping USIA tapes to Moscow is an exercise in futility!

That VOA facilities are deeply in need of replacement is beyond doubt. More than 35 percent of VOA transmitters are at least 30 years old. We broadcast to the Soviet Bloc with equipment captured from the Nazis at the end of World War II. VOA has not added significant transmitter equipment in more than 20 years. A listener in Ghana writes about the difficulty he has receiving VOA news. "It sounds as if your transmitters are wearing out," he said. They are.

Why, then, is a VOA modernization program in jeopardy?

In one sense this is a textbook illustration of the difficulty our nation's political leadership has in changing priorities in government. The president can demand modernization of our radios but unless structures are changed to accomplish this demand, the entrenched bureaucracy can find a thousand reasons not to carry it out. Henry Ford did not create the auto assembly line with blacksmiths.

The fact of the matter is that a number of USIA officials privately oppose a real push for VOA modernization because that would require making VOA a top priority of the agency.

(I'll never forget my shock in learning that a program to send piano players to Europe had official USIA budgeting priority over components of VOA modernization in the same months that President Reagan was saying that modernization had the priority that President Kennedy gave to the space program.)

There is also the problem of diplomatic hostility to international broadcasting. Ideas and traditional diplomacy are not always compatible with detente, and neither is truth. Nothing enrages the Soviets more than reporting the plight of Jews in the U.S.S.R. The diplomatic community will not readily make budgetary sacrifices to strengthen the signal of our radios.

There is no excusing the Appropriations Committee members who wiped out radio construction, and they should be called to task. But they should have felt the heat before the vote.

What is needed is for the political leadership of this administration to inform career personnel at OMB and USIA that radio modernization is USIA's highest priority and that it must be accomplished. And then the White House must mobilize the widespread support VOA and RFE/RL have on Capitol Hill to push through funds for modernization.

Yet there may be a silver lining on the modernization front. Richard Carlson has just been confirmed as VOA director, and that surely will help restore VOA's voice in USIA's leadership. Under Malcolm Forbes Jr., leadership at the Board for International Broadcasting (which runs RFE/RL) has never been stronger.

Meanwhile, it would be a good idea for the president to call in the supporters of our international radios and reaffirm his commitment to modernization—an act that will not be lost on those dragging their feet. Then he can unleash his people on Congress.

We will never see modernizaion of VOA until money is placed in a trust fund to ensure the job is done.

CONTRACTOR OF THE YEAR AWARDED DALTON CONSTRUCTION CO.

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. TORRES. Mr. Speaker, it is with extreme pleasure that I call to the attention of my colleagues in Congress the awarding of Contractor of the Year to the Dalton Construction Co. The company has been chosen to be Contractor of the Year by the California Association of Minority American Contractors.

Dalton Construction Co. can be proud of its many years of successful building contracting. It is a highly competent and technically oriented building business. The Company strives to provide quality, competitive construction, generally ahead of schedule.

The company has assembled a staff of dedicated young men and women from a variety of disciplines such as financial administrators, accountants, attorneys, architects, and construction managers. Among their list of accomplishments are a Department of Housing and Urban Development Award for superior effort in utilization of minority contractors on HUD projects, a Department of the Army Commendation and Outstanding Peformance Award for construction of military officers' quarters at Fort Irwin, CA, and a city of Las Vegas award for construction of a detention and correctional center for the city. In addition, they have designed, built, and rehabiliated numerous housing projects.

Mr. Speaker, I ask my colleagues to join me in recognizing Dalton Construction Co. for their superior track record of performance in the building construction industry. The California Association of Minority American Contractors has made an excellent choice for its 1986 Contractor of the Year Award.

PERSONAL EXPLANATION

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. SYNAR. Mr. Speaker, last Thursday I missed a series of votes on the omnibus drug bill because I was hosting an economic development conference in Oklahoma. The conference had been planned for several months and we did not anticipate the House being in session. Due to the drop in oil prices and the farm crisis, Oklahoma's economy is in a very serious condition and I belonged back home. Because of the importance of the omnibus drug bill, I would like to explain in detail my views on several votes I missed.

Generally, I believe our increased awareness of the drug problem is good. The Government should play a lead role in curbing drug abuse and I agree with the overall effort. However, I fear that our headlong rush to legislate has produced some bad results. First, we cannot afford any new spending, much less $3.5 billion. We are acting like Congresses of the past which threw money at problems and called it a solution. We should not add to the deficit.

Second, several of the amendments offered are tremendously disruptive of our time-tested law enforcement system and the careful balance between tough criminal laws and the civil liberties of law-abiding citizens.

For example, I would have voted against the amendment by Mr. LUNGREN to create a so-called good faith exemption to the exclusionary rule for warrantless searches. This amendment applies to all Federal criminal cases and is not limited to drug-related violations. It is much broader than the scope of this legislation.

A good faith exception is probably unworkable. The courts are not equipped to probe the subjective good faith of law enforcement officers. The result, if this statutory exception is ultimately enacted into law, will be either a gaping hole in the exclusionary rule or judicial interpretations that render the amendment meaningless and frustrate the author's purpose. The end result will inevitably be that criminal prosecutions will be significantly longer and expensive while we wrangle over this new rule.

This so-called good faith exception is bad law. The exclusionary rule is critical to protect American citizens and deter police misconduct. It is unfortunate that it is most visible in those anomalous situations when a clearly guilty defendant is freed. Statistically these are a very small percentage of total prosecutions. We rarely focus on how the exclusionary rule helps protect innocent individuals from overzealous law enforcement.

In *United States* v. *Leon,* 104 S.Ct. 3405 (1984) and *Massachusetts* v. *Sheppard* 104 S.Ct. 3424 (1984) the U.S. Supreme Court created a good faith exception for cases in which law enforcement officers reasonably relied on a defective warrant. We should see how this new exception works before expanding it. The Judiciary Committee has not held hearings on the exclusionary rule since Leon was handed down.

In 72 years our Federal courts have not been able to find a better way to protect fourth amendment rights. We should be very cautious about making radical changes in the exclusionary rule without thorough deliberation. Former Supreme Court Justice Potter Stewart put the exclusionary rule into perspective:

Much of the criticism leveled at the exclusionary rule is misdirected; it is more properly directed at the Fourth Amendment itself * * *. The exclusionary rule places no limitation on the actions of the police. The Fourth Amendment does.

The inevitable result of the Constitution's prohibition against unreasonable searches and seizures and its requirements that no warrant shall issue but upon probable cause is the police officers who obey its strictures will catch fewer criminals * * *.

That is the price the framers anticipated and were willing to pay to ensure the sanctity of the person, home and property against unrestricted governmental power.

I also would have voted against the amendments relating to the use of the military in law enforcement. Over our 200 years we have developed a strict line of demarcation between law enforcement and the military. This amendment clouds that line.

The practical reason that Congress now turns to the military to assist law enforcement is because the Department of Defense has massive resources when compared with the Federal agencies responsible for fighting drug trafficking. We are at fault for allowing this situation to evolve.

For example, the Pentagon budget has increased 103 percent over the last 5 years—or 51 percent adjusting for inflation—while the budgets of the Coast Guard and Customs Service, the two agencies with primary responsibility for drug interdiction, are smaller now than when President Reagan took office 6 years ago.

More importantly, our Founding Fathers intentionally gave law enforcement responsibility to States and localities to avoid mischief by those who would abuse a strong centralized government. It has been necessary to create Federal law enforcement agencies for specific purposes, but we have carefully circumscribed their powers. We are going in a dangerous direction to involve military personnel in law enforcement.

I would have voted against the Gekas amendment imposing the death sentence. I agree fully with President Reagan's assessment that the omnibus drug bill is too important "to get embroiled on a side issue such as the death penalty." The President and I do not always agree on matters, but we certainly agree that a death penalty amendment will slow down or kill this legislation in the Senate.

On a substantive level, the Gekas amendment is probably unconstitutional. A death penalty must be restricted to punish conduct that results in a death in cases in which the defendant killed or attempted to kill the victim. The Gekas amendment is much broader.

In *Godfrey* v. *Georgia*, 446 U.S. 420 (1980) the U.S. Supreme Court struck down a similar statute because its unconstitutionally broad scope failed to give the courts adequate guidance.

The Gekas amendment is downright bizarre in providing that a person may be sentenced to death on the basis of "information presented regardless of its admissibility under the rules governing the admissibility of evidence at criminal trials." While no one has a constitutional right to the Federal Rules of Evidence, capital punishment is the most severe punishment possible and all Americans should be able to expect normal procedure.

Again, we will delay punishing the guilty because of the inevitable appeals, inevitable reversals and inevitable new trials, following the imposition of a clearly unconstitutional death sentence.

With this Mr. Speaker, I regret missing votes last Thursday and Friday and would like to explain now how I would have voted on each recorded vote.

OMNIBUS DRUG ACT

"No" on the Kramer amendment imposing madatory life sentences for persons 21 or older convicted for a second time for selling drugs in or near schools (roll number 370).

"No" on the Rangel amendment (increasing funding for State and local law enforcement grants (roll number 371).

"No" on the McCollum amendment to remove the cap placed on the size of State prison industry contracts with the Federal Government (roll number 372).

"No" on the Lungren amendment concerning the exclusionary rule (roll number 373).

"No" on the Gekas amendment concerning the death penalty (roll number 374).

"No" on the Bennett amendment to transfer certain aliens from State and local penal facilities to Federal facilities (roll number 375).

"No" on the Chandler amendment to devote some of the drug abuse education funds to higher education institutions (roll number 376).

"Yes" on the Bilirakis amendment to strike the creation of an Advisory Commission on Intercollegiate Athletics (roll number 377).

"Yes" on final passage of the Omnibus Drug Act (roll number 378).

"Yes" on approving the journal on Friday (roll number 379).

SOUTH AFRICAN SANCTIONS

"Yes" on motion to bring up South African sanctions (roll number 380).

"Yes" on motion to agree to Senate amendment on sanctions (roll number 381).

HUD APPROPRIATIONS

"Yes" on motion to waive points of order on HUD appropriations bill (roll number 382).

"Yes" on final approval of HUD appropriations (roll number 383).

GENE SNYDER

SPEECH OF

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. MICHEL. Mr. Speaker, I want to join our colleagues in paying tribute to our good friend, GENE SNYDER, who has so ably represented the people of his district, the Fourth District of Kentucky, for two decades and who will retire at the end of this Congress.

GENE has served with distinction and effectiveness on the Merchant Marine and Fisheries Committee and as ranking minority member of the Public Works and Transportation Committee.

Those of us who have been in the House for a number of years get to know each other fairly well. Not just in strictly legislative matters, but in matters of personality and talent and political skills. And I can say that GENE SNYDER has always impressed me, both before and since I have become Republican leader, with his persuasive power, his ability to focus on and help achieve realizable legislative goals and his overall effectiveness.

GENE is one of the classic tellers of tales, in the great House tradition that seems, these days, to be slowly dying. Such a gift is something more than the ability to tell a good story—it is a cherished part of this complicated, sometimes maddening, always difficult task we call legislating. A good story, at the right time, told in the right way, can go far to ease a tense atmosphere, to slyly illustrate a point or to just plain make us laugh when we need it. It is an enviable gift and we're going to miss GENE'S ability in this area as well as in so many others.

Mr. Speaker, let me just say GENE has been a good colleague and a good Representative for his constituents. That may seem like slight praise to those who have not served in the House, but to those of us who have been on the firing line for many a year can tell you, it is the highest praise we can pay.

TRIBUTE TO HON. GENE SNYDER

SPEECH OF

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. BEVILL. Mr. Speaker, I rise today to pay tribute to my good friend GENE SNYDER of Kentucky who is retiring this year. I consider GENE to be one of my best friends here in Congress. I appreciate him and I will really miss him.

GENE has done an outstanding job as ranking Republican on the Public Works and Transportation Committee. In that role, he has been especially helpful to me. When the airport in my home county of Walker was in a dangerous, deteriorating condition, GENE took the lead to make it possible to build a nice, safe airport. He may not know it, but that new

airport actually may have saved some lives not long ago. A plane not scheduled to land there, developed engine trouble unexpectedly. It made a safe landing and no one was injured. The thought has always stayed with me that having that safe, new airfield prevented what could have been a disaster. Those of us from Walker County owe GENE SNYDER a debt of gratitude for the work he did to make that new airport a reality.

Not only has GENE worked hard for his constituents in Kentucky's Fourth District, but he has worked hard for our Nation.

He is respected on both sides of the aisle as a man of integrity. His talents will be missed by his many friends and colleagues here in Congress.

I would like to wish GENE well in his future endeavors. We won't forget the fine work he did here.

PERSONAL EXPLANATION

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. TORRES. Mr. Speaker, I was unavoidably absent on official business during rollcall votes No. 399 and No. 400 on Friday, September 19. Had I been present on the House floor, I would have cast a "no" vote on the Robert amendment. I would have voted aye on final passage of the FIFRA Amendments bill, H.R. 2482.

ARNIE'S PLATOON WINS THE CHRYSLER PRO-AM

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. McDADE. Mr. Speaker, Arnold Palmer, already a golfing legend in our time, teamed with some local golf amateurs to win the Chrysler Cup, International Seniors Pro-Am tournament at Avenel, the new Tournament Players club in Potomac, MD, on September 2, 1986.

Arnold Palmer headed a team of eight American senior golf champions. Gary Player led an equal number of international champions. On September 2, 1986, Arnold Palmer had a hole-in-one on the 3/par, third hole. On the next day, September 3, 1986, he holed out again on the same hole with a single shot. Some reporters called it a 10 million-to-1 chance.

But there's a human-interest side to this story that involves just ordinary folks, like yours truly.

Arnold Palmer's pro-am team consisted of Jerry Osgood, a Coca-Cola Co. executive; Tom Bolger, chairman of the board of Bell Atlantic; Lou Kriser, a Capitol Hill consultant; and me, JOE MCDADE. Even if you've not a golfer, you can appreciate what we all felt like to be with the great Arnie Palmer when he made the first of his historic hole-in-one series and also to lead the winning pro-am team. It was a golfer's dream come true and a day none of us will ever forget. Thanks Arnie, for helping your platoon win.

THE NATIONAL ENDOWMENT FOR DEMOCRACY

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. COURTER. Mr. Speaker, I want my colleagues to have the chance to see the following article on the National Endowment for Democracy by Morton Kondracke.

Mr. Kondracke is soon to join the New Republic, whose current editors, I am pleased to note, have been steady defenders of the NED. The endowment, though federally funded, is privately directed and devoted to nonpartisan and peaceable efforts to strengthen democratic movements, newspapers, and labor unions in foreign countries. Its outstanding work, I fear, is overlooked by too many Members, and its small budget comes under the most harsh scrutiny during each authorization and appropriation cycle. I therefore, very much appreciate the New Republic's view of the worthiness of the NED's efforts. And I want the RECORD of the House to reflect my further appreciation for Mr. Kondracke's equally clear view of the importance of the Endowment.

[From the New York Times, Sept. 22, 1986]

DON'T SELL DEMOCRACY SHORT

(By Morton Kondracke)

WASHINGTON.—There will be an effort in the Senate this week to kill off the National Endowment for Democracy, the private agency that administers this country's modest efforts to promote democratic movements around the world. This should not be allowed to happen.

The effort comes at a time when, according to Central Intelligence Agency estimates, the Soviet Union spends between $60 million and $80 million a year on 13 worldwide front groups that promote its ideological line and $50 million more covertly aiding Communist parties around the world. This is all separate from the activities of the K.G.B., Soviet satellite governments and all the official organs of East bloc propaganda, diplomacy and cultural exchange.

The most active nation on our side is West Germany, which gives $210 million a year to its four political party foundations, which help parties around the world that share their Christian Democrat, Socialist, conservative or liberal world view. The foundations also help trade unions, newspapers, voter education projects and other nonpartisan democratic movements, some of them under attack from totalitarian governments, of the left and right.

Shouldn't we do the same? From the 1940's to the early 60's we did so covertly through the C.I.A., causing great embarrassment to recipients when the funding was exposed in the post-Vietnam era. The United States resumed help for democratic movements only three years ago, but even now we devote only $15 milion a year to the cause.

With these funds, the National Endowment for Democracy is undertaking fascinating experiments in democracy-building and doing so openly. In Asia, N.E.D. is helping the anti-Soviet resistance in Afghanistan re-establish schools, print textbooks and train people to use minicameras to give the world a video record of the war. It funded the international group that monitored the Philippine elections. It finances a Chinese-language newspaper that provides a forum on issues of democracy and economics for mainland Chinese and Taiwanese students in the United States and Canada. And it gives training in democratic theory and practice in South Korea, Turkey and India.

In Latin America, N.E.D. has helped fund La Prensa, Nicaragua's anti-Sandinista newspaper, and serves as the main source of voter education and political training in the fledgling democracies of Haiti, Guatemala and Grenada. It has 15 programs in Chile, helping various groups pave the way back toward democracy.

In Africa, the National Endowment has approved either new legal aid, squatter resettlement, education and democratic organizing programs in South Africa, and has union, womens' and youth projects going in Zimbabwe, Senegal, Gambia, Botswana and French-speaking nations.

In Eastern Europe, N.E.D. has provided legal assistance to jailed Solidarity activists in Poland and support services for their families. It helps publish magazines promoting democracy in Poland, Czechoslovakia and Hungary, and is preparing video-taped discussions on democracy for distribution in the Soviet Union.

Out of some 260 projects over the past three years, three have become controversial: aid to a pro-military political party in Panama, funding of a conservative student youth group in France and backing for a United States group that lobbied for aid to the contras in Nicaragua. On inspection, only the Panamanian intervention seems to have been truly unacceptable, and that led to tighter internal controls.

Some liberals say that the N.E.D. is too Reaganite (for aiding critics of the Sandinistas). Some conservatives think it's mischievous for backing democrats in South Africa, South Korea and Chile. Others believe we have no business getting involved in any country's internal affairs.

This week, Senator Dale Bumpers, Democrat of Arkansas, will move to transfer the National Endowment's appropriation to the Fulbright scholarship program in the belief that having foreigners visit our country is a better way to foster democracy than sending money abroad. But the $15 million will add only 10 percent more to the Fulbright budget and will wipe out the Endowment. We will then have no agency helping struggling democrats around the world—unless, of course, we want to bring back the C.I.A.

DAC, S. VINCENT TOWNSEND, SR., AND FERD WEIL, SR.: SPARKPLUGS OF PROGRESS

HON. BEN ERDREICH

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. ERDREICH. Mr. Speaker, I would like to take a few moments to tell my colleagues in the House about an organization in Birmingham, AL, that is celebrating its silver anniversary this month, because those 25 years, and what was accomplished by this organization during that time, have made a real difference in how Birmingham has grown into a place

where families want to live and raise their children, and where an evermore diversified business sector continues to expand.

The Downtown Action Committee was formed in 1961 by two Birmingham leaders, Ferd Weil, Sr. and S. Vincent Townsend, Sr. At that time, Weil was vice president of the retail division of the Birmingham Area Chamber of Commerce, and Townsend, now deceased, was vice president and assistant to the publisher of the Birmingham News. Both men saw the need to form an organization to put the magic back into "The Magic City," the name given Birmingham in an earlier era when its growth surpassed every city in America.

The DAC took on a variety of projects, involving all our citizens, to move beyond the racial strife of the early 1960's, enhancing economic growth and central city vitality, so important to the growth of our metropolitan area, and indeed, to our State.

Throughout the years, the DAC has continued to help the city of Birmingham realize its potential and become a sparkplug of the State's ecomony through progress and growth with strong government and business leadership. And along with economic growth, Birmingham has also become a major southern center for performing and visual arts.

The founding fathers of the DAC, Ferd Weil and Vincent Townsend, were honored by the women's junior chamber of commerce for their outstanding efforts on behalf of the city, with Townsend being named "Man of the Year" by that organization in 1966, and Weil receiving that same honor in 1967. And Ferd Weil continues to this day to be a guiding force for the DAC, working to see that the foundation laid by him and Vincent Townsend continues to be built upon as the city continues to grow and prosper.

All of us owe a debt to gratitude to the DAC, and its founders, Ferd Weil and Vincent Townsend. They have helped keep Birmingham on a positive path, enhancing the future for all our citizens.

THE DRUG WAR

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. SHAW. Mr. Speaker, on August 11, I participated in a meeting organized by the House leadership with representatives of the media industries. The purpose of this meeting was to solicit their help in our national effort to combat the growing tragedy of drug abuse. The industries represented at this meeting are in the unique position of developing campaigns and promoting an awareness among the general public about the problems of drug abuse and the need to prevent drug use among young people.

The House has taken action on the omnibus antidrug legislation that is aimed at everything from eradication of drug supplies to treatment of victims. Much of the debate and discussion leading to the recently passed drug bill focused on initiatives by private enterprises, and in particular by the media. The concept of a media advisory board has been discussed by Members of Congress and representatives of the media. This board would be composed of representatives from broadcasting, cable, program production, the print media, advertising media and professional sports associations. It is my understanding that all of these groups have voluntarily agreed to be part of a board and to contribute their enormous collective resources to educating the public about the problems of drug abuse.

Some media organizations have already initiated their own campaigns against substance abuse. Over the past decade the three major networks have devoted significant resources to drug and alcohol problems through regular entertainment and news programming, public service announcements, cooperative industry efforts, and with its own employees. Beginning in 1980, NBC developed a positive alternative-to-drugs campaign entitled Get High On Yourself and has initiated other similar campaigns, including Don't be a Dope, and Just Say No, and most recently their special report Cocaine Country. I commend NBC on its efforts to date.

Since Congress alone cannot solve the problems of drug abuse, it is important that all segments of our society work together in a coordinated effort in our war on drug use and abuse. The media can play a vital role in educating America about the dangers of drug use. I applaud those organizations from the private sector who will voluntarily join the media advisory board. The expertise they bring will be invaluable in our overall efforts to wipe out illegal drugs.

MISS KIMBERLY A. KADRYNA RECEIVES GIRL SCOUT GOLD AWARD

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. GEKAS. Mr. Speaker, Sunday, October 5, 1986, will be remembered as a very special day in the life of one young lady from my district, Miss Kimberly A. Kadryna of Selinsgrove, PA. Miss Kadryna, daughter of William and Joyce Kadryna, has earned Girl Scouting's top honor, the Gold Award, which she will receive before family, friends, and her Congressman at a ceremony at Zion Lutheran Church of Kratzerville.

Kimberly, a member of Kratzerville Troop 1293, Hemlock Girl Scout Council, and a senior at Selinsgrove Area High School, earned the coveted award after completing activities covering community service, career exploration, specialized interest projects and leadership skills.

For career exploration, Kimberly researched careers available with the NASA space program and participated in a weeklong session at the U.S. Space Camp in Huntsville, AL. She plans to pursue a career as an aerospace engineer.

Miss Kadryna has also distinguished herself as a member of the National Honor Society, president of the American Industrial Arts Student Association, was selected for the 1986 Keystone Girls State, and captured first place in the Pennsylvania AIASA public speaking competition.

I would ask my colleagues in the U.S. Congress to join me in extending congratulations to Kimberly Kadryna for earning this notable award. I wish her great success in her future endeavors.

FREE TRADE AREA AGREEMENT WITH THE PHILIPPINES

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. GUARINI Mr. Speaker, today I join with my distinguished colleague, SAM GIBBONS, the chairman of the Ways and Means Subcommittee on Trade, in introducing a resolution expressing the sense of Congress that the President should begin exploratory discussions with the Government of the Republic of the Philippines to determine whether the negotiation of a reciprocal bilateral free trade area under section 102(b) of the Trade Act of 1974 would be feasible and in our mutual economic interest.

Last week, after President Corazon Aquino addressed the joint session of Congress I had the opportunity to speak to her. My impression is that Mrs. Aquino has a clear vision of democracy and where she is directing her country. Yet with its $26 billion debt and staggering economy, her country is in more dire need of economic help than many others.

The political and economic stability of the Philippines is of critical importance to the security of the United States. The Philippines is our bulwark in the Pacific. She is home to two U.S. military bases, Subic Bay and Clark Air Force Base, which are leased to the United States until 1991.

Strengthening our trade relations with the Philippines would promote economic and political stability. It would draw this new democracy closer to the United States.

The United States and the Philippines have long enjoyed a special historical, political, and economic relationship. For almost 50 years she was part of our country. Extending our hand of friendship across the Pacific in the form of relaxed trade policies would expand upon our already strong cultural and language ties.

We have received clear signs from the Philippine Government that she is anxious to rebuild her economy, and is committed to modernization, a wiser use of resources and agro-industrial programs more attuned to the times. It appears that she is dedicated to a genuine private enterprise system, increasing productivity, and efficiency, and rationalizing overall business and entrepreneurial policies.

In just 6 months, the Government of the Philippines has made strides in the economic field by stabilizing the exchange rate and increasing the country's international reserves. Inflation has been brought under control and interest rates have dropped.

A free trade area agreement with the Philippines would increase investment, industrial development, and foreign exchange earnings.

It would help this country move further down the road to economic growth. The mutual reduction of barriers and improved market access would encourage her economic development, reduce her foreign debt burdens and dependence, and create an environment which would foster long-term political and economic stability.

The President of the United States has the authority under section 102(b) of the Trade Act of 1974 to negotiate reciprocal and mutually advantageous bilateral free trade area agreements. We have already negotiated a free trade area agreement with Israel and a similar agreement is presently being negotiated with Canada. Enhancing our trade relations with these countries has been fundamental in solidifying our already strong friendships.

The negotiation of a free trade agreement between the United States and the Philippines would be mutually advantageous. Significant political, economic, and national security benefits would accrue to both nations. On these grounds, I urge your strong support for this resolution.

NCAA: ALL BARK, NO BITE

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. FLORIO. Mr. Speaker, I would like to bring to the attention of my colleagues an editorial that appeared recently in the Camden, NJ, Courier-Post. The editorial criticizes the National Collegiate Athletic Association [NCAA] for its failure to penalize schools and athletes for violations of NCAA rules and for ignoring the importance of academic excellence, as well as athletic accomplishment, in college sports.

Last week, the House confronted a similar issue when we voted on the omnibus drug bill. That bill provides for the establishment of an independent commission to investigate the drug problem in college sports and to develop a strategy for curbing the problem. This independent commission is needed largely because the NCAA, on its own, has failed to come to grips with this and other problems in college sports.

I believe, therefore, that the following editorial properly identifies the fundamental problem today in college athletics—the NCAA's unwillingness to set and to enforce meaningful guidelines for college sports. Until we begin to act forcefully, the drug problem and poor academic performance of college athletes are likely to continue.

Mr. Speaker, the text of the Courier-Post editorial follows:

SPORTS WATCHDOG ALL BARK, NO BITE

The watchdog that is known to bark a lot but has never bitten anyone is at first a noisy nuisance; next, it's ridiculed, and, finally, it becomes a contemptible cur. This week, the NCAA, the watchdog of college sports, reached the stage that years of pointless yipping has earned for it.

The NCAA last week snarled half-heartedly at the Nebraska Cornhuskers, college football's perennial top team. Sixty Nebraska players, the NCAA woofed, had improperly distributed game passes, valuable because the contests are always sellouts. The players get four passes each to give to relatives or fellow students. The tickets cannot be sold or traded or given to anyone ineligible to get them.

The penalty, provided under a rule approved by the NCAA in January 1985, was suspension of all 60 offenders for one game—Nebraska's season opener against Florida State.

Even the Cornhusker's gridiron machine can't shrug off the loss of that many players. Talk turned to the possibility of forfeiting to FSU, but that conversation didn't last long. After all, the NCAA appeals process was still open, and the discussion quickly focused on getting the association to change its mind, which it did after a teleconference with coach Tom Osborne.

Instead of one-game suspensions, the NCAA opted to strip the offending players of their passes, and, in case that didn't scare off rule breakers, the football team and the men's and women's basketball team will be asked to check into how student athletes used freebie tickets last year. Woof. Woof.

"I think this is the best step they could take," Mr. Osborne said. "I think it is a tough but fair decision."

No question the step is the best the coach could have hoped for. He should feel like a man who believes he's going to the guillotine but finds he's actually going to have his fingernails clipped. The NCAA's decision, however, has nothing to do with fairness or toughness. It has to do with fear and cowardice. The NCAA is afraid to enforce its rules because it is afraid to disrupt the economy of college sports, of which it is part.

Many colleges have become training grounds for pro athletes and coaches, and lucrative contracts for TV rights have become justification enough for fielding a winner at all costs. Whenever rules get in the way, they can be swept aside with the breath it takes to chant "We're Number One."

The distortions these things have caused are evident in Mr. Osborne's painfully articulated postscript to his pre-season victory. "We felt the original penalty was very harsh on the institution and the players in view of what had happened because what they did in falsifying relationships was unethical conduct." Ethical matters, the coach continued, are the business of the university, violations of rules are the NCAA's. Teaching the difference between right and wrong, he failed to say, is the business of neither. The NCAA should admit as much and stop its baying. The easier a useless old dog is to ignore, the longer it will be before someone puts it to sleep.

RELIGIOUS INTOLERANCE AND POLITICS

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 23, 1986

Mr. COLEMAN of Texas. Mr. Speaker, the year 1986 has already seen more cases of religious intolerance and unfair tactics than normally occur throughout most entire election years.

As People for the American Way have documented in their 1986 interim report on religious intolerance and politics:

The instances of religious intolerance and deceptive campaign tactics that have already occurred should serve as a warning. Unless these tactics are challenged, American society may become further polarized, our liberties threatened, and our political system distorted—not only for the remainder of this campaign season, but for years to come.

Based on the experience in this year's party primaries, caucuses, and conventions, the study warns that "this year may see some of the most intolerant and deceptive campaign tactics in recent history." Most instances of religious intolerance and unfair campaign tactics have been confined to intraparty battles, such as the extremism and conspiracy theories of the LaRouche movement within the Democratic Party and the increasingly deceptive and intolerant tactics of the religious right operating within the Republican Party. Considering the unfair tactics used in this year's skirmishes, People for the American Way have raised great cause for concern about what will happen when Republicans and Democrats square off in this fall's elections.

Chairman of People for the American Way John Buchanan, an ordained Southern Baptist minister and former eight-term Republican Congressman from Alabama, observed:

So far in 1986, the main victims of intolerant and deceptive campaign tactics have been Republicans, including traditional conservatives as well as moderates, who have been subjected to theopolitical inquisitions and personal attacks from the Religious Right.

In its review of the first half of 1986, People for the American Way's report found that instances of political intolerance ranged from the anti-Semitism of the LaRouche movement within the Democratic Party, to an attack on a Christian Scientist in a Republican congressional primary in Texas, to demands that candidates in several States answer questionnaires about their religious views, and even prayers for the death of political opponents.

Mr. Speaker, all Americans of every faith, color, and creed should be thankful for the efforts of People for the American Way to expose this rising tide of religious and political intolerance as we enter the final stretch of the 1986 political season. Intolerance challenged is intolerance denied, and I urge my colleagues and the American people to study and ponder the results of this most important study, the first part of which I have included for the RECORD:

RELIGIOUS INTOLERANCE AND POLITICS 1986: AN INTERIM REPORT

I. INTRODUCTION

America is the freest—and most religious—nation on earth because its people have been free to worship as they choose and to participate freely in the nation's public life.

Americans' religious and political liberties are guaranteed by the Constitution. The Constitution's First Amendment guarantees religious liberty and further protects the individual's freedom of conscience by prohibiting an official establishment of religion. By forbidding religious tests for public office, the Constitution's Article VI has allowed people of every faith and viewpoint to participate in the public arena and seek and hold public office.

Religion and politics have traditionally been entwined in two ways in American history. On one hand, Americans have always tried to be a moral people and to do what was Right; religious voices have always been welcome in public debate, and religious movements have spearheaded important changes like the abolition of slavery, the extension of voting rights to women and the advancement of civil rights in the past three decades. But on the other hand, Americans have also had to struggle with the presence of religious intolerance—whether in the form of established state religions in the Colonial period or in the form of unwritten codes barring Catholics or Jews from the presidency.

America has made great strides in fighting religious intolerance over the decades, particularly in the election of the first Catholic president in 1960. But religious intolerance has not disappeared from the American political scene; far from it. Classic forms of religious intolerance, such as that found in the extremism of Lyndon LaRouche, can still be found. To this has been added a new form of religious intolerance practiced largely by the Religious Right—one which says there is only one way for godly people to vote; declares Biblical principles require adherence to a narrow set of political opinions; and claims a divine endorsement for political candidates.

This year, PEOPLE FOR has initiated a new effort to monitor and combat religious intolerance in political compaigning. During the first six months of 1986, a disturbing number of instances of religious intolerance as well as instances of deceptive campaign tactics by theopolitical movements, have already occurred in both parties. These incidents range from the blatant anti-Semitism and bizarre conspiracy theories of the LaRouche movement which operates within the Democratic Party, to an attack on a Christian Scientist in a Republican Congressional Primary in Texas, to several unfair tactics used by the Religious Right, including demands that political candidates in several states answer questionnaires about their personal religious views and affiliations, the training of fundamentalist activists in deceptive political tactics, and even prayers for the death of political opponents.

So far, most of these instances of religious intolerance have been confined to intra-party battles, with Republican candidates bearing the brunt of these unfair attacks by extremists operating within their party. If the experience of the first half of 1986 is any guide to the general election season, then this year may see some of the most intolerant and deceptive campaign tactics in recent history.

II. THE FREEDOM COUNCIL

The best-known Religious Right groups—the Liberty Federation (which includes the Moral Majority), Christian Voice and the American Coalition for Traditional Values—have not been major factors so far this year. But one less known organization has had a tremendous influence—the Freedom Council, a tax-exempt foundation serving as the de facto campaign organization for television evangelist Pat Robertson's bid for the 1988 Republican presidential nomination. The council has organized local activity in Michigan, Iowa, Texas, New Hampshire and other states.

The Freedom Council describes itself as: "a nonprofit, nonpartisan Christian organization dedicated to reinforcing the traditional Judeo-Christian principles and values upon which the United States was founded. The council distributes practical political information through Bible-believing churches and a growing bipartisan grassroots network. The council also maintains information bureaus in Washington, D.C., and in several state capitals to give local people a national and statewide perspective."

The council claims 200,000 contributors, 40 full-time field workers and organizers in at least 41 states. Robertson, who founded the council in 1981, no longer has any formal connection to it, but his actual control is obvious.

Robertsons Christian Broadcasting Network contributes $250,000 a month to the council, accounting for half its budget (indicating that the councils budget is $6 million a year).

Robertson introduced a novel fund-raising technique at a May 16 dinner in Washington, D.C.: contributions ranged from $1,000 to $25,000 (for host couples). Because the limit on PAC contributions is $5,000, large donors gave their first $5,000 to Robertson's PAC, the Committee for Freedom and the rest to the Freedom Council.

The Freedom Council's original president, Gen. Jerry Curry, resigned and has been replaced on an interim basis by Bob Slosser, president of CBN University.

In the first half of 1986, Robertson visited at least 17 states and the District of Columbia, making appearances, often endorsing local candidates, in California, Connecticut, Florida, Illinois, Indiana, Iowa, Massachusetts, Mississippi, New Hampshire, New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, Texas and Virginia. Many appearances were in conjunction with Freedom Council activities.

Robertson, who has consulted with New Right leader Paul Weyrich about his candidacy, has drawn heavily on people with connections to Weyrich to run the Freedom Council and his Committee for Freedom PAC:

National Field Director Dick Minard was Northwest field director for Weyrich's Committee for the Survival of a Free Congress in 1979.

James Ellis, assistant national director of the Freedom Council, is executive director of Weyrich's Free Congress Political Action Committee.

R. Marc Nuttle, president of the Committee for Freedom PAC, has been a consultant to the Committee for the Survival of a Free Congress.

The Freedom Council has recruited thousands of candidates to run for delegate slots in Michigan, which is selecting some delegates for the 1988 nominating convention earlier than other states. The council also engineered the takeover of a number of Iowa, Indiana, and Nebraska Republican caucuses and is gearing up to operate in New Hampshire and Florida.

III. THE RELIGIOUS RIGHT

Religious Right activity in the early part of 1986 represents a new stage in the movement's development—the institutionalization of the Religious Right as a special interest group within the Republican Party. In the past, the vast majority of Religious Right activity has come in support of Republican candidates in presidential and high-visibility Senate and House races; this year marks the most widespread Religious Right effort yet to take control of the Republican Party itself. It has been marked by a series of attacks on the party establishment in Indiana, Iowa, Michigan, Minnesota, North Carolina, Oregon, South Carolina and Texas.

The institutionalization of the Religious Right has created serious tension within the party. Many fundamentalists, buoyed by what they see as their success in 1984, feel that the Republican Party is indebted to them and are trying to take control of the party. At the same time, there has been another shift in Religious Right tactics. In the past, the movement has been unusually and commendably forthright in its activity; this year, however, there has been outright deceit.

In Iowa, a flyer on "How to Participate in a Political Party" circulated anonymously among fundamentalists who took over a number of Republican county caucuses said "The activities of the church must not become public knowledge. There are those who seek to undermine our work." Incredibly, this flier sought to justify deceptive political tactics by citing Biblical passages.

For instance, the flier advises activists to "keep your positions on issues to yourself," citing the New Testament Book of John, where "Jesus didn't overwhelm even his disciples with truth." Similarly, activists are urged to "give the impression that you are there to work for the party, not to push an ideology." That advice is justified by citing the Book of Romans, Chapter 12, Verse 18. However, this Biblical passage does not make a virtue out of duplicity but, instead, offers this wise advice: "If possible, so far as it depends upon you, live peaceably with all." The flier also instructs activists to "Try not to let on that a close group of friends are becoming active in the party together."

The flyer also says "Hide your strength. When you control a political party, the only times you want to show your strength is [sic] when (1) Electing officers; (2) Technically, when voting on resolutions, everyone votes his own conscience. . . . It is important not to clean house of all non-Christians. . . . When you have control of a party, it might not be wise to place 'our' people into any and every position. Get the counsel of wise Christian politicians when in doubt."

In addition to advocating deceit, the flyer advocates something clearly contrary to the spirit of the First Amendment—using the political process to make religious conversions. The flyer advised, "Determine to win both friend and foe to the Lord. Don't do anything that will harm your testimony."

Another effort to use the political process to advance a particular religion came in Texas, where Adrian Van Zelfden, leader of a group called the Texas Grassroots Coalition PAC, asked candidates in the 5th and 10th state senate districts to sign a "Believers' Decree of Agreement." (Slightly different versions of the decree were circulated). The preamble said: "We, the citizens of the State of Texas, County of Travis and City of Austin, by the providence of God, adhering to the Christian faith, having as our desire the glory of God and the advancement of the Kingdom of Our Lord and Savior Jesus Christ, as well as true public liberty, safety and peace; having resolved to enter into a mutual agreement with one another, before the most High God, to uphold the the following truth . . ."

The decree's conclusion said: "We further commit ourselves to support and encourage those elected officers and candidates who pledge to faithfully serve God in the administration of their office. We also solemnly warn that violation of such a sacred trust invites the judgment of God not only upon elect rulers, but also the communities which they represent and serve."

A flyer distributed anonymously in Republican caucuses in Minnesota said "Experience has shown that it is best not to say you are entering politics because of Christian beliefs on life issues. It is better to say you favor the Republican Platform (it is pro-life) and support President Reagan. You will probably be asked outright if you are pro-life or pro-choice. Answer truthfully, of course. If the people asking this information are pro-choice, you can put them in a bad light by adding—I am pro-life, but that is not the only issue."

Religious Right activists have also distributed a number of candidate questionnaires which clearly impose a religious test for office. In the 8th District of Indiana, the Rev. Donald Brooks of a fundamentalist group called The Agora sent local and congressional candidates a questionnaire which included these questions: "If a regular church attender, how many times each month are you in attendance for a regular church service?"; "What is the name of your church and pastor?"; "Have you been or are you now a member of any group considered subversive, anti-God or anti-American?"; "In your opinion, is the Bible: (1. A good book/ 2. A collection of religious writings; 3. Literal, inerrant Word of God?".

In North Carolina, a group called Students for Better Government asked these questions of candidates in Cabarrus County: "Can you honestly say that you have a personal relationship with Jesus Christ? How well do you know him?" and "If you answered yes . . . would you, if elected, seek God's guidance for your decisions? If no, how would you determine your answers and solutions?"

SENATE—*Wednesday, September 24, 1986*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. The prayer today will be offered by the Reverend Dr. John H. Alexander, minister, the Congregational Church of Sun City, Sun City, AZ. Dr. Alexander is sponsored by Senator KASTEN and cosponsored by Senator GOLDWATER.

PRAYER

The Reverend Dr. John H. Alexander, minister, Congregational Church of Sun City, Sun City, AZ, offered the following prayer:

Let us pray.

Eternal and Almighty God, no person has seen You at any time, but Your love and power is felt by every one who places trust in You. We pause to renew in Your care the Members of this Senate of the United States.

After a long day yesterday, and very few hours of rest and refreshment, they return to this historic Chamber, to 100 offices and to committee rooms about these Halls of Government.

Many concerns are being pressed upon them, some mundane, others self-serving, some old, some new, and still others of significant import to the responsibilities to which they have been elected.

Whatever may claim their attention today, social or economic challenges, national or international issues, reelection concerns, protect the Senators from wasting their energies in trivial pursuits. Empower them to be their best and to give creative thought to what is crucial to the strength and well-being of our country.

May they have the wisdom and the strength to complete the agenda that is ahead of them in these critical days.

From the time of its birth, the leaders of this Nation have placed their trust in You for guidance and inspiration. Let it be so for the men and women of the Senate today. May what they do be good in Your sight, and in the best interests of the millions of people here and everywhere who will be affected by their actions. We offer this prayer with continuing trust in Your power and presence. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the distinguished Senator from South Carolina, Senator THURMOND. If there is no objection, I would like to yield 2 minutes of my leader time at this point to the distinguished Senator from Wisconsin, Senator KASTEN.

Mr. KASTEN. I thank the majority leader.

A TRIBUTE TO GUEST CHAPLAIN DR. JOHN H. ALEXANDER

Mr. KASTEN. Mr. President, it is a pleasure to welcome the Reverend Dr. John H. Alexander of the Congregational Church of Sun City, AZ, as guest chaplain to the Senate this morning.

Dr. Alexander is a respected national and international leader in the Congregational faith. His participation as guest chaplain today is especially significant for me because of the close ties of Congregationalism, and Dr. Alexander, to my home State of Wisconsin.

And, it is meaningful to this body because the Congregational faith is historically entwined with the birth of the American Nation and our democratic form of government.

Mr. President, the Congregationalists came to America on the *Mayflower* in 1620. The Pilgrim fathers, who fled the religious persecution of the Church of England to plant the seeds of free religious fellowship in America, were among the religious, intellectual, and political leaders of Colonial America. The Mayflower Compact, signed by the Pilgrims as they embarked on the creation of a free society in Plymouth colony, was the first expression of democratic principles governing both church and state.

And Congregationalists were among the Founding Fathers of the new United States. John Adams, Samuel Adams, and John Hancock all were Congregationalists. Participants in the Boston Tea Party gathered at Old South Congregational Church. Thomas Hooker, author of the Connecticut Constitution, from which the U.S. Constitution derived much of its structure, was a Congregationalist. So too were President Calvin Coolidge, abolitionist author Harriet Beecher Stowe, and Catherine Lee Bates, who wrote "America the Beautiful."

Congregationalism has had great impact on American education. Believing in the strength of an educated laity, the early Congregationalists established in America the first Sunday schools, public schools, and universities, including Harvard and Dartmouth. Congregationalists founded two of the finest higher education institutions in my home State of Wisconsin, Beloit College in 1846, and Ripon College in 1851.

According to Dr. Alexander, Congregationalism believes in the autonomy of the local church and that each person has the right to interpret the Scripture and apply its teachings for himself. The Congregational Way—faith, freedom, and fellowship—is based on the importance of the individual conscience before God.

Mr. President, Dr. Alexander has been a lifelong practitioner of the Congregational ideal of individual freedom and responsibility.

A native of Boston, who was born and reared some 50 miles from Plymouth Rock, he was educated at Bowdoin College in Brunswick, ME, and at Bangor [ME] Theological Seminary. He was ordained in 1948 and has served churches in Winthrop, ME; Galewood, IL; Wauwatosa, WI; Marshalltown, IA; and Sun City, AZ, which he founded in 1976. He was awarded the honorary degree of doctor of divinity by Piedmont College, Demorest, GA, in 1970.

In addition to pastoral ministry, Dr. Alexander has been a leader in the national politics of preserving the traditional Congregational faith.

The denomination, which once totaled some 6,000 churches nationwide, was shaken in the 1950's by the merger of several denominations into the United Church of Christ. Dr. Alexander was one of a handful of intellectual religious leaders who in 1955 formed a voluntary association of Congregational churches that did not wish to yield their local autonomy to the United Church of Christ national hierarchy.

Dr. Alexander was the first moderator of the National Association of Congregational Christian Churches, which today has the voluntary membership of some 425 churches, including churches in 29 Wisconsin communities. He served as the National Association's associate executive for missions from 1967 to 1969 and as its executive secretary from 1969 to 1976. During his tenure, the association built its national headquarters in Oak Creek, WI.

Dr. Alexander also has been a leading voice in the international Congregational movement, organizing and serving as the cochairman of the first International Congregational Fellowship held in London, England, in 1977. His devotion to expanding the concept of religious freedom has taken him and his wife of 43 years, Donna, on many overseas journeys, including

leading the Youth Pilgrimage to Greece in 1964 to build a dining hall for the Greek Evangelical Churches near Alexandroupolis, Greece.

Dr. Alexander's ties to Wisconsin are strong. In addition to bringing the National Association to Oak Creek, he served as associate minister of the First Congregational Church in Wauwatosa from 1956 to 1962, directing a major building project. In the early 1960's, he founded the Wisconsin Congregational Association, a fellowship of continuing Congregational churches throughout the State.

Mr. President, this autumn marks a passing of seasons for Dr. Alexander. After a lifetime of ministry and selfless service to the Congregational faith, he will retire this November.

I am delighted that Dr. Alexander could join us today as guest chaplain, and I know that all who have been inspired by his religious scholarship and his Christian caring join me in wishing Dr. and Mrs. Alexander a healthy and spiritually fulfilling life in the years to come.

Mr. DOLE. Mr. President, let me also yield to the distinguished senior Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I want to congratulate the distinguished minister who led us in prayer this morning, Dr. Alexander. It was in the same great tradition of Chaplain Halverson. It was a relevant prayer, not just a general prayer. He appealed to the U.S. Senate to do our very best and to be our best. I cannot tell him what pride I have in the fact that, first, he is a Congregationalist; second, he is from Wisconsin; third, he is a fine minister; and fourth, he is in the fine tradition of Chaplain Halverson.

Mr. DOLE. I thank both my colleagues.

SCHEDULE

Mr. DOLE. Mr. President, we hope to complete action on the highway bill by noon today, if we can reach some agreement on certain antiapartheid language; then take up the intelligence authorization bill; the commodity futures trading bill; and FIFRA [Federal Insecticide, Fungicide, Rodenticide Act], so we will have votes throughout the day. If we can reach agreement there maybe other matters we could bring up. But this is one of the last, if not the last, days to resolve any legislative issues where we are going to take a couple of hours of debate. I think from here on, unless something happens that we do not forsee, unless there is some unanimous-consent agreement or almost unanimous consent, we are probably not going to be able to accommodate Members on either side. I really believe we can reach to October 3 deadline. We still have the continuing resolution, which I am advised we will try to bring up next Monday. We have tax reform. We have reconciliation. We have drug enforcement legislation. We have, hopefully, Superfund. So there are a number of bills. We still have the product liability matter to dispose of. Some would still hope that there will be trade legislation this year. I think those chances are very unlikely

TIME TO ACT ON THE DANILOFF RESOLUTION

I also hope we can dispose of the Daniloff resolution and the intelligence authorization bill. I know Senators HUMPHREY and MOYNIHAN feel strongly about the Daniloff resolution. There are other Members who feel just as strongly but are not particularly pleased with the modified version of the Daniloff resolution. They feel it needs to be touched up. It seems to me everything ought to be on hold with the Soviet Union unless there is some resolution of the Daniloff case, whether it is conversations about arms control, whether it is negotiations or whatever with reference to the unratified SALT II agreement, whether it is sales of any commodities, including grain to the Soviet Union. All of that ought to be on hold until we have resolved the Daniloff case.

It is time to act on the Daniloff resolution. I hope there can be some agreement on what the resolution will contain. I think we ought to have an up-or-down vote on it. We ought to indicate to the Soviets that we mean business.

There are some press reports today that there may be some movement on the Daniloff case. I have some concern about what I have read but I do not want to comment in detail until we have more facts. But one thing is clear. Daniloff himself is still sitting under virtual house arrest in Moscow with a sharp sword dangling over his head and our whole relationship with Moscow is pretty much dead in the water, as it should be, until Daniloff, if given unconditional permission to depart the Soviet Union.

All of us are pretty fed up with the games Moscow is playing. We want to say so in a way that is so loud and clear that the message will penetrate even those thick walls around the Kremlin. The resolution we put in last Friday does the job.

Now, it has been modified since then. Some do not believe it has nearly the punch it had last Friday, so I think we need to take a look at that and make certain it does send a message.

It is not just tough talk. It endorses tough action. It doesn't just take one, or another, little aspect of our relationship and say to the Russians: "Unless you clean up your act, you're going to lose this program, or this benefit." It sends the kind of across-the-board message that is essential when you are dealing with a matter so fundamental, and so damaging to our relations with Moscow, as the unjust arrest and indictment of an American citizen. It says to Gorbachev and his cronies: "No more business as usual—in fact, no more business, period—until Daniloff is free."

The principle is that important to us. The life and freedom of one American is that important to us. And the Soviets better understand that, if we are ever going to deal successfully with them on any major issue.

So let us get to this resolution. Let us not water it down in any way, or pull our punches. Let us vote on the resolution in its original form. And let us vote for it, overwhelmingly.

INTELLIGENCE AUTHORIZATION BILL

The second matter I want to touch on, more briefly, is the intelligence authorization bill. It is my understanding that we have come very close to reaching a good agreement here within the Senate on this bill, on which the Intelligence Committee has worked hard. The chairman has been working closely with Senator HELMS over the past several days, to work out some concerns that Senator HELMS had on the bill. It is my understanding that they have succeeded in fashioning some language, mostly in the bill's report, and a method of workingout one amendment of concern to Senator HELMS, That will hopefully allow us to move on this bill this afternoon.

I know that both Senator DURENBERGER and Senator HELMS intend to speak to Director Casey today, to insure that any concerns he has can be addressed in a way that will meet everyone's needs. I hope that any differences which do exist now can be speedily resolved, so that we can move this legislation, which is so important, not only to the "CIA," but to all the elements of the intelligence community—and, in fact, to our national security.

SOUTH AFRICA ON HIGHWAYS BILL

Finally, there is the matter of the South Africa provision now on the highways bill. It seems almost self-evident, at least to me, that a highways bill is not the place to deal with South Africa. As everyone here—and, I guess, virtually everyone in the country—knows very well, we've already passed a South African bill, and we may be dealing with it again soon.

What I hope all Senators will keep in mind, also, is that in passing the South Africa bill, we dealt with the very provision which now appears in the highways bill. We dealt with it by taking a vote on it, and voting it down. We decided that it was not a good addition to the South Africa bill. In light of that action, it is hard to see how it could be considered a good addition to a highway bill.

I know that Senator WALLOP, who joins me, and I think many others, in strongly opposing this provision in the highways bill, will be talking to Sena-

tor MOYNIHAN, who supports it, to see if there is not some way to put South Africa back where it belongs—on South Africa legislation, or at least on some vehicle that is not so totally unrelated to foreign policy as this one is.

REMEMBERING THE UKRAINIAN FAMINE—THE "HARVEST OF DESPAIR"

Mr. DOLE. Mr. President, there has been a lot of hype lately over the new fall series of network television shows. I am not a TV critic, but I can tell my colleagues that there is a program well worth watching on public television this evening. It's a documentary entitled "Harvest of Despair," a chilling account of one of the darkest episodes in human history: the deliberate starvation of millions of Ukrainians by Soviet boss Josef Stalin.

CALCULATED ACT OF REVENGE

In 1932 and 1933, the breadbasket of the Soviet Union was stripped of its golden harvest of wheat, to be replaced with a harvest of despair. The precious Ukrainian grain was taken from their farms; taken from their hands; and taken from their mouths. As a result, men, women, and children—hardworking and proud—were left to die unspeakable deaths. It was a calculated act of revenge by the Kremlin, designed to crush not only the will of the fiercely independent Ukrainians, but also to eradicate their very being from Communist Russia.

What followed was a holocaust. According to scholars who have investigated this tragedy, as many as 5 or 6 million Ukrainians perished in the harvest of despair. It is almost unimaginable that such an atrocity could be so coldly and willingly carried out. But it was. And sadly enough, the full story was slow to reach the front pages of America's newspapers—and that is still the case, even to this day.

GETTING THE STORY OUT—AT LAST

Mr. President, the documentary "Harvest of Despair" was produced in 1983 by a Canadian group for the 50th anniversary of this sad moment in history. Unfortunately, it has taken 3 long years to put this award-winning film on American television. All I can say is "Why?"

So let me salute all the people who have worked long and hard to cut through the redtape—and the politics of public television—to finally bring this shocking tale to our TV screens. I ask unanimous consent that four articles telling the story behind the story of "Harvest of Despair" be included in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

CULTIVATED STARVATION

(By William F. Buckley, Jr.)

Twenty Questions time . . .

It happened in 1932-1933 and there were approximately 10 million victims.

Russia? Well, sort of: the Ukraine.

Of starvation.

No, not drought: cultivated starvation. You know, where there is actually food, but the people one intends to starve aren't permitted to move to where the food is, and the food is not permitted to be moved to where the people who are supposed to starve are.

Well, the implied questions and the explicit answers give it away, but giving it away is precisely the problem. Not many people know that between 1932 and 1933, Josef Stalin decided to crush the people of the Ukraine. The neatest way to effect this was to starve them to death. This was done by going in and removing the wheat—not an easy project. It's something like going into Iowa and removing all the wheat, and then moving in a division or two whose responsibility is to keep the borders, in this case the borders of the Ukraine (which by the way is the largest state in Europe, incorporated by force into the Union of Soviet Socialist Republics), locked tight in order to prevent people from moving out or food from getting in.

A good year for old Joe. He managed in that one episode to kill more people than Hitler killed in his slaughterhouses. In fact, he killed more people than were killed on all the battlefronts of World War I, up until then the heaviest hitter of any war in history.

Comes now the story of a small Canadian company that resolved to commemorate this spectacular act of genocide, on its 50th anniversary. That was 1983, when "Harvest of Despair" was produced. Initiatives were instantly taken to sell the one-hour documentary to the networks, but neither CBS nor NBC nor ABC was interested, notwithstanding that the documentary was winning prizes abroad.

And here we pause in our narrative, having just viewed the documentary: It is not pleasant viewing. A camera can show the emaciated corpses of children for only so long before causing the viewer to feel a certain itch, not entirely unlike the kind of itch one feels inspecting, oh, the torture room at the Chateau at Chinon, or the collection in Leningrad at the Museum of the History of Religion and Atheism—a collection of torture instruments used during the Inquisition, and serving, one supposes, as prototypes for use in the Lubyanka and throughout the Gulag.

But one views such things—for instance, long accounts of life in Hitler's elimination centers—not for pleasure but for instruction. And it was the naive assumption of the producers of "Harvest of Despair" that there would be a lively interest in the West in seeing the evidence of one of the most spectacular acts of human cruelty in history. Moreover, not something entirely irrelevant to a continuing understanding of the Soviet Union and its policies. Why is that? Because official Soviet history simply denies that the famine ever took place—denies it quite categorically.

When Prime Minister Brian Mulroney of Canada made a pious reference to the Ukrainian famine on its 50th anniversary, he received a tongue-lashing from the Soviet ambassador—an official protest, as though a reference to the Ukrainian massacre was on the order of a reference to the Protocols of the Elders of Zion—a forgery.

Mikhail Gorbachev, profiled a season ago by Time magazine, is thus referred to: "Gorbachev looks well tanned, just a bit ruddy in the cheek. . . . He laughs easily. . . . [His eyes] are an intense, dark brown. . . . The voice is extraordinary, deep but also quite soft . . . low and melodious." He voiced his concern to Time over the "hundreds of millions of people going hungry. . . . We, all of us, just have no right to ignore the situation."

Well, planned starvation isn't only a historical memory. It has been going on in Ethiopia on a pretty grand scale, and Ethiopia is for all intents and purposes a satellite state of the Soviet Union. Gorbachev can't begin to fight hunger by encouraging starvation. And if he is against ignoring hunger, then he should be against ignoring the hunger and starvation effected by the principal figure in the development of the Soviet state, Papa Stalin. A continuing failure by the Soviet state to acknowledge the atrocity of 1932-1933 is, in effect, a continuing ratification of that atrocity.

The documentary will be shown on network by PBS on Sept. 24, and there is no way to avoid mentioning that it will be shown as a part of a two-hour "Firing Line" program, of which I act as the host. I can't really recommend that you watch it, for reasons listed above. But it is very important that you not forget that harvest of despair, that it live in the memory—like the Nazi Holocaust—as evidence of man's long bestial reach in our time.

[From the Washington Times]

PBS' FOOT-DRAGGING ON "HARVEST" RAISES A CROP OF QUESTIONS

(By Don Kowet)

On Sept. 24, the Public Broadcasting System will distribute to its stations a two-hour, special prime-time edition of William F. Buckley, Jr.'s "Firing Line."

For the first time, a national U.S. audience will be able to see a film completed in 1983 about the 1932-33 Soviet-made famine in the Ukraine.

"Harvest of Despair" signals a pause in the PBS-made famine of documentaries that dare to criticize the Soviet Union. But for people associated with the production, this "Harvest" has been a bitter one.

They want to know why a film that became an Academy Award nominee and was based largely on research at Harvard University warrants a one-hour wraparound featuring a debate over the "facts."

They are also asking:

Why is The Nation's leftist Washington correspondent Christopher Hitchens among the trio of proposed panelists?

Why has their broadcast been branded with a for-conservatives-only warning—the "Firing Line" label—while PBS' 12-hour, Soviet-sanctified "Comrades" carries no such skull and crossbones?

"It's a disgrace," said a Corporation for Public Broadcasting official who asked not to be identified," one more example of the hypocrisy in the system."

Critics believe that the many questions about PBS' treatment of this program have a single answer: The broadcast blasphemes PBS orthodoxy by desecrating a pair of sacred totems.

"Harvest of Despair" not only focuses on the taboo topic of purposeful Soviet genocide, it accuses The New York Times, and by proxy the entire American liberal press, of deliberately covering up the crime.

The crime was committed by the Soviet state in collusion with Josef Stalin, who created a famine by confiscating the entire

grain harvest of the Ukraine, Europe's "breadbasket."

The Soviets sealed off the Ukraine. People who tried to enter the adjacent Russian Soviet Federated Republic, where there was no famine, were turned back at the border.

The Ukraine became a vast death camp filled with the bloated bodies of nearly one-quarter of the population, the documentary argues. Based on a three-year research project—headed by Hoover Institution Sovietologist Robert Conquest—at Harvard's Ukrainian Research Institute, the documentary persuasively argues that the famine was intentional, devised by the Soviet regime to starve out the Ukraine's stubborn spirit of nationalism.

This thesis challenges the wisdom of Soviet apologists, who since the 1930s have been dismissing the famine as an inevitable side effect of "collectivization" or the random result of bureaucratic bungling.

"To put it brutally," wrote The New York Times' Moscow correspondent Walter Duranty, "you can't make an omelet without breaking eggs."

Now, courtesy of "Harvest of Despair," observers are asking if the egg that may be cracking is the Pulitzer Prize-winning Mr. Duranty's posthumous reputation, and perhaps The New York Times' legend as the newspaper of record.

Mr. Duranty consistently denied in his dispatches that a "famine" existed, even after an excursion into the Ukraine.

But while publicly scoffing at reports of starving millions, documents reveal, privately he was confirming that "the population of the Ukraine [has decreased] by 4 to 5 million . . . and that as many as 10 million may have died directly or indirectly from a lack of food in the Soviet Union during the past year."

The documentary—produced in Canada with financial assistance from that country's national film board—was released in 1984 and aired on Canadian national television. Its American representatives from the Harvard University Ukrainian Studies Fund, a private organization associated with the university's Ukrainian Research Institute, were eager for exposure on American television, and expected a warm welcome.

Not only did their broadcast document an untold holocaust, its message rang with a contemporary echo. The Soviets were being accused of using the same starvation tactics in Afghanistan, and their disciples of using the same strategy in Cambodia and Ethiopia.

"We wrote to all three commercial networks," said Ukrainian Studies Fund board member Peter Paluch. None of them responded.

"We began to focus more and more on PBS," said Mr. Paluch.

Mr. Paluch and his colleagues approached "Frontline" and "MacNeil-Lehrer NewsHour."

No response.

Mr. Paluch began submitting his review cassettes to individual public television stations, including WNET in New York.

Peter Foges, at that time director of WNET's public-affairs programming, reportedly rejected the film because it was "technically deficient" and "of dubious quality" and failed to meet PBS' "production standards." When asked for specifics, Mr. Paluch recalled, Mr. Foges responded that "the sound of hoofbeats should have been dubbed into a still scene showing human corpses being carted away." (The hoofbeats had, indeed, been dubbed.)

Then this "technically deficient" documentary began garnering first-place prizes in film festivals. Within a year, this film "of dubious quality" had earned an Academy Award nomination.

"Harvest's" ever-more crowded trophy case meant increased pressure on PBS stations to air the program.

"They couldn't keep talking about lousy production values after the show started winning all these awards," said the CPB source.

Critics contended PBS stations needed a new excuse, and that Miami station WPBT's was typical.

In rejecting the broadcast, WPBT's director of program acquisition wrote that although she found the documentary "interesting and well-produced, we have a journalistic problem with the content in that the producers . . . have a perceived bias in terms of the viewing public."

In other words, while the documentary passed muster, its producers—and presumably Harvard University—lacked a proper pedigree.

The excuses kept coming.

A public-TV viewer in a suburb of Boston wrote to WGBH to find out why the station hadn't aired "Harvest of Despair."

WGBH's director of scheduling replied that she had attempted to purchase rights for a broadcast, but "unfortunately, the price requested . . . was much higher than we would pay for comparable programming, and we were unable to reach an agreement."

Mr. Paluch insists that WGBH could have purchased the program for a third less than "filler junk" from Canada normally costs, and that "price was never a factor in dealing with WGBH." The difference in price between what WGBH was willing to pay and what the producers felt they needed, he said, was about $1,000. "A committee in Boston agreed to provide the $1,000," he added, "in the form of a contribution." WGBH, he said, replied that such contributions were unacceptable.

Within a week of WGBH's letter to the viewer, an article by Mr. Paluch appeared in The National Review, suggesting that PBS stations were conspiring to prevent the documentary's broadcast.

That article, along with screenings arranged for several sympathetic congressmen and a least one Corporation for Public Broadcasting board member, seems to have suddenly energized PBS.

After a telephone call from PBS Vice President of Public Affairs Programming Barry Chase, William F. Buckley, Jr. agreed to air the broadcast in a special edition of "Firing Line."

"We think the program would have been ideal for 'Frontline,'" said Mr. Paluch. "Putting it on 'Firing Line' takes the cutting edge off."

Why was the broadcast placed under Mr. Buckley's conservative umbrella?

PBS, said Mr. Chase in an interview, wants to take shows that are normally seen only on weekends—such as "Firing Line"—"and showcase them in prime time." Mr. Chase added that "this special treatment ensures the film will get special attention, too."

Why the wraparound?

The film, said Mr. Chase, leveled a pair of allegations that "require expanded discussion: that the famine was done, and that it was done intentionally. If it was intentional as charged," he added, "then comparisons with the Nazi holocaust aren't ridiculous."

The panel will consist of Mr. Conquest plus Harrison Salisbury and Mr. Hitchens.

Mr. Salisbury, like Mr. Duranty, was a New York Times Moscow correspondent.

In his book "Without Fear or Favor," Mr. Salisbury wrote that Mr. Duranty "had failed to report one of the greatest of Stalin's crimes, one of the most important stories of the decade," but insisted that Mr. Duranty had been "nobody's agent but his own."

"We need an opportunity [to hear] someone who knows how the Times worked in that day and age," said Mr. Chase. "If a defense [of Mr. Duranty and the Times] can be made, it ought to be made."

Mr. Chase said that Mr. Hitchens of The Nation "can be expected to raise the [issue of] the motivation of the Ukrainian community [in lobbying for this film]," in the light of allegations of Ukrainian complicity in Nazi war crimes.

[From Boston Herald, Aug. 20, 1986]

HOW "PUBLIC" IS THE BROADCASTING?

On Sept. 24, the Public Broadcasting System will distribute to its stations a special two-hour segment of William F. Buckley, Jr.'s show "Firing Line." Those tuning in will be able to see, for the first time nationally, an Academy Award-nominated documentary about the man-made Ukrainian famine in 1932-33. "Harvest of Despair."

Getting "Harvest" on PBS has not been easy. Despite winning numerous awards and acclaim for its scholarship and production values, PBS has been extraordinarily reluctant to broadcast the film, which lays bare Stalin's coldly calculated starvation of five to six million Ukrainians, who were resisting Communist rule.

PBS has also been less than eager to broadcast "Television's Vietnam: The Impact of the Media," hosted by Charlton Heston and produced by the conservative media watchdog group Accuracy in Media. The program is a sequel to AIM's "Television's Vietnam: The Real Story," which PBS finally broadcast last year after a long struggle. Both films are in response to the PBS series "Vietnam: A Television History," which AIM said was biased against the U.S.

PBS nevertheless found time this summer for 12 hours worth of Soviet-sanctified broadcasting with the "Comrades" series. Last December, they also broadcast a "documentary" called "Guatemala: When the Mountains Tremble," which, arguably, was a valentine to the Communist guerrillas in that country.

Just how "public" is public broadcasting, anyway? Its executives seem to find it hard to believe Stalin deliberately wiped out millions of innocent Ukrainians.

The Ukrainian-Americans who live in Boston, lost relatives in the famine and pay taxes to support PBS don't find it hard to believe at all.

Ronald Reagan says Vietnam was a "noble cause" and he won 49 states. If any at PBS share that conviction, you'd never know it by the way they have fought to keep AIM's point of view off the air.

In the age of cable and satellite dishes, the choice of programming is expanding tremendously, calling public broadcasting's very reason for being into question. If well-made programs that happen to conflict with the prejudices of "public" broadcasting executives cannot make it onto the airwaves, then President Reagan should rethink whether the whole exercise is even worth it.

[From the National Review, Apr. 11, 1986]

SPIKING THE UKRAINIAN FAMINE, AGAIN

(By Peter Paluch)

"Give me Hollywood for six months, and I'll rule the world,"—Josef Stalin.

Aside from the climate, the 28th International Film & TV Festival of New York was as lush and glamorous as any Hollywood bash. The festival is one of the most highly regarded in the world, with 44 countries represented in 1985. The two thousand people seated for the awards-presentation banquet in the Imperial Ballroom of the Sheraton Centre hotel represented 5,313 entrants and the cream of the industry. The BBC, ABC, NBC, and CBS were there in force. So were HBO and Turner Broadcasting.

The gold medalist in the TV Documentaries category was announced halfway through the braised beef bordelaise—*Harvest of Despair*, a 55-minute Canadian production disinterring the story of the man-made Ukrainian famine buried half a century ago beneath layers of Soviet propaganda and Western venality. After the presentation of the gold medals in the ten categories included in the overall TV Entertainment Programs and Specials Group, it was time for the ice-cream log *assorti* in meringue crown and the announcement of the winner of the Grand Award Trophy Bowl. Again, it was *Harvest of Despair*, judged the "most outstanding entry" of all 837 films in the group. These two awards gave the film enough points in international competitions to make it eligible for an Oscar, although too late for this year's Academy Awards.

This was last November 15. Ten months earlier, Peter Foges, Public Affairs Programming Director at New York's PBS affiliate, WNET, was pressed to explain why he had rejected the film. After a long silence he replied that it was "technically deficient" and of "dubious quality," and that it did not meet PBS's "production standards." Pressed for an explanation of what *that* meant, Foges stumbled for a moment and said, not entirely convinced himself, that the sound of horses' hoofbeats should have been dubbed into a still scene showing human corpses being carted away. (Those sound effects *are* included.)

These two incidents typify the whipsaw reaction to an extended effort to call to the American media's attention the untold story of how Soviet authorities deliberately starved to death at least seven million people in the traditional "breadbasket of Europe." Harvard University's Ukrainian Research Institute recently concluded a monumental three-year research project on the subject, headed by British Sovietologist Robert Conquest; the resulting book will be published this spring by the Oxford University Press. The Harvard project coincided with the production in Toronto of *Harvest of Dispair*, a private effort that soon attracted the attention and support of the National Film Board of Canada. Independent of each other, the Canadian film and the Harvard study were simultaneous firsts concerning a subject that Harvard's James Mace said "remains as the least understood cataclysm of this century, a tragedy that has disappeared from the public consciousness so completely that it represents the most successful example of the denial of genocide by its perpetrators."

The importance and timeliness of the issue seemed obvious enough, and any one of the several threads in this story would make it a natural for broader dissemination.

There is most obviously the purely human-interest aspect—nothing less than the systematized murder of seven million human beings in less than a year, three million of them children under the age of seven. That is the conservative figure, extrapolated from Soviet statistics. That the actual number is significantly higher must be assumed, since the compilers of the first Soviet census after the famine was lifted were summarily shot for "undermining Socialism by deliberately undercounting the population." A "correct" census was immediately prepared. It is on the "corrected" version that the seven-million figure is based. The true extent of the human cataclysm is perhaps more accurately suggested by Dr. W. Horsley Gantt, a British physician who was in the Soviet Union at the time and who relayed private estimates by Soviet officials of as many as 15 million killed, fully half the Ukrainian nation, and equal to the population of all of Central America today.

In testifying before the Senate shortly after the destruction of KAL flight 007, Robert Conquest remarked that Soviet policy in Ukraine during 1932-33 could be placed in a clearer perspective by recognizing that Soviet MiGs would have to shoot down a 747 airliner every day for seventy years in order to approximate the death toll in Ukraine.

The novelty in all this is that the famine in Ukraine was modern history's first example of "famine on command." It was not brought about by drought, or crop failure, or war. One hundred thousand Communist Party activists, brought in for the task from Russia, physically removed virtually all of the food from the region. Dogs and cats vanished from the streets, as the state abruptly realized a need for their skins. Ukraine's symbol, the nightingale, was trapped and slaughtered *en masse* by the secret police. The famine was the realization of Soviet Foreign Minister Maksim Litvinov's dictum, "Food is a weapon." It was also the precursor of starvation politics in Afghanistan [1] and Ethiopia.

The second thread of the story, which the producers hoped the media half a century later would have the integrity to address, was the Western media's responsibility for spiking the story originally in order to curry favor with the Kremlin. Among the luminaries of the time, Walter Duranty of the *New York Times* was the acknowledged dean of Western reporters in Moscow. He categorically denied the existence of any famine, prompting Stalin to compliment him—"You have done a good job in your reporting of the USSR"—and to reward his efforts with the Order of Lenin.[2]

PULITZER JOURNALISM

The Pulitzer Prize Committee was of like mind and bestowed its own coveted award upon Duranty for his "dispassionate, interpretative reporting . . . marked by scholarship, profundity, impartiality, sound judgment, and exceptional clarity . . . excellent examples of the best type of foreign correspondence." In order to promote such journalism, Duranty was permitted by Soviet authorities to accompany Litvinov on his triumphant trip to the United States, when we negotiated the diplomatic recognition of the USSR at the very height of the famine.

To be sure, a few European papers, such as France's *Le Matin*, decided to publish the truth. But the American media were damningly silent, both about the genocide and about Soviet manipulation of the foreign press.

The third thread of the story is summed up in George Orwell's observation, "We have now sunk to a depth at which the restatement of the obvious is the first duty of intelligent men." It may sound tautological to repeat that "the Soviet Union" is not "Russia," but it is nonetheless necessary to do so. The USSR is a multinational federation of formerly independent nations. It is not a monolithic state, any more than is any empire. An Uzbek in Samarkand or a Latvian in Riga has about as much similarity to, or affinity for, a Russian in Leningrad as does an Afghan in Kabul. The Red Army's occupations of Lithuania and Georgia were little different from its occupation of Afghanistan, with the exception that with the passage of time the former have been absorbed into a "Soviet Union" as constituent republics. Afghanistan may yet become the 16th installment. In this light, the man-made famine in Ukraine speaks volumes about Moscow's relationship with the non-Russian nations of the USSR, which account for 50 per cent of its population. That event thus offers the West a glimpse into the practical consequence of the structuring of the Soviet Union and the centrifugal forces in it.

None of these issues has proved attractive to the media in the United States. At this writing *Harvest of Despair* has been shown only on two small U.S. television stations; and virtually no press attention has been given to the discoveries of the Conquest group. This has not been for lack of trying by either the *Harvest* producers or the Harvard Institute. But all their efforts have been met with the sort of embarrassingly inarticulate—or silent—rejection that suggests people are unwilling to explain their reasons for not doing the obviously right thing.

Thus, for instance, the three commercial television networks did not see fit to articulate any reason whatsoever for their rejection of the story. We have reason to believe that, at least in the case of one of the networks, a fawning concern, at the highest level, with maintaining the good graces of the Kremlin led to the network's self-censorship.

When we approached the major news weeklies, *Time*, for example, answered that "at the present time" it was not planning any stories on the subject. Asked when would be a more opportune occasion than the fiftieth anniversary of the tragedy, *Time* (after repeating that it "is not considering such an article at this time") made an abrupt change of course and said that its mandate was only to cover immediate news. This was immediately followed by another twist—"We do occasionally report historical events when they bear directly on current news . . . or if the event itself becomes the subject of renewed controversy or discussion."

The repetition of the Ukrainian pattern in Cambodia, or Afghanistan, or Ethiopia did not qualify. Not did the recent establishment of a Joint Congressional Commission to investigate the famine and its coverup. As

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[1] Recently, a Ukrainian in the Red Army deserted and joined the Afghan resistance. The 21-year-old private, Aleksandr Levenets, gave his reason: "Our officers said we must go into a village and kill all the people and animals, sheep, horses, even dogs and cats. But I thought it was the Mujahedin who were fighting against us, not elderly people and dogs and cats."

[2] In private conversations with his colleagues in Moscow and with representatives of the British Foreign Office, Duranty volunteered that as many as ten million had been killed by starvation, leading Malcolm Muggeridge to call Duranty the greatest liar he had met in fifty years of journalism.

to waiting for a "renewed controversy or discussion," that was a rather incestuous excuse, since a discussion cannot be renewed when the story was never reported in the first place. The disclosures of the Harvard project shatter some long-held assumptions concerning the formative years of the USSR. That, certainly, should satisfy even *Time's* tortured criteria. Presented with these arguments, *Time* made no response.

The Harvard group hoped the release of *Harvest of Despair* might make a difference. A recognized film-distribution firm in Washington, D.C., viewed the film and expressed enthusiastic interest in serving as its exclusive agent in the United States and Canada. But after the firm discussed the matter with its industry contacts on the East and West Coasts, a wall of silence descended. No explanation. No replies to inquiries. Nothing.

And then there is PBS. Its legislative mandate requires that it serve as an accessible alternative to commercial broadcasting, to provide an outlet for productions that couldn't win a place in the ratings game. Controversy, the unknown, the unorthodox were to be PBS's mainstay.

The initial reaction of PBS, summarized above, came before *Harvest of Despair* was awarded the gold medal in the first of what soon became an unbroken succession of international awards. In a follow-up discussion, the reason given for WNET's rejection predictably changed. Now, the film was "inadequately documented." This is hardly less transparent than was Foges's first excuse. It is also untoward, given that the production has been critically acclaimed as "exceedingly well documented." More than one and a half million feet of rare archival film footage were viewed, of which 720 feet were incorporated into the production. The critics wrote that "the historical documentation has been vividly assembled. One can see that tremendous research was part of making *Harvest of Despair.*"

So, when we asked what "inadequate documentation" meant, WNET said the film lacked "journalistic integrity." When we asked what *that* meant, we finally got to the heart of the matter—the "other side" of the story was not presented. We replied that this *was* the other side of the story. PBS's airing of *Harvest of Despair* would be the first time, after half a century, that the "other side" of the story finally was made available to the American public, in fullest accord with PBS's own mandate. Alas, to no avail.

In a remarkable parallel, on November 5, 1985, WPBT, the PBS affiliate in Miami, also rejected the film on the grounds that it has "a perceived bias in terms of the viewing public." (WPBT did acknowledge that the film was "interesting and well produced.") The film was submitted to WPBT after that station broadcast a documentary on Stalin covering the period from 1934 onward. *Harvest of Despair* treats the period through 1933 and seemed a logical adjunct. A request to Candace Carlisle, WPBT's Director of Program Acquisition, for an explanation or example of the film's bias has remained unanswered.

Finally, after a ten-month blackout, and on the heels of WPBT's rejection, the main office of PBS in Washington opined that the film presents only "one point of view" and that it is "subjective." This, of a film that now is in the running for an Academy Award as a documentary. Unembarrassed, a few weeks ago the PBS affiliate in Boston, WGBH, also fell into line.

PBS thus remains adamant.[3] *Harvest of Despair* is fatally flawed because it violates Solomonic impartiality by not giving equal time to Moscow's point of view. But what would the Soviets say? Perhaps, like those who deny the Nazi Holocaust, they would claim the famine never occurred. But no one suggests that Holocaust films be routinely accompanied by a rebuttal from the editors of *Spotlight.* Or perhaps they would use the war criminal's lament: It happened, but it was nobody's fault.

Indeed, in a Canadian television production shown on April 27, 1983, the Soviet Union *was* given equal time and said absolutely nothing new. CBC's *Fifth Estate* series, Canada's answer to *60 Minutes,* produced a twenty-minute segment on the Ukrainian famine, a full 18 months before the public release of *Harvest of Despair.* Aleksandr Podakin, from the Soviet Embassy in Ottawa, appeared in the segment and was cool, calm, and collected, countering with sober reflections on the tribulations of Americans and Canadians during the Depression. The day after the broadcast of the *Fifth Estate* program, the Soviet Embassy put out a virulent three-page press release "On the So-Called 'Famine' in Ukraine," replete with the predictable litanies. In December of that year, Aleksandr Podakin finally lost his cool, after Canadian Conservative leader Brian Mulroney mentioned the Ukrainian famine in a speech. The Soviet Embassy filed a formal protest with the Department of External Affairs, branding Mulroney's speech "a 100 per cent lie." It accused Canada of violating the Helsinki Accords by attemping the overthrow of the Soviet government.

There was nothing to prevent PBS or any of the U.S. networks, for that matter, from similarly airing *Harvest of Despair* and then having a post-mortem with a Soviet representative. Certainly, the Soviet Embassy in Washington will not broach the issue so long as, in the U.S., it remains submerged.

LOST IN AMERICA

Perhaps the strangest aspect of the story is the contrast between the silence of the media in the United States concerning *Harvest of Despair* and the critical acclaim elsewhere. In addition to its sweep in the international film competitions, the film has been lauded as "a searing 55-minute documentary," "powerful," "an eye-opener," "an important film . . . it should be seen by everyone," "an unquestionably sobering film which rightfully deserves wide distribution on television," "a riveting account," "a superb chronicle," *"un film éminemment nécessaire."* CBC broadcast the film throughout Canada last September, and European, Australian, and Japanese rights are being negotiated.

The only important exception among the critics is the *New York Times's* Vincent Canby. Writing on the occasion of the screening at the New York Film Festival last October 10, Canby defended the *Times's* Walter Duranty. He did not deny that Duranty lied; he criticized the *film* for not explaining why Duranty did it. He excused Duranty's perfidy by explaining (citing Harrison Salisbury) that Duranty was not a Communist ideologue but merely a "calculating careerist," as if that were a valid defense for fraud.

Canby continued: *Harvest of Despair* was visually "full of generalities." An astonishing statement. The *New York Times* first censors the printed news and then, fifty years later, complains that the visual record is too general. The remarkable thing is that there is any visual record extant in the West. (*Shoah,* the recent documentary of the Nazi Holocaust, was applauded by the critics even though it runs for nine and a half hours without using *any* archival footage.)

Canby ruled, ultimately, that *Harvest of Despair* is a "frankly biased, angry recollection" of a "hugely emotional subject." "Biased" is a serious charge to hurl at a documentary. But what does it mean here? That the producers disapprove of genocide? Or that they twisted the facts to make genocide appear where there was none? If it was the latter, Canby gave not a single example, nor the slightest substantiation. A letter requesting substantiation remains unanswered.

What is to be made of the particular resistance of the U.S. media? The story is clear enough. After 15 years of trying, Moscow had been unable to solidify Communist rule in Ukraine, the largest non-Russian republic in the Soviet Union. Soviet reaction to Ukrainian opposition was simple—starve the opponents. A quarter, perhaps half, of the population was driven to madness, cannibalism, and death. During the whole process, Moscow was able to muzzle the Western media, enthrall Western intellectuals, and entrance Western governments. For half a century the story remains entombed. Then, a major university study and an award-winning film expose the genocide and its coverup, and the U.S. media do not respond. Why?

LAP DOGS OF THE PRESS

As one of the few Western journalists who remained true to his public trust, Malcolm Muggeridge wrote at the time that "the man-made famine in Ukraine is one of the most monstrous crimes in history, so terrible that people in the future will scarcely be able to believe it ever happened." But, of the myriad excuses given by the American media, disbelief was never even intimated. Nor would we expect to see the line of demarcation between belief and disbelief to be so sharply drawn between the United States on the one hand, and Canada, Western Europe, and Australia on the other. Quite beyond *Harvest,* over the last three years, the famine itself has been the focus of extensive editorial and reader discussion in the major publications of those countries.

Part of the reason must surely lie in the American media's refusal publicly to admit to its especially disgraceful delinquency. But the ultimate reasons can only be the same ones that prompted the media to spike the story in the first instance. One of those is a fawning concern to maintain their good standing with the Kremlin. An indirect example of this is found in the Wall Street Journal, which does not maintain an office in Moscow and whose editorial policy has earned Moscow's ire. Moscow thus has no leverage on the Journal, and the Journal has publicized the direct connection between the man-made famine in Ukraine and present-day developments in Afghanistan and Ethiopia.

The other, more important reason is the pervasiveness of the very political bias that PBS was so quick to ascribe to *Harvest of Despair.* It isn't simple conscious complicity, but unknowing gullibility, that is behind the acceptance of Soviet horrors. Because this bias is often subliminal, it is all the more in-

[3] To their credit, the local PBS affiliates in Chicago, Illinois, and Rochester, New York, have recently aired the film.

sidious. David Satter wrote in the October 22, 1985, *Wall Street Journal:* "The Soviet authorities understand that concessions to their view of reality weaken an adversary's ability to insist on the absolute value of anything. This is why the effort to induce the world to take their ideological lying literally is not just a question of prestige for the Soviet leaders but also a matter of political strategy. The Soviet authorities do not expect Western journalists to believe Soviet propaganda, but only to repeat it uncritically, without any effort to analyze what it means, so that, over time, the Soviet Union's ideological lying and officially sanctioned misuse of language, enhanced by the credibility of important American publications, begin to have the same numbing effect on Westerners as Soviet citizens."

Were, say, ABC to air *Harvest of Despair* or its own documentary on the subject, it would freeze for an hour the Soviet phantasmagoria. The new image: The famine in Ukraine was not the unfortunate but unintended byproduct of the overall collectivization of agriculture in the Soviet Union, as soporifically recited by those in the West who even concede its occurrence. In Ukraine, collectivization was completed long before the Central Statistical Office ceased publication. Long before doctors were forbidden to record deaths as due to starvation. Long before *holod*, the Ukrainian word for famine, was outlawed. Long before the Ukrainian-Russian border was sealed, preventing anyone from leaving Ukraine for Russia in search of food. Ukrainian villages starved. Russian villages a few hundred yards across the border did not.

The ensuing half-century of worldwide silence testifies to the effectiveness of the Soviet disinformation effort on a global scale. Eugene Lyons wrote bitterly that "the most rigorous censorship in all of Soviet Russia's history has been successful. It had concealed the catastrophe, until it was ended, thereby bringing confusion, doubt, contradiction into the whole subject." Concurrently, the Soviet Union achieved its greatest foreign-policy goals—America extended diplomatic recognition and the international community invited it to join the League of Nations.

Soviet brutality has never been exploited by its enemies as a way of undermining Soviet power. Indeed, its brutalities have increased its might, helping to transform it into a global superpower. "The Soviet Union is not the only original killer state, but the model one," wrote Nick Eberstadt of the Harvard Center for Population Studies.

For American newsmakers, such an image remains awkward, untimely, impolitic, inexpedient. Yet the man-made famine in Ukraine represents, as much as any one event can, the USSR's most precarious fault lines, domestically and globally. That event, half a century ago, today bears direcly on issues of national self-determination, land and social reform, and indigenous cultural and religious values that are of burning concern in those areas of the world that lie in the path of Soviet influence. An understanding of the Ukrainian famine may well be the critical first step in a popular assimilation of the interaction between Soviet domestic and foreign policies, American media coverage of the Soviet Union, and our own consequential formulation of policy toward the Soviet Union.

Until that step is taken, Mikhail Gorbachev has good reason to be pleased. True to form, his cover-story interview in the September 9, 1985, issue of *Time* magazine began with *Time*'s own insights: "Gorbachev looks well tanned, just a bit ruddy in the cheek . . . He laughs easily . . . [His eyes] are an intense dark brown . . . The voice is extraordinary, deep but also quite soft . . . low and melodious." That voice then broadcast to us his concern about the "hundreds of millions of people going hungry . . . We, all of us, just have no right to ignore the situation." So spoke the man who forged his career in the crucible of the once heavily Ukrainian North Caucasus.

Mr. DOLE. It has been a long time coming, but tonight the American people can at last judge for themselves. It is on their channel this evening—"public television"—on Willian F. Buckley's outstanding show "Firing Line." I hope that my colleagues will join the American people in watching this special show. In doing so, we will help remember—and honor—the millions of innocent victims of a ruthless dictator's "harvest of despair."

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds.

Mr. DOLE. After the leader's time on the other side, I would yield the remainder of my time to the distinguished Senator from Florida [Mrs. HAWKINS].

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the time of the Democratic leader be reserved for his use later today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PROXMIRE. I will follow the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

A MATTER OF SURVIVAL

Mrs. HAWKINS. Mr. President, Vice President BUSH recently raised the question of the death penalty for large-scale narcotics traffickers. "I don't think the death penalty is unreasonable," the Vice President said in an interview with a Boston Herald reporter. Mr. BUSH described drugs as a "great threat to our society. Finding a way to control them is something that must be done."

The Vice President is a wise man, and demonstrates the caliber of his wisdom when he notes that leniency against drug use has contributed to the problem. He singles out drug use in sports as an outstanding example. There has been a pattern of leniency toward drug users in the sports fraternity. It is something that has been swept under the rug for too long. And it also is a fact of life that many drug users start at an early age when they are influenced by the behavior of professional athletes.

Narcotics trafficking is the most despicable of crimes and the punishment should fit the crime! We have slapped the wrists of the drug smugglers for too long. They should be stripped of all profits derived from their slimy and very profitable business. Any material thing that has been acquired as a result of dealing in narcotics should be confiscated.

When you talk about property seizure, you are talking about homes, you are talking about cars, you are talking about planes, boats, and all kinds of vehicles used in moving drugs from one place to another. Seizure should result in hardships to the families of narcotics dealers. If a dealer cared enough for his family and their welfare, he would not be in the drug business in the first place. The profit motive must be removed entirely from drug dealing.

Most States, realizing the menace posed by drugs, have toughened the sentences for drug convictions. The Federal drug laws have shown a pattern of gradually cracking down tighter on drug violators. Longer sentences with less possibility of early parole is the order of the day. But the question remains—what can you do to dissuade traffickers beyond seizing their illgotten gains and throwing them into jail? The temptations to deal in drugs remains high—the potential rewards so great that people are attracted to this nefarious business.

Vice President BUSH's feelings lend new credence to the position that perhaps we should consider the death penalty for major drug trafficking. Immediately, there are those who would rise to note that capital punishment is not a particular deterrent to murder. But there is a difference. Most murders are committed in a moment of passion. There is heat and anger. In some cases, longstanding grievances are involved. Drug dealers, in contrast, know exactly what they are doing. Their moves are cold and calculating. Their goal is not vengeance or injury to someone but the satisfaction of greed. Profit, pure and simple. The damage narcotics traffickers inflict on society is incalculable: wrecked health, destroyed families, lost productivity and corrupted institutions. What measures should we take to discourage people from trafficking in drugs?

A society has the right, and indeed the obligation, to exist and to take whatever steps are necessary to insure its continued existence. It's a simple matter of survival.

I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10 a.m., with statements therein limited to 5 minutes each.

HOW DO WE TAKE ADVANTAGE OF THE U.S.S.R. NUKE WEAPONS TEST MORATORIUM?

Mr. PROXMIRE. Mr. President, what are the implications of the Soviet extension of their unilateral suspensions of nuclear weapons testing that began August 6, 1985, and has now been extended until January 1, 1987? First, have the Soviets actually stopped nuclear testing for more than a year? Have they violated this moratorium? After all, the moratorium has not been subject to any U.S. verification procedures of any kind.

How do we know the Soviet Union has not been cheating? How do we know they have not conducted scores of tests? We are told that seismic monitoring stations in Scandinavian countries can detect underground explosions that exceed 1 kiloton within the Soviet Union. We are also told that explosions of less than a single kiloton would have no military significance. Is this true? Ask yourself: Would the administration make this an issue if the Soviets had, in fact, tested nuclear weapons during this 13-month moratorium? The administration could. They should. They would.

Has there been any charge by any responsible administration official that the Soviet Union has violated its unilateral suspension of nuclear weapons testing since August 6, 1985? No. This Senator has not heard such a charge from any source.

Has anyone in the Defense Department charged that the Russians could have been testing nuclear weapons of significant kilotonnage in actual explosions without detection? This Senator has not heard it. If there is any evidence of this kind, let us have it.

The fact is, Mr. President, that there is every reason to believe that for more than a year, the Soviet Union has not conducted a single nulcear weapons test. There is also every reason to believe that the Soviets will continue this moratorium at least until January 1, 1987.

What are the implications of this Soviet absention from nuclear weapons testing? First, it means that the Soviets, in all likelihood, do not feel that this long moratorium will have an important adverse effect on their national security or on the credibility of their deterrent. Second, it means that by next January, our country will have nearly 1½ years advantage over the Soviet Union in the testing of nuclear weapons which is essential to proving new research on these weapons.

Keep in mind that at the time the Soviet Union stopped testing, the United States was already well ahead in nuclear weapons technology—according to our own Under Secretary of Defense for Research and Development. The Undersecretary informed the Congress in 1985—shortly before the Soviet moratorium on testing began—that the United States was either ahead of or tied with the Soviet Union in every one of the most important nuclear weapons technologies. The Soviet Union was ahead in none. Since then, our researchers have had more than a year to advance their technology even further. It is also a fact that the United States had initiated far more nuclear weapons test explosions than the Soviet Union even before the Soviets ceased their testing.

What does all this mean for the wisdom of U.S. negotiations with the Soviet Union to stop further nuclear weapons testing? It means we can stop testing on both sides with the absolute assurance that the United States has a clear and decisive technological lead in nuclear weapons research and testing. We freeze. We stop testing when we are ahead. And what does that do? It solidifies our advantage in concrete. Neither side can test. Neither side can move the lethal, devastating effect of nuclear weapons ahead further by the testing that is quintessential to effective nuclear weapon technology advance. If we stop nuclear weapons testing now, we end this crucial element of the nuclear arms race. We end the nuclear weapon technology arms race.

If there can be a winner in this race, it is us. That is reason enough to negotiate a test ban treaty. But there is an element here that should satisfy the most cynical hawk. We stop the testing when we are clearly ahead. We stop the testing when we have had nearly 1½ years to further advance our advantage. Mr. President, there is no way we can gain by refusing to take advantage of this golden opportunity. Just think of it. We serve the cause of peace in this terribly dangerous nuclear age by ending the technological nuclear arms race. And best of all, we do it at a time when our country is ahead—so we perpetuate our advantage. We freeze it.

Does this mean the negotiations will be easy or automatic? Certainly not. We can and should insist that verification be absolute. We should insist on the stationing of seismic monitoring stations through the Soviet Union. We should insist on on-the-spot, unannounced inspections of any suspicious indications of explosions in the Soviet Union. We should promptly turn to the extension of this ban to other nations, including all the present acknowledged nuclear powers and potential nuclear powers.

We have a golden opportunity here. Let us take advantage of it.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, there are two prevailing points of view among many experts in the United States on the subjects of terrorism and nuclear accidents that, at their core, are based on mythology. The first generally accepted viewpoint is that nuclear accidents can't happen here. Sure we had Three Mile Island but not one life was lost. Our technology is superior to the Russians. Chernobyl can't happen here.

Likewise the United States has escaped serious terrorist attack. This has given rise to the perception, also a myth, that we somehow are safe from terrorist actions.

Both related and commonly held positions are, unfortunately, not based on fact.

What form can nuclear terrorism take in this country?

Just look at all of the nuclear powerplants in this country and the large number of nuclear reactors we have at our universities and research centers. Many of these facilities have less than adequate physical security arrangements, which in many cases would not deter a nuclear terrorist from sabotaging them.

According to Theodore Taylor, former Deputy Director of the U.S. Defense Atomic Support Agency, one possible terrorist scenario could be the detonation of a very small nuclear device on top of a nuclear waste facility causing an extraordinary amount of destruction.

Mr. President, let me add another possibility. Not all weapons-grade uranium and plutonium in this country is very well protected. The biggest risk we face today, where these materials are concerned, is during transport. Can you imagine someone actually stealing weapons-grade nuclear materials during transport on the open road? Well, it could happen.

THE NEW GATT ROUND

Mr. BAUCUS. Mr. President, yesterday I stated that the GATT [General Agreement on Tariffs and Trade] agenda recently agreed to in Punta del Este was a good beginning.

But yesterday I was able to review an actual copy of the agenda that was agreed to. It contains a troubling provision.

The agenda seems to state that the less developed countries do not have to make any concessions in these negotiations, if those concessions might hurt their "development, financial or trade needs."

Let me read the language. This is from a section entitled "General Principles Governing Negotiations;"

The developed countries—that is, the United States and other developed countries—do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade developing countries, i.e., the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs.

Continuing the language further:

Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latters' development, financial and trade needs.

That is a lot of legal language. But it means that the LDC's seem to have it all their way. They do not have to make any concessions—and we cannot ask for concessions—if those demands would be contrary to their "development, financial and trade needs."

Let me explain what that phrase means. In this new round, the United States would like to gain access to many markets in the LDC's, including services, computers, agriculture, and other areas where the United States is most competitive.

The administration has stated that these are their highest priorities in the new round.

But under this agenda, can Brazil state that it should be able to continue to protect its computer or aircraft markets because it is necessary for their development needs?

Under this agenda, can developing countries refuse to open their investment and banking markets because it contradicts their financial needs?

Under this agenda, can Korea refuse to open its markets to United States beef exports because it is inconsistent with their trade needs?

This GATT agenda language seems to say "yes."

Not only does it say "yes," but also, it seems to say that the United States cannot even ask to have them open these markets. It can't be discussed.

Mr. President, that is not the understanding that we in the Congress have as we enter this new round.

One of our primary goals in entering this new round is to open these markets. If we cannot even ask them to open them, why are we entering this round at all?

Let me be clear. I know that in past GATT agreements, the LDC's have received a special status. It has traditionally been understood that the developed countries will give special consideration to the LDC's to assist their development.

I support that approach up to a point. But this new GATT provision strikes the balance too far the other way.

This provision says that the LDC's have to give up nothing. They get the whole ball of wax.

It not only says that we will tie our hands behind our backs, but that we will not try to untie them.

I think I speak for most of my colleagues in saying that that approach is not acceptable. We will not accept a final agreement in which the LDC's have made no concessions.

Mr. President, I would like to ask for two things today.

First, I would like the administration formally to explain to the Congress the meaning of this provision in the agenda.

Congress will be asked before long to determine whether to grant fast-track authority to the administration to negotiate this new round. My colleagues will not want to grant fast-track authority unless they can be assured that the United States will not be sold down the river in these negotiations.

We deserve an explanation.

Second, I want to send a clear message to the LDC's. This Congress will not approve of any agreement in which the LDC's refuse to make concessions on the basis that those concessions are inconsistent with their "development, financial, and trade needs."

All countries—developed and developing—must demand concessions as part of the negotiating process.

I note that the provision after the one I have cited states that LDC's recognize that their capacity to make concessions will increase as their economies progress.

I expect the LDC's to live up to that commitment sooner rather than later. And I would expect that the final agreement would reflect the development these countries already have achieved.

Mr. President, this GATT round cannot be a one-way street. Both sides must give, but this provision looks like unilateral disarmament.

Mr. President, for years, GATT has proceeded on the basis that open trade benefits all nations. That principle is just as valid today.

But that principle requires that all countries open their markets. To carve out certain exceptions for certain groups of countries undermines the entire GATT framework.

Before we go any further with this GATT round, we need an explanation of the meaning of this provision.

Benjamin Franklin once said, "A good beginning begets a good ending."

Mr. President, we need some explanations of this provision. Otherwise, this uncertain beginning will beget a horrible ending.

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SUPERFUND

Mr. LAUTENBERG. Mr. President, the Superfund Program is facing another crisis. With adjournment drawing near, and the conference on the Superfund reauthorization bill still unresolved, we face the unacceptable prospect of closing the 99th Congress without enacting a bill to expand and renew this program.

Mr. President, members of the Senate Environment and Public Works Committee have committed almost 3 years of work to renewing and reshaping the Superfund Program. In 1984, knowing that it would be a complicated and contentious effort, our committee, under the distinguished leadership of Senator STAFFORD, reported a bill to the Senate for consideration. That bill was never scheduled for floor action, because the administration opposed moving ahead with a bill at that time.

It is now 2 years later, and we still do not have a bill. The House and Senate both approved Superfund legislation in 1985, but no conference met on the bill until February 1986. The conference of the programmatic provisions of the Superfund bill was completed, after 6 months of intense meetings, in July. But, the tax provisions of the bill are still pending in conference.

Mr. President, Superfund has survived over the past year on a series of interim funding measures. EPA Administrator Lee Thomas has sounded the alarm. Without an infusion of funds, or a bill approved by the Congress, he will have to take irrevocable action. He will have to cancel existing contracts for work at Superfund sites threatening our capability to get this job done, as contractors lay off skilled engineers and workers and they scatter to the wind. At the end of October, work at over 100 remedial projects across this Nation will stop.

Mr. President, the Superfund Program is in danger of dying. With the 99th Congress coming to a close, we must make it a top priority to renew this program, and provide funding for it, before we leave for the year. What we do will have an impact on this Nation's environment for years to come.

Will we have a nation of Timers Beaches and of Lipari's or will we have a commitment to rigorous cleanups? Will we expose our citizens to the risks of chemical releases or will we insure that they have the right to know about chemicals in their communities, and how to respond in the event of a chemical release? Will we clean up the 900 abandoned toxic waste sites on the Superfund national priority list, or will we turn our backs on these threats to the environment and public health?

Mr. President, continued stop-gap funding for Superfund, if it can even be provided at this late date, is not the way to deal with this problem. We need, instead, to enact the conference report on H.R. 2005, which includes important reforms in Superfund Progam. We need to provide for an equitable and effective financing mechanism to fund the program to its authorized level of $9 billion.

Mr. President, there is a lot at stake in this bill. Many of us spent years in writing it. We worked with all affected parties—from local officials, to community groups, to environmental and industry groups. There is no opposition from any corner to the programmatic provisions in this bill. These provisions require effective cleanup standards, so that money is not wasted on remedial actions that do not do the job. They set up community notification and emergency response programs. They authorize a radon/indoor air program. The conference agreement also provides for citizen suits a leaking underground storage tank program, preservation of State taxing authority for State spill funds, credits for work done by our States at cleanup sites, and a list of other environmental protections too long to document here.

Mr. President, what prevents final passage of these historic provisions is the need to complete action on the revenue provisions. As we know, because of their work on tax reform, the tax conferees have not been able to reach an agreement on these provisions. On Monday, I joined with 28 other Members of the Senate urging action on the tax title now that work has been completed on the tax reform bill. It is my understanding that the tax conferees on the Superfund bill are scheduled to meet this morning, and that is welcome news.

Mr. President, I hope those deliberations can be completed quickly, and that we can take up the conference report on Superfund within days.

The time is now. The stakes are high. And the goal is clear: Let us enact a strong, enlarged, and improved Superfund Program and get on with the task of cleaning up the abandoned waste sites that dot my State and others across the Nation.

EDUCATION OF THE HANDICAPPED ACT AMENDMENTS

Mr. STAFFORD. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2294.

The legislative clerk laid before the Senate the amendment of the House of Representatives to the bill (S. 2294) to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes.

(The amendment of the House is printed in the RECORD of September 22, 1986, beginning at page 25187.)

Mr. WEICKER. Mr. President, on behalf of myself, Mr. HATCH, Mr. STAFFORD, Mr. KERRY, Mr. KENNEDY, and Mr. SIMON, I rise to urge the passage of S. 2294 as amended by the House. In the absence of a conference report on this legislation, we make this joint statement as members of the Subcommittee on the Handicapped and cosponsors of the original S. 2294. Further, we would like to commend our colleagues on the House side, particularly Representative PAT WILLIAMS, for taking action on this critical legislation.

On June 6, the Senate unanimously passed S. 2294, the Education of the Handicapped Amendments of 1986 to amend and extend the discretionary programs under the Education of the Handicapped Act for an additional 3 years and to create a new program of early intervention services for handicapped children beginning at birth. The bill before us represents House consideration of, and response to, the Senate-passed bill. Because the underlying goals of S. 2294 have been retained by the House and are embodied in S. 2294 as amended, the bill has our full support.

Although the legislation now before us differs structurally from the Senate-passed S. 2294, let us make it crystal clear that in terms of congressional intent regarding the provision of services to handicapped infants, toddlers, and young children, the two bills are not different.

First, with regard to the provision of special education and related services to handicapped children from ages 3 to 5, both bills establish a mandate for serving these handicapped children, while differing in terms of the funding formula and the length of time allowable for the State to phase in its program. This new funding formula was developed by the American Association of School Administrators, and is described in detail in the House committee report on this bill. Although it is true that the Senate bill established a mandate for services to handicapped children between the ages of 3 and 5 by lowering the mandate under Public Law 94-142, we firmly believe that the end product of the House amendments will be the same. With the very strong financial incentives provided in the bill to serve these children, we are confident that all the Nation's handicapped preschool children will have the special educational services they need.

Second, with regard to the establishment of a new program of comprehensive early intervention services for handicapped infants, both House and Senate versions of S. 2294 reflect our commitment to ensuring that such services will be available to all eligible children by the end of the 4-year phase-in period. The bill before us today establishes a policy of assistance to States to develop and implement programs of early intervention services to handicapped infants, toddlers, and their families.

Many of these programs include provisions found so successful in serving the school-aged handicapped child, such as parent participation, individualized intervention plans, interdisciplinary decisionmaking, and procedural safeguards.

Both the House- and Senate-passed bills specify that these early intervention services shall be at no cost to parents to the extent not inconsistent with Federal or State law. This is not intended to signal congressional toleration of undue financial burdens on parents. States participating in this program accept responsibility for providing early intervention services. This legislation recognizes that universal access to services gives the State—not the parents—the chief financial responsibility for the provision of services required by the act. The services required by this act must be made available to handicapped infants and toddlers on the basis of their need and not on the basis of a family's ability to pay. It must be understood that the act bars the reliance on such laws if they create a financial barrier to infants receiving the required services.

By amending the Education of the Handicapped Act to provide authority for a program of early intervention services, Congress recognizes and emphasizes the critical relationship between development and learning. There is now clear and convincing evidence that early intervention reduces the need for special education once a child reaches school age. A reduced need for special education means an increased opportunity for interaction between handicapped and nonhandicapped children and youth; an increased opportunity for independence and self-sufficiency in adulthood; and a substantial reduction in the cost of education for handicapped students.

A primary purpose of early intervention relates to educational need; however, the legislation we are considering today recognizes that educational services do not exist in isolation from other necessary services, such as health and social services. Just as developmental readiness for school is not limited to cognitive development, early intervention is not limited to education alone. Rather, early intervention means a combination of services designed to meet the needs of a handicapped infant or toddler across a range of developmental domains. There can be no doubt about the appropriateness or viability of this policy. The establishment of this policy is grounded in special education

and child development research and brings Federal law in line with contemporary best practices in special education.

We also recognize the value of public input with respect to all of the policies constituting the statewide system of service delivery, particularly with respect to the definition of eligible children.

It is our belief that an individualized program of early intervention services will greatly enhance the educational prognosis for handicapped children. Ten years of experience with Public Law 94-142 has shown what education alone can do to ameliorate the effects of handicapping conditions.

Not unlike part B of the act, commonly known as Public Law 94-142, the new early intervention program contains procedural safeguards to ensure that handicapped infants and toddlers receive services based upon individual need. Although States are given flexibility in providing for the speedy resolution of disputes, parents are entitled to have their complaint heard by an impartial individual. Such an individual should be independent of any agency providing services. Of course, the remedies provided to parents under this part are in no way meant to be exclusive of any other remedies parents of handicapped children, including infants and toddlers, may have under other Federal laws. Moreover, the bill allows court actions by parties aggrieved by the findings of the complaint resolution process.

We note, however, that there are circumstances comparable to the exception recognized under part B in which exhaustion of administrative remedies would not be required: For example, where immediate action is necessary to protect the child's health or where it would be futile to use the administrative proceedings, such as where the dispute is not over the content of the individualized family service plan but rather the failure to provide the services contained within it. Finally, nothing in this section should be construed to prevent or delay the provision of services to handicapped infants or toddlers. We wish to emphasize that there may be situations in which interim services are required pending the resolution of a complaint.

Let me also take a moment to note that at least six States and three territories are currently providing special education to all handicapped children beginning at birth. In these States, no single agency provides all services to all children. Rather, existing service delivery systems represent interdependence among public and private organizations at both the State and local level. In crafting this legislation, we have looked carefully at what the States have done to meet the needs of handicapped infants and toddlers. In creating a new Federal discretionary grant program, the Congress does not intend to disrupt existing efforts in the States. However, it is in the national interest to assist State and local efforts in this regard and thereby promote a policy of universal access to services for handicapped infants and toddlers.

Some opponents of this legislation have said more time is needed to address the issues involved in establishing this new Federal program. We reject this argument. The state of our knowledge is more than sufficient to justify this new commitment of Federal resources to those who need our special care. This is not to say that we do not have concerns which must and shall be addressed when this legislation is reauthorized. Most notably, we are concerned about program accountability and fully intend for the allocation of funds authorized under the new early intervention program be based on the actual number of infants and toddlers served after the phase-in period expires. To this end, the bill amends section 618 of the act to require data collection on the numbers of children served. We believe that tying the distribution of funds to the actual number of children served is a critical component of program accountability.

The bill before us also amends and extends the discretionary programs under the act to ensure quality early intervention, special education, and related services will continue to be available to handicapped children. I will take just a moment to highlight some of these provisions.

One significant provision is the recognized need for research institutes to carry on sustained research. If we are to determine what are cost-effective and cost-beneficial services, sustained research such as that conducted in research institutes is essential.

Another significant provision addresses the training of teachers who will assist secondary special education students make the transition from school-based services to adult services, including employment. Currently, most secondary special education teachers are trained to utilize a classroom model rather than a community model. Teachers who are trained and experienced to work in a community environment rather than a traditional classroom are needed. This bill provides for such training.

We would also like to point out the very timely provisions in the House amendment designed to expand the advancement of new technology, media, and materials in the education of handicapped students. The development and utilization of such technology holds great promise in circumventing the limitations of certain handicaps. The new part G of the act will take a bold step in this direction.

We are pleased to note that the special needs of underserved groups have not been ignored by the Congress. For example, the House committee report on the measure directs the Secretary to pay particular attention to the needs of native Hawaiian and American Indian children.

Further, we wish to emphasize that the term "special education" includes physical education. The committee received testimony indication that many schools were not including physical education services in students' individualized education plan. We wish to underscore the importance of physical education as a part of special education.

Finally, we want to make a statement to everyone who has been involved in developing, or who will benefit from, the passage of this landmark legislation—whether parents, educators, handicapped children, or those who will implement the program. Make no mistake that today we send a message to the handicapped citizens of our Nation that their needs are not going to be sacrificed at the altar of budget cuts or educational reforms. And remember, too, that the enactment of this legislation does not signal the culmination of all congressional efforts to maintain and strengthen our commitment to preschool education and early intervention services for handicapped children. Over the next several years, as the impact of the action we take here today becomes clear, we will be watching closely to determine what improvements need to be made when these programs are next reauthorized.

In particular, we will be monitoring the implementation of the provisions in the bill pertaining to special education for eligible preschool children to ensure that its implementation results in a free, appropriate public education to all handicapped children beginning at age 3. We must—and will—be vigilant in ensuring that the services needed to maximize our handicapped children's potential for growth and achievement are available to all who need them.

Mr. KERRY. Mr. President, I rise in support of S. 2294, the Education of the Handicapped Amendments as amended by the House of Representatives.

Let me first commend the distinguished subcommittee chairman, Senator WEICKER, for his leadership on this legislation that will benefit so many handicapped infants, children, and youth and their ability to achieve a quality education.

A little over a decade ago, Congress set out to provide quality educational services to handicapped children in the schools by enacting what we know today as Public Law 94-142. Today's legislative initiative takes that success-

ful law one step further and offers States great incentives which will enable them to serve all handicapped infants, toddlers, and children. Furthermore, Congress has provided adequate funding for the States to carry out this exciting new initiative in the 1987 appropriations bill.

The Senate passed on EHA reauthorization in June. When Congress returned from the August recess, I must admit I was concerned that we might not see action on this essential bill. Fortunately, in the past 2 weeks, the House of Representatives has introduced, considered, and passed, its version of S. 2294. Mr. President, tonight the Senate has an opportunity to finish the work that we set out to do when we introduced this legislation. Because the Congress will be adjourning soon, I strongly recommend that the Senate accept S. 2294 as amended by the House. By accepting the amended House version, the Senate will forfeit their ability to conference differences with the House bill, as well as the opportunity to write a conference committee report. It is for this reason that I overwhelmingly endorse the comments of my distinguished colleague from Connecticut which, delivered on behalf of myself, the Democrats on the Subcommittee on the Handicapped, and others, are designed to establish legislative history on this bill.

I strongly urge my colleagues to join with me tonight and unanimously pass this critical legislation.

I understand that during consideration of S. 2294 by the House, a provision contained in the Senate bill was not included in the House amendment pertaining to the authority for staff of parent training centers to assist parents directly in activities under part B of the Education of the Handicapped Act.

The intent of the Senate provision in this regard was to clarify current law with respect to this authority. Is that correct?

Mr. WEICKER. The Senator is correct. Information had been provided to the Subcommittee on the Handicapped indicating that there had been some confusion with respect to this authority.

Mr. KERRY. Further, is it your understanding that current law permits staff of parent training centers to assist parents in activities under part B, and that therefore, the Senate provision was viewed as unnecessary?

Mr. WEICKER. That is correct. There has been no change in Federal policy since this program was created in 1983. As originally intended, these programs were designed to assist parents participate effectively with professionals in recognizing and addressing the special educational needs of handicapped children. For example, should parents need a staff person to accompany them to any meeting with school officials regarding the provision of services to their child, this legislation clearly permits them to do so.

Mr. KERRY. I thank the Senator from Connecticut for this clarification.

Mr. STAFFORD. Mr. President, I move that the Senate concur in the House amendments to S. 2294.

The PRESIDING OFFICER. Is there objection to the motion of the Senator from Vermont?

Mr. BYRD. There is no objection.

The motion was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the motion was adopted.

Mr. BYRD. Mr. President, I move to lay the motion to reconsider on the table.

The motion to lay on the table was agreed to.

REPRESENTATION AND TESTIMONY OF FORMER SENATE EMPLOYEES

Mr. STAFFORD. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 493) to authorize the production of documents by the Senate Permanent Subcommittee on Investigations.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, at the request of the chairman of the Permanent Subcommittee on Investigations, Mr. ROTH, the U.S. attorney for the District of Columbia is conducting an investigation of possible misuse of subcommittee funds by a former staff member. In that regard, the U.S. attorney has asked the subcommittee for access to certain relevent documents.

Both Senator ROTH and Senator NUNN, the ranking minority member of the subcommittee, would like to be able to respond to such a request. This resolution would so authorize the chairman and ranking minority member, acting jointly, to provide the requested documents.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 493) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 493

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs possesses documents relating to the financial activities of the subcommittee;

Whereas, the United States Attorney for the District of Columbia has requested access to certain of those records to assist him in fulfilling his own investigatory responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needed in any investigation for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the chairman and ranking minority member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the United States Attorney for the District of Columbia pertinent records relating to the subcommittee's financial affairs for the years 1980–1986.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REPRESENTATION AND TESTIMONY OF FORMER SENATE EMPLOYEE

Mr. STAFFORD. Mr. President, I send another resolution to the desk on behalf of Senator DOLE and Senator BYRD and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection? If not, the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 494) to direct the Senate Legal Counsel to represent and to authorize the testimony of former Permanent Subcommittee on Investigations employee in the case of William E. Brock versus Frank Gerace, et al.

The Senate proceeded to consider the resolution.

Mr. DOLE. Mr. President, two former employees of the Senate Permanent Subcommittee on Investigations, David Faulkner and Michael Eberhardt, have been subpoenaed for deposition testimony and the production of documents by the defendants in a civil action now before the Federal District Court in New Jersey. The case, Brock versus Gerace, involves allegations of ERISA violations which were also the subject of an investigation by the subcommittee.

This resolution would direct the Senate Legal Counsel to represent both former employees in the matter as well as authorize them to testify, though only if consistent with the privileges of the Senate. Mr. Presi-

dent, I move adoption of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 494) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 494

Whereas, in the case of *William E. Brock* v. *Frank Gerace, et al.* Civil Action No. 85-3669, pending in the United States District Court for the District of New Jersey, the defendants have obtained subpoenas for the testimony of David Faulkner and Michael C. Eberhardt, former employees of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent former employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of former employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent David Faulkner and Michael C. Eberhardt in the case of *William E. Brock* v. *Frank Gerace, et al.*.

SEC. 2. That David Faulkner and Michael C. Eberhardt are authorized to testify in the case of *William E. Brock* v. *Frank Gerace, et al.*, except concerning matters which are privileged and subject to a determination that they have relevant information which is not so protected from disclosure.

Mr. STAFFORD. I move to reconsider the vote by which the resolution was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TRIBUTE TO DR. A.G. GASTON

Mr. DENTON. Mr. President, it is my honor to stand before the Senate today to pay tribute to Dr. A.G. Gaston, a fellow Alabamian, on the occasion of his receipt of the sixth Living For America Award. The fact that Dr. Gaston is the first black recipient of this award pays tribute to his efforts to bring about equality for persons of all races in Alabama and the rest of the Nation; it is also great testimony to the wisdom of those who present the annual award—the Selma-Dallas County Chamber of Commerce and the Alabama Tourism and Travel Bureau.

As a former winner of the award myself, I am deeply honored to be in the same company as Dr. Gaston, a man who has worked to build a better Alabama and a better nation for the greater part of his 94 years.

Dr. Gaston, who is a graduate of the Tuggle Institute and the recipient of 10 honorary doctorates from several prestigous colleges and universities, has engaged in a career which not only brought him marked success in the business world, but also helped bring about great social change through his work in defending civil rights and his efforts to eliminate many racial barriers in Alabama and the Nation.

Dr. Gaston's career began in 1923 with the founding of the Booker T. Washington Insurance Co. in Birmingham. With less than $500 as capital, his perseverance and entrepreneurial spirit transformed this initial investment into a business empire which now controls not only the original insurance company, but also the A.G. Gaston Home for Senior Citizens, Vulcan Realty and Investment Corp., Citizens Federal Savings Bank, the Booker T. Washington Broadcasting Co., and four other companies which he founded—a free enterprise empire valued at over $35 million. He is, in the truest sense, a great American success story.

Despite the time and energies required of the chief executive of such ventures, Dr. Gaston never lost sight of the responsibility to serve the needs of his fellow man.

There are many examples of his compassion and philanthropy. In 1966, he organized the A.G. Gaston Boys' Club, leading the way in helping to finance it by contributing the first $50,000 for the project.

His boys' club has had a dramatic impact in the city of Birmingham. Within a year after the opening of the club, the Birmingham Police Department reported a 50-percent drop in juvenile crime.

Dr. Gaston currently serves on the boards of no fewer than 26 civic organizations, associations, and commissions reflecting a broad interest. They include the Boy's Clubs of America, the United Negro College Fund, Tuskegee Institute, the National and Birmingham Urban League, and the American Legion, to name just a few.

In 1954, Dr. Gaston opened the A.G. Gaston Motel, later to play a major part in the history of the civil rights movement in the United States. When Dr. Martin Luther King, Jr., brought his protest movement to Birmingham in 1963, the A.G. Gaston Motel served as the major facility that housed and fed those leading the demonstration.

As another example of his desire to serve the members of the black community, Dr. Gaston founded the Citizens Federal Savings & Loan Association, as a means of providing a financial institution that could lend home mortgage money to blacks who could not borrow from other financial institutions.

Dr. Gaston's concern for elderly black residents of Alabama led him to found the A.G. Gaston Home for Senior Citizens. With this effort, Dr. Gaston provided a first-rate nursing home to meet the needs of the black community when there were no other similar institutions to be found.

Dr. Gaston, who has spent his life helping and encouraging others to excel, has never allowed race to become an issue in one's pursuit of any goal. Dr. Gaston was recently quoted as saying:

> You hear people say they can't make it because they're black. But it can be done. This democracy—and I don't know how long it will last—is the best thing in the world.

Dr. Gaston has set an example from which we can all learn. Dedication and effort will bring success, and will overcome all barriers, including race. His life and story inspire me, and it is my sincere hope that it will inspire generations to come.

Mr. President, I am proud that Dr. A.G. Gaston is a fellow Alabamian, and I congratulate him on this latest, well-deserved honor.

VETERANS FAST FOR LIFE

Mr. LEAHY. Mr. President, I rise to call attention to four American veterans who are fasting in protest of United States aid to the Contra rebels in Nicaragua. Two have consumed only water for 3½ weeks. The others are in their second week. They have said they will fast until they die, or until they achieve their goal of inspiring the majority of Americans who opposed this aid before the recent Senate vote to renew their efforts to stop this war. Charlie Litkey, a Catholic priest who renounced the Medal of Honor he was awarded for bravery in Vietnam to protest United States aid to the Contras, has lost 25 pounds and has developed medical problems. Brian Willson of Chelsea, VT, an Air Force captain in Vietnam, has been told by doctors that he can expect to live only 40 days without foods.

Mr. President, I came to the U.S. Senate in January 1975. I was 34 years old. Like all Americans, I had seen the debate over Vietnam, the dissention in our country and in my own State of Vermont. When I took the oath of office I made a promise to myself to do everything I could to prevent this country from repeating that tragedy.

The recent Senate vote to aid the Contras was a profound disappointment to those of us who advocate a peaceful resolution to the conflict in Nicaragua. That vote was a vote on a downpayment—a downpayment on an-

other Vietnam. The President and others who support this policy have said that this war is different—that no American men will be sent to fight in Nicaragua. We heard that in 1960. How quickly we forget.

Brian Willson, Charlie Liteky, George Mizo, and Duncan Murphy are fasting because they, more than anything else, want us never to forget the lessons of Vietnam. Three of them witnessed that tragedy with their own eyes. They saw the destruction of that country. They saw mothers and fathers holding the lifeless bodies of their children. The fourth, Duncan Murphy, a veteran of World War II, helped free the surviviors of Nazi death camps in 1945.

These brave men fought for our country because they loved and believed in it. They have each devoted years of their lives to helping veterans recover from the Vietnam war, and to helping others understand why there must never be another Vietnam. They have watched, as we all have, with growing fear as the United States has once again started down that road to war in Central America. To them it does not matter that no United States troops are dying in Nicaragua yet. Other men, women, and children are dying there.

No one should make light of the significance of this fast—that four veterans who have already risked their lives on the battlefield, are prepared to face that risk again so this generation of Americans will be spared the terrible costs of another senseless war. They spend each afternoon on the steps of the Capitol talking with people about their fast, and reading aloud from the hundreds of letters they receive each day from Americans who share their goal. I have met with these men and am convinced of their sincerity. Their commitment is an inspiration to me, as it is to many Vermonters. I admire their courage and pray that the American people will renew their resolve to turn this administration away from the road to war.

Mr. President, I ask unanimous consent that an article from the Times Argus, Barre-Montpelier, VT, entitled "Willson: Fasting Vets Are Doing Well" be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

WILLSON: FASTING VETS ARE DOING WELL

(By Will Lindner)

His voice was firm, clear and buoyant over the phone, just as it was a month ago when he weighed 210 pounds and lived in an apartment across from the green in Chelsea.

Today, however, as he spoke by telephone from Washington, D.C., Brian Willson, 45, was entering the 10th day of a water-only fast. His weight had dropped to 195 pounds, he said, but he felt healthy and vigorous.

With three partners, all of them combat veterans of the United States armed forces, Willson has begun a "fast for life" to protest U.S. policy in Central America.

"Everybody's well, mentally and spiritually," said Willson. "George and Charlie are getting a little tired, but when you get a thousand letters a day and 200 phone calls, it charges you up."

The four began their action on Labor Day, when they convened at the steps of the Capitol in Washington and issued a press statement describing their intention to fast, until death if necessary, in an effort to focus national attention and popular will on the issue of U.S. aid to the contra forces fighting to overthrow Nicaragua's Sandinista government.

Charles Liteky of San Francisco and George Mizo of Boston were the first to stop eating, and now are in their 24th day without food.

Willson said the four veterans—three of whom fought in Vietnam, while one, Duncan Murphy of Sulphur Springs, Ark., saw action in World War II—spend four hours each day but Sunday on the steps of the U.S. Capitol building. They convene there each day at 3 p.m., and, he said, routinely are joined by supporters, some of whom travel from far out of state to be with them. Willson mentioned visitors from Oregon, Maine and New Hampshire.

The veterans also have been visited on the Capitol steps by U.S. senators and congressmen, including Sen. Patrick J. Leahy, D-Vt., according to Willson.

"There have been three senators and three representatives," he said. "It isn't much, but it's a start."

Last weekend, Willson said, the four veterans took their case to the United Nations, where they presented a written statement of their beliefs and goals to the Mexican Ambassador to the U.N. Mexico is a leader of the Contadoran process, by which a group of Central American nations are seeking a negotiated settlement in Nicaragua.

Willson said the four held a private discussion with the ambassador, outside the presence of news personnel, during which he told them their action was the first hopeful sign he has seen of a constructive, nonmilitary role by the U.S. in the troubled region.

"He told us he was really moved, and he seemed to be," said Willson. "He said, 'We've been waiting for signs the U.S. people are going to rise up against this madness."

Willson said the ambassador told them groups from as many as eight European nations had contacted him about forming a European movement in support of the Contadoran process, which the Reagan administration has not endorsed.

The trip to New York also included a service at the Community Church in Manhattan, Willson said.

Back in Washington, the four have found a comfortable house in the city in which to live and center their fast, safely off the streets so that no legal issues arise with police. He said a Vermonter named Will Ravenscroft, who has medical skills, had joined them as a caretaker.

Willson said the four veterans continue to discuss what they would perceive to be signs their fast has succeeded and would lead them to end their starvation diet.

"What we want to see is a movement prepared to work full time to end the war," he said. "We don't want (the movement) to end when we end the fast. We're talking about a revolution of consciousness. That's hard. People don't know what that means."

What it means, Willson said, is a new vision of the U.S. not just as a country that no longer is militarily aggressive, but as one that is aggressively peaceful, that will lend its considerable weight to finding peaceful solutions to turmoil not only in Nicaragua, but in Angola and other countries where the U.S. is supporting armed domestic forces.

"If (the movement) is not going to follow through without the fast," Willson predicted, "I can tell you we're all going to go down."

TRIBUTE TO STANLEY FISHER

Mr. GLENN. Mr. President, I take great pleasure in recognizing the accomplishments of an outstanding member of the legal profession and an Ohioan, Stanley Fisher. September 26, 1986, Stanley Fisher is being sworn in as president of the Federal Bar Association. He is the first Ohio lawyer to be elected president of the Federal Bar Association in its 65-year history.

Mr. Fisher has been an active member of the Federal Bar Association for more than 30 years. He has held a number of national offices with the organization and served as president of the Cleveland Chapter of the Federal Bar Association from 1971–72.

As a practicing attorney in Cleveland, Mr. Fisher has received the first superior service award of the FBA Cleveland Chapter and has twice received distinguished service awards and commendation awards. He has served as special counsel to the attorney general of Ohio and has been an adjunct lecturer of law for the Cleveland Marshall School of Law. He is admitted to the bar in Ohio, Michigan and Florida.

During his legal career, Mr. Fisher has maintained a high level of excellence in all aspects of his life. He is deserving of the office to which he has been elected and the respect of his fellow attorneys as well as those of us who make this country's laws.

Mr. Fisher's accomplishments are deserving of recognition by the Senate. If it were possible to pass a Senate resolution in his honor it would read as follows:

To commend Stanley Fisher on becoming the president of the Federal Bar Association.

Whereas Stanley Fisher is the first Ohioan to be elected president of the Federal Bar Association in its 65-year history.

Whereas Stanley Fisher earned his law degree from the University of Michigan Law School in 1950 and his undergraduate degree from Oberlin College.

Whereas Stanley Fisher, of counsel to the Cleveland law firm of Arter & Hadden, has served as special counsel to the attorney general of the State of Ohio and as an adjunct lecturer of law for the Cleveland Marshall School of Law.

Whereas Stanley Fisher has been awarded the first superior service award of the Cleveland Chapter of the Federal Bar Association and twice received distinguished service awards and commendation awards.

Whereas Stanley Fisher is a life member of the judicial conference of the sixth circuit and has been admitted to the bar in Ohio, Michigan and Florida.

Whereas Stanley Fisher has been elected president of the Federal Bar Association at the 1985 convention in Detroit, MI. Now, Therefore, be it

Resolved by the Senate, that it is the sense of the Senate to commend Stanley Fisher on the achievement of becoming the 66th president of the Federal Bar Association and to recognize his accomplishments and the integrity with which Mr. Fisher has served the legal profession for more than 30 years.

Mr. President, I am confident that my colleagues join me in commending Stanley Fisher on this memorable day in his long and distinguished career.

SENATE RECONCILIATION PROTECTIONS FOR RETIREES

Mr. KASTEN. Mr. President, last week the Senate reaffirmed its commitment to protecting retirement benefits for the elderly of this Nation.

Once again, we approved legislation protecting the Social Security Trust Funds and benefits in a debt crisis and we guaranteed that Social Security retirees will get full COLA's, regardless of the rate of inflation.

We also extended trust fund and benefit protections to civil service, military and railroad retirees and exempted their retirement benefits, like Social Security, from future sequester.

These provisions, along with the requirement that employers continue to accrue pension benefits for those over 65 who continue working, given seniors assurance that their retirement benefits are secure and will not be jeopardized by future budget reductions.

Although the Senate approved several of these retirement protections as part of the debt limit bill, the House and Senate have not met to conference that bill yet. The overwhelming adoption of these provisions as part of reconciliation ensures that they will be considered even if the debt limit bill is scrapped, and moves them one step closer to becoming law.

We have one hurdle left to overcome before these provisions become law, however, and that is the House-Senate reconciliation conference. I urge the Senate conferees on reconciliation to retain the Senate's position on retirement protections.

The House has approved repeal of the COLA trigger as part of reconciliation, but it has overlooked many other signficant retirement protections. The House bill does not exempt civil service, military and railroad retirement COLA's from sequestration; it does not require continued pension accrual for older workers, and it offers no protections for the retirement trust funds or benefit payments in a debt crisis.

Mr. President, I want to call particular attention to the Senate provisions dealing with trust fund protections for a debt crisis. Earlier this year, I introduced legislation to keep the trust funds whole and ensure benefit payments when the Government reaches its debt ceiling. The Senate has twice adopted legislation which will accomplish that goal. The House, however, has approved another piece of legislation that would prevent benefit payments in a debt crisis, prohibiting those payments until Congress completed action on debt extension legislation.

I believe, as most of those in this body do, that we must remove Social Security as a political hostage of the debt limit. We must prevail upon the House to eliminate this unacceptable situation which haunts seniors every time we approach the debt ceiling.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1010

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. HATFIELD). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL AID HIGHWAY ACT OF 1986

The PRESIDING OFFICER. The clerk will report the pending bill.

The assistant legislative clerk read as follows:

A bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. SYMMS. Mr. President, first, I would like to thank all of my colleagues on both sides of the aisle and the leadership of the committee on both sides of the aisle for their hard work and diligence yesterday. We made a lot of progress on the bill. Pending now is the amendment of the distinguished Senator from Mississippi. Unless there are other amendments, we may be getting close to final consideration of the highway bill.

So I announce to my colleagues that we would expect to vote on the Cochran amendment probably within the hour and they should start making preparations.

I believe the unanimous-consent agreement is 1 hour equally divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. SYMMS. I yield the floor. I think the Senator from Mississippi is prepared to go forward.

AMENDMENT NO. 2890

(Purpose: To apply the Buy American provision to cement and cement clinker)

Mr. COCHRAN. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Mississippi [Mr. COCHRAN], for himself, Mr. THURMOND, Mr. MELCHER, and Mr. SPECTER, proposes an amendment numbered 2890.

Mr. COCHRAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 56, on line 20, insert after "steel" ", cement, cement clinker,"

Mr. COCHRAN. Mr. President, on behalf of the Senator from South Carolina [Mr. THURMOND], the Senator from Montana [Mr. MELCHER] and the Senator from Pennsylvania [Mr. SPECTER], I offer this amendment to the Surface Transportation Act. The amendment seeks to include in the Buy American section the provision that had been in this highway bill as a result of congressional action in 1982. At that time, the Congress decided that it was important to provide in the highway bill that the Federal tax moneys, those in the highway trust fund collected from user fees, would be used to purchase steel, cement, and other manufactured products to be used in highway construction from American firms, products that were manufactured and produced in the United States. The Congress debated that, considered it very carefully, and included it in the highway bill.

Then, in 1984, the committees of jurisdiction took out cement but left in the bill the requirement that steel and other manufactured goods had to be purchased from American firms with money authorized to be appropriated in the Federal Aid Highway Act.

Now, what has happened and what is the problem that we are seeking to address this morning? In 1983, during the time when this provision was a part of the law that related to the purchase of cement, foreign imports coming into this country amounted to 4.2 million tons. Last year, after this amendment had been approved by the committees of jurisdiction and cement was no longer a part of the Buy American provision, imports of cement more than tripled, so that 14.5 million tons

of cement were imported into the United States last year.

The impact on the domestic industry, on American jobs, has been quite severe, Mr. President. This morning we have an opportunity to try to help correct that and to improve the opportunities for American industry, American business, American workers to compete for business in the Federal-aid highway program.

I really do not think it is too much to ask to dedicate at least a portion of the funds spent in the United States to buy cement and other products from American business men and women when those funds are tax dollars that have been collected from the American people.

I do not see any real harm in this prohibition. We are talking about only 7 percent of the total consumption of cement in a given year in the United States.

So we are not asking the Senate this morning to approve a ban on imports of cement into the United States. We are simply saying that the cement used in the Federal-Aid Highway Construction Program should be American cement, produced here in the United States. We have that provision as it relates to steel. That provision is in this bill and in the law since 1982 with respect to other manufactured products. It is time to correct the error that was made in 1984 in deleting cement from this provision.

Well, you might say: "Why put this prohibition in the law right now? Let American firms compete with the foreign producers, those who are exporting into this country."

Well, let me tell you what is happening. The foreign producers are selling their cement in the United States at below market prices. And I an not talking about just below U.S. market prices, but I am talking about below the market prices in their own countries.

Here is an example: In Spain, cement is being sold in Spain by producers there for $71.33 a ton. That same cement is being sold in New Orleans, LA for $39 a ton. In Mexico, cement being produced in Mexico for use in Mexico brings about $56 a ton there in Mexico, but, when sold in Houston, TX, that same cement is being sold for $29 a ton.

Now, that is what we are up against, Mr. President, and that is why it is important that we draw a line and say that at least in the use of Federal tax dollars we are going to insist that American producers be given a chance to sell the cement for these contracts. Unless we draw the line, we are going to see a continued erosion of this very important industry in our country.

The pattern has been set. The trend is to bring in more and more cement from overseas. The trend is to close more and more American cement production plants and more American workers are out of work as a result.

This morning we have an opportunity to speak up for those who are losing their jobs and for those who are seeing their plants closed, who are being forced to import foreign cement rather than produce American cement. This piece of legislation should not add to the problem. We have an opportunity to try to do something to improve the situation, Mr. President, and I hope the Senate will support the amendment.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time to the Senator from Rhode Island?

Mr. SYMMS. Mr. President, who is controlling the time?

The PRESIDING OFFICER. The managers of the bill or their designees.

Mr. SYMMS. Mr. President, how much time does the Senator want?

Mr. CHAFEE. If we have a total of a half an hour, I would take 10 minutes at this time.

Mr. SYMMS. I yield 10 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 10 minutes.

Mr. CHAFEE. Mr. President, every so often a bill comes through here that is of significant importance to the future of the Nation and if the vote on that measure goes one way or another it can really affect the future of our country. In other words, even though it may not be part of a major bill, nonetheless an amendment can have very, very significant advantageous or deleterious effects on the future of our country. And this, Mr. President, is one of those that has extremely adverse effects on our future.

Mr. President, what we are talking about seems like a simple issue—the supplying of cement for our Highway Program. Now, the truth of the matter is, Mr. President, we are now buying minor amounts of cement from Mexico, but principally from Canada. So I would like to put this in terms of our Canadian relationships.

But before doing that, let us look at the situation as it exists now in our country. The fact is, Mr. President, that the U.S. production for cement is short of demand. It is not a question of foreign cement coming in and causing Americans to lose jobs. The statitics are that the United States last year consumed 85½ million tons of cement, but only is capable of producing about 80 million tons.

Thus, the result of this Buy American provision which the Senator from Mississippi is proposing would not cause an increased amount of jobs in the United States. What it would do is bring about an intense shortage of cement for necessary construction projects. And, of course, when we are talking about the flow of cement to our highways, also factored into the equation must be the supply of cement for all the rest of American projects.

And so what this means is that the cost of building our highways will be higher because the intense pressure will come on the American cement and the prices will naturally go up. We all know that. We know that in certain regions of our country, such as the Northeast, the Southeast, and the Pacific Southwest, where domestic production is insufficient to meet local demand, that, the highway builders will be put in an intensely difficult position, competing to try to get enough cement.

Now one of the questions is: "Well, why don't we just go and build more capacity? All that you have got to do is put up some more capacity and then there will be American jobs."

Well, it is not that simple. To provide more capacity takes 3 or 4 years. It is not something you can do overnight.

The fluctuating demands for cement will mitigate against the domestic producers building more capacity. They feel they have sufficient capacity. Then when the surge comes, as it were, when the demand increases, then the imports go up and when the demand slackens the imports go down and the domestic producers have the cement they need.

I would like to cite some testimony that was had on this subject.

The chairman of the Highway Committee conducted a hearing in the Subcommittee on Transportation a little over a year ago on this subject. This is the first and only time that this issue has received careful scrutiny from witnesses from the Government and the industry. The hearings supported the congressional conclusion to repeal the then existing restriction on the "buy American" provision.

In other words, it was found that the ban on imported cement would provide virtually no additional employment in the domestic cement industry.

In addition, witnesses testified that such a demand would have serious regional consequences in those areas I have pointed out, the Northeast, the Southeast, and other areas where cement is in short supply.

Since the hearing in 1984, the demand for cement has continued to outstrip the capacity of the domestic cement industry. Demand has been so great in recent years that domestic cement producers—in other words, the ones in theory this is trying to protect—have themselves been importing cement. The demand is there. Do they go out and build new plants? No. They are importing cement because they do not believe it wise to put into this ex-

tremely capital-intensive industry the dollars that are needed just to meet this elastic demand upward which, in a cyclical fashion, could go down just as rapidly.

So when we are talking about jobs, we are not talking about increasing American jobs. When we talk about helping the domestic cement industry, that is not completely accurate, as I have pointed out from the statistics and the statements.

Now I would like to talk, Mr. President, about the effect of this on our Canadian relationships.

There is a very interesting statistic that I found. The Province of Ontario does more trade with the United States than any nation in the world, except Canada. In other words, our largest trading partner is Canada. But the second largest trading partner, if you take it an entity, is the Province of Ontario.

What this legislation is doing is an anti-Canadian cement move. I think we have to recognize it as that.

We are currently in negotiations with Canada on a free trade agreement. Perhaps that will come about. These are long negotiations that are going to take considerable time.

This is absolutely going to throw a monkey wrench into those trade negotiations.

Furthermore, we found that Canada, our largest trading partner, responds, and rightfully so, when we take one of these strictly protectionist actions against that nation. We have seen if we take one action in the cedar shingles, they will take another action, a retaliatory action, justifiably so, on specialty steel. Now we come back with cement and on it goes.

Mr. President, I do not think that is the way either to build trade relationships or decent neighborly relationships with the great country to our north.

Mr. President, our negotiators through GATT, in working with the Japanese and the other nations of the world, are constantly trying to remove their so-called buy provisions. In other words, we fight against the Japanese tendency to buy Japan for the Japanese telecommunications system. We want an entry into that.

Yet, we are turning around and saying, "We are going to have a buy American provision on cement like there are on other products."

With the other products, so be it. I wish they were not there. But they are.

What this provision does is add cement to that and make it a strictly buy American procedure for our highway program.

Some might say, "Well, there is a cap. Anything less than a $500,000 project does not apply."

The trouble is there are very, very few $500,000 projects in the highway system and I think we all know that. You do not let out a contract to build an overpass, to build a section of highway, for $500,000. These projects are in the millions.

So, in effect, we are excluding from our highway program all imported cement.

Mr. President, I would like to point out one side factor of this. What we are trying to do in this Congress constantly is to give small businesses a chance to bid on these big contracts, these big governmental contracts. At least, to have a portion of them.

Any cement producer or cement supplier, a ready-mix concrete company, in this country that is supplying concrete for driveways, for houses, for county roads, whatever it might be, has a mixture of imported and domestic cement. Many of these concrete companies are really small and only have one silo.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHAFEE. I request 4 more minutes.

Mr. SYMMS. I am happy to yield 4 additional minutes.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. What the amendment of the Senator from Mississippi is doing is excluding those concrete companies which are small and have but one silo and, therefore, are not able to set aside what is U.S. cement in one silo and what is a mixture of U.S. and imported cement in the other silo. They are barred. They cannot compete on these contracts.

Here is a letter from Consolidated Ready Mix Concrete, in Providence.

This protectionist language would not just affect highway projects. Many ready mixes have but one silo in which to store their cement. If forced to differentiate between foreign and U.S. cement many could not afford the cost of another silo or the overlapping bookkeeping complications and might be forced to discontinue the use of foreign cement for non-government projects as well and thus lose out on contracts for other competitive projects.

So, Mr. President, not only is this bad internationally, not only is this bad as far as the cost to the U.S. Government goes, it is going to increase our costs, but also it is anti small business.

Mr. President, the amendment of the Senator from Mississippi is strongly opposed by the Secretary of Transportation. I will ask that a copy of the letter from the Secretary of Transportation be printed in the RECORD at the conclusion of my remarks. It states.

We believe that the restrictions on the use of imported cement will increase the cost of Federal-aid highway construction without providing an offseting benefit to the Nation.

This is also opposed by the Secretary of Commerce.

I strongly oppose the buy America cement provision.

It is opposed by Clayton Yeutter, the U.S. Trade Representative.

Mr. President, I ask unanimous consent that copies of these letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

SECRETARY OF TRANSPORTATION,
Washington, DC, September 19, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE: You asked for the Administration's views and concerns regarding the provision in H.R. 3129 which would require that cement used in Federally funded highway and transit projects be manufactured in the United States. As a general matter, the Administration prefers that the existing "Buy America" statutory provision be repealed entirely. We find too often that protectionist measures are counterproductive, resulting in higher prices for United States industry and consumers and reduced trade opportunities for United States exporters as a result of foreign retaliation. We strenuously oppose the expansion of the current provision to include cement and clinker and believe that Congress acted wisely when cement was removed from the coverage of "Buy America" in 1982.

We believe that restrictions on the use of imported cement will increase the cost of Federal-aid highway construction without providing an offsetting benefit to the Nation. In areas heavily dependent on imported cement, suppliers would be forced to construct new storage facilities to ensure that cement used for Federal-aid highway construction could be segregated and verified as not being imported or stop purchasing imported cement altogether. Many suppliers are not likely to increase their investment and would cease purchasing imported cement. Since domestic producers are operating at, or near, capacity in many areas of the country, prices of cement would rapidly increase. Suppliers will be able to increase prices in the wake of short term constraints on supply resulting from the elimination of imports and an important source of price competition. These trade restrictions, with the resulting increase in prices, will not be limited to highway construction, but will ripple throughout the construction industry, raising prices in both the private and public construction sectors. The restrictions will lead to supply disruptions and delays in construction projects in areas where imported cement has become an essential source of supply.

Cement imports have increased substantially over the past three years (from 4.2 million tons in 1983, to 8.9 million tons in 1984, and 14.5 million tons in 1985). In large part this is in response to strong temporary demand from the construction industry. Because of the cyclical nature of the cement market, imported cement plays a critical role in the United States market. Imports moderate price increases during periods of rising demand, and fill temporary gaps between demand and domestic supply in regions of the country where the domestic industry can not economically expand production capabilities. During the past few years, because of the upswing in demand, domestic cement producers have been importing cement rather than constructing new plants whose capacity would lie vastly underused in periods of slack demand. In such slack pe-

riods, cement imports typically fall off more than proportionately and moderate the extent to which domestic producers must reduce their prices.

The capacity to produce cement domestically can expand very little in response to cyclical growth in demand and is unlikely to expand significantly in the foreseeable future. New plants are extremely expensive to build; older, less efficient plants have been closed; and several existing plants have been faced with difficult technical problems which have constrained output. Once a decision is made to build a new plant, it takes from three to five years to bring the plant into production, and it often takes longer than this to eliminate all technical problems associated with the new plant.

A study prepared for the Cement Free Trade Association in February of this year indicated that, when capacity utilization rates are adjusted for loss of effective capacity due to plant obsolescence, input material problems, or other technical difficulties, the domestic industry's productive available capacity is about 79.3 million tons. With 1985 consumption at the 87.4 million ton level, the essential need for imported cement is readily apparent.

Differences between available capacity and consumption rates are even more striking when viewed on a regional basis. The above study uses Portland Cement Association data on individual plant capacities and plant information provided by industry sources to project available capacity in each of seven regions of the United States. These calculations show estimated 1985 consumption at 109.6 percent of available capacity in the Pacific Southwest region, 131.9 percent of available capacity in the Eastern region, 149.8 percent of available capacity in the Southeastern region, 98.1 percent of available capacity in the Great Lakes-Midwestern region, 93.7 percent of available capacity in the Rocky Mountain-Northwest region, 89 percent of available capacity in the South Central region, and 87.6 percent of available capacity in the North Central region.

If Portland Cement Association capacity data for 1984 are used without making any adjustments for loss of effective capacity between 1984 and 1985, total United States capacity in 1985 was about 86 million tons, just slightly below 1985 cement consumption. A third United States capacity figure is provided by United States Bureau of Mines data which put total United States capacity at about 90 million tons, although these figures apparently include plants that are unlikely to ever come back into production. These figures seem to indicate somewhat less of a strain on available capacity on a national basis. However, Portland Cement Association data indicate that consumption is still significantly higher than available capacity in the Eastern and South eastern regions (131.9 percent and 116.2 percent), and is above 90 percent of capacity in the Rocky Mountains-Northwest region and the Pacific Southwest region.

The Federal-aid highway program used about 7.1 million tons of cement in 1985 (8.1 percent of total United States usage). If it is assumed that the share of imported cement in Federal-aid highway construction is the same as the import share for all domestic uses (16.6 percent out of a total consumption of 87.4 million tons in 1985), the Federal-aid highway programs used an estimated 1.18 million tons of imported cement in 1985.

Those advocating a ban on use of imported cement on Federal-aid projects appear to feel that such a prohibition will increase the output of domestic cement plants and increase employment opportunities for American workers. We believe that there is little likelihood that this will be significant because the cement industry is very capital intensive. The industry cannot simply add more workers to increase output when it is already operating at or near full capacity. As noted earlier, a more likely result of the import ban will be an escalation of cement prices, particularly in those regions most dependent on cement imports.

Imports of cement have played an important role in moderating price increases in areas of short supply. Eliminating this source of price competition will create new cost pressures for an important federal program and make it even more difficult to reduce the size of the federal deficit. The Department of Transportation remains vigorously opposed to legislation that restricts the use of imported cement, and other imported materials, on Federally assisted highway and transit construction projects.

Moreover, since trade restrictions often lead to counter restrictions by affected trading partners, the provision could jeopardize access by United States firms to other foreign markets, particularly Canada.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views to the Congress.

I hope that this information is helpful.

Sincerely,

ELIZABETH HANFORD DOLE.

SECRETARY OF COMMERCE,
Washington, DC, September 17, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR JOHN: Thank you for your letter regarding H.R. 3129, the Surface Transportation Reauthorization bill recently passed by the House of Representatives. H.R. 3129 contains a prohibition against the use of foreign cement in federally aided highway construction.

I strongly oppose the "buy America" cement provision in H.R. 3129. Provisions such as this will not result in a net increase in American jobs. Instead, they will result in further restrictions against American exports in overseas markets. "Buy national" requirements imposed by foreign governments are already major barriers to U.S. exports, and we are working hard to eliminate them. Enactment of "buy America" requirements will make our job that much more difficult. In addition, enactment of these provisions will undermine our continuing efforts to improve and expand the General Agreement on Tariffs and Trade Government Procurement Code and negotiate a free trade area with Canada. Furthermore, imposition of new trade restrictions as we embark on a new round of multilateral trade negotiations will jeopardize our credibility in this effort.

Because domestic cement production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in segregating foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

The largest domestic cement producers are among the largest importers of foreign cement supplies. This is due partially to the fact that foreign sources are sometimes more readily available and less expensive, particularly in the border states. Since the domestic cement industry has not increased its capacity in recent years, we must depend on imports to meet peak demand for the product in some market areas. In Florida and New England, imports are generally needed to meet demand.

I enclose a copy of a letter which the Department has sent to Chairman Stafford regarding the cement provision, as well as two other provisions of H.R. 3129 to which we are strongly opposed: an increase in the required domestic content of certain federally financed rolling stock, and an increase in the "buy America" preferential rate for rolling stock.

I strongly urge your help in resisting any effort to include these provisions in any bill reauthorizing highway or transit programs.

Sincerely,

DOUGLAS A. RIGGS,
Acting Secretary of Commerce.

U.S. TRADE REPRESENTATIVE,
Washington, DC, September 12, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Washington, DC.

DEAR JOHN: Thank you for your August 28 letter and your request for the Administration's views on the effect of H.R. 3129, the Surface Transportation Assistance Act, on the use of imported cement in any federally-aided highway construction.

The Administration is strongly opposed to the proposed "buy America" cement provision in H.R. 3129 because this provision is contrary to the principles of free trade. Furthermore, it has a negative impact on the domestic cement industry itself, particularly in those regions, such as the Northeast and some border States, which rely on imports to supplement tight supplies. In some cases, the largest domestic cement producers are among the largest importers of foreign cement supplies. An estimated 70 percent of imports of cement are imported by firms that produce in the United States. Limitations on imports of cement in these areas will have an adverse impact on supply and price that could be severe.

In addition, restricting the use of foreign cement on interstate highway projects could easily result in higher highway construction costs and construction delays. Because many domestic concrete producers mix domestic and foreign cement together in their silos, they will be unable to certify the domestic content of the concrete they supply for federal highway projects. If they discontinue the use of foreign cement, shortages could develop not only for federal highway projects but for non-government construction as well. The result would adversely affect economic activity generally.

In summary, the Administration finds the provisions of H.R. 3129 to be contrary to our national interest and to the Administration's free trade principles. It will work against consumers and workers in affected industries.

Sincerely,

CLAYTON YEUTTER.

The PRESIDING OFFICER. Who yields time?

Mr. COCHRAN. I yield 3 minutes to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise as a cosponsor of the buy America amendment to the Federal Aid Highway Act of 1986. This amendment would ensure that cement firms are not affected when contracting for federally funded highway projects.

Our domestic cement industry cannot compete against foreign imported cement when foreign governments subsidize these industries. It is impossible for us to compete when their governments subsidize them.

American cement manufacturers are in direct competition with the governments of Mexico—not the individuals over there, not the companies over there, but the Governments—Mexico, Canada, Spain, Venezuela, and Colombia.

I am confident that American cement manufacturing firms can compete with foreign firms, but not foreign governments. For these firms to compete with foreign governments is unfair.

Mr. President, for too long we have neglected the concerns of our domestic manufacturers. Now is the time to stand firmly behind American businessmen.

Mr. President, this will show how they are subsidized: The same cement that sells in Spain for $71 a ton sells in New Orleans, as was brought out by the able Senator from Mississippi, for $39. In other words, they are subsidizing when they sell in this country. How can our own cement people survive when that is the case?

The same cement that sells in Mexico for $56 a ton, sells in Houston for $29 a ton.

How can the people in this country compete with that? It is simply because they are being subsidized by foreign governments.

Mr. President, I think it is about time we look after our own people first. The same principle was brought out in the textile bill. We lost 350,000 jobs in the last 5 years. Just like the textile business now going out of business, practically, being squeezed out by foreign imports, now you are going to do the same thing with cement and you will do the same thing with many other things if we do not change our trade policy.

I hope the Congress will see fit to pass this bill and tell the people of the United States, "We think of you first. You are American citizens. You are entitled to our first consideration."

If we do that, we will vote for the amendment of the able Senator from Mississippi and that will be a signal that these foreign governments cannot send goods in here and sell them when they are subsidized.

□ 1040

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. SYMMS. Mr. President, I yield 5 minutes to the distinguished chairman of the committee, Senator STAFFORD.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 5 minutes.

Mr. STAFFORD. Mr. President, I must oppose the amendment offered by my distinguished colleague from Mississippi, Mr. COCHRAN. I am very concerned about proposals to extend buy-America restrictions. In terms of economics and trade policy, this is an unwise course, and I believe such restrictions do not serve highway and transit interests well either.

The buy-America provisions in the House-passed surface transportation bill, H.R. 3129, and in the amendment being offered today by my distinguished colleague greatly concern me. Both the House bill and this amendment would ban the use of imported cement for highway projects entirely. This issue has been debated repeatedly in the last several years. The Transportation Subcommittee held a hearing on this specific issue in August 1984. At that time, The U.S. Trade Representative testified that the Federal-aid highway program accounts for only 6 percent of domestic consumption of cement. He also stated that a buy-America restriction would save only about 80 jobs, and that the cost per job saved could range from $21,000 to $180,000 per job.

If this buy-America restriction is imposed on cement other countries will retaliate in kind.

I have received a letter from the Honorable Allan Gotlieb, the Canadian Ambassador on this issue. He states:

> The possibility of renewed or expanded restrictions affecting Canadian cement and rolling stock reinforces our concern over this issue. You will recall that Canada responded to the removal of restrictions on cement in March 1984 by lifting tariff surcharges applied to certain U.S. specialty steel products. The re-imposition of Buy America restrictions on cement and an increase in domestic content for rolling stock would be most unfortunate as it would reopen the tariffs issue on certain U.S. specialty steel products. It would also be regrettable for such restrictive provisions to be put forward at a time when our two Governments are engaged in the negotiation of a comprehensive bilateral trade liberalization agreement.

I ask unanimous consent that the entire letter from Ambassador Gotlieb be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. STAFFORD. Mr. President, I have also received a letter from Mr. Douglas A. Riggs, general counsel of the Department of Commerce, stating the Department's strong opposition to any further Buy America requirements. Mr. Riggs states that—

> Restricting the use of foreign cement on all Federal-aid highway and transit projects could easily result in higher construction costs and construction delays.

He continues:

> The Department is also concerned that, because domestic production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in differentiating between foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

I ask unanimous consent that the letter from Mr. Riggs be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. STAFFORD. Mr. President, Buy America restrictions will make highway cement work more costly and could result in fewer highway miles being built or repaired. Every producer and distributor, at a minimum, will have to construct separate facilities to keep domestic and foreign cement separated because cement is impossible to trace.

Mr. President, in conclusion, I believe that the costs generated by buy America restrictions such as those I have described far outweigh any benefits. I urge my colleagues to resist efforts to expand on buy America requirements within the Federal-aid highway and transit programs and defeat this amendment.

EXHIBIT 1

CANADIAN EMBASSY,
Washington, DC, August 1, 1986.

Hon. ROBERT T. STAFFORD,
Senate Hart Office Building,
Washington, DC.

DEAR SENATOR STAFFORD: I understand that the Senate will be considering S. 2405, the "Federal Aid Highway Act of 1986". I am very grateful for your efforts in ensuring that this Bill does not increase Buy America requirements under the Surface Transportation Assistance Act.

However, my Government is deeply concerned over certain provisions of the House version of this Bill (H.R. 3129, the "Surface Transportation and Uniform Relocation Act of 1986"). The House Bill contains an amendment which would place Buy America restrictions on cement imported from Canada and Mexico. It is not at all clear why Buy America restrictions should apply to imports from only these two countries, and especially Canada whose share of U.S. imports of cement has fallen dramatically within the last two years. It would also increase the domestic content requirement for rolling stock from the current 50 per cent to 85 per cent.

I understand that this issue may be joined in conference and I am taking this opportunity to reiterate my Government's longstanding opposition to the restrictive Buy

America provision of the Surface Transportation Assistance Act. The possibility of renewed or expanded restrictions affecting Canadian cement and rolling stock reinforces our concern over this issue. You will recall that Canada responded to the removal of restrictions on cement in March 1984 by lifting tariff surcharges applied to certain U.S. specialty steel products. The re-imposition of Buy America restrictions on cement and an increase in domestic content for rolling stock would be most unfortunate as it would reopen the tariffs issue on certain U.S. specialty steel products. It would also be regrettable for such restrictive provisions to be put forward at a time when our two Governments are engaged in the negotiation of a comprehensive bilateral trade liberalization agreement.

Thank you again for your support on this issue.

Yours sincerely,

ALLAN GOTLIEB,
Ambassador.

EXHIBIT 2

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, September 17, 1986.

Hon. ROBERT T. STAFFORD,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The purpose of this letter is to convey the strong opposition of the Department of Commerce to three provisions in H.R. 3129, the Surface Transportation Reauthorization bill recently passed by the House of Representatives. These provisions would (1) raise the required domestic content of buses and other rolling stock whose construction or assembly is funded by the Urban Mass Transportation Administration, (2) increase the "buy America" preferential rate for rolling stock, and (3) impose "buy America" requirements on cement to be used in federally funded highway projects.

Your Committee recently marked up S. 2405, the Senate version of the Surface Transportation Reauthorization legislation. In its present form, the bill does not contain these provisions. However, the House version of the legislation, H.R. 3129, does. For the following reasons, the Department of Commerce urges the Senate to oppose any efforts to add these provisions to S. 2405 and to oppose efforts by the House to include these provisions during the conference on this legislation.

DOMESTIC-CONTENT REQUIREMENTS FOR ROLLING STOCK

The domestic-content requirements for rolling stock contained in H.R. 3129 will not result in a net increase in American jobs. Instead, they will result in further restrictions against American exports in overseas markets. "Buy national" requirements imposed by foreign governments are already major barriers to U.S. exports, and we are working hard to eliminate them. Enactment of "buy America" requirements just makes our job that much more difficult.

The domestic-content requirements of H.R. 3129 would also lessen competition in the bus and subway car assembly and manufacturing industry, and provide competitive advantages to certain firms at the expense of other firms. Only one subway car assembler, and a few bus manufacturers, could meet the domestic-content requirements of H.R. 3129. Those many companies not meeting the requirements would suffer severe adverse consequences, including the loss of their investment. Over 1,000 jobs would be jeopardized, according to our estimates. There is simply no justification for this exercise in economic favoritism. Of course, diminished competition in the industry will also result in price increases, at a time when state and local transportation authorities have a particular need to use their resources wisely.

"BUY AMERICA" PREFERENTIAL RATE FOR ROLLING STOCK

The provisions increasing the "buy America" preferential rate for rolling stock constitute an unwarranted restriction on international trade. As noted above, this provision would frustrate our ongoing efforts to eliminate "buy national" requirements imposed by our trading partners. Enactment of these provisions would undermine our ongoing efforts to improve and expand the General Agreement on Tariffs and Trade (GATT) Government Procurement Code and negotiate a free trade area with Canada. Furthermore, imposition of new trade restrictions as we embark on a new round of multilateral trade negotiations would jeopardize our credibility in this effort.

"BUY AMERICA" REQUIREMENTS FOR CEMENT

The Department of Commerce also strongly opposes the "buy America" cement provision in H.R. 3129. Like those discussed above, this provision is contrary to principles of free trade. In addition, restricting the use of foreign cement on all federal-aid highway and transit projects could easily result in higher construction costs and construction delays.

The Department is also concerned that, because domestic production is currently insufficient to meet U.S. demands in some markets, limitations on imports in these areas will adversely affect economic activity generally. Because of the difficulties in differentiating between foreign and domestically produced cement, many U.S. distributors may simply discontinue the use of foreign cement. This could exacerbate the shortage situation not only for highway projects but for non-government construction as well. In certain areas—especially the border states and the Northeast—the impact on price and supply would be severe.

The largest domestic cement producers are among the largest importers of foreign cement supplies. This is due partially to the fact that foreign sources are sometimes more readily available, particularly in the border states. Since the domestic cement industry has not increased its capacity in recent years, we must depend on imports to meet peak demand for the product in some market areas. In Florida and New England, imports are generally needed to meet demand.

In conclusion, Mr. Chairman, these three provisions are contrary to our national interest and to the Administration's free-trade principles, and will work against consumers and workers in the affected industries. The Department strongly urges you and your colleagues actively to work against their inclusion in any bill reauthorizing highway or transit programs.

The Office of Management and Budget has advised that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

DOUGLAS A RIGGS.

The PRESIDING OFFICER. Who yields time?

Mr. SYMMS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Idaho has 12 minutes and 33 seconds. The Senator from Mississippi has 20 minutes and 16 seconds.

Mr. SYMMS. Mr. President, I yield myself 1 minute.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. SYMMS. Mr. President, I have a great deal of regard and sympathy for the arguments that have been presented here by both the distinguished President pro tempore, Senator THURMOND, and the distinguished Senator from Mississippi, and I hear their point of view, but there is one thing we must remember. We are talking about dollars paid by U.S. taxpayers, trying to buy road construction at a best price available for them, so that we can get more highways built for the dollars that are invested in the highway system.

The Senator from South Carolina talks about subsidized cement. In the Finance Committee, we have legislation pending right now, being marked up in the committee, dealing with trade, in which four natural resource subsidies would be addressed. It appears to me that is the appropriate place to address this question.

As a citizen, if people wish to buy America, I will support it and encourage it. That is fine, if people want to do that with their own money. But when you start taking taxpayers' dollars and then imposing "Buy America" restrictions that will interfere with Canadian and other cement that comes into the country, I think it is a high-risk proposition. This is not the right way to impose trade restrictions.

If you want to talk about stopping subsidized cement, I favor that. The appropriate way to handle that problem would be with countervailing duties. But to prohibit the use of foreign-produced cement may result in a Presidential veto of the bill. I don't think any of us want that result.

Mr. President, I yield 7½ minutes to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized for 7½ minutes.

Mr. MOYNIHAN. I thank my friend, the distinguished manager of this legislation.

Mr. President, the Senator from Idaho has said that he feels that this provision would be a mistake. I should like to report to the Senate that this provision already has been tried and has been proved a mistake.

The Senate will recall that a "Buy America" provision was in the Highway Act from 1982 to 1984, so we have had an experiment. It was a particularly precise experiment in the State

of New York, which I have the honor to represent—a big State. The State's limestone formations run northwest through the Catskills, west to Buffalo, south as far as Mount Vernon, NY, and east to the Connecticut and Massachusetts borders.

We have a cement industry in New York. A broken limestone ridge runs north and south—the Lake Champlain-Hudson River geologic formation. We make cement in Glens Falls and Ravena and places like that.

All that cement makes its way down river. It is a waterborne commerce. It is bulk. The price is about $55 to $60 a ton. Anyplace where water transportation is available is a logical route for cement, and the cement in the eastern part of our State makes its way down to the metropolitan area of New York and elsewhere.

West from the Hudson, you will not get to a cement plant for 200 or 300 miles. There are some in Pennsylvania, but none really in that region, except just on the other side of Lake Ontario, where there is another limestone ridge, and where the Canadians produce perfectly good cement, which we have been trading for a century and a half.

When the Buy America Act went into effect, the price of cement in Syracuse, NY, went up $5 a ton. That is a 10-percent increase. Why? Because they could not bring the cement in the Oswego branch of the Erie Canal and across the lake. This was self-inflicted injury. It raised the cost of all related goods and services in that part of the State, for that period.

Beyond that, Mr. President, this proposal to reenact that experiment, a failed experiment, is particularly baffling and in some ways ominous.

The Portland cement industry in this country is producing at above its nominal production capacity. There is no spare capacity at all. The improbable number of 109 percent of capacity is the present level of production, and there is always a little extra. You can always squeeze a little more out of an industrial plant, and that is happening.

There is a shortage of output but no shortage of work. All that this provision would do, according to the International Trade Commission, would be to save 80 jobs, as the Senator from Vermont suggested. And the cost per job saved could be as high as $180,000.

What is the matter with our country, that we find it necessary to protect ourselves from the cement produced by our nearest neighbor and friend—commerce that has been going on for a century and a half? The elemental economics of transportation support this commerce.

Moreover, such a proposal comes at a particularly inopportune time. President Reagan and Prime Minister Mulroney have done an extraordinary thing. They have initiated major trade negotiations which are now underway.

This is the first time in 75 years this has happened. President Taft and then-Prime Minister Laurier proposed such an enterprise in 1911, and it quickly came to grief over fears from both sides of the border. It took three-quarters of a century to get back to the point where a Canadian Prime Minister was prepared to do this with an American President, and vice versa. And right in the middle of these negotiations we propose to do something like this!

What has come of the United States of America that we are threatened by cement imports? Mr. President, this is unbecoming of us. It is inefficient of us. We have no right to waste public moneys in this manner, and it is a disservice to the President of the United States to do this when Canada will have to retaliate. Our relations with a nation such as Canada are of such profound consequences in diplomatic, in military, and economic matters, how could we think of jeopardizing such a relationship?

These events are seen and heard. There is no Buy Canada cement provision out of Ottawa. Agreed, there is such a provision in the Province of Quebec, and I wish there were not, and there ought not to be. But it is unbecoming of us to do this; it is unwise; it is imprudent, it is wasteful, and it puts in jeopardy a major initiative of President Reagan, which is a freer trade relationship across the border with Canada. I hope this will not be done.

I would say once again we have tried the experiment. I can report for the State of New York that it was a great mistake. Can we not learn from our experience?

I thank the Chair.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. SYMMS. I yield to the distinguished Senator from Rhode Island 2 minutes.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 2 minutes.

Mr. CHAFEE. Mr. President, we are really playing with fire here. We are not doing anything for the domestic cement industry, as has been so clearly pointed out. The total imports from Canada amount to 4 percent of U.S. consumption. So what we are doing is, in an extreme fashion, irritating a neighbor of ours and one of the great customers we have. Listen to these statistics. Ontario is the largest single customer for American-made products in the world. In 1985, U.S. exports to Ontario were valued at $40 billion—19 percent of all U.S. exports.

Are these exports growing? We know they are declining all over the rest of the world. What is happening with Ontario? Between 1981 and 1985, U.S. exports to Ontario advanced by 51 percent, to the $40 billion. In 1985, Ontario consumers purchased 20 percent of all U.S.-manufactured exports. That is where we are trying to do some good in our sales abroad, with manufactured exports. Twenty percent of all of them went to Ontario; never mind how many went to the balance of Canada. But this is the principal province we are dealing with. We are saying to Canada, "No, we are not even going to let you sell 4 percent of our total cement supply in the United States."

Mr. President, I plead with my colleague to reject this amendment because of the dangers it imposes on the United States. Now, I would say that if this amendment should be adopted, we have word from the Office of Management and Budget that they would recommend a veto to the President of the United States. Certainly, with all of the work we have done in this highway bill, we do not want to have it endangered by a measure such as this.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. SYMMS. Mr. President, I yield to the distinguished Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for not to exceed 1 minute 9 seconds.

Mr. CHAFEE. Mr. President, I ask unanimous consent that two letters and a telegram that I have be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSOLIDATED
READY MIXED CONCRETE,
East Providence, RI, August 18, 1986.

Hon. JOHN H. CHAFEE,
U.S. Senate, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR CHAFEE. As a cement ready-mixer from your state, I am writing to express my strong opposition to a Buy America cement proposal in the House highway reauthorization bill (H.R. 3129). A similar bill (S. 2405) will be addressed on the Senate floor in the near future. Your continued strong opposition to the Buy America cement provision is vital to the health of my business.

I know you are aware of the adverse implications of such a ban on U.S. trade relations and on U.S. compliance with standard international trading practices (GATT). This proposal would also be very damaging to the U.S. domestic economy. Every small business person needs as many alternate sources of supply as possible. For a variety of reasons, many U.S. cement producers have abandoned markets in the Northeast and along the U.S./Canadian border. Thus, because of prohibitive transportation costs, many ready-mix companies have no real alternative to Canadian or other foreign cement.

If foreign cement were banned from use in federal highway projects, many of us would either face shortages or severe price disad-

vantages because of the cost of transporting cement over long distances. In any event, the result would be higher prices, economic disruptions and inflation in construction costs. This would mean less highway miles for the same amount of money.

This protectionist language would not just affect highway projects. Many ready-mixers have only one silo in which to store their cement. If forced to differentiate between foreigh and U.S. cement, many could not afford the cost of another silo, or the overwhelming bookkeeping complications, and might be forced to discontinue use of foreign cement for non-government construction projects as well. In summary, such a ban would adversely affect Rhode Island, the entire domestic economy, and my small business.

You are a member of the Senate Environment and Public Works Committee that has jurisdiction over the Surface Transportation Assistance Act (STAA) to which the House has attached this provision. I appreciate your excellent efforts in the past and urge you to keep this proposal or any similar proposal out of the Senate bill.

Sincerely,

GEORGE PESCE,
Vice President.

FIORE READY-MIX CO., INC.,
Peace Dale, RI, August 25, 1986.

Hon. JOHN CHAFEE,
U.S. Senate, Washington, DC.

DEAR SENATOR CHAFEE: As a cement ready-mixer from your state, I am writing to urge you to oppose any attempt to insert a Buy America cement provision in S. 2405, the highway bill reauthorization. The highway bill reauthorization would restrict the use of foreign cement in any federal highway project.

Buy America does not take into account the unique makeup of the cement industry. For one thing, domestic producers cannot meet consumer demand. Plants were not upgraded and expansion was curtailed to such a degree in the 1970's that now, in the 1980's, foreign cement is an invaluable, irreplaceable product to ready-mixers. This is especially true in the Northeast and along the U.S. Canadian border. If foreign cement were banned from use in federal highway projects, many of us would face shortages and severe price increases because of the cost of transporting cement over long distances. We would either have to stop bidding on projects or build costly cement silos to differentiate between foreign and domestic cement. This, in turn, could lead to discontinuation of the use of any foreign cement and thus create domestic cement monopolies. In any event, the result would be economic disruptions and inflation in construction costs. This would mean less highway miles for the same amount of money.

The ready-mix people of our state will greatly appreciate your efforts to defeat any such provisions on the Senate floor.

Sincerely,

ROLAND FIORE, Jr.,
President.

[Telegram]

INDEPENDENT CEMENT CORP.,
Providence, RI.

Senator JOHN CHAFEE,
Capitol One, DC.

We urgently need your strong opposition to any Buy America cement provision in the reauthorization of the Surface Transportation Assistance Act (S. 2405). Domestic cement producers cannot meet cement demands. This legislation would be devastating to the construction and transportation industries in Rhode Island that depend on foreign supplements.

WILLIAM A. BAUGH.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

The Senator from Mississippi.

Mr. COCHRAN. Mr. President, may I inquire about the time remaining for each side on this amendment?

The PRESIDING OFFICER. The Senator from Mississippi as the proponent of the amendment has 20 minutes and 4 seconds. The Senator from Idaho has 54 seconds.

Mr. COCHRAN. I thank the Chair.

Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, I appreciate the concerns expressed by those who have spoken in opposition to the amendment. It is certainly not the intention of this Senator to urge the Senate to agree to an amendment which would be targeted toward any of our friends in other countries or our neighbors or that would affect their economies or their ability to sell products and compete in our market in the United States. That is not what the amendment seeks to do. I am convinced that is not the effect of the amendment. We are talking about only 7 percent of the total cement sales in the United States, which would be restricted to American firms—only 7 percent. So, if, as the Senator from Rhode Island urges, our friends in Canada are selling and claiming a market share here of about 4 percent of total consumption, then the impact on that producing country would not be very great.

Let me say that Canada has about 23 percent of the share of the total import cement market. Spain has about the same share. Other countries—Mexico, Venezuela, Colombia—are also selling in this market. There are new countries competing now—Korea, and Greece are examples. Others are getting involved too. Everybody is getting on the act because it is a huge market. It offers tremendous potential, particularly for those countries that are getting started in the business of exporting cement. That which cannot be sold in their own country is being shipped here and dumped into this market at prices below the cost of production.

I used as examples the prices that are being charged by Mexico and Spain for their cement when it is shipped into the United States as compared with the prices of the same cement that is being sold in their countries—it's less than half the price here in the United States. That is the kind of competition that is hurting our industry and is going to erode the entire industry. We are writing a blueprint for the demise of the U.S. cement industry.

□ 1100

Some say "Well, it doesn't mean that many jobs." Twenty-six thousand jobs is what it means. It means an underlying business that has been a very important part of our Nation's economy.

I wonder what the pressures are that have caused us to treat this industry different from our other industries under this Federal highway program.

It is very interesting, Mr. President, that when the Buy American provision was written into the bill in 1982 it included steel, cement, and other manufactured products. Then cement was taken out in 1984 by the committee.

This is an effort to simply put that back in the bill and require that cement be treated as other manufactured products in the United States.

You would think we were asking people here today to vote to bankrupt the Nation or destroy our trade relations with all our friends around the world. They can still come in and sell their cement in the market and compete with our firms as they have been doing in the past. They now have about a 17-percent share of our market. Foreign producers do.

What is alarming is the rate at which that is increasing. The rate of growth of the foreign share of the American market is alarming, and that is why we are debating this today, Mr. President.

Are we going to just sit back and just observe this and say to the cement industry "I am sorry." We are going to do something about insisting that our steel be used in Federal aid highway projects, we are going to require that other manufactured products be obtained from American firms in our Federal aid highway projects, but not cement. We are going to write them off. We are going to give that to all of our foreign friends and let them sell in our market, destroy our indigenous cement industry, and let the foreigners have it.

I just do not think that ought to be our national policy, Mr. President, and that is why the issue is before the Senate today.

I think jobs and American workers are more important than that and our attitude ought to be that we recognize that we have a responsibility to our own industries, not to protect them from foreign competition in every respect but where U.S. highway tax dollars are used for Federal construction projects, the goods, the ingredients that go into making up that project ought to be American products. That is all we are saying here.

Let me also respond to the suggestion by our friends who spoke in oppo-

sition to the amendment that the impact on the highway program would be devastating in terms of costs. I think that is an over-statement, and it is just not reflected in the facts, as I understand them, Mr. President.

If we assume that the adoption of this amendment would increase the price of cement that goes into Federal aid projects by $10 a ton, which we do not concede, the impact would be less than one-hundredth of 1 percent in terms of the total cost of all the projects that would be authorized in this bill. We are not talking about imposing any unusual expense on our Federal Aid Highway Program. The cost would be negligible, Mr. President, and that is a fact.

We are just suggesting that we ought not to single out one of our industries and treat it differently from the way we treat steel and the manufacturers of other products that are used in the highway program. That is all we are asking.

This is a surface transportation act that means a great deal to the transportation resources of our country, It is a very important program. We call it the national defense highway trust fund that we use to pay for these projects. It is my hope that we will recognize our indigenous industries as a part of the economic strength of our country that permits us to be able to defend ourselves, or have something to defend.

I am worried that we are going to see our trade deficit become worse if we do not start taking corrective action.

This is one small step, one thing we can do today which will help restore a better trade balance. It is not going to turn around the entire industry but it is going to at least show American workers and businessmen and women who are involved in the American cement industry that we are not just going to trade them off. We talk about negotiations with our friends around the world on matters of trade.

Here is where we have cashed in too early. We have traded in all of our chips in advance of the negotiations with Canada. We have taken out, unilaterally, the provision that relates to cement and said we give in on that before we even start the talks. I think that is a very bad mistake, Mr. President, and we should not support that kind of policy here in the Senate today.

I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. KASTEN). Who yields time?

BUY AMERICA, CEMENT

Mr. DECONCINI. Mr. President, cement imports have been rising dramatically over the last several years. My State, Arizona, has been one of the importers' primary targets. Imports in Arizona accounted for 17.3 percent of the Arizona market for the first half of 1986. The trend line is continuing upward.

By far the largest share of these imports comes from new plants and expansions in Mexico that have come on line within the last 5 years. Though they are some distance from the Arizona markets—U.S. plants would find it difficult to ship their cement the same distance and remain competitive—these plants have large capacities that will not be fully utilized by the internal Mexican construction market. That can only mean continued import penetration into Arizona and the border States.

We are sympathetic to the needs of our neighbors in Mexico for trade with the United States in order to work their way out of the current Mexican economic troubles. But for jobs, investment, and competitiveness in Arizona, the consequences of the foreign cement incursion are disastrous. We have modern, state-of-the-art cement plants in Arizona, but they require continuous reinvestment to maintain their productivity and efficiency. We have a growing construction market that needs new production capacity for cement, but this takes large, long-term capital investments to build new facilities or reopen mothballed plants. This kind of investment in the future is not occurring now in the Arizona cement industry, and the reason for it is imports.

It is important to add that these imports are unfairly traded. The Commerce Department has found that Mexican cement imports are subsidized by several Mexican Government programs. In addition, as the Senate is well aware, there is a fierce debate in the courts and agencies, as well as in Congress, over whether the cheap fuel and energy supplied to the Mexican cement makers constitutes a countervailable subsidy. In the only two dumping cases brought so far against foreign cement, the dumping margins found by Commerce were massive—from 45 to 136 percent. These are accounts in the international trade press that more dumping cases are on the way.

In the Southwestern States, we have seen a number of U.S. cement kilns shutdown in the last year or 2, with the U.S. cement companies, themselves, forced to import in order to compete. Make no mistake about it: This is a highly distasteful step for the American manufacturers. They do not aspire to be a sales network for foreign cement producers. They want to keep their plants running, to replace old plants with new ones, and to expand their capacity. But with foreign cement flowing in from nearly a dozen countries, they do not have much choice.

One thing seems clear in this situation: We did not enact the 1982 gas tax increase in order to transfer dollars from the taxpayers to foreign cement producers. Using Federal highway funds for foreign cement is bad for our foreign trade deficit, bad for the competitiveness of the U.S. cement industry, bad for new investment, and bad for jobs in Arizona and elsewhere. For these reasons, I urge my colleagues to support reimposition of a Buy American provision in the aid-to-highways authorization bill.

Mr. KASTEN. Mr. President, I rise to express my regret that I cannot support the amendment offered by my friend from Mississippi, Senator COCHRAN.

As my colleagues know, I have long advocated a stronger American trade policy that seeks to make our system more fair. Unfortunately, this particular amendment falls short of that goal, and I must oppose this amendment in its current form.

This amendment is harmful to the group it is supposed to help the most—the cement manufacturers. It assumes that American cement manufacturers are being forced to close down their doors because of a glut of imported cement from Canada and Mexico. The truth is, that in every State except for Mississippi, domestic cement manufacturers rely on both imported cement and cement produced in their own facilities. Without the imports, the cement manufacturers would be unable to keep up with the demand, and thus, some jobs would almost surely be lost. I have heard from many cement manufacturers in Wisconsin, and although some are for the language of this amendment, it is clear that a great many more people are opposed.

Not only will this amendment clearly hurt most cement manufacturers in Wisconsin, it will also hurt ports like those in Green Bay and Duluth-Superior which import some of the greatly needed foreign-made cement.

For these reasons, Mr. President, I must oppose this amendment.

Mr. BAUCUS. There are times when frustration comes very close to overtaking commonsense.

Our commonsense tells us that Buy America provisions are the classic example of shooting ourselves in the foot.

They distort trade flows, create economic inefficiencies and generally result in higher prices. They cause trade to shrink, and that means lost jobs. They invite retaliation.

Even so, it's tempting to consider Buy America provisions when you reach the last straw, and, frankly, Mr. President, I came very close to reaching that point in the case of a small Montana cement company.

In June, this particular Montana company was low bidder on a tender to supply 12,000 tons of cement for a strip of highway in Alberta.

They offered the highest quality product at the lowest price. But did they get the contract? No, Mr. President, they did not.

After behind-the scenes maneuvering, the Alberta authorities decided not to buy American cement and awarded the contract to a Canadian company.

That wasn't the end. Things took a turn for the worse when specifications in tenders let by the Alberta provincial government indicated that a fairly tough Buy Canada policy was in effect.

I was ready then, Mr. President, to argue for reciprocity, and ready to propose a limited Buy America provision to convince Alberta to mend its ways.

But I knew that that was the "last-straw" option. The Montana company agreed with me that that's not the way to promote trade or economic growth.

We worked with the Alberta Government, and the Canadian Government in Ottawa. We worked with the Canadian cement companies to get this thing resolved.

I'm pleased to report that we've been successful. That problem was resolved—by negotiation and by good faith efforts on all sides.

The Montana company was told officially by the Alberta Government that they will henceforth be placed on the list of approved bidders for future projects.

This means they'll have a chance to compete on equal terms with other contenders. This means they'll have a chance to benefit from trade.

I'm convinced, Mr. President, that that's the way to go, not Buy America provisions.

We've preserved trade relations, kept open the possibility of growth through trade and solved our problem.

A vote for this Buy America provision would undo all of these good efforts. It would guarantee that this Montana company would once again be shutout of the Alberta market.

But the damage would not be limited to Alberta. This provision would invite Canada and all of our trading partners to retaliate by erecting their own Buy Whatever provisions.

Make no mistake, Mr. President. If it turns out that Alberta is not making good on its promises, I will revisit the Buy America question.

Until then, I'm convinced that that's not the way to go, and that's why I'm voting against this amendment.

Mr. SYMMS. Mr. President, I yield myself 24 seconds.

Mr. President, I just bring to the attention of my colleagues a letter from Jim Miller, the Director of the Office of Management and Budget of the Executive Office of the President. Mr. Miller indicates that the senior advisers to the President would recommend a veto if this "Buy America" proposal is adopted.

I hope my colleagues will support a motion to table when it is offered.

I yield the remaining 30 seconds to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I just point out that as far as the Canadian imports go, in 1980 they were 3.4 percent; in 1983 they dipped to 3 percent; in 1985 they are at 4 percent.

So there is not a surge of Canadian imports into the United States, exports to the United States of Canadian cement.

If we adopt this amendment we threaten American coal sales, American computer sales, aircraft sales, tractor sales, chemical product sales, scientific equipment sales. It will be extremely damaging to American imports and to our balance of trade.

Mr. COCHRAN. Mr. President, I have been asked by the Senator from Pennsylvania [Mr. SPECTER] to indicate that he does not wish to be listed as a cosponsor of the bill.

Mr. President, let me say, in conclusion, and I intend to yield back the remainder of my time—I assume all time has been consumed by the opponents of the bill—there was a reference made to the impact on small businessmen and those who have small firms.

This amendment does not treat cement producers any different from producers of any other manufactured goods or producers of steel. It puts them all on the same footing. There is no distinguishing between large subcontracts or small subcontracts.

This provision is described in the bill as any project whose total costs exceed $500,000. That does not mean that you have to sell $500,000 worth of cement in a project to come under the terms of this provision.

Also, most firms who do sell cement for inclusion in Federal aid highway projects have more than one silo, more than one bin for the storage of cement.

So, I think the facts indicate that this does not adversely affect any small business; that the preference for small business is not going to be affected by this amendment.

I yield back the remainder of my time.

Mr. SYMMS. Mr. President, I ask unanimous consent to have printed in the RECORD a letter from James C. Miller III, Director of the Office of Management and Budget.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC.

Hon. ROBERT J. DOLE,
U.S. Senate,
Washington, DC.

DEAR BOB: I am writing to convey the Administration's strong opposition to a "Buy America" amendment to be offered by Senator Cochran to S. 2405, the Federal Aid Highway Act of 1986.

We understand that the amendment would prohibit purchases of foreign materials for Federally-funded highway projects. Such a provision would add millions of dollars to the cost of highway projects; cause substantial construction delays (because of insufficient domestic cement production); and invite foreign retaliation against U.S. exports. The Office of the U.S. Trade Representative advises that restraints on cement imports would almost certainly result in Canadian retaliation against U.S. specialty steel exports.

The proposed amendment is clearly contrary to our national interest. If adopted by the Senate and subsequently included in the final version of this legislation, it would result in the President's senior advisors recommending disapproval of the bill.

Sincerely yours,

JAMES C. MILLER III,
Director.

Mr. EVANS. Mr. President, I rise to speak in opposition to the Cochran amendment. This is one more Buy-American amendment to add to our already large number of such requirements on Government procurement. They raise unnecessarily the price of materials which the Federal Government procure, thus raising the eventual costs to American taxpayers. Furthermore, such a Buy American provision by itself doesn't improve the competitiveness of the domestic cement industry.

It is true that cement imports have been rising over the past several years to a level of 14.5 million tons in 1985, which amounts to about 16 percent of total consumption. Much of this increase in demand, however, is due to the cyclical nature of the construction industry. Since cement manufacturing is a capital-intensive industry, a rapid increase in domestic demand can't be met quickly by domestic producers. Data from the Cement Free Trade Association indicates that domestic producers haven't had sufficient capacity to meet increasing demand recently. This is especially true for certain regions of the country, such as the Eastern and Southeastern regions. Demand is running about even to available capacity in my region of the country, also, the Rocky Mountain-Northwest region.

Hence imports play an important role in moderating the troughs and peaks of demand and price in the U.S. market. From a supply standpoint, imported cement is critical in some projects to meet constuction schedules and cost objectives. Without the ability to import cement, Federal projects would be subject to artificial restraints on supply and higher costs. The data available for 1985 clearly support this point: consumption was 87.4 million tons, while the domestic industry's productive available capacity was about 79.3 million tons.

Indeed, the main effect of the Cochran amendment to require the purchase of U.S.-manufactured cement would be to raise prices in our markets. Construction projects already planned or underway could not be stopped suddenly; demand would exceed the available supply; and cement prices would increase as a result. Price increases, in fact, appear to be the ultimate objective of many domestic industries that are competing head-on with imports in our market. The domestic cement industry isn't unusual in this regard. Yet I don't think a price increase for one industry is what the Senate should be advocating on this important highway authorization bill.

Mr. President, this amendment is misguided and untimely from a trade policy standpoint, also. The administration has just concluded a successful round of ministerial talks at Punta del Este for the beginning of a new GATT round. The overall objective of this new round is to liberalize trade flows and eliminate trade-restrictive measures such as Buy-American laws. The adoption of this amendment would directly contradict this objective, which would send the wrong message to other contracting parties of the GATT.

Furthermore, this amendment is aimed in particular to restrict cement imports from Canada and Mexico. Mexico has just joined the GATT and will be obligated to eliminate many domestic laws and regulations which are illegal under the GATT. Furthermore, the administration is embarking on a comprehensive round of negotiations with Canada to reduce restrictions on trade flows and create a free trade area between our two countries. This provision flies in the face of these positive trends in both Mexico and Canada. Finally, I should mention that the administration is attempting to expand the scope of the GATT Government Procurement Code to the transportation sector. The enactment of unilateral legislation such as this Buy-American amendment will undoubtedly detract from our efforts to persuade other countries to reduce their trade barriers and sign such a code.

In conclusion, Mr. President, this Buy-American provision for cement should be decisively rejected. The adoption of this amendment would raise prices for the Federal Government and the American taxpayer in our highway projects. Cement imports aren't injuring our domestic industry to the extent that requires this sort of drastic relief. Other trade remedies are available to the domestic cement industry if it proves before the ITC and other Government bodies that it is being injured by imports or that exports are being subsidized. That is the proper route for this industry to follow—not a Buy-American amendment attached to the highway bill. I urge the Senate to defeat this amendment.

Mr. SYMMS. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho to lay on the table the amendment of the Senator from Mississippi.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. MATSUNAGA] is necessarily absent.

I also announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 285 Leg.]

YEAS—56

Andrews	Gorton	Moynihan
Armstrong	Gramm	Nunn
Baucus	Hart	Packwood
Bentsen	Hatch	Pell
Bingaman	Hatfield	Proxmire
Boschwitz	Hawkins	Quayle
Bradley	Hecht	Rockefeller
Burdick	Humphrey	Roth
Chafee	Inouye	Rudman
Chiles	Johnston	Simon
Cranston	Kassebaum	Stafford
Danforth	Kasten	Symms
Dodd	Kerry	Trible
Dole	Lautenberg	Wallop
Durenberger	Laxalt	Warner
Evans	Leahy	Weicker
Exon	Lugar	Wilson
Goldwater	Mathias	Zorinsky
Gore	McClure	

NAYS—41

Abdnor	Ford	Mitchell
Biden	Glenn	Murkowski
Boren	Grassley	Nickles
Broyhill	Harkin	Pressler
Bumpers	Heflin	Pryor
Byrd	Heinz	Riegle
Cochran	Helms	Sarbanes
Cohen	Hollings	Sasser
D'Amato	Kennedy	Simpson
DeConcini	Levin	Specter
Denton	Long	Stennis
Dixon	Mattingly	Stevens
Domenici	McConnell	Thurmond
Eagleton	Melcher	

NOT VOTING—3

Garn	Matsunaga	Metzenbaum

So the motion to lay on the table Amendment No. 2890 was agreed to.

□ 1130

Mr. COCHRAN. I move to reconsider the vote by which the motion was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHAFEE. Mr. President, it has come to my attention recently that there has been a flurry of activity in the other body to try and force the administration to expand the application of the Cargo Preference Act beyond its current applicability to the highway program.

The Cargo Preference Act has historically been applied by the Federal Highway Administration [FHWA] to foreign shipments of construction materials brought to a project site, which result from purchases made by contractors or subcontractors after a Federal-aid highway contract had been let. Conversely, foreign items delivered to U.S. suppliers as part of a normal business transaction that subsequently are purchased by a Federal-aid contractor or subcontractor are not covered by cargo preference.

I view this interpretation of the Cargo Preference Act to be correct, and view attempts by some to expand its coverage as a thinly veiled effort to expand Buy America coverage to cement in a backdoor manner.

It has been suggested that cargo preference be expanded to trace shipments of all components of manufactured materials used in highway construction, such as the crude oil used to manufacture asphalt and clinker used to manufacture cement. Expansion has also been proposed to trace shipments of a suppliers' inventory which may be sold to any customers, including highway contractors. Lastly, it has been suggested that shipments be traced to materials purchased prior to a Federal-aid contract in the normal course of business.

Such expansion interferes with private commercial transactions between vendors and manufacturers. It also gives a retroactive application to cargo preference. Clearly such expanded application is not consistent with the language of the Cargo Preference Act and was never intended by Congress.

Moreover, such an expansion would impose an undue hardship and business disruption not only on highway construction contractors but on private businesses as well. The FHWA and the States are not administratively geared to manage such an enormous expansion, which would require the tracing of all components to assure any foreign articles were transported on U.S. vessels regardless of when they were shipped.

Mr. President, I fail to see how such burdens could be legally imposed on private enterprise or the States and find it astounding that such expansion is being given serious consideration. Such recommendations are far beyond the scope and responsibilities of build-

ing our Nation's highways in an effective, efficient, and economical manner.

Mr. SYMMS. Mr. President, let me announce to my colleagues that we are nearing what I believe will be completion of this legislation. The distinguished Senator from Pennsylvania [Mr. SPECTER] has an amendment dealing with budgetary ceilings. I might just inquire of the Senator from Pennsylvania, how much time he needs?

Mr. SPECTER. Mr. President, I anticipate not more than 15 minutes. I propose to offer two amendments, one which I understand is subject to objection on which I shall not appeal the ruling of the Chair. I have a second amendment on the outyears where I expect to be able to present my arguments in the course of 10 minutes.

Mr. SYMMS. We can do what the leader wishes, but I would suggest that we go ahead with the amendment and dispose of it.

I might also say we think we are entering an agreement with respect to the South Africa amendment that Senator MOYNIHAN and I have been working on. We shall try to leave that until last. The Senator from Washington [Mr. GORTON] has an amendment which we shall take up right after the amendments of the Senator from Pennsylvania.

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order.

Mr. DOLE. Mr. President, there will be a rollcall vote on passage of this legislation. I am hopeful we can be on passage between now and 12:30.

Following disposition of this legislation, we shall move to the intelligence authorization bill. We believe we can reach a time agreement of 2 hours. If not, we can just bring it up.

Following that, we hope to bring up the CFTC bill, the Commodity Futures Trading Corporation. As far as I know, that can be disposed of in a couple of hours.

Then if we can reach some agreement on FIFRA—Federal insecticide, fungicide, rodenticide. In any event, that will be after that.

There is a possibility we might not be in late this evening if we can take care of those three items. I do not know of anything else that might be ready today. If I have additional information, I shall convey it to the distinguished minority leader.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 2891

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2891.

Mr. SPECTER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 62, strike out lines 20 through 23, and insert in lieu thereof the following:

(1) $14,200,000,000 for fiscal year 1987;

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

Mr. SPECTER. Mr. President, this amendment would authorize increased funding for much-needed highway projects across the country without raising taxes. This amendment would accomplish this important purpose by drawing down approximately $10 billion of the unobligated balance that currently exists in the highway trust fund in order to prevent the even greater buildup of unobligated funds that would occur without this action.

Earlier this year, I introduced identical legislation in S. 2581. At that time, I advised the managers of this bill that I intended to pursue this issue when the highway bill came up.

The cause for this buildup of a highway trust fund reserve and a partial cause of the shortfall in Federal highway dollars to the States is that the States are not allowed to obligate at a rate that equals their apportionment. My home State of Pennsylvania is an example of this. Pennsylvania's federally mandated obligation ceiling versus its apportionment was only 93 cents on the dollar in 1985 and is 84 cents on the dollar in 1986. My State now reportedly has a $460 million unobligated balance because of these low mandated obligation ceilings.

Stated simply, Pennsylvania cannot obtain the funds which it should have under action taken by Congress. Pennsylvania reportedly now could use some $460 million in the unobligated balance because of these low mandated obligated ceilings. I emphasize that these are funds which Congress says should be spent but they have not been spent, notwithstanding the fact that they exist in the trust fund, because of the applicable law which would be remedied by this amendment. My amendment would set obligation ceilings at $14.2 billion per year for fiscal years 1987 through 1990, rather than the $12.35 billion recommended by the committee. This would reduce the unused surplus in the trust fund to $3.5 billion by 1990, a sufficient reserve against unexpected obligations or revenue variances and consistent with sound financial practices.

The present $10 billion reserve is unreasonable and wasteful at a time when our Interstate Highway System remains unfinished and in disrepair. The Nation has invested more than $110 billion in the interstate system which is now 86-percent complete. It is unconscionable to allow the system to degenerate due to a lack of adequate dollar allocations when these moneys are present, have been set aside, and have been paid for by highway users. Some 1,416 miles of our Nation's interstate highways are closed to the public because sufficient funds to finish their completion have not been made available.

My home State of Pennsylvania is illustrative of the runaway problem of disrepair which has struck our Nation's system of highways. The State estimates a requirement of $1.4 billion for interstate restoration between now and 1990. Given current funding projections, Pennsylvania could only mount $500 million against this shortfall.

Mr. President, I emphasize that the money is there, it has been paid for by the highway users, but it simply is not being spent because of bookkeeping procedures in the Federal Government.

For example, Interstate 80, which is a vital link between the eastern and western halves of the State, requires $50 million per year to finance important reconstruction, but receives only $15 million per year through the regular apportionment of Federal funds for interstate restoration. My amendment would help increase expenditures to remedy the needs of I-80 and of many other similar highways throughout the Nation. All States would be beneficiaries if this amendment is passed.

□ 1140

I would add only one other point, and that is that the use of the Federal highway funds for the highways would be a very important factor in increasing the use of steel in this country—another issue of great importance to Pennsylvania, where we have massive unemployment in the steel mills. It would also create jobs in areas other than steel. A study by the Pennsylvania Economy League found that every $1 million spent on highway construction supports a total of 104 on site and indirect jobs. This amendment would provide for an additional 187,000 jobs of various types nationwide and 8,500 jobs in Pennsylvania annually. Increasing the obligation ceiling will result in approximately 121 tons of steel being produced for every $1 million spent on highway construction, which would amount to approximately 200,000 additional tons of steel.

Mr. President, I do not call for the use of steel simply to make jobs but I call for the use of steel because it is necessary for the Nation's highway system, and, again, I emphasize with

funds which have been paid for by highway users out of the gasoline tax.

Mr. President, I yield the floor at this time.

Mr. SYMMS. Mr. President, I rise in support of the amendment offered by my colleague from Pennsylvania, Senator SPECTER. This amendment would raise the obligation limitation in S. 2405 to $14.2 billion annually for fiscal year 1987 to fiscal year 1990. The obligation limitation established by the Environment and Public Works Committee is $12.35 billion per year, so the Specter amendment would increase the annual spending authority in this bill by $1.85 billion. If we adopt the amendment, total spending authority, including categories outside the obligation ceiling, will be approximately $15 billion per year.

The highway trust fund can easily support this level of spending over the next 4 years. The Congressional Budget Office estimates that an annual obligation limitation of $14.2 billion, combined with annual authorizations of $13.1 billion—as already provided in the bill—will leave in the highway account of the trust fund an end-of-year cash balance of approximately $3.57 billion in fiscal year 1990, if we take the Specter amendment. That figure compares favorably with the $9-plus billion currently sitting in the highway account and the $9-plus billion CBO estimates would still be sitting there by the end of fiscal year 1990 under spending levels approved by the committee.

Mr. President, when Congress passed the Surface Transportation Assistance Act of 1982, we approved a significant increase in the Federal excise tax on motor fuels in order to stop the rapid deterioration of our transportation infrastructure. We made a promise to American highway users that if they would accept the higher fuel taxes, we would spend those increased revenues on badly needed highway and bridge projects around the country.

Subsequent to passage of the 1982 act, authorizations in the highway program did increase significantly, but Congress has used a budgeting tool—the obligation limitation—to limit the amount of those authorizations that the States can actually spend. As a result, total spending in the highway program has been held well below the amounts authorized and the cash balance in the highway trust fund has grown to the current $9-plus billion level.

Mr. President, I think it is time to renew our commitment to American highway users by adopting the Specter amendment and, thereby, drawing down the balance in the highway trust fund. Let us come clean in this budgetary process. Let us admit to our constituents that we have used that $9 billion trust fund balance to help make the deficit picture look a little better than it really is. Let us admit that spending in the highway program does not and cannot contribute to the Federal deficit because revenues to the highway trust fund are paid in advance by highway users and can be spent only on highways and bridges. Let us put some "trust" back in this trust fund.

I want my colleagues to know that it is not just the Senator from Pennsylvania and the chairman of the Transportation Subcommittee who believe we ought to stop playing this budget game in which we break our commitment to users who contribute to the highway trust fund and other Federal trust funds. An August 25 Wall Street Journal article cites recent remarks by Don Regan saying he believes the President's next major policy initiative will be a budget-overhaul package in which trust funds would be removed from the Federal budget. Mr. Regan specifically mentions "the commingling of trust funds with ordinary expenses" as one of the "many things [we do] at the Federal level that would be considered dishonest and illegal if done in the private sector." Mr. President, I look forward to reviewing that budget-overhaul package, and I ask unanimous consent that the Wall Street Journal article to which I've referred be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1).

Mr. SYMMS. Again, Mr. President, I urge the adoption of the Specter amendment. Even with spending authority of $15 billion per year, the highway program will still be grossly underfunded to meet the highway needs across the country. Federal Highway Administration statistics indicate that $12 to $15 billion is needed to complete the Interstate System; $50.8 billion is needed to repair and replace deficient bridges; $20 billion is needed to address existing interstate 4R needs; over 200,000 miles of the primary system will need capital investments during the next 15 years; and over $6 billion per year is needed to maintain existing conditions on the urban and secondary systems.

In addition to helping protect our transportation infrastructure, adoption of the Specter amendment would allow the States to draw down the balance of previously authorized funds which they have been unable to obligate because of spending constraints imposed by Congress. By the end of this fiscal year, the States will have accumulated an estimated $6.7 billion worth of previously authorized funds which they would be allowed to spend under the Specter amendment.

Mr. President, I congratulate my colleague from Pennsylvania for offering this amendment and for his continued interest in preserving a strong Federal-aid highway program. I am always pleased to know that the highway program has ardent supporters both on and off the authorizing committee.

Mr. President, I urge adoption of the Specter amendment.

EXHIBIT 1

REGAN SAYS REVAMPING BUDGET PROCESS WILL BE A MAJOR GOAL FOR THE PRESIDENT

(By Ellen Hume)

SANTA BARBARA, CALIF.—White House chief of staff Donald Regan said he expects that overhauling the federal budget process will be a major policy initiative for the rest of President Reagan's term.

Mr. Regan, who long has wanted to put the federal budget on a more businesslike footing, told a group of reporters here that he's considering a budget-overhaul package that would give the federal government a so-called capital budget.

The proposal also would remove trust funds from the federal budget, add a presidential line-item veto and include a balanced-budget constitutional amendment. The administration also might seek a two-year budget process, he said.

The chances of winning congressional approval for such a package appear remote now, especially since the administration previously tried and failed to get the line-item veto and the balanced-budget amendment approved. But Mr. Regan insisted that the prospects aren't hopeless, because the administration has "never seriously" pushed for them as part of a major budget overhaul.

"Now, in these days of huge deficits, Gramm-Rudman and so forth. I think the atmosphere may be changing, where people are saying this is a Mickey Mouse system," Mr. Regan said.

The idea of a capital budget—in which buildings and other capital costs could be charged off over time, rather than in a lump sum at the beginning—has long been resisted by staff experts at the Office of Management and Budget. Such proposals were blocked by David Stockman when he was OMB director.

A capital budget would reduce annual deficits by spreading some costs over a period of years. But critics note questions about what constitutes a legitimate capital expenditure and the temptation to abuse this accounting technique. They charge that the technique was a leading reason for New York City's fiscal crisis and could lead to even greater problems at the federal level.

Mr. Regan said the budget-process overhaul, which still is in the discussion stage, emerged as a major initiative when the staff met a week ago to plan the agenda for the Reagan administration's final 17 months.

HODGEPODGE IS CITED

"We have a crazy hodgepodge of a budget," he told reporters, adding: "We do many things at the federal level that would be considered dishonest and illegal if done in the private sector."

As an example, he cited "the commingling of trust funds with ordinary expenses." He was referring to such trust funds as the highway and airport accounts, which are financed by specially earmarked fees and taxes. It is "not right" to count such trust fund receipts against the federal budget deficit, he asserted.

Mr. Regan reiterated that the administration's crackdown on drugs will be its No. 1

priority once work on the tax-overhaul bill is completed. Asked if an administration study on revamping the welfare system might lead to a major initiative in that area, Mr. Regan said: "I don't know what we'll do, if anything, about it. I want to read the study first."

Mr. Regan acknowledged that the economy in the second quarter was a "downer," and that many economists consider the administration's projections of a 4% economic growth rate for the remainder of the year too optimistic. But he said the 4% rate was "possible," and he predicted the trade deficit with Japan would narrow "gradually."

"The third quarter is starting off pretty well," he said, citing recent increases in durable-goods orders, the continued stability of prices, and the Federal Reserve Board's recent steps to stimulate the economy by cutting the discount rate.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. STAFFORD. Mr. President, this is a matter of major interest to the distinguished chairman of the Budget Committee, Senator DOMENICI, and we are advised he is on his way. In order to allow him to get to the floor I suggest the absence of a quorum.

Mr. GORTON. Will the Senator from Vermont withhold that request?

Mr. STAFFORD. I would withhold if it is for another matter.

Mr. GORTON. It is. While we are waiting, I have an amendment at the desk that I believe can be disposed of in 60 seconds or so. Does that meet with the approval of the Senator from Idaho?

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. SYMMS. Mr. President, maybe we could ask unanimous consent to temporarily set the Specter amendment aside and dispose of the Gorton amendment. I think there is no disagreement on the Gorton amendment.

Mr. GORTON. I would make such a request, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, the Specter amendment is temporarily set aside.

AMENDMENT NO. 2893

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I have an amendment at the desk and I ask for its immediate consideration.

The PRESIDING OFFICER. The desk does not have a copy of the amendment. Does the Senator have an amendment he can send to the desk?

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] proposes an amendment numbered 2893.

Mr. GORTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am offering an amendment to reimpose the heavy vehicle use tax on Canadian operators. This action is taken in response to a regulation issued by the Internal Revenue Service on May 23, 1985. That regulation, 44.4481-1(a)(2), was designed to conform to the Tax Reform Act of 1984. That act called for a study "to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1954 (relating to tax on use of certain vehicles) on transborder trucking operations." During the comment period, several commentators suggested that the imposition of the tax on Canadian vehicles should be suspended until this study was completed. The Internal Revenue Service accepted this suggestion and suspended the tax.

This decision has created an inequitable situation whereby Canadian truckers have the benefit of our highways, but do not bear a reasonable share of their costs. I believe we should remedy this situation by adopting this amendment, which will prohibit the Service from spending any funds appropriated by this act to implement its regulation 41.4481-1(a)(2) and will carry us through until that study is completed some time in 1987.

The amendment has been cleared by the chairman of the Finance Committee, Senator PACKWOOD, and the ranking minority member, Senator LONG, since it falls within their jurisdiction. I ask for my colleagues' support.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2893) was agreed to.

Mr. GORTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1150

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO 2891

Mr. DOMENICI. Mr. President, I am fully aware of the fact that the distinguished junior Senator from Pennsylvania and many other Senators desire to spend more of the trust fund that we collect from our highway users for the 1987 highway program. However, as in many trust funds that we have in the U.S. Government, they are all part of the unified budget. Some people do not like that, but that is the reality of it.

For now, the biggest of trust funds and the smallest of trust funds are all part of the fiscal policy of this country—Social Security being the largest, Medicare being the second largest. There are innumerable trust funds—a trust fund for airport construction. You tax a specific use by way of a user-type fee, much as you do with a gasoline fuel tax and certain levies on trucks and tires to pay for the highways. Those go into a fund.

Let me make it clear that they are not used for anything else. We are not going to spend that trust fund money on something else. But when you take the big ledger of the U.S. Government, you have receipts and you have disbursements. You add them up, whether they are trust fund receipts or not, whether they are trust fund disbursements or not, or whether they are normal outlays or expenditures that we appropriate out of the general tax coffers. Each year, you go through this exercise of adding up the receipts and adding up the expenditures, and from that accumulation you get the national deficit.

So, obviously, this highway trust fund is building up a little bit of a reserve; because as we move through each year, we set limits that are not coextensive with the expected receipts. At one point, we were moving in the other direction: We were spending more than we were taking in. We have been catching up of late, and there is a reserve of a few billion dollars.

What the distinguished Senator from Pennsylvania—whom I greatly admire—would like to do is to build more roads. The infrastructure of the country needs more money; not less. The truth of the matter is that we have already made some decisions around here with reference to the overall budget that precludes this amendment from being in order.

Obviously, if the Senator wants to push, the U.S. Senate can do what it pleases. It just has to waive the Budget Act and spend more money than is presently prescribed to be spent in 1987 by way of obligational authority, and I believe it would be a couple of hundred millon dollars this year.

The Senator would perhaps propose later on that we proceed to set some higher limits in the outyears. That would be 1988, 1989, and 1990. For now, his amendment says let us raise the obligational ceilings for 1987 over that which, No. 1, the appropriators have established, since they set that each year; No. 2, from the levels that were established a couple of nights ago, when, at 12 in the evening, we voted for a reconciliation bill in the Senate by an overwhelming vote. This particular activity of the Federal Government was within that reconciliation bill, and the 1987, 1988, and 1989 levels were mandated by a huge vote.

Some 85 Senators said, "Let us save some money." In saving money, it means that we are not going to spend it. It does not mean that we are going to use entrusted highway funds for something else.

Having said that, Mr. President, I raise the point of order that the pending amendment violates section 302(f) of the Budget Act by providing for outlays in excess of the appropriate 302(b) allocation.

Mr. SPECTER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Is debate permitted after the point of order is raised?

The PRESIDING OFFICER. At the discretion of the Chair.

Mr. SPECTER. I ask the distinguished Senator from New Mexico to withhold the point of order for the moment, to give this Senator an opportunity to make a brief reply.

Mr. DOMENICI. I have no objection.

Mr. SPECTER. Mr. President, I understand fully what the distinguished chairman of the Budget Committee is saying, and I understand that, technically, my amendment is subject to a point of order at this time.

I have already advised the distinguished chairman of the Budget Committee that I will abide by the ruling of the Chair, because there has been a determination as to this year's budget, and I would pursue the issue with the outyears for fiscal 1988, 1989, and 1990.

But I do want to say at this time that the use by the Federal Government of trust funds is in my legal opinion inappropriate and on occasions illegal.

When the Government of the United States last year used trust funds from the Social Security trust when we could not have an extension of the debt limit, that was in my legal opinion unlawful.

A trust fund is a fund, a sum of money, set aside for a specific purpose. It is held in trust for a specific purpose and any use of those funds for any purpose other than that specifically authorized by law is what is called a conversion and it is a fraudulent conversion and it is punishable as a crime in the courts of the United States.

I do not think it makes any difference if high level Government officials take an action which is fraudulent conversion any more than anyone else. This is something that I think the Government has to face up to, and not use trust funds for some purpose other than what they were set aside for.

We do not face precisely that situation here because here we have a fund which is not being used for the purpose for which it was established. But there is a very fine line, and I would like the attention of the chairman of the Budget Committee on this point, if I may have his attention, because while Senator DOMENICI is exactly correct that we are not spending this trust fund for anything else, which is what he has asserted, we are using it for another purpose. We are using it at the present time to meet the targets of law on what the deficit may be, and if we were spending the trust fund for highway construction we would not be meeting those targets.

I am committed, as is the Senator from New Mexico, to meet the targets of deficit reduction. But many perceive, de facto, that there is something of value which is being derived from not spending this money for highway construction, and that is funds being withheld so that the deficit does not exceed the $154 billion amount to come within the Gramm-Rudman target, and it seems to me that, call it what you like, call it juggling the Federal books or call it accounting of a certain sort, staying within the budget deficit limit, that is what is happening. And I don't think that it is the right way to stay within the deficit.

The distinguished Senator from Idaho, the chairman of the subcommittee, referred to that a few minutes ago. I had expected a point of order to be raised against my amendment, and I am not unaware of the fact that the point of order validly lies under the technical circumstance present here.

I make this argument somewhat more extended because I do intend to submit another amendment, and I hope the distinguished chairman of the Budget Committee will join me in the second amendment. It will not violate the Budget Act, and I am going to call for a rollcall vote because I think there ought to be an expression of as many Senators as possible—of course, I may be surprised; maybe the Senate will vote against it—I think there ought to be an expression of Senators. As Senators SYMMS said earlier, this money is set aside in order to be used for highway construction. It is not a foolish use. Our highways are in disrepair. Probably a lot of people are watching on C-SPAN now because they cannot drive on the highways in their States across this country.

Everywhere I drive in Pennsylvania I find detours and I find potholes and I find problems that go all across this country. The highway users of this country have bought and paid for highways and it is unfair not to let them get the value for what they paid.

I know the budget problem this year, and I know the point of order lies and I am not going to appeal the ruling of the Chair, although maybe, Mr. President, if I submit to my colleagues this list of highway funds which would come to every State, every State would be a winner, maybe the Senate would overrule the Chair and would say these funds ought to be expended.

Mr. President, I ask unanimous consent at this time that a table showing the distribution to the 50 States and Puerto Rico be printed in the RECORD. It shows the power and the importance of this to everybody in the country.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

ESTIMATED DISTRIBUTION OF OBLIGATION LIMITATIONS BASED ON S. 2405 PROGRAM STRUCTURE

[In thousands of dollars]

State	$12.35 billion ceiling	$14.2 billion ceiling	Difference
Alabama	226,730	264,112	37,382
Alaska	152,541	177,691	25,150
Arizona	127,505	148,527	21,022
Arkansas	110,934	129,223	18,289
California	907,962	1,057,659	149,697
Colorado	186,792	217,588	30,796
Connecticut	243,574	283,733	40,159
Delaware	50,152	58,420	8,268
District of Columbia	67,768	78,942	11,174
Florida	495,756	577,492	81,736
Georgia	323,113	376,386	53,273
Hawaii	139,003	161,921	22,918
Idaho	87,203	101,580	14,377
Illinois	365,144	425,345	60,201
Indiana	192,036	223,697	31,661
Iowa	162,373	189,144	26,771
Kansas	145,529	169,523	23,994
Kentucky	206,891	241,002	34,111
Louisiana	318,137	370,589	52,452
Maine	57,242	66,679	9,437
Maryland	262,944	306,296	43,352
Massachusetts	309,368	360,374	51,006
Michigan	302,816	352,742	49,926
Minnesota	229,382	267,201	37,819
Mississippi	122,177	142,320	20,143
Missouri	235,096	273,857	38,761
Montana	107,820	125,596	17,776
Nebraska	104,145	121,316	17,171
Nevada	72,324	84,248	11,924
New Hampshire	55,502	64,653	9,151
New Jersey	333,831	388,870	55,039
New Mexico	105,238	122,589	17,351
New York	609,352	709,817	100,465
North Carolina	228,386	266,040	37,654
North Dakota	75,720	88,204	12,484
Ohio	353,796	412,127	58,331
Oklahoma	145,491	169,478	23,987
Oregon	136,246	158,710	22,464
Pennsylvania	499,555	581,918	82,363
Rhode Island	94,902	110,548	15,646
South Carolina	148,553	173,045	24,492
South Dakota	82,115	95,654	13,539
Tennessee	228,640	266,336	37,696
Texas	674,526	785,737	111,211
Utah	139,175	162,121	22,946
Vermont	53,680	62,530	8,850
Virginia	278,009	323,845	45,836
Washington	261,677	304,820	43,143
West Virginia	98,393	114,616	16,223
Wisconsin	160,960	187,497	26,537
Wyoming	83,087	96,786	13,699
Puerto Rico	61,549	71,697	10,148

ESTIMATED DISTRIBUTION OF OBLIGATION LIMITATIONS BASED ON S. 2405 PROGRAM STRUCTURE—Continued

[In thousands of dollars]

State	$12.35 billion ceiling	$14.2 billion ceiling	Difference
Total	11,220,840	13,070,841	1,850,001

Source: U.S. Department of Transportation.

Amounts not distributed

Federal lands	$250,000,000
Administration	204,660,000
Discretionary	662,500,000
Territories	12,000,000
Total	1,129,160,000

U.S. Department of Transportation.

Mr. SPECTER. I yield the floor.

Mr. DOMENICI. Mr. President, I withhold my point of order momentarily and want to make a couple statements in response to my friend from Pennsylvania.

First of all, I do not want anyone to think that the fact that the Senator from New Mexico is making the point of order against the amendment of the distinguished Senator from Pennsylvania means that the Senator from Pennsylvania is not fully within his rights to offer this amendment. Sometimes a point of order makes some people think it means something different than I think. It merely means that under the budget processes of this country that are in effect right now and the budget that we have adopted and have been working on, the Senate would have to vote by a supermajority if they choose to do this, to overrule the point of order. I do not think they would do it, I regret to say to my friend, with or without that list because, as a matter of fact, this clearly would add $200 million to the base line agaist which we figure a sequester.

We spent 3 days negotiating amongst ourselves and with the House and untold numbers of hours here on the floor and we voted at about midnight on Friday to put into effect a reconciliation bill because we did not want a sequester come October, that is, an across-the-board cut.

Whether one likes the procedure or not, the fact is that excesses in trust funds that are not spent are used in the bookkeeping of the United States to reduce the deficit. Whether one likes that or not, the truth of the matter is that this would add $200 million right up front to what we will have to try to find in the appropriations process, in the reconciliation bill, in order to avoid an across-the-board cut. It is in that sense adding $200 million to the deficit perceived by Congress as of now as it works its way trying to control the outlays of Government.

Let me also say to my friend from Pennsylvania if the theory of offering an amendment to increase the expenditures out of the trust fund is that we ought to spend every year everything that is collected for a trust fund, then I submit that we have done exactly the opposite for a long time. For a long time we did not collect enough in the trust fund and yet we spent more than was in there because we thought there was a highway need. So for a long time we go down at the end of the year and say well, we only have $7 billion collected, but we are going to spend $8 or $9. We did that because it was our decision to get the program going and to, in a sense, spend trust fund money we did not have, perfectly within our purview, and equally appropriate to save money when you have more than you need when you have tough fiscal times.

So, Mr. President, with that I must say to my friend I do not intend to support an outyear change either in 1988 or 1989 and I will argue that when he proposes the amendment and I think the Senate ought to wait on that and make that decision later.

But I renew my point of order.

The PRESIDING OFFICER. The point of order is well taken. The amendment falls.

AMENDMENT NO. 2894

(Purpose: To increase the obligation limitations for Federal-aid highways and highway safety construction programs)

Mr. SPECTER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2894.

On page 62, strike out lines 21 through 23, and insert in lieu thereof the following:

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

Mr. SPECTER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SPECTER. Mr. President, this amendment follows up on the discussion which we have been having and does not fall subject to a point of order.

I might say that I do not disagree with what the distinguished chairman of the Budget Committee has argued in terms of our having established the reconciliation picture, and I quite agree with him about the undesirable consequence of having any sequestration.

I think that is something which is highly undersirable and that Congress ought to establish the priorities within the limits of the deficit ceiling. This body has discharged its responsibilities and we got that job done last week. I commend, and have heretofore and do again, what the distinguished chairman of the Budget Committee has accomplished.

But now we are on a different point. We have met the targets of Gramm-Rudman for fiscal year 1987 and now the issue is what is going to happen in succeeding years, 1988, 1989, and 1990.

□ 1210

Mr. President, this amendment would fulfill the commitment which the Senate made when it passed a resolution, which was cosponsored by Senator SYMMS and Senator MURKOWSKI and myself, expressing the sense of the Senate that the highway trust fund should be drawn down to the safest minimum level of reserves possible. That has been passed on a sense of the Senate by this body and I think we ought to move ahead at this time.

Mr. President, I would disagree with the distinguished chairman of the Budget Committee when he seeks to make an analogy between spending more than the trust fund and not spending as much as the trust fund has absent a reasonable reserve.

The Congress of the United States has authority to appropriate what we choose and we can spend money for highways out of general revenues if we choose to do so. But it is not the same as saying, since we spend more than the trust fund in the past, we ought not to spend as much as the trust fund as a matter of our discretion.

If we are not going to spend the trust fund, let us not charge the American consumer, the American highway users for the gasoline tax as much as we are.

It is true that we cannot precisely say what the trust fund will be and exactly how much we should spend. So it is necessary to have a reserve. But I believe it ought to be a realistic reserve. And a reserve is something you keep in reserve for contingencies or some problem which may arise. It is not something which you have a large sum of money for some collateral purpose to balance the budget or to hold the deficit at a certain level.

If those funds are needed, they ought to come from other sources. That is not why we ought to have highway users place money into the highway trust fund.

I have asked for a rollcall vote on this matter, because I believe that if the Senate of the United States speaks emphatically on this issue, it will be a direction to the Budget Committee and the distinguished chairman next year that we want to have money spent on highways. And, of course, it is easier to spend the moneys next year and the year after than it is this year, because we do not have to bite any bullets in doing so.

But I believe it is an appropriate statement of the expression of the

intent of the Senate. And if the Senate decides we ought to leave the decision for next year, then I think the Senate will be recognizing that this will be a bargaining chip in the overall process and highways will probably end up short next year.

Of course, if we can express our intention by adopting this amendment, it could always be changed, as well, if the eloquent chairman of the Budget Committee comes in next year with budget problems—and maybe he will not have any problems next year on the budget. Maybe there will not be a need to shortchange highway construction.

But I would say if we are going to defer something to next year, let us defer consideration of any unknown problem to next year. Let us renew our commitment to the American highway user that the money we have taken out of his pocket on the gasoline tax is going to be used for highway construction. I yield the floor.

Mr. SYMMS. Mr. President, I have already spoken on the previous Specter amendment which really covers my position. I would only rise to say that I compliment my colleague for offering the amendment. I support the amendment.

As a member of the Budget Committee, I know we have difficulties deciding where to get the money necessary to meet the Gramm-Rudman targets, but I believe there are good, justifiable reasons for us to support a higher funding level out of the Federal trust fund.

Again, I support the amendment and urge its adoption.

The PRESIDING OFFICER. The question is on the amendment. Is there further debate?

Mr. STAFFORD. Mr. President, with a great deal of regret, I have to rise in opposition to the Senator's amendment. And I do so in the name of the committee, because the committee did come to a conclusion on spending over these years and the Senator's proposal would run almost $2 billion over the committee level which the committee voted for. There was a vote in the committee, as a matter of fact, to raise the level, which was defeated in the committee by a vote of 8 to 5.

The Senator proposes $14.2 billion a year. But there are additional expenditures from the fund for other programs that are not included in that figure which raises it to about $15 billion a year in total expenditures, as I understand it.

I should point out that estimated revenues for the trust fund for the years in question are about $13.2 billion, which is approximately the amount called for to be expended under the committee decision, and that figure appears in the committee bill.

So, much as I would like to spend more money on highways at this time, I think that the committee, having made the decision that we stay at the levels I have mentioned—$13.2 billion roughly, in total expenditures—I feel we should stay there. We have committed ourselves to that course, both in deference to the national deficit, the national debt and in connection with the Budget Committee and reconciliation.

Mr. DOMENICI. Mr. President, I might say to my friend from Pennsylvania, if he desires to further debate the issue, I hope he will let me know, because I do intend to ask that the amendment be tabled. I think that is a preferable vote, from my standpoint, to an up-or-down vote because I think it more aptly expresses what we are doing and what we ought to do.

First of all, in plain, simple terms, next year, the year after, and the year after that—1988, 1989, and 1990—we will have a budget, we will have appropriations, and clearly the Highway Act that is before us will not constrain us in terms of raising the level of funding if the Senate and the Congress desire to. But for now, plain and simple, we voted in ourselves, by recommendation of the Public Works Committee that has jurisdiction over this, we voted a 3-year limitation in the reconciliation just a few nights ago.

The distinguished chairman of the full committee has stated it right. We did that, and we will turn around today and we will say, "Well, yeah, we did that because we want to be fiscally responsible, as we look at next year and the year after, to take a real look at where are we. Do we have enough money to spend more out of the trust fund, or should we save it and apply it to the deficit?"

This will add, my numbers indicate, $3.15 billion in outlays for the next 3 years as a mandate over and above what we already just voted for, decided to be for, Friday night at 12 o'clock. I just do not think we ought to do it. The same reasoning applies in his behalf as in behalf of the committee. If next year the budget looks better, as he hopes—and I hope so, too—then obviously we will be debating this issue of a predetermined decision made by the committee which they thought was reasonably prudent under the circumstances.

So I regret to say I will ask to table the amendment and actually would hope the Senator would not make us vote on this. I think we should give him some commitment that we will work on this, that clearly we will listen to him and to the chairman of the subcommittee and, if we can find our way, we will significantly increase it; we will try to.

I am sure the distinguished chairman would agree. I am sure if Senator HATFIELD were here he would say he would agree to take another look and see if we could raise it next year. But for now, I think we must object.

I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Mexico [Mr. DOMENICI] to table the amendment of the Senator from Pennsylvania [Mr. SPECTER]. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Delaware [Mr. BIDEN] is necessarily absent.

I also announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 69, nays 28, as follows:

[Rollcall Vote No. 286 Leg.]

YEAS—69

Andrews	Exon	McConnell
Armstrong	Goldwater	Melcher
Bentsen	Gorton	Mitchell
Bingaman	Gramm	Moynihan
Boren	Grassley	Murkowski
Boschwitz	Hart	Nickles
Bradley	Hatch	Nunn
Broyhill	Hatfield	Packwood
Bumpers	Heflin	Pell
Chafee	Helms	Proxmire
Chiles	Hollings	Roth
Cochran	Humphrey	Rudman
Cohen	Inouye	Sarbanes
Cranston	Johnston	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Lugar	Trible
Domenici	Mathias	Wallop
Durenberger	Matsunaga	Weicker
Eagleton	Mattingly	Wilson
Evans	McClure	Zorinsky

NAYS—28

Abdnor	Hawkins	Quayle
Baucus	Hecht	Riegle
Burdick	Heinz	Rockefeller
Byrd	Kassebaum	Sasser
D'Amato	Kasten	Specter
Denton	Lautenberg	Symms
Ford	Levin	Thurmond
Glenn	Long	Warner
Gore	Pressler	
Harkin	Pryor	

NOT VOTING—3

Biden	Garn	Metzenbaum

So the motion to lay on the table amendment No. 289 was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. SYMMS. Mr. President, we are very close to passage of the bill. I say again to my colleagues, this is a most important piece of legislation which we must get through a conference and on the President's desk before the end of the month. It is most important to the Federal aid highway program.

We have one remaining glitch. Specifically, the problem is the language on page 28 of the committee report, which explains section 105(b) of the bill.

AMENDMENT NO. 2895

In order to try to clear up this issue, Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. SYMMS] proposes an amendment numbered 2895.

On page 28 line 24 strike all through page 29 line 15.

□ 1240

Mr. SYMMS. Mr. President, may I please have order?

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Idaho is recognized.

Mr. SYMMS. Thank you, Mr. President.

Mr. President, I will be very brief in my explanation of this amendment. This amendment simply strikes section 105(b) from the bill. The question is, Should a State or local government be allowed to attempt to influence international relations with South Africa?

The answer in this Senator's opinion is "no." In this instance, it is basically a New York City issue. We thought we had a compromise worked out between the distinguished senior Senator from New York and myself, but we have had other Senators who have voiced objections.

I want to make two or three very quick points. Foreign relations for the United States of America should not be vested in local governments. Foreign policy is and should be in the domain of the National Government.

I believe we should not piecemeal our international relations with South Africa and we should have a coordinated comprehensive policy. The language currently in the bill sets a bad precedent for us.

We have pending before the Congress and the administration legislation dealing with South Africa, and it is being properly handled by the appropriate authorities. I believe the provision would set a costly and dangerous precedent for the highway program. This amendment could have a very chilling effect on competitive bidding because some firms may choose not to bid. Moreover, each local area could establish its own type of South Africa contracting restrictions and this would destroy the uniformity of the contracting process and add to the bid preparation costs.

Mr. President, those are reasons why I think we should support the Symms amendment and strike out section 105(b) from the bill. An equally important reason is that each Senator has a State department of transportation and highway users waiting to get the highway program resolved.

Let us not let this one small issue interfere with the Federal-aid Highway Program. I urge support for my amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I am just going to take about 1 minute. I think the issue is fairly clear but the consequences may not be. If there is not some resolution of this provision, I am advised by a number of Senators that there will not be a highway bill. I think that is what we need to focus on. This is really the last day, as I look at the next 7 or 8 days, that we can take up the highway bill.

We have about three other bills pending this afternoon. Tomorrow, Friday, and Saturday we will be on the drug enforcement bill. Somewhere we have to work in the tax bill in that period of time. And then on Monday we are on the continuing resolution. That will take at least 2 days. Then we will also have Superfund, and we have the debt limit conference report. We also have the trial of Judge Clairborne.

While this may not and perhaps should not be an element in consideration of how Senators vote, I think in every State we have vital interests in this package. I am not threatening anyone. I am just suggesting I have been advised by a number of Senators that unless this provision is stricken or there is some compromise, they intend to spend the rest of the day discussing it and that, as far as I know, would postpone any final action on this package. We might be able to get to it sometime next week but I am not certain.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Thank you, Mr. President.

Might I make two points. The first is to take very gentle exception to the statement of my friend from Idaho that this is a New York City matter. Similar legislation has been enacted in some 25 cities. I will name just a few: Charleston, SC; Chicago, IL; East Lansing, MI; College Park, MD; Kansas City, KS and—Perhaps I should say that again, Kansas City, KS—Kansas City, MO; Los Angeles; Madison, WI; Newark, NJ; New Orleans; New York; Oakland, Omaha; Pittsburgh; Raleigh, North Carolina; Richmond, CA; Richmond, VA; Rochester, NY; San Francisco; Topeka, KS; and Tucson, AZ.

Measures of this kind have been adopted in a number of places and for the same reason. They are an expression of concern American communities have about South Africa.

I completely agree with the Senator's statement that the conduct of foreign policy is a national responsibility.

□ 1250

Madison wrote in Federalist Paper No. 42 that "If we are to be one nation in any respect, it clearly ought to be in respect to other nations." But this does not have to do with our relations with other countries. It is a statement internal—about how we will behave with our own fellow citizens with respect to business activities and government investment.

This legislation provides that if a community—Kansas City, San Francisco, College Park, Rochester, or wherever—wishes to enforce anti-apartheid bidding standards on highway projects, with the result that a higher bid might have to be accepted than otherwise would be the case, and if that municipality pays from its own resources every penny of the additional cost, then the Federal Government and the highway program have no argument with that community. It is a very American arrangement. It is characteristic of our country that when people feel strongly about ethical issues, moral issues, they act in local ways; and often in our history, policy has come up from the lower levels of government rather than come down from the higher ones.

This is not something we need ever be ashamed of. It is something we have every reason to be proud of, as a characteristic of American life. This provision is a simple accommodation to it.

I think of it in the same spirit that Thoreau refused to pay taxes that he thought were supporting the Mexican War. The authorities put him in jail in Concord for so doing. Emerson came to visit him, and they had a wonderful exchange:

Emerson said: "What are you doing in there?"

Thoreau said: "What are you doing out there?"

A moral statement was being made by one man and by the other man, too. They had different views, and we admire them for that.

When Kansas City and Camden, NJ, and Charleston, SC, and Chicago and New York take measures such as this, they do so out of conscience, and we

want them to behave out of conscience.

Are they doing any harm to anyone in economic terms? Yes—to themselves. They accept that. They say, "We will pay more in order to make a statement of moral concern of importance to this community to this City Council, to this Mayor." That is a very American thing to do. It is not to be disparaged, not to be prevented—no, not to be prevented, so long as we are a country of Thoreaus. Nor is there any need to do so.

I offered this amendment in the Committee on Environment and Public Works. The amendment addressed a situation in a city in my State—and in a number of cities across the country. We asked to have the arrangement made that if cities accept higher than least-cost bidding, then those cities can make up for the higher costs that result. Our committee, with the great courtesy we show one another, under the very remarkable leadership of the senior Senator from Vermont—who has a Vermont Yankee's capacity to tolerate even New Yorkers—said:

> Fine, if you want to do that, you do it. You pay for it. We are not going to let this get in the way either of the highway program or of the expression of views about matters important to American communities.

Therefore, it is there. Essentially identical language is in the House bill.

Mr. President, I have no desire to prolong this debate. I would not have entered it, save that my good friend, the distinguished Senator from Idaho, has observed that other Senators felt it necessary to raise the matter. That is their right, and in the end we will vote. I hope we will vote to sustain the Committee on Environment and Public Works in a fine American tradition which is somewhat disorderly, but wonderfully creative in the long run.

Mr. D'AMATO. Mr. President, I join my distinguished colleague, the senior Senator from New York [Mr. MOYNIHAN], and commend him for having moved to include this provision in the bill.

I believe that it should be the right of any municipality to undertake a conscious decision not to do business with those who might be giving aid and comfort to the practice of apartheid. I believe that this is a very real and strong sentiment, not only in the city of New York, but also in the other municipalities which have already undertaken similar legislation. In the case of the city of New York, the local government is willing to make up any deficiency that might result from refusing to award a contract to a low bidder that does business with South Africa. Thus, the taxpayers of the United States will not be called upon to pay any additional costs, but the city, itself, will do so.

The taxpayers of the city have been supportive of this initiative. Overwhelming support has been given to this local legislation by other members of the New York delegation. They have not come out in opposition. They are willing to make up for the economic difference that possibly may take place.

There has been mention by the distinguished Senator from Idaho [Mr. SYMMS] that we have already dealt with this issue on the Comprehensive Antiapartheid Act of 1986 and that that is where it should be left. I am concerned that there is a very real chance that that bill will be vetoed, and we will find ourselves in a situation where we have not adequately addressed this problem.

I join Senator MOYNIHAN in saying that we are not attempting to make foreign policy by the inclusion of this language in the highway bill. What we are saying is that we support the efforts of those communities which have chosen to restrict their dealings with those who do business with South Africa, whether it is Alameda County, CA, or Tucson, AR, or our great city of New York. If those local governments wish to say clearly that they will not countenance doing business with South Africa, we should hear their voices. If they are willing to put their money where their mouths are, and if they are willing to make a commitment of their resources, to see to it that the practice of apartheid is not encouraged, then the Senate should not penalize them for their efforts.

Mr. President, I hope we will be able to retain this important language which would underscore the revulsion we feel toward the system of apartheid. I urge my colleagues not to delete this provision and to join me in our crusade against State-sponsored racism.

Thank you, Mr. President.

Mr. WALLOP. Mr. President, I will be very brief on this, as one who has stood on this floor many, many times as an advocate of local control, local government, State government. But I am also here as an advocate of the concept of constitutional government.

Here is an advocate of the fact that some things the National Government must do, and other things the State government, local government, local commissions, by our concept, must do. One of the things the Federal Government must do is conduct the foreign policy of the United States.

I say to my friend from New York that this has nothing to do with apartheid. It has to do with apartheid in the case of New York City and perhaps another local government or two around the country, but it has nothing to do with apartheid.

□ 1300

The senior Senator from New York sent in a statement in behalf of the public. It is not a statement of interest on behalf of the public. It is a statement of foreign policy.

Now, I can conceive of marvelous politics at the local level where local entities would much prefer to talk about the emotional issues of foreign policy rather than the issues for which they are constituted. The school board would far prefer to speak to foreign policy rather than curriculum. A city council would far prefer to speak to foreign policy rather than the sewers or streets. The planning commission would far prefer to speak to South Africa or Cambodia or some other place than they would on open spaces or requirements in conflict between interests within their jurisdiction. The county commissioners would far prefer to speak of the national emotional issues of foreign policy rather than speak about the construction of roads or the organization of school districts or the other kinds of things of which they are constituted and, of course, they would because it is a diversion from their political responsibility.

But were we to let this go, the Secretary of State of the United States would soon be closely involved with negotiations with every community in America as well as with every foreign country. It soon would be the obligation of the Secretary of State to deal with the city of New York, or the county of Sheridan in Wyoming or some State that wished to offer sanctuary and that is not the role that was conceived of by the Founding Fathers nor must it ever be.

It is difficult enough for this body to make its recommendations to the President of the United States and the executive branch as to the conduct of foreign policy. It does not belong in the hands of local governments.

And this is not a question of apartheid. This is a question of foreign policy of the United States. It is not a question of apartheid or sanctuary movements or of nuclear free zones or anythng else. It is a question that the national policy of the country must be set at the national level.

The local governments will find me standing by their side in every single instance in which their right to make local decisions is clear. This is not one of those areas. And I urge this amendment's adoption.

Mr. SYMMS. Mr. President, now, on this amendment I see the distinguished ranking member of the Foreign Relations Committee is here on the floor.

I ask unanimous consent to have printed in the RECORD an article from the Wall Street Journal by Mr. Spiro, the editor of the Virginia Law Review, Wednesday, September 24.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Sept. 24, 1986]

GET STATES AND CITIES OFF FOREIGN-POLICY STAGE

(By Peter Spiro)

A wave of state and local boycotts and divestiture actions directed against the white regime in Pretoria has meant that much of U.S. policy on South Africa has evolved outside Washington. On this issue mayors, county executives and governors have been elevated to virtual equality with U.S. national legislators and administration officials; never before has the action of these nonfederal authorities loomed so large in shaping a foreign-policy issue.

The phenomenon is a disturbing one, with serious implications not only for the development of a national strategy to help dismantle apartheid but also for the making of U.S. foreign policy in general. Congress and the courts should move against it while it remains largely restricted to the South Africa question. Allowed to act untrammeled for the time being, cities and states may grow accustomed to their newfound role and resort to it more frequently on a broader range of issues.

Congress has not been blind to the problem. Sen. Richard Lugar (R., Ind.), chairman of the Senate Foreign Relations Committee and author of the latest sanctions bill, has made clear in floor debate that his proposal, if passed into law, would "preempt" state and local measures by "occupying the field" of South Africa policy. In other words, his legislation would render such measures inoperative. Uncontested, Sen. Lugar's statement would probably suffice to support a judicial scrapping of local anti-South Africa laws were they to face court challenge.

THE SOONER THE BETTER

While agreeing to the substance of the Lugar sanctions, the House of Representatives passed a non-binding rule in order to establish legislative intent that would allow state and local laws to stand up in court. Anti-apartheid representatives have also managed to pass riders to various appropriations measures excusing local governments with anti-apartheid laws from federal competitive-bidding requirements.

Sen. Lugar has the right idea on the question of pre-emption, but he states the case too softly. The scrapping of state and local anti-South Africa laws is not simply a matter of congressional intention. It is mandated by constitutional law, and the sooner someone takes Sen. Lugar's hint to the courts, the better.

State and local governments have, in effect, implemented a national policy encouraging full divestiture. In doing so, they have bypassed federal decision making on an issue upon which only the federal government is empowered to decide.

The stage is by now well set. Dozens of cities and states, from Jacksonville, Fla., and Richmond, Va., to New York City, California and New Jersey, have moved to divest themselves of securities in corporations that do business in South Africa, many regardless of their compliance with the Sullivan principles (a code of fair-labor and anti-discriminatory practices). A growing number of these authorities have similarly moved to restrict or prohibit procurement from corporations doing business in South Africa.

The exclusive federal domain over foreign affairs is, first of all, firmly grounded in constitutional tradition. It was partly because the original 13 states found themselves so weak in the international arena that they abandoned the Articles of Confederation and adopted the Constitution itself almost 200 years ago; as James Madison put it, "If we are to be one nation in any respect, it clearly ought to be in respect of other nations." Thus only the federal government is allowed by the Constitution to conclude treaties with foreign states.

The Supreme Court has unequivocally upheld this precept of uniformity. In the landmark 1941 case of *Hines vs. Davidowitz*, the court struck down a Pennsylvania statute requiring the fingerprinting and photographing of enemy aliens where Congress had required only that they register with the government. "Our system of government," the decision concluded, "is such that the interest of the cities, counties and states . . . imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference."

In invalidating state probate laws that, in practice, tended to disallow inheritance by citizens of East-bloc nations, the court extended these clear dictates with its 1968 opinion in *Zschernig vs. Miller* so as to condemn any inquiry by local authorities into political conditions prevailing in foreign countries. Significantly, the local action considered in *Zschernig* was not in conflict with federal policy. The implication of the decision is that states may not under any circumstances jump into the foreign-policy arena. Although the court has also indicated a willingness to protect state action in the marketplace from federal interference, such precedent has never been applied in a situation involving foreign relations. (Some states and cities have "buy-America" laws on the books, but the courts have never conclusively ruled on their constitutionality.)

In fact, it is in the long-term interest of local authorities to defer to Washington in the making of foreign policy—ever where it may impinge on decisions traditionally left to their discretion. This is why—to take an extreme and unlikely example—the U.S. would not tolerate one state declaring war on another country, for all the states would suffer the consequences of such a brazen act. More plausibly—and closer to the South African example—if car-producing Michigan decided that it would no longer invest in or make purchases from Japanese corporations or their subsidiaries, Japan might strike back by limiting textile imports from the U.S. North Carolina would be hurt as a result of Michigan's parochialism, and yet it would have little recourse in Washington to prevent Michigan or other states from so compromising its interests, if local anti-apartheid laws set any sort of precedent.

Such laws are already setting a precedent. Massachusetts recently moved to ban pension-fund investments in banks with loans to corporations selling armaments to Britain for use in Northern Ireland. Michigan has taken steps to restrict university holdings in corporations doing business with the Soviet Union. So-called sanctuary legislation and nuclear-free-zone laws are also symptomatic of this trend. The question of nonfederal involvement in foreign affairs is one that should transcend partisan politics. A stand in favor of local action on today's issue—that of South Africa—may backfire tomorrow.

The position of cities and states on South Africa also stands in clear contrast to federal policy in the area. The president's executive order of September 1985—which remains the law of the land—implemented limited economic measures designed to maintain a U.S. economic presence in South Africa while eliminating some counterproductive aspects of that presence, such as the sale of computer goods to apartheid-enforcing agencies of the Pretoria government. Even if the Lugar sanctions package were to become law, presumably over a presidential veto, companies complying with the Sullivan principles would in no way be penalized for staying in South Africa.

But state and local actions, of course, mean that a continued South African presence would remain a serious liability. Companies that do not disinvest face millions of dollars in lost municipal contracts and lowered share prices on national markets. The probable result? "In five years," according to financial analyst Pierre A. Rinfret, "almost no American investment will be left in South Africa." While the impact of nonfederal measures is perhaps not as direct and immediate as an all-out embargo on continued investment in South Africa, the long-term result will be the same as if federal action were taken.

A SERIOUS IMPACT

These nonfederal measures are far more sweeping than similar actions taken by private institutions and investors, since they often go beyond mere disinvestment and include boycotts against products with the slightest South African connection. And, unlike their private-sector counterparts, they enjoy the imprimatur of governmental authority. In addition to provoking Pretoria's ire, these have had a serious impact on their intended corporate targets. Nineteen companies have pulled out of South Africa this year alone, and many more are taking second looks at their presences there. Several, including Bell & Howell Co. and Phibro-Salomon Inc., have cited state and local action as their primary motivation for their withdrawal.

If a majority of Americans want disinvestment from South Africa, or action on any other matter of foreign policy, then presumably that action can be taken through their elected representatives in Washington. Upholding this institutional necessity may take patience and restraint where the political process is slow to register electoral opinion, but it is infinitely preferable to allowing mayors and governors to transcend their competence and assume the status of would-be secretaries of state. The U.S. has enough trouble developing one foreign policy; let us not thereby devolve to hundreds.

Mr. SYMMS. Mr. President, I would just like to say that it is the wish of the managers of the bill that we could keep the debate very brief on this subject. It is most important, I think, that we get this highway legislation through.

The majority leader has been most patient, but his patience is running thin. We need to get this bill done very soon, and I mean within the next 30 minutes.

So I hope we could keep our remarks as brief as possible, say what we have to say, vote on this amendment, and then vote on final passage of the bill.

I yield the floor.

Mr. PELL. Mr. President, I oppose this amendment.

To date, 19 States, including my home State of Rhode Island, and 81 cities and counties have enacted laws or other binding antiapartheid measures restricting public funds, investments, and/or procurement and contracting practices.

These measures reflect the strength and commitment of the grass roots antiapartheid movement in the United States—a movement that has played an important role in focusing attention on the immorality of apartheid and the failure of the administration's constructive engagement policy.

In my view, these and other antiapartheid measures that may be adopted in the future by State and local governments should stand.

In voting for the South Africa bill in August, it was not my intention to preempt State and local antiapartheid laws. In my view, there is no language in the bill that constitutes preemption.

When the distinguished chairman of the Foreign Relations Committee raised the preemption issue during Senate consideration of the South Africa bill, I made the point that it is a State's privilege to invest any way it wishes and that that is not a foreign policy matter.

The preemption issue was never discussed during the Foreign Relations Committee's deliberations on the South Africa bill and was only briefly touched upon during debate on the floor.

The House, on the other hand, has spoken clearly on this issue. In passing the Senate's bill on South Africa, the House adopted a resolution clarifying its intent not to restrict, nullify or affect the authority of State and local governments to enact antiapartheid measures.

I believe that section 105(b) of the bill before us is fair, in that States and local governments would bear the excess financial costs of enforcing their antiapartheid laws, and consonant with the view that the South Africa bill recently passed by Congress does not preempt State and local antiapartheid measures.

I urge my colleagues to oppose the amendment.

I yield the floor.

Mr. D'AMATO. Mr. President, I do not wish to prolong this but I could not help but concur with my distinguished colleague, the senior Senator from Rhode Island, when he indicates that this is not an abdication of the responsibility of the Federal Government to make its policies. There is nothing that really should preclude a local community if it is willing to pay for any additional costs that are incurred as a result of its local initiative.

Let me simply refer to the clear intent of the House of Representatives on this specific issue upon passage of the Comprehensive Antiapartheid Act of 1986. The House also passed a resolution, House Resolution 548, with respect to that bill in which they stated:

Resolved, That in passing the bill, H.R. 4868, as amended by the Senate, it is not the intent of the House of Representatives that the bill limit, preempt, or affect, in any fashion, the authority of any State or local government or the District of Columbia or of any Commonwealth, territory, or possession of the United States or political subdivision thereof to restrict or otherwise regulate any financial or commercial activity respecting South Africa.

So the House clearly went on record as indicating that it was not attempting to preempt States and cities from doing exactly what this provision would allow them to do.

I yield the floor.

Mr. SYMMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER (Mr. DENTON). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

On this question the yeas and nays were ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Ohio [Mr. METZENBAUM] is absent because of illness in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 65, nays 32, as follows:

[Rollcall Vote No. 287 Leg.]

YEAS—65

Abdnor	Gramm	Murkowski
Andrews	Grassley	Nickles
Armstrong	Hatch	Nunn
Baucus	Hatfield	Packwood
Bentsen	Hawkins	Pressler
Bingaman	Hecht	Quayle
Boren	Heflin	Roth
Boschwitz	Heinz	Rudman
Broyhill	Helms	Sasser
Bumpers	Humphrey	Simpson
Burdick	Inouye	Stafford
Chiles	Johnston	Stennis
Cochran	Kassebaum	Stevens
Danforth	Kasten	Symms
Denton	Laxalt	Thurmond
Dole	Long	Trible
Domenici	Lugar	Wallop
Durenberger	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky
Gorton	McConnell	

NAYS—32

Biden	DeConcini	Hart
Bradley	Dixon	Hollings
Byrd	Dodd	Kennedy
Chafee	Eagleton	Kerry
Cohen	Glenn	Lautenberg
Cranston	Gore	Leahy
D'Amato	Harkin	Levin
Melcher	Proxmire	Sarbanes
Mitchell	Pryor	Simon
Moynihan	Riegle	Specter
Pell	Rockefeller	

NOT VOTING—3

Garn	Goldwater	Metzenbaum

So the amendment (No. 2895) was agreed to.

□ 1330

Mr. SYMMS. I move to reconsider the vote by which the amendment was agreed to.

Mr. STAFFORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MOYNIHAN. Mr. President, we have had a very clear expression of the Senate's will, with one-third of the Chamber recorded in opposition to the amendment to strike our antiapartheid provision. As for those who supported the amendment, that is the way we make decisions in this body. I wish to state for the record that the House bill has an essentially identical provision. I express the hope that the House might prevail in the conference, the committee having been strongly of this view. That, too, will be determined.

I appreciate the courtesy of Senator SYMMS and Senator BURDICK in this entire matter. I am sure I speak for Mr. D'AMATO as well.

Mr. STAFFORD. In a decisive vote on July 23, the Senate Environment and Public Works Committee approved section 117 of S. 2405 which provides an equitable and meaningful solution to a law that has become unworkable and ineffective.

The Highway Beautification Program is the only area of Federal law that I know of where the industry which is supposed to be regulated by the law is the only group which supports the law and has vehemently opposed any changes to the law or its repeal. I think that only proves how convoluted the Highway Beautification Act has become since its passage in 1965.

Section 117 of S. 2405 will balance the information needs of the traveling public with the desire for natural scenic beauty along our Nation's highways. Most importantly, it will finally return to the States their constitutional right to regulate existing billboards under their land use laws, and end the preferential treatment billboards have been receiving.

The most devastating blow came in 1978 when the billboard industry was able to convince Congress to give billboards preferential treatment by requiring States to pay cash for the removal of all nonconforming billboards whether or not they were taken down pursuant to the Highway Beautification Act. If States did not pay cash,

they would lose 10 percent of their Federal-aid highway money.

States and localities have always regulated and removed billboards, and other nonconforming uses, through land use laws derived from their constitutional police power. This authority has been repeatedly upheld by Federal and State courts. Courts have rejected the view that the Constitution mandates payment of cash compensation to property owners on the removal of billboards in Markham Advertising Co. versus Washington; National Advertising Co. versus City of Ashland, OR; and Modjeska Sign Studios Inc. versus Berle as just several examples.

Under the Constitution, States and localities have the authority to provide amortization in removing nonconforming signs in lieu of cash compensation. Courts have consistently rejected constitutional challenges by the billboard industry to amortization. Examples of cases include Lamar Advertising Associates of East Florida, Ltd. versus City of Daytona Beach; Accord, Fischer Buick, Inc. versus City of Fayetteville; Major Media of Southeast, Inc. versus City of Raleigh.

Most nonconforming billboards were identified soon after the 1965 act was passed or at the latest in the early 1970's. These nonconforming billboards have enjoyed between 10 and 15 years of income, profits, and tax benefits and now we are supposed to give them even more. No other nonconforming uses that I know of have been given such generous treatment.

Billboards have no constitutional right to cash compensation as opposed to amortization. The billboard industry is one of the healthiest industries in the country and needs no special protection as evidenced by an article in the June 1983 issue of People & Taxes. In 1982, a time of recession for the rest of the country, Bear, Stearns & Co., put together a tax shelter using Metromedia's 45,000 billboards which Metromedia was willing to sell for $485 million. Metromedia would continue to manage the business side of the project and after 5 years buy the billboards back. In 1982, Bear, Stearns was projecting a 43-percent after-tax return on investment. Most of these billboards were not giving travelers any information at all. Forty-one percent of them advertised cigarettes and 21-percent promoted alcohol.

When Congress required the States to pay cash, Congress also promised to provide Federal funds to pay cash and remove nonconforming billboards. Congress has not lived up to its promise and has not provided the money. With record budget deficits and severe cuts in all Federal programs now and in the foreseeable future, Congress will not provide any funds to take down billboards. We have tied the States hands entirely which is precisely what the billboard industry wants. The General Accounting Office estimates that the requirement for cash compensation will cost taxpayers nearly $1 billion to pay for just the nonconforming billboards.

Not only are the States hands tied in removing nonconforming billboards, new billboards are going up at an ever increasing rate. According to the General Accounting Office, in fiscal year 1983, 2,235 nonconforming billboards were removed while 13,522 new billboards were erected.

Section 117 of S. 2405 puts the Billboard Control Program back in the hands of the States where it belongs. It would permit the States to choose to remove signs through amortization, or to require cash compensation for the removal of billboards, or the State could choose to do nothing and leave the existing nonconforming billboards stand. If States and localities want to live with the blight of billboards, that should be their choice. But it should not be something forced on them by the Federal Government.

There is ample evidence that billboards are bad for economic development and the tourism industry all of which is related to jobs. A recent poll conducted by the President's Commission on American Outdoors found that "Natural beauty is the most important criterion for men and women in selecting a place to visit." Four of the most tourist dependent States in the country, Alaska, Hawaii, Maine, an Vermont, have all totally banned billboards.

American communities which have banned or strictly regulated billboards have all benefitted economically. Examples of such communities are Scottsdale, AZ; Sante Fe, NM; Boulder, CO; Montgomery County, MD; Fairfax County, VA; Chapel Hill, NC; Boca Raton, FL; Marin County, CA; and Honolulu, HI.

The three American cities voted most conducive to business, best to retire to, and most attractive for their size—San Diego, Seattle, and Portland—have all banned billboards.

Most of America's premier vacation resorts ban billboards, including Palm Springs; Lake Tahoe; Carmel, CA; Santa Fe, NM; Socttsdale, AZ; Hilton Head Island, SC; Williamsburg, VA; Boca Raton, FL; and Martha's Vineyard, MA.

The billboard industry maintains that billboards are necessary to provide information to travelers. Yet according to Advertising Age, product advertising, which is largely cigarettes and alcohol, accounts for the majority of all billboard revenues. For those businesses that do provide information to the traveling public, there are effective and attractive alternatives to billboards including logo signs, on-premise signs, information at rest areas and tourist information centers and uniform State business identification signs.

Communities all over the country are demanding the return of their constitutional right to regulate billboards and to regain control of their environment.

I ask unanimous consent that information from the Coalition on Scenic Beauty on public attitudes toward billboards be included at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PUBLIC ATTITUDES RE BILLBOARDS

Memo to Charlie Floyd, President of the Coalition.

The allegation is frequently made that there are no studies which indicate that the average person likes or does not like billboards. In this connection I have kept files on this matter over a period of years, and would like to submit the following for the Coalition's records.

On 18 July 1979 I testified before the U.S. Senate's Committee on Environment and Public Works re S. 344, a bill by Senator Stafford to modify the Highway Beautification Act of 1965 on the ground that the Act, as later modified, was not accomplishing its stated purpose.

At the conclusion of my testimony I submitted an "Addendum to Testimony of Yale Maxon, re S. 344, Public Attitudes Re Billboards, Documentation from fourteen polls."

This addendum is contained on pages 289—291 inclusive of Hearings Before the Subcommittee on transportation of the Committee on Public Works, U.S. Senate, 96th Congress, First Session on S. 344, A Bill to Amend Section 131, Title 23, United States Code. Serial No. 96-H25. See following sheets for the content of these data.

Summarizing the above data, it can be said that of the 13 polls that gave respondents a choice of indicating a pro-billboard or anti-billboard attitude, the percentages of anti-billboard attitudes were as follows: 61%; 65%; 66%; 69%; 69%; 71%; 76%; 76%; 79%; 79%; 82%; 82%; and 95%.

[Addendum To Testimony of Yale Maxon re S. 344]

PUBLIC ATTITUDES RE BILLBOARDS: DOCUMENTATION FROM FOURTEEN POLLS

"It would appear that wherever billboards continue to exist, they do so despite the contrary force of public opinion." This comment accompanies a 1977 study by the California Roadside Council from which the following data have been abstracted. The data indicate that whether tested at the national, state, or local level, public sentiment is opposed to the visual pollution of the environment caused by the presence of billboards.

PUBLIC ATTITUDES RE BILLBOARDS: DOCUMENTATION FROM 14 POLLS

Title or description, area, year, and finding:

Poll No. 1: Maryland State Auto Club: Maryland, 1957—25,000 questionnaires were sent out to motorists and AAA members asking whether recipients would favor or oppose a ban on billboards within 1000' of all controlled access freeways in the state. 95% favored the total ban.

Poll No. 2: Trendex Nationwide News Poll: U.S.A., 1957—Respondents were asked whether they favored or opposed strict limitation of outdoor advertising along major state highways. 65% favored strict limitation.

Poll No. 3: University of Akron: I-90 between Cleveland and Erie, Pa., 1967—2051 motorists were asked "Should any commercial advertising billboards be allowed on all of I-90?" 71% said none should be allowed.

Polls Nos. 4, 5, and 6: San Diego, 1971—Three groups of students of Professor Jack Haberstroh, Professor of Advertising at San Diego State University, contacted San Diego residents with the following question: "The City Council of San Diego early next year will consider an ordinance which would ban all billboards except those used for the purpose of identification of the property, or advertising goods and services available on that property. Are you in favor or not in favor of such an ordinance.

Poll No. 4: Mailed Random Survey of 195 S.D. residents: San Diego, 1971—In answer to the above question, 82% favored the ordinance.

Poll No. 5: Personal Contact of 200 individuals at busy traffic locations: San Diego, 1971—In answer to the above question, 76% favored the ordinance.

Poll No. 6: Random phone survey of 200: San Diego, 1971—In answer to the above question, 66% favored the ordinance.

Poll No. 7: State Planning Office: Maine, 1973—In response to the question "Should the State pass legislation to ban billboards on State Highways?" 61% said "yes".

Poll No. 8: Opinion Research of California: Long Beach, 1974—In the course of in-home interviews on "Citizen Attitudes Toward Future Development" with 602 persons statistically representative of the city's population as a whole, "Provide more stringent regulations of commercial signs and billboards" rated in desirability above each of the following: "Create more parks . . ." Expand program of landscaping roadways and center strips." "Restrict strip commercial zoning."

Poll No. 9: City Planning Commission: San Gabriel, 1976—Survey questionnaire was sent out to 1104 businesses. Of the 165 who responded, 79% said billboards should not be permitted in San Gabriel.

Polls Nos. 10, 11, and 12: San Diego, 1976—Four-year follow-up of Polls 4, 5 and 6 by graduate student of Professor Jack Haberstroh of San Diego State University (see above). All respondents were asked the following question: "In 1972 the City Council of San Diego passed an ordinance banning all billboards except those used for the purposes of identification of property, or advertising goods or services available on that property. This ordinance has been under appeal and in the courts for the last four years. Are you in favor or not in favor of seeing this ordinance enforced?"

Poll No. 10: Mailed Random Survey of 188 San Diego residents: San Diego, 1976—76% favored enforcement of San Diego's total ban on commercial off-site billboards.

Poll No. 11: Personal Contact with 200 San Diego residents at busy traffic locations: San Diego, 1976—82% favored enforcement of San Diego's total ban on off-site commercial billboards.

Poll No. 12: Random phone contacts with 200 San Diego residents: San Diego, 1976—79.5% favored enforcement of San Diego's total ban on off-site commercial billboards.

Poll No. 13: City Staff Survey: Visalia, 1977—City staff interviewed by telephone 896 households regarding the city's signs. 69% answered that the city would be more attractive if it had more stringent regulations on commercial signs.

Poll No. 14: Random Telephone Survey of 42 S.F. residents: San Francisco, 1977—Graduate students of the Urban Studies Program at Antioch College/West, under the direction of Professor Irwin Mussen, sought citizen reaction to a proposal of the City Planning Department to eliminate billboards throughout the city. 69% favored the purposed ordinance.

WHO LIKES BILLBOARDS?

(1) On November 5, 1985, voters in Tucson, Arizona, voted to ban the constuction of all new billboards in Tucson.

(2) On November 6, 1984, voters in Beaufort County, South Carolina, voted overwhelmingly to abolish all billboards in Beaufort County.

(3) A 1984 public opinion poll conducted by Nicolet Research Corporation of Green Bay, Wisconsin, indicated that a large majority of Wisconsin residents oppose billboards.

(4) Houston Mayor Kathy Whitmire was elected after pledging to clean up billboard blight in Houston. Six months later the Houston City Council banned the construction of new billboards and enacted its first comprehensive sign ordinance.

(5) In March 1983, the major and city council of Little Rock, Arkansas, unanimously voted to ban new billboards in that city.

(6) In January 1984, the mayor and city council of Austin, Texas, voted unanimously to ban all new billboards.

(7) In March 1984, the mayor and city council of Ft. Worth banned all new off-premise signs.

(8) Since 1980, over 60 percent of suburban cities in the Houston/Galveston Metro area have followed Houston's lead and voted to prohibit construction of new billboards. This includes blue-collar communities like Pasadena, Texas.

(9) Almost every major American newspaper (from most liberal to most conservative) has editorialized against billboards. For example:

(10) The Los Angles Times calls billboards "Highway Eye Pollution."

(11) The Baltimore Sun calls billboards a "Blight on the Nation."

(12) The Atlanta Constitution calls them a "Spreading Pox on the Urban Landscape."

(13) Readers Digest calls billboards "America's Most Persistent Parasite."

(14) Columnist William Buckley calls billboards "Acts of Aggression Against the American Landscape."

(15) Advertising Executive David Ogilvy calls billboards "hideous."

WHAT'S WRONG WITH BILLBOARDS

(1) Billboards are a form of pollution which scar the face of America. For example, columnist William Buckley calls them "acts of aggression against the American landscape."

(2) Billboards erode the quality of life in America. They pollute our landscape, destroy our historic, cultural, and natural diversity, and undermine America's heritage and sense of place.

(3) Billboards are bad for business. Business, industry, and new residents are all attracted or repelled by a community's appearance. An attractive community generates business and attracts homeowners. Without exception, every American community which has banned or regulated billboards has benefited economically. Just look at Scottsdale, Arizona, Sante Fe, N.M. or Boulder, Colorado to see that this is true.

(4) Billboards are unnecessary. Most billboards advertise cigarettes, liquor, and other products which have nothing to do with roadside businesses. Six states, hundreds of cities, even entire countries have eliminated billboards. All have benefited. [illegible] are alternatives to billboards which provide the same information to motorists without destroying our environment and at less cost to roadside businesses.

(6) Billboards are a form of blight which invariably lower property values, waste energy, and discourage tourism. Tourists seek unspoiled countryside and unobliterated architecture not endless clutter.

(7) Billboards violate our constitutional right to privacy. Unlike other forms of advertising which can be eliminated at the flip of a switch or the turn of a page there is no possible way to turn off a billboard.

(8) Billboards cause traffic accidents. Research and common sense tell us that billboards are designed to distract motorists' attention. Highways cluttered with billboards have more accidents than those that don't.

(9) If every billboard in America disappeared tomorrow no one would miss them. Maine, Vermont, Hawaii, Alaska and hundreds of American cities have eliminated billboards. All have benefited. Billboard controls will help business. Indeed, the Chamber of Commerce in Houston, Texas has made cleaning up billboard pollution one of their top priorities.

(10) Even if we accept billboards as a legitimate form of business there is absolutely no reason why we can't pass regulations to control the size, height, placement, and number of outdoor ads. Presently, billboards are too big, too tall, too many, and in all the wrong places.

SIGN CONTROL IS GOOD FOR BUSINESS

(1) To a great degree, business, industry, and new residents are attracted or repelled by a community's appearance. In other words, what it looks like. An attractive community generates business and attracts homeowners. An attractive community is also a healthy community. It fosters a sense of community pride, a sense of caring, and a sense of place.

(2) Without exception, communities that have enacted sign control ordinances have benefitted economically. For example, Montgomery County, Maryland; Fairfax County, Virginia; Boulder, Colorado; Chapel Hill, North Carolina; Boca Raton, Florida; Marin County, California; and Honolulu, Hawaii all have three things in common: strict sign controls, healthy economies, and national images as good places to live, work, and do business.

(3) The Joint Economic Committee of the United States Congress reports that a city's quality of life is more important than purely business-related factors when it comes to attracting new businesses, particularly in the rapidly growing high-tech and service industries.

(4) The three American cities voted most conductive to business, best to retire to, and most attractive for their size—San Diego, Seattle, and Portland—have all banned new billboards and enacted tough on-premise sign controls.

(5) Sign control is even more important when it comes to communities that depend on tourism. As tourists, Americans collectively spend millions of dollars seeking un-

spoiled countryside and unobliterated architecture. Yet nothing destroys the unique character of a place faster than uncontrolled signs and billboards. The more a community does to enhance its unique set of natural, historic, and architectural assets the more tourists it will attract. On the other hand the more one place comes to look like everyplace else, the less reason there is to visit.

(6) Almost all of America's premier vacation resorts ban billboards. For example, Palm Springs, Lake Tahoe, and Carmel, California; Sante Fe, New Mexico, Scottsdale, Arizona, Hilton Head Island South Carolina; Williamsburg, Virginia; Boca Raton, Florida; and Martha's Vineyard, Massachusetts have all recognized that sign control helps attract tourists' dollars and aids the local economy.

(7) Chaotic overabundance of billboards almost invariably accomplishes an area's deterioration and lowers property values.

(8) Indeed, the copy cat competition to see who can build the biggest, tallest, and most distracting signs always backfires. Like screaming children in a crowded classroom, the more everyone shouts the less you can hear. Sign cutter works the same way. It means the viewer sees less, not more.

(9) When a community passes regulations that effectively limit the size and number of signs, the viewer actually sees more. As a result businesses do a more effective selling job at lower cost. Elimination of clutter also increases motorist safety, and reduces the visual assault on our senses.

(10) You need only look about you to see that every step taken to improve a community's livability includes without question good sign control. You always find it in modern shopping malls, revitalized business districts, and top grade industrial parks.

Mr. LEAHY. Mr. President, I rise today to support the highway bill reported by the Senate Environment and Public Works Committee, and to congratulate my good friend, the senior Senator from Vermont, Mr. STAFFORD.

Senator STAFFORD and his committee worked long and hard to produce a bill to make sorely needed improvements and repairs in our Nation's highway system. There is little doubt that much work must be done. More than 1,100 bridges in my State of Vermont, alone, are deficient. Much needed improvements are necessary on our State's roads, including Route 7, in the western part of Vermont.

Mr. President, the Senate highway bill is more than a parochial piece of legislation. It authorizes more than $52 billion in highway programs to improve the flow of interstate commerce and to make our Nation's roads safer for the traveling public.

The Senate highway bill achieves all of these things without increasing the Federal gas tax or adding to the deficit. There is no need to raise the gas tax to pay for better highways, because the Federal highway trust is currently running a $16 billion surplus.

My support for Senator STAFFORD's highway bill follows my vote in 1982 to renew our investment in America's infrastructure. I said at that time that our Nation's highways and bridges were in trouble, and I voted with Senator STAFFORD to increase the gas tax to pay for better roads and bridges. Both of us took a lot of heat for our vote.

But my vote for the 1982 highway bill is one of which I am proud.

Only later did our critics realize the deteriorating condition of our Nation's highways. But if we had waited to improve our highways until it became popular, or until some tragedy shocked us into action, the Nation's roads would have deteriorated even more. The cost of repairing and improving those highways would have greatly increased.

The current Senate highway bill is equally farsighted. But we must not become complacent. All of us will look to Senator STAFFORD in the future to bring legislation before the Senate to maintain our investment in the Nation's highways.

I urge the Senate to adopt the highway bill.

Mr. DOMENICI. Mr. President, I would like to take a few moments to address the provisions contained in this bill pertaining to the disadvantaged business enterprise program.

The committee received a great amount of testimony on this program; it is one that has generated a great deal of controversy. Some have argued for its elimination, but the committee took a firm stand in support of its continuation. There was a recognition by the committee, however, that there have been serious implementation problems with the program.

Therefore, section 130 of the legislation before us attempts to address some of these problems. Significant reforms include the following:

Establishment of Federal minimum uniform certification criteria for States to use in certifying whether a concern is disadvantaged. This is important to make sure nonminority contractors know who are qualified DBE's certified under this program.

Requirement that States expend not less that 5 percent in 1988, not less than 7 percent in 1989, and not less than 10 percent in 1990 of the overall DBE goal directly with DBE firms. This requirement should focus the attention of State governments on increasing the opportunities for DBE's to be prime contractors.

Changing the definition of a DBE to include small business concerns with annual average gross receipts less than $10 million and to include women as "socially and economically disadvantaged individuals"; and

Allowing up to 10 percent of the costs of each contract incurred by State and local governments and prime contractors in assisting DBE's to be used to meet the goal.

Mr. President, these provisions are an important step in the right direction, but we may want to consider further changes at a later date. I feel strongly that we must continue our oversight of this program to ensure that it is being implemented properly.

This is one Senator who believes that the DBE program is essential in bringing disadvantaged businesses into the marketplace. However, without proper implementation the provision will not help anyone. I commend the committee for its efforts in this regard.

Mr. SPECTER. Mr. President, at this time I wish to raise with Senator SYMMS the matter of section 127 of S. 2405, as reported by the Committee on Environment and Public Works, which would establish a $500,000 threshold of application for "Buy America" requirements on Federal Aid to Highway and Transit Contracts. Under current law, "Buy America" requires that 100 percent of all steel and other construction materials used in STAA authorized contracts be domestically produced.

While taking large strides toward rehabilitating our Nation's transportation infrastructure, S. 2405's predecessor, the Surface Transportation Assistance Act of 1982, also gave a much needed boost to the suffering steel and construction industries.

The U.S. Department of Transportation estimated that STAA led to the creation of over 100,000 jobs within the first year of its enactment. The Pennsylvania Economy League calculates that for every $1 million spent on highway construction, a total of 104 direct and indirect jobs are produced. Because of STAA-funded procurement, reportedly over 2 million more tons of steel are produced, which supports over 6,000 new jobs in the vital steel industry. The "Buy America" provision has been a great success.

Mr. SYMMS. I appreciate the Senator's concern about this important issue. You are correct in stating that section 127 exempts projects costing $500,000 or less from domestic content requirements. It was the committee's position, however, that reestablishment of such a threshold provision would help to reduce administrative burdens and facilitate the highway and transit procurements of grantees with small projects, and lower the cost of the highway and transit programs.

Mr. SPECTER. I must vigorously oppose this clause which would exempt contracts, under $500,000 from being subject to the "Buy America" provision. This is plainly an attempt to subvert our current successful "Buy America" policy. If this new change had been in effect in fiscal year 1985, approximately 3,000 or 48 percent of the 6,275 contracts awarded would have been exempt from "Buy America." Over the last 6 years, almost 55 percent of all Federal-aid highway

construction contracts were for $500,000 or less.

In addition to a decrease in production by our important steel industry, a drop in domestic procurement imposed by the $500,000 threshold will also translate into a loss of tax revenues at a time when we are trying to reduce deficits. A study by the Congressional Research Service on this issue reports that for every $1,000 purchase of domestic materials by the Federal Government, $464 are eventually recaptured through taxes at the Federal, State, and local levels. If the $500,000 threshold were to become law, we could lose $1.6 billion in tax revenues over the next 4 years at a time when we especially need to be fiscally tight.

Mr. SYMMS. I would note for the RECORD that the statistics cited from the Congressional Research Service [CRS] study are based on the assumption that without "Buy America" requirements, all steel and other construction materials used in Federal-aid highway and transit contracts would be foreign-produced. I am advised that American-produced materials covered under the "Buy America" provision are often very competitively priced with foreign-produced materials and the CRS study, therefore, may have overstated the actual impact of this "Buy America" threshold on American manufacturers. However, I recognize the Senator's desire to ensure that the money of American taxpayers goes to support American jobs and American industries, and will work to protect these concerns in conference. The Senator's cooperation will further our shared interest in securing passage of this highway reauthorization legislation, without which State highway construction and repair programs would be frozen to a halt.

Mr. SPECTER. Mr. President, on the basis of such assurance that the chairman of the Subcommittee on Transportation will protect my concerns with respect to the "Buy America" statute, I withdraw my amendment from further consideration and yield the floor.

Mr. HEFLIN. Mr. President, the amendment of the Highway Beautification Act concerning the elimination of just compensation for the removal of billboards is, in my opinion, unfair and unnecessary. Since the act's passage in 1965, Congress has held firm in its insistence on the payment of just compensation for lawful signs removed by Government action. The Senate Committee on Public Works, predecessor of our present Committee on Environment and Public Works, unanimously elected to pay just compensation for signs and billboards when they considered and reported the bill in 1965.

Just compensation is fair, and it is totally consistent with all other provisions of the Federal-Aid Highway Program that result in the acquisition of personal and real property.

I believe Congress should do what is fair, and continue the compensation requirement as contained in the House bill.

Mr. CRANSTON. Mr. President, I want to commend the leadership of the Senate Environment and Public Works Committee for their diligence in bringing to the Senate a multiyear highway reauthorization bill. Reauthorization of Federal Highway Programs is vitally important to the growing transportation needs of California and the Nation. The timely maintenance and expansion of our highway system, made possible by sound planning, is critical to California's continued economic growth. Such planning is possible only with a multiyear Federal authorization of highway programs.

I support prompt Senate approval of the multiyear reauthorization of highway programs in S. 2405. At the same time, I support the California highway demonstration projects included in H.R. 3129, the House counterpart to the Senate highway bill. These are projects of merit, important to communities throughout California. They respond to specific local transportation needs unmet by the current highway program.

I am aware that S. 2405 makes possible the addition of demonstration projects, to be paid for from the State's Federal apportionment. Additional Federal funds are not authorized under the Senate bill, as they are under the House bill. I will not propose to include these projects in S. 2405. California operates under a 5-year State Transportation Improvement Program [STIP] that commits its highway funds to specific projects well in advance. Including new projects in the Senate bill would necessarily displace others to which the State is already committed. Nonetheless, I want to make it clear to the chairman and the ranking minority member that my not offering an amendment to include the projects in the committee bill does not signal any lack of support for the California projects set forth in H.R. 3129. Rather, it simply means that I view a conference with the House as the best place for resolving the matter, where the relative merits of the Senate versus House funding approach for demonstration projects may be thoroughly debated.

I want to make my support for these projects clear to the chairman and ranking minority member. I would like their acknowledgment of my support and their assurance that every effort will be made to resolve the demonstration project funding matter in conference with the House.

Mr. STAFFORD. I can assure my distinguished colleague from California that I understand he is supportive of the California projects in H.R. 3139, and that the Senate will be diligent in its attempts to reach a compromise in conference with the House.

Mr. BENTSEN. Mr. President, I also wish to assure the Senator from California that I am aware of his support for the projects and that I will assist the chairman in achieving an equitable resolution of the issue in conference.

Mr. CRANSTON. I thank the distinguished floor managers.

AMENDMENT NO. 2893

Mr. GORTON. Mr. President, I ask unanimous consent that in the engrossment of H.R. 3129, the highway bill, the enrolling clerk be instructed to insert in the text of my amendment, numbered 2893, agreed to earlier today, the words "or any other" before the word "act." This amendment is necessary to correct a technical drafting error and has been agreed to by Senators SYMMS and BURDICK.

The PRESIDING OFFICER. Without objection, it is so ordered.

Are there further amendments? The Senator from Idaho.

Mr. SYMMS. Mr. President, I move that we advance the bill to third reading.

The PRESIDING OFFICER. If there are no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. SYMMS. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 889, H.R. 3129.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 3129), to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. SYMMS. Mr. President, I move to strike all after the enacting clause and to substitute therefore the text of S. 2405 as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Idaho.

The motion was agreed to.

Mr. SYMMS. I ask for the yeas and nays on passage.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

The PRESIDING OFFICER (Mr. COCHRAN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 288 Leg.]

YEAS—99

Abdnor	Goldwater	Melcher
Andrews	Gore	Metzenbaum
Armstrong	Gorton	Mitchell
Baucus	Gramm	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nickles
Bingaman	Hart	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Pressler
Broyhill	Hecht	Proxmire
Bumpers	Heflin	Pryor
Burdick	Heinz	Quayle
Byrd	Helms	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Stevens
Dole	Levin	Symms
Domenici	Long	Thurmond
Durenberger	Lugar	Trible
Eagleton	Mathias	Wallop
Evans	Matsunaga	Warner
Exon	Mattingly	Weicker
Ford	McClure	Wilson
Glenn	McConnell	Zorinsky

NOT VOTING—1

Garn

So the bill (H.R. 3129) was passed, as follows:

That this Act may be cited as the "Federal-Aid Highway Act of 1986".

AUTHORIZATIONS

SEC. 102. The following sums are hereby authorized to be appropriated out of the Highway Trust Fund other than the Mass Transit Account—

(1) For the Federal-aid Interstate-Primary Program $8,150,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(2) For the Federal-aid urban system $750,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(3) For the Federal-aid secondary system in rural areas $600,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(4) For bridge replacement and rehabilitation under section 144 of title 23, United States Code, $1,500,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. All but $200,000,000 per fiscal year of each such authorization shall be apportioned as provided in 23 U.S.C. 144(e). Such $200,000,000 shall be obligated as provided in 23 U.S.C. 144(g)(2). The minimum percentage off-system bridge provisions of 23 U.S.C. 144(g)(2) shall continue effective in fiscal years 1987, 1988, 1989, and 1990;

(5) For carrying out the Federal lands highway program under section 204 of title 23, United States Code—

(A) For forest highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For public lands highways, $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For Indian reservation roads, $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For park roads and parkways $75,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(6) For carrying out the territorial highway program under section 215(a) of title 23, United States Code—

(A) For the Virgin Islands, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(B) For Guam, $5,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(C) For American Samoa, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(D) For the Commonwealth of the Northern Mariana Islands, $1,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(7) For carrying out section 402 of title 23, United States Code (relating to highway safety construction programs), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(8) For carrying out sections 307(a) and 403 of title 23, United States Code (relating to highway construction safety research and development), by the Federal Highway Administration, $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990;

(9) For projects for the elimination of hazards under section 152 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990; and

(10) For projects for the elimination of hazards of railway-highway crossings on any public road under section 130 of title 23, United States Code, $175,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

INTERSTATE SUBSTITUTE PROGRAM

SEC. 103. (a) Section 103(e)(4) of title 23, United States Code, is amended to read as follows:

"(4) INTERSTATE SUBSTITUTE PROGRAM.—

"(A) WITHDRAWAL OF APPROVAL.—Upon the joint request of a State Governor and the local governments concerned, the Secretary may withdraw approval of any route or portion thereof on the Interstate System which was selected and approved in accordance with this title, if the Secretary determines that such route or portion thereof is not essential to completion of a unified and connected Interstate System and if the Secretary receives assurances that the State does not intend to construct a toll road in the traffic corridor which would be served by the route or portion thereof.

"(B) SUBSTITUTE PROJECTS.—When the Secretary withdraws approval under this paragraph, a sum equal to the Federal share of the cost to complete the withdrawn route or portion thereof, as that cost is included in the latest Interstate System cost estimate approved by Congress, or up to and including the 1983 interstate cost estimate, whichever is earlier, subject to increase or decrease, as determined by the Secretary based on changes in construction costs of the withdrawn route or portion thereof as of the date of approval of each substitute project under this paragraph, or the date of approval of the 1983 interstate cost estimate, whichever is earlier, shall be available to the Secretary to incur obligations for the Federal share of either public mass transit projects involving the construction of fixed rail facilities or the purchase of passenger equipment including rolling stock, for any mode of mass transit, or both, or highway construction projects on any public road or both, which will serve the area or areas from which the Interstate route or portion thereof was withdrawn, which are selected by the responsible local officials of the area or areas to be served, and which are selected by the Governor or the Governors of the State or States in which the withdrawn route was located if the withdrawn route was not within an urbanized area or did not pass through and connect urbanized areas, and which are submitted by the Governors of the States in which the withdrawn route was located. Federal-aid highway projects constructed under this paragraph shall be subject to provisions of this title applicable to the appropriate Federal-aid system. Off system highway projects constructed under this paragraph shall be subject to the provisions of this title applicable to Federal-aid secondary system projects.

"(C) DEADLINE FOR WITHDRAWAL.—The Secretary shall not approve any withdrawal of a route under this paragraph after September 30, 1983, except that with respect to any route which on November 6, 1978, is under judicial injunction prohibiting its construction the Secretary may approve withdrawals until September 30, 1986, and except that with respect to any route which on May 12, 1982, is under judicial injunction prohibiting its construction, the Secretary may approve withdrawals on such route until September 30, 1985.

"(D) PROJECT APPROVAL; FEDERAL SHARE.—Approval by the Secretary of the plans, specifications, and estimates for a substitute project shall be deemed to be a contractual obligation of the Federal Government. The Federal share of each substitute project shall not exceed 85 per centum of the cost thereof.

"(E) AVAILABILITY OF FUNDS FOR SUBSTITUTE PROJECTS.—

"(i) TIME PERIOD.—The sums apportioned and the sums allocated under this paragraph for public mass transit projects or for projects under any highway assistance program shall remain available in the State of apportionment or allocation for the fiscal year for which apportioned or allocated, as the case may be, and for the succeeding fiscal year.

"(ii) REAPPORTIONMENT OR REALLOCATION.—Any sums which are apportioned or allocated to a State and are unobligated (other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a substitute project which has been submitted by the State to the Secretary for approval) at the end of the period of availability shall be apportioned or allocated, as the case may be, among those States which have obligated all sums (other than such an amount) apportioned or allocated, as the case may be, to them. Such reapportionments shall be in accordance with the latest adjusted estimate of the cost of completing substitute projects, and such reallocations shall be at the discretion of the Secretary.

"(F) ADMINISTRATION OF TRANSIT FUNDS.—The sums obligated for mass transit projects under this paragraph shall become part of, and be administered through, the Urban Mass Transportation Fund.

"(G) AUTHORIZATION OF APPROPRIATIONS FOR HIGHWAY PROJECTS.—For the fiscal year ending September 30, 1983 $257,000,000 shall be available out of the Highway Trust Fund for expenditure at the discretion of the Secretary for projects under highway assistance programs. There shall be available, out of the Highway Trust Fund (other than the Mass Transit Account), to the Secretary for expenditure under this paragraph for projects under highway assistance programs $700,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985, and $725,000,000 for the fiscal year ending September 30, 1986, and $650,000,000 per fiscal year for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

"(H) DISTRIBUTION OF SUBSTITUTE HIGHWAY FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Twenty-five per centum of the funds made available by subparagraph (G) for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for substitute highway projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 75 per centum of such funds shall be apportioned in accordance with cost estimates.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute highway projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute highway projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September of 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Table 3, Committee Print 99-171 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary, (2) changes in the State estimates in the division of funds between substitute highway and transit projects, (3) approval of substitute projects, and (4) the allocation and apportionment of substitute highway funds in prior fiscal years and shall use the Federal share of such adjusted estimates in making apportionments for substitute highway projects on October 1 or as soon as practicable thereafter for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(I) AUTHORIZATION OF APPROPRIATIONS FOR TRANSIT PROJECTS.—There are authorized to be appropriated for liquidation of obligations incurred for substitute transit projects under this paragraph the sums provided in section 4(g) of the Urban Mass Transportation Act of 1964.

"(J) DISTRIBUTION OF SUBSTITUTE TRANSIT FUNDS.—

"(i) BETWEEN DISCRETIONARY AND APPORTIONED PROGRAMS.—Fifty per centum of the funds appropriated for each fiscal year beginning after September 30, 1983, for carrying out substitute transit projects under this paragraph shall be distributed at the discretion of the Secretary. The remaining 50 per centum of such funds shall be apportioned in accordance with cost estimates approved by Congress.

"(ii) 1984 APPORTIONMENT.—The Secretary shall make an estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives as soon as practicable after the date of the enactment of the Highway Improvement Act of 1982. Upon approval of such cost estimate by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal year ending September 30, 1984.

"(iii) 1985 AND 1986 APPORTIONMENTS.—The Secretary shall make a revised estimate of the cost of completing substitute transit projects under this paragraph and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1984, and upon approval by Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for substitute transit projects for the fiscal years ending September 30, 1985 and September 30, 1986.

"(iv) SUBSEQUENT APPORTIONMENTS.—In September 1986 and every September thereafter, the Secretary shall adjust the Interstate substitute cost estimate established in revised Table 4, Committee Print 99-171 of the Senate Committees on Environment and Public Works and on Banking, Housing, and Urban Affairs to reflect (1) changes in the amounts available to the Secretary under this paragraph, (2) changes in State estimates of the division of funds between substitute highway and transit projects, (3) approvals of substitute projects, and (4) the allocation and apportionment of substitute transit funds in prior fiscal years and shall use the Federal share of such adjusted estimate in making apportionments for substitute transit projects on October 1 or as soon as practicable thereafter for fiscal years subsequent to the fiscal year ending September 30, 1986.

"(K) REDUCTION OF INTERSTATE APPORTIONMENT.—

"(i) IN GENERAL.—Unobligated apportionments for the Interstate System in any State where a withdrawal is approved under this paragraph shall, on the date of such approval, be reduced in the proportion that the Federal share of the cost of the withdrawn route or portion thereof bears to the Federal share of the total cost of all Interstate routes in that State as reflected in the latest cost estimate approved by the Congress.

"(ii) EXCEPTION.—In any State where the withdrawal of an Interstate route or portion thereof has been approved under this paragraph prior to the date of the enactment of the Federal-Aid Highway Act of 1976, the unobligated apportionments for the Interstate System in that State on such date of enactment shall be reduced in the proportion that the Federal share of the cost to complete such route or portion thereof, as shown on the latest cost estimate approved by Congress prior to such approval of withdrawal, bears to the Federal share of the cost of all Interstate routes in the State, as shown on such cost estimate; except that the amount of such proportional reduction shall be credited with the amount of any reduction in such State's Interstate apportionment which was attributable to the Federal share of any substitute project approved under this paragraph prior to enactment of such Federal-Aid Highway Act.

"(L) APPLICABILITY OF URBAN MASS TRANSPORTATION ACT.—

"(i) SUPPLEMENTARY FUNDS.—Funds available for expenditure to carry out the purposes of this paragraph shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(ii) LABOR PROTECTION.—The provisions of section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended, shall apply in carrying out this paragraph.

"(M) LIMITATION ON INTERSTATE DESIGNATIONS.—After the date of enactment of the Federal-Aid Highway Act of 1978, the Secretary may not designate any mileage as part of the Interstate System pursuant to this paragraph or under any other provisions of law. The preceding sentence shall not apply to a designation made under section 139 of this title.

"(N) OPEN TO TRAFFIC REQUIREMENT.—After September 30, 1979, the Secretary shall not withdraw approval under this paragraph of any route or portion thereof on the Interstate System open to traffic before the date of the proposed withdrawal. Any withdrawal of approval of any such route or portion thereof before September 30, 1979, is hereby determined to be authorized by this paragraph.

"(O) LIMITATION OF SUBSTITUTION FOR STATUTORILY DESIGNATED ROUTES.—Any route or segment which was statutorily designated after March 7, 1978, to be on the Interstate System shall not be eligible for withdrawal or substitution under this subsection.

"(P) RIGHT-OF-WAY PAYBACK.—Of sums made available to the Secretary under this paragraph for a State, an amount equal to the amount expended in Federal funds to purchase right-of-way for the withdrawn route or portion thereof in every case where right-of-way has not been disposed of by the State as of the date of enactment of this sentence shall not be available for release by the Secretary until the right-of-way disposition decision has been made in accordance with 103(e)(5)(B), (6)(B), or (e)(7) of this title. The amount apportioned to each eligible State pursuant to this paragraph shall be based on the full remaining value of the sums made available under this paragraph as determined by the Secretary but the total of such apportionments shall not exceed the remaining value of such sums less the amount unavailable for release by the Secretary. Sums retained by the Secretary shall be made available for apportionment upon partial or full repayment of funds in accordance with section 103(e)(7) of this title or upon determination by the Secretary that, under section 103(e)(5)(B) or (6)(B), repayment is not required.".

RIGHT-OF-WAY PAYBACK

(b) Subsection 103(e) of title 23, United States Code, is amended by adding paragraph (10) as follows:

"(10)(A) Upon repayment by a State to the Treasurer of the United States of an amount as determined by the Secretary to be equal to the amount of Federal funds expended to acquire property for the Interstate System which was withdrawn from the Interstate System on or after September 1, 1985, in accordance with paragraph (4), such State shall be absolved of any further responsibility for repayment and will be deemed to have fully met all of the repayment requirements of paragraph (7) of this section.

"(B) The amount repaid to the United States under this paragraph shall be deposited to the credit of the appropriation for the Highway Trust Fund. Such repayment shall be credited to the unprogrammed balance of funds apportioned to such State in accordance with section 104(d)(1)(C) of this title. The amount so credited shall be in addition to all other funds then apportioned to the State and shall be available for expenditure in accordance with the provisions of this title."

APPORTIONMENT

SEC. 104. Section 104 of title 23, United States Code, is amended by (a) Striking in paragraph (f)(1) ", except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System." and inserting in lieu thereof a period and by relettering subsection (f) as subsection (b).

(b) Adding a new subsection (c) as follows:

"(c) On October 1 of each of the fiscal years, ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, the Secretary, after making deductions authorized by subsections (a) and (b) of this section, shall deduct one-quarter per centum of the remaining funds authorized to be appropriated for that fiscal year for the Federal-aid Interstate-Primary Program, the urban system, the secondary system, bridge replacement and rehabilitation, Interstate substitution highway projects, projects for the elimination of hazards of railway-highway crossings, and for projects for the elimination of hazards under section 152 of this title for the purpose of carrying out the objectives of the Strategic Highway Research Project under section 133 of this title."

(c) Repealing existing subsections (c) and (d).

(d) Existing subsection (b) is amended to read as follows:

"(d) On October 1 of each fiscal year the Secretary, after making the deductions authorized by subsections (a), (b), and (c) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for the fiscal year, among the several States in the following manner:

"(1) FOR THE FEDERAL-AID INTERSTATE-PRIMARY PROGRAM.—

"(A) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $3,000,000,000 remaining after making the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned in the ratio which the estimated cost of completing the Interstate System in each State bears to the sum of the estimated cost of completing the Interstate System in all of the States as established in revised table 5, Committee Print 99-170 of the Senate Committee on Environment and Public Works: Provided, That the Secretary shall on October 1, 1986, before making the apportionment required by this paragraph, adjust such Interstate Cost Estimate to reflect (i) all previous credits, apportionments of Interstate construction funds and lapses of previous apportionments of Interstate construction funds, (ii) previous withdrawals of Interstate segments, (iii) previous allocations of Interstate discretionary funds, and (iv) transfers of Interstate construction funds and: Provided, That for each of the fiscal years 1987, 1988, 1989, and 1990, no State, including the State of Alaska, shall receive less than one-half per centum of the total apportionment under this paragraph (A). Amounts made available under this proviso shall be eligible for expenditure in the same manner as other Interstate-primary funds, for projects on the urban and secondary system, and for projects for the elimination of hazards under section 152 of this title.

"(B) For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,800,000,000 remaining after making the deduction authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows 55 per centum in the ratio that lane miles on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978) in each State bears to the total of all such lane miles in all States; and 45 per centum in the ratio that vehicle miles traveled on lanes on the Interstate routes designated under sections 103 and 139(c) of this title (other than those on toll roads not subject to a Secretarial agreement provided for in section 129(e) of this title and section 105 of the Surface Transportation Assistance Act of 1978) in each State bears to the total of all such vehicle miles in all States. Notwithstanding the preceding sentence, no State excluding any State that has no Interstate lane miles shall receive less than one-half of 1 per centum of the total apportionment made by this subparagraph for any fiscal year.

"(C) Before making the apportionment under this paragraph (C), the Secretary shall set aside such sums as are necessary to carry out the provisions of subparagraph (C)(iv). For each of the fiscal years 1987, 1988, 1989, and 1990 that portion of $2,350,000,000 remaining after such set aside and after the deductions authorized by subsections (a), (b), and (c) of this section shall be apportioned as follows:

"(i) The Secretary shall determine for each State the higher of the amount which would be apportioned to such State under a formula where (I) two-thirds would be apportioned, one-third in the ratio which the area of each State bears to the total area of all the States, one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census, and one-third in the ratio which the mileage of rural delivery routes and intercity mail routes where service is performed by motor vehicles in each State bears to the total mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary; and one-third in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census with no State (other than the District of Columbia) to receive less than one-half per centum of each year's apportionment and the amount which would be apportioned to such State under a formula where (II) each State would be apportioned one-half in the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States as shown by the latest available Federal census and one-half in the ratio which the population in urban areas in each State bears to the total population in urban areas in all the States as shown by the latest Federal census.

"(ii) The Secretary shall total the amounts determined for each State under paragraph (i) and shall determine the ratio which the amounts apportioned under this paragraph (C) bears to such total.

"(iii) The amount which shall be apportioned to each State under this paragraph (C) shall be the amount determined for such State under paragraph (i) multiplied by the ratio determined under paragraph (ii).

"(iv) No State shall receive an apportionment under this paragraph (C) which is less than the lower of (I), the amount which the State would be apportioned under the formula in paragraph (i)(I), and (II), the amount which the State would be apportioned under the formula in paragraph (i)(II). No State shall receive less than one-half per centum of the total apportionment under this paragraph (C).

"(2) For the Federal-aid secondary system one-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of rural areas of each State bears to the total population of rural areas of all of the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and intercity mail routes where service is performed by motor vehicles, certified as above provided, in each State bears to the total mileage of rural delivery and intercity mail routes where serv-

ice is performed by motor vehicles in all the States. No State (other than the District of Columbia) shall receive less than one-half of 1 per centum of each year's apportionment.

"(3) For the Federal-aid urban system in the ratio which the population in urban areas, or parts thereof, in each State bears to the total population in such urban areas, or parts thereof, in all the States as shown by the latest available Federal census. No State shall receive less than one-half of 1 per centum of each year's apportionment.".

(e) Subsection (e) is amended to read as follows:

"(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums apportioned hereunder to each State for such fiscal year, and also the sums which have been deducted pursuant to subsections (a), (b), and (c) of this section. To permit the State to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized.".

(f) Existing subsection (g) is amended to read as follows:

"(f) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 130, 144, and 152 of this title, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment under any other of such sections if such transfer is requested by the State highway department, and is approved by the Secretary as being in the public interest, if the Secretary has received satisfactory assurances from such State highway department that the purposes of the program from which such funds are to be transferred have been met.".

(g) Existing subsection (h) is repealed.

(h) Subsection (g) is added as follows:

"(g)(1) The amount apportioned in any fiscal year to each State in accordance with paragraph (2) or (3) of subsection (d) of this section may be transferred from the apportionment under one paragraph to the apportionment under the other paragraph if such transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. Funds apportioned in accordance with paragraph (3) of subsection (d) of this section shall not be transferred from their allocation to any urbanized area of two hundred thousand population or more under section 150 of this title without the approval of the local officials of such urbanized area.

"(2) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of any apportionment for any fiscal year shall be transferred to other apportionments.".

LETTING OF CONTRACTS

SEC. 105. Section 112(b) of title 23, United States Code, is amended by inserting "or that an emergency situation exists" before the period at the end of the first sentence.

AVAILABILITY

SEC. 106. Section 118 of title 23, United States Code, is amended to read as follows:

"Sec. 118. Availability.

"(a) On and after the date that the Secretary has certified to each State the sums apportioned or allocated pursuant to an authorization under this title such sums shall be available for obligation under the provisions of this title.

"(b)(1) Sums apportioned for the Federal-aid Interstate-Primary Program, for the Federal-aid secondary system and for the Federal-aid urban system in a State shall continue available for obligation in that State for the appropriate program and system for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unobligated at the end of such period shall lapse.

"(2)(A) Sums apportioned for bridge replacement and rehabilitation in a State shall remain available for obligation in that State for a period of three years after the close of the fiscal year for which the sums are authorized and any amounts apportioned remaining unobligated at the end of the period shall be allocated by the Secretary pursuant to section 144(g)(2) of this title.

"(B) Sums allocated for bridge replacement and rehabilitation in a State shall remain available for obligation in that State until the close of the fiscal year of allocation and any amount allocated remaining unobligated at the end of the period shall be reallocated by the Secretary pursuant to section 144(g)(2) of this title.

"(3) Sums apportioned or allocated for a particular purpose for any fiscal year shall be deemed to be obligated if a sum equal to the total of the sums apportioned or allocated to the State for such purpose for such fiscal year and previous fiscal years is obligated. Any funds released by the payment of the final voucher or by the modification of the formal project agreement shall be credited to the same class of funds previously apportioned or allocated to the State and be immediately available for obligation.

"(c) Funds made available to the State of Alaska under this title may be expended for construction of access and development roads on a Federal-aid system that will serve resource development, recreational, residential, commercial, industrial, or other like purposes.".

INTERSTATE SYSTEM RESURFACING

SEC. 107. (a) Section 119(a) of title 23, United States Code, is amended by (1) striking "section 105 of the Federal-Aid Highway Act of 1978" and inserting in lieu thereof "section 129(k) of this title" and by (2) striking the next to the last sentence.

(b) Section 119(b) of title 23, United States Code, is amended by striking "for the Interstate system shall" and inserting in lieu thereof "shall", by (2) striking "equal to 10 per centum" and inserting in lieu thereof "of not more than 10 per centum", and by (3) striking "104" and inserting in lieu thereof "104(d)(1)(A)".

(c) Section 119(d) is repealed.

FEDERAL SHARE PAYABLE

SEC. 108. (a) Subsection (a) of section 120, title 23, United States Code, is amended by striking "financed with primary" and inserting in lieu thereof "financed with Interstate-primary" and by inserting "(other than the Interstate System)" after "primary system".

(b) Subsection (b) of section 120, title 23, United States Code, is repealed.

(c) Subsection (c) of section 120, title 23, United States Code, is amended by striking "provided for by funds made available under the provisions of section 108(b) of the Federal-Aid Highway Act of 1956 shall be increased to" and inserting in lieu thereof ", as designated in section 103 of this title and as designated prior to March 9, 1984, in section 139 (a) and (b) of this title financed with Interstate-primary funds shall not exceed".

(d) Subsection (f) of section 120 of title 23, United States Code, is amended by striking "shall not exceed 100 per centum of the cost thereof: Provided" and inserting in lieu thereof "on account of any project on a Federal-aid highway system, including the Interstate System, shall not exceed the Federal share payable of a project on a system as provided in subsections (a) and (c) of this section: Provided, That the Federal share payable for eligible emergency repairs to minimize damage, protect facilities or restore essential traffic accomplished within thirty days after the actual occurrence may amount to 100 per centum of the costs thereof: And provided further".

(e)(1) The second subsection (i), subsection (j), and subsection (k) of section 120 of title 23, United States Code, are relettered as subsection (j), (k), and (l) respectively.

(2) The second subsection (i) of section 120, title 23, United States Code, relettered as subsection (j), is amended by inserting "104(b) and" before "307(c)".

(f) Subsection (b) is added to section 120 of title 23, United States Code, as follows: "Notwithstanding other provisions of this title, a State may contribute an amount in excess of its normal share on a project under this title so as to decrease the Federal share payable on such project: Provided, That the use of this provision shall be subject to criteria established by the Secretary.".

(g) Section 120(f) of title 23, United States Code, as amended by this section is effective for all natural disasters or catastrophic failures which occur subsequent to enactment of this Act.

RELOCATION OF UTILITY FACILITIES

SEC. 109. Section 123(a) of title 23, United States Code, is amended to read as follows:

"(a) When a State pays for the cost of relocation of utility facilities necessitated by the construction of a project on the Federal-aid primary system including the Interstate System, or under a Federal-aid program, or under the State's safety improvement program for the elimination of hazards to the traveling public resulting from the utility facilities on or near the right-of-way of highways on the Federal-aid primary system including the Interstate system, Federal funds may be used to reimburse the State for such cost in the same proportion as Federal funds are used on the project.".

EMERGENCY RELIEF

SEC. 110. Section 125 of title 23, United States Code, is amended by adding subsection (d) as follows:

"(d) For purposes of this section, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Island shall be considered to be States and part of the United States, and the chief executive officer of each territory shall be considered to be a Governor of a State. The Secretary may expend funds from the sums authorized for this section for the repair or reconstruction of highways eligible for assistance under section 215 of this title: Provided, That obligations for projects under this subsection shall not exceed $5,000,000 in any fiscal year.".

VEHICLE WEIGHT LIMITATIONS—INTERSTATE SYSTEM

SEC. 111. Section 127(a) of title 23, United States Code, is amended by striking "authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned" and inserting in lieu thereof "shall be apportioned under section 104(d)(1)(A) of this title" and by (b) adding after the word "lapse" the following: "if not released and obligated within the availability period specified in section 118(b)(1) of this title".

TOLL ROADS, BRIDGES, TUNNELS AND FERRIES

SEC. 112. (a)(1) Section 301 of title 23, United States Code, is repealed.

(2) Section 105 of the Federal-Aid Highway Act of 1978 is amended by striking the last two sentences.

(b) Section 129 of title 23, United States Code, is amended to read as follows:

"SEC. 129. TOLL ROADS, BRIDGES, TUNNELS AND FERRIES.

"(a) Except as provided in this section all highways constructed, reconstructed, rehabilitated, restored, or resurfaced under the provisions of this title shall be free from tolls of all kinds.

"(b) The Secretary may permit Federal participation, on the same basis and in the same manner as in the construction of free highways under this chapter, in the construction of any new toll highway, bridge or tunnel other than a highway on the Interstate System; in the reconstruction of any existing highway, bridge or tunnel to expand its capacity, other than a highway, bridge or tunnel on the Interstate System; or in the construction, reconstruction or acquisition of any toll bridge or toll tunnel; upon compliance with the conditions contained in this section Provided, That the Federal share payable for the construction or reconstruction of a toll highway, bridge or tunnel shall not exceed 35 per centum. The highway, bridge, tunnel, or approach thereto must be publicly owned and operated. Federal funds may participate in the approaches to a toll bridge or toll tunnel whether the bridge or tunnel is to be or has been constructed, or acquired, by the State or other public authority. For purposes of this section the term "new toll highway, bridge or tunnel" shall mean initial construction of a highway, bridge or tunnel on a new location at any time before it is open to traffic and shall not include any improvements to a toll highway after it is open to traffic. The State Highway Department must agree, for toll bridges, tunnels and highways, that toll revenues will be used only on the facility tolled, and only for construction or reconstruction costs, or for the costs necessary for the proper operation, maintenance and debt service of the facility including resurfacing, reconstruction, rehabilitation, and restoration. Except for reconstruction to expand capacity, toll facilities may receive Federal participation under this subsection once only for the original construction, reconstruction, or acquisition. Toll mileage created under this subsection shall not be used to increase a State's apportionment under any apportionment formula.

"(c) Funds authorized for use on any of the Federal-aid systems including the Interstate System shall be available for obligation on projects approaching any toll road, bridge, or tunnel to a point where the approach enters the main lanes of the toll facility or toll plaza, whichever occurs first. Construction, reconstruction, or relocation of toll collection equipment, facilities, plaza, or related facilities shall not be eligible for Federal funds. The Secretary may permit Federal participation in any engineering and fiscal assessments, traffic analyses, and preliminary design analyses necessary to determine whether a privately owned toll road, toll bridge, or toll tunnel shall be acquired by a State or political subdivision thereof.

"(d)(1) The Secretary may permit Federal participation under this title in the construction of a ferryboat, whether toll or free, subject to the following conditions:

"(A) It is not feasible to build a bridge, tunnel, combination bridge-tunnel, or other normal highway structure in lieu of use of the ferry.

"(B) The operation of the ferry shall be on the Federal-aid primary sustem other than the Interstate System or the Federal-aid secondary system.

"(C) The ferry shall be publicly owned and operated.

"(D) The operating authority and the amount of fares charged for passage on the ferry shall be under the control of the State, and all revenues derived therefrom shall be applied to actual and necessary costs of operation, maintenance, and repair.

"(E) The ferry may be operated only within the State (including the islands which comprise the State of Hawaii and the islands which comprise the Commonwealth of Puerto Rico) or between adjoining States. Except with respect to operations between the islands which comprise the State of Hawaii, operations between the islands which comprise the Commonwealth of Puerto Rico, operations between the State of Maine and its off-shore islands, and operations between any two points in Alaska and between Alaska and Washington, including stops at appropriate points in the Dominion of Canada, no part of the ferry operation shall be in any foreign or international waters.

"(F) The ferry shall not be sold, leased, or otherwise disposed of without the approval of the Secretary. The Federal share of any proceeds from a disposition shall be credited to the unprogrammed balance of Federal-aid highway funds of the same class last apportioned to the State. Any amount credited shall be in addition to other funds apportioned to the State and shall be available for obligation in accordance with the provisions of this title.

"(2) The Secretary may permit Federal participation under this title in the construction of a project constituting an approach to a ferry, whether toll or free, on the Federal-aid primary system other than the Interstate System or the Federal-aid secondary system. The ferry may be either publicly or privately owned and operated, but the operating authority and the amount of fares charged for passage shall be under the control of a State agency or official, and all revenues derived from publicly owned or operated ferries shall be applied to payment of the cost of construction or acquisition, including debt service, and to actual and necessary costs of operation, maintenance, repair, and replacement.

"(e) Sums apportioned to a State for the Federal-aid Interstate-primary program or for Interstate System resurfacing may be obligated for projects for resurfacing, restoring, and rehabilitating lanes on a toll road which has been designated as a part of the Interstate System if an agreement satisfactory to the Secretary of Transportation has been reached with the State highway department and any public authority with jurisdiction over such toll road prior to the approval of such project that the toll road will become free to the public upon the collection of tolls sufficient to liquidate the cost of the toll road or any bonds outstanding at the time constituting a valid lien against it, and the cost of maintenance and operation and debt service during the period of toll collections. The agreement referred to in the preceding sentence shall contain a provision requiring that if, for any reason, toll road subject to an agreement does not become free to the public upon collection of sufficient tolls, as specified in the preceding sentence, Federal funds used for projects on such toll road pursuant to this subsection shall be repaid to the Federal Treasury and a provision requiring that if such repayment does not equal or exceed Federal funds apportioned to a State by reason of including toll road mileage in an apportionment formula, the State's apportionment shall be reduced by the amount needed to make the repayment equal such apportionment.

"(f)(1) Each operator of toll roads, toll tunnels, toll ferries, and toll bridges, other than an international toll facility or toll facility subject to an agreement under this section or section 105 of the Surface Transportation Assistance Act of 1978 on a Federal-aid system in a State shall biennially certify to the Governor of the State that such facilities are adequately maintained and that the operator of such toll facility has the ability to fund the replacement or repair of any such facilities that are not adequately maintained without using Federal-aid highway funds. Failure to certify shall preclude Federal funding out of the Highway Trust Fund of any facilities owned or operated by the operator of such toll facility.

"(2) The Governor shall report biennially to the Secretary the toll facilities subject to paragraph (1) of this subsection, that have so certified and those which have not certified in accordance with paragraph (1) of this subsection. If funds from the Highway Trust Fund are used to repair or replace such toll facilities, the States' apportionments for the following fiscal year under section 104 of this title shall be reduced by the amount of Highway Trust Fund moneys expended: Provided, That such reduction shall not be made if the State has executed an agreement covering such toll facilities under this section or section 105 of the Surface Transportation Assistance Act of 1978.".

(c) Upon the request of a State and upon entering into an agreement that toll revenue will be used only on the facility tolled, construction and reconstruction costs, or for the costs necessary for the proper operation and debt service of the facility, including resurfacing, reconstruction, rehabilitation, and restoration, pursuant to section 129(b) of title 23, United States Code, as amended by this section, the Secretary of Transportation may void an agreement entered into prior to the enactment of this section under section 129 (a) (d) or (e) of title 23, United States Code. The Secretary shall issue rules and regulations regarding the voiding of such agreements which shall be limited to insuring future operation and maintenance of the tolled facility.

RAILWAY-HIGHWAY CROSSINGS

SEC. 113. (a) Section 130 of title 23, United States Code, is amended by adding subsections, (d), (e), (f), (g), and (h) as follows:

"(d) Each State shall conduct and systematically maintain a survey of all highways to identify those railroad crossings which may require separation, relocation, or protective devices, and establish and implement

a schedule of projects for this purpose. At a minimum, such a schedule shall provide signs for all railroad-highway crossings.

"(e) At least half of the funds authorized for and expended under this section shall be available for the installation of protective devices at railway-highway crossings. Sums authorized to be appropriated for this section shall be available for obligation in the same manner as funds apportioned under section 104(d)(1) of title 23, United States Code.

"(f) 25 per centum of the funds authorized for this section shall be apportioned to the States in the same manner as sums apportioned under section 104(d)(2) of title 23, United States Code, 25 per centum of such funds shall be apportioned to the States in the same manner as apportioned under section 104(d)(3) of title 23, United States Code, and 50 per centum of such funds shall be apportioned to the States in the ratio that total rail-highway crossings in each State bears to the total of such crossings in all States. The Federal share payable on account of any project financed with funds authorized for this section shall be 90 per centum of the cost thereof.

"(g) Each State shall report to the Secretary of Transportation not later than December 30 of each year on the progress being made to implement the railroad-highway crossings program authorized by this section and the effectiveness of such improvements. Each State report shall contain an assessment of the costs of the various treatments employed and subsequent accident experience at improved locations. The Secretary of Transportation shall submit a report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress not later than April 1 of each year, on the progress being made by the State in implementing projects to improve railroad-highway crossings. The report shall include, but not be limited to, the number of projects undertaken, their distribution by cost range, road system, nature of treatment, and subsequent accident experience at improved locations. In addition, the Secretary's report shall analyze and evaluate each State program, identify any State found not to be in compliance with the schedule of improvements required by subsection (d) and include recommendations for future implementation of the railroad highway crossings program.

"(h) Funds authorized for this section may be used to provide local government with funds to be used on a matching basis when State funds are available which may only be spent when local government produces matching funds for the improvement of railroad crossings.".

(b) Section 203 of the Highway Safety Act of 1973 is repealed.

STRATEGIC HIGHWAY RESEARCH PROGRAM

SEC. 114. Title 23, United States Code, is amended by adding section 133 as follows:

"§ 133. Strategic highway research program

"(a) The sums provided by section 104(c) of this title shall be available for obligation when deducted to implement the Strategic Highway Research Program (SHRP). The Secretary is authorized to carry out the SHRP in cooperation with the State highway departments, as represented by the American Association of State Highway and Transportation Officials (AASHTO). The Secretary shall set standards to use the funds under this paragraph to conduct research, development and technology transfer activities determined to be strategically important to the national highway transportation system. The Secretary may provide grants to, and enter into cooperative agreements with, AASHTO and/or the National Academy of Sciences to conduct appropriate portions of the SHRP. Advance payments may be made as necessary to facilitate this program. No State matching share is required for the sums made available under this section. The sums provided by this section shall be combined and administered by the Secretary as a single fund which shall be available for obligation for the same period as funds apportioned for the Federal-aid Interstate-Primary Program.

"(b) The Secretary shall transmit a report annually beginning on January 1, 1988, to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress which provides information on the progress and research findings of the Strategic Highway Research Program.

"(c)(1) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for injury, loss of property, personal injury, or death shall apply to any civil action against the National Academy of Sciences for injury, loss of property, personal injury, or death for any act or omission arising from activities conducted under or in connection with the Strategic Highway Research Program authorized under subsection (a) of this section.

"(2) The remedies referred to in paragraph (1) shall be exclusive of any other civil action or proceeding for the purpose of determining liability arising from any such act or omission without regard to when the act or omission occurred. Employees of the National Academy of Sciences and other individuals appointed by the President of the National Academy of Sciences and acting on its behalf in connection with the Strategic Highway Research Program shall be considered to be employees of the Federal Government, as provided in section 2671 of title 28, United States Code, for the purposes of such civil action or proceeding; and the civil action or proceeding shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of such title and shall be subject to the limitations and exceptions applicable to those actions.

"(3) Upon certification by the Attorney General that a suit is within the provisions of subsection (a), a civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place wherein it is pending and the proceeding shall be deemed a tort action brought against the United States under the provisions of section 1346(b), 2401(b), or 2402, or sections 2671 through 2680 of title 28, United States Code. For purposes of removal, the certification of the Attorney General under this subsection shall be conclusive.".

SECTION 139 ROUTES

SEC. 115. The last sentence of section 139(a), the fourth sentence of 139(b), and the last sentence of section 139(c) of title 23, United States Code, are each amended by striking "sections 104(b)(1) and 104(b)(5)(B)" and inserting in lieu thereof "section 104(d)(1)".

OFF-SYSTEM BRIDGE PROGRAM

SEC. 116. Section 144, title 23, United States Code, is amended by adding a new subsection as follows:

"(n) Notwithstanding any other provision of law, with respect to any project not on a Federal-aid highway system for the replacement of a bridge or rehabilitation of a bridge which is wholly funded from State and local sources, is eligible for Federal funds under section 144 of title 23, United States Code, is noncontroversial, is certified by the State to have been carried out in accordance with all standards applicable to such projects under section 144, and is determined by the Secretary upon completion to be no longer a deficient bridge, any amount expended after the effective date of this section, from such State and local sources for such project in excess of 20 per centum of the cost of construction thereof may be credited to the non-Federal share of the cost of the projects in such State which are eligible for Federal funds under section 144, in accordance with procedures established by the Secretary.".

BRIDGE REPLACEMENT FUNDS

SEC. 117. (a) Section 144, Title 23, United States Code, is further amended by adding a new subsection as follows:

"(o)(1) Notwithstanding any other provision of this section or of any other provision of law, any State may utilize any of the funds provided under this section to construct any bridge which—

"(A) replaces any low-water crossing (regardless of the length of such low-water crossing),

"(B) replaces any bridge that was destroyed prior to 1960, or

"(C) replaces any ferry which was in existence on January 1, 1984.

"(2) The Federal share payable on any bridge construction carried out under paragraph (1) shall be 80 percent of the cost of such construction.".

(b) The amendment made by subsection (a) shall apply to funds apportioned to the States for fiscal year 1987 or or any subsequent fiscal year.

HIGHWAY BEAUTIFICATION

SEC. 118. (a) Section 131 of title 23, United States Code, is amended as follows—

(1) in subsection (b)—

(A) by striking "shall be reduced" and inserting in lieu thereof "may be reduced"; and

(B) by striking the words "equal to 10" in the second to last sentence, by inserting in lieu thereof "up to 5", and by striking the last sentence;

(2) in subsection (c)—

(A) by striking "(c)" and inserting in lieu thereof "(c)(1)" and redesignating clauses 1 through 5 as clauses A through E;

(B) by inserting at the end thereof the following new paragraphs—

"(2) As part of effective control, each State shall maintain an annual inventory of all outdoor advertising signs, displays, and devices required to be controlled pursuant to this section. Such inventory shall identify all such signs as either illegal, nonconforming, or conforming under State law. An inventory shall not be required in States which the Secretary determines have a permit and enforcement system which requires a permit for all lawful signs required to be controlled by this section and identifies promptly all unlawful signs.

"(3) As part of effective control, each State shall assure that signs, displays, and devices required to be removed by this section shall be removed within ninety days of (A) the date upon which they become unlawful or if not unlawful, the date upon which they must be removed pursuant to State law, or

(B), if eligible to receive compensation pursuant to this section or to be amortized, the date upon which cash compensation is paid, or the State amortization period ends.

"(4) As part of effective control, no State may allow or undertake any vegetation removal or other alteration of the highway right-of-way with the purpose of improving the visibility of any outdoor advertising sign, display or device located outside of the right-of-way.

"(5) As part of effective control, no State may permit any person to modify any outdoor advertising sign, display, or device which does not conform to subsections (c) or (d) of this section to improve its visibility or its useful life.

"(6) As part of effective control, signs, displays and devices carrying advertising which is required to include a warning label in other advertising media, pursuant to a federal law or regulation, shall be required to display such warning label so that it is plainly legible from the main traveled way of the highway.";

(3) in subsection (d) by striking "(d)", by inserting in lieu thereof "(d)(1)", and by adding at the end of the subsection the following:

"(2) After July 1, 1986, no new signs, displays or devices may be erected under the authority of this subsection. Any sign, display, or device lawfully erected under State law after July 1, 1986, and prior to the effective date of this section shall be treated as nonconforming.";

(4) in subsection (e) by amending subsection (e) as follows:

"(e) The Secretary shall not require a State to remove any lawfully erected sign, display, or device which does not conform to this section and is lawfully in existence on the date which this section becomes effective pursuant to section 117(b) of the Federal-Aid Highway Act of 1986. Nothing in this subsection shall prevent a State from removing any sign, display, or device.";

(5) in subsection (g) by amending subsection (g) to read as follows:

"(g)(1) The Secretary may participate in the costs incurred by a State for the following:

"(A) physically removing signs, displays, or devices that are located in areas required to be effectively controlled by this section and are illegal under State law or that are required by this section to be removed and that were lawfully created and have been lawfully maintained under State law.

"(B) acquiring signs, displays, or devices that are required by this section to be removed and that were lawfully erected and have been lawfully maintained under State law.

"(2) Payments made to a State by the Secretary may be made for the removal or acquisition of signs, displays, and devices located in areas adjacent to the Federal-aid primary system and the Interstate System from funds apportioned to such State under section 104(d)(1) of this title. For the removal or acquisition of signs, displays, or devices, the Federal share of any costs participated in under this subsection shall not exceed that set forth in section 120(a) for those adjacent to the Federal-aid primary system and that set forth in section 120(c) for those adjacent to the Interstate System.

"(3) A sign, display, or device acquired with funds made available pursuant to this section may be disposed of by sale or other means to a private party only if the State receives satisfactory written assurances that the material will not be used to construct or reconstruct an outdoor advertising sign, display, or device.";

(6) in subsection (h) by striking "(h)", by inserting in lieu thereof "(h)(1)", and by adding at the end the following new paragraph:

"(2) No outdoor advertising sign, display, or device shall be permitted by any Federal agency on all public lands or reservations owned or controlled by the United States, unless such sign, display, or device conforms to regulations issued by the Federal agency with jurisdiction over, or responsibility for, such land. Such regulations shall be at least as stringent as the requirements of this section and the requirements of the State in which the land is located. The regulations required by this subsection shall be developed in consultation with the Secretary of Transportation and shall be promulgated within 12 months of the effective date of this Act.";

(7) in subsection (k) by striking the words "Subject to compliance with subsection (g) of this section for the payment of just compensation, nothing" and inserting in place thereof the word "Nothing".; and

(8) by repealing subsections (n) and (p).

(b) The amendments made by this section shall be effective on December 31, 1988.

MINIMUM ALLOCATION

SEC. 119. (a) Section 157(a) of title 23, United States Code, is amended to read as follows:

"(a) Beginning with fiscal year 1987, as soon as practicable after the date of enactment of the Federal-Aid Highway Act of 1986 and in each of the fiscal years thereafter, on October 1, or as soon as possible thereafter, the Secretary of Transportation shall allocate among the States, as defined in section 101 of this title, amounts sufficient to ensure that a State's percentage of the total apportionments in each such fiscal year and allocations for the prior fiscal year for Federal-aid highway programs, except allocations for forest highways, Indian reservation roads, and parkways and park roads in accordance with section 202 of this title, highway related safety grants authorized by section 402 of this title, nonconstruction safety grants authorized by sections 402, 406, and 408 of this title, and Bureau of Motor Carrier Safety Grants authorized by section 404 of the Surface Transportation Assistance Act of 1982, shall not be less than 85 per centum of the percentage of estimated tax payments attributable to highway users in that State paid into the Highway Trust Fund, other than the Mass Transit Account, in the latest fiscal year for which data are available.".

(b) The amendment made by subsection (a) shall become effective on October 1, 1986.

(c) Title 23, United States Code, section 157(c) is amended by striking the "and" that precedes "September 30, 1986" and inserting after "1986" the following: ", September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990".

FEDERAL-AID INTERSTATE-PRIMARY PROGRAM

SEC. 120. Title 23, United States Code, is amended by adding section 159 as follows:

"§ 159. Federal-aid Interstate-primary program

"(a) It is the national policy to bring all elements of the primary system up to standards established pursuant to section 109 of this title. To accomplish this policy the Federal-aid Interstate-primary program shall consist of projects for the construction, reconstruction, rehabilitation, restoration, and resurfacing or improvement of the primary system as designated in section 103(a) of this title and the Interstate System as designated in section 103(c)(1) and section 139 of this title.

"(b) In approving projects under this section, the Secretary shall give consideration to projects to complete essential gaps on the Interstate System and for the reconstruction, rehabilitation, restoration, and resurfacing of existing highway facilities. Reconstruction may include, but is not limited to, the addition of travel lanes and the construction and reconstruction of interchanges and overcrossings along existing completed Interstate routes, including the acquisition of right-of-way where necessary.".

INCOME FROM RIGHTS-OF-WAY

SEC. 121. Title 23, United States Code, is amended by adding section 160 as follows:

"§ 160. Income from rights-of-way

"Net income that a State receives from the use, lease, or sale of right-of-way airspace acquired as a result of a project under this title shall be used by the State for projects eligible under this chapter.".

TERRITORIAL HIGHWAY PROGRAM

SEC. 122. Subsection (f) of section 215 of title 23, United States Code, is amended to read as follows:

"(f) The provisions of chapter 1 of this title that are applicable to Federal-aid Interstate-Primary Program funds and to projects on the Federal-aid primary system other than the Interstate System shall apply to funds authorized to be appropriated to carry out this section, to funds obligated under this section and to projects carried out under this section except as determined by the Secretary to be inconsistent with this section. There shall be designated in each territory, a territorial Federal-aid highway system which will include all highways eligible for funding under this section. The system shall be designated by the highway department of the territory and be subject to the approval of the Secretary. Funding provided under this section shall only be available for highway construction projects on the territorial Federal-aid system.".

BICYCLE PROJECTS ELIGIBILITY

SEC. 123 The second sentence of section 217(b)(1) of title 23, United States Code, is amended by inserting "and sums apportioned or allocated for highway substitute projects in accordance with section 103(e)(4) of this title" after the word "title".

HIGHWAY PLANNING AND RESEARCH

SEC. 124. Section 307(c)(1) of title 23, United States Code, is amended by inserting after "section 104 of this title", the following: "and for highway projects, section 103(e)(4)".

NATIONAL HIGHWAY INSTITUTE

SEC. 125. Subsections (b) and (c) of section 321 of title 23, United States Code, are amended to read as follows:

"(b) Not to exceed one-quarter per centum of all Federal-aid Interstate-Primary Program funds, apportioned to a State under section 104 of this title shall be available for expenditure by the State highway department, subject to approval by the Secretary, for payment of not to exceed 75 per centum of the cost of tuition and direct educational expenses (but not travel, subsistence, or salaries) in connection with the education and training of State and local highway department employees as provided in this section.

"(c) Education and training of Federal, State, and local highway employees authorized by this section shall be provided by the Secretary at no cost to the States and local

governments for those subject areas which are a Federal program responsibility, or, in the case where such education and training are to be paid for under subsection (b) of this section, by the State, subject to the approval of the Secretary, through grants and contract with public and private agencies, institutions, individuals and the Institute.".

RIGHT-OF-WAY DONATION

SEC. 126. (a) Notwithstanding any other provision of title 23, United States Code, the State matching share for a project under title 23, United States Code, may be credited by the fair market value of land incorporated into the project and lawfully donated to the State after the effective date of this subsection. The fair market value of the donated land shall be established as determined by the Secretary. Fair market value shall not include increases and decreases in the value of donated property caused by the project. For purposes of this subsection the fair market value of donated land shall be established after the date the donation becomes effective or when equitable title to the land vests in the State, whichever is earlier. This subsection shall not apply to donations made by an agency of a Federal, State or local government. The credit received by a State pursuant to this subsection may not exceed the State's matching share for the project to which the donation is applied.

(b) Section 323 of title 23, United States Code, is amended by—

(1) inserting after "Donations." an "(a)"; and

(2) inserting the following new subsection:

"(b)(1) A gift or donation in accordance with subsection (a) may be made at any time during the development of a project: Provided, That any document executed as part of such donation prior to the approval of an environmental document prepared pursuant to the National Environmental Policy Act shall clearly indicate that—

"(i) all alternatives to a proposed alignment will be studied and considered pursuant to the National Environmental Policy Act;

"(ii) acquisition of property under this subsection shall not influence the environmental assessment of a project including the decision relative to the need to construct the project or the selection of a specific location; and

"(iii) any property acquired by gift or donation shall be revested in the grantor or successors in interest if such property is not required for the alignment chosen after public hearings and completion of the environmental document.".

(c) Section 4651 of title 42, United States Code, is amended as follows:

(1) Insert after "programs" in the first sentence the following "to promote joint projects between States and landowners and other entities in order to maximize Federal and State dollars".

(2) Insert new paragraph (10) as follows:

"(10) Promotion of joint projects wherein private citizens and other governmental entities participate in the cost through land donations and/or financial contributions is consistent with Federal policy and should be encouraged by all Federal agencies. To this end donations of right-of-way and/or financial contributions by a State or other political subdivision, or any person is permissible.".

(d) Notwithstanding any other provision of law, the fair market value of any lands which have been or in the future are donated or dedicated to the State of California necessary for the right-of-way for relocation and construction of California State Route 73 in Orange County, California, from its interchange with Interstate Route I-405 to its interchange with Interstate Route I-5 shall be included as a part of the cost of such relocation and construction project and shall be credited first toward payment of the non-Federal share of the cost of such relocation and construction project. If the fair market value of such lands exceeds the non-Federal share of such relocation and construction project, then the excess amount, upon the request of the State of California, shall be credited toward the non-Federal share of the cost of any other project on the Federal-aid system in the State of California. To further the purposes of this section and section 323 of title 23, United States Code, any recorded irrevocable offer of dedication or donation of property within the right-of-way shall be considered as part of the State right-of-way acquisition for purposes of this section if such offer is irrevocable and effective no later than such time as the State of California requests final reimbursement for the Federal share. In no case shall the amount of Federal-aid reimbursement to the State of California on account of such relocation and construction project exceed the actual cost to the State for such project.

PROHIBITION AGAINST DISCLOSURE AND ADMISSION AS EVIDENCE OF STATE REPORTS AND SURVEYS

SEC. 127. Chapter 4 of title 23, United States Code, is amended by adding section 409 as follows:

"§ 409. Reports, surveys; disclosures; admission as evidence

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled with the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or rail-highway crossings, pursuant to sections 130, 144, and 152 of title 23, United States Code, or for the development of any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be admitted into evidence in Federal or State court, or considered for other purposes, in any action for damages arising from any matter occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists or data.".

BUY AMERICA

SEC. 128. Section 165(a) of the Surface Transportation Assistance Act of 1982 is amended to read as follows:

"Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act or, after the date of enactment of this Act, any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Assistance Act of 1978 and administered by the Department of Transportation, for projects whose total cost exceed $500,000, unless steel and manufactured products used in such projects are produced in the United States.".

REGULATION OF TOLLS

SEC. 129. (a) Section 4 of the General Bridge Act of 1906 (34 Stat. 85, 33 U.S.C. 494), as amended, is further amended by deleting the last sentence thereof.

(b) Section 17 of the Act of June 10, 1930 (46 Stat. 552, 33 U.S.C. 498a), as amended, is repealed.

(c) Section 1 of the Act of June 27, 1930 (46 Stat. 821, 33 U.S.C. 498b), as amended, is repealed.

(d) Sections 1-5 of the Act of August 21, 1935 (49 Stat. 670, 33 U.S.C. 503-507), as amended, are repealed.

(e) Sections 503 and 506 of the General Bridge Act of 1946 (60 Stat. 847, 848, 33 U.S.C. 526, 529), as amended, are repealed.

(f) Section 133 of Public Law 93-87 (87 Stat. 267, 33 U.S.C. 526a) is repealed.

(g) Section 6 of the International Bridge Act of 1972 (86 Stat. 732, 33 U.S.C. 535d) is repealed.

(h) Section 6(g)(4) of the Department of Transportation Act (80 Stat. 937, 49 U.S.C. 1655(g)(4)) is repealed.

(i) Tolls for passage or transit over any bridge constructed under the authority of the Bridge Act of 1906, as amended, the General Bridge Act of 1946, as amended, and the International Bridge Act of 1972, shall be just and reasonable.

INDIAN EMPLOYMENT AND CONTRACTING

SEC. 130. Section 140 of title 23, United States Code is amended by adding the following:

"(d) Consistent with section 703(i) of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 241, July 2, 1964, nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on projects and contracts on Indian reservation roads. The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.".

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SEC. 131. (a) CONTRACTING GOAL.—Except as the Secretary determines otherwise, not less than 10 per centum of the amounts authorized to be appropriated under this title or obligated under title 1 of Public Law 97-424 after the effective date of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) DEFINITIONS.—For the purposes of this section:

(1) "disadvantaged business enterprise" means a small business concern owned and controlled by socially and economically disadvantaged individuals;

(2) "small business concern" is defined by section 3 of the Small Business Act (15 U.S.C. 632), except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $10 million, as adjusted by the Secretary for inflation; and

(3) "socially and economically disadvantaged individuals" is defined by section 8(d)(2)(C) of the Small Business Act (15 U.S.C. 637(d)(2)(C), except that women shall be presumed to be socially and economically disadvantaged individuals.

(c) TECHNICAL ASSISTANCE.—Amounts expended for technical assistance to benefit disadvantaged business enterprises may be used to meet up to 10 per centum of the amounts required to be expended on a contract or subcontract with a disadvantaged business enterprise under the provisions of this section.

(d) UNIFORM CERTIFICATION.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern is a disadvantaged business enterprise for the purposes of this section. Such minimum uniform criteria shall

include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

(e) LEVEL OF EFFORT BY SUBCONTRACTORS.—(1) Amounts expended with a disadvantaged business enterprise for subcontracting work shall not be used to meet any part of the goal established by this section unless such enterprise performs with its own organization subcontract work amounting to not less than 30 per centum of the subcontract price not including materials and supplies.

(2) A State government may reduce the 30 per centum requirement of paragraph (1) for a particular contract if it determines that such a reduction would be in the public interest and that the level of effort by the disadvantaged business enterprise is consistent with industry practice by subcontractors for the type of work involved.

(3) Except for contracting arrangements approved in advance by the State government, any payments from a disadvantaged business enterprise to the prime contractor or any affiliate shall not be used to meet any part of the goal established by this section.

(f) PRIME CONTRACTS.—Except as the Secretary determines otherwise, amounts equal to not less than 5 per centum in 1988, not less than 7 per centum in 1989 and not less than 10 per centum in 1990, of the goal established by this section for a State shall be expended on contracts directly between a State government and a disadvantaged business enterprise.

(g) APPLICABILITY.—Section 105(f) of Public Law 97-424 shall not apply to amounts authorized under title 1 of such Act and obligated after the effective date of this Act.

RELEASE OF CONDITION RELATING TO CONVEYANCE OF A CERTAIN HIGHWAY

SEC. 132. Notwithstanding paragraph (1) of subsection (b) of section 146 of the Federal-Aid Highway Act of 1970 (84 Stat. 1739) and any agreement entered into under such subsection, no conveyance of any road or portion thereof shall be required to be made under such paragraph or agreement to the State of Maryland and the State of Maryland shall not be required to accept conveyance of any such road or portion. Funds authorized by such section may be obligated and expended without regard to any requirement of such paragraph or agreement that such conveyance be made.

WASTE ISOLATION PILOT PROJECT

SEC. 133. For the fiscal year ending September 30, 1986, and thereafter, there is authorized to be appropriated $58,000,000 to remain available until expended for the upgrading of certain highways in the State of New Mexico for the transportation of nuclear waste generated during defense-related activities.

OBLIGATION LIMITATION

SEC. 134. (a) Notwithstanding any other provisions of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $12,350,000,000 for fiscal year 1987;

(2) $12,350,000,000 for fiscal year 1988;

(3) $12,350,000,000 for fiscal year 1989; and

(4) $12,350,000,000 for fiscal year 1990.

These limitations shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, and projects under section 157 of title 23, United States Code.

(b) For each of the fiscal years 1987, 1988, 1989 and 1990, the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

(c) During the period October 1 through December 31, 1986, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b) for fiscal year 1987, and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection for such fiscal year.

(d) Notwithstanding subsections (b) and (c), the Secretary shall—

(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned or allocated to a State;

(2) after August 1 of each of the fiscal years 1987, 1988, 1989, and 1990 revise a distribution of the funds made available under subsection (b) for such fiscal year if a State will not obligate the amount distributed during such fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during such fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 and the Federal-Aid Highway Act of 1981, have experienced substantial proportional reductions in their apportionments and allocations; and

(3) not distribute amounts authorized for administrative expenses, Federal lands highways, and the Strategic Highway Research Program.

HISTORIC BRIDGES

SEC. 135. (a) Congress hereby finds and declares it to be in the national interest to encourage the rehabilitation, reuse and preservation of bridges significant in American history, architecture, engineering and culture. Historic bridges are important links to our past, serve as safe and vital transportation routes in the present, and can represent significant resources for the future.

(b) The Secretary shall, in cooperation with the State, implement the programs described in section 144 of this title in a manner that encourages the inventory, retention, rehabilitation, adaptive reuse and future study of historic bridges.

(c) The Secretary shall require each State to complete an inventory of all bridges on and off the Federal-aid system to determine their historic significance.

(d) Reasonable costs associated with actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which continue to be used for motorized vehicular traffic shall be eligible as reimburseable project costs, including projects authorized pursuant to section 144 of title 23, provided that the load capacity and safety features of the resulting bridge are adequate to serve the intended use for the life of the facility. Funding pursuant to section 144 of this title for actions to preserve, or reduce the impact of the project on, the historic integrity of historic bridges which are no longer used for motorized vehicular traffic shall not exceed the estimated cost of demolition.

(e) Any State which proposes to demolish a historic bridge for a replacement project with funds made available pursuant to section 144 of title 23, shall make the bridge available for donation to a State, locality, or responsible private entity provided such State, locality, or responsible entity enters into an agreement to—

(1) maintain the bridge and the features that give it its historic significance and

(2) assume all future legal and financial responsibility for the bridge, which may include an agreement to hold the State highway agency harmless in any liability action. Costs incurred by the State to preserve the historic bridge, including funds made available to the State, locality, or private entity to enable it to accept the bridge, shall be eligible project costs under chapter 1 of title 23 up to an amount not to exceed the cost of demolition. Any bridge preserved pursuant to this subsection shall thereafter not be eligible for any other funds authorized pursuant to this title.

(f) For purposes of this section, "historic bridge" means any bridge that is listed on, or eligible for listing on, the National Register of Historic Places.

(g) The Secretary of Transportation shall make appropriate arrangements with the Transportation Research Board of the National Research Council to carry out a study of the section 144 bridge program's effect on the preservation and rehabilitation of historic bridges. The Transportation Research Board shall also develop recommendations of specific standards which shall apply only to the rehabilitation of historic bridges, and shall provide an analysis of any other factors which would serve to enhance the rehabilitation of historic bridges.

FOREST HIGHWAYS

SEC. 136. Notwithstanding section 202(a) of title 23, United States Code, the Secretary of Transportation shall, after making the transfer provided by section 204(g) of title 23, United States Code, on October 1, of each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, allocate 66 per centum of the remainder of the authorization for forest highways provided for that fiscal year by this Act in the same percentage as the amounts allocated for expenditure in each State and the Commonwealth of Puerto Rico from funds authorized for forest highways for the fiscal year ending June 30, 1958, adjusted to (1) eliminate the 0.003,243,547 per centum for the State of Iowa to the State by deed executed May 26, 1964, and (2) redistribute the above percentage formerly apportioned to the State of Iowa for other participating States on a proportional basis. The remaining funds authorized to be appropriated for forest highways for such fiscal years shall be allocated pursuant to section 202(a) of title 23, United States Code.

WILDFLOWERS

SEC. 137. Section 319 of title 23, United States Code, is amended by inserting an "(a)" after section 319 and inserting the following new subsection:

"(b) The Secretary shall require the planting of native wildflower seeds and/or seed-

lings as part of any landscaping project under this section. At least one-quarter per centum of the funds expended for landscaping projects shall be used for such plantings. The requirements of this subsection may be waived by the Secretary if the State certifies that such native wildflowers or seedlings cannot be grown satisfactorily or planting areas are limited or otherwise used for agricultural purposes. Nothing in this subsection shall be construed to prohibit the acceptance of native wildflower seeds or seedlings donated by civic organizations or other organizations and individuals to be used in landscaping projects.".

COMBINED ROAD PLAN DEMONSTRATION PROGRAM

SEC. 138. (a) The Secretary of Transportation, in cooperation with up to 10 States, shall conduct a Combined Road Plan Demonstration to test the feasibility of approaches for combining, streamlining and increasing the flexibility in the administration of the Federal-aid secondary, Federal-aid urban and off-system urban and secondary bridge programs. The demonstration shall place as much responsibility as feasible with State and local governments including, but not limited to, the granting of design exceptions and the conduct of final inspections.

(b) As soon as is practicable, upon completion of the demonstration project, the Secretary of Transportation shall submit a report to the Congress evaluating the effectiveness of the demonstration and making needed recommendations.

CALIFORNIA EMERGENCY RELIEF

SEC. 139. Section 125(b) of title 23, United States Code, is amended by striking "$30,000,000" and inserting in lieu thereof "$55,000,000" and the following: "(or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986)".

PRIORITY PROJECTS

SEC. 140. (a) Notwithstanding any other provisions of title 23 pertaining to the transfer of Federal-aid program funds, the Secretary of Transportation shall carry out the following projects if requested by a State highway department and if designated as part of a Federal-aid system;

(1) The Broadway-Chinden Connector in Idaho, connecting Interstate-184 with Broadway Avenue, to increase the access to downtown Boise and the Interstate;

(2) U.S. 59 Highway Corridor in Texas, from Texarkana to Houston to Beeville;

(3) The Brunswick-Topsham Bypass in Maine, a limited access highway providing increased access from Interstate 95 to Brunswick Naval Air Station and Bath Iron Works;

(4) The Long Island Expressway Fourth Lane Study to examine the feasibility of adding a fourth lane in each direction to I-495 in New York;

(5) The Nassau Expressway in New York, extending from Burnside Avenue to Broadway;

(6) The Westchester Parkway in New York, to widen the segment between the Hawthorne Interchange and Washburn Road, reconstruct the southbound lanes in the vicinity of Pleasantville Road, and reconstruct the Pleasantville Road interchange;

(7) The Lockport Expressway in New York, to relocate the terminus of the Lockport Expressway (I-990) and construct an interchange at its new terminus at Millersport Highway in Erie County, New York;

(8) The Sunrise Highway in New York, from Wheeler Road to Veterans' Memorial Highway in the Town of Islip, Suffolk County, New York;

(9) The Southern Tier Expressway in Steuben County, New York;

(10) Fuhrman Boulevard, an access road which parallels Lake Erie along the outer harbor in the City of Buffalo, New York;

(11) Access highways to public recreation areas on certain lakes and State parks in order to accommodate present and projected traffic density—

(A) Morton County: $1.8 million for bridge replacement and access road to Sweetbriar and Crown Butte Lakes, North Dakota;

(B) Mercer County: $1.2 million for access road to Hazen Bay, Lake Sakakawea, North Dakota;

(C) Ransom County: $3.0 million for access road to Fort Ransom State Park, North Dakota;

(D) Benson/Ramsey Counties: $3.7 million for access road to Tri-County Park, Devils Lake Recreation Areas, North Dakota;

(E) Mountrail County: $2.8 million for access road to Parshall Bay, Lake Sakakawea, North Dakota;

(F) Emmons County: $5.9 million for access road to Lake Oahe and numerous bays, North Dakota;

(G) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near the city of Charlson, North Dakota;

(H) Grand Forks County: $.8 million for access road to Larimore Dam Recreation Areas, North Dakota;

(I) Grand Forks County: $1 million for access road to Fordville Dam Recreation Area, North Dakota;

(J) Steele County: $1.6 million for access road to Golden Lake Recreation Areas, North Dakota;

(K) McKenzie County: $.8 million for access road to several bays on Lake Sakakawea near U.S. Highway 85 south of the City of Williston, North Dakota;

(L) Bottineau/Renville Counties: $1.6 million for access road to U.S. Fish and Wildlife Lake Darling Refuge, North Dakota; and

(M) Mountrail County: $.6 million for access road to Van Hook Bay, Lake Sakakawea, North Dakota;

(12) Stark/Hettinger Counties: $8.1 million for secondary road improvements serving a regional grain terminal at Gladstone, North Dakota;

(13) For a new route from Los Alamos, New Mexico to Santa Fe, New Mexico;

(14) For work on U.S. 70 in the State of New Mexico from Las Cruces, New Mexico to Texico, New Mexico;

(15) A project on the Federal-aid urban system between a railroad line and a highway in the vicinity of Moorhead, Minnesota;

(16) A highway project in Pine City, Minnesota, to construct an interchange between a highway on the Interstate System and a county State-aid highway;

(17) A reconstruction of an access road to Voyageurs National Park, Minnesota;

(18) A highway project for the construction of an access road from County Road 413 in St. Louis County, Minnesota, to a recreational complex on the Bois Forte Chippewa Reservation (Vermilion Sector);

(19) A project for the design and site location for the replacement of the Bloomington Ferry Bridge, located in Hennepin and Scott Counties, Minnesota; and

(20) A project for construction of a highway connecting Aurora-Hoyt Lakes and Silver Bay, Minnesota.

(21) Interstate connector from I-95 near Florence, South Carolina to U.S. 17, north of Myrtle Beach, South Carolina to allow increased access to the Grand Strand.

(22) The South Caroline portion of the Bobby Joines Expressway by-pass from I-20 near North Augusta, South Carolina south across the Savannah River into Georgia, where it connects with I-520.

(23) Up to $14.5 million to carry out a highway project in the vicinity of Sanford, Florida, to demonstrate methods of reducing costs and expediting construction of an interchange between Florida State Route 46A and a highway on the Interstate System by contracting with a private consultant to design and construct such project.

(24) To reconstruct and rehabilitate the Eugene Talmade Memorial Bridge, a functionally obsolete bridge which is located in Savannah, Georgia and crosses the Savannah River.

(25) In Lawrence, Kansas, a by-pass project which is a model for its cost-sharing arrangement and economic development goals.

(26) In Wichita, Kansas, the replacement of a conventional intersection of two heavily travelled streets at Kellogg and Oliver with a new low-cost European fly-over design for the interchange.

(27) In Olathe, Kansas, the 119th Street Interchange to correct a dangerous interchange.

(28) In Emporia, Kansas, a new Prairie Street overpass to overcome existing flood conditions.

(29) In Sparks, Nevada, for the purpose of demonstrating the efficacy of improving traffic flow conditions on various adjacent interchanges and local streets by constructing a new interchange and approahces on an east-west highway on the Interstate System and a four-lane highway not on such system which could serve as a beltway.

(30) In the State of Arkansas on a segment of a north-south highway on the Federal-aid primary system from the vicinity of the junction of Interstate routes I-40 and I-540 to the boundary between the State of Arkansas and Missouri in the vicinity of Bella Vista, Arkansas.

(31) In the vicinity of Fort Smith, Arkansas, to widen a segment of the Federal-aid urban system and improve signalization.

(32) In the vicinity of Jonesboro, Arkansas for the construction of four grade separations on a four-lane bypass route for demonstration methods of improving highway safety.

(33) In Kansas City, Missouri, the South Midtown Roadway, a north-south route on the Federal-aid Primary System.

(34) In St. Charles County, Missouri, a bypass highway to connect an east-west Interstate route with the Interstate beltway around St. Louis, Missouri.

(35) A segment of north-south highway on the Federal-Aid Primary System from the vicinity of Carthage, Missouri, to the boundary between the States of Arkansas and Missouri in the vicinity of Noel, Missouri, increasing the number of lanes on such segment from two to four.

(36) A 106-mile highway on the Federal-aid Primary system in Missouri, Beginning in the vicinity of Columbia and ending in the vicinity of Lancaster.

(37) Construction of the New River Parkway in West Virginia, a two-lane scenic highway through the New River Gorge National River area connecting with Interstate 64.

(38) To improve the Peachtree Industrial Boulevard from I-285 to S.R. 141 in Atlanta, Georgia.

(39) A ten mile extension from the Blue Ridge Parkway to the Explore Project (a 5,000 acre tourist destination located in the Roanoke Valley in western Virginia).

(40) The restoration of the Martin Luther King bridge connecting the metro east area in Illiniois and St. Louis, Missouri.

(41) The improvement of the Builder Highway in Henderson, Nevada creating a landscaped environment.

(42) Highway bridge at Lock & Dam 4 near Pine Bluff, Arkansas.

(43) The extension of I-49 for 6.7 miles in the Shreveport and Lafayette, Louisiana vicinities.

(44) The Cline Avenue/I-94 Interchange in East Chicago, Indiana.

(45) The demonstration of the state of the art highway technologies on U.S. 220 in Blair County, Pennsylvania.

(46) The Basin Street Railroad Crossing. To secure funding for a railroad grade crossing project in Allentown, Pennsylvania.

(47) The Southern Expressway project in Pittsburgh, Pennsylvania. To enable traffic to bypass airport and local roads that access the Pittsburgh Airport.

(48) The Ebsenberg Bypass. To divert traffic from Route 219 in Ebsenberg, Pennsylvania, to a 5.1 mile relocated segment.

(49) The Chambersburg, Pennsylvania interchange project, located in Franklin County. To relieve traffic congestion at an existing interchange on a north-south interstate route and to provide access to Chambersburg, Pennsylvania.

(50) The Chadville, Pennsylvania highway project. To relocate and reconstruct a 3.5 mile segment of the Federal-aid primary system from the vicinity of Chadville, Pennsylvania, to Fairchance, Pennsylvania.

(51) The Kittanning-Brookville, Pennsylvania project. To reconstruct approximately 30 miles of a two-lane on the Federal-aid primary system between Kittanning and Brookville, Pennsylvania.

(52) The Johnstown Flood National Memorial project. To upgrade a narrow, 1.3 mile access road to the Johnstown Flood National Memorial, near Johnstown, Pennsylvania.

(53) The Seltice Way project located in Post Falls, Idaho. The reconstruction project of Seltice Way through the city of Post Falls, beginning at Pleasant View Road and ending at Huetter Road.

(54) The US-20/26 Highway Project, located on US-20/26 and US-20 between the Idaho National Engineering Laboratory (INEL) site and the city of Idaho Falls, Idaho.

(55) A highway project in the vicinity of Southeast Baton Rouge, Louisiana, for the purpose of demonstrating methods by which (a) the widening of the on and off ramps of a full diamond interchange on the Interstate System, and (b) the widening and improvement of the approaches on both sides of the Interstate System, including access ramps and turnouts therefrom, of a two lane highway not on such system and construction of a school bus loading area immediately adjacent thereto, and (c) the coordination of a partial relocation of a two lane highway not on such system, will enchance to the economic development of the area while removing safety hazards, reducing traffic congestion at the Interstate Interchange, at the entrances to a large commercial development and a school, including the entrances to the school bus loading zone.

(56) A highway project in the vicinity of East Lafayette Parish, Louisiana, for the purpose of demonstrating the benefits of a full diamond interchange connecting Louisiana Avenue on the west bank of Bayou Vermillion to the Interstate System to improve traffic flow and highway safety in the City of Lafayette.

(57) A highway project in the vicinity of East Lafayette, Louisiana for the purpose of demonstrating the benefits of providing access to the Interstate System from a state highway not on such system.

(58) The New Sewickly project, located in the townships of New Sewickly and Conway, Pennsylvania. To construct a two-lane highway between the two municipalities.

(59) A grade separation over a rail highway crossing at the intersection of U.S. 41 and Causeway Boulevard in the vicinity of Tampa, Florida, to relieve motor vehicle congestion resulting from the transportation of freight to and from areas for the transshipment of waterborne commerce.

(60) A highway project to demonstrate methods of improving highway safety by making improvements to a road providing direct access from the Fort Campbell Military Reservation to the City of Clarksville, Tennessee.

(61) To perform a study to determine the benefits and cost associated with making Route 22 West from Ebensburg, Pennsylvania to Pittsburgh, Pennsylvania a four lane road. Preliminary design and engineering is to be included in this study. This segment of Route 22 is a dangerous road which varies from two to three ot four lanes. A four lane road would benefit commerce and safety. This project should be granted priority status for construction funds.

(62) To perform a study to determine the benefits and costs associated with making Route 219 from Somerset, Pennsylvania to the Maryland border a four lane highway. Preliminary design and engineering is to be included in this study. This segment, currently a two lane road, would connect with two four lane segments to provide a major Appalachian thoroughfare and result in jobs and safety benefits. This project should be granted priority status for construction funds.

(63) To perform a study to determine the benefits and costs associated with creating a four lane highway from Route 56 in Johnstown, Pennsylvania to Route 22. Preliminary design and engineering is to be included in this study. This project should be granted priority status for construction funds.

(64) $184,000 is needed to perform emergency repair to the Calhoun Bridge (Morrisville to Trenton, Pennsylvania). An accident caused structural damage which necessitated closing the bridge until repairs can be accomplished. Twenty thousand cars per day that were regular users of the bridge are inconvenienced and many businesses located at this bridge are inconvenienced as a result. This Project should be granted priority status for construction funds.

(65) To perform a study to determine the benefits and costs associated with making Route 15 from Hunterstown, Pennsylvania to the Maryland Border four lanes. This segment is currently two lanes and connects two four lane segments. Many deaths occur on this dangerous stretch of highway. This project should be granted priority status for construction funds.

(66) Cline Avenue Interchange Improvement Project in East Chicago, Indiana for the reconstruction of an interchange at the intersection of Cline Avenue and the Borman Expressway.

(67) Hammond Railroad Relocation Project in Hammond, Indiana to complete acquisition of right-of-way and construction of the Hohman Avenue underpass to improve transportation and economic benefits to the community.

(68) Lafayette Railroad Relocation in Lafayette, Indiana to reroute rail traffic to a single corridor with few crossings reducing the threat posed to the safety of the local citizens by over 40 rail-highway intersections.

(69) U.S. 75 North Central Expressway Extension combines several individual projects which involve construction of additional lanes, more efficient interchanges, and improved bridge structures for added capacity and safer travel on a Federal-aid Primary System highway. Improvements to this major north-south route in north central Texas near Dallas would cover 15.4 miles of highway from Interstate 635 in Dallas County to State Highway 121 in Collin County. Cost of the project is estimated at $134.5 million.

(70) Interstate Highway 30 Interchange ("West Leg")—Ft. Worth, Texas, reconstructs and widens a critical interchange involving major, heavily-traveled East-West and North-South Interstate Highways (IH 30 and IH 35, repectively).

(b) Each fiscal year before making any apportionment, the Secretary of Transportation shall approve from a State's apportionments under sections 104, 130, 144, and 152, of title 23, United States Code, such sums that may be requested by a State highway department to carry out projects required by this section in that State. A State highway department shall designate the apportionments from which sums are to be approved. The Federal share payable for sums approved from apportionments provided in paragraphs 104(d)(1)(A) and 104(d)(1)(B) shall not exceed the share provided in subsection 120(c) of title 23, United States Code; from apportionments provided in paragraphs 104(d)(1)(C), 104(d)(2) and 104(d)(3) shall not exceed the share provided in subsection 120(a) of title 23, United States Code; from apportionments provided in subsection 130(f) shall not exceed the share provided in subsection 130(f); from apportionments provided in subsection 144(e) shall not exceed the share provided in subsection 144(f); and from apportionments provided in subsection 152(e) shall not exceed the share provided in subsection 152(d). Funds approved under this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended. Funds in excess of the amounts needed to complete a project shall be returned to the appropriate apportionment.

NEW JERSEY PENNSYLVANIA TOLL COMPACT DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION

SEC. 141. (a) OBLIGATION TO REPAY FEDERAL FUNDS INVESTED ON I-80.—

(1) The Delaware River Joint Toll Bridge Commission (hereinafter in this section referred to as the "Commission"), in conjunction with the State highway agencies of the Commonwealth of Pennsylvania and of the State of New Jersey, shall enter into an agreement with the Secretary of Transportation to repay to the Treasury of the United States any Federal funds which previously have been obligated or otherwise expended by the Federal Government with respect to the Delaware Water Gap Bridge on I-80. Such repayment shall be credited to the Highway Trust Fund.

(2) Upon such repayment, such States and the Commission shall be free of all restrictions contained in title 23, United States Code, and any regulation or agreement thereunder, with respect to the collection or imposition of tolls or other charges for such bridge or the use thereof.

(b) AGREEMENT TO CONSTRUCT I-78 BRIDGE AS A TOLL BRIDGE.—If the Commonwealth of Pennsylvania, the State of New Jersey, and the Commission determine to operate the uncompleted bridge under construction in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, on I-78 as a toll bridge, such States, the Commission, and the Secretary of Transportation shall enter into an agreement with respect to such I-78 bridge project as provided in section 129 of title 23, United States Code, notwithstanding the requirements of section 301 of such title or any existing agreement.

(c) COMMISSION'S AUTHORITY TO CHARGE TOLLS; RIGHT OF REVIEW BY FEDERAL AGENCIES PRESERVED.—The Commission's authority to fix, charge, or collect any fees, rentals, tolls, or other charges shall be as provided in its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f), but paragraph (c) of the supplemental agreement described and consented to in subsection (f) shall not be construed to eliminate the necessity for review and approval by any Federal agency, as may be required under applicable Federal law, to determine that the tolls charged by the Commission are reasonable and just consistent with the Commission's responsibilities under its Compact, supplements thereto and the supplemental agreement described and consented to in subsection (f).

(d) CONGRESSIONAL CONSENT NOT GRANTED TO TOLLS ON EXISTING NONTOLL BRIDGES.—Nothing in this section shall be construed to grant congressional consent to the imposition of tolls by the Commission on any existing and operating bridge under the Commission's jurisdiction on which tolls were not charged and collected on January 1, 1986.

(e) CONGRESSIONAL APPROVAL NOT APPLICABLE TO I-895 CORRIDOR.—Nothing in this section shall constitute congressional approval to construct any additional toll bridge in the previously designated I-895 corridor.

(f) CONSENT OF CONGRESS TO SUPPLEMENTAL AGREEMENT CONCERNING AUTHORITY OF COMMISSION.—

(1) The consent of the Congress is hereby given to the supplemental agreement, described in paragraph (2), concerning the Delaware River Joint Toll Bridge Commission, which agreement has been enacted by the Commonwealth of Pennsylvania on December 18, 1984, as Act 206, laws of 1984, and by the State of New Jersey on October 21, 1985, as Public Law 1985, chapter 342.

(2) The agreement referred to in paragraph (1) reads substantially as follows:

"SUPPLEMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

"Supplementing the Compact or Agreement Entitled Agreement between the Commonwealth of Pennsylvania and the State of New Jersey Creating the Delaware River Joint Toll Bridge Commission as a Body Corporate and Politic and Defining its Powers and Duties, as Heretofore Amended and Supplemented, to Establish the Purposes for Which the Commission May Fix, Charge, and Collect Tolls, Rates, Rents, and Other Charges for the use of Commission Facilities and Properties".

"The Commonwealth of Pennsylvania and the State of New Jersey do solemnly covenant and agree, each with the other, as follows:

"(a)(1) Notwithstanding any other provision of the compact hereby supplemented, or any provision of law, State or Federal to the contrary, as soon as the existing outstanding bonded indebtedness of the commission shall be refunded, defeased, retired, or otherwise satisfied and thereafter, the commission may fix, charge, and collect tolls, rates, rents, and other charges for the use of any commission facility or property and in addition to any purpose now or heretofore or hereafter authorized for which the revenues from such tolls, rates, rents, or other charges may be applied, the commission is authorized to apply or expend any such revenue for the management, operation, maintenance, betterment, reconstruction, or replacement (a) of the existing non-toll bridges, formerly toll or otherwise, over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the act of the State of New Jersey approved April 1, 1912 (Chapter 297), and all supplements and amendments thereto, and the act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto and (b) of all other bridges within the commission's jurisdiction and control. Betterment shall include but not be limited to parking areas for public transportation services and all facilities appurtenant to approved projects.

"(2) The commission may borrow money or otherwise incur indebtedness and provide from time to time for the issuance of its bonds or other obligations for one or more of the purposes authorized in this supplemental agreement. The commission is authorized to pledge its tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loan or advances.

"(3) The authority of the commission to fix, charge, and collect fees, rentals, tolls or any other charges on the bridges within its jurisdiction, including the bridge at the Delaware Water Gap, is confirmed.

"(4) The covenants of the State of New Jersey and the Commonwealth of Pennsylvania as set forth in Article VI of the compact to which this is a supplemental agreement shall be fully applicable to any bonds or other obligations issued or undertaken by the commission. Notwithstanding Article VI or any other provision of the compact, the State of New Jersey and the Commonwealth of Pennsylvania may construct a bridge across the Delaware River in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, within 10 miles of the existing toll bridge at that location. All the rest and remainder of the compact, as amended or supplemented, shall be in full force and effect except to the extent it is inconsistent with this supplemental agreement.

"(b) The commission is authorized to fix, charge, or collect fees, rentals, tolls, or any other charges on the proposed bridge to be constructed in the vicinity of Easton, Pennsylvania, and Phillipsburg, New Jersey, in the same manner and to the same extent that it can do so for other toll bridges under its jurisdiction and control provided that the United States Government has approved the bridge to be a part of the National System of Interstate and Defense Highways with 90 percent of the cost of construction to be contributed by the United States Government, and provided further, that the non-Federal share of such bridge project is contributed by the commission. The commission is further authorized in the same manner and to the same extent that it can do so for all other toll bridges under its jurisdiction and control to fix, charge, and collect fees, rentals, tolls or any other charges on any other bridge within its jurisdiction and control if such bridge has been constructed in part with Federal funds.

"(c) The consent of Congress to this compact shall constitute Federal approval of the powers herein vested in the commission and shall also constitute authority to the United States Department of Transportation or any successor agency and the intent of Congress to grant any Federal approvals required hereunder to permit the commission to fix, charge, and collect fees, rentals, tolls, or any other charges on the bridges within its jurisdiction to the extent provided in subsections (a) and (b) and this subsection and the compact.

"(d) Notwithstanding the above provisions, the commission shall not fix, charge, or collect fees, rentals, tolls, or any other charges on any of the various bridges formerly toll or otherwise over the Delaware River between the State of New Jersey and the Commonwealth of Pennsylvania heretofore acquired by the commission pursuant to the provisions of the Act of the State of New Jersey approved April 1, 1912 (chapter 297), and all supplements and amendments thereto, and the Act of the Commonwealth of Pennsylvania approved May 8, 1919 (Pamphlet Laws 148), and all supplements and amendments thereto.

"(e) At any time that the commission shall be free of all outstanding indebtedness, the State of New Jersey and the Commonwealth of Pennsylvania may, by the enactment of substantially similar acts, require the elimination of all tolls, rates, rents, and other charges on all bridges within the commission's jurisdiction and control and, thereafter, all costs and charges in connection with the construction, management, operation, maintenance, and betterment of bridges within the jurisdiction and control of the commission shall be the financial responsibility of the States as provided by law.".

MOTOR VEHICLE STUDY

SEC. 142. (a) The Secretary shall enter into appropriate arrangements with the Transportation Research Board (TRB) of the National Academy of Sciences to conduct a study of those motor vehicle issues noted in subsection (b) of this section. The TRB shall consult with the Department of Transportation, the State highway administrations, the motor carrier industry, highway safety groups, and any other appropriate entities.

(b) The study shall include an analysis of the impacts of the various positions that have been put forth with respect to each issue. The final report shall include best estimates of the effects on pavement, bridges, and highway safety, and the changes in transportation costs and other measures of productivity for various segments of the trucking industry resulting from adoption of each of the positions identified and analyzed. Related issues of permitting, weight enforcement, and data availability and reliability shall be addressed as appropriate. The issues to be addressed shall include but not be limited to:

(1) Elimination of existing, grandfather provisions of section 127, title 23, United

States Code, which allow higher axle loads and gross vehicle weights than the 20,000-pound single axle load limit, 34,000-pound tandem axle load limit, and 80,000-pound gross vehicle weight limit maximums authorized by the Federal-Aid Highway Amendments of 1974 (Public Law 93-643), including permits for divisible loads and statutory provisions providing higher weights by formula, tolerance or statutory specification.

(2) Analysis of alternative methods of determining a gross vehicle weight limit and axle loadings for all types of motor carrier vehicles.

(3) Analysis of the bridge formula contained in section 127 of title 23, United States Code, in view of current vehicle configurations, pavement and bridge stresses in accord with 1986 design and construction practices, and existing bridges on and off the Interstate System.

(4) Establishment of a nationwide policy regarding the provisions of "reasonable access" to the National Network for combination vehicles established pursuant to the Surface Transportation Assistance Act of 1982.

(5) Recommend appropriate treatment for specialized hauling vehicles which do not comply with the existing Federal bridge formula.

(c) The TRB shall submit a final report to the Secretary and the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section, not later than thirty months after appropriate arrangements are entered into under subsection (a). Appropriate arrangements shall be concluded within six months from the date of passage of this Act.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $500,000 per fiscal year for each of the fiscal years ending September 30, 1987, and September 30, 1988. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

RAIL-HIGHWAY CROSSINGS STUDY

SEC. 143. (a) The Secretary shall conduct a study of national highway-railroad crossing improvement and maintenance needs. The Secretary shall consult with the State highway administrations, the Association of American Railroads, highway safety groups, and any other appropriate entities in carrying out this study.

(b) The issues to be addressed by this study shall include but not be limited to:

(1) Examine any correlation which may exist between existing conditions at crossings and accident data at crossings.

(2) Examine existing hazards to motorists and railroad personnel and community impacts resulting from mobility and capacity constraints including delays of police, fire, and emergency medical services.

(3) Analysis of most cost effective methods of protecting the public at crossings including a review of the impact of Federal funds expended at crossings; division of cost of improvements and maintenance between Federal, State, local governments and railroads; cost effectiveness of the Railroad Relocation Demonstration Program (section 163 of the Federal-Aid Highways Act of 1973) compared to the Railroad-Highway Crossings program (section 203 of the Highway Safety Act of 1973); and the cost of upgrading existing equipment at crossings to the latest technology.

(4) Examine driver behavior at railroad-highway crossings and what technologies are most effective in changing behavior and preventing accidents.

(5) Examine what effect the shift in rail traffic patterns, including abandonments, mergers, and increased demand in certain corridors) has on railroad-highway crossing needs.

(6) Review any other potential costs associated with railroad-highway crossings including accident liability, increased truck size and wieght, and maintenance responsibilities.

(c) The Secretary shall submit a final report to the Senate Environment and Public Works Committee and the House Public Works and Transportation Committee of the Congress on the results of the study conducted under this section along with recommendations of how these needs can be addressed in a cost effective manner, not later than twenty-four months after the date of enactment of this section.

(d) There is authorized to be appropriated to carry out subsection (a) of this section, out of the Highway Trust Fund (other than the Mass Transit Account), $600,000 for the fiscal year ending September 30, 1987, to remain available until expended. Funds authorized for this section shall be available for obligation in the same manner as if apportioned under chapter 1 of title 23, United States Code, and shall be available until expended.

FERRY BOAT SERVICE STUDY

SEC. 144. (a) The Secretary of Transportation in consulation with the highway departments of the States of Nebraska and South Dakota, shall conduct a study to determine the feasibility and cost of establishing public ferry boat service on the Missouri River which connects a Federal-aid highway in the Vicinity of Niobrara, Nebraska with a Federal-aid highway in the vicinity of Springfield, South Dakota, and which meets the requirements of section 129(g) of title 23, United States Code.

(b) Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the study conducted under this section together with any recommendations the Secretary may have concerning the establishment of the ferry boat service described in subsection (a).

SUBSTITUTE TRANSIT PROJECT IN OREGON

SEC. 145.* (a) Notwithstanding any other provision of law, upon the joint request of the Governor of the State of Oregon and the local governments concerned, the Secretary may approve a substitute transit project for construction of a light rail transit system in lieu of construction of any eligible interstate lanes if such substitute project is in or adjacent to the proposed right-of-way for such lanes.

(b) Upon approval of any substitute transit project under subsection (a), the costs of construction of the eligible interstate lanes for which such project is substituted shall not be eligible for funds authorized under section 108(b) of the Federal-Aid Highway Act of 1956 and a sum equal to the Federal share of such costs, as included in the latest interstate cost estimate approved by Congress, shall be available to the Secretary to incur obligations under section 103(e)(4) of title 23, United States Code, for the Federal share of the costs of such substitute project.

(c) By September 30, 1989, any substitute transit project approved under subsection (a) (for which the Secretary finds that sufficient Federal funds are available) must be under contract for construction or construction must have commenced. If any such substitute transit project is not under contract for construction or construction has not commenced by such date, then immediately after such date, the Secretary shall withdraw approval of such project and no funds shall be appropriated under the authority of section 103(e)(4) of title 23, United States Code, for any such project.

(d)(1) A substitute transit project approved under subsection (a) shall be deemed to be a substitute transit project for purposes of section 103(e)(4) of title 23, United States Code (other than subparagraphs (C) and (O)).

(2) Unobligated apportionments for the Interstate System in the State of Oregon shall, on the date of approval of a substitute transit project under subsection (a), be reduced in the proportion that the Federal share of the costs of the construction of the eligible interstate lanes for which such project is substituted bears to the Federal share of the total cost of all interstate routes in that State as reflected in the latest cost estimate approved by Congress.

(3) The Secretary shall administer this section through the Federal Highway Administration.

(f) For purposes of this section, the term "eligible interstate lanes" means any bus lanes which are to be constructed on Interstate Route 205 in Oregon.

REVIEW OF REPORTS ON UNITED STATES ROUTE 13 RELIEF ROUTE

SEC. 146. The Congress requests the Board of Engineers for Rivers and Harbors of the United States Army Corps of Engineers to review—

(1) the report of the State of Delaware and the Federal Highway Administration for the United States Route 13 Relief Route; Project No. F-1001(16), Contract #83-110-01,

(2) the report of the Chief of Engineers on the Inland Waterway from the Delaware River to Chesapeake Bay, Delaware and Maryland, printed as House Document Number 63-196, and

(3) other subsequent pertinent reports,

for the purpose of determining how to best modify the existing canal project to provide a new structure for the selected alignment of the United States Route 13 Relief Route.

USE OF ROCK SALT ON HIGHWAYS

SEC. 147. (a) The Congress finds that—

(1) the use of rock salt to remove ice from the highways causes considerable damage to the highways, bridges, automobiles, and trucks,

(2) rock salt also causes damage to equipment and buildings near highways,

(3) rock salt causes considerable damage to the environment,

(4) all of these costs are real costs borne by the taxpayers, although such costs may not be paid directly to the government, and

(5) calcium magnesium acetate is an effective deicing material which does not cause the corrosion and environmental damage associated with rock salt.

(b) It is the sense of the Congress that the States and local governments should consider the full cost of using rock salt on the highways, including the damage to highways, vehicles, equipment, buildings, and the environment, in calculating the real cost of deicing materials and the use of calcium magne-

sium acetate as an alternative deicing material.

HIGHWAY FEASIBILITY STUDY

Sec. 148. (a) STUDY.—The Secretary, in cooperation with the States of Louisiana, Arkansas, and Missouri, shall study the feasibility and necessity of constructing to appropriate standards a proposed highway along a route from Shreveport, Louisiana to Texarkana, Fort Smith, and Fayetteville, Arkansas, and Carthage and Kansas City, Missouri. Such study shall update the feasibility study conducted under section 143(6) of the Federal-Aid Highway Act of 1973.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study conducted under this section.

INTERIM AMENDMENTS

SEC. 149. (a) Unobligated balances of Interstate construction funds apportioned or allocated to a State and available to a State on September 30, 1986, shall be available for obligation for Interstate construction projects or to convert Advance Construction Interstate projects until October 1, 1990. Federal Interstate construction funds shall not be used to reimburse the State under section 123(a) of title 23, United States Code, when the payment to the utility violates the law of the State or violates a legal contract between the utility and the State. Projects constructed under this subsection are eligible for the Federal share payable provided in section 120(b) of title 23, United States Code. Interstate discretionary funds unallocated on September 30, 1986, shall be available for allocation until October 1, 1990.

(b) Unobligated balances apportioned to a State under section 104(b)(1) of title 23, United States Code and section 104(b)(5)(B) of title 23, United States Code, shall be available for obligation for projects under section 159 of title 23, United States Code.

(c) Unobligated balances apportioned to the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands under the provisions of section 108 of the Highway Improvement Act of 1982 shall be considered to have been authorized to be appropriated to carry out the provisions of section 215 of title 23, United States Code.

(d) Unobligated balances apportioned to a State under section 203 of the Highway Safety Act of 1973 shall be available for projects under section 130 of title 23, United States Code.

TECHNICAL AMENDMENTS

SEC. 150. (a) Title 23, United States Code, is amended as follows:

(1) The tables of sections for chapters 1, 3, and 4 are amended by (A) striking:

"115. Construction by States in advance of apportionment."
"118. Availability of sums apportioned."
"127. Vehicle weight and width limitations—Interstate System."
"133. Repealed."
"146. Repealed."
"148. Development of a national scenic and recreational highway."
"151. Pavement marking demonstration program."
"155. Access highways to public recreation areas on certain lakes."
"156. Highways crossing Federal projects."
"213. Rama Road."
and

"219. Safer off-system roads.",

and by (B) inserting in lieu thereof, respectively,

"115. Advance construction."
"118. Availability."
"127. Vehicle weight limitations—Interstate System."
"133. Strategic highway research program."
"146. Carpool and vanpool projects."
"148. Repealed."
"151. Repealed."
"155. Repealed."
"156. Repealed."
"213. Repealed."
and

"219. Repealed."
and by (C) adding

"159. Federal-aid Interstate-primary program."
"160. Income from right-of-way."
and

"409. Reports, surveys; disclosures; admission as evidence.".

(2) Section 101(a) is amended by striking the definition of "park road" and inserting in lieu thereof "The term 'park road' means a public road that is located within, or provides access to, an area in the national park system, with title and maintenance responsibilities vested in the United States.".

(3) Section 106(c) is amended by striking "10" and inserting in lieu thereof "15" and by striking the second sentence.

(4) Section 107(b) is amended by striking "under section 108(b) of the Federal-Aid Highway Act of 1956" and inserting in lieu thereof "for Interstate construction or for the Interstate-primary program".

(5) Section 113 is amended by striking out "August 30, 1935" and inserting in lieu thereof "March 3, 1931" and by striking out "267a" and inserting in lieu thereof "276a".

(6) Section 121(d) is amended by striking out "10" and inserting in lieu thereof "15", and by striking out the third sentence.

(7) The first sentence of section 122 is amended by inserting "or for substitute highway projects" before "and the retirement".

(8)(A) Section 125(b) is amended by striking out "the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors," each place it appears and inserting in lieu thereof "the Federal-aid highway systems, including the Interstate System".

(B) Section 125(c) is amended by striking out "routes functionally classified as arterials or major collectors" and inserting in lieu thereof "on any of the Federal-aid highway systems".

(9) Section 137(f)(1) is amended by striking "104(b)(5)(B)" and inserting in lieu thereof "104(d)(1)".

(10) Section 141(d) is amended by striking "104(b)(5)" and inserting in lieu thereof "104(d)(1)" the two places "104(b)(5)" appears and by inserting "-primary" after the word "Interstate".

(11)(A) Section 142(a)(1) is amended by (iii) striking "104(b)" and inserting in lieu thereof "104(d)".

(B) Section 142(a)(2) is amended by striking "104(b)(6)" the three places it appears and inserting in lieu thereof "104(d)(3)" in each place.

(C) Section 142(b) is amended by striking "paragraph (5) of subsection (b) of section 104" and inserting in lieu thereof "section 104(d)(1)".

(D) Section 142(c) is amended by striking "104(b)(6)" the two places it appears and inserting in lieu thereof in each place "104(d)(3)".

(12) Section 144(i) is amended by striking out the period at the end and inserting in lieu thereof "to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation.".

(13) Section 146 is amended by striking "104(b)(1), 104(b)(2), and 104(b)(6)" and inserting in lieu thereof "104(d) (1), (2), and (3)".

(14) Sections 148, 151, 155, 156, 213, and 219 are repealed.

(15) Section 150 is amended by striking "(6) of subsection (b)" in two places and inserting in lieu thereof in each place "(3) of subsection (d)".

(16)(A) Section 152(e) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(B) Section 152(g) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

(17)(A) Section 154(e) is amended—

(i) by striking out "criteria which takes" and inserting in lieu thereof "criteria which take";

(ii) by inserting after "posted" the following: "on January 1, 1983,"; and

(iii) by inserting before "in accordance with" the following: ", and on highways built after such date with speed limits posted at fifty-five miles per hour,".

(B) Section 154(f) is amended by striking "each of sections 104(b)(1), 104(b)(2), and 104(b)(6) of this title in an aggregate amount of up to 5 percent of the amount to be apportioned for the following fiscal years, in the case of fiscal years 1982 and 1983, and up to 10 percent, in the case of subsequent fiscal years." and inserting in lieu thereof "sections 104(d)(1)(C), (2), and (3) of this title in an amount of up to 10 percent of the amount to be apportioned for the following fiscal year.".

(18)(A) Section 158(a)(1) is amended by striking "each of the sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1986".

(B) Section 158(a)(2) is amended by striking "each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985" and inserting in lieu thereof "sections 104(d) (1), (2), and (3) of this title on October 1, 1987."

(19)(A) The second sentence of section 204(b) is amended by inserting "the Secretary or" before the "Secretary of the Interior".

(B) Section 204(e) is amended by striking "88 Stat. 2205" and inserting in lieu thereof "88 Stat. 2203".

(20) Section 210(g) is amended by striking "Commerce" and inserting in lieu thereof "Transportation".

(21) Subsection (a) of section 215 of title 23, United States Code, is amended by striking from the first sentence the words "and American Samoa" and inserting in lieu thereof "American Samoa, and the Commonwealth of the Northern Mariana Islands".

(22) Section 217 is amended by striking "paragraphs (1), (2), and (6) of section

104(b)" the two places it appears and inserting in lieu thereof "sections 104(d) (1), (2), and (3)".

(23)(A) Section 307(c)(3) is amended by striking "(1), (2), and (3) of section 104(b)" and inserting in lieu thereof "(1) and (2) of 104(d)".

(B) Section 307(c)(5) is amended by striking "104(b)(1)" and inserting in lieu thereof "104(d)(1)".

(C) Section 307(e) is amended by striking "the Congress" and inserting in lieu thereof "the Senate Environment and Public Works Committee and the House Committee on Public Works and Transportation".

(24) Section 311 is amended by striking "(b)" and inserting in lieu thereof "(d)".

(25) Section 315 is amended by striking "204(d), 205(a), 207(b) and 208(c)" and inserting in lieu thereof "204(f) and 205(a)".

(26) Section 401 is amended by striking "and American Samoa." and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands.".

(27)(A) Section 402(c) is amended by (i) striking "For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such" and inserting in lieu thereof "Such", by (ii), striking "After December 31, 1969, the" and inserting in lieu thereof "The", and by (iii) striking "and American Samoa" and inserting in lieu thereof "American Samoa and the Commonwealth of the Northern Mariana Islands".

(B) The last sentence of section 402(j) is amended by striking out "chapter" and inserting in lieu thereof "section".

(b)(1) Section 108(b) of the Federal-Aid Highway Act of 1956 is amended by (A) inserting "and" before "the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1987", by (B) inserting a period after "1987", and by (C) striking ", and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1988, the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1989, and the additional sum of $4,000,000,000 for the fiscal year ending September 30, 1990.".

(2) Section 108(d) of the Surface Transportation Assistance Act of 1982 is amended by striking "this title," and inserting in lieu thereof "title 23, United States Code,".

(3) Section 163 of the Surface Transportation Assistance Act of 1982 is amended by striking "appropriated" and inserting in lieu thereof "apportioned".

(4) Section 163(o) of the Federal-Aid Highway Act of 1973 is amended to read as follows:

"(o) The Secretary of Transportation shall make biennial reports and a final report to the President, the Senate Committee on Environment and Public Works, and the House Committee on Public Works and Transportation with respect to activities pursuant to this section."

(5) Section 103(c) of the Federal-Aid Highway Act of 1978 is amended by striking "Congress" and inserting in lieu thereof "the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation".

NATIONAL MAXIMUM SPEED LIMIT LAW

SEC. 151. (a) Subsection 154(a) of title 23, United States Code, is amended—

(1) by inserting "other than a highway on the Interstate System located outside of an urbanized area of fifty thousand population or more, (2) a maximum speed on any highway within its jurisdiction on the Interstate System located outside of an urbanized area of fifty thousand population or more in excess of sixty-five miles per hour" immediately after "hour"; and

(2) by renumbering "(2)" as "(3)" at the two places "(2)" appears.

(b) Subsection 154(f) of title 23, United States Code, is amended by inserting "on public highways with speed limits posted at fifty-five miles per hour" immediately after "hour".

CUMBERLAND GAP NATIONAL HISTORICAL PARK, VIRGINIA

SEC. 152. (a) Section 160(a) of the Federal-Aid Highway Act of 1973 (87 Stat. 278) is amended by adding the following new sentences at the end thereof: "After completion of the reconstruction and relocation of Route 25E through the Cumberland Gap National Historical Park (including construction of a tunnel and the approaches thereto), funds available for parkways in subsection (a) of section 101, Title 23, United States Code, shall be available to finance the cost of upgrading from 2 lanes to 4 lanes a highway providing access from such route through that portion of the Cumberland Gap National Historical Park which lies within the State of Virginia. The project, including any environmental impact statements, referred to in the preceding sentence shall not delay or affect in any way the reconstruction and relocation of Route 25E (including construction of a tunnel and approaches thereto).

(b) Subsection (b) of section 160 of such Act is amended by inserting after "rights-of-way" the following: "including approaches in the State of Virginia".

STATE MATCHING SHARE

SEC. 153. Notwithstanding title 23, United States Code, the State matching share for the Calder Bridge project across the St. Joe River, nineteen miles east of St. Maries, Idaho, including approaches, under title 23, United States Code, may be credited by the fair market value of land incorporated into the projected, where such land is fair market value of land incorporated into the project, where such land is in addition to existing public right-of-way and such land is lawfully donated to the State or local government after the effective date of this section, and may be credited by the fair market value of construction on the project performed by or donated to the State or local government after the effective date of this section.

ADVANCE CONSTRUCTION

SEC. 154. (a) Section 115 of title 23, United States Code, is amended by striking the title and inserting in lieu thereof "Advance construction".

(b) Paragraph (a) of section 115 of title 23, United States Code, is amended to read as follows:

"(a) When a State has obligated all the highway substitute, urban, secondary or bridge funds, as the case may be, apportioned or allocated to it or has used or demonstrates that it will use the obligation authority allocated to it, and proceeds to construct a highway substitute, urban, secondary or bridge project without the aid of Federal funds in accordance with all procedures and all requirements applicable to a project, except insofar as procedures and requirements limit a State to the construction of a project with the aid of funds previously apportioned or allocated to it or limit a State to the construction of a project with obligation authority previously allocated to it, the Secretary, upon approval of an application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned or allocated to the State, or when additional obligation authority is allocated to the State if—

"(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards under section 109 of this title.".

(c) Paragraph (b)(1) of section 115 of title 23, United States Code, is amended to read as follows:

"(b)(1) When a State proceeds to construct any project on the Federal-aid primary system including the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to projects on the Interstate System or the primary system, as the case may be, except insofar as the procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of the application, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State if—

"(A) prior to the construction of the project the Secretary approved the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards under section 109 of this title.".

(d) Paragraph (b)(3) of section 115 of title 23, United States Code, is amended by inserting "on the Interstate System" after "project" the first place that "project" appears.

(e) Section 115 of title 23, United States Code, is further amended by adding new subsection (d) as follows:

"(d) the Secretary may not approve an application under this section if the amount of approved applications in the category of funds involved exceeds the total of that category of unobligated funds apportioned or allocated to a State, plus such State's expected apportionment of that category of funds from existing authorizations plus an amount equal to such States expected apportionment of that category of funds for one additional fiscal year.".

DAVID-BACON WAGE RATES

SEC. 155. Subsection (a) of section 113 of title 23, United States Code, is amended by striking out "subcontractors on" and inserting in lieu thereof "subcontractors under any contract or subcontract in excess of $250,000 for".

H-3 HIGHWAY IN HAWAII

SEC. 156. The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

HEAVY VEHICLE USE TAX

SEC. 157. None of the funds appropriated or made avaiable by this or any other Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

EFFECTIVE DATE

SEC. 158. Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

TITLE II—MASS TRANSIT

AUTHORIZATIONS

SEC. 201. (a) Section 21 of the Urban Mass Transportation Act of 1964 is amended—

(1) in subsection (a)(1), by striking out "and $3,050,000,000 for the fiscal year ending September 30, 1986, and funds" and inserting in lieu thereof the following: "$3,050,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for fiscal year 1987, $1,990,000,000 for fiscal year 1988, $1,993,000,000 for fiscal year 1989, and $1,996,000,000 for fiscal year 1990. Funds";

(2) in subsection (a)(2)(B), by striking out "and $1,100,000,000 for fiscal year 1986" and inserting in lieu thereof "$1,100,000,000 for fiscal year 1986, and $1,000,000,000 for each of the fiscal years 1987 through 1990";

(3) in subsection (a)(4), by striking out "In each of the fiscal years 1984, 1985, and 1986" and inserting in lieu thereof "in each of the fiscal years 1984 through 1990";

(4) in subsection (a)(5), by striking out "1984, 1985, and 1986" and inserting in lieu thereof "1984 through 1990"; and

(5) in the first sentence of subsection (b), by striking out "and" before "$90,000,000" and by inserting before the period at the end the following: ", such sums as may be appropriated for fiscal year 1987, and $46,000,000 for each of the fiscal years 1988 through 1990".

(b) Section 4(g) of such Act is amended by striking out "and" before "$400,000,000" and by inserting after "September 30, 1986," the following: "such sums as may be necessary for fiscal year 1987, and $200,000,000 for each of the fiscal years 1988 through 1990,".

NEWLY URBANIZED AREAS

SEC. 202. The last sentence of section 9(k)(2) of the Urban Mass Transportation Act of 1964 is amended by inserting "authorized" after "its".

LEASED PROPERTY

SEC. 203. Section 9(j) of the Urban Mass Transportation Act of 1964 is amended by inserting after the first sentence the following: "Grants for construction projects under this section shall also be available to finance the leasing of facilities and equipment for use in mass transportation service, subject to regulations limiting such grants to leasing arrangements which are more cost effective than acquisition or construction. The Secretary shall publish regulations under the preceding sentence in proposed form in the Federal Register for public comment not later than 60 days after the date of enactment of this sentence, and shall promulgate such regulations in final form not later than 120 days after such date of enactment.".

DEFINITION OF ASSOCIATED CAPITAL ITEM

SEC. 204. The last sentence of section 9(j) of the Urban Mass Transportation Act of 1964 is amended—

(1) by striking out "and materials" and inserting in lieu thereof ", tires, tubes, materials, and supplies"; and

(2) by striking out "1 per centum" and inserting in lieu thereof "one-half of 1 per centum".

OVERHAUL-RECONSTRUCTION

SEC. 205. (a) Section 12(c)(1) of the Urban Mass Transportation Act of 1964 is amended by inserting "(A)" after "such term also means" and by inserting before the semicolon at the end thereof the following: ", (B) any bus remanufacturing project which extends the economic life of a bus eight years or more, and (C) any project for the overhaul of rolling stock (whether or not such overhaul increases the useful life of the rolling stock)".

(b) Section 9(j) of such Act is amended—

(1) by inserting "(1)" before "Grants"; and

(2) by adding at the end the following new paragraphs:

"(2) A project for the reconstruction (whether by employees of the grant recipient or by contract), of any equipment and materials each of which, after reconstruction, will have a fair market value no less than one half of 1 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and materials are to be used shall be considered a project for construction of an associated capital maintenance item under this section.

"(3) Notwithstanding any other provision of this section—

"(A) a grant, or that portion of a grant, for a project under the second sentence of paragraph (1);

"(B) a grant covering the costs of associated capital maintenance items having a value of less than 1 per centum but more than ½ of 1 per centum of current fair market value of rolling stock described in the last sentence of paragraph (1); and

"(C) a grant under paragraph (2);

shall be subject to the Federal grant limitation contained in the second sentence of subsection (k)(1).".

(c) Section 3(a)(2)(A)(iii) of such Act is amended by inserting before the period the following: ", and will maintain such facilities and equipment".

PROJECT MANAGEMENT OVERSIGHT

SEC. 206. The Urban Mass Transportation Act of 1964 is amended by inserting at the end thereof the following new section:

"PROJECT MANAGEMENT OVERSIGHT

"SEC. 24. (a)(1) The Secretary may use as much as is necessary of the funds made available for each fiscal year by sections 21(a)(1), 21(a)(2)(B), and 4(g) of this Act, and section 14(b) of the National Capital Transportation Act of 1969 to contract with any person for the performance of project management oversight. Any contract entered into under this subsection shall provide for the payment by the Secretary of 100 percent of the cost of carrying out the contract.

"(2) Each recipient of assistance under this Act or section 14(b) of the National Capital Transportation Act of 1969 shall provide the Secretary and a contractor chosen by the Secretary in accordance with paragraph (1) such access to its construction sites and records as may be reasonably required.

"(b) As a condition of Federal financial assistance for a major capital project under this Act or the National Capital Transportation Act of 1969, the Secretary shall require the recipient to prepare and, after approval by the Secretary, implement a project management plan which meets the requirements of subsection (c).

"(c) A project management plan may, as required in each case by the Secretary, provide for—

"(1) adequate recipient staff organization complete with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

"(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and such miscellaneous payments as the recipient may be prepared to justify;

"(3) a construction schedule;

"(4) a document control procedure and recordkeeping system;

"(5) a change order procedure which includes a documented, systematic approach to the handling of construction change orders;

"(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

"(7) quality control and quality assurance functions, procedures, and responsibilities for construction and for system installation and integration of system components;

"(8) materials testing policies and procedures;

"(9) internal plan implementation and reporting requirements;

"(10) criteria and procedures to be used for testing the operational system of its major components; or

"(11) periodic updates of the plan, especially with respect to such items as project budget and project schedule, financing, ridership estimates, and where applicable, the status of local efforts to enhance ridership in cases where ridership estimates are contingent, in part, upon the success of such efforts; and

"(12) the recipient's commitment to make monthly submissions of project budget and project schedule to the Secretary.

"(d) The Secretary shall promulgate such regulations as may be necessary to implement the provisions of this section. Such regulations shall be published in proposed form for comment in the Federal Register and shall be submitted for review to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 60 days after the date of enactment of this section, and shall be promulgated in final form not later than 120 days after the date of enactment of this section. Such regulations shall, at a minimum, include the following:

"(1) A definition of the term 'major capital project' for the purpose of subsection (b). Such definition shall exclude projects for the acquisition of vehicles or other rolling stock, or for the performance of vehicle maintenance or rehabilitation.

"(2) A requirement that, in order to maximize the transportation benefits and cost savings associated with project management oversight, such oversight shall begin during the preliminary engineering stage of a project. The requirement of this paragraph shall not apply if the Secretary finds that it is more appropriate to initiate such oversight during another stage of the project.

"(e) The Secretary shall approve a plan submitted pursuant to subsection (b) within 60 days following its submittal. In the event that approval cannot be completed within 60 days, the Secretary shall inform the recipient of the reasons therefor and as to how much more time is needed for review to be completed. If a plan is disapproved, the Secretary shall inform the recipient of the reasons therefor.".

EFFECTIVE DATE

SEC. 158. Except as otherwise provided therein the effective date of the Federal-Aid Highway Act of 1986 is October 1, 1986.

TITLE III—DISASTER RELIEF AMENDMENTS

SEC. 301. This title may be cited as the "Disaster Relief Act Amendments of 1986".

SEC. 302. The short title of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended by deleting the words "Disaster Relief Act of 1974" and inserting in lieu thereof "Major Disaster Relief and Emergency Assistance Act".

SEC. 303. Section 102(1) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(1)) is amended to read as follows:

"(1) 'Emergency' means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property, public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.".

SEC. 304. Title VIII of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3231-3236) is hereby repealed, and title V of the Disaster Relief Act of 1974 (Public Law 93-288) is hereby amended to read as follows:

"TITLE V—FEDERAL EMERGENCY ASSISTANCE PROGRAMS

"PROCEDURES

"SEC. 501. (a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. As a part of this request, and as a prerequisite to emergency assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. Based upon such Governor's request, the President may declare that an emergency exists.

"(b) The President may exercise any authority vested in him by section 502 and section 503 of this Act with respect to an emergency when he determines that an emergency exists for which the primary responsibility for response rests with the United States because the emergency involves a subject area for which, under the Constitution or laws of the United States, the United States exercises exclusive or preeminent responsibility and authority. The President may determine that such an emergency exists only after consultation with the Governor of the affected State, if practicable. The President's determination, however, may be made without regard to the provisions of section 501(a) of this Act.

"FEDERAL ASSISTANCE

"SEC. 502. In any emergency, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts, including but not limited to personnel, equipment, supplies, facilities, and managerial, technical and advisory services in support of State and local emergency assistance efforts to save lives and to protect property, public health and safety or to lessen or avert the threat of a catastrophe;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing emergency assistance, and coordinate emergency assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks of hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"EMERGENCY ASSISTANCE

"SEC. 503. (a) In an emergency, when the Federal assistance provided pursuant to section 502 of this title is inadequate, the President may provide assistance to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe. When debris removal assistance is appropriate under this section, it shall be provided in accordance with the terms and conditions of section 406 of this Act.

"(b) In any emergency and except as provided by subsection (c) of this section, the costs of providing emergency assistance under this section shall not exceed $5,000,000 of funds appropriated to carry out this Act.

"(c) The limitation of subsection (b) of this section may be exceeded when the President determines that continued emergency assistance is immediately required; that there is a continuing and immediate risk to lives, property, public health or safety; and that necessary assistance will not otherwise be provided on a timely basis. In the event that the limitation of subsection (b) is exceeded, the President shall report to Congress on the nature and extent of the emergency assistance requirements and propose additional legislation if necessary.".

SEC. 305. Section 102(2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122(2)) is amended to read as follows—

"(2) 'Major disaster' means any natural catastrophe, including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought, or any fire, flood, or explosion, regardless of cause, in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.".

SEC. 306. Title II of the Disaster Relief Act of 1974 (42 U.S.C. 5131-5132) is amended by—

(1) striking the words "(including the Defense Civil Preparedness Agency)" in section 201(a);

(2) adding the words "including evaluations of natural hazards and development of the programs and actions required to mitigate such hazards," between the words "plans" and "except" in section 201(d); and

(3) striking "$25,000" in section 201(d) and inserting in lieu thereof "$50,000".

SEC. 307. Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by—

(1) deleting sections 301, 305, and 306 and renumbering subsequent sections appropriately;

(2) deleting the caption "FEDERAL ASSISTANCE" of section 301, as redesignated by paragraph (1) of this section, and inserting in lieu thereof "RULES AND REGULATIONS";

(3) deleting the first and second sentences of subsection (a) of section 301, as redesignated by paragraph (1) of this section, and amending the final sentence thereof by adding ", with or without reimbursement," immediately before "through"; and

(4) deleting ", or economic status" in the second sentence of section 308(a) as redesignated by paragraph (1) of this section, and adding "or" before "age,".

SEC. 308. Section 302(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5143(a)), as redesignated by section 307(1) of this Act, is amended by adding at the end thereof the following: "The Federal coordinating officer shall represent the President in coordinating the emergency or the major disaster response and recovery effort.".

SEC. 309. Section 311 of the Disaster Relief Act of 1974 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act, is amended by redesignating subsections (a), (b), and (c) as (b), (c), and (d), respectively, and by adding at the beginning thereof a new subsection as follows:

"(a) As a condition of assistance, any public facility and private nonprofit facility which is:

"(1) located in a special flood hazard area as identified by the Director pursuant to the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.);

"(2) damaged or destroyed by flooding; and

"(3) otherwise eligible for assistance under section 405 of this Act, must be covered, on the date of the flood damage, by reasonable and adequate flood insurance. Assistance under section 405 for any such facility not so covered shall be reduced by the maximum amount of benefits which could have been received had reasonable and adequate flood insurance been in force: Provided, however, That this reduction of assistance shall not apply to uninsured facilities where such communities have been identified for less than one year as having special flood hazard areas. The limitations of assistance required by this subsection shall not apply until final regulations are promulgated by the President. Such regulations shall define reasonable and adequate flood insurance.".

SEC. 310. Section 312 of the Disaster Relief Act of 1974 (42 U.S.C. 5155), as redesignated by section 307(1) of this Act, is amended to read as follows:

"DUPLICATION OF BENEFITS

"SEC. 312. (a) Agencies or other organizations providing Federal assistance for needs or losses resulting from a major disaster or emergency shall assure that no person, business concern, or other entity receives any such Federal assistance if said person, business concern, or entity receives or is entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source: Provided, That nothing in this section shall prohibit the provision of Federal assistance to a person, business concern, or other entity who is or may be entitled to receive benefits for the same purposes from insurance or any other Federal or non-Federal source when any such applicant for Federal assistance has not received such other benefits by the time of application for Federal assistance, so long as the applicant for Federal assistance agrees as a condition of receipt of Federal assistance to repay duplicative assistance from insurance or any other Federal or non-Federal source to the agency or other organizations providing the Federal assistance. The President shall establish such procedures as are deemed necessary to insure uniformity in preventing such duplication of benefits. Receipt of par-

tial benefits for a loss or need resulting from a major disaster or emergency does not preclude provision of additional Federal assistance for any part of such loss or need for which benefits have not been provided.

"(b) A person, business concern, or other entity receiving Federal assistance for needs or losses resulting from a major disaster or emergency shall be liable to the United States to the extent that such Federal assistance has duplicated benefits available to the person, business concern, or other entity for the same purpose from insurance or any other Federal or non-Federal sources. The agency or other organization which provided the duplicative assistance shall collect such duplicative assistance from the recipient in accordance with the Claims Collection Act of 1966, as amended, when in the best interest of the Government. The repayment shall not exceed the amount of Federal assistance received.

"(c) Federal disaster assistance and comparable disaster assistance provided by States, local governments, and disaster assistance organizations to individuals and families shall not be considered as income or a resource when determining eligibility or benefit levels for federally funded income assistance or resource tested benefit programs.".

SEC. 311. (a) Title III of the Disaster Relief Act of 1974 (42 U.S.C. 5141-5158) is amended by adding at the end thereof four new sections as follows:

"PROTECTION OF ENVIRONMENT

"SEC. 315. No action taken or assistance provided pursuant to section 402, 403, 406, 502, or 503 of this Act, or any assistance provided pursuant to section 405 of this Act that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852). Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this Act or under any other provisions of law.

"RECOVERY OF FUNDS

"SEC. 316. The Attorney General of the United States is authorized to institute actions in the United States District Court for the district in which an emergency or major disaster occurred, or in such district as otherwise provided by law, against any party whose acts or omissions may in any way have caused or contributed to the damage or hardship for which Federal assistance is provided pursuant to this Act. Upon the showing that an emergency or major disaster or the associated damage or hardship was caused in whole or in part by an act or omission of such party, then such party shall be liable to the United States for the full amount of Federal expenditures made to alleviate the suffering or damage attributable to such act or omission. The authority of this section shall also apply to the recovery of Federal funds expended under the authority of section 419 of this Act for fire suppression.

"AUDITS AND INVESTIGATIONS

"SEC. 317. (a) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, shall conduct audits and investigations and in connection therewith may enter such places and inspect such records and accounts and question such persons as deemed necessary to determine the facts relative thereto.

"(b) The President, when deemed necessary to assure compliance with any provision of this Act or related regulations, may require audits by State and local governments in connection with assistance provided under the Act.

"(c) The President and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for purposes of investigation, audit, and examination, to any books, documents, papers, and records of any person or entity relating to any activity or program undertaken or funded pursuant to this Act.

"CRIMINAL AND CIVIL PENALTIES

"SEC. 318. (a) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any application or other document in connection with a request for assistance under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for assistance is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(b) Any person, organization, or other entity who knowingly makes a false statement or representation of a material fact, or who knowingly fails to disclose a material fact, in any bill, invoice, claim, or other document requesting reimbursement for work or services performed in connection with assistance provided under this Act, or who knowingly falsifies or withholds, conceals, or destroys any documents, books, records, reports, or statements upon which such request for reimbursement is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for each violation.

"(c) Any person, organization, or other entity who knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one-half times the misapplied amount of the loan or cash benefit.

"(d) Whenever it appears that any person, organization, or other entity has violated or is about to violate any provision of this Act, including rules and regulations issued and civil penalties imposed, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in the district court of the United States having jurisdiction where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

"(e) The President, or the duly authorized representative of the President, shall expeditiously refer to the Attorney General of the United States for appropriate action such evidence developed in the performance of functions under this Act as may be found to warrant consideration for criminal prosecution under the provisions of this Act or other Federal law.".

(b) Title III of the Disaster Relief Act of 1974 is amended by deleting subsections (a) and (c) of section 314 (42 U.S.C. 5157), as redesignated by section 307(1) of this Act, and by renumbering "(b)" from the remaining subsection of section 314 as subsection "(f)" of section 318 as added by section 311(a) of this Act.

(c) Title IV of the Disaster Relief Act of 1974 is amended by deleting section 405 (42 U.S.C. 5175) and by renumbering subsequent sections appropriately.

(d) Section 315 of the Disaster Relief Act of 1974 (42 U.S.C. 5158), as redesignated by section 307(1) of this Act, is further redesignated as section 314.

SEC. 312. Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding three new sections as follows and by renumbering subsequent sections appropriately:

"PROCEDURES

"SEC. 401. (a) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster, including, but not limited to, the cost-sharing provisions pursuant to sections 405, 406, 407, and 410 of this Act. Based upon such Governor's request, the President may declare that a major disaster exists.

"(b) In any case where an eligible applicant (or the State) is unable to assume its financial responsibility under the cost-sharing provisions of sections 405, 406, and 407 of this Act, the President is authorized to lend or advance to the State such 25 per centum share. For the purposes of section 405, such loan or advance shall be authorized only after the occurrence of concurrent, multiple major disasters in a given jurisdiction, or the extraordinary costs of a particular major disaster, and when the damages caused by such major disasters are so overwhelming and severe that it is not possible for the applicant or the State to assume their financial responsibility under this Act immediately. Except as provided by subsection (c) of this section, any such loan or advance is to be repaid to the United States; there shall be no deferral of the repayment of loans or advances authorized by this subsection or of accrued interest. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance.

"(c) The President may cancel all or any part of such loan or advance made regarding section 405 or section 406 for concurrent, multiple major disasters or a single catastrophic major disaster if a determination is made that following the three full fiscal years after the loan or advance is made, the applicant demonstrates substantial and continuing inability to repay all or part of the loan or advance.

"(d) The President shall issue regulations describing the terms and conditions under which any loans or advances authorized by this section may be made or canceled.

"FEDERAL ASSISTANCE

"SEC. 402. In any major disaster, the President may—

"(a) direct any Federal agency with or without reimbursement to utilize its authorities and the resources granted to it under other Acts including, but not limited to, personnel, equipment, supplies, facilities, and managerial, technical, and advisory services in support of State and local assistance efforts;

"(b) coordinate all Federal agencies and voluntary relief or disaster assistance organizations providing disaster assistance, and coordinate disaster assistance with State and local officials; and

"(c) provide technical and advisory assistance to affected State and local governments in the performance of essential community services, warning of risks and hazards, public information and assistance in health and safety measures, management and control, and reduction of immediate threats to public health and safety.

"COOPERATION OF FEDERAL AGENCIES IN RENDERING DISASTER ASSISTANCE

"SEC. 403. (a) In any major disaster, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

"(1) utilizing or lending, with or without compensation therefore, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

"(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food, and other consumable supplies, other services to disaster victims, or emergency assistance;

"(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this Act; and

"(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including, but not limited to: Search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph. Such contributions for emergency work under this section and section 402 of this Act shall not exceed 100 per centum of the net eligible cost, or for small projects 100 per centum of the Federal estimate of the net eligible cost, of such emergency work or services performed by State and local governments: Provided, That where debris removal assistance is appropriate under this section or section 402 of this Act it shall be provided in accordance with the terms and conditions of section 406 of this Act.".

SEC. 313. (a) Section 405 of the Disaster Relief Act of 1974 (42 U.S.C. 5172), as redesignated by section 312 of this Act, is amended to read as follows:

"(a) The President is authorized to make contributions to State or local governments, to help repair, restore, reconstruct, or replace public facilities belonging to such State or local government which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contribution shall be limited to 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'public facility' includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

"(b) The President is authorized to make contributions to help repair, restore, reconstruct, or replace eligible private nonprofit facilities which were damaged or destroyed by a major disaster. Notwithstanding any other provision of law, such contributions shall be 75 per centum of the net eligible cost, or for small projects 75 per centum of the Federal estimate of the net eligible cost, of repairing, restoring, reconstructing, or replacing any such facility estimated on the basis of the design of such facility as it existed immediately prior to such major disaster and in conformity with current applicable codes, specifications, and standards. For the purposes of this section, 'eligible private nonprofit facility' means private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged and disabled, and such private nonprofit facilities on Indian reservations, which were damaged or destroyed by a major disaster.

"(c) No authority under this section shall be exercised unless the affected State, local government, or eligible private nonprofit organization first agrees that such facility shall be repaired, restored, reconstructed, or replaced in compliance with flood plain management and hazard mitigation criteria required by the President, with the provisions of the Coastal Barrier Resources Act and other applicable Federal statutes, and in conformity with other applicable codes, specifications, and standards, except as otherwise provided in section 315 of this Act.

"(d) For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the contribution shall be 75 per centum of the net eligible costs of restoring such facilities substantially to their predisaster condition: Provided, That the term 'net eligible costs' shall not include cost which, under a contract, are the responsibility of a contractor.

"(e) In those cases, except for small projects, where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government and which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (a) of this section, a contribution that shall be 50 per centum of the Federal estimate of the net eligible cost of repairing, restoring, reconstructing, or replacing such damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.".

(b) The Disaster Relief Act of 1974 is amended by deleting section 421 (42 U.S.C. 5189), as redesignated by sections 311(c) and 312 of this Act, and by striking "or 419" each place that this phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act.

(c) Section 406 of the Disaster Relief Act of 1974 (42 U.S.C. 5173), as redesignated by section 312 of this Act, is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, whether carried out directly through Federal departments, agencies, or instrumentalities or through grants to State or local governments, Federal assistance provided under authority of this section shall be 75 per centum of the net eligible costs, or for small projects 75 per centum of the Federal estimate of the net eligible costs, of debris removal.".

SEC. 314. Section 407(a) of the Disaster Relief Act of 1974, as redesignated by section 312 of this Act, is amended to read as follows:

"(a) The President is authorized to provide, either by purchase or lease, temporary housing including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. Whenever he determines it to be in the public interest, the President is authorized to provide temporary housing assistance by using Federal departments, agencies, or instrumentalities. In addition, the President is authorized to provide temporary housing assistance by contributing not to exceed 100 per centum (or 75 per centum for group site development pursuant to paragraph (2) of this subsection) of the costs of temporary housing assistance to a State or local government which provides such assistance to those who require it as a result of a major disaster. Federal financial and operational responsibilities for temporary housing assistance shall not exceed eighteen months from the date of the major disaster declaration by the President, unless he determines that due to extraordinary circumstances it would be in the public interest to extend the eighteen month period.

"(1) Temporary housing assistance pursuant to this subsection shall be provided only when adequate alternative housing is un-

available, unless there is compelling need to do so because of extreme hardship.

"(2) Any mobile home or other readily fabricated dwelling supplied pursuant to this subsection shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster. When the President determines such action to be in the public interest, he may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites. However, in the event the President authorizes the development of a group site, that is, a site for two or more households, the Federal share shall be 75 per centum of the development costs, and the remainder shall be met by funds provided by the State or local government.".

SEC. 315. Section 408 of the Disaster Relief Act of 1974 (42 U.S.C. 5176), as resdesignated by sections 311(c) and 312 of this Act, is amended by adding "(a)" after "408." and by adding a new subsection "(b)" as follows:

"(b) The President is authorized to contribute up to 50 per centum of the cost of implementing hazard mitigation projects which he has determined would be cost effective and would substantially reduce the risk of future damage, hardship, loss, or suffering in the area affected by a major disaster. Such projects shall be identified following the evaluation of natural hazards provided for in subsection (a) of this section and shall be subject to approval by the President. The total of the contributions made under this subsection shall not exceed 10 per centum of the Federal estimate of grants made under the authority of section 405 of this Act for each major disaster.".

SEC. 316. Section 409(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5177), as redesignated by sections 311(c) and 312 of this Act, is amended to read as follows: "The President is authorized to provide such disaster unemployment assistance as he deems appropriate to individuals who are unemployed as a result of a major disaster. Disaster unemployment assistance authorized by this section shall be available to an eligible individual for a period not to exceed fifty-two weeks after the week in which an eligible individual became unemployed as a result of a major disaster, and such period shall be regarded as the disaster assistance period for that individual for the purposes of this section. Disaster unemployment assistance shall not be payable with respect to any week for which an individual is entitled to unemployment compensation (as defined in section 85(c) of the Internal Revenue Code of 1954, as amended) or waiting week credit. The maximum amount of disaster unemployment assistance payable to any individual with respect to a major disaster shall not exceed twenty-six times the maximum weekly amount for which the individual establishes eligibility minus the amount of any unemployment compensation paid to the individual during the fifty-two week benefit period established pursuant to this section. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section for a week of unemployment shall be reduced by any amount of private income protection insurance compensation available to such individual for such week of unemployment. The payment of unemployment compensation to an individual with respect to any week subsequent to the exhaustion of eligibility of such individual for disaster unemployment assistance and within the fifty-two week benefit period established pursuant to this section shall not be regarded as duplication of benefits under section 312 of this Act. The President is directed to provide disaster unemployment assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.".

SEC. 317. (a) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is amended by adding a period after the word "share" in the second sentence of that subsection and by deleting the following phrase from the second sentence of section 410(b): "and any such advance is to be repaid to the United States when such State is able to do so.".

(b) Section 410(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is further amended by adding the following sentence between the second and third sentences of this subsection: "Such advances shall bear interest from the date of the advance at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Repayment of such advances and of interest which accrues on the advances may be deferred for no longer than two years from the date of the major disaster declaration.".

SEC. 318. Section 410(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5178), as redesignated by sections 311(c) and 312 of this Act, is amended by striking "$5,000" in the last sentence and inserting in lieu thereof "$7,500".

SEC. 319. Section 415 of the Disaster Relief Act of 1974 (42 U.S.C. 5183), as redesignated by sections 311(c) and 312 of this Act, is amended by striking "(through the National Institute of Mental Health)".

SEC. 320. Section 420(d) of the Disaster Relief Act of 1974 (42 U.S.C. 5188), as redesignated by sections 311(c) and 312 of this Act, is deleted.

SEC. 321. The Disaster Relief Act of 1974 (42 U.S.C. 5121-5202) is amended by—

(1) striking paragraph (7) of section 101(b) (42 U.S.C. 5121), striking "; and" from paragraph (6) and adding in lieu thereof a period, and adding "and" at the end of paragraph (5);

(2) striking "the Canal Zone," in paragraphs (3) and (4) of section 102 (42 U.S.C. 5122);

(3) striking "DISASTER" in the caption of title III (42 U.S.C. 5141-5158) and inserting in lieu thereof "MAJOR DISASTER RELIEF AND EMERGENCY";

(4) striking "section 402 or 404 of" in section 308(b) (42 U.S.C. 5151), as redesignated by section 307(1) of this Act;

(5) adding "emergency or" before the word "major" each of two places that word appears in section 307 (42 U.S.C. 5150), as redesignated by section 307(1) of this Act;

(6) striking in section 310(b) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, everything after the word "areas" and inserting in lieu thereof a period;

(7) striking "or section 803 of the Public Works and Economic Development Act of 1965," each place the phrase appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act;

(8) striking "402" each place that number appears in section 311 (42 U.S.C. 5154), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "405";

(9) adding "emergency and major" before the word "disaster" in section 313 (42 U.S.C. 5156), as redesignated by section 307(1) of this Act;

(10) adding the word "MAJOR" between the words "FEDERAL" and "DISASTER" in the caption to title IV (42 U.S.C. 5171-5189);

(11) striking "in emergencies or in major disasters" in the third sentence of paragraph (2) of section 407(d) (42 U.S.C. 5174), as redesignated by section 312 of this Act;

(12) striking "311" in section 407(d)(2) (42 U.S.C. 5174), as redesignated by section 312 of this Act, and inserting in lieu thereof "308";

(13) striking "an emergency or" in section 417 (42 U.S.C. 5185), as redesignated by sections 311(c) and 312 of this Act, and inserting in lieu thereof "a";

(14) striking "408" in section 605 (42 U.S.C. 5121) and inserting in lieu thereof "410";

(15) striking "301" in subtitle C of title I of the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512; 86 Stat. 919) and inserting in lieu thereof "401";

(16) striking "President" each place that word appears in section 309(a), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "Federal coordinating officer".

(17) striking "rent" in section 310(a)(2) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, and inserting in lieu thereof "income"; and

(18) striking paragraph (1) of section 310(a) (42 U.S.C. 5153), as redesignated by section 307(1) of this Act, and renumbering subsequent paragraphs appropriately.

SEC. 322. (a) Section 6(a)(6)(E) of the Coastal Barrier Resource Act, 16 U.S.C. 3505(a)(6)(E), is amended by striking out "pursuant to sections 305 and 306 of the Disaster Relief Act of 1974" and inserting in lieu thereof "pursuant to sections 402, 403, 502, and 503 of the Major Disaster Relief and Emergency Assistance Act".

(b) Whenever any reference is made in any provision of law (other than this Act), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1974 repealed or renumbered by this title, such reference shall be deemed to be a reference to the appropriate provisions of the Major Disaster Relief and Emergency Assistance Act.

SEC. 323. (a) Except as provided in subsection (b), this title shall take effect on October 1, 1986.

(b)(1) This title shall not affect the administration of any assistance provided under the authority of the Disaster Relief Act of 1974, for any major disaster or emergency declared by the President prior to October 1, 1986.

(2) Except with regard to section 409(a) of the Disaster Relief Act of 1974, as redesignated by sections 311(c) and 312 of this Act (relating to disaster unemployment assistance)—

(A) rules and regulations issued under statutory provisions which are repealed, modified, or amended by this Act shall continue in effect as though issued under the authority of this Act until they are expressly abrogated, modified, or amended by the President; and

(B) provision of disaster assistance authorized by statutory provisions repealed, modified, or amended by this Act or rules

and regulations issued thereunder, or proceedings involving violations of statutory provisions repealed, modified, or amended by this Act or rules and regulations issued thereunder which are in process prior to the effective date of this Act, may be continued to conclusion as though the applicable statutory provisons had not been repealed, modified, or amended.

(3) Violations of statutory provisons or rules and regulations issued under the authority of statutory provisons repealed, modified, or amended by this Act or rules and regulations issued thereunder which are committed prior to the effective date of this Act may be proceeded against under the law in effect at the time of the specific violation.

(c) Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5171-5189) is amended by adding at the end thereof a new section as follows:

"SEC. 421. No State shall be ruled ineligible to receive assistance under this Act solely by virtue of an arithmetic formula based on income or population.".

TITLE IV—HIGHWAY REVENUE ACT OF 1986

SEC. 401. SHORT TITLE.

This title may be cited as the "Highway Revenue Act of 1986".

SEC. 402. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND TAXES AND RELATED EXEMPTIONS.

(a) EXTENSION OF TAXES.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(a)(3) (relating to special fuels tax).

(2) Section 4051(c) (relating to tax on heavy trucks and trailers sold at retail).

(3) Section 4071(d) (relating to tax on tires and tread rubber).

(4) Section 4081(b) (relating to gasoline tax).

(5) Sections 4481(e), 4482(c)(4), and 4482(d) (relating to highway use tax).

(b) EXTENSION OF EXEMPTIONS, ETC.—The following provisions of the Internal Revenue Code of 1954 are each amended by striking out "1988" each place it appears and inserting in lieu thereof "1992":

(1) Section 4041(b)(2)(C) (relating to qualified methanol and ethanol fuel).

(2) Section 4041(f)(3) (relating to exemption for farm use).

(3) Section 4041(g) (relating to other exemptions).

(4) Section 4221(a) relating to certain tax-free sales).

(5) Section 4483(f) (relating to exemption for highway use tax).

(6) Section 6420(h) (relating to gasoline used on farms).

(7) Section 6421(h) (relating to tax on gasoline used for certain nonhighway purposes or by local transit systems).

(8) Section 6427(g)(5) (relating to advance repayment of increased diesel fuel tax).

(9) Section 6427(m) (relating to fuels not used for taxable purposes).

(c) OTHER PROVISIONS.—

(1) FLOOR STOCKS REFUNDS.—Paragraph (1) of section 6412(a) of the Internal Revenue Code of 1954 (relating to floor stocks refunds) is amended—

(A) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(B) by striking out "1989", each place it appears and inserting in lieu thereof "1993".

(2) INSTALLMENT PAYMENTS OF HIGHWAY USE TAX.—Paragraph (2) of section 6156(e) of such Code (relating to installment payments of tax on use of highway motor vehicles) is amended by striking out "1988" and inserting in lieu thereof "1992".

SEC. 403. 4-YEAR EXTENSION OF HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsections (b), (c), and (e) of section 9503 of the Internal Revenue Code of 1954 (relating to Highway Trust Fund) are each amended—

(1) by striking out "1988" each place it appears and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

(b) EXPENDITURES FROM HIGHWAY TRUST FUND.—Paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from Highway Trust Fund) is amended by striking out "or" at the end of subparagraph (B) and by striking out subparagraph (C) and inserting in lieu thereof the following new subparagraphs:

"(C) authorized to be paid out of the Highway Trust Fund under the Federal-Aid Highway Act of 1986, or

"(D) hereafter authorized by a law which does not authorize the expenditure out of the Highway Trust Fund of any amount for a general purpose not covered by subparagraph (A), (B), or (C) as in effect on December 31, 1986.".

(c) CONFORMING AMENDMENTS TO LAND AND WATER CONSERVATION FUND.—Subsection (b) of section 201 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-11) is amended—

(1) by striking out "1988" and inserting in lieu thereof "1992", and

(2) by striking out "1989" each place it appears and inserting in lieu thereof "1993".

SEC. 404. REDUCTION IN EXCISE TAX EXEMPTION FOR QUALIFIED METHANOL AND ETHANOL FUELS.

(a) IN GENERAL.—Subparagraph (A) of section 4041(b)(2) of the Internal Revenue Code of 1954 (relating to exemption for qualified ethanol and methanol fuels) is amended to read as follows:

"(A) IN GENERAL.—In the case of any qualified methanol or ethanol fuel, subsection (a)(2) shall be applied by substituting '3 cents' for '9 cents'.".

(b) CONFORMING AMENDMENT.—The heading for section 4041(b) of the Internal Revenue Code of 1954 is amended by striking out "Exemption" the second place it appears and inserting in lieu thereof "Reduction in Tax".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 405. TECHNICAL CORRECTIONS.

(a) REFUND OF ENTIRE DIESEL FUEL TAX WITH RESPECT TO SCHOOL BUSES.—

(1) IN GENERAL.—Paragraph (2) of section 6427(b) of the Internation Revenue Code of 1954 (relating to intercity, local, or school buses) is amended by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

"(B) EXCEPTION FOR SCHOOL BUS TRANSPORTATION.—Subpargraph (A) shall not apply to fuel used in an automobile bus while engaged in the transportation described in paragraph (1)(B).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (A) of section 6427(b)(2) of such Code is amended by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraphs (B) and (C)".

(B) The heading for subparagraph (C) of section 6427(b)(2) of such Code, as redesignated by paragraph (1), is amended by striking out "Exception" and inserting in lieu thereof "Exception for certain intracity transportation".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect as if included in section 915 of the Tax Reform Act of 1984.

(b) CERTAIN TRANSFERS FROM HIGHWAY TRUST FUND TO BE MADE PROPORTIONATELY FROM MASS TRANSIT ACCOUNT.—Subsection (e) of section 9503 of such Code (relating to establishment of Mass Transit Account) is amended by adding at the end thereof the following new paragraph:

"(5) PORTION OF CERTAIN TRANSFERS TO BE MADE FROM ACCOUNT.—

"(A) IN GENERAL.—Transfers under paragraphs (2), (3), and (4) of subsection (c) shall be borne by the Highway Account and the Mass Transit Account in proportion to the respective revenues transferred to such Accounts under this section.

"(B) HIGHWAY ACCOUNT.—For purposes of subparagraph (A), the term 'Highway Account' means the portion of the Highway Trust Fund which is not the Mass Transit Account.".

TITLE V—UNIFORM RELOCATION ACT AMENDMENTS

Subtitle A—Short Title

SHORT TITLE

SEC. 501. This title may be cited as the "Uniform-Relocation Act Amendments of 1986".

Subtitle B—General Provisions

DEFINITIONS

SEC. 511. (a) Section 101(1) (42 U.S.C. 4601(1)) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (hereinafter the "Uniform Act") is amended by striking out "(except the National Capital Housing Authority)" and "(except the District of Columbia Redevelopment Land Agency)".

(b) Section 101(3) of the Uniform Act (42 U.S.C. 4601(3)) is amended to read as follows:

"(3) The term 'State agency' means any entity which has eminent domain authority under State law.".

(c) Section 101(4) of the Uniform Act (42 U.S.C. 4601(4)) is amended by inserting, "or mortgage interest subsidy to a person" after "insurance".

(d) Section 101(6) of the Uniform Act (42 U.S.C. 4601(6)) is amended to read as follows:

"(6) The term 'displaced person' means—

"(A) except as provided under paragraph (E) (with respect to a utility on real property under the control or ownership of a State or local agency), any person who moves from real property, moves personal property, or moves a business or farm operation, as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance;

"(B) solely for the purpose of subsections (a) and (b) of section 202 and of section 205, any person who moves from real property or moves personal property from real property—

"(i) as a direct result of the written notice of intent to acquire or the acquisition of other real property, on which such person conducts a business or farm operation, for a program or project undertaken by a Federal agency or with Federal financial assistance; and

"(ii) as a direct result of rehabilitation or demolition for a program or project undertaken by a Federal agency or with Federal financial assistance, where the person is a residential tenant, farm operation, or a small business and where the head of the displacing agency determines that such displacement is permanent;

"(C) solely for the purpose of subsections (a) and (b) of section 202 and of any other provisions of this Act which the head of the displacing agency may prescribe, any other person who is a residential tenant, farm operation, or small business and who the head of the displacing agency determines will be permanently displaced as a direct result of a program or project undertaken by a Federal agency or with Federal financial assistance;

"(D) any person who is eligible for relocation assistance under paragraphs (A), (B), or (C) of this subsection, unless such person has been determined, according to criteria established by the head of the lead agency, to be either in unlawful occupancy of the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Act; or

"(E) solely for the purpose of subsections (d) and (e) of section 202, any utility company which moves its facilities from real property under the ownership or control of a State or local agency.".

(e) Section 101 of the Uniform Act (42 U.S.C. 4601) is amended by adding at the end thereof the following new subsections:

"(10) The term 'suitable replacement dwelling' means any dwelling that is (A) decent, safe, and sanitary; (B) adequate in size to accommodate the occupants; (C) within the financial means of the displaced person; (D) functionally similar; (E) in an area not subject to unreasonable adverse environmental conditions; and (F) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"(11) The term 'displacing agency' means any Federal agency, State or State agency utilizing Federal financial assistance or, for the purposes of paragraphs (B) and (C) of section 101(6), any person furnished Federal financial assistance which causes a person to be a displaced person.

"(12) The term 'lead agency' means the Federal department, agency, or other entity designated by the President to coordinate implementation of the Uniform Act under section 213 of this Act.

"(13) The term 'appraisal' means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.".

SUBTITLE C—UNIFORM RELOCATION ASSISTANCE

SEC. 521. Section 201 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621), and its catchline are amended to read as follows:

"DECLARATION OF FINDINGS AND POLICY

"SEC. 201. (a) The Congress finds and declares that—

"(1) displacement as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance is caused by a number of activities, including rehabilitation, demolition, code enforcement, and acquisition;

"(2) displacement occurs in a variety of social, economic, geographic, and legal circumstances;

"(3) relocation assistance policies must provide for sufficient flexibility to assure fair, uniform, and equitable treatment of all affected persons;

"(4) the displacement of businesses often results in their closure; and

"(5) minimizing the adverse impact of the displacement of businesses is essential to maintaining the economic and social well-being of communities.

"(b) This title establishes a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance, in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

"(c) It is the intent of Congress that—

"(1) the primary purpose of this title is to minimize the hardship of displacement on persons displaced as a direct result of programs or projects undertaken by a Federal agency or with Federal financial assistance;

"(2) Federal agencies shall carry out this law in a manner which minimizes waste, fraud, and mismanagement;

"(3) the administration of this Act shall, to the maximum extent feasible, minimize unnecessary administrative and program costs borne by States and State agencies through the promulgation of economical regulatory requirements and the delegation of substantial administrative discretion to State and local governments;

"(4) uniform procedures for the administration of relocation assistance shall, to the maximum extent feasible, assure that the unique circumstances of any displaced person are taken into account and that persons in essentially similar circumstances are accorded equal treatment under this Act; and

"(5) the improvement of housing conditions of economically disadvantaged persons under this title shall be undertaken, to the maximum extent feasible, in coordination with existing Federal, State, and local governmental programs for accomplishing such goals.".

MOVING AND RELATED EXPENSES

SEC. 522. (a) Section 202(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4622(a)) is amended—

(1) by striking out the matter preceding paragraph (1) and inserting in lieu thereof the following:

"(a) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of—";

(2) by striking out "and" at the end of paragraph (2);

(3) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(4) by adding at the end thereof the following:

"(4) actual reasonable expenses necessary to reestablish a displaced nonprofit organization or small business at its new site, but not to exceed $10,000.".

(b) Section 202(b) of the Uniform Act (42 U.S.C. 4622(b)) is amended by striking out all that follows "may receive" and inserting in lieu thereof "an expense and dislocation allowance, which shall be determined according to a schedule established by the head of the lead agency.".

(c) Section 202(c) of such Act (42 U.S.C. 4622(c)) is amended to read as follows:

"(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the head of the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the head of the lead agency, except that such payment shall not be less than $1,000 nor more than $20,000. A person whose sole business is renting displacement property to others shall not qualify for this payment.".

(d) Section 202 of the Uniform Act (42 U.S.C. 4622) is amended by adding at the end thereof the following new subsections:

"(d)(1) For the purposes of this section and section 101(6)—

"(A) The term 'cost of relocation' shall include the entire amount paid by the utility company properly attributable to a relocation after deducting any betterment in the relocated utility and any salvage from the old utility.

"(B) The term 'utility' means any electric, gas, water, steam power or materials transmission or distribution system, any transportation system, or any communications system (including cable television), and any fixtures, equipment, or other property appropriate to the operation, maintenance, or repair of the foregoing. A utility may be publicly, privately, or cooperatively owned.

"(2) Except when provided otherwise by Federal law, whenever a federally assisted program or project undertaken by a displacing agency other than a Federal agency will result in the displacement of a utility from property under the ownership or control of a State or local agency, the head of the displacing agency shall provide a payment to the utility company pursuant to State or local law or a written contract, if any, between the utility company and the State or local agency, but in no event shall such payment exceed the actual reasonable cost of relocation of such utility.

"(3) Nothing in this subsection shall supercede a State or local law or a written contract between a utility company and a State or local government, or require a payment to be made where none is required under State or local law or a written contract.

"(4) Nothing in this subsection shall deprive a utility company of its rights under State or local law.

"(5) Nothing in this subsection shall require a Federal agency to increase its payment if the increased payment is attributable to a contract or contract amendment that is made in anticipation of the Federal payment.

"(6) Nothing in this subsection shall require a Federal payment in excess of the payment that a State or local agency would pay if no Federal funds were involved.

"(7) Nothing in this subsection confers jurisdiction on a court of the United States (as defined in section 451 of title 28, United States Code) to review any action of a displacing agency in carrying out this subsection or to review the right of a utility company to be compensated under State or local law.

"(e) Whenever a program or project directly undertaken by a Federal agency will

result in the displacement of a utility as the result of Federal acquisition of real property under the ownership or control of a State or local agency, the head of the Federal agency shall either relocate the utility with the utility company's consent, or provide a payment to the utility equal to the actual reasonable cost of relocation of such utility. Such relocation or such payment shall not be required when it is provided otherwise by a Federal law, or a Federal regulation promulgated prior to March 17, 1983, or a contract or agreement with a Federal agency.".

REPLACEMENT HOUSING FOR HOMEOWNER

SEC. 523. Section 203(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623(a)) is amended—

(1) by striking out "Federal" in paragraph (1) and inserting in lieu thereof "displacing";

(2) by striking "$15,000" and inserting in lieu thereof, "$22,500";

(3) by striking out "acquired by" and all that follows through "market" in paragraph (1)(A) and inserting in lieu thereof "acquired by the displacing agency, equals the reasonable cost of a suitable replacement dwelling";

(4) by striking out paragraph (1)(B) and inserting in lieu thereof the following:

"(B) The amount, if any, which will compensate such person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such suitable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling."; and

(5) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the date on which such person receives final payment from the displacing agency for the acquired dwelling or the date on which the displacing agency's obligation under section 205(c)(3) of this Act is met, whichever is later, except that the displacing agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a suitable replacement dwelling within one year of such date.".

REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

SEC. 524. Section 204 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4624) is amended to read as follows:

"REPLACEMENT HOUSING FOR TENANTS AND CERTAIN OTHERS

"SEC. 204. (a) In addition to amounts otherwise authorized by this title, the head of a displacing agency shall make a payment to or for any displaced person displaced from any dwelling unit not eligible to receive a payment under section 203 which was actually and lawfully occupied by such displaced person for not less than ninety days immediately prior to the initiation of negotiations for acquisition of such dwelling, or, where displacement is not caused by acquisition, any other event which the head of the lead agency may prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed three years, a suitable replacement dwelling. For a person whose income exceeds 50 per centum of the median income of the area, as determined by the Secretary of Housing and Urban Development, the amount referred to shall equal the lesser of (i) $4,500 or (ii) 36 times the amount obtained by subtracting the monthly housing costs for the displacement dwelling from the monthly housing costs for a suitable replacement dwelling. At the discretion of the head of the displacing agency, a payment under this subsection may be made in periodic installments.

"(b) Any displaced person eligible for payments under subsection (a) of this section may elect to receive in lieu thereof either Federal low income housing assistance or similar State or local governmental assistance if such assistance is available at the time of displacement and such person is otherwise eligible for such assistance. The failure of any such person to make such an election shall be considered when evaluating the eligibility of such person for any Federal or federally assisted low income housing assistance program during the three years following the date on which such person received the payment authorized under subsection (a) of this section.

"(c) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a downpayment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. A displaced homeowner who has occupied the displacement dwelling for at least ninety days but not more than one hundred and eighty days immediately prior to the initiation of negotiations for the acquisition of such dwelling may, at the discretion of the head of the displacing agency, be eligible for the maximum payment allowed under this subsection: Provided, That such payment shall not exceed the payment such person would otherwise have received under section 203(a) of this Act had the person occupied the displacement dwelling for one hundred and eighty days immediately prior to the initiation of such negotiations.".

RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

SEC. 525. Section 205 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4625) and its catchline are amended to read as follows:

"RELOCATION ASSISTANCE COORDINATION AND ADVISORY SERVICES

"SEC. 205. (a) The head of any displacing agency shall assure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency head determines that any person occupying property immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result thereof, the agency head may make available to such person such advisory services.

"(b) The Secretary of Housing and Urban Development shall assign a high priority for assistance under the programs referred to in sections 204(b) and 206(b) of this Act to persons eligible under such sections. To the extent practicable, the Secretary shall require that federally assisted State and local governmental low income housing assistance programs assign priority for assistance to such persons. To the extent practicable, the Administrator of the Small Business Administration and the heads of other Federal agencies administering programs which may be of assistance to displaced persons shall make available technical assistance under subsection (c)(5) of this section and expedite the applications for such assistance by such persons.

"(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

"(1) determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;

"(2) provide current and continuing information about sales prices and rental charges on suitable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;

"(3) assure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a suitable replacement dwelling;

"(4) assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;

"(5) supply information concerning other Federal programs which may be of assistance to displaced persons, and technical assistance to such persons in applying for assistance under such programs;

"(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and

"(7) assure that a one hundred and eighty day homeowner-occupant is given a reasonable opportunity to remain in such occupancy status.

"(d) The head of a displacing agency shall coordinate the relocation activities performed by such agency with other Federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

"(e) Whenever two or more Federal agencies provide financial assistance to a displacing agency other than a Federal agency, to implement functionally or geographically related activities which will result in the displacement of a person, the heads of such Federal agencies may by agreement designate one such agency as the cognizant Federal agency whose procedures shall be utilized to implement the activities. If such agreement cannot be reached, then the head of the lead agency shall designate one such agency as the cognizant agency. Such related activities constitute a single program or project for purposes of this Act.".

HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

SEC. 206. Section 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626) is amended to read as follows:

"HOUSING REPLACEMENT BY FEDERAL AGENCY AS LAST RESORT

"SEC. 206. (a) If a program or project undertaken by a Federal agency or with Federal financial assistance cannot proceed on a timely basis because suitable replacement dwellings are not available, and the need of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropri-

ate to provide such dwellings by use of funds authorized for such project. The head of the lead agency shall require that this section may be used to exceed the payment ceilings established in sections 203 and 204 only on a case-by-case basis, for good cause.

"(b) Whenever housing replacement as a last resort will result in the provision of housing for persons who are otherwise eligible for low income housing assistance, the requirement that the displacing agency provide suitable replacement housing may be met through such assistance as the provision of a certificate of family participation under the existing section 8 housing program pursuant to the United States Housing Act of 1937, as amended (42 U.S.C. 1437f).".

CERTIFICATION

SEC. 527. (a) Section 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4630) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 210. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any grant to or contract or agreement with a displacing agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such agency that—

"(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

"(2) relocation assistance programs offering the services described in section 205 of this title shall be provided to such displaced person;

"(3) within a reasonable period of time prior to a displacement, suitable replacement dwellings will be available to displaced persons in accordance with section 205(c)(3) of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title and title I of this Act, with the exception of sections 208 and 211 of this title, by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title and title I: Provided, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title and title I, particularly with respect to the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to such persons in such categories.

"(2) The head of the lead agency shall, in coordination with other Federal agencies, monitor from time to time, and report biennially to the Congress on, State agency implementation of such certification, and a State agency shall make available any information required for such purpose. The head of a Federal agency, after consultation with the head of the lead agency, may withdraw his acceptance of the certification for good cause: Provided, That the State government is given due notice prior to taking any such action and is given a reasonable opportunity to demonstrate why such action should not be taken.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall provide interested parties with an opportunity for public review and comment. In particular, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under the Act.

"(d) The head of a Federal agency may withhold his approval of any grant, contract, or cooperative agreement with any displacing agency found to have intentionally circumvented a State law adopted under subsection (b) of this section.".

FEDERAL SHARE OF COSTS

SEC. 528. (a) Section 211(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4631(a)) is amended to read as follows:

"(a) The cost to a displacing agency of providing payments and assistance pursuant to titles II and III shall be included as part of the cost of a program or project undertaken by a Federal agency or with Federal financial assistance. A displacing agency, other than a Federal agency, shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program costs.".

(b) Section 210(b) of the Uniform Act (42 U.S.C. 4631(b)) is amended by striking out all that follows "required by" and inserting in lieu thereof "State law which is determined by the head of the lead agency to have substantially the same purpose and effect of such payment under this section.".

REGULATION

SEC. 529. Section 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4633) and its catchline are amended to read as follows:

"REGULATION

"SEC. 213. (a) The President shall designate a lead agency.

"(b) The head of the lead agency shall—

"(1) develop, publish, and promulgate, with the active participation of other Federal agencies responsible for funding relocation and acquisition actions, and in full coordination with State and local governments, such rules as may be necessary to carry out this Act;

"(2) assure that relocation assistance activities under this Act are coordinated with low-income housing assistance programs or projects by a Federal agency, or a State or State agency with Federal financial assistance;

"(3) monitor, in coordination with other Federal agencies, the implementation and enforcement of this Act and report to the Congress, as appropriate, on any major issues or problems with respect to any policy or other provision of this Act; and

"(4) perform other duties as may be provided by law as relate to the purposes of this Act.

"(c) The rules promulgated pursuant to subsection (b) shall apply to the Tennessee Valley Authority only with respect to relocation assistance under this title and title I.".

TRANSFER OF SURPLUS PROPERTY

SEC. 530. Section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4638) is amended by inserting "net" after "all".

REPEALS

SEC. 531. Sections 214, 215, 217, and 219 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4634, 4635, 4637, and 4639) are hereby repealed.

Subtitle D—Uniform Real Property Acquisition Policy

UNIFORM POLICY ON REAL PROPERTY ACQUISITION PRACTICES

SEC. 541. (a) Section 301(2) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651(2)) is amended by inserting the following before the period at the end thereof: ", except that the head of the lead agency may prescribe a procedure which forgoes the appraisal".

(b) Section 301(9) of the Uniform Act (42 U.S.C. 4651(9)) is amended to read as follows:

"(9) If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the head of the acquiring agency shall offer to acquire that remnant. For the purposes of this Act, an uneconomic remnant is a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property and which the head of the acquiring agency has determined has little or no value or utility to the owner.".

(c) Section 301 of the Uniform Act (42 U.S.C. 4651) is amended by adding at the end thereof the following subsection:

"(10) A person whose real property is being acquired in connection with a project under this title may, after the person has been fully informed of his right to receive just compensation of such property, donate such property, any part thereof, any interest therein, or any compensation paid therefor to an acquiring agency, as said person shall determine.".

CERTIFICATION

SEC. 542. Section 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4655) and its catchline are amended to read as follows:

"AGENCY CERTIFICATION OF STATE PROGRAMS

"SEC. 305. (a) Except as provided in paragraph (b) of this section, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, an acquiring agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on or after the effective date of this title, unless he receives satisfactory assurances that—

"(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies under section 301 of this title and the provisions of section 302 of this title; and

"(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304 of this title.

"(b)(1) In lieu of the provisions of subsection (a) of this section, the head of a Federal agency may discharge his responsibilities under this title by accepting a certification from a State agency that it will implement State law in a manner which will accomplish the policies and objectives contained in this title: Provided, That the head of the lead agency has determined that such State law will accomplish the same purpose and effect as this title.

"(2) The head of the lead agency in coordination with other Federal agencies shall from time to time monitor State agency im-

plementation of such certification and the State agency shall make available any information required for such purpose. The head of the lead agency shall by regulation develop criteria for withdrawal of acceptance of a certification.

"(c) Prior to making a determination regarding State law under subsection (b) of this section, the head of the lead agency shall consult with interested local general purpose governments within such States on the impacts of such State laws on the ability of local governments to carry out their responsibilities under this Act.".

Subtitle E—Effective Date

SEC. 551. (a) Section 529 of the Uniform Act takes effect on the date of its enactment.

(b) The remainder of this title takes effect either twenty-four months from the date of its enactment or when a State agency makes such provisions applicable under State laws, whichever is earlier.

□ 1400

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SYMMS. Mr. President, I ask unanimous consent that S. 2405 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I wish to again say thanks to the distinguished chairman of the committee, the ranking minority member and the ranking minority member of the subcommittee and all of my colleagues on the Environment and Public Works Committee and my colleagues in the Senate who made it possible that we brought this very important piece of legislation to final passage.

I would also be remiss if I did not say thanks to Jean Lauver and Nadine Hamilton, of the majority staff, along with the good leadership of Bailey Guard, our staff director, and equally strong support for the minority staff, Mike Weiss and Paulette Hansen, and Lee Fuller, the minority staff director.

I appreciate the work of all the staff and certainly my own member of my own staff, Taylor Boulden, who without his help and support this would have been a very difficult task for this Senator to accomplish.

Mr. President, I now move that the Senate insist on its amendments and request a conference with the House on the disagreeing votes thereon and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. SYMMS. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STAFFORD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1410

Mr. STAFFORD. Mr. President, I think the Senate has just passed a very good highway bill for the sake of this Nation and our traveling public.

I particularly wanted to express my personal appreciation, as chairman of the parent committee, to the managers of the bill—they have done yeoman service—and to the staff that have helped them. I will not name the staff individually, but I join in Senator SYMMS' words of appreciation to the members of the staff who worked so hard to help us get this bill passed.

Again, I say, Senator SYMMS has done an outstanding job as the manager for the majority and, as always, Senator BURDICK has, as manager for the minority. It has always been a great pleasure for me to work with Senator BENTSEN, the ranking member of the committee who has been not only my partner but friend over a great many years.

I yield the floor.

Mr. BURDICK. Mr. President, I, too, would like to thank the staff who gave yeoman work in this effort.

I want to say to the majority that we have worked together very harmoniously and, as a result of those efforts, I think we have got a very good piece of legislation.

Mr. DOLE. Mr. President, I thank the leaders on both sides in the handling of the highway bill. I believe the 90-to-0 vote indicates the strong support for that measure. I certainly wish to thank Senator BURDICK from North Dakota, Senator BENTSEN from Texas, Senator STAFFORD from Vermont, and particularly Senator SYMMS, the subcommittee chairman, because without his tenacity and ability, without his leadership, the Senate could not have completed action on the highway authorization bill in such an expedited fashion.

The Federal Aid Highway Act of 1986 is important to every part of our country, but no place is it more important than in largely rural States like Kansas, and I might say Idaho, North Dakota, parts of Texas, and what we consider the Far West. The Interstate Highway System is the lifeline for hundreds of thousands of Americans. Senator SYMMS' role in advocating a modest increase in the speed limit to 65 miles per hour on these roads was pivotal, and I know that countless Americans will thank him for his success in amending the bill to include this change.

It is not without controversy. Senator HECHT had a different idea which would have expanded the increase from 55 to 65 miles an hour on primary and secondary roads. That was defeated, but the Symms amendment dealt with rural interstates and if this provision holds in the conference it will permit an increase of 10 miles per hour.

I believe that the Senate will prevail, at least in part, in increasing the speed limit but in all the other important parts I believe the Senate will prevail more often than not.

Again, I thank all of my colleagues for their cooperation on this very important bill and in particular thanks Senator SYMMS for his leadership.

INTELLIGENCE AUTHORIZATION ACT

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar Order No. 804, S. 2477, the intelligence authorization bill.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2477) to authorize appropriations for fiscal year 1987 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Minnesota?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Armed Services, with an amendment:

On page 3, line 7, after "Senate," insert "as amended by the classified appendix of the Committee on Armed Services of the Senate."

So as to make the bill read:

S. 2477

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Authorization Act for fiscal year 1987".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.
(2) The Department of Defense.
(3) The Defense Intelligence Agency.
(4) The National Security Agency.
(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.
(6) The Department of State.
(7) The Department of the Treasury.
(8) The Department of Energy.
(9) The Federal Bureau of Investigation.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1987, for the conduct of the intelligence activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Select Committee on Intelligence of the Senate, *as amended by the classified appendix of the Committee on Armed Services of the Senate.* That Schedule of Authorizations shall be made available to the Committees

on Appropriations of the Senate and the House of Representatives, and to the President. The President shall provide for suitable distribution of the schedule, or of appropriate portions of the schedule, within the executive branch.

PERSONNEL CEILING ADJUSTMENTS

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1987 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1987 the sum of $22,338,000.

AUTHORIZATION OF PERSONNEL END STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred and thirty-nine full-time personnel as of September 30, 1987. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1987, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence activities.

(c) During fiscal year 1987, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1987, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY

RETIREMENT AND DISABILITY SYSTEM AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1987 the sum of $125,800,000.

TITLE IV—ADMINISTRATIVE PROVISIONS RELATED TO INTELLIGENCE AGENCIES

CLASSIFIED RECORD DESTRUCTION SCHEDULES

SEC. 401. Section 3303a of title 44, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The requirement in subsection (a) of this section that the Archivist provide notice in the Federal Register of the list and schedule of records proposed for disposal shall not apply to lists or schedules of the Central Intelligence Agency or the National Security Agency that are properly classified pursuant to Executive Order 12356, or its successor order.".

EMPLOYMENT OF CIVILIAN PERSONNEL IN THE DEFENSE INTELLIGENCE AGENCY

SEC. 402. Paragraph 1604(e)(1) of chapter 83 of title 10, United States Code, is amended by striking out "1985 and 1986" and inserting in lieu thereof "1987 and 1988".

CLARIFICATION OF DEFENSE MAPPING AGENCY AUTHORITIES

SEC. 403. (a) Chapter 167 of title 10, United States Code, is amended by adding at the end thereof the following:

"§ 2795. Exchange of mapping, charting, and geodesy data with foreign nations.

"The Secretary of Defense may, subject to the requirements of section 112b of title I, United States Code, and the regulations promulgated thereunder (22 CFR part 181), and under such additional regulations as are deemed appropriate, authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies or services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.".

(b) The table of contents of chapter 167 of title 10, United States Code, is amended by adding at the end thereof:

"2795. Exchange of mapping, charting, and geodesy data with foreign nations.".

MEDICAL EVACUATION OF DIA CIVILIAN EMPLOYEES STATIONED OVERSEAS

SEC. 404. Subsection 1605(a) of chapter 83 of title 10, United States Code, is amended by inserting "(5)" after "paragraphs (2), (3), (4)" and after "22 U.S.C. 4082 (2), (3), (4)".

PROCEEDS FROM DEFENSE DEPARTMENT COUNTERINTELLIGENCE OPERATIONS

SEC. 405. (a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the Military Departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, if use of appropriated funds to meet such expenses would not be practicable.

(b) As soon as the net proceeds from particular counterintelligence operations are no longer necessary for the conduct of those or similar operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the Military Departments, including effective internal systems of accounting and administrative controls.

SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 406. (a) Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new section:

"SURVIVOR BENEFITS FOR CERTAIN OTHER FORMER SPOUSES

"SEC. 224. (a)(1) Any individual who was a former spouse of a participant or former participant on November 15, 1982, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 per centum of the greater of—

"(A) the full amount of the participant's or former participant's annuity, as computed under section 221(a); or

"(B) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

"(2) A survivor annuity payable under this section shall be reduced by an amount equal to the amount of retirement benefits, not including benefits under title II of the Social Security Act, received by the former spouse which are attributable to previous employment of such former spouse by the United States.

"(b) A former spouse shall not be entitled to a survivor annuity under this section if—

"(1) an election has been made with respect to such former spouse under section 223;

"(2) the former spouse remarries before age fifty-five; or

"(3) the former spouse is less than fifty years of age.

"(c)(1) The entitlement of a former spouse to a survivor annuity under this section—

"(A) shall commence—

"(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on the later of—

"(I) the sixtieth day after such date; or

"(II) the date such former spouse reaches age fifty; and

"(ii) in the case of any other former spouse, beginning on the latest date of—

"(I) the date that the participant or former participant to whom the former spouse was married dies;

"(II) the sixtieth day after the effective date of this section; or

"(III) the date such former spouse reaches age fifty; and

"(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age fifty.

"(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, within thirty months after the effective date of this section.

"(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

"(d) The Director shall—

"(1) issue such regulations as may be necessary to carry out this section; and

"(2) to the extent practicable inform each individual who was a former spouse of a participant or former participant on November 15, 1982, of any rights which such individual may have under this section.".

(b) Section 14(a) of the Central Intelligence Agency Act of 1949 (59 U.S.C. 403n(a)) is amended by inserting "224," after "222, 223,".

(c) For fiscal year 1987, not to exceed $500,000 shall be available from amounts appropriated under the authority of section 101(1) of this Act for survivor annuities under section 224 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employment and under the amendment made by subsection (b) of this section.

(d) The amendments made by this section shall take effect on October 1, 1986.

HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 407. (a) The Central Intelligence Agency Act of 1949 is amended by adding at the end thereof a new section, as follows:

"HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

"SEC. 16. (a) Except as provided in subsection (c)(1), any individual—

"(1) formerly married to an employee or former employee of the Agency whose marriage was dissolved by divorce or annulment before May 7, 1985;

"(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

"(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

"(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulations prescribe, such individual—

"(A) files an election for such enrollment; and

"(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

"(2) The Director of Central Intelligence shall take all steps practicable—

"(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

"(B) to notify each such former spouse of that individual's rights under this section.

"(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

"(c)(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1).

"(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

"(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

"(e) For purposes of this section the term 'health benefits plan' means an approved health benefits plan under chapter 89 of title 5, United States Code.".

(b) The amendment made by this section shall take effect on October 1, 1986.

PHYSICAL SECURITY OF NATIONAL SECURITY AGENCY FACILITIES

SEC. 408. The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by deleting section 11 and inserting in lieu thereof the following new section:

"SEC. 11. (a) The Director of the National Security Agency may authorize National Security Agency personnel within the United States to perform the same functions as special policemen of the General Services Administration perform under the first section of the Act entitled 'An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes' (40 U.S.C. 318), with the powers set forth in that section, except that such personnel shall perform such functions and exercise such powers only within Agency installations, and the rules and regulations enforced by such personnel shall be the rules and regulations promulgated by the Director.

"(b) The Director is authorized to establish penalties for violations of the rules or regulations promulgated by the Director under subsection (a) of this section. Such penalties shall not exceed those specified in the fourth section of the Act referred to in subsection (a) of this section (49 U.S.C. 318c).

"(c) Agency personnel designated by the Director under subsection (a) of this section shall be clearly identifiable as United States Government security personnel while engaged in the performance of the functions to which subsection (a) of this section refers.".

TITLE V—ENHANCED FEDERAL BUREAU OF INVESTIGATION COUNTERINTELLIGENCE CAPABILITIES

ACCESS TO FINANCIAL RECORDS OF AGENTS OF FOREIGN POWERS

SEC. 501. Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is or may be a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(C) On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

"(D) No financial institutions, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.".

ACCESS TO STATE AND LOCAL CRIMINAL RECORDS

SEC. 502. (a) Section 9101 of title 5, United States Code, is amended:

(1) in paragraph (1) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;"

(2) in subparagraph (3)(A) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;"

(3) in subparagraph (3)(B) of subsection (b) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency;" and

(4) in subsection (c) by striking out "or" after "Office of Personnel Management" and by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency."

(b) Section 803(a) of title 8 of the Intelligence Authorization Act for fiscal year 1986 is amended by striking out "and" after "the Office of Personnel Management" and by inserting ", and the Federal Bureau of Investigation" after "the Central Intelligence Agency".

(c) The amendments made by this section shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.

ACCESS TO TELEPHONE TOLL RECORDS

SEC. 503. (a) Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 538. Access to telephone toll records

"(a) A communication common carrier shall comply with a request for telephone subscriber information or toll billing record

information by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the communications common carrier that such information is sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is or may be a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(b) The Federal Bureau of Investigation may disseminate information obtained pursuant to this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(c) On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this section.

"(d) No communications common carrier, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to telephone subscriber information or toll billing record information under this section."

(b) The table of contents for chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following:

"538. Access to Telephone Toll Records"

TITLE VI—PROTECTION OF UNITED STATES INTERESTS

FOREIGN MISSIONS ACT AMENDMENT

SEC. 601. Section 202(a)(4) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) is amended to read as follows:

"(4) 'foreign mission' means any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by—

"(A) a foreign government, or

"(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity,

including any real property of such a mission and including the personnel of such a mission;".

SOVIET MISSION AT THE UNITED NATIONS

SEC. 602. (a)(1) It is the policy of the Congress that the number of nationals of the Soviet Union admitted to the United States to serve as members of the Soviet mission at the United Nations headquarters shall not substantially exceed the number of United States nationals who serve as members of the United States mission at the United Nations headquarters, unless the President determines that the admission to the United States of additional Soviet nationals to serve as members of the Soviet mission at the United Nations headquarters would be in the interest of the United States.

(2) Beginning six months after the date of enactment of this section, and every six months thereafter, the Secretary of State shall prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth the number of Soviet nationals admitted during the preceding six-month period to the United States pursuant to a determination of the President under paragraph (1) and their duties with the Soviet mission at the United Nations headquarters.

(3) Nothing in this subsection may be construed as including any dependent or spouse who is not a member of a mission at the United Nations headquarters in the calculation of the number of members of a mission at the United Nations headquarters.

(b) It is the sense of the Congress that the Secretary of State and the Attorney General should, not later than six months after the date of enactment of this section, prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth a plan for ensuring that the number of Soviet nationals described in paragraph (a)(1) does not exceed the limitation described in that paragraph.

(c) For purposes of this section—

(1) the term "members of the Soviet mission" and "members of the United States mission" are used within the meaning of the term "members of the mission", as defined by article 1(b) of the Vienna Convention on Diplomatic Relations, done April 18, 1961; and

(2) the term "mission at the United Nations headquarters" of a country includes all the missions of such country to the United Nations in New York City and includes missions in New York City to specialized agencies of the United Nations, as defined in article 57 of the charter of the United Nations.

REGISTRATION OF AGENTS OF CERTAIN FOREIGN GOVERNMENTS

SEC. 603. Section 951 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign government for purposes of this section if—

"(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

"(2) such person—

"(A) is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

"(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, or is the employer of such person, except that the provisions of this section shall not apply to a person or employer described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.".

TITLE VII—GENERAL PROVISIONS

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 701. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN COMPENSATION AND BENEFITS AUTHORIZED BY LAW

SEC. 702. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

UNANIMOUS-CONSENT REQUEST

Mr. DURENBERGER. Mr. President, I ask unanimous consent that, as the Senate turns to the consideration of Calendar Order No. 804, S. 2477, the Intelligence Authorization Act, it be considered under the following time agreement: 1 hour on the bill, to be equally divided between the chairman of the Committee on Intelligence and the vice chairman or their designees, and that the following amendments be the only amendments in order and that no second-degree amendments be in order.

The committee-reported amendment from the Committee on Armed Services, limited to 15 minutes; an amendment to be offered by Senator HELMS related to the classified report of the Intelligence Committee on the bill, limited to 30 minutes; an amendment to be offered by Seantor HELMS related to the request for report on human rights in Panama, limited to 1 hour; further, Mr. President, that there be 30 minutes on any debatable motions, appeals, or points of order, if so submitted to the Senate; tht no motions to recommit with instructions be in order, and that the agreement be in the usual form.

The PRESIDING OFFICER. Is there objection to the request?

Mr. BYRD. Mr. President, the request was not fully made.

Mr. DURENBERGER. I have a further request, Mr. President.

I further ask unanimous consent that once the bill has been advanced to third reading, the chairman of the Intelligence Committee, or his designee, be recognized to proceed to the immediate consideration of H.R. 4759, the House companion bill, and strike its text and substitute the text of S. 2477, and that the Senate insist on its amendment to H.R. 4759, request a conference with the House on the disagreeing votes of the two Houses on

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the bill, and that the Chair be authorized to appoint conferees on the part of the Senate, all without debate.

The PRESIDING OFFICER. Has the Senator completed stating the request?

Mr. DURENBERGER. I have. That is the complete unanimous-consent request.

The PRESIDING OFFICER. Is there an objection to the request?

Mr. LEAHY. Mr. President, reserving the right to object, it is my understanding, on the time agreement on the amendments by the distinguished Senator from North Carolina, that that time was divided.

Mr. DURENBERGER. Mr. President, it is agreeable with me that the time is divided. I understand that the agreement that we did have, particularly between the chairman and the vice chairman, I misstated in the second part. I will restate it as follows: An amendment to be offered by Senator HELMS related to the classified report of the Intelligence Committee on the bill, which would be limited to 1 hour, equally divided.

Mr. BYRD. Reserving the right to object, Mr. President, the words "in the usual form" are words of art which mean that the time will be equally divided.

I reserve the right to object further. There is no provision here for immediate passage without further debate, intervening motion, or point of order from the moment that the substitution of the text of S. 2477 is made, so I assume that to include such a provision.

Mr. DURENBERGER. Mr. President, I think the distinguished Democratic leader is correct. I would add to the proposal that I made for unanimous consent the language which he suggested relative to the consideration of the House bill.

Mr. BYRD. Mr. President, further reserving the right to object, is it to be established for the record that Mr. WARNER and Mr. HART will be conferees for matters within the jurisdiction of the Armed Services Committee?

Mr. DURENBERGER. Mr. President, I would say to my distinguised colleague, the Democratic leader, that at the appropriate time I will get the appointment of all of the members of the Intelligence Committee, which is our usual approach, together with two members of the Armed Services Committee who are not members of the Intelligence Committee, Senators WARNER and HART.

□ 1420

Mr. BYRD. Mr. President, I thank the distinguished manager of the bill. I want to be sure that we are clear that, once the text of S. 2477 is inserted in lieu of the House text on H.R. 4759 the Senate then is to proceed to third reading immediately without further debate, without any intervening action and without further motion or point of order, and that once third reading is achieved, the same conditions will apply to passage of the bill, and that there be no motion to reconsider in order.

Mr. DURENBERGER. Mr. President, the Senator correctly states my understanding of the procedure which I would ask to be incorporated in the unanimous-consent request.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HUMPHREY. Mr. President, reserving the right to object, I would ask the Senator if he would include in his request 30 minutes to be equally divided for the Senator from New Hampshire to have the opportunity to offer a resolution dealing with the situation concerning Mr. Daniloff. I might say we have been prepared to offer that on a couple of occasions since last Friday night. We are currently trying to negotiate the language with various parties.

I want to say from the point of view of this Senator that it is time to go, that we cannot wait forever to perfect the language to satisfy everybody. I am prepared to offer that resolution.

In any event, I do ask the Senator from Minnesota to include in his request the 30 minutes to be equally divided for that purpose.

Mr. DURENBERGER. Mr. President, I have no objection to including in my request the 30 minutes equally divided on the amendment to be proposed by the Senator from New Hampshire. I intend to oppose the amendment, though I do not know the entire text of the amendment. From our side, it would certainly be appropriate to include it on this bill if he so desired.

Mr. LEAHY. Reserving the right to object, I wish we could keep within the parameters we had agreed to earlier, informally agreed to. The Senator from New Hampshire, of course, is within his rights to offer further amendments. My concern is that this is a very sensitive matter. The Senate is proceeding on the intelligence authorization bill which requires us to deal with extraordinarily sensitive matters. Adding in what would be, as I understand the description, advice to the President, or even a direction to the President, on how to handle the Daniloff case I, for one, wish could be done as a freestanding matter and not to be on this bill.

I also feel that the President is doing a good job in handling the Daniloff case.

I will not object because the Senator from New Hampshire is within his rights. I would just urge Senators to understand that of all the pieces of legislation that comes before the Senate during the year, the intelligence authorization bill is an extraordinarily different one and is usually handled in a far different manner because of the highly sensitive matters within it.

Mr. BYRD. Mr. President, reserving the right to object, if Mr. HUMPHREY insists on this approach, then we cannot agree to the rest of the agreement.

We go through a time-consuming process here of contacting all Members on our side by telephone, running the proposed agreement by them, to see if they consent to that agreement. Now, if there is going to be a change in that agreement, it necessitates our doing the same thing all over again.

I could very well support the amendment of the distinguished Senator from New Hampshire, but if he insists on the amendment I would have to object to the agreement.

Perhaps I would want to offer an amendment myself to stop the sale of subsidized grain to the Soviets. I am not sure that Senators want to get into that kind of discussion this afternoon.

So, it is either go with what we have already agreed to, or I will have to object and try to run the traps all over again.

The PRESIDING OFFICER. Did the Senator from Minnesota include in his request the right of the Senator from New Hampshire to offer an amendment?

Mr. DURENBERGER. I did. I indicated, Mr. President, that I have no objection to including in the unanimous-consent request, as I understood it, a 30-minute debate on an amendment to be offered by the Senator from New Hampshire related to the Daniloff matter.

Before the Chair entertains an objection, I might inquire of the Democratic leader if the problem here is one of time. That is, whether given an opportunity to run the normal cloakroom check of Democratic Members we might find no specific objection to this matter. Or is the concern of the Democratic leader deeper, that other amendments would be offered which would make it difficult for us to consider the bill?

Mr. BYRD. As I was saying, I do not think I could get consent to the overall agreement with that amendment. Other Senators may want to offer amendments, too. If we let this one in, I will want consent to offer my amendment. It might be best that we just not have an agreement and if the Senator wants to offer his amendment, he may go ahead.

Mr. LEAHY. Reserving the right to object, I should note in support of what the distinguished Senator from West Virginia has said I have urged a number of Senators not to put amendments on this particular bill, again because of the unique nature of the intelligence authorization bill, including

amendments that I might well cosponsor if they were put on a more appropriate vehicle. But this is so we can bring out a bill which is much needed by the intelligence agencies in our country, much needed at a time of increased terrorist activities and much needed for our counterterrorism.

I would again urge Senators on both sides of the aisle to see if it is possible to restrain themselves and put their amendments on some other bill.

As I say, on many of the amendments I might well join them. I wish that could be done.

Mr. DURENBERGER. Mr. President, I will repropose the unanimous-consent agreement. But first, let me say in response to my colleagues on the Democratic side of the aisle, we do not know what is contained in the Senator's proposed amendment, but if it does deal with the Daniloff matter it deals with subject matters that are covered in the intelligence authorization bill.

If it deals with the issues of espionage, security, and counterintelligence, it obviously deals with some of the concerns that this committee usually has. So I do not think there is an irrelevance at all to the subject matter contained in this bill. It might well be very significant addition, as is one of the amendments to be proposed by the Senator from North Carolina.

Mr. President, I will ask unanimous consent that the time agreement as I have stated it, modified by the addition of the 30 minutes for the Senator from New Hampshire, be considered at this time.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I would hope the distinguished manager would put the request as he originally put it, and I would hope it would not be objected to. This is a bill which is somewhat sui generis. It is not like most bills which come before the Senate. I would like to see the bill acted on without amendments other than those that were originally stated. If the Senator wants to object to that request he may do so and he may offer his amendment because there would then not be an agreement.

At least, the chairman has the chance to get an agreement here which will expedite floor consideration of this matter, which I understand the majority leader would like to dispose of. The majority leader has two or three other matters he would like to dispose of today. We have offered consent to an agreement on this bill, which was a difficult agreement to work out. Consent agreements often take a lot of time. I have been sitting on the floor for 1 hour now waiting to achieve this agreement. Now, to come up with the same proposal that has been discussed before and has been objected to before—the Senator has the right to offer his amendment. He could have offered it to the highway bill. We shall have a continuing resolution coming along here that is going to be a lightning rod for any and every amendment one can think of. Also, the debt limit extension. The Senator can offer a freestanding resolution.

□ 1430

I hope there would not be an objection on this. The majority leader is on the floor and can speak for himself. He knows time is of the essence. He knows this measure is important. I think we have a good time agreement here that would see us complete action on this measure within, certainly, 3 hours at the most, I would think.

Mr. DOLE. Will the Senator from Minnesota yield?

Mr. DURENBERGER. I am happy to yield to the majority leader.

Mr. DOLE. Mr. President, I know the Senator from New Hampshire feels rather strongly about the resolution. It has been modified a couple of times. It is a rather weak resolution now, in my view; the teeth have been taken out of it. But it is better than nothing.

It seems to me a better thing to do would be to offer it as a freestanding resolution. I would be glad to try to clear that with the minority leader, try to get an agreement to do that. Otherwise, there are a couple of other bills that have been waiting around here for about a week to be brought up and we are in that period of time where anybody can offer anything. If the Senator from New Hampshire feels strongly about this, maybe we can toughen it up a little bit. Maybe we can offer it as a freestanding resolution.

But to put it on this measure—I think the Russians are already indicating that Daniloff is a CIA agent and if we put it on an intelligence bill, we sort of buttress that suspicion. It seems to me we have it on the wrong bill in any event.

Mr. DURENBERGER. Mr. President, that last part does concern me. Perhaps I should yield to my colleague from New Hampshire.

Mr. HUMPHREY. Mr. President, I thank my colleague from Minnesota. The difficulty is that time is of the essence. The difficulty is that we have rather few bills left. The difficulty is that there is all kinds of maneuvering relative to this resolution preventing us from offering it. The difficulty is that the Democratic side objected last Friday to offering it as a freestanding measure.

Everyone thinks we ought to do something about this resolution, but so far, no one is willing to do anything. That is why I am seeking to protect the right, frankly, in hope of instigating some action on this resolution, getting the language clarified and finalized and an opportunity agreed upon to offer it. That is why I am seeking to protect the right to offer it to this bill. I continue to insist upon that right.

Mr. DURENBERGER. Mr. President, given the statement by the majority leader and the suggestion that he will make an alternative available to the Senator from New Hampshire, I shall repropose my unanimous-consent request without the request included by the Senator from New Hampshire.

The PRESIDING OFFICER. Is there objection?

Mr. HUMPHREY. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I am pleased to present before the Senate the intelligence authorization for fiscal year 1987, as recommended by the Select Committee on Intelligence. While the specifics of the intelligence authorization must, for the most part, remain secret, we believe that the annual presentation of this bill to the Members is important. It shows to the Senate and to the American public that, even when dealing with the most secretive matters of national security, laws in the United States are reviewed by elected officials representing the interests of the American people.

The intelligence authorization, as you are aware, is the principal means for the Senate to express its concerns and its priorities for the U.S. intelligence community. Not only must the Senate approve every dollar that is spent in the name of intelligence; the intelligence authorization is also the occasion on which the Senate makes its recommendations for U.S. intelligence policy and the manner in which that policy will be carried out.

Mr. President, in presenting the fiscal year 1987 intelligence authorization, I would like to call the attention of my colleagues to two developments reflected in this year's bill.

First, I am pleased to point out that, for the first time, this year the Select Committee reviewed the budget requests of the Director of Central Intelligence in light of the DCI's national intelligence strategy. As the Members may recall, last year's intelligence conference report required Mr. Casey to submit with his budget request a national intelligence strategy. This document was to state the DCI's goals for national intelligence, the missions and priorities he had set out for the intelligence community, and his plans for carrying out these missions.

Bill Casey responded to the Select Committee's request, I am pleased to say, with distinction. Furthermore, the expectations of the committee that the national intelligence strategy

would strengthen oversight were borne out in the review of the fiscal year 1987 intelligence authorization bill. Not only did the committee examine over 3,000 pages of budget documentation in a line-by-line review of the National Foreign Intelligence Program; we also considered just how well this program would meet the intelligence needs of the United States. I believe that, as a result of the national intelligence strategy, the intelligence community and the Select Committee both have a better understanding of what we are buying for our intelligence dollar and why we are buying it.

This brings me to the second point I would like to call to the attention of the Members—the current state of U.S intelligence and the crisis it faces today.

In the course of our review of the national intelligence strategy, it also became clear to the Select Committee just how tightly stretched the National Foreign Intelligence Program is in meeting the basic intelligence requirements of the United States. The committee is deeply concerned about the future health of U.S. intelligence. Many of our concerns stem from constraints now facing the defense budget, where, for reasons of security, intelligence programs are financed. Last year, largely because of constraints imposed on defense spending, fiscal year 1986 intelligence community investment actually declined in real terms. This was the first decline in 7 years. It forced cancellation of a number of important activities and the deferral and stretchout of many others.

This situation, combined with the tragic loss of the space shuttle *Challenger* and the consequences arising from the Titan 34D launch vehicle explosion in April 1986, has placed U.S. intelligence in its most serious crisis in decades. Mr. President, I cannot overstate the severity of the current situation. Having reviewed the DCI's national intelligence strategy, his fiscal year 1987 budget request, and the requirements levied by the defense and foreign policy community on intelligence program managers, the Members of the Select Committee are convinced that intelligence investment must be protected from arbitrary limits imposed on Government spending in general and on defense spending in particular.

We on the Select Committee are fully aware that similar claims will be made about other Government programs in this age of fiscal constraint. Indeed, we have reached our conclusions with considerable hand-wringing, However, we would point out that the secrecy necessary for intelligence operations leaves the intelligence community with only one constituency that can speak out on its behalf to the Senate—namely, those of us on the Intelligence Committee who must meet behind closed doors and have witnessed the dangers facing the National Foreign Intelligence Program.

In addition to the budgetary recommendations which are the primary function of this bill, there are also several significant legislative provisions. These are extensively discussed in the report on the bill submitted by the Intelligence Committee. I might mention at this point that the bill contains proposals on enhancing FBI access to financial and telephone records for counterintelligence purposes and FBI access to State and local law enforcement records for counterintelligence and security purposes; for legislatively mandating the reduction in the size of the Soviet mission to the United Nations and registering and limiting the activities of foreign commercial agents from countries engaged in intelligence activities against the United States; for providing benefits to former spouses of CIA officers who currently receive none; and for other purposes.

The classified supplement to the committee's report on the fiscal year 1987 intelligence authorization has been available for review by all Members of the Senate since early June of this year in accordance with the provisions of Senate Resolution 400. This classified supplement explains in detail the specific recommendations of the committee on all intelligence programs.

We believe, Mr. President, that the recommendations set forth by the Committee in the classified supplement represent the minimum that must be invested in intelligence to provide the intelligence capabilities necessary for U.S. national security. This judgment is objective; this judgment is bipartisan; and, most of all, it is strongly held. We urge the Members of this body to join us in supporting this bill.

Mr. LEAHY. Mr. President, this has certainly been a challenging year for everyone associated with our intelligence effort—the aftermath of the "Year of the Spy," the continued specter of international terrorism, the realization by all of us that there will be more terrorist attacks, this year and next year, and the disasters involving the space shuttle and the Titan launch vehicle. In addition, reports of serious progress in the arms talks underscore the intelligence community's need to improve its capabilities to monitor Soviet forces and verify an arms control agreement that might come out of Geneva or out of a summit.

The Select Committee on Intelligence views the annual budget authorization process as one of its principal oversight responsibilities because of the means this process provides in our effort to influence the long-term direction and scope of U.S. intelligence efforts.

This year, as we did last year, the committee conducted its intelligence budget review at the full committee level, involving all members of the Intelligence Committee. In my opinion, the committee's review of the budget this year was the most comprehensive and effective that I have seen in the more than 7 years I have served on the committee. I am very gratified at the personal and bipartisan participation we had from the committee members in this sometimes arduous process, one where members were able to set aside labels of Democrat and Republican to work together in a bipartisan effort for the best intelligence this country could possibly have.

As Senator DURENBERGER has stated, we take very seriously our obligation to the other 85 Members of the Senate to review, dollar for dollar, every program that is proposed for U.S. intelligence. I should also note that we have been helped in no small way by our excellent and nonpartisan staff—Bernie McMahon, staff director; Eric Newsom, minority staff director; Dan Finn, chief counsel; Keith Hall, chief budget officer; and numerous others.

I am pleased with the committee's continuing oversight in the area of combatting terrorism. This is something I have felt strongly about for several years. As the recent hijacking in Karachi and the attack at the synagogue in Turkey graphically show, terrorist activity throughout the world continues to threaten the safety of innocent persons as well as peace and stability worldwide. I and others on the committee have frequently stressed the need for more and better intelligence to combat terrorism. This bill continues the committee's efforts to strengthen the intelligence community's counterterrorism programs.

Another area in which I believe the committee has made a significant contribution is counterintelligence. The Intelligence Committee is in the process of completing a comprehensive report to the Senate on the state of U.S. counterintelligence and security programs. That report is nearly ready and should be available within a matter of days, if not weeks. In addition, the fiscal year 1987 authorization bill calls for substantial new resources for communications and personnel security initiatives, which I wholeheartedly support.

Mr. President, I take I hope a pardonable pride in the committee's incorporation of S. 1773, a bill Senator COHEN and I offered last year to apply the principle of numerical equivalence to the sizes of the United States and Soviet missions to the United Nations. It, together with a companion measure enacted into law in 1985, the Leahy-Cohen diplomatic equivalence and rec-

iprocity amendment, provide's strong tools to the President and in fact the entire executive branch in controlling and reducing the Soviet espionage presence in the United States operating under diplomatic cover.

Let me take one moment to compliment my friend from Maine for his hard work and leadership in our efforts to combat the hostile intelligence presence in this country. I want also to thank Jim Dykstra, from the committee staff, for his valuable contributions.

Mr. President, I mention both the Leahy-Cohen bill that passed in 1985 and its newer version included in this bill for a specific reason. Secretary Shultz has recently been implementing a policy to limit the size of the Soviet diplomatic mission at the United Nations which mirrors the approach Senator COHEN and I have proposed. He has done it in my mind for all the right reasons. He has not only brought a great deal of pressure to bear on the Daniloff matter, but he has also demonstrated that the United States is concerned about the number of Soviets in that mission, which is much larger than they need to perform their normal diplomatic duties. According to the FBI as many as 35 percent or more of the Soviet diplomats are active KGB agents. By reducing the size of the Soviet mission to the United Nations, we have succeeded in bringing pressure on the Soviets in the Daniloff matter.

I am one Democratic Senator who says: Do not tie the hands of President Ronald Reagan in this case. In my estimation, the President has been doing everything right in the Daniloff case. He has taken a very, very tough attitude toward the Soviet Union. He has taken the extraordinary measure of sending a letter stating that Mr. Daniloff is not a spy. He has made his anger and concern very clear. He has authorized Secretary Shultz to follow the basic principles which Senator COHEN and I have proposed in kicking out Soviet diplomats. All that brings pressure on the Soviet Union.

At the same time, President Reagan has also realized that we have a preeminent responsibility to enhance the security of our own country by pursuing meaningful arms negotiations. As a result he has instructed his Ambassadors to continue that effort in Geneva. The arms negotiations go on.

Earlier this week at the United Nations, the President of the United States gave a strong statement of his own commitment to nuclear arms control. So I say that we should not be here trying to second-guess the President of the United States. We should give him the tools with which to work.

We will provide him even more tools in this bill. But this is such a delicate area. With arms control negotiations coming under the cloud of the Daniloff matter, the President of the United States should be given the tools and the confidence to go forward. I, for one, am confident of the direction President Reagan has taken, and I support it.

The select committee has also taken the lead in assuring that the intelligence community will be able to address future requirements for arms control monitoring and that these are given a high priority in the development of future intelligence capabilities. I mention that because the Senate has a unique responsibility in arms control matters. We are the only 100 people in the country to vote on a treaty. A major issue will be whether it is verifiable.

In these times of large deficits and budget reductions, it is even more critical that we provide support for intelligence to meet arms control as well as other essential requirements affecting our national security. Intelligence is the eyes and ears of our overall national defense program. As we cutback in general defense programs, it would be shortsighted and dangerous to reduce funding for intelligence programs.

In my opinion, some of the most dedicated, most capable, most qualified, and most hardworking people in our Government are within our intelligence community, whether they work for the CIA, the DIA, the FBI, or others. We must give them the support they require. I believe it is vital to the first line of our security.

Mr. President, we have not recommended authorization of one dollar more than we believe is absolutely necessary to fulfill the intelligence requirements to cope with the growing threat facing this Nation. Our review was extensive and complete. It has also been bipartisan, continuing our committee tradition.

In conclusion, Mr. President, I once again compliment the work of the chairman and the other members of the Intelligence Committee on the important piece of legislation before us today. This bill will continue to provide the resources that are sorely needed to keep our national intelligence capabilities up with international developments that could threaten U.S. interests. It also will provide additional authority to respond to the proliferation of espionage activities within our country.

Mr. President, as vice chairman of the Intelligence Committee, I fully endorse this bill and recommend its passage.

Mr. DURENBURGER. Mr. President, I thank my colleagues from New Hampshire, not only for——

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. DURENBURGER. I yield for the obvious——

Mr. LEAHY. New Hampshire is a slightly smaller State geographically. They have more people. They need more people—no, I should not say that. New Hampshire is a wonderful State. It is slightly smaller, however.

Mr. DURENBURGER. I trust that this is not the first time you have had to correct someone on that.

Mr. President, I do compliment my colleague, who this year had to make a choice as to where he was going to play a leadership role, between the Agriculture Committee and the Intelligence Committee, and I am grateful that he chose the Intelligence Committee to do that.

I think we have made a lot more progress over the last 2 years than the time that we each have allotted to describing the authorization bill before us. I appreciate very much all the effort he has put in on that, as well as the minority staff. We do not call them minority staff. They are all part of the committee staff. Eric Newsom is the minority staff director, and he has been around for quite some time and has always been a very valuable addition to all the difficult efforts we have had to undertake during the course of these 2 years.

Mr. President, I understand that the pending amendment is the committee amendment of the Armed Services Committee on sequential referral of the bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURENBURGER. Mr. President, the amendment by the Armed Services Committee makes a change in a classified item relating to a military construction project. It adds funds for the purpose of providing full funding for this project, which was only partially funded in the bill reported by the Intelligence Committee. The Intelligence Committee welcomes this amendment, which is reflected in the text of S. 2477, as reported, on sequential referral by the Armed Services Committee on August 7.

I request that the Senate approve the amendment of the Armed Services Committee.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the committee amendment of the Armed Services Committee.

The amendment was agreed to.

Mr. DURENBERGER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, this probably is an appropriate time for us to consider the first of what I understand will be two amendments this afternoon to the bill, to be

offered by the Senator from North Carolina [Mr. HELMS].

Mr. HELMS. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 2896

Mr. HELMS. Mr. President, I have an amendment at the desk, and I ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 2896:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspect of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial;

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspects of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial; Foreign Broadcast Information Service analyses; reconnaissance capability; protection of polygraph information; role of the Defense Intelligence Agency; and intelligence policy regarding Panama."

Mr. HELMS. Mr. President, I allowed the clerk to read part of the amendment in order to give an indication of its nature. It is a very important amendment.

Let me say at the outset that the distinguished chairman and vice chairman, Mr. DURENBERGER and Mr. LEAHY, have worked very hard to produce a bill which contains significant reforms of the intelligence process. However, the intelligence process is an extremely important component of our foreign policy decisions. In my work as ranking majority member of the Foreign Relations Committee, I have frequently run into situations which suggested an inadequacy in the intelligence analyses our policymakers have been getting.

I have had a number of discussions with the distinguished chairman of the select committee about these problems, and I have been gratified by his response to my suggestions. I have worked with him, Senator LEAHY, and other distinguished members of the select committee to produce some points to supplement the diligent work of the committee. This is in no way intended as a criticism of the work of the select committee, but merely to present an added perspective from a foreign policy point of view.

My first amendment amends the classified report of the select committee to provide some additional directions to the intelligence community on a number of topics, particularly with regard to intelligence about the Soviet Union. I will only single out for comment here a requirement for intensified competitive analysis. That may be a vague term to many because of the classified nature of the intelligence apparatus, but let me say for the record that it is enormously important.

□ 1500

Mr. President, competitive analysis has been demonstrated by the 1975 A team-B team exercise to be beneficial to better intelligence of our national security. Contending points of view and varying schools of analysis and interpretation are inevitable in the art form—I suppose one would call it—called intelligence. The classified supplement goes into more detail, but I have been assured by the distinguished chairman that the following list of intelligence problems will be studied under appropriate competitive analysis procedures:

1. Soviet geopolitical and strategic intentions, including the functions of the Soviet Five Year Defense Plan and the long range Fifteen Year Plan;

2. Soviet investigation of the feasibility of detecting submerged submarines through the analysis of data on the surface of the ocean;

3. The role of surprise and deception as principles of Soviet military doctrine;

4. Soviet perceptions of American military, political, economic, and psychological vulnerabilities;

5. The accuracy of Soviet missiles;

6. The existence of hidden Soviet missiles for reload, refire, and covert soft launch, in strategic reserves;

7. The reasons for the continuing underestimation by CIA of Soviet strategic forces, in light of the recent statement in the White House Report to Congress on SALT II of June 16, 1986, that: "On the basis of the history of U.S. Intelligence underestimation, it is unlikely that the numbers of Soviet strategic missiles, bombers, and warheads five years from now will be identical (or necessarily even close) to these [NIE] force projections";

8. The role of Soviet Bloc intelligence services in the international drug trade;

9. Better methodologies for estimating Soviet defense spending;

10. The effects of Soviet negotiating and operational deception in arms control;

11. Better methods for processing, debriefing, retaining, and resettling defectors and emigres;

12. Means of overcoming, deterring, and hardening against Soviet data denial through Soviet radio-electronic warfare;

13. The role of disinformation and forgeries in Soviet foreign policy; and the extent of Soviet Active Measures, disinformation and forgeries inside the United States;

14. Countermeasures to deter Soviet jamming of U.S. National Technical Means of reconnaissance;

15. The extent of the Soviet lead over the U.S. in deploying a nationwide, land-based ABM defense, and in developing a space-based ABM defense, including identification of U.S. intelligence gaps on the Soviet SDI program;

16. Soviet civil defense capabilities;

17. Soviet knowledge of U.S. National Technical Means of intelligence collection, and deceptive actions which the USSR might have taken on the basis of that knowledge;

18. The possibility of Soviet Bloc sabotage being among the human errors causing the Space Shuttle Challenger and other recent U.S. strategic space mission explosions;

19. The Soviet Biological and Chemical Warfare threat, and potential U.S. countermeasures;

20. Implications for U.S. national security of Soviet military supremacy;

21. Better means for protecting U.S. Intelligence Sources and Methods and classified information, including reforming the classification system, so as to prevent such cases as the unlawful publication of details of the "Chalet" project by The New York Times in June, 1979;

22. Better methodologies for estimating yields of Soviet underground nuclear weapons tests, which utilize all the evidence available;

23. Possible limitations in U.S. area search and spot search reconnaissance capability, and the possibility of a U.S. search and spot National Technical Means of intelligence collection crisis due to the long-term standdown in the U.S. Space Shuttle and other strategic space launch programs;

24. The possibility that the CIA and the State Department have been penetrated by the KGB at various levels;

25. The contents of the 1962 Kennedy-Khrushchev Agreement prohibiting Soviet offensive weapons in Cuba, and the evidence supporting the charges of President Reagan, the DCI, the Chairman of the JCS, and the Under Secretary of Defense for Policy that Soviet Mig-27 fighter-bombers, TU-95 Bear bombers, strategic submarines, and the Soviet Combat Brigade in Cuba violate the Kennedy-Khrushchev Agreement;

26. The ability of U.S. National Technical Means of intelligence collection to monitor Soviet compliance with the 1967 Outer Space Treaty prohibiting nuclear weapons in space, and with an Anti-Satellite Treaty;

27. The history of Soviet violations of the Biological and Chemical Weapons Conven-

tions, and whether the CIA blocked the creation of an Interagency Group to study these violations when first detected in 1976 and 1977;

28. The military implications of Soviet SALT and other arms control violations, and the reasons why the CIA resisted evidence and analysis showing Soviet SALT violations for 12 years;

29. Complete analysis of the Popov, Penkovsky, Golitsyn, Nosenko, and Pacepa cases, including their contribution to Intelligence Community analyses and Counter-Intelligence;

30. Long-term Soviet violations of the 1947 Rio Treaty, through their massive arms shipments to Cuba and to Nicaragua;

31. Allegations of drug trafficking, money laundering, arms trafficking, human rights violations, political assassination, and intelligence exchange and collaboration with Castro and Ortega by military leaders of Panama;

32. Reasons for reported CIA long term underestimation of Soviet submarine capabilities.

Mr. President, this amendment, as I indicated earlier, has been worked out through the cooperation of a number of people, including the distinguished chairman of the committee and vice chairman and their very capable and competent staff.

I urge adoption of the amendment.

The PRESIDING OFFICER (Mr. DANFORTH). The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, as my colleague has indicated we have put some effort in the last week or so against the concerns of the Senator from North Carolina.

Let me begin my brief comments in reaction to his amendment by indicating that I appreciate his comments on the intelligence bill itself. Like him the members of the Select Committee on Intelligence are dedicated to improving the quality of intelligence available to the U.S. Government.

I have consulted with the members of the Intelligence Committee and can say that the committee has no objection to inclusion in its classified report on the bill the material of interest to the Senator from North Carolina.

The amendment which the Senator has offered to the bill reflects certain changes in the nature of a supplement, which would be incorporated into the committee's classified report on intelligence programs. Material in the supplement relates to the subjects listed in the amendment and it is available to be read by any Member of the Senate who so wishes.

Mr. President, in view of the agreement of the committee for the inclusion of supplementary material in its classified report, members of the committee will not object to a motion by the Senator from North Carolina that his amendment be adopted. However, prior to proceeding with that motion, I would like to engage in two colloquys with the Senator on the subjects of CIA analysts and on the subject of counter intelligence.

After hearing of the Senator's concerns in these areas it appeared for a variety of reasons more desirable to discuss them here than to include them in the classified report on the bill.

With respect to the issue of how CIA analysts use their time on basic research as proposed by the Senator or on current reporting and policy support tasks such as briefing, I felt that a discussion on the floor would be sufficient to alert the Director of Central Intelligence to the Senate's interest on this issue.

I think we have agreed on a colloquy. If the Senator wants to proceed he certainly may do so.

Mr. HELMS. Very well.

Mr. President, I thank the distinguished chairman. I do have some questions which I wish to direct to the distinguished chairman concerning the kind of responsibilities that the CIA analyst must assume today.

□ 1510

As the distinguished occupant of the chair knows, a lot of us have been concerned for a great while about whether the CIA analysts have the opportunity to carry out the mission they were hired to do, and that is to conduct basic analysis. According to some reports I have received, CIA analysts are increasingly required to attend interagency meetings and coordination sessions, all of which cuts into the basic intelligence research and analysis the Agency is able to accumulate. My concern is that, without a base of research, the people we expect to be our experts on the Soviet Union and the rest of the world will lack the opportunity to develop the knowledge we expect of them.

So, with that preface, I would ask my good friend from Minnesota, Senator DURENBERGER, are these reports true, and what is the burden of irrelevant administrative duties that is being imposed on CIA analysts?

Mr. DURENBERGER. I fully appreciate my colleague's concerns. This is one reason why the select committee has initiated an indepth study of personnel policies within the Intelligence Community. One of the subjects that the committee study is currently addressing is how our most valuable resource—people—is being used within the Directorate of Intelligence and other analytic units in the Intelligence Community.

Mr. HELMS. Then, am I correct in understanding that the select committee's study will investigate whether CIA analysts are being drawn away from doing basic research?

Mr. DURENBERGER. That is correct.

Mr. HELMS. I thank the Senator. And when will this committee study be completed, if I may ask the chairman?

Mr. DURENBERGER. Our current expectation is that the study will be completed and available for implementation in January 1987.

Mr. HELMS. That is fine. I appreciate the distinguished chairman's response and I appreciate his diligence in this connection, and that of Senator LEAHY, as well. I will be looking forward to the results because, Mr. President, this issue is so critical to our intelligence capability and, of course, to the security of this country.

COUNTERINTELLIGENCE COLLOQUY

Mr. HELMS. Mr. President, counterintelligence is at the heart of the deep concern that many Americans have about the intelligence community and its potential weaknesses. The espionage cases of the past 2 years do not tell the whole story, but they make clear that our Government has some very serious problems.

Counterintelligence issues cannot be confined to closed hearings and secret deliberations. Foreign agents and spies are prosecuted in public. Strategic monitoring capabilities are acknowledged by the Government, and Soviet concealment practices are described in the administration's unclassified statements on Soviet noncompliance with arms control agreements. The compromise of our intelligence collection capabilities by a Howard, a Pelton, or a Chin cannot be kept quiet, because espionage is too serious to be immune from the criminal law or congressional and public concern.

The implications of these and other, earlier hostile intelligence successes can be enormous. The Navy says the Walker-Whitworth ring was a military disaster. Fortunately, we were not engaged in battle with the Soviet Navy, for we might well have lost any battle due to the Soviets reading our coded messages; that's what we did to Japan in World War II. There are immediate dangers when the compromise of intelligence secrets gives our adversaries the ability to neutralize or deceive some of our sensitive intelligence systems or operations.

Concerned Americans have to be deeply troubled by the propsect that the Government may not be facing up to the full implications of Soviet intelligence operations. Is anybody doing an overall assessment of the damage from all the recent espionage cases? How can we learn and apply the lessons, if nobody looks at what went wrong, why it happened, and what the consequences have been?

Another question is raised by the latest case involving a Soviet employee at the United Nations Secretariat. Has there been a comprehensive effort to examine the ways the Soviet KGB exploits its access through the U.N. Secretariat and the Soviet U.N. missions for intelligence purposes? We have stood idly by for too long while the So-

viets overwhelm our counterintelligence by the sheer numbers of people they have at the United Nations.

When are we going to get serious about the role of disinformation, forgeries, and other "active measures" in Soviet foreign policy? The KGB is using these covert political action operations all over the world, and the United States itself is not off limits.

Are we building a cadre of trained and experienced counterintelligence specialists in the intelligence community who can handle all the dimensions of hostile intelligence operations? Or is counterintelligence still the forgotten discipline, a dead-end job that can not attract talented intelligence professionals?

Does the intelligence community have the capability to detect and analyze hostile measures to deceive, manipulate, or limit our technical and human intelligence collection? Do we have an organized effort to protect the security of our own intelligence systems and operations? These are issues that strike at the core of the credibility of our national intelligence products.

Is there any plan to improve personnel security in the State Department and the intelligence community? There is altogether too much reliance on foreign national employees at sensitive U.S. missions abroad, and we must wonder whether the CIA has learned any lessons from the Koecher, Scranage, Howard and Chin cases.

Finally, the interrelationships among these issues show the inadequacy of the Government's definition of "counterintelligence" in Executive Order 12333. That order says that counterintelligence means "information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorism, but not including personnel, physical, document, or communications security programs."

The limitations of this provision should be obvious when it is compared with the terms used in a definition from 1958 that spoke of "destroying the effectiveness of inimical foreign intelligence activities" and that related counterintelligence directly to activities undertaken to protect the security of the Nation and its personnel, information, and installations against espionage, sabotage, and subversion. The 1958 definition may be outdated in some respects, for it leaves out the problem of deception of our intelligence systems and it uses the vague term "subversion" instead of active measures and disinformation. But we need an approach to counterintelligence that stresses offensive tactics and that is broad enough to link the findings about hostile intelligence threats with the design of security measures.

Can the Intelligence Committee provide answers to these questions, so that the Senate and the American people can have some assurances that critical counterintelligence issues are being addressed more effectively than they have been in the recent past?

Mr. DURENBERGER. Mr. President, the Intelligence Committee has been concerned about all of these counterintelligence matters for a number of years. In the last Congress, for example, the committee used the classified report accompanying the Intelligence Authorization Act to require action on several counterintelligence initiatives. They were summarized as follows in a public report to the Senate on the Committee's activities in 1983-84 (S. Rept. 98-665):

COUNTERINTELLIGENCE

For several years, the Committee has emphasized the need to improve the U.S. counterintelligence capabilities by, among other things, re-establishment of a career counterintelligence service within the CIA and organizational and policy changes to promote multidisciplinary counterintelligence analysis. In the Intelligence Authorization Act Report for FY 1985, the Congress directed that specific steps be taken to achieve these objectives.

Counterintelligence (CI) requires critical appraisals of the operational security and vulnerability of intelligence collection from human sources and by technical means. This means testing the conclusions and assumptions of intelligence personnel engaged in collection and in the analysis of intelligence data. For that reason, the job of CI specialist in agencies such as the CIA has not always been popular or career-enhancing. If it is to be done conscientiously, as the Committee desires, it must be done by people whose careers may progress in the ranks of CI specialists, and do not depend on the favor of the collectors whose work they scrutinize. Although CI should not be a force unto itself and the DCI must always judge between contrasting views, it is important to foster and protect the expression of independent views by establishing a career CI service within the CIA.

Additionally, in agencies that collect intelligence by technical means, there is a need to apply CI discipline and provide for the kind of operational security and testing that is traditional for human sources. The need for such operational security and validity-testing is especially important in such agencies, because of the number of recent compromise of technical systems by espionage and unauthorized public disclosure. Inadequate operational security could affect the Committee's willingness to authorize funds for such systems.

In the 99th Congress, the committee has stepped up its efforts on an even wider range of counterintelligence issues. In addition to further initiatives through the Intelligence Authorization Acts and accompanying reports, the committee has conducted a comprehensive review of U.S. counterintelligence and security programs. We have held 16 closed hearings and scores of staff interviews and briefings, drawing on expertise from inside and outside the Government.

The committee is preparing to submit, before the end of this session, a report to the Senate on the results of this review. This report will respond directly to the concerns raised by Members of the Senate and others who wonder whether the U.S. Government is doing all that it can to respond to the hostile intelligence challenge. We are also dealing with significant counterintelligence issues in the Intelligence Authorization Act for Fiscal Year 1987, which the Senate will pass today, and in the accompanying classified report. The bill itself contains legislative provisions to reduce and restrict the hostile intelligence presence, including reduction of the size of the Soviet U.N. missions and greater regulation of East European Government-owned commercial entities operating in the United States, as well as provisions to enhance FBI counterintelligence capabilities through a procedure for mandatory access to financial and telecommunications records.

We are confident, as well, that the committee's forthcoming reports will show significant progress by the administration in building an effective counterintelligence system. That is not to say the report will be rosy. We are pushing the administration on several fronts, particularly on the need for an improved security policy mechanism.

One of the principal features of our report will be an overall assessment of the damage from recent cases, as part of a description and analysis of the hostile intelligence threat across the board. The committee has drawn on its many hearings on specific cases, as well as on internal executive branch assessments of the damage to military, intelligence, and other national security interests.

On specific counterintelligence questions, we believe the committee will bring some reasonably good news. The limited Executive order provision defining counterintelligence does not really reflect the current situation. Thus, executive branch officials are more attentive than ever to the need for security policy to be based on the best counter-intelligence. The definition in the order has not been a serious barrier to improvements, once there was a will to take on difficult problems.

Perhaps the most important sign of a new approach is the executive branch decision to develop a national counter-intelligence strategy, as we proposed almost a year ago in testimony before public hearings of the Permanent Subcommittee on Investigations chaired by Senator ROTH. Counterintelligence has traditionally been fragmented by the jurisdictional divisions among the FBI, the CIA, and

components of the Defense Department. The NSC is now developing a strategic plan that combines the capabilities of all the agencies to achieve identified national objectives.

One reason for greater confidence that this enterprise will succeed is the willingness of the agencies to assign talented counterintelligence personnel to an augmented community counterintelligence and security countermeasures staff, which was reorganized and upgraded by the DCI earlier this year. The community staff is no substitute for joint planning by senior officials of the agencies themselves, but it has a clear mandate to foster and promote the strategic planning process.

Recent counterintelligence actions that have surfaced publicly, such as the expulsion of the Soviet Air Attache in June and the substantial reduction in the size of the Soviet U.N. missions, are tangible signs that the current approach to counterintelligence is indeed to "destroy the effectiveness of inimical foreign intelligence activities." We know that such a strategy has broad support in the Senate. It also reflects the consistent and aggressive prosecution policy adopted over the past 8 years by the Department of Justice.

Soviet exploitation of the United Nations has been a high-priority concern of the committee. In 1985, we issued a public report, prepared for the Committee by the Intelligence Community, on Soviet use of the United Nations Secretariat. Last fall, Senators LEAHY and COHEN of the committee introduced S. 1773 to establish a policy that the size of the Soviet U.N. missions must be substantially equivalent to the size of the U.S. mission. This year, we have included the provisions of S. 1773 in the Intelligence Authorization Act that is before us now, so as to reinforce the administration's commitment to cut the number of Soviets at their U.N. missions.

The committee is continuing to press the intelligence community to develop in each agency a trained, experienced body of counterintelligence specialists. Several agencies, including the CIA, have made significant strides in this direction during the past 2 years, which will be discussed in the committee's upcoming reports. The committee is monitoring their progress, and the reports identify the need for further actions in several areas.

In the wider field of personnel security for sensitive Government agencies, the committee's reports will have a number of specific findings and recommendations. Without trying to summarize a complex subject, it is fair to say an area where the committee is using the Intelligence Authorization Act to advance needed changes. The committee's actions to improve personnel security are detailed in the classified annex to the bill, which is available to any Member.

We have also supported funds to implement plans, pursuant to the Diplomatic Security Act, to replace foreign national employees with Americans at sensitive State Department posts abroad and to put Americans in charge of Embassy computer systems. The committee has specifically addressed the situation in Moscow, where overreliance on foreign national employees presents definite security risks. Committee legislation proposed by Senators LEAHY and COHEN and enacted in 1985 required the Secretary of State and the Attorney General to submit a plan to eliminate the disparity between the number of Soviet Embassy and consular personnel in the United States, 320, and the number of American officials in the U.S.S.R. about 200. The plan should result in replacing a significant number of foreign national employees by Americans at our Moscow embassy, as well as a reduction in the official Soviet presence in the United States.

The committee and the administration are focusing much more attention on programs to identify, expose, and counter Soviet disinformation, forgeries, and other active measures. The State Department's Bureau of Intelligence and Research has created a new office for this purpose. The FBI has also prepared a completely new and updated version of its 1982 classified report on Soviet active measures in the United States. That report and other intelligence reports on Soviet efforts worldwide have been provided to the committee and were used in preparing our reports to the Senate.

The counterintelligence issues that are most difficult to discuss in public involve denial, concealment, and deception. We do not want to reveal to our adversaries either our strengths or our weaknesses. Yet we realize there are inevitable public concerns about whether the Soviets may be able to affect U.S. national policy by deceiving our intelligence system. This problem deserves high priority in every part of the intelligence community, as well as leadership by the DCI who can ensure that analysts have access to the data they need to identify threats and develop means to counter them. The committee and the DCI have taken certain initiatives in this field, and the committee continues to monitor the effort. The classified committee report to the Senate will discuss this issue.

In general, we have found over the past 2 years a new attitude in the executive branch toward counterintelligence. The administration and the intelligence community are coming to grips with difficult, underlying problems that have plagued the Government for years. The Intelligence Committee has worked very closely and quietly with the executive branch to raise these issues in a manner that can lead to their resolution by policymakers, rather than delay on defensiveness.

The committee's attention to these issues will not end when our reports are issued next week. The committee will continue to seek the support of the Senate for its efforts to make constructive use of its oversight authority in counterintelligence and other sensitive areas.

Mr. President, I have one further set of brief comments that relate principally to the process that we are going through this afternoon. I have indicated already that the Committee on Intelligence has agreed to accept the omnibus amendment the Senator from North Carolina has offered to the authorization bill.

But, if I might, I would like to make two brief points. One, that it would not be accurate to say that, as chairman, I agree with the purpose of these amendments or with any reflection that the acceptance by the committee might imply on the current performance or management of the intelligence community.

I do understand, Mr. President, that this process that we are going through here this afternoon does allow the Senator from North Carolina to raise some issues that he feels very, very deeply about. He is not a member of the Intelligence Committee and has not been a member of that committee. This is an opportunity for him, as any Member might have that same opportunity, to raise those issues and to ensure not only himself but a larger constituency that he and we represent that these issues have been considered by the Senate, are being considered by the Congress and are being considered by the executive branch.

The second point I would make is important as it relates to what you might call the health and welfare of the intelligence oversight itself. Because, Mr. President, when the Senate created the Select Committee on Intelligence in 1976, under the provisions of Senate Resolution 400, it was exploring new ground. Up until that time, many people believed that it was impossible to operate an effective intelligence community without giving away the essential democratic right of free and open debate. Some people said democracy had to give way because the United States absolutely needed intelligence. Others said the United States should not operate an intelligence community at all because the costs of operating a community in the way it needed to be operated, the costs to democracy would be too great.

The Senate at that time said otherwise. In adopting Senate Resolution 400, the Members of the Senate decided that they could compromise be-

tween intelligence and democratic rule by selecting some of their colleagues to represent the full range of views within the Senate and by giving them full and open access to the budget, the operations, and the policies of the intelligence community. Then, to protect the security of the intelligence, the Senate agreed to isolate legislative review of the intelligence community to just this one committee.

The thinking, Mr. President, was that the Select Committee on Intelligence would serve as a buffer.

The concerns that Members had regarding intelligence were to be funneled through the committee so that discussions of the relevant issues could remain secure. In exchange for that arrangement, the intelligence community agreed to deal with the select committee in a completely frank and open atmosphere. Normally, this process works well. The community has sometimes raised concerns about security. The select committee for its part sometimes complained about not being kept fully and adequately informed on intelligence matters.

But, on the whole, Mr. President, the system works, and it works well.

As I said in my earlier statement, it is kind of an amazing fact that not $1 is spent on intelligence in the United States that has not been reviewed by the elected representatives of the people of this country in Congress. That is an amazing fact. It is unique in the world. But it is a fact.

Unfortunately, Mr. President, the system, to a degree, this year may have broken down, or some people may say it has broken down. And it is not the kind of course that we would necessarily want to follow year after year after year.

I think the Members of the body understand that everyone has the right to move amendments to the intelligence bill on the floor of the Senate. That right needs to be exercised in as responsible a fashion as possible. We have just had an example of that out here earlier this afternoon.

Mr. President, I would suggest that, in the accommodation to our colleague from North Carolina, we are not necessarily intending to set up a new process, pattern, or rule. It is very, very difficult for the 15 Members who have volunteered for brief periods of time in their Senate career—up to 8 years, but no more—to deal with the very, very difficult issues of the so-called compromise between democracy and good intelligence.

So I would hope that, in the future, the concerns of all of our colleagues for the adequacy or the inadequacy of the intelligence collection analysis or oversight process may be reflected in a manner somewhat different from the manner in which it was reflected this year.

□ 1520

And yet, Mr. President, I would say that without in any way disparaging the right of my colleague from North Carolina to present to his colleagues and to present to the larger constituency that we all represent those feelings that are deeply held, feelings that have accumulated over years and years of experience, with a commitment to the security of the country that we both hold so dear.

Mr. President, I yield to my colleague from Vermont.

Mr. LEAHY. Mr. President, I will be brief. I think the distinguished Senator from Minnesota has spelled out very carefully and very well the strictures we operate under and the extreme difficulty we face in actually running this committee. I compliment him for his work and the amount of time that he has devoted. He knows more than any of the other 99 Members of this body how much time it takes, how much care it takes, and why so often we must speak in euphemisms if we speak at all. We often refrain from speaking rather than saying anything at all.

I also compliment the distinguished Senator from North Carolina because he worked very hard with the committee in trying to find the way to raise issues of concern to him in a manner which minimizes floor discussion.

The distinguished Senator from North Carolina is certainly not one who normally would shy away from floor debate. But in this case, he has worked very, very hard to minimize discussion on issues about which he feels strongly.

As he knows, and the distinguished Senator from Minnesota and I know, many of these topics are quite sensitive. We do not want to do anything to damage our intelligence or national security in discussing them.

I will note that the full descriptions of the issues and report language to be appended to the Intelligence Committee's report are available to all Senators through the select committee in a classified version under the structures of Senate Resolution 400, 94th Congress.

I would also note for all Senators that the chairman and I are willing and ready at any time to meet with Senators from either side of the aisle if they have specific questions on intelligence matters. If we have the answers we can make them available under the rules of Senate Resolution 400. If not we can use the Senate Intelligence Committee to get those questions answered for individual Senators or for committees—whether it is Foreign Relations, of which the distinguished Senator from North Carolina is a member, or Armed Services or Judiciary. Each of these committees from time to time have need for access to classified material in order to carry out their duties and functions.

Again, I would remind all Senators that we are available to help. We neither serve as advocate or adversary, but merely present the facts as we know them.

I yield to the distinguished Senator from Minnesota.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I thank the Chair for recognizing me.

Let me say to my good friends, Senator DURENBERGER and Senator LEAHY, that I appreciate the spirit of cooperation and I think it is a matter of comfort to people inside and outside the Senate that there is comity in the understanding about the agreement about very important aspects of our intelligence capability in this country.

I know this exercise has been arduous for you. It has been detailed. And also for the staff, in particular, Mr. McMahon, Mr. Finn, Mr. Newsome, and Mr. Holliday. They have spent an enormous number of hours going through this material.

I might add parenthetically, it was not easy to prepare my statement, even, without running the risk of stepping over the classified line of demarcation.

In any case, I compliment the chairman and vice chairman of the committee and I assure them it has been a pleasure to work with them on this.

It is a complicated amendment and it is a very important one.

I thank my friends.

Mr. DURENBERGER. I thank our colleague from North Carolina for his comments. I think in the remarks we have made on the subject, besides expressing the difficulty in dealing with the line of demarcation that the Senator from North Carolina referred to between classification and national secrets and what can be referred to in the open, the other difficulty is always dealing as between this branch and the executive branch. I think the Senator from North Carolina can appreciate to a degree the difficulty, perhaps the last-minute difficulty, presented to some people in the executive branch who have been working very, very closely with this committee over many years, particularly in the last 2 years—by the suggestion from the Senator from North Carolina that a more detailed description of the needs of the oversight process needed to be accommodated.

I reflect in my comments my appreciation to my colleague from North Carolina for being, I think, significantly cognizant of the difficulty that certain members of the executive branch many have had with his amendment.

Mr. HELMS. If the Senator will yield, I thank him for his kind com-

ments. In a very delicate way, it might have given some slight heartburn to certain individuals, which is what I intended. but they can take a little bicarbonate with water and feel better tomorrow morning.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2896) was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 2897

Mr. HELMS. Mr. President, I have a second amendment at the desk which I momentarily will call up and ask to be stated. I am offering amendment on behalf of myself and Senators PELL, DENTON, HATCH, KERRY, WALLOP, ZORINSKY, HAWKINS, MCCLURE, SYMMS, HECHT, THURMOND, and MATTINGLY.

Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself, Mr. PELL, Mr. DENTON, Mr. HATCH, Mr. KERRY, Mr. WALLOP, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MCCLURE, Mr. SYMMS, Mr. THURMOND, Mr. MATTINGLY, and Mr. HECHT, proposes an amendment numbered 2897.

On page 24 of the bill, after line 4, add the following new section:

"Section 604. The Director of Central Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than March 1, 1987, whether and to what extent the Defense Forces of the Government of Panama have violated the human rights of the Panamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora."

□ 1530

Mr. HELMS. Mr. President, in the past few months, many Senators have come to me and expressed their deep concern over the current situation in Panama. There were many events in Panama in the last year which sparked this concern, beginning with the brutal murder of former Vice Minister of Health, Dr. Hugo Spadafora, and the forced removal of President Nicolas Ardito Barletta. This concern was heightened with the revelations about Gen. Manuel Antonio Noriega last June in the New York Times and on NBC television. Furthermore, in the subcommittee on Western Hemisphere Affairs, I held three hearings this year on Panama in which both witnesses from the administration and the private sector discussed many of the problems facing Panama today.

The news accounts as may be expected, generated a greater interest in tracking down the veracity of the alleged activities of the Panamanian Defense Forces. Several hearings were held in the House of Representatives, and just last week, Johns Hopkins University held a seminar on Panama and what is going on there. At that seminar, Mr. Norman Bailey, a former NSC staffer charged that U.S. dependence on Panama as an intelligence asset was causing us to mute criticism of Panama's drug trafficking activities, and the Spadafora case.

This cannot be allowed to ccntinue, Mr. President. Other recent allegations regarding Panama have centered on the following issues: The decapitation and murder of Noriega's harshest critic, Dr. Spadafora; the unanswered questions about the plane crash of Gen. Omar Torrijos; the role of the Panamanian Defense Forces in international drug trafficking, arms trafficking and money laundering; the role of the Panama Defense Forces in election fraud; the role of the defense forces in the removal of President Barletta; the existence of gross corruption at the highest levels of the government and the defense forces; the role of General Noriega as an intelligence asset for Cuba and other countries, at the same time he was providing intelligence for the United States; and the role of Panama serving as a refuge for various terrorist organizations.

Mr. President, this amendment pending would require that the Central Intelligence Agency report to the Intelligence Committees of the Senate and the House, within 6 months, whether and to what extent the defense forces of the Government of Panama violated the human rights of the people of Panana; to what extent they are involved in international drug trafficking, arms trafficking, or money laundering; or whether they were involved in the death of Dr. Hugo Spadafora.

It is time that the veneer was ripped off and whatever the facts may be—and I think I know what they are—let them be exposed. That is all this amendment asks. I am asking it because I believe that it is absolutely essential that the U.S. Senate be able to have this information in order to assess United States policy toward Panama with regard to intelligence matters. In the New York Times of June 12, 1986, Seymour Hersh wrote that senior U.S. Government officials stated that General Noriega had been providing intelligence information simultaneously to Cuba and the United States. I believe that we absolutely must ask ourselves whether this situation constitutes a national security threat to the United States if proven true. It is with this in mind that I offer this amendment on behalf of a number of my colleagues and myself as a first step in focusing our long-overdue attention on what really is going on and has been going on in Panama. Let us review a little bit, then I shall conclude.

Mr. President, a little more than 1 year ago, Panama was shocked by the brutal murder of Dr. Hugo Spadafora, at one time the Vice Minister of Health for Panama. More recently he had been leading bands of freedom-fighters in the fight against the Sandinistas in Nicaragua.

In the weeks before he was murdered, Dr. Spadafora had been very vocal in criticism of elements in the Panamanian military whom he said were allied to drug trafficking, principally Gen. Antonio Noriega.

That is pretty dangerous stuff to do and say in a number of countries. Apparently Panama is one of them because on September 13, Doctor Spadadora was taken off a public bus as it entered Panama from Costa Rica by two members of the Panama defense forces, and was never seen again alive. The next morning his decapitated body was found across the border in Costa Rica, and that mutilated body showed clear signs of torture before this man was murdered.

Dr. Barletta, the President of Panama—incidentally, he is a graduate of North Carolina State University, I might say to my friends who are managing this bill—Nicky Barletta was moved by the public outcry to call for the appointment of a commission to invesigate the death. And what do you reckon happened, Mr. President, when Barletta called for a public investigation? This was the President, President Barletta, known personally by many of us in this Chamber.

Before the commission could even be appointed, he went to New York for the meeting of the UN General Assembly. He returned to Panama on September 26, and was ousted under pressure from the military elements suspected of the murder.

That was the President of Panama, and he was ousted after he had said, "I want a public investigation and I am going to appoint a commission." That is the kind of thing, Mr. President, that this Senator believes should be investigated, and I believe the U.S. Senate is well within its rights to make such a requirement of our intelligence capability.

Let me make it clear, Mr. President, that I am not a partisan of Dr. Barletta. I know him and I like him personally. I am not a partisan of the late Dr. Spadafora or General Noriega. And I have grave doubts, as a matter of fact, that Dr. Barletta's election was a free and fair election. I would

hardly be considered an advocate of Dr. Spadafora's Social Democrat politics; not do I hold any brief for General Noriega, whose longstanding ties with Cuba are well-known.

Nevertheless, the Panamanian Government is widely perceived as dependent on United States aid. We appear to be responsible for the activities of the Panamanian military, as though we somehow approved the murder of Dr. Spadafora.

That is why the U.S. Senate deserves to know the truth about what is happening in Panama, and why we need to call upon the CIA to direct its assets toward a study of Panamanian Government involvement in drug trafficking, arms trafficking and political assassination.

Mr. President, the historic partnership with Panama has always been very important to the people of the United States. The friendly contribution of the American people to Panama's development, through the construction and operation of the Panama Canal, still remains unmatched in any other country in the world. At times, no doubt, the sheer size of the United States has tended to overwhelm Panama, and Panamanians have sometimes chaffed at the relationship, perhaps feeling they have too much of a good thing. Nevertheless, for better or for worse, the United States and Panama are closely associated by treaty until the end of this century; and I know of no American who is not eager for that close association and friendship to continue for the next century.

And in Panama itself, we recognize a basic reserve of good will and deep friendship. Many Panamanian families have intermarried with ours, have sent their sons and daughters to the United States for education, have joined in business ventures with Americans for decades in the canal operations. Members of the Panamanian Defense Forces have trained with our military personnel, have gone to our military schools, have served on multilateral institutions such as the Inter-American Defense Board, and worked to coordinate the defense of the canal.

The positive interests of the United States and of Panama are inextricably intertwined to the benefit of both countries. We want to do everything to see that those benefits continue for everyone.

Yet the news from Panama continues to be very disquieting. When the commitment to turn the Panama Canal over to Panama was made in the 1976 treaties, there were many of us in this country who felt that Panama, physically, was too small a country to bear the burden of responsibility for a strategic waterway coveted by the major military and economic powers of the world. We lost that argument. But there was an implicit agreement in the treaties that the United States would work to encourage stability and development to Panama during the transition period so that Panama would be as strong as possible in the year 2000.

So far Panama has not achieved either political stability or economic development. Despite the many additional millions of dollars which the treaties have brought to Panama, the republic faces an economic crisis. Unemployment has reached catastrophic proportions. And its political structure has almost ceased to operate effectively. In the last 4 years, Panama has had five Presidents, three of whom were removed by pressure from elements in the military. The brutal murder of Dr. Hugo Spadafora has not been solved. Panama's free press, with traditions stretching back to the founding of the republic, feels increasing pressure and intimidation.

These international events are destablizing Panamanian society. Panama's future internal security depends upon opening up economic opportunity to all levels of the Panamanian social structure. The promise of free enterprise will be an illusion unless the campesino, the worker, the tradesman, and the small businessman have the chance to participate in economic life. No economy can flourish when motivation is destroyed by Government regulations, delays in granting permits, redistribution schemes, corruption, and special privileges for cronies and relatives of the rich and powerful.

Moreover, powerful outside forces threaten Panama's freedom, independence, and democracy. The longstanding relationship of some elements in the military with the totalitarian Communist government of Cuba is a cause for concern. The special privileges granted to the supranational banking institutions, which respect the national interest of no nation, have distorted the Panamanian economy and Panama's relationship with other nations. Finally, the growing concentration of the North American drug traffic in Panama's transportation facilities threatens to create forces more powerful than any legitimate power in Panama.

The brutality of the murder of Dr. Spadafora, an insistent critic of powerful elements in Panama, is without precedent. It has served as a catalyst to action for many, inside of Panama and without, who believe that it marks the end of Panama's independence and signifies the hidden takeover of the country by illegitimate and antidemocratic forces. That is why my amendment calls for a thorough CIA report to the Intelligence Committee.

Mr. President, I ask unanimous consent that the following articles be placed into the CONGRESSIONAL RECORD: June 12, 1986, New York Times, "Panama Strongman Said To Trade in Drugs, Arms and Illicit Money," be Seymour Hersh; June 13, 1986, New York Times, "U.S. Aides in '72 Weighed Killing Officer Who Now Leads Panama," by Seymour Hersh; June 16, 1986, New York Times, "U.S. Envoy Outlining Policy for Panama," by James LeMoyne; and September 20, 1986, the Washington Post, "Panamanians Spying on, for U.S.," by Associated Press.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, June 12, 1986]

PANAMA STRONGMAN SAID TO TRADE IN DRUGS, ARMS, AND ILLICIT MONEY

(By Seymour M. Hersh)

WASHINGTON, June 11.—The army commander of Panama, a country vital to United States interests in Latin America, is extensively involved in illicit money laundering and drug activities and has provided a Latin American guerrilla group with arms, according to evidence collected by American intelligence agencies.

Senior State Department, White House, Pentagon and intelligence officials said the evidence also showed that the Commander, Gen Manuel Antonio Noriega, who is in effect the leader of the country, had been tied to the killing of a political opponent. They also said that for the last 15 years, he had been providing intelligence information simultaneously to Cuba and the United States.

In addition, they said, General Noriega is a secret investor in Panamanian export companies that sell restricted American technology to Cuba and Eastern European countries.

ESPIONAGE INVESTIGATION IN 70'S

In the mid-1970's, according to former officials of the National Security Agency, General Noriega was implicated in a secret espionage investigation involving the transfer of highly sensitive agency materials to Havana. These officials said General Noriega purchased the N.S.A. documents from a United States Army sergeant on duty in Panama.

A White House official, discussing General Noriega's role in what he depicted as the "Panamanian connection," said curtailing the general's activities would play an enormous role in stopping the international trafficking of drugs by organized crime.

The head of the Panamanian military, called the Panama Defense Force, is widely viewed as the politically dominant force in the country.

General Noriega is on a visit to the United States this week and presented a Panamanian medal of honor today at a private ceremony at the Inter-American Defense Board. Requests to interview the general in Washington received no response.

In Panama last weekend, General Noriega could not be interviewed to discuss the Americans' assertions despite three days of telephone calls to the army press office and attempts to reach him through other senior army officers.

SPOKESMAN DENIES ASSERTIONS

The general, said Capt. Eduardo E. Lim Yueng, the second in command of the Panama Defense Force press office, was busy with other important business. Two days of telephone calls, including several

written messages left with secretaries, brought no reply from the presidential press office.

Captain Lim Yueng, however, denied the assertions as a spokesman for the "institution of the armed forces and for General Noriega." He said General Noriega and the military were the victims of a campaign of slander that had no basis in fact.

"These are political attacks," he said. "General Noriega would answer the same way. This campaign is trying to damage our institution."

A White House official said the intelligence information about General Noriega's activities had been made available to senior officials of the White House. But this official and others said they did not know whether President Reagan was aware of the reports.

A senior Reagan Administration official would not discuss the assertions against General Noriega, who was previously head of military intelligence and became army commander when Brig. Gen. Omar Torrijos Herrera was killed in a helicopter crash in 1981. The Administration official expressed concern that the intelligence information would damage relations with Panama if it was seen as reflecting the views of the White House.

Officials in the Reagan Administration and past Administrations said in interviews that they had overlooked General Noriega's illegal activities because of his cooperation with American intelligence and his willingness to permit the American military extensive leeway to operate in Panama.

They said, for example, that General Noriega had been a valuable asset to Washington in countering insurgencies in Central America and was now cooperating with the Central Intelligence Agency in providing sensitive information from Nicaragua.

But many Reagan Administration officials made clear in interviews that the extent of General Noriega's activities was seen as a potential national security threat because of the strategic importance of Panama and the Panama Canal. Under treaties negotiated with General Torrijos in the 1970's, the United States has agreed to turn the canal over to Panama in the year 2000.

"It's precisely because we have long-term strategic interests in Panama, with the canal, that it's important to have reliable people we can deal with," a senior American diplomat said. In addition, Panama has become increasingly important for the United States and its monitoring of insurgencies in Central America.

GENERAL'S ACTIVITIES: 'LEGAL AND ILLEGAL'

A recent classified report by the Defense Intelligence Agency concludes that General Noriega, operating through a small band of top associates in the military, maintains tight control of drug and money-laundering activities by his associates in the Panama Defense Force, according to one American official. The study said the general was "deeply involved in legal and illegal business."

"Nothing moves in Panama without the instructions', order and consent of Noriega," the official said.

According to the State Department, White House, Pentagon and intelligence sources, there has been longstanding evidence among intelligence officials of General Noriega's activities, including his relations with the Cuban Government and his willingness to sell arms to the M-19 rebel group in Colombia.

The goal of M-19, which is pro-Cuban, is to overthrow the democratically elected Government. Over the years, the guerrilla group has been responsible for violent attacks that have led to hundreds of deaths.

Of the assertion on the M-19 guerrillas, Captain Lim Yueng, the Panamanian Army spokesman, said: "We have no information on M-19. We do all we can to avoid Panama being used as a trampoline for terrorism."

The Captain also denied any Cuban intelligence efforts in Panama or that General Noriega was involved in any shady activities with Cuba. He also denied any export of embargoed goods to Cuba. "Cuba has an embassy here and normal relations with us like many countries," the captain said.

He added, "We've captured drugs here, and are doing our best to collaborate with the United States to fight narcotraffic in Panama."

'A CRITICAL MISJUDGMENT' IN KILLING OF A CRITIC

What has come to be seen within the United States Government as the Noriega problem was heightened by recent intelligence directly tying the general and the top leadership of the Panama Defense Force to the slaying last September of Dr. Hugo Spadafora, one of the army's leading critics.

In his statement, Captain Lim Yueng said: "There is absolutely nothing in this case involving the army. Spadafora had many enemies. The institution of the armed forces absolutely denies any ties to the death of Spadafora. We criticize this crime."

A classified Defense Intelligence Agency report on General Noriega described his involvement in the killing as "a critical misjudgment" on his part. The D.I.A. is also known to have intelligence demonstrating that General Noriega ordered the killing, according to an official with first-hand information.

Dr. Spadafora's decapitated body was found stuffed in a United States mailbag in Costa Rica just across the Panamanian-Costa Rican border. The killing occurred a few weeks before General Noriega ousted the civilian President, Nicolás Ardito Barletta, who was about to name an investigating commission.

Mr. Barletta was replaced by Eric Arturo Delvalle, who is viewed by American officials as another nominal leader, with the army commander actually in control of the country.

Some senior White House officials have privately been concerned about General Noriega's activities. Late last year Vice Adm. John M. Poindexter, then the newly appointed national security adviser, visited the general and privately told him to "cut it out"—alluding to the drug and money laundering activities and his close relations with Cuba, according to a Government official.

Admiral Poindexter was later quoted as having raised questions about an alternative to the Panamanian general.

The issue is a chronic one for American policy makers: how far to over look corruption and a lack of democratic principles in allies in order to protect secret intelligence installations.

Senior civilian officials in the Pentagon, headed by Nestor D. Sanchez, a former C.I.A. and White House aide for Latin American issues who is a deputy Assistant Secretary of Defense for Inter-American Affairs, are known to be concerned that any successor to General Noriega might not be willing to tolerate the American military activites that now exist in Panama.

IN PANAMA, A WEB OF U.S. INTELLIGENCE

Since the early 1980's the National Security Agency, operating through its military components in the Army, the Navy and the Air Force, has vastly increased its intelligence-gathering activities in Panama. It is now capable of monitoring all of Central America and most of South America from its Panamanian installations.

The Central Intelligence Agency has also used military bases in Panama, especially Howard Air Base near Panama City, as a jumping-off point for intelligence gathering and for agents sent to Nicaragua, according to intelligence officials.

In interviews, Reagan Administration officials emphasized the nature of the evidence tying General Noriega and the top leadership of the Panama defense Force to money-laundering and drug trafficking activities.

One official who said he had extensively reviewed the most sensitive intelligence available to the American Government on General Noriega, including reports from agents and intercepts, described most of the specifics as "having to do with gun and drug running."

He said General Noriega's name appeared "over and over" in connection with specific dates, places and contacts in money-laundering and drug activities.

Much of the information, the sources acknowledged, has been gleaned from National Security Agency intercepts, among the most highly classified information in the Government.

In interviews, intelligence officials repeatedly described General Noriega as brilliant in masking much of his direct involvement, preferring to operate through cutouts or as a secret partner in Panamanian trading companies and banks.

An American official with long experience in Pananamian affairs noted that the general seemed to have become more circumspect in his pattern of activity in the early 1980's, moderating overt support for M-19 and direct financial involvement in drug activities.

Instead, the official said, the general has invested more heavily in legitimate business ventures and become more involved in what were described as safer and more lucrative activities—money laundering, much of it, according to American law enforcement agencies, known to be drug-related. In addition, the official said, he has also become involved in the shipping of high-technology American goods, much of them on restricted lists, from duty-free zones in Panama to Cuba and countries in Eastern Europe.

COLOMBIAN REBELS AND THE PANAMANIANS

According to American intelligence officials there is evidence tying General Noriega to longstanding arms dealing to M-19, the Colombian rebel group.

Such shipments dwindled in the last few years, officials said, apparently in response to pressure from the Reagan Administration, but have begun to flow again. General Noriega's M-19 trafficking "continues today," said an official with access to the most current intelligence.

The most specific details of General Noriega's involvement with M-19 were provided by C.I.A. officials. In one instance, carefully monitored by the agency, General Noriega and members of the Panama Defense Force were found to have armed a small M-19 band—estimates range from 60 to more than 100—before an unsuccessful attack on Colombia's west coast in early 1982.

Members of the M-19 group, which had been trained in Cuba, were tracked by American intelligence as they left Havana and flew to Panama, according to intelligence officials. They said the rebels were then armed by members of the Panama Defense Force and shipped by a boat, which had passed through the canal, from Panama Bay to two locations off the coast of Colombia.

The guerrilla bands were eventually found and attacked by Colombian officials, with heavy loss of life, according to intelligence officials. Diaries were seized in which the recruits told of their training in Havana and their stay in Panama, including an overnight stay in a safehouse that was said to have been provided by members of the Panama Defense Force.

Other American intelligence officials told of viewing reconnaissance film, believed to have been taken by a high-flying U-2, depicting M-19 aircraft off-loading drugs at a Panamanian Air Defense Force airstrip. Arms were said to have been loaded into the craft for its return to Colombia.

Through his legal and illegal activities, American officials said, General Noriega has amassed an enormous personal fortune, much of which is believed to be deposited in European banks. He is reported to own at least two homes in Panama City and one in southern France. As army commander, officials said, General Noriega earns a salary of $1,200 a month.

General Noriega is also reported to have a substantial interest in a bank in the Colón, Panama, Free Zone, which American officials said is heavily involved in laundering money for the M-19 as well as for narcotics dealers.

LAUNDERING MONEY AND SHIPPING DRUGS

According to a 1985 assessment of "U.S. Narcotics Control Programs Overseas," published by the House Foreign Affairs Committee, Panama is regarded by American law enforcement officials as a "drug and chemical transshipment point and money-laundering center for drug money."

Panama's banking laws are among the most stringent in the world, permitting secret accounts by individuals and corporations that are virtually free from scrutiny by American law enforcement officials. Additionally, Panama's corporation laws allow companies to be organized with no public disclosure of principals. As a result, Panama has become a world leader in the depositing of illegal profits from drug dealing and other activities.

Cash on deposit at a Panamanian bank can simply be sent by wire to banks in the United States or elsewhere, part of the process known as money laundering, in which the ultimate source of the money is disguised through a series of transactions.

A White House official said the most significant drug-running in Panama was being directed by General Noriega.

"Doing away with the Panamanian connection—in the sense that General Noriega condoned and protects such activity—would put one hell of a dent in the movement of drugs in organized crime," the White House official said. "That's the bottom line."

In the recent interviews, Administration officials depicted General Noriega's current drug function as that of a "facilitator." The officials cited intelligence reports showing that he is a secret investor in companies controlled by a Panamanian businessman and is financially involved in a series of trading companies.

A former White House aide depicted General Noriega's role as being to "facilitate the shipments and pay the payoffs."

The former aide added: "Noriega doesn't carry the stuff around. They pay him a percentage for protection of the traffic."

General Noriega's involvement in money laundering was similarly described by American intelligence and diplomatic officials as a behind-the-scenes role, with private export companies acting as his agent.

Officials said the United States had intelligence showing that in the early 1980's General Noriega held a major financial interest in an opium-processing plant that was discovered, according to a House Foreign Affairs Committee investigation in 1985, in operation along the Panamanian-Colombian border.

The Congressional report noted that the laboratory was apparently financed by Colombians along with a senior member of the Panama Defense Force whom it identified as a Colonel Melo.

The colonel and others were arrested by the Panama Defense Force, the report noted, but "none was prosecuted due to 'lack of evidence.'" Administration officials said that despite the officer's arrest and dismissal from the military by General Noriega, he was still living openly in Panama City.

Customs officials have filed many criminal indictments in which the role of members of the Panama Defense Force was prominent. In one case, involving a private Panamanian freight carrier, Inair Cargo Airlines, a Federal grand jury returned an indictment charging conspiracy to move "multimillion-dollar shipments" of cash to Panama.

According to American officials, there is evidence tying General Noriega and members of the Defense Force to a financial involvement in a small airline charter company that, operating out of the main airport in Panama City, flies weekly money-laundering missions in and out of the United States. The aircraft is met in Panama by an armored truck.

NORIEGA REPORTED LINKED TO A KILLING

According to American officials, the Defense Intelligence Agency has uncovered evidence linking General Noriega to the slaying of Dr. Spadafora.

General Noriega has repeated military denials of involvement in the killing.

One White House official who has access to the Government's intelligence reports said "there is no doubt" that General Noriega was directly implicated in Dr. Spadafora's death.

Another official said the intelligence "takes it up to him"—General Noriega—"as the originator of the idea and the planning of it." There is no evidence, the official added, that General Noriega was directly involved in the actual torture and slaying of Dr. Spadafora, who was beheaded.

General Noriega is known, according to highly sensitive American intelligence information, to have told "several aides in prior days that 'I want that guy's head,'" the official said. American intelligence officials in Panama are known to have reviewed the Panamanian medical reports on the slaying and confirmed, the official added, that Dr. Spadafora was tortured four to six hours while alive.

Another American official, who was in Central America at the time of the slaying, similarly declared that the United States "knows"—he emphasized that word—"that the Panamanian Defense Force did him in; these are people who were working under Noriega."

This official also said, however, that "who gave the order and why it was done in the way it was, we don't know." The possibility cannot be ruled out, he added, that some of General Noriega's associates may have killed him without an express order in hopes of currying favor with their leader.

A SUPPLIER OF DATA TO CUBA AND U.S.

General Noriega's ties to Cuba have touched off a longstanding debate among intelligence agencies.

The C.I.A. has viewed General Noriega as an invaluable asset since the 1970's because of his willingness to provide intelligence on the Cubans. He later became a valuable source of inside information on the Sandinista revolution in Nicaragua and, informed officials said, has used the Panamanian Embassy in Managua to collect intelligence for the United States.

At the time, it was also known that General Noriega was supplying intelligence on the United States and its activities in Panama and elsewhere to the Cubans.

"The station chiefs loved him," a former American Ambassador to Panama recalled, referring to intelligence agents. "As far as they were concerned, the stuff that they were getting was more interesting than what the Cubans were getting from Noriega on us."

Another American official told of a briefing in Washington at which he was assured that General Noriega was "our man." After the American was posted to Panama City, one of the first National Security Agency intercepts that crossed his desk said that the D.S.G.I., the Cuban intelligence agency, had assured its operatives in Panama that General Noriega was "their man."

One former senior C.I.A. official who served in Panama when General Noriega was chief of intelligence under General Torrijos defended his agency's reliance on General Noriega.

"To me, he was under continuous attack by people who kept saying, 'Look at this with Havana.' But he was G-2," or intelligence. It was General Noriega's job, the C.I.A. official explained, to stay in close contact with Havana.

"As to who had the upper hand—and this was debated for years—the United States or Cuba, I frankly think it was the United States that came out ahead" because of General Noriega's reporting, he said.

A BREACH OF SECURITY: 'SINGING SERGEANTS'

The most disturbing breach of security in General Noriega's relationship with Cuba involved his recruitment of an American Army intelligence sergeant in the mid-1970's. The incident briefly came into public view in the fall of 1977, in a critical period in the Carter Administration's negotiations with Panama on the future of the canal.

Among other details, the sergeant informed General Noriega of the clandestine monitoring of senior Panamanian officials, according to intelligence officials. There were later allegations from American critics of the Panama Canal treaties that the United States had eavesdropped on Panamanian negotiations, had been caught in the process and was being threatened with exposure unless last-minute concessions were made. The Senate Intelligence Committee, after investigating the incident, concluded that there was no evidence that the Panamanians had made any blackmail threats.

The incident became known inside the Carter Administration as the case of the "singing sergeants," and the breach of security was widely considered to be limited to interceptions of personal conversations, some of them highly embarrassing, by General Torrijos.

Retired N.S.A. officials, in recent interviews, depicted the breach as far more troublesome and one that directly involved General Noriega. In the officials' account, the sergeant began dealing with General Noriega. Transcripts of intercepts of General Torrijos were turned over, in return for cash payments, as well as highly sensitive technical materials, including manuals that described how various N.S.A. systems worked. "Quite detailed N.S.A. documents were given to Noriega" and ended up in Cuba, a former N.S.A. official recalled.

General Noriega enraged some American officers in the late 1970's, according to an intelligence report, when he purchased 10 new American-made automobiles while on a visit to Washington and then, upon his return, turned over the vehicles to the Cuban diplomatic delegation in Panama City.

Many American officials, despite their hostility to General Noriega's involvement in these activities, expressed admiration for his ability to keep his various constituencies—such as the United States and Cuba—at bay. One key to his success, some officials said, was his lack of ideology.

[From the New York Times, June 13, 1986]

U.S. AIDES IN 1972 WEIGHED KILLING OFFICER WHO NOW LEADS PANAMA

(By Seymour M. Hersh)

WASHINGTON, June 12—Law enforcement officials in the Nixon Administration once proposed the assassination of Gen. Manuel Antonio Noriega, who was then chief of intelligence in the Panama Defense Force, as a partial solution to that nation's heavy drug trafficking, according to a Senate Intelligence Committee report.

The recommendation was one of a series of options proposed in 1972 for dealing with the officer, who was then a lieutenant colonel. The options were presented to John E. Ingersoll, then the Director of the Bureau of Narcotics and Dangerous Drugs. Mr. Ingersoll, the Senate report said, rejected the option, which proposed the "total and complete immobilization" of General Noriega. A separate Department of Justice investigation also found no evidence that any direct action against General Noriega had been put in motion.

General Noriega is now the army commander of Panama and is widely viewed as the politically dominant force in the country. In an article in The New York Times today, American intelligence agencies were reported to have evidence that General Noriega is extensively involved in illicit money laundering and drug activities and provided a Latin American guerrilla group with arms.

In a telephone interview about the Nixon-era events, Mr. Ingersoll confirmed that he had rejected a staff proposal to kill the Panamanian. He recalled that his agency had accumulated "hard information" that General Noriega was trafficking in drugs and had been frustrated in its attempts to persuade Brig. Gen. Omar Torrijos Herrera, who was then the military strongman of Panama, to take sanctions.

Mr. Ingersoll, who is now a security consultant, recalled that at the same time the Bureau of Narcotics and Dangerous Drugs was under heavy pressure for more aggressive action in international narcotics control from senior officials in the Nixon White House, including John E. Ehrlichman, then the counsel for domestic affairs.

A SET OF OPTIONS

Mr. Ehrlichman, reached at his home in Santa Fe, NM, acknowledged today that during the Nixon years there was White House pressure on Mr. Ingersoll "to get more results," but he said it was nothing more than that—general pressure. Mr. Ingersoll's most pressing concern, Mr. Ehrlichman said, was Turkey as a source of drugs.

The pressure from the White House and the hard intelligence about the extent of General Noriega's involvement in drug trafficking led Mr. Ingersoll's staff to prepare a set of options to deal with the Panamanian, Mr. Ingersoll said.

The Senate Intelligence Committee, in a 1978 report, said five options against General Noriega, who was described as a "Guardia Nacional official" rather than by name, were "considered" by the Bureau of Narcotics and Dangerous Drugs in the first months of 1972.

The report listed these options:

Linking the official to a fictitious plot against General Torrijos.

Leaking information on drug trafficking to the press.

Linking his removal to negotiations over the future status of the Panama Canal.

Secretly encouraging powerful groups in Panama to raise the issue.

"Total and complete immobilization."

Senate committee investigators confirmed that the officer referred to was General Noriega, and that the option calling for "immobilization" was a euphemism for assassination.

PERIOD OF TENSIONS

One investigator described the evidence obtained by the Bureau of Narcotics and Dangerous Drugs in early 1972 as extensive, and said it showed that the Panamanian intelligence officer "was more powerful than anybody wanted to admit at the time."

The Senate report said the options paper was composed at a period of tension in United States-Panamanian relations that stemmed from the drug agency's efforts inside Panama. Agency officials had arrested a Panamanian official inside the Canal Zone, which was then under American jurisdiction, creating a serious diplomatic incident.

According to the Senate report, the State Department and Panama's intelligence service, which Mr. Noriega ran, then insisted that investigators from the Bureau of Narcotics and Dangerous Drugs not enter Panama without coordinating their activities with the United States Ambassador.

Recalling the atmosphere, Mr. Ingersoll said today that there was "no question" that the extensive, and seemingly protected, activities of Colonel Noriega posed "a problem."

APPROACH TO TORRIJOS

"The only way to deal with him was to go to his leader," Mr. Ingersoll said, adding that he and top aides in his agency responded to the options paper by taking what he called "hard information" about Mr. Noriega's drug dealings to General Torrijos at a meeting in Panama City.

The confrontation also had been urged by the White House, Mr. Ingersoll said. "They would never have instructed me to go visit the head of an allied country without hard information," he added.

General Torrijos responded to the evidence, Mr. Ingersoll said, by "suggesting that something might be done." But no steps were taken against Colonel Noriega, and Mr. Ingersoll said he concluded at the time that "Torrijos was worried about him even then" and that "Noriega was a very dangerous man."

The 1972 options paper emerged during the Senate Intelligence Committee's extensive investigation in the late 1970's into American intelligence activities inside Panama. At issue was whether there were any high-risk American activities that, if disclosed, would endanger or taint the negotiations then being conducted over the Panama Canal treaty.

4 INSTANCES OF PLOTTING REPORTED

The Committee report also noted that the Department of Justice had investigated the drug agency options paper in 1975 and had concluded that "no illegal activity resulted."

A former senior Justice Department official, reached today, acknowledged that three lawyers, all knowledgeable in national security affairs, had been assigned in the post-Watergate period to investigate four known instances of formal and informal assassination plotting by federal agencies during the Nixon Administration. The department inquiries, conducted in strict secrecy, found "no evidence" in any of the four cases that any action had resulted from the plotting.

It could not be learned what the other three instances were, or how the four cases become known to officials in the Justice Department.

The former Justice Department official said that once confronted with written evidence of assassination plotting, the unit adopted the approach of working "from the bottom up" and summoning field operatives and low-level officials for questioning.

"There were four instances," that officical recalled, "where there was a whiff that there could have been consideration of assassination." The Bureau of Narcotics and Dangerous Drugs options paper, with its reference to "immobilization," was one of the four, he said.

"In the Noriega case," he added, "we approached it to see whether any steps were ever taken—and none was."

[From the New York Times, June 16, 1986]

U.S. ENVOY OUTLINING POLICY FOR PANAMA

(By James LeMoyne)

PANAMA, June 15—The United States Ambassador here will deliver a formal definition of American policy on Panama to the Government here on Monday, according to an American Embassy spokesman, after charges in Washington that the head of the Panamanian Army is a drug dealer, money launderer and occasional spy for Cuba.

The Ambassador, Arthur H. Davis, was originally schedule to have delivered the message last Friday, but asked for a postponement until Monday.

The formal expression of Administration policy is seen as a key element in the growing political crisis here set off by the charges made by American officials against the Panamanian Army commander, Gen. Manuel Antonio Noriega. The charges were the subject of a New York Times report last Thursday.

In the last two days opposition leaders have called for the resignation of the army high command and a Government investigation of the activities of General Noriega,

who is seen as the true holder of political power here.

AN APPEAL TO THE MILITARY

The opposition Christian Democratic Party went a step further Saturday night, choosing the politically risky course of calling on "responsible officers and troops" to seek new military leaders.

The increasingly open confrontation with the de facto military Government forms part of a prolonged political struggle in Panama, where the military has imposed or deposed five presidents in recent years and is suspected of having killed a leading opposition figure, Dr. Hugo Spadafora, last September.

"We are in a period of remilitarization of our society," Ricardo Arias Calderón, head of the Christian Democratic Party, said in an interview today. "The structure of military power is more and more naked."

Mr. Arias noted that in recent months there had been unexplained attacks on his party's headquarters and on a leading Christian Democratic legislator. In addition, the Government has shut down an opposition radio station and censored a leading opposition radio commentator.

ELECTION FRAUD SUSPECTED

The army, known as the Panama Defense Force, seized power in 1968 but permitted a limited return to civilian rule in the last few years. However, the army is widely believed to have stolen the last election in 1984, imposing its candidate, Nicolás Ardito Barletta, who was then summarily dismissed when he backed an inquiry into the killing of Dr. Spadafora. Dr. Spadafora's decapitated body was found stuffed in a United States mailbag in Costa Rica just across the border with Panama.

In the months since then the army and its political allies have continued to control the Government and have angrily denied the charges made by American officials against General Noriega in the last few days.

The general himself has characterized the accusations as part of a campaign to keep Panama from taking control of the Panama Canal in the year 2000. There are rumors that he is organizing a demonstration in support of the Government later this week.

The charges made in Washington have raised major questions about United States policy toward Panama because they appear to have been purposely disclosed by several American officials who conceded they had known of General Noriega's reported criminal activities for years but tolerated them because he was useful to the United States.

ATTEMPT AT OUSTER SEEN

The accusations have led to speculation here that the Reagan Administration is now seeking General Noriega's ouster because he is no longer so useful to the United States.

Both American and Panamanian political analysts say Pentagon and Central Intelligence officials have long relied on General Noriega for intelligence information and as a guarantor of the main United States military base and intelligence-gathering center in Latin America, situated along the Panama Canal.

But American officials, speaking in interviews before the latest charges against General Noriega were made public, blamed him for failing to bring the political liberalization that the Administration sees as necessary for the long-term stability of Panama and, by extension, the security of the Panama Canal.

Even General Noriega's chief critics say they remain cynical about American policy concerns in Panama.

Several Panamanian politicians bitterly recalled that despite knowing that the last presidential election was a fraud, the Administration sent Secretary of State George P. Shultz to the inauguration of Mr. Barletta. At the height of anti-Government protests in March, they said, the United States held joint military maneuvers with the Panamanian Army.

U.S. EMBASSY WON'T COMMENT

"The United States chief interest here is the security of the Panama Canal," Mr. Arias said. "In all these years they have known exactly what Noriega was doing. But now they are against him because they feel he is a source of instability rather than stability."

A spokesman for the United States Embassy refused to comment on American policy here.

At present the political opposition appears too divided and too weak to force major changes. Opposition leaders say that instead they hope a barracks coup will lead to General Noriega's removal.

So far General Noriega has treated his critics with considerable restraint. The opposition La Prensa newspaper has been allowed to print regular front page stories on the general's alleged criminal activities and has repeatedly demanded his resignation.

Pro-Government newspapers have replied, with no apparent sense of irony, by accusing opposition politicians and journalists of being the main drug dealers in Panama, where strict bank secrecy laws are widely believed to have attracted billions of illicit dollars.

[From the Washington Post, Sept. 20, 1986]

PANAMANIANS SPYING ON, FOR UNITED STATES

The United States receives valuable intelligence information about Cuba and Nicaragua from Panamanian "double agents" who, in turn, inform those two countries about U.S. activities, a former administration official said yesterday.

Norman Bailey, formerly of the National Security Council staff, said he gives high marks to the Panamanian agents because the United States, on the one hand, and Cuba and Nicaragua, on the other, both believe they are "getting more than they are giving."

Bailey said Panama's role as an intelligence asset is a principal reason the United States has muted its public criticism of that country's alleged drug-trafficking activities and continued military domination of the government.

He said, however, that the president's national security affairs adviser, John M. Poindexter, during a private meeting last December, "read the riot act" to the head of Panama's Defense Forces, Gen. Manuel Noriega, about his alleged drug smuggling.

Based on the findings of "all U.S. agencies and departments," Bailey said Panama is "major center of drug trafficking."

Bailey was a panelist for a daylong seminar at the Johns Hopkins School for Advanced International Studies. Panelists included U.S. and Panamanian government officials and nongovernment experts from both countries.

Panama is headed by President Eric Arturo del Valle, who took office last year after Nicolas Ardito Barletta was forced out by the Defense Forces.

□ 1540

Mr. HELMS. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair.

I yield the floor.

Mr. DURENBERGER. Mr. President, I will be brief. I oppose this amendment of the Senator from North Carolina. As the Chair already knows, we have discussed a variety of his amendments with him and accommodated in the areas we felt we could accommodate. But in this particular area, I will oppose the amendment of the Senator from North Carolina. It would require the Director of Central Intelligence to report to the Intelligence Committees on whether and to what extent the security forces of Panama violate human rights or engage in international drug trafficing and certain other undesirable activities. It sounds like American motherhood, how to get the "Good Housekeeping Seal of Approval," and has gotten a lot of cosponsors.

Mr. President, I would have to note also though for my colleagues that similar reports are required of the President of the United States. Particularly is this true on the issue of human rights compliance. In fact, we consistently require of the President of the United States reports on the human rights compliance of countries that receive security assistance from the United States. This amendment would require an additional, presumbly classified, report by the Director of Central Intelligence to the Intelligence Committees on these subjects, but in fact intelligence information should already be fully considered in the reports periodically filed by the President on human rights and on narcotics matters.

Mr. President, I have not asked the other members of the Intelligence Committee their views on this amendment so I speak only for myself in this regard. I believe that the Senator's requirement would duplicate existing reporting. It is unnecessary. I would add this is also the view of the country's intelligence community. Mr. President, I think their concern as well as my own for the amendment by the Senator from North Carolina is that by making intelligence the focus of the inquiry, we run the risk of putting in jeopardy intelligence sources and methods.

On an ongoing basis, inside the committee, apart from explicit statutory authorizations, both the Senate and the House committees do regularly review human rights violations and make a variety of other inquiries as appropriate.

To put that requirement, as the Senator suggests that we do, in the authorization bill not only duplicates the requirements that are already laid on the President of the United States, who can do it in a much larger context, but also narrows it to intelligence sources and methods.

I fear particularly in the Panama situation—and I want to say I would love to read the report when it comes from the President as much as my colleague from North Carolina, because I share his concerns for what is going on in that country. But if it is to be as he proposes, an intelligence report, reported to the Intelligence Committees, I think, Mr. President, we run too great a risk of compromising intelligence sources and methods particularly in a country like Panama. So for that reason I will oppose the Senator's amendment.

Mr. LEAHY. Mr. President, on its merits, I have no objection to the amendment or issues raised by the distinguished Senator from North Carolina. He raises questions which are realistic questions, valid ones for those of us who must make decisions on matters involving not only that part of the world but others.

Many of the questions he raises are questions which occur to the Senator from Vermont also. My concern about the amendment is only that a report by the Director of Central Intelligence on such a sensitive topic should not be the subject of debate in open session on the Senate floor. Legitimate questions, yes, but I would prefer requesting answers to such questions through the aegis of the select committee, not through the aegis of an amendment.

I mentioned this earlier this afternoon. I hope Senators will understand the reasoning for the longstanding practice of not going into debate or amending of the intelligence bill on the floor of the Senate. It is not that we somehow see ourselves as a sacred group which handles this in closed session, unwilling to be subject to any questions. Not by any means. The committee is prepared to entertain behind closed doors, in a secured hearing room the questions of any Member of this body relating to intelligence activities. In fact, we are ready to serve the Senate.

The Senator from North Carolina has been very careful here this afternoon in couching his questions in a very precise way, and I appreciate that.

Even as I speak, I am attempting to distinguish between matters that have been discussed openly, and those matters discussed in a classified fashion. As a result, if the Senator from North Carolina and my fellow colleagues feel that I am speaking in broad generalities, indeed I am. The reason for that, the reason for such broad generalities for myself or the Senator from Minnesota is the practice of avoiding discussion of intelligence matters on the floor of the U.S. Senate or anywhere else.

So I must say that I concur fully with the remarks of the Senator from Minnesota. I think the report required by the amendment of the Senator from North Carolina would be duplicative of other executive branch reports. I think if there is other sensitive intelligence input available, we could make it available through the select committee.

I am very concerned about Panama, as are all Members of the Senate. I do not doubt the concern felt by the Senator from North Carolina. But I hope the distinguished Senator from North Carolina will realize that when as a member of this committee I join with the distinguished chairman in opposing his amendment, I am not suggesting that he is not asking valid questions. Rather, I see my role as vice chairman of this committee as one which requires that I oppose such amendments on their form, rather than their substance. As a result, while I would also be most interested in reading the answers to the particular questions, I must in my role as vice chairman oppose the amendment.

□ 1550

Mr. HELMS. Mr. President, I must preface what I am about to say with a reiteration of what I said earlier about my respect and admiration and friendship for the distinguished chairman and vice chairman.

I don't want any misunderstanding on that point, but let me say that I believe they have offered convoluted logic as to why they feel obliged to oppose my amendment; and in doing so, they have validated the very reason for the amendment.

The truth of the matter is that this amendment does not call for open debate on this floor about whatever information is discovered about Panama or Mr. Noriega or anybody else. But what we are getting now from the intelligence community is zilch—nothing. Either they don't know, or they don't want the Congress to know.

Furthermore, Mr. President, this emphasizes—at least in my mind, and I say this most respectfully—the kind of selective judgment we have in this Chamber about whom we are going to oppose and about whom we are going to make critical comments.

The point is that Dr. Spadafora's head was either cut off or it was not. It was. That much is documented, but the rest we need to know. I cannot tell you how many fine, responsible leaders of Panama in the private sector have come to me and said, "Please, Senator, look into what is going on in our country." What is shocking is that these good, patriotic Panamanians who are asking these questions have been attacked in the Government press down there as disloyal citizens for raising fundamental issues.

The testimony has been given that two members of the defense forces, in uniform, went aboard that bus and took that man, Dr. Spadafora, off, and that was the last time he was seen alive. The next day, his body was found in Costa Rica, his head ripped off.

Are not the Members of the U.S. Senate entitled to know what our intelligence capability finds out about that?

How about the drug trafficking? Are we going to be namby-pamby about drug trafficking, when Panama is up to its armpits in it?

Money laundering: There are so many banks in Panama that they cannot find space for them all—and we know that a good many are handling drug money.

I do not mean that we have an open session on Panama here, before the Lord and everybody else, and go into detail about what we have found, when we find it, and when it is delivered to us by our intelligence capability. But I do say that Members of the U.S. Senate and the House of Representatives are entitled to know what is going on down there, from the views of our intelligence people.

It is all very well and good for somebody else to get the information, but we do not get it. How do we make an intelligent, enlightened decision about Panama—or, for that matter, any other country?

I am simply saying, in this amendment, let us have the facts. I have no notion whatsoever—as the distinguished Senator from Minnesota put it—of "putting at risk" any of our intelligence people. We do not have to do that.

I hope that this amendment, which is supported and cosponsored by a number of Senators on both sides of the aisle, of both political and philosophical persuasions, will be adopted. I hope that this rollcall vote will produce an overwhelming call by the U.S. Senate for the truth about Panama, whatever it is.

Mr. President, it may be true, as has been stated here, that our intelligence services are in constant surveillance of the situation in Panama. Who knows? But what we need, particualrly, is for the CIA to sit down and prepare a specific report for the needs of the Senate. It is one thing to monitor a situation continuously, but it is another thing to sit down and evaluate the available information in response to a particular need and a particular request. If it is necessary that it be classified—fine. But make it available.

What we want is a special focus on Panama, and I do not think we can

expect that without a particular request. We need to give our colleagues an opportunity to go on public record, to demonstrate the intense interest in the Panama problem which has been manifested to me privately by so many people, including Senators—especially Senators.

Let me reiterate one more time, and then I will conclude: I simply want the intelligence community to realize how important this information is to the U.S. Senate.

I yield the floor.

Mr. DURENBERGER. Mr. President, I do not intend to be namby-pamby on drug trafficking or money laundering, either; nor do any other members of the committee. But we are struck here this afternoon, I think, with a sort of classic situation in which each of us, dealing with problems as they occur around the world, would like to have more or as much information as we presume is available to somebody, usually the President or the head of the National Security Council or someone else. In one way or another, we have come to the conclusion in such situations that he—that is, the President—either does not have all the information or, having all that information, he is not acting the way we might act under a given set of circumstances.

I say that to my colleague because I have been through that as a Senator and as a member of this committee.

Were we, in effect, to license through the authorization bill, 535 of us, in one way or another, an attempt to satisfy, in a statutory vehicle, using the intelligence community and the limited resources of 15 Senators and 15 House Members to try to get all the detail that I think we would all like to have on a variety of subjects, we would be charting an impossible course.

Obviously, there is some precedent for the kind of request the Senator is making. There is no precedent I know of on an authorization bill. In the past, this committee has been asked by individual Senators to look at a specific country.

For example, we were asked to look at the possible connection between United States diplomatic and intelligence officials in El Salvador and human rights violations in that country. We responded to that request by a Senator with an investigation and both a classified and an unclassified report.

So it is not as though the committee is not willing, under a certain set of circumstances and on request from a Senator, to undertake an effort that is somewhat similar to the kind that the Senator is suggesting here. My objection is to the specific nature of the request on this authorizing legislation.

Frankly, I fear that the precedent that the adoption of this amendment would create would be nearly disastrous in the oversight process, and it is for that reason and no other that I object.

I yield to the Senator from Maine.

□ 1600

Mr. COHEN. Mr. President, I am going to follow up on what my colleague was saying. It would seem to me that if any Senator, especially the Senator from North Carolina, were to make a request to the chairman of the Intelligence Committee that this is a matter of importance to him, which any other Senator may have a similar request, we felt on the committee indeed Panama certainly has been a focus of a great deal of congressional attention in the past and expect it will be in the future.

As Senator DURENBERGER indicated, we are all concerned about the trafficking in drugs in Panama, Colombia, or any other region of the globe that might have an impact on us and our security.

It would seem to me the Intelligence Committee would in fact respond favorably by conducting or requesting reports to be filed by the intelligence community and then presented to that individual Member who made the request.

I think as one who still has 4 years to go on the Intelligence Committee that I would not want to see such an amendment pass, not because I am opposed to the merits—I support what the Senator is asking for—but as a matter of policy encouraging this sort of amendatory process in the authorization bill thereby setting a precedent for every other Member who might be concerned on El Salvador, on what is going on in Nicaragua, or Pakistan, Afghanistan, et cetera.

I think what we would like to do if possible is to avoid setting a precedent and yet accommodate the Senator from North Carolina by agreeing to look into the very areas that he had requested that we mandate into law.

So if the request were made I am sure it would be met with some favorable consideration.

Mr. HELMS. Mr. President, of course, I know that my friend from Maine and my friend from Minnesota and others on the Intelligence Committee will respond the best they can.

But I say again that I have found in my work as chairman of the Western Hemisphere Subcommittee that the focus on this matter is substantially less than enlightened.

Now, I must be careful at this point that I do not violate classification because I sat in on a classified hearing on Panama and I was not impressed with the quality of the information presented. I will say to my friend that among the classified documents was a letter I had written to the CIA.

This is a matter of focus. I do not know why it would be risky or harmful to focus in on this issue at the particular request of the Senate, and I think we should.

Certainly I am not questioning the good faith of the Senator from Maine. I know him and I know how he operates, and I respect him.

Mr. COHEN. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. COHEN. It is not a matter of not agreeing with the substance of what the Senator would like to see.

Mr. HELMS. I understand.

Mr. COHEN. It is not a question of whether we think it should be classified or unclassified. To the extent it could be unclassified certainly we would like to have a complete discussion before the body. The real question is do we want to start setting a precedent for individual requests being written into law for those areas being deemed critical by individual Senators?

We think that is a bad policy where we could in fact accommodate it on an agreement basis if any Senator would make a request saying this is a serious subject matter, and indeed it is, would you as chairman of the Intelligence Committee ask for a hearing, insist upon members of the intelligence community communitywise to come in with a full and complete report that would then be available for review and discussion by that Senator requesting it or the Senate floor if it were not dealing with classified matter. That would seem to me to be a better policy to be following.

Mr. HELMS. I thank the Senator.

● Mr. KENNEDY. Mr. President, I support this amendment because I am concerned about the serious allegations of human rights abuses by General Noriega in Panama. These allegations are not frivolous. It is not only the charge that the Presidential elections were rigged. It is not only the accusation that General Noriega was personally responsible for the murder and mutilation of Hugo Spadoforo. It is not only the allegations of drug smuggling and gunrunning.

It is also the fact that critics of General Noriega are routinely rounded up and put in jail, that opposition leaders in Panama are harassed, threatened and intimidated, and that editors, labor leaders, academic figures, and business people are forced to live in a constant atmosphere of corruption and intimidation.

The United States Government knows more than it is willing to tell us about what is happening in Panama. Congress—and the American people—have a right to know the truth about these allegations. In supporting this amendment, we are in no sense attempting to refight the battle over the Panama Canal Treaty in the 1970's. Concern about human rights viola-

tions in Panama in the 1980's is broad-based in Congress and the Nation, and it is time we learned more about the current situation. I urge the Senate to adopt this amendment.●

Mr. HELMS. I am ready to vote, Mr. President.

The PRESIDING OFFICER (Mr. EVANS). Is there further debate?

The question is on agreeing to the amendment of the Senator from North Carolina.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 53, nays 46, as follows:

[Rollcall No. 289 Leg.]

YEAS—53

Abdnor	Hatch	Packwood
Andrews	Hatfield	Pell
Armstrong	Hawkins (Mrs.)	Pressler
Bingaman	Hecht	Pryor
Broyhill	Heflin	Quayle
Burdick	Heinz	Roth
Cochran	Helms	Rudman
Cranston	Kassebaum	Sasser
D'Amato	(Mrs.)	Simpson
Danforth	Kasten	Specter
DeConcini	Kennedy	Stevens
Denton	Kerry	Symms
Dixon	Laxalt	Thurmond
Dole	Mattingly	Trible
Ford	McClure	Wallop
Gorton	McConnell	Warner
Gramm	Murkowski	Wilson
Grassley	Nickles	Zorinsky

NAYS—46

Baucus	Exon	Matsunaga
Bentsen	Glenn	Melcher
Biden	Goldwater	Metzenbaum
Boren	Gore	Mitchell
Boschwitz	Harkin	Moynihan
Bradley	Hart	Nunn
Bumpers	Hollings	Proxmire
Byrd	Humphrey	Riegle
Chafee	Inouye	Rockefeller
Chiles	Johnston	Sarbanes
Cohen	Lautenberg	Simon
Dodd	Leahy	Stafford
Domenici	Levin	Stennis
Durenberger	Long	Weicker
Eagleton	Lugar	
Evans	Mathias	

NOT VOTING—1

Garn

So the amendment (No. 2897) was agreed to.

□ 1620

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DURENBERGER. Mr. President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

COMMEMORATING THE AWARD OF THE CENTRAL INTELLIGENCE AGENCY SEAL MEDALLION TO SENATOR DANIEL PATRICK MOYNIHAN

Mr. GOLDWATER. Mr. President, a couple of weeks ago one of our distinguished colleagues, Senator DANIEL PATRICK MOYNIHAN, was honored by the Central Intelligence Agency for his many contributions to the CIA and the intelligence process while serving as a member of the Senate Intelligence Committee. As a member and then chairman of that committee, I can testify that PAT MOYNIHAN richly deserves this honor. Not only did he bring his wit and eloquence, with which we are all familiar, to the committee hearings, but his strong instinct for the subject matter along with his keen intellect brought an added dimension to our debates. Throughout his service on the committee, SENATOR MOYNIHAN adhered to a personal code that put the best interests of the United States above all else. Time and again, he kept us focused on the main issue rather than allowing us to get bogged down in fruitless side trips.

One of the best things about this service on the committee was the intermediary role which he took upon himself. Realizing that it was awfully easy for some of his colleagues to criticize the secret operations of our intelligence agencies, SENATOR MOYNIHAN became a behind-the-scenes tutor to some of his fellow Senators. During my term as chairman, PAT served as vice chairman and I can say honestly that he proved to be an invaluable assistant in managing the committee in our oversight duties. More than that, he became a friend, and I guess there just isn't any higher compliment.

Mr. President, I ask unaimous consent that my remarks as well as the citation accompanying the award be printed at this point in my remarks.

There being no objection, it was ordered to be printed in the RECORD, as follows:

CENTRAL INTELLIGENCE AGENCY CITATION

DANIEL P. MOYNIHAN IS HEREBY AWARDED THE AGENCY SEAL MEDALLION

In recognition of his outstanding accomplishments as a Member of the Senate Select Committee on Intelligence from February 1977 to January 1985. He was a leader in establishing the oversight of intelligence which was and is today in the finest spirit of bipartisan government. Consistently adhering to the highest standards of personal and professional integrity in furtherance of the national security interests of the United States, Senator Moynihan clearly demonstrated that effective oversight of intelligence can be realized in a democratic nation without risk to the intelligence process. Serving with full knowledge that his achievements would never receive public recognition, he chose to align himself with the thousands of men and women who have devoted their lives to support the intelligence needs of our country. Senator Moynihan's extraordinary contributions and exemplary dedication while serving on the Senate Select Committee on Intelligence reflect great credit on himself and the Congress of the United States.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, I am not aware of any further amendments to be offered. I am prepared to ask for a third reading. I will ask for a third reading.

The PRESIDING OFFICER. If there are no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4759, the companion bill in the House.

□ 1630

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will state the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

Mr. DURENBERGER. Mr. President, I move to strike all text after the enacting clause of H.R. 4759 and that the text of S. 2477, as amended by the Senate, be substituted therefor.

The motion was agreed to.

The PRESIDING OFFICER. Is there further debate? There being no further debate, the question is on the engrossment of the amendment for a third reading and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4759) was passed.

Mr. DURENBERGER. I move to reconsider the vote by which the bill passed.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DURENBERGER. Mr. President, I move that consideration of S. 2477 be indefinitely postponed.

The motion was agreed to.

Mr. DURENBERGER. Mr. President, I move that the Senate insist upon its amendment to H.R. 4759, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer appointed Mr. DURENBERGER, Mr. ROTH, Mr. COHEN, Mr. HATCH, Mr. MURKOWSKI, Mr. SPECTER, Mr. HECHT, Mr. MCCONNELL, Mr. LEAHY, Mr. BENTSEN, Mr. NUNN, Mr. EAGLETON, Mr. HOLLINGS, Mr. BOREN, and Mr. BRADLEY; and from the Committee on Armed Services: Mr. WARNER and Mr. HART for matters within the jurisdiction of the Armed Services Committee, conferees on the part of the Senate.

Mr. DURENBERGER. Mr. President, I wish to use this occasion to express my personal appreciation and that of the committee to members of the intelligence community in this country—to the Director of Central Intelligence, Mr. Casey, with whom we have had our periodic differences, as many have over the course of time, but there has never been a question of our mutual, bipartisan agreement on the need for strong, effective intelligence in this country. The leadership of the intelligence community in this country, in DIA, NSA, State/INR, FBI, and a variety of other areas, has probably never been stronger than it is today. That is a compliment to the individuals involved, a compliment to Mr. Casey, a compliment to the President of the United States, and it is a compliment to the mutual efforts toward congressional and executive branch commitment to good intelligence in this country.

I express my appreciation to what we commonly call the rank and file, the tens of thousands of intelligence officers, men and women throughout this country and throughout the world, many of whom have participated in deliberations of the Senate select committee on its authorizing bill during the course of this year.

I express my particular appreciation to the staff of the committee, to the leadership of the staff, Bernie MacMahon and Eric Newsom, to all who made a particular contribution this year in the area of adapting our budget requirements to the new international intelligence strategy in a way which was so persuasive that the golden objectives of the community and the committee were almost totally satisfied throughout this process.

Mr. President, I had almost completed my compliments and mentioned individuals and I turned to my right and discovered one of the most valuable members of the staff, who happens to be on my immediate right. Dan Finn has been on the committee staff several years, having earlier been on the minority staff and having been promoted, if you can call it that, to the minority counsel; then when the committee counsel job was vacated recently, he was willing to take on that job.

I think that this indicates the special spirit that exists in what we would rather call the nonpartisan, sometimes, than the bipartisan spirit of this committee, particularly the spirit of professionalism on the staff, which does not really recognize the political differences. Dan Finn, as much as anybody else, reflects that.

Mr. LEAHY. Mr. President, I also add my compliments to Dan Finn for the years he served as minority counsel and for the years he served before that in various capacities on the Intelligence Committee.

Mr. DURENBERGER. I conclude with compliments to my colleague from Vermont [Mr. LEAHY] and to our colleagues on the House side. We have had some spectacular, if you will, success in our relationship with our counterparts in the House select committee, particularly its leadership and the chairman, LEE HAMILTON, from Indiana, which has made the staff work and the work of the intelligence community, participating in the oversight process as well as the authorizing work that we have completed today, much more successful than in the past.

This is clearly a reflection of the fact that there is growth in this new process of oversight, that there is a maturity we are finally realizing, but that it is the individuals who are involved to whom we all in this country owe a debt of gratitude for their commitment to the role that intelligence plays in the national security.

Mr. LEAHY. Mr. President, I join with my good friend from Minnesota in complimenting not only the intelligence community and those who work on intelligence matters in the Senate, but the Senators who are members of the committee. They have put in an inordinate amount of time, invariably behind closed doors, usually having to take time from their other and always pressing duties.

The staff, led by Bernie MacMahon and Eric Newsome, have served all Senators on both sides of the aisle very well.

I could mention others here—Keith Hall and others on the staff of the committee. Of all the committees I have served on, I cannot think of any staff that works with such a high degree of professionalism as tirelessly or so anonymously as the Senate Intelligence Committee staff. I wish we could bring them all out and explain the responsibilities of each one. But even that would violate security, for much of their work is classified and held in compartmented fashion.

I have always had, in my 12 years in the Senate, first as a member of the Armed Services Committee and then as a member of the Appropriations Committee, an opportunity to watch the development of our intelligence community. I have seen this strong leadership provided in the Senate to strengthening our intelligence—Senator GOLDWATER, Senator INOUYE, Senator BAYH, and Senator DURENBERGER have all provided leadership. I would like to think that in some ways, I too, have helped. In all of this, there has only been really one overriding concern, not only of the select committee but also of those individuals we have worked with as directors of the CIA, directors of the FBI, and others from both Republican and Democratic administrations: To have the best intelligence agencies in the world, the best ability to gather intelligence in the world. I firmly believe that the United States today has the best intelligence services in the world.

I also firmly believe that this administration, as previous administrations, is committed to making it the best, and to continue in proving our intelligence capabilities. I am also convinced that those who lead the community strive for constant improvement. In that regard, they have received strong bipartisan support from the House and from the Senate and strong leadership, Chairman LEE HAMILTON and the members of the House Permanent Select Committee on Intelligence.

Mr. President, I hope that the intelligence services of this country realize that the Senate's unanimous vote of support for the intelligence authorization bill, after only 2 or 3 hours of debate, is a reflection of the commitment of the Senate to our intelligence services and those who lead them.

Mr. LEAHY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, at the appropriate time, when the distinguished minority leader is present and we have the managers here, we will move to the consideration of Calendar No. 636, the commodities futures trading bill. I understand that can probably be completed in not more than 2 hours. Hopefully following that, we could take up FIFRA, though I am not certain we can get that cleared. There is fairly heavy wrapup; in other words, a lot of things we can do after we do the CFTC bill. It is our hope that tomorrow we will start on drug enforcement legislation.

I must commend the staff members on each side who have been working for the past several days almost around the clock. What they are attempting to do before they bring the package to Senators on each side is to try to reach some consensus on areas

where we can find agreement, Republicans and Democrats, or even differences among some Republicans or some Democrats. And then where we cannot find agreement, just agree that we will offer amendments, say, on the death penalty, or exclusionary rule, or the drug czar, or some area where we cannot find agreement, at least we could set out the parameters of what we might be doing on the drug bill. That could take some time. They are very sensitive issues, very controversial in some areas. That could take through Saturday. Some time in there we need to take up the tax reform bill.

I am advised that there is now considerable sentiment in the other body that we might be able to depart here on October 3, so that may offer some encouragement even though we have been in long hours and working fairly hard. If that target could be reached, it would be worth the effort.

Mr. EXON. Will the Senator yield for a question?

Mr. DOLE. I am happy to yield.

Mr. EXON. Will the Senator be good enough to tell us what his plans are—he outlined the upcoming legislation—about how late he anticipates we will be in tonight and will there be any windows in the schedule as viewed presently by the majority leader?

Mr. DOLE. I understand there has been a request for a window on both sides. I think a number of Senators have activities that necessitate their absence for an hour, an hour and a half, maybe 2 hours.

What we would like to do is finish CFTC and see how far we can go on FIFRA. If we could reach some agreement, not have a window, just not stay in, and go out fairly early.

Mr. EXON. I thank the majority leader.

Mr. METZENBAUM. The Senator says "fairly early." Would he give some rough estimate—does he mean 6 o'clock, 6:30, 7?

Mr. DOLE. Somewhere like 7:30 maybe.

Mr. METZENBAUM. I thank the majority leader.

□ 1650

Mr. DOLE. Mr. President, let me indicate to my colleagues what I intend to do.

First, I ask unanimous consent that the Journal of the proceedings be approved to date. Then I will ask that we may adjourn for 1 minute, and then I will ask unanimous consent that we move to the CFTC bill.

The purpose of all this is to get various items, about five items, on the calendar.

Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date, that no resolutions come over under the calendar, that the call of the calendar be dispensed with, and that the morning hour be deemed to have expired.

Mr. BYRD. Mr. President, reserving the right to object—and I will not object—the distinguished majority leader, for the RECORD, is making this request in anticipation of consent being given, and thereafter immediately moving to adjourn the Senate.

Is that correct?

Mr. DOLE. That is correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT

Mr. DOLE. Mr. President, I move that the Senate adjourn for 1 minute.

The motion was agreed to, and at 4:57 p.m. on Wednesday, September 24, 1986, the Senate adjourned until 4:58 p.m., the same day.

AFTER ADJOURNMENT

WEDNESDAY, SEPTEMBER 24, 1986

The Senate met at 4:58 p.m., pursuant to adjournment, and was called to order by the Honorable DANIEL J. EVANS, a Senator from the State of Washington.

BILLS READ THE SECOND TIME

Mr. BYRD. Mr. President, inasmuch as there are five bills on the calendar of "Bills and Joint Resolutions Read the First Time," I ask the distinguished majority leader if we could not just agree that there would be an objection to each of those five, and proceed under rule XIV, so we will not have to take them up singly.

Mr. DOLE. That is a good suggestion. I was about to ask that.

Mr. President, I ask unanimous consent that the five bills awaiting their second reading be deemed to have been read a second time, en bloc, and then I would object to their further consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bills referred to are as follows:

H.R. 5484, Omnibus Drug Enforcement, Education, and Control Act of 1986.

S. 2825, waiver of certain Medicaid requirements.

H.R. 4492, transfer of certain property in Iowa.

H.R. 4838, relating to treatment of airline employees in certain transactions.

S. 2850, Drug Enforcement Act of 1986.

□ 1700

Mr. DOLE. Mr. President, I do object to their further consideration.

The PRESIDING OFFICER. Objection is heard.

The measures will be placed on the calendar.

Mr. DOLE. I thank the distinguished minority leader.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded

The PRESIDING OFFICER (Mr. COHEN). Without objection, it is so ordered.

COMMODITY FUTURES TRADING ACT

Mr. DOLE. Mr. President, I am advised by the distinguished minority leader, Senator BYRD, there is no objection to moving to Calendar 636, S. 2045. I ask unanimous consent that the Senate now turn to Calendar 636, S. 2045, the commodity futures trading bill.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture, Nutrition, and Forestry, with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Futures Trading Act of 1986".

TITLE I—ENFORCEMENT

SEC. 101. FRAUDULENT PRACTICES.

Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(1) by designating the first and second unnumbered paragraphs as subsections (a) and (b), respectively;

(2) in subsection (a) (as so designated)—

(A) by striking out "on or subject to the rules of any contract market," in clause (2);

(B) by redesignating clauses (a), (b), and (c) as clauses (A), (B), and (C), respectively; and

(C) by redesignating subclauses (A), (B), (C), and (D) as subclauses (i), (ii), (iii), and (iv), respectively; and

(3) by adding at the end thereof the following new subsection:

"(c) Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of such board of trade, exchange, or market.".

SEC. 102. EXTRATERRITORIAL SERVICE OF SUBPOENAS.

Section 6(b) of the Commodity Exchange Act (7 U.S.C. 15) is amended—

(1) in the fourth sentence, by striking out "or any State" and inserting in lieu thereof

", any State, or any foreign country or jurisdiction"; and

(2) by inserting after the fourth sentence the following new sentence: "A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country.".

SEC. 103. EX PARTE APPOINTMENT OF TEMPORARY RECEIVERS.

The proviso of the first sentence of section 6c of the Commodity Exchange Act (7 U.S.C. 13a-1) is amended by inserting within the parenthetical phrase before the closing parenthesis the following: ", and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate".

TITLE II—LEVERAGE TRANSACTIONS

SEC. 201. DEFINITIONS.

Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in the first proviso of the third sentence (relating to the definition of the term "commodity"), by striking out ", and transactions subject to regulation by the Commission pursuant to section 19 of this Act"; and

(2) in the sixteenth sentence (relating to the definition of the term "commodity trading advisor")—

(A) by striking out the comma after "a contract market" and inserting in lieu thereof "or"; and

(B) by striking out "or any leverage transaction authorized under section 19,".

SEC. 202. PENALTY FOR MANIPULATION OF PRICES.

The first sentence of section 9(b) of the Commodity Exchange Act (7 U.S.C. 13(b)) is amended—

(1) by inserting "or" after "4h,"; and

(2) by striking out ", or section 19".

SEC. 203. PENALTY FOR PROHIBITED TRANSACTIONS.

The first sentence of section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended by striking out "or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract,".

SEC. 204. PENALTY FOR USE OF NONPUBLIC INFORMATION.

Section 9(e) of the Commodity Exchange Act (7 U.S.C. 13(e)) is amended by striking out each place it appears the following: ", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

SEC. 205. RELATION TO OTHER LAWS.

Section 12(e)(2) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)) is amended by striking out "or 19".

SEC. 206. LEVERAGE TRANSACTIONS.

Section 19 of the Commodity Exchange Act (7 U.S.C. 23) is repealed.

SEC. 207. PRIVATE RIGHT OF ACTION.

Section 22(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 25(a)(1)(C)) is amended—

(1) by inserting "or" after the semicolon at the end of clause (i);

(2) by striking out clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

SEC. 208. EFFECTIVE DATE.

The amendments made by this title shall become effective 2 years after the date of enactment of this Act.

TITLE III—REGISTERED FUTURES ASSOCIATIONS

SEC. 301. DISCIPLINARY ACTIONS.

Subsection (h) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(h)) is amended to read as follows:

"(h)(1)(A) If any registered futures association takes final disciplinary action against any member of the association or any person associated with such a member or denies admission to any person seeking membership in the association, or bars any person from being associated with a member, the association shall promptly file notice thereof with the Commission.

"(B) The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate to carry out the purposes of this Act.

"(2)(A) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission—

"(i) on the motion of the Commission; or

"(ii) on application by any person aggrieved by the action filed within—

"(I) 30 days after the date the notice was filed with the Commission and received by the aggrieved person; or

"(II) such longer period as the Commission may determine.

"(B) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of the action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

"(C) The Commission shall establish standards for expedited procedures to be used in the consideration of the request for a stay.".

SEC. 302. COMMISSION REVIEW OF ASSOCIATION ACTION.

Subsection (i) of section 17 of the Commodity Exchange Act (7 U.S.C. 21(i)) is amended to read as follows:

"(i)(1) In a proceeding to review final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

"(A) if the Commission finds—

"(i) on the basis of the record in the proceeding before the association and such other matters as may be presented to the Commission, that the member or person associated with a member has engaged in such acts or practices or has failed to engage in such acts or practices;

"(ii) that the acts, practices, or failures to act, are in violation of the rules of the association as specified in the determination of the association; and

"(iii) that the rules of the association are and were applied in a manner consistent with this Act,

the Commission shall, by order, so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

"(B) if the Commission makes no such finding, the Commission shall, by order—

"(i) set aside the sanction imposed by the association; and

"(ii) if appropriate, remand the case to the association for further proceedings.

"(2) If, after a proceeding conducted in accordance with paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive, with due regard for the public interest, the Commission shall, by order, cancel, reduce, or require the remission of the penalty.

"(3)(A) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association), the Commission shall, by order, dismiss the proceeding for review if the Commission determines that—

"(i) the specific grounds on which the denial or bar is based exist in fact;

"(ii) the denial or bar is in accordance with the rules of the association; and

"(iii) the rules are and were applied in a manner consistent with this Act.

"(B) If no such determination is made, the Commission shall, by order, set aside the action of the association and require the association to admit the applicant to membership in the association or to permit the person to be associated with a member.

"(4) Any person (other than a registered futures association) aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in accordance with section 6(b).".

SEC. 303. RULE REVIEW PROCEDURES.

Section 17(j) of the Commodity Exchange Act (7 U.S.C. 21(j)) is amended by striking out the third sentence.

TITLE IV—AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

SEC. 401. CERTAIN PROHIBITED TRANSACTIONS.

Section 9(d) of the Commodity Exchange Act (7 U.S.C. 13(d)) is amended—

(1) in the first sentence, by inserting before the period at the end thereof the following: "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is made through the use of any instrument regulated by the Commission, except that the prohibitions in this sentence shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection"; and

(2) by striking out the second and third sentences.

SEC. 402. AUTHORIZATION FOR APPROPRIATIONS.

Subsection (d) of section 12 of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended to read as follows:

"(d) There are authorized to be appropriated to carry out this Act such sums as may be required for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1992.".

SEC. 403. TECHNICAL CORRECTIONS.

The Commodity Exchange Act is amended—

(1) in the third sentence of section 2(a)(1)(B)(iv)(I) (7 U.S.C. 2a(iv)(I)), by striking out "Securities Exchange Commission" and inserting in lieu thereof "Securities and Exchange Commission";

(2) in the fourth full sentence of section 5a(12) (7 U.S.C. 7a(12)), by striking out "particpate" and inserting in lieu thereof "participate";

(3) in the first sentence of section 9(c) (7 U.S.C. 13(c)), by striking out "section 4k." and inserting in lieu thereof "section 4k,";

(4) in the first sentence of section 9(d) (7 U.S.C. 13(d)), by striking out "advance guarantee" and inserting in lieu thereof "advance guaranty";

(5) by repealing section 11 (7 U.S.C. 14 note);

(6) in the second full sentence of section 17(b)(2) (7 U.S.C. 21(b)(2)), by striking out "with in" and inserting in lieu thereof "within"; and

(7) in section 17(k)(1) (7 U.S.C. 21(k)(1)), by striking out "title" and inserting in lieu thereof "section".

Mr. DOLE. Mr. President, let me also indicate that there will be probably one vote on this matter. We hope we can dispose of it rather quickly.

If we can clear it there will be one vote on six treaties that will count on six votes and this could conclude the action for the remainder of the day, although we are still working to see if we can get some agreement on FIFRA that we might be able to do in the morning.

The PRESIDING OFFICER. The Chair will note the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1710

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. Pending at the desk is S. 2045.

Mr. HELMS. I thank the Chair.

Mr. President, I ask unanimous consent that the committee amendment be adopted and that it be treated as original text for the purpose of further amendment.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, I just want to say to my distinguished colleague that I am not handling this bill; Senator ZORINSKY is. I gather he is on his way over here.

Were you not asking unanimous consent to adopt the committee amendment?

Mr. HELMS. Yes. I am sure he would have no objection to that.

Mr. METZENBAUM. I am sure he does not. I would ask my colleague if he would just go ahead with his opening statement. I have no objection whatsoever personally. I do not know what it is, but I, at this monent, feel I should protect the position of Senator ZORINSKY.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, the Futures Trading Act of 1986, S. 2045, extends the authorization for appropriations for the Commodity Futures Trading Commission for 6 years. It also makes improvements in the Commodity Exchange Act.

Now, I am not going to discuss the specific provisions of the bill at great length. Before I even touch on the provisions, I want to pay my respects and express my gratitude to the distinguished Senator from Indiana, Mr. LUGAR, for the extraordinary help that he has given. He has taken the lead in this matter. Without his great effort, I do not know how far we would have come in terms of moving the bill to the Senate floor this afternoon. So I thank the Senator from Indiana.

Senator LUGAR chaired 2 days of full committee hearings on the bill. During these hearings, Senator LUGAR, myself, and other members of the committee collected the thoughts and suggestions of many witnesses as to the specific provisions that should be included in the bill. During the course of the committee markup, Senator LUGAR offered invaluable counsel on the form and scope of the provisions that were included, as well as those issues that were dealt with in the committee report. I very much appreciate the leadership role that Senator LUGAR has taken on this bill and on so many other things that have come before the Agriculture Committee.

Mr. President, I would also like to recognize the material contributions made to the bill by Senator ZORINSKY, ranking minority member of the committee, and by Senator MELCHER, ranking minority member of the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation. These Senators worked diligently with Senator LUGAR, myself, and the other members of the committee to fashion a piece of legislation of which the Senate can be proud.

It is not a piece of legislation with a great deal of sex appeal. I do not imagine it will have black headlines in the morning on the front page of the newspaper. But, nonetheless, it is an enormously important piece of legislation and I am glad we have brought it this far.

Mr. President, the Commodity Exchange Act is based on the findings and conclusions of Congress that, first, transactions, known as futures and options are affected with a national public interest; second, such transactions are carried on in large volume by the public, as well as by persons engaged in the business of buying and selling commodities in interstate commerce; third, the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices of commodities and their products and byproducts; and, fourth, such transactions can be manipulated or controlled. A fundamental purpose of the Commodity Exchange Act is to ensure fair practices and honest dealing on the commodity exchanges and to control manipulative activity and speculative excesses that demoralize markets and cause injury to producers, consumers, and the exchanges themselves.

Futures trading involves the making of contracts under which the parties agree to buy and sell specified quantities of certain commodities at fixed prices for delivery at some future date. The Commodity Exchange Act requires that futures trading in commodities be conducted on a commodity exchange designated as a contract market by the Commodity Futures Trading Commission. Contracts to buy and sell commodities for future delivery are made by or through a member of a designated commodity exchange. A separate market is established for each commodity traded on a contract market. The contract markets have the authority, within limitations, to admit members and select officers; discipline and expel members; determine delivery months and contract terms; fix limits on the amount of permissible price changes during a trading day; and establish margin requirements. The contract markets, through their clearing mechanisms, also guarantee performance on the futures and options contracts.

In order to qualify for designation as a contract market, a commodity exchange must meet certain conditions and requirements, including those covering the, first, keeping of certain records and the preparation of reports on futures transactions, second, prevention of dissemination of false, misleading, or inaccurate commodity information, third, prevention of manipulation and other abusive trading practices, and fourth, inspection of records by the Commodity Futures Trading Commission and the Department of Justice. In addition, the Commission must find that transactions for future delivery in the commodity

for which designation as a contract market is sought will not be contrary to the public interest.

The Commodity Futures Trading Commission was created in order to ensure that a single agency would have the responsibility for developing a coherent regulatory program covering futures trading and related activities. Consequently, Congress vested in the Commission exclusive jurisdiction to develop and implement a strong and sound Federal regulatory policy covering futures trading.

The 1986 reauthorization of appropriations for the Commodity Futures Trading Commission and related legislation is particularly significant, since the Commission completed its first 10 years of operation in April 1985. The changes in the futures markets are reflected by the fact that, in fiscal year 1975, approximately 26 million futures contracts were traded; by 1978, the number had grown to 53.2 million contracts. This tremendous growth has continued since the last reauthorization in 1982. During fiscal year 1985, for example, 169.5 million futures and options contracts were traded on 13 U.S. commodity exchanges.

ENFORCEMENT PROVISIONS

The bill, as reported by the committee, makes several changes in the Commodity Exchange Act. Title I of the bill clarifies and strengthens the enforcement capabilities of the Commodity Futures Trading Commission. The bill makes explicit that the principal antifraud provision of the Commodity Exchange Act, section 4(b), applies to the sale of off-exchange futures contracts, and that the Commission is empowered under section 6(b) to serve its administrative subpoenas outside the United States. In addition the committee bill empowers the Commission, when it proceeds on an ex parte basis to seek a temporary restraining order freezing the assets of suspected violators, to seek the appointment of a temporary receiver to administer those assets and to perform such other duties as the court may specify.

LEVERAGE TRANSACTIONS

Mr. President, title II of the committee bill amends the Commodity Exchange Act to repeal section 19, dealing with the regulation of leverage transactions, and deletes most other references to leverages transactions from the act. Under this amendment, the Commission would neither be required nor authorized to regulate leverage transactions as a distinct form of commodity instrument. The committee bill also delays the effective date of title II for a period of 2 years from the date of enactment in order to give the two existing leverage firms an opportunity to restructure their businesses to comply with applicable State laws, to make arrangements to trade their contracts on exchanges, or to make a transition out of the business of being leverage transaction merchants.

By way of background, Mr. President, under the Commodity Futures Trading Commission Act of 1974, the Commission was given exclusive jurisdiction to regulate leverage transactions in gold and silver. In 1978, Congress added section 19 to the Commodity Exchange Act. In this section, Congress banned leverage transactions in agricultural commodities, authorized the Commission to prohibit certain leverage transactions, and extended the Commission's exclusive jurisdiction to leverage transactions in all other commodities. Between 1974 and 1982 the Commission adopted two moratoria on the entry of persons into the leverage business and a broad antifraud rule applicable to leverage transactions.

The Futures Trading Act of 1982 directed the Commission to regulate leverage transactions in gold and silver bullion and bulk coins and in other nonagricultural commodities. As a result of the direction given by Congress in 1982, the Commission issued interim final leverage regulations in 1984 and 1985, respectively, that were applicable to both long- and short-leverage transactions in gold and silver bullion and coins, copper, platinum, and certain foreign currencies. Two firms have been registered as leverage transaction merchants under these regulations.

Notwithstanding the foregoing, Mr. President, the leverage transaction issue has remained controversial at the Commission and in the futures industry. The Commission testified that the historical statutory distinction between leverage transactions and futures contracts is unjustified and that leverage transactions are legally and economically indistinguishable from futures contracts and, consequently, do not warrant separate statutory treatment.

The committee bill eliminates the statutory disparity between leverage transactions and futures contracts, but authorizes a 2-year delay in the implementation of the statutory changes to give the two existing leverage transaction merchants time to deal with this change. The two leverage firms may continue in business by undertaking the marketing of cash or installment sales transactions. These cash or installment sales would, of course, be subject to State regulation. The firms may also make arrangements to sell their contracts on exchanges designated for this purpose. The two firms could also decide to discontinue leverage sales and concentrate on the sale of other products, such as the sale of dealer and exchange traded options.

Mr. President, the committee adopted its position on leverage transactions for two reasons. First, Mr. President, the two leverage firms, as they currently conduct their business, simply do not fit within the general regulatory framework of the Commodity Exchange Act. Congress passed legislation regulating futures trading—despite the opposition of some who wanted to ban such trading—because it performs two very important functions in our economy, namely that of price discovery and the shifting of risk. Price discovery in the futures markets aids cash sellers of commodities by giving these sellers a reliable gauge to use in pricing their produce. The shifting of risk from those who wish to avoid it to those who are willing to assume it—in the hope of making a profit—facilitates trade and commerce by allowing merchants to concentrate on what they do best, the production and marketing of a product, without having to worry about changes in interest rates or the value of their inventories.

Mr. President, leverage transactions serve neither of these purposes. Consequently, there is no justification for their regulation under the rubric of the Commodity Exchange Act.

Mr. President, the second reason for the committee position on leverage is that the Federal Government does not live in an environment of unlimited resources. We Members of Congress must consider carefully whether certain Federal regulatory programs and policies are worth their cost.

Since Federal resources are limited, particularly in light of the Gramm-Rudman-Hollings deficit reduction measure, Congress must pick and choose among those programs and projects seeking funding. No one maintains that the public good derived from the sale of leverage contracts justifies the expenditures needed to adequately police it. These expenditures will go up over time, rather than down, since there are no industry self-regulatory organizations bearing a portion of the burden and cost of the regulation of leverage transactions. Expenditures to regulate leverage transactions under the Commodity Exchange Act will also take money and other resources needed to pay for regulatory programs in the futures and options trading areas. Consequently, Mr. President, the committee could not justify open-ended Government expenditures for the regulation of leverage transactions.

Mr. President, the committee resolved this dilemma by providing for repeal of the Commission's exclusive jurisdiction over the regulation of leverage transactions. This action will permit other Federal and State regulatory agencies, such as the Securities and Exchange Commission and the State securities commissions, to initiate any necessary regulatory activity in this area. No one can seriously maintain that regulation under the

Securities Acts is burdensome or unfair to the leverage transaction merchants, since most shares of stock and other investment contracts sold in the United States are subject to such regulation.

REGISTERED FUTURES ASSOCIATIONS

Mr. President, the committee bill promotes the Commission's continuing oversight program over registered futures associations. At the present time, there is only one registered futures association, the National Futures Association [NFA]. NFA's disciplinary system for violations of its rules by members or their associated persons includes a summary procedure called a member responsibility action.

Section 17(h) of the Commodity Exchange Act provides that any aggrieved person may appeal a registered futures association disciplinary action to the Commission and that the filing of such an appeal triggers an automatic stay of the disciplinary action. While the Commission may lift the stay under current law. It may do so only after notice and opportunity for a hearing. As a result, the effectiveness of the disciplinary action can be reduced, particularly when immediate action is necessary to protect markets, customers, or other NFA members.

The committee bill removes the automatic stay provisions from current law. The bill also makes the stay procedures associated with futures association disciplinary actions parallel with those for exchange disciplinary actions. Under the committee bill, the Commission is to set standards for expedited procedures to be used in the consideration of requests for stays.

Mr. President, the committee bill also amends existing law to make explicit that Commission review of NFA disciplinary action is available only for final actions, precluding the disruption of the futures association disciplinary process by untimely appeals to the Commission. The bill also authorizes the Commission to review only the record before the futures association and the submissions of the parties. The actual standards for Commission review would, however, remain essentially unchanged.

In addition, the committee bill amends section 17(i)(3), which deals with the denial of membership in registered futures associations, to conform the standards for Commission review of certain registered futures association decisions with the standards applicable to association disciplinary actions.

The committee bill also amends section 17(j) of the act to eliminate the requirement that the Commission approve additions to or changes in the rules of a registered futures association within 30 days.

AUTHORIZATION FOR APPROPRIATIONS AND MISCELLANEOUS AMENDMENTS

Mr. President, section 12(d) of the Commodity Exchange Act authorizes the appropriation of such sums as may be required to carry out the act through the fiscal year ending September 30, 1986. The committee bill extends the authorization for such appropriations for 6 years, through the fiscal year ending September 30, 1992.

In addition, Mr. President, section 9(d) of the Commodity Exchange Act makes it a felony for a Commissioner or Commission employee to participate, directly or indirectly, in commodity futures, options, or leverage transactions or, with certain limited exceptions, in investment transactions in an actual commodity. The committee bill eases some of these restrictions and empowers the Commission to administer section 9(d) in a flexible manner to assure that transactions that do not pose a conflict of interest or appearance of conflict of interest are not subject to the broad prohibitions in current law.

Mr. President, the committee amendment is the product of the thoughtful consideration of the members of the committee from both sides of the aisle. I urge my colleagues to adopt the committee amendment and to pass the bill without further amendment.

The PRESIDING OFFICER. Is the Senator from Ohio seeking recognition?

Mr. METZENBAUM. Mr. President, I ask the Senator from North Carolina if he would yield to me for a question. As I pointed out, I am not the manager of this. I am just holding the floor temporarily.

But I want to understand: What does this bill do with respect to the trading in commodity futures and is there more effective regulation of those who trade in those futures or is it a lessening of the regulation?

Mr. HELMS. Well, I will give you a one-word answer. I will say, yes. Senator LUGAR may wish to elaborate on that.

Mr. LUGAR. I thank the distinguished chairman. In response to the question of the Senator from Ohio, it seems to me that the regulation has been tightened up very substantially. I think the Agriculture Committee views with great pride the development of the Commodity Futures Trading Commission, its professionalism, the number of ways it offers services, and very complex services I might add, because of the number of instruments that they must supervise. The trading in these instruments has increased very substantially, but so has the expertise of the Commission's staff, and its general surveillance capability. Consequently, we have raised the general level of safety for the American investor.

Mr. METZENBAUM. Under present law, who provides supervision with respect to the commodity futures trading? Because, as we all know, at various points recently, as well as in years past, there has been tremendous speculation in this area by those who have nothing at all to do with agriculture but who are merely playing the marketplace.

Mr. LUGAR. Well, the committee structure of the Senate and the House, of course, provides for basic oversight procedures by the Senate Agriculture Committee and the House Agriculture Committee. Both committees have taken that oversight very seriously. We have had a number of hearings throughout the period of authorization, as various questions have been raised by constituent groups or by ourselves. The Commission itself, plus its staff, of course, has the hands-on responsibility. In my judgment, that Commission has served with great integrity.

There have been, from time to time, as the Senator from Ohio knows, questions raised, such as at the time of the silver speculation and the sale of London options contracts.

Mr. METZENBAUM. Various cornering of the market in various commodities.

Mr. LUGAR. That is right. And, after each of these there has been a very thorough analysis of how the system ought to be strengthened. And that analysis is restated in the authorization bill. It offers an opportunity for the analysis to come to fruition in the legislation.

Mr. METZENBAUM. Is there anything in the language in the legislation that weakens the power of the CFTC?

Mr. LUGAR. No, the changes were all in the direction of strengthening the powers.

Mr. METZENBAUM. I thank the Senator from Indiana. I appreciate his cooperation.

Mr. President, the manager of the bill on this side is here and I will retire gracefully to my office.

Mr. DIXON. Mr. President, will the distinguished manager of the bill or the chairman of the committee yield for a question?

Mr. HELMS. Mr. President, in 1 minute I will, I say to my friend from Illinois.

First, I ask unanimous consent, Mr. President, that the committee amendment be adopted and that it be treated as original text for the purpose of amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. HELMS. Now, in the usual sequence, I yield to my distinguished colleague from Nebraska, Mr. ZORINSKY.

Mr. ZORINSKY. Mr. President, I thank the chairman.

I have a brief statement to make, after which I will certainly entertain a question from our distinguished colleague on the Senate Agriculture Committee, Senator DIXON, from the State of Illinois.

□ 1720

Mr. President, S. 2045, as reported by the Committee on Agriculture, Nutrition, and Forestry, will authorize appropriations to carry out the Commodity Exchange Act during fiscal years 1987 through 1992. S. 2045 will also make certain improvements in the current commodity futures regulatory program. I urge the Senate to adopt the bill as reported.

The futures markets are an intregral part of the Nation's economy. They affect consumers, investors, financial institutions, manufacturers, Government, and businesses of all types, including Nebraska wheat, corn, and soybean farmers, as well as beef and pork producers. Therefore, it is imperative that the markets be free from fraud and manipulation. Ensuring fair and honest trading of futures contracts is the primary responsibility of the Commodity Futures Trading Commission. In addition, the regulation of the futures industry is furthered by the National Futures Association.

The CFTC was established as an independent regulatory agency in 1974 by the Commodity Futures Trading Commission Act. The authorization of appropriations for the CFTC was extended in 1978 and 1982.

The 1974 Act made extensive changes in the Commodity Exchange Act and provided for Federal regulation by the Commission of all agricultural and other commodities, goods, and services traded on exchanges.

The 1982 legislation dealt with a number of difficult issues. These included speculative limits, private rights of actions, agricultural options, leverage transactions, and State antifraud jurisdiction. In addition, a jurisdictional accord between the CFTC and the Securities and Exchange Commission was established, and the futures industry was given greater authority for selfregulation.

S. 2045 will make only modest changes in the statutory authority of the CFTC. This, I believe, clearly indicates that the 1982 law has been successfully implemented.

The changes to be made by S. 2045 are in the areas of enforcement and litigation, regulation of leverage transactions, registered futures associations, and restrictions on certain investments by CFTC personnel.

Most of the provisions in the bill are designed to enable the Commission to operate more efficiently and effectively. Some of these provisions relate to judicial review of CFTC final orders and rules, service of subpoenas outside the territorial jurisdiction of the United States, and the appointment of temporary ex parte receivers to protect business records and assets. Other provisions relate to CFTC procedures for the review of disciplinary actions and denial of membership by the association.

Current law prohibits fraud in futures contracts conducted on any contract market. S. 2045 makes it clear that the Commission has authority to pursue off-exchange operators who engage in fraudulent activities.

Under current law, the CFTC is required to separately regulate leverage transactions. The bill would eliminate this requirement and, thereby, prohibit transactions involving leverage unless conducted on an exchange. The elimination of the separate regulation of the leverage industry would not be effective for 2 years after enactment of the bill. This delay is intended to allow leverage firms sufficient time to terminate—in an orderly manner—their current method of doing business.

The elimination of the separate regulation of the leverage industry is controversial. It is opposed by the administration, and I understand that the Commission was not unanimous in recommending that Congress eliminate the separate regulation by the Commission of leverage transactions. However, it is the view of the committee that leverage transactions are indistinguishable from future contracts and should be traded as such. The administration and apparently two members of the CFTC are of the opinion that continued separate regulation is warranted.

I strongly urge my colleagues to resist any attempt to make major changes in S. 2045 as reported by the committee and pass the legislation as soon as possible.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be recinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, I would like to make a very brief statement. The manager of the bill and the distinguished ranking member have agreed that I can make the statement now.

Mr. President, I rise today to discuss an issue of concern to me. During the hearing on S. 2045, the reauthorization of the Commodity Futures Trading Commission [CFTC], held in the Senate Agriculture Committee, Susan M. Phillips, Chairman of the CFTC, testified that the Commission "believes that the sale of futures contracts should occur on exchanges under the supervision of self-regulatory organizations." This Commission statement reaffirmed the agency's commitment to the fundamental requirement in the Commodity Exchange Act—all futures contracts, regardless of the underlying commodity, must be traded on federally approved exchanges.

It was my initial intention to offer an amendment to S. 2045 to ensure that the Commodity Futures Trading Commission would enforce the unambiguous exchange trading requirement of section 4(a) of the Commodity Exchange Act. However, as a result of my recent conversation with Chairman Phillips, as well as assurances made to me by the chairman of the Argiculture Committee, Senator HELMS, I have been assured that the Commission intends to fully execute the statutory mandate. Chairman Phillips has agreed that the Commission will undertake a comprehensive study of the off-exchange trading issue but cannot, as I understand the law, allow any off-exchange futures trading as a result of this study without first seeking enactment by Congress of a statutory amendment. It is also my understanding that the Senate Agriculture Committee will take a close look at this issue during the next session of Congress.

In the interim, however, the legal status quo must be maintained. Ultimately, the decision of whether to permit any form of exception to the exchange trading requirement for all futures contracts rests with the Congress.

I would also observe that, by regulation, the Commission has implemented a specific congressional directive and allowed the trading of commodity options only by, or through, the facilities of designated contract markets, with the narrow exceptions of trade options and dealer options. It is my understanding that this congressional intent remains undisturbed by the legislation before us and that the Commission should not permit or expand off-exchange options transactions.

I appreciate the assistance of both Chairman Phillips and Senator HELMS in reaching this agreement.

□ 1730

Mr. President, I thank the two managers of the bill very much for permitting me to make my statement.

May I say, if I may have a moment with the manager of the bill, I understand that my friend, the distinguished Senator from South Dakota, will shortly be offering an amendment to this bill that in essence would ban the trading of cattle futures. Is that the manager's understanding?

Mr. LUGAR. The Senator is correct. That is my understanding.

Mr. DIXON. As I explained to the distinguished chairman and ranking member of the Agricultural Committee, I have to leave briefly. I expect to be back on the floor by 6:15. I advise all Members that I oppose the amendment by my distinguished friend from South Dakota and would like to ask that a rollcall be requested on this particular amendment at the appropriate time.

Mr. LUGAR. I thank the Senator, and I am certain it is the intent of the distinguished chairman of the committee to ask for a rollcall vote on the Abdnor amendment.

Mr. DIXON. I thank everybody for their consideration.

Thank you, Mr. President.

Mr. LUGAR. I thank the Senator.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, in response to the statement of the distinguished Senator from Illinois, let me simply say that the Senator is correct. The Commodity Exchange Act generally prescribes all nonexchange traded futures contracts in the United States. Indeed, S. 2045 does contain a provision which amends the antifraud prohibition in section 4(b) to clarify that this prohibition also applies to off-exchange futures contracts covered by the act.

The CFTC recommended the amendment to facilitate enforcement of the law against bucket shop and boiler room operations that purvey illegal commodity instruments. This amendment was not intended and should not be interpreted to change existing law with respect to whether exchange futures contracts are covered by the act.

Let me further comment that the distinguished Senator from Illinois has made a number of points that should be addressed in the Commission's study of these issues. With or without the amendments contained in the legislation before us, the Commission has a statutory responsibility to enforce the requirements of the Commodity Exchange Act. Of course, inherent in that responsibility in both regulatory and enforcement discretion to interpret and apply the act consistent with the mandate of Congress and the public interest. I am pleased the Commission has undertaken to study the complex field of possible off-exchange instruments and look forward to receiving testimony on their report when that study is concluded. Ultimately, the decision whether to alter the statute rests with Congress, and only with Congress.

Finally, the distinguished Senator from Illinois has correctly recognized that existing legal requirements remain undisturbed by this legislation. Further, the legislation that we are considering today has no effect on the respective jurisdictions of the CFTC and the SEC as delineated in the CFTC-SEC jurisdictional agreement. Nonexchange traded commodity options have been the subject of some of the largest customer protection scandals in the last two decades. In contrast, exchange traded options have become very valuable commercial risk-shifting instruments in recent years with no reported customer protection problems. I am confident the Commission will continue to adhere to the congressional mandate in its regulation of trading in commodity options.

Mr. President, while I have the floor, I would like to make a short opening statement.

For many years U.S. futures markets have played an important role in the economy by facilitating hedging and pricing activities. Farmers and businessmen alike have used these markets to hedge selling prices and input costs. The entire international economy depends on futures markets for their price discovery functions.

I make that point at the outset, Mr. President, because clearly that is the basic fundamental understanding that one must have as to why we are in the process of having futures markets; it is because they have a price discovery function. And our entire economy, not only nationally but internationally, now depends upon that.

The Commodity Futures Trading Commission was created in 1975 in order that a single Federal agency would have responsibility for developing an efficient and effective regulatory program for a growth-oriented futures industry. Prior to this time, some futures markets were regulated by the Department of Agriculture and the Department of Commerce while others were unregulated altogether.

In 1975, futures trading was limited mostly to contracts on agricultural commodities and precious metals. Today, in addition to traditional futures markets such as gold, silver, and live cattle, futures contracts have grown to include a diverse group of instruments ranging from Treasury bond futures to futures based upon the Consumer Price Index. In 1975, approximately 26 million contracts were traded. It is estimated that nearly 169 million futures and options contracts were traded in 1985.

While futures activity has increased sixfold during this period, the enforcement resources available to the Commission have increased by only 17 percent. The creation of a self-regulatory body in 1982—the National Futures Association—has helped the regulator keep pace with this industry. The NFA's annual budget now exceeds $18 million of funds generated by membership user fees. In addition, the 1982 legislation eased some of the Commission's regulatory burden by allowing States to vigorously pursue all off-exchange trading.

The Senate Agriculture Committee's task in 1982 was a difficult one and the reforms we approved were complex and comprehensive. This year's reauthorization, however, proposes far less significant modifications to the Commodity Exchange Act. The committee held 2 days of hearings earlier this year and the calls for new reform of the Commodity Exchange Act were very limited.

The committee bill empowers the Commission to serve administrative subpoenas on persons located outside the United States in order to ensure attendance of such persons at Commission investigative hearings. Foreign citizens and those U.S. citizens located outside the territorial United States are free to participate in our futures markets. This provision simply makes clear that these participants will be held accountable for wrongful actions in a manner similar to market participants who are located in the United States. This provision does not authorize the Commission to act without considering pertinent international factors.

This legislation also authorizes the Commission to seek appointment of a temporary receiver on an ex parte basis in order to protect books, records, and assets. The period between the issuance of an ex parte restraining order and the hearing on the application for the appointment of a receiver may be as long as 15 to 20 days. During this critical period, an independent person should be present to manage the operations of the business in order to prevent disposition of assets, books, records, and other vital documents.

Without question, the most controversial aspect of this bill is an amendment recommended by the Commission that prohibits Federal regulation of leverage contracts. Without such regulation, leverage contracts would be considered off-exchange future contracts and subject to more stringent and less uniform State regulation.

The Commodity Exchange Act requires that futures contracts be traded on federally registered futures exchanges. Despite the fact that the Commission determined that leverage contracts are indeed futures contracts in disguise, the Congress has historically voted to regulate leverage separately from futures contracts which has allowed them to proceed virtually without regulation. The committee bill eliminates this disparity between leverage contracts and futures contracts. It requires that leverage contracts be traded on registered futures exchanges or else come under the jurisdiction of State regulation. Most analysts agree that either option would

likely close out the current leverage business.

At the moment, the leverage industry is limited to just two firms. The committee bill requires a 2-year delay in the implementation of the leverage changes in order to give ample time for the two existing leverage firms to adapt their business operations to these changes. The Commission testified that leverage firms could continue to sell their goods under a cash and carry arrangement which would not be prohibited under the Commodity Exchange Act.

The committee bill also gives the National Futures Association greater authority to impose disciplinary actions upon its members. Under present law, any aggrieved person may appeal an NFA disciplinary action to the Commission and the filing of such an appeal triggers an automatic stay of the disciplinary action. While the Commission may lift the stay under current law, it may do so only after notice and opportunity for a hearing. Hence, the disciplinary action may be rendered ineffective particularly when prompt action is necessary in order to protect markets and customer accounts. While the Commission would retain its authority to grant such a stay, the committee bill deletes the automatic stay requirement.

The current statute makes it a felony for a Commissioner or Commission employee to participate, directly or indirectly, in commodity futures and options markets. The committee bill eases these restrictions and authorizes the Commission to allow participation in those instances where a conflict of interest does not exist. The broad prohibition under current law has become increasingly burdensome to the Commission and its employees as the futures and options markets continue to expand into new areas. Many mutual funds and investment portfolios now use these markets as part of their day-to-day investment strategy. In order to attract the most competent personnel, the Commission cannot deny its employees the use of legitimate investment opportunities provided that nonpublic information is not being used for such purposes.

Finally, the committee bill reauthorizes the Commodity Exchange Act for a period ending September 30. The Commodity Futures Trading Commission has a total budget of less than $30 million and a reauthorization process adds a significant burden to their already limited resources. I believe their performance has been outstanding in the last 4 years. The Commission's effort at providing efficient and effective regulation warrant a longer reauthorization period in order to provide some long-term stability to their regulatory program.

To summarize, Mr. President, this legislation does not propose significant changes to the Commodity Exchange Act as was the case in 1982. Since enactment of the 1982 amendments, the Commission has discovered a few areas where their oversight authority remains inadequate. Except for the leverage issue which will be discussed at some length here today and in the conference committee, we are simply attempting to further clarify and refine the intent of the 1982 amendments. I am hopeful that my colleagues will assist me in seeking prompt approval of this legislation.

□ 1740

Mr. HELMS. Mr. President, I believe the Senator from South Dakota has an amendment.

Mr. ABDNOR. I thank the chairman. That is correct.

AMENDMENT NO. 2898

(Purpose: To remove the application of the Commodity Exchange Act to the trading of cattle)

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. ABDNOR] for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON, proposes an amendment numbered 2898.

Mr. ABDNOR. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. . NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE.

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before October 3, 1986.

Mr. ABDNOR. Mr. President, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 2899

(Purpose: To remove the application of the Commodity Exchange Act to the trading of cattle)

Mr. ABDNOR. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. ABDNOR] for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON, proposes an amendment numbered 2899 to amendment numbered 2898.

Mr. ABDNOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the word "Sec." and insert in lieu thereof the following:

NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before the date of enactment of this Act.

Mr. ABDNOR. Mr. President, today I am offering an amendment along with my colleagues Senators BOREN, WALLOP, and SIMPSON, to eliminate cattle as a subject for trading on the commodity futures market. Simply said, our legislation delists the two contracts of cattle from the futures market.

The call to ban cattle futures comes from cattlemen themselves. The stockgrower and cattlemen associations of South Dakota, North Dakota, Colorado, Wyoming, Montana, and Arizona all have passed resolutions calling for the elimination or suspension of cattle futures trading. The American Cowman's Association has requested that the Chicago Merchantile Exchange and the Commodity Futures Trading Commission permanently drop live cattle and feeder cattle futures. Additionally, petitions calling for the ban on cattle futures have been circulated in some 30 States.

I have here with me some of these petitions. There are over 13,000 signatures on these petitions, 13,698 to be exact, from cattlemen, bankers, agribusinessmen, and others who all believe that cattle futures should be eliminated. These signatures come from all over the United States including South Dakota.

I wish to take a second so you can see these are genuine. I hope my col-

leagues will see that, to this very day, are still coming in from all places.

I just cannot help but think that when we see this kind of response, a voluntary one—it was not Senator ABDNOR who started this movement. It was a request by the people who would normally use futures, they thought they were so wonderful and desirable, and still are saying this should be eliminated and have brought in these petitions. As I said, these petitions and signatures come not only from my State but Oklahoma, North Dakota, Wyoming, Kansas, Nebraska, Texas, Illinois, Missouri, Alabama, Arkansas, Arizona, Georgia, Louisiana, Wisconsin, California, Florida, South Carolina, New Mexico, Kentucky, Pennsylvania, Ohio, Maryland, Hawaii, Michigan, Nevada, West Virginia, Indiana, Washington, Idaho, Oregon, Minnesota, and others.

So let me make it clear at this time that this is a response from far more than just the cattlemen of my State of South Dakota.

The live cattle futures were created in late 1964 and the feeder cattle futures in 1971. Last year there were more than 5 million such cattle futures contracts traded at the Chicago Mercantile Exchange [CME].

When the cattle futures market was established, cattlemen were told that it would help stabilize the cattle market and be good for the cattle industry. Cattlemen in my home State of South Dakota and across the Nation are saying that the futures have not stabilized the market. In fact, most cattlemen would argue that futures markets have made markets more volatile during the last year.

Within 2 months last spring, there were 14 limit or near-limit moves in live cattle contracts. One daily limit move of $1.50 per hundredweight results in a $16.50 per head change in the value of a 1,100-pound steer. Such volatility was dramatically illustrated on the heels of the announcement of cow slaughter numbers under the Government's Dairy Cow Termination Program.

During the period from 1960 to 1964, the difference between the high and low end of the fed cattle market was 23.6 percent. This timeframe is before live cattle futures were established. In 1985 alone, however, the fed cattle market moved 21 percent. That's a 21-percent change in just 1 year with futures as compared to a 23.6-percent change over a period of 5 years without futures.

Perhaps the November 16, 1983, edition of Farm Talk stated the sentiment of cattlemen best when it argued:

The futures markets have become so hyper-responsive to rumor, supply and demand estimates and so inter-related to such things as the price of gold, silver, treasury bills and foreign exchange rates, that they are but tenuously connected to the real world. Futures trading is geared to benefit those with inside information and those with tremendous market clout. Unfortunately, beef producers have neither.

A system can't be right with non-producers set and oversee the rules, when non-producers influence the price of commodities they never own and never intend to own.

I am not going to argue that volatility in cash prices of cattle, measured in percentage terms, has increased since the creation of futures. Studies done by the CME have indicated that volatility declined following the introduction of futures, but even in the words of the CME:

None of these declines proved to be statistically significant. (The Impact of the Cattle Futures Market on the Cash Market: An Analysis of Current Concerns; Chicago Mercantile Exchange, July 22, 1986)

I would like to note that the CME studies compared to an 11-year period of variability in weekly steer prices before futures with a 22-year period following the introduction of futures. I'm not a trained economist, but I feel it's unorthodox to compare an 11-year period with a 22-year period.

I also would like to point out that cattle price volatility measured in dollars rather than percentage terms was higher during the 22 years following futures. During the first week after the March 28, 1986, dairy buyout announcement, for example, the panhandle price for cattle dropped almost 9 percent.

Mr. President, one of the things that really angers cattlemen and me is that the livelihoods of cattlemen are being controlled by speculators playing the futures markets. The rough-faced and windburned cattleman has no control over the price he receives. It is controlled by speculators.

In the May 29, 1986, issue of Livestock Weekly, Wade Choate of San Angelo, TX, states the following in his letter to the editor:

As I see it, the futures have taken control of our live market and have given it to people who have no interest in our business.

Probably the worst thing about the futures is that they have so much leverage on us. One load of live cattle will cost about $20,000 to place on feed. The futures trader can buy about 29 contracts or loads with the same money that we have to put up to buy one pen of cattle. They can push us around very easily.

I am not complaining as a result of being on the wrong side. Our brokers would tell you that the futures have been very good to us personally the last two years. My complaint is because of what they are doing to our industry.

Incidentally, I stepped into a local commodity office a little while ago. There were seven people playing the cattle commodities: one lawyer, three construction people, one beer joint operator and just two of us cow traders.

Still another problem with cattle futures is that futures prices affect cash prices. Immediately following the March 28 dairy buyout announcement, both futures and cash prices plunged. But why did the cash prices plunge? Not a single dairy cow had been slaughtered.

In the May 29, 1986, edition of the Western Liverstock Journal, Pete Crow of Albuquerque, NM, states:

The commodities markets control the cash market. What seems to have happened is we have removed supply and demand from the market and have created future supply and future demand, for which you need a crystal ball to forecast. The fact of the matter is that the futures markets are out of control and are not working to the benefit of most producers or feeders.

Another well-stated argument about the futures' influence on cash prices is made by even those who have made their living on the floor of the CME.

In the April 24, 1986, issue of Drovers Journal, which is a mighty well respected publication, Marvin J. Walter of Carriage House Meat and Provision Co., Inc., in Ames, IA, writes:

As one who for a period of time made a living as a floor trading member of the Mercantile, I feel more sure now than ever before that the entire cattle industry is suffering serious setbacks because of the way trading activity moves the cash beef market both up and down. Until this became so apparent, I was never critical of the futures market and, in fact, felt it was a very viable tool in the marketing process.

Probably the most damaging force emerges on the floor of the exchange by floor traders and the 'mob psychology' created when they are successful in pushing the market in one direction for a prolonged period of time. Recently, of course, this movement has worked to the detriment of the cattle industry as floor traders continue to add to their short positions on the basis of some exaggerated rumors that in most cases they help create and foster.

Because packers have no real incentive to step into the live cattle market and bid up prices with a rapidly declining futures market and a higher percentage of their needs tied up in contracts, the live market collapses also. Because retailers and other large beef users see the futures market dropping and they have a percentage of their purchases made against a contract, they have no real interest in stepping into a declining market. Why buy today when we can buy cheaper later as they futures market continues to decline?

A very good example of this was seen on April 3 when the futures market opened and appeared to stabilize, and the cash beef market was called steady. Suddenly, the floor started selling heavily and moved the futures down the limit. By late afternoon the bottom fell out of the cash market and it was quoted $1 to $2.50 lower. This all happened even though slaughter numbers were not abnormally high and the live cattle market was already abnormally low.

I suggest this just doesn't happen. The futures market has far too much influence and control of the cash and it is getting to be a serious situation. The cattle industry is being crippled in the process.

Because a preponderance of those of us in the cattle and beef industry are free enterprise entrepreneurs, we are hesitant to interfer with this 'bastion' of our economy and marketing system. Rather, we sit on the sidelines and see an entire industry devas-

tated . . . Something must be done and I urge all people interested in this business to raise their voices and ask that this nonsense be stopped.

The Chicago Mercantile Exchange does not have a rule prohibiting or limiting short selling on a downward market. The New York Stock Exchange, however, has such a rule. The big board's rule to prohibit selling short on the heels of a transaction which produced a price decline or no change in price was instituted in the 1930's when such short selling was discovered to be a common way to deliberately depress stock shares. The big board's rule therefore bars short selling except where the last transaction in a stock resulted in a price increase, or uptick.

I am not asserting that there is widespread manipulation in cattle futures. Although many cattlemen across the Nation may believe such, I cannot substantiate their claim. Personally, I tend to agree with cattlemen on this subject, but manipulation is difficult to discover and prove.

It has been suggested for years that a similar rule be initiated for commodity futures trading. Very simply, the rule would prohibit selling short unless the trader had a legitimate long hedge position or unless the transaction takes place during an uptick in the market.

It is interesting to note that even large feeders who have used the futures markets for years now advocate delisting the two contracts of cattle on the futures market. Such is the case with Paul Engler, president of Cactus Feeders, Inc., the Nation's largest cattle feeding operation. I would like to read for the RECORD a portion of an article highlighting Paul Engler's thoughts which appeared in the June 1986 issue of National Cattlemen.

ENGLER ADVOCATES DELISTING

Paul Engler, president of Cactus (Texas) Feeders, Inc., the nation's largest feeding business, says flatly that the industry should work to get cattle futures contracts delisted. Engler says that the only economic justification for any futures contract is that it (1) is a useful risk management tool and (2) provides a price discovery mechanism. The cattle contract, he says, does neither.

Engler long has used futures, but he always has questioned if the cattle contract is a viable one. Cattle, as compared with soybeans, for example, are not really a deliverable commodity, he says, and the contract has suffered from the lack of long hedgers. Theoretically, the packer should be a long hedger, but has not participated that way.

Compounding the problem was 1984 tax legislation, Engler added. This legislation effectively eliminated spreads and straddles, and that eliminated much of the speculator interest in the back months. There thus is less liquidity in the back months.

There definitely is a downward bias in the futures, Engler says. The normal hedgers (cattlemen) must sell short, and there is not enough long hedger or speculator interest on the other side.

"The futures now have an overwhelming effect on the cash markets," Engler said. "People, including retailers and packers, watch the board and make buy and sell decisions in the cash markets on the basis of the futures."

Engler urges that action to delist the cattle contract be taken now. "Cattle numbers are going down," he notes. "We're turning the corner on fat and cholesterol. The next five years could be good. But the golden years will not come to pass if we keep the futures.

Those who have suffered the most from futures, Engler says, are the basic producers and ranchers. They cannot use the contract, and they have felt most of the price pressure.

Mr. Engler points out the most appropriate reason for eliminating cattle futures—that is, the shortage of long hedgers which results in a downward bias in the market.

Cattlemen are the short hedgers in the market. They are the ones that must sell their products. The problem is that there are six times more short hedgers in the market than long hedgers. If there are six times more sellers than buyers, this puts downward pressure on the market. For various reasons, legitimate buyers of cattle like retailers and packers have not used futures to a great extent for long hedges. This is why a downward bias exists.

Mr. President, there are those who say that we should not adopt my amendment now, that we should study this issue before we act. Let me tell you that cattlemen in the United States are sick and tired of studies and delays. How long must this Congress study an issue before we act? Should we wait 1 year, 2 years, or 10 years and let the cattle business die in the meantime?

No, we should take action on this issue now. Cattlemen from across the country are demanding that cattle futures be banned. Some say that we should wait for the results of the referendum being conducted by the National Cattlemen's Association [NCA] before we take action. Well, the NCA poll results will not be available for another 30 to 60 days at which time this bill will be passed and Congress is adjourned.

Study, study, study. That is all this Congress does when it faces a tough issue. I say the time for studies has expired and that it is the day of reckoning. Cattlemen across the Nation want to know who is for eliminating futures and who is not.

Cattlemen across the country are demanding that cattle futures be eliminated. They feel that instead of being a tool which they can use, the futures have become a leg iron which is contributing to the problems being faced by the cattle industry.

Some say that cattlemen are looking for a scapegoat to blame for the problems they are facing. I submit to my colleagues that cattle futures are part of the problem. The inherent downward bias in the futures market, the effect of futures on cash market prices, the control that speculators have on the prices received by real cattlemen, and the recent volatility in futures prices—all are compelling reasons why cattle futures should be eliminated.

The legitimate producers of beef are calling for elimination of cattle futures. We should heed their call.

Mr. President I ask for the yeas and nays on my second-degree amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SIMPSON. Mr. President, I commend my friend from South Dakota, my neighbor from a neighboring State, as I always do on these agricultural issues. Again, he has done a splendid job of presenting a situation which is very clear.

Last spring, I joined others of my colleagues to express our deep displeasure and concern over the effect that the USDA Dairy Termination Program had on beef cattle prices, cash prices, doing that both through letters to the Secretary of Agriculture and on the Senate floor. That was an ill-advised termination program divided into three disposal periods. I will not go into the history of that. Yet, nearly two-thirds of the total number of cattle under that whole-herd dairy buyout—that number to be slaughtered under the program—were to be disposed of prior to August 31, 1986. That was hardly what we would call an orderly marketing procedure, and that was in that bill.

I am appalled by the absolute havoc that this program has had on western cattle ranchers in South Dakota, Wyoming, Montana, North Dakota, Nebraska, Colorado—anywhere there are cattle ranchers—who take nothing out of the Federal till, while everybody comes in here and jabs around in the farm bill and picks about 31 billion bucks out of the stack, and the poor, old cowboy gets nothing; at least, I have not seen him get anything.

Here comes the whole-herd dairy buyout, and here comes this peculiar business with the commodity exchange. When they dumped the 1 million head of dairy cattle into this pathetically weak market, the value of beef was cut by about 5 billion bucks in one fell swoop.

□ 1800

Beef cattle inventories are at the very lowest levels since 1962.

We find American cattle ranchers do not have their hands out at the Federal till seeking agricultural price supports. They have always tried to exercise a market discipline.

Now, after years of low prices and drought and high interest, and the release of these additional cattle on the market, it has really been the death knell for the western cattlemen, those uncomplaining, independent western ranchers, and at the hand of a subsidized industry no less.

So I have been looking at the impact of these future trading issues on the cash price of cattle. I realize that the Commodity Futures Trading Commission completed its own study which oddly enough and surprisingly enough said there was no manipulation. Any further study, I think, should consider the elements that many cattlemen have often stressed to me and I am sure to the Senator from South Dakota, the impact of the large traders, the shortage of the long hedgers, and the use of the futures market by actual real honest-to-God cattlemen. That does not happen very often.

Since I have been nosing around in the matter I discover yet another study has been completed. That one was done by a John Helmuth, a staff economist for the Committee on Small Business, and covered a 16-month period, January 1978 to April 1979. That study found that 90 percent of the long or the buying side of the market were speculators while the largest traders, the grain companies, the meatpackers and commercial feed lots were usually on the short or selling side of the market.

That is a lopsided composition of traders in the cattle futures market. It is a bad situation for cattle producers, and the slightest negative news causes the speculators to move out of their positions. They are just scurrying out of their positions very quickly. That creates an overload of sellers with few buyers.

When the market moves the limit down in 1 day the buyers put off their purchase decisions until they think the market has hit bottom and that leads to chaos.

There is no corresponding action then on the other side and the hedgers place their sell orders as these profitable levels are reached.

Those are the two actions that create a downward bias in the market and it is very much a no-win situation for the cow-calf person.

That is why I join with Senator ABDNOR. He just does a terrific job in calling this to the attention of all of us in the Senate who recognize it—I hope that some of our brethern from the other States will realize it, too—in this amendment to remove cattle as an item for trading on the commodity futures market.

I am convinced that when that was created in 1964 it increased the absolute volatility and instability in cash prices of cattle and rather than being a tool for a cattleman to use in his favor, I feel that the future trading in cattle has contributed to some of the serious problems in the industry and that inherent downward bias in the futures market. The effect of the futures on the cash market prices, the control that the speculators have on the prices received by the real cattlemen, and the recent volatility in the future prices are all very compelling reasons to support the elimination of cattle futures.

I am deeply appreciative of Senator ABDNOR and the manner in which he has presented this issue and certainly hope we will embrace his amendment.

I thank the Chair.

The PRESIDING OFFICER (Mr. GORTON). The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I thank the Chair.

Mr. President, I have such enormous respect and affection for the distinguished Senator from South Dakota that I never feel comfortable when I feel obliged to oppose a proposal made by him.

This is one of those rare occasions when I must do that. I believe that I will be joined by my distinguished colleague, Mr. ZORINSKY, and equally distinguished colleague, Mr. LUGAR.

One of the problems with this amendment is that the impact, if any, of futures trading on the cash market prices of cattle is now under study. Senator ZORINSKY and I requested this study some weeks back, as a matter of fact, the early part of the summer, as I recall. This amendment has not been the subject of hearings by the Agriculture Committee.

Because of the implications of what the Senator proposes, I would hope that we would not take such a step without knowing what we are doing.

As I mentioned, Senator ZORINSKY and I asked the Comptroller General to conduct an investigation of the cattle futures market earlier this summer and to examine the issues raised by some in the cattle industry. That study, as I say, is under way now.

In any case, Mr. President, it would be premature to have the Senate act on this matter before we know what we are acting on.

I pledge to the Senator right this moment that as soon as the results of the study are in, we will make them available to him and all other interested Senators. If the study warrants action, we will go ahead immediately into hearings; and the committee will act promptly.

Mr. President, I ask unanimous consent at this point that the text of the letter sent by Senator ZORINSKY and me to the Comptroller General be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,

Washington, DC, July 23, 1986.

Hon. CHARLES A. BOWSHER,
Comptroller General, General Accounting Office, Washington, DC.

DEAR MR. COMPTROLLER GENERAL: We request that the General Accounting Office conduct an investigation of the cattle futures markets. This request is made in response to the concerns expressed by several senators who are interested in the operation of the cattle futures markets and their effects on cash cattle prices.

Many cattle producers across the United States have raised questions about the effect of cattle futures trading on cash market prices for cattle during the past twenty years. Producers' concerns were heightened by the abrupt negative reaction of the cattle futures markets to the announcement of the results of the dairy whole-herd buyout program in March of this year.

The investigation of the cattle futures markets should address the following specific questions:

1. Was the reaction of the cattle futures markets to the announcement of the results of the dairy whole-herd buyout accurately based on supply/demand conditions?

2. What is the effect of the cattle futures markets (a) on price relationships between feeder cattle and fed cattle? (b) on the price discovery process? (c) on the competitive structure of the cattle industry?

3. We are informed that the use of packer contracts as a means to obtain predictable supplies of slaughter cattle has increased sharply. We are advised that one effect of this development has been an increase in short hedging in the live cattle futures markets.

a. What effect, if any, has this increased short hedging had on futures and cash prices?

b. If packer contracting becomes the prevalent method of marketing fed cattle, can cash cattle markets accurately reflect supply/demand conditions?

4. Questions have been raised about the present delivery system for the live cattle futures contracts.

a. Does the present delivery system create any upward or downward bias in cash prices for cattle?

b. Does the present delivery system create additional price volatility during the delivery month?

c. What are the advantages and disadvantages of using a cash settlement system in lieu of the present delivery system for the live cattle futures contracts?

We would appreciate the opportunity to work with your staff as it addresses these questions and sets the scope of the investigation. We may also have additional areas for examination.

The investigation should be completed by July 1, 1987. We also request that a preliminary report be presented to the Committee by January 15, 1987.

Sincerely,

JESSE HELMS,
Chairman.

EDWARD ZORINSKY,
Ranking Minority Member.

Mr. HELMS. Mr. President, I could go through a whole litany of problems that I have with the Senator's amendment.

The commercial market participants, the feedlots, the producers, packing houses, all of these and others would be deprived of hedging and price basing vehicles. Cattle prices, in quotes to producers, could very well be lowered to reflect increased risk; and cattle prices would, in any case, reflect only local conditions. If the Senator's amendment should prevail, there will be no national market for pricing or producer planning.

The CFTC itself was requested to review the cattle market by the National Cattlemen's Association, the American Cowmen's Association, and the distinguished Members of the other body.

In response to those inquiries, the CFTC reported no evidence of price manipulation or excessive speculation whatsoever.

So, Mr. President, I will not go further, but this amendment, in the judgment of this Senator, is at best premature and probably ill-advised.

But I say to the Senator again that when the report is in, and the facts are in, if the situation warrants; the committee will go immediately into hearings and will act on this issue early next year.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. ZORINSKY. Thank you, Mr. President.

On July 23, Senator HELMS and I wrote a letter to the Comptroller General, as the Senator pointed out, requesting that GAO investigate the cattle futures markets. Not everyone in the cattle industry believes that cattle futures trading should be prohibited. Since the request for the GAO investigation originated with some members of the cattle industry, I believe it is only fair that we await the results of GAO's investigation. In our letter, Chairman HELMS and I asked that the investigation be completed by July 1, 1987. We asked that a preliminary report be presented to the committee by January 15, 1987.

The pending amendment to ban trading in cattle futures has not been the subject of any congressional hearings, and it would, in my judgment, be premature to adopt it.

There are many cattlemen who use the futures markets to their advantage.

□ 1810

It should also be noted that the House-passed bill requires the House Agriculture Committee to conduct such a study.

I, therefore, urge my colleagues to reject the amendment.

Mr. ABDNOR. Mr. President, I appreciate the views and words of the chairman and ranking member of the Agriculture Committee, my friend and colleague from Nebraska, Senator ZORINSKY.

But, again, I want to point out I really have not done anything toward trying to gather up petitions. They are coming in every day—almost 14,000 names.

Let me just tell you how the petition reads:

We as Beef Producers, Farmers, Businessmen, Bankers, that have this day signed the following petition, strongly requesting our Congress to eliminate entirely all Future Markets on all Livestock. All Future Contracts bought and sold on the Chicago Mercantile Exchange amount to 14 to 15% of all Cattle on Feed in the United States, and not taking in consideration all cattle in pastures, but yet it controls our markets daily. We ask Congress to do this quickly in order to save the Cattle Industry in the United States.

I want to say I did have a meeting out in South Dakota. I picked the State fair. It was well advertised and anyone was welcome to come. I got quite a story, "Cattlemen Back ABDNOR On Cattle Futures Trading."

I did not have anyone to bother to take the trouble at the State fair where probably more cattlemen appear than any one place I know. Not one individual there opposed the measure. As a matter of fact, they encouraged me and wanted me to know they were solidly behind it.

Now, you have contracts in this business. A bona fide cattle feeder comes in and he has to buy a contract which, as I understand it, is for at least 40,000 pounds. What disturbs me is this man that puts up every buck for those 40,000 pounds and takes them home has all the risks in the world of keeping those cattle together and finishing them out and fattening them—he has to undergo the blizzards, he has to undergo diseases, he has to undergo fluctuations in prices up and down, and all that goes with raising cattle. But the fellow who is playing the contracts from the board of trade can buy for the same dollars 29 contracts, 29 times more than the poor farmer and cattle feeder, who I can sympathize with because I have been around cattle feeding and in the business myself. I know the risks and I know all that they are undertaking.

And to think that somebody else, who does not probably even know what a cow looks like, other than it runs through the computer when he looks the figures over, he can buy 29 times the same amount as the man who actually feeds the cattle. It would seem to me the least we could do is make him put up some bucks if he wants to get into the business and participate against the feeder.

You know, even in the grain market, if you want to play the grain trade, you have to put up a lot more money than 29 to 1, I will tell you that. Maybe that would satisfy us. Maybe if they had to put up a little more of their dough to get into it and have this great influence on the market, it might be of considerable help.

I will tell you this much: As I understand it, the futures were put there for the benefit of the cattleman, not the guy who wants to play the other end. And when they come out in the numbers that are coming out telling me to get rid of it, I have got to believe there is some merit to it. That is exactly why I stand here today and ask you to support me in my proposal and my amendment.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, the distinguished Senator from South Dakota speaks, I think, poignantly and accurately about the anguish of cattlemen. It has not been a good situation. I know that each one of us who is involved in agriculture wishes the situation might improve.

Mr. President, let me just say I think the gist of the argument today is not a technical one. It is the fact that the cattle business has been in despair. Mr. President, that is not a function of the CFTC or the futures market.

The fact of life, unfortunately, in the cattle industry is that in the last 10 years the consumption of red meat has declined from 126 pounds per person in this country to 106 pounds per person. This is dramatic, almost a 20-percent decline in consumption of red meat. That means that the demand has so substantially dropped off that, in a supply-and-demand marketing situation, the price was bound to come down.

Now the distinguished Senator from South Dakota has pointed to some other factors that have accelerated that despair. One of them is the whole herd buyout provision of the farm bill that was passed last year.

With 1.2 million animals slaughtered, coming onto the market, the supply side once again was very heavy but the demand side was still declining, both moving in the same directing. Consequently, the price went down. It was bound to go down. It has absolutely nothing to do with the futures market. It has a lot to do with the despair in the cattle industry.

I would point out, Mr. President, that inexplicably there are higher slaughter rates this year than last year. That is another factor that depresses price. But I think, Mr. President, it would be a bad mistake to get confused about the mechanism of a futures contract or the markets that establish the price for cattle and the basic facts in that industry which have led to less demand, sharply less demand—for a variety of reasons—and a vast oversupply, plus an acceleration of slaughtering.

Mr. President, it is a fact that the futures markets, by and large, lead to higher prices for cattle, as they do for

other livestock. The reason that this is so, as the distinguished Senator from North Carolina has pointed out, is that the futures markets represent a national market, a national focus for demand. And it is an entirely different type of market, Mr. President.

Many persons in our country now take a look each week at what the highest available savings rates might be at savings and loans or savings banks all over the country. Why do they do that? Because often the rate of interest being offered by the local savings and loan or the local bank is lower than somewhere else in the country and, as a result, a lot of money moves to banks that offer a higher rate of interest. That national market is available, a national focus. So it is in the futures business with regard to cattle.

If, in fact, the seller of cattle was confined to the pricing situation in his own market and that local market had no reference whatever to the national market; or, now, to the international market, prices would be lower, not higher, and cattlemen would lose money, or not make as much money. They would not be able to maximize their opportunities in the way the futures markets now make possible.

The fact is that markets still attempt to have a degree of price discovery and that means, in simple terms, an opportunity for a seller of cattle to have the best options available anyplace in the United States, or the world, and to have that price reflected in what he can obtain in his own market.

So, Mr. President, let us not throw out a mechanism which has some hope, by the very way that it works, of raising prices. Let us understand that the reason prices have come down is through the natural forces of supply and demand. Many persons in the cattle industry are working very, very hard to come up with meat that is leaner, that meets nutritional needs and demands of Americans, that may offer a very good reason for Americans to increase their consumption of red meat each year.

□ 1820

I am optimistic that the cattle industry will succeed in that endeavor. We have heard much testimony before our committee which shows that this experimentation is coming along. But let us at least preserve the futures mechanism which will make it possible to maximize prices for that red meat as it comes to market in a form that Americans find more to their liking.

Mr. President, I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I have not had a chance to take a close look at this amendment offered by the distinguished Senator from South Dakota.

I want to say at the outset that I would agree with the Senator from South Dakota that there are some problems in this context, the cattle futures contract. It is apparent, at least to this Senator, that there are many unexplained disruptions in the cattle futures market which are resulting in lost cash to cattle producers. I do not believe that the Congress, nor the CFTC, has given sufficient attention to the inequities that cattlemen face in the futures market. I know that many of my cattlemen believe that the position of the futures market has been dictating the price. That is what they believe.

They believe that the futures market is driving down the cash price of cattle which, of course, is the amount of money that a rancher or farmer gets for his cattle at the sale barn or the packing plants.

The recent situation in the futures prices on the Chicago Merchantile Exchange have convinced many cattlemen that something is definitely wrong there.

The recent volatility of, and the downward pressure on, futures and cash prices had many cattlemen questioning the integrity of the beef cattle markets.

On the other hand, Mr. President, the ability to forward contract is essential. It is essential to the cattle industry, if we are to have stability in the livestock industry.

The futures markets can provide several benefits to the industries that have them. For instance, cattle futures and options in particular, first, allow for cattlemen to increase the time in which they can choose the price for their cattle from the traditional 2 weeks to 5 months or more. That is a definite benefit to the cattlemen in Iowa, South Dakota, or anywhere else.

Second, cattle futures allow the cattlemen to significantly reduce the financial risk involved in cattle feeding.

I would just point out that those who were appropriately hedged at the time of the whole herd dairy buyout announcement would have been fully protected against the 9-percent cash price drop which followed immediately thereafter. So that also could have been a benefit.

Third, I would point out that an operating cattle futures market allows cattlemen to obtain continous information on how the market is valuing cattle to be delivered up to 14 months into the future. This is a definite asset to anyone who is in the cattle business.

Mr. President, abolishing the cattle futures trading contract right now is much too precipitious an action to take at this time. The disruptions that it would cause throughout the countryside would be enormous. If you think cattlemen have lost a lot of money now, if you adopt this amendment, I grant you the cash price of cattle is going to go completely through the floor. If we have disruptions now, you ain't seen nothing yet if we adopt this amendment, because this amendment says, "Bang, no more contracts after the date of enactment of this."

No new contracts.

That is going to cause the price of cattle, I think, to go completely through the floor.

Ideally, Mr. President, we should have, I think, a strong look at the cattle contract because I do not believe that it is working properly. I would agree with many of the cattlemen who feel that way. I believe very strongly that if we do not clean up this contract, sooner or later it is going to hurt all the other CFTC contracts. But this is not the way to do it. This does not just get at those who are perhaps trying to manipulate this contract, those who are violating the limits as one speculator violated the limits 15 times in the last 5 months.

No; this really hurts the cattlemen out there in the countryside.

So I think that the real victims from this kind of amendment would be the cattlemen, and I would also point out the real victim would be the cow-calf producer out there in the countryside.

I just think, Mr. President, that we have a contract here that should provide, as I mentioned, those these benefits to our cattle producers, to the livestock industry. I think, for the most part, this contract has operated to benefit the cattle producers of America. There are anomalies. There are some things going on in this contract which I think ought to be looked at. I would hope that this amendment by the Senator from South Dakota would be rejected, and I would hope that we perhaps could move on to a study to find out why these things are occurring and to have this reported back.

As I understand it, if I am not mistaken, the Senate Agriculture Committee and the distinguished chairman and ranking member have written such a letter and have requested that study to be done.

So I think this action here is much too precipitous. I just think if this amendment is adopted on the floor of the Senate tonight, watch what happens to the cash price of cattle tomorrow. Just watch it. It will go down and you are going to leave a lot of farmers out there, who are already hurt enough, holding the bag.

As much as I agree that we ought to have a strong look at this contract, and I do believe there are some things going on that I do not like, this is far too precipitous an action to take. The real victims of this amendment, should

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it be adopted, are not those who are violating the contract, not those who are violating the limits on the Chicago market, but the cow-calf producer and the livestock producer in Iowa, Nebraska, South Dakota, and all over this country.

So, Mr. President, I do indeed hope that this amendment will be rejected at this time and that we get a good study done, taking a good, hard look at it. Then we ought to have some firm directions to the CFTC to take some actions to clean up this contract.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. I yield to the Senator from Illinois.

Mr. DIXON. Mr. President, I rise in opposition to the amendment offered by the Senator from South Dakota, Senator ABDNOR. This amendment seeks to ban the trading of cattle futures.

These contracts have been widely used by feedlot operators, family feeders, meat packers, and meat exporters. Last year, more than 5 million contracts were traded. The economic purpose of this contract has never been successfully questioned.

Unfortunately, there are often misunderstandings about what cattle futures markets are, who is in them, and how they operate. In 1982, the Congress directed the Commodity Futures Trading Commission [CFTC] to conduct a 2-year study of the manner in which large hedgers use the futures markets in live cattle. The study concluded "that the existing regulatory programs of the CFTC and the CME, Chicago Mercantile Exchange, are adequate to deter any abusive trading by large hedgers in livestock markets and to preserve or restore orderly trading in those markets. Consequently, no legislative proposals are being recommended."

An amendment similar to the one offered today by Senator ABDNOR was soundly defeated in the House. I urge a similar vote against the amendment here in the Senate.

Mr. LUGAR. Mr. President, we are at a point where I suspect the participants are prepared to conclude the debate.

In a moment, I will move to table the Abdnor amendment. I understand the Senator from Montana is approaching the floor and has a statement to make. For the moment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1830

Mr. LUGAR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. Mr. President, I move to lay on the table the underlying Abdnor amendment No. 2898 and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay on the table the underlying amendment of the Senator from South Dakota [Mr. ABDNOR]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Hawaii [Mr. INOUYE], the Senator from West Virginia [Mr. ROCKEFELLER] are necessarily absent.

The PRESIDING OFFICER (Mr. GRAMM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 71, nays 26, as follows:

[Rollcall Vote No. 290 Leg.]

YEAS—71

Armstrong	Harkin	Mitchell
Bentsen	Hatch	Moynihan
Biden	Hawkins	Nunn
Bingaman	Heflin	Packwood
Bradley	Heinz	Pell
Broyhill	Helms	Proxmire
Bumpers	Hollings	Pryor
Chiles	Humphrey	Quayle
Cochran	Johnston	Riegle
Cohen	Kasten	Roth
Cranston	Kennedy	Rudman
D'Amato	Kerry	Sarbanes
Danforth	Lautenberg	Sasser
Dixon	Leahy	Simon
Dodd	Levin	Specter
Dole	Long	Stafford
Eagleton	Lugar	Stennis
Evans	Mathias	Symms
Exon	Matsunaga	Trible
Ford	Mattingly	Warner
Glenn	McClure	Weicker
Gore	McConnell	Wilson
Gorton	Melcher	Zorinsky
Gramm	Metzenbaum	

NAYS—26

Abdnor	Denton	Laxalt
Andrews	Domenici	Murkowski
Baucus	Durenberger	Nickles
Boren	Goldwater	Pressler
Boschwitz	Grassley	Simpson
Burdick	Hart	Stevens
Byrd	Hatfield	Thurmond
Chafee	Hecht	Wallop
DeConcini	Kassebaum	

NOT VOTING—3

Garn	Inouye	Rockefeller

So the motion to lay the amendment (No. 2898) on the table was agreed to.

The second-degree amendment (No. 2899) falls on a tabling motion.

□ 1900

Mr. HELMS. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. LUGAR. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILSON. Mr. President, I had intended to offer an amendment which would have retained the existing authority of the Commodity Futures Trading Commission to regulate leverage transactions. Although in the interest of time I will not do so, I do wish to expand upon the importance of retaining section 19 of the Commodity Exchange Act.

Before doing so, however, I wish to express my pleasure that this important legislation to reauthorize the CFTC has made its way to the floor of the Senate. I wish to commend my distinguished colleagues, Senator HELMS and Senator LUGAR, the chairmen of the Agriculture Committee and its Subcommittee on General Legislation, for their leadership and cooperation regarding this bill and my interest in it.

I share their concern and support for enacting legislation during this Congress which will reauthorize the CFTC. This authorization process has commanded a great deal of the agency's attention and resources, and in my view, it is vitally important that Congress pass a multiyear reauthorization bill, so that the agency may again concentrate upon the task of regulating a range of complex and important activities.

One such activity involves the enforcement of existing regulations pursuant to which licensed companies may offer to consumers leverage or margin contracts for the delivery of precious metals or gold or silver coins. These regulations are intended to protect consumers from the unlicensed, sharp operators who may seek to defraud public consumers through phony commodity transactions. The continued regulatory oversight of the CFTC in order to eliminate these illegal operations is of particular importance to me because the problem of commodity fraud has been severe in southern California.

While I applaud the intention of my colleagues on the Agriculture Committee who wish to eliminate fraudulent commodity transactions, I question their means. The bill before us today would prohibit the CFTC from regulating leverage transactions, thereby putting out of business the only two leverage transaction merchants which have been licensed by the Commission. The apparent presumption in this approach is that by banning anyone from legally offering leverage contracts, somehow the illegal backroom operations will also disappear.

In all candor, Mr. President, to the extent that this approach may make any sense, I fail to perceive it. Congress neither ensures additional consumer protection nor fewer fraudulent operations by adopting legislation that

outlaws legitimate businesses and prohibit continued Federal regulations.

Of all the retail commodity dealers in California—some of them legitimate businesses and many of them not—only one of them offers the benefits of comprehensive, stringent Federal customer protection regulations. Monex International, Ltd., is a CFTC registered leverage transaction merchant located in Newport Beach, CA. It is one of only two such firms in the country licensed by the CFTC to buy and sell commodities to the public under leverage of margin contracts. The other firm is located in Florida.

Monex has been in business since 1967, nearly 20 years, it presently employs 200 people and services approximately 14,000 accounts. It has appeared before Congress each of the four times that we have considered the Commodity Exchange Act, since its enactment in 1973. And during every reauthorization year, Monex and the Florida-based leverage merchant have come before Congress in support of comprehensive regulations to protect the public from fly-by-night operators how profit on the basis of fraud and deceit.

And during each previous reauthorization, Congress concurred with their positions and instructed the CFTC to adopt regulations to govern these companies. After a decade of regulatory inertia, Congress finally demanded action from the CFTC in 1982. Consequently, in 1984, the CFTC promulgated regulations for leverage contracts.

In many ways, these regulations parallel those that the Commission imposes upon futures commission merchants that trade on exchanges. Both regulations require registration with the Commission, minimum capital requirements—$2.5 million for leverage merchants; $50,000 for futures traders—disclosure statements to customers regarding investment risks, segregation of customers' funds, and submission of regular financial reports to the CFTC. In other ways—aside from higher minimum capital requirements—the Commission's regulations of leverage businesses are more stringent that those which apply to exchanges. For example, first-time purchasers of leverage contracts have a 3-day cooling-off period during which they may rescind their investment.

In fact, in 1984, Monex invested a great deal of money—more than $1 million—to adapt its operating procedures to these regulations, in order to be federally licensed to offer leverage contracts. I ask unanimous consent that a side-by-side comparison of the CFTC's rules affecting leverage and futures contracts, which was prepared by the Department of Justice, be inserted in the CONGRESSIONAL RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COMPARISON OF RULES AFFECTING LEVERAGE TRANSACTION MERCHANTS [LTMS] AND FUTURES COMMISSION MERCHANTS [FCMS]

LTMS	FCMS
1. LTMS must be registered with the Commission (17 C.F.R. §§ 3.17; 31.5(a)(2)).	FCMS must be registered with the Commission (7 U.S.C. § 6d; 17 C.F.R. § 3.10).
2. Associated persons of LTMS must be registered with the Commission (17 C.F.R. §§ 3.18, 31.5a(3), 31.5(b)).	2. Associated persons of FCMS must be registered with the Commission (7 U.S.C. § 6k, 17n C.F.R. § 3.12).
3. Each LTM must at all times maintain adjusted net capital equal to or in excess of $2,500,000 plus 20 percent of the market value of the amount of physical commodities subject to leverage contracts entered into by the LTM which are uncovered (17 C.F.R. § 31.9).	Each FCM must maintain adjusted net capital equal to or in excess of an amount that cannot be less than $50,000 and, depending on the size of the FCM's business and other factors, may be substantially more (17 C.F.R. § 1.7).
4. LTMS must provide their leverage customers with a disclosure document that sets forth the risks of entering into a leverage contract in language prescribed by the Commission (17 C.F.R. § 31.11).	FCMS must provide their futures customers with a disclosure statement that sets forth the risks of trading futures in langauge prescribed by the Commission (17 C.F.R. § 1.55).
5. LTMS must separately account for and segregate funds belonging to leverage customers (17 C.F.R. § 31.12).	FCMS must separately account for and segregate funds belonging to futures and options customers (17 C.F.R. § 1.20).
6. LTMS must file financial reports with the Commission on forms prescribed by the Commission (17 C.F.R. § 31.13).	FCMS must file financial reports with the Commission on forms prescribed by the Commission (17 C.F.R. § 1.10).
7. LTMS must keep books, records and other documents in the manner prescribed by the Commission (17 C.F.R. § 31.14).	FCMS must keep books, records and other documents in the manner prescribed by the Commission (17 C.F.R. § 1.31-1.37).

COMPARISON OF RULES AFFECTING LEVERAGE TRANSACTION MERCHANTS [LTMS] AND FUTURES COMMISSION MERCHANTS [FCMS]—Continued

LTMS	FCMS
8. LTMS must promptly report to their leverage customers statements of any transaction in their accounts, and must provide their leverage customers with monthly statements as well (17 C.F.R. § 31.15).	FCMS must promptly provide to their futures customers confirmation of any transaction in their accounts, and must provide their leverage customers with monthly statements as well (17 C.F.R. § 1.33).
9. LTMS are forbidden to represent to their leverage customers that they will guarantee those customers against loss (17 C.F.R. § 31.20).	FCMS are forbidden to represent to their futures customers that they will guarantee those customers against loss (17 C.F.R. § 1.56).
10, LTMS must permit first time leverage customers to rescind their leverage contracts if the customers request recission within three days from the time the customers receive confirmation of the transaction (17 C.F.R. § 31.23).	No comparable provision application to FCMS.
11. LTMS must at all times maintain cover of at least 90 percent of the amount of physical commodities subject to open long (or open short) leverage contracts entered into with leverage customers (17 C.F.R. § 31.8).	No comparable provision application to FCMS.

As this analysis makes clear, whether a customer is investing in leverage contracts or futures, he is protected by a comprehensive regulatory scheme when he deals with a CFTC-licensed merchant. Indeed, Susan Phillips, chairman of the CFTC, testified in both the Senate and House Agriculture Committees that the two licensed leverage merchants are now tightly and effectively regulated.

So what would the bill before us do? It would ban leverage transactions. Despite a decade of congressional action sanctioning these businesses, despite the implementation of Federal regulation of these businesses, and despite their reliance upon the acts of Congress and compliance with Federal

regulations, S. 2045, if enacted, would put these two legitimate firms out of business.

I understand and share the desire of my colleagues who wish to eliminate the scam operators who prey upon the public. However, I disagree with their theory that by prohibiting legal firms from engaging in this business, we will eliminate the illegal, unlicensed operators. On the contrary, it seems clear to me that if we preclude the CFTC from keeping a watchful eye on leverage transactions, then we will be encouraging the type of unregulated environment in which scam operators will flourish.

This point of view is shared by the Reagan administration. In a letter to Agriculture Committee Chairman HELMS, the Department of Justice acknowledges that it, too, is concerned about preventing fraudulent transactions. However, the administration states that "those who are already operating outside the requirements of the law are unlikely to be affected by banning leverage contracts." The Justice Department further states that to the extent that abuses outside the law and beyond CFTC regulations may exist, "they should be addressed as an enforcement matter, not by governmental intrusion into the market to ban leverage and thereby deny consumers the benefit of transactions with qualified firms."

I concur with the administration's view that "there is every reason to believe that careful regulation of leverage merchants will prevent fraud and abuse, especially if to that regulation is added competition that enables customers to choose merchants with reputations for honesty and solvency." I ask unanimous consent that the letter from the Justice Department to Chairman HELMS, dated August 13, be printed at this point in the CONGRESSIONAL RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, August 13, 1986.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter contains the views of the Department of Justice ("Department") concerning S. 2045, the "Futures Trading Act of 1986", as reported by your Committee. The Department respectfully urges that S. 2045 be amended by deleting Title II as presently drafted and substituting a new subsection to Section 19 of the Commodity Exchange Act (7 U.S.C. § 23). Title II as reported would have the effect of phasing out after two years and then banning a form of off-exchange commodities transaction called "leverage contracts", now regulated by the Commodity Futures Trading Commission ("CFTC" or "Commission").

While off-exchange leverage contracts bear some resemblance to futures contracts, they differ from futures in many respects. For example, futures contracts are typically of short duration, whereas the term of leverage contracts may be as long as twenty-five years. Futures contracts are generally for larger quantities than are leverage contracts, and it is far easier for the holder of a "long" position in a leverage contract to take delivery of the commodity than it is for the holder of a "long" position in a futures contract to do so. The time for delivery under a futures contract is a specific month in the future, whereas delivery under a leverage contract can take place at any time after payment of the balance of the purchase price.

In addition, leverage contracts generally serve a different function than do futures contracts. Futures contracts serve as commercial hedging devices and as price discovery mechanisms. While leverage contracts do not serve a price discovery function and are not used in commercial hedging, holders of "long" position in leverage contracts may use them as an investment vehicle and hold them as a hedge against inflation. Perhaps the most significant difference is the manner in which they are traded. Futures are traded on organized exchanges, with clearing houses taking positions opposite that of all customers. Leverage contracts, on the other hand, are not traded on exchanges but are agreements between leverage merchants and customers, with the merchants taking a position opposite to that of their customers. Because leverage merchants are able to avoid the high fixed costs of establishing an exchange and a clearinghouse, they have greater flexibility in introducing new products, new maturity dates, new quantities of a commodity, and new delivery provisions. These differences from futures have caused some consumers to prefer trading in leverage contracts for a variety of reasons; speculation, investment, or hedging against inflation. Your Committee has recognized that leverage transactions satisfied genuine consumer demands and should not be banned. S. Rep. No. 97-384, 97th Cong., 2d Sess. 52 (1982).

Since 1975, the Commission has a broad prohibition on fraud in connection with the offer and sale of leverage contracts (17 C.F.R. § 31.3 (1985)). Since 1979, the Commission has had a moratorium on the entry of new firms into the leverage business (17 C.F.R. §§ 31.1, 31.2 (1985)). The 1984 regulations require, among other things, registration of leverage merchants and commodities with the Commission, minimum financial requirements, disclosure of risks, a three-day "cooling off" period for first time customers, and access for leverage customers to the Commission's reparations procedure. It was not until 1984 that the Commission put into effect its present comprehensive regulations for leverage contracts. The effects of the moratorium and the regulations have been to limit the writing of leverage contracts to the two firms that remain in the industry and to constrain the ability of those firms to innovate by the artificial limitation of leverage contracts to ten years' duration and longer.

Leverage transactions are not the only kinds of off-exchange transactions subject to CFTC regulation. While most of the transactions regulated by the Commission involve exchange-traded instruments, the Commission also regulates the off-exchange offer and sale of commodity options to commercial interests for use in their business (17 C.F.R. § 32.4(a) (1985)) and the off-exchange offer and sale of dealer options (17 C.F.R § 32.12 (1985)).

The Department is concerned that Title II of S. 2045 would prohibit the offer and sale of leverage contracts, as that business is presently conducted, by repealing after two years the portions of the Commodity Exchange Act that require the CFTC to regulate them as a separate type of instrument. As a consequence of the repeal of that regulatory authority, firms currently writing leverage contracts would be precluded from doing so in two years. The result would be effectively to foreclose a desired competitive alternative to the trading of futures contracts offered by exchanges. Thus, Title II would unnecessarily impair the operation of markets among willing buyers and sellers for this type of off-exchange contract.

It is now generally recognized that new goods and services and new, more efficient productive processes are major contributors to enhanced consumer welfare. New goods and services not only serve in and of themselves to increase the well-being of consumers, but they also make consumers better off by stimulating firms that did not introduce innovations (and are losing, or fear losing, business to the innovators) to imitate, and perhaps improve upon, those innovations. This constantly evolving operation of market forces reflects the process of competition in maximizing consumer choices, promoting innovation and efficiency, and enhancing consumer welfare.

The importance of innovation to the futures industry is shown by the growth of new contracts. For example, approximately two-thirds of the 1985 trading volume on the largest exchange, the Chicago Board of Trade, was accounted for by contracts that that exchange did not trade in 1975. Innovation in the futures market may, however, be less than optimal for two reasons. First, a futures contract in a particular commodity such as gold that becomes well established on one exchange may well have natural monopoly characteristics, so that there is decreased incentive for other exchanges to imitate and try to improve upon it due to the difficulty of competing successfully with the dominant exchange for that contract. Second, aside from the moratorium-constrained two-firm leverage industry, futures commission merchants and others are statutorily prevented from offering innovative off-exchange futures and products that might compete with futures. *See* 7 U.S.C. § 6(a).

An expansion of the leverage industry could be expected to enhance innovation and competition not only in the leverage industry but also in the development of other types of off-exchange transactions. Such expansion in leverage transactions could be expected to provide increased competition to futures contracts as well. A seller considering whether to offer an innovative leverage product—for example, a contract on gold—would not be deterred from doing so by the existence of a successful exchange-traded futures contract on gold in the same way that an exchange contemplating a new futures contract on gold would be, because the off-exchange seller would be providing a different investment vehicle than a futures contract. The seller of an off-exchange leverage contract would not be limited in its choice of contract terms to those suitable for exchange trading, but could differentiate its products from futures or existing leverage products in contract terms, duration, delivery provisions, contract size, or other

terms and conditions. A large number of off-exchange leverage merchants would be expected to increase the number of innovative contract features, some of which could be imitated and perhaps improved upon by the exchanges in their futures contracts. In this way innovation in off-exchange leverage transactions could lead to innovations in futures trading.

An example of how innovation in financial instruments can lead to imitation elsewhere is the development of bank-issued credit cards. Initially, merchants such as department stores and petroleum companies offered credit cards by which their customers could be extended credit on purchases of their products. Later, firms such as American Express and Diners' Club began offering credit cards by which consumers could purchase goods and services from a wide variety of sellers. Eventually, banks began to offer all-purpose credit cards for use in ordinary consumer purchasing. *See* Bergsten, *Credit Cards—A Prelude to the Cashless Society,* 8 B.C. Ind. & Comm. L. Rev. 485 (1967). Thus, had there been governmental regulation permitting firms to offer credit only on the goods and services they provided, the development of the modern credit industry with its multiple choices and conveniences may well have not developed.

Much of the debate about leverage contracts has centered on allegations of fraud and abusive practices. While the Department is, of course, concerned about preventing such practices, there is no reason to believe that such complaints are necessarily related to registered leverage merchants. The greatest danger to leverage customers would appear to be from "bucket shops" and other firms operating outside the law and CFTC leverage regulations. Those who are already operating outside the requirements of the law are unlikely to be affected by banning leverage contracts, however. Moreover, the fact that numerous complaints about fraud and abusive practices were made in the largely unregulated environment in which leverage merchants operated prior to 1984 should not be viewed as establishing that such practices have occurred or will continue under the comprehensive and stringent Commission regulations on leverage merchants now in place. If abuse outside the law and CFTC leverage regulations exists, they should be addressed as an enforcement matter, not by governmental instrusion into the market to ban leverage and thereby deny consumers the benefit of transactions with qualified firms that may seek to offer such contracts.

The new subsection that the Department proposes be added to Section 19 of the Commodity Exchange Act (previously supplied to the Committee staff) would require the Commission to remove its moratorium on the entry of new firms into the business of offering leverage contracts. The new subsection would also require the CFTC, within one year, to transmit to the appropriate Committees of Congress a report containing its findings and recommendations concerning appropriate changes in the regulatory scheme to govern leverage transactions. The report would include recommendations on how the regulatory scheme should be modified without placing an undue burden on the limited resources of the Commission, so as better to ensure the financial solvency of firms writing leverage contracts, prevent manipulation and fraud, and promote or allow product innovation by measures such as permitting short-term standardized contracts.

The Department appreciates that, in carrying out its duties under the Commodity Exchange Act, the CFTC is not compelled to promote competition if adequate safeguards against fraud or other abusive practices would thereby be abandoned. However, the CFTC has had only two years' experience in regulating the leverage industry subject to stringent regulations and no experience at all in regulating a competitive leverage industry. The proposed Commission report will assist in determining the appropriate level of regulation based upon the kinds of transactions currently engaged in and reasonably contemplated.[1]

Moreover, there is every reason to believe that careful regulation of leverage merchants will prevent fraud and abuse, especially if to that regulation is added competition that enables customers to choose merchants with reputations for honesty and solvency. Indeed, leading futures commission merchants already regulated by the Commission are potential entrants into the leverage business, and the forces of competition can be expected to help drive unsound firms and questionable practices from the marketplace. Reputable leverage merchants would have every incentive to protect their reputations by avoiding abusive or questionable practices themselves through careful selection and monitoring of principals and employees, and by reporting to the Commission fraud and abusive practices by other firms in the industry and illegal conduct by unregistered firms operating outside the law. A cautious approach by the Commission to admitting additional firms and regulating them will not only help to ensure that only highly qualified firms are permitted to offer leverage contracts, but will help to alleviate any additional burden on the Commission's resources. Moreover, it may be possible that the regulatory burdens can be shared with a CFTC-registered futures association, thus further lessening the Commission's duties with respect to leverage transaction merchants while ensuring the integrity of the more competitive marketplace.

For the foregoing reasons, the Department of Justice respectfully urges an approach to leverage contracts different than that contained in Title II of S. 2045. Rather than banning such contracts, we believe competition and consumer welfare will better be enhanced by revision of Title II along the lines we have suggested. Our approach would eliminate the ban on new entry and require a study of ways in which the regulatory scheme should be modified so as better to ensure the financial solvency of firms writing such contracts, prevent manipulation and fraud, and promote or allow product innovation. Such an approach is fully consistent with this Administration's commitment to reducing unnecessary governmental interference with free market forces and maximizing reliance on competition to promote consumer welfare.

We sincerely appreciate your consideration of these views.

[1] In comments recently filed with the Commission, the Department noted that the appropriate level of regulation for an instrument (in that case, foreign options) depends in part on whether the history of the marketing of that instrument was marked by widespread fraud and abuse. Comments of the United States Department of Justice before the Commodity Futures Trading Commission in the Matter of Proposed Rules for Regulations of Foreign Options and Foreign Futures Transactions 17 (July 8, 1986).

The Office of Management and Budget has advised this Department that there is no objection to the submission of these views from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON,
Assistant Attorney General.

Mr. WILSON. It is ironic that while the administration supports added competition in the marketplace, as do I, some observers believe that the entire campaign to rescind the CFTC's authority over leverage contracts has been prompted by fear of competition. The two licensed leverage companies have been in existence before Congress even created a CFTC. The issue of leverage regulation has been considered by Congress in 1973, 1978, 1982, and again this year. Yet, this year, for the first time, one exchange which trades futures contracts on precious metals has perceived that the two licensed leverage firms represents competition.

In my opinion, the consumers of this country, as well as our Nation's overall economy, are best served through public policy which promotes competition, not through special interest laws which eliminate it.

The amendment which I had considered introducing would have had a positive effect upon competition among leverage merchants. Specifically, it would have continued that CFTC's authority to regulate leverage contracts on gold, silver, and platinum. It would have further directed the CFTC to conduct a survey and report to Congress in 2 years regarding expansion of this industry and the resulting competition. Also, the proposal which I had been considering would have directed the Commission to review and amend existing leverage regulations to accommodate an expanded leverage industry, including any responsibilities that a user-funded futures association may be required to accept.

In addition, my amendment would have incorporated the consumer protection provisions contained in the CFTC's regulations of the leverage industry, as well as restating the existing statutory authority of the States to enforce antifraud laws against unlicensed operators who illegally sell commodity transactions.

Had I introduced an amendment, its section relating to the CFTC's continued regulatory authority would have been identical to the provision which has already been approved by the full House of Representatives. That language is supported by the Chicago Board of Trade and the Chicago Mercantile Exchange. In addition, CFTC Chairman Phillips told the House Agriculture Committee that the Commission could accept such a provision.

In my view, it is essential that any CFTC reauthorization bill retain—at a

minimum—language similar to that approved by the House and contained in my amendment. Similarly, I understand that it is essential that the Senate have an opportunity to adopt this critical reauthorization bill before our adjournment, without a lengthy and time-consuming debate on leverage transactions.

For that reason, I have not introduced an amendment and am willing to allow Senate passage of the committee's bill with some assurance from the distinguished manager of the bill, Senator LUGAR, that the leverage issue will be addressed fully by the House/Senate conferees and resolved in a more favorable way. If this should not occur, then I want the record to reflect that I will use whatever parliamentary procedures are available to prevent the Senate from adopting a conference report prior to our sine die adjournment.

Before engaging in a colloquy with the bill's distinguished manager, Senator LUGAR, I wish to express my pleasure that this important legislation to reauthorize the CFTC has made its way to the floor of the Senate. In addition, I wish to commend Senator HELMS and Senator LUGAR, the chairmen of the Agriculture Committee and its Subcommittee on General Legislation, for their leadership and cooperation regarding this bill and my interest in it.

I share their concern and support for enacting legislation during this Congress which will reauthorize the CFTC. This authorization process has commanded a great deal of the agency's attention and resources, and in my view, it is vitally important that Congress pass a multiyear reauthorization bill, so that the agency may again concentrate upon the task of regulating a range of complex and important activities.

One such activity involves the enforcement of existing regulations pursuant to which licensed companies my offer to consumers leverage or margin contracts for the delivery of precious metals or gold or silver coins. These regulations are intended to protect consumers from the unlicensed, sharp operators who may seek to defraud public customers through phony commodity transactions. The continued regulatory oversight of the CFTC in order to eliminate these illegal operations is of particular importance to me because the problem of commodity fraud has been severe in southern California.

In my view, it is essential that any CFTC reauthorization bill retain—at a minimum—language similar to that approved by the House and discussed in my written statement. Similarly, I appreciate that it is essential that the Senate have an opportunity to adopt this critical reauthorization bill before our adjournment, without a lengthy and time-consuming debate on leverage transactions.

For that reason, I have not introduced an amendment and am willing to allow Senate passage of the committee's bill with some assurance from the distinguished manager of the bill, Senator LUGAR, that the leverage issue will be addressed fully by the House/Senate conferees and resolved in a more favorable way.

Mr. LUGAR. Mr. President, the Senator from California has stated his point very eloquently. The House Agriculture Committee has voted overwhelmingly to retain Federal regulation of leverage contracts. A compromise among competing interests by the House/Senate conferees would be a normal course of events under such circumstances. Should this not occur and the Senate position prevail in the conference, I fully understand and appreciate the fact that the Senator from California would likely oppose the Senate's consideration of the conference report this year.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The distinguished majority leader is recognized and the Senate will be in order.

Mr. DOLE. Mr. President, if we could have order, there are a number of Senators who would like to know what the program is going to be.

I understand there are now a series of amendments cropping up on this minor measure. We have at least one or two on this side and one or two on the other side. One is apparently a farm bill. We have a couple on grain standards.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business not to extend beyond 7:15 p.m. There will be no more votes tonight.

Mr. PRYOR. Mr. President, reserving the right to object.

Would the majority leader repeat what he just said. I could not hear.

Mr. DOLE. I just said based on what I am picking up around there will be no more votes, and we will just have a period for the transaction of routine morning business.

Mr. PRYOR. I thank the Senator.

Mr. MELCHER. Mr. President, will the leader yield?

The PRESIDING OFFICER. Is there objection?

Mr. MELCHER. Reserving the right to object.

Mr. HARKIN. Reserving the right to object.

Mr. BYRD. May we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. Members will withhold until the well is cleared.

Mr. MELCHER. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I am happy to yield.

Mr. MELCHER. Will the majority leader have any objection to continuing long enough to offer an amendment that we believe will be accepted?

Mr. DOLE. I understand there will be so many amendments that are not going to be accepted that we better sort of find out where they are. If we can accept the Senator's amendment and if there are a couple more we can do very quickly tomorrow morning, we will. If we cannot work it out, this bill is finished for the year.

Mr. MELCHER. I thank the leader.

Mr. HARKIN. Mr. President, reserving the right to object, I inquire of the majority leader will this bill then be taken up first thing tomorrow?

Mr. DOLE. You may never see this bill again this year.

Mr. BYRD. Mr. President, will the distinguished majority leader yield for a question?

Mr. DOLE. I yield.

Mr. BYRD. While a goodly number of Senators are here, what time does the distinguished majority leader intend to bring the Senate in tomorrow? What is his plan to have up on tomorrow when the Senate begins its business?

Mr. DOLE. I think one thing we might do is sort of canvass the amendments on this bill but if what I am hearing is correct we are looking at farm bills and other things. We will probably not be on this bill tomorrow. There is a chance we might be on FIFRA, and then we hope to start action on the drug bill tomorrow.

The House will vote on the tax reform bill about 1 o'clock. That may be over.

We also at least have the possibility of a cloture vote tomorrow when we come in on the product liability. And if cloture is invoked I assume there will be 100 votes for it. That could take some time on the cloture before we move to proceed to that measure.

So we plan on coming in at 9:30 a.m.

Mr. BYRD. If the Senate comes in at 9:30 a.m., unless the majority leader gives the order to have a cloture vote at a time different from that which would be in accordance with the rule, if Senators could know at this point perhaps the majority leader would want to let us know now.

Mr. DOLE. I think what I need to do on that is discuss that with the minority leader a little later.

I have a couple things in mind that we might do on this vote.

Mr. BYRD. All right.

The majority leader was interested in having a vote on some treaties.

Mr. DOLE. We have about six treaties, and I understand that if every Member is here tomorrow, we could have one vote that would count as six votes on the six treaties.

Mr. EAGLETON. What time?

Mr. BYRD. I think we might very well be able to get consent for one vote on the six treaties. We would probably have that for the majority leader in the morning.

What drug bill will the Senate be taking up?

Mr. DOLE. It is my hope, and the staff is still working, it may not be any drug bill that is on the calendar. It may be a bipartisan bill that we would introduce as a substitute, call up one and then introduce the substitute, hopefully with Republican and Democratic sponsors on the parts that we can agree to, and on the areas we cannot agree we will just have to agree to offer amendments and let people vote them up or down.

Mr. BYRD. Very well.

I thank the majority leader. There will be no more rollcall votes today?

Mr. DOLE. No more rollcall votes this evening.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, reserving the right to object, I would like to ask the majority leader if he will yield for a question.

Mr. DOLE. I yield.

Mr. HARKIN. I and several other Senators have introduced today a new farm bill. I was wondering if the majority leader was laboring under the impression this was the bill?

Mr. DOLE. No.

Mr. HARKIN. I want to make it clear we were not anticipating and I was not and no one with me on the bill that I know was going to offer that in any way. I want to make that point clear.

Mr. DOLE. I think someone else may offer a number, like soybeans, farm credit. There are Members on both sides who have grain standard amendments. I understand there are amendments that will be taken of Senator MELCHER and the Senator from Kentucky, Senator MCCONNELL.

We would like to complete action on this, but I think until we can find out and get all the competing people together, it does not serve any purpose, and I know that many Members on this side have conflicts as do Members on that side, and we were in late last night. It is going to be a long week. I think we may as well wrap it up.

The PRESIDING OFFICER. Is there objection?

Mr. MATSUNAGA. Reserving the right to object, will the distinguished majority leader yield for a question?

Mr. DOLE. I am most pleased to yield.

Mr. MATSUNAGA. At what time does the majority leader intend to adjourn the Senate this evening?

Mr. DOLE. We have quite a little wrap-up. I would think by 8 o'clock.

Mr. MATSUNAGA. Without objection, it is so ordered.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1930

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:22 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 1246) to establish a federally declared floodway for the Colorado River below Davis Dam.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 2294. An act to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes.

ENROLLED BILL SIGNED

At 11:30 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2787. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION SIGNED

At 4:12 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 5:43 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that in accordance with the request of the Senate the joint resolution (H.J. Res. 686) to designate August 12, 1986, as "National Civil Rights Day" is returned to the Senate.

The message also announced that the House has passed the following bill, with amendments in which it requests the concurrence of the Senate:

S. 816. An act to establish the Pine Ridge Wilderness and Soldier Creek Wilderness in the Nebraska National Forest in the State of Nebraska, and for other purposes.

The message further announced that Mr. DAVIS is appointed as an exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment in the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2638) entitled "An act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes," vice Mr. KRAMER, excused.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 1915. An act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987);

H.R. 3077. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes;

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes;

H.R. 4216. An act to provide for the replacement of certain lands within the Gila

Bend Indian Reservation, and for other purposes;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 4862. An act to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information;

H.R. 4980. An act to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5166. An act to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes;

H.R. 5262. An act to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5369. An act to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the building and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan;

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such Act;

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the United States Information Agency;

H.R. 5526. An act to authorize the water resources research activities of the United States Geological Survey, and for other purposes; and

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies.

At 7 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 394. Concurrent resolution to correct technical errors in the enrollment of the bill S. 1965.

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent:

H.R. 1915. An act to establish procedures for review of tribal constitutions and bylaws or amendments thereto pursuant to the act of June 18, 1934 (48 Stat. 987); to the Select Committee on Indian Affairs.

H.R. 4862. An act to amend the Freedom of Information Act to provide procedures for the processing of requests for confidential business information; to the Committee on Governmental Affairs.

H.R. 4980. An act to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

H.R. 5262. An act to establish the Bayou Sauvage Urban National Wildlife Refuge in the State of Louisiana; to the Committee on Environment and Public Works.

H.R. 5369. An act to require asbestos manufacturers to submit information on their asbestos products to the Environmental Protection Agency and to require owners of buildings containing asbestos to inspect the building and take samples of asbestos before commencing civil actions relating to asbestos, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the United States Information Agency; to the Committee on Foreign Relations.

H.R. 5526. An act to authorize the water resources research activities of the United States Geological Survey, and for other purposes; to the Committee on Environment and Public Works.

H.J. Res. 67. Joint resolution calling for a wildlife sanctuary for humpback whales in the West Indies; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

H.R. 5484. An act to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes;

S. 2825. A bill to provide for a waiver of certain requirements of title XIX of the Social Security Act with respect to care and services provided by the Medical University of South Carolina;

H.R. 4492. An act to permit the transfer of certain airport property in Algona, Iowa;

H.R. 4838. An act to amend section 408 of the Federal Aviation Act of 1958 to ensure fair treatment of airline employees in airline mergers and similar transactions; and

S. 2850. A bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes.

The following bills were read the first and second times by unanimous consent:

H.R. 3077. An act to amend the Inspector General Act of 1978 to establish offices of inspector general in certain departments, and for other purposes;

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987;

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act;

MEASURES HELD AT THE DESK

The following bills were ordered held at the desk by unanimous consent, pending further disposition:

H.R. 4154. An act to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes;

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 5056. An act to permit registered public utility holding companies to own certain interests in qualifying cogeneration facilities;

H.R. 5430. An act to amend the Gila River Pima-Maricopa Indian Community judgment distribution plan.

The following bill was ordered held at the desk by unanimous consent, until the close of business September 25, 1986:

S. 2840. A bill entitled the "Superfund Amendments and Reauthorization Act of 1986".

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 24, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1963. An act to direct the Secretary of the Interior to convey certain interests in lands in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology;

S. 2703. An act to amend the Federal Aviation Act of 1958 to provide that prohibitions of discrimination against handicapped individuals shall apply to air carriers;

S. 2759. An act relating to telephone services for Senators;

S.J. Res. 207. Joint resolution to designate November 15, 1986, as "National Philanthropy Day";

S.J. Res. 317. Joint resolution to designate the month of November 1986 as "National Hospice Month";

S.J. Res. 354. Joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week";

S.J. Res. 362. Joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk and Drugged Driving Awareness Week";

S.J. Res. 402. Joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship"; and

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-860. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"ASSEMBLY JOINT RESOLUTION No. 108

"Whereas, The United States Senate Budget Resolution eliminates the United States Travel and Tourism Administration (USTTA), the only official organization that coordinates international tourism policy for the United States worldwide; and

"Whereas, Tourism is the second largest private employer in the nation and generates more than $46 billion a year in salaries and wages while serving as the first, second, or third largest employer in 40 states; and

"Whereas, USTTA provides state and city tourism agencies with a worldwide network of offices and services which promote the United States as a destination of travel in general and aid in marketing those states and cities in particular; and

"Whereas, The average funding among competitive countries for equivalent agencies is nearly four times greater than federal funding for USTTA; and

"Whereas, The preservation of the profit-generating USTTA would lessen the United States balance-of-trade deficit by increasing the United States' share of tourism receipts thereby increasing our nation's real earnings; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President and Congress of the United States to take all measures necessary to retain the United States Travel and Tourism Administration at current or higher funding levels; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the National Conference of State Legislatures."

POM-861. Joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"ASSEMBLY JOINT RESOLUTION No. 102

"Whereas, Agriculture is the leading industry in California accounting for more than 14 billion dollars in gross receipts from the production of nearly 250 different crops and livestock; and

"Whereas, California's agricultural economy is heavily dependent on foreign markets which account for 25 percent of California agricultural sales; and

"Whereas, The value of California's agricultural exports has declined from a high of 4.2 billion dollars in 1981 to 2.9 billion dollars in 1984 largely due to tariff and nontariff barriers facing our agricultural exports and to the competition from emerging foreign producers; and

"Whereas, Spain and Portugal have entered into full membership in the European Economic Community which will further decrease our agricultural export trade; and

"Whereas, The preservation and development of foreign markets are essential to the economic well-being of California agriculture; and

"Whereas, The next round of tariff negotiations under the General Agreement on Tariffs and Trade (GATT) is scheduled to take place in September 1986; and

"Whereas, United States agriculture in general, and California agriculture in particular, have historically been relegated to a low priority in the GATT negotiations and have received little benefit, frequently being offered as the sacrificial lamb to achieve nonagricultural concessions; and

"Whereas, Those few gains which agriculture has achieved through these negotiations are of little, if any, value due to flagrant violations of the GATT rules by foreign countries; and

"Whereas, It has become abundantly clear that the United States must make an unequivocal strong stand at the GATT negotiations to protect our rightful position in world trade and to ensure that agriculture maintains a priority status; and

"Whereas, The California State World Trade Commission has appointed a Special Trade Representative who is housed in the Governor's Washington D.C. Office and who is intimately familiar with California agriculture and the significant importance of maintaining present and developing new export markets for California's agricultural commodities; and

"Whereas, This is a prime opportunity for the Governor and the commission's special trade representative to protect and enhance the position of California agriculture through forceful, constructive, and determined participation in the GATT negotiations; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California respectfully memoralizes the President and Congress of the United States to protect California agricultural interests in the forthcoming General Agreement on Tariffs and Trade (GATT) negotiations; and be it further

"Resolved, That the California State World Trade Commission is requested to direct its special trade representative in Washington, D.C., to take an active role in the forthcoming GATT negotiations and ensure that the United States negotiators recognize California agriculture's rightful position in world trade; and be it further

"Resolved, The special trade representative be requested to keep the Governor and the Legislature abreast of international trade developments, especially any proposal that might be considered by the United States negotiating team so the state will have an opportunity to analyze and present meaningful and timely input to the United States negotiators; and be it further

"Resolved, That United States negotiators be requested to obtain agreement from all GATT participants that violations of GATT rules will cease; and be it further

"Resolved, That the Clerk of the Assembly transmit copies of this resolution to the Governor, to the Director of the California Department of Food and Agriculture, to the California State World Trade Commission and its Special Trade Representative, to the President and Vice President of the United States, to the President pro Tempore of the United States Senate, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the United States Secretary of Agriculture, and to the United States Trade Representative."

POM-862. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION No. 105

"Whereas, Advancing medical technology in the area of organ transplantation has brought enhanced health to thousands of people while increasing both the need and demand for transplant operations; and

"Whereas, The public has seen an increasing number of dramatic appeals for organ donors to help a particular patient in need of a heart, liver, or other organ transplant; and

"Whereas, The federal Task Force on Organ Procurement and Transplantation is a congressionally mandated body representing physicians and scientists involved in transplantation, organ procurement specialists, hospitals, third-party payers, members of the general public, ethicists, attorneys, and representatives of the federal government; and

"Whereas, The task force has spent the last 18 months studying transplant policy in this country; and

"Whereas, The task force has recently released an extensive report on its findings; and

"Whereas, The American Council on Transplantation (ACT) is a private sector organization formed in 1983 and dedicated to increasing the availability and transplantation of organs and tissues to save and improve the lives of others. ACT is a nonprofit organization of over 700 individuals and over 80 national, regional, and local organizations representing a range of interests in organ and tissue transplantation; and

"Whereas, The American Council on Transplantation has officially endorsed in principle the work and report of the task force; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California endorses in principle the work and the findings of the federal Task Force on Organ Transplantation; and be it further

"Resolved, That the Legislature of the State of California respectfully memorializes the President of the United States and Congress to carry out the specific task force recommendation that a national organ procurement and transplantation network be established to coordinate efforts to locate potential donor organs, and that this network shall have the power to set guidelines for obtaining and using organs for the purpose of transplantation; and be it further

"Resolved, That the Chief Clerk of the Assembly send copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Health and Human Services, to the Executive Director of the American Council on Transplantation, and to the Executive Director of the Task Force on Organ Procurement and Transplantation."

POM-863. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION No. 100

"Whereas, The right of working people to fair treatment by their employers is fundamental to the proper functioning of both our American democracy and our economy; and

"Whereas, Being out of work is a dehumanizing experience, and Americans do not go on strike for frivolous reasons; and

"Whereas, On March 7, 1986, the 6,000 members of the Independent Federation of Flight Attendants (IFFA) went on strike against Trans World Airlines (TWA) after contract negotiations reached a total impasse; and

"Whereas, The IFFA has bargained in good faith by offering to accept the same pay and benefit reductions as other TWA unions; and $5,000 per IFFA member per year over three years; and

"Whereas, TWA rejected this offer, demanding salary, benefit, and work rule concessions from IFFA members three times greater than those accepted by other TWA employees (i.e., mechanics, pilots, ground employees, nonunion personnel, and management employees); and

"Whereas, TWA seeks a substantially greater reduction in the total wage-benefit-work rule package from the IFFA; and

"Whereas, All union employees regardless of gender have the same economic need to support themselves and their families, thus requiring that due consideration for equal treatment be assured in labor negotiations and settlements for both male and female dominated unions; and

"Whereas, TWA management's present course of using inexperienced, nonunion personnel to fill the strikers' positions is causing a reduction in service; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California expresses its support for a prompt and equitable settlement of the labor dispute between the Independent Federation of Flight Attendants and Trans World Airlines; and be it further

"Resolved, That, recognizing that the regulation of interstate air traffic is a federal responsibility, the Legislature urges the President of the United States, the Secretaries of the United States Departments of Labor and Transportation, and the Congress of the United States to take all appropriate steps to bring about a prompt and equitable settlement of the labor dispute between the Independent Federation of Flight Attendants and Trans World Airlines; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Secretaries of the United States Departments of Labor and Transportation, the Speaker of the House of Representatives of the United States, each Senator and Representative from California in the Congress of the United States, the Independent Federation of Flight Attendants, and Trans World Airlines."

POM-864. Joint resolution adopted by the Legislature of the State of California; to the Committee on Small Business:

ASSEMBLY JOINT RESOLUTION No. 96

"Whereas, The United States Small Business Administration was established to foster the American spirit of entrepreneurship for individuals gifted with initiative and talent but who lack financial means to achieve their business objectives; and

"Whereas, The United States Small Business Administration has provided new entrepreneurs with counsel, expertise, and technical support to compete in the business community in an economically significant manner; and

"Whereas, The State of California recognizes that the programs of the United States Small Business Administration have strengthened the state's economic growth and welfare by developing businesses that generate state revenue, stimulating private investment and employment; and

"Whereas, The State of California recognizes that federal appropriations to the Small Business Administration are an investment in future business developments and innovations that will keep this country competitive with other industrial nations; and

"Whereas, The State of California recognizes that private entrepreneurs with the help of the Small Business Administration have stimulated the development of new products, technology, services, marketing ideas, and employment opportunities which have placed California in the forefront of business developments; and

"Whereas, The State of California recognizes that the Small Business Administration has played an important role in assisting minority business people to start their own businesses and participate in government procurement programs; and

"Whereas, The State of California's businesses are in greater need today than ever before of the services of the United States Small Business Administration as a result of the fact that they are:

"(a) Experiencing severe economic problems caused by escalating insurance costs and commercial rents.

"(b) Increasing competition from large chains.

"(c) Often subjected to greater regulation by all levels of government which requires greater knowledge and technical expertise.

"(d) Subject to greater interest rates and loan fees for capital than competing larger businesses and often entrepreneurs have difficulty obtaining private financing for startup costs, maintenance, and expansion; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California urge the President and Congress of the United States to keep the United States Small Business Administration as an independent agency with adequate funding for assisting the development of new small businesses and preservation of existing ones; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Administrator of the United States Small Business Administration."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 827. A bill to amend the Public Health Service Act to provide for the compensation of children and others who have sustained vaccine-related injuries, and for other purposes (Rept. No. 99-483).

By Mr. HATCH, from the Committee on Labor and Human Resources, without amendment:

S. 2864. A bill to provide for a Deputy Secretary of Labor, and Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes (Rept. No. 99-484).

By Mr. ANDREWS, from the Select Committee on Indian Affairs:

Report to accompany the bill (S. 2676) to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes (Rept. No. 99-485).

By Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, without amendment:

S. 430. A bill to amend and clarify the Foreign Corrupt Practices Act of 1977 (Rept. No. 99-486).

By Mr. THURMOND, from the Committee on the Judiciary, without recommendation without amendment:

H.R. 2183. A bill to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

H. Con. Res. 67. Concurrent resolution expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S. 2312. A bill to amend title VII of the Omnibus Crime Control and Safe Streets Act of 1968, relating to armed career criminals, to include a serious drug offense and any crime of violence as an offense subject to enhanced penalties.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2323. A bill to exempt certain activities from provisions of the antitrust laws.

By Mr. THURMOND, from the Committee on the Judiciary, without recommendation without amendment:

S. 2424. A bill to amend the interest provisions of the Declaration of Taking Act.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation:

John W. Melcher, of Maryland, to be Inspector General, Department of Transportation;

William R. Graham, of California, to be Director of the Office of Science and Technology Policy; and

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER:

S. 2863. A bill to prohibit damage to religious property; injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

By Mr. HATCH:

S. 2864. A bill to provide for a Deputy Secretary of Labor, and Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes; from the Committee on Labor and Human Resources; placed on the calendar.

By Mr. GORTON (for himself and Mr. EVANS):

S. 2865. A bill to amend Public Law 94-423, relating to the Oroville-Tonasket Unit, Chief Joseph Dam Project, to ensure that the design flaws in the system are corrected, and for other purposes.

By Mr. SPECTER:

S. 2866. A bill to rename the VA Medical Center;" at University Drive in Pittsburgh, Pennsylvania, the "Commando Charles E. Kelly VA Medical Center"; to the Committee on Veterans' Affairs.

By Mr. METZENBAUM:

S. 2867. A bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2868. A bill to amend the Indian Self-Determination Act of 1974, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. HARKIN (for himself, Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK):

S. 2869. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agriculture commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SPECTER (for himself and Mr. HEINZ):

S. 2870. A bill entitled the "Steamtown Historic Designation Act;" to the Committee on Energy and Natural Resources.

By Mr. BRADLEY (for himself and Mr. LAUTENBERG):

S. 2871. A bill to designate certain segments of the Maurice, the Manatico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the national wild and scenic rivers system; to the Committee on Energy and Natural Resources.

By Mrs. KASSEBAUM:

S. 2872. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. KENNEDY:

S. 2873. A bill to require the Director of the National Institute of Child Health and Human Development to establish a grant program to fund research, training, and patient service in pediatric pulmonary medicine; to the Committee on Labor and Human Resources.

By Mr. GRASSLEY:

S. 2874. A bill to amend the Grain Standards Act of 1916 to establish the policy of providing grain of high quality to both domestic and foreign buyers, to better define the purpose of Official United States Standards for Grain and to provide for the closer regulation of dockage and foreign material in grain; to the Committee of Agriculture, Nutrition, and Forestry.

By Mr. MATSUNAGA (for himself, Mr. GLENN, Mr. BROYHILL, Mr. BURDICK, Mr. GORE, Mr. HEFLIN, Mr. INOUYE, Mr. JOHNSTON, Mr. MCCONNELL, and Mr. WILSON):

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs produced in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes; to the Committee on Finance.

By Mr. MOYNIHAN:

S.J. Res. 419. Joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day"; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. STAFFORD (for Mr. DOLE (for himself and Mr. BYRD)):

S. Res. 493. A resolution to authorize the production of documents by the Senate Permanent Subcommittee on Investigations; considered and agreed to.

By Mr. STAFFORD (for Mr. DOLE (for himself and Mr. BYRD)):

S. Res. 494. A resolution to direct the Senate Legal Counsel to represent and to authorize the testimony of former Permanent Subcommittee on Investigations employees in the case of "William E. Brock v. Frank Gerace, et al."; considered and agreed to.

By Mr. D'AMATO (for himself and Mr. BRADLEY):

S. Con. Res. 164. A concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2863. A bill to prohibit damage to religious property; injury to persons in the free exercise of their religious beliefs; to the Committee on the Judiciary.

CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND INJURY TO PERSONS EXERCISING RELIGIOUS FREEDOM

Mr. SPECTER. Mr. President, I am introducing a bill to amend chapter 13 of title 18 of the United States Code to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs. This is an identical bill which was approved on Monday, September 22, in the House of Representatives.

Religiously motivated violence, which can involve simple vandalism such as defacing the walls of a synagogue with a swastika or more dangerous acts of destruction such as arson or bombing, appears to be a growing problem. In Pennsylvania, the number of reported incidents increased 85 percent in the past year.

Synagogues and black churches are believed to be the target of the overwhelming majority of religiously motivated crimes of destruction. Current Federal law permits prosecution of religiously motivated violence in limited circumstances. First, the Federal Government can prosecute persons who engage in religiously motivated violence while acting under color of law, as well as those acting in concert with persons acting under color of law. However, these instances are rare.

Second, the Federal Government can prosecute religiously motivated violence if explosives are used or are attempted to be used or arson or attempted arson is involved and, first, the offender flees across the State line with intent to avoid prosecution or, second, the property damage is used in or affects interstate or foreign commerce. Thus, the Federal unlawful flight provision would not permit prosecution if the underlying offense was defacing property, one of the most common forms of damage sustained by synagogues.

This bill adds a new section to title 18 of the U.S. Code which would make it an offense: to travel in interstate or foreign commerce or to use a facility or instrumentality of interstate or foreign commerce with intent to deface, damage, or destroy any religious real property because of the religious character of the property; to travel in interstate or foreign commerce or to use a facility or instrumentality of interstate or foreign commerce with intent to obstruct, by force or threat of force, any person in the free exercise of religious beliefs. This bill authorizes: a fine and imprisonment for any term of years or for life or both if death results from religiously motivated violence; a fine and imprisonment for not more than 15 years or both if serious bodily injury results; and a fine and imprisonment for not more than 5 years or both in any other case. The maximum fine authorized by 18

U.S.C. 3623 is $250,000 if the defendant is an individual and $500,000 if the defendant is an organization. This bill defines: "religious real property" to mean any church, synagogue, religious cemetery, or other religious real property; and "serious bodily injury" as a substantial risk of death, unconsciousness, extreme physical pain, or protracted loss, or impairment of the function of a bodily member, organ, or mental faculty.

This bill does not supplant or replace local law enforcement authority and responsibility, but strengthens the Federal response when one is called for. The scope of existing Federal laws is inadequate to augment State and local enforcement in a substantial manner. Existing Federal laws do not adequately express the moral condemnation of the escalating numbers of hate crimes being committed in our society. It is important to send a strong signal that religiously motivated violence will not be tolerated. Enactment of this legislation would go a long way to ensure that right of every person to be protected from fear, harassment and physical harm which may be imposed upon them by reason of their religion.

By Mr. GORTON (for himself and Mr. EVANS):

S. 2865. A bill to amend Public Law 94-423, relating to the Oroville-Tonasket Unit, Chief Joseph Dam project, to ensure that the design flaws in the system are corrected and for other purposes; to the Committee on Energy and Natural Resources.

AUTHORIZATION FOR OROVILLE-TONASKET IRRIGATION PROJECT

● Mr. GORTON. Mr. President, in 1976, Congress authorized the construction of an irrigation system between the towns of Oroville and Tonasket in Okanogan County, WA. The system was designed as a state-of-the-art replacement for a 70-year-old gravity irrigation system to provide water for 10,000 acres of orchards and cropland and to provide fisheries enhancement for the area. Unfortunately, Mr. President, this modern state-of-the-art system has turned out to be a constant state-of-disrepair system that has failed to meet the needs of the farmers who depend on it for their livelihood.

For 2 years, the growers who use the system have been plagued by a system that simply does not work properly. Rather than bringing clean usable water to the apple, cherry, and pear orchards of the Oroville-Tonasket region, the system is clogged with sand, silt, vegetation, and debris which is choking filters, blowing sprinkler heads, and generally doing a poor job of irrigating the land it was designed to serve.

For some farmers, the problems with the system are literally driving them out of business. Edna Schertenleib is one orchardist whose problems with the system are severe and aren't getting any better. During high water last spring she had to clean the filter screens on her farm by hand every half hour; otherwise the system clogged and shut down. Unfortunately, Mr. President, Edna's difficulties are multiplied across most of the irrigation project.

Mr. President, after 2 years of meetings and negotiations with Bureau of Reclamation officials to try and find solutions to the problems besetting the system, the irrigators and the irrigation district personnel are fed up. The time has come to take action to correct the problems in the system. Pursuant to this goal, today, Senator EVANS and I are introducing a bill to increase the authorization for the Oroville-Tonasket project to a level which will permit the Bureau to pay for the repairs that need to be made to the system. Earlier this year, the Bureau requested a $76-million authorization level for the project to cover delays in construction and inflation. Our bill, which is identical to H.R. 5468 introduced by Congressman SID MORRISON in the House of Representatives, would increase this authorization to $88 million. I am convinced that some or all of this increase will be necessary to properly address the fundamental design flaws in the present system.

Mr. President, the time has come for action. Yesterday, Congressman MORRISON and I met with Dale Duvall, the Commissioner of the Bureau of Reclamation, and asked him to take a personal role in correcting the ills of the system and to give assurances to the farmers and orchardists who use it that they can expect a timely resolution to their problems. Mr. Duvall has agreed to do just that. He guaranteed us that previously considered plans for 1 or 2 years of study to determine the nature of the problem have been scrapped and that immediate interim measures are forthcoming. These will be followed by a more comprehensive plan to fully correct the design for the system.

I am pleased that we finally have the attention of the Bureau of Reclamation at the highest level. I will continue to urge the Bureau to make a swift and complete resolution to the system's problems at the earliest possible date.●

By Mr. SPECTER:

S. 2866. A bill to rename the VA Medical Center at University Drive in Pittsburgh, PA, the "Commando Charles E. Kelly VA Medical Center;" to the Committee on Veterans' Affairs.

COMMANDO CHARLES E. KELLY VA MEDICAL CENTER

● Mr. SPECTER. Mr. President, I am introducing legislation today to rename the VA Medical Center at University Drive in Pittsburgh, PA, as the "Commando Charles E. Kelly VA Medical Center."

Charles E. Kelly was a World War II hero from the Pittsburgh area. Known as "Commando Kelly," he was the first enlisted man to receive the Congressional Medal of Honor in that war for singlehandedly fighting off a German platoon in Italy in 1943, while serving with the 36th Texas Division. His outstanding and exemplary courage inspired many people during World War II, especially in Pittsburgh and western Pennsylvania.

Commando Kelly was a patient at the Pittsburgh VA Medical Center and died at the age of 64 years.

Many VA medical centers are, appropriately, named after war heroes, and Commando Charles E. Kelly is most deserving of this honor.

The Department Executive Committee of the American Legion, Department of Pennsylvania, passed a resolution on September 6, 1986, supporting legislation to redesignate the VA Medical Center after Commando Kelly, and I am pleased to introduce such legislation today.

I ask unanimous consent that the full text of the bill be printed at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2866

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the VA Medical Center at University Drive in Pittsburgh, Pennsylvania, shall be designated and hereafter known as the Commando Charles E. Kelly Medical Center, in honor of the late Charles E. Kelly.

Any reference to such center in law, regulation, map, document, record, or other paper of the United States shall be held and considered to be a reference to the Charles E. Kelly VA Medical Center.●

By Mr. METZENBAUM:

S. 2867. A bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties for damage to religious property and for injury to persons in the free exercise of religious beliefs; to the Committee on the Judiciary.

CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY

● Mr. METZENBAUM. Mr. President, I am introducing today a bill which would make it a Federal crime to engage in religious intimidation. This bill would make it unlawful to use the facilities of interstate commerce to deface religious property, or obstruct by force or threat of force a person's enjoyment of the free exercise of religion.

This kind of violence is not new, but there is evidence that its incidence is on the rise. Though some States have statutes which provide remedies for this kind of violence, there is a need for a clear comprehensive Federal remedy for interferences with the free exercise of religion, a Federal constitutional right. If adopted, this legislation would not displace State efforts to address this problem. Rather it would be evidence of a national commitment to stop a form of violence dangerous to one of our most cherished freedoms.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2867

Be it enacted by the Senate and House of Representatives of the United State of America in Congress assembled,

SECTION 1. CRIMINAL PENALTIES FOR DAMAGE TO RELIGIOUS PROPERTY AND INJURY TO PERSONS IN THE FREE EXERCISE OF RELIGIOUS BELIEFS.

Chapter 13 of title 18, United State Code, is amended by adding at the end the following new section:

"§ 247. Damage to religious property; injury to persons in the free exercise of religious beliefs

"(a) Whoever, travels in, or uses a facility or instrumentality of, interstate or foreign commerce with intent to—

"(1) deface, damage, or destroy any religious real property, because of the religious character of that property; or

"(2) obstruct, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs;

shall be punished as provided in subsection (b) of this section.

"(b) The punishment for a violation of subsection (a) of this section shall be—

"(1) if death results, a fine in accordance with this title and imprisonment for any term of years or for life, or both;

"(2) if serious bodily injury results, a fine in accordance with this title and imprisonment for not more than fifteen years, or both; and

"(3) in any other case, a fine in accordance with this title and imprisonment for not more than five years, or both.

"(c) As used in this section—

"(1) the term 'religious real property' means any church, synagogue, religious cemetery, or other religious real property; and

"(2) the term 'serious bodily injury' means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.".

SEC. 2. TECHNICAL AMENDMENT.

The table of sections for chapter 13 of title 18, United States Code, is amended by adding at the end the following new item:

"247. Damage to religious property; injury to persons in the free exercise of religious beliefs.".●

By Mr. DOMENICI (for himself and Mr. BINGAMAN)

S. 2868. A bill to amend the Indian Self-Determination Act of 1974, and for other purposes; to the Select Committee on Indian Affairs:

INDIAN SELF-DETERMINATION AMENDMENTS OF 1986

● Mr. DOMENICI. Mr. President, I am most pleased to introduce a bill to improve the Indian Self-Determination and Education Assistance Act of 1974. Senator BINGAMAN and I are cosponsors of this Senate version of H.R. 4174, the Indian Self-Determination Amendments of 1986.

This legislation is supported by the All Indian Pueblo Council, the Eight Northern Indian Pueblos Council, and the Five Sandoval Indian Pueblos. They have all been disappointed with the performance of the original 1974 Self-Determination Act, Public Law 93-638. The original law mandated Governmentwide participation. To date, the main participants have been only the Bureau of Indian Affairs [BIA] and the Indian Health Service [IHS].

Public Law 93-638 called for:

An orderly transition from Federal domination of programs and services for Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

In the 10 years of "638" activity, many tribes have been awarded "638 contracts" for conducting what would have otherwise been Government-operated programs mainly in education and health.

While the Indian Pueblos and tribes would like to run many more of the Government programs operating to their benefit, there are some major obstacles to their ability to do so. First of all, the Secretary of any Federal Department may decline to allow such a contract for several reasons. Declinations occur if the Secretary finds that: First, services to Indians under the proposed contract will not be satisfactory; second, adequate protection of trust resources is not assured; or third, the proposed project or function to be contracted cannot be properly completed or maintained by the proposed contract. In addition to declination, the Federal Government may rescind a 638 contract.

There is also much consternation about the meaning of section 106(h) of Public Law 93-638. This section requires that the contract amount "shall not be less than [the amount that] the appropriate Secretary would have otherwise provided for in his direct operation of the program." [25 U.S.C. 450j(h)]. The BIA, for example, routinely retains 20 to 40 percent of program amounts for "residual functions of oversight" and other administrative activities.

The issue of contract support costs for operating a 638 contract is another vital issue in Indian self-determination. Recurring shortfalls in agreed-upon support costs have led to many administrative and legal actions to recover costs. This complicated arena of indirect costs and costs that are added because the Federal Government is no longer the provider, for example, liability insurance and depreciation, is a continuing focus of friction in the day-to-day reality of 638 contracting.

Our bill, Mr. President, clarifies the activities that are subject to the Indian self-determination concept. We also attempt to resolve many of the complicated contract support cost issues and the administrative processes for initiating and maintaining a 638 contract. Our aim is to place more trust in the Indian people and their ability to serve their own people. They should not have to face major administrative obstacles in seeking to provide needed services. The Indian people of this land should be supported with consistency and clarity in their efforts to become self-sufficient. The rules of the contracting game should not be as shifting sands.

In his testimony before the House Committee on Interior and Insular Affairs, Ross O. Swimmer, Assistant Secretary for Indian Affairs at the Department of Interior, stated his support for these needed improvements. For example, the Assistant Secretary supports the expansion of 638 activity to construction projects on trust lands. On the complicated question of indirect costs or contract support costs, Mr. Swimmer prefers the establishment of an "administrative fee." He is working with the inspector general and others to work out the details for this needed change.

I am pleased to note that Senator ANDREWS, chairman of the Senate Select Committee on Indian Affairs, has expressed his interest in solving this recurring and complicated issue. I look forward to working with his committee to find the best solutions to encouraging the Indian people of this country to improve their ability to operate and improve service programs for Indian people.

By strengthening and clarifying congressional intent, we can do a lot for helping Indian tribal administrators to focus their attention on serving their people rather than constantly doing battle with Federal bureaucrats who want to bicker over responsibilities, funding, and oversight. If we are successful, we may actually reduce the bureaucracy and enhance the position of Native Americans to direct their own lives.●

● Mr. BINGAMAN. Mr. President, I join my distinguished colleague, the senior Senator from New Mexico, Mr. DOMENICI, in introducing this bill, the Indian Self-Determination Amendments of 1986.

On August 11, 1986, the House passed a similar version, H.R. 4174. At present this measure is pending in the Senate Select Committee on Indian Affairs. Other than the addition of a technical amendment to clarify application of this legislation to certain Alaska Native tribes, this measure is substantively identical to the House bill.

At the urging of the Pueblos in New Mexico and other Indian tribes I am persuaded that Congress needs to take a second look at the Indian Self-Determination Act. Originally intended to promote economic self-sufficiency among tribes, this law has now become an impediment to tribes achieving such independence. Although it is late in the 99th Congress and the Senate select committee may be unable to hold hearings before we adjourn, my intent is to at least bring it before the Senate for discussion.

I urge my colleagues to study this bill and urge their support for strengthening the Indian Self-Determination Act to correspond with its original intent.●

By Mr. HARKIN (for himself, Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK):

S. 2869. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agricultural commodities, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SAVE THE FAMILY FARM ACT

● Mr. HARKIN. Mr. President, I have a bill that I am introducing today on behalf of myself and Mr. ZORINSKY, Mr. EXON, Mr. HART, and Mr. BURDICK.

Mr. President, we have titled our bill the Save the Family Farm Act because, Mr. President, we turn once again to continue the fight for a farm program that will save and not destroy our family farm system of agriculture.

My cosponsor on the House side, Congressman GEPHARDT, and I are introducing today a new bill—the Save the Family Farm Act—because it's become clear, 1 year after its misguided inception, that the 1985 farm bill is not working.

The present farm bill is busting the taxpayers to the tune of $35 billion this year, it's busting our farmers with more surpluses and lower prices, and it's destroying our small towns and small businesses across America.

Yet, this administration brags about how much money it is spending on farm programs. That is like Henry Ford bragging about all the production costs he put into the Edsel. Well, the 1985 farm bill is an Edsel, and no amount of fine-tuning or new paint jobs will make it any better.

We were told by this administration and its supporters in Congress that the 1985 farm bill would lower commodity prices and increase exports.

Well, they got it half right. They got commodity prices down—way down. But for the past 3 months in a row, U.S. agricultural imports have exceeded exports—the first time this has happened since 1959.

This fall, farmers across the Nation face the prospect of bumper harvests with no place to store their grain.

If we continue down this same road, we are headed for higher unpaid setasides and a repeat of this disastrous 1983 PIK Program.

The road we are on now is leading to the destruction of the family farm system of agriculture in America.

The time has come for a new direction in farm policy.

If our goal is a cost-effective farm bill that increases net farm income and reduces the deficit, the Save the Family Farm Act is the only ballgame in town.

The bill embodies two basic concepts:

First, a nationwide producer referendum in all major food and feedgrains and dairy. If a majority of producers in any given commodity approve, then a supply-management program would go into effect.

In brief, the supply-management program would be based on bushel allotments and market certificates. The acreage reduction would be progressive, so bigger farmers would set aside a greater percentage of their land than smaller farmers. However, in no case would the set-aside on any one farm exceed 35 percent.

The bill also contains a credit provision which provides for interest-free loans to be given to States for States to administer to farmers. Any farmer who had over a 40 debt-to-equity ratio or any farmer who was already undergoing bankruptcy or foreclosure would be eligible for such loans.

To conclude, I believe there are three compelling reasons that we have to have a change in our farm policy direction:

First, it is the only bill yet offered in Congress that would actually lower the deficit. Government payments would be drastically reduced. There would be no more $20 million payments to huge corporate farmers in California, or any other State.

Last year the Congressional Budget Office conducted a study of this bill that showed it would save $42 billion over 5 years. But that was based upon the anticipated costs of the farm bill that we now have before us. But with farm costs now far higher, we fully expect that this bill will save in the neighborhood of $15 billion to $20 billion per year—or approximately $60 billion over 4 years.

Second, it is the only bill yet offered in Congress that would increase net farm income. And it will do this, not by busting the taxpayers of this country, but by providing the farmers with a fair price in the marketplace. A study by the Food and Agriculture Policy Research Institute at the University of Missouri and Iowa State University showed this approach could increase farm income to $74 billion annually—almost three times the current level.

And third, this is the only bill that has widespread, grassroots support from farmers across this country. At the St. Louis Farm Congress held last week, 2,000 farmers from 38 States endorsed this approach. Forty percent of the farmers in attendance at that conference were Farm Bureau members. It has been endorsed by the National Farmers Union, the American Agriculture Movement, the National Farmers Organization, the Save the Family Farm Coalition, and a host of other farm organizations.

This farm bill works, it saves money, and it has the support of America's family farmers. The current program is broke and it's no use even trying to fine-tune it. We want to save our family farms and we need a new direction. That's why we're introducing this bill today.●

Mr. President, I ask unanimous consent that an editorial appearing in the Baltimore Sun be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Baltimore Sun, Sept. 23, 1986]

NEW DIRECTION FOR FARM POLICY

After less than a year, the farm bill is bearing bitter fruit. Huge commodity surpluses dot the heartland. Exports still are sagging. Government is squandering more than $30 billion this year on a price-support system that has become an entitlement program for the biggest and richest farm owners. Today, Sen. Tom Harkin and Rep. Richard Gephardt present an intriguing alternative.

Dubbed the "Save the Family Farm Act," the legislation would allow farmers to vote every four years on whether to continue present policies or give the agriculture secretary the power to set production limits on each major commodity. If a majority agreed, the USDA would set a production quota based on export demand, domestic consumption and average acreage yields. The bill would require larger producers to lay idle a greater percentage of their land than smaller farmers—to a maximum of 35 percent of total acreage. Under this supply-management program, federal subsidies, would be wiped out. The loan rate (which essentially sets the amount a farmer can borrow) would be substantially increased.

There are some clear advantages to a supply-management approach. First, it would break the production-only cycle that plagues the farm bill (lower prices force farmers to produce more per given unit, thus further lowering prices). Second, it would make farmers' income a reflection of market prices, not a government paycheck. Finally, by wiping out subsidies, it would save the government about $20 billion this

year alone, enough to make a huge dent in the federal deficit.

But reform bears a cost. Higher commodity prices, for example, would mean higher food prices—about 4 percent across the board. But is food too cheap now? Is paying the real cost of food more fiscally odious than continuing to enjoy low government-subsidized prices? Further, production controls are likely to have an impact on the GNP and perhaps some minimal effect on agriculture-related businesses and employment. Will that be economically painful, or will the changes be minimal, balanced out by fiscal relief from a burgeoning deficit and sagging exports?

Lawmakers must arrive at a consensus on such questions. But with the clock running out on the 99th Congress, the Harkin-Gephardt initiative almost certainly will not get sufficient debate time. More critical matters than the supply-management concept remain in the legislative forefront. The starting failure of the farm bill has shown that supply and demand must play a dominant role in influencing the production and pricing of farm products. A supply-management program moves resolutely in that direction.

Mr. ZORINSKY. Mr. President, farm program costs continue to skyrocket, while net farm income continues to decline. These trends will surely endure, and may in fact accelerate, unless we change the course of Federal farm policy.

We continue to intentionally reduce the value of one of our most critical national assets—our food production. As we do so, we deplete our Treasury and bankrupt our farmers, lenders, agribusinesses, and entire rural communities.

We continue to overproduce for illusory markets. We continue to offer our agricultural commodities for sale at prices below their costs of production. And we continue to spend vast sums of taxpayer dollars in an attempt to protect our Nation's farmers and consumers from the misguided farm policies of this administration.

In addition, the current stress the farm economy is undergoing is propelling us to the point of having to make a decision on whether to spend billions of Federal tax dollars in "bailing out" the Farm Credit System. I find it anomalous that many of the same people who make the argument that the Farm Credit System should not be permitted to compete with other lenders by loaning money below cost apparently have no such compunctions against farmers selling their produce below cost.

The current farm crisis begs for a solution that reduces Government costs. Mandatory supply management does both, and has the added attraction of permitting farmers themselves to decide whether they want such a program.

Time is running out. The longer we continue along the course of our current policy, the closer the damage comes to being irreparable. Our family-based system of agriculture, once lost, cannot be restored.

I am, therefore, pleased to be a cosponsor of the Save the Family Farm Act. The legislation contains significant provisions that deserve immediate consideration by Congress.

As in the case of most legislation, there are provisions in the bill I do not wholeheartedly endorse. I would expect changes and improvements in the legislation prior to any final passage by Congress.

Too, it may be too late to act on the legislation prior to the adjournment sine die of this Congress.

However, the introduction of the legislation places on the legislative agenda the question of adopting mandatory supply management programs and making other significant changes in the current farm programs.

In that connection, I contemplate introducing a bill that would require the Secretary of Agriculture to carry out a mandatory production control program for wheat—subject to approval in a farmer referendum.

I am determined to do all I can to restore prosperity to American agriculture. The simple fact of the matter is that we must seek a legislative alternative to "staying the course" with the 1985 farm bill.

By Mr. SPECTER (for himself and Mr. HEINZ):

S. 2870. A bill entitled the "Steamtown Historic Designation Act"; to the Committee on Energy and Natural Resources.

● Mr. SPECTER. Mr. President, I am today introducing legislation to designate the Steamtown collection in Scranton, PA, as a national historic site. I am joined by my distinguished colleague from Pennsylvania, Senator HEINZ, in introducing this bill, which is a companion to legislation introduced by Congressman JOSEPH MCDADE in the House of Represenatives.

The Steamtown collection is one of the world's largest collections of steam and railroad memorabilia. Founded by F. Nelson Blount, the collection was originally located in North Walpole, NH, and Bellows Falls, VT. After years of planning, however, the collection was gradually moved to Scranton, PA, officially arriving there on February 4, 1984. Since September 1984, Steamtown has been running its "living exhibit" excursions between Scranton and Moscow, PA. The former DL&W Yards of South Washington Avenue in Scranton are being rebuilt for museum display purposes.

The Steamtown collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. Of particular note is Locomotive No. 2317, a heavy 4-6-2 Pacific-type locomotive originally built for the Canadian Pacific Railway by Montreal Locomotive Works in 1923. Steamtown spent nearly 3 years restoring this locomotive. While most of the Steamtown collection is now in Scranton, only a few representative pieces are currently on public display. The balance are stored until they can be properly shown at the rehabilitated yards.

The establishment of the Steamtown Museum is an extraordinarily positive development both from the point of view of the museum and from the point of view of the city of Scranton. Scranton's history has long been intertwined with that of railroads, and the museum offers great potential for economic development for a city still recovering from the deterioration of the anthracite coal mining industry and the railroad industry.

Mr. President, it is entirely fitting for Steamtown to be designated a national historic site. The railroads not only served as a cornerstone for the industrialization of the United States, but also supply some of the fondest memories in our national consciousness. The romance of these trains is apparent to all who encounter them, even those who were born long after the age of steam locomotion. And it is especially appropriate that this site be located in Pennsylvania, which has long served as one of the great railroad centers of the world.

Mr. President, I would like to commend Congressman MCDADE for taking the initiative on this matter. He does an outstanding job representing his district and this worthwhile initiative is a tribute to his leadership. The intrinsic value of a project like Steamtown is obvious, and the potential it holds for revitalizing and giving a renewed sense of pride to the city of Scranton can hardly be exaggerated. This bill will provide appropriate Federal recognition to Steamtown, while authorizing $35 million for the administration of Steamtown National Historic Site. Although we are faced with a enormous pressure in completing our business in the 99th Congress, I urge my colleagues to give this bill their prompt and favorable consideration before the scheduled adjournment date.

Mr. President, I ask unanimous consent that the text of the bill be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2870

SEC. 1. DESIGNATION AS NATIONAL HISTORIC SITE.

The property known as "Steamtown", consisting of the historic roundhouse, switchyard, and associated buildings, track, and rolling stock, and located on approximately 40 acres in Scranton, Pennsylvania, is hereby designated as the Steamtown National Historic Site, and shall be administered by the Secretary of the Interior as a unit of the National Park System. The Sec-

retary of the Interior shall administer the Steamtown National Historic Site through cooperative agreements and grant agreements as appropriate, with the owner or owners of the property pursuant to which the Secretary may provide financial and technical assistance in planning, interpretation, maintenance, preservation, and appropriate public use of the site in order to further public understanding and appreciation of the development of steam locomotives in the region.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS

There is authorized to be appropriated $35,000,000 for the administration of the Steamtown National Historic Site and for assistance to the owner thereof pursuant to the agreements referred to in Sec. 1.

● Mr. HEINZ. Mr. President, I am pleased to join my colleague Senator SPECTER in introducing legislation which would make Steamtown U.S.A. an official component of the National Park System.

Steamtown U.S.A., located in Scranton, PA, is a unique museum and "living exhibit" to America's steam age. Steamtown contains one of the world's largest collection of steam and railway memorabilia. The collection includes approximately 40 steam locomotives and 100 assorted pieces of other railroad rolling stock. A planned museum complex to display this memorial to the age of steam centers around a historic roundhouse, locomotive and erecting shops, and rail yards.

The "living exhibit" excursions provide visitors with an exhilarating 13-mile train ride, powered by a steam-propelled locomotive, through spectactular countryside between Scranton and Moscow, PA. A planned expansion will take the trip up to the scenic Pocono region and the Delaware Water Gap.

The legislation which Senator SPECTER and I have introduced would allow the Park Service to develop and run this steam age museum while the nonprofit Steamtown Foundation operates the trains and works on locomotive restoration.

Even in its early stages, Steamtown has shown its popular appeal by attracting over 215,000 visitors from throughout the Nation. The State of Pennsylvania recognizes the importance of Steamtown, and is providing $1 million over the next 2 years. Private contributions are also financing Steamtown, but the backing of the Federal Government through the legislation we have introduced is essential to insure its continued success and expansion.

Congressman MCDADE has introduced a similar bill in the House of Representatives as H.R. 5555 and the entire Pennsylvania delegation has joined on H.R. 5555 as cosponsors.

I urge my colleagues to join Senator SPECTER and I as cosponsors of this bill which is designed to preserve an important part of our Nation's history for the education and enjoyment of future generations.●

By Mr. BRADLEY:

S. 2871. A bill to designate certain segments of the Maurice, the Manantico, and the Manumuskin Rivers in New Jersey as study rivers for inclusion in the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

DESIGNATION OF NEW JERSEY STUDY RIVERS

● Mr. BRADLEY. Mr. President, it is my pleasure to send the following bill to the desk on behalf of myself and my distinguished colleague from New Jersey, Senator LAUTENBERG. The purpose of this legislation is to direct the Department of the Interior to study the potential addition of the Maurice River, the Manantico Creek, and the Manumuskin River in southern New Jersey to the National Wild and Scenic River System. Companion legislation, introduced by Congressman WILLIAM HUGHES, is being considered in the House of Representatives where hearings are scheduled on September 30.

Mr. President, the National Wild and Scenic River Act, passed in 1968, offered the first Federal protection for the Nation's rapidly disappearing network of free-flowing rivers and streams. This landmark law preserves selected rivers and river corridor landscapes which possess outstanding scenic, recreational, historic, and cultural values. The Maurice, Manumuskin, and Manantico Rivers fit this description, and each of these rivers was recommended in 1977 by the commissioner of the New Jersey Department of Environmental Protection for inclusion in the national inventory of scenic rivers.

The Maurice River has its headwaters in small tributaries in Gloucester and Salem Counties. In its progress toward the Delaware Bay, the river meanders through wooded and wetland terrain. As the river nears the bay, it widens and becomes tidal. The river winds in broad loops past the communities of Laurel Lake, Port Elizabeth, Mauricetown, Dorchester, Leesburg, Shell Pike and Vivalre. The Manantico and Manumuskin Rivers also have a rich diversity, passing through fresh water wetlands, swamp forest, upland forest, and local communities.

These rivers host a variety of plant and animal life, including a number of threatened and endangered species. Additionally this river area is lauded as one of the finest for canoeing in the coastal region and is recognized for its pristine water quality.

Mr. President, those who live in southern New Jersey would like to assure that these rivers' water quality and recreational opportunities are maintained through sound planning and management. The Wild and Scenic Rivers Act would provide this protection through the development of a management plan. The proposed study has the support of all the local municipalities.

Mr. President, the Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Maurice, Manantico and Manumuskin Rivers are excellent candidates for the preservation and protection afforded by this act. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2871

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION AS STUDY RIVERS.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following:

"(92) MAURICE, NEW JERSEY.—The segment from Shell Pile to the point three miles north of Laurel Lake.

"(93) MANUMUSKIN, NEW JERSEY.—The segment from its confluence with the Maurice River to the Pennsylvania-Reading Seashore Railroad line.

"(94) MANANTICO, NEW JERSEY.—The segment from its confluence with the Maurice River to the base of the dam at Manantico Lake.".●

● Mr. LAUTENBERG. Mr. President, I am pleased to join my colleague from New Jersey, Senator BRADLEY, in introducing legislation to designate sections of three New Jersey rivers for inclusion in the National Wild and Scenic Rivers System. This bill would name certain segments of the Maurice, Manumuskin, and Manantico Rivers in New Jersey as study rivers. This is the first step in the wild and scenic designation process. Our distinguished colleague in the House of Representatives, BILL HUGHES, earlier introduced a similar bill, H.R. 5343.

The Wild and Scenic Rivers Act, enacted in 1968, expressed the national policy of balancing the need for dams and other construction at appropriate sections of rivers with the need to preserve selected rivers and sections of rivers in their free-flowing condition. It was the intent of Congress to protect such rivers and the natural resources surrounding them, for their scenic, recreational, historic, cultural, and other outstanding qualities. There are currently 68 rivers in the Wild and Scenic System.

Mr. President, Senator BRADLEY and I earlier introduced S. 2287, to direct the National Park Service to study the Great Egg Harbor River in New Jersey for possible inclusion in the Wild and Scenic System. The House of Representatives approved companion legislation also sponsored by Representative HUGHES. Designation of the Great Egg Harbor, along with specified portions of the Maurice, Manumuskin and Manantico Rivers will provide New

Jersey with its first wild and scenic rivers designated by the Congress.

The Maurice, Manumuskin, and Manantico Rivers are located in a sparsely developed region in the southern portion of New Jersey. The Manumuskin is a tributary to the Maurice River which flows into the Delaware River Bay. Together, these two rivers possess some of the most delicate species of animal and plant life in the State.

The Maurice contains many of the physical remnants of New Jersey's once prosperous oyster harvesting and processing industry. Many species of reptiles and amphibians, including the threatened and endangered tiger salamander, and corn and pine snakes, inhabit the Maurice. This type of environment is unique to New Jersey and represents an important part of the Atlantic coastal landscape.

The water quality of the Manumuskin River is of the highest in the State. The Manumuskin encompasses a diverse stretch of wetlands, swamp forests and upland forests. It is the site of an historic church which dates back to the American Revolution. One species of plant found along the Manumuskin appears in only five locations throughout the world. This fall, thousands of migrating waterfowl, rail birds, and bobolink will stop along the river.

Large portions of the Maurice, Manumuskin, and Manantico lie within the boundaries of the Pinelands National Reserve, one of our most valuable natural resources. Inclusion of these rivers within the Wild and Scenic System would enhance protection of these areas in cooperation with the Federal, State, and local efforts through the Pinelands comprehensive management plan.

Local support for the protection of these rivers is overwhelming. My constituents have been working hard to preserve and protect important portions of the Maurice, Manumuskin, and Manantico Rivers. The National Park Service strongly supports inclusion of these rivers in the Wild and Scenic Rivers System. Designation of these rivers by the Park Service as study rivers would represent the culmination of years of efforts by local individuals, the State of New Jersey, conservation groups, and the Federal Government who wish to preserve them for the enjoyment of residents and visitors alike.

Mr. President, these rivers are part of one of the few remaining unspoiled natural areas on the entire east coast. The beautiful rivers which flow through southern New Jersey should be preserved for future generations. I urge my colleagues to support this legislation, and I look forward to working with the local communities, the State of New Jersey, and the Park Service in protecting these important natural resources.●

By Mrs. KASSEBAUM:

S. 2872. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

PESTICIDE PRICE COMPETITION ACT

● Mrs. KASSEBAUM. Mr. President, the bill I am offering today eliminates the data compensation provisions of FIFRA. In addition, it provides for the use of an abbreviated application for registration of generic pesticides. Enactment of this measure would, in effect, place manufacturers of generic pesticides on equal footing with generic pharmaceutical manufacturers.

My purpose in proposing this legislation is simply to cut production costs for farmers. This measure could provide savings in the range of $200 million to $500 million annually in the pesticide bills of American farmers. These savings would be achieved by making it easier and quicker to bring generics onto the market.

Let me emphasize that this legislation is not intended to deprive manufacturers who originate pesticides from receiving an ample return on their investment. Current law recognizes the substantial research and development costs involved in pesticide production by providing a 17-year exclusive marketing right over registered pesticides. Manufacturers are eligible for research and development tax deductions and credits as well. In addition, the FIFRA reathorization bill reported by the Senate Agriculture Committee, S. 2792, extends the patent life of pesticides for up to 5 years.

I believe these provisions offer adequate incentives for innovation. Yet, the truth is that barriers to market entry do not end with the expiration of a patent when it comes to pesticides. In short, at the same time we have gone to great lengths to protect the investments of original manufacturers, we have done nothing to advance the interests of pesticide consumers who would benefit from greater generic competition.

When we granted patent term extension to pharmaceutical products in 1984, we at the same time made it easier for generic products to come onto the market. Rather than duplicating tests of a drug, a generic manufacturer now only has to prove to the Food and Drug Administration that it can produce an identical chemical compound in order to begin marketing it.

This general approach has also been endorsed by the administration. In a March 10, 1986, letter to Senator STROM THURMOND, Health and Human Services Secretary Otis Bowen strongly recommended that legislation providing for patent term extension of veterinary drugs be amended. The Secretary proposed that a provision be added to enable manufacturers to obtain premarket approval of generic drugs without having to duplicate the safety and effectiveness studies required for approval of the original drug. Mr. President, I ask unanimous consent that the full text of Secretary Bowen's letter appear in the RECORD following my remarks.

Now, we will soon be considering patent term extension for pesticides without removing road blocks to production of generic products. I would like to explain briefly how onerous those roadblocks are.

Current law requires that an enormous amount of health and safety data be submitted to the Environmental Protection Agency [EPA] in order to register a pesticide product. Without EPA registration, a pesticide may not be put on the market. A generic producer has two options for meeting this requirement.

One, the producer can generate his own data—which takes anywhere from 5 to 7 years. In so doing, the generic producer is duplicating work that has already been done.

The producer's second option is to buy the right to cite the data previously submitted to EPA by the originator of the product. The amount of the data compensation due is determined by a system of binding arbitration which was set up in the 1978 amendments to FIFRA.

The law does not contain any explicit standard for determining compensation. Thus, the only guidance we have as to the effects of the arbitration process is the single case which has been completed under it—Stauffer Chemical Co. versus PPG Industries (1983).

In that case, the arbitration award to the original manufacturer—Stauffer Chemical—amounted to 50 percent of the cost of the data plus a 10-year royalty. The royalty amount was intended to represent the value to the generic manufacturer of being able to enter the market much sooner than would otherwise be possible. In all, the value of the award is estimated to exceed $15 million—an amount five times the actual cost of producing the data.

Commenting on this case, an analyst with the Congressional Research Services notes:

This award was so large that it could effectively foreclose secondary registrants by making the cost of entering the market so uncertain that few if any firms would be willing to take the risk, and for smaller firms, making the up-front costs so high they could scarcely take the risk.

This system simply doesn't make sense. Generic drug manufacturers have never had to pay for data which has already been filed with the Food and Drug Administration. Why should pesticides be different?

Clearly, this situation works against the American farmer who is trying to cut costs and operate at maximum efficiency. The monopoly held by original pesticide producers extends long beyond the expiration of a patent, as a potential generic competitor must either spend 5 to 7 years duplicating data or debate whether it is worth the financial risk to purchase that data.

Either way, the bottom line is that farmers pay more for pesticides. Mr. President, I ask unanimous consent that an article on this subject by George Anthan of the Des Moines Register be printed in the RECORD following my remarks.

Farmers spend about $3.4 billion on pesticides every year. Competition within the industry would significantly reduce prices, as illustrated by past experience when generics have come onto the market. The price of phostoxin, for example, has dropped nearly 20 percent since a generic version became available in 1982. Treflan has seen a price drop of nearly 25 percent since a generic appeared on the market last year.

It is particularly important that we act soon to address this situation. Over the next 5 years, 21 pesticides widely used by American farmers will come off patent. These pesticides constitute about 43 percent of the entire pesticide market.

Congress, by deciding to inject a healthy dose of competition into the pesticide industry, could give the farmer a real break. And, this could be done without further drain on the U.S. Treasury.

Mr. President, I ask unanimous consent that the text of my bill appear in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2872

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pesticide Price Competition Act".

SEC. 2. ABBREVIATED APPLICATIONS FOR REGISTRATION OF PESTICIDES AND NEW USES OF PESTICIDES.

(a) IN GENERAL.—Section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)) is amended by adding at the end thereof the following new paragraph:

"(9) ABBREVIATED APPLICATIONS.—

"(A) An applicant may file with the Administrator an abbreviated application for the registration of a pesticide, or for an application for an amendment adding a new use to the registration of a pesticide, in accordance with this paragraph.

"(B) The application shall contain—

"(i) information to demonstrate that—

"(I) the pesticide is identical or substantially similar chemically to a pesticide previously registered under this Act;

"(II) the conditions of use recommended in the labeling proposed for the pesticide have been approved for the previously registered pesticide; and

"(III) the labeling proposed for the pesticide is the same as the labeling approved for the previously registered pesticide, except for differences approved by the Administrator under other provisions of this Act; and

"(ii) a certification that to the best of the knowledge of the applicant no data that has been previously submitted to the Administrator for the previously registered pesticide is entitled to exclusive use under paragraph (1)(D)(i).

"(C) Notwithstanding any other provision of law, paragraphs (1)(D) (other than clause (i)), (2)(B)(v), and (2)(D) shall not apply to an application filed under this paragraph.

"(D) Nothing in this paragraph shall be construed to supersede part II or III of title 35, United States Code.".

(b) TABLE OF CONTENTS.—Section 1(b) of such Act (7 U.S.C. prec. 121) is amended by inserting between the items relating to sections 3(c)(8) and 3(d) the following new item:

"(9) Abbreviated applications.".

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, March 10, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: There is pending before the Committee, S. 1093, a bill "To amend the patent law to restore the term of the patent in the case of certain products for the time of the regulatory review period preventing the marketing of the product claimed in the patent." We take this opportunity to inform you of our views on that bill. We understand that S. 1093 is scheduled for mark-up on March 11, 1986 before the Subcommittee on Patents, Copyrights and Trademarks.

Our views focus on S. 1093 as it would affect veterinary drugs, which are regulated by the Food and Drug Administration (FDA) under the Federal Food, Drug, and Cosmetic (FDC) Act. S. 1093 would authorize the restoration of patent time lost due to Federal premarket requirements for veterinary drugs, pesticides, and agricultural chemicals.

In summary, we support patent restoration for veterinary drugs, but urge the Committee to add an additional provision that would enable manufacturers to obtain Federal premarket approval to market generic versions of these drugs without having to duplicate the potentially costly and time-consuming safety and effectiveness studies that are required of pioneer manufacturers. Without such a provisions, there would appear to be no need for patent restoration since the current Federal requirement for duplicative testing would continue to serve as an effective economic barrier to competition even after the expiration of patents that would be restored by this legislation.

The Department of Health and Human Services traditionally has supported patent restoration for the products that require the premarket approval of FDA. These products often entail high development costs, the risk of failure and small potential markets. In addition, innovators typically lose years of patent exclusivity because of testing requirements and regulatory review. We are mindful of the paradox that the careful and time-consuming scientific review needed to confirm safety and effectiveness may be reducing initiatives to develop new veterinary drugs. Streamlining the regulatory process will help. However, the FDA premarket approval system must continue to be thorough enough to assure safety and efficacy even if that means living with a process that takes longer than we would ideally prefer. We want to encourage innovation, but not at the expense of safety. Consequently, we support patent extension for veterinary drugs as a means of encouraging innovative research.

Patent restoration would have little meaning, however, if Federal regulatory barriers had the effect of preventing the marketing of virtually identical generic products after patents expire. Such a situation existed for human drugs until 1984, when the Congress enacted legislation that both extended patents associated with human drugs and removed regulatory barriers that effectively prevented the development of many generic human drugs. The situation still exists, however, for veterinary drugs.

Consequently, in addition to patent extension, we strongly support the enactment of an explicit statutory authority that would allow a manufacturer to market a generic version of a veterinary drug without having to duplicate the time-consuming and costly studies that are necessary to demonstrate that the original version of that drug is safe and effective. The generic manufacturer only would have to demonstrate in an "abbreviated" application for marketing approval to FDA that it is capable of manufacturing an equivalent product.

FDA presently allows abbreviated applications for generic versions of veterinary drugs that were approved before 1962, the year in which Congress amended the FDC Act to require that both human and veterinary drugs be shown to be effective as well as safe. A similar procedure has not been established for post-1962 veterinary drugs. As a consequence, the duplicative testing for safety and effectiveness that generic manufactuers must conduct for post-1962 drugs constitutes an effective economic barrier to their development. In this respect, the Federal drug approval process unwittingly serves as a quasi-patent whose term never expires.

We have concluded, therefore, that both patent restoration and an abbreviated approval procedure ought to be included in the same legislation so that they may be considered and, hopefully, enacted together. We continue to believe that it is good public policy to link the two concepts in order to foster research for new products and at the same time encourage competition and lower prices. In our view, it would be unfair to consumers as well as to the industry as a whole if one were enacted but not the other or if a substantial time lag occurred between the enactment of both. We would be pleased to work with the Committee to add an abbreviated application provision to S. 1093.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

OTIS BOWEN, M.D.,
Secretary.

[From the Des Moines Register, Sept. 14, 1986]

FARMERS' PURSE STRINGS MAY TIE UP CHEMICAL LEGISLATION

(By George Anthan)

The already shaky agreement over legislation to re-authorize the Federal Insecticide, Fungicide and Rodenticide Act could unravel because of an important sticking point involving farmers' pocketbooks.

The lengthy and complex debate in Congress over FIFRA, under which farm and garden chemicals are regulated, has involved representatives of the chemical industry and environmentalists, but farmers have a huge financial stake in the situation.

Negotiations have taken years, but a series of compromises this year involving the industry and environmental groups has cleared the way for both houses of Congress to take up the bill before they adjourn this fall.

The House and Senate Agriculture committees have approved versions of the new bill under which FIFRA would be extended for five years. The new law would require that pesticides must be "registered" by the Environmental Protection Agency and that some 600 pesticides in use when the original law was passed in 1971 must be tested for their health effects. The "re-registration" of these pesticides would be financed through fees paid by the manufacturers.

The controversy is over "data compensation," splitting the mostly big companies whose research brings pesticides into the market and the mostly smaller companies and cooperatives who later want to enter the market and produce the same pesticides as generic products at a lower cost to farmers.

Farmland Industries Inc., a farm cooperative based in Kansas City, has estimated that over the next five years, patents on some 45 percent of pesticides now in use will expire and that if these products can be produced by generic manufacturers, the potential saving to farmers would range from $420 million to $500 million a year.

Tim Galvin, an aide to Congressman Berkley Bedell, whose subcommittee developed the House version of FIFRA, says the issue of how to compensate the big pesticide "innovators" is "very divisive, almost intractable."

The larger chemical companies pay for the research necessary to bring new pesticides into the market and to get them registered by the EPA. In return, they get a 17-year exclusive right to sell the products. Once the patent expires, other firms, in most cases smaller, can move in and produce the pesticides under "generic" labels.

But, under current law, companies seeking to enter the market with a pesticide on which the patent has expired have been forced to compensate the innovators more then five times their cost of generating the data filed with EPA.

Farmland Industries officials told Congress recently that "when a human drug comes off patent, for example, a generic producer has only to prove to the Food and Drug Administration that it is capable of producing an identical chemical compound and is then authorized to begin marketing. . . ."

But FIFRA provides that the question of how much a pioneering firm is to be compensated for the scientific data it generated to gain approval for the pesticide will be determined through binding arbitration. In a case involving Stauffer Chemical Co., the original developer of a product, and PPG Industries Inc., which wanted to enter the market, arbitrators gave Stauffer an award valued at almost $16 million, 90 times what PPG had considered reasonable.

The Congressional Research Service notes in a report that "this award was so large that it could effectively foreclose secondary registrants by making the cost of entering a market so uncertain that few firms would be willing to take the risk. . . ."

The Senate version of the FIFRA bill greatly pleases the large chemical companies because it allows patents on new pesticide products to be extended for up to five years, depending on how long the product was undergoing regulatory review by EPA. The Senate bill also gives smaller companies the right to begin health tests on such a pesticide up to two years before the patent expires.

The House bill includes some provisions for non-binding arbitration. But Farmland emphasizes that any new law that's passed should include a ceiling on the amount of compensation that could be paid to a company which developed a pesticide.

Farmland cites data showing dramatic drops in the prices of some pesticides that were produced under generic labels. The data show that Phostoxin, a product that has been produced generically since 1982, has dropped in price by almost 20 percent. Treflan has had generic competition since last year, Farmland stated, and has experienced a price cut of almost 25 percent.

In contrast, the cooperative contends, several leading pesticides that have no generic competition have had significant price increases in recent years.●

By Mr. KENNEDY:

S. 2873. A bill to require the Director of the National Institute of Child Health and Human Development to establish a grant program to fund research, training, and patient services in pediatric pulmonary medicine; to the Committee on Labor and Human Resources.

PEDIATRIC PULMONARY RESEARCH ACT

● Mr. KENNEDY. Mr. President, today I am introducing legislation which will bring a significant benefit to infants and children with diseases of the lungs. It will place the existing pediatric pulmonary centers program within the National Institute for Child Health and Development and authorize funding for them at $12 million.

Despite tremendous progress in the diagnosis and treatment of childhood lung disease in the last two decades, it remains the leading cause of death in children below 1 year of age and an important cause of morbidity and mortality in children of all ages. In 1984 respiratory diseases were the leading cause of death among 43,364 children who died in the first year of life. Respiratory illnesses and their complications among children were the leading cause for missed school days, doctor visits, prescribed medication, and hospitalizations. Respiratory diseases of children annually cause 319 million days of restricted activity, and 165 million days of bed disability and more than 50 percent of school absenteeism.

There is evidence that early injuries to the lung can be magnified in later years and that childhood respiratory diseases may be predisposed to chronic adult lung disease. Strategies must be developed to identify those diseases early. Because of the potential of long-term sequelae, modes of prophylaxis must be developed to reduce their incidence. Ways must be found to reduce their later consequences.

Mr. President, I would like to give some specific examples. Hyaline membrane disease is the principal cause of infant mortality. Survival following this dread disease has increased markedly. However the long term natural history of this disease must be more clearly established and strategies must be developed through basic and clinical research to prevent, minimize and treat long term sequelae.

Asthma affects 2.4 million children under the age of 17 years. There have been major advances in our understanding of this complex disease. New strategies are needed to ensure patient and parent compliance with treatment and to provide specific interventions that can prevent many of these hospitalizations.

Cystic fibrosis [CF] is one of the most common inherited diseases in caucasians and, in the United States, occurs with a frequency of 1 in 2,000 live births. The search for a metabolic defect or marker that might be used for early diagnosis or to identify the genetic carrier continues to elude us. Although the treatment of CF is improving, many unanswered questions remain regarding the long-term care of children with this disease.

There are 3.5 million episodes of pneumonia or bronchiolitis in childhood. Many of these are of viral origin. The relationship between these episodes and the development of chronic lung disease in later life is clear. We need to define the epidemiology of these diseases, the host virus interaction, and the factors influencing development of chronic lung disease and use this knowledge to devise protective and therapeutic strategies.

Most people have heard of sudden infant death syndrome [SIDS]. Most probably do not know that sleep associated airway problems in children not only include SIDS but other conditions as well. Conditions called the obstructive sleep apnea syndrome, nocturnal asthma, spasmodic croup, and others. Recognition of these problems is difficult and sophisticated sleep physiology laboratories are presently required. Parents who have lost one child to SIDS desire reassurance that this will not happen again. Study of all of these disorders may supply some answers.

Congress in 1968 recognized the staggering impact of pediatric lung diseases, and established the Pediatric

Pulmonary Centers Program. The goal of the centers was to increase the supply of trained pediatric lung specialists and to provide a regionalized network of care facilities that could provide a full spectrum of specialized services for children with the most serious lung diseases.

Unfortunately, the program has suffered because over the years it has received insufficient attention and funding. The administration of the project has been moved repeatedly and its source of funding has been insecure. Initially, 10 centers were funded by the Regional Medical Program Services. In 1973, administration went to the Office of Maternal and Child Health within the Bureau of Community Health Services. Since 1982 the centers have been funded from a fixed percentage of the Maternal and Child Health Services block grant. In fiscal year 1985 there are only eight centers surviving, with a total budget of $2 million. This commitment is far below that which is needed for the centers to adequately address the many problems of childhood lung disease. This bill will place the centers under the responsibility of the National Institutes of Health and provide the additional resources that are necessary to rebuild and expand the program.

This bill would create a network of comprehensive centers, specializing in the alleviation of children's lung disease and would attract top professionals to bridge the gap between research and services. This bill would allow for a better definition of the natural history of childhood respiratory diseases. It will contribute to the application of new but yet to be proven therapeutic nodalities. It will stimulate restructuring of the health care delivery system to reduce hospitalization and increase chances of long-term remissions. In addition, I hope that this bill will become a focus of public discussion about the need to improve pediatric pulmonary research and care.

The centers can be instrumental in the development of strategies for reducing the morbidity and mortality of childhood respiratory disease while safely and reasonably reducing health care costs. The resources are available to meet the challenge; all that is required is a renewed national commitment to fight lung disease in children and their long-term effects in adults. I urge my colleagues to support this bill.

I ask that by unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2873

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pediatric Pulmonary Research Act of 1986".

FINDINGS

SEC. 2. Congress finds that:

(1) Respiratory diseases remain a leading cause of death and a significant cause of morbidity in children of all ages.

(2) There is an increased need for pediatric pulmonary research and improvements in pediatric pulmonary care as a result of the improving survival rate of prematurely-born children.

(3) There is growing evidence that premature birth, childhood respiratory infections, and exposure to pollutants in the environment as a child may contribute to the development of lung disease as an adult.

(4) Congress has set a goal of creating a number of pediatric pulmonary centers to provide a network of facilities to treat children with serious lung disease and that goal has not been realized.

(5) There is still a need to train an adequate number of personnel in pediatric pulmonary medicine.

(6) It is an appropriate role for the Federal Government to support research centers in areas such as cancer, heart disease, and pulmonary disease in order to bridge the gap between research and service and to provide opportunities for interdisciplinary care.

(7) Because of the need to increase Federal attention to pediatric pulmonary research, training, and services, it is necessary to provide clear legislative authority for a separate grant program in pediatric pulmonary medicine.

GRANT PROGRAM

SEC. 3. (a) Subpart 7 of part C of title IV of the Public Health Service Act is amended by adding at the end thereof the following new section:

"PEDIATRIC PULMONARY MEDICINE

"SEC. 452. (a) The Director of the Institute shall establish a grant program in pediatric pulmonary medicine.

"(b) Grants under the program established under subsection (a) may be made to—

"(1) public or nonprofit universities;

"(2) schools of medicine;

"(3) research institutions; or

"(4) other public or nonprofit agencies providing pediatric pulmonary services.

"(c)(1) Grants under the program established under subsection (a) may be used to fund basic and clinical research, interdisciplinary clinical training, and model patient services and treatment, in pediatric pulmonary medicine.

"(2) Grants under the program established under subsection (a) may not be used for—

"(A) cash payments to intended recipients of health services;

"(B) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

"(C) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

"(D) providing funds for research or training to any entity other than a public or nonprofit private entity.

"(d)(1) Applications for grants under the program established under subsection (a) shall be submitted to the Director of the Institute and shall contain such information as the Director determines to be necessary.

"(2) The Director of the Institute shall establish criteria for the selection of grant recipients from among eligible applicants. Such criteria shall provide for the selection of at least 4 grant recipients each year and of recipients which are dispersed geographically.".

(b) Section 408(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(3) To carry out section 452, there are authorized to be appropriated $12,000,000 for each of the fiscal years 1987, 1988, and 1989.".●

By Mr. MATSUNAGA (for himself, Mr. GLENN, Mr. BROYHILL, Mr. BURDICK, Mr. GORE, Mr. HEFLIN, Mr. INOUYE, Mr. JOHNSTON, Mr. MCCONNELL, and Mr. WILSON):

S. 2875. A bill to amend the Federal Food, Drug, and Cosmetic Act to ban the reimportation of drugs produced in the United States, to place restrictions on drug samples, to ban certain resales of drugs purchased by hospitals and other health care facilities, and for other purposes; to the Committee on Finance.

PRESCRIPTION DRUG MARKETING ACT

Mr. MATSUNAGA. Mr. President, with Senators GLENN, BROYHILL, BURDICK, GORE, HEFLIN, INOUYE, JOHNSTON, MCCONNELL and WILSON as original cosponsors, I am introducing today the "Prescription Drug Marketing Act of 1986."

Our bill would protect the American consumer by establishing much-needed stricter control over the distribution of prescription drugs manufactured in the United States. Studies and congressional hearings over a period of several years have revealed that the American consumer, purchasing a prescription drug ordered by his or her doctor, can no longer do so in the full confidence that the drug will be safe and effective.

The problem is not one of inadequate safeguards in the pharmaceutical manufacturing process. Our system of testing, manufacturing, and introducing new drugs into the marketplace is the safest in the world, albeit very slow at times.

But what happens to a prescription drug after it is tested, approved, manufactured, and sold? Too often it enters a "gray market" known as the "diversion market" where it may be counterfeited, improperly stored, improperly relabeled or repackaged, or improperly shipped. Diverted drugs often reenter the normal distribution system and are then resold to the unsuspecting consumer by an equally unsuspecting retailer. Such drugs, with a fraudulent expiration date, can be sold after their potency has lapsed.

Congressional and public attention was focused on this issue in 1984, when the G.D. Searle Co. discovered that its Ovulen 21 birth control pill had been counterfeited. Approximately 2 million of the counterfeit pills had been imported and distributed in the

United States before the fraud was discovered, with an ease that startled investigators. Further investigation revealed that 36 percent of American pharmaceutical manufacturers had experienced problems with counterfeit drugs.

How do prescription drugs get into the "diversion market"? In some cases, a bogus charitable organization is established which buys drugs and medical supplies from a manufacturer for export and use overseas. Upon arrival in the country for which it is destined, the shipment of drugs never leaves the docks but is reshipped back to the United States, where it is resold at a profit.

Nonprofit hospitals and charitable organizations often buy pharmaceuticals from the manufacturer at a discount. If excess supplies are purchased, the excess may be resold and then resold again to be purchased unwittingly at an attractive price by a reputable retailer, who then passes on the savings to his customers. Salesmen's samples may be sold rather than given to physicians, or in some cases, a physician may sell samples he or she receives. Sometimes, shipments of drugs are simply stolen and then resold. Under existing law, it is practically impossible to trace the source of drugs not purchased directly from a manufacturer.

If counterfeits could be kept off the market, and if diverted drugs were always properly stored, labeled and shipped, the consumer might benefit from resales of diverted drugs at lower prices. Unfortunately, that is not the case. Our bill, which is identical to a House measure now awaiting markup in the House Committee on Energy and Commerce, would close some of the loopholes in existing law and make it more difficult for diverted drugs to enter the normal distribution chain. This legislation would do the following:

First, prohibit the reimportation of American drugs sold abroad, except in a bona fide emergency;

Second, prohibit the selling or trading of drug samples, and the resale of drugs purchased by health care institutions and charities; and

Third, require wholesalers to disclose the sources of drugs they purchase.

Mr. President, time is growing very short in this session of Congress, but I hope that the introduction of the "Prescription Drug Marketing Act" will help focus attention on what can only be described as an approaching scandal. I hope that the bill will receive favorable consideration, if not this year, then in the new Congress.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2875

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND REFERENCE.

(a) SHORT TITLE.—This Act may be cited as the "Prescription Drug Marketing Act of 1986".

(b) REFERENCE.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Food, Drug, and Cosmetic Act.

SEC. 2. FINDINGS.

The Congress finds that:

(1) American consumers cannot purchase prescription drugs with the certainty that the products are safe and effective.

(2) The integrity of the distribution system for prescription drugs is insufficient to prevent the introduction and eventual retail sale of substandard, ineffective, or even counterfeit drugs.

(3) The existence and operation of a wholesale submarket, commonly known as the "diversion market", prevents effective control over or even routine knowledge of the true sources of merchandise in a significant number of cases.

(4) Increasing amounts of drugs are being reimported to the United States as American goods returned. These imports are a health and safety risk to American consumers because they may have become subpotent or adulterated during foreign handling and shipping.

(5) The ready market for prescription drug imports has been the catalyst for a continuing series of frauds against American manufacturers and has provided the cover for the importation of foreign counterfeit drugs.

(6) The existing system of providing samples of drugs to physicians through manufacturer's sales representatives has been abused for decades and has resulted in the sale to consumers of misbranded, expired, and adulterated pharmaceuticals.

(7) The bulk resale of below wholesale priced prescription drugs by health care institutions, for ultimate sale at retail, helps fuel the diversion market and is an unfair form of competition to wholesalers and retailers that must pay otherwise prevailing market prices,

(8) The effect of these several practices and conditions is to create an unacceptable risk that counterfeit, adulterated, misbranded, subpotent, or expired drugs will be sold to American consumers.

SEC. 3. REIMPORTATION.

Section 801 (21 U.S.C. 381) is amended by redesignating subsection (d) as subsection (e) and on inserting after subsection (c) the following:

"(d)(1) Except as provided in paragraph (2), no drug subject to section 503(b) which is manufactured in a State and exported may be imported into the United States unless the drug is imported by the person who manufactured the drug.

"(2) The Secretary may authorize the importation of a drug the importation of which is prohibited by paragraph (1) if the drug is required for emergency medical care.".

SEC. 4. SALES RESTRICTIONS.

Section 503 (21 U.S.C. 353) is amended by adding at the end the following:

"(c)(1) No person may willfully sell or trade or offer to sell or trade any sample of a drug subject to subsection (b). For purposes of this paragraph and subsection (d), the term 'sample' means a drug which is not intended to be sold and is intended to promote the sale of the drug.

"(2) No person may—

"(A) sell, purchase, or trade, or

"(B) offer to sell, purchase, or trade,

in bulk any drug subject to subsection (b) which is purchased by a public or private hospital or other health care facility or any other establishment exempt from registration as a pharmacy licensed under State law for the use of the hospital, facility, or establishment, except that a hospital or other health care facility which is a member of a group purchasing organization may purchase or otherwise secure such a drug for its own use from other hospitals or facilities which are members of such organization.

"(3) No person may willfully sell or trade or offer to sell or trade any drug which is subject to subsection (b) and which was donated or supplied at a reduced price to a charitable organization described in section 501(c)(3) of the Internal Revenue Code or 1954, except that such an organization may sell or trade any such drug to an affiliate of the organization.".

SEC. 5. DISTRIBUTION OF SAMPLES.

Section 503 (as amended by section 4 of this Act) is amended by adding at the end the following:

"(d)(1) Except as provided in paragraph (2), no sales representatives, employee, or agent of a drug manufacturer may distribute any sample of a drug subject to subsection (b) which is manufactured by such manufacturer. This subsection does not prohibit the distribution of a drug in connection with its investigational use under regulations promulgated under section 505(i).

"(2) The manufacturer of a drug subject to subsection (b) may, in accordance with this paragraph, distribute samples of such drug to practitioners licensed to prescribe such drugs. Such distribution of samples shall be made by mail or common carrier and shall be made in response to a written request for samples made on a form approved by the Secretary. Practitioners receiving samples distributed under this paragraph shall provide the manufacturer making the distribution a receipt for the samples received. Each drug manufacturer which makes distributions under this paragraph shall maintain the receipts received for samples distributed and maintain a record of distributions which identifies the drugs distributed and the practitioners receiving the drug. Receipts and records required to be maintained by a drug manufacturer shall be made available to Federal and State officials engaged in the regulation of drugs and in the enforcement of laws applicable to drugs.

SEC. 6. WHOLESALE DISTRIBUTORS.

Section 503 (as amended by section 5 of this Act) is amended by adding at the end the following:

"(e)(1) Each person who is engaged in the wholesale distribution of drugs subject to subsection (b) shall provide to each purchaser of such drugs a statement identifying—

"(A) the manufacturer of the drug, and

"(B) each sale of the drug (including the date of the sale) before the sale to such purchaser.

"(2)(A) No person may sell at wholesale and in interstate commerce drugs subject to subsection (b) in a State which does not require such person to be licensed in accordance with standards prescribed under subparagraph (B).

"(B) The Secretary shall issue regulations establishing minimum standards, terms, and conditions for the licensing of persons to make sales at wholesale and in interstate commerce of drugs subject to subsection (b). Such standards shall prescribe requirements for the storage and handling of such drugs and for the establishment and maintenance of records of the sales of such drugs.".

SEC. 7. PENALTIES.

(a) PROHIBITED ACTS.—Section 301 (21 U.S.C. 331) is amended by adding at the end the following:

"(t) The importation of a drug in violation of section 801(d)(1), the sale, purchase, or trade of a drug in violation of section 503(c), the distribution of a drug sample in violation of section 503(d), and the failure to comply with the requirements of section 503(e).".

(b) PENALTIES.—Section 303 (21 U.S.C. 333) is amended—

(1) by inserting "(1)" after "(a)",

(2) by redesignating subsection (b) as paragraph (2) and by striking out "subsection (a) of this section" in such subsection and inserting in lieu thereof "paragraph (1)", and

"(3) by inserting after subsection (a) the following:

"(b) Notwithstanding subsection (a), any person who violates section 301(t) because of an importation of a drug in violation of section 801(d)(1) or because of a sale, purchase, or trade of a drug in violation of section 503(c) shall be imprisoned for 10 years and fined not more than $100,000.".

SEC. 8. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect upon the expiration of 90 days after the date of the enactment of this Act.

(b) WHOLESALE LICENSES.—The Secretary of Health and Human Services shall promulgate the regulations required by section 503(e)(2)(B) of the Federal Food, Drug, and Cosmetic Act (as added by section 5 of this Act) not later than 180 days after the date of the enactment of this Act. Section 503(e)(2)(A) of such Act shall take effect upon the expiration of 2 years after the date such regulations are promulgated and take effect.

Mr. GLENN. Mr. President, I rise today to join Senators MATSUNAGA, BURDICK, JOHNSTON, GORE, HEFLIN, INOUYE, WILSON, BROYHILL, and MCCONNELL to introduce the Prescription Drug Marketing Act of 1986. In introducing this legislation, we are attempting to address the problems surrounding the widespread practice of diverting prescription drugs, which is employed by an unacceptable number of pharmacists, drug store owners, wholesalers, and salespersons.

Currently, pharmaceutical manufacturers are permitted to donate or sell at reduced prices prescription drugs to charitable organizations, nonprofit hospitals, physicians, and foreign countries. However, once given or sold, the recipients of these drugs may not resell them for profit. Unfortunately, congressional hearings have revealed that for many of these recipients the financial temptation has been too great, and the risk too small, to resist reselling these drugs. "Drug diversion" is the term used to describe this practice.

A direct consequence of drug diversion is that, while the integrity of many of these drugs may be maintained, some of these pharmaceuticals are exposed to unacceptable shipping and handling procedures which render the drugs impotent and/or potentially dangerous. Frequently the drugs are resold and reshipped so many times that they have surpassed the expiration date provided by the manufacturer by the time patients use them. Unfortunately, a number of retail drug outlets have given in to the competitive pressures brought on by drug diversion and stock diverted drugs on their store shelves.

As the senior Democratic member of the Senate Special Committee on Aging, I am particularly concerned about the problem of drug diversion as it relates to our elderly population. Individuals over the age of 65 represent 12 percent of our population, yet they consume about 30 percent of all prescription drugs. Because many older Americans are taking multiple medications, it is often difficult to tell whether one specific medication is having its intended effect. Due to this situation, the elderly must place a particularly strong trust in their pharmacists and the drug manufacturers to ensure that they receive the high-quality drugs prescribed by their physicians. In some cases, the frail elderly or their caregivers themselves fall victim to ageist stereotypes and place the entire blame for their deteriorating or stagnant conditions on the fact that they are old. Many of these people do not even consider the possibility that their medications might be at fault.

The Food and Drug Administration [FDA], in its opposition to the bill we are introducing today, has accurately stated that we do not have an abundance of hard data that links public health problems to drug diversion. On a national level, we certainly do need more definitive information. However, in my home State of Ohio, we now know that a number of quality control and health problems do exist. While I would hope that our Ohio State Board of Pharmacy—one of the most active and productive State oversight agencies investigating the drug diversion problem in the Nation—has located, charged and punished every individual who has participated in the drug diversion scam, the magnitude of the problem precludes that as a realistic possibility.

The House Energy and Commerce Subcommittee on Investigations conducted a 2-year investigation which examined the problems associated with the large underground drug diversion market. At one of the subcommittee's hearings, the executive director of the Ohio State Pharmacy Board, Mr. Franklin Z. Wickham, testified that during the last year the Ohio Board of Pharmacy has charged 104 pharmacists, drugstores, and wholesalers with buying and selling illegally-diverted drugs. The diversion practices of one Southwestern Ohio wholesaler were so blatant that the board fined him $2 million and revoked his license to sell pharmaceuticals. Mr. Wickham recently informed my office that, in one case, the board discovered that high school students were being hired to relabel diverted drugs, and then substituted diabetic medicine for heart medicine. The unfortunate recipient of this medicine was a heart patient who suffered initially unexplainable reactions to this incorrectly marked drug.

In addition to the Ohio-specific problems, during a recent 6-month period, the House investigation found that more than $10 million worth of U.S. pharmaceuticals, some illegally exported and potentially dangerous, made their way around the world and back into the United States. One company alone in California obtained drugs, worth approximately, $2.5 million from 40 hospitals and then resold them in the drug diversion market. Needless to say, both the hospitals and the company were the benefactors of substantial and illegal profits.

As a result of the subcommittee investigation, Congressman Dingell introduced legislation in the House of Representatives that is identical to the bill we are introducing today in the Senate. Our bills would, among other things, first, prohibit the reimportation of American drugs sold abroad, second, prohibit the selling or trading of drug samples and the resale of pharmaceuticals by health care institutions or charities, and third, require wholesalers to disclose the sources of drugs they purchase.

For laudable and understandable reasons, the National Association of Retail Druggists [NARD] strongly supports the Prescription Drug Marketing Act of 1986. First, they want consumers to be able to rest assured that they are receiving high quality medicines from their local retail druggist. Second, they want to stay in business; they are finding that it is virtually impossible to compete with the drug diversion market.

Other interested groups include consumers and their advocates, drug manufacturers, the FDA, the Congress, and State and local governments. Although some provisions in this bill are troublesome to some of these groups, it is my hope that we can work out a package which is acceptable to everyone concerned. I am more than willing to work toward this goal as long as we

end up with a solution which protects one of our most vulnerable groups of citizens—the consumers of prescription drugs.

While it is true that we do not yet know of thousands of health problems that can be directly linked to drug diversion, we do know that the potential for abuse is as unlimited as the creativity of the criminal mind. Until we limit this potential, sure as night follows day, we will undoubtedly witness problems of tragic proportions in the future. In my book, an ounce of prevention has always been worth a pound of cure.

Mr. President, I urge all of my colleagues to join with us in supporting this important legislation.

ADDITIONAL COSPONSORS

S. 430

At the request of Mr. HEINZ, the name of the Senator from New York [Mr. D'AMATO] was withdrawn as a cosponsor of S. 430, a bill to amend and clarify the Foreign Corrupt Practices Act of 1977.

S. 522

At the request of Mr. HATCH, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 522, a bill to amend the Civil Rights Act of 1964 to protect the rights of the unborn.

S. 812

At the request of Mr. HEINZ, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of S. 812, a bill to amend the Export Administration Act of 1979 to authorize controls on the export of capital from the United States.

S. 945

At the request of Mr. THURMOND, the names of the Senator from Georgia [Mr. NUNN] and the Senator from Montana [Mr. MELCHER] were added as cosponsors of S. 945, a bill to recognize the organization known as the National Association of State Directors of Veterans' Affairs, Inc.

S. 1026

At the request of Mr. PRESSLER, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 1054

At the request of Mr. HEINZ, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of S. 1054, a bill to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such act, and for other purposes.

S. 1817

At the request of Mr. TRIBLE, the name of the Senator from Wyoming [Mr. WALLOP] was added as a cosponsor of S. 1817, a bill to suspend temporarily most-favored-nation treatment to Romania.

S. 2030

At the request of Mr. PRYOR, the name of the Senator from Arkansas [Mr. BUMPERS] was added as a cosponsor of S. 2030, a bill to establish an alternative procedure for the review of bid protests under the Competition in Contracting Act, and for other purposes.

S. 2181

At the request of Mr. D'AMATO, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of S. 2181, a bill entitled the "Construction Industry Labor Law Amendments of 1986."

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Pennsylvania [Mr. SPECTER], the Senator from North Carolina [Mr. BROYHILL], and the Senator from Colorado [Mr. HART] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2479

At the request of Mr. TRIBLE, the name of the Senator from Indiana [Mr. QUAYLE] was added as a cosponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2802

At the request of Mr. TRIBLE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2802, a bill to prohibit foreign assistance to countries which fail to take steps to prevent and punish the laundering of drug-related profits in their territory, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

SENATE JOINT RESOLUTION 339

At the request of Mr. HATCH, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of Senate Joint Resolution 339, a joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week."

SENATE JOINT RESOLUTION 348

At the request of Mr. GLENN, the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 388

At the request of Mr. LEVIN, the names of the Senator from Indiana [Mr. LUGAR], the Senator from Arkansas [Mr. PRYOR], the Senator from Wisconsin [Mr. KASTEN], the Senator from Ohio [Mr. GLENN], the Senator from Michigan [Mr. RIEGLE], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Illinois [Mr. DIXON], the Senator from Nebraska [Mr. EXON], the Senator from Arkansas [Mr. BUMPERS], the Senator from Connecticut [Mr. DODD], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Massachusetts [Mr. KERRY], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from New York [Mr. MOYNIHAN], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 388, a joint resolution designating the week beginning January 4, 1987, as "National Bowling Week."

SENATE JOINT RESOLUTION 396

At the request of Mr. HATCH, the names of the Senator from Alabama [Mr. HEFLIN], and the Senator from Mississippi [Mr. COCHRAN] were added as cosponsors of Senate Joint Resolution 396, a joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week."

SENATE JOINT RESOLUTION 401

At the request of Mr. GORE, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 401, a joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week."

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Illinois [Mr. SIMON], the Senator from South Dakota [Mr. ABDNOR], and the Senator from South Dakota [Mr. PRESSLER] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland."

SENATE JOINT RESOLUTION 404

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month."

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. STEVENS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of Senate Concurrent Resolution 145, a concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 155

At the request of Mr. SIMON, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of Senate Concurrent Resolution 155, a concurrent resolution expressing the support of the Congress for a transition to democracy in Paraguay.

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

SENATE RESOLUTION 492

At the request of Mr. PRESSLER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of Senate Resolution 492, a resolution to express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend.

AMENDMENT NO. 2405

At the request of Mr. RIEGLE, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of amendment No. 2405 intended to be proposed to S. 2638, a bill to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes.

AMENDMENT NO. 2866

At the request of Mr. PRESSLER, the name of the Senator from Oklahoma [Mr. BOREN] was added as a cosponsor of amendment No. 2866.

SENATE CONCURRENT RESOLUTION 164—RELATING TO SOVIET INTERFERENCE WITH POSTAL COMMUNICATIONS BETWEEN THE UNITED STATES AND THE SOVIET UNION

Mr. D'AMATO (for himself and Mr. BRADLEY) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 164

Whereas normal postal relations between the residents of the United States and the Soviet Union serve an important and useful purpose toward mutual understanding between both nations, thereby furthering the cause of peace in the world;

Whereas the integrity of the mail service between the United States and the Soviet Union is being called into question by mailers in the United States who assert that postal items are systematically not being delivered to various addresses and addressees in the Soviet Union;

Whereas the nondelivery of mail which is deliverable as addressed and which does not contain prohibited articles is a violation by the Soviet Union of internationally recognized human rights guaranteed to all persons by Article 12 of the Universal Declaration of Human Rights, and is also a violation by the Soviet Union of the provisions of the Helsinki Final Act calling for the freer flow of information between signatory states;

Whereas such nondelivery also violates the Acts of the Universal Postal Union;

Whereas the Congress of the United States has on several occasions addressed this issue and has collected voluminous evidence of Soviet postal malfeasance, and Members of Congress continue to receive complaints of such malfeasance to the present time;

Whereas none of the letters sent in a special mailing to Dr. Andrei Sakharov by our colleagues Senators Boren, Bradley, Cohen, D'Amato, and Denton, and Representatives Biaggi, Courter, Frank, Gilman Lagomarsino, and Lowery were delivered by Soviet postal employees;

Whereas postal service serves as a lifetime for individuals living within Soviet Bloc nations; and

Whereas the Universal Postal Union Congress in Hamburg, Germany, adopted 5 resolutions in July 1984 in response to Soviet postal malfeasance: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress—

(1) that the President—

(A) through the Secretary of State, should express to the Government of the Soviet Union the disapproval of the American people regarding innumerable instances of Soviet violations of the above-mentioned international agreements;

(B) should raise the issue of Soviet noncompliance with the above-mentioned agreements at the upcoming summit meeting; and

(C) should, through the Secretary of State, raise the issue of Soviet violation of the Helsinki Final Act at the follow-up meeting of the Conference on Security and Cooperation in Europe scheduled to convene in Vienna in November 1986; and

(2) that the United States Postal Service—

(A) should increase its efforts in combatting Soviet postal malfeasance; and

(B) should undertake a full investigation with regard to the undelivered letters sent to Dr. Andrei Sakharov by 11 Members of Congress, and inform the Congress, as well as the Universal Postal Union, of its findings.

● Mr. D'AMATO. Mr. President, I am pleased to submit today a concurrent resolution dealing with a situation that concerns not only a great number of this Senator's constituents from New York, but also many citizens across our Nation. I am referring to the continuing practice of the authorities of the Soviet Union of interfering with mail delivery between its citizens and persons living outside the Soviet Union, particularly our citizens here in the United States.

The uninterrupted flow of written correspondence is a vital component of normal relations and understanding between nations, as well as of the emotional link between individuals. As we know, millions of people move across borders every year, either permanently or temporarily. They leave behind them friends, relatives, and loved ones with whom they naturally wish to correspond. In addition, there are many people who wish to receive information from outside their national borders to acquaint themselves, if only through reading, with other peoples and cultures.

The right of individuals to communicate freely has long been recognized. As early as 1874, the Universal Postal Union was founded in Bern, Switzerland, to establish standards for international mail service. The UPU has since become a specialized agency with the United Nations. Article 12 of the United Nations Declaration on Human Rights established the principle of freedom of correspondence, stating:

No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence. . . . Everyone has the right to the protection of the law against such interference.

I would add that the right to freedom of communication is so obvious that, following the adoption of the Helsinki accords in 1975, the Guardian of London wrote:

The right of private citizens to receive letters through the post may have been too elementary for inclusion in the famous Helsinki Final Act. However, the denial of this right is inconsistent with the general principles of free contact and certainly with the spirit of the Final Act.

And yet, the Soviet Government, a member of the United Nations and a

signatory state of the Helsinki accords, blatantly continues to interfere with normal postal communications between the Soviet Union and the United States. Extensive investigation by the Committee on Post Office and Civil Service in the United States House of Representatives has revealed instances of massive interference with mail entering and leaving the Soviet Union. As a result of hearings held between 1979 and 1984, the committee has accumulated over 2,500 pieces of evidence of Soviet postal malfeasance.

If I may must mention just one single, but enormously instructive, example: In 1979, an Estonian man in the United States received a signed delivery receipt for a letter that he wrote to his son in prison in Soviet-occupied Estonia. Only later did he learn that his son had died and was buried back in 1976. According to former KGB agent Stanislav Leuchenko, the KGB is in charge of monitoring and stopping mail that the authorities do not want to reach their destination. He also has stated that when the workload of unmonitored mail gets too great for the KGB manpower, the sacks of unopened mail are just thrown away. The authorities are particularly diligent about stopping invitations from Israel to Soviet Jews who wish to emigrate from reaching their destination.

Mr. President, the recitation of Soviet postal violations—nondelivery of mail, forged delivery receipts, illegally returned letters and parcels, et cetera—would take more time than this body has at its disposal. As I have stated, it is all on record, documented in reports of the House Postal and Civil Service Committee. In addition, I should mention that a number of Members of Congress, including this Senator and the cosponsor of this resolution, the distinguished Senator from New Jersey, sent registered letters to Dr. Andrei Sakharov last year. None of the letters reached their destination, as was confirmed by Dr. Sakharov's wife Elena Bonner, when she was in the United States this spring.

The concurrent resolution that I am submitting today calls upon the President to express, through the Secretary of State, the disapproval of the American people over Soviet postal interference and to raise this issue at the Geneva Summit Conference and the Vienna followup meeting of the Helsinki accords. In addition, it calls upon the United States Postal Service to increase its efforts in combating Soviet postal malfeasance and, specifically, to investigate the circumstances of the nondelivery of mail to Dr. Sakharov and to report its findings to the Congress and the UPU.

Mr. President, the Soviet Union claims that it wishes to increase contacts between the peoples of our two nations. Soviet officials take great pains to point out what they claim is a huge information gap between our citizens and reality in the Soviet Union. This concurrent resolution should provide an impetus for resolving this problem, by increasing the flow of information between our citizens. I urge my colleagues to support this, concurrent resolution.●

SENATE RESOLUTION 493—AUTHORIZING PRODUCTION OF DOCUMENTS BY THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. STAFFORD (for Mr. DOLE, for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 493

Whereas, the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs possesses documents relating to the financial activities of the subcommittee;

Whereas, the United States Attorney for the District of Columbia has requested access to certain of those records to assist him in fulfilling his own investigatory responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that documents, papers, and records under the control or in the possession of the Senate are needed in any investigation for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the chairman and ranking minority member of the Permanent Subcommittee on Investigations, acting jointly, are authorized to provide to the United States Attorney for the District of Columbia pertinent records relating to the subcommittee's financial affairs for the years 1980–1986.

SENATE RESOLUTION 494—AUTHORIZING REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. STAFFORD (for Mr. DOLE, for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 494

Whereas, in the case of *William E. Brock v. Frank Gerace, et al.*, Civil Action No. 85–3669, pending in the United States District Court for the District of New Jersey, the defendants have obtained subpoenas for the testimony of David Faulkner and Michael C. Eberhardt, former employees of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a)(2) (1982), the Senate may direct its counsel to represent former employees of the Senate with respect to subpoenas issued to them in their official capacity;

Whereas, by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of former employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to represent David Faulkner and Michael C. Eberhardt in the case of *William E. Brock v. Frank Gerace, et al.*

Sec. 2. That David Faulkner and Michael C. Eberhardt are authorized to testify in the case of *William E. Brock v. Frank Gerace, et al.*, except concerning matters which are privileged and subject to a determination that they have relevant information which is not so protected from disclosure.

AMENDMENTS SUBMITTED

FEDERAL-AID HIGHWAY ACT

COCHRAN (AND OTHERS) AMENDMENT NO. 2890

Mr. COCHRAN (for himself, Mr. THURMOND, and Mr. MELCHER) proposed an amendment to the bill (S. 2405) to authorize appropriations for certain highways in accordance with title 23, United States Code, and for other purposes; as follows:

On page 56, on line 20, insert after "steel" ", cement, cement clinker,".

SPECTER AMENDMENT NO. 2891

Mr. SPECTER proposed an amendment to the bill S. 2405, supra; as follows:

On page 62, strike out lines 20 through 23, and insert in lieu thereof the following:

(1) $14,200,000,000 for fiscal year 1987;
(2) $14,200,000,000 for fiscal year 1988;
(3) $14,200,000,000 for fiscal year 1989; and
(4) $14,200,000,000 for fiscal year 1990.

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT, AND RELATED AGENCIES APPROPRIATION, 1987

GORTON AMENDMENT NO. 2892

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill (H.R. 5294) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain Independent Agencies, for the fiscal year ending Septem-

ber 30, 1987, and for other purposes; as follows:

On page , between lines and , insert the following new section:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

FEDERAL-AID HIGHWAY ACT

GORTON AMENDMENT NO. 2893

Mr. GORTON proposed an amendment to the bill S. 2405, supra; as follows:

At the appropriate place, insert the following:

SEC. . None of the funds appropriated or made available by this Act shall be used to implement Internal Revenue Service Regulation section 41.4481-1(a)(2) or any ruling or procedure which attains the same or similar result.

SPECTER AMENDMENT NO. 2894

Mr. SPECTER proposed an amendment to the bill S. 2405, supra; as follows:

On page 62, strike out lines 21 through 23, insert in lieu thereof the following:

(2) $14,200,000,000 for fiscal year 1988;

(3) $14,200,000,000 for fiscal year 1989; and

(4) $14,200,000,000 for fiscal year 1990.

SYMMS AMENDMENT NO. 2895

Mr. SYMMS proposed an amendment to the bill S. 2405, supra; as follows:

On page 28, line 24, strike all through page 29, line 15.

INTELLIGENCE AUTHORIZATION ACT

HELMS AMENDMENT NO. 2896

Mr. HELMS proposed an amendment to the bill (S. 2477) to authorize appropriations for fiscal year 1987 for intelligence activities of the United States Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for other purposes; as follows:

On page 4 of the bill, after line 2, add the following new section:

"SEC. 104. The classified report of the Select Committee on Intelligence which accompanies this Act is hereby amended to include the material contained in the classified supplement to the aforesaid report which was prepared on September 24, 1986. The classified supplement incorporates additional directions to the Intelligence Community on the following subjects: Competitive analyses of key intelligence topics; survivability of national technical means of intelligence collection; availability of the report of the President's 1980 Transition Team study of intelligence; training on combatting Marxism-Leninism; integration of military, political and economic aspects of national estimates on the Soviet Union; integrated national estimate on the Soviet Union; assessment of the effects of Soviet data denial; Foreign Broadcast Information Service analyses; reconnaissance capability; protection of polygraph information; role of the Defense Intelligence Agency; and intelligence policy regarding Panama."

HELMS (AND OTHERS) AMENDMENT NO. 2897

Mr. HELMS (for himself, Mr. PELL, Mr. DENTON, Mr. HATCH, Mr. KERRY, Mr. WALLOP, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MCCLURE, Mr. SYMMS, Mr. HECHT, Mr. THURMOND, and Mr. MATTINGLY) proposed an amendment to the bill S. 2477, supra, as follows:

On page 24 of the bill, after line 4, add the following new section: "Section 604. The Director of Central Intelligence shall provide a report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives not later than March 1, 1987, whether and to what extent the Defense Forces of the Government of Panama have violated the human rights of the Panamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora."

COMMODITY EXCHANGE ACT AMENDMENTS

ABDNOR (AND OTHERS) AMENDMENT NO. 2898

Mr. ABDNOR (for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON) proposed an amendment to the bill (S. 2045) to amend the Commodity Exchange Act to reauthorize appropriations to carry out such act, and for other purposes, as follows:

At the end of the bill, add the following new section:

SEC. . NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE.

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by inserting "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before October 3, 1986.

ABDNOR (AND OTHERS) AMENDMENT NO. 2899

Mr. ABDNOR (for himself, Mr. BOREN, Mr. WALLOP, and Mr. SIMPSON) proposed an amendment to amendment No. 2898 proposed by Mr. ABDNOR (and others) to the bill S. 2045, supra, as follows:

Strike all after the word "Sec." and insert in lieu thereof the following:

NONAPPLICABILITY OF COMMODITY EXCHANGE ACT TO TRADING OF CATTLE

(a) DEFINITION OF COMMODITY.—The third sentence of section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) by insertng "(other than cattle)" after "livestock"; and

(2) by inserting "and cattle" after "except onions as provided in Public Law 85-839".

(b) REPORT ON HEDGING.—The last sentence of 4a(3) of such Act (7 U.S.C. 6a(3)) is amended by striking out "cattle, hog, or pork" and inserting in lieu thereof "hog or pork".

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall not apply to a contract of sale of cattle for future delivery that was entered into before the date of enactment of this Act.

PRODUCT LIABILITY ACT

HOLLINGS AMENDMENT NOS. 2900 THROUGH 2974

(Ordered to lie on the table.)

Mr. HOLLINGS submitted 75 amendments intended to be proposed by him to the bill (S. 2760) to regulate interstate commerce by providing for a uniform product liability law, and for other purposes, as follows:

AMENDMENT No. 2900

On page 25, strike all from line 19 through line 6.

AMENDMENT No. 2901

On page 3, strike lines 9 through 25.

AMENDMENT No. 2902

On page 2, strike lines 7 through 14.

AMENDMENT No. 2903

On page 3, strike lines 1 through 8.

AMENDMENT No. 2904

On page 4, strike lines 1 through 5.

AMENDMENT No. 2905

On page 4, strike lines 6 through 11.

AMENDMENT No. 2906

On page 4, strike lines 12 through 20.

AMENDMENT No. 2907

On page 4, strike lines 21 through 22.

AMENDMENT No. 2908

On page 4, strike all from line 23 through line 2 on page 5.

AMENDMENT No. 2909

On page 5, strike lines 3 through 8.

AMENDMENT No. 2910

On page 5, strike lines 9 through 25.

AMENDMENT No. 2911

On page 6, strike all from line 1 through line 11 on page 7.

AMENDMENT No. 2912

On page 7, strike lines 12 through 13.

AMENDMENT No. 2913

On page 7, strike lines 14 through 17.

AMENDMENT No. 2914

On page 7, strike lines 18 through 22.

AMENDMENT No. 2915

On page 7, strike all from line 23 through line 8 on page 8.

AMENDMENT No. 2916

On page 8, strike all from line 9 through line 5 on page 9.

AMENDMENT No. 2917

On page 9, strike lines 6 through 12.

AMENDMENT No. 2918

On page 9, strike lines 13 through 18.

AMENDMENT No. 2919

On page 9, strike all from line 19 through line 6 on page 10.

AMENDMENT No. 2920

On page 10, strike lines 7 through 17.

AMENDMENT No. 2921

On page 10, strike lines 18 through 24.

AMENDMENT No. 2922

On page 11, strike all from line 1 through line 23 on page 12.

AMENDMENT No. 2923

On page 12, strike all from line 24 through line 2 on page 13.

AMENDMENT No. 2924

On page 13, strike lines 3 through 15.

AMENDMENT No. 2925

On page 13, strike all from line 17 through line 10 on page 17.

AMENDMENT No. 2926

On page 17, strike all from line 11 through line 17 on page 18.

AMENDMENT No. 2927

On page 18, strike all from line 18 through line 10 on page 19.

AMENDMENT No. 2928

On page 19, strike all from line 20 through line 2 on page 21.

AMENDMENT No. 2929

On page 21, strike all from line 3 through line 9 on page 22.

AMENDMENT No. 2930

On page 22, strike all from line 10 through line 11 on page 24.

AMENDMENT No. 2931

On page 24, strike lines 13 through 18.

AMENDMENT No. 2932

On page 24, strike all from line 10 through line 22 on page 26.

AMENDMENT No. 2933

On page 26, strike all from line 23 through line 8 on page 29.

AMENDMENT No. 2934

On page 29, strike all from line 9 through line 15 on page 33.

AMENDMENT No. 2935

On page 33, strike all from line 16 through line 24 on page 34.

AMENDMENT No. 2936

On page 35, strike all from line 1 through line 17 on page 37.

AMENDMENT No. 2937

On page 37, strike all from line 18 through line 21 on page 38.

AMENDMENT No. 2938

On Page 38, strike all from line 22 through line 9 on page 39.

AMENDMENT No. 2939

On page 39, strike all from line 10 through line 18 on page 40.

AMENDMENT No. 2940

On page 40, strike all from line 19 through line 16 on page 41.

AMENDMENT No. 2941

On page 41, strike all from line 18 through line 7 on page 43.

AMENDMENT No. 2942

On page 11, strike lines 8 through 13.

AMENDMENT No. 2943

On page 11, strike all from line 14 through line 16 on page 12.

AMENDMENT No. 2944

On page 12, strike lines 17 through 20.

AMENDMENT No. 2945

On page 12, strike lines 21 through 23.

AMENDMENT No. 2946

On page 13 strike lines 22 through line 2 on page 14.

AMENDMENT No. 2947

On page 14, strike lines 3 through 14.

AMENDMENT No. 2948

On page 14, strike all from line 15 through line 18 on page 15.

AMENDMENT No. 2949

On page 15, strike all from line 19 through line 7 on page 16.

AMENDMENT No. 2950

On page 16, strike lines 8 through 13.

AMENDMENT No. 2951

On page 16, strike lines 14 through 24.

AMENDMENT No. 2952

On page 17, strike lines 1 through 10.

AMENDMENT No. 2953

On page 17, strike all from line 12 through line 17 on page 18.

AMENDMENT No. 2954

On page 18, strike all from line 19 through line 6 on page 19.

AMENDMENT No. 2955

On page 19, strike lines 7 through 14.

AMENDMENT No. 2956

On page 19, strike lines 15 through 19.

AMENDMENT No. 2957

On page 19, strike lines 22 through 26.

AMENDMENT No. 2958

On page 20, strike lines 1 through 2.

AMENDMENT No. 2959

On page 20, strike lines 3 through 13.

AMENDMENT No. 2960

On page 20, strike lines 14 through 21.

AMENDMENT No. 2961

On page 20, strike all from lines 22 through line 2 on page 21.

AMENDMENT No. 2962

On page 21, strike lines 4 through 9.

AMENDMENT No. 2963

On page 21, strike lines 10 through 17.

AMENDMENT No. 2964

On page 21, strike lines 18 through 25.

AMENDMENT No. 2965

On page 22, strike lines 1 through 4.

AMENDMENT No. 2966

On page 22, strike lines 5 through 9.

AMENDMENT No. 2967

On page 22, strike lines 11 through 17.

AMENDMENT No. 2968

On page 22, strike all from lines 18 through line 4 on page 23.

AMENDMENT No. 2969

On page 23, strike lines 5 through 14.

AMENDMENT No. 2970

On page 23, strike all from lines 15 through line 6 on page 24.

AMENDMENT No. 2971

On page 24, strike lines 7 through 11.

AMENDMENT No. 2972

On page 24, strike lines 13 through 18.

AMENDMENT No. 2973

On page 24, strike all from line 20 through line 10 on page 25.

AMENDMENT No. 2974

On page 25, strike lines 11 through 18.

METZENBAUM AMENDMENT NOS. 2975 THROUGH 3028

(Ordered to lie on the table.)

Mr. METZENBAUM submitted 54 amendments intended to be proposed by him to the bill, S. 2760, supra; as follows:

AMENDMENT No. 2975

On page 3, line 1, strike subsection (2) through line 8 and redesignate all subsequent subsections accordingly.

AMENDMENT No. 2976

On page 3, line 20, after "any" delete "life,".

AMENDMENT No. 2977

On page 3, line 9, strike paragraph (3) of subsection (a) through line 25 and redesignate all subsequent paragraphs accordingly.

AMENDMENT No. 2978

On page 4, line 14, after "compensable under State law," strike "in the amount of $100,000, and."

AMENDMENT No. 2979

On page 6, line 1, strike paragraph (11) of subsection (a) through page 7, line 11, and redesignate all subsequent paragraphs accordingly.

AMENDMENT No. 2980

On page 9, line 13, strike paragraph (1) of subsection (b) through line 18 and redesignate subsequent paragraph accordingly.

AMENDMENT No. 2981

On page 13, line 6, delete all after the word "Act" through line 9 and insert in lieu thereof the following: "in which the claimant discovered or should have discovered the harm and its cause for which damages are sought on or after that date."

AMENDMENT No. 2982

On page 13, line 24, strike "For the purposes of this title, an offer shall be limited to a claim for payment of the claimant's net economic loss, pursuant to section 205 of this title, and any dignitary loss."

AMENDMENT No. 2983

On page 17, line 11, insert the following: "(i) For purposes of this section attorney's fees and costs shall be awarded only when applicable state or federal law does not provide for the award of costs in civil actions."

AMENDMENT No. 2984

On page 18, line 25, strike out "judgment an amount" and insert in lieu thereof the following:

"judgment—

"(1) an award for additional damages in an amount equal to 50 percent of the judgment plus 1 percent of the increased judgment per month for each month after the date on which the defendant rejected the offer of settlement until the date of entry of judgment against the defendant; and

"(2) an amount".

AMENDMENT No. 2985

On page 19, line 9, strike "The court shall reduce such amount if the court determines that the defendant had a reasonable basis for rejecting the offer of settlement made by a claimant in accordance with section 201 of this title because the case involved a novel question of law or complex questions of fact."

AMENDMENT No. 2986

On page 20, line 12, after "exceed" strike "two times the claimant's economic loss or $50,000, whichever is less", and insert in lieu thereof "$50,000".

AMENDMENT No. 2987

On page 20, line 5, strike out "$250,000" and insert in lieu thereof "$1,000,000".

AMENDMENT No. 2988

On page 20, line 13, strike out "$50,000" and insert in lieu thereof "$100,000".

AMENDMENT No. 2989

On page 20, between lines 13 and 14, insert the following:

(3) The provisions of paragraphs (1) and (2) of this subsection shall not apply if the claimant establishes by a preponderance of the evidence that the noneconomic loss suffered was the result of conduct manifesting a manufacturer's or a product seller's conscious or flagrant indifference to the safety of those persons who might be harmed by a product.

AMENDMENT No. 2990

On page 20, strike subsection (b) through line 2, and redesignate all subsequent subsections accordingly.

AMENDMENT No. 2991

On page 20, line 3, strike paragraph (1) of subsection (c) through line 8.

AMENDMENT No. 2992

On page 20, line 9, strike paragraph (2) of subsection (c) through line 13.

AMENDMENT No. 2993

On page 20, line 22, strike subsection (e) through page 21, line 2.

AMENDEMENT No. 2994

On page 20, line 18, after "loss" strike "The jury shall not be instructed regarding the limitations on damages specified in subsections (b) and (c) of this section, but the award of damages in any such action shall be reduced by the court in accordance with such limitations."

AMENDMENT No. 2995

On page 22, line 5, strike subsection (c) through line 9.

AMENDMENT No. 2996

On page 26, strike lines 7 through 12.

AMENDMENT No. 2997

On page 26, strike lines 13 through 22.

AMENDMENT No. 2998

On page 26, strike all from line 24 through line 9 on page 27.

AMENDMENT No. 2999

On page 26, lines 24 and 25, delete the following: ", if otherwise permitted by applicable law,"

AMENDMENT No. 3000

On page 26, line 26 after "by" strike "clear and convincing" and insert in lieu thereof "a preponderance of the".

AMENDMENT No. 3001

On page 27, strike all from line 17 through line 14 on page 28.

AMENDMENT No. 3002

On page 28, strike all from line 15 through line 8 on page 29.

AMENDMENT No. 3003

On page 27, line 17, strike subsection (c) through page 29, line 8.

AMENDMENT No. 3004

On page 29, strike lines 10 through 18.

AMENDMENT No. 3005

On page 29, line 13, after "harm", delete "and"; insert in lieu thereof ","; and, after "its cause," insert the following: "and the potential cause of action for relief from injuries due to the harm,"

AMENDMENT No. 3006

On page 29, line 10, after "(a)" insert "(1)".

At line 19, insert the following:

"(a)(2) In any case in which the claimant is unable to determine the identity of the product manufacturer or seller that caused the harm, the claimant shall file a complaint against an unnamed product manufacturer or seller. Upon the filing of the complaint, the court shall toll the statute of limitations provided in subsection (a) of this section for one year, for the purpose of allowing the claimant to determine the identity of the product manufacturer or seller."

AMENDMENT No. 3007

On page 29, strike all from line 19 through line 5 on page 32.

AMENDMENT No. 3008

On page 32, strike lines 6 through 9.

AMENDMENT No. 3009

On page 32, strike lines 11 through 21.

AMENDMENT No. 3010

On page 32, lines 19 and 20, delete "of court costs, fees, and expenses (including attorney's fees)" and insert following: "provided for by existing state law of court costs, fees, expenses and attorney's fees reasonably attributable to such conduct."

AMENDMENT No. 3011

On page 32, line 26, after "expenses," insert the following: "as provided by state law,".

AMENDMENT No. 3012

On page 32, strike all from 22 through line 12 on page 33.

AMENDMENT No. 3013

On page 33, strike lines 13 through 15.

AMENDMENT No. 3014

On page 33, strike lines 17 through 25.

AMENDMENT No. 3015

On page 34, strike lines 1 through 13.

AMENDMENT No. 3016

On page 33, line 19, after the word "action", insert the following: ", the insurer of any such person, and, in a civil action in which damages are sought for harm occurring in a workplace, the claimant's employer and its insurer".

AMENDMENT No. 3017

On page 34, strike lines 14 through 24.

AMENDMENT No. 3018

On page 35, strike lines 3 through 14.

AMENDMENT No. 3019

On page 35, strike lines 15 through 22.

AMENDMENT No. 3020

On page 35, line 10, insert after the word "harm" the following: "if under the applicable federal or state workers compensation law the plaintiff will continue to receive payments after an award of damages under this Act."

AMENDMENT No. 3021

On page 35, strike all from line 23 through 15 on page 36.

AMENDMENT No. 3022

On page 36, strike lines 16 through 22.

AMENDMENT No. 3023

On page 36, strike all from line 23 through line 13 on page 37.

AMENDMENT No. 3024

On page 37, line 18 strike the heading "Several Liability for Noneconomic Damages";

On page 37, line 19, strike section 308 through page 38, line 21, and redesignate all subsequent sections accordingly.

AMENDMENT No. 3025

On page 40, line 11, strike subsection (b) through line 18.

AMENDMENT No. 3026

On page 42, line 4, immediately after the period, add the following: "Necessary data shall include annual compilations of premiums collected and closed claims paid out for each separate line of liability insurance. The annual compilation shall be collected for each calendar year beginning not later than 1984.".

AMENDMENT No. 3027

On page 43, line 8, insert the following:

TITLE V—STUDY TO BE CONDUCTED BY GENERAL ACCOUNTING OFFICE

SEC. 501. The General Accounting Office shall provide to the Congress one year after the date of enactment of this Act a study of the feasibility of establishing a reinsurance program operated by the federal government and funded by the insurance industry.

AMENDMENT No. 3028

On page 43, line 8, insert the following:

TITLE V—STUDY TO BE CONDUCTED BY GENERAL ACCOUNTING OFFICE

SEC. 501. The General Accounting Office shall provide to the Congress one year after the date of enactment of this Act a study of the feasibility of creating a federal Office of Insurance to monitor the insurance industry and establish regulatory standards for state insurance commissions.

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-385 Russell Senate Office Building, on Monday, September 29, 1986, at 2 p.m., to continue the oversight hearing begun on July 30, 1986, on the operations and functions of the Office of the Sergeant at Arms of the Senate.

For further information regarding this hearing, please contact Carole Blessington of the Rules Committee staff on x40278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Wednesday, September 24, 1986, in order to consider the nomination of Jim R. Billington, to be a member of the Farm Credit Administration Board, Farm Credit Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. DURENBERGER. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, September 24, to hold a hearing on emerging criminal groups/Asian.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

SENATOR PACKWOOD'S SPEECH AT WILLAMETTE UNIVERSITY

● Mr. HATFIELD. Mr. President, as the 2d session of the 99th Congress draws to a close, issues of civil liberties continue to confront the Senate. Whether they arise in the context of legislation to combat the drug problem, enact immigration reform or provide funding for the next fiscal year, these issues demand careful attention. This fact was recently brought to light by my distinguished colleague and friend from Oregon, Senator PACKWOOD. In a speech at Willamette University in Salem, OR, Senator PACKWOOD outlined the forces that cause the erosion of our civil liberties and challenged us to be vigilant to preserve and protect them for the generations to come.

Mr. President, I commend the speech to my colleagues and ask that Senator PACKWOOD's speech be printed in the CONGRESSIONAL RECORD.

SENATOR BOB PACKWOOD ON CIVIL LIBERTIES

The year was 1956. The place was Oregon. The document was the general election ballot of November of that year. The issue was fishing. The ballot description read, "prohibiting certain fishing in coastal streams."

Now go back almost 800 years. The year was 1215. The place was Runnymede, England. The document was the Magna Carta. This issue was fishing. Article 33 of the Magna Carta reads, "All fish weirs shall be removed from the Thames, the Medway and throughout the whole of England except on the sea coast." I was struck by the fact of how many issues that we deal with today seem to be eternal.

When you look at the history of government—ours for 200 years—England's for almost 600 years prior to that—it is a continual struggle of men and women to secure for themselves certain liberties that governments wish to take away.

The battle is not usually fought against those who are intent upon doing evil. It is usually fought against those who are intent on doing good—as they see it.

This country is full of good men and women intent upon helping us. Some would prevent us from driving cars in national parks. Others would require us to wear helmets while riding motorcycles. Some would insist upon protecting us against smoking—for our own good, of course. Some would muzzle the press. These people are well-intentioned.

These well-intentioned people are convinced they are right. They sincerely believe they are so right, that if you disagree with them, they are sure you are wrong. Then it's only a short step to "the end justifies the means," because they believe the end is so "right." When these people gain control of government, they become dangerous. The more I read history, and the longer I watch government operate, the more convinced I am that almost anyone can withstand adversity. If you want to test a person's character, give that person power.

If we are going to protect our civil liberties against those who are in power, we must do battle in the first trench. We don't wait until we have been shoved and pushed to a hilltop where we are surrounded and circumscribed by a government run by men and women of good intent trying to help us.

Often, when we have to battle in that first trench to protect our liberties, it is not against somebody who wants to prevent driving in national parks or to stop us from smoking. The first trench is usually a battle to defend some radical or bomb thrower or political dissident, or someone whose life style differs from those in power. We must make sure that the procedures for their defense are kept secure. A government that can put that person in prison or abuse that person's rights, without what all of us would regard as due process, can easily turn that procedure against us. Government will try just that if we choose to do something that the government, in its wisdom, thinks is not proper.

I want you to go back with me a bit through the history of England and the United States to see what England did over a period of almost 600 years, why they did it, and why we copied it almost verbatim into our Constitution and into our Bill of Rights.

England's experience was substantially different from ours. To begin with, they don't have a written constitution. All of the civil liberties of England are simply a series of parliamentary acts, or in some cases, decisions of common law courts. The English experience with government, through the centuries, was that government, be it a government of the king, or a parliamentary government—will try to take away certain liberties from the citizenry.

Initially in English history, it was presumed the monarch would try to abuse civil liberties and the parliament would protect them. Therefore, many of England's early civil liberty battles were struggles pitting the king against the parliament.

What's the first thing the king would try to do in those early days when parliament was still a fledgling institution? Of course, he would try to rule without a parliament. Parliament was a hindrance. Parliament wanted to restrict his right to imprison

people and arrest people and start wars. So the easiest thing to do was to have no parliament meet. In 1330, parliament passed a statute that said, "It is accorded that parliament shall be holden once every year or more often if need be." How did we phrase it 450 years later in our Constitution? "The Congress shall assemble at least once every year." This would insure that a President would not try to set aside Congress' right to gather and assemble.

When parliament was secure in its right to meet, the next avenue that the king would use would be to imprison members for what they said on the floor of parliament. If we can't keep them from meeting, at least we can put them in prison if they say anything adverse. So the English Bill of Rights—the English Bill of Rights in 1689—simply said that, "The freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament." How did we say it in Article I, Section V, of the Constitution? "Senators and Representatives . . . for any speech or debate in either House shall not be questioned in any other place."

Well, all right, if parliament must meet, and the members of parliament are entitled to say what they want, the king would next try to keep the citizens and parliament apart. Therefore, he would not allow citizens to petition parliament for grievances they might have against the king, and if they did so petition, try to imprison them for it.

So again, the English Bill of Rights says simply, "It is the right of the subjects to petition the king and all commitments and prosecutions for such petitioning are illegal." And how did we say it in our Bill of Rights? "Congress shall make no law . . . abridging the right of the people . . . to petition the government for a redress of grievances."

The battle continued to secure, and secure once again, more strongly, our liberties. It was a continual struggle to prevent government from taking away our right to dissent, our right to assemble, our right to a different life style, our right to appear and ask that the government change, in short—from taking away our basic political liberties.

The king found that the parliament was becoming more and more obdurate. They wouldn't give him the money for the wars that he wanted. In fact, to get any money at all to sustain his army, he found that he had to turn to parliament more often than he liked. However, one avenue to save money in the military budget was simply to quarter the soldiers and the sailors in the homes of the citizens, and make the citizens pay for their room and board. And so the English Petition of Right in 1628, says, "Your majesty will be pleased to remove the said soldiers and mariners, and that your people may not be so burdened in time to come." What did we say in our Bill of Rights? "No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner prescribed by law."

In addition to securing parliamentary right vis-a-vis the king, Englishmen also continually strengthened individual liberties. The Magna Carta says: "No free man shall be seized or imprisoned or stripped of his rights or posessions, or outlawed or exiled or deprived of his standing in any other way. . . except by the lawful judgment of his equals or by the law of the land." We said it more simply in our Bill of Rights. "No person shall be deprived of life, liberty or property without due process of law."

The king, thus, thwarted in his effort to prohibit fair trials, next turned to the concept of setting bail so high that a person could not afford it, or threatening punishment so cruel that a person would confess, rather than face the punishment. So in the English Bill of Rights, it simply says, "Excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." A hundred years later in our Bill of Rights we said, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

All right, said the king, if I can't hold the man without bail, or threaten him with cruel and inhumane punishment, I'll simply let the cloud of guilt hang over his head and delay his trial for years. No you won't, said the Magna Carta, and they phrased it as follows: "To no one will . . . we deny or delay right or justice." Our Bill of Rights says, "in all criminal prosecutions, the accused shall enjoy the right to speedy and public trial by an impartial jury."

I'll try the man over and over, and over again, until I finally get a conviction, said the king. Parliament didn't even have to address itself to that. The courts of law themselves in the pleas of autrefois acquit and autrefois convict said, "a man shall not be brought into danger . . . for one and the same offense more than once." We said it in our Bill of Rights as follows: "No person shall be subject for the same offense to be twice put into jeopardy of life or limb."

Finally, when all else would fail, the king would extract confessions by torture, and use the confession in court for conviction. So the Magna Carta put it this way. "In future, no official shall place a man on trial upon his own unsupported statement." Almost 600 years later, we said it in the 5th amendment as follows: "No person shall be compelled in any criminal case to be a witness against himself."

There are many more examples from English history that we have adopted and incorporated in our Constitution and Bill of Rights. As a matter of fact, we added two protections England didn't have—freedom of the press and freedom of religion. These both grew out of our colonial experience. One of the basic tenants of our colonial history was religious diversity. We wanted that protected and, therefore, prohibited the establishment of a national church. In addition, because of the efforts of England to throttle the colonial press, we added the protection in our Bill of Rights of freedom of the press.

A key fact to remember is that our civil liberties may be as easily abused by a President, as by a Congress. England even learned that long before we became a nation. As I said earlier, from the time of the Magna Carta to the English civil war in the 1640's, the feeling in England was that the king was likely to abuse liberties, and the parliament was likely to protect them. The common citizen never paused to think that a parliament might abuse their liberties until the English civil war. In the 1640's the King and the parliament divided and fought. The parliament was full of diverse factions, but they united against the King. Parliament finally won. They beheaded the King. Then the parliamentary factions fell to fighting among themselves. One of the parliamentary factions, the Puritans—whose religious kin had left England 20 to 30 years before to come to this country—gained control of parliament. They gained it completely when a Puritan army man named Colonel Pride stood at the door of parliament in 1948. In what has come to be known as "Pride's Purge," he turned away all members of parliament who did not agree with the Puritan party then headed by Oliver Cromwell. Fifty-three members of parliament—the Puritan faction—were left to govern England. They proceeded to abuse the rights of all Englishmen. Finally, Oliver Cromwell, and his instrument of tyranny, the New Model Army, could not stand even the fifty-three. They were dismissed, and parliament dissolved. The second civil war started. Winston Churchill, in his *History of the English-speaking Peoples* phrases it so eloquently when he says, "The story of the second civil war is short and simple. The king, the lords and commons, landlords and merchants, the city and the countryside, the church, the Scottish army, the Welsh people, and the English fleet all now turned against the New Model Army. The army beat the lot. And at their head was Cromwell. . . . It was a triumph of some 20,000 resolute, ruthless, disciplined military fanatics over all that England ever wished or ever willed."

From that day onward, the documents of English liberty make it obvious that neither the king nor parliament were to abuse Englishmen.

American history reveals the same sorry examples. Congress or the President can violate our liberties. It was Congress which first passed the Alien and Sedition Acts, clearly violating our First Amendment liberties. It was President Jackson who approved efforts in southern states to prohibit the receipt through the mail of abolitionist tracts mailed from the north. It was Woodrow Wilson's attorney general who lent his name to the infamous "Palmer red raids" in which efforts were made to round up alleged "red" sympathizers in 1920. It was President Franklin Roosevelt, with the immediate concurrence of Congress, who authorized the internment of native born American citizens of Japanese ancestory in World War II. It was a Congress that abused our liberties during the McCarthy era of the 1950's. It was the President who abused our liberties during the Watergate era.

If history has taught us anything, it is that there is no foolproof, safe haven which can serve as the repository of our liberties. On occasion, Congress, the President and even the courts can be swept away by the passion of the moment.

From the prospective of one who is a practicing politician, I hope we always will remember that passion can obscure judgment. We should remember that governing officials, in dictatorships and democracies, find it easy and convenient to bend to transitory, popular prejudices which would subjugate individual liberties. Those of us in public office should always remember that we can never err enough on the side of protecting individual liberty and freedom. We who have been elected to a position of public trust, should be willing at all costs to withstand the buffets of a temporary storm that would trammel, or even extinguish, our freedom for the alleged common good.

A few years ago we celebrated our 200th anniversary as a nation. We should remember that we celebrated not just 200 years of American liberty. In addition, we celebrated almost 800 years of Anglo-Saxon history during which men and women have been tortured and imprisoned, have fought and died so that we today can say what we want,

do what we want and be what we want. In short, they have given us the blessings of political liberty. It is the greatest blessing anyone could ever give to us. All I ask is that you cherish it, preserve it, and protect it and pass it on to our children a bit more secure than we received it.●

THE U.S. HEALTH CARE REVOLUTION

● Mr. SIMON. Mr. President, I would like to submit for the RECORD remarks made by Joseph A. Califano, Jr., former Secretary of Health, Education and Welfare, before the Economic Club of Detroit.

He addresses issues we are facing—and sometimes not facing—during this health care revolution. How are we going to pay for the increasing cost of health care? If there is a limited pool of resources, who will receive health care services? How is health care delivery going to change to reflect the current population, cost, and medical technology?

Improved medical technology has reshaped health care, but it has also created new moral dilemmas. Because of the high cost of the technology, we must now determine who will have access to its benefits. The escalating cost of medical care is bringing Americans face to face with the prospect that health care rationing may occur.

Mr. Califano does a commendable job of describing the health care changes in the last 3 years for the Chrysler Corp. More important, he outlines the major issues to be considered in the coming years on health care delivery and I urge my colleagues to read his thoughtful observations I do not agree with every recommendation he makes, but he is facing issues squarely that we are now ducking.

The remarks follow:

AMERICA'S HEALTH CARE REVOLUTION

(Remarks of Joseph A. Califano, Jr.[1])

A revolution in the American way of health is under way, and it is likely to be as far-reaching as any economic and social upheaval we have known.

At stake is who gets how much money out of one of America's top three industries, who suffers how much pain how long, and who gets the next available kidney, liver, or heart: in short, who lives, who dies, and who pays.

The revolutionary forces at work are profound. Science is serving up incredible biomedical breakthroughs that hold the promise of remarkable cures and the threat of unacceptable costs. The graying of America presents a burgeoning elderly population, who consume the most expensive high-tech medicine and who already strain our capacity to provide adequate medical and nursing care. In law and religion, our judges, ethicists and moral theologians are confounded by the Pandora's box of medical discoveries that insists they reexamine questions as fundamental as when life begins and ends.

Fed up with waste and inefficiency, the biggest buyers of health care—governments, corporations and unions—are changing the way doctors, hospitals, and other providers are used and paid, and reshaping financial incentives that encourage patients to seek unnecessary care.

Guiding this revolution is a delicate and treacherous business because there's so much of value to preserve. If the American health care colossus has become far too costly and mercenary, the American way of health has been miraculous.

The miracles are everywhere to be seen: vaccines that have virtually eliminated most childhood diseases; the high technology of microsurgery, kidney dialysis, vital-organ transplants, machines that scan the body and the brain and do the work of the heart, pharmaceutical inventions to remedy everything from headaches and depression to hypertension and epilepsy. We have conquered diseases that have killed millions over many centuries, and we have extended life expectancy beyond the wildest predictions of just a generation ago.

We have the most advanced medical technology on this earth, and an abundance of superb specialists and hospitals.

But the soaring cost of care threatens to deny even the affluent access to the miracles we have come to expect and the billions we've spent have not given millons of uninsured Americans basic health care.

Medicine's high priests, the doctors, have said once too often, and with an arrogance we no longer accept, that only they know what to prescribe, where to treat us, and how they should be paid.

Corporations, unions, governors, mayors legislatures, every president since Lyndon Johnson—all the institutions or people speak and act through—have attacked the profligacies of the American health care industry.

Examples of exorbitance and skewed values abound: a 75-year-old man dies after less than seven hours of emergency surgery for a ruptured aneruysm. His widow gets bills for $23,000. Another widow received a bill of $250,000 for her husband's five and a half months in an intensive care unit battling emphysema that killed him. A California man spent ten days in a hospital for a mild heart attack, and received doctor and hospital bills totaling more than $25,000 before the hospital reluctantly agreed to transfer him to a Veterans Administration facility where he was eligible for free care.

But there are signals of change:

Hospital admissions, lengths of stay, and occupancy rates dropped in 1984 and again in 1985.

Medicare, once predicted to go bust by the end of this decade, looks solvent until late in the next.

Cigarette consumption has gone down.

The early results of America's health care revolution make it clear that we can provide quality health care to all at a reduced cost. To achieve that goal, we must recognize that the revolution is just beginning.

Three years ago at this Detroit Economic Club I announced Chrysler's plans to control health care costs. I said we would work with the United Auto Workers, our employees, and the hospitals and physicians who serve the Chrysler family, to change the structure of a health care system that had become supplier-dominated and inefficient, and was not delivering the best possible care to our employees.

Today I can announce that Chrysler has saved more than $100 million in health care costs since that effort began and that it expects to save at least another $250 million—a quarter of a billion dollars—over the next five years. Throughout this effort, we have provided better quality care for our employees at less cost, and that's something we will continue to do.

We have achieved these remarkable results by working hand in hand with the United Autoworkers. Indeed, the contract we signed last October will produce savings in our total health care bill of $130 million over its term.

Chrysler has put the brakes on the growth of its health care bill. Year-to-year increases in employee health care costs have plunged from more than 15 percent in both 1981 and 1982 to less than 4 percent in 1985. Even with tough 1985 targets, Chrysler health care costs were $25 million under budget. For 1986, although our new preferred providers will be in place for no more than half the year, we project an increase of less than 2 percent.

We have cut our retiree costs from a 20 percent increase in 1982 to a small, but unprecedented reduction in 1985. For 1986, despite the 23 percent increase in Medicare deductibles and copayments, which we pay dollar-for-dollar, we expect to hold retiree cost increases to less than 3 percent. Without the increase in Medicare deductibles and copayments, Chrysler's 1986 costs for retirees would be less than its 1984 costs.

We have been able to achieve these savings and at the same time provide better quality care to our employees and retirees. We've substituted just-as-effective generic drugs for high-priced brand names, established dental health maintenance organizations, mounted health promotion programs with financial incentives—for example charging smokers 75 percent more than non-smokers for company life insurance—and cut over—and misuse of podiatrists and surgeons.

The big bucks have come from our move on unnecessary hospitalization.

First, we changed our view of hospitals. At Chrysler, we now regard them as institutions to stay out of, settings of last resort, places to go for treatment only when all else fails.

Second, we directly confronted hospitals with high profiles of unnecessary admissions or needlessly extended stays. Let me give one example.

We asked a team of physician experts to examine our Michigan hospital expenses for non-surgical low-back pain treatment. They found that two-thirds of the hospitalizations at the eight Detroit area hospitals with the most admissions—and 85 percent of the total hospital days (2,264 out of 2,679 days)—were inappropriate. In fact, three of the hospitals audited did not have one single appropriate admission. The admissions, it turned out, were largely for bed rest, which is both safer and cheaper at home.

We confronted the doctors and administrators with our findings. Initially resistant, they eventually agreed to take action. The result: in the first 6 months following our intervention, the eight hospitals reduced their admissions for low-back pain by 64 percent!

[1] Mr. Califano was Secretary of Health, Education and Welfare from 1977 to 1979, and President Lyndon Johnson's assistant for domestic affairs from 1965 to 1969. He is presently senior partner in the Washington office of the law firm of Dewey, Ballantine, Bushby, Palmer & Wood, and chairman of the health care committees of Chrysler Corporation and American Can Company. His most recent book, "America's Health Care Revolution: Who Lives? Who Dies? Who Pays?," was published by Random House last month.

For those who doubt how much more there is to be done, let me release our latest findings on lower back pain admissions from our studies at other Chrysler locations. These new audits by our physicians expose widespread unjustified hospitalization in low back pain cases.

In St. Louis 72 percent of the audited admissions and 90 percent of the hospital days were inappropriate;

In Indiana 66 percent of the admissions and 87 percent of the hospital days were inappropriate.

In Delaware 34 percent of the admissions and 68 percent of the hospital days were inappropriate.

Needless to say, we are going to confront the offending hospitals and physicians.

Third—and of critical importance—we instituted a prescreening program for hospitalization. Chrysler will not pay for hospitalization in non-emergency, non-maternity cases unless the need for admission is confirmed in advance by a second, independent, medical opinion. Where hospitalization is warranted, a specific number of days for reimbursement is approved before admission. If the admitting physician believes the stay should be extended beyond that period, he must go to Blue Cross in advance, explain why, and get approval.

This year we are introducing a major specialized preferred provider initiative. Chrysler will fully pay a number of benefits only if delivered through preferred providers that Chrysler contracts with. These benefits include vision care and podiatry services. Employees and their doctors will have a strong financial incentive to use these providers; going to others will require employees to make substantial copayments. A joint Chrysler-UAW committee has begun work to explore the creation of additional preferred providers—for substance abuse, psychiatric services, outpatient radiology, and medical equipment.

Moreover, we are contracting with the lowest responsible bidder to provide outpatient laboratory tests to our employees. Chrysler will only pay full cost for such tests if they are performed by that laboratory. We expect savings from the laboratory and podiatry programs to exceed $3 million each in the first full year. We expect to establish similar arrangements for prescription drugs.

These preferred providers are a win/win situation for Chrysler and its employees. The company's costs go down and the employee gets better care with lower copayments. We expect, for example, that our prescription drug program will reduce employee copayments by at least 40 percent and still give Chrysler significant savings.

These are substantial achievements for Chrysler, and other companies—notably General Motors and Ford—are also taking giant steps to provide employees better quality care at less cost. But we must not let self-congratulation weaken our vigilence. The toughest work of America's health care revolution lies ahead. There's a job for each of us.

What remains to be done?

We should promptly eliminate at least 400,000 unnecessary hospital beds.

Within 10 years we will need only half the hospital beds we have today.

Closing hospitals is hard labor. Everyone admits we have too many hospital beds in America—they're just all in someone else's town, city, or neighborhood. Even with Detroit's occupancy rate down to less than 70 percent and expected to drop further, a new hospital has just opened on the east side and another one is under construction—at a time when the metropolitan area should be embarking on a program to close down at least 5,000 of its 20,000 beds within five years.

The desirability of reducing the number of hospital beds and consolidating facilities is not limited to cost savings. Concentration of surgical procedures in fewer hospitals will mean better medical care. Patients are more likely to die in hospitals where fewer operations are performed. A patient is seven times more likely to die during a coronary by-pass operation in a hospital that performs only 100 such operations a year than in a hospital that performs 350. No patient in Detroit—or any city—should go to a hospital without asking how often that hospital treats the ailment for which he or she is being admitted.

We must reduce extreme and unwarranted variations in the practice of medicine.

A 1984 Massachusetts survey of surgery rates revealed startling variations in medical practice: if you lived in Hingham in 1984, you were four times more likely to have your gall bladder removed than if you lived in Holyoke and had the same symptoms. Residents of Fairhaven, Fitchburg, and Framingham are fifteen times more likely to have tonsillectomies than people living in other Bay State areas where antibiotics are used to treat tonsillitis.

A recent study of 4.4 million Medicare beneficiaries living in 13 major regions, from Philadelphia to southern California, revealed that the erratic practice of medicine is a national phenomenon. Researchers found that, for 67 of the 123 medical and surgical procedures studied—more than half—residents of the areas with the highest rates were at least three times as likely to be treated as those in areas with the lowest rates. If you lived in the areas with the highest rates, for the same symptoms, you were 11 times more likely to get a hip operation, 6 times more likely to have a knee replaced, 3 times more likely to have coronary bypass surgery, 5 times more likely to get a skin biopsy, and 26 times more likely to receive hemorrhoid injections. And these stunning variations had no apparent relationship to health status.

For the same symptoms, the rate of major cardiovascular surgery is twice as high in Des Moines as in Iowa City. And while the incidence of heart attack is the same in Palo Alto and North San Diego, North San Diego's rate of cardiovascular surgery is 66 percent higher.

Adoption of more conservative surgical and medical practice styles by doctors could easily produce a 40 percent reduction in money spent for hospitalization alone—a savings of more than $60 billion a year.

We need to strengthen quality and nourish competition by giving individual and corporate purchasers the information they need to make intelligent health care choices.

Central to a free market with few controls and a variety of payment systems for physicians, hospitals, and other suppliers is an informed purchase of medical services.

It is imperative to get lots of information out: what hospitals and doctors charge, how successful they are in handling different types of patients, what kinds of diseases they treat most frequently, how often they use drugs or resort to surgery.

We need to loosen the hammerlock monopoly of doctors over the practice of medicine.

Medical technology makes it possible to provide in the home and the doctor's office diagnosis and treatment, like chemotherapy, dialysis and intravenous therapies and feeding, that once could only be delivered in a hospital. Today nurses can perform a host of tasks once reserved for doctors, such as examining, diagnosing and treating many wounds and sprains and common respiratory ailments. Early results of a Memorial Sloan-Kettering program indicate that many cancer patients can be treated just as effectively on an outpatient basis as in the hospital.

The physical monopoly over the practice of medicine should be eased to reflect the realities of modern technology, reduce medical featherbedding, eliminate obsolete work rules and allow paraprofessionals to provide many medical services just as competently and far less expensively. Government and private insurance programs should be tilted more toward care in the home and doctor's office.

We need to overhaul our medical malpractice system.

The cost of malpractice insurance is paid not by doctors and hospitals but by all of us as taxpayers and patients, and in 1984 it came to $4 billion of our health care bill—to say nothing of the billions of dollars we paid for unnecessary tests ordered by doctors anticipating lawsuits.

States should limit the amount of recovery to modest payment for pain and suffering, and largely link damages to costs of health care, replacing loss of income due to inability to work, and disability costs. Contingent legal fees should be sharply reduced.

Malpractice itself needs to be redefined. The tests doctors truly need to diagnose and treat their patients should be sufficient for their lawyers to prevail in the courtroom.

For doctors, reform of malpractice laws begins at home, with reform of their own medical discipline systems. Professional medical disciplinary systems are too often not doing their job. In 1984 state medical boards in Nevada, Utah, Oregon, and Mississippi each disciplined more than one physician out of every hundred. But boards in New York, Massachusetts, Nebraska, Hawaii, and the District of Columbia disciplined fewer than one per thousand.

We need to devise and adopt case management systems to cope with high cost cases.

Preliminary analysis of Chrysler's 1984 health care data indicates that 3.4 percent of Chrysler's insured accounted for 43.5 percent of the company's hospital payments. Our review of these high cost cases reveals that they are often life-style related diseases and that millions of dollars were wasted—and ineffective care provided—because no one was managing the care of these patients and aggressively pressing them to change their lifestyles, and because there was insufficient flexibility in the benefits package. For example, some patients who could have been more humanely and inexpensively treated at home were kept in the hospital because the benefit package provided only limited home care services.

As a result, Chrysler and the United Auto Workers have agreed to develop a system to better manage the care of patients. Our objective is to provide higher quality care at far less cost. In adopting case management systems, we will be insensitive to potential privacy issues and avoid an intrusive approach.

We need to adopt sophisticated health promotion programs.

Each of us can do more for our own health than any doctor, any hospital, any machine, or any drug.

Heart disease is America's number-one killer. Daily newspapers and television give the impression that coronary bypass surgery, modern cardiopulmonary techniques, miracle hypertension pills, human heart transplants, and in the future, animal and artificial heart transplants are the way to battle heart disease.

Right?

Couldn't be more wrong.

Since 1970 our nation has experienced a dramatic 25 percent decline in deaths from coronary heart disease. The major reasons? Improved eating habits—the reduction in cholesterol—accounted for almost one-third of the drop. The decline in cigarette smoking was responsible for another quarter. Individuals, by changing personal habits, were responsible for more than half the decline in deaths from heart disease. In contrast, coronary care units accounted for only 13 percent; cardiopulmonary resuscitation, 4 percent; bypass surgery, 3 percent; and the widely used hypertension pills only 9 percent.

Virtually all factors that substantially increase likelihood of heart disease are within the patient's, not the doctor's control: smoking, alcohol and drug abuse, a high-cholesterol diet, obesity, lack of exercise, stress.

British Prime Minister Winston Churchill put it characteristically well on a visit to his personal physician because of headaches, wheezing, aches, pains, and shortness of breath. "You've got to stop smoking a dozen cigars a day and staying up half the night drinking a bottle of cognac," his doctor admonished. "If I wanted to do that," Churchill shot back, "I wouldn't need you."

In a free country, pursuit of a healthy lifestyle is voluntary. But we can certainly take a host of actions to encourage Americans to choose wisely, and to bear the cost when they don't.

Business is just beginning to wake up to its potential for creating a healthy America. One of the most ambitious efforts is Johnson & Johnson's Live for Life program. Started in 1979, the program now involves 30,000 employees at 50 locations in the United States, Puerto Rico, and Europe.

Johnson & Johnson reports these early results:

25 percent of all employees who smoked in 1980 had stopped by 1982; 40 percent of the smokers in the program had stopped.

The average heart efficiency of all employees increased 11 percent over a two-year period—more than halfway toward the 20 percent maximum increase any individual can achieve.

The average blood pressure of all employees dropped by three points.

Hospital costs plummeted 35 percent.

Absenteeism went down 20 percent.

In the sixth year, savings per employee reached three times costs.

Finally, we need to continue our efforts as purchasers of health care to negotiate hard for the best quality care at the lowest possible price.

There is plenty more fat to be eliminated. Hospital profits hit record levels in 1984 and 1985 profit margins were even higher. Medical care inflation in 1985 was double that of the economy as a whole.

At Chrysler, we're proud of our efforts to hold down health care costs over the last three years, but we're not standing still. We're proving that action by health care purchasers can pay off in a big way in lower costs and better care, and we're convinced we've just scratched the surface of the savings potential.

Our next major move will be on Medicare costs. We have been analyzing these costs for the past two years and we are convinced that we can stem their rise and provide better health care, at least for our own retirees, by integrating the delivery of Medicare benefits into our own far more efficient health care system. We think there is a better way to provide the very best in health care for our retirees who are eligible for Medicare, a way which can set an example for corporations that employ millions of other beneficiaries.

Over the past two years Medicare has contracted with health maintenance organizations to provide benefits to eligible members. The HMOs agree to provide all Medicare benefits to a patient for 95 percent of the average annual fees Medicare would otherwise expect to pay fees-for-service doctors and hospitals. If costs exceed 95 percent, the HMO absorbs them; if costs are less, the HMO passes the difference on to its members in lower premiums or additional benefits.

Chrysler wants to make a similar arrangement with Medicare. We are prepared to provide all Medicare benefits for eligible retirees for 95 percent of the average cost to Medicare. The company would put itself at risk, paying anything above 95 percent and keeping anything below 95 percent. With a Medicare budget that will soon hit $100 billion, the potential savings for taxpayers from this and similar efforts by companies and unions can be measured in billions, not just millions, of dollars.

We are exploring this idea with the United Auto Workers. We are prepared to do it with the UAW ourselves, but we know other companies, particularly General Motors, have similar interests and we think a joint program would be desirable. I called Secretary of Health and Human Services Otis Owen last week to tell him about this and he is interested in exploring the idea with us. I believe this presents an exciting and effective way for the private and public sectors in a partnership to provide better quality care at lower cost to American taxpayers.

Hard-nosed bargaining by business and governments and competition among providers will bring down costs and give us a system efficient enough to provide quality care for all at a reasonable cost. But pressures of vigorous competition leave little space to provide Robin Hood care for the elderly, the poor and the unemployed—even by well-intentioned cost-shifting. In such an environment, government must protect the vulnerable, and assure them access to medical services, or they will be squeezed out of the health care system.

What a tragedy it would be, if we finally got a health care system efficient enough to enable us to provide high quality care to all our citizens, and we failed to fulfill this obligation in social justice!

Whether we're smart enough and disciplined enough to do that may well determine whether there is a first-class health care system for our children. And time is short.

America is at the dawn of the first four-generation society in the history of the world. That dawn can be the start of a brilliant era in which great-grandparents pass on a rich, living inheritance of love and wisdom to their great-grandchildren, or it can be the start of a frightening era of death control.

Which era dawns will depend on our moral values and compassion, and in large measure on our ability to create an efficient health care delivery system, with its attention turned to keeping people well.

As the twentieth century makes way for the twenty-first, we will become a society in which it will be common to have two generations of the same family in retirement, on social security, on Medicare, receiving nursing care.

The implications of this demographic transformation are stunning in every aspect: voting patterns, shifts of political power, demands on economic resources and social service systems, housing, income redistribution. But, nowhere is the aging of America more freighted with opportunity and danger than in the area of health care.

The issues of who lives and who dies, and at what cost, are complex and confounding. The omnivorous appetite of health care for our financial resources adds an urgency that demands action, under threat that our society will be torn apart by a debate over death control that will make the debate over abortion seem like genteel tea-party chatter. Unlike fetuses, the old can speak and vote for themselves.

Today, 12 percent of our population is 65 or older. When the baby boom ripens into the senior boom in the first quarter of the next century, some 20 percent of our population—about 60 million Americans—will be 65 or older.

And the composition of our older citizens is changing. Those who now live to be 65 have a life expectancy of 82. By the end of this century, almost 50 percent of those over 65 will be 75 or older.

The effect of the aging of our population on health care costs is sobering. We've all followed the Perils-of-Pauline saga of Medicare's trust fund. But, few Americans have even begun to think about the unfunded health care liabilities of our nation—which for the Fortune 500 alone exceed their assets.

We must create an efficient health care delivery system.

The stark alternative is a terrifying triage for the American people. In "The Painful Prescription," a book published by Brookings, the authors argue persuasively that, like Great Britain, we will soon ration health care in our country.

We always have had rationing, of course, related to individual economic wealth. But, with Medicare, the government becomes the rationer of health care for those who use and need the acute care system most.

Bluntly put, Uncle Sam will soon be playing King Solomon with your father and mother, and mine, and with you and me.

We face a frightening specter in our nation as medical technology and spiraling costs combine to blur the lines in hospital rooms among natural death, euthanasia, suicide and murder.

Without the most energetic pursuit of efficiencies, we will soon face a world in which there is no kidney dialysis for people over 55, no hip operations (or artificial hips) for those over 65, a world in which eligibility for expensive anti-cancer therapy will be based on statistical assessments of success, and key organ transplants will be severely limited to special cases of virtually certain recovery—all as defined in pages and pages of government regulations. In other words, unless we act, we will soon face a world of bureaucratic death control.

What kind of vision for the future is that? It's not a very pleasant one. But, in Great

Britain, that future is now. That's just about what they do today.

We in America are fortunate because we still have time to avoid that fate. We can learn from Britain's experience. We have a far more productive society. We can well afford to provide quality medical care to all. But we must have a health care system which eliminates inefficiencies and reduces the cost of care for our society as a whole.

The central fact about health care and costs in America is that we can do something about them. We can't create heaven on earth, but we have the capacity to provide quality care for all at reasonable cost. We can shape a competitive system of excellence, and motivate doctors and hospitals to provide less expensive care, and patients to stay healthy. We have the moral depth and Judeo-Christian roots to face the bewildering ethical issues our scientists pose with their ingenious inventions.

Our fate is in our hands. The uncertainties are not in knowing what to do, not in science, not in economics. The uncertainties lie in our ability to discipline ourselves and our individual and collective wills to act with courage and compassion.

A health care system as efficient and fair as it is miraculous is at long last within our reach, if we have the daring and persistence to finish the health care revolution.

Who lives? Who dies? Who pays?

That's up to you.●

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate a revised budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of congressional action on the budget for fiscal years 1986 and 1987. The estimated totals of budget authority, outlays, and revenues for each fiscal year are compared to the appropriate or recommended levels contained in the most recent budget resolutions, Senate Concurrent Resolution 32 for fiscal year 1986, and, Senate Concurrent Resolution 120 for fiscal year 1987. This report meets the requirements for Senate scorekeeping of section 5 of Senate Concurrent Resolution 32 and is current through September 23, 1986. The report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

Since my last report it has been determined that the Federal Government will receive in 1987 its share of the Louisiana Outer Continental Shelf escrow funds that were ordered to be paid by the Consolidated Omnibus Reconciliation Act of 1985 (Public Law 99-272). These receipts were assumed in the 1987 budget resolution, Senate Concurrent Resolution 120. This changes budget authority and outlays.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In billions of dollars]

	Current level[1]	Budget resolution (S.Con.Res.32)	Current level +/− resolution
Fiscal year 1986:			
Budget authority	1,053.0	1,069.7	−16.7
Outlays	980.0	967.6	12.4
Revenues	778.5	795.7	−17.2
Debt subject to limit	2,094.7	[2] 2,078.7	16.0
Fiscal year 1987:			
Budget authority	634.1	1,093.4	−459.3
Outlays	735.1	995.0	−259.9
Revenues	845.6	852.4	−6.8
Debt subject to limit	2,094.7	[2] 2,322.8	−228.1
Direct loan obligations	20.4	34.6	−14.1
Guaranteed loan commitments	33.1	100.8	−67.7

[1] The currrent level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,497	
Offsetting receipts	−188,561	−188,561	
Total enacted in previous sessions	1,060,679	986,159	777,794
II. Enacted this session:			
Commodity Credit Corporation urgent supplemental appropriation, 1986 (Public Law 99-243)			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99-251)		4	
VA home loan guarantee amendments (Public Law 99-255)		−51	
Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272)	−4,259	−6,001	765
Department of Agriculture urgent supplemental, 1986 (Public Law 99-263)			
Advance to hazardous substance response trust fund (Public Law 99-270)			
FHA and GNMA Credit Commitment Assistance Act (Public Law 99-289)		−380	
Federal Employees Retirement Act of 1986 (Public Law 99-335)			−90
Temporary extension of certain housing programs (Public Law 99-345)		−304	
Military Retirement Reform Act (Public Law 99-348)	−25		
Urgent supplemental appropriations, 1986 (Public Law 99-349)	−3,508	475	
Panama Canal Commission Authorizing Act (Public Law 99-368)	18	16	
Total	−7,773	−6,240	675
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			

FISCAL YEAR 1986, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
V. Entitlement authority and other mandatory items requiring further appropraition action:			
Compact of free association	3	3	
Special benefits (Federal employees)	14	14	
Family social services	100	75	
Payment to civil service retirement [1]	(37)	(37)	
Total entitlements	118	93	
Total current level as of September 23, 1986	1,053,024	980,012	778,469
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,412	
Under budget resolution	16,676		17,231

[1] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.

FISCAL YEAR 1987, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−165,990	−165,990	
Total enacted in previous sessions	567,568	677,563	843,799
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (Public Law 99-251)		2	
Technical Corrections Amends to Food Security Act (Public Law 99-253)	50	50	
VA home loan guarantee amendments (Public Law 99-255)		49	
Food Security Improvements Act of 1986 (Public Law 99-260)	−115	−115	
White Earth Reservation Land Settlement Act of 1985 (Public Law 99-264)	10	10	
Consolidated Omnibus Budget Reconciliation Act of 1986 (Public Law 99-272)	155	−3,553	2,503
FHA and GNMA Credit Commitment Assistance Act (Public Law 99-289)		−178	
Federal Employees' Retirement System Act of 1986 (Public Law 99-335)	−150	−1,670	−666
Judicial Improvements Act (Public Law 99-336)	2		
Temporary extension of certain housing programs (Public Law 99-345)		−85	
Military Retirement Reform Act (Public Law 99-348)	−47	146	
Urgent supplemental appropriations, 1986 (Public Law 99-349)	−278	−914	
Panama Canal Commission Authorizing Act (Public Law 99-368)		2	
Omnibus Diplomatic Security and Anti-Terrorism Attack Act (Public Law 99-399)	1	1	
Children's Justice and Assistance Act (Public Law 99-401)	10		
Total enacted this session	−362	−6,254	1,837
III. Continuing resolution authority			

FISCAL YEAR 1987, SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPTEMBER 23, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
IV. Conference agreements ratified by both Houses: Socorro County land conveyance (S. 1963)	−1	−1	
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payments to the CIA retirement fund	126	126	
Claims, defense	156	150	
Payment to the foreign service retirement trust fund [1]	(173)	(173)	
Range improvements	10	7	
BLM: Miscellaneous trust fund	(2)	(2)	
Compact of free association	42	42	
Administration of territories	35	30	
Payments to air carriers, DOT	32	30	
Retired pay—Coast Guard	370	341	
Maritime, operating-differential susidies		297	
BIA: Miscellaneous trust funds	1	1	
Social services block grant	2,700	2,538	
Family social services	758	584	
Guaranteed student loans	3,219	2,580	
Higher education facilities loans and insurance	19		
Government payment for annuitants	1,459	1,301	
Retirement pay for PHS officers	83	81	
Medicaid	19,595	19,241	
Medical facilities guarantee and loan fund	20	19	
Payments to health care trust funds [1]	(20,826)	(20,826)	
Special milk program	16	11	
Child nutrition programs	4,212	3,791	
Federal unemployment benefits and allowances	103	102	
Advances to unemployment trust fund [1]	(9)	(9)	
Special benefits (general retirement and Federal employee retirement)	257	257	
Black lung disability trust fund	549	549	
Supplemental security income	7,846	7,846	
Special benefits for disabled coal miners	698	638	
Assistance payments	7,350	7,350	
Child support enforcement	599	583	
Payments to social security trust funds [1]	(501)	(501)	
Veterans insurance and indemnities	5	4	
Veterans readjustment benefits	750	723	
Veterans compensation	10,300	9,360	
Veterans pensions	3,684	3,385	
Veterans burial benefits	138	138	
Salaries of judges	104	103	
Fees and expenses of witnesses	46	37	
Compensation of the President	(2)	(2)	
Payment to civil service retirement trust fund [1]	(4,557)	(4,557)	
National wildlife refuge fund	6	6	
Military pay raises and benefits	1,566	1,539	
Total entitlements	66,855	63,793	
Total current level as of September 23, 1986	634,060	735,100	845,636
1987 budget resolution (S. Con. Res. 120)	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			
Under budget resolution	459,290	259,900	6,764

[1] Interfund transactions do not add to budget totals.
[2] Less than $500 thousand.

Note.—Numbers may not add due to rounding.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. RUDMAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee has received a request for a determination under rule 35, for Mr. John Graykowski, a member of the staff of Senator DONALD W. RIEGLE, JR., to participate in a program in Vienna, Austria, sponsored by the "Z-bank" Foundation of Vienna, from September 18–19, 1986.

The committee has determined that participation by Mr. Graykowski in the program in Vienna, at the expense of the "Z-bank" Foundation, is in the interest of the Senate and the United States.

The select committee has received a request for a determination under rule 35, for Senator ORRIN G. HATCH, Mrs. Hatch, and Mr. Mike Pillsbury, Mr. Dee Benson, and Ms. Wendy Higginbotham, members of Senator HATCH's staff, to participate in a program in South Africa, sponsored by the South Africa Vocational Endowment, from August 30 to September 7, 1986.

The committee has determined that participation by Senator HATCH, Mrs. Hatch, and Mr. Pillsbury, Mr. Benson, and Ms. Higginbotham in the program in South Africa, at the expense of the South Africa Vocational Endowment, was in the interest of the Senate and the United States.●

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE FOR THE GREAT BASIN NATIONAL PARK ACT OF 1986

● Mr. MCCLURE. Mr. President, with regard to S. 2506, a bill to establish a Great Basin National Park in the State of Nevada, and for other purposes, I request that the Congressional Budget Office estimate of the costs of this measure be printed in the RECORD at this point. The cost estimate was not available at the time the report was filed.

The cost estimate follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 22, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2506, the Great Basin National Park Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

SEPTEMBER 22, 1986.

CONGRESSIONAL BUDGET OFFICE

COST ESTIMATE

1. Bill Number: S. 2506.

2. Bill Title: Great Basin National Park Act of 1986.

3. Bill Status: As ordered reported by the Senate Committee on Energy and Natural Resources, September 17, 1986.

4. Bill Purpose:

S. 2506 would establish the Great Basin National Park and would authorize the Secretary of the Interior to acquire lands within its boundaries. The bill also would abolish the Lehman Caves National Monument, incorporating the old monument site into the new park.

Section 3 of the bill addresses management of the park. Specifically, the bill would require the Secretary of the Interior to publish a management plan for the park that addresses grazing (which would be permitted to the extent that it now occurs on this land), fishing, and wildlife management. Subject to existing rights, park lands would not be open to mining or other commercial use.

Section 5 of the bill would authorize appropriations totaling $1 million for the acquisition and development of the park. In addition, any funds still available for the Lehman Caves National Monument would be used for the park.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level	1.0				
Estimated outlays	0.2	0.4	0.2		

The costs of this bill fall within budget function 300.

BASIS OF ESTIMATE

For purposes of this estimate, it is assumed that S. 2506 will be enacted by early in fiscal year 1987 and that the full amounts authorized will be appropriated. Outlays have been estimated on the basis of information obtained from the Department of the Interior (DOI) and do not include any spending of the $200,000 authorized for the acquisition of lands and interests within the park. According to the DOI, there is no private ownership of lands within the park, and the $200,000 would only be needed for the acquisition of any subsurface rights that may be identified in the agency's management plan.

No amounts have been included for the operation and maintenance of the park because it is expected that existing annual appropriations for the Lehman Caves National Monument will be sufficient for this purpose. Additional expenses for maintaining lands transferred from the Humboldt National Forest are not expected to be significant.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis (226-2860).

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.●

POLISH-AMERICAN HERITAGE MONTH

● Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague from Illinois as a cosponsor of Senate Joint Resolution 404, a resolution to designate October 1986 as "Polish-American Heritage Month." It is particularly appropriate that, in this year, the centennial year of the Statue of Liberty, we honor a people who have contributed so abundantly to our great country and to the world.

Polish-Americans are distinctly featured in so many areas of American achievement, particularly in our Nation's struggle for freedom against the British in the Revolutionary War. One such contributor was the legendary Pole, Gen. Casimir Pulaski. This Polish-American was introduced to George Washington by Benjamin Franklin in 1777. General Pulaski distinguished himself by fighting courageously in the American Revolution. He served our patriotic forces with special honor in the Battle of Brandywine. In Poland, he also was active in the struggle against foreign domination. This opposition to external control is noteworthy, especially in light of the current situation that prevails in Poland. General Pulaski is honored once a year in New York, where over 100,000 Polish-Americans march with pride in a parade to commemorate this renowned man.

Another Revolutionary hero of Polish heritage was Thaddeus Kosciuszko. Kosciuszko remained attached to his beloved homeland, but he also exhibited a strong devotion to America and its quest for freedom. Kosciuszko was instrumental in the defeat of the British at Saratoga and, subsequently, he was given 500 acres of land as a reward for his valiant service. In his will, he stipulated that this land be sold and that the proceeds be used to educate slaves.

These two noble men exemplify the rich tradition inherent in the Polish character and demonstrate a desire by Poles everywhere to uphold the principles of liberty and self-determination.

Mr. President, the contributions of other Poles to science and culture are equally impressive. The father of modern astronomy, Nicolaus Copernicus, established himself as a predominant figure in the annals of scientific history. His authoritative treatise, "Concerning the Revolutions of the Celestial Spheres," validated the previously unrecognized concept that the planets revolved around the Sun and not around the Earth. Poles have acquired prominence in other fields as well. The great 19th century composer and pianist Frederic Chopin serves as a further illustration of Polish accomplishment.

Today, there are many Poles who are principal players in the world forum. Pope John Paul II, the first Polish Pope, provides inspirational guidance for the Roman Catholic Church and for people facing adversity everywhere. Nobel Peace Prize winner and labor leader Lech Walesa serves as an example for others with his policy in advocating a peaceful solution to the problems that presently plague Poland. These men, through their diplomatic efforts, represent the virtuous qualities so much a part of the Polish character.

In the United States, we are also inspired by the leadership provided by such Polish-Americans as Edmund Muskie, our first Polish-American Senator, and Zbigniew Brzezinski, former National Security Adviser. These individuals have contributed much to our country, our heritage, and mankind as a whole. I am pleased to honor such a determined, freedom-loving people.

SOVIET JEWRY: THE CALL TO CONSCIENCE

● Mr. HEINZ. Mr. President, today I want to share with the Senate and the American people several stories of courage and persecution, several stories of Soviet Jews who are struggling to secure a simple right that we here in the United States take for granted: the right to emigrate.

These cases are not among the more celebrated of the Soviet refuseniks. The names have not figured high on the list of refuseniks that official American requests seek to have let go. These cases have come to my attention because constituents in Pennsylvania have alerted me. But the desire of these Soviet Jewish families to emigrate, their desire to leave the Soviet Union and go to Israel or the United States, where they can practice the religion of their fathers without fear of persecution, is as strong as that of more familiar refusenik figures.

The first case is the Mendeleyev family of Moscow. They applied to leave the U.S.S.R. more than a decade ago. Oscar is an engineer but, like all refuseniks, can find no regular work. His wife, Shelley, works as a pediatrician, but with reduced pay and privileges. Their twin sons have grown into young men during their long wait for emigration, and could soon be drafted for service into the Soviet military.

If they are drafted before exit visas are granted, all hope of the Mendeleyev's leaving the U.S.S.R. could vanish. For the Mendeleyevs, time may be running out.

In Minsk, the Reingolds have been waiting 3 years for a response to their application to emigrate to Israel. Gennady and Bella applied to emigrate, along with their son Alexander and Bella's parents, sister, and brother-in-law. Some of the extended family has already made it to Israel.

The Reingolds, because they live in a remote location, do not receive many foreign visitors, who can be a lifeline of hope for refusenik families enduring the cold isolation of official ostracism. They have only the mail to connect them with the outside world, with their relatives in Israel.

Another case involves the family of Felix and Mila Levitas, of Kiev. With their children Yuric and Rivka, Felix and Mila have long lived in Kiev. But in June of this year they suddenly left, Felix for Turkmenistan, and the rest of the family to Moscow to live with friends. Their relatives in Pennsylvania are not quite sure why they left Kiev, or what will come next.

We do know that they have suffered the typical fate of refuseniks—loss of employment, endless waiting, harassment from official Soviet society. They applied to emigrate to the United States back in 1978, and still they wait.

All these families—the Mendeleyevs, the Reingolds, the Levitas—have the right to emigrate from the Soviet Union, a signatory of the Helsinki accords. But they are all refused, punished, and made to wait interminably to learn their eventual fate. Our power to help them directly is very limited. What we can do is to make sure their heroic behavior does not pass unnoticed. We can keep their cause, their names in front of the Soviet authorities, living example of Moscow's disregard for its solemn international commitments on human rights.

Mr. President, I call on the Soviet Government to live up to its own pronouncements, its own international commitments, to universal standards of justice and human rights. The Senate and the American people join me when I say to the Kremlin, on behalf of the Mendeleyevs, the Reingolds, and the Levitas—let them go.●

NAUM AND INNA MEIMAN: A BLATANT VIOLATION

● Mr. SIMON. Mr. President, I would like to commend Gerald Batist for his article "Why Can't These Soviet Cancer Patients Leave?" which appeared in the Washington Post on Sunday, September 21, 1986. There can never be enough publicity for the Soviet cancer victims who should be able to obtain experimental treatment or second opinions in the West. The Soviets continued refusal to permit these cancer-stricken refuseniks to obtain treatment is a violation of the Soviet-signed Helsinki accords.

Naum and Inna Meiman are close friends who know only too well the harshness of refusal by the Soviet Government. Inna has had four operations for tumors on her neck. A fifth tumor grows larger each day, yet the Soviets will not allow Inna and Naum to come to the West for experimental treatment.

I ask that the Batist article appear in the RECORD.

The article follows:

WHY CAN'T THESE SOVIET CANCER PATIENTS LEAVE

(By Gerald Batist)

Under the best circumstances, with the latest developments in treatment available in modern hospitals, cancer is a horrible disease. Cancer patients in the Soviet Union, I found during my visit there last spring, face even grimmer prospects. For the average Soviet cancer patient, there is no choosing a physican for treatment—the patient accepts whoever is assigned to the case; there is no seeking a second opinion; there is no opting for alternative treatment or traveling to another city for better treatment.

But there is a group of Soviet cancer patients whose problems are even worse and whose burden is all the greater—perhaps too great to bear.

I saw this cruel burden firsthand when I met with Soviet cancer patients, involuntarily separated from their families and denied the chance to get treatment that might save or lengthen their lives. Knowing what I know about cancer and the tremendous effect a patient must make to overcome it, I believe that keeping a patient separated from loved ones is a kind of death sentence, that their will to live is undermined by their isolation.

Five Soviet cancer patients have been denied permission to join their blood relatives in the West where they could consider alternative treatments in the loving and supportive environment of their families. I visited some of these cancer patients in Moscow, spending time with them and listening to them describe their feelings of loneliness and isolation.

Rimma Bravve is a 31-year-old woman who is dying of ovarian cancer and has been told by her Soviet physicians that they can do nothing more to arrest her cancer. She lives in a dark and dingy apartment in Moscow with her husband, Vladimir, and his family. She last saw her mother 10 years ago, and her sister six, when each was granted an exit visa.

Vladimir met me before we visited Rimma. He carefully reviewed her medical history and explained that she is so emotionally fragile that she is afraid of even the mention of her cancer. I am familiar with this reaction. The powerlessness of a cancer patient, particularly when the physician gives no hope, is overwhelming. It is a feeling of profound loneliness and helplessness that for some is too strong even to ponder, much less empower with words.

I thought of how my patients cope with it, and I recalled a woman of about Rimma's age. She had just been diagnosed with an incurable malignancy and was very depressed. I first met her when she and her parents attended a patient-and-family psychological-support group I ran on a cancer ward in Washington. They sat clutching one another as they listened to other patients and family members discuss not only their illnesses, but also their everyday lives, their short- and long-term goals and their attempts at maintaining normal routines.

Finally, just as we were about to adjourn, this young woman spoke, introducing herself and her parents. She said that she had been afraid to talk about her cancer, but that sitting there with her family, listening to others in the same situation, she had discovered that "the sun also rises each day for cancer patients." After that initial session, with time, and the loving support of her family, she slowly came to better terms with her fate and found the courage to enjoy experiences with greater intensity, to make the most of each day.

Like all the cancer patients I visited in the Soviet Union, Rimma and Vladimir are outcasts in their society. They are Jewish and have expressed a desire to emigrate. Dismissed from work, socially ostracized, and carefully scrutinized by neighbors, it is difficult to imagine the sun rising for her even in health. Guarded conversations over a tapped telephone with her mother and sister are Rimma's only connection to hope, her only sense of a future.

As I was leaving, Rimma said in a strained English, "Good luck in your difficult journey." With sincere modesty, I answered that my visits were not difficult. Thinking that she had misspoken, she ran to her Russian-English dictionary and returned to say, "Good luck in your noble journey." Vladimir escorted me out. He asked nothing for himself, but accepting the painful future, wondered if I could provide Rimma with pain medications when the time came, since he was uncertain of the care he could count on. In that instant I felt more powerless than he and was awestruck by his protective caring and courage. More terrifying was the thought that this young woman would die without even trying some experimental treatments that I believe might help.

I met Benjamin Bogomolny on a dim street. A tall, boyish man, at age 40 he is one of the longest-standing "refuseniks," denied permission to emigrate for more than 20 years. All of his immediate family members live in the West. He and his wife, Tatyana, have experienced harassment, house arrest and searches, joblessness and disgrace in their struggle to rejoin their family members outside the Soviet Union.

We were greeted at the door by Tatyana, an articulate and compelling woman of 47 years who, until her application to emigrate, was a translator. She has not seen her father or sister for more than six years. They live in San Francisco. She took me to another room where, she said, we could discuss her illness without upsetting Benjamin.

She had had a radical mastectomy for breast cancer four months earlier and was receiving chemotherapy because the tumor was found to have spread to her lymph nodes. She was in obvious pain, a complication of the surgery, and was weakened by the drugs. Yet her spirit was forceful and deliberate. She quoted William Blake and Walt Whitman with passion as she described her isolation, her fears, her determination. Between Tatyana and Benjamin, all 26 of their living relatives are in the West, yet the Soviets do not consider them a divided family as defined by the Helsinki accord. The utter absurdity of this situation shocked me.

She had been offered further surgery to remove her ovaries as a preventive measure—not a common practice in the West—but she was uncertain. She had "confessed" her refusenik status to her doctor and thankfully found a sympathetic ear. I wondered how my colleague, her doctor, must be feeling—trying to maintain his patient's spirits during this difficult treatment in the midst of such utterly distressing circumstances. Western physicians have long recognized that the psychological and emotional state of the patient can have direct impact on both tolerance of and response to treatment. Yet Tatyana's emotional state could not be more stressful. Her response to this helpless situation is to take what control she can, to use the power of words that she so dearly loves: In speaking to Westerners, she asks them to do what they can to "rescue" her and others like her from isolation.

Her struggle for control of her own destiny takes fascinating shapes: Benjamin, trained as an engineer, has begun evening medical courses at her insistence. "They have taken everything away from us. The only way I can get back is by making Benjy the most brilliant doctor." If she must, Tatyana will fashion her own physician, one who she knows can provide her with strength and understanding.

The Bogomolnys have been visited over the years by hundreds of westerners, including some prominent politicians. Among them is San Francisco Mayor Dianne Feinstein. Tatyana spoke of her with moving admiration and affection. When I returned from the Soviet Union, I found the mayor to have the same feelings for Tatyana. She asked me to convey a private note and pink bathrobe to Tatyana. Little gestures like these, that we may take for granted in the West, are often the most we can do to pierce the isolation of those I visited in the Soviet Union.

It was just after Chernobyl and visitors to the Soviet Union were scarce. I sent the robes to one couple in Los Angeles, but they changed their plans at the last moment and returned it ot me. I finally found a New Yorker who agreed to take it with him during his visit to Moscow. By the time Tatyana received the robe it had traveled more than 10,000 miles, but I am told that she immediately wrapped it around her scarred body to feel the strength in solidarity with the mayor.

On June 2, 1986, six months after Tatyana's diagnosis, she and Benjamin were again refused permission to leave and were given no reason. The Soviet visa official said, "If you need a reason, we'll find one."

A few months ago, I received a call from Leon Charny who lives in Massachusetts. Charny's brother Benjamin was one of the patients in Moscow. Leon and Benjamin are very close, their parents having died long ago. Benjamin has been both brother and father to Leon. In 1979 they decided to emigrate. Leon was permitted to leave that same year, thinking that Benjamin would shortly follow. But that was not to be. For inexplicable reasons Benjamin was refused. But more shocking to the brothers was Benjamin's newly diagnosed malignant melanoma. This deadly skin cancer added an even more traumatic dimension to their forced separation. Soon after, Benjamin suffered a series of dangerous heart attacks requiring hospitalization.

Benjamin is 48 years old and lives with his wife, Yadviga, and his daughter and son-in-law, Anna and Yuri Blank. As a refusenik, Benjamin has been denied the right to work in his field of mathematics. In recent months his tumor has recurred, with visibly growing masses in his neck, yet his cardiologists insist that his heart cannot withstand further surgery. In North America it is now indeed a rare patient who cannot be carried through surgery because of a cardiac condition, yet because the Soviets will not allow him to emigrate, Benjamin cannot have access to this know-how. Perhaps more importantly, he cannot feel the warm embrace of his brother Leon, the other half of the family that their parents created.

Since June, Leon has fought desperately to tell his brother's story to the world, to

lay bare the absurdity of this cruel situation. Following a press conference in Boston attended by some of the most prominent cancer specialists in America, a television network sent a camera crew to interview Benjamin in Moscow.

The following day Leon and I appeared on the morning news show. There, live before millions of viewers, Leon was shown film footage of his brother, whom he has not seen in more than seven years. I sat beside Leon and watched his stunned silence as tears welled up in the eyes of this reserved and dignified man. He sat speechless shaken with joy at this "reunion" and pain at the persistent separation. I wondered how in this modern age such a macabre situation could actually exist.

The sadness of this situation is enhanced by the recognition that once Benjamin and his family are allowed to leave, his struggle with cancer goes on. Yet if he must die, it should be only after every available treatment has been tried. And, if he cannot be saved, at least he should not be forced to die in the utter loneliness of his present circumstances, cut off from his beloved brother. This is, as I learned in my own oncologic practice, the key ingredient in finding peace of mind for both patient and family.

Inna Meiman is critically ill. The tumor on her neck grows larger each week and her Soviet doctors have no therapy to offer. Since the fourth operation in December 1985, she has become progressively weaker and more despairing. Inna is 53 years old and lives alone with her 75-year-old husband, Nahum. They are not permitted to leave the country. The reason given is that theoretical work in mathematics performed by Nahum over 30 years ago still makes him a security risk. This claim is denied even by the president of the Soviet Academy of Sciences, yet it remains the excuse of this inhumanity. When Nahum speaks to westerners, he pleads desperately for his beloved, ailing wife.

Earlier this month, amidst the bustle of the U.S. Capitol, several of us gathered at a press conference in a crowded Senate hearing room—doctors, family members, government leaders—to tell the story of these sad souls. As we each spoke, journalists dutifully recorded the facts, the faces, the photographs of the patients.

When the telephone rang, a shudder ran through the room as we all focused on the faceless voice. In the midst of the tragic stories we had just described, Tatyana's voice cried out with courage, determined to be heard, fearless of the consequences. "We have nothing more to lose", she had long ago told me, determined to maintain her dignity.

Her father Ilya, now 75, caressed the phone as he talked to his daughter and spoke out publicly for the first time in all these years of separation. In impassioned Russian, this dignified, decorated war veteran cried, "If there is a God, my daughter should be with me!"

As I looked around the room, tears filled everyone's eyes as they stared at the speaker phone. In her strength, Tatyana Bogomolny had made us feel the depths of helplessness, yet also renewed our fierce determination.

As a cancer doctor, I have faced impossible challenges many times, yet the solution here is so simple and attainable—let them leave. Tatyana left us with one request—"please don't forget us." She pleaded not only for herself but for Rimma, Benjamin, Inna and also Leah Maryasin, another cancer patient separated from relatives in the West.

Looking around the room, sensing the common core of humanity that has been touched by the pleas, I knew that they will be remembered.●

ABORTION AND INFORMED CONSENT: GEORGIA

● Mr. HUMPHREY. Mr. President, this anonymous letter from Georgia brings an added dimension to our discussion of post-abortion trauma: The damage done to women's families. Women who have written to my office regretting their decision to submit to abortion discuss their own mental and physical sufferings. The health effects on women warrant swift action in the Congress. But we need to realize that this gruesome procedure also takes its toll on other family members.

In most surgical procedures, husbands are included in the decisionmaking process. Too often, this is not so with abortion. The Supreme Court has determined that the father (not to mention grandparents and other relatives) essentially has no right to protect the life of his child. As a result, he is considered to be of slight or no concern in the so-called counseling process preceding abortion. I find this astonishing. Abortion, as hoped for by its promoters, has indeed become a "private" affair, to the detriment of women and men all over the country.

Thus we see that the tendency to give insufficient information regarding abortion procedures and consequences is not limited to potential mothers, but also to fathers and other family members. According to this letter, neither husband nor wife were prepared for what they now experience. Like so many others, they were led to believe that abortion would provide a "quick-fix" in an embarrassing situation. So the outrageous lack of informed consent is magnified, being extended to the woman and to her family. Rather than solving family problems, we observe that abortion is tearing American families to shreds. Rather than enhancing opportunities for women, abortion cripples them along with their families.

I hope my colleagues will join me in cosponsoring S. 2791, which will require that women be given adequate information regarding abortion. Perhaps then we will begin to see healing take place in our families rather than disaster when they confront an unplanned pregnancy.

The letter follows:

MAY 19, 1986.

DEAR SENATOR GORDON HUMPHREY: I encourage and support the stand you are taking against abortion. It's the most controversial issue in America. I have had two abortions and would like to share my story with you.

Four years ago (age 19), I had an abortion. Six months later, I was pregnant again and decided to marry the father of both babies. Because of embarrassment on his side of the family, we aborted our second child also. We told our families I had a miscarriage.

We were encouraged by our "pro-choice" friends to have this "simple medical procedure." We realize now that it was the worst mistake we had ever made.

I went through, and still go through, severe mental problems—visualizing the procedure in my mind, hating myself, grieving and wanting to escape from the whole situation. No one ever told me about the emotional side effects after having an abortion.

My husband is now experiencing severe depression and has been referred to a counselor at a psychiatric hospital. My husband is terrified of having children. He is afraid of having physically or mentally handicapped children. Our marriage is falling apart and he is emotionally torn apart.

You can see how the abortions have affected me and my husband. Imagine the other millions of people (men and women) involved in abortions. God help this country if it continues. People can not live as normally after an abortion as they had before. Abortion is viewed by many as the solution to a "problem pregnancy." It is opening the door to worse problems.

It is too easy and inexpensive to have an abortion. Women are physically and mentally unbalanced during pregnancy to begin with. Clinics should have a day or two waiting period after the initial "counselling appointment". The above is simply a suggestion if the abortion laws in this country can't be abolished.

(Name withheld upon request.)

GEORGIA.●

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Thursday, September 25.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 5 minutes each: HAWKINS, PROXMIRE, MURKOWSKI, BRADLEY, and MCCONNELL.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that following the special orders, there be a period for the transaction of routine morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT DESK—S. 2840

Mr. ARMSTRONG. I ask unanimous consent that S. 2840, Superfund, be

held at the desk until close of business Thursday, September 25.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERNATIONAL CLAIMS SETTLEMENT ACT AMENDMENTS

Mr. ARMSTRONG. I ask unanimous consent that the Senate turn to H.R. 5506, the International Claims Settlement Act of 1949, just received from the House.

Mr. BYRD. Reserving the right to object, Mr. President. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5506) to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken.

The Senate proceeded to consider the bill.

● Mr. MURKOWSKI. Mr. President, today I rise in support of H.R. 5506, a bill to amend the International Claims Settlement Act of 1949. This legislation will strengthen the position of the U.S. Government when negotiating with foreign governments and will protect U.S. businesses abroad.

The bill codifies the basis by which the Foreign Claims Settlement Commission determines the value of expropriated property belonging to U.S. citizens. That standard, consistently recognized by Congress, is "Fair Market Value". This standard, as applied to an operating business enterprise would generally be the "Going Concern" value of the enterprise. In addition, the bill establishes a presumption that in the case of service industries, the appropriate basis for valuation is the going concern value of the enterprise.

H.R. 5506 codifies the principle that the amount of compensation due is not to be influenced by pre-expropriation of postexpropriation actions by the taking government which may have depressed the value of the property. The standard enunciated in the bill conforms to accepted principles of international law established by a long history of treaty practice and decisions of international judicial and arbitral tribunals; it is based primarily upon the standard established by Congress in title V of the International Claims Settlement Act.

In the past, legislation concerning the Foreigin Claims Settlement Commission has not contained an explicit reference to the compensation standard required by international law, with the exception of the Cuban Claims Act of 1964. Without the definition of a compensation standard, the potential exists for decisions inconsistent with international law, which would harm current and future U.S. investment abroad.

I commend our colleagues in the House for their prompt action on this legislation. With this bill as guidance, the Commission's decisions should apply clearly the proper standards of international law and foreign governments will be on notice that the U.S. Congress will take all appropriate steps to protect U.S. business abroad. I urge my colleagues to approve H.R. 5506.●

The PRESIDING OFFICER. If there be no amendment to be proposed, the question is on the third reading of the bill.

The bill was ordered to a third reading, was read the third time, and passed.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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THE CALENDAR

Mr. ARMSTRONG. Mr. President, I would like to inquire of the minority leader if he is in a position to pass or indefinitely postpone any of the following calendar items: Calendar No. 894, S. 2048; Calendar No. 923, S.J. Res. 329, Calendar No. 924, S.J. Res. 339; Calendar No. 926, S.J. Res. 395; Calendar No. 927, S.J. Res. 396; Calendar No. 928, S.J. Res. 401; Calendar No. 929, S.J. Res. 413; Calendar No. 930, H.J. Res. 547; Calendar No. 952, H.J. Res. 721; Calendar No. 953, H.J. Res. 611; Calendar No. 954, S. 1935; Calendar No. 956, H.J. Res. 710; Calendar No. 959, S. 2750; Calendar No. 960, H.R. 1344; Calendar No. 961, S. 2062; and Calendar No. 962, S. 2788.

Mr. BYRD. Mr. President, all of these calendar items have been cleared on this side by all Members and we are ready to proceed with the understanding that Calendar Orders 923 and 928 as enumerated by the distinguished acting Republican leader are for the purpose of postponement.

Mr. ARMSTRONG. 928 and 923?

Mr. BYRD. Yes.

Mr. ARMSTRONG. I thank the minority leader and with that understanding I ask unanimous consent that the calendar items just identified be considered en bloc and passed or i.ndefinitely postponed en bloc and that all committee reported amendments and preambles be considered agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

DESIGNATION OF SHIPWRECK OF THE "TITANIC" AS AN INTERNATIONAL MARITIME MEMORIAL

The Senate proceeded to consider the bill (S. 2048) to encourage international efforts to designate the shipwreck of the R.M.S. *Titanic* as an international maritime memorial and to provide for reasonable research, exploration and, if appropriate, salvage activities with respect to the shipwreck.

Mr. WEICKER. Mr. President, as the cosponsor with Senator PELL, I urge my colleagues to support S. 2048, legislation that would designate the *Titanic* an international maritime memorial. The bill directs the United States to negotiate with other nations to establish international guidelines for research, exploration, and, if appropriate, salvage of the shipwreck. The bill was recently reported out of the Senate Foreign Relations Committee and the House companion bill, H.R. 3272, was passed last December.

You all know the story of the "unsinkable" *Titanic*, which, in 1912, collided with an iceberg off the coast of Newfoundland and sunk 2½ miles to the ocean floor. Over 1,500 lives were lost, and the tragic event changed maritime history forever. New regulations that would provide increased safety at sea were implemented in the years following the disaster.

The joint United States-French team which discovered the *Titanic* was under the direction of Dr. Robert Ballard of Woods Hole Oceanographic Institution. The team initially located the shipwreck with an unmanned submersible, and Dr. Ballard's latest trip to the site this past July was in the three-man submersible *Alvin*.

Using sophisticated undersea technology, Dr. Ballard found an underwater museum: thousands of artifacts were strewn over the ship and ocean floor. The remotely operated camera attached to *Alvin* traveled down the grand staircase to view the ballroom with its chandelier still hanging. Uncorked champagne bottles and unbroken fine china survived the 2½-mile fall to the bottom. Dr. Ballard and his colleagues determined that on impact with the iceberg, the portion of the hull where the gash was supposed to be had actually buckled where the steel plates popped their rivets and separated. Throughout, the scientific expedition proceeded with its mission while maintaining the archeological history of the site.

The passage of this legislation serves several purposes: it provides a forum to resolve the potential conflicts of interest between scientists, salvors, archeologists, and family and friends of those who perished. An understanding of how to treat the shipwreck lies in legislation that will commemorate the

lives lost and allow the rest of the world to see and learn from the tragic event. S. 2048 does just that.

Since the shipwreck lies in international waters, the bill seeks to promote a spirit of cooperation between countries, a spirit that would create a common goal: to stimulate research and exploration on the *Titanic* and encourage those who would be involved in those activities to refrain from physically disturbing the wreck or recovering artifacts until there has been fair opportunity to develop international guidelines or agreements. Specifically the bill directs the Secretary of State to consult with the Administrator of the National Oceanic and Atmospheric Administration when negotiating with interested nations. Full participation in the guideline development process by other interested U.S. Federal agencies, academic and research institutions, and the public is encouraged.

This legislation has the support of the administration and requires no authorization of funds. The bill does not prohibit U.S. citizens from exploring or salvaging activities in the absence of similar restrictions on citizens of other interested nations.

Again, I urge swift passage of this legislation, so the *Titanic* can receive the proper treatment she so richly deserves.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2048

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "R.M.S. Titanic Maritime Memorial Act of 1986".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the R.M.S. Titanic, the ocean liner which sank on her maiden voyage after striking an iceberg on April 14, 1912, should be designated as an international maritime memorial to the men, women, and children who perished aboard her;

(2) the recent discovery of the R.M.S. Titanic, lying more than twelve thousand feet beneath the ocean surface, demonstrates the practical applications of ocean science and engineering;

(3) the R.M.S. Titanic, well preserved in the cold, oxygen-poor waters of the deep North Atlantic Ocean, is of major national and international cultural and historical significance, and merits appropriate international protection; and

(4) the R.M.S. Titanic represents a special opportunity for deep ocean scientific research and exploration.

(b) PURPOSE.—The Congress declares that the purposes of this Act are—

(1) to encourage international efforts to designate the R.M.S. Titanic as an international maritime memorial to those who lost their lives aboard her in 1912;

(2) to direct the United States to enter into negotiations with other interested nations to establish an international agreement which will provide for the designation of the R.M.S. Titanic as an international maritime memorial, and protect the scientific, cultural, and historical significance of the R.M.S. Titanic;

(3) to encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic; and

(4) to express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage the R.M.S. Titanic in any research or exploratory activities which are conducted.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the term—

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA);

(b) "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government;

(c) "R.M.S. Titanic" means the shipwrecked vessel R.M.S. Titanic, her cargo or other contents, including those items which are scattered on the ocean floor in her vicinity; and

(d) "Secretary" means the Secretary of State.

SEC. 4. COMMENDATION.

The Congress of the United States highly commends the members of the joint international expedition which discovered the R.M.S. Titanic.

SEC. 5. INTERNATIONAL GUIDELINES.

(a) The Administrator is directed to enter into consultations with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic, which—

(1) are consistent with its national and international scientific, cultural, and historical significance and the purposes of this Act; and

(2) promote the safety of individuals involved in such operations.

(b) In carrying out subsection (a), the Administrator shall consult with the Secretary and shall promote full participation by other interested Federal agencies, academic and research institutions, and members of the public.

SEC. 6. INTERNATIONAL AGREEMENT.

(a) The Secretary is directed to enter into negotiations with the United Kingdom, France, Canada, and other interested nations to develop an international agreement which provides for—

(1) the designation of the R.M.S. Titantic as an international maritime memorial; and

(2) research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic consistent with the international guidelines developed pursuant to section (5) and the purposes of this Act.

(b) In carrying out the requirements of subsection (a), the Secretary shall consult with the Administrator, who shall provide research and technical assistance to the Secretary.

(c) The Secretary and the Administrator shall report semiannually to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate on the progress of the negotiations and consultations.

(d) Upon adoption of an international agreement as described in subsection (a), the Secretary shall provide notification of the agreement and recommendations for legislation to implement the agreement to the Committee on Merchant Marine and Fisheries and the Committee on Foreign Affairs in the House of Representatives and to the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation in the Senate.

SEC. 7. SENSE OF CONGRESS REGARDING CONDUCT OF FUTURE ACTIVITIES.

It is the sense of Congress that research and limited exploration activities concerning the R.M.S. Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance: *Provided*, That, pending adoption of the international agreement described in section 6(a) or implementation of the international guidelines described in section 5, no person should conduct any such research or exploration activity which would physically alter, disturb, or salvage the R.M.S. Titanic.

SEC. 8. DISCLAIMER OF EXTRATERRITORIAL SOVEREIGNTY.

By enactment of this Act, the United States does not assert sovereignty, or sovereign or exclusive rights or jurisdiction over, or the ownership of, any marine areas or the R.M.S. Titanic.

NATIONAL HOME CARE WEEK

The joint resolution (S.J. Res. 339) to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 339

Whereas organized home health care services to the elderly and disabled have existed in this country since the last quarter of the eighteenth century;

Whereas home health care, (including skilled nursing services, physical therapy, speech therapy, social services, occupational therapy, health counseling and education, and homemaker-home health aide services), is recognized as an effective and economical alternative to unnecessary institutionalization;

Whereas caring for the ill and disabled at home emphasizes the dignity and independence of the individual;

Whereas the Federal Government has supported home health services since the enactment of the medicare program, with the number of home health agencies providing services increasing from less than five hundred to more than five thousand; and

Whereas many private, public, and charitable organizations provide these and similar services to millions of patients each year preventing, postponing, and limiting the need for institutionalization and enabling such patients to remain independent: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America

in Congress assembled, That the week of November 30, 1986, through December 6, 1986, is designated as "National Home Care Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the week with appropriate programs, ceremonies, and activities.

NATIONAL INSTITUTES OF HEALTH CENTENNIAL YEAR

The joint resolution (S.J. Res. 395) to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 395

Whereas the National Institutes of Health over the past 100 years, has grown from a one-room laboratory of hygiene within the Stapleton Marine Hospital on Staten Island, New York, to become one of the largest and most respected biomedical research centers in the world;

Whereas the National Institutes of Health, as an agency of the Department of Health and Human Services, is the Nation's flagship in mankind's continuing battle to conquer disease;

Whereas the National Institutes of Health continuously contributes to the discovery of new knowledge that leads to longer lives and better health for all people;

Whereas the National Institutes of Health provides national leadership in a critical partnership of the Government, academic, and private sectors;

Whereas the National Institutes of Health conducts research in its own laboratories, supports the research of non-Federal scientists in universities, medical schools, hospitals, and other public, private, and voluntary research institutions throughout this country and abroad;

Whereas the National Institutes of Health fosters training and career development of future research scientists, sponsors the enhancement of research resources, and promotes improvements in biomedical communications;

Whereas the National Institutes of Health facilitates the assembly of United States and foreign biomedical scientists and promotes the exchange of scientists and scientific information between the United States and other countries;

Whereas the National Institutes of Health supported the work of 60 Noble Prize winners before their selection as laureates;

Whereas the National Institutes of Health has contributed to the great strides of the past 100 years in the control and virtual worldwide elimination of epidemic diseases such as cholera, smallpox, yellow fever, and bubonic plague, and the prevention in this country of childhood diseases such as diphtheria, polio, tetanus, and pertussis;

Whereas the National Institutes of Health has stimulated biomedical research that has played a role in the 70-percent reduction in the death rate in the United States since 1900;

Whereas the National Institutes of Health has pioneered new methods for the detection and treatment of diseases and has promoted their widespread dissemination into medical practice;

Whereas grantees and scientists of the National Institutes of Health work at the forefront of biomedical technologies that open up new opportunities in medical research;

Whereas the next 100 years will undoubtedly see the National Institutes of Health lead the world in ways of promoting health and preventing disease;

Whereas the Congress of the United States has consistently supported the National Institutes of Health to maintain America's preeminence in medical research; and

Whereas the Congress of the United States looks to the National Institutes of Health for progress in overcoming the disease that afflict the people of this country: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the period of October 1, 1986, through September 30, 1987, is designated as "National Institutes of Health Centennial Year", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such year with appropriate ceremonies and activities.

NATIONAL ADULT IMMUNIZATION AWARENESS WEEK

The joint resolution (S.J. Res. 396) to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 396

Whereas influenza and pneumonia are among the top killers of American adults, especially elderly Americans;

Whereas fewer than 12 percent of the adult population is adequately protected against these diseases or against other highly infectious diseases including measles, rubella, diphtheria, and hepatitis B;

Whereas less than half of Americans over 60 are inoculated against the deadly tetanus toxoid;

Whereas the lives of tens of thousands of American adults could be spared this year simply by taking vaccines that are approved as safe and effective by the United States Food and Drug Administration and are readily available to the public; and

Whereas the Surgeon General of the Public Health Service has repeatedly called on this Nation to prevent the massive costs of health care through a program of preventive health care, of which a major role is played by inoculation against infectious diseases: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of October 26, 1986, through November 1, 1986, is designated as "National Adult Immunization Awareness Week". The President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

LEARNING DISABILITIES AWARENESS MONTH

The joint resolution (S.J. Res. 413) to designate the month of October 1986 as "Learning Disabilities Awareness Week," was considered, ordered to be engrossed for a third reading, read the third time and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 413

Whereas millions of Americans suffer from one or more learning disabilities;

Whereas it is estimated that ten million American children have been diagnosed as suffering from learning disabilities;

Whereas most learning-disabled persons are of normal or above normal intelligence but cannot learn to read and write in the conventional manner;

Whereas it is important for parents, educators, physicians, and learning-disabled persons to be aware of the nature of learning disabilities and the resources available to help learning-disabled persons;

Whereas early diagnosis and treatment of learning-disabled children gives such children a better chance for a happy and productive adult life;

Whereas the courage necessary for learning-disabled persons to meet their special challenges should be recognized;

Whereas hundreds of national and local support groups for learning-disabled persons, parents of learning-disabled children, and professionals who work with learning-disabled persons have made important contributions to the treatment of learning disabilities;

Whereas research and study have contributed to public knowledge about learning disabilities, but much remains to be learned; and

Whereas public awareness of and concern about learning disabilities may encourage the establishment of the programs necessary to promote early diagnosis and treatment of learning disabilities and to help learning-disabled persons and their families cope with their learning disabilities: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 1986 hereby is designated "Learning Disabilities Awareness Month", and the President of the United States is authorized and requested to issue a proclamation calling upon all public officials and the people of the United States to observe such month with appropriate programs, ceremonies, and activities.

POLISH AMERICAN HERITAGE MONTH

The Senate proceeded to consider the joint resolution (H.J. Res. 547) to designate October 1986 as "Polish American Heritage Month."

Mr. SIMON. Mr. President, I am pleased that House Joint Resolution 547, designating October 1986 as "Polish American Heritage Month," was favorably passed out of the Judiciary Committee on September 19, 1986. I introduced this joint resolution as Senate Joint Resolution 404 on August

15, 1986, and am pleased to note that there are now 30 cosponsors.

Polish Americans have contributed richly to our culture. They have excelled in education, arts and sciences, diplomacy, the military, sports, and entertainment. Polish Americans are justly proud of their contributions to American society.

Polish American Heritage Month will also help focus attention on the plight of the people of Poland, and that of the once free trade union Solidarity. Although a number of political prisoners were recently released, the struggle for human dignity and freedom in that country is far from over. By honoring Polish Americans, we also send a message of hope to those fighting for a free Poland.

Mr. President, I ask that House Joint Resolution 547 be adopted by the Senate, so that we may usher in October 1986 as "Polish American Heritage Month."

The joint resolution was ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL JOB SKILLS WEEK

The joint resolution (H.J. Res. 721) to designate the week of October 12 through 18, 1986, as "National Job Skills Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

NATIONAL APLASTIC ANEMIA AWARENESS WEEK

The joint resolution (H.J. Res. 611) to designate the period of December 1, through 7, 1986, as "National Aplastic Anemia Awareness Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

PASSENGER SHIP ACT

The Senate proceeded to consider the bill (S. 1935) to direct the secretary of the department in which the Coast Guard is operating to cause certain vessels to be documented as vessels of the United States so as to be entitled to engage in the domestic coastwise trade, and for other purposes, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike out all after the enacting clause, and insert the following:

That this Act may be cited as the "Passenger Ship Act of 1986".

SEC. 2. (a) The Secretary of the department in which the Coast Guard is operating (hereinafter referred to as the "Secretary") shall, during the period beginning on the date of enactment of this Act and ending August 31, 1988, monitor the status of efforts to construct in the United States passenger vessels, or to refurbish as required by law in the United States passenger vessels built in the United States, with accommodations for at least six hundred passengers.

(b) During the period referred to in subsection (a) of this section, the Secretary shall publish notice in the Federal Register within thirty days after either the substantial completion of construction or refurbishment of any vessel described in subsection (a) of this section that was not operating on the date of enactment of this Act as a documented passenger vessel of the United States with the privilege of engaging in the coastwise trade.

(c) Sections 3 through 10 of this Act shall take effect on September 1, 1988, unless before such date the Secretary has made determinations and published notice of such determinations in the Federal Register (as required by subsection (b) of this section) with respect to at least two vessels.

SEC. 3. Notwithstanding section 12106 or 12107 of title 46, United States Code, section 8 of the Act of June 19, 1886 (46 App. U.S.C. 289), section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other similar provision of law, the Secretary may, from applications submitted in accordance with this Act, document vessels not otherwise qualified to be documented as vessels of the United States with the privilege of engaging in the coastwise trade, if—

(1) each such vessel is in compliance with all other requirements of law or regulations applicable to vessels engaging in the coastwise trade;

(2) any alterations, repairs, or rebuilding of each vessel that are necessary to bring the vessel into compliance with the requirements of part B of subtitle II of title 46, United States Code (relating to inspection and regulation of vessels) and regulations issued under that part, or any conversion to eliminate cargo space necessary to bring the vessel into compliance with paragraph (5) of this section, are performed in the United States;

(3) all future nonemergency alterations, repairs, or rebuilding of each such vessel after it is documented under this section are performed in the United States pursuant to the then applicable laws, so long as the vessel remains documented as a United States vessel;

(4) each such vessel is owned at the time of documentation by a citizen of the United States, as defined in the applicable laws prescribing the qualifications of vessels to engage in the coastwide trade;

(5) transportation in each vessel is limited solely to passengers and their personal luggage, personal property and personal motor vehicles transported on a basis other than on a ferry service basis;

(6) the owner of each such vessel has agreed to enter into a contract with the United States for the inclusion of enhanced military features at Government expense; and

(7) the Secretary determines—

(A) that each such vessel is a modern, efficient and economical vessel;

(B) that each such vessel has twin screws and is not less than ten thousand gross registered tons;

(C) that each such vessel has accommodations for not less than six hundred passengers with modern facilities;

(D) that each such vessel has a remaining useful economic life of not less than ten years after documentation under this section; and

(E) in consultation with the Secretary of the Navy, that each such vessel will be suitable for conversion to a troop ship for use in time of war or national emergency.

SEC. 4. (a) An application for documentation under this Act shall be submitted to the Secretary no later than September 1, 1989. A separate application shall be submitted for each vessel to be considered by the Secretary for documentation.

(b) The Secretary shall charge a fee of $3,000 for each application submitted.

(c) Not later than March 1, 1990, the Secretary shall select vessels which meet the requirements for documentation under this Act.

(d) The Secretary shall notify the applicant that such applicant's vessel has been selected for documentation under this Act.

SEC. 5. A vessel selected for documentation under section 4 of this Act may enter the coastwise trade no later than two years after the date of the Secretary's notification of selection under section 4(d) of this Act.

SEC. 6. The owner, operator, or successor in interest of a vessel documented under this Act shall not offer substantially similar service as determined by the Secretary, to that service offered on September 1, 1988, by the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States. If such substantially similar service offered by the owner, operator, or successor in interest of a coastwise passenger vessel constructed in the United States is terminated, a vessel documented under this Act may offer such service.

SEC. 7. The owner or operator of a vessel documented under this Act shall not offer, except in accordance with this section, substantially similar service to that service offered or advertised after September 1, 1988, by an owner, operator, or successor of a coastwise passenger vessel constructed in the United States, if—

(1) the owner, operator, or successor in interest of the coastwise passenger vessel constructed in the United States certifies to the Secretary, within two years after the date the vessel documented under this Act enters the coastwise trade, that such owner, operator, or successor in interest is offering or advertising the service pursuant to a certificate of financial responsibility for indemnification of passengers for nonperformance of transportation issued in accordance with the Act entitled "An Act to require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes", approved November 6, 1966 (46 App. U.S.C. 817e), by the Federal Maritime Commission;

(2) the Secretary determines that the service offered or advertised is substantially similar to that service offered by the owner or operator of the vessel documented under this Act, and the Secretary notifies the owner or operator of the vessel documented under this Act that such owner or operator shall terminate the service no later than three hundred and fifty-six days after such notification; and

(3) the coastwise passenger vessel constructed in the United States enters the service certified to the Secretary under paragraph (1) of this section no later than three hundred and sixty-five days following notification under paragraph (2) of this section.

SEC. 8. (a) For the purposes of section 6 and 7 of this Act, the term "coastwise pas-

senger vessel constructed in the United States" means—

(1) a vessel built in the United States which (A) is documented under the laws of the United States, (B) is offering services in the coastwise trade on September 1, 1988, and (C) has accommodations for not less than six hundred passengers with modern facilities; or

(2) a vessel built in the United States after September 1, 1988 which (A) is documented under the laws of the United States, and (B) has accomodations for not less than six hundred passengers with modern facilities.

(b) In determining under sections 6 and 7 of this Act whether a coastwise passenger vessel is offering service substantially similar to service offered by vessels documented under this Act, the Secretary shall consider, among other things—

(1) the frequency of the comparable service;

(2) the relative size and class of service of the competing vessels;

(3) the number and geographic location of competing ports of call; and

(4) the overall itineraries of the competing vessels.

SEC. 9. The Secretary shall modify the certificate of documentation of a vessel to reflect the imposition or removal of a restriction resulting from the operation of this Act.

SEC. 10. The Secretary may prescribe rules and regulations to carry out the provisions of this Act.

The amendment was agreed to.

Mr. DANFORTH. Mr. President, I am offering today S. 1935, the Passenger Ship Act of 1986, as reported by the Committee on Commerce, Science, and Transportation.

S. 1935, as reported, is designed to revitalize the domestic cruise vessel industry without adversely impacting on current efforts to build and refurbish deepwater cruise vessels in the United States. The legislation would permit the documentation and operation of certain foreign-built cruise vessels in the coastwise passenger trade if construction or refurbishment of two U.S.-built deepwater passenger vessels has not been substantially completed by September 1, 1988.

Much concern has been expressed about the inability of U.S.-flag vessel operators to participate in an expanding domestic market for the entertainment, convention, and vacation services provided by luxury deepwater cruise vessels. Only two such vessels now operate in our coastwise trade under U.S.-flag, both off Hawaii, and none has been built in the United States in 30 years. Although the need to revitalize the cruise ship industry has been widely recognized, there has, until now, been no agreement about how to do so.

The legislation I am offering today succeeds where previous legislative efforts have failed to forge a consensus. I believe the reason for the widespread support of this bill is that it is a compromise that accommodates the national interest in a strong U.S.-built fleet while allowing for the entry of foreign-built vessels if domestic interests cannot meet the demand for cruise services by substantially completing construction or refurbishment of two U.S.-built vessels in the next 2 years.

If, as I hope, efforts by domestic interests are successful in substantially completing two U.S.-build vessels in the next 2 years, no foreign-built vessels will be permitted to enter the coastwise trade under this bill. If not, then foreign-built vessels will be allowed in, subject to the protective provisions of the bill that are designed to safeguard existing and prospective U.S.-flag cruise vessel operators offering substantially similar service.

Mr. President, S. 1935 was reported without objection by the Commerce Committee. It enjoys the support of virtually all interested segments of the public, and I ask my colleagues to support it.

Mr. STEVENS. Mr. President, the Committee on Commerce, Science, and Transportation has reported S. 1935, the Passenger Ship Act of 1986. Chairman DANFORTH has submitted a statement explaining the purpose of the legislation, and I concur fully with his assessment.

S. 1935 provides the Secretary of Transportation with the authority to permit certain foreign-built cruise vessels to operate in the coastwise passenger trade, provided that the U.S. shipbuilding industry has not substantially completed the construction or refurbishment of two U.S.-built luxury cruise vessels by September 1, 1988.

This issue has sharply divided the Senate Commerce Committee for 4 years now. We have finally been able to strike a balance between the need to revitalize the domestic cruise vessel industry and the need to provide the U.S. shipbuilding industry with the first opportunity to meet the demands of an expanding market.

Mr. President, S. 1935 was reported without objection by the Commerce Committee. I ask my colleagues to support quick consideration of this important legislation.

Mr. INOUYE. Mr. President, I support S. 1935, because I believe it will provide an opportunity to increase the size of our domestic passenger cruise industry without undermining the objectives of our cabotage laws.

In each of the last three Congresses we have been urged, albeit unsuccessfully, to chip away at our cabotage laws, and enact legislation to permit foreign-build cruise vessels to be reflagged, with Jones Act privileges. Proponents of these measures have maintained that it is financially not feasible to build a passenger cruise vessel in a U.S. shipyard, and if we are to have a domestic cruise industry we must permit foreign-built vessels to be reflagged with coastwise privileges.

In the past I have opposed these efforts because I felt that if foreign-built vessels were allowed into our domestic trades it would:

Assure that no passenger cruise vessels will be built in U.S. shipyards. The capital costs of a U.S.-built vessel would make it noncompetitive with a foreign-built vessel which, of course, would have a much lower construction cost.

In this connection, a U.S. shipyard—American Ship Building Co.—has publicly announced that it will build two cruise vessels, and operate them in our Jones Act trades. It will not do so, however, if foreign-built vessels are permitted in the Jones Act trades.

Enable these foreign-built reflagged vessels to compete with the only two U.S.-built vessels now operating in our Jones Act trades. Such an occurrence would, of course, be completely at odds with the purposes and objectives of our cabotage laws.

When the Commerce Committee considered S. 1935 in executive session I was therefore prepared to oppose it.

As the committee debated the matter it seemed clear to me that all of the members wanted the cruise vessels operating in our domestic trades to be U.S.-built, if that is a realistic possibility. and, if not, the committee wanted to ensure that any foreign-built reflagged vessels would not compete against current or future U.S.-built vessels.

Out of the committee's deliberations on S. 1935, came a compromise in the nature of a substitute which I believe ensures a reasonable opportunity for refurbishment or construction of cruise vessels in U.S. yards, such as American Ship Building Co. proposes; while at the same time ensuring that if such refurbishment or construction does not materialize within a reasonable time, foreign-flag passenger vessels may be reflagged with Jones Act privileges.

The heart of the compromise is, of course, the two provisions intended to achieve those objectives.

The first provides that if the construction or refurbishment of two vessels in U.S. yards is "substantially completed" by August 31, 1988, no foreign-built vessels may be reflagged with Jones Act privileges.

The second provides that if construction or refurbishment is not completed by that date, those foreign-built vessels which are reflagged under the legislation may not offer Jones Act service which is "substantially similar" to that which is currently being offered by U.S.-built vessels or may be offered by future U.S.-built vessels.

The tests for what constitutes "substantial completion" and "substantially similar service" are not set out in bill itself. They are, however, precisely spelled out in the committee report, and I would like to read the pertinent text because those tests are critical.

The committee report explains the test of "substantial completion" as follows:

Section 2 requires the Secretary of the Department in which the Coast Guard is operating (Secretary) to determine and publish notice of the "substantial completion" of construction or refurbishment of U.S.-built cruise vessels with accommodations for at least 600 passengers. The committee intends that the Secretary consider construction or refurbishment of a vessel to have reached the stage of "substantial completion" when (1) the keel has been laid; (2) firm, irrevocable commitments and financing have been placed to complete the vessel; (3) at least 50 percent of the financing has been expended or contractually obligated; (4) sufficient work and associated arrangements have been concluded so as to make it likely that the vessel will be engaged in the actual transportation of passengers on a commercial basis in the 1989 season or shortly thereafter; and (5) advance bookings for such service are being offered and advertised pursuant to a certificate of financial responsibility and indemnification of passengers for nonperformance of transportation. The committee intends that the Secretary, in determining whether a vessel has reached the stage of "substantial completion", consider and make appropriate allowance for unavoidable delays caused by force majeure, acts of God, and other events beyond the control of personal constructing or refurbishing a vessel.

In the event foreign-built vessels do enter our domestic trades, the committee report expressly states that the Secretary of Transportation must find that service offered by a foreign-built vessel is "substantially similar" and thus prohibited, if it would cause economic harm to the existing or proposed service of a U.S.-built vessel in a specific market. The report states the test as follows:

While the factors enumerated in section 8 are intended to guide the Secretary in determining whether service by a foreign-built vessel would cause economic harm to a domestic operation and thus be "substantially similar", the committee intends that they be illustrative rather than exclusive.

The committee intends that the Secretary interpret "substantially similar" service to mean more than merely identical service. In addition to offering identical service, a foreign-built vessel documented under the bill could, for example, capture part of the Hawaiian cruise market if it offered cruise service between the mainland and Honolulu; offered cruise service from the mainland to Hawaii, and return by air; or offered cruise service to Honolulu with an air tour of other islands. Such service causing economic harm to a domestic operator would be prohibited as "substantially similar" within the meaning of section 8.

In other words, if the proposed service or actual service of a foreign-built vessel would siphon-off passengers in a particular market from the service or proposed service of a U.S.-built vessel, it would be "substantially similar," and thus prohibited.

Mr. President, I believe S. 1935 is in the national interest and urge its enactment.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to authorize the coastwise operation of certain passenger vessels.".

NATIONAL CHILDREN'S TELEVISION AWARENESS WEEK

The joint resolution (H.J. Res. 710) to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

PROPERTY TAX FUND FOR THE HOULTON BAND OF MALISEET INDIANS

The bill (S. 2750) to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2750

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Houlton Band of Maliseet Indians Supplementary Claims Settlement Act of 1986".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "Houlton Band Tax Fund" means the fund established under section 3.

(2) The term "Houlton Band trust land" means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Houlton Band of Maliseet Indians in accordance with section 5(d) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(d); 94 Stat. 1789).

(3) The term "amended Maine Implementing Act" means the Maine Implementing Act (defined in section 3(e) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(e); 94 Stat. 1787)) as amended by—

(A) the "Act to amend the Maine Implementing Act with respect to the Houlton Band of Maliseet Indians", enacted by the State of Maine in chapter 675 of the Public Laws of 1981, and

(B) the State of Maine in chapter 672 of the Public Laws of 1985.

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "Houlton Band of Maliseet Indians" has the meaning given to such term by section 3(a) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1722(a)).

HOULTON BAND TAX FUND

SEC. 3. (a) There is hereby established in the United States Treasury a fund to be known as the Houlton Band Tax Fund in which shall be deposited $200,000 in accordance with the provisions of this Act.

(b)(1) Income accrued on the land acquisition fund established for the Houlton Band of Maliseet Indians pursuant to subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) shall be transferred to the Houlton Band Tax Fund. No transfer shall be made under this subsection if such transfer would diminish such land acquisition fund to a balance of less than $900,000.

(2) Whenever funds are transferred to the Houlton Band Tax Fund pursuant to paragraph (1), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the full amount of $200,000 has been transferred to the Houlton Band Tax Fund.

(c) The Secretary shall manage the Houlton Band Tax Fund in accordance with the first section of the Act of June 24, 1938 (25 U.S.C. 162a), and shall utilize the principal and interest of such Fund only as provided in subsection (d) and for no other purpose.

(d) Notwithstanding the provisions of section 3727 of title 31, United States Code, the Secretary shall pay out of the Houlton Band Tax Fund all valid claims for taxes, payments in lieu of property taxes, and fees, together with any interest and penalties thereon—

(1) for which the Houlton Band of Maliseet Indians are determined to be liable under the terms of section 6208-A(2) of the amended Maine Implementing Act,

(2) which are final and not subject to further administrative or judicial review, and

(3) which have been certified by the Commissioner of Finance and Administration of the State of Maine as valid claims (within the meaning of section 6208-A(2) of the amended Maine Implementing Act) that meet the requirements of this subsection.

(e) Notwithstanding any other provision of law, if—

(1) the Houlton Band of Maliseet Indians is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest or penalties thereon, and

(2) there are insufficient funds in the Houlton Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full,

the deficiency shall be paid by the Houlton Band of Maliseet Indians only from income-producing property owned by such Band which is not held in trust for such Band by the United States, and such Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

(f) The Secretary shall, after consultation with the Commissioner of Finance and Administration of the State of Maine and the Houlton Band of Maliseet Indians, prescribe written procedures governing the filing and payment of claims under this section and section 6208-A of the amended Maine Implementing Act.

HOULTON BAND TRUST LAND

SEC. 4. (a) Subject to the provisions of section 3 of this Act, the Secretary is authorized and directed to expend, at the request of the Houlton Band of Maliseet Indians, the principal of, and income accruing on, the land acquisition fund established for such Band under subsections (c) and (d)(1) of section 5 of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724; 94 Stat. 1789) for the purposes of acquiring land or natural resources for such Band and for no other purpose. Land or natural resources so acquired within the State of Maine for such

Band shall be held in trust by the United States for the benefit of such Band.

(b)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be alienated only by—

(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c),

(B) takings for public use pursuant to the laws of the United States,

(C) transfers authorized by section 5(g)(3) of the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1724(g)(3); 94 Stat. 1791), or

(D) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Houlton Band of Maliseet Indians to another member of such Band.

(c)(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Houlton Band of Maliseet Indians may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act.

(2) The consent of the United States is hereby given to the State of Maine to further amend the amended Maine Implementing Act for the purpose of embodying the agreement described in paragraph (1).

(d)(1) Lands and natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians only if the Secretary has, at any time prior to such acquisition—

(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Houlton Band Tax Fund contains $200,000, and

(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 3(f).

(2)(A) No land or natural resources may be acquired by the Secretary for the Houlton Band of Maliseet Indians until the Secretary—

(i) files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired by the Secretary, or

(ii) files with the Secretary of State of the State of Maine a certified copy of any instrument setting forth the location and boundaries of the land or natural resources to be acquired.

(B) For purposes of subparagraph (A), filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.

RESTORATION OF FEDERAL RECOGNITION TO CERTAIN INDIAN TRIBES

The Senate proceeded to consider the bill (H.R. 1344) to provide for the restoration of Federal recognition to the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas, and for other purposes, which had been reported from the Select Committee on Indian Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act".

REGULATIONS

SEC. 2. The Secretary of the Interior or his designated representative may promulgate such regulations as may be necessary to carry out the provisions of this Act.

TITLE I—YSLETA DEL SUR PUEBLO RESTORATION

DEFINITIONS

SEC. 101. For purposes of this title—

(1) the term "tribe" means the Ysleta del Sur Pueblo (as so designated by section 102);

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "reservation" means lands within El Paso and Hudspeth Counties, Texas—

(A) held by the tribe on the date of the enactment of this title;

(B) held in trust by the State or by the Texas Indian Commission for the benefit of the tribe on such date;

(C) held in trust for the benefit of the tribe by the Secretary under the plan developed pursuant to section 105(g); and

(D) subsequently acquired and held in trust by the Secretary for the benefit of the tribe.

(4) the term "State" means the State of Texas;

(5) the term "Tribal Council" means the governing body of the tribe as recognized by the Texas Indian Commission on the date of enactment of this Act, and such tribal council's successors; and

(6) the term "Tiwa Indians Act" means the Act entitled "An Act relating to the Tiwa Indians of Texas," and approved April 12, 1968 (82 Stat. 93).

REDESIGNATION OF TRIBE

SEC. 102. The Indians designated as the Tiwa Indians of Ysleta, Texas, by the Tiwa Indians Act shall, on and after the date of the enactment of this title, be known and designated as the Ysleta del Sur Pueblo. Any reference in any law, map, regulation, document, record, or other paper of the United States to the Tiwa Indians of Ysleta, Texas, shall be deemed to be a reference to the Ysleta del Sur Pueblo.

RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND BENEFITS

SEC. 103. (a) FEDERAL RECOGNITION.—Federal recognition of the tribe and of the trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this title shall apply to the members of the tribe, the tribe, and the reservation.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—All rights and privileges of the tribe and members of the tribe under any Federal treaty, statute, Executive order, agreement, or under any other authority of the United States which may have been diminished or lost under the Tiwa Indians Act are hereby restored.

(c) FEDERAL SERVICES AND BENEFITS.—Notwithstanding any other provision of law, the tribe and the members of the tribe shall be eligible, on and after the date of the enactment of this title, for all benefits and services furnished to federally recognized Indian tribes.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this title, the enactment of this title shall not affect any property right or obligation or any contractual right or obligation in existence before the date of the enactment of this title or any obligation for taxes levied before such date.

STATE AND TRIBAL AUTHORITY

SEC. 104. (a) STATE AUTHORITY.—Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefitting the tribe, and the State is authorized to perform any services benefitting the Tribe that are not inconsistent with the provisions of this Act.

(b) TRIBAL AUTHORITY.—The Tribal Council shall represent the tribe and its members in the implementation of this title and shall have full authority and capacity—

(1) to enter into contracts, grant agreements, and other arrangements with any Federal department or agency, and

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement.

PROVISIONS RELATING TO TRIBAL RESERVATION

SEC. 105. (a) FEDERAL RESERVATION ESTABLISHED.—The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) CONVEYANCE OF LAND BY STATE.—The Secretary shall—

(1) accept any offer from the State to convey title to any land within the reservation held in trust on the date of enactment of this Act by the State or by the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) CONVEYANCE OF LAND BY TRIBE.—At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any land within the reservation held by the tribe on the date of enactment of this Act to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) APPROVAL OF DEED BY ATTORNEY GENERAL.—Notwithstanding any other provision of law or regulation, the Attorney General of the United States shall approve any deed or other instrument which conveys title to

land within El Paso or Hudspeth Counties, Texas, to the United States to be held in trust by the Secretary for the benefit of the tribe.

(e) PERMANENT IMPROVEMENTS AUTHORIZED.—Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) CIVIL AND CRIMINAL JURISDICTION WITHIN RESERVATION.—This State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 401 and 402 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes." and approved April 11, 1968 (25 U.S.C. 1321, 1322).

(g) PLAN FOR ENLARGEMENT OF RESERVATION.—The Secretary shall negotiate with the tribe concerning the enlargement of the reservation and, not later than two years after the date of the enactment of this Act, shall develop a plan for the enlargement of the reservation for the tribe. The plan shall include provisions for the acquisition of land to be selected from available public, State, or private lands within El Paso or Hudspeth Counties, Texas. Upon approval of such plan by the tribe, the Secretary shall submit such plan, in the form of proposed legislation, to the Congress.

(h) NOTIFICATION AND CONSULTIVE REQUIREMENTS FOR PLAN.—To assure that legitimate State and local interests are not prejudiced by the enlargement of the reservation for the tribe, the Secretary, in developing the plan under subsection (g) shall notify and consult with all appropriate officials of the State of Texas, all appropriate local government officials in the affected area in the State of Texas, and any other interested party. The consultations required under this subsection shall include—

(1) the size and location of the additions to the reservation;

(2) the effect the enlargement of the reservation would have on State and local tax revenues;

(3) the criminal and civil jurisdiction of the State of Texas with respect to the reservation and persons on the reservation;

(4) the provision of State and local services to the reservation and to the tribe and members of the tribe on the reservation; and

(5) the provision of Federal services to the reservation and to the tribe and members of the tribe and the provision of services by the tribe to members of the tribe.

(i) CONTENTS OF PLAN.—Any plan developed for the enlargement of the reservation shall provide that the Secretary shall not accept any real property in trust for the benefit of the tribe or bands unless such real property is located either within El Paso or Hudspeth Counties, State of Texas.

(j) STATEMENT APPENDED TO ENLARGEMENT PLAN RESPECTING IMPLEMENTATION OF NOTIFICATION AND CONSULTATIVE REQUIREMENTS.—The Secretary shall append to the plan a detailed statement describing the manner in which the notification and consultation prescribed by subsection (h) was carried out and shall include any written comments with respect to the enlargement of the reservation for the tribe submitted to the Secretary by State and local officials and other interested parties in the course of such consultation.

TIWA INDIANS ACT REPEALED

SEC. 106. The Tiwa Indians Act is hereby repealed.

SEC. 107. (a) Gaming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is hereby prohibited on the tribe's reservation and on tribal lands.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(c) Nothing in this section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas.

SEC. 108. (a) For a period of three years after enactment of this Act, the tribe's membership shall consist of—

(1) the individuals listed on the Tribal Membership Roll approved by the tribe's Resolution No. TC-5-84 approved December 18, 1984, and approved by the Texas Indian Commission's Resolution No. TIC-85-005 adopted on January 16, 1985; and

(2) a descendant of an individual listed on that Roll if the descendant (i) has ⅛ degree or more of Tigua-Ysleta del Sur Pueblo Indian blood, and (ii) is enrolled by the tribe.

(b) Notwithstanding subsections (a) and (c) of this section

(1) the tribe may remove an individual from tribal membership if it determines that the individual's enrollment was improper; and

(2) the Secretary, in consultation with the tribe, may review the Tribal Membership Roll. If the Secretary determines that an individual enrolled by the tribe does not meet the criteria for membership set out in the tribe's Resolution No. TC-5-84, then the Secretary may, after affording an opportunity for an administrative appeal by such individual or by the tribe, declare such individual ineligible for Federal services provided to Indians because of their status as Indians.

(c) Nothing in this section shall be interpreted as limiting the authority of the tribe to determine its membership criteria or the eligibility or ineligibility of an individual to membership in the tribe, for purposes other than eligibility for Federal Indian services.

TITLE II—ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS

DEFINITIONS

SEC. 201. For purposes of this title—

(1) the term "tribe" means the Alabama and Coushatta Indian Tribes of Texas (considered as one tribe in accordance with section 202);

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "reservation" means the Alabama and Coushatta Indian Reservation in Polk County, Texas, comprised of—

(A) the lands and other natural resources conveyed to the State of Texas by the Secretary pursuant to the provisions of section 1 of the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Alabama and Coushatta Tribes of Indians of Texas, and the individual members thereof; and for other purposes." and approved August 23, 1954 (25 U.S.C. 721);

(B) the lands and other natural resources purchased for and deeded to the Alabama Indians in accordance with an act of the legislature of the State of Texas approved February 3, 1854; and

(C) lands subsequently acquired and held in trust by the Secretary for the benefit of the tribe;

(4) the term "State" means the State of Texas;

(5) the term "constitution and bylaws" means the constitution and bylaws of the tribe which were adopted on June 16, 1971; and

(6) the term "Tribal Council" means the governing body of the tribe under the constitution and bylaws.

ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS CONSIDERED AS ONE TRIBE

SEC. 202. The Alabama and Coushatta Indian Tribes of Texas shall be considered as one tribal unit for purposes of this title and any other law or rule of law of the United States.

RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND BENEFITS

SEC. 203. (a) FEDERAL RECOGNITION.—Federal recognition of the tribe and of the trust relationship between the United States and the tribe is hereby restored. The Act of June 18, 1934 (48 Stat. 984), as amended, and all laws and rules of law of the United States of general application to Indians, to nations, tribes, or bands of Indians, or to Indian reservations which are not inconsistent with any specific provision contained in this title shall apply to the members of the tribe, the tribe, and the reservation.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—All rights and privileges of the tribe and members of the tribe under any Federal treaty, Executive order, agreement, statute, or under any other authority of the United States which may have been diminished or lost under the Act entitled "An Act to provide for the termination of Federal supervision over the property of the Alabama and Coushatta Tribes of Indians of Texas, and the individual members thereof; and for other purposes." and approved August 23, 1954, are hereby restored and such Act shall not apply to the tribe or to members of the tribe after the date of the enactment of this title.

(c) FEDERAL BENEFITS AND SERVICES.—Notwithstanding any other provision of law, the tribe and the members of the tribe shall be eligible, on and after the date of the enactment of this title, for all benefits and services furnished to federally recognized Indian tribes.

(d) EFFECT ON PROPERTY RIGHTS AND OTHER OBLIGATIONS.—Except as otherwise specifically provided in this title, the enactment of this title shall not affect any property right or obligation or any contractual right or obligation in existence before the date of the enactment of this title or any obligation for taxes levied before such date.

STATE AND TRIBAL AUTHORITY

SEC. 204. (a) STATE AUTHORITY.—Nothing in this Act shall affect the power of the State of Texas to enact special legislation benefitting the tribe, and the State is authorized to perform any services benefitting the tribe that are not inconsistent with the provisions of this Act.

(b) CURRENT CONSTITUTION AND BYLAWS TO REMAIN IN EFFECT.—Subject to the provisions of section 203(a) of this Act, the constitution and by laws of the tribe on file with the Committee on Interior and Insular Affairs is hereby declared to be approved for the purposes of section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476)

except that all reference to the Texas Indian Commission shall be considered as reference to the Secretary of the Interior.

(c) AUTHORITY AND CAPACITY OF TRIBAL COUNCIL.—No provision contained in this title shall affect the power of the Tribal Council to take any action under the constitution and bylaws described in subsection (b). The Tribal Council shall represent the tribe and its members in the implementation of this title and shall have full authority and capacity—

(1) to enter into contracts, grants, agreements, and other arrangements with any Federal department or agency;

(2) to administer or operate any program or activity under or in connection with any such contract, agreement, or arrangement, to enter into subcontracts or award grants to provide for the administration of any such program or activity, or to conduct any other activity under or in connection with any such contract, agreement, or arrangement; and

(3) to bind any tribal governing body selected under any new constitution adopted in accordance with section 205 as the successor in interest to the Tribal Council.

ADOPTION OF NEW CONSTITUTION AND BYLAWS

SEC. 205. Upon written request of the tribal council, the Secretary shall hold an election for the members of the tribe for the purpose of adopting a new constitution and bylaws in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

PROVISIONS RELATING TO TRIBAL RESERVATION

SEC. 206. (a) FEDERAL RESERVATION ESTABLISHED.—The reservation is hereby declared to be a Federal Indian reservation for the use and benefit of the tribe without regard to whether legal title to such lands is held in trust by the Secretary.

(b) CONVEYANCE OF LAND BY STATE.—The Secretary shall—

(1) accept any offer from the State to convey title to any lands held in trust by the State or the Texas Indian Commission for the benefit of the tribe to the Secretary, and

(2) shall hold such title, upon conveyance by the State, in trust for the benefit of the tribe.

(c) CONVEYANCE OF LAND BY TRIBE.—At the written request of the Tribal Council, the Secretary shall—

(1) accept conveyance by the tribe of title to any lands within the reservation which are held by the tribe to the Secretary, and

(2) hold such title, upon such conveyance by the tribe, in trust for the benefit of the tribe.

(d) APPROVAL OF DEED BY ATTORNEY GENERAL.—Notwithstanding any other provision of law or regulations the Attorney General of the United States shall approve any deed or other instrument from the State or the tribe which conveys title to lands within the reservation to the United States.

(e) PERMANENT IMPROVEMENTS AUTHORIZED.—Notwithstanding any other provision of law or rule of law, the Secretary or the tribe may erect permanent improvements, improvements of substantial value, or any other improvement authorized by law on the reservation without regard to whether legal title to such lands has been conveyed to the Secretary by the State or the tribe.

(f) CIVIL AND CRIMINAL JURISDICTION WITHIN RESERVATION.—The State shall exercise civil and criminal jurisdiction within the boundaries of the reservation as if such State had assumed such jurisdiction with the consent of the tribe under sections 401 and 402 of the Act entitled "An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes." and approved April 11, 1968 (25 U.S.C. 1321, 1322).

SEC. 207. (a) Gaming, gambling, lottery or bingo as defined by the laws and administrative regulations of the State of Texas is hereby prohibited on the tribe's reservation and on tribal lands.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined not more than $10,000 or imprisoned not more than two years, or both.

(c) Nothing in this section shall be construed as a grant of civil regulatory jurisdiction to the State of Texas.

The amendment was agreed to

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

MARTIN LUTHER KING, JR. FEDERAL BUILDING AND UNITED STATES COURTHOUSE

The Senate proceeded to consider the bill (S. 2062) to designate the Federal Building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

Mr. LAUTENBERG. Mr. President, I am pleased that the Senate is considering legislation that I introduced to designate the new Federal courthouse planned for Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse."

It is most appropriate to name the new Federal courthouse in Newark after Dr. King. He spent his life fighting for freedom. His name is synonymous with justice. And our Federal judicial system represents justice.

The Martin Luther King, Jr. Federal Building and United States Courthouse will serve generations of New Jerseyans. The name on the building will remind them of the heritage of Dr. King each time they enter it to conduct Government business. The civil rights and humanitarian values that Dr. King embodied are fittingly memorialized by this soon-to-be-built Federal office building and courthouse.

Mr. President, I would like to note that before I introduced this bill, I asked Mrs. Coretta King for permission to use her husband's name. I am pleased to report that she made an exception to her usual policy and did agree to my request.

By naming this building after Dr. King, we will provide a small, yet very special tribute to his memory. The true legacy of Dr. King lives on in the hearts and minds of those who were affected by his life. But a physical monument is also an important and visible reminder of the King legacy.

I urge passage of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2062

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Building and United States Courthouse to be constructed and located at Walnut and Orchard Streets in Newark, New Jersey, shall be known and designated as the "Martin Luther King, Jr. Federal Building and United States Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such building and courthouse is deemed to be a reference to the Martin Luther King, Jr. Federal Building and United States courthouse".

JACOB WEINBERGER FEDERAL BUILDING

The bill (S. 2788) to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building," was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2788

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF BUILDING.

The Federal building located at 325 F Street in San Diego, in the State of California, commonly known as the Old Federal Courthouse, shall hereafter be known and designated as the "Jacob Weinberger Federal Building".

SEC. 2. LEGAL REFERENCES TO BUILDING.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the Federal Building referred to in section 1 is hereby deemed to be a reference to the "Jacob Weinberger Federal Building".

H.R. 5056 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once received from the House, H.R. 5056, dealing with public utility holding companies, that it be held at the desk pending further disposition.

Mr. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE CONCURRENT RESOLUTION 391 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, House Concurrent Resolution 391, a concurrent resolution calling on the Governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcast of Voice of America and RFE/RL, Inc., it be held at the desk pending further disposition.

Mr. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 4217 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4217, a settlement with the Papago Indian Tribe regarding Tat Momolokote Dam, it be held at the desk pending further disposition.

Mr. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 4216 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4216, to resolve water claims of the Papago Tribe on the Gila Bend Reservation, it be held at the desk pending further disposition.

Mr. BYRD. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 5430 TO BE HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Senate receives from the House H.R. 5430, to distribute judgment funds of the Gila River Community, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

SEQUENTIAL REFERRAL OF H.R. 4212, A BILL TO REAUTHORIZE THE DEEP SEABED HARD MINERAL RESOURCES ACT

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that when H.R. 4212, a bill to reauthorize the Deep Seabed Hard Mineral Resources Act, and for other purposes, is reported by the Committee on Energy and Natural Resources, it be sequentially referred to the Committee on Commerce, Science, and Transportation for its consideration for a period not to extend beyond 3 calendar days, provided that, if H.R. 4212 is not reported at such time, the Committee on Commerce, Science, and Transportation shall be immediately discharged of further consideration thereof, and H.R. 4212 shall be placed directly on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1950

"WE THE PEOPLE" CALENDARS

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of House Concurrent Resolution 375, dealing with "We the People" calendars, which is being held at the desk.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 375) designating the 1987 United States Capitol Historical Society "We The People" calendar as the official congressional calendar for the Bicentennial of the United States Constitution.

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 375) was agreed to.

The preamble was agreed to.

Mr. ARMSTRONG. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RULEMAKING PROCEDURES REFORM ACT OF 1985 REFERRAL

Mr. ARMSTRONG. Mr. President, I ask unanimous consent that once the Judiciary Committee reports S. 1145, Rulemaking Procedures Reform Act of 1985, it be referred to the Rules Committee for a period of 15 calendar days for the purpose of considering portions of section 3 of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

H.R. 4154 HELD AT THE DESK

Mr. ARMSTRONG. Mr. President, I would now like to return to H.R. 4154 and ask unanimous consent that once the Senate receives from the House H.R. 4154 dealing with maximum age requirement it be held at the desk pending further consideration.

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The distinguished minority leader.

Mr. BYRD. Mr. President, I remove the reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ARMSTRONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, at 10:30 a.m., a live quorum will begin under the provisions of rule XXII, to be followed by a cloture vote on the motion to proceed to the product liability bill. If cloture is invoked, it is the majority leader's intention to remain on the motion until disposed of. Therefore, a late session is expected.

If cloture is not invoked, it would be the majority leader's intention to begin consideration of the drug reform bill, although I might alter that to indicate that I think as we speak there are efforts on the so-called Commodity Futures Trading Commission bill to work out some of the problems that were raised here earlier with Senators on both sides who are seeking to offer amendments. I understand a couple of the amendments can be accepted. The Melcher amendment can be accepted. The McConnell amendment can be accepted. Maybe those who have grain standards amendments can get together and cosponsor an amendment.

We are not quite certain what the distinguished Senator from Oklahoma, Senator BOREN, may have, what his amendment may be. It could be he might be willing to offer that on another bill that we hope to take up tomorrow; that would be the FIFRA bill, S. 2792.

But I am quite certain we will have a number of votes. It is our hope that about noon, or shortly thereafter, 1 or 2 o'clock—if we can work it out—to begin the debate on the bipartisan drug enforcement package.

It is also my hope, depending on what happens earlier in the day on cloture, that we might agree on the treaty votes. I think every Senator is in town, at least on this side of the aisle, with the exception of Senator GARN. He will be out, in any event, for this year. So we may do that.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until 9:30 a.m., on Thursday, September 25, 1986.

The motion was agreed to; and, at 7:50 p.m., the Senate recessed until Thursday, September 26, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 24, 1986:

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Wallie Cooper Simpson, of New York, to be a member of the National Council on Educational Research for a term expiring September 30, 1988, reappointment.

NATIONAL SCIENCE FOUNDATION

The following-named persons to be members of the National Science Board, National Science Foundation, for terms expiring May 10, 1992:

F. Albert Cotton, of Texas, vice Peter T. Flawn, term expired.

Mary Lowe Good, of Illinois, reappointment.

John C. Hancock. of Missouri, vice Peter David Lax, term expired.

James B. Holderman, of South Carolina, vice Jay Vern Beck, term expired.

James L. Powell, of Pennsylvania, vice Homer A. Neal, term expired.

NATIONAL OCEANIC AND ATOMOSPHERIC ADMINISTRATION

Subject to qualifications provided by law, the following for permanent appointment to the grades indicated in the National Oceanic and Atmospheric Administration:

To be lieutenants

Richard B. Koehler
Joanne F. Flanders

To be lieutenants (junior grade)

Jon E. Rix
John E. Lowell, Jr.
Thomas W. Hurst
David M. Mattens
Mark W. Hulsbeck
Kenneth Kramer
Thomas K. Porta
Morgan S. Lynn
Stephen G. Brezinski
Suzanne D. LaReau
John W. Lovell

To be ensigns

Michael P. Lynch
Robert W. Poston
Wade J. Blake
Timothy C. O'Mara
Brian K. Taggart
Richard A. Fletcher
E. Allen Rice
David S. Savage
Brenda L. Whynot
John M. Steger
Kevin M. MacKay
Patricia D. Grant
Alison J. Veishlow
Michele G. Bullock
Scott J. Brown
James Vicedomine
Raymond C. Slagle
DeWayne J. Nodine
Bruce A. Stoneback
Mary J. Murphy
William A. Hartzell
Robert D. Fellows
Daniel W. Cheng
Richard Borden
Brent M. Bernard
Tina Bertucci
Christopher S. Moore
Carl D. Hoffman
Edward R. Cassano

IN THE ARMY

The following-named officers for permanent promotion in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code, section 624:

CHAPLAIN

To be lieutenant colonel

Black, Jerry W., xxx-xx-xxxx
Cooper, John H., xxx-xx-xxxx
Dodd, Paul W., xxx-xx-xxxx
Farr, David R., xxx-xx-xxxx
Golden, David O., xxx-xx-xxxx
Gruebmeyer, Mark H., xxx-xx-xxxx
Jolin, Ernest W., Jr., xxx-xx-xxxx
Kim, Stephen K., xxx-xx-xxxx
Lizor, Joseph S., Jr., xxx-xx-xxxx
Lonergan, James B., xxx-xx-xxxx
Mayer, Gary E., xxx-xx-xxxx
McCall, Dan D., xxx-xx-xxxx
Miller, Joseph E., xxx-xx-xxxx
Neshiem, Vaughn R., xxx-xx-xxxx
O'Connell, David A., xxx-xx-xxxx
Pejakovich, George, xxx-xx-xxxx
Peterson, Donald A., xxx-xx-xxxx
Pingel, Gilbert H., xxx-xx-xxxx
Plummer, Roy G., xxx-xx-xxxx
Richter, Robert J., xxx-xx-xxxx
Schmid, Wayne L., xxx-xx-xxxx
Schmit, Louis L., xxx-xx-xxxx
Stephenson, Douglas R., xxx-xx-xxxx
Sullivan, Edward J., xxx-xx-xxxx
Teer, John F., xxx-xx-xxxx
Thorne, Carrol W., xxx-xx-xxxx
Vickers, Robert C., xxx-xx-xxxx
Wells, John A., xxx-xx-xxxx
Whalen, Frank J., xxx-xx-xxxx
Wichner, Erwin, xxx-xx-xxxx

DENTAL CORPS

To be lieutenant colonel

Albritton, James E., Jr., xxx-xx-xxxx
Allen, Francis E., xxx-xx-xxxx
Bagley, Dwight E., xxx-xx-xxxx
Bandy, Rufus Y., III, xxx-xx-xxxx
Berman, Michael B., xxx-xx-xxxx
Bice, Ronald W., xxx-xx-xxxx
Billman, Michael A., xxx-xx-xxxx
Blair, Robert C., xxx-xx-xxxx
Bond, John L., xxx-xx-xxxx
Bowers, James E., xxx-xx-xxxx
Britton, Joseph A., xxx-xx-xxxx
Brown, Carolyn M., xxx-xx-xxxx
Burleigh, John D., xxx-xx-xxxx
Cameron, Stephen M., xxx-xx-xxxx
Camp, Larry R., xxx-xx-xxxx
Campbell, Jerry C., xxx-xx-xxxx
Carroll, Bernard L., xxx-xx-xxxx
Casey, Glenn R., xxx-xx-xxxx
Clarke, Michael E., xxx-xx-xxxx
Colvin, Charles J., xxx-xx-xxxx
Diamond, Richard., xxx-xx-xxxx
Engle, Rosemary E., xxx-xx-xxxx
Estey, Allan W., xxx-xx-xxxx
Gaston, Max L., xxx-xx-xxxx
Groom, Thomas D., xxx-xx-xxxx
Guerin, Richard D., xxx-xx-xxxx
Harper, Bradford W., xxx-xx-xxxx
Herring, Herman W., Jr., xxx-xx-xxxx
Hnarakis, Emanuel J., xxx-xx-xxxx
Hogans, William R., xxx-xx-xxxx
Infantino, Lillian M., xxx-xx-xxxx
Jones, Charlottee K., xxx-xx-xxxx
Judah, Michael W., xxx-xx-xxxx
Katagihara, Rodney H., xxx-xx-xxxx
Leeds, Robert C., xxx-xx-xxxx
Lewis, John F., Jr., xxx-xx-xxxx
Lui, Chiu L., xxx-xx-xxxx
Macpherson, Michael G., xxx-xx-xxxx
Mariscal, Roque., xxx-xx-xxxx
Mathieu, Gregory P., xxx-xx-xxxx
McDougle, Michael, xxx-xx-xxxx
Moeller, Donald R., xxx-xx-xxxx
Nedderman, Theodore A., xxx-xx-xxxx
Parker, Merle H., xxx-xx-xxxx
Pilgrim, James J., xxx-xx-xxxx
Primack, Patrice D., xxx-xx-xxxx
Prior, Robert F., xxx-xx-xxxx
Pugh, Richard J., xxx-xx-xxxx
Putnam, James M., xxx-xx-xxxx
Raulin, Leslie A., xxx-xx-xxxx
Reid, David E., xxx-xx-xxxx
Richter, Norman W., Jr., xxx-xx-xxxx
Rockman, Roy A., xxx-xx-xxxx
Rupell, Orville L., III, xxx-xx-xxxx
Russell, Kendall F., xxx-xx-xxxx
Shufford, Earl L., xxx-xx-xxxx
Shurtleff, Joseph L., xxx-xx-xxxx
Startzell, James M., xxx-xx-xxxx
Stone, Stephen D., xxx-xx-xxxx
Stout, Herbert C., xxx-xx-xxxx
Sykes, Fred L., xxx-xx-xxxx
Thompson, Bruce H., xxx-xx-xxxx
Thornton, Linda J., xxx-xx-xxxx
Threadgill, James M., xxx-xx-xxxx
Tupa, James E., xxx-xx-xxxx

MEDICAL CORPS

To be lieutenant colonel

Allen, Theodore L., xxx-xx-xxxx
Bacon, Jonathan P., xxx-xx-xxxx
Becker, William K., Jr., xxx-xx-xxxx
Benton, Frank R., xxx-xx-xxxx
Blanchett, Leo M., III, xxx-xx-xxxx
Blough, John M., xxx-xx-xxxx
Boudreau, Ellen F., xxx-xx-xxxx
Brown, Jerry L., xxx-xx-xxxx
Brugman, John L., xxx-xx-xxxx
Bryan, George E., II, xxx-xx-xxxx
Clayton, James E., xxx-xx-xxxx
Colman, Lauren K., xxx-xx-xxxx
Cooper, Sharon P., xxx-xx-xxxx
Diallo, Thierno, xxx-xx-xxxx
Diaz, Rafael R., xxx-xx-xxxx
Eckberg, David J., xxx-xx-xxxx
Eggebroten, William E., xxx-xx-xxxx
Evenson, Eric T., xxx-xx-xxxx
Falbey, Robert J., xxx-xx-xxxx
Ferguson, Clifford L., xxx-xx-xxxx
Fernandez, Bueno C., xxx-xx-xxxx
Flynn, Frederick G., xxx-xx-xxxx
Garcia, Julio E., xxx-xx-xxxx
Gardner, John W., xxx-xx-xxxx
Garrett, Wayne L., xxx-xx-xxxx
Georgitis, William J., xxx-xx-xxxx
Gooding, Daniel E., xxx-xx-xxxx
Gruenther, Raymond C., xxx-xx-xxxx
Hanna, John H., xxx-xx-xxxx
Hardy, James T., xxx-xx-xxxx
Hays, Robert C., xxx-xx-xxxx
Henry, Anthony R., xxx-xx-xxxx
Hickey, Deborah L., xxx-xx-xxxx
Holmes, Stephen M., xxx-xx-xxxx
Hostetter, Robin E., xxx-xx-xxxx
Icochea, Rosendo S., xxx-xx-xxxx
Jarrett, David G., xxx-xx-xxxx
Jenkins, Terry R., xxx-xx-xxxx
Kray, Kenneth T., xxx-xx-xxxx
Krug, Ernest F., III, xxx-xx-xxxx
Lammie, John J., xxx-xx-xxxx
Lee, Seok Y., xxx-xx-xxxx
Leib, Richard C., Jr., xxx-xx-xxxx
Lelonek, Edward A., xxx-xx-xxxx
Levin, Marc W., xxx-xx-xxxx
McKinney, Gary E., xxx-xx-xxxx
Mehta, Rajesh R., xxx-xx-xxxx
Michael, Rodney A., xxx-xx-xxxx
Mills, Glenn M., xxx-xx-xxxx
Mong, Dennis P., xxx-xx-xxxx
Mosby, John A., xxx-xx-xxxx
Olazabal, Raul P., xxx-xx-xxxx
Panvelkar, Gopal V., xxx-xx-xxxx
Papazoglou, Savvas, xxx-xx-xxxx
Park, Young C., xxx-xx-xxxx
Payne, John B., xxx-xx-xxxx
Pelegrina, Miguel A., xxx-xx-xxxx
Perkins, Denver E., Jr., xxx-xx-xxxx
Pezzarossi, Angel G., xxx-xx-xxxx
Potter, Donald E., Jr., xxx-xx-xxxx
Rumisek, John D., xxx-xx-xxxx
Sanchez, Rene J., xxx-xx-xxxx
Schipul, Arthur H., Jr., xxx-xx-xxxx
Shaw, Timothy J., xxx-xx-xxxx
Sinha, Karabi, xxx-xx-xxxx
Snyder, Clyde R., xxx-xx-xxxx

Taylor, David N., xxx-xx-xxxx
Thornton, John W., III, xxx-xx-xxxx
Ting, Stanislaus, xxx-xx-xxxx
Urban, Edward S., xxx-xx-xxxx
Vierra, Lawrence A., xxx-xx-xxxx
Virmani, Renu, xxx-xx-xxxx
Webb, David L., xxx-xx-xxxx
Westmoreland, Lewis H., xxx-xx-xxxx
Wilcosky, Bernard R., Jr., xxx-xx-xxxx
Williams, Robert E., xxx-xx-xxxx
Wilson, Bruce E., xxx-xx-xxxx
Wolf, Charles R., III, xxx-xx-xxxx

HOUSE OF REPRESENTATIVES—*Wednesday, September 24, 1986*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Almighty God, give us the will that we lose not the desire for the gifts of the spirit, kindness, and compassion. We recognize that our world is confused and our lives at times bewildering and we can miss our capacity for love. May Your spirit encourage and renew our spirits that in spite of disappointments or lack of appreciation we will continue doing what You would have us do—seeking justice, loving mercy, and walking humbly with You. This we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate disagrees to the amendments of the House to the bill (S. 2638) "An act to authorize appropriations for military functions of the Department of Defense and to prescribe military personnel levels for such Department for fiscal year 1987, to revise and improve military compensation programs, to improve defense procurement procedures, to authorize certain construction at military installations for fiscal year 1987, to authorize appropriations for national security programs of the Department of Energy for fiscal year 1987, and for other purposes," agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GOLDWATER, Mr. THURMOND, Mr. WARNER, Mr. HUMPHREY, Mr. COHEN, Mr. QUAYLE, Mr. WILSON, Mr. DENTON, Mr. GRAMM, Mr. BROYHILL, Mr. NUNN, Mr. STENNIS, Mr. HART, Mr. EXON, Mr. LEVIN, Mr. KENNEDY, Mr. BINGAMAN, Mr. DIXON, and Mr. GLENN to be the conferees on the part of the Senate.

The message also announced that the Secretary of the Senate be directed to request the House to return to the Senate the bill (H.J. Res. 686) "Joint resolution to designate August 12, 1986, as 'National Civil Rights Day'."

AUTHORIZING RELEASE OF RESTRICTIONS ON CERTAIN PROPERTY CONVEYED FOR AIRPORT PURPOSES

Mr. MINETA. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation be discharged from further consideration of the bill (H.R. 5379) to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, I shall not object, but under my reservation I yield to the distinguished chairman of the Aviation Subcommittee, the gentleman from California [Mr. MINETA], for an explanation of his request.

Mr. MINETA. Mr. Speaker, H.R. 5379, which is sponsored by our colleague from Virginia, Mr. BATEMAN, would release the Newport News Airport from a restriction in the deed of airport property from the Federal Government. The restriction requires that the land be used exclusively for airport purposes. A release from the restriction is needed to permit construction of a road to link a residential and commercial development adjacent to the airport to the main highway in the area.

H.R. 5379 imposes two conditions on the release from the deed restriction. First, the airport must receive fair market value for the land conveyed, and, second, the proceeds from the sale of land must be used for airport purposes. These types of conditions have been imposed in most other legislation releasing airports from deed restrictions.

In addition to these conditions, we have received satisfactory assurances that the construction of the road will not interfere with operations at the airport. In these circumstances I see no reason why the release should not be granted and I urge my colleagues to support H.R. 5379.

Mr. HAMMERSCHMIDT. Mr. Speaker, further reserving the right to object, I rise in support of this bill that would release the Peninsula Airport at Newport News, VA, from certain deed restrictions.

It is my understanding that this action is needed to allow a development company to obtain a right-of-way across airport property. Evidently, the developer is constructing several buildings on property it already owns and needs a right-of-way from the main road across airport property. This bill would allow the airport to provide that right-of-way.

In the past, our committee has required a deed restriction removal bill such as this one to meet two criteria. It has to ensure that the airport receives fair market value for the property sold or leased. And the money received for the property must be used for airport purposes.

I am pleased to say that the bill before us today meets both of these criteria. Therefore, I support this bill and urge my colleagues to do the same.

Mr. BATEMAN. Mr. Speaker, will the gentleman yield?

Mr. HAMMERSCHMIDT. I yield to the gentleman from Virginia.

Mr. BATEMAN. Mr. Speaker, I would like to thank the distinguished chairman of the committee, the gentleman from New Jersey [Mr. HOWARD], the chairman of the subcommittee, the gentleman from California [Mr. MINETA], and the ranking minority members of the Public Works and Transportation Committee, the gentleman from Kentucky [Mr. SNYDER], and the gentleman from Arkansas [Mr. HAMMERSCHMIDT] for bringing this bill promptly to the floor. It is a matter of great importance to my area.

As stated by the distinguished gentleman from California [Mr. MINETA] this approval, while not allowing directly an airport activity, is incredibly significant to the viability of this airport. The Federal Aviation Administration has no objection to this congressional authorization of the conveyance of the right of way, and I very much thank my colleagues for expediting and bringing this matter to the floor.

Mr. HAMMERSCHMIDT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding section 16 of the Federal Airport Act (as in effect on May 14, 1947), the Secretary of Transportation is author-

ized, subject to section 4 of the Act of October 1, 1949 (50 U.S.C. App. 1622c) and subsection (b) of this section, to grant releases from any of the terms, conditions, reservations, and restrictions contained in the deed of conveyance dated May 14, 1947, under which the United States conveyed certain property in Newport News, and York County, Virginia, to the Peninsula Airport Commission for airport purposes.

(b) Any release granted by the Secretary of Transportation under subsection (a) of this section shall be subject to the following conditions:

(1) The Peninsula Airport Commission shall agree that in leasing or conveying any interest in the property which the United States conveyed to such Commission by the deed described in subsection (a), the Commission will receive an amount for such interest which is equal to the fair lease value or the fair market value, as the case may be (as determined pursuant to regulations issued by the Secretary).

(2) Any amount so received by the Peninsula Airport Commission shall be used by the Commission for the development, improvement, operation, or maintenance of a public airport.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MINETA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

THE WOMEN POW'S

(Mr. MONTGOMERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONTGOMERY. Mr. Speaker, tens of thousands of our military service personnel have been held as prisoners of war during this century in conflicts around the world. Many Americans remain unaware of a special group among this number.

It is my great privilege today to remind my colleagues of the courageous deeds of these too often overlooked and forgotten former POW's—I speak of the Army and Navy nurses who became captives of the Japanese during World War II and one Army nurse who was a POW in Germany.

When Pearl Harbor was bombed in December 1941, 105 Army and Navy nurses were serving in the Philippines and on Guam. They remained on the islands, risking their lives and their freedom in order to provide nursing care to wounded U.S. soldiers, sailors, and civilians. Most became prisoners of war for periods ranging from 6 months to almost 4 years.

Held in internment camps in the Philippines and in prisons in Japan, they suffered through the harshest of conditions, including malnutrition and disease. Even in the face of tremendous adversity and with very limited resources, they continued to care for their fellow POW's.

Six of these former POW's from across the country are in Washington today and on Capitol Hill for a series of tributes in their honor. I think it only fitting that we offer our gratitude to these American female heroes for their courage, for their sacrifices, for their endurance, and for their devotion to this country. I wish these exprisoners of war a wonderful day in our Nation's Capital. They are a source of great inspiration and pride for all who desire and enjoy freedom.

Mr. Speaker, these and all former POW's have some very understanding friends in the Congress. That this great body appreciates their experiences is evidenced by the benefit package developed to address their health care concerns and to compensate them for disabilities they suffered as a result of captivity. We are proud of our former POW's, and we can be justly proud of our record of providing essential programs for them.

THE MAD DASH TO ADJOURNMENT

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, its showtime. Time for the mad dash to adjournment. In 2 or 3 weeks, we will carry another $200 billion deficit across the finish line.

Today, we slam through a reconciliation bill with a sticker price of $15 billion in savings. But at best its really worth a fraction of that amount, maybe $6 billion.

Tomorrow we slam through the CR—not just any CR, but the biggest one ever, with all 13 appropriations bills and a slew of unauthorized funds attached. And this CR is several billion over the generous allocation permitted in the phony numbers budget resolution.

Then, undoubtedly we will table the sequester resolution and pretend that we met the Gramm-Rudman target. Then we'll passs the tax reform bill, maybe the Superfund bill. We'll up the debt ceiling, and then we'll go home.

In our wake, Mr. Speaker, will be still another $200 billion gift to our children—a testament to the disgraceful and continuing failure of the greatest deliberative body in the world to address the real crisis of our times.

NEW LEGISLATION WOULD MAKE COURT-ORDERED RESTITUTION A NONDISCHARGEABLE DEBT

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, first of all, I would like to congratulate the gentleman from Mississippi [Mr. MONTGOMERY] for pointing out the distinguished careers of these women who had been POW's.

But the real reason I am taking the well this morning, Mr. Speaker, is that today I am introducing legislation to amend the Federal Bankruptcy Code that will make it harder to shirk court-ordered restitution payments.

The Willful Injury and Drunk Driving Act of 1986 will amend the U.S. Bankruptcy Code to include court-ordered restitution as a nondischargeable debt in chapter 13 bankruptcies. When Congress amended the Bankruptcy Code's chapter 7 statutes, it neglected to do the same for chapter 13.

This difference creates gross inequities in court decisions. Courts have ruled that under chapter 13 defendants are not liable for debts as a result of damage awards from convictions such as drunk driving or rape, because the law does not specifically list court-ordered restitution as a nondischargeable debt.

I can't believe Congress meant to create this loophole in chapter 13. Convicted drunk drivers or rapists should not be let off the hook and avoid paying restitution that was ordered by the court. Join me in making sure that chapter 13 is the Bankruptcy Code is not a haven for convicted offenders.

□ 1110

CONTRA AID DOES NOT BELONG IN THE CONTINUING RESOLUTION

(Mr. LAGOMARSINO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, we are today confronted with a situation, which we were recently promised, would not occur. The Democratic leadership of this House gave us their word that action and negotiation on Contra aid appropriations would be honest and straightforward. That is something we Republicans understand and appreciate.

What we do not understand is their current machinations. It now appears that they do not intend to abide by the support the Contra aid bill received in both Houses.

If the Democratic leadership gets their way, they will put Contra aid ap-

propriations on the continuing resolution [CR]. Because the CR is so flawed the President will undoubtedly veto it. The Democrats believe they can stall the President's animosity toward the CR by placing the much needed Contra aid dollars on the very bill President Reagan has vowed to kill. The Democrats have never wanted to assist the freedom fighters in Nicaragua.

This is all nonsense. The Contra aid debate has already taken place. Its merits have been batted back and forth for hours, and the issue has been settled. Thousands of freedom-seeking Nicaraguans are counting on our sense of responsibility.

Failure to pass this bill will have critically deleterious effects on the situation in Nicaragua. A return to totalitarian rule of the Nicaraguan people will be inevitable. Suppression of the free press, churches, minority groups, labor unions, and the social fabric itself will escalate. It will be an unmistakable sign to the Sandinista dictatorship: The United States does not now, or will it in the future, support the true desires of the Nicaraguan masses. Daniel Ortega, comrade of Fidel Castro, will then move quickly to consolidate his revolution.

Furthermore, failure to pass this bill will have worse implications throughout the hemisphere. It would send a sign to our neighbors that we no longer choose to exercise leadership in this hemisphere, our hemisphere. It will be a tacit admission that the Cuban Government is more interested, effective, and active in our hemisphere. And it will allow, by default, the growth of a situation in our own backyard that we may never again be in a position to stop.

Mr. Speaker, I urge all Members who have a sense of responsibility and moral fiber, to remain true to their original vote. I ask all members to bar this effort to place Contra aid appropriations on the continuing resolution.

TAX REFORM: A TRUST BETRAYED?

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Mr. Speaker, how many of my colleagues would have supported the breakup of the telecommunications industry? I believe the answer would be none.

Yet right now we have a number of Congressmen who will have to accept the responsibility for the breakup of a tax system, a system that generated investments, that generated job creation, that generated the incentive for providing for people's own retirement.

There is no action, no action that elicits more anger than a trust betrayed. Make no mistake about it, by passing so-called tax reform, we are betraying agriculture, we are betraying small business, we are betraying those who would provide for their own retirement, we are betraying the property owner.

Like the breakup of the telephone industry, once it is done there will be no fixing it. I just hope that we are not breaking up the American dream.

I urge my colleagues to vote against the so-called tax reform.

ENSURING QUICK ESTABLISHMENT OF A NATIONAL ORGAN REGISTRY

(Mr. FLORIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FLORIO. Mr. Speaker, today I am introducing legislation which would require hospitals to establish protocols for organ procurement and to establish national standards for the 110 organ procurement agencies in this country. On September 10, Senator GORE introduced similar legislation in that body, cosponsored by Senators MITCHELL, HEINZ, and KENNEDY.

Two years ago many of us envisioned a fully functioning national organ registry in place by this time as a result of the enactment of the National Organ Transplant Act of 1984. Instead, we have seen our hopes for the quick establishment of the national network included with a vast study of the ethical and moral implications of large scale organ transplantation.

Although the conferees working on the National Organ Transplant Act instructed that implementation of the National Registry not be tied to this study, the Department of Health and Human Services tied its creation to the results of this study. Only within the past few weeks has that study been completed. And only now will the National Organ Registry move toward reality.

There is a tiny child today, a little girl, virtually living at Children's Hospital in Philadelphia. Her name is Julianne McLaughlin. She is a very sick little girl. She is 17 months old and is in need of a liver transplant.

My bill would force the Department of Health and Human Services to move quickly toward the establishment of a National Registry.

Mr. Speaker, if we are to give children like Julianne McLaughlin and hundreds of thousands of other Americans a real chance of saving their lives through organ transplants we have to do one thing. We have to make sure that each person in need has access to all of the potential donor lists in the country and that they are provided with those organs by strict order of need and not by other considerations.

CROSSING THE WIRES AT THE TRAFFIC LIGHTS

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, our trade deficit has reached a record of $18 billion on a monthly basis. As this Member has been urging the House, the policy of dollar depreciation is counterproductive and dangerous. Not only will it fail to redress our trade balance, but it may make the deficit worse.

A depreciating currency crosses the wires at the traffic lights. It gives the green signal to importers, telling them to accelerate before it is too late, while sending the red signal to exporters, telling them to decelerate. Indeed, importers can increase their profits by accelerating imports because if they wait longer, the same amount of imports will cost them more dollars. Exporters can increase their profits by slowing down the repatriation of their receipts because if they wait longer, their foreign earnings will convert into more dollars.

Now that our dollar has lost 50 percent of its value in terms of the yen, thanks to the efforts of our Treasury Department, we have to ship twice as much to Japan in payment for the same amount of imports as a year earlier. Our terms of trade vis-a-vis much of the world has worsened in the same proportion.

Are the dollar debasers contrite, and do they admit that they have erred? Far from it: They are getting ready to step up their efforts to beat down the foreign exchange value of the dollar even more.

Mr. Speaker, the policy of dollar degradation is insane, and it invites disaster. The alleged benefits of a weak and depreciating dollar are a myth. There is no substitute for a strong and stable dollar, one based on a fixed metallic standard.

NATIONAL BURN AWARENESSS WEEK

(Mr. HUTTO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUTTO. Mr. Speaker, yesterday I introduced, along with my distinguished colleague Mr. PEPPER, a resolution designating the week of February 9, 1987, as "National Burn Awareness Week."

Burn injuries continue to be one of the leading causes of death in the United States, which has the worst burn problem of any industralized nation in the world. Of the 2 million people who are the unfortunate victims of burn injuries each year, 70,000 are hospitalized and another 12,000

die. Even more tragic is the fact that children, the elderly and the disabled represent a majority of burn victims, with a death rate five times that of any other group.

Each year millions of dollars are spent trying to remedy the effects of burns and burn-related incidents. However, studies have proved that approximately 75 percent of all burns could be prevented if Americans were properly educated in burn prevention methods. This resolution provides for a public awareness program designed to familiarize the public with these techniques.

I ask my colleagues to support this resolution by cosponsoring "National Burn Awareness Week." Let this be another step in the effort to eradicate unnecessary burn injuries that exact such a tremendous toll of human life, suffering, disability, and financial loss in our country.

WORLD TRADE AGENDA SET IN URUGUAY

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, to most Americans discussing international trade is about as interesting as watching paint dry. However, the trade talks which just concluded last week in Uruguay may be an exception because an agenda was set for debate among member nations to the General Agreements on Tariffs and Trade [GATT] that will rewrite the rules for world trade over the next several years. It is uncertain now, but our lives will surely be affected by the decisions made there.

Much of the income of my State of Arkansas, from sales of products, comes from international trade. Thus, the economic futures of towns with names like Osceola, Piggott, Jonesboro, and Gillett depend upon the outcome of the world trade talks.

Over the next decade our Nation's economy will move ever more rapidly from a local-national competition to a national-international economy. What was once a dull issue is brightened by the importance of the trade talks as we watch the value of our products and goods decided at the international bargaining table.

My congratulations to Ambassador Clayton Yeutter, who represented the United States at the talks, for including agriculture on the agenda and for a job well done. During the last 5 years we have seen the importance of agricultural sales as the merchandise trade deficit has increased to $160 billion in part because of the decline of agricultural sales.

As soon as the agenda is made available I will attempt to secure copies for all Members of Congress.

□ 1120

THREE-YEAR RECOVERY RULE

(Mr. HOYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOYER. Mr. Speaker, the conference report on the tax bill which is before this House contains over 350 transition rules which provide over $10 billion in tax breaks to almost every interest group under the Sun.

Three hundred and sixty million dollars in construction projects including the Merrill Lynch skyscraper, have been exempted for one Senator.

The steel industry has received over $520 million in exemptions which allows them to retain the investment tax credit for an additional 15 years.

The tax report provides for a 10-percent excise tax on money withdrawn from any corporate pension fund. Phillips Petroleum, which is planning to reallocate $1 billion from its pension fund has received an exemption from this provision, at a cost to the Treasury of $100 million.

Mr. Speaker, these are just a small sampling of exemptions crammed into this report. And I do not mean to judge whether they are good or bad. I do mean to point them out so that this country's 12 million police officers, teachers, firemen, and local government workers; and our fighting men and women; and our 3 million Federal workers; all of whom contribute to their retirement, will know just where they stand.

They are the only group to suffer a retroactive attack on their personal income. The newly retired Customs drug enforcement officer on average will have to pay an additional $2,500 in taxes in the first year alone as a result of this conference agreement. In the meantime, Phillips Petroleum will get a $100 million tax break. Something is wrong here. And it is wrong for 20 million average Americans.

Let's send this bill back to conference to remove this unfair retroactive provision.

STALEMATE BETWEEN USX AND THE UNITED STEELWORKERS OF AMERICA—NEGOTIATIONS MUST RESUME

(Mr. VISCLOSKY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VISCLOSKY. Mr. Speaker, today marks the 55th day of the shutdown of USX's steel operations.

For 55 days the communities in which USX facilities remain have been savaged. Gary, IN—the very name evokes thoughts of steel—is a case in point.

Gary and its surrounding environs are losing $808,000 daily in payroll. Further, revenues for local communities have declined, small businesses struggle and the hardship on families is unremitting.

I acknowledge that sharp and fundamental differences between labor and management exist, including over the issue of contracting out. Nevertheless, this issue and others have been successfully resolved in other steel negotiations.

I also appreciate the concern of both parties about creating false expectations by simply resuming negotiations for the sake of appearances. However, expectations will never be met, and progress never made, if the talks remain suspended. Public disappointment over unmet expectations is a risk we must all take.

I, therefore, again, for the fourth time, call on David M. Roderick and Lynn R. Williams to jointly avail themselves of the services of the Federal Mediation and Conciliation Service in order to facilitate meaningful negotiations so that all can work again.

TAX BILL WILL HAVE SEVERE CONSEQUENCES IN THE LONG RUN

(Mr. HUBBARD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUBBARD. Mr. Speaker, this morning's news includes:

President Reagan, acknowledging that final congressional approval of tax revision is not assured, yesterday stepped up the pressure on reluctant House Members to approve the package when it comes to the floor, possibly Thursday.

One reason supporters of the Rostenkowski-Packwood, 925-page tax overhaul bill are concerned they do not have the votes to pass this major tax bill is that a growing number of House Members are hearing from their constituents who oppose many portions of the tax bill.

One House Member from central Michigan is quoted today as saying his constituents' telephone calls are 10 to 1 against the tax bill.

The results of the tax bill, if passed, will be a worsening of our economy and an adding to our staggering Federal debt.

I predict 1 year from today those who vote against this tax bill will be those who can proudly say they are not responsible for the bill's severe consequences to our Nation's economy and the increasing Federal debt.

UPDATE ON THE TWA STRIKE

(Mr. SLATTERY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SLATTERY. Mr. Speaker, it has now been 5 months ago since 6,500 members of the International Federation of Flight Attendants struck TWA; 5,000 of them are still unemployed. TWA has partially replaced them with about 2,000 novice flight attendants, who have gone through far less training than the veteran IFFA members.

The FAA approved TWA's cutting the flight attendants' training period from 5 weeks to 18 days. The FAA also approved TWA's cutting the in-air training time for flight attendants to 2½ hours, below even the legal minimum specified by Federal regulations. Seven hundred safety violations by TWA were filed with the FAA during the 2 months of the attendants' strike. There were two emergency evacuations. But the FAA found no discrepancies.

Mr. Speaker, the FAA is entrusted to protect the public. Labor-management problems can result in unnecessary safety risks to airline passengers. The FAA should justify its handling of this matter. And TWA should negotiate in good faith with the flight attendants.

IMMIGRATION REFORM IS AS VITAL TO THE COUNTRY AS TAX REFORM

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, we have heard a lot of talk on both sides of the aisle about the upcoming tax reform bill. A lot of it has been criticism, some suggesting or heralding the day it is going to be here.

Obviously, most Members feel we are going to have a vote on that. Whether they feel they are for it or against it, they want to make their own feelings known.

I just wonder why we are not hearing as much about immigration. Immigration is something that is as vital to the country as tax reform. Immigration is a problem which has plagued this country for too long a period of time. Immigration is a situation that is getting worse and worse and worse as we sit here and talk in the Halls of the Congress.

We are now apprehending, in the San Diego area alone, one illegal alien every 30 seconds. Those are the people that we are fortunate enough to catch.

Many others, perhaps two to four successful illegal entries, are made for every apprehension that we have.

We only have less than 2 weeks left in this Congress. It is my hope that we might deal with immigration by that time.

If we do not deal with it by that time, the American people will hold us accountable, and in fact, Mr. Speaker, they ought to hold us accountable.

EASE INTEREST RATES FOR INDEBTED FARMERS

(Mr. WORTLEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WORTLEY. Mr. Speaker, the sky isn't falling, but interest rates sure are. Home mortgages are again in the single digits and the automobile companies are offering financing as low as 2.4 percent.

But many of our hard-pressed farmers are not enjoying the decreased costs of borrowing money. Today, farmers who borrow from the Farm Credit System banks are finding that interest rates are neither competitive nor reasonable.

I find this situation shocking. At a time when farmers are facing decreasing land values and depressed commodity prices, having to borrow money at excessive rates is equivalent to being hit when you're already down.

I believe Congress should stand by the farmers, and I have joined with the chairman of the Agriculture Subcommittee on Credit in introducing legislation that will ensure that farmers have access to loans at competitive and reasonable interest rates. The bill would take the authority to set interest rates for Farm Credit System banks away from the Washington regulators and give it to the farmer-elected boards of directors of the banks.

It makes little economic sense to keep System rates at noncompetitive levels. This will only drive out the most financially secure borrowers reducing the size and quality of the System's loan portfolio. More importantly, it makes no sense to shoulder struggling farmers with high interest rates that don't reflect the rest of the market. I urge my colleagues to consider and approve this legislation.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore laid before the House the following message from the Senate:

Ordered, That the Secretary of the Senate be directed to request the House of Representatives to return to the Senate the bill (H.J. Res. 686) entitled "Joint resolution to designate August 12, 1986, as 'National Civil Rights Day'.".

The SPEAKER pro tempore. Without objection, the request of the Senate is agreed to.

There was no objection.

RESIGNATION AS CONFEREE AND APPOINTMENT OF CONFEREE ON S. 2638, DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1987

Mr. NICHOLS. Mr. Speaker, I ask unanimous consent that, with respect to the Senate bill (S. 2638), the gentleman from Colorado [Mr. KRAMER] may be excused from further service as an exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment, and that the Speaker may be authorized to appoint an additional exclusive conferee, solely for the consideration of title IX of division A of the Senate bill and sections 213, 1025, 1026, 1048, and title IX of division A of the House amendment.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama? The Chair hears none and, without objection, appoints the following conferee to fill the existing vacancy: Mr. DAVIS.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferee.

PROVIDING FOR CONSIDERATION OF H.R. 5300, OMNIBUS BUDGET RECONCILATION ACT OF 1986

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 558 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 558

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, and the first reading of the bill shall be dispensed with. All points of order against the bill and against its consideration are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed 3 hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Budget, the bill shall be considered as having been read for amendment under the 5-minute rule. The first group of amendments printed in the report of the Committee on Rules on this resolution shall be considered as having been adopted in the House and in the Committee of the Whole, subject to amendments made in order by the following sentence. No other amendment to the bill shall be in order except the second group of amendments printed in the report of the Committee on Rules on this resolution, said amendments shall be considered only in the order listed, and if offered by the Member indicated or his designee, in said report, said amendments shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, each of said amendments shall be debatable for not to exceed the time indicated in the report of the Committee on Rules on this resolution, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and all points of order

against said amendments are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions. If section 3003 of the bill (incorporating the text of H.R. 1), as inserted by the first group of amendments printed in the report of the Committee on Rules on this resolution, is not stricken during the consideration of the bill, the clerk shall, in the engrossment of the bill H.R. 5300, strike section 3003 and insert in lieu thereof a new section 3003 containing the actual text of the bill H.R. 1 as passed by the House, with appropriate correction of section numbers, punctuation marks, and cross references.

The SPEAKER pro tempore (Mr. NATCHER). The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Ohio [Mr. LATTA], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 558 is a modified closed rule providing for consideration of one of the most imperative pieces of budget related legislation that we must consider before the adjournment of this Congress: H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

This rule provides for 3 hours of general debate on the reconciliation bill and waives all points of order against consideration of the bill and against the bill. Finally, the rule provides for the disposition of some nine separate amendments either by operation of the rule or by making in order amendments by specific Members on specific issues.

All of the amendments made in order under this rule are printed in the report on the rule. The first group of amendments so listed includes those amendments which shall be considered to be adopted upon adoption of the rule. Three of these amendments add language to the text of H.R. 5300, and four amendments strike certain narrow provisions in H.R. 5300.

Included in the three amendments which add provisions to the bill upon adoption of the rule are the Budget Committee perfecting amendment and a Ways and Means Committee substitute. Together, Mr. Speaker, these two amendments represent the results of successful bipartisan House and Senate efforts to put together a package of additional savings to ensure that this reconciliation bill will achieve sufficient savings to meet the fiscal year 1987 Gramm-Rudman-Hollings deficit target. Together, these provisions will achieve more than $15 billion in fiscal year 1987 deficit reduction when scored against the Gramm-Rudman-Hollings baseline. These provisions are the heart of this reconciliation bill.

The third amendment adding language to the bill is a technical amendment requested by the Ways and Means Committee. This amendment refines the provisions dealing with State health insurance risk pools.

Mr. Speaker, in contrast with the amendments I have just discussed, which add all of the new package of savings to the reconciliation bill, this first group of amendments also includes amendments which strike language in the bill. At the outset, Mr. Speaker, I would note that each of the matters stricken from the reconciliation bill by operation of this rule address narrow issues, are provisions which would not reduce the deficit, and are all in fact extraneous to the reconciliation process.

The matters stricken upon adoption of this rule include the following:

Provisions in the Agriculture Committee title granting the Department of Agriculture authority to reduce the frequency of inspections in meat processing plants;

Provisions in the Merchant Marine and Fisheries Committee title dealing with the national defense reserve fleet;

Provisions in the Public Works Committee title calling for an Army Corps of Engineers study for a hydroelectric dam project in California; and

Provisions in the Public Works Committee title which have the effect of moving several transportation-related trust funds off budget.

Again, Mr. Speaker, I would note that in the case of each matter stricken by operation of this rule, the issues were extraneous to reconciliation, and subject to significant controversy and/or claims of jurisdiction by more than one committee of the House of Representatives.

The fourth amendment which strikes provisions upon adoption of the rule has been the source of some controversy over the last couple years. The provisions in question have the effect of taking the highway trust fund, the airport and airway trust fund and the inland waterways trust fund out of the unified budget. Put another way, Mr. Speaker, these trust funds are moved off budget by these provisions.

As the record of debate on this issue will detail, Mr. Speaker, this Member appreciates the concerns expressed by our colleagues who oversee these trust funds. However, the removal of these items from the budget or their exemption from Gramm-Rudman-Hollings serves only to undermine our overall budget balancing objectives. Following the recommendations of the chairman of the Committee on the Budget, Mr. Speaker, the Rules Committee opted to delete these provisions by operation of the rule.

In addition to the seven amendments I have just discussed, which are all deemed to be adopted upon adoption of this rule, Mr. Speaker, this rule also makes in order a second group of two amendments which are made in order during consideration of the bill for amendment.

The first of these two amendments is an amendment by Representative RODINO, of New Jersey, the distinguished chairman of the Committee on the Judiciary. The Rodino amendment is not amendable and is debatable for up to 30 minutes, equally divided by Mr. RODINO and a Member opposed thereto. The Rodino amendment would strike provisions in the Merchant Marine and Fisheries Committee title of the bill which amend the Ship Mortgage Act. Since the provisions may have the effect of amending the Bankruptcy Code, which is within the jurisdiction of the Judiciary Committee, this amendment was made in order.

The other amendment in this second group is an amendment by Representative WYLIE, the ranking minority member on the Committee on Banking, Finance and Urban Affairs, or his designee. The Wylie amendment is not amendable and is debatable for up to 30 minutes, equally divided by the proponent of the amendment and a member opposed thereto. The Wylie amendment would strike from the bill the text of H.R. 1, the Housing Act of 1986, which was passed by this Chamber earlier this year. Mr. Speaker, the housing bill is brought into reconciliation as part of the Budget Committee perfecting amendment which is adopted upon adoption of this rule. Because of the controversy over adding an authorization measure of this size to reconciliation, this amendment is made in order so the membership of the House can have an up-or-down vote on the propriety of including a housing authorization bill in reconciliation.

Finally, Mr. Speaker, the rule provides that after the bill has been considered for amendment and it is reported back to the House, no intervening motion to final passage, other than a motion to recommit, without instructions, shall be in order.

Mr. Speaker, the Budget Committee started off this budget year more than 8 months ago committed to meeting the Gramm-Rudman-Hollings deficit target and avoiding the imposition of the mindless and crippling cuts of a Gramm-Rudman-Hollings sequestration order. We adopted a budget resolution that met the target of $144 billion and started work on the reconciliation package that would implement that budget. The Budget Committee reported H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, in

July, but it soon became apparent that because of less favorable economic conditions than anticipated and because of the Gramm-Rudman-Hollings scorekeeping rules, the savings contained in that bill would not be sufficient to avoid sequestration. So the Budget Committee redoubled its efforts. Since Congress returned from the August recess, we have engaged in a continuous effort to put together a package of additional savings. Democrats and Republicans worked together in this effort. House Members worked with Members of the other body, and Members of both bodies worked with the administration.

The end result is the deficit reduction package that this rule would make in order. It is a package which has bipartisan and bicameral support on the essentials, although there are still some details on which there are differences which must be worked out in conference. It is a package which we believe the administration will be able to support when all is said and done. But most importantly, it is a package, which, if it is signed into law, will reduce the deficit below the $154 billion level which would trigger the whole sequester process.

This package will reduce the deficit by $15.1 billion in fiscal year 1987. It is comprised of provisions within the jurisdiction of 12 House committees. I will not take the time to describe the provisions now, as that will be covered during general debate on the bill. I do, however, want to express my appreciation to all of the committees involved for the cooperation that they gave in putting together this package under extremely difficult circumstances and in a short amount of time. I also want to point out the tremendous job that was done by the chairman of the Budget Committee, BILL GRAY, and the ranking minority member of the Budget Committee, Mr. LATTA, in making sure that we have a package that can be enacted before the sequestration deadline and that will reduce the deficit below the sequestration trigger level.

Finally, Mr. Speaker, I just want to point out that all of the work that has been done on the budget this year, all of the pain that has been required in cutting programs that are near and dear to our hearts, will be for naught if we do not enact this reconciliation bill. The clock is ticking. On October 6 CBO and OMB will issue the second and final report on the deficit situation. If we have not enacted this bill by that time, they will certainly estimate that the deficit exceeds the Gramm-Rudman target by at least $20 billion. We will then be faced with a vote to either order a sequestration of more than $20 billion or defeat the sequestration order and go home in shame because we were totally unable to live up to the pledge we took last year to reduce the deficit. There is no real choice. There will be no second chance. We have to adopt this reconciliation package today. I urge the adoption of this rule so we can get on with doing so.

□ 1135

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am not going to take the time of the House to go over the various items that have already been mentioned by the gentleman from South Carolina, but I do that to emphasize that this is a must piece of legislation, unless we are going to have sequestration. And I have not talked to too many of my colleagues who want to see that happen.

We are right up against a deadline, so we have to pass this rule, and then we are going to have to pass the bill.

I might also point out, as I see the chairman of the Budget Committee over there, that this is a bipartisan effort to try to get something passed in this Congress, even though I am not totally in agreement with what is contained in the reconciliation bill. I would have much preferred to have seen some meaningful reductions in expenditures rather than the asset sales and the user fees that we find contained in the reconciliation bill.

But coming to the rule itself, I support this rule. It is a 3-hour rule for general debate, followed by only two motions to strike, and each debatable for only 30 minutes. Thus, the debate time is going to be a total of 4 hours. And even if recorded votes are demanded on the motions to strike, the entire consideration of this mammoth bill cannot take much longer than 5 hours after the rule is adopted.

Mr. Speaker, the procedure embodied herein represents, as I mentined earlier, a bipartisan effort. Upon the adoption of this rule—and I want to stress that—upon the adoption of this rule, the House will be deemed to have approved or added several provisions to the bill and also to have removed several others.

□ 1145

There are four items which will be deemed to have been stricken from the text upon the adoption of the rule. They were pointed out by the gentleman from South Carolina.

First is the provision dealing with the Agricultural Meat Inspectors; second, a provision dealing with the National Defense Reserve Fleet; third, a provision providing for a study of a dam in California; and fourth, a provision which would have taken the transportation trust funds off budget

We have had that debated several times and that will be stricken upon the adoption of this rule. In addition, Mr. Speaker, there are only two items which will be deemed to have been incorporated into the text of the bill upon the adoption of the rule. The two items added are, first, a Budget Committee perfecting amendment including Conrail and a Ways and Means substitute for title X, and, second, a Ways and Means Committee technical amendment.

Mr. Speaker, the House will have an opportunity to vote on two motions to strike, and that is all. The first motion to strike may be offered by the gentleman from New Jersey [Mr. RODINO]. It would strike the bankruptcy provisions in the Merchant Marine and Fisheries title. The second motion to strike could be offered by the gentleman from Ohio [Mr. WILEY] or his designee. It would be a motion to strike the provisions of H.R. 1, the Housing Act, which has been added to this bill.

I might digress for just a moment to once again point out to the Members of the House it was not the Budget Committee that came up with these various changes that are incorporated in this bill. Under the act, the Budget Committee merely has a ministerial job to do of taking the recommendations made by the various committees and putting them together. Then we went to the Rules Committee with that package, and the Rules Committee has made certain recommendations that we have already pointed out.

Mr. Speaker, the rule is almost as notable for what it does not allow as for what it allows. The rule does not allow any amendments to the Conrail sale provisions. It does not allow an amendment to raise the gasoline tax, for example, or to increase cigarette taxes.

Mr. Speaker, the time has come when we must take some action on budget reconciliation if we are to avoid the across-the-board cuts under Gramm-Rudman. Certainly this is not the rule I would have preferred, had I had the votes in the committee to craft it otherwise. Nor is the bill itself that we will be debating, the reconciliation bill, the bill I would have preferred had I had the votes to have crafted that reconciliation bill the way I wanted it.

I did not have the votes. We had to work with the Senate, and I might say at this juncture that what we bring to this House today has the assurance from OMB that we will meet the numbers required to prevent sequestration.

We had with us during our negotiations Mr. Miller from OMB who agreed to the numbers that we will be presenting later on in the reconciliation bill. So have no fear of sequestration if we pass this legislation.

Mr. Speaker, as I say, the effort here is a compromise effort and it is possible to do the things that I have outlined if we adopt this rule and then pass the bill.

Mr. Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding me this time.

Mr. Speaker, I think we ought to understand as a body that what we are really doing in adopting this rule is saying that we are going to put all of this material into the reconciliation bill. Now I do not know how many Members of the House have really read this report and know what it is we are doing, but I doubt that it is very many because this particular report has only been available on the House floor for about a half hour. When I got mine a few minutes ago, the pages were still warm from it coming off the copying machine. I sure hope we did not burn up a copying machine as a part of the whole process as well, but one thing I am assured of is nobody really knows what it is we are doing out here right now. We are doing some awfully interesting things.

Mr. Speaker, we are adopting a closed rule which says if you take all of this you adopt it out here without even having a chance to amend it. It seems to me that at the very least if we are going to bring some package like this to the floor, there ought to be an opportunity for Members to work their will on it, but that is not going to happen.

We are basically being given a take-it-or-leave-it proposition here and we are being told that you have got to do it to keep sequestration from taking place. Sequestration was supposed to be a discipline on us. We were supposed to be disciplining ourselves to cut spending. There is absolutely nothing in what we are doing here that is going to cut any spending. I say we ought to leave this process because it is a total phony.

We are told we have got $15 billion in savings in this bill. That is a complete phony, my friends. This is, as one of the Members in the other body described it, "A complete smoke and mirrors operation; you cannot see the mirrors for all the smoke." That is exactly right because what we are doing is we are selling off national assets and we are claiming that as savings. We are doing what is probably the equivalent, as one of the staff members on our side put it, of saying that we are going to accept as money coming into the Government money that is "thrown over the transom late at night." Most of what we have in here is just completely unacceptable.

In going through the bill, I found one interesting little item for instance. Back here in the bill we have a little item about revenue sharing. What do I find out we are doing in the revenue sharing area? Well, we are transferring deficit from next year back to this year as though the deficit accumulated this year does not have any meaning to us any more, we will just transfer it back. We go from October 1 back to September 30. It is still add-on deficit as though what the accumulation of deficit overall is not what we are really all about. It is a total phony. Mandrake the Magician would be proud of this bill.

What we have done is we have reduced the deficit in the process here with no reductions at all in spending. That is a great trick but it is totally all illusion. I say we ought to reject this rule, we ought to reject the reconciliation bill that it brings to us. Both make a mockery of the whole process of deficit reduction.

This is not budget reconciliation; this is not a budget reconciliation process. This is a congressional abdication process. We are just walking away from our obligations to get spending under control. We are actually bringing before us a bill that is called a "budget reconciliation bill" where we were supposed to achieve spending savings and it actually increases spending.

The bill we will have before us has user fee increases in it. It sells off national assets, but when you get to spending, it actually increases spending by about $1.8 billion.

If you like political charades, if you like political phoniness at its worst, you will like this process and you will like the bills we are about to consider. If you want to vote for real deficit reduction, you ought to vote "no" and reject this process.

The gentleman from South Carolina said in his remarks, "If we do not go through with this process we have the likelihood that we will go home in shame." I would suggest that if we adopt this process we should be ashamed, but we probably will not be.

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. I thank the gentleman for yielding me this time.

Mr. Speaker, the rule before us contains a provision which will speedup fourth quarter general revenue sharing payments by 5 days so that they will be counted against this year's outlays rather than next year's outlays. The apparent purpose of this move is to load that $680 million on top of this year's $230 billion deficit in order to make it appear that we are getting closer to next year's Gramm-Rudman deficit target. This is gimmickry of the worst kind and, it is going to cost the American taxpayer at least a half million dollars.

General revenue sharing has always been financed with borrowed dollars. It has already added $83 billion to the Federal debt in the past 14 years. By speeding up this one payment the Federal Government is going to have to start paying the interest on that $680 million before it would otherwise have to. The cost for borrowing this money 5 days early will be $500,000 to $600,000.

Some might say that this is only a drop in the bucket—but I submit that it is not an insignificant drop in the bucket—especially when the fact is that we are unnecessarily spending money in a desperate effort to create the illusion that we are reducing Federal expenditures.

Is this what Congress had in mind when it passed the Deficit Reduction Act? Isn't it ironic that we are wasting a half a million dollars trying to fool the taxpayer into believing that we are getting the deficit down, when in fact we are actually increasing it? I suspect that the American taxpayer will not be fooled for long.

□ 1155

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 6 minutes to the gentleman from Pennsylvania [Mr. GRAY], the distinguished chairman of the Committee on the Budget.

Mr. GRAY of Pennsylvania. Mr. Speaker, I rise in support of the rule for consideration of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Adoption of this rule will enable us to complete the reconciliation process quickly. I appreciate the accommodations made by the Committee on Rules in honoring my request on behalf of the Committee on the Budget in putting this rule together.

By making in order the perfecting amendment of the Committee on the Budget, this rule recognizes the efforts of both the majority and minority to achieve a compromise which will serve to reduce the Federal deficit in a manner which will avoid sequestration in fiscal year 1987.

I would like to describe, Mr. Speaker, how this package evolved. First of all, in August, when the snapshot was taken, it was believed that the average for 1987 was $164 billion. Thus, there was a need for a $10-billion deficit reduction package so that we could avoid sequestration and get down under the threshold.

That sequestration in August was believed to be about $19 billion, which would result in about $9 billion in outlay reductions in national security and $9 billion in domestic programs. It was believed at that time that we could put together a $10-billion deficit reduction package made up primarily of the 1987 budget, including some revenues of about the same size as the President's. However, when we returned in September, it became clear that a $10 billion package would not do the job and avoid sequestration.

We also found that there was a mood here on Capitol Hill that there

were those who were not prepared to make deep cuts in spending, nor were they prepared to make decisions with regard to raising revenues. Thus, what we were faced with was a situation that was compounded by three realities:

First, sequestration was no longer $19 billion, but it was $24 billion in outlays; and therefore, we had to get to the threshold by October 1, to avoid sequestration of $12 billion in defense spending, $12 billion in domestic and outlays, which is about $50 billion in budget authority.

Second, we were faced with the problem that we must have Presidential support and the signature of the President in order for it to become law before October 1. The President has made it very clear that he would not support cuts in spending in Pentagon programs or foreign assistance, nor would he support revenues even of the magnitude in his own budget submitted to the Congress for fiscal year 1987.

Third, the other problem we faced was the clear fact that we only had a limited number of legislative days in which to come up with a package large enough to reduce the deficit within a very narrow time frame of about 15 legislative days.

What we did was to put together a package on the House side, and I might add, bipartisanly. I must commend the gentleman from Ohio [Mr. LATTA] and the Members of the minority side who worked to put together this package.

What we came up with was a package that consists primarily of asset sales, user fees, as well as some changes in accounting procedures, as pointed out by the gentleman from Pennsylvania [Mr. WALKER]. But it was done within the context of the three realities we faced.

I want to commend the gentleman from Ohio [Mr. LATTA], who went to the other body, shared it with them; and as a result, the other body came and asked us to work bicamerally together on a bipartisan package, including the White House.

As a result, with White House representation, bipartisan leadership of both the other body and the House, we worked for several hours and came up with an agreed $13 billion worth of deficit reduction, which could be signed off on by the administration in order for us to avoid sequestration.

This package before you today represents the best effort in light of those three circumstances. Would this Chair prefer something else? Yes, but we did not have the time nor do we have the Presidential support in order to implement something else.

The President says, "Take it all out of domestic! Do not touch foreign assistance! Do not touch the Pentagon!" Everyone here knows that this body is not going to vote to cut $15 billion out of domestic spending.

So, why are we going to sit here and talk about being prepared to make spending reductions when the only spending reduction that the administration will sign off on is a domestic one? There are no votes on that side of the aisle, for that! There are no votes on this side of the aisle for that! Certainly 40 days, or so, before an election are we going to vote to cut $15 billion spending—you know it, and I know it. So, this represents probably the best effort. It is not, perhaps, what I would like. It is temporary. It gets us under the threshold of $154 billion. It does not address the long-term problem of structural changes in order to bring the deficits down, but I say to my colleagues, support the rule. Support this reconciliation package. It is the best, considering the three realities that we face.

Again, I would like to thank the members of the Committee on the Budget, and particularly the minority side. While the package before us may not be ideal and may not be the ideal response to this Nation's deficit problem, it does answer our present need.

Failure to act now runs a much higher risk.

Mr. LATTA. Mr. Speaker, I yield 6 minutes to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I rise to express my disappointment and dismay that the Rules Committee did not make in order my amendment to authorize the imposition of Coast Guard user fees on recreational boaters. I think that the House should have had an opportunity to vote this issue up or down. But most particularly, I think we are missing a good bet in our efforts to plug the sea of red ink in which our ship of state is sinking.

Mr. Speaker, as the press across this country have editorialized for weeks, we are using every possible blue smoke and mirror mechanism available to us in order to avoid a Gramm-Rudman-Hollings sequestration. If we were honest with ourselves, and with each other, we would have to admit that a good part of the alleged savings in this reconciliation bill are imaginary. Oh, they may look good on paper. And maybe some of them will even stand up to the Congressional Budget Office's analysis. But when we get around to finally auditing the books, those savings aren't going to appear. And we will be in even worse shape next year, when we try to meet the even more stringent 1988 deficit target.

The crying shame here, Mr. Speaker, is that we could—and should—be collecting about $100 million a year in Coast Guard user fees from recreational boaters who use U.S. waterways. Every year, the Coast Guard spends well over $150 million a year providing nonemergency search and rescue services and aids to navigation to recreational boaters. And that's just the operating cost—it doesn't even begin to count in the cost of all the helicopters, patrol boats, cutters, Falcon jets, C-130's, radars, communications equipment, and other resources that the Coast Guard brings to bear when a boater gets into trouble.

What we are talking about is an $18-a-year fee, about one-third the cost of a new pair of deck shoes. This fee, which would raise about $100 million, would be desposited directly into the Coast Guard's operating expense account, and be available only to provide search and rescue services in nonemergency situations, plus aids to navigation for recreational boaters. What could be more fair?

The boaters complain that they already pay various fees and taxes. And of course they do, just like everyone else in this country.

But the best analogy is to motorists. We all pay a Federal tax on gasoline, that goes into the Highway Trust Fund. But when a car breaks down, we don't look to the Federal Government to tow it in. We either belong to the Triple-A, or to one of the other auto clubs, or we accept the inevitability of being gouged by some unscrupulous tow truck driver who takes advantage of motorists in trouble.

Now, my informal survey shows that people are paying more than $18 a year to belong to those auto clubs. And I can't understand why boaters insist on getting a free ride from the General Treasury. This $18-a-year fee would ensure the continuation of these essential Coast Guard services. It's an insurance policy. And it's one that should have been paid for a long time ago.

Mr. Speaker, at a time when we are talking about percentage cuts in programs like maternal and child health, education, Medicare, higher education, and programs for the elderly and handicapped, I have a difficult time explaining why 234 million Americans should pay for all—that's 100 percent—of the cost of providing Coast Guard services for some 6 million recreational boaters who may run out of gas on a Sunday afternoon.

Let's keep on towing—but it shouldn't be a free ride.

□ 1205

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Speaker, I rise in opposition to this rule this morning.

My reason is that I, too, have a difficult time understanding the decision that the Rules Committee made in striking the meat inspection improve-

ment bill from this legislation. This was an act that had the unanimous support of the House Agriculture Committee. We have a letter and I have a letter before me to the chairman, signed by the chairman and the ranking Member of the House Agriculture Committee.

The OMB and CBO have both agreed that this bill saves $1 million a year the first year, $4 million the second, and then $14 million a year into perpetuity.

It is my understanding this is a reconciliation bill, and in reconciliation, we should be looking at spending cuts.

I want to associate myself with the chairman, the gentleman from Pennsylvania [Mr. GRAY], in total. The gentleman is right on the mark in what he said.

I am here today to ask my colleagues in the House to vote down the rule and send it back to the Rules Committee and let us have an opportunity to find $14 million in savings and make some needed improvement to the Meat Inspection Act.

I would like to ask either the gentleman from South Carolina or the gentleman from Ohio if they could enlighten me as to why, in a reconciliation bill, they turned down a spending reduction bill that has come from the House Agriculture Committee, presented to the Rules Committee; no objection, in fact supported by the Budget Committee, but unilaterally it was decided to strike that savings. Could somebody enlighten me as to why?

Mr. DERRICK. Mr. Speaker, will the gentleman yield?

Mr. STENHOLM. I yield to the gentleman from South Carolina.

Mr. DERRICK. Mr. Speaker, let me say this to the gentleman, that I personally agree with the Meat Inspection Improvement Act. As to why it was deleted, it was a bipartisan act on the part of the Rules Committee.

You know, from time to time in these reconciliation bills, we do have extraneous matters, and this is one.

I questioned whether it belonged in the Reconciliation Act to begin with, whether that was the proper place for it; but be that as it may, it was a bipartisan act and that is the reason it was struck.

Mr. STENHOLM. Mr. Speaker, I thank the gentleman for that enlightenment.

Mr. LATTA. Mr. Speaker, will the gentleman yield to me?

Mr. STENHOLM. I am happy to yield to the gentleman from Ohio.

Mr. LATTA. Mr. Speaker, let me say that I also was one of those individuals who supported the gentleman's position in the Rules Committee, but there just were not the votes there to do what the gentleman would like to have done.

Mr. STENHOLM. It is another one of these things in which we have the overwhelming majority of the votes, but we seem not to have the votes to do it.

Again, I close my plea to the House, I would agree that there is some merit as to what we ought to have in reconciliation and what we ought not to, but it would seem to me the fair way to have handled this question would have been to allow a vote, to allow the will of the House to be expressed as to whether this $14 million in cuts is one that we should have.

Mr. DERRICK. Mr. Speaker, I have no further requests for time.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. Mr. Speaker, I thank the gentleman from Ohio.

I rise in opposition to this rule.

I also rise in opposition to the reconciliation package. I believe the rule is inappropriate because of the amount of material which is put into the reconciliation package by passage of the rule.

I believe the reconciliation package itself, as has been discussed here, is an obfuscation of reality. As have been noted, it is filled with smoke. In fact, it has so much smoke and fog within it that I should think we would issue everybody in this House a fog light so that we do not bump into each other as we try to debate it this afternoon.

As we look down the list of items which are alleged to be savings, you have a hard time finding anything that is really substantial and anything that is hard. One wonders how many times we can sell Conrail and how many budget resolutions we are going to give credit for selling it and at what price we are going to level it out at.

You have the additional IRS personnel for raising $2.4 billion. That is a very questionable item as to whether or not we are going to raise that type of money from those additions.

More importantly, we have this accounting change for the revenue-sharing issue, which is clearly an attempt to obfuscate reality and an attempt simply to avoid the issue of spending money. The revenue-sharing money is going to be spent. It is simply going to be credited to this year's deficit instead of next year's deficit.

We are making a mistake, in my opinion, in rushing to try to attempt to avoid sequestration by passing something like this. It is a trip to fantasy island and it is in no way going to resolve the very serious budget problems we have as a Congress.

Mr. LATTA. Mr. Speaker, I yield myself 30 seconds.

Since the gentleman who just spoke mentioned Conrail, this happens to be a part of the bill and in this bill are the provisions for the sale of Conrail. They have the authority now if this legislation passes to sell Conrail, which they have not had before.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Speaker, I thank the gentleman for yielding.

I rise to make the point that this rule makes in order an amendment to be offered by the gentleman from Ohio [Mr. WYLIE] or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto.

Mr. Speaker, this is a historic moment in the history of the House in that I received a rule which I did not request or ask for. The provision which is in the rule today authorizes me to offer an amendment which would in effect allow me to strike the provisions of the Housing bill.

Now, as I say, I am not sure how we got here, but I have decided not to do that, not to ask for such a rule, because the House has worked its will on the housing bill.

May I say that we had a good day in the Banking Committee yesterday, I believe. We passed a package providing for a FSLIC recap bill, a regulators' bill, a funds availability bill, and H.R. 1. The funds availability bill and H.R. 1 had already been passed by the House by a rather substantial margin.

I have told the authors of the substitute, the gentleman from New York [Mr. LAFALCE] and the gentleman from Georgia [Mr. BARNARD] and also the gentleman from Rhode Island [Mr. ST GERMAIN] that I would not ask for an amendment or a rule which would provide for an amendment to strike the provisions of the housing bill.

So when I came this morning to the floor, that was the first notice that I had that an amendment would be in order by me to strike the provisions of the Housing bill and I was somewhat surprised.

What I wanted was the right to offer an amendment to meet the cap levels provided for in the budget for the housing programs.

The Congressional Budget Office, in its scoring, says that the bill does not authorize any specific funding levels for most programs. Instead, it includes a general policy statement that all fiscal year 1986-87 authorizations must be capped at levels established in the budget resolution; however, some provisions are direct spending and have a cost.

The committee estimates the overall cost implications of the bill are $470 million in excess of the levels established by the budget resolution.

I talked to the chairman of the Budget Committee, Mr. GRAY, a little earlier and he agrees with that assessment.

So what I would really like to do is to offer an amendment to the budget reconciliation bill today which would meet those cap levels and do exactly what the budget bill suggested that we do and also what H.R. 1 suggested we do.

So, Mr. Speaker, what I would like to do is ask unanimous consent at this point that I be allowed to offer an amendment which would simply state:

Provided, however, That the gentleman from Ohio [Mr. WYLIE] may in lieu of the amendment be permitted to offer the following amendment—

And it would strike to period after section 303 and would say:

Provided, however, That outlays associated with H.R. 1 are hereby reduced by $470 million in fiscal year 1987.

As I say, that would meet the budget resolution targets. It would also be in line with H.R. 1, which we previously passed in this House.

The SPEAKER pro tempore. The time of the gentleman from Ohio has expired.

Mr. LATTA. Mr. Speaker, I yield 1 additional minute to the gentleman.

Mr. WYLIE. So, Mr. Speaker, I do ask unanimous consent that this resolution which we are considering now be amended to reflect what I wanted to do, since the Rules Committee made in order an amendment to be offered by the gentleman from Ohio [Mr. WYLIE], which is something I did not ask for. What I would request is to be allowed to offer the amendment which I really wanted to offer.

Mr. LATTA. Mr. Speaker, will the gentleman yield to me?

The SPEAKER pro tempore. Would the gentleman from Ohio [Mr. LATTA] like to object?

Mr. LATTA. Mr. Speaker, I think the gentleman yielded to me.

Mr. WYLIE. Mr. Speaker, I made a unanimous-consent request, but I would yield to the gentleman from Ohio.

Mr. DERRICK. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I thank the gentleman for yielding. I would like to address, under his reservation, a question to the gentleman from Ohio.

My understanding in discussing this with the staff who as usual are the experts in the details of this is that the one specific provision that would clearly be stricken was one adopted by a majority in the House which would reduce the rents for people in housing from 30 to 25 percent, because that was the one thing I was told would be directly affected.

Mr. WYLIE. Mr. Speaker, if the gentleman will yield, that is not correct.

Mr. DERRICK. Mr. Speaker, reserving the right to object, let me suggest that the gentleman is out of order. He has been yielded to for purposes of debate only; but further reserving the right to object, if I might suggest to the gentleman that I think a unanimous-consent request might be looked on favorably at the time the gentleman's amendment comes up under the bill itself; but I do make the point of order that the gentleman is out of order, that he has been yielded to for purposes of debate only.

The SPEAKER pro tempore. Objection is heard.

The Chair recognizes the gentleman from Ohio [Mr. LATTA].

Mr. LATTA. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. BARTLETT].

□ 1220

Mr. BARTLETT. Mr. Speaker, the purpose of the reconciliation bill, as has been discussed, is to lower spending so as to lower the deficit to come into compliance with the budget of the House. As has been discussed, and I will not elaborate on, this reconciliation may well lower the deficit, but it does not have specific provisions to lower spending. In fact, it has specific provisions—and the gentleman from Ohio [Mr. WYLIE] is seeking to correct one of them—to increase spending in some very specific ways.

One of those ways is the addition of H.R. 1, the Housing Act. Now I join with the gentleman from Ohio. I do not oppose necessarily putting H.R. 1 into this bill, nor do I oppose H.R. 1 in the form in which it passed the House. But I do think that it is very, very fair for the House to be allowed to vote on whether or not we want to cap spending in the housing bill, in H.R. 1, which is a part of this reconciliation package, at the fiscal year 1986 levels. I think that a majority of the members of the committee would want to do that and a majority of the Members of the House would want to do that.

As I understand it, Mr. WYLIE has been given permission by the rule to offer an amendment to strike the entirety of H.R. 1. That is an amendment that he does not wish to make and did not seek the authority to make. He does have an amendment that would correct the $470 million problem that is in this bill. It can be fully debated. It would have an hour's worth of debate, and then the house can decide as to whether they would adopt the cap on authorizations that Mr. WYLIE would seek to put in.

The amendment that Mr. WYLIE seeks to offer should be made in order because it is specific as to what the problem is. The gentleman from Ohio is the ranking member of the Banking Committee. He was given, as ranking member, the authority to offer an amendment, and he ought to be allowed to offer the amendment that he wants to offer, not the amendment that someone—we do not even know who it is—wants him to offer. He has talked, as I understand, with the chairman of the Committee on Rules, who had indicated that he sees no difficulty with doing that, and thinks that it ought to be made in order. He has talked with the chairman of the Housing Subcommittee, the gentleman from Texas [Mr. GONZALEZ], who supports the spirit of that and has said that he has no objection to it being in order.

I visited earlier with the chairman of the Committee on the Budget, the gentleman from Pennsylvania [Mr. GRAY], and he can speak for himself and I will yield to him for that purposes, but as I understand it, he would have no objection. I will just ask if the chairman would have any objection to Mr. WYLIE being allowed to offer this very specific amendment to a provision that he is familiar with.

Mr. GRAY of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Speaker, I would just say to my distinguished colleague that I would have no objection, but of course the jurisdiction for a role or an amendment to a rule lies with the Committee on Rules.

I would also point out to the gentleman one of the things that we are going to be facing in conference on all of these issues; I would hope that the gentleman and any of his colleagues who have a similar concern would take this into their consideration of the rule.

The SPEAKER pro tempore (Mr. NATCHER). The time of the gentleman from Texas [Mr. BARTLETT] has expired.

Mr. DERRICK. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTLETT].

Mr. GRAY of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Speaker, let me just simply say that I would hope that the gentleman from Texas and all who are concerned about this and other issues will be remined of something very important, and that is that in the other body there is a provision that does not allow any conference report on reconciliation to be considered that increases spending. So, therefore, one of the problems that we are going to face this year in reconciliation that we have not faced before is that the other body cannot recede to the House position because of that, and I think that it is going to take a lot of extraneous material out.

Mr. BARTLETT. Would the gentleman then support our cleaning up at

least this section of the bill here and then leaving the other items for conference? The gentleman is saying that in conference this spending is going to be reduced anyway, and the gentleman would support that as I understand his comments.

Mr. LATTA. Mr. Speaker, I yield 1 additional minute to the gentleman from Texas [Mr. BARTLETT].

Mr. WYLIE. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Ohio.

PARLIAMENTARY INQUIRY

Mr. WYLIE. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WYLIE. Mr. Speaker, the gentleman from South Carolina [Mr. DERRICK] indicated that he did not really have objection to my unanimous-consent request to make this comply with the budget resolution, which is really what I wanted to do, but felt that the unanimous-consent request to change the amendment should be made when we go into Committee and are considering the resolution. I do not believe that I can do it at that time, that I have to make the unanimous-consent request while the House is in session.

The SPEAKER pro tempore. [Mr. NATCHER]. The Chair advises the gentleman from Ohio [Mr. WYLIE] that he can make that request after the rule is adopted and before we go into the Committee of the Whole.

Mr. BARTLETT. Mr. Speaker, do I understand that the parliamentary inquiry did not come out of the controlled time?

The SPEAKER pro tempore. [Mr. NATCHER]. The time is taken out of the gentleman's time.

Mr. BARTLETT. Mr. Speaker, I urge, unless this is resolved, at least in this issue, and I think that the Committee on Rules has wrestled with the rule, but I do urge a "no" vote on the rule unless the rule is changed—and there seems to be agreement to change it, but we cannot quite get to the point of doing it—to permit at least this one amendment that would specifically reduce or eliminate the increase in spending that is provided in the reconciliation bill. We ought to send it back to the Rules Committee.

Mr. LATTA. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, I understand the difficulty that the Committee on Rules has in coming up with a very complicated rule dealing with this proposition. However, I do think that this whole question about resurrecting revenue sharing in this way ought to be observed. Many of us have been talking with our local communities. We have told them that revenue sharing is dead, that there is no chance. Now it has risen again. I guess this is Easter Sunday for some of those people.

You just wonder after a while why we are doing this sort of thing. I suppose we might refer to this as "legislative backstroke." We just take what is supposed to be next year and we put it in this year's budget, which suggests to me that we can get rid of the deficit for next year. If someone would allow me to have an amendment to take the Federal budget for defense for next year and put it into this year's budget, we can get rid of the deficit for next year.

Now that just brings up the question as to how we are going to spend this $680 million between today, the 24th of September, and the 30th of September, but I guess where there is a will, there is a way.

Two weeks ago or 3 weeks ago, we had a very worthy bill on the floor, an antidrug bill. I was concerned that we went overboard in terms of money. I wondered what the next precedent was going to be. Last week, Corrie Aquino came and gave a magnificent speech, for which she received a $200 million honorarium. But now we top that. In what I would consider to be, as I say, legislative backstroke, we are now going to create $680 million out of whole cloth. It is not going to count against the deficit for next year because we put it in this year's budget, which only lasts for 6 more days.

I do not know how you get interest payments here. Maybe what we are doing is trying to create another reverse rally on Wall Street. If we put enough money from next year's budget into this year's budget, perhaps we could lose 200 points on the Dow Jones averages before the week is out and we could go home and face our constituents.

I understand that the Rules Committee was up against it in this one, but it just seems to me that this is the wrong way to legislate. It is legislative sleight-of-hand at the least that we adopt a rule, and in adopting the rule, we just take a small, paltry $680 million for next year, put it into this year, and we do not have to worry about it. I hope that we vote the rule down.

Mr. LATTA. Mr. Speaker, I have no further requests for time.

Mr. DERRICK. Mr. Speaker, for the purpose of debate only, I yield 3 minutes to the gentleman from California [Mr. ANDERSON].

Mr. ANDERSON. Mr. Speaker, I rise in opposition to the rule providing for the consideration of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. As reported from committee, the reconciliation bill included a provision taking the transportation trust funds off budget. Adoption of this rule will wipe out that provision.

This rule prevents the full House from working its will on an issue that, albeit controversial, is critical to this Nation's transportation infrastructure. Despite the fact that we knew the Rules Committee was going to report a modified closed rule on this bill, we were expecting them to make in order an amendment to strike our provision. But never did we imagine the reporting of a self-actuating rule that denies the House the opportunity to even consider the issue.

Mr. Speaker, the Rules Committee took this action despite strong indications that this House, were it to have the opportunity to consider the issue, might support our effort to take the trust funds out of the unified budget. If we look at the record, we see that a similar vote last year was extremely close. In fact the provision to take the trust funds off budget would have passed with a swing of a mere nine votes. Last month, a swing of 22 votes would have carried a similar provision although at that time the motion under which our provision was being considered allowed for only very limited debate on the matter. Perhaps if we had been allowed today to debate this important issue, the House would have concluded that the trust funds should be removed from the unified budget, as is the case in the reconciliation bill for the Medicare hospital insurance trust fund. Unfortunately, we will never know because we have been silenced by the rule.

I think at the very least the Members have a right to know what has been lost by deleting this provision before they have had time to consider it. The transportation trust funds, which are derived solely from user fees, are by law allowed to fund only eligible transportation projects. Surpluses in the funds cannot be used to finance other programs, so do not lower the general budget deficit. Of course, these surpluses have been used to make our horrible budget deficits appear smaller. But since these surpluses do not decrease the real deficit, using them in this way merely deceives the American public and makes a mockery of the budget process and those of us who are concerned with the horrendous deficit that is confronting this country.

Mr. Speaker, the transportation trust funds cannot be used to lower the budget deficit. Nevertheless, in attempts to make it appear so, artificial ceilings are applied to the obligation of these funds. These result in the backlog of huge sums of money, money paid into the trust funds by transportation users and levied by the Government, this Congress, with the promise that their user fees would be used for improved transportation. Now, these unused and untouchable funds sit year after year while our Nation's infrastructure crumbles and long-awaited new projects languish, all so that we can deceive the public into

believing that the deficit is smaller than we know it to be.

Mr. Speaker, the reconciliation process provides that funding committees submit their reconciliation provisions to the Budget Committee, which then takes these provisions to the floor. The self-actuating rule recommended by the Rules Committee perverts that process and denies to the Public Works Committee the ability to have the House even focus on the committee position, let alone adopt it.

Mr. Speaker, it has been less than 24 hours since the Rules Committee reported this rule. Obviously, any organized attempt to defeat the rule in such a timeframe would have been futile. But let the record show how disappointed I am, as one who believes so strongly in the trust fund mechanism, in the action our Rules Committee has chosen to take in refusing to allow this provision to even be considered.

This is a gag rule, and I strongly oppose it.

□ 1230

PARLIAMENTARY INQUIRY

Mr. WALKER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore [Mr. NATCHER]. The gentleman will state his parliamentary inquiry.

Mr. WALKER. Mr. Speaker, the gentleman from Pennsylvania wishes to ascertain how the gentleman from Ohio [Mr. WYLIE] might be able to make his amendment in order.

The SPEAKER pro tempore. The Chair would like to advise the gentleman that that request would be in order after the rule is adopted and before we go into the Committee of the Whole. At that time that request is in order.

Mr. WALKER. Is the gentleman from Pennsylvania also correct that the committee could offer a committee amendment to this particular rule that would, in fact, offer the gentleman from Ohio a chance to offer the amendment which he had originally hoped would be given to him?

The SPEAKER pro tempore. The Chair would like to advise the gentleman from Pennsylvania that that would be up to the manager of the rule at this time.

Mr. WALKER. A further parliamentary inquiry Mr. Speaker: The gentleman from Pennsylvania does understand that. But that is an option which is available at this juncture, is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. Furthermore, it is possible for the House to defeat the previous question, and thereby give the gentleman from Ohio a chance to offer an amendment which would then make his amendment to the reconciliation bill in order too; is that not correct?

The SPEAKER pro tempore. The Chair would like to advise the gentleman that an appropriate amendment to the rule might be in order.

Mr. WALKER. If the previous question were defeated; is that correct?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. I thank the Chair.

Mr. WYLIE. Mr. Speaker, I have a unanimous-consent request.

The SPEAKER pro tempore. Does the gentleman from South Carolina [Mr. DERRICK] yield to the gentleman from Ohio for a unanimous-consent request?

Mr. DERRICK. Not at this time, Mr. Speaker.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. DERRICK. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 216, nays 196, not voting 20, as follows:

[Roll No. 406]

YEAS—216

Abercrombie	Daniel	Gray (PA)
Ackerman	Daschle	Guarini
Akaka	de la Garza	Hall (OH)
Alexander	Dellums	Hamilton
Andrews	Derrick	Hatcher
Annunzio	Dicks	Hawkins
Anthony	Dingell	Hayes
Applegate	Dixon	Hefner
Aspin	Donnelly	Hertel
Atkins	Dorgan (ND)	Hoyer
AuCoin	Dowdy	Jenkins
Barnes	Downey	Jones (NC)
Bates	Durbin	Jones (TN)
Bedell	Dwyer	Kanjorski
Beilenson	Dymally	Kaptur
Bennett	Eckart (OH)	Kastenmeier
Bevill	Edgar	Kennelly
Boggs	Edwards (CA)	Kildee
Boner (TN)	Erdreich	Kleczka
Bonior (MI)	Evans (IL)	Kolter
Bonker	Fascell	Kostmayer
Borski	Fazio	Lantos
Bosco	Feighan	Lehman (CA)
Boucher	Flippo	Lehman (FL)
Boxer	Florio	Leland
Brooks	Foglietta	Levin (MI)
Brown (CA)	Foley	Levine (CA)
Bruce	Ford (MI)	Lipinski
Bryant	Ford (TN)	Long
Bustamante	Frank	Lowry (WA)
Carper	Frost	Luken
Carr	Fuqua	MacKay
Chapman	Garcia	Manton
Chappell	Gaydos	Markey
Clay	Gejdenson	Martinez
Coelho	Gephardt	Matsui
Coleman (TX)	Gibbons	Mavroules
Collins	Glickman	Mazzoli
Cooper	Gonzalez	McCloskey
Coyne	Gordon	McCurdy
Crockett	Gray (IL)	McHugh
McKinney	Reid	Studds
Mica	Richardson	Swift
Mikulski	Rodino	Synar
Miller (CA)	Roe	Tallon
Mineta	Rose	Torres
Mitchell	Rostenkowski	Torricelli
Moakley	Rowland (GA)	Towns
Mollohan	Roybal	Traxler
Montgomery	Russo	Udall
Moody	Sabo	Valentine
Morrison (CT)	Savage	Vento
Mrazek	Scheuer	Visclosky
Murphy	Schroeder	Volkmer
Murtha	Schumer	Waldon
Natcher	Seiberling	Walgren
Neal	Sharp	Watkins
Nichols	Shelby	Waxman
Oakar	Sikorski	Weaver
Oberstar	Sisisky	Weiss
Obey	Skelton	Wheat
Olin	Slattery	Whitley
Ortiz	Smith (FL)	Williams
Owens	Smith (IA)	Wilson
Panetta	Solarz	Wirth
Pease	Spratt	Wise
Penny	St Germain	Wolpe
Pepper	Staggers	Wright
Perkins	Stallings	Wyden
Price	Stark	Yates
Rahall	Stokes	Yatron
Rangel	Stratton	Young (MO)

NAYS—196

Anderson	Gregg	Moorhead
Archer	Gunderson	Morrison (WA)
Armey	Hall, Ralph	Myers
Badham	Hammerschmidt	Nelson
Barnard	Hansen	Nielson
Bartlett	Hendon	Nowak
Barton	Henry	Oxley
Bateman	Hiler	Packard
Bentley	Holt	Parris
Bereuter	Hopkins	Pashayan
Bilirakis	Horton	Petri
Bliley	Howard	Pickle
Boehlert	Hubbard	Porter
Boulter	Huckaby	Pursell
Brown (CO)	Hughes	Quillen
Burton (IN)	Hunter	Ray
Byron	Hutto	Regula
Callahan	Hyde	Ridge
Carney	Ireland	Rinaldo
Chandler	Jacobs	Ritter
Cheney	Jeffords	Roberts
Clinger	Johnson	Robinson
Coats	Jones (OK)	Roemer
Cobey	Kasich	Rogers
Coble	Kemp	Roth
Coleman (MO)	Kolbe	Roukema
Combest	Kramer	Rowland (CT)
Conte	LaFalce	Rudd
Coughlin	Lagomarsino	Saxton
Courter	Latta	Schaefer
Craig	Leach (IA)	Schneider
Crane	Leath (TX)	Schuette
Dannemeyer	Lent	Schulze
Darden	Lewis (CA)	Sensenbrenner
Daub	Lewis (FL)	Shaw
Davis	Lightfoot	Shumway
DeLay	Livingston	Shuster
DeWine	Lloyd	Siljander
Dickinson	Loeffler	Skeen
DioGuardi	Lott	Slaughter
Dornan (CA)	Lowery (CA)	Smith (NE)
Dreier	Lujan	Smith (NJ)
Duncan	Lungren	Smith, Denny (OR)
Dyson	Mack	
Early	Madigan	Smith, Robert (NH)
Eckert (NY)	Marlenee	
Edwards (OK)	Martin (IL)	Smith, Robert (OR)
Emerson	Martin (NY)	
English	McCain	Snowe
Evans (IA)	McCandless	Snyder
Fawell	McCollum	Solomon
Fiedler	McDade	Spence
Fields	McEwen	Stangeland
Fish	McGrath	Stenholm
Franklin	McKernan	Strang
Gallo	McMillan	Stump
Gekas	Meyers	Sundquist
Gilman	Michel	Sweeney
Gingrich	Miller (OH)	Swindall
Goodling	Miller (WA)	Tauke
Gradison	Molinari	Tauzin
Green	Monson	Taylor

Thomas (CA)	Walker	Wortley
Thomas (GA)	Weber	Wylie
Traficant	Whitehurst	Young (AK)
Vander Jagt	Whittaker	
Vucanovich	Wolf	

NOT VOTING—20

Berman	Chappie	Kindness
Biaggi	Conyers	Lundine
Boland	Fowler	Moore
Breaux	Frenzel	Whitten
Broomfield	Grotberg	Young (FL)
Burton (CA)	Hartnett	Zschau
Campbell	Hillis	

□ 1250

Mr. LEATH of Texas changed his vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. NATCHER). The question is on the resolution.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 255, noes 157, not voting 20, as follows:

[Roll No. 407]

AYES—255

Abercrombie	Dowdy	Kaptur
Ackerman	Downey	Kastenmeier
Akaka	Duncan	Kennelly
Alexander	Durbin	Kildee
Andrews	Dwyer	Kleczka
Annunzio	Dymally	Kolter
Anthony	Dyson	Kostmayer
Applegate	Eckart (OH)	Lantos
Aspin	Edgar	Latta
Atkins	Edwards (CA)	Lehman (CA)
AuCoin	Emerson	Lehman (FL)
Barnes	English	Leland
Bates	Erdreich	Lent
Bedell	Evans (IL)	Levin (MI)
Beilenson	Fascell	Levine (CA)
Bennett	Fazio	Lipinski
Bentley	Feighan	Loeffler
Berman	Fish	Long
Bevill	Flippo	Lott
Bliley	Florio	Lowry (WA)
Boggs	Foglietta	Lujan
Boner (TN)	Foley	Luken
Bonior (MI)	Ford (MI)	Lundine
Bonker	Ford (TN)	MacKay
Borski	Frank	Manton
Boucher	Frost	Markey
Boxer	Fuqua	Martin (IL)
Brooks	Garcia	Martinez
Brown (CA)	Gaydos	Matsui
Bruce	Gejdenson	Mavroules
Bryant	Gephardt	Mazzoli
Bustamante	Gibbons	McCloskey
Carr	Gilman	McCurdy
Chapman	Glickman	McDade
Chappell	Gonzalez	McGrath
Clay	Goodling	McKinney
Coelho	Gordon	McMillan
Collins	Gray (IL)	Mica
Conte	Gray (PA)	Michel
Cooper	Guarini	Mikulski
Coughlin	Hall (OH)	Miller (CA)
Coyne	Hamilton	Miller (WA)
Crockett	Hatcher	Mineta
Daniel	Hawkins	Mitchell
Daschle	Hayes	Moakley
Davis	Hefner	Mollohan
de la Garza	Hendon	Montgomery
Dellums	Hertel	Moody
Derrick	Horton	Morrison (CT)
Dicks	Hoyer	Mrazek
Dingell	Jenkins	Murphy
DioGuardi	Johnson	Murtha
Dixon	Jones (NC)	Natcher
Donnelly	Jones (TN)	Neal
Dorgan (ND)	Kanjorski	Nelson
Nichols	Russo	Thomas (GA)
Nowak	Sabo	Torres
Oakar	Savage	Torricelli
Oberstar	Scheuer	Towns
Obey	Schroeder	Traxler
Olin	Schumer	Udall
Ortiz	Seiberling	Valentine
Owens	Sharp	Vento
Panetta	Shelby	Visclosky
Pashayan	Shuster	Volkmer
Pease	Sikorski	Waldon
Penny	Sisisky	Walgren
Pepper	Skeen	Watkins
Perkins	Skelton	Waxman
Pickle	Slattery	Weaver
Price	Smith (FL)	Weiss
Pursell	Smith (NJ)	Wheat
Quillen	Solarz	Whitley
Rahall	Spratt	Whittaker
Rangel	St Germain	Williams
Reid	Staggers	Wilson
Richardson	Stallings	Wirth
Rinaldo	Stark	Wise
Rodino	Stokes	Wolf
Rose	Stratton	Wolpe
Rostenkowski	Studds	Wright
Rowland (CT)	Swift	Wyden
Rowland (GA)	Synar	Yates
Roybal	Tallon	Yatron
Rudd	Taylor	Young (MO)

NOES—157

Anderson	Hammerschmidt	Regula
Archer	Hansen	Ridge
Armey	Henry	Ritter
Badham	Hiler	Roberts
Barnard	Holt	Robinson
Bartlett	Hopkins	Roe
Barton	Howard	Roemer
Bateman	Hubbard	Rogers
Bereuter	Huckaby	Roth
Bilirakis	Hughes	Roukema
Boehlert	Hunter	Saxton
Bosco	Hutto	Schaefer
Boulter	Hyde	Schneider
Brown (CO)	Ireland	Schuette
Burton (IN)	Jacobs	Schulze
Byron	Jeffords	Sensenbrenner
Callahan	Jones (OK)	Shaw
Carney	Kasich	Shumway
Carper	Kemp	Siljander
Chandler	Kolbe	Slaughter
Cheney	Kramer	Smith (IA)
Clinger	LaFalce	Smith (NE)
Coats	Lagomarsino	Smith, Denny (OR)
Cobey	Leach (IA)	
Coble	Leath (TX)	Smith, Robert (NH)
Coleman (MO)	Lewis (CA)	
Coleman (TX)	Lewis (FL)	Smith, Robert (OR)
Combest	Lightfoot	
Courter	Livingston	Snowe
Craig	Lloyd	Snyder
Crane	Lowery (CA)	Solomon
Dannemeyer	Lungren	Spence
Darden	Mack	Stangeland
Daub	Madigan	Stenholm
DeLay	Marlenee	Strang
DeWine	Martin (NY)	Stump
Dickinson	McCain	Sundquist
Dornan (CA)	McCandless	Sweeney
Dreier	McCollum	Swindall
Early	McEwen	Tauke
Eckert (NY)	McKernan	Tauzin
Edwards (OK)	Meyers	Thomas (CA)
Evans (IA)	Miller (OH)	Traficant
Fawell	Molinari	Vander Jagt
Fiedler	Monson	Vucanovich
Fields	Moorhead	Walker
Gallo	Morrison (WA)	Weber
Gekas	Myers	Whitehurst
Gingrich	Nielson	Whitten
Gradison	Packard	Wortley
Green	Parris	Wylie
Gregg	Petri	Young (AK)
Gunderson	Porter	
Hall, Ralph	Ray	

NOT VOTING—20

Biaggi	Conyers	Kindness
Boland	Fowler	McHugh
Breaux	Franklin	Moore
Broomfield	Frenzel	Oxley
Burton (CA)	Grotberg	Young (FL)
Campbell	Hartnett	Zschau
Chappie	Hillis	

□ 1305

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

REQUEST FOR PERMISSION TO OFFER SUBSTITUTE AMENDMENT TO H.R. 5300 IN LIEU OF AMENDMENT MADE IN ORDER UNDER THE RULE

Mr. WYLIE. Mr. Speaker, I ask unanimous consent that I be permitted to offer a substitute amendment which is at the desk in lieu of the amendment made in order under the rule.

The SPEAKER pro tempore (Mr. NATCHER). Is there objection to the request of the gentleman from Ohio?

Mr. GRAY of Illinois. Mr. Speaker, reserving the right to object, I have examined the proposed amendment to be offered by the gentleman from Ohio, and it undoubtedly is aimed at an amendment I offered and was adopted in the House by a vote of more than 2 to 1 earlier, that would lower rents for senior citizens. Therefore, I am constrained to object.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GRAY of Illinois. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I understand the point the gentleman is making. However, we have had a rather unusual set of circumstances here. If the House would wish to vote in the direction the gentleman is talking, we certainly could have a vote on that issue.

But the gentleman from Ohio really was basically assured of an amendment and the gentleman tried to offer it during the process here. The committee refused to offer a committee amendment, and the gentleman has been frozen out of the situation and told that this was his one recourse in order to get his amendment in order. If the gentleman does make his objection, the gentleman from Ohio has lost his recourse and we have lost a chance to vote on 470 million dollars' worth of budget savings.

I am just wondering if the gentleman could at least allow us to bring this to a vote.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I apologize to the gentleman for having to do this but, as I said, the House voted by more than 2 to 1 for lowering elderly housing rents, including more than 50 Members on the minority side.

Mr. WYLIE. Mr. Speaker, will the gentleman yield to me so that I might explain my amendment if the gentleman intends to object?

Mr. GRAY of Illinois. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Speaker, I thank the gentleman from Illinois for his courtesy.

Mr. Speaker, my amendment does not say anything about the amendment of the gentleman from Illinois which has to do with rental housing for the elderly.

All my amendment does is to put a cap on the spending for the housing program at the level which the budget recommended. I have discussed this with Mr. GRAY of Pennsylvania, and the gentleman agrees with me and says that it will be taken out in conference. I think that we should take it out here on the House floor.

The gentleman from Illinois [Mr. GRAY] has been around a long time, and the gentleman knows that my amendment cannot possibly have any effect on his amendment unless the Appropriations Committee wants it to have an effect on his amendment. The final appropriations have not been made for fiscal year 1987. They will not be made until after we adopt the budget and until after the housing authorization bill is adopted, which it has not been.

All my amendment does is reflect the will of the House when we passed the housing bill.

Under the rule, I would be permitted to offer an amendment which would strike out the whole housing bill which would include the gentleman's amendment. I did not ask for such a rule. As I said earlier, this is a historic moment. I got a rule which I did not ask for.

What I am trying to do is reflect the will of the House, and the final appropriations will determine what the monies will be spent for, and it cannot possibly have any impact on the gentleman's amendment at this point. I would hope the gentleman would not object.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, will the gentleman tell us what items he is aiming at in his exact precise amount of $470 million.

I might say parenthetically that it is more than ironic that that happens to be the cost estimated by the Congressional Budget Office of lowering rents to senior citizens in public housing. If the gentleman is not aiming at my amendment, the gentleman is certainly a good guesser.

Mr. WYLIE. Mr. Speaker, will the gentleman yield?

Mr. GRAY of Illinois. Under my reservation of objection, I yield to the gentleman from Ohio.

Mr. WYLIE. Mr. Speaker, I do not know where CBO got its estimates. All I am saying is that this rule came to my attention this morning for the first time. CBO says that, under its scoring policy, it indicates that the housing portion of the bill is $470 million over budget levels.

I think we are trying to follow the budget resolution in this budget reconciliation process. The chairman of the Budget Committee has assured me that that is the case.

It may be more than a coincidence if what you say is what CBO did in its scoring procedure. I do not know that to be a fact. But let me assure the gentleman I did not have any specific program in mind at all. All I am trying to do is to cap the level of outlays in my amendment, if I am permitted to offer it, to the fiscal year levels of spending which were announced earlier in the budget bill.

Mr. LATTA. Mr. Speaker, will the gentleman yield?

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Ohio.

□ 1315

Mr. LATTA. I thank the gentleman for yielding to me.

Mr. Speaker, let me say in the interest of fairness I would like to appeal to my friend from Illinois not to object. The gentleman from Ohio maintains that what we did in the Rules Committee is not what he wanted. I think that we ought to permit a Member, if we make an amendment in order under a rule, to offer, to at least offer what he intended.

We will have an opportunity when the proper time comes, even though you permit, without your objection, for him to make this amendment to his amendment, we will have an opportunity to vote on it. At that time the gentleman and the Members of this House will have an opportunity to vote up or down on his amendment. So that time is in the future. All he is asking for is to correct his amendment. It is his amendment; not yours, not mine, not anybody else's in this House. It is his amendment that we made in order in the Rules Committee.

So I think the gentleman ought to have an opportunity to perfect his amendment, and I hope the gentleman will not object. We will vote on it later on.

Mr. GRAY of Illinois. Mr. Speaker, further reserving the right to object, I certainly respect the very esteemed gentlemen from Ohio [Mr. LATTA and Mr. WYLIE] and the gentleman from Pennsylvania [Mr. WALKER] but it is very obvious what this proposed amendment is for. It is to get at the Gray amendment that reduced rentals in public housing from 30 to 25 percent of gross income. As far as it increasing the overall budget, Mr. Speaker, we pointed out in our very lengthy debate, that there is approximately a 15-percent vacancy rate in public housing now because the rents are too high. What we have are people moving out of our public housing units into substandard housing. If we can have more people coming back in with cheaper rents, we can recoup this $470 million or a great part of it. It is very obvious, in light of the fact that the gentleman from Ohio [Mr. WYLIE] cannot tell us exactly where those cuts are going to be made. It is further obvious to me that the gentleman from Ohio is definitely trying to cut back on the very poor people who are at the very bottom of the economic ladder. Our senior citizens living in public housing.

Mr. Speaker, reluctantly, I object.

Mr. Speaker, I am constrained to object.

Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

OMNIBUS BUDGET RECONCILIATION ACT OF 1986

The SPEAKER pro tempore. Pursuant to House Resolution 558 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5300.

□ 1317

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, with Mr. SEIBERLING in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Pennsylvania [Mr. GRAY] will be recognized for 1½ hours and the gentleman from Ohio [Mr. LATTA] will be recognized for 1½ hours.

The Chair recognizes the gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today we are considering H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, as modified by the package of amendments incorporated into the bill by the rule.

The other body has already adopted a reconciliation package similiar to the one I present today. It is my hope that once the House passes this reconciliation bill, we will begin the conference immediately with the other body to resolve our differences in order to reach agreement on a package sufficient to meet the Gramm-Rudman-Hollings target.

We must send this package to the President before the October snapshot

to avoid a possible sequestration of more than $20 billion. Elements of the bipartisan package include provisions for a public offering of Conrail, Exim loan asset sales, rural development insurance fund asset sales, a validation of the administration's fiscal year 1986 revenue sharing payment, additional IRS personnel to increase revenue collections, accelerated collection of certain excise taxes, increased taxpayer compliance through penalties, and an across-the-board cut in discretionary spending, 50 percent from domestic and 50 percent from Pentagon spending.

All told, the original provisions of H.R. 5300 plus these modifications will result in more than $15 billion in fiscal year 1987 deficit reduction even when scored against the Gramm-Rudman-Hollings baseline.

I stress the fact that the package before you today is a bipartisan one, formulated only after extensive discussions between the majority, the minority and the administration. We all know our goal and through this package we will meet that goal, which is to avoid sequestration and come within the guidelines and the threshold of Gramm-Rudman.

The common question asked by my colleagues on both sides of the aisle is how did we get from passing a budget resolution in June containing a deficit of under $144 billion to the situation confronting us now of piecing together a deficit reduction package of $15 billion practically overnight. My answer is all too familiar these days: Gramm-Rudman-Hollings.

The original reconciliation bill, as adopted by the Budget Committee in July, represented the good faith efforts of the House committees to meet their reconciliation instructions. However, since that time the Congressional Budget Office and the Office of Management and Budget issued their fiscal year 1987 sequestration report. That report projected the fiscal year 1987 deficit to be not $142.6 billion, as we had believed in early July, but to be $163.4 billion. Well above the Gramm-Rudman-Hollings target of $144 billion.

This estimate is not only due to congressional actions but to things totally outside of our control, such as lower revenues due to slower economic growth than expected. Further, advance deficiency payments for farm price supports are expected to be made. Also appropriation bills or a continuing resolution at the budget resolution levels are expected to be enacted.

Together, those actions would increase the deficit to $169 billion for fiscal year 1987; $15 billion above the Gramm-Rudman-Hollings threshold. In light of these facts, H.R. 5300, as originally reported, did not meet our deficit reduction goals and avoid sequestration this year. Therefore, a bipartisan reconciliation package of amendments was fashioned to augment the savings in the reconciliation bill. These modifications, if enacted, will ensure that we meet the deficit target necessary to avoid sequestration this year.

The package of reductions will enable the House to maintain its priorities set forth in the 1987 budget resolution while avoiding the mindless approach to deficit reduction of Gramm-Rudman-Hollings sequestration.

□ 1325

If fact, if we fail today to pass this deficit reduction measure, our most recent estimates show that the across-the-board cuts would rise to $24 billion; $12 billion from national security in outlays, $12 billion from vital domestic programs in outlays, thus totaling nearly $50 billion in budget authority.

This reconciliation vehicle is not a perfect package, but it is what all parties involved, the leadership of the House, the other body and the executive branch of Government, were able to agree upon.

I will admit that this approach does not totally reflect my preferences on how to reduce the deficit. I would prefer to include the revenue as some specific reductions, both in Pentagon spending and the domestic side.

However, the President is adamantly opposed to any revenue increases, even those in his own budget for 1987. Since the President must sign any reconciliation vehicle, and since we are limited in the number of days in which to reach our goal, it would seem foolhardy to pursue a course that ignores this reality. Not until the President is willing to look at all parts of the budget, not just domestic spending will we ever be able to implement a long-run solution to the deficit problem.

My friends and colleagues, that brings us to the real question today. You may not think this is a good package or a perfect package, and you are probably right. However, the question is, in order to pass this into law, we would have to have a Presidential signature and, thus, how many of us here today are prepared, as the President wants, to cut $15 billion out of domestic programs only and not touch the Pentagon side?

How many of us here today are prepared to go against the President and vote for large increases in revenues which we know ahead of time the President will not sign and, thus, we will face sequestration on October 1?

When you look at those realities, I believe despite the deficiencies of this package, it is the best that can be done. One thing we do know is that if we pass this package today, because of the bipartisan support in working it out in this body and the other body, along with the administration, that we will be able to go to conference and we will be able to get a vehicle that can be passed into law, that will avoid sequestration.

In conclusion, my colleagues, this package, in a word, gets the job done. It enables us to maintain the priorities which we set forth in the 1987 budget resolution. It is a reasonable alternative to the pending sequestration resolution and it avoids the devastating impact of mindless reductions of $24 billion across the board mandated by Gramm-Rudman-Hollings.

So, as you look at the package, look at it, even with its imperfections, with the knowledge that we will avoid sequestration; we will get under the threshold. We will not make major structural changes in deficit reduction, but one must recognize what the alternatives are and whether we could implement those alternatives by October 1. If we cannot, then we are inviting sequestration.

I urge all Members, after looking at the alternatives, to look at this package and they will recognize what we in the Committee on the Budget bipartisanly recognize, and that is, that this is the best possible solution to a difficult problem and it gets the job done.

Before I conclude, Mr. Chairman, I must commend the ranking member of the committee and his ranking members on the minority side: the gentleman from Ohio [Mr. LATTA] and particularly the gentlewoman from Illinois [Mrs. MARTIN] and also the gentleman from Texas [Mr. LOEFFLER], who were a part of a task force, who bipartisanly last week came up with something that both sides in the Committee on the Budget could accept.

Then I must commend my colleagues on the minority side for having the wisdom, as well as the courage, to encourage the other body to look at the proposal and, as a result of their leadership, the other body, along with the White House, joined in deliberations that lasted for several hours so that we know when we pass this vehicle that at least $13.6 billion of the savings herein have already been tentatively approved and will be signed into law.

I want to commend the ranking member, the gentleman from Ohio [Mr. LATTA], the gentlewoman from Illinois [Mrs. MARTIN] and the gentleman from Texas [Mr. LOEFFLER] and those of the minority side for their outstanding leadership in putting this package together.

It is the best that can be done in light of the political realities that we face.

I urge my colleagues to support it and vote for it, particularly when they look at what the alternatives are and the amount of time we face in which

to enact legislation and avoid mindless cuts across the board.

Mr. LATTA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, at the outset, let me thank the gentleman from Pennsylvania [Mr. GRAY] for his kind remarks and say that it is always a pleasure to work with him. Certainly in this instance it was a pleasure to work with him. We put in, as the gentleman indicated, many, many hours in trying to come up with a compromise, and a compromise is before us.

The gentleman from Pennsylvania [Mr. GRAY] has shown, since he has been chairman of this committee, extremely able leadership and we are very, very lucky in this body to have his leadership with us.

Let me say at the outset that we cannot lose sight of the fact that we bring to you a package that has been put together by the Committee on the Budget; however, it is package that was first given to us by the individual committees of this House.

We do not come up with these program reductions or these program additions, and there are a few additions in here. They are submitted to us on the Committee on the Budget and we put them together.

However, in our negotiations with the other body, we had certain limitatons that we submitted to the committee and said: "These are the figures that you must come up with." Most of them have complied. So we thank them for that.

I might say, if I had been putting this package together, I would not have done it in every detail as has been done here, nor would the President have done it as they have done.

I might say that I happen to be one of those who joined with the President and believes that we ought to be reducing expenditures of Government and not increasing taxes, as a good many Members in this House would do on the majority side.

We are going to be faced with this problem next session. We are going to have to decide at that time whether or not to reduce expenditures, as I think the American people want. They do not want increased taxes. You are not going to have any choice. We have given you an out this time in this reconciliation bill, but not the next time. There is not going to be a next time. You are going to have to fish or cut bait during the next session of this Congress and make some real cuts.

If you are talking about $15 billion in this bill, wait until the next time when you are talking about $40 billion.

Those are meaningful amounts, so get to thinking about it because the time is coming when those reductions in the budget are going to have to be made, and certainly the American people ought to take note of this fact, whether or not they want increased taxes or whether or not they want this Congress to reduce expenditures. I believe they want the latter.

Let me also say, as the chairman of the committee has indicated, I rise in support of this reconciliation bill as we have no other alternative. We have only a couple of days to act or sequestration is going to take place.

It is a product of negotiations, which are both bipartisan and bicameral. We sat down with the other body, Chairman DOMENICI of the Committee on Budget, and Senator CHILES, the ranking member, our chairman and myself, for several days to come up with this product that we have before us. So it is bicameral.

□ 1335

We had the Office of OMB Director, Mr. Miller, with us all the time, so the figures that we have here are figures that are going to be accepted downtown.

Certainly what emerged would not rank as anyone's first choice for dealing with this deficit. The best that can be said about it is that it is a package, and even though it has flaws, it will accomplish the objectives that we have to accomplish to avoid sequestration.

It allows the Congress to do the job of reducing the deficit rather than having it done through this automatic process across the board which I think would be unfair regardless of the value or the merits of the various programs. I think that is wrong to have equal cuts. I think there are some programs in government that are more valuable than others and some, in my humble judgment, we could do without altogether; but under Gramm-Rudman programs are cut across the board equally. We avoid that through this process.

We will be able to get below the Gramm-Rudman-Hollings deficit target of $154 billion, which would allow us to avoid sequestration in the fiscal year 1987 budget.

Here is what sequestration would have done. In these across-the-board cuts, they could total about $30 billion. This would be 8.9 percent in defense programs and 13.9 percent in nondefense programs. These cuts would have to be made on top of the automatic Gramm-Rudman cuts that were made earlier in fiscal year 1986, which amounted to 4.9 percent in defense and 4.3 percent in domestic programs.

The cumulative reductions below the amounts originally appropriated for 1986 would have been almost 14 percent for defense and 18 percent for domestic programs. After adjustment for inflation, the cumulative reductions would have been even greater.

Such a sequestration would have serious effects on many vital areas. It could be particularly harmful to the armed services. Hundreds of thousands of active duty and reserve military personnel would have to be laid off.

On the domestic front, programs to benefit the farmers and to carry on the war against drugs would be among those taking severe cuts.

Gramm-Rudman-Hollings makes no distinction between unnecessary Government spending and spending that America really needs.

So it is far better that Congress meet its responsibilities and reduce the deficit through the enactment of this reconciliation package, even though in my humble judgment it is flawed in many areas, rather than letting it be done through sequestration.

Reducing the deficit would provide little benefit for the American people if the reductions were accompanied by the kind of large income tax increases that many others in this Congress have advocated; so it is a major accomplishment that we are avoiding such a tax increase in reaching the target through this package. It is in line with the pledges made to the American people by the President when he was seeking reelection and also in line with the position that the Republican members of the House Budget Committee have taken all along.

I would have preferred to see substantial reductions in domestic programs in the package, but the majority on the Budget Committee made it plain that any domestic savings would have to be accompanied by a dollar-for-dollar reduction in defense programs, and the President is firmly against any more sizable cuts in our defense capabilities.

The House Appropriations Committee already has cut President Reagan's request for fiscal year 1987 by more than 12 percent. This would be 2 percent below the 1986 level after the 1986 Gramm-Rudman sequestration and about a 5-percent real cut from 1986 if you account for inflation. In the last 2 years defense has suffered real cuts totaling about 10 percent, so it is pretty obvious that defense has done its share in reducing costs.

Some critics have denounced what they call smoke and mirrors in this package. Well, maybe there is some smoke and mirrors, but OMB agrees to the figures.

There are good arguments for accomplishing deficit reduction this year with this kind of package. For one thing the selling of assets and imposing user fees avoids fiscal contractions on the general economy at a time when the economy appears to be quite fragile. In selling off assets we are pulling the government out of areas we feel would be better served by private enterprise without further expense to the American people.

When we sell loan assets without recourse—and I want to stress that—without recourse, we also can determine exactly how much Federal subsidy has been involved in all those loan programs.

As the chairman has already pointed out, under this reconciliation package we are going to have the advance payments to the farmers and they are going to be made shortly.

Revenue sharing for this year, payments are going to be made before the next fiscal year.

The package also provides for paying cost-of-living adjustments for Social Security recipients, even if the cost-of-living increase for the year does not reach the 3-percent trigger required under the current law. This is very important to some 36 or 37 million people under Social Security. This would cost about $800 million. It is one of the add-ons.

An additional $580 million is included to hold the part. A deductible required for Medicare patients to $500, rather than let this figure rise to $572 for 1987 stipulated in the current law, so we are saving these Medicare patients under part A $72 a year on their deductible..

It also contains money for improving enforcement of our income tax laws to make sure that some Americans do not profit at the expense of others by dodging legitimate tax payments.

Speaking of taxes, some Members think we can avoid sequestration just by utilizing the expected revenues from the next tax reform bill. That bill is designed to be revenue neutral. Even if you get a windfall of surplus revenues next year, this will be balanced off by a shortfall of revenues in future years, so obviously we cannot rely on it for long-term deficit reduction. No one is sure exactly how much surplus will be produced next year. It is highly unlikely that we could escape sequestration with the tax bill revenues alone without enactment of this reconciliation package.

Finally, Mr. Speaker, time is running out for this Congress to act. Even if we pass this package today, we still have some differences, even though they are small, to work out with the U.S. Senate, and the bill must still go to the President of the United States for his signature.

If this bill does not become law by a week from Sunday, October 5, then we probably will miss the deficit reduction target and the Government will have to undergo a painful sequestration.

Now is the time we must act to keep us from going that direction.

Mr. LOWRY of Washington. Mr. Chairman, I yield 15 minutes to the distinguished gentleman from Michigan [Mr. DINGELL], the chairman of the full committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I yield myself 5½ minutes for purposes of dealing with the aspects of this legislation which relate to the business of the Committee on Energy and Commerce.

Mr. Chairman, I thank my distinguished friend and colleague for his kindness to me. At the appropriate time I will yield 7½ minutes to my dear friend, the gentleman from New York [Mr. LENT], the ranking minority member, for purposes of addressing his share of the issues and his concerns.

First, Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Reconciliation Act of 1986. I would like to take a few minutes to discuss title IV of the bill, which contains the reconciliation recommendations of the Committee on Energy and Commerce.

Title IV includes legislation that will result in 3-year outlay savings of $3.8 billion. More than $2.7 billion of that amount will be achieved in fiscal year 1987 alone.

The sale of Conrail will be a major source of these savings. The other savings in title IV have been achieved in a number of ways—by making improvements in the Medicare Program, by increasing user fees for the Nuclear Regulatory Commission, by imposing user fees at the Federal Energy Regulatory Commission, and by recouping some of the oil overcharge funds anticipated by the budget resolution.

Unfortunately, most of us on the committee believed at one time or another that the savings would be larger. Regrettably, a court decision rendered subsequent to the passage of the budget resolution made the bulk of the oil overcharge funds unreachable by legislative action, an action by the court which I regard as being extremely unwise and very much inconsistent not only with statutory law, but also with good sound public policy. Thus, the Energy and Commerce Committee's savings are lower than what they might have been were it not for this unfortunate judicial decree, even though the committee, I note, did meet its reconciliation targets.

Title IV also contains other provisions to effectuate certain policy goals contemplated by the budget resolution. For example, section 9 of the budget resolution expressed the sense of the Congress that the strategic petroleum reserve be filled to 750 million barrels. The committee's reconciliation recommendations provide the necessary authority to meet this goal.

Similarly, the budget resolution aimed at increasing funding for maternal and child health—the so-called children's initiative—and for specified improvements in the Medicaid Program. After close consultation with and approval of the Budget Committee and the leadership, the committee included legislation to carry out these important health policy imperatives.

The inclusion of our Conrail sale legislation in this bill has my wholehearted support and endorsement. It caps off nearly 2 years of discussion and debate on this issue. I am pleased to be bringing to the House a bill that will move Conrail to the private sector without the unfortunate anticompetitive problems and the job losses that would have accompanied a merger with another Eastern carrier.

The Conrail legislation, which has been incorporated as subtitle H of title IV, provides for a sale of the Government's 85-percent interest in Conrail through a public stock offering to be administered by the Secretary of Transportation. The Secretary would be expected to obtain proceeds of at least $1.7 billion, which when coupled with a transfer to the Government of $300 million in Conrail cash, would result in deficit reduction of at least $2 billion, if the market does not fall.

By a bipartisan vote of 32 to 9, the committee adopted an important amendment offered by the gentleman from Ohio [Mr. ECKART] to provide that the Secretary shall retain the services of multiple investment bankers to serve jointly and to be compensated equally as "co-lead managers" of the public offering and to establish a syndicate to underwrite the public offering. The gentleman from Ohio [Mr. ECKART], as author of this amendment, not only succeeded in having the amendment adopted overwhelmingly, but did so in a bipartisan fashion. Although I opposed that amendment as part of an agreement with my dear friends and colleagues, the gentleman from New York [Mr. LENT], the gentleman from New Jersey [Mr. FLORIO], and the gentleman from Illinois [Mr. MADIGAN], all of whom were similarly compelled to oppose it, I nevertheless believe that this is a good amendment and I commend the gentleman from Ohio for what he has done.

The committee engaged in an extensive debate when this amendment was offered. It is clear from my reading and my recollection of that debate that the committee intends the term "co-lead manager" to mean full and equal sharing of responsibilities in managing the transaction, as distinguished from the terms "lead manager" or "co-manager" as commonly used in the investment community.

This concept of "co-lead managers" is new to the American financial markets, but is well-known in the European Community and is certainly appropriate to an offering of this size, the largest in the history of this Nation.

Our committee was also cognizant of the need to insure the continuation of essential rail service in the Conrail region. Thus, the committee mandated

that Conrail take various steps for specified periods of time to maintain rail operations. We have also taken steps to guard against hostile takeovers and anticompetitive rail mergers. All in all, I believe the committee has produced a sensible, well-balanced, bipartisan sale package.

This package, called the Conrail Privatization Act, is the product of a bipartisan effort by a number of my colleagues, and I wish to commend them at this time—the subcommittee chairman, the gentleman from New Jersey [Mr. FLORIO], our two senior minority members, the gentleman from New York [Mr. LENT] and the gentleman from Illinois [Mr. MADIGAN], the ranking minority member of the subcommittee, the gentleman from Kansas [Mr. WHITTAKER], and the gentleman from Ohio [Mr. ECKART].

□ 1350

Mr. Chairman, I also want to recognize the distinguished chairman of the Committee on the Budget, the gentleman from Pennsylvania [Mr. GRAY], and his colleagues, and to commend them for their outstanding efforts and hard work to make possible not only the cooperation between our two committees, but also what we have done in this bill.

Mr. Chairman, I will include in the RECORD immediately following my remarks a floor statement and section-by-section analysis of the Conrail Privatization Act which represents the views of the chairmen and ranking minority members of the committee and subcommittee, as well as of Mr. MADIGAN, all of whom played integral roles in authoring this legislation.

The statement and analysis are as follows:

FLOOR STATEMENT ON CONRAIL—H.R. 5300, CONRAIL PRIVATIZATION ACT

SUBTITLE H—RAIL RELATED ISSUES

On September 17, 1986, the Committee on Energy and Commerce approved the Conrail Privatization Act. In lieu of a Committee Report, this floor statement represents the views of the Chairmen and Ranking Minority Members of the Committee and Subcommittee, as well as Representative Edward Madigan, and is intended to serve as the legislative history.

The Act would transfer Conrail to the private sector through a public offering to be administered by the Secretary of Transportation. Conrail is required to transfer $300 million in cash to the Government within thirty days of enactment. The Secretary shall thereafter sell the common stock owned by the United States in a public offering if the estimated sum of the gross proceeds to be realized by the Government from the public offering and the value of any warrants issued by Conrail to the Government is at least $1.7 billion.

The legislation provides guarantees to ensure that Conrail continues to provide rail service in the region. For example, the bill mandates that for five years Conrail spend at least $500 million annually on capital expenditures, unless the Conrail Board of Directors reduces that amount to $350 million (on a cumulative basis). If such expenditures are not made, Conrail cannot pay dividends. Other restrictions, ranging from three to five years in length, limit the ownership of any person in Conrail to 7.5 percent, require Conrail to maintain at least $250 million in cash on hand at the end of each year, restrict rail mergers, particularly with other carriers in the region, limit foreign ownership to 20 percent, and require Conrail to continue its affirmative action and minority vendor programs.

Once Conrail is sold, it will function like any other private sector corporation, with its own Board of Directors making decisions in the best interest of the Corporation, subject, of course, to applicable provisions of law.

A detailed section-by-section analysis of the legislation follows:

PART 1—GENERAL PROVISIONS

Section 4701. Short Title; Table of Contents

Section 4701 provides the short title, the "Conrail Privatization Act," and the table of contents.

Section 4702. Findings

Section 4702 provides the findings.

Section 4703. Purposes

Section 4703 provides the purposes.

Section 4704. Definitions

Section 4704 provides the definitions used in the Act.

With reference to the definition of "capital expenditures," we understand that Conrail's present accounting treatment distinguishes between capital expenditures and normal repair, maintenance and upkeep in accordance with generally accepted accounting principles.

Clause (A) of the definition of "cumulative net income" includes payments to be made to Conrail employees who are not represented by unions. We understand that Conrail will make payments to these employees which will not exceed $30 million. In addition, the aggregate value of the shares distributed under section 4724(f) should include cash distributed in lieu of fractional shares.

PART 2—CONRAIL

Subpart A—Sale of Conrail

Section 4711. Preparation for Public Offering

This section specifies actions required to prepare for a public offering.

Subsection (a) requires the Secretary of Transportation (the Secretary), not later than 30 days after enactment, in consultation with the Secretary of the Treasury and the Chief Executive Officer of Conrail, to retain the services of investment bankers to manage the public offering. The language provides that these firms will serve jointly as the "co-lead managers" of the public offering of Conrail stock, and will establish a syndicate to underwrite the public offering with equal responsibility for structuring and managing the public offering, an equal share in management fees resulting from the transaction, and an underwriting position and allocation of shares to be jointly determined by the co-lead managers.

The legislation requires that, in selecting the "co-lead managers," recognition and consideration shall be given to the contributions made by particular investment banking firms before the date of enactment in demonstrating and promoting the long-term financial viability of Conrail and the feasibility of a public stock offering.

Subsection (b) requires a transfer by Conrail of $300 million to the Secretary of the Treasury not later than 30 days after the date of enactment.

Subsection (c) requires Conrail to prepare and file a registration statement with the Securities and Exchange Commission (SEC) in connection with the initial and any subsequent public offering. We intend for Conrail to prepare and file with the SEC as many registration statements or amendments thereto as may be necessary to enable the Secretary to sell all the United States shares pursuant to this Act.

Subsection (d) amends the Regional Rail Reorganization Act of 1973 (3R Act) to eliminate the authority of the United States Railway Association (USRA) to purchase additional stock or debentures in Conrail, effective upon the date of enactment.

Section 4712. Public Offering

This section specifies requirements for the public offering.

Subsection (a) requires the Secretary in consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail and the co-lead managers, to offer the Government's common stock interest for sale in a public offering, after the registration statement is declared effective by the SEC. The Secretary may offer less than all the shares owned by the United States at the initial sale, thus allowing for a sale in stages. Under no circumstances shall the Secretary offer any of the shares for sale unless, before the sale date, the Secretary determines, after consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail and the co-lead managers, that the estimated sum of the gross proceeds from the sale of all of the shares owned by the Unted States and the value of any warrants issued by Conrail to the Government is at least $1.7 billion.

Subsection (b) request the Secretary, if a sale is to be done in stages, to sell the remaining shares in subsequent public offerings.

Subsection (c) provides that any public offerings under this section may be made without Conrail's consent.

Subsection (d) allows the Secretary to require Conrail to declare a stock split or reverse stock split.

Subsection (e) provides that, in consideration for the $300 million transfer from Conrail to the Secretary of the Treasury and any warrants issued under this section, the Secretary, concurrent with the initial public offering, shall deliver to Conrail all preferred stock, 7.5 percent debentures and contingent interest notes of Conrail held by the United States. Conrail shall then cancel such debentures, preferred stock, and contingent interest notes and the interest of the United States in such debentures, preferred stock and contingent interest notes will thereby be extinguished.

We understand that the surrender of the Conrail preferred stock and debt securities by the Secretary pursuant to this subsection is necessary in order to permit the Secretary to sell the United States shares. We understand that investment bankers are of the opinion that the United States are not marketable while the Conrail preferred stock, debentures and contingent interest notes are outstanding.

The subsection further provides that for purposes of regulation by the Interstate Commerce Commission (ICC) and state public utility commissions and for purposes of reporting to the SEC, certain actions au-

thorized by this legislation will not change Conrail's asset value net of depreciation and shall not be used to alter the calculation of Conrail's stock or asset value, rate base, or certain other attributes or otherwise affect or be the basis for a change in the regulation of Conrail's service, rates, or practices, or any change in Conrail's financial reporting practice.

Subsection (f) allows the Secretary, in consultation with the Secretary of the Treasury, the Chairman of the Board of Conrail, and the co-lead managers, to require Conrail to issue warrants to the Government, if doing so will increase the return to the Government. We intend for any determination by the Secretary under this subsection to specify the terms of any warrants to be issued by Conrail to the United States.

Subsection (g) requires the Secretary to ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in the public offering. This subsection is intended to ensure opportunity for participation by minority investment banking firms in the public offering. We intend that before concluding a contractual relationship retaining any co-lead managers, the Secretary shall ensure that minority owned or controlled investment banking firms have been provided an opportunity to participate to a significant degree in all other phases of the public offering, including, but not limited to, management, underwriting, selling and any other syndicate activities created pursuant to this Act.

Subsection (h) authorizes the General Accounting Officer (GAO) to make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of Conrail and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the GAO to make such audits, and the GAO shall report the results of all such audits to the Congress.

Section 4713. Fees

This section requires the Secretary, in consultation with the Secretary of the Treasury and Conrail's chairman, to agree to pay to investment bankers and other persons participating in the public offering the absolute mininum amount in fees necessary to carry out the public offering.

Subpart B—Other Matters Relating to the Sale

Section 4721. Rail Service Guarantees

This section provides rail service guarantees to protect essential rail service in the Northeast and Midwest.

Subsection (a) provides for certain restrictions or requirements on Conrail, for a period of five years from the date of enactment.

The first guarantee requires Conrail to spend the greater of its financial depreciation or $500 million in capital expenditures in each fiscal year. The guarantee allows Conrail's Board to reduce the required capital expenditure for such years to an amount which the Board determines is justified by prudent business and engineering practices, subject to a required minimum amount of $350 million per year (on a cumulative basis). We intend that the Conrail directors will exercise their business judgment in any determination under this paragraph, and that such business judgment will be held to the standards provided for under applicable State law.

The second guarantee limits dividend payments. Dividend payments may only be made if Conrail is in compliance with the capital expenditures requirement, and common stock dividends cannot exceed fifty percent of cumulative net income less the cumulative amount of any preferred stock dividends.

The third guarantee requires Conrail to continue its affirmative action and minority vendor programs.

The fourth guarantee requires Conrail to retain the locomotive shop and car repair shop in Blair County, Pennsylvania, and the repair shop in Collinwood, Ohio.

Subsection (b) provides the three year guarantees.

The first guarantee prevents any break-up of Conrail.

The second guarantee requires Conrail to have a cash balance of at least $250 million at the end of each fiscal year.

The third guarantee requires Conrail to continue to offer to sell lines which the ICC has approved for abandonment for 75 percent of net liquidation value.

Section 4722. Ownership Limitations

This section provides certain ownership limitations on non-rail and rail purchasers of Conrail stock.

Subsection (a) limits ownershp of Conrail stock by any person for a five year period, to 7.5 percent. This limit does not apply to the Employee Stock Ownership Plan (ESOP), the Secretary, to a railroad as described below, to underwriting syndicates holding stock for resale and, in the case of shares beneficially held by others, to commercial banks, broker-dealers, clearing corporations, or other nominees. This subsection also limits, for a five year period, total foreign ownership to 20 percent.

Subsection (b) limits railroad ownership. For five years, no Class I railroad may own more than 7.5 percent of Conrail stock, unless such railroad applies for merger authority with the ICC, in which case, the ICC shall give substantial weight to any views of the Secretary regarding the application. For five years, any railroad purchaser of no more than 7.5 percent of Conrail stock must vote such stock in the same proportion as all other common stock is voted. Any railroad which purchases more than 7.5 percent must vote as directed by the ICC, if no such direction is provided, in the same proportion as all other common stock is voted.

For the first three years, there are additional restrictions on Norfolk Southern Corporation and CSX Corporation. They are forbidden to own more than 7.5 percent of Conrail's stock and the ICC is forbidden to consider any merger or control application between Conrail and Norfolk Southern or between Conrail and CSX. These additional restrictions expire in three years or if any loan guarantee is made to Conrail under Section 4725. After these specific provisions expire, NS, CSX, and their successors and assigns will continue to be bound by the restrictions applicable to other railroads.

Section 4723. Board of Directors

This section provides for a transition from Conrail's current Board of Directors (six members appointed by the USRA, five members appointed by the Department of Transportation (DOT), and the Chairman and the President of Conrail) to a Board elected by the public shareholders of Conrail.

We intend that there will be special meetings of Conrail stockholders to elect new directors as soon as practicable after the dates on which this section requires new directors to be elected by public stockholders of Conrail, and that all directors referred to in this section will continue to serve as directors until their successors have been qualified and elected or appointed, as the case may be.

We intend that the first director elected by the Conrail public stockholder will replace the director with the shortest length of service as a director of Conrail. If the first Conrail director replaced was appointed by DOT, or is a replacement for a director appointed by DOT, the second director replaced will be the director (or replacement of such a director) having the shortest length of service from among the so-called "USRA directors." The third director replaced will be a DOT director, the fourth director replaced will be a USRA director, and so forth, with shortest length of service within each class determining the order of replacement. If the first Conrail director replaced is a USRA director, the reverse order of replacement will occur.

We intend that eight directors will be elected by the Conrail public stockholders after more than half of the Conrail stock owned by the United States has been sold, without regard to increments of 12.5 percent ownership interest sold by the United States.

The Secretary is not a public stockholder under this section.

Section 4724. Provisions for Employees

This section establishes various provisions for Conrail's employees in recognition of the role they have played in Conrail's successful turnaround.

Subsection (a) requires Conrail to assume financial liability for the current section 701 labor protection program, until the sale date.

Subsection (b) provides for dispute resolution procedures during this transitional period.

Subsection (c) repeals section 701 effective on the sale date.

Subsection (d) requires Conrail to provide protection to its employees, on and after the sale date, pursuant to its September 17, 1985 agreement with representatives of its employees, or as otherwise agreed between the parties. The United States shall have no liability for benefits under this subsection.

We understand and intend that the benefits provided under the Conrail supplemental unemployment benefit plan ("SUB plan") contemplated by the Definitive Agreement shall be considered for all purposes as benefits received by employees under a nongovernmental plan for unemployment insurance, and not as remuneration for services rendered to Conrail.

Subsecton (e) requires Conrail to pay, in compensation for past wages below industry standard, $200 million to present and former agreement employees in accordance with its September 17, 1985 agreement, or as otherwise agreed between the parties. We expect Conrail to pay other obligations to the Railway Labor Executives' Association only for legitimate verified claims for actual services rendered (such as legal fees).

This subsection of the bill provides for individual payments to all present and former employees who accepted wages below industry standard.

Subsection (f) provides for the distribution of shares in Conrail's ESOP to participants and beneficiaries. After the distribution of stock, the ESOP terminates. We

intend the allocation of shares in the ESOP will be as contemplated in the Definitive Agreement, i.e., to those persons who were Conrail employees at any time between April 1, 1981 and June 30, 1984. We intend that the ESOP will make any distributions required by the law to maintain its tax-qualified status.

Section 4725. Essential Rail Service Loan Guarantee

This section allows the Secretary, during the ten year period beginning on date of enactment, and at the request of Conrail, to guarantee a loan or loans up to a total of $500 million, if the Secretary determines such a guarantee is in the public interest and necessary for Conrail to continue to provide essential rail service. The Secretary may prescribe necessary and appropriate terms and conditions, which may include representation on Conrail's Board of the Secretary and the Secretary of the Treasury, or their designees.

Section 4726. Certain Enforcement Relief

This section provides for enforcement.

Subsection (a) provides that the Secretary, with respect to any guarantee in Section 4721 or ownership limitation in Section 4722, or any person, including Conrail, who suffers direct economic injury as a result of an alleged violation of the capital expenditure, dividend, or cash balance guarantees or the ownership limitations, may bring an action to enforce compliance with such provision.

Subsection (b) provides that any action brought under this part shall be brought before the Special Court. The Special Court may limit the enforcement of a guarantee under section 4721 only if the effect of such restriction would be substantially to impair the continued viability of Conrail.

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

Section 4731. Abolition of the United States Railway Association

Section 4731 abolishes the USRA, effective January 1, 1987. The section also provides that the securities of Conrail held by the USRA and the responsibilities of the USRA are to be transferred to DOT. Effective as of January 1, 1987, the Financing Agreement between Conrail and the USRA, except for provisions specifying repayment terms and conditions to the United States, shall terminate. The repayment terms and conditions terminate on the sale date.

Section 4732. Applicability of the Regional Rail Reorganization Act of 1973 to Conrail After Sale

This section specifies that the 3R Act shall not apply to Conrail and to activities and other actions and responsibilities of Conrail and its directors and employees after the sale date, with specified exceptions.

Section 4733. Miscellaneous Amendments and Repeals

This section makes miscellaneous amendments and repeals to the 3R Act, the Northeast Rail Service Act of 1981 (NERSA), and other Acts.

This section also amends section 217(c) of the 3R Act, which was enacted by section 1140(c) of NERSA and which exempted Conrail from liability for state taxes until the property of Conrail is transferred. The amendment is intended to clarify the period of the exemption, which permanently removed a financial burden from Conrail.

This section also provides that, in the event Conrail files for bankruptcy, the Secretary is required to develop and submit to the appropriate court a reorganization plan which maximizes rail service and transportation competition. Such court shall give substantial weight to the Secretary's plan.

Section 4734. Liability of Directors

This section exempts Conrail's directors and others from liability if, with respect to the involved subject matter, the person was fulfilling a duty which such person in good faith reasonably believed to be required by law or vested in such person in his capacity, in connection with any action taken under this Part. However, this section does not apply to claims arising out of various securities laws, which claims are in connection with a public offering under section 4712 of this Act.

Section 4735. Charter Amendment

This section requires Conrail to amend its Articles of Incorporation to contain the following provision: "It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area." This provision shall not be subject to amendment or repeal and shall be primary to other lawful business purposes in which Conrail may engage under the laws of Pennsylvania, where Conrail is incorporated.

Section 4736. Status of Conrail After Sale

This section makes clear that Conrail remains a rail carrier, as defined in the Interstate Commerce Act, after the sale.

Section 4737. Effect on Contracts

This section specifies that nothing in this Act affects Conrail's obligation to carry out its transportation contracts, equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

We intend that Conrail will continue to be bound after the sale by any contract, agreement, judicial decree or similar instrument to which the corporate entity was a party prior to the sale. This section, therefore, does not abrogate other instruments that do not fit the descriptions contained in this provision. We also intend that nothing in this Act shall affect any Conrail agreements with states or localities.

Section 4738. Resolution of Certain Issues

Subsection (a) makes clear that the employee provisions in section 4724 completely and finally resolve any rights under section 401(e) of the 3R Act and certain other claims.

Subsection (b) provides that Conrail shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement because of any provision of this Part or any actions Conrail is required to take under this Part.

Subsection (c) withdraws the consent of the United States to be sued with respect to any claims for damages or other monetary compensation arising out of this Part.

PART 3—PROMOTION OF RAIL COMPETITION

Section 4751. RAIL Service Continuation

This section amends the Interstate Commerce Act (ICA) to provide protection for employees adversely affected by sales of lines.

Employees adversely affected by a line sale under section 10901 would receive protection under the conditions provided in *New York Dock*, subject to a cap of $25,000, except for employees provided long-term employment with the acquiring carrier.

The legislation would require implementing agreements in line sales.

In the case of transactions under section 10905, the protection would depend on the type of transaction. The protection in line sales would be the same as that provided for line sales under section 10901. The protection in abandonments under section 10905 would be the same as that provided in abandonments under section 10903.

This section also provides that the ICC could not interfere in collective bargaining under the Railway Labor Act, except insofar as necessary to allow, by agreement or arbitration if required, the railroad to carry out the transaction approved by the ICC through adjustment of work forces, such as selection and assignment of forces.

Section 4751(a) of the bill amends Section 10901 of the Interstate Commerce Act by providing that the Interstate Commerce Commission shall provide affected employees those protections provided employees by section 11347 of the ICA, subject to a cap of $25,000. The Commission now has discretionary authority to provide such protection to employees but has made formal policy rulings that it will not do so.

There are two differences, however, between the protections required by other provisions of the ICA and the protections required by this amendment. Unlike the payments made under the conditions required by sections 10903 and 11347 and other sections of the ICA, the payments to be made under this section are limited to $25,000 per affected employee. Also, unlike typical employee protection provisions, these protections would not apply to employees who obtain "long-term employment" with the acquiring carrier. "Long-term employment" is intended to mean permanent employment in a bona fide job which would continue for not less than 3 years.

The amendment would also require so-called implementing agreements to be entered into, either voluntarily or by arbitration, between the selling carrier, buying carrier and the affected employees. The implementing agreements between the selling carrier and the employees shall be the same as those executed under the requirements of the employee protection conditions imposed by the Commission under Section 11347 in purchase cases. The agreement between the buying carrier and the employees shall be limited to the selection of forces to service the newly purchased line. This provision provides a means of assuring employees, particularly older, senior employees of the opportunity for continued employment in the railroad industry and involves only the identity of the employees to transfer. Binding arbitration should be required to be completed by the ICC within 15 days.

Section 4751(b) amends section 10905 in the same manner and to the same extent as section 4751(a) amends section 10901. The reference to section 10901 at the end of subsection (b) is, of course, a reference to that section as amended by this bill in the new subsection (f) of section 10901.

Section 4751(c) of the bill is a free-standing provision which restores the autonomy of the Interstate Commerce and Railway Labor Acts which had become blurred as the result of recent decisions of the Interstate Commerce Commission. The authority of the Commission to supersede certain laws where necessary in transactions approved under section 11344 is limited in the area of labor relations to the adjustment of work forces such as selection and assignment of such forces to perform the work in the new operation. We do not, by adopting this pro-

vision, intend to provide a means for preventing the effective consummation of mergers and other transactions. We intend that when issues other than the adjustment of work forces arise, the parties should enter into collective bargaining which will swiftly accomplish the objectives of the transaction.

Section 4752. Agriculture Contract Disclosure

This section amends the contract rate provision of the Interstate Commerce Act to establish minimum standards for the disclosure of terms of contracts for the transportation of agricultural commodities. In particular, the terms to be disclosed include, but are not limited to, identity of the shipper party to the contract; the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; the duration of the contract, including provisions for optional extension; the actual volume requirements, if any; whether any transportation service has begun under a contract before the date such contract is filed with or approved by the ICC; and the date on which the contract became applicable to the transportation services provided under the contract. The ICC is directed to interpret this provision to provide for liberal discovery to shippers seeking remedies under the remedial provision applicable to agricultural commodities.

This section also requires that any amendment, supplement, or change to any term or provision of an agricultural contract shall be deemed to be a new contract and most be filed separately with the ICC.

This section requires the ICC to issue regulations, within 60 days after enactment, to implement the new disclosure requirements.

Finally, the section requires the ICC's contract rate advisory service to assess the impact on competition among agriculatural shippers of variations between contract rates and the published single car rates and to submit a report to Congress no later than 120 days after enactment.

Section 4753. Boxcar Provision

This section confirms the legal authority of the ICC to promulgate that portion of the rule adopted by the ICC in Ex Parte No. 346 (Sub. No. 19), served September 12, 1986, consisting of protections for small railroads. This section will resolve any doubts that may have been raised in ICC dissenting opinions regarding the ICC's legal authority to adopt those small railroad protections.

Mr. DINGELL. Mr. Chairman, I yield 7½ minutes to the gentleman from New York [Mr. LENT].

The CHAIRMAN. Without objection, the gentleman from New York [Mr. LENT] is recognized for 7½ minutes.

There was no objection.

Mr. LENT. Mr. Chairman, the reconciliation instructions received by the Committee on Energy and Commerce required the committee to recommend changes in laws to save $5.6 billion in outlays over the next 3 fiscal years. Of that amount, $3.25 billion were assumed to be saved through Medicare provider payment reforms. The remaining $2.35 billion were assumed to come from savings in the energy area. Subsequently, the energy savings were reduced by $750 million due to judicial action.

In the course of meeting its energy savings targets, the committee increased annual charges for the Nuclear Regulatory Commission. The fees collected now will cover virtually all the cost of NRC regulation. The committee also increased user fees for the Federal Energy Regulatory Commission and repealed a statutorily required industrial energy conservation survey. Finally, the committee provided for the U.S. Treasury to receive funds recovered from those who violated petroleum price and allocation regulations to the extent the parties injured by those violations cannot be determined and to the extent petroleum overcharge recoveries are not governed by previous court orders.

The Medicare and Medicaid amendments reported by the Committee on Energy and Commerce fall far short of achieving the savings required by the budget resolution for fiscal year 1987. The minimal savings that are achieved through changes to the Medicare Program are significantly reduced by many provisions increasing Federal spending in both of the entitlement programs under the committee's jurisdiction. Both the Committee on Energy and Commerce and the Committee on Ways and Means have been instructed to achieve savings of $550 million in fiscal year 1987 in the Medicare Program. This savings target can be reached only if new spending provisions are minimized. Although there may be merit to the spending proposals contained in this legislation, a reconciliation bill is an inappropriate vehicle for them.

In order to meet the deficit reduction target required by the Gramm-Rudman legislation and to avoid further sequestration, I anticipate that any new spending provisions in the health area will be closely scrutinized in conference. It is my hope that the conferees from the Senate Finance Committee and both the House Ways and Means and Energy and Commerce Committees can reach agreement on a health package which achieves necessary savings through meaningful reforms to the Medicare Program.

Finally, the committee enacted legislation authorizing the sale of Conrail. The Conrail Privatization Act would transfer Conrail to the private sector through a public offering administered by the Secretary of Transportation. Conrail must transfer $300 million in cash to the Government within 30 days of enactment. The Secretary must then sell the Conrail common stock owned by the Government to the public. The Secretary may sell the stock only if the estimated sum of the gross proceeds to be realized by the Government from the public offering and the value of any stock warrants issued to the Government are at least $1.7 billion.

The legislation seeks to ensure that Conrail continues to provide rail service in the Northeast. It does this through minimum capital expenditure requirements, ownership limitations, and restrictions on any "break-up" of Conrail. Once Conrail is sold, it will function as a private corporation with an independent board of directors making decisions in the best interest of the corporation.

A detailed description of the Conrail Privatization Act is set forth in a joint statement which Congressmen DINGELL, MADIGAN, FLORIO, WHITTAKER, and I are submitting for the RECORD today. I understand that Congressmen BLILEY and ECKART, the sponsors of a committee amendment dealing with public offering managers, are submitting a statement further describing that provision, section 4711(a), in which I will join.

Mr. Chairman, in conclusion, I would like to take this opportunity to discuss an issue which has arisen dealing with the lack of rail competition in the New York Metropolitan area. Specifically, the New York, Susquehanna and Western Railroad [NYS&W] operates the Rahway Valley/Staten Island railroads in the New York/New Jersey Port area which are separated by a distance of roughly 20 miles with the mainline of the NYS&W. In order to provide a competitive alternative to Conrail in the port region, Conrail should make a good faith effort to negotiate overhead trackage rights to connect the two geographically separate parts of the NYS&W system. If Conrail and the NYS&W are unable to reach agreement on their own initiative, NYS&W should be free to reach a trackage rights agreement with New Jersey Transit, without interference from Conrail. Clearly, this interconnection would provide shippers a transportation alternative into the region and would inject an element of competition where there previously was none.

Mr. LENT. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas [Mr. FIELDS].

The CHAIRMAN. Without objection, the gentleman from Texas [Mr. FIELDS] is recognized for such time as he may consume.

There was no objection.

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. FIELDS. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, during the Energy and Commerce Committee markup of its reconciliation actions on energy and related matters, my distinguished colleague from Texas, Mr. FIELDS, offered an amendment to subtitle C, the Petroleum Overcharge and Distribution Act of 1986, as amended by Mr. SHARP's amendment. The amendment, which was overwhelming-

ly approved by a voice vote, deleted section 4202(b)(2) in its entirety and substituted in lieu thereof the following:

(2) amounts governed by the settlement, approved on July 7, 1986, in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, in the United States District Court for the District of Kansas.

I would like to inquire of the author of the amendment whether the purpose of the amendment was to exempt fully from this legislation the settlement agreement in the stripper well litigation and the Court's judgment of July 7, 1986, which approved the settlement agreement?

Mr. FIELDS. The distinguished gentleman from New York [Mr. LENT] is correct. The purpose of my amendment was to preserve fully the stripper well settlement agreement and the Court's judgment and to exempt both the settlement and the judgment from the scope of the legislation. Further, my amendment neither expanded nor reduced the scope of the judgment.

My amendment assured that the legislation would neither alter the rights or obligations of any of the parties to the agreement or under the judgment, nor alter the terms and conditions of the agreement and judgment. Thus, my amendment exempted from the legislation all crude oil overcharge funds, including MDL 378 escrowed and deficiency funds and funds in other administrative and judicial proceedings regardless of whether such funds are in escrow or whether such cases had commenced on the date of enactment of my amendment.

Mr. LENT. Mr. Chairman, I yield 30 seconds to the gentleman from Kansas [Mr. WHITTAKER].

The CHAIRMAN. Without objection, the gentleman from Kansas [Mr. WHITTAKER] is recognized for 30 seconds.

There was no objection.

Mr. WHITTAKER. Mr. Chairman, subtitle H of the budget reconciliation legislation provides for the sale of Conrail to the private sector through a public offering of its stock.

This legislation marks a significant step in ensuring rail service in the Northeast and Midwest and ending the involvement of the Federal Government in freight railroading. This involvement has cost the American taxpayer over $7 billion in the last 10 years.

The process of structuring a sale of Conrail has been long and arduous. The Secretary of Transportation conducted a thorough and objective review of alternatives for a sale, and should be commended for her perseverance and dedication to this effort.

The legislation approved by the Committee on Energy and Commerce meets the criteria for the sale, set out in the Northeast Rail Service Act, of preserving essential rail service, and maximizing the Government's return on its investment. The legislation directs that Conrail be sold through a public offering of its stock for a minimum price of $1.7 billion. Covenants are also included which are designed to protect Conrail's financial strength and service in the region.

The legislation also includes provisions outside of the realm of the sale itself. One such provision addresses the inability of small agricultural shippers in pursuing statutory remedies in contesting contracts. Specifically, the provision would require greater disclosure of the terms of contracts to better enable shippers to effectively challenge a contract on the basis that it is "discriminatory" or "constitutes a destructive competitive practice."

In closing, Mr. Chairman, this legislation is a consensus document and represents the joint effort of the leadership of the Energy and Commerce Committee. It is structured with an eye toward ensuring Conrail's future strength and giving certainty to the shipping community that rail service in the region will be preserved for the long term. I congratulate my colleagues on their successful effort.

Ms. MIKULSKI. Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Budget Reconcilation Act. In particular, I want to express my strong support for that portion of this legislation which would return Conrail to the private sector through a public stock offering.

Since 1981, Congress has wanted to return the Federal Government's interest in Conrail to the private sector.

During this time, I have examined the various privatization proposals with three principal goals in mind:

First, does it provide American taxpayers with a fair return on their investment? The Federal Government has invested a substantial amount of money in making Conrail a profitable railroad. As a result, any sale should maximize the return to the Federal Treasury to help reduce the deficit.

Second, will it preserve rail competition in the marketplace? With the passage of the Staggers Act in 1980, the Congress ushered in a new era of rail competition.

Any Conrail sale should maintain a framework within which shippers will have access to their markets and other railroads will be guaranteed a level paying field within which they can compete.

And third, does it provide the very best deal for Maryland?

My State's economic growth depends heavily on a competitive rail transportation system. The Port of Baltimore and the Eastern Shore rely directly on Conrail for moving goods to market.

Western Maryland, while not a direct user of Conrail, does rely on a transportation network where there is real competition because it is competition that guarantees continued rail service.

The Conrail Privatization Act contained in H.R. 5300 clearly meets these three goals.

It is a good deal for the taxpayer because it guarantees a minimum of $2 billion for deficit reduction from the sale.

It is a good deal for consumers and shippers because it keeps Conrail as an independent railroad, guaranteeing continued service and affordable rates by preserving rail competition.

And finally, it is a very good deal for Maryland.

I have always been concerned that a sale of Conrail to Norfolk Southern would have seriously jeopardized rail service within Maryland, particularly to the Port of Baltimore.

But by keeping Conrail independent, which this legislation does, I am confident we will maintain the integrity of its rail service in our State.

We will be able to move coal, grain, and other commodities through the port, helping to keep it a world-class port.

We will guarantee continued service to the Eastern Shore so our poultry industry and other businesses can transport their goods by rail efficiently.

And we will protect those men and women in places like Cumberland, Frostburg, and Brunswick in western Maryland who either work for the railroads or whose livelihood depends on continued, regular rail service.

The Conrail Privatization Act represents a watershed in the history of our Nation's rail transportation system. When Conrail was formed out of the bankrupt Penn Central in the mid-1970's, few people thought we would see it a decade later as a strong and viable railroad.

With passage of the Staggers Act in 1980, however, and under the very capable leadership of Stanley Crane, Conrail has become a viable railroad that is profitable and which provides cost-effective service.

I want to commend the chairman of the Energy and Commerce Committee, JOHN DINGELL, for his efforts on this legislation. He has worked tirelessly to make sure that Conrail remains a viable and profitable railroad once returned to the private sector.

I also want to commend Commerce Subcommittee chairman, JIM FLORIO, for his very hard work on this issue. I have enjoyed working with him and believe that the proposal he has fashioned is in the best interests of the taxpayer and business competition.

Since Conrail was formed a decade ago, Congress has been its trustee, the steward designated to protect the interest of the American people in this railroad.

In passing this legislation today, I believe we will be exercising responsible stewardship over that interest and urge my colleagues to join me in voting for this bill.

Mr. DINGELL. Mr. Chairman, I yield back the balance of my time.

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. FLORIO].

□ 1400

Mr. FLORIO. Mr. Chairman, in 1981, the Congress set in motion the process for the sale of Conrail. The railroad was given the opportunity to become profitable, and the mechanism to begin the sale process was set in place.

We are here today to reap the benefits of that action through a sale that will return at least $2 billion to the Federal Government. We are selling Conrail through a public offering that will protect rail service and competition in the Northeast and Midwest.

Under the able leadership of Chairman DINGELL, we have rejected the proposal of the administration to sell Conrail to a competing railroad. Instead, we have chosen an option which will preserve the maximum amount of rail service and will provide a higher return to the Government.

For the last 2 months, Congressman MADIGAN and I, along with Congressmen DINGELL, LENT and WHITTAKER, have worked diligently to put together a public offering bill that would provide us the opportunity to return Conrail to the private sector. The bill before us does just that, and at the same time it protects jobs, protects service, and protects competition.

Conrail is a success story. From a chronic money loser from 1976 to 1981, it has become one of the most successful railroads in the country, both in terms of its earnings and its service to shippers. The Chairman of the company, Stanley Crane, deserves great credit, as do all the employees of Conrail. They have worked hard and well and they deserve the success they have earned.

It is important to understand what this bill does. It transfers Conrail to the private sector for a substantial sum, but it imposes requirements that will ensure that Conrail remains primarily a railroad providing service to shippers. There are a series of guarantees that ensure that Conrail continues to invest in its plant, prohibits the payment of dividends if Conrail does not make the required investment or if earnings are too low, prohibits mergers with other railroads in the region, and several others. It is these guarantees that make this sale possible in my view. Without them there would be insufficient assurance that Conrail remain in the railroad business, but with them the Government gets out of the railroad business, earns over $2 billion, and protects rail service.

After the sale Conrail will act like any other private corporation with the exception of these guarantees. The Board of directors of the Corporation will make decisions in the best interest of the Corporation.

The sale itself will be carried out by the Secretary of Transportation under the strict requirements of the bill. The Secretary is to hire investment bankers to manage the sale of the Government's common stock. While the Secretary should recognize and consider the contribution made by investment bankers to a public offering, the most important goal is to hire investment bankers who will provide the best service to the Government at the lowest possible cost. The bill requires the Secretary to keep fees to the absolute minimum, which means, in the context of a large offering of this sort, below the percentage that is normally paid to investment bankers for a smaller transaction.

The Federal Government owns Conrail and should realize the highest possible return from the sale. Conrail is required to turn over $300 million within 30 days of enactment, which is a small fraction of Conrail's current cash balance, and is a small amount compared to the enormous investment made by the Government in Conrail.

Only when the Secretary determines that the United States will receive $1.7 billion from the sale of the Government's common stock may the Government begin a sale. This minimum price is simply a level below which the Government would be better off not selling the railroad. The Congressional Budget Office has estimated the value of Conrail to be far in excess of this amount, and if this amount cannot be achieved then the Government would be better off simply allowing Conrail to repay its obligations to the Government and postponing any sale.

The Secretary has the option of selling less than all the common stock of the Government at one time. For example, the Secretary could determine to sell one third at a time. Before the Secretary may choose this option, however, she must determine that the proceeds from all sales will equal $1.7 billion. The determination must be a realistic one, with an accurate assessment of the proceeds from the first and any future offerings.

The Secretary also has the authority to require the Corporation to issue warrants to the Government if the issuance of warrants will increase the proceeds to the Government. If the decision is made to sell warrants, that decision should be made prior to the time the investment banking community begins its efforts to sell the common stock so investors will know the investment situation.

The bill also requires the Corporation to pay $200 million to the employees for the wages the employees gave up after 1981. This amount includes all represented employees, including those who did not previously sign an agreement with Conrail. Conrail should pay a comparable amount to nonagreement employees for their wage give up.

The bill maintains competition in the region, but Conrail should be aware that additional competition may be necessary in some parts of the region. The New York Susquehanna & Western Railroad [NYS&W] provides a competitive access route to the Port of New York/New Jersey in competition with Conrail. NYS&W operates the Rahway Valley/Staten Island Railroads in the port area which do not connect to the main line of NYS&W. It is in the public interest that the NYS&W and Rahway Valley/Staten Island be connected to bring additional benefits of competition into the port area. I expect NYS&W and Conrail to make a good faith effort to negotiate overhead trackage rights over the most practicable Conrail lines to connect the two geographically separate parts of the NYS&W system. If Conrail and NYS&W fail to reach agreement it is my intent that NYS&W be free to reach trackage rights agreement with New Jersey Transit without opposition from Conrail. Such opposition would be inconsistent with the competitive spirit of the 3R Act.

The bill also contains provisions protecting employees in the sale of short lines under section 10901 of the Interstate Commerce Act. Unfortunately the ICC has misinterpreted the law so that this action was necessary to require the imposition of labor protection in these sales. The ICC should understand that these provisions are intended to require labor protection in short line sales in the same way that labor protection is required elsewhere in the act. The ICC is not free to decide that labor protection is something that they would rather not impose or that they would like to change. The law is clear and they should follow it.

This bill is an important one, and I urge my colleagues to support it.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 8 minutes to the gentleman from Ohio [Mr. GRADISON].

Mr. GRADISON. Mr. Chairman, the reconciliation bill now before us is not a sign of victory over the deficit, but an admission of defeat. It is a sorry story of negatives and apologies, rather than action and success.

Faced with opposition from those who don't want to cut domestic spending, those who don't want to cut defense spending, and those who don't want to raise new revenues, this measure gives in to them all. It ducks the tough choices with a rag-tag collection of counterproductive asset sales and dubious revenue enhancements.

For every dollar received from an asset sale, a dollar must be added to deficit-reduction baseline. This means that passage of this measure is worse than a "scam"—to use the word of my distinguished budget committee colleague from Texas, Mr. LEATH—for it actually raises the deficit-reduction glidepath. The consequences of this shortsighted plan is to guarantee that we will not even come close to next year's deficit target of $108 billion. In fact, we may find ourselves further from it.

In this Member's view, this reconciliation package will backfire; I can speak only for my constituents. They know the difference between real deficit reduction and blue smoke and mirrors, and I am clear as to their preference.

Given the political imperatives that come to dominate at this point in an even-numbered year, I can predict

with confidence that this bill will pass with votes to spare. Yet, approval will tell the world that the $144-billion deficit target for fiscal year 1987 will not be met, that the goal of $108 billion for fiscal year 1988 is out of the question, that the United States will continue its heavy dependence on foreign capital, and that our trade deficit will stay badly out of balance.

As recently as a week ago, our negotiators were moving in the direction of achieving a meaningful part of the needed deficit reduction through spending reductions—half domestic, half defense. But that gave way to the need to reach a compromise and the difficulty of the choices. I have the highest respect for those in both parties and in both Houses who developed the bill before us. But this Member, for one, would prefer sequestration to this reconciliation. For all its faults, at least sequestration, by actually lowering the deficit scorekeeping baseline, would keep the deficit on a downward path.

While Gramm-Rudman has rightfully forced us to focus on the deficit, that focus has been misdirected by political and budgetary legerdemain. And this bad bill is only the tip of the iceberg. Three other budget accounting masquerades come to mind:

First, the recapitalization of the Federal Savings & Loan Insurance Corporation [FSLIC] uses a clever gimmick to hide off-budget approximately $15 billion. I can hardly wait to see the accounting mechanism that will be developed to hide the cost of the next bailout which will probably be the Farm Credit System.

Second, the chartering of the Corporation for Small Business investment [COSBI] which reports savings of $850 million only because CBO was instructed by the House Budget Committee to score it as a savings, for reconciliation purposes.

Third, the creation of yet another off-budget Government-sponsored enterprise—the College Construction Loan Insurance Association which would provide a significant off-budget windfall to Sallie Mae.

Mr. Chairman, rather than dwell on the obvious, I close by expressing my deep disappointment that serious efforts to tackle the monstrous deficit have collapsed and come to this unintended result. If, as I expect, this bill is enacted, we will be back next year with a larger deficit, indeed with a deficit that will make this year's problems look like a tea party.

This member of the Budget Committee will vote "no" on reconciliation.

Mr. Chairman, I yield my remaining time to the gentleman from Pennsylvania [Mr. GOODLING] my colleague on the Budget Committee.

The CHAIRMAN. Without objection, the gentleman from Pennsylvania is recognized.

There was no objeciton.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I am happy to yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I rise in opposition to the present bill.

Mr. GOODLING. Mr. Chairman, neither the House nor the Senate package contains any significant increases in taxes or cuts in Federal spending, although in the House we do include $1 billion across the board which I understand the administration is opposed to because, of course, it would also reduce defense spending.

It is too late, I suppose, to talk about this year. It is probably the best we are going to get, or perhaps we might say the worst we are going to get, whichever choice you want to make. But we do want to keep in mind that when we come back next year we have a real serious problem facing us.

This package sells assets. You can only do that one time, and some of them they are selling they have been selling ever since I have been in the Congress, I think, so I do not know whether they will get them sold this time or not. But you can only do it once, and in the out years, of course, you lose money because you do not have any of the interest coming in on those assets.

Then we are told that by adding tax collectors we are going to receive a great deal more money for the Treasury of the United States. It was suggested, as a matter of fact, in the committee, that if we can do it that way, why do we not just add enough, and we will just wipe out the entire deficit. That may not be to facetious, because I think it is probably no different than what we have just done here.

We then talk about shifting $680 million from the 1987 deficit. I cannot do that at home and get away with it. I doubt whether we are going to get away with it here. It just means it is going to be that much more difficult when we come back next year.

As was mentioned by my colleague, it was only a few days ago when I think there was enough courage in the Budget Committee to cut at least $5 billion across the board, $2.5 billion domestic and $2.5 billion defense. Unfortunately, we have to deal with the administration and the other body in putting the package together, so that went by the board.

I think the young lady who wrote some information down on this sheet for me sums it up best of all with her last line. I do a "plain talk" which is a letter that goes out to the press on some topic each week. She says we will be able to write another really entertaining plain talk about this, but it may be the only positive characteristic of the entire bill. I am afraid that is probably true, and I yield back the balance of my time.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GOODLING] yields back 1 minute.

Mr. LOWRY of Washington. Mr. Chairman, I yield 15 minutes to the distinguished chairman of the Ways and Means Committee, the gentleman from Illinois [Mr. ROSTENKOWSKI].

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Mr. ROSTENKOWSKI. Mr. Chairman, I rise today to urge support for this reconciliation bill for three major reasons.

First, the committee's deficit reducing recommendations are not blue smoke and mirrors. Real deficit reduction is achieved. In addition to the $6.2 billion of Medicare savings achieved by regulations, the bill under the Gramm-Rudman baseline assumptions reduces the deficit by some $13.5 billion over the next 3 fiscal years.

Medicare outlays are reduced by limiting the increase in the hospital reimbursement rate for both fiscal year 1987 and 1988, and capping the growth in cost reimbursement for hospital capital expenses. It should be understood that the latter is a stopgap provision. It is the intent of the Committee on Ways and Means to enact legislation that will fold capital reimbursement into the existing prospective payment system.

Several revenue provisions are included in the bill. However, there are no tax rate increases. The revenue provisions are either extensions of tax rates already in effect, speedups in the collection of existing taxes, increased penalties to encourage compliance, or user fees.

The bill would extend the 3-percent telephone tax and the two-tenths of 1 percent Federal tax on wages for unemployment compensation for 2 years.

Tax collections of State and local payroll taxes and wine, beer, and tobacco excise taxes are accelerated.

Title X also includes a new provision of law which would impose a "customs user fee" on all commercial entries of imported merchandise of 0.5 percent ad valorem beginning December 1, 1986, and 0.2 percent ad valorem on October 1, 1987, and thereafter.

The proceeds of such fees would be deposited in a separate account within the general fund of the Treasury and would be available, subject to appropriation, to the Customs Service for carrying out its operations.

The purpose of this Customs user fee on merchandise entries is to ensure that the costs of maintaining Customs Services are paid for by users of such services. The committee made certain that receipts from such fees would be dedicated to Customs operations and that periodic adjustments in the fee structure would be recommended by

the Secretary of the Treasury in order to ensure that such fees do not exceed the overall costs of Customs operations. The committee approved a higher fee for the first 10 months in order to cover any startup costs and to compensate for anticipated reductions in the level of imports below those projected by the Congressional Budget Office as a result of the lower value of the dollar.

The fee arrangement adopted by the committee is fully consistent with our GATT obligations. Article 2 of GATT authorizes signatories to impose fees on imports commensurate with the costs of services rendered. Several other countries, including France, Portugal, Spain, and Sweden, impose fees for the processing of commercial entries.

Second, the bill also contains important policies which aid many individuals. The bill eliminates the 3-percent COLA trigger in the Social Security Program. Without this legislation, beneficiaries in the Social Security, veteran pensions, supplemental security income, and railroad retirement programs would receive no cost-of-living increase this January.

The Medicare hospital deductible, which was scheduled to increase to $572 in 1987, an increase of $80, was held to an increase of only $8. Important reforms are contained in the bill which, among other things, ensure that Medicare beneficiaries are not moved out of a hospital setting prematurely due to incentives in the prospective payment system and ensure that adequate posthospital services are available.

The committee again recommends the mandating of the AFDC-two parent program so that unemployed fathers will not have to leave home in order for their children to receive AFDC and Medicaid benefits.

The reconciliation bill has several provisions which are designed to limit out-of-pocket medical costs for Medicare beneficiaries. Incentives are provided to encourage physicians to become "participating physicians" which implies that the beneficiary is not charged more than Medicare allows. Information is made available to assist beneficiaries who wish to select a participating physician. And perhaps, most importantly, when the freeze on actual charges for nonparticipating physicians ends this December, it is replaced with a policy which limits the increase in how much physicians can charge elderly and disabled individuals beyond what Medicare pays.

Also, the bill mandates that hospitals serving a disproportionate share of low-income patients would continue to receive periodic interim payments.

Finally, I would urge my colleagues to support this bill because it avoids the Gramm-Rudman sequester order. While this bill is not a perfect product, it was not the easy way out. We could have used the $11 billion revenue increase for fiscal year 1987 in the tax reform conference report to avoid the sequester, forgotten the reconciliation bill, and gone home. However, increasing reconciliation savings to avoid the sequester, as we do with this bill, is clearly a more preferable approach.

We should not belittle congressional efforts to reduce the deficit. The 1986 budget deficit will probably be $225 billion. If this bill is enacted, the fiscal year 1987 deficit will likely be between $140 and $150 billion. That is $80 billion of deficit reduction in 1 year. Even if the actual fiscal year 1987 deficit comes in $30 billion higher, $50 billion is significant progress.

I have attached to my statement a further explanation and legislative history concerning the provisions which the committee adopted on September 18 and 22, and which were not described in the committee report accompanying H.R. 5300.

MEDICARE PROVISIONS

HOSPITAL RATE OF INCREASE

Present law

Under present law the medicare prospective payment system (PPS) rates are to be updated annually by the Secretary of Health and Human Services. The law states that the update should reflect increases in hospital input prices, but not to exceed the hospital market basket (index measuring hospital input prices).

The Secretary of HHS promulgated regulations that would provide a .5% increase in the prospective payment rates for FY 1987.

PPS-exempt hospitals are paid on a cost basis subject to caps on the maximum amount of allowable reimbursement. The Secretary of HHS has provided a .5% increase for FY 87.

Explanation of provision

The bill would require that PPS hospitals be provided a 1.0% increase in the payment amounts for FY 87 and an increase of hospital market basket minus two percentage points for FY 88.

PPS-exempt hospitals would be provided a 1.0% increase in the cost limits for FY 87, and an increase of hospital market basket minus 2.0% for FY 88.

The provisions would be effective for cost reporting periods beginning during FY 87 and FY 88 for prospective payment system exempt hospitals; and for discharges occurring during FY 87 and FY 88 for prospective payment system hospitals.

2. PROMPT PAYMENT FOR MEDICARE PROVIDERS

Present law

There are no current law requirements concerning prompt payment of claims. Historically, medicare has processed both part A and part B claims in a timely manner. In recent administrative action HCFA has slowed down processing time for part A claims from an average of 9 days in FY 1985 to 27 days at the end of FY 86; and for part B claims from 11 days in FY 85 to 27 days at the end of FY 86.

Explanation of provision

Payment of medicare part A "clean" claims would be required within 22 days, effective for claims received on or after October 1, 1987. "Clean" claims are those claims which include substantiating documentation.

Payment of medicare part B "clean" claims for services provided by nonparticipating physicians and suppliers would be required to be paid within 22 calendar days of receipt effective October 1, 1987. "Clean" claims submitted by participating physicians and suppliers would be required to be paid within 11 days of receipt by the medicare carrier effective October 1, 1987.

Provisions eliminating periodic interim payments for certain providers would be effective August 1, 1987.

DELAY IN PROMULGATION OF REGULATIONS

Present law

Under current law, the Secretary of Health and Human Services has been given broad authority to issue regulations, instructions to medicare carriers and fiscal intermediaries, and other changes in policy to implement the medicare law. Generally, regulations, instructions, or changes in policy must be issued in final form prior to August 15 or prior to October 6 to be included in the August or October Gramm-Rudman baseline. As an exception to this general rule, proposed regulations updating the prospective payment amount for hospital operating costs are included in the August or October Gramm-Rudman baseline if they are issued prior to the August 15 or October 6 deadline. Under P.L. 98-21, capital-related costs were excluded from the prospective payment system until October 1, 1986. P.L. 99-369 extended this exclusion until October 1, 1987.

Reasons for change

The Secretary of Health and Human Services has recently used administrative regulatory authority to make major changes in medicare policy without seeking new legislative authority. To ensure that Congress has time to review such changes and to alter the approach, if appropriate, the Committee believes that it is necessary to impose a temporary moratorium on major rules (and other changes in policy) that would result in reduced medicare outlays of $50,000,000 or more in fiscal 1988. The Committee is particularly concerned about the ability of the Secretary to issue regulations changing the method of payment for capital-related costs. To ensure that the Congress has ample opportunity to legislate a capital reimbursement policy, the Committee believes that it is necessary to impose a moratorium on promulgation of final regulations concerning capital reimbursement and to clarify application of existing law to ensure that proposed regulations related to capital reimbursement are not included in the Gramm-Rudman baseline calculations.

Explanation of provision

The Secretary of Health and Human Services would be prohibited from issuing in final form any regulation, instruction, or other policy before September 15, 1987, which is estimated by the Secretary to achieve medicare savings in fiscal year 1988 of more than $50,000,000, except as required to implement specific provisions required under statute. Regulations, instructions or other policy, issued in violation of this provision would be null and void and should not be included in any baseline estimate projected medicare outlays by the Congressional Budget Office or the Office of Management and Budget.

The exception for regulations, instructions, or policies required to implement spe-

cific provisions required under statute should be strictly construed. A provision that authorizes, but does not require, the Secretary to make certain adjustments would not suffice to trigger the exception. Similarly, a general requirement that reimbursement rates for a class of services be set at a "reasonable" level should not be viewed as sufficient to trigger the exception. The exception would, however, apply to a provision which requires the Secretary to take a specific action or to implement a specific provision by a certain date. The exception would also apply to a provision which requires the Secretary to make a specific change in reimbursement policy.

A special rule applies to regulations concerning reimbursement of capital-related costs. The Secretary would be prohibited from publishing in final form any regulation regarding changes in the methodology for computing the amount of payment for capital-related costs for inpatient hospital services under medicare part A. The prohibition would be effective between September 1, 1986 and September 1, 1987. (For purposes of this provision, the term "capital-related costs" refers to those capital-related costs that are specifically excluded under Section 1886(a)(4) of the Social Security Act from the term "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.) Any regulation published in violation of this provision would be void and should not be considered either by the Congressional Budget Office or the Office of Management and Budget in any baseline estimate of projected budget outlays.

Finally, the Committee amendment clarifies references in current law to regulations issued in final or proposed form pursuant to Sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act. Under the Committee amendment, no such reference should be construed as including any regulation with respect to capital-related costs. Sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) concern the Secretary's authority to issue regulations specifying the "applicable percentage increase" used to update the target rates for prospective payment system (PPS) exempt hospitals and the average standardized payment amounts for PPS hospitals reimbursed under PPS. Under the Committee amendment, the reference in Section 251(a)(6)(D)(ii) of P.L. 99-177 to Sections 1886(b)(3)(B), 1886(d)(3)(A) and 1886(e)(4) of the Social Security Act would apply only to regulations specifying the "applicable percentage increase" and not to regulations related to the inclusion of capital-related costs into prospective payment. Therefore, no proposed regulation altering the method of payment for capital-related costs should be included by the Congressional Budget Office or the Office of Management and Budget in estimates of projected outlays under final or proposed regulations issued pursuant to Sections 1886(b)(3)(B), 1886(d)(3)(A), or 1886(e)(4).

The provision is effective on enactment.

Revenue Provisions

1. INCREASES IN CERTAIN TAX PENALTIES

a. Penalty for failure to make deposit of taxes

Present Law

A number of taxpayers (such as employers) are required to make periodic deposits of various taxes (such as social security taxes or income taxes withheld from employees) prior to the close of the taxable year. Taxpayers who fail to comply with these deposit requirements may be subject to a penalty of 5 percent of any underdeposit not deposited on or before the prescribed date, unless it is shown that the failure is due to reasonable cause and not due to willful neglect (Code sec. 6656).

Reasons for Change

The committee believes that, in light of the present budgetary situation, it is appropriate to increase the level of this penalty, which will provide additional encouragement for taxpayers to make these deposits punctually.

Explanation of Provision

The penalty for failure to comply with these deposit requirements is increased from 5 percent to 10 percent of the amount of any underdeposit.

Effective date: This provision is effective for deposits required to be made (whether by the Code or by regulations) after the date of enactment of this Act.

b. Penalty for substantial understatement of tax liability

Present Law

If a taxpayer substantially understates income tax for any taxable year, the taxpayer must pay an addition to tax equal to 10 percent of the underpayment of tax attributable to the understatement (sec. 6661). An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be show on the tax return or $5,000 ($10,000 in the case of most corporations). An understatement is generally the excess of the amount of tax required to be shown on a tax return over the amount of tax actually shown on the tax return. The penalty generally does not apply to amounts with respect to which (1) there was substantial authority for the taxpayer's treatment of the amount, or (2) the taxpayer discloses the relevant facts with respect to that amount on the tax return. The IRS has the authority to waive all or a portion of this addition to tax if the taxpayer shows that there was reasonable cause for the understatement and that the taxpayer acted in good faith.

Reasons for Change

The committee believes that, in light of the present budgetary situation, it is appropriate to increase the level of this penalty.

Explanation of Provision

The addition to tax for a substantial understatement of tax liability is increased from 10 percent to 25 percent, effective for returns the due date of which is after December 31, 1986.

The committee notes that the conference agreement on H.R. 3838 (the Tax Reform Act of 1986) would increase this addition to tax for a substantial understatement of tax liability form 10 percent to 20 percent of the amount of the underpayment of tax attributable to the understatement. Thus, under the committee's budget reconciliation bill, the level of this penalty would be increased an additional 5 percent beyond the level agreed to in the Tax Reform Act of 1986.

2. TIME FOR PAYMENT OF TOBACCO, WINE, AND BEER EXCISE TAXES

Present Law

Under present law, excise taxes on tobacco products, wine, and beer are payable with respect to semi-monthly periods, with payments being due the following number of days after close of the semi-monthly period during which the taxable event occurs:

Tobacco products 25 days.

Wine and beer 15 days.

In certain cases, payors of these excise taxes must pay by means of electronic transfer of funds.

Reasons for Change

The committee believes that the present budgetary situation requires more effective cash flow methods such as that provided by accelerated deposits of excise taxes.

Explanation of Provision

Under the committee amendment, the payment date for the tobacco products, wine, and beer excise taxes is reduced to 14 days after the close of the semi-monthly period during which the products are removed from bonded premises. If the regular payment date falls on a Saturday, Sunday, or legal holiday, payment is due on the last preceding business day. The present-law rules requiring electronic transfer of funds in certain cases are retained.

Effective date: This provision applies to taxable products removed during semi-monthly periods ending on or after December 31, 1986. Under a special rule, tobacco excise taxes for the semi-monthly period ending on December 15, 1986, will be due on January 14, 1986 (rather than January 10, 1986).

3. TAX TREATMENT OF CONRAIL PUBLIC SALE

Present law

Tax attributes

In general, the purchase of all or part of a corporation's stock has no effect on a corporation's tax attributes; thus, a corporation's net operating loss ("NOL"), investment tax credit ("ITC"), and other carryovers generally survive. Similarly, a stock purchase has no effect on a corporation's earnings and profits ("E&P") and aggregate asset basis.

Carryovers

Under the Internal Revenue Code of 1954, in the case of taxable stock purchases, NOL and ITC carryovers are eliminated if one or more of a loss corporation's ten largest shareholders increase their common stock ownership by more than 50 percentage points within a two-year period, unless the loss corporation continues to conduct a trade or business that was conducted before the ownership change. Amendments were made to these special limitations by the Tax Reform Act of 1976 that would substantially change the 1954 Code provisions; the effective date of these amendments was repeatedly postponed until January 1, 1986.[1]

Section 269 authorizes the disallowance of NOL and ITC carryovers after the purchase of a controlling stock interest in a loss corporation, but applies only if it is determined that tax avoidance was the primary purpose of the purchase.

Earnings and Profits

In general, the amount of a distribution by a corporation to a shareholder is includible in the shareholder's gross income as dividend only to the extent the distribution is made out of current or accumulated E&P. If a distribution exceeds E&P, the balance is treated as a tax-free return of capital. To the extent the distribution exceeds the basis of the stock, the excess generally is taxed at capital gain rates.

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[1] Pending tax reform legislation (H.R. 3838) would retroactively repeal the 1976 amendments, as well as substantially change the 1954 Code provisions.

Asset Basis

A stock purchase would not affect a corporation's aggregate basis for its assets, unless an election to treat the stock purchase as an asset purchase were made or deemed made under section 338.

Cancellation of debt and preferred stock

Section 61 of the Code generally provides that the discharge of indebtedness results in the realization of income by the debtor. Under section 108(a), income from the discharge of indebtedness incurred by a corporation is excluded from gross income if the corporation elects to reduce the basis of its depreciable property by the excluded amount (under section 1017). Section 108(E)(6) provides an additional exception where a corporation acquires its debt from a shareholder as a contribution to capital.

Ordinarily, the cancellation of preferred stock would be a nontaxable event; however, preferred stock could be recharacterized as debt the cancellation of which gives rise to income.

Reasons for Change

The Conrail Privatization Act authorizes a public sale of stock in Conrail. Special tax provisions are required to implement certain aspects of the public sale. Further, the committee determined that it would be inappropriate to permit the transfer of tax benefits that directly resulted from investments made by the Federal Government. Under present law, it is likely that Conrail's NOL, ITC, and other carryovers would survive the public sale. Further, depending on the identity of Conrail's shareholders after the sale, any deficit in Conrail's E&P (the existence of which is suggested by the NOL carryovers) could generate additional tax benefits. For example, for individuals who purchase Conrail stock, a deficit in E&P would enable Conrail to pay tax-free dividends (after the distribution of any post-sale current E&P). On the other hand, non-controlling corporate shareholders who are eligible for the dividends received deduction would view the possibility of capital-gain dividends (after recovery of basis) as a disadvantage. Under the committee's bill, the price for which Conrail stock is sold will be based on Conrail's value, without inflation or reduction because of the corporation's tax history.

Explanation of Provisions

Under the committee amendment, the public sale of stock in Conrail will be treated as a purchase of Conrail's assets: Conrail will be treated as a new corporation that purchased all of its assets as of the beginning of the day after the public sale, for an amount equal to the "deemed purchase price" (defined below). As a consequence of conforming the tax treatment of the stock sale to that of a sale of assets, Conrail's NOL, ITC, and capital loss carryovers attributable to periods before the public sale will not be carried forward for use in any period after the public sale. Conrail's carryovers will be available to offset income or tax liability determined with respect to a taxable year ending prior to the public sale. Another consequence of the deemed asset purchase will be the termination of Conrail's taxable year.

The basis of Conrail's assets will be adjusted to reflect the buyers' cost, measured by the stock purchase price, liabilities, and other relevant items (*e.g.*, the payment for back wages that the amendment requires to be capitalized, described below). This "deemed purchase price" will be grossed up to reflect 100 percent of the stock in Conrail.

In general, the committee amendment requires the allocation of the deemed purchase price among Conrail's assets in a manner that is consistent with the temporary regulations promulgated under section 338 (generally, first to cash, then among all other assets—excluding assets in the nature of good will—in proportion to fair market values, and then to goodwill or going concern value). The secretary is to establish specific guidelines for the allocation so that the basis of conrail's assets will be ascertainable before the public sale. The amendment contemplates that the secretary will resolve issues relating to (1) the amount of liabilities to be included in the deemed purchase price, (2) the extent to which any portion of the purchase price should be allocated to intangibles, and (3) the relative values of conrail's assets, among other issues.

The committee amendment provides that no amount will be included in the gross income of any person by reason of the cancellation of any obligation or preferred stock of Conrail.

The committee amendment preserves the status of Conrail's Employee Stock Ownership Plan ("ESOP") as a qualified plan under section 401 and section 501. First, the amendment provides that the limits on contributions and benefits generally applicable to ESOPs (section 415) will not apply with respect to interests in stock transferred to the Conrail ESOP as the result of the public sale or a previously enacted law. Second, the amendment provides an exception to the general rule that precludes a participant from withdrawing contributions made on the participant's behalf prior to the expiration of two years after the year in which the contributions were made.

Further, the committee amendment proscribes the deduction of any amount paid after the date of the public sale to Conrail employees for services performed on or before the date of the public sale, to the extent such payments are made for the purpose of increasing wages or benefits to industry standards.

The committee amendment includes a number of definitions for purposes of the special tax provisions. The term "Conrail" means the Consolidated Rail Corporation, as well as any corporation that was an 80-percent controlled subsidiary of Conrail immediately before the public sale. The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act; if there is more than one public offering, such term means the sale pursuant to the initial public offering.

Effective date: These provisions are effective upon enactment.

4. PORT USE TAX AND RELATED TRUST FUND; INLAND WATERWAYS TRUST FUND AND FUEL TAX

In General

The committee amendment includes the revenue provisions of H.R. 6 (title XV) as passed by the House on November 13, 1985, with two modifications. First, the effective date of the provisions is changed from January 1, 1986 to January 1, 1987. Second, the mechanism for alleviating a double burden of toll charges and port use taxes on cargo shipped through the Saint Lawrence Seaway is changed from a credit against the port use tax for payment of the tolls to a rebate of the tolls.

The legislative history of these provisions (other than the two modifications) is set forth in House Report 99-251 (Part III). The following is an overview of the principal provisions of the committee amendment.

Overview

Port use tax

The committee amendment imposes a new 0.04 percent (4 cents per $100) excise tax on the value of commercial cargo loaded onto or unloaded from a commercial vessel at a port in the United States.

The port use tax does not apply to cargo where the transportation of that cargo has been (or will be) subject to the excise tax on diesel or other fuels used on the inland waterways under Code section 4042. Also, the port use tax does not apply to fish or other aquatic animal life caught during a voyage.

The port use tax does not apply to cargo when loaded or unloaded at ports in Hawaii or in any possession of the United States; also, the tax does not apply to cargo when loaded on a vessel at any U.S. port for ultimate use or consumption in Hawaii or a possession. If the cargo loaded in Hawaii or a U.S. possession is unloaded at a port in the United States, then the port use tax applies when the cargo is so unloaded.

Generally, as determined under Treasury regulations, the port use tax is to be administered by the U.S. Customs Service, with penalties applicable as under the customs laws, and not under the tax administrative procedures of Subtitle F of the Internal Revenue Code. For purposes of determining court jurisdiction, the tax is to be treated as if it were a customs duty.

The committee amendment establishes a new Port Infrastructure Development and Improvement Trust Fund in the Treasury. The Trust Fund is to receive amounts equivalent to revenues from the new port use tax. In addition, the committee amendment authorizes appropriations to the Trust Fund of sufficient general revenues for each fiscal year such that the total of port use tax revenues and general revenues for the fiscal year equals $1 billion. The committee amendment specifies the permitted expenditures out of the Trust Fund. The Trust Fund statute is placed in the Trust Fund Code of the Internal Revenue Code.

Effective date: These provisions are effective on January 1, 1987. Thus, the port use tax applies to cargo loaded or unloaded on or after January 1, 1987.

Inland waterways trust fund

The committee amendment places the Inland Waterways Trust Fund statute in the Trust Fund Code of the Internal Revenue Code. The amendment provides that not more than one-third of the cost of specified waterway construction projects under section 202(a) of the Water Resources Development Act (H.R. 6 as passed by the House) and not more than one-sixth of certain relocation costs under section 202(b) of that Act may be paid out of the Trust Fund.

The committee amendment adds the Tennessee-Tombigbee Waterway to the list of inland and intracoastal waterways the commercial use of which is subject to the inland waterways fuel tax under Code section 4042. There is no other change in the fuel tax.

Effective date: These provisions are effective on January 1, 1987.

5. OIL SPILL LIABILITY TRUST FUND; TAX ON PETROLEUM

In General

The committee amendment includes the Oil Spill Liability Trust Fund and revenue provisions of H.R. 2005 (title V, part III) as passed by the House on December 10, 1985, with certain modifications. (*See*, H. Rept.

99-253, Part 2.) First, the effective period of the provisions is changed from January 1, 1986 through September 30, 1990 to January 1, 1987 through December 31, 1991. Second, cross references are to expenditure provisions of the Comprehensive Oil Pollution Liability and Compensation Act of H.R. 5300 (title VI, subtitle F) as reported by the House Budget Committee. Third, a technical correction is made of the $30 million minimum balance provision (limiting payments which reduce the fund below this balance to payments for removal costs).

Overview

Oil spill liability trust fund

The committee amendment establishes in the Treasury an Oil Spill Liability Trust Fund, to be funded in part by a 1.3-cents-per-barrel excise tax on domestic and imported petroleum. Amounts in the Oil Spill Fund will be available for removal costs, certain damages associated with oil spills, and contributions to an International Oil Spill Liability Trust Fund if the convention establishing such fund comes into force with respect to the United States. No amounts will be payable to State or local governments for natural resource damage claims or lost tax revenue or for other purposes unrelated to the cleanup of oil spills. Amounts payable to the International Fund are restricted to provide conformity with the expenditure purposes of the domestic fund. Excess amounts remaining in the funds created by the Deepwater Port Act and the Outer Continental Shelf Act are transferred to the Oil Spill Liability Trust Fund.

Effective date: The trust fund provisions are effective on January 1, 1987.

Oil spill liability trust fund excise tax on petroleum

A new excise tax of 1.3-cents-per-barrel is imposed on domestic crude oil and on petroleum products (including crude oil) that are imported into the United States. The tax is imposed on the same crude oil and petroleum products, and is subject to the same definitional and other provisions, as the Superfund petroleum tax (Code sec. 4611) which expired on September 30, 1985. A credit against the oil spill tax is allowed to the extent that the taxpayer contributed to the Deepwater Port Liability Fund or the Offshore Oil Pollution Compensation Fund before January 1, 1987. Amounts equivalent to the revenues from the tax are deposited in the Oil Spill Liability Trust Fund. The collection, enforcement, and penalty provisions are the same as under the prior law Superfund petroleum tax.

Effective date: The excise tax provisions are effective on January 1, 1987. The petroleum tax expires on December 31, 1991.

TRADE PROVISION

1. CUSTOMS SERVICE USER FEE

Present law

The Consoldiated Omnibus Budget Act of 1985 (P.L. 99-272) for the first time imposed a schedule of customs users fees to cover Customs' costs of processing the arrival of vessels, trucks, trains, private boats and planes, and passengers. No fees were imposed, however, on the processing of commercial merchandise.

Reasons for change

The total revenues of approximately $200 million per year realized from the existing fees fall far short of covering the costs of Customs operations. Article II, section 2 of the General Agreement on Tariffs and Trade (GATT) authorizes any contracting party to impose at any time on the importation of any product, "fees or other charges commensurate with the costs of services rendered." Several other countries including France, Egypt, Portugal, Spain and Sweden, impose fees for the processing of commercial entries.

These fees are intended solely to cover the costs of maintaining the operations of the Customs Service and the Committee believes that such fees are consistent with the GATT exception regarding such charges. During Committee deliberations, questions were raised concerning the 0.5 percent level of fees for fiscal year 1987, which according to CBO estimates would raise approximately $1.8 billion in that fiscal year. While it is true that the fiscal year 1987 authorization level recently approved by the House in H.R. 5484 was $1.06 billion, the Committee nevertheless decided to approve a fee structure at the 0.5 percent level for several reasons. First, the actual level of imports for fiscal year 1987 may well be lower than that estimated by CBO because of the declining value of the U.S. dollar. Second, the Committee wanted to ensure that there are adequate receipts in the fund to cover start-up costs and to cover any potential increases in the costs of Customs operations. In this regard, the fee was reduced to 0.2 percent ad valorem after only 10 months of operation on the belief that, after the start-up costs were absorbed, the lower fee in subsequent years would offset any surplus resulting in fiscal year 1987, so that for the first two years the fees realized will closely approximate Customs' actual costs of operations. Finally, in order to ensure that the fees approximate the actual costs of Customs operations, the Secretary is directed at the end of fiscal year 1988 and every two years thereafter to recommend corrections in the fee structure in order to bring the funds in the dedicated Customs users fee account to a zero balance. Accordingly, the Committee chose to adopt a cautious approach and to approve a fee structure which would guarantee adequate funding at the outset and strive for overall balance in the ensuing years.

Explanation of provision

The Committee amendment imposes a customs user fee on all formal entries of imported merchandise for consumption based on the f.o.b. value (i.e., excluding ocean freight and insurance) of 0.5% ad valorem in fiscal year 1987 (beginning December 1, 1987) and 0.2% ad valorem in subsequent fiscal years. The provision would not apply to articles classifiable under items in schedule 8 of the Tariff Schedules. The process of such fees would be deposited in a separate account within the general fund of the Treasury and be available, subject to appropriation, to the Customs Service for carrying out its operations.

Beginning at the close of fiscal year 1988 and every two years thereafter, the Secretary of the Treasury would be required to submit a report to the Congress concerning any necessary fee adjustments to bring the account into a zero balance and to ensure that the fee reflects the actual costs of the services provided.

The fee is intended to apply to all formal entries of merchandise for consumption, including warehouse withdrawals for consumption. The fee would not apply however to informal entries, merchandise which does not formally enter U.S. commerce, or any articles which are eligible for special tariff treatment under one of the provisions in schedule 8 of the Tariff Schedules of the United States. The fee would apply to all other articles, however, regardless of whether such articles are dutiable or duty free or whether the articles are eligible for a tariff preference such as the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), a bilateral fee trade arrangement or general headnote 3(a).

The Committee recognizes that such a fee will create some hardships to the importing community and believes it is reasonable for importers to expect the Customs Service to be adequately staffed and to provide its services in an expeditious fashion. It is the intention of the Committee in providing for a Customs user fee for cargo shipments, that such a fee will enable the Customs Service to guarantee that staffing and services will be provided at such times and at such levels as are necessary to meet the demand of the shipping public.

The Committee is also concerned that the creation of a user fee on consumption entries not be the occasion for an increase in the record keeping or other data collection burdens imposed upon the public. In this regard, it is anticipated that the Customs Service will continue to employ its existing standard consumption entry form (CF 7501) which contains sufficient information to assure proper collection of the user fee. In implementing the new user fee, the Committee directs the Commissioner to make certain that no new record keeping or data collection burdens are imposed upon the public, including all shippers, cargo/freight carriers or related entities.

Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore (Mr. MONTGOMERY). The gentleman from Illinois [Mr. ROSTENKOWSKI] has 8 minutes remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. STARK].

The SPEAKER pro tempore. Without objection, the gentleman from California is recognized for 4 minutes.

There was no objection.

Mr. STARK. Mr. Chairman, title X of H.R. 5300 is extremely important legislation. As chairman of the Ways and Means Subcommittee on Health, I would first like to thank the ranking minority member, the distinguished gentleman from Ohio and all of the members of my subcommittee, for their time and bipartisan effort. I would also like to thank our hard working chairman, and the gentleman from Tennessee, the ranking minority member, for their efforts in bringing this responsible deficit reduction bill to the House floor.

I urge my colleagues to support this legislation because it achieves some very important goals. It achieves a 3-year net saving of over $5 billion in Medicare provisions.

We are particularly proud that we have protected beneficiaries from increased out-of-pocket costs proposed by the administration. Under the administration's budget Medicare beneficiaries would have paid over $2 billion more in coinsurance and deductibles over the next 3 years—and a whopping

$8 billion more in part B premiums. We rejected all of these proposals.

The committee's legislation addresses another important concern of beneficiaries. The part A hospital deductible has increased rapidly as an unforeseen consequence of shorter lengths of stay in the hospital. Left unchecked the deductible would have gone up from $492 to $572 in 1987. This would have meant an increase of over 43 percent over the 2 years, 1986-87. This is unacceptable. For this reason, the committee decided to set the deductible at $500 for 1987. The committee plans on revisiting this issue next year to determine an appropriate cost sharing for future years.

Concerned with more than costs, the committee has worked hard to protect the quality of care Medicare beneficiaries receive. Contained in title X of H.R. 5300 are several provisions to ensure that Medicare providers, in their efforts to cut costs, don't compromise on quality or access to care.

In particular, I would like to point out that paying physicians to reduce or limit services to Medicare beneficiaries, which anyone would think would be illegal, will become illegal as a result of this legislation. This bill also gives patients recourse if they feel they are being improperly treated.

As a response to widespread concern that many elderly are now being discharged "quicker and sicker," the committee has included a number of provisions to protect against premature hospital discharge and to improve access to needed post-hospital services. These provisions create a balance. They ensure that policies which obtain greater savings do not damage the quality of care provided to the elderly.

Further, we have achieved the needed budget reductions and yet have still provided for increases in reimbursements to hospitals and physicians. We have sought fairness in Medicare payments to hospitals. The committee provided a 1-percent increase in hospital payments; this is in comparison to a 0.5-percent increase proposed by the administration. Further, knowing how important prompt payment of claims is to hospitals, we have preserved periodic interim payments for certain hospitals and guaranteed prompt businesslike payment of claims to all Medicare providers.

On the other hand, believing that Medicare was paying too much for capital expenditures, we have limited the aggregate increase in capital. For fiscal year 1987, the rate of increase could not exceed expenditures in fiscal year 1986 plus 10 percent. Capital expenditures would be limited to 20 and 30 percent over the fiscal year 1986 base for fiscal years 1988 and 1989 respectively. The committee will continue to work over the next year in an effort to devise an equitable system to incorporate capital into the PPS system.

To prevent the administration from issuing regulations in this area we have prohibited the Secretary of HHS from publishing in final form any regulation regarding changes in the computation of payment amounts for capital-related costs for inpatient hospital services between September 1, 1986, and September 1, 1987.

Title X of H.R. 5300 provides a 3.2-percent increase in payments to all physicians. Participating physicians would receive an additional 1-percent bonus to encourage participation in Medicare. The bill also limits increases in actual charges by nonparticipating physicians to ensure that savings are not obtained at the expense of higher costs for the elderly. This is a fair outcome—physicians will receive a full inflation increase and beneficiaries will be protected from further increases in out-of-pocket costs.

H.R. 5300 also protects end-stage renal disease [ESRD] beneficiaries by strengthening ESRD networks. I would like to assure the many Members who have contacted me about the administration's proposals to reduce ESRD rates that the bill seeks to protect beneficiaries. The legislation reduces rates to ESRD facilities by approximately $5.50 per treatment; half the cut originally proposed by the administration. Physician payments would be reduced by approximately $14 a month per patient. The legislation calls for a study to determine the effects of lower ESRD rates on quality or access to care.

The bill gives the Secretary of HHS authority to deal with problems that have arisen in the Medicare Health Maintenance Organization Program. It also repeals the 2-for-1 rule which is so inequitable to long established providers.

Finally, H.R. 5300 calls for one small but significant proposal to help the medically uninsured. The bill requests that States establish high risk health insurance pools to provide access to health insurance for currently uninsurable Americans. This will not solve all of the problems of the uninsured but it will provide access to health insurance to the 1 percent of the population who now can't buy insurance at any price.

This legislation deserves your support because it reduces the budget deficit. It responsibly restrains Medicare costs. And it does this without increasing the financial liability of Medicare beneficiaries.

□ 1420

Mr. ROSTENKOWSKI. Mr. Chairman, I yield 3 minutes to the gentleman from North Dakota [Mr. DORGAN].

The CHAIRMAN pro tempore. (Mr. MONTGOMERY). Without objection, the gentleman from North Dakota [Mr. DORGAN] is recognized for 3 minutes.

There was no objection.

Mr. DORGAN of North Dakota. Mr. Chairman, I listened to my friend from Ohio in discussing this bill, and I want to agree with some of his remarks. I also want to say I do not think any thinking person in this town believes we can solve the problem we are confronted with in fiscal policy without first, substantial spending restraint; and second, additional revenue.

Now, what the President says to Congress is, "I want you to balance the budget or move forward toward a balanced budget or at least make progress in reducing the deficit, but I insist on my military numbers and I insist there be no additional revenue." He is saying, "Put a puzzle together over there, and I am going to keep a couple of pieces of that puzzle in my pocket." It is impossible to deal with this fiscal policy problem with the President's current position.

We need additional revenue in addition to spending restraints.

I took the well because I want to talk just for a moment about an amendment that I proposed in the Committee on Ways and Means the day before yesterday on an oil import tariff. It is one way to achieve some revenue. It is very controversial. Some people do not like it.

There are several other ways that I would support as well to achieve some revenues. The oil import tax that I introduced over at the committee, which lost on a voice vote and then a show of hands, 12 to 6, would suggest that we ought to be willing to pay to ourselves, to reduce the Federal deficit, that which we were previously required to pay the OPEC countries in the form of a $38 price per barrel of oil.

I suggested a $22 per barrel floor price and a variable tariff between the world price and that $22. That raised $50-some billion in the next several years and raised about $15 billion the first year alone.

Now, why not pass something like that? Well, first of all, the President says, "I won't accept any new revenue. You solve this fiscal policy problem without revenue." I say it is absolutely impossible to do.

We are working with Gramm-Rudman, that is what this is all about. That is a sham and a fraud. In the old days these folks would have driven covered wagons and stopped in a small town 100 years ago and sell amber fluid out of the back to cure hiccups and heart attacks. That is a fraud; these folks who have constructed the Gramm-Rudman approach, if they were involved 100 years ago in dealing with this sort of thing, would be doing the same but out of the backs of wagons.

It does not make any sense at all. This thing is unworkable, it is fundamentally fraudulent, and we are all talking as if it is serious.

We need the President to engage with us, Democrats and Republicans, in a responsible attempt to first, restrain spending, and that includes defense; and second, raise additional revenue and finally move toward some semblance of order in this country's fiscal policy.

The present fiscal policy is irresponsible, and we cannot solve the problem without the President's cooperation. He insists weeks after week after week that he will not cooperate.

This Member is disgusted with that.

The CHAIRMAN. The gentleman from Illinois [Mr. ROSTENKOWSKI] has 1 minute remaining.

Mr. ROSTENKOWSKI. Mr. Chairman, I reserve the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Chairman, I hope that the House is not going to be deluded by this bill, even if it feels that passage of the bill is the only way it can deal with this matter of reconciliation.

In my judgment, having this bill before us, and its ultimate passage, represent a full retreat from what I call a sane fiscal policy. The reconciliation process was developed so that we could reduce spending. But this is a reconciliation bill devoid of spending reductions.

Instead, the bill has nearly $9 billion of asset sales, and it has nearly $8 billion in increased taxes for fiscal 1987. Worse, it has actually increased spending of nearly $2 billion.

So the bill by any rational standard of measure does not do that which reconciliation was intended to do.

It is a shame that Congress has copped out on its responsibility under reconciliation, but that is the only phrase that I can think of that fully describes what we are doing here. In my judgment, it would be far better for us to vote down this reconciliation bill and let the sequester take place. If we pass this bill, we will increase baseline spending. That is both outrageous and contrary to the spirit of reconciliation.

Raising the spending baseline will surely and inevitably make it completely out of the question that GRH targets of next year can be achieved. We have created this reconciliation bill in the usual way, with our pencils rather than with our knives. Cuts are what we were asked to do, but there are no cuts here. There are only erasures and strikeovers.

It took all the cunning the leadership of this House could muster to turn a reconciliation bill into a tax and spend bill. But when it comes to plain and fancy spending, never underestimate the creativity of our House leaders.

I must say, with respect to some of the items in this bill, they really bring a smile. Hooray, hooray, we are selling Conrail again. I wonder how many years we can put the sale of Conrail into our budgets and our reconciliation plans. This is our second consecutive year. I will be counting future sales.

There is also a Customs Service user fee of $1.8 billion. That is a 15-percent surcharge on all customs duties. The new customs surtax amounts to about twice as much as the Customs spends in a year. Therefore, it hardly can be considered a surcharge. It is certainly in violation of our international agreements, and we will be charged compensation by every other country in the world with which we do business.

Now, there are also some things you cannot see in here because they will cause future taxes. We are going to nail the employers of the United States $3.6 billion over the next 3 years for continuation of FUTA taxes even though the expenses those taxes were designed to cover will be completed at the end of fiscal year 1987.

FUTA is a jobs tax, of course, because nobody wants to hire new employees if it costs more extra money to put them on the payroll. Also, there are telephone excise taxes in here which, in the next 3 years, will cost the telephone users of America more than $2 billion.

So all I can say to Members of this Committee is, if you are very strong for increasing taxes, this bill ought to be just your cup of tea. And if you do not believe in fiscal sobriety, this bill is made for you. If you think increasing spending is what the people of the United States want, this bill is designed to suit you to a tee.

On the other hand, if you believe that the people would like the Congress to reduce spending, to reduce the deficit, then I think you have no other choice than to vote against it.

I shall vote against it.

The CHAIRMAN. The gentlewoman from Illinois [Mrs. MARTIN] has 1 minute remaining and has been yielded back 1 minute.

Mrs. MARTIN of Illinois. Mr. Chairman, I reserve the balance of my time.

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. ECKART].

Mr. ECKART of Ohio. Mr. Chairman, for those who have not paid attention, we are back on the railroad again.

I thank the gentleman for yielding to me. I am pleased that we are here on the floor with public offering legislation which I had initially introduced with my good friend and colleague from Virginia, Mr. BLILEY, some 16 months ago.

Two amendments which the gentleman and I offered in committee and which were adopted, one by voice vote and the other by a vote of 32 to 9, expressed clearly the intention of the majority of the committee, No. 1 to have an independent audit by the GAO of the activities relevant to the public offering, and the second was to require that the firms selected be colead managers, to jointly manage the public offerings.

As an original cosponsor of legislation calling for a public sale of Conrail more than 1 year ago, I am extremely pleased that we are moving down that track today. I have long been convinced that a public stock offering will yield the highest proceeds for the Government's interest in Conrail, while at the same time protecting the important interests of labor, shippers, and others associated with or served by Conrail.

Mr. Chairman, I would also like to take a minute to clarify an understanding of the language of the bill which requires the Secretary of Transportation to select colead managers to organize and run a public stock offering. As the gentleman will recall, this language was the subject of an amendment which I offered in committee and which was adopted by a vote of 32 to 9. It is my intent, as shared by the bipartisan majority of the committee, that the bill would require that firms selected as colead managers jointly determine how to manage the public offering and share equal responsibility for structuring and managing the offering, an equal share of management fees resulting from the transaction and equal underwriting position and allocation of shares including:

Advising DOT on timing, size of issue, structure of the deal and structure of Conrail's capital structure, value of shares and marketing program.

Forming and managing a syndicate, which may include other comanagers, and allocating shares for sale to the underwriters, dealers, major institutional purchasers, and others to include for example agreement and nonagreement Conrail employees as contemplated by the definitive agreements among Conrail, the RLEA, and Morgan Stanley.

Organizing the preparation of documents, contracts, and presentation materials.

Negotiating final terms with the seller, including price, size, and distribution expenses; and

Overall coordination of sales, management, and publicity efforts under mutually agreed upon terms and locations.

Mr. Chairman, I would be pleased to acknowledge the support of my colleague from Virginia who is so instru-

mental in this regard for his comments and yield to him.

Mr. BLILEY. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I also want to associate myself with the remarks just made by my distinguished colleagues from Michigan and Ohio. I, too, was an original cosponsor of legislation to return Conrail to the private sector through a public offering. I felt then and continue to believe that Conrail has the financial strength to survive and be successful and that preserving Conrail as an independent entity is far superior, from a rail competition standpoint, to combining it with Norfolk Southern. With the legislation before us today, I am confident that the first major component of the President's privatization initiative will be successful.

Mr. Chairman, I would also briefly like to touch on the subject of colead managers. I believe that it is important for my colleagues to recognize that the amendment regarding the selection of colead managers for a public offering was supported by 32 members of the Energy and Commerce Committee, including a majority of Members on both sides of the aisle. On this point, I would like to confirm the understanding of the distinguished ranking minority member of the committee, Mr. LENT, that the committee's intention in adopting this language is to direct the Department of Transportation to select those firms with the greatest marketing ability and knowledge of Conrail to assure a successful sale. In this regard, it is the committee's intention that the Department select colead managers based on the significance of their contributions prior to the date of enactment in demonstrating and promoting the long-term financial viability of Conrail as an independent entity and the feasibility of a public stock offering. It is not our intent to exclude any particular firm or firms that have been involved in this transaction during the legislative process.

Mr. Chairman, I wonder if the gentleman from Ohio [Mr. ECKART] would yield to the ranking minority member on the committee to see if that is not his understanding of what took place in the committee, as well.

Mr. ECKART of Ohio. I would be pleased to yield to my colleague, who worked with us in this subcommittee and now sits as the ranking member of the Committee on Energy and Commerce [Mr. LENT] from New York.

Mr. LENT. I thank the gentleman for yielding.

Mr. Chairman, the gentleman is correct in his understanding of the amendment as adopted by the committee. The intent is to assure that the Department of Transportation will select colead managers with the necessary expertise and marketing credibility to assure the success of a public offering and that the contributions of the firms in promoting Conrail's viability and the feasibility of a public offering prior to enactment should be a primary criteria for selection.

Mr. ECKART of Ohio. I thank my colleagues for their participation. I thank particularly my friend from Virginia [Mr. BLILEY] and his staff who have labored long and hard in negotiating these most difficult of matters. I am delighted for the public offering's presence here today.

Taxpayers will be protected, working men and women who have sacrified so much to make Conrail so productive and profitable in the last few years will be rewarded, and lastly competition will be preserved in our part of the country, which is so important for our economic development.

Mr. LELAND. Mr. Chairman, earlier today my good friend and colleague, Mr. ECKART of Ohio, discussed the Conrail public offering. He stated that under the definition of colead managers the firms selected will jointly "run the books." This statement raises some concerns.

Mr. ECKART has told us that he was not asking any Member to repudiate a valid Government contract, such as Goldman-Sachs has with the Department of Transportation to serve as "the" lead manager. Therefore, I must assume that there will be only one colead manager working together with Goldman-Sachs which is entitled by contract to 50 percent of the management fee.

As far as I know, there has been no other instance where two firms have shared a similar colead role, either in U.S. corporate or municipal finance, or in the international market. I therefore am very concerned that we may be creating a monster that may work against our mutual wish for a smoothly executed public offering. I believe the definition of colead manager should be changed to reflect the traditional comanagement form.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, if you enjoy returning to Congress every year to face record budget deficits, you should like this bill. If you are in favor of burdening our Nation's children with huge future debts you should vote for this bill.

This bill has bicameral, bipartisan support. Unfortunately, that translates into meaning that it contains little real deficit reduction. It doesn't cut defense, it doesn't cut domestic spending. This is Washington at its worst—you get yours, I get mine and the kids get the bill.

This is the next step in the process of pretending to meet Gramm-Rudman targets. In reality, we aren't close to that target.

Revenues are down. Appropriations are over budget. Outlays for defense, agriculture and health care will probably continue to race ahead of estimates. The recent snapshot showing us only $20 billion off target is too optimistic.

Mr. Chairman, this bill is a hollow log. It is a "fill in the blanks" bill. We figure out how much savings the bill needs to contain and then we stick in the numbers.

Once upon a time, selling Conrail was said to be worth $1 billion. Then it went to $1.8. Now its got a price-tag of $2.1 billion.

Loan sales are supposed to bring in $6.5 billion. But it's going to be hard to bring in that amount of revenue because we have delayed so long in passing this bill. By dumping this authorization on the administration at the last minute, we encourage a fire sale of securities late into fiscal year 1987. And asset sales, as we all know, do not address the structural deficit.

Then we've got some new taxes in this bill—excise taxes and user fees. And again, we've filled in a blank by inserting a phony number showing $2.5 billion savings from IRS enforcement. Let's remember that CBO has already revised their baseline revenue estimates down by $16 billion, so who's kidding who?

As for the health and welfare provisions, they are a combination of new spending proposals and accounting gimmicks. Accounting gimmicks in Medicare, I should point out, do little to add stability to a troubled program.

Today we pass a savings bill that contains no savings. Tommorrow we pass a spending bill that contains too much spending. We do these things in the name of deficit reduction, and we refuse to learn that saying so won't make it so.

It is profoundly tragic that we are not doing anything about the deficit this year—we're passing on another $200 billion to our children. And it is frightening that we appear to be fulfilling the warning of Orwell's "1984": Freedom is slavery, 2 and 2 equal 5, and this bill saves $15 billion.

□ 1435

Mr. LOWRY of Washington. Mr. Chairman, I yield 4 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Chairman, I thank the gentleman for yielding this time to me.

Mr. Chairman, I want to congratulate the Budget Committee for doing a very reasonable job of meeting a very unreasonable goal.

Gramm-Rudman did not make a great deal of sense when it was passed, and it has become less sensible as time has gone on. In particular, I am referring to the economic targets that were involved. Gramm-Rudman said that we should reach a certain level of deficit reduction based on the assumption that there would be a given amount of economic growth in the country.

What has happened is that there has been, for a variety of reasons, much less economic growth than we had anticipated, less than a percentage point in the most recent quarter.

Virtually every economist, regardless of ideology, conservative and liberal, has said that this should dictate a change in the Gramm-Rudman target; that is, given the failure of the economy to grow the way the administration thought it would grow, the target set for this fiscal year by Gramm-Rudman for the deficit was unrealistic. In effect, we have all recognized that. But for a variety of reasons, pride of authorship in the other body, the very impressive ability of this President to ignore reality and some political timidity in here, we have not had the votes to do the straightforward thing, which is to change the Gramm-Rudman target.

On the other hand, no one has wanted to deal with sequestration. Members having voted in both Houses for sequestration compete now to talk about what a horrible thing it is.

So we have this problem: How do we meet this target which is no longer rational economically—and everyone from Martin Feldstein and Herb Stein and Paul Volcker and a range of others have said it is no longer rational—how do we do that without exacerbating the problem of slow growth which we now have?

To have made substantial domestic spending reductions would be exactly the opposite. As Herb Stein, a former Republican Chairman of the Council of Economic Advisers, said, one does not have to be a Keynesian to decide not to be an anti-Keynesian, to think that it is not wise to make substantial cuts at a time of very slow growth.

So we have come up with a way to deal with this. We have a new slogan now. "No taxation without representation" served us for a couple hundred years. We have a new one, "No sequestration while we can have obfuscation," because that is what we have in this bill. Instead of dealing directly with it, we are going to do a little obfuscating.

What we are doing instead of making any serious cuts right now, because every economist thinks it would be unwise and because Members do not want to cut—people do not want to cut defense any further in some parts and people do not want to cut domestic spending any further—what we are doing is showing the deficit really was not as bad as people thought because we are selling off our assets. If we were anything but the Federal Government in fact when we looked at our financial condition, we would have put some valuation on those assets.

When we talk about the national debt, we lament it and it is too high, but we do not do what would be done rationally in any other organization setting, offset that with our assets. What we are doing today is in fact implicitly admitting that the deficit is not as bad as people have said it is, because when we calculate this, people like Robert Eisner have pointed out, we never look at the underlying assets. So we are going to sell off some assets today.

It is too bad we cannot sell Conrail to the Japanese, because then we could get a twofer. We could reduce what we call the deficit and also do something about the trade deficit. But what we are doing instead is—and we ought to be clear about this—avoiding economic nonsense by showing that the deficit is not as bad as we thought it was.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. FAWELL]

Mr. FAWELL. Mr. Chairman, this reconciliation bill is an admission that Congress does not have the will to cut Federal spending to meet the Gramm-Rudman targets. It's an admission that we are not going to reduce the Federal deficit in 1987.

The deficit is real—so is the growing national debt which now consumes about $200 billion a year just to pay interest on that debt. I have the distinction of telling my constituents that in the first 2 years of my congressional career, I have seen Congress continue to chronically overspend so as to produce back-to-back all-time record annual deficits of $212 billion in 1985 and $230 billion in 1986. Were it not for the $11.7 billion Gramm-Rudman cut last March, the 1986 deficit would be $241.7 billion. In total for those 2 years, the deficit is approaching one-half trillion.

I can remember when we were talking about last year's reconciliation bill. Our budget was to produce a deficit of about $172 billion by enacting that bill. But, the deficit is coming in at $230 billion.

Actually, the deficit in 1986 will be more than $230 billion because now, by the means of this year's reconciliation bill, we are transferring payments which should be paid in 1987 to 1986—like the $680 million final payment for revenue sharing which is due to be paid in October 1987 but will be prepaid in 1986 so the deficit will look less in 1987.

I've supported Gramm-Rudman. Yet, all year I've watched as deadlines required by Gramm-Rudman have been ignored. Congress hasn't passed any 1987 appropriation bills or the 1987 reconciliation bill, even though Gramm-Rudman requires that the latter be completed by June 15. As a result, when the OMB-CBO "snapshot" of the 1987 deficit was taken on August 15, 1986, there was nothing to snap.

So the snapshot had to be of 1986 expenditures, which produced a $230 billion deficit. Yet the snapshot came up with the miraculous conclusion that there would not only be a freeze in Federal spending in 1987, as compared to 1986, but predicted there would actually be a decrease of $5 billion in spending. There's no one in this Chamber who believes that. Yet estimated spending is one of the two foundations for OMB-CBO arriving at the conclusion that the deficit for 1987 would be reduced by $67 billion—from $230 billion to $163.4 billion in 1987—just about $9 billion shy of the $154 billion deficit which would eliminate the need for sequestration for 1987.

It is also estimated in the snapshot that there would be $62 billion in new revenue in 1987 which, combined with the predicted $5 billion in decreased spending in 1987, results in the estimated $163 billion deficit for 1987. A like estimate of $60 billion in new revenue was predicted by OMB in 1986. New revenue for 1986, however, will be only about $30 billion.

So we have in my view a snapshot of a 1987 estimated deficit which is knowingly inaccurate in predicted Federal spending and revenues.

And now, I submit, we have a reconciliation bill which is mostly smoke and mirrors, rather than real cuts in spending or real and lasting enhancement of revenues. And it is based upon a snapshot prediction of a 1987 deficit which is inaccurate.

This reconciliation bill not only fails to make net cuts in Federal spending, it results in a net increase in spending. There are actual spending cuts of $1.42 billion in the bill in Medicare, student loan programs, and an across-the-board reduction. Yet spending increases a total of $1.93 billion not including Social Security COLA's.

The only real savings in the bill are from user fees, and from the sale of Conrail—these savings total about $4 billion out of total claimed savings of $18 billion; $7 billion of the savings in this bill—about half of the claimed reconciliation savings—are from loan asset sales. But these are false savings because even though they lower the deficit in 1987, they raise the deficit next year—and beyond—because the Government is no longer collecting principal and interest on the loans.

For example: While the bill claims savings of $850 million in 1987 from selling Small Business Administration loans, the Government would lose almost $1.4 billion from 1988 to 1996 from forgone revenues. That is, the Government won't be collecting the principal and interest it had counted on. Therefore, the Government may not only realize no savings, it may lose money on the sale.

In addition, very shortly now, we'll also be presented with a mammoth continuing appropriation bill involving 13 committee appropriations totaling

over one-half trillion dollars. Some call it a Christmas tree. I don't mean any disrespect to anyone, but I think we all know that when Congress gets done with the CR and the supplemental appropriations and the increased mandatory spending, all of which will follow as surely as does the night the day, we shall have produced another $200 billion plus 1987 deficit.

I understand that at this late date, it's easy to say that while this isn't much of a reconciliation bill, it's better than sequestration. That's where I differ. Frankly, I think sequestration is a better alternative because it would cause Congress and the administration to be serious about prioritized spending and real enhancement of revenue. In short, sequestration would apply the pressure upon Congress and the administration it was meant to apply. Faced with sequestration, Congress and the administration, even now, still have time before the final OMB-CBO snapshot of October 6 to work out a meaningful reconciliation bill.

And sequestration is not the only alternative. Congress can simply turn down this reconciliation bill and the flawed snapshot upon which it stands and ask for some real prioritized cuts and/or enhancement of revenues. Congress has time to do this before the next snapshot is made on October 5.

If we fail to be serious about reconciliation, as we have failed to be serious about the Gramm-Rudman deadlines and about the 1987 snapshot, we have admitted that we are not serious about controlling the 1987 deficit. We shall simply continue to overspend and have the bill sent to our children and grandchildren.

□ 1445

Mr. LOWRY of Washington. Mr. Chairman, I yield such time as he may consume to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I thank the gentleman for yielding to me.

Mr. Chairman, I rise to address the chairman regarding a matter of particular concern to me and also to my friend and colleague from South Dakota [Mr. DASCHLE]. I refer to an amendment on Public Law 480 funding which was adopted on a bipartisan basis in the other body and which, as I understand it, will be a conference item in the reconciliation bill.

The amendment requires that funds already appropriated by the Congress for Public Law 480 title II in fiscal 1986, but which are not otherwise obligated to date, shall be obligated by the end of this fiscal year, and shall be used only for the purposes for which they were appropriated—and so on, humanitarian food shipments overseas.

This amendment was made necessary by what, to this Member, is an astounding mistake by the current administration.

What happened was that this summer the administration put a "hold" on further obligations of the funds that Congress had approved for Public Law 480, the Food-for-Peace Program, in fiscal 1986. The ostensible reason was that some of the amount would or could be needed as part of the Contra aid package for Central America. After protests from Congressmen, Senators, and others, the administration unfroze some of this money and the other body added a special amendment to provide for Central American aid.

But early this month, we received word that the administration had once again put a "hold" on remaining Public Law 480 money. Specifically, this froze the $50 million still unobligated for Public Law 480 title II this year. Title II is the Humanitarian Grant Program which we use for food aid to victims of famine in Africa, for mother-child health programs, school lunches, food-for-work, and other worthy projects in poor countries.

The fact is, this Public Law 480 aid is not only a help to those recipients abroad, but it also is a program helpful to American farmers. Public Law 480 exports part of our agricultural surplus, reducing some of the costs of our Domestic Farm Program. The processing and transportation of the food shipments provide jobs to Americans as well as assisting the needy overseas.

That is why the Congress has supported this worthy program. Agricultural interests support it. Agribusiness and labor groups support it. Private voluntary groups support it for humanitarian activities. It makes no sense to sit on this already-appropriated money, and possibly lose its use, at this time of need for our farmers, our trade, and hungry persons abroad—including millions still at risk in Africa's continuing food emergency.

I ask the chairman, on behalf of my colleagues from South Dakota and other interested parties, if he would be willing to agree to the amendment which was bipartisanly adopted by the other body.

Mr. DASCHLE. Mr. Chairman, will the gentleman yield?

Mr. DORGAN of North Dakota. I yield to the gentleman from South Dakota.

Mr. DASCHLE. I thank the gentleman for yielding to me.

Mr. Chairman, I just want to applaud the gentleman from North Dakota, my colleague, for bringing this issue to the attention of the committee and to the House. I think it is the height of irony that at a time when we have surpluses unlike any time in recent history, at a time when we find a great deal of hunger, not only in Latin America but in Africa, that we find this administration and some in the Congress willing to freeze the funds for Food for Peace, ironically, to be earmarked for arms to the Contras. That is the height of ridiculousness. It is preposterous as we try to resolve the many difficulties we have with regard to hunger as well as regard to the agricultural policies that are now in place. In addition, of course, to our needs, to meet the humanitarian needs that we have, not only in Latin America, Africa, but around the world.

So it is an important issue, and it is one that we try to resolve I think in this way. All we ask is the assurance of the chairman that we can have his support as we try to resolve this dilemma as we face this bill now.

Mr. DORGAN of North Dakota. The gentleman from South Dakota puts it very well. We are talking about $50 million that I think is very important to the Food for Peace Program. I have asked for this colloquy to ask the chairman on behalf of my colleague and myself and other interested parties if he would be willing to consider agreeing to the amendment which was bipartisanly adopted by the other body on this matter.

Mr. GRAY of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. DORGAN of North Dakota. I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. I thank the gentleman for yielding to me.

Mr. Chairman, I fully understand and share the concerns of the gentleman from North Dakota on this issue, and I would like to assure him and his colleague, who have been in the forefront of speaking out very clearly on the issues of hunger in the world, that I will do my best to secure conference agreement on the amendment to which he refers.

Mr. DORGAN of North Dakota. I thank the chairman very much.

Mr. DASCHLE. I thank the chairman.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I would just like to say to the gentlemen from North and South Dakota that the ranking member is not here, and I assume you have also talked to him, because as you pointed out in a bipartisan effort, both parties would want to be involved and we look forward to that involvement on a bipartisan and bicameral level.

Mr. Chairman, I yield 5 minutes to the gentleman from New Hampshire [Mr. GREGG].

Mr. GREGG. I thank the gentlewoman for yielding me this time.

Mr. Chairman, as I said earlier, I consider this reconciliation bill to be a

trip to "Fantasy Island" by the Congress. It is pure escapism in its worst form in the legislative process.

As we look down the numbers of this bill, it is very hard to find any hard savings. The gentleman from Illinois [Mr. FAWELL] has just noted that he estimates that there is approximately $4 billion of hard savings in this bill. I think that may be generous, quite honestly.

What there is in this bill is some hard spending money. There is no question but that this bill is going to energize $3 billion in new spending. So it is very likely that rather than being a reconciliation bill as traditionally perceived during the budgetary process where you save money and reduce spending in the outyears, this bill ends up being possibly simply a wash. Maybe even a money loser.

The process by which the $15 billion which is reflected in this bill is reached is one of smoke and mirrors as has been mentioned on many occasions today. But there are some things which are so egregious I think they need reemphasizing.

One of them, of course, is the manner in which the Federal revenue sharing is handled. The Congress generally has agreed, I believe, that Federal revenue sharing is a program which we can no longer afford. We are perfectly happy, I suspect, to share with local and State communities Federal debts since that is what we have an excess of, but we do not have an excess of Federal revenue and there is none to share. We certainly cannot afford the Federal Revenue Sharing Program.

It had been assumed that this program was going to be terminated; that is what the budget resolution called for. What the budget resolution further called for was that if it was not terminated there had to be some way to fund it.

This is a unique way to fund it, folks. What we are going to do is to throw it into this year's budget rather than next year's budget and thus claim that next year's budget is reduced by the amount that we throw into this year's budget. That is a very unusual accounting method. Not only does it not save us any money, it is going to cost us money because that is just going to simply build up the deficit this year on which we are going to have to pay interest so we are going to accelerate Federal revenue sharing in its payment process and thus create a greater interest payment and thus create a bigger Federal debt and preserve a program which everyone generally has agreed that we should eliminate.

Mrs. MARTIN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. GREGG. I yield to the gentlewoman from Illinois.

Mrs. MARTIN of Illinois. I thank the gentleman.

Mr. Chairman, just so there is clarification, it is not the budget resolution that continues the revenue sharing. On that you get to wait for the CR to take care of. This does accelerate a final payment. I want to be very clear: It is not your budget resolution that has the new final years of revenue sharing.

Mr. GREGG. This resolution by the passage of the rule transferred $680 million into this year's expenditures which should have been incurred next year. That is certainly inappropriate.

Mr. Chairman, it seems to me that whether you come from the liberal side of the aisle in this House or the conservative side of the aisle you are concerned about deficits. I think the concern is legitimate.

If you are on the liberal side of the aisle, you may lean toward increasing taxes as a legitimate way to address the deficit problem we have today. If you are on the conservative side of the aisle, you lean toward cutting spending.

What you do not lean toward, however, I would hope, is a bill which clearly uses only mechanisms of accounting and smoke and mirrors in order to reach an alleged budget deficit reduction.

This bill does not accomplish any deficit reduction of substance and it is an abandonment of the purpose of this House and especially an abandonment of the reconciliation process for us to pass it.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1 minute to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. However, I do so reluctantly. I had hoped that today we would consider an amendment to this legislation to protect Federal, military, black lung, railroad retirees, and other retirees' cost-of-living adjustments [COLA's] from the threat of further Gramm-Rudman cuts. In effect, this amendment would have simply provided that these retirees be treated the same as Social Security beneficiaries. It would have guaranteed that our Nation's retirees would be treated equally and that they would be assured of the COLA's which they have been promised by law. It would not have added 1 penny to our budget deficit.

The reconciliation does provide COLA's for 1987 but does not hold it harmless in Gramm-Rudman in the future.

The Senate has already adopted such an amendment as part of its reconciliation legislation. Twice, I have attempted to offer a COLA protection amendment in this body. Yesterday, I proposed that my amendment be considered as part of H.R. 5300. This summer, I proposed that it be considered as part of our action to affirm the 1986 Gramm-Rudman cuts. Both times, it was decided that I would not be allowed to offer the amendment on the floor of this House.

Last December, the recipients of civil service, military, tier II railroad, CIA, black lung, Foreign Service, and certain FECA retirement benefits were abruptly denied their COLA. Scores of these retirees were informed only 2 weeks before they expected to receive their checks that their 1986 COLA had been suspended. The suspension became a denial on March 1, 1986. At the same time, their contemporaries, who receive Social Security benefits were given a 3 percent adjustment. This action immediately established unequal treatment of our Nation's retirees, and placed an unnecessary financial strain on millions of senior citizens.

In 1983, Social Security recipients were required to sacrifice their COLA's for 6 months. Similar sacrifices have been made by all civilian retirees, as well as military and railroad retirees, over the past 3 years. While inflation has risen 10 percent over this period, civilian and military retirees have only received one COLA, in 1984, at a rate of 3.1 percent. Over the last 6 years, Federal annuitants and their survivors alone have lost approximately 30 percent of their inflation adjustments. I believe the time has come for Congress to reexamine where sacrifices need to be made. Senior citizens have done enough.

Just a few months ago, Members of this body affirmed their belief in COLA equity for all retirees. On June 24, by a rollcall vote of 396–19, the House approved my legislation, H.R. 4060, which guarantees a COLA in January 1987 to recipients of civil service, military, and other Federal retirement benefits. The amendment I had hoped to offer today was a logical extension of this bill and this vote. It simply sought to treat all retirees the same.

Mr. Chairman, unequal application of the law is never wise public policy. In the case of America's retirees, the Gramm-Rudman law is discriminatory. It singles out millions of retirees for unfair treatment. I fully support exempting Social Security beneficiaries from Gramm-Rudman. I firmly believe we should do the same, prospectively, for the rest of our Nation's retirees.

In conference, I call upon the House conferees to accede to the Senate version.

Mr. Chairman, Budget Committee Chairman GRAY and the chairmen of our other standing committees have worked hard to fashion this compromise budget reconciliation language. I

fully appreciate the pressures they have been under to meet our deficit reduction targets, especially in light of the administration's stubborn refusal to consider changes in revenues and defense spending as part of an overall deficit reduction effort. I commend my colleagues for their perseverance in fighting this seemingly impossible budget battle.

I do believe, however, that this House had an opportunity to exhibit strong leadership in defense of fairness for our retirees. I am deeply disappointed that we did not seize that opportunity and vote on my amendment today.

Mr. Chairman, I urge my colleagues to vote for H.R. 5300. In addition, I urge the House to accept the Senate amendments to exempt civil service, military, and other Federal retirement COLA's from further Gramm-Rudman cuts when we meet in conference on H.R. 5300.

□ 1455

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I rise in strong support of H.R. 5300. The additional savings contained in the Budget Committee's perfecting amendment allow us to achieve our goals for reconciliation. Not only would we avoid a deep sequestration under Gramm-Rudman, but we would also make needed improvements in the Medicare, Medicaid, and Maternal and Child Health Programs.

The Energy and Commerce Committee provisions relating to Medicare in title IV of this legislation would, on net, reduce outlays by $100 million in fiscal year 1987 and $750 million over the next 3 years. These are real savings, and are based on the Gramm-Rudman baseline. Moreover, they come from reforms in the methods of paying providers; there are no increases in the beneficiaries' out-of-pocket expenses. In fact, we have built into this bill protections against greater patient liability, in situations where Medicare payments to providers are reduced.

The Medicare provisions would lift the current freeze on physician fees and reward physicians for taking assignment on their Medicare claims. The bill would achieve savings through reductions in payments for cataract surgery, clinical laboratory services, and therapy services in the home. It would also make several important improvements in the Medicare Program, some of which were included in our reconciliation conference agreement last year. For example, we would:

Improve patient access to vision care;

Provide for judicial review on disputed claims;

Mandate demonstration projects on providing services for patients with Alzheimer's disease;

Provide payments for the drugs that are essential to the success of organ transplants already paid for by Medicare;

Improve the supply and distribution of organs for transplantation; and

Initiate policy research on health care practices and patient outcomes that will enable us to make more sensible program improvements in the future.

With respect to Medicaid, the bill contains a number of important program reforms. Following on a recommendation of the Southern Governor's Association, the bill would allow States, at their option, to extend Medicaid coverage to pregnant women, and infants up to age 1, whose incomes fall below 100 percent of the Federal poverty line. I believe that this provision, which has bipartisan support, will enable the States to reduce their infant mortality rates and increase the number of low-income babies born without health problems.

The bill also includes a provision to allow States to use Medicaid funds to pay the Medicare cost-sharing requirements faced by the low-income aged and disabled with incomes below the poverty line. Finally, the bill contains a provision to hold 13 States harmless against a decrease in their Medicaid matching rates in fiscal year 1987 as a result of a change made by last year's reconciliation bill. The States protected are: Arizona, Florida, Georgia, Maine, Minnesota, Missouri, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, and Virginia.

Each of these Medicaid reform provisions was adopted by the Senate in the reconciliation bill which it passed last Friday. They all have broad, bipartisan support. While these provisions do cost money—$110 million in the first year—I do not believe that Federal funds could be better spent than helping poor pregnant women, infants, and elderly and disabled people get needed health care.

I urge my colleagues to support the bill.

Mr. GRAY of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I am pleased to yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Chairman, I ask the distinguished gentleman from California if he would tell me and tell the House what would happen in the area of health care for the elderly if this reconciliation package is not approved, particularly with regard to things like the deductibility and other issues which the gentleman is one of the foremost experts on.

Mr. WAXMAN. Mr. Chairman, the biggest complaint of the elderly under the Medicare Program is the fast increase in the hospital deductible. The reconciliation bill provides for a ceiling on that increase so that the elderly, once they have to go to the hospital, will not be faced with such a dramatic out-of-pocket cost.

The legislation further, under Medicare, provides for services for those who do not have services at the present time, particularly Alzheimer's patients, as well as some access to health care that low-income elderly would not have.

Mr. GRAY of Pennsylvania. I thank the gentleman because some of the spending that was mentioned earlier by some of our colleagues really is referring to the issues that the gentleman is talking about, and they have been paid for by some increases in revenues which this administration approves of.

When you hear the talk about taxes, increased spending, you are talking about those issues that provide health primarily for the elderly in the area of Medicare and Medicaid and the deductibility.

I think the House ought to be aware of that.

Mr. Chairman, I yield 10 minutes to the gentleman from North Carolina [Mr. JONES], the distinguished chairman of the Committee on Merchant Marine and Fisheries.

Mr. JONES of North Carolina. Mr. Chairman, I rise to explain those provisions in the reconciliation bill contributed by the House Merchant Marine and Fisheries Committee. These are found in title VI of the legislation.

The Congessional Budget Office has estimated that our provisions save $38 milion in direct spending for fiscal year 1987 and $50 million in fiscal year 1988 but increase direct spending by $3 million in fiscal year 1989, thus totaling a decrease of $85 million in direct spending over 3 years. In addition there is a $10 million savings in authorizations over 3 years. The Congressional Budget Office also estimates a $139 million increase in net revenues over the 3-year period. This last figure is attributed to the oil spill provisions.

Subtitle A of title VI imposes certain modest fees on ocean dumping permittees. This language is essentially the same as that found in H.R. 1957, the Ocean Dumping Amendments Act of 1985, which was approved by the House of Representatives on December 10, 1985.

Subtitle B has been stricken from the bill by adoption of the rule.

Subtitle C amends the Merchant Marine Act of 1920 to permit the United States to gain possession and dispose of vessels and other assets in

default of a federally guaranteed loan under title XI of the Merchant Marine Act of 1936. The Government can recoup some of its costs by selling these assets.

Subtitle D authorizes specific Coast Guard user fees associated with loadline and tonnage measurement laws. This subtitle is essentially the same as H.R. 1362, which was approved by the House of Representatives on December 2, 1985.

Subtitle E amends the Panama Canal Act of 1979 to increase the amount of interest on the United States investment in the Panama Canal which is paid to the United States by the Panama Canal Commission.

Subtitle F provides for a comprehensive oil pollution liability and compensation system. The House has repeatedly endorsed and passed legislation to have a comprehensive Federal system to deal with oil spills but the other body has failed to act. Inclusion of the oil spill language in the reconciliation bill is another effort to seek to have the other body deal seriously with this issue in the 99th Congress.

Subtitle G establishes a National Offshore Vessel Operators Safety Advisory Committee.

Subtitle H repeals the act establishing the National Advisory Committee on Oceans and Atmosphere. Repeal should prevent future appropriations and thus save the Federal Government about $500,000 a year.

Subtitle J imposes a requirement for the use of American built equipment for the exploration and developing on the U.S. Outer Continental Shelf.

The Committee on Merchant Marine and Fisheries is proud of its title VI contribution to deficit reduction and supports its complete inclusion in the Omnibus Reconciliation Act.

Mr. Chairman, I reserve the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 10 minutes to the gentleman from Michigan [Mr. DAVIS], the ranking member of the Committee on Merchant Marine and Fisheries.

Mr. DAVIS. Mr. Chairman, I thank the gentlewoman from Illinois for yielding time to me.

Mr. Chairman, I would like to take this opportunity to make some observations about title VI of this bill, which was reported by the Merchant Marine and Fisheries Committee, and which I support. I commend my colleague, Mr. JONES, the chairman of our committee, for his capable explanation of the provisions of this title.

There are two areas in which our committee elected to include user fees in this package. The first, the ocean dumping user fee, will collect from ocean dumping applicants a fee not to exceed $10,000, which will reflect the reasonable administrative costs of the Administrator of EPA in processing the permit application. This measure also provides for the collection of a special fee for permits issued by EPA to recover the costs of ensuring compliance with dumping regulations. These provisions were included in the Ocean Dumping Act reauthorization which passed the House on December 10, 1985.

We gave substantial thought to the fees, particularly the special compliance fee provisions of this legislation, especially as they affect the development and implementation of technology for destroying hazardous waste at sea by incineration. Specifically, the amount of the special compliance fee should not be set at a level which will adversely impact the prospects for commercial implementation of effective and efficient ocean-based waste destruction technology. Also, we intend the special compliance fee to reflect the need for reasonable assessments of the direct effects on the marine environment caused by disposal activities and not for gathering baseline data nor to recoup the costs of long-term, comprehensive ocean research programs.

The second user fee in this package will be charged by the Coast Guard to recover the costs of loadline and tonnage measurement for vessels. The fee is part of the text of H.R. 1362, a bill revising, consolidating, and enacting certain laws related to loadline and tonnage measurement which passed the House December 2, 1985. The fee is a reasonable and direct user fee which has been agreed to by industry.

In particular, I bring these two sections into focus because there has been an effort to enact, as part of reconciliation, a general Coast Guard user fee for recreational boaters. It is the strong opinion of this Member of the House that these kinds of revenue-raising ploys are nothing but additional taxes and should, at the very least, be called by their real name. The Committee on Merchant Marine and Fisheries has made it abundantly clear time and again that we are not opposed to reasonable, direct fees—demonstrated, I think, by our willingness to include two such fees in this legislation. But we continue to oppose efforts to balance the budget with across-the-board taxes on specific sectors of our population, in this case boaters. I will continue to strongly oppose this concept here in reconciliation or anywhere else it may appear in legislation we produce in this House.

Mr. Chairman, title VI also includes a provision, in section 6201, to amend the Merchant Marine Act of 1920 to restore the protections the Maritime Administration enjoyed under the Vessel Loan Guarantee Program of title XI of the Merchant Marine Act of 1936, prior to enactment of the Bankruptcy Code in 1978.

Title XI was created to meet the national security objectives of secure waterborne commerce with adequate auxiliary vessels and crew. The Loan Guarantee Program was intended to be self-sustaining; to show neither profit nor loss over the long term. In the last several years, however, the program has experienced an unprecedented series of defaults requiring payouts in the billions of dollars to guaranteed bond holders by the Federal Government.

Until 1978, the Maritime Administrator could repossess on demand despite the protections accorded a debtor under bankruptcy laws. However, Congress unintentionally eliminated that power when it revamped the Bankruptcy Code in 1978, and since that time, bankruptcy proceedings have presented a substantial impediment to the Maritime Administration for closure efforts. The inability of the Maritime Administration to foreclose on its collateral in a timely manner has been one factor in the current insolvency of the title XI program.

Moreover, the continued operation by defaulting debtors adversely affects the financial liability of other, nondefaulting operators. This, in turn, threatens the continued viability of other loans of the Maritime Administration by undermining the ability of nondefaulting operators to pay off their debts.

Section 6201 will give back to the Government the ability to enforce a maritime lein, protect its collateral, and help assure the future viability of nondefaulting operators. It will also have the additional benefit of raising revenue for budget reconciliation purposes. CBO estimates it will raise about $34 million in the first year alone.

Finally, Mr. Chairman, I would like to point out that our title of this bill includes comprehensive oil pollution liability and compensation, the "oil spill fund." This committee has worked long and hard to get a comprehensive system of oil spill compensation and cleanup and it is my hope that through this vehicle we may finally get a system in place. My colleagues may have noted that there was a frighteningly large oil spill near the Delaware River this month. That spill could have caused major damage to the environment. Luckily it did not. Nonetheless, the taxpayers of this country, according to the Secretary of Transportation, paid $6.3 million to clean it up. Had we had the system proposed here today in place, the taxpayers would have been relieved of that burden.

The important thing for us to keep in perspective is that we enact a system that fully compensates victims of oil spills and that fully cleans them up. This should be achieved while

treating all parties—industry, environmentalists, and States—in a balanced and fair manner, as well as upholding our obligations in the international maritime community. I urge my colleagues to continue to press forward on ensuring that this oil spill fund is set up before we consider our work complete in this Congress.

□ 1505

Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Maine [Mr. MCKERNAN].

The CHAIRMAN. Without objection, the gentleman from Maine [Mr. MCKERNAN] is recognized for 3 minutes.

There was no objection.

Mr. MCKERNAN. Mr. Chairman, I thank the distinguished ranking member for yielding.

I want to say, first of all, that I voted against the rule on this legislation because I feel that there is a better way to meet our obligations to reduce the deficit. Having said that, I also feel that it is important to support this legislation in order to keep the process moving so that we will ultimately be able to come to a resolution which is going to reduce this deficit that faces our country.

I want to commend as we begin to debate this particular aspect of the bill both the chairman of the Merchant Marine and Fisheries Committee, as well as the ranking member, for including title VI, which is subtitle (F) of the oilspill liability. It is an issue that we on the committee have spent an awful lot of time dealing with. It is one which to my mind has not been satisfactorily resolved to date, especially because of some of the provisions that adversely affect the States that have taken the initiative to protect their particular coastlines; but section 6510 of subtitle (F) changes the way we have passed this legislation in the past. It maintains States rights, and for me personally it is the successful culmination of a 4-year battle that we have had to make sure that States that had the foresight, such as Maine, to protect their coasts will continue to have that opportunity even as we move to a national system to also protect the coasts where those States have not had the foresight to do what the people of Maine have had on the books for some 15 years.

I want to just say in conclusion again that I think this is a major step forward. I think we can all be proud that we are finally working toward having a way to protect our coasts and at the same time not interfering with those States that have already taken that action in order to make sure that they can preserve their coastlines, which are so important not only to the heritage of many of the States, but also to our future.

Mr. DAVIS. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time to the gentlewoman from Illinois [Mrs. MARTIN].

Mr. JONES of North Carolina. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time to the gentleman from Pennsylvania [Mr. GRAY], chairman of the Committee on the Budget.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 6 minutes to the distinguished gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Chairman, this is not the most glorious moment in the history of the budget process. I think there are many of us who would look to a very strong reconciliation bill that will be comparable to the $400 billion that we have been able to achieve in the budget process over the last few years and to try in some way to provide a package that is comparable to what we have been able to do in the past; but at best, we have a one-shot effort to try to avoid the ax of Gramm-Rudman.

We are in the last few minutes of this year's budget game. Frankly, we have very little choice left. If we walk off the field now and do not adopt reconciliation, then we are sure to lose the game. Gramm-Rudman would go into effect to the tune of almost $24 billion that would have to be reduced, $12 billion out of defense, $12 billion out of nondefense.

We are looking at cuts in terms of cost-of-living increases.

More importantly, in the defense area, we are looking at a cut of almost 300,000 active duty personnel. There is not anyone here who is prepared to subject the country's security to that kind of a proposal.

So we have to play out these last few minutes and we have to do it with a giant dose of pain killer, of novacaine, and that is what this represents.

Everyone acknowledges that in this package we are not solving the structural problems of the deficit. We know what we have to do to do that. We have got to proceed with serious reductions in spending and we have to proceed with revenue increases. That is where it is at. That has been acknowledged time and time again when it comes to dealing with the deficit issue.

But what has happened? The President has basically walked away from this issue and the Congress has followed. The President has said that we are not going to cut defense, we are not going to raise taxes, and the Congress basically says, "If that is your position, Mr. President, we are not going to cut spending."

It is gridlock, budget gridlock, and it has been that way for the last 5 years and it continues today.

Gramm-Rudman was intended to try to break that budget gridlock. That is the whole point of Gramm-Rudman. It was intended to say to both the President and the Congress, "Get your act together, make your tough choices, or else we will cut everything else across the board."

To the extent that Gramm-Rudman has failed to break that deadlock, Gramm-Rudman has failed, and I am one of those who worked on that proposal and felt hopefully that it would convince both the President and the Congress to act. It failed to do that; so we really do not have any choice today.

The only path we can follow is the path of supporting this reconciliation to avoid an even greater crisis that this country would have to face; but in saying that, I hope all Members will learn some basic lessons today from what we do on reconciliation.

First of all, let us understand that we cannot in the Congress wait for the President to lead on this issue. He is not. If you are waiting next year for this President to suddenly take a lead on revenues, forget it. Not raising revenues has been a centerpiece for this President throughout his administration and he is not about to change next year. The President has basically taken the position that he is not going to put deficit reduction as a No. 1 priority; so we ought not to wait for his leadership. If we are going to move on the deficit, we in the Congress are going to have to do it.

Second, by enacting this package, we are bringing the Nation closer to a real crisis in terms of our deficit situation. Next year we face a target of $108 billion under Gramm-Rudman. By enacting a short-term package in this sense, we face an even tougher situation next year.

The third lesson is this. We are by enacting this package slowly limiting our options even more.

The options for 1988 that we face in the budget for 1988 are one of two. We will either get rid of Gramm-Rudman and the targets that are a part of Gramm-Rudman or we will enact the very tough choices that have to be enacted of adopting revenue increases and reductions totaling anywhere from $60 billion to $70 billion.

We are in that corner now. We have given up the last few easy ways out throgh asset sales and through the other parts that are contained in the reconciliation; so ultimately what Gramm-Rudman failed to do, we may very well be forcing ourselves to do, which is to move on those tough choices.

It does not replace leadership, but ultimately it may force us to take the right action because the public will demand no less.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. Mr. Chairman, I thank the gentlewoman for yielding.

Mr. Chairman, I think my position was made quite clear in the previous debate on the rule which was held earlier this morning, that out of perhaps an overabundance of caution, I want to discuss the issue that I addressed earlier in regard to my amendment.

As I said, the Rules Committee made in order an amendment to be offered by me. I did not ask the Rules Committee to do this for me. This may be an historic moment where a Member received a rule that he did not request. It may be that the Rules Committee is compensating me for all the rules that I did ask for and did not receive, but I do not regard this as a favor, and in my opinion it is not a quid pro quo.

I just learned about the rule when I came to the floor this morning when I saw the briefing sheet. When I took a look at the briefing sheet, I saw that the banking title of the reconciliation bill adds to the deficit by $470 million. This caused me great concern, because I was under the impression that what we were doing in the Banking Committee was sending over a bill which met the deficit reduction targets as outlined in the budget resolution. Because of this, it was my intent to offer an amendment which would reduce the banking title by $470 million and therefore reduce the deficit to the budget reduction figures.

So there will be no misunderstanding, Mr. Chairman, my amendment, which was general in nature, did not specifically refer to the amendment of the gentleman from Illinois reducing the elderly rents or any other program contained in the housing authorization bill.

I do think that I should point out to the members of the committee that in order to meet the budget requirements, the Budget Committee is forcing the Farmers' Home Administration to sell rural housing loans that it holds in its portfolio. This amounts to a fire sale and it is forcing the Farmers' Home Administration to give up assets which it owns and which are valuable, in my opinion.

During the debate on the rule this morning, the esteemed chairman of the Budget Committee brought to my attention with regard to H.R. 1 and its inclusion in the reconciliation bill that because of the rules of the other body, the extraneous legislative material contained in H.R. 1 will be dropped.

For all these reasons, I do not intend to offer the amendment which was made in order by the rule, which I did not request. I think offering the amendment at this time would be a vain thing, and I am not in the habit of doing vain things.

Now, Mr. Chairman, I would like to just say a couple of words about what we had to do in our Banking Committee to meet the targets of the budget process.

With regard to the Government-owned assets, the Banking Committee has few programs from which to choose. Therefore, title III, the Banking Committee's title of H.R. 5300, contains legislation which would require the Farmers' Home Administration to sell loan assets in sufficient amounts to lower the net outlays by $2.4 billion over the next 3 years.

Title III also contains legislation which would require the Export-Import Bank to sell sufficient loan assets to reduce outlays by $2.8 billion in 1987.

The Banking Committee's contribution to reconciliation is almost double the amount that was initially required by the concurrent budget resolution. This action was necessary because of the fact that H.R. 5300 was significantly under what was required to meet the 1987 Gramm-Rudman target and therefore avoid sequestration.

Mr. Chairman, there has been a lot of controversy over achieving deficit reduction by means of selling off Government assets. Some have referred to this as nothing more than a fire sale; that is, selling a portion of the assets of the Nation at the risk of realizing certain losses of the asset itself, its associated future revenues and the discounts that will be required in order to sell it all for a one-time boost in revenues.

I am going to support the reconciliation bill today.

As I said earlier this morning, I support the housing bill which passed the House earlier this year and mention the fact that we did have a good day in the Banking Committee yesterday. We passed the package providing for a FSLIC recapitalization bill, a regulators' bill, a funds availability bill, H.R. 1.

For all these reasons, Mr. Chairman, I do not intend to offer my amendment at the time it is afforded to me.

□ 1520

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 3 minutes to the gentleman from Michigan [Mr. DINGELL], the distinguished chairman of the Committee on Energy and Commerce.

Mr. DINGELL. Mr. Chairman, I thank the distinguished chairman of the Committee on the Budget, and I express my appreciation to him for not only his extraordinary ability in handling this difficult matter, but also his courtesy to me during this debate.

I rise first for purposes of making a statement regarding the legislative history of the Conrail Privatization Act.

On September 17, 1986, the Committee on Energy and Commerce approved the Conrail Privatization Act. In lieu of the committee report, this floor statement that I have with me represents the views of both the chairmen and the ranking minority members of the committee and the subcommittee, the gentleman from New Jersey [Mr. FLORIO]; my distinguished and beloved friend, the gentleman from New York [Mr. LENT], the senior minority member; our dear friend and colleague, the gentleman from Kansas [Mr. WHITTAKER], as well as of our good friend, the gentleman from Illinois [Mr. MADIGAN].

Mr. LENT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New York.

Mr. LENT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, we know that there are many Members of the House who have concerns about how Conrail will deal with shippers, railroads, facilities, and State and local governments after it becomes a private company. I would hope that Conrail will negotiate in good faith to resolve all such concerns. I trust that the chairman shares my concerns, and that we can work together in the appropriate fashion to see that Conrail is properly sensitive to these concerns.

Mr. DINGELL. Mr. Chairman, I thank my dear friend from New York, and I concur fully in his statement. I would expect Conrail, as the gentleman has said, to negotiate in good faith with the parties he has mentioned to resolve these problems. I furthermore add that the committee will interest itself actively in this matter to ensure that Conrail is dealing with these concerns in an appropriate fashion.

Mr. Chairman, I yield back the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I must admit that I am one of the people who is fascinated when I go to a magic show, and I watch that act where the magician comes out and first of all brings an elephant onto the stage and levitates it. Then, after levitating it and so on, in a few moments, proof, the elephant is gone, and so on.

Well, I must say that this whole process reminds me a little bit of that kind of a magic show, and we ought to be just as fascinated by it. The act of levitation was when we brought the budget to the floor. When I go to that magic show, I am always looking for the wires—you know, where do they have the wires on the elephant, and so on. Well, I suppose that I did not look hard enough in this case, because I was one of those who ended up believ-

ing. I saw the levitation and I believed and I voted for the budget, because I really thought that this was something that was real.

Now I find out when we get the reconciliation package out here on the floor that in fact it was just another illusion, because the reconciliation package has absolutely nothing to do with the budget. What we have done is found about $15 billion, and poof, it is gone. Here it is out here in language and so on that everybody could understand.

How did we get it to go away? Well, we took some spending that was supposed to be made in 1987 and we moved it back into 1986, so that the $230 billion deficit we had in 1986 becomes a $231 billion deficit. That does not make any difference, good heavens, and so on, it just adds on to the $2 trillion deficit that we have. Our kids will pay for it anyway, and so on, but it does not show up in 1987.

Using that kind of logic, we could balance this budget. All we would have to do is take the whole defense budget out of 1987, bring it back and put it in 1986—of course, it would make the 1986 deficit about $500 billion, but who cares, that is by now, and so on—and we would have a balanced budget in 1987. We could all go home and we could campaign on the idea that, by golly, we had balanced the budget.

This is the kind of illusion that we are dealing with out here. It is a magic act. It should not be taken seriously. We ought to kill this bill right now; we ought to just vote it down.

Mrs. MARTIN of Illinois. Mr. Chairman, will the gentleman yield?

Mr. WALKER. I yield to the gentlewoman from Illinois.

Mrs. MARTIN of Illinois. Mr. Chairman, I just want the gentleman to know he should not give up in terms of the defense budget; we are not back with the conference report yet.

Mr. WALKER. We have another elephant coming? I am pleased.

Mr. GRAY of Pennsylvania. Mr. Chairman, I yield 1½ minutes to the gentleman from Tennessee [Mr. FORD], a member of the Committee on Ways and Means.

Mr. FORD of Tennessee. Mr. Chairman, I rise in support of H.R. 5300, and I would like to commend the chairman of the Committee on Ways and Means, the gentleman from Illinois [Mr. ROSTENKOWSKI], also for his leadership in bringing in the title X section of H.R. 5300 that is before us today.

I am especially pleased that title X of the bill includes provisions requiring that all States implement the AFDC unemployed parent program. Today in half the States a father must leave his home in order to support his family in order for them to receive AFDC benefits. It should come as no surprise that this policy encourages family breakup. What continues to surprise me, however, is the Reagan administration's opposition to this policy. The President has repeatedly stressed his profamily agenda and often alluded to the welfare policies that encourage the breakup of the family.

We have taken the President at his word. We have identified the single most notorious antifamily welfare policy, and we propose to eliminate it in the reconciliation provision that was reported by the Ways and Means Committee.

If the President means what he says, then he will support this bill, including the AFDC-UP program. After all, it gives him the best of both worlds. It gives him profamily, and also antideficits.

Mr. Chairman, we urge our colleagues to vote for H.R. 5300.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Chairman, I rise in opposition to this package designated "reconciliation." One would think that when we in the Congress have to face the reality of finding ways to reduce the deficit, most Americans would say, "Well, cut spending."

That is not true. What this package proposes to do is kind of like when the family gets together and discusses that they do not have enough money to run their household budget, and somebody suggests, "Well, let's sell off the kitchen, or how about the bedroom."

"How can we live if we do that?"

"Who cares about that? At least we'll get by this budget crisis for this year."

That is what we propose to say in this reconciliation package: $15 billion-plus of alleged savings comes about from selling the kitchen or the bathroom or the bedroom of the house, $8.7 billion. What is most distasteful and reprehensible in this whole process of reconciliation is that we still see Members of the House using the reconciliation process as a vehicle for adding new programs for which no authorization exists. In this reconciliation package it totals a little over $3 billion. Never should we be putting our stamp of approval on that kind of a process.

In terms of cuts there is $1.876 billion of cuts in this bill. I commend the courage of those who developed it at least for that much. In case Members are wondering where we can find ways to cut more, I have a list of $26 billion in spending cuts that are identified, a compilation of recommendations of the Grace Commission, the Heritage Foundation, and the General Accounting Office.

The only thing that we need around here is people with the guts to vote to do it. We do not have this in the 99th Congress, and in November 1986 I hope that the American people will make a judgment as to who they want to show up around here in organizing the 100th Congress.

□ 1530

Mr. LOWRY of Washington. Mr. Chairman, I yield 3 minutes to the gentleman from Arizona [Mr. UDALL], the chairman of the Committee on Interior and Insular Affairs.

Mr. UDALL. Mr. Chairman, the Constitution assigns the Congress broad responsibilities regarding our insular areas. Because their 3.5 million Americans do not have influence over the decisions we make that affect them equal to that of their fellow Americans, we have a special obligation to carefully consider the impact of all legislation upon the territories and commonwealths.

The Committee on Interior and Insular Affairs has broad jurisdiction over matters affecting our territories and commonwealths. Because almost all matters affect them, this jurisdiction is shared with other committees of the House.

The circumstances of our Caribbean and Pacific insular areas are often different from the rest of the Nation. Because this means that their needs are also unique, they must be specially treated in most legislation.

I am concerned that several provisions of this legislation were developed without consultation with the Committee on Interior and Insular Affairs or our colleagues from the U.S. insular areas. I hope that the unique needs of the territories and commonwealths can be adequately addressed in the conference on budget reconciliation so that serious adverse consequences for insular America do not result.

Two provisions of concern would impose new fees on port and customs use. The economies and consumers of the insular areas would be negatively and disproportionately impacted in comparison to the rest of the Nation because they are small, disparate, distant from supplies and markets, have limited resources, import most consumer goods, export most of their products to the United States, have higher costs of living and doing business than elsewhere in the Nation, and have per capita incomes which are far lower.

The port use fee provision exempts the insular areas from the new levy for goods shipped from the United States to the islands but imposes it on goods shipped from them to the United States. This will yet further handicap their industrial development and should be a priority concern accommodated through a broader exemption.

The customs user fee provision includes no special treatment for the insular areas and would affect some dif-

ferently than others, since Puerto Rico is within the United States for customs purposes; American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands are outside U.S. customs territory; and Samoa and the Marianas enforce their own customs laws. Consumer costs, which are already high, and manufacturing, which is not at a high enough level, would be more adversely affected in the insular areas than in the States.

For example, according to our colleague Jaime Fuster, the customs user fee would add $21 million to consumer costs in Puerto Rico, given 1985 imports. Further, the commonwealth is three times as dependent upon inports than is the Nation as a whole.

Our colleagues Fofo Sunia of American Samoa and Ben Biaz of Guam, have pointed out the problems that these fees would create for the important tuna and textile industries in their territories.

The territories receive necessary preferences in tariff treatment—since they are members of the American political family—and something similar is needed in this situation—because of the unique impacts. Additionally, a fundamental element of the Federal fiscal relationship with insular areas is that they are either exempted from Federal revenue provisions or receive the proceeds of Federal collections. This principle should be maintained.

A third provision of concern would require that all States provide Aid to Families with Dependent Children (AFDC) benefits to needy two-parent families in which the principal earner is unemployed and apply this requirement to the U.S. insular areas. I support such application because the need for these benefits in the insular areas is the same as the need for the benefits in the States.

AFDC and related Medicaid assistance to the territories and commonwealths, however, is subject to amount limitations that supersede the Federal share of the costs of the programs. There are, of course, no similar "caps" on Federal payments under the programs to the States.

Because the current insular caps are well below even current program costs, the insular governments would have to pay all costs of the additional benefits which would be required by the bill—as much as $19 million by fiscal year 1979, according to the Congressional Budget Office. Since most of these costs in the States would be paid by the Federal Government, the inequitable treatment of the territories and commonwealths in the AFDC and Medicaid programs would be made worse.

So that further inequities are not unintentionally created by this legislation, I urge that the provision be amended in conference to exempt the costs of the additional benefits from the caps on AFDC and Medicaid assistance to the territories and commonwealths. Our senior insular colleague, Ron de Lugo of the Virgin Islands, has already discussed the need to do this with Chairman Ford of the Subcommittee on Public Assistance and Unemployment Compensation.

The bipartisan leadership of the Committee on Interior and Insular Affairs stands ready to work with the conferees on the concerns that I have identified. We and the insular representatives regard it as important that they be adequately addressed.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Chairman, the provision in H.R. 5300, the Omnibus Reconciliation Act of 1986, that establishes a 0.5-percent user fee on all formal entries of merchandise is a thinly disguised and ill-advised revenue raising device.

This fee is GATT illegal on its face and in its effect, and cannot be justified as a "user fee." The amount raised by this new tariff, in effect, is about $1.8 billion. This amount far exceeds any fee that can be correlated to expenses of the Customs Services in processing imported goods.

In order to be GATT compatible, any customs user fee must be associated with costs of services provided to process imports. Article VIII of the GATT states that—

All fees and charges of whatever character imposed * * * in connection with importation or exportation be limited * * * to the approximate cost of services rendered and *shall not represent an indirect protection to domestic products or a taxation * * * for fiscal purposes.*

Under the GATT, countries have also agreed to attempt to reduce the number and diversity of such user fees.

For fiscal year 1986, the entire budget for all programs of the Customs Service was about $717 million including all administrative and personnel costs, drug interdiction, air program, computer processing of customs documentation and import data. Because of expanded drug enforcement efforts, the total customs budget for fiscal year 1987 should exceed $900 million. However, this so-called user fee raises $1.8 billion—far in excess of the costs associated with the "service" provided in processing imported goods.

Although the level of the fee seems small, in effect this fee increases the overall amount of tariffs collected by about 15 percent. In calendar year 1985, for example, about $13 billion in tariffs were collected on about 7 million formal entries. For individual imported products where duties are low or the value of products high, the total amount of the fee could be extensive and far in excess of the cost associated with clearing the particular product through customs and collecting any duties.

This user fee would apply to all duty-free products and preferential products under the generalized System of Preferences [GSP] for developing countries, Caribbean Basin Initiative and the Israel-United States Free Trade Zone Agreement. Under these programs and agreements, including those items that are bound at duty free under earlier MTN rounds, the United States is obligated to maintain duty-free treatment. In some cases we would owe compensation for applying an additional revenue-raising fee or tariff, even though we have attempted to name it a user fee.

Finally, this fee is a direct and blatant violation of the standstill and rollback provisions of the agreement reached just a few days ago in Punta del Este, Uruguay kicking off the new round of multilateral trade negotiations. The United States and about 90 other nations agreed, during the period of negotiation, not to impose any further barriers outside GATT rules or auspices and to eliminate any such existing practices that violate GATT as soon as possible. Otherwise, further negotiations to establish trade disciplines and open markets becomes meaningless as countries engage in unilateral one-upmanship such as this fee.

I hope we are more committed to a successful MTN, to an effective trade policy, and to the integrity of the United States in meeting its obligations than this new fee or tariff suggests. The administration strongly opposes such a fee. Our trading partners have already made representations to our Government against this provision. I hope it can be dropped in conference.

Mr. LEATH of Texas. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, two sentences really stood out in this week's Congressional Quarterly article about this reconciliation bill: First, the package would pare $13 billion to $15 billion from the fiscal 1987 deficit; and second, neither the House nor Senate package would contain any significant increases in taxes or cuts in Federal spending.

Will someone please explain to me how we can reduce the deficit by $15 billion without any significant cuts in spending or increases in revenue?

Even if we are saved from sequestration, we are not making an honest projection of the fiscal year 1987 deficit.

Since no fiscal year 1987 appropriations bills have been enacted into law, the Gramm-Rudman-Hollings base level, against which these reconciliation savings will be computed for the

purpose of avoiding sequestration, is based on fiscal year 1986 appropriations levels. In other words, this base level deficit projection, unlike the regular CBO and OMB baselines, is not based on extending current services into the future.

The Gramm-Rudman-Hollings base level assumes that fiscal year 1987 outlays will be virtually unchanged from fiscal year 1986 levels and that revenues will increase by an incredible $60 billion. As our friend and colleague, HARRIS FAWELL, has pointed out in his excellent "Dear Colleague," 1986 revenues grew only by $31 billion and outlays have grown over $50 billion a year for the last 6 years. Federal spending has grown in each of the last 21 years. To me, this sounds like a formula, not for coming anywhere close to meeting our Gramm-Rudman-Hollings target for 1987, but missing it by as much as $70 billion.

If the fiscal year 1987 deficit does, indeed, come in at $70 billion over what we tell the public it is going to be, how are we going to explain that to our constituents back home a year from now?

Even the fiscal year 1987 numbers are defective and we will be relying on the tax reform bill to save us from sequestration.

One other thing worth remembering is how we arrived at the goal of reducing the deficit by $13 to $15 billion in this bill. We are trying to get under the $154 billion Gramm-Rudman-Hollings "trigger." The August 20 "snapshot" said we needed to find $9.4 billion in savings to do that. But that $9.4 billion figure is the average of CBO and OMB estimates. Their individual estimates differed significantly. The GAO has already said the joint estimate was too low.

Taking the CBO figure alone, we would have to cut $16.6 billion to avoid sequestration. Most Members today seem to agree, which is why this bill calls for $15 billion in savings, not $9.4 billion.

But these figures also imply that Congress will be depending on the tax reform bill to carry us the rest of the way below the trigger and provide about a $9 billion cushion.

PROBLEMS WITH ASSET SALES

This bill calls for $7 billion in asset sales. As a practical matter, the Government probably should sell some assets and keep others. A smart business person is one that knows what lines of business he or she shouldn't be in. But I'm not going to discuss the merits of selling assets. These sales do not constitute $7 billion in deficit reduction, unless we can sell that same $7 billion in assets next year and the year after.

It's bad enough that selling assets reduces the defict only for 1987 and only from a cash-flow point of view. What's worse is that some of this year's asset sales will increase the deficit in future years, as the Government forgoes principal and interest repayments. For example, this year's $850 million "saving" from selling SBA loans may be offset by $1.4 billion losses from future foregone revenues. CBO says that, in the long run, the prepayment of REA loans will cost almost $2 billion. And CBO says that selling Ex-Im Bank loans will cost $543 million by 1991.

False savings this year mean big problems for fiscal year 1988 budgeting.

We are scrambling to get the deficit projection under the Gramm-Rudman-Hollings trigger of $154 billion, at least on paper. But if we do that without real spending reductions or revenue increases, what is going to happen next year?

The deficit target for fiscal year 1988 is only $108 billion. If we don't enact real deficit reductions this year, then next year will be still tougher. Even if the fiscal year 1987 deficit does come in under $154 billion—which I doubt—we will still have to cut spending and raise revenue to reduce the deficit another $46 billion to meet the 1988 target. Because the asset sales in this bill will reduce the deficit only technically and only for 1987, we are going to have to cut spending and raise revenues by another $7 billion next year. And if we pass the tax reform bill—which I hope we do not and think we might not—we will add another $17 billion to the fiscal year 1988 deficit giving us at least $70 billion to cut between now and 1988.

As it is, we will probably have to cut still more: The CBO baseline deficit projection for fiscal year 1988 is already $150 billion and this year's deficit is already approaching $230 billion. The longer we wait, the more painful it is going to be for everyone.

This bill is not honest deficit reduction.

It's been said, if you just tell the truth, you don't have to remember all the stories you've told folks. The same rule applies to truth-in-budgeting. This reconciliation bill is not honest deficit reduction. Some of us will go home and tell our constituents that the House voted for $15 billion in deficit reductions. But a year from now, they're going to wonder why the 1987 deficit is $180 billion or $200 billion or more, instead of the $154 billion this bill promises.

Other problems with the reconciliation bill.

Lowering the fiscal year 1987 deficit by shifting $680 million in revenue sharing payments from October to September and trying to hide it in an already staggering 1986 deficit is pure chicanery. Overall debt will still go up by the same amount—and even more since the Government will begin paying interest on borrowing that $680 million even sooner.

The bill unravels an earlier compromise this Congress passed in 1983 to stabilize the Social Security system. Under the 1983 rescue, there would be no cost-of-living adjustment when inflation is less than 3 percent. Yet, by incorporating a COLA at a lower inflation level, the bill spends $808 million more than would be spent under current law.

There is new spending in the bill and authorizing language that does not have anything to do with the budget reconciliation process. The whole text of H.R. 1, a multibillion-dollar housing authorization will be incorporated. If this trend continues, soon Congress will be passing only two bills every year: A continuing resolution to appropriate funds for the entire Government and a reconciliation bill to authorize the whole Government.

The rule contains the usual waivers of all points of order against the bill. One wonders why we even bother maintaining the fiction of this House having rules if, on legislation as far-ranging and major as this, we continue to have more exceptions than rules.

No, you can't have it all.

Contrary to what the well known commercial says, we can't have it all: Guns, butter, low taxes, and real deficit reduction. At least one of those items has to give. Preferably, all three; guns, butter, and revenues should give some. Instead of fooling ourselves and misleading our constituents with promises that we can have it all, we need to acknowledge that the right tune for the times is you can't always get what you want.

Our constituents do want us to make the hard choices.

I voted last year for the Leath-Slattery-MacKay budget amendment that would have frozen all spending, including defense and entitlements, and except for programs for the neediest poor. The year before that I voted for the Roemer-Stenholm-Montgomery budget amendment that would have cut all indexing—for entitlements and taxes—to CPI minus 2 percent. I went from having one reelection opponent to none. Other Members of this body have had similar experiences. To me, that says that our constituents want us to make the hard choices; that they will understand if deficit reduction involves pain, as long as that pain is spread equitably and across the board.

I don't know why my constituents should be much different from those in any other district. When I go home and go to town meetings and discuss what's in the Federal budget and what options are available, my constituents tell me they are willing to see entitlement growth restrained; they are willing to see defense growth restrained; they are willing to see revenues raised

a little if that is accompanied by spending cuts.

It's been said that elected officials overestimate how much information the average voter has and underestimate how much wisdom he or she has. If we are honest with out constituents about what it will really take to balance the budget, they will support real deficit reduction.

Mrs. MARTIN of Illinois. Mr. Chairman, I reserve the balance of my time.

Mr. LEATH of Texas. Mr. Chairman, I ask unanimous consent that 5 minutes of the time remaining on each side be reserved until after the disposition of all amendments and before the Committee rises.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. PURSELL. Mr. Chairman, I would like to associate myself with the comments of my friend and colleague from Michigan, Mr. DAVIS, with regard to a provision in H.R. 5300, the Omnibus Budget Reconciliation Act, that reduces the Medicare reimbursement fee for cataract surgery.

Mr. Chairman, I support H.R. 5300 with the understanding that the cataract surgery reimbursement provision included in this legislation will be changed in conference so that these Medicare reductions are distributed more equitably among the States.

The issue is not whether to cut reimbursement payments for cataract surgery but the inequity of the formula used to determine these reductions. As written, the bill sets an upper limit on the prevailing charge for cataract removal with lens implantation at 110 percent of the prevailing charge for removal without implantation.

The result is that some States are singled out for enormous reductions in their Medicare payments while others feel very little impact. Under the proposal, Michigan physicians stand to lose an average of 51 percent per case in payments for cataract surgery while those in California would lose only 7 percent.

I support a proposal that more evenly distributes the impact of reductions in cataract surgery payments among the States and reiterate that my support for this legislation is conditioned on a conference change in this unfair and inequitable provision.

Mr. DAVIS. Mr. Chairman, I would like to associate myself with the remarks of my colleague from Michigan, Mr. PURSELL.

I will vote for the omnibus budget reconciliation, but I do so with the understanding that a provision concerning Medicare reimbursement for cataract surgery will be substantially improved in conference with the other body.

This provision is nothing but punitive in its treatment of opthalmologists. It singles out this medical specialty for deep reductions in Medicare payments. Not only does this provision unfairly target this profession, it will result in dramatic disparities in payment amounts for identical services provided in different States. The issue is not whether to cut the cataract reimbursement, but the inequity of this method.

This provision is unrealistic because it attempts to base surgical fee reductions on an outmoded procedure. The outmoded procedure is extraction of the cataract without implanting an intraocular lens. Today, in 95 percent of the cases, cataract surgery is performed with the implanted lens. Statistically, there are too few cataract surgeries performed using the old procedure to develop a valid baseline. The inequity of basing current payments on an outmoded procedure is illustrated in the wide range of State-by-State reductions in Medicare payments that will result. For example, Michigan opthalmologists will be forced to bear a 51-percent payment cut for cataract surgery while another State's opthalmologists' reimbursements will be reduced by only 5 percent. Clearly, this is not fair.

It is important to stress that there is no valid reason for opthalmologists in certain States being targeted for massive cataract reimbursement cuts. The quality, efficiency, and type of cataract surgeries performed in these States are identical to those in States which benefit from negligible cuts. The cause of this problem is a statistical aboration, and one which can be easily corrected with an across-the-board percentage reduction nationwide.

I have been assured that when the budget reconciliation goes to conference, a more equitable fee reduction plan will be adopted. My vote supporting the conference report is by no means assured without the correction of this glaring inequity.

Mr. HENRY. Mr. Chairman, the process by which today's budget reconciliation bill has come to the floor has lately come in for widespread—and well-deserved—criticism. A process which was supposed to allow the necessary cuts in Federal programs to comply with the budget resolution has become the main, and nearly sole, vehicle for programmatic changes in Government programs. In one bill, and in one vote, we are asked to approve or disapprove of changes ranging from revising the reimbursement formulas for doctors and hospitals under the Medicare and Medicaid programs to "Buy American" requirements for offshore oil rigs.

There are a number of programmatic changes in the bill which I support—such things as increases for physician and hospital rates under Medicare, the AFDC–UP provision, the improved waiver authority for community-based services for the mentally ill under Medicaid—section 2176 waivers. And the bill is, in my view, still preferable to the disruption of sequestration.

On the other hand, the bill does not meet our responsibility, in my view, for deficit reduction. I am also strongly opposed to the inclusion of the State health risk pools provision in this budget reconciliation bill. It is a purposely vague attempt at establishing what has been described accurately as a "patchwork quilt of national health insurance"—paid for by the employer community. While we obviously have a pressing problem in the number of persons who do not have health insurance coverage, this "solution" is both dishonest in shifting this hidden cost to the business community, and shortsighted in encouraging the very problem we are attempting to resolve.

Mr. FORD of Michigan. Mr. Chairman, I rise to explain title VII of the Omnibus Reconciliation Act of 1986, which represents a diligent effort on the part of the Committee on Post Office and Civil Service to meet this year's reconciliation directive.

I am indeed satisfied that our committee's recommendations satisfy the reconciliation directive.

This year, I am happy to say, the reconciliation burden does not fall as heavily as it has in past years on Federal employees who were asked to provide more than their fair share of the effort to reduce our horrendous budget deficits.

The reconciliation recommendations of the Committee on Post Office and Civil Service, which are included in the matter before us, are in two areas: First, participation in the Federal Employees Thrift Savings Plan; and second, computation of the postal revenue forgone appropriation. These recommendations were approved by a bipartisan vote of 22 to 0 and substantially achieve the savings required by the concurrent resolution on the budget.

ACCELERATE PARTICIPATION IN THRIFT SAVINGS PLAN

This recommendation would permit employees covered by the Civil Service Retirement System [CSRS] to begin contributing to the Thrift Savings Plan established by the Federal Employees' Retirement System Act of 1986 in January 1987 rather than July 1987. As a result, those employees who choose to participate in the thrift savings plan would have 6 additional months during fiscal year 1987 during which contributions would be withheld from their pay and invested on budget under the plan.

The Federal Retirement System Act of 1986 establishes a three-tier retirement program for those Federal employees covered by Social Security. The three tiers are: First, Social Security; second, a defined benefit pension plan; and third, a tax-deferred thrift savings plan similar to 401(k) plans common in the private sector. Under the thrift savings plan, an employee may contribute to the plan, and thereby shelter from taxation, up to 10 percent of salary each pay period. The Government matches up to 5 percent of the employee's contribution. Under the act, the new retirement program commences in January 1987 at which time those employees covered by the new program may begin contributing to the thrift savings plan.

The act also permits those employees covered under the Civil Service Retirement System to participate in the tax-deferred thrift plan with certain qualifications. The qualifications are: An employee may contribute only up to 5 percent of pay each pay period; employee contributions are not matched by the Government; employee contributions may be invested only in Government securities; and an employee may not begin to contribute until July 1, 1987.

The reconciliation recommendation would permit employees under the CSRS to begin contributing to the tax-deferred thrift plan in January 1987. This is the same time employees under the new plan are permitted to begin making contributions and will provide an additional 6 months during which the affected employees may enjoy the benefits of the tax-deferred savings plan. The other qualifications

for CSRS employee participation are unaffected. Similarly, the provisions of the act relating to the 6-month "open season" during which employees may switch from the CSRS to the new program are unaffected.

REVISE METHOD FOR COMPUTING REVENUE FORGONE APPROPRIATION

This provision implements one of the recommendations of the Postal Rate Commission from the June 18, 1986, report on its preferred rate study, which was required by the Consolidated Omnibus Budget Reconciliation Act of 1985. This recommendation revises the method for computing the amount of the revenue forgone appropriation for reduce-rate mail. Called the equal markup method, it defines the amount to be appropriated in terms of a percentage markup over the attributable cost level that determines the reduced postage rates which the mailers of reduced-rate mail have to pay. Each of the reduced-rate categories will have the same percentage markup over attributable costs as is set for the most closely corresponding regular-rate category in postal rate proceedings, in order to help cover the institutional costs of the postal system. Through the revenue forgone appropriation, the Federal Treasury will then bear the same percentage contribution to institutional costs as regular ratepayers are require to pay for the same general type of mail.

Because all of the institutional costs of the postal system must be paid by someone, any reduction in the portion to be paid from appropriations inevitably affects the postage rates which must be charged to other kinds of mail. There can be no saving for the Government as a whole until postage rates in general are adjusted to reflect the revised methodology for determining how much should be received from appropriations. Accordingly, the revised methodology will be introduced in conjunction with the next general rate adjustment, but for appropriation purposes will take effect not later than January 1, 1989.

Enactment of this provision will result in savings of approximately $200 million in fiscal year 1989.

Mr. HOWARD. Mr. Chairman. The budget is dishonest. Some have even characterized it as a "Mickey Mouse system." Whatever, as an accounting technique, it is wrought with inequities and deceptions which, when all is said and done, serve to victimize the American people.

Nowhere in the entire hodgepodge of the budget is this better demonstrated than by the current treatment of the so-called transportation trust funds—the highway, transit, aviation, and inland waterways trust funds.

These funds are self-supporting and financed by fees paid by the users of these transportation systems. Under the law, they are dedicated solely for transportation improvements. However, the balances in these funds have been used to make the Federal deficit appear smaller. Current practice allows this by permitting the President and the Congress to "cook the books."

Who suffer? The American people and the quality of life afforded them; needed infrastructure projects; and our Nation's overall long-term economic growth.

Recognizing this, I, along with a number of my colleagues, have labored long and hard to get these trust funds removed from the unified budget. As some have said, it is not right to count such user-fee receipts against the Federal budget deficit.

Most recently, in H.R. 5300, the Omnibus Reconciliation Act of 1986, language was included which would achieve this end. But, as in the past, the committee's efforts have been thwarted. Not, I might add, by a vote of the House but by action taken by the Rules Committee which provides that in adopting the rule on H.R. 5300, the off-budget language would be automatically deleted.

Regardless, I think it is important that we understand what the issue really is. Taking the transportation trust funds off budget is not a Public Works Committee issue. It is an "American people's" issue. As such, it should transcend politics and committee jurisdictions. The focus should be on the American people and not Congress, for it is they, not the institution, who are being victimized.

No doubt people have argued that taking the transportation trust funds off budget will result in greater cuts in other transportation programs; that doing so will result in drastic increases in across-the-board cuts under Gramm-Rudman; and that this would set a precedent for taking other trust funds off budget.

At the least, these assertions are exaggerations; at the most, they are wrong.

Taking the transportation trust funds off budget—

Does not necessarily result in cuts in other transportation programs—just like taking Social Security off budget last year did not result in automatic cuts this year in other income security programs;

Does not result in drastic increases in across-the-board cuts under Gramm-Rudman—CBO estimates only one-tenth of 1 percent;

Does not give higher spending priority to transportation at the expense of other programs—over 100 safety net programs exempt from Gramm-Rudman would not be affected;

Does not eliminate annual congressional oversight or controls—that is, authorizations and appropriations;

Does not set a precedent for other trust funds—we are not simply talking about trust funds but user-fee financed trust funds whose programs receive no general fund appropriations. Other than Social Security, the transportation trust funds are the only ones that fit this definition; and

Does not alter the role or responsibility of the Appropriations and Ways and Means Committees—to set ceilings and taxes.

This is not budget gimmickry. It will not open the flood gates. And, it is not a question of "haves" and "have nots."

Regardless of what happens today, I remain committed to this issue. Taking the transportation trust funds off budget is good public policy based upon truth in budgeting. Unfortunately, we are dealing with a dishonest budget.

Mr. FIELDS. Mr. Chairman, I rise in strong support of the Panama Canal interest provision which is contained within title VI of H.R. 5300.

This provision, which I authored, was adopted by the House Merchant Marine and Fisheries Committee and will raise, according to the Congressional Budget Office, some $9 million in fiscal year 1987, $6 million in fiscal year 1988, and $5 million in fiscal year thereafter.

I would like to briefly share with my colleagues the justification and need for this proposal.

As some of my colleagues may recall, last year we adopted and the President signed into law a bill which directed that the interest payment on our original investment in Panama Canal be paid directly into the General Fund of the U.S. Treasury and not the Panama Canal Commission Fund.

This proposal was necessary because of some ambiguous language contained within the Panama Canal Act of 1979 which caused the diversion of some $62 million in U.S. taxpaye funds between October 1, 1979, and December 31, 1985.

While this legislation could have simply transferred the $62 million and all future interest payments to the U.S. Treasury, the bill was drafted so that it affected only prospective interest payments.

As the author of Public Law 99-195, I chose not to seek a transfer of the $62 million because these funds are needed by the Panama Canal Commission in order to avoid a serious cash-flow shortage at the beginning of each fiscal year.

With the problem of all future interest payments now successfully resolved, H.R. 5300 addresses a key remaining issue involving the level of our investment in the canal upon which our interest payments are calculated.

The language contained in subtitle E of title VI would raise the principal on our investment in the canal to the level where it should have been had no interest funds been previously diverted.

With the enactment of this provision, the Department of the Treasury would be authorized to add the $62 million that is deposited in the Panama Canal Commission Fund to the level of our principal investment, which is $75.1 million, and to calculate our yearly interest payment by multiplying that figure by the prevailing interest rate of 9.3 percent. By so doing, you arrive at the savings calculated by CBO which represents some $20 million in U.S. taypayer funds for just the next 3 fiscal years alone.

Let me emphasize, however, that this amendment does not transfer the $62 million to the General Fund of the U.S. Treasury. While I am sure that some of my colleagues would support such an effort, I have once again decided not to seek a transfer of those funds because such an action would have an adverse and negative impact on the operational requirements of the Panama Canal Commission.

While some may argue that this proposal may cause the Commission some financial anxieties, I would emphasize to my colleagues that at the end of July, with only 2 months left in the fiscal year, the Commission had accumulated an operational surplus of $10.3 million. Without this provision, the Republic of Panama will receive a huge and substantial profit payment for fiscal year 1986. This profit payment is the result of language contained within title XIII of the Panama Canal Treaty of

1977 which requires that any Panama Canal Commission revenues which exceed expenditures must be paid to the Government of Panama.

While I have no desire to damage our longstanding relationship with the Republic of Panama, there is no debate or controversy among the members of the House Merchant Marine and Fisheries Committee over the fact that these interest payments on our investment in the canal should be properly paid and deposited in our U.S. Treasury.

Finally, Mr. Chairman, since there is no dispute over the legitimacy of our claim to these interest payments, I would like to address the impact of this proposal on the operational budget of the Panama Canal Commission.

I would say to my colleagues that there are four important reasons why this proposal will not cause any cash flow problems for the Panama Canal Commission. These are:

First, the President has signed into law legislation I sponsored which permanently exempts the Panama Canal Commission from the enforcement provisions of the Gramm-Rudman-Hollings law. Without this exemption, the Commission would have had its operational budget reduced by $18.3 million in fiscal year 1986 alone. These funds are now available for their use.

Second, the Panama Canal Commission received earlier this year some $17.1 million in funds from the fiscal year 1986 supplemental appropriation bill.

Third, the Commission has, and will continue to have, access to the $62 million in interest funds that accumulated between October 1, 1979, and December 31, 1985.

And, fourth, the Commission continues to utilize some $85.6 million in U.S. taxpayer money which was appropriated to that agency in 1979. While the Commission has repaid some $378 million from its original appropriation, $85.6 million is still outstanding at this time.

Mr. Chairman, I would urge my colleagues to support the committee's position on this proposal which will raise over $20 million for the U.S. Treasury by restoring the proper level of our investment in the Panama Canal.

Thank you, Mr. Chairman.

Mr. ROYBAL. Mr. Chairman, today we have before us a bill containing changes to Medicare and Medicaid—programs essential to the health and well-being of millions of elderly and poor. Several signfiicant initiatives deserve your support, especially the two Medicaid provisions relating to the elderly and children. I have personally pushed two other key changes—holding down Medicare's deductible and upgrading Medicare's quality assurance system.

For 2 years, I have been pushing Congress to constrain Medicare's deductibles and coinsurance. I am pleased that this bill will constrain Medicare's 1987 hospital deductible and nursing home coinsurance. Instead of rising to an outrageous $572 in 1987, the deductible would be held to $500, an increase which approximates the increase in the elderly's Social Security COLA. I believe we should have made this linkage to the COLA a permanent fixture, but that will have to apparently wait until next year.

On a second front, I launched an effort in 1985 to upgrade Medicare quality assurance. Today we can take a significant step forward in this effort by passing the quality assurance provisions in this bill. Reconciliation contains several improvements which are contained in my quality assurance bills, H.R. 1870 and H.R. 4330. They deserve your strong support.

Again, I believe we need to go much further in the quality area. We must increase the emphasis on quality assurance, expand review to all types of providers, open consumer hotlines, add consumer advisory boards, and create a national quality assurance council. A special area of concern is the absence of quality assurance for care in the home. As for nursing home and home care access, we need to set up a prior authorization system for nursing home and home health care, to have intermediaries be more accurate and uniform, take into account "medical necessity" and "practical matter considerations," and to build the PRO into the appeals process. I would hope that these issues will be part of next year's legislative effort.

I strongly urge your support of the intiatives to improve Medicaid, and to constrain Medicare's deductible and upgrade its quality assurance.

Mr. FAZIO. Mr. Chairman, I rise in support of the reconciliation package, and I urge my colleagues to vote in favor of this measure.

Everyone is aware of the problems associated with the huge and growing deficit. The public declares it to be the No. 1 economic problem. Economists of all persuasions tell us it is not possible to "grow" our way out of the deficit, and if we don't act to reduce it in a reasonable way, we will throw the economy into a recession.

Cutting spending is a difficult process. That is because every program affects individuals. Politicians at the local, State and Federal level talk of the shortage of funds for our infrastructure programs, for the poor and the aged and the list goes on. Whether we are talking about funding a submarine which increases the employment base of an area, or funds to bolster the number of air traffic controllers, tax dollars raised and spent directly or indirectly impact people.

On the other hand it is easy to talk about the problem of the deficit. On the other, it is just as easy to defend program "X" and program "Y." It is also easy to blame the deficit on this policy or that spending program or that tax break. It is not easy to take the action we are being called upon to do today. But we weren't elected to find the easy way out. We were elected to make the hard choices.

We passed our budget resolution earlier this year. Reconciliation is a major part of implementing that resolution. Granted, the reconciliation bill before us is not perfect and no one is claiming it is. What we are saying is the time for rhetoric is over and the time for action is upon us. If we fail to fulfill our responsibilities today, the Gramm-Rudman machine of mindless cuts will take over. Responsible action is needed. I urge you to vote yes.

Mr. DASCHLE. Mr. Chairman, I am deeply troubled by the shift of attention in this measure away from the unique needs of rural hospitals. Rural America is in a state of economic crisis. Crop prices are at depression levels. Land prices have plummeted. And we are seeing record numbers of bankruptcies and foreclosures among farmers. Small businessmen, dependent for survival on a vital farm economy, are closing their doors. My fear is that we soon will see rural hospitals, hit hard by the effects of a depressed rural economy, forced to close their doors as well. This would be a tragedy.

The administration has told hospitals they will only receive a 0.5-percent increase in PPS payments next year, well below the market basket. The measure before us does slightly better, but not enough to meet the rising costs to rural hospitals, which are particularly affected by the PPS rate deficiency because they have a consistently higher Medicare population than their urban counterpart.

The smallest rural hospitals are experiencing a dramatic 12-percent negative patient margin. Hospitals with fewer than 50 beds, 85 percent of which are rural, suffered a negative net patient margin in 1986. I know of several small hospitals in South Dakota which, financially, cannot hold on much longer.

I cannot emphasize enough the serious effect hospital closures would have on my State. South Dakota is a medically underserved area where it is common for patients to travel long distances to the nearest hospital. If the smallest of these hospitals were forced to shut down, it would have tragic human consequences. These institutions desperately need an adequate reimbursement rate under Medicare.

I share the commitment of this administration and the Congress to halt deficit spending. Such commitment, I know, translates into fewer dollars for health care and intense competition within the health care industry for those dollars. Unfortunately, the small rural hospital, which has high Medicare and indigent care populations, has gotten the short end of the stick.

The Senate reconciliation bill calls for a 1.3-percent increase in the PPS rate. While this is less than adequate for the struggling rural hospital, it is better than the 1 percent which the House bill allows.

This administration has ignored rural health care. When the cuts have to be made, the White House would rather ask the elderly or the disadvantaged to bear the burden—never the Defense Department. The Congress has the opportunity to do something positive on this issue by providing a realistic and fair PPS rate for rural hospitals. I urge the House conferees to consider the unique financial needs of rural hospitals when the issue of PPS rates is addressed in conference.

Mr. WALGREN. Mr. Chairman, I urge support of the budget reconciliation bill of 1986. This bill, with all its limitations, reduces the Federal deficit to meet the 1987 Gramm-Rudman target by cutting the deficit by $15 billion, $3 billion more than the Senate bill.

It is important to once again bring attention to how we got to a 1986 deficit of well over $200 billion. In 1979, the Federal deficit was $27.5 billion. By 1985, it ballooned to $212 billion. This rapid runup in deficit spending is due largely to irresponsible tax cuts for the wealthy and for corporate America, pushed through the Congress in 1981 and large yearly

increases in military spending since then. Since 1980, social spending has been reduced almost $50 billion per year while interest costs and military spending have gone up more than four times that amount. The additional $200 billion we are now spending on interest costs and the military is widely recognized as unnecessary. This is the real damage of the Federal deficit, "wasting" $145 billion per year on interest payments required simply to carry the national debt for 12 months—from the start of one budget year to the start of the next—without producing anything for anybody. Interests costs are "waste" in its purest form.

The bill before us is the third in 3 years attempting to restore the balance that became unhooked in 1981. We are trying to make careful cuts to achieve not only a balanced budget but a better balance in Federal priorities.

While not affecting the budget deficit, I would like to highlight several provisions I sponsored in the Energy and Commerce Committee which have been included in this overall legislation that are important in their own way.

MEDICAL PRACTICE VARIATION

The first directs the National Center for Health Services Research to accelerate research on variation in medical practice. Our country has a tremendous variation in acceptable medical treatment. For example, Medicare patients in South Dakota have 69 percent more surgery than those in South Carolina. Why? People in Omaha are three times as likely to be hospitalized as people in San Diego. Women in one part of the country are four times as likely to have a hysterectomy than those living in another area. What can explain this variation in medical practice. Why do we spend much more on medical care in one region of the country than we do in another, even though each area has the same kind of problems?

Our Health Subcommittee heard testimony that Medicare hospitalization costs in the area around the University of Iowa were $734 compared to $1,320 in the Des Moines area. Why? Medicare costs for hospital care for each beneficiary in the Boston area was $1,894 compared to $1,078 per person in New Haven, CT. Why? If the New Haven rate had applied to the Medicare beneficiaries living in Boston, Medicare could have saved $63 million. Researchers say this difference was due to different ways doctors practice medicine from one area to another.

Some variation can be justified: high incidence of black lung disease in coal mining areas; some is not. My amendment would require Medicare to examine the extent and reasons for variations with emphasis on several costly and risky medical treatments.

Better information on variation would provide the medical community with state of the art information. The medical community itself, not the Government, remains responsible for educating physicians and helping them change their practice or reduce unnecessary procedures. In a Vermont project, tonsillectomies declined 46 percent in 4 years even though the kids were no healthier. In New Mexico antibiotic injections dropped 60 percent when a physician feedback program helped the medical community agree on when, and when not, to use this kind of treatment.

Medicare is on shaky financial grounds. Some project bankruptcy in the 1990's. While there is hardly a better use of our tax effort than providing good health care, we must make sure our Medicare dollars are spent wisely.

IMMUNOSUPPRESSIVE DRUGS FOR ORGAN TRANSPLANTS

Another provision I sponsored provides payment for immunosuppressive drugs for Medicare organ transplant patients for the first year after transplantation. Immunosuppressive drugs, like cyclosporine, are necessary to prevent the body from rejecting the transplanted organ. My amendment would pay for such drugs as a Medicare benefit for the first year after transplant.

The Task Force on Organ Transplantation found that some 15 percent of those who need transplants are being denied solely because they cannot pay for the drugs. While my provision would not help all those who need organ transplants, it would permit Medicare patients who cannot afford the drugs to have the same access as those who can. That is only the right thing to do.

Medicare was extended to kidney patients in the first place because of concern that some were being denied lifesaving dialysis due to inability to pay. It would be almost immoral to go back to those days for those whose lives can be saved by transplants simply because someone could not pay for the immunosuppressive drugs required to make the transplant survive.

Ironically, it is both more humane and costs less to transplant kidney patients than to support dialysis. Three years after a kidney transplant many patients can leave the Medicare Program and require no further support. That is what the program should be all about.

ORGAN DONATION COUNSELING

My third provision requires hospitals participating in Medicaid and Medicare to raise the possibility of organ donation with next of kin. Families, of course, would have the right to decline to donate, for whatever reason. But there is a time to ask.

The Task Force on Organ Transplantation recommended that Federal and State legislation require hospitals to establish what are called "routine inquiry" policies. About 22 States currently have such legislation in effect and have found a dramatic increase in the number of organs donated in response to being asked.

This provision is needed to meet the terrible shortage of organs available for donation. Only about 1 in 100 families who could donate organs are now doing so. When approached, about 4 in 5 families donate. There are 40,000 people who could benefit from kidney transplants alone if an adequate supply were available. The shortage of organs is one of the key limiting factors in making the miracle of organ transplants more widely available. We have all heard the heartwrenching pleas of families on TV appealing for organs to save the lives of their loved ones. My provision would help increase the supply of organs so that more of those families who need transplants could get them.

I hope the Congress adopts this bill both to bring down the deficit and make these modest improvements in our health care program.

Mr. SHUMWAY. Mr. Chairman, I cannot support the Omnibus Budget Reconciliation Act of 1986 because it amounts to a gross departure from the original intent of such a bill. Reconciliation should be the process of resolving the differences between appropriations and budget limitations; it should not encompass creation of new spending and avoidance of real spending reductions.

By creating new spending of $3.1 billion in programs such as Medicare, Medicaid, and aid to families with dependent children, the bill misses by far the reconciliation of previous decisions made by this body with the budget and the targets mandated by Gramm-Rudman-Hollings. Not only is it unfair for these new programs to receive funding while other programs perhaps just as worthy do not receive funding or are being cut, but such spending is profane when considering the fact that it is contained in a bill whose sole purpose is to reduce spending.

More important than new spending, however, is that this bill contains no real reduction of Federal spending or the deficit: it amounts to no more than smoke and mirrors. Through asset sales, user fees and accelerated collection, the bill does achieve savings enough to afford the bill's spending splurge and to avoid a Gramm-Rudman-Hollings sequestration this year. But next year, Congress will not have Conrail to sell again nor will Congress to be able to further accelerate collection. The bill's savings are clearly destined to do anything but reduce the deficit in the long run. Given the $108 billion Gramm-Rudman-Hollings deficit reduction target faced by Congress next year, it is reprehensible that Congress is not taking serious steps now to avoid sequestration in the 1988 fiscal year.

I cannot support this bill and I regret that Congress is reneging upon its past commitment to reduce the Federal deficit through this kind of legislative legerdemain.

Mr. McCANDLESS. Mr. Chairman, we have been down this path before. We huff and we puff and we denounce the deficit on a regular basis. In fact, according to the Library of Congress' CONGRESSIONAL RECORD Abstract for the 99th Congress, the deficit has been the topic of debate on no fewer than 1,125 occasions. So it would seem that the problem continues to plague us; not because of a lack of words, but because of a lack of action.

The fiscal year 1986 budget is a classic example. The fiscal year 1986 budget resolution was passed amidst much hoopla and celebration. We were told that we were back on the road of fiscal sanity. We were told that the resolution would reduce the deficit by $57.5 billion. We were told the joyous news that the deficit for fiscal year 1986 would be only $171.9 billion; which, considering the fact that the deficit for the year before was $212 billion, indicated that we were, at the very least, moving in the right direction. That is what we were told those many months ago.

I was not buoyed by the claims. In fact, I denounced the fiscal year 1986 budget resolution as being nothing more than blue smoke and mirrors. I expressed doubts that we would

ever see the promised deficit reductions of $57.5 billion. I am sorry to say that time and events have proven me correct. The projected deficit for fiscal year 1986 is $230 billion—nearly $60 billion over the budget resolution. And that is after the $11.7 billion Gramm-Rudman reduction. Without Gramm-Rudman, the deficit would have exceeded $240 billion—almost a quarter of a trillion dollars in just 1 year.

And we are not done yet. Last week, the House voted to give an additional $200 million in foreign aid to the Philippines. Add that to the fiscal year 1986 deficit. Apparently the House leadership has decided that if we are going to bust the budget, we might as well go in style. This week, in this bill, we are being asked to add another $680 million to the fiscal year 1986 deficit by speeding up revenue sharing payments. That is close to $1 billion added to the deficit in the last 2 weeks. It is probably a good thing that there are only a few days left in fiscal year 1986.

With that sorry history, you would think that the House of Representatives, at the dawn of a new fiscal year, would be eager to redeem itself. Alas, No.

The fiscal year 1987 budget resolution also had promises of budget reductions in the form of reconciliation. The House Budget Committee reported a reconciliation package on July 31, that package claimed a deficit reduction of $7.6 billion. However, in the light of reality, CBO's analysis of package only found $900 million in deficit reduction. OMB only found a $300 million reduction. We now have a new package. Proponents of this new legislation say that it will reduce the deficit by $15.5 billion. Or, if you prefer the numbers of the other body across the Capitol, it's $13.3 billion. However, before anyone gets too excited about the prospect of the Congress actually doing something about the deficit, let's take a closer look at the bill that is before us.

There are no real savings or even a faint effort to confront the long-term deficit crisis. What is proposed is a one shot fire sale of Federal assets which will supposedly raise $8.4 billion. However, as with any forced sale, the price of the assets is likely to be less than the actual fair market value. In addition, the loss of those assets will mean less Federal revenue in the future. There's more. Another $4.1 billion is supposed to be raised by hiring more IRS agents who will ferret out unpaid taxes. Another $3.8 billion will be raised from increased or new fees and taxes. When it comes to spending reductions, this bill provides only $1.9 billion. That's the good news. The bad news is that this bill, which is supposed to cut spending, also provides for new and additional spending of nearly $2 billion.

What a sham. What a travesty. As one Member of Congress put it, "It is a package of golden gimmicks." If we adopt this package, we are in effect telling the American public that we have carefully and thoroughly examined a budget in excess of $1 trillion and in that budget we only found less than two-tenths of 1 percent of waste, fraud, abuse, excess, obsolescence, and otherwise unnecessary spending in all of the Federal budget. Who are we trying to fool?

The deficit crisis is real. We are spending and consuming today and leaving the bills to be paid by our children and grandchildren. We have already left them a legacy of a national debt in excess of $2 trillion.

There are some who argue that the reason the deficit is so high is that taxes are too low. Therefore, they contend, the solution is to raise taxes. I do not accept that. The problem is that Federal spending is out of control and until we come to grips with that problem, additional taxes are not the answer.

In 1982, Congress passed the largest tax increase in history with the promise to reduce spending by $3 for every additional $1 raised. Not only did those spending reductions never materialize, but spending actually increased $1.14 for every new tax dollar. We repeated the process in 1984, again with a promise to cut spending by $1 for every $1 of new tax. Only 20 percent of those spending reductions were ever enacted. Another venture down the road of tax increases is only likely to lead to similar results.

Others point at President Reagan's 1981 tax cut as the culprit responsible for the deficit. I believe that assumption is misguided. Look at the facts. Even with the tax cuts, during the first 6 years of the Reagan administration, the Federal Government has collected as much revenue as it did during the administrations of George Washington through Gerald Ford combined. Let me repeat that. During the first 6 years of the Reagan administration, the Federal Government has collected as much revenue as it did during the combined Presidency of the first 38 Presidents.

Therefore, only after we have thoroughly reexamined all Federal spending, cut out waste and obsolete and unnecessary programs, established our spending priorities, and considered new ways to better utilize Federal resources, then, and only then, should we begin to talk about new or higher taxes.

In conclusion, Mr. Chairman, H.R. 5300 is just another version of the old shell game—"now-you-see-it, now-you-don't" deficit reduction. Therefore, I must vote against H.R. 5300, and I would urge my colleagues to do the same. We need not resort to one time flash in the pan and other sleight of hand tricks. We can do better than this. Let's vote down H.R. 5300 and devise a real and serious plan to confront the deficit crisis.

Mr. GOODLING. Mr. Chairman, I wish to record my grave concern over the smoke and mirrors aspects of the reconciliation bill before us. As an example, let me select an issue which reflects a broken promise made to our country's employers. I am speaking of the further 2-year extension of the Federal unemployment tax [FUTA] on employers.

The 0.2 percent increase originally was enacted to repay funds borrowed for extensive weeks of unemployment compensation. It is now retained as another of our smoke and mirrors measures to avoid making real budget cuts in the H.R. 5300, the omnibus budget reconciliation bill.

The Department of Labor estimates this debt will be paid in 1987. Yet, the tax is being extended, beyond its expiration date of 1987, to 1989. This measure will raise $2.2 billion in additional revenues for reconciliation purposes, and was proposed as savings by the Ways and Means Committee.

Chairman ROSTENKOWSKI gave two reasons this tax should be extended. The first is that it "* * * will allow the Federal unemployment trust fund to build up reserves in anticipation of a downturn in the economy * * *." Regardless of when or whether the chairman anticipates such a downturn, the fact is the trust fund is divided into three accounts, all of which have a legislated cap. Excess funds from one account shift into another, but not outside of the trust fund. According to the Department of Labor, all of these funds will be at or over their legislated caps by the end of fiscal year 1987, that is, they will be full up, without the continuation of this tax. Of course, Representative STARK has legislation, H.R. 4469, waiting in the wings to mandate an extension of benefits with such excess funds.

Mr. ROSTENKOWSKI makes a second point, that the $2.2 billion in revenues will decrease the deficit. Well, like almost every other measure in this bill, it really won't. The money is earmarked for the exclusive use of the FUTA, and therefore will not add to Federal revenue as a whole at all. It will only serve to perpetuate this program—which has served its useful purpose.

This is but one example of the many misleading and illusory provisions of the Omnibus Budget Reconciliation Act. There are very few programs left in the Federal budget to hide behind. I do not relish the task of making real cuts next year, especially considering what choices are left to us.

Mr. RAHALL. Mr. Chairman, I rise today in support of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986. This measure is designed to reduce the fiscal year 1987 deficit by $15 billion, and is expected to be sufficient to avoid across-the-board spending cuts called for in the Gramm-Rudman-Hollings deficit reduction law. Last Friday, the Senate passed a generally similar bill making deficit reductions of $12 billion.

This measure has received a great deal of attention due to the wide reach of its provisions, and the early possibility of a cigarette or gasoline tax. While the proposals to increase the tax levied on cigarettes and gasoline have been soundly put aside, there are many provisions in this bill of concern and interest to me and my fellow West Virginians. While this bill avoids general tax increases and contains only modest spending cuts, the deficit reductions would be produced mainly by the sale of assets, such as Conrail and various loan portfolios, increased user fees, acceleration of certain tax collections, and improved tax compliance. In addition, the reconciliation bill includes some program improvements such as a cap on the Medicare hospital deductible and repeal of the 3-percent threshold for triggering a Social Security cost-of-living adjustment [COLA].

At this point, I would like to point out those provisions of this measure in which I have a particular interest as a representative of West Virginia's Fourth Congressional District.

I strongly support language in the bill which incorporates the text of H.R. 1, the Housing Act, as passed by the House. This authorizes, for fiscal year 1987, sums as may be needed for housing assistance programs administered by the Housing and Urban Development De-

partment and the Farmers Home Administration. It extends Federal Housing Administration Mortgage Insurance Programs, Federal Flood and Crime Insurance Programs, and reauthorizes the Community Development Block Grant and Urban Development Action Grant Programs.

Additionally, I support the provision of H.R. 5300 which advances the fourth quarter revenue-sharing payment for 1986 so that it occurs in fiscal year 1986 and not in fiscal year 1987. The bill requires that the payment be made before the end of fiscal year 1986, thereby reducing fiscal year 1987 outlays by $680 million.

H.R. 5300 also achieves savings in the Medicare Program through various reforms in payments to hospitals and other providers of services. At the same time, it takes some steps to limit the rapid increases in costs that many elderly patients have been facing—first by capping at $500 the deductible charged for the first day of hospitalization under Medicare, and also by establishing new incentives for doctors to accept the Medicare-determined rates as payment in full instead of billing extra charges directly to their patients. Further, the legislation includes several provisions designed to help assure quality medical care for Medicare patients and to address concerns that the continued ratcheting down of payment rates has led to an erosion of standards of care in some cases.

The bill also takes some steps toward addressing the unmet health needs of the roughly 35 million Americans currently without private or public health insurance. For example, it permits States to expand their Medicaid Programs to cover pregnant women, infants, and elderly and disabled persons whose incomes are below the poverty line but not below the even lower thresholds usually required to qualify for Medicaid. It also includes provisions designed to encourage States to set up insurance pools to help make health coverage available to additional uninsured persons.

Included in this budget reconciliation bill are provisions which provide for the sale of Conrail through a public stock offering. My enthusiasm for this proposal, however, is tempered due to the lack of amendments to the Staggers Rail Act of 1980 in this package. During the Energy and Commerce Committee's consideration of the Conrail sale last week an effort was made to include modest changes to the 1980 act necessary to insure that those shippers who are captive to a single railroad are not subjected to monopolistic railroad pricing and service practices. The vote in committee on this matter was 20 to 20 against the Staggers Act amendments.

During the 98th Congress I and a few of our colleagues from the coal States began the effort to address certain problems that have existed with the ICC's implementation of the Staggers Act. We felt then as we do now that the Commission has turned a deaf ear to the interests of captive shippers as well as to the American consumer. As some of us will remember, in 1980 the Congress sought to balance the revenue needs of the railroad industry with requirements to protect captive shippers from abuses of railroad market dominance. While the railroads have once again grown prosperous and are now in the financial position to expand far beyond their traditional rail operations into many other enterprises, shippers of bulk commodities such as coal have been forsaken by the Commission in its proceedings dealing with maximum rate reasonableness determinations. In 1985, a coalition was formed among shipper groups to push forward with amendments based on my previous legislation. The so-called CURE bill was introduced by BILLY TAUZIN and cosponsored by myself and the gentleman from Kentucky, HAL ROGERS, among many other Members.

This effort ended with the narrow defeat in committee. However, I would like to take this opportunity to commend my dear friend BILLY TAUZIN for his diligent effort to gain enactment of the CURE bill. We fought against great odds and lost but one battle. The war, however, it is not over. For if you are concerned about a viable Conrail, if you are concerned for an independent Conrail, be advised that under this sale proposal the railroad is a sitting duck in the years hence for a takeover by any number of other major carriers. Without the protections we sought in our amendments to the Staggers Rail Act, the monopolistic abuses that currently exist will be greatly magnified in the future if Conrail is under such a scenerio. I believe we will rue the day that we did not act with foresight in this matter.

While this bill is not perfect and even has provisions which I would not necessarily support, I feel I must support this deficit reduction legislation. It is necessary legislation. It is our only means of avoiding the sequestration process created by Gramm-Rudman. I did not support the adoption of Gramm-Rudman, but now, it is the law of the land, and we must all abide by its rules. We must reduce spending now, or suffer the wrath of Gramm-Rudman. I remember the public outcry when vital programs were cut in the first round of Gramm-Rudman cuts. The second round of cuts would be even more devastating to the economy of West Virginia and the Nation. For this reason, I must support this legislation. I must choose to avoid the automatic cuts.

Mr. DENNY SMITH. Mr. Chairman, I rise in opposition to H.R. 5300, the omnibus budget reconciliation bill of 1986.

In my opinion, the bill ought to be retitled the "ominous budget reconciliation bill of 1986" because it foreshadows a disaster with the Federal budget that will make this year's hand wringing over Gramm-Rudman look like a pleasant experience. After an entire year of struggling, we have given up on any serious attempt to cut Federal spending to reduce the deficit. Instead, as one of my colleagues put it regarding this bill, "There's so much smoke you can't see the mirrors."

The bill before us contains every gimmick imaginable to "reduce" the Federal deficit without cutting spending. There's a fire sale on loan asset sales—RHIF, Exim, GSL, College Housing Loans. Small Business loans—you name it, we sell it. The sales may "reduce" the deficit today, but it's a fact these sales will increase the size of the deficit tomorrow.

This bill raises taxes to the tune of $7.9 billion. If it's a user fee, we raise it. If it's an IRS office, we increase its size. And if it's an accounting trick, we use it. Fiscal year 1987 spending is moved on the books to fiscal year 1986 for a large portion of general revenue sharing, a move that will make it all but impossible to reduce the deficit to the Gramm-Rudman target set for 1988.

Mr. Chairman, we can do better than this. We have to do better than this. We must not go home with this bag of tricks during an election year attempting to fool the taxpayers into believing Congress has gotten serious about the deficit. This bill is far from a serious attempt to reduce the deficit, and I urge my colleagues to defeat it.

Mr. FIELDS. Mr. Chairman, I rise in strong support of a provision in this reconciliation bill requiring the Secretary of Energy, through the Energy Information Administration [EIA], to conduct a study of crude oil production and refining in the United States.

I joined with my colleague, Representative BILLY TAUZIN, to offer the energy study provision as an amendment in the Energy and Commerce Committee. The energy study provision instructs the Secretary of Energy to report back to Congress, within 60 days, the findings of the EIA study. The President then has 45 additional days to evaluate the report and determine whether crude and refined product imports have risen or U.S. domestic production has fallen to a level which poses a national security threat.

Committee report language specifically asks EIA to examine: the refined petroleum product needs of the U.S. military; the effect dependence on imported crude will have on U.S. foreign policy; the ability of the United States to resume production from shut-in crude oil and natural gas wells and to restart idled refining capacity; the adequacy of alternative sources of energy; the extent to which the decline in production and, conversely, the increase in consumer demand is occurring in the rest of the free world; the geographic diversification of imported supplies likely to be available to the United States in 1990; the projected free world supply-demand balance in 1990; the current work of private stock compared with historic levels; the likelihood that OPEC will expand its refinery capacity; and, the effect of the economic decline in the oil service and oil field supply industry on future U.S. production.

Since Saudi Arabia began flooding the world oil market with crude in January, prices have plummeted to 50 percent their previous level. Following the oil price plunge, economists painted rosy pictures of the positive effect lower oil prices would have on the U.S. economy. Yet, a booming economy has not occurred. In large part, no boom materialized as a result of the severe depression in the domestic oil and gas production and related industries.

But, the purpose of the EIA study is not to examine the economic distress of oil and gas producing States, although that distress is great. The purpose of the EIA study is twofold: to provide Congress and the administration with reliable energy information and to, then, focus the attention of Congress and the administration on our Nation's dangerous trend toward energy dependency. Rejoicing over low oil prices while ignoring vastly increased imports and reduced domestic crude oil production is irresponsible.

Memories are often short. But, surely we have not forgotten the results of the Arab oil embargo. The same OPEC which acted to depress prices early this year may act again to inflate prices, as it did in the 1970's.

Even if OPEC never actively attempts to gouge the American consumer again, the precarious political situation in the Middle East should make us nervous about overdependency.

Finally, we cannot ignore the possibility that the Soviet Union might block the Strait of Hormuz or otherwise impede oil flow from the Middle East during a military conflict.

A glance at some basic energy statistics should alarm us all. In August 1985, the United States imported 28.7 percent of its total petroleum needs. In August of 1986, that figure had jumped to 41.2 percent. Even more worrisome, imports from the Persian Gulf more than tripled to 16.3 percent, compared with only 4 percent the same month in 1985. Saudi Arabia is now the fourth largest supplier of crude and crude products to the United States.

At the same time, active U.S. drilling rigs plummeted to 740 on August 15. This is a drop from an average of 1,980 in 1985 and a high of 4,530 in December of 1981.

This Energy Information Administration study will provide Congress and the administration with the facts it needs to face the current energy crisis squarely and determine what action is necessary to preserve U.S. energy security.

Mr. JONES of Oklahoma. Mr. Chairman, as we debate the Omnibus Budget Reconciliation Act, I would like to take a moment to discuss one small part of the bill which I am very much opposed to; the extension of the temporary 0.2-percent payroll tax.

This tax was enacted in 1976 solely for the purpose of retiring the debt incurred by borrowing money from General Treasury funds to pay benefits to the unemployed. Employers nationwide, large and small, profitable and unprofitable, shared the burden of this additional tax equally.

But we made a promise to the employers that this tax would expire automatically the year after the debt was paid. The Department of Labor has said that the debt will be repaid next year. Thus, it is only fair that the tax expire in January 1988.

I voted against this extension in committee, and I am opposed to its inclusion in the reconciliation package. This is a breach of faith, and a costly one at that. In my home State, where the economy is already depressed, the extension of this tax will cost employers $26.3 million over 2 years.

Mr. COLEMAN of Texas. Mr. Chairman, I must oppose H.R. 5300, the Omnibus Reconciliation Act of 1986.

While I believe it is imperative that we achieve budgetary savings to meet the Gramm-Rudman-Hollings Deficit Reduction Act and avoid across-the-board sequestration, I do not believe this bill will either achieve the necessary savings nor do I believe all of the savings contained in this bill are sound.

The bill provides for a one-time gain of $9.8 billion in assets sales. This would impose a 0.5 percent Customs user fee on all cargo entering the United States for a revenue gain of $1.8 billion. It includes additional revenues through an extension of the telephone excise tax.

The bill contains $2.185 billion in budget cuts, but also contains an increase in spending of $4.472 for a net increase of $2.287 billion. This is certainly not the direction we should be heading for deficit reduction.

The bill also contains savings which are highly questionable. These include $2.4 billion from greater tax collections as a result of the House-passed Treasury, Postal Service, and general Government appropriations bill which increases the number of IRS personnel. I sit on the subcommittee which drafted that bill, H.R. 5294, and we added those personnel to both increase collections and avoid backlogs, but we did not use that to score the budget deficit, because those are not hard and fast numbers, but rather assumptions. The bill also assumes $846 million through increased penalties for failure to deposit payroll and withholding taxes and substantial understatement of tax liability.

I question whether or not this bill will bring us under the $154 billion deficit level we need to achieve to avoid sequestration. If, by change, it does this year, next year we will be faced with an ever greater and likely impossible task of avoiding sequestration. Even if we raise $10 billion through assets sales, it will only be a one-time gain. If we impose the supposed customs user fees, we will increase costs for consumers on all imports and hurt the economies of our border communities.

While there are provisions contained in the bill with which I agree, such as the cap on Medicare deductible payments for the elderly. I cannot support the entire bill. It takes up in the wrong direction. It is a short-term solution which will pose long-term problems—namely budget cuts or revenue increases in the nature of $75 billion next year. The members of the Budget Committee have worked hard on this bill, but I cannot accept it. I, too, want to avoid the danger sequestration poses to our national security, international position, and defense of our borders, but I do not believe this bill will do the job. I propose we go back to the drawingboard and bring a bill up which makes the cuts we need, $10 billion, to reach our deficit target.

Mr. ACKERMAN. Mr. Chairman, I am going to support passage of H.R. 5300, the fiscal year 1987 Budget Reconciliation Act, but I do so reluctantly because of some major shortcomings contained in the measure.

The fact is, the bill before us does not propose real deficit reduction. The bill does contain modest spending cuts, but half the savings come from selling loan assets held by various Government agencies. These are not true savings. Even though these sales would lower the deficit during 1987, the Government's forgone revenues from collecting principal and interest on the loans will increase the deficit the following year, and perhaps for many years to come. This is a quick fix for raising fast cash, but a dangerous risk that may cause the Government to actually lose money on the sales and endure long-term financial loss as a result.

Another aspect of the bill which I am opposed to is the advanced revenue-sharing payment requirement. The payment is currently scheduled to be made during the first 5 days of fiscal year 1987. However, under the reconciliation bill, the fourth quarter payment will be made before the end of 1986 in order to reduce fiscal year 1987 outlays by $680 million. What we are talking about is juggling the books to create the illusion that we are meeting the Gramm-Rudman targets. This is a flagrant retreat from responsible decisionmaking.

I am also very concerned about provisions in the bill which would cut the fiscal year 1987 discretionary appropriations to bring outlays $1 billion below the amount allocated under the budget resolution by using the Gramm-Rudman formula of indiscriminate, across-the-board cuts. I am strongly opposed to this reckless budget-cutting gimmick because I believe one of Congress' most basic responsibilities is to make spending decisions. It is the branch of the Federal Government closest to the people and should be most responsive to the needs of the people.

Yes; deficit reduction is urgently needed, but Congress can cut the budget without Gramm-Rudman. Let's not forget that Congress has appropriated less than the President requested every year except 4 since World War II. In fiscal year 1986 Congress appropriated $7.8 billion less than it did for fiscal year 1985, and this amount was $5.9 billion less than the President's request. The only appropriations bills which exceeded last year's target levels were for defense and military construction, both at the urging of the White House.

Mr. Chairman, I support a balanced budget, but shifting money from the 1987 budget to the 1986 budget to make it appear as if we are meeting the Gramm-Rudman targets is ludicrous. Congress has a responsibility to make carefully thought-out spending decisions based on the merits of various programs to our society. Let's keep the budget decisions where they belong, in the hands of the people.

Mr. LEATH of Texas. Mr. Chairman, I yield back the balance of my time.

Mrs. MARTIN of Illinois. Mr. Chairman, I yield back the balance of my time.

□ 1540

The CHAIRMAN. Pursuant to House Resolution 558, the bill is considered as having been read for amendment under the 5-minute rule.

The text of H.R. 5300, as introduced and without amendments, is as follows:

H.R. 5300

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND TABLE OF CONTENTS

SECTION 1001. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1986".

SEC. 1002. TABLE OF CONTENTS.

Title I. Short Title and Table of Contents.
Title II. House Committee on Agriculture.
Title III. House Committee on Banking, Finance and Urban Affairs.

Title IV. House Committee on Energy and Commerce.
Title V. House Committee on Interior and Insular Affairs.
Title VI. House Committee on Merchant Marine and Fisheries.
Title VII. House Committee on Post Office and Civil Service.
Title VIII. House Committee on Public Works and Transportation.
Title IX. House Committee on Small Business.
Title X. House Committee on Ways and Means.

TITLE II—HOUSE COMMITTEE ON AGRICULTURE

Subtitle A—Sale of Notes Held in the Rural Development Insurance Fund

SEC. 2001. SALE OF RURAL DEVELOPMENT NOTES.

(a) SALES REQUIRED.—The Secretary of Agriculture, under such terms as the Secretary may prescribe, shall sell notes held in the Rural Development Insurance Fund created by section 309A of the Consolidated Farm and Rural Development Act in such amounts as to realize net proceeds not less than—

(1) $552,000,000 from such sales during fiscal year 1988, and

(2) $547,000,000 from such sales during fiscal year 1989.

(b) NONRECOURSE SALES.—Section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended by striking out the period at the end of the second sentence and inserting in lieu thereof the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) BORROWER RIGHTS AND OBLIGATIONS.—Any sale of notes, as described in subsection (a), shall not alter the rights or obligations of the borrower specified in the note, except that the Secretary of Agriculture, prior to sale, shall ensure that such notes, as sold, contain no terms for graduation of the borrower to any other source of credit.

(d) ELIGIBILITY TO PURCHASE NOTES.—Notwithstanding any other provision of law, each institution of the Farm Credit System shall be eligible to purchase notes held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institution's interest in the purchased notes), and collect and dispose of, such notes, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and the purchasing institution and as may be approved by the Farm Credit Administration.

(e) LIMITATION ON SALES FROM AGRICULTURAL CREDIT INSURANCE FUND.—During fiscal years 1987 through 1989, no note shall be sold out of the Agricultural Credit Insurance Fund, except in connection with transactions with the Secretary of the Treasury, without prior approval by Congress.

Subtitle B—Prepayment of Loans

SEC. 2011. PREPAYMENT OF REA GUARANTEED LOANS.

(a) AMENDMENT TO RURAL ELECTRIFICATION ACT OF 1936.—The Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) is amended by inserting after section 306 (7 U.S.C. 936) the following new sections:

"SEC. 306A. PREPAYMENT OF LOANS.

"(a) Except as provided in subsection (c), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of this Act may prepay such loan by paying the outstanding principal balance due on the loan, if—

"(1) the loan is outstanding on July 2, 1986;

"(2) private capital, with the existing loan guarantee, is used to replace the loan; and

"(3) the borrower certifies that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower.

"(b) No sums in addition to the payment of the outstanding principal balance due on the loan shall be charged as the result of such prepayment against the borrower, the fund, or the Rural Electrification Administration.

"(c)(1) A borrower will not be qualified for prepayment under this section if, in the opinion of the Secretary of the Treasury, to prepay in such borrower's case would adversely affect the operation of the Federal Financing Bank.

"(2) Paragraph (1) shall be effective in fiscal year 1987 only for any loan the prepayment of the principal amount of which will cause the cumulative amount of principal on loans prepaid under this section (and under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986) to exceed $2,415,000,000.

"(d) The Administrator shall permit, subject to subsection (a), prepayments of principal on loans in fiscal year 1987 under this section (or under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986) in a cumulative amount not less than the amount that, added to the cumulative amount of principal repayments in fiscal year 1986, equals $2,415,000,000.

"SEC. 306B. SALE OR PREPAYMENT OF DIRECT OR INSURED LOANS.

"A direct or insured loan made under this Act shall not be sold or prepaid at a value less than the face value of any outstanding principal balance of such loan.".

(b) CONFORMING AMENDMENT.—Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986, is amended by striking out the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems.

(c) REGULATIONS.—The Secretary of Agriculture shall issue regulations to implement this section within 15 days after the date of enactment of this Act. To the extent practicable, the Secretary shall incorporate the regulations issued under the undesignated paragraph relating to the prepayment of loans by the Rural Electrification and Telephone Systems, of Chapter I of the Act entitled "An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1986, and for other purposes" (Public Law 99-349), approved July 2, 1986.

Subtitle C—Federal Meat Inspection

SEC. 2021. SHORT TITLE.

This subtitle may be cited as the "Processed Products Inspection Improvement Act of 1986".

SEC. 2022. PURPOSE.

The amendments made by this subtitle are in furtherance of the findings made by Congress in section 2 (21 U.S.C. 602) of the Federal Meat Inspection Act.

SEC. 2023. AMENDMENTS TO FEDERAL MEAT INSPECTION ACT.

(a) MANNER AND FREQUENCY OF INSPECTION.—Section 6 of the Federal Meat Inspection Act (21 U.S.C. 606) is amended by striking out "That for purposes" and all that follows through "*Provided*, That", and inserting in lieu thereof the following:

"For the purposes hereinbefore set forth, the Secretary shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of meat food products prepared for commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment. Such examination and inspection shall be conducted with such frequency and in such manner as the Secretary deems necessary, as provided in rules and regulations issued by the Secretary, taking into account such factors as the Secretary deems to be appropriate, including—

"(1) the nature and frequency of the processing operations at such establishment;

"(2) the adequacy and reliability of the processing controls and sanitary procedures at such establishment; and

"(3) the history of compliance with inspection requirements in effect under this Act, by the operator of such establishment or anyone responsibly connected with the business (as described in section 401(g) of this Act) that operates such establishment.

All such products found by such inspectors, if any, and by the operator of such establishment to be not adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and passed'; and all such products found by any of such inspectors or by the operator of such establishment to be adulterated shall be marked, stamped, tagged, or labeled as 'Inspected and condemned'. All such condemned products shall be destroyed for human food purposes. The Secretary may suspend inspection at, and thereby remove inspectors from, any establishment that fails to so condemn adulterated meat food products or fails to so destroy condemned meat food products. For purposes of any examination and inspection, such inspectors shall have access to every part of an establishment at all times, by day or night, and without regard to whether such establishment is operated. Notwithstanding the preceding provisions of this section,".

(b) ENFORCEMENT METHODS.—Section 401 of the Federal Meat Inspection Act (21 U.S.C. 671) is amended—

(1) by inserting "(a)" after "Sec. 401.",

(2) in the first sentence—

(A) by striking out "applicant, for" and inserting in lieu thereof "applicant for",

(B) by striking out "any felony, or (2)", and

(C) by inserting before the period at the end thereof "or (2) any felony",

(3) in the second sentence—

(A) by indenting the first word 2 ems so as to create a new paragraph, and

(B) by inserting "(f)" before the first word,

(4) by inserting "(g)" before the first word of the third sentence,

(5) in the fourth sentence—

(A) by striking out "The" and inserting in lieu thereof "(h) Except as provided in subsection (e)(2), the", and

(B) by striking out "this section" and inserting in lieu thereof "subsection (e)", and

(6) by inserting after subsection (a), as so designated by paragraph (1) of this subsection, the following new subsections:

"(b)(1) On the request of the Secretary at the time of the sentencing of an individual who is a person responsibly connected with any business requiring inspection under title I of this Act and who is convicted of a felony involving—

"(A) the intentional adulteration of food (except as defined in section 1(m)(8) of this Act);

"(B) the adulteration of food, as defined in section 1(m)(8) of this Act, with intent to defraud;

"(C) bribery; or

"(D) extortion;

the sentencing court shall issue a temporary order forbidding such individual to exercise operational control of, or to be physically present at, any establishment requiring inspection under title I of this Act if the court finds that the exercise of operational control by, or the presence of, such individual at the establishment either poses a direct and substantial threat to the public health or safety or, if such individual is convicted of a felony described in subparagraph (B), poses a clear likelihood of significant economic harm to consumers.

"(2) Such order shall terminate—

"(A) whenever the Secretary determines by order, after a hearing on the record, whether such individual should exercise operational control of, or be physically present at, any establishment requiring inspection under title I of this Act, and judicial review, if any, of such determination is completed; or

"(B) ninety days after the issuance of such temporary order by the court if the Secretary does not commence such hearing before the expiration of such ninety days;

whichever occurs earlier.

"(c) Any determination and order of the Secretary issued under subsection (a) or (b) shall be conclusive and enforceable unless the affected applicant for, or recipient of, inspection service or the affected individual files, not later than thirty days after the effective date of such order, a petition for review of such order in the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the relevant establishment is doing business. Judicial review of such order shall be upon the record upon which the determination and order are based.

"(d)(1) Subject to paragraph (3), the Secretary may commence a civil action in an appropriate court, as provided in section 404, to withdraw inspection service under title I of this Act with respect to any establishment or to prevent any individual responsibly connected with any business requiring inspection under title I of this Act from exercising operational control of, or being present at, any establishment requiring inspection under title I of this Act.

"(2) If the court finds, on the basis of clear and convincing evidence, that the recipient of inspection service or such individual has repeatedly failed to comply with the requirements of this Act, or the rules and regulations issued under this Act, in a manner that poses a direct and substantial threat to the public health or safety, then the court shall issue an order—

"(A) withdrawing inspection at such establishment; or

"(B) forbidding such individual to exercise operational control of, or to be physically present at, such establishment;

for such period as the court deems necessary to carry out the purposes of this Act.

"(3) Not less than ninety days, and not more than 450 days, before commencing a civil action under paragraph (1), the Secretary shall give to each recipient of inspection service, and each individual responsibly connected with the business, with respect to which such action is commenced a written notice that includes—

"(A) a statement that the Secretary intends to commence such action;

"(B) a comprehensive description of the violations of this Act and the regulations issued under this Act alleged by the Secretary; and

"(C) a description of the actions the Secretary considers necessary to be taken by such recipient or such individual to comply with this Act and to eliminate the need to commence such civil action.

"(e)(1) The Secretary may temporarily withdraw inspection service under title I of this Act with respect to any establishment for such period as is necessary to ensure the safe and effective performance of official duties under this Act if the Secretary determines, after an opportunity for a hearing on the record, that an officer, employee, or agent of such establishment—

"(A) threatened to forcibly assault;

"(B) forcibly assaulted;

"(C) forcibly intimidated; or

"(D) forcibly interfered with;

an employee of the United States engaged in, or on account of, the performance of any of such official duties.

"(2)(A) Notwithstanding paragraph (1), the Secretary may temporarily suspend inspection service under title I of this Act with respect to any establishment, pending an expedited administrative hearing on the record and judicial review of the order of the Secretary based on such record, if the Secretary determines that temporary suspension of such inspection service is necessary for the safety of any employee who performs official duties under this Act.

"(B) If the Secretary receives, before or after temporarily suspending such inspection service in accordance with subparagraph (A), adequate written assurances from the recipient of inspection service, or the individuals involved, that the conduct or circumstances that threatened the safety of such employee will not continue or recur, the Secretary may continue or restore such inspection service on the condition that such assurances are fulfilled.".

(c) WARNING; REPORTING OF VIOLATIONS.—Section 406 of Federal Meat Inspection Act (21 U.S.C. 676) is amended—

(1) in subsection (b) by adding at the end thereof the following:

"In determining whether the public interest could be adequately served by a written notice of warning, the Secretary shall take into account, among other factors—

"(1) the compliance history of such establishment;

"(2) the magnitude of the violation;

"(3) whether compliance with this Act would likely be obtained as a result of such notice; and

"(4) whether such violation is of a minor or technical nature.", and

(2) by adding at the end thereof the following new subsection:

"(c) Unless the Secretary by regulation provides otherwise, before any violation of this Act is reported by the Secretary for prosecution of a criminal proceeding, the Secretary shall give the person alleged to have committed such violation—

"(1) reasonable notice that the Secretary intends to report such violation for prosecution; and

"(2) an opportunity to present to the Secretary, orally or in writing, views with respect to such proceeding.".

(d) CONFORMING AMENDMENTS.—

(1) NIGHTTIME.—Section 9 of the Federal Meat Inspection Act (21 U.S.C. 609) is amended by inserting ", except as provided in section 6," after "equines, and" the first place it appears.

(2) ADMINISTRATION.—Section 21 of the Federal Meat Inspection Act (21 U.S.C. 621) is amended by striking out "and meat food products" and inserting in lieu thereof "thereof, and of meat food products".

(e) CONSTRUCTION OF AMENDMENTS.—The amendments made by this section shall not be construed to authorize the Secretary of Agriculture to refuse to provide inspection under the Federal Meat Inspection Act at an establishment solely because such establishment does not participate in a total plant quality-control program.

SEC. 2024. REENACTMENT OF FORMER PROVISIONS OF LAW.

(a) REENACTMENT.—Effective 6 years after the date of the enactment of this Act, sections 6, 9, 21, 401, and 406 of the Federal Meat Inspection Act (21 U.S.C. 606, 609, 621, 671, 676) are amended to read, respectively, as such sections read immediately before the date of the enactment of this Act.

(b) SAVING PROVISION.—The amendments made by subsection (a) shall not have the effect of releasing or extinguishing any penalty, forfeiture, or liability incurred under the Federal Meat Inspection Act as amended by section 1023, or under the rules or regulations issued under such Act.

SEC. 2025. SENSE OF CONGRESS.

It is the sense of Congress that the Secretary of Agriculture should—

(1) carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act, and

(2) evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under title I of the Federal Meat Inspection Act, in order to identify the producer of such livestock.

SEC. 2026. ANNUAL REPORT.

Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing—

(1) any action proposed or taken by the Secretary to implement the amendments made by this subtitle,

(2) any action proposed or taken by the Secretary to carry out a program to detect residues in livestock that are subject to inspection under title I of the Federal Meat Inspection Act,

(3) any action proposed or taken by the Secretary to evaluate the feasibility of, and develop, a program that would enable the Secretary to trace any particular livestock that are subject to inspection under such

title, in order to identify the producer of such livestock, and

(4) any personnel action proposed or taken by the Secretary as a result of the amendments made by this subtitle and any effort made by the Secretary to minimize any adverse economic effect of such amendments on employees of the Department of Agriculture.

SEC. 2027. CONGRESSIONAL REEVALUATION.

Not later than 6 years after the date of the enactment of this Act, Congress shall—

(1) evaluate the operation and effects of the amendments made by this subtitle, for the purpose of determining whether to extend or modify the operation of such amendments, and

(2) enact such legislation as may be necessary to efficiently and effectively carry out the Federal Meat Inspection Act.

SEC. 2028. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in section 2024(a) and in subsection (b) of this section, this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) TEMPORARY APPLICATION OF EXISTING LAW.—Sections 6, 9, and 21 of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), as in effect immediately before the date of the enactment of this Act, shall apply with respect to establishments until the Secretary of Agriculture first issues rules and regulations as provided in the amendment made by section 2023(a) of this Act.

TITLE III—HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 3001. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays, from the proceeds of such sales, of not less than—

(1) $1,158,000,000 in fiscal year 1987;

(2) $523,000,000 in fiscal year 1988; and

(3) $546,000,000 in fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under subsection (a) shall not be subject to any requirement under section 517 of the Housing Act of 1949 or any other law that the loans be insured or guaranteed when sold, or to any requirement under paragraph (2) or (3) of subsection (d) of such section 517.

SEC. 3002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 15. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $500,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan by the Bank under this section shall not be subject to any Federal or State securities law.".

TITLE IV—HOUSE COMMITTEE ON ENERGY AND COMMERCE

Subtitle A—Nuclear Regulatory Commission Annual Charges

SEC. 4001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) GENERAL AUTHORITY.—The Nuclear Regulatory Commission shall assess and collect annual charges from its licensees on a fiscal year basis, beginning with fiscal year 1987. Such annual charges shall be in addition to any assessment of charges under section 9701 of title 31, United States Code.

(b) AGGREGATE AMOUNT REQUIREMENT.—The aggregate amount of the annual charges under this section for any fiscal year (when added to charges assessed by the

Nuclear Regulatory Commission for such fiscal year under section 9701 of title 31, United States Code) shall be sufficient to recover all of the regulatory costs of the Commission budgeted for such fiscal year, including all costs for—

(1) research activities directly related to the regulation of any licensee of the Commission;

(2) licensing, regulation, and inspection activities with respect to such licensees; and

(3) safeguards activities with respect to such licensees.

(c) ESTABLISHMENT OF ANNUAL CHARGES.—

(1) The amounts of the annual charges established under this section—

(A) shall be based on the relative cost of regulating different categories of licensees and other factors determined to be appropriate by the Nuclear Regulatory Commission, including the impact of such annual charges on research and medical treatment; and

(B) with respect to any utilization or production facility for industrial or commercial purposes issued a license under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)), shall also be based on the rated capacity of such facility.

(2) The amounts of the annual charges under this section shall be established by rule.

(d) TIME OF PAYMENT.—The Nuclear Regulatory Commission may make estimates in assessing annual charges under this section and shall provide that the annual charges assessed under this section shall be paid by the end of the fiscal year for which the annual charges are assessed.

(e) USE OF FUNDS.—To the extent approved in appropriation Acts, amounts collected under this section may be retained and used for costs incurred by the Nuclear Regulatory Commission and shall remain available for such purpose until expended.

(f) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G.

Subtitle B—Federal Energy Regulatory Commission Annual Charges

SEC. 4101. FEDERAL ENERGY REGULATORY COMMISSION ANNUAL CHARGES.

(a) IN GENERAL.—The Federal Energy Regulatory Commission shall assess and collect annual charges on a fiscal year basis, beginning with fiscal year 1987, from interstate natural gas pipelines, interstate oil pipeline carriers, and public utilities in amounts determined under subsection (b).

(b) AMOUNT OF ASSESSMENTS.—The Commission shall assess and collect charges under this section—

(1) in the case of an interstate natural gas pipeline, in an amount that bears the same relationship to the adjusted costs of the Commission for the fiscal year as the volume of natural gas sold or transported by the pipeline during such year bears to the total volume of natural gas sold or transported by all interstate natural gas pipelines during such year;

(2) in the case of an interstate oil pipeline carrier, in an amount that bears the same relationship to the adjusted costs of the Commission for the fiscal year as the total barrels delivered (subject to the jurisdiction of the Commission) by the pipeline carrier during such year bears to the total barrels delivered (subject to such jurisdiction) by all interstate oil pipeline carriers during such year; and

(3) in the case of a public utility, in an amount that represents the public utility's proportional share of the adjusted costs of the Commission for the fiscal year, taking into consideration the public utility's proportional share of the total of the kilowatt hours transmitted under interchange hour agreements and the total jurisdictional kilowatt hours sold by all public utilities during such fiscal year.

(c) TIME OF ASSESSMENT.—The Commission shall assess charges under this section by making estimates based on data available to the Commission at the time of assessment.

(d) TIME OF PAYMENT.—The Commission shall provide that the charges assessed under this section shall be paid by the end of the fiscal year for which they were assessed.

(e) ADJUSTMENTS.—The Commission shall, after the completion of a fiscal year, make such adjustments in the assessments for such fiscal year as may be necessary. Such adjustments shall be made on the basis of the complete data applicable to the fiscal year concerned, as determined by the Commission, and shall be used for making adjustments in assessments made under subsection (b) for the following fiscal year.

(f) USE OF FUNDS.—To the extent approved in appropriation Acts, amounts collected under this section may be retained and used for administrative costs of the Commission and shall remain available for such purpose until expended.

(g) NATURAL GAS CHARGES IN RATES.—The Commission shall provide that charges assessed under this section shall be included in the rates of an interstate natural gas pipeline as a uniform charge on each thousand cubic feet (Mcf) or million Btu (MmBtu), as determined appropriate by the Commission, of natural gas sold or transported by the pipeline.

(h) DEFINITIONS.—For purposes of this section—

(1) the term "adjusted costs of the Commission" means—

(A) in the case of the assessment of charges on interstate natural gas pipelines, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) in administering the Natural Gas Act and the Natural Gas Policy Act of 1978 for a fiscal year, reduced by the amount of charges assessed by the Commission for such fiscal year under section 9701 of title 31, United States Code, with respect to the regulation of the sale or transportation of natural gas,

(B) in the case of the assessment of charges on interstate oil pipeline carriers, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) as a result of regulating the transportation of oil under subtitle IV of title 49, United States Code, reduced by the amount of charges assessed by the Commission for such fiscal year under such section 9701 with respect to the regulation of the transportation of oil, and

(C) in the case of the assessment of charges on public utilities, costs incurred by the Commission (but not to exceed the amount authorized by law for such costs) in administering titles II and III of the Federal Power Act (other than for the regulation of cogeneration and small power production under sections 201 and 210 of such Act) for a fiscal year, reduced by the amount of fees collected under such section 9701 for services or benefits rendered under such titles during such fiscal year;

(2) the term "Commission" means the Federal Energy Regulatory Commission;

(3) the term "interstate natural gas pipeline" means any person engaged in the transportation or sale of natural gas subject to the jurisdiction of the Commission under the Natural Gas Act;

(4) the term "pipeline carrier" has the meaning given such term in section 10102 of title 49, United States Code;

(5) the term "natural gas sold or transported" means—

(A) sales or deliveries of natural gas to distribution utilities for sales or use, and

(B) sales or deliveries of natural gas to consumers for ultimate use; and

(6) the term "public utility" has the same meaning given such term by section 201(e) of the Federal Power Act, except that such term does not include a qualifying small power producer or a qualifying cogenerator.

Subtitle C—Petroleum Overcharge Distribution

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Petroleum Overcharge Distribution and Restitution Act of 1986".

SEC. 4202. DEPOSIT OF FUNDS.

(a) IN GENERAL.—(1) Amounts determined at any time, pursuant to any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted by the Secretary to enforce the petroleum pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970, to be amounts that are to be paid as restitution for actual or alleged petroleum pricing and allocation violations shall be referred, subject to paragraph (2), to the Secretary and held in appropriate escrow accounts administered for the Secretary by the Secretary of the Treasury.

(2) Amounts described in paragraph (1) and held in an escrow account by a court prior to the date of the enactment of this subtitle may continue to be held by such court, but shall be disbursed, together with any interest thereon, by the Secretary or, as appropriate, by the court only in accordance with the provisions of this subtitle.

(b) EXCEPTION.—Subsection (a) shall not apply to—

(1) amounts actually disbursed before the date of the enactment of this subtitle to any person or governmental entity pursuant to section 155 of Public Law 97-377 or any final judicial or administrative order or judgment (including any settlement agreement or declaratory judgment);

(2) amounts governed by the settlement, approved on July 7, 1986, in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, in the United States District Court for the District of Kansas; and

(3) amounts designated by judicial or administrative order or judgment (including any settlement agreement or declaratory judgment) for disbursement at any time to any specific person (or class of persons) identified in such order or judgment as injured by the violation or alleged violation of the regulations described in subsection (a)(1).

(c) INTEREST.—Consistent with the disbursement requirements of this subtitle, the Secretary of the Treasury shall provide that amounts described in subsection (a) shall earn interest at the maximum rate earned on investments of Federal trust funds by the Secretary of the Treasury in short-term and long-term securities issued by the Federal Government (including minority bank investments).

SEC. 4203. DISBURSEMENT.

(a) IN GENERAL.—(1) All rulings, policies, or other statements, including any administrative order or settlement agreement, issued by any office, official, or employee of the Department of Energy that are inconsistent with the provisions of this subtitle shall be terminated or modified to conform with this subtitle.

(2) All orders, including declaratory judgments, issued by any court after the date of the enactment of this subtitle shall be consistent with the provisions of this subtitle.

(b) DISBURSEMENT OF AMOUNTS AS DIRECT RESTITUTION TO INJURED PERSONS.—(1) The Secretary shall, through the Office of Hearings and Appeals of the Department of Energy, conduct proceedings expeditiously in accordance with subpart V regulations for the purpose of, to the maximum extent possible—

(A) identifying persons or classes of persons injured by any actual or alleged violation of the petroleum pricing and allocation regulations issued pursuant to the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970;

(B) establishing the amount of any overcharge incurred by such persons; and

(C) making restitution, through the disbursement of amounts in the escrow accounts described in section 4202(a), to such persons.

(2) In conducting such proceedings, the Secretary shall take into consideration the reports released pursuant to several orders of the applicable Federal district court in In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378.

(c) DETERMINATION OF EXCESS AMOUNT TO BE USED FOR INDIRECT RESTITUTION.—(1) Within 45 days after the beginning of each fiscal year after fiscal year 1986, the Secretary shall, using the best available information available to the Secretary, determine and publish (along with a justification thereof) in the Federal Register the amount held in the escrow accounts described in section 4202(a) which is in excess of the amount that will be needed to make restitution to persons or classes in accordance with subsection (b)(1) of this section and to meet other commitments of such accounts, including the requirements of section 155 of Public Law 97-377. In making such determination, the Secretary shall give primary consideration to assuring that at all times sufficient funds, including a reasonable reserve, are set aside for making such restitution and meeting such other commitments.

(2) The Secretary shall make public the information referred to in the first sentence of paragraph (1).

(d) DISBURSEMENT OF EXCESS AMOUNT AS INDIRECT RESTITUTION TO STATES FOR ENERGY CONSERVATION PROGRAMS.—(1) After the publication of the determination of an excess amount under subsection (c) for a fiscal year, the Secretary shall promptly provide for the disbursement of a portion or all of such excess amount to States for use in energy conservation programs. The amount so disbursed for a fiscal year shall be the smaller of—

(A) $256,000,000; or

(B) the amount determined under subsection (c) to be the excess amount for such fiscal year.

(2) After determining the amount to be made available to the States under paragraph (1), the Secretary shall apportion such amount among each of the energy conservation programs in a manner that will provide funding under this subtitle for the fiscal year concerned for each of such programs in the same proportionate amount that was provided for each of the programs by the Congress for fiscal year 1986. The Secretary shall then make available each amount apportioned for use under an energy conservation program to the Governors of the States in the same manner, to the same extent, under the same rulings and regulations, and for the same uses that Federal appropriated funds are made available to, and used by, the States under such program.

(3) The Secretary shall require that amounts made available to a State under this subsection are used by the State to supplement, and not supplant, funds otherwise available for energy conservation activities under Federal or State law.

(e) DEPOSIT OF REMAINDER OF EXCESS AMOUNT INTO TREASURY AS INDIRECT RESTITUTION.—The amount that remains from the excess amount described in subsection (c) after all disbursements have been made for a fiscal year under subsection (d) shall be deposited by the Secretary of the Treasury into the general fund of the Treasury as indirect restitution for the benefit of the general public.

SEC. 4204. REPORTS.

(a) REPORT ON RECEIPTS AND DISBURSEMENTS.—The Secretary shall transmit, not later than 60 days after the date of the enactment of this subtitle, a report to the Congress containing a clear and complete statement of all receipts, disbursements, and commitments of funds, as of such date of enactment, by the Secretary pursuant to—

(1) any judicial or administrative proceeding (including any settlement agreement or declaratory judgment) instituted at any time by the Secretary to enforce the petroleum pricing and allocation regulations issued under the Emergency Petroleum Allocation Act of 1973 or the Economic Stabilization Act of 1970; or

(2) section 155 of Public Law 97-377.

(b) REPORT ON COLLECTION OF CERTAIN DEFICIENCY FUNDS.—The Secretary shall report each fiscal year, beginning in fiscal year 1987, on the status of collections by the Secretary of deficiency funds to be deposited into the M.D.L. No. 378 escrow account established by the United States District Court for the District of Kansas until all such deficiency funds have been paid. The Secretary shall, in a manner substantially similar to that required by section 155 of Public Law 97-377 with respect to amounts disbursed under such section, monitor the disposition by the States of any funds disbursed to the States by the court pursuant to the opinion and order of such District Court, dated July 7, 1986, with respect to In Re: The Department of Energy Stripper Well Exemption Litigation, M.D.L. No. 378, including the use of such funds for administrative costs and attorneys fees.

(c) RECEIPT BY COMMITTEES.—The reports required by this subtitle shall be transmitted to the Committee on Energy and Commerce of the House and the Committee on Energy and Natural Resources of the Senate.

SEC. 4205. TERMINATION.

(a) IN GENERAL.—(1) Except as provided in subsection (b), the provisions of this subtitle shall terminate 90 days after the Secretary—

(A) determines that all of the funds referred to in section 4202(a) have been collected and disbursed as provided in this subtitle; and

(B) submits to Congress the final report required by section 4204.

(2) Such final report shall include the determination (and the justification thereof) referred to in subsection (a)(1)(A). Such report shall also be published in the Federal Register.

(b) EXCEPTION.—The requirements of section 4203(d) shall continue to be applicable to the use by any State of funds received under this subtitle as long as such funds remain available to the State.

SEC. 4206. DEFINITIONS.

For purposes of this subtitle:

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Director" means the head of the Office of Hearings and Appeals of the Department of Energy.

(3) The term "subpart V regulations" means the provisions of Subpart V—Special Procedures for Distribution of Refunds (10 CFR 205.280-205.288) and any amendment made after the date of the enactment of this subtitle, and all precedents and decisions under such regulations, but only to the extent that such provisions, precedents, decisions, and amendments are consistent with the provisions of this subtitle.

(4) The term "energy conservation programs" means—

(A) the program under part A of the Energy Conservation and Existing Buildings Act of 1976 (42 U.S.C. 6861 and following);

(B) the programs under part D of title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(C) the program under part G of title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following); and

(D) the program under the National Energy Extension Service Act (42 U.S.C. 7001 and following).

(5) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, and Indian tribal organizations in the case of any energy conservation program in which such organizations receive a direct grant from the Federal Government.

(6) The term "Governor" means the Governor or the chief executive officer of a State.

(7) The term "person" includes refiners, retailers, resellers, farmer cooperatives, transportation entities, public and private utilities, school districts, Federal, State, and local governmental entities, farmers, and other individuals and their successors.

Subtitle D—Information and Study Requirements

SEC. 4301. INDUSTRIAL ENERGY CONSUMPTION INFORMATION.

(a) TERMINATION OF INDUSTRIAL ENERGY CONSERVATION PROGRAM.—(1) Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291 et seq.) is amended by striking out part E.

(2) The table of contents in the first section of such Act (42 U.S.C. 6201) is amended by striking the items relating to part E of title III.

(b) PERIODIC SURVEY OF INDUSTRIAL ENERGY CONSUMPTION.—(1) The Secretary of Energy shall conduct and publish the results of a survey of energy consumption in the manufacturing industries in the United States on at least a triennial basis and in a manner designed to protect, in accordance

with applicable provisions of law, the confidentiality of individual responses.

(2) In conducting each survey under this subsection, the Secretary shall collect at least the following information:

(A) The quantity of fuels consumed by the industries described in paragraph (1).

(B) Energy expenditures of such industries.

(C) Fuel switching capabilities of such industries.

(D) Use by such industries of nonpurchased sources of energy, such as cogeneration and waste byproducts.

(3) This subsection may not be construed to affect the authority of the Secretary of Energy to collect data under section 52 of the Federal Energy Administration Act of 1974 (15 U.S.C. 790a).

SEC. 4302. CRUDE OIL PRODUCTION AND REFINING CAPACITY IN THE UNITED STATES.

(a) IN GENERAL.—To assist the Congress and the President in determining whether domestic crude oil production and petroleum refining capacity are adequate to protect the national security, the Secretary of Energy, acting through the Energy Information Administration, shall conduct a study of such production and capacity.

(b) PUBLIC COMMENT.—The Secretary shall provide notice and a reasonable opportunity for public comment with respect to conducting the study carried out under this section.

(c) REPORTING DATE.—The Secretary shall, within 60 days after the date of the enactment of this Act, transmit to the Congress and the President a copy of the findings and conclusions of the study carried out under this section.

(d) ACTION BY THE PRESIDENT.—The President shall, within 45 days after the date on which such report is transmitted to the Congress, determine the levels at which imports of crude oil and refined petroleum products are a threat to the national security.

Subtitle E—Strategic Petroleum Reserve

SEC. 4401. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1987, 1988, AND 1989.

(a) IN GENERAL.—The following amounts are hereby authorized to be appropriated in accordance with section 660 of the Department of Energy Organization Act for operating expenses for the Strategic Petroleum Reserve to carry out part B of title I of the Energy Policy and Conservation Act for the acquisition, transportation, and injection of petroleum products, as defined for purposes of such part B, for the Reserve and for any drawdown and distribution of the Reserve:

(1) For fiscal year 1987, $200,000,000.

(2) For fiscal year 1988, $291,000,000.

(3) For fiscal year 1989, $479,000,000.

(b) EFFECT ON OTHER AUTHORIZATIONS.—The authorization made by subsection (a) is in lieu of any authorization of appropriation for the expenses described in such subsection for fiscal years 1987, 1988, and 1989.

SEC. 4402. PURCHASE OF STRIPPER WELL OIL.

(a) IN GENERAL.—The Secretary of Energy shall implement this section during any or all of the fiscal years 1987, 1988, and 1989 if such Secretary makes a determination that the implementation of this section is in the national interest and will prevent significant, permanent loss of production of petroleum from stripper well property.

(b) IMPLEMENTATION.—In implementing this section with respect to any of the fiscal years described in subsection (a), the Secretary shall use the smaller of $200,000,000 of the amount, or the total amount, appropriated pursuant to section 4401(a) of this subtitle for the fiscal year concerned to acquire for the Strategic Petroleum Reserve—

(1) crude oil produced in the United States from property classified, on January 1, 1986, as stripper well property within the meaning of the June 1979 energy regulations as defined in section 4996(b)(8) of the Internal Revenue Code of 1954; or

(2) crude oil exchanged for the crude oil described in paragraph (1).

(c) PRICE.—The Secretary may purchase crude oil under this section at a price not in excess of 110 percent of the current daily acquisition cost of crude oil purchased for the Reserve other than under this section.

(d) INDEPENDENT PRODUCERS.—At least 75 percent of the crude oil purchased under this subsection shall be purchased from persons who, at the time of purchase, are independent producers as defined in section 4992(b) of the Internal Revenue Code of 1954.

(e) LIMITATION.—The Secretary may not purchase crude oil under this section during any month if, during the preceding month, the daily average acquisition cost of crude oil for the Reserve exceeded $15 per barrel.

SEC. 4403. FILL RATE OF THE RESERVE; LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.

(a) FILL RATE OF THE RESERVE.—Section 160(c)(3) of the Energy Policy and Conservation Act (42 U.S.C. 6240(c)(3)) is amended—

(1) by striking out "fiscal year 1986 and continuing through fiscal years 1987 and 1988" and inserting in lieu thereof "fiscal year 1987 and continuing through fiscal years 1988 and 1989";

(2) by striking out "527,000,000 barrels" and inserting in lieu thereof "750,000,000 barrels";

(3) by inserting ", to the extent of the availability of appropriated funds," after "the President shall"; and

(4) by striking out "35,000 barrels per day" and inserting in lieu thereof "100,000 barrels per day".

(b) LIMITATION ON UNITED STATES SHARE OF THE NAVAL PETROLEUM RESERVE.—Section 160(d)(1) of such Act (42 U.S.C. 6240(d)(1)) is amended—

(1) in subparagraph (A), by striking out "527,000,000 barrels" and inserting in lieu thereof "600,000,000 barrels";

(2) in subparagraph (B)—

(A) by striking out "100,000 barrels" and inserting in lieu thereof "80,000 barrels"; and

(B) by striking out "; or" and inserting in lieu thereof a period; and

(3) by striking out subparagraph (C).

SEC. 4404. INFORMATION TO BE CONTAINED IN ANNUAL AND QUARTERLY REPORTS ON SPRO.

(a) ANNUAL REPORT.—Section 165(a) of the Energy Policy and Conservation Act (42 U.S.C. 6245(a)) is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) a detailed statement of the status of the Strategic Petroleum Reserve, including—

"(A) an estimate of the final capacity of the Reserve and the scheduled annual fill rate for achieving such capacity;

"(B) the scheduled monthly fill rate for the 12-month period beginning on the date on which such report is transmitted;

"(C) the type and quality of crude oil to be acquired for the Reserve pursuant to the schedule described in subparagraph (A);

"(D) the schedule of construction of any facilities needed to achieve the final capacity of the Reserve, including a description of the type and location of such facilities and of enhancements and improvements to existing facilities;

"(E) an estimate of the cost of acquiring crude oil and constructing facilities necessary to complete the Reserve;

"(F) a description of the current distribution plan for using the Reserve, including the method of drawdown and distribution to be utilized; and

"(G) an explanation of any changes made in the matters described in subparagraphs (A) through (F) since the transmittal of the previous report under this subsection;".

(b) QUARTERLY REPORT.—Section 165 (b)(2) of such Act (42 U.S.C. 6245(b)(2)) is amended to read as follows:

"(2) Each of the quarterly reports made under paragraph (1) shall contain a description of—

"(A) any change made with respect to the matters described in subparagraphs (A) through (F) of subsection (a)(1) since the last annual report made under such subsection; and

"(B) the scheduled monthly fill rate for the Reserve for the 12-month period beginning on the date on which such quarterly report is transmitted.".

SEC. 4405. IMPROVING NATIONAL ENERGY POLICY.

Section 164 of the Energy Policy and Conservation Act (42 U.S.C. 6244) (relating to naval petroleum reserves) is amended to read as follows:

"COORDINATION OF NATIONAL ENERGY POLICY CONCERNING PETROLEUM RESERVES

"SEC. 164. (a) For the purpose of improving the coordination of national energy policy with respect to the Strategic Petroleum Reserve and the naval petroleum reserves, the President—

"(1) shall, notwithstanding any other provision of law, establish a minimum price for the sale of the United States share of petroleum produced from Naval Petroleum Reserves Numbered 1, 2, and 3 at an amount not less than the higher of—

"(A) 90 percent of the current sales price, as estimated by the Secretary of Energy, of comparable petroleum in the same area; or

"(B) the price of petroleum being purchased for the Strategic Petroleum Reserve, minus the cost of transporting petroleum from the naval petroleum reserve concerned to the nearest storage area of the Strategic Petroleum Reserve, with adjustments for the difference in the quality of the petroleum being purchased for the Strategic Petroleum Reserve and petroleum being produced from the naval petroleum reserve concerned; and

"(2) may, with respect to any production of petroleum from Naval Petroleum Reserves Numbered 1, 2, or 3, establish a production rate that is less than the maximum efficient rate and that is consistent with sound engineering practices and the protection, conservation, maintenance, and testing of such Reserves, if the Secretary determines that the minimum price described in paragraph (1) cannot be attained for the sale of the United States share of petroleum produced from such Reserves.

"(b) To assure a maximum return from the price described in subsection (a)(1), the Secretary may, notwithstanding any other provision of law, enter into a contract or other agreement with respect to such price after 15 days after the Secretary notifies the Attorney General of the proposed contract or other agreement unless, within such 15-day period, the Attorney General advises

the Secretary that such contract or agreement may create or maintain a situation inconsistent with the antitrust laws.".

SUBTITLE F—MEDICARE

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PART 1—PROVISIONS RELATING TO PARTS A AND B

SEC. 4501. DIRECT COSTS OF GRADUATE MEDICAL EDUCATION.

(a) CLARIFYING COUNTING OF TIME SPENT IN OUTPATIENT SETTINGS—Section 1886(h)(4) of such Act is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) COUNTING TIME SPENT IN OUTPATIENT SETTINGS.—Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs costs for the training program in that setting.".

(b) REDUCING MAXIMUM INITIAL RESIDENCY PERIOD.—Section 1886(h)(5)(F)(i) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(F)(i)) is amended by striking "five years" and inserting "four years".

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall apply to payments for approved residency training programs as of July 1, 1987.

(2) In the case of an approved residency program on or after July 1, 1987, and before July 1, 1988, and for purposes of subparagraph (C) of section 1886(h)(4) of the Social Security Act, the weighting factor shall be .75 for a physician whose weighting factor during the period under such subparagraph—

(A) in the absence of the amendment made by subsection (a), would have been 1.00, but

(B) taking into account the amendment, would otherwise be .50.

SEC. 4502. APPLICATION OF PAYMENT LIMITS FOR HOME HEALTH SERVICES ON A DISCIPLINE-SPECIFIC BASIS.

(a) IN GENERAL.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended by inserting after the first sentence the following: "Such limitations shall be applied on an aggregate basis for all home health services furnished by an agency, rather than on a discipline-specific basis, with appropriate adjustment for adminstrative and general costs of hospital-based agencies.".

(b) CONSIDERATIONS IN ESTABLISHING LIMITS.—In establishing limitations under section 1861(v)(1)(L) of the Social Security Act on payment for home health visits, the Secretary of Health and Human Services shall—

(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

(c) GAO REPORT.—The Comptroller General shall study and report to Congress, not later than April 1, 1987, on—

(1) the appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under section 1861(v)(1)(L) of the Social Security Act on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and

(2) the appropriateness of the percentage limits established by the Secretary of Health and Human Services under such section.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) and subsection (b) shall apply to cost reporting periods beginning on or after July 1, 1985. Subsection (b)(2) shall apply to changes in requirements effected before, on, or after such date.

SEC. 4503. ESTABLISHMENT OF RESEARCH PROGRAM.

(a) IN GENERAL.—Section 1875 of the Social Security Act (42 U.S.C. 1395ll) is amended by adding at the end the following new subsection:

"(c)(1) The Secretary shall establish a program (hereinafter in this subsection referred to as the 'research program') to provide for research with respect to patient outcomes of selected medical treatments and surgical procedures for the purpose of assessing their appropriateness, necessity, and effectiveness. The research program shall include—

"(A) assessments of the extent of uncertainty regarding appropriateness;

"(B) assessments of the appropriateness of admissions or selection criteria;

"(C) development of improved measures of patient outcome,

"(D) evaluation of patient outcomes, and

"(E) efforts to reduce existing levels of uncertainty or disagreement regarding appropriateness.

"(2) In selecting treatments and procedures to be studied, the Secretary shall give priority to those medical and surgical treatments and procedures—

"(A) for which data indicate a highly (or potentially highly) variable pattern of utilization among beneficiaries under this title in different geographic areas, and

"(B) which are significant (or potentially significant) for purposes of this title in terms of utilization by beneficiaries, length of hospitalization associated with the treatment or procedure, costs to the program, and risk involved to the beneficiary.

"(3) For purposes of carrying out the research program, there shall be available—

"(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

"(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.

"(4) Not less than 90 percent of the amount appropriated for any fiscal year to carry out the research program shall be used to fund grants to, and cooperative agreements with, non-Federal entities to conduct research described in paragraph (1). The remainder may be used by the Secretary to provide such research by Federal entities and for administrative costs.

"(5) The research program shall be administered by the National Center for Health Services Research and Health Care Technology established under section 305 of the Public Health Service Act (hereinafter in this subsection referred to as the 'Center'). The Center shall establish application procedures for grants and cooperative agreements, and shall establish peer review panels to review all such applications and all research findings. The Center shall consult with the council on health care technology (established under a grant under section 309 of the Public Health Service Act) in establishing the scope and priorities for the research program and shall report periodically to any such council on the status of the program.

"(6) The Secretary shall make available data derived from the programs under this title and other programs administered by the Secretary for use in the research program.

"(7) The Center shall report to the Committees on Finance and Appropriations of the Senate and the Committees on Ways and Means, Energy and Commerce, and Appropriations of the House of Representatives not later than 18 months after the date of the enactment of this Act, and annually thereafter, with respect to the findings under the research program. In cooperation with appropriate medical specialty groups, the Center shall disseminate such findings as widely as possible, including disseminating such findings to each peer review organization which has a contract under part B of title XI."

(b) PERMITTING SERVICES TO BE PROVIDED UNDER RESEARCH PROGRAM.—Section 1862(a)(1) of such Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by striking the semicolon at the end of subparagraph (D) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(E) in the case of research conducted pursuant to section 1875(c), which is not reasonable and necessary to carry out the purposes of that section;".

SEC. 4504. TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.

(a) IN GENERAL.—Sections 1877(b)(3) and 1909(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3), 1396n(b)(3)) are each amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting "; and", and

(3) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are reimbursed under this title if—

"(i) the person has a written contract with each such vendor and each such individual or entity which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such individual or entity under the contract, and

"(ii) the person discloses to each such individual or entity the amount received from each such vendor with respect to purchases made by or on behalf of the individual or entity.".

(b) EFFECTIVE DATE.—The amendments made by this section apply to payments made before, on, or after the date of the enactment of this Act.

SEC. 4505. IMPROVEMENTS IN CIVIL MONETARY PENALTY AND EXCLUSION PROVISIONS.

(a) COLLATERAL ESTOPPEL EFFECT OF PRIOR FEDERAL CRIMINAL CONVICTIONS.—Section 1128A(b) of the Social Security Act (42 U.S.C. 1320a-7a(b)) is amended by adding at the end the following new paragraph:

"(3) In a proceeding under subsection (a) which—

"(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

"(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.".

(b) AUTHORITY OF HEARING OFFICER TO SANCTION MISCONDUCT.—Such section is further amended by adding at the end the following new paragraph:

"(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

"(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

"(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

"(C) striking pleadings, in whole or in part,

"(D) staying the proceedings,

"(E) dismissal of the action,

"(F) entering a default judgment,

"(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

"(H) refusing to consider any motion or other action which is not filed in a timely manner.".

(c) CLARIFICATION OF EXCLUSION AUTHORITY FOR CERTAIN OFFENDERS.—Section 1128 of such Act (42 U.S.C. 1320a-7) is amended by adding at the end the following new subsection:

"(f) For purposes of subsection (a), a physician or other individual is considered to have been 'convicted' of a criminal offense—

"(1) when a judgment of conviction has been entered against the physician or individual by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

"(2) when there has been a finding of guilt against the physician or individual by a Federal, State, or local court;

"(3) when a plea of guilty or nolo contendere by the physician or individual has been accepted by a Federal, State, or local court; or

"(4) when the physician or individual has entered into participation in a first offender or other program where judgment of conviction has been withheld.".

(d) EFFECTIVE DATES.—(1) The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.

(3) The provisions—

(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act, and

(B) of paragraph (4) of such section shall apply to participation in a program entered into on or after the date of the enactment of this Act.

SEC. 4506. PAYMENT RATES FOR RENAL SERVICES.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended—

(A) in the third sentence, by inserting "and of pediatric facilities" after "isolated, rural areas", and

(B) by inserting after the third sentence the following new sentence: "Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2)(B) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for such adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) as may be appropriate to reduce the average monthly capitation rate to $180 for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(2) EFFECTIVE DATE.—The adjustment under paragraph (1) shall be made in a manner so as to become effective for services furnished on or after August 1, 1986.

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment under the medicare program for patients with end stage renal disease on their access to care or quality of care, and

(B) a report to Congress on the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

(1) IN GENERAL.—Section 1861(s)(2) of such Act (42 U.S.C. 1395x(s)(2)) is amended—

(A) by striking "and" at the end of subparagraph (H)(ii),

(B) by inserting "and" at the end of subparagraph (I), and

(C) by inserting after subparagraph (I) the following new subparagraph:

"(J) immunosuppressive drugs furnished to an individual who receives an organ transplant within 1 year after the date of the transplant procedure;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to immunosuppressive drugs furnished on or after October 1, 1986.

SEC. 4507. IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish a network council of renal dialysis and transplant facilities located in the area, and a medical review board, which has a membership including physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall solicit applicants for such an agreement in accordance with provisions of law relating to competitive bidding so as to provide an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that none of such organizations meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(b) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(c) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of such section is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(d) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of such section is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(e) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of such section is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(f) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of such section is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1).

(g) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(h) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to such a dialysis supply is appropriate, the Secretary may establish such a protocol.

"(C) If a renal disease facility fails to follow a protocol established under this paragraph in the reuse of a dialyzer filter or other dialysis supply, the facility shall be subject to such a penalty as the Secretary may establish.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(i) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (b), (c), and (d) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (a)(1).

SEC. 4508. HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES.

(a) IN GENERAL.—Title XI of the Social Security Act is amended by inserting after section 1137 the following new section:

"HOSPITAL PROTOCOLS FOR ORGAN PROCUREMENT AND STANDARDS FOR ORGAN PROCUREMENT AGENCIES

"SEC. 1138. (a) The Secretary shall provide that no hospital may participate in the programs under title XVIII and XIX unless the hospital establishes protocols for encouraging organ and tissue donation by identifying and assisting potential human organ and tissue donors in a manner that (1) assures that families of potential donors are made aware of the option of organ or tissue donation and their option to decline, and (2) encourages discretion and sensitivity to the circumstances, views, and beliefs of families.

"(b) The Secretary shall provide that no payment may be made under title XVIII or XIX with respect to costs in procuring organs attributable to payments made to an organ procurement agency which—

"(1) is not a qualified organ procurement organization (described in section 371(b) of the Public Health Service Act) or meets the standards to be such an organization, and

"(2) has not been certified (and recertified not less often than once every two years) as meeting the standards for certification of organ procurement agencies established by the Association of Independent Organ Procurement Agencies.".

(b) EFFECTIVE DATES.—(1) Section 1138(a) of the Social Security Act shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act as of July 1, 1987.

(2) Section 1138(b) of such Act shall apply to costs of organs procured on or after January 1, 1988.

SEC. 4509. COBRA TECHNICAL CORRECTIONS.

(a) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(b) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(1) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(2) The amendment made by paragraph (1) shall apply to determinations of per capita payment rates of payment for 1987 and subsequent years.

(c) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(1) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(2) The amendment made by paragraph (1) shall apply to claims presented after the date of the enactment of this Act.

(d) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA and for surgical procedures performed during the period beginning on April 1, 1986, and ending on November 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgical is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition.

(e) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(f) MISCELLANEOUS TECHNICAL AMENDMENTS.—(1) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(A) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(B) by striking the period at the end of subparagraph (J) and inserting ", and", and

(C) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(2) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(3) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(4) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), amended by section 9301(c) of COBRA, is amended—

(A) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(B) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(5) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(6) The amendments made by this subsection are effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4510. RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT FOR HMOS AND CMPS.

(a) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by striking "if" and all that follows through the end and inserting the following: "to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(b) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of payments to the organization under this section for individuals enrolled with the organization after the date the Secretary notifies the organization of such noncompliance.".

(c) EFFECTIVE DATES.—

(1) NEW RESTRICTION.—The amendment made by subsection (a) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(2) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

(3) EXTENSION OF CURRENT WAIVERS.—In the case of an eligible organization described in paragraph (4), the Secretary of Health and Human Services may provide for an extension of such waiver only if the Secretary determines that the organization has made and is continuing to make reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary. If the Secretary determines that such an organization has failed to comply with such schedule of compliance, the Secretary may provide for the suspension of payments, under section 1876 of the Social Security Act, to the organization for individuals enrolled with the organization after the date the Secretary notifies the organization of such noncompliance.

(4) ORGANIZATIONS COVERED UNDER EXTENSION.—An eligible organization described in this paragraph is an eligible organization that—

(A) as of the date of the enactment of this section, has been granted, under paragraph (2) of section 1876 of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(B) does not meet the requirements for such modification or waiver under the amendment made by subsection (a) of this section.

PART 2—PROVISIONS RELATING TO PART B

SEC. 4521. COVERAGE OF VISION CARE.

(a) DEFINING SERVICES AN OPTOMETRIST CAN PROVIDE.—Clause (4) of section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)) is amended to read as follows: "(4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after April 1, 1987.

SEC. 4522. COVERAGE OF OCCUPATIONAL THERAPY SERVICES.

(a) COVERAGE.—Subparagraph (C) of section 1832(a)(2) of the Social Security Act (42 U.S.C. 1395k(a)(2)) is amended to read as follows:

"(C) outpatient physical therapy services (other than services to which the second sentence of section 1861(p) applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1861(g));".

(b) LIMITATION ON PAYMENTS.—Section 1833(g) of such Act (42 U.S.C. 1395l(g)) is amended—

(1) by striking "next to last sentence" and inserting "second sentence", and

(2) by adding at the end thereof the following new sentence: "In the case of outpatient occupational therapy services which are described in the second sentence of section 1861(p) through the operation of section 1861(g), with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b).".

(c) CERTIFICATION STANDARD.—(1) Section 1835(a)(2)(C) of such Act (42 U.S.C. 1395n(a)(2)(C)) is amended—

(A) by inserting "or outpatient occupational therapy services" after "outpatient physical therapy services",

(B) in clause (i), by inserting "or occupational therapy services, respectively," after "physical therapy services", and

(C) in clause (ii), by inserting "or qualified occupational therapist, respectively," after "qualified physical therapist".

(2) The second sentence of section 1835(a) of such Act and section 1866(e) of such Act (42 U.S.C. 1395n(a), 1395cc(e)) are each amended—

(A) by inserting "(or meets the requirements of such section through the operation of section 1861(g))" after "1861(p)(4)(A)" and after "1861(p)(4)(B)", and

(B) by inserting "or (through the operation of section 1861(g)) with respect to the furnishing of outpatient occupational therapy services" after "(as therein defined)".

(d) DEFINITION AND INCLUSION WITH OTHER PART B SERVICES.—(1) Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by inserting after subsection (f) the following new subsection:

"Outpatient Occupational Therapy Services

"(g) The term 'outpatient occupational therapy services' has the meaning given the term 'outpatient physical therapy services' in subsection (p), except that 'occupational' shall be substituted for 'physical' each place it appears therein.".

(2) Section 1861(s)(2)(D) of such Act (42 U.S.C. 1395x(s)(2)(D)) is amended by inserting "and outpatient occupational therapy services" after "outpatient physical therapy services".

(3) Section 1861(v)(5)(A) of such Act (42 U.S.C. 1395x(v)(5)(A)) is amended by inserting "(including through the operation of section 1861(g))" after "section 1861(p)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred for outpatient occupational therapy services furnished on or after April 1, 1987.

SEC. 4523. COVERAGE OF SERVICES OF A PHYSICIAN ASSISTANT.

(a) SERVICES COVERED.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 4506(d)(1) of this subtitle, is amended—

(1) by striking "and" at the end of subparagraph (I),

(2) by adding "and" at the end of subparagraph (J), and

(3) by adding at the end the following new subparagraph:

"(K)(i) services which are performed by a physician assistant (as defined in subsection (aa)(3)) under the supervision of a physician as defined in subsection (r)(1) in a hospital, skilled nursing facility, or as an assistant at surgery and which the physician assistant is legally authorized to perform by the State in which the services are performed, and

"(ii) such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;".

(b) DETERMINATION OF PAYMENT AMOUNT.—Section 1842(b)(3) of such Act (42 U.S.C. 1395u(b)(3)) is amended by adding at the end the following: "With respect to services described in section 1861(s)(2)(K) (relating to a physician assistant acting under the supervision of a physician), the prevailing charges shall not exceed 90 percent of the prevailing charges applicable with respect to the physician's performance of the services.".

(c) PAYMENT TO EMPLOYER.—The first sentence of section 1842(b)(6) of such Act (42 U.S.C. 1395u(b)(6)) is amended—

(1) by striking "except that payment may be made (A)(i)" and inserting "except that (A) payment may be made (i)";

(2) by striking "or (B)" and by inserting "(B) payment may be made"; and

(3) by inserting before the period at the end the following: ", and (C) in the case of services described in section 1861(s)(2)(K) where payment is made on an assignment-related basis, payment shall be made to the employer of the physician assistant involved".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 4524. COVERAGE OF SERVICES OF NURSE ANESTHETISTS.

(a) COVERAGE OF SERVICES OF A REGISTERED NURSE ANESTHETIST UNDER PART B.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395x(s)) is amended—

(1) by redesignating paragraphs (11) through (14) as paragraphs (12) through (15), respectively;

(2) by striking "and" at the end of paragraph (9);

(3) by striking the period at the end of paragraph (10) and inserting "; and"; and

(4) by inserting after paragraph (10) the following new paragraph:

"(11) services of a registered nurse anesthetist (as defined in subsection (bb)).".

(b) DEFINITION OF SERVICES OF A REGISTERED NURSE ANESTHETIST.—Section 1861 of such Act is amended by inserting after subsection (aa) the following new subsection:

"Services of a Registered Nurse Anesthetist

"(bb)(1) The term 'services of a registered nurse anesthetist' means anethesia services and related care furnished by a registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

"(2) The term 'registered nurse anesthetist' means a registered nurse licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists.".

(c) DIRECT PAYMENT FOR SERVICES.—Section 1832(a)(2)(B) of such Act (42 U.S.C. 1395k(a)(2)(B)) is amended—

(1) by striking "and" at the end of clause (i),

(2) by striking "; and" at the end of clause (ii) and inserting ", and", and

(3) by adding at the end the following new clause:

"(iii) services of a registered nurse anesthetist; and".

(d) AMOUNT OF PAYMENT.—(1) Section 1833(a)(1) of such Act (42 U.S.C. 1395l(a)(1)) is amended by striking "and' at the end of subparagraph (E), and by adding at the end the following: "and (H) with respect to services of a registered nurse anesthetist under section 1861(s)(11), the amounts paid shall be 80 percent of the reasonable charges for such services established by the Secretary in accordance with subsection (l),".

(2) Section 1833 of such Act is further amended by adding at the end the following new subsection:

"(l)(1) With respect to services of a registered nurse anesthetist under section 1861(s)(11), the reasonable charge shall be an amount determined by the Secretary to be consistent with efficient and high quality anesthesia services, taking into account the prevailing rate for such services, but modified to the extent necessary to comply with the requirements of paragraph (2).

"(2) In establishing the reasonable charge for those services, the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for those services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would be paid under this title for those services in the fiscal year if the services were included as inpatient hospital services and payment for such services was made under part A in the same manner as payment was made in fiscal year 1986, adjusted to take into account changes in prices and technology relating to the adminstration of anesthesia.

"(3) In establishing the reasonable charge for medical direction of services of a registered nurse anesthetist under section 1861(s)(11), the Secretary shall adjust the reasonable charge to the extent necessary to ensure that the total amount which will be paid under this title for such medical direction and such services in any fiscal year (as estimated by the Secretary) will not exceed the total amount which would have been paid but for the enactment of the amendments made by section 4524 of the Budget Reconciliation Act of 1986.

"(4)(A) If an adjustment under paragraph (3) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

"(i) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

"(ii) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(B) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(3) Section 1842(j)(2) of such Act (42 U.S.C. 1395u(j)(2)) is amended by inserting "or section 1833(l)(4)" after "(k)".

(e) NOT TREATED AS PART OF INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of such Act (42 U.S.C. 1395x(b)(4)) is amended by inserting before the semicolon the following: ", costs of anesthesia services provided by a certified registered nurse anesthetist".

(f) CONFORMING AMENDMENTS TO HOSPITAL PAYMENTS.—(1) Section 1886(a)(4) of such Act (42 U.S.C. 1395ww(a)(4)) is amended by striking ", costs of anesthesia services provided by a certified registered nurse anesthetist,".

(2) Section 1886(d)(5) of such Act (42 U.S.C. 1395ww(d)(5)) is amended by striking subparagraph (E).

(g) OTHER CONFORMING AMENDMENTS.—(1) Section 1862(a)(14) of such Act (42 U.S.C. 1395y(a)(14)) is amended by inserting before the period the following: "or are services of a registered nurse anesthetist".

(2) Section 1866(a)(1)(H) of such Act (42 U.S.C. 1395cc(a)(1)(H)) is amended by in-

serting ", and other than services of a registered nurse anesthetist" after "1861(a)(14)".

(3) Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) of such Act (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), 1396n(a)(1)(B)(ii)(I)) are each amended by striking "paragraphs (11) and (12)" and inserting "paragraphs (12) and (13)".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after October 1, 1987.

(i) CONSTRUCTION.—Nothing in this section or the amendments made by this section shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.

SEC. 4525. PAYMENT FOR PHYSICIANS' SERVICES.

(a) PAYMENT FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)(ii)) is amended by adding at the end the following new subclause:

"(III) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by a participating physician, the Secretary shall treat the additional 1 percent increase permitted on May 1, 1986, under subclause (II), as having been justified by economic changes.".

(b) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICAL ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(c) PAYMENT FOR NONPARTICIPATING PHYSICIANS.—

(1) LIMIT ON PREVAILING CHARGES FOR UNASSIGNED CLAIMS.—Section 1842(b)(4)(A) of the Social Security Act is amended by adding at the end the following new clause:

"(iv) For physicians' services furnished on or after January 1, 1987, for which payment is not made on an assignment-related basis, for purposes of the fourth sentence of paragraph (3), the increase that is justified under the index described in that sentence for 1987 is 1 percent.".

(2) LIMIT ON ACTUAL CHARGE INCREASES FOR NONPARTICIPATING PHYSICIANS.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

(B) by adding at the end the following new subparagraph:

"(B) In the case of a nonparticipating physician for services furnished on or after January 1, 1987, the Secretary shall monitor the physician's actual charges for such services. If such physician knowingly and willfully bills for actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) With respect to services furnished during 1987 for which payment is—

"(i) made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by the percentage increase in the medical economic index (under the fourth sentence of paragraph (3)) applicable to physicians' services furnished as of January 1, 1987, or

"(ii) not made on an assignment-related basis, the charges may not exceed the physician's actual charges for the calendar quarter beginning on April 1, 1984, increased by 1 percent.".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished during 1988 and 1989 by a physician, if the physician was a nonparticipating physician in 1987, the Secretary shall not recognize any amount of such charges in 1987 that exceed the limit imposed under subsection (j)(1)(C).".

(d) TERMS DEFINED.—Section 1842(h)(1) of the Social Security Act is further amended by adding at the end the following new sentence: "For purposes of this section, the term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician, and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.".

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall apply to services furnished on or after January 1, 1987.

SEC. 4526. GUIDELINES FOR USE OF INHERENT REASONABLENESS AUTHORITY.

(a) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(8)", and

(3) by adding at the end the following new subparagraphs:

"(B) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service, if the Secretary has made specific findings with respect to that service in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

"(C)(i) In applying subparagraph (A), the Secretary may compare—

"(I) the charges and resource costs for related procedures,

"(II) charges and resource costs for the procedure over a period of time,

"(III) charges for a procedure in different geographic areas, and

"(IV) the charges and allowed payments for a procedure under this part and by other payors.

"(ii) An adjustment under subparagraph (B) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is grossly out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

"(iii) In this subparagraph, 'resource costs' include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

"(D) In determining whether to adjust payment rates under subparagraph (B), the Secretary shall consider—

"(i) the potential impacts on quality, access, and beneficiary liability of the adjustment,

"(ii) likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians,

"(iii) the proportion of such procedures for which payment is available under this part, and

"(iv) the prevailing charges of other third-party payors for the procedure.

"(E)(i) Before making an adjustment under subparagraph (B), the Secretary shall—

"(I) publish notice of the proposed adjustment, which shall contain a summary of the study data and an explanation of the basis for the proposed adjustment, and

"(II) provide a period of at least 60 days during which interested parties may comment on the proposed adjustment.

"(ii) Before publishing a notice of proposed adjustment under clause (i)(I), the Secretary shall consult with the Physician Payment Review Commission and shall provide the Commission an opportunity to review and comment on the proposal.

"(iii) An adjustment under subparagraph (B) shall only take effect only after publication of a final notice by the Secretary. In such notice the Secretary shall explain the factors and data that were taken into consideration in making the adjustment and shall respond to any comments made by the Physician Payment Review Commission.

"(F)(i) If an adjustment under subparagraph (B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part—

"(I) the physician may not charge the individual more than 125 percent of the adjusted prevailing charge for the service, and

"(II) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(ii) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(b) PREVENTION OF EXCESS CHARGES.—Section 1842(j)(2) of such Act is amended by inserting "(b)(8)(F)," before "(k)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 4527. PAYMENT FOR CERTAIN CATARACT SURGICAL PROCEDURES.

(a) LIMITATIONS.—Section 1842(b)(9) of the Social Security Act (42 U.S.C. 1395u(b)(9)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively,

(2) by inserting "(A)" after "(9)", and

(3) by adding at the end the following new subparagraphs:

"(B) In determining the reasonable charge under paragraph (3) for cataract surgery with intraoccular lens implantation, the prevailing charge for such surgery shall not be recognized to the extent it exceeds 110 percent of the prevailing charge recognized for such surgery without intraoccular lens implantation.

"(C) In determining the reasonable charge under paragraph (3) for cataract surgery anesthesia, the Secretary shall not recognize more than 4 base units (as used for purposes

of determining payment for anesthesia services as of the date of the enactment of this subparagraph) or equivalent amounts.".

(b) LIMITING CHARGES TO BENEFICIARIES.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is amended by adding at the end the following new subsection:

"(l)(1) With respect to the provision of cataract surgery with intraoccular lens implantation and cataract surgery anesthesia furnished by a nonparticipating physician to an individual entitled to benefits under this part—

"(A) the physician may not charge the individual more than 125 percent of the prevailing charge recognized under this part for the services (which, in the case of cataract surgery anesthesia, is based on conversion factors taking into account the base and time units allowed), and

"(B) if the physician charges more than such amount, the physician shall refund to the individual (and shall be liable to the individual for) any amounts received in excess of such amount.

"(2) If a physician knowingly and willfully imposes charges or fails to make refunds in violation of paragraph (1), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by section is amended by inserting ", or (l)" after "(k)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1987.

SEC. 4528. PAYMENT FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) TREATMENT OF HOSPITAL OUTPATIENT LABORATORIES.—

(1) ELIMINATING SUNSET OF APPLICATION OF PAYMENT PROVISIONS TO HOSPITAL LABORATORIES.—Section 1833(h)(1) of the Social Security Act (42 U.S.C. 1395l(h)(1)) is amended—

(A) in subparagraph (B), by striking "(other than tests performed by a hospital laboratory for outpatients of such hospital)", and

(B) by striking subparagraph (C).

(2) ELIMINATION OF PAYMENT DIFFERENTIAL.—Section 1833(h)(2) of such Act is amended by striking "(or, in the case of a test performed by a hospital laboratory for outpatients of such hospital, 62 percent)".

(3) EFFECTIVE DATE.—The amendments made by this subsection apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.

(b) ELIMINATING REQUIREMENT OF NATIONAL FEE SCHEDULE.—

(1) IN GENERAL.—Section 1833(h)(1)(B) of such Act is amended—

(A) in the first sentence, by striking "during the period beginning on July 1, 1984, and ending on December 31, 1987" and inserting "on or after July 1, 1984", and

(B) by striking the second sentence.

(2) REPORT.—The Secretary of Health and Human Services shall report to Congress, by not later than April 1, 1988, on the advisability and feasibility of establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1833(h) of the Social Security Act.

(c) PAYMENT FOR TIME AND TRAVEL COSTS TO COLLECT SAMPLES FROM CERTAIN IMMOBILE BENEFICIARIES.—

(1) IN GENERAL.—Section 1833(h)(3) of such Act is amended—

(A) by inserting "(A)" after "provide for and establish", and

(B) by inserting before the period at the end the following: ", and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital)".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to samples collected on or after January 1, 1987.

(d) STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES.—

(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.

SEC. 4529. PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES.

The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act to payment for parenteral and enteral nutrition supplies on or after January 1, 1987.

SEC. 4530. PAYMENT FOR OXYGEN THERAPY SERVICES.

(a) MONTHLY PROSPECTIVE FEE SCHEDULES FOR OXYGEN THERAPY SERVICES.—Section 1833 of the Social Security Act (42 U.S.C. 1395l), as amended by section 4524(d)(2) of this subtitle, is amended by adding at the end the following new subsection:

"(m)(1) The Secretary shall establish monthly capitation fee schedules, on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for oxygen therapy services for which payment is made under this part.

"(2)(A) Under each such schedule, payment shall be made under this part on the basis of the number of units of oxygen prescribed for a patient per month without regard to the actual number of units of oxygen so used.

"(B) The Secretary shall require verification of the initial prescription requirements and any subsequent changes therein by laboratory data or such other means deemed appropriate by the Secretary.

"(C) No payment may be made under this part for oxygen therapy services (i) other than to a provider of services with an agreement in effect under section 1866 or on an assignment-related basis (as defined in section 1842(i)(8)) or (ii) furnished more than one year after the date of the prescription for such services.

"(D) No payment may be made under this part for oxygen therapy services furnished pursuant to a prescription of a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, the entity furnishing the oxygen therapy services, except that this prohibition shall not apply with respect to an entity which is the sole supplier (as determined by the Secretary) of oxygen therapy services in a community.

"(E) With respect to payment for oxygen therapy services, the Secretary shall provide that—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) within 22 calendar days after the date a claim for payment under this part is received, the carrier shall notify the entity submitting the claim of any defect or impropriety in the claim (including the lack of any required substantiating documentation) or circumstance requiring special treatment that prevents the claim from being treated as a clean claim and prevents timely payment from being made;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part.

In this subparagraph, the term 'clean claim' means a claim which meets the requirements of this title for payment under this part and the term 'carrier' refers to the appropriate carrier with a contract under section 1842.

"(3) Subject to paragraph (4), the Secretary shall set such fee schedules at 100 percent of the reasonable charge level determined (pursuant to section 1842(b)(3)) for the 12-month period ending June 30, 1986, for oxygen therapy services (excluding any part of such charges relating to the purchase or rental of equipment) furnished in the applicable region, State, or area. Such fee schedules shall be adjusted annually (to become effective January 1 of each year, beginning with 1987) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (all items; United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes. The Secretary shall also base such fee schedule on the lowest cost medically appropriate means of delivery.

"(4) The Secretary shall provide for a percentage increase (established by the Secretary) in the fee schedule amounts for oxygen therapy services furnished through a portable device. In order to assure the availability of oxygen therapy services for individuals consuming small amounts of oxygen, the Secretary shall provide for a minimum monthly amount for the furnishing of oxygen therapy services.

"(5) Nothing in this subsection shall be construed as requiring the use of any particular type of equipment or device.

"(6) In this subsection and subsection (a), 'oxygen therapy services' means durable medical equipment, accessories, and supplies for the provision of oxygen therapy in a patient's home.".

(b) PAYMENT BASED ON MONTHLY PROSPECTIVE FEE SCHEDULE.—Section 1833(a) of such Act is amended—

(1) in paragraph (1), by striking out "and" before "(H)" and by adding at the end the following: "and (I) with respect to oxygen therapy services (as defined in subsection (m)(6)), the amount paid shall be equal to 80 percent of the amount determined under the monthly prospective fee schedule under subsection (l),"; and

(2) in paragraph (2)—

(A) in subparagraph (B), by striking out "or (D)" and inserting in lieu thereof "(D), or (E)",

(B) by striking out "and" at the end of subparagraph (C),

(C) by inserting "and" at the end of subparagraph (D), and

(D) by inserting after subparagraph (D) the following new subparagraph:

"(E) with respect to oxygen therapy services, 80 percent of the amount determined under the monthly prospective fee schedule under subsection (m);".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to oxygen therapy services furnished on or after January 1, 1987.

(d) REPORT.—The Secretary of Health and Human Services shall study and report to the Congress, not later than July 1, 1988, on the implementation of the amendments made by this section and on the effect of such amendments, including the effects on—

(1) patient outcomes,

(2) the availability of oxygen therapy services to medicare beneficiaries, and

(3) changes in oxygen therapy technology.

SEC. 4531. ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.

(a) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(b) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by subsection (a), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

SEC. 4532. CHANGING MEDICARE APPEAL RIGHTS.

(a) REVIEW OF PART B DETERMINATIONS.—(1) Section 1869 of the Social Security Act (42 U.S.C. 1395ff) is amended—

(A) by inserting "or part B" in subsection (a) after "amount of benefits under part A",

(B) by inserting "or part B" in subsection (b)(1)(C) after "part A",

(C) by amending paragraph (2) of subsection (b) to read as follows:

"(2) Notwithstanding paragraph (1)(C), in the case of a claim arising—

"(A) under part A, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

"(B) under part B, a hearing shall not be available to an individual under paragraph (1)(C) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.", and

(D) by adding at the end the following new paragraph:

"(3) Paragraph (1) shall not be construed as authorizing any administrative law judge to review any national coverage determination under section 1862(a)(1) respecting whether or not a particular type or class of items or services is covered under this title.".

(2) Section 1842(b)(3)(C) of such Act (42 U.S.C. 1395u(b)(3)(C)) is amended by striking "$100 or more" and inserting "at least $100, but not more than $500".

(3) Section 1879(d) of such Act (42 U.S.C. 1395pp(d)) is amended by striking "section 1869(b)" and all that follows through "part B)" and inserting "sections 1869(b) and 1842(b)(3)(C) (as may be applicable)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after January 1, 1987.

SEC. 4533. ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the "Secretary") shall conduct at least 5 demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act (in this section referred to as "medicare beneficiaries") who are victims of Alzheimer's disease or related disorders.

(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

(1) case management services,

(2) home and community-based services,

(3) mental health services,

(4) outpatient drug therapy,

(5) respite care and other supportive services and counseling for family,

(6) adult day care services, and

(7) other in-home services.

(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

(1) each be conducted over a period of 3 years;

(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge,

(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a preliminary report during the third year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

(f) FUNDING.—Expenditures (not to exceed $40,000,000 for the projects and $2,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.

Subtitle G—Medicaid and Maternal and Child Health

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PART 1—COVERAGE OF INDIVIDUALS

SEC. 4601. OPTIONAL COVERAGE FOR POOR PREGNANT WOMEN AND INFANTS.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(ii)), as amended by sections 9505(b)(2) and 9529(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by striking ", or" at the end of subclause (VII) and inserting a semicolon,

(2) by inserting "or" at the end of subclause (VIII), and

(3) by adding at the end the following new subclause:

"(IX) subject to subsection (l)(4), who are described in subsection (l)(1);".

(b) DESCRIPTION OF GROUP.—Section 1902 of such Act is amended by adding at the end the following new subsection:

"(l)(1) An individual described in this paragraph is—

"(A) a woman during pregnancy (and during the 60-day period beginning on the last date of her pregnancy), and

"(B) an infant under one year of age or, in the case described in subsection (e)(7), older,

who is not described in subsection (a)(10)(A)(i) and whose family income does not exceed the maximum income level established by the State under paragraph (2) for a family size equal to the size of the family including the woman or infant. A State may not elect, under subsection (a)(10)(A)(ii)(IX), to cover only individuals described in subparagraph (A) or to cover only individuals described in subparagraph (B).

"(2)(A) For purposes of paragraph (1) and subject to subparagraph (B), the State shall establish a maximum income level which is a percentage (not more than 100 percent) of the nonfarm income official poverty line defined by the Office of Management and Budget (and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) The maximum income level established under subparagraph (A) for a family may not be less than the payment level applicable to a family of that size and with no income under the State plan approved under part A of title IV.

"(3) Notwithstanding subsection (a)(17), for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(ii)(IX)—

"(A)(i) no resource standard or methodology may be applied with respect to an individual described in paragraph (1)(A),

"(ii) any resource standard or methodology which is applied with respect to an individual described in paragraph (1)(B) may not be more restrictive than the corresponding resource standard or methodology which is applied under the State plan under part A of title IV,

"(B) the income standard to be applied is the income standard established under paragraph (2), and

"(C) family income shall be determined in accordance with the methodology employed under the State plan under part A of title IV (without regard to section 402(a)(18)), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.

"(4) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) unless the State has in effect, under its plan established under part A of title IV, payment levels that are not less than the payment levels in effect under its plan on April 17, 1986."

(c) LIMITATION OF BENEFITS FOR NEWLY ELIGIBLE PREGNANT WOMEN.—Section 1902(a)(10) of such Act (42 U.S.C. 1396a(a)(10)), as amended by sections 9501 and 9505(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended, in the matter after subparagraph (D)—

(1) by striking "and" before "(VI)", and

(2) by inserting before the semicolon at the end the following: ", and (VII) the medical assistance made available to an individual described in subsection (l)(1)(A) who is eligible for medical assistance only because of subparagraph (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, and postpartum services) and to other conditions which may complicate pregnancy".

(d) CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN PREGNANT WOMEN DURING PREGNANCY AND FOR CERTAIN INFANTS RECEIVING INPATIENT SERVICES AT ONE YEAR OF AGE.—Section 1902(e) of such Act (42 U.S.C. 1396a(e)), as amended by section 9501(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraphs:

"(6) At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), the plan may provide that any woman described in such subsection and subsection (l)(1)(A) shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last date of her pregnancy.

"(7) If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX), in the case of an infant described in subsection (l)(1)(B)—

"(A) who is receiving inpatient services for which medical assistance is provided on the date the infant becomes one year of age, and

"(B) who, but for becoming one year of age, would remain eligible for medical assistance as under such subsection,

the infant shall continue to be treated as an individual described in subsections (a)(10)(A)(ii)(IX) and (l)(1)(B) until the end of the stay for which the inpatient services are furnished.".

(e) CONFORMING AMENDMENTS.—(1) Section 1902(a)(17) of such Act (42 U.S.C. 1396a(a)(17)) is amended by inserting "except as provided in subsection (l)(3)," after "(17)".

(2) Section 1903(f)(4) of such Act (42 U.S.C. 1396b(f)(4)) is amended by inserting "for any individual described in section 1902(a)(10)(A)(ii)(IX) or" after "as medical assistance".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished in calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

SEC. 4602. OPTIONAL COVERAGE OF ELDERLY AND DISABLED POOR FOR ALL MEDICAID BENEFITS.

(a) CREATION OF NEW OPTIONAL CATEGORICALLY NEEDY GROUPS.—

(1) IN GENERAL.—Subsection (a)(10)(A)(ii) of section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by section 4601(a) of this subtitle, is amended—

(A) by striking "or" at the end of subclause (VIII),

(B) by striking the semicolon at the end of subclause (IX) and inserting ", or", and

(C) by adding at the end the following new subclause:

"(X) subject to subsection (m)(3), who are described in subsection (m)(1);".

(2) DESCRIPTION OF INDIVIDUALS.—Such section is further amended by adding after subsection (l), added by section 4601(b) of this subtitle, the following new subsection:

"(m)(1) Individuals described in this paragraph are individuals—

"(A) who are 65 years of age or older or are disabled individuals (as determined under section 1614(a)(3)),

"(B) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(C) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(b) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—Section 1902(m) of such Act, as added by subsection (a)(2), is further amended by adding at the end the following new paragraphs:

"(3) A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X), unless the plan provides

coverage of some of the individuals described in subsection (l)(1).

"(4) Notwithstanding subsection (a)(17), for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X)—

"(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4603. OPTIONAL COVERAGE OF POOR MEDICARE BENEFICIARIES FOR MEDICARE COST-SHARING EXPENSES.

(a) ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARY.—Section 1902(a)(10) of the Social Security Act (42 U.S.C. 1396a(a)(10)) is amended—

(1) by striking "and" at the end of subparagraph (C),

(2) by inserting "and" at the end of subparagraph (D), and

(3) by inserting after subparagraph (D) the following new subparagraph:

"(E) at the option of a State but subject to subsection (m)(3), for making medical assistance available for medicare cost-sharing (as defined in section 1905(p)(3)) for qualified medicare beneficiaries described in section 1905(o)(1);".

(b) QUALIFIED MEDICARE BENEFICIARY DEFINED.—Section 1905 of such Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(p)(1) The term 'qualified medicare beneficiary' means an individual—

"(A) who is entitled to hospital insurance benefits under part A of title XVIII (including an individual entitled to such benefits pursuant to an enrollment under section 1818),

"(B) who, but for section 1902(a)(10)(E) and the election of the State, is not eligible for medical assistance under the plan,

"(C) whose income (as determined under section 1612 for purposes of the supplemental security income program) does not exceed an income level established by the State consistent with paragraph (2)(A), and

"(D) whose resources (as determined under section 1613 for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

"(2)(A) The income level established under paragraph (1)(C) may not exceed a percentage (not more than 100 percent) of the nonfarm official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

"(B) In the case of a State that provides medical assistance to individuals not described in section 1902(a)(10)(A) and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1902(a)(10)(A).".

(c) LIMITED, MEDICARE GAP-FILLING BENEFITS.—Section 1902(a)(10) of such Act (42 U.S.C. 1395a(a)(10)), as amended by section 1(c) of this subtitle, is amended, in the matter after subparagraph (D)—

(1) by striking "and" before "(VII)",

(2) by inserting before the semicolon at the end the following: ", and (VIII) the medical assistance made available to a qualified medicare beneficiary described in section 1905(p)(1) shall be limited to medical assistance for medicare cost-sharing (described in section 1905(p)(3)), subject to the provisions of subsection (n) and section 1916(b)".

(d) MEDICARE COST-SHARING DEFINED.—Section 1905(p) of such Act, as added by subsection (b), is amended by adding at the end the following:

"(3) The term 'medicare cost-sharing' means the following costs incurred with respect to a qualified medicare beneficiary:

"(A) Premiums under part B.

"(B) Deductibles and coinsurance described in section 1813.

"(C) The annual deductible described in section 1833(b).

"(D) The difference between the amount that is paid under section 1833(a) and the amount that would be paid under such section if any reference to '80 percent' therein were deemed a reference to '100 percent'.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1876.".

(e) PAYMENT AMOUNTS.—Section 1902 of such Act, as amended by sections 4601(b) and 4602(a)(2) of this subtitle, is further amended by adding at the end the following new subsection:

"(n) In the case of medical assistance furnished under this title for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under title XVIII with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.".

(f) REQUIREMENT OF COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND OTHER SPECIAL RULES.—

(1) REQUIRING COVERAGE OF CERTAIN PREGNANT WOMEN AND CHILDREN AND INCOME STANDARD TO BE USED.—Section 1902(l) of such Act, as added by section 4602(a)(2) of this subtitle, is amended—

(A) in paragraph (3), by inserting "or coverage under subsection (a)(10)(E)" after "subsection (a)(10)(A)(ii)(IX)", and

(B) by adding at the end the following new paragraph:

"(5) Notwithstanding subsection (a)(17), for qualified medicare beneficiaries described in section 1905(p)(1)—

"(A) the income standard to be applied is the income standard described in section 1905(p)(1)(C), and

"(B) except as provided in section 1612(b)(4)(B)(ii), costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17), require or permit such treatment for other individuals.".

(2) EFFECTIVE DATE OF BENEFITS.—Section 1902(e) of such Act, as amended by section 4601(d) of this subtitle, is amended by adding at the end the following new paragraph:

"(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1905(p)(1)), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1903(a), such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.".

(g) CONFORMING AMENDMENTS.—

(1) TREATMENT OF BENEFITS.—Section 1902(a)(10)(C) of such Act (42 U.S.C. 1396a(a)(10)) is amended, in the matter before clause (i), by inserting "or (E)" after "subparagraph (A)".

(2) PAYMENT OF MEDICARE PREMIUMS AND PART A DEDUCTIBLE.—Section 1903(a)(1) of such Act (42 U.S.C. 1396b(a)(1)) is amended—

(A) by inserting "deductible amounts under part A and" after "(including expenditures for",

(B) by inserting "(and, in the case of qualified medicare beneficiaries described in section 1905(p)(1), part A)" after "premiums under part B", and

(C) by striking "or (B)" and inserting "(B) are qualified medicare beneficiaries described in section 1905(o)(1), or (C)".

(3) TIMING OF BENEFITS.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before subdivision (i), by inserting "or, in the case of a qualified medicare beneficiary described in section 1905(p)(1), if provided after the month in which the individual becomes such a beneficiary" after "makes application for assistance".

(4) COPAYMENTS.—

(A) Section 1902(a)(15) of such Act (42 U.S.C. 1396a(a)(15)) is amended by inserting "are not qualified medicare beneficiaries (as defined in section 1905(p)(1)) but" after "older who".

(B) Subsections (a) and (b) of section 1916 of such Act (42 U.S.C. 1396o) are each amended by striking "section 1902(a)(10)(A)" and inserting "subparagraph (A) or (E) of section 1902(a)(10)".

(h) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4604. MEDICAID ELIGIBILITY FOR QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.

(a) AS CATEGORICALLY NEEDY.—Section 1902(a)(10)(A)(i)(II) of the Social Security Act (42 U.S.C. 1396a(a)(10)(A)(i)(II)) is amended by inserting "or who are qualified severely impaired individuals (as defined in section 1905(q))" after "title XVI".

(b) DESCRIPTION OF QUALIFIED SEVERELY IMPAIRED INDIVIDUALS.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by section 4603(b) of this subtitle, is amended by

adding at the end the following new subsection:

"(q) The term 'qualified severely impaired individual' means an individual under age 65—

"(1) who received (A) a payment of supplemental security income benefits under section 1611(b) on the basis of blindness or disability, (B) a supplementary payment under section 1616 of this Act or under section 212 of Public Law 93-66 on such basis, (C) a payment of monthly benefits under section 1619(a), or (D) a supplementary payment under section 1616(c)(3), and

"(2) for so long as the Secretary determines that—

"(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under title XVI,

"(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611(b) (if he were otherwise eligible for such payments),

"(C) the lack of eligibility for benefits under this title would seriously inhibit his ability to continue or obtain employment, and

"(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under title XVI and this title and attendant care paid for under title XX which would be available to him in the absence of such earnings.".

(c) EFFECTIVE DATE.—(1) The amendments made by this section apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

SEC. 4605. CLARIFICATION OF ELIGIBILITY OF HOMELESS INDIVIDUALS.

Section 1902(b)(2) of the Social Security Act (42 U.S.C. 1396a(b)(2)) is amended by inserting before the semicolon the following: ", regardless of whether or not the residence is maintained permanently or at a fixed address".

SEC. 4606. TREATMENT OF INCOME AND RESOURCES REQUIRED TO BE PAID UNDER SPOUSAL AND CHILD SUPPORT ORDERS.

(a) IN GENERAL.—Section 1902 of the Social Security Act (42 U.S.C. 1396a), as amended by sections 4601(b), 4602(a)(2), and 4603(e) of this part, is further amended by adding at the end the following new subsection:

"(o) In applying subsection (a)(17) and notwithstanding any provision in that subsection to the contrary, in determining the income and resources of an individual who is in an institution, the individual shall not be considered to have available to him or her income or resources which are required to be paid under court order for the support of the individual's spouse or child.".

(b) EFFECTIVE DATE.—(1) Subject to paragraph (2), the amendment made by subsection (a) shall apply to medical assistance furnished on or after the date of the enactment of this Act, without regard to whether or not regulations to implement such amendment is promulgated before such date.

(2) Such amendment shall only apply to States the policy or practice of which (as of July 22, 1986, and without regard to whether or not such policy or practice has been approved by the Health Care Financing Administration) is consistent with section 1902(o) of the Social Security Act (as added by such amendment).

SEC. 4607. PAYMENT FOR ALIENS UNDER MEDICAID.

(a) IN GENERAL.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(1) by striking the period at the end of paragraph (7) and inserting "; or", and

(2) by adding at the end the following new paragraph:

"(8) for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or permanently residing in the United States under color of law.".

(b) CONFORMING AMENDMENT.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by adding at the end the following: "Notwithstanding paragraph (10) or any other provision of this subsection, nothing in this title shall be construed as requiring a State plan to provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to medical assistance furnished to aliens on or after January 1, 1987. The amendment made by subsection (b) shall apply to medical assistance furnished to individuals on and after the date of the enactment of this Act.

PART 2—PROVISION OF SERVICES UNDER WAIVER AUTHORITY

SEC. 4611. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) OR WITH AIDS-RELATED CONDITIONS.

(a) PERMITTING HOSPITAL LEVEL OF CARE.—Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)), as amended by section 9502(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the period the following: "or because they have been diagnosed as having acquired immune deficiency syndrome (AIDS) or AIDS-related conditions the cost of treatment with respect to which is reimbursed under the State plan".

(b) COMPUTING EXPENDITURES FOR CERTAIN PATIENTS WITH AIDS OR AIDS-RELATED CONDITIONS.—Section 1915(c)(7) of such Act, as added by section 9502(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by inserting "(A)" after "(7)", and

(2) by adding at the end the following new subparagraph:

"(B) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those respective facilities."

(c) PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH AIDS AND AIDS-RELATED CONDITIONS.—Section 1915(g)(1) of such Act, as added by section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 4612. PERMITTING STATES TO OFFER HOME AND COMMUNITY-BASED SERVICES TO LOW-INCOME INDIVIDUALS WITH CHRONIC MENTAL ILLNESS.

(a) PERMITTING HOSPITAL LEVEL OF CARE.—Section 1915(c)(1) of the Social Security Act (42 U.S.C. 1396n(c)(1)), as amended by section 9502(b)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by inserting before the period the following: "or because they have chronic mental illness the cost of treatment with respect to which is reimbursed under the State plan".

(b) WAIVER OF COMPARABILITY REQUIREMENT.—The first sentence of section 1915(c)(3) of such Act is amended by striking all that follows "statewideness)" and inserting "and section 1902(a)(10)(B) (relating to comparability of medical assistance).".

(c) COMPUTING EXPENDITURES FOR CERTAIN PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(c)(7) of such Act, as added by section 9502(d) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended by section 46011(b) of this subtitle, is amended by adding at the end the following new subparagraph:

"(C) In making estimates under paragraph (2)(D) in the case of a waiver which applies only to individuals with chronic mental illness, who are inpatients in hospitals or in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those respective facilities.".

(d) PROVIDING CASE MANAGEMENT SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(g)(1) of such Act, as added by section 9508(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended by section 46011(c) of this subtitle, is amended by adding at the end the following: "A State may limit the provision of case management services under this subsection to individuals with chronic mental illness.".

(e) PROVIDING CERTAIN OTHER SERVICES TO PATIENTS WITH CHRONIC MENTAL ILLNESS.—Section 1915(c)(4)(B) of such Act is amended by inserting before the period at the end the following: "and for day treatment or

other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act.

SEC. 4613. WAIVER AUTHORITY FOR THE CHRONICALLY MENTALLY ILL DEMONSTRATION PROGRAM.

(a) IN GENERAL.—The Secretary of Health and Human Services may, in accordance with this section, waive certain provisions of title XIX of the Social Security Act in order to allow States to implement demonstration programs to improve the continuity, quality, and cost-effectiveness of mental health services available to chronically mentally ill medicaid beneficiaries.

(b) CONDITIONS OF WAIVER.—A waiver shall be granted under this subsection with respect to a demonstration program only if—

(1) the demonstration program is receiving funding from the Robert Wood Johnson Foundation and the Department of Housing and Urban Development under their "Program for the Chronically Mentally Ill",

(2) the State provides assurances satisfactory to the Secretary that under such waiver—

(A) the average per capita expenditure estimated by the State in any fiscal year for medical assistance for mental health services provided with respect to individuals covered under the program does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such services for such individuals if the waiver had not been granted, and

(B) there will be no reduction or limitation in benefits to a medicaid beneficiary under the program.

(c) PROVISIONS THAT CAN BE WAIVED.—The authority under this section extends only to the following, as they relate to the provision of mental health services:

(1) A waiver of the requirements of sections 1902(a)(1), 1902(a)(10)(B), 1902(a)(23), and 1902(a)(30) and clauses (i) and (ii) of section 1903(m)(2) of the Social Security Act.

(2) Including as "medical assistance" under the State plan case management services with respect to mentally ill patients, habilitation services (as defined in section 1915(c)(5) of such Act), day treatment or other partial hospitalization services, residential services (other than room and board), psychosocial rehabilitation services, clinic services (whether or not furnished in a facility), and such other services as the State may request and the Secretary may approve for individuals covered under the demonstration project.

(d) DURATION OF WAIVER.—(1) A waiver under this section shall be for an initial term of three years which may be extended for an additional two-year term. The request of a State for extension of such a waiver shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(2) The authority to approve a waiver under this section extends only during the five-year period beginning on October 1, 1986.

(d) INCORPORATION OF CERTAIN PROVISIONS.—Subsections (c)(6) and (e)(1) of section 1915 of the Social Security Act shall apply to a waiver under this section in the same manner as they apply to a waiver under that section.

(e) REPORT.—The Secretary shall report, not later than January 1, 1993, to Congress on the cost, accessibility, utilization, and quality of services provided under waivers granted under this section.

(f) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and implementing the amendments made by this part.

SEC. 4614. CONTINUATION OF "CASE-MANAGED MEDICAL CARE FOR NURSING HOME PATIENTS" DEMONSTRATION PROJECT.

(a) APPROVAL OF APPLICATION.—The Secretary of Health and Human Services shall approve any application for a waiver of any requirement of title XVIII or XIX of the Social Security Act necessary to provide for continuation, from July 1, 1987, through June 30, 1989, of the "Case-Managed Medical Care for Nursing Home Patients" demonstration project (#95-P-98346/1-01) carried out pursuant to section 222 of the Social Security Amendments of 1972, section 402 of the Social Security Amendments of 1967, and section 1115 of the Social Security Act by the Department of Public Welfare, Commonwealth of Massachusetts.

(b) TERMS AND CONDITIONS.—The Secretary's approval of an application (or renewal of an application) under subsection (a) shall be on the same terms and conditions as applied to the demonstration project on July 1, 1986.

PART 3—PAYMENTS

SEC. 4621. HOLDING STATES HARMLESS IN FISCAL YEAR 1987 AGAINST A DECREASE IN THE FEDERAL MEDICAL ASSISTANCE PERCENTAGE.

(a) IN GENERAL.—Section 9528 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payment to a State under section 1903 of the Social Security Act, the amendments made by subsection (a) shall not apply to a State if the effect of the applying the amendments would be to reduce the amount of payment made to the State under that section.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 at the time of its enactment.

PART 4—OTHER QUALITY AND EFFICIENCY MEASURES

SEC. 4631. INDEPENDENT QUALITY REVIEW OF HMO SERVICES.

(a) IN GENERAL.—Section 1902(a)(30) of the Social Security Act (42 U.S.C 1396a(a)(30)) is amended by adding at the end the following new subparagraph:

"(C) provide a utilization and quality control peer review organization (under part B of title XI) or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1903(m), with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(d) of such Act (42 U.S.C. 1396a(d)) is amended by inserting "(including quality review functions described in subsection (a)(30)(C))" after "medical or utilization review functions".

(2) Section 1903(a)(3)(C) of such Act (42 U.S.C. 1396b(a)(3)(C)) is amended by inserting "or quality review" after "medical and utilization review".

(c) EFFECTIVE DATE.—The amendments made by this section apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 4632. CLARIFICATION OF FLEXIBILITY OF STATE UTILIZATION REVIEW SYSTEMS.

(a) IN GENERAL.—Section 1902(h) of the Social Security Act, as inserted by the amendment made by section 4633(a) of this subtitle, is further amended by inserting "(1)" after "(h)" and by adding at the end the following new paragraph:

"(2) Nothing in this title (including subsections (a)(4) and (a)(30) of this section) shall be construed as authorizing the Secretary to require that States operate second surgical opinion programs or inpatient hospital preadmission review programs.".

(b) REPORT.—(1) The Secretary of Health and Human Services shall report to Congress, by not later than January 1, 1992, for each State in a representative sample of States—

(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

(C) the extent of geographic variation in the rate of performance of such procedures for small areas within each State and among such States,

(D) the rate at which each such procedure is performed on medicaid patients compared to the rate at which such procedure is performed on privately insured patients, and

(E) with respect to each such procedure, the number of board certified or board eligible physicians in the State who (i) now perform the procedure, and (ii) are willing to provide second opinions (of the type described in section 1164 of the Social Security Act) for the procedure at prevailing payment rates under the State medicaid plan.

(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

(A) The procedure is one which generally can be postponed without undue risk to the patient.

(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

(3) Such report shall also include an identification of those underutilized, medically necessary, diagnostic and treatment procedures and services for which—

(A) a failure to furnish could have an adverse effect on health status, and

(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

(4) In this subsection, the term "medicaid plan" means a State plan approved under title XIX of the Social Security Act.

SEC. 4633. CLARIFICATION OF FLEXIBILITY FOR STATE MEDICAID PAYMENT SYSTEMS FOR INPATIENT SERVICES.

(a) IN GENERAL.—Section 2173 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, 95 Stat. 809) is amended by adding at the end the following new subsection:

"(d) Section 1902 of such Act is further amended by inserting before subsection (i) the following new subsection:

" '(h) Nothing in this title (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this title with respect to inpatient hospital services, skilled nursing facility services, or intermediate care facility services, including any such limitation relating to the amount that can reasonably be estimated would have been paid for such services under the reimbursement principles applicable under title XVIII.'. ".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) Act shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35).

SEC. 4634. FINANCIAL DISCLOSURE REQUIREMENTS FOR HMOS.

(b) DISCLOSURE OF INTERLOCKING RELATIONSHIPS.—Section 1903(m) of the Social Security Act (42 U.S.C. 1396b(m)) is amended—

(1) in paragraph (2)(A)—

(A) by striking "and" at the end of clause (vi),

(B) by striking the period at the end of clause (vii) and inserting ", and", and

(C) by adding after clause (vii) the following new clause:

"(viii) such contract provides for disclosure of information in accordance with section 1124 and paragraph (4) of this subsection."; and

(2) by adding at the end the following new paragraph:

"(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

"(i) Any sale or exchange, or leasing of any property between the organization and such a party.

"(ii) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

"(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

"(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.".

(b) APPROVAL OF CONTRACTUAL EXPENDITURES BY HHS.—Section 1903(m)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)(iii) is amended by inserting before the semicolon the following: "and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000".

(c) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.

SEC. 4635. DELEGATION TO INSPECTOR GENERAL OF AUTHORITY OVER STATE MEDICAID FRAUD CONTROL UNITS.

Section 1903(q) of the Social Security Act (42 U.S.C. 1396b(q)) is amended by adding at the end the following new sentence:

"The Secretary shall provide (or continue to provide) for the delegation of the Secretary's authority under this subsection to the Inspector General in the Department of Health and Human Services.".

SEC. 4636. COBRA TECHNICAL CORRECTIONS AND CLARIFICATIONS RELATING TO THE MEDICAID PROGRAM.

(a)(1) Section 1905(a) of the Social Security Act (42 U.S.C. 1395d(a)) is amended—

(A) by striking "and" at the end of paragraph (18),

(B) by redesignating paragraph (19) as paragraph (20), and

(C) by inserting after paragraph (18) the following new paragraph:

"(19) case-management services (as defined in section 1915(g)(2)); and".

(2) Section 1902(j) of such Act (42 U.S.C. 1396a(j)), as amended by section 9505(d)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "(19)" and inserting "(20)".

(3) Section 1902(a)(10)(C)(iv) of such Act (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 9505(d)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "through (18)" and inserting "through (19)".

(b) Section 1902(a)(13)(D) of the Social Security Act (42 U.S.C. 1396a(a)(13)(D)), as inserted by section 9505(c)(1)(C) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and as amended and redesignated by paragraphs (2) and (3) of section 9509(a) of such Act, is amended by adding "and" at the end.

(c) Section 9506 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by adding at the end the following new subsection:

"(c) EXCEPTION.—The amendment made by subsection (a) shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.".

(d) Section 1903(m)(2)(F) of the Social Security Act (42 U.S.C. 1396b(m)(2)(F)), as amended by section 9517(a)(2)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by striking "in the case" and inserting "In the case".

(e) Section 9517(c)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subparagraph (A), by adding at the end the following: "For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.";

(2) in subparagraph (B), by striking "(iv)" and inserting "(vi)"; and

(3) by adding at the end the following new subparagraph:

"(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).".

(f) Section 1919(c) of the Social Security Act (42 U.S.C. 1396r(c)), as added by section 9516(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) by striking "and" at the end of paragraph (6),

(2) by striking the period at the end of paragraph (7) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(8) assure that the existing facility continues to provide active treatment (described in section 1905(d)(2)) to the remaining residents during the phase-out period.".

(g) Section 1920(a) of the Social Security Act (42 U.S.C. 1396s(a)), as added by section 9526 of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively, and

(B) by inserting after "—(A)" the following: "Section 402(a)(32) of this Act (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

"(B)";

(2) in paragraph (2)—

(A) by inserting "(A)" after the dash, and

(B) by adding at the end the following new subparagraph:

"(B) Section 1634(b) of this Act (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).''; and

(3) in paragraph (3), by striking "Section 473(b)" and inserting "Sections 472(h) and 473(b)".

(h) Section 9528(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended by striking "1101(a)(8)(P)" and inserting "1101(a)(8)(B)".

(i) The amendments made by this section shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 4637. PAYMENT FOR CERTAIN LONG-TERM CARE PATIENTS IN HOSPITALS.

(a) IN GENERAL.—In the case of a State which received a waiver under the authority of section 402(b) of the Social Security Amendments of 1967 with respect to payment methodology for inpatient hospital services under title XVIII and XIX of the

Social Security Act during the 3-year period beginning January 1, 1983, notwithstanding section 1902(a)(13) of such Act, the State may pay under title XIX of such Act for hospital patients receiving services at an inappropriate level of care at the rate for hospital patients receiving an appropriate level of care if the Secretary of Health and Human Services determines that a sufficient number of hospital beds have been decertified in the State to reduce the payments to hospitals under such title in the State by an amount equal to or greater than the amount by which payments to hospitals under such title in such State will increase as a result of the payment of such higher rates for patients receiving inappropriate levels of care.

(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payments for services furnished during the 3-year period beginning January 1, 1986, after the date the Secretary makes the determination described in that subsection.

PART 5—MATERNAL AND CHILD HEALTH

SEC. 4641. AUTHORIZATION OF ADDITIONAL FUNDS.

(a) ADDITIONAL FUNDS.—Section 501 of the Social Security Act (42 U.S.C. 701) is amended by striking "$478,000,000 for fiscal year 1984" and inserting "$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989".

(b) SET-ASIDE FOR NEWBORN GENETIC DISORDERS.—Section 502(a)(1) of such Act (42 U.S.C. 702(a)(1)) is amended—

(1) by inserting "(A)" after "(a)(1)", and

(2) by adding at the end the following new subparagraph:

"(B) Of the amount appropriated under section 501(a), the Secretary shall also retain $7,000,000 in fiscal year 1987, $7,500,000 in fiscal year 1988, and $8,000,000 in fiscal year 1989 for the purpose of carrying out (through grants, contracts, or otherwise) projects for the screening of newborns for sickle-cell anemia and other genetic disorders.".

SEC. 4642. MATERNAL AND CHILD HEALTH AND ADOPTION CLEARINGHOUSE.

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain data and information obtained from studies, research, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption,

(H) statistics on adoption, and

(I) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field; and

(3) disseminate the most current and complete information regarding adoption, including directories compiled, maintained, and revised pursuant to paragraph (2).

TITLE V—HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

SEC. 5001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

(a) IN GENERAL.—

(1) Beginning with fiscal year 1987, the Nuclear Regulatory Commission shall assess and collect an annual charge from each person described in paragraph (2) in an amount equal to $750 per million watts of the rated thermal capacity of the utilization facility operated by such person.

(2) A person described in paragraph (1) is any person—

(A) who, on the last day of a fiscal year, holds a license issued under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)) that authorizes the person to operate a utilization facility with a rated thermal capacity in excess of 50,000,000 watts; or

(B) whose authority to operate under such a license is in suspension (but has not been revoked) on the last day of the fiscal year.

(b) EXEMPTION FROM CERTAIN CHARGES.—Any person who is assessed an annual charge under this section shall be exempt from any assessment of charges under section 9701 of title 31, United States Code, other than charges for the costs incurred by the Commission in processing the application of such person for an operating license.

(c) USE OF FUNDS.—Amounts collected under this section shall be deposited in the general fund of the Treasury to reimburse the United States for amounts appropriated for use by the Nuclear Regulatory Commission in carrying out its functions.

(d) REPEAL.—Title VII of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272) is amended by striking subtitle G.

SEC. 5002. ABANDONED MINE RECLAMATION RESEARCH AND DEVELOPMENT.

After the enactment of this Act, the research and demonstration authorities of the Department of the Interior under the provisions of section 401(c)(6) of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) shall be transferred to, and carried out by, the Director of the Bureau of Mines. Research and demonstration projects under such provision shall be selected by a panel appointed by the Director of the Bureau of Mines to be comprised of 9 persons including 4 representatives of State abandoned mine reclamation programs, 4 representatives of the Bureau of Mines and one representative of the Office of Surface Mining Reclamation and Enforcement.

TITLE VI—HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Subtitle A—Ocean Dumping Application and Special Fees

SEC. 6001. Section 104(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414(b)) is amended to read as follows:

"(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit.

"(2) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and the undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law.

"(3) The funds collected under paragraphs (1) and (2) shall be deposited as miscellaneous receipts into the general fund of the Treasury."

Subtitle B—Amendment of the Merchant Ship Sales Act of 1946

SEC. 6101. Section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) is amended to read as follows:

"SEC. 11. (a) The Secretary of Transportation shall maintain a National Defense Reserve Fleet (including the Ready Reserve Force or any component of that fleet) consisting of those vessels owned or acquired that the Secretary, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the national defense reserve fleet.

(b) Except as otherwise provided by law, a vessel in the national defense reserve fleet may be used only for an account of an agency of the United States government during a national emergency, proclaimed by the President, under a charter, contract, or other agreement arranged by the Secretary of Transportation.".

Subtitle C—Amendments to the Merchant Marine Act of 1920

SEC. 6201. Subsection D(a)(5) of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 922) is amended by inserting before "a State", the words "the United States,".

SEC. 6202. Subsection L of section 30 of the Merchant Marine Act of 1920 (46 App. U.S.C. 952) is amended to read as follows:

"Notwithstanding another law, the United States as mortgagee may enforce a preferred mortgage lien in a suit in rem in admiralty under this Act. In a suit in rem in admiralty for the enforcement of the preferred mortgage lien, the district court exercising admiralty jurisdiction may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. When the United States is the mortgagee, the court authorizing the receiver to operate the mortgaged vessel shall order compensation to be paid to the United States for the use of the vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of a person claiming a possessory common-law lien.".

SEC. 6203. When the United States is a mortgagee, section 6202 applies to an obligor that failed to make a payment on a guaranteed obligation after April 1, 1986, under title XI, Merchant Marine Act, 1936 (46 App. U.S.C. 1271).

Subtitle D—Load Line and Tonnage Measurement User Fees

SEC. 6301. Subtitle II of title 46, United States Code, is amended as follows:

(1) The table of chapters at the beginning of the subtitle is amended by—

(A) striking "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and inserting—

"PART C—LOAD LINES OF VESSELS

"51. Load lines ..... 5101";

and

(B) striking "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and inserting—

"PART J—MEASUREMENT OF VESSELS

"141. General 14101
"143. Convention measurement 14301
"145. Regulatory measurement 14501
"147. Penalties ..... 14701".

(2) Immediately after part B, strike "[PART C—RESERVED FOR LOAD LINES OF VESSELS]" and insert the following new part C:

"PART C—LOAD LINES OF VESSELS

"CHAPTER 51—LOAD LINES

Sec.
"5101. Definitions.
"5102. Application.
"5103. Load line requirements.
"5104. Assignment of load lines.
"5105. Load line surveys.
"5106. Load line certificate.
"5107. Delegation of authority.
"5108. Special exemptions.
"5109. Reciprocity for foreign vessels.
"5110. Submersible vessels.
"5111. Providing loading information.
"5112. Loading restrictions.
"5113. Detention of vessels.
"5114. Use of Customs Service officers and employees for enforcement.
"5115. Regulations.
"5116. Penalties.

"§ 5101. Definitions

"In this chapter—

"(1) 'domestic voyage' means movement of a vessel between places in, or subject to the jurisdiction of, the United States, except movement between—

"(A) a place in a territory or possession of the United States or the Trust Territory of the Pacific Islands; and

"(B) a place outside that territory, possession, or Trust Territory.

"(2) 'economic benefit of the overloading' means the amount obtained by multiplying the weight of the overload (in tons) by the lesser of—

"(A) the average freight rate value of a ton of the vessel's cargo for the voyage; or

"(B) $50.

"(3) 'existing vessel' means—

"(A) a vessel on a domestic voyage, the keel of which was laid, or that was at a similar stage of construction, before January 1, 1986; and

"(B) a vessel on a foreign voyage, the keel of which was laid, or that was at a similar stage of construction, before July 21, 1968.

"(4) 'freeboard' means the distance from the mark of the load line assigned under this chapter to the freeboard deck.

"(5) 'freeboard deck' means the deck or other structure the Secretary prescribes by regulation.

"(6) 'minimum safe freeboard' means the freeboard that the Secretary decides cannot be reduced safely without limiting the operation of the vessel.

"(7) 'weight of the overload' means the amount obtained by multiplying the number of inches that the vessel is submerged below the applicable assigned freeboard by the tons-an-inch immersion factor for the vessel at the assigned minimum safe freeboard.

"§ 5102. Application

"(a) Except as provided in subsection (b) of this section, this chapter applies to the following:

"(1) a vessel of the United States.

"(2) a vessel on the navigable waters of the United States.

"(3) a vessel—

"(A) owned by a citizen of the United States or a corporation established by or under the laws of the United States or a State; and

"(B) not registered in a foreign country.

"(4) a public vessel of the United States.

"(5) a vessel otherwise subject to the jurisdiction of the United States.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a recreational vessel when operated only for pleasure.

"(3) a fishing vessel.

"(4) a fish processing vessel of not more than 5,000 gross tons that—

"(A)(i) was constructed as a fish processing vessel before August 16, 1974; or

"(ii) was converted for use as a fish processing vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(5) a fish tender vessel of not more than 500 gross tons that—

"(A)(i) was constructed, under construction, or under contract to be constructed as a fish tender vessel before January 1, 1980; or

"(ii) was converted for use as a fish tender vessel before January 1, 1983; and

"(B) is not on a foreign voyage.

"(6) a vessel of the United States on a domestic voyage that does not cross the Boundary Line, except a voyage on the Great Lakes.

"(7) a vessel of less than 24 meters (79 feet) overall in length.

"(8) a public vessel of the United States on a domestic voyage.

"(9) a vessel excluded from the application of this chapter by an international agreement to which the United States Government is a party.

"(10) an existing vessel of not more than 150 gross tons that is on a domestic voyage.

"(11) a small passenger vessel on a domestic voyage.

"(c) On application by the owner and after a survey under section 5105 of this title, the Secretary may assign load lines for a vessel excluded from the application of this chapter under subsection (b) of this section. A vessel assigned load lines under this subsection is subject to this chapter until the surrender of its load line certificate and the removal of its load line marks.

"(d) This chapter does not affect an international agreement to which the Government is a party that is not in conflict with the International Convention on Load Lines currently in force for the United States.

"§ 5103. Load line requirements

"(a) A vessel may be operated only if the vessel has been assigned load lines.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel shall mark and maintain the load lines permanently and conspicuously in the way prescribed by the Secretary.

"§ 5104. Assignment of load lines

"(a) The Secretary shall assign load lines for a vessel so that they indicate the minimum safe freeboard to which the vessel may be loaded. However, if the owner requests, the Secretary may assign load lines that result in greater freeboard than the minimum safe freeboard.

"(b) In assigning load lines for a vessel, the Secretary shall consider—

"(1) the service, type, and character of the vessel;

"(2) the geographic area in which the vessel will operate; and

"(3) applicable international agreements to which the United States Government is a party.

"(c) An existing vessel may retain its load lines assigned before January 1, 1986, unless the Secretary decides that a substantial change in the vessel after those load lines were assigned requires that new load lines be assigned under this chapter.

"(d) The minimum freeboard of an existing vessel may be reduced only if the vessel complies with every applicable provision of this chapter.

"(e) The Secretary may designate by regulation specific geographic areas that have less severe weather or sea conditions and from which there is adequate time to return to available safe harbors. The Secretary may reduce the minimum freeboard of a vessel operating in these areas.

"§ 5105. Load line surveys

"(a) The Secretary may provide for annual, renewal, and other load line surveys.

"(b) In conducting a load line survey, the Secretary shall consider whether—

"(1) the hull and fittings of the vessel—

"(A) are adequate to protect the vessel from the sea; and

"(B) meet other requirements the Secretary may prescribe by regulation;

"(2) the strength of the hull is adequate for all loading conditions;

"(3) the stability of the vessel is adequate for all loading conditions;

"(4) the topsides of the vessel are arranged and constructed to allow rapid overboard drainage of deck water in heavy weather; and

"(5) the topsides of the vessel are adequate in design, arrangement, and equipment to protect crewmembers performing outside tasks necessary for safe operation of the vessel.

"§ 5106. Load line certificate

"(a) On finding that a load line survey of a vessel under this chapter is satisfactory and that the vessel's load lines are marked correctly, the Secretary shall issue the vessel a load line certificate and deliver it to the owner, master, or individual in charge of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 5107. Delegation of authority

"(a) The Secretary shall delegate to the American Bureau of Shipping or other similarly qualified organizations the authority to assign load lines, survey vessels, determine that load lines are marked correctly, and issue load line certificates under this chapter.

"(b) Under regulations prescribed by the Secretary, a decision of an organization delegated authority under subsection (a) of this section related to the assignment of a load line may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the International Convention on Load Lines, 1966, the authority to assign load

lines, survey vessels, determine that the load lines are marked correctly, and issue an International Load Line Certificate (1966).

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the organization.

"§ 5108. Special exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when—

"(1) the vessel is entitled to an exemption under an international agreement to which the United States Government is a party; or

"(2) under regulations (including regulations on special operations conditions) prescribed by the Secretary, the Secretary finds that good cause exists for granting an exemption.

"(b) When the Secretary grants an exemption under this section, the Secretary may issue a certificate of exemption stating the extent of the exemption.

"(c) A certificate of exemption issued under subsection (b) of this section shall be maintained as required by the Secretary.

"§ 5109. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to load lines are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to an international load line agreement to which the United States Government is a party, the Secretary shall accept the load line marks and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter. The Secretary may control the vessel as provided for in the applicable international agreement.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize load lines assigned under this chapter.

"§ 5110. Submersible vessels

"Notwithstanding sections 5103-5105 of this title, the Secretary may prescribe regulations for submersible vessels to provide a minimum level of safety. In developing the regulations, the Secretary shall consider factors relevant to submersible vessels, including the structure, stability, and watertight integrity of those vessels.

"§ 5111. Providing loading information

"The Secretary may prescribe regulations requiring the owner, charterer, managing operator, and agent of a vessel to provide loading information (including information on loading distribution, stability, and margin of strength) to the master or individual in charge of the vessel in a language the master or individual understands.

"§ 5112. Loading restrictions

"(a) A vessel may not be loaded in a way that submerges the assigned load line or the place at which the load line is required to be marked on the vessel.

"(b) If the loading or stability conditions of a vessel change, the master or individual in charge of the vessel, before moving the vessel, shall record in the official logbook or other permanent record of the vessel—

"(1) the position of the assigned load line relative to the water surface; and

"(2) the draft of the vessel fore and aft.

"(c) A vessel may be operated only if the loading distribution, stability, and margin of strength are adequate for the voyage or movement intended.

"(d) Subsections (a) and (b) of this section do not apply to a submersible vessel.

"§ 5113. Detention of vessels

"(a) When the Secretary believes that a vessel is about to leave a place in the United States in violation of this chapter or a regulation prescribed under this chapter, the Secretary may detain the vessel by giving notice to the owner, charterer, managing operator, agent, master, or individual in charge of the vessel.

"(b) A detained vessel may be cleared under section 4197 of the Revised Statutes (46 App. U.S.C. 91) only after the violation has been corrected. If the vessel was cleared before being detained, the clearance shall be withdrawn.

"(c) Under regulations prescribed by the Secretary, the owner, charterer, managing operator, agent, master, or individual in charge of a detained vessel may petition the Secretary to review the detention order.

"(d) After reviewing a petition, the Secretary may affirm, withdraw, or change the detention order. Before acting on the petition, the Secretary may require any independent survey that may be necessary to determine the condition of the vessel.

"(e) The owner of a vessel is liable for the cost incident to a petition for review and any required survey if the vessel is found to be in violation of this chapter or a regulation prescribed under this chapter.

"§ 5114. Use of Customs Service officers and employees for enforcement

"(a) With the approval of the Secretary of the Treasury, the Secretary may use an officer or employee of the United States Customs Service to enforce this chapter and the regulations prescribed under this chapter.

"(b) The Secretary shall consult with the Secretary of the Treasury before prescribing a regulation that affects the enforcement responsibilities of an officer or employee of the Customs Service.

"§ 5115. Regulations

"(a) The Secretary may prescribe regulations to carry out this part.

"§ 5116. Penalties

"(a) Except as otherwise provided in this section, the owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this chapter or a regulation prescribed under this chapter are each liable to the United States Government for a civil penalty of not more than $5,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"(b) The owner, charterer, managing operator, agent, master, and individual in charge of a vessel allowing, causing, attempting to cause, or failing to take reasonable care to prevent a violation of section 5112(a) of this title are each liable to the Government for a civil penalty of not more than $10,000 plus an additional amount equal to twice the economic benefit of the overloading. The vessel also is liable in rem for the penalty.

"(c) The master or individual in charge of a vessel violating section 5112(b) of this title is liable to the Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

"(d) A person causing or allowing the departure of a vessel from a place within the jurisdiction of the United States in violation of a detention order issued under section 5113 of this title shall be fined not more than $10,000, imprisoned for not more than one year, or both.

"(e) A person causing or allowing the alteration, concealment, or removal of a mark placed on a vessel under section 5103(b) of this title and the regulations prescribed under this chapter, except to make a lawful change or to escape enemy capture in time of war, shall be fined not more than $10,000, imprisoned for not more than 2 years, or both.".

(3) Immediately after part I, strike "[PART J—RESERVED FOR MEASUREMENT OF VESSELS]" and insert the following new part J:

"PART J—MEASUREMENT OF VESSELS

"CHAPTER 141—GENERAL

"Sec.
"14101. Definitions.
"14102. Regulations.
"14103. Delegation of authority.
"14104. Measurement to determine application of a law.

"§ 14101. Definitions

"In this part—

"(1) 'Convention' means the International Convention on Tonnage Measurement of Ships, 1969.

"(2) 'existing vessel' means a vessel the keel of which was laid or that was at a similar stage of construction before July 18, 1982.

"(3) 'Great Lakes' means—

"(A) the Great Lakes; and

"(B) the St. Lawrence River west of—

"(i) a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island; and

"(ii) on the north side of Anticosti Island, the meridian of longitude 63 degrees west.

"(4) 'vessel engaged on a foreign voyage' means a vessel—

"(A) arriving at a place under the jurisdiction of the United States from a place in a foreign country;

"(B) making a voyage between places outside the United States (except a foreign vessel engaged on that voyage);

"(C) departing from a place under the jurisdiction of the United States for a place in a foreign country; or

"(D) making a voyage between a place within a territory or possession of the United States and another place under the jurisdiction of the United States not within that territory or possession.

"§ 14102. Regulations

The Secretary may prescribe regulations to carry out this part.

"§ 14103. Delegation of authority

"(a) The Secretary may delegate to a qualified person the authority to measure a vessel and issue an International Tonnage Certificate (1969) or other appropriate certificate of measurement under this part.

"(b) Under regulations prescribed by the Secretary, a decision of the person delegated authority under subsection (a) of this section related to measuring a vessel or issuing a certificate may be appealed to the Secretary.

"(c) For a vessel intended to be engaged on a foreign voyage, the Secretary may delegate to another country that is a party to the Convention the authority to measure the vessel and issue an International Tonnage Certificate (1969) under chapter 143 of this title.

"(d) The Secretary may terminate a delegation made under this section after giving written notice to the person.

"§ 14104. Measurement to determine application of a law

"When the application of a law of the United States to a vessel depends on the vessel's tonnage, the vessel shall be measured under this part.

"CHAPTER 143—CONVENTION MEASUREMENT

"Sec.
"14301. Application.
"14302. Measurement.
"14303. International Tonnage Certificate (1969).
"14304. Remeasurement.
"14305. Optional regulatory measurement.
"14306. Reciprocity for foreign vessels.
"14307. Inspection of foreign vessels.

"§ 14301. Application

"(a) Except as otherwise provided in this section, this chapter applies to the following:

"(1) a documented vessel.

"(2) a vessel that is to be documented under chapter 121 of this title.

"(3) a vessel engaged on a foreign voyage.

"(b) This chapter does not apply to the following:

"(1) a vessel of war.

"(2) a vessel of less than 24 meters (79 feet) overall in length.

"(3) a vessel operating only on the Great Lakes, unless the owner requests.

"(4) a vessel (except a vessel engaged on a foreign voyage) the keel of which was laid or that was at a similar stage of construction before January 1, 1986, unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(5) before July 19, 1994, an existing vessel unless—

"(A) the owner requests; or

"(B) the vessel undergoes a change that the Secretary finds substantially affects the vessel's gross tonnage.

"(c) A vessel made subject to this chapter at the request of the owner may be remeasured only as provided by this chapter.

"(d) After July 18, 1994, an existing vessel (except an existing vessel referred to in subsection (b)(5)(A) or (B) of this section) may retain its tonnages existing on July 18, 1994, for the application of relevant requirements under international agreements (except the Convention) and other laws of the United States. However, if the vessel undergoes a change substantially affecting its tonnage after July 18, 1994, the vessel shall be remeasured under this chapter.

"(e) This chapter does not affect an international agreement to which the United States Government is a party that is not in conflict with the Convention or the application of IMO Resolutions A.494 (XII) of November 19, 1981, A.540 (XIII) of November 17, 1983, and A.541 (XIII) of November 17, 1983.

"§ 14302. Measurement

"(a) The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter and the Convention.

"(b) A vessel measured under this chapter may not be required to be measured under another law.

"(c) Unless otherwise provided by law, the measurement of a vessel under this chapter applies to a law of the United States whose applicability depends on a vessel's tonnage, if that law—

"(1) becomes effective after July 18, 1994; or

"(2) is in effect before July 19, 1994, is not enumerated in section 14305 of this title, and is identified by the Secretary by regulation as a law to which this chapter applies.

"§ 14303. International Tonnage Certificate (1969)

"(a) After measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel.

"(b) The certificate shall be maintained as required by the Secretary.

"§ 14304. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement; or

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage.

"(b) Except as provided in this chapter or section 14504 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"§ 14305. Optional regulatory measurement

"(a) On request of the owner of a documented vessel measured under this chapter, the Secretary also shall measure the vessel under chapter 145 of this title. The tonnages determined under that chapter shall be used in applying—

"(1) parts A, B, C, E, F, and G and sections 12106(c) and 12108(c) of this title;

"(2) section 3(d)(3) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 903(d)(3));

"(3) section 4 of the Bridge to Bridge Radiotelephone Act (33 U.S.C. 1203(a));

"(4) section 4(a)(3) of the Ports and Waterways Safety Act (33 U.S.C. 1223(a)(3));

"(5) section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183);

"(6) sections 27 and 27A of the Act of June 5, 1920 (46 App. U.S.C. 883 and 883-1);

"(7) Act of July 14, 1956 (46 App. U.S.C. 883a);

"(8) sections 351, 352, 355, and 356 of the Ship Radio Act (47 U.S.C. 351, 352, 354, and 354a);

"(9) section 403 of the Commercial Fishing Industry Vessel Act (46 U.S.C. 3302 note);

"(10) the Officers' Competency Certificates Convention, 1936, and sections 8303 and 8304 of this title;

"(11) the International Convention for the Safety of Life at Sea as provided by IMCO Resolution A.494 (XII) of November 19, 1981;

"(12) the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978, as provided by IMO Resolution A.540 (XIII) of November 17, 1983;

"(13) the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, as provided by IMO Resolution A.541 (XIII) of November 17, 1983;

"(14) provisions of law establishing the threshold tonnage levels at which evidence of financial responsibility must be demonstrated; or

"(15) unless otherwise provided by law, any other law of the United States in effect before July 19, 1994, and not listed by the Secretary under section 14302(c) of this title.

"(b) As long as the owner of a vessel has a request in effect under subsection (a)(1) of this section, the tonnages determined under that request shall be used in applying the other provisions of law described in subsection (a)(1) to that vessel.

"§ 14306. Reciprocity for foreign vessels

"(a) When the Secretary finds that the laws and regulations of a foreign country related to measurement of vessels are similar to those of this chapter and the regulations prescribed under this chapter, or when a foreign country is a party to the Convention, the Secretary shall accept the measurement and certificate of a vessel of that foreign country as complying with this chapter and the regulations prescribed under this chapter.

"(b) Subsection (a) of this section does not apply to a vessel of a foreign country that does not recognize measurements under this chapter. The Secretary may apply measurement standards the Secretary considers appropriate to the vessel, subject to applicable international agreements to which the United States Government is a party.

"§ 14307. Inspection of foreign vessels

"(a) The Secretary may inspect a vessel of a foreign country to verify that—

"(1) the vessel has an International Tonnage Certificate (1969) and the main characteristics of the vessel correspond to the information in the certificate; or

"(2) if the vessel is from a country not a party to the Convention, the vessel has been measured under laws and regulations similar to those of this chapter and the regulations prescribed under this chapter.

"(b) For a vessel of a country that is a party to the Convention, if the inspection reveals that the vessel does not have an International Tonnage Certificate (1969) or that the main characteristics of the vessel differ from those stated on the certificate or other records in a way that increases the gross or net tonnage of the vessel, the Secretary promptly shall inform the country whose flag the vessel is flying.

"(c) For a vessel of a country not a party to the Convention—

"(1) if the vessel has been measured under laws and regulations that the Secretary finds are similar to those of this chapter and the regulations prescribed under this chapter, the vessel shall be deemed to have been issued an International Tonnage Certificate (1969); and

"(2) if the vessel has not been measured as described in clause (1) of this subsection, the Secretary may measure the vessel.

"(d) An inspection under this section shall be conducted in a way that does not delay a vessel of a country that is a party to the Convention.

"CHAPTER 145—REGULATORY MEASUREMENT

"SUBCHAPTER I—GENERAL

"Sec.
"14501. Application.
"14502. Measurement.
"14503. Certificate of measurement.
"14504. Remeasurement.

"SUBCHAPTER II—FORMAL SYSTEMS

"14511. Application.
"14512. Standard tonnage measurement.
"14513. Dual tonnage measurement.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"14521. Application.
"14522. Measurement.

"SUBCHAPTER I—GENERAL

"§ 14501. Application

"This chapter applies to the following:

"(1) a vessel not measured under chapter 143 of this title if—

"(A) the vessel is to be documented under chapter 121 of this title; or

"(B) the application of a law of the United States to the vessel depends on the vessel's tonnage.

"(2) a vessel measured under chapter 143 of this title if the owner requests that the vessel also be measured under this chapter as provided in section 14305 of this title.

"§ 14502. Measurement

"The Secretary shall measure a vessel to which this chapter applies in the way provided by this chapter.

"§ 14503. Certificate of measurement

"The Secretary shall prescribe the certificate to be issued as evidence of a vessel's measurement under this chapter.

"§ 14504. Remeasurement

"(a) To the extent necessary, the Secretary shall remeasure a vessel to which this chapter applies if—

"(1) the Secretary or the owner alleges an error in its measurement;

"(2) the vessel or the use of its space is changed in a way that substantially affects its tonnage;

"(3) after being measured under subchapter III of this chapter, the vessel becomes subject to subchapter II of this chapter because the vessel or its use is changed; or

"(4) although not required to be measured under subchapter II of this chapter, the vessel was measured under subchapter II and the owner requests that the vessel be measured under subchapter III of this chapter.

"(b) Except as provided in this section and chapter 143 of this title, a vessel that has been measured does not have to be remeasured to obtain another document or endorsement under chapter 121 of this title.

"SUBCHAPTER II—FORMAL SYSTEMS

"§ 14511. Application

"This subchapter applies to a vessel described in section 14501 of this title if—

"(1) the owner requests; or

"(2) the vessel is—

"(A) self-propelled;

"(B) at least 24 meters (79 feet) overall in length; and

"(C) not operated only for pleasure.

"§ 14512. Standard tonnage measurement

"(a) The Secretary shall prescribe regulations for measuring the gross and net tonnages of a vessel under this subchapter. The regulations shall provide for tonnages comparable to the tonnages that could have been assigned under sections 4151 and 4153 of the Revised Statutes of the United States, as sections 4151 and 4153 existed immediately before the enactment of this section.

"(b) On application of the owner or master of a vessel of the United States used in foreign trade, the Secretary may attach an appendix to the vessel's register stating the measurement of spaces that may be deducted from gross tonnage under laws and regulations of other countries but not under those of the United States.

"§ 14513. Dual tonnage measurement

"(a) On application by the owner and approval by the Secretary, the tonnage of spaces prescribed by the Secretary may be excluded in measuring under this section the gross tonnage of a vessel measured under section 14512 of this title. The spaces prescribed by the Secretary shall be comparable to the spaces that could have been excluded under section 2 of the Act of September 29, 1965 (Public Law 89-219, 79 Stat. 891), as section 2 existed immediately before the enactment of this section.

"(b) The Secretary shall prescribe the design, location, and dimensions of the tonnage mark to be placed on a vessel measured under this section.

"(c)(1) If a vessel's tonnage mark is below the uppermost part of the load line marks, each certificate stating the vessel's tonnages shall state the gross and net tonnages when the mark is submerged and when it is not submerged.

"(2) Except as provided in paragraph (1) of this subsection, a certificate stating a vessel's tonnages may state only one set of gross and net tonnages.

"SUBCHAPTER III—SIMPLIFIED SYSTEM

"§ 14521. Application

"This subchapter applies to a vessel described in section 14501 of this title that is not measured under subchapter II of this chapter.

"§ 14522. Measurement

"(a) In this section, "length" means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

"(b)(1) The Secretary shall assign gross and net tonnages to a vessel based on its length, breadth, depth, other dimensions, and appropriate coefficients.

"(2) The Secretary shall prescribe the way dimensions (except length) are measured and which coefficients are appropriate.

"(c) The resulting gross tonnages, taken as a group, reasonably shall reflect the relative internal volumes of the vessels measured under this subchapter. The resulting net tonnages shall be in approximately the same ratios to corresponding gross tonnages as are the net and gross tonnages of comparable vessels measured under subchapter II of this chapter.

"(d) Under regulations prescribed by the Secretary, the Secretary may determine the gross and net tonnages of a vessel representative of a designated class, model, or type, and then assign those gross and net tonnages to other vessels of the same class, model, or type.

"CHAPTER 147—PENALTIES

"Sec.
"14701. General violation.
"14702. False statements.

"§ 14701. General violation

"The owner, charterer, managing operator, agent, master, and individual in charge of a vessel violating this part or a regulation prescribed under this part are each liable to the United States Government for a civil penalty of not more than $20,000. Each day of a continuing violation is a separate violation. The vessel also is liable in rem for the penalty.

"§ 14702. False statements

"A person knowingly making a false statement or representation in a matter in which a statement or representation is required by this part or a regulation prescribed under this part is liable to the United States Government for a civil penalty of not more than $20,000 for each false statement or representation. The vessel also is liable in rem for the penalty.".

CONFORMING AND MISCELLANEOUS AMENDMENTS

SEC. 6302. (a) Title 14, United States Code, is amended as follows:

(1) In the analysis of chapter 17, add the following after item 663:

"664. User fees.".

(2) In section 651, strike "preceding fiscal year." and substitute "preceding fiscal year, including amounts collected as provided under section 664 of this title.".

(3) After section 663, add the following new section:

"§ 664. User fees

"(a) Amounts collected under section 9701 of title 31 or another law by the Secretary for a service or thing of value provided by the Coast Guard shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities.

"(b) A fee charged for a service or thing of value provided by the Coast Guard must be—

"(1) prescribed as provided under section 9701 of title 31; and

"(2) based on the following:

"(A) fairness;

"(B) the costs to the United States Government;

"(C) the value of the service or thing to the recipient;

"(D) equity among transportation modes;

"(E) effect on the ability of the Coast Guard to perform its duties or functions under this title;

"(F) public policy or interest served; and

"(G) other relevant factors.

"(c) A fee may not be charged for a service or thing of value provided by the Coast Guard if the service or thing of value—

"(1) is required for national defense or emergency search and rescue;

"(2) benefits a large segment of the public; or

"(3) is actually performed by the private sector.

"(d) The Secretary may grant an exemption from the user fee requirements of this section to a person subject to a fee.

"(e) Before January 1 of each year, the Secretary shall submit a report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate that includes—

"(1) a verification of each activity for which a user fee is collected stating—

"(A) the amount collected in the prior fiscal year; and

"(B) that the amount spent on that activity in that fiscal year are not less than the amount collected; and

"(2) the amount expected to be collected in the current fiscal year for each activity for which a fee is expected to be charged.".

(b) Title 46, United States Code, is amended as follows:

(1) In section 2101—

(A) between clauses (20) and (21), insert the following new clause:

"(20a) 'overall in length' means—

"(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

"(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

"(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

"(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments."; and

(B) add at the end the following new clause:

"(47) 'vessel of war' means a vessel—

"(A) belonging to the armed forces of a country;

"(B) bearing the external marks distinguishing vessels of war of that country;

"(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

"(D) staffed by a crew under regular armed forces discipline.".

(2) Section 2102 is amended by striking "chapters 43" and substituting "chapters 37, 43, 51,".

(3) In section 2109, strike "This" and substitute "Except as otherwise provided, this".

(4) In section 2110—

(A) strike "examination of vessels" and substitute "examination of vessels under part B of this subtitle"; and

(B) strike "measurement or".

(5) Section 3701 (5) and (6) is repealed.

(6) In section 12102—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.".

MISCELLANEOUS PROVISIONS

SEC. 6303. (a) Laws effective after January 1, 1986, that are inconsistent with this subtitle supersede this subtitle to the extent of the inconsistency.

(b) A reference to a law replaced by this subtitle, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision of this subtitle.

(c) An order, rule, or regulation in effect under a law replaced by this subtitle continues in effect under the corresponding provision of this subtitle until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by this subtitle is deemed to have been taken or committed under the corresponding provision of this subtitle.

(e) An inference of legislative construction is not to be drawn by reason of the caption or catch line of a provision enacted by this subtitle.

(f) If a provision enacted by this subtitle is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this subtitle is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.

(g) The Secretary of Transportation shall—

(1) Before July 19, 1990, submit to Congress—

(A) a study of—

(i) the impact of applying vessel tonnage determined under chapter 143 of title 46 (as enacted by section 6301 of this subtitle), United States Code, in laws of the United States that contain provisions based on tonnage, including an analysis of the number and types of vessels that would become subject to additional laws or more stringent requirements because of that application; and

(ii) the extent to which the tonnage thresholds in laws of the United States whose application is based on tonnage would have to be raised so that additional vessels would not become subject to those laws if their application is based on tonnage determined under chapter 143; and

(B) a recommendation of the levels to which the tonnage thresholds in laws of the United States whose application is based on tonnage should be raised if a complete conversion to the International Convention measurement system under chapter 143 is made.

(2) in conducting the study under clause (1) of this subsection, consult with representatives of the private sector having experience with the operation of vessels likely to be affected by laws of the United States whose application is based on tonnage.

(3) before July 19, 1988, submit to Congress an interim progress report on the study conducted under clause (1) of this subsection.

REPEALS

SEC. 6304. (a) The repeal of a law by this subtitle may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this subtitle:

Revised Statutes

Revised Statutes Section	United States Code	Title Section
4148	46 App.	71
4149	46 App.	72
4151	46 App.	75
4153	46 App.	77
4154	46 App.	81

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		United States Code	
			Volume	Page	Title	Section
Aug. 5 1882	398	2	22	300	46 App.	81
Aug. 27 1935	747		49	888	46 App.	88–88i
Sept. 29 1965	89–219		79	891	46 App.	72, 74, 77, 83–83k
Oct. 1 1973	93–115		87	418	46 App.	86–86i
Sept. 10 1976	94–406	8	90	1236	46 App.	420

Subtitle E—Adjustment of the U.S. Investment Base in the Panama Canal on Which Interest Payments to the U.S. Treasury Are Computed

SEC. 6401. U.S. INVESTMENT INCREASE.

Section 1603(b) of the Panama Canal Act of 1979 (22 U.S.C. 3793(b)) is amended by striking out "and" at the end of paragraph (1), by striking out the period at the end of paragraph (2) and by inserting in lieu thereof "; and", and by adding at the end the following:

"(3) the investment of the United States shall also be increased by the amount of tolls and other receipts that covers interest on the investment of the United States and that has been or is deposited in the Panama Canal Commission Fund as of December 31, 1985.".

SEC. 6402. EFFECTIVE DATE.

The amendment made by section 6401 shall apply to the United States investment beginning on January 1, 1986.

Subtitle F—Comprehensive Oil Pollution Liability and Compensation

SEC. 6501. SHORT TITLE.

This subtitle may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

PART 1—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 6501. DEFINITIONS.

For purposes of this part, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the Outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "foreign offshore unit" means a structure or group of structures located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country contiguous to the United States and used for the purpose of exploring for, drilling for, producing, storing, handling, transferring, processing or transporting oil produced from the seabed beneath that territorial sea or from that continental shelf;

(7) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(8) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(9) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(10) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(11) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(12) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(13) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(14) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(15) "navigable waters" means the waters of the United States, including the territorial sea;

(16) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(17) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(18) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(19) "Outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(20) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(21) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(22) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(23) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(24) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(25) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(26) "Secretary" means the Secretary of Transportation;

(27) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(28) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9505 of the Internal Revenue Code of 1954;

(29) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(30) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(31) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 6502. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compen-

sation for Oil Pollution Damage, 1984, are in force with respect to the United States, this part shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and part 4.

SEC. 6503. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and (C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 6504(c), or

(ii) he is entitled to a limitation of liability under section 6504(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 6504(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 6504(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 6501(17) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 6501(17) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 6501(17) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 6501(17), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 6501(17)(B)(iv) or 6501(17)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 6501(17).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 6506, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 6504. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 6501(24)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 6503.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this part.

(B) To the extent that damages for which claims may be asserted under section 6503 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities;

such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 6503.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phe-

nomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) PARTIAL DEFENSES.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF TRUST FUND.—

(1) GENERAL RULE.—The Trust Fund shall be liable for damages for which claims may be asserted under section 6503 and for which claims are presented under this part, to the extent that the damages are not otherwise compensated.

(2) FOREIGN OFFSHORE UNIT.—In any case where oil, which has been discharged from a foreign offshore unit, causes any economic loss of a type compensable under section 6503 to any United States claimant, the Trust Fund shall be liable to that United States claimant as if the economic loss arose out of or directly resulted from oil pollution or the substantial threat of oil pollution.

(3) CLAIMS EXCEEDING CONVENTION LIABILITY.—During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, the Trust Fund shall be liable for claims for damages by United States claimants under this part which exceed the compensation available under those conventions.

(4) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 6501(24)(A), there shall be no liability under paragraph (1), (2), or (3)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 6503 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 6506, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 6503 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 6505(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this subtitle shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this part shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than part 5 or any amendment made by part 5) relating to liability or the limitation thereof, this section supersedes such other law.

(i) ADMINISTRATIVE COSTS.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this subtitle, unless such costs and expenses are necessary for and incidental to the implementation of this subtitle.

SEC. 6505. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 6504 to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 6504. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 6504. In cases where the responsible party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 6503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this part. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this part shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 6506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notifi-

cation of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 6507. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 6506(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 6506(c);

(2) by a responsible party who may assert a claim under section 6503(a);

(3) by the Governor of a State for cleanup costs incurred by that State; or

(4) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Trust Fund is liable under section 6504(d)(2).

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 6506(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 6504 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 6509 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 6509(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this part against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this part, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 6504 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this part. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this part, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 6503, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 6508. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 6503 shall be subrogated to all rights, claims, and causes of action which that claimant has under this part.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 6507(b)(1) or 6507(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund

has compensated a claimant for a claim presented to the Trust Fund under section 6507(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 6507(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to the responsible party or guarantor or advertising was commenced under section 6506, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund in satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 6504(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust Fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 6505(e).

SEC. 6509. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have original jurisdiction over all controversies arising under this part and parts 2 and 3, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this subtitle, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 6510. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle, or in section 9505 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this part, and

(2) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this part.

(b) PRESERVATION OF STATE FUNDS.—Nothing in this subtitle or section 9505 of the Internal Revenue Code of 1954 shall affect the authority of any State to establish or continue in effect, and to require any person to contribute to, a fund a purpose of which is to pay for costs or damages arising out of or directly resulting from oil pollution or the substantial threat of oil pollution.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this part.

(d) NO PREEMPTION OF CIVIL PENALTIES.—Nothing in this subtitle or section 9505 of the Internal Revenue Code of 1954 shall affect the authority of the United States or any State or political subdivision thereof to impose, or to determine the amount of, any fine or penalty for any violation of law relating to the discharge, or substantial threat of a discharge, of oil.

SEC. 6511. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 6505 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 6512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1986, such sums as may be necessary to carry out this subtitle.

PART 2—REPORT AND COORDINATION WITH OTHER PROVISIONS

SEC. 6521. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this subtitle.

SEC. 6522. COORDINATION WITH OTHER PROVISIONS OF THIS SUBTITLE.

(a) If any provision of this subtitle provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision of this subtitle authorizes amounts to be expended from the Trust Fund which are not authorized by part 5 (or an amendment made by part 5), such provision shall have no force or effect.

PART 3—REGULATIONS, EFFECTIVE DATES, AND SAVINGS PROVISIONS

SEC. 6531. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 6501, section 6502, section 6512, part 2, section 6532(a)(1) and (3), section 6533, 6534, and each provision of part 1 that authorizes the promulgation of regulations shall be effective on the date of the enactment of this subtitle.

(b) PART 4.—Part 4 shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) PROVISIONS TAKING EFFECT IN 180 DAYS.—All other provisions of this subtitle, and the regulations issued under this subtitle, shall take effect 180 days after the date of enactment of this subtitle, except that the penalty prescribed by section 6511 for failure to comply with the requirements of section 6505 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this subtitle, whichever is earlier.

(d) REGULATIONS RESPECTING FINANCIAL RESPONSIBILITY.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 6532, and in effect on the day immediately preceding the effective date of section 6532 shall remain in force until superseded by regulations issued under part 1.

SEC. 6532. CONFORMING AMENDMENTS.

(a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection

is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 6501 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 6531, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (5) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 6501 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under part 1 of this subtitle.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 6505 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 6533. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this subtitle.

SEC. 6534. SEPARABILITY.

If any provision of this subtitle or the applicability thereof is held invalid, the remainder of this subtitle shall not be affected thereby.

PART 4—IMPLEMENTATION OF CONVENTIONS

SEC. 6541. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International

Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 6542. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 6543. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 6544. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 6545. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 6546. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 6547. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 6548. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 6544(b) or 6547, the regulations issued under either such section, or any denial or detention order under section 6547(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 6549. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 6550. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 6551. DEFINITIONS.

For purposes of this part—

(1) terms defined in part 1 have the same meanings when used in this part;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

PART 5—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 6561. TAX ON PETROLEUM FOR OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1986, and before October 1, 1990."

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended by striking the period at the end and inserting the following: "that is attributable to the Superfund financing rate under section 4611(c).".

(3) Subsection (b)(1) of section 221 of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Superfund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986.

SEC. 6562. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 6501(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 6544 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

"(4) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986.

Subtitle G—National Offshore Vessel Operators Safety Advisory Committee

SEC. 6601. ESTABLISHMENT AND CONSULTATION.

There is established a National Offshore Vessel Operators Safety Advisory Committee (hereinafter in this subtitle referred to as the "Committee"). The Committee shall advise, consult with, and make recommendations to the Secretary of the department in which the Coast Guard is operating (hereinafter in this subtitle referred to as the "Secretary") on matters relating to the safety aspects of offshore oil, gas, and other mineral operations subject to regulation by the Secretary. The Secretary shall, whenever practicable, consult with the Committee before taking any significant action related to these offshore operations. Any advice or recommendation made by the Committee to the Secretary shall reflect the independent judgment of the Committee on the matter concerned. The Committee is authorized to make available to Congress any information, advice, and recommendations which the Committee is authorized to give to the Secretary. The Committee shall meet at the call of the Secretary, but in any event not less than once during each calendar year. All matters relating to or proceedings of the Committee shall comply with the Federal Advisory Committee Act (5 App. U.S.C.).

SEC. 6602. MEMBERSHIP.

(a) FIFTEEN MEMBERS.—The Committee shall consist of fifteen members, who have particular expertise, knowledge, and experience regarding the transportation and other technology, equipment, and techniques that are used, or are being developed for use, in

the exploration for, or the recovery of, offshore oil, gas, or other mineral resources, as follows:

(1) Two members representing enterprises engaged in the production of oil, gas, or other mineral resources, except that not more than one member may represent companies included on the list of restricted joint bidders prepared by the Department of the Interior;

(2) Two members representing enterprises specializing in offshore drilling;

(3) Two members representing enterprises specializing in the supply of offshore oil, gas, or other mineral exploration or recovery operations by water;

(4) One member representing those engaged in each of the following specialities:

(A) Construction of offshore exploration or recovery facilities;

(B) Diving services related to offshore construction; and

(C) Helicopter services related to offshore construction;

(5) Two members representing individuals employed in offshore operations;

(6) Two members representing environmental interests; and

(7) Two members representing the general public.

(b) APPOINTMENT.—The Secretary shall appoint the members of the Committee after first soliciting nominations by notice published in the Federal Register. The Secretary may request the head of any other Federal agency or department to designate a representative to advise the Committee on matters within the jurisdiction of that agency or department.

(c) CHAIRMAN AND VICE CHAIRMAN.—The Committee shall elect, by majority vote at its first meeting, one of the members of the Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in, the Office of the Chairman.

(d) MEMBERSHIP TERM.—Terms of members appointed to the Committee shall be for three years, except that the terms of those members first appointed under section 6602(a) (1), (2), and (3) shall be for two years. The Secretary shall, not less often than once a year, publish notice in the Federal Register for solicitation of nominations for membership on the Committee.

SEC. 6603. COMMITTEE ADMINISTRATION.

Members of the Committee who are not officers or employees of the United States shall serve without pay and members of the Committee who are officers or employees of the United States shall receive no additional pay on account of their service on the Committee. While away from their homes or regular places of business, members of the Committee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. The Secretary shall furnish to the Committee an executive secretary and the secretarial, clerical, and other services necessary for the conduct of its business. There are authorized to be appropriated such sums as may be necessary to implement the provision of this subtitle.

SEC. 6604. TERMINATION DATE.

The Committee shall terminate on September 30, 1992.

Subtitle H—Repeal of the Act Establishing the National Advisory Committee on Oceans and Atmosphere

SEC. 6701. The National Advisory Committee on Oceans and Atmosphere Act of 1977 (33 U.S.C. 857-13 through 857-18) is repealed.

SEC. 6702. The repeal made by section 6701 takes effect on October 1, 1986.

Subtitle I—Establishment of a Timetable for Completion of Coast Guard Offshore Safety Studies

SEC. 6801. REGULATIONS.

(a) DEADLINE FOR EFFECTIVENESS.—The Secretary of the department in which the Coast Guard is operating (hereafter in this Act referred to as the "Secretary") shall issue final regulations, to become effective before September 1, 1987, pursuant to the advance notice of proposed rulemaking regarding the revision of the regulations on outer Continental Shelf activities (50 Fed. Reg. 9290 (1985)), published March 7, 1985.

(b) CONSIDERATION OF STANDBY VESSELS FOR EVACUATION.—In preparing regulations referred to in subsection (a), the Secretary shall consider requiring standby vessels for the evacuation of personnel from manned installations on the outer Continental Shelf.

SEC. 6802. REPORTS TO CONGRESS.

(a) PRELIMINARY REPORT.—The Secretary shall, before December 31, 1986, submit to the Congress a report setting forth the progress made in preparing the regulations referred to in section 6801(a).

(b) FINAL REPORT.—The Secretary shall, before September 1, 1987, submit to the Congress a report setting forth the justification for the manned installation evacuation procedures contained in the final regulations referred to in section 6801(a).

Subtitle J—Requirement for the Use of American Built Rigs for Exploration and Development on the U.S. Outer Continental Shelf

SEC. 6901. USE OF AMERICAN-BUILT RIGS FOR OCS DRILLING.

Section 5 of the Outer Continental Shelf Lands Act (43 U.S.C. 1334) is amended by adding at the end the following new subsection:

"(j)(1) Any vessel, rig, platform, or other structure used for the purpose of exploration or production of oil and gas on the outer Continental Shelf south of 49 degrees North latitude shall be built—

"(A) in the United States; and

"(B) from articles, materials, or supplies at least 50 percent of which, by cost, shall have been mined, produced, or manufactured, as the case may be, in the United States.

"(2) The requirements of paragraph (1) shall not apply to any vessel, rig, platform, or other structure which was built, which is being built, or for which a building contract has been executed, on or before October 1, 1986.

"(3) The Secretary may waive—

"(A) the requirement in paragraph (1)(B) whenever the Secretary determines that 50 percent of the articles, materials, or supplies for a vessel, rig, platform, or other structure cannot be mined, produced, or manufactured, as the case may be, in the United States, and

"(B) the requirement in paragraph (1)(A) upon application, with respect to any classification of vessels, rigs, platforms, or other structures on a specific lease, when the Secretary determines that at least 50 percent of such classification, as calculated by number and by weight, which are to be built for exploration or production activities under such lease will be built in the United States in compliance with the requirements of paragraph (1)(A).".

TITLE VII—HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

SEC. 7001. EARLIEST DATE FOR CERTAIN ELECTIONS TO PARTICIPATE IN THE THRIFT SAVINGS PLAN.

Section 206(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 594) is amended to read as follows:

"(b)(1) An election may first be made by an employee of the Federal Government or a Member of Congress under section 8351 of title 5, United States Code (as added by subsection (a)(1)), during the election period provided under section 8432(b)(4) of such title. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the last day of that election period.

"(2) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this subsection.".

SEC. 7002. CHANGE IN METHOD BY WHICH REVENUE FOREGONE IS COMPUTED FOR CERTAIN CATEGORIES OF MAIL.

(a) IN GENERAL.—Section 3626 of title 39, United States Code, is amended by adding at the end the following:

"(i)(1) As used in this subsection—

"(A) 'reduced-rate category' means any class of mail or kind of mailer for which a rate schedule is established under subsection (a) of this section; and

"(B) 'regular-rate category' means any class or kind of mail other than a class or kind referred to in section 2401(c) of this title.

"(2) This subsection shall be used in determining the costs recovered by revenues plus appropriations for the reduced-rate categories, for the purpose of distinguishing costs to be recovered from rates and fees for regular-rate categories under this chapter, and for the purpose of determining the appropriation requests under section 2401(c) of this title relating to the reduced-rate categories. It shall be assumed that the combination of postage and appropriations to be received for each of the reduced-rate categories will bear the same ratio to the costs attributed as required by section 3622(b)(3) of this title to such respective categories, as the revenues to be received from the most closely corresponding regular-rate category, as estimated in determining the rates for such category, bear to the costs attributed to that regular-rate category as required by section 3622(b)(3) of this title.".

(b) CONFORMING AMENDMENT.—Section 2401(c) of title 39, United States Code, is amended by striking "3626" and inserting "3626(a)-(h)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1989, or on the effective date of the next general change in rates and fees under sections 3622 and 3625 of title 39, United States Code, whichever is sooner.

TITLE VIII—HOUSE COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION

Subtitle A—Highway Program

SEC. 8001. CONTRACT AUTHORITY.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total amount of contract authority to be provided for programs funded out of the Highway Trust Fund (other than the Mass Transit Account) shall not exceed—

(1) $13,527,000,000 for fiscal year 1987;

(2) $13,527,000,000 for fiscal year 1988; and

(3) $13,527,000,000 for fiscal year 1989.

(b) EXCEPTIONS.—The limitations imposed by subsection (a) shall not apply to—

(1) the traffic safety grant program carried out by the National Highway Traffic Safety Administration under section 402 of title 23, United States Code;

(2) the maintenance of railroad-highway crossings program under section 145 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto;

(3) the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982; and

(4) the university transportation centers program under section 11(b) of the Urban Mass Transportation Act of 1964.

SEC. 8002. OBLIGATION CEILING.

(a) GENERAL LIMITATION.—Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs shall not exceed—

(1) $11,975,000,000 for fiscal year 1987;

(2) $11,975,000,000 for fiscal year 1988; and

(3) $11,975,000,000 for fiscal year 1989.

For each of fiscal years 1987, 1988, and 1989, the limitation imposed by this subsection shall be subject to subsections (c), (d), and (e) of section 105 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto.

(b) EXCEPTIONS.—The limitations imposed by subsection (a) shall not apply—

(1) to obligations specified in subsection (b) of section 105 of H.R. 3129, as reported by the Committee on Public Works and Transportation (the Surface Transportation and Uniform Relocation Assistance Act of 1986), or the conference report relating thereto; and

(2) to obligations under subsection (f) of such section.

(c) LIMITATION ON EXCEPTED OBLIGATIONS.—Notwithstanding any other provision of law, the total of all obligations specified in subsection (b) of such section 105 (other than obligations for the maintenance of railroad-highway crossings program under section 145 of such H.R. 3129 and for the motor carrier safety grant program under section 404 of the Surface Transportation Assistance Act of 1982) and subsection (f) of such section 105 shall not exceed—

(1) $1,070,000,000 for fiscal year 1987;

(2) $1,020,000,000 for fiscal year 1988; and

(3) $1,020,000,000 for fiscal year 1989.

(d) CONFORMING AMENDMENT.—Section 157(b) of title 23, United States Code, is amended by striking out the period at the end of the last sentence and inserting in lieu thereof "and section 8002(c) of the Omnibus Budget Reconciliation Act of 1986.".

SEC. 8003. EMERGENCY RELIEF.

Section 125(b) of title 23, United States Code, is amended by striking out "(and $55,000,000 for projects in connection with disasters or failures occurring in calendar year 1985)" and by inserting after "1985" the following: "or $100,000,000 with respect to natural disasters and catastrophic failures occurring in calendar year 1986".

Subtitle B—Federal Energy Regulatory Commission Annual Charges

SEC. 8101. PROHIBITION ON THE ASSESSMENT AND COLLECTION OF ANNUAL CHARGES.

Notwithstanding any other provision of this Act (including any amendment made by this Act), the Federal Energy Regulatory Commission shall not assess or collect any charges from an interstate natural gas pipeline or an interstate oil pipeline carrier, except those charges assessed or collected pursuant to a law approved before the date of the enactment of this Act.

Subtitle C—Ocean Dumping Amendments

SEC. 8201. SHORT TITLE.

This subtitle may be cited as the "Ocean Dumping Amendments Act of 1986".

SEC. 8202. DUMPING PERMIT PROGRAM.

Section 102 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1412) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting "(1)" after "(a)";

(B) by striking out ", and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, for which no permit may be issued," and inserting ", and except as provided in paragraphs (2) and (3),";

(C) by striking out "and beaches." in subparagraph (C) and inserting in lieu thereof ", beaches, and wetlands.";

(D) by striking out the last sentence thereof; and

(E) by adding at the end thereof the following new paragraphs:

"(2) No permit may be issued under this title in relation to the following:

"(A) Radiological, chemical, and biological warfare agents.

"(B) High-level radioactive waste.

"(3) No permits may be issued or renewed under this title that authorizes the dumping, or the transportation for purposes of dumping, after December 31, 1986, of municipal sludge, whether or not the sludge is subject to section 104A, unless—

"(A) the sewerage authority or other unit of State or local government operating the plant at which the municipal sludge is generated is in compliance with those requirements of sections 307(b) and 402(b)(8) of the Federal Water Pollution Control Act (33 U.S.C. 1317(b) and 1342(b)(8)) which are related to the quality of municipal sludge; and

"(B) the Administrator, in consultation with the Governor of the State in which the unit is located, finds that a suitable land-based alternative to the ocean disposal of the sludge is not currently available.".

(2) Subsection (c) is amended to read as follows:

"(c)(1) The Administrator shall designate sites at which materials may be dumped pursuant to this section and, after consultation with the Secretary, at which materials may be dumped pursuant to section 103; except that no site may be designated by the Administrator under this subsection until the Administrator undertakes and completes an analysis of the characteristics of the site and its suitability for dumping and of the environmental effects which will likely result from dumping. In undertaking such an analysis of each site, the Administrator shall take into consideration the factors set forth in subsection (a) and shall specifically take into account the following:

"(A) The types and quantities of wastes and pollutants projected to be deposited in, and adjacent to, the site from dumping and other sources.

"(B) The ability of the waters at the site to disperse, detoxify, or neutralize the materials.

"(C) The importance of the site to the surrounding biological community, including the presence of breeding, spawning, nursery or foraging areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of marine organisms.

"(D) The immediate and cumulative effects on human health and on the ecosystem adjacent to the site and the persistent effects on the ecosystem within the site.

Nothing contained in this paragraph shall be construed to limit the authority of the Secretary under section 103 to make independent determinations regarding appropriate locations for dumping.

"(2) The Administrator shall—

"(A) periodically monitor, or cause to be monitored, the effects of the dumping of materials at or adjacent to each site for which the Administrator determines, on the basis of the characteristics of the site and the materials to be dumped, that such monitoring is necessary to accomplish the purposes of this title; and

"(B) at the close of the third year after the site designation and at every three-year interval thereafter until such time as the designation is terminated, estimate the extent of the dumping and other waste inputs that will occur in and adjacent to each site during the next three-year period.

"(3) If at any time the Administrator, on the basis of the factors taken into account under subparagraphs (A) through (D) of paragraph (1), or on the basis of the monitoring or estimates, required under paragraph (2), determines that the site is no longer suitable for such dumping, the Administrator shall—

"(A) limit dumping at the site to certain materials or at certain times or both; or

"(B) suspend or terminate the designation of the site under paragraph (1).

In making a determination under the preceding sentence that a site is no longer suitable for dumping pursuant to section 103, the Administrator shall consult the Secretary.".

(3) Such section is amended by adding at the end thereof the following new subsection:

"(f) No funds authorized under this title may be used to finance, in whole or in part, the dumping of material or the transportation of material for the purpose of dumping, as authorized under this section.".

SEC. 8203. SPECIAL PERMIT PROVISIONS AFFECTING THE DUMPING OF HARMFUL MUNICIPAL SLUDGE AND INDUSTRIAL WASTE.

(a) Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 102 the following new section:

"DUMPING OF HARMFUL MUNICIPAL SLUDGE AND INDUSTRIAL WASTE

"SEC. 102A. (a) The Administrator shall—

"(1) end the dumping of harmful municipal sludge into ocean waters and into waters described in section 101(b) as soon as possible after the date of the enactment of this section, except that in no case may any dumping of harmful municipal sludge—

"(A) occur after the last day of the eighteen-month period beginning on such date of enactment; or

"(B) be authorized under this title for other than an eligible authority within the meaning of section 104A(a)(1)(C); and

"(2) end the dumping of industrial waste into such waters, except as provided in subsections (b) and (c).

"(b) On and after the date of the enactment of this section, the Administrator may issue permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the Administrator determines—

"(1) that the proposed dumping is necessary to conduct research—

"(A) on new technology related to ocean dumping, or

"(B) to determine whether the dumping of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities;

"(2) that the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities; and

"(3) after consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Each permit issued pursuant to this subsection shall be subject to such conditions and restrictions as the Administrator determines to be necessary to minimize possible adverse impacts of such dumping. No permit issued by the Administrator pursuant to this subsection may have an effective period of more than six consecutive months.

"(c) On and after the date of the enactment of this section, the Administrator may issue emergency permits under section 102 for the dumping of industrial waste into ocean waters, or into waters described in section 101(b), if the Administrator determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. As used in this subsection, the term 'emergency' refers to situations requiring action with a marked degree of urgency.

"(d) For purposes of this section—

"(1) The term 'harmful municipal sludge' means municipal sludge (as defined in section 3(n)) the ocean dumping of which may be harmful to human health, welfare, amenities, or the marine environment, ecological systems, and economic potentialities. Municipal sludge shall be considered to be harmful, for purposes of this section, if it fails to meet the environmental impact criteria of the Environmental Protection Agency's regulations issued under this title.

"(2) The term 'industrial waste' means any solid, semisolid, or liquid waste generated by a manufacturing or processing plant the ocean dumping of which may unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, and economic potentialities.".

(b) Section 4 of the Act entitled "An Act to amend the Marine Protection, Research, and Sanctuaries Act of 1972 to authorize appropriations to carry out the provisions of such Act for fiscal year 1978", approved November 4, 1977 (33 U.S.C. 1412a), is repealed.

SEC. 8204. CORPS OF ENGINEERS PERMITS.

Section 103(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(b)) is amended by striking out the last sentence and inserting in lieu thereof the following: "In conducting the independent determination under the preceding sentence, the Secretary shall consider the relative environmental impact of, and shall give equal treatment to, all alternative forms of disposal. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c). The Secretary in consultation with the Administrator shall be responsible for management, including appropriate monitoring, of sites utilized pursuant to this section.".

SEC. 8205. PERMIT CONDITIONS.

Section 104 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1414) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) Permits issued under this title shall designate and include—

"(1) the type of material authorized to be transported for dumping or to be dumped;

"(2) the amount of material authorized to be transported for dumping or to be dumped;

"(3) the location where such transport for dumping will be terminated or where such dumping will occur;

"(4) the length of time for which the permits are valid and their expiration date;

"(5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, to minimize the harm from dumping, which may include measures that the permittee must take to plan, develop, acquire, or implement, as appropriate—

"(A) alternatives for the disposal of the material,

"(B) processes for reducing or eliminating any contaminants in the material, or

"(C) processes for recycling the material;

"(6) after consultation with the Secretary of the Department in which the Coast Guard is operating, any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, for the monitoring and surveillance of the transportation or dumping; and

"(7) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.".

(2) Subsection (b) is amended to read as follows:

"(b)(1) The Administrator or the Secretary, as the case may be, shall prescribe by regulation and collect from the applicant, unless the applicant is a Federal agency, an application fee in an amount, not to exceed $10,000, that is commensurate with the reasonable administrative costs incurred or expected to be incurred by the Administrator or Secretary in processing the permit. The application fee shall be deposited to the principal appropriation account or accounts used to carry out the processing of permits under this title.

"(2)(A) The Administrator shall prescribe by regulation, after opportunity for a hearing on the record, and collect a special fee for permits issued under section 102 to recover the costs incurred, or expected to be incurred, in the undertaking of measures by Federal agencies to determine compliance with permit terms, and the undertaking of only the monitoring necessary to make a reasonable assessment of the direct effects on the marine environment caused by disposal activities carried out under the permit. Such fee shall be an amount which will not have a substantial adverse effect on the competitive prospects for commercial implementation of effective and efficient ocean-based waste destruction technologies that otherwise meet the requirements of law. The special fee shall be deposited to the principal appropriation account or accounts used to carry out site and compliance monitoring, surveillance, and enforcement activities.

"(B) The funds collected under subparagraph (A) may be transferred in part to other Federal agencies for the costs incurred or expected to be incurred in connection with their activities described in subparagraph (A).

"(3) The expenditure of funds raised by these fees shall be subject to appropriations.".

(3) Subsection (e) is redesignated as subsection (e)(1) and after it the following new paragraph is inserted:

"(2) The Administrator and the Secretary shall establish and maintain quality assurance programs to ensure the validity, accuracy, and sufficiency of information submitted to or used by the Administrator or the Secretary in connection with applications for permits or other activities undertaken pursuant to this title. Such quality assurance programs shall encompass, but not be limited to, the design, implementation, and analysis of sampling, testing, and monitoring procedures and results. The Administrator and the Secretary shall each individually report annually, as a part of the report required under section 112 of this title, on the status of implementation of this subsection; except that the first such quality assurance reporting shall be submitted to the Congress no later than one year after the effective date of this subsection.".

(4) The following new subsection is added at the end thereof:

"(j) The Administrator or Secretary, as the case may be, may prescribe such reporting requirements as he or she deems appropriate with regard to actions authorized by permits issued under this title.".

SEC. 8206. SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES.

(a) The Congress finds that the New York Bight Apex is no longer a suitable location for the ocean dumping of municipal sludge.

(b) Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.) is further amended by inserting after section 104 the following new section:

"SPECIAL PROVISIONS REGARDING CERTAIN DUMPING SITES

"SEC. 104A. (a) NEW YORK BIGHT APEX.—(1) For purposes of this subsection:

"(A) The term 'Apex' means the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

"(B) The term 'Apex site' means that site within the Apex at which the dumping of municipal sludge occurred before October 1, 1983.

"(C) The term 'eligible authority' means any sewerage authority or other unit of State or local government that on November 2, 1983, was authorized under court order to dump municipal sludge at the Apex site.

"(2) No person may apply for a permit under this title in relation to the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex unless that person is an eligible authority.

"(3) The Administrator may not issue, or renew, any permit under this title that authorizes the dumping of, or the transportation for purposes of dumping, municipal sludge within the Apex after the earlier of—

"(A) December 15, 1987; or

"(B) the day determined by the Administrator to be the first day on which municipal sludge generated by eligible authorities can reasonably be dumped at a site designated under section 102 other than a site within the Apex.

"(4)(A) Within three years after the date of the enactment of this section, the Administrator shall prepare and submit to the Congress a New York Bight Apex Restoration Plan. In preparing the plan, the Administrator shall hold public hearings in order to obtain the views and comments of interested persons.

"(B) The New York Bight Apex Restoration Plan required under subparagraph (A) shall—

"(i) identify and assess the impact of pollutant inputs, such as treated and untreated sewage discharge, industrial outfalls, agricultural and urban runoff, storm sewer overflow, upstream contaminant sources, atmospheric fallout, and dumping that are affecting the water quality and marine resources of the Apex;

"(ii) identify those uses in the Apex that are being inhibited because of those inputs;

"(iii) determine the fate of the contaminants from those inputs and their effect on the marine environment;

"(iv) identify technologies and management practices, and determine the costs, necessary to control those inputs;

"(v) identify impediments to the cleanup of those inputs;

"(vi) devise a schedule of economically feasible projects to implement the controls identified under clause (iv) and to remove the impediments identified under clause (v); and

"(vii) develop recommendations for funding and coordinating various Federal, State, and local government programs necessary to implement the projects devised under clause (vi).

Within six months after the date of the enactment of this section, the Administrator shall submit to the Congress a detailed schedule (and the associated funding requirements) for completing the restoration plan required by this paragraph.

"(5) Within one year after the date of the enactment of this section, the Administrator shall prepare and submit to Congress a report on the technological and economic feasibility of establishing and implementing quality standards for disposal of municipal sludge through ocean or land-based methods. The quality standards shall set forth maximum permissible concentrations of heavy metals, PCB's, persistent plastics, microbiological constituents, pathogens, and any other material found in municipal sludge regarding which the Administrator considers the establishment of maximum permissible concentrations to be warranted.

"(6) In addition to funds authorized under section 111, there are authorized to be appropriated to the Environmental Protection Agency, for purposes of preparing the New York Bight Apex Restoration Plan required under paragraph (4)(A), the following amounts:

"(A) $2,000,000 for fiscal year 1986.

"(B) $2,000,000 for fiscal year 1987.

"(C) $1,000,000 for fiscal year 1988.

"(b) RESTRICTION ON USE OF THE 106-MILE SITE.—The Administrator may not issue or renew any permit under this title which authorizes any person, other than a person that is an eligible authority within the meaning of subsection (a)(1)(C), to dump, or to transport for the purposes of dumping, municipal sludge within the site designated under section 102(c) by the Administrator and known as the '106-Mile Ocean Waste Dump Site' (as described in 49 F.R. 19005).".

SEC. 8207. CONVENTION ADHERENCE.

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by adding at the end thereof the following new subsection:

"(g) To the extent that they may do so without relaxing the requirements of this title, and in accordance with chapter 5 of title 5, United States Code, the Administrator and the Secretary shall adhere to and apply the requirements of the Convention, including its annexes, that are binding upon the United States when implementing this title.".

SEC. 8208. TRANSITIONAL PROVISIONS.

Until completion of the site designation or denial of site designation by the Administrator of the Environmental Protection Agency with respect to any areas of ocean waters approved for dumping on an interim basis before July 1, 1982, and any areas of ocean waters used for dumping pursuant to a court order, the amendments made by this subtitle to the Marine Protection, Research, and Sanctuaries Act of 1972 (other than section 102(a) of that Act as amended by section 8202(1) of this Act, other than subsection (c)(2) and (3) of section 102 of that Act as added by section 8202(2) of this Act and other than amendments made by sections 8203, 8205, 8206, 8209, 8210, 8211, 8215, and 8216 of this Act) shall not be applicable to those areas of ocean water.

SEC. 8209. DEFINITIONS.

Section 3 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1402) is amended—

(1) by inserting ", and the subjacent areas," immediately after "those waters" in subsection (b);

(2) by striking out "sewage sludge," in subsection (c) and inserting in lieu thereof "municipal sludge,";

(3) by adding at the end thereof the following new subsection:

"(m) 'Monitoring' means the systematic, time-series observation of materials, contaminants, or pertinent components of the marine ecosystem over a period of time sufficient to determine the existing levels, trends, and natural variations of measured components in the water column, sediments, and biota for the purpose of ensuring that immediate harmful effects of dumping are detected, and cumulative and long-term effects are detected, forecasted, and evaluated. Observations may include, but are not limited to, the following procedures, depending upon the type of waste to be dumped and the characteristics of the site: (1) seasonal sampling and analyses of the infaunal community and sediment for purposes of characterizing structural composition and size distribution; (2) sampling and analyses of sediment and selected organisms to determine levels of hydrocarbon, trace metals, and chemical and pathogenic contaminants identified as constituents of wastes to be dumped; (3) profiling measurements of standard oceanographic parameters including dissolved oxygen, salinity, and water temperature; (4) characterization of large-scale surface topography and megafaunal structure and composition; and (5) sampling and analyses to determine levels of nutrients and organic carbon.

"(n) 'Municipal sludge' means solid, semisolid, or liquid waste generated by a waste water treatment plant of a sewerage authority or other unit of State or local government or a privately owned or operated waste water treatment plant which treats predominantly domestic sewage."; and

(4) by striking out "the Canal Zone," in subsection (d).

SEC. 8210. PENALTIES.

Subsection (b) of section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415(b)) is amended as follows:

(1) The text is redesignated as paragraph (1) of such subsection.

(2) Paragraph (1), as so redesignated, is amended by adding at the end thereof the following new sentence: "Any action authorized by this section shall be consistent with international law.".

(3) The following new paragraph is added at the end thereof:

"(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or who falsifies, tampers with, or knowingly renders inaccurate any monitoring, sampling, or testing device or method required to be maintained or implemented under this title, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both. For purposes of this section, the term 'person' shall mean, in addition to the definition contained in section 3(e) of this title, any responsible corporate officer.".

SEC. 8211. ORDERS.

Section 105(g) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415) is amended—

(1) by redesignating paragraph (5) as paragraph (6) and by inserting immediately after paragraph (4) the following:

"(5) Upon application of any person, the district courts of the United States shall have jurisdiction to order the Administrator to implement in a timely manner the site designation provisions of this title for those sites for which site designation proceedings are incomplete and at which dumping is authorized pursuant to permits issued under sections 102 and 103. Nothing in this paragraph is intended to affect the conduct of any dumping activity under a permit issued under this title pending the completion of site designation proceedings. Paragraph (4) of this subsection shall not apply to any suit brought pursuant to this paragraph."; and

(2) by striking out "injunctive" in paragraph (6), as so redesignated.

SEC. 8212. SCHEDULE FOR COMPLETION.

The Administrator of the Environmental Protection Agency shall establish a schedule for expeditiously completing the study and designation or denial of designation of all areas of ocean waters approved before July 1, 1982, for dumping on an interim basis and areas of ocean waters used for dumping pursuant to a court order. The Administrator shall submit this schedule to Congress not later than the one hundred and eightieth day after the date of enactment of this subtitle.

SEC. 8213. ANNUAL REPORTS.

Section 112 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1421) is amended to read as follows:

"SEC. 112. In March of each year, the Administrator and the Secretary shall each individually report to the Congress on the administration of this title during the previous calendar year.".

SEC. 8214. AUTHORIZATION OF APPROPRIATIONS.

Section 111 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1420) is amended by striking out "and" immediately following "fiscal year 1981," and inserting "and not to exceed $8,864,000 for each of fiscal years 1986, 1987, and 1988," immediately after "fiscal year 1982,".

SEC. 8215. EXTENSION OF UNITED STATES AUTHORITY.

(a) Whenever in this section there is a reference to a section, subsection or paragraph of existing law, the reference is to the Marine Protection, Research, and Sanctuaries Act of 1972, as amended.

(b) Section 2(c)(2) is amended by striking out "territorial sea or the contiguous" and insert in lieu thereof the following: "territorial sea or the exclusive economic".

(c) Section 3 is amended by adding at the end thereof the following new subsection:

"(o) 'exclusive economic zone' means the zone established by Proclamation Numbered 5030, dated March 10, 1983.".

(d) Section 101(b) is amended to read as follows:

"(b) Except as may be authorized by a permit issued pursuant to section 102 of this title, and subject to regulations issued pursuant to section 108 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into the exclusive economic zone of the United States.".

SEC. 8216. RELATION TO OTHER FEDERAL LAW.

Section 106 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1416) is amended by adding at the end thereof the following new paragraph:

"(h) Nothing in this Act shall affect or modify the rights or liabilities of any person under other Federal law with respect to damage caused by noncompliance with any requirement of this Act or any permit issued under this Act.".

SEC. 8217. PERMIT FEE STUDY.

(a) As used in this section, the term "Federal waste disposal program" means any program under which the United States Government regulates the disposal, discharge, or emission of materials or substances that cause environmental pollution.

(b) The Administrator of the Environmental Protection Agency shall prepare a report regarding the permit fee systems that are applied in implementing Federal waste disposal programs. The report shall include—

(1) a description of the permit fee system applied in administering each Federal waste disposal program;

(2) an evaluation of the extent to which each permit fee system described under paragraph (1) recovers the costs expended by the United States Government in administering the related program;

(3) if the evaluation under paragraph (2) indicates that more of the costs to the United States Government in administering any waste disposal program should be borne by the permittees, recommendations for changing the permit system to achieve that result;

(4) an analysis of those conditions under which, and the extent to which, permit fees should be used—

(A) to encourage or discourage the use of particular disposal, discharge, or emission alternatives, or

(B) to encourage waste reduction, reuse, or recycling; and

(5) any legislative proposals that the Administrator considers appropriate in view of the results of the matters addressed under paragraphs (1) through (4).

(c) The report required under subsection (b) shall be prepared and submitted to the Speaker of the House of Representatives and the majority leader of the Senate for referral to the appropriate committees of Congress within eighteen months after the date of the enactment of this subtitle.

Subtitle D—Water Resources

SEC. 8301. ENGINEERING AND DESIGN STUDIES.

Section 10 of the Act entitled "An Act authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes", approved December 22, 1944 (58 Stat. 901), is amended by inserting after "and the local organizations." the following: "The Secretary is authorized to undertake further studies for engineering and design with appropriate non-Federal sponsors for a project not to exceed 200,000 acre feet of additional flood control and other storage benefits at the existing facility and not to exceed 800,000 acre feet of additional flood control and other storage benefits to alleviate flood and irrigation problems that exist in the existing service area and to report on such study to Congress.".

Subtitle E—Highway, Airport, and Inland Waterways Trust Funds

SEC. 8401. BUDGETARY TREATMENT OF HIGHWAY, AIRPORT, AND INLAND WATERWAYS TRUST FUND OPERATIONS.

(a) IN GENERAL.—The receipts and disbursements of the Highway Trust Fund, the Airport and Airway Trust Fund, and the Inland Waterways Trust Fund allocable to the transportation-related operations of each such Trust Fund—

(1) shall not be included in the totals of—

(A) the budget of the United States Government as submitted by the President, or

(B) the congressional budget (including allocations of budget authority and outlays provided therein), and

(2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(b) TRANSPORTATION-RELATED OPERATIONS.—For purposes of subsection (a), the receipts and disbursements allocable to the transportation-related operations—

(1) of the Highway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under—

(A) paragraph (1) of section 9503(c) of the Internal Revenue Code of 1954 (relating to expenditures from the Highway Trust Fund for the Federal-aid highway program), and

(B) paragraph (3) of section 9503(e) of such Code (relating to expenditures from the Mass Transit Account);

(2) of the Airport and Airway Trust Fund are the disbursements, and the receipts allocable to such disbursements, under paragraph (1) of section 9502(d) of the Internal Revenue Code of 1954 (relating to expenditures from the Airport and Airway Trust Fund for the airport and airway program); and

(3) of the Inland Waterways Trust Fund are the disbursements, and the receipts allocable to such disbursements, under section 204(a) of the Inland Waterways Revenue Act of 1978 (relating to the expenditures from the Inland Waterways Trust Fund for navigation construction and rehabilitation projects on inland waterways).

SEC. 8402. ADJUSTMENTS OF AUTHORIZATIONS AND APPROPRIATIONS OUT OF THE AIRPORT AND AIRWAY TRUST FUND.

The Airport and Airway Improvement Act of 1982 is amended by adding at the end the following new section:

"SEC. 533. ADJUSTMENTS OF AUTHORIZATIONS AND APPORTIONMENTS.

"(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Secretary of Transportation, in consultation with the Secretary of the Treasury, shall estimate—

"(1) the amount which would (but for this section) be the unfunded aviation authorizations at the close of the next fiscal year, and

"(2) the net aviation receipts for the 24-month period beginning at the close of such fiscal year.

"(b) PROCEDURE WHERE THERE IS EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If the Secretary of Transportation determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of such excess.

"(c) ADJUSTMENT OF AUTHORIZATIONS WHERE UNFUNDED AUTHORIZATIONS EXCEED 2 YEARS' RECEIPTS.—

"(1) DETERMINATION OF PERCENTAGE.—If the Secretary of Transportation determines that there is an excess referred to in subsection (b), the Secretary of Transportation shall determine the percentage which—

"(A) such excess, is of

"(B) the total of the amounts authorized to be appropriated and the amounts available for obligation from the Airport and Airway Trust Fund for the next fiscal year.

"(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary of Transportation determines a percentage under paragraph (1), each amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund for the next fiscal year shall be reduced by such percentage.

"(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—If, after an adjustment has been made under subsection (c)(2), the Secretary of Transportation determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated or available for obligation that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Secretary of Transportation determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction). The Secretary of Transportation shall apportion amounts made available for apportionment by reason of the preceding sentence. Any funds apportioned pursuant to the preceding sentence shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned pursuant to the preceding sentence.

"(e) DEFINITIONS.—For purposes of this section—

"(1) UNFUNDED AVIATION AUTHORIZATIONS.—The term 'unfunded aviation authorizations' means, at any time, the excess (if any) of—

"(A) the total amount authorized to be appropriated or available for obligation from the Airport and Airway Trust Fund which has not been appropriated or obligated, over

"(B) the amount available in the Airport and Airway Trust Fund at such time to make such appropriations or to liquidate such obligations (after all other unliquidated obligations at such time which are payable from the Airport and Airway Trust Fund have been liquidated).

"(2) NET AVIATION RECEIPTS.—The term 'net aviation receipts' means, with respect to any period, the excess of—

"(A) the receipts (including interest) of the Airport and Airway Trust Fund during such period, over

"(B) the amounts to be transferred during such period from such Fund under section 9502(d) of the Internal Revenue Code of 1954 (other than paragraph (1) thereof).

"(f) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Secretary of Transportation to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.".

SEC. 8403. ADJUSTMENTS OF AUTHORIZATIONS AND APPROPRIATIONS OUT OF THE INLAND WATERWAYS TRUST FUND.

(a) ESTIMATES OF UNFUNDED INLAND WATERWAYS AUTHORIZATIONS AND NET INLAND WATERWAYS RECEIPTS.—Not later than March 31 of each year, the Secretary of the Army, in consultation with the Secretary of the Treasury, shall estimate—

(1) the amount which would (but for this section) be the unfunded inland waterways authorizations at the close of the next fiscal year, and

(2) the net inland waterways receipts at the close of the next fiscal year.

(b) PROCEDURE WHERE THERE IS EXCESS UNFUNDED INLAND WATERWAYS AUTHORIZATIONS.—If the Secretary of the Army determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Secretary shall determine the amount of such excess.

(c) ADJUSTMENT OF AUTHORIZATIONS WHERE UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

(1) DETERMINATION OF PERCENTAGE.—If the Secretary of the Army determines that there is an excess referred to in subsection (b), the Secretary of the Army shall determine the percentage which—

(A) such excess, is of

(B) the total of the amounts authorized to be appropriated and the amounts available for obligation from the Inland Waterways Trust Fund for the next fiscal year.

(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Secretary of the Army determines a percentage under paragraph (1), each amount authorized to be appropriated or available for obligation from the Inland Waterways Trust Fund for the next fiscal year shall be reduced by such percentage.

(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—If, after an adjustment has been made under subsection (c)(2), the Secretary of the Army determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated or available for obligation that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Secretary of the Army determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction).

(e) DEFINITIONS.—For purposes of this section—

(1) UNFUNDED INLAND WATERWAYS AUTHORIZATIONS.—The term "unfunded inland waterways authorizations" means, at any time, the excess (if any) of—

(A) the total amount authorized to be appropriated or available for obligation from the Inland Waterways Trust Fund which has not been appropriated or obligated, over

(B) the amount available in the Inland Waterways Trust Fund at such time to make such appropriations.

(2) NET INLAND WATERWAYS RECEIPTS.—The term "net inland waterways receipts" means, with respect to any period, the receipts (including interest) of the Inland Waterways Trust Fund during such period.

(f) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Secretary of the Army to the Committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Environment and Public Works of the Senate.

SEC. 8404. CONFORMING AMENDMENTS AND LIMITATIONS TO THE BUDGET PROCESS.

(a) EXEMPTION FROM SEQUESTRATION ORDER.—Section 255(g)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905; 99 Stat. 1083) is amended—

(1) by inserting after the 1st undesignated paragraph (relating to activities resulting from private donations) the following new undesignated paragraph:

"Airport and Airway Trust Fund (69-8106-0-7-402; 69-8107-0-7-402; 69-8108-0-7-402; 69-8104-0-7-402);"; and

(2) by inserting after the 14th undesignated paragraph (relating to health professions) the following new undesignated paragraphs:

"Highway Trust Fund (20-8102-0-7-401; 69-8019-0-7-401; 69-8020-0-7-401; 69-8099-0-7-401);

"Inland Waterways Trust Fund (20-8861-0-7-301);".

(b) TREATMENT OF TRUST FUND RECEIPTS FOR DEFICIT CALCULATION PURPOSES.—Section 3(6) of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the second sentence the following new sentences: "In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act of 1985 (notwithstanding section 8401(a) of the Omnibus Budget Reconciliation Act of 1986) for any fiscal year, the receipts of the Highway Trust Fund (including the Mass Transit Account), the Airport and Airway Trust Fund, and the Inland Waterways Trust Fund allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total revenues for such fiscal year, and the disbursements allocable to the transportation-related operations of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. For purposes of the preceding sentence, the receipts and disbursements allocable to the transportation-related operations of such Trust Funds shall be those described in section 8401(b) of the Omnibus Budget Reconciliation Act of 1986.".

(c) LIMITATIONS ON CONGRESSIONAL BUDGET PROCESS.—Section 310 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end the following new subsection:

"(h) LIMITATION ON CHANGES TO THE HIGHWAY, AIRPORT AND AIRWAY, AND INLAND WATERWAYS TRUST FUNDS.—Notwithstanding any other provision of law, it shall not be in order in the Senate or the House of Representatives to consider—

"(1) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that assumes or contains in the aggregate totals or functional categories provided for by section 301(a) any amount of budget authority or budget outlays from the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund,

"(2) any concurrent resolution on the budget for any fiscal year, or any amendment thereto or conference report thereon, that contains reconciliation instructions with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund, or

"(3) to consider any reconciliation bill or reconciliation resolution reported pursuant to a concurrent resolution on the budget agreed to under section 301 or 304, or a resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto or conference report thereon, that contains recommendations with respect to the Highway Trust Fund, the Airport and Airway Trust Fund, or the Inland Waterways Trust Fund.".

(d) CONFORMING ENFORCEMENT PROCEDURES.—Sections 302(c), 302(f), 303(a), 311(a), and 402 of the Congressional Budget and Impoundment Control Act of 1974 shall not apply to any bill, resolution, or amendment (including a conference thereon) which provides contract authority or budget outlays from the Highway Trust Fund or the Airport and Airway Trust Fund or budget authority or budget outlays from the Inland Waterways Trust Fund.

SEC. 8405. EFFECTIVE DATE.

This subtitle (including the amendments made by this subtitle) shall take effect October 1, 1987, except that the amendments made by section 8404(a) shall take effect March 15, 1987.

Subtitle F—Comprehensive Oil Pollution Liability and Compensation

SEC. 8500. SHORT TITLE.

This subtitle may be cited as the "Comprehensive Oil Pollution Liability and Compensation Act".

PART 1—OIL POLLUTION LIABILITY AND COMPENSATION

SEC. 8501. DEFINITIONS.

For purposes of this part, the term—

(1) "claim" means a demand in writing for a sum certain;

(2) "cleanup costs" means costs of reasonable measures taken, after an incident has

occurred, to prevent, minimize, or mitigate oil pollution from that incident;

(3) "discharge" means any emission, intentional or unintentional, and includes spilling, leaking, pumping, pouring, emptying, or dumping;

(4) "facility" means a structure, or group of structures, which is either—

(A) located, in whole or in part, on the Outer Continental Shelf and used for the purposes of exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf, or

(B) licensed under the Deepwater Port Act of 1974;

(5) "foreign claimant" means any person residing in a foreign country, the government of a foreign country, or any agency or political subdivision thereof, who asserts a claim;

(6) "guarantor" means the person, other than the responsible party, who provides evidence of financial responsibility for a responsible party;

(7) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, which causes, or poses a substantial threat, of oil pollution;

(8) "inland oil barge" means a non-self-propelled vessel, carrying oil in bulk as cargo or in residue from cargo and certificated to operate only on the internal waters of the United States while operating in such waters;

(9) "internal waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside that baseline which are a part of the Gulf Intracoastal Waterway;

(10) "lessee" means a person holding a leasehold interest in an oil and gas lease on submerged lands of the outer Continental Shelf granted or maintained under the Outer Continental Shelf Lands Act;

(11) "licensee" means a person holding a license issued under the Deepwater Port Act of 1974;

(12) "mobile offshore drilling unit" means every watercraft or other contrivance (other than a public vessel of the United States) capable of use as a means of transportation on water and as a means of drilling for oil on the outer Continental Shelf;

(13) "natural resources" means living and nonliving resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government;

(14) "navigable waters" means the waters of the United States, including the territorial sea;

(15) "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(16) "oil pollution" means—

(A) the presence of oil in or on the navigable waters or on land within the United States immediately adjacent thereto, or in or on the waters of the contiguous zone—

(i) which has been discharged from a vessel or facility; and

(ii) which has been discharged in quantities which the President has determined may be harmful pursuant to paragraph (4) of subsection (b) of section 311 of the Federal Water Pollution Control Act;

(B) the presence of oil (other than natural seepage) in or on waters outside the territorial limits of the United States and of any foreign country—

(i) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(ii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or from a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port licensed under such Act;

(iii) causing injury to or loss of natural resources; or

(iv) which has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States; and

(C) the presence of oil (other than natural seepage) in or on the waters, including the territorial sea, or adjacent shoreline, of a foreign country—

(i) which has been discharged from a vessel located within the navigable waters;

(ii) which has been discharged in connection with activities conducted under the Outer Continental Shelf Lands Act;

(iii) which has been discharged from a deepwater port licensed under the Deepwater Port Act of 1974 or a vessel transiting to or from a deepwater port and located in a safety zone of a deepwater port under such Act; or

(iv) which, in the case of the waters or adjacent shoreline of Canada, has been discharged, before being brought ashore in a port in the United States, from a ship that received such oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) for transportation to a port in the United States;

(17) "operator" means—

(A) in the case of a vessel, a charterer by demise or any other person, except the owner, who is responsible for the operation, manning, victualing, and supplying of the vessel; or

(B) in the case of a pipeline, any person, except the owner, who is responsible for the operation of such pipeline by agreement with the owner;

(18) "Outer Continental Shelf" has the meaning set forth in subsection (a) of section 2 of the Outer Continental Shelf Lands Act;

(19) "owner" means, in the case of a vessel or a pipeline, any person holding title to, or in the absence of title, any other indicia of ownership of, the vessel or pipeline, whether by lease, permit, contract, license, or other form of agreement, except that such term does not include a person who, without participating in the management or operation of a vessel or a pipeline, holds indicia of ownership primarily to protect his security interest in the vessel or pipeline;

(20) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or any other commercial, legal, or governmental entity;

(22) "public vessel" means a vessel which—

(A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government, and

(B) is not engaged in commercial service;

(23) "removal costs" means—

(A) costs incurred under subsection (c), (d), or (l) of section 311 of the Federal Water Pollution Control Act, section 5 of the Intervention on the High Seas Act, or subsection (b) of section 18 of the Deepwater Port Act of 1974, and

(B) cleanup costs, other than the costs described in subparagraph (A);

(24) "responsible party" means—

(A) with respect to a vessel or a pipeline, the owner or operator of such vessel or pipeline;

(B) with respect to a facility (other than a deepwater port or pipeline), the lessee or permittee of the area in which such facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which such facility is located where such holder is a different person than the lessee or permittee; and

(C) with respect to a deepwater port, the licensee;

(25) "Secretary" means the Secretary of Transportation;

(26) "ship" means a vessel (other than an inland oil barge) carrying oil in bulk as cargo or in residue from cargo;

(27) "Trust Fund" means the Oil Spill Liability Trust Fund established by section 9505 of the Internal Revenue Code of 1954;

(28) "United States" and "State" mean the several States of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Marianas, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States;

(29) "United States claimant" means any person residing in the United States, the Government of the United States or any agency thereof, or the government of a State or a political subdivision thereof, who asserts a claim; and

(30) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SEC. 8502. COORDINATION WITH INTERNATIONAL CONVENTIONS.

During any period in which both the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, are in force with respect to the United States, this part shall not apply with respect to damage arising out of or directly resulting from oil pollution or a substantial threat of oil pollution to the extent that compensation is available under such conventions and part 4.

SEC. 8503. DAMAGES AND CLAIMANTS.

(a) DAMAGES FOR WHICH CLAIMS MAY BE ASSERTED.—Claims may be asserted, to the extent provided in this section, for damages for economic loss incurred on or after the effective date of this section and arising out of or directly resulting from oil pollution or the substantial threat of oil pollution for—

(1) removal costs;

(2) injury to, or destruction of, real or personal property;

(3) reasonable costs incurred in (A) assessing both short-term and long-term injury to, or destruction of, natural resources, (B) preparing a restoration and acquisition plan with respect to the damaged resources, and

(C) restoring or acquiring the equivalent of the damaged resources;

(4) loss of subsistence use of natural resources;

(5) loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources to the extent that such damages are sustained during the two-year period beginning on the date the claimant first suffers such loss; and

(6) loss of tax revenue for a period of one year due to injury to real or personal property.

(b) REMOVAL COSTS RECOVERABLE BY ALL CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (1) of subsection (a) by any person.

(2) LIMITATION ON RECOVERY BY RESPONSIBLE PARTY.—(A) The responsible party with respect to a vessel or facility involved in an incident may assert a claim under paragraph (1) of subsection (a) only if he can show that—

(i) he is entitled to a defense to liability under section 8504(c), or

(ii) he is entitled to a limitation of liability under section 8504(b).

(B) A claimant who is not entitled to a defense to liability, but who is entitled to a limitation of liability, may assert a claim under paragraph (1) of subsection (a) only to the extent that the sum of the removal costs incurred by the responsible party plus the amounts paid by the responsible party or by the guarantor on behalf of the responsible party for claims asserted under subsection (a) exceeds the amount to which the total of the liability under section 8504(a) and removal costs incurred by, or on behalf of, the responsible party is limited under section 8504(b).

(c) OTHER DAMAGES RECOVERABLE BY UNITED STATES CLAIMANTS.—

(1) INJURY TO PROPERTY; SUBSISTENCE USE OF NATURAL RESOURCES.—A claim may be asserted under paragraphs (2) and (4) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 8501(16) by any United States claimant, but only if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant.

(2) INJURY TO NATURAL RESOURCES.—A claim may be asserted under paragraph (3) of subsection (a) by the President as trustee for natural resources controlled by the United States or by the Governor of any State for natural resources within the boundary of the State and controlled by the State or a local government within the State.

(3) LOSS OF PROFITS.—A claim may be asserted under paragraph (5) of subsection (a) with respect to oil pollution described in subparagraph (A) or (B) of section 8501(16) by any United States claimant, but only if the claimant derives at least 25 percent of his earnings from activities which utilize the property or natural resource or, if such activities are seasonal in nature, 25 percent of the claimant's earnings during the season in which such activities took place.

(4) LOSS OF TAX REVENUE.—A claim may be asserted under paragraph (6) of subsection (a) only by a State or political subdivision thereof.

(d) OTHER DAMAGES RECOVERABLE BY FOREIGN CLAIMANTS.—

(1) GENERAL RULE.—A claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) with respect to oil pollution described in subparagraph (C) of section 8501(16) by a foreign claimant who is a resident of the country in which the oil pollution occurs, to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraph (A) of section 8501(16), if—

(A) the foreign claimant is not otherwise compensated for his loss; and

(B) recovery is authorized by a treaty or an executive agreement between the United States and the foreign country of which the claimant is a resident, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

(2) SPECIAL RULE FOR CANADIAN CLAIMANTS RESPECTING TRANS-ALASKA PIPELINE OIL.—In the case of any oil pollution described in section 8501(16)(B)(iv) or 8501(16)(C)(iv), a claim may be asserted under paragraph (2), (3), (4), or (5) of subsection (a) by a resident of Canada without regard to subparagraph (B) of paragraph (1), to the same extent that a United States claimant would be able to assert a claim with respect to oil pollution described in subparagraphs (A) and (B) of section 8501(16).

(e) ATTORNEY GENERAL.—A claim may be asserted under subsection (a) by the Attorney General, on his own motion or at the request of the Secretary, on behalf of any group of United States claimants who may assert a claim under this section.

(f) GROUP OF CLAIMANTS.—If the Attorney General fails to act under subsection (e) within sixty days after the date on which the Secretary designates a source under section 8506, any member of a group may assert a claim for damages on behalf of that group. Failure of the Attorney General to act shall have no bearing on any claim for damages asserted under this section.

SEC. 8504. LIABILITY.

(a) JOINT, SEVERAL, AND STRICT LIABILITY.—

(1) GENERAL RULE.—Subject to paragraph (2) of this subsection and subsections (b) and (c), the responsible party with respect to a facility or a vessel (other than a public vessel) that is the source of oil pollution, or poses a substantial threat of oil pollution in circumstances that justify the incurrence of the type of costs described in section 8501(23)(A), shall be jointly, severally, and strictly liable for all damages for which a claim may be asserted under section 8503.

(2) SPECIAL RULE FOR MODU'S.—(A) Except as provided in subparagraph (B), in any case in which a mobile offshore drilling unit is being used as a facility and is the source of oil pollution originating on or above the surface of the water or poses a substantial threat of such oil pollution, such unit shall be deemed to be a vessel which is a ship for purposes of this part.

(B) To the extent that damages for which claims may be asserted under section 8503 from any incident described in subparagraph (A) exceed the amount for which the responsible party is liable under subparagraph (A) (as such amount may be limited under subsection (b)(1)(B)), the mobile offshore drilling unit shall be deemed to be a facility covered by subsection (b)(1)(D), except that for purposes of applying subsection (b)(1)(D) the amount specified in such subsection shall be reduced by the amount for which the responsible party with respect to a ship is liable under subparagraph (A).

(C) In the case of any incident described in subparagraph (A)—

(i) which is caused primarily by willful misconduct or gross negligence within the privity or knowledge of both the owner or operator of the mobile offshore drilling unit and the lessee or permittee of the area, or holder of a right of use or easement for the area, in which such unit is located; or

(ii) with respect to which both such owner or operator and such lessee or permittee or holder fail or refuse to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities; such owner or operator and such lessee or permittee or holder shall be jointly, severally, and strictly liable (without limitation under subsection (b)) for all loss for which a claim may be asserted under section 8503.

(b) LIMITS ON LIABILITY.—

(1) GENERAL RULE.—Except as provided in paragraph (2), the total of the liability under subsection (a) and any removal costs incurred by, or on behalf of, the responsible party with respect to an incident shall be limited to—

(A) in the case of a vessel other than a ship or an inland oil barge, $500,000 or $300 per gross ton whichever is greater;

(B) in the case of a ship, $3,000,000 or $420 per gross ton, whichever is greater (but not to exceed $60,000,000);

(C) in the case of an inland oil barge, $150,000 or $150 per gross ton, whichever is greater; or

(D) in the case of a facility, $50,000,000.

(2) EXCEPTIONS.—Paragraph (1) shall not apply—

(A) when the incident is caused primarily by willful misconduct or gross negligence within the privity or knowledge of a responsible party; or

(B) when a responsible party fails or refuses to report the incident where required by law or to provide all reasonable cooperation and assistance requested by the responsible Federal official in furtherance of cleanup and removal activities.

(3) REPORT.—The Secretary shall, from time to time, report to Congress on the desirability of adjusting the limitations on liability specified in this subsection.

(c) DEFENSES TO LIABILITY.—

(1) COMPLETE DEFENSES.—Except when the responsible party has failed or refused to report an incident where required by law, there shall be no liability under subsection (a) if the responsible party proves that the incident—

(A) resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable, and irresistible character, or

(B) was wholly caused by an act or omission of a person other than—

(i) a responsible party;

(ii) an employee or agent of a responsible party; or

(iii) one whose act or omission occurs in connection with a contractual relationship with a responsible party.

(2) PARTIAL DEFENSES.—There shall be no liability under subsection (a)—

(A) as to a particular claimant, where the incident or economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(B) as to a particular claimant, to the extent that the incident or economic loss is caused by the negligence of that claimant.

(d) LIABILITY OF TRUST FUND.—

(1) GENERAL RULE.—The Trust Fund shall be liable for damages for which claims may be asserted under section 8503 and for

which claims are presented under this part, to the extent that the damages are not otherwise compensated.

(2) DEFENSES TO LIABILITY.—Except for the removal costs specified in section 8501(23)(A), there shall be no liability under paragraph (1), (2), or (3)—

(A) where the incident is caused wholly by an act of war, hostilities, civil war, or insurrection;

(B) as to a particular claimant, where the incident or the economic loss is caused, in whole or in part, by the gross negligence or willful misconduct of that claimant; or

(C) as to a particular claimant, to the extent that the incident or the economic loss is caused by the negligence of that claimant.

(e) LIABILITY FOR INTEREST.—

(1) GENERAL RULE.—The responsible party or his guarantor shall be liable to the claimant for interest on the amount paid in satisfaction of a claim under section 8503 for the period described in paragraph (2).

(2) PERIOD FOR WHICH INTEREST IS OWED.—(A) Except as provided in subparagraph (B), the period for which interest shall be paid under paragraph (1) is the period beginning on the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claimant is paid, inclusive.

(B) If the responsible party or guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in subparagraph (A) shall not include the period beginning on the date such offer is made and ending on the date such offer is accepted. If such offer is made within sixty days after the date upon which the claim is presented, or of the date upon which advertising is begun pursuant to section 8506, whichever is later, the period described in subparagraph (A) shall not include any period before such offer is accepted.

(3) RATE OF INTEREST.—The interest paid under this subsection shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of one hundred and eighty days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve bulletin.

(4) RELATIONSHIP TO LIABILITY LIMITS.—Interest under this subsection shall be in addition to damages for which claims may be asserted under section 8503 and shall be paid without regard to any limitation of liability under subsection (b). The payment of interest under this subsection by a guarantor shall be subject to section 8505(e).

(f) AGREEMENTS.—

(1) LIABILITY NOT TRANSFERABLE.—A responsible party may not transfer the liability imposed under this section to any other person.

(2) INDEMNIFICATION AGREEMENTS.—Nothing in this subtitle shall preclude an agreement whereby a person who, by an agreement with a responsible party, agrees to indemnify the responsible party for the liability imposed under subsection (a).

(g) RELATIONSHIP TO OTHER CAUSES OF ACTION.—Nothing in this part shall bar a cause of action that a responsible party subject to liability under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(h) RELATIONSHIP TO OTHER LAW.—To the extent that it is in conflict with, or otherwise inconsistent with, any other law (other than part 5 or any amendment made by part 5) relating to liability or the limitation thereof, this section supersedes such other law.

(i) ADMINISTRATIVE COSTS.—The Trust Fund shall not be available for the payment of costs and expenses of administration of this subtitle, unless such costs and expenses are necessary for and incidental to the implementation of this subtitle.

SEC. 8505. FINANCIAL RESPONSIBILITY.

(a) VESSELS.—

(1) REQUIREMENT.—The responsible party with respect to each vessel (except a public vessel or a non-self-propelled vessel that does not carry oil as cargo or fuel) over three hundred gross tons that uses a facility or the navigable waters shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum liability under section 8504 to which the responsible party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 8504. In cases where a responsible party owns or operates more than one vessel subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) DENYING ENTRY TO OR DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (B) detain at the facility or at the port or place in the United States, any vessel subject to this subsection that, upon request, does not produce the certification required under this subsection or regulations issued hereunder.

(b) FACILITIES.—The responsible party with respect to each facility shall establish and maintain, in accordance with regulations issued by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability to which the responsibile party would be exposed in a case where he would be entitled to limit his liability in accordance with subsection (b) of section 8504. In cases where the responsibile party is responsible for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the maximum liability applicable to one such facility.

(c) METHODS.—Financial responsibility under this section may be established by any one, or by any combination, of the following methods acceptable to the Secretary: evidence of insurance, surety bond, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(d) CLAIMS AGAINST GUARANTOR.—Any claim authorized by section 8503(a) may be asserted directly against any guarantor providing evidence of financial responsibility as required under this section for any responsible party with respect to a facility or vessel. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under this part. He may also invoke the defense that the incident was caused by the willful misconduct of the responsible party, but he may not invoke any other defense that he might be entitled to invoke in proceedings brought by the responsible party against him.

(e) LIMITATION ON GUARANTOR'S LIABILITY.—Nothing in this part shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceeds, in the aggregate, the amount of financial responsibility which that guarantor has provided for the responsible party for any vessel or facility that was a source of oil pollution in that incident. Nothing in this subsection shall be construed to limit any other statutory, contractual, or common law liability of a guarantor to any responsible party for whom such guarantor provides evidence of financial responsibility including, but not limited to, the liability of such guarantor for negotiating in bad faith a settlement of any claim.

SEC. 8506. DESIGNATION AND ADVERTISEMENT.

(a) DESIGNATION OF SOURCE AND NOTIFICATION.—When the Secretary receives information of an incident that involves oil pollution, he shall, where possible and appropriate, designate the source or sources of the oil pollution. If a designated source is a vessel or a facility, the Secretary shall immediately notify the responsible party and the guarantor, if known, of that designation.

(b) ADVERTISEMENT BY THE RESPONSIBLE PARTY OR GUARANTOR.—If a responsible party or guarantor fails to inform the Secretary, within five days after receiving notification of a designation under subsection (a), of his denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented to such party or guarantor, in accordance with regulations promulgated by the Secretary. Advertisement under the preceding sentence shall begin no later than fifteen days after the date of the designation made under subsection (a). If advertisement is not otherwise made in accordance with this subsection, the Secretary shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than thirty days.

(c) ADVERTISEMENT BY THE SECRETARY.—If—

(1) the responsible party and the guarantor both deny a designation within five days after receiving notification of a designation under subsection (a),

(2) the source of the oil pollution was a public vessel, or

(3) the Secretary is unable to designate the source or sources of the oil pollution under subsection (a),

the Secretary shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Trust Fund.

SEC. 8507. CLAIMS SETTLEMENT.

(a) PRESENTATION TO RESPONSIBLE PARTY OR GUARANTOR.—Except as provided in subsection (b), all claims shall be presented to the responsible party or guarantor of the source designated under section 8506(a).

(b) PRESENTATION TO TRUST FUND.—Claims may be presented to the Trust Fund—

(1) where the Secretary has advertised or otherwise notified claimants in accordance with section 8506(c);

(2) by a responsible party who may assert a claim under section 8503(a); or

(3) by the Governor of a State for cleanup costs incurred by that State.

(c) ELECTION.—If a claim is presented in accordance with subsection (a) and—

(1) each person to whom the claim is presented denies all liability for the claim, or

(2) the claim is not settled by any person by payment within 180 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 8506(b), whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Trust Fund. Such an election shall be irrevocable and exclusive.

(d) UNCOMPENSATED DAMAGES.—If a claim is presented in accordance with subsection (a) and full and adequate compensation is unavailable, either because the claim exceeds a limit of liability invoked under section 8504 or because the responsible party and his guarantor are financially incapable of meeting their obligations in full, a claim for the uncompensated damages may be presented to the Trust Fund.

(e) TRANSMITTAL OF CLAIM AND DOCUMENTS.—In the case of a claim which has been presented to any person under subsection (a) and which is being presented to the Trust Fund under subsection (c) or (d), that person, at the request of the claimant, shall transmit the claim and supporting documents to the Trust Fund. The Secretary may, by regulation, prescribe the documents to be so transmitted and the terms under which they are to be transmitted.

(f) PROCEDURES.—The Secretary shall establish procedures and standards for the prompt appraisal and settlement of claims against the Trust Fund, including procedures for ensuring the rapid and equitable settlement of claims submitted by the Governor of any State for cleanup costs incurred by that State.

(g) USE OF PRIVATE ORGANIZATIONS AND FEDERAL PERSONNEL.—The Secretary may use the facilities and services of private insurance and claims adjusting organizations or State agencies in processing claims against the Trust Fund and may contract for those facilities and services. To the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, the Secretary may use Federal personnel, on a reimbursable basis, to process claims against the Trust Fund.

(h) JUDICIAL REVIEW.—Any claimant, or any other person suffering legal wrong because of, or adversely affected or aggrieved by, a final determination of the Secretary with respect to a claim, may bring an action for judicial review of the determination in accordance with chapter 7 of title 5, United States Code. Such action shall be brought under section 8509 and shall be the exclusive judicial remedy with respect to such final determination of the Secretary. Such an action shall be filed not later than thirty days after the Secretary issues notification of the final determination. Venue for any such action shall lie in any district wherein the claimant resides, in addition to any district described in section 8509(b).

(i) ACTIONS AGAINST RESPONSIBLE PARTY OR GUARANTOR.—

(1) SERVICE OF PLEADINGS ON TRUST FUND.—In any action brought under this part against a responsible party or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Trust Fund at the same time those pleadings are served upon the opposing parties.

(2) INTERVENTION OF TRUST FUND.—The Trust Fund may intervene as a party as a matter of right in any action in which a complaint has been served upon it under paragraph (1).

(3) ADMISSION OF LIABILITY.—In any action to which the Trust Fund is a party, if the responsible party or his guarantor admits liability under this part, the Trust Fund shall be dismissed therefrom to the extent of the admitted liability.

(4) EFFECT OF JUDGMENT.—If the Trust Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in paragraph (1), the Trust Fund shall be bound by any judgment entered therein, whether or not the Trust Fund was a party to the action.

(5) FAILURE TO SERVE PLEADINGS.—(A) If the plaintiff fails to serve a copy of the complaint upon the Trust Fund as required by paragraph (1), the plaintiff shall not recover from the Trust Fund any sums not paid by the defendant.

(B) If the defendant fails to serve a copy of the initial answer to a complaint upon the Trust Fund as required by paragraph (1), the limitation of liability otherwise permitted by subsection (b) of section 8504 shall not be available to the defendant.

(C) If neither the plaintiff nor the defendant serves a copy of the complaint and all subsequent pleadings upon the Trust Fund as required in paragraph (1), the Trust Fund may serve a motion for a new trial for the purposes specified in this subparagraph. The motion must be served not later than ten days after the Trust Fund has received notice of the entry of the judgment in the action, but in no case later than ninety days after the entry of that judgment. The Trust Fund must establish in its motion that, due to the failure of the plaintiff or defendant to comply with paragraph (1), the Trust Fund failed to receive timely notice of one or more issues raised in the action, which might affect the liability of the Trust Fund in any case brought under this part. When the Trust Fund does so, the court shall open the judgment, if one has been entered, and shall take additional pleadings and testimony on the identified issue or issues. The court may amend findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in the action.

(j) JOINDER OF PARTIES.—In any action brought against the Trust Fund the plaintiff may join any responsible party or his guarantor, and the Trust Fund may implead any person, who is or may be liable to the Trust Fund.

(k) PERIOD OF LIMITATIONS.—No claim may be presented, nor may any action be commenced for damages recoverable under this part, unless that claim is presented to, or that action is commenced against, a responsible party or his guarantor or against the Trust Fund as to their respective liabilities, within three years from the date of discovery of the economic loss for which a claim may be asserted under subsection (a) of section 8503, or within six years of the date of the incident which resulted in that loss, whichever is earlier.

SEC. 8508. SUBROGATION.

(a) RIGHT OF SUBROGATION.—Any person, including the Trust Fund, who compensates any claimant for an economic loss compensable under section 8503 shall be subrogated to all rights, claims, and causes of action which that claimant has under this part.

(b) RECOVERY BY TRUST FUND.—

(1) DENIAL OF SOURCE DESIGNATION OR LIABILITY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(b)(1) or 8507(c)(1), the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant;

(B) interest on that amount for the period beginning on the date on which the claim was first presented by the claimant to the Trust Fund or the responsible party or guarantor and ending on the date on which the Trust Fund is paid by the responsible party or guarantor, except that if the Trust Fund offered to the claimant the amount finally paid by the Trust Fund to the claimant in satisfaction of the claim against the Trust Fund the responsible party or guarantor shall not be liable for interest for the period beginning on the date the Trust Fund made such offer and ending on the date on which the claimant accepted such offer; and

(C) all costs incurred by the Trust Fund by reason of the claim of the claimant against the Trust Fund and by reason of the claim of the Trust Fund against the responsible party or guarantor.

(2) FAILURE TO SETTLE WHERE PAYMENT BY TRUST FUND EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(c)(2) where the amount the Trust Fund has paid to the claimant exceeds the largest amount, if any, the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid the claimant, except that the portion of such amount in excess of the amount offered to the claimant by the responsible party or guarantor shall be subject to dispute by the responsible party or guarantor;

(B) interest on the portion of such excess, if any, which is recovered by the Trust Fund, for a period determined in the same manner as in paragraph (1)(B); and

(C) all costs incurred by the Trust Fund by reason of the claim of the Trust Fund against the responsible party or guarantor.

(3) FAILURE TO SETTLE WHERE PAYMENT OF TRUST FUND DOES NOT EXCEED OFFER BY RESPONSIBLE PARTY.—In a case in which the Trust Fund has compensated a claimant for a claim presented to the Trust Fund under section 8507(c)(2) where the amount the Trust Fund has paid to the claimant is less than or equal to the largest amount the responsible party or guarantor offered to the claimant in satisfaction of the claim of the claimant against the responsible party or guarantor, the Trust Fund shall recover under subsection (a)—

(A) the amount the Trust Fund has paid to the claimant; and

(B) interest—

(i) for the period beginning on the date on which the claim was presented by the claimant to the responsible party or guarantor and ending on the date on which the responsible party or guarantor offered to the claimant the largest amount referred to in this paragraph, except that if the responsible party or guarantor offered such amount within sixty days after the date upon which the claim of the claimant was presented to

the responsible party or guarantor or advertising was commenced under section 8506, whichever is later, the responsible party or guarantor shall not be liable for interest for such period; and

(ii) for the period beginning on the date on which the claim of the Trust Fund against the responsible party or guarantor was presented to the responsible party or guarantor to the date on which the Trust Fund is paid, inclusive, except that if the responsible party or guarantor offers to the Trust Fund the amount finally paid to the Trust Fund in satisfaction of the claim of the Trust Fund, interest shall not be paid for the period beginning on the date on which such offer is made and ending on the date on which the Trust Fund accepts that offer, inclusive.

(4) SPECIAL RULES.—For purposes of this subsection—

(A) interest shall be calculated in accordance with section 8504(e); and

(B) costs recoverable under paragraphs (1)(C) and (2)(C) include, but are not limited to, processing costs, investigating costs, court costs, and attorney's fees.

(c) PAYMENT OF CERTAIN INTEREST TO CLAIMANT.—The Trust Fund shall pay over to the claimant that portion of any interest the Trust Fund recovers under subsections (b)(1)(B) and (b)(2)(B) for the period beginning on the date on which the claim of the claimant was first presented to the Trust Fund or the responsible party or guarantor to the date upon which the claimant was paid by the Trust Fund, inclusive.

(d) APPLICATION OF LIABILITY LIMITS.—The Trust Fund is entitled to recover for all interest and costs specified in subsection (b) without regard to any limitation of liability to which the responsible party or guarantor may otherwise be entitled. The payment of such interest and costs by a guarantor shall be subject to section 8505(e).

SEC. 8509. JURISDICTION AND VENUE.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction over all controversies arising under this part and parts 2 and 3, without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Unless otherwise provided in this subtitle, venue shall lie in any district wherein the injury complained of occurred, or wherein the responsible party or guarantor resides, may be found, or has his principal office. For purposes of this section, the Trust Fund resides in the District of Columbia.

SEC. 8510. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION.—Except as provided in this subtitle, or in section 9505 of the Internal Revenue Code of 1954—

(1) no action may be brought in any court of the United States, or of any State or political subdivision thereof, for an economic loss compensable under this part,

(2) no person may be required to contribute to any fund, the purpose of which is to compensate for damages for an economic loss described in section 8503(a), except that, for a period of three years beginning on the effective date of this section, any State which on such date has in effect a statute that requires such contributions may continue to require such contributions within the limits established by such statute as those limits exist on such date, and

(3) no person may be required to establish or maintain evidence of financial responsibility relating to the satisfaction of a claim compensable under this part.

(b) STATE FINANCING OF PREPARATION FOR OIL POLLUTION CLEANUP.—Nothing in this subtitle shall preclude any State from imposing a tax or fee upon any person or upon oil in order to finance the purchase and prepositioning of oil pollution cleanup and removal equipment or to finance other preparations for responding to a discharge of oil which affects such State.

(c) ACTIONS BY TRUST FUND.—Nothing in subsection (a) shall prohibit an action by the Trust Fund under any other provision of law to recover compensation paid under this part.

SEC. 8511. PENALTIES.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 8505 or the regulations issued thereunder or with any denial or detention order shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 8512. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for fiscal years beginning on or after October 1, 1985, such sums as may be necessary to carry out this subtitle.

PART 2—REPORT AND COORDINATION WITH OTHER PROVISIONS

SEC. 8601. ANNUAL REPORT.

The Secretary shall report annually to the Congress on the activities of the Trust Fund during the preceding year. The Secretary shall include in any such report any recommendations for legislative changes needed for the Trust Fund to carry out the purposes of this subtitle.

SEC. 8602. COORDINATION WITH OTHER PROVISIONS OF THIS ACT.

(a) If any provision of this subtitle provides that the balance in any fund (hereinafter in this subsection referred to as the "transferor fund") is to be transferred to the Trust Fund, any claim which arises before the effective date of such transfer (to the extent such claim would have been payable out of the transferor fund), shall be payable out of the Trust Fund.

(b) If any provision of this subtitle authorizes amounts to be expended from the Trust Fund which are not authorized by part 5 (or an amendment made by part 5), such provision shall have no force or effect.

PART 3—REGULATIONS, EFFECTIVE DATES, AND SAVINGS PROVISIONS

SEC. 8701. EFFECTIVE DATES.

(a) PROVISIONS TAKING EFFECT ON DATE OF ENACTMENT.—This section, section 8501, section 8502, section 8512, part 2, section 8702(a)(1) and (3), section 8703, 8704, and each provision of part 1 that authorizes the promulgation of regulations shall be effective on the date of the enactment of this subtitle.

(b) PART 4.—Part 4 shall take effect on the first date on which both the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage are in force with respect to the United States.

(c) PROVISIONS TAKING EFFECT IN 180 DAYS.—All other provisions of this subtitle, and the regulations issued under this subtitle, shall take effect 180 days after the date of enactment of this subtitle, except that the penalty prescribed by section 8511 for failure to comply with the requirements of section 8505 or the regulations issued thereunder shall not be effective until the ninetieth day after issuance of those regulations or the two hundred and seventieth day after the date of enactment of this subtitle, whichever is earlier.

(d) REGULATIONS RESPECTING FINANCIAL RESPONSIBILITY.—Any regulation respecting financial responsibility, issued pursuant to any provision of law repealed by section 8702, and in effect on the day immediately preceding the effective date of section 8702 shall remain in force until superseded by regulations issued under part 1.

SEC. 8702. CONFORMING AMENDMENTS.

(a) TRANS-ALASKA PIPELINE AUTHORIZATION ACT.—(1) The first sentence of subsection (b) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(b); 87 Stat. 586) is amended by inserting "in the State of Alaska" after "any area" and by inserting "related to the trans-Alaska oil pipeline" after "any activities". Such subsection is further amended by inserting at the end thereof the following new sentence: "This subsection shall not apply to removal costs resulting from oil pollution as that term is defined in section 8501 of the Comprehensive Oil Pollution Liability and Compensation Act.".

(2) Subsection (c) of section 204 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)) is repealed. Such repeal shall not affect the applicability of such subsection to claims arising before the effective date of this paragraph. Notwithstanding section 8701, the repeal of—

(A) paragraph (4) of such subsection (establishing the Trans-Alaska Pipeline Liability Fund),

(B) paragraph (5) of such subsection (to the extent it permits costs of administration to be paid from the Fund and permits amounts in the Fund to be invested), and

(C) paragraph (8) of such subsection (permitting recovery by subrogation),

shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under paragraph (3) of this subsection, the rebate of all remaining amounts under paragraph (3) of this subsection, and the completion of all actions required to carry out paragraph (3) of this subsection.

(3)(A) Not later than 210 days after the date of enactment of this paragraph, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the Secretary of Transportation the total amount of claims outstanding against such Fund, as of the effective date of paragraph (2) of this subsection. The amount in the Trans-Alaska Pipeline Liability Fund exceeding the total amount certified under the preceding sentence shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(B) After the settlement of all claims described in subparagraph (A) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in such Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(C) Whenever a rebate is made on a pro rata basis to the owners of oil under subparagraph (A) or (B), each such owner's share of the rebate shall be an amount determined by dividing the amount contributed by such owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to such Fund.

(D) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

(b) INTERVENTION ON THE HIGH SEAS ACT.—Section 17 of the Intervention on the High Seas Act (33 U.S.C. 1486; 88 Stat. 10) is amended to read as follows:

"SEC. 17. The Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954 shall be available to the Secretary for actions and activities relating to oil pollution (as defined in section 8501 of the Comprehensive Oil Pollution Liability and Compensation Act), or the substantial threat of oil pollution, taken under section 5 of this Act.".

(c) FEDERAL WATER POLLUTION CONTROL ACT.—Section 311 of the Federal Water Pollution Control Act is amended as follows:

(1) Subsection (a) is amended by striking out the period at the end of paragraph (17) and inserting in lieu thereof a semicolon and by adding at the end the following new paragraph:

"(18) 'person in charge' means the individual immediately responsible for the operation of a vessel or facility.".

(2) Paragraph (5) of subsection (b) is amended in the last sentence by inserting after "person" the following: "or his employer".

(3) Subparagraph (A) of paragraph (6) of subsection (b) is amended—

(A) in the first and second sentences, by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge"; and

(B) in the third sentence, by striking out "the owner or operator" and inserting in lieu thereof "whoever being".

(4) Subparagraph (B) of paragraph (6) of subsection (b) is amended in the first and second sentences by striking out "or person in charge" each place it appears and inserting in lieu thereof "person in charge, or employer of such person in charge".

(5) Subsection (c)(2)(H) is amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: ", in the case of any discharge of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Oil Spill Liability Trust Fund".

(6) Subsection (d) is amended by striking out the last sentence.

(7) Subsections (f), (g), and (i) of section 311 of the Federal Water Pollution Control Act shall not apply with respect to any discharge of oil resulting in damages for which a claim may be asserted under part 1 of this subtitle.

(8) Subsection (i) is amended by striking out "(1)" after "(i)" and by striking out paragraphs (2) and (3).

(9)(A) Subsection (k) is repealed, effective upon the payment from the fund established by such subsection of all claims certified under subparagraph (B) and all remaining amounts to the general fund of the Treasury under subparagraph (B).

(B) Not later than 180 days after the effective date of this paragraph, the Secretary of Transportation shall certify to the Secretary of the Treasury the total amount of the claims outstanding against the fund established by subsection (k) as of the effective date of this paragraph. The amount in such fund exceeding the total amount certified shall be transferred to the general fund of the Treasury. If the amount paid in settlement of such claims is less than the amount so certified, the remainder shall be transferred to the general fund of the Treasury. Any amounts received by the United States under section 311 with respect to such claims after the effective date of the repeal of subsection (k) shall be deposited in the general fund of the Treasury.

(10) Subsection (l) is amended by striking out the second sentence.

(11) Subsection (p) is repealed.

(12) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Liability Trust Fund shall be available to carry out subsections (c), (d), (i), and (l) as those subsections relate to discharges of oil. Any amounts received by the United States under this section with respect to claims arising on or after the effective date of this subsection shall be deposited in the Oil Spill Liability Trust Fund.".

(d) DEEPWATER PORT ACT OF 1974.—The Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.; 88 Stat. 2126) is amended as follows:

(1) Section 4(c)(1) is amended by striking out "section 18(l) of this Act" and inserting in lieu thereof "section 8505 of the Comprehensive Oil Pollution Liability and Compensation Act".

(2) Subsections (b), (d), (e), (f), (g), (h), (i), (j), (l), and (n) of section 18 are repealed and subsections (c), (k), and (m) of section 18 are redesignated as subsections (b), (c), and (d), respectively.

(3) Paragraph (3) of subsection (b) of section 18 (as redesignated by paragraph (2)) is amended by striking out "Deepwater Port Liability Fund established pursuant to subsection (f) of this section." and inserting in lieu thereof "Oil Spill Liability Trust Fund.".

(4) Subsection (c) of section 18 (as redesignated by paragraph (2)) is amended to read as follows:

"(c) This section shall not be interpreted to preclude any State from imposing additional requirements, not inconsistent with the provisions of the Comprehensive Oil Pollution Liability and Compensation Act, for any discharge of oil from a deepwater port or a vessel within any safety zone.".

(5) Any amounts remaining in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974 shall be deposited in the Oil Spill Liability Trust Fund. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Deepwater Port Liability Fund under the Deepwater Port Act of 1974.

(e) OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978.—Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (Public Law 95-372) is repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Oil Spill Liability Trust Fund established under section 9505 of the Internal Revenue Code of 1954. The Oil Spill Liability Trust Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund under title III of the Outer Continental Shelf Lands Act Amendments of 1978.

SEC. 8703. REGULATIONS AND DELEGATION OF AUTHORITY.

The Secretary of Transportation may prescribe regulations to carry out this subtitle.

SEC. 8704. SEPARABILITY.

If any provision of this subtitle or the applicability thereof is held invalid, the remainder of this subtitle shall not be affected thereby.

PART 4—IMPLEMENTATION OF CONVENTIONS

SEC. 8801. RECOGNITION OF THE INTERNATIONAL FUND.

The International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention is recognized under the laws of the United States as a legal person and shall have the capacity under the laws of the United States to contract, to acquire and dispose of real and personal property, and to institute and be a party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State his agent for service of process in any action against the International Fund in any court in the United States.

SEC. 8802. SERVICE OF PROCESS AND INTERVENTION.

(a) SERVICE OF PROCESS ON FUNDS.—In any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund and the Oil Spill Liability Trust Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) INTERVENTION.—The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or his guarantor under the Civil Liability Convention.

(c) EFFECT OF JUDGMENT.—If the International Fund has been served a copy of the complaint and all subsequent pleadings in an action referred to in subsection (a), the International Fund shall be bound by any judgment entered therein, whether or not the International Fund was a party to the action.

SEC. 8803. EXEMPTION FROM TAXATION.

The International Fund and its assets shall be exempt from all direct taxation in the United States.

SEC. 8804. PAYMENT OF CONTRIBUTIONS.

(a) PAYMENTS TO BE MADE FROM OIL SPILL LIABILITY TRUST FUND.—The amount of any contribution to the International Fund which is required to be made under article 10 of the International Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall

be paid to the International Fund from the Oil Spill Trust Fund. Before the International Fund Convention enters into force with respect to the United States, the President shall make, and deposit with the Secretary-General of the International Maritime Organization, a declaration under article 14 of the International Fund Convention that the United States assumes the obligation to pay contributions under article 10 of such Convention in respect of oil received within the territory of the United States and that such amount will be paid from the Oil Spill Liability Trust Fund.

(b) INFORMATION.—The Secretary shall, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal installation, or other installation in the United States under article 10 of the International Fund Convention to provide such information relating to that oil as may be necessary to carry out subsection (a).

SEC. 8805. JURISDICTION OF DISTRICT COURTS.

(a) JURISDICTION.—The United States district courts shall have exclusive original jurisdiction of all controversies arising under the Civil Liability Convention or the International Fund Convention in—

(1) the territory, including the territorial sea, of the United States, or

(2) the exclusive economic zone of the United States established by Proclamation Numbered 5030, dated March 10, 1983,

without regard to the citizenship of the parties or the amount in controversy.

(b) VENUE.—Venue shall lie in any district wherein the injury complained of occurred, or wherein the defendant resides, may be found, or has his principal office. For purposes of this subsection, the International Fund shall reside in the District of Columbia.

SEC. 8806. RECOGNITION OF JUDGMENTS.

Any final judgment of a court of any nation which is a party to the Civil Liability Convention or the International Fund Convention in an action for compensation under either such convention shall be recognized by any court of the United States or of a State when that judgment has become enforceable in such nation and is no longer subject to ordinary forms of review, except where—

(1) the judgment was obtained by fraud; or

(2) the defendant was not given reasonable notice and a fair opportunity to present his case.

SEC. 8807. FINANCIAL RESPONSIBILITY.

(a) U.S. DOCUMENTED SHIPS.—The owner of each ship which is documented under the laws of the United States and is carrying more than two thousand tons of oil in bulk as cargo shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The Secretary shall issue a certificate to each such owner who complies with this paragraph, in the form and manner required by the Civil Liability Convention.

(b) U.S. OWNED SHIPS.—With respect to any ship owned by the United States, the Secretary shall issue a certificate stating that the ship is owned by the United States and that the ship's liability is covered within the limits of liability prescribed by the Civil Liability Convention.

(c) OTHER SHIPS.—The owner of each ship (other than a ship to which subsection (a) or (b) applies), wherever registered, which is carrying more than two thousand tons of oil in bulk as cargo and which enters or leaves a port or offshore terminal in the United States (including the territorial seas) shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility in amounts sufficient to cover the maximum liability of such owner for pollution damage arising from one incident under the Civil Liability Convention. The owner of a ship which is registered in, or flying the flag of, a nation which is a party to the Civil Liability Convention shall be considered to have met the requirements of this paragraph if the ship is carrying a certificate issued by such nation attesting that insurance or other financial security is in force which meets the requirements of such Convention.

(d) WITHHOLDING CLEARANCE.—The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate showing compliance with the requirements of financial responsibility under subsection (a) or (c).

(e) DENYING ENTRY AND DETAINING VESSELS.—The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility, to any port or place in the United States, or to the navigable waters, or (2) detain at the facility or at the port or place in the United States, any vessel subject to this section that, upon request, does not produce the certificate required under this section or regulations issued hereunder.

SEC. 8808. CIVIL PENALTY.

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 8804(b) or 8807, the regulations issued under either such section, or any denial or detention order under section 8807(e) shall be liable to the United States for a civil penalty, not to exceed $10,000 for each violation. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. The Secretary may compromise, modify, or remit with or without conditions any civil penalty which is subject to imposition or which has been imposed under this subsection. If any person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection.

SEC. 8809. WAIVER OF SOVEREIGN IMMUNITY.

The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the International Fund Convention relating to any ship owned by the United States and used for commercial purposes.

SEC. 8810. RULES AND REGULATIONS.

The Secretary may issue such rules and regulations as are necessary to implement the Civil Liability Convention and the International Fund Convention.

SEC. 8811. DEFINITIONS.

For purposes of this part—

(1) terms defined in part 1 have the same meanings when used in this part;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "International Fund" means the International Oil Pollution Compensation Fund established by article 2 of the International Fund Convention; and

(4) the term "International Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

PART 5—OIL SPILL LIABILITY TRUST FUND AND ITS REVENUE SOURCES

SEC. 8901. TAX ON PETROLEUM FOR OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel.".

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c) for any period an amount equal to the excess of the aggregate amount paid by the taxpayer into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund over the amount of such payments taken into account under this subsection for all prior periods.".

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after September 30, 1985, and before October 1, 1990.".

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended by striking the period at the end and inserting the following: "that is attributable to the Superfund financing rate under section 4611(c).".

(3) Subsection (b)(1) of section 221 of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Super-

fund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, subparagraph (A) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c).".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

SEC. 8902. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under part 1 of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deepwater Port Liability Fund established by section 18(f) of the Deepwater Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 8501(23)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 8804 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—Rules similar to the rules of paragraph (3) of section 223(c) of the Hazardous Substance Response Revenue Act of 1980 shall apply for purposes of this subsection.

"(4) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1990, and all advances to such Fund shall be repaid on or before such date.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act or in any amendment made by such Act shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

Subtitle G—Prohibition on Loan Sales

SEC. 8951. PROHIBITION.

A loan made under the Public Works and Economic Development Act of 1965 or under section 254 of the Trade Act of 1974 shall not be sold to private interests, except with the consent of the borrower, and a contract shall not be entered into with private interests to sell or administer any such loan.

TITLE IX—HOUSE COMMITEE ON SMALL BUSINESS

SEC. 9001. This title may be cited as the "Corporation for Small Business Investment Charter Act".

SEC. 9002. Section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662) is amended—

(1) by inserting before the semicolon in paragraph (3) the following: ", or a company qualified to conduct business with the Corporation under section 357 of this Act";

(2) by inserting before the semicolon at the end of paragraph (5) the following: ", except that for purposes of title III the term means one which, together with its affiliates, is independently owned and operated, is not dominant in its field of operations and—

"(A) does not have net worth in excees of $7,000,000 and does not have an average net income, after Federal income taxes, for the preceding two years in excess of $2,500,000 (average net income to be computed without benefit of any carryover loss), except that such net worth and net income limitations shall be adjusted effective January 1 of each year following the effective date of this Act. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the implicit price deflator for gross national product published by the United States Department of Commerce, with 1986 being the initial year for adjustment; or

"(B) Otherwise qualifies under size standards for financial assistance established by the Administration under the Small Busines Act, as amended (Public Law 163, Eighty-third Congress).";

(3) by striking "and" at the end of paragraph (7);

(4) by striking the period at the end of paragraph (8) and inserting in lieu thereof a semicolon; and

(5) by inserting after paragraph (8) the following new paragraphs:

"(9) the term 'Corporation' means the Corporation for Small Business Investment, as constituted under this Act; the Corporation shall be classified as and considered to be a corporate instrumentality of the United States;

"(10) the term 'Board of Directors' means the Board of Directors of the Corporation;

"(11) the term 'disadvantaged small business concern' means a small business concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

"(12) the term 'law' includes any law of the United States or any State (including any rule of law or of equity);

"(13) the term 'organization' means any corporation, partnership, association, business trust, or other business entity;

"(14) the term 'security' has the meaning ascribed to it by section 2(1) of the Securities Act of 1933 (15 U.S.C. 77b(1));

"(15) the term 'small business investment security' shall include—

"(A) debentures, bonds, promissory notes, obligations or securities issued by small business investment companies; and

"(B) such other small business investment company securities as determined by the Corporation;

"(16) the term 'private capital' means the combined private paid-in capital and paid-in surplus of a corporate small business investment company, or in the case of an unincorporated small business investment company, the permanent partnership capital; and

"(17) the term 'licensee in good standing' means a small business investment company which was approved by the Administration to operate under the provisions of this Act and was issued a license as provided in section 301 of this Act, unless such licensee (A) is in default under the provisions of preferred securities or debentures and such preferred securities or debentures have been declared due and payable by the Administration, or (B) is in liquidation by the Administration for regulatory reasons.".

SEC. 9003. Title III of the Small Business Investment Act of 1958 is amended by adding the following new section at the end thereof:

"TRANSFER AND PHASE-OUT

"SEC. 322. (a) A licensee in good standing shall have a period of three months from the date the Administration receives notice under section 352(h) of this Act in which to qualify under section 357(a) or section 359(a) of this Act.

"(b) Within six months after the Administration receives notice under section 352(h) of this Act, the Administration shall promulgate final rules and regulations to effect the orderly termination of operations of any licensee in good standing that is not qualified under section 357(a) or section 359(b) of this Act, and the Administration shall enter into an agreement with the Corporation which provides for the administration of such rules and regulations by the Corporation.

"(c) The final rules and regulations adopted by the Administration for termination of the operations of any licensee under subsection (b) of this section shall, among other things, suspend such licensee's authority under this title to obtain financial assistance from the Administration and shall require revocation of the license of any such licensee effective within two years after the publication of such rules and regulations, except that the license revocation for any such licensee which has outstanding debentures or preferred securities as provided in this title shall be within two years after such debentures or securities are due or paid, whether voluntarily or otherwise.

"(d) The Administration shall furnish to the Corporation all books and records of the Administration necessary to carry out the provisions of this title within thirty days after written request by the Corporation unless the Administrator certifies to the Corporation that such books and records are not available within such time: *Provided*, That the Administration shall not furnish information on any individual licensee unless the licensee has entered an agreement for the release of such information. Any such information received by the Corporation shall be kept confidential by the Corporation, its officers, agents and employees, under the same provisions which would have been applicable if it had been retained by the Administration.".

SEC. 9004. Title III of the Small Business Investment Act of 1958 is amended—

(1) by amending the table of contents to read as follows:

"TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

"PART A

"Sec. 301. Organization of small business investment companies.
"Sec. 302. Capital requirements.
"Sec. 303. Borrowing power.
"Sec. 304. Provision of equity capital for small-business concerns.
"Sec. 305. Long-term loans to small-business concerns.
"Sec. 306. Aggregate limitations.
"Sec. 307. Exemptions.
"Sec. 308. Miscellaneous.
"Sec. 309. Revocation and suspension of licenses; cease and desist orders.
"Sec. 310. Examinations and investigations.
"Sec. 311. Injunctions and other orders.
"Sec. 312. Conflicts of interest.
"Sec. 313. Removal or suspension of directors and officers of licensees.
"Sec. 314. Unlawful acts and omissions by officers, directors, employees, or agents; breach of fiduciary duty.
"Sec. 315. Penalties and forfeitures.
"Sec. 316. Jurisdiction and service of process.
"Sec. 317. Interest subsidy.
"Sec. 318. Joint ownership of companies, benefits.
"Sec. 319. Preferred stock asset coverage requirement, exemption.
"Sec. 320. Guaranteed obligations not eligible for purchase by Federal Financing Bank.
"Sec. 321. Issuance and guarantee of trust certificates.
"Sec. 322. Transfer and phase-out.

"PART B

"Sec. 351. Purposes.
"Sec. 352. The Corporation for Small Business Investment.
"Sec. 353. Common and preferred stock.
"Sec. 354. Obligations and securities.
"Sec. 355. Legal investments and exempt securities.
"Sec. 356. Loan and investment operations.
"Sec. 357. Qualification of small business investment companies.
"Sec. 358. Operations of small business investment companies.
"Sec. 359. Special small business investment companies.
"Sec. 360. Audits and reports.
"Sec. 361. Transfer of SBA guaranteed securities to the Corporation.
"Sec. 362. Participating Incentive Revolving Fund.";

and

(2) by inserting the following heading prior to section 301:

"PART A".

SEC. 9005. Title III of the Small Business Investment Act of 1958 is amended by inserting the following new sections at the end thereof:

"PART B

"PURPOSES

"SEC. 351. The Congress hereby declares that the purposes of Part B of this title are—

"(1) to establish a Government-sponsored private corporation which will be financed by private capital and which will serve as a secondary market and warehousing facility for loans and investments in small business investment companies, including loans guaranteed by the Small Business Administration, and will provide liquidity for small business loans and investments;

"(2) to encourage the formation of new small business investment companies and to stimulate and supplement the orderly and necessary flow of private equity capital and long-term loan funds to and improve the distribution of investment capital available for small-business concerns as defined under this Act; and

"(3) to provide for an orderly transfer of certain functions of, and securities guaranteed or owned by, the Small Business Administration to the Corporation for Small Business Investment as constituted under this title.

"THE CORPORATION FOR SMALL BUSINESS INVESTMENT

"SEC. 352. (a) There is hereby created a body corporate to be known as the Corporation for Small Business Investment (hereinafter referred to as the 'Corporation'). The Corporation shall have succession until dissolved. It shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof. Offices may be established by the Corporation in such other place or places it may deem necessary or appropriate for the conduct of its business.

"(b) The Corporation, including its franchise, capital, reserves, surplus, mortgages, or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, or by any county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

"(c) Within sixty days of the date of enactment of part B of this title, an interim Board of Directors of the Corporation shall be appointed by the President, one of whom the President shall designate as interim Chairman. The interim Board shall consist of five members, two of whom shall be representative of small business, two of whom shall be representative of small business investment companies, and one of whom shall be the Administrator. The interim Board shall arrange for an initial offering of common stock and take whatever other actions are necessary to proceed with the operations of the Corporation.

"(d) The Corporation shall have a permanent Board of Directors which shall consist of fifteen persons. When small business investment companies have purchased and fully paid for $15,000,000 of common stock of the Corporation, the holders of such common stock shall elect ten members to the Board of Directors. The President shall appoint the remaining five directors.

"(e) At the time the events described in subsection (d) of this section have occurred, the interim Board shall turn over the affairs of the Corporation to the permanent Board of Directors. The directors appointed by the President shall serve at the pleasure of the President and until their successors have been appointed and have qualified. The Board shall at all times have as members appointed by the President at least one person from a small business investment company operating under section 359 of this Act, and two persons who shall be representative of small business. The directors elected by the common shareholders shall each be elected for a term ending on the date of the next annual meeting of the common stockholders of the Corporation, and shall serve until their successors have

been elected and have qualified. Any appointive seat on the Board which becomes vacant shall be filled by appointment of the President. Any elective seat on the Board which becomes vacant after the annual election of the directors shall be filled by the Board, but only for the unexpired portion of the term.

"(f) The Board shall determine the general policies which shall govern the operations of the Corporation. The Board shall select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Corporation and shall discharge all such executive functions, powers and duties.

"(g) The Corporation shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

"(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry out its operations, and have officers and exercise the powers granted by this section in any State without regard to any qualification, licensing or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Corporation;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such attorneys, officers, employees, and agents as may be required, determine their qualifications, define their duties, fix their compensation, require bonds for them and fix the penalty thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

"(h) When the permanent Board of Directors is duly constituted and the Corporation is ready to conduct business, it shall so notify the Administration.

"COMMON AND PREFERRED STOCK

"SEC. 353. (a)(1) The Corporation shall have voting common stock, having such par value as may be fixed by its Board of Directors from time to time, which may be issued only to small business investment companies. Each share of voting common stock shall be vested with all voting rights, each share being entitled to one vote with rights of cumulative voting at all elections of directors. The free transferability of the voting common stock at all time to any person, firm, corporation, or other entity shall not be restricted except for the restriction in subparagraph (5)(B) of this subsection and except that, as to the Corporation, it shall be transferable only on the books, of the Corporation. The initial maximum number of shares of voting common stock that the Corporation may issue and have outstanding shall be 100,000,000 shares. The maximum number of shares of voting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares.

"(2) The Corporation is authorized to issue nonvoting common stock having such par value as may be fixed by its Board of Directors from time to time. The initial maximum number of shares of nonvoting common stock that the Corporation may issued and have outstanding shall be 100,000,000 shares. The maximum number of shares of nonvoting common stock may be increased or decreased by the affirmative vote of the holders of at least a majority of the total outstanding shares. Any nonvoting common share issued shall be fully transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(3) The holders of the voting or nonvoting common stock shall not have preemptive rights.

"(4) In order to accumulate funds for its capital surplus account from private sources—

"(A) the Corporation shall require each small business investment company to make payments of nonrefundable capital contributions not to exceed two per centum of the private capital of each such company;

"(B) the Corporation also may require each small business investment company to make payments of nonrefundable capital contributions not to exceed two per centum of any increases in the private capital of each such company; and

"(C) the Corporation also may require each small business investment company which sells a small business investment security to the Corporation to make, or commit to make, a nonrefundable capital contribution not to exceed one per centum of the unpaid principal balance of such security;

"(5)(A) The Corporation, from time to time, shall issue to each small business investment company its voting common stock evidencing any capital contributions made pursuant to paragraph (4) of this subsection.

"(B) Such voting common stock shall be retained by such companies for a period of not less than three years, subject to such conditions as may be established by the Corporation.

"(C) In addition, the Corporation may issue shares of nonvoting common stock in return for appropriate payments into capital or capital and surplus.

"(D) Such dividends as may be declared by the Board of Directors in its discretion shall be paid by the Corporation to the holders of its voting and nonvoting common stock.

"(6) Notwithstanding any other provision of law, any depository institution, as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A), shall be authorized to make payments to the Corporation of the capital contributions referred to in this subsection, to receive stock of the Corporation evidencing such capital contributions, to dispose of such stock, subject to the provisions of this title.

"(b)(1) The Corporation is authorized to issue nonvoting preferred stock, having such par value as may be fixed by its Board of Directors from time to time. Any preferred share issued shall be freely transferable, except that, as to the Corporation, it shall be transferable only on the books of the Corporation.

"(2) The holders of the preferred shares shall be entitled to such rate of cumulative dividends and such shares shall be subject to such redemption or other conversion provisions as may be provided for at the time of issuance. No dividends shall be payable on any share of common stock at any time when any dividend is due on any share of preferred stock and has not been paid. The Corporation may prescribe that any class of preferred stock of the Corporation may be converted into voting or nonvoting common stock of the Corporation.

"(3) In the event of any liquidation, dissolution, or winding up of the Corporation's business, the holders of the preferred shares shall be paid in full at par value thereof, plus all accrued dividends, before the holders of the common shares receive any payment.

"OBLIGATIONS AND SECURITIES

"SEC. 354. (a) The Corporation is authorized to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Corporation. Such obligations shall be issued at such times, bear interest at such rates, and contain such terms and conditions as the Corporation shall determine, with the approval of the Secretary of the Treasury. Such obligations may be redeemable at the option of the Corporation before maturity in such manner as may be stipulated therein. The Corporation shall insert appropriate language in each of its obligations issued under this section and under section 356 clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Corporation. The Corporation is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price. Any obligation or security of the Corporation may be issued and sold in definitive form, in book entry form or in such other form, with or without delivery of physical evidence of ownership, as shall be prescribed by the Corporation.

"(b) For the purposes of this section, the Corporation is authorized to issue obligations which are subordinated to any or all other obligations of the Corporation, including subsequent obligations. The obligations issued under this section shall have such maturities and bear such rate or rates of interest as may be determined by the Corporation and may be made redeemable at the option of the Corporation before maturity in such manner as may be stipulated in such obligations. Any of such obligations may be convertible into shares of common stock in such manner, at such price or prices, and such time or times as may be stipulated therein.

"(c) The Secretary of the Treasury, in his discretion, may purchase any obligations issued by the Corporation pursuant to subsection (a) of this section as now or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act (40 Stat. 228), as amended, as now or hereafter in force, and the purposes for which securities may be issued under such Act, as now or hereafter in force, are extended to include such purchases. The authorities provided to the Secretary of the Treasury by the preceding sentence shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

The Secretary of the Treasury shall not at any time purchase any obligations under this subsection if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this subsection to an amount greater than $500,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be on terms and conditions as shall be determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations to the United States of comparable maturities as of the last day of the month preceding the making of such purchase. The Secretary of the Treasury may, at any time, sell, on such terms and conditions and at such price or prices as the Secretary may determine, any of the obligations acquired by the Secretary under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this section shall be treated as public debt transactions of the United States.

"LEGAL INVESTMENTS AND EXEMPT SECURITIES

"SEC. 355. All obligations issued by the Corporation pursuant to sections 354 and 356, all preferred stock issued by the Corporation pursuant to section 353(b) and all obligations guaranteed by the Corporation pursuant to section 356 shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Corporation shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Corporation shall, for the purposes of section 14(b)(2) of the Federal Reserve Act (12 U.S.C. 355(2)), be deemed to be an agency of the United States. The obligations of the Corporation shall be deemed to be obligations of the United States for purposes of section 3124 of title 31, United States Code. For the purpose of section 101(39) of title 11, United States Code, the Corporation shall be deemed to be an agency of the United States; however, for the purpose of section 101(33) of title 11, United States Code, the Corporation shall not be deemed to be a governmental unit, but instead shall be deemed to be a corporation.

"LOAN AND INVESTMENT OPERATIONS

"SEC. 356. (a) After the permanent Board of Directors has been duly constituted and the debentures purchased as provided in section 361 of this Act, the Corporation is authorized, subject to the provisions of this section, pursuant to commitments or otherwise, to make advances on the security of, purchase, or repurchase, service, sell or resell, offer participations or pooled interests or otherwise deal in, at prices and on terms and conditions determined by the Corporation, small business investment securities.

"(b) Notwithstanding the provisions of any State law to the contrary, including the Uniform Commercial Code as in effect, in any State, a security or ownership interest in small business investment securities created by the Corporation or by any eligible small business investment company may be perfected either through the taking of possession of such securities or by the filing of notice of such interest in such securities in the manner provided by such State law for perfection of security or ownership interests in accounts.

"(c) The Corporation is authorized to guarantee securities based on or secured by pools or trusts of the small business investment securities eligible for purchase by the Corporation under this section and to act either as issuer or as guarantor of such securities issued by an eligible small business investment company. Such securities shall bear interest at a rate equal to the rate on the underlying small business investment securities less an allowance for servicing and other expenses as determined by the Corporation.

"(d) Securities issued pursuant to subsection (c) of this section may be in the form of debt obligations secured by pools of loans, or trust certificates of beneficial ownership in such pools of loans or both. Small business investment securities set aside pursuant to the offering of participations or pooled interests shall at all times provide for payments that, in the reasonable judgment of the Corporation, are adequate to ensure the timely principal and interest payments on such securities.

"(e) Nothing contained in this section shall be construed to impede small business investment companies operating under section 359 of this Act from receiving a proportionate and fair share of available funds.

"QUALIFICATION OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 357. (a) The Corporation shall establish appropriate criteria for the qualification of small business investment companies to conduct business with the Corporation. Such criteria may include, among other things, the general business reputation and character of the owners and management of the small business investment company, and the probability of successful operations of such small business investment company, including adequate profitability and financial soundness. Licensees in good standing which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) Each small business investment company authorized to operate under the authority of Part B of this title shall have private capital of not less than $1,000,000. In all cases, such private capital shall be in an amount adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently.

"(c) Notwithstanding the provisions of section 23A of the Federal Reserve Act (12 U.S.C. 371c), ownership interests in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire ownership interests in any small business investment company if, upon the making of that acquisition the aggregate amount of ownership interest in small business investment companies then held by the bank would exceed five per centum of its capital and surplus.

"(d) Each small business investment company shall have authority to purchase stock issued by the Corporation and to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such rules as the Corporation may prescribe.

"(e) Thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the provisions of sections 301-306 inclusive, sections 308-318 inclusive, and sections 320 and 321, of this Act shall be inapplicable to small business investment companies which qualify under section 357(a) or section 359(a) of this Act and which remain qualified to conduct business with the Corporation.

"(f) All specific references to small business investment companies operating under the Small Business Investment Act of 1958 in any law of the United States, or regulations promulgated thereunder by any agency of the United States Government, or any law of any State in effect on the effective date of part B of this title, shall be deemed to refer to and include small business investment companies operating under the provisions of such Part.

"OPERATIONS OF SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 358. (a) The Corporation shall enter into agreements with small business investment companies qualified under section 357 or section 359 of this Act governing the operations of such companies, in accordance with the provisions and purposes of this title.

"(b) Each small business investment company is authorized to provide equity capital and loans to small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the rules of the Corporation. Equity investments and loans made under this section may be made directly or in cooperation with other investors or lenders on a participation or guaranteed basis. Each small business investment company may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services.

"(c) Small business investment companies shall engage only in the activities contemplated by this title and in no other activities.

"(d) For the purpose of eliminating conflicts of interest which may be detrimental to small-business concerns, to small business investment companies, to the shareholders or partners of either, to the Corporation, or to the purposes of part B of this title, the Corporation shall adopt rules to govern transactions with any officer, director, shareholder, or partner of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, or partner of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company.

"(e) The Corporation shall adopt rules which shall provide that small business investment companies, either singularly or jointly, shall not be permitted to assume control over small-business concerns except on a temporary basis if reasonably necessary for the protection of its investment and then only under restrictions as determined by the Corporation.

"(f) Except as otherwise provided by the rules of the Corporation, financings of small-business concerns by small business investment companies shall be for a minimum period of five years. In the case of small business investment companies operating under section 359 of this Act, financings shall be for the minimum period of four years, except as otherwise provided by the rules of the Corporation.

"(g) Without the approval of the Corporation, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this title for any single enterprise shall not exceed 20 per centum of the private capital of such company. In the case of small business investment companies operating under section 359 of this Act, the limitation shall be 30 per centum.

"(h) Small business investment companies shall not provide financing to a small-business concern for re-lending, foreign investments, passive investments or the acquisition of farm land. For purposes of this subsection, 'farm land' shall mean land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

"(i) Each small business investment company shall be subject to an annual audit and shall make such reports to the Corporation at such times and in such form as the Corporation may require. The Administration shall have access to any financial audit or certified financial report filed with the Corporation by small business investment companies having outstanding small business investment securities which are held by or guaranteed by the Administration.

"(j) The Corporation shall adopt appropriate measures to assure compliance by small business investment companies with the provisions of this section. Failure by a small business investment company to comply with the provisions of this section shall entitle the Corporation to terminate or suspend the agreements between the Corporation and a small business investment company or to take corrective action warranted under the circumstances which shall include, but is not limited to: suspension or termination of agreements between the Corporation and such company; assessment of penalties against such company or its officers or directors; or removal or suspension of officers or directors of such company. In appropriate cases, the Corporation is authorized, in its discretion, to refer violations of the provisions of this section to the Administration for investigation or to refer such violations to the United States attorney in the jurisdiction in which such violations may have occurred or in which the small business investment company, or its officers or directors, are located.

"(k) In order to facilitate the orderly and necessary flow of long-term loans and equity funds from small business investment companies to small-business concerns, the provisions of the Constitution or the laws of any State expressly limiting the rate or amount of interest, discount points, finance charges or other charges which may be charged, taken, received, or reserved by lenders shall not apply to any business loan made by a small business investment company pursuant to provisions of this title. This subsection shall apply to business loans made by a small business investment company in any State on or after the effective date of part B of this title, unless such State adopts a law or certifies that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of the subsection to apply to business loans made in such State. In any case in which a State takes an action described in this subsection, such State law or constitutional or other provision shall not apply after the date of such action was taken with respect to any business loan made by a small business investment company pursuant to a commitment to make such loan which was entered into on or after the effective date of part B of this title and prior to the date on which such action was taken.

"SPECIAL SMALL BUSINESS INVESTMENT COMPANIES

"SEC. 359. (a) The Corporation shall adopt reasonable criteria regarding the qualification of a special type of small business investment company (hereinafter referred to as 'special small business investment companies'), the investment policy of which is that its investments will be made solely in disadvantaged small-business concerns. Licensees in good standing operating under the provisions of section 301(d) of this Act which make capital contributions and acquire and maintain common stock of the Corporation pursuant to section 353(a) of this Act, contract with the Corporation pursuant to the provisions of section 358(a) of this Act, and authorize the release of records to the Corporation pursuant to section 322(d) of this Act shall be deemed to be qualified under this section.

"(b) In order to benefit special small business investment companies, there is hereby authorized and created a special-purpose trust (hereinafter referred to as the 'Trust') which shall operate in conjunction with the Corporation as follows:

"(1) The Trust shall operate in accordance with a trust agreement between the Trust and the Corporation to carry out the purposes of this title.

"(2) The Trust shall be administered by five trustees, three of whom shall be nominated by the special small business investment companies and appointed by the Board of Directors of the Corporation. At least three of the trustees shall, at all times, be persons from special small business investment companies. One of the trustees shall be appointed by the President, to serve at the pleasure of the President, and one of the trustees shall be ex-officio, the Chairman of the Board of Directors of the Corporation, or his designee.

"(3) The nomination of trustees by special small business investment companies shall be by vote of such companies, which shall be cumulative, by number of shares of voting common stock of the Corporation held by each such company. Each of the trustees nominated by the special small business investment companies shall be appointed as trustees by the Board of Directors of the Corporation unless such Board, for good cause shown, refuses to approve any such nominee, in which event a new nominee shall be nominated by the special small business investment companies. Nominees, upon appointment by the Board, shall serve for terms of three years, and no such trustee shall serve more than two consecutive terms.

"(4) The trustees appointed by the Corporation shall have custody and control of the trust estate to administer, sell, invest and reinvest the trust estate with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

"(5) The Trust shall establish separate accounting for all preferred securities, debentures, loss reserves and other funds acquired and the application of funds for the purposes specified in this section. The trustees shall make an annual accounting of the Trust's operations to the Secretary of the Treasury.

"(c) Within thirty days after the Administration receives notice from the Corporation pursuant to section 352(h) of this Act, the Administration shall convey to the Corporation in trust all of the right, title, and interest to all preferred securities and debentures issued by small business investment companies operating under authority of section 301(d) of this Act, and held by the Administration. The Corporation shall grant and convey to the Trust such securities and debentures and other funds designated for the Trust in trust, to be administered in accordance with the provisions of this title.

"(d) The Trust shall apply all of the funds held in trust and income thereon, dividends on any preferred securities held in trust, and interest on any debentures held in trust, together with the proceeds from any retired preferred securities held in trust, and proceeds from any maturing debentures held in trust—

"(1) to cover any losses realized on preferred securities or debentures held in trust, preferred securities purchased by the Trust in accordance with the provisions of this section or debentures purchased or guaranteed by the Corporation in accordance with the provisions of this section;

"(2) to reduce the interest rate on debentures purchased or guaranteed by the Corporation in accordance with the provisions of subsection (e) of this section:

"(3) to purchase preferred securities in accordance with the provisions of subsection (e) of this section; and

"(4) to cover the operating costs of administering the Trust.

"(e) The trustees of the Trust are authorized to purchase preferred securities, and the Corporation is authorized to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by special small business investment companies. Such purchases or guarantees may be on such terms and conditions as the Trust or the Corporation deems appropriate, subject to the following:

"(1) The Trust may purchase shares of nonvoting stock (or other securities having similar characteristics) issued by special small business investment companies, provided—

"(A) dividends are preferred and such securities are subject to such rate of cumulative dividends, redemption or other conversion provisions, terms and conditions as may be determined by the Trust;

"(B) on liquidation or redemption, the Trust is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Trust) the Trust shall be paid any amounts as may be due pursuant to subparagraph (A) of this paragraph;

"(C) the purchase price shall be at a price determined by the Trust and, in any one sale, $50,000 or more; and

"(D) the amount of such securities purchased and outstanding at any one time shall not exceed 200 per centum of the pri-

vate capital of such company. The amount of such securities purchased by the Trust in excess of 100 per centum of such private capital from any company may not exceed an amount equal to the amount of its funds invested in or legally committed to be invested in venture capital as determined by the Trust. For the purpose of the subsection, the term 'venture capital' means stock of any class (including preferred stock) or limited partnership interests, or shares in a syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other ventures for profit or debt instruments which are subordinate by their terms to other borrowings of the issuer.

"(2) The Corporation may purchase or guarantee debentures issued by special small business investment companies which shall be subordinate to any other debentures, bonds, promissory notes or other debts and obligations of such companies unless the Corporation in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise, provided—

"(A) the effective rate of interest during the first five years of the term of any debenture purchased by the Corporation under authority of this section shall be at a rate determined by the Corporation to be the rate of return on comparable small business investment securities purchased by the Corporation reduced to such lower rate as determined and provided by the Trust, such reduction in rate not to exceed 3 per centum per annum; and

"(B) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this subsection or transferred to the Trust under subsection (c) of this section shall not exceed 400 per centum of a company's private capital less the amount of preferred securities outstanding.

"(3) Debentures purchased and outstanding pursuant to paragraph (2) of this subsection (e) may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2)(B) of this subsection (e).

"(f) The Trust and the Corporation are authorized to extend the benefits of this section to any special small business investment company which is owned, in whole or in part, by one or more small business investment companies, in accordance with rules promulgated by the Trust and the Corporation.

"(g) All dividends on preferred securities, interest on debentures, gains from sales of any securities and all other income of the Trust shall be exempted from all taxation now or hereafter imposed by the Congress or by any State or by any county, municipality, or local taxing authority.

"(h) Fifty years after the effective date of the Corporation for Small Business Investment Charter Act, all preferred securities purchased by the Trust from special small business investment companies shall be redeemed and, together with the remaining corpus and interest of the Trust, less any funds owed to the Corporation, shall be transferred by the Trust to the United States Treasury for covering into miscellaneous receipts. Thereafter, the Trust shall be terminated and special small business investment companies operating under the authority of this section shall operate under the authority of section 357 of this Act.

"AUDITS AND REPORTS

"SEC. 360. (a) The Administration shall have review authority over the Corporation to insure that the public purposes of part B of this title are carried out. The Administration's reviews shall cover the Corporation's criteria for the qualification of small business investment companies to conduct business with the Corporation and the Corporation's agreements, rules or regulations governing the operations of small business investment companies, but shall not extend to the Corporation's internal operations such as personnel, salary, and other usual corporate matters.

"(b) The Administration may examine the books and records of the Corporation and may require the Corporation to make such reports as the Administration deems desirable. The Administration, not later than January 31 of each year, shall report to the Congress on reviews made under this section.

"(c) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States. A report of each such audit shall be furnished to the Secretary of the Treasury. The audit shall be conducted at the place or places where the accounts are normally kept. The representatives of the Secretary shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

"(d) A report of each such audit for a fiscal year shall be made by the Secretary of the Treasury to the President and to the Small Business Committees of the Congress not later than six months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement (showing intercorporate relations) of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Corporation, together with such recommendations with respect thereto as the Secretary may deem advisable, including a report of any impairment of capital or lack of sufficient capital noted in the audit. A copy of each report shall be furnished to the Administration and to the Corporation. In addition to such annual audits, the Corporation shall be subject to audit by the General Accounting Office, at the request of either of the Small Business Committees of the Congress, as long as the Corporation holds small business investment company securities guaranteed by the Administration and acquired by the Corporation pursuant to section 361 of this Act.

"(e) The Corporation shall, as soon as practicable after the end of each fiscal year, transmit to the President, the Small Business Committees of the Congress and the Administration a report of its operations and activities during each year.

"TRANSFER OF SMALL BUSINESS ADMINISTRATION GUARANTEED SECURITIES TO THE CORPORATION

"SEC. 361. (a) To carry out the purposes set forth in section 351 of this Act, and notwithstanding any law, rule, or regulation, the Secretary of the Treasury is authorized and directed to sell to the Corporation during fiscal year 1987, all of the right, title and interest to all small business investment company securities guaranteed by the Administration and held by the Federal Financing Bank (the 'Bank'), providing such securities are due in fiscal year 1988 or any subsequent year. The acquisition by the Corporation shall be with full recourse to the full faith and credit guarantee of the Administration. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities, except that $100,000,000 of the purchase price shall be paid by the Corporation to the trustees for the Trust to carry out the trust functions specified in section 359 of this Act. Such securities shall not be sold by the Corporation prior to three years following their acquisition by the Corporation. Interest on such securities shall accrue to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.

"(b) To the extent the Corporation is prepared to conduct business during fiscal year 1987, the Secretary of the Treasury is authorized to sell to the Corporation during fiscal year 1987, all of the right, title and interest to any small business investment company securities guaranteed by the Administration and held by the Bank which are due in fiscal year 1987. The acquisition by the Corporation shall be with full recourse to the full faith and credit guarantee of the Administration. The Corporation shall fully pay in cash for such securities during fiscal year 1987 at a price equal to the outstanding principal balance of such securities. Such securities shall not be sold by the Corporation prior to three years following their acquisition by the Corporation. Interest on such securities shall accure to the benefit of the Bank up to the date of transfer of title of the securities from the Bank to the Corporation.

"PARTICIPATING INCENTIVE REVOLVING FUND

"SEC. 362. (a) The Corporation shall establish a participating incentive revolving fund. Annually and within 30 days of the close of its fiscal year, the Corporation shall determine the difference between the interest income received by the Corporation on guaranteed securities purchased by the Corporation pursuant to section 361 of this Act and the sum of (1) the amount of issuance costs and interest payments made on obligations incurred by the Corporation for the purpose of acquiring such guaranteed securities, including any refinancing thereof; and (2) the operating costs of the Corporation to service such guaranteed securities. An amount equal to the difference so computed shall be deposited in the revolving fund within 10 days of the date the determination is made.

"(b) Annually the Administration shall determine the amount of net losses it has realized on account of claims under small business investment company securities guaranteed by the Administration and shall notify the Corporation of the amount so determined. From the revolving fund, including any interest earned thereon, the Corporation shall pay to the Administration an amount equal to such net losses. If the balance in the revolving fund is insufficient to pay the full amount of net losses, any amounts not so paid shall accrue as a charge against the fund and shall be paid at the

earliest possible date. Except as a charge against the revolving fund, any such accrued charges shall not be considered a liability of the Corporation.

"(c) Fifteen years after the effective date of part B of this title, the revolving fund shall terminate: *Provided*, That the Corporation may terminate the revolving fund at an earlier date if the Administration certifies to the Corporation that all net losses on guaranteed securities purchased by the Corporation under section 361 of this Act have been paid and that there will be no net losses in the future under subsection (b) above. Any balances remaining in the revolving fund at the time of termination shall be distributed as follows: seventy-five per centum to the capital surplus account of the Corporation and twenty-five per centum to the Trust created under section 359 of this Act.".

SEC. 9006. Section 4(c)(5) of the Small Business Act (15 U.S.C. 633(c)(5)) is amended—

(1) by striking clause (i) of subparagraph (B);

(2) by striking "(ii)" from subparagraph (B);

(3) by striking from subparagraph (C) "subsection (B)(ii)" and inserting "subparagraph (B)"; and

(4) by striking from subparagraph (C) "funds" and inserting "funds: *Provided*, That notwithstanding any other law, rule or regulation, the Administration shall not make any payments to the Department of the Treasury on account of debentures guaranteed under title III of the Small Business Investment Act of 1958 after the date such debentures are sold to the Corporation as provided in section 361 of the Small Business Investment Act of 1958".

SEC. 9007. Section 5(b)(2) of the Small Business Act, (15 U.S.C. 634(b)(2)) is amended by striking "collection;" and by inserting "collection: *Provided*, That nothing in this Act nor any other law shall authorize the Administration to sell, hypothecate, pledge or in any way encumber loans or debentures made or issued by such Administration except as authorized by section 361 of the Small Business Investment Act of 1958;".

SEC. 9008. (a) Section 321(f)(1) of the Small Business Investment Act of 1958 is amended by striking "development company; the interest rate paid by the development company" and inserting "licensee involved; the interest rate paid by the licensee involved"; and

(b) Section 18005(b)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) is amended by striking "sections 504 and 505" and inserting "section 321".

SEC. 9009. The sixth sentence of the seventh paragraph of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by inserting after "Student Loan Marketing Association" the following "or obligations or other instruments or securities of the Corporation for Small Business Investment,".

SEC. 9010. Except as otherwise provided in this Act, or as otherwise provided by the Corporation or by the laws hereafter enacted by the Congress expressly in limitation of provisions of this Act, the powers and functions of the Corporation and of the Board of Directors shall be exercisable, and the provisions of this Act shall be applicable and effective, without regard to any other law.

SEC. 9011. Notwithstanding any other law this Act shall be applicable to the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

TITLE X—HOUSE COMMITTEE ON WAYS AND MEANS

Subtitle A—OASDI Provisions
Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes
Subtitle C—Provisions Relating to Medicare
Subtitle D—Revenue Provisions

Subtitle A—OASDI Provisions

SEC. 10001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) ELIMINATION OF TRIGGER.—Section 215(i)(1)(B) of the Social Security Act is amended by striking out "with respect to which the applicable increase percentage is 3 percent or more" and inserting in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

(B) by inserting "and by section 10001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out ", by not less than 3 per centum," in paragraph (1)(B); and

(B)(i) by striking out clause (i) of paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 10002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsec-

tions (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 21ℓ(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes

SEC. 10101. MANDATORY PROVISION OF AID WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) REQUIREMENT THAT AID BE PROVIDED.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act is amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence:

"No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1988.

SEC. 10102. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 10103. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 4621(a) of this Act) is amended (effective as provided in section 4621(b))—

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 10104. RATE OF FUTA TAX.

(a) IN GENERAL.—Paragraph (1) of section 3301 of the Federal Unemployment Tax Act is amended by striking out "1976" and inserting in lieu thereof "1989 ".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 1986.

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PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

SEC. 10201. SETTING PART A DEDUCTIBLE AT $500 FOR 1987.

For purposes of part A of title XVIII of the Social Security Act, and notwithstanding any provision of such part to the contrary, the inpatient hospital deductible (otherwise determined under section 1813(b) of such Act) for 1987 shall be $500. Such amount shall be applied—

(1) to inpatient hospital services furnished in 1987,

(2) in computing, under section 1813(b)(3) of such Act, the coinsurance amount for post-hospital expended care services furnished in 1987, and

(3) in computing, under section 1818(d) of such Act, the monthly premium (under part A of title XVIII of such Act) for months in 1987.

SEC. 10202. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) IN GENERAL.—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

"(II) for fiscal year 1987, 1.3 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and".

(b) CONFORMING AMENDMENTS.—(1) Section 1886(d)(3)(A) of such Act is amended by striking "and 1986" and inserting ", 1986, 1987, and 1988".

(2) Section 1886(e)(4) of such Act is amended—

(A) by striking "determine for each fiscal year (beginning with fiscal year 1987)" and inserting "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year", and

(B) by adding at the end the following new sentence: "The percentage change for subsection (d) hospitals and subsection (d) Puerto Rico hospitals may be different from that for other hospitals and may vary among such other hospitals.".

(3) Section 1886(e)(5) of such Act is amended—

(A) by striking "June 1 before each fiscal year (beginning with fiscal year 1986)" and inserting "April 1 before fiscal year 1988 and the June 1 before each subsequent fiscal year", and

(B) by inserting "recommendation or" before "determination" each place it appears.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after October 1, 1986.

(d) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act but in no case later than October 1, 1986, for the republication of the determination described in section 1886(e)(5) of the Social Security Act, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10203. LIMITATION ON PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES OF DRG HOSPITALS UNDER MEDICARE.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Notwithstanding section 1861(v)(1), in determining the amount of the hospital capital payments (as defined in subparagraph (D)), the Secretary shall provide for a reduction by such percentage (in this section referred to as the 'capital reduction percentage') in such payments as is necessary to provide that the aggregate amount of hospital capital payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1987, in fiscal year 1988, and in fiscal year 1989, does not exceed 110 percent, 120 percent, and 130 percent, respectively, of the aggregate amount of such payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1986, adjusted in accordance with subparagraph (C).

"(B) The Secretary shall determine the capital reduction percentage based upon the best information available before the beginning of the fiscal year involved and interim and final payments shall be made on the basis of such percentage. Such percentage shall not be subject to change after the date it is promulgated in final form.

"(C) In computing the hospital capital payments attributable to portions of cost reporting periods occurring in fiscal year 1986 in computing the limitation on hospital capital payments under subparagraph (A) attributable to portions of cost reporting periods occurring in—

"(i) fiscal year 1987, there shall be excluded 25 percent,

"(ii) fiscal year 1988, there shall be excluded 50 percent,

"(iii) fiscal year 1989, there shall be excluded 75 percent,

of the amount of the hospital capital payments (attributable to portions of cost reporting periods occurring in fiscal year 1986) that are attributable to a return on equity capital.

"(D) In this paragraph, the term 'hospital capital payments' means the payments that may be made under part A of this title with respect to the allowable capital-related costs (as defined by the Secretary) of inpatient hospital services for subsection (d) hospitals and subsection (d) Puerto Rico hospitals.".

(b) PUBLICATION OF CAPITAL REDUCTION PERCENTAGE.—Section 1886(e)(4) of such Act is amended by inserting before the period at the end the following: " and shall determine for each fiscal year the capital reduction percentage which should be effected under subsection (g)(3) for that fiscal year".

(c) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—Section 1886(d)(7) of such Act is amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(C) the determination of a capital reduction percentage under subsection (g)(3).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments for capital-related costs attributable to portions of cost reporting periods occurring on or after October 1, 1986.

(2) TRANSITION.—The Secretary of Health and Human Services shall cause to have published in the Federal Register, by not later than 30 days after the date of the enactment of this Act or, if earlier, by October 1, 1986, the capital reduction percentage determined under section 1886(g)(3) for payments for capital-related costs attributable to portions of hospital cost reporting periods that occur during fiscal year 1987. In promulgating such percentage for such fiscal year, the provisions of chapter 5 of title 5, United States Code, and of chapter 35 of title 41 of such Code, shall not apply.

SEC. 10204. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1986, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

"(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1986 and increase such amount by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1987.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level, and

"(III) adjusting for variations in case mix among hospitals.

"(iii) The Secretary shall compute an average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

"(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1988 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

"(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

"(i) Subparagraph (A) (relating to outlier payments), except that the total amount of additional payments made under this clause in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made under this paragraph for discharges in that year.

"(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

"(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

"(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

"(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of section 1886(d)(5)(C)(i) of such Act is amended by inserting "(other than under paragraph (9))" after "established under this subsection".

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting "(other than under paragraph (9))" after "payment amounts under this subsection".

(c) NO RESTANDARDIZATION OF NATIONAL LEVELS TO REFLECT INCLUSION OF PUERTO RICO.—The Secretary of Health and Human Services shall not restandardize or otherwise adjust the national DRG prospective payment rates otherwise determined under section 1886(d) of the Social Security Act to take into account changes in the payments provided to subsection (d) Puerto Rico hospitals under the amendment made by subsection (a).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1986. The Secretary of Health and Human Services shall issue such regulations, by not later than October 1, 1986, as are necessary to implement such amendments in a timely manner, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10205. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) DEADLINE.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.—

(1) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 10207(e)(6)(A) of this subtitle, is amended—

(A) by striking "and" at the end of the subparagraph (J),

(B) by striking the period at the end of subparagraph (K) and inserting ", and", and

(C) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(L) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(c) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.—

(1) REQUIREMENT AS CONDITION OF PARTICIPATION.—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) DISCHARGE PLANNING PROCESS DEFINED.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Discharge Planning Process

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel."

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose)", and

(B) by inserting "clause (A) or (B) of" after "comply also with".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1988.

(f) CONTINUING OF FAVORABLE PRESUMPTION OF WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES, HOME HEALTH AGENCIES, AND HOSPICE PROGRAMS.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(f)(1)(A) A skilled nursing facility which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(B) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(C) A hospice program which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) In the case of a skilled nursing facility, the committee or group responsible for the conduct of utilization review for the facility has informed the facility that payment may not be made under this title with respect to the services.

"(C) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The facility, agency, or program complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The facility, agency, or program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted during the previous quarter, the rate of denial of bills by reason of section 1862(a)(1) or (9) for—

"(A) a skilled nursing facility does not exceed 5 percent, computed based on days of post-hospital extended care services billed,

"(B) a home health agency does not exceed 2.5 percent, computed based on visits for home health services billed, or

"(C) a hospice program does not exceed 2.5 percent, computed based on visits for hospice care billed.

"(5) The Secretary shall report annually to Congress—

"(A) information on the frequency and distribution (by type of provider) of denials referred to in paragraph (4), including—

"(i) the reasons for such denials,

"(ii) the extent to which payments were nonetheless made because of this section, and

"(iii) the rate of reversals of such denials, and

"(B) such other information as may be appropriate to evaluate the appropriateness of the percentage standards established under paragraph (4).

"(6) In this subsection, the term 'fiscal intermediary' means, with respect to a skilled nursing facility, home health agency, or hospice program an agency or organization with an agreement under section 1816 with respect to the facility, agency, or program.".

(2) REPEALING DUPLICATIVE PROVISIONS.—Section 9205 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and subsection (c) of section 9126 of such Act, are repealed.

(3) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to services furnished on or after the date of the enactment of this Act, and before October 1, 1989.

(B) The amendments made by paragraph (1) shall apply to hospice care furnished (i) on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and (ii) before October 1, 1989.

(g) EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsection (f), is further amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a)(1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (g) had not occurred" before the period at the end;

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a)(1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a)(1) or (9)";

(E) in subsection (f)(1)(B)—

(i) by inserting "(i)" after "applicable requirements", and

(ii) by inserting before the period at the end the following: "or (ii) of paragraphs (3) and (5) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g)";

(F) in subsection (f)—

(i) in paragraph (5), by striking "paragraph (4)" each place it appears and inserting "paragraphs (4) and (5)",

(ii) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed."; and

(G) by adding at the end the following new subsection:

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis or physical, speech, or occupational therapy."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services furnished on or after the first day of the first month that begins more than 90 days after the date of the enactment of this Act; except that the amendments made by paragraphs (1)(E) and (1)(F)(iii) shall not apply to services furnished on or after October 1, 1989.

(h) DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than 1 year after the date of the enactment of this Act, on the instrument or instruments developed under this section. The report shall include an evaluation of the advantages and disadvantages of using the instrument or instruments as the basis for determining whether payment should be made for post-hospital extended care services and home health services provided to individuals entitled to benefits under part A of title XVIII of the Social Security Act.

(i) EXPEDITED REVIEW BY FISCAL INTERMEDIARIES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsections (f) and (g), is further amended by adding at the end the following new subsection:

"(h) The Secretary shall develop procedures to expedite the determination of whether initial claims submitted for post-hospital extended care services, home health services, and hospice care provided (or to be provided) to an individual may be reimbursed under this title, so as to minimize the time between (1) when the provider first provides the services to the individual, and (2) when the provider first receives notice of an initial determination on whether or not payment may be made under this title for some or all of the services provided the individual."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall provide for the expedited procedures described in section 1879(h) of the Social Security Act not later than one year after the date of the enactment of this Act.

(j) INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.—

(1) IN GENERAL.—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

(B) by adding at the end the following new subparagraph:

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.

(k) PRIOR AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior authorization for post-hospital extended care services and home health services furnished under part A of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be implemented by not later than July 1, 1987.

(3) CONSULTATION.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than January 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior authorization;

(B) impact of prior authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 10206. OFF-BUDGET TREATMENT OF FEDERAL HOSPITAL INSURANCE TRUST FUND IN FISCAL YEAR 1987.

(a) EFFECTIVE IN FISCAL YEAR 1987.—Section 710 of the Social Security Act (as amended by section 261 of Public Law 99-177) is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) The receipts and disbursements of the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

"(2) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.", and

(2) in subsection (c), by striking "or the Federal Disability Insurance Trust Fund, or for payments from either" and inserting ", the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund, or for payments from any".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to fiscal years beginning after September 30, 1986, and ending before October 1, 1992.

SEC. 10207. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) ONE-YEAR EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking "October 1, 1987" and inserting "October 1, 1988".

(b) 4-YEAR DESIGNATION PERIOD FOR RURAL REFERRAL CENTERS.—If the Secretary of Health and Human Services classifies or has classified a hospital located in a rural area as a regional referral center under section

1886(d)(5)(C)(i) of the Social Security Act, the Secretary shall not terminate or change such classification before the end of the 4th cost reporting period for which the classification is in effect.

(c) TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hospice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(d) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the Statewide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(e) PART A COBRA TECHNICAL CORRECTIONS.—

(1) CLARIFICATION OF INDIRECT MEDICAL EDUCATION COSTS LANGUAGE.—(A) Paragraph (2)(C)(i) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by striking "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)".

(B) Paragraph (3)(A) of such subsection is amended by adding at the end the following: "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.".

(C) Clause (ii) of paragraph (3)(C) of such subsection is amended to read as follows:

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).".

(D)(i) Except as provided in clause (ii), the amendments made by this paragraph apply to discharges occurring on or after October 1, 1986.

(ii) The amendments made by this paragraph shall not be first applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (incorporating the amendments made by paragraph (2) of this subsection) are also being applied.

(2) CLARIFICATION OF DISPROPORTIONATE SHARE LANGUAGE.—(A) Paragraph (2)(C) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 9105(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA") is amended—

(i) by adding "and" at the end of clause (ii),

(ii) by striking ", and" at the end of clause (iii) and inserting a period, and

(iii) by striking clause (iv).

(B) Paragraph (3)(C) of such subsection is amended by adding at the end the following:

"(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.".

(C) Paragraph (5)(F)(vi)(I) of such subsection is amended—

(i) by striking "supplementary" and inserting "supplemental", and

(ii) by striking "fiscal year" and inserting "period".

(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.

(3) CLARIFICATION THAT ALL MEDICARE PARTICIPATING HOSPITALS ARE REQUIRED TO MEET EMERGENCY CARE REQUIREMENTS.—Section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)), as inserted by section 9121(b) of COBRA, is amended by striking "and has, under the agreement, obligated itself to comply with the requirements of this section".

(4) APPROPRIATE ANNUAL PERIODS FOR SKILLED NURSING FACILITY PROSPECTIVE PAYMENTS.—(A) Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)), as added by section 9126(a) of COBRA, is amended by striking "fiscal year" each place it appears and inserting "cost reporting period".

(B) Section 1888(d)(4) of such Act is amended—

(i) in the first sentence, by striking "each fiscal year" and inserting "cost reporting periods beginning in a fiscal year", and

(ii) in the second sentence, by striking "fiscal year" and all that follows up to the period and inserting "cost reporting period no later than 30 days before the beginning of that period".

(C) Section 9126(d)(1) of COBRA is amended by striking "fiscal years" and inserting "cost reporting periods".

(D) The amendments made by subparagraphs (A) and (B) apply to cost reporting periods beginning on or after October 1, 1986.

(5) TREATMENT OF CERTAIN STATE AND LOCAL CAMPAIGN WORKERS WITH RESPECT TO THE HOSPITAL INSURANCE TAX.—(A) Section 3121(u)(2)(B)(ii) of the Internal Revenue Code of 1954 is amended—

(i) by striking "or" at the end of subclause (III),

(ii) by striking the period at the end of subclause (IV) and inserting ", or", and

(iii) by adding at the end the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(B) Section 210(p)(2) of the Social Security Act (42 U.S.C. 410(p)(2)) is amended—

(i) by striking "or" at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting ", or", and

(iii) by adding at the end the following:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(C) The amendments made by this paragraph shall apply to services performed after March 31, 1986.

(6) MISCELLANEOUS PROVISIONS.—(A) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(i) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(ii) by striking the period at the end of subparagraph (J) and inserting ", and", and

(iii) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(B) The amendments made by subparagraph (A) are effective as if they had been included in the enactment of COBRA.

(C) Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 10221. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) ELIMINATION OF PIP FOR PPS HOSPITALS.—

(1) IN GENERAL.—Section 1815(a) of the Social Security Act (42 U.S.C. 1395g(a)) is amended—

(1) by inserting "(1)" after "(a)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Secretary shall provide payment under this part for inpatient hospital service furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) only on the basis of actual bills submitted by the hospital and not on a periodic interim payment basis.

"(B) Subparagraph (A) shall not apply, and the Secretary shall permit payment on a periodic interim payment basis—

"(i) to a subsection (d) hospital during the period it is—

"(I) being paid additional amounts under section 1886(d)(5)(F) (relating to disproportionate share payments), or

"(II) a sole community hospital (as defined in section 1886(d)(5)(C)(ii)); and

"(ii) to a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system.

"(C) In the case of a subsection (d) hospital which has significant cash flow problems resulting from operations of its interme-

diary or from unusual circumstances of the hospital's operation, the Secretary shall make available appropriate accelerated payments.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective with respect to payments for discharges occurring on or after July 1, 1987.

(b) REQUIRING TIMELY PAYMENT OF PROPERLY SUBMITTED MEDICARE CLAIMS UNDER PART A.—

(1) IN GENERAL.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment under this part is not made on a periodic interim payment basis under section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the agency or organization shall notify the entity submitting the claim, within 22 calendar days after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the agency or organization will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for intermediary agreements under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after July 1, 1987.

(c) PROMPT PAYMENT FOR MEDICARE PHYSICIANS AND SUPPLIERS.—

(1) IN GENERAL.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(A) by inserting "(1)" after "(c)", and

(B) by adding at the end the following new paragraph:

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall that, in cases of claims for which payment under this part is not made on a periodic interim payment basis described in section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day (or the 11th calendar day, the case of a claim for services furnished by a participating physician or supplier) after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the carrier shall notify the entity submitting the claim, within 22 calendar days (or within 11 calendar days, in the case of a claim for services furnished by a participating physician or supplier) after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for carrier contracts under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

SEC. 10222. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF "2 FOR 1" CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

"(E) The preceding provisions of this paragraph shall not apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.".

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

"(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

"(i) the enrollee's rights to benefits from the organization,

"(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

"(iii) out-of-area coverage provided by the organization,

"(iv) the organization's coverage of emergency services and urgently needed care, and

"(v) appeal rights of enrollees.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking "if" and all that follows through the end and inserting the following: "if more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section with the organization after the date the Secretary notifies the organization of such noncompliance.".

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization described in subparagraph (D), the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization—

(i) has complied, or made significant progress toward compliance, with such schedule of compliance, the Secretary may extend such waiver, or

(ii) has not complied with such schedule, the Secretary may provide for the suspension of enrollment, under section 1876 of the Social Security Act, of individuals with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) ORGANIZATION COVERED.—An eligible organization described in this subparagraph is an eligible organization that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

and includes a successor to such an organization.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Subsection (g) of such section is amended by adding at the end the following new paragraph:

"(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for covered services and supplies furnished to individuals enrolled under this section, if the services or supplies are not furnished under

a contract between the organization and the provider or supplier.

"(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individual enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after July 1, 1987.

(e) REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.—

(1) IN GENERAL.—Subsection (i)(3)(C) of such section is amended—

(A) by striking "and" at the end,

(B) by inserting "(i)" after "(C)", and

(C) by adding at the end the following new clauses:

"(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

"(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

(f) AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.—Subsection (i) of such section is amended by adding at the end the following new paragraph:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $2,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

(g) STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

SEC. 10223. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PROVIDER REPRESENTATION OF BENEFICIARIES ON APPEALS AND PERMITTING APPEAL OF CERTAIN TECHNICAL DENIALS.—

(1) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Such a person cannot represent a beneficiary with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.".

(2) PERMITTING REVIEW OF TECHNICAL DENIALS.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting ", the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A" after "part A,", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting ", or" at the end of subparagraph (C), and

(iii) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

(3) EFFECTIVE DATE.—The amendments made by this subsection take effect on the date of the enactment of this Act.

(b) PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.—

(1) MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital or an eligible organization with a risk-sharing contract under section 1876 knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

"(A) are entitled to benefits under part A or part B of title XVIII,

"(B) in the case of an eligible organization, are enrolled with the organization, and

"(C) are under the direct care of the physician, the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to—

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations occurring on or after January 1, 1988.

(3) STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than April 1, 1987, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) consider whether criteria and standards for defining and measuring quality of care should be developed and, if so, how this should be done;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for coordinating and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the alloca-

tion of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

SEC. 10224. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.—

(1) IN GENERAL.—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of providers of services if—

"(i) the person has a written contract, with each such vendor and each such provider of services, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such provider under the contract, and

"(ii) the person discloses to each such provider of services the amount received from each such vendor with respect to purchases made by or on behalf of the provider.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking "of the fiscal years 1985 and 1986" and inserting "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)", and

(2) by inserting "or fixed price" after "competitive bidding" each place it appears.

(c) COBRA TECHNICAL CORRECTIONS.—

(1) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(2) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(A) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(B) The amendment made by subparagraph (A) shall apply to determinations of per capita payment rates for 1987 and subsequent years.

(3) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(A) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(B) The amendment made by subparagraph (A) shall apply to claims presented after the date of the enactment of this Act.

(4) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

(5) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(6) MISCELLANEOUS PROVISIONS.—(A) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(B) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(C) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), as amended by section 9301(c) of COBRA, is amended—

(i) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(ii) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(D) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(E) Section 1842(b)(8) of the Social Security Act, as added by section 9304(a) of COBRA, is amended—

(i) in subparagraph (A), by inserting "by carriers" after "to be used", and

(ii) in subparagraph (B), by inserting "by carriers" after "be considered".

(F) The amendments made by this paragraph are effective as if they had been included in the enactment of COBRA.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

SEC. 10231. EXTENSION OF PREMIUM PAYMENT PROVISION THROUGH 1989.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" and inserting "1990" each place it appears;

(2) in subsection (f)(1), by striking "or 1987" and inserting ", 1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting ", 1988, or 1989".

SEC. 10232. PAYMENT FOR PHYSICIANS' SERVICES, RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS, AND INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating and nonparticipating physicians, respectively, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating and nonparticipating physicians, respectively, as having been justified by economic changes.

"(iv) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) shall be the same for nonparticipating physicians as for participating physicians.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking "(i)" after "(C)", and

(B) by striking clause (ii).

(3) DEFINITIONS.—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

"(E) In this section:

"(i) The term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(b) 1 PERCENT BONUS FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of such Act is amended by adding at the end the following new subclause:

"(III) In applying the percentage increase in the MEI for physicians' services furnished by a participating physician during each year after 1986, the Secretary shall provide a bonus of 1 percentage point in the percentage increase otherwise determined. Such a bonus for each year shall apply to

physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.".

(c) LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.—

(1) IN GENERAL.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

(B) by adding at the end the following new subparagraph:

"(B) During any period, on or after January 1, 1987, during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such services actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) For physicians' services furnished by a physician to individuals enrolled under this part—

"(i) during 1987, in the case of such services for which the physician—

"(I) has actual charges for the calendar quarter beginning on April 1, 1984, the limit is the physician's actual charges for such services furnished during such quarter increased by the sum of the percentage increase in the MEI (as defined in subsection (b)(4)(E)) for 1987 and 1 percentage point, or

"(II) has no actual charges for such calendar quarter, the limit is the 50th percentile of the customary charges (weighted by frequency of procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986, increased by the sum of the percentage increase in the MEI for 1987 and 1 percentage point; and

"(ii) during a subsequent year, the limit is the maximum actual charges permitted under this subparagraph for the previous year increased by the percentage increase in the MEI for that subsequent year.".

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by inserting "and" at the end of subparagraph (F), and

(C) by inserting after subparagraph (F) the following new subparagraph:

"(G) will provide such information to nonparticipating physicians as is available to enable the physicians to determine the maximum actual charges permitted under subsection (j)(1)(C);".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such charges for services furnished during such previous year that exceeds the limit on actual charges imposed under subsection (j)(1)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(d) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(e) RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS.—

(1) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended by adding at the end the following: "In the case of items and services other than physicians' services, a carrier shall only provide, in the process of calculating the prevailing charge for specific items and services, for considering charges in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive.".

(2) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall submit to Congress, by not later than April 1, 1987, recommendations concerning payment reductions under part B of title XVIII of the Social Security Act for overpriced items and services. Such recommendations shall include the specific payment reductions recommended and measures to assure that such reductions in payment do not result in corresponding increases in out-of-pocket costs to medicare beneficiaries.

(f) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of such Act, as amended by subsection (c)(2), is further amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by inserting "and" at the end of subparagraph (G), and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;".

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effective for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during November 1987.

(g) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES.—Section 1842(h)(6) of the Social Security Act (42 U.S.C. 1395u(h)(6)) is amended—

(A) in the second sentence—

(i) by inserting after "that area" the following: "and to each individual enrolled under this part and residing in that area", and

(ii) by inserting before the period the following: "and that an appropriate number of copies of each such directory is sent to hospitals located in the area"; and

(B) by adding at the end the following: "Such copies shall be sent free of charge.".

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.".

(3) PERIOD FOR PHYSICIAN ENROLLMENT.—Section 1842(h)(1) of such Act is amended by striking "the beginning of any year beginning with 1984" and inserting "during the month of November before a year".

(4) EFFECTIVE DATES.—

(A) DISTRIBUTION AND ORGANIZATION.—The amendment made by—

(i) paragraph (1)(A)(i) shall first apply to directories for 1988,

(ii) paragraph (1)(A)(ii) shall first apply to directories for 1987, and

(iii) paragraph (1)(B) takes effect on the date of the enactment of this Act.

(B) ENROLLMENT PERIOD.—The amendment made by paragraph (3) shall apply to participation agreements entered into for 1988 and subsequent years.

(h) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

"(l)(1)(A) Subject to subparagraph (C), if—

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may

not be made by reason of section 1862(a)(1), and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act is amended by inserting "or (l)" after "(k)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after October 1, 1987.

(i) MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.—

(1) REQUIREMENT OF PARTICIPATION.—Section 1866(a) of the Social Security Act, as amended by sections 10207(e)(6)(A) and 10205(b)(1) of this subtitle, is further amended—

(A) by striking "and" at the end of subparagraph (K),

(B) by striking the period at the end of subparagraph (L) and inserting ", and", and

(C) by inserting after subparagraph (L) the following new subparagraph:

"(M) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

(j) SUBMISSION AND DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR PHYSICIANS SERVICES.—

(1) SUBMISSION OF CLAIMS.—Section 1842 of the Social Security Act, as amended by subsection (h)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, and the excess of the physician's actual charge over the approved charge.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by subsection (h)(2) of this section, is amended by striking "or (l)" and inserting ", (l), or (m)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to surgical procedures performed on or after October 1, 1987.

SEC. 10233. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by inserting after the third sentence the following new sentence: "Each application for such an exception for a sole facility located in an isolated, rural area shall be deemed to be approved as of the date of its filing unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished on or after August 1, 1986, to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for an adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) to 3.9 to 1 in order to reduce by $14.81 the current average monthly capitation rate for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the

case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a voluntary combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that such organizations do not meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(e) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(f) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(g) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to any such dialysis supplies is appropriate, the Secretary may establish such a protocol.

"(C) The Secretary shall incorporate protocols established under this paragraph into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(l) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1).

SEC. 10234. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "following the calendar quarter".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after October 1, 1986.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secre-

tary of Health and Human Services shall study and report to the Committee on Ways and Means of the House of Representatives, by April 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security Act, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 10241. IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS.

(a) PRO REVIEW OF HOSPITAL DENIAL NOTICES.—

(1) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

"(d)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3)(A) If a patient (or a patient's representative)—

"(i) has received a notice under paragraph (1), and

"(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

"(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

"(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

"(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

"(4) If—

"(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

(2) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(B) Section 1154(d)(4) of the Social Security Act (as added by the amendment made by paragraph (1)) shall take effect on the date of the enactment of this Act.

(b) PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.—

(1) TIMELY PROVISION OF HOSPITAL INFORMATION.—Section 1153 of such Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that peer review organizations receive each month, on a timely basis, either directly from hospitals or through fiscal intermediaries data necessary to initiate the review process under section 1154(a) on a timely basis."

(2) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services meet professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

(3) EFFECTIVE DATES.—(A) The Secretary of Health and Human Services shall implement the amendment made by paragraph (1) not later than 6 months after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) REQUIRING PRO REVIEW OF QUALITY OF CARE.—

(1) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—Section 1154(a)(4) of such Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities relating to quality of services is made among the different cases and settings (including inpatient hospital care, post-acute-care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.".

(2) REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Such section is further amended—

(A) by inserting "(A)" after "(4)",

(B) by adding at the end the following new subparagraph:

"(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.", and

(C) by adding at the end of such subparagraph the following: "Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.".

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

"(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care."

(4) EFFECTIVE DATES.—(A) The amendments made by paragraphs (1) and (2)(B) shall apply to contracts as of January 1, 1987.

(B) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(C) The amendment made by the paragraph (3) becomes effective on the date of the enactment of this Act.

(d) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by adding at the end the following new paragraph:

"(3) has at least one individual who is a representative of consumers on its board of directors."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(e) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by subsection (b)(2), is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's conclusions respecting the complaint and final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

(f) SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.—

(1) IN GENERAL.—Section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(A) by striking "and" at the end of subparagraph (B),

(B) by amending subparagraph (C) to read as follows:

"(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1865; and"; and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) to assist State ombudsmen and State protection and advocacy officials who the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such ombudsman or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the ombudsman or official in carrying out official duties;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

(g) FUNDING OF ADDITIONAL PRO ACTIVITIES.—

(1) THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting "(i)" after "(F)", and

(iii) by adding at the end the following new clause:

"(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);"; and

(B) by adding at the end the following new paragraph:

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.".

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 10222(f) of this subtitle, is amended by adding at the end the following new paragraph:

"(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.".

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of January 1, 1987.

PART 5—ASSURING ACCESS TO HEALTH CARE

SEC. 10251. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS.

(a) GENERAL RULE.—Chapter 41 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

"Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

"SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

"(a) TAX IMPOSED.—In the case of a large employer which—

"(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

"(2) is not a participating member of that pool in a taxable year at any time at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

"(b) LARGE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'large employer' means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whether or not at the same moment of time) 20 or more individuals.

"(2) EXCEPTION FOR GOVERNMENTAL UNITS.—The term 'large employer' shall not include the United States, any State or political

subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

"(c) QUALIFIED HEALTH INSURANCE POOL.—For purposes of this section, the term 'qualified health insurance pool' means any organization which—

"(1) is a nonprofit corporation established pursuant to and regulated by State law;

"(2) permits any large employer doing business in the State to be a participating members;

"(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

"(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $1,500 and under family coverage to $3,000,

"(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000,

"(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups), but not to exceed $1,000 for each covered individual,

"(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, and

"(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment;

"(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

"(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

"(d) OTHER DEFINITIONS.—

"(1) USE OF FUTA DEFINITIONS.—For purposes of this section, the terms 'wages', 'employee', and 'employer' have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

"(2) STATE.—The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(e) CROSS REFERENCE.—

"(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq."

(b) CLERICAL AMENDMENTS.—

(1) Chapter 41 of such Code is amended by striking the chapter heading and inserting the following:

"CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

"Subchapter A. Public charities.

"Subchapter B. Large employers not members of qualified State health insurance pools.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 41 and inserting the following:

"Chapter 41. Public charities; large employers not members of qualified State health insurance pools."

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking "or chapter 41 or 42" and inserting ", subchapter A of chapter 41 or chapter 42".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1988.

(d) ESTABLISHMENT OF QUALIFIED STATE HEALTH INSURANCE POOLS.—Congress intends that each State should establish a qualified health insurance pool (described in section 4912(c) of the Internal Revenue Code of 1954) by not later than January 1, 1988, or, if later, the end of the first regular State legislative session that begins after the date of the enactment of this Act.

SEC. 10253. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE.

(a) MODIFICATION OF COVERAGE.—Paragraph (2)(A) of section 162(k) of the Internal Revenue Code of 1954 (relating to type of benefit coverage) is amended by adding at the end the following: "If coverage is modified under the plan for similarly situated beneficiaries, such coverage shall also be modified in the same manner for all qualified beneficiaries covered under the plan.".

(b) MAXIMUM PERIOD OF CONTINUATION COVERAGE.—Paragraph (2)(B)(i) of such section (relating to maximum period of continuation coverage) is amended—

(1) by striking out the period at the end and inserting a semicolon, and

(2) by adding at the end the following:

"except that in the case of a qualified beneficiary with respect to whom more than one qualifying event occurs, the date may be extended under this clause but in no case may the coverage period with respect to such events (other than the period applicable to a qualifying event described in paragraph (3)(F)) exceed a 36-month period for such qualified beneficiary.".

(c) GRACE PERIOD FOR PAYMENT OF PREMIUMS.—Paragraph (2)(B)(iii) of such section (relating to failure to pay premium) is amended by adding at the end the following: "Payment shall be considered to be timely if made within 30 days of the date due or within such longer period as applies to or under the plan."

(d) ELECTION BY BENEFICIARIES.—Paragraph (5) of such section (relating to elections) is amended by adding at the end the following new subparagraph:

"(C) RIGHT TO INDIVIDUAL ELECTION.—Notwithstanding subparagraph (B), each qualified beneficiary is entitled to make a separate election with respect to continuation coverage for that beneficiary and, if there is a choice of type of coverage under the plan, to make a separate selection among such types of coverage.".

(e) NOTICE REQUIREMENT.—Paragraph (6)(C) of such section (relating to notice requirements) is amended by inserting "within 60 days of the date of the qualifying event" after "paragraph (3)".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 10253. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1954 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iii) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING SPOUSE AND DEPENDENTS.—Clause (i) of section 162(k)(2)(B) of such Code (relating to maximum period) is amended—

(A) by striking "and" at the end of subclause (I),

(B) in subclause (II), by inserting "or (II)" after "(I)",

(C) by redesignating subclause (II) as subclause (III), and

(D) by inserting after subclause (I) the following new subclause:

"(II) a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iii)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee, and".

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—Subclause (II) of section 162(k)(2)(B)(iv) of such Code (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iii)," before "entitled".

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—Section 162(k)(7)(B) of such Code (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1) and section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the amendments made by this section and by section 10001 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1954, and

(B) a qualifying event described in section 162(k)(3)(A) of such Code relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1954 applies to covered employees who retired before, on, or after the date of the enactment of this Act.

Subtitle D—Revenue Provisions

SEC. 10301. EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES.

(a) IN GENERAL.—The table contained in paragraph (2) of section 4251(b) of the Internal Revenue Code of 1954 (relating to imposition of tax on communications services) is amended to read as follows:

"With respect to amounts paid pursuant to bills first rendered:	The applicable percentage is:
During 1987, 1988, or 1989	3
During 1990 or thereafter	0."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1986.

SEC. 10302. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption and shall describe the types of persons which benefit from each such exemption.

(b) REPORT.—The report of the study under subsection (a) shall be submitted, not later than December 31, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

The CHAIRMAN. Amendments printed in section 1 of House Report 99-871 are considered as having been adopted. No other amendments are in order except the amendments printed in section 2 of House Report 99-871, which shall be considered only in the order listed and if offered by the Member indicated in said report. The amendments shall not be subject to amendment or to a demand for a division of the question but each amendment shall be debatable as specified in House Report 99-871.

The text of the amendments to H.R. 5300, printed in section 1 of House Report 99-871 are considered as having been adopted, is as follows:

I. The following are the amendments considered to have been adopted in the House and in the Committee of the Whole under House Resolution 558.

Page 6, strike out line 23 and all that follows thereafter through page 18, line 15.

Page 159, strike out line 15 and all that follows thereafter through page 160, line 8 and redesignate succeeding subtitles accordingly.

Page 301, strike out line 1 and all that follows thereafter through page 313, line 19, and redesignate succeeding subtitles accordingly.

Page 541, after line 10, insert the following:

"(3) EXCEPTION FOR CERTAIN CHURCHES AND ASSOCIATED ORGANIZATIONS.—The term 'large employer' shall not include, with respect to a State health insurance pool in a State, any—

"(A) church,

"(B) convention or association of churches, or

"(C) organization which is controlled by or associated (as described in section 414(e)(3)(D)) with a church or convention or association of churches,

if the church, convention, association, or organization states (in accordance with such procedures as the Secretary determines to be appropriate) that it is opposed for religious reasons to participation in the State health insurance pool of that State.

Page 542, line 14, strike "and".

Page 542, line 17, strike the semicolon and insert ", and".

Page 542, after line 17, insert the following:

"(F) such insurance may deny coverage for some or all services or other costs relating to abortion;

Page 156, after line 6, insert the following new subtitle:

Subtitle H—Rail Related Issues

PART 1—GENERAL PROVISIONS

SEC. 4701. SHORT TITLE; TABLE OF CONTENTS OF SUBTITLE.

(a) SHORT TITLE.—This subtitle may be cited as the "Conrail Privatization Act".

(b) TABLE OF CONTENTS OF SUBTITLE.—

PART 1—GENERAL PROVISIONS
Sec. 4701. Short title; table of contents of subtitle.
Sec. 4702. Findings.
Sec. 4703. Purposes.
Sec. 4704. Definitions.

PART 2—CONRAIL

SUBPART A—SALE OF CONRAIL
Sec. 4711. Preparation for public offering.
Sec. 4712. Public offering.
Sec. 4713. Fees.

SUBPART B—OTHER MATTERS RELATING TO THE SALE
Sec. 4721. Rail service guarantees.
Sec. 4722. Ownership limitations.
Sec. 4723. Board of Directors.
Sec. 4724. Provisions for employees.
Sec. 4725. Essential rail service loan guarantees.
Sec. 4726. Certain enforcement relief.

SUBPART C—MISCELLANEOUS TECHNICAL AND CONFORMING AMENDMENTS AND REPEALS
Sec. 4731. Abolition of United States Railway Association.
Sec. 4732. Applicability of Regional Rail Reorganization Act of 1973 to Conrail after sale.
Sec. 4733. Miscellaneous amendments and repeals.
Sec. 4734. Liability of directors.
Sec. 4735. Charter amendment.
Sec. 4736. Status of Conrail after sale.
Sec. 4737. Effect on contracts.
Sec. 4738. Resolution of certain issues.

PART 3—PROMOTION OF RAIL COMPETITION
Sec. 4751. Rail service continuation.
Sec. 4752. Agriculture contract disclosure.
Sec. 4753. Boxcar provision.

SEC. 4702. FINDINGS.

The Congress finds that—

(1) the bankruptcy of the Penn Central and other railroads in the Northeast and Midwest resulted in a transportation emergency which required the intervention of the Federal Government;

(2) the United States Government created the Consolidated Rail Corporation, which provides essential rail service to the Northeast and Midwest;

(3) the future of rail service in the Northeast and Midwest is essential and must be protected through rail service guarantees, consistent with the transfer of the Corporation to the private sector;

(4) the Northeast Rail Service Act of 1981 has achieved its purpose in allowing the Corporation to become financially self-sustaining;

(5) the Federal Government has invested over $7,000,000,000 in providing rail service to the Northeast and Midwest;

(6) the Government, as a result of its ownership and investment of taxpayer dollars in the Corporation, controls substantial assets, including cash of approximately $1,000,000,000;

(7) the Corporation's viability and sound performance allow it to be sold to the American public for a substantial sum through a public offering;

(8) a public offering of the Corporation's stock will preserve competitive rail service in the region, provide the greatest return to the Government, and protect employment;

(9) the Corporation's employees contributed significantly to the turnaround in the Corporation's financial performance and they should share in the Corporation's success through a settlement of their claims for reimbursement for wages below industry standard, and a share in the common equity of the Corporation through the employee stock ownership plan;

(10) the requirements of section 401(e) of the Regional Rail Reorganization Act of 1973 are met by this subtitle;

(11) the Secretary of Transportation has discharged the responsibilities of the Department of Transportation under the Northeast Rail Service Act of 1981 with respect to the sale of the Corporation as a single entity;

(12) the Staggers Rail Act of 1980 has been successful in reducing unneeded Government regulation of the railroad industry, improving rail service for shippers, and improving the previously inadequate earnings of the railroad industry; and

(13) the implementation of the Staggers Rail Act of 1980 and the Interstate Commerce Act by the Interstate Commerce

Commission has caused problems for some shippers and for employees.

SEC. 4703. PURPOSES.

The purposes of this subtitle are—

(1) to transfer the interest of the United States in the common stock of the Corporation to the private sector through the broadest practicable distribution of shares, in a manner that provides for the long-term viability of the Corporation, provides for the continuation by the Corporation of its rail service in the Northeast and Midwest, provides for the protection of the public interest in a sound rail transportation system, and secures the maximum proceeds to the United States; and

(2) to correct problems in the implementation of the Staggers Rail Act of 1980.

SEC. 4704. DEFINITIONS.

For the purposes of this subtitle—

(1) the term "capital expenditures" means amounts expended by the Corporation and its subsidiaries for replacement or rehabilitation of, or enhancements to, the railroad plant, property, trackage, and equipment of the Corporation and its subsidiaries, as determined in accordance with generally accepted accounting principles, and in interpreting generally accepted accounting principles, no amount spent on normal repair, maintenance, and upkeep of such railroad plant, property, trackage, and equipment in the ordinary course of business shall constitute capital expenditures;

(2) the term "Commission" means the Interstate Commerce Commission;

(3) the term "Corporation" means the Consolidated Rail Corporation;

(4) the term "cumulative net income" means, for any period, the net income of the Corporation and its consolidated subsidiaries (after provision for income taxes) as determined in accordance with generally accepted accounting principles, before provision for expenses related to—

(A) amounts paid by the Corporation under section 4724(e), and comparable payments made to present and former employees of the Corporation not covered by such section; and

(B) the aggregate value of the shares distributed under section 4724(f);

(5) the term "person" means an individual, corporation, partnership, association, trust, or other entity or organization, including a government or political subdivision thereof or a governmental body;

(6) the term "preferred stock" means any class or series of preferred stock, and any class or series of common stock having liquidation and dividend rights and preferences superior to the common stock of the Corporation offered for sale on or after the sale date;

(7) the term "public offering" means an underwritten offering to the public of such common stock of the Corporation as the Secretary of Transportation determines to sell under section 4712;

(8) the term "sale date" means the date on which the initial public offering is closed;

(9) the term "subsidiary" means any corporation more than 50 percent of whose outstanding voting securities are directly or indirectly owned by the Corporation;

(10) the term "United States share" means a share of common stock of the Corporation held by the United States Government on the date of the enactment of this Act; and

(11) the term "warrant" means an instrument entitling its owner to purchase, at a prescribed price or prices for a prescribed period, common stock of the Corporation.

PART 2—CONRAIL

Subpart A—Sale of Conrail

SEC. 4711. PREPARATION FOR PUBLIC OFFERING.

(a) PUBLIC OFFERING MANAGERS.—(1) Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chief Executive Officer of the Corporation, shall retain the services of investment bankers to serve jointly and be compensated equally as co-lead managers of the public offering (hereafter in this subpart referred to as the "co-lead managers") and to establish a syndicate to underwrite the public offering.

(2) In selecting the investment bankers to serve as co-lead managers of the public offering under paragraph (1), recognition and consideration shall be given to contributions made by particular investment banking firms before the date of the enactment of this Act in demonstrating and promoting the long-term financial viability of the Corporation and the feasibility of a public stock offering.

(b) PAYMENT TO THE UNITED STATES.—Not later than 30 days after the date of the enactment of this Act, the Corporation shall transfer to the Secretary of the Treasury $300,000,000.

(c) REGISTRATION STATEMENT.—The Corporation shall prepare and cause to be filed with the Securities and Exchange Commission a registration statement with respect to the securities to be offered and sold in accordance with the securities laws and the rules and regulations thereunder in connection with the initial and any subsequent public offering.

(d) LIMIT ON AUTHORITY TO PURCHASE STOCK.—Section 216(b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 726(b)) is amended by adding at the end thereof the following new paragraph:

"(5) The authority of the Association to purchase debentures or series A preferred stock of the Corporation shall terminate upon the date of the enactment of the Conrail Privatization Act.".

SEC. 4712. PUBLIC OFFERING.

(a) STRUCTURE OF PUBLIC OFFERING.—(1) After the registration statement referred to in section 4711(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall offer the United States shares for sale in a public offering, except as provided in paragraphs (2) and (3).

(2) The Secretary of Transportation, after such consultation, may elect to offer less than all of the United States shares for sale at the time of the initial sale.

(3) Under no circumstances shall the Secretary of Transportation offer any of the United States shares for sale unless, before the sale date, the Secretary determines, after such consultation, that the estimated sum of the gross proceeds from the sale of all the United States shares and the value of any warrants issued under subsection (f) is at least $1,700,000,000.

(b) SUBSEQUENT SALES.—If the Secretary of Transportation elects to offer for sale less than all the United States shares, the Secretary shall sell the remaining United States shares in subsequent public offerings.

(c) CONSENT OF THE CORPORATION NOT REQUIRED.—Any public offering under this section may be made without the consent of the Corporation.

(d) AUTHORITY TO REQUIRE STOCK SPLITS.—(1) The Secretary of Transportation, in consultation with the co-lead managers and the Chairman of the Board of Directors of the Corporation, may, in connection with the initial public offering described in subsection (a), before the filing of the registration statement referred to in section 4711(c), require the Corporation to declare a stock split or reverse stock split.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(e) CANCELLATION OF OTHER SECURITIES HELD BY THE UNITED STATES.—(1) In consideration for amounts transferred to the United States under section 4711(b), and for any warrants issued under subsection (f) of this section, the Secretary of Transportation shall, concurrent with the initial public offering described in subsection (a), deliver to the Corporation all preferred stock, 7.5 percent debentures, and contingent interest notes of the Corporation. The Corporation shall immediately cancel such debentures, preferred stock, and contingent interest notes, and any interest of the United States in such debentures, preferred stock, and contingent interest notes shall be thereby extinguished.

(2) For purposes of regulation by the Commission and State public utility regulation, and for purposes of reporting to the Securities and Exchange Commission, the actions authorized by this subsection, the public offering, and the value of the consideration received therefor shall not change the value of the Corporation's assets net of depreciation and shall not be used to alter the calculation of the Corporation's stock or asset values, rate base, expenses, costs, returns, profits, or revenues, or otherwise affect or be the basis for a change in the regulation of any railroad service, rate, or practice provided or established by the Corporation, or any change in the financial reporting practice of the Corporation.

(f) ISSUANCE OF WARRANTS.—(1) Before the registration statement referred to in section 4711(c) is declared effective by the Securities and Exchange Commission, the Secretary of Transportation, in consultation with the Secretary of the Treasury, the Chairman of the Board of Directors of the Corporation, and the co-lead managers, shall determine whether to require the Corporation to issue warrants to the United States in conjunction with the public offering, if it will increase the amount to be realized by the United States.

(2) The Corporation shall take such action as may be necessary to comply with the Secretary's requirements under this subsection.

(g) MINORITY INVESTMENT BANKING FIRMS.—The Secretary of Transportation shall ensure that minority owned or controlled investment banking firms shall have an opportunity to participate to a significant degree in any public offering under this part.

(h) GENERAL ACCOUNTING OFFICE AUTHORITY TO CONDUCT AUDITS.—The General Accounting Office may make such audits as may be deemed appropriate by the Comptroller General of the United States of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the Corporation and the co-lead managers associated with the public offering. The co-lead managers shall agree, in writing, to allow the General Accounting Office to make such audits. The General Accounting Office shall report the results of all such audits to the Congress.

SEC. 4713. FEES.

The Secretary of Transportation, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of the Corporation, shall agree to pay to investment bankers and other persons participating in the public offering the absolute minimum amount in fees necessary to carry out the public offering.

Subpart B—Other Matters Relating to the Sale

SEC. 4721. RAIL SERVICE GUARANTEES.

(a) FIVE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 5 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall spend in each fiscal year the greater of (A) an amount equal to the Corporation's depreciation for financial reporting purposes for such year or (B) $500,000,000, in capital expenditures. With respect to any fiscal year, the Corporation's Board of Directors may reduce the required capital expenditures for such year to an amount which the Board determines is justified by prudent business and engineering practices, except that the Corporation's capital expenditures shall not be less than $350,000,000 for its first fiscal year beginning after the sale date, a total of $700,000,000 for its first two fiscal years beginning after the sale date, a total of $1,050,000,000 for its first three fiscal years beginning after the sale date, a total of $1,400,000,000 for its first four fiscal years beginning after the sale date, and a total of $1,750,000,000 for its first five fiscal years beginning after the sale date.

(2)(A) Except as otherwise provided under subparagraph (B), no common stock dividend or preferred stock dividend may be declared or paid by the Corporation.

(B)(i) Concurrent with the declaration of any common stock dividend or preferred stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend the Corporation will be in compliance with the requirements of paragraph (1) for the fiscal year in which such dividend payment is made.

(ii) Concurrent with the declaration of any common stock dividend, the Corporation's Board of Directors shall find and certify that, after payment of such dividend, the cumulative amount of all common stock dividends paid after the sale date will not exceed 50 percent of—

(I) the cumulative net income of the Corporation for the period beginning after the end of the last fiscal quarter of the Corporation ending before the sale date, less

(II) the cumulative amount of any preferred stock dividends declared and paid after the sale date.

(C) For purposes of this paragraph—

(i) the term "common stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the common stock of the Corporation (other than dividends payable solely in shares of the common stock of the Corporation);

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the common stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the common stock of the Corporation; and

(ii) the term "preferred stock dividend" means—

(I) the declaration or payment by the Corporation of any dividends in cash, property, or other assets with respect to any shares of the preferred stock of the Corporation;

(II) the application of any of the property or assets of the Corporation to the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation;

(III) the setting apart of any sum for the purchase, redemption, or other acquisition or retirement of any shares of the preferred stock of the Corporation; and

(IV) the making of any other distribution, by reduction of capital or otherwise, with respect to any shares of the preferred stock of the Corporation.

(3) The Corporation shall continue its affirmative action program and its minority vendor program, substantially as such programs were being conducted by the Corporation as of February 8, 1985, subject to any provisions of applicable law.

(4) The locomotive shop and car repair shop in Blair County, Pennsylvania, and the repair shop in Collinwood, Ohio, shall be retained.

(b) THREE-YEAR RESTRICTIONS ON THE CORPORATION.—During a period of 3 years beginning on the date of the enactment of this Act, the following restrictions shall apply to the Corporation:

(1) The Corporation shall not permit to occur any transaction or series of transactions (other than in the ordinary course of business of the Corporation and its subsidiaries) whereby all or any substantial part of the railroad assets and business of the Corporation and its subsidiaries taken as a whole are sold, leased, transferred, or otherwise disposed of to any corporation or entity other than to a wholly owned subsidiary of the Corporation.

(2) The Corporation shall have on hand at the end of each fiscal year cash or cash equivalents of at least $250,000,000.

(3) The Corporation shall offer any line for which an abandonment certificate is issued by the Commission to a purchaser who agrees to provide interconnecting rail service. Such offer shall last for the 120-day period following the date of issuance of the abandonment certificate and the price for such abandoned line shall be equal to 75 percent of net liquidation value as determined by the Commission, pursuant to regulations that had been issued under section 308 of the Regional Rail Reorganization Act of 1973.

SEC. 4722. OWNERSHIP LIMITATIONS.

(a) GENERAL.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act no person, directly or indirectly, may acquire or hold securities representing more than 7.5 percent of the total votes of all outstanding voting securities of the Corporation.

(B) This paragraph shall not apply—

(i) to the employee stock ownership plan (or successor plans) of the Corporation,

(ii) to the Secretary of Transportation,

(iii) to a railroad as described under subsection (b)(1),

(iv) to underwriting syndicates holding shares for resale, or

(v) in the case of shares beneficially held by others, to commercial banks, broker-dealers, clearing corporations, or other nominees.

(2) During a period of 5 years beginning on the date of the enactment of this Act, not more than 20 percent of the stock of the Corporation may be held by or for the benefit of persons not citizens of the United States or entities owned or controlled by persons not citizens of the United States.

(b) RAILROADS.—(1)(A) During a period of 5 years beginning on the date of the enactment of this Act, no railroad may purchase or hold, directly or indirectly, more than 7.5 percent of any class of stock of the Corporation unless such railroad files for approval and authorization of the Commission under section 11343 of title 49, United States Code, except as provided in paragraph (2). If such an application is filed, the Commission shall give substantial weight to any views of the Secretary of Transportation regarding such application which may be submitted to the Commission.

(B) During a period of 5 years beginning on the date of the enactment of this Act, any railroad which purchases or holds no more than 7.5 percent of any class of stock of the Corporation shall vote such stock in the same proportion as all other common stock of the Corporation is voted. During such 5-year period, any railroad which purchases or holds more than 7.5 percent of such stock shall, unless such acquisition has been approved by the Commission as described in subparagraph (A), vote such stock as directed by the Commission, or, in the absence of any such direction, in the same proportion as all other common stock of the Corporation is voted. As used in this paragraph, the term "railroad" means a class I railroad as determined by the Commission under the definition in effect on the date of the enactment of this Act, and includes any entity controlling, controlled by, or under common control with any railroad (other than the Corporation or its subsidiaries).

(2)(A) Norfolk Southern Corporation, CSX Corporation, and their successors and assigns, shall not purchase or own, directly or indirectly, more than 7.5 percent of the common stock of the Corporation.

(B) The Commission shall not consider any application filed under section 11343 or 11344 of title 49, United States Code, from—

(i) the Corporation; or

(ii) Norfolk Southern Corporation, CSX Corporation, the successors and assigns of such corporations, and any person controlling, controlled by, or under common control with such corporations, successors, and assigns,

for authority to enter into any merger or consolidation, or any other transaction prohibited under subparagraph (A), between the Corporation and any entity described in clause (ii).

(C) Subparagraphs (A) and (B) shall cease to be effective upon—

(i) the guarantee of any loan to the Corporation under section 4725; or

(ii) the expiration of 3 years after the date of the enactment of this Act.

When subparagraphs (A) and (B) cease to be effective, entities described in subparagraph (B)(ii) shall be considered railroads for purposes of paragraph (1).

SEC. 4723. BOARD OF DIRECTORS.

Except as may be prescribed by the Secretary of Transportation in section 4725, the Board of Directors of the Corporation shall be comprised as follows:

(1) Except as provided in paragraph (3), with respect to the period ending June 30,

1987, the board shall remain as it exists on the date of the enactment of this Act, with any vacancies being filled by directors nominated and elected by the remainder of the members of the board.

(2)(A) Except as provided in paragraph (3), with respect to the period beginning July 1, 1987, the board shall consist of—

(i) 3 directors appointed by the Secretary of Transportation;

(ii) the Chief Executive Officer and the Chief Operating Officer of the Corporation; and

(iii) 8 directors appointed from among persons knowledgeable in business affairs by the special court established under section 209 of the Regional Rail Reorganization Act of 1973, in consultation with the Secretary of Transportation and the Chairman of the Board of Directors of the Corporation, and recognizing the need for and importance of—

(I) continuity in the direction of the Corporation's business and affairs;

(II) preserving the value of the investment of the United States in the Corporation; and

(III) preserving essential rail service provided by the Corporation.

(B) The Secretary of Transportation and the special court may appoint directors under subparagraph (A) from among existing directors of the Corporation.

(3)(A) After the sale date, one director shall be elected by the public shareholders of the Corporation for each increment of 12.5 percent of the interest of the United States in the Corporation that has been sold through public offering.

(B) With respect to the period ending June 30, 1987—

(i) the first director elected under this paragraph shall replace the member of the board who became a director most recently from among—

(I) directors appointed by the United States Railway Association, or elected under paragraph (1) to replace such a director, and

(II) directors appointed by the Secretary of Transportation, or elected under paragraph (1) to replace such a director;

(ii) the second director elected under this paragraph shall replace the member of the Board who became a director most recently from among directors described in clause (i)(I) or (II), whichever group the first director replaced under this subparagraph was not a member of; and

(iii) subsequent directors elected under this paragraph shall replace members alternately from the groups described in clause (i)(I) and (II).

(C) With respect to the period beginning July 1, 1987, directors elected under this paragraph shall replace directors appointed by the special court under paragraph (2)(A)(iii), in the order designated by the special court in a list to be issued at the time of such original appointments.

(D) With respect to the period beginning on the first date more than 50 percent of the interest of the United States in the Corporation has been sold through public offering and ending when 100 percent of such interest has been sold—

(i) all remaining members of the board referred to in paragraph (2)(A)(iii), and

(ii) with respect to the period ending June 30, 1987, all remaining members of the board, except 3 members appointed by the Secretary of Transportation and the Chief Executive Officer and the Chief Operating Officer of the Corporation,

shall be replaced by directors elected by the public shareholders of the Corporation.

(E) After 100 percent of the interest of the United States in the Corporation has been sold, any remaining directors appointed by the Secretary of Transportation, the United States Railway Association, or the special court referred to under paragraph (2)(A)(iii), shall be replaced by directors elected by the public shareholders of the Corporation.

(F) Nothing in this paragraph shall be construed to prohibit any director referred to in this section from being elected as a director by the public shareholders of the Corporation.

(4)(A) No director appointed or elected under this section shall be an employee of the United States, except as provided in section 4725 or as elected by the public shareholders of the Corporation.

(B) No director appointed or elected under this section shall be an employee of the Corporation, except as provided in paragraph (2)(A)(ii) or as elected by the public shareholders of the Corporation.

SEC. 4724. PROVISIONS FOR EMPLOYEES.

(a) TRANSITIONAL EMPLOYEE PROTECTION.—Section 701(d)(2) of the Regional Rail Reorganization Act of 1973 is amended to read as follows:

"(2) Notwithstanding any other provision of law—

"(A) upon exhaustion of appropriated funds available for payment of benefits or expenses of administration of the Railroad Retirement Board (hereafter in this section referred to as the 'Board') under this section, or on the expiration of 60 days after the date of enactment of the Conrail Privatization Act, whichever first occurs, the United States shall have no further liability under this section, but the Corporation shall—

"(i) as agent for the Board, pay benefits under this section, without reimbursement, in such amounts and to such eligible employees as the Board shall designate, subject to the limitations prescribed in the benefit schedules issued under subsection (a); and

"(ii) on a periodic basis determined by the Board, advance to the Board its necessary expenses of administration, including expenses reasonably required for close-out of the program of labor protection under this section and for technical transition to the program of labor protection required by the Conrail Privatization Act, which advances shall be made without reimbursement.

"(B) The Corporation shall promptly honor the Board's requests for advances under this paragraph as due and payable liquidated debts, subject to later adjustment after audit by the Inspector General of the Board. The Board is authorized to receive and apply Corporation funds advanced under this paragraph for administration of this section and to refund to the Corporation any excess administrative funds advanced by the Corporation.

"(C) The Corporation shall be deemed subrogated to the right of the Board to recover any benefit paid by the Corporation as agent for the Board that was improvidently paid under this paragraph, and the Board shall cooperate with the Corporation in its effort to recover any such payment; but the Corporation shall have no claim against the Board for such payment, and the Board shall not be made a real party in interest to any lawsuit or to any proceeding with respect to recovery of such payment.

"(D) Benefits provided by the Corporation, as agent for the Board, shall, for purposes of this title, be deemed to have been made available under section 713 of this title.".

(b) DISPUTE RESOLUTION.—Section 701 of the Regional Rail Reorganization Act of 1973 is further amended by adding at the end thereof a new subsection as follows:

"(e) Any dispute or controversy regarding eligibility for benefits under this section shall be determined under such procedures as the Board may by regulation prescribe. Subject to administrative reconsideration by the Board under its own procedures, findings of fact and conclusions of law of the Board in determination of any claim for such benefits shall, in the absence of fraud or an action exceeding the Board's jurisdiction, be binding and conclusive for all purposes and shall not be subject to review in any manner. For purposes of administration of this section, the administrative powers and penalties set forth in sections 9 and 12 of the Railroad Unemployment Insurance Act shall apply as if incorporated herein.".

(c) REPEAL OF SECTION 701.—Section 701 of the Regional Rail Reorganization Act of 1973 is repealed effective on the sale date. Notwithstanding this repeal—

(1) any dispute or controversy regarding benefits under section 701 shall be determined under the terms of the law in effect prior to such repeal; and

(2) the Railroad Retirement Board shall take such actions as may be necessary to complete administration and closeout of the section 701 program.

(d) CONTINUING RESPONSIBILITIES.—(1) On and after the sale date, the Corporation shall provide the protection for its employees described in "Part III, Article III, Employee Protection", of the "Definitive Agreement of September 17, 1985, By and Between Conrail and the Undersigned Representatives of Conrail's Agreement Employees" and Appendix 3 thereto, together with any amendments thereto, or under any other terms and conditions as shall be agreed between the Corporation and the representatives of its employees.

(2) The Corporation shall pay, as designated by the Railroad Retirement Board, any remaining benefits under section 701 of the Regional Rail Reorganization Act of 1973 that accrued, but were not disbursed, prior to the sale date.

(3) The Railroad Retirement Board shall transfer to the Corporation such information regarding administration of the labor protection program under such section 701 as may be reasonably necessary for the Corporation to discharge its responsibilities under this subsection, including the individual claim records of employees of the Corporation.

(4) The United States shall have no liability for benefits under this subsection.

(e) COMPENSATION FOR WAGES BELOW INDUSTRY STANDARD.—The Corporation shall pay $200,000,000 to present and former employees subject to collective bargaining agreements, in accordance with the terms and conditions in the Definitive Agreement referred to in subsection (d)(1), or as otherwise agreed between the parties.

(f) ESOP TRANSACTIONS.—(1) As soon as practicable after the date of the enactment of this Act, the employee stock ownership plan of the Corporation (hereafter in this subsection referred to as the "ESOP") shall be amended to provide that—

(A) the shares of the ConRail Equity Corporation preferred stock held by the ESOP shall be surrendered by the ESOP in exchange for an equal number of shares of the

common stock of the Corporation, and such common stock of the Corporation shall be allocated by the ESOP to the same persons in the same amounts as the shares of ConRail Equity Corporation preferred stock had been allocated; and

(B) the remaining shares of the ConRail Equity Corporation preferred stock held by the Corporation shall be cancelled, and an equal number of shares of the common stock of the Corporation shall be contributed by the Corporation to the ESOP, which shares shall be allocated by the ESOP to the ESOP participants in accordance with the formula set forth in section 2 of Article II of Part III of the Definitive Agreement referred to in subsection (d)(1), and in accordance with a comparable formula for present and former employees of the Corporation not covered by such section of the Definitive Agreement, except that no contribution by the Corporation to the ESOP shall be made which would affect the status of the ESOP, or of any of the employee benefit plans maintained by the Corporation or any affiliate of the Corporation, as an employee stock ownership plan under the Internal Revenue Code of 1954.

(2)(A)(i) As soon as practicable after the expiration of 90 days after the sale date, the ESOP shall distribute all of the stock in the accounts of its participants and beneficiaries, except as provided in clause (ii).

(ii) Fractional shares shall not be distributed under clause (i). Shares equal to the aggregate amount of fractional shares shall be surrendered by the ESOP and redeemed by the Corporation for cash at the average closing price for the common stock of the Corporation on a national securities exchange for the 10 business days immediately preceding the date of distribution under clause (i), or, if the common stock of the Corporation is not listed on a national securities exchange, at the average closing price for such stock for such 10 business days as appearing in any regularly published reporting or quotation service, and the proceeds of such redemption shall be distributed by the ESOP to the same participants and beneficiaries and the same amounts as the fractional shares had been allocated.

(B) After completing the distribution under subparagraph (A), the ESOP shall terminate.

(3) The Corporation shall distribute any shares of its common stock which, because of the exception under paragraph (1)(B), could not be contributed to the ESOP to those persons to whom the ESOP would have allocated such shares pursuant to paragraph (1)(B) had such shares been contributed to the ESOP.

(4) For purposes of Rule 144 promulgated under the Securities Act of 1933, each share of the common stock of the Corporation distributed under this subsection shall be deemed to have been beneficially owned by the recipient, as of the date of such distribution, for a period of three years.

SEC. 4725. ESSENTIAL RAIL SERVICE LOAN GUARANTEES.

At any time before the expiration of the ten year period beginning on the date of the enactment of this Act, the Secretary of Transportation may, if the Corporation requests and the Secretary of Transportation determines that it is in the public interest and is necessary for the Corporation to continue to provide essential rail service, arrange to guarantee a loan or loans of up to a total of $500,000,000, under such terms and conditions as the Secretary of Transportation shall prescribe, which may include representation on the Board of Directors of the Corporation by the Secretary of Transportation and the Secretary of the Treasury, or their designees.

SEC. 4726. CERTAIN ENFORCEMENT RELIEF.

(a) ENFORCEMENT ACTIONS.—The Secretary of Transportation, with respect to any provision of section 4721 or 4722, and any person who suffers direct economic injury as a result of an alleged violation by the Corporation, with respect to the provisions of section 4721(a)(1) and (2), and (b)(2), and section 4722, may bring an action to require compliance with such provision.

(b) SPECIAL COURT.—Any action brought under this part shall be brought before the special court established under section 209 of the Regional Rail Reorganization Act of 1973. Such special court may limit the enforcement of a restriction under section 4721, if the effect of such restriction would be to substantially impair the continued viability of the Corporation.

Subpart C—Miscellaneous Technical and Conforming Amendments and Repeals

SEC. 4731. ABOLITION OF UNITED STATES RAILWAY ASSOCIATION.

(a) ABOLITION.—Effective January 1, 1987, the United States Railway Association is abolished.

(b) TRANSFER OF SECURITIES AND RESPONSIBILITIES.—(1) Any securities of the Corporation held by the United States Railway Association shall, upon the date of the enactment of this Act, be transferred to the Secretary of Transportation.

(2) If, on the date the United States Railway Association is abolished under subsection (a), such association shall not have completed the termination of its affairs and the liquidation of its assets, the duty of completing such winding up of its affairs and liquidation shall be transferred to the Secretary of Transportation, who for such purposes shall succeed to all the powers, duties, rights, and obligations of such association.

(c) FINANCING AGREEMENT.—(1) On January 1, 1987, the Amended and Restated Financing Agreement, dated May 10, 1979, between the United States Railway Association and the Corporation, together with any and all rights and obligations of or on behalf of any person with respect to such agreement, shall terminate and be of no further force or effect, except for those provisions specifying terms and conditions for payments made to the United States with respect to debentures, preferred stock, and contingent interest notes.

(2) Effective as of the sale date, those provisions of the Financing Agreement referred to in paragraph (1) shall terminate.

SEC. 4732. APPLICABILITY OF REGIONAL RAIL REORGANIZATION ACT OF 1973 TO CONRAIL AFTER SALE.

Section 301 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 741) is amended by adding at the end thereof the following new subsection:

"(k) GOVERNING PROVISIONS AFTER SALE.—The provisions of this Act shall not apply to the Corporation and to activities and other actions and responsibilities of the Corporation and its directors and employees after the sale date, other than with regard to—

"(1) section 102;

"(2) section 201(d);

"(3) section 203, but only with respect to information relating to proceedings before the special court established under section 209(b);

"(4) section 209, other than subsection (f) thereof;

"(5) section 216(f)(8), but only as such authority applies to activities related to the ESOP and related trust before the sale date;

"(6) section 216(f)(9), but only as such indemnification applies to activities relating to the ESOP and related trust before the sale date;

"(7) section 216(f)(10) with respect to all securities of the Corporation issued or transferred before the sale date and all securities of ConRail Equity Corporation and all interests in the ESOP;

"(8) section 217(c) and (e);

"(9) subsection (b) of this section, but only with respect to matters covered by the last sentence of such subsection;

"(10) subsection (i) of this section, but only as such authority applies to service as a director of the Corporation before the sale of the interest of the United States in the common stock of the Corporation;

"(11) section 302, but only to the extent of (A) the creation and maintenance of the power and authority of the Corporation to operate rail service and to rehabilitate, improve, and modernize rail properties, and (B) the creation and maintenance of the powers of the Corporation as a railroad in any State in which it operates as of the sale date;

"(12) section 303(b)(1) and (2), but only to the extent of establishing the legal effect of the conveyance of property ordered and of the deeds and other instruments executed, acknowledged, delivered, or recorded in connection therewith and the quality of title acquired in such property;

"(13) section 303(b)(3)(B) with respect to the effect of an assignment, conveyance, or assumption as set forth in the last sentence of such subparagraph (B);

"(14) section 303(b)(5);

"(15) section 303(b)(6), but only with respect to establishing and maintaining the rights of the Corporation with respect to, limiting its obligations with respect to, and establishing the status of, the employee pension and welfare benefit plans transferred to the Corporation thereunder and with respect to the exclusivity of the jurisdiction of the special court and the limitation of jurisdiction of other courts;

"(16) section 303(e);

"(17) section 304, but only with respect to the finality of abandonments completed before the sale date pursuant to the authority thereof;

"(18) section 305, but only as to the effect, and continuing administration, of supplemental transactions consummated before the sale date;

"(19) section 308, but only (A) as to the finality of abandonments completed before the sale date and (B) as to abandonments of lines where a notice or notices of insufficient revenues with respect to such lines have been filed before November 1, 1985;

"(20) section 601(a)(2), but only with respect to activities before the sale date;

"(21) section 601(b)(2) and (b)(3), but only with respect to issuance of and transactions in any security of the Corporation before the sale date;

"(22) section 702(e);

"(23) section 703;

"(24) section 704;

"(25) sections 706(a), 707, and 708(a), but only insofar as they establish part of the prevailing status quo for the Corporation's employees' rates of pay, rules, and working conditions, such provisions to continue to apply unless changed pursuant to section 6 of the Railway Labor Act;

"(26) section 709;

"(27) section 710(b)(1);
"(28) section 711; and
"(29) section 714, but only with regard to disputes or controversies specified in such section that arose before the sale date.".

SEC. 4733. MISCELLANEOUS AMENDMENTS AND REPEALS.

(a) REGIONAL RAIL REORGANIZATION ACT OF 1973 REPEALS.—The following provisions of the Regional Rail Reorganization Act of 1973 (together with any items relating to such provisions contained in the table of contents of such Act) are repealed:

(1) Title IV (45 U.S.C. 761 through 769c).
(2) Section 713 (45 U.S.C. 797l).

(b) REGIONAL RAIL REORGANIZATION ACT OF 1973 AMENDMENTS.—(1) Section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702) is amended by inserting after paragraph (17) a new paragraph as follows:

"(17A) 'sale date' means the date on which the initial public offering of the securities of the Corporation is closed under the Conrail Privatization Act;".

(2) Section 217(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 727(c)) is amended by striking ", until the property" and all that follows, and inserting in lieu thereof "the statutory payment date of which, determined without regard to any extensions of time for filing, occurs on or before January 1 of the year in which the sale date occurs, but in no event before January 1, 1987.".

(3) Section 217(e) of such Act (45 U.S.C. 727(e)) is amended by striking "and shall collect".

(c) AMENDMENTS AND REPEALS OF OTHER RAIL LAWS.—(1)(A) Section 1152 of the Northeast Rail Service Act of 1981 (45 U.S.C. 1105) is amended—

(i) by inserting "or part 2 of the Conrail Privatization Act" after "subtitle" each place it appears; and

(ii) in the second sentence of subsection (c), by inserting ", as the case may be," after the insertion made by clause (i) of this subparagraph.

(B)(i) The following provisions of the Northeast Rail Service Act of 1981 are repealed:

(I) Section 1154 (45 U.S.C. 1107).
(II) Section 1161 (45 U.S.C. 1110).
(III) Section 1166 (45 U.S.C. 1114).
(IV) Subsection (c) of section 1167 (45 U.S.C. 1115).

(ii) The items relating to such sections 1154, 1161, and 1166 in the table of contents of such Act are repealed.

(2) Section 501(8) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(8)) is amended by striking out "(A)" and by striking out all that follows "improved asset utilization;".

(3) Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended—

(A) in subsection (a)(1), by striking out all after "railroad" through "1981)"; and

(B) in subsection (b)(2)(C), by striking out all after "costs" the second time it appears through "subsidy".

(4) Subsection (b)(1) of section 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 829) is repealed.

(5) Section 511(e) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831(e)) is amended—

(A) by striking out "(1)" in the first paragraph;

(B) by striking all that follows "time" in the first paragraph and inserting in lieu thereof a period; and

(C) by striking out paragraph (2).

(6) Section 402 of the Rail Safety and Service Improvement Act of 1982 (45 U.S.C. 825a) is repealed.

(7) Section 10362(b)(7)(A) of title 49, United States Code, is amended by striking out "by the Consolidated Rail Corporation or".

(d) PLAN FOR CONTINUATION OF RAIL SERVICE.—In the event the Corporation files for bankruptcy, the Secretary of Transportation shall develop and submit to the appropriate court a reorganization plan for the Corporation which maximizes rail service and transportation competition. Such court shall give substantial weight to the Secretary's plan.

SEC. 4734. LIABILITY OF DIRECTORS.

(a) IN GENERAL.—No person referred to in section 216(f)(8)(C)(i), (ii), or (iii) of the Regional Rail Reorganization Act of 1973 shall be liable, for money damages or otherwise, to any party by reason of the fact that such person is or was a director, if, with respect to the subject matter of the action, suit, or proceeding, such person was fulfilling a duty which such person in good faith reasonably believed to be required by law or vested in such person in his capacity as a director of the Corporation, in connection with any action taken under this part.

(b) EXCEPTION.—This section shall not apply to claims arising out of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Constitution or laws of any State, territory, or possession of the United States relating to transactions in securities, which claims are in connection with a public offering under section 4712 of this Act.

SEC. 4735. CHARTER AMENDMENT.

Within 60 days after the date of the enactment of this Act, the Corporation shall amend its Articles of Incorporation to contain the following provision, which provision shall not be subject to amendment or repeal:

"It shall be a fundamental purpose of the Corporation to maintain continued rail service in its service area.".

SEC. 4736. STATUS OF CONRAIL AFTER SALE.

The Corporation shall be a rail carrier as defined in section 10102(19) of title 49, United States Code, notwithstanding this part.

SEC. 4737. EFFECT ON CONTRACTS.

Nothing in this part shall affect any obligation of the Corporation to carry out its transportation contracts and equipment leases, equipment trusts, and conditional sales agreements, in accordance with their terms.

SEC. 4738. RESOLUTION OF CERTAIN ISSUES.

(a) EMPLOYEE ISSUES.—Section 4724 completely and finally—

(1) extinguishes all employee rights, and any obligation of the United States, under section 401(e) of the Regional Rail Reorganization Act of 1973 as in effect immediately before the date of the enactment of this Act;

(2) resolves any and all claims against the Corporation or any other entity arising under the Definitive Agreement referred to in section 4724(d)(1);

(3) resolves all claims to pay entitlements arising out of the pay increase deferrals by present and former employees of the Corporation under the Agreement of May 5, 1981, between Conrail and Certain Labor Organizations for Labor Contributions to Self-Sufficiency for Conrail;

(4) resolves all issues raised by notices served by representatives of such employees under section 6 of the Railway Labor Act proposing repayment of or compensation for such deferrals; and

(5) resolves all claims against the Railway Labor Executives' Association or the Corporation by any adviser, consultant, or other person who has provided services to such association in connection with any matter referred to in this part.

(b) CORPORATION ACTIONS.—The Corporation shall not be considered to be in breach, default, or violation of any agreement to which it is a party, notwithstanding any provision of such agreement, because of any provision of this part or any action the Corporation is required to take under this part.

(c) RIGHT TO SUE WITHDRAWN.—The United States hereby withdraws any stated or implied consent for the United States, or any agent or officer of the United States, to be sued by any person with respect to any claims for damages or other monetary compensation arising out of this part.

PART 3—PROMOTION OF RAIL COMPETITION

SEC. 4751. RAIL SERVICE CONTINUATION.

(a) EMPLOYEE PROTECTION.—Section 10901 of title 49, United States Code, is amended by adding at the end the following new subsections:

"(f) In granting authority to acquire or operate a railroad line under this section, the Commission shall provide for the protection of the interests of affected railroad employees, other than employees provided long-term employment with the acquiring entity, no less protective to such employees than would be required under section 11347 of this title. In no event shall an affected employee receive more than $25,000 for such purposes. The carrier operating such railroad line before the granting of such authority shall be responsible for making payments required under this subsection.

"(g)(1) In approving any acquisition under this section, the Commission shall require implementing agreements between the selling carrier and the affected employees and between the acquiring entity and such affected employees.

"(2)(A) The implementing agreement required under paragraph (1) between the selling carrier and the affected employees shall be as required by the conditions imposed under section 11347 of this title.

"(B) The implementing agreement required under paragraph (1) between the acquiring entity and the affected employees shall only apply with respect to the selection of forces.

"(3) If the parties referred to in paragraph (1) are unable to complete an implementing agreement, the terms of an implementing agreement shall be determined through binding arbitration.".

(b) PROTECTION IN CASE OF ABANDONMENTS OR SALES.—Section 10905 of such title is amended by adding at the end a new subsection as follows:

"(g)(1) In issuing any certification of abandonment or discontinuance under this section, the Commission shall include provisions at least as beneficial for the interests of employees as are required under section 10903(b)(2) of this title.

"(2) If the Commission approves a transaction under subsection (e), the Commission shall include provisions at least as beneficial for the interests of employees as are required under section 10901 of this title.".

(c) COLLECTIVE BARGAINING NOT AFFECTED.—No order under section 11344 of title 49, United States Code, shall affect the rights

of any carrier or its employees under the Railway Labor Act or applicable collective bargaining agreements, except insofar as is necessary to allow, by agreement, or by arbitration if required, the carrier to carry out the transaction approved by the Commission in such order through adjustment of work forces, such as selection and assignment of forces.

SEC. 4752. AGRICULTURE CONTRACT DISCLOSURE.

Section 10713(b) of title 49, United States Code, is amended by inserting "(1)" after "(b)"; and by adding at the end a new paragraph as follows:

"(2)(A) The essential terms of any contract for the transportation of agricultural commodities to be made available to the general public in tariff format under this subsection shall include, but shall not be limited to (i) the identity of the shipper party to the contract; (ii) the specific origins, transit points and other shipper facilities subject to the contract, and destinations served under such contract; (iii) the duration of the contract, including provisions for optional extension; (iv) the actual volume requirements, if any; (v) whether any transportation service has begun under a contract before the date such contract is filed with or approved by the Commission, and (vi) the date on which the contract became applicable to the transportation services provided under the contract. The Commission shall interpret this subsection to provide for liberal discovery to shippers seeking remedies under subsection (d)(2)(B) of this section.

"(B) Any amendment, supplement, or change to any term or provision of any contract described in subparagraph (A), including extensions of such contract, changes of origin, transit points, affected shipper facilities, destination points, or negotiated economic terms, shall be deemed to be a separate and new contract for the purposes of this subsection. Such amendments, supplements, or changes shall be filed separately with the Commission as provided in paragraph (1).

"(C) Within 60 days after the date of the enactment of the Conrail Privatization Act, the Commission shall issue regulations which require that essential terms of contracts described in subparagraph (A) shall be made available to the general public in tariff format as provided in this paragraph.

"(D) The railroad contract rate advisory service established pursuant to subsection (m) of this section shall assess the impact on competition among agricultural shippers of variations between contract rates for various shipments and the published single car rates, and shall submit a report to the Congress not later than 120 days after the date of the enactment of the Conrail Privatization Act.".

SEC. 4753. BOXCAR PROVISION.

The authority of the Commission to promulgate that portion of the rule adopted by the Commission in Ex Parte No. 346 (Sub. No. 19) served September 12, 1986, consisting of small railroad protections, is hereby confirmed.

Page 419, strike out line 12 and all that follows through page 552, line 2, and insert in lieu thereof the following:

TITLE X—HOUSE COMMITTEE ON WAYS AND MEANS

Subtitle A—OASDI Provisions
Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes
Subtitle C—Provisions Relating to Medicare and Health Programs
Subtitle D—Revenue Provisions

Subtitle A—OASDI Provisions

SEC. 10001. ELIMINATION OF 3-PERCENT TRIGGER FOR COST-OF-LIVING INCREASES.

(a) ELIMINATION OF TRIGGER.—Section 215(i)(1)(B) of the Social Security Act is amended by striking out "with respect to which the applicable increase percentage is 3 percent or more" and inserting in lieu thereof "with respect to which the applicable increase percentage is greater than zero".

(b) CONFORMING AMENDMENTS.—

(1) IN CURRENT LAW.—Section 215(i) of such Act is further amended—

(A)(i) by striking out clause (i) in paragraph (2)(C) and redesignating clauses (ii) and (iii) of such paragraph as clauses (i) and (ii), respectively, and

(ii) by striking out "under clause (ii)" in clause (ii) of such paragraph as so redesignated and inserting in lieu thereof "under clause (i)";

(B) by inserting "and by section 10001 of the Omnibus Budget Reconciliation Act of 1986" after "Social Security Amendments of 1983" in paragraph (4); and

(C) by striking out "because the wage increase percentage was less than 3 percent" in paragraph (5)(A)(i) and inserting in lieu thereof "because there was no wage increase percentage greater than zero".

(2) IN APPLICABLE FORMER LAW.—Section 215(i) of such Act, as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978, is amended—

(A) by striking out ", by not less than 3 per centum," in paragraph (1)(B); and

(B) by striking out "(C)(i) Whenever" and all that follows down through "(ii) Whenever" in paragraph (2)(C) and inserting in lieu thereof "(C) Whenever".

(c) TECHNICAL AMENDMENT TO SMI PROGRAM.—Section 1839(f)(2)(A) of such Act is amended to read as follows:

"(A) the monthly premium amount determined under subsection (a)(2) for that January reduced by the amount (if any) by which the monthly benefit under section 202 or 223 for that November, after the deduction of the premium (disregarding subsection (b)) for that individual for that December and after rounding under section 215(g), would exceed the monthly benefit under section 202 or 223 for that December, after the deduction of the monthly premium amount determined under subsection (a)(2) (disregarding subsection (b)) for that individual for that January and after rounding under section 215(g), or".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act in effect after December 1978) in 1986 and subsequent years.

(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) shall apply with respect to months after September 1986.

(3) The amendment made by subsection (c) shall apply with respect to monthly premiums (under section 1839 of the Social Security Act) for months after December 1986.

SEC. 10002. DEPOSITS OF SOCIAL SECURITY CONTRIBUTIONS BY STATE AND LOCAL GOVERNMENT EMPLOYERS.

(a) RETURNS AND PAYMENTS.—(1) Subchapter C of chapter 21 of the Internal Revenue Code of 1954 is amended by redesignating section 3126 as section 3127, and by inserting after section 3125 the following new section:

"SEC. 3126. RETURN AND PAYMENT BY GOVERNMENTAL EMPLOYER.

"If the employer is a State or political subdivision thereof, or an agency or instrumentality of any one or more of the foregoing, the return of the amount deducted and withheld upon any wages under section 3101 and the amount of the tax imposed by section 3111 may be made by any officer or employee of such State or political subdivision or such agency or instrumentality, as the case may be, having control of the payment of such wages, or appropriately designated for that purpose.".

(2) The table of sections for subchapter C of chapter 21 of such Code is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 3126. Return and payment by governmental employer.
"Sec. 3127. Short title.".

(b) TREATMENT OF SERVICE UNDER SECTION 218 AGREEMENTS AS EMPLOYMENT PERFORMED BY EMPLOYEES.—

(1) SERVICE TREATED AS EMPLOYMENT.—(A) Section 3121(b)(7) of such Code is amended—

(i) by striking out "; or" at the end of subparagraph (C) and inserting in lieu thereof a comma;

(ii) by striking out the semicolon at the end of subparagraph (D) and inserting in lieu thereof ", or ", and

(iii) by adding after subparagraph (D) the following new subparagraph:

"(E) service included under an agreement entered into pursuant to section 218 of the Social Security Act;".

(B) Section 1402(b) of such Code is amended by striking out "under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or" in the flush sentence immediately following paragraph (2).

(2) INDIVIDUAL PERFORMING SERVICES TREATED AS EMPLOYEE.—(A) Section 3121(d) of such Code is amended by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act; or".

(B) Section 3306(i) of such Code is amended by striking out "subparagraphs (B) and (C) of paragraph (3)" and inserting in lieu thereof "paragraph (3) and subparagraphs (B) and (C) of paragraph (4)".

(c) CONFORMING AMENDMENTS IN SOCIAL SECURITY ACT.—(1) Subsections (e), (h), (i), (j), (q), (r), (s), and (t) of section 218 of the Social Security Act are repealed; and subsections (f), (g), (k), (l), (m), (n), (o), (p), and (u) of such section are redesignated as subsections (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively.

(2)(A) Section 205(c)(1)(D)(i) of such Act is amended by inserting "(as in effect prior to December 31, 1986)" after "section 218(e)".

(B) Section 205(c)(5)(F)(iii) of such Act is amended—

(i) by inserting "(as in effect prior to December 31, 1986)" after "section 218", and

(ii) by inserting "(as so in effect)" after "subsection (q) of such section".

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)", and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-month period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

Subtitle B—Provisions Relating to Public Assistance and Unemployment Taxes

SEC. 10101. MANDATORY PROVISION OF AID WITH RESPECT TO DEPENDENT CHILDREN IN TWO-PARENT FAMILIES.

(a) REQUIREMENT THAT AID BE PROVIDED.—Section 402(a) of the Social Security Act is amended—

(1) by striking out "and" after the semicolon at the end of paragraph (38);

(2) by striking out the period at the end of paragraph (39) and inserting in lieu thereof "; and"; and

(3) by inserting immediately after paragraph (39) the following new paragraph:

"(40) provide that payments of aid will be made under the plan with respect to dependent children of unemployed parents, in accordance with section 407.".

(b) CONFORMING AMENDMENTS.—(1) Section 407(b) of such Act is amended by striking out "(b) The provisions" and all that follows down through "(1) requires" and inserting in lieu thereof the following:

"(b) In providing for the payment of aid under the State's plan approved under section 402 in the case of families which include dependent children within the meaning of subsection (a) of this section, as required by section 402(a)(40), the State's plan—

"(1) shall require".

(2) Section 407(b)(2) of such Act is amended by striking out "provides—" and inserting in lieu thereof "shall provide—".

(c) QUARTERS OF WORK BASED ON EDUCATION OR TRAINING.—(1) Section 407(d)(1) of such Act is amended—

(A) by inserting "(A)" after "means a calendar quarter"; and

(B) by inserting before the semicolon at the end thereof the following: ", or (B) if the State plan so provides (but subject to the last sentence of this subsection), in which such individual (i) was in regular full-time attendance as a student at an elementary or secondary school, (ii) was in regular full-time attendance in a course of vocational or technical training designed to fit him or her for gainful employment, or (iii) participated in an education or training program established under the Job Training Partnership Act".

(2) Section 407(d) of such Act is further amended by adding at the end thereof (after and below paragraph (4)) the following new sentence: "No individual shall be credited during his or her lifetime (for purposes of subsection (b)(1)(C)(i)) with more than 4 'quarters of work' based on attendance in a course or courses of vocational or technical training as described in paragraph (1)(B)(ii) of this subsection.".

(3) Section 407(b)(1)(C)(i) of such Act is amended by inserting after "6 or more quarters of work (as defined in subsection (d)(1))" the following: ", including 2 or more quarters of work as defined in subsection (d)(1)(A),".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective January 1, 1988.

SEC. 10102. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 10103. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 4621(a) of this Act) is amended (effective as provided in section 4621(b))—

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 10104. RATE OF FUTA TAX.

(a) IN GENERAL.—Paragraph (1) of section 3301 of the Federal Unemployment Tax Act is amended by striking out "1976" and inserting in lieu thereof "1989 ".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to remuneration paid after December 31, 1986.

Subtitle C—Provisions Relating to Medicare and Health Programs

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PART 1—PROVISIONS RELATING TO MEDICARE PART A ONLY

SEC. 10201. SETTING PART A DEDUCTIBLE AT $500 FOR 1987.

For purposes of part A of title XVIII of the Social Security Act, and notwithstanding any provision of such part to the contrary, the inpatient hospital deductible (otherwise determined under section 1813(b) of such Act) for 1987 shall be $500. Such amount shall be applied—

(1) to inpatient hospital services furnished in 1987,

(2) in computing, under section 1813(b)(3) of such Act, the coinsurance amount for post-hospital expended care services furnished in 1987, and

(3) in computing, under section 1818(d) of such Act, the monthly premium (under part A of title XVIII of such Act) for months in 1987.

SEC. 10202. APPLICABLE PERCENTAGE INCREASE IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES.

(a) IN GENERAL.—Subclause (II) of section 1886(b)(3)(B)(i) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended to read as follows:

"(II) for fiscal year 1987, 1.0 percent, and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and".

(b) CONFORMING AMENDMENTS.—(1) Section 1886(d)(3)(A) of such Act is amended by striking "and 1986" and inserting ", 1986, 1987, and 1988".

(2) Section 1886(e)(4) of such Act is amended—

(A) by striking "determine for each fiscal year (beginning with fiscal year 1987)" and inserting "recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year", and

(B) by adding at the end the following new sentence: "The percentage change for subsection (d) hospitals and subsection (d) Puerto Rico hospitals may be different from that for other hospitals and may vary among such other hospitals.".

(3) Section 1886(e)(5) of such Act is amended—

(A) by striking "June 1 before each fiscal year (beginning with fiscal year 1986)" and inserting "April 1 before fiscal year 1988 and the June 1 before each subsequent fiscal year", and

(B) by inserting "recommendation or" before "determination" each place it appears.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act, for discharges occurring on or after October 1, 1986.

(d) PROMULGATION OF NEW RATE.—The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act but in no case later than October 1, 1986, for the republication of the determination described in section 1886(e)(5) of the Social Security Act, taking into account the amendments made by this section, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10203. LIMITATION ON PAYMENTS FOR CAPITAL-RELATED COSTS FOR INPATIENT HOSPITAL SERVICES OF DRG HOSPITALS UNDER MEDICARE.

(a) IN GENERAL.—Section 1886(g) of the Social Security Act (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:

"(3)(A) Notwithstanding section 1861(v)(1), in determining the amount of the hospital capital payments (as defined in subparagraph (D)), the Secretary shall provide for a reduction by such percentage (in this section referred to as the 'capital reduction percentage') in such payments as is necessary to provide that the aggregate amount of hospital capital payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1987, in fiscal year 1988, and in fiscal year 1989, does not exceed 110 percent, 120 percent, and 130 percent, respectively, of the aggregate amount of such payments attributable to portions of hospital cost reporting periods occurring in fiscal year 1986, adjusted in accordance with subparagraph (C).

"(B) The Secretary shall determine the capital reduction percentage based upon the best information available before the beginning of the fiscal year involved and interim and final payments shall be made on the basis of such percentage. Such percentage shall not be subject to change after the date it is promulgated in final form.

"(C) In computing the hospital capital payments attributable to portions of cost reporting periods occurring in fiscal year 1986 in the computing the limitation on hospital capital payments under subparagraph (A) attributable to portions of cost reporting periods occurring in—

"(i) fiscal year 1987, there shall be excluded 25 percent,

"(ii) fiscal year 1988, there shall be excluded 50 percent,

"(iii) fiscal year 1989, there shall be excluded 75 percent,

of the amount of the hospital capital payments (attributable to portions of cost reporting periods occuring in fiscal year 1986) that are attributable to a return on equity capital.

"(D) In this paragraph, the term 'hospital capital payments' means the payments that may be made under part A of this title with respect to the allowable capital-related costs (as defined by the Secretary) of inpatient hospital services for subsection (d) hospitals and subsection (d) Puerto Rico hospitals.".

(b) PUBLICATION OF CAPITAL REDUCTION PERCENTAGE.—Section 1886(e)(4) of such Act is amended by inserting before the period at the end the following: "and shall determine for each fiscal year the capital reduction percentage which should be effected under subsection (g)(3) for that fiscal year".

(c) NO ADMINISTRATIVE OR JUDICIAL REVIEW.—Section 1886(d)(7) of such Act is amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(C) the determination of a capital reduction percentage under subsection (g)(3).".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to payments for capital-related costs attributable to portions of cost reporting periods occurring on or after October 1, 1986.

(2) TRANSITION.—The Secretary of Health and Human Services shall cause to have published in the Federal Register, by not later than 30 days after the date of the enactment of this Act or, if earlier, by October 1, 1986, the capital reduction percentage determined under section 1886(g)(3) for payments for capital-related costs attributable to portions of hospital cost reporting periods that occur during fiscal year 1987. In promulgating such percentage for such fiscal year, the provisions of chapter 5 of title 5, United States Code, and of chapter 35 of title 41 of such Code, shall not apply.

SEC. 10204. COVERAGE OF HOSPITALS IN PUERTO RICO UNDER A DRG PROSPECTIVE PAYMENT SYSTEM.

(a) IN GENERAL.—Section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) is amended by adding at the end the following new paragraph:

"(9)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1986, is equal to the sum of—

"(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

"(ii) 25 percent of the average of—

"(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in an urban area, and

"(II) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels.

As used in this section, the term 'subsection (d) Puerto Rico hospital' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

"(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

"(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A)) for the hospital for the cost reporting period beginning in fiscal year 1986 and increase such amount by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1987.

"(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

"(I) excluding an estimate of indirect medical education costs,

"(II) adjusting for variations among hospitals by area in the average hospital wage level, and

"(III) adjusting for variations in case mix among hospitals.

"(iii) The Secretary shall compute an average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

"(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective

payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1987 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this title. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

"(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1988 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

"(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments) or in subparagraph (D)(v) (relating to disproportionate share payments) for subsection (d) Puerto Rico hospitals.

"(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

"(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

"(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

"(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

"(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

"(i) Subparagraph (A) (relating to outlier payments), except that the total amount of additional payments made under this clause in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made under this paragraph for discharges in that year.

"(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

"(iii) Subparagraph (C)(iii) (relating to exceptions and adjustments).

"(iv) Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).

"(v) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).".

(b) CONFORMING AMENDMENTS.—(1) The first sentence of section 1886(d)(5)(C)(i) of such Act is amended by inserting "(other than under paragraph (9))" after "established under this subsection".

(2) The second and third sentences of section 1886(d)(5)(C)(ii) of such Act are each amended by inserting "(other than under paragraph (9))" after "payment amounts under this subsection".

(c) NO RESTANDARDIZATION OF NATIONAL LEVELS TO REFLECT INCLUSION OF PUERTO RICO.—The Secretary of Health and Human Services shall not restandardize or otherwise adjust the national DRG prospective payment rates otherwise determined under section 1886(d) of the Social Security Act to take into account changes in the payments provided to subsection (d) Puerto Rico hospitals under the amendment made by subsection (a).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1986. The Secretary of Health and Human Services shall issue such regulations, by not later than October 1, 1986, as are necessary to implement such amendments in a timely manner, without regard to the provisions of chapter 5 of title 5, United States Code.

SEC. 10205. IMPROVING QUALITY OF CARE WITH RESPECT TO PART A SERVICES.

(a) REFINEMENT OF PROSPECTIVE PAYMENT SYSTEM.—

(1) DEVELOPMENT OF LEGISLATIVE PROPOSAL.—The Secretary of Health and Human Services shall develop and submit to Congress a specific legislative proposal to improve the classification and payment system under section 1886(d) of the Social Security Act (and, as appropriate, the system for payment of outliers under section 1886(d)(5)(A) of such Act) in order to assure that the amount of payment per discharge approximates the cost of medically necessary care provided in an efficient manner for individual patients or classes of patients with similar conditions.

(2) ACCOUNTING FOR SEVERITY OF ILLNESS.—In developing the proposal, the Secretary shall account for variations in severity of illness and case complexity which are not adequately accounted for by the current classification and payment system.

(3) DEADLINE.—The proposal shall be submitted to Congress by not later than 2 years after the date of the enactment of this Act.

(b) REQUIRING NOTICE OF HOSPITAL DISCHARGE RIGHTS.—

(1) REQUIREMENT FOR HOSPITALS TO PROVIDE STATEMENT.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)), as amended by section 10207(e)(6)(A) of this subtitle, is amended—

(A) by striking "and" at the end of subparagraph (J),

(B) by striking the period at the end of subparagraph (K) and inserting ", and", and

(C) by inserting after subparagraph (K) the following new subparagraph:

"(L) in the case of hospitals, to provide to each individual who is entitled to benefits under part A (or to a legally responsible person or persons acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

"(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this title,

"(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

"(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

"(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(L) of the Social Security Act not later than six months after the date of the enactment of this Act. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.

(c) REQUIRING HOSPITALS TO PROVIDE DISCHARGE PLANNING PROCESS.—

(1) REQUIREMENT AS CONDITION OF PARTICIPATION.—Section 1861(e)(6) of the Social Security Act (42 U.S.C. 1395x(e)(6)) is amended—

(A) by inserting "(A)" after "(6)", and

(B) by inserting before the semicolon at the end the following: "and (B) has in place a discharge planning process that meets the requirements of subsection (ee)".

(2) DISCHARGE PLANNING PROCESS DEFINED.—Section 1861 of such Act is further amended by adding at the end the following new subsection:

"Discharge planning process

"(ee)(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this title and if it meets the guidelines and standards established by the Secretary under paragraph (2).

"(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

"(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

"(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

"(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hos-

pital care will be made before discharge and to avoid unnecessary delays in discharge.

"(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

"(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

"(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

"(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel."

(3) EFFECT OF ACCREDITATION.—The second sentence of section 1865(a) of such Act (42 U.S.C. 1395bb(a)) is amended—

(A) by inserting ", requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)," after "the same purpose)", and

(B) by inserting "clause (A) or (B) of" after "comply also with".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to hospitals as of one year after the date of the enactment of this Act.

(d) REVIEW OF STANDARDS FOR MEDICARE CONDITIONS OF PARTICIPATION FOR ASSURING QUALITY OF INPATIENT HOSPITAL SERVICES.—The Secretary of Health and Human Services shall arrange for a study of the adequacy of the standards used for hospitals, for purposes of meeting the conditions of participation under title XVIII of the Social Security Act, in assuring the quality of services furnished in hospitals. The Secretary shall report to Congress on the results of the study by not later than 2 years after the date of the enactment of this Act.

(e) STUDY OF PAYMENT FOR ADMINISTRATIVELY NECESSARY DAYS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine whether a payment should be made (in a budget-neutral manner under title XVIII of such Act to hospitals receiving payments under section 1886(d) of such Act) to a hospital for administratively necessary days, separate from the per-discharge and outlier payments made under such section.

(2) ADMINISTRATIVELY NECESSARY DAYS DEFINED.—In this subsection, an "administratively necessary day" is a day of continued inpatient hospital stay, for an individual entitled to benefits under part A of title XVIII of the Social Security Act, necessitated by a delay in obtaining placement for the individual in a skilled nursing facility.

(3) CONSIDERATIONS IN CONDUCTING STUDY.—In conducting the study, the Secretary shall consider—

(A) the need for such a payment in order to minimize—

(i) the disproportionate financial impact of current law on certain hospitals (or hospitals in certain locations) due to difficulties in arranging for appropriate post-hospital care, such as difficulties resulting from a shortage of beds in skilled nursing facilities where those hospitals are located and from the source of payment for such care, and

(ii) the risk of inappropriate discharge to a non-institutional or inappropriate institutional setting of individuals who need post-hospital services in a skilled nursing facility, and

(B) the administrative mechanisms that can be used to prevent inappropriate payments for administratively necessary days.

(4) REPORT ON STUDY.—The Secretary shall report to Congress on the results of the study not later than January 1, 1988.

(f) CONTINUING OF FAVORABLE PRESUMPTION OF WAIVER OF LIABILITY FOR SKILLED NURSING FACILITIES, HOME HEALTH AGENCIES, AND HOSPICE PROGRAMS.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp) is amended by adding at the end the following new subsection:

"(f)(1)(A) A skilled nursing facility which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(B) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(C) A hospice program which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) with respect to denials of coverage by reason of section 1862(a)(1) or (9).

"(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2), including any of the following:

"(A) Notice by the fiscal intermediary of the fact that payment may not be made under this title with respect to the services.

"(B) In the case of a skilled nursing facility, the committee or group responsible for the conduct of utilization review for the facility has informed the facility that payment may not be made under this title with respect to the services.

"(C) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

"(3) The requirements of this paragraph are as follows:

"(A) The facility, agency, or program complies with requirements of the Secretary under this title respecting timely submittal of bills for payment and medical documentation.

"(B) The facility, agency, or program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this title.

"(4) The requirement of this paragraph is that, on the basis of bills submitted during the previous quarter, the rate of denial of bills by reason of section 1862(a)(1) or (9) for—

"(A) a skilled nursing facility does not exceed 5 percent, computed based on days of post-hospital extended care services billed,

"(B) a home health agency does not exceed 2.5 percent, computed based on visits for home health services billed, or

"(C) a hospice program does not exceed 2.5 percent, computed based on visits for hospice care billed.

"(5) The Secretary shall report annually to Congress—

"(A) information on the frequency and distribution (by type of provider) of denials referred to in paragraph (4), including—

"(i) the reasons for such denials,

"(ii) the extent to which payments were nonetheless made because of this section, and

"(iii) the rate of reversals of such denials, and

"(B) such other information as may be appropriate to evaluate the appropriateness of the percentage standards established under paragraph (4).

"(6) In this subsection, the term 'fiscal intermediary' means, with respect to a skilled nursing facility, home health agency, or hospice program an agency or organization with an agreement under section 1816 with respect to the facility, agency, or program.".

(2) REPEALING DUPLICATIVE PROVISIONS.—Section 9205 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and subsection (c) of section 9126 of such Act, are repealed.

(3) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to services furnished on or after the date of the enactment of this Act, and before October 1, 1989.

(B) The amendments made by paragraph (1) shall apply to hospice care furnished (i) on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act and (ii) before October 1, 1989.

(g) EXTENSION OF WAIVER OF LIABILITY PROVISIONS TO CERTAIN COVERAGE DENIALS FOR HOME HEALTH SERVICES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsection (f), is further amended—

(A) in subsection (a)(1), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(B) in the first sentence of subsection (a), by inserting "and as though the coverage denial described in subsection (g) had not occurred" before the period at the end;

(C) in the third sentence of subsection (a), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(D) in subsection (c), by inserting "or by reason of a coverage denial described in subsection (g)" after "section 1862(a) (1) or (9)";

(E) in subsection (f)(1)(B)—

(i) by inserting "(i)" after "applicable requirements", and

(ii) by inserting before the period at the end the following: "or (ii) of paragraphs (3) and (5) shall be presumed to meet the requirement of subsection (a)(2) with respect to any coverage denial described in subsection (g)";

(F) in subsection (f)—

(i) in paragraph (5), by striking "paragraph (4)" each place it appears and inserting "paragraphs (4) and (5)",

(ii) by redesignating paragraphs (5) and (6) as paragraph (6) and (7), respectively, and

(iii) by inserting after paragraph (4) the following new paragraph:

"(5) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) does not exceed 2.5 percent, computed based on visits for home health services billed."; and

(G) by adding at the end the following new subsection:

"(g) The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1814(a)(2)(C) or section 1835(a)(2)(A) in that the individual—

"(1) is or was not confined to his home, or

"(2) does or did not need skilled nursing care on an intermittent basis or physical, speech, or occupational therapy."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to services furnished on or after the first day of the first month that begins more than 90 days after the date of the enactment of this Act; except that the amendments made by paragraphs (1)(E) and (1)(F)(iii) shall not apply to services furnished on or after October 1, 1989.

(h) DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT.—

(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

(A) evaluates—

(i) the functional capacity of an individual,

(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

(iii) the social and familial resources available to the individual to meet those requirements; and

(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than 1 year after the date of the enactment of this Act, on the instrument or instruments developed under this section. The report shall include an evaluation of the advantages and disadvantages of using the instrument or instruments as the basis for determining whether payment should be made for post-hospital extended care services and home health services provided to individuals entitled to benefits under part A of title XVIII of the Social Security Act.

(i) EXPEDITED REVIEW BY FISCAL INTERMEDIARIES.—

(1) IN GENERAL.—Section 1879 of the Social Security Act (42 U.S.C. 1395pp), as amended by subsections (f) and (g), is further amended by adding at the end the following new subsection:

"(h) The Secretary shall develop procedures to expedite the determination of whether initial claims submitted for post-hospital extended care services, home health services, and hospice care provided (or to be provided) to an individual may be reimbursed under this title, so as to minimize the time between (1) when the provider first provides the services to the individual, and (2) when the provider first receives notice of an initial determination on whether or not payment may be made under this title for some or all of the services provided the individual."

(2) EFFECTIVE DATE.—The Secretary of Health and Human Services shall provide for the expedited procedures described in section 1879(h) of the Social Security Act not later than one year after the date of the enactment of this Act.

(j) INCLUDING IN ANNUAL REPORTS ON PROSPECTIVE PAYMENT SYSTEM INFORMATION ON QUALITY OF POST-HOSPITAL CARE.—

(1) IN GENERAL.—Section 603(a)(2) of the Social Security Amendments of 1983 is amended—

(A) by striking "1987" in subparagraph (A) and inserting "1989", and

(B) by adding at the end the following new subparagraph:

"(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

"(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act,

"(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act) from receiving appropriate post-hospital services covered under such title, and

"(iii) information on reconsiderations and appeals taken under title XVIII of such Act with respect to payment for post-hospital services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1)(B) shall apply to reports for years beginning with 1986.

(k) PRIOR AUTHORIZATION DEMONSTRATION PROJECT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration program concerning prior authorization for post-hospital extended care services and home health services furnished under part A of title XVIII of the Social Security Act.

(2) SCOPE.—The program shall include at least four projects and shall be implemented by not later than July 1, 1987.

(3) CONSULTATION.—The program shall be developed in consultation with an advisory panel that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

(4) EVALUATION AND REPORT.—The Secretary shall evaluate the demonstration program conducted under this subsection and shall report to Congress on such evaluation no later than January 1, 1989. Such evaluation and report shall address—

(A) the administrative and program costs for prior authorization across demonstration projects and in comparison to administrative and program costs under the current system of retroactive review, including costs for uncovered services paid under the waiver of liability which would not be incurred under prior authorization;

(B) impact of prior authorization on access to and availability of extended care services and home health services in comparison to the current system (including costs to providers) and on timely discharge of hospital inpatients; and

(C) accuracy and associated cost savings of payment determinations and rates of claim reversals under prior authorization versus the current system.

(5) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Hospital Insurance Trust Fund under section 1817 of the Social Security Act. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection.

(6) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.

SEC. 10206. OFF-BUDGET TREATMENT OF FEDERAL HOSPITAL INSURANCE TRUST FUND IN FISCAL YEAR 1987.

(a) EFFECTIVE IN FISCAL YEAR 1987.—Section 710 of the Social Security Act (as amended by section 261 of Public Law 99-177) is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) The receipts and disbursements of the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

"(2) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.", and

(2) in subsection (c), by striking "or the Federal Disability Insurance Trust Fund, or for payments from either" and inserting ", the Federal Disability Insurance Trust Fund, or the Federal Hospital Insurance Trust Fund, or for payments from any".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to fiscal years beginning after September 30, 1986, and ending before October 1, 1992.

SEC. 10207. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART A.

(a) ONE-YEAR EXTENSION OF PASS-THROUGH FOR COSTS OF CERTIFIED REGISTERED NURSE ANESTHETISTS.—Section 2312(c) of the Deficit Reduction Act of 1984 is amended by striking "October 1, 1987" and inserting "October 1, 1988".

(b) 4-YEAR DESIGNATION PERIOD FOR RURAL REFERRAL CENTERS.—If the Secretary of Health and Human Services classifies or has classified a hospital located in a rural area as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act, the Secretary shall not terminate or change such classification before the end of the 4th cost reporting period for which the classification is in effect.

(c) TEMPORARY WAIVER OF INPATIENT LIMITATIONS FOR THE CONNECTICUT HOSPICE, INC.—With respect to the Connecticut Hos-

pice, Inc., for hospice care provided before October 1, 1988, the reference in section 1861(dd)(2)(A)(iii) of the Social Security Act (42 U.S.C. 1395x(dd)(2)(A)(iii)) to "20 percent" is deemed a reference to "50 percent".

(d) MASSACHUSETTS MEDICARE REPAYMENT.—The Secretary of Health and Human Services shall not, on or after the date of the enactment of this section and before January 1, 1988, recoup from, or otherwise reduce payments to, hospitals in the State of Massachusetts because of alleged overpayments to such hospitals under part A of title XVIII of the Social Security Act which occurred during the period of the State-wide hospital reimbursement demonstration project conducted in that State, between October 1, 1982, and June 30, 1986, under section 402 of the Social Security Amendments of 1967 and section 222 of the Social Security Amendments of 1972.

(e) PART A COBRA TECHNICAL CORRECTIONS.—

(1) CLARIFICATION OF INDIRECT MEDICAL EDUCATION COSTS LANGUAGE.—(A) Paragraph (2)(C)(i) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww) is amended by striking "(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)".

(B) Paragraph (3)(A) of such subsection is amended by adding at the end the following: "If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.".

(C) Clause (ii) of paragraph (3)(C) of such subsection is amended to read as follows:

"(ii) REDUCING FOR SAVINGS FROM AMENDMENT TO INDIRECT TEACHING ADJUSTMENT FOR DISCHARGES AFTER SEPTEMBER 30, 1986.—The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

"(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

"(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).".

(D)(i) Except as provided in clause (ii), the amendments made by this paragraph apply to discharges occurring on or after October 1, 1986.

(ii) The amendments made by this paragraph shall not be first applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (incorporating the amendments made by paragraph (2) of this subsection) are also being applied.

(2) CLARIFICATION OF DISPROPORTIONATE SHARE LANGUAGE.—(A) Paragraph (2)(C) of subsection (d) of section 1886 of the Social Security Act (42 U.S.C. 1395ww), as amended by section 9105(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA") is amended—

(i) by adding "and" at the end of clause (ii),

(ii) by striking ", and" at the end of clause (iii) and inserting a period, and

(iii) by striking clause (iv).

(B) Paragraph (3)(C) of such subsection is amended by adding at the end the following:

"(iii) REDUCING FOR DISPROPORTIONATE SHARE PAYMENTS.—The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.".

(C) Paragraph (5)(F)(vi)(I) of such subsection is amended—

(i) by striking "supplementary" and inserting "supplemental", and

(ii) by striking "fiscal year" and inserting "period".

(D) The amendments made by subparagraph (C) apply to discharges occurring on or after May 1, 1986, and the amendments made by subparagraphs (A) and (B) apply to discharges occurring on or after October 1, 1986.

(3) CLARIFICATION THAT ALL MEDICARE PARTICIPATING HOSPITALS ARE REQUIRED TO MEET EMERGENCY CARE REQUIREMENTS.—Section 1867(e)(3) of the Social Security Act (42 U.S.C. 1395dd(e)(3)), as inserted by section 9121(b) of COBRA, is amended by striking "and has, under the agreement, obligated itself to comply with the requirements of this section".

(4) APPROPRIATE ANNUAL PERIODS FOR SKILLED NURSING FACILITY PROSPECTIVE PAYMENTS.—(A) Section 1888(d)(1) of the Social Security Act (42 U.S.C. 1395yy(d)(1)), as added by section 9126(a) of COBRA, is amended by striking "fiscal year" each place it appears and inserting "cost reporting period".

(B) Section 1888(d)(4) of such Act is amended—

(i) in the first sentence, by striking "each fiscal year" and inserting "cost reporting periods beginning in a fiscal year", and

(ii) in the second sentence, by striking "fiscal year" and all that follows up to the period and inserting "cost reporting period no later than 30 days before the beginning of that period".

(C) Section 9126(d)(1) of COBRA is amended by striking "fiscal years" and inserting "cost reporting periods".

(D) The amendments made by subparagraphs (A) and (B) apply to cost reporting periods beginning on or after October 1, 1986.

(5) TREATMENT OF CERTAIN STATE AND LOCAL CAMPAIGN WORKERS WITH RESPECT TO THE HOSPITAL INSURANCE TAX.—(A) Section 3121(u)(2)(B)(ii) of the Internal Revenue Code of 1954 is amended—

(i) by striking "or" at the end of subclause (III),

(ii) by striking the period at the end of subclause (IV) and inserting ", or", and

(iii) by adding at the end the following:

"(V) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100."

(B) Section 210(p)(2) of the Social Security Act (42 U.S.C. 410(p)(2)) is amended—

(i) by striking "or" at the end of subparagraph (C),

(ii) by striking the period at the end of subparagraph (D) and inserting ", or", and

(iii) by adding at the end the following:

"(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $100.".

(C) The amendments made by this paragraph shall apply to services performed after March 31, 1986.

(6) MISCELLANEOUS PROVISIONS.—(A) Paragraph (1) of section 1866(a) of the Social Security Act (42 U.S.C. 1395cc(a)) is amended—

(i) by striking the "and" inserted at the end of subparagraph (I) by section 9122(a)(2) of COBRA,

(ii) by striking the period at the end of subparagraph (J) and inserting ", and", and

(iii) by redesignating the subparagraph (I) inserted by section 9403(b) of COBRA as subparagraph (K) and transferring and inserting such subparagraph after subparagraph (J).

(B) The amendments made by subparagraph (A) are effective as if they had been included in the enactment of COBRA.

(C) Effective on the date of the enactment of Public Law 99-107, in applying section 5(a) of such Act, a cost reporting period beginning on September 28, 29, or 30 is deemed to begin on October 1 and any reference to September 30 is deemed a reference to September 27.

PART 2—PROVISIONS RELATING TO PARTS A AND B

SEC. 10221. ELIMINATION OF PERIODIC INTERIM PAYMENT SYSTEM (PIP) FOR DRG HOSPITALS AND PROMPT PAYMENT FOR MEDICARE PROVIDERS.

(a) ELIMINATION OF PIP FOR PPS HOSPITALS.—

(1) IN GENERAL.—Section 1815(a) of the Social Security Act (42 U.S.C. 1395g(a)) is amended—

(A) by inserting "(1)" after "(a)", and

(B) by adding at the end the following new paragraph:

"(2)(A) Except as provided in subparagraph (B), the Secretary shall provide payment under this part for inpatient hospital service furnished by a subsection (d) hospital (as defined in section 1886(d)(1)(B), and including a distinct psychiatric or rehabilitation unit of such a hospital) only on the basis of actual bills submitted by the hospital and not on a periodic interim payment basis.

"(B) Subparagraph (A) shall not apply, and the Secretary shall permit payment on a periodic interim payment basis—

"(i) to a subsection (d) hospital during the period it is—

"(I) being paid additional amounts under section 1886(d)(5)(F) (relating to disproportionate share payments), or

"(II) a sole community hospital (as defined in section 1886(d)(5)(C)(ii)); and

"(ii) to a hospital which is receiving payment under a State hospital reimbursement system under section 1814(b)(3) or 1886(c), if payment on a periodic interim payment basis is an integral part of such reimbursement system.

"(C) In the case of a subsection (d) hospital which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary shall make available appropriate accelerated payments.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective with respect to payments for discharges occurring on or after August 1, 1987.

(b) REQUIRING TIMELY PAYMENT OF PROPERLY SUBMITTED MEDICARE CLAIMS UNDER PART A.—

(1) IN GENERAL.—Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(A) by inserting "(1)" after "(c)", and

(B) by adding at the end the following new paragraph:

"(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment under this part is not made on a periodic interim payment basis under section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the agency or organization shall notify the entity submitting the claim, within 22 calendar days after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the agency or organization will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for intermediary agreements under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

(c) PROMPT PAYMENT FOR MEDICARE PHYSICIANS AND SUPPLIERS.—

(1) IN GENERAL.—Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c)) is amended—

(A) by inserting "(1)" after "(c)", and

(B) by adding at the end the following new paragraph:

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall that, in cases of claims for which payment under this part is not made on a periodic interim payment basis described in section 1815(a)—

"(i) if payment is not made on or before the 22nd calendar day (or the 11th calendar day, the case of a claim for services furnished by a participating physician or supplier) after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) the carrier shall notify the entity submitting the claim, within 22 calendar days (or within 11 calendar days, in the case of a claim for services furnished by a participating physician or supplier) after the date the claim is received, of any defect, impropriety, or circumstance that prevents the claim from being treated as a clean claim;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be made (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is made or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs to carry out this part (other than such amounts as are made available for carrier contracts under this section).

"(B) In this paragraph, the term 'clean claim' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to claims received on or after October 1, 1987.

SEC. 10222. HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.

(a) REPEAL OF "2 FOR 1" CONVERSION REQUIREMENT FOR CERTAIN HEALTH MAINTENANCE ORGANIZATIONS.—Section 114(c)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 is amended by adding at the end the following new subparagraph:

"(E) The preceding provisions of this paragraph shall not apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.".

(b) REQUIRING THE PROVISION OF AN EXPLANATION OF ENROLLEE RIGHTS.—

(1) IN GENERAL.—Subsection (c)(3) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) is amended by adding at the end the following new subparagraph:

"(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

"(i) the enrollee's rights to benefits from the organization,

"(ii) the restrictions on payments under this title for services furnished other than by or through the organization,

"(iii) out-of-area coverage provided by the organization,

"(iv) the organization's coverage of emergency services and urgently needed care, and

"(v) appeal rights of enrollees.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.

(c) RESTRICTING WAIVER OF REQUIREMENT OF 50 PERCENT NON-MEDICARE ENROLLMENT.—

(1) RESTRICTION ON NEW WAIVERS.—Paragraph (2) of subsection (f) of such section is amended by striking "if" and all that follows through the end and inserting the following: "if more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this title or under a State plan approved under title XIX.".

(2) SANCTIONS FOR NONCOMPLIANCE.—Such subsection is further amended by adding at the end the following new paragraph:

"(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section with the organization after the date the Secretary notifies the organization of such noncompliance.".

(3) EFFECTIVE DATES.—

(A) NEW RESTRICTION.—The amendment made by paragraph (1) shall apply to modifications and waivers granted after the date of the enactment of this Act.

(B) SANCTIONS FOR NONCOMPLIANCE.—The amendment made by paragraph (2) shall take effect on the date of the enactment of this Act.

(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization described in subparagraph (D), the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization—

(i) has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver, or

(ii) has not complied with such schedule, the Secretary may provide for the suspension of enrollment, under section 1876 of the Social Security Act, of individuals with the organization after the date the Secretary notifies the organization of such noncompliance.

(D) ORGANIZATION COVERED.—An eligible organization described in this subparagraph is an eligible organization that—

(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act, a modification or waiver of the requirement imposed by paragraph (1) of that section, but

(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

and includes a successor to such an organization.

(d) REQUIRING PROMPT PAYMENT OF CLAIMS.—

(1) IN GENERAL.—Subsection (g) of such section is amended by adding at the end the following new paragraph:

"(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for covered services and supplies furnished to individuals enrolled under this section, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.

"(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the

amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to risk-sharing contracts under section 1876 of the Social Security Act with respect to services furnished on or after July 1, 1987.

(e) REQUIRING ACCESS TO FINANCIAL RECORDS AND DISCLOSURE OF INTERNAL LOANS.—

(1) IN GENERAL.—Subsection (i)(3)(C) of such section is amended—

(A) by striking "and" at the end,

(B) by inserting "(i)" after "(C)", and

(C) by adding at the end the following new clauses:

"(ii) shall require the organization to provide and supply information (described in section 1866(b)(2)(C)(ii)) in the manner such information is required to be provided or supplied under that section;

"(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to contracts as of January 1, 1987.

(f) AUTHORITY TO IMPOSE CIVIL MONEY PENALTIES.—Subsection (i) of such section is amended by adding at the end the following new paragraph:

"(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $2,000 for each such failure.

"(B) The provisions of section 1128A (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.".

(g) STUDY OF AAPCC AND ACR.—The Secretary of Health and Human Services shall provide, through contract with an appropriate organization, for a study of the methods by which—

(1) the adjusted average per capita cost ("AAPCC", as defined in section 1876(a)(4) of the Social Security Act) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and

(2) the adjusted community rate ("ACR", as defined in section 1876(e)(3) of such Act) can be refined.

The Secretary shall submit to Congress, by not later than January 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR can be refined.

(h) ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT A LOCAL SOCIAL SECURITY OFFICE.—The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.

SEC. 10223. PROVISIONS RELATING TO IMPROVEMENT OF QUALITY OF CARE.

(a) PROVIDER REPRESENTATION OF BENEFICIARIES ON APPEALS AND PERMITTING APPEAL OF CERTAIN TECHNICAL DENIALS.—

(1) PERMITTING PROVIDER REPRESENTATION OF BENEFICIARIES.—Section 1869(b)(1) of the Social Security Act (42 U.S.C. 1395ff(b)(1)) is amended by adding at the end the following: "Sections 206(a), 1102, and 1871 shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Such a person cannot represent a beneficiary with respect to the issue described in section 1879(a)(2) unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal.".

(2) PERMITTING REVIEW OF TECHNICAL DENIALS.—Section 1869 of such Act is further amended—

(A) in subsection (a), by inserting ", the amount of benefits with respect to home health services under part B, and any other determination with respect to a claim for benefits under part A" after "part A,", and

(B) in subsection (b)(1)—

(i) by striking "or" at the end of subparagraph (B),

(ii) by inserting ", or" at the end of subparagraph (C), and

(iii) by inserting after subparagraph (C) the following new subparagraph:

"(D) any other denial (other than under part B of title XI) of a claim for benefits under part A or a claim for benefits with respect to home health services under part B,".

(3) EFFECTIVE DATE.—The amendments made by this subsection take effect on the date of the enactment of this Act.

(b) PROHIBITION OF CERTAIN PHYSICIAN INCENTIVE PLANS.—

(1) MAKING CERTAIN PLANS SUBJECT TO CIVIL MONETARY PENALTIES.—Section 1128A of the Social Security Act (42 U.S.C. 1320a-7a) is amended—

(A) by striking "subsection (a)" each place it appears and inserting "subsection (a) or (b)",

(B) in subsection (a)(1), by striking "(h)(1)" and "(h)(2)" and inserting "(i)(1)" and "(i)(2)", respectively,

(C) in subsection (f), by striking "subsection (d)" and inserting "subsection (e)",

(D) by redesignating subsections (b) through (h) as subsections (c) through (i), respectively, and

(E) by inserting after subsection (a) the following new subsection:

"(b)(1) If a hospital or an eligible organization with a risk-sharing contract under section 1876 knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

"(A) are entitled to benefits under part A or part B of title XVIII,

"(B) in the case of an eligible organization, are enrolled with the organization, and

"(C) are under the direct care of the physician,

the hospital or organization shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

"(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for individual described in such paragraph with respect to whom the payment is made."

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to—

(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act, and

(B) payments by eligible organizations occurring on or after January 1, 1988.

(3) STUDY.—The Secretary of Health and Human Services shall report to Congress, not later than April 1, 1987, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians. The report shall—

(A) review the type of incentive arrangements in common use,

(B) evaluate their potential to pressure improperly physicians to reduce or limit services in a medically inappropriate manner, and

(C) make recommendations concerning providing for an exception, to the prohibition contained in section 1128A(b) of the Social Security Act, for incentive arrangements that may be used by such organizations and plans to encourage efficiency in the utilization of medical and other services but that do not have a substantial potential for adverse effect on quality.

(d) STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall arrange for a study to serve as the basis for establishing a strategy for reviewing and assuring the quality of care for which payment may be made under title XVIII of the Social Security Act.

(2) ITEMS INCLUDED IN STUDY.—Among other items, the study shall—

(A) identify the appropriate considerations which should be used in defining "quality of care";

(B) evaluate the relative roles of structure, process, and outcome standards in assuring quality of care;

(C) consider whether criteria and standards for defining and measuring quality of care should be developed and, if so, how this should be done;

(D) evaluate the adequacy and focus of the current methods for measuring, reviewing, and assuring quality of care;

(E) evaluate the current research on methodologies for measuring quality of care, and suggest areas of research needed for further progress;

(F) evaluate the adequacy and range of methods available to correct or prevent identified problems with quality of care;

(G) review mechanisms available for coordinating and supervising at the national level quality review and assurance activities; and

(H) develop general criteria which may be used in establishing priorities in the allocation of funds and personnel in reviewing and assuring quality of care.

(3) REPORT.—The Secretary shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on the study. Such report shall address the items described in paragraph (2) and shall include recommendations with respect to

strengthening quality assurance and review activities for services furnished under the medicare program.

(4) ARRANGEMENTS FOR STUDY.—(A) The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in this subsection. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(B) In developing plans for the conduct of the study, the Secretary shall assure that consumer and provider groups, peer review organizations, the Joint Commission on Accreditation of Hospitals, professional societies, and private purchasers of care with experience and expertise in the monitoring of the quality of care are consulted.

SEC. 10224. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PARTS A AND B.

(a) TREATMENT OF GROUP PURCHASING VENDOR AGREEMENTS.—

(1) IN GENERAL.—Section 1877(b)(3) of the Social Security Act (42 U.S.C. 1395nn(b)(3)) is amended—

(A) by striking "and" at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting "; and", and

(C) by adding at the end the following:

"(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of providers of services if—

"(i) the person has a written contract, with each such vendor and each such provider of services, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage (not to exceed 3 percent) of the value of the purchases made by each such provider under the contract, and

"(ii) the person discloses to each such provider of services the amount received from each such vendor with respect to purchases made by or on behalf of the provider.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) apply to payments made before, on, or after the date of the enactment of this Act.

(b) EXTENSION AND CLARIFICATION OF COMPETITIVE CONTRACTING AUTHORITY.—Section 2326(a) of the Deficit Reduction Act of 1984 is amended—

(1) by striking "of the fiscal years 1985 and 1986" and inserting "fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1989)", and

(2) by inserting "or fixed price" after "competitive bidding" each place it appears.

(c) COBRA TECHNICAL CORRECTIONS.—

(1) CORRECTION CONCERNING TRANSITION PERIOD FOR FOREIGN MEDICAL GRADUATES IN DETERMINING PAYMENTS FOR DIRECT GRADUATE MEDICAL EDUCATION COSTS.—The matter in section 1886(h)(4)(E)(ii) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(E)(ii)), added by 9202(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (in this section referred to as "COBRA"), preceding subclause (I) is amended by inserting "but before July 1, 1987," after "1986,".

(2) ANNOUNCEMENT, RATHER THAN PUBLICATION, OF HMO AND CMP PAYMENT RATES.—(A) The matter in section 1876(a)(1)(A) of the Social Security Act (42 U.S.C. 1395mm(a)(1)(A)) preceding clause (i), as amended by section 9211(d) of COBRA, is amended by striking "publish" and inserting "announce (in a manner intended to provide notice to interested parties)".

(B) The amendment made by subparagraph (A) shall apply to determinations of per capita payment rates for 1987 and subsequent years.

(3) PENALTIES FOR BILLING FOR ASSISTANTS AT SURGERY FOR CERTAIN CATARACT OPERATIONS.—(A) Section 1842(k) of the Social Security Act (42 U.S.C. 1395u(k)), added by section 9307(c) of COBRA, is amended by inserting "presents or causes to be presented a claim or" after "willfully" each place it appears.

(B) The amendment made by subparagraph (A) shall apply to claims presented after the date of the enactment of this Act.

(4) TEMPORARY USE OF CARRIER PRE-PAYMENT SCREENING AS A SUBSTITUTE FOR PRE-PROCEDURE REVIEW.—For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.

(5) EXTENSION OF CONTINUATION PERIOD OF ACCESS: MEDICARE DEMONSTRATION PROJECT.—Section 9221(a) of COBRA is amended by striking "September 30, 1986" and inserting "July 31, 1987".

(6) MISCELLANEOUS PROVISIONS.—(A) Section 9127(b) of COBRA is amended by inserting ", except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year" after "years".

(B) Section 9202(j) of COBRA is amended by inserting "or section 402 of the Social Security Amendments of 1967" after "section 1886(c) of the Social Security Act".

(C) Section 1842(h) of the Social Security Act (42 U.S.C. 1395u(h)), as amended by section 9301(c) of COBRA, is amended—

(i) in paragraph (5), as redesignated by section 9301(c)(3)(D) of COBRA, by striking "such" each place it appears, and

(ii) in paragraph (6), as so redesignated, by striking "the the" and inserting "the".

(D) Section 9301(c)(5) of COBRA is amended by striking "1842(b)(7)" and inserting "1842(h)(7)".

(E) Section 1842(b)(8) of the Social Security Act, as added by section 9304(a) of COBRA, is amended—

(i) in subparagraph (A), by inserting "by carriers" after "to be used", and

(ii) in subparagraph (B), by inserting "by carriers" after "be considered".

(F) The amendments made by this paragraph are effective as if they had been included in the enactment of COBRA.

(d) LIMITATION ON AUTHORITY TO ISSUE FINAL REGULATIONS AND INSTRUCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as may be permitted under paragraph (2) with respect to a regulation described in that paragraph, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act and before September 15, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000.

(2) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE SEPTEMBER 1, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (4)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before September 1, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act. Any regulation published in violation of the previous sentence before the date of the enactment of this Act is void and of no effect.

(3) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (5)).

(4) EXCEPTION.—Paragraph (2) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by section 10203 (relating to limitation on payments for capital-related costs for inpatient hospital services of DRG hospitals under medicare).

(5) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term "capital-related costs" means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act, from the term "operating costs of inpatient hospital services" (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.

PART 3—PROVISIONS RELATING TO MEDICARE PART B

SEC. 10231. EXTENSION OF PREMIUM PAYMENT PROVISION THROUGH 1989.

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (e), by striking "1989" and inserting "1990" each place it appears;

(2) in subsection (f)(1), by striking "or 1987" and inserting ", 1987, or 1988"; and

(3) in subsection (f)(2), by striking "or 1988" and inserting ", 1988, or 1989".

SEC. 10232. PAYMENT FOR PHYSICIANS' SERVICES, RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS, AND INCENTIVES FOR PHYSICIAN PARTICIPATION.

(a) DETERMINATION OF MAXIMUM ALLOWABLE PREVAILING CHARGES FOR PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842(b)(4)(A) of the Social Security Act (42 U.S.C. 1395u(b)(4)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating and non-

participating physicians, respectively, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating and nonparticipating physicians, respectively, as having been justified by economic changes.

"(iv) Beginning with 1987, the percentage increase in the MEI (as defined in subparagraph (E)(ii)) shall be the same for nonparticipating physicians as for participating physicians.".

(2) CONFORMING AMENDMENT.—Section 1842(b)(4)(C) of such Act is amended—

(A) by striking "(i)" after "(C)", and

(B) by striking clause (ii).

(3) DEFINITIONS.—Section 1842(b)(4) of such Act is further amended by adding at the end the following new subparagraph:

"(E) In this section:

"(i) The term 'participating physician' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1)), and the term 'nonparticipating physician' refers, with respect to the furnishing of services, a physician who at the time of furnishing the services is not a participating physician.

"(ii) The term 'percentage increase in the MEI' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of paragraph (3)) applicable to such services furnished as of the first day of that year.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(b) 1 PERCENT BONUS FOR PARTICIPATING PHYSICIANS.—Section 1842(b)(4)(A)(ii) of such Act is amended by adding at the end the following new subclause:

"(III) In applying the percentage increase in the MEI for physicians' services furnished by a participating physician during each year after 1986, the Secretary shall provide a bonus of 1 percentage point in the percentage increase otherwise determined. Such a bonus for each year shall apply to physicians' services furnished only during the year and not in the calculation of payments for any subsequent year.".

(c) LIMIT ON ACTUAL CHARGES FOR NONPARTICIPATING PHYSICIANS.—

(1) IN GENERAL.—Section 1842(j)(1) of such Act is amended—

(A) by inserting "(A)" after "(j)(1)", and

(B) by adding at the end the following new subparagraph:

"(B) During any period, on or after January 1, 1987, during which a physician is a nonparticipating physician, the Secretary shall monitor each such physician's actual charges for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills for such services actual charges in excess of the charges permitted under subparagraph (C), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

"(C) For physicians' services furnished by a physician to individuals enrolled under this part—

"(i) during 1987, in the case of such services for which the physician—

"(I) has actual charges for the calendar quarter beginning on April 1, 1984, the limit is the physician's actual charges for such services furnished during such quarter increased by the sum of the percentage increase in the MEI (as defined in subsection (b)(4)(E)) for 1987 and 1 percentage point, or

"(II) has no actual charges for such calendar quarter, the limit is the 50th percentile of the customary charges (weighted by frequency of procedure) for the procedure performed by nonparticipating physicians in the locality during the 12-month period ending June 30, 1986, increased by the sum of the percentage increase in the MEI for 1987 and 1 percentage point; and

"(ii) during a subsequent year, the limit is the maximum actual charges permitted under this subparagraph for the previous year increased by the percentage increase in the MEI for that subsequent year.".

(2) PROVISION OF ACTUAL CHARGE INFORMATION BY CARRIER TO NONPARTICIPATING PHYSICIANS.—Section 1842(b)(3) of such Act is amended—

(A) by striking "and" at the end of subparagraph (E),

(B) by inserting "and" at the end of subparagraph (F), and

(C) by inserting after subparagraph (F) the following new subparagraph:

"(G) will provide such information to nonparticipating physicians as is available to enable the physicians to determine the maximum actual charges permitted under subsection (j)(1)(C);".

(3) CONFORMING AMENDMENT.—Section 1842(b)(4)(D) is amended by adding at the end the following new clause:

"(iv) In determining the customary charges for physicians' services furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such charges for services furnished during such previous year that exceeds the limit on actual charges imposed under subsection (j)(1)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after January 1, 1987.

(d) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.

(e) RESTRICTIONS ON REASONABLE CHARGE LIMITATIONS.—

(1) IN GENERAL.—Section 1842(b)(8) of the Social Security Act (42 U.S.C. 1395u(b)(8)) is amended by adding at the end the following: "In the case of items and services other than physicians' services, a carrier shall only provide, in the process of calculating the prevailing charge for specific items and services, for not considering charges in specific instances in which the charges, in comparison with the charges for similar items and services, are grossly excessive or deficient. Nothing in this paragraph or this Act shall be construed as authorizing the Secretary, through regulations, guidelines, instructions, or otherwise, to require carriers to reduce payment amounts under this part for specific items and services for which the Secretary has made a specific determination that the payment amounts or charges are excessive.".

(2) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—The Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, shall submit to Congress, by not later than April 1, 1987, recommendations concerning payment reductions under part B of title XVIII of the Social Security Act for overpriced items and services. Such recommendations shall include the specific payment reductions recommended and measures to assure that such reductions in payment do not result in corresponding increases in out-of-pocket costs to medicare beneficiaries.

(f) RECRUITING.—

(1) CARRIER RESPONSIBILITY.—Section 1842(b)(3) of such Act, as amended by subsection (c)(2), is further amended—

(A) by striking "and" at the end of subparagraph (F),

(B) by inserting "and" at the end of subparagraph (G), and

(C) by inserting after subparagraph (G) the following new subparagraph:

"(H) if it makes determinations or payments with respect to physicians' services, will implement—

"(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

"(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;".

(2) MEASURING CARRIER PERFORMANCE.—The Secretary of Health and Human Services shall provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act.

(3) CARRIER BONUSES FOR GOOD PERFORMANCE.—Of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act, the Secretary of Health and Human Services shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians.

(4) EFFECTIVE DATES.—

(A) CARRIER RESPONSIBILITY.—The amendment made by paragraph (1) shall be effective for contracts under section 1842 of the Social Security Act as of October 1, 1987.

(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under paragraph (2) by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under paragraph (3) not later than April 1, 1988, to reflect performance of carriers during November 1987.

(g) DIRECTORIES OF PARTICIPATING PHYSICIANS.—

(1) REQUIRING DISTRIBUTION TO MEDICARE BENEFICIARIES.—Section 1842(h)(6) of the Social Security Act (42 U.S.C. 1395u(h)(6)) is amended—

(A) in the second sentence—

(i) by inserting after "that area" the following: "and to each individual enrolled

under this part and residing in that area", and

(ii) by inserting before the period the following: "and that an appropriate number of copies of each such directory is sent to hospitals located in the area"; and

(B) by adding at the end the following: "Such copies shall be sent free of charge.".

(2) ORGANIZATION OF DIRECTORIES.—Section 1842(h)(4) of such Act is amended by adding at the end the following: "Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.".

(3) PERIOD FOR PHYSICIAN ENROLLMENT.—Section 1842(h)(1) of such Act is amended by striking "the beginning of any year beginning with 1984" and inserting "during the month of November before a year".

(4) EFFECTIVE DATES.—

(A) DISTRIBUTION AND ORGANIZATION.—The amendment made by—

(i) paragraph (1)(A)(i) shall first apply to directories for 1988,

(ii) paragraph (1)(A)(ii) shall first apply to directories for 1987, and

(iii) paragraph (1)(B) takes effect on the date of the enactment of this Act.

(B) ENROLLMENT PERIOD.—The amendment made by paragraph (3) shall apply to participation agreements entered into for 1988 and subsequent years.

(h) PROHIBITING UNASSIGNED BILLING OF SERVICES DETERMINED TO BE MEDICALLY UNNECESSARY BY A CARRIER.—

(1) IN GENERAL.—Section 1842 of the Social Security Act is further amended by adding at the end the following new subsection:

"(l)(1)(A) Subject to subparagraph (C), if—

"(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

"(ii) payment for such services is not accepted on an assignment-related basis,

"(iii) a carrier determines under this part or a peer review organization determines under part B of title XI that payment may not be made by reason of section 1862(a)(1), and

"(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

"(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

"(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

"(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

"(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual if—

"(i) the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1862(a)(1), or

"(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

"(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of title XI shall send any notice of denial of payment for physicians' services based on section 1862(a)(1) and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

"(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act is amended by inserting "or (l)" after "(k)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to services furnished on or after October 1, 1987.

(i) MAINTENANCE AND USE OF PARTICIPATING PHYSICIAN DIRECTORIES BY HOSPITALS.—

(1) REQUIREMENT OF PARTICIPATION.—Section 1866(a) of the Social Security Act, as amended by sections 10207(e)(6)(A) and 10205(b)(1) of this subtitle, is further amended—

(A) by striking "and" at the end of subparagraph (K),

(B) by striking the period at the end of subparagraph (L) and inserting ", and", and

(C) by inserting after subparagraph (L) the following new subparagraph:

"(M) in the case of hospitals—

"(i) to make available to its patients the directory or directories of participating physicians (published under section 1842(h)(4)) for the area served by the hospital, and

"(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to agreements under section 1866(a) of the Social Security Act as of October 1, 1987.

(j) DISCLOSURE OF INFORMATION OF UNASSIGNED CLAIMS FOR CERTAIN PHYSICIANS' SERVICES.—

(1) IN GENERAL.—Section 1842 of the Social Security Act, as amended by subsection (h)(1), is further amended by adding at the end the following new subsection:

"(m)(1) In the case of a nonparticipating physician who—

"(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

"(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, and the excess of the physician's actual charge over the approved charge.

"(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

"(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2).

"(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).".

(2) CONFORMING AMENDMENT.—Section 1842(j)(2) of such Act, as amended by subsection (h)(2) of this section, is amended by striking "or (l)" and inserting ", (l), or (m)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to surgical procedures performed on or after October 1, 1987.

SEC. 10233. PAYMENT RATES FOR RENAL SERVICES AND IMPROVEMENTS IN ADMINISTRATION OF END STAGE RENAL DISEASE NETWORKS AND PROGRAM.

(a) COMPOSITE RATES FOR DIALYSIS TREATMENT.—

(1) IN GENERAL.—The Secretary of Health and Human Services may provide for an adjustment of the composite rates established under section 1881(b)(7) of the Social Security Act, but only if the base rate for routine dialysis treatment in a free-standing facility is not less than $117.50, and only if the base rate for routine dialysis treatment in a hospital-based facility is not less than $121.50.

(2) ASSURING PROMPT CONSIDERATION OF EXCEPTION REQUESTS.—Section 1881(b)(7) of the Social Security Act (42 U.S.C. 1395rr(b)(7)) is amended by inserting after the third sentence the following new sentence: "Each application for such an exception for a sole facility located in an isolated, rural area shall be deemed to be approved as of the date of its filing unless the Secretary disapproves it by not later than 45 working days after the date the application is filed.".

(3) EFFECTIVE DATE.—(A) Paragraph (1) shall apply to dialysis treatment furnished on or after October 1, 1986.

(B) The amendment made by paragraph (2) shall apply to applications filed on or after October 1, 1986.

(b) PAYMENT FOR PHYSICIANS' SERVICES.—In establishing the payment rates, under section 1881(b)(3)(B) of the Social Security Act, for physicians' services furnished on or after August 1, 1986, to individuals determined to have end stage renal disease, the Secretary of Health and Human Services shall provide for an adjustment in the home/facility physician treatment capability ratio (used in establishing such payment rates) to 3.9 to 1 in order to reduce by $14.81 the current average monthly capitation rate for physicians' services to outpatient maintenance dialysis patients (based on a weighted average by State ESRD population).

(c) REPORT ON PAYMENT RATES.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for—

(A) a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and

(B) a report to Congress on the results of the study by not later than January 1, 1988.

(2) ARRANGEMENTS WITH INSTITUTE OF MEDICINE.—The Secretary shall request the National Academy of Sciences, acting through appropriate units, to submit an application to conduct the study described in paragraph (1). If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable ap-

plication to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.

(d) REORGANIZATION OF ESRD NETWORK AREAS AND ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (A) of subsection (c)(1) of section 1881 of the Social Security Act (42 U.S.C. 1395rr) is amended to read as follows:

"(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

"(I) establish at least 17 end stage renal disease network areas, and

"(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

"(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2).

"(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.".

(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1), not later than January 1, 1987.

(3) SPECIAL TREATMENT OF EXISTING NETWORK ORGANIZATIONS.—In first designating network administrative organizations for areas so established, the Secretary shall designate the network organization (or a voluntary combination of such organizations) in operation on the date of the enactment of this Act as the network administrative organization, unless the Secretary determines that such organizations do not meet minimal standards and criteria established under section 1881(c)(1)(A)(ii) of the Social Security Act (as amended by paragraph (1)).

(e) PATIENT REPRESENTATION ON COUNCILS AND MEDICAL REVIEW BOARDS.—Subparagraph (B) of subsection (c)(1) of section 1881 of the Social Security Act is amended to read as follows:

"(B) At least one patient representative shall serve as a member of each network council and each medical review board.".

(f) RESPONSIBILITIES OF NETWORK ORGANIZATIONS.—Subsection (c)(2) of section 1881 of such Act is amended—

(1) in subparagraph (A), by inserting before the semicolon the following: "and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs";

(2) in subparagraph (B), by inserting before the first semicolon the following: "and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs";

(3) in subparagraph (D), by inserting before the semicolon the following: "and reporting to the Secretary on facilities and providers that are not providing appropriate medical care";

(4) in subparagraph (E), by inserting "and encouraging participation in vocational rehabilitation programs" after "self-care settings and transplantation"; and

(5) by redesignating subparagraphs (D) and (E) as subparagraphs (G) and (H), respectively, and inserting after subparagraph (C) the following new subparagraphs:

"(D) implementing a procedure for evaluating and resolving patient grievances;

"(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

"(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and subsection (g) and to assure the maintenance of the registry established under paragraph (7);".

(g) FACILITY COOPERATION WITH NETWORKS.—The first sentence of subsection (c)(3) of section 1881 of such Act is amended by inserting "or to follow the recommendations of the medical review board" after "consistently failed to cooperate with network plans and goals".

(h) INTENT OF CONGRESS RESPECTING MAXIMUM USE OF VOCATIONAL REHABILITATION SERVICES.—The first sentence of subsection (c)(6) of section 1881 of such Act is amended by inserting before the period the following: "and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment".

(i) NATIONAL END STAGE RENAL DISEASE REGISTRY.—

(1) ESTABLISHMENT OF REGISTRY.—Subsection (c) of section 1881 of such Act is further amended by adding at the end the following new paragraph:

"(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

"(A) the preparation of the annual report to the Congress required under subsection (g);

"(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

"(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

"(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

"(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.".

(2) REPORT.—The Secretary of Health and Human Services shall submit to the Congress, no later than January 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) and shall establish such registry by not later than January 1, 1988.

(j) FUNDING OF ESRD NETWORK ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b)(7) of section 1881 of the Social Security Act is amended by adding at the end the following new sentence: "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to treatment furnished on or after January 1, 1987.

(k) PROTOCOLS ON REUSE OF DIALYSIS FILTERS AND OTHER DIALYSIS SUPPLIES.—

(1) ESTABLISHMENT OF PROTOCOLS.—Paragraph (7) of subsection (f) of section 1881 of the Social Security Act is amended to read as follows:

"(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

"(B) The Secretary shall study and review the appropriateness of establishing protocols on standards and conditions for the reuse (where appropriate) of other dialysis supplies (such as blood lines, transducer filters, and dialyzer caps). If the Secretary determines that the establishment of such a protocol with respect to any such dialysis supplies is appropriate, the Secretary may establish such a protocol.

"(C) The Secretary shall incorporate protocols established under this paragraph into the requirements for facilities prescribed under subsection (b)(1)(A) and failure to follow such a protocol subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol.".

(2) DEADLINE AND REPORT.—The Secretary of Health and Human Services—

(A) shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act by not later than January 1, 1988, and

(B) shall report to the Congress, not later than January 1, 1988, on the study and review conducted under section 1881(f)(7)(B) of such Act.

(l) EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by subsections (e), (f), and (g) shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1).

SEC. 10234. TECHNICAL AMENDMENTS AND MISCELLANEOUS PROVISIONS RELATING TO PART B.

(a) ADDITIONAL MEMBERS FOR PHYSICIAN PAYMENT REVIEW COMMISSION.—

(1) 2 ADDITIONAL MEMBERS.—Section 1845(a)(2) of the Social Security Act (42 U.S.C. 1395w-1(a)(2)) is amended by striking "11 individuals" and inserting "13 individuals".

(2) APPOINTMENT OF ADDITIONAL MEMBERS.—The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1), no later than 60 days after the date of the enactment of this Act, for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.

(b) EFFECTIVE DATE OF VOLUNTARY DISENROLLMENT FROM MEDICARE.—

(1) IN GENERAL.—The second and sixth sentences of section 1838(b) of the Social Security Act (42 U.S.C. 1395p(b)) are each amended by striking "following the calendar quarter".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to notices filed on or after October 1, 1986.

(c) STUDY ON PROSPECTIVE PAYMENT OF RADIOLOGY, ANESTHESIA, AND PATHOLOGY SERVICES TO HOSPITAL INPATIENTS.—The Secretary of Health and Human Services shall study and report to the Committee on Ways and Means of the House of Representatives, by April 1, 1987, concerning the design and implementation of a prospective payment system for payment, under part B of title XVIII of the Social Security, for radiology, anesthesia, and pathology services furnished to hospital inpatients. Such report shall include data, from a representative sample, showing, for discharges classified within each diagnosis-related group, the distribution of total reasonable charges and costs for each inpatient discharge for such services.

PART 4—IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS

SEC. 10241. IMPROVED REVIEW OF QUALITY BY PEER REVIEW ORGANIZATIONS.

(a) PRO REVIEW OF HOSPITAL DENIAL NOTICES.—

(1) IN GENERAL.—Section 1154 of the Social Security Act (42 U.S.C. 1320c-3) is amended by adding at the end the following new subsection:

"(d)(1) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

"(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1879) of the determination.

"(2) If—

"(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

"(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) the validity of the hospital's determination.

"(3)(A) If a patient (or a patient's representative)—

"(i) has received a notice under paragraph (1), and

"(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

"(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

"(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

"(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

"(4) If—

"(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

"(B) the conditions described in section 1879(a)(2) with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

"(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative)."

(2) EFFECTIVE DATE.—(A) Except as provided in subparagraph (B), the amendment made by paragraph (1) shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act.

(B) Section 1154(d)(4) of the Social Security Act (as added by the amendment made by paragraph (1)) shall take effect on the date of the enactment of this Act.

(b) PRO REVIEW OF INPATIENT HOSPITAL SERVICES AND EARLY READMISSION CASES.—

(1) TIMELY PROVISION OF HOSPITAL INFORMATION.—Section 1153 of such Act (42 U.S.C. 1320c-2) is amended by adding at the end the following new subsection:

"(g) The Secretary shall provide that peer review organizations receive each month, on a timely basis, either directly from hospitals or through fiscal intermediaries data necessary to initiate the review process under section 1154(a) on a timely basis."

(2) REQUIRING REVIEW OF EARLY READMISSION CASES.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by section 9401(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is amended by adding at the end the following new paragraph:

"(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an 'early readmission case' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge."

(3) EFFECTIVE DATES.—(A) The Secretary of Health and Human Services shall implement the amendment made by paragraph (1) not later than 6 months after the date of the enactment of this Act.

(B) The amendment made by paragraph (2) shall apply to contracts entered into or renewed on or after January 1, 1987.

(c) REQUIRING PRO REVIEW OF QUALITY OF CARE.—

(1) ALLOCATION OF FUNDS FOR QUALITY CARE REVIEW.—Section 1154(a)(4) of such Act (42 U.S.C. 1320c-3(a)(4)) is amended by adding at the end the following: "Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities relating to quality of services is made among the different cases and settings (including inpatient hospital care, post-acute-care settings, ambulatory settings, health maintenance organizations, and competitive medical plans). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.".

(2) REQUIRING REVIEW OF HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Such section is further amended—

(A) by inserting "(A)" after "(4)",

(B) by adding at the end the following new subparagraph:

"(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a contract under section 1876 for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings.", and

(C) by adding at the end of such subparagraph the following: "Under the contract

the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.".

(3) IDENTIFICATION OF METHODS FOR IDENTIFYING CASES OF SUBSTANDARD CARE.—Section 1154 of such Act (42 U.S.C. 1320c-3), as amended by subsection (a)(1), is amended by adding at the end the following new subsection:

"(e) The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4)) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care."

(4) EFFECTIVE DATES.—(A) The amendments made by paragraphs (1) and (2)(B) shall apply to contracts as of January 1, 1987.

(B) The amendment made by paragraph (2)(C) shall apply to review activities conducted by organizations on or after January 1, 1988.

(C) The amendment made by the paragraph (3) becomes effective on the date of the enactment of this Act.

(d) REQUIRING CONSUMER REPRESENTATIVE ON PEER REVIEW BOARDS.—

(1) IN GENERAL.—Section 1152 of such Act (42 U.S.C. 1320c-1) is amended—

(A) by striking "and" at the end of paragraph (1),

(B) by striking the period at the end of paragraph (2) and inserting "; and", and

(C) by adding at the end the following new paragraph:

"(3) has at least one individual who is a representative of consumers on its board of directors."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to contracts entered into or renewed on or after January 1, 1987.

(e) IMPROVING PEER REVIEW RESPONSIVENESS TO BENEFICIARY COMPLAINTS.—

(1) APPROPRIATE REVIEW OF COMPLAINTS REQUIRED.—Section 1154(a) of such Act (42 U.S.C. 1320c-3(a)), as amended by subsection (b)(2), is further amended by adding at the end the following new paragraph:

"(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under title XVIII) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such title (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's conclusions respecting the complaint and final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act.

(f) SHARING OF INFORMATION BY PEER REVIEW ORGANIZATIONS.—

(1) IN GENERAL.—Section 1160(b)(1) of such Act (42 U.S.C. 1320c-9(b)(1)) is amended—

(A) by striking "and" at the end of subparagraph (B),

(B) by amending subparagraph (C) to read as follows:

"(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1865 in accrediting providers for purposes of meeting the conditions described in title XVIII, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body in carrying out its respective function which is within the jurisidiction of the agency or body under State law or under section 1865; and"; and

(C) by inserting after subparagraph (C) the following new subparagraph:

"(D) to assist State ombudsmen and State protection and advocacy officials who the Secretary identifies as having responsibility for assuring the quality of care furnished by providers or practitioners, which data and information shall be provided by the peer review organization to any such ombudsman or official upon request relating to a specific provider or practitioner, but only to the extent that such data and information are related to the quality of care furnished by a provider or practitioner and only if the peer review organization determines that the data and information may reflect a failure in a substantial number of cases or a gross and flagrant failure in one or more instances to provide services of a quality which meets professionally recognized standards of health care, and that the data and information are needed by the ombudsman or official in carrying out official duties;".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act.

(g) FUNDING OF ADDITIONAL PRO ACTIVITIES.—

(1) THROUGH AGREEMENTS WITH HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—Section 1866(a) of such Act (42 U.S.C. 1395cc(a)) is amended—

(A) in paragraph (1)(F)—

(i) by redesignating clauses (i), (ii), and (iii), as subclauses (I), (II), and (III), respectively,

(ii) by inserting "(i)" after "(F)", and

(iii) by adding at the end the following new clause:

"(ii) in the case of hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (4)(A);"; and

(B) by adding at the end the following new paragraph:

"(4)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1154(a)(4)(A) and under section 1154(a)(14) with respect to services, furnished by the hospital, facility, or agency involved, for which payment may be made under this title.

"(B) For purposes of payment under this title, the cost of such an agreement to the hospital, facility, or agency shall be considered a cost incurred by such hospital, facility, or agency in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, facility, or agency in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of title XI.".

(2) THROUGH AGREEMENTS WITH HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS.—Section 1876(i) of such Act (42 U.S.C. 1395mm(i)), as amended by section 10222(f) of this subtitle, is amended by adding at the end the following new paragraph:

"(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of title XI for the area in which the eligible organization is located) under which the peer review organization will perform functions under section 1154(a)(4)(B) and section 1154(a)(14) (other than those performed under contracts described in section 1866(a)(1)(F)) with respect to services, furnished by the eligible organization, for which payment may be made under this title.

"(B) For purpose of payment under this title, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this title and shall be paid directly by the Secretary to the peer review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

"(C) Such payments—

"(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriations Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

"(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of title XI.".

(3) EFFECTIVE DATE.—

(A) HOSPITALS, SKILLED NURSING FACILITIES, AND HOME HEALTH AGENCIES.—The amendments made by paragraph (1) shall apply to provider agreements as of October 1, 1987.

(B) HMOs AND CMPS.—The amendment made by paragraph (2) shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act, as of January 1, 1987.

PART 5—ASSURING ACCESS TO HEALTH CARE

SEC. 10251. INCENTIVES FOR THE ESTABLISHMENT OF STATE HEALTH INSURANCE POOLS.

(a) GENERAL RULE.—Chapter 41 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new subchapter:

"Subchapter B—Large Employers Not Members of Qualified State Health Insurance Pools

"Sec. 4912. Tax on wages of large employers not members of qualified State health insurance pools.

"SEC. 4912. TAX ON WAGES OF LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS.

"(a) TAX IMPOSED.—In the case of a large employer which—

"(1) employs any individual to perform services in a State that has established a qualified health insurance pool, and

"(2) is not a participating member of that pool in a taxable year at any time at which such services are performed,

there is hereby imposed a tax equal to 5 percent of the wages paid by the employer during the taxable year for services performed in the State by its employees.

"(b) LARGE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'large employer' means an employer who, on each of some 20 days during the taxable year or the preceding taxable year, each day being in a different calendar week, employed for some portion of the day (whether or not at the same moment of time) 20 or more individuals.

"(2) EXCEPTION FOR GOVERNMENTAL UNITS.—The term 'large employer' shall not include the United States, any State or political subdivision thereof, or any possession of the United States or any agency or instrumentality of any of the foregoing (including the United States Postal Service and Postal Rate Commission); except that such term shall include any nonappropriated fund instrumentality of the United States.

"(c) QUALIFIED HEALTH INSURANCE POOL.—For purposes of this section, the term 'qualified health insurance pool' means any organization which—

"(1) is a nonprofit corporation established pursuant to and regulated by State law;

"(2) permits any large employer doing business in the State to be a participating member;

"(3) makes available (without regard to health conditions) to all residents of the State, who are not eligible for benefits under part A of title XVIII of the Social Security Act, levels of health insurance typical of the levels of coverage provided through large employer groups, except that—

"(A) any such level of insurance must limit the amount of the annual out-of-pocket expenses for covered services under individual coverage to $1,500 and under family coverage to $3,000,

"(B) any such level of insurance may not establish a lifetime benefit limit for any individual of less than $500,000,

"(C) subject to subparagraph (A), such insurance may provide for a choice of deductibles (in addition to the deductibles typical of levels of coverage provided through large employer groups), but not to exceed $1,000 for each covered individual,

"(D) such insurance may deny coverage for covered services for preexisting conditions for a period not to exceed 6 months, and

"(E) such insurance must include as covered services the purchase and repair of medically necessary durable medical equipment;

"(4) charges a pool premium rate expected to be self-supporting based upon a reasonable actuarial determination of anticipated experience and expected expenses, such pool premium rate in no event to exceed 150 percent of average premium rates for individual standard risks in the State for comparable coverage; and

"(5) assesses losses of the pool equitably among all participating members.

Nothing in this subsection shall be construed as preventing a State or other entity from providing for payment of part or all of the premium of an enrollee and from varying the amount of such payment based on the enrollee's income or other basis.

"(d) OTHER DEFINITIONS.—

"(1) USE OF FUTA DEFINITIONS.—For purposes of this section, the terms 'wages', 'employee', and 'employer' have the meanings given such terms in subsections (a), (c), and (d), respectively, of section 3401.

"(2) STATE.—The term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico.

"(e) CROSS REFERENCE.—

"(1) For provision denying deduction for tax imposed by this section, see section 275(a)(6).

"(2) For provisions making deficiency procedures applicable to tax imposed by this section, see section 6211 et seq."

(b) CLERICAL AMENDMENTS.—

(1) Chapter 41 of such Code is amended by striking the chapter heading and inserting the following:

"CHAPTER 41—PUBLIC CHARITIES; LARGE EMPLOYERS NOT MEMBERS OF QUALIFIED STATE HEALTH INSURANCE POOLS

"Subchapter A. Public charities.

"Subchapter B. Large employers not members of qualified State health insurance pools.

"Subchapter A—Public Charities".

(2) The table of chapters for subtitle D of such Code is amended by striking the item relating to chapter 41 and inserting the following:

"Chapter 41. Public charities; large employers not members of qualified State health insurance pools."

(3) Subparagraph (B) of section 6104(c)(1) of such Code is amended by striking "or chapter 41 or 42" and inserting ", subchapter A of chapter 41 or chapter 42".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1988.

(d) ESTABLISHMENT OF QUALIFIED STATE HEALTH INSURANCE POOLS.—Congress intends that each State should establish a qualified health insurance pool (described in section 4912(c) of the Internal Revenue Code of 1954) by not later than January 1, 1988, or, if later, the end of the first regular State legislative session that begins after the date of the enactment of this Act.

SEC. 10252. COBRA TECHNICAL AMENDMENTS RELATING TO CONTINUATION OF EMPLOYER-BASED HEALTH INSURANCE COVERAGE.

(a) MODIFICATION OF COVERAGE.—Paragraph (2)(A) of section 162(k) of the Internal Revenue Code of 1954 (relating to type of benefit coverage) is amended by adding at the end the following: "If coverage is modified under the plan for similarly situated beneficiaries, such coverage shall also be modified in the same manner for all qualified beneficiaries covered under the plan.".

(b) MAXIMUM PERIOD OF CONTINUATION COVERAGE.—Paragraph (2)(B)(i) of such section (relating to maximum period of continuation coverage) is amended—

(1) by striking out the period at the end and inserting a semicolon, and

(2) by adding at the end the following: "except that in the case of a qualified beneficiary with respect to whom more than one qualifying event occurs, the date may be extended under this clause but in no case may the coverage period with respect to such events (other than the period applicable to a qualifying event described in paragraph (3)(F)) exceed a 36-month period for such qualified beneficiary.".

(c) GRACE PERIOD FOR PAYMENT OF PREMIUMS.—Paragraph (2)(B)(iii) of such section (relating to failure to pay premium) is amended by adding at the end the following: "Payment shall be considered to be timely if made within 30 days of the date due or within such longer period as applies to or under the plan."

(d) ELECTION BY BENEFICIARIES.—Paragraph (5) of such section (relating to elections) is amended by adding at the end the following new subparagraph:

"(C) RIGHT TO INDIVIDUAL ELECTION.—Notwithstanding subparagraph (B), each qualified beneficiary is entitled to make a separate election with respect to continuation coverage for that beneficiary and, if there is a choice of type of coverage under the plan, to make a separate selection among such types of coverage.".

(e) NOTICE REQUIREMENT.—Paragraph (6)(C) of such section (relating to notice requirements) is amended by inserting "within 60 days of the date of the qualifying event" after "paragraph (3)".

(f) EFFECTIVE DATE.—The amendments made by this section shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985.

SEC. 10253. CONTINUATION COVERAGE FOR RETIREES IN CASES OF BANKRUPTCIES.

(a) LOSS OF COVERAGE OF RETIREE THROUGH BANKRUPTCY AS QUALIFYING EVENT.—Paragraph (3) of section 162(k) of the Internal Revenue Code of 1954 (relating to qualifying event with respect to continuation coverage requirements under group health plans) is amended by adding at the end the following:

"(F) A proceeding in a case under title 11, United States Code, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in subparagraph (F), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in paragraph (7)(B)(iii) within one year before or after the date of commencement of the proceeding."

(b) PERIOD OF CONTINUATION COVERAGE.—

(1) LIFE OF COVERED EMPLOYEE OR WIDOW AND ADDITIONAL 36 MONTHS FOR SURVIVING

SPOUSE AND DEPENDENTS.—Clause (i) of section 162(k)(2)(B) of such Code (relating to maximum period) is amended—

(A) by striking "and" at the end of subclause (I),

(B) in subclause (II), by inserting "or (II)" after "(I)",

(C) by redesignating subclause (II) as subclause (III), and

(D) by inserting after subclause (I) the following new subclause:

"(II) a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in paragraph (7)(B)(iii)(III)), or in the case of the surviving spouse or dependent children of the covered employee, 36 months after the date of the death of the covered employee, and".

(2) COVERAGE NOT LOST UPON ENTITLEMENT TO MEDICARE BENEFITS.—Subclause (II) of section 162(k)(2)(B)(iv) of such Code (relating to reemployment or medicare eligibility) is amended by inserting "in the case of a qualified beneficiary other than a qualified beneficiary described in paragraph (7)(B)(iii)," before "entitled".

(c) DEFINITION OF QUALIFIED BENEFICIARY MODIFIED IN REORGANIZATION CASES.—Section 162(k)(7)(B) of such Code (relating to special rule for termination and reduced employment in definition of qualified beneficiary) is amended by adding at the end the following new clause:

"(iii) SPECIAL RULE FOR RETIREES AND WIDOWS.—In the case of a qualifying event described in paragraph (3)(F), the term 'qualified beneficiary' includes a covered employee who had retired on or before the date of substantial elimination of coverage and any other individual who, on the day before such qualifying event, is a beneficiary under the plan—

"(I) as the spouse of the covered employee,

"(II) as the dependent child of the employee, or

"(III) as the surviving spouse of the covered employee.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect as if included in section 10001 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) TREATMENT OF CERTAIN BANKRUPTCY PROCEEDINGS.—Notwithstanding paragraph (1) and section 10001(e) of the Consolidated Omnibus Budget Reconciliation Act of 1985, the amendments made by this section and by section 10001 of such Act shall apply in the case of plan years ending during the 12-month period beginning July 1, 1986, but only with respect to—

(A) a qualifying event described in section 162(k)(3)(F) of the Internal Revenue Code of 1954, and

(B) a qualifying event described in section 162(k)(3)(A) of such Code relating to the death of a retired employee occurring after the date of the qualifying event described in subparagraph (A).

(3) TREATMENT OF CURRENT RETIREES.—Section 162(k)(3)(F) of the Internal Revenue Code of 1954 applies to covered employees who retired before, on, or after the date of the enactment of this Act.

Subtitle D—Revenue Provisions

PART I—EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES

SEC. 10301. EXTENSION OF EXCISE TAX ON COMMUNICATIONS SERVICES.

(a) IN GENERAL.—The table contained in paragraph (2) of section 4251(b) of the Internal Revenue Code of 1954 (relating to imposition of tax on communications services) is amended to read as follows:

"With respect to amounts paid pursuant to bills first rendered:	The applicable percentage is:
During 1987, 1988, or 1989	3
During 1990 or thereafter	0."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts paid for communications services pursuant to bills first rendered after December 31, 1986.

SEC. 10302. STUDY OF COMMUNICATION SERVICES NOT SUBJECT TO FEDERAL EXCISE TAX.

(a) IN GENERAL.—The Secretary of the Treasury or his delegate shall conduct a study of communication services which are exempt from the tax imposed by section 4251 of the Internal Revenue Code of 1954 by reason of being a private communication service (as defined in section 4252(d) of such Code) or by reason of a specific exemption from such tax under section 4253 of such Code. Such study shall include an estimate of the reduction in tax revenues by reason of each such exemption and shall describe the types of persons which benefit from each such exemption.

(b) REPORT.—The report of the study under subsection (a) shall be submitted, not later than December 31, 1987, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

PART II—INCREASES IN CERTAIN PENALTIES

SEC. 10311. INCREASE IN PENALTY FOR UNDERPAYMENTS OF TAX DEPOSITS.

(a) IN GENERAL.—Subsection (a) of section 6656 of the Internal Revenue Code of 1954 (relating to failure to make deposit of taxes or understatement of deposits) is amended by striking out "5 percent" and inserting in lieu thereof "10 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to deposits the date prescribed for the making of which is after the date of the enactment of this Act.

SEC. 10312. INCREASE IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF LIABILITY.

(a) IN GENERAL.—Subsection (a) of section 6661 of the Internal Revenue Code of 1954 (relating to substantial understatement of liability) is amended to read as follows:

"(a) ADDITION TO TAX.—If there is a substantial understatement of income tax for any taxable year, there shall be added to the tax an amount equal to 25 percent of the amount of any underpayment attributable to such understatement."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

PART III—CERTAIN EXCISE TAX DEPOSITS ACCELERATED

SEC. 10321. CERTAIN EXCISE TAX DEPOSITS ACCELERATED.

(a) TOBACCO.—Paragraph (2) of section 5703(b) of the Internal Revenue Code of 1954 (relating to method of payment of tax) is amended to read as follows:

"(2) TIME FOR PAYMENT OF TAXES.—

"(A) IN GENERAL.—In the case of taxes on tobacco products and cigarette papers and tubes removed during any semimonthly period under bond for deferred payment of tax, the last day for payment of such taxes shall be the 14th day after the last day of such semimonthly period.

"(B) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this subparagraph, the due date under subparagraph (A) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(b) WINES AND BEER.—Section 5061 of such Code (relating to method of collecting tax) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TIME FOR COLLECTING TAX ON WINES AND BEER.—

"(1) IN GENERAL.—In the case of wines and beer to which this part applies (other than subsection (b) of this section) which are withdrawn under bond for deferred payment of tax or from bonded premises (including customs custody), the last day for payment of such tax shall be the 14th day after the last day of the semimonthly period during which the withdrawal occurred.

"(2) SPECIAL RULE WHERE 14TH DAY FALLS ON SATURDAY, SUNDAY, OR HOLIDAY.—If, but for this paragraph, the due date under paragraph (1) would fall on a Saturday, Sunday, or a Federal holiday, such due date shall be the immediately preceding day which is not a Saturday, Sunday, or such a holiday."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to removals during semimonthly periods ending on or after December 31, 1986.

(2) SPECIAL RULE FOR TOBACCO FOR SEMIMONTHLY PERIOD ENDING DECEMBER 15, 1986.—With respect to remittances for tobacco products and cigarette papers and tubes of the tax imposed by section 5701 of the Internal Revenue Code of 1954 for the semimonthly period ending on December 15, 1986, the last day for payment of such remittances shall be January 14, 1987.

PART IV—TAX TREATMENT OF CONRAIL PUBLIC SALE

SEC. 10331. TAX TREATMENT OF CONRAIL PUBLIC SALE.

(a) TREATMENT AS NEW CORPORATION.—

(1) IN GENERAL.—For periods after the public sale, for purposes of the Internal Revenue Code of 1954, Conrail shall be treated as a new corporation which purchased all of its assets as of the beginning of the day after the date of the public sale for an amount equal to the deemed purchase price.

(2) ALLOCATION AMONG ASSETS.—The deemed purchase price shall be allocated among the assets of Conrail in accordance with the temporary regulations prescribed under section 338 of the Internal Revenue Code of 1954 (as such regulations were in effect on the date of the enactment of this Act). The Secretary shall establish specific guidelines for carrying out the preceding sentence so that the basis of each asset will be clearly ascertainable.

(3) DEEMED PURCHASE PRICE.—For purposes of this subsection, the deemed purchase price is an amount equal to the gross amount received pursuant to the public sale, multiplied by a fraction—

(A) the numerator of which is 100 percent, and

(B) the denominator of which is the percentage (by value) of the stock of Conrail sold in the public sale.

The amount determined under the preceding sentence shall be adjusted under regulations prescribed by the Secretary for liabilities of Conrail and other relevant items.

(b) NO INCOME FROM CANCELLATION OF DEBT OR PREFERRED STOCK.—No amount shall be included in the gross income of any person by reason of any cancellation of any obligation (or preferred stock) of Conrail in connection with the public sale.

(c) DISALLOWANCE OF CERTAIN DEDUCTIONS.—No deduction shall be allowed to Conrail for any amount which is paid after the date of the public sale to employees of Conrail for services performed on or before the date of the public sale in order to increase wages or benefits to industry standards.

(d) WAIVER OF CERTAIN EMPLOYEE STOCK OWNERSHIP PLAN PROVISIONS.—For purposes of determining whether the employee stock ownership plans of Conrail meet the qualifications of sections 401 and 501 of the Internal Revenue Code of 1954—

(1) the limits of section 415 of such Code (relating to limitations on benefits and contributions under qualified plans) shall not apply with respect to interests in stock transferred pursuant to this Act or a law heretofore enacted, and

(2) the 2-year waiting period for withdrawals shall not apply to participant withdrawals of amounts (or shares) in their accounts in connection with the public sale.

(e) DEFINITIONS.—For purposes of this section—

(1) CONRAIL.—The term "Conrail" means the Consolidated Rail Corporation. Such term includes any corporation which was a subsidiary of Conrail immediately before the public sale.

(2) PUBLIC SALE.—The term "public sale" means the sale of stock in Conrail pursuant to a public offering under the Conrail Privatization Act. If there is more than 1 public offering under such Act, such term means the sale pursuant to the initial public offering under such Act.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

PART V—PORT USE TAX AND RELATED TRUST FUND; INLAND WATERWAYS TRUST FUND

SEC. 10341. IMPOSITION OF PORT USE TAX.

(a) GENERAL RULE.—Chapter 36 of the Internal Revenue Code of 1954 (relating to certain other excise taxes) is amended by inserting after the chapter heading the following new subchapter:

"Subchapter A—Port Use Tax

"Sec. 4461. Imposition of tax.

"Sec. 4462. Definitions and special rules.

"SEC. 4461. IMPOSITION OF TAX.

"(a) GENERAL RULE.—There is hereby imposed a tax on any port use.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any port use shall be 0.04 percent of the value of the cargo involved.

"(c) LIABILITY FOR TAX.—The tax imposed by subsection (a) shall be paid by—

"(1) in the case of cargo entering the United States, the importer,

"(2) in the case of cargo to be exported from the United States, the exporter, or

"(3) in any other case, the shipper.

"SEC. 4462. DEFINITIONS AND SPECIAL RULES.

"(a) PORT USE.—For purposes of this subchapter—

"(1) PORT USE.—The term 'port use' means—

"(A) the loading of commercial cargo on, or

"(B) the unloading of commercial cargo from,

a commercial vessel at a port in the United States.

"(2) PORT.—The term 'port' means any port or channel in the United States with a depth authorized by law of more than 14 feet. The term does not include any port or channel with respect to which no Federal funds have been used for construction, maintenance, or operation.

"(b) OTHER DEFINITIONS.—For purposes of this subchapter—

"(1) COMMERCIAL CARGO.—The term 'commercial cargo' means any cargo other than fuel supplies, ship's stores, sea stores, or legitimate equipment for the vessel.

"(2) COMMERCIAL VESSEL.—The term 'commercial vessel' means any vessel used—

"(A) in the business of transporting cargo by water for compensation or hire, or

"(B) in transporting cargo by water in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

"(3) VALUE.—The term 'value' means—

"(A) in the case of an arms length transaction, the sales price determined under the principles of section 4216(a); or

"(B) in any other case, a constructive sales price determined under regulations prescribed by the Secretary.

To the extent provided in regulations, value may be determined on the basis of standard commercial documentation.

"(c) EXEMPTION FOR HAWAII AND POSSESSIONS.—

"(1) UNITED STATES NOT TO INCLUDE HAWAII OR POSSESSIONS.—For purposes of this subchapter, the term 'United States' shall not include Hawaii or any possession of the United States.

"(2) SHIPMENTS TO HAWAII OR POSSESSIONS.—No tax shall be imposed by this subchapter with respect to any cargo loaded on a vessel for transportation to Hawaii or any possession of the United States for ultimate use or consumption in Hawaii or any possession of the United States.

"(d) EXEMPTION FOR TAX WHERE TRANSPORTATION SUBJECT TO TAX IMPOSED BY SECTION 4042.—No tax shall be imposed under this subchapter with respect to any cargo if any portion of the transportation of such cargo on the vessel concerned has (or will be) transportation subject to the tax imposed by section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(e) EXEMPTION FOR UNITED STATES.—No tax shall be imposed under this subchapter on the United States or any agency or instrumentality thereof.

"(f) EXTENSION OF PROVISIONS OF LAW APPLICABLE TO CUSTOMS DUTY.—

"(1) IN GENERAL.—Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs law shall apply in respect of cargo subject to the tax imposed by this subchapter (and in respect of persons liable therefor) in the same manner as if such cargo were cargo imported into the United States. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the value of the cargo.

"(2) JURISDICTION OF COURTS AND AGENCIES.—For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, the tax imposed by this subchapter shall be treated as if such tax were a customs duty.

"(3) ADMINISTRATIVE PROVISIONS APPLICABLE TO TAX LAW NOT TO APPLY.—The tax imposed by this subchapter shall not be treated as a tax for purposes of subtitle F of this title or any other provision of law relating to the administration and enforcement of internal revenue taxes.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subchapter including—

"(1) regulations providing that only 1 tax shall be imposed under this subchapter with respect to the transportation of any cargo on the same vessel, and

"(2) regulations exempting any transaction or class of transactions from the tax imposed by this subchapter where the collection of such tax is not administratively practical."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 of such Code is amended by inserting the following before the item relating to subchapter D:

"Subchapter A. Port use tax."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10342. CREATION OF PORT INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9504 the following new section:

"SEC. 9505. PORT INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Port Infrastructure Development and Improvement Trust Fund' (hereinafter in this section referred to as the 'Port Trust Fund'), consisting of such amounts as may be—

"(1) appropriated to the Port Trust Fund as provided in this section,

"(2) appropriated to the Port Trust Fund pursuant to section 10342(b) of the Omnibus Budget Reconciliation Act of 1986, or

"(3) credited to the Port Trust Fund as provided in section 9602(b).

"(b) TRANSFER TO PORT TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Port Trust Fund amounts equivalent to the taxes received in the Treasury under section 4461 (relating to port use tax).

"(c) EXPENDITURES FROM PORT TRUST FUND.—

"(1) IN GENERAL.—Amounts in the Port Trust Fund shall be available, as provided by appropriation Acts, for making expenditures for—

"(A) feasibility studies for, and construction, operation, and maintenance of, projects for ports by the Secretary,

"(B) feasibility studies for, and construction, rehabilitation, operation, and maintenance of, projects for ports for the Saint Lawrence Seaway by the Saint Lawrence Seaway Development Corporation,

"(C) relocations of utilities, structures, and other improvements, necessary for construction, operation, and maintenance of

projects referred to in subparagraph (A) or (B),

"(D) making payments to any non-Federal interest which has planned and designed or planned, designed, and constructed a port in accordance with section 104 of the Water Resources Development Act of 1986,

"(E) grants under sections 113 and 114 of such Act, and

"(F) the payment of rebates of tolls or charges pursuant to section 13 of the Act of May 13, 1954 (as in effect on the date of the enactment of this section), and

"(G) the payment of all expenses of administration incurred by the Department of the Treasury in administering subchapter A of chapter 36 (relating to port use tax).

"(2) DEFINITIONS AND SPECIAL RULES.—For purposes of paragraph (1)—

"(A) CONSTRUCTION DEFINED.—The term 'construction' includes any planning, designing, engineering, and surveying which is necessary to carry out a project for a port and which is performed after authorization of the project.

"(B) PORT DEFINED.—The term 'port' has the meaning given such term by section 115 of the Water Resources Development Act of 1986.

"(C) LIMITATION ON REBATE.—The amount of rebate of any toll or charge which may be paid out of the Port Trust Fund under paragraph (1)(F) shall not exceed the portion of such toll or charge which is attributable to cargo on which tax was (or is to be) imposed by section 4461 of the Internal Revenue Code of 1954.

"(D) REFERENCE TO SECTIONS.—Any reference to a section of the Water Resources Development Act of 1986 shall be treated as a reference to such section as in effect on the date of the enactment of this section."

(b) AUTHORIZATION OF APPROPRIATIONS TO PORT TRUST FUND.—There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Port Infrastructure Development and Improvement Trust Fund for each fiscal year beginning after September 30, 1986, an amount equal to the excess of—

(1) $1,000,000,000, over

(2) the amount of tax imposed by section 4461 of the Internal Revenue Code of 1954 (relating to port use tax) which the Secretary of the Treasury estimates will be received by such Trust Fund during such year.

(c) REBATES OF SAINT LAWRENCE SEAWAY TOLLS.—The Act of May 13, 1954 is amended by adding at the end thereof the following new section:

"REBATE OF CHARGES OR TOLLS

"SEC. 13. (a) The Corporation shall certify to the Secretary of the Treasury, in such form and at such times as the Secretary of the Treasury shall prescribe—

"(1) the identity of any person who pays a charge or toll to the Corporation pursuant to section 12 of this Act with respect to a commercial vessel (as defined in section 4462(b)(2) of the Internal Revenue Code of 1954), and

"(2) the amount of the toll or charge paid by such person with respect to such vessel.

"(b) Within 30 days of the receipt of a certification described in subsection (a), the Secretary of the Treasury shall rebate, out of the Port Infrastructure Development and Improvement Trust Fund, to the person described in subsection (a) the amount of the charge or toll paid pursuant to section 12 of this Act which is attributable to cargo on which tax was (or is to be) imposed by section 4461 of the Internal Revenue Code of 1954."

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9504 the following new item:

"Sec. 9505. Port Infrastructure Development and Improvement Trust Fund."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10343. INLAND WATERWAYS TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9505 the following new section:

"SEC. 9506. INLAND WATERWAYS TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is hereby established in the Treasury of the United States a trust fund to be known as the 'Inland Waterways Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFER TO TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There are hereby appropriated to the Inland Waterways Trust Fund amounts determined by the Secretary to be equivalent to the taxes received in the Treasury under section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

"(c) EXPENDITURES FROM TRUST FUND.—

"(1) IN GENERAL.—Except as provided in paragraph (2), amounts in the Inland Waterways Trust Fund shall be available, as provided by appropriation Acts, for making construction and rehabilitation expenditures for navigation on the inland and coastal waterways of the United States described in section 206 of the Inland Waterways Revenue Act of 1978, as in effect on the date of the enactment of this section.

"(2) EXCEPTION FOR CERTAIN PROJECTS.—

"(A) CONSTRUCTION PROJECTS.—Not more than ⅓ of the cost of any construction to which section 202(a) of the Water Resources Development Act of 1986 applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund.

"(B) CERTAIN RELOCATION EXPENSES.—Not more than ⅙ of the cost of any relocation to which section 202(b) of such Act applies (as in effect on the date of the enactment of this section) may be paid from the Inland Waterways Trust Fund."

(b) CONFORMING AMENDMENTS.—Sections 203 and 204 of the Inland Waterways Revenue Act of 1978 (relating to Inland Waterways Trust Fund) are hereby repealed.

(c) FUEL USE ON TENNESSEE-TOMBIGBEE WATERWAY SUBJECT TO INLAND WATERWAY TAX.—Section 206 of the Inland Waterways Revenue Act of 1978 is amended by adding at the end thereof the following:

"(27) Tennessee-Tombigbee Waterway: From Pickwick Pool on the Tennessee River at RM 215 to Demopolis, Alabama, on the Tombigbee River at RM 215.4.".

(d) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9506. Inland Waterways Trust Fund."

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on January 1, 1987.

(2) SPECIAL RULE FOR TENNESSEE-TOMBIGBEE WATERWAY.—For purposes of section 9506(c)(1) of the Internal Revenue Code of 1954 (as added by this section), the amendment made by subsection (c) shall be treated as taking effect on the date of the enactment of this Act.

(3) INLAND WATERWAYS TRUST FUND TREATED AS CONTINUATION OF OLD TRUST FUND.—The Inland Waterways Trust Fund established by the amendments made by this section shall be treated for all purposes of law as a continuation of the Inland Waterways Trust Fund established by section 203 of the Inland Waterways Revenue Act of 1978. Any reference in any law to the Inland Waterways Trust Fund established by such section 203 shall be deemed to include (wherever appropriate) a reference to the Inland Waterways Trust Fund established by this section.

PART VI—TAX ON PETROLEUM AND OIL SPILL LIABILITY TRUST FUND

SEC. 10351. TAX ON PETROLEUM.

(a) IN GENERAL.—Subsections (a) and (b) of section 4611 of the Internal Revenue Code of 1954 (relating to environmental tax on petroleum) are each amended by striking out "of 0.79 cent a barrel" and inserting in lieu thereof "at the rate specified in subsection (c)".

(b) INCREASE IN TAX.—Section 4611 of such Code is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

"(c) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the taxes imposed by this section is the sum of—

"(A) the Hazardous Substance Superfund financing rate, and

"(B) the Oil Spill Liability Trust Fund financing rate.

"(2) RATES.—For purposes of paragraph (1)—

"(A) the Hazardous Substance Superfund financing rate is 0.79 cent a barrel, and

"(B) the Oil Spill Liability Trust Fund financing rate is 1.3 cents a barrel."

(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—Section 4612 of such Code (relating to definitions and special rules) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) CREDIT AGAINST PORTION OF TAX ATTRIBUTABLE TO OIL SPILL RATE.—There shall be allowed as a credit against so much of the tax imposed by section 4611 as is attributable to the Oil Spill Liability Trust Fund financing rate for any period an amount equal to the excess of—

"(1) the aggregate amounts paid by the taxpayer before January 1, 1987, into the Deepwater Port Liability Trust Fund and the Offshore Oil Pollution Compensation Fund, over

"(2) the amount of such payments taken into account under this subsection for all prior periods."

(d) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 4611 of such Code (relating to application of taxes), as redesignated by subsection (b), is amended to read as follows:

"(e) APPLICATION OF TAXES.—

"(1) SUPERFUND RATE.—The Hazardous Substance Superfund financing rate under subsection (c) shall not apply after September 30, 1985.

"(2) OIL SPILL RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1986, and before January 1, 1992."

(2) Subsection (c) of section 4661 of such Code (relating to termination of tax on certain chemicals) is amended to read as follows:

"(c) TERMINATION.—The tax imposed by this section shall not apply after September 30, 1985."

(3) Paragraph (1) of section 221(b) of the Hazardous Substance Response Revenue Act of 1980 (relating to transfers to Response Trust Fund) is amended by adding at the end thereof the following:

"In the case of the tax imposed by section 4611, paragraph (1) shall apply only to so much of such tax as is attributable to the Superfund financing rate under section 4611(c)."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 10352. OIL SPILL LIABILITY TRUST FUND.

(a) IN GENERAL.—Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to establishment of trust funds) is amended by adding after section 9506 the following new section:

"SEC. 9507. OIL SPILL LIABILITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Oil Spill Liability Trust Fund', consisting of such amounts as may be appropriated or credited to such Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There are hereby appropriated to the Oil Spill Liability Trust Fund amounts equivalent to—

"(1) taxes received in the Treasury under section 4611 (relating to environmental tax on petroleum) to the extent attributable to the Oil Spill Liability Trust Fund financing rate under section 4611(c),

"(2) amounts recovered, collected, or received under subtitle A of the Comprehensive Oil Pollution Liability and Compensation Act,

"(3) amounts remaining on the date of the enactment of this section in the Deep Water Port Liability Fund established by section 18(f) of the Deep Water Port Act of 1974,

"(4) amounts remaining on the date of the enactment of this section in the Offshore Oil Pollution Compensation Fund established under section 302 of the Outer Continental Shelf Lands Act Amendments of 1978, and

"(5) amounts credited to such trust fund under section 311(s) of the Federal Water Pollution Control Act.

"(c) EXPENDITURES.—

"(1) GENERAL EXPENDITURE PURPOSES.—

"(A) IN GENERAL.—Amounts in the Oil Spill Liability Trust Fund shall be available, as provided in appropriation Acts, only for purposes of making expenditures for—

"(i) the payment of removal costs described in section 6501(24)(A) of the Comprehensive Oil Pollution Liability and Compensation Act,

"(ii) the payment of claims under the Comprehensive Oil Pollution Liability and Compensation Act for damage which is not otherwise compensated,

"(iii) carrying out subsections (c), (d), (i), and (l) of section 311 of the Federal Water Pollution Control Act with respect to any discharge of oil (as defined in such section),

"(iv) carrying out section 5 of the Intervention on the High Seas Act relating to oil pollution or the substantial threat of oil pollution,

"(v) the payment of all expenses of administration incurred by the Federal Government under the Comprehensive Oil Pollution Liability and Compensation Act, and

"(vi) the payment of contributions to the International Fund under section 6544 of such Act.

"(B) SPECIAL RULES.—

"(i) PAYMENTS TO GOVERNMENTS ONLY FOR REMOVAL COSTS.—Amounts shall be available under subparagraph (A) for payments to any government only for removal costs and administrative expenses related to removal costs.

"(ii) RESTRICTIONS ON CONTRIBUTIONS TO INTERNATIONAL FUND.—Under regulations prescribed by the Secretary, amounts shall be available under subparagraph (A) with respect to any contribution to the International Fund only in proportion to the portion of such fund used for a purpose for which amounts may be paid from the Oil Spill Liability Trust Fund.

"(iii) REFERENCES TO OTHER ACTS.—Any reference in any clause of subparagraph (A) to any Act shall be treated as a reference to such Act as in effect on the date of the enactment of this section.

"(2) LIMITATIONS ON EXPENDITURES.—

"(A) $200,000,000 PER INCIDENT.—The maximum amount which may be paid from the Oil Spill Liability Trust Fund with respect to any single incident shall not exceed $200,000,000.

"(B) $30,000,000 MINIMUM BALANCE.—Except in the case of payments described in paragraph (1)(A)(i), a payment may be made from such Trust Fund only if the amount in such Trust Fund after such payment will not be less than $30,000,000.

"(d) AUTHORITY TO BORROW.—

"(1) IN GENERAL.—There are authorized to be appropriated to the Oil Spill Liability Trust Fund, as repayable advances, such sums as may be necessary to carry out the purposes of such Trust Fund.

"(2) LIMITATION ON AMOUNT OUTSTANDING.—The maximum aggregate amount of repayable advances to the Oil Spill Liability Trust Fund which is outstanding at any one time shall not exceed $300,000,000.

"(3) REPAYMENT OF ADVANCES.—

"(A) IN GENERAL.—Advances made to the Oil Spill Liability Trust Fund shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in such Fund.

"(B) FINAL REPAYMENT.—No advance shall be made to the Oil Spill Liability Trust Fund after September 30, 1991, and all advances to such Fund shall be repaid on or before such date.

"(C) RATE OF INTEREST.—Interest on advances made pursuant to this subsection shall be at a rate determined by the Secretary of the Treasury (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

"(e) LIABILITY OF THE UNITED STATES LIMITED TO AMOUNT IN TRUST FUND.—

"(1) GENERAL RULE.—Any claim filed against the Oil Spill Liability Trust Fund may be paid only out of such Trust Fund.

"(2) COORDINATION WITH OTHER PROVISIONS.—Nothing in the Comprehensive Oil Pollution Liability and Compensation Act (or in any amendment made by such Act) shall authorize the payment by the United States Government of any amount with respect to any such claim out of any source other than the Oil Spill Liability Trust Fund.

"(f) ORDER IN WHICH UNPAID CLAIMS ARE TO BE PAID.—If at any time the Oil Spill Liability Trust Fund has insufficient funds (or is unable by reason of subsection (c)(2)) to pay all of the claims out of such Trust Fund at such time, such claims shall, to the extent permitted under such subsections, be paid in full in the order in which they were finally determined."

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding after the item relating to section 9506 the following new item:

"Sec. 9507. Oil Spill Liability Trust Fund."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

PART VII—CUSTOMS REVENUES

SEC. 10361. CUSTOMS USER FEE FOR THE PROCESSING OF MERCHANDISE ENTRIES.

(a) AMOUNT OF FEE.—Subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is amended by adding at the end thereof the following new paragraph:

"(9) For the processing of each formal entry of merchandise for consumption, a fee (which is imposed on the importer of record of the merchandise) in an amount equal to the following percentage of the appraised value, as determined under the customs laws, of the merchandise:

"(A) 0.5 percent if the merchandise is entered after November 30, 1986, and before October 1, 1987.

"(B) 0.2 percent if the merchandise is entered after September 30, 1987.

For purposes of this paragraph, the term 'merchandise' does not include any article classifiable under any provision of schedule 8 of the Tariff Schedules of the United States.".

(b) CUSTOMS USER FEE ACCOUNT.—Paragraph (1) of section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(1)) is amended to read as follows: "(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited into a separate account, which shall be known as the 'Customs User Fee Account', within the general fund of the Treasury of the United States. Except as provided in paragraph (2), all monies in the Customs User Fee Account shall be available, to the extent provided for in appropriation Acts, for the necessary expenses of the United States Customs Service in carrying out its operations, except operations funded under the Customs Forfeiture Fund. At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the

United States Government for the services provided by the Customs Service.".

PART VIII—COORDINATION WITH OTHER PROVISIONS

SEC. 10371. COORDINATION WITH OTHER PROVISIONS.

Nothing in any provision of this Act (other than this title) shall be construed as—

(1) imposing any tax (or exempting any person or property from any tax),

(2) establishing any trust fund, or

(3) authorizing amounts to be expended from any trust fund.

Page 552, after line 2, insert the following new title:

TITLE XI—MISCELLANEOUS

SEC. 11001. APPROPRIATIONS REDUCTION.

(a) APPROPRIATIONS REDUCTION.—All discretionary appropriations made for fiscal year 1987 in any Act making or continuing appropriations (whether enacted before or after the enactment of this Act) shall be automatically reduced, in the manner described in subsection (b), to the extent necessary to achieve a reduction in budget outlays to a level $1,000,000,000 below the level of outlays allocated in House Report 99-666 to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 in such fiscal year.

(b) MANNER OF REDUCTION.—The reduction in discretionary appropriations under subsection (a) shall be made in the manner provided in section 251(a)(3)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985, as though subsection (a) of this section were a Presidential order issued under section 252 of such Act and the amount of the deficit excess to be eliminated were the amount necessary to achieve a reduction in budget outlays to a level $1,000,000,000 below the level of outlays allocated in House Report 99-666 to the Committee on Appropriations pursuant to section 302(a) of the Congressional Budget Act of 1974 in such fiscal year, and shall take effect on the date of the enactment of this Act or the date of the enactment of such Act making or continuing appropriations, whichever is later.

SEC. 11002. APPROPRIATIONS FOR IRS ENFORCEMENT.

For purposes of reconciliation, in order to provide for an accurate estimate of revenue raised by increased appropriations for the Internal Revenue Service, the enacted appropriations measure providing funding for the Internal Revenue Service for the fiscal year ending September 30, 1987, will include the following funding levels: for "Salaries and Expenses", $95,147,000; for "Processing Tax Returns", $1,332,902,000; for "Examinations and Appeals", $1,623,162,000; and for "Investigation, Collection, and Taxpayer Service", $1,196,581,000: *Provided*, That the allocation to the Senate Committee on Appropriations pursuant to section 302(a) of the Budget Act, as amended, under Senate Concurrent Resolution 120, the concurrent resolution on the budget for fiscal year 1987, is increased by $300,000,000 in both new budget authority and outlays.

SEC. 11003. REVENUE SHARING PAYMENTS.

Notwithstanding section 6702(b) of title 31, United States Code, the Secretary of the Treasury shall make the installment payment of revenue sharing funds under chapter 67 of such title that is otherwise required to be paid on or before October 5, 1986, by no later than September 30, 1986.

SEC. 11004. BUDGETARY TREATMENT OF SALES OF LOAN ASSETS.

(a) ASSET SALES AS DEFICIT REDUCTIONS.—Any sale (whether with or without recourse) of loan assets by the United States shall be treated as a sale of assets and counted as offsetting collections which reduce the federal deficit for purposes of Part C of the Balanced Budget and Emergency Deficit Control Act of 1985. In calculating the budget base levels and in estimating the deficit under sections 251(a)(1) and 251(c)(1) of such Act and under any other appropriate provision of such Act, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall treat any sale of loan assets (whether with or without recourse) as a reduction of the federal deficit.

(b) BUDGET SUBMISSIONS OF THE PRESIDENT.—For purposes of the President's budget submissions under chapter 11 of title 31 of the Unites States Code, any sale (whether with or without recourse) of loan assets by the United States shall be treated as a sale of assets and counted as offsetting collections which reduce the federal deficit.

SEC. 11005. EDUCATION PROGRAM REDUCTIONS.

For provisions of law which reduce spending in programs within the jurisdiction of the Committee on Education and Labor, see the conference report on S. 1965, the Higher Education Amendments of 1986 (H. Report 99-861).

Page 2, after the item relating to title X (which appears between lines 1 and 2), insert the following:

Title XI. Miscellaneous.

On page 2, on line 11, insert "to the Government" after "proceeds".

On page 2, between lines 12 and 13, insert the following:

"(1) $1,000,000,000 from such sales during fiscal year 1987,".

On page 2, on line 13, strike out "(1)" and insert in lieu thereof "(2)", and on line 15, strike out "(2)" and insert in lieu thereof "(3)".

On page 3, strike out lines 6 through 11 and insert in lieu thereof the following:

"(c) CONTRACT PROVISIONS.—Consistent with section 309A(e) of the Consolidated Farm and Rural Development Act, as amended by subsection (b), any sale of notes, as described in subsection (a), shall not alter the terms specified in the note, except that, on sale, a note shall not be subject to the provisions of section 333(c) of the Consolidated Farm and Rural Development Act.".

On page 4, after line 3, insert the following:

"(f) Prior to selling any note, as described in subsection (a), the Secretary of Agriculture shall require persons offering to purchase the note to demonstrate an ability to service, or provide resources for servicing, the loans represented by the note, including the ability or resources to provide technical assistance, additional credit, and such other services that the Secretary deems necessary to ensure the continued performance of the loan.".

On page 4, on line 13, insert "(or any loan advance thereunder)" after "loan", and on line 14, insert "(or advance)" after "loan".

On page 4, line 17, strike out "antee," and insert in lieu thereof "antee (which shall be fully transferable and assignable without condition),".

On page 4, strike out lines 18 to 20 and insert in lieu thereof the following:

"'(3) the borrower certifies that any savings from such prepayment will be passed on to its consumers or used to improve the financial strength of the borrower in cases of financial hardship.' ".

On page 6, line 5, strike out "loan." and insert in lieu thereof the following: "loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan's present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.".

On page 6, strike out "To the extent" on line 15 and all that follows down through the end of line 22, and insert in lieu thereof the following: "The regulations shall facilitate prepayments of loans, as described in subsection (a) except as specifically provided for in this Act, that increases the cost to borrowers of obtaining private capital for prepayment.".

Page 18, strike line 16 and all that follows through page 25, line 3, and insert the following:

TITLE III—COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SEC. 3001. SALE OF RURAL HOUSING LOANS.

(a) REQUIRED SALES TO PUBLIC.—The Secretary of Agriculture shall take such actions as may be necessary to ensure that loans made under title V of the Housing Act of 1949 are sold to the public in amounts sufficient to provide a net reduction in outlays, from the proceeds of such sales, of not less than—

(1) $1,405,000,000 in fiscal year 1987;

(2) $549,000,000 in fiscal year 1988; and

(3) $462,000,000 in fiscal year 1989.

(b) PROCEDURES AND TERMS OF SALES.—

(1) ESTABLISHMENT OF GUIDELINES.—The Secretary of Agriculture shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including the kind of protections that should be provided to borrowers and terms that will ensure that the sale of the loans will be made at the lowest practicable cost to the Federal Government.

(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Secretary of Agriculture shall use the Federal Financing Bank as an agent to sell the loans, unless the Secretary determines that the sale of loans directly by the Secretary will result in a higher rate of return to the Federal Government. If the Secretary determines to sell loans directly under this paragraph, the Secretary shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

(c) REPORTS TO CONGRESS.—

(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Secretary of Agriculture shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

(2) REPORTS BY SECRETARY.—The Secretary of Agriculture shall submit periodic reports

to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Secretary under this section. Each report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of the loans. The Secretary shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1989.

(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Secretary of Agriculture described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Secretary as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

(d) RELATION TO OTHER LAW.—The sale of loans under subsection (a) shall not be subject to any requirement under section 517 of the Housing Act of 1949 or any other law that the loans be insured or guaranteed when sold, or to any requirement under paragraph (2) or (3) of subsection (d) of such section 517.

SEC. 3002. SALE OF EXPORT-IMPORT BANK LOANS.

The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 15. SALE OF BANK LOANS.

"(a) REQUIRED SALES TO PUBLIC.—The Board of Directors shall take such actions as may be necessary to ensure that loans made by the Bank under this Act are sold to the public in amounts sufficient to provide a net reduction in outlays of not less than $2,810,000,000 in fiscal year 1987 from the proceeds of such sales.

"(b) PROCEDURES AND TERMS OF SALES.—

"(1) ESTABLISHMENT OF GUIDELINES.—The Board of Directors shall establish specific guidelines for the sale of loans under subsection (a). The guidelines shall address the procedures and terms applicable to the sale of the loans, including terms that will ensure that the sale of the loans will bring the highest possible return to the Federal Government.

"(2) ASSISTANCE BY FEDERAL FINANCING BANK.—In selling loans to the public under subsection (a), the Board of Directors shall use the Federal Financing Bank as an agent to sell the loans, unless the Board of Directors determines that the sale of loans directly by the Export-Import Bank will result in a higher rate of return to the Federal Government. If the Board of Directors determines to sell loans directly under this paragraph, the Board shall notify the Federal Financing Bank of such determination and the loans involved and, to the extent practicable, shall implement any reasonable recommendations that may be made by the Federal Financing Bank with respect to the procedures and terms applicable to the sale.

"(c) REPORTS TO CONGRESS.—

"(1) NOTIFICATION OF INITIAL LOAN SALE.—Not less than 20 days before the initial sale of loans under subsection (a), the Board of Directors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives containing an estimate of the amount of the discount at which loans will be sold at such initial sale and an estimate of the discount at which loans will be sold at each subsequent sale during fiscal year 1987.

"(2) REPORTS BY BANK.—The Board of Directors shall submit periodic reports to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives setting forth the activities of the Board of Directors under this section. Each such report shall include the guidelines established under subsection (b)(1), a description of the loans sold under subsection (a), and an analysis of the net reduction in outlays provided by the sale of such loans. The Board of Directors shall submit the first report under this paragraph not later than 60 days after the date of the enactment of this Act, and shall submit subsequent reports each 60 days thereafter through the end of fiscal year 1987.

"(3) REPORTS BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall conduct an audit and evaluation of the activities of the Board of Directors described in each report submitted under paragraph (1) or (2), in accordance with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Board of Directors as the Comptroller General determines necessary to conduct each such audit and evaluation. The Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report setting forth the results of each such audit and evaluation.

"(d) SECURITIES LAWS NOT APPLICABLE TO SALES.—The sale of any loan by the Bank under this section shall not be subject to any Federal or State securities law.".

SEC. 3003. THE HOUSING ACT OF 1986.

The provisions of H.R. 1, as passed by the House of Representatives on June 12, 1986, are hereby enacted into law.

II. The following are the amendments made in order under House Resolution.

An amendment to be offered by Mr. Rodino of New Jersey, or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

On page 160 strike line 15 and all that follows thereafter through page 161, line 10.

An amendment to be offered by Mr. Wylie of Ohio or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Strike section 3003 of the bill as inserted by the first group of amendments.

III. The following are the amendments made in order under House Resolution.

An amendment to be offered by Mr. Rodino of New Jersey, or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

On page 160 strike line 15 and all that follows thereafter through page 161, line 10.

An amendment to be offered by Mr. Wylie of Ohio or his designee, to be debatable for not to exceed 30 minutes, to be equally divided and controlled by the proponent of the amendment and a member opposed thereto.

Strike section 3003 of the bill as inserted by the first group of amendments.

Mr. LEATH of Texas. Mr. Chairman, I would ask the gentlewoman from Illinois [Mrs. MARTIN] if she has any closing statement she would like to make under the unanimous-consent request?

Mrs. MARTIN of Illinois. Mr. Chairman, we are sitting here waiting for the amendment we thought was going to be offered.

Mr. LEATH of Texas. I think we are both surprised that we did not have one.

Mrs. MARTIN of Illinois. Yes, the chairman of the committee, obviously, has not chosen to offer the amendment.

Yes, I will use up the 5 minutes, if that is what the Chair wishes to move to.

Mr. LEATH of Texas. In the meantime, we will look for our chairman to use up his time.

Mrs. MARTIN of Illinois. Mr. Chairman, I would caution the gentleman that we are not going to go back and forth on this. If he is not here, we will not be doing the amendment.

Mr. LEATH of Texas. No, I meant for the 5 minutes.

Mrs. MARTIN of Illinois. Yes, indeed.

Mr. Chairman, I am going to ask for a clarification.

May I assume from the Chair that the minority will be using its 5 minutes or that amount of it that it chooses; then to the majority, to the chairman or his designee, and then we will move to the vote; that we are now through with amendments since none have been presented. Is that correct?

The CHAIRMAN. The Chair will state that the gentlewoman is correct; that she would have her 5 minutes and then the gentleman from Texas [Mr. LEATH] would have his 5 minutes, since neither amendment made in order is being offered.

Mrs. MARTIN of Illinois. Mr. Chairman, I believe the House is ready for a vote. I will yield back my 5 minutes.

The CHAIRMAN. What is the pleasure of the gentleman from Pennsylvania?

Mr. GRAY of Pennsylvania. Mr. Chairman, it is my understanding that we have 5 minutes left, and the other side has yielded back the balance of their time. Is that correct?

The CHAIRMAN. The gentleman is correct.

Mr. GRAY of Pennsylvania. Mr. Chairman, my colleagues, let me conclude by saying we have had a lively

and spirited debate, and I think all of us who have spoken have really stated a concern that we share.

I think all who have come to the well; Republicans, Democrats, moderates, conservatives, liberals, are truly concerned about this deficit. We may not agree on the best way to go about it, but I would just say, Mr. Chairman, that this vote today is not going to be on whether we have the ideal package that each of us would want; whether or not this package represents 3 or 4 months of deliberations, or whether or not this package will solve the problem. It will not.

I would just ask my colleagues to remember one thing. That is, if we do not have this package, what other package can be put together that gets us $15 billion worth of deficit reduction, gets signed by the President which it must be, and can pass this House by 218 votes, as well as the other body.

Therefore I think when you ask yourself that question, and the time limit that we have which is by next Wednesday, we must reduce the deficit by $15 billion for 1987; I think we come up with one answer: That answer is, this is the vehicle.

Therefore, I urge Members to vote for this reconciliation package. It is not perfect, it does not do all that many of us would like it to do. However, it does get the job done. It would be irresponsible for us to allow a $24 billion sequester to take place. Therefore, I thank my colleagues from the other side for their leadership, and I urge all Members to vote for this reconciliation package.

The CHAIRMAN. All time has expired.

Under the rule, the Committee rises.

Accordingly the committee rose; and the Speaker pro tempore (Mr. MONTGOMERY) having assumed the chair, Mr. SEIBERLING, chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, pursuant to House Resolution 558, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The amendments printed in section 1 of House Report 99-871 are considered as having been adopted.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 309, nays 106, not voting 17, as follows:

[Roll No. 408]

YEAS—309

Abercrombie	Dwyer	Leath (TX)
Ackerman	Dymally	Lehman (CA)
Akaka	Dyson	Lehman (FL)
Alexander	Eckart (OH)	Leland
Andrews	Eckert (NY)	Lent
Annunzio	Edgar	Levin (MI)
Anthony	Edwards (CA)	Levine (CA)
Applegate	Emerson	Lewis (CA)
Aspin	Erdreich	Lewis (FL)
Atkins	Evans (IL)	Lipinski
AuCoin	Fascell	Lloyd
Barnard	Fazio	Loeffler
Bartlett	Feighan	Long
Bateman	Fields	Lott
Bates	Fish	Lowery (CA)
Bedell	Flippo	Lowry (WA)
Bennett	Florio	Lujan
Bentley	Foglietta	Luken
Bereuter	Foley	Lundine
Berman	Ford (MI)	Mack
Bevill	Ford (TN)	MacKay
Biaggi	Frank	Madigan
Bilirakis	Franklin	Markey
Bliley	Frost	Martin (IL)
Boehlert	Fuqua	Martin (NY)
Boggs	Gallo	Martinez
Boner (TN)	Garcia	Matsui
Bonior (MI)	Gaydos	Mavroules
Bonker	Gejdenson	Mazzoli
Borski	Gephardt	McCain
Bosco	Gibbons	McCloskey
Boucher	Gilman	McCollum
Boulter	Glickman	McCurdy
Boxer	Gonzalez	McDade
Brooks	Gordon	McGrath
Brown (CA)	Gray (IL)	McHugh
Bruce	Gray (PA)	McKernan
Bryant	Green	McKinney
Bustamante	Guarini	McMillan
Chapman	Gunderson	Meyers
Chappell	Hall (OH)	Mica
Cheney	Hamilton	Michel
Clay	Hatcher	Mikulski
Clinger	Hawkins	Miller (CA)
Coats	Hayes	Miller (OH)
Cobey	Hefner	Miller (WA)
Coble	Hendon	Mineta
Coelho	Henry	Mitchell
Coleman (MO)	Hertel	Moakley
Collins	Holt	Molinari
Combest	Horton	Mollohan
Conte	Howard	Montgomery
Cooper	Hoyer	Moody
Coughlin	Hughes	Morrison (WA)
Courter	Jacobs	Mrazek
Coyne	Jeffords	Murphy
Crockett	Jenkins	Murtha
Darden	Johnson	Natcher
Daschle	Jones (NC)	Neal
Daub	Jones (TN)	Nowak
Davis	Kanjorski	Oakar
de la Garza	Kaptur	Oberstar
Dellums	Kasich	Obey
Derrick	Kastenmeier	Ortiz
Dicks	Kennelly	Owens
Dingell	Kildee	Panetta
DioGuardi	Kleczka	Parris
Dixon	Kolbe	Pashayan
Donnelly	Kolter	Pease
Dorgan (ND)	Kostmayer	Pepper
Dowdy	Lagomarsino	Perkins
Downey	Lantos	Price
Durbin	Latta	Pursell
Quillen	Skeen	Traficant
Rahall	Skelton	Udall
Rangel	Slattery	Valentine
Reid	Slaughter	Vento
Richardson	Smith (FL)	Visclosky
Rinaldo	Smith (NE)	Volkmer
Ritter	Smith (NJ)	Waldon
Rodino	Smith, Robert (OR)	Walgren
Roe	Snowe	Waxman
Rogers	Solarz	Weaver
Rose	Solomon	Weber
Rostenkowski	Spence	Weiss
Roth	Spratt	Wheat
Roukema	St Germain	Whitehurst
Rowland (CT)	Staggers	Whitley
Rowland (GA)	Stangeland	Whittaker
Roybal	Stark	Williams
Russo	Stokes	Wilson
Sabo	Strang	Wirth
Savage	Stratton	Wise
Saxton	Studds	Wolf
Schneider	Sundquist	Wolpe
Schroeder	Sweeney	Wortley
Schuette	Synar	Wyden
Schumer	Tallon	Wylie
Seiberling	Taylor	Yates
Sensenbrenner	Thomas (GA)	Yatron
Sharp	Torres	Young (AK)
Shuster	Torricelli	Young (MO)
Sikorski	Towns	
Sisisky		

NAYS—106

Anderson	Gregg	Pickle
Archer	Hall, Ralph	Porter
Armey	Hammerschmidt	Ray
Badham	Hansen	Regula
Barnes	Hartnett	Ridge
Barton	Hiler	Roberts
Beilenson	Hillis	Robinson
Brown (CO)	Hopkins	Roemer
Burton (IN)	Hubbard	Rudd
Byron	Huckaby	Schaefer
Callahan	Hunter	Schulze
Carper	Hutto	Shaw
Carr	Hyde	Shelby
Chandler	Ireland	Shumway
Coleman (TX)	Jones (OK)	Siljander
Craig	Kemp	Smith (IA)
Crane	Kramer	Smith, Denny (OR)
Daniel	LaFalce	
Dannemeyer	Leach (IA)	Smith, Robert (NH)
DeLay	Lightfoot	
DeWine	Livingston	Snyder
Dickinson	Lungren	Stallings
Dornan (CA)	Marlenee	Stenholm
Dreier	McCandless	Stump
Duncan	Monson	Swift
Early	Moorhead	Swindall
Edwards (OK)	Morrison (CT)	Tauke
English	Myers	Tauzin
Evans (IA)	Nelson	Thomas (CA)
Fawell	Nichols	Traxler
Fiedler	Nielson	Vander Jagt
Frenzel	Olin	Vucanovich
Gekas	Oxley	Walker
Gingrich	Packard	Watkins
Goodling	Penny	Whitten
Gradison	Petri	Wright

NOT VOTING—17

Boland	Chappie	McEwen
Breaux	Conyers	Moore
Broomfield	Fowler	Scheuer
Burton (CA)	Grotberg	Young (FL)
Campbell	Kindness	Zschau
Carney	Manton	

□ 1605

The Clerk announced the following pair:

On this vote:

Mr. Manton for, with Mr. Kindness against.

Mr. ENGLISH changed his vote from "yea" to "nay."

Mr. GILMAN and Mr. PARRIS changed their votes from "nay" to "yea."

Mr. SIKORSKI changed his vote from "yea" to "present."

Mr. SIKORSKI changed his vote from "present" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. SCHEUER. Mr. Speaker, on rollcall No. 408, the rollcall vote on final passage of the bill H.R. 5300, the Omnibus Budget Reconciliation Act, I was unavoidably absent due to appearing on the Ted Koppel public television show, "Who Shall Live and Who Shall Die." It is a show about the agonizingly difficult problems affecting our country concerning biomedical ethics.

Mr. Speaker, if I had been here, I would have voted "yes."

GENERAL LEAVE

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter, on H.R. 5300, the bill just passed.

The SPEAKER pro tempore. (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. BONIOR of Michigan. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 5300, the Clerk make the following correction: In subsections (b) and (c) of section 4912 of the Internal Revenue Code, as added by section 10251 as included in the report of the Committee on Rules on House Resolution 558, make the changes which appear on the first page of the amendments included in the report of the Committee on Rules—directed to pages 541 and 542 of the original bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

CONFERENCE REPORT ON S. 1965, HIGHER EDUCATION ACT AMENDMENTS OF 1986

Mr. BONIOR of Michigan. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 557 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 557

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Michigan [Mr. BONIOR] is recognized for 1 hour.

Mr. BONIOR of Michigan. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Missouri [Mr. TAYLOR], pending which I yield myself such time as I may consume.

House Resolution 557 waives all points of order against the conference report on the bill S. 1965, the Higher Education Act Amendments of 1986. The rule also waives all points of order against consideration of the conference report.

These waivers are necessary to prevent a point of order from lying against the conference report on the grounds that it exceeds the scope of the differences committed to conference. A waiver of the 3-day layover rule for conference reports is also necessary in order to expedite consideration of this vital legislation.

Finally, the rule provides that the conference report shall be considered as having been read when called up for consideration.

Mr. Speaker, this is a simple rule that will allow the House to proceed to immediate consideration of the conference report on the Higher Education Act Amendments of 1986. This bill is the single most important legislation affecting postsecondary education in America. Authorization for most of the programs contained in it is scheduled to expire at the end of this fiscal year.

Passage of this conference report will reauthorize and extend such programs as student loans, Pell grants, and other important higher education programs for an additional 5 years. This conference report has been developed with strong bipartisan support.

Mr. Speaker, I urge this body to reaffirm our Nation's commitment to higher education by passing this rule and moving to immediate adoption of this legislation.

□ 1615

Mr. TAYLOR. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 577 is a rule waiving points of order against the conference report on the Higher Education Act Amendments of 1986, legislation which is of vital interest to thousands of the Nation's college and university students.

This rule is designed to facilitate House consideration of bipartisan agreement on the bill, S. 1956. The rule protects the conference report against points of order that otherwise might lie against it on the ground that the report contains nongermane matter or that it exceeds the scope of the differences committed on conference.

In addition, the rule waives points of order that would otherwise lie against the consideration of the conference report. In this case, the waiver is necessary because the report has not been available for the required 3 days.

Mr. Speaker, the conference report made in order by this rule is solidly supported by the Republican members of the Committee on Education and Labor and is the result of a long and difficult conference. When the House originally passed H.R. 3700 in December of last year, I was among those who voted in favor of the legislation. If anything, the conference resulted in improvements to the House-passed bill. I am pleased to be able to support it here today.

Mr. Speaker, I want to take a minute to point out that the conference report made in order by this rule authorizes $10.2 billion for higher education programs in 1987. The House-passed bill, H.R. 3700, authorized $11.5 billion, and the conferees should be commended for trimming the overall costs of this legislation while expanding the current provisions of our Higher Education Act.

Mr. Speaker, the conferees adopted proposals that bring student loan spending in line with the targets contained in our congressional budget resolution, while at the same time making more aid available to poor students attending college less than half the time.

The congressional budget resolution called for changes that would reduce projected outlays for guaranteed student loans by $395 million over 3 years.

The major programs authorized for a 5-year period by the conference report are guaranteed student loans and Pell grants. The total authorization for guaranteed student loans is $3.2 billion, and the total for Pell grants is $4.6 billion.

Mr. Speaker, the new authorizations for student financial assistance are expensive, but the conferees included provisions that require all students to pass a financial needs test to qualify for guaranteed student loans, and students are prohibited from borrowing more than they actually need.

These strict requirements will apply to all students, and family assets must be considered in the assessment of financial needs.

Mr. Speaker, there are over 13,200 students at the University of Missouri who attended school last year with a guaranteed student loan. These students had over $35.4 million worth of

loans last year, for an average of $2,600 per student.

In addition, there are about 6,800 students at the University of Missouri who were given a Pell Grant last year. The average Pell Grant was $1,300, and over $8.9 million in grant assistance was made available.

Mr. Speaker, the conference report complies with the budget resolution adopted by the House and will be explained in more detail by the members of the Committee on Education and Labor.

I urge my colleagues to adopt this rule.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding to me.

Mr. Speaker, I am trying to figure out what the points of order are that we are waiving. This is a very simple rule and it should be no problem. If I understood the gentleman correctly, we are waiving the points of order with regard to germaneness in the bill.

Do we know what the nongermane sections may be of this particular piece of legislation?

Mr. TAYLOR. I do not think there actually are any nongermane amendments to the bill. It does waive the 3-day layover rule, however.

Mr. WALKER. If the gentleman will continue to yield, that one troubles me a litle bit. I understand that the bill that we have coming to the floor is a conference report that is several inches thick. None of us have had a chance to see that. My guess is that we are probably wearing out a copy machine somewhere so that the Members might have a chance to look at that before we pass it, and yet one more copy machine will give up its life to provide us with information on the floor yet today. Nevertheless, we are adopting a rule that then does not permit us very much time to look through a fairly thick stack of documents.

Was the Rules Committee given a chance to look at all of this material before we waived the 3-day rule on that size of a document?

Mr. TAYLOR. Yes, sir. The Rules Committee had that material.

Mr. Speaker, I would note that the conference report materials were delivered to the Committee on Rules on Tuesday, but the report was printed in the CONGRESSIONAL RECORD on Monday, September 22.

Mr. WALKER. All right. I thank the gentleman.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding to me.

Mr. Speaker, perhaps I can answer, at least in part, the gentleman's question. The items that are nongermane under our rules, for example, are the Senate's projects that they had for specific schools. We agreed to an equal distribution of those things between the House and the Senate. They had no fiscal implication because they come out of already authorized money.

We had a provision that was developed with respect to unemployed people and guaranteed student loans which would be technically outside the scope.

One more that is more important, the changes that were made to reach the numbers for the 1987 reconciliation were in some instances outside the scope as far as our bill was concerned because they were picked up later in order to make it match what the Budget Committee was calling upon us to save in reconciliation.

Mr. TAYLOR. It is my understanding that the waiver of the differences committed to the conference rather than germaneness itself; is that right, Mr. Chairman?

Mr. FORD of Michigan. Yes. The problem with the reconciliation factors is that they were outside of the scope of conference.

Mr. TAYLOR. It is my understanding that the report signed by and is supported by every Member of the House committee and the other body on both sides of the political aisle and in both bodies; is that correct?

Mr. FORD of Michigan. That is correct. There were 33 conferees from the House.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding to me.

Mr. Speaker, I do not see any need for a vote on this, but just so we clarify, I think what I just heard was that the things that went outside the scope of the conference was basically a tradeoff of projects for various Members of both bodies that are down in the bill. That is all fine and dandy for the people who served on the conference committee and it is nice that we could go through the process. It gives everybody a little bit of funding. Of course, once again we hear that those things do not cost us anything. I am a wee bit concerned that those are some of the things that we do not find when we have a conference report dropped on the floor, no chance to look through it, and then we find out a few days later just how many special, little projects were buried down in there for the people to have direct influence on the legislation.

I just raise it as a note of caution because I think that it may not be just this conference report, it may not be just this bill; we may see a number of things like this as the session winds down. I just put the Members of the House on warning that we are not going to go through this very many more times where it takes this kind of process without having votes on some of these issues because I do not think it is proper for us to be considering things that we really do not have any idea what is in them when we are asked to vote.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. TAYLOR. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding to me.

Mr. Speaker, I would simply like to say to the gentleman from Pennsylvania that I can assure you that there is no project in the bill for any Member of the House that was in H.R. 3700 when it passed the House. It is Senate projects that were not in the bill that they thought up as we went along. The committee on that side is controlled by your party and I wanted to get along with them.

Mr. TAYLOR. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

□ 1625

Mr. BONIOR of Michigan. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. FORD of Michigan. Mr. Speaker, pursuant to House Resolution 557, I call up the conference report on the Senate bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MONTGOMERY). Pursuant to House Resolution 557, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of Monday, September 22, 1986, at page H7912.)

The SPEAKER pro tempore. The gentleman from Michigan [Mr. FORD] will be recognized for 30 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise with great pride in support of the conference report accompanying S. 1965, the Higher Education Amendments Act of 1986. As chairman of the Subcommittee on Postsecondary Education, it has been

my privilege to be deeply involved in the development of this conference report.

This conference report represents a continuation of the long tradition of bipartisan support for higher education. While the conferees were always mindful of the budget constraints that we must live with, there was never a question of our commitment to meeting the needs of the students and postsecondary education institutions of this Nation and to the important role the Federal Government must play in recognizing the rapidly changing face of American higher education.

This conference report maintains all the Federal student financial assistance programs but fine tunes them to ensure that those students with the most need will receive the assistance they deserve and to the extent possible will receive that aid in the form of grants and low-interest loans. One of the major thrusts of both bodies in designing this legislation was to reestablish an appropriate balance between grant and loan aid. We were keenly aware of the unmanageable debt levels that many students were undertaking to meet the costs of higher education. As a result, the conference report before you contains substantial increases in maximum grant aid available to students, but only modest increases in loan amounts. Moreover, in the future all students will have to demonstrate their need for a loan before they can borrow. This will eliminate unnecessary borrowing and excessive indebtedness in the future.

I am equally pleased that this conference report recognizes the shifts in the students bodies of our campuses. For the first time the Congress is fully recognizing that today's students are not the traditional 18 to 22 year olds who live on campus and are full-time students. Many of our current students are less than full time in their mid to late twenties with the responsibilities of jobs and families. They are returning to school because they realize that further education is essential if they are to compete in today's job market. These students will now be able to apply for direct student aid and will have necessary services, such as child care, made available to them.

The provisions of this conference report were not purchased with increased authorizations and costs. S. 1965 is composed of carefully balanced reductions and savings in many areas and selected high priority increases in other areas. The conference report will result in approximately $2 billion less in authorizations for fiscal year 1987 than the fiscal year 1986 authorizations contained in current law. The maximum authorization for subsequent years are also capped to ensure that they do not exceed inflation. In particular, the costs of the Guaranteed Student Loan Program, which are real costs since this program is an entitlement program is estimated to reduce spending over the next 3 fiscal years by approximately $400 million, which more than meets the fiscal year 1987 reconciliation requirements.

It would be impossible for me, in the brief time available, to appropriately credit all the individual efforts of those who have contributed to this legislation. Let me single out only a few: Mr. HAWKINS of California's legislation to revise title III and to more effectively serve the needs of historically black colleges and universities; Mr. COLEMAN of Missouri's proposals for graduate fellowships and to improve collections of student loans; Mr. JEFFORDS of Vermont's provisions to reestablish a Loan Consolidation Program; Mr. BIAGGI of New York's efforts on the behalf of nontraditional students and teachers; Mr. WILLIAMS of Montana's and Mr. GUNDERSON of Wisconsin's legislation in support of nontraditional students in title I; Mr. ECKART of Ohio's "Dislocated Workers Act of 1985"; Mr. BRUCE of Illinois' proposals to improve the student financial aid programs and his "National Higher Education and Economic Development Act"; Mr. DYMALLY of California's legislation for university/high school partnerships aimed at dropout prevention, and Mr. CHANDLER of Washington's bill for midcareer teacher training.

There are, however, Mr. Speaker, two errors in the statement of manager's which I would like to correct at this time:

In the discussion of the provisions for the supplemental loan programs for students and parents, the statement of the managers erroneously states that the interest rate is to be calculated according to the 12-month T-bill. This reference should be to the 3-month T-bill, as it is correctly stated in the legislation.

In title XI the conference report states that one-third of the appropriation will be available for part A and two-thirds will be available for part B. These proportions should be reversed two-thirds for part A and one-third for part B. The legislation language is correct in this matter.

Mr. Speaker, at this point I would like to outline some of the very important specifics of the conference report.

Title I of the report is designed to assist institutions to meet the special needs of nontraditional students and students whose access to continuing postsecondary education programs has been limited. Title I of the bill—Postsecondary Programs for Nontraditional Students—constitutes a complete substitute for title I of the current Higher Education Act of 1965.

Title I provides a 4-year grant program to assist institutions to establish programs, strengthen existing capacity, or support cooperative agreements with other organizations to meet the continuing education needs of adults, and to a limited extent, to develop and provide support services such as counseling, off-campus outreach, and continuing education delivery systems.

The conference agreement reauthorizes title II which provides grants to libraries for adding to their resources, to train library personnel, and to strengthen college research library capabilities.

Since 1983, the appropriations committees have refused to appropriate funds for college library resource grants under II-A because there was no needs-based criteria under which grants were made. In this conference agreement, a new needs test is imposed for grant eligibility among college libraries, which will target grants to the most needy libraries in the country.

Title II-B which makes grants available for the training of libraries and for research and demonstration is reauthorized without substantive change.

Title II-C, strengthening college research libraries, is amended to include, for the first time, medium- to small-size research libraries that have been unable to compete with the large ones in the past.

A new part D, "College Library Technology and Cooperation Grants," authorizes competitive grants of up to $15,000—which must be matched by one-third by grant recipients—to enable them to fully participate in the new systems of library computer technology and to take full advantage of technological advances in library science.

Title III of the conference report is intended to provide grants of assistance to less-developed colleges and universities which serve low-income and minority students in an effort to help these institutions strengthen their academic programs and management abilities and to move toward self-sufficiency. Section 301 sets forth Congress' findings that many postsecondary institutions are struggling to survive in the face of declining enrollments and scarce resources, and that there is a strong national interest in ensuring the stability of these institutions and enhancing their role in providing equal access to a higher education for low-income and minority students. The purpose of this title is to assist these institutions in equalizing educational opportunity. I am particularly pleased by the set-aside of funds for institutions which serve the highest percentage of minorities and which are not historically black colleges.

Under title IV, the report increases the maximum awards for the Pell grant and supplemental educational opportunity programs and increases authorizations for the College Work

Study Program. Loan limits for the Guaranteed Student Loan Program are established at $2,625 for undergraduates in their first 2 years, $4,000 in the final 2 years, and $7,500 for graduate and professional students.

One statutory need analysis is established for the Pell Grant Program and another statutory need analysis for the other student assistance programs.

There are increases in interest rates from 8 to 10 percent for the GSL Program beginning in the fifth year of repayment as well as provisions which increase collections on defaulted student loans.

Title V in the report does not respond to all of today's teacher-related issues—such as the demand for higher salaries, safer school environments, or higher standards of achievement for students and teachers alike—because those are issues that must remain the responsibility of State and local governments.

What title V does offer are opportunities for the recruitment, retention, and development of professional skills for teachers, administrators, and other school personnel. To recruit talented individuals for careers in teaching, title V offers 4-year teacher scholarships under its Congressional Teacher Scholarship Program for prospective teachers in both public and private elementary and secondary schools, and it offers the midcareer teacher training program to retain individuals who want to move from education releated occupations to the field of teaching.

Title V continues the Talented Teacher Fellowship Program, and renames it in honor of Mrs. Christa McAuliffe. The program awards 1-year fellowships to experienced teachers who are selected by their peers for outstanding classroom work. This is a paid sabbatical, and is intended to give well-deserved recognition to good teachers and to encourage them to remain in the teaching profession.

For more than 2.4 million teachers currently teaching 40 million children in the Nation's schools, title V authorizes grants to establish professional development resource centers. Center programs will be designed by the teachers themselves to help upgrade their subject matter expertise, and to learn new classroom management and teaching techniques.

Title V also continues the leadership in education administration programs [LEAD] which offers leadership development opportunities for school administrators, local superintendents, and principals to help them create more effective schools.

Title V also authorizes the University-High School Partnership Program to provide assistance to at-risk secondary students from low-income families and communities to help them remain in school to graduation, to prepare them for better employment prospects, and to encourage them to pursue postsecondary training.

Title VI of the report extends and reinvigorates the foreign language and international studies programs that are the legacies of the National Defense Education Act. In my view, the $55 million authorized for these programs in fiscal year 1987 is one of the best investments we are making toward enhancing America's security through improved understandings and informed negotiations, and toward strengthening our ability to compete effectively in the international marketplace.

From a recent newspaper story comes compelling evidence of the importance of training provided through title VI programs: "A shortage of Berber translators, according to intelligence sources, contributes to the death of Army Sgt. Kenneth T. Ford. Intercepted Libyan messages warning of the Berlin nightclub bombing in which Ford was killed April 5, went untranslated several days because of an increasingly common problem: A shortage of skilled translators."

The legislation creates three new programs under part A—international and foreign language students; intensive summer language institutes and advanced students and faculty; and an authorization for the acquisition of foreign periodicals. I believe we have demonstrated a resolve to address some of our Nation's shortcomings in international politics through the newly created and strengthened centerpiece programs of title VI. In addition, by continuing the highly successful business and international education programs, first authorized in 1980, we convey our respect of the addage "business in the language of the customer."

Title VII of the report creates the College Construction Loan Insurance Corporation to increase the capital available for academic facilities.

A new part A of title IX is authorized to recruit talented but disadvantaged undergraduate students for graduate work and a new part D is authorized to increase fellowship aid to graduate students.

A new part A is authorized for title XI which encourages postsecondary education institutions in activities which further economic growth and productivity. Title XI also continues and refines the Urban Grant University Program in which I take great pride.

Mr. Speaker, before concluding I would like to pay special tribute to all the members of the Subcommittee on Postsecondary Education who have participated with me in the 2-year journey to bring this bill to fruition. The bipartisan cooperation, hard work, and diligence of all of the members have made this monumental bill possible. I would also like to commend the staff of all the members for their professionalism and invaluable contributions to the successful consideration of this bill. I particularly appreciate the work of the staff of the Subcommittee on Postsecondary Education: Tom Wolanin, the staff director, and the other members of the staff, Maryln McAdam, Birdie Kyle, Kris Gilbert and Gloria Watson.

I urge passage of the conference report.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of Conference Report 861, the Higher Education Amendments of 1986. This bill amends and extends the Higher Education Act of 1965 from fiscal year 1986 through the end of fiscal year 1991. I believe that this represents the most important education legislation to be considered by the 99th Congress.

Last year we celebrated the 20th anniversary of the signing of the original Higher Education Act, which established the first comprehensive Federal commitment to higher education. This Federal commitment provided grant, work, and loan opportunities which allowed many college students to realize their dreams for college and graduate school. At the same time, the act was enacted to provide resources to ensure that our colleges and universities be the very best in the world. This commitment was continued in H.R. 3700, the House version of the reauthorization of the Higher Education Act, and I am pleased to report to the House that this is continued in the final legislative product.

Since the enactment of the act 21 years ago, the Federal role in postsecondary education has revolved around four principal concepts:

First, equality of educational opportunity for students, encouraged through an array of student aid programs that emphasize educational access for low and low to middle-income students.

Second, a measure of student choice among postsecondary educational institutions through student aid requirements that take into account cost differences among institutions.

Third, support for the concept of diversity among America's postsecondary institutions, through program eligibility criteria that permit participation in all forms of postsecondary education.

And finally, the meeting of certain special educational needs through a number of categorical assistance programs targeted to such areas as college libraries, international education and teacher training.

These very important concepts are preserved in our conference agreement with the Senate and improved to better meet the contemporary needs

of our great system of higher education.

This conference agreement is the product of a thorough, bi-partisan effort to reauthorize the programs within the Higher Education Act. I would like to compliment our Chairman BILL FORD on the leadership he has shown in shepherding H.R. 3700 through the House and bringing the conference on H.R. 3700 and S. 1965 to a successful conclusion. I would also like to compliment both our full committee chairman, Mr. HAWKINS, and the ranking member, Mr. JEFFORDS, both of these distinguished Members lent the expertise of their considerable experience in developing education legislation to help assure that the final product reflected the important principles contained in H.R. 3700.

It would have been desirable if the reauthorization of the Higher Education Act could have been developed exclusively with a view toward the needs and desires of higher education as we move into the next decade. Unfortunately throughout this process, the reauthorization has had to reflect the financial limitations created by our deepening budget deficit. I believe that the conference report we bring before the House today reconciles these competing policy objectives.

The overall authorization of this bill, $10.2 billion for fiscal year 1987 is actually less than the current fiscal year 1986 authorization of $11.6 billion. We eliminated programs that have been unfunded and outdated, replacing them with programs designed to meet the contemporary needs of higher education. We have modified our needs analysis system to ensure that it treats students and parents fairly and ensures that our limited financial aid resources are directed at the neediest students. We made major reforms in our student loan programs to rid them of fraud and abuse.

In the interest of time, I will forgo a lengthy discussion of the numerous provisions included in the bill. I would, however, like to highlight a few important components included in the bill:

Our Budget Committee has required that the bill include $395 million in savings within the Guaranteed Student Loan Program in accordance with the fiscal year 1987 Budget Reconciliation Act. Consequently, the final legislative product incorporates a number of legislative changes that have the effect of meeting our budget requirements when compared to the program under current law. Included in the program changes are:

First, a series of amendments designed to prevent student loan defaults and improve collection efforts;

Second, a requirement that all students undergo a needs analysis to establish their eligibility for a loan (current law requires that only students from families whose income exceeds $30,000 demonstrate need);

Third, a reduction in the special allowance paid to lenders from 3.5 percent to 3.25 percent;

Fourth, the establishment of a reinsurance fee for State guarding agencies dependent upon their default rate;

Fifth, an increase in borrower interest from 8 to 10 percent beginning in the fifth year of repayment. Also, included in the bill is a provision which protects students from being charged an unjustifiably high interest rate in times of low interest rates by providing that any borrower interest paid in excess of the basic special allowance formula is applied to the borrower's principal balance.

The bill contains a tightening of the definition of independent student. This new definition was crafted to prevent the potential abuses of the independent student status within our title IV programs.

The bill raises the borrowing limits within the GSL, Supplemental GSL and NDSL Program. These increases while modest in the face of escalating education costs, attempt to provide more resources for students and their families.

The bill establishes a nonprofit corporation created to insure loans to colleges for the construction and renovation of facilities. This addresses in part, perhaps one of the most serious problems facing higher education in the coming decade—the deterioration of its physical plant infrustructure.

The bill makes several important improvements in Federal support for graduate education. Our last reauthorization, The Education Amendments of 1980, set forth as a part of the agenda for the National Commission on Student Financial Assistance the charge to study and report on graduate education. The Commission was directed to study the following: The adequacy of sources and levels of support for graduate students; the extent to which talented individuals are dissuaded from graduate study by cost considerations; the growing levels of indebtedness of graduate students and; the status of minorities in various fields of graduate study.

In December 1983, the Commission, chaired by New York University President and former Colleague John Brademas, released its report: "Signs of Trouble and Erosion: A Report on Graduate Education in America." This report spotlighted the very real deterioration of support for graduate education over the past 20 years. The report highlighted five major problems: First, shortages of highly trained talent in key fields, such as science and engineering; second, difficulties in maintaining high quality faculty; third, loss of talented students, especially women and minorities due to lack of adequate financial resources; fourth, deterioration of the infrastructure which supports graduate research and training; and fifth, potential loss of a generation of scholarship in many fundamental fields of knowledge.

Because of the central importance of graduate education to the Nation, the findings of this report alarmed me. The findings of this report were confirmed repeatedly again as we listened to witnesses and reviewed the status of our graduate education enterprise. We found that the number of applications for graduate study had declined, and that the percentage of students who enroll each year is progressively the larger proportion of those who apply. The brightest college graduates are not pursuing graduate education in the numbers that they were 15 years ago. In critical areas of national interest, we found that we are not producing a sufficient number of doctorates; for example, in 1984, over half of all engineering doctorates were awarded to foreign nationals.

While the costs of graduate education have steadily increased, substantial reductions have occurred in the amount and quality of support available to even our best graduate students. Federally funded fellowships and traineeships dropped from 60,000 in 1969 to fewer than 13,000 in 1981. Both undergraduate and graduate students have become increasingly dependent on loans to finance their education. Between 1974 and 1984, the percentage of Federal aid provided to graduate and professional students in the form of loans increased from 26 to 73 percent.

Because of the fundamental importance of graduate education to the Nation, I believe that it was imperative that we responded to this phenomenon in reauthorization of the Higher Education Act. For this reason, I introduced earlier to this Congress, a bill creating a new fellowship program for graduate students. The bill was adopted by the House and agreed to by the Senate as a part of this conference report.

This new program creates a new part D of title IX. It creates a fellowship program which authorizes the Department of Education to award grants to graduate departments in areas of national need. Grants would be awarded on the basis of merit from competing proposals as judged by panels of nationally recognized academic experts. Graduate departments would use the funds to provide followships to talented graduate students for up to 3 years.

This method—awarding grants to graduate departments who have documented a track record of excellence, for the support of promising graduate students—is a proven mechanism for targeting Federal financial assistance for graduate education to where it can do the most good for our Nation. In

our final agreement, this program was authorized at $30 million for fiscal year 1987.

I would be remiss in not pointing out the conferees also adopted a program authored by Representative DYMALLY, which was contained in the House bill. This program addresses another critical need, by providing funds for the identification of students from minority groups underrepresented in graduate education and providing these students with opportunities to which will prepare them for graduate study.

This bill has strong bipartisan backing. It reflects sound education policy while at the same time shows concern for our fiscal responsibilities. I urge my colleagues to show their support for higher education by voting "yes" for this conference report.

□ 1635

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. GAYDOS].

Mr. GAYDOS. Mr. Speaker, I rise to strongly support this conference report on the Higher Education Act reauthorization, S. 1965. As is typical of conference efforts, this is a compromise. We gave on some points and the Senate gave on others. Clearly, though, while no one is totally satisfied with the final result, neither is anyone totally dissatisfied.

As one knowledgeable educator said recently, "It is probably the best product we could have gotten under the constraints of the times and the circumstances under which we had to operate."

I am particularly pleased to note that the measure we are considering continues to make available trade, technical, and vocational training for those students who seek more immediate access to job opportunities instead of the conventional postsecondary path to a 4-year college degree.

This is especially relevant to the people in my district and in those districts that have suffered from the devastating effects of unfair and overwhelming foreign competition to our basic industries.

In my district alone, there were more than 30,000 employed steelworkers just 5 years ago. Today, there are less than 5,000 and most of them are on strike. These are not teen-aged dropouts. These are men and women in their thirties, forties, and fifties.

These are family people, homeowners, and responsible members of the community. There is in this bill before us the potential to help them find new careers through vocational training in proprietary schools and community colleges. In these settings they train to become truck drivers, word processors, or health aides through the assistance of guaranteed student loans [GSLS] and Pell grants.

There are, for example, some 5,000 private trade, technical, and business schools eligible to train such students. In my own family, one of my daughters chose to be trained as a secretary, which she is today, at the Bradford School in Pittsburgh.

These schools fill an important and growing need, especially among men and women who are seeking training in new fields because their past jobs have disappeared or because they are not interested in the traditional type of postsecondary education.

The bill before us is a compromise. It is the product of many long hours and a great deal of frustration. Our colleague from Michigan, who is chairman of the Subcommittee on Postsecondary Education, and his staff deserve a great deal of praise for their herculean efforts to bring this bill back to the floor.

As a member of the conference committee, I know of the many hours and long days put into the conference process. I know of the frustrations as agreements on key issues reached one day seemed to unravel in the light of the next day.

Still, for all the hours and the frustration, the bill does provide the basic framework governing the Federal role in higher education for the next 5 years.

The final authorization figure of $10.2 billion for the entire package seems to be a bit low considering the importance of higher education to the future of this country, but it was the best we could achieve.

As I said earlier, this measure is neither totally satisfying nor objectionable. There is little doubt that some technical amendments and other kinds of fine tuning will be necessary in the next Congress, but that is the way things tend to be.

Still in all, this is a good bill and I urge everyone to vote for its passage.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 5 minutes to our ranking Republican member, the gentleman from Vermont [Mr. JEFFORDS], who made significant contributions to the success of this conference report.

Mr. JEFFORDS. Mr. Speaker, the Higher Education Amendments of 1986 have evolved over the past 2 years as a bipartisan piece of legislation. I am pleased to be a cosponsor of this bill and I wish to congratulate the two House Members most responsible for this successful legislative effort, my colleagues from Michigan, Mr. FORD, the chairman of the Subcommittee on Postsecondary Education and the ranking Republican of the subcommittee from Missouri, Mr. COLEMAN.

The legislation before us today strikes a balance between contradictory forces—the continuing high budget deficits and corresponding need to hold the line on spending, and the importance of Federal financial aid to students and parents. Federal financial aid has become by far the largest contributor to student aid—approximately 80 percent of all student aid comes from the Federal Government—and it has become an increasingly important dimension of college finances.

This reauthorization reaffirms the strong Republican commitment of support for postsecondary education and equal opportunity for all citizens. The bill focuses on strengthening the most important component of the Higher Education Act, student financial aid, while at the same time providing new initiatives in the categorical assistance programs which are directed toward meeting the needs of our dynamic system of higher education.

Keeping the enterprise of higher education strong and vital through Federal programs is very important not only to our Nation as a whole, but also to my home State of Vermont. Institutions of higher education constitute the third largest employer in my State, with 31,000 students attending Vermont's 30 institutions of higher education. Two-thirds of those 31,000 students receive some combination of Federal grants, work opportunities, loans, interest subsidies, and loan guarantees. In addition many Vermont institutions benefit from the categorical programs in the act.

In the interest of time, I will not go into a detailed explanation of the conference agreement. I would, however, like to touch on a few of the provisions in the final bill which I was personally involved in developing.

The conference agreement includes a provision which established a National Commission to examine the responsibilities of parents, students, Government, and institutions of higher education to fund the expenses of postsecondary education. The purpose of this Commission is to report to Congress information that will assist us in developing a fair and equitable Federal policy with respect to financial aid. Without knowledge of our responsibilities and expectations how can we plan for a comprehensive Federal policy now so that we are able to meet our future needs?

One area that I believe this Commission must thoroughly assess and assist the Congress in reexamining before the next reauthorization is the definition of the independent student. The current law definition presents some potential for abuse; therefore, these amendments contain a substantial revision of the independent student definition. Under the new, stricter definition, students are presumed to be independent if they are 24 years or older; if they are married, responsible for legal dependents, a graduate or professional student, a veteran, an orphan or ward of the court; or if they can prove

they have been supporting themselves independently for 2 years prior to receiving a student aid award.

This new definition addresses the objective of the conferees—a tighter definition which attempts to end the potential abuses. However, larger policy questions still remain. At what point should a student be considered independent from his or her parents? Should policy be based on the belief that by the time a student turns a certain age parents are no longer financially responsible for them? Our new definition of the independent student may be rewarding the parents of independent students by relieving them of the responsibility of paying for their child's education. By allowing their children to declare themselves independent, we are allowing these students to be eligible for larger student aid awards.

In addition, these amendments include a provision which allows students with high loan debts to consolidate these loans and extend their overall repayment period. Consolidation is included as a means of reducing the potential for default by reducing the initial monthly payments to be made by the students. For example, a student with a loan debt of $10,000, could reduce his monthly payment by about $25, or a total of $300 per year. Such a sum is significant to a student who is fresh out of school and starting in a new job. The costs of higher education are continuing to increase; therefore students will be graduating with even higher loan debts in the future. I believe that this provision will yield even greater benefits to students in the future due to these increasing costs.

The conference agreement also makes some major revisions to the interest rate structure for parent and student supplemental loans. Under the present program an interest rate of up to 12 percent can be charged. A survey of the current program indicates that almost without exception a flat 12-percent interest rate is being charged. I believe that lenders should have made an effort to tie this program to a more market sensitive rate. With T-bills at less than 6 percent, T plus 3.25 percent is approximately 9 percent, a spread of 12 percent is unjustifiably high. Had lenders exercised the current option available to them, the conferees would not have felt compelled to revise the interest rate structure.

Under the conference substitute, all new supplemental loans will be made with an interest rate based on market rates, the 91-day T-bill plus 3.75 percent, with a cap of 12 percent. In addition, holders of old supplemental loans would be eligible to refinance their old loans under the new interest rate structure. The conferees adopted this change out of concern that the interest rate on the supplemental loan programs was disproportionately high.

I would like to note here that there is an inconsistency between the actual legislative language and the statement of managers regarding the T-bill used to determine the variable interest rate in this proposal. The legislative language is correct. It is my intent that the 91-day T-bill be used in this calculation, and I appreciate the chairman's willingness to make the appropriate correction in the report to conform with the legislation.

This change was made in recognition of the need for middle-income students and parents to have access to student loan capital to finance their education. It is our belief that this change will not undermine the continued partnership of the lending community and the Federal Government in making this program available to the public. The conference susbtitute has been designed so that these provisions can be implemented easily and fairly for students, parents, and banks.

At that urging of the lending community, we did not make the refinancing component of this provision mandatory. However, I would like to call attention to the faci refinancing can be immediately implemented upon enactment of this legislation. It is my hope that the lending community will participate aggressively in this Refinancing Program and view it as a means for expanding their supplemental loan portfolio. The conference agreement recommends that Congress conduct an oversight hearing concerning the implementation and availability of this program.

I would like to thank my colleagues, MARGE ROUKEMA and JOHN MCKERNAN for raising the issue of market sensitivity during House consideration of the bill. I believe that their contributions added considerably to the successful resolution of these provisions.

Another substantial change to past practice is the recapture of interest paid by the borrower in excess of the basic special allowance formula. The bill includes an increase in borrower interest on a GSL from 8 percent to 10 percent in the borrowers fifth year of repayment. This change is a provision from the House bill. It was incorporated to recognize that once a student is out of school and employed, the student can handle a greater portion of the interest. In light of making this interest rate increase in the fifth year, the conferees agreed to a further provision which will ensure that students will not be required to pay interest in excess of the basic special allowance payment. Under this provision any excess interest paid will be credited to the borrowers principal by either lengthening or shortening the period of repayment or by recalculating the borrowers monthly repayments on an annual basis. I would like to emphasize that any benefit accrued by these provisions is intended to be returned to the borrower.

Overall, I would like to reiterate my support for House Report 861. I urge my colleagues to join me in reauthorizing these programs for fiscal years 1987–91.

Mr. FORD of Michigan. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. BIAGGI].

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise as a cosponsor of the House-passed higher education amendments, and as a member of the conference committee, to urge my colleagues to support the conference report on S. 1965. This conference was long and difficult; but I feel confident that this legislation addresses the current and future needs of the higher education community, especially the students.

I want to congratulate and commend the distinguished chairman of the Postsecondary Education Subcommittee and primary negotiator in this process, my good friend and distinguished colleague, BILL FORD. His extraordinary leadership, craftsmanship, spirit of compromise and dedication to serving the needs of higher education was instrumental and essential in arriving at the legislation we bring before you today.

A special exception was made for Chairman FORD to continue to be the chairman of this subcommittee. I can only tell you upon reflection that this was the wisest thing this House has done, at least that the Democratic Caucus has done.

As I've said before, higher education has no greater friend and no greater champion. He has demonstrated this through his tremendous efforts in conducting over 36 hearings on higher education concerns, molding H.R. 3700 from these hearings and from the concerns of the members of the Postsecondary Education Subcommittee, diligently ensuring its favorable House consideration, and working with the Senate for the last month and a half, resolving the differences between the House and Senate legislation in a manner which would best benefit the higher education community.

I would also like to commend the ranking Republican on this subcommittee, TOM COLEMAN, for his significant and substantial contributions to this legislation. His contributions in reducing student loan default rates and in improving our commitment to graduate education, as well as his significant efforts in other areas in order to achieve this compromise, are reflective of his dedication to addressing postsecondary education needs.

I would also like to commend our distinguished chairman, GUS HAWKINS, who in keeping with his long-

standing commitment to quality in education lent his experience and expertise to molding a title 3 which addresses the needs of historically black colleges, institutions that serve a large number of minorities, as well as other needy institutions.

I would also like to recognize the many and significant contributions of the ranking Republican member of this committee, JIM JEFFORDS, and commend him especially for his efforts in the area of loan consolidation.

Mr. Speaker, since I joined the House Education and Labor Committee in 1969, I have participated in four reauthorizations of the Higher Education Act of 1965. In the past 20 years, postsecondary education has greatly changed. The student of the sixties is not the student of the eighties; the institutions have changed and grown; and the cost of education has greatly risen. Each reauthorization, this committee seeks to amend and adapt this important legislation to meet the changing needs of the higher education community. In the midseventies we tackled the problem of unavailability of guaranteed student loans by providing banks with added incentives to join this program. We have addressed the growing cost of education with new student aid programs. We have retargeted our aid depending on the needs appropriate at the time. This year we address many of the rising needs of higher education. These needs include lifting barriers to the nontraditional student, the rising cost of higher education, the increasing teacher shortage, and the increase in student default rates, among others. I would like to focus on some of the specific aspects of this important legislation.

REMOVES BARRIERS TO NONTRADITIONAL STUDENTS

In our numerous hearings in the last 2 years, one significant fact stood out—not enough was being done for the most rapidly growing segment of our student population—the nontraditional student. One point that is quite important to stress is the changing demographics of the population of the educational institution. No longer are our college campuses exclusively filled with recent high school graduates enrolled in 4-year programs. Currently over 40 percent of our students attend on a part-time basis; that figure is expected to increase to over 50 percent by the end of this reauthorization. Two-thirds of our community college students are part-time students. By 1992, it is estimated that one-half of our higher education students will be 25 or older.

I first addressed this problem early in this Congress, when I introduced H.R. 2711, the Fair Financial Aid for Part-Time Students Act, which sought to remove the barriers to the nontraditional student. This bill was incorporated in part into H.R. 3700, and a compromise was achieved with the Senate which would, for the first time, remove the present discrimination against needy students who, because of family or other responsibilities, cannot attend school on at least a half time basis. Financial aid will now depend on need, not on the number of credits a student is taking. This conference report contains provisions which will ensure that part-time students will receive a reasonable proportion of campus-based financial aid. This report for the first time allows less-than-half-time students to become eligible for Pell grants, phasing the neediest students in first. I would like to thank my colleague, Mr. Penny for his enthusiastic support of the less-than-half time student.

This legislation also contains provisions which will more fairly calculate the cost of attending school for these nontraditional students, such as including provisions for child care and by updating the definition of an independent student. We have also included a child care pilot project to examine the effect of campus-based child care on our student enrollment. Thanks largely to the dedicated efforts of Pat Williams and Steve Gunderson, title 1, which supports continuing education programs, focusing on our adult students, was reformed and reauthorized.

TEACHER RECRUITMENT AND RETENTION

Another problem on this rise in our Nation's education community is the increased shortage of teachers. We can expect a teacher shortage of one million by 1990. While enrollment in higher education programs in the last decade has increased by over one-third, the enrollment in teacher education programs has decreased by one-third. Even the President's report, "A Nation at Risk" cited teacher recruitment and retention as a major problem in our schools today. In an effort to address these shortages, I introduced legislation, H.R. 2742, which was incorporated into the higher education amendments to provide a 3-year guaranteed student loan deferral for those entering the field of teaching in areas of shortage. These areas of shortage include geographic areas and subject areas. We seek to address special problems such as early retirement provisions in certain areas which reduce the teacher population, incentives for minorities to enter teaching in areas with a high percentage of minority students, areas with mandated teacher testing, which reduces teacher supply, and areas which must presently resort to emergency certification to fill the classroom. I feel this is a positive step toward addressing these grave problems.

I would also like to commend Chairman FORD for his work in title V, particularly the school-university partnerships, the Midcareer Teacher Training Program, and the establishment of professional development resource centers.

REFORMS IN STUDENT AID PROVISIONS

One of the most notable changes in higher education in the past 20 years is the cost of higher education and Congress's response to that cost. Consider that the value of student aid has dropped 21 percent in the past 5 years. In 1979, the average Pell grant covered 46 percent of a student's costs. Today it only covers 26 percent. Consider that the dependence on loans has dramatically risen. Under 10 years ago, only 15 percent of our lowest income students borrowed, instead of relying on grants. Today that figure has risen to 57 percent. Combine these statistics with the National Institute of Independent Colleges and Universities' estimate that after 4 years of college, the debts of the neediest students are larger than their family incomes, and the result is our neediest students being inadequately served, thus being forced to discontinue their education or graduate with unjustly burdensome debts.

Both the House and the Senate have placed a greater emphasis on grant money for the lowest income students, instead of forcing them to become heavily burdened by debt. Pell grant maximums are increased to $2,300 in the year of enactment of this legislation, and by increments of $200 for each year thereafter, until the maximum grant reaches $3,100 in fiscal year 1991. Guaranteed student loan limits are increased to $2,625 for those students in their first 2 years of school, and $5,000 for other undergraduates. Limits for graduate students are increased to $7,500. This maintains the committee's commitment that students should not be forced into excessive debt, while providing flexibility for students attending high cost institutions. Also, since the highest default rate occurs in the first 2 years, this addresses the problem of student loan defaulters.

TACKLING STUDENT LOAN DEFAULTERS

The conference committee addresses the problem of student loan defaults by reinstating the Loan Consolidation Program, requiring the multiple disbursement of loans, and extending the unemployment deferment to 2 years—unemployment is the major reason for defaulting on student loans. All together these provisions represent over $180 million in savings over the life of the bill.

This bill's total authorizations is over $2 billion under current authorizations. This bill is fiscally responsible.

ADDRESSING THE NEEDS OF GRADUATE STUDENTS

In 1983, our former colleague John Brademas, now president of New York University, reported that between 1969 and 1981 the number of graduate fel-

lowships had dropped from 60,000 to 13,000. Our committee addressed this concern in title IX, largely by Mr. COLEMAN's bill H.R. 2199, which I cosponsored. The conference report provides for grants to graduate students in areas of need. A provision I authored would include nondegree granting institutions in eligibility for this graduate assistance. The Museum of Natural History in New York City brought to my attention that there are graduate students studying at museums, libraries, botanical gardens, and other institutions which do not grant degrees, that are gaining access to information vital to their research, information often not present anywhere save the museum or library.

FEDERAL SUPPORT IN OTHER HIGHER EDUCATION AREAS

This conference report reauthorizes and strengthens the TRIO programs, which were established to assist the disadvantaged student in completing high school and attaining postsecondary education. The conference report includes a special program targeted at encouraging minority students to enroll in graduate education, which along with provisions in title IX, seeks to address the grave imbalance of minorities in graduate school and therefore in teaching positions.

This legislation reforms the allocation formula for campus-based aid programs to more fairly serve institutions with large numbers of needy students. The conference report retains the House language keeping the student's GSL interest rate at 8 percent for the first 5 years after graduation. It renames the National Direct Student Loan Program in honor of our distinguished former chairman Carl Perkins.

CONCLUSION

In the end we produced what we feel is a very substantial piece of legislation that will assure the continued support on the part of the Federal Government for the next 5 years to so many aspiring students. This legislation was reauthorized in a very extensive fashion in cooperation with the Senate. In what seemed to be at the outset an almost impossible conflict, reason prevailed, adjustments were made, accommodations were arrived at, and we are here today. This bill is comprehensive; there are many important provisions I did not mention today. This conference report responds satisfactorily to the needs of the higher education community. Given the conditions of the day, I think we could not have produced anything better. Hopefully, in the future when the financial situation ameliorates itself, we will be able to improve.

This conference report does address the main concerns of higher education assistance—that of providing equal educational opportunities to all students regardless of race, creed, handicap, national origin, and perhaps most importantly, financial background. This legislation attempts to remove barriers that face all postsecondary students and attempts to assist students in fulfilling their goals and dreams. While not perfect, this legislation is an important step in our continuing and increasing efforts to educating the people of America. This country has historically placed a significant value on education, this legislation ensures that this priority is reaffirmed and revitalized.

Before I close, I would like to enter into a colloquy with the chairman just for clarification of the RECORD.

Mr. Speaker, to clarify the committee's intent with respect to the language of section 484(D) of the bill dealing with ability to benefit students, am I correct in my understanding that if a student is admitted under counseling, we expect the institution to keep records showing that student has the ability to benefit?

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield, yes, that is correct.

Mr. BIAGGI. Am I also correct in my understanding that if a student fails the admission test and the institution deems that the student can benefit from the education upon receiving appropriate remediation, we expect the school to maintain records justifying that decision.

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield further, yes, that is correct.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 4 minutes to the gentlewoman from New Jersey [Mrs. ROUKEMA].

□ 1650

Mrs. ROUKEMA. Mr. Speaker, I wish to express my support for S. 1965, The Higher Education Amendments of 1986, which extend the Federal student aid and other higher education programs through fiscal year 1991. My reasons for supporting this bill are based primarily upon my strong support for the student aid programs we are reauthorizing. I believe that student aid is one of the few areas where a Federal education role is essential. In providing financial assistance to students on the basis of need, we ensure that no one is denied access to college solely due to the lack of financial resources.

I would at this time like to commend the gentleman from Michigan [Mr. FORD], the chairman, and the gentleman from Missouri [Mr. COLEMAN], the ranking Republican, on the Postsecondary Education Subcommittee and the gentleman from Vermont [Mr. JEFFORDS], the ranking minority member in the full committee. As a member of the subcommittee myself, I have seen the degree of dedication and innumerable hours of work that they have devoted to the passage of this legislation. I would also like to commend the Members of the Senate who worked so hard in conference to resolve the differences between the House and Senate bills.

Although I had earlier been concerned about the very large total authorization amount contained in the House bill, particularly in these days of fiscal constraints, I am pleased that we worked out a reasonable compromise between House and Senate authorization levels in conference.

I am gratified that a provision contained in an earlier amendment I had introduced was incorporated into this bill, although on a narrower scale than I had hoped. In subcommittee, I offered an amendment to the Guaranteed Student Loan Program which would have based student's initial interest rate on prevailing market conditions by linking interest rates to T-bill rates.

My amendment would have included some limits to ensure against windfalls for lenders or excessive rates for students. This idea of linking interest rates to the T-bill was adopted by conferees not in the Guaranteed Student Loan Program, but in the Supplemental Loan Program. Although that amendment was not adopted, it was included in this bill.

Thanks to the effort of the gentleman from Vermont [Mr. JEFFORDS] it was introduced to apply to the Supplemental Loan Program. I do not believe that we should totally insulate students from fluctuations in the financial market. I certainly think this is a step in the right direction, a step toward variable rate loans. We can observe how this principle works in the Supplemental Loan Program. Hopefully, when we revisit the Higher Education Act in the future, we can apply what we have learned to the GSL Program without encountering the administrative problems raised by the banking community.

H.R. 3700 also contains a significant reform by including a new independent-student definition. If there is one area that virtually everyone agreed was in need of reform in the student aid programs, it was the arbitrary rules governing independent-student status. These rules were virtually impossible to verify. Consequently, there was every reason to believe that widespread abuses were occurring.

The conferees have remedied this by basically adopting the House provisions. These provisions require a student to either be at least 23 years old or to fall within one of certain specific categories—for example, married, orphan, graduate or professional student, and so forth. In addition, a student who does not fall within one of

these categories would be able to prove independence with proper documentation. Fortunately, the conferees have retained the additional requirement that students applying for independent status shall not have been claimed as a dependent for income tax purposes by their parents or anyone else other than a spouse for 2 previous years. This requirement, which I was able to add on the House floor, retains the one element of the previous test which was easily verifiable. The new definition of independent student should provide more predictability, consistency and fairness, as well as cut down on false claims of independence.

Finally, I would like to mention another important improvement which this bill addresses. That is in the area of debt burdens acquired by students who take out guaranteed student loans. Under the previous system, students were also too frequently unaware of the costs of their loans; many, if not most, students were unaware of the monthly payments they would have to make until their loans actually came due. Since students have some control over costs in choosing which higher education institution to attend, it is important that in making that decision they be fully aware of the long-term financial implications and not be overextended.

For this reason, the bill includes a provision I offered in committee which requires the Secretary of Education to provide the necessary information regarding potential student loan debt burdens to students at the time they make their higher education plans. The senior in high school must know that if he or she decides to attend a high-cost institution, it will probably mean a large debt burden upon graduation. I like to call this "truth in lending" in the student loan programs.

In sum, we will be making some important improvements in the Higher Education Act when we enact these amendments. I therefore wholeheartedly support this reauthorization of the act.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. OWENS].

Mr. OWENS. Mr. Speaker, despite the fact that there have been very few headlines connected with this particular bill and the media have paid no attention to it, this bill is one of the most important items to be passed in this session of the legislation, and history will show that the steps taken here are far more significant in keeping America strong than many of the other items that have been dealt with in this session.

I want to congratulate the chairman of the committee, the gentleman from Michigan [Mr. FORD]. As expected, he and his staff have done a very competent and thorough job. But beyond that, the citizen participation and the participation by the entire education community in the shaping of this bill was quite exceptional. Provision was made for numerous hearings and for input that I think was at a maximum from all quarters of the education community. As a result of this tremendous input and the flexibility of the chairman and the members of the committee, I think that we have a bill which cannot be excelled in any way in terms of dealing with all of the various problems related to higher education.

The bill has provisions which maximize opportunities for those who want to learn, for those who have potential. Contrary to anything that Prime Minister Nakasone may say, geniuses exist in all parts of our society—in all races, all ethnic groups, and at all economic levels—and the Higher Education Assistance Act is just one part of providing opportunities for those geniuses, those people with leadership ability, and just ordinary people who can be improved by education, to get the kind of assistance that they need from their Government.

The bill is to be commended for maximizing those opportunities for those who have the greatest needs. It also is to be commended for recognizing the needs of the historically black colleges. The historically black colleges are a very tiny fraction of the total constellation of the American higher education community, but their special recognition in this bill allows them to make the contribution that they can make toward the bigger goals of the American higher education community.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Speaker, I rise only to compliment the chairman of the subcommittee and the ranking minority member. The manner in which the bill was put together is different from that of some committees on which I serve. We not only were given an opportunity to participate, we were encouraged to participate. If you do not believe that that is different, serve on the Budget Committee sometime as a minority member. We can participate in reconciliation there—that is the bad guy—but putting it together is something else.

I do want to congratulate both Chairman FORD and the gentleman from Missouri [Mr. COLEMAN], because we spent hours and hours and hours going all over this country and having hearings here, and then put together a bill that I think will improve our whole higher education program. so again, I compliment both for their efforts.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. PENNY].

Mr. PENNY. Mr. Speaker, I urge a vote in support of the conference report on the reauthorization of the Higher Education Act of 1965. The report before us today is the result of several weeks of negotiations between the House and Senate on over 700 points of disagreement.

Mr. Speaker, conferees agreed to a fiscal year 1987 authorization level that represents a savings of $500 million over the House-passed bill, while maintaining and strengthening needed aid programs.

In addition to making some savings, the conference report makes important and needed policy changes. Conferees agreed that student financial assistance should be extended to the growing number of nontraditional students on our college campuses. For the first time, students enrolled on a less-than-half-time basis will be given access to student aid programs. This change reflects the present reality on our college campuses. Part-time and less-than-half-time students now comprise 41 percent of all national postsecondary enrollment. It's time, Mr. Speaker, that people striving to make a better life for themselves by advancing their education are given a chance. Most part-time students are those training for a better job, or people retraining for a new career after being laid off from a declining industry or losing their farm.

Mr. Speaker, this change and several others represent a significant step forward in our efforts to ensure access to education. I want to thank the gentleman from Michigan [Mr. FORD], the chairman of the subcommittee, for his leadership and his hard work, and that of both the minority and majority members of the Subcommittee on Postsecondary Education, which is reflected in this conference report.

Mr. Speaker, I urge my colleagues to support the conference report.

□ 1700

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin [Mr. GUNDERSON.]

Mr. GUNDERSON. Mr. Speaker, following the recent completion of the House/Senate conference committee's work on the reauthorization of the Higher Education Act of 1965 (S. 1965), I would like to commend the House Postsecondary Education Subcommittee chairman, Mr. FORD, and the ranking minority member of the subcommittee, Mr. COLEMAN, for their dedication and leadership throughout this reauthorization process.

S. 1965, a bipartisan effort in both Houses, responsibly extends the Federal commitment to higher education through student and institutional programs. Changes in student assistance programs are geared toward reducing

a borrower's dependence on loans while at the same time realizing the cost of attending school continues to increase. Also addressed, are the changing trends in postsecondary students and their institutional and service needs.

Passage of this conference report concludes an extensive reauthorization process commenced by both the House and Senate on February 14, 1985.

I am pleased by the direction this legislation takes to respond to significant challenges facing our higher education community, those being:

Demographic changes in the student population;

Increasing costs of attending higher education institutions;

The need to adapt to changing technology with programs and curriculum that will prepare students properly; and

Federal budgetary constraints.

This reauthorization establishes a funding level for fiscal year 1987 of $10.2 billion. Title IV, student assistance programs make up the majority of this package—98 percent—thereby making more aid available to students. This is an impressive Federal commitment to the future of higher education and access to it. With public university costs, approaching $5,000 to $8,000 annually in some instances and private institutional costs double that of its public counterpart, Federal financial assistance is becoming a greater necessity.

In my home State, of the entire University of Wisconsin system—enrollment equals 165,000 approximate—more than 63,400 University of Wisconsin students receive financial assistance equalling over $207 million. It is certain this reauthorization will provide greater access and financially assist more students. The positive impact of this act will be further amplified by the fact that these figures do not include student participation or funding from the many independent institutions, vocational education institutions, or junior colleges throughout Wisconsin.

In addition to the well-publicized student financial aid programs, for which this act is known, this reauthorization contains other important programs, such as cooperative education, libraries, graduate education, and nontraditional student programs. A number of objectives have guided us throughout this process. First, the need to respond to the changing needs and clientele of the postsecondary student population. Title I gives the act a new focus to help colleges and universities be more responsible to part-time students and working adults, and eliminate institutional barriers. This can be accomplished by developing creative and innovative educational delivery systems—cooperative and consortia arrangements to more effectively address regional educational needs.

Second, we confronted the budgetary limitations placed upon us by the deficit and our economic responsibilities. Recognizing the need for adequate funding for education, we responded to the fact that Federal resources are not limitless. This conference report responsibly increases the GSL loan limit, the maximum amount available in the Pell grant program, and campus-based programs. Under the direction of the Secretary of Education, a study will be conducted concerning the problems of escalating postsecondary education costs. This conference report is both fiscally and programmatically sound.

Third, we improved the administration and quality of the programs reauthorized by the conference report. Congress must insure that these programs function in an administratively efficient and effective manner, promote incentives for the improved quality of individual programs and postsecondary education generally, and respond to the financial needs of students. This conference report does this.

Additionally, the new law will assist the higher education community meet the changing needs of our student population. John Naisbitt, social forecaster and author of Megatrends considers, "In education we are moving from the short-term considerations of completing our training at the end of high school or college to lifelong education and training." This 5-year reauthorization puts this concept into practice.

In this lifelong educational spectrum, the number of traditional college age students 18 to 21 continues to decline, while older students over age 22 account for 41 percent of the national college and university student body. This compares with 28 percent in 1970. Between 1970 and 1983, enrollment for all students increased by 28 percent. During the same period, enrollment for older adult learners increased by 70 percent. By 1991, it is expected that adult learners will make up 50 percent of the postsecondary student population.

Accordingly, many House conferees sought to improve Federal law as it pertains to the expanding nontraditional adult learner population. Working with Representative WILLIAMS to refocus the direction of title I—previously continuing education—postsecondary programs for nontraditional students, we developed a program to assist universities adapt to the needs of the growing nontraditional student population. Creation and implementation of on- and off-campus programs will enable institutions to reach out to nontraditional learners.

The approach taken toward higher education programs in this act is both progressive and responsive. We have been fiscally responsible and practical in addressing the financial needs of the Nation's student, while at the same time, recognizing the changing face of higher education and responding to it.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. BRUCE].

Mr. BRUCE. Mr. Speaker, I rise today in support of the conference report on the higher education amendments of 1986. As a member of the Postsecondary Education Subcommittee, I know the time and diligence it has taken to bring this final bill to the floor. I believe the bill reflects the true spirit of compromise and I would like to commend the chairman of the subcommittee, the distinguished gentleman from Michigan [Mr. FORD], who carefully guided us through this process.

Undertaking this bill was no small task—for the conference agreement we are considering today will chart the future of Federal support to higher education for the next 5 years. The final bill strikes an important balance between fiscal responsibility and the goals of access and choice. In recent years, choice has all but disappeared and access has been eroded. Budgetary constraints prevent us from fully realizing those goals, but I believe today we have moved closer than ever before to the goals envisioned by the act's original authors 21 years ago.

This bill has particular significance to me because the district I represent has one of the largest concentrations of college students in the Nation. Fourteen percent of the adult population is enrolled in one of the district's seven community colleges or two universities.

The Student Aid Programs are particularly important. More than 20,000 students in the district receive some form of student aid. Over 12,000 students at the University of Illinois alone benefit from the Guaranteed Student Loan Program.

By strengthening Pell grants as the foundation of student aid, and by increasing the loan limits under guaranteed student loans, this bill responds to the problems of rising tuition costs, shrinking grant aid and the growing dependency on loans to finance a college education. The bill also responds to the changing student population by making aid available to students attending school less than half time.

Throughout the conference, decisions were made with the understanding that these times demand fiscal responsibility and accountability. Without this recognition, we threaten the future of those we seek to help. And so the bill, in addition to meeting our budget targets this year, makes long term changes to ensure the fiscal in-

tegrity of its programs. For example, in response to GSL defaults, the bill caps the amount to be borrowed by first- and second-year students—the years where default rates are the highest. The bill also includes a provision I authored which calls for student loans to be made in installments. This provision is estimated to save over $300 million per year without dropping any students from the program.

I would like to take this opportunity to thank my colleagues for their support of my initiative to link colleges and universities with local governments, business and others to work on economic development issues. With a small Federal investment, this is one way we can work to stem the tide of economic decline experienced in our communities.

In conclusion, Mr. Speaker, the legislation we are considering today is an investment of the best kind—an investment in the future of our young. The programs represented in this legislation reflect both an opportunity for millions of young men and women, and a sound investment in a strong and prosperous America.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 3 minutes to the gentleman from Iowa [Mr. TAUKE].

Mr. TAUKE. Mr. Speaker, I rise in strong support of the conference report on S. 1965, the Higher Education Amendments of 1986. I comment Chairman HARKINS and Chairman FORD for their leadership in bringing this conference report before us, and I congratulate the ranking Republicans on the committee and subcommittee, Mr. JEFFORDS and Mr. COLEMAN respectively, for their diligence and efforts to construct a balanced bill to reauthorize the Higher Education Act of 1965.

Congress was faced with a difficult task when it began the reauthorization of this act. We were confronted with the need to expand financial aid programs in order to help students meet the rising costs of a college education and to ensure that financial burdens did not become insurmountable hurdles to pursuing a higher education in this country. At the same time, we had to remain mindful of the need to control the overall cost of this bill to the Federal Government in light of the current budget crisis.

Many of the conferees would have preferred a much greater expansion of student financial aid programs in this bill. I commend my colleagues for recognizing budget constraints and working within difficult spending limitations in developing this legislation, which successfully holds the line on the overall cost of the programs authorized by this legislation.

While this bill does successfully control the cost of higher education programs, it does not do so at the expense of students. Availability of student aid is increased by this bill, but in ways that will not bust the budget. For instance, loan limits are raised in the Guaranteed Student Loan Program, thereby making larger loans available to help students meet rising costs at limited expense to the Federal Government. Moreover, the special subsidies provided to lenders participating in the Guaranteed Student Loan Program are reduced slightly, a provision which does not jeopardize the continuation of the program or limit access to loans, but which saves the taxpayers millions of dollars.

The conference agreement also recognizes the increasing number of nontraditional students enrolled in postsecondary education programs and addresses this growing area of need. The compromise reached to increase the aid available to these nontraditional students also rightly protects fulltime students from reductions in aid as a result of this expansion of the population eligible for student aid programs.

Finally, I want to commend the gentleman from Vermont, Mr. JEFFORDS, for his work on the comprehensive, loan consolidation program included in this conference agreement. The ability to consolidate loans is an important benefit to students who are graduating from postsecondary education with large debt burdens. Manageable repayment schedules will also decrease the default rate on Government guaranteed loans, and thus reduce the cost of these programs.

I strongly support this conference report and urge my colleagues to join in the passage of this comprehensive, responsible legislation.

□ 1710

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DYMALLY].

Mr. DYMALLY. Mr. Speaker, most of the Members have dealt with the substance of the bill, and others will continue to do so; however, I wish to deal with the spirit which prevailed during the many hours of the conference committee meetings.

First, I want to commend the chair of the Subcommittee on Postsecondary Education, the gentleman from Michigan [Mr. FORD] for his efforts.

Mr. Speaker, in this extremely conservative time of fiscal constraints, when the national priorities tend more to be in terms of military emphasis in addressing the security needs of this great Nation of ours, the House and Senate Committees on Higher Education have been most triumphant against the odds of reducing the significance of higher education in America.

The conference report which is now before both Houses represents bipartisanship in its greatest hour, and perhaps more importantly it represents the willingness of the Members of this Congress to address the present and future needs of higher education, and thereby securing the future of America.

Noteworthy of the agreements to be highlighted are the increases in student financial assistance to the poor and almost poor of this Nation; the realization that Americans, as a people, are aging and all cohorts are to be afforded the opportunity for education—the nontraditional students; the search to address the high numbers of dropouts in this Nation and programs which help this population secure higher education; the increases in programs such as trio which has been most successful over the years and provides the poor with opportunity and chances for successful livelihoods; the recognition that black Americans and minorities of all races and creeds contribute to the greatness of this Nation and, therefore, the opportunities granted by the title III programs; the recognition that graduate education in all areas is important to the continued greatness of America and, therefore, Patricia Harris grants; the cognizance that fair is fair and the programs which were adopted to treat equitably all colleges and universities of the Nation.

This is an excellent bill which is being brought to this floor. Staff have worked hard and long for months and Members of both Chambers have given unselfishly of their time and energies to assure that higher education in America is a solution to the record inflation, the growing numbers of illiterates, and the overextended under and unemployment lines.

I urge swift passage of the conference report and congratulate my colleagues in both Houses and on both sides of the aisles for making a most significant piece of legislation a part of the 99th Congress.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. Mr. Speaker, I do concur with many of the speakers that this conference report is a substantial improvement over the version that passed the House. The legislation is technically well-thought-out and well-legislated. In fact, it does reduce total spending from $10.7 and $10.2 billion from the version we passed in the House.

In addition, it provides other improvements: A need analysis, a 6-month grace period, interest rates increased in the 5th year, consolidation of repayments, and an increase in auxiliary loans.

I would call to the attention of the House floor that the bottom line is still the bottom line. This conference report proposes to increase expenditures in the higher education areas by $1.6 billion from fiscal year 1986 to

fiscal year 1987. Expenditures in fiscal year 1986 were $8.6 billion; $3.5 billion in Pell Grants, that would be proposed to be increased by about a billion dollars; $3 billion in GSL, that would be proposed of an increase of $200 million; and $1.8 billion in the remaining grant programs, and that would be proposed to be increased to $2.4 billion.

We will, if we pass this, and I believe we will; I have no illusions about the final vote; it will have an effect on sequestration, on Gramm-Rudman, on the deficit. I think the House should not adopt this version until the conference report comes back with a spending cap of a freeze at the fiscal year 1986 levels.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES. Mr. Speaker, I rise to express my strong support for the conference agreement on the Higher Education Act amendments. As one of the House conferees on this legislation, I would like to personally compliment Chairman FORD and ranking member COLEMAN for their perseverance in fighting for a conference agreement that we in this body can—and should—be proud of and fully support. In addition, I would like to compliment Chairman FORD's staff for all of their tireless efforts in working out many of the differences between H.R. 3700 and S. 1965.

While it may not contain provisions meeting each and every Members' desires, including my own, I want to tell my colleagues, given the financial restraints we worked under, it is the best possible agreement that we were able to work out with the other body. Regardless of personal desires, each and every Member of Congress will have thousands of constituents who will benefit from the provisions of this agreement. Indeed, our entire Nation will benefit from this agreement.

I urge my colleagues on both sides of the aisle to vote yes on passage of this legislation.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Maine [Mr. MCKERNAN].

Mr. MCKERNAN. Mr. Speaker, I want to just say to the leadership of the Committee on Education and Labor and the staff what a privilege it has been for me to serve on that committee during this term that we are reauthorizing such an important piece of legislation.

Particularly I want to thank the chairman, the gentleman from Michigan [Mr. FORD] and his staff, as well as the ranking member, the gentleman from Missouri [Mr. COLEMAN] and his staff, and the ranking member of the full committee, the gentleman from Vermont [Mr. JEFFORDS], because they have been of incredible assistance to me and my staff as we have tried to address problems that are specific to Maine children who need the opportunity for higher education.

Whether they are problems that are unique to our own secondary market where we are trying to give more opportunity to Maine children for higher education; whether it is the problem of rent subsidies being considered a part of income for the nontraditional students who need that help in order to go back to school; whether it is expanding the work-study programs to make sure that we can put more funds into job placement, so that we can make sure that we have the opportunities that are going to be essential for a work-study program to work; or whether it is just changing the opportunities the students have under the Guaranteed Student Loan Program.

Maine has the lowest percentage of students in this country who go on to higher education, but the largest percentage who use guaranteed student loans.

I believe the kind of changes that we have made are going to allow more Maine students and more students throughout this country to have the opportunity to use government assistance to make sure that they have the opportunity to get the education which is going to be so important for their futures.

Mr. Speaker, I think we have satisfied the goal that we started out with, thanks to the leadership on our committee putting education ahead of partisan politics. That is the way legislation ought to be crafted, and I am convinced that will mean we are going to have more opportunity for students in this country within the limited dollars that we have.

Mr. FORD of Michigan. Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, quite often when the Congress considers major legislation of this type, it has difficulty drafting the legislation in a way that affects the future. We so often know what has happened in the past that sometimes we in effect fight the last war.

I am pleased that the chairman and those of us who worked on this legislation were able to draft it in a way that we took a close look and affected the lives of the new college student.

There is a myth, Mr. Speaker, that the American college student is 18 years old, male, unmarried, not working, and enrolled in the business school. I do not know if that was ever true, but it certainly is not true today; and this bill really takes a major step at working with what we might call the nontraditional college student, the student that is more and more making up the majority of the student population on the campus.

With this legislation we try to provide appropriate assistance to returning students, to single parent students, to workers who have been thrown out of work in these last two recessions in the past few years, and want to return to a campus to pick up additional kinds of skills.

□ 1720

Time does not allow me to enumerate all of the many, many pages of changes that are in this bill which will affect the new students coming onto the campuses today and tomorrow. I want to commend the chairman for his leadership in ensuring that this bill affects those types of students and I would like to also commend my colleagues on both sides of the aisle, particularly, if I might take the risk of singling out one colleague, particulary Mr. GUNDERSON on the minority side of the aisle for the excellent work that he did in coordinating and cooperating with me and others in writing this bill in a way that it takes care of the nontraditional new college student who is going to be on America's campuses.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, I rise in support of the conference report on S. 1965, the higher education amendments of 1986. This legislation responds to the two overriding concerns today when it comes to Federal student financial assistance—making more dollars available, both in grants and in subsidized loans, for those students unable to pay the increasing costs of higher education, while also tightening eligibility criteria and collection procedures, to insure that only those students who need Federal aid receive it, and that those who do receive loans repay them. The bill maintains the critical combinations of Federal grants and loans which have been so important in insuring educational opportunity to our young people, and increasingly, older workers who need retraining and further education as well.

In addition, the conference report follows the House bill and includes a new program to address one of the most pressing needs of higher education today—the critical need for new and upgraded research and educational facilities. By involving private capital in this new program of loan insurance and reinsurance for educational facilities, this program will allow us to leverage a large number of dollars for college construction with relatively few Federal dollars involved.

I want to also commend the outstanding efforts of Chairman FORD, and of my ranking member of the subcommittee, Mr. COLEMAN, and to the chairman and ranking member of the full committee, Chairman HAWKINS and Mr. JEFFORDS for all of their work on this legislation. It is a tribute to

them, as well as an acknowledgement of the importance of these higher education programs to our present and future strength as a nation, that this measure has maintained such a level of bipartisan support throughout the legislative process.

Finally, let me mention two particular provisions in the legislation. Under present law, there are two supplemental loan programs—the Supplemental Loan Program for Students [SLS] which is available to graduate and professional students and to undergraduate students who have been deemed to be independent, and PLUS loans, which are available to parents of dependent students. While the loans are in many ways similar—there is, for example, no interest subsidy paid by the Government—the repayment terms under the two programs are different. Under the student loan program, the borrower has the option, with the lender, to either pay only the interest on the loan while the student remains in school, or to capitalize the interest and begin repayment after completing school. Under the parent loan program, repayment of both principal and interest must begin within 90 days of disbursement of the loan, under existing law.

The conference report makes two important changes in the parent loan program, which should go a very long way in making this program more useful to families whose income and assets prevent them from getting a guaranteed student loan, or for whom the GSL does not meet educational costs. The first is to add a variable interest rate, based on the U.S. Treasury bills, a change which was due to the efforts of Congressman JEFFORDS. The second change would allow flexibility in the repayment terms of these loans, adding the interest only while in school and capitalization options presently available under the student loan program, to this program. The combination of these changes will make this program more useful to families which are caught in the crunch between increasing educational costs, and the new restrictions on the more expensive GSL Program.

I have already mentioned the new construction loan program included in title VII of the conference report. The bill also includes, in conjunction with that program, a nondiscrimination provision, initially added by the other body. While the intent of that provision was to insure that none of the benefit of this program goes to those schools which follow policies of racial or other discrimination—an intent which I agree with—the language adopted by the other body would have precluded the participation in this program by a great number of private schools which maintain their identity through the religious faith commitment of faculty, staff, and/or students. Many of these schools are no longer, or have never been, formally tied to or controlled by a particular church or denomination, but nonetheless have maintained a commitment to an identifiable set of religious beliefs and ask their faculty, staff, and/or students to accept these as well. While it would have been my first preference to simply remove the prohibition on religious discrimination, as has been done in all of the other education statutes, it was not possible to get the other body to agree. So language has been included in the bill clarifying that these institutions which follow an identifiable set of religious beliefs, and which require their faculty, staffs, or students to accept these religious beliefs, are not thereby prohibited from participating in this program.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. ATKINS].

Mr. ATKINS. Mr. Speaker, the $10.2 billion authorized by this legislation is about the best investment in this country's future that I can imagine. It will open the doors of educational opportunity to more than 12 million students. While we have provided the educational opportunities our society so desperately needs, we have held spending below current authorization levels. We have targeted financial aid to students and families with the greatest need, and we have found affordable methods of assisting middle-income families.

We have raised financial aid levels to reflect the increased costs of higher education. We have reenacted a student loan consolidation program that will let students stretch out their repayments and lower their debt burdens. We have set up new tougher procedures for collecting on defaulted student loans.

That we can improve the act's student aid programs and save money at the same time is a tribute to the bipartisan effort that went into the drafting of this bill. I would especially like to congratulate our chairman, Mr. FORD, for his unending efforts on behalf of this legislation.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Mr. Speaker, darned near everything has been said on this bill. I just want to rise and say "thank you" to the chairman of the Subcommittee on Higher Education, "thank you" to the ranking member of both the subcommittee and of the committee.

Last year I read in the Wall Street Journal about a program up at Harvard that struck my imagination as one that might be useful for the whole country, one that would take people who had served in a career for some time, 20 or 25 years and then train them to be a teacher.

So I went to Mr. FORD and asked him his ideas about it. He said, "Why don't you introduce a bill?" Later he suggested "let's put it in the Higher Education Act."

Then he helped me get it through the conference committee, as did the gentlemen from Missouri [Mr. COLEMAN] and Vermont [Mr. JEFFORDS].

I think this is an example of people from different parties working together, holding hearings in my State, and I just want to stop for just a moment, from all the rest of the discussion of this and just say that this is a little personal triumph for me. It is my first bill through the Congress, and I am tickled about that. But you never do anything alone.

Especially to you, Mr. Chairman, "thanks a million."

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. KILDEE].

Mr. PANETTA. Mr. Speaker, will the gentleman yield?

Mr. KILDEE. I yield to the gentleman from California.

Mr. PANETTA. I thank the gentleman for yielding.

Mr. Speaker, I rise to pay tribute to the chairman and those involved in this conference, particularly on the foreign language areas, title VI. If we are going to have strong higher education in this country, it does have to emphasize foreign language training.

Mr. KILDEE. Mr. Speaker, I rise in support of the conference report on S. 1965, the Higher Education Act Amendments of 1986. This conference report will help achieve the goal of equal educational opportunity by reauthorizing grants and loans to the Nation's colleges and their students for 5 years. I commend the gentleman from Michigan, Chairman FORD, for skillfully guiding this important measure through Congress, and I urge my colleagues to support it.

I was a conferee for title XIII of this measure, which creates an autonomous Institute of American Indian and Alaskan Native Culture and Arts. This institute will be a continuation of the excellent program in Santa Fe, NM, which I have had the privilege of visiting. Special attention in the long effort to take this vital step goes to Congressman RICHARDSON, who has worked for several years on these provisions. I am sure that it will allow continued growth in the program. I believe the institute will be a showplace for young Indian artists and artisans.

I must also mention the fact that the conference report on S. 1965 takes the first step in recognizing the need to preserve and foster native Hawaiian art and culture. The grant program authorized by this section is not in

competition with, but is separate and in addition to, the program in Santa Fe. As such, it is to be commended and supported.

In addition, the conference report on S. 1965 incorporates provisions from H.R. 147, which I introduced on January 5, 1985, and which is cosponsored by 78 Members of the House. These provisions ensure funding for the National Diffusion Network.

The National Diffusion Network [NDN] was created in 1974 by the Department of Health, Education, and Welfare. Its objective is to carry out a congressional mandate to improve educational quality through the dissemination of exemplary educational programs to school districts throughout the United States. It is the only program in the country that has this objective. The NDN also provides assistance to school districts that wish to adopt and operate any of these programs. Though relatively small, the NDN has amassed an impressive record of success in meeting this objective.

Since 1974, the NDN has been fostering the improvement of educational practice in school districts in all 50 States, the District of Columbia, the Virgin Islands, and Puerto Rico.

Currently, NDN programs are funded from tier II of the Secretary's discretionary fund. This provision ensures funding under the Secretary's fund by moving it into tier I of this fund.

Also incorporated into the conference report on S. 1965 are provisions from H.R. 2210, which I introduced on April 24, 1985. H.R. 2210 adds two principals to the Assessment Policy Committee [APC], a body established by Congress to help assess education policymaking at the local, State, and Federal levels.

These provisions will enhance the important task of assessing the achievement levels of children and young adults in the basic skills of reading, mathematics, and communication.

Congress mandated a national assessment of education progress when it enacted Public Law 95-561, the General Education Provisions Act [GEPA]. The APC is charged with the task of selecting the learning areas to be assessed, developing goals and assessment objectives, identifying appropriate methodology and ground rules for measuring educational progress and determining the form and content of the assessment's report, as well as the method of dissemination. The APC also conducts studies on how to improve the ultimate use of the national assessment.

Principals set the learning climate, are the curriculum leaders and are the ones who implement change in each school. They observe and assess the daily implementation of curricula. Secondary and elementary principals would bring to the APC a much needed perspective of the every day implementation and assessment of curricula. This measure affords the utilization of this perspective.

Finally, Mr. Speaker, I would like to take this opportunity to express my heartfelt appreciation to Mr. David Solis, formerly of my staff, whose hard work, contributed greatly to the National Diffusion Network and the Assessment Policy Committee provisions of this bill. Mr. Solis has recently returned to the teaching profession, and I am sure we all wish him well in his future endeavors.

Again, Mr. Speaker, I urge my colleagues to support the conference report on S. 1965.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. FASCELL], the chairman of the Committee on Foreign Affairs.

Mr. FASCELL. Mr. Speaker, I take this time to engage the subcommittee chairman in a colloquy.

Mr. Speaker, I understand that the conference agreement contains language creating a special commission which will study the issue of title IV eligibility for students whose immigration status is pending or is in some other way unclarified.

Mr. FORD of Michigan. Mr. Speaker, if the gentleman will yield, yes there is report language to this effect.

Mr. FASCELL. I would like to suggest that one component of the commission's study in this area be an examination of the special concerns of higher education institutions like Miami-Dade Community College in Miami, FL. Miami-Dade is the largest community college in the United States and has a long and distinguished record of educating students from other nations. The commission should pay special attention to the students of Nicaraguan descent who are enrolled at Miami-Dade and other higher education facilities in south Florida. The administration's refusal to clarify the immigration status of these students has placed their educational future in peril. Miami-Dade argues that an educated populace is a productive populace. I trust that these special concerns can be included in the commission's mandate.

Mr. FORD of Michigan. I, too, would hope that the commission would pay special attention to concerns of this nature.

Mr. Speaker, I yield 1 minute to the gentleman from Kentucky [Mr. PERKINS].

Mr. PERKINS. Mr. Speaker, I appreciate the chairman giving me this opportunity to rise and voice my strong support for this conference report. We have gone through an extensive examination of all the higher education programs and I feel that we have been able to put together a bill that addresses many of the needs that are facing the higher education community today. I feel that this bill also provides the structure for today's programs to face tomorrow's problems as higher education grows and expands through the 5-year life of this reauthorization.

In this conference report we were able to preserve the present interest rates on the guaranteed student loans that are used and critically needed by today's students. We were also able to open the door of hope and access a little wider for the nontraditional students. Many of the truly deserving will become eligible for Pell grants in the coming years as a result of this initiative. Hopefully we will be wise enough to continue to build on this idea and provide more access for nontraditional students in the future.

I congratulate the chairman of our postsecondary subcommittee on his excellent leadership and hard work throughout the hearings, markups, and the conference proceedings with the Senate. Because of Congressman FORD's dedication to this legislation we have a reauthorization that deserves unanimous support from both Houses of Congress. I urge everyone to vote for approval of this conference report on S. 1965.

Mr. FORD of Michigan. Mr. Speaker, I yield 1 minute to the gentleman from the Virgin Islands [Mr. DE LUGO].

Mr. ECKART of Ohio. Mr. Speaker, will the gentleman yield?

Mr. DE LUGO. I yield to the gentleman from Ohio.

Mr. ECKART of Ohio. Mr. Speaker, the Education and Labor Committee, and the conference committee both on which I sit, faced a formidable task in reauthorizing the Higher Education Act. While increasing tuitions at institutions force more students to seek financial assistance, the budget deficits are placing great pressure on Congress to control student aid costs. Through enormous diligence, we were successful in drafting a bill which provides more aid to individual students while keeping costs down.

I am particularly pleased with this bill as it serves the needs of the nontraditional students. As a Representative of northeastern Ohio, I have striven to provide assistance to the many workers in my district who have permanently lost their jobs. The economic dislocation in our economy has been enormous in the past decade, with millions of workers losing their jobs. Thousands of those coming from northern Ohio. Yet, few Federal funds are available to help these workers get back on their feet. This Congress, I introduced a provision, included in this bill, which allows dislocated workers to qualify for student aid so that they

can pursue additional education and training to reenter the work force.

Significant barriers stand in the way of these pursuits. Many of these workers have financial responsibilities such as owning homes and providing for their families, which render them ineligible for assistance. My amendment allows that for these workers, the principal place of residence is not computed as an asset, and unemploymet insurance is not considered income to determine their needs for Federal aid. This provision is also extraordinary because it provides these workers with the opportunity to enter an educational or retraining program unique to their particular needs and abilities.

Mr. Speaker, education is the stepladder by which each generation improves over the past.

Job retraining and education opportunity are the keys to future economic development in the industrial Midwest. It is not enough to retool our factories; we must also reskill our workers as well. Hope, access, opportunity, this conference report represents that for millions in our society.

Mr. Speaker, I urge support for this legislation. I commend Chairman HAWKINS and Chairman FORD for their excellent work in writing this legislation.

Mr. DE LUGO. Mr. Speaker, I rise in support of approval of the conference report on the Higher Education Act Amendments of 1986. While I regret that we could not be more generous in authorizing these programs, I believe that passage of the proposal before this body today will reaffirm Congress' commitment to assuring access to higher education.

I am particularly pleased to note that, in referring to the definition of "historically black colleges and universities" under title III, of the act, the conference report specifies that the definition includes "many institutions * * * at least one established as late as 1963". The College of the Virgin Islands is one such institution.

The College of the Virgin Islands was created to serve the needs of the U.S. Virgin Islands community. This is a primarily black community, and the school was created to offer an access to higher education previously unavailable to the native West Indian residents of the territory. The school has done, and continues to do, a commendable job in this regard. It fits squarely within the objectives of the part B set-aside. Its student body has historically been primarily black, and is expected to be in the future.

Unfortunately, earlier definitions of historically black institutions had excluded the College of the Virgin Islands because it was created after the landmark civil rights case, Brown versus The Board of Education. Yet, the college's function has been the same as those institutions: to provide quality postsecondary education to black students with limited access to other institutions of higher learning.

I thank the gentleman from California, Chairman HAWKINS, the gentleman from Michigan, BILL FORD, chairman of the conference committee for their role in making clear that the College of the Virgin Islands is included under the part B set-aside. I appreciate their understanding of the importance of the college to the future of the U.S. Virgin Islands and their care in assuring that black students in that part of the country benefit from the same consideration as their mainland counterparts.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, let me just say there has been a lot of commendation today to the Members who have been involved. I also want to say thank you to the fine staff which has supported us. This is a very complicated and complex bill and subject matter, and both the Republican and Democratic staff members deserve a great deal of credit for the success of this particular conference report.

I think all of us want to thank them today.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. COLEMAN of Missouri. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Speaker, I thank the gentleman from Missouri for his remarks, and I associate myself with his remarks. Indeed, this has been a monumental task for both the majority and minority, and they have performed well.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield the balance of our time to the gentleman from Michigan [Mr. PURSELL].

Mr. PURSELL. I thank the gentleman for yielding.

Mr. Speaker, as a member of the Committee on Appropriations' Subcommittee on Higher Education, I want to say congratulations to Chairman FORD and Congressman COLEMAN and others who have presented an outstanding bill for this country for the next 5 years.

Mr. NATCHER and I and others on the subcommittee have set aside the reserves, earmarked dollars for higher education, and we are prepared to fully fund the authorization bill at the maximum level.

I just want to congratulate Congressman FORD and others who have an outstanding long career of providing funds for our students and people in higher education in America.

I congratulate the gentleman for an outstanding piece of work and yield back the balance of my time.

Mr. MCCAIN. Mr. Speaker, today I rise in strong support of the conference report on the Reauthorization of the Higher Education Act. During the 98th Congress, I served on the Committee on Education and Labor which was holding preliminary hearings on this topic and since then I have taken a strong interest in this reauthorization. My district includes one of our Nation's largest and finest universities, Arizona State University, and my State of Arizona is the home of several other fine institutions of higher learning. The huge private and State funding available to many Eastern schools does not exist for schools in my State. That is why this bill is so important to me.

I was most gratified to see that changes were made allowing for increased student loans and grants. The action to expand aid to part time and nontraditional students is extremely important to me and to Arizona. As many Members have said today, the archtypical college student is no longer 18 to 22 years old, upper middle class and supported by his or her parents. We need to provide for all Americans, no matter what age or background. Part-time students training for a better job or retraining to start a new career will especially benefit. In Arizona, this group includes dislocated copper workers and countless others.

This bill also provides for aid to postsecondary institutions beyond the standard 4-year college, university, or graduate school. We recognized the existence and needs of technical and business schools, so important in our Nation's move toward a high-technological service-oriented economy.

This reauthorization is vital to our Nation and I urge my colleagues' strong support. As a father, I believe this Nation must make every effort to invest in our most important natural resource, our children.

Mr. GILMAN. Mr. Speaker, I rise in support of the conference report on S. 1965, the Higher Education Act Amendments of 1986. I would like to commend the gentleman from California [Mr. HAWKINS] for the leadership he has provided us in bringing this legislation before us today and for his continuous support of higher education.

Mr. Speaker, yesterday we debated for the rights of our senior citizens. Today, we are arguing for the rights of an extremely important segment of our population, our young people. The future leaders of our Nation and this Government lies with our young citizens. A student loan or a Pell grant can make all the difference in allowing a person to receive a higher education. We must not deny them the opportunity to better themselves merely because they may not have the financial means to do so.

This legislation will help allow our nontraditional students to obtain an education. In these days of financial troubles, many students cannot afford to attend school on a full-time basis or choose to enter the work force and return to their education later. This conference report extends to those students who attend less than part time, access to aid. This will allow many of our students to remain in school while also opening doors to many of our older citizens.

I believe the conference committee has done an outstanding job in helping build a

strong higher educational system while working within strict monetary constraints. Accordingly, I urge my colleagues to support the conference report on S. 1965, to ensure the continued prosperity of our educational system and of our young people.

Mr. AKAKA. Mr. Speaker, I rise in strong support of the conference report on the bill, S. 1965, the Higher Education Act amendments.

Of particular interest to me and my constituents is a provision in the conference report which affords particular attention to native Hawaiians. Specifically, the conferees have agreed to provide funds for the purpose of establishing a Native Hawaiian Culture and Art Development Program in order that their precious art and cultural history may be preserved.

Clearly, the conferees believe, and I concur, that such a program is vital to the promotion and protection of native Hawaiian culture and art. It is generally agreed that a Native Hawaiian Culture and Art Development Program, independent of the Culture and Arts Development Institute established for American Indians and Alaskan Natives, provides the most effective means for the Federal Government to support research and scholarship in native Hawaiian art and culture.

Under the provisions of S. 1965, the Secretary will make a grant to a private, nonprofit organization or institution primarily serving and representing Hawaiian natives. It is imperative that the importance of efficient management of this grant be recognized, and as such the Secretary should ensure that said grant be made to an established organization knowledgeable in the cultural and artistic heritage of native Hawaiians. Such an institution is the Bernice Pauahi Bishop Museum, in Honolulu, HI, which serves as an invaluable resource in the study of Hawaiian culture. The Secretary would no doubt be acting in accordance with the intent of this provision to exercise maximum flexibility in allowing the Bishop Museum to administer this grant.

A very important element in the success of this program will certainly be the establishment of a governing board to control its activities. Indeed, the need for expert representation in order to ensure the long-term viability of the program cannot be overemphasized. Therefore, it is envisioned that the board shall be comprised of individuals who are native Hawaiian, or other individuals, who are widely recognized in the field of Hawaiian art and culture, of which the total number of voting members shall be 13. The members of the board should be appointed by the Governor of the State of Hawaii.

The board's leadership should include as chairman, the chairman of the Office of Hawaiian Affairs, and as vice-chairman, the president of the Bishop Museum. In addition, the president of the University of Hawaii should occupy a seat on the board. In making the 10 additional appointments, the Governor should consult with and seek nominations from native Hawaiian organizations within the State of Hawaii, and should ensure that their terms rotate, at least every 6 years. Ideally, no member would be eligible to serve in excess of two consecutive terms, but may continue to serve until such member's successor has been appointed.

Of the members first appointed, three should be appointed for terms of 2 years, three should be appointed for 4 years, and four should be appointed for terms of 6 years; as designated by the Governor at the time of appointment. Such terms will surely result in the most efficient administration possible.

The composition of its board will not be the sole determinant of success for this program. Also imperative to its success is the location of this program in an environment complementary to its objectives. As we are well aware of the historic expertise of the Bishop Museum in acquiring, preserving, and promoting the art and culture of native Hawaiians, it would be most appropriate for us to intend that the Bishop Museum be maintained as the location for the Native Hawaiian Culture and Art Development Program.

Finally, it would certainly be of great assistance to Congress if the Secretary would see that a report be submitted to the Congress annually by the Department describing the efforts being made to date to identify and perserve and perpetuate native Hawaiian art and culture.

Mr. Speaker, I am sure that I speak for Hawaii's entire population when I say that the committee and its staff should be thanked and commended for their sensitivity to the need for preservation and promotion of native Hawaiian art and culture. I would like to go on record as saying that I will be sure to monitor the progress of this program as closely as possible to ensure that the intent of Congress is best fulfilled.

Mr. HAWKINS. Mr. Speaker, I appreciate the opportunity to comment briefly and affirmatively on the conference report on S. 1965, the Higher Education Amendments of 1986.

The reauthorization of the Higher Education Act of 1965 is overwhelmingly significant today, because of the high cost of going to college, and because S. 1965 seeks to keep access to college open to all students, and especially to capable students who want to go to college, but who also have great financial need.

Additionally, S. 1965 addresses the goal of equal educational opportunity through improvements in student financial assistance programs, through balance and equity provisions in these programs, by making the system fairer in determining the share of educational costs students and their families can be expected to bear, by providing more effective service to the nontraditional student, and by providing certain increases in, and better targeting of student financial aid programs.

Of particular interest to me in this landmark proposal is title III. The provisions of this title are substantially similar to legislation I introduced earlier this year, H.R. 2907, a bill that revised and modified title III. I want to express my appreciation to the subcommittee chairman for his careful consideration of the proposed changes to title III which were ultimately adopted by the conference committee and which I believe are key to ensuring an equal opportunity for a higher education for all Americans—particularly minority, low-income, and educationally disadvantaged students.

The intent of title III is to provide grants of assistance to less developed colleges and universities which serve large numbers of low-income and minority students, in an effort to help these institutions strengthen their academic programs and management capabilities and move toward self-sufficiency. I believe it is unquestionably in our Nation's interest to ensure the stability and growth of the many postsecondary institutions that are struggling to survive in the face of declining enrollments and scarce resources. The purpose of this title is to assist these institutions in equalizing educational opportunity by expanding the avenues of access to a higher education.

While current law has provided valuable assistance to many developing postsecondary institutions, there are many other intended beneficiaries of title III assistance that have not received a sufficient or fair share of available funds—funds, I might add, that have never been adequate to assist all deserving institutions. This is particularly true for historically black colleges and universities, and other institutions serving large numbers of minority and low-income students. Accordingly, the revised title III eliminates duplicative and confusing eligibility requirements that have contributed to a lack of effective distribution of funds in the past, and is restructured to ensure that intended beneficiaries of title III funds will be eligible to receive grants of assistance.

The revised title III creates a new part which authorizes grants to historically black colleges. Other institutions with large concentrations of minority students may be eligible for title III assistance based in part on their minority enrollment. Developing schools serving large numbers of low-income students may establish title III eligibility under clearer requirements based on up-to-date student information. Also, a relatively substantial percentage of title III funds in set aside for eligible junior and community colleges. In addition to basic grants of assistance, title III recipients may receive matching grants to establish or build their endowments—certainly an important step toward achieving financial self-sufficiency for any school.

Title III is an integral and important part of S. 1965 for many reasons, not the least of which is furthering our national commitment to equal educational opportunity for all of our citizens, regardless of race, national origin, or family income. I therefore urge my colleagues to approve the conference report on S. 1965.

Mr. VENTO. Mr. Speaker, I am pleased to support the Higher Education Act amendments conference committee report.

This bill reconfirms our commitment to higher education by realistically compensating for increased costs by increasing the appropriation in this time of budget constraint.

The Higher Education Act amendments represent a significant investment in America's future. Federal student assistance is among our most successful programs. It is important to keep higher education as a national priority and to ensure that every American has the opportunity to attend college.

I am particularly happy to see a provision concerning deferments for guaranteed student loans contained in this bill. By including this one small provision we have prevented an injustice from occurring in the future. That provision is a deferment for single parents with disabled dependents.

A woman in my district is suffering due to just such an oversight in current law. She is unable to work because her 3-year-old child has cancer but was unable to obtain a deferment. Deferments were available to individuals with a disabled spouse but not for a single parent with a disabled dependent. Although she was undergoing extreme stress she has led a one women fight in demanding that this injustice be corrected. Congress listened. Due in part to my constituent's diligent efforts, people in her circumstance will be protected in the future.

Unfortunately, this change is not retroactive but it does prevent this circumstance from occurring in the future. I have been told that due to budget constraints deferments contained in this bill are not retroactive. Although I would have preferred to see this change help my constituent, I feel the change was a reasonable solution to the problem and will effectively prevent this situation from reocurring.

Importantly is the opportunity to consolidate an individuals guaranteed student loans in the conference report before us today, this is surely an avenue to help redress existing loans that provide no such deferment, if other conditions as to the amount and circumstance can be met.

I'm pleased to rise in strong support and urge my collegues to support the Higher Education Conference Committee report before the House today.

Mr. RAHALL. Mr. Speaker, I rise today in support of the conference report for S. 1965, the Higher Education Act amendments. This report represents a bipartisan rejection of the administration's proposals for deep cuts in higher education, and I commend the conferees on their diligence and efforts on behalf of our Nation's low- to middle-income students.

As a strong proponent of legislation designed to enhance our Nation's educational capabilities, I am particularly interested in this authorization bill. I have reviewed information which outlines the need for student financial aid in my home State of West Virginia and cannot overstate the hope that the adoption of this measure will provide for many of my low- to middle-income constituents who, without this assistance, would have little to no hope of obtaining a college education. I would like to briefly outline the situation in West Virginia in this regard. In this way, I hope to go beyond the basic understanding of need to show in broad terms the number of people helped by federal student financial aid in West Virginia, as well as the additional unfulfilled need that exists.

In March 1985, a report was released by the West Virginia Association of Student Financial Aid Administrators on financial aid concerns. The board of regents had conducted a survey of student assistance awarded to undergraduate students enrolled in West Virginia public and private colleges during the 1983–84 academic year. The critical importance of federally supported or regulated student aid programs is demonstrated by the fact that 76.2 percent of all assistance awarded in that year came from Federal programs. The percentages of undergraduate students receiving some form of financial assistance were 41.5 percent at public institutions, and 59.0 percent at private colleges. While approximately $100.1 million in student assistance was awarded at all levels, schools estimated a funding shortfall of $61 million in comparing demonstrated needs to available student aid dollars. The data indicate that large numbers of students are not receiving needed aid dollars at current funding levels. The report concluded that a reduction in funding may be expected to exacerbate the serious college access problem already in existence.

In addition to the Guaranteed Student Loan [GSL] Program, which subsidizes borrowing for low- to middle-income students, and the Pell Grant Program, the primary source of Federal student aid fund for low-income students, the conference agreement reauthorizes a number of other programs which are designed to enhance educational opportunities for our Nation's low- and middle-income population. Students would be allowed to borrow substantially more in low-interest loans to pay their college tuition bills, and access to Pell grants and other forms of Federal aid would be increased to part-time students due to the increasing trend of part-time attendance by people who are going to college later in life. In addition, the measure includes a revised program of support for continuing education, new grants for campus child care programs and provisions allowing students to postpone repayment of past college loans if they return to school part time.

In all, the conference report would authorize the following amounts in millions of dollars for fiscal 1987 (the figure in parentheses represents fiscal 1986 appropriations): Pell grants, $4,600, with no authorization ceiling ($3,578); guaranteed student loans, $3,200 with no authorization ceiling ($3,259); supplemental educational opportunity grants, $490 ($395); national direct student loans, $275 ($209); income-contingent loan demonstration projects, $5 ($0); college work-study, $656 ($567); TRIO, special services for the disadvantaged, $205 ($169); State student incentive grants, $85 ($73); programs for migrant farmworkers, $9 ($7); Commission on college financing, $2 ($0); merit scholarships, $8 ($0); Child care grants, $10 ($0); Veterans' services, $5 ($3); Continuing education, $10 ($0); College libraries, $30 ($7); Developing institutions, $245 ($135); Teacher training, $60 ($20); International education, $55 ($27); Facilities construction, $100 ($50); Cooperative education, $17 ($14); Graduate education, $90 ($19); Postsecondary improvement, $25 ($17); Urban universities, $17 ($0); Total, higher education programs, $10,199 ($8,549).

The programs authorized by this conference report are of vital importance in providing for the need this Nation's students face. This measure begins to bring our funding policies for education programs back from the destructive path into which the current administration has led us. This is an important step in this effort, and I commend the gentleman from Michigan [Mr. FORD], chairman of the Subcommittee on Postsecondary Education, the gentleman from California, [Mr. HAWKINS], chairman of the full Committee on Education and Labor and all those members of the committee and conferees who are responsible for bringing this promising measure before us today. I urge my colleagues to support adoption of this conference report.

Mr. DORGAN of North Dakota. Mr. Speaker, I rise in support of the conference report on the higher education reauthorization. A strong financial aid program is essential to our national security. By opening the doors of educational opportunity to all, we ensure that America will continue to have a large pool of well educated future leaders.

While the bill was being drafted in the House, I supported a provision which excludes income from foreclosure, forfeiture, liquidation, or bankruptcy from the calculation of family assets. This provision will help students from farm families qualify for the financial aid they need to continue their education.

Similarly, it is my hope that the imposition of a needs test will provide the means to a more equitable and fair distribution of Federal assistance while not proving discriminatory toward the family farmer who may be asset rich and cash poor. The asset protection measures in the bill should prevent the need to cannibalize the family's income producing assets in order to finance a student's education. However, I will be watching this new aspect of the Federal financial aid program to be sure that it does not adversely effect students who truly deserve financial assistance.

I want to thank my colleagues for their hard work on this legislation; it clearly demonstrates that with careful consideration, Federal programs can be effective and cost efficient.

Mr. FASCELL. Mr. Speaker, I rise in support of the Higher Education Act conference report, specifically the provision which reauthorizes the U.S. Institute of Peace for two additional years. The conference measure provides for funding levels identical to the Institute's initial authorization, that is $6 million for fiscal year 1987 and $10 million for fiscal year 1988.

As my colleagues will recall, the U.S. Institute of Peace was enacted in October 1984 and only recently has become operational with the appointment of its Board of Directors. Since that time, the U.S. Institute of Peace's Board of Directors has met on numerous occasions in order to move forward on establishing a viable and operational U.S. Institute of Peace.

I am pleased with the progress that the U.S. Institute of Peace has made and believe that now more than ever this Institute can serve as a vital role in the development and strengthening in peace research and education. I would like to commend my colleagues, GUS HAWKINS, the chairman of the Education and Labor Committee, and BILL FORD, chairman of the Postsecondary Education Subcommittee for their support in conference for reauthorizing the U.S. Institute of Peace.

The SPEAKER pro tempore (Mr. MONTGOMERY). All time has expired.

Mr. FORD of Michigan. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. COLEMAN of Missouri. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 385, nays 25, not voting 22, as follows:

[Roll No. 409]

YEAS—385

Abercrombie	DioGuardi	Hubbard
Ackerman	Dixon	Huckaby
Akaka	Donnelly	Hughes
Anderson	Dorgan (ND)	Hunter
Andrews	Dornan (CA)	Hutto
Annunzio	Dowdy	Hyde
Anthony	Downey	Ireland
Applegate	Duncan	Jacobs
Aspin	Durbin	Jeffords
Atkins	Dwyer	Jenkins
AuCoin	Dymally	Johnson
Badham	Dyson	Jones (NC)
Barnard	Early	Jones (OK)
Barnes	Eckart (OH)	Jones (TN)
Barton	Eckert (NY)	Kanjorski
Bateman	Edwards (CA)	Kaptur
Bates	Edwards (OK)	Kasich
Bedell	Emerson	Kastenmeier
Beilenson	English	Kemp
Bennett	Erdreich	Kennelly
Bentley	Evans (IA)	Kildee
Bereuter	Evans (IL)	Kleczka
Berman	Fascell	Kolbe
Bevill	Fawell	Kolter
Biaggi	Fazio	Kostmayer
Bilirakis	Feighan	Kramer
Bliley	Fiedler	LaFalce
Boehlert	Fish	Lagomarsino
Boggs	Flippo	Lantos
Boner (TN)	Florio	Latta
Bonior (MI)	Foglietta	Leach (IA)
Bonker	Foley	Leath (TX)
Borski	Ford (MI)	Lehman (CA)
Bosco	Ford (TN)	Lehman (FL)
Boucher	Franklin	Leland
Boxer	Frenzel	Lent
Brooks	Frost	Levin (MI)
Brown (CA)	Fuqua	Levine (CA)
Brown (CO)	Gallo	Lewis (CA)
Bruce	Garcia	Lewis (FL)
Bryant	Gaydos	Lightfoot
Bustamante	Gejdenson	Lipinski
Byron	Gekas	Livingston
Callahan	Gephardt	Lloyd
Carney	Gibbons	Loeffler
Carper	Gilman	Long
Carr	Gingrich	Lott
Chandler	Glickman	Lowery (CA)
Chapman	Gonzalez	Lowry (WA)
Chappell	Goodling	Lujan
Clay	Gordon	Luken
Clinger	Gradison	Lundine
Coats	Gray (IL)	MacKay
Cobey	Gray (PA)	Madigan
Coble	Green	Markey
Coelho	Guarini	Marlenee
Coleman (MO)	Gunderson	Martin (IL)
Coleman (TX)	Hall (OH)	Martinez
Collins	Hall, Ralph	Matsui
Combest	Hamilton	Mavroules
Conte	Hammerschmidt	Mazzoli
Cooper	Hansen	McCain
Coughlin	Hartnett	McCloskey
Courter	Hatcher	McCollum
Coyne	Hawkins	McDade
Craig	Hayes	McGrath
Crockett	Hefner	McHugh
Daniel	Hendon	McKernan
Darden	Henry	McKinney
Daschle	Hertel	McMillan
Daub	Hiler	Meyers
Davis	Hillis	Mica
de la Garza	Holt	Mikulski
Dellums	Hopkins	Miller (CA)
Derrick	Horton	Miller (OH)
DeWine	Howard	Miller (WA)
Dicks	Hoyer	Mineta
Mitchell	Rodino	Strang
Moakley	Roe	Stratton
Molinari	Roemer	Studds
Mollohan	Rogers	Sundquist
Monson	Rose	Sweeney
Montgomery	Rostenkowski	Swift
Moody	Roth	Synar
Moorhead	Roukema	Tallon
Morrison (CT)	Rowland (CT)	Tauke
Morrison (WA)	Rowland (GA)	Tauzin
Mrazek	Roybal	Taylor
Murphy	Russo	Thomas (CA)
Murtha	Sabo	Thomas (GA)
Myers	Savage	Torres
Natcher	Saxton	Torricelli
Neal	Scheuer	Towns
Nelson	Schneider	Traficant
Nichols	Schroeder	Traxler
Nielson	Schuette	Udall
Nowak	Schulze	Valentine
Oakar	Schumer	Vander Jagt
Oberstar	Seiberling	Vento
Obey	Sensenbrenner	Visclosky
Olin	Sharp	Volkmer
Ortiz	Shaw	Vucanovich
Owens	Shelby	Waldon
Oxley	Shuster	Walgren
Packard	Sikorski	Walker
Panetta	Siljander	Watkins
Parris	Sisisky	Weaver
Pashayan	Skeen	Weber
Pease	Skelton	Weiss
Penny	Slattery	Wheat
Pepper	Slaughter	Whitehurst
Perkins	Smith (FL)	Whitley
Petri	Smith (IA)	Whittaker
Pickle	Smith (NE)	Whitten
Porter	Smith (NJ)	Williams
Price	Smith, Robert (OR)	Wilson
Pursell	Snowe	Wirth
Quillen	Snyder	Wise
Rahall	Solarz	Wolf
Rangel	Solomon	Wolpe
Ray	Spence	Wortley
Regula	Spratt	Wright
Reid	St Germain	Wyden
Richardson	Staggers	Wylie
Ridge	Stallings	Yates
Rinaldo	Stangeland	Yatron
Ritter	Stark	Young (AK)
Roberts	Stokes	Young (MO)
Robinson		

NAYS—25

Archer	Dickinson	Schaefer
Armey	Dreier	Shumway
Bartlett	Fields	Smith, Denny (OR)
Boulter	Gregg	Smith, Robert (NH)
Burton (IN)	Lungren	Stenholm
Cheney	Mack	Stump
Crane	McCandless	Swindall
Dannemeyer	Michel	
DeLay	Rudd	

NOT VOTING—22

Alexander	Dingell	McCurdy
Boland	Edgar	McEwen
Breaux	Fowler	Moore
Broomfield	Frank	Waxman
Burton (CA)	Grotberg	Young (FL)
Campbell	Kindness	Zschau
Chappie	Manton	
Conyers	Martin (NY)	

□ 1745

Mr. SMITH of New Hampshire changed his vote from "yea" to "nay."

Mr. OXLEY changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

A REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-875) on the resolution (H. Res. 559) providing for the consideration of the bill (H.R. 3810) to amend the Immigration and Nationally Act to revise and reform the immigration laws, and for other purposes, which was referred to the House Calendar and ordered to be printed.

□ 1755

GENERAL LEAVE

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on S. 1965, Higher Education Amendments of 1986.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Michigan?

There was no objection.

AUTHORIZING THE SECRETARY OF THE SENATE TO MAKE CORRECTIONS IN ENROLLMENT OF S. 1965, HIGHER EDUCATION AMENDMENTS OF 1986

Mr. FORD of Michigan. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 394) to correct technical errors in the enrollment of the bill S. 1965, and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, I do so only for the purpose of allowing the chairman of the Subcommittee on Postsecondary Education to explain what the nature of the concurrent resolution is.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. Mr. Speaker, the concurrent resolution makes technical corrections to the bill which include corrections in effective dates which were agreed to by the conferees but were not reflected in the final draft of the conference report and other material which was inadvertently deleted in the final draft of the conference report. The changes in the effective dates are extremely important to enable us to meet the spending targets for the guaranteed student loans.

Mr. JEFFORDS. Mr. Speaker, I assure the body that I have reviewed these technical changes and agree with the chairman, with one little addition, that there is also a $50 threshold in there which no one even understood was going to be included. It appeared; that has been removed and I appreciate that.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 394

Resolved by the House of Representatives (the Senate concurring) That, in the enrollment of the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, the Secretary of the Senate shall make the following corrections:

(1) In section 332(e) of the Higher Education Act of 1965 (hereafter in this concurrent resolution referred to as the "Act"), as contained in section 301 of the bill, insert after "An institution receiving a" the following: "grant under this section shall provide to the Secretary (or a designee thereof) such information (or access thereto) as may be necessary to audit or examine expenditures made from the endowment fund corpus or income in order to determine compliance with this section.

"'(f) SELECTION CRITERIA.—In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall—

"'(1) give priority to an applicant which is a recipient of a grant made under part A or part B of this title during the academic year in which the applicant is applying for a grant under this section; and

"'(2) give priority to an applicant with a greater need for such a grant, based on the current market value of the applicant's existing endowment in relation to the number of full-time equivalent students enrolled at such institution;

"'(3) consider—

"'(A) the effort made by the applicant to build or maintain its existing endowment fund; and

"'(B) the degree to which an applicant proposes to match the grant with nongovernmental funds.

"'(g) APPLICATION.—Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing' ".

(2) In section 427(a)(4) of the Act (as contained section 402(a) of the bill) strike out "interval between the first and".

(3) In section 427A(e)(3) of the Act (as contained in section 402(a) of the bill) strike out ", nor need any credit be made when the amount to be credited is less than $50".

(4) In section 428(b)(1)(O)(i) of the Act (as contained in section 402(a) of the bill) strike out "the interval between the first and second installment being dispersed" and insert in lieu thereof "the second installment being dispersed after".

(5) In section 438(b)(2)(D)(i) of the Act (as contained in section 402(a) of the bill) insert "or purchased" after "loans made".

(6) In section 402(b)(2) of the bill insert "(other than clause (ix) of each such section)" after "sections 427(a)(2)(C) and 428(b)(1)(M) of the Act".

(7) In section 406(b)(4) of the bill, insert before the period at the end thereof the following: ", in the case of programs operated under part B of title IV of the Act, or for periods of enrollment beginning on or after July 1, 1987, in the case of programs operated under subpart 2 of part A and parts C and E of such title".

(8) In section 408(a)(7) of the bill strike out "paragraph (4) and by striking out paragraphs (6) and (7)" and insert in lieu thereof "paragraph (3) and by striking out paragraphs (5), (6), and (7)".

(9) In section 606 of the bill, strike out subsection (b) and insert in lieu thereof the following:

"'(b) CONFORMING AMENDMENT.—Subsection (b) of such section is amended to read as follows:

"'(b) The Secretary shall prepare and publish an annual report listing the books and research materials produced with assistance under this title.'.".

(10) In section 1521(c)(2) of the bill, strike out "and" at the end of subparagraph (B), redesignate subparagraph (C) as subparagraph (E), and insert after subparagraph (B) the following:

"(C) include the president of the University of Hawaii,

"(D) include the president of the Bishop Museum, and".

(11) In section 901 of the Act (as contained in section 901(a) of the bill), strike out "low-income".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

COMMUNICATION FROM THE HONORABLE WILLIAM HILL BONER, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable WILLIAM HILL BONER:

HOUSE OF REPRESENTATIVES,
Washington, DC, September 24, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, H-209, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I have previously informed you that several present and former members of my staff had been served with subpoenas issued by the United States District Court for the Middle District of Tennessee. After consultation with the General Counsel to the Clerk of the House, I determined that compliance with those subpoenas was consistent with the privileges and precedents of the House and informed you of that decision.

Recently, two additional individuals who have been members of my staff have been served with similar subpoenas. I have again consulted with the General Counsel to the Clerk and, pursuant to his advice, I have determined that compliance with these subpoenas is consistent with the applicable privileges and precedents of the House.

Sincerely,

BILL BONER,
Member of Congress.

PERMISSION FOR COMMITTEE ON RULES TO FILE REPORT ON CONTINUING RESOLUTION

Mr. HALL of Ohio. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file a report providing for the consideration of the continuing resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

Mr. HALL of Ohio. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 553 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 553

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the bill for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Technology, the bill shall be considered for amendment under the five-minute rule by titles instead of by sections, and each title shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. HALL] is recognized for 1 hour.

Mr. HALL of Ohio. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], for purposes of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 553 is an open rule providing for the consideration of H.R. 5495, the NASA Authorization for fiscal year 1987.

The rule provides for 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Committee on Science and Technology.

Under the rule, the bill shall be considered for amendment under the 5-minute rule by titles instead of by sec-

tions, and each title shall be considered as having been read. The rule also provides for one motion to recommit.

It should be noted that the rule waives clause 5(a) of rule XXI, which prohibits appropriations in a legislative bill. This technical waiver is needed because certain provisions of H.R. 5495 could be interpreted as involving appropriations in a legislative bill. This waiver, which is considered noncontroversial, has bipartisan support.

Mr. Speaker, H.R. 5495 authorizes funding for a number of programs and activities under the jurisdiction of the National Aeronautics and Space Administration. The bill contains funding for space flight, construction of facilities, control and data communications, and research and development. The measures provided by this legislation will help to restore and stimulate our space program in the wake of the *Challenger* space shuttle tragedy.

Mr. Speaker, I am not aware of any opposition to this open rule, and I urge my colleauges to adopt it.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I rise in support of the rule and this bill and commend the Committee on Science and Technology for its diligent work toward assuring a well-managed national space program. I am particularly pleased that the committee has included provisions in the legislation to prevent the obligation or expenditure of any funds for the purpose of reassigning any technical work responsibilities on a permanently manned space station.

In June of this year, NASA proposed changes in the space station program that appeared to adversely affect the Johnson Space Center, located in my district, by attempting to shift a number of work packages previously assigned to JSC to the Marshall Space Flight Center in Alabama. I was very concerned about this move, not only as it would have a negative impact on a facility located in my district which has a proven record of excellent performance, but also because the proposals made no sense in terms of either improved performance or effective cost savings.

At a time when the Nation's space programs have come under attack and when the administration is favoring a more militaristic orientation in funding for America's space efforts, I feel that we must keep a much more careful eye on any decisions that may take away from the maximum effectiveness of our civilian space program.

It is my understanding that at the committee's insistence, NASA has nearly completed its evaluations of the changes proposed earlier this summer. NASA officials have briefed me on the latest revisions of their plans, and I am confident that with the help of the committee's strong admonition, NASA will complete its justifications well before the Agency needs to obligate any of these funds.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 553 provides for the consideration of H.R. 5495 which authorizes appropriations to the National Aeronautics and Space Administration for fiscal year 1987.

The rule provides for the consideration of the bill in the Committee of the Whole, with 1 hour of general debate to be equally divided and controlled by the chairman and ranking minority member of the Science and Technology Committee.

Following general debate, the bill will be read by title instead of by sections for amendments under the 5-minute rule. So, this is a completely open rule. Finally, the rule provides for one motion to recommit.

Mr. Speaker, the rule does include a waiver against the bill for failure to comply with clause 5(a) of rule XXI which prohibits appropriations in a legislative bill.

Mr. Speaker, H.R. 5495 authorizes approximately $7.7 billion for NASA in fiscal year 1987 for a variety of purposes including research and development, space flight, control and data communications, construction of facilities, and research and program management.

The total authorization is identical to the amount requested by the President's 1987 budget, although the committee has allocated the funds somewhat differently than requested. I think the committee is to be congratulated for doing an outstanding job in keeping this authorization bill within the budget constraints of the administration request while at the same time assuring that NASA's programs, goals and objectives remain intact.

Mr. Speaker, title III of this authorization bill will permit NASA to move forward on a new orbiter to replace the space shuttle *Challenger*, and to safely return the space shuttle fleet to flight status.

Again, this is a simple, open rule which was adopted by voice vote in the Rules Committee. Although some of the priorities have changed, it is a good bill, and I would urge my colleagues to adopt the rule and support the bill.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

Mr. HALL of Ohio. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1805

The SPEAKER pro tempore (Mr. GRAY of Illinois). Pursuant to House Resolution 553 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5495.

The Chair designates the gentleman from Texas [Mr. GONZALEZ] as Chairman of the Committee of the Whole and requests the gentleman from Missouri [Mr. SKELTON] to assume the chair temporarily.

□ 1806

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 5495, with Mr. SKELTON (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from Florida [Mr. FUQUA] will be recognized for 30 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Florida [Mr. FUQUA].

Mr. FUQUA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 5495 which would authorize fiscal year 1987 funds for the National Aeronautics and Space Administration. I want to congratulate Mr. NELSON, chairman of the Subcommittee on Space Science and Applications and Mr. BROWN, Chairman of the Subcommittee on Transportation, Aviation, and Materials for their hard work and leadership in bringing this legislation to the floor. I also want to recognize the efforts of Mr. LUJAN, Mr. WALKER, and Mr. LEWIS on the other side of the aisle.

The bill we will consider today comes at a very crucial time in America's space program. The loss of the space shuttle *Challenger* on January 28 will have a profound and long lasting effect on the programs that are the source of so much pride to this Nation. A recent national public opinion survey shows quite conclusively that 85 percent of all Americans believe we should build a replacement orbiter and 89 percent want us to resume space flight operations. H.R. 5495 is responsive to this demand from the American people and I urge my colleagues to join me in support of this legislation.

The authorization level contained in H.R. 5495 meets the administration's request of $7.694B that was submitted to us shortly following the accident. We have in this bill, authorized NASA to begin construction of a new orbiter and carry out the engineering changes to the existing fleet that are required to return the shuttle to flight status. We recognize, however, that additional funding above the amount authorized in this bill will be required to carry out

this intent. We have also authorized such funds as may be needed to launch some of the backlogged Government payloads on commercially provided expendable launch vehicles.

Mr. Chairman, in bringing this bill to the floor we recognize that NASA has not yet been able to fully assess all the costs of the *Challenger* accident and all the costs of recovering from the accident. Therefore, we have authorized such sums as necessary for recovery from the accident. NASA's ongoing programs, such as space science, were virtually all impacted by the accident but we do not yet know exactly where the costs will fall. Therefore we have marked up the President's request to indicate our priorities for these programs. Let me give you details:

In the research and development area, we have authorized NASA to begin development work on the space station that has been under study for 2 years now. The space station will be our next logical step in space and will enable us to carry out commercial and scientific operations in a routine manner in the coming decades.

We have also provided funding for the Advanced Communications Satellite [ACTS] Program that will keep us in a world leadership position in the communications field. The amount of funding we have authorized will keep us roughly on track and allow a launch in 1990.

We have maintained a balanced program in science and applications that will sustain the science community until we can fully resume spaceflight operations on the shuttle and expendable launch vehicles. The amount we have authorized represents a slight increase over the fiscal year 1987 budget which will allow this program to keep pace with inflation.

In the aeronautics area we have authorized the full amount requested by the administration and we have included funding for a new start for the aerospace plane. Mr. BROWN, chairman of the Transportation, Aviation, and Materials Subcommittee will address this in more detail.

I am including in the record a comparison of the fiscal year 1986 operating plan, the fiscal year 1987 request and the committee actions taken.

I urge my colleagues to support H.R. 5495.

Mr. LUJAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the bill, H.R. 5495, authorizing appropriations for the National Aeronautics and Space Administration for fiscal year 1987. We are all aware of the need to make sacrifices. This has been a difficult year for Congress as the growing deficit continues to hamper the budget process. Gramm-Rudman has had the positive effect of making us very uncomfortable with large deficits; yet I believe most of us recognize that deep cuts in spending for R&D will do much to harm future generations.

The bill reported out of the Committee on Science and Technology reflects these dual concerns. We recognize the funding authorized in this bill is inadequate to meet the desires and expectations of the public for a rapid return to space. In a recent poll conducted by Market Opinion Research, 60 percent of the people polled supported spending "whatever is necessary" to maintain U.S. leadership in space. Many believe we have already lost our position as world leader in space technology, and that this budget falls far short of what is needed to regain that position.

However, within the constraints that Congress has placed on itself with respect to the budget, I believe this bill is a responsible effort to meet the most pressing needs.

It stays within the President's requested level for the total program, and it preserves the President's request for the space station. Small cuts or program delays are made in a number of areas to support the continuation of the Advanced Communications Technology Satellite Program. The arguments in support of this program are as valid today as they were when the program was initiated. This program will prove the feasibility of a number of advanced communication satellite technologies with a wide range of applicability. This is a small investment to ensure that the United States will maintain its lead in this rapidly expanding technology.

This bill also authorizes funding for a new budget line item in NASA's aerospace program. The $45 million for transatmospheric R&T is for the start of a new technology development program that could eventually result in a replacement for the shuttle and the next generation high speed military aircraft as well as the "Orient Express" that we have all heard so much about—the airplane that will reduce the flight time to Tokyo to 2 hours. This is an exciting program that will revolutionize the aviation industry, and also potentially reduce significantly the cost of putting payloads into orbit. We all want to see access to space become routine. This will move us in that direction.

In addition to authorizing the funding to support NASA's programs, this bill also addresses several important policy issues. This has been an especially difficult year for NASA. The tragic loss of the *Challenger* left a huge void in our space program. And as I stated at the beginning of my remarks, the public is anxious to move out in front again with our space program.

The public strongly supports manned space flight, and I believe we must do what is necessary to get us back into that arena. This bill directs NASA to begin procurement of a replacement orbiter, and it sets priorities for use of the shuttle which permits foreign and commercial users, albeit it at a low priority.

H.R. 5495 also authorizes the procurement of expendable launch services to augment the shuttle capability. I believe these are important first steps to take to restore the U.S. position of leadership in space. This bill isn't all that many of us would like to see; however, it is one which I think deserves our support, and I urge my colleagues to join me voting for this legislation.

Mr. Chairman, before I conclude my remarks, I want to take this opportunity to express my sincere appreciation for the outstanding and enlightened leadership of our chairman, DON FUQUA, and say how much we will all miss his presence on the Science and Technology Committee next year. I am sure our loss will be the aerospace industries' gain, and I wish him the very best in his new career.

Mr. FUQUA. Mr. Chairman, I yield 2 minutes to the distinguished chairman of the Subcommittee on Transportation, Aviation and Materials, the gentleman from California [Mr. BROWN].

Mr. BROWN of California. Mr. Chairman, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization. The Subcommittee on Transportation, Aviation and Materials conducted numerous field inspections and held extensive hearings here in Washington on the aeronautical part of the fiscal year 1987 NASA authorization. Testimony was taken from a variety of witnesses, both inside and outside of NASA.

Members of the subcommittee worked long and hard in carefully reviewing the NASA aeronautical program and the 1987 budget request. We found that although the dollar amount for aeronautical R&D is small—$376 million recommended by the committee this year—the payoff is very large. This is true because NASA emphasizes the high-risk, long-term research and technology that industry is financially unable or unwilling to undertake. Such efforts provide the foundation for future aircraft and engines which return many times their initial cost to our economy. In a very real sense, NASA's aeronautical R&D is an investment in our country's future.

For example, in 1985, the United States suffered an all-time record foreign trade deficit of $137 billion. And yet, as bad as this was, it would have been $12.6 billion worse, had it not been for the favorable contribution of aerospace products, the bulk of which were civil aircraft.

U.S. suppliers have built nearly 90 percent of the free world's civil air

fleet by dollar value. Our airlines are our best ambassadors, offering superior quality, safety, comfort and reliability, at economical costs. They speak well of America, to operator and user alike.

Of course, these results did not just happen. They came because we have consistently had the best products. And one of the big reasons for that has been the long-standing partnership between Government and industry in developing new aeronautical technology.

Because of this, the Committee on Science and Technology has repeatedly urged the administration and the Congress to increase the resources devoted to aeronautical R&D. We have pointed to the many long-term benefits of such investment, which are reflected in billions of dollars in sales of U.S. aircraft both here an abroad, and in millions of jobs for Americans.

Yet, in spite of its proven cost benefits, the NASA aeronautics program has not kept pace with inflation nor with the relentless pressure from our competitors, both military and commercial. For example, the administration's request for fiscal year 1987, if inflation is considered, is 3 percent less than the purchasing power of the 1981 budget. There aren't many Government programs that can make that claim.

Furthermore, anyone familiar with the dramatic increases in both the cost and complexity of new technology in the last few years knows that a level budget won't produce the same results as it once did. It simply costs more today to achieve each increment of improvement in fuel efficiency or safety or performance.

Of course, none of this would cause alarm if the Europeans, Japanese, and the South Americans had not begun to pose a serious competitive threat. But they have.

Because of this, I believe the committee's recommendation is at the low end of what is actually needed. In my view, international conditions call for expanding NASA's aeronautical program, not curtailing it.

The administration, for its part, is moving slowly in this direction. The fiscal year 1987 budget reflects a modest growth over last year—still far short of what is needed, even to compensate for past shortfalls, but about the best we can hope for in a difficult budget climate.

For this reason, the committee recommended approval of the aggregate amount requested by NASA. In addition to the aeronautics program, the subcommittee also considered a new budget line item for transatmospheric R&T. This is NASA's contribution to the joint NASA/DOD National Aerospaceplane Program, an effort to advance and prove the technology for high-speed, hypersonic flight. If successful, this program could lead the way to several very attractive applications, including a single-stage-to-oribt space transportation system and a hypersonic commercial air transport—sometimes called the Orient Express.

The committee feels it is necessary to begin this program now so that the technology will be ready in the mid-1990's, when we will need it to support the successful commercial development of space.

Furthermore, we felt it was vital for NASA to be involved fully in this program to assure the technology is developed with these important civil applications in mind. For these reasons, we are recommending approval of the full administration request—$45 million.

Mr. Chairman, I urge adoption of the bill.

Mr. LUJAN. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today in strong support of the bill H.R. 5495, the annual fiscal year 1987 authorization for the National Aeronautics and Space Administration.

As all Members of the House already know, 1986 has been an extraordinary year for NASA. At the beginning of this year we were planning a total of 15 shuttle launches to take place during 1986. Among the planned launches were a number of truly remarkable missions. During the course of the year we had expected to launch the Galileo mission to probe the planet Jupiter, and the Ulysses mission that would have flown about the poles of the Sun and explored entirely unknown regions of the center of our solar system. We had also planned on the long awaited launching of the Hubble space telescope, a mission that will expand our frontiers in space thousands of times beyond where they can be explored today.

Unfortunately, Mr. Chairman, as all of the world now knows, on the morning of January 28, 1986, NASA, and the American people, suffered a tragic loss as the space shuttle *Challenger* exploded and crashed into the Atlantic Ocean after only 73 seconds of flight.

The National Aeronautics and Space Administration and the Committee on Science and Technology have been hampered in our attempts to plan recovery efforts because it was necessary to await the results of the Rogers Commission, and then allow the President time to review the Rogers Commission report and make his decision on the recovery plan that would win the support of the administration. Because of that, we freely admit that the budget numbers in this legislation are based on the President's budget which was submitted before the *Challenger* accident. We have worked hard to let the numbers reflect both what we have learned already, and to also reflect the priorities that the Congress feels are important in our ongoing space program.

We feel that the true importance of this legislation is the crucial new space policy that is contained in the bill.

The first, and foremost point I would make on this legislation is that we are within the budget allocations, and at the level requested in the President's budget. We have included in the bill an authorization for such sums as may be necessary for a replacement orbiter. As many Members already know, there has been substantial debate within the administration over the need for a replacement for the *Challenger*. The Committee on Science and Technology strongly supports a new orbiter. The space program of the United States, including a substantial portion of the space program of the Department of Defense, and the new manned space station which is already under development, urgently needs a four orbiter fleet to support their launch requirements. Our Committee on Science and Technology stands ready to work cooperatively with the Committee on Appropriations to find the funding necessary to move this new orbiter forward.

In the meantime, Mr. Chairman, I would stress to all Members that the Committee on Science and Technology has not yet received either the budget amendment for the replacement orbiter, or any budget justifications. This will be a major undertaking, with a total cost of some $2.96 billion. Our committee feels a strong responsibility to the Congress, and to the taxpayers of this Nation, to fully explore the administration request. We need to examine the NASA plan, to hear witnesses from the administration, from industry, and from the public, before we can fully understand the proposal.

Mr. Chairman, we have included a number of very important policy sections in this legislation which merit the full support of the House. The first, and most important, is the reestablishment of the old National Aeronautics and Space Council. As many Members will remember, this Council was a strong and effective means of recommending civil space policy to the President. Unfortunately, the old Council was ended under a reorganization plan adopted during the Nixon administration. For more than 2 years we have seen the SIG space group flounder about on the issues of space shuttle pricing and accident recovery. It is sad, but true, that many members of the SIG space group have proven to be far more interested in furthering their own petty and highly parochial interests, and in expanding their empires, than they have in protecting the national interest. I do not want to

dwell on this, but, the SIG space process has proven itself to be unable to function within the national interest. The time has come to return control of our civil space program to those who have a legitimate statutory interest in space policy.

Mr. Chairman, I would point out that there is a provision in the legislation which would allow the President to appoint advisory members to this Council from those Federal offices having statutory scientific, operational, or regulatory responsibilities for space activities. This language was the result of a compromise between myself and the gentleman from Florida, Mr. NELSON, who chairs the Subcommittee on Space Science and Applications, and our specific intent is that the directors of offices such as the Office of Commercial Space Transportation in the Department of Transportation should have a voice in this Council.

Mr. Chairman, titles III and IV of the bill constitute a complimentary program that is designed to lay a strong foundation for the return of the United States to our proper position of international leadership in space activities.

We have authorized the construction of a replacement orbiter for the *Challenger*, and have directed the Administrator to seek private sector financing for that construction if it is in the best interests of the United States. This bold, and imaginative step opens an exciting era in which we may start to see the private sector becoming directly involved in the creation of the space infrastructure needed as a part of the multibillion-dollar space based economy of the 21st century.

We have also moved forward with a plan to erase the backlog of civil governmental payloads while creating the atmosphere necessary to allow domestic ELV manufacturers to compete in the commercial marketplace with the European Space Agency Ariane launcher. In a major break with the past, we have directed the Administrator of NASA to purchase domestic ELV launch services, not launch vehicles, to ensure the United States will have assured access to space on American ELV's as a compliment to the space transportation system. Let me assure Members that this is not intended as a subsidy to the domestic U.S. ELV industry. It is our intent to let the industry know that the Congress is committed to a mixed fleet of launch vehicles, and that the Government intends to encourage domestic ELV's to compete for commercial launches in the international market.

We have also taken steps to create stability in the aerospace industry by directing that those businesses which had valid contracts with NASA at the time of the *Challenger* accident for shuttle launches should have the opportunity to receive those launches, but that they will have to take the lowest priority on the after accident launch manifest. In the new launch priority list the highest priority will go to payloads critical to the national security of the United States. The second priority will go to significant NASA payloads that have limited launch windows such as the Galileo mission to Jupiter which can only be launched once every 13 months. The third priority will go to all other governmental payloads. The lowest priority will go to all other payloads including those of commercial and foreign customers.

In order to allow our domestic ELV industry to openly and freely compete in the international commercial marketplace, we have set the price for space shuttle launches for commercial and foreign customers at a price no less than the cost of a comparable American ELV launch.

Mr. Chairman, these policies create an assurance that our space launch assets will be used in the best interest of the United States, and in a manner to encourage the domestic ELV industry. We will also provide the flexibility that will allow access to the space shuttle at a price that is not subsidized, and at the lowest priority. These policies are carefully crafted to ensure American access to space aboard a vibrant mixed fleet for many years to come.

Mr. Chairman, this bill is an excellent piece of legislation which has broad bipartisan support. It meets the President's budget, and is within the budget guidelines. It contains critical space policy that is urgently needed.

Mr. Chairman, I am proud of this legislation. I fully support it. And I urge all the Members to join in voting in favor of this bill and giving NASA an overwhelming mandate to return the United States to our proper position of space leadership.

Finally, Mr. Chairman, let me mention that today marks a major milestone in our manned space program. This bill is the last major piece of NASA legislation that will be brought to the House by the gentleman from Florida [Mr. FUQUA] who chairs the Committee on Science and Technology, and is generally recognized as the godfather of the manned space program. DON FUQUA has announced his retirement from the House after nearly a quarter of a century of service to the people of the second district. He was first elected to the 88th Congress on November 6, 1962, and has been reelected to each Congress since.

In his tenure as the chairman of the Committee on Science and Technology DON FUQUA has been an effective leader who has left a permanent mark on the science programs of this Nation. He has earned, and richly deserves, the respect of every Member of the House for his efforts over the years to preserve and protect American leadership in the fields of science and technology. I want to wish DON, and his lovely wife, Nancy, all of the very best in their retirement. It has been a pleasure, and a privilege, to have served with the gentleman from Florida.

□ 1820

Mr. FUQUA. Mr. Chairman, I yield such time as he may consume to the gentleman from Florida [Mr. NELSON], the chairman of the Subcommittee on Space Science and Applications.

Mr. NELSON of Florida. I thank the gentleman for yielding time to me.

Mr. Chairman, I want to add my personal comments of appreciation to my chairman, the gentleman from Florida [Mr. FUQUA], for his leadership in all of these decades that he has offered leadership to science and technology for this country. We all unanimously join together in a chorus of appreciation of my distinguished colleague from the State of Florida.

I would also like to express my appreciation to our ranking minority member, the gentleman from Pennsylvania [Mr. WALKER]. We have worked hard on this bill, because it has been a tough year for all of us, and we have come out with a good consensus. This will be a stabilizing year for us as we put America's space program back together and face the challenges of the future as we build from this. I think that we have a good bill here which we can all support.

Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization for fiscal year 1987. I think it is fair to say this authorization is the most important for NASA in years. It deals not only with NASA's regular program, but also contains important policy provisions which will help get this Nation's space program back on its feet again.

The bill is written in four titles. Title I deals with NASA's regular program, that is, activities planned before the accident. Title II authorizes $586,000, the same as last year, for the Office of Commercial Space Transportation in DOT. Title III deals with NASA's restoration of the shuttle program following the *Challenger* accident. Title IV deals with establishing an expendable launch vehicle industry.

Let me now describe the major features of the bill:

First, title I endorses the President's request for regular NASA space programs at $7,694,400,000. Various line item changes which were adopted are described in the table attached to my statement. In particular, the bill continues the ACTS Program; the bill protects funding for science and applications programs; and the bill fully supports the space station and makes clear that it be permanently manned.

The bill recognizes that there may be some savings in NASA's regular activities as a result of the shuttle not flying, but that these savings will be largely offset by extra costs and by the loss of revenues from shuttle customers.

NASA's accounting and reprogramming is not complete but clearly NASA will incur large net costs as a result of the accident, even aside from the cost of a replacement orbiter.

Because NASA has not yet submitted a revised budget plan reflecting reprogramming as a result of the accident, the dollar figures in this bill reflect the original request as modified by the committee's priorities. For example, as mentioned earlier we reinstated the ACTS Program, and did this without significantly cutting funding for other science and applications programs.

Second, title III of the bill deals with recovery from the *Challenger* accident by four actions: Authorizing prompt return of the three-orbiter fleet to safe flight status along with the necessary supplemental funding; directing the construction of a replacement orbiter and authorizing either supplemental funding or private funding; directing NASA to use ELV's as necessary and authorizing the necessary supplemental funding; and setting launch priorities for the shuttle; in particular allowing the foreign and commercial payloads to fly on the shuttle—but at a lower priority.

Third, title IV of the bill provides for government utilization of ELV's which will foster the development of an ELV industry by the following actions:

NASA purchase through competitive procurement of ELV services—not vehicles—for the purpose of launching Government payloads.

Access by industry to Government launch facilities on an additive cost basis. This provision would apply to Government facilities not otherwise available commercially, consistent with Circular A-76 concerning performance of commercial activities.

Assuring availability of the shuttle, to commercial users on a backup basis by requiring that shuttle prices be no less than a comparable launch on a U.S. expendable launch vehicle. Special pricing arrangements for customers involved in research use of the shuttle would be continued, such as through NASA's Joint Endeavor Agreement Program.

Finally, the bill takes an important step toward improvement of the policymaking process for national space issues by reestablishing the National Aeronautics and Space Council which was originally set forth as part of the Space Act; and abolished in the early 1970's. The Council will be composed of members from NASA, State Department and the Defense Department and the chairman of the Users Advisory Group, consisting of non-Federal representatives of industries and other persons involved in aeronautical and space activities. the Council will also be composed of advisory members from Federal offices having statutory scientific, operational or regulatory responsibilities for space activities. The Council will provide important policy advise and coordination among Federal agencies involved in space matters. A permanent staff will enable the Council to carry out its responsibilities efficiently and effectively.

Mr. Chairman, the Committee on Science and Technology has brought a good bill to the floor. I urge all Members to support it.

Mr. LUJAN. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization bill for fiscal year 1987. I'd like to commend the gentleman from Florida [Mr. FUQUA], the chairman of the committee, for his work and say that I will miss his steady hand and staunch support, but that I am grateful for the opportunity to have served with him in this House and for the incalculable contribution he has made to our space program. I'd also like to commend the gentleman from New Mexico [Mr. LUJAN], the ranking member of the committee, for his contribution, and to note the hard work of the subcommittee chairman, the gentleman from Florida [Mr. NELSON], and the gentleman from Pennsylvania [Mr. WALKER], the ranking minority member, along with the other members of the Committee on Science and Technology and the entire staff, for bringing this bill to the floor under difficult circumstances.

Indeed, this bill is something of a landmark, for it marks the return of the space shuttle fleet to flight status following the *Challenger* disaster of last January. The bill sets a target for resumption of shuttle launches in the first quarter of 1988, and calls on NASA to promptly construct a fourth shuttle orbiter to replace *Challenger* and bring the fleet to full status. The Administrator of NASA is directed to explore the availability of private funding for the replacement orbiter, and the 1958 NASA act is amended to allow NASA to accept gifts and donations of services, money, and real, personal, tangible and intangible property for construction of the orbiter. In this respect, H.R. 5495 incorporates the substance of legislation, H.R. 4202, which I introduced along with my colleague, the gentleman from Texas, JACK FIELDS, last February at the request of my constituent, Mike Webber, as well as provisions of legislation proposed by the subcommittee chairman, Mr. NELSON, and I would like to expressly thank the chairman for including this provision in the bill.

The authorization also provides for expendable launch vehicles, and calls for a plan for assured access to space, as well as a manned space station and programs in space science and technology.

I want to assure my colleagues also, in spite of some press reports, that Vandenberg Air Force Base in my district will be ready, very willing and certainly able to fulfill its role as the western and polar orbit facility for the shuttle when a vehicle is available.

This bill is essential in order to get our space program back on track

Mr. FUQUA. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Chairman, I rise in strong support of H.R. 5495, NASA authorization for fiscal year 1987.

Mr. Chairman, this country has been committed to leadership in the exploration of outer space for over two decades. The spectacular achievements of the *Mercury, Gemini,* and *Apollo* programs, as well as the unmanned missions of *Explorer* and *Voyager,* have expanded our knowledge of the universe and were—and remain—a source of national pride.

These missions revolutionized our understanding of the solar system, as have experiments conducted in the last few years on the space shuttle. Future efforts with the shuttle, space station, and additional unmanned probes promise ever more impressive advances. Spinoffs from the space program have created new technologies benefiting our scientists, doctors, and consumers.

Unfortunately, in the last few years, our commitment to space exploration has waned. Perhaps it was because what had once seemed so extraordinary became commonplace. We put men on the Moon during *Apollo,* and then terminated that program when that goal no longer seemed sufficiently worth pursuing.

The potential of the space shuttle—the world's first reusable reentry vehicle—seemed limitless only 5 years ago, and excited the imaginations of all Americans. It proved yet again that this Nation was the worldwide leader in conquering the heavens. And yet, shuttle launchings soon became so routine—although, as we know, constantly fraught with risk—that the public seemed to lose interest. This situation was coupled with the lack of direction regarding our space program both at NASA and within successive administrations.

The *Challenger* disaster and reports of wasteful spending and negligence on the part of NASA have shaken public and congressional confidence in NASA's ability to manage our civilian space program. We should all be deeply concerned about these horror stories and about the findings of the Rogers Commission report. Clearly, every effort must be made to right the wrongs which threaten the future of our space program. We cannot allow the kind of mismanagement which caused the needless deaths of the seven shuttle astronauts, and the waste of millions of tax dollars, to continue.

These events also illuminated just how far this country has slipped in the space race. *Challenger* exposed for all to see that reliance on only one means of access to space—the shuttle—left us with no options when that system failed. The Europeans, with Ariane, are presently better equipped to launch payloads into space than are we. Japan, and even China, could soon

have that capability. The authoritative Jane's Spaceflight Directory reports that the Soviet Union now holds an almost frightening lead on the United States in space experience. Even if it is an exaggeration to say, as Jane's does, that our space program has fallen 10 years behind the Soviets in the practical utilization of space, there is no doubt that we are in trouble.

Such a situation cannot be tolerated. We must redouble our efforts to expand and improve our space program. We are in critical need of positive action to end the post-*Challenger* indecision of both NASA and the Reagan administration, which blocks definition of a coherent policy that will reassert U.S. leadership in space.

I believe, Mr. Chairman, that H.R. 5495 is an essential first step. I commend the chairman of the Space Subcommittee, Mr. NELSON from Florida, and the chairman of the full committee, Mr. FUQUA, for their leadership on this and other space policy issues.

H.R. 5495 takes significant strides toward getting the shuttle program back on track. It authorizes such funds as may be necessary to construct a fourth shuttle orbiter to replace *Challenger*. It is regrettable that the administration took so many months to request another orbiter. Given the tremendous backlog of both civilian and military space missions, it should have been obvious that one was needed. Nonetheless, we welcome the administration decision even though I, along with many of my colleagues, question their wisdom of having NASA finance the orbiter through cutbacks in other NASA programs. I am pleased to see that this bill prohibits such actions from being taken.

The bill also authorizes funds to return the shuttle system to full flight status and to achieve the next shuttle flight by the first quarter of 1988. It expresses the sense of Congress both that the United States must promptly restore its space transportation capabilities without deemphasizing other space programs, and that the Government should utilize commercial rockets as well as the shuttle for placing Government payloads into orbit. The bill also includes provisions designed to help develop a commercial industry for unmanned expendable rockets for satellite launches.

Finally, the bill provides money for continued development of one of most important projects which NASA has ever undertaken—the manned space station. The success of the space station is crucial if we are ever to have a permanent presence in space, and if we are ever to undertake the kinds of experiments necessary to expand significantly our study of the planets and the universe.

All of these provisions mark major steps forward for our space program. While I recognize that the malaise which affects our space program cannot be eliminated overnight, there is no doubt that vigorous action—as embodied by this bill—backed by firm committments from the pivotal players who formulate our space policy, can restore U.S. leadership in space.

I urge my colleagues to support this bill.

Mr. Chairman, I also rise in strong support of the Torricelli amendment to H.R. 5495, which would require that NASA move toward a second source of booster rockets for the space shuttle.

I would like to commend the gentleman from New Jersey [Mr. TORRICELLI], as well as my colleagues from California [Mr. FAZIO and Mr. LOWERY] for their leadership on this issue. In the interest of promoting fiscal responsibility, and of ensuring a sound technological base as well as ensuring future launch capability for the shuttle, they have led efforts to encourage NASA to inject competition into its procurement of the solid rocket motors.

I have long been an advocate of competition, especially within the military. Last year, I authored an amendment to the DOD authorization bill requiring procurement of all major weapons systems on a competitive basis. It passed the House overwhelmingly.

During this year's authorization debate, I offered a successful amendment requiring that a competitive prototype strategy be followed in the acquisition of all major weapons systems and subsystems.

There is little doubt of the value of competition in the Government procurement process, whether in the military or civilian spheres. Increased competition encourages contractors to hold down prices and improve the quality of their products. Dual sourcing protects the Federal Government from a single source contractor that overcharges the Government for its work on produces a shoddy product. With the participation of more than one contractor on major contracts, the Government maintains access to backup research, testing, and production teams.

The GAO report on NASA's procurement of the solid rocket boosters stresses the importance of second sourcing, without which the contractor may not have the incentive to identify and correct problems in areas such as quality control and safety. The report goes on to state that it is competition which gives the Government its leverage to ensure greater efficiency and effectiveness.

We have already witnessed the importance of competition in the shuttle program. Regarding the solid rocket motors, it seems clear that significant interest in competition demonstrated by four major contractors last year caused the incumbent, Morton-Thiokol, to reduce significantly its future charges to NASA for the rocket motors. NASA is on record supporting second sourcing and stating that the mere threat of competition has already saved the Agency $100 million.

Unfortunately, NASA, while supporting second sourcing, has also dragged its feet on implementing such a policy. This amendment would require that NASA develop a plan for competition of the solid rocket boosters, and solicit competitive bids for the boosters.

The anticipated long-term savings of millions of tax dollars and of greater quality control—maintained by a permanent competitive second source—will enhance the economic viability and schedule assurances of the shuttle program. I urge my colleagues to support this important amendment.

□ 1830

Mr. LUJAN. Mr. Chairman, I yield 5 minutes to the gentleman from Florida [Mr. LEWIS].

Mr. LEWIS of Florida. Mr. Chairman, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization bill. The Subcommittee on Transportation, Aviation, and Materials unanimously supported the administration's request for their aeronautics program this year.

I know none of us are happy with the huge deficits that continue to plague us. However, we must resist the temptation to balance the budget at the expense of research and development. I am sure every one of us would be willing to borrow money to take advantage of an investment opportunity with a guaranteed return greater than the cost of borrowing. Those kinds of investment opportunities are rarely available to us as individuals, and yet I believe that funding NASA's aeronautics R&T program is as close to a risk-free investment as any of us are likely to see.

The U.S. aerospace industry continues to provide a positive trade balance. This is directly related to the investments we have made in the past in aeronautics research. There is tremendous synergism in NASA's aeronautics program; much of it is generic research that benefits all aspects of aviation, and the resulting cost of requiring each company to conduct its own basic research program would surely mean the end of our fragile competitive advantage in aviation products.

I would also like to call attention to a new line item in NASA's budget this year—transatmospherics R&T. This is the aerospace plane program which bridges the gap that now exists between aeronautics and space. The aerospace plane is the most exciting program we've seen in decades—a hypersonic research aircraft that will demonstrate the technologies needed for hypersonic transports, military aircraft, and also a single-stage-to-orbit space transportation system.

This is a joint program with DOD, and it is critically important to support a strong NASA role in this program to ensure that it remains a research program to support both civil and military applications in both aeronautics and space.

And, now I would like to turn our attention to the space program. The NASA authorization bill directs NASA to begin procurement of a replacement orbiter; moreover, it provides for the

acceptance of gifts and donations to be used for that replacement. Many children have already eagerly begun making their contributions to replace the *Challenger*.

As we all know, when the space shuttle *Challenger* accident occurred on January 28, 1986, millions of children who were expectantly waiting for the first school lesson from space, witnessed the tragedy on television. These same schoolchildren will be the space explorers of tomorrow. Therefore, I am especially pleased that this bill also provides for allowing these school children the opportunity to participate in selecting the name for a new orbiter.

Mr. Chairman, those of us on the Committee on Science and Technology recognize the need for fiscal restraint, but we also recognize the importance of a healthy research program for the future strength of our economy. Therefore, I strongly urge the adoption of this bill.

Before I return the balance of my time, Mr. Chairman, I would like to join my colleagues on the Science and Technology Committee in expressing my appreciation for the opportunity to serve on this committee under the leadership of our chairman, Mr. DON FUQUA. Chairman FUQUA has served this committee with distinction and has earned the respect and admiration of Members from both sides of the aisle. His contributions to science and technology will be long remembered, and he will be greatly missed in the years to come. I am sure he will continue to serve the aerospace community well in his new capacity as president of Aerospace Industries Association, and I wish him every success in this new venture.

Mr. FUQUA. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from New York [Mr. SCHEUER].

Mr. SCHEUER. Mr. Chairman, I too wish to raise my voice in admiration and affection of our chairman, the gentleman from Florida, DON FUQUA. He has been an inspiration to all of us who have worked with him. It has been a privilege to have been associated with him in the glorious business of space. None of us will ever forget the experience, and we give him our heartfelt best wishes for success, health and happiness in his new career ahead, and along with him his marvelous wife, Nancy.

Mr. Chairman, I rise in support of H.R. 5495, the NASA authorization bill for fiscal year 1987.

Over the past 8 months, in the wake of the *Challenger* accident, we have asked probing questions about the direction of our space program, and the competence of its administration and leadership.

Although this review is necessary and appropriate, we must not lose sight of our successes.

The Space Shuttle Program did bridge the gap between the pioneering efforts of Mercury, Gemini, and Apollo and the homesteading efforts of the space station.

The shuttle was so successful in delivering crew and cargo to and from orbit that we were essentially blinded to the dangers associated with space flight.

We were delivering satellites to orbit. We were repairing satellites in orbit. We were retrieving satellites from orbit. We were manufacturing in space. We were carrying on experiments in space. We were manuevering, untethered, in space. We were learning to utilize the unique environment of space. For 24 flights the shuttle was so successful that we began to take its success for granted. Then came flight 25, and the tragic events of January 28.

The *Challenger* accident and the resulting investigations have shaken our Nation's confidence in our space agency, our space program and, I might add, in ourselves.

This confidence can be restored. This confidence must be restored. Design problems must be solved so that we can safely and reliably exploit the shuttle's capabilities in delivering astronauts to space. Management systems must be implemented so that danger signs are detected and acted upon, in time.

Policies must be changed such that this Nation is not dependent on a single space transportation system. NASA must develop the technical muscle to ensure that in the future it will recognize and resolve recurrent problems promptly and thoroughly.

And we in the Congress must resolve to maintain a close and continuous oversight of NASA, both to ensure that flight safety is never compromised and to ensure that the agency is provided with clear, and achievable goals.

Once these changes are accomplished, NASA and space exploration will deserve our full support. And our support should be as consistent, as bold, and as proud as our belief in the Nation's pioneering spirit and inspirational destiny in space.

□ 1840

Mr. LUJAN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. FUQUA. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. SEIBERLING], a former member of the Committee on Science and Technology.

Mr. SEIBERLING. Mr. Chairman, I wanted to take this time to say that I had the privilege of serving for one Congress, my freshman term, on the Committee on Science with the distinguished gentleman from Florida [Mr. FUQUA], and I think that the Congress and the country owe him a tremendous debt of gratitude for his many years of dedicated work on the Science Committee, and in particular for his work in supporting the pioneering efforts of NASA.

I wanted to add my voice to those who were similarly phrasing his activities.

Mr. FUQUA. Mr. Chairman, I yield 30 seconds to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I just walked onto the floor from a meeting, and I noticed the debate was concluding, and I did not want that to pass without the opportunity, Mr. Chairman, of expressing to you as we have heard these words so many times now, of farewell, my personal appreciation for your commitment not just to the House of Representatives but indeed to that pioneering spirit that we are so supportive of in our space effort.

Your contribution to the House, to that effort, will not be forgotten. We appreciate and will miss you as we work in the years ahead.

Mr. ANDREWS. Mr. Chairman, I want to take a moment to congratulate the leadership of the Science and Technology Committee for bringing forward this important and well-crafted authorization for NASA. Chairman NELSON and the Space Science Subcommittee held exhaustive hearings that probed the serious crisis in our Nation's space policy and helped us all to face foursquare the obstacles in the path of further exploration and development of space.

Mr. Chairman, this year's authorization for NASA is extremely important. In 1987 we will move out at full speed on the space station. Thus I think it would be timely to note for my colleagues the immense capability the station will give our country, particularly in promoting participation by the private sector.

In addition to using the space station, the private sector may have a role as the builders and operators of the station. To encourage this type of commercial role in station development, NASA has issued "Guidelines for U.S. Commercial Enterprises for Space Station Development and Operations".

These guidelines have sparked considerable interest in the private sector and will as a policy foundation upon which to build a significant commercial presence in space. As the Federal budget squeezes ever tighter on our space investment, it is the commercial sector that will be needed to expand our Nation's role in space. Therefore, space commercialization needs our most fervent promotion and support.

Areas for commercial participation as builders or operators on the station may include: habitation, medical and health, data management, communications, laboratories, payload processing, and logistics. As we move into full-scale development of the space station, these opportunities will grow significantly.

Beyond participation in the station itself, NASA is promoting commercialization of other space activities. Last year's memorandum of

understanding between NASA and Space Industries, Inc. is an example of cooperation in space hardware development. As SII continues work on its industrial space facility, they have exchanged information with the space station office which may lead to an ISF compatible with station and that may assist in the development and operational stages of the space station.

Overall, these initiatives bode well for the future of the space station. We must use the engines of free enterprise to drive our development of space and assure our Nation's role in outer space for decades to come.

Mr. GORDON. Mr. Chairman, I support H.R. 5495, the NASA authorization bill for fiscal year 1987. This bill includes funds for the shuttle program. The Space Station Program and the Space Shuttle Program are interdependent. The Space Shuttle Program is the space station's primary transportation system for construction and resupply. Included in this authorization bill are the funds to support the early years of space station construction, a major initiative for the United States to maintain world leadership in the international community of space users. Also included are funds to support precursor space laboratory flights which will develop, for this international community of space station users, the equipments and scientific experiment data base which is necessary for efficient utilization of the space station.

We must also remember that as an element in America's space transportation capability, the space shuttle still represents the major portion of our Nation's capacity for placing spacecraft on orbit. It is the shuttle that gives America its unique capability to perform on orbit repairs, servicing, refueling, retrievel, so ably demonstrated during the first 24 flights of the Shuttle Program.

The recovery and repair of the solar maximum satellite by our NASA astronauts "Ox" Van Hoften, "Pinky" Nelson, Bob Crippen, and the late Dick Scobee, saved the United States a satellite that cost over $50 million alone and demonstrated the ingenuity of teams of astronauts as they employed various means to recover a tumbling satellite.

Those who watched the extraordinary recovery of two crippled communications satellites which cost approximately $30 million each can appreciate the tremendous advances the United States has taken in manned space operations. Again, our NASA astronauts Joe Allen and Dale Gardner proved conclusively that salvaging abandoned satellites, with subsequent return to Earth in the shuttle, is an operational reality in America.

Perhaps even more remarkable was the extraordinary on-orbit recovery, repair, and redeployment of the Hughes Syncom satellite. It is estimated that by rescuing this mission, NASA saved Hughes over $50 million in satellite costs and in excess of $80 million in business revenues over the first 5 years of spacecraft operations.

It is important that we support the continued development of these shuttle unique capabilities as they are the future in space operations being pursued throughout the world. Additionally, they are the area of unique manned-space operational capabilities in which America still retains a substantial lead among the world's space programs.

Finally, I urge continued support for the Space Shuttle Program as it is a vital element of the Nation's space launch capability that provides launches of national security interest and for which the shuttle's unique capabilities are only now being explored.

Mr. BROWN of California. Mr. Chairman, as I stated earlier, I support H.R. 5495, a bill to authorize appropriations for the National Aeronautics and Space Administration for fiscal year 1987. The bill earmarks $7.7 billion for the Nation's space agency—identical to the President's request level. My colleagues on the Science and Technology Committee, with the help of the committee's expert staff, have arrived at a bill that should be agreeable to most Members of this body. Given the difficulty and uncertainty surrounding NASA as a result of the *Challenger* accident of January 28, I believe that chairman of the Space Science and Applications Subcommittee. Mr. BILL NELSON, has done an exceptional job.

The Space Subcommittee wisely restored funding for the Advanced Communications Technology Satellite [ACTS] Program at $95 million. I would have preferred, however, that the subcommittee restore the funding to $117 million as requested in the project funding profile. At $95 million, the program will experience a 6-month delay and cost overruns in excess of $40 million overall. If ACTS is delayed further, the United States will fall behind its Japanese and European competitors, who have their own vigorous advanced communications satellite technology programs.

Discussion of title I is limited because the budget figures in this bill have little to do with the budget realities at NASA. Essentially, the bill provides little more than an operating shell for NASA. Without a budget amendment from NASA, the committee was unable to form a more accurate budget proposal.

Mr. Chairman, I am concerned that perhaps we on the Science and Technology Committee have relinquished some of our authorization and oversight responsibilities to the Appropriations Committee. Jurisdiction wrangling between the authorizing and appropriating committees is a tradition in Congress. But the situation has become particularly acute in the case of the proposed space station. The Appropriations Committee has been allowed to manipulate the Space Station Program within NASA without any objections. NASA is forced to do handstands and somersaults to keep the Appropriations Committee happy. I seriously question whether this is responsible or appropriate oversight.

I would like to mention that H.R. 5495 does provide full funding for the continuation of the Mars Observer Program, scheduled for launch in 1990. Not only does this mission promise to yield a wealth of scientific understanding of Mars, but it will also coincide with the Soviet mission to the Martian moon Phobos. It would be disappointing if NASA were to recommend delaying this critical program. In finalizing its payload manifest for the space shuttle for the next 5 years, I hope NASA has the foresight to give the Mars Observer mission high priority. Also, any new space science programs and initiatives which NASA feels are important should be brought before Congress without jeopardizing other ongoing projects.

Moving on to titles III and IV of the NASA authorization bill, these new additions will provide hope and incentives needed for the United States to once again be the preeminent spacefaring nation. These measures may well be the medicine that will revitalize the Space Agency. Under title III such funds as necessary are authorized to do the necessary fixes on the shuttle, replacing the shuttle *Challenger,* and building a mixed fleet of expendable launch vehicles [ELV's] to assure U.S. access to space. The measure also establishes space shuttle payload priorities, putting commercial payloads at the bottom of the list. The bill may also open the door for private financing of additional shuttle orbiters.

Title IV is considered an experiment in fostering a private ELV industry in the United States. Under this title, NASA would be required to purchase a number of launch services each year. Some changes would also be made in the shuttle pricing policy to ensure that the space shuttle is only used as a backup launch vehicle for commercial payloads. I believe this is a comprehensive approach to determining if a private ELV industry can thrive in the United States.

While I am enthusiastic about titles III and IV of the NASA bill, I am concerned that the authorization is not backed up with specific numbers. I get the sense that the bill we are considering today goes a long way toward solving problems in the American Space Agency, but stops short of providing the definitive cure for NASA's ailments. Unless we are willing to authorize specific dollar amounts, we will be making only partial payments on our commitment, and we may end up with a Subaru without an engine.

Curiously, the Senate Appropriations Committee was able to mark up a HUD-Independent Agencies bill which earmarks $8.3 billion for NASA in fiscal year 1987—$575 million above the NASA budget before us today. The Senate Committee on Commerce, Science, and Transportation managed to report a NASA authorization bill that is also above the House NASA authorization levels by more than $100 million. I am disappointed that the Science and Technology Committee has not taken similar initiative to increase the NASA budget above the President's request. I think the committee underestimates Congress, willingness to take the appropriate steps to get the Space Agency flying again.

Simply providing minimum funding to NASA is not enough. In order for NASA to once again be the premier Space Agency in the world, it must be adequately funded. NASA must experience real growth over the next 5 to 10 years, followed by a steady level funding into the 21st century. I am not speaking only for myself. There is a growing concensus among space policy analyst that increased commitment to the U.S. civilian Space Program is crucial. Among the groups advocating enhanced NASA budgets are the American Institute of Aeronautics and Astronautics, the NASA Advisory Council, and the National Commission on Space. But clearly the most important group which supports increased funding for NASA is the American public. A

recent survey has indicated that 57 percent of the American population support an expanded civilian Space Program.

Rebuilding the U.S. Space Program to last for 100 years. However, is a difficult challenge, and will not happen in 1 year's budget. I will continue to work with my colleagues until we have arrived at a civilian Space Program worthy of the American pioneering spirit.

Again, I offer my support for H.R. 5495.

Mr. FUQUA. Mr. Chairman, I yield back the balance of my time, and I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose and the Speaker pro tempore [Mr. GRAY of Illinois] having resumed the Chair, Mr. SKELTON, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, had come to no resolution thereon.

DESIGNATING THE NEZ PERCE TRAIL AS A PART OF THE NATIONAL TRAILS SYSTEM

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 1542) to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I do so only for the purpose of asking the gentleman from Minnesota [Mr. VENTO], the chairman of the subcommittee, to explain the measure.

Mr. VENTO. If the gentleman will yield, Mr. Speaker, the Legislation before us, S. 1542, would designate the Nez Perce (Ne-Me-Poo) Trail as a National Historic Trail.

The 1,170-mile trail, traversing through Oregon, Idaho, Wyoming and Montana was the route used by the "non-treaty" Nez Perce Indians during the summer and fall of 1877 in their attempt to flee the United States Army and seek peace in Canada. The Nez Perce, also known by their traditional Indian name Ne-Me-Poo, meaning "The People", were cited in news accounts of the day and subsequent historical analyses for their perseverance and strategy in the face of overwhelming odds.

A study of the proposed national historic trail was conducted pursuant to section 5(c) of the National Trails System Act. The study undertaken jointly by the U.S. Forest Service and the National Park Service found that it was feasible and desirable to designate the Nez Perce Trail as a component of the National Trails System. Subsequently, the National Park System Advisory Board made the determination required by the National Trails System Act that the proposed Nez Perce Historic Trail is of national significance.

Mr. Speaker, it is my understanding that the administration supports this legislation. From all the information gathered on this matter it would appear that the designation of a Nez Perce (Ne-Me-Poo) National Historic Trail would be a fitting recognition of this moment in American history.

I support adoption of this measure.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I rise in support of S. 1542, to designate the Nez Perce Trail as a national historic trail.

As the subcommittee chairman has explained, the 1,170-mile Nez Perce Trail, which passes through the State of Oregon, Idaho, Wyoming, and Montana, was the route followed by the Nez Perce Indians during their flight from the U.S. Army to Canada. The traditional name of the Nez Perce, Ne-Me-Poo, will also be recognized in the trail's designation.

The Nez Perce Trail was jointly studied by the U.S. Forest Service and the National Park Service and was found to meet the requirements under the National Trails System Act for national historic trail designation.

Under the bill's provisions, no private lands outside of federally administered areas may be acquired for the trail. The bill also authorizes appropriate marking of the trail.

The other body recently approved S. 1542. Therefore, I urge my colleagues to pass this measure and send it to the White House for presidential signature.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the National Trails System Act (82 Stat. 919), as amended, is further amended as follows: Section 5(a) is amended to insert the following new paragraph:

"(14) The Nez Perce National Historic Trail, a route of approximately eleven hundred and seventy miles extending from the vicinity of Wallowa Lake, Oregon, to Bear Paw Mountain, Montana, as generally depicted in 'Nez Perce (Nee-Me-Poo) Trail Study Report' prepared by the Department of Agriculture and dated March 1982. The report shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia. The trail shall be administered by the Secretary of Agriculture. No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the Nez Perce National Historic Trail. The Secretary of Agriculture may designate lands outside of federally administered areas as segments of the trail upon application from the States or local governmental agencies involved if such segments meet the criteria established in this act and are administered by such agencies without expense to the United States. So that significant route segments and sites recognized as associated with the Nez Perce Trail may be distinguished by suitable markers, the Secretary of agriculture is authorized to accept the donation of suitable markers for placement at appropriate locations. Any such markers associated with the Nez Perce Trail which are to be located on lands administered by any other department or agency of the United States may be placed on such lands only with the concurrence of the head of such department or agency.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. There are authorized to be appropriated $550,000 to carry out the purposes of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1542, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

DESIGNATING THE CUMBERLAND TERMINUS OF THE CHESAPEAKE AND OHIO CANAL IN HONOR OF J. GLENN BEALL, SR.

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the Senate bill (S. 1766) to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr., and ask for its immediate consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Mr. Speaker, reserving the right to object, I yield to the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Speaker, S. 1766 would designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in

honor of J. Glenn Beall, Sr., in recognition of his efforts to preserve and protect the canal and towpath from development.

J. Glenn Beall, Sr., served as a Member of the House of Representatives and as a U.S. Senator from Maryland during the period from 1943-65. During his service in the Congress, Mr. Beall was a leader in efforts to establish a C&O Canal National Historical Park and adjoining parkway in Maryland, sponsoring enabling legislation in the 84th, 85th, and 86th Congresses. Though his legislation was not enacted into law, President Eisenhower, by Proclamation on January 18, 1961, established the Federal lands comprising the canal as the Chesapeake and Ohio Canal National Monument. Ten years later in 1971, legislation was enacted establishing the areas as the Chesapeake and Ohio Canal National Historical Park.

Mr. Speaker, S. 1766 directs the Secretary of the Interior to erect and maintain an appropriate memorial to J. Glenn Beall, Sr., at the Cumberland terminus of the park, the cost of which is not to exceed $25,000. I understand the administration supports this measure and I add my support to its adoption.

Mr. Speaker, I want to thank the gentlewoman Congresswoman, BYRON, an able member of the Interior and Insular Affairs Committee for her assistance and help in guiding this measure to enactment. It would not have been successfully enacted without Congresswoman BYRON's leadership.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of S. 1766. As the subcommittee chairman has explained, this bill would designate the Cumberland terminus of the C&O Canal National Historic Park in honor of J. Glenn Beall, Sr.

Senator Beall was a distinguished Member of Congress for 22 years during which he served in both bodies. His numerous contributions during his service include his efforts to protect and preserve the canal and towpath which are the prominent features of the park. He introduced the first piece of legislation aimed at preserving and restoring the canal in 1956. After years of work and negotiation, legislation was finally passed to establish the park in 1971, 1 year after Senator Beall's death.

Congressional designation of the Cumberland terminus of this unique park as a memorial to Senator Beall is an appropriate way to recognize and honor his role with regard to the canal.

The other body recently approved this measure. Therefore, I urge all of my colleagues to support S. 1766.

Mrs. BYRON. Mr. Speaker, I want to take this opportunity to extend my thanks to my subcommittee chairman, Congressman VENTO, for supporting this legislation which means a great deal to me and so many western Marylanders.

This bill dedicates the C&O canal terminus after the late Maryland Senator, J. Glenn Beall, Sr., in recognition of his efforts to protect and preserve the park's canal and towpath. During his 22 years in Congress, he maintained a personal interest in the protection of the C&O Canal National Park. In 1956, he introduced the first piece of legislation which recognized the historical importance of the canal and provided a vehicle for its preservation and restoration. While similar bills were introduced during the next 16 years, nothing was signed into law until 1971—just 1 year after Senator Beall's death. What could now be more appropriate than to dedicate the terminus—a significant portion of the canal—to his memory?

The plan for the Park Service to implement will be an attractive interpretive park with permanent exhibits, landscaping, walkways, miniplazas, and benches which would draw people to the river and the canal terminus area. This legislation authorizes a mere $25,000 which will cover the entire cost of the proposed interpretive park. A simple plaque dedicated to J. Glenn Beall will suffice as the sole object recognizing his contributions to the canal's protection.

Mr. Speaker, I cannot find anyone who does not think that this bill is an excellent idea. The Senate companion bill, introduced by Maryland Senator CHARLES MATHIAS, passed the Senate on August 1 without opposition. I urge its speedy approval in the House as well so that J. Glenn Beall's contributions to the survival and protection of this beautiful park may be recognized for all time.

Mr. LAGOMARSINO. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1766

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park is hereby dedicated to J. Glenn Beall, Sr. in grateful recognition of his outstanding efforts to preserve and protect the canal and towpath from development.

(b) In order to carry out the provisions of this Act, the Secretary of the Interior is authorized and directed to provide such identification by signs, including changes in existing signs, materials, maps, markets, or other means as will appropriately inform the public of the contributions of J. Glenn Beall, Sr.

(c) The Secretary of the Interior is further authorized and directed to cause to be erected and maintained, within the exterior boundaries of the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park, an appropriate memorial to J. Glenn Beall, Sr. Such memorial shall be of such design and be located at such place as the Secretary shall determine.

(d) There are authorized to be appropriated up to $25,000 to carry out the purposes of this Act.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 1766, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

THE ARMS RACE AND SOVIET ECONOMIC DECLINE

(Mr. SEIBERLING asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. SEIBERLING. Mr. Speaker, yesterday, I placed in the RECORD some compelling facts about our own Nation's economic crisis and the key role of the arms race in bringing it about. Today, I would like to discuss the economic crisis in the Soviet Union, which is in great measure similar in origin to the crisis we confront. In both cases, there is a smaller remedy, if the will exists to pursue it: namely, a major arms control and reduction agreement between the two superpowers.

A recent article by Jan Vanous, research director for an economic consulting firm—PlanEcon, Inc.—documents the Soviet crisis in some detail. The immediate cause of the crisis is a decline of the value of Soviet exports, especially oil. However, this comes in an economy already strained by years of excessive military spending so the effects of the decline are very serious for the Soviet Union, and help explain the increasing emphasis of the Soviet Government in reaching major arms control agreements with the United States. The Vanous article summarizes the situation this way:

The downward slide of exports and imports threatens Mikhail Gorbachev's ambitious modernization program. Just to maintain the quality of imports at last year's level, the Soviets probably will have to borrow $25 billion over the next five years, nearly doubling their gross hard-currency debt. But even this heavy borrowing, the Soviets won't be able to afford increased imports of Western machinery to modernize their economy. To save the modernization program, Gorbachev will have to change the division of the Soviet economic pie by cutting the growth of arms production in order to free capacity for production of civilian machinery.

Gorbachev's realization that he will soon have to choose between tractors and tanks has forced him to show much greater flexibility in arms negotiations than in the past. If the Reagan administration does not overplay its hand and succumb to the tempta-

tion to play it tough with the Soviets—based on an assessment that Gorbachev is "over a barrel"—it can probably secure major concessions in arms bargaining with the Soviets.

Since we in the United States face a similar economic crisis resulting in large measure from our own expenditures on the arms race, real progress on arms control ought to be the highest priority on the agenda of our own Government as well as the Government of the Soviet Union.

The full text of the Vanous article, as it appeared in the Washington Post for August 17, 1986, follows these remarks:

THE SOVIET TRADE CRISIS: CHOOSE TRACTORS OR TANKS

(By Jan Vanous)

The Soviet Union is facing a severe trade crisis, one that could force major changes in Moscow's foreign and domestic policies.

The crisis stems from the collapse of the price of oil in the world market, which has meant an unprecedented shortfall in hard currency export earnings for the Soviets and a prospective decline in ruble earnings from exports to Eastern Europe. The fall in export earnings, in turn, is forcing Moscow to reduce its imports of Western machinery and equipment and to limit imports of these goods from Eastern Europe over the next five years. This means that the Soviets will have to depend increasingly on their own domestic machinery production in an effort to replace the country's aging capital stock.

The downward slide of exports and imports threatens Mikhail Gorbachev's ambitious modernization program. Just to maintain the quantity of imports at last year's level, the Soviets probably will have to borrow $25 billion over the next five years, nearly doubling their gross hard-currency debt. But even with this heavy borrowing, the Soviets won't be able to afford increased imports of Western machinery to modernize their economy. To save the modernization program, Gorbachev will have to change the division of the Soviet economic pie by cutting the growth of arms production in order to free capacity for production of civilian machinery.

Gorbachev's realization that he will soon have to choose between tractors and tanks has forced him to show much greater flexibility in arms negotiations than in the past. If the Reagan administration does not overplay its hand and succumb to the temptation to play it tough with the Soviets—based on an assessment that Gorbachev is "over a barrel"—it can probably secure major concessions in arms bargaining with the Soviets.

Gorbachev's economic strategy has four fundamental objectives, at least three of which are now threatened by the Soviet trade crisis. The goals include:

Accelerating Soviet economic growth. The plan for 1986-90 calls for a growth of net material product (roughly corresponding to Western GNP) of 4.1 percent per year, compared to an average rate of growth of 3.2 percent during 1981-85. These plans were based in part on export and import targets that now appear impossible to achieve.

Improving labor productivity. To get higher labor productivity, Soviet leaders agree they need better management, a more enthusiastic and better disciplined labor force, and above all, new investment in plant and equipment. Gross investment in fixed capital is slated to rise 10 percent this year, remain at the same level in 1987, and then increase by about 2 percent per year during 1988-90. It was originally hoped that sharply increased imports of capital goods from Eastern Europe and the West would be key ingredients of the modernization program. But the collapse of Soviet hard-currency export earnings and looming difficulties in trade with Eastern Europe over the next few years are pushing the Soviets to rely mostly on domestic resources.

Improving the quality of production. Most Soviet products are outdated in design, break down more often than they should, and waste valuable inputs in their manufacture such as metals and energy. Quality control and efficient production will be given much greater attention than in the past. The Soviets would find it easier to raise production standards to Western levels if they could purchase new capital equipment from the West.

Assuring an adequate Soviet defense capability. This is a requirement for any Soviet leader who wants to stay in power, and Gorbachev won't sacrifice it simply to improve the performance of the civilian economy. However, the Soviets appear inclined to offer what in their terms are unprecedented concessions in arms negotiations in order to cut their defense burden and avoid having to mount a full-scale counterpart to the strategic defense initiative.

As a major oil exporter, the Soviets have been stunned by the sudden decline in oil prices. Oil and gas account for 60 percent of their exports to the non-communist world. As of mid-1986, they are receiving $10 to $12 per barrel for their oil, down 60 percent from an average of $27.50 per barrel in the fourth quarter of 1985. Since natural gas prices are also falling rapidly, the Soviets face an unprecedented deterioration in their terms of trade.

The Soviet trade crisis is compounded by the sharp drop in the value of the dollar. That's because most Soviet exports are priced in dollars, while the prices of most Soviet imports are based on West European currencies that have risen sharply against the dollar in recent months. As of July 1986, for example, it took almost five times more Soviet oil to purchase a given piece of West German machinery than it did in early 1985, although the dollar price of Soviet oil has fallen by only 60 percent.

Moscow's trade crunch could get worse. That's because the Soviet Union's economic fallbacks—arms sales, exports of gold, diamonds and platinum, and hopes for better harvests and a reduction in food imports—are also in trouble.

The decline in Soviet arms sales is largely a side effect of the fall in oil prices. This has squeezed the finances of OPEC nations, including major buyers of Soviet arms such as Iraq, Libya, Syria, and Algeria. With arms accounting for about 20 percent of Soviet exports to the non-communist world, the sluggish arms market in the Middle East will further aggravate Soviet hard-currency problems.

Soviet arms sales to the Third World fell 25 percent last year, after three straight years of record sales. With few exceptions, the Soviets must now finance close to 100 percent of such sales over 10 to 15 years at concessionary terms. With arms sales yielding relatively little immediate cash flow, they must look less attractive to the Soviets.

Gold, platinum and diamonds won't help much either in solving the trade crisis. The Soviets are the world's second-largest supplier of these precious commodities, and they can't boost their own sales without further weakening the market. South Africa's growing political and economic problems have forced that regime to sell as much goal, platinum and diamonds as the world market can absorb. Heavy and steady South African gold sales are keeping the price of gold relatively low, in spite of the collapse of the dollar and falling interest rates, which normally should increase incentives to hold gold. (To be sure, if the Pretoria regime should fall and a prolonged period of political and economic instability take hold in South Africa, the Soviets would benefit significantly from panic buying of gold, diamonds, platinum, chromium and other related commodities by Western speculators.)

The Soviets had hoped that a good harvest this year would ease the trade crunch by permitting a reduction in grain and food imports. Less hard currency spent on agricultural imports (which accounted for 27 percent of Soviet non-communist imports last year) means more money available for imports of Western capital goods. But nature hasn't been kind to Gorbachev this year. The drought affecting key grain-growing areas of the Soviet Union will probably depress the Soviet crop to somewhere between 165 and 175 million metric tons (the latest USDA estimate puts it at 175 mmt). This would be far less than the estimated 1985 harvest of 190 mmt and 1986 output target of 150 mmt and would pressure the Soviets to increase grain imports correspondingly.

The obvious way out for the Soviets is increased borrowing from the West. I estimate that Soviet hard-currency exports this year will be more than $10 billion below the peak of $36.2 billion reached in 1983, without taking into account the impact of dollar depreciation and inflation. There will be some recovery over the next several years, but a large financing burden will remain.

My conclusion is that the Soviets will either have to borrow about $25 billion from the West over the next five years just to maintain "reasonable" levels of hard-currency imports or accept extreme cutbacks in imports, with a consequent adverse impact on Soviet economic performance. Soviet gross hard-currency debt to the West may nearly double by 1990, rising to about $53 billion, compared to an estimated $28.6 billion at the end of 1985. (The corresponding increase in net Soviet hard-currency debt during the same period should be somewhat smaller—about $19 billion.)

Even by borrowing the $25 billion, the Soviets won't be able to do much more than tread water, holding import spending, at best, at last year's level in real terms. Hopes for increased imports of machinery and equipment from the West to help in the Soviet modernization effort are probably doomed. To finance these more ambitious efforts, the Soviets would have to borrow far more—say $50 billion over the next five years—which they would regard as imprudent.

The Soviets should be able to borrow the $25 billion from the West without great difficulty. We expect them to remain a borrower favored by major Western banks over the next five years, reflecting the huge Soviet endowment of natural resources, the rise to power of a more competent economic management group, and strong foreign exchange reserve position. Moreover, Western commercial banks generally believe that the Soviet Union is under-represented in their

portfolios and are quite eager to take more Soviet paper.

Heavy Soviet borrowing needs will also stimulate a search for alternative means of securing capital inflows into the Soviet Union. We expect the Soviets to turn to Western investment banks to help them float bond issues. A test issue could be floated on the London market perhaps in the latter part of this year. We also regard recent hints of possible Soviet application to the IMF and World Bank as another component of that strategy.

Moscow probably doesn't have an Eastern European solution to its import shortfall. Even if the Soviets run modest trade deficits with most East European countries over the next five years, they cannot hope to compensate for the loss of machinery imports from the West by increasing the quantity of machinery imports from Eastern Europe. In fact, the fall in ruble energy export revenue from Eastern Europe means that they will at best be able to maintain the level of imports of East European machinery at their 1985 level over the next five years.

With the modernization options based on increased imports of Western and East European machinery, now closed, Gorbachev is down to his last choice. He must cut domestic production of defense machinery in favor of investment from the civilian sector of Eastern Europe.

To understand the modernization squeeze, it helps to look at the demand for capital goods. Although the Soviet Union is probably the largest machinery producer in the world, it is unable to satisfy its own demand for investment machinery.

The main reason for this is the huge scale of Soviet defense machinery output. A recent study by PlanEcon, Inc., estimated that the share of Soviet final machinery output allocated to defense increased from 18 percent in 1960 to a staggering 44 percent in 1985. During the same period, the share of final machinery output allocated for civilian investment declined from 58 percent to 39 percent and the share of consumer durables (passenger cars, refigerators, etc.) declined from 24 percent to 17 percent.

Gorbachev can salvage his modernization program only if he does two things. First, he must increase domestic machinery output by close to his five-year plan target of 7.5 percent growth per year. Second, he must slash the growth rate of defense machinery production to 4 percent per year for 1986–90, compared to an average of 8.5 percent during the past decade. This way, average annual growth of domestic investment machinery output could be pushed to about 9.5 percent per year during 1986–90, making it possible to supply enough investment machinery for the modernization program from domestic sources.

Whether Gorbachev can sell such a policy to the Soviet defense establishment is an open question. But sophisticated military men in the Soviet Union should understand economic realities, and they may be willing to accept fewer resources for a few years in order to help to strengthen the economy.

The arms-control implications of the Soviet trade crisis are clear. The Soviets, as their leaders have repeatedly stated, want an arms-control agreement that can hold the level of military spending low enough to allow for modernization of the civilian economy. This is presumably one factor behind increased Soviet flexibility in arms negotiations in recent months. An arms-control agreement that allows both sides to cut defense spending would benefit both. The Soviets could salvage their much needed modernization program and the United States could at last get its budget deficit under control.

□ 1850

MY CONCERNS ABOUT THE TAX BILL

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Georgia [Mr. RAY] is recognized for 5 minutes.

Mr. RAY. Mr. Speaker, I rise tonight to share with my colleagues my concerns about the tax bill and the concerns expressed to me by many of our constituents.

I am told that the tax bill is a reform movement on a locomotive which cannot be stopped. That may be true, but for the record, I believe I need to point out some problems which are already evident to the people of the Third District of Georgia, and from others who I have spoken with.

The news media and special interest groups have pulled out certain facts from the summary of the tax bill and as a result, the people are quite aware of what is going on with tax reform. And of the thousands of people who have written in to me about this bill, over 70 percent opposed actions taken to change the Tax Code. That is above the national average of 50 percent opposition according to a recent ABC News poll.

Now, I am not saying that "if it's not broke, that we should not fix it." There is a growing feeling across this country that the Tax Code is not fair. Recently, I received a letter from a young man from Perry, GA, Robert Stanley. He wrote me a straightforward letter. "My question, he wrote, is about taxes. I heard on the news and on the radio that the blue-collar workers pay more taxes than a rich person. I would like to know why workers have to pay taxes while the rich don't and why taxes can't be 10 percent for everyone." Robert, I, too, see inequities in the Tax Code that need to be fixed. It remains to be seen if this bill is indeed reform and if simplicity has been written into it.

I praise the committees for attempting such a comprehensive project, and I do not intend for my remarks to reflect badly on their efforts. I compliment them on several provisions which I see as a sign of their sincere intent toward true reform. Among those efforts are:

Retaining the child care credit; increasing the standard deductions and personal exemptions; weeding out loopholes for those who should pay; creating a livable alternative minimum tax for corporations; keeping the mortgage deduction on up to two homes; including some incentive for saving; lowering vesting standards for pensions; and continuing the employer-provided educational assistance through 1987, raising the amount excludable to $5,250 and there are others.

However, let me list for you some of the problems that I see coming if we pass this bill. Among these problems are:

Discouraging investments and capital improvements by heavy manufacturing and industry; maintaining some inequities for the truly rich. For example, couples earning $145,000 will pay an effective rate of 33 percent because of that hidden surcharge whereas couples earning $200,000 will pay only 28 percent; disallowing the increased spousal contribution to IRA's; losing the benefits of a broad-based charitable deduction for many tax-exempt organizations; chaning the rules for many workers without the means to plan their retirement finances the way they want; and changing the accounting and reporting rules for many companies.

But, it seems to me that the guidepost of this entire tax proposal has been to keep it revenue neutral—not the ultimate fairness of the reform.

I am in no way advocating an increase in taxes. My pledge to my constituents is not to vote for a tax increase until I am convinced that a majority of Americans are willing to pay to maintain the current level of government services rather than to do without them through Gramm-Rudman cuts.

The questions are: Has fairness been kept in this bill? Are there incentives to plan ahead for retirement? For health care costs? Is there simplification? Are there incentives for business? What will the loss of the investment tax credit do to business expansion?

Let's look at this bill. It weighs over 4 pounds. It is close to 1,000 pages long. It merely amends a code that is several volumes long when you count all the regulations. It still takes a CPA if not a lawyer, to give good tax advice. I am told that this legislation is being called the unemployed lawyers' relief act, and I am presently checking to see if H.R. Blocks' stock is up or down. I suspect it is up.

Some argue that reducing the number of brackets is simplification, and I agree that reducing the number of brackets from 14 to 3 in 1988 is encouraging. But, to me, simplification would be achieved when a person with an eighth grade education could made heads-or-tails of the form 1040. To me, simplification would be achieved when the average person could, without complicated formulas and hours with a calculator, simply compute his or her tax return within a short time.

My constituents complain about the retirement changes. Teachers and insurance annuity holders hoped for their tax-shelter annuities to remain the same. Factory workers relied on their 401(k) and 403(b) plans to continue with no changes. Federal employees counted on the current law which states that they would have a 3-year basis recovery on their employee contribution to their pension. All these people are having the game changed on them, but I must admit that civil servants are really bearing the brunt here. Not only is the method in which they receive their retirement threatened, but they have no way to recapture what they were promised if they are eligible to retire now. The conference committee included a retroactive date, July 1, 1986. For example, a 30-year Federal employee will begin his retirement by having a heavy tax levied from his first retirement check which is contrary to the Government's promise when he or she started.

There is concern that individualism may have been forgotten in the drafting of this bill. The tax-deferred individual retirement account is an effort by the Government to acknowledge that some people—through their individual choice—may want to contribute more toward their retirement years. The IRA is the mechanism by which the Government has encouraged people to make that choice. For a while, that whole concept was thrown out. In the conference agreement, there is a complicated tangle of rules surrounding exactly who may contribute to a completely tax-deferred IRA. It goes something like this. If you are not a part of an employer-provided pension plan, you may contribute the entire $2,000 and have the tax deferred on this money until you withdraw it upon retirement. If you are a part of a pension plan at work and if you made under $40,000 on a joint return, you may still contribute the full amount. However, if you are single, the salary cap for full deductibility is $25,000!

Many of my constituents are upset about the complicated new rules pertaining to charitable deducations. The conference agreement allows those who itemize their deductions to take a 100 percent charitable deduction for money given to their church, a hospital, a school, or other charitable foundation. But then those of us who do not itemize cannot get that same deduction as we have in the past. This is compounded by the fact that this bill is supposed to make paying taxes simpler by encourging people not to itemize.

Another concern that the businessmen and businesswomen of my district have is whether their businesses will survive. During the tax reform debate, we came a long way toward making those corporations that currently pay less taxes than you or I liable for their fair share of the tax burden of this country. But I cannot help but worry about the small business which cannot take the loss of both the investment tax credit and the capital gains treatment. In Georgia, 80 percent of timber owners are small landowners and not big corporations. Many are wondering if they are going to be able to make ends meet. And, I must say, the tax bill does not give them much encouragement. Real estate interests are having the rules changed on them in the middle of the game. There are manufacturing companies which were caught by yet another retroactive date—the loss of the investment tax credit back to January 1, 1986—even after they had made decisions to purchase and are now stuck with that decision.

The conference agreement would increase the overall corporate income tax burden by over $120 billion over 5 years. This revenue would be used to lower the taxes for many other groups. Many retail businesses and small computer growth firms would benefit from the lower corporate rates which are being cut from 46 percent on taxable income over $100,000 to 34 percent over $75,000 in 1988. The minimum tax provision contained in the conference agreement is a step ahead of the original House-passed provision. The minimum tax percentage is 20 percent as opposed to 25 percent in the House bill. I believe that the lower percentage and the surrounding provisions will encourage many more large corporations to play fair and pay their share. But I do worry that many companies could be surprised by the adverse effects of this provision resulting from a one-time accounting change or other adjustment for book purposes that has nothing to do with unreported economic income.

All the rules for applying these provisions have not yet been formulated. I am concerned that these provisions apply principally to large corporations and do not take the "fisherman's net" approach—ranking in small farmers who are already suffering the worst drought in many, many decades and homeowners who must itemize in order to take all possible deductions. Farmers, for instance, would be drastically affected by the loss of the income averaging deduction since their income fluctuates so dramatically from year to year.

Let me quote from the September 15, 1986 Industry Week article which was recently forwarded to me by my constituent, Dick Sargent of Thomaston, GA, who is an executive with Thomaston Mills. The magazine article takes two exceptionally hard hits at the tax bill by saying that the tax legislation will drastically deflate the economy and that it will slow the economy. "The initial economic effect * * * will be extremely deflationary. Removing tax subsidies on formerly advantaged investments * * * will expose the excess valuations placed on these assets * * * this will worsen the deflation problem we are already experiencing by flooding the market with unwanted assets." The article continues with more astounding facts: "Passage of the tax reform bill, as it now stands, is in fact a disguised tax increase for the first 6 months of 1987. This will have a dampening effect on the already sluggish economy * * * higher business taxes will pinch cash flow and depress investment activity * * * on the consumer side, although individual taxes will be reduced an average of $50 per family next year, that will not be enough to trigger any kind of consumer-spending boom * * * the disappearance of the investment tax credit * * * could prove to be the Achilles' heel of the bill, undermining the favorable effects of reduced rates in 1988 and beyond."

The sock-it-to-business approach in this bill seems to ignore the fact that if business doesn't do well and it is not profitable, its workers will not do well either. Then, America will not do well. To put it bluntly, all the lower individual tax rates in the world will not create any benefits if these people are not earning salaries from our Nation's businesses.

I thank you for your patience while I expressed for you just a few of my constituent's concerns. I believe it is important that their views are read into the RECORD of this tax reform debate. I would like to add, also for the record, comments made by Senator PETE DOMENICI as reported by Helen Dewar of the Washington Post. According to her article, which appeared in the September 12 edition of that newspaper, my colleague from the other body does not believe that we can make the fiscal year 1988 Gramm-Rudman-Holling target if we pass the tax bill as it is now written.

Let me quote from the article: "Moreover DOMENICI said, 'I think we are getting very close to abandoning the notion that we will ever get to a balanced budget.' DOMENICI said the tax revision bill, nearing enactment, provides an estimated initial revenue windfall of $11 billion, which would help Congress meet the real fiscal 1987 deficit target of $14 billion. But he said substantial revenue shortfalls are forecast for fiscal 1988 and 1989, making it harder to meet deficit-reduction targets in those years."

It seems that leading budget experts in Washington and my constituents at home seem to agree. The Government cannot push the economy on both ends and expect it to survive in the short term. I strongly believe that our first priority should be to balance the

budget. We should not be voting this year on anything that threatens the Gramm-Rudman-Hollings process of reducing our Federal deficit to zero.

We owe it to our constituents—who in record numbers are contacting their Representatives to say that the deficit is the top national concern—to be true to them and to be true to the effort to reduce the deficit.

Therefore, my colleagues, I would encourage that we all carefully review the contents of the tax bill. We should make every effort to debate our own concerns, and the questions raised by our constituents about this bill.

While it is true that we will not be able to amend the bill. We can do our best to identify inequities, which should be adjusted. I am already hearing from the chamber of commerce and others that the issue of taxes might be brought back to the floor as early as next year for another legislative adjustment.

There are several questions we should ask ourselves. Is it simple? Is it truly positive reform? Is it better than our present law? Will it shock the business community to the point of rupturing our fragile economy? Is it as fair to the unmarried as it is to the married? Will the poor and the middle income be better off or not?

My colleagues, unless we can agree that these questions have positive answers, I do not believe that this bill will best serve America.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. LEHMAN] is recognized for 5 minutes.

Mr. LEHMAN of Florida. Mr. Speaker because of longstanding commitments in the 17th Congressional District, I unfortunately was absent during House consideration of the Federal Insecticide, Fungicide, and Rodenticide Act amendments on September 19, 1986.

If I had been present, I would have voted in favor of final passage of H.R. 2482.

THE TAX REFORM BILL IS UNFAIR TO STATES DEPENDING ON SALES TAX REVENUES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington [Mr. LOWRY] is recognized for 5 minutes.

Mr. LOWRY of Washington. Mr. Speaker, I rise again against the so-called tax reform bill to come before the House tomorrow. I think it is a serious mistake. I am taking just these few minutes to talk about an extreme inequity within the bill.

When the tax bill left the House, all State and local taxes were 100 percent deductible, the same as present law. That includes the deduction of the sales tax. In the other body, when that body acted upon their tax bill going to conference, they made 60 percent of the sales tax deductible. So that we went to conference, the House position was 100 percent deductible, the other body was 60 percent deductible. What happened was, of course, the two leaders on the conference got together and announced, after we had left, their proposal that there was zero deductibility for sales tax.

Now, they were totally out of scope with the conference.

Then what happended was on the following Tuesday a member of the Committee on Ways and Means came over and got unanimous consent to waive points of order on the tax conference so that it could come to the floor without going to Rules. So those of you that were very concerned about that, about the item of retroactivity upon the Federal retirees to take away their option of retiring before the first of January and thereby singularly hurting them, about other provisions in the bill also, we did not have a chance to go the the Rules Committee and talk about the inequities that we thought were in the bill.

Now, I represent the State of Washington. In the State of Washington we have a constitutional prohibition against the State income tax.

In the last 10 years we have had two strong efforts by which to remove the constitutional prohibition. The voters of the State of Washington have turned it down by overwhelming proportions. In other words, we are not going to be able to get out of the situation we are in, agree or not agree in the State of Washington as is true of six other States of this Nation, I believe, about being very dependent upon the sales tax for funding our services in the State of Washington.

Now, in our State, like in most States, over half or approximately over half of the revenues of the costs that are paid by the State go to education, 60 percent of the revenue to the State of Washington comes from the sales tax. So what we have done by this unfair situation that moved us here is we have significantly increased the cost of education in the State of Washington because we have increased the cost of the sales tax because we have taken away the deductibility of the sales tax by this maneuver that was used.

Now, on this floor and in our caucuses before the bill ever left the House, everybody had a position, from income tax States, saying "we have got to have the deductibility of those local taxes." Why? Because if you do not have the deductibility of those local taxes, it puts the pressures on those services, primarily education.

That is exactly what this bill now does. It is extremely unfair to those of us, to the children in those States dependent upon sales taxes.

Now, why did this happen? Well, the Senate provision that was dropped out cost $2 billion, and I want to emphasize that, it cost $2 billion for the 60-percent deductibility of the sales tax. They said that cannot be afforded.

We have a bill before us that has $10 billion in transition rules, $10 billion of mostly special interest handling of special things for people that was affordable within this tax bill but $2 billion for the education of the children in the States that cannot get out of their dependence on the sales tax, that is not affordable in this bill. There was $1 billion in transition rules for chicken producers, large chicken producers, $1 billion in transition rules for large chicken producers but we could not have the sales tax deduction for the education of the children in the State of Washington that cost $2 billion.

Now, there are those that would say this is a chicken-plucking result. I myself do not like it. If you are going to vote for this bill, if you are going to say that moving a stadium someplace for a baseball team that you do not even know where it is going to be but you are going to give it a $250 million goodie, if you can take care of all those types of goodies around here but say, "This is against the education of the children in this country because of the immense inequity of what happened in this conference," I think you are wrong.

ORDER OF BUSINESS

Mrs. ROUKEMA. Mr. Speaker, I ask unanimous consent that my special order precede the special orders heretofore granted.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

TRIBUTE TO JUSTICE DESIGNATE ANTONIN SCALIA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New Jersey [Mrs. ROUKEMA] is recognized for 60 minutes.

GENERAL LEAVE

Mrs. ROUKEMA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New Jersey?

There was no objection.

Mrs. ROUKEMA. Mr. Speaker, I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentlewoman for yielding.

Mr. Speaker, I want to join with the gentlewoman's special order welcom-

ing Antonin Scalia to the Supreme Court bench.

Mr. Speaker, it is my privilege today to pay tribute to a fellow Italian, Antonin Scalia, on the occasion of his confirmation as an Associate Justice of the U.S. Supreme Court. His new position represents two "firsts": He will be the first Justice of Italian origin and at 50, be the youngest member to join the Court.

Over the years, Judge Scalia has evidenced his philosophy of strict separation of powers and judicial restraint. He is a hard worker, a shrewd intellect, and a systematic advocate, but maintains an insurmountable humor and a warm personality. All these qualities will enable him to contribute to a cohesive and coherent court.

Judge Scalia is a unique individual. He is a man dedicated to bettering justice. His appointment to the Supreme Court will surely change the history of government for the better.

I ask my colleagues to join me in welcoming Antonin Scalia to the U.S. Supreme Court as an Associate Justice.

Mrs. ROUKEMA. Mr. Speaker, on June 17 of this year President Reagan made history by naming Judge Antonin Scalia as an Associate Justice of the U.S. Supreme Court.

Judge Scalia's professional qualities could not be of a higher order. The descriptions of him by his colleagues, by journalists, by attorneys, by others in government, by anyone who has dealt with him professionally are all variations of one dominent theme: a man of uncommon competence. "An intense intellectual. Personally charming. A consensus-builder. A writer of extraordinary clarity." These are the words used to describe the man who will be our newest member of the Nation's highest Court.

But there is also a personal quality which also ought to be highlighted. Judge Scalia is the first Italian-American to be named to the Supreme Court. This is a thrilling achievement which all of us of Italian ancestry share with the Justice-designate.

Judge Scalia, or "Nino" as his family and friends call him, is the son of immigrant parents. He was born on March 11, 1936, in Trenton, NJ and grew up in Queens. His mother was a grade-school teacher and his father a professor of Italian literature at Brooklyn College. It is not surprising that, coming from a family with a deep concern for learning, he had a brilliant academic career of his own. That began in a Jesuit school in New York and continued at Georgetown University and Harvard Law School. He graduated first in his class from Georgetown and made the Law Review at Harvard.

The man we honor today entered private practice with the nationally known firm of Jones, Day in Cleveland, where he stayed for 6 years. He then joined the faculty of one of this country's preeminent law schools: The University of Virginia. He became a prolific and influential writer. To this day he is known for his ability to write clearly and persuasively on complicated legal points.

Consumed by ideas and a desire for public service, Antonin Scalia joined the Nixon administration and later became the head of the Office of Legal Counsel in the Department of Justice during the Ford administration.

He then spent a year as a scholar at the American Enterprise Institute here in Washington before returning to the classroom as a professor at the University of Chicago Law School. There he served with distinction, often helping to give intellectual direction to this administration in its formative months.

With that impressive record in such a short time, no one was surprised when in 1982 President Reagan tapped Antonin Scalia for a position on the U.S. Court of Appeals for the District of Columbia Circuit. As an article in the Los Angeles Times recently pointed out:

> On the appellate bench, Scalia continued to make his mark and to exercise considerable influence. His law clerks went into the administration or on to clerk at the Supreme Court. He remained a prolific writer: almost two dozen articles and, in 4 years on the appellate court, more than 80 majority opinions and dozens of concurring and dissenting opinions.

The President could have done no better in selecting a Supreme Court nominee. Even those at the opposite end of the philosophical spectrum have little but praise for Nino Scalia. Judge Abnor Mikva a liberal colleague of Scalia's on the court of appeals and one who was one of the most liberal Members of this body for several years, has said that the appointment "is going to be good for the institution" of the Supreme Court.

All Americans can be proud that a man of such distinction is to become our next Associate Justice when he is sworn in this Friday. But those of us who are Italian-Americans will feel a special pride. We who are Italian-Americans will thank our own parents for helping to instill in us the love of family, devotion to country and commitment to education which Judge Scalia's parents instilled in him. After he is sworn in, we who are Italian-Americans will point to Supreme Court Justice Antonin Scalia and say to our children, "There is an example. There is a powerful intellect and a man dedicated to public service. There is one to be emulated." And, because at age 50, Judge Scalia will be the youngest member of the Court, most of us will probably have ample opportunity to hold him up to our grandchildren, as well.

Ours is a country of immigrants and a country of opportunity. Our highest Court should possess the intellectual prowess which Judge Scalia has demonstrated and the Court should reflect this country's diverse heritage. Judge Scalia will serve as an important symbol of that rich heritage. This is a wonderful moment for Judge Scalia, his wife Maureen and their nine children, and I send Judge Scalia my very best wishes for a long, successful, and satisfying tenure on the bench.

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Mr. GALLO. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from New Jersey.

Mr. GALLO. Mr. Speaker, I thank the gentlewoman for yielding. The confirmation of the Honorable Antonin Scalia as an Associate Justice on the U.S. Supreme Court is a milestone for all of America.

Our tradition of a free and independent judiciary goes back to the founding of the Nation. Next year, we celebrate the Bicentennial of the U.S. Constitution, which is the foundation of our Government.

In spite of the fact that we are one of the youngest nations on Earth, we are the oldest continually operating democracy in the world. This dedication to democracy took time to develop. Its development occurred because generations of people who desired freedom built upon the accomplishments of their parents to reach for freedom.

In 5 years, we will celebrate the 500th anniversary of the discovery of America by Christopher Columbus.

As a Representative from the State of New Jersey whose grandfather came to this country from Italy 400 years after Columbus sailed, I appreciate the fact that important events are the result of years of hard work by many people.

We are here today to honor an individual who has attained the highest office in the judiciary. We share with Mr. Scalia a common heritage as Italian-Americans.

Our intense pride in Mr. Scalia's accomplishments is rooted in the understanding that we are all here today because our forefathers chose to come to America and committed themselves to the hard work required of them in the New World.

Our pride as Italian-Americans is based on the knowledge that opportunity goes hand in hand with hard work and that our common heritage was built brick by brick over the years as opportunity led to advancement in America.

I am pleased today to honor Mr. Scalia for his personal accomplishments as a jurist. I am particularly

proud that Mr. Scalia is a New Jersey native.

As you know, the New Jersey State Society will host a reception for Associate Justice-designate Scalia on Thursday, October 2 here in Washington.

As honorary chairman of the New Jersey State Society, I think that this reception is an appropriate way for us to recognize this Trenton native who is now assuming the responsibilities associated with appointment to the U.S. Supreme Court.

I am proud of our State's continuing contribution to the judicial process with a long tradition of high court appointments.

This reception will provide New Jerseyans now working in Washington with the opportunity to honor Mr. Scalia.

Mr. Scalia's reputation and his record speak for themselves.

The unanimous vote by the Senate to confirm Mr. Scalia is further evidence that he has proven himself to be worthy of the challenges that await him on the Court.

As the first Italian-American to be confirmed as a member of the court, Mr. Scalia is a pioneer.

As an American jurist, Mr. Scalia is the newest standard-bearer for a long tradition of justice through law in a proud democracy.

It is with great personal pride that I join with my colleagues today to mark this milestone for our Nation. We wish for Mr. Scalia all the best as he undertakes this new and challenging assignment.

Mr. VENTO. Mr. Speaker, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I commend the gentlewoman for her special order and associate myself with her remarks in the statement concerning the newest Justice to be confirmed by the other body, Antonin Scalia.

Although I do not personally know him, I share an ancestry with him in terms of being an Italian-American. I am very proud to see him assume this, one of the first to assume this high honor.

Indeed, I think that the academic record he has established, the integrity that he has commended, and the unanimous vote of the other body is something that we can all take pride in, in terms of someone of quality and of substance who will uphold and help retain a strong judiciary in our system of government. I think today it is more important than ever.

I look forward to his work and the product that he produces. While philosophically we may not agree, I think that we can agree obviously on the competence and the jurist and the academic excellence that has been represented in this person, and certainly in the ancestry that has given rise to this and, frankly, the opportunity that is represented in this country to anyone and to all of us who have utilized this.

So I am pleased to note this and am especially glad to join the gentlewoman and commend her for this special order.

Mrs. ROUKEMA. Mr. Speaker, this is a statement of pride for all of us of ethnic heritage.

I am very pleased that the gentleman from Minnesota took the time to observe that the other body gave unanimous support to Judge Scalia's appointment.

Mr. ANNUNZIO. Mr. Speaker, I rise to join my colleagues in paying tribute to the Honorable Antonin Scalia, the first Italian-American to be nominated and confirmed as an Associate Justice of the U.S. Supreme Court.

Justice Scalia is eminently qualified to serve on the highest court in our country—the recent 98–0 confirmation vote by the Senate is a reflection of those superb qualities—and to join the illustrious ranks of the 106 Supreme Court Justices who have preceded him. His extraordinary legal knowledge and scholarship, as well as his commitment to the highest standards in the preservation of our country's legal institutions, are most worthy of recognition.

Scalia was born in Trenton, NJ, in 1936, the only child of S. Eugene Scalia, an Italian immigrant who was professor of Romance languages at Brooklyn College, and Catherine Panaro Scalia, a first-generation Italian-American who was an elementary school teacher. From his parents, who died within 3 weeks of each other this past winter, he inherited a tradition of scholarship, political acumen, and an interest in law. Scalia graduated first in his class in high school, as well as first in college from Georgetown University in 1957. He received his law degree from Harvard University in 1960, graduating magna cum laude.

From 1960 through 1966, Justice Scalia practiced law with the prestigious law firm which is now called Jones, Day, Reaves & Pogue, and he taught law at the University of Virginia Law School for 3 years from 1967 to 1970. He served as general counsel of the newly created Office of Telecommunications Policy in 1971, and the next year, he became chairman of the Administrative Conference of the United States.

In 1974, Justice Scalia served as Assistant Attorney General in the Office of Legal Counsel, and in 1977, he joined the faculty at the University of Chicago Law School, where he taught until his appointment by President Reagan in 1982 to the U.S. Circuit Court of Appeals for the District of Columbia.

As a leader in the Italian-American community, as a founder of the National Italian American Foundation, as a founder of the Joint Civic Committee of Italian Americans, an umbrella organization encompassing more than 40 Italo-American organizations in the Chicagoland area, I am extremely proud of my heritage as the son of immigrant Italian parents, as is Judge Scalia.

The appointment of Judge Scalia is convincing proof that in America there are no barriers to achieving one's fondest hopes and aspirations. To become a member of the highest court in the land, as Judge Scalia has done, could be accomplished only in a country where the doors of opportunity are open to everyone, regardless of national origin, religion, race or gender. In America there are no barriers for an individual who is willing to work in order to achieve the highest goals that he sets for himself. Judge Scalia is a living example and a monument to that great principle, enunciated this year at the Statue of Liberty centennial celebration, of a land of opportunity for all.

Mr. Speaker, Justice Scalia is a man of great integrity and compassion, and his deep commitment to the highest principles in our legal system is most commendable. I congratulate Justice Scalia and his family on his appointment as an Associate Justice to the U.S. Supreme Court, and I extend to him my best wishes as he continues his outstanding service to our Nation.

Mr. RODINO. Mr. Speaker, it is my great pleasure to join my House colleagues in taking out this special order to Antonin Scalia, our Nation's newest Associate Justice of the U.S. Supreme Court.

Justice Scalia is the embodiment of the American dream. The only son of a Sicilian immigrant father and a school teacher mother, he attended Georgetown University, becoming valedictorian, and graduated from Harvard Law School, where he served as editor of its prestigious law review.

As a young lawyer, Justice Scalia quickly earned a reputation as an outstanding scholar and an impeccable legal intellectual. He has taught law at the University of Virginia and the University of Chicago. During the Nixon and Ford administrations, Justice Scalia served as general counsel of the White House Office of Telecommunications Policy and head of the Justice Department Office of Legal Counsel. In 1982, President Reagan appointed him to the U.S. Court of Appeals for the District of Columbia Circuit, the second highest powerful court in the Nation.

On a more personal note, Justice Scalia is a man of warm good humor, a family man, devoted to his wife, Maureen, and their nine children. Known to family and friends as "Nino," he has a zest for oldfashioned "sing-alongs" and friendly poker games.

Mr. Speaker, even though some of us may disagree with Justice Scalia's conservative views, we respect his outstanding record as lawyer, teacher, and jurist. I am especially pleased to note that Justice Scalia is the first American of Italian heritage to be selected to serve on the highest court in the land. A few weeks ago, my colleagues in the Senate—both Democrats and Republicans—voted to confirm Justice Scalia, unanimously.

Mr. Speaker, the Constitution of the United States is the cherished foundation of our democracy, a guarantee of civil rights, freedom and liberty for all Americans. All Americans—black and white, young and old, rich and poor, conservative and liberal—depend on the Supreme Court to preserve the meaning of this wonderful document through history. I am sure that in the coming years, Justice Antonin Scalia will prove to be a jurist who inspires the pride and confidence of all Americans, a jurist

of extraordinary talents and unwavering devotion to the Constitution, who will help wisely guide the Supreme Court and the American people into the 21st century.

Mr. RINALDO. Mr. Speaker, the President's nomination and the confirmation by a unanimous vote of the Senate of Judge Antonin Scalia to the U.S. Supreme Court is a great source of pride to millions of Italian-Americans. As the first member of the Supreme Court of Italian heritage, Justice Scalia stands out as one of our Nation's most respected and distinguished legal scholars and a staunch defender of the Constitution. Even those Members of the Senate who disagreed with Justice Scalia's conservative views on the role of the judiciary expressed the deepest respect for his ability as a jurist and his legal scholarship.

The rise of Justice Scalia to the highest branch of the law demonstrates that the barriers that Italian-Americans once faced in our society have been rapidly coming down. While there can be no such thing as ethnic balance on the Supreme Court—it must be fair and impartial to every race, creed, and ethnic group—there is an undeniable sense of ethnic pride among Italian-Americans in having a judge of such great talent and experience on the Court. It can only help to further the respect that millions of Italian-Americans have for our laws and judicial system.

The appointment of Justice Scalia has fulfilled President Reagan's promise of selecting only the very best judges to serve on the Supreme Court. Just as the President achieved an historic breakthrough in nominating Sandra Day O'Connor as the first woman Justice on the Supreme Court, he has kept his faith with millions of Italian-Americans who waited for more than two centuries before an Italian-American joined our Nation's highest court.

Justice Scalia is dedicated to constitutional liberties and the preservation of our free institutions. During his distinguished career as a judge and legal scholar, he has broadened our understanding of the law and helped to educate new generations of lawyers. A summa cum laude graduate of Georgetown University, where he was first in his class, Judge Scalia later was editor of the Law Review at Harvard Law School and a Sheldon fellow at Harvard. He taught law at the University of Chicago, Stanford University, Georgetown, and the University of Virginia. Each of these universities is among our most prestigious centers of higher education and can take great pride in Justice Scalia's development as one of our Nation's most respected legal scholars.

In the Senate confirmation hearings, Justice Scalia also demonstrated the judicial temperament, human compassion, and pride in our American institutions that have made the Supreme Court of the United States the most honored legal body in the world. Justice Scalia will make all Americans proud, regardless of their ethnic background, to have so outstanding a judge and fellow American on the Supreme Court of the United States.

Mr. LAFALCE. Mr. Speaker, I join with many of my colleagues and millions of Americans, in celebrating the unanimous confirmation by the Senate of Antonin Scalia as an Associate Justice of the U.S. Supreme Court. I do this with particular pride, because I share with "Nino" Scalia a common heritage, membership in the Italian-American community.

However, we honor Judge Scalia today not because of his ethnic background, but for his brilliant achievements, which have been justly rewarded by his lifetime appointment to our Nation's highest court.

Judge Scalia graduated first in his class from Georgetown and achieved high honors at the Harvard Law School. He has distinguished himself in each endeavor he has undertaken. As a law school professor at the Universities of Virginia and Chicago, an attorney engaged in the private practice of law, as an assistant U.S. attorney general, and finally as a Federal judge, Mr. Scalia has impressed one and all with his intellect, his vigor and his personal integrity.

While generally classified as a conservative, Judge Scalia is not an ideologue. He has demonstrated in his legal opinions, not only great mental agility, but also the flexibility to consider the merits of each case, and apply the facts to the law, which is the mark of a fine jurist. Above all, Judge Scalia has demonstrated a respect for the Constitution as the supreme law of the land, which is perhaps the most important qualification for his new position.

Just as Justice Felix Frankfurter provided a moderating influence on the Court after his appointment by President Roosevelt, so, I believe can Judge Scalia fulfill that role on the Rehnquist Court.

He is a young, healthy man with a boundless enthusiasm for his work, and I therefore look forward to his brilliance on the Court, where we hope he will serve well into the next century.

As an Italian-American, but above all as an American, I join the voices being raised today in honor of the past and future achievements of Antonin Scalia. Congratulations, Justice Scalia.

Mr. RUSSO. Mr. Speaker, I join with my colleagues in paying tribute to the Honorable Antonin Scalia, unanimously confirmed by the Senate as an Associate Justice of the U.S. Supreme Court. As a citizen and Representative, I welcome the addition to the Court of a man who possesses formidable intelligence, tenacity, a brilliant legal mind, energy and commitment. As an Italian-American, I am proud to share a common heritage with Judge Scalia.

Given the attention to the appointment of the first Italian-American to the Supreme Court, I am delighted that it is Judge Scalia who is this "representative." The only child of a Sicilian immigrant, he is a devout and courageous man. He's a hard worker. He also has the personal charm and sense of humor that serve you well, anywhere. I believe these traits in addition to his energetic scholarship are going to mean that Judge Scalia will prove to be not only a good and fair Justice, but a great one.

I commend the wisdom of the President in appointing and the Senate in confirming Judge Scalia. It is a proud day for Italian-Americans and a fortunate day for America to have gained such a fine man in our highest Court. I welcome this opportunity to pay tribute to Judge Scalia and to wish him well as he assumes his new responsibilities.

Mr. TRAFICANT. Mr. Speaker, as an Italian-American I am honored and proud to participate in this special order honoring Judge Antonin Scalia's confirmation as an Associate Justice on the U.S. Supreme Court.

Judge Scalia has an excellent record and is a man of high character. The appointment of an Italian-American to the highest Court in the land is yet another chapter in the ongoing saga of the Italian-American community. Having come here from Italy in the late 19th and early 20th centuries, Italians have made a lasting impact on the development of America. Italian-Americans continue to provide strategic leadership in so many areas of American life. Judge Scalia's confirmation serves to highlight and underscore the many contributions Italian-Americans have made to this great country.

I share the sense of pride and accomplishment felt by all Italian-Americans. I am proud of the ongoing contributions Italian-Americans continue to make on America's rich ethnic heritage. It is through its tradition of opening its arms to all peoples that America draws its strength. Italian-Americans serve in some of the most powerful and important positions in American government. The confirmation of Judge Scalia marks the first time an Italian-American has ascended to the highest Court in the land. I am confident that he will make all of us in the Italian-American community proud and that he will serve America in a distinguished and professional manner.

Italian-Americans have come a long way from their humble immigrant heritage. The confirmation of Judge Scalia as an Associate Justice on the Supreme Court is yet another indication of the long, successful road we have traveled. I want to congratulate Judge Scalia and his family and wish him the best of luck in his new position.

ORDER OF BUSINESS

Mr. LEVINE of California. Mr. Speaker, I ask unanimous consent that the special order which I have reserved be allowed to precede the others at this time and be taken out of order.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

Mr. CRANE. Mr. Speaker, reserving the right to object, and I do not anticipate objecting, but will the gentleman tell me how long the special order is?

Mr. LEVINE of California. Mr. Speaker, I do not anticipate this special order will last more than 20 minutes. I think it will be a 15- or 20-minute special order.

Mr. CRANE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

TRIBUTE TO KEN EDWARDS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. LEVINE] is recognized for 60 minutes.

Mr. LEVINE of California. Mr. Speaker, a little more than a year ago, Ken Edwards, one of the finest public servants and individuals whom I have ever known passed away. I have asked for this time, along with my distinguished colleague, the gentleman from Oklahoma [Mr. EDWARDS], to pay tribute to Ken Edwards. It is fitting, and I am especially pleased that with us in Washington this evening are Ken's wife, Sue, and Ken's son, David, two people who have been very special in their own right and who obviously meant the world to Ken.

□ 1915

I think that it is fitting that this special order occur at this particular time. It is a tradition in the Jewish faith, in the Jewish religion, not to unveil the headstone at the grave of somebody who died for more than a year. After a year, when the headstone is unveiled, one has the opportunity, even a year later, to think about and reflect upon the accomplishments that that individual achieved during his or her lifetime.

The accomplishments that Ken Edwards achieved and the person that Ken Edwards was were truly remarkable whether one views them a year after his death or, I suspect, many, many years into the future.

I personally first met Ken almost 10 years ago when I was running for my first elective public office, a seat in the State Assembly in California. When I met Ken, he was actually campaigning for my opponent, but Ken in the way that those of us knew him had such an incredible warmth and sincerity and charm and effectiveness of style that, despite the fact that Ken Edwards, when I first met him, was campaigning for the person against whom I was running, was able to establish an immediate rapport with me and was somebody whom I immediately considered a person that I wanted to become friendly with and a person that I was able very quickly to become friendly with.

I think for those of us in this Chamber, all of whom were elected to this office in the U.S. House of Representatives in the crucible of a campaign, to understand that when you meet somebody for the very first time when that person is actually in the camp of your opponent, it is highly unusual that you become very close to and very friendly with that person. But that was the type of person Ken was.

Tonight's tribute is a tribute that was distinctly bipartisan and a tribute that clearly crosses philosophical and political lines. Ken was a person who was able to accomplish that in everything that he did.

Ken was such a remarkable man that it is hard to know where to begin in summarizing his accomplishments. I will do my best, however, to do some of that. As with most of us, Ken's early life played an important role in shaping his adult life. He said as an adult repeatedly that his childhood, during which he spent 10 years living at Vista del Mar, helped form his commitment to working on behalf of social services and troubled young people. Despite a childhood in which things were not always made easy for Ken, to say the least, Ken was able to earn degrees from Santa Monica College in pre-architecture and from California State College at Los Angeles in social work.

Following his graduation, Ken spent 2 years in Venezuela with the Peace Corps. That experience cemented Ken's commitment to helping people in need. That youthful commitment became the driving force in Ken's personal and professional life.

Among the organizations on whose board he served, and played an active role, were the Family Service of Santa Monica, the YWCA, Jewish Family Services, Family Planning of Los Angeles, Project Heavy West, the Santa Monica Community Coordinating Council, the Santa Monica School Attendance Review Board, Stepping Stone, and the Bay Area Drug Abuse Council.

As a professional, Ken worked as a juvenile placement officer for the county of Los Angeles. He worked day in and day out with some of the most troubled young people in Los Angeles. It is thanks to Ken Edwards that many of those young people are leading productive and happy lives.

During the time he worked as a probation officer, Ken also found time to complete a masters degree in social work at Pepperdine University.

His commitment to improving the quality of life in Santa Monica extended beyond the realm of his professional life and social work into the political arena.

In 1972, the Santa Monica City Council was considering a proposal to demolish the pier which has become a landmark for the city. In its place was to be a highrise hotel and other tourist facilities.

Ken became one of the key leaders in the effort to save the pier. He helped put together a broad coalition of community residents who were able to save the pier. He worked with business, political, and community leaders to win a victory for his cause.

That experience seemed to galvanize a belief in Ken that Government, and the political process, were key to helping the people, and advancing the causes, he cared so much about. He began to regularly attend city council meetings, and speak out on behalf of the needs of the poor and the dispossessed.

He became active in the local Democratic Party and his union. He was an active member in the American Federation of State, County, and Municiple Employees. He chaired their Political Action Committee. He was a founding member of Westside COPE.

In the Democratic Party, Ken was a member of the State Central Committee, the Los Angeles County Central Committee, the 44th Assembly District Democratic Council, and president of the Santa Monica Democratic Club.

Given all of Ken's commitments, it is hard to believe that he ever had time to marry and become a father. But, he did. And in this, like most everything else in his life, he was a success.

Never a man to rush into things, Ken took his time in proposing to his wife to be, Sue Tyler. Ken first met Sue in 1962 while she was a student at UCLA. It was 11 years before they were finally married.

Ken and Sue waited 6 years before they had their son David, who was born on April 11, 1979. It is ironic that David was born the same day that one of the causes about which Ken cared so much, rent control, became law in Santa Monica.

Sue and David meant the world to Ken. They both meant so much to him, it is hard for me to remember spending any significant amount of time with him without him singing the praises of his family.

David was especially important to Ken. Perhaps because of his own childhood, Ken was determined that David grow up in a loving and caring home. No two parents could have provided their child with a more loving a nurturing home than Ken and Sue.

I first saw David after the time that he was a very small child at a meeting in Santa Monica, where David, as I think as a 2- or 3-year-old, was irrepressable in going around the room saying, "Vote for my daddy, vote for my daddy," and it was all that Ken could do to get David to desist from saying "Vote for my daddy" the 18th or 20th time. But his infectious spirit which was clearly a part of the heredity which he obtained was the clear highlight of that meeting that I was at in Santa Monica.

Even though they shared him for such a relatively short time, only David and Sue know how lucky they were to share Ken's love and Ken's life.

Ken's restless desire to do more for his community, and help those most in need of help, continued to push him into politics. While he accomplished a great deal as a private citizen, he knew

he could do more if he held the reigns of power.

Finally, in 1977 Ken ran for the Santa Monica City Council. Once again, however, things were not to come easily to Ken. He was defeated by a handful of votes.

The election marked a watershed in Santa Monica City politics, however. It was the last victory of the old conservative establishment which had controlled the city for decades.

In the next election, Ken worked selflessly to help elect two progressive Democrats to the council. Not only were they successful, but the leader of that ticket received more votes than any candidate in Santa Monica's history. From that day on, things were never the same for the city of Santa Monica.

□ 1925

Two years later, Ken again ran for city council. This time he won, and led all candidates in votes received.

Two years later, Ken was elected mayor by his colleagues on the city council.

In 1985 he was reelected to the city council and broke every previous record for votes received.

By this time it was public knowledge that Ken was fighting, and losing, a battle with cancer. His reelection was more than an endorsement of his leadership as mayor. It was an outpouring of affection and support from the people of Santa Monica for Ken, and his years of service and commitment to the city and its residents.

The time Ken served on the city council, and in particular as mayor, were among the most difficult and tumultuous times in the history of Santa Monica's history. A change in power as sweeping and complete as Santa Monica's is never easy. In Santa Monica it broke apart political alliances and personal friendships, and made the city a focus of national attention and of community controversy.

City council meetings lasted well into the night. Many times they were characterized by heated exchanges among council members and between the council and the public.

During this time of chaos Ken was able, on all occasions, to retain his composure and his perspective. His commitment to working with every sector of the city, and his commitment to giving everyone their chance to be heard, helped make him a unique figure during this difficult time.

At a time of unprecedented divisiveness, Ken was a source for cooperation and reconciliation. At a time of confrontation, Ken was a source of moderation. At a time of fractuous struggle, Ken was a source of healing.

More than any other single council member, Ken worked to bring a divided city back together.

Ken Edwards will not be forgotten by the city to whom he gave so much. Soon, Santa Monica's first senior citizen multipurpose center will open and be named in his honor. It is fitting that this symbol of Santa Monica's social service network will be named in his honor.

As a council member, Ken never waivered in his commitment to the social service community in Santa Monica. He played the leading role in creating a predictable grants program for the city. Today, at a time of unprecedented reductions in funding for public programs, Santa Monica now budgets more than $1 million every year for social services, thanks very largely to the leadership that Ken Edwards gave to this issue.

Ken also was responsible for creating one of the most progressive and effective local anticrime programs in the Nation. His belief in, and commitment to, neighborhood based crime prevention, and his professional experience with the criminal justice system enabled him to create a model program for other cities to emulate.

Earlier this year, a plaque dedicated to Ken Edwards' work as a probation officer was placed on the probation department building in the group of county offices in Santa Monica. This was the very first time in the history of Los Angeles County that any county employee has been so honored.

My fondest memories of Ken are personal ones. Ken learned that he had cancer at a time when he had perhaps the most to live for. He had become a father, had been elected to the city council, and was enjoying a successful career. He had everything he could ask for, and everything to live for.

Any ordinary man would have been overcome by either self-pity or despair. Not Ken.

I will never forget his courage, his sense of humor, and his combative determination to win his battle with cancer. Just as he rose above adversity as a child, he rose above a fatal disease as an adult.

I last visited Ken only 2 days before he died. Even then, weakened as he was by his disease, his views remained strong and firm and his sense of humor altogether intact.

By any objective definition of the term, Ken Edwards was a great man. He was a dedicated and loving father and family man. He gave more to his community than he ever received. There is no question that Santa Monica is a better and more decent place in which to live because of his efforts.

He was a force for conciliation when his community faced the danger of being torn apart by confrontation. He was often a success in spite of his circumstances, not because of them.

A year after his death I still miss Ken. I miss his wise counsel on a variety of important issues, I miss his humor. I miss his energy and commitment. And, perhaps most of all, I miss his advocacy for the less fortunate, the poor, the elderly, and the dispossessed members of our society.

People like Ken Edwards are rare. They should serve as role models for our children. Although Ken is gone, he will never be forgotten by those who knew him or by our community.

I would like to mention that I had not intended for these remarks to go quite as long as they have, and I hope that my colleagues will beg my indulgence for a few moments. I appreciate the indulgence of my colleagues for remarks that were somewhat longer than I anticipated.

Mr. EDWARDS of Oklahoma. Mr. Speaker, will the gentleman yield?

Mr. LEVINE of California. I yield to the gentleman from Oklahoma.

Mr. EDWARDS of Oklahoma. Mr. Speaker, first, let me thank my colleague from California for arranging the time for this special tribute. MEL LEVINE and Ken Edwards were not only close politically, they were close friends, personally, and this is, indeed, a very special way MEL has chosen to honor his friend.

Ken Edwards was my cousin, and I was proud of him. When I speak to my own children about a life in public service, about the rare opportunity public life offers to help our people, I talk to them about their cousin, Ken.

We don't salute Ken today because of family, or friendship, or even because of our similarities. Ken's father and mine were brothers, in our childhood we lived together, but politically we set about on very different paths. I am a conservative Republican; the man whose life I am celebrating today was a liberal Democrat who was once honored by the Democratic Party in Los Angeles as its Man of the Year.

So what was it about Ken Edwards that sets him apart, that makes us want to stand here and put his life before our colleagues as something very special and very important.

For one thing, Ken Edwards devoted his life not to himself, but to others. He had the intelligence, the dedication, the capacity to make a substantial amount of money and live comfortably, without controversy. He chose instead to spend his life in social work and public service.

As Ken's wife, Sue, describes him: Ken was a social worker—a social worker who entered politics to continue his social work. And he did it well.

He worried about, and concerned himself with, the problems of the poor and elderly, though he was not poor and did not live to be elderly.

He concerned himself with the problems of renters, though he did not

rent. He entered politics not out of self-interest, but out of selfless interest and in so doing became one of southern California's most powerful, most respected and most popular political figures.

Ken Edwards understood that the most of good government is not confrontation but consensus. That sometimes there are winners and losers, but in the best of politics there are solutions and agreements—and, amazingly, Ken was often successful in finding those areas of agreement. He won when he had to, but his goal was not so much to win political battles as to avoid them.

The gentleman from California has reviewed the many things Ken Edwards did. And I was reminded again of the great social concern that motivated him because the organizations he chose to help were not the powerful boards but the hands-on-agencies that work most closely with the people of the community.

I did not work in politics with Ken. His politics and mine were far different. But how I loved his heart.

What I remember most about Kenny are two things: Kenny as a small boy in Oklahoma City with absolutely boundless energy and enthusiasm. And Kenny as a successful adult, sitting with me for hours on the night before he went back into the hospital for the last time—Kenny, sick with cancer, knowing his days were few, still full of boundless energy and enthusiasm.

I loved Ken Edwards but that's no big thing: everybody loved Ken Edwards. It's not a matter of wishing he was still here—I believe he still is. What it's a matter of, is wishing there were others like him.

□ 1935

Mr. LEVINE of California. Mr. Speaker, I thank the gentleman very sincerely for his eloquent and personal and moving remarks about his cousin, Ken. I join with my colleague from Oklahoma in thanking our colleagues for allowing us to precede them with this special order.

GENERAL LEAVE

Mr. LEVINE of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of this special order.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

There was no objection.

STEEL MARKS THE TEST

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. MURTHA] is recognized for 60 minutes.

Mr. MURTHA. Mr. Speaker, the domestic steel industry continues to wage a war against an unremitting stream of imported steel. Despite the overall reduction in steel imports since the 1984 introduction of the steel VRA Program, steel imports from non-VRA countries continue to undermine the steel program and the recovery of the domestic steel industry.

Under the VRA Program, steel imports have declined from a record high of 31 percent in 1984 to approximately 23 percent today. Unfortunately, during the past 8 months steel import penetration has steadily increased to nearly 27 percent. The flip side of the coin is equally alarming—the second largest steel producer has filed bankruptcy under chapter 11, domestic steel shipments have continued to fall, the Nation's largest steel producer is not in operation, and steel employment has fallen to half of what it was in 1984.

Since 1980 the steel industry has lost over $8 billion and 15 steel companies have gone out of business since 1977. Despite this decline, since 1977 industry reinvestment and modernization has exceeded $14 billion, including $3 billion in the last 2 years. Unfortunately, since 1980, the industry's equity has declined from $15.4 billion to $6.8 billion.

Some economists will tell you that, so be it, economic survival goes to the strongest.

It is not that simple, America needs and must have a basic steel industry.

The erosion of the steel industry must be brought to a halt and here is why: National defense.

Current U.S. steel production is approximately 88 million tons annually. Eighty-eight million tons still provides enough steel production to meet current mobilization requirements. However, as domestic steel production continues to decline so too will our ability to meet future defense requirements. If it were only a question of economics, we could purchase the ships, planes, and tanks overseas. But Congress has made the decision that this country needs a strong, adequate defense industrial base. That decision applies to steel.

Steel represents only one aspect of a much larger problem.

Many people, including some Members of Congress, will tell you that the country no longer needs an integrated steel industry. They contend that Third World developing countries can better provide for our steel needs. Chiefly, the argument goes, it's because they have the newest technology and lower wages and can therefore produce steel cheaper.

Resounding evidence shows that developing countries follow the example of the post WWII reconstructed countries like Japan and Korea and Western Europe. They all begin by shipping steel into the U.S. market, followed in short order by exports of steel-using products such as automobiles and appliances.

The chairman of LTV Corp., Mr. Ray Hay, noted in testimony before the Steel Caucus, that 50 percent of the steel consumed annually in the United States comes from overseas. That's the result of direct and indirect steel imports.

Increased direct and indirect steel imports impact not only the domestic steel industry, but also our steel-using industries. Loss of our basic industries can only result in the loss of the Nation's industrial base, a lowering of our standard of living and economy, while posing as a threat to our national security.

There is sometimes criticism of what the steelworkers in this country are paid.

Since 1983, the steelworkers of this country have given back over $1.4 billion in wages and benefit concessions. Some people will tell you that it is simply economics, foreign producer's lower labor cost enable them to produce steel cheaper. If the United States gives up its raw steelmaking capacity, retaining only the rolling mills, the industry's contribution to the Nation's gross national product will be reduced by 40 percent. In addition, the impact on the country's workers will be devastating—lower wage jobs, and not just for steelworkers, but for all workers in manufacturing. As the country's manufacturing base declines so to will national income. Remember, as revenue declines, GNP declines, the Federal deficit grows and the Nation's economic growth vanishes.

Why do we need basic industries like steel? Because they are the core of this Nation's economy.

The steel industry has taken extreme measures to get back into the ball game—especially in the areas of reducing costs and meeting new quality standards. The result has been streamlined work practices and a reduction in man-hours per ton that keeps the American steel industry the most productive in the world.

In October 1984, the President implemented a steel policy that called for the negotiation of steel voluntary restraint agreements with our principal steel trading partners. Since the VRA Program was put into effect, agreements with 17 countries have been concluded covering 81 percent of all steel imports.

The members of the House Steel Caucus have been diligent in monitoring the progress of the steel program. In the past 18 months we have met repeatedly with members of the Cabinet, the steel companies and the United Steelworkers to ensure continued implementation of the VRA's and to identify potential problems areas as they arise. Our efforts have led us to identify two major threats to the continued success of the program and the steel industry—circumvention of the VRA's and rising steel imports from non-VRA countries. The most substantial increase in steal imports have come from Canada, Taiwan and Sweden.

The legislation I am introducing today, and the companion bill that was introduced in the Senate last week, will directly resolve these problem areas by:

First, requiring that all steel entering the United States from non-VRA countries be allocated to the country where the steel was melted and poured, regardless of where the final finishing operation is performed.

Second, allows 90 days for concluding a separate VRA with Canada, Taiwan and Sweden.

Failure on the part of the countries to conclude a VRA will result in their steel imports

automatically being limited to 70 percent of the level of their steel imports during the 12 months preceding the implementation of the steel VRA Program on October 1, 1984.

This legislation will effectively stabilize all steel imports from Canada, Taiwan, and Sweden at 2.64 million tons annually. These restrictions will mean an additional 1.4 million tons of production for domestic steel producers and bring the level of steel import penetration closer in line with the 20.2-percent level established under the steel VRA Program.

Steel marks the test on which the future of American industry will be determined. Our basic industries are the foundation of the country's economy. It is our basic industries, our growth in manufacturing that has fueled the economic growth and prosperity that we have come to know and expect.

This country needs it basic industries. We need a strong steel industry.

If we maintain the foundation that our basic industries provide, then we will continue to have an economy as strong as steel.

TAX REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. CRANE] is recognized for 60 minutes.

Mr. CRANE. Mr. Speaker, tonight my distinguished colleague, the gentleman from Texas [Mr. ARCHER] and my distinguished colleague, the gentleman from Minnesota [Mr. FRENZEL] and I want to add further remarks on some of the problems that we perceive in this pending tax bill that will be up before us tomorrow morning.

The tax bill was originally the creation of many people who for years had commented on the Byzantine aspect of our existing code, a code so complicated that even average citizens were almost reduced to dependence upon professionals to fill out their tax forms and there was a crying need, obviously, for simplification of that code.

In addition to that, we read in newspaper accounts of the unfairness of the existing code. There was the classic illustration of GE making $6½ billion in profits a couple years back and getting a $283 million tax rebate, when little Mom and Pop operations were forced to pay taxes. Thus, there was a great attraction to trying to establish some degree of equity and fairness in the code.

In addition to that, we could see with some of our growth figures that there were additional incentives that might be provided in the code to guarantee that we would have more dynamic economic growth, that we could have increased job creation and the fringe benefit of that, of course, is more people employed, and thus a greater revenue base for the Government, not that increasing revenues in this town was the objective, but clearly this would be a desirable objective, too; so simplicity, fairness and growth, were kind of the code words that attended the President's legitimate call for a revision of the code that would address these three fundamental points.

Unfortunately, somewhere on the way to tax reform we made a detour. We made a detour not necessarily, I do not think, because Members consciously wanted to depart from the guidelines that the President had set forth to open up the parameters of the debate, but in the nitty-gritty of trying in a climate of intense pressure to produce a comprehensive sweeping reform of the entire code, inevitable political concessions ended up being made. In fact, that finally resulted in the conferees back in August of this year reporting out a document that they had never seen, a document in fact that did not exist, a document that I have been told is still in the process of technical revision right now on the eve of our having to vote on this tax bill tomorrow.

The document produced two volumes, weighty volumes here, the report of the managers, the interpretation of the managers and the bill itself coming to some 2,000-odd pages. That scarcely represents tax reform if you are talking about simplicity of the code.

As my distinguished colleague from Texas is prepared to comment, I would like in fact to invite the gentleman to tell all of our colleagues just exactly what he was told by the professionals who had work with the code, and I happily yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, if the gentleman will yield, many of the professionals who have helped put this together and have done I think a very good job considering the pressures that they have been under have serious misgivings about the workability of many of these provisions.

They in addition recognize the haste by which it was put together has left many ends untied and actually misstatements that will go into the law compared to what was intended.

The point I wanted to make, though, and I thank the gentleman for yielding, is that these 2,000 pages of this document will not be the new law. They will be added to the existing law and will not replace the existing law.

The existing law, as I mentioned the other night, is something like 3,837 pages; so this will be added to that to make a much more complex body of law, not to speak of the IRS regulations, the massive IRS regulations that will have to come in the aftermath of this and have to be digested for people to understand.

Now, let us quickly say yes, there is simplicity in this new reform bill for those people who are dropped from the rolls, those low-income people who already have the simplest return to file will not have to file a return at all; but you could say the same thing about the system today, that an individual who does not have to file a return has a simple return under the current code.

The question is, What is going to be the impact on those people who have to continue to file a return?

I thank the gentleman for yielding.

Mr. CRANE. Mr. Speaker, I thank the gentleman for his contribution. I would wholeheartedly concur that we met the criterion of simplification for 6 million who never should have been on the tax rolls anyway if we had had indexation of the Tax Code over the past 50 years. They are people who are workers in such low-income brackets that they should be encouraged, not discouraged, by application of the Tax Code and in part because of the deterioration of the purchasing power of the dollar and bracket creep these people ended up as taxpayers; but that is about the extent of tax simplification, because as my colleague from Texas notes, the truth of the matter is this has created an infinitely more complicated body of law.

I think something for folks to recognize is that back in 1984 we passed a relatively modest $50 billion tax increase over a 3-year period and I read recently where one paragraph of that 1984 law has already produced 126 pages of interpretations.

Now, I made the statement at the time we debated the House version of this so-called tax reform, if that is the case this Chamber will not accommodate over the next 25 years the body of interpretations that will be applied to what we are contemplating here tomorrow.

This is another disturbing aspect of engaging in something so sweeping and so complicated and so little understood as this is.

The truth of the matter is, there will not be a single Member of this body who will have read these documents when we are asked to vote on them tomorrow anymore than the conferees, the people responsible for reconciling House and Senate differences had anything to look at when they cast their vote last August. There was no document.

We have the document now and considering the time constraints, even if one were to sit up the remainder of tonight in anticipation of that debate tomorrow, there is not going to be any Member who has read it, and that is not as disturbing as it sounds, because we would not understand it if we read it anyway.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I am happy to yield to the gentleman from Minnesota.

Mr. FRENZEL. On that matter, Mr. Speaker, I would like to state that it is no pleasure for the gentleman to come

here late at night and address empty chairs, but the gentleman is doing this body and the country a great service for letting our Members know, if they choose to watch or to read that which we say and do here tonight, some of the things that are wrong with this tax bill.

The bill has been promoted as being an unvarnished advantage, an unrestrained asset. There are some good things in it, but the gentleman has pointed out correctly that the preponderance of disadvantage far outweighs the advantage in the bill.

The people in the Congress, like the gentleman from Illinois who carry the burden of knowledge of what is in this bill, are willing to spend the time to inform empty chairs and others, we hope, of the things that are clearly wrong in this bill and are the reasons why it should not be supported.

I thank the gentleman for taking the time to do it.

Mr. CRANE. Mr. Speaker, I thank the gentleman for his contribution and for his hours of labor in behalf of trying to sift through to determine just exactly what it is we are going to be asked to render a judgment on tomorrow.

I think there are no individuals who have devoted more time trying to understand what is contained in these two documents more than my distinguished colleagues from Minnesota and Texas; yet for all of that, we will be years in learning what hidden little things may be in there.

There was the case in point of the article in the New Republic of a little provision in that code on like page 646 and it was paragraph 842, or whatever, subparagraph (H), subparagraph 4, dealing with the constriction of tax exempt municipal bonds and said that there would be this restriction, except for those communities that met the criteria contained in section 235, subsection (B), subsection 5, and so you jumped a hundred pages back in the bill and here it said the exception to this restriction would be communtites of 2½ million or more, and as the New Republic said, and they added an American baseball team facetiously, that they noted that brought us down to three cities. Now we are talking about New York City, Chicago, and Los Angeles.

Then there was another provision that said they must also conform to the guidelines contained in section 1022, subsection (G), subsubsection 4, and so you jump 175 pages forward in the bill and here it explained that these cities had to be in States that ratified a new constitution in the precise way that my home State of Illinois did.

As a result, even if you go through this bill, unless you are a Sherlock Holmes, you cannot necessarily know what all these references are alluding to. I do not know how much may be in there. I am sure tax sleuths will work their way through that bill at some future date and we may find all kinds of unrevealed goodies and dispensations for certain interests that found their way into the bill.

Maybe one might legitimately argue, well, that is politics, that is the way you develop a consensus. You have got to make concessions to this group and that. All I am suggesting is that there is more in this bill than meets the eye.

In fact, in making reference to more than meeting the eye, to reassure our colleagues that this is not a partisan issue, the Democratic Study Group prepared a document, a special report on the tax agreement, pluses and minuses. In going over some of the minuses in the bill, I have got to commend the research talent of the DSG for focusing on some of the things that we have been alluding to in previous debates on the subject.

The sales tax deduction, as we know and probably most of our colleagues are aware, this measure repeals the itemized deduction for State and local sales taxes. The unfortunate aspect of this is that not all States tax the same way. We have a State income tax in our home State of Illinois and that is deductible, the State income tax, but in States that have not resorted to income taxes, as our colleague from Washington who was in the well earlier made reference to, those States have relied instead on sales taxes and excise taxes. Because of the absence of a State income tax, they have been able to get constituent support for higher sales taxes than we have in my home State, but none of those taxes are going to be deductible.

In addition to that the consumer interest deduction is another thing that the DSG report focuses on. They noted that these consumer interest deductions will be eliminated under the provisions of this new code.

Now, stop and ask yourselves the question, who in our society is most inclined to be taking advantage of consumer interest deductions? I will argue and I think I can easily generate the proof of this point that people with lower incomes are the ones who tend to be those who buy on time.

□ 1950

The wealthy in our society do not have to, and the not so wealthy do not have to.

I was indoctrinated as a youngster to believe that it was improper to take on debt. My wife and I had to in the purchase of our house, but otherwise we delayed our gratifications, whether it was purchase of furniture, appliances, or even automobiles, until we had the cash. But we are living in a different society in the post-World War II era, and there are many people out there, working people in lower income levels, who are the beneficiaries primarily of the consumer-interest deduction. They are going to feel a great deal of pain as a result of losing that in this code.

We made mention before, but it bears repeating, of another provision in this tax change, that dealing with apartment housing and renters. Once more, who tend to be the renters in our society? People in lower-income brackets, that tend to rent. By changing the treatment of passive losses and the encouragement of investment in the construction of multifamily housing, the projections are that there will be a halving of the construction of multifamily housing next year, which will impact on the building and constructions trades, but aside from that, it is going to create a smaller pool of available rental space, and the demand will continue to go on as it has, and this can only have the consequence that Martin Feldstein referred to in an article which he did on this subject of pushing the rents of these apartments up.

He is projecting a 10- to 15-percent increase in rents next year alone. He noted in his article that the couple making $25,000 a year and paying $500 in monthly rent may enjoy a $20-a-month reduction in their taxes, but they can anticipate a $50- to $75-a-month increase in their rents. So once more, how have we provided for the low-income in our society, or middle-income, not to mention the ability to use your Visa card and put your house up as collateral if you are a homeowner and get a line of consumer credit that is deductible? Again, that opportunity is denied to that individual who rents.

Mr. ARCHER. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Texas.

Mr. ARCHER. I thank the gentleman from Illinois for taking this time tonight and giving us an opportunity to further explain some of the aspects of this bill.

The gentleman touched on two, in the denial of consumer interest and the increase that can be expected in the cost of rents for those who live in apartments.

The chairman of our committee, the gentleman from Illinois [Mr. ROSTENKOWSKI], said on national television during an interview with Peter Jennings at halftime on the football game on Sunday, in answer to a question, that yes, rents could go up under this bill. So it is not just those of us who have the great concerns about the bill who are saying this, even those who are proponents of the bill talk about increased rents.

It is an interesting thing. There is an interrelationship between the consumer interest in increased rents that is a terrific disadvantage and discrimi-

nation against the individual who has to rent and does not own his own home, because if you own your own home, as the gentleman mentioned, he has the opportunity under some of the new creative financing that is already being planned to go down and take a second mortgage on your home and be issued a special credit card. You can then take that credit card and buy any consumer item that you wish, and deduct the interest on your purchase. But the individual who is renting an apartment does not have that opportunity. So the apartment renter is caught on the first hand of having his rents increased beyond the amount of his reduction, and in addition not being able to take advantage of the deductibility of consumer interest.

I thank the gentleman for giving me an opportunity to add that on.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I think that this is a very important point. At the beginning of this discourse those of us who oppose the tax bill, represented by the gentleman from Illinois [Mr. CRANE], indicated that one of the advantages of the tax bill is that it takes lower income people off the Tax Code who probably never should have been on there in the first place, and we like that from a standpoint of social justice. From the standpoint of administering the Tax Code it probably is not efficient to collect taxes from many of them anyway.

The kicker is the Martin Feldstein statement that the gentleman from Illinois mentioned. That is, your rate of increase in rent is likely to be twice the rate of reduction of your taxes, and the hard-dollar increase in rent in the case noted is probably an average case. So the consumer—the renter, in this case—is going to find that his rental increase is twice as many dollars as his tax cut. Therefore, while we concede the fact that it is good to get lower income people off the tax schedule, we would argue very strongly that it is not a very good idea to take them off the tax schedule by means of raising their rent by twice as much as they saved in taxes.

Mr. CRANE. I thank the gentleman for that contribution.

Mr. Speaker, let me touch upon another aspect of this bill that certainly affects many interests. I attended graduate school after I got out of the Army, and got married at about the same time. My wife and I were Johnson poverty cases by definition.

I was fortunate in that beyond my GI bill I also was able to secure a scholarship. That scholarship went very far in those days toward putting food on the table and helping to pay the rent and commuting expenses. But under the provisions of this bill, scholarships now can be taxed above and beyond what is strictly confined to tuition and fees. This seems to me once more to be counterproductive. Obviously these scholarships are awarded to assist people in need, and here we have taken another backward step.

There is yet another provision in this code affecting education, and I was discussing it with some alumni of my alma mater, Hillsdale College up in Michigan. It has to do with the treatment of the contributions of people to support their alma maters. Under the provisions of this code, if, for example, you bought stock at $50 a share, and that stock is now worth $1,000 a share, and you want to contribute that to your local university or your alma mater, you can only deduct it on the basis of what you originally paid for the stock, $50 a share, even though the current value may be $1,000 a share.

Some of the folks who were present said, "Well, what can you do?"

I said, "Well, what you can do is sell the stock at today's value, $1,000 a share. Unfortunately, most of those people will take a 33-percent capital-gains whack. In other words, Uncle Sugar is going to take a third of your contribution to your alma mater or to your local university or college.

Again, with all of the efforts that we have made to pour money into the promotion of education, it seems that this is a backward movement in terms of arriving at the objectives that we all believe in, and it is certainly not what I think the overwhelming majority of the Members intended to do in once more pursuing those goals of fairness and simplification and growth.

In addition to that is the marriage-penalty deduction. That special deduction was designed to help offset the marriage penalty for the two-earner couples. That has been repealed in this legislation. That has been a hot issue that we have debated about for years, about the fundamental inequity of penalizing people for marriage. Once more we are taking a backward step in a counterproductive, unfair way.

Mr. FRENZEL. Mr. Chairman, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Chairman, I want to go back to gifts of appreciated property to charities, and indicate that an association of colleges and universities hired a study group to determine how much this feature would cost them in assets which might be otherwise given to them. Over the 5-year period the amount was $600 million.

□ 2000

That is peanuts in the total scope of this multibillion dollar bill. But to your local college, or the one you attended, or your land grant college which will be denied the gift of appreciated stock, of the business, of the farmer, or friends of those institutions who may want to contribute, this will be a real death blow to take $600 million out of the function that most societies consider to be the highest and most noble within that society. Why in heaven's name would we hurt higher education for the tiny revenue costs of a few hundred million dollars, which is absolutely inconsequential in the total scheme of this bill?

The answer is that this feature is simply mean-spirited, and really does nothing to help lower the rates. All it does is spread some of the suffering around and retards the function of higher education.

Mr. CRANE. I thank the gentleman for his contribution again.

Yet another area of losses for ordinary taxpayers spelled out by the Democratic Study Group's report on this tax bill is the medical expense deduction. Medical expenses are a terrible thing and no one likes to contemplate ever being confronted with them. But we had the misfortune of having a daughter involved in a terrible auto accident a couple of years ago and larger than usual medical expenses, something that every family at one time or another is probably confronted with. We allocate huge sums of money to provide for health care, and we have all noted that the deductions under Medicare have increased through the years, and as a consequence it has made it increasingly difficult for individuals to take care of their health care needs.

Once more, this bill moves in the wrong direction. Under existing law taxpayers can take an itemized deduction for medical expenses in excess of 5 percent of their adjusted gross income. This conference agreement moves that up 50 percent, to 7½ percent of adjusted gross income. I think, again, with the best of intentions, I am sure, this tax bill, in its zeal to achieve at any and all costs the goal of revenue neutrality, neglected in the process consideration of fairness or sound social policy.

In addition to this, there is another inadvertent provision in here. Under existing code we have an extra personal exemption for the elderly, and this measure repeals the additional personal exemption for the elderly and the blind. How consistent is this with sound social policy? Once more, I would argue in the determination to achieve revenue neutrality they lost sight of proper social values that we have recognized through other aspects of legislation.

Yet another one that the Democratic Study Group focuses on as losses for ordinary taxpayers is income averaging. Income averaging may not be that

defensible for people in a lot of professions, or maybe if you win the Illinois lottery or something like that. But, on the other hand, you take the plight of the American farmer today. The American farmer, we all know, has been suffering enormously because of world prices for his products. We have seen a fall off in markets worldwide for our agricultural produce. We witnessed this year the horrible droughts in our Southeastern States where those farmers had to plow under the corn that they planted early in the spring. In my home State of Illinois, by contrast, we had adequate rain and sunshine, which blessed our farmers, and they came in with the most enormous bumper crop in the history of our State. Sad to say, their bumper crop production did not help them. That has the tragic consequence of depressing farm prices.

That farmer is one who more than any other in our society may suffer through a number of lean years and then suddenly get a good year. Under existing law, he can average out his good years against the bad years, and thus reduce his total tax consequence. And if anyone is deserving of preservation of income averaging, it has to be the American farmer, and yet that was stricken from the legislation at a time when, as I say, our farmers are hurting to perhaps an unprecedented degree since the Great Depression.

If that were not enough to hit the farmer with, there is repeal of the investment tax credit. Farming is an extensive enterprise today, and to compete successfully you have to make major investments in heavy equipment. The farmer also lost that.

The capital gains treatment to take the maximum capital gains rate from 20 to 33 percent, as this legislation does, once more works to the disadvantage of the farmer as well as his loss of his consumer interest deduction, because farmers, like others, do purchase on time.

Mr. BROWN of Colorado. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I am happy to yield to my colleague from Colorado.

Mr. BROWN of Colorado. Mr. Speaker, I thank the gentleman for yielding and want to commend him for taking this special order to discuss the tax bill. I would like to address some inquiries to him, if I may, if the gentleman is willing.

Mr. CRANE. Certainly.

Mr. BROWN of Colorado. I understand the bill does away with different treatment of capital gains. Under the old law, of course, capital gains were treated with a different tax rate, a better treatment than ordinary income. My understanding is if you have capital gains now that they are treated just as ordinary income.

Would the gentleman tell me what happens with capital losses? Would they, under this treatment, be accorded as a deduction against ordinary income just as gains are added toward ordinary income?

Mr. CRANE. To the best of my knowledge, and I will stand corrected by either of my two colleagues on the committee, capital losses are still deductible.

Mr. ARCHER. If the gentleman will yield, capital losses will be treated differently than capital gains. Capital gains are treated exactly like ordinary income under this tax reform bill, but capital losses have neither fish nor fowl characteristics. They will not be deductible against ordinary income, even though capital gains are treated as ordinary income, only to the extent that they exceed $3,000 a year. So if you have a capital loss and no capital gain, you can deduct that loss up to $3,000 as your ordinary income. If you have capital gains, obviously you can offset a capital gain by a capital loss, dollar for dollar. But if you have a year where you take a significant amount of capital losses, the most you can take against your other ordinary income is $3,000.

Mr. BROWN of Colorado. If I understand what the gentleman is saying, it is that if you have a gain, the Government wins with taxable income, and if you have a loss, the Government wins because it limits the amount you can offset from your income?

Mr. ARCHER. That is absolutely correct.

Mr. CRANE. The Government wins; you lose.

Mr. BROWN of Colorado. So you could, in effect, have a real loss, not a paper loss, but a real loss on capital gains and only be able to deduct $3,000 of it during the year, and not the other parts of your real loss?

Mr. ARCHER. In fairness, I must say that you are entitled to carry that loss over at $3,000 a year. If you live long enough, you can ultimately perhaps take advantage of it. But at the time value of money, it shrinks in what it is worth to you.

Mr. BROWN of Colorado. It is really kind of a heads-they-win, tails-you-lose kind of situation.

Mr. FRENZEL. Will the gentleman yield to me?

Mr. CRANE. Yes, indeed.

Mr. FRENZEL. I think the flower of our Tax Code or the crown jewel in our tiara has been the capital gains tax. We have been able to stimulate investment and entrepreneurial spirit in the United States through that.

As far as I am concerned, the best tax bills I ever voted for were in 1978 and 1981 when we lowered the capital gains tax and made it a greater differential. Now, in this bill, the gentleman from Colorado has pointed out there is no more capital gains tax. The only problem is you lose twice if you have a capital loss.

I would like to make the further point that most capital gains in our inflationary society are inflationary and not real gains, and therefore, what used to be a capital gains tax was really a tax on capital. Now our tax on capital has become a regular income tax with no differential. So you lose three times in the new scheme of things, and the ultimate losers are the people of the United States because they are the ones that are going to see less capital accumulation, less savings, less economic activity, less jobs as a result of this assault on the capital gains provision.

Mr. CRANE. If I could add a further point to this, and it is one that I think all of our colleagues ought to take to heart and consider addressing in that first improvement or corrections bill that this body considers, in this measure we fail to index capital gains.

□ 2010

And they are treated as regular income. I saw a report the other day that if you had put $10,000, in 1966, into the Dow Jones averages today that would be worth $24,000; but if it were to be comparable in value to the $10,000 you initially invested, it would have to be $36,000.

As a result, this failure to index capital gains while simultaneously treating them as regular income is one of the major immediate deficiencies that hopefully this body in its infinite wisdom will see fit to remedy as quickly as we can reconvene a tax panel, to try and apply any correctives if, perish the thought, this legislation passes tomorrow.

Mr. BROWN of Colorado. If I understand the example the gentleman just gave, in that circumstance in real dollars the taxpayer would have had a real loss of $12,000 but he would be taxed as if he had had a gain of $14,000.

Mr. CRANE. Of $14,000; yes, indeed.

Mr. BROWN of Colorado. One other question, if I may, Mr. Speaker.

I understand that this bill speaks to the problem of offsetting earned income with passive losses, and prevents—one of the good things it does is it prevents or stops the incentive to invest in investments that will lose money on the paper basis as a tax gimmick to offset earned income.

Let me ask the gentleman: What about passive investments that have a real loss? Which were not simply entered in for tax reasons but the investment unfortunately turns out to not do well, and there is a genuine loss. How are those treated?

Mr. CRANE. That taxpayer cannot deduct that loss from earned income, from wages, salaries, dividends, interest, and so forth. As a result, he is going to suffer, and in fact there are

ramifications of this that go beyond just his personal suffering.

A lot of those investments, some of them as the gentleman from Colorado [Mr. BROWN] has already indicated, may have been entered into not necessarily with the expectation of getting a return, hopefully maybe some years out, and I am thinking of investments, say, in office construction and certainly in the early years you do not anticipate having a 65-percent occupancy rate.

That taxpayer currently enjoyed depreciation of the property; he enjoyed his losses, the deductibility of his losses from regular income; it was a sheltered investment.

The truth of the matter is, I have never thought highly of that provision of the code, but on the other hand, what is so incredibly offensive in this particular tax bill we have under consideration, that man is going to be hammered retroactively—it is not a case of saying, come January 1, 1987, we are going to eliminate those opportunities, and taxpayers henceforward cannot get into them. That is a retroactive application of the code in a way where it may have been a legitimate investment and a loss was sustained, as you indicated; but on the other hand even if it were not it is inconscionable to apply new rules today that have a retroactive application.

For goodness sakes, I certainly have tried to teach my kids to keep their word, and I think that we have enough of a credibility problem in this town and more specifically in this body without suddenly telling folks that, "You abided by the rules, you did the honest thing, we created those ground rules to encourage you to do that sort of thing, but now, sucker, you fell for it and you believed us, and we got ya!"

The fact of the matter is that what many are anticipating, in a number of these investments, is that those individuals, still faced with a prospect of losses on into the future will default.

Now, who gets hammered if that occurs? It is our financial institutions. Chairman Edwin Gray noted that they anticipate over the next 18 months, and this was in the paper just yesterday, over the next 18 months, 250 S&L's going belly up in this country, and that will require $26 billion in Federal savings and loan insurance to cover the losses to depositors, and they do not have that kind of money.

That is before they may get stuck holding a piece of property that someone invested in and walked away from. In addition to that, if you look at the banks, the Chairman of the Federal Deposit Insurance Corporation noted just recently that the number of troubled banks has gone from 1,150 in January of this year to over 1,400.

The banks are going to be left holding some of those investments, too; but if they are over $500 million in assets they are also going to get hammered by losing their bad debt reserve deduction.

This so troubled Chairman Volcker and even the President, who communicated through Secretary of the Treasury Jim Baker to our distinguished chairman of the Ways and Means Committee that "You must provide a special exemption for 20 of these banks scheduled to lose their bad debt reserve deduction because of their fear that they were on the verge of going belly up themselves."

Imagine what kind of consternation that might create when the FDIC has exhausted half of its reserves just to nationalize Continental Bank in Chicago, and they only have the capability with their existing reserves, of taking over one more bank of that size.

Mr. ARCHER. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I will happily yield to the gentleman from Texas.

Mr. ARCHER. Mr. Speaker, the irony of the so-called troubled bank exception which you mention, that supposedly will help 20 banks who have 75 percent or more of their loans nonperforming is like trying to go after the horse after he is out of the barn.

To be able to say, "Now you don't have to pay taxes" is no real benefit, because they are not in a taxable mode anyhow; they are in a loss mode. It might very well be better for them to recapture their reserves, since they would pay no taxes, since they have losses only. It is of no benefit to them to say "Now you can deduct for loan loss reserves" when they have nothing to deduct it against.

The time you have got to do this is when the bank is still viable and still has taxable earnings, in order to be a protection for the future.

So I do not really understand why the so-called troubled bank exemption is going to really be that helpful.

Mr. BROWN of Colorado. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman from Colorado.

Mr. BROWN of Colorado. Mr. Speaker, I know this body has expressed its strong belief in IRA's as one of the most viable and important portions of the tax law to encourage savings; I wonder if the gentleman could advise me how the conference committee acted on our request, from this body, to have the IRA left alone and continued as it had been?

Mr. CRANE. Well, Mr. Speaker, I think there was a lot of sentiment on behalf of trying to preserve existing IRA's. The conviction from the outset was that we probably could not go along with the President's—I should not say "we;" I am using the editorial we. We were in favor of adding spousal IRA's for nonworking spouses; what the President had originally called for.

IRA's, I think the President clearly recognized, were one of the best things we have done in recent changes in our Tax Code. The fact is, 28 million families were into IRA's last year, to the tune of $250 billion.

Now we arbitrarily defined what is middle income, and in our arbitrary definitions in conference, we said that is $20,000 to $50,000. And yet, under the provisions of this bill on a joint return, when you get to $40,000 the IRA's start phasing out, and they are totally gone by $50,000.

Well, $40,000, if you have got a husband and wife working, is $20,000 each. So once more, in terms of addressing the concerns that the committee members ostensibly had for the middle class, they just barely made the first rung of the ladder going into what they defined as middle income in their treatment of IRA's, and they also drastically reduced 401(k) programs.

Mr. ARCHER. Mr. Speaker, if the gentleman will yield before we move off the IRA's, the example that you mentioned of a couple, each making $20,000, or $22,000, and beginning to lose their IRA's, is very apt, because over 50 percent of the benefits currently enjoyed from IRA's today will be eliminated by the restrictions in this bill.

So less than 50 percent of the benefits will remain in the new tax reform Code if it is adopted.

Mr. CRANE. If I may add one further point, Mr. Speaker, our colleague in this body from Virginia [Mr. SLAUGHTER] has introduced legislation which I am a cosponsor of and could not embrace more wholeheartedly, and that would provide a medical IRA so that people could anticipate providing for themselves in those later years of life when they are most prone to absorb huge medical expenses.

It was another good, positive step; just like the creation of the original IRA's, and I have had my staff working, before this tax bill came up, on an educational IRA that you could take out for your youngster at birth, and when he reaches 18 or college age, he could start drawing from his IRA and pay taxes at that rate at that time and, if he saw fit not to go to college, simply convert that into a medical IRA for him for the rest of his life.

□ 2020

These were sound principles encouraging savings. This certainly is a component of that third criterion the President set forth that he wanted to achieve, namely growth. Yet how can you argue that you are promoting growth when you hammer IRA's? You hammer 401(k)'s, you take maximum capital gains rates from 20 percent up

to 33 percent and you eliminate the dividend exclusion? It is working directly at cross-purposes with what were the initial objectives that we all agreed upon, Democrats and Republicans alike. This was not a partisan issue. I think Chairman ROSTENKOWSKI made it clear after the President announced his original intention to go for these objectives in sweeping comprehensive tax reform, and the chairman, speaking as a Democrat, acknowledged that those were objectives that his side of the aisle could embrace with as much enthusiasm as our side.

Mr. BROWN of Colorado. I thank the gentleman for his comments.

Mr. CRANE. I thank the gentleman from Colorado for his questions.

Let me comment on just a couple of other provisions contained in the minuses for ordinary citizens contained in the Democratic Study Group's publication and analysis on this subject. This has to do with unemployment compensation. Unemployment compensation payments are presently nontaxable for persons with relatively low income. The conference agreement makes such payments fully taxable. If you are going to acknowledge that a person is hurting and suffering to begin with, and that is what unemployment compensation was designed to address, then why do you come in and hammer him with this kind of a change in the code when the man is already suffering from a reduced income and may yet still have all of his family obligations in front of him?

In addition to this, Government pensions; the fact of the matter is that the treatment of Government pensions by not permitting a person to withdraw what he initially put into the program in terms of nontaxable dollars in the early years, and it is up to 3, and instead to combine that with his Government contribution and make it taxable and spread it out over a period of time almost strikes one as cynical, that with any kind of luck you are not going to live long enough to get the money out of there, the tax-free money that you contributed. This is not just Federal employees. This applies to Federal employees back in our home States, policemen, firemen, schoolteachers. I think once more this is a gross violation of equity because it was made retroactively effective as of July 1 of this year. I would not make it effective as of January 1, 1987, but at the very least it should be for those people who are going on the payroll and who can now anticipate that the groundrules have changed. "If you still want to get on the team under those circumstances, fine." But for people who are making plans in anticipation of retirement, this is a profound dislocation.

I yield to the gentleman from Texas.

Mr. ARCHER. It is even broader than Federal employees, Federal policemen, firemen and teachers; it is any employee who has made a personal after-tax contribution to his own retirement plan, a contributory retirement plan. So it will pick up some people in the private sector that have been a part of that type of plan and it will cause all of these people to be double taxed on at least a major portion of their contributions into that retirement program. To me that is grossly unfair.

Mr. CRANE. Again, if one looks at the criteria set forth, this measure does not live up to the charge that was given us by the President at the beginning of this whole debate.

I know that there are components that the President has embraced for years, and I think many of us have, trying to move in the direction of a so-called proportional or flat tax. Certainly with the advertised two-tier rate level of 15 and 28 percent—which is misleading because there is actually yet one more level—this is the closest we have come toward moving in that direction.

I would hope that this debate would continue and that we could anticipate a time before this century is out when we do establish the principle of proportional or flat-rate taxation.

But on the other hand, to achieve those seemingly desirable objectives in this document, there was just much too much that was sacrificed.

I think in trying to summarize and put into some context the consequences of a failure to embrace this tax reform tomorrow, one must recognize that the tax debate will not go away. Even if this is passed, we are going to be at the books every year doing revisions to that tax bill for the next several years and maybe each year for the remainder of this century.

That being the case, in the event this measure is not adopted tomorrow, it does not mean the end of the quest for simplicity in the code, for fairness in the Code, and the progrowth aspects in the Code.

These are all objectives that we will continue to pursue and in fact now that we have generated this much national attention and focus on the issue, I think the clamor will increase on the part of the individuals to achieve those objectives.

But the things that had touched off the debate initially, that had people so exercised really were the illustrations, as I noted before, of injustices where some people paid taxes and others did not, and trying to achieve that kind of free field where everyone pays a fair share which can be accomplished through a proportional or flat tax on gross income, to achieve the desired objective of encouraging Americans to save and invest.

I was in Japan in 1981 with the American Productivity Center. Japan at that time had a 20- to 25-percent rate of personal income going into savings. Ours was down about 3 percent at the time. We have the lowest rate of savings in this country of any of the industrial nations of the world.

The Japanese asked us, "Why do you tax interest, dividends and capital gains?" They said, "That would certainly provide an incentive for people to save, and invest." They said, "We learned these incentives in your country from economists at the University of Chicago who said it is counterproductive to tax interest, dividends and capital gains. So why do you do it?" Well, we did not have appropriate answers for that any more than we did for some of the other questions they asked us about our conduct of business in this country, when the things that they were doing and doing very effectively they were very up-front to acknowledge they had learned from us in the first instance.

So I would hope that looking to the future because of the generation of responsible dialog on this subject of the need for tax reform, that we could go back to the drawing board maybe next year and analyze the advisability if we really want to promote growth, encouraging Americans to save and to invest by the elimination of taxation of interest, dividends and capital gains.

That antiquity in our code really goes back to the New Deal when our tax laws were designed to provide disincentive for saving because the economists reasoned if you get people into savings, you are not going to have an economic recovery from the Depression.

So instead they provided encouragement for people to go into debt and punished you for saving.

If you stop and think about it, if you take an after-tax dollar and you invest it in a public corporation, when that public corporation makes a profit, that dollar gets taxed twice. Then when it makes a dividend distribution, that dollar gets taxed a third-time. If you sell your stock and enjoy a capital gain, it gets taxed a fourth time. And the ultimate obscenity is when you die and they are so outraged, Treasury, over losing you as an ongoing productive taxpayer, they come in and zap your bereaved spouse and loved ones with an estate tax. Stop and think about it: five hits on that same dollar. And we wonder why we have disincentives in this country to savings and investment.

Well, these are subjects, as I say, for an ongoing debate on tax reform. Certainly this, as I noted, is not the end of the road as far as our desired objectives. I am confident that if the American people are as irate on some of these provisions as I am convinced

they are, and if they are not yet, they certainly will be once they realize all of the negative impacts of this tax bill, our colleagues will be back here at the drawing boards issuing the call for comprehensive tax reform.

I yield to my colleague for Texas.

Mr. ARCHER. I thank my colleague for yielding.

In the short time that is left on the special order of the gentleman, I would like to mention what the rate schedules are for individuals. There seems to be a lot of confusion about that.

In this new so-called tax reform bill the proponents continue to say day after day that it is a 2-tier rate system with a top marginal rate of 28 percent. They compare that to the top marginal rate of 50 percent in the Code today. I wish it were so. It does not happen to be true.

I have communicated with the tax-writing experts, the staff that put this bill together and have been assured that the top marginal rate is 33 percent, not 28, and for a single individual that top marginal rate of 33 percent will begin on every item of taxable income above $43,500. It will continue until roughly $150,000 and then the dollars earned over and above that will be taxed once again only at a marginal rate of 28 percent.

So there are 4 tiers when this is fully implemented, if in fact it ever does become fully implemented—and I would like to speak to that—there are 4 tiers, 15, 28, 33, and back to 28 again.

Now, that is in the year 1988 and years beyond if in fact it survives that long.

Many of my colleagues are telling me in private as I go around and speak to them that they do not think that rate will ever take effect because the rate schedules for individuals in 1987, next year, are going to be maximum of 38½ percent top marginal rate with 5 tiers of rates on income leading up to that. There are many in this body who today believe that that rate system will be frozen in place and will never be permitted to go in 1988 to the ultimate 15, 28, 33, and then back to 28.

But let us make no mistake about it, middle-income Americans if they are lucky because 25 percent in 1988 will be getting a tax increase and 75 percent will get a tax decrease, and you do not know until you look at your return where you are going to be for sure; it will be a much bigger percentage in 1987 under this higher five-tier rate system which they call temporary. But the return, the reduction will be so small that it will be a matter of a dollar or $2 or $3 a week. That will be eaten up in their paychecks by Social Security tax increases. And perhaps more importantly, in those States that have income taxes, the increased State income tax that will occur as a result of this tax reform bill broadening all of the base on which the States levy their income taxes, will most likely eat up the other part of their so-called tax reduction.

So there is a booby trap in here for the individual taxpayer that has not been talked about very much. Ultimately they look at their net paycheck after withholding and when their State income tax is withheld in a higher amount and when Social Security is held in a higher amount, the small, small reduction that they might get if they are one of the lucky ones under this bill will not be noticeable.

So I think it is important for people to understand precisely how they will be impacted by this bill.

I thank the gentleman for yielding.

Mr. CRANE. I want to thank my distinguished colleague from Texas for his contribution and especially for his communications with our fellow colleagues, not just here through special orders, through explaining at various meetings we have held for the edification of many who are not as conversant as he is on the tax bill, and I want to thank my distinguished colleague from Minnesota for all of the hard work that he has put into this educational effort.

I would hope that our colleagues, while not present in the Chamber, some of them may have listened to some of the arguments that have been advanced here by the miracle of television. In the process I think they can develop at least the arguments that are valid arguments, that if they feel any political pressure to do a bad economic thing that defies the fundamental call for tax reform based on simplicity, fairness and growth, that they will be well armed as a result of the contributions my distinguished colleagues have made.

Mr. Speaker, I yield back the balance of my time.

□ 2035

TAX REFORM

The SPEAKER pro tempore (Mr. GRAY of Illinois). Under a previous order of the House, the gentleman from Texas [Mr. ARCHER] is recognized for 60 minutes.

Mr. ARCHER. Mr. Speaker, I would like to continue with the colloquy and the presentation that my distinguished colleagues, Mr. CRANE of Illinois and Mr. FRENZEL of Minnesota, have been participating in over the last hour, to talk about a few more of the aspects of this new broad-base tax reform bill.

This, as the gentleman from Illinois has shown, is the 2,000-page document that will be voted on tomorrow.

Some of the areas which have not been widely heralded are how the income of minor children will be taxed under this bill.

If you have a minor child who has been given property by any relative or by any friend or comes as a bequest from a particular uncle, the income off of that property is rightfully that child's. It cannot in any way be used legally by the parents. And frequently there comes to minor children that is income producing so that moneys can be laid aside for their educational expenses.

Under the current law, that property is taxed under a separate schedule by an individual taxpayer, namely the minor child. Under this new tax reform bill, irrespective of who gave the property to the child, the income on that property above $1,000 is going to be taxed at the rate of the parent, and that to me is grossly unfair. It prevents this minor child who has no say in the matter whatsosever from being able to have this money accumulate at his or her own individual tax rate, which would perhaps be a 15-percent rate. This, I believe, is a major change in the current law and is one that has not been spoken to before, to my knowledge.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, this is an important point.

Trusts are not an important point of the tax reform bill. They did not bring in a lot of revenue that could be used to lower rates. There were no hearings on this radical change in trust taxation. The Trust Bar and others should certainly be heard on this subject.

Nevertheless, for no reason that I can determine, we accepted a change in the taxation of trust income in the way that the gentleman has described, and suddenly the whole world of trusts is turned upside down.

Now, if there had been a bonanza to be reaped out there so that we could lower taxes, maybe it would make some sense. If there had been a showing of abuse, that people were shifting income and avoiding taxation, maybe it would have made sense. There was no such showing at any time within our committee. Nevertheless, the committee went ahead and simply integrated this into the tax reform bill, although it could be excised without costing more than a few cents of additional revenue.

Mr. ARCHER. I thank the gentleman for his comments.

Mr. Speaker, I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, I have been informed by staff, and I would like for the gentleman if he can answer this question to do so, if you claim any children as dependents now, you must get a Social Security or taxpayer identification number for any

children who are 5 years of age or older and include that number on your tax return; is that correct?

Mr. ARCHER. The gentleman is correct, to my knowledge.

Again, this is an additional complexity that many people today have not had to cope with. Obviously, a 5-year-old child is not going to be entering the work force, and people are not going through all of the redtape of going down to the Social Security office and getting a number for that 5-year-old child.

This bill will require it if they are to be taken as a dependent on the tax return.

Mr. CRANE. If the gentleman will yield further, currently if a child earns under $3,560, he or she does not need to file a return. However, under this bill, if the child earns over $500 and has $1 or more of interest, he or she must now file a return.

Mr. ARCHER. That is my understanding to be part of the new code.

Mr. CRANE. I thank the gentleman for yielding.

Mr. ARCHER. Or the proposed new code, I should say.

I would also like to talk about another area that particularly concerns me. That is for those people who are active in operating or developing real estate.

For some strange reason, in this tax reform bill, those people who actively pursue this as a business are treated differently than any other business operation in the United States. Those people who are farmers, those people who operate oil wells, those people who operate retail stores, those people who conduct any other type of business can take their business losses against their business income. But the individual who operates and owns an apartment house cannot take the losses on anything other than the rental income from that apartment house.

If that individual has working capital, has money in the bank drawing interest that is needed for the purpose of operating that venture that is an integral part of that business operation, he or she cannot deduct the losses against that income unless, of course, it is under $25,000 a year, and then that is phased out at a higher income level.

This is highly discriminatory against those who happen to be gainfully making their living out of rental property. They will not be able, if they happen to be developing real estate on one hand and making a profit on it and, on the other hand, renting property and taking a loss, be able to deduct their rental losses against the profit on their development projects. This is clearly discriminatory, for what reason I do not know, againts one particular type of operation, while everybody else operates under different rules.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. ARCHER. I yield to the gentleman from Minnesota.

Mr. FRENZEL. The source of the discrimination, I think, is quite simple. When the Senate was fishing for a very low rate, it looked around as to where it might find it. It thought it found it in the so-called passive losses in real estate investments, but found they could not get enough money that way. So they merely defined active management as being passive management. It was very simple, a stroke of the pen, totally unfair, inconsistent with any kind of rational tax policy, and it was an exercise in money grubbing, disadvantaging a certain class of American investor and manager for the simple reason that they needed more money.

They had already prohibited short form filers, the poor people of the world, from taking charitable deductions. They had already hurt education. They had already begun to tax the appreciated value of charitable contributions of itemizers. So what they did was simply invent a new definition which was an undefinition or a counterdefinition. Certainly that is one of the things that is going to contribute to the raising of rents in the United States and the shortage of supply in housing.

I thank the gentleman for bringing it up.

Mr. ARCHER. The gentleman has made an excellent point, and I thank him.

I must say that this, as well as other provisions in this bill, seems to be patterned after the type of Tax Code that has been used in Mexico for the last 30 years. I am sure this country really wants to adopt that type of approach to taxation, because in Mexico all of the various types of endeavors are segmented off and compartmentalized independent of one another, and losses from one cannot be taken against income from another. The results in Mexico, I must say, have been less than sterling over the last 30 years.

I do not believe that this is in the best interests of the long-term progress in improving the standard of living of the people of the United States of America.

As a result of this and many other things that we have talked about over last week, I will tomorrow at the end of debate offer a motion to recommit to send this tax bill back to the conference committee so that it can be improved, so that it can be a true tax reform document, so that most of these major and grievous flaws that are in it will have an opportunity to be corrected.

□ 2045

It will not be the end of tax reform if my motion to recommit passes. It will be perhaps the beginning of an accomplishment that the President and I and most Americans really would like to see occur. True tax reform that does present a fair document, that does present a code which will be simpler than the current code; not more complex. One that takes more of the risk out relative to the economy and to the jobs of people. One which will not disimprove our competitiveness in the world marketplace, and one which gives us an opportunity, truly, to eliminate the risk of negative impact on our economy in the short term. Because the risk of loss in this bill, in my opinion, is not overcome by the chance of gain.

So it is that tomorrow we will debate and we will vote on this bill. The impact on millions of Americans is at stake. It is not all bad. If it passes, it will not be the end of the world for the United States. But if it can be improved, now is the time to improve it.

Some say, "Oh, but there is so little time left in this session. To send it back to the conference committee would be the death knell of tax reform." Nothing could be farther from the truth. We have 3 months left; over 3 months left in this session. Changing the current code in an improved way is an important priority. Overwhelmed only by one other in my opinion and that is the deficits. That brings me to my last point.

This bill, at the best, according to the estimators, will exacerbate the deficits by a revenue shortfall in 1988 of $28 billion. Americans have spoken out over the last several years as to their view that we should move toward a balanced budget. They have spoken overwhelmingly. Gramm-Rudman was adopted.

If this bill is embraced as it currently is revenue estimated, it will most certainly be the death knell for Gramm-Rudman's effort to move this country to a balanced budget in 1988.

I thank the gentleman for participating with me. I thank Mr. FRENZEL and Mr. CRANE.

Mr. Speaker, I yield to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. I thank the gentleman.

Mr. Speaker, I want to take up on the point the gentleman made about the extraordinary shortfall, the notch between 1987 and 1988 where the bill theoretically goes from a plus $11 billion to a minus $17 billion. In that year, according to the best revenue estimates that we can get at this time, while I will concede they are the best we can get, I am not sure how good they are.

The question I would ask is the gentleman has followed economic testimo-

ny on this bill for 3 years. Most recently, we have heard from the Joint Economic Committee. My understanding of the most recent testimony of many economists is that not only is the notch there but probably we are not going to realize in the outyears the amount of money that our estimators suggest we are.

Can the gentleman comment on that, please?

Mr. ARCHER. Yes; I had referred only to the official estimates that have accompanied this bill.

Outside economists, five of which testified before the Joint Economic Committee last week, said that it was their projection that the estimates were $40 to $50 billion too high. In other words, that over the 5-year period, there would be a revenue shortfall of $40 to $50 billion. If that went equally across the years, that would be roughly $8 to $10 billion a year shortfall and would further exacerbate these estimates which I mentioned.

One economist by the name of Brenner from Data Resources Institute, said specifically that his revenue estimates showed a $21 billion shortfall in 1987, a $25 billion shortfall in 1988 for a total of $46 billion. That was the worst scenario that was presented to the Joint Economic Committee. Of course, $46 billion is much worse than $28 billion.

Mr. FRENZEL. If the gentleman will yield further, I do agree with him and I think that not only do we have the notch which threatens to upset Gramm-Rudman and all of the targets which we have set, but we have a suspicion that the case could be much worse than that. Neither of those estimates are provable at this time. But we have to use the best estimates that are available.

If the gentleman would yield further, I have a point or two that I might make on the gentleman's time about that bill.

We talked earlier, rather the gentleman from Illinois [Mr. CRANE] talked earlier about problems for higher education. At the time I pointed out that represntatives of associations representing higher educational groups have suggested that the tax bill is the worst catastrophe for higher education in 25 years. Mr. CRANE mentioned that gifts of appreciated property will now be taxable under our minimum tax system, and he mentioned further that certain scholarship stipends that formerly nurtured insipient professors through their graduate years would become taxable, therefore discouraging a few more of our potential teachers for the future.

I would like to talk about a couple of other things that wreak carnage in higher education. The first one is the question of student loan bonds. These are tax-exempt bonds issued by States and the proceeds of these bonds are used to supplement student loans which come from the Federal Government. These loans in my State are absolutely essential if we are going to give any hope of achieving the American dream to thousands of students who are willing to work for their education but need a little borrowing power provided from outside.

This bill puts limits on these student loan funds which are going to restrict their availability in my State and probably in many others as well. So that we will have fewer students who are able to take advantage of the hope and the promise of higher education.

One other feature that sticks out in my mind is the ceiling that is also placed on private institutions in issuing tax-exempt bonds, usually dormitory bonds or facilities bonds. The bill provides that these may still be issued and then sets on such restrictive caps that they probably will not be issued.

So education gets nailed four times in a row, that is, higher education. I would remind those who might be watching, those insomniacs who may still be alive, that the gentleman from Washington [Mr. LOWRY] has already pointed out that education, that is, elementary and secondary education in his State, because of the nondeductibility of sales taxes, is already going to suffer grievously. Not only in his State, but every State that relies on sales tax to furnish education to the young people of those States.

I want to get back to pensions a little bit because I think that is extremely important. It fits into the category that I call savings and capital accumulation. It is an important source of capital for this country, and it is also an important bulwark of our Social Security System, which, because of its very existence, the pension system, it prevents undo pressure on a precariously financed Social Security System to develop more and more money to take care of retired persons. A good pension and a Social Security System working together can provide reasonable comfort in old age for all of us we hope.

Now, we know on the savings side that we have killed the capital gains rate. Perhaps the most serious single flaw in the bill and the most serious blow to capital accumulation.

□ 2055

We know that we have gotten rid of the ITC, the most important corporate savings incentive. We know we have stretched appreciation, the next largest capital accumulation incentive. We have talked about IRA's; we have talked about 401(k)'s; we have talked about 403(b)'s.

We have not dealt very much on pensions. But this bill not only reduces the amounts that can be set aside to provide guaranteed benefit pensions and guaranteed contributions pension, but worse of all, it establishes a whole new set of rules for pension programs.

I would like to suggest that in the last 5 years, we have made major modifications in pension programs in the United States 4 years out of 5. The net result has been a termination of pension programs throughout the United States.

I submit that in my State, small businesses are turning to their lawyers and actuaries and saying, "For my 5 or 10 or 100 employees, I cannot afford the overhead to rewrite my pension plan. Therefore, I am going to kill my pension plan. I am going to put the money in the pay envelopes and everybody will get more that way."

Everybody will, but they probably will not save it. As these pension plans go out of business for no good reason, some new antidiscrimination rules which are totally unneeded—we have plenty of antidiscrimination rules and top-heavy rules and the rest in our pension laws, our ERISA bills—but because we have sought in this bill to adorn them, to augment them, it will mean that every pension system in the United States, almost, will have to be rewritten.

More will go out of business meaning less savings for American industry, for investment to put American jobs back in motion. It means less security for American workers, people of all kinds. Worst of all, it means more pressure on Social Security; more pressure on Social Security means more contribution and, again, a disincentive to work because of the higher cut that the Government takes out in the most regressive tax we have for our Social Security payment.

I do not know how we could make so many mistakes in one bill without really exercising the combined ingenuity of all the 200 IQ geniuses in the United States. One would think that we had tried to shipwreck America intentionally. I do not believe that, of course, but it looks to me like that is the result of the bill.

Yet, we hear these wonderful payings of praise for tax reform. Why? Because tax reform is a good buzzword. Why? Because the President is for it and the President is popular and he is a good man. Or because some editorialist, who has never opened the pages, those 2,000 pages that the gentleman from Texas [Mr. ARCHER] has decided that he or she is bored with the current Tax Code and that reform would be a nice thing.

For those of us who have had the unfortunate duty to have to read this the results are very painful. It means that we have to swim upstream against the tide of public opinion, against the editorialists, against the academicians. We are the ones who have to cry out the warning.

This bill is a problem. It is antigrowth; it is antimanufacturing; it is antisavings; it is anticapital accumulation; it is antieducation; it is anticharities; it is antiexport; it is anticompetitive.

Can we stand all these things? Yes, we can stand a few of them, or we could stand all of them if they were only modestly anti. The trouble is, the bill is fairly aggressively anti and it covers the whole range of American activities.

It is not just a tax bill; it is a housing bill; it is an education bill; it is a charities bill; it is an oil-drilling bill; it is a manufacturing bill; it is an exporting bill; it is an industrial policy bill.

Every time we make a tax decision, we effect a very vital dynamic function in American society. In this bill, we have effected too many of them in too disruptive a manner and the net result is going to be difficulty for the United States of America.

Is it overwhelming difficulty? No; I do not think so. The people in the economy have been able to take insults in the past and I do not think this will sink it.

But I do think it will make our life more uncomfortable needlessly. Therefore, it is my hope that when the gentleman from Texas offers his motion tomorrow to recommit the bill to committee, that this House will demonstrate the good sense that it sometimes shows and recommit the bill so that the committee can do what the gentleman from Texas [Mr. ARCHER] wants it to do; that is, to repair the bill. Not kill it, because everybody in this country, including us, wants tax reform. We just do not want tax reform at a cost that inflicts too much pain and too much suffering on our economy.

Again, I thank the gentleman for his contribution and for allowing me to participate.

Mr. ARCHER. Mr. Speaker, the gentleman has made some very, very outstanding comments and hopefully we will have a result that will benefit this Nation tomorrow.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YOUNG of Florida (at the request of Mr. MICHEL), for today, on account of attendance at a funeral.

Mr. BOLAND (at the request of Mr. WRIGHT), for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. WALKER) to revise and extend their remarks and include extraneous material:)

Mr. PARRIS, for 5 minutes, on September 26.

Mr. MYERS of Indiana, for 60 minutes, on October 1.

Mr. DIOGUARDI, for 5 minutes, today.

Mr. CRANE, for 60 minutes, on October 2.

(The following Members (at the request of Mr. SEIBERLING) to revise and extend their remarks and include extraneous material:)

Mr. RAY, for 5 minutes, today.

Mr. LAFALCE, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. LEHMAN of Florida, for 5 minutes, today.

Mr. LOWRY of Washington, for 5 minutes, today.

Mr. SEIBERLING, for 30 minutes, on September 25 and 26.

Mr. BEDELL, for 60 minutes, on September 26.

Mr. STOKES, for 60 minutes, on October 7.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. DINGELL, during consideration of H.R. 5300, in the Committee of the Whole, today.

Mr. MCCANDLESS, prior to vote on passage of H.R. 5300, in the Committee of the Whole, today.

(The following Members (at the request of Mr. WALKER) and to include extraneous matter:)

Mr. KEMP.
Mr. PACKARD.
Mr. CLINGER.
Mr. GREEN.
Mr. HENRY.
Mr. CONTE.
Mr. GOODLING.
Mr. LIVINGSTON.
Mr. HORTON in two instances.
Mr. LAGOMARSINO in two instances.
Mr. SCHULZE.
Ms. SNOWE.
Mrs. JOHNSON.
Mr. DAUB in three instances.

(The following Members (at the request of Mr. SEIBERLING) and to include extraneous matter:)

Mr. COLEMAN of Texas.
Mr. FAUNTROY.
Mr. DORGAN of North Dakota in two instances.
Mr. ST GERMAIN.
Mr. EDWARDS of California.
Mr. FRANK.
Mr. KILDEE.
Mr. SMITH of Florida.
Mr. ACKERMAN.
Mr. TORRES.
Mr. ROYBAL.
Mr. BORSKI.
Mr. HAMILTON in two instances.
Mr. HOYER in two instances.
Mr. HERTEL of Michigan.
Mr. DELLUMS.
Mr. CLAY in two instances.
Mr. BRYANT.
Mr. MILLER of California.
Mr. WEISS in two instances.

ADJOURNMENT

Mr. FRENZEL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 1 minute p.m.), the House adjourned until tomorrow, Thursday, September 25, 1986, at 10 a.m.

OATH OF OFFICE, MEMBERS, RESIDENT COMMISSIONER, AND DELEGATES

The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members, Resident Commissioner, and Delegates of the House of Representatives, the text of which is carried in 5 U.S.C. 3331:

> "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by the following Member of the 99th Congress, pursuant to the provisions of 2 U.S.C. 25:

NEIL ABERCROMBIE, First Hawaii.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4258. A letter from the Deputy Assistant Secretary of Defense, transmitting notification that the Department of the Navy intends to exclude the clause concerning examination of records by the Comptroller General from three contracts, pursuant to 10 U.S.C. 2313(c); to the Committee on Armed Services.

4259. A letter from the Secretary of Health and Human Services, transmitting the status and accomplishments of runaway centers receiving grants under the Runaway and Homeless Youth Act for fiscal year 1985, pursuant to 42 U.S.C. 5715; to the Committee on Education and Labor.

4260. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Toward a National Plan to Combat Alcohol Abuse and Alcoholism", pursuant to Public Law 98-509, section 208

(98 Stat. 2363); to the Committee on Energy and Commerce.

4261. A letter from the Director, Bureau of Educational and Cultural Affairs, U.S. Information Agency, transmitting notification of a proposed waiver of limitation on foreign travel by a citizen who is financed by grants from the Private Sector Program, pursuant to 22 U.S.C. 2460 nt.; to the Committee on Foreign Affairs.

4262. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Impact of Medicare Prospective Payment System on Admissions; Need for Volume Adjusters and/or Pre-Admission Certification," pursuant to 42 U.S.C. 1395ww (Pub. L. 98-21, sec. 603(a)(2)(A)); to the Committee on Ways and Means.

4263. A letter from the Secretary of Energy, transmitting the 24th quarterly report on general biomass energy development, pursuant to Public Law 96-294, section 218(a); jointly, to the Committees on Agriculture, Energy and Commerce, and Science and Technology.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. WHITTEN: Committee on Appropriations. A report on revised allocations of subdivision of budget totals for fiscal year 1987 (Rept. 99-872). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 1542. A bill to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System. (Rept. 99-873). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5570. A bill to designate the U.S. courthouse and customhouse at 601 West Broadway, Louisville, KY, as the Gene Snyder United States Courthouse and Customhouse. (Rept. 99-874). Referred to the House Calendar.

Mr. BEILENSON: Committee on Rules. H. Res. 559. A resolution providing for the consideration on H.R. 3810, a bill to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes. (Rept. 99-875). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5180. A bill to designate the Federal building at 111 W. Huron Street, Buffalo, NY, as the "Thaddeus J. Dulski Federal Building" (Rept. 99-876). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4156. A bill to designate the Federal building and U.S. courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse" (Rept. 99-877). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5446. A bill to designate the Federal building and U.S. Post Office located at 315 West Allegan Street in Lansing, MI, as the "Charles E. Chamberlain Federal Building and United States Post Office" (Rept. 99-878). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5470. A bill to designate the Federal courthouse for the Eastern District of Virginia in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse"; with amendments (Rept. 99-879). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5181. A bill to designate the U.S. courthouse at 68 Court Street, Buffalo, NY, as the "Michael J. Dillon Memorial United States Courthouse". Rept. 99-880. Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4118. A bill to designate the building commonly known as the Old Post Office in Worcester, MA, as the "Harold D. Donohue Federal Building" (Rept. 99-881). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 3951. A bill to designate the building which will house the Federal Court for the Eastern District of Texas in Lufkin, TX as the "Ward R. Burke Federal Court Building"; with amendments (Rept. 99-882). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5020. A bill to expand the U.S. Secret Service Uniformed Division protective jurisdiction; with an amendment (Rept. 99-883). Referred to the Committee of the Whole House on the State of the Union.

Mr. DERRICK: Committee on Rules. H. Res. 560. A resolution providing for the consideration of H.J. Res 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes. (Rept. 99-884). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. MICA (for himself and Ms. SNOWE):

H.R. 5584. A bill to prohibit further construction on the U.S. Embassy in Moscow; to the Committee on Foreign Affairs.

By Mr. LEWIS of Florida:

H.R. 5585. A bill to require the Administrator of Veterans' Affairs to establish a pilot program to contract for veterans' health care in the areas which will be served upon the completion of the West Palm Beach Veterans' Administration Medical Center; to the Committee on Veterans' Affairs.

By Mrs. SCHROEDER:

H.R. 5586. A bill to amend title 11 of the United States Code to except from discharge under chapter 13 claims for certain willful and malicious injuries and for debts arising from the debtor's operation of a motor vehicle while intoxicated; to the Committee on the Judiciary.

By Mr. FLORIO (for himself, Mr. DASCHLE, Mr. EDGAR, Mr. GUARINI, Mr. HOWARD, Mr. SIKORSKI, Mr. WALGREN, Mr. WAXMAN, and Mr. WYDEN):

H.R. 5587. A bill to amend title XI of the Social Security Act to require hospitals participating in the Medicare and Medicaid Programs to establish protocols for organ procurement, to establish standards for organ procurement agencies, and for other purposes; jointly, to the Committees on Ways and Means, and Energy and Commerce.

By Mr. GEPHARDT (for himself, Mr. DASCHLE, Mr. CHAPMAN, Mr. HUBBARD, Mr. PENNY, Mr. MOODY, Mr. WATKINS, Mr. BRYANT, Mr. KASTENMEIER, Mr. SIKORSKI, Mr. EVANS of Illinois, Mr. DELLUMS, Mr. OBEY, Mr. WILLIAMS, Mr. ANTHONY, Mr. ALEXANDER, Mr. SABO, Mr. ENGLISH, Ms. KAPTUR, Mr. CONYERS, Mr. TOWNS, Mr. BEDELL, Mr. OBERSTAR, Mr. WEAVER, Mr. LELAND, and Mr. VOLKMER):

H.R. 5588. A bill to provide price and income protection to family farmers through the management of the supply of the 1987 through 1999 crops of certain agricultural commodities, and for other purposes; to the Committee on Agriculture.

By Mr. HOYER:

H.R. 5589. A bill to amend title 5, United States Code, to provide that the Government's health insurance program for Federal employees include benefits relating to cleft lip and cleft palate; to the Committee on Post Office and Civil Service.

By Mr. HUGHES:

H.R. 5590. A bill to amend title 28, United States Code, to encourage alternative dispute resolution; to the Committee on the Judiciary.

By Mr. MURTHA (for himself, Mr. REGULA, Mr. GAYDOS, Mr. APPLEGATE, Mr. RITTER, Mrs. BENTLEY, Mr. SCHULZE, Mr. KINDNESS, Mr. OBERSTAR, Mr. SHELBY, Mr. MURPHY, Mr. RIDGE, Mr. KOLTER, Mr. VISCLOSKY, Mr. WALGREN, Mr. BEVILL, Mr. LIPINSKI, Mr. CLINGER, Mr. YATRON, Mr. RAHALL, Mrs. COLLINS, Mr. STRANG, Mr. ERDREICH, and Mr. DINGELL):

H.R. 5591. A bill to amend the Steel Import Stabilization Act; to the Committee on Ways and Means.

By Mr. SHAW:

H.R. 5592. A bill to amend the Rehabilitation Act of 1973 to provide that a drug abuser shall not be considered a handicapped individual for purposes of that act, and for other purposes; to the Committee on Education and Labor.

By Mr. WHITTEN:

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. LIVINGSTON:

H.J. Res. 739. Joint resolution to proclaim December 7, 1986, as "My Nationality American Day"; to the Committee on Post Office and Civil Service.

By Ms. SNOWE (for herself, Mr. GUNDERSON, Mr. LAGOMARSINO, Mr. FRENZEL, Mr. FUSTER, Mr. WOLF, Mr. STOKES, Mr. CHAPPIE, Mr. EVANS of Iowa, Mr. FAZIO, Mr. CROCKETT, Mr. SMITH of Florida, Mr. BONER of Tennessee, Mr. LIPINSKI, Mr. KASICH, Mr. WORTLEY, Mr. HORTON, Mrs. BURTON of California, Mr. FUQUA, Mr. CONYERS, Mr. DE LUGO, Mr. CONTE, Mr. FEIGHAN, Mr. MATSUI, Mr. LUNGREN, Mr. RANGEL, Mr. JENKINS, Mrs. BENTLEY, Mr. DYMALLY, Mr. MORRISON of Connecticut, Mr. TAUKE, Mr. OWENS, Mr. WALGREN, Mr. WYDEN, Mr. BOSCO, Mr. AKAKA, Mr. ROE, Mrs. BOXER, Mr. KOLTER, Mr. DE LA GARZA, Mr. BLAZ, Mr.

FROST, Mr. FOGLIETTA, Mr. HUGHES, Mr. LANTOS, Mr. LEHMAN of Florida, Mr. LEACH of Iowa, and Mr. MARTINEZ):

H.J. Res. 740. Joint resolution to designate February 4, 1987, as "National Women in Sports Day"; to the Committee on Post Office and Civil Service.

By Mr. FORD of Michigan:

H. Con. Res. 394. Concurrent resolution to correct technical errors in the enrollment of the bill, S. 1965; considered and passed.

By Mr. DORGAN of North Dakota:

H. Res. 561. Resolution expressing the sense of the House of Representatives that the U.S. Government should negotiate a multilateral wheat production agreement with the other wheat exporting countries; jointly, to the Committees on Foreign Affairs, and Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. FAUNTROY:

H.R. 5593. A bill for the relief of Joseph A. Bosco and Carol B. Bosco; to the Committee on the Judiciary.

By Mr. KEMP:

H.R. 5594. A bill to direct the Administrator of Veterans' Affairs to release a reverter interest of the United States in certain real property in Canandaigua, NY, previously conveyed by the United States to Sonnenberg Gardens, a nonprofit education institution of the State of New York; to the Committee on Veterans' Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1086: Mr. BURTON of Indiana.

H.R. 1436: Mr. WIRTH.

H.R. 1575: Mr. SIKORSKI.

H.R. 2320: Ms. MIKULSKI.

H.R. 2761: Mr. FAUNTROY, Mr. FEIGHAN, Mr. GARCIA, Mr. KASTENMEIER, and Mr. LIPINSKI.

H.R. 3436: Mr. WORTLEY.

H.R. 3663: Mr. NELSON of Florida, Mr. VENTO, and Mr. TOWNS.

H.R. 3800: Mr. MACKAY and Mr. GEJDENSON.

H.R. 3865: Mr. DUNCAN and Mrs. ROUKEMA.

H.R. 4057: Mr. LOEFFLER, Mr. LEWIS of Florida, and Mr. MARLENEE.

H.R. 4183: Mrs. MEYERS of Kansas and Mr. HOPKINS.

H.R. 4499: Mr. MARTINEZ.

H.R. 4500: Mr. MARTINEZ.

H.R. 4534: Mr. EVANS of Iowa, Mr. SKELTON, Mr. EMERSON, Mrs. MARTIN of Illinois, and Mr. GUNDERSON.

H.R. 4633: Mr. SHELBY and Mr. DAVIS.

H.R. 4715: Mr. SCHUETTE, Mr. JONES of Oklahoma, Mr. EMERSON, and Mr. DURBIN.

H.R. 4717: Mr. LIGHTFOOT.

H.R. 4766: Mr. BARTLETT.

H.R. 5053: Mr. SCHUETTE.

H.R. 5180: Mr. KEMP.

H.R. 5181: Mr. KEMP.

H.R. 5274: Mr. BILIRAKIS and Mr. FEIGHAN.

H.R. 5284: Mr. DOWNEY of New York.

H.R. 5350: Mr. PETRI, Mr. ROBINSON, Mr. FUQUA, Mr. DANIEL, Mr. ROSE, Mr. LEATH of Texas, Mr. FAUNTROY, Mr. EDWARDS of California, Mr. WATKINS, Mr. MARTIN of New York, Mr. KRAMER, Mr. DORGAN of North Dakota, Mr. DYMALLY, Mr. WHITLEY and Mr. BARTON of Texas.

H.R. 5376: Mr. DAVIS and Mr. NIELSON of Utah.

H.R. 5425: Mr. KOLTER and Mr. FISH.

H.R. 5456: Mr. WRIGHT.

H.R. 5488: Mr. ROGERS.

H.R. 5499: Mr. TRAXLER, Mr. FRANKLIN, and Mr. DERRICK.

H.R. 5538: Mr. MORRISON of Connecticut and Mr. TOWNS.

H.J. Res. 524: Mr. GEKAS, Mr. HOPKINS, Mr. MORRISON of Connecticut, Mr. JENKINS, Mr. FAZIO, Mr. HEFNER, Mr. SMITH of Florida, Mr. MANTON, Mr. DORNAN of California, Mr. KOLTER, Mr. JEFFORDS, Mr. EARLY, Mr. FUQUA, and Mr. REGULA.

H.J. Res. 535: Mr. HERTEL of Michigan, Mr. GUARINI, and Mr. FAZIO.

H.J. Res. 550: Mr. LUNGREN, Mr. LEHMAN of Florida, Mr. MANTON, Mr. GREEN, Mr. LEWIS of California, Mr. BLILEY, Mr. LELAND, Mr. FEIGHAN, Mr. ORTIZ, Mr. GUARINI, Mr. LEVINE of California, Mr. LUKEN, Mr. BONIOR of Michigan, Mr. YOUNG of Missouri, Ms. MIKULSKI, Mr. DELLUMS, Mr. FISH, Mr. DANNEMEYER, Mr. DORNAN of California, and Mr. MRAZEK.

H.J. Res. 602: Mrs. MARTIN of Illinois, Mr. BATEMAN, and Mr. SIKORSKI.

H.J. Res. 620: Mrs. MARTIN of Illinois, Mr. GRAY of Illinois, Mr. HOPKINS, Mr. KOLTER, Mr. KILDEE, Mr. JONES of North Carolina, Mr. AKAKA, Mr. BLAZ, Mr. CONYERS, Mr. DIXON, Mr. DONNELLY, Mr. LUNGREN, Mr. MARKEY, Mr. MAVROULES, Mr. MURPHY, Mr. SAVAGE, Mr. DENNY SMITH, Mr. SPRATT, Mr. TALLON, Mr. TORRICELLI, Mr. WAXMAN, Mr. YOUNG of Alaska, Mr. ANTHONY, Mr. BOSCO, Mr. DASCHLE, Mr. CROCKETT, Mr. ROTH, Mr. SISISKY, Mr. BRYANT, Mr. ECKERT of New York, Mr. PEPPER, and Mr. KEMP.

H.J. Res. 638: Mr. DYMALLY, Mr. MCCOLLUM, Mr. HYDE, Mr. KOSTMAYER, Mr. HOWARD, Mr. LEVIN of Michigan, Mrs. MEYERS of Kansas, Mr. LUNGREN, Mr. OLIN, Mr. SOLARZ, Mr. LAGOMARSINO, Mr. BEDELL, Mr. VALENTINE, Mr. BRYANT, Mr. SAVAGE, Mr. WORTLEY, Mr. ROE, Mr. HEFNER, Mr. DAUB, Mr. MRAZEK, Mr. DELLUMS, Mr. NIELSON of Utah, and Mr. FISH.

H.J. Res. 655: Mr. BARNARD, Mr. BLILEY, Mr. BONIOR of Michigan, Mr. COURTER, Mr. EDGAR, Mr. FLORIO, Mr. FORD of Tennessee, Mr. MANTON, Mr. MONSON, Mrs. ROUKEMA, Mr. THOMAS of Georgia, Mr. WIRTH, and Mr. LIVINGSTON.

H.J. Res. 656: Mrs. VUCANOVICH, Mr. MARLENEE, and Mr. CHAPPELL.

H.J. Res. 671: Mr. FROST, Mr. HORTON, Mr. GRAY of Pennsylvania, Mr. LEHMAN of California, Mr. LIPINSKI, Mr. BEVILL, Mr. ATKINS, Mrs. BURTON of California, Mr. DARDEN, Mr. SABO, Mr. DONNELLY, Mr. DORGAN of North Dakota, Mr. BUSTAMANTE, Mrs. LLOYD, Mr. RANGEL, Mr. WYDEN, Mr. VANDER JAGT, Mr. TALLON, Mr. FEIGHAN, Mr. KOLTER, and Mr. RITTER.

H.J. Res. 693: Mr. YOUNG of Florida, Mr. RANGEL, Mr. MINETA, Ms. KAPTUR, Mr. HUGHES, Mr. SKELTON, Mr. MOAKLEY, Mr. RAHALL, Mr. STRANG, Mr. COYNE, Mr. DOWDY of Mississippi, Mr. DE LUGO, Mr. FROST, Mr. CROCKETT, Mr. PASHAYAN, Mrs. BYRON, Mr. BROWN of California, Mrs. BOXER, Mr. STOKES, Mr. LAFALCE, Ms. OAKAR, Mr. JONES of North Carolina, Mr. HENRY, Mr. LEVIN of Michigan, Mr. TOWNS, Mr. SOLARZ, Mr. WYLIE, Mrs. LONG, Mr. TALLON, Mr. SCHUMER, Mr. CONTE, Mr. KOSTMAYER, Mr. FEIGHAN, Mr. LOWERY of California, Mr. RUSSO, Mr. BIAGGI, Mr. WALGREN, Mr. TAUKE, and Mr. HAMILTON.

H.J. Res. 704: Mr. HENDON, Mr. WIRTH, Mr. PANETTA, Mr. WHEAT, Mr. FRANK, Mr. KILDEE, Mr. DYMALLY, Ms. OAKAR, Mr. DAUB, Mr. VALENTINE, Mr. LEVIN of Michigan, Mr. OWENS, Mr. STOKES, Mr. WYLIE, Mr. BERMAN, Mr. LAGOMARSINO, Mr. ROE, Mr. MONSON, Mr. BROWN of California, Mrs. BOXER, Mr. FISH, Mr. BEVILL, Mr. FEIGHAN, and Mr. BOLAND.

H.J. Res. 709: Mr. FOLEY, Mr. KOLTER, Mr. GRAY of Pennsylvania, Mr. ROE, Mrs. BOXER, Mr. HAMMERSCHMIDT, Mr. SMITH of Florida, Mr. FEIGHAN, Mr. CHAPPIE, Mr. LIVINGSTON, Mr. LOWRY of Washington, Mr. FRANK, Mr. YOUNG of Alaska, Mr. YATRON, Mr. ROYBAL, Mr. YOUNG of Missouri, Mr. MRAZEK, Mr. LOWERY of California, Mr. RINALDO, Mr. MARTIN of New York, Mr. MARTINEZ, Mr. SABO, Mr. WEISS, and Mr. ANDERSON.

H.J. Res. 733: Mr. MRAZEK, Mr. HERTEL of Michigan, Mr. LEHMAN of Florida, Mr. LUNDINE, Mr. LEACH of Iowa, Mr. MCDADE, Mr. LIGHTFOOT, Mr. LUNGREN, and Mr. MCMILLAN.

H. Con. Res. 225: Mr. MCGRATH, Mr. NELSON of Florida, Mr. FISH, Mr. COOPER, Mr. LEHMAN of California, and Mr. TOWNS.

H. Con. Res. 388: Mr. MARTINEZ, Mr. WHITTAKER, Mr. BEVILL, Mr. BERMAN, and Mr. RITTER.

H. Res. 469: Mr. ATKINS, Mr. GLICKMAN, Mr. HOYER, Mr. MACK, Ms. MIKULSKI, Mr. RICHARDSON, and Mr. TAUKE.

H. Res. 522: Mr. WALGREN.

H. Res. 540: Mr. LAGOMARSINO, Mr. MARLENEE, Mr. RITTER, Mr. NIELSON of Utah, and Mr. ERDREICH.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 3810

By Mr. LUNGREN:

—Strike out sections 302 through 305 and insert in lieu thereof the following (and conform the table of contents accordingly):

SEC. 302. SEASONAL AGRICULTURAL WORKER PROGRAM.

(a) PROVIDING NEW "N" NONIMMIGRANT CLASSIFICATION FOR SEASONAL AGRICULTURAL WORKERS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by this Act, is further amended—

(1) by inserting "(other than seasonal agricultural services in perishable commodities described in section 217(h)(1))" in subparagraph (H)(ii)(a) after "agricultural labor or services";

(2) by striking out "or" at the end of subparagraph (L);

(3) by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or"; and

(4) by adding at the end the following new subparagraph:

"(N) an alien having a residence in a foreign country which he has no intention of abandoning who is coming to the United States to perform seasonal agricultural services in perishable commodities (as defined in section 217(h)(1)).".

(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—Chapter 2 of title II is amended by adding after section 216, as added by section 301(c) of this title, the following new section:

"ADMISSION OF SEASONAL AGRICULTURAL WORKERS

"SEC. 217. (a) ESTABLISHMENT OF SEASONAL AGRICULTURAL WORKER PROGRAM.—The Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program (hereafter in this section referred to as 'the program') for the admission into the United States of seasonal agricultural workers (as defined in subsection (h)(2)).

"(b) ADMISSION OF SEASONAL AGRICULTURAL WORKERS.—A petition to import an alien as a seasonal agricultural worker (as defined in subsection (h)(2)) may not be approved by the Attorney General unless the petitioner certifies to the Attorney General the following:

"(1) SEASONAL AGRICULTURAL EMPLOYER IN PERISHABLE COMMODITIES.—

"(A) NATURE OF PETITIONER.—The petitioner employs (or contracts for the employment of) individuals in seasonal agricultural services in perishable commodities, or is an association representing such employers or contractors.

"(B) REQUIREMENTS OF PETITIONS.—For each month concerned and for each agricultural employment region (designated under subsection (i)(1)) in which the petitioner is operating, the petition must specify—

"(i) the total number and qualifications of individuals in seasonal agricultural services in perishable commodities required in each month, and

"(ii) the type of agricultural work required to be performed by these workers.

"(2) WILL MAKE RECRUITING EFFORT.—The petitioner will make a good faith effort to recruit (as required by the Attorney General in regulations) in the area of intended employment, including the listing of employment opportunities with the appropriate office of a governmental employment service, and will accept for employment able, willing, and qualified workers referred by such office to perform seasonal agricultural services in perishable commodities until the commencement of the seasonal agricultural services for which the petitioner has recruited.

"(3) REPORT ON RECRUITMENT.—In the case of a petitioner that has employed seasonal agricultural workers during the previous 12 months, the petitioner will provide a summary of his efforts to recruit domestic workers to perform seasonal agricultural services in perishable commodities during that period.

"(4) ADEQUATE WORKING CONDITIONS.—The petitioner will provide such wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed.

"(5) HOUSING.—The petitioner will furnish housing for seasonal agricultural workers or, at the petitioner's option and instead of arranging for suitable housing accommodations, will substitute payment of a reasonable housing allowance to the provider of the housing, but only if the housing is otherwise available within the approximate area of employment.

"(6) NOTICE TO ATTORNEY GENERAL OF EMPLOYMENT.—The petitioner will notify the Attorney General of the entering into, or termination, of an employment relationship with a seasonal agricultural worker not later than 72 hours of the time the relationship is entered into or terminated.

"(7) EMPLOYMENT ONLY IN SEASONAL AGRICULTURAL EMPLOYMENT IN PERISHABLE COMMODITIES.—The petitioner will not employ a seasonal agricultural worker for services other than seasonal agricultural employment in perishable commodities.

"(8) LIMITATION ON THE USE OF "N" WORKERS IN PERISHABLE COMMODITIES.—The petitioner will not employ (or petition for the employment of) a seasonal agricultural worker in any job opportunity when an application for employment in that job opportunity under section 101(a)(15)(H)(ii)(a) is pending or approved.

"(9) JOB INFORMATION DISCLOSURE TO "N" WORKERS.—The petitioner shall, upon request, disclose in writing to seasonal agricultural workers when an offer of employment is made, the place of employment, the wage rates, the employee benefits to be provided, and any costs to be charged for each of them, the crops and kinds of activities for which the worker may be employed, and the anticipated period of employment.

"(c) SUSPENSION OF CERTIFICATION.—The Attorney General shall suspend a petitioner's certification under subsection (b) if any of the following conditions exist:

"(1) LABOR DISPUTE.—There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

"(2) VIOLATION OF TERM OF PREVIOUS CERTIFICATION.—

"(A) IN GENERAL.—The employer at any time during the previous two-year period employed seasonal agricultural workers and the Attorney General has determined, after notice and opportunity for a hearing, that the employer at any time during that period—

"(i) substantially violated an essential term or condition of the labor certification under subsection (b) with respect to the employment of domestic or nonimmigrant workers, or

"(ii) has not paid any penalty for such violations which have been assessed by the Attorney General.

"(B) DISQUALIFICATION LIMITED TO ONE YEAR.—No employer may have its certification suspended under clause (A) for more than one year for any violation described in that clause.

"(3) NOT PROVIDING FOR WORKERS' COMPENSATION.—The employer has not provided the Attorney General with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a seasonal agricultural worker, and a labor certification with respect to such worker, may be filed by an association representing seasonal agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If such association is a joint or sole employer of seasonal agricultural workers, the certifications obtained under this section by the association may be used for the job opportunities of any of its members requiring such workers to perform agricultural services of a seasonal nature for which the certifications were obtained.

"(3) TREATMENT OF VIOLATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual member of such an association is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the member, the suspension shall apply only to that member and does not apply to the association unless the Attorney General determines that the association or other member participated in, or had knowledge of and derived benefit from, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—If an association representing agricultural employers as an agent, joint employer, or employer is determined to have committed an act that under subsection (c)(2) results in the suspension of certification with respect to the association, the suspension shall apply only to the association and does not apply to any individual member of the association unless the Attorney General determines that the member participated in, or had knowledge of and derived benefit from, the violation.

"(e) EXPEDITED ADMINISTRATIVE APPEAL OF SUSPENSION OF CERTIFICATION UNDER SUBSECTION (c)(2).—

"(1) EXPEDITED PROCEDURES.—The Attorney General shall provide for an expedited procedure for the review of a suspension of certification under subsection (c)(2) or, at the applicant's request, for a de novo administrative hearing respecting the suspension. In the case of a request for such a review or hearing, the Attorney General shall provide that the review or hearing take place not later than 72 hours after the time the request is submitted.

"(f) HEARING DE NOVO BEFORE THE UNITED STATES DISTRICT COURT.—

"(1) JURISDICTION.—On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in the District of Columbia, has jurisdiction to enjoin the Attorney General from suspending the complainant's certification under the program and to order the reinstatement of complainant's certification if it is improperly suspended. In such a case, the court shall determine the matter de novo and the burden is on the Attorney General to sustain his suspension.

"(2) PRECEDENCE OF CASES.—Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

"(g) MISCELLANEOUS PROVISIONS.—

"(1) AUTHORITY.—The Attorney General is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

"(2) APPROPRIATE DOCUMENTATION.—The Attorney General shall provide for such endorsement of entry and exit documents of seasonal agricultural workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(3) PREEMPTION.—The provisions of this section preempt any State or local law regulating admissibility of special agricultural workers.

"(h) DEFINITIONS.—For purposes of this section:

"(1) SEASONAL AGRICULTURAL SERVICES IN PERISHABLE COMMODITIES.—The term 'season-

al agricultural services in perishable commodities' means services in agricultural employment including planting, cultural practices, production, cultivation, growing, and harvesting involving perishable commodities (as defined by regulations of the Secretary of Agriculture).

"(2) SEASONAL ARGICULTURAL WORKER.—The term 'seasonal agricultural worker' means a nonimmigrant described in section 101(a)(15)(N).

"(3) CARIBBEAN BASIN.—The terms 'Caribbean Basin' and Caribbean Basin Countries' include those countries eligible to be designated by the President as 'beneficiary countries' under section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)).

"(i) ESTABLISHMENT OF NUMERICAL LIMITATIONS BY AGRICULTURAL EMPLOYMENT REGION.—

"(1) ESTABLISHMENT OF AGRICULTURAL EMPLOYMENT REGION.—For purposes of the administration of the program the Attorney General shall designate not more than 10 agricultural employment regions within the United States. The entire United States shall be encompassed by the area of all such regions.

"(2) NUMERICAL LIMITATIONS.—After considering the factors described in paragraph (3), if the Attorney General determines that seasonal agricultural workers are required for a month for an agricultural employment region, the Attorney General shall establish a numerical limitation on the number of nonimmigrant visas that may be issued for such workers for that month for that region, except until the end of the third year after the effective date of this Act, the Attorney General may not establish a numerical limitation on the number of such visas that may be issued at any given time in excess of 350,000.

"(3) FACTORS IN DETERMINATION.—In making the determination and establishing numerical limitations under paragraph (2), the Attorney General shall—

"(A) base the determinations and limitations on petitions filed under subsection (b)(1),

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts understaken by the Secretary of Labor under section 303(c)(1) of the Immigration Control and Legalization Amendments Act of 1986, and

"(D) consult with the Secretary of Agriculture.

"(4) NUMERICAL LIMITATIONS AFTER THREE YEARS.—The Attorney General shall establish at the end of the third year after the effective date of this Act, a numerical limit on the total number of seasonal agricultural workers to be admitted into all employment regions in the United States under the program at any given time. In establishing a numerical limit under this paragraph, the Attorney General shall—

"(A) consider petitions filed under subsection (b)(1) during the preceding years of the program,

"(B) take into consideration the historical employment needs of agricultural employers and the availability of able, willing, and qualified domestic labor,

"(C) take into consideration the recruitment efforts undertaken by the Secretary of Labor under section 303(c)(1) of the Immigration Control and Legalization Amendments Act of 1986, and

"(D) consult with the Secretary of Agriculture.

"(5) CHANGES IN NUMERICAL LIMITATIONS IN EXTRAORDINARY CIRCUMSTANCES.—

"(A) INADEQUATE MONTHLY AND REGIONAL LIMITATIONS.—If—

"(i) a numerical limitation has been established under paragraph (2) or (4) for a region for a month, and

"(ii) a petitioner described in subsection (b)(1) establishes that extraordinary and unusual circumstances have resulted in a significant change in the petitioner's need for seasonal agricultural workers specified in the petition or in the availability of domestic workers who are able, willing, and qualified to perform seasonal agricultural employment, the petitioner may apply to the Attorney General (in such form and manner as the Attorney General shall provide) for an increase in the numerical limitations otherwise established under paragraphs (2) and (4) to accommodate the circumstances.

"(B) DETERMINATION.—The Attorney General shall make a determination on such an application within 72 hours of the date the application is completed. To the extent the application is approved, the Attorney General shall provide for an appropriate increase in the appropriate monthly and regional numerical limitation. The Attorney General may expand the number of workers admitted into the region for which the application is approved by transferring seasonal agricultural workers from another region with a lesser need or by admitting additional workers from foreign countries. In the event the limit on the admission of seasonal agricultural workers for all regions in the United States established under paragraph (4) has been reached at the time the application alleging extraordinary and unusual circumstances is filed, the Attorney General shall follow the procedures in subparagraph (C).

"(C) INCREASE IN THE NUMERICAL LIMITATION ESTABLISHED BY THE ATTORNEY GENERAL.—If—

"(i) a numerical limitation on the admission of seasonal agricultural workers into all employment regions has been established by the Attorney General under paragraph (4) and

"(ii) a petitioner described in subsection (b)(1) establishes under the provisions of subparagraph (A) and (B) that extraordinary and unusual circumstances require an increase in the numerical limitation, the Attorney General may provide for an increase in the appropriate numerical limitation in an amount not to exceed 20 percent of the total number authorized for admission into all regions. Any such increase authorized by the Attorney General shall terminate upon the end of circumstances requiring it and shall not result in a permanent expansion of the numerical limit established by the Attorney General under paragraph (4).

"(j) ENTRY OF SEASONAL AGRICULTURAL WORKERS.—

"(1) ANNUAL TIME LIMITATION.—An alien may not be admitted to the United States as a seasonal agricultural worker under section 101(a)(15)(N) for a period of more than nine months in any calendar year. An alien admitted under section 101(a)(15)(N) during any calendar year will not be eligible for readmission into the United States until he has returned to his country of origin for a period of 3 months.

"(2) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a seasonal agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

"(k) WAGES AND WORKING CONDITIONS.—The Attorney General, in consultation with the Secretaries of Agriculture and Labor, shall establish through regulation appropriate wages and working conditions as will not adversely affect the wages and working conditions of United States workers similarly employed in the area of intended employment.

"(l) ALLOCATION AND USE OF VISAS UNDER THE PROGRAM.—

"(1) IN GENERAL.—Nonimmigrant visas for seasonal agricultural workers, within the numerical limitations established under subsection (i)(2), shall be made available as follows:

"(A) PREVIOUS WORKERS.—Visas shall first be made available to qualified nonimmigrants who have previously been admitted as seasonal agricultural workers and who have fully complied with the terms and conditions of any such previous admission, providing priority in consideration among such aliens in the order of the length of time in which they were so employed.

"(B) OTHERS.—Any remaining visas shall be made available to other qualified nonimmigrants.

"(C) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of a seasonal agricultural worker is not entitled to a nonimmigrant visa as such a worker by virture of such relationship, whether or not accompanying or following to join the nonimmigrant, but may be provided a nonimmigrant visa as such a worker if the spouse or child also is qualified as such a worker.

"(D) NO INDIVIDUAL EMPLOYER VISA PETITION REQUIRED.—An alien admitted pursuant to section 101(a)(15)(N) shall not be required to obtain any petition from any prospective employer within the United States in order to obtain a nonimmigrant visa under the program.

"(E) NO LIMITATION TO PARTICULAR EMPLOYER OR CROP.—A nonimmigrant visa issued under the program shall not limit the geographical area (other than by agricultural employment region) within which a seasonal agricultural worker may be employed or limit the type of seasonal agricultural employment services, in perishable commodities, the worker may perform.

"(F) DISQUALIFICATION FROM FEDERAL ASSISTANCE.—A seasonal agricultural worker under the program is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government.

"(G) ALLOCATION OF VISAS TO CARIBBEAN BASIN COUNTRIES.—The Attorney General, in consultation with the Secretaries of State and Agriculture, shall establish through regulations the allocation of visas to workers in specific countries under this section. A percentage of the visas issued shall be allocated to qualified workers in countries located in the Caribbean Basin.

"(m) TRUST FUND FOR PROGRAM ADMINISTRATION.—

"(1) ESTABLISHMENT.—The Attorney General shall establish by regulation a trust fund the purpose of which to provide funds for the administration of the program and to provide a monetary incentive for seasonal

agricultural workers in the program to return to their country of origin upon expiration of their visas under the program. The Attorney General shall promulgate such other regulations as may be necessary to carry out this subsection.

"(2) PAYMENTS INTO TRUST FUND.—In the case of employment of a seasonal agricultural worker under the program—

"(A) EMPLOYER PAYMENT.—The employer shall provide for payment into the trust fund established under this subsection of an amount equivalent to 11 percent of the wages of the worker.

"(B) WORKERS PAYMENT.—There shall be deducted from the wages of the nonimmigrant and paid into such trust fund an amount eqivalent to 20 percent of the wages of the worker.

"(C) WAGES DEFINED.—For purposes of this paragraph, the term 'wages' has the meaning given such term in section 3121(a) of the Internal Revenue Code of 1954, except that for these purposes paragraph (1) of that section shall not apply.

"(3) USE OF AMOUNTS IN TRUST FUND.—

"(A) EMPLOYER PAYMENTS AND INTEREST.—Except as provided in paragraph (B), amounts paid into the trust fund, and interest thereon, shall be used for the purpose of administering the program.

"(B) WORKERS PAYMENT.—Amounts described in paragraph (B) paid into the trust fund with respect to a worker and interest thereon shall be paid to the worker if—

"(i) the worker applies for payment within 30 days of the last day of employment under the program (as verified by the Attorney General) at the United States consulate nearest the worker's residence in the country of origin, and

"(ii) the worker complies with the terms and conditions of the program, including the obligation to be continuously employed (or actively seeking employment) in seasonal agricultural employment in perishable commodities.

"(4) EXPANSION OF CONSULATES.—The Secretary of State is authorized to take such steps as may be necessary in order to expand and establish consulates in foreign countries in which aliens are likely to apply for nonimmigrant status under the program.".

(c) AUTHORIZATIONS OF APPROPRIATIONS FOR SECRETARY OF LABOR.—There are authorized to be appropriated to the Secretary of Labor for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(1) of recruiting domestic workers for temporary services which might otherwise be performed by seasonal agricultural workers described in section 217 of the Immigration and Nationality Act, and

(2) of monitoring terms and conditions under which such temporary and seasonal agricultural workers (and domestic workers employed by the same employers) are employed in the United States.

(d) AUTHORIZATION OF APPROPRIATIONS FOR SECRETARY OF AGRICULTURE.—There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under section 217 of the Immigration and Nationality Act.

(e) PROHIBITING ADJUSTMENT OF STATUS OF SEASONAL AGRICULTURAL WORKERS.—(1) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking out "or" before "(3)" and by inserting before the period at the end the following: "; or (4) an alien (other than an immediate relative as defined in section 201(b)) who entered the United States classified as a nonimmigrant under section 101(a)(15)(N).".

(2) Section 248(1) (8 U.S.C. 1258(1)) is amended by striking out "or (K)" and inserting in lieu thereof "(K), or (N).".

(f) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a), (b), (c), and (e) of this section apply to petitions and applications filed under section 217 of the Immigration and Nationality Act on or after the first day of the twelfth month beginning after the date of the enactment of this Act (hereafter in this section referred to as the "effective date").

(2) No alien may be admitted as a nonimmigrant described in section 101(a)(15)(N) of the Immigration and Nationality Act for any month after the end of the 46-month period beginning on the effective date.

(g) REGULATIONS.—the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall approve all regulations to be issued implementing sections 101(a)(15)(N) and 217 of the Immigration and Nationality Act. Notwithstanding any other provision of law, final regulations to implement such sections shall first be issued, on an interim or other basis, not later than the effective date.

(h) DEPORTATION OF SEASONAL AGRICULTURAL WORKERS FOR FAILURE TO BE EMPLOYED OR SEEK EMPLOYMENT.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; or"; and

(2) by adding at the end the following new paragraph:

"(20) entered the United States as nonimmigrants under section 101(a)(15)(N) and failed to be continuously employed or actively seeking employment in seasonal agricultural employment in perishable commodities (as defined in section 217(h)(1)) in accordance with the usual and customary employment patterns and practices.".

(i) SENSE OF CONGRESS RESPECTING ADVISORY COMMISSION.—It is the sense of Congress that the President should establish an advisory commission which shall consult with the Government of Mexico and the governments of other appropriate countries and advise the Attorney General regarding the operation of the seasonal agricultural worker program established under section 217 of the Immigration and Nationality Act.

(j) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by inserting after the item relating to section 216, as inserted by section 301(f) of this title, the following new item:

"Sec. 217. Seasonal agricultural worker program.".

In the heading to section 403, insert "AND SEASONAL AGRICULTURAL PROGRAM" after "PROGRAM", and conform the table of contents accordingly.

In section 403(a), insert "and the seasonal agricultural worker program (under section 217 of the Immigration and Nationality Act)" after "(H-2A) program".

In section 403(a)(1), strike out "the" and insert in lieu thereof "each such program".

In section 403(a)(2), insert "respective" before "program".

In sections 403(a)(3) and (4) (other than subparagraph (D)), strike out "program" and insert in lieu thereof "programs".

In section 403(a)(4)(C), strike out "and" at the end.

In section 403(a)(4)(D) insert "H-2A" before "program" and strike out the period and insert in lieu thereof ", and".

At the end of section 403(a)(4), insert the following new subparagraph:

(E) on the need to continue, improve, or eliminate the seasonal agricultural worker program.

In section 403(b), insert "and on the seasonal agricultural worker program" after "program".

EXTENSIONS OF REMARKS

LEGISLATION PROTECTING OFFICIAL NAMES CREATED BY ALABAMA SPACE SCIENCE COMMISSION

HON. RONNIE G. FLIPPO

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. FLIPPO. Mr. Speaker, I am pleased to introduce on behalf of myself and all the other members of the House from Alabama, legislation which would protect the use of the official names which have been created by the Alabama Space Science Exhibit Commission

The citizens of Alabama and the State legislature voted to construct a rocket and space exhibition in Huntsville, AL in 1985. The initial seed money amounting to several million was invested by the city of Huntsville, Madison County and the State of Alabama for the design and construction of the Space and Rocket Center.

The Space and Rocket Center officially opened its doors in 1970. This center has enjoyed astounding success. The Space and Rocket Center has become the largest rocket and space museum in the world with a collection of 1,500 pieces of rocket and space hardware valued at over $30 million. Over 60 active exhibits are now part of the exhibition center. The Space and Rocket Center serves as a major repository for the Smithsonian Institutions National Air and Space Museum.

Since it opened, the Space and Rocket Center has served more than 4 million visitors. Approximately 70 percent of the visitors to the center are from States other than Alabama and foreign countries. Needless to say, the most enthusiastic visitors to this great center of space history have been school-age children.

In 1982, the Alabama Space Science Exhibit Commission initiated a Youth Camp Science Program to build on the enthusiastic response of young visitors to the Space and Rocket Center. The Space Camp Program is designed to stimulate interest in space, science and math through extensive hands-on experience with the Space Program. The response to this program has been overwhelming. The huge success of the Space Camp Program has been the subject of numerous articles in national magazines and newspapers as well as network news programs.

Mr. Speaker, a recent article published in the September 3, 1986 edition of Forbes magazine follows my remarks.

Space Camp is the only supplemental educational program in the Nation specifically intended to motivate youngsters to prepare for high technology and scientific careers. The Space Camp Program influences its young participants to study science and technology so they will be adequately qualified to become the scientists and engineers of tomorrow.

The youngsters, ranging from ages 11 to 16, spend 5 days at the Space and Rocket Center's Museum complex in closely structured programs involving rocketry, equipment design, astronaut training, computers and career guidance. They work sophisticated equipment and converse with engineers and scientists involved in aerospace technology. Children from varied ethnic and social backgrounds work side-by-side each day.

At the request of the program's graduates for continuing studies between trips to Huntsville, a package of home study material is being developed for distributions by its Space Camp Club. Also, youngsters' education will be carried to higher levels with the creation of the Space Academy Science Program.

This season, some 4,500 boys and girls from all 50 States and at least 18 foreign countries will participate in this remarkable educational program. This will raise the 5-year total to more than 12,500 participants.

Inspired by the late Dr. Wernher von Braun, the Space Camp is self supported and depends on funding from a number of sources including the Huntsville, Alabama Aerospace Community, the U.S. Army Missile Command, and the Marshall Space Flight Center of the National Aeronautics and Space Administration. Just as Dr. von Braun founded the Space and Rocket Museum on a self-funded basis, so have the educational programs continued on that philosophy.

Financial support from the Nation's high technology industry is growing each year. Funds for construction of permanent facilities are being raised from a number of leading corporations. Among them are Coca-Cola, McDonnell Douglas, Rockwell International, Morton Thiokol, IBM, Teledyne, Eastern Airlines, United Technologies, Lockheed, Boeing, Texas Instruments, Essex Corp., Control Data Corp., TRW, South Central Bell, Martin Marietta, GoldStar, Owens Corning, Raytheon, PPG Industries, Polaroid, Chesebrough-Pond's, 3M, First Alabama Bank, J.T. Schrimsher Co., Hercules, Wyle, Proctor and Gamble, Atlantic Research, Colonial Bank of North Alabama, GTE, Bendix, and Finalco.

In my many visits to the Space and Rocket Center, I have been impressed with the enthusiasm and interest demonstrated by the fine young people who participate in this program, as well as its highly qualified staff. My son, Cooper, thoroughly enjoyed his Space Camp experience and benefited greatly from the educational opportunities available there. I firmly believe that this young generation being trained to staff our aerospace and other high technology programs in the 21st century will be able to accomplish even more successes than we have to date.

Today I am introducing legislation which would protect the use of the official names which have been created by the Alabama Space Science Exhibit Commission. Through its unique and excellent educational programs the Space Camp is now recognized the world over. My bill would simply give the Commission the exclusion rights to the continued use of the names it created, such as Space Camp and Space Academy, which have become synonymous with these programs. I urge my colleagues to support me in this effort.

The bill follows:

H.R. —

A bill for the relief of the Alabama Space Science Exhibit Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REGISTRATION OF SERVICE MARKS.

Upon proper application by the Alabama Space Science Exhibit Commission, an instrumentality of the State of Alabama, the Secretary of Commerce, acting through the Commissioner of Patents and Trademarks, shall issue to said Alabama Space Science Exhibit Commission, certificates of registration on the Principal Register in International Class 41 of the service marks described in Section 2 pursuant to section 7 of the Act of July 5, 1946 (15 U.S.C. 1051 et seq.). Said registrations shall be without disclaimers, shall not be subject to the provisions of Sections 12 and 13 of said Act and shall not be cancellable on the ground that the service marks are merely descriptive or the common descriptive name of the services.

SEC. 2. DESCRIPTION OF SERVICE MARKS.

The service marks referred to in section 1 are used by the Alabama Space Science Exhibit Commission for educational programs relating to science and technology and are further described as follows:

(1) "The Space and Rocket Center".
(2) "Space Camp".
(3) "Space Academy".
(4) "United States Space Camp".
(5) "United States Space Academy".

[From Forbes, Sept. 3, 1986]

SPACE CADETS

(By Jeff Bloch)

The trouble begins as the crew of space shuttle *Discovery* prepares to return to Earth. Navigators must position the craft at the precise angle for re-entry, but there is a problem. "Um, flight director, we don't know which buttons to push," reports Commander David Parks. No sweat for flight director Stewart Sentell, who sizes up the available options, then barks out his order: "Skip some stuff."

Welcome to the U.S. Space Camp in Huntsville, Ala. For one week children 11 to 16 have a chance to rehearse today for the experiences they could encounter as adult astronauts tomorrow. "I can learn a whole semester of science here in one day. And it's fun," says Brian Dowling, 14, from Boynton Beach, Fla. "I intend to go to MIT, then Air Force pilot training. Then I'll wait for NASA."

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

NASA sorely needs that kind of enthusiasm these days. There has been little good news out of the Marshall Space Flight Center since the space shuttle *Challenger* exploded last January. Yet despite the continuing bad press that has followed, Space Camp and its adjoining museum remain an oasis of optimism. Campers say they see no reason that disaster should alter their future flight plans. "There's a risk in everything," says 11-year-old space cadet Liz Carleton, from Tipp City, Ohio. "So what's the big deal?" In fact, inquiries about camp enrollment doubled in the weeks following the accident. And both active and retired NASA officials who lecture the campers seem to enjoy the opportunity to address enthusiastic and noncritical ears.

The camp is the brainchild of Wernher von Braun, the famed rocket scientist who worked at the Marshall Center after leaving Nazi Germany. In the late 1960s, the state of Alabama marketed a $1.9 million bond issue to build a space museum on 35 acres adjacent to the Space Center. The museum was such a successful tourist attraction that the space camp was added in 1982. Tuition fees of $425 to $575 (depending on age) per week meet the camp's $2 million annual budget for some 5,000 campers.

"We have football camps and cheerleader camps. Why don't we have science camps?" asks camp director Edward O. Buckbee. "We may lead some youngsters toward a career they never knew existed. I'm going to be very disappointed if we don't see some campers in space in the 21st century." Indeed, the camp's regimen and equipment are so authentic that NASA sent its ten teacher shuttle candidates, including New Hampshire grade school teacher Christa McAuliffe, there in 1985.

Campers arrive weekly, beginning in March and ending each Labor Day, and are divided by age into space shuttle teams, then suited up in copies of astronaut flight suits. The younger children start with classes on the principles of rocketry and propulsion. Later they launch their own 18-inch balsa wood rockets carrying payloads of live crickets and propelled by small fuel pellets. Splashdown and rescue techniques are practiced in an indoor pool. NASA officials and other experts provide lectures on the American and Soviet space programs and other topics, during which campers mostly want to know exactly when they can hop aboard a real mission.

For the older set, this is even less your typical tent-and-canoe wilderness adventure. The 14-to-16-year-old campers design space stations, practice space walks using discarded NASA simulators, and prepare for their final performance: a mock two-hour shuttle mission.

While the younger campers perform a brief mock flight, the older kids' missions take place on what looks like a movie sound stage. Mission control is designed to resemble the real thing in Houston. Nine campers, dressed in blue flight suits and sneakers, sit in front of banks of consoles crammed full of buttons, switches, colorful lights and video monitors. Some of the equipment came from NASA, while other panels were designed with the advice of NASA engineers. A videotape of an actual shuttle flight accompanies the mission director's launch and landing commands.

TAX REFORM: WHAT'S RIGHT AND WHAT'S NOT

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, I intend to vote in favor of this tax reform bill because I think it is much better than present law.

This tax bill makes more progress than anyone dreamed possible in obliterating tax shelters that now allow those with money in this country the opportunity to avoid paying income taxes.

Unfortunately, the tax shelter industry became the growth industry of the 1970's and early 1980's. It turned good investments into bad investments and bad investments into good investments and it put the Government in the position of making decisions about where they wanted people to direct their investments.

I happen to agree with President Reagan that it is far better to have the market system determine where investment capital should move. Let the market system determine based on the risks of reward and loss where someone might want to invest theit money. This tax bill takes a giant step in that direction.

This tax reform bill also takes over 6 million low-income Americans off the income tax roles. It broadens the tax base and lowers the tax rate which I think is a step in the right direction.

The bill also contains provisions that I think are, in the main, helpful to agriculture. Agriculture has become a haven for tax shelters. Investment in some areas of agriculture has been motivated more by tax loopholes than by the pursuit of profits.

This tax bill eliminates many of the schemes by which investors move money into agriculture shelters to try to farm the Tax Code. Notably, the passive loss restrictions will discourage off-farm investments merely to avoid tax liability and the use of tax exempt bonds for agricultural loans on farm depreciable property will be limited to $250,000 per borrower.

This tax bill also remedies several of the tax hurdles that family farmers now face. Farmers who participate in loan restructuring programs will no longer be liable for the tax on the amount of that loan write-down. This will allow the farmer an opportunity to continue farming and ultimately repay his debt as originally intended by Federal loan restructuring programs. Self-employed individuals, including farmers, will be able to deduct 25 percent of the premium costs for health insurance.

But let me point out that this tax reform bill is not without problems. There are a number of things that concern me about this legislation. First, I think the top rate is too low. I think providing a tax cut for the wealthiest individuals in America on the heels of substantial tax cuts they received from the 1981 tax bill and at a time when America's suffering from a huge Federal budget deficit is absolutely ludicrous.

I feel very strongly that we should have had one or two additional rates at the top to soak up the tax cut for the rich contained in this bill.

The principle of a "broadened base" and "lowered rate" makes sense to me but I think this bill overdoes it. The "lowered rate" which puts someone in the $29,000 income class in the same tax bracket as someone earning $300,000 defies all good sense.

I expect that we're stuck with that position only because the Senate and the White House became intoxicated with driving down the top tax rate for the wealthy to 28 percent. Well, that's not a priority with me.

I am also concerned with the retroactivity of certain provisions in the Tax Code. I think all changes in the tax bill should have been prospective. People have made decisions based on the current code and I think it's unfair to retroactively punish them for the decisions they made based on current law. That includes decisions that deal with the investment tax credit, depreciation, bonding, and dozens of other things.

Another area that concerns me is the Federal workers retirement provisions which under no circumstances should have been made retroactive. I think those provisions are blatantly unfair to Federal workers who have been taking it on the chin in a dozen different ways in our budget and tax provisions in recent years.

I also believe that income averaging should have been retained for farmers. The agricultural industry is, by its nature, unpredictable, dependent on a variety of external forces beyond the control of the farmer. Income averaging is a necessary tax provision in assisting the farmer in dealing with the tremendous fluctuations in income.

A final point that I want to make is that this tax bill should have "raised revenue." Essentially, every thinking person in this town understands we need additional revenue to move toward a balanced Federal budget. The requirement that this bill be revenue neutral was ridiculous from the start and I think it's even more ridiculous today. We're passing a tax bill which closes tax loopholes and uses the entire revenue from that to drive down the tax rates. At least half of the revenue should have been used to reduce the Federal deficit.

Despite these areas of concern about the bill, let me be clear that I intend to vote for it because when all is said and done, this tax bill is better than present law and we can correct its deficiencies. We can correct the errors, and I have no doubt that in a corrections bill next year we will fine tune this bill the right way, and I intend to push for that.

SOLARZ CALLS FOR LIFTING OF UNITED STATES SANCTIONS AGAINST POLAND

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HAMILTON. Mr. Speaker, I want to draw to the attention of my colleagues an excellent article in the Washington Post on September 24, 1986, by our distinguished col-

league from New York, STEPHEN SOLARZ, who has recently returned from a visit to Poland.

I commend him for his insights and fully endorse his recommendations for U.S. policy. The United States must find a way to respond positively to recent events in Poland so that, step-by-step, United States-Polish relations can improve.

The text of Congressman SOLARZ's article follows:

[From the Washington Post, Wednesday, Sept. 24, 1986]

IT'S TIME TO LIFT SANCTIONS ON POLAND

(By Stephen J. Solarz, MC)

The recent release of Poland's political prisoners is a tribute to the resilience of the Polish resistance and demonstrates a recognition on the part of the Jaruzelski government that at least some degree of national reconcilation is a necessary condition for solving the country's many problems.

At this moment when the government—called "the power" in Poland—and society are exploring the basis of a new relationship, the United States should move quickly to encourage further progress on human rights and economic reform. Specifically, it should lift the remaining sanctions—denial of most-favored-nation tariff status and a prohibition on government-guaranteed credits—that were imposed following the declaration of martial law. A failure to respond would forfeit our best chance of exerting influence. The Jaruzelski regime would continue to place blame for Poland's dreary economic situation not on the government's own ideology and incompetence, where it belongs, but on American sanctions. And Poles friendly to the United States, who now believe that further steps toward Polish-American normalization are overdue, would conclude that the United States has abdicated any rule in their future.

Sanctions were the appropriate American response to the imposition of martial law in December 1981. They demonstrated that we were not prepared to deal with the Jaruzelski regime on a business-as-usual basis and enabled us in a highly visible way to declare solidarity with Solidarity.

But five years later, our point has been made. Polish authorities have taken a number of steps to alleviate some of the more conspicuous features of their despotism. Conditions in Poland compare favorably with those in most other Eastern European countries. The regime in Warsaw still tolerates a flourishing underground press, a measure of outspoken criticism and an independent church.

We now find ourselves in the anomalous position of according Romania and even the Soviet Union more favorable treatment in some regards than we offer Poland, although from a human rights standpoint the situation in Poland is better than in either of those nations. The paradox has been noted—and not to our advantage—by the Polish people.

I recently returned from four days in Poland, where I met with senior officials of the government and with Cardinal Glemp, Lech Walesa and other Poles who have distinguished themselves by their courage and convictions. Most conveyed the same message: it is now time for the United States to life the remaining sanctions, particularly in the context of a willingness by the Polish government to release its political prisoners.

If the Polish people, who welcomed American sanctions when they were imposed, still favored their continuation, we should think twice before rescinding them. But in view of their apparent desire for the removal of what they increasingly see as discriminatory measures, a failure to do so now that the political prisoners have been released risks alienating the very people we seek to aid.

The establishment of a dialogue between government and society is the direction the current regime claims it wants to go. We would have a better chance of encouraging movement by lifting sanctions than by maintaining them.

Rescinding sanctions does not deprive us of leverage on the Polish government. If the regime were to rearrest the prisoners it has just released, sanctions could always be reimposed. In any case, removing the prohibition on trade credits is not the same as extending new credits. We could make the government's desire for U.S. credits contingent on further progress toward the goals we seek.

Solidarity's fate suggests that restoration of genuinely free trade unions is still rigidly opposed by the Polish regime and its Kremlin sponsors. Even so, it may be feasible to speak of working for incremental progress toward a pluralism in which a certain independence is permitted—not just for the church, which already enjoys considerable autonomy, but also for trade unions, various kinds of clubs and academic associations. A reduction in censorship and greater opportunity for the expression of opinion may also be possible. Such developments would make life more bearable for the Polish people, and would strengthen Polish society in its ongoing efforts to carve out greater autonomy from a repressive regime.

This is the season for evolutionary, not revolutionary, change in Poland, for modest progress rather than miraculous transformation. Ending American sanctions will not fundamentally alter the condition under which Poles live. But it could promote the small but significant improvements that would make those conditions more tolerable.

LEVERAGED BUYOUT DEBTS THREATEN ECONOMIC HEALTH

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. CLAY. Mr. Speaker, on August 14, 1986, I introduced House Resolution 535 which is intended to address problems certain to arise as a result of the leveraged buyout of Safeway Stores, Inc. As I pointed out at the time, the Safeway buyout resulted in over $4 billion in debt without producing one new job, one new store or one new product. In fact, while a few individuals have figured out a way to reap obscene profits, they may well have done so at the expense of a once profitable company and the workers and consumers who made that company profitable.

Unfortunately, Safeway is but one example of a much larger phenomenon. As the following article by James Sterngold of the New York Times makes clear, "major financial institutions are pouring billions of dollars into the booming field of leveraged buyouts." Not only are these paper transactions syphoning funds that might otherwise be used to enhance productivity and the development of new products, but the popularity of this latest fad may now be threatening the well-being of otherwise healthy institutions.

Mr. Speaker, I commend the following article to the attention of the Members:

LURE OF LEVERAGED BUYOUTS

(By James Sterngold)

As if he did not have enough to read already, Brian F. Wruble now has Chicago's two daily newspapers delivered to his Manhattan home every morning. The reason: The Equitable Capital Management Corporation, which he runs, has invested $50 million in a $145 million leveraged buyout of The Chicage Sun-Times, and he wants to keep a close eye on his investment, as well as its competitor, The Chicago Tribune.

"We'll monitor this much more intensely than we would other kinds of investments" such as regular stocks or bonds, said Mr. Wruble. His company has financed numerous leveraged buyouts in a variety of businesses, including last year's $59 million buyout of Ecolaire, a maker of equipment for electric utilities.

Indeed, he must be more vigilant, since leveraged buyouts are unlike other corporate investments: They create much more financial pressure, and risk, by committing a significant share of a company's income to paying off the debt assumed in buying out the previous owners.

STEPPING UP COMMITMENTS

Nonetheless, major financial institutions are pouring billions of dollars into the booming field of leveraged buyouts. Equitable and other institutional investors are either stepping up their commitments to buyouts or coming in for the first time.

Many, such as state, municipal and corporate pension funds and university endowments, are eagerly chipping in to a lot of new buyout funds run by leveraged buyout firms. The firms are paid a fee for managing the money, finding good deals and then structuring the buyouts and investing the fund's capital, usually in a mix of debt and equity.

Typically, the buyers, who include management, put up about 10 percent of the purchase price in permanent equity capital and finance the rest with debt that the company hopes to pay down.

The surge of new money available for buyouts, however, is coming as the climate is changing for the worse: Solid deals are harder to find, and investment returns are already slipping, in some cases significantly.

AVERAGE RETURN DECLINING

Mr. Wruble, for instance, said Equitable's historic return of about 30 percent—an average of its return on equity and debt investments—is falling closer to 20 percent. These are far more sobering numbers than the publicized returns on a few spectacular transactions, which have repaid equity investors hundreds of times their investment in a couple of years. But these are the real figures the institutions report they are earning.

The flood of capital, ironically, is contributing to the declining returns. Too much capital is chasing too few opportunities, and the prices of attractive buyouts are being bid up as throngs of investors pursue them.

Even with such concerns, leveraged buyouts, known as L.B.O.'s, have clearly moved out of the backwaters of the financial world into its mainstream, and have revolutionized the way companies are bought and sold and the way major institutions invest their capital. In corporate board-

rooms, leveraged buyouts are as respectable as pinstriped suits—and almost as common.

CAREFULLY PLANNED MOVES

"We don't look at L.B.O.'s to be high-risk," said John C. Chenoweth, investment officer of the Minneapolis Employees Retirement Fund, which has decided to invest about $50 million of its $750 million of assets in leveraged buyouts. "With all the work that goes into preparing these transactions, an L.B.O. is a much more studied decision than just buying a stock or a bond. I'm committed to the concept."

In 1983, the 87 leveraged buyouts whose terms were disclosed had a total value of $4.5 billion, according to Mergers & Acquisitions magazine. That shot up to last year's 119 deals with a disclosed value of $19.3 billion. In the first six months of 1986, there were 39 whose terms were disclosed, worth $13.7 billion, according to Mergers & Acquisitions.

And the numbers are likely to rise still higher.

"The business schools teach that capital is a limited resource, but we've found there is no limit to the capital when the deal is good enough," said Frank E. Richardson, a principal of the Wesray Capital Corporation, a major leveraged buyout firm. "The problem today is not getting capital, but finding reasonable investments for it."

BIG NEW FUNDS ORGANIZED

Forstmann Little & Company, a major leveraged buyout investment banking firm, just raised a new fund from institutions to finance its deals, giving it about $1.5 billion. Another major firm, Kohlberg, Kravis, Roberts & Company, has raised $2 billion.

Even Goldman, Sachs & Company, which is among the leaders of traditional corporate financing, decided to jump into the fray by starting its own fund this year. Goldman originally sought just $100 million but quickly garnered $250 million. "We could have raised a lot more than that," said Fred Eckert, partner in charge of the leveraged buyout department.

Much of the money in buyouts comes from commercial banks. Like other institutions, banks sometimes finance several layers in a buyout, putting up some of the equity as well as becoming a lender. Citibank, for one, can both invest in equity and lend funds, and in both fields is increasing its exposure. For instance, it now allows its buyout specialists to invest up to $100 million of equity in each deal without seeking extraordinary approval—seven years ago the figure was $2 million. And the Bankers Trust Company just had a frenzied string of helping line up about $4 billion of debt for buyouts in one week.

The institutions are throwing their capital into buyouts because of the profits generated in the past four to five years, ideal ones for leveraged buyouts—the economy and corporate profits were generally strong, interest rates were steadily falling and the stock market was booming.

So successful has the technique proved that some companies have undergone repeated buyouts. The Lesley Fay Companies, a garment manufacturer, went through a buyout in 1982, another in 1984 and then sold shares to the public this year, each time generating substantial profits for the participants.

Perhaps the best symbol of the powerful allure of leveraged buyouts hangs in the entranceway to the sleek Manhattan offices of Forstmann Little: It is an old poster for the French national lottery showing a man in a business suit leaping crazily into the air, clutching fistfuls of paper money.

Garnett L. Keith, vice chairman of the Prudential Insurance Company, which has invested some $2 billion in leveraged buyouts, said his only regret is that his company had not placed more. But Prudential is trying to make up for that, he added, with a goal of investing a total of $5 billion.

The inflow of new money, however, could well cast a shadow over the business.

COMMENTS ON TODAY'S FIELD

"A lot of people look back at the returns of the last four years and think it will always work that way, but I think you're fooling yourself to think you'll get the same kinds of yields going forwards," said Mr. Keith.

Frederick R. Adler, a principal in Adler & Shaykin, which arranged the buyout of The Chicago Sun-Times, added: "The big question that everyone has, and it has to be taken seriously, is if we can keep our returns if we're investing so much more money. It is getting harder."

The problem for institutions today is how they can capture the kind of high returns on their investments that they were able to achieve over the past five years. They have, for instance, watched interest rates decline sharply in recent years, slashing their returns. Treasury bonds yielded nearly 11 percent a year ago and just 7.5 percent today.

Financing leveraged buyouts is one means they use to regain the old, high returns. Some institutions say their return, figured as a blend of their equity and debt investments, has been as high as 40 percent.

So seductive is the leveraged buyout a arena that it has sucked in money that had been earmarked for other kinds of speculative corporate investments, particularly venture capital.

LESS FOR VENTURE CAPITAL

Much of the money that Bankers Trust and Citibank, for instance, invest in buyouts come from funds that had been planned for venture capital.

"Venture capital that once found its way into Silicon Valley is now finding its way into the Rust Bowl in the form of L.B.O.'s," said Robert C. O'Brien, managing director of corporate finance at Bankers Trust.

But everyone seems to have the same idea at the same time. So many people are combing through annual reports looking for candidates to buy, experts agree, that the quality of many of the proposed deals is sinking.

"I would say about 5 percent of the deals we see would seem to work," said Mr. Wruble. "Before, I would have to say that one in five of those we saw worked."

Jerome L. Katz, president of Charterhouse International, a leveraged buyout firm financed largely with British capital, said: "The prices paid for companies have gone up dramatically. There has been what seemed something of a feeding frenzy, but I don't have the courage to pay those kinds of multiples for companies."

Don L. Hale, general manager of corporate finance at the General Electric Credit Corporation, remarked, "We turn down more deals than ever because they don't make sense to us." And yet, he added, deals that his company passes up are finding financing elsewhere. "No doubt, some deals are being done that shouldn't be," he said.

ADDING UP SERVICE FEES

"Your big problem today is not finding capital," commented Michael R. Dabney, head of the leveraged buyout section at Bear, Stearns & Company. "The problem is finding good deals."

But the buyout firms are determined to initiate deals and are ringing up enormous profits from the fees they charge for their services.

In the Macy's buyout, $175 million in fees were paid to the investment banks and commercial banks that arranged the deal and its financing. In the $4.6 billion buyout of Safeway Stores, $150 million in fees will be paid. And out of that Kohlberg, Kravis, Roberts, which arranged the transaction, will receive $60 million, part of which will be shared by some of the professionals it hired to structure the transaction.

Investors have little choice but to pay out these sums—that is, if they want to play the game.

"If we took a puritancial view, we might be cut off from the business," said John W. Childs, a senior vice president of the Prudential Capital Markets Group.

A LETTER TO THE PRESIDENT

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HORTON. Mr. Speaker, I would like to share with my colleagues a letter written to President Reagan by one of my constituents, Patricia Preece, of Seneca Falls, NY. Mrs. Preece moved to the United States with her husband and daughter in 1957. Our Fourth of July celebration, and especially the rededication of the Statue of Liberty, prompted Pat to reflect on her 28 years in the United States.

In her letter, she eloquently states what this Nation and the principles on which it was established mean to her. It is an inspiring letter. It is one that I believe captures the spirit, patriotism, and energy that comprise the American character.

Mr. Speaker, I am very proud to submit for the CONGRESSIONAL RECORD this inspiring statement:

JULY 4, 1986.

MR. PRESIDENT: Sir, I realize that the chances that you will ever read this are extremely remote, but I feel a compelling urge to convey to you the feelings of a fairly recent immigrant as we all celebrate this very special weekend honoring "The Lady of the Harbour" and all she stands for.

In 1957, my husband, Anthony, our 5-year old daughter, Susan, and myself left England to make this great country our home.

As we had connections in this small upstate village of Seneca Falls, New York, we made it our home and have lived here ever since. As I wished to learn more about the government of our country, I became involved in local politics, first as a committee woman, then Town Chairman and County Vice President (I might add, Republican). Because of this, I was able to attend your first inaugural in 1980. It was our first visit to Washington and all the history of our country that it holds in its museums, galleries and institutions. When I returned to Seneca Falls, I was invited to speak at our area Rotary and Kiwanis Clubs. I think what I am trying to say is that in the final words that I closed with in these addresses hold the deep love and respect I have for the United States. I would like to share them with you.

In the three days I spent in our Nation's Capitol, I saw much of our past, our present and a glimpse of our future, our hopes and dreams, successes and some failures. It was all brought back to me as I heard President Reagan give his first address to Congress and he quoted Carl Sandberg saying, "No Country can become a Republic without a dream."

I thought how true that is because our nation was born out of a fabric of dreams. The dreams of a handful of men who wished for a free self-governing nation, away from the outstretched arm of a monarch across the ocean who had no understanding of life or its problems in the colonies.

As the fabric of this new nation grew, into it were woven the dreams of thousands of its people, some famous, most not. There were the untold number of men and women who underwent unspeakable hardship and privation in search of their dream to settle and develop the Western Territory, now California.

Later still, a dream of another kind brought men and women, not only from this nation but around the world to answer to the cry of gold at Sutters Mill. From that dream sprang the great city of San Francisco. Later still, two young men dreamt of inventing a machine that would fly, the culmination of that dream far beyond any stretch of their imagination as we saw our first space shuttle landed safely in the California desert.

Through the years, that same fabric has become at times a little frayed and sometimes even torn apart by a Civil War, wars our people supported, wars they did not, assassinations and would-be assassinations, civil unrest and discontent. But always the people of this nation who are America have risen to dream again and to strengthen and rebuild that fabric and cause it to grow again.

So now we are half way through this decade of the '80's and it is now our turn, whomever we are, for this great country to build and strengthen this fabric with our dreams, so in years to come historians will be able to look back at the '80's and write they were the best of times.

I remain, Sir, respectfully,

PATRICIA PREECE,
Lower Lake Rd., Seneca Falls, NY.

ALEXANDER PEKELIS

HON. DON EDWARDS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. EDWARDS of California. Mr. Speaker, I want to share with our colleagues an article about Alexander Pekelis, professor of law at Columbia University and a former codirector of the American Jewish Congress Commission on Law and Social Action. Professor Pekelis' distinguished career and contribution to civil and constitutional rights merits our gratitude and is worthy of our attention:

[From Midstream, June/July 1986]

ALEXANDER PEKELIS: THE AMERICAN JEW AS CIVIL SERVANT

(By Jacob Freid)

The end of World War II saw bright young Jews mustered out of the armed forces and government service to become civil servants in the communal agencies of American Jewry. This was particularly true of the American Jewish Congress, the American Jewish Committee, and the Anti-Defamation League of B'nai B'rith.

They came with a sense of commitment to a comprehensive program of positive Jewish life in a democratic society. Moved by the war experience, the Nazi *churban* and the labor pangs that preceded the birth of the State of Israel, they wanted the opportunity to serve the Jewish community in a fiduciary capacity. It was a time of ferment, innovation, and creative experiment on the frontiers of social action, civil rights, and intercommunity relations.

Legal scholars and lawyers grappled with the perplexities of civil rights, the separation of Church and State, the defense of minorities, and the drafting and passage of legislation outlawing discrimination. Social scientists examined the roots of prejudice, intercommunity relations, and group identity. Historians and critics examined the problems of Diaspora and Galut, relations with Israel, population and economic trends, and Jewish culture, art, and literature. Pledged to the service and freedom of man and to the Jeffersonian trinity of "life, liberty, and the pursuit of happiness," they allied the moral qualities of prophetic Judaism to those of the Enlightenment and American life. And they implemented their insights in the spheres of public life: in the court chamber, the legislative hall, and the executive office, in the market-place, public accommodations, and the halls of learning.

Alexander Pekelis of Columbia University Law School was a paradigm of the committed Jewish intellectual. Under his aegis the entire context of Jewish social action in the United States was revolutionized by the Commission on Law and Social Action (CLSA) of the American Jewish Congress. Pekelis formulated a Jewish community action approach to the social functions of law to combat anti-Semitism and to achieve first-class citizenship and civil rights for all. The appreciation of the import of Pekelis's law and social action thesis by Rabbi Stephen Wise, and its incisive legal implementation by people like Will Maslow, Leo Pfeffer, and Phil Baum, transformed community responses to the attacks of Father Charles Couglin, the Christian Front, and their lunatic-fringe allies into a brilliantly conceived and executed strategic and tactical program solidly based upon American constitutional law.

Pekelis was himself an authentic symbol of the Jew in Galut. Max Ascoli, who knew him in Italy and the United States, said: "He had an amazingly disturbing power to assimilate the culture of any country, to make himself into a citizen of every community. Therefore if the capacity of absorbing and dramatizing culture is, as I think, a Jewish trait . . . [he was] thoroughly a Jew."

Those working with Pekelis shared his view that "one of the tasks that educators face today is to narrow the appalling chasm between those who, in schools and research centers, study our community, and those who in legislative committees and courts, shape its life.[1] Law was the binding force of human relations. It was too important in community life to be reduced to mere legalism and left to attorneys alone.

The social sciences were needed to facilitate the law's proper function in a constitutional democracy: "Law without a knowledge of society is blind; sociology without a knowledge of law, powerless."[2]

Pekelis articulated a program of Jewish social action in America grounded upon Jewish tradition and American law and society. The result of his historic memorandum to the American Jewish Congress in 1945, which confronted American Jewry and its defense agencies with the need to determine its ends and the means necessary to attain them. He had no use for apologetics and anonymity in Jewish community relations. He believed Jews must fight against injustice and discrimination not as "anti-anti-Semites," but as conscious self-respecting Jews, entitled to the equality of free men in a free society.

Pekelis knew that cellmates in a prison enjoy equality—but they do not have freedom. This was the import of the Declaration of Independence and the Bill of Rights. That was why "the adoption of the first Ten Amendments . . . was indeed a vindication of the rights of the individual and was at least a partial return to the general philosophy of the Declaration of Independence.[3]

We seek freedom not only as individuals but as groups—as Americans and Jews. Liberty was the price exacted by the Emancipation's blandishments of personal equality that enticed the Jews of Western Europe. This is the caveat of the negators of the Galut in their entreaties and prophecies concerning the impossibility of creative Jewish survival in the Diaspora. But, as against predictions of extinction, and the Jeremiads of Israeli intellectuals that this was the inevitable fate of Diaspora existence. Pekelis, himself a refugee and leader of Poale Zion, had posed a counter-thesis that this price need not be paid in the United States. Indeed, he insisted, it would mortally wound American democracy, whose lifeblood would course only so long as the arteries of freedom did not harden against any religious or ethnic group.

Quotas against Jewish students in higher education are but a vile memory today. Pekelis recalled his Odessa youth when a Tsarist law established a "healthy" ratio between Christians and Jews in any given class. "Today, my children here do not have to grow up under the humiliation of such a law . . . Laws on the books have a reality all their own, and believe me, the phrase 'all men are created equal' makes better reading and a better rearing for children than the circulars of a Russian or Prussian minister of education."[4]

The efforts of Pekelis and others like him made it possible for minority groups to utilize effectively their constitutional rights. CLSA gave an inservice education to the National Association for the Advancement of Colored People and other minority groups in the struggle against discrimination and prejudice. On the question of limiting Jewish defense efforts to problems of explicitly Jewish concern, Pekelis argued that it was as difficult to disassociate Jewish and American interests as to operate successfully on Siamese twins. The air of freedom was

[1] Alexander H. Pekelis, *Law and Social Action*, edited by Milton R. Konvitz, Cornell University Press. 1950, p. 14.

[2] Ibid.

[3] Ibid., p. 94.

[4] *Ibid.*, p. 102.

breathed by all; contaminate it and all were affected. It is no wonder, he said, that ever since the Enlightenment Jews have been in the forefront of struggle in what Heinrich Heine called "the liberation war from humanity."

This is the basis of the close support American Jewry gave blacks and other minorities. In virtually every major discrimination case Jewish defense agencies file *amicus curiae* briefs. American Jewry's aid in the desegregation struggle has been of central significance.

This was a program worthy of allegiance. An older generation had seen as the spearhead of such causes and programs of social betterment and equality of opportunity only the Communist Party and its front groups. Even with the shock of discovery of their being duped they were unable to see Judaism, Jewish affiliation, and community identification and participation as a means of realizing the moral purposes and potentialities of American democracy for all peoples. For the wartime generation such a program existed. It coincided with the internal migration, the centrifugal push from the city centers to the suburbs with its proliferation of new synagogues and Jewish community centers, and community and social compulsions to affiliate.

This was a dynamic change from earlier programs that lacked imagination and daring. It was a thinking, liberal program; it provided an opportunity to relate the prophetic ethical qualities and moral principles of Judaism to American life. It was a program for Jews with a sense of Jewish identity and a commitment, untroubled by charges of "dual loyalty," Jews with faith in the reason and integrity of the American people, Constitution, and political democracy as the instrument that would make the achievement of creative Jewish life possible in America. Accordingly, in the post-World War II years, outstanding sociologists, lawyers, scholars, and thinkers devoted their talents to the betterment of Jewish and American life through the three major Jewish defense agencies.

Community relations today, more than ever before, under the aegis of the National Community Relations Advisory Council (NCRAC), the American Jewish Committee, the American Jewish Congress and the Anti-Defamation League of B'nai B'rith, are vehicles of adult education and forums of popular statesmanship. The gains on behalf of minority groups in general and blacks in particular have been substantial. Pekelis's contributions to law and social action have been continually adapted by able civil servants of the Jewish community to enlarge democracy and to achieve its social, economic, and political promise as against the special interest groups and private associations who would pervert that promise and frustrate its attainment. Sabbath sermons, community forums, adult education programs, periodical literature and books acknowledge that the community's representatives occupy a central position in the fight to break through to freedom and equality of opportunity by making accessible to all minority groups the information and understanding on which their choices and actions depend.

COAST GUARD BRAVERY

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. LIVINGSTON. Mr. Speaker, in our struggle to reduce our Nation's deficit and still maintain funding for important Federal programs, Congress should ensure that the U.S. Coast Guard remains one of our top funding priorities.

Though the Coast Guard conducts thousands of routine missions, the service's men and women also engage in countless acts of heroism to save lives throughout this Nation. One such incident recently occurred along the gulf coast.

Constituents of mine recently wrote me recounting the excellent job performed by Coast Guard personnel from the Dauphin Island, AL, Recreation Center, and the Houston, TX, Recruiting Station. The hard work and heroism of these dedicated personnel, especially Larry Champagne of Metairie, LA, and Chief Yeoman Keith Phillips of the Atlanta Reserves, should be recognized by all of us. These Coast Guard personnel and the thousands who serve our entire country deserve our gratitude, recognition, and full support here in Congress.

METAIRIE, LA,
August 16, 1986.

ROBERT L. LIVINGSTON,
Member of Congress, Cannon Office Building, Washington, DC.

DEAR BOB: I know that you have been a strong supporter of our military forces, but do not recall if that has included the United States Coast Guard. I hope if that has. The enclosed letters describe a terrible time that Will and I, and our cousins Lee and Don Teijelo, had recently when caught in a storm off Dauphin Island. If it were not for their prompt and efficient performance, I might not be here to write this letter. I would appreciate your passing on to the proper authorities our gratitude for a job well done.

In addition, several other Guardsmen played important roles. Keith Phillips, Chief Yeoman with the Atlanta Reserves, along with Larry Champagne of Metairie, were the two who risked there lives in the john boat to try to aid us. D.E. (Jack) Jackson, retired from the Coast Guard and Manager of the Dauphin Island Recreation Center, and Chief Robert Cable Officer in charge of the Houston. Texas Recruiting Station, were the ones who marshalled all the forces into action in time to have us picked up before it was too late to be spotted. Sandra Jackson and Carol Cable stayed with Kitty Teijelo and Madge throughout the ordeal. Without them, Kitty and Madge may have been the victims of the evening instead of those of us off-shore.

Madge and I will appreciate all of the people involved receiving the recongnition that they deserve. I would also like to say that if all of the other government agencies were staffed with people as efficient and as courteous as the Coast Guard, no one would mind paying their taxes. I hope that you will do your best to see that the USCG gets the appropriations it needs to continue serving the citizens of our country.

Very truly yours,

P. CAREY BECKER.

METAIRIE, LA,
August 16, 1986.

COMMANDING OFFICER,
Brookley Base, U.S. Coast Guard, Mobile, AL.

DEAR SIR: I am writing in appreciation of the excellent performance of your men and woman who rescued my son Will, a close friend Donald Teijelo, his son Lee, and me on the night of July 30, 1986. Don and I were sailing on a 14 foot boat about ½ mile off the south shore of Dauphin Island when we noticed dark clouds to the south-east. We headed immediately for shore, but had to drop the sail about 50 yards out. Our sons, aged 16 and 17, saw what was happening from the beach, and swam out to help us get the boat in. By the time they reached us, all that we could do was to huddle on the boat with only two life jackets for the four of us, and wait for the storm to pass. Two men vacationing in the area saw our problem and launched a 14 foot john boat to come to our rescue. When they reached us, we were probably close to a mile out, and the winds and waves had reached the point that they were also in trouble and had to turn back. Before they could reach land, they had to swamp the boat to keep it from pitching over. We now had six people in trouble in the worst storm I have ever been in over some 20 years of sailing. I am told that the winds were sustained at 55 knots, with gusts to 93.

The fortunate part of this incident is that we had happened to launch off the beach by the Coast Guard Recreation Center on Dauphin Island. Men there had immediately notified your base of the need for assistance. By sundown, the storm had passed, but the waves and wind were still too high to set the sail on the over-loaded boat. Two USCG helicopters, flying a search pattern, soon found the two men in the water with the john boat, and shortly after located us. A 41 foot cutter, #41460, arrived about 8:15 PM, and took the four of us, and our boat on board. In the two hours that had passed we had been blown about 4.5 miles off-shore, and were nearing a major shipping lane. I believe the following were the boat's crew that night: Coxswain: BM3 Larry Lanier and BM3 William Davis. Engineer MK2 Charles Morris, MK2 McKee, and SA Suzette Pontius.

Because of the suddenness and severity of the storm, we were the third or fourth mission they were on that evening. Each one was efficient, courteous, and a credit to your service. After making sure that all of the people were safe, they went to extra effort to secure our boats and equipment. I hope that you will pass on to them our gratitude, and that of our wives.

Very truly yours,

P. CAREY BECKER.

METAIRIE, LA,
August 16, 1986.

COMMANDING OFFICER,
Aviation Training Center, U.S. Coast Guard, Mobile, AL.

DEAR SIR: I am writing in appreciation of the excellent performance of your men who rescued my son Will, a close friend Donald Teijelo, his son Lee, and me on the night of July 30, 1986. Don and I were sailing in a 14 foot board boat about one-half mile off the south shore of Dauphin Island when we noticed dark clouds to the south-east. We headed immediately for shore, but had to drop the sail about 50 yards out. Our sons, aged 16 and 17, saw what was happening from the beach, and swam out to help us get

the boat in. By the time they reached us, all that we could do was to huddle on the boat with only two life jackets for the four of us, and wait for the storm to pass. Two men vacationing in the area saw our problem and launched a 14 foot john boat to come to our rescue. When they reached us, we were probably close to a mile out, and the winds and waves had reached the point that they were also in trouble and had to turn back. Before they could reach land, they had to swamp the boat to keep it from pitching over. We now had six people in trouble in the worst storm I have ever been in over some 20 years of sailing. I am told that the winds were sustained at 55 knots, with gusts to 93.

The fortunate part of this incident is that we had happened to launch off the beach by the Coast Guard Recreation Center on Dauphin Island. Men there had immediately notified your base of the need for assistance. By sundown, the storm had passed, but the waves and wind were still too high to set the sail in the pram. Two USCG helicopters, flying a search pattern, soon found the two men in the water with the john boat. While one was recovering them the other located us. Being blinded by its searchlight is probably the best feeling I have ever had in my life. After dropping a strobe light to mark our position, the helicopter hovered nearby until a USCG cutter could pick us up.

In the two hours that had passed we had been blown about 4.5 miles off-shore, and were nearing a major shipping lane. I believe the following were the crews that night: H-52 #3: Pilot, Lt. David L. Maxon; copilot, Lt. Dennis W. Lawrence; crew, AE3 Don R. Eyles (I am afraid I have this name misspelled). H-65 #6524: Pilot, Lt. Cdr. Alberto J. Gaston; copilot, Lt. Authur J. Lamontagne; crew, AD2 Mark A. Sassin; assisting, Capt. Allen Gould, USAF.

The efficiency with which they located such small targets after sundown, and in high seas is a credit to your service. Had they not performed so well, the best we could have hoped for would have been to be found the next day somewhere in the Gulf. We very probably owe our lives to them. I hope that you will pass on to them our gratitude, and that of our wives.

Very truly yours,

P. CAREY BECKER.

PORTUGUESE COMMUNITY HEALTH CARE TASK FORCE PERFORMS VALUABLE SERVICE

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. FRANK. Mr. Speaker, I want to call the attention of the Members of the House to a very innovative undertaking by St. Anne's Hospital in Fall River, MA.

In January 1984, St. Anne's Hospital of Fall River, MA established a Portuguese Community Health Care Task Force.

The purpose of this task force was to identify ways in which the hospital could better serve the health care needs of the Portuguese community in southeastern Massachusetts.

The task force, made up of community leaders, members of the Portuguese community, trustees and staff of the hospital, has been meeting on a regular basis for the past 2½ years. During this time, a number of issues effecting the Portuguese community have been identified. Issues, such as access to health care, communication, language barriers and the need for a better understanding of the special nature of the Portuguese and specifically, the Azorean culture, were among the major findings of the task force.

The task force can be credited with a number of significant accomplishments, such as the creation of a course in practical Portuguese for hospital employees; the translation of nearly all hospital literature and patient information brochures into Portuguese; the installation of bilingual signage throughout the hospital; the hiring of personnel with bilingual capabilities in certain key areas in the hospital; the production of a TV health spot on the local Portuguese cable television station; the writing of a regular health article in the local Portuguese newspaper, the "O'Journal", the sponsoring of several health screening, prevention and education programs in Portuguese parishes, and the establishment of a scholarship fund for bilingual students pursuint health care careers.

Earlier this year, an exchange program was initiated between St. Anne's and its sister hospital in St. Miguel, Azores. At the invitation of the task force, the administrator of Ponta Delgada Hospital, Dr. Jose Estrela Rego, spent several days in Fall River.

Since Ponta Delgada is preparing to construct a new facility, one of Dr. Rego's principle tasks was to examine the building design, as well as the clinical technology of St. Anne's. In addition, he sought to study the American approach to nursing education with officials from Southeastern Massachusetts University. Also discussed during his visit, were ways that the two hospitals could work together in the future to improve each's ability to deliver quality health care.

In October of this year, a joint delegation from St. Anne's Hospital and Southeastern Massachusetts University School of Nursing will visit St. Miguel as guests of Dr. Rego and the Azorean Government. The purpose of this visit will be to learn more about the health care delivery and educational system in the Azores so that this knowledge can be applied in the local community, enabling the hospital to be more responsive to the needs and special nature of the Azorean immigrants it serves.

I commend the participants in this undertaking, both here and in the Azores, for providing this excellent example of how a medical institution can meet its obligation to be responsive to the needs of the people it serves.

THE CASE OF JOSEPH DOHERTY

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DioGUARDI. Mr. Speaker, earlier this year, and again this week, I communicated to the Attorney General certain concerns of my constituents, concerns which I share, regarding the immigration case of an Irish refugee who entered this country illegally in 1982. The case is formally designated: "In the matter of Joseph Patrick Thomas Doherty, File No. A26185231" begun June 17, 1983.

In 1983 the U.S. Government brought deportation proceedings against Joseph Doherty, an admitted former member of the Irish Republican Army [the IRA] who had been in combat against British occupation forces in those six of the divided Irish Province of Ulster's nine counties known as Northern Ireland and who had, on orders from his superiors in the IRA, escaped from a British prison and sought refuge in the United States. The issue here is not the use of physical force by the IRA. Be assured that I share your abhorrance of violence of whatever origin, and, unlike the British Government, I do not believe that there is any such thing as "an acceptable level of violence in the community." But, I do agree with the finding of the U.S. District Court for the Southern District of New York that there is a longstanding insurrection by an organized military force against continued English rule in Ireland. It is further evident that the ultimate cause of the continuing Irish troubles is the partition of Ireland and the occupation of part of the Irish national territory by a foreign power.

The issue before us now is justice in the case of Joseph Doherty, not the relative merits of the cause he served in Ireland. The Doherty deportation proceedings have been held in abeyance for the last 3 years during extradition proceedings, requested by the British Government, seeking to return Joseph Doherty to the United Kingdom.

On December 12, 1984, the U.S. District Court for the Southern District of New York found that Joseph Doherty was not subject to extradition. In so ruling, Judge John E. Sprizzo stated that "the facts of this case present the political offense exception in its most classic form." (Matter of Doherty by the Government of the United Kingdom, 599 F.Supp. 270, 276 (S.D.N.Y. 1984). The National Law Journal supported Judge Sprizzo's decision as being "fully supported by the facts and law" (Dec. 31, 1984, p. 12, col. 1).

In February 1985 the executive branch of the U.S. Government filed an unprecedented lawsuit seeking a declaratory judgment against Judge Sprizzo's decision. On June 25, 1985, the Honorable Charles S. Haight, Jr., of the U.S. District Court for the Southern District of New York, ruled that Judge Sprizzo's order denying extradition is not subject to review (*United States* v. *Doherty,* 615 F.Supp. 755, 760 n. 5 (S.D.N.Y. 1985)).

In August 1985 the executive branch of the U.S. Government appealed the decision of Judge Haight to the U.S. Court of Appeals for the Second Circuit. In a unanimous 3 to 0 decision written by the eminent legal scholar Judge Henry Friendly, handed down March 13, 1986, the decision of Judge Haight was affirmed in all respects. Joseph Doherty is not properly subject to extradition to the United Kingdom.

September 2, 1986, was the deadline for the filing of a petition for a writ of certiorari to appeal the decision of the court of appeals to the Supreme Court of the United States. No

such petition was filed, meaning that the extradition question has been settled legally in favor of Mr. Doherty and the deportation proceedings could proceed as soon as Mr. Doherty would withdraw his request for political asylum, which request has been withdrawn in favor of the Government's original deportation request.

On September 19, 1986, in response to a presentation that Joseph Doherty would consent to an order of deportation to the Republic of Ireland, Immigration Judge Howard I. Cohen of the Executive Office for Immigration Review issued an order of deportation to send Joseph Doherty to the Republic of Ireland.

Joseph Doherty has been in jail for over 3 years without a break during these proceedings, despite the many court findings in his favor. Having won his legal battle against extradition, he seeks only to return home to the Republic of Ireland where he is a citizen by birth and, under Irish law, must be admitted.

One reason that I have taken the time to raise this issue in the Congress is as a result of a deluge of telephone calls over the past few days, from constituents, to my district office expressing great fears that justice might not be done in the case of Joseph Doherty.

The fear which my constituents express is that the U.S. Government will appeal the decision to deport Joseph Doherty to the Republic of Ireland, not because it would be detrimental to the interests of the United States to have Doherty in Dublin, but for the sole purpose of satisfying the desire of the British Government to see Joseph Doherty punished for his role as a member of the IRA seeking to end English rule in Ireland. They fear that the deportation of Joseph Doherty will be delayed until after the Westminister Parliament ratifies the New Supplemental Extradition Treaty between the United States and the United Kingdom; they fear that the British Government will then again seek the extradition of Joseph Doherty, this time under the new treaty, and that Joseph Doherty will spend another 3 years in an American jail refighting the same legal battle which he has just won.

Their fears are grounded in the two facts: First, that this treaty was drafted as a direct result of the British Government failing to find the American court which would extradite Joseph Doherty—making the treaty in effect a bill of attainder; second, the treaty is retroactive—making it an ex post facto instrument for punishing England's past enemies where they can be found in the United States—presumably not only veterans of the 1919–21 Irish War for Independence would be in jeopardy, but also members of the Irgun, including Menachem Begin. It shouldn't require an accountant to remind a House with a majority of lawyers that both bills of attainder and ex post facto legislation are expressly forbidden by the Constitution of the United States. These, and many other English legal practices, were among the causes of the American Revolution; the Constitution of the United States is a great instrument for reminding us of our own legal history. The retroactivity provision of the New Supplemental Extradition Treaty was opposed by 33 Members of the U.S. Senate, including both Senators from my own State of New York. Opposition to this provision, and to the treaty itself, was most eloquently stated in the Senate by Senator ALFONSE D'AMATO (CONGRESSIONAL RECORD, July 16, 1986, pp. S9153–S9160).

When you add to the diplomatic record the multiple attempts to overturn Judge Sprizzo's 1984 decision that Joseph Doherty fit the political offense exception to extradition, it is not difficult to understand the great sense of apprehension which is expressed by so many of my constituents in the case of Joseph Doherty.

I, too, am apprehensive, but not just for Joseph Doherty. It is my fear that, should my constituents' fears not prove groundless, the honor of the United States might be sullied were it to be perceived that this country's Government ignored the final decision of its own independent judiciary, ignored even the Constitution of the United States and the history of the American Revolution for the purpose, figuratively speaking, of "handing the head of Joe Doherty on a silver platter" to Margaret Thatcher.

I have communicated my fears to the Attorney General of the United States together with my request that Joseph Doherty be allowed to be deported, without delay, to the Republic of Ireland. Please join your voices with my own—at stake is our national honor and the reputation of the United States as an independent country with liberty and justice for all.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, September, 25, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 26

9:00 a.m.
Conferees
Closed, on S. 2638, proposed National Defense Authorations Act.
S-407, Capitol

9:30 a.m.
Governmental Affairs
Intergovernmental Relations Subcommittee
To hold hearings on comprehensive federalism reform.
SD-342

10:00 a.m.
Environment and Public Works
To continue hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

2:00 p.m.
Appropriations
Business meeting, to mark up the provisions of H.J. Res. 730, making continuing appropriations for fiscal year 1987 (pending on House calendar).
SD-192

SEPTEMBER 29

9:30 a.m.
Environment and Public Works
Nuclear Regulation Subcommittee
To hold hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear powerplant accident.
SD-406

Finance
Taxation and Debt Management Subcommittee
To hold hearings on S. 1974 and S. 1113, bills to prohibit the imposition by States of the worldwide unitary method of taxation.
SD-215

11:00 a.m.
Environment and Public Works
To hold hearings on the nomination of Vaun A. Newill, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency for Research and Development.
SD-406

2:00 p.m.
*Rules and Administration
To resume oversight hearings on the operations and functions of the Office of the Senate Sergeant at Arms.
SR-385

SEPTEMBER 30

9:30 a.m.
Judiciary
Constitution Subcommittee
Business meeting, to mark up S. 1580, to revise Federally mandated attorneys fees applicable to civil, criminal, and administrative proceedings involving the United States and Civil proceedings involving State and local governments.
SD-226

10:00 a.m.
Environment and Public Works
To resume hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold hearings on United States trade relations with Taiwan and Korea.
SD-419

OCTOBER 1

9:00 a.m.
*Armed Services
To hear and consider the nominations of Robert B. Barker, of California, to be Chairman of the Military Liaison Committee to the Department of Energy, William A. Clinkscales, of Virginia, to be Director of the Selective Service System, and James F. McGovern, of Virginia, to be Under Secretary of the Air Force, and military nominations.
SR-222

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings on activities of the National Highway Traffic Safety Administration, and the implementation of the Motor Carrier Safety Act of 1984.
SR-253

Foreign Relations
Business meeting, to consider pending calendar business.
SD-419

Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
To hold oversight hearings to review Federal procedures relating to the proposed Port America site in Prince Georges County, Maryland, including section 404 permits and environmental impact assessments as contained in the National Environmental Policy Act of 1969.
SD-406

Judiciary
To hold hearings to examine certain criminal activity in the pharmaceutical industry.
SD-226

2:00 p.m.
Foreign Relations
East Asian and Pacific Affairs Subcommittee
To hold oversight hearings on the North Pacific drift net fisheries.
SD-419

4:00 p.m.
Select on Intelligence
Closed meeting, to discuss intelligence matters.
SH-219

OCTOBER 2

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
To resume hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution.
SD-406

OCTOBER 3

10:00 a.m.
Environment and Public Works
Nuclear Regulation Subcommittee
To resume hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear powerplant accident.
SD-406

CANCELLATIONS

SEPTEMBER 26

9:30 a.m.
Commerce, Science, and Transportation
Aviation Subcommittee
To hold hearings on proposed legislation authorizing funds for the Airport and Airway Trust Fund.
SR-253

SENATE—*Thursday, September 25, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

God of all comfort, in this large Senate family, there are probably many who are hurting about whom we are uninformed. But You know, Lord, who they are and their circumstances.

We regret the death of Officer Delbert Lanier after surgery last night and pray for Your consolation for his family.

We pray for every person who has a need, whether it be personal, family, physical, financial, or vocational.

Confident You are a God who knows when the spirit falls to the ground, we lift up to You those who are hurting and pray for a special healing touch in their lives.

We are grateful for the good news concerning Mrs. Metzenbaum and pray for her early and total recovery.

We are grateful for the recovery of Senator GARN and his daughter, Susan, and commend them to Your gracious care.

Words come with difficulty when we remember Stan and Eunice Kimmit as they hope against hope for their son, Tom. Be gracious, Lord, to a strong, loving father who waits helplessly and a faithful mother and her lonely vigil beside her son's bed day after day now for 18 months. In mercy, Lord, give them special grace and comfort in their unrelieved pain and anxiety.

Thank You, Heavenly Father, for Your comfort and encouragement in difficult days. In His name who is the great physician. Amen.

RECOGNITION OF MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

SCHEDULE

Mr. DOLE. I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND of South Carolina.

Under the standing order, the leaders will have 10 minutes each followed by special orders for Senators HAWKINS, PROXMIRE, MURKOWSKI, BRADLEY, and MCCONNELL for not to exceed 5 minutes each.

Routine morning business will not extend beyond the hour of 10:30 a.m., with Senators permitted to speak for no more than 5 minutes each.

Between 9:30 and 10:30, hopefully, we can make some decision on cloture on product liability.

It is still my hope that we can complete action on the Commodity Futures Trading Commission authorization legislation. I know they were working last evening, the staff representing Members on both sides of the aisle, to see if they could combine some of the amendments because there are Members on each side who want to offer pretty much the same amendment on grain quality, for example.

Senator MELCHER has an amendment which can be accepted and Senator MCCONNELL has an amendment which can be accepted.

We would still like to dispose of that piece of legislation and then perhaps move to FIFRA, which is another important piece of legislation which should be disposed of.

On that there could be an amendment by Senator BOREN, if he decides not to offer it on the CFTC legislation.

In any event, I would say before midafternoon it would be my hope that we could turn to drug legislation. We hope to have an opportunity to meet sometime this morning with the principals who have been involved with their staffs for the last couple of weeks. That would include myself, the distinguished minority leader, and others who might be designated. There is a lot of work going on by members of our staffs on each side of the aisle.

We hope we can agree on 90 percent of the package. There is no disagreement from the standpoint of Republicans or Democrats. We do not believe ours will be a perfect solution, but we do believe that it is time for us to act. We would like to start that process today.

In my view, the drug problem can only be solved by a full-scale bipartisan attack. That is why we looked carefully at all proposals and then divided negotiators into five bipartisan working groups. They have been working within these groups.

One group is education, prevention, and treatment. The second group is judiciary and justice related issues. The third group is interdiction of supply. The fourth group is international issues. The final group is leadership issues and floor amendments.

The initial meeting was held last Friday afternoon and they have reached, we believe, a fair consensus. We believe that most, if not all, Senators can agree to cosponsor and wholeheartedly support the package at the outset. However, as with any comprehensive package, some major issues must be decided on the Senate floor. At least at this time, we have not reached a compromise on such issues as the death penalty, the so-called drug czar, the exclusionary rule, drug testing and a few others. So in the course of this deliberation—today, tomorrow, and possibly Saturday—I hope we can resolve these outstanding issues.

Again, Mr. President, I suggest to my colleagues that we do not have a great deal of time left. I hope we are in the final 7 or 8 days of legislative business this year. I do believe there is some hope that we can conclude our business by October 3.

The one matter we would like to take up early today is the so-called Daniloff resolution sponsored by Senators HUMPHREY and MOYNIHAN. It is my understanding now that they have agreed to certain modifications in the resolution which will make it acceptable to nearly everyone on both sides and at least let us bring it up as a free-standing resolution. Otherwise, I am advised by Senator HUMPHREY that he will offer it as an amendment to whatever might be pending on the Senate floor.

Mr. President, I reserve the remainder of my time.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. ANDREWS). Under the previous order, the Democratic leader is recognized.

Mr. BYRD. I thank the Chair.

SUPPORT FOR THE PHILIPPINES

Mr. BYRD. Mr. President, President Corazon Aquino has now returned to the Philippines, after an inspiring visit to the United States. Her remarkable presentation to Congress was an eloquent testimony to the powerful wellsprings of democracy which exist in her island nation, and which survived and finally prevailed under extremely trying and difficult circumstances.

Mrs. Aquino renewed the lessons of the true value of the democratic system which she cherishes and which we cherish and nurture. Through the heroism of the Philippine people, the story which she so poignantly recounted to this body and the other body, she has retaught is our own lessons.

As she so accurately remarked, for the United States her revolution was cheap. The revolution that evolved and resulted in a democracy cost us nothing. But the dollars that we previously had given to the Marcos government were stolen by him, robbing his people of their intended help. Repayment of debts accumulated by Marcos, diverted from their intended use, are burdensome on the Philippine people today—consuming one-half of that Nation's export earnings to pay just the debt service.

Mrs. Aquino came to this country in a true celebration of democracy. And, she came for help. Mr. President, it is true that we have, so far, turned away from her request. She has gone home empty handed—not a cent, not a red cent, from this Chamber.

The Senate played a remarkable and responsible role as events unfolded in the Philippine peaceful revolution last spring. In declaring the manipulation of the election results by Marcos to amount to fraud, and in supporting the real victory of Mrs. Aquino, this body inspired the empowering of forces of democracy behind her. Are we now to give those same forces the brushoff? Are we now to step back from those forces in their time of need? No, I do not think we should do that. I do not think we will do that. And I do not think we will do that.

We have a serious budget crisis in this country. Our debt, foreign and domestic, is enormous. We dare not add to it. But there are ways to fulfill America's obligation to the Philippines and yet not add to that debt. The Contra Aid Program proposed by the administration includes a $300 million slush fund for Nicaragua's neighbors, which comes on top of very substantial aid we are providing those nations both last year and this coming year. I intend to offer an amendment to the continuing resolution, which contains the Contra program, which would give the Senate an opportunity to turn slush into genuine assistance, to turn bribery into investment, to turn waste into constructive assistance.

My amendment would redirect $200 million of the Central America slush fund toward economic support for the Philippines. It will not add 1 cent to our deficit, but I believe it is a far wiser use of $200 million in aid.

The administration has given no rationale for its $300 million slush fund. Presumably, it is designed to give Nicaragua's neighbors an incentive to support the U.S. Contra Aid Program. But those countries already have plenty of incentive. El Salvador is to get half a billion dollars next year, Honduras over $250 million, Costa Rica nearly $200 million, and Guatemala $150 million. The additional $300 million is just throwing money around, throwing it away in an extravagant way. So I believe redirecting $200 million for the Philippines is justifiable and will not damage America's goals in Central America.

The base facilities that currently exist in the Philippines are essential to America's security interests in the Pacific region and the continued support of the Philippine Government for those bases is critical to American national security interest. It would be nearly impossible and enormously expensive, even if it were possible, to substitute those bases with comparable facilities in the near future.

Mr. President, do I have any time remaining under the order?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. BYRD. I thank the Chair.

I ask unanimous consent that I may reserve the remainder of my time throughout the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida is recognized for not to exceed 5 minutes.

VITIATION OF SPECIAL ORDER FOR SENATOR McCONNELL

Mrs. HAWKINS. Mr. President, I ask unanimous consent that the special order for the Senator from Kentucky [Mr. MCCONNELL] be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

DRUG TESTING: MUCH ADO ABOUT NOTHING

Mrs. HAWKINS. Mr. President, there are 61 lawyers in the Senate. Some people think that is enough. Some people think that is too many. I am not one of the lawyers. But in my 15 years of public service, I have learned something about the law and the Constitution. Frankly, I am puzzled at the questions being raised about drug testing, contending that it is a constitutional issue and an invasion of privacy. The hullabaloo strikes me as much ado about nothing.

Laws require us to have a driver's license to operate an automobile and States place various restrictions on who may drive. Health regulations mandate vaccinations against several diseases before children may attend school. There are Federal and State laws regulating the sale and transportation of firearms. There are laws governing the sale and consumption of alcoholic beverages.

Such laws were enacted in the best-interests, safety and well-being of society. They do result in some limitations of personal freedom. They do not compromise basic constitutional rights. Nor do I believe that mandatory drug testing is any violation of our basic freedoms. Rather, drug use in the workplace and in our schools violates the rights of those who do not succumb to substance abuse. We all pay a heavy price for drug use.

Drug testing is already in place and working splendidly in our Armed Forces. And I might add—it has worked! It has not violated anyone's right of privacy. Testing has enabled the military to bring under control a significant drug problem in its ranks.

Many private companies, municipal governments and professional sports teams have already implemented drug testing programs. President Reagan and Vice President BUSH have been tested. My Senate office staff has undergone testing. I have passed the test. In none of these instances have constitutional rights been violated.

There are many areas of employment where public safety can not be compromised—airline pilots, air traffic controllers, railroad engineers, bus drivers, ships officers, policemen, firemen, doctors, nurses, ambulance teams, paramedics, and nulcear plant crews, to name a few. The public has a right to expect drug-free personnel in our transportation facilities, hospital rooms and utility management. And I do not think it violates any constitutional rights to require people employed in critical industries to take drug tests.

In Kansas City, five air traffic controllers have been fired for drug use. In my home State of Florida, an air traffic controller was arrested after discovery of a package containing 10 ounces of cocaine being shipped to Illinois. Air controllers must make split second decisions involving the safety of thousands of airline passengers. Their minds cannot function properly and their reflexes are slowed under the influence of drugs.

I do not think it is unreasonable to expect Federal employees in sensitive positions to be drug-free. I would take that a step further: I think all Federal employees should be subject to drug tests. I know that some individuals and groups feel that mandatory drug testing violates personal rights. But I think they are wrong. This Nation is the greatest on Earth, but it has a major flaw. It consumes 60 percent of the world's output of illicit drugs. This is the compelling issue we must address.

□ 0950

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. Thank you, Mr. President.

STAR WARS SPINOFFS DO NOT JUSTIFY ITS WASTE

Mr. PROXMIRE. Mr. President, the Sunday, August 25 New York Times magazine carried a story entitled "The Star Wars Spinoff." The story was written by Malcolm Browne. Mr. Browne is a New York Times science writer. Browne concludes that the more than $6 billion already spent on star wars will change the face of science whether a single strategic defense initiative unit is ever deployed or not. The scientific spinoffs in the future will become ever more dazzling as the billions in research become tens of billions as the administration intends. What areas of human endeavor will specially benefit from this extraordinary explosion of scientific research? Browne cites many. Conventional military weapons could receive the largest benefit. SDI research has greatly advanced the railgun. Browne contends that both the United States and Soviet military planners agree that continental style armored combat will be transformed by tough-skinned Soviet tanks opposed, thanks to oncoming SDI research, by amazing new rail guns powered by such enormous increases in velocity that they can send steel projectiles through supertoughened armor.

Browne charges that star wars research has also made stunning contributions to cancer research through the development of the free electron laser. This laser shows promise—probably several years away—of increasing its velocity to a point where it could confront and defeat ballistic missiles in flight. The same penetrating capability can be applied to find and destroy cancerous tissue. The electron beam has little effect in the tissue through which it passes. But when it reaches its penetration depth, it releases most of its energy at that spot. Result: an exactly calibrated electron beam could smack a malignant tumor on the precise spot without damaging the healthy tissue.

So what's the answer? Does the star wars spinoff make this multibillion-dollar research extravaganza worthwhile? Malcolm Browne gives a double-edged answer: he says critics of star wars point out that the technological aid benefits of this SDI research could be achieved far more cheaply and quickly if researchers went after them directly, to which this Senator would say "amen." So why don't we? Well, says Browne, the star wars supporters say there is no way this country would pursue this research with such all out vigorous funding—with the juiciest contracts that buy the best research brains and give them the finest equipment money can buy to work with if it were not driven by the top military priority of the President of the United States. And do not knock it, says Browne. This is the way so much scientific progress has always been made. Out of World War II came a quantum jump in aeronautics. World War II military research also brought us the great new nuclear energy industry, not to mention plastics, synthetic fibers, antibiotics and many other scientific marvels.

Mr. President, this argument is madness. It is the old story of the man who discovered the joys of roast pig when his house burned down with a pig in it. The roast pig tasted so great the man and his friends bought up houses, placed a pig in each and burned each house down so they could dine on that ever-loving roast pork.

In the terrible exigencies of war, this Senator can understand how we can welcome beneficial side effects. But in peacetime? Can any sane person justify the billions we are throwing away and the trillion dollars or more we will eventually squander on this ridiculous and obscene waste of our resources because the President of the United States, one highly popular but very limited man has made such an appalling military decision? Here is one Senator who can find no justification in this madness. Surely, the Congress of the United States can and should directly fund research that can improve our conventional weapons. Certainly we can and should and do fund the most promising cancer research. If laser beams have such promise in fighting cancer, let's go ahead—to fight—not to dream of an impenetrable, missileproof rainbow for the whole United States.

MYTH: PR PACKAGE CAN REPLACE SANCTIONS

Mr. PROXMIRE. Mr. President, the myth of the day is that a package of South African actions the administration is cooking up can adequately replace the South African sanctions Congress has passed.

Here is the strategy coming out of the White House. The President plans to veto the bill Congress passed by a wide bipartisan margin, which imposes economic sanctions against South Africa.

Mr. Reagan knows he will catch a lot of heat for this veto. His policy of constructive engagement with South Africa has no support in Congress or across the country. It is a disgraceful policy that runs counter to the democratic values this Nation stands for.

Mr. Reagan, therefore, knows that Congress would likely override that veto.

So in order to head off a veto override, the White House is floating a trial balloon. If you don't override the veto, the White House is proposing, we'll offer a package of South African initiatives in place of the sanction.

That package, according to press reports, consists of:

First, appointing a black Ambassador to Pretoria; second, giving $500 million in aid to countries bordering South Africa; third, and accepting just some of the sanctions in the congressional bill.

Mr. President, it is a myth to believe for one moment that this package is an adequate substitute for the congressional sanctions bill.

For starters, we don't have a half billion dollars to give in foreign aid to these border states.

Second, appointing a black Ambassador to South Africa is nothing but a cosmetic gesture. The problem is not with our Ambassador, but with our President's South African policy.

Third, the Congress and the American people are tired of getting only a half a loaf from this administration when it comes to sanctions. It is time for this administration to come through with the whole loaf.

Mr. President, it is time for the administration to stop being an apologist for the repressive regime in South Africa.

It is time to recognize that the situation in South Africa is becoming more violent and more unstable.

It is time for the United States to stand firmly behind the forces of freedom in South Africa.

In other words, it is time for the sanctions Congress has passed—not the PR package the administration is floating—to become the law of the land.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10:30 a.m., with statements therein limited to 5 minutes each.

The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair.

AN UNWRITTEN DRUG BILL

Mr. LEVIN. Mr. President, this country is now facing some critical decisions and many of them are coming together in the final days of this Congress. One of the things on which we

are focusing is drugs, and it is highly appropriate that we do so. I happen to come from a community which for a long time has faced the scourge of drugs. I was president of a city council in a city which has been devastated at least in times and parts by the drug menace. I have seen the product of drug use in that community and in many other communities across the country. So the problem is obviously an important one to address. It is important to address properly. We understand that there is now in process a drug measure being written. The ink not only is not dry on that measure, apparently some of the ink has not yet been used; it is still in the bottle. And so what we are being told is that the Senate might be asked today to proceed to consider a significant measure, significant to the people of this country, significant to our children, a measure which has not even been written.

I think that would be a mistake. There is no more important issue to address wisely and well. Any measure which is as important as this is entitled to appropriate consideration, serious consideration, wise consideration, and deliberate consideration. We ought to see it. We and the people of the United States ought to have a chance for a couple days to read it before we decide that we want to proceed to it.

I think it would be a mistake to proceed to a bill today which is still not written. I think it would not be consistent with the needs of this country to proceed to a bill today which is still not written. I think it is out of keeping with the seriousness of this question, the importance of this question, to proceed to a bill today which is still not written.

I hope we proceed to this issue before we leave. If we have to stay longer than October 3 in order to address this issue, I hope we do so. But I also hope that we, a body that we like to think of as a deliberative body, not contemplate consideration on the same day that that bill is being written, never having had any hearings, no committee report. It is too serious to treat this way. It is not a political issue. Hopefully it will not be treated as a partisan issue. Hopefully it will be treated as an issue which requires and commands some serious respect and serious debate, serious contemplation, not just by this body but by the people of the United States before this body proceeds to consider it.

I thank the Chair. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KASTEN). Without objection it is so ordered.

RECOGNITION OF SENATOR BRADLEY

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized for not to exceed 5 minutes.

ASSISTANCE TO THE PHILIPPINES

Mr. BRADLEY. Mr. President, I have asked for these few minutes this morning to talk about Philippine democracy and American honor.

Just yesterday, it seems, Americans gave their hearts and hands to the Filipino people in their struggle to overthrow a corrupt dictator. We championed their cause. Their victory was a victory for all democratic nations.

But getting rid of Marcos was just the beginning of a new struggle. A struggle against Communist insurgents, a struggle against reactionary forces who continue to resist the people's will, a struggle against a huge debt burden that crushes hope and strangles growth; a struggle against poverty, illiteracy, joblessness, and despair.

These forces are democracies' most potent foes. They stand in the way of the political stability and the modest prosperity without which democracy cannot thrive.

Mrs. Aquino knows that. And few have put it so eloquently as she. But it was not her eloquence that prompted the House to vote $200 million in supplemental economic assistance.

The House voted for that money because they understood that our moral and security interests also hang in the balance. That is why it is imperative that the Senate follow the House in aiding the Philippines at this critical time.

If we do not, both our commitment to democracy and the value of America's word will be found wanting, not just in the Philippines, but around the world. We will undercut our leadership and debase our worth if we fail to follow up our words with aid.

We must seize this opportunity to demonstrate our solidarity with the Filipino people in a concrete way. Rather than wishing Mrs. Aquino and the Filipino people luck, we must help them help themselves. To be effective, our help must come when it is most needed—when the new government is struggling to translate its mandate into action.

There may be some in this body who think that United States interests would be better served if a different group were to take power in the Philippines. This is a dangerously flawed notion. We cannot promote our interests by seeking to impose our will on the Filipino people. That is the lesson of Marcos' downfall. The best hope for furthering our objectives lies in a democratic government with genuine popular support. Cory Aquino unquestionably enjoys that support—and deservedly so.

I know that the deficit and the Gramm-Rudman regime force us to make tough choices. But helping our Filipino friends consolidate their new democracy is a wise use of our funds even when things are tight at home. Shortchanging democracy is penny-wise and pound-foolish. On the other hand, a modest investment in democracy will preserve our access to key bases and earn us ample political and strategic dividends in the years ahead. Make no mistake. Preserving democracy in the Philippines is critical. Our bases there project American power into Asia and the Pacific. If we shortchange the Filipinos now, we risk losing those bases to the Communists.

But there is even more at stake here than bases. Filipinos inherited their yearning for democracy from America. We were their mentors. If we turn a deaf ear to their needs now, how can we be democracy's champion? Instead, the world will view us as a fair weather friend, long on rhetoric and short on staying power. Who will trust us if we betray the trust of Cory Aquino and the millions who elected her? In this context, I am mystified that some Members of this body can find money to subsidize grain sales to the Soviet Union and yet they close their purses to a staunch ally in a time of need.

So, Mr. President, I hope that we will soon act on this economic assistance. And I hope that it will pass by the overwhelming majority that the Philippine people deserve.

AVERELL HARRIMAN

Mr. HART. Mr. President, last week, many of us gathered to pay tribute to the life, work, and contribution of Averell Harriman. To the hundreds who came to the National Cathedral, he was known by many names: Governor, Mr. Ambassador, and Mr. Secretary—to mention just a few. But the thousands more across this country, who didn't experience firsthand his advice or his friendship, he was known simply as a patriot who gave selflessly to the country he loved.

Indeed, what distinguished Averell Harriman's service was not just its breadth but also its quality. He integrated his mastery of business, politics, and world history to become a genius of administration, a hero of diplomacy. His achievements were impressive, tangible, lasting. Our understanding of the Soviet Union, the neutrality of Laos, the cessation of nucle-

ar tests in the atmosphere—these are just some of the results of his efforts.

Most impressive of all was the quality of his professional advice—always acute, honest, and fearless. He was unafraid to tell Wall Street it needed the New Deal. He was unafraid to reprehend Soviet leaders for their despotism. And he was unafraid to tell America that we must negotiate with the Soviets, no matter how repugnant we find their behavior.

In all this, he exercised his influence with a selflessness that all in public service would do well to emulate. He worked tirelessly—but never on his own behalf. He weilded great power—but never for its own sake. He was often the first to make diplomatic breakthroughs—but usually the last to claim credit.

Much has been said about the life of this great statesman. But I believe that four men who knew him well, said it best. The words of Cyrus Vance, Clark Clifford, and Arthur Schlesinger, Jr., and our colleague from Massachusetts, Mr. KENNEDY, moved those of us who attended the memorial service for Averell Harriman. And I am confident they would move all Americans as well. For this reason, I ask unanimous consent that their eulogies be printed in the RECORD.

There being no objection, the eulogies were order to be printed in the RECORD, as follows:

REMARKS DELIVERED AT W. AVERELL HARRIMAN MEMORIAL CEREMONY TUESDAY, SEPTEMBER 16, 1986—WASHINGTON DC

(By Cyrus Vance)

Averell was my friend. He was also, at various times in my life, a mentor, a guide, a staunch ally, and a close and revered colleague. And always he was an inspiration. Over the years, we served together in good times and bad, and formed a bond of love and respect which will always be with me, and will all of our family.

For almost three decades, on perhaps the two most important challenges to face our nation since World War II, I worked closely with Averell. The first, in which his clarity of vision was a steady beacon, was US-Soviet relations. The second was Vietnam.

No one tried harder than Averell to resolve that conflict. Having already negotiated the Laos cease-fire in 1961, he approached the Vietnam crisis in a manner characteristic of his entire career—as a patriot, loyal to the presidents who had appointed him, yet determined to do everything in his power, to achieve a reasonable negotiated end to the war.

Day after day in Paris, in that difficult year of 1968, I watched Averell, then in his late 70s, push himself and the rest of us against the unrelenting clock of history. If our efforts were not crowned with an end to the conflict, it was not because of a lack of trying on his part.

But Vietnam was for him only an unhappy diversion from the main task that he had set for himself over the last 40 years. I refer, of course, to the search for ways to deal with the Soviet Union.

At various times in his life, Averell was attacked by the left for being too hard on Russia and by the right for being too soft. History will record that both criticism were equally misinformed. Through the high winds and turbulence of American domestic politics, his course was remarkably steady. As he often said, the Soviet system and value are vastly different from ours in a profound and disquieting way, but we must live on the same planet and find ways of reducing the chance of war. "I decry," he wrote a decade ago, "those who contend that any relaxation of tensions must inevitably benefit the Russians, to our disadvantage." In a memorable phrase that has as much relevance today as it did when he coined it, he called for a policy of "competitive coexistence." Characteristically, he said that he did not fear this competition, for in the end he believed that American determination, Americans ideals, and American strength would succeed. His was a down-to-earth, unideological, and wholly American approach to dealing with the Soviet Union.

Averell approached all problems with the same simple, direct style. We were all aware—many of us from painful first-hand experience—why he was called the "crocodile." He penetrated straight to the heart of any issue, seized it, and never let go. Not for Averell a meandering debate: if there was a problem he wanted to solve it—not tomorrow but immediately. Enough talk, he seemed to say, let's get on with it. Like his great friend, Winston Churchill, he felt that the problems would worry for themselves; what he wanted was solutions.

This impatience with temporizing, this fierce determination to create, to build, to make a contribution, stemmed, I believe, from his conviction like Jefferson, Madison and other Founding Fathers, that he had a profound obligation to serve the country that had given him so much. And he did not shrink from the political side of policy debate. This sometime made him suspect in the eyes of others. But I believe that this willingness to mix politics and policy testified in the most eloquent way that he cared not just about service but about solutions.

Averell cared about something else too: encouraging the careers—and particularly independent thinking—of young foreign service officers. Throughout his career, he sought out promising junior foreign service officers whom he promoted rapidly, often to the dismay of their superiors. Up to 50 years older than some of the people he worked closely with, he was more open to new ideas than many of them. To encourage that rarest of bureaucratic qualities, which he possessed in such abundance, he established an award—given each year to a junior foreign service officer who had shown exceptional talent and "creative dissent" in his work. Later, Pam added a second award in honor of Avis Bohlen, the widow of Averell's distinguished foreign service colleague, Ambassador Charles Bohlen. This award is given annually to a member of a foreign service family. These two awards are part of the shining legacy of W. Averell Harriman.

Averell also gave us one of the most important institutions of Soviet studies in the country, which he established a few years ago at Columbia University. I am confident that from the new generation of young men and women being trained there, there will come distinguished public servants of the future, like Chip Bohlen, George Kennan and Tommy Thompson.

Averell Harriman lived the consummate life of our century. He was vital and questing, a participant in history, for more than five decades. He never said so directly, but I think I know how he would have summed up his aggressive, probing activism—a ceaseless energy which continued until the last few weeks. We can do better, he would have said; we can do better, and we must try.

The poet, Stephen Spender, once wrote these lines which I feel capture the essence of our friend Averell:

I think continually of those who were truly great—
The names of those who in their lives fought for life,
Who wore at their hearts the fire's center.
Born of the sun they traveled a short while towards the sun,
And left the vivid air signed with their honor.

REMARKS OF THE HONORABLE CLARK M. CLIFFORD

I wish to express my appreciation to the three speakers who preceded me for their eloquence and what each did to enrich the life of Averell Harriman.

We have heard of his public career, of his expertise as a foreign policy advisor, and we know much about it and the fifty years of service he rendered to the country.

I shall confine my remarks to an extraordinary one visit that I had with him some time ago. On May 7, 1983, I had the opportunity of visiting with him for four hours. Now, two men do not just sit down together and talk for four hours. We were taking a trip in the Governor's plane to Independence, Missouri, to attend a meeting of the Truman Library Board. So we had two hours going out and two hours coming back.

He was in a wonderfully nostalgic period. He spoke of his boyhood, he talked of his father, he talked of his young manhood, and he stated the impact that Franklin Roosevelt had had upon him and how the direction of his life had changed as a result of that friendship.

At one time he spoke of Walter Lippmann. He had the highest regard for him. He said he felt the country owed him a debt of gratitude because Lippmann had the facility to take the most complex foreign and domestic issues and reduce them to clarity so that the American people could understand it.

We both remembered that Walter Lippmann had a photograph hanging on the wall of his office. It was taken from a tombstone from a churchyard in Carolina of a man who had died in the Civil War. I tried to remember the words, and he did, but we did not do it well. I said I would get a copy of it and send it to him if I could because I thought that it contained words that perhaps very aptly could describe Averell Harriman. There are not many, but they are meaningful.

"Unawed by opinion, unseduced by flattery, undismayed by disaster, he confronted life with unique courage and death with Christian hope."

On the way back we had exhausted most of the usual subjects, and we turned to literature and then to poetry, and we attempted to lines of poems we loved. He would come up with one; I might remember one; sometimes we were successful in constructing an entire stanza. I found that we both had the deepest respect and the highest regard for Alfred Lord Tennyson, and we attempted, if we could, to put together a poem that we both loved. We didn't do it very successfully, but I shall read it now because of the significance that it has today:

Sunset and evening star,
And one clear call for me
And may there be no moaning of the bar
When I put out to sea.

But such a tide as moving seems asleep
Too full for sound and foam
When that which drew from out the boundless deep
Turns again home.

Twilight and evening bell
And after that the dark
And may there be no sadness of farewell
When I embark

For though from out are born of time and place
The flood may bear me far
I hope to see my pilot face to face
When I have crossed the bar.

At one point, he told of a very troubled year he had. It was the year 1970 and he said it was a year of withdrawal. He found himself withdrawing from people, even from his friends. He said he found himself losing interest in subjects that he had long followed. But then he said that all changed in 1971 when he married Pamela. And he spoke so beautifully of that relationship. He spoke of the sense of fulfillment that it had brought to him, and it was a wonderful experience to sense the feeling with which he spoke. And after a bit, I suggested, "Well, certainly, one of the best decisions you ever made was when you married Pamela." He smiled, and said, "No. It was not 'one of the best decisions I ever made.' It was *the* best decision I ever made."

I feel his presence strongly here today, here with his family, here with so many of his close friends in this magnificent House of God. If he were here and if he could, I think he might conclude by reading a lovely poem by Ila Richardson. I will read it for him:

If I should ever leave you, whom I love
To go along the silent way
Grieve not, nor speak of me with tears
But laugh and talk of me as if I were beside you
For, who knows, but that I shall be oftentimes.

I'd come, I'd come, but could I find a way
But would not tears and grief be barriers
And when you hear a song I used to sing
Or see a bird I love
Let not the thought of me be sad
For I am loving you just as I always had.

You were so good to me
So many things I still wanted to do
So many, many things to say to you
Remember that I did not fear
It was just leaving you I could not bear to face.

We cannot see beyond, but this I know
I loved you so, 'twas heaven there with you.

REMARKS OF ARTHUR SCHLESINGER, JR.

During these weeks since Averell Harriman's death, in sorting out impressions and recollections across the long years, I found myself trying to understand the qualities of character that made him so impressive a figure in all our lives and in the history of our times.

I first met Averell forty years ago, directly after the war. I was in my twenties, a young fellow who had occupied obscure posts in the OWI and the OSS and later rose to the rank of corporal in the ETO. Averell was already world-famous, the trusted intermediary between Roosevelt, Churchill and Stalin, ambassador to the Soviet Union, then to Britain and at this point Secretary of Commerce in President Truman's cabinet.

We were brought together by Robert E. Sherwood, who was working on his wonderful book Roosevelt and Hopkins. What struck me at once was that, despite the formidable gap in age, experience, status, knowledge and savoir-faire, Averell wasted no time on ceremony, treated me as a contemporary, instructed me to call him by his first name and placed our relations on a basis of ease and candor that endured till the end of his days.

In 1948 he took me to Paris as his special assistant when he ran the European side of the Marshall Plan. Working for Averell, let me say, was not always easy. He was a nonfrills chief, single-minded in his concentration on the job, who rarely slept and expected his associates to be on call at any hour of day or night. Alfred Friendly, his director of public affairs, and I had special responsibility for his public appearances. Averell later became a rather effective speaker, but he was an inveterate mumbler in those days; and, after he had mumbled away a speech before an increasily bemused audience at a luncheon of the American Chamber of Commerce in Paris, Al and I, unable to face him, sought fortification at a convenient cafe and did not reappear in the office till later afternoon. Averell glared at us and said, "All right, what did I do wrong?" We told him. He grunted, dismissed us brusquely and returned to work. Still later he came by and, without further word about the speech, invited us to dinner at Maxim's.

For all the occasional exasperation involved, I do not know anyone who worked for him, then or later, who failed to emerge not alone with overwhelming respect for his boldness of mind and intensity of concern and purpose but with overwhelming affection for his straightness, decency and astonishing charm.

What happened on a small scale with associates was, I suppose, what happened more consequentially with Roosevelt, Churchill, Stalin and later generations of world statesmen who dealt with him on global matters. Above all, they liked Averell and trusted him. He was frank and often blunt in stating differences but with an impersonality that preserved friendship across political lines. When he became personal, he felt a little guilty about it thereafter. Once at dinner at Francis Biddle's in the early 1950s, he got mad for some reason at Archie MacLeish. Twenty years later MacLeish's name came up, and Averell surprisingly said, "You know, I still feel very badly over the way I treated Archie—do you remember, back at that Biddle dinner?"

His secret lay partly in his manners, which were distinguished. To the end of his life he accompanied parting guests to the front door and struggled to his feet when a woman entered the room. But, as Emerson said, "Manners impress as they indicate real power." Averell's manners were an expression of character.

He was one of the last of 19th century Americans. His father instilled high standards in him; his sister Mary led him to extend those standards to less fortunate members of society. Then there was Groton. He never much liked the Reverend Endicott Peabody. George Biddle in his autobiography recalls Averell's remark to his father about the Rector: "You know he would be an awful bully if he weren't such a terrible Christian." I once asked Averell why so many New Dealers came out of Groton. He said grimly, "Because they were unhappy there." Yet Groton too gave an abiding sense of service and obligation.

The word has gone out of fashion, but Averell was in truth a great gentleman. Even the Soviet leaders recognized this, which is why they welcomed him in Moscow though he made no bones about his dislike of their ideology and policy. Like really great gentlemen, he was a true democrat, scornful of judgments made on extraneous considerations like class, sex, race, color or opinion. One still remembers his magnificent contempt for John Foster Dulles's habit of appeasing Joe McCarthy at the expense of the foreign service.

Of course he joined to his 19th century code traits that made him so vital a force in 20th century government and life. He had an instinct for power and a readiness to use it, high intelligence, imperturbable self-confidence and sure political intuitions that steered him through the intricacies of European and Asian affairs and lapsed only when he confronted the incomprehensible politics of the state of New York.

But character counts most in the end. In this age of hustle and opportunism and the mucker pose, we don't seem to breed men like Averell Harriman very often. Yet it was men of this noble stamp who invented the republic and men of this stamp who saw it through its fiercest trials. We loved him for himself, for his concern and passion and patriotism, and we loved him for the hope his life held out that our nation may yet rise to its highest ideals. The republic was blessed by his years of service to the state. His friends were doubly blessed to have known him.

REMARKS OF THE HONORABLE EDWARD M. KENNEDY

Today I speak not simply for myself, but on behalf of both my brothers who cared deeply for Averell Harriman. For them—for Jackie and Ethel and our families—this great man was also the greatest of friends. He was advisor and counselor; he gave his help and his heart in our happiest days and our hardest hours. For us, he was like another, older—and yes, wiser brother.

It was a bond strongly-forged in a few glorious years, a generation ago, at the beginning of a new decade and a new Administration.

After the 1960 election, President Kennedy was not quite sure what assignment he should ask Governor Harriman to undertake. They knew each other, but not well—and after all, the Governor was well past the normal retirement age. But it was not long before President Kennedy came to regard Averell as the only ambitious seventy-year old he knew—and perhaps the single ablest diplomat in American history. By the end of those thousand days, there was no trust that President Kennedy would not have given to him. The young President and the elder statesmen became remarkable companions in a powerful quest to make the world safe for human survival.

They took a special delight in each other's presence. For example, President Kennedy was well aware of Averell's very selective hearing aid and its magical tendency to tune out the boring, the foolish and the long winded. But once during a meeting at the White House, the hearing aid actually failed. As the President started to talk, so did Assistant Secretary of State Harriman—who just kept on talking. Afterwards, someone asked the President if he was annoyed. Of course not, he said: "I enjoy watching Averell in a meeting more than anyone else. He sits there with his head down and you might think he's asleep. But then someone says something foolish and he bites off his

head like a crocodile." So that became his nickname among the new frontiersmen—and the crocodile loved it.

As Averell worked his way up, tireless in his 70s, to the summit of the President's confidence, he gave the most remarkable achievements to his country and the world. He had been among the first to warn of the Soviet danger after World War II; he now became the masterful negotiator of the first lasting break in the Cold War— the Nuclear Test Ban Treaty of 1963. He was not a man of illusions, of stereotypes, of the right or the left. At the bargaining table, he was tough, but without false bravado. Among the wise men of the many eras he lived and led, he was preeminent in reason and common sense.

He was practical, but principled—and on the most important issues, he was often prophetic. He negotiated neutralization in Laos—and warned against militarization in Vietnam. He dismissed as "outdated" the experts, many of them younger than he was, who said we had to expect and accept military dictatorships in Latin America.

Averell Harriman proved the truth of Robert Kennedy's belief that "Youth is not a time of life, but a state of mind." To the end, he was young—always ready for another assignment, a new mission to Moscow, the challenge of a new election.

At the age of 80, he was one of the happiest newly-weds I have ever seen. Pamela became the light of his life; there was always a lilt in his voice when she entered the room. "Pam," he would say and his tone said it all as he smiled and reached for her hand. With her at his side, he had a fourth—or was it a fifth?—political career.

In a time when many foolish things were being said, the crocodile still had his bite.

Averell Harriman never became the President he possibly might have been—or the Secretary of State he surely should have been. But he was the first citizen of this century—a greater man than all the titles he ever held.

His friends John and Robert Kennedy loved and often quoted some words, which seems to me now to sum him up. In what he did and how he lived, Averell Harriman urged us on: "Come, my friends, tis not too late to seek a newer world—Push off, and sitting well in order—(yes, sitting well in order was always important to him)—smite the sounding furrows; for my purpose holds to sail beyond the sunset and the baths of all the western stars, until I die.

For Averell Harriman, the sunset has come at last. But we will continue to live in the glow of his life and each time we push off again, toward that never world of peace he sought, we have a guiding star to follow—the example and the direction he set for us, and for all the Americans yet to come.

VETERANS FASTING IN PROTEST OF OUR POLICY IN CENTRAL AMERICA

Mr. KERRY. Mr. President, I know that all of us who are Members of this institution—both institutionally and otherwise—are very hesitant to sometimes want to revisit the issues that are not pleasant to consider. But there is at this moment on the steps of the U.S. Capitol an event taking place that I believe forces us to yet again at least stop to pause and think about our policy in Central America.

At this moment, a group of Vietnam veterans are fasting in protest of our policy in Central America. Their commitment to their fast is total—they say they are prepared to lose their lives in this fast, and, having talked with them, I do not doubt their sincerity or the sincerity of their commitment in coming here to try to bring a message to the U.S. Congress.

Now, I am sure that no one here, certainly myself, quickly supports any individual making a decision to fast to death in opposition to any policy of the U.S. Government. No one wants to encourage the risk and the potential loss of such an action, and I believe that their lives are far too precious to be wasted.

The purpose of my speaking here today is not to say that I think that this is what these veterans should do, but to take note and to ask my colleagues to take note of the depth of their commitment and the concern which they express regarding our policy.

Mr. President, as a veteran of Vietnam, as well as one who, along with my colleagues, went through the public process of those terrible years of division in this country over that war, I am deeply distressed that yet again American citizens have come to such a feeling of separation from the course of our Government that they feel compelled by conscience to take this kind of action.

Yet, we persist to pursue a course that brings bloodshed and confrontation closer, not peace closer.

A few days ago, people across this country marveled at the words of President Corazon Aquino. Senator after Senator and Congressman after Congressman left that joint session of Congress saying it was the best speech that they had heard in years. I heard the Speaker of the House of Representatives say that it was the best that he had heard from any foreign leader in all the time that he had been in the House of Representatives since 1952. I heard Senator MATHIAS say to the Foreign Relations Committee, it was the best he has heard in all the years he has served on that committee and in the Congress.

In that speech, President Aquino said:

> I must explore the path of peace to the utmost, for at the end of whatever disappointment I meet there, is the moral basis for laying down the olive branch of peace, and taking up the sword of war.

At the core of her speech, Mr. President, which we all applauded, was her commitment to make every effort to pursue negotiations with those who oppose her policies before pursuing armed conflict.

And yet we do exactly the opposite, Mr. President. We continue in Central America to pick up the sword of war, and to give others the ability to pick up the sword of war, before pursuing the olive branch of peace.

The veterans who are fasting on the steps of the Capitol are asking us:

> Why is it that we can't pursue a more peaceful policy in Central America? Why is it that we cannot seem to learn the lessons of Vietnam? Why is it that we must repeat those same mistakes again in an escalating conflict in Central America?

Because we have reached the same position of picking up the sword of war before in fact making every effort to pick up the olive branch of peace.

Let me just say a few words today—and I will talk about this on other days—about one of the veterans who is fasting on the Capitol steps, Charlie Liteky.

Charlie was ordained as a Catholic priest in 1960. He volunteered to enter the Army as a chaplain in 1966. He served for 2½ years in Vietnam, where he was assigned to the 199th Light Infantry Brigade and to a field hospital.

In 1968, Charlie was awarded the Congressional Medal of Honor by President Johnson at a White House ceremony. This award for heroism is our Nation's highest civilian award. As President Johnson handed Charlie the medal, he whispered to him—and Charlie will tell you this—"son, I'd rather have one of these than be President."

The Medal of Honor was awarded to Charlie Liteky for actions taken in December 1967, while his company was conducting a search and destroy operation in Bien Hoa Province in Vietnam, and was ambushed by enemy forces.

According to the citation, Chaplain Liteky—who now fasts to death on the steps of our Capitol—"despite painful wounds in the neck and foot," rescued over 20 men while under fire. The citation continues:

> Through his indomitable inspiration and heroic actions, Chaplain Liteky saved the lives of a number of his comrades, and enabled the company to repulse the enemy. Chaplain Liteky's actions reflect great credit upon himself and were in keeping with the highest traditions of the U.S. Army.

Mr. President, on July 29, 1986, Charlie Liteky renounced his Medal of Honor in protest of U.S. policy in Central America. He later placed it at the foot of the Vietnam Veterans Memorial in Washington.

In doing so, Charlie Liteky said:

> My renunciation of the Medal of Honor in no way represents disrespect for the Medal itself, or for the recipients of medals of valor throughout our history. My action is directed toward the inhumne foreign policies of my Government, policies that cast shadows of shame over the heritage of this country * * * I find it ironic that conscience calls me to renounce the Congressional Medal of Honor for the same basic reason I received it—trying to save lives.

Mr. President, we learned in Vietnam over 11 bitter years and more

about the terrible divisions that occurred because of government's unwillingness to listen when a majority of its people oppose its policies. The veterans who are fasting today on the Capitol steps are here to remind us of that simple truth.

I hope that we listen to their plea of conscience. I hope that we learn from them. And I hope that this Nation will live up to its own highest traditions, and once again pick up the olive branch of peace, before choosing the sword of war.

Mr. President, we have not heard one word in the United States in recent months about the Contadora process. The American people have been called on to spend not $100 million in aid in Central America, but $800 million—$300 million in covert assistance, $400 million in slush fund money—to the Governments of Honduras, Costa Rica, Guatemala, and El Salvador.

Meanwhile, veterans of our last military conflict have decided that, to get us to listen, they have to stop eating, they have to make the choice of potentially giving up their lives.

I hope, before they are in wheelchairs, Mr. President, and before this Congress has the uncomfortable plight of dealing with those who have chosen to die in order that others may live, that we will somehow reconsider or see whether or not that olive branch of peace is not worthy of picking up.

(Applause in the galleries.)

The PRESIDING OFFICER. The galleries will be quiet or the Sergeant at Arms will be ordered to remove the spectators from the galleries.

REMARKS OF DEPUTY SECRETARY OF DEFENSE WILLIAM H. TAFT IV, AT THE DEDICATION CEREMONY OF THE SOLDIER-SIGNERS OF THE CONSTITUTION CORRIDOR

Mr. THURMOND. Mr. President, on September 17, I had the pleasure of attending the dedication ceremony of the Soldier-Signers of the Constitution Corridor at the Pentagon. This was a significant event to me, not just because of my great love for the Constitution, but also because three of the soldier-signers—Pierce Butler, Charles Pinckney, and Charles Cotesworth Pinckney—were from my home State of South Carolina.

As a member of the Commission on the Bicentennial of the Constitution, I would like to take this opportunity to urge my distinguished colleagues to participate in the upcoming festivities and events marking the 200th anniversary of the signing of the Constitution. This is indeed a time for reflecting on the importance this great document holds for all of us, and for celebrating the unique form of freedom and self-government which we enjoy as Americans.

The splendid event at the Pentagon, which was also attended by the Secretary of the Army, John O. Marsh, was made even more meaningful by the inspirational remarks of William H. Taft IV, the Deputy Secretary of Defense. I ask unanimous consent that these remarks and a copy of the program be inserted in the RECORD at the conclusion of my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS OF WILLIAM H. TAFT IV, DEPUTY SECRETARY OF DEFENSE

Thank you Secretary Marsh. It is an honor for me to participate in this very special and significant ceremony.

Upon the men we honor today was placed the great and arduous trust of forming a union that would grant freedom without license and best secure the permanent prosperity and liberty of their country.

Yet I believe these citizen-soldiers would be somewhat uncomfortable with the praise they richly deserve. For they knew the Constitution they wrote was not perfect. They knew it was—in the now-popular phrase—a "bundle of compromises," and as such was subject to all the hedging that political agreement demands.

But they also knew that temporizing was possible because there was fundamental agreement that the times called for everyone to rise above regional differences and narrow self-interest; that the times called for a union and the creation of a strong republic.

It is probably not too much to say that the brilliance and subtle wisdom of our Constitution is due in no small measure to the fact that over half of its signers also served in the Revolutionary War. We therefore owe these men a special measure of our devotion.

What was it about that war that led these men to gather during the steamy Philadelphia summer of 1787 to write a new constitution? Complex and surely valid reasons may be given, but a brief look at the biographies of these men points to one rather simple answer. Six years of war impressed upon these citizen-soldiers that the Government under the articles of confederation was simply inadequate to the necessities of leadership.

One of the men we honor today, Gouveneur Morris of Pennsylvania, upon viewing Washington's troops during their bitter winter at Valley Forge, called them "an army skeletons . . . naked, starved, sick, discouraged." Colonial rivalries and petty jealousies joined with the impotence of the central Government to deny Washington's troops the most basic necessities. The soul-wrenching cold of that winter, could not but convince Washington and others of the need for a government adequate to the exigencies of war.

And in the years following the war, the feebleness of the articles of confederation was obvious. A government not adequate for either peace or war had to be changed.

Because they knew both peace and war, the soldier-signers of our Constitution possessed a unique wisdom, a wisdom that molded their vision of appropriate governmental powers, and shaped their actions as they strove to create a vigorous union.

The impetuous genius of Hamilton; the clever and yet prudent mind of Gouveneur Morris; the quiet, but extraordinary dedication of William Jackson; the towering example and incomparable wisdom of Washington—these were the qualities of the men who wrote our constitution and whose character we commemorate today.

Nations are often defined by the men and women who lead them. And our democracy has frequently been defined by the statesmenship of its citizen-soldiers.

The concept of citizen-soldier is not easy to capture in words, but listen to George Washington's reflection: "When we assumed the soldier," he said, "we did not lay aside the citizen, and we shall . . . rejoice . . . when the establishment of American liberty . . . shall enable us to return to our private stations in the bosom of a free, peaceful and happy country."

The sometimes uneasy combination of citizen-soldier was reconciled and given its greatest achievement in the men we honor today. As each of us joins in the celebration of the bicentennial of our Constitution, it is these men and their sacrifice that we must keep before us.

THE SOLDIER-SIGNERS OF THE CONSTITUTION CORRIDOR DEDICATION CEREMONY

(September 17, 1986, the Pentagon, Washington, DC.)

In September 1987 the United States commemorates the bicentennial of the signing of the Constitution. Twenty-three of the forty signers of the Constitution including the Secretary to the Convention were veterans of the Revolutionary War. Their experiences in that conflict made them deeply conscious of the need for a strong central government that would prevail against its enemies, yet one that would safeguard the individual liberties and the republican form of government for which they had fought. Their solution is enshrined in the Constitution. The President of the United States is the Commander in Chief of the nation's military forces. But it is the Congress that has the power to raise and support those forces, and to declare war. The Founding Fathers established for all time the precedent that the military, subordinated to the Congress, would remain the servant of the Republic. That concept is the underpinning of the American military officer. These twenty-three men were patriots and leaders in every sense of the word: they fought the war, they signed the Constitution, and they forged the new government. They all went on to careers of distinguished public service in the new Republic. Their accomplishments should not be forgotten by those who enjoy the fruits of their labors.

The Soldier-Signers of the Constitution Corridor was created to provide information on these veterans, celebrate the bicentennial of the signing of the Constitution, and honor these great Americans.

SIGNERS OF THE CONSTITUTION

1. George Washington,[1] 2. Benjamin Franklin, 3. James Madison, Jr., 4. Alexander Hamilton,[1] 5. Gouverneur Morris,[1] 6. Robert Morris, 7. James Wilson, 8. Charles C. Pinckney,[1] 9. Charles Pinckney, 10. John Rutledge, 11. Pierce Butler,[1] 12. Roger Sherman, 13. William S. Johnson, 14. James McHenry,[1] 15. George Read, 16. Richard Basset,[1] 17. Richard D. Spaight,[1] 18. William Blount,[1] 19. Hugh Williamson,[1] 20.

[1] Soldier-signer.

Dan of St. Thomas Jenifer, 21. Rufus King,[1] 22. Nathaniel Gorham, 23. Jonathan Dayton,[1] 24. Daniel Carroll, 25. William Few,[1] 26. Abraham Baldwin,[1] 27. John Langdon,[1] 28. Nicholas Gilman,[1] 29. William Livingston,[1] 30. William Paterson, 31. Thomas Miffin,[1] 32. George Clymer, 33. Thomas FitzSimmons,[1] 34. Jared Ingersoll, 35. Gunning Bedford. Jr., 36. Jacob Broom, 37. John Dickinson,[1] 38. John Blair, 39. David Brearley,[1] 40. William Jackson,[1]

SOLDIER-SIGNERS OF THE CONSTITUTION

George Washington, 1732-1799, Virginia, Commander in Chief, Continental Army.

Abraham Baldwin, 1754-1807, Georgia, Chaplain, Continental Army.

Richard Bassett, 1745-1815, Delaware,, Captain, Delaware, Militia,

William Blount, 1749-1800, North Carolina, Staff Officer (Paymaster,) Continental Army.

David Brearley, 1745-1790, New Jersey, Lieutenant Colonel, Continental Army.

Pierce Butler, 1744-1822, South Carolina, Adjutant General, South Carolina Militia.

Jonathan Dayton, 1760-1824, New Jersey, Captain, Continental Army.

John Dickinson, 1732-1808, Delaware, Brigadier General , Militia.

William Few, 1748-1828, Georgia, Colonel, Georgia Militia.

Thomas Fitzsimons, 1741-1811, Pennsylvania, Captain, Pennsylvania.

Nicholas Gilman, 1755-1814, New Hampshire, Captain, Continental Army.

Alexander Hamilton, 1757-1804, New York, Lieutenant Colonel, Continental Army.

Rufus King, 1755-1827, Massachusetts, Major, Massachusetts Militia.

John Langdon, 1741-1819, New Hampshire, Colonel, New Hampshire Militia.

William Livingston, 1723-1790, New Jersey, Brigadier General, New Jersey Militia

James McHenry, 1753-1816, Maryland, Major, Continental Army.

Thomas Mifflin, 1744-1800, Pennsylvania, Major General, Continental Army.

Gouverneur Morris, 1752-1816, New York, Volunteer, New York Militia.

Charles Pinckney, 1757-1824, South Carolina, Lieutenant, South Carolina Militia.

Charles Cotesworth Pinckney, 1746-1825, South Carolina, Colonel, Continental Army.

Richard Dobbs Spaight, 1758-1802, North Carolina, Staff Officer, North Carolina Militia.

Hugh Williamson, 1735-1819, North Carolina, Surgeon General, North Carolina State Troop.

William Jackson, 1759-1828, Secretary to Constitutional Convention, Major, Continental Army.

PARTICIPANTS

HOST

The Honorable John O. Marsh, Jr., Secretary of the Army.

DISTINGUISHED GUEST

The Honorable William H. Taft, IV Deputy Secretary of Defense.

SEQUENCE OF EVENTS

Pre-Ceremony Concert, The United States Army Band (Pershing's Own): March-On, Honors, Sound Off, Retreat, Inspection, National Anthem.

Remarks, Secretary Marsh.

Remarks, Secretary Taft.

March in Review.

Conclusion of Outdoor Ceremony.

Ceremonial Ribbon Cutting (Commemorative Corridor Site).

Tour of Corridor.

SALE OF LIBYAN STOCK OWNERSHIP IN FIAT S.P.A.

Mr. DIXON. Mr. President, several months ago the Congress expressed its serious concern about the Libyan Government's partial ownership of a major Italian defense contractor, Fiat S.P.S. The Qadhafi regime held 15.19 percent of a firm that had done substantial business with the U.S. Department of Defense, and no one in the Congress wanted Libya to profit from American defense contracts.

On September 23, Fiat and a group of Western investors bought the Libyan ownership. After months of pressure from Congress and the Department of Defense, the Fiat company has finally rid itself of the Libyan connection.

Mr. President, after the issue of Libyan ownership in Fiat was revealed, I introduced legislation in the Armed Services Committee which provides the Department of Defense with the ability to look into the question of hostile foreign ownership in any potential defense contractor.

At this moment, Mr. President, a House-Senate conference committee is considering my legislation, which requires strict disclosure of any hostile foreign ownership before a corporation is allowed to bid on a U.S. defense contract. The United States must not do business with firms linked financially to nations which support international terrorism.

This legislation is designed to prevent U.S. tax dollars from enriching the treasury of terrorist nations such as Libya, Iran, or Syria. I believe it also effectively strengthens the administration's policy of economically isolating the Qadhafi regime.

I applaud the action taken by the Fiat company in finally ridding itself of Libyan ownership. This was an action long overdue. As a member of the Senate Armed Services Committee, I strongly support allied participation in supplying U.S. and NATO defense needs. Significant Libyan ownership of Fiat, however, was unacceptable.

The sale of Libya's interest in Fiat does not, however, remove the need for specific legislation. Indeed, the Pentagon testified before a Senate Armed Services Subcommittee that our country did not have the statutory authority to deny a contract to a corporation with Libyan ownership. It is my hope that by providing the Department of Defense with this authority, the fiscal 1987 defense authorization bill will contribute further to developing a comprehensive U.S. policy on state-sponsored terrorism against innocent Americans.

FIRST ETHNIC AMERICAN DAY A SUCCESS

Mr. PRESSLER. Mr. President, last Sunday the first Ethnic American Day celebration was held at Constitution Hall here in Washington. I am proud to have had a part in this celebration and hope that Ethnic American Day will become an increasingly larger event each year, not only in the Nation's Capital, but also throughout America. Over 1,600 people attended this first celebration.

Twenty-one American ethnic organizations selected Americans of their ethnic backgrounds to honor on this special day. These honored Americans and their sponsoring organizations included:

HONORED AMERICANS CHOSEN BY ETHNIC AMERICAN ORGANIZATIONS FOR THEIR OUTSTANDING CONTRIBUTION TO THE AMERICAN WAY AND PRIDE IN THEIR ETHNIC HERITAGE

Congressman Mario Biaggi—Sponsor: Order Sons of Italy in America.

Hyman Bookbinder—Sponsor: The American Jewish Committee Institute for American Pluralism.

Dr. Zbigniew Brzezinski—Sponsor: Polish National Alliance.

Norman E. D'Amours—Sponsor: Association Cando-Americaine.

Dr. Tirso del Junco—Sponsor: National Association of Cuban Women, Inc.

Professor Manoranjan Dutta—Sponsor: The Association of Indians in America, Inc.

Mr. Ahmet Ertegun—Sponsor: Federation of Turkish American Societies, Inc.

His Eminence Archbishop Iakovos—Sponsor: United Hellenic American Congress.

Senator Daniel K. Inouye—Sponsor: Japanese American Citizens League.

Ann Jillian—Sponsor: Lithuanian World Youth Association.

Casey Kasem—Sponsor: National Association of Arab Americans.

James V. Krakora—Sponsor: CSA Fraternal Life.

Dr. Sammy Lee—Sponsor: League of Korean Americans.

Maya Lin—Sponsor: Asian American Assembly.

Dr. Haridas T. Muzumdar—Sponsor: National Federation of Asian Indian Organizations in America.

Irene Natividad—Sponsor: Filipino American Women's Network.

Paul O'Dwyer—Sponsor: Ancient Order of Hibernians in America.

Dr. Olgerts Raimonds Pavlovskis—Sponsor: American Latvian Association.

Colonel Harry A. Sachaklina—Sponsor: Armenian National Committee of America.

Dr. Dalip Saund (Deceased)—Sponsor: Indian American Forum for Political Education.

Mrs. Elsbeth M. Seewald—Sponsor: German American National Congress.

Representing all of these honored Americans, our distinguished colleague, Senator INOUYE, gave a stirring speech praising the American tradition of respect for the immigrants and refugees who have contributed so much to the building of our Nation.

Finally, President Reagan sent a fine statement which was read at the Ethnic American Day celebration. Mr. President, I ask unanimous consent

that President Reagan's letter be printed as if read at this point in the RECORD.

THE WHITE HOUSE,
Washington, September 19, 1986.

I am delighted to extend warm greetings to those gathered together from twenty-four ethnic organizations to commemorate the first Ethnic American Day. In particular, I wish to offer my congratulations to the distinguished recipients of the Honored American award, to Selven Feinschreiber of Americans By Choice, and to the members of Congress whose vision made this day possible.

This special observance presents a welcome opportunity to recognize and honor the accomplishments and contributions of ethnic Americans. By keeping alive and advancing your ethnic heritage you contribute to the diversity that enriches American life and is the foundation of our nation's strength.

God bless you.

RONALD REAGAN.

Following the presentation of bronze plaques to each of the 21 honored Americans, 15 of the organizations entertained the audience with music and dance performances and a costume show.

Mr. President, next year and thereafter I hope even more Americans will participate in an even greater variety of ways in the celebration of Ethnic American Day. Schoolchildren could be encouraged to compete in essay contests, writing about the contributions of ethnic Americans. Local organizations throughout the land could select their own honored citizens and sponsor local celebrations. Constitution Hall will be the site of the principal Ethnic American Day celebration again next year, but more Americans can experience the sheer enjoyment of honoring America's multiple ethnic heritages if people throughout the Nation cooperate in organizing more celebrations.

PRODUCT LIABILITY

Mr. HATCH. Mr. President, we have before us a cloture vote on the motion to proceed on consideration of S. 2760, the Product Liability Reform Act. I will vote for cloture, because this is an issue that should be debated and acted upon by the Senate. In my view, the liability crisis is one of the most critical issues facing our Nation's business. I have been concerned with this issue for quite some time. The problems are, I am sure, well known to all of you. Today, both the business community and consumers are threatened by the unpredictability of court awards and judge-made laws that allow a finding of liability even though a defendant is without fault. Insurance companies have responded to this unpredictability by doubling and even tripling their premiums each year. The heavy burden of insurance premiums has driven some companies out of business and has made life difficult for those who remain.

This is by no means a local problem. In fact, courts in Utah and her surrounding States have been relatively restrained when dealing with the issue. Those local courts have not joined the few States that have discarded traditional concepts of tort law that require negligence or recklessness in order to recover in favor of an expanded doctrine of strict liability. Furthermore, the Utah Legislature recently passed the Tort Reform Act of 1986 which abolished the legal theory of joint and several liability. But because insurance companies set their premiums based upon the worst-case scenario, professionals in Utah are feeling the effects of laws made in States thousands of miles away.

This is a national problem and several proposals have been presented in Congress in an attempt to reduce the pressure felt by the insurance unavailability/unaffordability crisis. These proposals range from "shotgun ideas" that would federalize the entire tort system to specific "rifle shots" that address only those areas most needing assistance.

Certainly, there is considerable controversy on Capitol Hill about these proposals. Part of the problem is due to opposition lobbyists like the American Trial Lawyers Association. But what, to me, is a more serious concern, are the ramifications of dealing on a Federal level with legal principles that have traditionally remained on the State level. However, the scope of the liability crisis is, as I mentioned, one of national concern. There are thousands of businesses across the Nation, both small and large, that are seeing their costs increase, their profits disappear and their risk of being used growing larger daily. In Florida, 20 percent of obstetricians have stopped delivering babies. Manufacturers of vaccines for our children are faced with skyrocketing insurance premiums that increase costs and limit innovation. One Utah town with 60 registered voters was recently held liable for $2.7 million in a dispute over construction permits. Nationwide, people have been prevented from engaging in business because of their inability to obtain insurance.

Therefore, I believe that the Federal Government can and should take limited steps to correct our runaway liability system. Earlier this month I chaired hearings in the Senate Judiciary Committee in which we heard testimony demonstrating the need for a national remedy for products liability. I have therefore endorsed S. 2760, the Product Liability Reform Act, which I believe will have a great impact on the problem, but with minimal disruption of the ability of the people to govern themselves on the State level.

I am convinced that this bill would reduce the pressure that is currently felt by businesses who are exposed to product liablity. Because businesses such as those in my own State of Utah are feeling the effects of court decisions rendered in States that have not adopted such laws, passage of this proposal by Congress would establish some level of uniformity, allowing insurance companies to better anticipate potential jury vedicts. A limited Federal product liability solution is needed and we must act on S. 2760.

However, as this legislation deals only with product liability, it does not alleviate the insurance crisis as it relates to our local governments and medical professionals, two other groups in great need. A separate proposal that I introduced is directed at reducing the risk of municipal liability. Courts have recently interpreted section 1983, a civil right statute, so that a city or local government may be sued in Federal court for a violation of Federal law unrelated to civil rights. If the plantiff prevails, the defendant city or county must pay not only the amount awarded, but attorneys fees as well. This has forced insurance companies to raise liability insurance premiums of cities and local governments.

I have introduced S. 436, to limit the broad reading that courts have given to the Federal law in question, and return the interpretation to violations of civil rights, which was the original intent of the law. This bill would also establish an immunity for decisions of local governments that were made in good faith; impose a uniform statute of limitations; and require the exhaustion of State administrative remedies prior to suit in Federal court. Passage of S. 436 would significantly reduce the pressure felt by municipalities and local governments. S. 436 was unanimously approved by the Constitution Subcommittee and is now pending before the Senate Judiciary Committee.

To respond to the health care professional liability crisis, I have introduced a bill providing incentives to States who modify their laws to provide for periodic payment of damage awards over $100,000; elimination of the collateral source rule; limiting noneconomic damages to $250,000; limiting contingency fee awards; and several other provisions to ensure record-keeping and discipline.

These three approaches respond to the liability problems facing practicing professionals, local governments, and American business generally. I believe that State governments bear the majority of the responsibility of modifying the laws as tort liability is traditionally an area of State law. However, through judicious use of the Federal power to provide stability in an area marked by continued turmoil, the Fed-

eral Government can join the States in making great strides in eliminating the liability crisis.

S. 2878—ANTI DRUG ABUSE ACT OF 1986

(Note: Later in today's proceedings the Senate proceeded to the consideration of S. 2878, the Anti Drug Abuse Act of 1986. By unanimous consent the text of the bill was ordered to be printed in the RECORD. To assure inclusion of the text of the bill in part I of today's RECORD, the text of the bill is printed at this point, as follows:)

S. 2878

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti Drug Abuse Act of 1986".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. Compliance with Budget Act.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Drug Penalties Enhancement Act of 1986

Sec. 1001. Short title.
Sec. 1002. Controlled Substances Act penalties.
Sec. 1003. Other amendments to the Controlled Substances Act.
Sec. 1004. Amendment to title 18 of the United States Code.
Sec. 1005. Amendment to title 28 of the United States Code.
Sec. 1006. Amendment to the Federal Rules of Criminal Procedure.
Sec. 1007. Elimination of special parole terms.
Sec. 1008. Amendment to the Comprehensive Crime Control Act of 1984.
Sec. 1009. Miscellaneous technical amendments.

Subtitle B—Drug Possession Penalty Act of 1986

Sec. 1051. Short title.
Sec. 1052. Penalty for simple possession.

Subtitle C—Juvenile Drug Trafficking Act of 1986

Sec. 1101. Short title.
Sec. 1102. Offense.
Sec. 1103. Technical amendments.
Sec. 1104. Manufacturing a controlled substance within 1000 feet of a college.

Subtitle D—Assets Forfeiture Amendments Act of 1986

Sec. 1151. Short title.
Sec. 1152. Asset forfeiture funds.
Sec. 1153. Substitute assets.

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

Sec. 1201. Short title.
Sec. 1202. Offense.
Sec. 1203. Definition.
Sec. 1204. Technical and conforming amendments.

Subtitle F—Continuing Drug Enterprise Act of 1986

Sec. 1251. Short title.
Sec. 1252. Increased penalties.
Sec. 1253. Continuing criminal enterprise enhanced penalties.

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

Sec. 1301. Short title.
Sec. 1302. Enhanced penalties.

Subtitle H—Money Laundering Crimes Act of 1986

Sec. 1353. Amendment to the Right to Financial Privacy Act.
Sec. 1354. Compliance, exemptions, and summons authority.
Sec. 1355. Predicate offenses.
Sec. 1356. Forfeiture.
Sec. 1357. Severability clause.

Subtitle I—Armed Career Criminals

Sec. 1401. Serious drug offenses.

Subtitle J—Authorization of Appropriations for Drug Law Enforcement

Sec. 1451. Authorization of appropriations.

Subtitle L—State and Local Narcotics Control Assistance

Sec. 1551. Short title.
Sec. 1552. Office of justice assistance drug grant program.

Subtitle M—Study on the Use of Existing Federal Buildings as Prisons

Sec. 1601. Study required.

Subtitle N—Drug Law Enforcement Cooperation Study

Sec. 1651. Drug law enforcement cooperation study.

Subtitle P—Narcotics Traffickers Deportation Act

Sec. 1751. Amendment to the Immigration and Nationality Act.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

Sec. 1771. Short title.
Sec. 1772. Amendment to the Controlled Substances Act.

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

Sec. 1791. Offense.

Subtitle S—Freedom of Information Act

Sec. 1801. Law enforcement.
Sec. 1802. Organized crime.

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

Sec. 1821. Short title.
Sec. 1822. Offense.
Sec. 1823. Effective date.

Subtitle U—Manufacturing Operations

Sec. 1841. Manufacturing operation.

Subtitle W—Precursor and Essential Chemical Review

Subtitle V—Controlled Substances Technical Amendments

Subtitle X—Improved Drug Crime Reporting

Sec. 1921. Improved Drug Crime Reporting.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

Subtitle A—Strengthening United States Narcotics Control Overseas

Sec. 2001. Additional funding for international narcotics control assistance and regional cooperation.
Sec. 2002. Restrictions on the provision of United States assistance.
Sec. 2003. Retention of title to aircraft provided to foreign countries for narcotics control purposes.
Sec. 2004. Records of aircraft use.
Sec. 2005. Development of herbicides for aerial coca eradication.
Sec. 2006. Review of effectiveness of international narcotics control assistance program.
Sec. 2007. Extradition to the United States for narcotics-related offenses.
Sec. 2008. Foreign police arrest actions.
Sec. 2009. Information-sharing so that visas are denied to drug traffickers.
Sec. 2010. Assessment of narcotics trafficking from Africa.
Sec. 2012. Conditions on assistance for Bolivia.
Sec. 2013. Combating narcoterrorism.
Sec. 2014. Interdiction procedures for vessels of foreign registry.
Sec. 2015. Department of Defense assistance for law enforcement activities outside the United States.
Sec. 2016. Intelligence support to combatting the drug problem.
Sec. 2017. Report on certain countries.
Sec. 2018. Policy toward multilateral development banks.

Subtitle B—Strengthening International Narcotics Control and International Drug Education

Sec. 2021. Declaration; policy.
Sec. 2022. Findings.
Sec. 2023. International conference on drug abuse and illicit trafficking.
Sec. 2024. Effectiveness of international drug prevention and control system.
Sec. 2025. Narcotics control conventions.
Sec. 2026. Mexico-United States intergovernmental commission.
Sec. 2027. Opium production in Pakistan.
Sec. 2028. Opium production in Iran, Afghanistan, and Laos.
Sec. 2029. Increased funding for USIA drug education programs.
Sec. 2030. Increased funding for aid drug education programs.
Sec. 2031. Reports to Congress on drug education programs abroad.

TITLE III—INTERDICTION

TITLE IV— EDUCATION, TREATMENT, AND REHABILITATION

SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Drug Penalties Enhancement Act of 1986

SEC. 1001. SHORT TITLE.

This part may be cited as the "Drug Penalties Enhancement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);";

(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation of suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of

weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(a) LIMITED AUTHORITY TO IMPOSE A SENTENCE BELOW A STATUTORY MINIMUM.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 1005. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (n):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (z), respectively.

SEC. 1006. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.".

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 1007. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1008. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"Sec. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1009. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (c) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Subsection (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release."

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This Subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"SEC. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise au-

thorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this subsection, or a prior conviction for any drug or narcotic offense chargeable under this title or title III or under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum or $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this subsection, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

"(b) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER TWENTY-ONE YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) Except as authorized by this title, it shall be unlawful for any person at least eighteen year of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to violate any provision of this title; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under twenty-one years of age to assist in avoiding detection or apprehension for any offense of this title by any Federal, State, or local law enforcement official.

"(b) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title is punishable by a term of imprisonment, or a fine, or both; up to twice that authorized by section 401(b) of this title, and at least twice any special parole term authorized by section 401(b) of this title, for a first offense.

"(c) Any person at least eighteen years of age who violates section 405B(a) (1) or (2) of this title after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment, or a fine, or both, up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section.

"(d) Any person who violates section 405B(a) (1) or (2)

"(1) by knowlingly providing or distributing to any person under twenty-one years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is set out in section 401(b) of this title shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

(c) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A COLLEGE.

Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amened, in subsection (a), by inserting "or manufacturing" after "distributing" and by striking out "a public or private elementary or secondary school" and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Asset Forfeiture Amendments Act of 1986".

SEC. 1152. ASSET FORFEITURE FUNDS

(a) DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND.—Subsection (c) of section 524 of title 28, United States Code, is amended—

(1) in paragraph (1) before subparagraph (A) by striking out "in such amounts as may be specified in appropriations Acts";

(2) by inserting at the end of paragraph (A) the following:

"such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than ninety percent of which use will be program-related), training, printing, contracting for service directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(3) by inserting after subparagraph (A) of paragraph (1) the following new subparagraph and renumbering the subsequent subparagraphs appropriately:

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States.

(4) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

"(F) for equipping for drug law enforcement functions any government owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and";

(5) by striking out paragraph (8); and

(6) by adding at the end of the subsection and following new paragraph:

"(9)(A) If any funds deposited into the Department of Justice Assets Forfeiture Fund or the Customs Forfeiture Fund (19 U.S.C. 1613a, 1613b) are not expended or obligated prior to thirty days after the end of the fiscal year, ninety percent of such funds shall be transferred into a Special Forfeiture Fund.

"(B) The funds in the Special Forfeiture Fund shall be disbursed, during the fiscal year in which they are transferred into the Special Fund, by the Attorney General, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(i) Federal drug law enforcement agencies and programs;

"(ii) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(iii) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(iv) State and local law enforcement agencies for drug law enforcement efforts.

"(C) Funds disbursed from the special forfeiture fund shall not be used to supplement existing funds, but shall be used to supplement the amount of funds, that would be otherwise available."

"(D) The Attorney General shall report annually to the Congress on all disbursement under the authority of clause (B).".

(b) CUSTOMS FORFEITURE FUND.—

(1) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) as added by Public Law 98-473, is amended—

(A) in subsection (a) before paragraph (1) by striking out "in such amounts as may be specified in appropriations Acts";

(B) by amending paragraph (3) of subsection (a) to read as follows:

"(3) for equiping for law enforcement functions any government owned or leased vessels, vehicles, and aircraft available for official use by the United States Customs Service; and"; and

(C) by striking out subsection (h).

(2) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) as added by Public Law 98-573, is repealed.

"(c) FUNDS NOT COUNTED FOR PURPOSES OF ALLOCATION LIMITS IN SECTION 302 OF THE CONGRESSIONAL BUDGET ACT OF 1974.—Notwithstanding any other provision of law or

any rule of the House of Representatives or the Senate, amounts available in the Customs Forfeiture Fund or the Department of Justice Assets Forfeiture Fund shall not be counted in determining the allocation of totals under subsections (a) and (b) of section 302 of the Budget Act of 1974.

SEC. 1153. SUBSTITUTE ASSETS.

"(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogs' Enforcement Act of 1986".

SEC. 1202. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 403 the following new section 403A (21 U.S.C. 843):

"§ 403A. Prohibited acts D

"Any person who knowingly or intentionally manufactures with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $500,000, or imprisoned not more than twenty years, or both, and $2,000,000 for a person other than an individual. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than $25,000, or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substance Act (21 U.S.C. 802) is amended by adding at the end thereof the following new paragraphs:

"(31) The term 'controlled substance analog' as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedule I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedule I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonnies, quinazolinones, substituted indoles, and arylcycloalkylamines.

"(32) The term 'human consumption' includes application, injection, inhalation, or ingestion.".

SEC. 1204. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The analysis of part D of the Controlled Substances Act is amended by inserting after the item relating to section 403 the following:

"403A Prohibited acts D.".

(2) Title 18 of the United States Code is amended as follows:

(a) Section 1791 is amended—

(1) in subsection (a)(1) by—

(A) redesignating subparagraphs (E) and (F) as (F) and (G), respectively; and

(B) inserting the following new subparagraph after subparagraph (D):

(E) a controlled substance analog as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);" and

(2) in subsection (b)(3) by—

(A) striking out "or" the second place it appears and inserting in lieu thereof a comma; and

(B) inserting ", or (1)(F)" after "(1)(E)".

(b) Section 1952(b)(1) is amended by—

(1) striking out "or" the first place it appears and inserting a comma in lieu thereof;

(2) inserting ", or controlled substance analogs" after "substances"; and

(3) striking out "(6)".

(c) Section 2118 is amended—

(1) in subsection (a) by inserting ", or controlled substance analog all or part of which controlled substance analog is intended for human consumption," after "substances";

(2) in subsection (b) by—

(A) inserting "or controlled substances analog all or part of which controlled substance analog is intended for human consumption" after "substance" the first place it appears; and

(B) inserting "or controlled substance analog" after "substance" the second place it appears; and

(3) in subsection (e)(1) to read as follows:

"(1) the 'controlled substance', 'controlled substance analog', and 'human consumption' have the meaning prescribed for those terms by section 102 of the Controlled Substances Act (21 U.S.C. 802);".

(d) Section 3142(c)(2)(I) is amended by inserting "or controlled substance analog" after "substance".

(e)(1) Section 3563(b)(8), as enacted by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by inserting "or controlled substance analog" after "substance".

(2) The amendment made by this subsection shall take effect on the date of the taking effect of such section 3563(b)(8).

(f)(1) section 3607 is amended—

(A) in subsection (a) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. 843) or" after "of" the first place it appears;

(B) in subsection (a)(1) by inserting "or controlled substance analog" after "substances"; and

(C) in subsection (c) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. § 843A) or" after "of" the first place it appears.

(2) The amendments made by this subsection shall take effect on the date of the taking effect of section 3607.

(3) The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 102(11) (21 U.S.C. 802(11)) is amended by inserting "or a controlled substance analog" after "substance" each place it appears.

(b) Section 307(f) (21 U.S.C. 827(f)) is amended by inserting "and controlled substance analogs" after "substances".

(c) Subsections (a) and (b) of section 405 (21 U.S.C. 845) are amended by—

(1) inserting "or section 403A" after "401(a)(1)";

(2) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(3) inserting "in the case of a controlled substance or section 403A in the case of a controlled substance analog" after "section 401(b)" the first place it appears.

(d) Section 405A (21 U.S.C. 845A) is amended—

(1) in subsection (a) by—

(A) inserting "or section 403A" after "401(a)(1)";

(B) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(C) striking out "841(b) of this title" and inserting in lieu thereof "401(b) in the case of a controlled substance or section 403A in the case of a controlled substance analog"; and

(2) in subsection (b) by—

(A) inserting "or section 403A" after "401(a)(1)"; and

(B) inserting "or a controlled substance analog" after "substance" the first place it appears.

(e) Section 501(c) (21 U.S.C. 871(c)) is amended by inserting "or controlled substance analogs" after "substances".

(f) Section 503 (21 U.S.C. 873) is amended—

(1) in subsection (a) by—

(A) inserting "and controlled subtance analogs" after "substances" each place it appears; and

(B) inserting "and controlled substance analog" after "substance" each place it appears; and

(2) in subsection (d)(1)(A) by inserting "and controlled substance analogs" after "substances".

(g) Section 504 (21 U.S.C. 874) is amended by inserting "and controlled substance analogs" after "substances".

(h) Section 506(a) (21 U.S.C. 876(a)) is amended by inserting "or controlled substance analogs" after "substances".

(i) Section 509 (21 U.S.C. 879) is amended by inserting "or controlled substance analogs" after "substances".

(j) Section 511 (21 U.S.C. 881) is amended—

(1) in subsection (a) by—

(A) inserting "or controlled substance analogs" after "substances" each place it appears; and

(B) inserting "or controlled substance analog" after "substance" each place it appears;

(2) in subsection (f) by inserting "and all controlled substance analogs" after "schedule I" each place it appears; and

(3) in subsection (g)(1) by inserting "or controlled substance analogs" after "II".

(k) Section 515 (21 U.S.C. 885) is amended—

(1) in subsection (c) by inserting "or controlled substance analogs" after "schedule I"; and

(2) in subsection (d) by inserting "or controlled substance analogs" after "substances".

(l) Section 516(b) (21 U.S.C. 886(b)) is amended by inserting "or controlled substance analogs" after "substances".

(4) Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) is amended as follows:

(a) Subsections (a), (b), and (c) are amended by inserting "or a controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance".

(b) Subsection (e) is amended by inserting "or controlled substance analog" after "substance" each place it appears.

(c) Subsection (g) is amended—

(1) in paragraph (1) by inserting "involving a controlled substance" after "section";

(2) in paragraph (2) by inserting "involving a controlled substance" after "Act"; and

(3) by adding the following new paragraph after paragraph (2):

"(3) Any person who commits an offense defined in subsection (a), (b), or (c) of this section involving a controlled substance analog shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both."

(5) Section 280E of the Internal Revenue Code of 1954 (26 U.S.C. 280E) is amended by inserting "or controlled substance analogs (within the meaning of section 102 of the Controlled Substances Act (21 U.S.C. 802)" after "Act)".

(6) Section 994 of title 28 of the United States Code is amended as follows:

(a) Paragraphs (1)(B) and (2)(B) of subsection (h) are amended by—

(1) striking out "section" the first place it appears and inserting in lieu thereof "sections";

(2) inserting "and 403A" after "401"; and

(3) inserting "and 843A" after "841".

(b) Paragraph (5) of subsection (i) is amended by—

(1) inserting ", 403A," after "401;

(2) inserting ", 843A," after "841; and

(3) inserting "or controlled substance analog" after "substance".

(7) Section 902q of the Federal Aviation Act of 1958 (49 U.S.C. 1472q) is amended by—

(a) inserting "or controlled substance analog" after "substance" each place it appears; and

(b) striking out the second sentence and inserting in lieu thereof:

"For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 125. SHORT TITLE.

This subtitle may be cited as the Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Subsection 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended as follows:

(1) by striking out the phrase "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out the phrase "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsections after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the quantity of a substance described in subsection 401(b)(1)(B) of this Act, or

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle C—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1542. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts or isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violations shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during their term of imprisonment.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out the phrase "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24);

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

Subtitle H—Money Laundering Crimes Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Crimes Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact

involves the proceeds of specified unlawful activity—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), (a)(3), or a transportation described in subsection (a)(2) is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the phrase 'knowing that the property involved in a financial transaction represents the proceeds of some form on unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securites of States and private entities), section 545 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Power Act (50 U.S.C. 1702 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

"1956. Laundering of monetary instruments".

SEC. 1353. (a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include only the name or names of and other indentifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employees, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. (a) Section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority

"(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

"(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (e);

"(2) require a class of domestic finnancial institutions to maintan appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institutions or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time

and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (c); and

"(5) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

"(b) The purposes for which the Secretary of the Treasury may take any action described in paragraph (3) of subsection (a) include the purpose of civil and criminal enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508.

"(c) The purpose for which the Secretary of the Treasury may take any action described in paragraph (4) of subsection (a) is limited to investigating violations of this subchapter, violations of section 21 of the Federal Insurance Act (12 U.S.C. 1829b), violations of section 411 of the National Housing Act (12 U.S.C. 1730d), or violations of chapter 2 of Public Law 91-508 for the purpose solely of civil enforcement of these provisions or any regulation issued thereunder. A summons may be issued under paragraph (4) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury .

"(d) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than five hundred miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

"(e) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

"(f) In the case of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation which gave rise to the summons is being or has been carried on or of which the person summoned is an inhabitant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.".

(b)(1) Paragraph (1) of subsection (a) of section 5321 of title 31, United States Code, is amended to read as follows:

"(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315) is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulaiton prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.".

(2) Subsection (a) of section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

"(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

"(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

"(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $500.

"(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction."

"(7) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) involved in the violation of section 5324 of this subchapter. A civil penalty under this paragraph is reduced by any amount forfeited under subsection 981(a)(1)(C) of title 18.".

(c) Subsection (b) of section 5321 of title 31, United States Code, is amended to read as follows:

"(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction in which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later.".

(d) Subsection (c) of section 5321 of title 31 is amended to read as follows:

"(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317(c) of this title or under subsection 981(a)(1)(C) of title 18 or may mitigate any civil penalty under subsection (a) of this section.".

(e) Subsection (b) of section 5322 of title 31, United States Code, is amended by striking out "pattern of illegal activity involving transactions of more than $100,000" and inserting in lieu thereof "pattern of any illegal activity involving more than $100,000", and by striking out "5" and inserting in lieu thereof "10".

(f) Section 5312(a)(5) of title 31, United States Code, is

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.".

(g) Subchapter II of Chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new section:

"Section 5324. Structuring transactions to evade reporting requirements.

"No person shall, for the purpose of evading the reporting requirements of subsection 5313(a)—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required by subsection 5313(a),

"(2) cause or attempt to cause a domestic financial institution to file a report required by subsection 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or attempt to structure or assist in structuring a transaction.".

(h) The table of sections for chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirements."

(i) Subsection 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(j) The table of sections at the beginning of chapter 53, subchapter II, of title 31, is amended by striking "5318. Compliance and exemption." and inserting in lieu thereof "5318. Compliance, exemptions and summons authority."

(k) Subsection (c) of Section 5322 of title 31, United States Code is amended by striking out "5318(2)" each time it appears and inserting in lieu thereof "5318(a)(2)"."

"(1) Subsection (b) of Section 5317 of title 31, United States Code is amended by striking Subsection (b) and inserting in lieu thereof "(b) To ensure compliance with section 5316 of this title, a customs officer may stop and research, at the border, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States."

SEC. 1335. (a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title

31, United States Code, or under section 1956 of this title.".

(b) Subsection (1) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (1) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments)," after "section 1955 (relating to enterprises of gambling),".

SEC. 1356. (a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General * * * the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated * * *

"(e) Notwithstanding any other provision of the law, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure for forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a * * * ceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

"(1) Notwithstanding any other provision of law, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable, presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)—(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following.

"46. Forfeiture ..... 961".

SEC. 1357. If any provision of this Subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and

Subtitle I—Armed Career Criminals

SEC. 1401. SERIOUS DRUG OFFENSES.

(a) The second sentence of subsection (a) of section 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1202(a)) is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a crime of violence or a serious drug offense, or both,".

(b) Subsection (c) of section 1202 of title VII of such Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof:

"(8) 'serious drug offense' means—

(i) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a et. seq.); and

"(ii) an offense under State law, involving manufacturing, distributing, possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(9) 'crime of violence' means any offense punishable by imprisonment for a term exceeding one year that—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration, $438,000,000 of which $15,000,000 shall be for an All Source Intelligence Center; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expense of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $805,807,000 of which $179,000,000 shall be for the construction of Federal penal and correctional institutions.

(c) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $88,000,000.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $54,500,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the United States Marshals Service, $157,000,000.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for Support of United States prisoners in non-Federal Institutions, $59,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $351,093,000.

Subtitle K—Controlled Substances Production Control

* * * * *

Subtitle L—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. OFFICE OF JUSTICE ASSISTANCE DRUG GRANT PROGRAM.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"PART H—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"FUNCTION OF THE ATTORNEY GENERAL

"SEC. 1301. The Attorney General shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Attorney General is authorized to make grants under this part to States for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons, who violate State laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons,

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime labs), personnel training, and supplies for more widespread prosecution of persons accused of violating such State laws and to pay operating expenses in connection with such prosecution,

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases,

"(4) provide additional correctional facilities (including the expansion of existing prisons) for the detention of persons convicted of violating State laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State laws,

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted, and

"(6) to conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosection of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move

these offenders expeditiously through the judicial system.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. (a) To request a grant under section 1302, the chief executive officer of a State shall submit to the Attorney General an application at such time and in such form as the Attorney General may require. Such application shall include a statewide strategy for the enforcement of State laws relating to the production, possession, and transfer of controlled substances. Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Bureau or the State, as the case may be, a performance report concerning the activities carried out pursuent to section 1302 of this title.

"REPORTS

"SEC. 1304. (a) Each State which receives a grant under under section 1302 shall submit to the Attorney General, for each year in which any part of such grant is expended by a State or local government entity, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303, and

"(2) such other information as the Attorney General may require by rule.

Such report shall be submitted in such form and by such time as the Attorney General may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of such grants made to such State for such fiscal year,

"(2) the amount of such grants expended for each of the five general purposes specified in section 1302, and

"(3) a summary of the information provided in compliance with subsection (a)(1).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1305. (a) A grant under section 1302 may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any one of the five general purposes specified in section 1302. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant under section 1302 may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 302 shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Attorney General may require by rule to facilitate an effective audit.

"(2) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of State and local government entities which receive any part of a grant, made under section 1302 if, in the opinion of the Attorney General or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1306. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Bureau, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended—

(A) by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M", and

(B) by striking out "part D" each place it appears and inserting in lieu thereof "parts D and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1306, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Attorney General.

"Sec. 1302. Description of drug law enforcement grant program.

"Sec. 1303. Applications to receive grants.

"Sec. 1304. Reports.

"Sec. 1305. Expenditure of grants; records.

"Sec. 1306. State office.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and I" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $115,000,000 for fiscal year 1987, $115,000,000 for fiscal year 1988, and $115,000,000 for fiscal year 1989, to carry out the programs under part H of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and H".

Subtitle M—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; and, the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle N—Drug Law Enforcement Cooperation Study

SEC. 1651. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle O—Arrest Authority for INS Officers

Subtitle P—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation or a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this part, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this part.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 1771. SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. 1772. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) striking out the matter following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnapping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 1791. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs

Subtitle S—Freedom of Information Act

SEC. 1801. LAW ENFORCEMENT.

(a) Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any natural person;".

(b) Section 552(a) of title 5, United States Code, is amended by adding after paragraph (6) thereof the following new paragraph:

"(7) Nothing in this section shall be deemed applicable in any way to the informant record maintained by a law enforcement agency under an informant's name or personal identifier, whenever access to such records is sought by a third party according to the informant's name or personal identifier.".

SEC. 1802. ORGANIZED CRIME.

Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c) Nothing in this section shall be deemed applicable to documents compiled in any lawful investigation of organized crime, designated by the Attorney General for the purposes of this subsection and conducted by a criminal law enforcement authority for law enforcement purposes, if the requested document was first generated or acquired by such law enforcement authority within five years of the date of the request, except where the agency determines pursuant to regulations promulgated by the Attorney General that there is an overriding public interest in earlier disclosure or in longer exclusion not to exceed three years. Notwithstanding any other provision of law, no document described in the preceding sentence may be destroyed or otherwise disposed of until the document is available for disclosure in accordance with subsections (a) and (b) of this section for a period of not less than ten years.".

(b) Subsection (f) of title 5, United States Code (as redesignated), is amended by—striking out the comma after "section" and inserting a dash;

(2) by designating the matter that follows as clause (1);

(3) by striking the period at the end thereof and inserting "; and"; and

(4) by inserting at the end thereof:

"(2) 'organized crime' means those structured and disciplined associations of individuals or of groups of individuals who are associated for the purpose of obtaining monetary or commercial gains or profits, wholly or in part by illegal means, while generally seeking to protect and promote their activities through a pattern of graft or corruption, and whose associations generally exhibits the following characteristics:

"(A) their illegal activities are conspiratorial,

"(B) in at least part of their activities, they commit acts of violence or other acts which are likely to intimidate,

"(C) they conduct their activities in a methodical or systematic and in a secret fashion,

"(D) they insulate their leadership from direct involvement in illegal activities by their organizational structure,

"(E) they attempt to gain influence in government, politics, and commerce through corruption, graft, and illegitimate means, and

"(F) they engage in patently illegal enterprises such as dealing in drugs, gambling, loan-sharking, labor racketeering, or in the investment of illegally obtained funds in legitimate businesses.".

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia;

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or

may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Sustances Act (title II of Public Law 91-513). It includes, but is not limited to, items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetimines into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is deplayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate users of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any person or entity that, in the normal lawful course of business, imports, exports, transports, or sells thorugh the mail or by any other means any pipe, paper, or accessory primarily intended for use with tobacco products.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective ninety days after the date of enactment of this subtitle.

Subtitle U—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle Y—Controlled Substances Technical Amendments

SEC. 1861. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing, medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except for studies conducted by the Bureau of Prisons.".

SEC. 1862. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning * * * the filing", by striking out "$2,500" and inserting in lieu thereof "$5,000".

SEC. 1863. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) is enacted by Public Law 98-473 is repealed.

SEC. 1864. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 1865. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by", and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

DRUG ENFORCEMENT AMENDMENTS (CHAPTER V)

SEC. 1867. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 1868. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their sales, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 1869. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 1870. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 1871. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees; except that such officers shall be subject to section 3374(c) of title 5, United States Code.

SEC. 1872. Paragraph (1) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)) is amended—

(1) in subparagraph (A) by striking out clauses (i), (ii), and (iii) and inserting in lieu thereof the following:

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);";

(2) in subparagraph (B) by inserting "a mixture or substance containing a detectable amount of" after "a kilogram or more of";

(3) in subparagraph (C) by inserting "a mixture or substance containing a detectable amount of" after "500 grams or more of";

(4) in subparagraph (D) by inserting "a mixture or substance containing a detectable amount of" after "5 grams or more of"; and

(5) by adding at the end thereof, "If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than four years in addition to such term of imprisonment.".

(b) Paragraph (3) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(3)) is amended by striking out ", except as provided in paragraph (4)".

SEC. 1873. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1874. Subsection (c) of section 924 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to any" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) or any";

(2) adding after the words "in addition to the punishment provided for such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the" the words "felony or".

SEC. 1875. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 855a), or a";

(2) adding after the words "in addition to the punishment provided for the commission of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence".

Subtitle W—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this part.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug tarfficking and abuse problems in the United States.

Subtitle X—Improved Drug Crime Reporting

SEC. 1921. IMPROVED DRUG CRIME REPORTING.

(a) The Congress—

(1) finds that—

(A) The Bureau of Justice Statistics currently conducts one of the largest public opinion survey programs in the world, the National Crime Survey;

(B) this survey, conducted by the Census Bureau, involves detailed field surveys of 60,000 households and more than 100,000 individuals who are interviewed twice a year to measure the amount of crime actually occurring (crime victimization), as opposed to that reported to police through the uniform crime reporting system;

(C) currently the National Crime Report does not gather data involving drug abuse or victimization;

(D) further, the Bureau of Justice Statistics does not act as a clearinghouse for the gathering of data generated by Federal, State, local enforcement and together criminal justice agencies on their drug enforcement activities; and

(E) to obtain a comprehensive understanding of the dimensions of our crime problems and enforcement activities, one must sift through the annual reports of numerous agencies; and

(2) based on findings in paragraph (1) the purpose of this Act is to create a comprehensive and timely data base of the dynamics of the drug crisis.

(b)(1) The Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, State, and local statistics gathering groups, shall compile and publish comprehensive data on drug trafficking and abuse.

(2) For purposes of carrying out the provisions of paragraph (1), the authorization for the Bureau of Justice Statistics for fiscal year 1987 is increased by $3,000,000.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

Subtitle A—Strengthening United States Narcotics Control Overseas

SEC. **01. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under chapter 8 of part I of this Act (22 U.S.C. 2291 et seq.; relating to international narcotics control). These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. **02. RESTRICTIONS ON THE PROVISION OF UNITED STATES ASSISTANCE.

(a) Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of the amount of United States assistance justified to the Congress for allocation to such country for each fiscal year shall be withheld from obligation and expenditure;

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secre-

tary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country; and

"(C) on or after March 1, 1987, and March 1 of each succeeding year, the President shall deny to all products of such country tariff treatment under title V of the Trade Act of 1974 (the Generalized System of Preferences), the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of clauses (A) and (B) of paragraph (1) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, financing, or preferential tariff treatment not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combatting narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), a joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive the assistance, financing, or preferential treatment described in subsection (a) unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) Section 481(i) of such Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) The amendments made by this section shall take effect October 1, 1986.

SEC. **03. RETENTION OF TITLE TO AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES.

(a) Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new section:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft made available to a foreign country under this chapter at any time after the date of enactment of this section (including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986) shall be provided, to the maximum extent practicable, on a lease or loan basis.".

(b) The Congress finds that the aircraft provided Mexico under assistance made available by section 481 of the Foreign Assistance Act of 1961 have not been used efficiently and that the fleet of aircraft provided Mexico is plagued by rapidly rising maintenance costs.

SEC. **04. RECORDS OF AIRCRAFT USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program), as amended by the preceding section of this subtitle, is further amended by adding at the end the following new section:

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) REQUIREMENT TO MAINTAIN RECORDS.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to Mexico under this chapter, including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986 and aircraft made available under this chapter before the enactment of this section.

"(b) CONGRESSIONAL ACCESS TO RECORDS.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. **05. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. **06. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) REQUIREMENT FOR INVESTIGATION.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) REPORTS TO CONGRESS.—

(1) PERIODIC REPORTS.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) FINAL REPORT.—Not later than 12 months after the date of enactment of this Act, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. **07. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relat-

ing to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. **08. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1), by striking out in the first sentence "engage or participate in any direct police arrest action in any foreign country" and inserting in lieu thereof "directly make an arrest in any foreign country as part of any foreign police action";

(2) by amending paragraph (2) to read as follows:

"(2) Nothing in paragraph (1) prevents such employee or officer—

"(A) from being present at the scene of an arrest or otherwise assisting foreign officers in making an arrest; or

"(B) from taking direct action to protect life or safety if exigent circumstances arise in the course of an arrest which are unanticipated and which pose an immediate threat to United States or foreign officers or to members of the public."; and

(3) by adding at the end thereof the following new paragraph:

"(3) The provisions of this subsection shall apply to all countries, unless the President certifies to the Congress a specific country or countries for which it would be against the national interests of the United States to do so.".

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SEC. **09. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) NEED FOR COMPREHENSIVE INFORMATION SYSTEM.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) ESTABLISHMENT OF SYSTEM.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. **10. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. **11. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a)(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) Section 611(2) of the International Security and Development Cooperation Act of 1985 is amended to read as follows:

"(2) For fiscal year 1987—

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking countrywide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond, and is making substantial progress towards the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

(c) In the certification required by subsection (b) of this section, the President shall explain why the 1983 agreement's terms proved unattainable and the reasons why a new agreement was necessary.

(d) Nothing in this section or the amendment made by this section shall be construed as waiving any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. **12. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and acts of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this subtitle, the President shall report to the Congress on the steps taken pursuant to this subsection.

SEC. **13. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDINGS.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected of carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase efforts to negotiate with relevant countries procedures which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. **14. DEPARTMENT OF DEFENSE ASSISTANCE FOR LAW ENFORCEMENT ACTIVITIES OUTSIDE THE UNITED STATES.

Section 374(c)(1) of title 10, United States Code, is amended—

(1) by inserting "or foreign" after "Federal"; and

(2) in subparagraph (B) by striking out "and the Attorney General" and insert in lieu thereof ", the Attorney General, and the Secretary of State".

SEC. **15. INTELLIGENCE SUPPORT TO COMBATING THE DRUG PROBLEM.

(a) It is the sense of the Congress that the Intelligence Community can play a key role in United States efforts to prevent the importation of illegal drugs into the United States. It is also the sense of the Congress that the drug problem is sufficiently important that monitoring the production of illegal drugs and providing support to efforts to halt the trafficking in illegal drugs should be a high priority for the United States intelligence program.

(b) In order to improve the strategic international narcotics control program of the United States and to assist the reporting requirements of section 481(e) of the Foreign Assistance Act of 1961, the Congress directs the Director of Central Intelligence to improve the collection and analysis of foreign drug production sufficiently to produce highly reliable data on drug cultivation, harvest, and yields for each major illicit drug producing country (as defined by section 481(i) of the Foreign Assistance Act of 1961).

(c) The Congress also directs the Director of Central Intelligence (hereafter in this paragraph referred to as the "DCI") to make support to anti-drug efforts a Level One Priority in his National Foreign Intelligence Strategy and to reflect this priority in the National Foreign Intelligence Program. The Congress understands that—

(1) a copy of the DCI's National Foreign Intelligence Strategy will be provided to the Permanent Select Committee on Intelligence of the House of Representatives and

the Select Committee on Intelligence of the Senate, with the DCI's budget request for fiscal year 1988; and

(2) the DCI will address Intelligence Community support to anti-drug efforts and the coordination of these efforts within the Intelligence Community in his presentation of the National Foreign Intelligence Strategy to the Committees.

SEC. **16. REPORT ON CERTAIN COUNTRIES; RESTRICTIONS ON ASSISTANCE.

(a) Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require the provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) For purposes of this section, the term "United States assistance" has the same meaning as is given to such term by section 481(i)(4) of the Foreign Assistance Act of 1961.

SEC. **17. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combating international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

Subtitle B—Strengthening International Narcotics Control and International Drug Education

SEC. **21. DECLARATION; POLICY.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization (NATO) in cooperative drug programs.

SEC. **22. FINDINGS.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations auspices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. **23. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987 an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, including the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. **24. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. **25. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. **26. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United Interparliamentary Conference which recommended that the Government of Mexico and Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the executive departments of each government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this subtitle, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. **27. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 60 days after the date of enactment of this subtitle with respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. **28. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United

Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. **29. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons, programs and international visitor programs involving students, educators, and scientists.

SEC. **30. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. **31. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

TITLE III—INTERDICTION

Subtitle A—National Drug Interdiction Improvement

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "National Drug Interdiction Improvement Act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplace;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, national drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) systems, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this subtitle—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

(3) to improve other drug interdiction programs of the Federal Government.

SEC. 3004. DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000 to be available for refurbishment and upgrading of four existing E2C Hawkeye surveillance aircraft for drug interdiction purposes, and the procurement of four replacement E2C Hawkeye aircraft and related spares for the Navy.

(2) For procurement for the Air Force, $49,500,000, to be available for procurement of 3 aerostat radar systems, 3 aerostat radar spares for such system, and 1 aerostat radar spare for an aerostat radar system authorized and funded for location in the Bahamas by section 5(b) of the Urgent Supplemental Appropriations Act, 1986 (Public Law 99-349; 100 Stat. 723).

(3) For operation and maintenance for the Air Force, $12,615,000 to be available for the transfer of 6 Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out drug interdiction missions.

(4) For the Secretary of Defense, $12,000,000 for enhanced intelligence collection activities concerning illegal importation into the United States of drugs originating in South America.

(5) For procurement of twin engine pursuit helicopters and procurement of four aerostat radar systems, $90,000,000. The location of the aerostat radar systems shall be established at the highest drug threat sites, as agreed to by the Commissioner of Customs and the Commandant of the Coast Guard.

(b) LOANS TO THE UNITED STATES CUSTOMS SERVICE.—The Secretary of Defense shall make available the refurbished, upgraded, and modified aircraft; and the twin engine pursuit helicopters, using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) to the United States Customs Service in accordance with chapter 18 of title 10, United States Code, except that the four replacement E2C Hawkeye aircraft procured using funds appropriated pursuant to authorizations in subsection (a)(1) shall be delivered to the Navy.

(c) RESPONSIBILITIES OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The United States Customs Service shall have the responsibility for operation and maintenance costs attributable to the aircraft refurbished, upgraded, or modified and the twin engine pursuit helicopters using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) and the aerostat radar systems using funds appropriated pursuant to authorizations in subsections (a)(2) and (a)(5) except that responsibility for the operation and maintenance costs by the United States Customs Service shall commence upon receipt of the modified, refurbished, and upgraded aircraft, and helicopters authorized in subsections (a)(1) and (a)(5) and upon completion of the installation of the aerostat radar systems authorized in subsections (a)(2) and (a)(5).

(2) Upon enactment of this Act, the Commissioner of Customs shall immediately commence consultations with the Commandant of the United States Coast Guard regarding coordination of the deployment of the aircraft authorized in subsection (a)(1) and on loan to the United States Customs Service under subsection (b) in order to maximize the detection, surveillance, and intelligence gathering capabilities of the drug surveillance aircraft on loan to the United States Customs Service. The Commissioner of Customs shall make quarterly reports to the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives regarding drug interdiction plans developed under this paragraph.

(d) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized by subsection (a) are in addition to any other amounts authorized to be appropriated to the Department of Defense for fiscal year 1987.

(e) FUNDING OF COAST GUARD DRUG-INTERDICTION ACTIVITIES.—

(1) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—(A) In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft.

(B) There are hereby authorized to be appropriated to the Department of Defense in fiscal year 1987, $15,000,000 to be available for transfer to the Secretary of Transportation and shall be used only for the program described in section 379 of title 10, United States Code.

(2) ENHANCED DRUG-INTERDICTION ASSISTANCE.—(A) Chapter 18 of title 10, United States Code, is amended by adding after section 378 the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation may, by agreement, provide for the assignment to duty on board surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and are empowered to arrest, search, and seize property and persons suspected of violations of law.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty as provided in subsection (a) or for other high priority drug interdiction activities.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 378 the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes.".

SEC. 3005. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There is authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $114,000,000.

(2) There is hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000; *Provided*, That this amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active Duty personnel for fiscal year 1987 to 39,220.

(3) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

SEC. 3006. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION ENHANCEMENT.

(a) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.—In addition to any other funds authorized to be appropriated to the United States Customs Service for fiscal year 1987, there are authorized to be appropriated the following sums:

(1) For an additional amount for Salaries and Expenses, $65,900,000.

(2) For an additional amount for Operation and Maintenance, Air Interdiction Program, $50,000,000.

SEC. 3007. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted among the Commissioner of Customs; the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

SEC. 3008. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3006, and (ii) any training and personnel enhancements authorized in this section and section 3006.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this subtitle, $10,000,000 for the following:

(A) $9,000,000 for 3 twin engine drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this subsection as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

SEC. 3009. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for twin engine helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART I—TARIFF ACT AMENDMENTS

SEC. 3111. CONTROLLED SUBSTANCES DEFINED.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by striking out the period in subsection (c) and inserting in lieu thereof "and monetary instruments as defined in section 5312 of title 31, United States Code.",

(2) by striking out the following: "For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.",

(3) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term",

(4) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel,

"(B) has received merchandise while in the customs waters beyond the territorial sea, or

"(C) has received merchandise on the high seas,

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.", and

(5) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given to such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, any controlled substance is merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—

"(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made;

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not beyond 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—

"(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall, present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, airport, or place of arrival, or

"(2) discharge any passenger or merchandise, including baggage,

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with the provisions of section 433;

"(2) to present any forged, altered, or false document or paper to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509);

"(4) to violate section 433(e); or

"(5) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of the preceding paragraphs.

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who violates any provision of subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who willfully commits any violation enumerated in subsection (a) shall be liable for an additional fine of not more than $2,000 or imprisonment for not more than 1 year, or both, and if the conveyance has, or is discovered to have had, on board—

"(1) any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, or

"(2) any controlled substances, spirits, wines, or other alcoholic liquors,

such person shall be liable for an additional fine of not more than $10,000 and imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for an additional penalty equal to the value of the merchandise and the merchandise shall be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of the controlled substances listed in section 584 of this Act, the master, person in charge of a vehicle, or pilot shall be liable for the penalties prescribed in that section.".

(b) Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting in lieu thereof "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTY FOR UNLOADING OF PASSENGERS.

Section 454 of the Tariff Act of 1930 (19 U.S.C. 1454) is amended by striking out "$500 for each" and inserting in lieu thereof "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false documents or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally commits any violation described in subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) Section 460 of the Tariff Act of 1930 (19 U.S.C. 1460) is repealed.

SEC. 3116. PENALTY FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—

"(1) Any article which—

"(A) is not included in the declaration and entry as made, and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required,

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article, and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—

"(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary, in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. FALSE MANIFESTS; LACK OF MANIFESTS.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000",

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000",

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500", and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3118. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" each place it appears and inserting in lieu thereof "$10,000",

(2) by striking out "two years" in subsection (e) and inserting in lieu thereof "15 years", and

(3) by striking out "within one league of the coast" in subsection (e) and inserting in lieu thereof "within customs waters".

SEC. 3119. AVIATION SMUGGLING.

The Tariff Act of 1930 is amended by inserting after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It shall be unlawful for the pilot of any aircraft to transport, or for any person on board any aircraft to possess, merchandise knowing or intending that the merchandise will be introduced into the United States unlawfully.

"(b) SEA TRANSFERS.—It shall be unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)) and the merchandise consists of controlled substances, spirits, wines, or other alcoholic liquors or merchandise, the importation of which into the United States is prohibited or is restricted, or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) PENALTIES.—

"(1) Any person who violates any provision of this section shall be civilly liable for a fine equal to twice the value of the merchandise involved but less than $10,000 and, in addition to such civil penalty shall be liable for a fine of not more than $10,000 and imprisonment for a period of not more than 5 years or both if the merchandise involved was not a controlled substance and a fine of $250,000 or imprisonment for a period of 20 years or both if its a controlled substance—

"(2) For purposes of this subsection, the value of any controlled substance shall be determined in accordance with section 497(b).

"(d) SEIZURE AND FORFEITURE.—Any vessel or aircraft used in connection with, or in aiding or facilitating, any of the unlawful acts described in this section (whether or not any person is charged in connection with such acts) shall be seized and civilly forfeited in accordance with the customs laws.

"(e) INTENT OF TRANSFER OF CONTROLLED SUBSTANCES.—For purposes of imposing civil penalties under this section of this Act, any one of the following acts, when performed within 250 miles of the territorial sea of the United States shall be prima facie evidence that the transportation of possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (d) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) the operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law;

"(2) the presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law;

"(3) the failure to correctly identify—

"(A) the vessel by name and the country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority;

"(4) the external display of false registration numbers, false country of registration, or, in the case of a vessel, false name;

"(5) the presence on board of unmanifested merchandise, the importation of which is prohibited or restricted;

"(6) the presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or any other international treaty;

"(7) the presence of any compartment or equipment which is built or fitted out for smuggling; or

"(8) the failure of a vessel to stop when hailed by a customs officer or other government authority.".

For purposes of section 590, merchandise shall consist of controlled substances, spirits, wine, or other alcoholic liquors or other merchandise, the importation of which into the United States is prohibited or restricted.

SEC. 3120. SEIZURE OF CONVEYANCES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft, or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft,

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure or forfeiture under the customs laws for violations relating to merchandise contained—

"(1) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(2) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) CONTROLLED SUBSTANCES ON CONVEYANCE.—If any controlled substances are found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it appears to the satisfaction of the Secretary that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such controlled substances were on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party;

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) and other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.".

SEC. 3121. SEARCHES AND SEIZURES.

Subsection (a) of section 595 of the Tariff Act of 1930 (19 U.S.C. 1595) is amended to read as follows:

"(a)(1) If any officer or person authorized to make searches and seizures shall have probable cause to believe the presence of—

"(A) any merchandise upon which the duties have not been paid or which has been otherwise brought into the United States contrary to law,

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service, or

"(C) any documents, containers, wrappings, or other articles which are evidence of violations of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

in any dwelling house, store, or other building or place, such officer or person may apply, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate for a warrant and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other building or place at night or by day, and to search for and seize such merchandise or other article named in such warrant.

"(2) If any house, store, or other building or place is located upon or within ten feet of

the boundary line between the United States and a foreign country and any merchandise or other article subject to forfeiture is found in such house, store, or other building or place, the portion of such house, store, or other building or place that is within the United States may be taken down or removed.".

SEC. 3122. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "in the proviso to section 594" and inserting in lieu thereof "in subsection (b) or (c) of section 594",

(2) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is or has been introduced, or attempted to be introduced, into the United States contrary to law (other than in violation of section 592) shall be seized and forfeited.".

SEC. 3123. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under a law enforced or administered by the United States Customs Service, or otherwise acquired under section 605 of this Act, and relief from the forfeiture is granted by the Secretary upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the United States Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the United States Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3124. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

"(a) IN GENERAL.—

"(1) If any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person, and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) FORFEITED PROPERTY NOT SOLD.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) DOLLAR LIMITATION.—The amount awarded and paid to any person under this section shall not exceed $250,000 for any case.

"(d) SOURCE OF PAYMENT.—Any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) RECOVERY OF BAIL BOND.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3125. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", or to comply with international obligations.".

SEC. 3126. EXCHANGE OF INFORMATION.

The Tariff Act of 1930 is amended by inserting after section 627 the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"The Secretary of the Treasury may prescribe regulations authorizing customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law related to controlled substances that is enforced or administered by the United States Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; or

"(4) assist a foreign customs or law enforcement agency in taking any action comparable to any of those described in paragraph (1), (2), or (3), or in relation to any proceeding in a foreign country.".

SEC. 3127. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) IN GENERAL.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) FUNCTIONS AND DUTIES.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) COMPLIANCE.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station were a port of entry within the customs territory of the United States.

"(d) SEIZURES.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory of the United States to be proceeded against under the customs laws.

"(e) STATIONING OF FOREIGN CUSTOMS OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) APPLICATION OF CERTAIN LAWS.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) the provisions of sections 111 and 1114 of title 18, United States Code, shall apply as if the foreign officials were designated in those sections;

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be liable for a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.".

SEC. 3128. COMMERCIAL COVER.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 630. AUTHORITY TO CONDUCT COMMERCIAL COVER.

"(a) IN GENERAL.—The Commissioner of Customs may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support investigative activities of the United States Customs Service. Such commercial entities may be established only upon written certification by the Commissioner of Customs or a delegate of the Commissioner of Customs that commercial cover is necessary to conduct authorized investigative activities.

"(b) ESTABLISHMENT AND OPERATION.—The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. Laws applicable to Federal appropriations, Federal property management, Feder-

al acquisitions, Federal employment and Government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Commissioner of Customs, or any delegate of the Commissioner of Customs, that the application of such laws would compromise a commercial cover.

"(c) WITHDRAWAL AND DEPOSIT OF FUNDS.—The Commissioner of Customs, or any delegate of the Commissioner of Customs, is authorized to deposit and withdraw in banks and other financial institutions—

"(1) funds appropriated for the United States Customs Service that are used to conduct commercial cover, and

"(2) funds generated by the business entities authorized by this section.

"(d) USE OF FUNDS GENERATED BY COMMERCIAL COVER.—

"(1) Funds generated by any business entities authorized by this section may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(2) Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under this section and after the payment of all obligations incurred with respect to such commercial cover, any remaining funds described in paragraph (1) or (2) of subsection (c) shall be deposited in the Treasury of the United States as miscellaneous receipts.".

PART II—MISCELLANEOUS PROVISIONS

SEC. 3131. RECREATIONAL VESSELS.

Subsection (b) of section 12109 of title 46, United States Code, is amended by adding at the end thereof the following new sentence: "Such vessel must, however, comply with all customs requirements for reporting arrival pursuant to section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such vessel shall be subject to all applicable customs regulations.".

SEC. 3132. PROVISION OF ASSISTANCE TO CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes (19 U.S.C. 507) is amended to read as follows:

"(a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government, and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If such person shall, without reasonable excuse, neglect or refuse to assist the customs officer upon proper demand, such person shall be guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3133. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1454. SMUGGLING INVESTIGATIONS.

Section 3 of the Act of August 11, 1955 (69 Stat. 684; 21 U.S.C. 969), is amended by (A) deleting the words "of Controlled Substances" from the heading of Sec. 1.; (B) by redesignating sections (1), (2), and (3) and subsections (a), (b), and (c); (C) by striking "Section 545 of title 15 (relating to . . . 21 U.S.C. and substituting in any law relating to the reporting of monetary instrument transactions and transportation (pursuant to Chap. 53, title 31 U.S. Code) or to the Bank Secrecy Act (P.L. 91-508)" inserting "and pay the costs of the proceeding" after "investigation" in the second sentence.

PART III—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3141. UNLAWFUL IMPORTATION.

(a) Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "Possession," in the heading,

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall",

(3) by striking out "This section" and inserting in lieu thereof "(c) This section",

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a), and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States to—

"(1) manufacture or distribute a controlled substance, or

"(2) possess a controlled substance with intent to distribute.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

PART IV—AMENDMENTS TO THE CRIMINAL CODE

SEC. 3151. OPERATION OF AIRCRAFT; WITH ILLEGAL FUEL TANK INSTALLATIONS.

(a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Illegal fuel installations aboard aircraft

"(a) It shall be unlawful for any person to knowingly make a fuel tank or fuel system installation aboard an aircraft, or to operate any aircraft with a fuel tank or fuel system installation aboard, unless such tank or installation is in accordance with all applicable rules, regulations or requirements of the Administrator of the Federal Aviation Administration, including inspection and approval. Any person violating this section shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both. Unless exempted by the Administrator of the Federal Aviation Administration, by regulation, authorization from the Federal Aviation Administration to have an auxiliary fuel tank or system installation or modification shall be aboard the aircraft whenever it is operated and such authorization must be shown to any Federal, State, or local law enforcement officer upon request. Failure to have such authorization aboard shall create a presumption that the installation is unlawful.

"(b) Any unlawful fuel tank or fuel system installation and the aircraft in which it is installed shall be subject to seizure and civil forfeiture. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon customs officers or any other person with respect to the seizure and forfeiture of property under the customs law may also be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.".

(b) The table of sections for chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following:

"36. Illegal fuel installation aboard aircraft.".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This part may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96-350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96-350; 94 Stat. 1159) is amended by striking everything immediately after the enacting clause and inserting in lieu thereof the following:

"That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a flag nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"Sec. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Reports on Department of Defense Drug Control Actitivies

SEC. 3251. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES.

(a) Not later than March 1, 1987, the National Drug Enforcement Policy Board shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the manner and the extent to which the Department of Defense should be involved in United States law enforcement activities relating to the control and reduction of drug abuse. The Board shall include in such report—

(1) its recommendation for a 5-year funding plan for the participation of the Department of Defense in United States drug law enforcement activities; and

(2) a description of the functions which members of the Armed Forces, including the National Guard, the Reserves, and the Civil Air Patrol, under the jurisdiction of the Secretary of Defense may appropriately perform in the national effort to control and reduce drug abuse, including the interdiction of illegal drugs.

(b) Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of (1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse, (2) the types of drug education programs that are currently being provided in such schools, (3) whether additional drug education programs are needed in such schools, and (4) the extent to which drug education programs for youth in grades K through 12 include or should include preventative peer counseling classes.

Subtitle E—Driving While Impaired by Drug Intoxication to be Punishable Under the Uniform Code of Military Justice

SEC. 3301. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by striking out "drunk," and inserting in lieu thereof "drunk or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),".

Subtitle F—Drug Interdiction Assistance to Civilian Law Enforcement Officials

SEC. 3351. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.

Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.".

Subtitle G—Air Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(b)) is amended by adding at the end thereof the following:

"(3)(A) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who in connection with an act described in subparagraph (B) and with knowledge of such act—

"(i) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(ii) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(iii) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(iv) obtains an aircraft registration certificate from the Administrator by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.

"(B) The Act referred to in subparagraph (A) is the transportation by aircraft of any controlled substance, or the aiding or facilitation of a controlled substance offense, where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law re-

lating to simple possession of a controlled substance).".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401) is amended by adding at the end thereof the following:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate or registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 501. Registration of aircraft nationality." is amended by adding at the end thereof the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity; and

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or aiding or facilitating a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death of imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) For purposes of this subsection, the term 'controlled substance' has the meaning given to such term by section 102(5) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 902. Criminal penalties." is amended after the item relating to subsection (q) to read as follows:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" wherever it appears and by inserting in lieu thereof "$5,000";

(2) by inserting immediately after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109(b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In the case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer or conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements of section 501 or 503 of this Act.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 1109. Application of existing laws relating to foreign commerce." is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

Subtitle H—Communications

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission shall revoke any license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have used said license for the purpose of using or distributing any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission shall, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is being used for purposes of using or distributing any such substance.

Subtitle I—Drug Law Enforcement Cooperation Study

SEC. 3551. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle J—Drug Interdiction

SEC. 3601. EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

Subsection (c) of section 374 of title 10, United States Code, is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations, including to transport such officials into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft when such pursuit began outside such land area,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory or possession of the United States) for the purpose of—

"(i) identifying such vessels and aircraft; and

"(ii) monitoring and communicating the location and movement of such vessels and aircraft until Federal, State, and local law enforcement officials can assume such responsibilities,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a)

would be seriously impaired if such use of equipment were not permitted.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and Rehabilitation

SEC. 4001. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Alcohol and Drug Abuse Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 4002. EXTENSION OF ALCOHOL, DRUG, ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) Section 1911 is amended—

(1) by striking out "$576,000,000" and inserting in lieu thereof "$675,000,000"; and

(2) by adding at the end thereof the following new sentence: "Of the amounts appropriated under the preceding sentence for fiscal year 1987, $136,000,000 shall be available for allotments to States under section 1921 and for the purpose of section 1923.".

(b)(1) Title XIX is amended by inserting after section 1920A the following new sections:

"SPECIAL ALLOTMENTS TO STATES FOR ALCOHOL ABUSE AND DRUG ABUSE TREATMENT AND REHABILITATION PROGRAMS

"SEC. 1921. (a)(1) The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) Twenty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this subsection. The allotment of a State under this subsection for a fiscal year shall be an amount which bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this subsection for such fiscal year as the population of such State bears to the population of all States.

"(3) Seventy-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of the alcohol abuse and drug abuse. In determining such need for each State under this subsection, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse alcohol or drugs and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for alcohol abuse and drug abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (c);

"(C) the commitment of the State to the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse (as determined by the Secretary after an evaluation of the expenditures of the State for such services during the calendar year described in subparagraph (B) and of the ability of the State to meet the need for such services);

"(D) the availability in the State of Federal, State, and local resources to satisfy the needs in such State for services described in subparagraph (C); and

"(E) the number of low-income individuals in the State who need treatment and rehabilitation for alcohol abuse and drug abuse and who do not have insurance to pay the costs of such treatment and rehabilitation or who are not eligible to receive services for such treatment and rehabilitation under the State plan approved under title XIX of the Social Security Act.

"(b)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under subsection (a) from amounts appropriated for that fiscal year.

"(2) Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(c) In order to receive an allotment for a fiscal year under subsection (a), each State shall include with the application submitted to the Secretary under section 1916 a separate statement requesting an allotment under this section. Each such statement shall contain—

"(1) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (F) of subsection (a)(3);

"(2) a description of the manner in which programs and activities conducted with payments under subsection (b) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs;

"(3) assurances that, in the preparation of any application under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(4) a description of the manner in which the State will evaluate programs and activities conducted with payments made to the State under subsection (b) and assurances that the State will report periodically to the Secretary on the results of such evaluations; and

"(5) assurances that payments made to the State under subsection (b) will supplement and not supplant any State or local expenditures for the treatment and rehabilitation of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(d) Except as provided in subsections (e), (f), and (i), amounts paid to a State under subsection (b) may be used by the State for alcohol abuse and drug abuse treatment and rehabilitation programs and activities, including—

"(1) activities to increase the availability and outreach of programs provided by major treatment centers and regional branches of such centers which provide services in a State in order to reach the greatest number of people;

"(2) activities to expand the capacity of alcohol abuse and drug abuse treatment and rehabilitation programs and facilities to provide treatment and rehabilitation services for alcohol abusers and drug abusers who have been refused treatment due to lack of facilities or personnel; and

"(3) activities to provide access to vocational training, job counseling, and education equivalency programs to alcohol abusers and drug abusers in need of such services in order to enable such abusers to become productive members of society.

"(e) A state shall use 5 percent of the total amount paid to a State under subsection (b) for a fiscal year to carry out the programs described in section 1922.

"(f) Of the total amount paid to any State under subsection (b) for a fiscal year, not more than 2 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of such administering such funds.

"(g) The Secretary may provide training and technical assistance to States in planning and operating activities to be carried out under this section.

"(h) The Secretary may conduct data collection activities to enable the Secretary to carry out this section.

"(i) The provisions of subsections (a) and (d) and paragraphs (1) through (5) of subsection (b) of section 1917 and the provisions of sections 1914(b), 1915(b), 1918, 1919, and 1920 shall apply to this section in the same manner as such provisions apply to payments made under section 1914 from allotments made under section 1913.

"STATE PROGRAMS FOR HIGH RISK YOUTH

"SEC. 1922. A State shall use the amounts required by sections 1916(c)(8) and 1921(e) to be used under this section for model, innovative, community based programs to provide multiple coordinated services for alcohol abuse and drug abuse prevention, treatment, and rehabilitation directed toward high risk youth. For purposes of this paragraph, the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide; or

(9) is disabled by injuries.".

TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

SEC. 1922. Of the amount available under the last sentence of section 1921, the Secretary shall transfer to the Administrator of Veterans' Affairs $11,000,000 to be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities."

SEC. 4003. REVISION OF ALLOTMENT PROCEDURES APPLICABLE TO INDIAN TRIBES.

(a) Section 1902(d)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

(b) Section 1913(b)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

SEC. 4004. REVISION OF CERTAIN BLOCK GRANT EARMARKS.

(a) Section 1916(c) is amended—

(1) by striking out "35" each place it appears in subparagraphs (A) and (B) of paragraph (7) and inserting in lieu thereof "25";

(2) by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 80 percent of such amount for treatment and rehabilitation programs for individuals who abuse alcohol or drugs."; and

(3) by adding at the end thereof the following new paragraph:

"(16) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 5 percent of such amount for programs described in section 1922.".

SEC. 4005. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that, if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4006. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the Institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 4007. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by section 4006 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute

constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

SEC. 4008. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 4009. STUDIES ON THE HEALTH EFFECTS OF ALCOHOL CONSUMPTION.

(a) The Congress finds that—

(1) the most abused drug in America is alcohol;

(2) alcohol use costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) in 1984, 53 percent of the traffic fatalities in the United States, accounting for more than 23,500 deaths, were related to the consumption of alcohol;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, and this represents an 8.2 percent increase in problem drinking since 1980;

(5) in 1984, almost 3,300,000 individuals between the ages of 14 and 17 experienced serious problems at home, in school, or with the law because of alcohol consumption;

(6) fetal alcohol syndrome is the third leading cause of birth defects, and is the only preventable cause of birth defects among the top three causes;

(7) nearly 5,000 babies per year are born with birth defects related to fetal alcohol syndrome;

(8) the statistics cited in the preceding paragraphs of this subsection indicate that many Americans are not aware of the adverse effects that the consumption of alcoholic beverages may have on health;

(9) it is necessary to undertake a serious national effort to educate the American people of the serious consequences of the consumption of alcoholic beverages; and

(10) carefully drafted warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages would assist in providing such education.

(b) Therefore, it is the sense of the Senate that—

(1) the Public Health Service should focus attention on the problem of educating the American people on the effects on health resulting from alcoholic beverage consumption;

(2) the Public Health Service should conduct studies on the most effective means of providing such education, including studies on the effectiveness of warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages; and

(3) the Public Health Service should transmit a report to the Congress within 6 months after the date of enactment of this Act concerning any studies described in paragraph (2) which have been conducted, and should include in such report recommendations concerning the effectiveness of the labels described in such paragraph and recommendations for specific language for such labels.

SEC. 4010. SUICIDE.

Section 501 is amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall—

"(A) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(B) make such information generally available to the public and health professionals.

"(2) By January 1, 1988, and every 3 years thereafter, the Secretary shall report to the Congress on the activities undertaken under paragraph (1) during the period reported on and shall include in each such report an assessment of the effectiveness of such activities.".

SEC. 4011. PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS.

(a) The Secretary of Health and Human Services shall increase and expand activities conducted under paragraphs (1) and (4) of section 503(d) of the Public Health Service Act.

(b) Section 503(d)(4) is amended—

(1) by inserting "and documentary films" after "television"; and

(2) by inserting "and films" before the period.

SEC. 4012. NATIONAL PLAN TO COMBAT DRUG ABUSE.

By October 1, 1988, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat drug abuse. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat drug abuse;

(2) an analysis of the social and economic costs of drug abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for drug abuse, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from drug abuse; and

(C) to meet other costs resulting from drug abuse, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of drug treatment and rehabilitation into the Nation's health care system;

(4) recommendations for the National Institute on Drug Abuse for research on, and plans for the development of, chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction;

(5) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(6) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of drug abuse;

(7) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (6) and estimates of savings in resources that can be anticipated from the achievement of such goals and objectives.

SEC. 4013. CLEARINGHOUSE.

(a) The Secretary of Health and Human Services, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. The clearinghouse shall—

(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

(b) The Secretary of Health and Human Services shall ensure that the clearinghouse established under subsection (a) coordinates its activities with similar activities conducted by the Secretary of Education.

SEC. 4014. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to treat abuse of specific drugs.".

SEC. 4015. STUDY ON ALKYL AND BUTYL NITRATES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs, should conduct a study on alkyl and butyl nitrates and report to the appropriate committees of the Congress recommendations concerning whether alkyl and butyl nitrates should be treated as a drug under the Food, Drug, and Cosmetic Act.

SEC. 4016. ADMINISTRATION.

The Secretary of Health and Human Services shall not establish any new administrative unit in the Department of Health and Human Services to administer alcohol abuse

and drug abuse programs, and shall carry out such programs through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug use and alcohol abuse is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well.

(2) The use of drugs and the abuse of alcohol by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(3) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality.

(4) In communities, schools and local organizations have a special responsibility to work together to combat the scourge of drug use and alcohol abuse.

(5) Prompt action by our Nation's schools, families, and communities can bring us significantly closer to the goal of a drug-free generation and a drug free society.

SEC. 4103. PURPOSE.

The purpose of this subtitle is to assist States in their efforts to educate concerning, and to prevent, drug use and alcohol abuse through school and community based programs.

SEC. 4104. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this subtitle, there are authorized to be appropriated $150,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

SEC. 4105. RESERVATIONS AND ALLOTMENTS.

(a) The Secretary shall reserve $20,000,000 of the amounts appropriated under section 4104 for any fiscal year for national programs under section 4109.

(b)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsection (a) for such fiscal year, the Secretary may reserve up to 1 per cent for allotments to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The Secretary shall allot the amounts reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, on the basis of need for amounts to carry out the activities described in section 4107.

(c)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsections (a) and (b) for such fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the State bears to the total number of such children in all States, except that the allotment of each State under this subsection shall not be less than $500,000. For purposes of this subsection, the number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recent available data satisfactory to the Secretary.

(2)(A) The Secretary may reallot all or a portion of the State's allotment under paragraph (1) for any fiscal year if the State does not submit a State application under section 4106, or otherwise indicates to the Secretary that it does not need or cannot use the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallotments.

(B) The Secretary may reallot amounts available under subparagraph (A) for a fiscal year on a competitive basis to one or more States that demonstrate a need for additional amounts to carry out the activities described in section 4107. Any funds reallotted to a State under this subparagraph shall be deemed to be part of its allotment under this subtitle for the fiscal year in which the funds are reallotted.

(3) For purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 4106. PAYMENTS UNDER ALLOTMENTS TO STATES.

(a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1205 from amounts appropriated for that fiscal year.

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

SEC. 4107. USE AND DISTRIBUTION OF FUNDS.

(a) At least 62 percent of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for such fiscal year shall be used by the State educational agency in accordance with subsection (c).

(b)(1) After the application of subsection (a), the remainder of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for a fiscal year shall be used by the chief executive officer of a State for drug abuse and alcohol abuse prevention and education activities, and to ensure the coordination of local drug abuse and alcohol abuse prevention and education activities. Activities by the chief executive officer of a State under this subsection may include:

(A) Grants to local governments or other public and nonprofit private entities, including parent groups, in the State for the improvement of programs and activities such as—

(i) local broad based programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education directed toward all age groups, and

(ii) training programs for teachers and other school personnel, parents, local law enforcement officials, and judges.

(B) The development and distribution of educational and informational materials, including curricula, and public information, including media campaigns, aimed at a drug-free America.

(C) Activities to increase drug abuse and alcohol abuse education and prevention efforts targeted at children and youth in kindergarten through the twelfth grade.

(2) In carrying out paragraph (1), the chief executive officer of a State shall ensure that model, innovative, community based programs of multiple coordinated services for high risk youth are given the highest priority. For purposes of this paragraph, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(A) is the child of a substance abuser;

(B) is a victim of physical, sexual, or psychological abuse;

(C) has dropped out of school;

(D) has become pregnant;

(E) is economically disadvantaged;

(F) has committed a violent or delinquent act;

(G) has experienced mental health problems;

(H) has attempted suicide; or

(I) is disabled by injuries.

(c)(1) The State educational agency of a State shall use 90 percent of the amounts available to such agency under subsection (a) for grants to, and contracts with, local educational agencies in the State, pursuant to subsection (d), provided that in fiscal years 1989 and 1990 the State educational agency shall allot to each local educational agency an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the local school district bears to the total number of such children in the State.

(2) Any amounts available to a State educational agency after the application of paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education which will be conducted in elementary, secondary, and postsecondary schools;

(B) training and technical assistance programs for local educational agencies, including teachers, administrators, and other school personnel, parents, local law enforcement officials, and judges;

(C) the development, dissemination, implementation, and evaluation of drug abuse education curricula and teaching materials in elementary and secondary schools throughout the State; and

(D) demonstration projects in drug abuse education.

(3) The State educational agency shall submit to the chief executive officer of the State a plan which—

(A) describes how the State will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, in particular, the State authority which administers the Alcohol, Drug Abuse, and Mental Health block grant;

(B) describes how funds will be allocated among local educational agencies in fiscal years 1987 and 1988;

(C) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle;

(D) provides that the State educational agency will keep such records and provide such information to the chief executive officer of the State as may be required for fiscal audit and program evaluation; and

(E) contains assurances that there is compliance with the specific requirements of this subtitle.

(d)(1) Any amounts made available to a local educational agency pursuant to a grant or contract under paragraph (1) may be

used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) the development and implementation of drug abuse and alcohol abuse education curricula for elementary and secondary schools;

(B) drug abuse and alcohol abuse prevention counseling programs including peer and professional counseling;

(C) programs of drug abuse and alcohol abuse treatment referral;

(D) programs of in-service and pre-service training in drug abuse and alcohol abuse prevention for teachers, counselors, and other educational personnel, public service personnel (including law enforcement officials), and community leaders, including cooperative programs with higher education institutions;

(E) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach developed by the Department of Education;

(F) community education programs and other activities to involve parents and communities in the fight against drug abuse and alcohol abuse;

(G) public education programs on drug abuse and alcohol abuse, including programs utilizing professionals, and former drug abusers and alcohol abusers and drug dependent and alcohol dependent individuals;

(H) on-site efforts in schools to enhance identification and discipline of such drug abusers and alcohol users, and to enable law officials to take necessary action in cases of drug possession and of drug and alcohol supplying to the student population; or

(I) other programs of drug abuse and alcohol abuse education and prevention consistent with the purposes of this subtitle.

(2) A local educational agency may receive its allocation of funds under this subtitle for any fiscal year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—

(A) provides assurances of compliance with the provisions of this subtitle;

(B) describes how drug and alcohol abuse prevention curricula will be implemented in each elementary and secondary school from the early elementary level through grade twelve, including a description of provisions to target education efforts to students most at risk of drug abuse and to schools with the greatest need of drug abuse prevention programs;

(C) provides assurances that the applicant's drug and alcohol education and prevention programs will involve school administrators, teachers, athletic staff, and other school personnel, as well as parents, law enforcement officials, medical professionals, and other groups with interest and expertise in drug abuse and alcohol abuse prevention;

(D) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug abuse and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(E) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle; and

(F) agrees to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this subtitle.

(e) Any program supported with amounts paid to a State under section 4106 shall, where appropriate, provide information to individuals about local drug abuse and alcohol abuse treatment and rehabilitation programs.

(f) Any materials produced or distributed with amounts paid to a State under section 4106 shall reflect the message that the use of illegal drugs and the abuse of alcohol is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection.

SEC. 4108. STATE APPLICATIONS.

(a) In order to receive an allotment under subsection (b) or (c) of section 4105 for a fiscal year, a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the amounts paid to the State under section 4106 in accordance with the requirements of this subtitle.

(b) Each application submitted under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at a time, in such manner, and contain such information, as the Secretary may require;

(3) contains assurances that no more than 2 per cent of the total amount paid to a State under section 4106 for a fiscal year will be used by the State, and 2 per cent by the State educational agency, to pay the costs of administering programs under this subtitle;

(4) contain assurances that the Federal funds made available under this subtitle for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this subtitle and will in no event supplant such State, local, and other non-Federal funds; and

(5) designate the State educational agency as the agency responsible for the administration and supervision of programs assisted under subsections (c) and (d) of section 4107 includes the plan for use of funds under subsection (c)(3) of such section.

SEC. 4109. NATIONAL PROGRAMS.

(a) The Secretary shall use—

(1) $10,000,000 of the amount reserved under section 4105(a) for a fiscal year to maintain the regional centers authorized by subsection (c);

(2) $8,000,000 of such reserved amount for a fiscal year to carry out the national programs described in subsection (b); and

(3) $2,000,000 of such reserved amount for the grants described in subsection (d).

(b)(1) The Secretary shall use the amount described in subsection (a)(2) for a fiscal year for national programs described in paragraph (2). Such programs shall be designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this subsection with activities conducted by the Secretary of Health and Human Services, the Secretary of Labor, the Director of ACTION, and the heads of other appropriate agencies.

(2) The Secretary shall use amounts available under this subsection to—

(A) collect and disseminate information about drug use and alcohol abuse among students in elementary and secondary schools;

(B) develop curricula for schools which warn against the use of drugs and the abuse of alcohol;

(C) provide training or technical assistance to States consistent with the purposes of this subtitle;

(D) coordinate drug abuse and alcohol abuse education and prevention efforts with similar efforts by other Federal agencies; and

(E) collect data concerning, and evaluate, programs that reduce drug abuse and alcohol abuse among students.

(3) The Secretary shall coordinate activities conducted under this subsection with similar activities conducted by the Secretary of Health and Human Services, particularly the clearinghouse established under section 4013.

(c) The Secretary shall use the amount described in subsection (a)(1) for a fiscal year to maintain at least 5 regional centers to—

(1) train school teams to access the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long term effective drug and alcohol abuse programs, including long range technical assistance, evaluation, and followup on such training;

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and higher education institutions in developing appropriate preservice and inservice training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

(d)(1) From the amounts described in subsection (a)(3) for a fiscal year, the Secretary shall reserve—

(A) $1,700,000 for grants to Indian tribes and tribal organizations, and

(B) $300,000 for grants to Hawaiian natives.

(2) From the funds reserved pursuant to paragraph (1)(A), the Secretary shall make grants to Indian tribes and tribal organizations to plan, conduct, and administer programs, or portions thereof, which are authorized and consistent with the provisions of this subtitle for the benefit of tribal members.

(3) From the funds reserved pursuant to paragraph (1)(B), the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(4) For the purposes of this subsection, the terms—

(A) "Indian tribe" and "tribal organization" have the same meaning given such terms in sections 4(b) and 4(c) of the Indian

Self-Determination and Education Assistance Act, and

(B) "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

SEC. 4110. INTERAGENCY COORDINATION.

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, and the Director of ACTION shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, and ACTION, respectively, to coordinate interagency drug abuse activities.

SEC. 4111. TRAINING, TECHNICAL ASSISTANCE, AND DATA COLLECTION.

(a) The Secretary of Health and Human Services and the Secretary of Education shall provide training and technical assistance to States and public and nonprofit private entities in planning and operating activities to be carried out under this subtitle.

(b) The Secretary of Health and Human Services and the Secretary of Education may conduct data collection activities to enable the Secretary to carry out this subtitle.

SEC. 4112. REPORT.

Within 6 months after the date of enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall prepare and transmit to the appropriate committees of the Congress a report on the implementation of this subtitle. The report shall include a description of the manner in which activities conducted under this subtitle are being coordinated with activities conducted under subtitle A.

SEC. 4113. CONFORMING AMENDMENTS.

Section 583(b) of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3851(b)) is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out paragraph (3); and

(3) redesignating paragraph (4) as paragraph (3).

SEC. 4114. DEFINITIONS.

The definitions of terms contained in section 595 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4115. PRIVATE SCHOOLS.

The provisions of section 557 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4116. SENSE OF THE SENATE URGING THE MOTION PICTURE ASSOCIATION TO LABEL PRO-DRUG FILMS.

(a) The Senate finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions;

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth;

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way;

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

(5) the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system.

(b) It is the sense of the Senate that the Motion Picture Association of America should incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol abuse and drug use in a benign or favorable light, and give a special rating to movies that so depict alcohol abuse and drug use, in order that parents can make an informed choice about the movies their children attend.

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian

population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) IN GENERAL.—The Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) CHARACTER OF ACTIVITIES.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) CONSULTATION.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) PUBLICATION.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 90 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) IN GENERAL.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such resolution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(2) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(3) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(4) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need. There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian Youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of

this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: *Provided*, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) PUBLICATION.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) PILOT PROGRAMS.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.".

(b) USE OF FUNDS.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) IN GENERAL.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) REFERRALS.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) DIRECTION TO STATES.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) STANDARDS.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) AUTHORIZATION.—For the planning and design, construction, and renovation, of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) DATA.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal

Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) LAW ENFORCEMENT AND JUDICIAL SERVICES.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION OF REVIEW.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION.

(a) INVESTIGATION AND CONTROL.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal law enforcement agencies, including the United States Customs Service.

(b) AUTHORIZATIONS.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4217. TRIBAL COURTS, SENTENCING AND FINES.

To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations, paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year and a fine of $5,000, or both".

SEC. 4218. LAW ENFORCEMENT SERVICES.

(a) For the purpose of maintaining law and order and of protecting persons and property within Indian country as defined in section 1151 of title 18, United States Code, the Secretary of the Interior (hereinafter referred to as the "Secretary") may charge any officer or employee of the Department of the Interior with law enforcement responsibilities and authorize such officer or employee to exercise such of the following authorities as the Secretary may deem appropriate:

(1) Carry firearms within Indian country and while transporting prisoners or on other official duties outside Indian country.

(2) Secure and execute or serve within Indian country any order, warrant, subpoena, or other process which is issued under the authority of the United States or of an Indian tribe.

(3) Make an arrest without a warrant—

(A) for any offense committed within Indian country against the United States committed in the presence of the officer or employee;

(B) for any offense committed within Indian country against the United States constituting a felony if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; or

(C) for any offense committed within Indian country against an Indian tribe that has commissioned the officer or employee to enforce its laws if the officer or employee has reasonable grounds to believe that the person to be arrested is committing the offense in the officer's or employee's presence or view.

(4) Offer and pay a reward for services or information assisting in the detection or investigation of the commission of an offense committed within Indian country or in the apprehension of an offender.

(5) Make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is material or relevant to the enforcement within Indian country of the laws of the United States or of any Indian tribe that has commissioned the officer to enforce its laws.

(6) Perform any other law enforcement duty that the Secretary may designate.

(7) Upon request, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement of the laws, ordinances, or regulations which they administer or enforce, but no Indian tribe, State, or political subdivision shall be deprived, by this section or by any such request, of any civil or criminal jurisdiction it may have.

(b)(1) The Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local Governmental agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in the first section of this Act as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this section.

(c) The Secretary of the Interior may make and publish such rules and regulations as the Secretary deems necessary or proper for officers or employees of the Department of the Interior charged with law enforcement responsibilities and for employees of any Federal, tribal, State, or local governmental agency whose services are being utilized pursuant to subsection (b).

(d)(1) Nothing in this section shall be construed to invalidate any delegations of authority or law enforcement commissions issued by the Secretary, or the Secretary's designates, prior to the date of enactment of this Act.

(2) The authorities provided by this section are in addition to, and not in derogation of, any existing authorities. Nothing in this section shall be construed to alter in any way the law enforcement, or investigative, or judicial authorities of any Indian tribe, State, or political subdivision thereof, or of any department, agency, court, or official of the United States other than the Department of the Interior and agencies or officials thereof.

(e) Notwithstanding section 5901(a) of title 5, United States Code, the uniform allowance for Bureau of Indian Affairs law enforcement officers shall not exceed $400 annually.

SEC. 4219. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) IN GENERAL.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 787.

(b) AUTHORIZATION.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4220. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4221. JUVENILE DETENTION CENTERS.

(a) PLAN.—The Secretary of the Interior shall construct and renovate juvenile deten-

tion centers and shall ensure that the construction of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) AUTHORIZATION.—For the purpose of subsection (a), there are authorized to be appropriated $10,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4222. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4223. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) COMPILATION OF LAW ENFORCEMENT DATA.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) REFERRAL OF DATA.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) CONFIDENTIALITY.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) IN GENERAL.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) DISSEMINATION.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination for the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) CENTERS.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $6,000,000 for the construction and renovation of the regional youth treatment centers, and $3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) FEDERALLY OWNED STRUCTURES.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) REHABILITATION AND FOLLOW-UP SERVICES.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $9,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. TRAINING AND COMMUNITY EDUCATION.

(a) COMMUNITY EDUCATION.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) TRAINING.—The Secretary of Health and Human Services shall, either directly or through contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Indian Health Service, and personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Indian Health Services, including supervisors of emergency shelters and halfway houses described in section 4213.

(c) AUTHORIZATION.—There are authorized to be appropriated $4,000,000 for the fiscal year 1987 and such sums as are necessary to carry out the purposes of this section for the fiscal years 1988 and 1989.

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) EVALUATION AND REPORT.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) AUTHORIZATION.—There are authorized to be appropriated for the purposes of grants under subsection (a) $200,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Action Grants

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (such as, but not limited to, grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and forprofit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

TITLE V—ANTI-DRUG TRUST FUND

DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

(a) Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part:

DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) IN GENERAL.—With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) any amount of an overpayment of such tax for such taxable year, or

"(2) in the absence of any overpayment of such tax, any contribution which the taxpayer includes with such return.

be paid over to the Anti-Drug Trust Fund.

"(b) MANNER AND TIME OF DESIGNATION.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) DESIGNATED AMOUNTS NOT DEDUCTIBLE.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(d) OVERPAYMENTS TREATED AS REFUNDED.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if late, the date the return is filed.".

(b) Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9505. ANTI-DRUG TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the 'Anti-Drug Trust Fund', consisting of such amounts as may be appropriated or credited to the Anti-Drug Trust Fund as provided in this section and section 9602(b) (relating to crediting of interest, etc.).

"(b) TRANSFERS TO ANTI-DRUG TRUST FUND.—There are hereby appropriated to the Drug Addiction Prevention Trust Fund amounts equivalent to the amounts designated under section 6097 and received in the Treasury.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Anti-Drug Trust Fund shall be available as provided by appropriation Acts, for making expenditures to carry out the purposes of the Drug Enforcement Act of 1986.".

(c)(1) The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"PART IX. Designation of overpayments and contributions for Anti-Drug Trust Fund.".

(2) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9505. Anti-Drug Trust Fund.".

(d) The amendments made by this section shall take effect on January 1, 1987.

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1024

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. One hour having passed since the Senate convened, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to S. 2760, the Product Liability Reform Act.

Bob Kasten, Jim Broyhill, Phil Gramm, Steve Symms, Don Nickles, Larry Pressler, Nancy Landon Kassebaum, Dick Lugar, Mitch McConnell, Jesse Helms, Pete Wilson, Jake Garn, Jim McClure, Chic Hecht, Jim Abdnor, Dan Quayle, Edward Zorinsky, and Lowell Weicker.

CALL OF THE ROLL

The PRESIDING OFFICER (Mr. LAXALT). Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum Vote No. 10 Leg.]

Byrd	Hollings	Zorinsky
Dole	Kasten	
Grassley	Laxalt	

The PRESIDING OFFICER. A quorum is now present. The clerk will call the names of the absent Senators.

The assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

Abdnor	Biden	Broyhill
Andrews	Bingaman	Bumpers
Armstrong	Boren	Burdick
Baucus	Boschwitz	Chafee
Bentsen	Bradley	Chiles

Cochran	Heflin	Packwood
Cohen	Heinz	Pell
Cranston	Helms	Pressler
D'Amato	Humphrey	Proxmire
Danforth	Inouye	Quayle
DeConcini	Johnston	Riegle
Denton	Kassebaum	Rockefeller
Dixon	Kennedy	Roth
Dodd	Kerry	Rudman
Domenici	Lautenberg	Sarbanes
Durenberger	Leahy	Sasser
Eagleton	Levin	Simon
Evans	Long	Simpson
Exon	Lugar	Specter
Ford	Mathias	Stafford
Glenn	Matsunaga	Stennis
Goldwater	Mattingly	Stevens
Gore	McClure	Symms
Gorton	McConnell	Thurmond
Gramm	Melcher	Trible
Harkin	Metzenbaum	Wallop
Hart	Mitchell	Warner
Hatch	Moynihan	Weicker
Hatfield	Murkowski	Wilson
Hawkins	Nickles	
Hecht	Nunn	

□ 1100

VOTE

The PRESIDING OFFICER (Mr. STEVENS). A quorum is present.

The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 2760, the Product Liability Reform Act, shall be brought to a close? The yeas and nays are automatic under the rule, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GRAN]. is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR], is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would each vote "yea."

The yeas and nays resulted—yeas 97, nays 1, as follows:

[Rollcall Vote No. 291 Leg.]

YEAS—97

Abdnor	Goldwater	Melcher
Andrews	Gore	Metzenbaum
Armstrong	Gorton	Mitchell
Baucus	Gramm	Moynihan
Bentsen	Grassley	Murkowski
Biden	Harkin	Nickles
Bingaman	Hart	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Pressler
Broyhill	Hecht	Proxmire
Bumpers	Heflin	Quayle
Burdick	Heinz	Riegle
Byrd	Helms	Rockefeller
Chafee	Hollings	Roth
Chiles	Humphrey	Rudman
Cochran	Inouye	Sarbanes
Cohen	Johnston	Sasser
Cranston	Kassebaum	Simon
D'Amato	Kasten	Simpson
Danforth	Kennedy	Specter
DeConcini	Kerry	Stafford
Denton	Lautenberg	Stevens
Dixon	Laxalt	Symms
Dodd	Leahy	Thurmond
Dole	Levin	Trible
Domenici	Long	Wallop
Durenberger	Lugar	Warner
Eagleton	Mathias	Weicker
Evans	Matsunaga	Wilson
Exon	Mattingly	Zorinsky
Ford	McClure	
Glenn	McConnell	

NAYS—1

Stennis

NOT VOTING—2

Garn Pryor

□ 1124

The PRESIDING OFFICER. On this vote there are 97 yeas and 1 nay. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

PRODUCT LIABILITY REFORM ACT

Mr. KASTEN. Mr. President, when I spoke to the delegates at the White House Conference on Small Business, many of whom had businesses that were literally on the edge of survival, many of whom had businesses whose very existence depended upon the needed reforms of the product liability system, I promised them that this legislation, this bill, would be on the floor of the Senate.

I also promised them, as did the majority leader and others, that we would find out who supported them and were concerned about their problems and who supported the trial lawyers. I am doing everything I can, and I am going to do everything I can, to move this bipartisan consensus bill, the package which I proposed as an amendment in the nature of a substitute on behalf of Senators on both sides of the aisle—to do everything I can to work with this bipartisan consensus until those who support the small businessmen and women across the country are given an opportunity to vote.

I am not a lawyer, but I understand that one of the things that attorneys do, particularly trial lawyers, is they drag things out in court. They stall in court. They use legal technicalities in court to prevent a solution or to prevent any decision from being made.

These legal technicalities that we are seeing now is a process under which a small number of people who are using legal technicalities and not willing to vote up or down on an issue are dragging out this issue on the floor of the Senate, just as trial attorneys drag out an issue in a courtroom.

We cannot let them get away with that on the floor of the Senate. I strongly urge my colleagues to vote for the Kasten-Inouye-Gorton-Stevens-Kassebaum-Riegle amendment to Senate bill 2760, the Product Liability Reform Act. I believe we have a strong, bipartisan consensus.

I do not believe, Mr. President, that we ought now to go through this dragging out process, which would include up to 30 hours, possibly, of debate, now that we have invoked cloture on the motion to proceed. I shall not use my time, and I do not believe that any of us who are fighting for the small business men and women across this country want to use their time, because we do not want to participate in this delay. Instead, I hope that we can move forward relatively quickly to a vote, first of all, on the motion to proceed, then to a vote on the substitute.

So, Mr. President, in the interest of trying to move along, at the same time giving people an opportunity to debate—and I know there are some Senators on the floor who desire to debate—I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed on S. 2760, the Product Liability Act, at 12:30 today.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KASTEN. I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed on S. 2760 at 1 o'clock today.

Mr. HOLLINGS. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. KASTEN. Mr. President, let me just say to the Senator from South Carolina, I am trying, if we can, to expedite the process of the Senate. We would be willing to try a vote at 1:30 or 2 o'clock.

I ask unanimous consent that, notwithstanding the provisions of rule XXII, a vote occur on the motion to proceed to S. 2760 at 2 p.m.

Mr. HOLLINGS and Mr. HART. I object.

The PRESIDING OFFICER. Two objections are heard.

Mr. KASTEN. Mr. President, I yield the floor.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. What is the time situation, Mr. President?

The PRESIDING OFFICER. There are 30 hours of consideration that began at 11:23 a.m.

Mr. HART. Mr. President, if I may, I wish to direct an inquiry to the distinguished Senator from South Carolina as to whether a statement on behalf of the position which he has taken on this measure would be in order by the Senator from Colorado at this point?

Mr. HOLLINGS. By all means, Mr. President. I suggest the Senator go right ahead.

Mr. HART. I thank the Senator.

Mr. President, at a time when the Senate ought to be very seriously considering trade legislation, a true deficit reduction measure such as an oil import fee, or overdue revisions of the farm bill—measures to help the American people—we are considering something else: an unjust and unwise meas-

ure to injure people who have already been hurt.

I cannot support legislation to make it more difficult for victims of dangerous and defective products to be compensated for their injuries. Most of the provisions of the product liability bill would undercompensate the injured or insulate the guilty. The consumers of this Nation and the firms which conscientiously apply the highest standards in manufacturing both deserve better.

This legislation is based on the false premise that economic losses are somehow more worthy of compensation, while other damages, more difficult to quantify, are deemed less worthy of compensation. The $250,000 cap on pain and suffering and the elimination of joint and several liability for so-called noneconomic losses illustrate a favoritism for arithmetic but a moral blindspot when it comes to human suffering.

Mr. President, pain and suffering constitute real losses, not a fiction or a nasty plot designed to benefit the lawyers.

Consider for a moment the fairness of a $250,000 cap as applied in the case of a young girl who has suffered severe burns after her pajamas caught fire. Her scars are permanent; plastic surgery will not restore her appearance. Disfiguring injuries will guarantee her a lifetime of pain and personal regret. The $250,000 cap in this bill does not permit adequate compensation for this victim, this child.

Under this unfair legislation, manufacturers will make an offer just to limit the amount they will eventually pay to a victim, like the little girl. The cap would not encourage plaintiffs to settle. Seriously injured patients already have an incentive to resolve disputes, to get along with their lives. Instead, this cap acts as an incentive for manufacturers to ignore their responsibilities for justifiable damage awards. A nonflexible formula for calculating compensable loss will do a substantial injustice in individual cases.

When compensation is based chiefly on economic factors, like wage loss and medical bills, the victim's recovery rights are drastically and unfairly reduced. Many injured consumers are not wage earners, and horrendous injuries may be untreatable.

The woman who used a Dalkon Shield and is now unable to bear children, for example, will not be prevented from actively pursuing her career. A liability formula that is biased toward economic damages, by definition, cannot begin to compensate her inability to start and/or add to her family. And that is wrong, Mr. President.

There has been much discussion in this debate about deep-socket liability. I prefer to call it "guilty-pocket" liability. Under the longstanding doctrine of joint and several liability, the plaintiff cannot recover from any defendant without showing the defendant caused the harm. It is fair to require that anyone who caused the injury pay for it. It is eminently unfair to force the innocent victim of a product accident to absorb any shortfall in compensation. Revisions in the doctrine of joint and several liability, which force the innocent victim to subsidize wrongdoers, is unsound public policy, regardless of whether this subsidy consists of economic or noneconomic losses.

It is well documented that the tort system has functioned to drive from the market dangerous products—flammable fabrics, unsafe automobiles, birth control pills which cause cancer and stroke, and others. The threat of damages forces otherwise irresponsible manufacturers to pay close attention to the safety consequences of their products. With legislation freeing them of liability concerns, that attention to safety will disappear.

Sound reforms of this Nation's tort liability system can be accomplished. But solutions to those problems which do exist must involve contributions from all parties—insurers and consumers, manufacturers and attorneys. That would be a principled approach.

But this legislation is a bailout. It seeks to protect manufacturers from the consequences of their actions at the expense of consumers who have been injured.

I congratulate the distinguished Senator from South Carolina [Mr. HOLLINGS], who has been this Chamber's conscience on product liability legislation. I commend him for his leadership in opposition to this flawed bill.

Mr. President, a further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Would a statement unrelated to the pending matter be in order at this point?

The PRESIDING OFFICER. It is not in order at this time.

Mr. HART. Would it be in order if unanimous consent were obtained?

The PRESIDING OFFICER. It would be in order to ask unanimous consent for that purpose.

Mr. HART. Mr. President, I ask unanimous consent that it be in order to present brief remarks on the occasion of the memorial service to the late Governor Harriman.

Mr. KASTEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HART. I am sure the friends of Governor Harriman appreciate that.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Business has not intervened since the last quorum call; therefore——

Mr. HOLLINGS. No business has intervened, Mr. President?

The PRESIDING OFFICER. That is the rule, that during a cloture period, there cannot be another quorum call unless business has intervened in the interim since the last rollcall.

Mr. HOLLINGS. Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

The PRESIDING OFFICER. The Chair states that that is a very technical question. There are a series of things that constitute business. Ordering the yeas and nays on a motion would be business.

Mr. HOLLINGS. But not debate?

The PRESIDING OFFICER. Not debate. There must be action by the Senate disposing of pending business before another quorum call is in order.

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second for that purpose? There is not a sufficient second for that purpose.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. A quorum is not in order.

Mr. HOLLINGS. Oh, yes, Mr. President; now business has occurred.

The PRESIDING OFFICER. The Chair is corrected by the Parliamentarian. The Senator having appealed the ruling of the Chair, it is now in order to have a quorum call to get sufficient time to get seconders for the request. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1150

Mr. KASTEN. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. KASTEN. Mr. President, it is our intention to move to the yeas and nays on this question now if the Senator from South Carolina is agreeable.

Mr. HOLLINGS. I object right now. Let me get this understood. You can move it, but I would be recognized to talk. I misunderstood the request of the distinguished Senator.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor and has made a request.

Mr. HOLLINGS. Is it unanimous consent?

The PRESIDING OFFICER. Is there sufficient second for the yeas and nays?

Mr. HOLLINGS. Parliamentary inquiry. What is the motion?

The PRESIDING OFFICER. It is the Chair's understanding the Senator from Wisconsin has asked for the yeas and nays on the appeal.

Mr. HOLLINGS. The appeal was out and then we got the quorum call.

The PRESIDING OFFICER. No. The appeal was not out because the Senator had appealed the ruling of the Chair and asked for the yeas and nays and there was not a sufficient second. And then the Senator asked for a quorum call, which leaves the Senator's motion remaining before the Senate and that is the appeal of the ruling of the Chair.

Mr. HOLLINGS. I withdraw the appeal. Is that all right?

The PRESIDING OFFICER. The Senator has that right. The appeal is withdrawn.

QUORUM CALL

Mr. HOLLINGS. The appeal is withdrawn and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 11]

Bentsen	Gorton	Kasten
Boschwitz	Hart	McClure
Bumpers	Helms	Pressler
Dodd	Hollings	Stevens
Goldwater	Kassebaum	Thurmond

The PRESIDING OFFICER (Mrs. KASSEBAUM). A quorum is not present.

The clerk will call the names of absent Senators.

The assistant legislative clerk proceeded to call the roll.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Madam. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Michigan [Mr. LEVIN] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The result was announced—yeas 90, nays 5, as follows:

[Rollcall Vote No. 292 Leg.]

YEAS—90

Abdnor	Ford	McConnell
Andrews	Glenn	Melcher
Armstrong	Gore	Metzenbaum
Baucus	Gorton	Mitchell
Bentsen	Gramm	Moynihan
Biden	Grassley	Murkowski
Bingaman	Harkin	Nickles
Boren	Hart	Nunn
Boschwitz	Hatch	Packwood
Bradley	Hatfield	Pell
Broyhill	Hawkins	Pressler
Bumpers	Hecht	Riegle
Burdick	Heflin	Rockefeller
Byrd	Heinz	Roth
Chafee	Helms	Rudman
Chiles	Hollings	Sarbanes
Cochran	Humphrey	Sasser
Cohen	Inouye	Simon
Cranston	Kassebaum	Simpson
D'Amato	Kasten	Specter
Danforth	Kennedy	Stafford
DeConcini	Kerry	Stennis
Dixon	Lautenberg	Stevens
Dodd	Laxalt	Symms
Dole	Leahy	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Eagleton	Matsunaga	Warner
Evans	Mattingly	Wilson
Exon	McClure	Zorinsky

NAYS—5

Goldwater	Proxmire	Weicker
Johnston	Quayle	

NOT VOTING—5

Denton	Levin	Pryor
Garn	Mathias	

So the motion was agreed to.

□ 1230

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

PRODUCT LIABILITY REFORM

Mr. KASTEN. Madam President, I ask for regular order.

The PRESIDING OFFICER. Regular order is the motion to proceed.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. The distinguished Senator from Wisconsin Madam President, has referred to the trial lawyers.

Mr. KASTEN. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator yield for a parliamentary inquiry?

Mr. HOLLINGS. No, I do not. I would like to make this thought. I have not spoken today on this particular matter. I would like to be heard because there have been some misleading statements made.

The American Bar Association writes to this Senator and all Senators, as you were, to try to clarify the record. Beginning in their letter dated September 24, they say:

DEAR SENATOR: Yesterday on the Senate floor during debate on S. 2760, Senator KASTEN stated that "most lawyers support some kind of bill" on product liability. We believe this is misleading. The American Bar Association—

I am not talking about trial lawyers.

The distinguished Senator would couch this all as insurance company versus trial lawyers. I daresay that an injured party cannot go to an insurance company. You cannot go and get a corporate lawyer. Those folks charge $500 and $600 an hour. So they do go, thank Heavens, to trial lawyers, the little man in town.

The American Bar Association, which encompasses trial lawyers, corporate lawyers, and insurance lawyers, states:

The ABA, with a membership of approximately 320,000 lawyers, supports federal legislation in two discrete areas of the product liability law. However, we have opposed broad federal product liability legislation such as S. 2760 since February 1981 when the ABA went on record against such proposals.

In February 1983, the ABA's House of Delegates reconsidered the matter and voted by a substantial majority to reaffirm its earlier position of opposition to broad federal preemptive product liability legislation. At that time, it also voted to approve two recommendations supporting federal attention in two limited areas: Litigation involving certain latent occupational diseases, and the question of how to allocate liability risks between the federal government and its contractors.

The approximately 380-member ABA House of Delegates, which is carefully structured to represent all aspects of the Bar, thoroughly studied all facets of this matter before making its decisions on this issue in 1981 and 1983.

Operating in a manner similar to the U.S. Congress, our House of Delegates is the legislative body for the ABA. The House of Delegates represents not only various groups within the Association but also the legal profession as a whole. Its membership is made up of delegates elected by Association members in each state, delegates from every state bar association, the larger local bar associations, other national organizations of the legal profession and delegates elected by the ABA Assembly and the ABA Sections.

Enclosed is a letter from our Immediate-Past President setting forth our reasons for opposing broad federal product liability legislation.

Mr. KASTEN. Madam President, I ask for regular order. The Senator from South Carolina has already spoken twice on this issue. Under the rules, he cannot speak again on this issue.

Mr. HOLLINGS. I have not yielded the floor, Madam President.

The PRESIDING OFFICER. Regular order has been requested.

Mr. HOLLINGS. I am in regular order, having been recognized. How can he be recognized? He has already made five motions. I have not made one talk. I am trying to complete it.

The PRESIDING OFFICER. The Senator from Wisconsin does not have to be recognized. He made a call for regular order. Under regular order, the Senator from South Carolina has

already delivered two speeches on the same subject. A third speech would be out of order.

Mr. HOLLINGS. As you were. I respectfully—I disrespectfully, I should say—object to that ruling, Madam President. That is babble from the Parliamentarian. You cannot rule in the U.S. Senate that when I made a request for a quorum, that is a speech. The only other thing I made was an appeal from the ruling of the Chair. If that is a case of being recognized, he has already been recognized, made six talks this morning. I make the point of order that he is out of order, has been recognized because he made two speeches so you could not recognize him. That is utter nonsense. I never heard of such a thing in my life—there is no precedent. The Parliamentarian referred to page 625. I have read it. I say he is wrong. I respect you, Madam President. I know you take that nonsense from him. I am going to appeal it, if you please.

If a motion in the U.S. Senate is a speech, if an absence of a quorum is a speech, if an appeal is a speech, we are in sad shape if we are going to take the majority or minority leader and rule him out of order because that is two speeches. He knows that. He has been recognized for three unanimous-consent requests and four others so on a point of order, he was not in order to be recognized. Therefore, he could not call for regular order under that nonsensical ruling.

I still have the floor. I thank the distinguished chairman.

The PRESIDING OFFICER. The Senator from South Carolina knows a ruling of the Chair is not debatable. An appeal of the ruling is not debatable.

Mr. METZENBAUM. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators answered to their names:

[Quorum No. 12]

Evans	Kassebaum	Simpson
Exon	Kasten	Stennis
Goldwater	McConnell	Symms
Harkin	Metzenbaum	Thurmond
Hollings	Pressler	

Mr. KASTEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HOLLINGS. I object.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

□ 1250

Mr. KASTEN. Madam President, I move that the Sergeant at Arms call for the return of the absent Senators.

Mr. HOLLINGS. Madam President, I object. A rollcall is in progress and he has not taken off the quorum.

Mr. METZENBAUM. Madam President, I invoke the two-speech rule. I invoke the two-speech rule.

Mr. HOLLINGS. That is right. He is out of order.

Mr. METZENBAUM. For that and seven other reasons why I object.

Mr. KASTEN. Madam President, I ask for the yeas and nays.

Mr. HOLLINGS. We are still in a quorum call.

The PRESIDING OFFICER. The quorum has been completed. The clerk just announced a quorum is not present.

Mr. METZENBAUM. I invoke the two-speech rule.

Mr. KASTEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. METZENBAUM. May we have a ruling on the two-speech rule?

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HOLLINGS. I raise a point of order that he not be recognized because this is his seventh speech.

The PRESIDING OFFICER. A point of order cannot be the absence of a quorum and there is not a sufficient second. The question is, Shall the Sergeant at Arms call for the return of the absent Senators? All those in favor say "aye."

All those opposed.

The ayes appear to have it.

Mr. METZENBAUM. The what?

The PRESIDING OFFICER. The ayes appear to have it.

Mr. METZENBAUM. Madam President, there was 1 yea and 1 nay.

Mr. KASTEN. I ask for a division.

The PRESIDING OFFICER. Those in favor stand and be counted.

Mr. METZENBAUM. Madam President, I ask for a rollcall. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Alabama [Mr. DENTON], the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Maryland [Mr. MATHIAS], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from New York [Mr. MOYNIHAN] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

The result was announced—yeas 87, nays 6, as follows:

[Rollcall Vote No. 293 Leg.]

YEAS—87

Abdnor	Ford	Matsunaga
Andrews	Glenn	Mattingly
Armstrong	Gore	McClure
Baucus	Gorton	McConnell
Bentsen	Gramm	Melcher
Biden	Grassley	Metzenbaum
Bingaman	Harkin	Mitchell
Boren	Hart	Murkowski
Boschwitz	Hatch	Nunn
Bradley	Hatfield	Packwood
Broyhill	Hawkins	Pell
Bumpers	Hecht	Pressler
Burdick	Heflin	Riegle
Byrd	Heinz	Rockefeller
Chafee	Helms	Roth
Chiles	Hollings	Rudman
Cochran	Humphrey	Sarbanes
Cohen	Inouye	Sasser
Cranston	Johnston	Simon
Danforth	Kassebaum	Simpson
DeConcini	Kasten	Specter
Dixon	Kennedy	Stennis
Dodd	Kerry	Stevens
Dole	Lautenberg	Symms
Domenici	Laxalt	Thurmond
Durenberger	Leahy	Trible
Eagleton	Levin	Warner
Evans	Long	Wilson
Exon	Lugar	Zorinsky

NAYS—6

D'Amato	Proxmire	Wallop
Nickles	Quayle	Weicker

NOT VOTING—7

Denton	Mathias	Stafford
Garn	Moynihan	
Goldwater	Pryor	

So the motion was agreed to.

□ 1320

The PRESIDING OFFICER. With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I am allowed 1 hour—or 2 or 3 if yielded to me, is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. I understand that some problem has risen with respect to the rule XIX, involving two speeches in the same legislative day on the same subject, the contention being that Senator HOLLINGS, on the suggestion of the absence of a quorum, was being charged with one of his two speeches to which he is entitled under the rule.

I was not on the floor at the time. I have asked for a transcript, and it is quite lengthy, as I see here. I would like to have an opportunity to read this transcript, and I shall shortly complete my one speech on the same subject during the same legislative day.

But, before I do so, I shall record the pertinent provisions of rule XIX:

* * * and no Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate.

Mr. President, if I am correct in the understanding that Mr. HOLLINGS got recognition, suggested the absence of a

quorum, and that that action on his part constituted a speech. I would ask the Chair if I am correct in that the Chair has rendered such an opinion.

The PRESIDING OFFICER. It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech and, of course, the reading of the transcript would give full evidence of the exact request of the Senator from South Carolina.

Mr. BYRD. I will read the transcript in a moment to ascertain in facts in that regard.

But we are told by the Chair, upon the advice of the Parliamentarian, that any recognition for any purpose when the Senate is proceeding under the cloture rule, the Senate having voted cloture, that such recognition constitutes a speech; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. If I might ask the Chair to inquire of the Parliamentarian: What is the basis for the Parliamentarian's recommendation or advice on that point?

The PRESIDING OFFICER. The precedent is set by the debate on June 12, 1935. During consideration of an amendment from the House, the President pro tempore, in reply to a parliamentary inquiry by Mr. Huey P. Long, from Louisiana, held that he would lose the floor if he made a motion for a recess. In reply, then, to a parliamentary inquiry of Mr. Pat McCarran, of Nevada, if any other Member than the Senator who occupied the floor could move a recess without the other Senator losing the floor, the President pro tempore said:

> If there is any business intervening, then the Senator is construed as starting another speech. If any business intervenes and the Senator allows it to intervene, having the power to prevent the intervention of any business, then if he is recognized it will be regarded as the beginning of a second speech.

And then, in reply to a parliamentary inquiry by Mr. Alben Barkley, of Kentucky, the President pro tempore held that where a Senator yielded to another Senator to make a motion to recess or adjourn or for any other motion, that constituted business, and if such Senator was again recognized, it would be for a second speech.

□ 1330

There is more to that precedent that I can share with the Democratic leader.

Mr. BYRD. I thank the Chair.

Would the Chair, with the advice of the Parliamentarian, indicate where in the footnotes that such precedent is referred to?

The PRESIDING OFFICER. It is on page 626 of Senate Procedure, footnote No. 487.

Mr. BYRD. I thank the Chair.

Mr. President, if Senators will pay close attention, the Senate will be called upon to make a decision on this point. It is going to be a serious impairment to any leader, whether majority or minority, if this ruling which has been taken as stated by the Chair, with the advice of the Parliamentarian, is allowed to stand.

Let me just say that I have been studying these rules for 20 years and have been a constant companion on the floor pretty much of that time and have probably been instrumental in establishing more pecedents than any other Senator before my time or during my time.

Let me hastily say that I can be wrong, and I am the first to recognize that I have been wrong on some occasions, have been shown to be wrong, and have admitted that I have been wrong.

But let us proceed now in connection with this matter.

All Senators have the book titled Senate Procedure. It may be in their desks or may be in their offices.

Let me read to Senators therefrom.

The Chair has cited a so-called precedent on page 626 of the book on Senate Procedure. We find a footnote, 487, "See June 12, 1935," the 74th Congress, 1st Session, RECORD pages 4495, 4496.

If each Senator will also look at the preface in this book, which is on page small Roman numerals xi, I will read this paragraph.

> It will be observed that the footnotes divide themselves into two classes: those without, and those with the word "See" and "See also." Those without

Meaning those without the word "See" or "See also,"

> are rulings by the Presiding Officer or decisions by the Senate.

Those are precedents. Whether they are "rulings" by the Presiding Officer or "decisions" by the Senate, that is what we mean when we refer to a "precedent." The Senate guards zealously its rules and precedents because, like the common law of England which is based on precedents from time immemorial rules and precedents are what we depend on here in this body, in addition to the unwritten rules of courtesy, comity, and mutual respect.

Reading further:

> Those with "See" are responses by the Chair to parliamentary inquiries in cases where the opinions expressed are in keeping with the practices of the Senate, even though in such cases an appeal from an opinion expressed by the Presiding Officer in reply to a parliamentary inquiry is not in order.

Where the Chair, therefore, expresses an opinion in response to a parliamentary inquiry, that opinion is not a precedent and, therefore, not subject to appeal. The Chair expressed opinions in only the footnote cited. The footnote cited says "See", and "See" is in italics which means that it was a response by the Chair to a parliamentary inquiry.

A response by the Chair to a parliamentary inquiry is not a precedent. I have already indicated that a precedent is a "decision", by the Senate or a "ruling" by the Chair. The Chair rules on a question of order.

If the Chair's ruling is not contested by the Senate, the ruling stands as a precedent of the Senate. If the ruling is appealed, the Senate decides. Whatever the Senate decides, whether it is in support of the Chair or opposes the Chair, that is a precedent of the Senate. A decision by the Senate is the stronger of the two precedents.

A ruling by the Chair, uncontested by the Senate, is a precedent, but not as strong a precedent as a decision by the Senate.

But in this footnote, we are being referred to responses by the Chair in answer to a parliamentary inquiry.

The Presiding Officer has already read the responses. The Chair was not asked to rule. A Senator simply arose and asked a parliamentary inquiry. The Chair responded that it was the Chair's opinion, thus and so. It may be the Chair's opinion based on a past precedent set by the Senate, but if there is such a precedent established by a Senate decision or a ruling by the Chair that would back up the Chair's opinion, it ought to be in the footnote also and we ought to see what it is, but none is indicated.

So the Chair's ruling today is not based on precedent. It is against all commonsense, it seems to me; it is against logic, to maintain that simply because a Senator rises and suggests the absence of a quorum, that that in itself constitutes a speech.

If this is going to be the rule here, then the distinguished majority leader, if he wishes to put in a quorum call, that is going to constitute a speech.

Well, he will be allowed to do that twice. Then, of course, when he has done that twice, the leader is going to be confronted with having spoken twice already on the same legislative day, and without the consent of the Senate, he cannot proceed. We all know that is impractical, it is implausible, it is illogical, it does not make sense. I think it would be a very serious thing if the Senate were to allow this matter to stand that, on the basis of the Senator from South Carolina's having arisen, having addressed the Chair, having gotten recognition, having suggested the absence of a quorum, that constitutes a speech within the two-speech rule.

□ 1340

I hope the Senate will not allow that ruling, if the ruling has indeed been

made, to stand unchallenged. I hope the Senate will not allow that to become a precedent.

Any Senator has the right to—does a Senator have to be recognized to ask for the yeas and nays, I ask the Chair?

The PRESIDING OFFICER. It is so that a Senator would have to be recognized to ask for the yeas and nays.

Mr. BYRD. I thank the Chair.

The Constitution gives any Senator the right to ask for the yeas and nays on any question and he is entitled to have the yeas and nays if one-fifth of those Senators present signify that they support that call for the yeas and nays. But if he does that, under today's ruling, that is one speech. If he asks for the yeas and nays twice, he has made his two speeches.

Is that logical? Does that make sense, that a Senator who asks for the yeas and nays on a given matter, to which he is entitled if supported by one-fifth of Senators present, under the Constitution of the United States—which is on a much higher plane than the rules of the Senate or the precedents of the Senate—then, is he going to render himself further speechless on a matter that may be vitally important to his State? No State shall be deprived of equal representation in the Senate without its own consent. Is he, by virtue of the fact that he asked for the yeas and nays twice unable to speak on a matter vital to his State, thus denying representation for his State?

The majority leader may say, "I move that the Sergeant at Arms be instructed to request the attendance of absent Senators." The majority leader may then say, "I ask for the yeas and nays." He has made two speeches? Is that what we are being told?

Mr. HART. Will the Senator yield for a question?

Mr. BYRD. Yes, I am happy to yield.

Mr. HART. Is it the contention of the Senator from West Virginia that the precedent cited by the Chair is incorrect or that the interpretation placed upon that precedent by the Chair is incorrect?

Mr. BYRD. I am saying that, No. 1, it is not a precedent.

The Chair is referring not to precedents. The Chair is referring, rather, to an opinion expressed by a previous Chair in response to a parliamentary inquiry. That is not a precedent. I am saying, furthermore, that the interpretation based upon the nonprecedent is incorrect, and illogical.

I shall read this paragraph on page 626 which the Chair has cited:

> If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.

If Senator HOLLINGS had had the floor and had spoken, let us say, for 2 minutes, 3 minutes, 10 minutes or 15 minutes—whatever it was—and he yields to another Senator to make a motion to recess, or makes the motion himself, he would indeed lose the floor, and he would have indeed made a speech, but the motion to recess, standing alone, would not, in and only of itself, constitute a speech. If he has the floor and speaks for an hour and a half and then puts in a quorum, of course, he has made a speech.

Or he speaks for 20 minutes and yields to me on another matter and I put in a quorum call, of course he has made a speech. No one would argue that he has not done so.

But for the Senator simply to stand and say, "Mr. President, I ask for the yeas and nays on this question," who in the name of common sense would maintain that that request for the yeas and nays—which he has a right to make under the Constitution of the United States, the organic law which created this Senate—constitutes a speech?

I hope the Senators will think about this carefully, because——

Mr. METZENBAUM. Will the minority leader yield for a question?

Mr. BYRD. Mr. President, I do not have to ask unanimous consent to yield to the distinguished Senator if he is going to ask a question. I have not taken my hour.

The PRESIDING OFFICER. There will be no objection.

Mr. METZENBAUM. If we follow this procedure, that any kind of recognition is tantamount to a speech, is it not the fact that the majority leader, as well as the minority leader, in their responsibilities are called upon day in and day out to seek recognition not only 2 times but 22 times in connection with a matter? And that any Senator seeing fit to do so could totally tie the Senate up in knots and tie up the leadership, preclude them from accepting their responsibilities? Does not the minority leader believe that would be the case?

Mr. BYRD. Mr. President, there is no question in my mind that this ruling would be a ball and chain around both hands and both feet of any leader, in addition to having a gag thrust in his throat. No leader could lead the Senate if this ruling is going to stand. If what is being maintained by the Chair, and I say this with all respect to the Chair—and the distinguished Senator in the Chair at the moment is there by reason of having answered the call to preside. I answer by simply saying, yes, that would be a serious impairment to the leaders and to managers of bills, and to any Senator who wishes to offer an amendment and is required repeatedly to explain or defend his amendment.

□ 1350

Mr. METZENBAUM. Another question I would then pose to the minority leader is, so far as the Chair's ruling as based upon the Parliamentarian's advice would put the Senate in a very tight bind and one that I believe would totally frustrate the ability to run this body in an orderly fashion, does the minority leader have an opinion as to how the Senate might act in order to make it clear that recognition for the yeas and nays, or for a quorum call, or for any one of number of other issues, might be resolved and make it clear that that is not the position of this body? I am wondering if the minority leader, who is unquestionably the most renowned authority on the Senate rules we have in this body, could suggest how we might clarify the situation?

Mr. BYRD. Yes, by appealing the Chair's ruling. In a few minutes I am going to suggest the absense of a quorum so that I can read the transcript. I want to see what the facts are. I was not on the floor when the situation developed. I want to see if the distinguished Senator from South Carolina was indeed making a speech. He has indicated he was not. I will take his word for it. But the transcript I want to read. Was he indeed making a speech, after which he put in a quorum. That is one thing. But he says he was not making a speech. He got recognition and suggested the absence of a quorum and then at a later time he was speaking and someone in the middle of the speech called for the regular order. It is appropriate for another Senator to ask for the regular order even in the middle of a Senators' speech. If then he is charged with having made a second speech and therefore he cannot proceed because the Chair rules that he has already made two speeches, why then, I want to see by the transcript just what it was all about.

But it will have to be challenged if it is the ruling by the Chair that the Senators' call for a quorum, in and of itself and standing alone constituted a speech. That cannot be allowed to remain unchallenged.

Mr. METZENBAUM. I thank the minority leader. As a matter of fact, when the Senator from South Carolina was involved in this issue, the Senator from Ohio suggested the absence of a quorum and then learned, to my total surprise after inquiry of the Parliamentarian, that that constituted one speech. And I am frank to say that I have been on this floor for a number of years and involved in a number of parliamentary debates and issues and, to the best of my recollection, I have never heard of a ruling that suggesting the absence of a quorum, or asking for the yeas and nays, or any one of a number of other

items that call for recognition but do not involve a speech are considered to be a speech within the interpretation of the two-speech rule.

Would the minority leader care to clarify my thinking on that subject and am I wrong that that has been the general interpretation in the past? At least the issue has never been raised to my recollection.

Mr. BYRD. I regret to say I was distracted by my own thoughts.

Mr. METZENBAUM. I understand.

Mr. BYRD. I beg the Senator's pardon. Here is what I was thinking. Here is what ran through my mind. A Senator asks for the yeas and nays. That is one speech. The Chair says, "Is there a sufficient second? There is not a sufficient second." Then the same Senator says, "I suggest the absence of a quorum." He wants to get a quorum here so he can get his yeas and nays. Well, he has made two speeches. He made two speeches. In suggesting the absence of a quorum, he has made a speech.

Mr. METZENBAUM. Right.

Mr. BYRD. The Chair says, "Is there a sufficient second?" He looks around. Only one hand goes up. The Chair says, "There is not a sufficient second." The same Senator, determined to get a rollcall on the question—and it is a vital question, perhaps vital to the Nation, vital to his State or whatever—says, "I suggest the absence of a quorum." He is out of the ball game for the rest of——

Mr. METZENBAUM. He cannot ask for it the next time.

Mr. BYRD. He is out of the ball game for the rest of the legislative day on that question. He cannot then get up and express the views of his constituents, not once. He has already run out his time by asking for the yeas and nays, and that demand not having been supported by an adequate show of seconds, he suggests the absence of a quorum, he has had it for the day—go home.

Mr. DODD. Will the Senator yield?

Mr. DECONCINI. Will the Senator yield for a further question?

Mr. METZENBAUM. As a matter of fact, is it not the case that he could not ask for the yeas and nays the second time because he has already used up his right to recognition twice?

Mr. BYRD. Of course. Of course he has.

Mr. DODD. If the leader will yield for a question, presumably he would have made a speech on the matter that was before the Senate.

If he had then asked for the yeas and nays and only one Senator raised his hand, then proceeded to make a point of order that a quorum was present, another Senator could call for regular order and he could not even make the point of order because the point of order would be a second speech, a third speech.

Let me just try to explain that again. Assuming there was a matter before the Senate. The Senator gives a speech on it. The Senator from West Virginia has a very important matter affecting his State. He has given an hour-long speech on the matter. No one else wishes to speak on the matter and so the Senator from West Virginia says he would like to have the yeas and nays on the amendment. He asks for the yeas and nays. Only one Senator raises his hand. The Chair says there is an insufficient second. At that point the Senator from West Virginia says, "Well, I would make a point of order that a quorum is not present."

Mr. BYRD. Yes.

Mr. DODD. Having a speech, having asked for the yeas and nays, he would be out of order even making the point of order that a quorum was not present. Is that correct?

Mr. BYRD. No. No, I would not agree with that. He makes the speech and then asks for the yeas and nays. That is not two speeches. He has the floor. He has recognition already. He speaks and, in closing says, "I ask for the yeas and nays." That is only one speech. The Chair says that recognition—recognition—for any purpose—the Senator already has recognition. I am standing here speaking. In closing my speech, and before yielding the floor, if I would say, "Mr. President, I ask for the yeas and nays," I have not made two speeches. That is not what the Chair maintained, because I shall have had recognition already for a true speech. I do not have to seek recognition again at the close thereof to ask for the yeas and nays, because I already have the floor.

Mr. DODD. If another Senator had spoken, if the Senator from West Virginia had given his speech on the matter and then yielded the floor, another Senator had risen and addressed the same matter, that concluded the debate; then the Senator from West Virginia came back at that point and asked for the yeas and nays, and then made the point of order that a quorum was not present. Would that be the third speech?

Mr. BYRD. I am sorry, I am still wrapped up in my own thoughts. The question occurs to me—I beg the Senator's pardon. Would he ask that again.

Mr. DODD. The Senator from West Virginia had an amendment on the floor and he gave a speech about his amendment. The Senator from North Carolina then decided he wanted to address the same amendment and gave a speech on the subject. The Senator had yielded the floor at the conclusion of his speech. Once the Senator from South Carolina had finished his speech, no one else wished to address the matter. At that point, the Senator from West Virginia, since it was his amendment hypothetically, asked for the yeas and nays on his amendment. Now he has given a speech on the amendment.

Mr. BYRD. Yes.

Mr. DODD. He has now had an intervening speaker. He has now arisen and said, "I would like the yeas and nays on my amendment."

Mr. BYRD. Yes.

Mr. DODD. The Chair says there is an insufficient second, at which point the Senator then comes back and says, "I would make a point of order that a quorum is not present." What I understand the Senator, the minority leader is saying is that that request, or making a point of order that a quorum was not present would be a third speech? That would be the scenario that I described.

□ 1400

Mr. BYRD. I do not know if it would ever get to that point, because he has already run his speech out. He made one speech on his amendment and then another Senator spoke, and the Senator asked for the yeas and nays. That is recognition. That is his second speech.

Let me ask the Chair: The Chair has said, I believe, that to get the yeas and nays, the Senator has to be recognized. Am I correct?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Once he asks for the yeas and nays, if the Chair says that there is not a sufficient second, has the Senator lost the floor when he asked for the yeas and nays and there is not a sufficient second and the Chair says, "There is not a sufficient second"? Has the Senator lost the floor, and does he have to be recognized again to suggest the absence of a quorum?

The PRESIDING OFFICER. The Senator has lost the floor under those circumstances. That is correct.

Mr. BYRD. So the point of order that a quorum is not present would constitute three speeches. He is knocked out when he made the second. That is what I was trying to say.

Mr. DODD. I thank the Senator.

Mr. BYRD. I think the question is an incisive one and a good one, because what the Senator is saying is that he has been recognized twice and cannot even suggest the absence of a quorum.

Mr. DODD. That was my question.

Mr. BYRD. That is a good point. I am sorry I was a little slow.

Mr. EXON. Mr. President, will the Senator yield for a question?

Mr. BYRD. I yield.

Mr. EXON. I appreciate the Democratic leader yielding for a question.

I hesitate, as a nonlawyer, even to speak on the floor of the U.S. Senate on this subject, because I do not want

to bring any commonsense into this argument or discussion. [Laughter.]

Mr. HOLLINGS. Don't worry.

Mr. EXON. But, as a nonlawyer, it sounds to me as though if the ruling of the Parliamentarian, and backed by the Chair, becomes the precedent that we are going to follow in the future, what we are basically saying is that we nonlawyers are not going to be doing much speaking in postcloture situations in the future in the U.S. Senate.

In asking my question of the minority leader, it appears to this nonlawyer that we are wasting a great deal of time on a nonsensical question that, if the Parliamentarian is right—and I do not know whether he is right or wrong—must be changed immediately.

Therefore, I think that what transcends our discussion here—and I happen to be on the side of the Senator from Wisconsin on the underlying debate that is taking place here, and not on the side of my great friend and colleague, the Senator from South Carolina—but as long as I have one speech or two speeches or have to stand here as long as I can within my hour, I am going to do everything I can to defend the right of my friend from South Carolina to at least proceed under the rules as is normally presented.

My question is this: The minority leader has indicated that he was about to put in a quorum call so that he would have a chance to read the transcript, to determine whether or not, under the reasonable interpretation of the rule, the Senator from South Carolina had offered two speeches. It seems to me that what we have brought out in the very interesting discussion, which I have listened to with great interest, is that whether or not the Senator in this case made two speeches, the question before us—and it is a very vital one—the question, more important, is whether the ruling of the Parliamentarian, through the Chair, in this particular case is going to be the ruling from here on out.

I cannot imagine any Senator, regardless of how he feels about this issue, backing up the ruling of the Parliamentarian, through the Chair, in this instance.

I simply ask the question: Aside from the immediate consideration of whether the Senator from South Carolina has given one, two, or no speeches, how does the minority leader suggest, with his skill and expertise in this area, that we extricate ourselves from the position we are presently in? What suggestion would he have in that area? I think he agrees with me that, aside from the rights of the Senator from South Carolina, the overriding issue is going to be the rights of all of us in postcloture situations in the future. What do we have to do? Do we overrule the Chair; and if we do, would that set the precedent that would keep this from happening in the future?

Mr. BYRD. Mr. President, I shall answer the question. It is an incisive and good question and appropriate.

In the first place, if the facts are as they have been described to me, then the Senator from South Carolina has been wrongfully—wrongfully in the context of Senate rules and precedents—deprived of his right to speak. But, more important, and I am sure the Senator from South Carolina will agree with me, what we have here is a matter before the Senate that involves whether or not the Senator from South Carolina will be deprived of his right to speak tomorrow, or a year from now.

It involves the right of every Senator on this floor—the right of the Senator from Nebraska—to speak twice, to make two real speeches in the same legislative day, on the same question, once another Senator has challenged his right, under the circumstances as found here today. That is what is at stake here.

As a matter of fact, some people may not realize it, but this question here is more important in the long term, in the overall future of this unique body's rules which give Senators the right to stand and speak as long as their feet will hold them—in the long run it is a more far-reaching question than the legislative matter that is being debated.

Mr. EXON. How do we get out of it?

Mr. BYRD. How do we get out of it? By appealing the ruling. First of all, I said I was not in here when this all happened.

I will have to ask whether or not the Chair has actually ruled. If the Chair has ruled, then I will appeal that ruling. If a Senator wants to move to table the appeal, he can move to table it, and I will ask for the yeas and nays, and the Senate will decide.

If the Senate refuses to table my appeal, or if the Senate sustains my appeal, then the Chair's ruling is overturned, and we then have a real precedent, not just an opinion expressed by different occupants of the chair, as referred to in the footnote involving the June 12, 1935, date.

□ 1410

Mr. HARKIN. Mr. President, will the minority leader yield on that?

Mr. BYRD. Yes.

Mr. HARKIN. I am intrigued by what the leader has said earlier in reading the preface to the Senate rules, trying to understand the difference between the word "without" and the words "see" and "see also." Then I referred back to page 785 of the Senate rules where it discusses a parliamentary inquiry.

I could direct the leader's attention to page 785.

Mr. BYRD. Yes; I am looking on that page. Yes.

Mr. HARKIN. And where it speaks of the parliamentary inquiry on that third paragraph from the top it said:

> Unlike rulings of the Chair, the responses to parliamentary inquiries do not create precedents for the Senate; if there are a series of responses to parliamentary inquiries over a long period of time on which nothing to the contrary has occurred, such responses are used as guidelines for decisions.

I emphasize that—"guidelines for decisions" but not rulings.

> The reason that a response to a parliamentary inquiry is not considered as a precedent is due to the fact that a Senator may not take an appeal from the Chair on the response to a parliamentary inquiry.

Mr. BYRD. That is right.

Mr. HARKIN. So we had the strange situation that according to the footnotes the Parliamentarian has suggested to the Chair a ruling not based upon precedents but based upon a parliamentary inquiry. It could not have been a precedent because no appeal could have been taken from the Chair on that.

So we have the strange situation here of the Chair being advised by the Parliamentarian to make a ruling on something which could not have ipso facto been a precedent of the Senate.

So now how can we appeal from a ruling of the Chair which on the face of it had to be based upon an erroneous interpretation of what was and what was not a precedent of the Senate? It seems it is almost like we are in a bit of a grid lock here on this if in fact that was the ruling of the Chair because the ruling could not have been based upon a precedent because it could not have been a precedent.

Mr. BYRD. Let me say at this point, the Chair is called upon to make a ruling, whether or not there has been a precedent and I am trying to answer the Senator's inquiry.

If a question of order is raised, the Chair has to make a ruling or submit the matter to the Senate for its decision. If there is no precedent—as the Senator states—the Chair still is required to make a ruling or submit the question to the Senate.

Let us say the Chair rules. He may make his ruling on the basis of opinions that have been expressed by the occupants of the chair in previous years in response to parliamentary inquiries. I am not saying the Chair has no right to make a ruling thereon. There may be no precedent. There may be no clear rule. Yet, he is required either to rule or to submit the question to the Senate for its decision.

In making his ruling, if there is no previous precedent, he may depend upon previous responses to parliamentary inquiries, but they are not precedents.

The Chair, indeed, is setting a precedent, launching out on his own when he does that, and in this instance it is my contention that the ruling not only has no basis in precedent but that it also is a bad ruling and that it will wreak havoc upon the deliberations of the Senate in the future and certainly upon the rights of Senators to speak if it is allowed to stand.

Mr. HARKIN. Mr. President, if the minority leader will yield further on that, I thank him for that response. That is the response I thought would be elicited from my inquiry. I know this Senator would have to think long and hard about overturning an opinion of the Chair that was based upon precedents because we have to rely on precedents if we are going to have orderly running of the Senate. My point was this ruling is not based upon precedents.

Mr. BYRD. No, it is not.

Mr. HARKIN. Not whatsoever.

Mr. BYRD. None whatsoever if nothing more can be shown than the two or more responses by the Chair that were made to parliamentary inquiries back in 1935, cited in the footnote.

The Senator can during any time during the day whether under cloture or not, stand and ask the Chair, "Mr. President, a parliamentary inquiry." The Chair will say "The Senator will state his parliamentary inquiry." And the Senator will ask the Chair question. The Chair will render an opinion in response.

That is not a precedent. That is merely an opinion of the Chair.

Now, I came into the Chamber, there was a quorum call under way, and Senator HOLLINGS told me what had happened.

Someone had called for the regular order. The Chair interpreting, I will say the rule—there is no rule—but the Chair in response to the call for the regular order took Mr. HOLLINGS off his feet and said, "The Senator has already made his two speeches." I would like to know what the Chair said.

The PRESIDING OFFICER. The Chair did rule under the regular order the Senator from South Carolina has already delivered two speeches on the same subject and a third speech would be out of order.

Mr. BYRD. Mr. President, before I appeal the ruling of the Chair, I yield to the distinguished Senator from South Carolina for a question.

Mr. HOLLINGS. Will the distinguished Senator from West Virginia, since I am not allowed to talk, ask unanimous consent to include the authority that the Parliamentarian relies upon because, as the book says, it says "See" and when you see it that means read it and understand it and if you read it and understand it a fifth grader will tell you this is no authority, no precedent, no basis for the point we are talking about, absolutely none. He has no precedent; he has no authority.

So I would ask the distinguished Senator from West Virginia as a personal favor to me please include by unanimous consent his so-called authority in the RECORD so anyone can read the full RECORD and look at his authority and understand the nonsensical nature of this particular rule.

Mr. BYRD. Mr. President, I will do that but at the moment does the Senator from Wisconsin wish me to yield to him?

Mr. KASTEN. No, I do not wish that.

Mr. BYRD. Yes.

Mr. President, I shall appeal the ruling of the Chair just in a moment but before doing so I shall ask unanimous consent, first of all, so that Senators in a future day may have the whole matter before them, in a future day.

I ask unanimous consent that beginning on page 624 of the book on Senate Procedure by Floyd M. Reddick, the Parliamentarian Emeritus, copyright 1981, beginning on page 624 paragraph titled "Speeches Allowed in Same Legislative Day" page 625 through page 626 and down to the close of the paragraph on 627 be printed in the RECORD.

There being no objection, the materiel was ordered to be printed in the RECORD, as follows:

SPEECHES ALLOWED IN SAME LEGISLATIVE DAY

"No Senator shall speak more than twice upon any one question in debate on the same legislative day without leave of the Senate, which shall be determined without debate,"[470] and "day" as used in Rule XIX means a legislative day,[471] but the rule is not self enforcing.[471a]

A Senator has a right to speak twice only in the same legislative day on the same question,[472] for example, on a conference report,[473] on a bill or on any amendment thereto.[474]

If a Senator has spoken twice on an amendment in the same day, he is entitled to make two additional speeches on an amendment proposed to that amendment,[475] or any different question brought before the Senate, as a motion to recommit.[476]

A Senator may make two speeches upon the same question in the same legislative day, and if he yields for a speech by another Senator he will lose the floor upon a point of order being made, and his speech will thereby be terminated.[477]

Under Rule XIX, a Senator is not entitled to speak more than twice in the same legislative day on the same question and when called to order during his third speech will lose his right to the floor.[478]

A Senator who has spoken twice on the same question may be recognized to make a motion,[479] and by leave of the Senate or the adoption of a motion to that effect, to be determined without debate, a Senator may speak more than twice upon the same question on the same legislative day.[480]

When a conference report taken up on motion is displaced by another matter taken up on motion, and such conference report is subsequently taken up again, a Senator who spoke on the report when it was first under consideration will have two speeches on the report when taken up the second time.[481]

In one instance, in 1948, when a Senator made a speech on an extraneous matter without knowledge that it would be counted as a speech on the pending question, he was by unanimous consent excused from the operation of the rule.[482]

In the event a speech is continued over from one day until the next by unanimous consent, it counts as only one speech, although the Senate recessed in the meantime, since the rule on recognition and number of speeches may thus be waived.[483]

A Senator who yields for a motion to recess loses the floor, and if he is recognized on the reconvening of the Senate he will be making a second speech on the pending question.[484]

The speech of a Senator who is called to order for a violation of Rule XIX, reflecting upon Senators, if he is permitted to proceed in order, is not terminated.[485]

When a bill or resolution is under consideration, a statement by a Senator concerning an extraneous matter will be counted as a speech by him on the pending question.[486]

If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.[487]

A Senator who twice yielded in debate in the same day for motions to take a recess is not entitled to recognition again upon the same question,[488] or who, during a second

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[470] Rule XIX, par. 1; Nov. 30, 1973, 93-1, Record, pp. 38902-03; see May 24, 1978, 95-2, Record, p. 15224; July 25, 1979, 96-1, Record, pp. 20532-33.

[471] July 8, 1937, 75-1, Journal, p. 404; see also Feb. 28, 1949, 81-1, Record, p. 1585; Jan. 19, 1938, 75-3, Record, pp. 751-52; May 24, 1978, 95-2, Record, p. 15224.

[471a] July 25, 1979, 96-1, Record, pp. 20532-33.

[472] Jan. 19, 1938, 75-3, Record, pp. 752, 753; Dec. 27, 1920, 66-3, Record, p. 742; May 21, 1935, 74-1, Journal, p. 365; Apr. 15, 1940, 76-3, Record, pp. 4486-88; July 8, 1937, 75-1, Journal, p. 403; Feb. 18, 1927, 69-2, Journal, p. 189; see also Feb. 22, 1923, 67-4, Record, p. 4248; May 31, 1924, 68-1, Record, p. 10012; Mar. 2, 1911, 61-3, Record, pp. 3900-06; Mar. 4, 1960, 86-2, Record, pp. 4472-73; Aug. 31, 1959, 86-1, Record, p. 17389; June 20, 1947, 80-1, Record, p. 7426; June 19, 1948, 80-2, Record, p. 9138; Sept. 20, 1950, 81-2, Record, p. 15184; Oct. 1, 1940, 76-3, Record, p. 12926; Sept. 24, 1951, 82-1, Record, p. 11954.

[473] Feb. 18, 1927, 69-2, Journal, p. 189, Record, p. 4148.

[474] See Mar. 16, 1954, 83-2, Record, pp. 3330-31.

[475] See Jan. 24, 1938, 75-3, Record, p. 1001.

[476] Sept. 18, 1914, 63-2, Record, p. 15358; see May 24, 1978, 95-2, Record, p. 15224.

[477] July 8, 1937, 75-1, Journal, p. 403, Record, pp. 6896-97.

[478] Dec. 16, 1970, 91-2, Record, pp. 41747-49; May 3, 1921, 67-1, Record, pp. 965-66.

[479] See June 20, 1947, 80-1, Record, p. 7426.

[480] Mar. 4, 1917, 64-2, Journal, p. 230, Record, p. 5019; Rule XIX, clause 1.

[481] Sept. 20, 1950, 81-2, Record, p. 15184.

[482] Mar. 1, 1949, 81-1, Record, p. 1658.

[483] July 13, 1949, 81-1, Record, p. 9381; July 13, 1937, 75-1, Record, pp. 7111-12.

[484] Jan. 24, 1938, 75-3, Record, p. 1001.

[485] See June 12, 1935, 74-1, Record, p. 9170.

[486] See Mar. 1, 1949, 81-1, Record, p. 1658.

[487] See June 12, 1935, 74-1, Record, p. 9127.

[488] Feb. 23, 1927, 69-2, Journal, p. 207, Record, pp. 4495, 4496.

speech on the same day on a question, yields for a motion to adjourn loses the floor, and cannot proceed again in the face of objection which may be made after a Senator has started his third speech.[489]

A Senator who yields for the purpose of a quorum call has concluded one speech,[490] but if he yields for a quorum call on condition that his right to the floor will be preserved, a subsequent point of order that his speech was terminated by yielding for the quorum call and that he had made one speech will not lie.[491]

Under an agreement to speak only once on a bill, a Senator cannot divide the time so as to speak more than once;[492] an agreement to speak only once on a bill, or any amendment thereto, would make a second speech of the same question and would not be in order,[493] but a Senator would be entitled to speak upon a new amendment.[494]

Under an agreement limiting debate on the part of a Senator to one speech of not more than 20 minutes on any resolution or amendment thereto, a Senator may speak on an amendment to an amendment.[495]

Under an agreement to speak once on a question, a Senator having the floor cannot yield time to another Senator.

Under an agreement for a limitation of debate to speak only once on a bill, a Senator who was interrupted at a specified hour for a joint meeting was permitted to proceed with his remarks after reconvening.

Mr. BYRD. Mr. President, I ask unanimous consent that paragraph 3 on page 626 be printed in the RECORD together with the footnote citation.

There being no objection, the paragraph was ordered to be printed in the RECORD, as follows:

If a Senator in possession of the floor yields to another Senator to make a motion to recess or makes such a motion himself he would lose the floor, and would have no prior right to recognition, and if recognized again, it would be his second speech.[487]

Mr. BYRD. I ask unanimous consent to have printed in the RECORD the actual opinions expressed by the Chair referred to in that footnote which says "See June 12, 1935, RECORD page 9127."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A Senator, in the course of an address, would lose the floor if he made a motion to recess, or yielded to another Senator to make such motion.

If a Senator is again recognized after yielding for such a motion, it would be a second speech.

A Senator yielding for such a purpose would have no prior right of recognition.

On June 12, 1935 (in 74th Congress, 1st session, Record p. 9127), during the consideration of an amendment of the House of Representatives to S.J. Res. 113, extending certain provisions of the National Recovery Act, the President pro tempore (Mr. Key Pittman, of Nevada), in reply to a parliamentary inquiry by Mr. Huey P. Long, of Louisiana, held that he would lose the floor if he made a motion for a recess. In reply to a parliamentary inquiry by Mr. Pat McCarran, of Nevada, if any other Member than the Senator who occupied the floor could move a recess without the other Senator losing the floor, the President pro tempore said:

If there is any business intervening, then the Senator is construed as starting another speech. If any business intervenes and the Senator allows it to intervene, having the power to prevent the intervention of any business, then if he is recognized it will be regarded as the beginning of a second speech.

In reply to a parliamentary inquiry by Mr. Alben W. Barkley, of Kentucky, the President pro tempore held that where a Senator yielded to another Senator to make a motion to recess or adjourn or for any other motion, that constituted business, and if such Senator was again recognized, it would be for a second speech.

The President pro tempore further held that a Senator losing the floor under such circumstances had no prior right of recognition upon the disposition of the motion, but that if he rose and addressed the Chair first, then it was the duty of the Chair to recognize him.

□ 1420

Mr. BYRD. Mr. President, I will not make my appeal at the moment because two Senators wish first to speak. As I understand it, the distinguished majority leader wishes to speak and the distinguished Senator from Wisconsin wishes to speak.

I will not at this moment make my appeal. I do not waive my right to make such an appeal and will make such an appeal.

I ask unanimous consent that I be recognized for that purpose if I so seek recognition following the speeches by Mr. DOLE and by Mr. KASTEN.

The PRESIDING OFFICER. Without objection.

Mr. KASTEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1520

Mr. KERRY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to proceed as if in morning business for a period not to exceed 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, I ask unanimous consent that my remarks appear at a point other than in the proceedings regarding the current debate on product liability.

The PRESIDING OFFICER. Without objection, it is so ordered.

(At this point, Mr. KERRY addressed the Senate. His remarks appear earlier in today's RECORD.)

□ 1530

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. DOLE. Mr. President, I listened with great interest to most of what the distinguished minority leader had to say earlier about the two-speech rule. As I understand, he is now framing an appeal to the ruling of the Chair. The Chair ruled that Senator HOLLINGS had already spoken twice on the same issue during the same legislative day and therefore cannot speak again on the Product Liability Act during this same day.

I have visited at some length with the Parliamentarian, Mr. Dove.

I must say in reading the transcript I could not find anything but one speech. But I also have gone over the transcript with the Parliamentarian.

As I understand, it is the Chair's interpretation that there were in fact three speeches, the first of which is on page 55 of the transcript that I have. I understand some transcripts have different pages because the reporters rotate and thereby a different number.

The first speech would be by the distinguished Senator from South Carolina [Mr. HOLLINGS] saying:

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Business has not intervened since the last quorum call. Therefore——

Mr. HOLLINGS. No business intervened, Mr. President?

That is interpreted as speech No. 1.

The second speech of the distinguished Senator from South Carolina [Mr. HOLLINGS]:

Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

Then a response from the Presiding Officer. Then Mr. HOLLINGS.

But not debate?

The PRESIDING OFFICER. Not debate. There must be action by the Senate disposing of pending business before another quorum call is in order.

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

And then there is the question:

Is there a sufficient second?

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. A quorum is not in order.

Mr. HOLLINGS. Oh, yes, Mr. President; now business has occurred.

That constitutes the second speech, as I understand the Chair has indicated.

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[489] Sept. 18, 1914, 63-2, Record, pp. 15346, 15357.

[490] July 13, 1937, 75-1, Journal, p. 411, Record, p. 7102; June 28, 1945, 79-1, Record, p. 6890; see also Apr. 12, 1940, 76-3, Record, p. 4419; Apr. 15, 1940, 76-3, Record, pp. 4487-88.

[491] May 9, 1949, 81-1, Record, p. 5877.

[492] See Feb. 4, 1944, 78-1, Record, p. 1246.

[493] Jan. 31, 1928, 70-1, Record, p. 2239; Nov. 7, 1921, 61-7, Record, p. 7474; Dec. 21, 1926, 69-2, Record, p. 843.

[494] Dec. 21, 1926, 69-2, Record, p. 843.

[495] See Feb. 26, 1947, 80-1, Record, p. 1439.

[487] See June 12, 1935, 74-1, Record, p. 9127.

Then the third speech, which I thought was the first speech, started on page 68 of the transcript that I have. It is probably different in the others.

In any event, I guess the question I would have is, what constitutes a speech and how, maybe perhaps, we would be better able to discuss this after the distinguished minority leader has framed the question in his appeal.

I do share the view unless it is clarified, particularly the leaders would have a difficult time in trying to operate the Senate if we were to conclude, after suggesting the absence of a quorum, or being recognized on two occasions, that is all we could do or nearly all we could do for the remainder of the legislative day.

Mr. President, I would hope the distinguished minority leader might be prepared to frame the question. I guess the only question I would not have at this time but, after the question is framed would be: What would be the result if the appeal of the ruling of the Chair is overruled, what would be the precise impact overruling of the Chair would have? That will depend, in part, on how tightly or how loosely the question is framed.

Mr. KASTEN. Will the majority leader yield?

Mr. DOLE. I yield the floor.

Mr. KASTEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. Mr. President, it is important that we maintain the two-speech rule. I believe, however, that the current interpretation is too narrow and the procedural motions such as asking for the yeas and nays, calling for a quorum call, moving to instruct the Sergeant at Arms, asking for a division, making a unanimous-consent request for a committee to meet, as I did, and I am told that that counted as a speech, these kinds of procedural provisions ought not to be interpreted as speeches under the two-speech rule.

So because I believe these procedural motions ought not to be considered as speech, I will vote with the leadership to overturn the ruling of the Chair. However, it is crucial that we maintain the two-speech rule and that Senators be limited to two speeches on the same subject on the same day. Our challenge, I think, as the majority leader said, is to define a speech. I am hopeful that we will define a speech in a way that will not be so narrow as to permit Senators, particularly the leadership but all Senators, to be able to have their rights to make procedural motions and not have those procedural motions be counted against them with the two-speech rule.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Does the Senator from South Carolina wish to be recognized?

Mr. HOLLINGS. Will they let me talk? Yes.

Mr. President, I ask unanimous consent that I be recognized for a minute or two.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina is recognized.

Mr. HOLLINGS. Mr. President, I only refer to page 51 of the transcript when the Presiding Officer asked did I yield, and my answer was, according to the record:

> No, I do not. I would like to make this thought. I have not spoken today on this particular matter. I would like to be heard because of certain misleading statements.

I realized I had not made a talk. In fact, I was waiting for other Senators to talk. So it boiled down into the fundamental. The fundamental is, shall motions, mere recognition and motions, whether it is a call to order, whether it is really technically a motion to require a quorum, a motion to make a parliamentary inquiry, whether any recognition for a motion in a parliamentary body is considered a speech.

Obviously, it is not. There is no precedent whatsoever to sustain.

We have asked the distinguished minority leader. The distinguished minority leader has included those things referred to by the Parliamentarian as his authority.

I would request respectfully of my colleagues to look at those so-called precedents or authorities and you will immediately see that they are not precedents; they are not authority. They have to do with rulings where speeches are being made and interruptions are suffered or the speech maker turns to make a motion for a recess, losing the floor, and then constituting a second speech.

It all relates to making a speech but not to actually being recognized and making a motion.

We could not constitute a parliamentary body if mere recognition constituted a second speech. The distinguished leaders, not just the managers of the bill but every day the leaders on both sides of the aisle, have the duty of trying to keep the flow of business flowing and they would talk several times under that strained ruling.

This does not refer just to the matter of postcloture but this refers generally to the two-speech rule. That would be a very, very strained rule and inhibit any orderly proceedings.

That never was the rule. It is not the rule. The rule is very clear. It says do not make more than two speeches.

□ 1540

Do not make more than two motions, do not make more than two inquiries of the Chair, whether for a quorum or a parliamentary ruling. This is strained nonsense. It has no support whatsoever in any precedent in any parliamentary body.

Mr. DOLE. Mr. President, I just want a point of clarification. As I understand it, the two-speech rule applies to two speeches on the same issue. If I had 10 amendments, I could make 20 speeches, is that correct?

The PRESIDING OFFICER. Two speeches on the same question.

Mr. DOLE. So whatever the question was, if there were dozens of questions, I could make dozens of speeches?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I think that is precisely what the Senator from South Carolina had in mind. It is important that we understand that, I think.

Mr. HOLLINGS. Right.

Mr. BYRD. Mr. President, precisely what was the Chair's ruling?

The PRESIDING OFFICER. The Chair ruled as follows:

> Under regular order, the Senator from South Carolina has already delivered two speeches on the same subject. A third speech would be out of order.

Mr. BYRD. Mr. President, if that constitutes the ruling of the Chair, then the appeal to that ruling—which, under cloture, is not debatable, and to which I intend to speak—this may be my second speech; it is, I guess. But I shall still have some time under the hour, I suppose, and I can get additional time, maybe. That rings up another point. If my hour runs out, that is the end of my second speech. Can another Senator yield me an additional hour under the cloture rule? I ask the Chair.

The PRESIDING OFFICER. Another hour can be yielded to the Senator as leader.

Mr. BYRD. Suppose at the end of my second speech, my hour runs out. The Chair says the time has expired. I no longer have recognition, am I correct, at that point?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Then Mr. DOLE very graciously says, "Well, I will yield the Senator from West Virginia an additional hour." But I have already made two speeches. What good does it do for him to yield me a second hour, or third hour, to which I am entitled under rule XXII as a leader or as a manager or as the ranking manager? Under this ruling, I am just pointing out that such a ruling in essence would, to all practical intents and purposes, invalidate the provision under rule XXII whereby other Senators may yield additional time to the majority leader or to the minority leader or to the manager of the bill or to the ranking manager. They may yield, but the recipient cannot be recognized for

what would then constitute a third speech.

The ruling says:

Under regular order, the Senator from South Carolina has already delivered two speeches on the same subject. A third speech would be out of order.

If we simply appeal that ruling, the Senate would be doing this:

It would be simply saying that the Senator from South Carolina had not delivered two speeches on the same subject and he will be allowed to speak the third time. That is all we would achieve. We would just be saying, no, the Chair was wrong, Senator HOLLINGS has not delivered two speeches.

Second, the Senate would be making a very bad judgment in that case, because the Chair said a third speech would be out of order. We all agree that the third speech is out of order. So if we appeal the ruling of the Chair just based on that language alone, we are saying the Chair is wrong, a third speech would not be out of order.

The verbiage of the ruling itself is not sufficient alone for the Senate to clarify this simple matter simply by appealing the ruling of the Chair.

The PRESIDING OFFICER. The Senator's 1 hour has expired.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak further in advance of the appeal which I shall make.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. Mr. President, the Presiding Officer said, reading from the transcript:

It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech and, of course, the reading of the transcript will give full evidence of the exact request of the Senator from South Carolina.

I had asked the question as to whether or not, Mr. HOLLINGS having gotten recognition and having suggested the absence of a quorum, that action on his part in suggesting the absence of a quorum constituted a speech. The Chair says:

It is the interpretation of the Parliamentarian that any recognition is considered in this context as a speech——

We are told by the Chair, upon the advice of the Parliamentarian, that any recognition for any purpose when the Senate is proceeding under cloture rules, the Senate having voted cloture, that such recognition constitutes a speech. That is one speech.

Mr. LONG. Will the Senator yield?

Mr. BYRD. Yes.

Mr. LONG. I ask the Senator to yield on my time.

Mr. President, the precedent to which the Senator addresses himself is the precedent made by the father of the Senator speaking. My father was standing right there at that chair. At that time, the National Recovery Act had been declared unconstitutional when Franklin Delano Roosevelt was President. My father knew the public was overwhelmingly disgusted with the whole thing and he tried to make a revised National Recovery Act. My father was joined by a minority of the Senate—they were Democrats, by the way. They undertook to speak against the National Recovery Act, that the public was disgusted with the whole thing, it should be declared a lousy idea and forgotten and dispensed with. But the administration was trying to save what it could of an act that had been declared unconstitutional under the Constitution of the United States by the Supreme Court.

I recall my father standing there and going on at great length about what fine, courageous justices they were, to have the courage to stand up against a powerful President of the United States and the rest of it. I was about 15 years old at that time, sitting right over there on that side of the family gallery that we are looking at from here.

So, as his speech went on and on, he suggested the absence of a quorum. Now, prior to that time, the record for a filibuster was set by Senator Robert La Follette of Wisconsin. He spoke for about 18 hours, but he had about a dozen quorum calls in the course of all that. In the tradition of the La Follette speech, the great Senator from Wisconsin, Huey Long suggested the absence of a quorum. So someone made the point of order that by suggesting the absence of a quorum, he had terminated his first speech and commenced a second speech.

□ 1550

John Nance Garner, in loyalty to the White House, sitting there in the chair, proceeded to rule that that was correct, and in doing so he overruled all the precedents prior to that time. How could Bob La Follette get away with it a dozen times and Huey Long not get away with it once? Well, it was because, I assume, the powers that be decided Huey Long should not be accorded the same courtesy as accorded Bob La Follette so such a ruling was handed down, and he proceeded to go on from there notwithstanding that ruling.

Now, at the conclusion of that speech, there was a Senator from one of the other States—either Senator Gore or Senator Schall—who was in total agreement. There were two blind Senators, it turned out at that time, both of them strong supporters of my father's position, so one of these blind men got up and submitted a transcript that would stand about a foot just in the written pages. He sent it to the desk and asked under usual courtesy that the speech might be read. The clerk proceeded to rifle through that speech about five pages at a turn. He would lower his voice and turn about five pages; lower his voice and turn about five pages, and disposed of a 150-page speech in about 5 minutes. And those who were on my father's side thought that was not fair at all. I recall that the man who was then my father's assistant clerk, who today is described as administrative assistant—his name was Bob Christianberry—was outraged about that and he said, "How dare you do something like that? That speech would have taken at least 2 hours to read, maybe 5 hours." And I recall one speaking from the other side said, "Well, now, let me ask you fellows how long it would have taken that gentleman when you were Governor?" And Mr. Christianberry said, "Well, we probably would have gotten through it in about half that time."

But it is best to recognize practicality on occasion. The practical matter was that rule was set. It was something of a usurpation at the time.

Now, to suggest that a mere parliamentary inquiry, for example, would be a speech, in my judgment is an outrage. At some point we ought to be willing to be fair about a matter like this and to recognize that a speech means more than just making a point of order or to ask a parliamentary inquiry or something of that sort. Now, as one who has been in many filibusters in years gone by, if it is a crime—and a filibuster by definition is an act of piracy—then I would assume that one could have a very tight rulebook on anyone who is filibustering in the Senate, if that is what it be. But what would it gain one to deny a Senator his rights to speak on the motion to proceed when you look at what lies just beyond that? For example, when you get the bill before the Senate, a Senator can offer an amendment—he can offer any number of them—so that one can still speak at great length even when the motion to proceed has been agreed to.

So my thought about the matter is we should be reasonable and tolerant about this matter. And I say that as one who voted for the bill and one who intends to vote for it.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Louisiana. The Chair referred to the occasion when the distinguished Senator's illustrious father was speaking and made the point about a quorum.

Mr. President, let me also make it clear that the two-speech rule does not obtain just when the Senate is operating under cloture. It obtains at any time on any day. Am I correct, may I ask the Chair?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Now, Mr. President, looking at the Chair's ruling and laying the predicate for my appeal, the Chair said: "The Senator from

Wisconsin does not have to be recognized. He made a call for the regular order."

Well, obviously, none of that constitutes the ruling of the Chair. No one disagrees.

The Chair went on to say, "A third speech would be out of order." Well, nobody disagrees with that. That is clear. So we must confine ourselves in crafting the appeal and in voting thereon, confine ourselves to address the ruling—it being that under regular order, "the Senator from South Carolina has already delivered two speeches on the same subject."

Now, the Chair had to have some rationale on which to base that ruling. Now, if I could ask the Chair at this point if the Chair would please state the reasonings behind its ruling, the rationale behind the ruling to wit, that the Senator from South Carolina had already delivered two speeches on the same subject.

The PRESIDING OFFICER. Since it is the responsibility of the Chair to keep time, the Chair had noted that on at least two occasions the Senator from South Carolina has used at least 1 minute in debate.

Mr. BYRD. Mr. President, would the Chair cite those two instances?

The PRESIDING OFFICER. The Chair now has the transcript which it did not have at that point and has ascertained that the Senator from South Carolina spoke on 11 different occasions in that period.

Mr. BYRD. Mr. President, has the Chair just stated that the Senator from South Carolina had made 11 speeches?

The PRESIDING OFFICER. The Chair did not say that the Senator from South Carolina had made 11 speeches. The Chair said that the Senator from South Carolina had spoken 11 times.

Mr. BYRD. Would the Chair cite for the RECORD those 11 instances?

The PRESIDING OFFICER. The Chair will read each instance.

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Business has not intervened since the last quorum call; therefore——

□ 1600

Mr. BYRD. Mr. President, will the Chair indulge me for a suggestion? We are reading from the same transcript. So that I might follow the Chair, will the Chair indicate the page numbers on which the Senator from South Carolina spoke 11 times?

The PRESIDING OFFICER. The first instance the Chair read from is on page 55.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. The second is also on page 55:

Mr. HOLLINGS. No business has intervened, Mr. President?

Mr. HOLLINGS. That is a motion, not a speech.

The PRESIDING OFFICER. The third instance is on page 56.

Mr. LONG. Is the Chair saying that that was a speech?

The PRESIDING OFFICER. The Chair did not say there was a speech. The Chair said the Senator from South Carolina spoke on 11 occasions.

Mr. LONG. Will the Chair state which one was a speech?

Mr. BYRD. I ask the Chair be allowed to state the 11 instances, so that the RECORD will be concise and clear.

The PRESIDING OFFICER. The third instance is on page 56:

Mr. HOLLINGS. Mr. President, may I inquire of the Chair—we have had some talk. What constitutes business?

The fourth instance, on page 56:

Mr. HOLLINGS. But not debate?

The fifth instance, on page 56:

Mr. HOLLINGS. I appeal the ruling of the Chair and ask for the yeas and nays.

The sixth instance, on page 56:

Mr. HOLLINGS. Mr. President, I suggest the absence of a quorum.

The seventh instance, on page 56:

Mr. HOLLINGS. Oh yes, Mr. President; now business has occurred.

The eighth instance, on page 68:

Mr. HOLLINGS. Parliamentary inquiry. What is the motion?

Page 68, the ninth instance:

Mr. HOLLINGS. The appeal was out and then we got a quorum call.

The tenth instance, on page 68:

Mr. HOLLINGS. I withdraw the appeal. Is that all right?

The eleventh instance:

Mr. HOLLINGS. The appeal is withdrawn and I suggest the absence of a quorum.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. Mr. President, it is obvious to anyone who is willing to look the facts in the eye that we are not talking the same language in this Chamber. I have searched this transcript. There is one speech, which everyone would have to agree, by Mr. HOLLINGS—one speech—and that was before he could finish. That was on page 51 of the transcript—it began on page 51 of the transcript—and that was interrupted, without his having yielded the floor. That was interrupted by Mr. KASTEN when he asked for the regular order, saying:

The Senator from South Carolina has already spoken twice on this issue * * *

Mr. HOLLINGS. I have not yielded the floor, Madam President.

That was one speech.

The instances the Chair has cited make it very clear that the Chair, on the advice of the Parliamentarian, is defining any motion, any request for the yeas and nays, any quorum call, any appeal, any of such motions which require any action whatsoever of the Senate, as a speech, in the interpretation of the two-speech rule.

Mr. HOLLINGS. Mr. President, will the distinguished minority leader yield at that point?

The PRESIDING OFFICER. The Chair only said there were two speeches.

Mr. HOLLINGS. Will the distinguished Senator ask the Parliamentarian to designate the two speeches? Then we will know where they are.

Mr. BYRD. Yes, I will be glad to.

The PRESIDING OFFICER. The first speech is on page 55 to page 56, and the second one is on page 68.

Mr. BYRD. On page 55, would the Chair read the first speech by the Senator from South Carolina?

The PRESIDING OFFICER. All that the Chair read, the statements, 1 through 7, constitute the first speech.

Mr. HOLLINGS. All of that, 1 through 7, constitutes the first speech? Come on.

Mr. BYRD. And the second speech?

The PRESIDING OFFICER. The second speech, page 68, includes items 8 to 11.

Mr. HOLLINGS. That is when I was objecting to the ruling.

Mr. BYRD. Mr. President, the ruling of the Chair having been that "The Senator from South Carolina has already delivered two speeches on the same subject," and that, from a careful study of the transcript, it having been shown that in the ordinary understanding of the English language, the Senator from South Carolina made one speech, that being the one which begins on page 68 of the transcript, and which speech was interrupted by the call for the regular order by Mr. KASTEN, I appeal that ruling on the basis——

Mr. LONG. Mr. President, will the Senator yield at that point?

Mr. BYRD. I yield.

Mr. LONG. Mr. President, I hope the Senator will withhold that appeal for a moment. I would like to claim the floor for a moment or two.

The PRESIDING OFFICER (Mr. EVANS). The Democratic leader has the floor.

Mr. LONG. Mr. President, will the Senator yield?

Mr. BYRD. I will yield.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BYRD. If the Senator will allow me, I yield, Mr. President, with the understanding that I do not lose the right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana.

Mr. LONG. Mr. President, in situations such as this, the Senator from Louisiana has been involved on both sides of these issues. The Senator from Louisiana has been in filibusters on occasion, and on occasion he has been on

the other side, seeking to shut off a filibuster. One finds himself in that situation, having served 38 years in this body.

□ 1610

And when these type situations occur, this Senator has always asked himself, Does the end justify the means? In other words, Do you want to deny the person the right to further proceed, or are you justified under the circumstances?

While that moral question has troubled me many times, I finally conclude it is all a matter of degree.

In this situation the Senator from South Carolina has been opposing a motion. Cloture has been voted. He is entitled to 1 hour and that is all he is entitled to. He is entitled to speak for 1 hour.

But the way I read the ruling of the Chair he would be denied the right to speak for 5 minutes.

I found myself in situations where I went to the then majority leader, Mr. BYRD, now the minority leader, and suggested to him that we were going to have to make some new precedents because one exercising his rights after cloture has been voted was unduly delaying the Senate and it gave the then majority leader, Mr. BYRD, problems that he provide leadership to cut off the filibuster which was necessary to do under the circumstances.

But in this situation, Mr. President, for the life of me I do not understand why we need to rule that a Senator has made a speech when he has talked about 1 minute, when he has merely made a motion or spoken about one line in the RECORD.

It just seems to this Senator that that is not justified. If he had 1 hour, let the Senator from South Carolina speak his 1 hour and during his 1 hour he has the right to make several motions.

I do not think anyone can find any precedent in the record, and I will invite the Parliamentarian to find one if he can, where the mere making of a motion was regarded as a speech by the occupant of the chair. That will be the first time we had such a ruling. If it were made, it would be wrong.

Mr. President, in situations like this, every Senator better consider his own situation. There may be a time it has served us here but he might be strongly opposed to something that is transpiring in the Senate. He may need to claim his rights on the floor to speak, and to suggest that the one who speaks five or six words or makes a motion or makes an appeal that he has made a speech would be a trespass upon the rights of every Member of this body.

The worst thing about all that is that it would set a precedent that the Senate should not be asked to live with. There is nothing that this Senator ever suggested that should be done even in terms of making new precedents that would go that far.

I have heard the quotations in the RECORD that have been read, and please understand, Mr. President, I am for the bill, voted for it in the committee and in due course if the bill reaches final passage I intend to vote for it, but I respect the rights of the Senator from South Carolina, and he is not speaking for a few votes. He is speaking the views of many Senators.

In my judgment, Mr. President, I could not support a proposal to say that the Senator has made two speeches based on that which has been cited for the RECORD.

I would think, Mr. President, that those who want to pass the bill should do what you have to do in this body when you do not agree with the speech the Senator is making, sit there, or if you want to do what they have done now, vacate your seats, just walk on out and let someone else protect your rights. But the Senator has the right to speak under these circumstances and if it is forced to a vote, even though I for one would like to see the bill passed, I would be compelled to vote to protect the rights of the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, could I have unanimous consent for 30 seconds?

Mr. BYRD. Mr. President, I yield for that purpose with the same understanding as before.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Just 30 seconds.

Mr. President, looking at the RECORD right quickly, Mr. HOLLINGS objected on page 50, which is disregarded by the Parliamentarian. On page 51, he disregards again another appearance of mine in recognition for an objection, and again on page 51 down at the bottom of that page, again on page 52 when I said: "By all means, I suggest the Senator go right ahead."

He just disregards that, and he starts in after his disregard of those appearances, starts counting on page 55 with one and then he goes down and counts 11 instances, and in the 11 instances he says now a quorum call one, a question two, a question three, a question four, appealing of the Chair five, a quorum call six, and seven a statement, "Oh, yes, but business has occurred." Those first seven that constitutes a speech.

Maybe that is why I was not understood on the Presidential campaign if that is the thought.

Then, the second speech I have is 8, 9, and 10 when I asked for a parliamentary inquiry and object and appeal.

I still had not gotten to the talk, and then when I talk it is the third talk.

It is quite obvious that the Parliamentarian is a moving target. He was trying to get authority in the books and he could not find authority in the rules or in the precedents and now when asked just a moment ago he moves over to time and he culminates an objection or motion or request for a quorum and he packages those nicely together and he calls that speech one, and then culminates all times and calls that speech two.

We are going to have to get a magician for a Parliamentarian up here for the regular, ordinary, sane, and prudent man to determine when a speech is made.

This is absolutely ludicrous.

I thank the distinguished minority leader.

Mr. BYRD. Mr. President, I suggest the absence of a quorum, but before doing so, I ask unanimous consent that I may be recognized immediately upon the termination of the quorum call.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1620

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The minority leader is recognized.

Mr. BYRD. Mr. President, I appeal the ruling of the Chair, to wit, that the Senator from South Carolina had already delivered two speeches on the same subject. I appeal the ruling of the Chair and I make my appeal to the Senate and base it upon the fact that procedural motions or requests, such as, for example, parliamentary inquiries, appeals from the ruling of the Chair, points of order, suggesting the absence of a quorum, the withdrawal of appeals, requests for the yeas and nays, do not, in and of themselves, constitute a speech within the context of the two-speech rule. And I ask for the yeas and nays on this motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. Appeals after cloture are not debatable.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 2 minutes.

The PRESIDING OFFICER. Is there objection? The majority leader is recognized for 2 minutes.

Mr. DOLE. Mr. President, I do this just to make—and I am certain the distinguished minority leader has given this a lot of thought and with a lot of experience.

I guess the question of the Chair would be: If the Chair is overruled, then what would be the consequences?

The PRESIDING OFFICER. If the Chair is overruled, the Senator from South Carolina would still be making his first speech and would be recognized.

Mr. DOLE. And then, any additional speaker, or from this time on then, in addition to the impact it would have on the distinguished Senator from South Carolina, any of the requests that the distinguished minority leader pointed out at a future time would not, in any event, constitute a speech?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Are there any others that come to mind of the Chair that should be included?

The PRESIDING OFFICER. The only additional element that comes to mind is a request to divide an amendment as a procedural request.

Mr. DOLE. In addition, there were, I think——

Mr. BYRD. Would that not be included within the verbiage of the appeal that I made? I said any procedural motion——

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Or request.

And besides, I did not phrase my appeal in such a way that it is the alpha and omega; it is not all inclusive. But these specifics were all set out only as examples.

The PRESIDING OFFICER. The Senator's statement was not all-inclusive. It was by example.

Mr. BYRD. Exactly.

□ 1630

Mr. DOLE. In this case, the Senator from Wisconsin, Senator KASTEN, made a unanimous-consent request that committees be allowed to meet. Would that be covered by the distinguished minority leader's request?

Mr. BYRD. That would be in the language I included.

The PRESIDING OFFICER. The Chair understands it would tend to include all unanimous-consent requests as being within the purview of this motion and not counted as intervening material.

Mr. BYRD. I said they were procedural. That is in the appeal language now, and we can have the official reporter read it back. It is there.

Mr. DOLE. As I understand, the unanimous-consent request itself would be covered by the distinguished minority leader's appeal.

Mr. BYRD. Yes, and not counted as a speech, standing alone.

The PRESIDING OFFICER. The Chair believes that since the motion is intended to become precedent to the Senate, the motion should be available in printed form so that everyone clearly understands precisely what the request is.

Mr. BYRD. The Chair is correct. I would like to prepare it in written form.

□ 1650

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. There is no quorum call in progress.

Mr. BYRD. Mr. President, in response to the Chair's request that the appeal be made in writing, which the Chair has a right to make and any Senator has a right to make, I have prepared the following appeal in writing:

I appeal the ruling of the Chair, and I make the appeal to the Senate on the basis that, standing alone, procedural motions or requests such as, but not limited to, the following shall not constitute a speech within the context of the two-speech rule: Parliamentary inquiries, appeals from the ruling of the Chair, points of order, suggesting the absense of a quorum, withdrawal of appeals, requests for the yeas and nays, requests for a division vote, requests for reading of amendments, requests for division of amendments.

The PRESIDING OFFICER. Can the Chair ask for a clarification on the term "standing alone"? Is it the Democratic leader's intention that if a motion of the sort he has mentioned is preceded by as little as two or three sentences of explanation, that would constitute a speech?

Mr. BYRD. I am attempting to avoid a situation in which a Senator in making a motion to table, for example, or making a point of order, or making an appeal, stands and lays the predicate for his point of order and speaks thereon; the motion itself would not be standing alone. It would have been preceded by a speech. What I am trying to say is that the motion itself, standing alone, in and of itself, does not constitute a speech.

The PRESIDING OFFICER. For further clarification, the Senator is really speaking of the words that constitute the motion itself?

Mr. BYRD. I beg the Chair's pardon.

The PRESIDING OFFICER. The Senator is speaking then of simply those words that constitute the motion itself?

Mr. BYRD. Yes; the procedural motion.

The PRESIDING OFFICER. Yes.

Mr. BYRD. Or request. And we should keep in mind what we are talking about is the two-speech rule, and that the two-speech rule refers to two speeches on the same question in the same legislative day.

In the case that brought all this colloquy about, the Senator from South Carolina was speaking—he began one speech—and it was on the motion to proceed to the product liability bill.

We are speaking now on an appeal. I am not speaking on the motion to proceed to the product liability bill right now. I am speaking about the Chair's ruling. So what I am saying is in explanation of the appeal.

There may be those who say, "Well, if he makes a point of order, he has to state why he makes the point of order." Is that going to constitute a speech? Well, it might very well. It will constitute a speech on that point of order. But, the point of order without the speech, does not, in itself, constitute a speech.

The PRESIDING OFFICER. The Chair says to the Democratic leader that the motion is not debatable.

Mr. BYRD. I understand that. I was only trying to respond to the Chair's appropriate inquiry.

□ 1700

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 5 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOLE. Mr. President, earlier, I made an inquiry. I think the word "request" was used in the earlier appeal, and I asked whether or not that would cover unanimous-consent requests. Would that be covered in this appeal?

The PRESIDING OFFICER. The latest statement, as put by the Democratic leader, did not include unanimous-consent requests.

Mr. BYRD. May I clarify that? It did include unanimous-consent requests. I said: "I make the appeal of the Senate on the basis that, standing alone, procedural motions or requests * * *"

Mr. DOLE. The reason I am concerned about that particular one is that I can envision somebody making a unanimous-consent request that might take a couple of hours. It seems to me that we, in effect, invoke cloture and then permit somebody to speak for hours, propounding some unanimous-consent request.

He could get up and say, "I ask that the Committee on Agriculture be permitted to meet," and then read the bill.

I know that the distinguished minority leader does not intend that.

So I hope it did not include unanimous-consent requests, unless we had some way to circumscribe the request.

The PRESIDING OFFICER. The term "unanimous-consent request" was not in the written version, but the term "request" was in there, and presumably it could be concluded that unanimous-consent requests are requests.

Mr. BYRD. Mr. President, I ask unanimous consent that I may respond to the distinguished Senator's question, which is an appropriate

question, and that the time not be charged against him.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, the predicate itself is the appeal. The examples I have set forth are for explanatory purposes. That is precisely what they are—they are specific examples, and they are not all-inclusive, because I used the verbiage "not limited to." The appeal is all one sentence.

If I wanted to take out the "such as" and the providing of examples, I would simply say: "on the basis that, standing alone, procedural motions or requests shall not constitute a speech within the context of the two-speech rule."

So I have used the words "requests" and "procedural motions."

Parenthetically, as it were, I am saying, "such as, but not limited to, the following." That is the parenthetical, explanatory material: parliamentary inquiries, appeals from the ruling of the Chair, points of order, and so on. But it is clear from the verbiage that unanimous-consent requests are included; so that if the leader rises and makes a straightforward unanimous-consent request—nothing more—that does not constitute a speech within the context of the two-speech rule. If the Chair's ruling were to be upheld, the leaders unanimous-consent request would constitute a speech.

Besides, we have the legislative history, so certainly the readers of the RECORD 100 years from now will understand what we are talking about, especially now that the majority leader has asked specific the question.

I thank the distinguished majority leader.

Mr. DOLE. I thank the distinguished minority leader.

Mr. President, I will suggest the absence of a quorum, and I would like to discuss the appeal with two of my colleagues who have just come to the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MCCONNELL). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1750

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the clerk dispense with the reading of the roll.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS BUDGET RECONCILIATION ACT, 1987

Mr. DOMENICI. Mr. President, I have cleared the unanimous consent request that I am going to make with reference to reconciliation with both sides and with the majority and minority leader.

Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 5300; that all after the enacting clause be stricken and the text of Senate bill 2706, as passed the Senate, be inserted in lieu thereof; that the bill as amended be passed; that the Senate insist on its amendment and request a conference with the House, and that the Chair be authorized to appoint conferees.

Mr. BYRD. Mr. President, reserving the right to object, and I do not intend to object, I do want this vote to occur on the motion to appeal which I have pending. Will the Senator confine this action to, say, no more than 2 minutes and that it not be with prejudice to the pending appeal?

Mr. DOMENICI. I so request, Mr. President.

Mr. BYRD. I thank the Senator.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The PRESIDING OFFICER (Mr. MCCONNELL) appointed Agriculture, Nutrition and Forestry: HELMS, DOLE, LUGAR, ZORINSKY, LEAHY;

Appropriations: HATFIELD, COCHRAN, ABDNOR, DECONCINI, BURDICK;

Banking, Housing and Urban Affairs: GARN, HEINZ, ARMSTRONG, HECHT, PROXMIRE, CRANSTON, RIEGLE;

Budget: DOMENICI, ARMSTRONG, KASSEBAUM, BOSCHWITZ, CHILES, HOLLINGS, JOHNSTON;

Commerce, Science, and Transportation: DANFORTH, PACKWOOD, KASSEBAUM, HOLLINGS, LONG, Conrail, subconference 9;

DANFORTH, PACKWOOD, STEVENS, HOLLINGS, INOUYE, Maritime, subconference 10;

Energy and Natural Resources: MCCLURE, WALLOP, WARNER, JOHNSTON, FORD;

Environment and Public Works: STAFFORD, CHAFEE, SIMPSON, DURENBERGER, SYMMS, BENTSEN, MITCHELL, MOYNIHAN, BURDICK;

Finance: PACKWOOD, DOLE, DANFORTH, CHAFEE, LONG, BENTSEN, MATSUNAGA, general;

HEINZ, DURENBERGER, MOYNIHAN, BAUCUS, Medicare, Medicaid, and Maternal and Child Health, subconferences 19, 20, 21;

Governmental Affairs: ROTH, STEVENS, COHEN, DURENBERGER, EAGLETON, LEVIN, GORE;

ROTH, COHEN, DURENBERGER, EAGLETON, LEVIN, subconference 15;

Labor and Human Resources: HATCH, NICKLES, STAFFORD, KENNEDY, METZENBAUM, ERISA and Railroad Retirement;

HATCH, STAFFORD, WEICKER, KENNEDY, PELL, GSL/Education Asset;

Small Business: WEICKER, RUDMAN, BUMPERS, conferees on the part of the Senate.

Mr. DOMENICI. Mr. President, was the unanimous consent granted?

The PRESIDING OFFICER. Yes, it was.

Mr. DOMENICI. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1820

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the Senate now turn to morning business for a period not to exceed 15 minutes and the Senator from Ohio be accorded an opportunity to make a statement.

Mr. BYRD. Mr. President, reserving the right to object, and I will not object. I just want to be sure that nothing is done that is prejudicial to my appeal at the moment. What is the request?

Mr. METZENBAUM. Mr. President, I further ask unanimous consent that the position of the Senate and all Senators therein not be prejudiced in any way by reason of the request of the Senator from Ohio and that the Senate be in the same condition that it was prior to my request having been made.

Mr. BYRD. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRANSITION RULES IN THE TAX REFORM BILL

Mr. METZENBAUM. Mr. President, the U.S. House has just passed the tax reform bill without being able to find out what is really in it. Included in that bill are $10.6 billion in special tax breaks that have become the most closely guarded multi-billion-dollar secret in Washington.

I should know about there being a secret because I have been trying to unlock that secret every day for weeks. On June 24, at my urging, the Senate passed a sense of the Senate resolution calling for a list of the transition rules, their beneficiaries, their costs and their rationale.

That language reads as follows:

Sense of the Senate on transition rules.

It is vital for the Senate to be fully informed about every matter that comes before it. Therefore, it is the sense of the Senate that the conference report on H.R.

3838 shall contain, one, the name of each business corporation or group receiving a special or unique treatment in the bill; two, the reason for the special or unique treatment; and, three, the costs of the unique or special treatment.

Mr. President, that could not be any clearer. But, for some inexplicable reason, the House refused to go along, preferring to legislate in the dark.

To his credit, Senate Finance Committee chairman BOB PACKWOOD promised me we could get that list, and he has just delivered. I have that list now. I do wish we could have gotten this list earlier so that Senators might have more time to study these so-called transition rules.

But certainly we all—every Member of the Senate—have to be embarrassed by the kind of attention these rules have been getting. The newspapers are entertaining their readers with quizzes that poke fun at the way our taxwriters have discussed these transition rules. But the joke has been on us, all of us, because we do not know what they are, either.

Can you believe it? There is $10.6 billion in transition rules and the Members of the House just overwhelmingly passed the bill and the Senate is about to be called upon to pass the bill and nobody knows what is in it.

Let me give you some idea of how you can find out. Do you know who benefits from this rule that is to be found in the transition rules?

It is located on lands submerged under the waters of a Great Lake or on adjacent lands which formerly were submerged under the waters of such lake.

What does that mean? There is not anybody in the United States that knows what that means except those who put it in the bill in order to take care of certain special interests.

The average man in America or the average woman did not have anybody putting those transition rules in providing for special privilege. What is the reason for that kind of mumbo jumbo? If these tax rules are justified, why not spell them out clearly? Why did the taxwriters have to turn them into a riddle that would stump the Sphinx?

I am not sure that many of these transition rules can be justified. I am not opposed to transition rules, in and of themselves. And I make no bones about it. I sought several for projects in my own State, every one of which can be justified on the basis of the facts and the merits. But these projects are exactly the kind that deserve transition rules.

There should be some transition rules. But the rules that we find included in this bill are included to help ease the switch to this new tax system for projects and companies that have long-term investments based on the current system.

I would guess that most of the transitional rules will turn out to be justified once we study the list. I am equally convinced that a great number of them will turn out to be unjustified and will turn out to be in the bill in order to buy a vote, in order to get somebody to go along that did not want to go along. And maybe even that is justified. I am not going to stand here and say that is a terrible thing.

But, I am saying that when somebody's vote was bought, the people of the United States and the U.S. Senate and the House of Representatives are entitled to know from whom it was bought and what was the price.

What concerns me are rules that are really giveaways and new loopholes. I am happy that we were able, when this bill was on the floor of the Senate, to knock some of those loopholes out of the Senate bill.

But, Mr. President, I want this body to understand something. In this list of 400 transition rules, we find something that we do not find around here very often, although it does occur on occasion. There are 400 new transition rules that were created in the conference committee that did not appear in either the House or the Senate bill.

Let me repeat that. Normally, a conference has to do with the differences between the House and the Senate. But in this bill, there are 400 special transition rules that neither the House nor the Senate have ever heard of before and the only people that know what is in there now are those who participated in the drafting.

□ 1830

It is my opinion that even the members of the conference committee do not know all of the details of what is in all of those new transition rules.

I have not had time to study them as yet. But I know this: some Members did not have to study them, Member X, Y, Z, P and Q. They were told, "We took care of this, that, and that for you," and each of them put out press releases chortling about how the American taxpayer had been ripped off and how they got some special benefit for their State.

That may be the way some people think we should legislate around here. This Senator does not think so. This Senator thinks if some Senator got something for his own State that may or may not be justified and may be just a transition rule and may be just a way of purchasing the vote, whatever the circumstances the Members of the Senate are entitled to know the facts. At this moment, we do not know the facts.

I would say that some chortling has been made, and some would make me worry a good deal about what has occurred. Much of that makes me feel that some of these transition rules mean nothing more than special tax loopholes for those who had the proper lobbyist or proper Member of Congress on their side. Maybe that is the price that the tax writers had to pay to earn the vote for passage. But I believe it is a shame we could not vote for this bill on its merits. I believe this is not the proper way to legislate. I believe the Members of the House, the Members of the Senate, and every American are entitled to know who is getting what and at what expense to all the rest of the taxpayers.

I have been supportive of this tax bill, and I intend to continue to be supportive of the tax bill. But I say that this is the wrong way for the House and the Senate to conduct themselves. It is legislation without information. It is legislation in the dark. It is legislating in a way of which we cannot be proud.

I think it is a shameful way to legislate. Although the end result and the total package may have much merit, this way of legislating is exactly the wrong way. I expect, Mr. President, to address myself further to the whole question of these transition rules when I get an opportunity to learn more about the details of what is in those specific transition rules.

I yield the floor.

Mr. LEVIN. Mr. President, would the Senator from Ohio yield for a question?

Mr. METZENBAUM. I do indeed.

Mr. LEVIN. Did the Senator receive this afternoon a copy of the transition rules? Has that now been received?

Mr. METZENBAUM. The answer is I have received a summary but I did not receive a copy of the rules themselves.

Mr. LEVIN. I missed the first part of the Senator's speech. Was that placed into the RECORD, that summary?

Mr. METZENBAUM. No; it has not been placed in the RECORD and at this point I am not prepared to place it in the RECORD until I actually know what is contained therein.

Mr. LEVIN. Mr. President, If I could, on the Senator's time on the morning business that he received unanimous consent to proceed under, he and I both have been seeking to obtain information on these transition rules. I have great admiration for the determination of my friend from Ohio for doing exactly that. He happens to be one who voted for this bill despite some of these transition rules. I happen to be one who voted against this bill in part because of the way in which these rules were written and placed in this bill, in a way that no one can understand them, both when they came through the Senate and now from conference.

I think it is something other than a coincidence that we get these transi-

tion rules in this form finally this afternoon after the House has voted.

Mr. METZENBAUM. I do not think it is any coincidence, I want to respond to the Senator from Michigan. It is no coincidence at all. I think there is no secret about it. I was very deliberate and intended that the Members of Senate would have the information made available to them but not until the House has acted.

I do not wish to stand on the floor of the Senate and in my way reflect upon the conduct of the House. That is a matter for them to determine for themselves. But I do have concerns about this matter with reference to our actions in the Senate.

Mr. LEVIN. Mr. President, just one other quick comment, if I might.

At some point we will be given a copy of these rules. We have requested them for many, many weeks now. The Joint Tax Committee staff is putting together answers to those questions and a number of other questions which have been asked. We ought to get this information in sufficient time so that we can consider it prior to the debate on the conference committee report. I would hope, and I think the Senator from Ohio might agree with me, that we have information we have been seeking, including the fleshing out of these transition rules, in enough time so that we can consider them.

Mr. METZENBAUM. The Senator from Michigan is not in disagreement with me. As a matter of fact, I had heard some word that there was maybe some intent to move to the tax bill tomorrow. I certainly hope the tax bill does proceed appropriately, but I would hope the leadership would not see fit to move to it tomorrow but give us sufficient time to analyze the transition rules.

Mr. LEVIN. In addition to the transition rules, which we are still awaiting information on, there are a number of other questions that we are awaiting information on, which we should also receive sufficiently in advance before considering the conference report.

Mr. METZENBAUM. I yield the floor.

PRODUCT LIABILITY REFORM ACT

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Democratic leader.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak for 30 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I hope Members of the Senate do not feel that I have held up the Senate from voting. I have been ready to vote for the last hour or hour-and-a-half. There was some question concerning the appeal. But I think ample time has now transpired so that the Senate may proceed to vote on the appeal.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. I ask that I may proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I think we are ready to proceed. I want to thank the minority leader for his having been ready to proceed for a couple of hours. We have been having discussions. There are some differences of opinion. I have discussed with Parliamentarian, and I think the Senator from Wyoming has a couple of questions to ask.

We have to keep in mind that this is a postcloture situation. As I understand, any of these things could be ruled dilatory. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I am ready to support the distinguished minority leader's appeal.

Mr. BYRD. I thank the majority leader. I may say I seek no partisan advantage. I have been seeking to protect the rights of all Senators on both sides of the aisle.

Mr. SIMPSON. Mr. President, I ask unanimous consent to inquire of the minority leader two questions, if I may.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I think our majority leader has covered it nicely. I do appreciate what the Democratic leader has done. I do not sense that he seeks partisan advantage. If we follow on, we will be severed by the same sword. I do not feel that way at all, I assure the Democratic leader.

I believe we have answered the question that any of these could be ruled dilatory by the Chair under this particular unique procedure in these cloture-type proceedings. Is that correct?

□ 1740

As a matter of fact, there are few precedents that the quorum calls in a postcloture situation can be ruled as being dilatory and various other motions and requests and actions.

The final question, Mr. President, is that I am assured then, and I think any of us in the legislative body would want to be assured, that this presentation, this procedure, this rule change, does not have any deleterious or lessening effect upon the essence or the effectiveness of the two-speech rule under our present procedure?

Mr. BYRD. May I say it is not the intent of this Senator to in any way impair the two-speech rule. I would prefer—I think the question is a good question and should be answered on the record, not only by the offerer of the appeal, the mover of the appeal. But I would like it if the distinguished majority whip would propound this question to the Chair so we can get an answer from the Chair through the advice of the Parliamentarian, aside from the answer by the mover of the appeal.

Mr. SIMPSON. I do direct that to the Chair of the Chair's determination of that.

The PRESIDING OFFICER. This appeal will certainly change the interpretation of the two-speech rule from a mechanical interpretation to a rule of reason.

Mr. SIMPSON. I thank the Chair. I thank the distinguished Democratic leader.

The PRESIDING OFFICER. The yeas and nays have been ordered on the appeal. The question is, shall the decision of the Chair stand as the judgment of the Senate?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would vote "nay."

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 5, nays 92—as follows:

[Rollcall Vote No. 294 Leg.]

YEAS—5

Hatch	McClure	Wallop
Helms	Stevens	

NAYS—92

Abdnor	Ford	McConnell
Andrews	Glenn	Melcher
Armstrong	Goldwater	Metzenbaum
Baucus	Gore	Mitchell
Bentsen	Gorton	Moynihan
Biden	Gramm	Murkowski
Bingaman	Grassley	Nickles
Boren	Harkin	Nunn
Boschwitz	Hart	Packwood
Bradley	Hatfield	Pell
Broyhill	Hawkins	Pressler
Bumpers	Hecht	Proxmire
Burdick	Heflin	Quayle
Byrd	Heinz	Riegle
Chafee	Hollings	Rockefeller
Chiles	Humphrey	Roth
Cochran	Inouye	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stennis
Dodd	Leahy	Thurmond
Dole	Levin	Trible
Domenici	Long	Warner
Durenberger	Lugar	Weicker
Eagleton	Mathias	Wilson
Evans	Matsunaga	Zorinsky
Exon	Mattingly	

NOT VOTING—3

Garn Pryor Symms

□ 1900

The PRESIDING OFFICER. The decision of the Chair does not stand as the judgment of the Senate.

Mr. CHILES. Mr. President, I move to reconsider the vote.

Mr. BIDEN. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I apologize for talking too long today.

It is the intent of the distinguished Senator from Wisconsin and myself to move to a motion to proceed.

Mr. FORD. Mr. President, I make the point of order that the Senate is not in order. We cannot hear the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator is correct. Those Senators who are conversing in the aisles will please retire to the cloakroom.

Mr. HOLLINGS. I thank the Chair.

Mr. President, it is our intent to move to a motion to proceed and get a rollcall vote very promptly.

In that spirit, I ask unanimous consent that the following documents be printed in the RECORD: a letter from the American Bar association, which I was in the process of reading this morning, dated August 11, 1986; a letter from the American Bar Association dated September 24; a letter from Public Citizen, Consumer Federation of America, Consumer's Union, and the U.S. Public Interest Research Group, dated September 24; a letter from the American Federation of Labor and Congress of Industrial Organizations, dated September 23, 1986, and the testimony of Ernest Dubester; a paper entitled "Fifteen Fallacies of Product Liability Reform."

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN BAR ASSOCIATION,
Washington, DC, August 11, 1986.

Hon. STROM THURMOND,
Chairman,
Committee on the Judiciary,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN: It is our understanding that your Committee has expressed interest in considering the proposed "Product Liability Reform Act" that was ordered reported June 26, 1986, from the Senate Committee on Commerce, Science and Transportation. We take this opportunity to tell you of our strong opposition to this bill or any other broad federal legislation pre-empting state product liability laws.

The American Bar Association opposes such legislation because it believes that the area of tort and insurance law is one which traditionally and appropriately has been handled at the state, not the national, level. Product liability laws have evolved historically from the common law developed by state courts and supplemented by state legislation. This gradual, state-by-state evolution of product liability law attests to one of the basic values inherent in our system of federalism, namely, that local communities in most situations are best able to regulate the day-to-day conduct of their citizens and are in the best position to address their specific social and economic needs.

Broad pre-emptive legislation such as the Commerce Committee proposal would introduce uncertainty and instability in the area of state product liability laws—results exactly contrary to the stated purpose of the proposed legislation. The current laws in each state have been carefully crafted and refined over the decades. In contrast, a new, untested system of laws would inevitably result in a rash of litigation in an effort to interpret it.

We have given serious consideration to "reform" proposals in the product liability area and have not taken a position of blanket opposition to all federal legislation in this area. We would support, for example, federal legislation dealing with occupational diseases with long latency periods, when the number of such claims and the liability for such damages in fact threaten the solvency of a significant number of manufacturers engaged in interstate commerce, and the number of such claims has become clearly an excessive burden on the judiciary. Similarly, we would support federal legislation allocating product liability risks between the federal government and its contractors and providing, in certain instances, indemnity against those risks. We are continuing to study this whole area to see if other portions of the product liability laws should be appropriately addressed at the federal level.

However, we cannot support legislation which would sweep aside the decades of careful legal drafting which has taken place in the fifty states in the product liability area and replace it with a sweeping new national standard. Such federal legislation may seriously impair the rights of those who have been injured and the consuming public generally by introducing great uncertainty and confusion into a judicial system that, with rare exception, has been working on the state level in a sound and rational way.

We urge you to vote against the Commerce Committee proposal when and if your Committee considers this bill.

Sincerely,

WILLIAM W. FALSGRAF.

AMERICAN BAR ASSOCIATION,
GOVERNMENTAL AFFAIRS OFFICE,
Washington, DC, September 24, 1986.

Re S. 2760, board Federal product liability legislation.

DEAR SENATOR: Yesterday on the Senate floor during debate on S. 2760, Senator Kasten stated that "most lawyers support some kind of bill" on product liability. We believe this is misleading.

The ABA, with a membership of approximately 320,000 lawyers, supports federal legislation in two discrete areas of the product liability law. However, we have opposed broad federal product liability legislation such as S. 2760 since February 1981 when the ABA went on record against such proposals.

In February 1983, the ABA's House of Delegates reconsidered the matter and voted by a substantial majority to reaffirm its earlier position of opposition to broad federal preemptive product liability legislation. At that time, it also voted to approve two recommendations supporting federal attention in two limited areas: litigation involving certain latent occupational diseases, and the question of how to allocate liability risks between the federal government and its contractors.

The approximately 380-member ABA House of Delegates, which is carefully structured to represent all aspects of the Bar, thoroughly studied all facets of this matter before making its decisions on this issue in 1981 and 1983.

Operating in a manner similar to the U.S. Congress, our House of Delegates is the legislative body for the ABA. The House of Delegates represents not only various groups within the Association but also the legal profession as a whole. Its membership is made up of delegates elected by Association members in each state, delegates from every state bar association, the larger local bar associations, other national organizations of the legal profession and delegates elected by the ABA Assembly and the ABA Sections.

Enclosed is a letter from our Immediate-Past President setting forth our reasons for opposing broad Federal product liability legislation.

Sincerely,

ROBERT D. EVANS.

SEPTEMBER 24, 1986.

DEAR SENATOR: We are writing to clarify the consumer organizations' position on the product liability legislation currently pending before the Senate. Contrary to the claims of some proponents of S. 2760, we continue to find that numerous provisions of the bill and of the Kasten substitute—even without caps on recoveries—would eviscerate vital consumer protections of current product liability law.

Like S. 2760, the Kasten substitute would tip the balance of current law firmly against consumers by denying victims adequate compensation and weakening incentives to produce safe products. Specifically, both proposals would:

partially repeal the doctrine of joint and several liability and thus deny some victims who happened to be injured by more than one wrongdoer the full compensation to which they were legally entitled:

offer some manufacturers, particularly general aviation and pharmaceutical manufacturers, unjustifiable protection from punitive damages;

limit the liability of sellers of dangerously defective products notwithstanding the crucial role that product sellers play in bringing products, both safe and unsafe, to the market;

preclude absolutely people injured by faulty equipment more than 25 years old from recovering anything at all for their injuries.

Our goal has long been to provide consumers injured by dangerously defective products fair compensation in a speedy and efficient way. Unfortunately, the Kasten substitute would not create an effective mechanism for meeting these goals.

Thank you for your consideration in this matter.

JOSEPH GOFFMAN,
Staff Attorney,
Public Citizen.
GENE KIMMELMAN,
Legislative Director,
Consumer Federation of America.

LINDA LIPSEN,
Legislative Counsel, Consumers Union.
PAMELA GILBERT,
Staff Attorney, U.S. Public Interest Research Group.

AFL-CIO,
DEPARTMENT OF LEGISLATION,
Washington, DC, September 23, 1986.

DEAR SENATOR: On behalf of the AFL-CIO I urge to oppose S. 2760, the so-called "Product Liability Reform Act", which is on the Senate floor this week. There may be votes either on a motion to proceed or on a petition to invoke cloture which the AFL-CIO would also urge you to oppose.

The subject of product liability is of profound importance to working men and women and therefore to the labor movement. Every year, thousands of workers suffer occupational injuries or diseases as a result of working on unsafe machinery or with toxic substances.

Many of these workers have found that product liability litigation affords their only recourse for full redress for their injuries. For this reason, any change in product liability law that would impair the ability of injured persons to be made whole for the losses they suffer would strike a severe blow at American workers.

In May of this year, the Executive Council of the AFL-CIO issued a statement on Liability Insurance and Tort Law which called upon Congress to adopt comprehensive and balanced reforms designed to protect both consumers and providers of safe goods and services. S. 2760, in our judgment, is not such a measure.

To the contrary, S. 2760 is a one-sided approach that would undermine the two principle functions which the product liability system should serve—namely, to provide fair and timely recompense to individuals who are harmed by unsafe products and to impose economic disincentives that induce manufacturers to act responsibly. This is especially evidenced by the so-called "expedited settlement system" contained in Title II of the bill. In our view, the settlement scheme would benefit only the least deserving plaintiffs and those manufacturers who have inflicted the most grievous injuries. The tort-law reforms contained in Title III add to the bill's imbalance.

There is an additional respect in which S. 2760 fails to deal with one of the fundamental problems currently confronting the product liability system. Thus, the bill does not meaningfully address the responsibility of the insurance industry for the so-called liability insurance problem. As suggested, our Executive Council Statement expressed the AFL-CIO's willingness to entertain proposals for modest and sensible reforms in the tort system only if such reforms are part of a balanced package which includes fuller regulation of the rates charged by insurers, aimed at producing a workable liability system.

Finally, S. 2760 is deficient in our view because it does not contain provisions for determining cause and providing compensation to workers who incur occupational diseases related to toxic substance exposure. Any balanced and comprehensive effort to reform the product liability system should adequately deal with the increasingly serious problem of toxic injuries.

For these reasons, the AFL-CIO urges you to oppose S. 2760 and to oppose any procedural efforts designed to expedite consideration of this bill.

Sincerely,

ROBERT M. MCGLOTTEN,
Director.

TESTIMONY OF ERNEST DUBESTER, LEGISLATIVE REPRESENTATIVE, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, BEFORE THE SENATE JUDICIARY COMMITTEE ON S. 2760, THE PRODUCT LIABILITY REFORM ACT

Mr. Chairman, the AFL-CIO appreciates this opportunity to state its opposition to S. 2760, the so-called "Product Liability Reform Act" that the Senate Commerce Committee has reported.

The subject of product liability is of profound importance to working men and women and therefore to the labor movement. Every day, thousands of workers are injured and killed in the workplace as a result of defects in the products—principally the machinery and equipment—with which they work. And every day thousands of workers inhale, ingest, or absorb toxic chemicals that permeate the air in which they work, resulting in occupational diseases.

In theory, the workers' compesation system exists to provide fair recompense to such workers and their families, and the Occupational Safety and Health Act exists to assure each worker "safe and healthful working conditions." But in practice, state workers' compensation laws provide inadequate relief to those suffering traumatic injuries and little or no relief to those suffering illnesses associated with exposures to toxic substances. And in practice, the Occupational Safety and Health Administration has defaulted on its duty to protect workers' safety and health, especially during the past six years.

Because of these developments, many workers have found their only recourse for full redress for their injuries to be product liability litigation. Indeed, studies indicate that up to half of the money paid for product liability claims goes to workers who have been injured on the job. Accordingly, any change in product liability law that would repair the ability of injured persons to be made whole for the losses they suffer would strike a severe blow at the American worker.

At the same time, millions of workers are employed by product manufacturers, and all workers are consumers of goods made by such manufacturers. Given current legal realities, most product manufacturers have concluded that to stay in business they must be able to obtain adequate levels of liability insurance at affordable prices. Recently, the insurance industry has ceased offering adequate levels of product liability insurance at any price, or has set the cost of such insurance of prohibitively high prices.

These developments in the product liability area paralleled developments in the area of liability insurance generally. No sector of the economy has been spared the effects of the insurance industry's actions. The American worker and consumer have been the ultimate victims of these developments.

In May of this year, the Executive Council of the AFL-CIO issued a Statement of Liability Insurance and Tort Law which sets forth in detail our position on these critical subjects. That Statement recognizes that the causes of the current situation with respect to liability insurance are "multiple and complex" and that, while "the insurance industry must accept the major responsibility," the "tort system has contributed to the cost of insurance" as well. The Statement therefore called for "comprehensive and balanced reforms" of a "multi-faceted" nature designed to "accommodate the legitimate yet conflicting interests of providers and of injured persons."

The bill reported by the Senate Commerce Committee is not such a measure. It is, rather, the sort of "one-sided approach" which the AFL-CIO Executive Council's Statement rightly warns "will only exacerbate, rather than alleviate, the present problem." That is expecially true with respect to the so-called "expedited settlement system" contained in Title II of the bill, although it is also true with respect to the tort-law reforms contained in Title III. Because the settlement system forms the heart of the Commerce Committee's bill, we wish to focus our comments on that system.

The Commerce Committee's report accompanying S. 2760 states that "Title II of the bill establishes a scheme for expedited settlement of product liability claims . . . based on incentives for settlement that will reduce the delays, excessive transaction costs, and uncertainties associated with such claims."[1] In truth, however, Title II does not add anything to the benefits that, in the nature of things, the parties to litigation inherently derive from reaching a mutually-satisfactory resolution of a case. What Title II does instead to "encourage" settlements is to establish penalties for those who reject a settlement offer if the offer meets certain specifications. And it is the one-sided nature of these penalties and these specifications that make the bill so imbalanced and unfair.

The requisites for a settlement offer whose rejection will trigger Title II's sanctions are set forth in section 201 of the Commerce Committee's bill. That section states that an injured person may only demand by way of settlement—and all that a manufacturer need offer—is payment for net economic loss and, in the most serious cases of intangible injury, payment of $100,000 in general damages. In contrast, under persent law, a wrongdoer manufacturer is not the payor of last resort for economic injury but is liable for the full amount of such injury the manufacturer causes, without regard to whether the injured individual has some other source of payment. Moreover, in most jurisdictions, the manufacturer is also liable for the full amount of the intangible or non-economic injury the manufacturer inflicts, without any arbitrary cap.

What this means, then, as the minority views to the Commerce Committee's report demonstrate, is that almost invariably, a Title II settlement offer will represent a small fraction of the manufacturer's actual exposure. Thus, the only plaintiffs who are likely to have any interest in inducing a manufacturer to settle on Title II's terms are plaintiffs who would be the least likely to recover in court because of some serious flaw in the plaintiffs claim of liability. These are the least deserving plaintiffs. In contrast, manufacturers are often likely to desire to coerce a plaintiff to accept a Title II settlement, especially in cases in which the manufacturer's misdeeds have inflicted grave harm and in which the manufacturer's potential liability is especially high.

It is at this point that the one-sidedness of the sanctions for refusing a Title II settlement offer, as set forth in sections 203 and

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[1] S. Rep. 99-422, 99th Cong., 2d Session at 31.

204 of the Committee's bill, becomes so significant. The penalties for a plaintiff who rejects such an offer are severe in the extreme. Such a plaintiff forfeits his claim for compensation for any economic loss for which the plaintiff received reimbursement from another source, such as from insurance the plaintiff purchased, or from a government social welfare program. In addition, a plaintiff who rejects a Title II settlement also forfeits his claim for any non-economic or general damages in excess of $50,000 in all but the most serious of cases, and in excess of $250,000 in such cases.

In other words, in most cases, the maximum amount of compensatory damages that a plaintiff who refuses a Title II settlement offer will be able to recover will be $50,000 more than the offer; in cases of especially grave, non-economic injury—such as cases involving the death of a parent or child, or the loss of a bodily function like sight, sound, or motion—the maximum compensatory recovery will be $150,000 more than the settlement offer. Given how relatively little can be won by a plaintiff who rejects a Title II offer and then prevails in court, the offer will truly be one that most plaintiffs cannot refuse.

In contrast, the penalties imposed upon manufacturers who reject Title II settlement offers from plaintiffs are modest, indeed. Whereas a plaintiff who rejects a proper offer is penalized even if the plaintiff is fully vindicated in the ensuing litigation, a manufacturer who refuses an offer will suffer a sanction only if the manufacturer eventually is required to pay to the plaintiff damages that exceed more than the settlement offer. Moreover, even in that case, the sanctions are weak.

In earlier drafts of S. 2760 that were circulated during the Commerce Committee's deliberations, the Commerce Committee considered requiring manufacturers who insist on litigating and who are found liable to pay the plaintiff's attorneys fees, interest at a high rate (2% per month) on the judgment awarded, and also to pay liquidated damages up to double the judgment. The Committee also considered relaxing the substantive rules of law for imposing liability on manufacturers who force litigation. However, in the bill the Commerce Committee has reported, the only sanction that remains on the nonsettling manufacturer is payment of fees to the plaintiff's attorney, calculated on an hourly fee basis without regard to the risk the attorney assumed, in taking the case, that the attorney would receive no compensation. And even this sanction is diluted by placing a $100,000 ceiling on the manufacturer's liability and by mandating a reduction in liability for fees if the manufacturer "had a reasonable basis for rejecting the offer of settlement." In sum, the most that a manufacturer can be penalized for rejecting a Title II settlement offer is $100,000—a relatively small amount for most manufacturers—and it is extremely unlikely that the penalty will ever reach even that level.

The short of the matter is simply this. Few victims of defective products are likely to want to submit Title II settlement offers because of the rigid limits on what can be included in such offers, and few manufacturers who receive such offers are likely to feel constrained to accept the offer because of the weak sanctions placed upon manufacturers who refuse. Many wrongdoing manufacturers, however, are likely to make Title II offers in order to obtain a cheap settlement—especially where the manufacturer has caused grievous injury—and most victims who receive such an offer are likely to be bludgeoned into submission because the stiff sanctions for litigating all but eliminate any possible gain from continuing to litigate. We submit, therefore, that by any definition, this is a one-sided and imbalanced settlement system.

There is one further, and perhaps even more fundamental respect, in which the settlement system which forms the heart of the Commerce Committee's bill is one-sided: it treats with only one aspect of the multifaceted problems currently confronting the product liability system. The Committee's bill does nothing of substance to address the responsibility of the insurance industry for those problems. Yet as we noted, the insurers bear a large measure of blame for what has been happening to the cost and availability of liability insurance. And we believe that the federal government has an active role to play in monitoring the insurance industry and in developing a set of basic regulatory requirements for state regulators to follow with respect to the industry.

In this regard, the Commerce Committee's bill should be contrasted with laws recently enacted by the Florida and New York legislatures. Those bodies have enacted statues—each quite different from the other—which make substantial modifications in the tort law. Those laws, however, couple these tort-law amendments with effective regulation of the insurance industry, including mandatory premium reductions, ceilings on rate increases, and protections against arbitrary cancellations of insurance. Although we by no means agree with all of the tort modifications made by these laws, the labor movement in those states nonetheless joined in supporting the enactment of these balanced measures.

Our point in noting the Florida and New York laws is not that federal legislation in this area is necessarily inappropriate; we repeatedly have made clear that we hold the opposite view. But at a time when the states are beginning to find ways of developing balanced measures that address all of the relevant interests and considerations, it would be most tragic if the federal government were to lead in the opposite direction by enacting a regressive and one-sided law like S. 2760.

For these reasons, the AFL-CIO opposes passage of the Commerce Committee's bill and we urge this Committee to do all within its power to prevent that bill from being enacted.

Fifteen Fallacies of Products Liability "Reform"

Abstract

Products liability "reform" is supported by manufacturers of defective products and the liability insurance industry. As the ones who stand to gain from the limitation of the rights of their victims, they have built their proposed "reforms" on a series of fifteen basic fallacies:

(a) The Fallacy of the Insurance "Crisis."
(b) The Fallacy of the "Litigation Explosion."
(c) The Fallacy of Excessive Jury Awards.
(d) The Fallacy of Lack of Uniformity.
(e) The Fallacy of Liability Without Fault.
(f) The Fallacy of Liability for Unforeseeable Injury.
(g) The Fallacy of Lower Litigation Costs.
(h) The Fallacy of Expediting Products Cases.
(f) The Fallacy of Double Recovery.
(j) The Fallacy of Windfalls in Future Damages Awards.
(k) The Fallacy of the "Deep Pocket."
(l) The Fallacy of Excessive "Transaction Costs."
(m) The Fallacy of Fairness.
(n) The Fallacy of "Reform."

The greatest fallacy of all is the use of the word "reform." Rather than reform, these proposals will bring chaos and confusion to our courts and despair to the lives of seriously injured victims of defective products. This pamphlet describes these fifteeen fallacies and the adverse effects of pending products liability "reform" proposals on our current system of American justice.

(a) *The Fallacy of the Insurance "Crisis."*—In the report of the Administration's "Tort Policy Working Group," they state that "the property-casualty industry in the past two years has suffered significant underwriting losses." [1] The truth of the matter is shown in a recent report of the United States General Accounting Office [2] which concluded that, during the past 10 years, the property/casualty insurance industry "had a net gain of about $75 billion" [3] and was expected to experience a "net gain before taxes of more than $90 billion over the years 1986-1990." [4] The only crisis that the insurance industry is really suffering is a "credibility crisis." [5]

Additional evidence of the fallacy of this alleged insurance crisis can be found in what Wall Street analysts call "the long bull market in property and casualty stocks." [6]

Since June of 1984, the stock price index for property and casualty insurance stocks has almost doubled, outperforming the Standard and Poor 500 Stock Index by a substantial margin.[7]

Wall Street analysts are predicting "explosive industry-wide earnings gains" as a virtual certainty in 1986.[8]

One element in their predicted "bullish scenario" [9] is the monumental rate hikes of 1985.[10]

Another is the expected boost in bulging insurance industry earnings from pending "tort reform proposals." [11]

(b) *The Fallacy of the "Litigation Explosion."*—The Administration's Tort Policy Working Group claims that "in the past decade there has been a veritable explosion of tort liability in the United States." [7a]

However, a recent study by the National Center for State Courts found no evidence of a "litigation explosion" in state trial courts in the United States: [8a]

"Careful examination of current available trial court data relating to tort, contract, real property rights and small claims cases, from a representative group of state courts, provides no evidence to support the existence of a national 'litigation explosion' in state trial courts during the 1981-1984 time period." [9a]

According to this study, the increase in tort litigation roughly approximates the increase in total population:

". . . For the entire period 1978-84, total tort filings increased by nine percent, but the population also increased by eight percent." [10a]

This study concludes with the observation that "the often cited litigation explosion . . . appears to be exaggerated. . . ." [11a]

Another study has concluded that the number of lawsuits filed per capita has remained constant since 1959.[12]

Footnotes at end of article.

(c) *The Fallacy of Excessive Jury Awards.*—In introducing the Administration's proposed Product Liability Reform Act on April 30, 1986, Senator Kasten said:

". . . The provisions in this legislation result from the report of the President's Tort Policy Working Group issued this past February. . .

"The working group found that in the past decade there had been a veritable explosion in tort liability in the United States. Between 1974 and 1985. . ., the average jury verdict in product liability cases increased from under $400,000 to over $1.8 million."[13]

When questioned about these statistics in Senate Commerce Committee hearings by Senator ERNEST F. HOLLINGS of South Carolina, Assistant Attorney General Richard K. Willard admitted that one of the primary sources for the working group's "statistics" was Jury Verdict Research, Inc., of Solon, Ohio.[14] Mr. Willard further admitted that there were "limitations on the methodology" used by Jury Verdict Research,[15] that their statistics were not scientific,[16] and that their statistics are gathered from newspaper clippings and other similar sources:

"Senator HOLLINGS. Well, how do they gather it? That is what I'm asking.

"Mr. WILLARD. They gather it from people who write in and report it to them, from newspaper clippings, from a variety of services.

"Senator HOLLINGS. Come on now, you are an Attorney General. You are not going to come up and testify about newspaper clippings.

"Mr. WILLARD. Well, Senator, we do not use Jury Verdict Research, Inc., statistics as being accurate as to absolute data as to average jury verdicts."[17]

Despite this admission, President Reagan told the American Tort Reform Association ten days later that, "Between 1975 and 1985, the average award in a products liability case quadrupled, to some $1.8 million."[18]

Whether the President knew better, or was misinformed, history does not yet record. Whichever, is true, it is clear to us that products liability "reformers" have used their concocted statistics much as a drunken man uses lamp posts: "for support rather than illumination."[19]

The fact is, there are no accurate, comprehensive statistics on jury verdicts in products cases.[20]

In South Carolina, we have taken steps to fill this void by establishing the South Carolina Jury Verdict Research Project.[21]

This project is being conducted by the University of South Carolina School of Law and will catalog and report all jury verdicts, in both state and federal courts in South Carolina for the past ten years.

A preliminary feasibility study showed that during the last five years there were no state court products verdicts in the largest county in South Carolina[22] in excess of $100,000.[23]

That's a far cry from an average verdict of $1.8 million.

"The argument that jury verdicts and expanded tort doctrine contributed to the product-liability 'Crisis' lacks substance. Complaints about the excessive generosity of jurors in products cases collapse under the weight of the available data. . . ."[24]

The same conclusions hold true with respect to punitive damages.

Preliminary findings from a recent study by the American Bar Foundation indicate that "punitive damage awards are not routine", are not typically given in excessive amounts, and are rarely awarded in product liability cases.[25]

In addition, under the longstanding common law procedure that Lord Coke refers to as a "wise distribution of power" in which "the judge and jury are a check upon each other",[26] the trial judge has both the power and the duty to set aside or reduce[27] the amount of any verdict which the trial judge considers to be excessive.

"As a general rule, the fact that the jury . . . have given excessive damages is ground for a new trial, and the trial court has both the power and the duty, where a new trial is sought on this ground, to determine whether the damages awarded to plaintiff are excessive so as to warrant a new trial."[28]

For those who are interested in learning the whole truth of the matter, there are no less than 21 recent Annotations on the subject.[29]

(d) *The Fallacy of Lack of Uniformity.*—The three legal theories upon which almost all products cases are based are (a) negligence, (b) breach of implied warranty, and (c) liability for manufacture and sale of defective and unreasonably dangerous products.[30] The principle that a product manufacturer is responsible for personal injury or death caused by negligent design and manufacture of defective products is uniformly applied in all 50 states.[31]

Virtually all states currently impose liability on manufacturers for injuries caused by their negligent failure to warn consumers of the dangerous nature or condition of their products.[32]

The Uniform Commercial Code, adopted on all 50 states, provides that manufacturers shall be liable to consumers for injuries resulting from breach of an implied warranty that their products are reasonably fit for the purpose for which they are intended.[33]

Forty-six of 50 states apply the principle that a manufacturer is liable to the ultimate consumer for personal injury and death caused by the defective and unreasonably dangerous nature of its products.[34]

These are the basic, underlying principles of products liability. To say that there is lack of uniformity here is flagrantly false.

(e) *The Fallacy of Liability Without Fault.*—One of the unfounded claims most often repeated by the liability insurance industry is that existing products liability law imposes liability without fault.[35] In making this claim, they refer to the provisions of ¶ 402A of the Restatement of Torts, 2d by the American Law Institute which is commonly called "strict liability".[36]

Strict liability, however, is not absolute liability.[37]

It applies only in cases where the injured consumer proves that the product in question is defective and unreasonably dangerous.[38]

How, you may ask, can a product manufacturer who produces a defective and unreasonably dangerous product be without fault?[39]

The question answers itself.

(f) *The Fallacy of Liability for Unforeseeable Injury.*—Another of the more popular claims of the products liability reformers is that, under existing law, manufacturers are held liable for unforeseeable product-related injury.[40]

This is simply not the case. Under existing law, the injured victim must prove, not just one, but three types of foreseeability: (1) that the risk of harm was reasonably foreseeable, (2) that the use to which the product was put was reasonably foreseeable, and (3) that the injured party fell within the class of reasonably foreseeable victims.[41]

Liability based on the manufacturer's negligent failure to warn of the dangerous nature of its product requires proof of reasonable foreseeability.[42]

Liability for breach of implied warranty also requires proof that the damages were the "natural" or foreseeable results of the product defect,[43] and the same foreseeability requirement applies to an action based on "strict liability" for defective and unreasonably dangerous products.[44]

In our experience, product manufacturers will claim that almost any product injury was unforeseeable.

Automobile manufacturers will claim that gasoline tank explosions from rear-end collisions are unforeseeable.

Power press manufacturers will claim that amputation of workers' hands in the unguarded jaws of the press are unforeseeable.

Crane manufacturers will claim that electrocutions from contact with high voltage power lines are unforeseeable. Yet, how can these documented dangers be unforeseeable if they have happened thousands of times before?

The majority of the claims that product manufacturers are held liable for unforeseeable product related injury come from manufactures who have unsuccessfully argued that position before juries who found otherwise. Their disgruntled complaints lend support to the old maxim: "He who feels the halter draw has a poor opinion of the law."[45]

(g) *The Fallacy of Lower Litigation Costs.*—The claim of the products liability "reformers" that their proposed legislation will result in lower litigation cost is another unfounded contention.[46] The exact opposite will inevitably occur. Abolition of joint and several liability will result in multiple defendants in almost all products cases.[47] Caps on recoveries of damages for pain and suffering, disfigurement and loss of companionship will virtually eliminate settlements.[48] Abolition of "strict liability" for defective and unreasonably dangerous products will require more extentive discovery and proof of negligence.[49] Separate claims procedures[50] will prolong litigation. All of these factors will lead to increased litigation costs.

It is difficult for the products liability "reformers" to conceive of the practical effects of their legislative proposals because few, if any have had any significant practical experience in the trial of products cases. Their wayward feet are unlit by the lamp of experience.[51]

(h) *The Fallacy of Expediting Products Cases.*— In his testimony to the Senate Commerce Committee on May 20, 1986, Attorney General Meece referred to certain aspects of the Administration Bill [52] which were designed to "alleviate burgeoning case loads" and to allow the injured victim to be compensated "in a more timely fashion".[53] As with litigation costs, the opposite result is inevitable if the legislation is adopted.

For example, the practical effects of adding multiple defendants will increase costs and prolong litigation.[54] In any case where a produce related injury is followed by less-than-optimal medical care, abolition of joint and several liability[55] will encourage the manufacturer to attempt to shift a portion of the responsibility of the treating physician.[56] A products case will then become both a products case and a malpractice case. This will inevitably result in skyrocketing litigation costs and inordinate delays in the litigation process.

(i) *The Fallacy of Double Recovery.*—Under the collateral source rule, the injured victim may recover his hospital expenses

from the negligent manufacturer despite the fact that a portion of his hospital expenses have been paid from his own hospital insurance.[57] Products liability "reformers" contend that this rule allows for double recovery by the injured victim.[58]

In actuality, hospital insurance payments are not payments from a "collateral" source. They are payments made by the injured victim himself. The victim pays his insurance premiums over a period of years so that an insurance fund will be established to cover any future hospitalization.

Quite often, by the time of his injury, he has paid more to his insurance company in premiums than the amount of his hospital bill. The same rationale applies to other types of insurance such as life, disability, or accident insurance.[59]

To abolish the collateral source rule by penalizing the conscientious victim who has had the foresight to purchase insurance does not prevent double recovery. It prevents single recovery. It rewards the wrongdoer at the expense of the victim.[60]

(j) *The Fallacy of Windfalls in Future Damage Awards.*—The proposed "Product Liability 'Reform' Act" permits product manufacturers to make payments of awards for future damages "periodically as costs are incurred."[61] In his testimony before the Senate Commerce Committee, Attorney General Meese described this as a provision providing "for future economic damages to be paid in periodic installments, to take away the windfall[62] effect.[63] In fact, there is no windfall, as existing law requires future damages to be reduced to their present cash value.[64]

(k) *The Fallacy of the "Deep Pocket."*—The Report of the Tort Policy Working Group refers to existing tort doctrines which supposedly "shift liability to 'deep pocket' defendants even though they did not cause the underlying injury, or had only a limited or tangential involvement."[65] The first answer to this absolute absurdity is that existing tort law does not impose liability on defendants who "did not cause the underlying injury or had only a limited or tangential involvement".[66] The second answer to this absolute absurdity is that there is no credible authority to support this "deep pocket" theory.[67] The only real evidence appears to support a contrary view.[68]

(l) *The Fallacy of Excessive "Transaction Costs."*—Those who support products liability "reform" cite what they refer to as "excessive transaction costs"[69] in support of their recommendation to "schedule contingency fees" for the lawyer of the injured victim.[70] It is significant that, although the Senate Commerce Committee determined that attorney's fees of defective product manufacturers exceeded those of injured product victims,[71] the products liability "reformers" only recommend that the attorney's fees of the injured victim be cut. The real reason is not to limit so-called "transaction costs", but to limit the attorney's incentive to obtain an appropriate award for his injured client. This is dramatically demonstrated by the Insurance Information Institute's $6.5 million pamphlet[72] entitled, "The Lawsuit Crisis" which contains "10 Reforms for the Lawsuit Crisis", including:

"Regulating Contingency Fees: To make sure everyone has access to an attorney, 'contingency fees' provide for lawyers to be paid a percentage of the final settlement. *Sometimes this encourages lawyers to push for higher awards* to create higher fees. . . ."[73]

(m) *The Fallacy of Fairness.*—Those who are pressing so vigorously for products liability "reform" claim that their proposals are fair. Nothing could be further from the truth. Here are a few examples:

1. Caps on Damages: Even the most ardent supporters of the proposed "Product Liability 'Reform' Act" admit that "numerous studies have found that the tort system" currently is guilty of "underpaying people with the most serious losses."[74] The "Product Liability 'Reform' Act" would compound this injustice by placing caps on damages awards,[75] further depriving the catastrophically injured victim of his right to just compensation.[76]

2. Exclusion of Commercial Loss: The "Product Liability 'Reform' Act" deprives the injured victim of his right to a jury trial, the collateral source rule, joint and several liability, implied warranty of the product seller, and just compensation, but excludes actions for "commercial loss"[77] so that one big business can still sue another big business and enjoy the benefits of a jury trial, the collateral source rule, joint and several liability, implied warranty of the product seller, and "uncapped" just compensation.

3. Abolition of Rights, But Not Defenses: In the name of uniformity,[78] the "Product Liability 'Reform' Act" deprives the injured product victim of causes of action against sellers of defective products for implied warranty, failure to warn, and strict liability for defective and unreasonably dangerous products, but preserves all the available defenses of the product manufacturer and product seller currently existing under state law.[79]

4. Periodic Payments for Future Damages: The "Product Liability 'Reform' Act" permits product manufacturers to make periodic payments for future damages even though existing law requires the jury to reduce future damages to their present cash value.[80]

5. Abolition of the Collateral Source Rule for Victims: Provisions of the "Product Liability 'Reform' Act" abolishing the collateral source rule give the product manufacturer credit against actual economic damages suffered by victim for all benefits which the victim has received or entitled to receive, including life, health, accident and disability insurance paid for entirely by the victim, and even for food stamps or welfare which the victim may be entitled to receive, but may not have applied for.[81] To compound this outrage, the product manufacturer may place whatever amount it "reasonably anticipates the claimant will receive from collateral sources" in "an interest-bearing escrow account."[82]

6. Proposal to Limit Contingency Fees: Although the insurance industry itself appears to have concluded that attorneys' fees paid to defense attorneys exceed those paid to plaintiffs' attorneys,[83] the Administration's Tort Policy Working Group only recommended cutting the product victim's attorney's fees and not those of the product manufacturer.[84] Although this recommendation was not included in the Senate Commerce Committee Bill, "a bitter Senator Bob Kasten (R-Wis.)" said that he "remained optimstic and would try again on the Senate floor."[85]

(n) *The Fallacy of Broad-Based Support.*—Products liability "reformers" and their allies have gone to great lengths to create the impression of broad-based support.[86] The fact is, their support comes primarily from the liability insurance industry,[87] product manufacturers,[88] and other special interest groups who stand to benefit most from the elimination of the rights of victims.[89] This callous coalition has set about to create a crisis[90] by raising rates and cancelling coverage of unsuspecting policyholders.[91] Thus far, however, their attempts to blackmail[92] a bewildered public have largely failed and through the smokescreen, the American consumer sees the situation for what it is: "The Manufactured Crisis."[93]

(o) *The Fallacy of "Reform".*—The word "reform" does not mean to change simply for the sake of change and it does not mean to change for the worse. It means to change for the better.[94-172] Product liability "reform," as presently proposed by the manufacturers of defective and unreasonably dangerous products and by the liability insurance industry, definitely means to change for the worse by literally destroying our present system of civil justice. This sweeping legislation will affect the lives of all Americans for years to come. It will abolish or severely limit the application of beneficial doctrines slowly and carefully developed and refined by the combined wisdom of 1,000 years of English and American common law. Two of the most prominent victims of this so-called "reform" movement are "equal and exact justice to all men" and the right of trial by jury.[173] Others include:

(1) The Collateral Source Rule: An equitable doctrine which recently celebrated its bicentennial birthday.[174]

(2) Joint and Several Liability: An equitable doctrine which dates back to the The Edicts of Ulpian, a Roman jurist in the 3rd Century A.D.[175]

(3) Liability of the Product Seller for Failure to Warn.[176] Liability to the ultimate consumer for negligent failure to warn of the dangerous nature of a product dates back to the turn of the century.[177]

(4) Liability of the Product Seller for Breach of Implied Warranty.[178] Liability for breach of implied warranty of product defects dates back to the Code Napoleon.[179]

(5) Liability of the Product Seller for Sale of Defective and Unreasonably Dangerous Products.[180] Commonly called "strict liability", this concept dates back to the 13th Century.[181] It was applied to sellers of food by judicial decision before the birth of Colombus.[182] It was applied to sellers of food by American courts in the early 19th Century.[183] Following World War II, its application was extended from food to such products as soap, hair dye and grinding wheels.[184] By 1963, it was being applied to products generally[185] and in 1964, its application to products generally was adopted by the American Law Institute.[186] Strict liabilities is now applied to products generally in 46 of the 50 states.[187]

(6) The Right of Equal Access to the Courts: The right of equal access to the courts necessarily implies the right of counsel: not just any counsel, but equal counsel. The contingent fee system provides the poor and moderate-income American with access to counsel equal in experience and ability to that of the richest and most powerful corporation. By drastically limiting contingent fees, the products liability "reformers" would deprive the average American citizen of this important right. Although this recommendation is not included in the Committee's proposed "Product Liability 'Reform' Act", Senator Kasten has vowed to reintroduce this restriction on the Senate floor.[188]

(7) The Right of Trial by Jury: This ancient right dates back to the Magna Carta. By severely limiting this right, the products

liability "reformers" would deprive the average American of an essential element of equal justice.[189]

(8) The Right of Just Compensation: The term "just" means "guided by truth, reason, justice and fairness." [190] Limiting the jury's right to award appropriate compensation by placing an arbitrary cap on damages, regardless of the nature and extent of injury, is certainly not guided by truth, reason, justice or fairness.[191]

Product liability "reform" as presently proposed is not reform, but regression and destruction: regression backward in time to the Dark Ages of the law and destruction of the fundamental freedoms of the American public. It like a spreading cancer fed by the insatiable greed of the liability insurance industry and the callous disregard of product manufacturers. It must be opposed and it must be defeated.

"Victims don't ask for sympathy or charity. Neither do they ask for apathy, indifference, and injustice. Instead they seek compassion, fair play, and a right to obtain justice from a jury of their peers."[192]

FOOTNOTES

[1] See, Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, p. 1 (February, 1986).

[2] See, Statement of John C. Finch, Senior Associate Director, General Government Division, Before the Subcommittee on Oversight, Committee on Ways and Means of the House of Representatives on the Profitability of the Property/Casualty Insurance Industry, pp. 1, 4, 7 (April 28, 1986).

[3] *Id.* at page 4.

[4] "Available industry estimates show that over the next five years the [property/casualty insurance] industry expects substantial net gains. Our calculations, made from the industry estimates, indicate an expected net gain before taxes of more than $90 billion over the years 1986-1990."

[5] See, also, Bellotti, et al., "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance", prepared by the Attorneys General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin for the National Association of Attorneys General. This extensive report contains several conclusions, including: "Conclusion #1: The property/casualty industry is in adequate and improving financial condition"; and "Conclusion #4: Changes in the civil justice system are not likely to solve the current or future problems in availability and affordability of liability insurance."

[6] Curran, "Bargains Beckon in Insurance", *Fortune Magazine*, p. 217 (August 4, 1986). See, also, "Yoo-Hoo, Big Blue", *Barron's*, p. 30 (June 2, 1986), which shows, "The 50 largest institutional holdings" and the "top 50 net purchases" by institutions as including at least four large liability insurance companies: Firemans Fund, St. Paul Companies, Chubb Corporation, and Kemper Corporation."

[7] Curran, *supra*, Note 6, p. 217. "The two year bull market in property and casualty stocks is far from over, analysts say. . . ." *Id.*

[8] Salmon Brother Analysts . . . are positively bubbly about the long term earnings outlook for property and casualty insurers. In a recent review of First Quarter results, they predict that 'explosive industry-wide earnings gains are virtually assured for 1986' because of commercial-rate strategies already in place." Henriques, "A Look at Insurers", *Barron's*, p. 44 (August 4, 1986).

[9] Curran, *supra*, Note 6, p. 217.

[10] Referring to "premium rate increases averaging 45% on traditional commercial policies in 1985", a recent *Fortune Magazine* article states that "analysts insist the earnings outlook for major insurers remains unusually bright." Curran, *supra*, Note 6, page 220.

[11] "Analysts' favorites run the gamut from the primary insurers who write the policies to reinsurers who take a piece of the action. [A] Salomon Brothers [analyst] thinks American International Group stands to be *a prime beneficiary of the trend toward the kind of tort reform that limits the size and type of awards.* 'This company writes esoteric coverage,' he says. 'Liability insurance for skating rinks, day care centers, ski lifts—just the type of business that will be helped by tort reform.' He expects AIG to earn . . . a gain of 73% over 1985, as higher policy prices reach the bottom line. In 1987 he expects a 35% boost . . . ." Curran, *supra*, Note 6, p. 220. See, also, "The Bullish Case for Casualty Stocks", *Barron's*, p. 13 (July 7, 1986), which states: "Generally, we think tort reform is good for the insurance industry . . . . We, ourselves, harbor a few reservations on the subject—*if tort reform brings about the desired result, it could encourage immoderate insurance company behavior* at some point. . . ."

[12] See, "Report of the Tort Policy working Group on the Causes, Extent and Policy Implications of the Current Crisis of Insurance Availability and Affordability", page 2 (February, 1986). In his introduction of the Administration bill (Kasten Amendment), Senator Kasten also referred to this alleged "products liability explosion". See *Congressional Record—Senate* S-5107 (April 30, 1986).

[13] See, "A Preliminary Examination of Available Civil Criminal Trend Data in State Trial Courts for 1978, 1981 and 1984", produced by the Court Statistics and Information Management Project of the National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187-8798 (April, 1986).

[14] See page 1 of study cited in Footnote 8 above. To the same effect, see "The Assault Upon Personal Injury Lawsuits: A Study of Reality vs. Myths" *Public Citizen*, Washington, D.C., p. 1 (August, 1986), which concludes as follows: "Available data indicate that there has not been a dramatic increase in tort cases filed in state courts, where approximately 95 percent of these lawsuits are filed. Data for the years 1978, 1981 and 1984 show that for state courts representing about 35 percent of the U.S. population, tort filings have paralleled growth in population." See, also, Bellotti, et al., "An Analysis of the Causes of the Current Crisis of Unavailability and Unaffordability of Liability Insurance", pp. 21-36, a Report by the Attorneys General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin prepared for the National Association of Attorneys General (May, 1986), which concludes that "the evidence shows no vast or explosive increases in claims or payments to victims."

[15] See page "ADD ONE" of study cited in Footnote 8 above.

[16] See page "ADD TWO" of study cited in Footnote 8 above. "Whatever the explanation, there is no evidence to support the notion of a nationwide increase in lawsuits in the state trial courts between 1981-84." See Part II, second page, of study cited in Footnote 8 above.

[17] Statement of Gustave Shubert, Director, Rand Institute For Civil Justice, before the National Conference of State Legislatures, Denver, Colorado, January 4, 1986. Source: National Insurance Consumer Organization Memo, page 2, entitled, "Insurance Industry Tall Tales." National Insurance Consumer Organization, 121 N. Payne Street, Alexandria, Virginia 22314.

[18] *Congressional Record—Senate* S-5107 (April 30, 1986).

[19] Concerning this source, see National Insurance Consumer Organization memo entitled, "Insurance Industry Tall Tales" which states in part as follows: "The figures disseminated by the insurance industry are the average of awards to plaintiffs reported by Jury Verdict Research, Inc., of Solon, Ohio, which collects cases it learns about through a clipping service it subscribes to, through legal publications such as the ATLA Law Reporter, through reports directly from plaintiff's lawyers, and through reports by a small fraction of court's clerks. Since the popular press, understandably, report only the big cases, and since plaintiff's lawyers report only their great victories, the average of awards to plaintiffs collected by JVR is far higher than the average of awards to all plaintiffs. Moreover, JVR's data do not include defense verdicts, which consistently account for more than half . . . of all jury verdicts. Finally, JVR includes in its database both verdicts that were remitted by the judge . . . and verdicts that were later reversed on appeal."

[20] See May 20, 1986, Transcript of Senate Commerce Committee, Subcommittee on Consumer Affairs Hearing, p. 25 (15-16).

[21] See Transcript, *supra*, Note 15, pp. 27(25)-28(2).

[22] See Transcript, *supra*, Note 15, p. 27(3-13).

[23] See release of the White House Office of the Press Secretary, "Remarks by the President to the American Tort Reform Association," page 2 (May 30, 1986).

[24] Andrew Lang, *The Penguin Dictionary of Quotations*, page 230, ¶ 15 (1960). It is also interesting to note that the President also made several references to Mark Twain in his remarks to the American Tort Reform Association. Mark Twain is generally credited with the famous reference to statisticians: "There are liars, damn liars, and statisticians."

[25] The Rand Institute for Civil Justice reports that during the period 1960-1979, the median jury award in products cases was approximately $37,000 in San Francisco County, California, and $115,000 in Cook County, Illinois. See Shanley & Peterson, "Comparative Justice: Civil Jury Verdicts in San Francisco and Cook Counties, 1959-1980", pp. 14-15 (Rand Institute for Civil Justice, 1983).

[26] This study is being conducted under the supervision of Professor Patrick Hubbard of the University of South Carolina School of Law. Statistics are being gathered from the Office of the South Carolina Court Administration, the Federal District Court for the District of South Carolina, and 26 of South Carolina's 46 counties which account for approximately 80% of the cases filed during the 10-year period 1976-1985. Results of this phase of the study are expected to be published during the Fall of 1986.

[27] Greenville County.

[28] See, Minority Views of Senator Ernest F. Hollings, Report on the "Product Liability 'Reform' Act", Report #99-422 (Calendar #856), page 110 (August 15, 1986). The "South Carolina Verdict Survey" By Jury Verdict Research, Inc., states that jury verdicts in South Carolina are 15% above the national average and that verdicts in Greenville County are 3% above the national average.

[29] Page & Stephens, "The Product Liability Insurance 'Crisis'," 13 *Capital Univ. L. Rev.* 387, 401 (1984). See, also, Report of the Attorney General of the States of Massachusetts, California, North Carolina, Texas, West Virginia and Wisconsin, cited in Footnote 7 above, which concludes: "The statistics cited do not show meaningful increases in the number or size of awards, or in the non-economic damage portion of the awards."

[30] Daniels, "Punitive Damages: The Real Story", pp. 60-63, *American Bar Association Journal* (August 1, 1986): "Product liability cases accounted for less than 5% of all [punitive damages] verdicts at all sites except Los Angeles County, where the percentage was 9.6%." *Id.* at 61.

[31] ". . . Nor is it any small merit in this arrangement . . . to have the benefit of a trial, in which the judge and jury are a check upon each other; and that this *benefit* may always be enjoyed. . . . Thus considered, the distinction between the office of judge and jury seems to claim our utmost respect. May this wise distribution of power between the two long continue to flourish, unspoiled . . . ." *Coke's Institutes on the Laws of England*, Vol. I, § 234, p. 155b (1628).

[32] On motion for a new trial, the trial judge has the discretion to grant a conditional new trial or a new trial *nisi* unless the plaintiff agrees to remit [reduce] a portion of the verdict. The practical effect of this procedure is to grant the trial judge with discretionary power to reduce the verdict.

[33] 66 *C.J.S.*, New Trial, § 76, page 241.

[34] See Annotations: 35 ALR4th 441 (1985); 16 ALR4th 238 (1982); 16 ALR4th 736 (1982); 16 ALR4th 1127 (1982); 15 ALR4th 294 (1982); 15 ALR4th 519 (1982); 14 ALR4th 328 (1982); 14 ALR4th 539 (1982); 13 ALR4th 183 (1982); 13 ALR4th 212 (1982); 12 ALR4th 96 (1982); 52 ALR3d 1289 (1973); 49 ALR3d 934 (1973); 47 ALR3d 909 (1973); 47 ALR3d 971 (1972); 46 ALR3d 680 (1972); 46 ALR3d 733 (1972); 12 ALR3d 117 (1967); 12 ALR3d 475 (1967); 11 ALR3d 9 (1967); 11 ALR3d 370 (1967).

[35] Although § 402A of the "*Restatement of Torts, 2d* is commonly referred to as "strict liability", it only applies to products which, at the time of manufacture or sale, are defective and unreasonably dangerous. *Comment i.* specifically states that "the rule stated in this section applies only where the defective condition of the product makes it unreasonably dangerous to the user or consumer. . . ."

[36] *Restatement of Torts, 2d*, § 395, by the American Law Institute provides that "a manufacturer who fails to exercise reasonable care in the manufacture of a [product] . . . involving an unreasonable risk of . . . physical harm . . . is subject to liability for physical harm caused to them by its lawful use in a manner and for a purpose for which it is supplied." According to the reporter's notes, this rule, based on *MacPherson v. Buick Motor Co.*,

217 N.Y. 382, 111 N.E. 1050 (1916), "is now all but universally accepted in the United States." See Appendix to *Restatement of Torts, 2d*, § 395, page 416. "Mississippi was perhaps the last jurisdiction to accept *MacPherson*". *Frumer & Friedman, Products Liability*, § 5.03[1], page 26, citing *Stone Mfg. Co. v. Hodges*, 189 So.2d 113 (Miss. 1966), *cert. den.* 386 U.S. 912 (1967).

[32] *Restatement of Torts, 2d*, § 388, adopted by the American Law Institute provides that "one who supplies . . . a [product] for another to use is subject to liability . . . for physical harm . . . if the supplier . . . has reason to know that the [product] is . . . likely to be dangerous for the use for which it is supplied, and . . . fails to exercise reasonable care to inform them of its dangerous condition or of the facts which make it likely to be dangerous." For authorities supporting this rule, see Appendix to *Restatement of Torts, 2d*, § 388, and Frumer & Friedman, *supra*, Note 31, ¶ 8.

[33] *Uniform Commercial Code*, § 2-315, provides that "where the seller . . . has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose."

[34] This principle is embodied in *Restatement of Torts, 2d*, § 402A, adopted by the American Law Institute in 1964. Commonly called "strict liability", the principle has been adopted in all states except Massachusetts, North Carolina, Virginia and Wyoming.

[35] In his introduction of the Administration's proposed Product Liability Reform Act, Senator Kasten speaks of a "return to a fault-based liability standard for product designs and warnings." See *Congressional Record—Senate* (April 30, 1986).

[36] *Black's Law Dictionary*, page 1275 (5th Ed., 1979) defines "strict liability" as follows: "A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety. . . ."

[37] "The liability we are considering is 'strict' in the sense that there is no need to prove that the manufacturer was negligent. . . . Yet, the manufacturer is not an insurer of the product's safety; *strict liability is not absolute liability.* As a [requirement] to recovery, the plaintiff must prove the product was defective." Schwartz, "A Products Liability Primer", 33 *ATLA J.* 64, 69-70 (1970) [Emphasis added].

[38] The headnote to 72 *C.J.S. Supp*, Products Liability, § 11, p. 17, states as follows: "There can be no liability for injury owing to a product unless that product is defective, regardless of whether the recovery is sought on the theory of strict liability, breach of warranty, or negligence."

[39] Section 2(a)(4) of the proposed "Product Liability Reform Act of 1986" (the Administration Bill or "Kasten Amendment") states: "Where product liability law is not based on fault or wrongdoing by the defendant, product liability law often operates to punish and deter conduct and activities which are beneficial and promote the public welfare." It is difficult for us to see how the manufacture and distribution of defective and unreasonably dangerous products is a "beneficial" activity which "promotes the public welfare".

[40] In introducing the Administration Bill (Kasten Amendment), Senator Kasten stated that, "Our courts have held persons liable for failing to warn about product dangers which were unknowable at the time; . . . and held liable those who failed to warn about product uses which were totally unforeseeable." *Congressional Record—Senate* (April 30, 1986). Having researched, followed and practiced products liability law for 20 years, I have no knowledge of any such cases. In any event, it seems that Senator Hollings' comment to one of the product liability reform witnesses at the May 20, 1986, Senate Commerce Committee Hearing is particularly appropriate here: "It strikes me that what you need are some better lawyers." [Transcript, p. 93 (19-20)].

[41] Kimble & Lesher, *Products Liability*, § 73, pp. 121-124 (West's Handbook Series 1979). This rule is contained in § 395 of the *Restatement of Torts, 2d* by the American Law Institute. Comment *b.* to this section states as follows: "This section states the rule thus generally adopted. The justification for it rests upon the responsibility assumed by the manufacturer toward the consuming public, which arises, not out of contract, but out of the relation resulting from the purchase of the product by the consumer, *upon the foreseeability of harm if proper care is not used;* upon the representation of safety implied in the act of putting the product on the market; and upon the economic benefit derived by the manufacturer from the sale and subsequent use of the [product]."

[42] "The duty to warn unquestionably rests on foreseeability, as does liability in negligence on other grounds in products liability cases." Frumer & Friedman, *Products Liability*, Vol. I, § 8.03[1], p. 161. "Foreseeability must be based on the manufacturer's notice or knowledge of the danger. But . . . the manufacturer must keep abreast of scientific advances, is under the duty to make tests to ascertain the nature of his product, and either has or should have a superior knowledge of his product. . . ." *id.* at p. 164.

[43] See 77 *C.J.S.*, Sales, § 374, p. 1318, at footnote 7. The "essential issue" in products cases based both on negligence and implied warranty is foreseeability. The manufacturer "must be expected to anticipate the environment which is normal for the use of his product and . . . he must anticipate the reasonably foreseeable risks of the use of his product in such an environment." *Gardner* v. *QHS, Inc.*, 448 F.2d 238, 242-243 (4th Cir. 1971), quoting from *Spruill* v. *Boyle-Midway, Inc.*, 308 F.2d 79, 83-84 (4th Cir. 1962).

[44] "The ordinary tort rules of causation are applicable in products liability cases, whether the basis of recovery is negligence or strict liability. Recovery in any products liability action requires that the injury incurred must have been actually caused by the defective condition of the product. In addition . . . the defect must be the legal or proximate cause of the harm. . . . This requirement of proximate cause is usually phrased in terms of foreseeability of danger or harm, with foreseeability held to mean that which it is objectively reasonable to expect, not merely what might conceivably occur. . . ." 72 *C.J.S. Supp*, Products Liability, § 30, pp. 46-48.

[45] "No man e'er felt the halter draw, with good opinion of the law," John Trumbull, from Evans, *Dictionary of Quotations*, p. 378 (1968).

[46] See, Minority Views of Senator Slade Gorton, who stated that the proposed "Product Liability 'Reform' Act", "rather than reducing transaction costs, is likely to increase them significantly." See, Report on "The Product Liability 'Reform' Act", *supra*, Note 23, page 102. See, also, Minority Views of Senator Gore, who stated: "Instead of establishing an efficient system of prompt and fair recoveries while reducing transaction costs, the Committee Bill will serve only to complicate and lengthen the litigation process. . . ." Report, *supra*, page 123.

[47] "This revision of the joint and several liability doctrine will prohibit a victim from recovering for any harm committed by a potential defendant that has not been sued. Consequently, [it] encourages victims to identify and sue each and every party that may be remotely responsible for the injury. That change will increase the number of parties before the court, the number of issues and motions to be resolved, the cost of litigation, and, in many instances, the complexity of a given case." Minority Views of Senator Gore, Report, *supra*, Note 23, page 123.

[48] See, Minority Views of Senator Slade Gorton, Report, *supra*, Note 23, page 101.

[49] See, for example, Prosser, "The Assault Upon the Citadel (Strict Liability to the Consumer)", 69 *Yale Law J.* 1099, 1115-1116 (1960) and Prosser, "The Fall of the Citadel (Strict Liability to the Consumer)", 32 *ATLA J.* 21-25 (1968).

[50] See, so-called "expedited settlements" provisions in Title II of the proposed "Product Liability 'Reform' Act", Senate Bill 2760, 99th Congress, Second Session, Calendar No. 856, §§ 201-206.

[51] "I have but one lamp by which my feet are guided, and that is the lamp of experience." Patrick Henry, *Bartlett's Familiar Quotations*, p. 465A (14th Ed., 1968). This is one of the great advantages of the common law. In each case, the court considers, not only the philosophy of abstract legal principles, but the practical effect of rules of law in a variety of individual situations.

[52] Referred to as "alternative dispute resolution mechanisms". [Transcript, 13 (18-19)].

[53] Transcript of May 20, 1986, hearing, p. 13 (18-20). In introducing his Bill on May 20, 1986, Senator Danforth referred to "a simple alternative settlement system that makes injured persons whole on an expedited basis and without the costs associated with prolonged litigation."

[54] See, Minority Views of Senator Gore quoted in Footnote 47 above.

[55] The proposed "Product Liability 'Reform' Act", Senate Bill 2760, *supra*, Note 50, § 308, proposes to abolish joint and several liability for "non-economic damages".

[56] Under the proposed "Product Liability 'Reform' Act" § 308(a), the manufacturer's responsibility for resulting damages would be reduced by the pro rata fault of both parties and non-parties. See, Minority Views of Senator Gore, quoted in Footnote 47 above. The practical effect of such provisions would be to encourage the manufacturer to point the blaming finger in each case in as many directions as possible and to force the plaintiff, for his own protection, to add all of them as parties to the action.

[57] "Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the [defendant] the payment should not be deducted from the damages which he would otherwise collect from the [defendant]. . . . In other words, a defendant . . . may not benefit from the fact that the plaintiff has received money from other sources as a result of the defendant's tort, *e.g.* sickness and health insurance." *Black's Law Dictionary*, p. 238 (5th Ed., 1979).

[58] In describing the proposed Product Liability Reform Act of 1986 (Administration Bill—Kasten Amendment) to the Senate Commerce Committee, Attorney General Meese stated that this proposed legislation "provides for the modification of collateral compensation doctrines to eliminate double recoveries by the plaintiffs." Transcript of May 20, 1986, Hearing, p. 13 (15-17).

[59] Under §§ 102(a)(3), 102(a)(11), 201(b), 201(c), and 204, if the defendant makes a settlement offer, the injured product victim's recovery for economic damages is restricted to "net economic loss" after deducting all so-called "collateral benefits", including "all benefits and advantages received or entitled to be received" under "any life, health or accident insurance or plan, wage or salary continuation plan, or disability income or replacement service insurance or any benefit received or to be received as a result of participation any prepaid medical plan or health maintenance organization." Proposed Act, *supra*, § 102(a)(3).

[60] As to the collateral source rule, see generally, *Helfend* v. *Southern California Rapid Transit District*, 84 Cal.Rptr. 173, 465 P.2d 61 (1970); *Hudson* v. *Lazarus*, 217 F.2d 344, 346 (D.C. Cir. 1954); *Hueper* v. *Goodrich*, 314 N.W.2d 828 (S.Ct. Minn. 1982); *Harding* v. *Town of Townshend*, 43 Vt. 534 (1870); *Restatement of Torts, 2d*, § 920A, Comment *b.*; Hogan, "The Collateral Source Rule: Its Justification and Its Defense", 19 *Trial* 58 (February, 1983); Stein, "Compensation from a Collateral Source", Chapter 10 in *Damages and Recovery—Personal Injury and Death Actions*, pp. 287-324 (1972); Averbach, "The Collateral Source Rule", 21 *Ohio St. L.J.* 231 (1960); Maxwell, "The Collateral Source Rule in the American Law of Damages", 46 *Minn. L.Rev.* 669 (1962); Comment, "Damages—The Collateral Source Rule", 63 *Va. L.Rev.* 177 (1961).

[61] Senate Bill 2760, 99th Congress, Second Session, Calendar No. 856, § 205(a).

[62] "Excess . . . proceeds." See *Winston* v. *United States*, 342 F.2d 715 (9th Cir. 1965). "An unexpected gain, piece of good fortune, or the like." *Random House Dictionary of the English Language*, p. 1636 (Unabridged Ed., 1973). See 46 *Words and Phrases*, p. 36.

[63] Senate Commerce Committee Transcript, p. 13 (12-14), (May 20, 1986).

[64] "*Present value of future damages.* An allowance for future damages must be reduced to its present value, and in passing on such damages, the jury may allow only such sum as put at simple interest would, with interest accumulations, amount to such damages at the time or times in the future when the jury find from the evidence they will be sustained." 25A *C.J.S.*, Damages, § 194, p. 259. See, also, *Am.Jur.2d*, Damages, §§ 26-29.

[65] Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability, pp. 2, 33-34 (February, 1986).

[66] Under the *Restatement of Torts, 2d*, § 431, there is no liability unless the defendant's conduct "is a substantial factor in bringing about the harm." *Comment a.* to § 431 states: "In order to be a legal cause of another's harm, it is not enough that the harm would not have occurred had the actor not been negligent. . . . This is necessary, but it is not of itself sufficient. The negligence must also be a substantial factor in bringing about the plaintiff's

harm." Listed in the Appendix to § 431 are no less than 44 pages of citations to cases which have repeatedly applied this principle in virtually every American jurisdiction.

[67] The Report of the Tort Policy Working Group, *supra*, Note 65, cites no authority for its "deep pocket" theory. See, pp. 33-34, Footnotes 28-34. The Rand Institute's booklet by Chin & Peterson entitled, "Deep Pockets, Empty Pockets, Who Wins in Cook County Jury Trials" (1985) is based on one data source only [page xi] and admits: "Patterns that we observed could reflect differences in liability issues among trials. . . ." [page x]. "These findings do not necessarily mean that juries treated types of litigants differently. It is possible that trials differed among types of defendants in ways not examined in our analyses. Most important, our analyses did not take liability issues into account. . . ." [page v].

[68] "Some researchers have hypothesized that plaintiffs receive large jury awards because jurors view certain defendants as having 'deep pockets'. However, interviews with jurors in federal and state courts in southeast Pennsylvania revealed no significant finding that awards were based on the ability of the defendant to pay. The jurors' decisions rested primarily on their consideration of whether the plaintiff deserved to win based on the facts of the case and the applicable law, as well as the necessity to deter misconduct." Minority Views of Senator Ernest F. Hollings, Report on the "Product Liability 'Reform' Act", *supra*, Note 23, page 113, citing Guinther, "The Jury in America" (Preliminary Report prepared for delivery at Earl Warren Conference, Cambridge, Mass., June, 1986).

[69] See, Report of Tort Policy Working Group, *supra*, Note 65, page 2.

[70] See, Testimony of Attorney General Meese, Senate Commerce Committee Hearing, p. 13, lines 23-25 (May 20, 1986); Report of Tort Policy Working Group, *supra*, Note 65, pp. 72-74.

[71] The Report of the Senate Commerce Committee on page 3 cites a study by the Insurance Organization on approximately 25,000 closed claims which concluded that, of every $1 paid in claims, the insurance industry paid "an average of 42¢ in defense costs", 67¢ went to the victim and 33¢ went to the victim's attorney. Therefore, of each $1.42, 47% went to the product victim, 30% to the product manufacturer's attorney, and only 23% to the injured victim's attorney.

[72] See, "Media Blitz: Insurers Claim Lawsuit Crisis", 72 *American Bar Association Journal* 19 (June 1, 1986). The Insurance Information Institute is "supported by more than 300 insurance companies". See "The Lawsuit Crisis" cited in Footnote 73 below, page 7.

[73] Insurance Information Institute pamphlet entitled, "The Lawsuit Crisis", p. 4 (April, 1986). Pushing for "higher awards" for catastrophically injured victims is required by Canon VII of the *Code of Professional Responsibility* which requires a lawyer to represent his client "zealously within the bounds of the law." Even the supporters of products liability "reform" admit that "numerous studies have found that the tort system" is guilty of "underpaying people with the most serious losses." Senate Commerce Committee Report on the "Product Liability 'Reform' Act", Report 99-422 (Calendar No. 856), page 4 (August 15, 1986).

[74] Majority Report of Senate Commerce Committee on the Proposed Product Liability Reform Act, Report 99-422 (Calendar No. 856), p. 4 (August 15, 1986).

[75] See, Senate Bill 2760, § 204(c).

[76] See, for example, Additional and Minority Views in Senate Commerce Committee Report. Senator Stevens called the caps "inappropriate" [p. 98]. Senator Rockefeller called them arbitrary and "nowhere near sufficient" [p. 99]. Senator Gorton called them an "incredible injustice" [p. 101]. Senator Hollings quoted an insurance executive, who said they would inflict "substantial injustice" [p. 104]. Senator Inouye called them "unjust to the point of absurdity." [p. 116]. And Senator Gore said that caps "would work the greatest injustice against individual victims" [p. 118] and concluded that "Congress must not sacrifice justice to reduce the cost of litigation." [p. 119]. "The [provisions of the Product Liability 'Reform' Act] effectively leave injured persons without anything approaching fair compensation for pain and suffering. . . ." [Senator Gore, p. 124].

[77] Senate Bill 2760, § 103(a).

[78] Senate Bill 2760, §§ 103(e) and 302.

[79] See, Senate Bill 2760, §§ 103, 301, and 302.

[80] Senate Bill 1760, § 205. "*Present value of future damages.* An allowance for future damages must be reduced to *its present value*, and in passing on such damages, the jury may allow only such sum as put at simple interest would, with interest accumulations, amount to such damages at the time or times in the future when the jury finds from the evidence they will be sustained." 25A *C.J.S.*, Damages, § 194, p. 259. See, also *Am.Jur.2d.*, Damages, §§ 26-29.

[81] See, Senate Bill 2760, § 102(a)(3). Laws which would give the wrongdoer, regardless of the degree of his guilt, a credit for the injured victim's life insurance or hospital insurance, no matter what the sacrifice or amount of premiums which the victim has scrimped and saved to pay, demonstrates the incredible injustice of the entire concept of this so-called "Product Liability 'Reform' Act".

[82] Senate Bill 2760, § 102(b).

[83] See, Senate Commerce Committee Report on Senate Bill 2760, *supra*, Note 23, p. 3, which cites a 1977 survey of approximately 25,000 closed claims conducted by the Insurance Services Office. This survey found that "insurers paid an average of 42¢ in defense costs" per $1 of claims paid against a typical plaintiff's "contingent fee of 33¢ in legal costs."

[84] See, Report of Tort Policy Working Group, Recommendation No. 7, pp. 72-74 (February, 1986), which recommends "scheduling contingency fees". See, discussion in § (1) on pp. 22-23 above.

[85] *Liability Week*, Vol. 1, No. 8, p. 1 (June 23, 1986).

[86] See, for example, the recent publication entitled, *The Need for Legislative Reform of the Tort System* (May, 1986), which lists 134 "endorsing organizations." However, two-thirds of these organizations are made up of medical groups such as the American Medical Association, trade associations such as the National Association of Manufacturers, and professional groups such as the American Institute of Architects. The remaining one-third are mainly made up of contractors, business executives, manufacturers, and insurance industry organizations such as the National Constructors Association, U.S. Business and Industrial Council, the American Insurance Association, General Motors, and AMOCO.

[87] See, for example, "Media Blitz: Insurers Claim Lawsuit Crisis", 72 *ABA J.* 19 (June 1, 1986), which states that "the property and casualty insurance industry has launched a $6.5 million television and print advertising campaign seeking changes in tort laws. . . . The insurance industry's campaign began in March with ads in Sunday newspaper magazines in 12 states. . . . Ads have since appeared in *Time*, *Newsweek*, and *Readers' Digest*. The television ads were slated to run on the NBC Nightly News. . . . The print ads include a coupon that can be sent to the Insurance Information Institute for 'The Lawsuit Crisis' pamphlet. . . ." according to this pamphlet, the Insurance Information Institute "is supported by more than 300 insurance companies." See "The Lawsuit Crisis", p. 7 (Insurance Information Institute) (April, 1986).

[88] See, for example, "Issue Brief, A Public Policy Summary on Product Liability Tort Reform" by the National Association of Manufacturers (January, 1986) in which the NAM claims to have "provided substantial additional input during the drafting process" of the so-called "Product Liability 'Reform' Act".

[89] This would include physicians who want immunity from liability for medical malpractice, architects who want immunity from liability for defectively designed structures such as the falling skywalks of Kansas City, industrial polluters who seek immunity from liability for toxic waste, the asbestos industry, manufacturers of the Dalkon Shield, etc.

[90] See, for example, Olender, "The Great Insurance Fraud of the Eighties," *National Law Journal*, p. 15 (July 21, 1986); Stewart, "The 'Tort Reform' Hoax", *Trial* 89-94 (July, 1986); Butler, "'Insurance Crisis' A Camouflage for Greed," *Atlanta Journal/Constitution* (August 17, 1986; Hunter & Angoff, "Insurance Industry Fouls its Own Nest," *Los Angeles Times* (February 4, 1986).

[91] According to *Consumer Reports*, "In June, 1985, John Byrne, then Chairman of the Board of Geico, a major insurance company, told the Casualty Actuaries of New York that 'the insurance industry should quit covering doctors, chemical manufacturers, and corporate officers and directors.' Byrne also said, 'It is right for the industry to withdraw and let the pressure for [tort] reform build in the courts and in the state legislatures.'" "The Manufactured Crisis: Liability Insurance Companies Have Created A Crisis And Dumped It On You," *Consumer Reports*, p. 544-545 (August, 1986).

[92] See, *e.g.*, "'Industry Blackmail' Forces State Reversal of Insurance Reform," *Greenville News* (February 4, 1986).

[93] See, "The Manufactured Crisis," *supra*, Note 91, which states: "In its advertising and in most statements to the press and public, the insurance industry lays blame for the crisis on lawyers, juries, or victims . . . A more objective analysis suggests that the 'crisis' is of the insurance industry's own making. . . ." *Consumer Reports* cites a Washington State task force report which concluded that the so-called "crisis" is "mostly a result of poor management practices by the (insurance) companies" and a report by the New York Governor's Advisory Commission on Liability Insurance which said that the insurance industry's allegedly poor financial condition [only $75 billion in net profits during the past 10 years] "largely reflects self-inflicted wounds." See, also, "Tort Study Scorecard," *ABA J.*, p. 26 (September 1, 1986), which states that "ABA officials testified in February before a Senate subcommittee that a 5-year ABA tort study showed the system is working."

[94-173] See, *Random House Dictionary of the English language*, p. 1206 (Unabridged Ed., 1973), which defines the word "reform" as "the improvement or amendment of what is wrong, corrupt, unsatisfactory, etc."

[173] "Equal and exact justice to all men, . . . freedom of religion; freedom of the press, . . . and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages and the blood of our heroes has been devoted to their attainment. They should be the creed of our political faith . . .; and should be wander from them in moments of error or alarm, let us hasten to retrace our steps and to regain the road which alone leads to peace, liberty, and safety." Thomas Jefferson, First Inaugural Address, *Bartlett's Familiar Quotations*, page 472 (14th Ed., 1968). The 7th Amendment to the United States Constitution, ratified December 15, 1791, provides for the right of trial by jury in civil cases: "In suits at common law . . . the right of trial by jury shall be preserved . . ."

[174] From *Mason* v. *Sainsburry*, 3 Douglas 61 (Eng. 1782) and *Yeates* v. *White*, 132 Eng. Rep. 793 (Eng. 1838), it was adopted in the United States in *Propeller Monticello* v. *Mollison*, 58 U.S. 152 (1854) and *Althorfe* v. *Wolfe*, 22 N.Y. 355 (1860). It is now almost universally followed in the United States. See *Restatement of Torts, 2d*, § 920A, *Comment b.*, by the American Law Institute, which provides as follows: *"Benefits from collateral sources* . . . It is the position of the law that a benefit that is directed to the injured party should not be shifted so as to become a windfall for the tortfeasor. If the plantiff was himself responsible for the benefit, as by maintaining his own insurance or by making advantageous employment arrangements, the law allows him to keep it for himself. . . . One way of stating this conclusion is to say that it is the tortfeasor's responsibility to compensate for all harm that he causes. . . ." See, also, *Annotation*: "Collateral Source Rule: Hospital or Medical Insurance", 77 ALR3d 415 (1977).

[175] See Scott, *The Civil Law*, Vol. 4, p. 84 adn Vol. 6, p. 147 (1932). See, also, League, *Roman Private Law*, pp. 345-347 (1906) and Buckland, *A Manual of Roman Private Law*, § 141, p. 349 (1939).

[176] § 302(b) of Senate Bill 2760 provides that a product seller could be held liable for failure to warn only if he failed to pass on "written warnings or instructions received while the product was in the product seller's possession and control." This would apply regardless of the product seller's own independent knowledge of the dangerous nature of the product. Therefore, proof that the product seller knew of the danger, or that he received oral warnings from the product manufacturer, or written warnings from some other source, would not be sufficient to establish liability under this so-called "reform".

[177] See, for example, *Waters-Pierce Oil Co.* v. *Deselms*, 212 U.S. 159, 177-178, 29 S.Ct. 270, 275-276, 53 L.Ed. 453 (1909); *Huset* v. *J.I.Case Threshing Machine Co.*, 120 Fed. 865 (8th Cir. 1903); *Louis* v. *Terry* 111 Cal. 39, 43 Pac. 398 (1896); *Schubert* v. J.R. Clark Co., 49 Minn. 331, 51 N.W. 1103 (1892). See cases collected in the Reporter's Notes to the Appendix to § 388 of the *Restatement of Torts, 2d*,

pp. 373-374. See, also *Restatement of Torts, 2d*, § 388.

[178] § 302(a) of the Senate Bill 2760 limits the product seller's liability to "independent acts of negligence or breach of express warranty" independent of any express warranty made by [the] manufacturer." Therefore, by necessary implication, § 302(a) abolishes §§ 2-314 and 2-315 of the *Uniform Commercial Code* which has been adopted in all 50 states. See, generally, 3 Squillante & Fonseca, *Williston on Sales*, §§ 15-19 through 15-23, pp. 387-412 (Lawyers Co-op., 1974).

[179] Section 1641 of the *Code Napoleon*, adopted in France in 1804, provides that "the vendor is bound to warranty by reason of concealed defects in the thing sold which render it unfit for the use to which it is destined. . . ." Liability for implied warranty is now codified in § 2-315 of the *Uniform Commercial Code* adopted in all 50 states. Implied warranties under English common law have existed for more than 200 years. See *Blackstone's Commentaries on the Laws of England*, Vol. III, page 158, which states that implied contracts "are such as reason and justice dictate, and which therefore the law presumes that every man has contracted to perform; and, upon this presumption, makes him answer to such persons, as suffer by his nonperformance." See, also, *Blackstone*, Vol. III, page 165, which states: "In contracts for provisions it is always implied that they are wholesome; and, if they be not, the same remedy may be had. Also if he, that selleth any thing, doth upon the sale warrant it to be good, the law annexes a tacit contract to this warranty, that if it be not so, he shall make compensation to the buyer: else it is an injury . . . for which an action . . . will lie to recover damages."

[180] See, § 320(a) of Senate Bill 2760 quoted in Footnote 78 above, which abolishes by necessary implication strict liability and implied warranty on the part of the product seller.

[181] See Reporter's Notes to § 402A of the *Restatement of Torts, 2d.*

[182] "Beginning about 1431", according to Dean Prosser. See Prosser, "The Assault Upon the Citadel (Strict Liability to the Consumer)", 69 *Yale Law J.* 1099, 1104 (1960). Columbus was born around 1446.

[183] *Van Bracklin* v. *Fonda*, 12 Johns. 468 (N.Y. 1815) called it "a principle, not only salutary, but necessary to the preservation of life and health." See Prosser, *supra*, Note 46, page 1104.

[184] See "Beyond Food", Prosser, *Supra*, Note 46, pp. 1110-1114.

[185] "A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." *Greenman v. Yuba Power Products, Inc.*, 59 Cal.2d 57, 27 Cal. Rptr. 697, 377 P.2d 897 (1963).

[186] See § 402A of the *Restatement of Torts, 2d.*

[187] The exceptions are Massachusetts, Virginia, North Carolina, and Wyoming.

[188] See, Footnote 185 above.

[189] By abolishing the collateral source rule, the proposed Act would effectively abolish the right of most product victims to recover for their medical expenses and loss of wages. To the extent that "net economic loss" exists, Senate Bill 2760, § 201(g), places the determination of all such issues in the hands of the judge. Arbitrary caps on damages deprive the catastrophically injured product victim of his right to a jury trial. See, §§ 102(a)(6) and 204(c). The victim's current rights to a jury trial against the product seller are effectively abolished by the abolition of strict liability, implied warranty, and failure to warn on the part of the product seller. See, §§ 302(a) and 302(b).

[190] *Random House Dictionary of the English Language*, p. 775 (Unabridged Edition 1973).

[191] See, Minority Views of Senator Daniel K. Inouye of Hawaii, who stated: "A cap [on damages] . . . amounts to telling a victim that, as a matter of Congressional policy, the pain that he has suffered or quality of life he has lost is worth only $150,000, $250,000, or some arbitrary figure selected because it sounds fair. I believe this is unjust to the point of absurdity." Senate Commerce Committee Report on Senate Bill 2760, page 116. See, also, Minority Views of Senator Albert Gore, Jr., of Tennessee, who stated that, "The Committee Bill . . . fails to assure justice, fairness and adequate compensation for those injured by defective products. . . ." Report, *supra*, page 117. Senator Gore stated that the Bill would "Effectively leave injured persons without anything approaching fair compensation for pain and suffering. . . ." Report, *supra*, page 124.

[192] Perlman, "All Pain and Suffering Is Not Equal," *Trial, p. 5 (June, 1986).*

The PRESIDING OFFICER. Is there further debate on the motion to proceed?

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I could have the attention of the majority leader for a moment.

I wonder if the majority leader might help me by answering a question, if he can. Since the vote of some could be affected by what happens after the vote, is the majority leader in a position to tell us what his plans are relative to this bill in the event that the motion to proceed is agreed to?

Mr. DOLE. Mr. President, if I had my "druthers," we would pass the bill. But it is fairly obvious, after two or three votes—and we have given this a pretty good shot—that it is not going to happen this year.

I hope to adjourn by October 3. I think we have a real opportunity to do that.

I have discussed this with the distinguished Senator from Wisconsin [Mr. KASTEN] who feels very strongly about this bill. I have discussed it with the chairman of the Commerce Committee, Senator DANFORTH, and I think that, realistically, after this vote, I will pull the bill from the calendar.

The PRESIDING OFFICER. Is there further debate on the motion to proceed?

Mr. KASTEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO PROCEED

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed. On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Arkansas [Mr. PRYOR] is absent because of illness in the family.

I further announce that, if present and voting, the Senator from Arkansas [Mr. PRYOR] would vote "yea."

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 84, nays 13, as follows:

[Rollcall Vote No. 295 Leg.]

YEAS—84

Abdnor	Glenn	McConnell
Andrews	Goldwater	Mitchell
Armstrong	Gore	Moynihan
Bentsen	Gorton	Murkowski
Biden	Gramm	Nickles
Bingaman	Grassley	Nunn
Boren	Hatch	Packwood
Boschwitz	Hatfield	Pell
Bradley	Hawkins	Pressler
Broyhill	Hecht	Proxmire
Bumpers	Heinz	Quayle
Burdick	Helms	Riegle
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Chiles	Kassebaum	Rudman
Cochran	Kasten	Sarbanes
Cohen	Kennedy	Sasser
Danforth	Kerry	Simon
Denton	Lautenberg	Specter
Dixon	Laxalt	Stafford
Dodd	Leahy	Stevens
Dole	Levin	Thurmond
Domenici	Long	Trible
Durenberger	Lugar	Wallop
Eagleton	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky

NAYS—13

Baucus	Hart	Metzenbaum
Cranston	Heflin	Simpson
D'Amato	Hollings	Stennis
DeConcini	Johnston	
Harkin	Melcher	

NOT VOTING—3

Garn	Pryor	Symms

So the motion to proceed was agreed to.

□ 1930

Mr. KASTEN. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HOLLINGS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KASTEN. Mr. President, I think this vote shows there is not only strong support but tremendous support for product liability reform

This overwhelming vote shows that almost all of my colleagues are ready to provide national uniformity and clarity to the product liability system. Only a tiny minority of my colleagues still resist a Federal solution to this national crisis. During the waning days of this 99th Congress, unfortunately, that minority has effectively prevented enactment of this legislation.

I find it particularly ironic that the tactics of delay, obfuscation, and use of legal technicalities have been used by this minority to prevent tort reform. These are the very tactics the trial attorneys use in the courtroom which have compelled the American public to demand Federal relief from the tort crisis. This is now the third Congress in which we have attempted to reform our product liability system. With each year, more and more of my colleagues have become convinced that Federal tort reform is absolutely essential. I am confident that next Congress we can begin action in the

other body and the Senate simultaneously and early so that we will not again be prevented from achieving reform by the special interests of a handful of trial attorneys. The American people are sick and tired of paying what is in effect a trial attorneys tax on every product they buy. They have a right to a fair, equitable, and uniform product liability system.

Next year, Congress can and will provide it.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I want to thank both the distinguished Senator from Wisconsin, Senator KASTEN, and the distinguished Senator from South Carolina, Senator HOLLINGS. As I indicated earlier, in my view there is strong support for this legislation, but it is obvious we are not going to conclude this year. We are in the last, hopefully, 6 or 7 days of the session. I commend the distinguished Senator from Wisconsin and others who support this. It is a bipartisan bill. But I believe those who oppose it feel just as strongly. It is fairly obvious to me that the best way to proceed at this point would be to ask unanimous consent that the product liability bill, S. 2760, be returned to the calendar.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HOLLINGS. I thank the distinguished majority leader.

Mr. President, let me ask unanimous consent that, since we brought this matter to a prompt close, Senators who wish to include their speeches be permitted to place their speeches into the RECORD if they send them to the desk during the next hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, for years, the Congress has been bombarded with stories from manufacturers about how they have been found liable for huge judgments in cases where either their conduct was not negligent or where the injured party grossly misused the product, thereby causing the injury. The early efforts at product liability reform reflected the manufacturers' concerns and were directed at changing the legal standards by which we assess liability in order to make them fairer for manufacturers.

However, when one examines the premises for these changes, it seems clear that such a tort "reform" effort was doomed from the start. The tort reform approach had two basic premises. First, it assumed that judges and juries had become sympathetic to victims and were twisting tort laws to find ways to compensate injured people. The notion was that injured people had inadequate other resources to care for themselves and that manufacturers, either because of their size or their insurance, were in a better position to absorb the losses. If this theory is correct, and I think there are good reasons to believe it, then it seems logical to me that the Congress could not devise any tort standards that a sympathetic judge and jury could not pervert if they really wanted to compensate people.

Second, the supporters of tort reform believed that by establishing Federal tort rules we would be able to reduce transaction costs because lawyers would not have to spend their time trying to determine the law in 51 different jurisdictions. Unfortunately, that premise does not reflect what attorneys bill their clients for in product liability cases. Rather than spending their time researching the law, lawyers spend the vast bulk of their time developing the facts, and tort reform would not change that need one iota.

To conclude that tort reform would not be a panacea for the manufacturers is not to conclude that we should keep the present system. In 1984, I set out to examine the existing data to see if perhaps the tort system was a bad one for victims as well, to see if there might be a common interest among victims and manufacturers in improving the present system. What I found should distress anyone concerned about providing prompt and adequate compensation for innocent people injured by defective products. I found a system that fails to pay a significant number of people we would all consider worthy of compensation; a system that grossly overpays people with small losses and sadly underpays those with the most serious losses; a system that takes too long to pay the people it does pay; and a system that is so inefficient that it pays more to lawyers than to victims.

These findings are consistent with other studies of the deficiencies of the tort system, dating back to 1933. A comprehensive survey of 24,452 claims done by the insurance services office in 1977 produced the following profile of claims:

One-third of all claims were closed with no payment whatsoever. While some of these claims undoubtedly involved negligent "vicims," they also included situations where we would all agree that the victims were innocent. For example, the tort system provides nothing for children injured for life by childhood vaccines because vaccines are "unavoidably unsafe" products. That is to say, they help more people than they hurt. Unfortunately, many of the people they hurt end up physically and mentally handicapped for the rest of their lives and their parents and relatives get no help from the manufacturers to care for them.

People with economic losses between $1 and $1,000 who were successful in their claims recovered an average of 482 percent of their economic losses—the amount over 100 percent being for noneconomic losses. On the other hand, people with the most serious injuries, those with losses over $100,000 recovered less than 100 percent of their economic losses. The most dramatic disparity between losses and recoveries was for the 10 people whose losses exceeded $1 million. Their recovery, net of their attorneys' fees, was only 6 percent.

The importance of compensating people with serious injuries is brought home equally graphically by the fact that people with losses over $100,000 were only 2 percent of the victims, but they incurred 78 percent of the losses.

For those people fortunate enough to recover, the average time to recover the average amount was fully 5 years, with people with the largest losses waiting even longer to recover. For people with inadequate other resources to pay for their medical and rehabilitation losses and their work losses, 5 years is an unconscionably long time.

Finally, analysis of the ISO data revealed that attorneys for both sides received slightly more than the victims.

The fact that attorneys make so much money from the system is not a criticism of attorneys; it is the logical result of a system that requires attorneys for resolution.

While the ISO data dates back to 1977, the basic conclusions have been confirmed in subsequent studies, including a July, 1986 Rand Institute for Civil Justice study of transaction costs and two Alliance of American Insurer studies of people with tort recoveries over $100,000.

If the tort system is a pernicious one for both victims and manufacturers, what can we do to improve it for all concerned? My answer, contained in Senate Amendment 10 to S. 100, was to create a system designed to encourage resolution of product liability cases outside of the legal system.

Thereafter I worked with Senator DANFORTH, and consumer, labor and business people to try to find an acceptable formulation of these standards. When Senator DANFORTH introduced S. 1999 in November, 1985, I cosponsored it because I hoped it would bridge the gap among the interested parties, although I was concerned that the standard for payment in the claims system was getting too complicated to be workable.

Unfortunately, after almost a year's work, we were unable to devise standards that the different parties were comfortable with. In brief, it seemed as if the business community was concerned that it would have to pay all persons injured by products and consumer groups were afraid that not enough people would be compensated. While I understand the difficulties and uncertainties when one is dealing

with new concepts, I was very disappointed that we could not get agreement to try a reasonable alternative to the tort system.

Nevertheless, I was extremely encouraged when Senator DANFORTH sought to devise a system using economic incentives to try to produce similar results. In light of the fact that many of the groups that were having difficulty with new standards had recommended such an alternative, I was hopeful that it might prove a second best solution.

The result of that process was S. 2760. It has some shortcomings in my mind—all actions having to be initiated through a court proceeding would increase transactions costs unnecessarily; the failure to include new standards for limited recoveries will mean that some innocent injured persons will not recover; manufacturers need more information to decide whether to pay; and limitations on recoveries can be unfair in some cases.

On the other hand, I think the test on this bill must be whether it would create a system which is demonstrably better than the present one; not whether it would create the ideal system. By this standard I think the arguments for enacting S. 2760 are very strong.

First, let me remind you about the present system. For victims, it is a lottery. Some recover big judgments. Some recover small ones. And some recover nothing. Far too often what you recover has little to do with how you were injured and the extent of your injuries. Instead, it has a lot to do with what State you were injured in; whether you have the economic resources to wait out a good settlement; how good your lawyer is; and how sympathetic your judge and jury are. No study of the tort system has ever shown that similarly injured people receive similar treatment. Such a system is not a system of individualized justice. It is a lottery.

And it is a system in which the victorious are often losers as well. While victims are waiting to recover—an average of 5 years—they are often forced to expend their assets and cannot afford to pay for needed rehabilitation. Oftentimes the uncertainty of future recovery creates every bit as much pain and suffering as the injury itself.

The system has similar deleterious effects on manufacturers. Small ones run the risk of being put out of business if they lose a suit, which might be appropriate if they were at fault but in many cases they are not. Large manufacturers can sometimes use their resources to wait out the victims and settle for very little. Sometimes they gamble and lose.

What will S. 2760 do to put an end to this lottery? The answer is that it will give manufacturers strong incentives to make fair settlements—payment of all net economic losses, without limitation on time, for small injury cases and payment of all net economic losses and $100,000 for noneconomic losses in cases of very serious injury.

And why will manufacturers make such offers when they don't today? Because if they make such an offer, and the injured person turns it down, the manufacturer's liability will be capped—at $50,000 for noneconomic damages in small cases and $250,000 in cases of very serious injury or death.

These numbers are arbitrary by definition, but I think the premise is sound—in order to encourage manufacturers to pay victims fair amounts, you are going to have to give them an incentive to do so. Having failed to find an acceptable incentive in terms of changes in the tort system, then economic incentives are one such option.

That brings me to the most controversial part of the bill—the caps. Many have said that $250,000 is not enough for the person who suffers a lifelong injury. In the abstract, I agree. But remember what we are doing here: we are comparing S. 2760 to the present system. So let me explain why I think the cap is beneficial:

While $250,000 for pain and suffering—before subtraction for attorneys' fees—may offend your and my sense of adequacy for a paraplegic, remember that the present system may pay that person nothing, for a whole host of reasons, or if the person is lucky enough to win, the data tells us that in cases of losses of $1 million or more, the average recovery is 6 percent.

The $250,000 cap would apply only in cases where a manufacturer agrees to pay that person's net economic losses and $100,000 for pain and suffering and makes the offer within 120 days after a suit is filed. That is vastly superior to the more than 5 years such a person would have to wait today.

If the manufacturer does not make such an offer, there would be no cap.

If you have no cap for serious injury cases, then the manufacturer has no incentive to make a settlement offer, because he knows he can wait out most victims and settle for a pittance. Furthermore, the present system gives the manufacturer little incentive to make an offer because such would be viewed as an admission of liability that would be the starting point for negotiations and because the offer would have to be large enough to cover the plaintiff's attorney's standard one-third fee.

In sum, the answer to the paradox of how a cap on a victim's recovery can produce fairer recoveries lies in comparison with the present system. The right of a seriously injured person to sue is important, but it does not compare with the right of that person to recover a fair amount in a timely fashion.

Finally, Mr. President, while I think the approach contained in S. 2760 is a fair one, it is evident that there is no magic to the numbers or even to the formulation. What is clear is that we must produce a system that is fairer than the present one for all parties and that we can do so. I respect the concerns expressed by Senator INOUYE and others and stand prepared to work with them to devise a better system to achieve this vital objective. We cannot guarantee the American public the ideal system, but we owe them our best effort to produce a better one.

Mr. LUGAR. Mr. President, there is no more important issue facing businesses today than the cost and availability of liability insurance, and the underlying need for product liability reform. Some of our colleagues have noted that our Nation's small business community spoke with a strong, unified voice last month in making liability reform the top policy priority at the White House Conference on Small Business. It is also important to note that ranking ninth on the Conference's list of 60 final recommendations was a call for enactment of S. 2760, with the Kasten-Lugar fault-based defense amendment. I urge my colleagues to move to consideration of this S. 2760 so that the Senate may consider this important issue of product liability and various amendments designed to improve the legislation.

The underlying legislation would be improved with the addition of some fault standards. Traditionally, tort law has held that those whose wrongful acts cause harm should be held responsible, and those who have not acted wrongfully should not be held responsible. But court actions in recent years have breached this long-standing principle of tort law.

The fault-based amendment Senator KASTEN and I want to offer does not establish a Federal product liability standard. The strict liability standards used in most States would continue to apply. The amendment does place an outer limit on State law by providing two defenses that preclude the imposition of "strict strict" or absolute liability.

Even though the amendment would affect the law in only a few States, it is nevertheless important to liability reform. Because national manufacturers are potentially liable for products that are sold and used in many States, their insurance costs must take into account the law in the most extreme State.

Adoption of a Federal product liability law and, specifically, a fault-based amendment is necessary for several reasons. First, a fault-based standard would restore some predictability to tort law. Holding manufacturers re-

sponsible for harm caused by the misuse of their products, or for risks that could not reasonably have been known at the time of manufacture, creates completely unlimited exposure. No one can predict all the ways a product might be misused, or what risks a new scientific process could discover in products manufactured years ago. The unpredictability, more than actual monetary awards, has created the crisis in liability insurance. The Kasten-Lugar amendment would eliminate two areas of unpredictability and, in the process, help to alleviate the liability crisis.

Adoption of a fault standard would also add fairness to the tort law. If an individual is harmed by his or her own actions in misusing or altering a product, it is unfair to hold someone else responsible. If a manufacturer could not reasonably have prevented harm, it has not acted wrongfully. In these two instances, this amendment would preclude the imposition of liability against innocent manufacturers. Clearly, however, if a business manufactures a defective product it should be responsible. Our efforts to reform the tort system should not change this important concept.

Continuation of the status quo is unacceptable. We should not continue an unpredictable system of tort law which lends itself to upward pressure on insurance premiums. We should not continue the unfairness of holding innocent manufacturers liable when their products are misused and when they could not reasonably have known about risks at the time of manufacture. We should not inhibit the development of new products nor should we continue a system that leads to the withdrawal of beneficial products from the market.

I urge my colleagues to move to the consideration of S. 2760. We should not and cannot maintain the status quo.

FEDERAL-AID HIGHWAY ACT OF 1986

Mr. DOLE. Mr. President, I understand clearance has been obtained from the distinguished minority leader that we can proceed with the appointment of conferees on the highway bill. I ask that the Chair be authorized to appoint conferees.

The motion was agreed to, and the Presiding Officer appointed the following as conferees on the part of the Senate:

ENVIRONMENT AND PUBLIC WORKS

First. For Title I of S. 2405 and Title I of H.R. 3129, and for section 204, 55 mph speed limit; section 202 (a)(1) Bridge replacement and rehabilitation program authorizations, (a)(2) Elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization; (a)(6) FHWA highway safety research and development authorization; section 209 Use of certain reports as evidence; section 210 Emergency call boxes; section 211 Railroad-highway crossings authorization; section 215 Railroad-highway crossing needs.

Mr. STAFFORD, Mr. SYMMS, Mr. CHAFEE, and Mr. ABDNOR.

Mr. BENTSEN, Mr. BURDICK, and Mr. MITCHELL.

FINANCES

Second. For Title III of S. 2405 and Title V of H.R. 3129, extending the Highway Trust Fund.

Mr. PACKWOOD, Mr. DOLE, and Mr. ROTH.

Mr. LONG, and Mr. BENTSEN.

BANKING, HOUSING AND URBAN AFFAIRS

Third. For provisions dealing with urban mass transportation (including title II of S. 2405 and title III of H.R. 3129).

Mr. GARN, Mr. HEINZ, and Mr. HECHT.

Mr. PROXMIRE, and Mr. DIXON.

COMMERCE SCIENCE AND TRANSPORTATION

Fourth. For provisions dealing with highway safety (including title II of H.R. 3129 except for Section 202 (a)(1) Bridge replacement and rehabilitation program authorizations, (a)(2) Elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization, (a)(6) FHWA highway safety research and development authorization; Section 209 Use of certain reports as evidence; Section 210 Emergency call boxes; Section 211 Railroad-highway crossings authorization; Section 215 Railroad-highway crossing needs.).

Mr. DANFORTH, and Mr. PACKWOOD.

Mr. HOLLINGS.

GOVERNMENTAL AFFAIRS

Fifth. For provisions dealing with the Uniform Relocation Act.

Mr. DURENBERGER, and Mr. ROTH.

Mr. CHILES.

HIGHER EDUCATION ACT AMENDMENTS—CONFERENCE REPORT

Mr. STAFFORD. Mr. President, I submit a report of the committee of conference on S. 1965 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) to reauthorize and revise the Higher Education Act of 1965, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their repective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 22, 1986.)

Mr. STAFFORD. Mr. President, I rise to urge the passage of S. 1965, the Higher Education Act Amendments of 1986. As chairman of the Subcommittee on Education, Arts, and Humanities, it has been my privilege to work with my colleagues in the Congress to develop and refine this vital piece of education legislation. Resolving over 600 items of disagreement in the Senate and House passed versions of this bill was no small task for the conferees to undertake. A prevailing spirit of compromise and a deep commitment to Federal support to students pursuing higher education enabled us to bring this bill before you today.

The compromises that were reached not only provide for continued Federal support of student financial aid programs, but they do so in a fiscally responsible manner. Included in S. 1965 are the legislative provisions necessary to meet the reconciliation instructions contained in the first concurrent resolution on the budet for fiscal year 1987. These provisions do not diminish the availability of financial assistance to eligible student borrowers. In fact, the conferees were able to reduce overall costs in the program by over $1.09 billion over 5 years while at the same time increasing the amount of loan assistance available for students for the first time in over 15 years.

When the reauthorization process began on the Senate side in February of 1985, the subcommittee members had two very important goals in mind in extending the student aid programs for 5 years. First, we wanted to make sure that 95 percent of Federal aid to higher education continued going directly to students. Our second priority was to restore the balance between grant and loan support. S. 1965 meets both of these targets. The maximum limits for the Pell grant, supplemental educational opportunity grant and State student incentive grant programs have been increased significantly, and the campus based aid programs have been better targeted on the neediest students.

At a time when Federal spending is so carefully scrutinized, and in order to increase the amount of assistance available to individual students, the question of eligibility had to be addressed as well. S. 1965 contains important revisions to the system of needs analysis which will serve to insure the fact that recipients of increased levels of Federal grants and loans are truly entitled to such assistance. Demographics on college campuses around the Nation have changed dramatically in the past 5 years and will continue to do so in the future. Barely 50 percent of students attending college today are in the 18-22-year

age range that we most often think of for students. Many students now have dependents of their own to support while attending classes and are working part time as well. S. 1965 fairly and equitably takes the financial needs of this new population on our campuses into account. An example of this consideration is the inclusion of child costs as an allowable expense in the revised need analysis system. Students with dependents, who have child-care costs, will be able to present a realistic budget of their school expenses to financial aid officers when their amount of Federal aid is determined.

Overall spending in S. 1965, though somewhat higher than in the Senate passed version of this legislation, is far less than our House counterparts would have liked. In December of last year, the House passed a higher education reauthorization with an $11.6 billion level in fiscal year 1987. In spite of that, all conferees agreed to a $10.2 billion cap with an overall 5 percent increase for the Higher Education Act in the out years. Furthermore, this cap is $1.6 billion less than current authorizations for the Higher Education Act.

I have included with my statement a summary of the conference agreements contained in S. 1965. I would also like to mention two technical corrections to the statement of managers. In the Guaranteed Student Loan Program Senate and House conferees worked out a compromise proposal pertaining to American students attending offshore medical schools. Two criteria for receipt of GSL's are described in the bill. Those provisions are to be interpreted as follows: either 60 percent of the students enrolled must be nationals of the country where the school is located or 45 percent of the U.S. students must pass the foreign medical graduates examination in 1987.

A second technical error that needs clarification pertains to title XI. Funds appropriated for that title are to be divided between parts a and b on a two-thirds one-third basis respectively.

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In closing, S. 1965 is a bill which I am very proud to bring before my colleagues. It represents the bipartisan efforts of all members of the Senate and House Education Subcommittees. Most importantly, it restates to the American public the Federal commitment to educational opportunity and excellence.

I want to thank my Senate colleagues on the Labor and Human Resources Committee for their great assistance and cooperation throughout this long process. I can truthfully say that all members of the Education, Arts and Humanities Subcommittee and their very capable staff have made significant contributions to S. 1965 at every step of the process, and I am proud to be chairman of a subcommittee with such fine members who care so greatly about education. I would like to read their names now: Senators HATCH, QUAYLE, WEICKER, WALLOP, THURMOND, PELL, KENNEDY, DODD, MATSUNAGA, and SIMON.

Finally, I want to especially acknowledge the constant support and guidance I have received from my partner, CLAIBORNE PELL. As usual he has made this process a pleasant one and has at every step in our sometimes difficult journey conducted himself with the utmost integrity, demonstrating once again that he is a gentleman and a leader.

Mr. President, at this time, I am delighted to yield the floor to Mr. PELL.

I ask unanimous consent to have a summary of the conference agreement printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF CONFERENCE AGREEMENT ON HIGHER EDUCATION AMENDMENTS OF 1986

COST

Current Law Authorization: $11.827 billion.
Current Appropriation: $8.796 billion.
Conference Agreement: $10.200 billion.

TITLE I—POSTSECONDARY PROGRAMS FOR NONTRADITIONAL STUDENTS

This is basically a rewrite of the discretionary grant program to provide assistance to adult and continuing education at the postsecondary level.

Current authorization: $63 million.
Current appropriation: 0.
Conference agreement : $10 million.

TITLE II—LIBRARIES

Part A—College Library Resources.—Program for College Library Resources provides assistance to needy libraries. Colleges would be eligible for grants of $2,000 to $10,000 depending upon the size of the institution and the number of disadvantaged students attending the school. This is a rewrite of the old program but with a targeting of funds to needy libraries. Initial authorization: $10 million.

Part B—Training and Development and Part C—Research Libraries.—These programs would be continued without major changes, but they would receive modest authorization increases.

Part D—College Library Technology and Cooperation.—This is a new discretionary grant program designed to help college libraries take advantage of technological advancements. Initial year authorization: $5 million.

Current authorization: $86 million.
Current appropriation: $6.7 million.
Conference agreement: $30 million.

TITLE III—INSTITUTIONAL AID

Strengthening Institutions provision would initially authorize $120 million to improve the academic quality, institutional management and fiscal stability of institutions that serve large numbers of disadvantaged students.

Strengthening Historically Black Institutions would initially authorize $100 million to upgrade the quality of these institutions.

Challenge Endowment Grants would be 50-50 matching grants to help institutions achieve financial independence. Initial year authorization of $20 million.

In addition, there would be a specific set-aside for community colleges—$51.4 million.

Current authorization: $270 million.
Current appropriation: $135 million.
Conference agreement: $245 million.

TITLE IV—STUDENT ASSISTANCE

Part A—Grants to Students.—

Subpart 1—Pell Grants.—The maximum grant (now at $2100) would go to $2,300 for 1987, $2,500, for 1988, $2,700 for 1989, $2,900 for 1990, and $3,100 for 1991.

Cost of attendance would be held at 60%, which means a maximum grant in the first year would be either $2,300 or 60% of the cost of attendance, whichever is less.

The Secretary of Education would be required to develop a simplified needs test for very low income families. The Secretary would also be encouraged to develop a simplified application form for the Pell Grant program.

Eligibility period: five full academic years for four-year programs; six full years for five-year programs.

Up to $1,000 in child care costs would be allowed in the calculation of eligibility for assistance in the Pell Grant program.

Students would be required to contribute up to $800 in self-help before being eligible for grant or loan assistance.

Less than half time students would become eligible for Pell Grant assistance in Fiscal 1989 if their families had a $0 expected family contribution. Those with expected family contributions between $0 and $200 would become eligible in Fiscal 1991.

Current authorization: $4.444 billion.
Current appropriation: $3.578 billion.
Conference agreement: $4.600 billion.

Subpart 2—Supplemental Educational Opportunity Grants.—The maximum grant would be increased from $2,000 to $4,000.

The minimum grant would be decreased from $200 to $100.

Priority in grant awards would be given to those students with the lowest expected family contribution at the school. This will make sure that this program is targeted to serving the most needy, deserving students.

Less than half time students would be eligible to receive supplemental grants. If counted, such students would receive a reasonable proportion of the institution's funds.

Current authorization: $725 million.
Current appropriation: $395 million.
Conference agreement: $490 million.

Subpart 3—State Student Incentive Grants.—These are federal grants to the states to support state scholarship and student aid programs. The maximum grant would be increased from $2,000 to $2,500.

Up to 20% of a state's funds could be used for a state work study program or community service work learning projects or both. Participation would be limited to students eligible for SSIG assistance and based upon need.

Current authorization: $250 million.
Current appropriation: $73 million.
Conference agreement: $85 million.

Subpart 4—Student Support Service Programs—TRIO Programs.—These programs include Upward Bound, Talent Search, Educational Opportunity Centers, and Special Services.

$1 million would be provided to fund a program giving special assistance to recruit

and help minority students pursue graduate study.

Current authorization: $490 million.
Current appropriation: $176 million.
Conference agreement: $205 million.

Subpart 5—Migrant Programs.—These programs include the High School Equivalency Program and the College Assistance Migrant Program.

Current authorization: $18 million.
Current appropriation: $7.5 million.
Conference agreement: $9.0 million.

Subpart 6—Byrd Honors Scholarship Program.—Program provides scholarships to talented high school graduates.

Current authorization: $8 million.
Current appropriation: None.
Conference agreement: $8 million.

Part B—Guaranteed Student Loans.—Every applicant would have to demonstrate financial need in order to obtain a loan. Currently, only families with incomes above $30,000 have to show need.

Loan limits would be increased in the following manner: from $2500 to $2625 for freshmen and sophomores; from $2500 to $4000 for juniors and seniors; from $5000 to $7500 for graduate students.

Deferment provision would be expanded in the following manner: New deferment for single parents with disabled dependents, borrowers on maternity leave, elementary and secondary teachers in shortage fields or regions, and members of the NOAA Corps; the deferment for unemployed borrowers would be extended from one to two years.

Interest rate would be held at 8% while the student is in school and would be increased to 10% in the fifth year after the student graduates.

The insurance premium would be renamed and correctly called an administrative fee. It would be limited to a one-time charge of no more than 3% for the first year of the loan.

State Guaranty Agencies would be required to provide a lender of last resort in every state.

The special allowance would be decreased from 3.5% to 3.25%.

Sallie Mae's general authority would be modified. They would be prohibited from purchasing a bank. Their actions would be limited to secondary market functions and they would have to notify Congress of new policies they were pursuing under their general grant of authority.

Provision also included allowing students to consolidate outstanding loans into one payment and to extend the length of repayment to 15 years, and up to 25 years where indebtedness exceeds $45,000. Student must have at least $5,000 in outstanding loan indebtedness in order to qualify for consolidation. Program could be offered by any bank, state guaranty agency, or Sallie Mae. The idea behind consolidation is that the student would make one payment of a reduced amount of money over a longer period of time. The interest rate on consolidated loans would be at a rate of 9% or the weighted average rate of the consolidated loan, whichever is greater.

PLUS/ALAS Loans.—Limits would be increased from $2,500 to $3,500 a year for undergraduates, and from $3,000 to $4,000 for graduate students.

Interest rate for new and refinanced loans would be at the rate of T-bill plus 3.75% or 12%, whichever is lower.

Current authorization: none, entitlement program.

Current appropriation: $3.260 billion.
Conference agreement: $3.200 billion.

Part C—Work Study Programs.—Institutions would be allowed to use up to 10% of their college work study funds for community service projects. If they opted to do this, they would have to come up with only a 10% match, as opposed to the 20% match currently required.

Current authorization: $830 million.
Current appropriation: $567 million.
Conference agreement: $656 million.

Part D—Income Contingent Loan Program.—A $5 million program is authorized to implement an income contingent loan program to test the concept of tying repayment to the income of the loan recipient.

Part E—Perkins Loans.—NDSL Loans would be called "Perkins Loans."

Cumulative loan limits would be increased to $4,500 for the first two years of undergraduate work, $9,000 for undergraduates who have completed more than two years of academic work, and $18,000 for graduate students.

Loans would be re-targeted to go to student demonstrating exceptional financial need.

Interest would remain at 5%.

A new cancellation provision would be implemented for Peace Corps and VISTA volunteers, and new deferments would be added for members of the NOAA Corps and for elementary and secondary school teachers in shortage fields or regions.

Current authorization: $653 million.
Current appropriation: $208 million.
Conference agreement: $275 million.

Part F—General Student Aid Provisions.—Major provisions of need analysis are incorporated into the federal law in order to prevent the Administration from altering the program and its direction through regulatory change.

Simplified needs test and application form for families with very low incomes.

No student in default on a GSL or a Perkins loan may receive any form of federal assistance while in default.

New authorization of $10 million for special Child Care Services to provide grant to institutions of postsecondary education to offer day care services to children of low income students.

Satisfactory Progress. Requires that a student, in order to remain eligible for federal student aid, must after the completion of second year in college maintain a cumulative "C" average, its equivalent, or academic standing consistent with the requirements of graduation at the institution of attendance.

Aid to students who attend college on a less than half time basis is available in the campus-based programs. If such students are counted, the institution would have to serve them in a reasonable proportion to their numbers on the campus. For the Pell Grant program, less than half time students would become eligible for assistance in Fiscal 1989 if they have a zero expected family contribution.

Ability to Benefit. Aid applicants without a high school diploma must obtain a GED diploma prior to graduation or pass a standardized test measuring the student's aptitude to complete the course of study in which they are enrolled. If the student does not pass the test, they must receive remedial basic skills instruction.

Independent student definition is changed. Student must be 24 years or older. If not 24, must be an orphan, ward of the court, not married with legal dependents, a veteran. If the student is married or is a graduate or professional student under 24, independence can be conferred by a decision, with documented evidence, of the financial aid administrator.

TITLE V—TEACHER TRAINING AND DEVELOPMENT

Part A—Midcareer Teacher Training for Nontraditional Students.—Discretionary grant program to assist individuals who want to change careers and prepare for the teaching profession. Would have an initial year authorization of $3.5 million.

Part B—School, College and University Partnerships.—Discretionary grant program for cooperative projects to improve the quality of instruction at the secondary education level. Initial year authorization of $15 million.

Part C—Professional Development and Leadership Program.—

Subpart 1—Professional Development Resource Centers.—This is a discretionary grant program to provide for inservice upgrading of teacher skills through centers established at the local level. Initial year authorization of $15 million.

Subpart 2—Leadership in Educational Administration Development.—Discretionary grant program to improve the quality of educational administration. Authorization level: $10 million.

Part D—Teacher Scholarships and Fellowships.—

Subpart 1—Congressional Teacher Scholarship Program.—Authorization of $13.5 million for scholarship for talented high school students interested in the teaching profession.

Subpart 2—Christa McAuliffe Fellowship Program.—Authorization of $2 million for fellowships to talented teachers to upgrade teaching skills.

Current authorization: $81 million.
Current appropriation: $9.8 million.
Conference agreement: $60 million.

TITLE VI—INTERNATIONAL EDUCATION

Reauthorization of revised and expanded International Education program which includes graduate and undergraduate language and area centers, establishment of language resource centers, provision for intensive summer language institutes, and fellowships for advanced graduate training for exceptional students studying foreign languages.

Current authorization: $87.5 million.
Current appropriation: $25.5 million.
Conference agreement: $55 million.

TITLE VII—CONSTRUCTION AND RENOVATION

Continuation of existing programs of grants and loans for construction, reconstruction, and renovation of graduate and undergraduate facilities.

College Housing Program is transferred to Higher Education Act and is expanded to include construction, reconstruction and renovation of academic facilities.

College Construction Loan Insurance Association.—New program with authorization of $20 million to guarantee and insure bonds and loans for the construction and renovation of academic facilities primarily for institutions that do not have access to financing in the private market.

Current authorization: $260 million.
Current appropriation: $51.4 million.
Conference agreement: $100 million.

TITLE VII—COOPERATIVE EDUCATION

Reauthorization with minor changes of existing cooperative education program.

Current authorization: $35 million.
Current appropriation: $13.8 million.
Conference agreement: $17 million.

TITLE IX—GRADUATE PROGRAMS

Part A—Grants to Institutions to Encourage Minority Participation in Graduate Education.—New program with initial year authorization of $10 million to identify promising minority students and to provide encouragement for them to pursue graduate education.

Part B—Patricia Roberts Harris Fellowships.—Existing program of fellowship assistance to encourage minorities and women to pursue graduate study has been renamed to honor the late Patricia Roberts Harris. Stipends would be increased from the current $4,500 to $10,000 a year. Initial year authorization of $30 million.

Part C—Jacob K. Javits Fellows Program.—National Graduate Fellows program has been renamed to honor the late Senator Javits. Program provides fellowships to graduate students in the humanities. Initial year authorization of $10 million.

Part D—Graduate Assistance in Areas of National Need.—New program of grants to institutions for students to pursue graduate study in areas of national need. Initial year authorization of $30 million.

Training in the Legal Profession and Law School Clinical Experience Programs, which provide assistance for disadvantaged students to study law, are continued without change.

Current authorization: $130 million.
Current appropriations: $16.5 million.
Conference agreement: $90 million.

TITLE X—IMPROVEMENT OF POSTSECONDARY EDUCATION

No fundamental changes in this program. Special authorization of $3 million to establish demonstration grant program for community service projects.

A new Part C transfers the Minority Institutions Science Improvement Act from the National Science Foundation to the Higher Education Act with an authorization of $7.5 million.

Current authorization: $50 million.
Current appropriations: $12.2 million.
Conference agreement: $25.0 million.

TITLE XI—PARTNERSHIPS FOR ECONOMIC DEVELOPMENT AND URBAN COMMUNITY SERVICE

Part A—Partnerships for Economic Development.—This is a new program to identify and disseminate effective models for partnerships between education institutions and other agencies involved in area or regional development. Has an initial year authorization of $10 million.

Part B—Urban Community Service.—Authorizes $5 million to extend on a revised based the Urban University Grant program.

Current authorization: $55 million.
Current appropriations: $0.
Conference agreement: $17 million.

TITLE XII—GENERAL PROVISIONS

This title includes provisions for a National Commission to Study the Institutional and Programmatic Recognition Process. The accreditation commission is to examine in detail the process for accrediting schools.

TITLE XIII—EDUCATION ADMINISTRATION

This title authorizes a series of studies to be conducted by the Secretary of Education or the General Accounting Office. Also authorized is a National Commission on Responsibilities for Financing Postsecondary Education. Further, the title requires a study of the re-targeted College Library Resources program.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, it is with considerable enthusiasm that I rise in support of the conference report on S. 1965, the Higher Education Amendments of 1986. When we began the conference in July, we had some 700 points of specific disagreement with the House. In all candor, I can say to my Senate colleagues that the Senate conferees, and particularly our leader, the distinguished senior Senator from Vermont [Mr. STAFFORD] were hard and tough in bargaining with the House. The main load of that conference was carried by him; there is no question about it. The result is a conference report that adheres in large part to basic principles laid down in the original Senate legislation.

Under the agreement worked out in conference, the initial year cost of this legislation would be $10.2 billion. That is more than $1½ billion below current higher education authorizations, and more than $1 billion below the legislation originally passed by the House. More than anything, this demonstrates a strong and successful commitment to prudent fiscal restraint on the part of the Senate while, at the same time, making sure that as much aid as financially possible would go to those needing it.

As was true with S. 1965, the primary focus of the conference report is student aid. Over 94 percent of the funds authorized will go directly to students in the form of grants, loans, college work study, and special instructional assistance.

When Chairman STAFFORD and I originally started work on this legislation, we formed an agreement that at least 90 percent of the funds had to go to student aid. I am very proud of the fact that we stuck to our guns and that the result is even better than the target we set at the start.

In the Pell Grant Program, which is the foundation of our Federal student aid efforts, we have produced very significant changes. The maximum grant, which is now set at $2,100, would start at $2,300 in the first year and increase by $200 each year of the 5-year reauthorization. This is a critically important achievement in light of the fact that the value of Pell grants has actually declined by 20 percent over the last 4 years, while the cost of a college education has increased by almost 40 percent.

Second, we have mandated the Secretary of Education to develop a simplified needs test for very low-income families, and encouraged him to develop a simplified application form for the Pell Grant Program. For parents who are poor and often lacking in basic skills, this is very important. It will, I am hopeful, produce an application form that is brief, clearly written, and without unnecessary detail.

Third, I am very proud of two provisions for which I worked hard. One of these provides that up to $1,000 in the costs of child care will be allowed in the calculation of eligibility for assistance in the Pell Grant Program. This provision is particularly important for single parents who want to pursue a postsecondary education, but often find there is no consideration in Federal student assistance for the costs of child care.

The other provision would increase the home asset protection from $25,000 to $30,000. This is important to low income home owners who have struggled hard in order to purchase a home and often find that its inflated value has unfairly affected their Pell grant eligibility. The plain fact is that the inflated cost of the home is something they cannot realize and cannot, therefore, use in financing a child's education. Yet, it is something for which they have been penalized in the past.

There is another provision related to child care that was also agreed to in Conference. It provides a $10 million authorization for on-campus child care facilities for low-income parents. This, too, is very important if educational opportunity is to be available to low-income students with children.

Finally, we agreed in conference that in fiscal 1989 less than half-time students would become eligible for Pell grants if their families had a zero expected family contribution. Those students from families with expected family contributions between zero and $200 would become eligible in 1991. The minimum Pell grant would remain at $200 and there is the important provision that the entrance of less than half time students into the Pell Grant Program cannot diminish aid to students who are eligible for Pell grant assistance and attending school more than half time.

Both the supplemental grant and direct loan programs would be retargeted to serve students who demonstrate exceptional financial need. The maximum grant in the supplemental program would be increased from $2,000 to $4,000. In direct loan program, which will now be called Perkins loans, the cumulative loan limits would be increased to $4,500 for the first 2 years of undergraduate work, $9,000 for undergraduates who have completed more than 2 years of academic work, and $18,000 for graduate students. The interest rate for Perkins loans would remain at the current 5 percent. These, too, are important changes for students with limited means, and for whom Federal student aid is an absolute necessity if the dream of a college education is to become a reality.

In the Guaranteed Student Loan Program, the conference agreement contains a series of changes that are crucial to the future viability of this

important program. Every student who seeks a GSL must now demonstrate financial need. The interest rate on such loans would remain at 8 percent while the student is in school and until the student reaches the fifth year of repayment. At that time, it would increase to 10 percent. The special allowance paid to banks would decrease from 3.5 to 3.25 percent. State guaranty agencies would be required to provide a lender of last resort, and would pay a reinsurance fee that would increase according to the agency's default rate. Loan limits would be increased from $2,500 to $2,625 for freshmen and sophomores, to $4,000 for juniors and seniors, and from $5,000 to $7,000 for graduate students.

These changes combine to produce two very crucial results. On the one hand, they help make sure that the GSL Program will remain a viable instrument in helping needy students finance their college education. On the other hand, they make sure that the savings we must achieve in this program are spread among all parties and are not borne solely by the students.

In both the College Work Study and the State Student Incentive Grant Programs we have incorporated a new emphasis upon community service. I am very hopeful that these changes will spur institutions throughout America to become more fully involved in their communities, and to make community service an integral part of the student's education.

In graduate education, we have made several extremely important changes. The grant program to enhance graduate education opportunities for women and minorities has been renamed to honor the late Patricia Roberts Harris, and the annual stipend has been increased to a maximum of $10,000. This increase was necessary in order that this program adquately reflect the higher costs of graduate education.

The National Graduate Fellows program, which provides fellowships in the humanities, has been renamed to honor our late colleague, Jacob K. Javits, and its authorization has been increased to allow three full classes of fellows.

The Senate conferees also accepted a House provision to establish a new National Graduate Fellowship Program in areas of national need.

If our Nation is to remain competitive in the world economy, it is crucial that those who teach our teachers, train our scientists, and constitute the leadership of America technology be of the highest quality possible. The reforms made in graduate education in this reauthorization legislation will be a giant stride forward in the realization of that goal.

The conference agreement also incorporates a provision which I have advocated for a number of years, and which was part of the original Senate bill. This provision requires that a student must, after completion of the second year in college, maintain a cumulative "C" average, its equivalent, or academic standing consistent with the institution's graduation requirements. This provision applies to all Federal student aid programs. Its effective implementation will insure that our limited student aid dollars go only to those students who have need and are serious about their work—students who are completing and passing the courses in which they are enrolled.

The conference report also includes another Senate provision which mandates a study of the accreditation process. Since accreditation is an important link in the determination of whether or not an institution can ultimately receive Federal student aid funds, it is important that we in Congress have a better understanding of how this process functions. This study can also provide us with critical information regarding whether or not the accreditation process insures that we have a postsecondary education system of the very highest quality.

Mr. President, as we developed the higher education reauthorization legislation in subcommittee, in full committee, and on the floor of the Senate, we were mindful of the need to develop and maintain a broad consensus of support. The conference report we bring back to the Senate today represents that kind of consensus. It is in that spirit that I urge my colleagues to approve this conference report on the Higher Education Amendments of 1986.

I add also that we could not have done our work on this bill had it not been for the able help of the counsel for the majority and minority sides, Mrs. Polly Gault and Mr. David Evans. I thank them and their associates for all they did so we could come up with this bill.

Mr. METZENBAUM. Mr. President, the conference report on the reauthorization of the Higher Education Act is a significant achievement, and in general I strongly support it. This legislation represents the Federal commitment to providing all students, regardless of income, with the opportunity for a higher education. The majority of the funds authorized through the bill will be used to extend and improve programs providing financial assistance to needy students: Pell grants, guaranteed student loans, campus-based grant and loan programs, and the College Work Study Program. These programs will provide to millions of lower and middle income students each year the opportunity to grow and achieve a better life through higher education.

While the primary emphasis of the bill is on financial aid, the Higher Education Act will also provide support for college libraries, cooperative education, graduate programs, teacher education, and for traditionally black colleges and institutions which serve minority and low-income students.

Mr. President, while I strongly support the continuation of these vital programs and commend the conferees for their achievement, I am very concerned by the action taken in conference on one provision of the bill: the College Construction Loan Insurance Association.

This new program was created to provide bond insurance to assist colleges which have had difficulty in obtaining the capital necessary to make badly needed improvements in their educational facilities. I am very sympathetic to the problems facing these schools, and during Senate consideration of S. 1965, I worked with other committee members to ensure that the program would target assistance on those schools currently having problems obtaining financing. Under the Senate bill, bonds insured through the CCLIA could only be used for education facilities purposes, and only schools which could not obtain financing elsewhere were eligible to participate. The Senate bill also ensured that no changes would be made in the tax rules governing bonds insured by the association. In addition, the Senate accepted my amendment prohibiting schools which discriminate from participating in the Loan Insurance Program.

Although the conferees retained the antidiscrimination language, the rest of the Construction Loan Insurance Program has been changed so significantly that I believe it will no longer serve the purpose for which it was created. The program will no longer concentrate its resources on providing access to construction capital for colleges and universities which do not now have such access. Instead, it will be permitted to spend most, if not all, of its resources reinsuring bonds which are already insured by the private sector, rather than providing new insurance for schools that cannot sell their below-commercial-grade bonds. The CCLIA is no longer an assistance program for colleges; it has become nothing more than a subsidy program for the insurance industry.

In addition, the CCLIA will be able to insure tax-exempt bonds, a direct violation of the Internal Revenue Code, which prohibits direct or indirect Federal guarantees of tax-exempt bonds. The CCLIA anticipates insuring more than $1.5 billion of such bonds annually.

Mr. President, I do not believe that this program in its present form will serve the needs of our colleges and universities, and I intend to oppose efforts to provide appropriations for it. In my view, the needs of colleges and

universities can be better served by funding other worthwhile programs.

Mr. WALLOP. Mr. President, 2 years ago, I accepted assignment to the Senate Labor and Human Resources Committee. As part of my work on the committee, I have served on the Subcommittee on Education, Arts, and Humanities, which is ably chaired by my colleague from Vermont, Mr. STAFFORD. The ranking member is the Senator from Rhode Island, Mr. PELL. These two members have overseen the development of our Federal program of assistance for higher education since the passage of the original Higher Education Act in 1965.

Most of my service the past 2 years on the subcommittee has focused on the reauthorization of the Higher Education Act. It has taken literally 2 full years to reach the point we are at today. We held extensive hearings on the issue of financing higher education. I personally chaired a field hearing in Laramie, WY, the home of the University of Wyoming. We eventually drafted an excellent bill. Unfortunately, the House of Representatives did not recognize many attributes in our bill, and we were forced into a lengthy conference.

At times, it appeared that the House Members had learned nothing from our experiences of the past 10 years. The House presented us with a bloated bill—including unrealistic funding levels and reauthorization of questionable programs. On our side, we had a firm commitment by all the Members to putting together a realistic bill, one that targeted most of the act's resources to loans and grants for low-income students in a fiscally responsible manner. Our firm determination convinced the House conferees that there would not be any legislation this year if they insisted on their position.

We have put together a good bill. Even the White House, reluctantly perhaps, agrees that we made tremendous progress with this reauthorization of the Higher Education Act. We set the first year authorization level at $10.2 billion, well below the original House level. We revamped and streamlined the qualification procedures for Pell grants and guaranteed student loans. Subsidies to the lenders have been cut back. The bill contains incentives for nontraditional students, in particular women who are single parents. My chairman has provided a thorough explanation of the bill. I urge the adoption of this conference report.

Mr. CHAFEE. Mr. President, I commend the distinguished Senator from Vermont on his outstanding work in putting together the Higher Education Act reauthorization. Both he and the distinguished senior Senator from Rhode Island worked tirelessly on this extremely important legislation, and they have done an excellent job.

Their dedication to quality educational institutions and student financial assistance programs is well known in this body, and indeed, throughout the Nation, and comes through clearly in this legislation. Working under difficult budgetary constraints, they crafted a responsible and equitable Senate bill that was applauded on all sides. I was proud to be a cosponsor of that legislation, and now I am pleased to vote in favor of the conference report, which I understand is the product of many days' hard work.

One particular provision of this legislation means a great deal to me, and I would like to take a moment to point it out to my colleagues. The conference has seen fit to include in this reauthorization the Leadership in Educational Administration Act [LEAD], of which I was the original Senate sponsor. This act became law in 1984, as part of the Human Services Reauthorization Act, and I have been working hard with the Department of Education to guide its actual implementation.

LEAD will eventually establish in each State a technical assistance and training center in which practicing and prospective elementary and secondary school administrators will learn the skills they need to succeed. These include management techniques, goal-setting, curriculum development, budgetary expertise, and many other skills that add up to effective leadership. Although the school administrator is in many ways the linchpin of his or her school, the needs of these educational leaders are often overlooked. In my view, one can have a school stocked with wonderful teachers, but without the leadership and vision of a skilled administrator the school can fail its students.

Although authorized at the level of $20 million per year, in fiscal year 1986 LEAD received an appropriation of $7.5 million. While I would have preferred a greater appropriation, in these days of budget cuts I was pleased that LEAD received a large enough sum to get the program off the ground. I am happy to report that just last week the Department of Education released proposed regulations, which means that state and local education agencies, intermediate school districts, private management organizations and nonprofit organizations can begin writing up proposals.

This conference report extends the authorization of LEAD through fiscal year 1991, with an authorization level of $10 million for fiscal year 1987. This is a 2-year extension of the original authorization, which I am very happy to see. More importantly, I am pleased that the conferees had a strong enough interest in this program to transfer it to the Higher Education Act reauthorization. Getting this program rolling has been something of an uphill struggle, in part because school administrators do not get the attention they deserve in discussions of education reform. Support for LEAD on the part of the conferees is certainly encouraging for the future of the program.

Finally, Mr. President, I would like briefly to mention a question that has arisen with the regulations for LEAD, regarding the eligibility of the District of Columbia. The language of the original LEAD legislation states only that the a LEAD center shall be established in each "State," but never indicates whether the District of Columbia should be included. I would like to make clear that, as the author of the original bill, I never intended to make the District of Columbia ineligible. It is my hope that regulations for LEAD will include the District of Columbia as eligible to participate in this exciting program along with the 50 States. I am sure that there are legal ways of defining the District of Columbia as a state, for the purposes of a particular program, and I will support such a definition in the case of LEAD.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I wish to take this opportunity as one of the conferees on S. 1965 to commend my colleagues, the distinguished Senator from Vermont and the distinguished Senator from Rhode Island.

I hope Americans across this country who have received a higher education over the last several years, fully appreciate the tremendous work that the Senator from Vermont and Senator PELL have done to see to it that lower and middle income families have the opportunity to see their children get an education.

The conference that we have just been through was an extensive one. It went on for a great deal of time. As the Senator from Rhode Island pointed out, there were some 700 items in disagreement. Yet because of the persistence of the Senator from Vermont and the Senator from Rhode Island, we were able to present this bill for substantially less than the Senate wanted to pay, yet in a way which provides for the needs of students across this country for the next 5 years.

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I am very proud to have been a part of that effort and I am delighted that a number of provisions that I offered, which I will not go into at this point, are a part of this conference report. I thank personally the chairman, Senator STAFFORD, for his willingness to listen to my ideas and to offer constructive criticism and improvement to those ideas, and my colleague as well, from Rhode Island, Senator PELL, for

the extensive time that he put into that effort as well. I would be remiss if I did not also express the gratitude of all of us on the committee to David Evans, the minority staff director; Polly Gault, who did a tremendous job, and Rich Tarplin in my office, who spent tremendous hours working not only on the issues that were of particular importance to me but also on the larger provisions of the bill as well.

So I am honored to have my name associated with this conference report. I think the chairman and the ranking minority member have done more than just their job; They have done a tremendous service to an awful lot of people across this country who will have a better opportunity to get a higher education because of their efforts.

John F. Kennedy once wrote:

> The future of young people and the Nation rests in large part on their access to college and graduate education. For this country reserves its highest honors for only one kind of aristocracy—that which the Founding Fathers called an "aristocracy of achievement arising out of a democracy of opportunity".

Just 2 short years after President Kennedy penned these visionary words, Congress enacted the Higher Education Act of 1965. Since that time, the Federal role in higher education has been shaped by the two philosophical foundations which underlie this landmark Federal statute. First, HEA embodies the uniquely American principle which President Kennedy first outlined almost 25 years ago: That all young people in America should have access to and choice of postsecondary educational opportunities, regardless of their personal wealth. Second, HEA symbolizes our conviction that the long-term economic vitality and security of our Nation depend on its ability to sustain a pool of educated citizens who can serve our country's needs in defense, science, communications, health, commerce, and a host of other areas.

Mr. President, it is a distinct pleasure and a high honor for me to report to the Senate that the conference report which is now before us maintains and expands the Federal Government's two historic responsibilities in higher education. The Higher Education Act of 1986 reauthorizes and expands important student aid programs like Guaranteed Student Loans, Pell Grants, and College Work-Study. This legislation also establishes an innovative Supplemental Loan Program to help middle-income families meet the rising costs of higher education without unreasonable sacrifice. These programs represent the best of our national character; they ensure that a student's choice of college is based not on the depth of his pocketbook but on the depth of his intellect.

This legislation also expands HEA's categorical programs which represent vital Federal investments in the scholarly and scientific research which has led to advancement and innovation across all areas of our national life. These programs include foreign language and international education, funds for the construction and renovation of academic and research facilities, research library assistance, graduate and professional fellowships, and funds for teacher training.

Mr. President, as a member of the Senate Subcommittee on Education, Arts, and Humanities, and as a Senate conferee on this historic legislation, I am proud to have authored several initiatives which are contained in the conference report before us today. First, I authored an amendment to establish a private corporation which will guarantee and insure bonds and loans for the construction and renovation of academic facilities and research equipment. While this corporation will not actually issue bonds or loans itself, it will provide access to private financial markets for a broad range of higher education institutions which currently have no recourse to such financing. In order to determine which institutions are eligible for its services, the corporation will apply the financial rating criteria currently utilized by nationally recognized statistical rating agencies. This corporation will also be fully independent from the Federal Government and will comply with all relevant State insurance and the qualification laws.

Second, I authored an amendment to reauthorize and expand title VI of HEA: foreign language and international education. In addition to the national foreign language and area studies resource centers already contained in title VI, this provision establishes intensive summer language institutes, foreign language resource centers, and a two-tiered stipend program for advanced language study. While this is a relatively small Federal program in terms of actual dollars, title VI is one of those vital Federal investments in higher education: We need a pool of human resources who can speak the languages of other nations and understand the nuances of other cultures.

Third, I authored an amendment which requires the Department of Education to conduct a major study—the first ever—on the rising cost of higher education. In conducting this study, the Department will evaluate the effects of rising costs on middle-income students and their families, and make recommendations on steps which Government and educational institutions themselves can take to stem the tide of rising costs in the future.

Together with Congressman TERRY BRUCE of Illinois, I also authored the Higher Education and Economic Development Act of 1986, which has been incorporated into title XI of HEA. This measure will provide Federal funds for partnerships between colleges and universities, local governments, labor, business, and industrial organizations, to assist in the development and implementation of comprehensive economic development plans in local communities.

Fifth, I offered an amendment to the College Work-Study Program which sets aside up to $62 million per year for community-service learning projects which benefit low-income individuals and families. Together with the other community service initiatives included in the conference report, my amendment signals our strong congressional interest in promoting service initiatives which utilize the unique skills and energies of our Nation's young people.

I authored another service-oriented amendment included in the conference report which establishes partial loan cancelation for Peace Corps and Vista Volunteers. Under the terms of this provision, volunteers will be able to have up to 15 percent of their national direct student loan canceled for their first year of service, and 20 percent canceled for each of their second and third years of service. My amendment is intended to be both an incentive and a reward for service in these two important national programs.

Last, I authored an amendment which authorizes $1.3 million for the construction of biobehavioral research facility at the University of Connecticut. If appropriated, these funds will help our State university establish a research facility of national significance in this important scientific area.

Mr. President, before I conclude my remarks, I would like to take a moment to pay tribute to two Senators without whom this reauthorization could not have been accomplished: Senators ROBERT STAFFORD and CLAIBORNE PELL. In an era of fiscal constraint, they crafted a Senate bill and later a conference report which expands our Nation's commitment to higher education while actually reducing the total authorization for this act. I have no doubt that Senators STAFFORD and PELL will be remembered by our children as visionary leaders in American education.

Mr. STAFFORD. Mr. President, I thank the able Senator from Connecticut for his kind words. His contribution to getting this conference put together and agreed to was a very major one.

Mr. HATCH. Mr. President, I welcome the Senate's consideration of the conference report on S. 1965, the Higher Education Amendments of 1986. I encourage its overwhelming adoption by the Senate.

The Higher Education Act of 1965 was a landmark piece of legislation. That bill, by authorizing programs of financial assistance for postsecondary education for many of our Nation's citizens, provided the necessary access to full participation in all that our society has to offer. Under that bill, students in my home State of Utah received nearly $38,500,000 in Federal student financial assistance last year. Its reauthorization in the Higher Education Amendments of 1986 is equally landmark legislation.

We have reauthorized many of those financial aid programs, all the while refining them so that the most deserving students will receive this assistance. We have also added new programs designed to recognize the changing character and changing needs of today's student population. Some aid is also directed to institutions of higher education—for library assistance or to help our historic black colleges and universities and other worthy "developing institutions" such as community colleges, for example. And, I am pleased to say, institutions may now receive grants for demonstration projects for child care facilities for disadvantaged and low-income students and for innovative continuing education programs.

Beyond this reaffirmation of the old and the addition of innovative programs, we have been as fiscally responsible as possible with this legislation. Refining programs to target aid to needy students and institutions and establishing reasonable authorization levels and maximum yearly growth rates have brought the level of the first year of this authorization bill, fiscal 1987, below the current year's authorization level. Furthermore, I would remind my colleagues that a prudent investment in the further education of our Nation's students can be a wise and fiscally responsible investment of the taxpayer's dollar.

In closing, Mr. President, I would like to add a word of thanks to my colleagues of both parties on the Education Subcommittee and the Labor and Human Resources Committee. They labored long and diligently to draft this bill and sent it to the Senate floor. It is a truly bipartisan and responsible effort. I would particularly like also to thank Senators STAFFORD and PELL, the chairman and ranking minority members, of the Education Subcommittee who shepherded this bill through the long conference with the House of Representatives. They have done a yeoman's job.

Mr. President, I urge my colleagues to pass this conference report and send it on to the President for his signature. Our country will be better for the passage of this bill, for its reaffirmation of the principle that access to educational opportunity and achievement is fundamental to the success of representative government.

Mr. WEICKER. Mr. President, I rise in support of the conference agreement on S. 1965, the Higher Education Amendments of 1986. This agreement was reached after many hours of deliberation and negotiations with our colleagues on the House side. I must, at the outset of my remarks, commend the leadership of my colleagues Senator ROBERT STAFFORD, chairman of the Education Arts and Humanities Subcommittee, and the ranking minority members, Senator CLAIBORNE PELL. Because of their commitment to higher education we have legislation before us of which we can all be proud.

Higher education has long been a part of American life and Federal Government has had an interest in its quality for over a century. In recent years the Federal role has reflected a commitment to both the quality of the Nation's institutions of higher education and access to that education for all qualified students who wish to pursue a postsecondary education. The bill before us recognizes the current and changing needs of the higher education system; and most importantly, student access to that system.

The legislation we are about to send to the President is fiscally sound. Savings have been achieved, and steps have been taken to address the costly problem of loan default. Most programs have received only modest increases in authorization levels over current appropriations; however, student aid to the neediest students has been increased. In this regard we can take great pride. S. 1965 recognizes the economic pressures of the 1980's but refuses to ignore the economic needs of our Nation's young people. Today we reaffirm our commitment to higher education. We reassert that a strong system of higher education which is accessible to all who wish to pursue it is a critical aspect of our nation's strength.

Again, I commend my good friend and colleague, the distinguished Senator from Vermont, for his commitment but most of all his leadership in this area.

Mr. WALLOP. Mr. President, 2 years ago, I accepted assignment to the Senate Labor and Human Resources Committee. As part of my work on the committee, I have served on the Subcommittee on Education, Arts, and Humanities, which is ably chaired by my colleague from Vermont, Mr. STAFFORD. The ranking member is the Senator from Rhode Island, Mr. PELL. These two members have overseen the development of our Federal program of assistance for higher education since the passage of the original Higher Education Act in 1965.

Most of my service the past 2 years on the subcommittee has focused on the reauthorization of the Higher Education Act. It has taken literally 2 full years to reach the point we are at today. We held extensive hearings on the issue of financing higher education. I personally chaired a field hearing in Laramie, WY, the home of the University of Wyoming. We eventually drafted an excellent bill. Unfortunately, the House of Representatives did not recognize many attributes in our bill, and we were forced into a lengthy conference.

At times, it appeared that the House Members had learned nothing from our experiences of the past 10 years. The House presented us with a bloated bill—including unrealistic funding levels and reauthorization of questionable programs. On our side, we had a firm commitment by all the Members to putting together a realistic bill, one that targeted most of the act's resources to loans and grants for low-income students in a fiscally responsible manner. Our firm determination convinced the House conferees that there would not be any legislation this year if they insisted on their position.

We have put together a good bill. Even the White House reluctantly perhaps, agrees that we made tremendous progress with this reauthorization of the Higher Education Act. We set the first year authorization level at $10.2 billion, well below the original House level. We revamped and streamlined the qualification procedures for Pell grants and guaranteed student loans. Subsidies to the lenders have been cut back. The bill contains incentives for nontraditional students, in particular women who are single parents. My chairman has provided a thorough explanation of the bill. I urge the adoption of this conference report.

Mr. QUAYLE. Mr. President, as a conferee on the bill, I am pleased to rise in support of the conference report to accompany S. 1965, the Higher Education Act reauthorization. This bill is the product of many hours of work and deliberation, and it truly represents a bipartisan approach to what the future of Federal assistance for higher education should be in our country.

This bill extends until 1991 the Federal student aid programs, the centerpiece of the Federal Government's commitment to higher education. In particular, the Pell Grant Program and the Guaranteed Student Loan Program are expanded to account for the changing demographics in higher education as well as to account for the rising cost of tuition.

I would like to commend the chairman of the Senate Subcommittee on Education, Arts and Humanities, Senator STAFFORD, and the ranking member on the subcommittee, Senator PELL, for their many efforts at putting this bill together and guiding it through the Senate and through conference

with the House. Both gentlemen have been a pleasure to work with, and I appreciate their willingness to address the concerns of the members of the Education Subcommittee.

S. 1965 represents a renewed commitment to providing access to all students to higher education. This bill places the emphasis of Federal funding on the student aid programs, which was always the priority of the Senate. The conferenced bill also tightens the student aid programs to better focus aid on the needier student, and it expands the size of the grant awards and loan amounts that needy students can receive.

This legislation authorizes $10.2 billion for student aid and institutional aid programs. While this is approximately $600 million more than the Senate had in its bill, the conferees agreed to put much of the increase into the student aid programs.

This bill also takes into account the need for cost control in the Guaranteed Student Loan [GSL] Program, and meets the savings targets established by the fiscal year 1987 budget resolution. The major change made in the GSL Program to achieve these savings is to require that all students undergo a needs test to establish the amount of money they are eligible to borrow.

I have strongly supported a universal needs test for many years, and am pleased that this bill contains such a needs test. This needs test will also have the effect of reducing defaults, because students will, in some cases, be borrowing only what they need.

The bill also contains many new provisions in the GSL Program designed to reduce defaults and to prevent them. This is another area that I have consistently worked hard in. Defaults in the GSL Program run over $1 billion and are cause for concern if we want to keep a strong, viable GSL Program. Many of the provisions in the Senate bill to prevent defaults have been agreed to by the House conferees, and I am hopeful that schools, States and lenders will do all they can to reduce defaults as required by many Senate programs.

At the same time, the conferees have been careful not to let the default problem override the access question. It would be easy to reduce defaults in the GSL Program by simply limiting loans to students that are projected to have a good chance of repayment. But the GSL Program has always been one of access, and the conferees have made numerous clear statements that the GSL Program should and must be available to all students, regardless of their course of education, the length of that education course, or other factors, such as economic status.

The bill also contains a number of provisions designed to assist the nontraditional student and the student who is returning to school for further education in between careers. More aid will be available for students attending less than full time, and deferments for GSL repayments will be allowed for students attending less than full time who are current GSL borrowers.

A significant, and very major change if made to the Pell Grant Program to allow less-than-half-time students eligibility for Pell grants beginning in 1989. The Senate bill did not include this expansion to less-than-half-time students because we did not want to see money taken away from the students who are attending full time or more than half time. However, the House was insistent on providing some type of assistance to the less than half time students through Pell grants.

The Senate conferees, I believe, made clear throughout the negotiations that money should not be taken away from the current Pell grant recipients to pay for the less-than-half-time student. While we have contained a provision for the 1989-90 award year protecting current recipients, I, for one, will be closely watching their results of this expansion to see if large amounts of funds are being diverted from the full-time student.

The conference bill contains a number of new programs which the conferees discussed in great detail. I am not pleased that we have several brand new programs and continued authorizations for programs that have not received funding for the past 5 years. I would make my position clear that I will always support appropriations for the student aid programs over the appropriations for these new programs.

Throughout the process of reauthorization, I have been helped and counseled by many of the college and university presidents and many of the financial aid officers, lenders and state officials in Indiana. I am happy to report to them that a great number of their recommendations have been picked up in this bill and that their imput was seen as a wise course by many Senators and their staffs.

For example, the Indiana Task Force on Higher Education made the following recommendations for student aid, all of which are now part of S. 1965: that all students undergo a needs test for the GSL Program; that the National Direct Student Loan and the Supplemental Education Opportunity Grant Program be more tightly focused on needy students; that a master calendar by which certain actions related to the delivery of student aid must occur be written into law; that a separate needs analysis be used for the Pell Grant Program, in order to better target that program to the neediest students; that GSL loan limits be increased to take into account the increases in cost of education; that GSL checks be made in multiple disbursements; that a loan consolidation program be made available; and that the definition for independent student be tightened up to avoid some of the current program abuses.

These are only some of the provisions on which the Indiana group advised me, and it gives me great pleasure that their sound advice was heeded. I continue to look forward to working with the higher education community in Indiana to ensure that S. 1965 does indeed provide the dollars to the students that need them most.

In closing, Mr. President, I want to express my support for S. 1965, which is a fair bill, and which will enable millions of students to obtain a postsecondary education. An educated citizenry is vital to the health and well-being of our economy and our Nation. S. 1965 reaffirms the commitment of the Federal Government to providing an opportunity for all to a higher education. I urge my colleagues to support this conference report.

Mr. GORTON. Mr. President, I wish to speak in support of the conference report on the higher education amendments. The committee of conference is to be commended for its work on this legislation, and I am proud to be listed as a cosponsor of the underlying bill, S. 1965. As approved by the conference committee, this legislation authorizes $10.7 billion for higher education programs in 1987.

The higher education amendments will make many significant changes in our higher education programs. Some of the most important provisions in the bill are aimed at alleviating the harsh impact that rising tuition has had on students' ability to pay for their educations. As approved by the conference, the bill will raise the maximum award for the Pell Grant Program from $2,100 to $2,300 in 1987. After 1987, the Pell grant ceiling will increase in $200 increments each year until the maximum award is $3,100 in 1991. The Supplemental Grant Program also will be improved by raising the maximum grant from $2,000 to $4,000.

The popular Guaranteed Student Loan Program also has been improved in this bill. Loan limits will be raised from $2,500 to $2,625 for freshmen and sophomores, and to $4,000 for juniors and seniors. The cumulative loan limit for undergraduate students will increase from $12,500 to $17,250. The limit on graduate student loans will increase from $5,000 to $7,500. Loan limits for the National Direct Student Loan Program also will go up under the bill—from $3,000 to $4,500 for the first 2 years of undergraduate study, and from $6,000 to $9,000 for the second 2 years. Furthermore, students with $5,000 or more in Guaranteed Student Loans, National Direct Student Loans, health professions student

loans, and PLUS/ALAS loans will be able to consolidate their loans.

I extend my special appreciation to the Senator from Vermont, Senator STAFFORD, and his staff for their willingness to work with me in clarifying some of the questions surrounding the International Education Program. Our Nation has a unique resource and a substantial investment in our comprehensive centers of international studies. A glowing example of the value of these centers can be found in my home State of Washington at the Jackson School of International Studies in Seattle. The knowledge of other countries and ability to communicate in other languages that students learn at these centers truly promote the long-term economic and security interests of our Nation. Title VI of the higher education amendments will preserve this legacy of excellence by sustaining and deepening the Nation's capacity for advanced training in foreign languages and international studies through comprehensive centers.

Mr. President, the Senator from Vermont [Mr. STAFFORD] and the ranking member, Senator PELL, are to be congratulated for their efforts on the higher education amendments. I urge my colleagues to join me in clearing this measure for the President.

Mr. KENNEDY. Mr. President, this conference report represents literally years of work by the Senate and the House. And it represents the extraordinary American commitment to provide higher education to people all across this country. There are few efforts more worthy of the attention, time and toil of the Congress than this legislation. Literally millions of Americans have received college degrees as a result of the Higher Education Act. It is one of the glories of this Nation that higher education is available to so many or our people. Wide access to our colleges and universities is one of our best defenses against the dangers of a closed society.

At a time when the educational standing of this Nation against its international competitors is eroding, a reduction in our commitment to higher education is a mistake for which we would pay for decades. But that price at least would only be paid in dollars and cents. The higher but more intangible price of lowering our commitment to higher education would be the erosion of equal educational opportunity.

So I applaud the Congress today. For all of the criticism to which this body is often subjected, there are great moments in public policy that ably serve our deepest shared values and this is one of them. This Nation is committed to educational excellence, and to the ideal of equal opportunity, and this vital legislation continues those commitments.

Mr. SIMON. Mr. President, I am pleased to join my colleagues in support of S. 1965, the Higher Education Amendments Act of 1986 and in urging adoption of the conference report. The distinguished chairman of the Committee on Labor and Human Resources, and my friend and colleague from Vermont, Senator STAFFORD, who is chairman of the Subcommittee on Education, Arts, and Humanities, and who along with the ranking Democratic member, Senator CLAIBORNE PELL, have demonstrated outstanding leadership in fashioning this reauthorization bill. S. 1965 contains several new titles and improvements in existing programs under the act, however, its basic thrust is to reaffirm Congress' and the Federal Government's commitment to equity and quality in higher education.

I was pleased to serve on the subcommittee which wrote the original Senate bill and to have participated fully in those deliberations and decisions under Chairman STAFFORD's skillful leadership. I was also able to serve as a Senate conferee, for the first time since my election to the Senate, and to share in the shaping of the final product we present here today. The final bill is not all that we would like it to be, but it takes a major stride toward achieving the twin goals of quality and equity by: First, expanding grant aid available to low- and middle-income students through the Pell grant and the Supplemental Educational Opportunity Grant [SEOG] programs; and second, enhancing Federal institutional assistance to libraries, to historically black colleges and universities and community colleges, and to postsecondary institutions generally for facilities and instrumentation—through a new program of direct and reinsurance on loans.

When the Committee on Labor and Human Resources reported its reconciliation bill to the Budget Committee on July 25, we were still in conference with the House of Representatives on the reauthorization of the Higher Education Act. That conference with the other body was concluded on September 12, 1986. For that reason, it was not possible for the committee to include all of its final decisions in the Senate-passed reconciliation bill adopted on Friday, September 19. Final decisions and the actual drafting of legislative language were not completed until Monday of this week. I am concerned and want the Members to know that they are voting today on the changes in the student aid provisions adopted by the conferees and which we believe will achieve the necessary changes requested by the Budget Committee. The changes in this conference report will be implemented and not those included in last week's reconciliation bill. The House-Senate conference on the reconciliation is expected to incorporate these changes in their conference report.

All of my colleagues who represented the Senate on the conference are justifiably proud of the conference report on S. 1965, especially those provisions affecting student aid.

First, we abolished the old "two-tiered" system for determining need in the Guaranteed Student Loan [GSL] Program which has existed since 1981. All students, regardless of family income will have to demonstrate need under a statutory needs analysis system. Prior to implementation of this new needs analysis in fiscal year 1988—annual year 1988-89—the current needs analysis—without the look-up tables will be used for all GSL borrowers. The conferees adopted the extension of the current needs analysis to all GSL borrowers in the belief that it is fair and equitable, in view of the increases we recommend for the Pell grant—$2,300 in fiscal year 1987—and SEOG—$4,000—to all students.

Second, the higher education conference report incorporates the new GSL interest rate, already included in the reconciliation bill adopted earlier this month. The interest rate for new borrowers will be increased from 8 percent—or the appropriate interest rate—to 10 percent once the student begins repayment.

Third, the rule governing reinsurance based on default rates is substantially revised to assure equitable treatment for all State guaranty agencies. The conferees agreed to establish a reinsurance fee based on default rates to be paid to the Federal Government by the guaranty agencies. Agencies with a default rate less than 5 percent will pay a fee equal to 0.25 percent of the total principal amount of loans on which that issued insurance during the fiscal year. Agencies with default rates equal to or greater than 5 percent will pay a fee equal to a 0.5 percent of such amount. This was an essential accommodation given two critical factors: First, current default rates and State efforts to reduce defaults; and second, varying State lending practices affecting categories of students and sectors of higher education served, especially low-income students in proprietary institutions and in community colleges—who are most likely to default.

A fourth difference is the special allowance paid to lenders on guaranteed loans. The reconciliation bill includes a 3.0 special allowance, identical to the provision in S. 1965 when it passed the Senate. The Higher Education Act conference report provides for a 3.25 percent special allowance and a provision for a major study of the return that banks earn on GSL's. This study will provide the Congress with a great deal more information than we now have on exactly how much banks earn

for their willingness to invest in the futures of America's human resources.

I am personally very gratified with the conferees work in developing a new definition for "independent student." That definition will eliminate the subjective and largely nonverifiable eligibility criteria and substitute solid, objective factors for determining whether or not a student is financially independent of their parents and should receive more Federal student assistance to help pay for college costs. The new definition of independent student means any individual: First, who is 24 years of age or older by December 31 of the award year; second, is a ward of the court, an orphan, or a veteran of the Armed Forces of the United States; third, who is a graduate or professional student who was not claimed as a dependent for income tax purposes by his or her parents, or guardian, for the first calendar year of the award year; fourth, who has legal dependent other than a spouse; fifth, who is a single undergraduate student with no dependents who was not claimed as a dependent for income tax purposes for the 2 calendar years preceding the award year and demonstrates to the financial aid administrator total self-sufficiency during those 2 years a total annual income of at least $4,000; or sixth who is a student for whom a financial aid administrator makes a documented determination of independence by reason of unusual circumstances.

S. 1965 makes a new commitment to the Pell Grant Program and to redressing the longstanding imbalance between the amount of Federal student aid awarded in the form of grants as opposed to that provided in the form of loans. The best way to redress that imbalance is to make the Pell grant an entitlement, however, our current budgetary situation will not permit us to take that step at this time. I hope we will before I leave the U.S. Senate. We have taken the next best step and that is to provide for increases in the maximum grant and to provide for automatic increases in the nontuition expenses when the maximum is raised. We have also doubled the SEGO maximum—making it possible for low-income students attending public institutions and lower cost private colleges to pay most of their college costs through grants. That is essential if we are to make college a real option for the poor and the middle-income student. Since 1975, the amount of Federal student aid has shifted from 805 grants and 20-percent loans to 51-percent loans, 45-percent grants and 4-percent-work study. Reducing student debt burdens of low- and middle-income students and reducing student loan defaults are inseparately tied to altering the shift in Federal aid from grants to loans.

Finally Mr. President, we have also focused on the issues of quality. We have reestablished the College Library Program in title II of the act. We have dramatically altered the title III, strengthening institutions Program for historically black colleges and universities, smaller public and private 4-year institutions, and community colleges. The new Black College and University Act in part B of title III represents a landmark commitment to the Nation's historically black colleges. Along with Senator THURMOND, I was glad to be advocate for this bill in the committee. In the conference, we received the cooperation of the chairman of the House Education and Labor Committee and the chairman of the Postsecondary Education Subcommittee. Without their help, we could not have worked the differences and brought this important legislation forward.

Several other provisions will also contribute to quality and higher academic standards:

Restoration of the 5-year limit on student participation in the Pell Grant Program.

Establishment of new satisfactory academic progress and ability to benefit requirements which will assure that students using Federal aid make prograss toward a degree or certificate and make good grades, and assure that students who enter postsecondary institutions without a high school diploma or GED learn the skills they need to succeed in their chosen field; and

Creation of two new programs to encourage minority and first-generation college student to enter graduate education—one in title IV, postbaccalaureate achievement under the TRIO programs and a second under title IX of the act.

Again, I want to commend all of my colleagues on both sides of the aisle who worked hard on this reauthorization.

Mr. STAFFORD. Mr. President, I now urge adoption of the conference report on S. 1965.

The PRESIDING OFFICER. Is there further debate on the conference report?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I thank the Senator from Connecticut for his kind remarks and for his help.

The PRESIDING OFFICER. Is there further debate on the conference report? If not, the question is agreeing to the conference report.

The conference report was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTION OF TECHNICAL ERRORS

Mr. STAFFORD. Mr. President, I now urge passage of a package of purely technical amendments contained in House Concurrent Resolution 394 which are necessary to correct mistakes made in the final draft of S. 1965. These amendments have been cleared by members of the conference in the House and Senate and should be passed at this time.

The PRESIDING OFFICER. Is there objection to giving immediate consideration to the resolution? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

A resolution (H. Con. Res. 394) to correct technical errors in the enrollment of the bill (S. 1965).

Mr. PELL. Mr. President, I urge the passage of these technical amendments and concur with my chairman and leader.

The PRESIDING OFFICER. Is there further debate on the resolution? If not, the question is on agreeing to the resolution.

The concurrent resolution (H. Con. Res. 394) was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. PELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 2020

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2878—ANTI DRUG ABUSE ACT OF 1986

Mr. DOLE. Mr. President, I send a bill to the desk on behalf of myself, the distinguished minority leader, Senator THURMOND, Senator BIDEN, Senator HAWKINS, Senator CHILES, Senator DECONCINI, Senator WILSON and others and ask for immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, and I will not object.

And I will be very happy to let the distinguished Senator from Connecticut precede me if he wishes.

Mr. WEICKER. Mr. President, reserving the right to object, I think that the RECORD should show that the introduction of this legislation relative

to drugs comes at a time and in such a form that none of us have had an opportunity to see in its entirety what it is that we are being asked to give our unanimous consent to. And, I might add, this applies, since this is a joint leadership bill, to both the Democratic and Republican side. And so that it is understood, we are going ahead and doing this by unanimous consent because it is not following the rules of the Senate. And maybe that is deemed proper and necessary at this juncture.

But the reason I am raising this point now is I think we will find, throughout the course of the legislation or the progress of the legislation, that time and again we will be asked to set aside normal procedure and normal consideration because of the urgency of the moment or, I might add, the politics of the time. And, of course, involved here is not any quick fix to a drug problem but rather the Constitution of the United States; whether the end to be achieved will be achieved by sacrifice on all of our parts or whether it is to be achieved by the sacrifice of others who need our special care and who are the weakest among us. These are all important issues that will arise in the course of the next 48 to 72 hours.

So I do not intend, in any manner, shape, or form, to prohibit or lengthen consideration of the matter, but I make the point that normally what is being done here would have to lay over for at least a day or two before we could move to its consideration. That is not going to happen. So the first exception has been made.

I will accept it. I will not object to the unanimous-consent request, but only point out at this juncture—and then I will take my seat—that however important the problem of drugs, the resolution of it will have to be done constitutionally and will have to be done with sacrifice by all in a nonpolitical way. Otherwise, this matter is better resolved after election day 1986.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, Mr. President. The distinguished Senator from Connecticut is right. The bill that is on the calendar was put on there via rule XIV, but the measure that the distinguished majority leader is calling up is not even on the calendar. And it is only by unanimous consent that it could be called up, the Senator from Connecticut is right.

I make the reservation only for the purpose of asking a question or so, one being: Will there by any amendments offered to the bill this evening? I already know the answer, but I would be expected to ask these questions.

Mr. DOLE. No I think the record should reflect we indicated to a number of Members that there would be no amendments offered or considered this evening.

Mr. BYRD. Will any opening statements be made today?

Mr. DOLE. We also made the representation to a number of Senators who wish to make statements that we would not do that this evening.

Mr. BYRD. I thank the majority leader.

One final question: What will be the business of the Senate tomorrow and, if I may ask the majority leader at this point—tomorrow will be Friday—what will be the business of the Senate on Saturday, as far as the distinguished majority leader can say at this moment?

Mr. DOLE. Well, what I had hoped to do tomorrow was to bring up the tax reform conference report which passed the House today by an overwhelming vote. I was advised by at least three Senators that they prefer I would not do that; that they had not had a chance to look at the transition rules. Another Senator on this side is involved in a Conrail discussion tomorrow, Senator DANFORTH, who strongly opposes the bill. It would not be a good time for him.

I have indicated to everyone that, if we really are trying to leave here next Friday, we do not have many days left.

What I will probably do tomorrow morning, unless there if some strenuous objection, is to go ahead and make opening statements on the drug bill. I have talked with the distinguished Senator from Ohio, Senator METZENBAUM, who wanted to take a look at the transition rules in the tax bill. He believes maybe, by 1 o'clock, he would be prepared to let us move, which we could do in any event, on the conference report on the tax bill. But maybe we would accommodate him in that way.

But tomorrow morning we will bring up the drug enforcement bill, make statements, and then I would try to work out with all parties their concerns on the tax reform bill.

We will have a Saturday session, which will probably either be on tax reform or drug enforcement.

Mr. BYRD. In other words, if tax reform had not been completed, the Senate would still be on tax reform, I take it, and, otherwise, we would on the drug package.

Mr. DOLE. That is as I presently see it.

Mr. BYRD. Yes. Well, I think the distinguished majority leader has answered as far as he can at this point. I know that Senator METZENBAUM was concerned about the transition rules.

Mr. President, I thank the majority leader. I remove my reservation.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2878) to strengthen the laws against illegal drugs, and for other purposes.

The Senate proceeded to consider the bill.

□ 2030

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I make a point of order this bill proposes to raise revenue and it is being offered as a Senate-originated bill. Under the U.S. Constitution, it is not in order.

The PRESIDING OFFICER. The point of order based on the constitutional precedents in the Senate is submitted to the will of the Senate.

Mr. WEICKER. Mr. President, I understand that. I am perfectly willing that this matter be the opening matter of debate at such time as the leadership cares to debate it. I wanted to raise the point at the outset, which would be the proper time. What I am saying is whatever the will of the leadership in this matter is fine with me.

Mr. DOLE. Mr. President, it is debatable, is that correct?

The PRESIDING OFFICER. The question is debatable.

Mr. DOLE. Mr. President, I assume the Senator from Connecticut wishes a record vote on that?

Mr. WEICKER. I have not asked for a record vote because all of us realize, leadership included, we are all now just looking at the bill. There is no point that the point I have raised cannot be remedied. If it can be remedied, that is fine.

Mr. DOLE. It needs to be remedied.

Mr. WEICKER. With all deference to the distinguished Senator from Kansas, I think it has to be remedied. In other words, I do not want to lock us into a vote.

I want to reiterate the point I made earlier. There is no question in my mind we are going to have a drug bill, but a very serious defect is the one that I raise as a point of order. I do not care to go ahead and either prolong debate or in any way raise a roadblock, except that we go ahead and make it constitutionally proper. If that can be done as an accommodation among all the parties, fine. If it requires a rollcall, we are going to do it. As I said before, I will be guided by the leadership on this matter.

Mr. DOLE. The Senator has made his point and I do not have any quarrel with it. I wonder if the Senator would be willing to withdraw it and offer it the first thing tomorrow morning.

Mr. WEICKER. Absolutely. I will do that, as long as I have the assurance I

can make it the first thing in the morning.

The PRESIDING OFFICER. Is the Senator withdrawing his point of order?

Mr. WEICKER. Mr. President, just by way of explanation, it will be my intention to withdraw and, quite frankly, as far as I am concerned, if more of my colleagues would operate on this basis I think more bills would move through faster. I think the majority leader has announced his good intention. I am not asking for unanimous consent or anything of that nature. His word is good enough for me and I withdraw my point of order.

The PRESIDING OFFICER. The Senator has that right.

Mr. DOLE. I thank the distinguished Senator from Connecticut. I would indicate this is a 250-page bill. I will not make a statement on it, but it does deserve serious consideration by every Member. If we can work out the schedule tomorrow, I would hope that Members would have most of tomorrow just to study it and take a look at it. There will be a number of amendments offered. We could not agree on everything. This is a consensus package. We could agree on it on a bipartisan basis. There will be other very controversial amendments, I assume, coming from each side. We at least wanted to start off with the indication that there is strong bipartisan support. We have that and we hope we can conclude action on a good bill very quickly.

I also ask unanimous consent that the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the bill was printed earlier in today's RECORD.)

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond the hour of 8:45 p.m.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT WITH RESPECT TO THE NATIONAL EMERGENCY IN SOUTH AFRICA—MESSAGE FROM THE PRESIDENT—PM-173

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

On September 9, 1985, in Executive Order 12532, I declared a national emergency to deal with the threat posed by the policies and actions of the Government of South Africa to the foreign policy and economy of the United States. Those actions and policies continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States, and in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I continued the national emergency with respect to South Africa on September 4, 1986. Pursuant to Section 204(c) of the International Emergency Economic Powers Act (50 U.S.C. 1703(c)), I am today reporting on the developments since my last report of March 17, 1986.

In Executive Order 12532, I prohibited: (1) the making or approval of bank loans to the South African Government, with certain narrow exceptions; (2) the export of computers and related goods and technology to certain government agencies and any apartheid-enforcing entity of the South African Government; (3) nuclear exports to South Africa and related transactions, with certain narrow exceptions; (4) the import into the United States of arms, ammunition, or military vehicles produced in South Africa; and (5) the extension of export marketing support to U.S. firms employing at least twenty-five persons in South Africa that do not adhere to certain fair labor standards.

In addition, I called for (6) consultations with other parties to the General Agreement on Tariffs and Trade with a view toward adopting a prohibition on the import of Krugerrands; (7) the completion of a report on the feasibility of minting U.S. gold coins; (8) an increase in the amount provided for scholarships in South Africa to victims of apartheid and an increase in the amount allocated for South Africa in the Human Rights Fund; and (9) the establishment of an Advisory Committee to provide recommendations on measures to encourage peaceful change in South Africa.

Executive Order 12535 of October 1, 1985, prohibited the importation of the South African Krugerrand into the United States, effective October 11, 1985 (50 Fed. Reg. 40325, Oct. 3, 1985). This implemented the course of action contemplated in Executive Order 12532. The Office of Foreign Assets Control of the Department of the Treasury issued South African Transactions Regulations on October 9, 1985 (50 Fed. Reg. 41682, Oct. 15, 1985), to implement the Krugerrand ban. There have been no changes in these regulations in the past six months.

In addition, the Bureau of Alcohol, Tobacco, and Firearms of the Department of the Treasury issued regulations on the Importation of Articles on the United States Munitions Import List on October 7, 1985, implementing the prohibition of certain arms imports contained in Executive Order 12532 (50 Fed. Reg. 42157, Oct. 18, 1985). The Department of State issued final regulations on South Africa and Fair Labor Standards on December 23, 1985, implementing the fair labor provisions of the Order (50 Fed. Reg. 53308, Dec. 31, 1985). The Office of Foreign Assets Control of the Treasury Department issued South African Transactions Regulations on November 6, 1985, implementing the Order's bank loan prohibition (50 Fed. Reg. 46726, Nov. 12, 1985). The International Trade Administration of the Department of Commerce issued Regulations on Export Controls on the Republic of South Africa on November 14, 1985, implementing the computer and nuclear export prohibitions in the Executive Order (50 Fed. Reg. 47363, Nov. 18, 1985). With the exception of some minor technical amendments, there have been no changes in any of these regulations in the past six months.

With the publication of a notice in the *Federal Register*, the Department of State established the Advisory Committee on South Africa on October 22, 1985 (50 Fed. Reg. 42817, Oct. 22, 1985). The Committee has met several times since and shall render a report to the Secretary of State within one year of its first meeting, which was held on January 29–30, 1986.

The Secretary of the Treasury submitted a report on the feasibility of minting U.S. gold coins on November 8, 1985. On December 17 of that year, I signed the Gold Bullion Coin Act of 1985 (Public Law 99-185), requiring the minting of such coins.

The expenses incurred by the Federal government in the period from September 9, 1985, through September 8, 1986, that are directly attributable to the exercise of powers and authorities conferred by the declaration of the national emergency with respect to South Africa are estimated at $536,813, of which approximately $404,230 represents wage and salary costs for Federal personnel and ap-

proximately $132,583 represents out-of-pocket expenses. Personnel costs were largely centered in the Department of the Treasury, Department of State, Department of Commerce, and Department of Energy.

I shall continue to exercise the powers at my disposal to apply the measures contained in Executive Orders 12532 and 12535 as long as these measures are appropriate and will report periodically to the Congress on significant developments pursuant to Section 204(c) of the International Emergency Economic Power Act.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION—MESSAGE FROM THE PRESIDENT—PM 174

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

In accordance with the provisions of Public Law 91-230, as amended (20 U.S.C. 1209(d)), I herewith transmit the 1985 annual report of the National Advisory Council on Adult Education.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD—MESSAGE FROM THE PRESIDENT—PM 175

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources:

To the Congress of the United States:

I hereby submit to the Congress the Annual Report of the Railroad Retirement Board for Fiscal Year 1985, pursuant to the provisions of Section 7(b)(6) of the Railroad Retirement Act, enacted October 16, 1974, and Section 12(1) of the Railroad Unemployment Insurance Act, enacted June 25, 1938.

The Railroad Retirement Board's chief actuary informs me he anticipates cash-flow problems in the rail industry pension fund, and states that "an upward adjustment in financing can no longer be regarded as premature." Refinancing legislation enacted in 1974, 1981, and 1983 has been required to prevent the rail pension fund from going broke three times in the last decade, and significant, constant declines in rail employment levels continue to deteriorate rail pension assets. With yet another financial crisis threatening the pension fund's ability to pay railroad retirees' benefits, the Administration agrees with the Board's chief actuary, Board Chairman Gielow, and Board Member Chamberlain that measures are needed now to forestall financing problems. I therefore concur with Mr. Chamberlain that raising rail management pension contributions 1.5% on January 1, 1987, is a prudent course to follow.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

ANNUAL REPORT OF THE COMMODITY CREDIT CORPORATION—MESSAGE FROM THE PRESIDENT—PM 176

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

To the Congress of the United States:

Pursuant to the provisions of Section 13, Public Law 806, 80th Congress (15 U.S.C. 714k), I hereby transmit the report of the Commodity Credit Corporation for the fiscal year ended September 30, 1985.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that on September 23, 1986, he had approved and signed the following enrolled bill:

S. 2462. An act to provide for the awarding of a special gold medal to Aaron Copland.

MESSAGES FROM THE HOUSE

At 4:40 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 159. Joint Resolution to designate the rose as the national floral emblem.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 6:42 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House passed the following bills, without amendment:

S. 1542. An act to amend the National Trails System Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System; and

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3838) to reform the internal revenue laws of the United States.

The message further announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 1917. An act to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

Mr. HAMILTON, Mr. STOKES, Mr. MCCURDY, Mr. BEILENSON, Mr. KASTENMEIER, Mr. DANIEL, Mr. ROE, Mr. BROWN of California, Mr. MCHUGH, Mr. DWYER of New Jersey, Mr. STUMP, Mr. IRELAND, Mr. HYDE, Mr. CHENEY, Mr. LIVINGSTON, and Mr. MCEWEN.

For consideration of matters within the jurisdiction of the Committee on Armed Services under clause 1(c) of House rule X: Mr. ASPIN, Mr. STRATTON, and Mr. DICKINSON.

For consideration of matters within the jurisdiction of the Committee on Post Office and Civil Service under clause 1(o) of rule X: Mr. FORD of Michigan, Mrs. SCHROEDER, Ms. OAKAR, Mr. HORTON, and Mr. YOUNG of Alaska.

The message further announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4033. An act to amend title 5, United States Code, to strengthen the protections available to Federal employees against prohibited personnel practices, and for other purposes;

H.R. 4302. An act to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower; and

H.R. 4900. An act to provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community.

The message further announced that the House has agreed to the following concurrent resolution;

H. Con. Res. 395. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3838.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4900. An act to provide for the proper administration of justice within the boundaries of the Salt River PimaMaricopa Indian Community; to the Select Committee on Indian Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LAXALT (for Mr. GARN), from the Committee on Appropriations, with amendments:

H.R. 5313: A bill making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies and offices, for the fiscal year ending September 30, 1987, and for other purposes (Rept. No. 99-487).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 1374: A bill to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island (Rept. No. 99-488).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1620: A bill to amend title XVIII of the Social Security Act to establish the National Council on Access to Health Care, and for other purposes (Rept. No. 99-489).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, without amendment:

H.R. 1426: A bill to reauthorize and amend the Indian Health Care Improvement Act, and for other purposes.

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 740: A bill to extend until October 1, 1995, the authority for appropriations to promote the conservation of migratory waterfowl and to offset or prevent the serious loss of wetlands and other essential habitat, and for other purposes.

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment and an amendment to the title:

S. 2551: A bill to create a National Center on Youth Suicide under the Office of Justice Programs in the Department of Justice.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. INOUYE:

S. 2876. A bill to amend title 37, United States Code, to provide for special pay for phychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

By Mr. CRANSTON:

S. 2877. A bill to amend section 312(c) of the Federal Aviation Act to 1958, relating to research and development, to require the Secretary of Transportation to assure the development of a collision avoidance system for use on all civil and military aircraft of the United States in the interest of air safety; to the Committee on Commerce, Science, and Transportation.

By Mr. DOLE (for himself, Mr. BYRD, Mr. THURMOND, Mr. BIDEN, Mrs. HAWKINS, Mr. CHILES, Mr. WILSON, Mr. DECONCINI, Mr. HATCH, Mr. CRANSTON, Mr. GRAMM, Mr. MOYNIHAN, Mr. SPECTER, Mr. DODD, Mr. TRIBLE, Mr. LEAHY, Mr. DENTON, Mr. MITCHELL, Mr. ABDNOR, Mr. NUNN, Mr. ROCKEFELLER, Mr. SASSER, and Mr. DIXON):

S. 2878. A bill to strengthen the laws against illegal drugs, and for other purposes; read the first time.

By Mr. MOYNIHAN:

S. 2879. A bill to amend part A of title IV of the Social Security Act to reduce the need for emergency assistance payments to provide temporary housing for destitute families and homeless AFDC families and the expense of such payments, by authorizing grants to States for the construction or rehabilitation of permanent housing that such families can afford with their regular AFDC payments; to the Committee on Finance.

By Mr. BYRD (for Mr. INOUYE (for himself and Mr. MATSUNAGA)):

S. 2880. A bill to provide a temporary extension of the interstate transfer deadline for H-3; ordered held at the desk.

STATEMENTS OF INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 2876. A bill to amend title 37, United States Code, to provide for special pay for psychologists in the commissioned corps of the Public Health Service; to the Committee on Governmental Affairs.

SPECIAL PAY FOR CERTAIN PSYCHOLOGISTS IN THE COMMISSIONED CORPS OF THE PUBLIC HEALTH SERVICE

● Mr. INOUYE. Mr. President, I am introducing legislation today to amend the U.S. Public Health Service Act to provide those psychologists who are in the Public Health Service Regular or Reserve Corps with the same board-certification/specialty designation pay bonus as their physician colleagues presently receive.

It is my understanding that there are approximately 24 psychologists in the U.S. Public Health Service and, further, that two of these individuals have received their board certification from the American Board of Professional Psychology.

In my judgment, it would be most appropriate for the Federal Government to encourage excellence within the ranks of those who provide care to Federal beneficiaries. Further, from a public policy frame of reference, it is important that each of the disciplines be treated in a comparable manner.

Mr. President, I request unanimous consent that a letter I recently received from Dr. Robert Windom, Assistant Secretary for Health, U.S. Department of Health and Human Services, describing the extent to which our Nation's physicians currently receive this pay bonus, be printed in the RECORD along with the text of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2876

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 5 of title 37, United States Code, is amended by inserting after section 302b the following new section:

"§ 302c. Special pay: psychologists in the Public Health Service Corps

"(a) A member who is—

"(1) an officer in the Regular or Reserve Corps of the Public Health Service and is designated as a psychologist; and

"(2) has been awarded a diploma as a Diplomate in Psychology by the American Board of Professional Psychology,

is entitled to special pay, as provided in subsection (b).

"(b) The rate of special pay to which an officer is entitled pursuant to subsection (a) shall be—

"(1) $2,000 per year, if the officer has less than 10 years of creditable service;

"(2) $2,500 per year, if the officer has at least 10 but less than 12 years of creditable service;

"(3) $3,000 per year, if the officer has at least 12 but less than 14 years of creditable service;

"(4) $4,000 per year, if the officer has at least 14 but less than 18 years of creditable service; or

"(5) $5,000 per year, if the officer has 18 or more years of creditable service.".

(b)(1) Section 303a of title 37, United States Code, is amended by inserting "302c," after "302b," each place it appears.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 302b the following new item:

"302c. Special pay: psychologists in the Public Health Service Corps.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1986, or on the date of the enactment of this Act, whichever is later, and shall apply with respect to pay periods beginning on or after that effective date.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, PUBLIC HEALTH SERVICE,

Washington DC, August 12, 1986.

Hon. DANIEL K. INOUYE,
U.S. Senate,
Washington, DC.

DEAR SENATOR INOUYE: This is in response to your letter of July 22 requesting information about Board Certified Pay (BCP) paid to medical officers of the Commissioned Corps of the Public Health Service (PHS).

Pursuant to 42 U.S.C. 210(a)(2) commissioned medical and dental officers on active duty in the PHS Commissioned Corps are authorized special pay in the same amounts as, and under the same terms and conditions which apply to, special pay paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37, United States Code. Medical officers of the Armed Forces are authorized BCP pursuant to 37 U.S.C. 302(a)(5). The amount of BCP ranges from $2,000 per year to $5,000 per year, depending on the number of years of creditable service of the officer concerned.

Our records show that during Fiscal Year 1983, 1,182 out of 2,259 medical officers were

paid BCP; during Fiscal Year 1984, 1,121 out of 2,127 medical officers were paid BCP; during Fiscal Year 1985, 1,060 out of 1,961 medical officers were paid BCP; and thus far in Fiscal Year 1986, 1,078 out of 1,841 medical officers have received BCP.

Dental officers in the PHS Commissioned Corps are also eligible for BCP pursuant to 42 U.S.C. 210(a)(2) and 37 U.S.C. 302b(a)(5). The amount of BCP for dental officers ranges from $2,000 per year to $4,000 per year, depending on the amount of creditable service of the officer concerned. Currently there are 32 out of 580 active duty dental officers receiving BCP in the PHS Commissioned Corps.

No other category of officers in the PHS Commissioned Corps is eligible for BCP.

Sincerely yours,

ROBERT E. WINDOM, M.D.,
Assistant Secretary for Health.●

By Mr. CRANSTON:

S. 2877. A bill to amend section 312(c) of the Federal Aviation Act of 1958, relating to research and development, to require the Secretary of Transportation to assure the development of a collision avoidance system for use on all civil and military aircraft of the United States in the interest of air safety; to the Committee on Commerce, Science, and Transportation.

DEVELOPMENT OF COLLISION AVOIDANCE SYSTEMS FOR AIRCRAFT

Mr. CRANSTON. Mr. President, the city of Cerritos, CA has forwarded to my office a copy of a moving and eloquent indictment of the Federal Aviation Administration's prolonged avoidance of deciding to issue a rule to require altitude encoded transponder equipment on all light aircraft, particularly aircraft entering terminal control areas.

Cerritos suffered a terrible tragedy when an Aeromexico jet and a light aircraft collided over the city on September 2.

The Cerritos tragedy is the third midair collision over California in recent years. This time we must accept the lesson that heavy commercial jet traffic and light private aircraft simply do not mix safely without altitude encoded transponders or some onboard or air-to-ground collision avoidance system. If such equipment is found by experts not to be an answer then another answer must be found—at once. Among the answers we must consider promptly are:

Equipping the FAA with sufficient computer capacity to handle the traffic encountered at congested airports.

Adding increased numbers of air traffic controllers.

Rehiring controllers fired in 1981 on a selective basis if that is necessary to bring the FAA's strength up to the level required to keep our airways safe.

Imposing temporary restrictions on air traffic at crowded airports until the FAA can install equipment and personnel necessary to do its job.

The innocent traveling public, flight personnel aboard commercial planes, pilots on private planes and those who accompany them, and the residents living in areas of heavy air traffic must no long carry the risks resulting from the failures of the Federal Aviation Agency and Congress to act decisively to stop avoidable midair collisions between commercial jets and light privately operated aircraft.

I am encouraged, therefore, by reports that FAA Administrator Donald Engen may reconsider the position of the FAA against requiring altitude encoded transponders on all aircraft entering terminal control areas.

I encourage all segments of the aviation industry and the general public to participate in solving the critical need for collision avoidance systems. The starting point must be to avoid midair collisions. All parties share a common interest in achieving this objective.

The resolution adopted by the Cerritos City Council asks for support for H.R. 3805, introduced in December 1985 in the House of Representatives by Congressman BOB DORNAN. The bill requires the FAA to promulgate standards for an airborne collision avoidance system within 1 year of enactment. I send to the desk a copy of the bill and ask for its appropriate referral.

I ask unanimous consent that the text of the bill and the motion adopted by the city council of the city of Cerritos on September 18, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 2. Section 312(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1353(c)), which relates to research and development, is amended by inserting "(1)" immediately after "(c)" and by adding at the end thereof the following new paragraph:

"(2) In carrying out his functions, powers, and duties under this section pertaining to aviation safety, the Secretary of Transportation shall coordinate and take whatever steps necessary (including research and development) to promulgate standards for an airborne collision avoidance system for all United States aircraft, civil and military, to improve aviation safety. The Secretary of Transportation shall promulgate such standards within one year after the date of enactment of this Act. Such standards shall require that such collision avoidance system be designed—

"(A) to give aircraft pilots clear and unambiguous instructions concerning maneuvers to be undertaken or avoided to prevent a mid-flight collision with other aircraft;

"(B) to be totally independent of any ground-based equipment and ground stations and able to function in any remote or other area without the need for communication with ground-based equipment;

"(C) to permit modification of the performance of such system by the pilot in command of the aircraft in which such system is installed at the option of such pilot;

"(D) to prevent the functions of such system being modified in any way by signals sent from any ground-based system or equipment;

"(E) so that such system can be manufactured and sold at a cost which the Secretary of Transportation determines is sufficiently reasonable so that its use on all such aircraft would not impose an unreasonable burden on air carriers and other owners and operators of aircraft;

"(F) so that it shall not be incompatible with the air traffic control system; and

"(G) so that it shall be adequate to protect a small aircraft from a similarly equipped small private or military aircraft."

MOTION ADOPTED BY CITY OF CERRITOS CITY COUNCIL, SEPTEMBER 18, 1986

History does repeat itself. It is also true that we are doomed to repeat our mistakes if we do not learn from them.

Time and the cruelties of chance selected Cerritos to drive home those two truths. Because the aviation industry—and the public—failed to learn from the mid-air collision above the City of Whittier in 1975 and again in 1978 in San Diego, history has once again repeated itself. In each case, altimeter encoded transponders that would have made the light planes and their altitudes visible to radar were not in use. As a result, we in Cerritos are left with immeasurable loss and grief.

In 1975, and again in 1978 following the mid-air collision of a PSA airliner and a light plane, many levels of aviation interests unleashed an avalanche of responses; much of it designed to disarm the public below:

Our aviation system is too complicated to be understood by laymen, they said.

It isn't necessary for radar to detect all aircraft because TCA's (terminal control areas) established by the FAA will keep commercial and private aircraft separated from each other, the experts said.

The public was told 3-D type radar used by the military to track uncooperative aircraft would be in airport service in a few years.

We were also told that altitude encoding transponders on all aircraft would flood radar screens and prevent traffic controllers from doing their job.

Those things were said 10 years ago. They are being said again today. It is time for sleight-of-mouth assurances to stop and meaningful action to BEGIN. it is time for those altitude enconding transponders to be required on ALL planes flying in metropolitan areas. The Federal Aviation Trust Fund has amassed over $8 billion which could be used to help implement such action. The fund was created to assist aviation safety by levying an $8 charge on each airline ticket purchased.

While this City Council does not have the authority to act directly, it does have the authority of the people to demand action. We have the authority—and the responsibility—to demand and keep demanding until Congress and the Federal Aviation Administration take action.

I, therefore, move that the Cerritos City Council:

(1) Go on record in support of requiring that all general aviation aircraft flying in metropolitan areas be equipped with operable altimeter encoded transponders and, that all local control towers be empowered to deny permission for takeoffs or landings

when local traffic is so great as to overburden the existing radar's ability to manage the airspace;

(2) Inform each Member of the California Congressional delegation and our U.S. Senators of our position on this issue;

(3) Direct the City Manager and City Attorney to keep the Council apprised of all Federal actions on this and other areas of aviation safety in a timely and regular basis, which should include recommendations for further Council action as needed;

(4) Indicate support for H.R. 3905 requiring that the Secretary of Transportation develop standards for an affordable air collision avoidance system; and

(5) Indicate support for increased and upgraded air traffic controllers.

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from Georgia [Mr. MATTINGLY], and the Senator from West Virginia [Mr. ROCKEFELLER] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1747

At the request of Mr. ROTH, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1747, a bill to amend the Foreign Assistance Act of 1961 to protect tropical forests in developing countries.

S. 1748

At the request of Mr. ROTH, the name of the Senator from Arkansas [Mr. PRYOR] was added as a cosponsor of S. 1748, a bill to amend the Foreign Assistance Act of 1961 to protect biological diversity in developing countries.

S. 2451

At the request of Mr. MELCHER, the name of the Senator from South Dakota [Mr. PRESSLER] was added as a cosponsor of S. 2451, a bill to provide for entry into the United States of sugar only from friendly developing countries, to provide for entry of sugar from the Philippines on at least as favorable terms as sugar from any other country, and for other purposes.

S. 2588

At the request of Mr. DOMENICI, the names of the Senator from Oregon [Mr. PACKWOOD], the Senator from Connecticut [Mr. DODD], and the Senator from Washington [Mr. GORTON] were added as cosponsors of S. 2588, a bill to provide permanent authorization for White House Conferences on Small Business.

S. 2637

At the request of Mr. LONG, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of S. 2637, a bill relating to the application of the drawback provisions of section 313 of the Tariff Act of 1930 to certain imports of cane sugar.

S. 2781

At the request of Mr. EVANS, the names of the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2845

At the request of Mrs. KASSEBAUM, the names of the Senator from Rhode Island [Mr. CHAFEE], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 2845, a bill to designate the Santa Fe Trail as an Historic Trail under the National Trails System Act.

S. 2850

At the request of Mr. DOLE, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 2850, a bill to strengthen and improve the enforcement of the laws against illegal drugs, and for other purposes.

S. 2861

At the request of Mr. GRASSLEY, the names of the Senator from Massachusetts [Mr. KERRY], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of S. 2861, a bill to provide for research, education, and information dissemination concerning Alzheimer's disease and related dementias.

S. 2872

At the request of Mrs. KASSEBAUM, the name of the Senator from Georgia [Mr. MATTINGLY] was added as a cosponsor of S. 2872, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes.

SENATE JOINT RESOLUTION 390

At the request of Mr. CRANSTON, the names of the Senator from Alaska [Mr. STEVENS], and the Senator from Mississippi [Mr. STENNIS] were added as cosponsors of Senate Joint Resolution 390, a joint resolution to authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week".

SENATE JOINT RESOLUTION 396

At the request of Mr. HATCH, the names of the Senator from Texas [Mr. BENTSEN], and the Senator from Ohio [Mr. METZENBAUM] were added as cosponsors of Senate Joint Resolution 396, a joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week".

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Virginia [Mr. WARNER], and the Senator from Pennsylvania [Mr. HEINZ] were added as cosponsors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day".

SENATE JOINT RESOLUTION 410

At the request of Mr. WILSON, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Ohio [Mr. METZENBAUM], were added as cosponsors of Senate Joint Resolution 410, a joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week".

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from Georgia [Mr. MATTINGLY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from Illinois [Mr. SIMON], the Senator from Michigan [Mr. LEVIN], the Senator from Mississippi [Mr. STENNIS], the Senator from Arkansas [Mr. PRYOR], the Senator from Arizona [Mr. GOLDWATER], the Senator from Oklahoma [Mr. BOREN], the Senator from Nebaska [Mr. ZORINSKY], the Senator from Utah [Mr. GARN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Illinois [Mr. DIXON], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Minnesota [Mr. DURENBERGER], and the Senator from Alabama [Mr. DENTON] were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week".

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the names of the Senator from Wisconsin [Mr. PROXMIRE], and the Senator from Arkansas [Mr. BUMPERS], were added as cosponsors of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the Senator from Maryland [Mr. SARBANES], the Senator from Kentucky [Mr. FORD], the Senator from Illinois [Mr. DIXON], and the Senator from Indiana [Mr. QUAYLE] were added as cosponsors of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

71-059 O-87-35 (Pt. 18)

AMENDMENTS SUBMITTED

INDIAN GAMING REGULATORY ACT

PELL (AND CHAFFEE) AMENDMENT NO. 3029

(Ordered to lie on the table.)

Mr. PELL (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (H.R. 1920) to establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands, and for other purposes; as follows:

At the end of section 4, add the following new subsection:

Nothing in this Act may be construed to permit gaming activities, except to the extent permitted under the laws of the State of Rhode Island on lands acquired by the Narragansett Indian Tribe under the Rhode Island Indian Claims Settlement Act (P.L. 95-395), or on any lands held by or on behalf of such tribes.

● Mr. CHAFEE. Mr. President, I am introducing on behalf of myself and my colleague, the junior Senator from Rhode Island [Mr. CHAFEE] an amendment to H.R. 1920, the Indian Gaming Regulatory Act. I ask that it be printed in the RECORD and held at the desk.●

DROPOUT PREVENTION AND REENTRY DEMONSTRATION PROJECTS

QUAYLE AMENDMENT NO. 3030

(Ordered to lie on the table.)

Mr. QUAYLE submitted an amendment intended to be proposed by him to the bill (H.R. 3042) to authorize the Secretary of Education to make grants to local educational agencies for dropout prevention and reentry demonstration projects; as follows:

On page 1 after line 2, insert:

"TITLE I—DROPOUT PREVENTION AND REENTRY ACT OF 1986

SEC. 101.".

At the end of the bill, add the following:

TITLE II—BILINGUAL EDUCATION

SHORT TITLE

SEC. 201. This title may be cited as the "Bilingual Education Act Amendments of 1986".

PURPOSE

SEC. 202. Section 702(a) of the Bilingual Education Act (20 U.S.C. 3221 et seq.) (hereafter in this title referred to as the "Act") is amended—

(1) by redesignating clauses (4) through (14) as clauses (5) through (15), respectively; and

(2) by adding after clause (3) the following new clause:

"(4) that, regardless of the method of instruction, programs which serve limited English proficient students have the equally important goals of developing academic achievement and English proficiency;".

FUNDING FLEXIBILITY

SEC. 203. Section 702(b) of the Act is amended—

(1) by striking out paragraph (3);

(2) in paragraph (4), by striking out the semicolon and everything that follows through the end thereof and inserting in lieu thereof a period; and

(3) by redesignating paragraphs (4), (5), (6), and

(7) as paragraphs (3), (4), (5), and (6), respectively,

TECHNICAL AMENDMENTS

SEC. 204. (a) Section 703(a)(13) of the Act is amended by striking out "areas of high concentrations of persons" and inserting in lieu thereof "individuals".

(b) Section 721(b) of the Act is amended—

(1) by striking out the paragraph designation "(1)""; and

(2) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

(c) Section 721(f)(7)(C) of the Act is amended by striking out "and with" and inserting in lieu thereof "with".

(d) Section 733 of the Act is amended by striking out the subsection designation "(a)".

EFFECTIVE DATE

SEC. 205. The amendments made by this title shall take effect on July 1, 1986.

DEFENSE PRODUCTION ACT EXTENSION

GARN AMENDMENT NO. 3031

Mr. DOLE (for Mr. GARN) proposed an amendment to the bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act; as follows:

At the end of the bill, add the following:

SEC. 5. AMENDMENT TO EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985.

Section 116(d) of the Export Administration Amendments Act of 1985 is amended by striking "October 1, 1986" and inserting in lieu thereof "October 1, 1987".

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. KASTEN. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation, of the Committee on Agriculture, be authorized to meet during the session of the Senate on Thursday, September 25, 1986, in order to conduct a hearing to address S. 2685, and S. 2782.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EMPLOYMENT AND PRODUCTIVITY

Mr. KASTEN. Mr. President, I ask unanimous consent that the Subcommittee on Employment and Productivity, of the Committee on Labor, be authorized to meet during the session of the Senate on Thursday, September 25, 1986, in order to conduct a hearing on United States-Japan Auto Parts Trade Talks.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

URGING SENATE APPROVAL OF AID TO THE PHILIPPINES

● Mr. KENNEDY. Mr. President, last Thursday, the House voted an additional $200 million in aid to the Philippines. Yesterday, President Corazon Aquino returned home to the Philippines after an extraordinary 9-day visit to the United States—without a commitment from this Senate on additional aid to her country. It is high time the Senate acted on the House resolution and approved this much-needed assistance to the world's newest democracy.

Never before in the history of this Nation have the American people demonstrated such an outpouring of support for a visiting foreign leader. Their enthusiasm was visible everywhere, in the large crowds, in the press, in the sea of yellow which broke out across this country and in the statements of our Nation's leaders.

At the conclusion of his meeting with President Aquino, President Reagan declared he was "bullish on the Philippines" and promised to "do all that we can" to make her government successful. After her moving and impressive speech before Congress, Speaker TIP O'NEILL declared, "That's the finest speech I've heard in my 34 years in Congress," and Majority Leader BOB DOLE declared President Aquino had "hit a home run." In her address to the Congress, President Aquino demonstrated that she is a tough, dedicated leader who clearly understands the complex and difficult issues facing her country. The House of Representatives has moved to support President Aquino and the Senate delay on that measure is inexcusable—and contrary to our interests.

Today, we hear much about the need to cut back our budget, and to reduce our national deficit. One of the first targets is always foreign assistance. Yet there must be something terribly wrong with this Nation's priorities if we can find $100 million for the Contras, $300 million for a Central American slush fund and $900 million for an antidrug bill but not $200 million for one of America's staunchest supporters and allies that is struggling to solidify its new-found democracy. The American people support that aid and it is time for the Senate to act on it.

The path of liberty is never easy. But the American and Philippine

people have a long history of joint dedication to the cause of justice, freedom, and democracy. Our two peoples fought side by side for our fundamental freedoms a generation ago in World War II—and we must not lose the fight for those freedoms in our own generation.

Millions—even billions—of peoples in other lands live under tyranny and repression in the world today—and they have never known the blessings of democracy. But the Philippine people have. They know what it means to vote in free elections, to live in freedom, to have a freely chosen government, to have a President who shares their cause.

We in America watched in awe as Cory Aquino took up the cause of freedom for which her husband Ninoy died and rallied her people against the tyranny and oppression of the Marcos regime. We watched with astonishment as those ripples of freedom in the Philippines spread from brother to brother, sister to sister, friend to friend, island to island. And we watched in admiration as the tide of people power swept Marcos from office and Cory to the Presidency.

But the time has come for the United States to act. The Philippines must now begin the long and difficult task of rebuilding a country ravaged for two decades by Marcos, Imelda, and their cronies. The Philippine economy is in shambles and still contracting. The heavy debt burden of $26 billion absorbs $2 billion a year in debt service alone—one half of the country's export revenues. The infighting within the Government continues and a Moslem leader has declared a provisional government. The Communist insurgency has rejected the President's offer of a cease-fire and remains a substantial threat to the security and stability of not only the Philippines but also the important United States bases in that country.

The United States is committed to preserving and promoting democracy throughout the world; President Aquino and the Philippine people have achieved an unprecedented, extraordinary democratic victory. They deserve our support, they need our support, and it is in our interests to provide them support.

We have delayed action on this assistance for far too long. I remind Members of this body that it is not simply the forces of peace and democracy that are watching our lack of action on this measure—you can be sure the forces of instability and tyranny are following it as well.

The American people gave President Aquino the warmest welcome ever provided a visiting head of State. I urge my colleagues to reflect their wishes and take action quickly to approve the aid package to the people of the Philippines.●

ABORTION AND INFORMED CONSENT: HAWAII

● Mr. HUMPHREY. Mr. President, I want to echo the remarks of Lora in this letter from Hawaii: "Why is there so much opposition to informed consent on abortion? What are we trying to hide?" Indeed, what is being hidden are the facts about "fetal development, abortion procedures, physical, and * * * emotional after effects."

Mr. President, Lora wishes to reveal the truth about the effects of abortion. Abortion, though legal, is not safe, and women need to be informed so that their consent is truly given after adequate counseling.

I urge my colleagues to join me in asking that informed consent be given to women before an abortion is performed on her. I particularly urge my colleagues from Hawaii to listen to their constituent, and to consider the thousands of constituents she represents who suffer in silence.

Mr. President, I submit Lora's letter for the RECORD.

The letter follows:

MAY 27, 1986.

DEAR SENATOR HUMPHREY: I understand that you are presenting a bill on informed consent for abortion. I support your effort. In fact, I wish there were such a law in Hawaii. You see, at the age of 17 I went through an abortion, totally ignorant of the facts of fetal development, abortion procedures, physical and most of all emotional aftereffects.

Of course, had I looked hard enough, I could have discovered the facts for myself. If informed consent had been the law, and therefore standard procedure, it might have been just the thing to keep me from making the worst decision of my life.

I regretted the abortion immediately, and was surprised that I felt so much guilt, depression and remorse. I cried, even mourned something I didn't understand.

It wasn't until I read a pro-life pamphlet that the awful truth finally dawned. The "fetus" that I had "aborted" had a heartbeat, brain waves, even fingerprints on its fingers.

I had murdered my own baby.

Why is there so much opposition to informed consent on abortion? What are we trying to hide? Are we helping a woman when we censor the facts that will help her make an intelligent decision about something so irreversible and eternal?

When I found out the manner by which my baby died (suction), my guilt was unbearable. The mental block couldn't cover the pain, nor could drugs or other methods I was using to cope.

Thank you for allowing me to express myself in this letter. I hope that someone else may benefit from what I went through.

Sincerely,

MRS. LORA L. HOOBLER,
Hawaii.●

RESERVATIONS TO INTER-AMERICAN CONVENTION ON LETTERS ROGATORY

● Mr. LUGAR. Mr. President, late last week the Committee on Foreign Relations reported the Inter-American Convention on Letters Rogatory, Treaty Document 98-7. The Convention is now on the Executive Calendar. I anticipate favorable Senate action shortly.

Due to an oversight, the committee's proposed resolution of ratification did not include two technical reservations recommended by the Department of State. At the time the Convention is brought up for a vote, I intend to add the two reservations as amendments to the resolution of ratification.

Mr. President, I ask that these two reservations be printed in the RECORD.

The reservations follow:

INTER-AMERICAN CONVENTION ON LETTERS ROGATORY TREATY DOCUMENT 98-7

Reservations intended to be proposed by Mr. Lugar:

Before the period at the end of the resolution of ratification, insert a comma and add the following:

"Subject to the following reservations:

"1. Pursuant to Article 2(b) of the Inter-American Convention on Letters Rogatory, letters rogatory that have as their purpose the taking of evidence shall be excluded from the rights, obligations and operation of this Convention between the United States and another State Party.

"2. In ratifying the Inter-American Convention on Letters Rogatory, the United States accepts entry into force and undertakes treaty relations only with respect to States which have ratifed or acceded to the Additional Protocol as well as the Inter-American Convention, and not with respect to States which have ratified or acceded to the Intern-American Convention alone.●

NATIONAL JOB SKILLS WEEK

● Mr. GORE. Mr. President. I am extremely pleased that the resolution to designate the week of October 12-18, 1986, as "National Job Skills Week" passed the Senate last night. I want to thank the many colleagues who joined Senator QUAYLE and me as cosponsors and supporters in the effort to get this measure passed. Also, I want to thank Congressman MATTHEW MARTINEZ, chairman of the House Subcommittee on Employment Opportunities, for sponsoring and guiding the resolution through the House of Representatives.

The principal aim of National Job Skills Week is to focus attention on our work force needs. Each of us is aware that work in our Nation today is in a constant state of change. We know that the American workplace is undergoing a dramatic transformation due to advances in technology and to international competition. This week will seek to highlight the changes that are taking place in our economy and the new skills that are being required because of these changes. It will bring us face to face with the challenge of accomplishing the work that will enable us to remain a competitive country with a high standard of living.

During National Job Skills Week, we will need to assess our private and public job training programs. America historically has invested less in the

training and retraining of workers than other industrialized nations. This appears to be continuing today, and we may not be developing trained and versatile workers who can adapt to a rapidly changing workplace.

Over the past few years, study after study has pointed out that the future belongs to the well skilled and the well trained. According to a recent report of the Carnegie Forum on Education and the Economy:

In the future, high-wage-level societies will be those whose economies are based on the use of a wide scale of very highly skilled workers, backed up by the most advanced technologies available.

The report also stated that:

If America wants to compete on the same terms as it did in the past—making the most of the workers with low skill levels—then it must accept prevailing world wage levels for low-skilled and semi-skilled labor. That is, we must be prepared for a massive decline in our standard of living.

We envision a bright future for America, a future with Americans who can get the job done. We need to evaluate our training programs so that we can take steps to ensure that workers with outmoded skills get modernized and those with no marketable skills get access to training. The future is coming, we must all be ready.●

THE LOSS OF ED BISHOP

● Mr. HART. Mr. President, the trade union movement has lost a vigorous representative. The people of Colorado have lost a spirit of the community. And I have lost a friend. It is with regret that I announce to the Senate the passing of Edmond Bishop.

During the course of our public lives, we are aided by thousands of good people. But some stand out; they give both their time and something of themselves without expecting anything in return. That kind of selflessness was the hallmark of Ed Bishop.

Ed played a key role in my two campaigns for election to the Senate. For more than a decade, I valued his advice and his hard work. Most of all, I valued his friendship.

Ed died recently from cancer. To his family and friends, to his fellow workers in the Communications Workers of America and the AFL-CIO, I offer my sincere condolences. All of us will miss him greatly.

I ask that an article that announced his passing, which appeared in the CWA newsletter, appear at this point in the RECORD.

The article follows:

EDMOND BISHOP SUCCUMBS AT AGE 53

Edmond F. Bishop, a former member of the CWA Executive Board and a CWA staff person since 1961, died Aug. 8, following a valiant struggle with cancer. He was 53 years old.

He died in St. Catherine's Hospital, near his home in Half Moon Bay, Cal., where he had returned two days earlier after months of treatment at the National Institutes of Health in the Washington, D.C., area.

At the time of his death, he was administrative assistant to CWA Vice President Harry Ibsen of District 9, a position he had held with CWA since August of 1977.

Mr. Bishop became the CWA vice president in the old District 8, headquartered in Denver, Colo., and which covered the operating territory of Mountain Bell Telephone Co., on Apr. 27, 1972. He was appointed as vice president to succeed John C. Carroll, who became assistant to the late Joseph A. Beirne, CWA President Emeritus, and he was re-elected the vice president in 1973 and 1975.

Starting with CWA as a staff trainee in 1961, Mr. Bishop worked as a CWA representative in the union's Syracuse, N.Y., office between 1962 and 1965 when he transferred to CWA's Albuquerque, N.M., office. Carroll named him his assistant in August of 1965.

Prior to his appointment to staff, Mr. Bishop served as president of CWA Local 9573 in San Bernadino, Calif., and was employed as a switchman by General Telephone.

Survivors include his wife, Bertha of Yucca Valley, Cal.; three sons, Thomas of Redwood City, Cal., and Gerald and Patrick, both of Birmingham, Ala.; his mother, Margaret of Duarte, Cal., and a brother, Thomas of Phoenix, Ariz.

One of Mr. Bishop's last wishes was that his remains be cremated and that the ashes be placed in the Pacific Ocean. Thomas Bishop, one of the sons, pledged to either dive with the remains or sprinkle the ashes as per his father's wish, following a memorial service at Forest Lawn Cemetery in Covina, Cal., on Sunday, Aug. 17, according to a family friend.●

S. 1696—A WISE SOLUTION TO A DIFFICULT PROBLEM

● Mr. JOHNSTON. Mr. President, this bill is made necessary by a curious set of circumstances. Following the construction of Glen Canyon Dam in 1963, releases into the lower Colorado River were limited for the following 17 years as Lake Powell began to fill. Despite warnings from the Bureau of Reclamation and the Corps of Engineers that greater flood control releases would eventually be necessary, local residents and businesses began building on the floodplain of the river. This development continues today and threatens the Bureau's ability to operate the upstream reservoir system. Part of the problem is that numerous Federal grants, subsidies, and programs that encourage development are available within the floodway.

The principal purpose of S. 1696 is to withdraw Federal assistance for development within the floodway. At the same time, currently existing development would be grandfathered. The bill has other provisions, but this is the crux of it.

Because of the Bureau of Reclamation's involvement in managing the Colorado River and because of the responsibilities of the Committee on Energy and Natural Resources in overseeing the Bureau's programs, the committee was given sequential referral of S. 1696 following its consideration by the Committee on Environment and Public Works. The Committee on Energy and Natural Resources supports S. 1696, as reported by the Committee on Environment and Public Works, and for this reason elected not to mark up the bill separately.

Mr. President, I believe this bill represents a wise solution to a difficult problem, and I urge its immediate passage.●

ATOMIC VETERANS

● Mr. RIEGLE. Mr. President, I rise today as a cosponsor of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act of 1985. This bill, relating to the liability of government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, would restore the right of those exposed to ionizing radiation to file suits against the contractors who conducted the weapons tests.

Between 1946 and 1962, the U.S. Government conducted a series of atmospheric tests of nuclear weapons. During this period, approximately 200,000 military personnel, including civilian Defense Department employees, participated in the nuclear testing program.

While there are no definitive statistics available for all the test participants, many health experts now suspect that these "atomic veterans," as they have come to be known, may be suffering from an increased incidence of cancer. One study, conducted by the Center for Disease Control, noted an increase in frequency of occurrence of leukemia and death from leukemia among participants in the 1957 nuclear test, code-named, "Smokey." Other studies have raised the possibility of similar long-term effects among participants in other nuclear tests.

Understandably, many atomic veterans have sought redress in court for acts or omissions of atomic weapons contractors in carrying out the atomic weapons testing program. Until 1984, such suits could be brought against contractors who participated in the testing program. Contractors were then indemnified by the Government for the costs of litigation, judgments, or settlements.

This system of redress was abruptly halted with the passage of an amendment to the 1985 Defense Authorization Act, known as the "Warner amendment." The amendment stipulated that the United States would replace the contractors as the defendant in suits filed by atomic veterans. Since the United States is immune from suits filed by veterans and civilians in these cases, the Warner amendment

effectively precluded any judicial remedy for injuries or death due to exposure to radiation in the course of the atomic weapons testing program. While veterans may apply for compensation through the Veterans' Administration, this has not proven to be an adequate means of redress. Of all such claims submitted, less than 3 percent have been granted benefits by the Veterans' Administration.

Mr. President, S. 2454 will restore to participants in the weapons testing program the right to judicial review of their claims. I believe we owe people exposed to ionizing radiation their day in court, where their cases can be decided on the merits. I urge my colleagues to support this bill, and to act expeditiously in approving it.●

RECOGNIZING MICHIGAN'S EXEMPLARY SCHOOLS

● Mr. RIEGLE. Mr. President, I would like to recognize the accomplishments of 12 Michigan shcools which have been selected by the U.S. Department of Education as Exemplary Schools of Excellence. These schools demonstrate an uncommon commitment to a special mission: helping our children obtain the skills and knowledge they will need to participate in our increasingly complex and sophisticated world.

The public schools named by the Department of Education are: Kellog Elementary School in Battle Creek, Doherty Elementary in West Bloomfield, Longstreet Elementary School in Saginaw, Orchard Hills Elementary School in Novi, Parkwood Upjohn Elementary School in Kalamazoo, Quarton Elementary School in Birmingham, Shay Elementary School in Harbor Springs, and Sylvester Elementary School in Berrien Springs. The private schools that have been recognized for their excellence are: Dickenson Area Catholic Elementary School in Iron Mountain, Holland Christian Middle School in Holland, St. John Lutheran in Rochester, St. Lorenz Elementary School in Frankenmuth, and St. Mary's Cathedral in Gaylord.

These schools are leading the way in preparing today's young people for the world of the future. They are providing their students with the skills and knowledge they need to take advantage of the opportunities available in America, and, in turn, to keep our Nation strong and free.

I would like to congratulate the students, parents, and staff and other members of the commumity who contributed to the attainment of this high level of achievement. Their cooperation and hard work will have an immeasurable pay-off for their communities and for our Nation. The strong educational foundation they are building will help us as a society tackle current and future challenges head-on, contributing to a better future for everyone.

Michigan is proud of these and all of its schools. We recognize that as long as Americans strive to provide a quality education for our children, we will remain a Nation of opportunity and promise.●

SUBSIDIZED SALE OF BARLEY TO ROMANIA

● Mr. MOYNIHAN. Mr. President, will this never end? First, it was wheat to the Soviets, then sugar for the Communist Chinese, and now we have volunteered to subsidize sales of barley to Romania.

Yesterday, Under Secretary of Agriculture Daniel Amstutz announced that United States exporters would be able to sell up to 200,000 metric tons of barley to Romania under the Export Enhancement Program. The export sales will be subsidized with commodities from the inventory of the Commodity Credit Corporation. Unlike the sale of subsidized wheat to the U.S.S.R., the level of subsidy is not calculated before the actual sale.

The bonus level for the sales has yet to be determined. But we can get a good idea of the subsidy from the bonuses awarded in recent barley sales under the EEP. Today, the Department of Agriculture announced that 45,000 metric tons of barley were sold to Saudi Arabia with a bonus of $32.89. On September 15, 25,000 metric tons of barley were sold to Cyprus with a bonus of $30.20 and 31,000 metric tons to Israel with a bonus of $27.81 per ton.

As best as I can estimate, then, we are talking about a subsidy level of $28 to $33 per metric ton. If we sell all 20,000 tons, the cost of subsidizing that sale will be between $5.6 and $6.6 million.

Why are American taxpayers paying $6 million to prop up faltering Communist economies? Why is this, the most rhetorically anti-Communist government of a generation so committed to subsidizing Marxist-Lenist governments?

In so doing, we are giving credence to the Communist prophecy that we capitalists "will sell them the rope with which to hang us." Over the last decade, I have risen repeatedly to warn to the danger of confirming one of the last remaining prophecies that sustains Marxist-Leninist ideology.

It was Marx who originally suggested that the capitalist system will collapse in a crisis of overproduction. Lenin, in "Imperialism: The Highest Stage of Capitalism," altered that prophesy by claiming that for a period, we would survive by dumping our surplus locomotives, wheat, barley, whatever, on the Communists.

What an irony that the United States spends $295 billion a year on defense in peacetime, and yet we cannot seem to find the resources to maintain our own economy and producers—without subsidizing Communist regimes.

It ought to be known that there is a limit to what we will do to sustain tyranny. I hope that my colleagues might heed my warnings on our continuing penchant for proving Lenin's dictum, and understand what is at stake in continuing to subsidize sales of our commodities to Communist countries.●

NAUM AND INNA MEIMAN: EQUALITY DENIED

● Mr. SIMON. Mr. President, the Soviet's Communist government claims it is based on the theory of unified equality for all. Unfortunately, for Inna and Naum Meiman of Moscow, equality is denied. The Meiman's home has been ransacked, they have been followed.

For 10 years, the Meimans have been trying to emigrate to Israel. Inna is deathly ill with cancer. After the removal of four malignant tumors on Inna's neck, Soviet doctors have said that there is nothing more they can do for the fifth tumor. Now, it is crucial that Inna and Naum be allowed to come to the West for Inna to obtain experimental medical treatment.

I strongly urge the Soviets to allow Naum and Inna Meiman to emigrate to Israel.●

KACHAJIAN'S REBELLION: NEW JERSEY BUSINESSMAN FIGHTS TO SAVE COMPANY

● Mr. LAUTENBERG. Mr. President, I would like to draw my colleagues' attention to an article about one of my constituents which appears in the October issue of Inc. magazine.

George Kachajian is the head of Silicon Technology Corp., a company headquartered in Oakland, NJ. STC manufactures internal diameter wafering saws, which are used to slice silicon ingot in thin wafers, one of the first steps in creating semiconductors.

Several months ago, Mr. Kachajian contacted my office about a serious problem he had encountered in obtaining an export license for his saws—a product which he had been successfully selling in domestic and international markets since the early 1970's. In 1980, the U.S. Department of Commerce denied an export license application from STC. When pressed for an explanation, Commerce cited "national security reasons."

When my staff investigated Mr. Kachajian's problem, I was appalled to learn of the incredible obstacles which had been thrown in his path by our Government. While I am pleased that Mr. Kachajian's problem has been re-

solved, I am disturbed at the cost—in lost business, lost jobs, and personal frustration—which Mr. Kachajian has had to bear.

The October issue of Inc. magazine details the strength and courage of one small manufacturer who spent 6 years fighting his way through the bureaucratic maze to save his company. During that time, he saw his major competitor, a Swiss Firm, chop away at STC's customers. Unrestrained by competition from STC, the firm was selling the same product in Eastern bloc countries for prices triple those that had prevailed before export controls. The firm then used the excess profits to undercut STC's prices in the United States.

Mr. President, I want to commend George Kachajian on his determination and fortitude. In no way do I minimize the importance of safeguarding the national security when considering export licenses. I am well aware that Eastern bloc countries commit significant resources to acquire technology which could harm our national security. However, the Kachajian case does not fall within that purview. And it points to the importance of carefully differentiating between legitimate security concerns and impediments to business. It is an unhappy occasion when a businessman finds his own government tying his hands as he attempts to provide quality American products in the domestic and international markets.

Mr. President, I ask that the Inc. article on George Kachajian be printed in the RECORD.

The article follows:

KACHAJIAN'S REBELLION

(By Lucien Rhodes)

Welcome to George Kachajian's Theater of the Absurd.

You will know you have arrived when you see the marquee, there above the front door of his corporate headquarters at the end of Spruce Street in Oakland, N.J. No, it wasn't planned that way, but it does capture the spirit and essence of the whole long, involved, and contentious drama that's been six years in the making and not finished yet.

Once, those large blue letters announced the company he started 16 years ago as Silicon Technology Corp. (STC). But some months ago, this sign broke in the middle, as if unable to stand the weight of the company's aching frustration any longer: the letters spelling "TECH" fell and shattered on the parking lot below. Now each morning when Kachajian sees this symbol of his plight, he cannot help but mentally review the script as he's lived it thus far. In a rising spiral of incredulity, he will recall how an abrupt shift in American foreign policy suddenly denied him access to foreign markets, and how a foreign competitor used the opportunity both to fill the vacuum overseas and to raid his market in the United States. And he will remember with bitterness the layoffs of workers in Oakland, and the mounting financial losses, and his long hegira through the federal bureaucracy in search of relief.

So it is that George Kachajian comes to work, his $10-million company still dangerously close to collapse. Looking at the marquee, he asks himself, "Who took the 'tech' from my technology?" to which he answers, amazed at the improbability of his own response: "My own government, that's who."

But please come inside: the featured attraction has a lot more to offer—senators, congressional subcommittees, the Western Alliance; also the Soviet Union and the Warsaw Pact. You will see that the story of George Kachajian's quest for an export license is really only a small vignette played out against a vast backdrop of international trade deficits, East-West competition, and political feuding within the Reagan Administration. Still, it is a vignette that raises disturbing questions: Do the complex controls regulating U.S. exports sacrifice the international competitiveness of American companies, particularly high-tech companies? If our export-control system causes our companies to lose markets, and worse yet, industries, to foreign competitors, then, in the long run are they really protecting our national security? With a trade deficit of $170 billion, can the United States afford to forgo exports that surely run into the billions of dollars that are lost each year to export controls?

The controversy has by no means spent its force, although George Kachajian has now won a victory of sorts against the deadening hand of the Export Administration Act—the first of its kind in history. And as the news of this victory spreads through the high-tech community, he is being praised as the underdog who beat city hall. But Kachajian never wanted to star in his own melodrama. He wanted to be a businessman.

For 18 years, George S. Kachajian had worked for Dow Corning Corp. in various sales and marketing jobs, first selling silicones for oils, greases, and paint resins, and then silicon, the pure crystalline element used exclusively in the manufacture of semiconductors. His contacts within this new, rapidly growing industry were broad, he was well paid, and his prospects were very promising. But in 1969, he decided to quit. That fall, at a company plant in Hemlock, Mich., Kachajian watched an employee at work on an internal diameter wafering saw, which cuts silicon ingot into thin wafers, one of the first steps in creating semiconductors. For a second, the operator looked away from his work and the saw's diamond blade sliced through the back of his hand and cut off his fingers. Horrified and splattered with blood, Kachajian pulled the man away from the machine and applied a tourniquet. Then and there he decided that "there had to be a better way."

With almost $20,000 in personal savings, Kachajian turned to a machine-tool company in Massachusetts and financed the development of a prototype for a new saw that changed the orientation of the cutting blade, added a protective shield, and rearranged the work flow. In the fall of 1970, funded by $220,000 from friends and relatives and the refinancing of his house, he began to manufacture and sell his new machine. And it was not long before Kachajian realized that he would have to comply with U.S. export regulations, the vagaries of which could hardly be factored into any rational business plan or production schedule.

These days, business on the international level is rarely "strictly business," especially when it involves high tech. During World War II, Export Controls were used to ensure an adequate supply of various goods and commodities needed to sustain the war effort. But contrary to the original expectations, those controls were left in place long after peace had been declared—a weapon of the Cold War. The Export Control Act of 1949 finally made official what had been administrative practice, banning the export to communist countries of not only bona fide military equipment, but also dual-use commodities that might have military as well as commercial value. Beginning in 1969, Congresses and Presidents began relaxing those export restrictions, turning a more congenial and expansive face to trade with the Soviet Union and its allies. But this period of détente came to an abrupt halt with the Soviet invasion of Afghanistan in 1980. Caught up in the ebb and flow of the tensions between the superpowers was a small machine-tool company at the end of Spruce Street in Oakland, N.J.

During the 1970s, STC had prospered, controlling 80% of the domestic market in wafering saws. At the same time, Kachajian, encouraged by the prevailing attitude toward open East-West trade, had turned his attention to the demand coming from foreign markets, particularly from the Eastern Bloc, to which he traveled more than 20 times from 1974 to 1980. Because his saw is an integral part of the semiconductor manufacturing line whose end products are, in turn, essential to sophisticated weapons systems, the saws were classified as dual-use commodities requiring a validated export license. In those days, however, the only problems Kachajian encountered in the licensing procedure were delays—after a wait of up to nine months, his applications were all approved. As a result, he sold 53 wafering saws to the Soviet Union and 4 to Poland, machines that today go for $100,000 apiece.

Then suddenly, in August 1980, the U.S. Department of Commerce, for the first time, denied an export license application from STC. "One minute I was selling," Kajachian recalls, "and the next minute I was screwed. And there you are. You don't want to break the law, so you have to live with it." During the next year and a half, he made one futile call after another to the Commerce Department, only to be told cryptically that his licenses were being denied for national security reasons. Kachajian allowed himself brief interludes of optimism in which he fantasized making up his lost sales with redoubled efforts in the U.S. market. But these, it turned out, were tranquil delusions, only possible because he had not yet heard all the bad news.

By mid-1981, Kachajian discovered that STC was losing not just overseas business, but domestic customers as well. His major competitor, Meyer & Burger A.G., in Switzerland, had suddenly appeared in the United States offering comparable wafering saws for less than STC's cost of production. At first, Kachajian could not understand how the Swiss firm could sustain such suicidal dumping, but he soon learned lacking any competitive restraint, the Swiss company was selling saws in the Eastern Bloc for prices as much as triple those that had prevailed before the export controls went into effect. "They were using those excess profits to buy market share here and drive me out of business—and I couldn't fight back," Kachajian says. "It was absurd. It was outrageous. My hands were being tied by my own government."

What's more, Kachajian could not see how the country's national-security interests were served by denying him export li-

censes on a product that the Soviets could get in comparable quality and quantity from the Swiss. Instead, he felt he was the victim of capricious regulations, which, in effect, doomed him to extinction. Determined to correct the obvious illogic of his situation Kachajian screwed up his courage and marched directly into the maw of the netherworld of export licensing.

What he found was a forbidding tangle of categories and classifications, of processes and procedures, of laws, regulations, and inscrutable interpretations. At its center was the Commodity Control List (CCL), which presents those commodities, goods, and technologies requiring export licenses for any of five criteria: national security, foreign policy, short supply, human rights, and nuclear nonproliferation. In many instances, the CCL is constructed not of products, per se, but of entries calculated according to general technical or performance standards. As a result, no one really knows how many specific products are, in fact, controlled, although estimates range to the hundreds of thousands. While nobody would argue that critical high technology should be sold to the Soviet Bloc, critics from industry, academia, and Congress have charged that the list is far too broad and that it includes items long since rendered technologically obsolete.

The complexity and ungainly sprawl of the CCL is replicated in the bureaucracy that has grown up around it. Today, an application to export a product that might be covered by the CCL is scrutinized not only by several divisions within the Department of Commerce, but frequently by several intelligence agencies and the Departments of State, Defense, and Energy. Nor is that the end of it. Even after applications for certain items have been reviewed by the appropriate roster of U.S. authorities, licenses still cannot be granted unless they are also approved by the 15 allies of the Coordinating Committee for Multilateral Export Controls (COCOM), a regulatory body headquartered in Paris. The intent of COCOM is to coordinate export controls with our allies, which is certainly understandable. But exporters complain that it adds yet another layer of uncertainty to the licensing system, causing delays that drive customers to the arms of competitors, either in non-COCOM countries or even worse, in COCOM countries that interpret its restrictions more liberally than the United States. In fact, some American business people charge that our allies have, on occasion, used the licensing apparatus to give a competitive advantage to their own manufacturers.

Admittedly, it is unclear how any government bureaucracy can effectively administer such a convoluted system. The General Accounting Office, the investigative arm of the Congress, once described the export controls as a "licensing system characterized more as a paper exercise than as an instrument of control." But should you get caught shipping items on the CCL without a valid license, the penalties for violating the export regulations are very real indeed: up to five years in jail, a minimum fine of $50,000, and the loss of all export privileges.

It was this phantasmagoria of licensing that nearly overwhelmed Kachajian's sensibilities. But the more he learned about it, the more he knew he was fighting for a cause that was not only empirically just, but one that was defensible under the law as well. Provisions of the Export Administration Act of 1979 had instructed the Commerce Department to establish a division of foreign availability. If this division were to determine that a product manufactured by a U.S. company was also available to proscribed countries in comparable quality and quantity, it could decontrol that product, and the exporter could ship without a license. If there ever were a case of foreign availability, Kachajian figured, his was it. What he did not figure was that it would take him nearly four more years to get the government to admit it.

Looking back, George Kachajian's plan of attack now seems fairly obvious: compiling the information needed to prove the matter of foreign availability; seeking the testimony of industry colleagues who found themselves in similar straits; enlisting the political support of the New Jersey congressional delegation. But at the time, the process was confusing, unpredictable, and enormously frustrating. When he has the need, Kachajian will arrange on the top of his office conference table, in eight indexed stacks, seemingly every piece of correspondence he has ever sent or received to or from anybody regarding some aspect of his case. If this collection were put under one cover, its more than 1,000 pages would tell a story roughly comparable, in its own way, to the voyage of Ulysses. In Kachajian's Bureaucrats' Baedeker, there are letters addressed to the chief of the policy division of the munitions control directorate, the deputy assistant secretary of commerce for export administration, the deputy to the deputy assistant secretary for export administration, the licensing officer of the electronic instrumentation branch of the office for export administration, the special assistant to the President for public liaison, the U.S. special trade representative, the special assistant to the President for intergovernmental affairs, the director of the office of International Economic Affairs, the director of the office of Investigations of the U.S. International Trade Commission, and the undersecretary of state for political affairs—to name just a few. Then, of course, there were all those phone calls beyond counting and some 30 trips to Washington, which cost him nearly $20,000 in hotel and travel expenses. And throw in maybe $60,000 in legal fees.

But Kachajian's odyssey was much more than inconvenient and expensive. It was also desperate. While the whole involved process—the dead-end leads, the false promises, the interminable discussions—dragged on and on, Kachajian's company was slowly bleeding to death, the victim of Meyer & Burger's persistent dumping. After a decade of growth in sales and profits, STC began to lose money—nearly a million dollars to date. In 1983, Kachajian was forced to lay off almost half his employees, and even as late as July 1986, he had to sell an acre and a quarter of land the company owned across the street just to bolster cash flow. "For six years," he says, "the upside of my business has been survival and the downside was bankruptcy. I never even thought about growth."

What he was thinking about most often was the Pentagon, which had persistently raised the national-security issue in connection with the export of his wafering saws. Between 1982 and 1984, Kachajian had half a dozen meetings with various Defense Department officials, including Stephen D. Bryen, the deputy undersecretary for trade security policy. At each meeting, Kachajian would lay out his case, a Swiss competitor driving him out of business with the help of Eastern Bloc profits and counterproductive U.S. government restrictions. And at each meeting, Defense officials would tell him that an export license would jeopardize "national security." Kachajian was prepared to meet their argument head-on. He would first point out that his saws were really "glorified salami slicers" whose technology was so well known tht they could hardly be considered a threat to national security. And furthermore that the Eastern Bloc could already get as many saws as it wanted from the Swiss. Then he would go on to say that the United States was in danger of losing its semiconductor manufacturing capability to foreign companies—where there were once five companies manufacturing saws in the States, now only two remained. That, he concluded, was the real threat to national security.

The Pentagon was not impressed, however, and Kachajian finally gave up in disgust. Says Wesley E. Charles, STC's president, who attended one such meeting: "They don't care about anything else, just don't give the Soviet Union anything. They wouldn't sell them a handful of sand. And if they could control that, they would."

Fortunately, as one door closed, another one opened. In the fall of 1984, Kachajian got a call from an investigator in the division of foreign availability, which only then had finally been staffed and funded as Congress had ordered back in 1979. Kachajian, hearing for the first time that a study was being done on internal diameter saws, was ecstatic. "Man, that was exciting," he says. "I had someone who was interested. I mean the guy asked questions for two hours." During the six months that it took the investigator to complete the study, Kachajian peppered the Commerce Department with information and stumped around Washington. "Because of George's involvement," says Toli Welihozkiy of the Office of Foreign Availability (OFA), "everybody became aware that this was an agenda item that needed to be moved quickly." But "quickly" has a special meaning in Washington. It was the spring of 1985, more than five years after the rejection of his first license, that the OFA determined that there was, in fact, foreign availability of wafering saws and that the item should be decontrolled.

With the OFA determinations, Kachajian had established a beachhead within the bureaucracy, but the battle had only just begun. Under the procedures of the Export Administration Act of 1985, OFA sent a draft of its report detailing its findings to the Department of Defense for review and comment, and, not surprisingly, Defense disagreed strongly with the specific findings, with their interpretation, and particularly with the impulse to decontrol the saws. The reaction touched off a fierce interagency squabble within an Administration equally committed to fighting back the Russians and fighting back government restrictions on business.

"Our view," explained deputy undersecretary Bryen, "is that we have very good intelligence, incontrovertible intelligence, that the items . . . will be put to use by the Soviets directly in military. You know, in the '70s we had this great experiment: we were going to trade with the Russians and try to improve relations. But the basic bottom line is that the bulk of this stuff went right to the Soviet military, and it was used by them to modernize their military forces."

Replied Paul Freedenberg, assistant secretary of Commerce for trade administration: "The Commerce Department sees to it that you have to make a balance in these types of cases. You have to decide to balance off

immediate national security against the long-term loss of the defense-industrial base, which, in itself, has a national-security implication. If you lose, for example, your semiconductor manufacturing capability, ultimately you're undermined, because you no longer have that defense base to build semiconductors. Now we're just talking in this case about one specific company, but it's a microcosm of a danger—not something that's immediate, but certainly something that, long range, could be very deleterious."

Confronted with implacable opposition from Defense once again, Kachajian's spirits wilted, but only for a moment. In September 1985, his forces were joined by fresh troops. Stanley T. Myers, president and chief executive officer of California-based Siltec Corp. and a member of the Semiconductor Technical Advisory Committee (TAC), one of nine such committees advising the Commerce Department in various high-tech areas, wrote a letter about STC's predicament to his fellow members. Myers, whose company uses wafering saws, knew firsthand about Meyer & Burger's tactics. And in his letter, he carefully outlined STC's plight and urged the committee to action on STC's and all U.S. manufacturers' behalf, ending with: "Unless we act quickly and decisively, we will face the ironic circumstance of having controlled an American technology into extinction."

The Advisory Committee did act quickly, using its powers under the Export Administration Act to force a decision on Kachajian's case, supposedly within 90 days. Kachajian responded by redoubling his lobbying efforts, enlisting New Jersey's two senators, Bill Bradley and Frank R. Lautenberg, and Representative Marge Roukema to put pressure on Commerce secretary Malcolm Baldrige and his aides. "I was in the wilderness for four years," Kachajian recalls, "and now I had big names."

Commerce was leaning toward a favorable decision, both because of the merits of Kachajian's case and because a positive decision was important to the credibility of the Office of Foreign Availability. Up to that point, the OFA had not produced one single case leading to the decontrol of any item or technology listed on the CCL. The business community was becoming openly critical. So was Congress, which had ordered the establishment of the office six years earlier. But there was still the problem of the Pentagon's unrelenting opposition. Finally, the standoff between an immovable object and an irresistible force had reached an impasse, and the case of George Kachajian and his little company at the end of Spruce Street in Oakland, NJ., was taken all the way to the White House.

On May 15 at 10:30 a.m., Kachajian was attending a meeting of the Semiconductor Technical Advisory Committee in the huge Commerce building on Pennsylvania Avenue. As Kachajian remembers it, the 20 members of TAC were in their places around a large conference table while assorted guests and observers chatted from their seats around the edges of the room. Suddenly, assistant secretary Freedenberg came in and everyone fell silent as he announced that, earlier that morning, he had recommended to the National Security Council at the White House that wafering saws be decontrolled for reasons of foreign availability. "Everybody turned to look at me," Kachajian says. "Then they got up and started to congratulate me. I just sat there like the cat who swallowed a canary, but I was afraid to smile. I still couldn't believe it. . . . This happened after six years of busting my chops. When I left that place, I thought I was walking on air."

For the next month, Kachajian kept up his pressure with telephone calls, visits, and a letter campaign that involved all 45 employees of his company. Then, in late June, he got a call from a staff person in Representative Roukema's office. The congresswoman had just received a letter, the caller said, from John M. Poindexter, the assistant to the President for national-security affairs, which stated that the council had agreed with the Commerce Department's position that the internal diameter saws should be immediately decontrolled.

Kachajian's first reaction was to shout for joy, but he knew better. Long experience with the government had taught him that seldom were problems that easily dispatched. And he was right. The saws, the letter continued, would, in fact, be decontrolled immediately for sale only to noncommunist countries such as Sweden and South Korea. The letter went on to say that, "Subsequently, we will begin working with our allies to arrive at a mutually agreed upon and orderly removal of COCOM controls on these saws to controlled countries."

In short, Kachajian, who views the reopening of Eastern Bloc markets as the key to the survival of his company, still could not sell his saws to the one market he wanted in the first place. And, at this moment, that is still where he is: one hand clutching the collar of his company to keep it from going under, the other with all its fingers crossed while he waits for COCOM to consider the issue sometime this year.

Yet as painful as it is for him, Kachajian's current limbo is entirely expressive of the lack of consensus that the current Administration brings to the issue of export controls. And it is particularly expressive of a regulatory environment in which the word "resolution" seems oddly to imply a more or less permanent state of contentiousness.

At the Commerce Department, for example, James K. Pont, the director of the OFA, speaks for many of his colleagues when he says that the Kachajian case establishes an important precedent. Claiming that the OFA has finally "found a path through the bureaucratic jungle," he predicts that over the next three to six months there may be several more positive findings.

But at the Defense Department, the feeling is that if there is any kind of precedent involved, it is only of the worst possible kind. Pointing out that the Kachajian case involves "the most sensitive technology that the Bloc can acquire," deputy undersecretary Bryen sees the handling of the issue as an example of "poor leadership" that ignored "the national interest." In his opinion, Commerce should have negotiated aggressively with the Swiss to get them to stop sales in the Eastern Bloc rather than decontrolling U.S. shipments. "There are plenty of things the Swiss want from us," he argues, "and it's outrageous that what we have is the Commerce Department laying back and saying, 'Well, we informally asked them and they said no.' I mean, that's nonsense. They [the Swiss] don't informally ask when they want something."

Bryen also makes it quite clear that George Kachajian's long ordeal is far from over, at least as far as the Pentagon is concerned. "Some of them [the saws] he will be allowed to sell," he says, "but there will be restrictions, at least if we have anything to say about it, on what types of saws he will be able to sell, and for what size ingot, and so on. It won't be any open door."

Thus, while George Kachajian's victory has drawn the attention of the export community, it has not engendered much hope for a significantly more balanced export-control policy. If anything, many of Kachajian's fellow exporters look at his six-year ordeal and wonder if it only confirms their worst fears about controls and the future competitiveness of American manufacturers abroad. Larry L. Hansen, executive vice-president of Varian Associates Inc., manufacturers of such items as ion implanters and chemical vapor deposition reactors, responds to the Kachajian case with a mixture of admiration and horror: "George put in an enormous amount of effort to get that, and that's a very mundane piece of equipment. I mean who in the hell can't make a crystal slicer? For him to have had to put in that much effort, and get that many people involved to get the relief that he got is an incredible thing, absolutely incredible."

"Sometimes there's a little voice inside me," says Kachajian, "that asks: 'What are you so happy about? All this means is that you can do what you should've been able to do along.'" Maybe.●

YSLETA DEL SUR PUEBLO AND ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS RESTORATION ACT

Mr. DOLE. Mr. President, I ask unanimous consent that all action be vitiated on H.R. 1344 and that it be placed back on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEFENSE PRODUCTION ACT AUTHORIZATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar 991, H.R. 5480, the Defense Production Act authorization.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3031

(Purpose: to delay for 1 year the effective date of section 116 of the Export Administration Amendments Act of 1985.)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator GARN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. GARN, proposes an amendment numbered 3031.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. 5. AMENDMENT TO EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985.

Section 116(d) of the Export Administration Amendments Act of 1985 is amended by striking "October 1, 1986" and inserting in lieu thereof "October 1, 1987".

Mr. DOLE. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3031) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5480), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

S. 2880—TO PROVIDE A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR H-3

Mr. BYRD. Mr. President, I send to the desk a bill I introduced on behalf of Mr. INOUYE for himself and Mr. MATSUNAGA. I ask unanimous consent that the bill be held at the desk until the close of business on tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I ask if the minority leader is prepared to consider the following items on the executive calendar: Calendar No. 1026, Calendar No. 1042, Calendar No. 1043, Calendar No. 1044, Calendar No. 1045, Calendar No. 1046, and Calendar No. 1048.

Mr. BYRD. Mr. President, these nominees that have been identified by the majority leader have been cleared by all Members on this side. We are ready to proceed with the confirmation thereof.

Mr. DOLE. Mr. President, I thank the distinguished minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations just identified.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

Mr. DOLE. I ask unanimous consent that the nominations be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the nominations were considered and confirmed en bloc.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF DEFENSE

Richard P. Godwin, of California, to be Under Secretary of Defense for Acquisition.

DEPARTMENT OF COMMERCE

Louis F. Laun, of New York, to be an Assistant Secretary of Commerce, vice Joseph F. Dennin, resigned.

THE JUDICIARY

Diarmuid F. O'Scannlain, of Oregon, to be U.S. Circuit Judge for the Ninth Circuit.

Frederic N. Smalkin, of Maryland, to be U.S. District Judge for the District of Maryland.

James L. Graham, of Ohio, to be U.S. District Judge for the Southern District of Ohio.

DEPARTMENT OF JUSTICE

George Landon Phillips, of Mississippi, to be U.S. Attorney for the Southern District of Mississippi for the term of 4 years.

THE JUDICIARY

Thomas B. Wells, of Georgia, to be a Judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

Mr. DOLE. I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Friday, September 26, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. Following the recognition of the two leaders under the standing order, I ask unanimous consent there be a period for the transaction of routine morning business not to extend beyond 10 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. At 10 a.m. we will begin consideration of the Drug Enforcement Act. At that time the distinguished Senator from Connecticut will be recognized to make his point of order. I hope we can work out a schedule to accommodate all Senators. I know it is a very busy time, with a lot of conferences; there are a lot of conflicts, but I would hope that we could make some headway on the drug bill tomorrow, then start on the tax reform conference report. I am advised that the House just passed the continuing resolution by one vote, so that will be coming over here and we hope to be on that Monday and Tuesday. There will be a late session tomorrow evening and there will be a session on Saturday of this week.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. There being no further business to come before the Senate, I move we stand in recess until 9:30 a.m. Friday, September 26, 1986.

The motion was agreed to; and, at 8:39 p.m., the Senate recessed until Friday, September 26, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 25, 1986:

IN THE ARMY

The following-named officers for appointment to the grade indicated, under the provisions of title 10, United States Code, section 601(a), in conjunction with their assignment to positions of importance and responsibility, designated as such by the President under title 10, United States Code, section 601(a):

To be general

Lt Gen. James J. Lindsay [redacted], U.S. Army.

To be lieutenant general

Maj. Gen. John W. Foss, [redacted], U.S. Army.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Judith Y. Brachman, of Ohio, to be an Assistant Secretary of Housing and Urban Development, vice Antonio Monroig, resigned.

NATIONAL INSTITUTE OF BUILDING SCIENCES

Fred E. Hummel, of California, to be a member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1989, reappointment.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 25, 1986:

DEPARTMENT OF DEFENSE

Richard P. Godwin, of California, to be Under Secretary of Defense for Acquisition.

DEPARTMENT OF COMMERCE

Louis F. Laun, of New York, to be an Assistant Secretary of Commerce.

THE JUDICIARY

Thomas B. Wells, of Georgia, to be a judge of the U.S. Tax Court for a term expiring 15 years after he takes office.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

Diarmuid F. O'Scannlain, of Oregon, to be U.S. circuit judge for the Ninth Circuit.

Frederic N. Smalkin, of Maryland, to be U.S. district judge for the district of Maryland.

James L. Graham, of Ohio, to be U.S. district judge for the southern district of Ohio.

DEPARTMENT OF JUSTICE

George Landon Phillips, of Mississippi, to be U.S. attorney for the southern district of Mississippi for the term of 4 years.

HOUSE OF REPRESENTATIVES—*Thursday, September 25, 1986*

The House met at 10 a.m.

Rev. Chuck Patterson, the Apostolic Church, Pontiac, MI, offered the following prayer:

Father God, in the name of Jesus, we come unto Thee again. We praise You that You have found it pleasant unto Thyself that we should be blessed with a body free of sickness. We thank You that You have not given us the spirit of fear but a spirit of concern and understanding while we pursue the knowledge to the many opportunities which will bring a higher quality of life to all people of this Nation and world. We realize that this cannot be accomplished by our power, or by our might, but it is possible by Your spirit.

Lord Jesus, we seek Your help throughout this day. Have mercy on the lonely. Lift up the fallen. Show Yourself to the needy. Raise up the weak. Comfort the fainthearted. Let everyone know that You alone are God.

Let each one of us be as the One who dwells in the secret place of the Most High. Let us abide humbly in the shadow of the Almighty. We shall say of the Lord, "He is my refuge and my fortress; My God, in Him I will trust." Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. RUSSO. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. RUSSO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 271, nays 120, answered "present" 5, not voting 36, as follows:

[Roll No. 410]

YEAS—271

Abercrombie	Frost	Mineta
Ackerman	Fuqua	Moakley
Akaka	Garcia	Mollohan
Alexander	Gejdenson	Montgomery
Anderson	Gibbons	Moody
Andrews	Gilman	Morrison (CT)
Annunzio	Glickman	Morrison (WA)
Anthony	Gonzalez	Mrazek
Applegate	Gordon	Murphy
Archer	Gradison	Murtha
Aspin	Gray (IL)	Myers
Atkins	Gray (PA)	Natcher
AuCoin	Green	Neal
Barnard	Guarini	Nelson
Barnes	Hall (OH)	Nichols
Bateman	Hall, Ralph	Nowak
Bates	Hamilton	Oakar
Bedell	Hartnett	Oberstar
Beilenson	Hatcher	Obey
Bennett	Hawkins	Olin
Berman	Hayes	Ortiz
Bevill	Hefner	Owens
Biaggi	Hertel	Panetta
Boggs	Hillis	Pease
Boner (TN)	Holt	Pepper
Bonior (MI)	Hopkins	Perkins
Borski	Horton	Petri
Bosco	Howard	Pickle
Boucher	Hubbard	Price
Boxer	Huckaby	Pursell
Brooks	Hughes	Quillen
Broomfield	Hutto	Rahall
Brown (CA)	Hyde	Ray
Bruce	Jeffords	Regula
Bryant	Jenkins	Reid
Bustamante	Johnson	Richardson
Byron	Jones (NC)	Rinaldo
Callahan	Jones (OK)	Ritter
Carper	Jones (TN)	Robinson
Carr	Kanjorski	Rodino
Chapman	Kaptur	Roe
Clinger	Kasich	Rogers
Coelho	Kastenmeier	Rose
Collins	Kemp	Rostenkowski
Combest	Kennelly	Rowland (GA)
Cooper	Kildee	Roybal
Coyne	Kleczka	Russo
Daniel	Kolter	Sabo
Darden	Kostmayer	Scheuer
Daschle	LaFalce	Schneider
Daub	Lantos	Schulze
Davis	Latta	Schumer
de la Garza	Leath (TX)	Seiberling
Dellums	Lehman (CA)	Sharp
Derrick	Lehman (FL)	Shelby
Dicks	Leland	Shumway
DioGuardi	Levin (MI)	Sisisky
Donnelly	Levine (CA)	Skelton
Dorgan (ND)	Lipinski	Slattery
Dowdy	Lujan	Smith (FL)
Downey	Luken	Smith (IA)
Duncan	Lundine	Smith (NE)
Durbin	Lungren	Smith (NJ)
Dwyer	Manton	Snyder
Dymally	Markey	Solarz
Early	Martinez	Spence
Eckart (OH)	Matsui	Spratt
Eckert (NY)	Mavroules	St Germain
Edwards (CA)	Mazzoli	Staggers
English	McCain	Stallings
Erdreich	McCloskey	Stratton
Evans (IL)	McCurdy	Studds
Fascell	McDade	Swift
Fazio	McEwen	Synar
Feighan	McHugh	Tallon
Fish	McKinney	Tauzin
Flippo	Meyers	Taylor
Florio	Mica	Thomas (GA)
Foglietta	Michel	Torres
Foley	Mikulski	Torricelli
Fowler	Miller (CA)	Towns
Frank	Miller (WA)	Traficant
Traxler	Weaver	Wortley
Udall	Weiss	Wright
Valentine	Wheat	Wyden
Vento	Whitley	Wylie
Visclosky	Whitten	Yates
Volkmer	Williams	Yatron
Walgren	Wirth	Young (MO)
Watkins	Wise	
Waxman	Wolpe	

NAYS—120

Armey	Hansen	Roberts
Badham	Hendon	Roemer
Bartlett	Henry	Roth
Barton	Hiler	Roukema
Bereuter	Hunter	Rowland (CT)
Bilirakis	Ireland	Rudd
Bliley	Jacobs	Saxton
Boehlert	Kindness	Schaefer
Boulter	Kolbe	Schroeder
Brown (CO)	Kramer	Schuette
Burton (IN)	Lagomarsino	Sensenbrenner
Chappie	Leach (IA)	Shaw
Cheney	Lent	Shuster
Coats	Lewis (CA)	Sikorski
Cobey	Lewis (FL)	Siljander
Coble	Lightfoot	Skeen
Coleman (MO)	Livingston	Slaughter
Conte	Lloyd	Smith, Denny (OR)
Coughlin	Loeffler	Smith, Robert (NH)
Courter	Lott	Smith, Robert (OR)
Crane	Lowry (WA)	Snowe
Dannemeyer	Mack	Solomon
DeLay	Marlenee	Stangeland
DeWine	Martin (IL)	Stenholm
Dickinson	Martin (NY)	Strang
Dornan (CA)	McCandless	Stump
Dreier	McCollum	Sundquist
Edgar	McGrath	Swindall
Emerson	McKernan	Tauke
Evans (IA)	McMillan	Thomas (CA)
Fawell	Miller (OH)	Vander Jagt
Fiedler	Mitchell	Vucanovich
Fields	Molinari	Walker
Frenzel	Monson	Weber
Gallo	Moorhead	Whittaker
Gekas	Nielson	Wolf
Gingrich	Oxley	Young (AK)
Goodling	Packard	Zschau
Gregg	Penny	
Gunderson	Porter	
Hammerschmidt	Ridge	

ANSWERED "PRESENT"—5

Chappell	Long	Pashayan
Clay	Parris	

NOT VOTING—36

Bentley	Dingell	MacKay
Boland	Dixon	Madigan
Bonker	Dyson	Moore
Breaux	Edwards (OK)	Rangel
Burton (CA)	Ford (MI)	Savage
Campbell	Ford (TN)	Stark
Carney	Franklin	Stokes
Chandler	Gaydos	Sweeney
Coleman (TX)	Gephardt	Waldon
Conyers	Grotberg	Whitehurst
Craig	Hoyer	Wilson
Crockett	Lowery (CA)	Young (FL)

□ 1020

Mr. ROWLAND of Connecticut changed his vote from "present" to "nay."

So the Journal was approved.

The result of the vote was announced as above recorded.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mrs. Emery, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and joint resolutions of the House of the following titles:

On August 21, 1986:

H.J. Res. 683. Joint resolution to provide for a temporary prohibition of strikes or lockouts with respect to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute;

H.R. 4184. An act to authorize appropriations to the National Science Foundation for fiscal year 1987, and for other purposes; and

H.R. 5395. An act to increase the statutory limit on the public debt.

On August 23, 1986:

H.J. Res. 377. Joint resolution to designate December 5, 1986, as "Walt Disney Recognition Day."

H.J. Res. 529. Joint resolution designating the week of September 21, 1986, through September 27, 1986, as "Emergency Medical Services Week";

H.J. Res. 630. Joint resolution designating the college of William and Mary as the official U.S. representative to the Tercentenary Celebration of the Glorious Revolution to be celebrated jointly in the United States, The Netherlands, and the United Kingdom;

H.J. Res. 642. Joint resolution to designate the week beginning May 17, 1987, as "National Tourism Week";

H.R. 483. An act for the relief of Edwin Marcos Ricos (also known as Marcos Edwin Rios) and Geovanna Rios;

H.R. 850. An act to modify the boundary of the Humboldt National Forest in the State of Nevada, and for other purposes;

H.R. 1693. An act for the relief of Enrique Montano Ugarte;

H.R. 1757. An act for the relief of Leonard Leslie Gambie;

H.R. 1963. An act to increase the development ceiling at Allegheny Portage Railroad National Historic Site and Johnstown Flood National Memorial in Pennsylvania, and for other purposes, and to provide for the preservation and interpretation of the Johnstown Flood Museum in the Cambria County Library Building, Pennsylvania;

H.R. 3093. An act for the relief of Juan Ricardo McRae;

H.R. 3154. An act for the relief of John Patrick Brady, Ann M. Brady, and Mark P. Brady;

H.R. 3212. An act to declare that the United States holds certain lands in trust for the Reno Sparks Indian Colony;

H.R. 3323. An act for the relief of Alexander Lockwood;

H.R. 3365. An act for the relief of Mountaha Bou-Assali Saad;

H.R. 3556. An act to provide for the exchange of land for the Cape Henry Memorial Site in Fort Story, VA; and

H.R. 3577. An act for the relief of Milanie C. Escobal Norman.

On August 27, 1986:

H.R. 1343. An act to authorize the use of funds from rental of floating drydock and other marine equipment to support the National Maritime Museum in San Francisco, CA, and for other purposes;

H.R. 2478. An act to amend the Revised Organic Act of the Virgin Islands, to amend the Covenant to Establish a Commonwealth of the Northern Mariana Islands, to amend the Organic Act of Guam, to provide for the governance of the insular areas of the United States, and for other purposes;

H.R. 3108. An act to amend title 17, United States Code, to clarify the definition of the local service area of a primary transmitter in the case of a low power television station;

H.R. 3554. An act to provide for the restoration of the Federal trust relationship with, and Federal services and assistance to, the Klamath Tribe of Indians and the individual members thereof consisting of the Klamath and Modoc tribes and the Yahooskin Band of Snake Indians, and for other purposes;

H.R. 4151. An act to provide enhanced diplomatic security and combat international terrorism, and for other purposes; and

H.R. 5371. An act to extend until September 15, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Insitutions Act of 1982.

On August 28, 1986:

H.J. Res. 713. Joint resolution making a repayable advance to the hazardous substance response trust fund;

H.R. 1260. An act for the relief of Joe Herring;

H.R. 3132. An act to amend chapter 44, of title 18, United States Code, to regulate the manufacture, importation, and sale of armor piercing ammunition, and for other purposes;

H.R. 4331. An act to authorize the Secretary of Agriculture to make grants for the purposes of establishing institutes of rural technology development; and

H.R. 4393. An act to consolidate and improve provisions of law relating to absentee registration and voting in elections for Federal office by members of uniformed services and persons who reside overseas.

On August 29, 1986:

H.R. 4843. An act to provide for a minimum price and an alternative production rate for petroleum produced from the naval petroleum reserves, and for other purposes.

On September 16, 1986:

H.J. Res. 580. Joint resolution to designate the week beginning September 7, 1986, as "National Freedom of Information Act Awareness Week."

On September 19, 1986:

H.R. 4329. An act to authorize United States contributions to the International Fund established pursuant to the November 15, 1985, agreement between the United Kingdom and Ireland, as well as other assistance.

On September 23, 1986:

H.J. Res. 60. Joint resolution to designate the week beginning September 15, 1986, as "National School-Age Child Care Awareness Week."

H.R. 1783. An act for the relief of Mary E. Stokes; and

H.R. 3443. An act to designate the Closed Basin conveyance channel of the Closed Basin Division, San Luis Valley project, Colorado, as the "Franklin Eddy Canal."

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

H.J. Res. 547. Joint resolution to designate October 1986 as "Polish American Heritage Month";

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week";

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week"; and

H. Con. Res. 375. Concurrent resolution designating the 1987 U.S. Capitol Historical Society "We The People" calendar as the official congressional calendar for the Bicentennial of the U.S. Constitution."

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill, joint resolutions, and a concurrent resolution of the House of the following titles:

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill and joint resolution of the House of the following titles:

H.R. 4759. An act to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes;

H.J. Res. 686. Joint resolution to designate August 12, 1986, as "National Civil Rights Day."

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4759) "An act to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. DURENBERGER, Mr. ROTH, Mr. COHEN, Mr. HATCH, Mr. MURKOWSKI, Mr. SPECTER, Mr. HECHT, Mr. MCCONNELL, Mr. LEAHY, Mr. BENTSEN, Mr. NUNN, Mr. EAGLETON, Mr. HOLLINGS, Mr. BOREN, and Mr. BRADLEY. From the Committee on Armed Services: Mr. WARNER, and Mr. HART to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 2294) "An act to reauthorize certain programs under the Education of the Handicapped Act, to authorize an early intervention program for handicapped infants, and for other purposes."

The message also announced that the Senate had passed a bill and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 2048. An act to encourage international efforts to designate the shipwreck of the

R.M.S. *Titanic* as an international maritime memorial and to provide for reasonable research, exploration, and, if appropriate, salvage activities with respect to the shipwreck;

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week"; and

S.J. Res. 395. Joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institutes of Health Centennial Year."

REV. CHUCK PATTERSON

(Mr. CARR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CARR. Mr. Speaker, it is my honor to host the Reverend Chuck Patterson as the guest chaplain. Reverend Patterson hails from, originally, Charlotte, NC. He and his lovely wife Irene have lived in Pontiac, MI, for the last 13 years where he is the pastor at the Apostolic Church in Pontiac and is well known as a leader in our community. He helped develop the Child Development Center in Pontiac in connection with the Apostolic Church. Through this center he has helped shape the future of many children in our area. He has served many elected officials, and he has in fact served in the city government of Pontiac giving of his time to further representative government.

Mr. Speaker, he is my friend and he is an inspiration to those of us in the Pontiac area. I look forward to introducing him to my many colleagues.

H.R. 4142, THE GENERAL AVIATION TORT REFORM ACT OF 1986

(Mr. WHITTAKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WHITTAKER. Mr. Speaker, for roughly a decade the issue of product liability reform has been debated in the Congress. While we debate this issue, American industries are being overwhelmed by product liability awards that are beyond reason. The general aviation industry has been particularly hard hit.

The U.S. general aviation industry is experiencing its most severe recession in history. The industry delivered only 2,033 airplanes in 1985 compared to 17,811 units in 1978. In 1985, the industry recorded a trade deficit of $481 million. These are not simply abstract numbers; what they mean is a loss of jobs for American workers.

The major general aviation manufacturers are currently experiencing 66 percent unemployment. Two-thirds of the jobs in this industry have been lost. Since 1980, 15,000 jobs have been lost in Wichita, KS, alone.

According to the Department of Commerce, one of the primary causal factors behind the industry's downturn is the cost of the product liability system. In 1985, industry cost for product liability exposure was $70,000 for each airplane built and delivered. Projections for 1986 indicate this figure will go over $100,000 per airplane. It should be noted that for the general aviation industry, this is not an insurance problem. These manufacturers are almost totally self-insured for the primary layers of insurance coverage.

If action is not taken to reform the product liability laws, the general aviation industry could be totally devastated. Therefore, I am supporting H.R. 4142 which provides for sector specific reform of product liability laws.

H.R. 4142 addresses, in an equitable manner, the three areas to tort law that have given the general aviation manufacturers particular difficulties. First, the bill provides a Federal uniform law on aviation product liability. Second, it eliminates joint and several liability, except for liability for defects in airplanes or their parts. Finally, it prohibits actions for injuries caused by products that are beyond their useful lives.

Mr. Speaker, I believe it is essential that Congress act on this legislation during this session. The general aviation industry and its employees cannot afford to listen to Congress discuss this issue for another 10 years.

MR. NAKASONE, AN APOLOGY IS IN ORDER

(Mr. MITCHELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MITCHELL. Madam Speaker, I would hope that my colleagues may be able to hear me.

Madam Speaker, I am a black man and Nakasone of Japan holds that I am intellectually inferior because I am black.

Madam Speaker, I hold that I am his intellectual superior. I have a myriad of facts and data stored in my mind. I have a catholicity of interests.

I understand the Guaranteed Agreement on Trade and Tariffs. I know what the law of diminishing returns means in terms of economic productivity.

I have a knowledge that the medical world no longer looks with favor on a lobotomy, a lobectomy or leukotomy. I know that Brahms wrote four symphonies, Gustav Mahler wrote nine. I know the difference between the Liebestod and the Liebeslied, and I do not think Mr. Nakasone knows that. I hold that I am his intellectual superior. I want to use my superior talents, I hope, to persuade all blacks and minorities to stop buying Japanese-made cars. If he holds that we are inferior, then we should not use his products.

I would also hope that this House will not take that insult gratuitously imposed on black and Hispanic people, imposed by Mr. Nakasone of Japan.

Madam Speaker, I would hope that this House would show its outrage, its absolute outrage and do that which is appropriate to protect the dignity of those of us in this House.

Nakasone has got to remember that it was the Black Caucus that supported reparations for the Japanese-Americans in this country who were treated so badly during World War II.

Mr. Nakasone, does that show intellectual inferiority?

Mr. MATSUI. Madam Speaker, will the gentleman from Maryland yield?

Mr. MITCHELL. I yield to the gentleman from California.

Mr. MATSUI. I thank the gentleman for yielding.

Madam Speaker, I would like to adopt each and every one of the sentences, the remarks that the gentleman from Maryland has just made.

You know, it was very interesting; 2 years ago when the Democrats had a caucus in West Virginia and Mr. Lee Iacocca spoke before our Democratic caucus and made some comments that I viewed as somewhat racist, it was people like PARREN MITCHELL, MICKEY LELAND, ESTEBAN TORRES who came to me and said, "We think what Lee Iacocca said was outrageous."

Now, I think what Mr. Nakasone said was outrageous, too.

They are, in Japan, a very closed society; they discriminate against the Koreans, the Filipinos, and a lot of other groups, and for them to make racist remarks against the people of our great country who have made this country the great Nation that it is, to me is outrageous.

I would just like to commend the gentleman and wholeheartedly agree with his condemnation of the Prime Minister of Japan.

Mr. DAUB. Madam Speaker, will the gentleman yield?

Mr. MITCHELL. I yield to the gentleman from Nebraska.

Mr. DAUB. I thank the gentleman for yielding.

Madam Speaker, may I say to my good friend and colleague that this House should stand and applaud what the gentleman from Maryland says. I think we owe our country and we owe Mr. MITCHELL a round of applause from this Chamber, and we all ought to agree with every word that he has said.

Mr. MITCHELL. I thank the gentleman for his comments.

THE WORST CURRENCY IS THE BEST AND THE BEST THE WORSE

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, the U.S. Treasury has set up our dollar as the whipping boy, to be punished for all of our trade woes whose numbers are legion. The position that a strong and stable dollar causes trade deficits, for which the cure is a weak and depreciating dollar, is untenable. The real root cause of our trade imbalance is our profligacy and failure to provide for the future with adequate savings and depreciation quotas. The policy of dollar degradation does nothing to remove this root cause, and may in fact be responsible for further entrenching it.

As though struck with some sort of madness, our Treasury officials and pressure groups took the position that a country with a weak and depreciating currency had an advantage over another with a strong and stable one, and that it was necessary to pull the strong currency down to the level of the weak. The worst currency was the best, and the best really the worst. Central bankers in their wild embracing of this idiocy never settled down to face the logic of their position that, if a debased currency was better than one based on a fixed monetary standard, then the best currency would be the one having no value at all, and the country would gain in trade most which simply gave away its goods and services.

Mr. Speaker, if we want to avoid sinking ever deeper into the quagmire of trade deficits, and if we really want to avoid an outright trade war with our allies, then we must urgently restore the inviolability of our dollar, by placing it on a fixed monetary standard.

□ 1035

PRIME MINISTER NAKASONE HAS FUELED RACISM EVERYWHERE

(Mr. LELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LELAND. Madam Speaker, I am angered by the recent insensitivity and ignorance demonstrated by the Japanese Prime Minister.

In linking the presence of ethnic diversity in our great Nation with a lower intelligence level, Prime Minister Nakasone has fueled racism everywhere by providing a justification for the bigots of the world.

Regardless of what he now says was his intent—he has not denied his actual words or apologized for them—the result of his careless remarks about blacks, Hispanics, and women is disastrous to race relations everywhere. I call on the U.S. Congress to denounce the Prime Minister's bigoted remarks and demand that the Reagan administration retract its placid acceptance of the Prime Minister's weak explanation of intent.

TAX REFORM

(Mr. MILLER of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MILLER of Washington. Madam Speaker, today we take up the subject of tax reform. I am going to vote for it.

Sure, this bill has some minuses. One is that it penalizes those taxpayers in my State who itemize their returns and want to deduct sales tax. Even so, the average individual taxpayer in my State will get a 4-percent tax cut.

This bill has three big pluses that make it meaningful reform. First, it makes the Tax Code fair. Wealthy corporations and individuals will pay their fair share. That is good.

Second, this bill gives some deserved relief to the working poor. That will help reduce poverty more than many Federal bureaucratic spending programs, and that is good.

Third, this bill in the long run will help our economy by getting businesses to invest in productivity and jobs instead of hunting for tax shelters, and that is good.

Overall, Madam Speaker, this is a good bill. We should pass it.

PRIME MINISTER NAKASONE'S STATEMENT

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Madam Speaker, I was shocked to hear the media allegations that Prime Minister Nakasone of Japan claims our intellectual level is inferior to that in Japan and that the cause of that inferiority is the number of blacks, Puerto Ricans, and Mexicans in our population.

We in the black and Hispanic caucuses have written to the Prime Minister asking him to clarify this matter. If the allegation is untrue, then we eagerly await Mr. Nakasone's reply to our inquiry. If it is true, then his statement is to be deeply regretted. It is our firm belief that the diversity of the American population, far from making us intellectually inferior, is one of the factors contributing to the strength of intellect in this country.

Mr. Nakasone's answer to our letter is eagerly awaited. If, in fact, he is correctly quoted in the media reports, then Mr. Nakasone has set back the relationship between Japan and the United States by years. If Mr. Nakasone did make the alleged remarks, the American people are deserving of an immediate apology. Mr. Nakasone, we await your reply.

OLDER AMERICANS ACT

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. BILIRAKIS. Madam Speaker, I would like to take just a moment to remind my colleagues of the importance of the Older Americans Act to our Nation's senior citizens.

As you know, Congress established the Older Americans Act in 1965 in response to the lack of community social services for older persons. It has grown over the past several decades to where it now consists of a variety of social and health care services intended to benefit our poor and elderly citizens.

In essence, the Federal Government distributes to each State a specific sum of Federal dollars, dependent upon the percentage of senior citizens residing in that State. The State is then able to use its flexibility and discretion, within Federal guidelines, to put these funds to the best possible use for its citizens.

Federal Older Americans Act dollars are used for beneficial services such as: home-delivered meals, a community service employment program to help give older people job skills, and so forth.

Madam Speaker, I would hope that all my colleagues will keep in mind the importance of Older Americans Act programs to our constituents when funding for any of its programs again comes before us.

Thousands of constituents need these services. Let's not let them down.

OUR DIVERSITY IS OUR STRENGTH

(Mr. TORRES asked and was given permission to address the House for one minute.)

Mr. TORRES. Madam Speaker, 2 days ago I joined my colleagues Mr. LELAND and Mr. HAWKINS, in sending a telegram to His Excellency Nobuo Matsunaga, the Ambassador of Japan. In that telegram we asked for an explanation of Prime Minister Nakasone's recent remarks about blacks, Puerto Ricans, and Mexicans in the United States.

Madam Speaker, our society is multiracial and multiethnic and hetrogeneous. We trace our roots to cities and villages around the world. We celebrate with equal relish Bastille Day,

Octoberfest, Cinco de Mayo, and Chinese New Years. Our diversity is our strength. That is hard for some foreign leaders to understand. Sometimes it is a concept that we forget also.

When we do forget it, when we make remarks that are insensitive to a segment of our diverse population, there is always an intense reaction, as there should be.

At a time when many of us in the Congress are working to improve relations between the United States and Japan, the Prime Minister's comments are unfortunate.

I respect the Japanese people, their government and their right to live in a homogeneous society.

Madam Speaker, I am looking to the Japanese Prime Minister to demonstrate a commensurate respect for the American people.

THERE ARE 50 WAYS TO LEAVE YOUR LOVER

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Madam Speaker, for those of you who are having a shaky love affair with tax reform, let me tell you here today that there are 50 ways to leave your lover.

No. 1, you can jump on a bus, GUS, with your farmers who are hurt by income tax averaging removal.

You can slip out the back, JACK, if you want to, with those retirees who are being hurt by retroactivity.

You can do a host of things. There are more than 50 ways to leave your lover; and if you run out of ways, you can add up the transition rules that add to more than 50, if you want to leave your lover.

The only way that we can cure this, Madam Speaker, is to go back to the conference table. I call upon the chairman of the Ways and Means Committee to give us a new plan, DAN.

THE MAGIC CITY

(Mr. ERDREICH asked and was given permission to address the House for 1 minute.)

Mr. ERDREICH. Madam Speaker, an organization in Birmingham, AL, is serving its silver anniversary today, and those 25 years have been very important to the city, because this organization has made a real difference in Birmingham's progress, helping it to become a place for families to raise their children, where an evermore diversified economy is prospering and expanding.

The Downtown Action Committee was formed in 1961 by two Birmingham leaders, Ferd Weil, Sr. and S. Vincent Townsend, Sr., to put the magic back into the "Magic City," the name given Birmingham in an earlier era when its growth surpassed every city in America.

The DAC has worked to move the city of Birmingham beyond the strife of the early sixties, enhancing economic growth and central city vitality so important to the progress of our metropolitan area and our State. All of us owe a debt of gratitude to the DAC, and especially its founders, Ferd Weil and Vincent Townsend. They have helped keep Birmingham on a positive path, enhancing the future for all our citizens.

ARE THE SOVIETS TELLING THE TRUTH ABOUT THE SAFETY OF THEIR NUCLEAR REACTORS?

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Madam Speaker, anyone who is concerned about another Chernobyl nuclear reactor disaster must read the latest International Atomic Agency report on that incident that came out today. Keep in mind the fact that similar reactors are now being built in nearby Cuba by the Russians. A reactor problem there could affect all Americans in a serious way.

Although the Soviets are insisting that their reactors have been modified and are safe, that International report questions that claim. The IAEA is uncertain if Soviet measures taken to prevent a similar explosion are adequate. Scientists remain concerned about Soviet modifications to their reactors. The truth is that there are basic design shortcomings in those units.

How honest are the Soviets being about their nuclear plants? Can we trust a government that delayed reporting a major nuclear accident for several days? Soviet-designed nuclear plants are being built in Cuba—a mere 90 miles from our coast. We don't want a disaster in our own back yard.

Mr. Gorbachev, all Americans want to know the truth about Soviet reactors before another accident happens that would affect all of us.

□ 1045

BILL INTRODUCED TO RESTORE 3-YEAR BASIS RECOVERY RULE

(Ms. OAKAR asked and was given permission to address the House for 1 minute.)

Ms. OAKAR. Madam Speaker, first of all, I would like to compliment all of the Members who spoke on the insult of the Japanese Prime Minister, but I want to compliment, in particular, Mr. MATSUI, a Japanese American, who spoke out against racism and I think we all join him and applaud him for that kind of statement.

On another subject, I think the tax bill that we are going to be voting on today has many constructive changes in the law and in our economy. There is one portion of the Tax Reform Act which I think it very unfair and it repeals, retroactively, the 3-year basis recovery rule with regard to qualified pension plans requiring employee contributions.

I think that is a marred provision, I think it is unjust, and over one-fourth of the people who will be unfavorably penalized are Federal retirees. Of course, other retirees also. You see, the difference is that a Federal retiree and other municipal retirees do contribute to their pension unlike the private sector which has about 93 of those pension plans that do not require employee contributions.

Today I am introducing a bill that will restore the original code in that area. I think we ought to make a statement. I do not think we should necessarily vote down the bill, but I think we ought to make a strong statement. Let us get a lot of cosponsors of this bill that I am introducing and maybe we can do something about correcting that one marred provision.

I hope my colleagues will join me in cosponsoring the legislation.

THE MAD DASH TO ADJOURNMENT: DAY 2

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Madam Speaker, today is day 2 of the mad dash to adjournment. Yesterday we came out of the blocks cleanly—passing a deficit reduction bill that doesn't reduce the deficit. Today we will pass the continuing resolution—not just any CR, but the grandaddy of them all with all 13 spending bills and a host of unauthorized programs included. First, however, we must consider the Tax Reform Act.

It is appropriate that we vote today on tax reform and the CR in this order because it highlights the relationship between these two bills. Whether you love or hate tax reform, there is no denying that it has faithfully served, for the last 22 months, to divert the attention of the media and the people from the real crisis in our midst—huge and continuing Federal deficits.

Tax reform has been a faithful fullback, and today it clears the way for an overweight CR to waddle to daylight. Today's vote on tax reform will be tomorrow's front page news while the vote on the CR will be buried somewhere else in the tabloids—perhaps next to the comics, where it belongs.

DISASTER LOOMS WITH CUT IN REVENUE SHARING

(Mr. KOLTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOLTER. Madam Speaker, because of committee action taken yesterday, this is a very sad morning for a lot of people in America. If you are a mayor of a town or city, or a county commissioner, or any other official of a State, local, or municipal government, you should be troubled and dismayed this morning, to learn that the House of Representatives will soon be considering a continuing resolution that no longer contains funds for the General Revenue Sharing Program. This program is critically important for many of these governments, and for those financially troubled governments in the high-unemployment communities I represent, it is a disaster to lose these funds.

The local taxpayers will have to make up the shortfall that we will be creating in their local government budgets when we fail to fund revenue sharing. So, in effect, this budget savings is no savings at all. Somebody will be paying for it, somebody we represent. Surely, there is a better way to find savings in the continuing resolution, a way which will not have such an immediate and painful impact.

CONTRA AID FACING POLITICAL THREAT

(Mr. BADHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BADHAM. Madam Speaker, the House leadership is currently endeavoring to jockey Contra aid appropriations over to the continuing resolution. What this amounts to is an attempt on the part of the Democratic leadership to override the decision of the majority of both Houses of Congress by attaching the Contra aid to a huge, pork-filled CR which the President will probably veto.

Allowing this political tactic would result in the abandonment of 20,000 freedon fighters. Indeed, it would be yet another overseas political commitment which Congress has reneged, creating even greater doubt about the will of the U.S. Congress to oppose tyranny and aggression.

The Contras are counting on our adherance to the votes we cast earlier this year. During my visit to Central America earlier this month, a Contra military leader made an ironic comment about some of the massive Soviet aid which is being used to turn Nicaragua into a Communist fortress. I asked him if he had seen MI-25 Hind helicopters during operations inside Nicaragua and he replied, "we see them so often that on a sunny day we use them for shade."

It is vital that we prevent the consolidation of a front-line Communists state in Central America. The Sandinsita regime in Nicaragua is inimical to the cause of peace an democracy in the region. Our support of the Contras is also support for democracy in Central America. If we fail to help those Central Americans who are combat Communist tyranny now, we are ensuring the eventual introduction of American combat forces into the region.

We must follow through on our promise to the people of Nicaragua. If we conceded now, if we appease the appeasers, we shall be abandoning the Nicaraguans as we previously abandoned the Hungarians, Cubans, Angolans and so many other peoples who have struggled for freedom against international Communist imperialism. Therefore, I strongly urge my distinguished colleagues to oppose attaching the aid to the Contras to the CR. We must support freedom and democracy in Central America.

HOW SOON THEY FORGET

(Mrs. COLLINS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. COLLINS. Madam Speaker, when I opened the Washington Post yesterday morning I was shocked. Japan's Prime Minister, Yasuhiro Nakasone, was quoted as stating that "blacks, Puerto Ricans, and Mexicans have pulled down the level of learning in the United States."

Madam Speaker, I am offended by any type of racism, no matter what its origin, but I am particularly offended to see these views expressed by the Japanese. I hope that Mr. Nakasone was misquoted. If not, all I can say is—how soon they forget.

Historically, whites considered the Japanese an inferior, third-rate people. Racism, practiced against Japanese-Americans, was rampant in the early 20th century. In San Francisco, the school board segregated Japanese students. They justified their action by stating that the Japanese had an influence that was "bad upon white children" and that they spread disease. Newspapers claimed that as Japanese children grew, they acquired "the distinctive character, habits, and moral standards of their race, which are abhorrent to our people." I've heard similar statements justifying discrimination aimed at blacks, and Puerto Ricans, and Mexicans.

It was only after World War II, when Japan emerged from ashes and destruction to become an economic power, did it find acceptance among the other nations. And who was it that rebuilt the Japanese political structure and provided the stability for Japan's rebirth? Americans did—including blacks, and Puerto Ricans, and Mexicans.

Today, Japan spends only a minuscule amount of its budget on defense. Instead of building up their military, the Japanese Government is free to pour money into industries which then compete unfairly with United States business. And how can Japan pursue this policy? Because the American military protects Japan—with forces that include blacks, and Puerto Ricans, and Mexicans!

Today, Japan's economy is supported by its exports, much of it to the United States. Their industry, underwritten by government subsidies, dumps countless numbers of cars, and cameras, and steros onto the American economy. The people buying these products include blacks, and Puerto Ricans, and Mexicans.

As a black woman I know a great deal about discrimination. That's why I cosponsored the Civil Liberties Act. During World War II, Japanese-Americans were immorally interned in concentration camps. Racism lay at the root of this policy. The Civil Liberties Act grants $20,000 to former Japanese prisoners. This is little enough recognition to what they went through, all as a result of the same type of racist thinking expressed by Mr. Nakasone. In light of this history of discrimination, it really hurts to hear such statements uttered by a Japanese Prime Minister. He should know better!

So Mr. Nakasone, I suggest you think before you speak. I suggest you think about how Japanese were treated in the past and just what discrimination is like. I suggest you think about who protects Japan's freedom today. I suggest you think about who condemns previous discrimination against the Japanese. And I suggest you think about who supports your economy. And after you think, maybe then you'll watch what you say.

GENERAL AVIATION: BOTH MANUFACTURERS AND CONSUMERS ARE ENDANGERED SPECIES

(Mr. LIGHTFOOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIGHTFOOT. Madam Speaker, with the end of the 99th Congress rapidly approaching, I want to remind my colleagues that we still have not acted on general aviation product liability legislation.

The other day I received a report from the Department of Commerce which finds that light aircraft manufacturers in the United States experiencing the worst recessionary period in history. Among the causal factors

cited by the Commerce Department are soaring product liability costs.

These rising product liability costs are having a dramatic impact on the general aviation community. In 1985, the cost of the average light aircraft included $70,000 just to cover the cost of product liability. For 1986, that figure is projected to rise to $100,000 per airplane.

Two bills pending before the House, H.R. 4142 and H.R. 4147, would address this problem by simply standardizing what is already law in many States. Neither of these bills would place caps on lawyers' fees or victims' claims. They are both relatively well-balanced and fair to both the manufacturer and consumer.

I want to urge my colleagues to support these bills and urge those members of the appropriate committees to do every thing in their power to see that this matter is addressed before the end of the session.

□ 1055

NAKASONE'S COMMENT ON U.S. MINORITIES

(Mr. BUSTAMANTE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BUSTAMANTE. Madam Speaker, I was disturbed to read Japan's Prime Minister Nakasone's remarks about the level of intelligence or literacy of Mexican-Americans, Puerto Ricans, and blacks, being neither a socialogist nor an educator, but the political leader of Japan Mr. Nakasone's pot shot at Americans does very little to strengthen his country's bonds with its closest ally. I would recommend to Mr. Nakasone to make useful comparisons between his country and ours, instead of denigrating us. It would strengthen our alliance if Mr. Nakasone would open up Japanese markets to American products, just as our markets are open to Japanese products. It would also do much good to our alliance if Japan would commit more of its resources to the common defense of Western democracies, just as we do. It is easy to take pot shots at Americans while benefiting from their markets and their investment for defense, but it does very little to strengthen the Western alliance.

A DAY OF TAX INFAMY

(Mr. MARLENEE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARLENEE. Madam Speaker, today is a day of tax infamy for the U.S. House of Representatives.

Today we decide if senior citizens and retirees should retroactively be penalized because they financially planned for their retirement. Tax reform betrays our commitment to senior citizens.

Today we decide if middle-income taxpayers should lose IRA's, income averaging and incentives to save. Tax reform garrotes middle-class Americans.

Today we decide if the agricultural economy should lose $1 billion in income. Tax reform will devastate the farmers of America.

Today we decide if we should punish the oil and gas industries with $850 million in new taxes. Tax reform is like a vendetta against domestic energy production.

Today we decide if American business and industry is going to lose investment credit, capital gains, and incentives to create jobs and spur economic growth. Tax reform is a mudslide that is going to bury us.

Today we strip tax shelters from the American taxpayer for the trade-off of illusionary lower rates. Don't believe the sham and illusion of tax reform. If you vote for tax reform you are only greasing the skids for the cold blade of a tax hike that will stab all taxpayers in the back.

APOLOGY DUE FROM PRIME MINISTER NAKASONE

(Mr. FAUNTROY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAUNTROY. Madam Speaker, Prime Minister Nakasone of Japan owes black Americans, Puerto Ricans, and Mexican Americans an apology for his careless, unsubstantiated and racist remarks of this week.

He should apologize for his feeble effort to dismiss the enormous balance of trade deficit that the United States is running with Japan by blaming it on the low intellectual capacity of black Americans, Puerto Ricans, and Mexicans.

He should acknowledge that it has not been the intellectual superiority of the Japanese people that has fueled their remarkable expansion, but rather two things: the cheaper labor costs and unfair trade policies by which the Japanese deny United States producers access to their markets, at the same time that they subsidize their exports to our country, undermining American producers and their workers.

It is these unfair export and import trade policies that will remain the focus of our attention with respect to Japan and not the insulting diversion from the real issue that Prime Minister Nakasone's attack on Americans of color represents.

"RATE CREEP" IN TAX REFORM

(Mr. LEWIS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of California. Madam Speaker, this is a historic day, the day of tax reform in America.

As we approach the debate, I would like to remind my friends of a minor problem that we all face.

We have talked about it. When you get to my age, we remind ourselves of a thing called "weight creep." No matter what you do, you go on a diet, you exercise yourselves, constantly you are affected by "weight creep."—no matter how serious your resolution—"weight creep."

Friends, parallel to that, one of the great elements of this bill is the reduction, the significant reduction of the tax rates all Americans face. No matter what kind of diet we are on, friends, watch out for the future.

We are going to be dealing with a problem that will be known as "rate creep." Twenty-eight percent is the marginal rate. Two years from now some will say, "What is the matter with a little increase to or 29 or 30 percent?" What is wrong with a 35-inch waist?

Friends, be warned: Watch out for "rate creep."

TRANSITION RULES ARE BAD TAX POLICY

(Mr. KLECZKA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLECZKA. Madam Speaker, we vote today on the tax reform conference report. But I must ask my colleagues: Will an "aye" vote on this report really be an endorsement of such-needed tax reform? I wonder.

In the waning hours of drafting this report, after all the major tax policy items had been agreed upon, $10.6 billion materialized for something called "transition rules."

Transition rules are those little special interest Alka-Seltzers for relief from the heartburn and indigestion of tax reform. In fact, this report offers almost as much relief from reform as it does through reform.

Madam Speaker, if there is $10.6 billion laying around to help corporations and large investors avoid tax reform, let's use it instead to help our individual taxpayers.

Transition rules are bad tax policy and bad legislative practice. The only thing that needs reform right now is this report. I urge an "aye" vote to recommit the tax bill with the hope that the Ways and Means Committee will reform this reform.

SUPERFUND—DO NOT LET IT DIE

(Mr. LENT asked and was given permission to address the House for 1 minute.)

Mr. LENT. Madam Speaker, a terrible thing is about to happen. The Superfund Program that Congress established 6 years ago to clean up the Nation's worst abandoned hazardous waste sites is on the verge of extinction. We cannot let that happen.

EPA has been without a stable, long-term source of funds for hazardous waste cleanup for almost a year. Through prudent management and two short-term funding measures, Lee Thomas, Administrator of the EPA, has been able to keep minimal Superfund Program alive. But the money is about to run out. This program deserves a guaranteed, long-term source of funding and it deserves it now.

Six weeks ago, the Superfund conferees with jurisdiction over the program matters reached agreement. The only issue standing in the way of Superfund reauthorization is the question of how to fund the program.

I urge the chairman of the House Ways and Means Committee and his colleagues working with their counterparts in the other body, to move expeditiously to conclude their portion of the Superfund conference. This Nation deserves an effective Superfund Program—and that means a full 5 years of funding. We cannot let Superfund die.

PRIME MINISTER NAKASONE OFFENDS ALL AMERICANS

(Mr. LUNDINE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNDINE. Madam Speaker, it is not just black, Mexican, and Puerto Rican Americans who are offended by the remarks of the Prime Minister of Japan, Mr. Nakasone. It is all Americans who are, or should be, offended by these racist remarks.

Never in the history of this world has one Nation ran a trade deficit with another to the extent of ours with Japan. The solution to our trade, our defense, and other problems is going to require a great deal of cooperation. In fact, as two of the leading nations in the world, the United States and Japan should be collaborating with regard to Third World debt and a host of other problems.

That kind of cooperation is not only impeded, but it is dealt a very, very difficult blow by the racist remarks of the Prime Minister of Japan.

Hopefully, we will not only get an apology for those remarks, but in addition, we will use this terrible insult as a start toward better working relationships, more respect for the culture of each nation, one to another, and we will be able to make progress out of this awful incident.

□ 1105

THE LEADERSHIP IS PLAYING GAMES ON CONTRA AID

(Mr. MONSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MONSON. Madam Speaker, perhaps my colleagues are not fully aware of the danger that Contra aid may not receive any funding at all, even though both Houses have indicated that the freedom fighters in Nicaragua should indeed receive our help. Some questionable tactics have recently come to light; tactics which deliberately obscure earlier congressional action on the subject.

You should know that the leadership has reneged on its promise to deal with the subject in an open and forthright manner. It has decided that there will be no conference on the military construction bill, which was approved by both Houses containing $100 million for Contra aid. Instead, they hope to incorporate this measure into the continuing resolution as a tactic to encourage the President to sign it.

This is because the leadership knows that the continuing resolution is loaded with questionable programs and wasteful spending—we all know it as "pork"—and that because of this, the President would be prone to veto the continuing resolution. In other words, the leadership is playing games and going back on its word, and in the process may cause serious harm to an effort to weaken the cause of communism in our own back yard.

As if this were not serious enough, let me alert you that there is other aid earmarked for that region that is also in jeopardy. Earlier, the Congress had approved reprogrammed moneys to be used for economic assistance for countries surrounding Nicaragua, including Honduras, Costa Rica, Guatemala, and El Salvador. A total of $300 million in reprogrammed money was approved: $225 million of this was to come from the Public Law 480, Food-for-Peace, Program. That program expires September 30.

So, unless reauthorization for the Food-for-Peace Program is extended by then for the next fiscal year, to allow for the reprogramming that was originally approved, that money too will not be available for peace efforts in the region.

Madam Speaker, what we need to watch out for here is "truth in legislating." Just because we here in the House thought we approved an action, doesn't mean that we actually did. Just because we thought that all action on Contra aid would be above-board and out in the open doesn't mean that it will be.

I am urging my colleagues now: Insist that H.R. 5052 be allowed to go to conference as originally promised by the leadership. Insist that Public Law 480 be reauthorized before September 30. Save Contra aid!

JAPANESE PRIME MINISTER EMBRACES A RACIST VIEW OF THE UNITED STATES

(Mr. MINETA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MINETA. Madam Speaker, I was outraged to learn of Prime Minister Nakasone's recent remarks in which he characterized Americans as less educated and, therefore, less intelligent than the citizens of Japan. He went on to attribute our so-called second-class status, in part, to the blacks and Hispanics in our society.

Madam Speaker, that a world leader and a major ally would so callously, cavalierly, and so erroneously, engage in a comparative survey of our two nations should be a source of anger to us all.

The problems our Nation faces with respect to Japan heretofore have been restricted to trade and economic issues. Therefore, I am alarmed and angered when I find the rhetoric and actions of the Japanese Prime Minister embrace a racist view of the United States that seeks to twist the rich fabric of our society into something negative or detrimental. Indeed, the truth is that our democratic values, the varied and rich backgrounds of our citizens and our constant pursuit of justice and opportunity for all Americans has, in fact, made us the prosperous and wealthy country we are today.

It is nonsensical for the Prime Minister of another country to cast aspersions on a society he so clearly does not understand. In the end, it is not our pride that suffers and it is not our values that are questioned; sadly, only the wisdom and world view of a major leader is called into question and he owes all of our citizens of this great country an apology.

PROPOSED TAX BILL STOPS INNER-CITY DEVELOPMENT

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Madam Speaker, I was pleased to hear the remarks of the gentlewoman from Ohio [Ms. OAKAR] this morning that she will introduce a bill today designed to restore the Federal employees' rights in regard to their pensions, the pension fund on which they have already paid taxes.

I do have other reservations about the tax bill. Only last week a constituent called to tell me that the tax bill has already affected him adversely, that his bank had canceled purchasing the IRB he had obtained from the city of Baltimore for the renovation of a deteriorating building in a less than prime area of the city.

Under the proposed tax bill, banks will no longer be able to receive tax exempt income from IRB's. This coupled with the halving of the investment tax credit makes it impossible for my constituent to proceed with consolidating his business into one facility.

What does this mean? It means that 150 new jobs will not be created in the city. It means that 150 people will not be added to the work force. It means that 150 people will not be paying income tax.

The equation to remember is: No business equals no jobs equals no taxes.

Before we pass this tax bill, let us make sure that it is projob, or else we will all be consumed by the deficit.

AN INVITATION TO PRIME MINISTER NAKASONE

(Mr. GARCIA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GARCIA. Madam Speaker, I would like to take this opportunity to join all my colleagues in their statements as they relate to Prime Minister Nakasone.

I just would like Prime Minister Nakasone to understand that I am a person of Puerto Rican heritage. Both my parents were born in Puerto Rico. I am proud of that, very proud of that. I am even prouder, Mr. Nakasone, that I am an American, and I say that to you because I think the remarks made by you were totally and completely of a racist nature. It becomes very clear to us that you have no knowledge of what has made this country great.

Mr. Nakasone, I think that in spite of the fact that the White House is satisfied with your explanation, based on the statements made by so many of my colleagues on this floor today we demand an apology from you because if the White House does not want it, the House of Representatives demands it.

I would like to go further, Mr. Nakasone. I invite you to my home in the South Bronx to come and visit with me to talk to the people who live there. Please understand that there are many good people who live within these communities, and you have insulted them.

AMERICA'S CENTRAL AMERICAN POLICY HELD HOSTAGE

(Mr. LIVINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIVINGSTON. Madam Speaker, today we are faced with a hostage crisis; but unlike most hostage situations, this one will not be covered by the media. I would prefer that it would be, and that the headlines would read, "America's Central American policy held hostage by the House's Democratic leadership."

In the face of clear and convincing evidence that the Marxist dictatorship in Nicaragua is repressing its own people and threatening the stability of Central America, this House agreed in June to support the Contra movement. Now this support is threatened by the backroom maneuvering of those who would force the President to choose between letting the hostage die or capitulating to the onerous demands of the continuing resolution.

The House leadership has not allowed the aid promised to the Nicaragua freedom fighters to be considered in conference, and now it has further encumbered that aid by tying it to the massive and complex continuing resolution.

Let us not condemn Central America to a future of Sandinista Sovietism for lack of decisive action.

Democracy is in a struggle for existence only a few hundred miles south of our borders. We cannot stand aside and allow the Marxist-Leninists in Nicaragua to consummate their control over those repressed people.

Madam Speaker, I strongly urge my colleagues to demand a conference on the military construction appropriations bill and to pass and approve aid to the Contras.

Set the hostage free.

WHAT DID HE REALLY MEAN TO SAY?

(Mr. HAYES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYES. Madam Speaker, I ask myself the question: What did he really mean to say?

Madam Speaker, recently Japanese Prime Minister (Yasuhiro) Nakasone made what I would term an ill-advised and uneducated statement about the level of intelligence in the United States because of the existence of racial and ethnic minorities. As the head government official of his nation, Prime Minister Nakasone showed an unacceptable lack of sensitivity and knowledge of history.

To even remotely infer or imply that the racial and ethnic composition of this country is the cause of a "low level of intelligence" is absurd.

Equally distressing is the response the Reagan administration made to this idiotic remark. I shouldn't be surprised however since President Reagan's advisers constantly have to come to his aid by telling the American public "what he really meant to say."

This morning I received an unconvincing explanation of the Prime Minister's remarks from Japanese Ambassador (Nobuo) Matsunaga, in which he said the Prime Minister meant no ill-intent. Ill-intent aside, there is no excuse for such remarks from a head government official. The Reagan administration and this Congress should officially, in no uncertain terms, condemn Prime Minister Nakasone's remarks.

AN EXCITING DAY FOR THE HOUSE

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Madam Speaker, this is going to be an exciting day in the House. We will start the business of the House today by addressing the tax reform bill. For those who advocate the passage of the bill, and I predict that will be the majority of the Members of this House, they will find in that bill the hope of increased efficiency in the American economy, increased growth for the American economy and some reduction in the chronic deficits of this economy. As soon as we do express that hope by the final vote, we will turn our attention to the largest expenditure of money in this history of the world.

As much hope as we may reflect in our debate for tax reform and its salutary effects on the economy, we will undo with the continued irresponsible spending of money by this body where we have lived up to no instrument of restraint at any time.

During that debate and at the end of the rule, I will offer a parliamentary motion to defeat the previous question so that I might offer this body a chance to once again express hope, give the President what he wants, in this case line-item veto authority, to provide constraint to the spending that we cannot provide for ourselves. The Members of this body will have a chance to cast that vote. I am sure the people of this country will understand clearly what it is we vote on.

ADULT LITERACY

(Mr. BIAGGI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BIAGGI. Madam Speaker, I was concerned to learn of Education Secretary Bennett's reaction to a new

report issued on the serious problem of adult literacy. The report concluded that 95 out of 100 adults can read as well as the average fourth grader—the standard to measure basic literacy; however the report also said that the overall literacy skills of many of them are extremely limited. Secretary Bennett in response said the report proved that the United States is "not awash in illiteracy" and that "young adults may be more literate than ever before in the U.S." I reject the notion that we should ever be content with an acceptable level of illiteracy. Secretary Bennett should join forces with those of us on the Education and Labor Committee to rid our Nation of its most serious educational problem—adult illiteracy.

THE OMNIBUS SPENDING ACT OF 1986

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Madam Speaker, I hope Prime Minister Nakasone has gotten the message here today. His attack on our pluralism is an outrage and we demand an apology.

Madam Speaker, later today we will be considering in this House the Omnibus Spending Act of 1986. Now, some around here are going to try to term this a continuing resolution. It is nothing of the kind. It is an Omnibus Spending Act, pure and simple, unrestrained spending.

In fact, I have confirmed that this bill is the largest single expenditure in the recorded history of human kind.

Let me repeat that. The Library of Congress has told me that the Omnibus Spending Act is the largest single expenditure in the history of the world.

Now, some may think that a vote for that kind of spending is a good vote, and I am sure they are going to be able to explain that vote to the likes of Louis XIV, Marie Antoinette, and the Pharaohs; however, none of those folks are my constituents.

REMARKS OF PRIME MINISTER NAKASONE AN INSULT TO ALL PEOPLE OF GOOD WILL

(Mr. TOWNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TOWNS. Madam Speaker, the remarks of Prime Minister Nakasone are an insult not only to blacks and Hispanics, but to all people of good will. I am concerned that his remarks will only serve to foster hostility between these communities and Asian Americans throughout this Nation.

Even more troubling is the fact that we have yet to receive an apology for the Prime Minister's remarks. Moreover, the administration's silence on this matter only adds insult to the injuries caused by Prime Minister Nakasone.

Madam Speaker, I would urge this body and the executive branch to soundly denounce these statements for what they are, racist and unworthy of a head of state.

□ 1120

ELLYNA TATUM

(Mrs. BOGGS asked and was given permission to address the House for 1 minute.)

Mrs. BOGGS. Madam Speaker, at this hour in New Orleans, in the Corpus Christi Catholic Church, a jazz funeral is in progress for Ellyna Tatum, the greatest woman jazz second-liner of this country.

Communities, cities, and States often have good will amabssadors who represent their spirit, their charm, their music, their progressiveness. Ellyna Tatum was such a good will ambassador for the jazz community, for the city of New Orleans, and for the State of Louisiana. With the Magnolia Jazz Band, she performed everywhere from local charity events and basketball games to the Newport Jazz Festival, to the Rainbow Room in New York, and in honor of many distinguished visitors, including President d'Estaing of France.

This lively, marvelously supple creature was tragically stricken with "Lou Gehrig's disease" and made her last public appearance only a week ago appealing for funds for research and treatment that will spare others from its devastating effects.

We in Louisiana salute her and offer her husband, Vernon, their children, and their other family members and the whole jazz community of New Orleans our deepest sympathy.

KEEP REVENUE SHARING ALIVE

(Mr. WEISS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEISS. Madam Speaker, 39,000 localities across the country have been receiving a return of a small portion of their residents' taxes to help them meet some of the costs of federally mandated programs. That is the General Revenue Sharing Program.

Now general revenue sharing is about to be terminated, having been forcibly excluded from the continuing resolution in which it was placed by a very strong vote of the Appropriations Committee.

At this time of economic crisis, revenue sharing is absolutely essential for the survival of thousands of small communities throughout the Nation. Many of them do not have the power to raise their taxes even if they had the fiscal capacity to do so. And they receive, most of them, no other Federal assistance.

At the very least Members should be allowed to vote on keeping the program alive, and to demonstrate to the people back home that they meant it when they promised to support its continuation.

By defeating the rule on the continuing resolution later today we can maintain our own integrity and keep this essential program alive.

THE TAX BILL IS UNFAIR

(Mr. ENGLISH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ENGLISH. Madam Speaker, I stand before you today to express my oppositon to the tax bill, H.R. 3838, the Tax Reform Act of 1986. I oppose this bill because, in many respects, it is unfair.

The economic base of my State, Oklahoma, depends heavily on the petroleum industry and agriculture—both in the throes of a depression. Repeal of the investment tax credit will only add to the burden these industries must bear. Furthermore, repeal of the ITC is retroactive, with equipment placed into service after January 1, 1986, not eligible for the credit. Repeal of the investment tax credit is one thing, but let's do it upfront, not retroactively. The farmer, independent oil producer, and other business men and women who made good faith investments earlier this year are being penalized by the retroactive repeal of the ITC. That's not fair.

In addition to the ITC, one of the most important provisions of the present Tax Code for farmers has been income averaging—this too, is being repealed. Young couples who are two-earner families, are also hit by repeal of income averaging, not to mention repeal of the two-earner deduction. The income of young couples, when one spouse leaves the work force to begin a family and then reenters later in the year, experiences great bulges. Income averaging helps these struggling families who are often also burdened with consumer debt, the interest deduction on which is also being phased out. It isn't fair. Students just coming into the job market are also being treated unfairly by repeal of the income averaging provision. And, speaking of students, that part of a scholarship not used for educational purposes would be taxable and interest deductions on educational loans would be phased out. That's not fair.

Finally, the State and many municipalities in Oklahoma are actively seeking new business and industry in an effort to broaden Oklahoma's econom-

ic base. This tax bill will result in numerous changes in the rules for tax-exempt bonds and will raise Government borrowing costs and restrict the authority of State and local governments to issue such bonds. These restrictions come at a bad time for Oklahomans. In addition, while some Oklahomans will pay less in Federal taxes, all Oklahoma taxpayers will see an increase in the State income tax they pay.

Madam Speaker, there are some favorable provisions in this bill. For exmple, I thank the conferees for retaining most of the current tax provisions favorable to the hard hit domestic petroleum industry. The conferees have labored long and hard on this historic package and I appreciate their efforts. However, on balance, I don't believe the provisons are in the best interest of my constituents and I intend to vote against the conference report. I urge my colleagues to do likewise.

TAX REFORM PACKAGE RISKS RECESSION

(Mr. WATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATKINS. Madam Speaker, I stand in opposition to the tax reform package, because I truly believe that it will drive us into a recession.

In the business section of today's paper, Paul Volcker indicated that we are competitive again, but he says that we need a couple of things to happen: to decrease consumption and increase investment.

Madam Speaker, I submit to you that the tax package does right opposite—it will increase consumption and decrease investment, driving us into a recession.

I submit to you that President Reagan's tax reform package is a tax fraud package on the American people, and I urge my colleagues to vote against it today. I submit to you that this tax package is a blueprint for a recession, for an economic disaster. At this particular time when we have an overvalued dollar, it will expedite the erosion of industry overseas and undercut the economic growth that we have and the potential that we have for the future economic needs of our country.

Madam Speaker, I ask my colleagues in this House today to vote against this tax reform package. Let us move our country forward in rebuilding our basic industries and rebuilding those jobs that we have to have, because I submit to you that within the next few months you will see our country in a recession if this tax package is passed.

TAX REFORM BILL CONFERENCE REPORT

(Mr. COUGHLIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COUGHLIN. Madam Speaker, I rise today to express my support for the conference report on the tax reform bill.

No one disputes the unfairness of the present income Tax Code and I have long advocated that it be revamped.

But when the House considered the Ways and Means Committee tax reform bill, I opposed its passage. I opposed the bill at that time because it was seriously flawed. Promises and commitments were made that evening. Members said the House bill would be improved in the Senate. They said the measure's inequities would be corrected.

These improvements were made. This bill is clearly a historic overhaul of the Tax Code. Moreover, the measure reforms the Tax Code in such a way as to retain most of the tax initiatives commenced in 1981.

For example, prior to 1981 the top statutory individual tax rate stood at 70 percent. Through herculean efforts, this rate was cut to 50 percent in 1981.

The tax bill continues these reductions by slashing the top statutory rate from 50 to 28 percent. This 28-percent figure is the lowest tax rate in more than 50 years.

The legislation also increases the personal exemption and standard deduction to more accurately reflect current economic reality. These revisions, when factored into the increased earned income tax credit, will take more than 6 million poor families off the income tax rolls, while at the same time, provide significant tax relief to middle-income taxpayers.

A tough minimum tax ensuring that wealthy individuals and profitable corporations no longer escape income taxes is proposed. I have long advocated this reform to ensure that those who should owe taxes, pay taxes like the rest of us.

As with any reform measure on controversial issues, hundreds of compromises must be made during the development of a final bill. The same is true for the tax reform conference report.

Some traditional deductions are slated for repeal and new restrictions are added. I hasten to add that I do have serious reservations over some of these actions and am concerned over their long-term impact. Therefore, I stand ready to revisit these questions next year if they are found to be creating inequitable and unfair consequences.

But no proposal can satisfy every individual or business. Such a goal is impossible to attain.

Fairness and economic growth must be fostered and tax reform should not penalize working Americans.

The bill we are debating meets these necessary qualifications.

It reduces taxes for working men and women.

It eliminates the loopholes that have enabled wealthy individuals and profitable corporations to avoid taxes.

It encourages business decisions based on economic productivity rather than tax consequences.

The bill is not perfect, as I have indicated. But it is a quantum leap forward for the average American taxpayer and I support its passage.

TAX BILL IS A MOVE IN THE RIGHT DIRECTION

(Mr. DORGAN of North Dakota asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORGAN of North Dakota. Madam Speaker, I am holding in my hand a list of 65 corporations, some of them the largest in America. What do they have in common? Well, between 1981 and 1983 they all made enormous income and paid no taxes. That is not a little tax—I am saying no taxes.

These enterprises made substantial income and paid nothing to the Federal Government in the form of income taxes. Why? Because our tax system has become such a punchboard of gimmicks and loopholes that these folks were able to slip through it.

If you believe that we ought to win the battle against tax preferences and tax gimmicks and tax loopholes, you ought to vote for this bill. I am surprised how many people come to this well and now tell us that the keys to the kingdom of economic growth in America reside somewhere in the crevice of a tax loophole. That is absurd.

This bill has some things wrong with it. I will be the first to admit that. But I am going to vote for it, because it has a tough, certain minimum tax that requires the freeloaders to come home and start paying tax again in this country. By that I am talking about the people who make big money and pay nothing, while the middle class gets stuck with the saddle of bearing the brunt of paying for America's Government.

That is wrong. This tax bill goes down the road a long way to correct that. The tax bill has problems; we can correct those problems. I intend to vote "yes" today, because this is a good, strong bill, moving in the right direction to get people who are not now paying their taxes at the upper income levels to become American taxpayers once again.

□ 1130

BAD IMPLICATIONS OF THE TAX REFORM BILL

(Mr. LOWRY of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LOWRY of Washington. Madam Speaker, in an earlier meeting today I heard what I thought was one of the more ironic statements. It was said in that earlier meeting that it was hoped that those of us who are opposing this tax bill are not doing so because we have some friend or industry that may be hurt by this tax bill. I want to say I took umbrage to that myself.

Many of us are opposing this tax bill because we are very worried about the state of the economy, we are worried about what it does to increasing our deficit and hurting our chances to do something about that. And we are very worried about the inequities in this bill.

I really must take exception when I heard the proponents say those of us that are opposed to this tax bill are opposed because we might have a special interest we are trying to protect. I must reply that what has really been happening is they are using transition rules, $10 billion of transition rules, to garner votes for the bill. I say that those special exceptions are being used to get votes for the bill, not votes against the bill.

I do not disregard the people who are for this bill. I think you have labored hard on it, but I think this bill is a mistake. Those of us that are in opposition are so because we think it is inequitable and too great an economic gamble.

APPOINTMENT OF CONFEREES ON H.R. 4759, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

Mr. HAMILTON. Madam Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mrs. LONG). Is there objection to the request of the gentleman from Indiana? The Chair hears none and, without objection, appoints the following conferees:

Messrs. HAMILTON, STOKES, MCCURDY, BEILENSON, KASTENMEIER, DANIEL, ROE, BROWN of California, MCHUGH, DWYER of New Jersey, STUMP, IRELAND, HYDE, CHENEY, LIVINGSTON, and MCEWEN.

For consideration of matters within the jurisdiction of the Committee on Armed Services under clause 1(c) of House rule X, Messrs. ASPIN, STRATTON, and DICKINSON.

For consideration of matters within the jurisdiction of the Committee on Post Office and Civil Service under clause 1(o) of rule X: Mr. FORD of Michigan, Mrs. SCHROEDER, Ms. OAKAR, Mr. HORTON, and Mr. YOUNG of Alaska.

There was no objection.

PRIVILEGES OF THE HOUSE—CONSIDERATION OF HOUSE RESOLUTION 562

Mr. ROSTENKOWSKI. Madam Speaker, I rise to a question of the privileges of the House.

Madam Speaker, I offer a privileged resolution (H. Res. 562) returning to the Senate the bill S. 638, and ask for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 562

Resolved, That the bill of the Senate (S. 638) to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation to the private sector, and for other purposes, in the opinion of this House, contravenes the first clause of the seventh section of the first article of the Constitution of the United States and is an infringement of the privileges of this House and that such bill be respectfully returned to the Senate with a message communicating this resolution.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 1 hour.

Mr. ROSTENKOWSKI. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this resoluton is simple and straightforward. On February 4, 1986, the Senate passed S. 638, the Conrail Sale Amendments of 1985.

This bill provides for the sale of Conrail to the Norfolk Southern Railroad as proposed by Secretary of Transportation Dole. As such, this bill contains numerous provisions relating to the tax treatment of the sale of Conrail. These provisions were intended to provide certainty as to how a number of questions concerning the operation of current tax law were to be resolved. Additional provisions related to the appropriate tax policy in situations involving the sale of a quasi-governmental entity to a private taxpayer are included.

As passed by the Senate, the bill clearly is a revenue measure. As such, the bill on its face violates the prerogatives of the House of Representatives under the Constitution.

Madam Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 3838, TAX REFORM ACT OF 1986

Mr. ROSTENKOWSKI. Madam Speaker, pursuant to the order of the House of September 9, 1986, I call up the conference report on the bill (H.R. 3838), to reform the Internal Revenue laws of the United States.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of September 18, 1986, at page H7351.)

The SPEAKER pro tempore. Pursuant to the order of the House of September 9, 1986, the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 1 hour and 30 minutes and the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 1 hour and 30 minutes.

Mr. ARCHER. Madam Speaker, may I inquire as to whether either the majority or minority manager of the conference report is opposed to the bill?

The SPEAKER pro tempore. Is the gentleman from Tennessee [Mr. DUNCAN] opposed to the bill?

Mr. DUNCAN. I am not opposed to it, Madam Speaker.

Mr. ROSTENKOWSKI. I am not opposed, Madam Speaker.

Mr. ARCHER. Madam Speaker, under clause 2, rule XXVIII, I demand one-third of the debate time as the leader of the opposition to the bill.

The SPEAKER pro tempore. The gentleman from Texas [Mr. ARCHER] will be recognized for 1 hour, the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 1 hour and the gentleman from Illinois [Mr. ROSTENKOWSKI] will be recognized for 1 hour.

Mr. ARCHER. Madam Speaker, I have a unanimous-consent request. Inasmuch as I understand all of the time that is going to be used by both the majority and minority, their 2 hours, will be assigned only to those Members who are for the bill, and inasmuch as it is a far simpler task timewise to make the arguments for the bill than to make the arguments against the bill, I ask unanimous consent that the opposition be granted an additional hour so as to equalize the time for and against the bill, in the name of fairness.

Mr. KLECZKA. Madam Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

Mr. ARCHER. Madam Speaker, I have another unanimous-consent request. That request is that if the time allotted today on the agenda is not extended, both the majority and the mi-

nority code 15 minutes to the opposition of their time so that once again the time would be equalized within the 3-hour period.

Mr. KLECZKA. Madam Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Chair recognizes the gentleman from Illinois [Mr. ROSTENKOWSKI].

Mr. ROSTENKOWSKI. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I bring to the floor H.R. 3838, the Tax Reform Act of 1986.

Since we began this mission almost 2 years ago, tax reform has been surrounded by controversy and hyperbole. It has been called a great threat to American free enterprise. It has been called the greatest tax bill in the country's history.

Like any other major economic initiative, the Tax Reform Act is a response to a moment in history. It does not pose a threat to the Nation's economy—nor is it the tax bill to end all tax bills. Rather, it confronts a mounting crisis of confidence and economic distortion at just the right time. And greatly lessens the risk of both.

The Tax Reform Act of 1986 is remarkable on a number of scales.

It is the broadest tax bill ever written. The number of pages is never the measure of a bill's reach, but in the case of tax reform the number of pages does reflect its enormous impact on the way America's income bill be taxed in the future.

The bill will shift more than $120 billion in tax liability from individuals to corporations—restoring a balance that existed at the start of this decade. It also shifts the ratio between the tax on capital and the tax on labor—and establishes new and more productive patterns of national investment.

Tax reform's popular appeal and its political force is its promise of fairness to working families. No other theme could have gained the support of such a broad spectrum of taxpayers. It was not the hope of more tax cuts that stirred a doubting, often cynical, nation—but the sense that the family down the street or the corporation across town can't beat the system any longer.

It's a bill that reaches deep into our national sense of justice—and gives us back a trust in government that has slipped away in the maze of tax preferences for the rich and powerful.

Tax reform is the great equalizer between income classes. Its most just edict is to remove more than 6 million working poor from the tax rolls. These are families whose taxes have senselessly moved steadily upward over the last 5 years. The working poor get far and away the largest tax cut in this bill. More than $5 billion in relief is provided for them. For the family of four living at the poverty line, the tax cut will be more than a thousand—an 80-percent reduction.

We have reduced the permanent tax brackets for individuals from 15 to 2. We have put tens of billions of dollars back into the pockets of taxpayers. But even more important, we have structured the rest of the code in such a way as to leave the new income tax system more progressive than today's. Again—the Tax Reform Act of 1986 promises a more progressive tax in every income range than does present law.

Much of the restructuring was achieved by raising the personal exemption and the standard deduction—and came at the expense of costly tax preferences enjoyed by those with good tax lawyers and accountants. The most significant change would eliminate the preferential treatment now given capital gains which has long been the basis of most tax sheltering schemes.

On top of that, the conference added a tough minimum tax that demands a minimum contribution from those who now shield most or all tax liability through the use of preferences.

Along the way, the House convinced Senate negotiators to maintain the deductibility of individual retirement accounts for those with moderate incomes—and guaranteed better pension benefits and wider coverage for low-income and short-term workers.

Preserved in this bill are the code's most durable individual economic and social incentives like deductions for home mortgage interest and charitable giving—with credits for child care and low-income earnings.

The greatest provider in the bill is corporate America—particularly those corporations with healthy earnings that now pay little or no taxes.

I began the campaign for tax reform with the premise that middle-income families should be the big beneficiaries—and that every private interest across the country should ante up a small part of the tab. Our supporters numbered those corporations and small businesses paying high tax rates while other industrials sectors walked away with most of the preferences. Our opponents are predictably those determined to protect the status quo—and all the abusive and excessive tax dodges that go with it.

We fought one battle after another to even out tax liabilities between individual industries and entire sectors. We stepped on some big toes as we took back some well-worn incentives from big banks, big oil, big insurance and big defense contractors.

We managed to preserve most of the tax breaks that legitimately contribute to economic growth and capital formation—and eliminated some of the least productive. We tried to encourage business to get out of tax gimmicks—and back into straightforward profitmaking. As Roger Smith of General Motors puts it: "All we want to do is what we do best—make cars." And this bill gives them a head start.

Beyond dramatically lower tax rates, the tradeoff for the business community is a consumer who has more money to spend—and an investor who expects real economic dividends, rather than paper losses. And perhaps most important, business can proceed with the certainty that the Tax Code will not be turned upside down next year and the year after.

If I have one philosophic quest as chairman, it's to check the annual sport of tightening and loosening the Federal Tax Code. I don't want to come back next year and open another round of rearranging tax preferences. But those who didn't get their way—those who fought even minimal contributions—are already lining up with schemes to undo reform. And their allies have spread the word that tax reform will drive the country into another economic recession if we don't add back tax breaks.

Change always brings apprehension. Every business in America will be affected by tax reform. It will take months to adjust to new rates and fewer incentives. It will take months just to get used to less Government intervention. For some the adjustment will be more painful than for others. But the long-term prescription contained in the bill guarantees not only healthy economic gains but the freedom to take risks and a more level field on which to compete for new capital and new markets.

As to the prospect of raising taxes to reduce the deficit, it's the President's call. The deficit was created by this administration. It should be solved by this administration. I have long advocated a tax increase to bring down the deficit. And I have no doubt that we will be forced to act in the future.

But that forecast has little bearing on the substance of tax reform—or the vote we must make today.

Today's vote is very straightforward. Do we want to give this country tax reform—or don't we? Do we want to give back to middle-income taxpayers the fairness they do not believe will ever come? Or do we want to stand for the status quo which goes hard on the poor—and easy on the rich?

Do we want to give all business in America an equal crack at capital investment? Or do we want to protect corporate giants like General Dynamics that pay no tax on huge profits? Who is more important to this Congress—the special interest, or the public interest?

I appreciate the pressure we are all under. I understand the move to kill this conference report. I have heard

all the naysayers' predictions of economic collapse. I have heard corporate lobbyists talk of mass bankruptcy. I have heard the highest paid Federal workers fret about their pensions.

About the only people I have not heard from are the very people this bill does the most for. And that is the middle-income taxpayers who finally believe that Congress is going to send them a tax cut.

They are the real tribunal which judges us today. They are the men and women to whom we must make our case no matter which way we vote.

I ask that you vote for this conference report and gain back much of the Nation's confidence in our Tax Code that has so sadly washed away over the last decade.

Now that I have described the strong policy reasons for this essential bill, I wish to clarify a number of other issues regarding this legislation.

There are several specific issues addressed by this legislation for which further explanation or clarification of the conference agreement may be helpful. Questions have arisen regarding implications of a number of miscellaneous areas of the legislation which may not have been fully answered in the statement of managers. I hope that the following comments will provide guidance to both taxpayers and appropriate Government officials regarding these conference decisions.

First, some questions have arisen regarding the interaction between 2-percent the floor on miscellaneous itemized deductions included in title I of the bill and the present $3,000 limitation on the deductibility of Members' away-from-home expenses. As many Members are aware, Members of Congress are subject to a special restriction in the Tax Code that limits our deductions for our away-from-home expenses to no more than $3,000. This has been the law since 1954, and it is not changed by this conference report. There has, however, been some confusion over how this provision relates to the new 2-percent floor on miscellaneous itemized deductions that is added to the Tax Code by this conference report.

Both the existing $3,000 annual limitation and the new 2-percent floor of adjusted gross income [AGI] on miscellaneous itemized deductions will apply in determining the amount of a Member's deductible away-from-home—Washington—living expenses. The deduction will be determined by first applying the 2-percent floor to determine tentatively the Member's allowable miscellaneous itemized deductions—including Washington living costs. The deduction for the portion of those expenses attributable to Washington living costs will be further limited to $3,000. Following are several examples to illustrate these rules.

Example 1: Assume a Member has $100,000 of AGI and total Washington living expenses of $10,000. For simplicity, assume the Member has no other miscellaneous itemized deductions. Applying the 2-percent floor, the deduction would first be limited to $8,000—the excess of the expenses over 2 percent of $100,000. The deduction for Members' living expenses would be further limited, as under present law to $3,000.

Example 2: Assume the same facts as example 1, except that the Member has $3,000 of Washington living expenses. Application of the 2-percent floor would limit the deduction to $1,000, which is fully deductible as it is less than the $3,000 limitation.

Example 3: Assume that a Member has $100,000 of AGI and that the Member has $5,000 of Washington living expenses. In addition, assume the Member has $5,000 of other miscellaneous itemized deductions for a total of $10,000 of miscellaneous itemized deductions. Application of the 2-percent floor would limit that deduction to $8,000, and the amount disallowed because of the 2-percent floor is disallowed proportionately. Thus, after application of the 2-percent floor, the Member can deduct $4,000 of the other miscellaneous deductions, and $4,000 of the Member's expenses. This $4,000 deduction is further limited to $3,000 because of the special limitation on deducting Member's expenses. Thus, the Member can deduct a total of $7,000 of miscellaneous itemized deductions.

Title 2 of H.R. 3838 repeals the investment tax credit. Section 212 of the legislation provides a carryback of existing carryforward of certain investment tax credits for certain companies. Nothing in section 212(f)(2) of the conference agreement is intended to limit application of section 1113 of the Bankruptcy Code.

In regard to the repeal of the investment tax credit, property qualifying as transition property under the binding contract exception may continue to qualify if the contract is transferred, including cases where there is more than one transfer or a transfer between two parties. Further, while transition property generally may not be placed in service before such a transfer, transition property may be placed in service before a transfer if it is leased back to the transferor, under a sale-leaseback transaction, within 3 months after the date the property was originally placed in service. For example, property otherwise eligible for the binding contract exception may retain that status if the contract is transferred several times, including a transfer between related parties, and then placed in service within 3 months of a sale-leaseback agreement.

Taxpayers have requested guidance regarding what is a substantial modification of a contract since, for purposes of the transition rules, a contract will not be considered binding at all times if it is substantially modified. If a taxpayer transfers his or her rights to such property under construction or such contract to another taxpayer, the bill does not apply to the property in the hands of the transferee, as long as the property was not placed in service by the transferee before the transfer by the transferor. A contract will not cease to be binding because there is a bilateral agreement to reduce the purchase price of the property by no more than 20 percent or change the financing terms.

I would also like to clarify an aspect of the conference agreement relating to repeal of the *General Utilities* doctrine.

As stated in the Statement of Managers, the purposes of the conference agreement repeal of *General Utilities* include conforming the treatment of liquidating sales and distributions to the treatment of nonliquidating transactions under present law, so that when appreciated corporate property, including stock of a subsidiary, is transferred to a corporate or an individual recipient outside the economic unit of the selling or distributing affiliated group, corporate level recognition is required.

The conference agreement statutory language specifically requires corporate level recognition when stock of a subsidiary is sold. The statute contemplates that a sale of subsidiary stock may, under an election, be treated as a sale of the assets of the subsidiary instead, so as to avoid potential for multiple corporate level taxation of the same appreciation. However, the statute specifically rejects the concept that recognition can be deferred merely because the underlying assets of the subsidiary do not obtain a stepped-up basis.

The statute does not tax distributions in liquidation of 80-percent subsidiaries within an affiliated group, because the property—together with the other attributes of the liquidated subsidiary—is retained within the economic unit of the affiliated group. Because such an intercorporate transfer within the group is a nonrecognition event, carryover basis follows. As a result of the carryover basis, the corporate level tax will be paid if the distributed property is disposed of by the recipient corporation to a person outside of the group.

It is understood that taxpayers under present law attempt to rely on certain consolidated return regulations to structure a result that, if permitted for acquisitions after the conference agreement is effective, would be inconsistent with the purposes of *General Utilities* repeal and with the basic statutory provisions of the con-

ference agreement. For example, they may structure an acquisition of a corporation in a manner that facilitates the ultimate disposition of some of its underlying businesses outside the economic unit of the affiliated group, without the imposition of corporate level tax on the appreciation in such businesses.

The conference report states, in this connection, that the Treasury Department will consider, in a consolidated context, whether aggregation of ownership rules similar to those in section 1.1502-34 of the regulations should be provided for purposes of determining status as an 80-percent distributee.

Since the conferees generally adopted the House provision with respect to the repeal of *General Utilities*, I would like to clarify the intent of this statement and the House provision. The purpose is to grant the Treasury Department flexibility so that only transactions that use the consolidated return regulations to avoid the purposes of the conference agreement are affected. There may be situations that do not involve the acquisition of a target corporation and a subsequent disposition of appreciated stock or other property of the target corporation outside the corporate group, in which the aggregation rules are not used to avoid the basic statutory rules. In such cases, the Treasury Department might permit the aggregation rules to continue in effect if it otherwise wished to do so.

Furthermore, the Treasury Department might develop alternative rules to require corporate level recognition where a transaction would otherwise avoid the basic statutory rules and purposes of the conference agreement.

As one example, such avoidance would most plainly occur when it is reasonable to infer that the disposition of an acquired business, without paying the corporate level tax on the built-in appreciation, was contemplated as a reasonable possibility at the time of an acquisition. Such an inference could be presumed if the disposition, or active negotiations for sale, occurred within any period of time reasonably related to the acquisition, taking into account all the facts and circumstances—including the necessity of obtaining funds to pay debt incurred in the acquisition, to redeem preferred stock issued in that connection, or any other factors.

In such cases, whether by not providing aggregation rules, or by such other provisions as Treasury may timely provide, it is expected that the disposition of the acquired businesses by the acquiring corporation will result in the recognition of the net unrealized built-in gain of such business, determined as of the time of the acquisition. The net unrealized built-in gain generally would be the excess of the allocable purchase price of the business that is disposed of over the aggregate adjusted basis—of stock in the case of a subsidiary—at the time of the acquisition.

Such transactions could otherwise avoid a principal purpose of *General Utilities* repeal, to eliminate tax biases that can favor the disposition of corporate assets by an acquiror in the course of an acquisition, over dispositions by the original owners.

With respect to long-term contracts, it is important to clarify that under Internal Revenue Code section 460—as added by title 8 of this bill—the calculation for the percentage of completion is a cumulative one. The income recognized for any taxable year will equal the excess of the percentage of completion at the end of the taxable year multiplied by the gross contract price over the amounts recognized under the percentage of completion method for the long-term contract in prior years.

Title 12 of the conference agreement imposes current tax on each U.S. person who owns stock in any 25 percent or more U.S.-owned foreign insurance company with respect to income from insuring risks of U.S. stockholders and related parties. It is intended that no inference be drawn from the legislative history of section 1221 of the act concerning any determination as to whether the insurance income of any foreign corporation is effectively connected with the conduct of a trade or business within the United States.

Another of the foreign tax provisions of the conference agreement may need clarification. This provision addresses an issue that, if it were not adequately addressed in the conference agreement, could be expected to reduce the effectiveness of many of the bill's reforms relating to the foreign tax credit and the antitax haven rules. I refer to the practice of factoring receivables; that is, buying another person's receivable at a discount, thus earning a profit by collecting more from the obligation than one paid for it.

U.S. corporate taxpayers today have a tax incentive to move funds out of the United States and into foreign subsidiaries to generate passive income like interest. With careful planning under current law, U.S. taxpayers that shift these funds can both defer U.S. tax on the income and manipulate their allowable foreign tax credit. This is also true of U.S. taxpayers that reinvest tax deferred profits derived by foreign subsidiaries.

The conference agreement addresses this potential for tax avoidance by adding a new category of income, called income equivalent to interest, to the types of income that are currently taxable to U.S. shareholders of controlled foreign corporations under the subpart F rules. This income is also included in the separate foreign tax credit limitation for passive income under the conference agreement.

I believe that there may be some uncertainty as to the meaning or scope of this new category of income "equivalent" to interest. To clarify its meaning, it may be useful to recognize that this is simply a further step along a road we began to travel in the 1984 act. In that act we first recognized that certain types of income are economically equivalent to interest yet could be used to avoid code provisions that refer to interest, simply because the income was arguably not classified as interest. The 1984 act specified that income from the factoring of related parties' receivables is to be treated as interest for certain purposes, because we concluded that such income's predominant character is like that of interest. That conclusion was supported by the writings of tax professionals who extolled factoring as a means of earning income economically identical to interest while avoiding code provisions aimed at interest. Congress in 1984 agreed with those commentators that the predominant character of the income relates to a return on the use of advanced funds—that is, the time value of money—and is not properly distinguishable from interest income.

Now, in this bill, rather than attempting to identify and list every type of transaction that generates income equivalent to interest, we have simply provided a rule that applies generically to all such income. We found in 1984 that the factoring of related part receivables is equivalent to interest, and I believe it is clear that the factoring of unrelated party receivables generally generates income equivalent to interest that should be subject to the bill's rules. Income generated by buying receivables at a discount may be attributable to three factors; that is, it may be attributable to the assumption of business risk, to the carrying out of collection activity, and to the time value of the money paid for the receivable. In any case where the predominant character of the income received relates to the time value of money, the income received is equivalent to interest.

I think it is important to emphasize this point, because given the other reforms incorporated in the bill, taxpayers will have a tremendous incentive to factor unrelated party receivables in order to get tax benefits previously available from the factoring of related party receivables—before the 1984 act—and from other activities now foreclosed by this bill. Seminars have already been held extolling such unrelated party transactions as a new means of avoiding code provisions aimed at interest. The character of income from such transactions is predominantly like that of interest income, and thus comes within the

definition of income equivalent to interest in the conference agreement.

Finally, I conclude by noting that we have been advised that inventive taxpayers are continuing to develop and use new economic substitutes for loans in an attempt to manipulate the subpart F rules and the foreign tax credit. Income equivalent to interest is nothing more, and nothing less, than income from such new and developing types of financing transactions, which attempt to disguise in some other form income that is attributable to the time value of money. Any and all such transactions are intended to be covered by the new category of income equivalent to interest.

Under title 12 of this legislation, the U.S. Virgin Islands will continue to use the mirror code. After 1986, full authority will be granted to Guam and the Commonwealth of the Northern Mariana Islands to determine their own income tax laws as American Samoa currently does. In developing these rules, the Committee on Ways and Means has worked closely with Chairman UDALL and the Committee on Interior and Insular Affairs. It remains my intention to continue to work cooperatively within the jurisdictional directives and limitations of the House Rules with the chairman and members of that committee as further issues develop regarding tax matters of special concern to the insular possessions.

Title 13 restructures the rules governing tax-exempt financing to delineate more clearly between financing for activities conducted by governmental units themselves and activities of nongovernmental persons. Under the conference agreement, activities of governments such as schools, roads, and public employee salaries may continue to be financed without regard to many of the restrictions that apply to State and local government bonds for other private activities. A brief summary of the tax-exempt bond provisions follows:

First, tax-exempt financing is retained for private activities where the general public is served—airports, docks and wharves, mass commuting, sewage and solid waste disposal, urban redevelopment, low-income rental housing, and certain other activities, as well as for activities of section 501(c)(3) organizations and single family housing mortgage bonds.

Second, new State volume caps are imposed on most private activity bonds.

Third, the amount of private use permitted before a bond becomes a private activity bond is reduced from 25 percent to 10 percent.

Fourth, opportunities for issuing tax-exempt bonds and investing the proceeds to earn arbitrage profits at the expense of the Federal Government are reduced by reduction in the size of reserve or replacement funds permitted to be funded with bond proceeds and in the temporary periods when unlimited arbitrage profits may be earned as well as by requiring rebates of arbitrage profits if bond proceeds are not spent within six months of issuance.

Fifth, limits are placed on issuance of multiple sets of bonds for the same project; that is, on advance refunding.

As part of enactment of these new rules, all of the tax-exempt bond provisions are reorganized and reenacted in 11 new code sections. Among the present-law provisions that are reenacted, some with technical modifications, are:

First, a requirement that tax-exempt bonds be issued in registered form is retained.

Second, the prohibition on Federal guarantees of tax-exempt bonds is retained since the combination of such a guarantee and tax-exception would result in these bonds being better investments than Treasury bills.

Third, a requirement that certain information be reported to the Federal Government when tax-exempt bonds are issued; is expanded to all tax-exempt bonds.

Fourth, a requirement that private activity bonds be approved by a voter referendum or public hearing; is expanded to all private activity bonds.

Fifth, authority to use tax-exempt bonds for small manufacturing facilities and land purchases by firsttime farmers is expanded and extended through 1989.

I want to stress that every effort has been made in developing this title to protect the legitimate financing needs of State and local governments themselves, and to minimize administrative burdens on governments. To that end, we provided exceptions such as the following for certain governmental (as opposed to private activity) bonds:

First, liberalized management contract rules are provided allowing increased private participation in governmental activities before bond financing is treated as for a private activity.

Second, no rebates of arbitrage profits are required of most small governmental units and special, relaxed rules are provided where rebate is required on governmental bonds.

Third, the new volume cap does not apply to the private use portion of governmental bonds where the bond issue is less than $150 million.

Fourth, monetary penalties rather than loss of tax-exemption are provided for certain reasonable cause errors by governmental units.

It should be noted that the statutory language and the statement of managers for the compliance provisions in title 15 of the bill correctly set forth the dates for which individuals and corporations may pay their 1986 income tax liabilities without incurring any additions to tax for 1986 underpayments of estimated tax, to the extent those underpayments are due to changes in the law made by this bill. Accordingly, the statement of managers for the depreciation provisions on page 64, which states that corporations have only 30 days after enactment of the act in order to avoid penalties for estimated tax underpayments, is incorrect.

Much of the focus of this tax reform legislation has been directed toward those who shelter income in order to avoid paying taxes. In addition to its consideration of H.R. 3838, the Committee on Ways and Means has held initial hearings on subchapter K of the Internal Revenue Code relating to the taxation of partners and partnerships. The Committee on Ways and Means will continue its study of the appropriate status of large, publicly traded limited partnerships, commonly known as master limited partnerships, to determine whether the limitations contained in this legislation have effectively curtailed the ability of individuals to shelter income from taxation through the use of these or other devices, and to determine the extent to which master limited partnerships are being used to avoid the purposes and effect of the current system of corporate taxation.

As chairman of the Committee on Ways and Means, I am often asked to participate in colloquies with other Members of the House of Representatives regarding the intent behind, or effect of, specific provisions in tax legislation. I take the responsibility to implement the decisions of the Committee on Ways and Means, and in this instance, the conference committee, very seriously. Consequently, I have limited the colloquies that I have agreed to participate in to those which do not attempt to modify the substantive agreement reached by the conferees on H.R. 3838. In addition, because we are discussing a conference agreement rather than a bill of merely one House of the Congress, for a colloquy to be considered as reflective of the conference agreement, it should be discussed in a substantially similar manner in both the House and the Senate. Otherwise, the views expressed can be considered only the views of one House and not necessarily reflective of the decisions made by the conferees.

In preparation for today's debate on this legislation, several Members have raised issues in the nature of colloquies that may need amplification or clarification in order for taxpayers to understand the effect of specific provisions.

I have discussed with Congressman FLIPPO several issues relating to the investment tax credit repeal transition

rules for self-constructed property and self-constructed plant facilities. We have reached a common understanding regarding the following specific issues:

First, I would like to clarify the application of the investment tax credit transition rules to self-constructed property. Under the bill, the repeal of the investment tax credit does not apply to property that is constructed or reconstructed by the taxpayer if the lesser of $1 million or 5 percent of the cost of the property was incurred or committed by January 1, 1986, and the construction or reconstruction began by that date. For purposes of this rule, a taxpayer who serves as the engineer and general contractor of a project is treated as constructing the property and construction is considered to have begun when physical work of a significant nature starts. Construction of a facility or equipment is not considered as begun if work has started only on minor parts or components. Under this provision, in the following circumstances construction of property should be considered to have been commenced so as to qualify the property for the investment tax credit under this transition rule.

Prior to January 1, 1986, an aircraft manufacturer entered into binding contracts with third parties for the construction of aircraft subassemblies to be included by the manufacturer in the construction of the completed aircraft. The cost to the aircraft manufacturer of these subassemblies is approximately $300,000, which together with the costs of other components of the aircraft which the manufacturer had incurred or was required to incur on December 31, 1985, exceeds 5 percent of the cost of the aircraft. These subassemblies were designed for this model of aircraft, were specifically ordered for the aircraft and are essential to its operation, and include wing trailing edges, ailerons and tabs, and rudders and tabs. The subcontractors commenced physical construction of these subcomponents prior to January 1, 1986. Prior to the date the aircraft is placed in service the manufacturer will transfer it to its wholly owned subsidiary that is included in the same consolidated tax return as the manufacturer.

Under the bill, construction of the aircraft would be considered to have begun by the aircraft manufacturer when the subcontractors commenced physical construction of the subassemblies on behalf of the manufacturer pursuant to the binding written contract.

As I have discussed earlier with Congressman FLIPPO, I would also like to clarify the general transition rule for the investment tax credit and depreciation in the case of self-constructed plant facilities. In the case of railroad track material which was acquired by the taxpayer or subject to a binding contract prior to January 1, 1986—or March 2, 1986, in the case of depreciation—such rails, ties, and other track components and the costs of installation in existing road beds constitute a self-constructed facility covered by the transition rule if more than half of the total cost is represented by acquisitions or binding contracts in effect before those dates.

This rule applies in the case of replacement track where the construction of the road bed has occurred and where a written plan for programmed track work was in existence before those dates. A project for a new rail line would not qualify unless actual construction of the road bed had begun before those dates.

I have discussed with Congressman WILLIAM FORD several issues relating to the effect of the repeal of the 3-year basis recovery rule. We have reached a common understanding regarding the following specific issues:

The repeal of the 3-year basis recovery rule, which most frequently affects public employees, may have created uncertainty about certain distributions to which Federal employees may be entitled. In addition, I think there may be confusion about the effective date of the provision that should be cleared up so that individuals who retired during June 1986 will know what the tax treatment of their benefits will be.

These problems may be prevalent for all Federal employees, regardless of their rank and regardless of whether they are employed in the legislative or executive branch of the Government.

The following items are of great concern to Congressman WILLIAM FORD:

First, if a Federal employee separates from service before retirement, receives the entire balance of the employee's contributions to the retirement system, and, as a result of this cashout, forfeits a right to any other benefits under the system, is the amount distributed treated as a nontaxable refund of employee contribution plus taxable interest payable, if any?

Second, under the old civil service retirement system, an employee's annuity cannot exceed 80 percent of the employee's final average pay. In addition, employees can make voluntary contributions to the retirement system in excess of their required contributions. An employee is entitled to receive these excess and voluntary contributions in a lump sum. Are these cashouts treated as a nontaxable return of employee contributions?

Third, when the Social Security amendments were adopted in 1983, certain Federal employees elected to be covered both under the existing civil service retirement system and under Social Security. They made a full 7 percent of pay contribution to civil service in addition to paying the full tax for Social Security coverage. When the new Federal employee retirement system is implemented next year, these employees will have the option of going into the new system or into the integrated offset system. If they make such an election, they will receive a refund of their contributions to the civil service retirement system in excess of the contributions that would have been required under the new Federal employee retirement system or the offset system. In addition, certain employees hired between July 1, 1982, and January 1, 1984, will be entitled to a refund of excess contributions made if they transfer from the old civil service retirement system to the new Federal employee retirement system. Are these refunds treated as nontaxable returns of employee contributions?

Fourth, under the basis recovery rules after the repeal of the special 3-year basis recovery rule, what happens if an employee dies before fully recovering his or her employee contributions?

Fifth, are all employees who retired during June of 1986 eligible for the 3-year basis recovery rule or only those employees who retired before June 4, 1986?

I want to emphasize that these questions raised by Congressman FORD are not unique to a small group of Federal employees, but potentially affect all other employees. I think it is important that we provide certainty to these individuals so that they understand what effect these rules will have on them.

The bill has the following effect on the issues that the gentleman raised:

First, in the case of an employee who cashes out his or her employee contributions on separation from service and forfeits the right to any other retirement benefit under the retirement system, the amount distributed is treated as a nontaxable return of employee contributions and taxable interest, if any.

Second, in the case of an employee who has made voluntary contributions to the retirement system or contributions in excess of the amount needed to fund the retirement benefit, the amounts cashed out of this voluntary contribution account, are treated as part of a separate contract and, therefore, are a nontaxable return of employee contributions. Of course, if interest is also payable on the amounts distributed, the interest portion of the distribution is taxable.

Third, if an existing employee makes an election to be covered under the new Federal employee retirement system or under the integrated offset system and the employee receives a

refund of excess contributions paid onto the old civil service retirement system, the refunded contributions are also treated as part of a separate contract and, therefore, are treated as a nontaxable return of employee contributions. If any interest is payable with respect to those excess contributions, the interest is taxable.

Fourth, under the tax reform bill, if an individual dies before fully recovering his or her employee contributions, the remaining employee contributions are treated as recovered in the last taxable year of the individual. Thus, the individual's annuity payments for the year are includible in gross income only to the extent that the payments exceed the individual's unrecovered employee contributions. In addition, if an employee's annuity for the taxable year is less than the unrecovered employee contributions, such unrecovered contributions are treated as a net operating loss that can be carried back to all open tax years. Consequently, an individual is never in the position—which could occur under present law—of dying without fully recovering his or her contributions to a retirement plan.

Fifth, the effective date of the repeal of the 3-year basis recovery is for individuals whose annuity starting date is after July 1, 1986. The annuity starting date is the first day of the first period for whch an amount is received as an annuity without regard to when a payment is actually made. With respect to this effective date, it is my understanding that employees who retire before July 1, 1986, will remain eligible for the special 3-year basis recovery rule of present law because their annuity starting date will be July 1, 1986, rather than after July 1, 1986.

I have discussed with Congressman DUNCAN several issues relating to the Tennessee Valley Authority's eligibility for a section 401(k) cash or deferred arrangement under this legislation. We have reached a common understanding regarding the following specific issue:

The House bill expressly provided that the Tennessee Valley Authority would be eligible to have a section 401(k) cash or deferred arrangement. Although this express provision is not in the conference report, it is my understanding that the cash or deferred arrangement that was adopted by TVA in February 1986 would be an eligible section 401(k) plan because TVA is a Federal agency.

I also have discussed with Congressman DUNCAN the issue of whether the provision of the bill which excludes certain income from unrelated trade or business income creates any inference under present law. We have reached a common understanding regarding the following specific issue:

The question relates to section 1601 of the bill which excludes from unrelated trade or business income revenues from the use of a tax-exempt organization's mailing list by another such organization. Section 1601 of the bill, which specifically exempts certain such revenues from the tax on unrelated business income in the future, carries no inference whatever that mailing list revenues beyond its scope or prior to its effective date should be considered taxable to an exempt organization.

I have discussed with Congressman JIM JONES several issues relating to the effective date under this bill of provisions governing the deduction of interest on loans from certain life insurance contracts. We have reached a common understanding regarding the following specific issue:

The question concerns the interpretation of the effective date of provisions governing the deduction for interest on loans from certain life insurance contracts under section 1003 of the bill. The effective date applies this provision to contracts purchased after June 20, 1986, in taxable years ending after such date. An exchange of a life insurance contract, other than one received in exchange for a life insurance contract issued by the same insurer, received after June 20, 1986, in exchange for an existing contract should be considered to have been purchased after June 20, 1986.

I have discussed with Congressman PICKLE and Congressman JIM JONES several issues relating to the effective date of the interest deduction limitation in this legislation. We have reached a common understanding regarding the following specific issues:

Section 1003 of H.R. 3838 limits the interest deduction on indebtedness in excess of $50,000 per insured under certain life insurance policies owned by a a business taxpayer. The limitation applies only to indebtedness under contracts purchased after June 20, 1986.

As I understand the business, applications for a policy of this sort are often sent after consideration of competing bids, and an application is usually considered to be acceptance of the insurance company's bid. However, I am informed that the exact point in this process when there is a technical purchase is not clear any may differ from State to State.

Under this provision policies are considered purchased for purposes of the effective date once the policy has been applied for. Consequently, the new provision does not limit deductions for interest on indebtedness under a policy for which an application was submitted to the insurance company on or before June 20, 1986.

I have discussed with Congressman DAUB an issue relating to when a contract is binding under certain transition rules in the legislation. We have reached a common understanding regarding the following specific issue:

A contract is binding even if subject to a condition as long as the condition is not within the control of either party or a predecessor. For example, a binding contract to build an ethanol plant comes within the scope of the rule even though the parties are awaiting a Federal guarantee.

I have discussed with Congresswoman KENNELLY several issues relating to the effect of specific provisions in this bill regarding freight forwarder operating authorities. We have reached a common understanding regarding the following specific issues:

Section 243(b) of the bill amends section 266 of the Economic Recovery Tax Act of 1981 to provide for a ratable deduction over a 60-month period with respect to freight forwarding operating authorities. Under section 243(b)(2) of the bill, the 60-month period commences as early as the so called deregulation month, which is defined in section 243(b)(3) of the bill to mean the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

It is intended that the deregulation month be that month determined by the Secretary of the Treasury or his delegate to be the month in which a Federal law has been enacted deregulating the freight forwarding industry. For example, if a Federal law deregulating the freight forwarding industry is enacted in October 1986 and the Secretary of the Treasury or his delegate determines in January 1987 that such deregulation has occurred, October 1986 should be the deregulation month.

In addition, in applying the provisions of section 266 of the Economic Recovery Tax Act of 1981, as amended by section 243 of the bill, with respect to freight forwarding operating authorities, a removal or modification of restrictions on the geographical scope of the freight forwarding operating authority, after acquisition of such authority or stock of a corporation holding such authority, should not be taken into account for purposes of applying these provisions.

□ 1140

I have discussed with Congressman GRADISON several issues relating to the effective date of the repeal of the deduction for qualified discount coupons under this legislation. We have reached a common understanding regarding the following specific issue:

Mr. GRADISON is concerned that the effective date for section 822, the repeal of the deduction for qualified discount coupons is unclear. The statute states that this provision applies

"to taxable years beginning after December 31, 1986." The conference report, however, applies the provision to the first taxable year ending after December 31, 1986. The statute governs in this instance. The statute is correct. The amendments made by this section apply to taxable years beginning after December 31, 1986.

I have discussed with Congressman HUCKABY several issues relating to the effective date of an excise tax imposed under the bill on the recovery of excess assets from a defined benefit pension plan. We have reached a common understanding regarding the following specific issue:

Under the tax reform bill, a new excise tax is imposed on the recovery of excess assets from a defined benefit pension plan maintained by an employer. This excise tax, which equals 10 percent of the amount of the reversion, is generally effective for reversions received by an employer after December 31, 1985.

A constituent of Congressman HUCKABY terminated a defined benefit pension plan in 1985, but has not yet received approval from the IRS and the PBGC to take the excess assets. The Congressman is concerned that the effective date of this excise tax will have the effect of imposing the tax on a reversion that occurs after December 31, 1985, on account of a termination of a defined benefit plan occurring before January 1, 1986.

The excise tax on plan asset reversions does not apply to a reversion received after December 31, 1985, if it is received on account of a plan termination occurring before January 1, 1986.

I have discussed with Congressman PICKLE several issues relating to the effect of this legislation's provision that a public approval requirement apply to private activity bonds. We have reached a common understanding regarding the following specific issues:

Section 1301 of the bill provides that a public approval requirement will apply to all private activity bonds, as provided in new section 147(f) of the 1986 code. Under section 1316(a) of the bill, a land program with a long history in Congressman PICKLE's State, the Texas Veterans' Land Bond Program, is now characterized as a private activity bond, and will be subject to this public approval requirement. These bonds are issued to fund a pool of loans to Texas veterans meeting certain State law criteria, and they are issued pursuant to constitutional referendums approved, from time to time, by the voters of the State of Texas. Bonds issued as part of the Texas Veterans' Land Bond Program pursuant to any prior or future referendum approved by the voters of the State of Texas amending article III of the Constitution of the State of Texas will satisfy the requirements of such new section 147(f) even though the identity of individual borrowers/mortgagors and the location of land to be financed is not known prior to or on the date such bonds are approved or issued. Also, such a referendum amending the Texas Constitution will satisfy the requirements of section 147(f) provided a public hearing is held with respect to any issue subsequent to the first issue covered by the referendum.

I have discussed with Congressmen YATRON and COYNE several issues relating to a clarification of a special rule in the bill regarding the investment tax credit and depreciation. We have reached a common understanding regarding the following specific issues:

Congressmen YATRON and COYNE have requested a clarification of the special rule in the bill which permits certain solid waste disposal facilities to qualify for the investment tax credit and present law depreciation. Under the rule, if a group of governmental entities committed more than $200,000 for feasibility studies, consultant fees, and other pre-engineering work prior to March 2, 1986, then the project qualifies under the transition rule.

I have discussed with Congressman MIKE ANDREWS several issues relating to the effective date of the generation-skipping transfer tax provisions of the legislation. We have reached a common understanding regarding the following specific issue:

With respect to the new generation-skipping transfer tax, the grandfather provision of the prior law was intended to apply to:

* * * a trust which includes a limited power of appointment, so long as the exercise of the power (including the creation of a trust) cannot result in the creation of an interest which postpones, or a new power which can be validly exercised so as to postpone, the vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the trust. (S. Rept. No. 1236, 94th Congress, 2d sess. 621).

The concepts of this legislative history have been embodied in section 26.2601-1(e)(3) of the Treasury Regulations.

The same result would obtain under the new generation-skipping tax provisions.

As in the case of the old provision, the new provision will not apply to the exercise of a limited power of appointment under an otherwise grandfathered trust or to trusts to which the trust property is appointed provided that such exercise cannot postpone vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the trust.

I have discussed with Congressman CLAY several issues relating to employee stock ownership plans and their treatment under H.R. 3838. We have reached a common understanding regarding the following specific issues:

The Senate amendment to H.R. 3838 contained a series of provisions designed to encourage the creation and use of employee stock ownership plans.

In the Senate amendment itself, in the Finance Committee report, and on the Senate floor, a series of suggested expressions of congressional intent were made which emphasized that ESOP's are tools of corporate finance and not conventional retirement plans. When the House considerated H.R. 3838, no similar suggested expressions of congressional intent were made.

In fact, H.R. 3838 incorporated many of the suggestions made by the President in his own tax reform proposal and repealed many of the tax incentives granted to employee stock ownership plans in previous tax legislation.

Section 1271 of the Senate amendment to H.R. 3838 emphasizes that ESOP's are tools of corporate finance and that Congress is concerned that the ERISA agencies are treating ESOP's as conventional retirement plans, thus hindering the suggested goal of expanding ESOP's as corporate financing vehicles. It has been asserted that section 1271 merely restates language found in tax legislation enacted in 1976. However, in comparing the two provisions, it certainly appears that section 1271 goes much farther than the 1976 statement. For example, in 1976 no reference was made to rulings and regulations under ERISA being a problem. The Committee on Education and Labor was concerned that the addition of references to ERISA might be erroneously construed by some as a weakening of title I fiduciary requirements as they applied to ESOP's.

The conference agreement does not contain the suggested statement of congressional intent.

The conferees agreed with the Committee on Education and Labor that it would be inappropriate to adopt any suggested statement of congressional intent concerning ESOP's without a full airing of the facts. Since that has not been done, the suggested statement of congressional intent regarding ESOP's was not adopted.

I am aware that a few people have criticized the ESOP enforcement activities of the Department of Labor. Concern has been expressed by those individuals that ESOP's should somehow be treated differently from other employee benefit plans under ERISA's title I fiduciary standards so that their use as a technique of corporate finance would not be thwarted. The same statutory fiduciary rules under title I are applicable to all employee benefit plans, regardless of whether they are retirement plans, savings

plans, health insurance plans, and so forth.

There is no provision in the conference agreement before us which could be interpreted as calling for relaxed enforcement of the fiduciary provisions of title I of ERISA in connection with transactions where ESOP's are used as a technique of corporate financing.

The legislative history under title I of ERISA requires that leveraged ESOP transactions be given special scrutiny under the title I fiduciary rules to ensure that the interests of participants in ESOP's be protected. No valuation methodology or construct should be applied in the determination of fair market value that would permit an ESOP to pay more for employer stock than a third-party investor in an arm's length transaction would, or that would permit any other party in the transaction to receive more than that party would be entitled to receive in an arm's length arrangement. For example, if an ESOP were to purchase all of the common stock of an employer, the ESOP should pay no more for the common stock than what the common stock could be sold for to an arm's length investor.

There is no provision in the conference agreement which could be construed to create new legislative history on how the stock purchased by the ESOP ought to be valued in these transactions.

There is nothing in the conference agreement that could be construed to prevent the Department of Labor from exercising its legitimate and congressionally mandated responsibility to enforce title I to protect the interests of ESOP participants.

There is nothing in the conference agreement which could be construed to establish the validity of or endorse a particular method of validation of stock or valuation construct in transactions involving ESOP's.

I anticipate that next Congress the Subcommittee on Labor-Management Relations will be holding oversight hearings on ESOP's and that the issues we have discussed today will be considered.

I have discussed with Congressman CAMPBELL several issues relating to the effect of the bill on the tax-exempt status of organizations providing "commercial type insurance." We have reached a common understanding regarding the following specific issues:

Section 1012 of the bill repeals the tax exempt status of certain organizations providing "commercial type insurance." For this purpose the provision expressly excludes from the term "commercial type insurance" property or casualty insurance provided directly or through an organization described in section 414(e)(3)(B)(ii), by a church or convention or association of churches for such church or convention or association of churches.

This provision excludes from the term "commercial type insurance" property and casualty insurance provided by a mutual insurance company first, which was in existence and exempt from tax on August 16, 1986, second, which does not have any taxable subsidiary or any subsidiary doing business with any person other than a church or convention or association of churches, and third, whose only policyholders are churches, conventions or associations of churches, or religious agencies or institutions owned and controlled by churches regardless of the number of different denominations represented by the policyholders or the fact that no single church, convention or association of churches controls such mutual insurance company.

I have discussed with Congressman ANTHONY several issues relating to effective date of certain net operating loss carryover provisions of the bill. We have reached a common understanding regarding the following specific issue:

The effective date for implementing amended section 382(l)(3)(A) is ambiguous as it pertains to contingent interests. It is my understanding that contingent interests arising prior to January 1, 1987, are not affected by this amendment. For example, contingent options created in business transactions occuring prior to January 1, 1987, are not treated as ownership changes merely by operations of the January 1, 1987 effective date.

I have discussed with Congressman FOLEY several issues relating to the effect of the bill on certain pooling and exchange agreements. We have reached a common understanding regarding the following specific issues:

Congressman FOLEY requested clarification of certain statements on page 690 of the conference report relating to the use of electricity pursuant to certain pooling and exchange arrangements. Power pooling and exchange are universal and essential elements of efficient energy management in the Pacific Northwest and elsewhere. It is my understanding that these statements are not intended to subject such pooling and exchange arrangements to an additional set of tests, but rather simply to identify certain types of arrangements that do not give rise to trade or business use.

Specifically, the Bonneville Power Administration is involved in two types of pooling and exchange arrangements as part of its statutory responsibility to manage the Federal hydroelectric system in the Northwest. The first uses coordination agreements, in which both governmentally owned and investor-owned utilities make power available to a power pool. Each utility has the right to draw power from the pool which approximately equals the amount of power made available to the pool. Because of variations in rainfall, snowfall and runoff, some of these agreements have to utilize a 4-year critical water planning period to coordinate the use of each utility's hydroelectric resources in a manner that is most efficient for the region as a whole.

The second involves residential purchase and sale agreements mandated by the Regional Power Act. Under these agreements, Bonneville exchanges power with both governmentally owned and investor-owned utilities for the purpose of spreading the cost benefits of Federal hydroelectric energy to the residential customers of these utilities.

It is my understanding that neither of these arrangements gives rise to a trade or business use of bond proceeds on the part of Bonneville.

I have discussed with Congressman PICKLE several issues relating to the effective date of certain interest deduction limitations under the bill. We have reached a common understanding regarding the following specific issues:

I have spoken with Mr. PICKLE and he is concerned about the treatment of interest on a loan which is secured by a recorded deed of trust, mortgage or other security interest in a taxpayer's principal or second residence, in a State such as Texas, where the enforceability of such recorded security instrument will be restricted by State and local laws, such as the Texas homestead law. Under section 1421 of H.R. 3838, such interest is treated as qualified residence interest, provided the interest on the debt is otherwise qualified residence interest.

Madam Speaker, I reserve the balance of my time.

□ 1150

The SPEAKER pro tempore (Mrs. LONG). The gentleman from Illinois [Mr. ROSTENKOWSKI] has consumed 12 minutes.

The Chair recognizes the gentleman from Tennessee [Mr. DUNCAN].

Mr. DUNCAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I intend to vote for this conference report.

It is not flawless, it poses some serious problems for the future, and it includes no economic guarantees. It does, however, represent President Reagan's No. 1 domestic priority item for his second term. It cuts taxes for many Americans, and it lowers the maximum marginal rate for all Americans. It also holds the promise of macroeconomic improvement on a long-term basis.

This legislation has been called, among other things, the biggest restructuring of our Internal Revenue

Code in generations, and a true revolution in U.S. tax policy.

Those are not really exaggerations. We did not have a national tax on income until after the 16th amendment to the Constitution was ratified in 1913. That amendment, of course, gave the Congress—and I quote—"power to lay and collect taxes on income, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

The first income tax law, in 1913, was a monumental piece of legislation, but largely because it "broke ground" in Federal tax law. In size and scope, it seems rather puny by comparison with subsequent efforts. It occupied only 30 pages of an average-sized book, whereas the Internal Revenue Code of today runs to nearly 4,000 pages.

In some respects, the 1986 legislation will roll back the tax policy clock. It probably won't cut the physical size of the Internal Revenue Code, but it does move closer to the starting point in other respects. The 1913 act provided for a flat 1-percent levy on income, with a graduated surtax to make sure that big salary earners paid proportionally more. The new bill does not lower individual rates to those levels, but it does drop them dramatically.

It should be remembered that the top individual rate was 70 percent just a few years ago. President Reagan's Economic Recovery Tax Act of 1981 cut that to 50 percent. This legislation completes the President's marginal rate reduction campaign by lowering the top rate on individuals to 28 percent.

The reduction of marginal rates will allow taxpayers to retain a larger share of each dollar they earn, and this should stimulate them to concentrate their energies on economically productive activities, rather than activities intended to reduce tax burdens through sheltering income in ways that are questionable from a productivity standpoint.

Let me briefly review more specifically some of the key positive components of the new reform legislation.

In addition to the marginal rate reductions, it would increase the standard deduction for all taxpayers. For married taxpayers filing jointly, beginning in 1988, the standard deduction would increase to $5,000, substantially higher than the 1985 level of $2,390. For head-of-household taxpayers, the standard deduction would be increased to $4,400, up about 50 percent from its 1985 level of $2,390.

The personal exemption for all taxpayers would be increased to $1,900 for 1987, $1,950 for 1988, and $2,000 for 1989. Beginning in 1990, the personal exemption would be adjusted for inflation. It is important to note that all taxpayers would be able to enjoy the benefits of the personal exemption increase. This would not have been possible under the House-passed version. That bill would have provided a smaller personal exemption of $1,500 for taxpayers who itemize their deductions. This was widely viewed as an antifamily aspect of the House bill, and was eliminated, I am pleased to say, by the conferees.

As many Members will recall, this was one of the key differences between the House bill and the Republican alternative which was offered nearly a year ago.

One very important net result of the increase in the personal exemption and the standard deduction will be the removal of more than 6 million taxpayers, now living below what is generally considered to be the poverty line, from the income tax rolls. This has been termed, legitimately I think, one of the genuine moves toward simplification and fairness in the bill.

Also noteworthy for individual taxpayers is the retention of indexing, the crown jewel of the 1981 tax bill. This means that bracket creep, that most unfair phenomenon of years gone by, will not return. My colleagues and I on the Ways and Means Committee were in the forefront of the war on bracket creep, and we are especially pleased that those who wanted to suspend the indexation of marginal rates did not succeed in the new legislation that has to be counted as a real victory for House Republicans particularly as well as for taxpayers generally.

In the corporate area, important changes also have been made. The most important of these obviously is the reduction of the top corporate rate from 46 to 34 percent. I hope this reduction will act as a catalyst for economic growth by American business. It also should help attract investment from our trading partners who generally will have higher corporate tax rates at home.

Notwithstanding these—and many other—positive components of the conference report, there are a number of provisions, as I indicated, which concern me greatly. These were addressed in the alternative which we committee Republicans offered in December. The four of us who served on the tax reform conference attempted to deal again with these problems in that arena. Obviously, we were badly outnumbered and often ignored in the process.

The most important areas of concern are very large ones, indeed, having to do with the treatment of capital formation and the bill's impact on: foreign competitiveness: domestic energy production: some of our financial institutions which have encountered so much difficulty; the ability of taxpayers to issue tax-exempt bonds for legitimate tax-exempt financing purposes, and personal savings, which have been disrupted by numerous changes in pension and deferred compensation law in recent years.

Many of my committee colleagues share my concern about these problems, and we will be watching carefully in the 100th Congress to assess a need to make modifying alterations in the law.

The extent to which retroactive effective dates appear in the legislation also concerns me greatly. This is particularly true with respect to limitations placed on so-called passive activities. While these changes may or may not be meritorious—when viewed in isolation on a tax policy basis—their implementation retroactively is totally without justification, and should have been reconsidered in a more cautious and deliberative manner during the conference.

Numerous foreclosures may be triggered as taxpayers default on their obligations, solely because of retroactive applications. The consequences of such disruptions, for both the financial community and individual taxpayers and business, could be catastrophic. These are changes that we will have to monitor very closely, and prepare ourselves to rectify as quickly as possible if warranted.

Except for the corrections I have identified as possibly desirable—and perhaps in a few other instances—I hope the Congress resists further revision of the Tax Code in the near future.

Individual taxpayers, and the business community in general, are tired of being buffeted by wave after wave of tax law changes. I believe it is time for a break—for a moratorium, if you will—to allow taxpayers to make business and personal economic decisions, and to plan for the future, without the constant threat of tax revision.

I certainly am not suggesting that we fail to make appropriate adjustments, and perhaps I should reemphasize that point. The writing of laws governing our tax system is an ongoing process to some extent, one which responds to the ever-shifting needs of our society. But I do believe the new code should be allowed to stand, to the degree feasible, long enough to be fairly tested and long enough for taxpayers to make—and keep—plans and commitments. We need an era of relative certainty. There's an old axiom that applies here: if it ain't broke, don't fix it.

In conclusion, I want to make it absolutely clear that I do not consider the new tax bill a cure for any or all of our economic ailments. And I reemphasize my concerns about its obvious flaws. But these can be corrected, and I do think the 1986 reform package deserves a chance.

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. DUNCAN] has consumed 6 minutes.

Mr. ARCHER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in opposition to H.R. 3838. As you have heard clearly, there is both good and bad in this bill, but I have to conclude as one who has explored the fine print in the conference report documents, that the risk associated with the bad outweighs the hoped-for benefits of the good.

The original goals of fairness, simplicity, and growth in the President's call for tax reform seem to have been obscured, lost, or discarded. I think it is important that we have truth in tax reform the same as we have truth in lending and truth in advertising. That requires full disclosure.

Full disclosure? How many Members of this body have read this 2,000-page document? The answer is none.

It is important as you listen to the proponents who will tell you over and over again that this is a two-tier system, with a maximum 28-percent marginal rate. The truth is, as confirmed by letter from the chief of staff of the Joint Committee on Taxation, that in 1987 there will be a top marginal rate of 38½ percent and a five-tier tax rate system. And even if the bill is fully implemented in 1988, there is a four-tier tax system, with marginal rates of 15 percent, 28 percent, 33 percent, and then, for the very wealthy, back to 28 percent again. This has been confirmed over and over again by those who understand this bill. It is not truth in tax policy or tax reform for the proponents to tell you that the top marginal rate is 28 percent.

The Members of this body today have several options. The most desirable in my opinion is to recommit the bill to the conference committee. Only in that way can we ensure that the new Tax Code does not penalize taxpayers retroactively for decisions made in reliance on current law, does not add billions of dollars to the soaring Federal deficit, does not increase taxes on the elderly and blind, does treat all State and local tax systems fairly and equitably between sales tax, property tax, and income tax. We can ensure that it does stimulate capital formation and savings, international competitiveness and, job creation rather than encourage consumption of imported products. We can ensure that it does stimulate the economy in the short term rather than weaken it, and we can ensure that it simplifies rather than adds complexities to an already overly complex current code.

In short, by voting to recommit, you will be affirming your own commitment to the kind of tax reform that the American people can indeed embrace and not fear. That is what we found when we went back home during the August recess. The people in our districts are uneasy and fearful about this process.

You have a choice beyond just a straight up or down vote on the bill itself; you can vote to rework this bill to remove its major flaws, and create fairness, growth, and simplicity.

I know that we have had only a few days to study the contents of the bill, but even a cursory review should make each of us pause to think about what it really contains. Simplicity, as I mentioned, is not there except for those who will not have to file a return. And I cannot argue that it is not simpler not to file a return than to file one. Those people who do not file a return today have a simple return. But for those who have to continue to file a return, every single CPA that I have talked to says that this increases the complexity in a major way.

Fairness? What is fair about increasing taxes on the elderly and blind or reimposing a marriage penalty or giving a lower marginal rate to the most wealthy people in the country rather than those who earn less, allowing deductions on second homes while denying deductions on first-car purchases. On growth, the consensus of economists who testified before the Joint Economic Committee was that there was great uncertainty in the short term, but that the odds were that it would have a negative impact on the economy.

I am a tax reformer and I have long advocated lowering the rates and broadening the base. But I also believe in doing it right, with a scalpel, not an ax.

We can have tax reform without the risk that this particular bill forces us to take.

Madam Speaker, I reserve the balance of my time.

The SPEAKER pro tempore. The gentleman from Texas [Mr. ARCHER] has consumed 6 minutes.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 2 minutes to the gentleman from Tennessee [Mr. FORD].

Mr. FORD of Tennessee. Madam Speaker, I support H.R. 3838 and I am going to vote for it and I encourage my colleagues to vote for it.

I would like to thank my chairman—the gentleman from Illinois [Mr. ROSTENKOWSKI] for his dogged pursuit of tax reform. The members of the conference committee also deserve our gratitude for their committment. And I can hardly let this time pass without saluting the staffs of both the Ways and Means Committee and the Joint Tax Committee—these individuals have been selfless in their devotion to the work of the Committee on Tax Reform.

There are many reasons to support the tax reform bill before us today.

The first is that today's tax bill is a critical antipoverty measure. A mother working hard at poverty level wages to support her two children will gain over $1,000 in income in 1988 if this bill is enacted.

The families of working parents—all sizes of families—big families and single parent families will benefit from the critical improvements in the personal exemption, standard deduction and the earned income tax credit.

I would—on a different note—call your attention to some of the business leaders who have urged adoption of this conference report:

Roger B. Smith, the chairman of General Motors Corp.

John Smale, the chairman of Procter & Gamble Co.

John Young, the president of Hewlett-Packard Co.

Allen Jacobson, the chief executive of the 3M Co.

Also the heads of Pepsi-Cola, Levi Strauss, Sara-Lee, General Foods, Dayton-Hudson Co. and others.

As a long-time supporter of the voluntary sector, I do feel compelled to mention one very serious reservation about the measure. The elimination from the act of the charitable deduction for nonitemizing taxpayers stands as an unfortunate, even devastating, loss amidst all the good that tax reform promises. This deduction has consistently received strong support from this body, evidenced both by the 259 Members who cosponsored H.R. 587, which would have made the deduction permanent, as well as by the inclusion of the charitable deduction for nonitemizers in the House's tax reform package. Given this widespread support, I believe it is extremely important for the RECORD to reflect this body's commitment both to the charitable deduction for nonitemizers and the principles on which it is based.

The loss of the charitable deduction for nonitemizers would deprive 75 million low-and moderate-income nonitemizers—almost three out of four taxpayers—of the ability to deduct their contributions to charity. This privilege would be reserved only for the affluent minority who itemize. Low- and moderate-income Americans have long played a significant role in providing selfless support for organizations such as the United Way, the Boy Scouts, and the Red Cross; for churches and synagogues; for programs to aid the elderly, and for the myriad of activities in the public interest that enrich our society and protect its people. Low- and moderate-income Americans who did not itemize contributed $22 billion, comprising 36 percent of all money donated by individuals and 30 percent of all donations to

charitable organizations by individuals, foundations, and corporations.

The charitable deduction is unlike any other tax deduction and should be viewed in light of several tax and public policy considerations. Since 1917 the Tax Code has recognized the importance of private giving for public purposes. This policy undermined by the elimination of the charitable deduction for three out of four taxpayers. Making the charitable deduction for nonitemizers permanent is a matter of fairness.

Moreover, keeping this deduction reinforces a very positive American practice. Charitable giving is motivated by selflessness and personal commitment. This is sound public policy.

Tax reform is an idea whose time has come. But the charitable deduction has served us well as an incentive for private giving for the public good, underscoring our historic Government commitment to stimulate charitable giving through the Tax Code. Thus, I feel strongly that the elimination of the charitable deduction for three out of four taxpayers should not pass without due recognition of the loss we will all suffer as a result.

In spite of this serious flaw, H.R. 3838 contains enough positive aspects to command our support and Madam Speaker, I ask my colleagues to support it.

□ 1205

Mr. DUNCAN. Madam speaker, I yield 5 minutes to the gentleman from Ohio [Mr. GRADISON], a valuable member of the committee.

Mr. GRADISON. Madam Speaker, this tax bill, H.R. 3838, is not perfect. Many provisions could be improved; too many loopholes remain, and the bill comes up short on simplification. But to dwell on these aspects misses the major achievements of the bill—significant improvement in fairness and benefits to economic growth and American competitiveness—achievements that, in my view, overwhelm its flaws.

Next year, more than four out of five Americans will get a tax cut, and these gains clearly favor lower- and middle-income taxpayers.

Tax reform will mean that over 6 million working poor Americans will be removed from the Federal income tax rolls altogether. Overall, the tax liability of those with incomes below $10,000 will be cut by 55 percent.

The dramatic reduction in tax rates is accompanied by a considerable advance in fairness. The variability of tax liabilities among individuals with similar incomes will be greatly improved. Under the new law, people and families with roughly the same income will owe roughly the same amount of tax.

Fairness across different income classes is also enhanced. Under the current tax system, high marginal tax rates are effectively reduced through the use of loopholes and tax shelters which have allowed well-heeled individuals—and businesses—to avoid large tax bills and often to avoid taxes altogether. The new, simplified rate structure addresses this problem directly.

With the new rates and the reduction of shelters, we will see fewer instances of wealthy individuals—and profitable companies—paying less tax than individual working Americans. Indeed, much of the ballyhooed $120 billion increase—over 5 years—in business taxation arises from taxing profitable corporations that have been paying little or no tax.

These significant gains in fairness did not materialize out of thin air, nor are they without cost. The tax bill had to be revenue neutral. The upshot of this constraint is that there will, necessarily, be some losers, and that is indeed tough medicine for us as politicians to swallow. But in my view, this imperative was resolved in the interest of fairness—by erasing credits, deductions, shelters, and other elements of inequity and economic distortion from the Tax Code. Put another way, those who fall in the minority group of Americans who will pay more under this tax reform have, often, been the big winners under the existing Tax Code; the new winners, a significant majority of working Americans, would be losers again if this reform is not enacted.

Critics of tax reform have lamented the loss or curtailment of investment subsidies, specifically, the investment tax credit [ITC] and the revision of the accelerated cost recovery system [ACRS]. Yet these so-called tax expenditures are not costless; their costs are borne by all taxpayers. Moreover, if one weighs the gains in revenue from the end of the ITC and the changes in the ACRS against the tax reduction of lower corporate rates, they amount to only 8 percent of the increase in corporate taxes. Most of the revenue increases come from accounting changes and the minimum tax, which catches profitable companies which paid little or no tax in the past.

Certainly, when considered in isolation, as if nothing else would change, a good case can be made that investment will drop. But such partial analyses are inappropriate; other factors affecting investment do change. After a decrease in rates of taxation, it is normal to expect a fall in interest rates. The point is that the higher cost of capital will be offset by other important factors affecting investment.

No less important is that the quality of investment will improve as a result of H.R. 3838. The reason is that investment decisions will be based more on economic and less on tax-motivated considerations. Good investments will still be profitable, and will still be made. And these projects will no longer be bidding against tax shelter schemes which are less productive. By encouraging more efficient investment, the effect will be to increase the worth of our capital stock, not just the money spent on it.

And small business, so important to job creation and economic growth, clearly benefits from this bill. The lowering of the top tax rate on businesses—from 46 percent to 34 percent—along with the almost halving of individual rates, provides strong incentives for innovation. Small businesses will also benefit from new provisions which put them on a more equal footing with corporations. It is no accident that both the U.S. Chamber of Commerce and the National Federation of Independent Businesses support this tax reform.

Another criticism being leveled is that tax reform will plunge an already slowing economy into recession. I have no doubt that whatever happens to the economy next year—good or bad—will be attributed to the tax bill. Yet, there is general, though not unanimous, agreement among economists that a revenue neutral tax reform cannot be expected to produce dramatic short-term economic effects. Over the longer run, a significantly less distortive Tax Code, one that does not seek to carry out social welfare objectives or a national industrial policy, can and will produce gains.

Compared to the present patchwork quilt we have come to know and hate as the present Tax Code, the Tax Reform Act of 1986 offers far greater equity and far less distortion—a much more level playing field—and it will lay the foundation for more rapid growth, more jobs, and more opportunity for all Americans.

That's why this Member supports tax reform.

Mr. ARCHER. Madam Speaker, will the gentleman yield?

Mr. GRADISON. I yield to the gentleman from Texas.

Mr. ARCHER. Madam Speaker, the gentleman made, I think, a very interesting comment that a revenue-neutral bill could not jeopardize the economy.

Is the gentleman aware that in 1987, this bill will pick up an additional $11 billion of extra revenue out of the economy in 1987 and will not be revenue neutral?

Mr. GRADISON. The gentleman is perfectly aware of that. In an economy of over $4 trillion, that is obviously within the range of statistical error.

71-059 O-87-36 (Pt. 18)

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from New York [Mr. GREEN].

Mr. GREEN. Madam Speaker, I rise to oppose the bill because I think it is bad for the country, and I know it is bad for my constituents.

From the point of view of the country, I think it is clear from the history of the 1981 tax bill that the business tax cuts produced business investment, but that the personal tax cuts did not increase personal savings. The personal savings rate is lower today than it was then. And to destroy what worked in order to do more of what did not work does not make a lot of sense.

From the point of view of my constituents, our State controller tells me the New York City residents will pay $179 million more in taxes next year as a result of the bill.

And the bill is blatantly discriminatory against tenants. Why should a homeowner be able to deduct the interest on a college loan while a tenant cannot? Is a homeowner's child more entitled to a college education than a tenant's? Is that fairness?

I say it is not, and I urge people to vote against this bill.

Mr. ARCHER. Madam Speaker, I reserve the balance of my time.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 3 minutes to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Madam Speaker, the essence of any tax reform measure is fairness. Every Member of this House and probably every citizen in our country could no doubt come up with a list of changes they would like to see made in this bill.

But the decision that each of us must make today is whether this bill will give us a Tax Code that is more fair than our current Tax Code. And, on that basis, I think the answer is "yes, it is a step in the right direction and it will give us more fairness in our Tax Code."

As President Reagan said in his statement yesterday:

> This bill will "advance fairness and encourage productive investment for sound business reasons by reducing the attractiveness of tax shelters and requiring all to pay their fair share."

A second test for judging any tax reform measure is whether it is economically sound. According to the best economic analyses available to us, this bill also meets that test. In a letter to me, U.S. Treasury Secretary James Boker strongly endorses this bill as being economically sound, and, according to the President's Council of Economic Advisers and Department of Treasury economists, this tax reform bill would have the following positive results:

First, increase long-term economic performance by at least 2 to 3 percent.

Second, increase real annual growth rate by 0.2 to 0.3 percentage points per year over the next decade.

Third, increase workers' real after-tax wages by more than 5 percent.

Fourth, increase longrun employment by 2 to 3 percent—this would be the equivalent to adding 2 to 3 million new jobs to the U.S. economy.

Fifth, lower nominal interest rates, resulting from lower marginal tax rates and reduced incentives to borrow, which will help stimulate business investment.

Sixth, reduce the Federal budget deficit through increased tax collections, smaller transfer payments resulting from higher GNP and increased labor supply, lower Federal borrowing costs and increased compliance with tax laws.

In conclusion, I believe we can be satisfied of what we have accomplished in this bill.

Democracy is not a perfect system but it is far better than any other system of government ever devised. This bill is the product of our democratic system. No one will claim that it gives us a perfect Tax Code but it will be better and more fair than the one it will replace.

This tax reform bill deserves our support because our citizens deserve a better system of taxation than the one we have now.

□ 1215

Mr. DUNCAN. Madam Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. I thank the gentleman for yielding me this time.

Madam Speaker, I will vote for this tax reform bill. I will vote for it because it reduces the individual tax rate from 50 percent to 28 percent. It will lower the tax rate for more than 80 percent of Americans. It will lower the top corporate rate from 45 percent to 34 percent. It will have the effect of simplifying our tax system for most Americans. Our tax system has become too complicated and too burdensome. I will support the tax bill because most people in my district favor this legislation. We have received over 10,000 responses—2,500 have been tabulated and show that those that favored the bill outnumbered opponents by almost 3 to 1. Not overwhelming but enough to persuade me that that is what most people in my district want.

President Reagan announced right after his reelection that he would press for a tax reform bill which would give a full $2,000 personal exemption for itemizers as well as nonitemizers and would provide basic tax incentives for American industries. It will simplify the system and provide more fairness in paying taxes.

Ten economists appeared before our Joint Economic Committee and all agreed that not passing the tax bill now would have a negative impact because the uncertainty in debate over tax reform has already resulted in a decrease in business investment. These experts agreed that in the long run the tax bill will increase our overall economic welfare.

I don't like the retroactive provision as it applies to those under certain pension plans. I also am not happy with the way the bill treats retirement accounts and capital gains. I am not happy about the elimination of the double exemption for the elderly and blind. But, in the overall, I feel that it is a good package that represents an improvement in our system and is better than we have now and should be enacted into law.

Mr. ARCHER. Madam Speaker, I yield 2 minutes to the gentleman from Colorado [Mr. BROWN].

Mr. BROWN of Colorado. I thank the gentleman for yielding this time.

Madam Speaker, this measure is projected to increase revenue from corporations by over $120 billion in the next 5 years. This $120 billion increase is over and above the enormous increase that is already projected for corporate taxes in that 5-year period. Including growth and the tax bill, corporate taxes are projected to double by 1991 from the current level. The projections of dramatically increased corporate tax revenue under this bill are overestimated by at least $50 billion.

The simple fact is that the projections that are in this bill for corporate taxes are absolute fantasy. Prior to 1981, we had a maximum personal tax rate of 70 percent and a corporate top rate of 46 percent. You had a dramatic incentive to incorporate if you were not going to remove earnings from the business.

With the passage of this bill, we will have a top personal rate of 28 percent and a top corporate rate of 34 percent. This provides a significant incentive for business to not incorporate. You will see a significant number of enterprises choosing not to be incorporated.

There are a number of very positive aspects of the tax bill, but provisions such as those effecting real estate will result in a significant shift of the tax burden. We must weigh the impacts carefully as we make our decision on the tax reform bill.

The tax bill in this one area will have a significant impact on the pocketbooks of a sizeable share of the country's population. It will effect not only real estate businesses, property owners, and investors, but the approximately 40 percent of Americans who rent rather than own their own homes.

It has been estimated the real estate industry will have to absorb as much as $40 to $50 billion in higher taxes as a result of the tax reform bill. This

will in turn cause an increase in the costs of renting homes and apartments of an estimated 15 to 20 percent. This is over and above any rent increases resulting from inflation.

The following is a copy of a letter 105 Members of the House sent to the ranking Republican on the House Ways and Means Committee, Representatives JOHN DUNCAN, concerning the provisions in the Senate tax bill affecting the real estate industry.

I urge members to review the letter and carefully consider this issue as they deliberate their vote on the conference agreement to the tax reform bill.

HOUSE OF REPRESENTATIVES,
OFFICE OF THE REPUBLICAN WHIP,
Washington, DC, July 31, 1986.

Hon. JOHN J. DUNCAN,
Ranking Republican, Committee on Ways and Means, Washington, DC.

DEAR REPRESENTATIVE DUNCAN: As the House-Senate conferees meet to write a final tax reform package, we would like to express our concerns about provisions in the Senate tax bill affecting the real estate industry.

We are particularly concerned about the ability of taxpayers to claim losses from real estate investments against "earned" income. While we believe that the elimination of abusive tax shelters is a worthwhile goal, we also believe that it is important to distinguish between "tax sheltering" and legitimate economic real estate investments. The House bill acknowledges this difference in its treatment of loss deductibility. Unfortunately, the Senate bill's "loss limitation rule" does not and thus, penalizes many non-tax motivated investments.

We urge members of the House/Senate conference committee to address this inequity in its final deliberations regarding tax shelters. We feel that the following improvements must be made to provide fair and reasonable treatment for rental real estate investments.

Real estate owners and investors who materially participate in the management or operation of their real estate investment should be treated the same as material participants in other businesses.

Losses that result from actual cash expenses, such as repairs, taxes, utilities, or interest should be deductible without limit. This is not a tax shelter. It is simply a dollar's worth of deduction for a dollar's worth of cash expended.

The loss limitation rule should not apply to existing investments. Such an application retroactively affects the anticipated return of the investments. It is unfair to change the rules on investors in the middle of the game.

If we fail to act, legitimate real estate investments will be unfairly penalized and the industry, as well as the American people, will suffer. The result will be higher rents for Americans who do not own their own homes and a decline in productive long-term economic investments.

We believe our recommendations are modest, yet meaningful, given the fact that tax reform will extract an estimated $50 billion from real estate over the next five years. In the name of fairness and equity, we hope you will agree.

Sincerely,

Trent Lott, Republican Whip; Tom Loeffler, Chief Deputy Whip; Olympia Snowe, Mickey Edwards, Jim Courter, Dean Gallo, Herbert H. Bateman, Carroll A. Campbell, Jr., Matthew J. Rinaldo, Dan Burton, Don Sundquist, Arlan Stangeland, David O'B. Martin, Nancy L. Johnson, Bob Whittaker, Robert J. Lagomarsino.

Newt Gingrich, Robert C. Smith, Howard Coble, Webb Franklin, Frank Horton, Bob Livingston, Larry Combest, Bob Stump, Guy Molinari, Gene Taylor, Robert Walker, Rod Chandler, Vin Weber, Gene Chappie, Helen Delich Bentley, Dick Cheney, Floyd Spence, Thomas Bliley, Stan Parris, Hank Brown, Eldon Rudd, E. Clay Shaw, Jr.

Duncan Hunter, Larry E. Craig, George C. Wortley, Silvio O. Conte, Bill Cobey, William Broomfield, Lynn Martin, William Dickinson, Paul B. Henry, Stewart B. McKinney, French Slaughter, Mike Strang, Phil Crane, Jerry Lewis, Jim Lightfoot, Thomas Hartnett, Joseph McDade, Bill Schuette, Henry J. Hyde, William Hendon, Marjorie Holt, J. Alex McMillan.

Robert K. Dornan, Patrick Swindall, John R. McKernan, Jr., Joe Barton, Vin Weber, Barbara Vucanovich, Steve Bartlett, James V. Hansen, William F. Clinger, Jr., Marge Roukema, Robert W. Davis, Ron Packard, Ed Zschau, Claudine Schneider, Bill Emerson, Larry Hopkins, Bill Lowery, Harold J. Daub, Charles Pashayan, Jr., Sherwood Boehlert, Sonny Callahan, Mark D. Siljander.

John McCain, Tom Lewis, Al McCandless, Norman D. Shumway, David S. Monson, Thomas N. Kindness, Bill Young, H. James Saxton, Pat Roberts, Virginia Smith, Benjamin A. Gilman, Howard C. Nielson, Harold Rogers, Gene Chappie, James H. Quillen, Robert E. Badham, Dan Schaefer, Richard Armey, John G. Rowland, Jim Kolbe, John Paul Hammerschmidt, Gerald B.H. Solomon, Frank R. Wolf.

Mr. SENSENBRENNER. Madam Speaker, will the gentleman yield?

Mr. BROWN of Colorado. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. I thank the gentleman for yielding to me.

Madam Speaker, I rise in strong opposition to the conference report on the tax bill.

Enactment of this bill will raise taxes for many Americans in 1987. With signs that the economy is softening, a tax increase is the worst thing Congress can do. Instead of the fiscal gimmickery of a tax increase next year and deficit increases afterward, this Congress should get serious in cutting Federal spending, which is the way to true prosperity.

The conference report has two other features which will irreparably hurt the American economy. First, it retroactively repeals the investment tax credit. This credit has been effectively used by both agriculture and manufacturing to retool to become more competitive in both the domestic and world markets. Its repeal will unevenly shift the burden of corporate taxes to these two segments of our economy at a time when both have been hurting. For a State like Wisconsin, which is heavily dependent upon agriculture and manufacturing, this change will mean further difficulties in keeping the jobs which are already there and attracting new jobs.

The second fatal defect of the conference report is the taxing of capital gains as ordinary income. Wisconsin did just that for decades and finally, economists and legislators of all political persuasions recognized that this high State capital gains tax drove jobs from Wisconsin to other States and countries and capital gains taxation was federalized during the administration of Gov. Lee Sherman Dreyfus from 1979 to 1983. Congress is about ready to make the same mistake that Wisconsin made for years, and it will have the same result—loss of jobs and curtailment of venture capital.

Congress can stop all these undersirable features before it's too late by defeating the conference report today. Instead, the conferees should put together a true tax reform—one that lowers rates, repeals shelters, eliminates "transition rules," and which is true simplification.

Mrs. KENNELLY. Madam Speaker, I yield 2 minutes to the gentleman from Michigan [Mr. LEVIN].

Mr. LEVIN of Michigan. Madam Speaker, I want to talk about the progressivity of this bill. This tax reform bill is indeed a progressive bill in terms of income tax rates. If one looks at this chart here, the first chart, this is on effective individual tax rates. The effective rates; the actual rates paid by people.

One sees that black is the current law and red is the conference bill. There is a substantial decrease in the effective tax rates for those $10,000 and under. You will see in the brackets up to $50,000 there is a significant drop. The drop in the higher income tax brackets, percentage-wise, is smaller.

We should not only talk about marginal rates; those are deceiving. But we should talk about effective tax rates. This is, indeed, a progressive bill.

Let me just point to a second chart which shows this graphically in terms of structural progressivity indexes. Forgetting for a moment about the House bill and the Senate bill, the current law is at this point on the progressivity index, and the conference bill is considerably higher. This is far more progressive than the present law, in part because of its loopholes.

Let me just, if I might, take a look at not only the individual tax rates but the combined individual and corporate income tax burdens. There the progressivity is even greater. For those under $10,000, there is a 32-percent cut. An 8-percent cut for $10,000 to $20,000, and 4.1 in the next income tax brackets. For those who are $50,000 to $75,000, there is an increase, a very slight one; for those in the highest tax brackets over 9 percent increase.

I have charts for any of the Members who would like to look at these in more detail. This indeed is progressive taxation, reflective of ability to pay.

We should vote for this bill, for that among other reasons.

Mr. DUNCAN. Madam Speaker, I yield 3 minutes to the gentleman from New York [Mr. MCGRATH].

Mr. MCGRATH. I thank the gentleman for yielding me this time.

Madam Speaker, I rise in strong support of the conference report on H.R. 3838. The fact that we have reached this point in the legislative process, is one of the great triumphs of our democratic system.

I congratulate my good friends from Illinois and Tennessee for their leadership in the long struggle.

We in the House have great difficulty thinking beyond 2 years in shaping any national policy. By starting early in 1985, with dogged determination and perserverance, we have given the American people a solid effort.

To those in this body who remain undecided on this bill, allow me to pose a fundamental question.

Would you rather see business and personal decisions molded around the Tax Code or would you prefer that they be made on their own merits?

The existing Tax Code dictates business and personal decisions. It extends the tentacles of government-much further into the lives of every American and undermines our system of free enterprise.

Many of those who have told me they opposed the tax bill, have joined me in dozens of other efforts, to get Government off of the backs of the private sector. I cannot think of a better way to accomplish that end, than by passage of the conference agreement before us. Let's allow people to build homes, and offices, to live and work in, not to avoid paying Federal taxes. Let's permit business leaders to make their own deals, instead of allowing the IRS regulators to structure those transactions.

I think that successful individuals and corporations insult their intelligence, when they argue for the status quo. I have more faith in the minds and abilities of Americans to thrive through their own initiative and I ask every Member of this body to join me in working toward that end.

□ 1225

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from California [Mr. THOMAS], a respected member of the Committee on Ways and Means.

Mr. THOMAS of California. Madam Speaker, my congressional district has been blessed with one of the most unusual agricultural events in this century—pistachios.

The U.S. pistachio industry is relatively young. Pistachio trees were first planted in California in the 1880's, but pistachios did not become a significant, commercial crop, until nearly 100 years later. Then in the 1960's and early 1970's thousands of acres in California were planted with pistachio trees.

Since it takes from 7 to 10 years from the time of planting for the trees to produce a significant crop, commercial quantities of U.S. grown pistachios were not marketed until 1976, when the crop was some 300,000 pounds. As older trees became more productive and younger trees began producing, the U.S. crop expanded rapidly, exceeding 10 million pounds in 1979. By 1984, an "on year" in the alternating 2-year cycle, the domestic in-shell crop exceeded 45 million pounds and in 1986 we anticipate production of approximately 70 million pounds.

The pistachio industry is concentrated almost entirely in California, where approximately 47,000 acres—nearly 32,000 bearing and 15,700 nonbearing—of trees have been planted, and where all initial processing of domestic nuts is performed. In crop-year 1984-85, California accounted for over 99 percent of the U.S. unprocessed pistachio production.

There are approximately 500 pistachio growers in the United States, most of them small ranchers. Some nine entities accounted for between 60 and 70 percent of the total production during the last crop year.

For the last 2 years the California pistachio industry has been battling the Iranian Government and the Iranian growers because of the dumping and subsidizing of Iranian pistachios. As our Government knows from experience, it has not been easy waging battles with the Iranian Government, but the California growers have persevered and in the last few months have won significant decisions in their countervailing and dumping actions.

Because of these important unfair trade action decisions and the poor general economic conditions in agriculture, the pistachio growers were concerned that syndications would substantially increase pistachio plantings and requested that I sponsor legislation that would require capitalization of development costs.

In effect, the language of the Senate bill provided protection of all farms from the potential ravaging by syndicators.

Upon learning of the terms of the Senate bill, the industry appealed to the House and Senate conferees to allow the continuation of expensing so that the legitimate growers would not be negatively affected by having to capitalize the expenses incurred over the 8-year preproductive period. The concerns regarding syndicators were diminished by the restrictions of the Senate bill.

Unfortunately, when the conference report was issued, the language of the House bill requiring capitalization by the pistachio growers was included despite the inclusion of the restrictive passive investment terms.

At this time, it is too late to remedy the inclusion of the capitalization requirement other than to allow the matter to be resolved through consideration in 1987 and I plan to introduce legislation to resolve the pistachio rancher's dilemma.

The pistachio industry seeks only the same treatment that is accorded other permanent crops and requests that consideration of its appeal be given attention.

As much as I like parts of this bill, especially its rates and personal exemptions, I feel it ought to be further adjusted before I can support it.

Certainly the chairman of the Committee on Ways and Means is to be complemented on the hard work, and in many cases excellent work included in this legislation. I am still concerned about some of the provisions in this bill, however, provisions I know others are going to discuss today.

I do want to mention my main concern which is the retroactivity of many of its provisions. The most common complaint about this bill I have heard from my constituents is that it reaches back to change tax laws on which people have relied. I agree that people ought to be able to rely on what their government does.

One provision that concerns me is the effective date for repealing the 3-year basis recovery provision so important to federal workers. With workers planning retirement months in advance, many people are trapped by the bill's repeal of 3-year basis recovery effective July 1, 1986.

In another instance in the foreign tax area, the bill reaches back to provide rules contrary to what counsel and a federal court identified as an acceptable practice. People relied on what the law said. This bill penalizes those who took reasonable steps in light of what the law said.

No one quibbles with the need to limit tax shelters but there is still a question about how this bill does so. The "passive loss" provisions in the bill are going to change taxes for many investors who made personal financial commitments long ago. While these provisions are phased out, the elimination of this deduction takes place over a relatively short period of time. A number of legitimate businesses are going to be severely impacted by the new rules.

We can avoid further problems by making some adjustments. Many of us who have watched this process fear we will be forced to look at this legislation again in the near future. Resolving the retroactivity of some of these provisions would help increase the bill's fairness and also help us avoid potential problems in the future.

Mrs. KENNELLY. Madam Speaker, I yield 1 minute to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Madam Speaker, the vote today is for fairness and equity.

For decades, the Congress has called for tax reform. This is our chance. We have railed against the abuses of a Tax Code that allows millionaires and the rich to escape tax-free, while the working men and women of this country pay for everything.

For 30 years, the corporate tax has been declining and individuals have been paying for the excesses in this country.

Madam Speaker, there are winners and losers in this tax bill. The winners are the poor and 700,000 elderly taxpayers that will now not pay taxes. The winners are the middle class, who will generally see tax relief.

All Americans win because the Tax Code is simplified and loopholes are closed.

Here are the losers, Madam Speaker: 250 corporations who, for many years, had not paid one dime in taxes; the rich and millionaires, for whom this is not a good day.

Madam Speaker, I have been a Member of the House for 4 years and there is one of the more important pieces of legislation that I have voted on.

The bill makes the Tax Code fairer for individuals by:

Relieving 6 million working poor of income tax liability.

Liberalizing the earned income tax credit.

Distributing the tax burden more equitably by broadening the base.

Retaining the tax provisions that are most popular, like home mortgage and charitable deduction, while making the standard deduction and personal exemption more generous.

Creating a tougher minimum tax so that the rich cannot escape their tax responsibilities.

Closing $30 billion in tax shelters.

Lessening the bias toward credit in our economy by getting rid of the consumer interest tax deduction. This should drive interest rates down.

Improving pension protection by guaranteeing better benefits and wider coverage for low-income and short-term workers. The bill includes mandatory 5-year vesting and anti-discrimination rules that require plans to cover more employees and provide benefits more equitably. IRA incentives are retained for those who lack company pensions and lower income taxpayers generally.

The bill makes the following improvements in the corporate income tax:

It imposes a tough minimum tax on corporations that have avoided paying taxes in the past. This alone raises an additional $25 billion.

It encourages investment in productivity by closing down tax shelters that lack economic merit.

It eliminates the existing disparity in the way different types of businesses are treated by dropping the investment tax credit.

It encourages investment in modern equipment by making depreciation provisions more generous.

The lower corporate tax rate, 34 percent, will discourage debate financing and thereby build stronger companies.

It eliminates the difference between long- and short-term capital gains, thereby allowing decisions to be made on a more economic basis.

It discourages hostile takeovers and certain other mergers by deleting the general utilities rule. New restrictions on net operating losses also will discourage certain types of mergers.

It helps the economy grow. The President's Council of Economic Advisers says the new code could increase growth by 0.25 percent annually. In 10 years, that would add $100 billion to the American economy.

It reduces the Government's role in making private economic decisions by encouraging corporations to ignore tax consequences when making financing decisions.

It encourages innovation by extending the research and development tax credit for another 3 years.

Mr. DUNCAN. Madam Speaker, I yield 5 minutes to the gentleman from Nebraska [Mr. DAUB], a valuable member of the committee.

Mr. DAUB. Madam Speaker, I rise in support of the Tax Reform Act of 1986. As a supporter of fundamental tax reform for many years now, I am pleased with the overall tax policy choices made in this draft and would encourage my colleagues to support this historic legislation.

I think each one of us comes here, committed in our own minds to the proposition that we, in our own way, can effect in a positive way public policy choices. I think that is why the statesman in each one of us will come out today when this House, in a bipartisan fashion, will overwhelmingly approve this historic tax reform legislation.

I recognize that many of my colleagues' congressional districts are such that they must be sensitive to particular special interest groups. This legislation, nonetheless, begs the political courage to vote for a bill which strikes at the heart of the pin-striped brigade which stood guard in the hallway outside the Ways and Means Committee room for those many months.

Instead of politics as usual, this legislation requires a genuine leap of faith for the Members of this House:

Faith in a fairer tax system;

Faith in lower tax rates;

Faith in the American entrepreneur;

Faith in market allocations of resources in a competitive environment; and

Faith that less involvement by Government in economic decisions will promote growth much more effectively than giveaways to favored industries, favored taxpayers, and favored investment choices.

Last December when addressing this House on the subject of the House tax reform bill, I talked of winners and losers in the tax reform process. Today, several months later, some of the biggest winners in this final conference committee package remain the same: agriculture, agribusiness, small business, and the individual wage earner.

Early in this tax reform debate, I joined with our colleague from North Dakota, Mr. DORGAN, in an attempt to carefully construct a series of agricultural tax provisions which would accomplish three primary goals:

First, the retention of simplified accounting methods for family farmers;

Second, the inclusion of more flexible rules for farmers restructuring their debts; and

Third, the limitation of the Tax Code incentives and advantages provided tax shelter farmers.

Each of these goals are key to promoting a fair shake for the family farmer and all three objectives are accomplished in this tax reform package.

In the case of simplified accounting methods, the cash method of accounting is retained as well as most elective expensing provisions in the current code. The $5,000 expense election for depreciable property is doubled to $10,000.

One of the most important of the agricultural provisions in the bill will be the provision which provides more flexible methods under which a farmer can refinance debt. Under the bill, farmers will have greater latitude to work with their creditors in debt settlements without triggering debt forgiveness income.

And finally in the agricultural area, tax shelter farmers will no longer be a favored class in the Tax Code. At a time when family farmers are suffering from the overproduction of key commodities, it is senseless to continue to subsidize through the Tax Code off-farm investment in farming losses. American agriculture stands to gain from tax reform not because of special incentives and tax breaks, but from curbing farm tax shelter investment.

Agribusiness stands to be a big winner in tax reform as well, particularly in the food processing and food manufacturing industry. For instance, in 1983, food processors paid a 29.5 percent effective tax rate while many other profitable industries payed single digit or negative effective rates. While much has been made about the fairness issues for individuals, this bill means a fairer shake for corporate America. The bill means a more level playing field and if you will, a deregulation of our growth industries which now pay excessive marginal tax rates under the current code.

Groups helpful in this effort for agriculture and agribusiness and a part

of the agriculture reform task force that we had were the following groups:

American Association of Nurserymen, American Farm Bureau Federation, American Horse Council, National Cattlemen's Association, National Corn Growers Association, National Council of Farmer Cooperatives, National Grange, National Milk Producers Federation, National Pork Producers Council, and National Turkey Federation.

The dramatic rate reduction in this bill is significant to American small business. For proprietorships and partnerships, the low 28 percent top individual rate means that entrepreneurs retain a larger after-tax piece of their economic gains. For corporate small businesses, the reduction of the top rate to 34 percent similarly means that the most profitable and most efficient will retain a larger share of their profits. This is an important consideration in terms of economic growth as the 14 million small businesses in this country generate approximately 40 percent of our gross national product.

Additionally, other key small business provisions make this bill overall a positive force for small business growth. For instance, the $5,000 expensing election under current law for depreciable property is doubled to $10,000. A simplified LIFO provision is included in this bill which will permit small businesses this inventory method at reasonable costs. And 25 percent of the health insurance costs of the self-employed will be deductible, narrowing the fringe benefit gap between this group and corporate employees.

It is for these reasons that the National Federation of Independent Business has stated that this tax bill "presents a more equitable distribution of the tax burden across economic sectors" and "is worthy of small business support."

Finally, the biggest winner in this tax reform process may be the individual wage earner and the elderly. I am referring in this case to the middle-class worker who does not have the economic clout to invest in tax shelter partnerships or put away large sums in an investment portfolio. For this taxpayer, his home is his only tax shelter and he senses a great frustration in the fact that affluent individuals and profitable corporations pay no taxes.

However, under this bill:

The middle class will receive an average tax cut of about 9 percent.

Six million working poor will be taken off the tax rolls because of the increase in the personal exemption and standard deduction.

The average marginal tax rate on wages and salaries, including the Social Security payroll tax, will be reduced 5 percent.

Employee fringe benefits will not be taxed.

Home mortgage interest and property taxes will remain deductible.

The personal exemption will be doubled during the phase-in of this bill.

The Association of Retired Persons and the AFL-CIO supports this bill.

This bill is a good bill at a key turning point for our country. This bill moves us toward lower rates and undeniably creates a fairer tax system. This bill is a brass ring which is unlikely to come back again. For those of us who truly want to instill fairness in the Tax Code and move to lower rates, the notion that this bill is not good enough rings hollow. This is the only game in town and I would hope that each of my colleagues would join me in voting for the family farmer, the small business person, and the wage earner who deserves better than the current code.

Mr. ARCHER. Madam Speaker, I yield 2 minutes to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Madam Speaker, I thank the gentleman for yielding and I rise in opposition to this bill and in support of the motion to recommit so that we can make it what it was intended to be, a bill that is fair.

In the Whip's advisory report, it says that this bill "repeals the 3-year rule which allows Federal retirees—and others—to frontload the receipt of their contributions." That—and others—is approximately 17 million Americans; 17 million Americans in addition to 3 million Federal employees who are being unfairly, retroactively treated by this bill.

□ 1235

Mr. CONYERS. Madam Speaker, will the gentleman yield?

Mr. HOYER. I only have 2 minutes.

Mr. CONYERS. I do not have any minutes.

Mr. HOYER. I yield to the gentleman from Michigan.

Mr. CONYERS. Madam Speaker, look, we have got a multibillion-dollar bill down here with hours of debate and I have just been told that I do not have any time, so I am voting against this bill.

The corporations that have not been paying taxes probably will not be paying taxes, but I will not be able to find out, so I am voting no.

I thank the gentleman for yielding.

Mr. HOYER. Madam Speaker, what is happening to Federal employees every year? Let me read to you what has happened to them every year since 1981.

1981: $2.3 billion out of their pockets.

1982: $5 billion.

1983: $7.4 billion.

1984: $10.6 billion.

1985: $10.7 billion.

1986: $13.4 billion.

That is almost $50 billion under this administration, and with our help on this side of the aisle, in reducing their pay and benefits by $50 billion under the law, to which they would have been entitled if we had not changed the law. That is not fairness. That is not equity.

Not one member of the Ways and Means Committee has tried to justify to me the retroactive impact. As a matter of fact, I think all of them would like to change that part of the bill.

If we recommit it, we can change it. If we do not recommit it, we cannot change it.

I ask for this House to give fairness not only to Federal employees, but to State, county, and municipal employees and other employees who contribute to their pension systems.

Mr. ARCHER. Madam Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. WOLF].

Mr. WOLF. Madam Speaker, we all support tax reform, but let me follow up what my colleague, the gentleman from Maryland, Mr. STENY HOYER, has said, and the gentleman is right. The members of the Ways and Means Committee, if geven a chance to vote on this issue, would vote with this; that is what we are asking for and that is why the motion to recommit is appropriate.

Madam Speaker, like many in the House, I see the need for tax reform. I wholeheartedly support the eliminate of special preferences and loopholes, and believe that all individuals and corporations should pay their fair share of taxes. I support the intent of this legislation—to make the Tax Code more fair. Unfortunately, the bill that we have before us today is grossly unfair.

I know that you are all aware of the tax reform provision which would repeal the 3-year basis recovery rule that allows public servants to recover their taxed contributions to a mandatory participation plan. Not only is this provision eliminated, but it is eliminated retroactively, thus trapping some 20 million retirement-eligible employees in their jobs without having the benefit of opting for a 3-year recovery rule on which they have based years of retirement planning.

The hundreds of letters and phone calls I have received from teachers, police officers, firefighters and local, State and Federal employees express disbelif, frustration, disappointment and anger that Congress would even consider making such a dramatic change retroactive, without giving them the option to choose. These people who educate our children, protect our families and make this country work could individually lose anywhere from $6,000 to $20,000.

No other group of individual taxpayers were singled out for this retroactive tax revision. To make the date retroactive indicates to all current and potential Government employees that Congress does not intend to honor the contract it made in good faith to these millions of employees, and that its credibility is at best lacking.

Let me share with you the frustrations these individuals have expressed:

This legislation would yank the safety net from under a large group of retirees—several million police, firemen, teachers and other State and municipal government workers—without affording them even the opportunity to factor it into their planning. This seems to me unreasonable and unfair.

What about those individuals who stayed on in order to finish a project or because a particular office situation dictated the need for them to stay? As this constituent relates:

I could have retired June 30 but we had an employee recovering from surgery and two in the process of leaving the government because they were disenchanted with the system. So, I chose to remain and get penalized for being sensitive to the needs of the office.

A NASA employee writes:

The new Administrator asked that I continue to work for the Agency during this recovery effort, even though I had been giving consideration to retirement. I decided to continue to work for the time being in the belief that Congress would not pass a retroactive change in the conditions under which we work.

These employees have put many years into Government service, some 26, some 37, some 40 years or more. Their shock and disappointment is felt with this statement:

I can't believe that the joint House and Senate conference committee decided to remove, retroactive to 1 July 1986, the 3-year basis recovery period. I feel it is totally unfair and unjust to eliminate this or any other benefit that an employee has understood would be part of his retirement program. What about the moral and legal obligation to maintain its commitment to its employees?

Madam Speaker, as the elected Representatives of these 20 million public servants, we cannot in good conscience, let this retroactive date take effect. We must bring fairness to this issue for the dedicated Federal employees, State employees, county employees, city employees, firemen, teachers, and policemen throughout this country, many of whom did not work for the high salary, but worked for the highest purpose and the best cause: to make their country and community better.

I ask my colleagues to support the motion to recommit so that we can do the right and just thing.

Mrs. KENNELLY. Madam Speaker, I yield 3 minutes to the gentleman from New York [Mr. RANGEL].

Mr. RANGEL. Madam Speaker, I rise in support of the tax reform bill and I vigorously oppose the consideration of a motion to recommit. The motion to recommit means that the bill goes back to committee and then we have to get together and see whether or not we can redraft a new tax bill.

When this bill first was being conceived, I thought, what a wonderful opportunity for Democrats to be able to go into their districts and to campaign for a reform bill, to take advantage of that fact that when the President first introduced his Economic Recovery Tax Act, everyone got a tax cut except the working poor, and for the rich and for the corporations the ability to shelter their income was right out here and I thought, my God, what a big Republican giveaway.

But is it not ironic now that this same President has come to us, not only to close the loopholes, but to make certain that the working poor who have been sucked into this tax system, that have been held hostage for 6 years, are relieved of the burden of having to pay Federal taxes and that the rich, the wealthy, and the profitable corporations would once again pay some contribution to the debt of this Nation.

I am suggesting to you that I believe that the President, by joining hands with the leaders of both the House and the Senate, by having the gentleman from Illinois, Mr. DAN ROSTENKOWSKI, and our own gentleman from Tennessee, Mr. JACK DUNCAN, working together on the House side with Senator PACKWOOD and Senator LONG have produced a good bill. There are a lot of things in this bill that anyone who wants an excuse to vote against it can find.

But the option that we have is not just voting for this bill, but by voting for a motion to recommit; by voting against this bill, what we are doing is saying that we want this same corrupt obscene tax system.

One of the worst things about this current system is that we enjoy in this great Nation of ours a voluntary tax payment system, and yet everybody knows somebody who takes a great amount of joy in explaining that notwithstanding their income, that they are able through creative accounting to find the type of shelter that is not based on any economic incentive, so that they will pay little or no taxes.

In this bill we have protected the fringe pension benefits of the working people. We have made it possible for the overwhelming majority of American taxpayers not to have to file, not to have to itemize on the long form, but to just file a short form.

There are many Members that say this bill should not be revenue neutral, that we should have taken advantage of this opportunity to raise the funds and reduce the deficit. The last time I heard something like this, there was a guy named Fritz Mondale, and nobody in this House thought that that idea was good then and we have another election year and I have not found any Member who is willing to do it now.

I say vote against the motion to recommit and vote for this reform bill. It is an historic occasion that we have to take advantage of.

Mr. DUNCAN. Madam Speaker, I yield 4 minutes to the gentleman from New Hampshire [Mr. GREGG], a member of the Ways and Means Committee.

Mr. GREGG. Madam Speaker, I thank the gentleman from Tennessee for recognizing me.

I think I should start by saying that this bill clearly does not bottle lightning. It has some significant problems. In my opinion, there are sections of this bill which are going to create extraordinary complexity in our tax law. There are also, unfortunately, sections of this bill which I would characterize as staff-driven academic drivel; but on balance, this bill accomplishes some of our fundamental goals for tax reform.

First, it is fair. It creates a situation where people of essentially the same taxable income will pay approximately the same amount of taxes.

Second, it dramatically cuts rates so that people have a greater incentive to be productive, so that people will go out and earn that extra dollar because they know they will be able to keep a higher percentage of that extra dollar.

Third, it significantly takes out of the business of investment the policy of trying to obtain tax deductions. One of the biggest problems we have in this economy today is that too many people invest for purposes of tax deductions versus investing for purposes of getting a real return on their investments. This bill will go a long way toward correcting that. It is therefore in my opinion not an answer to our dream, but rather a better bill than what we presently have as reality today. For that reason, I endorse it and I hope that it will pass.

Mr. ARCHER. Madam Speaker, I yield such time as he may consume to the distinguished gentleman from Wyoming [Mr. CHENEY].

Mr. CHENEY. Madam Speaker, the decision of whether to support or oppose H.R. 3838, the so-called tax reform bill, is one of the most difficult questions I've faced during my time in Congress. Very few people would defend the existing Tax Code or make the claim that it cannot be improved. The goal of reform is one that nearly everyone supports. However, the actual enactment of legislation into law requires us to be far more specific about what we mean by reform, and I have reluctantly concluded that H.R. 3838 fails the test.

Without question, there are some positive features in the bill. I like the idea of lower rates and fewer brackets. The move to close some badly abused loopholes is a good one, as is the imposition of an effective minimum

tax to make sure that everyone pays their fair share. But on balance I believe the negative features of the bill outweigh the positive.

The most critical consideration for me in evaluating any tax measure is its economic impact on Wyoming and the Nation. In the short run, over the next 2 to 3 years, I believe the bill will result in lower levels of economic activity, slower growth, less investment, and fewer jobs for Wyoming. Eliminating the investment tax credit is likely to lead to a lower level of capital investment under the new law than with the existing Tax Code. In addition, incentives for people to invest in the oil and gas business, already severely damaged by the collapse in world oil prices, will be even further reduced by the passage of this legislation.

On the national level I believe the evidence is overwhelming that H.R. 3838 will adversely affect our major manufacturing industries. That is especially unfortunate, because these are the companies hardest hit by competition from foreign imports. At a time when we should be looking for ways to make American businesses more competitive in world makets, this legislation will lead to a $120 billion increase in Federal taxes on business and to a significant rise in the cost of capital.

Increasing capital investment in this sector or our economy is essential if our companies are going to be able to compete with foreign firms, which operate in more favorable tax environments with low cost labor. Given our record trade deficits, the timing of these changes in our tax code couldn't be worse.

The bill discriminates against Wyoming in other respects as well. Under the provisions of H.R. 3838, it will be possible for taxpayers to continue to deduct State income and property taxes, but they will no longer be able to deduct State sales taxes. That clearly is unfair to those States like Wyoming which rely on a sales tax but collect only modest property taxes and have no State income tax. The Federal Tax Code should either permit the full deduction for all State and local taxes or for none of them. It is not equitable to discriminate against those States that have chosen a sales tax as the major source of their revenue.

There are other provisions I find objectionable: The significant increase in taxes on the real estate industry, the loss of income averaging especially for agriculture, the increases on taxes paid by retiring Federal employees, the increase in the tax on capital gains, the changes in IRA's for certain taxpayers, and the elimination of the deduction for tax advice and the preparation of tax return.

I believe there will be many unanticipated consequences of this tax legislation. The bill itself is hundreds of pages long. Many of the provisions are incomprehensible to Members of Congress, let alone those people who will be required to comply. There hasn't been time to analyze the bill in all its complexity, and therefore the impact it will have on many sectors of our economy is unknown.

I fully expect that Congress will have to enact legislation embodying so-called technical amendments in succeeding years to correct the problems arising from this bill. Instead of rushing to pass the measure in the closing weeks of the 99th Congress, it would be far more responsible to take the time necessary to work on the legislation until we had the bugs out of it before imposing it on the Nation. It also would be more equitable to provide for longer transition periods to the time when the new code would take effect. The current bill will create inequities by making some changes retroactively. People who made investments based on current law should not be penalized by having the rules changed in the middle of the game.

Finally, I am concerned that all of the attention paid to H.R. 3838 over the past 2 years has distracted the Congress and the administration from more important issues. I believe the Federal deficit, which will hit a new record of $230 billion in 1986, is an evergrowing threat to the future of our economy—greater than anything in the current or proposed Tax Code. If the President and Congress would make the same kind of sincere, dedicated, bipartisan effort to reduce the Federal deficit that went into the so-called tax reform bill, Wyoming and the Nation would have a much brighter future.

There are good features in H.R. 3838, the Tax Reform Act of 1986. Well intentioned, reasonable people can come to different conclusions on the overall worth of the legislation. After a good deal of study of the committee report, and advice from and discussions with a great many folks from Wyoming, I have concluded that passage of the bill would do more harm than good. Therefore, I have decided to oppose it.

Mr. ARCHER. Madam Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. LELAND].

Mr. LELAND. Madam Speaker, after long and careful consideration, I have decided that I cannot support the conference agreement on the tax reform bill, H.R. 3838. The agreement has some salutary features, notably the elimination of some of the more flagrantly offensive tax shelters and the removal of 6 million low-income taxpayers form the tax rolls. Nonetheless, on balance, the tax reform bill causes more economic problems than it solves.

I am particularly troubled by the potentially devastating impact the tax bill could have on the economy of Texas and my constituents in Houston. It is no secret that Texas and, in particular, the city of Houston have suffered severe economic trauma from the precipitous decline in oil prices. Other sectors of the Houston economy also are suffering, notably the real estate markets and the banking industry. Unfortunately, these three industries, oil, and gas, real estate, and banking are among those hardest hit by the tax bill.

There have been suggestions in the press and by economists that the energy industry benefits under this bill because it absorbs only a $4 billion tax increase rather than the $40 billion increases called for in President Reagan's original proposal and in the initial House bill. Given the current economic condition of the energy industry, even a $4 billion tax increase will have a significant impact. Moreover, in addition to the extra $4 billion in taxes the energy industry will have to absorb, it also will share in the $120 billion general tax increases on business. My constituents tell me this will reduce exploration, constrain development, depress capital expenditures by energy firms—and most assuredly, increase unemployment.

The situation is similar with regard to real estate and banking. Many Texas realtors and bankers are struggling to survive. The provisions in the tax bill which impact those industries could be the death blow. The conference agreement substantially reduces the two major special tax preferences that contribute to the low rates paid by many banks. This could cause major problems for viable banks and could cause marginal banks to fail. Many who have studied the conference agreement acknowledge that the real estate industry is one of those hardest hit. Downtown Houston, which is in the heart of my district, already suffers from excessive vacancies and little demand for existing stock. I will not, by my vote, contribute to the future deterioration of commercial and residential real estate in Houston. A vote for the tax bill, in my opinion, would have such an effect.

The tax agreement completely repeals the existing itemized deduction for State and local sales taxes, which will have a disproportionate impact on Texas. Texas does not have a State income tax, and relies heavily on sales tax for revenue. I can not defend a proposition that would require the citizens of Texas to subsidize States with high income taxes. This provision is arbitrary, discriminatory, and inequitable.

I also am very concerned about the lack of progressivity in this bill. For decades, one of the central tenets of the Democratic Party's tax policy has been progressivity in tax rates. In just 6 short years, however, we have moved from a top tax rate of 70 percent in 1981 to a possible top rate of 28 percent. Under the conference agreement, an individual earning $23,000 would pay the same 28 percent tax rate as an individual earning $500,000. Even should the agreement close some loopholes, I have severe problems with this potential bonanza for the wealthy.

Finally, I am particularly troubled that this package is revenue neutral and does not address the No. 1 economic problem facing our Nation today—a $2 trillion national debt that is growing daily. If we are to tackle tax reform or simplification, we must recover revenues to solve our national debt.

At best, any positive economic impact of the tax bill on either the national economy or on local economies is entirely speculative. Given our existing economic climate, Texans can not afford to engage in speculation. We need certainty and a revitalized economy. This conference agreement does not fill that bill.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Madam Speaker, I thank my friend for yielding.

In 1981 when I came to this Congress we fought very hard to pass, by a very narrow margin, what is known as the Economic Tax Recovery Act. That tax bill provided the strongest economic recovery that we have seen in over three decades, and here we are

today repealing large parts of that tax bill.

There are three stated goals behind tax reform which we all support. Those three goals, simplicity, fairness, and economic growth, are all being abandoned.

Every report that I have seen indicates that any individual who presently files a tax form will have a system which is more complex under this bill. What's simple about that?

What is it that is fair about a tax code which, as the gentleman from Texas said, allows for the deduction of second homes, but does not allow for the deduction of a first automobile?

On the third point, time after time we have seen economists report to us that there is more than uncertainty as far as economic growth is concerned. There is no doubt about the fact that a majority of economic forecasters have said that this will create a very difficult time for an already fragile economy.

I urge support of the recommital motion. So that we can have tax reform which is fair, simple and growth oriented.

Madam Speaker, when the announcement came last month that the Tax Reform Conference Committee completed a compromise on the most sweeping revision of Federal tax law in history, I shared the enthusiasm of many of my colleagues that we were about to do something genuinely good for the American taxpayers. Who can deny the powerful incentives for productivity and economic growth that are inherent in a tax structure where the top rate stands at 28 percent. Finally, it seemed, we were able to fashion a package based on the original objectives of tax reform: fairness, simplicity, and economic growth.

Unfortunately, Madam Speaker, my initial enthusiasm quickly faded upon returning to my congressional district for the August recess. It was there that many of the flaws in the conference committee agreement became public. Since the recess, I have received literally thousands of telephone calls and letters, with all but maybe 10 urging opposition to the package because of the potential hardships it will create. Even those who support it do so with a sober attitude that "it's the best that can be expected from Congress."

But I don't believe that this tax package we have before us is the best we can do. The American taxpayers want real and lasting tax reform, and we will have the opportunity today to give them just that by recommiting this conference report back to the conference committee with some simple instruction: First, don't penalize taxpayers retroactively for making decisions based on current tax laws; second, don't add billions of dollars to an already skyrocketing Federal deficit; third, don't discourage savings and investment at a time when borrowing and consumption are at an all time high; fourth, don't discourage economic growth.

Fairness, simplicity, and growth! This tax package is inadequate on all three fronts.

Without getting into the issue of merits, I don't see the fairness in telling a business person that the Government will pick up 10 percent of the tab for the purchase of new equipment, and then changing the rules after those purchases have been made. Where's the fairness for hundreds of thousands of middle-income Americans who recently refinanced their homes, only to find that they will no longer be able to afford their mortgage payments because the deduction they thought was there was taken away. And what's fair about retroactively changing pension rules without providing workers and retirees the opportunity to plan accordingly.

On the subject of simplicity, I commend the conference committee for rewriting the whole Internal Revenue Code rather than adding more complex amendments. However, I find nothing simple about a tax code in excess of 1,000 pages. Neither are the rates simple to understand. While the compromise boasts of a 28-percent top rate, the phase out of the 15-percent rate, the personal exemption, and deductions for individual retirement accounts will, result in a real top rate of well over 34 percent. How can we expect to restore confidence in our tax system when we're not being up front about the rate structure.

It's highly unlikely that this legislation, as currently drafted, will raise $120 billion through the proposed changes to capital formation, depreciation, foreign-source income, and the corporate minimum tax. With many industries such as banking, farming, energy, and real estate already facing economic difficulties, I don't anticipate much in the way of revenue enhancement coming from those sectors of the economy. More likely, we will see lower productivity, lower economic growth, and higher trade deficits. Ultimately, it will be the Federal deficit, not business taxes, that will increase.

Leading the way is the elimination of the preferential treatment of capital gains. Changes in the capital gains rate structure in recent years show conclusively that a lower tax rate results in greater capital formation and ultimately more tax revenue to the Federal Treasury. For instance, in 1977 the capital gains rate was 49 percent, total capital gains were $23.4 billion and taxes paid were $8.1 billion. By 1982, the top rate had been reduced to 20 percent, yet capital gains totaled $38.5 billion and taxes paid increased to nearly $13 billion. At the same time, the pool of capital gains available for capital formation increased from $3.5 billion in 1978 to $16 billion in 1984.

Yet, not only is the preferential treatment eliminated, the conference report won't even allow capital gains to keep up with inflation. Consider what the lack of indexing means, for example, to the average homeowner. With an annual inflation rate of 5 percent—a realistic assumption—the value of a $100,000 home will increase by about $30,000 over 5 years. In real terms, the value of that home remains $100,000, yet the owner would have to pay taxes on $30,000 upon selling the home.

A further deterrent to savings and investment is the way in which the tax bill treats IRA's. The proposed restrictions come at an unfortunate time. Our tax system is already biased against savings and investment, and curtailing IRA's will erode what is about the only base of support for savings in this country.

Moreover, IRA's have proved extremely effective in channeling private resources into retirement needs. The more than $250 billion in IRA's already comprises more than 15 percent of the total assets saved in pensions. If the IRA deduction is not fully restored, Congress will be seriously weakening the Nation's retirement system and destroying an important incentive for Americans to save.

Although this tax package will provide important tax relief to many small unincorporated firms, that will not be the case for most small businesses. Initially, tax reform was perceived to be advantageous to small business. But a recent study by the Small Business Administration found that firms with assets under $500,000 would see their taxes increase by as much as 40 percent, particularly for incorporated firms. Although there is substantial rate reduction, this is offset by the "hidden rate recapture surtax," the elimination of the ITC and the special capital gains rate, and the changes made to the deductibility of business expenses and depreciation schedules.

In addition, the phase-in of the 28-percent top rate over 2 years can only exacerbate an already sluggish economy. There is no doubt that the decision to phase in the 1981 tax cuts over 3 years contributed heavily to the recession of 1982. Businesses deferred profits until the full tax cut took effect in 1983, which happened to be the year we climbed out of the recession.

As you can see, Madam Speaker, these are no minor technical problems. If enacted in its current form, this tax bill threatens to undermine the spirit of tax reform, and make a mockery of our struggles to achieve it. A year from now, I don't want to be here

voting on another major tax bill to correct the deficiencies in this legislation. Let's do the job now. I urge my colleagues to support the motion to recommit, and bring to the floor a package that will insure real and lasting tax reform.

Mr. ARCHER. Madam Speaker, I yield 2 minutes to the gentleman from New York [Mr. MARTIN].

Mr. MARTIN of New York. Madam Speaker, I rise in reluctant opposition to the conference report.

I would like initially to applaud President Reagan and Chairman ROSTENKOWSKI, the gentleman from Tennessee [Mr. DUNCAN] and the people in the other body who worked so hard, for whether or not you are going to vote for this does not detract a bit from the hours and weeks and months of hard work and dedication by the people who put this together.

President Reagan initially pointed out, and accurately so, that the Internal Revenue Code is sick. The big question and I couldn't agree more is, If this is the treatment, will the treatment be lethal?

This has to be one of the most complex documents that has ever been put together in the history of man in one volume. Trying to read and understand it is virtually impossible. I would suggest that there is no Member who truly understand it. It was delivered to my office less than 96 hours ago and here we are debating this fundamental change of 30 years of social policy in 3 hours at the rate of 308 pages an hour.

The big question is in the short run and the long run, what is going to be the effect on this country?

In the short run, I want to warn my colleagues that this is going to exacerbate our already herculian challenge Gramm-Rudman presents for next year to the tune of $20 billion.

In the long run I would suggest that while this document is difficult to understand, a lot of it is yet to be written and interpreted. It is going to be well into the next millennium before we truly understand what this document does.

It is not all bad. As a matter of fact, it has some good features, some very good features. It is not so much the bad features that I understand that concern me, it is those that we do not understand because they have not been interpreted nor have they been addressed.

□ 1250

So I would suggest to the people—and I understand through the press accounts and the nose-counting that the bill has a good chance of passing here today—that if it passes, we can only hope and pray that it is the right way to go and that it is going to be beneficial to all Americans, because God knows, the stakes are high.

Mr. ROSTENKOWSKI. Madam Speaker, how much time do we have remaining?

The SPEAKER pro tempore (Mrs. LONG). The gentleman from Illinois [Mr. ROSTENKOWSKI] has 37 minutes remaining, the gentleman from Tennessee [Mr. DUNCAN] has 37 minutes remaining, and the gentleman from Texas [Mr. ARCHER] has 42 minutes remaining.

Mr. ARCHER. Madam Speaker, I yield 3 minutes to the gentleman from Washington [Mr. CHANDLER].

Mr. CHANDLER. Madam Speaker, a number of years ago I was trying to decide whether to give up smoking, and I talked it over with a friend of mine: a doctor.

"Well," he said, "there are a number of reason not to smoke. It causes emphysema, lung cancer, cancer of the throat, and mouth cancer. It's a factor in heart disease, and causes high blood pressure. You know, there's every reason to believe that smoking will shorten your life.

"On the other hand," he said, and I listened closely because I'd tried to quit before and I knew it would be terribly uncomfortable, "on the other hand, smoking has its positive side too."

"What's the positive side?" I asked.

"Well," he said, "it looks cool."

Madam Speaker, I'm reminded of that conversation when I discuss this tax bill with a number of my colleagues. When you talk about specific provisions, there's agreement that there are some real problems. But "it looks cool." Maybe that's why the next words you usually hear are "but I guess I'll have to vote for it."

Well, Madam Speaker, I don't have to vote for it. And I cannot, in good conscience, vote for it.

I want to put all my cards on the table, so I'll mention my most parochial reservation first.

Under the bill that passed the House, State and local taxes would remain deductible. Under the bill that passed the Senate, State and local income and property taxes would remain deductible, but only a portion of State and local sales taxes would remain deductible.

This is profoundly unfair, particularly in State which have a sales tax but no individual income tax. Those States include Connecticut, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, and Wyoming. Assurances were given in the Senate that this inequity would be fixed in conference.

The conference met and compromised. Halfway between the House position, allowing all sales taxes to be deducted, and the Senate position, allowing a portion of sales taxes to be deducted, the conference decided not to allow any sales tax to be deducted.

So, under the provisions of this conference report, if you live in a State relying extensively on an income tax, you can deduct most of your State and local taxes. If you live in a State relying heavily on a sales tax, you cannot.

So much for fairness.

If you don't represent a district in Connecticut, Florida, Nevada, South Dakota, Tennessee, Texas, Washington, or Wyoming, this "compromise" should still be of interest to you, because it illustrates just how faulty this process has been from the start.

Rather than beginning by asking ourselves what sort of public policy principles tax reform should embrace, we began with a determination to reduce the number of brackets and reduce rates. Once that determination was made, every decision, whether it related to the marriage penalty or deductions for medical expenses or retirement policy or the deductibility of State and local taxes, was driven by revenue estimates.

Tax reform should accomplish more than revenue neutrality.

Tax reform should encourage savings and investment, it should promote American competitiveness and it should encourage people to plan for their retirement.

Even if we were able to fix this problem with the sales tax, this bill is so flawed that it should be defeated.

Retirement income policy, an issue inevitably linked with tax policy, is one of the most important issues facing this Nation as we approach the 21st century.

When the Social Security system was established in the early 1940's, there were 100 workers for every beneficiary. When the baby boom generation retires, there will only be two people working for every retiree. Now we know that this generation will live longer, and we'd better do what we can to encourage baby boomers to prepare adequately for their retirement years. If adequate provision is not made, the burden on succeeding generations will be unbelievable. We're already saddling our children and grandchildren with an unconscionable public debt. We have no right to compound the problem by failing to address the need for retirement income for the baby boom.

Unfortunately, this measure represents a step in the wrong direction. Again, the retirement income provisions were driven solely by revenue considerations. Initially, very few changes were contemplated.

This bill removes incentives for participating in IRA's and 401(k) plans for many taxpayers. Women with children, who enter and leave the work force more than other workers, are especially hard hit by this. They need the portability that IRA's and 401(k)'s provide. And for purposes of determin-

ing eligibility, workers are told that if their spouses are covered by pensions, they are considered to be covered as well. Equity for women has come a long way; but, where pension law is concerned, this bill is a step into the past.

Small businesses today account for a majority of jobs in the United States. Two out of every three new jobs created come from small business. That is the good news. The bad news is that small employers have a difficult time providing pension plans for their employees. In fact, only about half of America's workers have the benefit of an employer-provided pension plan. And most of those who have no pension work for small businesses.

Does the tax bill do anything to help this situation? No. In fact, it compounds the problem by adding new rules and burdens—aimed at large employers but affecting everyone—that make it far less likely that small businesses will maintain, let alone establish, pension plans for their employees. The combination of lower individual rates and tighter contribution limits make it even less in the interest of a small entrepreneur to provide pension coverage.

We need to realize that in this country employers have the choice of providing pensions for employees. Only Social Security is mandatory. If we as a nation do not recognize the need to expand pension coverage, millions of Americans will retire without adequate resources for a dignified and comfortable retirement. On this issue, the tax reform bill looks the other way.

Federal retirees, especially those who retired recently, are also hard hit by this measure. We're changing the rules as to how we tax their pensions. For years we've been willing to sacrifice the financial security of Federal workers because of the deficit, now we're sacrificing their retirement income in the interest of revenue neutrality. The retroactivity of this change doesn't meet a public policy objective, we just need the revenue.

But retirement income isn't all that's at stake here. The money that is saved and invested for retirement provides a vital source of capital for American enterprise. One reason we're losing the trade war is that people in other countries are better savers than we are. But this bill will result in less capital formation, not more.

Madam Speaker, just a few short months ago, this House passed one of the most protectionist trade packages imaginable. Now we're considering a tax bill that would diminish, not enhance, the competitiveness of American enterprise.

If we're worried about jobs in our basic industries, why are we repealing the investment tax credit?

If we want our goods and services to compete well in a global economy, why are we raising business taxes? Who do we think will pay those business taxes? They're going to be passed along to the consumer, making our goods and services less competitive.

No one can doubt the relationship between the trade deficit and the budget deficit, but this bill, for all that was sacrificed for revenue neutrality, makes the deficit problem worse. Sure, we'll reap a windfall in fiscal 1987, but how are we going to cope with the projected revenue shortfall for fiscal 1988. Are we going to raise taxes, or are we going to cut services? If we're going to raise taxes, why haven't we factored that into this bill? If we're going to cut services, which services are we going to cut?

Just last year, we passed an extraordinary measure, the Gramm-Rudman-Hollings deficit reduction mechanism. For the first time in our history, we set up an "automatic pilot" for controlling the Federal budget if we, as elected officials, fail to address the Nation's fiscal crisis. How can we expect to be taken seriously if we turn around and pass a tax bill that will result in a revenue shortfall a year from now?

Proponents tell us that for all the bill's faults, we need to simplify the Tax Code.

Is simplicity what we're being offered? Most of the people I've talked with are bewildered by this measure. Imagine how lengthy the technical corrections bill is going to be. How many years, if not decades, will it take IRS to complete the rules and regulations?

One only has to look to the recent performance of the stock market to see that investors are confused by this bill.

I hope no one thinks we've simplified the code because we've reduced the number of brackets. I've never met a taxpayer who was confused by the number of brackets in the code. Plenty of taxpayers, including the Chandlers, have been confused by all the calculations you have to make before you get to the tax tables; but once you've gotten that far, the rest of the work is done for you.

But we need this bill to make the wealthy pay. Do we? None of us have really had time to read all the transition rules, but I'm sure there are a few loopholes as glaring as anything we have under existing law.

If we want to make the wealthy pay, all we have to do is strengthen the minimum tax. We don't have to hurt all the people who are going to be hurt by this bill to get the wealthy to pay. If this bill were a mere loophole closer, I would support it as enthusiastically as anyone in this House.

Who are we hurting so we can pass a tax reform bill?

The crisis in American agriculture is heartbreaking. Does this bill help farmers? Well, it repeals the investment tax credit, which farmers use to buy machinery.

It repeals income averaging. Is it fair to tax the American farmer in a way that overlooks the wild fluctuations in farm income?

Is it fair to workers to put their jobs in peril by hindering the ability of American enterprise to compete? Remember the three-martini lunch? Under this bill, American workers who carry their lunch to work will no longer subsidize the three-martini lunch. The deduction has been limited to 80 percent, so we're only subsidizing 2.4 martinis.

The bill widens the gap between owners and renters. Under current law, renters experience the frustration of watching homeowners deduct a portion of their housing expense, the interest on their mortgages, while those who rent, often people of more modest means, are unable to deduct any of their housing cost.

Under this bill, we're eliminating the deduction for consumer interest expense. On the face of it, that makes perfect sense; we shouldn't subsidize borrowing. But the way this bill is drafted, those of us who own property can take out another mortgage to meet our credit needs; those who cannot or do not choose to buy a home won't be able to deduct their credit costs.

We aren't really clamping down on consumer credit; we're just shifting it from plastic to mortgages, and we're discriminating against those who don't own homes in the process.

A lot has been said about the real estate provisions of this bill. Certainly too many real estate investments have been tax driven in the past. But I believe it is unfair to change the law retroactively. And I wonder what sense it makes to take low-income taxpayers off the tax rolls if a rent increase is waiting for them as a result of this bill.

Others are hurt by this bill as well.

Charitable giving is hit not once, or twice, but four times. Lower rates diminish the incentive for charitable giving. Eliminating the deduction for nonitemizers removes another important incentive. There will be fewer itemizers under the bill, further compounding the impact. And the recognition of the appreciation of property, such as real estate stocks, and art work, has been limited.

Education, which was identified as a major national priority just 2 short years ago, doesn't fare that well either. Not only does the bill diminish the incentives for giving, tax-exempt bonds for universities will be curtailed, scholarships will be taxed and the in-

terest on loans for education no longer will be deductible.

Had anyone of us introduced a bill to launch this sort of assault on education, we probably would be tarred and feathered. But, again, we need the money to get a revenue neutral bill.

For some time now we've been concerned about the cost of medical care, which has been priced beyond the reach of many Americans. And we're also alarmed by the increasing burden on the Medicare and Medicaid systems. Against that backdrop, this bill raises the threshold for deducting medical expenses from 5 to 7½ percent. Who will be hurt? Not the wealthy, they'll get by. Not the poor; we'll continue to provide for their medical needs. The middle income taxpayer, the taxpayer who can't figure out how to pay for the kids' education, the taxpayer who feels guilty about not being able to save enough to retire, the middle income taxpayer is the one who will feel the pinch.

At least the bill helps small business. That's the conventional wisdom. But I'm not so sure it does. Corporations paying the top rates will get a bigger tax cut. I'm not sure how eliminating capital gains rates and the investment tax credit will affect small businesses, but I don't see how it can help. Limiting business expenses deductions and changing depreciation schedules will probably hit smaller businesses harder than larger ones.

No, Madam Speaker, I'm afraid that the emperor has no clothes.

Wherever we have identified a problem—whether it's in trade or farming or health care—this bill delivers another blow.

A friend of mine put it well when the bill was in conference: "They're playing with big toys."

I'm going to vote agains this bill because I'm willing to admit that I have no way of knowing what its long-term impact will be. The cynics will say that to those of us who vote "no" are siding with the special interests. I'm siding with the people of my district, with the investors, the entrepeneurs and the working people of Washington State. I think it would be cruel to give a person a tax cut and a rent increase, or a tax cut and pink slip.

I may be tilting at windmills, because it looks like this bill is going to pass. But it's a bad deal and it will have to pass without my support.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Madam Speaker, I rise in support of H.R. 3838, the Tax Reform Act of 1986, and I urge my colleagues to support it.

Madam Speaker, I rise today in support of the conference agreement on H.R. 3838, the Tax Reform Act of 1986. This bold legislative undertaking has been endorsed by, among others, the Wall Street Journal, the Chicago Tribune, the New York Times, the National Taxpayers Union, the National Federation of Independent Business, the American Association of Retired Persons, and a variety of business and consumer groups.

The conference agreement, though not perfect, represents a significant improvement over our existing Federal income system. It goes a long way toward restoring fairness and equity in the tax treatment of both individuals and corporations and restoring confidence that those with similar incomes will share a similar burden in the running of the Government. The legislation will remove 6 million poor persons from the tax rolls—700,000 of whom are the elderly—by significantly increasing the personal deduction and the standard deduction. Those on welfare will now have a greater incentive to take low-paying jobs, begin the journey up the economic ladder, reduce the strain on Federal social spending and move them up into taxpaying earning levels.

Through broadening of the tax base, the top effective tax rate will be reduced from 50 percent to 20 percent for individuals, the lowest rate in over 50 years. Approximately 80 percent of individual taxpayers will experience a tax reduction averaging 6.1 percent. While many deductions have been curtailed or eliminated to lower income tax rates for everyone, others which have an important goal such as encouraging homeownership and charitable donations would be retained.

The bill would reduce the top effective corporate rate from 46 percent to 34 percent which is the lowest level that corporations have faced in over 40 years and lower than those imposed by our major economic competitors such as Japan, West Germany, France, the United Kingdom, and Canada. It will result in businesses making decisions based on the market and economics rather than on tax incentives. The bill would move the economy toward a more level playing field in obtaining capital, improving productivity and meeting market demands. It is interesting to note, that our major foreign competitors have expressed concern that the low U.S. comparative tax rates will cause an exodus of capital and brainpower to this Nation.

While the conference report did not go far enough, I believe that it does provide significant simplification. Due to the increased personal deduction and standard deduction as well as the elimination of many deductions and credits the system will be greatly simplified for millions of low- and moderate-income taxpayers.

I appreciate the fact that many of my colleagues on this side of the aisle are concerned about the bill, particularly about the possibility that some Members of this Chamber may try to raise the rates in the future. The President has told many of us that he will strongly oppose any increase in the tax rates and I for one will compeletly agree with him and will back him up if need be. In any event, a tax increase on 15- to 28-percent rates is different than on the present rate structure.

While the bill is certainly not perfect, it may be a long time before we will ever get the opportunity in the Democratic controlled House—and the Senate should it return to Democratic control—to lower the individual and business tax rates to the level that they are in the bill. However, there will always be the opportunity in the next few years to correct any flaws in the bill with regard to particular problems and concerns.

We should correct the inequitable treatment of retirement benefits of retired Federal employees and I will support and vote for legislation to correct it. There are a number of other unfair retroactive provisions that can and should be corrected. The bill is superior to present law and is superior to what we are likely to get if it fails here today and becomes the key issue in the 1988 Presidential election.

In closing, Madam Speaker, I want to again commend my colleague, the gentleman from New York, Mr. JACK KEMP, for bringing this issue to the forefront and for his tireless efforts on its behalf.

Mr. DUNCAN. Madam Speaker, I yield 5 minutes to the gentleman from Pennsylvania [Mr. SCHULZE], a most valuable member of the Committee on Ways and Means.

Mr. SCHULZE. Madam Speaker, my decision on how to vote on the tax reform conference report took a great deal of soul searching, and during this search, it became a personal dilemma. I asked myself, is this tax bill good for the Nation in the long run? I found a multitude of answers to this question.

Can this bill establish a foundation for reforms in future years? Yes, I believe it can. Does it eliminate inequities and loopholes used by those who wish to avoid paying their fair share of taxes? Yes, I believe it will close most loopholes. Does it lower rates and thus free the individual to make decisions with less influence from the Tax Code? Again the answer is yes.

On the other hand, does this measure fall short of accomplishing sound tax policy goals, goals important to our standing in a changing world economic order? Unfortunately, this bill probably will fail to stimulate individual savings and business capital formation. Nor does it clearly address our need to harmonize our Tax Code with our competitors' methods of taxation.

I have other concerns with this bill as well. Retroactive provisions penalize taxpayers who made investment decisions based on current law. This is clearly not fair. Eliminating sound incentives for our citizens, and thus, our economy's productivity are also of great concern to me. Incentives were placed within our Internal Revenue Code to stimulate business and individuals to be more productive, to save, and to help achieve predefined goals.

Are interest deductions for educational loans loopholes, or an investment in our future? They are, of course, an investment. Are individual retirement accounts loopholes? Again the answer is "No." In most cases, especially for small businesses, the investment tax credit is not a loophole, but a stimulus for essential and pro-

ductive investment. The elimination of preferential rates for capital gains ends a tax incentive which provides a sound stimulus for risk taking—an American tradition and a basis for our strength in the world economy.

I could go on and on about provisions in this bill I object to; the tax rates, for instance, are not what they seem, with clearly more than two rates for individuals. Tax-exempt financing, which has been vital to economic growth in Pennsylvania, has been gutted. The treatment of the historic rehabilitation credit under the new passive loss provisions will unfairly impact older Northeastern States.

The loss of the investment tax credit will heavily impact our manufacturing sector in Pennsylvania. The ITC has been repealed twice before, and it was reinstated quickly. I predict now that we will shortly revisit this important provision.

What concerns me most about this bill is that we cannot be certain how it will pan out. A recent column on tax reform by George Will sums up the various economic predictions surrounding this legislation. Will wrote:

Such is the state of economics as a predictive science, no one knows who is correct about this legislative leap of faith.

What tax reform seems to be to me is a shiny and tempting red apple—an apple which upon closer inspection, has a few worms in it. I'm going to bite into this apple, but as a member of the Committee on Ways and Means, you can be assured that I'll try to cut the worms out before I finish it.

Madam Speaker, it is my faith in the American people, who have never relied on the Tax Code alone to be productive, inventive, or industrious, which allows me to support this legislative leap of faith into a new tax system. It certainly could be, in time, a system which achieves tax simplification, more efficient allocation of investment, economic growth, and most importantly, fairness. A Tax Code where everyone pays, but where they pay at lower tax rates.

Madam Speaker, I intend to vote for the conference report, and I urge my colleagues to do the same.

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Mr. ARCHER. Madam Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. HOLT].

Mrs. HOLT. Madam Speaker, I am voting to send this bill back to the conference committee because it is a radical and sweeping revision of the Tax Code with consequences that are totally unpredictable.

The Baltimore Sun had it right in this morning's lead editorial, which said that "no one has the slightest idea how this particular tax overhaul package will affect the economy."

The Sun said we should enact the legislation because it "is worth the gamble," but I have a real problem with that line of reasoning.

I have read many articles by economists on the probable effects of the Tax Reform Act of 1986, and there are sound arguments for good results and bad results. Just take your pick of which economic soothsayers you choose to believe.

I have very strong concern about features of this bill that will repeal the investment tax credit, treat capital gains as ordinary income, stretch out depreciation, and wipe out the tax deductions for IRA contributions for millions of Americans. The legislation appears to have a serious bias against saving and investment, the foundation of economic growth.

And I have a real problem with the extraordinary unfairness of taxing retirement benefits before beneficiaries have recovered their contributions to the retirement system. I shall never understand why the chairman of the House Ways and Means Committee has insisted on hitting the Federal employees in that manner, and those employees are a large share of my constituency.

I am sure that all of us like the lower personal income-tax rates provided by the bill, but I know from talking to my constituents that a great many middle-class families will sustain an increase in their tax burden because other changes in the code.

I have received hundreds of letters and phone calls on the Tax Reform Act, and those who are for the legislation can be counted on my fingers. I am not talking about big national lobbies; I am speaking of communications from the middle-class people of my district.

My vote to recommit this bill is based on two considerations: the sentiments expressed almost unanimously by constituents who have communicated with me on the subject, and my serious concern that the legislation is potentially very damaging to the economy.

Mr. ARCHER. Madam Speaker, I yield such time as he may consume to the gentleman from Oklahoma [Mr. JONES].

Mr. JONES of Okalhoma. Madam Speaker, I rise to oppose this tax bill primarily because it will have a negative impact on my State of Oklahoma at a time when we are already suffering the worst economic recession in half a century.

There are at least four main reasons why this tax bill should be defeated. First, it makes tax law changes retroactively. I think that is wrong. I can only remember one other time when tax law was changed retroactively. Even in that instance, the retroactive features were corrected the very next year.

This bill is replete with retroactive tax changes. Can you imagine how the parents who borrowed money to send their child to college will feel when they discover that they can no longer deduct the interest on that loan? It's simply wrong to be changing the rules on taxes after the game has begun.

Second, the distribution of tax benefits once again shortchanges middle-income taxpayers. If you're wealthy or poor, you come out pretty well in this tax bill. But if you're middle-income Americans, especially two-earner families, your chances are about one in two that you will have a tax increase, not a tax cut. That simply is not fair.

Third, my analysis indicates that this tax bill is not revenue neutral as advertised. It will add to the Federal deficit. When you start with a 2.3 trillion dollar national debt, add to that the fact that the United States is today the world's largest trade debtor nation, and then thrown in the uncertainty and confusion this tax bill will have on financial markets it spells trouble. With those ingredients, the almost certain result is a national recession. I'm not willing to take that chance.

Finally, and most important for my State of Oklahoma, this tax bill calls for the largest tax increase on business and capital investment in our Nation's history. Every economist appearing before our committee predicted that in the short run; namely the next couple of years, this tax package would depress capital investment. States such as Oklahoma are starving for capital. Capital investment produces jobs. We need jobs and business activity. I'm afraid the overall result of the tax bill will be to make it that much harder for Oklahoma to recover from its depression.

Therefore, Madam Speaker, while I support tax reform, I cannot support this package. What we should have done is to pass a stiff minimum tax such as a gross income tax or a flat tax approach so that every taxpayer regardless of how wealthy would be paying a fair share toward the costs of democracy. That is not what we've done in this bill and I recommened that the conference report be defeated.

Mr. ARCHER. Madam Speaker, I yield 4 minutes to the gentleman from Washington [Mr. LOWRY].

Mr. LOWRY of Washington. Madam Speaker, I thank the gentleman from Texas for yielding me this time and for his leadership on this vital issue.

Madam Speaker, everybody in this Chamber, especially the Members of the Ways and Means Committee, have endeavored hard for tax reform, and I compliment them for their effort and their hard work. I seriously disagree with this bill. I think it is a mistake, and I hope we will vote for the motion to recommit to be offered by the gentleman from Texas [Mr. ARCHER], so that we can improve upon the most serious mistakes in this bill.

I only have time to mention two. First, I think it is an economic mistake. Yesterday we stood on the floor and everybody made speeches on how we were passing a reconciliation bill that was using one-time asset sales by which to hit our Gramm-Rudman target of $154 billion, one-time asset sales.

What are we going to do next year when we do not have those one-time asset sales to hit our Gramm-Rudman target? I will tell you what this tax bill does to help us on that. It will make our problem at least $17 billion harder, make it at least $17 billion higher, at least a third harder to hit the Gramm-Rudman target next year as a result of passing this tax bill than if we do not.

In the next 2 years, if you use the most optimistic revenue estimates, it will cost us $32 billion toward the target. It makes it impossible to accomplish what we have all said we want to accomplish, significantly reduce the deficit. Next year, if this tax bill passes, remember we will be $17 billion further away from our Gramm-Rudman target.

Second, it is a serious mistake in equity. I want to talk about the nondeductibility of the sales tax.

There is a serious inequity in this bill to those States whose State services and especially education are very, very reliant upon the sales tax. What does this bill do? It says that if your State happens to be financed by an income tax, OK. But if you are financed by a sales tax because of your constitution, and we have eight States that have a heavy reliance upon the sales tax, and no income tax to help them, you are tough out of luck. That is going to hurt education in our States.

To correct that, it would have cost the conferees between $2 and $3.3 billion. To correct that inequity would cost between $2 and $3.3 billion. But they said, oh, no, we cannot do that. We cannot do that for the education in the State of Washington and in the other eight States that this hits. They said we cannot do that.

But what did they do? They gave $10 billion of transition rules. We cannot do the $2 to $3.3 billion toward equity for education in our States by knocking out that sales tax deduction, but we can do $10 billion of transition rules.

Send this back to conference. Tell our conferees we want equity. Say that the education of the children in the State of Washington is as important as the chicken producers in this country who get $1 billion of transition rules in this bill, and the 25 largest chicken producers in this country get $1 billion transition rule, and $10 billion in transitions for dome stadiums and teams that we do not know quite where they are going to be.

These bills are tough to write, I understand that. But the education of children is important, and there is inequity in this bill, and it can be changed. It can be changed as well as the other inequities that have been stated today.

Please recommit this bill and straighten it out.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. WOLPE].

Mr. WOLPE. Madam Speaker, I rise in support of the tax reform bill. Madam Speaker, today, this Chamber has before it an opportunity to give to the American people true tax reform. As I have listened to and followed this debate, it seems that many Members have lost sight of the origin and goal of this legislation. Let us not forget that the call for tax reform came from our constituents. Across this Nation, Americans mounted a strong grassroots movement for tax reform. They wanted a tax system that required all Americans to pay their fair share of income tax and that provided hard working, middle-income taxpayers with the tax relief they were due. This tax bill accomplishes that goal. It is a great achievement, and I commend Chairman ROSTENKOWSKI, Senator PACKWOOD and other members of the conference committee for their efforts.

We all know that it is impossible to craft legislation as far reaching and comprehensive as this to everyone's liking. We all have some problems with certain aspects of the bill. I know I certainly do. I do not like the way it treats Federal employees, nor am I satisfied with the modifications made to individual retirement accounts. With respect to real estate investments, I frankly feel that the pendulum has swung too far. And 145 other Members of this body agreed with me in that regard. In a letter to the conferees, we expressed our concern that the Senate bill retroactively and unfairly penalized many non-tax-motivated real estate investments. Unfortunately, those provisions remain. But in supporting this bill today, I am not closing the door on revisiting those provisions that keep this bill from being as fair as it could possibly be.

Finally, Madam Speaker, I have one last objection to this bill which I am compelled to address—and that is its attack on the deductibility of State sales taxes. As you know, preserving deductibility has been a top priority for the Northeast-Midwest Coalition—of which I am cochair—since the tax overhaul debate began last year. We owe a great debt of gratitude to Chairman ROSTENKOWSKI for all the help and leadership he provided to preserve the full deductibility of State income and property taxes. However, we must understand that the exclusion of State sales taxes from the list of allowable deductions should not, does not, and cannot, serve as a precedent for a future assault upon the deductibility of State income and property taxes. Disallowing full deductibility of all State and local taxes, as proposed by the President—and rejected by this Congress—would violate the fundamental principle of fiscal federalism upon which our Nation's system of taxation was based. I say to my colleagues today that we will still strongly oppose any attempts in future years to subject the American public to double taxation by eliminating the deductibility of State income and property taxes.

Despite these reservations, I say again that this bill is a great and historic achievement. The good by far outweighs the bad: The vast majority of middle-income taxpayers will receive an average 8 to 10 percent tax cut; over 6 million low-income individuals, whose tax burden increased fivefold between 1980 and 1985, will be removed from the tax rolls; the elimination of numerous tax shelters and loopholes and the imposition of a very tough minimum tax will ensure that wealthy individuals and profitable corporations will no longer be able to escape their fair share of the tax burden; and finally, business investment decisions will more likely be based on the market rather than the Tax Code—allocating scarce resources more productively and resulting, in the long term, in a more healthy and efficient job-creating economy.

In sum, this bill is more fair than our current Tax Code, it will help restore the public's confidence in our tax system, and it will be good for the long-term future of our economy. I urge its passage.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES. Madam Speaker, I rise to speak on H.R. 3838, the Tax Reform Act. For nearly 2 years, we have debated and argued the meanings and the goals of tax reform. Should it be revenue neutral, especially when we know that we need more revenue in order to balance the budget? Should the Tax Code be more progressive or should it be more flat? Should we raise taxes for the rich and for corporations so that poor people under the poverty line don't have to spend their meager dollars on Federal taxes, or should we save capital gains and the investment tax credit for corporations so that they can try more "trickle down" economics?

Madam Speaker, there is no way that we can create a tax reform bill that answers the concerns of every Member of Congress or that seems fair to every American citizen. But my major concern, and the major concern of my constituents, is about one major aspect of tax reform. You see, most of my constituents haven't been taking deductions in order to avoid paying taxes. If they are working—and many of them are not working—their taxes are simply subtracted from their paychecks. These are dollars that they don't have available to pay their rent, to feed their children, or to spend on their own families. When they hear of giant tax cuts for the wealthy and for corporations, such as this Congress passed in 1981, they get angry. When they hear of corporations paying less tax than is taken out of their paychecks every week, they get angry. And when they see their tax dollars being spent on more weapons of destruction, and less on helping them or their neighbors, they get angry.

But as angry as may constituents get, they don't get excited about tax reform. When I start to explain that fewer deductions means lower rates and that there will be only two brackets, they ask me, "Won't that increase the deficit?"

I must take a moment to point out some of the things about tax reform that I oppose. The 3-year recovery rule which will literally take money out of the pockets of Federal retirees seems to me to be one of those things that should not have been included in this bill. Some of the deductions that were eliminated will not make our tax system more fair. By limiting deductions for medical expenses, terminating the two-earner "marriage penalty," increasing the tax on unemployment benefits and scholarships, and eliminating the deduction for sales taxes and consumer interest, we will hurt middle-class wage earners—especially in the State of Illinois. Some of the changes are unfair because they are applied retroactively. The IRA deduction appears to have been effectively eliminated, and State and

local governments will see increased borrowing costs because of new restrictions on tax-exempt bonds. Many of us believe that eliminating loopholes should have brought new revenue to the Federal Government, not merely "rate reduction."

But the bill has its positive attributes as well. For the first time in many years, many major loopholes are closed that were used by wealthy indiviiduals and corporations to avoid paying any taxes at all. The deductions that are saved are among the most important; State and local income and property taxes, mortgage interest, charitable contributions and child care. Also among those most important deductions saved is the earned income credit for low- and moderate-income families with children. Ending the special tax treatment of capital gains is an improvement, as well as eliminating the investment tax credit. The alternative minimum tax is a great improvement over the current code. And last, but not least, is the increase in the standard deduction for all taxpayers—which helps the most, those who make the least money.

Madam Speaker, every Member of Congress has some parts of this bill that they support and that they oppose. Deciding how to vote on this bill is a difficult decision for us all. When I found that unemployment compensation will be fully taxed, I wanted to vote against this bill. When I found that charitable contributions would no longer be deductible for nonitemizers I wanted to vote against this bill. And when I got a letter from President Reagan in support of this bill, I really wanted to vote against it.

I am glad, however, that we will not begin taxing people's health benefits, and the reform of the earned income credit is commendable. By increasing both the amount of the credit and the income level at which the credit is eliminated, working families will be tremendously assisted. I am glad that we will have a stronger, new minimum corporate tax which insures that corporations will shoulder a fairer share of the tax burden. The more that I look at this bill, the less it looks like a Reagan bill.

When you add up what is good in this bill and what is bad, it is better than the current Tax Code. Certainly it is no cure-all. Sometimes it's a small step forward. Today, I will join my colleagues in making that small step forward by supporting tax reform.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 1 minute to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Madam Speaker, I rise in very very strong support of this tax bill. I find it hard to believe sitting on this floor, listening to this debate, that some Member's refuse to relieve 6 million families, low-income families of tax obligations. Those families earning $14,000 or less trying to raise 2 children, it seems to me ludicrous that we are not responding to try and help these people. Who are the ones who need help.

It also goes beyond that to say that this bill also includes credits to help and promote low-income housing.

I represent the poorest congressional district in this Chamber, and it seems to me that this tax bill is very important and should be supported.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 1 minute to the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Madam Speaker, I rise in support of this bill. We know that there are few things in this world that are perfect, including this tax bill. But it is the best tax bill, however, that has been before the Congress in the 37 years that I have been a Member of the Congress of the United States.

The senior citizens of this country are for this bill. I include with my remarks something from the AARP in support of this bill and also another statement showing how this would help the pension system of this country. I also include a list of several national organizations supporting this bill, and also a letter addressed to me from the distinguished gentleman from Wisconsin [Mr. MOODY] who is an economist of distinction, showing that by the end of the third year the Federal retirees will be better off under this bill than under the present law.

Let us adopt this bill and then we will proceed to the perfection of it in the days ahead.

The material referred to follows:

WHERE WE STAND

(AARP's Views on Important Issues)

TAX REFORM

Q: Does AARP support the tax reform plan?

A: Yes. This plan is worthy of support because it helps put fairness and balance back in the tax code, removes millions of low-income people from the tax rolls, and provides tax cuts to the majority of older taxpayers. Despite some negative features, the plan will benefit most taxpayers.

Q: How will tax reform affect older Americans?

A: Just over one-half of the nation's 28 million persons 65 and over have sufficient income to file tax returns each year. About two-thirds of the nation's 15 million older taxpayers do not itemize deductions on their tax returns. For this group, tax reform will mean either lower taxes or no real change in tax liability. The non-itemizing older filers do well for three reasons:

1. The higher standard deduction (including an additional $750 for elderly singles and $1,200 for couples) means less income subject to tax.

2. The 15 percent rate helps those at moderate income levels.

3. Non-itemizing filers have relatively simple tax situations and are not affected by the loss of deductions, shelters, and credits.

About 700,000 low-income, non-itemizing older taxpayers will no longer owe tax under this plan.

Q: How about older taxpayers with higher incomes?

A: The impact of the tax plan will depend largely on the source of their income and the amount and type of their itemized deductions. As a general rule, non-itemizers will benefit under the plan. Filers with large capital gains and/or large amounts of certain itemized deductions may find their taxes increased.

Q: Has the extra personal tax exemptions for those age 65 and older been replaced?

A: Yes. Taxpayers 65 and older currently receive a $1,080 personal exemption and a $1,080 extra exemption. Under the new plan, older filers will receive a personal exemption of $1,900 in 1987 ($1,950 in 1988, $2,000 in 1989), plus—for non-itemizers—an additional deduction of $750 for a single filer and $1,200 for a couple (when both are over age 65).

Q: What will the new tax rates be under the plan?

A: The plan replaces the present 14 tax rates with two rates of 15 percent and 28 percent. The rates and tax brackets are:

	15 percent	28 percent
Single filers	first $17,850	income over $17,850
Joint filers	first $29,750	income over $29,750
Head of household	first $23,900	income over $23,900

Q: What changes will be made in itemized deductions?

A: The following deductions are eliminated or modified:

Medical expenses will be deductible only if they exceed 7.5 percent of adjusted gross income (the current threshold is five percent).

State and local sales taxes will no longer be deductible.

The consumer interest deduction will be phased out over a five-year period.

IRA contributions will be fully deductible for taxpayers who do not participate in a pension plan and for pension plan participants with adjusted gross incomes of $25,000 or less for single filers and $40,000 or less for couples. The deduction will phase out for pension plan participants with incomes above these amounts. Even though the IRA deduction is eliminated for some people, interest accrued in IRA accounts remains tax-free for everyone until withdrawn from the accounts.

Charitable contributions made by non-itemizing filers will no longer be deductible.

Q: How does the new tax plan affect capital gains?

A: The tax rate on long-term capital gains—the profit from the sale of assets such as real estate and stocks held for more than six months—will rise from a maximum 20 percent to 28 percent. However, the one-time $125,000 exclusion on the sale of a home by persons age 55 and older is retained.

Q: How do wealthy individuals and corporations fare under the plan?

A: The plan will increase the taxes of wealthy individuals and corporations that use tax preferences—deductions, credits and shelters—to lower or eliminate their tax bill under current law. It will strengthen provisions requiring wealthy individuals to pay a minimum tax of at least 21 percent and will set the top corporate tax rate at 34 percent.

Q: In brief, what are some of the good and bad points of the tax reform plan?

A: Among the best features are:

Tax relief for most older Americans.

Removal of 700,000 current older taxpayers from the tax rolls.

Pension changes including five-year vesting and limits on pension integration with Social Security that will help future retirees.

Among the bad features are:

The loss of certain itemized deductions, particularly the change in the medical de-

duction threshold from five percent to 7.5 percent of income.

The retroactive change in the timing of tax on pensions received by public sector retirees.

MAJOR PENSION REFORMS WILL BENEFIT FUTURE RETIREES

PENSION EQUITY CHANGES

Several provisions of the Conference tax reform plan will substantially increase both the number of workers receiving pension income at retirement and the average amount of pension income received. These changes (generally effective January, 1989) require new minimum vesting, integration and coverage standards for workers in qualified pension plans.

An AARP-commissioned study of similar changes (performed by ICF, Inc.) found that these reforms would, by the decade 2011-2020:

Increase average pension amounts by 22 percent over expected current law levels,

Increase the number of persons receiving pensions at retirement by 17 percent, and

Provide the greatest benefits to working women, who would see average pension payments increase by 34 percent

Vesting: Most pension participants are in plans with 10-year cliff vesting—that is, the employee must remain on the job for 10 years before earning the right to a pension at retirement. The Conference tax plan will generally require that plans provide five-year cliff vesting. This shorter vesting period will enable today's mobile workers to more easily qualify for pensions. (Note: Average length at job—men-5; women-4 yrs).

Integration: Many private pension plans are "integrated" with Social Security—that is, pension benefits are reduced by a percentage of an employee's Social Security benefits. Under current law, pension benefits can be reduced by as much as 83 percent of one's expected Social Security benefit. This practice hits hardest at lower paid workers, and may eliminate an entire pension benefit.

The Conference plan will require that integration formulas be changed so that in no case will an earned pension be reduced by more than one-half. For example, a retiree with a $400 monthly Social Security benefit and an earned pension of $200 per month could not receive less than $100 of their pension after integration with Social Security. (Under current law, this pension could lose their pension amount).

Coverage/Non-discrimination: In order to qualify for favorable tax treatment, a pension plan must meet minimum coverage standards mandating that a sufficient percentage of lesser-paid employees participate in the plan. Many plans now cover about one half of a firm's employees; often entire categories of workers are excluded from the plan.

The Conference plan strengthens the coverage requirements; plans will have to cover up to 70 percent of all non-highly compensated employees. An alternative test would narrow the gap between the size of pensions received by the highly paid and the non-highly paid employees.

INDIVIDUAL RETIREMENT ACCOUNTS

The Conference plan maintains the full deduction for contributions to IRAs for those who do not participate in a pension plan. For taxpayers covered by an employer-sponsored plan, the IRA deduction would phase out for single filers with AGIs over $25,000, and married filers with AGIs over $40,000. These filers could still make non-deductible IRA contributions and benefit from the tax-free build-up of IRA accounts. Rollovers of lump-sum pension distributions into IRA accounts would be encouraged under the plan, and would not be affected by the restrictions on IRA contributions.

401(K)S

Under current law, a participant in a 401(k) plan can elect to defer taxes on up to $30,000 of salary by contributing it to a 401(k) plan. The Conference plan would reduce this limit to $7,000, and would tighten non-discrimination requirements to increase coverage of lower paid employees.

SEPTEMBER 19, 1986.

DEAR REPRESENTATIVE:

The undersigned national organizations strongly urge your support for the confernece agreement on the Tax Reform Act of 1986.

We actively support the tax agreement as one of the most important pieces of legislation in years for low and moderate income families and elderly individuals. Among the reasons for our support, the bill:

Raises the tax thresholds substantially, thereby removing 6 million low income households and 700,000 elderly individuals from the federal tax rolls, and reduces the tax burdens of at least an additional 5 million lower income households substantially;

Improves the progressivity of the income tax system as a whole; although the average taxpayer in every income class will have their taxes reduced, the percentage reductions are much greater for those with low and moderate incomes than for the wealthy. The result is that the share of the total individual income tax burden goes down for all income classes below $50,000 a year but goes up for all income classes above this level.

The bill restores fairness and balance to the federal tax code which benefits all Americans.

We urge you to vote for the conference agreement.

Sincerely,

Cyril Brickfield, Executive Director, AARP; Marian Wright Edelman, President, Children's Defense Fund; Art Simon, President, Bread for the World; Barry Zigas, President, National Low Income Housing Coalition; Fred Wertheimer, President, Common Cause; Robert Greenstein, Executive Director, Center on Budget and Policy Priorities; Robert S. McIntyre, Director, Federal Tax Policy, Citizens for Tax Justice; and Nancy N. Neuman, President, League of Women Voters of the United States.

HOUSE OF REPRESENTATIVES,
Washington, DC, September 22, 1986.

Hon. CLAUDE PEPPER,
Rayburn House Office Building,
Washington, DC.

DEAR CLAUDE: There has been a lot of controversy, and some unintentional misinformation, about the impact of tax reform on federal retirees. And there has also been a great deal of concern about the impact of the tax reform bill on state and local retirees.

I hope you will find the attached information helpful in clarifying this very important issue.

Your comments or thoughts on this aspect of the tax bill would be most welcome. I will be happy to go into greater detail with you at your convenience on the effects this legislation will have.

Thanks for taking the time to review the attached.

Best regards,

JIM MOODY,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC, September 22, 1986.

DEAR COLLEAGUE: Some members are very concerned that tax reform may hurt federal and state/local retirees. This letter is to correct serious current misinformation on that score.

THE ISSUE

Certain retirees, including almost all public sector retirees have enjoyed a special advantage over other retirees by being able to "front load" the tax free withdrawals of previous retirement contributions. Other retirees must spend them out. Some public retirees have been using this provision designed for pension income to shelter otherwise taxable income on appreciated assets (IRA's, capital gains, etc.) during the first several years of retirement and thus obtain an unequal advantage over other taxpayers.

Contrary to much of the debate so far, taxation on employee pension contributions are not at stake under tax reform; they would remain tax-free. Only the timing of the withdrawals would be affected. Public and private pensions would be treated the same under tax reform.

The two key issues are (1) should public retirees continue to have a special advantage? (2) would public retirees really be worse off under tax reform? The first is a matter of judgment; the second can be answered factually.

A LOOK AT THE FACTS

Let's look at five levels of public employee work income ("high three" average), the corresponding pension incomes, and the taxes due for each under current law and under tax reform. We consider only taxes on pension income itself and not potential tax shelter effects of "front loading".

Work income	Pension income	Tax due by 3d year (current law)	Tax due by 3d year (current reform)	Annual savings 3d year and thereafter
$20,000	$11,250	$604	$234	$370
$30,000	18,000	1,595	1,176	419
$40,000	25,000	2,809	2,137	672
$50,000	32,000	4,410	3,120	1,290
$60,000	45,750	8,333	5,525	2,808

A STARTLING RESULT

As the table shows, by the third year of retirement every income category of public retiree is better off under tax reform than under current law.

This happens because by the third year the lower rates, enlarged personal exemption and standard deduction, etc., created by tax reform more than overcome the initial advantage of "front loading" of withdrawals.

THE TYPICAL FEDERAL RETIREE

Now lets look in detail at a typical federal retiree over the first five years of retirement. In fact, lets look at the median federal retiree who now has an annual pension of $12,084:

Year	Current law	
	Taxable pension	Tax
1	0	0
2	$6,042	$0
3	12,084	721
4	12,084	721
5	12,084	721
5-year total tax		2,163
18-year total tax		11,536

Year	Tax reform	
	Taxable pension	Tax
1	$11,238	$350
2	11,238	350
3	11,238	350
4	11,238	350
5	11,238	350
5-year total tax		1,750
18-year total tax		6,300

For the median federal retiree, from the third year onward, federal taxes have been cut by more than half. While the advantage is proportionally greater for the one half of federal retirees with pensions below $12,084, the gains for the half above $12,084 are substantial also. On a federal pension of $45,750, for example, the total 18-year payment would be cut from $137,783 under current law down to $99,450—28 percent lower—under tax reform.

TYPICAL STATE/LOCAL RETIREE

The averge state/local pension now stands at a surprisingly low $6,300 per year. This table shows how a state/local retiree would do far better under tax reform, even from year one:

Year	Current law		Tax reform	
	Taxable pension	Tax	Taxable pension	Tax
1	1,050	0	$6,111	0
2	$6,300	$23	6,111	0
3	6,300	23	6,111	0
4	6,300	23	6,111	0
5	6,300	23	6,111	0

SUMMARY

If we look at what's best for public retirees over a multi-year period and not just years one and two, the actual facts are that on their pension income they pay far less under tax reform. Over their full life expectancy their tax gains are truly dramatic.

Sincerely,

JIM MOODY,
Member of Congress.

P.S.: Two final points:

1. This analysis applies only to those public employees who retired on or after July 1, 1986. The 1.3 million who retired before this date would gain fully and immediately under tax reform. They would be better off at once.

2. This analysis does not address the effect of the July 1, 1986 effective date. But it should be noted that the President's original proposal had an effective date of January 1, 1986 for ending "front loading."

Mr. ROSTENKOWSKI. Madam Speaker, I yield 2 minutes to the gentleman from New Jersey [Mr. GUARINI].

Mr. GUARINI. Madam Speaker, I rise in support of the tax legislation before us today.

Fairness is the hallmark of this bill. We have strengthened the minimum tax for corporations and individuals. No longer will we hear about those who escape their tax responsibility. Taxpayers and corporations alike will pay their fair share. Our tax system is based on voluntary compliance, and compliance has gone down because of the perception of unfairness.

Loopholes and shelters will be eliminated, so that the tax burden will be distributed more equitably upon the shoulders of everyone, not just middle America. The substantial elimination of tax expenditures which favor preferred sectors of our society will give way to lower tax rates.

Over 6 million of the working poor will be taken off the tax rolls. This includes nearly a million of our senior citizens.

Workers all across America stand to gain from this legislation. First, because of the rise in the tax threshold and lower tax rates. Most Americans will have tax cuts from 6 percent to 9 percent as a result of this bill.

Second, because of improved pension protections. The bill includes mandatory 5-year vesting and antidiscrimination rules that require plans to cover more employees and provide benefits more equitably. Those who lack company pensions and lower income taxpayers generally will have full use of IRA's.

Third, because more of our taxpayers will be able to use the simplified short tax forms. Currently, because of complexities in the Tax Code, two-thirds of our taxpayers must itemize their deductions in order to take full advantage of the Tax Code.

Finally, as New Jersey's member on the Ways and Means Committee, I have been particularly concerned about the impact of this bill on New Jersey's people and industry. New Jersey taxpayers have high incomes on average and consequently pay high taxes. But under this bill, they'll pay $2.3 billion less.

Also, the high-technology industries we are trying to cultivate will benefit from the continuation of the research and development tax credit, as well as from the rate reduction for corporations and the availability of capital formation. Again, because of the lowered rates, the service industry in New Jersey should prosper.

As a final note, I would want to make sure that there will be no changes in the marginal tax rates in the foreseeable future. Certainty, in our Tax Code is necessary if businesses and individuals are to plan for the future and make financial decisions that they can depend upon. There has been too much vacillation and uncertainty in our tax law in the past.

There has been much thunder and some confusion about this bill. True, it is not perfect, but it is the best bill that could be crafted and accepted in our legislative process. It would be a mistake not to avail ourselves of this historic opportunity, which may never again occur in our lifetime.

We wish there could be more done on IRA's and public pensions, and that we could eliminate the retroactive effect on some industries. There will be winners and losers, but on balance it is vastly superior to the present law. Those who have a special interest not taken care of can receive satisfaction in knowing there will be lower rates, and that there will no longer be distortions in the distribution of our economic resources.

I am mindful that there will be a somewhat traumatic psychological effect in the marketplace, that there are short-term problems caused by putting in place a new way of doing business. I realize that the far-reaching changeover, the lengthy period for writing new regulations, and the limited auditing process will give us a shortfall.

But we must make a new start. Our present Code is becoming discredited. The American people demand fairness above all. I urge your support of this bold attempt to reshape our future. It is our best chance and may well be our only chance to do what is good for our taxpayers and good for our Nation.

I urge your support.

□ 1310

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Madam Speaker, I rise in support of the conference report on H.R. 3838, the Tax Reform Act of 1986.

Twenty-two months ago, those of us in Congress at the time began to become acquainted with the first comprehensive tax overhaul plan proposed in years, that issued by the Treasury Department. Now, six plans later, we have the opportunity to vote on a historic measure, crafted after many months of hearings, study, lobbying, and soul searching.

When I realized Congress was going to seriously consider President Reagan's initiative for tax reform, I sent a tax reform questionnaire to my constituents in the Fourth District of Ohio. Eighty-eight percent of those who responded felt the current Tax Code was unfair. From that point on I realized that if the heart of the final tax plan made our code more equitable, then I owed it to my constituents to support it.

That leads me to where I am today. Although I have serious misgivings about several items in the bill, such as retroactivity, IRA limitations, accounting measures, and a change in the tax treatment of some public and private pensions, I feel the rest of the bill is so strong that it will strongly benefit even some of those who are affected by these individual changes.

Under this bill, 80 percent of the American taxpayers will be in the 15 percent tax bracket.

Under this bill, the personal exemption will eventually be raised to $2,000.

Under this bill, the standard deduction for nonitemizers will increase considerably.

Under this bill, beleagured farmers will benefit from new accounting adjustments.

Under this bill, top corporate tax rates will be slashed from 46 percent to 34 percent.

Under this bill, wealthy wage earners and profitmaking companies will no longer be able to escape paying taxes.

Under this bill, the attractiveness of tax shelters is reduced.

Under this bill, 6 million low-income Americans will be removed from the tax rolls.

These features are so compelling that I must support these changes on behalf of my constituents. I have no doubt that Congress will come back to fine tune this measure to address the unintended inequities. As others have said, this is not the end of tax reform, but just the beginning.

Mr. DUNCAN. Madam Speaker, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA. Madam Speaker, I rise in support of the bill and against the motion to recommit.

Madam Speaker, I rise today in support of the Tax Reform Act of 1986. However, as much as I would like to say my support for this historic measure is enthusiastic and across-the-board, I cannot. I share the concerns of many of my colleagues, the uncertainly of many of our economists and the suspicions of many of my constituents.

While I have misgivings about the specifics of this measure. I have none about the process that has brought us to this point. In a word, it has been miraculous, but not necessarily a miracle.

Everyone acknowledges that we need a fairer, simpler tax system. However, beyond that agreement, the consensus quickly breaks down on just what consititues fairness and simplicity. After all, one man's loophole is another man's economic necessity.

For these reasons, I think President Reagan, Treasury Secretary Baker. Chairmen ROSTENKOWSKI and PACKWOOD and all the Members of the tax-writing committees deserve considerable credit for tackling the monstrous U.S. Tax Code and all its related special interests. The fact that they developed a bill at all is a substantial accomplishment.

The package before us is a clear improvement over our current tax code which is rife with inequity and chilling complexity. I have never been a fan of tax reform for reform's sake. What I am a big fan of is fairness; that all taxpayers, corporate and individual, pay an equitable share of tax. But, there again, who defines what is fair?

It is clear, however, that some wealthy individuals and profitable corporations scandalously pay no tax at all. In 1982, nearly 300 individuals with incomes in excess of $200,000 paid no Federal income taxes at all. Despite earning profits in the billions of dollars, a number of this Nation's largest corporations continue to pay no taxes. I am pleased that the bill before us contains an effective minimum tax, the single most significant reform in this sweeping legislation. In fact, this aspect alone would have been reason to vote for this measure.

Beyond this important provision, this tax reform package contains a number of key elements.

It preserves that deduction for State and local income and property taxes, preventing the residents of my State of New Jersey from suffering double taxation.

It removes over 6 million so-called working poor from the tax rolls. It lowers individual and corporate rates significantly. Tax shelters and special interest preferences are reduced. The mortgage interest deduction for first homes is preserved while the writeoff for Individual Retirement Account deposits will still be available for over 75 percent of my constituents, I believe strongly that they should have been fully deductible.

This legislation contains numerous changes in the tax and labor laws affecting our Nation's vast array of employee pension and welfare benefit plans. In fact, the changes in coverage, vesting, Social Security integration, benefit and contribution limitations are the most extensive since the landmark ERISA pension reforms were enacted in 1974. Given the changing demographics of both our worker and retiree populations, the effects of these changes must be closely monitored. My Subcommittee on Labor-Management Relations, with ERISA oversight responsibilities, will take a keen interest in these effects to assess whether these new provisions will allow private pension plans to maintain their position as partners with Social Security in providing adequate retirement income security.

However, like any tax bill, this package, all 15 titles and 925 pages of it, is complicated and anyone who looks hard enough is bound to find portions to criticize. In that vein, I am troubled by a number of issues.

On the individual side first, I do not believe that the bill before us today provides sufficient tax relief for the middle-income earner. In short, there is disproportionate relief for the rich, and too little is done for the middle class. It is very difficult to move from aggregate numbers to the specifics of one family's tax return. For the middle-income taxpayer, the question will be whether the loss of deductions outweigh the benefit of lower rates. Only the person who prepares that return will know for sure and from the mail I have been getting, my constituents are skeptical to say the least.

Also on the individual side, I am dismayed that this package retroactively repeals the 3-year basis recovery rule during which public servants recover their contributions to a mandatory participation pension plan. Retroactively taking away this expected provision for their long-term planning does not seem fair to me. These public employees have already paid taxes on this money. It is not as if they were getting this money back tax free. This new recalculation only adds an extra burden for those who have served our Federal, State, and local governments so well. As I wrote to the conferees, I would have preferred this provision to have been changed.

Good tax reform should enhance economic growth, savings, and investment. One of the deficiencies of this bill is the possible impact on capital intensive industries in the United States. We have seen these industries come under increasing attack in recent years, in part because of unfair trade practices by other countries. While I accept the fact that we are moving toward a more service-oriented economy, I do not accept that this means we should passively abandon our manufacturing sector. We must maintain a strong industrial base, and I fear that this bill will not assist us in that effort.

This conference report eliminates both the investment tax credit and the lower capital gains rate, and it provides a less generous system of depreciation than current law. In the first year of my tenure in this House, we enacted the Conable-Hance tax bill which provided important depreciation reforms. I regret that this bill will undo much of that good work. We need to provide more incentives to capital intensive companies, not fewer. We need to create jobs and spur competition. This bill falls far short on that score.

I also am greatly concerned over the expected revenue impacts of this tax bill. Next year we are expecting a significant revenue shortfall. When this year we had to use accounting gimmickry to meet our deficit reduction targets, what are we going to do next year when we have much more difficult targets and less revenue to pay our bills? The bill is estimated to revenue neutral over the next 5 years, but I hope my colleagues will commit themselves along with me to dealing responsibly with this revenue loss so that we can still meet our deficit reduction numbers.

While this measure is billed as revenue neutral, we may very well find that over the long term it becomes a major revenue loser. With this year's Federal deficit well beyond $200 billion, we cannot afford to lose income. I

am very hesitant about accepting revenue estimates for individual sections of the tax bill when we are considering massive, integrated tax reform. I recall the estimates for the IRA deduction several years ago. Despite statistical estimates and trends on what the average American would do, IRA's caught on like wildfire and our calculations ended up being more than 400 percent wrong. We can't afford another surprise like that.

Given the magnitude of the figures involved—about $3.6 trillion in tax revenues is expected to be collected from 1987 to 1991—and the potential for fluctuations in the economy, some forecasters say the chances are virtually nil that the revenue estimates for the new tax bill will be precisely borne out. For example, it only takes a 1-percent difference in personal income to have rate reductions cost $5 billion to $10 billion more or less than predicted.

Madam Speaker, we have been debating tax reform for years. While many economists fear for the future of the economy because of what we are doing today, I must say that when all is said and done, what we have here is better than what's in the law now and we owe it to the American people to give them some certainty in planning for their economic future. It is now appropriate to recall a speech I made in 1981 when we were also considering historic tax changes. I said at the time, "We must end the financial market fluctuations and the bitter frustrations of the businessmen who, since last November, have only been able to guess about the future intentions of Congress on tax policy and have been inhibited from financial planning, if not paralyzed . . . We can restore confidence and certainty in the direction our economy is headed . . . the choice is clear."

The vote today must be a "yes."

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Washington [Mr. MILLER].

Mr. MILLER of Washington. Madam Speaker, my colleagues, listening to the speakers against this bill, I hear the specific objections, the specific minuses, the long list of particulars, and we can all come up with those lists, I can, too. I can tell you some minuses from my point of view, and from my region.

I think we all, before we vote on this bill, have to look beyond those lists of objections and look at the three big pluses that makes this a meaningful tax reform bill:

First, it makes the Tax Code fairer. More wealthy corporations and individuals are going to pay their share. That is good.

Second, it gives some well-deserved relief to the working poor. This bill is going to do more to fight poverty than many of the Federal bureaucratic spending programs.

Third, in the long run this bill is going to help our economy by getting business to invest in productivity and jobs and not hunting for tax shelters.

Overall it is a good bill. Let us vote for it.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Ohio [Mr. KINDNESS].

Mr. KINDNESS. Madam Speaker, I appreciate the time yielded to me to state that I have the greatest respect for those who have labored over this matter over these months; and judgments are involved that are difficult judgments, and I feel that some of the judgments that have been made have been seriously wrong, to the extent that I feel that I must support the motion to recommit.

There are five things that this bill is not at this point. It is not simplification; it is not fair; it is not good for jobs or for production; it is not good for consumers, whose prices will rise; and it is not good for small businesses from which most of our jobs are generated in the United States.

There are five things that it will do. It will, I believe, push up inflation; it will push up interest rates; it will push up consumer prices; it will push up rents; and it will push up utility costs. It will depress investments and the economy, and I urge that the motion to recommit be supported.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from Virginia [Mr. OLIN].

Mr. OLIN. Madam Speaker, I rise reluctantly to oppose the Tax Reform Act.

The objectives of tax reform are admirable. Certainly those who worked for 2 years to bring us this bill did the best they could. They admit the bill is far from perfect.

Many will argue that because we worked so hard and because the objectives were so good we should pass this bill. They argue that this is a chance of a lifetime to close loopholes, excessive shelters, and unneeded preferences. That it makes sense to totally revolutionize commonly used deductions that have served millions of taxpayers for so long in order to lower tax rates. They say it makes sense for a family with an income of $30,000 to pay the same tax rate as one that earns $200,000 or $10 million. They argue that it's somehow fair for homeowners to be able to deduct interest for consumer purchases but those who rent cannot.

Our constituents want a tax structure that is fair, where no one can escape paying a proper share, that will raise the revenue needed to finance the Government, and won't have to be changed every year.

In my opinion this bill before us doesn't meet these tests and it should not be passed.

It is not fair. It will increase taxes for 20 million Americans, 77 percent of whom have incomes under $50,000. The tax cut for middle-income people is nothing compared with a $25,000 tax cut for those earning over $200,000.

What we've done in this bill is to close shelters and loopholes for the wealthy and instead of using that money to help us pay the bills, we're giving it back to those same wealthy people in the form of a 40-percent tax reduction. We're legitimizing and making permanent the tax breaks we claim to abhor.

This bill is not what it seems to be. It's unfair. It will stand in the way of ultimately moving toward fiscal responsibility.

What middle-income taxpayers need to think about—and we need to think about—is this. For that group we've taken away their deductions, lowered their rates a little but we've left them very vulnerable. This bill has a very good chance of not being revenue neutral—of raising less revenue as the years go by. Everyone knows it's impossible to keep preferences and loopholes from creeping in. When that happens, where is the revenue going to come from? Middle-income Americans pay 50 percent of the taxes. If we get loopholes creep, they will be very vulnerable.

There are many reasons to vote against this bill. But the main reason is that it does not meet our objectives:

It is not fair at the outset and it will get worse.

It falls short of being revenue neutral.

It is more complicated—not simpler.

It will need to have major revisions—probably for years.

It will make it more difficult for us finally to start paying the bills.

I urge all Members to think about what the impact of this bill will be. Don't be fooled. Think of the problems ahead of us.

Vote no on this tax reform effort.

Mr. RANGEL. Madam Speaker, I yield 2 minutes to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. Madam Chairman, colleagues, the main reason I am supporting this bill is because it actually increases the productivity and fairness in our total tax system. But I want to spend a minute talking about the very touchy issue of Federal retirees which has generated a lot of controversy in Congress. Right now they can "front load" their tax-free withdrawals from their pensions. Others have to spread out their tax-free withdrawals.

The two key issues, I think, are: first should State, local, and Federal retirees continue to enjoy a special tax advantage not enjoyed by the general population; and second, would public employment retirees be actually better

off with the tax reform bill or without it?

The "should" question is a matter of judgment. I personally come down on the side that everyone should be treated equally on the question of taxation of pension income.

The question "would be better off" with or without a bill can be answered factually, and I would ask that you look at this chart.

The point is this: That by year 3 of retirement, every income category begins to pay less taxes per year under tax reform than under the current law. Sure, the first 2 years with tax-free withdrawals under current law are lower tax years than under tax reform, but once you hit year 3, public retirees are actually better off under tax reform than without it. By year 3, annual taxes are lower.

Then the tax benefits continue to grow: The average person retiring at 62, lives 18 years on pension. By year No. 18 you are way, way ahead. The total tax savings continue to grow over time.

For the typical Federal pension of $12,084 annual tax savings would be cut by more than half by year 3, from $721 to $350. This savings of $371 would continue every year thereafter, and add to $5,236 by year 18.

State and local government retirees have generally lower pensions than Federal retirees, and typically their tax benefits kick in almost immediately. In fact, there is no year in which State-local retirees are not better off under tax reform.

There is one additional key point: Ending "front loading" for Federal retires only affects negatively those about to retire, or who are in the front end 3-year window after retirement. This numbers about 85,000 people per year. But tax reform does nothing to hurt the 1.3 million public retirees who are already retired and are past year 3 of retirement. Those folks are out there and will immediately enjoy the kinds of tax benefits I have been describing. The loss of "front loading" of contribution withdrawal will do no harm to them.

So in summary, I would say that Federal, State and local employees over a multiyear period are far better off with the tax reform than without it and I urge its adoption.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 1 minute to the gentleman from Louisiana [Mr. ROEMER].

Mr. ROEMER. Madam Speaker, I thank my colleague for yielding to me. There are many weaknesses of the tax bill. There always are. Tax bills are like catching fish: 5 days later, they both stink.

We are going to find things in the bill in a week or a month or so that we do not like. Even now, I resent the retroactive provisions, the investment tax credit, and capital gains provisions in the bill, but I like the heart of the bill; the heart of the bill is solid and strong: Lower marginal rates for all Americans. You make the last dollar, you get to keep it. That is what America is all about.

I like the heart of the bill: Everybody pays their fair share. The only thing wrong with this bill is that we did not have it 20 years ago. I like the heart of the bill. It is progressive.

The gentleman just got up and said, well, the rich are going to get off free. Wrong. The top 10 percent of the taxpayers in America pay 51 percent of the taxes now. After this bill, they will pay a higher percentage. This bill is progressive, fair, and with lower marginal rates. It is what America is all about.

Bad parts, yes. Wish we could change them. But if I have got to measure an animal, I will take the one with a good heart. Vote "yes."

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Madam Speaker, I certainly would like to echo the comments of the previous speaker. In 1981, I refused to back the tax reform package as it had excessive and inequitable tax breaks, which I felt would lead to large deficits.

Like everyone else, I would have written this bill differently. Yet I rise in support of the bill. I represent Vermont. This bill is good for Vermont. Our average income is one of the lowest in the Nation. Overall, we will receive $60 to $75 million in tax relief; this increased disposable income will benefit all Vermont.

Vermont is a small, small business State, and will generally have lower business taxes. The loss of farm tax shelters will have little direct effect on Vermont. However, it will bring down national milk production, especially in the West and Southwest.

In addition, we have won the battle to keep the tax deductibility of State and local property and income taxes. Also, we have protected the marble and granite and second home industries.

The Vermont vote is definitely "yes," and the national vote is "yes," also.

Madam Speaker, first, I want to commend the previous speaker, who really did do a memorable job of getting to the heart of this issue.

Madam Speaker, I was the only Republican Member—and one of only a few Members altogether—who voted against the 1981 tax bill. I feared that, with its excessive and inequitable tax breaks, the changes would lead to large deficits and public condemnation. It did.

Like just about everyone else here today, I also have problems with this bill. Unfortunately, we don't have, nor do we ever have, the option of voting for a perfect bill. We have to compare the conference report before us with current law. We are given no other option today.

In the absence of a perfect bill, I reluctantly support this tax bill because I represent the State of Vermont and, compared to present law, this tax reform is good for my State. Vermont's average per capita income is one of the lowest in the Nation. On a per capita basis, we are the most small business State in the country. Vermont's tax commissioner estimates that Vermonters' Federal taxes, as a whole, will decrease by $60 to $75 million per year. That increased disposable income will benefit all Vermont.

Vermont businesses, like the rest of the Nation's, will benefit from the substantial rate reductions. With its repeal of industry-specific deductions and credits, the bill tends to tax all industries more similarly, spreading the tax burden more evenly among corporate taxpayers. In an effort to guarantee that all profitable corporations pay their fair share of taxes, the drafters have designed a tough, minimum tax. This stiff new tax will raise revenues from wealthy individuals and corporations that currently escape paying any taxes through manipulation of the Tax Code. For the first time, they will pay their fair share.

I am also pleased that this measure retained some provisions of current law that are vital to specific Vermont businesses. For instance, the bill retains the depletion allowance for Vermont's marble and granite industries, which is essential to their survival. The second home industry, so important to Vermont, was spared a major loss when the tax writers decided to retain the current deduction of interest on mortgages on two personal residences. However, individuals may no longer be able to deduct unlimited interest on many residences, thereby preventing abuse of this provision.

It is unclear how the construction of vacation condominium residences will be affected by the bill's passive loss limitations. The special rule for rental activities, allowing individuals to offset up to $25,000 of nonpassive income with losses from rental real estate activities, should help to assure an adequate supply of individual investors. Many experts feared that the passive loss provisions would lead to an increase in rents and a shortage of quality low-income housing. The conference agreement attempts to prevent this by creation of a special credit to encourage investment in this sector. I am concerned about the retroactive impact of the passive loss provisions on investments—particularly real estate investments—made in good faith, and based on the principles of existing law.

Because of the reduction in rates, the repeal of the deduction for long-term capital gains was probably necessary to avoid a windfall to the wealthy taxpayers who realize such gains. In my view, however, repeal of the deduction should have been accompanied by indexing of the basis of capital assets to assure that taxpayers do not pay taxes on increases in value due solely to inflation.

Among the provisions that I found troubling, however, are the arbitrage provisions. The State of Vermont, as well as many local school districts, make use of arbitrage when funding construction projects. This bill would

require local officials to rebate arbitrage profits to the Federal Government. In a day and age when the Federal Government is increasingly asking States to shoulder burdens once borne by the Federal Government, I think it is inappropriate to interfere with States' revenue-raising capabilities. This is especially true as it appears we are also zeroing out the General Revenue Sharing Program.

I am also concerned that the dairy industry, like all businesses, will be hurt by elimination of the ITC and capital gains provisions, and the lengthening of depreciation schedules. Elimination of income averaging will adversely affect some farmers, although the lower tax rates will alleviate much of this impact. On the positive side, although a small number of Vermont farms will be hurt by the passive income limitations, the major impact of this provision will be felt by dairy farms in other regions, particularly the West and Southwest. This should have a significant if not substantial effect in reducing production in these high-surplus areas.

Vermont's machine tool industry also may feel the effects of the repeal of the investment tax credit [ITC]. But the ITC applied equally to domestically and foreign-made property, thereby having little effect upon the balance of trade. For the most part, the problems of the machine tool industry are related to unfair trade practices, the overvalued dollar, and productivity problems. As to high technology, Vermont's largest "high tech" employer, IBM, supports the tax bill. High-technology industries do not benefit as substantially from the ITC and the accelerated depreciation provisions of the 1981 tax bill. Unlike the "smokestack" industries, they will not be adversely affected by the repeal of these provisions, and they will benefit greatly from the rate reductions.

On the individual tax side, 6 million working poor will be removed from the tax rolls. Eighty percent of all taxpayers will find themselves in the 15-percent tax bracket. The bill's increased personal exemption will lower taxable income for many individuals and will substantially offset losses from the elimination of certain individual deductions. Nevertheless, I am not pleased that the bill repeals the charitable contribution deduction for noniternizers, which encouraged generosity on the part of low- and middle-income taxpayers.

The conference agreement increases the personal exemption from $1,080 to $2,000. The biggest beneficiaries of the increased personal exemption will be large families. The benefits for single individuals and childless couples will not be as substantial. Moreover, I regret that married couples will lose the benefit of the marriage deduction and that families with two wage earners may thus be disadvantaged. Also some elderly, especially those with high medical expenses, will see an increase in taxes. These are unfortunate situations and should be rectified. In short, a substantial number of middle and upper income people will receive tax increases even though they currently do not benefit from so-called tax loopholes. And these are not all of the problems; others will be discovered.

I am pleased, however, that the bill retains the deduction for State and local income and property taxes. This is especially important in a State such as Vermont where taxes are relatively high. Repeal of the deduction may have meant increased resistance to State taxes and the services they fund, including, of course, education.

The changes contained in the tax bill affecting higher education are another source of concern. Parents and students will be unable to deduct interest on their education loans unless they have home equity against which to borrow. Thus, many of the more hard-pressed families that itemize will be unfairly treated. Most likely, students will be using the increased standard deduction and larger personal exemption and thus will be less likely to be affected. Clifford trusts—sheltering income in short-term trusts—will no longer be a tax advantage. It is unfortunate that the administration's request for IRA-type educational savings accounts has not been incorporated in this bill.

On the other hand, I am pleased that the negative cash-flow implications of these provisions will be lessened somewhat by changes that I obtained in the higher education bill. These provisions will result in lower interest on the parent PLUS loans and student ALAS loans. More importantly, my loan consolidation provisions will allow student loans to be lumped together and payments spread out over a longer period of time, thereby increasing the borrower's cash-flow.

As one who has long advocated increased incentives and other improvements in our pension plans, I am pleased that this bill also contains badly needed pension reform. The process has left a lot to be desired, and much remains to be done. Due to the lack of cooperation between the Ways and Means Committee and Education and Labor Committee, many Tax Code changes are not complemented by changes in ERISA. Without a doubt, we will have to turn to these issues and others, such as portability, that remain largely unaddressed by this bill.

Nevertheless, several improvements have been made. Instead of having to work for 10 years before being vested in a pension plan, many employees will now be vested after 5 years. The bill's tightening of the nondiscrimination rules goes a long way in ensuring that pension plans benefit rank-and-file employees as well as owners and key employees. Reforms to simplified employee pensions and other changes parallel many of those I advocated in legislation I introduced last year—the retirement USA bill. I am happy that IRA's were retained for many taxpayers, although I'm concerned that the income levels for taxpayers with deductible IRA's are too low.

Finally, Madam Speaker, I must add a warning to all of this. Last fall I voted against the rule providing for consideration of the tax reform bill. I argued that we should wait until we had responsibly faced the deficit problem—which still we have not. I pointed out then that if we passed an income tax reform bill we would preclude the use of that vehicle to help reach the mandates of Gramm-Rudman. In all likelihood, this bill will make it more difficult to reach the deficit reduction targets.

Congress is counting on $11.4 billion in a one-time revenue increase in 1987, generated by phasing in the tax bill's provisions, to cover up this unresolved spending-versus-revenue disparity. Next year, Congress will be casting about for an additional $46 billion in spending cuts in fiscal year 1988 as required by Gramm-Rudman. Unfortunately, this difficult task will be exacerbated by the expected $16.5 billion revenue decrease in 1988 brought about by the lower tax rates in this bill. Combined with this shortfall is the gloomy reality that the $15 billion in supposed savings in the 1986 budget reconciliation bill are one-time savings only and will result in a decrease in Federal revenues after 1987. All this could leave lawmakers in the impossible position of having to eliminate $75 billion in deficit spending in order to come within reach of the Gramm-Rudman target.

If that does not totally discourage you, look ahead to the spring of 1988. Taxpayers will have completed their returns under the new system for the first time. Those who get tax breaks will find them smaller than expected. Many middle and upper middle income workers will be upset when they realize that this bill has resulted in an increase in their tax liabilities.

All of this will come at a time when our towns and cities will be feeling the full impact of cuts in Federal support for a wide variety of programs. These increased demands on local funds will follow close on the heels of an increase in the percentage of Federal income tax Vermonters must pay to the State. And barring a miracle, the Federal budget will still be running a huge deficit.

Knowing all of this, I normally would not support this bill. But I do for one compelling reason: my State of Vermont will be among the States most adversely hit by those future Federal spending cuts. As compared to current law, this bill will save Vermonters $60 to $75 million in taxes. This increase in Vermonters' disposable income should, to some extent, alleviate the pain of expected future cuts in Federal programs.

Despite my sobering prediction for the future, I also cannot ignore the historic chance we now have to make much-needed improvements in current law, which this bill, in many instances, does. Therefore, the Vermont vote of this bill is "yes," and I believe, the national vote should also be "yes."

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Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. I thank the gentleman for yielding.

Madam Speaker, I've paid close attention to this whole tax reform movement passing through Congress. I've been a strong proponent of tax reform for many years—I've wanted a low, flat tax with fewer deductions, one that would be fair, simple, and progrowth. I've been disappointed many times along the way, particularly when I saw the first piece of tax reform legislation this House passed by a voice vote. I emphatically voiced my opposition to the bill at that time.

Today, however, we are voting on a quite different version of tax reform.

Many of my colleagues, people I greatly respect—particularly BILL ARCHER, BILL FRENZEL, and PHIL CRANE—have pointed out all the flaws and all the problems with this bill. And let's not kid ourselves, there are flaws.

For instance, I'm very concerned about the retroactivity of some of the bill's provisions. In criminal matters, our Constitution clearly prohibits ex post facto laws. This constitutional guidance for enacting laws that apply retroactively has ordinarily been applied to all our laws and I'm sorry to see this tradition forsaken in this tax reform proposal.

I'm concerned about the unfairness in the bill's transition rules. If the same rules applied to all, it would be one thing. But allowing some to get favorable treatment while others do not runs solidly against the grain of fairness—one of the fundamental goals of tax reform.

But after a careful analysis of this bill, and after weighing the marginal rate reductions against increased business taxes; after weighing the closing of loopholes with the incentives to invest on the basis of economic criteria rather than tax consequences; after weighing how this bill will affect our position in the international marketplace and set a precedence for true reform in other Western nations, I've become a supporter of this bill.

By reducing marginal rates on individuals from 50 percent to 28 percent, we're in effect reducing the price of working and investing in the United States. We're planting the seeds of burgeoning young entrepreneurs out there who'll take their individual tax cuts, pool their resources, and start bold new small businesses and enterprises. We'll see a dynamic change as small enterprises expand America's job creation ability—that some ability that has made America's small businesses the leader in international job creation over the last several years.

America's future economic heath will depend not on economic guarantees as we've seen in the past, but on economic incentives. By putting the ultimate economic power in the hands of the people—through lower marginal and average rates—we will create an environment for economic growth through productive investment. A shift, that is, away from decisions based primarily on tax consequences, to decisions based primarily on long run economic considerations.

This is not a perfect tax bill. Ultimately I would like to see a low flat rate tax with few if any deductions. We should recognize that people—consumers, stockholders, employees—pay all taxes in America, corporations don't. We should persuade the majority of both Houses of Congress to pull away from their addiction to runaway Federal spending so more and more tax revenue will not be needed. This bill is not a tax increase overall, but even if it were, it would not satisfy the spending habits of most of us in this body. That is a fact we must reckon with, and make that our top priority after completing work of tax reform.

No, this bill is not perfect, but it is a major step in the right direction. It seeks growth not through the gimmicks of the Tax Code, but through getting Tax Code out of the way. Channeling money for spending and investment decisions will come less from central planners in Government, and more from individual Americans in a freer market. Decisions will be made not on avoiding taxes, but on more productive uses of investment capital. That's why, on balance, I believe this is real reform. This is a more simple, a more fair, a more progrowth tax bill. I encourage my colleagues to join me in support of this revolutionary change.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from Hawaii [Mr. AKAKA].

Mr. AKAKA. Madam Speaker, I rise today in support of my distinguished colleague's motion to recommit H.R. 3838. I am disturbed by the conference agreement to make the repeal of the 3-year recovery rule retroactive to July 1, 1986. The provision as adopted is gravely unfair and I urge my colleagues to join me in demanding a more equitable solution.

During the past month, my district office has been barraged with phone calls from current and future retirees who would be subject to the repeal. Understandably, these retirees are extremely distraught over this provision that would substantially reduce their benefits in 1986 by imposing taxes on employees contribution refunds. The repeal of the 3-year recovery rule is in itself quite a blow. To make it retroactive to July 1 is grossly unfair.

The State of Hawaii's employees' retirement system has provided me with a summary of actual cases of persons who have recently retired in the past few months and the adverse tax repercussions that would take effect should a retroactive repeal be enacted. Retirees in Hawaii would be especially hard hit because they generally exercise an option to receive a refund immediately upon retirement. For example, a teacher whose employee contribution to her pension plan equaled $45,495 over 29 years of service, would, under current law, pay $314 in taxes in 1986. Under the proposed law, she would have to pay $18,968, an increase of over $18,600. A police officer contributing $61,995 over 27 years of service would suffer a tax increase in 1986 of nearly $30,000, from $11,595 to $41,270. Other cases reflect taxes of $5,704, $17,945, $19,935, and $22,755, instead of no taxes in the first two instances, and taxes of $523 and $344 in the third and fourth instances. I am submitting an analysis of the tax effect on the teacher for the examination of my colleagues.

Some of my fellow Members have expressed their belief that up to now, some Government employees have enjoyed a tax break by taking advantage of the option to "front load" tax-free withdrawals of previous retirement contributions while others have had their refunds spread out over several years. I cannot speak for all Federal and State plans; however, in my State, the option to front load is open to all State and local retirees, regardless of income. All Hawaii State and local employees can choose among eight different pension plans, four of which would award a refund of contributions, in its entirety or a percentage thereof depending upon the plan, immediately upon retirement. In addition, those retirees who elect to receive a refund will have substantially lower monthly payments for the duration of their retirement than those who choose to spread out their refund.

It is true that in the long run, the taxes paid by retirees under the new provision versus current law would not be increased significantly. However, my most adamant objection is to the retroactivity. Those who have retired since July 1 have had no opportunity to make adjustments for the repeal. Many have already made long-term investments, paid off mortgages, or taken that long-awaited vacation.

As is evident from the facts cited, the burdens of the provision as it stands on our retirees are heavy indeed. While I fully realize the fiscal difficulty of restoring the 3-year recovery rule, in all fairness, I urge my colleagues to vote in favor of the gentleman's motion to recommit, so as to give the conferees one more chance to rectify retroactivity.

SEPTEMBER 9, 1986.

To: G. Matsuda-Honolulu.
From: A. Miyashiro. Tax Dept., Honolulu.
Client: Employees' Retirement System of the State of Hawaii (ERS).
Subject: Proposed Repeal of 3-Year Basis Recovery Rule.

The purpose of this memorandum is to illustrate the tax effect that the proposed repeal of the 3 year basis recovery rule will have on a participant who recently retired. The repeal of the 3 year basis recovery rule proposed by the Tax Reform Act of 1986 was previously discussed in a memorandum dated August 28, 1986.

The following illustration is based upon information and assumptions provided to us by the ERS.

A (female) retired on July 1, 1986 at age 56 with 29 years of service. Her contribution to the retirement system was $45,495 and accrued benefits based upon a life expectancy of 24.7 years is approximately $493,206.

The retiree files a joint return. The couple's combined taxable income for 1986 without the retirement benefits is approximately $57,000.

Under the option the Retiree had chosen, she received a lump-sum payment of $39,000 and monthly payments of $1,220 per month for the remainder of her life beginning July

1986. The monthly payment increases by 2½ percent each year (Post-retirement).

In 1986, Retiree will receive the following:

Lump-sum	$39,000
Monthly payments ($1,220 x 6)	7,320
Total	46,320

Under the current 3 year basis recovery rule, $825 of the distributions will be taxable to the Retiree in 1986 computed as follows:

Total distributions received in 1986	$46,320
Less: Participant's contribution	(45,495)
Taxable portion	825

With the proposed repeal of the 3 year basis recovery rule, the excludable portion of the retirement distributions is approximately 9 percent calculated as follows:

Employee contributions, $45,495 divided by accrued benefits, $493,206 equals 9% excludable percentage.

The taxable portion of the retirement distribution will therefore be 91% (100% less 9%).

The taxable portion of distributions received in 1986 will be $42,151 as shown below:

Total distributions received in 1986	$46,320
Percentage representing taxable portion	91
Taxable portion	42,151

1986	With 3-year recovery rule	without 3-year recovery rule
Total distributions received	$46,320	46,320
Taxable portion	825	42,151
Tax on distribution (applicable tax rate)	[1] 314	[2] 18,968

[1] 38 percent.
[2] 45 percent.

Retiree will therefore pay an additional $18,654 in federal income tax for 1986 calculated as follows:

Tax without 3-year recovery rule	$18,968
Tax with 3-year recovery rule	314
Increase in 1986 tax liability	$18,654

Subsequent years	With 3-year recovery rule	Without 3-year recovery rule
Total annual distribution received over expected life of retiree	$446,886	$446,886
Taxable portion	446,886	406,666
Tax at proposed rate of 28 percent	125,128	113,866
Summary		
Total cash received	493,206	493,206
Tax liability	125,442	132,834
Net cash after tax	367,764	360,372

The aggregate tax liability over the retirees expected life using the 3 year recovery rule is approximately $7,392 less than the total tax liability computed without using the cost recovery rule. This difference would increase if the time value of money was considered.

Mr. ARCHER. Madam Speaker, I yield such time as he may consume to the gentleman from New York [Mr. LENT].

Mr. LENT. Madam Speaker, with great reluctance I rise today to state my opposition to the tax bill before us. When we started down the road in the quest for tax reform at the beginning of this Congress, I had high hopes that with the support of President Ronald Reagan we might achieve what many thought was impossible—true tax reform. But, as we can see today, the goal has proved elusive. The President's support was critical and to some degree it kept the process going when it might otherwise have failed. But in the end the only thing that has really kept this bill alive is the fear on the part of the majority party in this House and my fellow Republicans in the other body that if it failed, one or the other would have to shoulder the blame on election day. I wonder if it occurred to anyone that if it had failed, there might have been a collective sigh of relief across the length and breadth of America. Like others in this body, I have not found any support among my constituency for the Tax Reform Act of 1986. To the contrary, based on what I'm hearing, there would be a sigh of relief—no a cry of rejoicing—if this conference agreement went down to defeat. I've heard from senior citizens, married couples with families, students with loans, public employees, and small business men and women. All of them oppose this legislation and are convinced that they will pay more in taxes if this bill is enacted. The supporters of this legislation say that its only opponents are the special interest. But that's not who I am hearing from unless you call the working people and retirees of my district the special interests.

Close scrutiny reveals this legislation as being badly marred. Under the guise of equity and simplicity this measure is being hastened through Congress leaving little opportunity for the careful study a bill of this magnitude deserves.

When all is said and done, I predict that we will find that H.R. 3838 is no better than our current Tax Code—indeed, I would venture that it is worse, given the tremendous uncertainty about future economic performance. Like the present tax system, H.R. 3838 is a maze of complex and often retroactive regulations inherently unfair to many taxpayers who made financial plans on the basis of rules that are now being changed in the middle of the game.

Much is being made of the tax rate reductions in the bill to a 15 and 28 percent two-bracket system, but I view that as being "smoke and mirrors." The actual tax rates for most Long Islanders may be considerably higher. There will be five brackets for 1987, the top one as high as 38.5 percent. Single taxpayers with taxable incomes over $27,000—$45,000 for couples filing jointly—will pay 35 percent. At $54,000 for singles—$90,000 for couples—the rate jumps again to 38.5 percent. Senior citizens and others with effective tax rates at or below 15 percent may pay more Federal taxes because of the elimination of deductions in the present code. They and others will also find their New York State income tax increasing.

Then, in 1988 a new set of rates will go into effect. Since many of the new limitations and restrictions will be phased in over a period of 3 to 5 years, each year's calculations will be somewhat different from the one before. Simplification has never been more complex. Additionally, the $2,000 personal exemption is delayed until 1989—a full 2 years after enactment of this legislation.

Public employees have been penalized unfairly in the new tax bill. The current 3-year exemption from the portion of Federal, State, and local pensions which reflect the employee's contributions to his or her retirement system would be repealed. In essence, we are repealing a commitment made to these employees in good faith.

The bill is being touted as profamily. In fact, two-income families—which include most families—will probably find a lot not to like in the new tax reform bill. The $3,000 two-earner deduction is repealed starting next year. Income averaging is also repealed.

While the deduction for State and local property and income taxes are retained under the bill, the deduction provided for sales taxes will no longer be allowed. I have worked to retain a full deduction for State and local taxes recognizing the importance of this provision to my constituents on Long Island.

The charitable deduction for nonitemizers is allowed to terminate at the end of 1986. If this tax bill is enacted there will certainly be a significant decline in charitable giving.

By stripping away or limiting many of the deductions that protect middle-income taxpayers—that is, sales tax, medical expenses, $3,000 two-earner deductions, consumer loan interest, union dues and other Job-related expenses—and placing restrictions on savings incentives such as IRA's and other retirement plans and eliminating the 60-percent capital gains exclusion on sales of stocks and real estate, we leave them horribly exposed. President Reagan may be able to protect middle-income taxpayers from tax increases now, but, when he leaves the scene in 2 year's time, who will protect them from the constant drumbeat in this body for higher and higher taxes as the answer to our growing deficit problem? This bill makes them dangerously vulnerable and for that reason, among many others, I will vote against the bill.

Lastly, but not at all least important, is the economic ramification of enactment. Many businesses and industries currently experiencing difficulties will be hard hit by tax changes. These include the industries of banking, farming, insurance and real estate. Enactment of this bill would threaten this country's economic recovery.

We have already witnessed the effects of this tax reform upon the stock market. Taking advantage of the current lower capital gains rate, many have sold off stocks before the end of the year—causing one of the biggest, however temporary, drops in the stock market in recent years.

I am concerned that changes in the tax treatment of capital gains and the retroactive elimination of the investment tax credit, among other of the bill's proposals, will translate into lower productivity, reduced capital formation and less growth.

This legislation is badly marred. It is a wolf in sheep's clothing which threatens the American public. Under the guise of equity and simplicity this measure is being hastened through Congress leaving little opportunity for the careful study a bill of this magnitude deserves. H.R. 3838 is not real tax reform and I urge a no vote on this legislation.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from Montana [Mr. MARLENEE].

Mr. MARLENEE. Madam Speaker, do we know what a $1 billion increase will have on the already beleaguered agriculture industry of this country?

Do we really want to break the trust of retirees—senior citizens who have made financial plans?

Do we know what impact this bill will have on small businesses, on the generation of jobs, on the economy of this country?

Do we realize—do we fully realize—that this bill strips away tax shelters and leaves the middle-income taxpayer unprotected from future tax increases? Is that really what we call tax reform?

The truth is, we have no clue what this bill is going to do to the small main street business, and it is these small main street businesses which form the backbone of this country.

The average taxpayer in this country—the guy who buys his products at main street shops all across this country—gets kicked in the shin by tax reform. Can we guarantee this person—can we look our constituents in the eye and say, "I fully understand the implications of this tax reform bill and I fully support every change in your taxes." And can we look our constituents in the eye and say, "I guarantee this tax bill is not a prelude to a tax raise, and I promise I will not vote to raise your taxes next year."

None of us can make that pledge. This tax reform is a sham that is being ramrodded through Congress. The only thing I will guarantee is that I will vote against this tax reform fraud.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 3 minutes to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I thank the chairman for yielding.

I think it might be useful in the context of this debate to ask the question why tax reform, why are we doing this? The answer is that this tax system is rotting from the inside. This tax system rewards the rich and penalizes the rest. This tax system, the current tax system gives us a situation where the wealthier you become, the better able you are to hire the best minds in America to figure out how you can avoid your taxes. And you can deduct the payment you make to those people that tell you how to avoid your taxes.

The result has been an overwhelming number of big corporations earning hundreds of millions of dollars and paying zero, that is nothing, in Federal income taxes.

A large number of wealthy Americans earning millions of dollars are paying nothing in taxes; yet the middle class people who work for a living, have a W-2 form, take their lunch to work, have to pay a certain tax. They cannot escape it, there is no flexibility, no alternative.

So we need to reform the tax system to make it fair system. That is what this is all about.

This bill is not perfect. I do not like the retroactivity, I do not like the top rate. I would have like to have seen a couple of more rates. But despite the fact that this bill is not perfect, this bill does some very important things. It guts tax shelters. We win the battle against tax shelters and tax gimmicks, for a change.

This bill adopts a tough certain exacting minimum tax. We are not going to see stories about this corporation or this rich fellow or this rich woman earning a major amount of money and paying nothing in taxes.

This bill will lead toward investment decisions in this country to be made on the basis of where the best return can be offered on that investment dollar, not having the Government as is done in the current Tax Code provide incentives, deductions, and gimmicks and preferences. This bill makes sense.

As the gentleman from Louisiana [Mr. ROEMER] said from the inside, from the heart, this bill is sound, good tax reform. It will restore confidence once again in the minds of the American people that we have a tax system to be a fair system.

So I hope that those who come to this floor and who believe, as they have stated, that the keys to the kingdom of economic growth reside in the crevice of some tax preference or some gimmick, understand there is more at stake here than that. What is at stake here is us demonstrating to the American people that we are willing to take the tough choices, make the tough decisions and give them a tax system that they can count on, that is fair, that will finance this government in the right way.

This is a historic debate, and you are right, not all of this bill is great. There are some problems with it but it moves in the right direction. Voting "yes" is the right decision. Passing this bill is the right thing for this country and its future.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from New York [Mr. WORTLEY].

Mr. WORTLEY. Madam Speaker, this is a sweeping bill before us, and I share the reservations held by many of my colleagues and constituents. But I have considered the bill as a whole, and I intend to support it. Yes, a favored deduction is lost here, or another is tightened there. But these "losses" pale before the fact of the dramatic cuts that will be made in the individual and business tax rates. May I remind my colleagues that a full 80 percent of Americans are expected to be paying under the low rate of 15 percent. I believe that the Tax Code should be a means of obtaining revenues in the simplest, fairest, and least obtrusive manner possible, rather than a means of rewarding politically powerful special interest groups.

This bill is profamily. The personal exemption is doubled and the standard deduction is likewise increased to reduce the tax burden currently shouldered by hard-working parents.

The bill will particularly help low-income persons, both families and single individuals, by allowing them to keep more of their hard-earned money. This is a much more constructive way to ease the plight of the poor than to force them to rely on Government spending. It is worthwhile to note that the American Association of Retired Persons and the Children's Defense Fund both endorse the bill.

Loopholes are closed and a tough minimum tax is imposed on the very wealthy. It wasn't too long ago that my constituents were outraged because of news stories that detailed how wealthy individuals and corporations were escaping taxation by cleverly manipulating the law. Under the tax bill, this will no longer take place.

The most important tax benefits for middle-class taxpayers are still retained under this bill. These include: the deduction for mortgage interest, the deduction for State and local income and property taxes, the credit for child care. And, although somewhat tightened over my objections, the deduction for IRA's will still be available to most taxpayers.

True, more taxes are shifted onto businesses because of restrictions or elimination of certain tax breaks. But, when compared to the gross national product, businesses are currently paying a smaller share of income taxes than in the last 25 years. Many large and small businesses and their organizations—including General Motors, General Foods, 3M, the National Federation of Independent Business—support tax reform because they see it as good for themselves, their employees, the consumers, and the entire economy.

Although not mentioned by the media, tax reform will also encourage U.S. businesses to keep their plants and operations in the United States rather than moving overseas. This is because the bill limits the usefulness of the foreign tax credit and limits tax avoidance through investments in tax haven countries. I applaud this long overdue action.

This bill is progrowth and its profamily, and it is certainly an improvement over current law which is littered with loopholes and has crushing high tax rates. Some fine turning may be necessary in the years to come, but I urge my colleagues to take a historic step today and vote for tax reform.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from Arkansas [Mr. ROBINSON].

Mr. ROBINSON. Madam Speaker and my colleagues, I voted for the House bill. It was an eagle. It soared over to the Senate, the other body. The other body took it, plucked a couple of feathers, clipped its wings, and it became a turkey.

It went to conference. Out of the conference it became a buzzard. Now when this passes, the buzzard is coming after us, the middle-income earners. I have looked at this bill. It benefits the very, very rich, and the very, very poor but, guess what? Those of us in the middle once again are going to pay the bulk of all the taxes paid in this country. In 1987 you get a tax increase. In 1988, when you are supposed to get a cut, guess what, the Social Security taxes go up.

I urge my colleagues; there is nothing in this bill for middle-class America. We are losing our good deductions. We are getting nothing in return. Vote "no."

Show your courage. This bill is not progrowth, it is not profamily, it is going to wreck our economy.

Mr. ARCHER. Madam Speaker, I yield 2 minutes to the gentleman from Kentucky [Mr. HUBBARD].

Mr. HUBBARD. Madam Speaker, I speak in opposition to H.R. 3838, the Tax Reform Act of 1985.

The most unsettling factors fueling mounting skepticism about the Rostenkowski-Packwood, 925-page tax overhaul bill are the huge Federal deficit and the state of our economy.

There is a growing fear that this tax bill will cause disruption in an already faltering economy, giving way to recession.

Further, this tax bill is a revenue neutral bill, which actually will add to our staggering Federal deficit.

Yesterday we in the House approved an election year budget bill that relies on accounting gimmicks, asset sales, and user fees to help meet the necessity of passing a budget bill for fiscal year 1987 beginning October 1.

Today we're passing a tax bill which is overall revenue neutral.

Actually, this 925-page bill is for the Nation's certified public accountants and tax lawyers a dream come true.

Mr. Speaker, in my rural 24-country western Kentucky district, my constituents have voiced their strong opposition to this legislation. Their concern, like many expressed today on this House floor, reflect on the elimination of many of their deductions, complications rather than simplifications in understanding the 925-page bill, concern over who was favored and who was penalized by transition rules, and the potential harm this measure will inflict on our Nation's businesses and economy.

This tax reform package will actually inflict a tax increase on 20 million people according to estimates by the Joint Tax Committee. A longstanding key component to our Tax Code has been the concept of progressivity. By eliminating the current 15 tax brackets to only 2 in 1988, we will be hard pressed to retain progressivity.

The future impact of this legislation on our Nation's economy has been judged as likely to cause economic damage. The measure is thought to reduce investment—reducing job creation, economic expansion, and international competitiveness.

My constituents have voiced loud their opposition to eliminating many of their deductions. Those repealed, restricted, or altered include the following:

The sales tax deduction—this violates the long held principle that the Federal Government does not tax income that has been spent to pay basic State and local taxes. This also creates an unfavorable disparity in treatment between residents of different States and how those States raise revenues.

The medical expenses deduction—people with unusually high medical expenses have less ability than others to pay taxes. The present threshold of 5 percent is perfectly adequate to distinguish unusually high medical costs, and that people with medical expenses at this level hardly seem to be in a position to absorb a tax increase.

Employee business expenses—the cost of certain items—work clothes, safety equipment, union dues, and professional subscriptions—is a cost of earning an income. Of course, my constituents and I see no fairness in eliminating this deduction and retaining an 80 percent deduction of business meals and entertainment.

IRA deduction—perhaps one of my constituents' most popular tax deductions and tool for savings. The changes made through this legislation make the IRA available for those generally not able to afford the deduction. The middle income wage earner will find this popular and effective method of saving will no longer have the tax advantages needed to plan for one's retirement.

Consumer interest deduction—the purchases of automobiles, appliances, and other household goods are likely to suffer due to this change. Many Americans have used this deduction to alleviate the cost associated with making one of these purchases.

Income averaging—in a rural district like mine, a group of taxpayers who are already hard pressed will be hard hit again, through the repeal of income averaging. With their wide swings of income from year-to-year, the American farmers will find their tax liability increasing at a time when other problems are confronting them.

The 3-year recovery rule repeal—this amounts to double taxation plain and simple. While not only punitive to Federal, State, and local, and other workers who contribute to their retirement, this change also harms those workers who are preparing to retire. The retroactivity provision of the repeal harms workers who are caught in an arbitrary decisionmaking process. I cannot call this repeal of the 3-year recovery rule tax simplification and fairness.

Charitable contributions deduction—the many worthy charities—the churches, arts, hospitals, and universities—like my alma mater, Georgetown College of Georgetown, KY, are expected to suffer losses in contributions due to this change. During these times when Federal spending is being curbed for programs which benefit these charitable receipients, it makes little sense to compound the problem by eliminating this deduction for nonitemizers.

I have not yet touched on numerous other provisions which will adversely impact my constituents—like the repeal of the investment tax credit. The already beleagured coal industry—an important industry in my district—will suffer due to the loss of this provision.

We must not rush to approve tax reform legislation which is flawed and harmful to our fragile economy. The wild revenue swings put forth by this legislation will draw this body to the unsavory task of making additional massive cuts in defense and domestic spending to make up for lost revenues, or call for a tax increase on our already overtaxed constituents.

Join me in defeating this harmful measure and work to restore real tax simplification and fairness to our Nation's Tax Code.

Mrs. KENNELLY. Madam Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. EARLY].

Mr. EARLY. Madam Speaker, I rise in support of the tax bill.

Mr. KENNELLY. Madam Speaker, I yield 2 minutes to the gentleman from California [Mr. PANETTA].

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Mr. PANETTA. Mr. Speaker, I think all of us acknowledge that we do not have a very easy choice before us. There is a dilemma here, and the dilemma is choosing between the comfort of protecting the existing system—we know what the existing system is all about with its inequities and its loopholes and its credits and deductions and bureaucracy—and choosing to take the gamble of tax reform and the concerns that are legitimately raised any time you engage in the kind of massive comprehensive reform of the Tax Code.

I think that gamble is worth taking for several reasons. One, because I believe that individuals and corporations and businesses should make investment decisions, not the Federal Government through credits and deductions and loopholes.

Second, I think the gamble is worth taking because you cannot get tax reform unless it is part of a broad comprehensive package. You cannot deal with provisions impacting on the poor or providing for a minimum tax unless it is in a comprehensive package. In the real world, those who argue for pure tax reform are arguing for no reform at all.

Third, I believe that this gamble is worth taking because I am concerned about dealing with the deficit. And for those of us who are concerned about it and recognize the need to raise revenues as part of our effort to deal with the deficit, the question you have to face is this: Do you raise those taxes based on the present unfair and inequitable system as a base, or do you raise those taxes based on tax reform and the fairness that that will bring to the tax system? If you kill tax reform, you hurt the chances for deficit reduction.

Lastly, I believe this gamble is worth taking because if there are particular concerns, and I know there are, surely we as representatives of the people can and will respond to those particular concerns. Because you believe it is unfair for some, do not reject tax reform and make it unfair for all.

For those reasons, I think the choice is clear, the gamble is worth taking for the people and for the Nation.

The SPEAKER pro tempore (Mr. HUCKABY). The time of the gentleman from California has expired.

Mr. DUNCAN. Mr. Speaker, I yield 1 minute to the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Speaker, this is a historic moment for the Congress and for the United States. It has been said—and I believe with considerable justification—that this is the most significant policy change to be enacted by the Congress of the United States in at least half a century. It is not without trepidation that we go forward into these uncharted waters, where no economist, however sagacious, and no computer model, however sophisticated, can predict with certainty how the American economy will react to this sweeping change.

But it has always been thus for those who explore the unknown, for those who seek to bring change that will benefit mankind. While we look for the answers to the questions we ponder, we must also examine what we do know about this new tax policy for America.

There is much to be said for this bill. It is the first real reform in the Tax Code we have seen in many, many years. At last we have made a step, and a large one at that, toward a Tax Code which is based upon economic growth rather than income redistribution. We have started down the road to a tax policy that promotes growth, not from the utilization by a select few of special loopholes in the code, but rather a policy which suggests that growth should be achieved by getting the Tax Code out of the way, and allowing business and personal decisions to be based upon its economic worth, and not the artificial superstructure of taxation. We take a giant step toward a policy in which the millions of decisions that must be made every day in the private sector can begin to center around what makes sense in terms of real life situations, and not whatever is deemed to be the favorite tax incentive in Washington that particular year.

I believe this—the recognition of economic worth as the critical element of decisionmaking—is the very core of the bill now before this body. In addition, we must also recognize the enormous impact of the drastic reduction in marginal rates on personal returns from 50 percent this year to 35 percent next year, and 28 percent in fiscal year 1988. This is really the essence of the economic principles which are embraced by the bill. The lower we bring the effective rate, the less each taxpayer must seek to avoid taxes, and the more he or she can focus their attention on the highest end use of their disposable income. Making this type of change allows the elimination of special classifications on income, such as capital gains. These changes help to rectify the inherent bias and unfairness of the Tax Code, without penalizing those individuals whose income is not from wages and salary, but from capital—the engine of growth.

There are other features of the bill which are equally positive. It removes over 6 million low-income Americans from the tax rolls, making it possible for them to provide for themselves without resort to welfare. It reduces the number of tax brackets to just two—and with that change brings enormous simplification. It makes sure that corporations that make profits and individuals who have income will pay taxes, thus helping to restore taxpayer confidence in a system where confidence has been badly eroded.

However it is not without reservation that I endorse this bill. The legislation is very far from perfect. Many parts of it are less than desirable—some are patently unfair. Foremost among such provisions is the retroactive removal of certain tax benefits to persons who made decisions in good faith based upon tax preferences previously structured to induce certain investment behavior.

Individuals who are unfortunate enough to have invested in certain real estate ventures, or are Federal retirees who had realistically planned to retire under the exclusionary rule, are justifiably angry at the abrupt changes forced upon them by this bill. These citizens made decisions based upon what the Tax Code specifically provided for. For that same Government to now tell these individuals that they are to be penalized for their actions because the tax reformers needed to raise revenues, is, I believe, a breach of confidence.

In addition, there are literally hundreds of special transition rules included in this bill which are really nothing more than gifts of immunity from the adverse changes brought on by the bill given to individuals and corporations who are fortunate to have an ear in Congress. To tell my constituents that they are going to lose the benefits of the rental property investment or retirement plans they have made, while other individuals or corporations will receive special consideration flies in the face of fairness.

Nevertheless, two steps forward and one step back is far better than no steps at all. Tax reform, real tax reform, has been sorely needed for a long time. This will not be the end of the process. Rather, it should be seen as the firm anchor point from which we can extend the net of fair taxation to a broader cross-section of the full economy. Corporations and individuals in all income classes and categories must be finally brought within the parameters of a fair, equitable, and productive Tax Code—one which promotes growth, which allows for decisions based upon economic choice, and most of all, is fair to all of the citizens of our country. Tax reform is not dead. We will revisit the Tax Code again and again in the years to come. Let us be sure that we do it in a manner that will benefit all of us, not just a few of us.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Speaker, I rise in support of the bill, and I'm proud to be here to witness a victory for fairness, as well as a once-in-a-lifetime achievement for this body.

As an aside, I just want to say that in my nearly 20 years on Capitol Hill as a staffer and now as a Member of Congress, I have never seen a legislative achievement which brings more credit to this battered institution. For once, we took on the special interests, with a clear goal in mind, without any crisis motivating our constituency, and against all odds we've largely met our goal. The President's strong leadership made it possible, but we did the deed. It's a refreshing reminder that the system still works.

We can also be proud of the result. Sure, it's not perfect. During the debate, we've all taken strong positions against one provision or another; in my case, I'm most concerned about the dangerous compromise on State and local tax deductibility; the impact on higher education; new disincentives to save and invest; and the difficult burdens to be faced by heavy industry and local governments. We're really hurting in these areas already, and I won't rest until we've done more to correct their problems.

I'm also unhappy that the Federal Government is breaking its pension contract with Federal employees. As far as I'm aware, the Federal Government is not in the habit of ripping up its contracts, and we shouldn't now after Federal employees have already taken so much abuse from their employer. I'm joining together today with my friend and colleague from Ohio, MARY ROSE OAKAR, to introduce a bill which already enjoys bipartisan support, and which will reinstate the 3-year basis recovery period for employees who retired on or after July 1, 1986.

But aside from these objections, my No. 1 criterion is fairness: whether the new laws, taken together, will be more fair for people in the 25th District of New York, and all Americans. While it's important to remember that not everybody will come out winners under the bill, most people will. By dropping rates for everybody and taking away many of the breaks used by the people with the accountants and the lawyers, the bill before us is an enormous step in the right direction

H.R. 3838 is the best compromise possible in pursuit of a worthy goal: greater fairness in the basic law affecting all Americans. For once, I have no doubt we're on the right road, and I urge my colleagues to vote "aye" on this historic piece of legislation.

Mr. ARCHER. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, the people of this country want spending that is now out of control brought under control.

I would have preferred to stand in the well of the House today talking about the impending vote on a constitutional amendment to balance the budget. We are not doing that because the leadership of this House, under the control of the Democrats, does not want that to happen.

I would like to be standing here in the well of the House talking about voting for the threshold level for the deficit for fiscal year 1987, which would reinstate the provision of Gramm-Rudman resulting in mandatory spending reductions that was struck out by the U.S. Supreme Court, but we are not doing that because the Democratic leadership does not want us to vote on that.

I would like to be standing in the well of the House talking about cutting at least $36 billion to $38 billion out of spending as a means of reducing the deficit, but we cannot do that because the Democratic leadership does not want to bring that to a vote either.

We are being diverted in our attentions by a tax bill that has good and bad. I am going to be voting in opposition to it, because I do not think it is going to deliver what is being promised.

My reasons are as follows:

Mr. Speaker, few things in government are as disappointing and discouraging as a good idea gone bad. Such is the case with the tax reform bill. Here is an issue of noble intentions and sound promise which, after the machinations of both Senate and House, reemerges as an ill-concealed tax increase which threatens to inflict more harm than good.

The basic premise behind tax reform was lower marginal tax rates and the closing of many loopholes which undermined the tax system. Rates are reduced under the new bill: individuals will see the current 50 percent maximum replaced by a two-tiered structure of 15 and 28 percent; corporations will have the current 46 percent maximum replaced by 34 percent. And many deductions which enabled thousands of taxpayers to avoid paying taxes are eliminated or reduced.

Unfortunately, these attainments were sabotaged by the politically motivated desire to increase revenues. The bill generates $11 billion in revenue in 1987, which is used to reduce the projected deficit and thereby nullify the need to cut spending. The fiscal year 1987 deficit is limited to $144 billion by Gramm-Rudman-Hollings; it can actually exceed that figure by $10 billion before automatic sequestration is triggered, so that the target deficit is really $154 billion. Current estimates by the Office of Management and Budget and the Congressional Budget Office project the fiscal year 1987 deficit to be $163.4 billion—$9.4 billion above the target. If the tax bill brings in $11 billion, there will be no need to cut spending.

Of course, in order to raise revenue, many provisions in the tax bill have been designed to minimize deductions and maximize payments. In the process, much harm is done. Many of the incentives to stimulate savings and investment contained in the 1981 Economic Recovery Tax Act are reversed. Since the summer of 1982, 10 million new jobs have been created, jobs which are now threatened under the guise of "reform."

Probably the worst aspect of the tax bill—and certainly the most inherently unfair—is the retroactive effective dates of many of the bill's provisions. Individual rates attain the 28 percent maximum level in 1988, but several deductions—State sales tax—are eliminated in 1987. The investment tax credit is repealed effective January 1, 1986, but corporate rates are not reduced to 34 percent until July 1, 1987.

Another area of concern exists with IRA and pension provisions. Although the $2,000 exemption per individual for an IRA is retained, this exemption is phased out for incomes between $25,000 and $35,000 for an individual and between $40,000 and $50,000 for a joint return. A majortiy of families earning over $50,000 have IRA's so the potential impact is very large. Moreover, a $7,000 cap is imposed upon those with both an IRA and a qualified pension plan, such as a 401(k). A case can be made for limiting the tax exemption for wealthy taxpayers who enjoy multiple retirement plans, but this approach is counterproductive. We ought to encourage voluntary savings toward retirement; by penalizing it we only place increased pressure on the already over-burdened Social Security system.

An additional counterproductive element is the elimination of the charitable contribution deduction for nonitemizers. More contributions were received as a consquence of the enactment of the nonitemizer deduction than from the lower rates resulting from the 1981 tax cut. It is estimated that elimination will cost charities $6 billion. Obviously, a loss of such magnitude will place further pressure on the Federal Government to appropriate more money for social and welfare programs. So where do the taxpayers save my money?

The tax bill also heads in the wrong direction in its treatment of capital gains. Our trade deficit continues to worsen. Many U.S. business, especially those in manufacturing, find it increasingly difficult to compete due to high operating costs and the expense of capitalization. We are at a particular disadvantage in comparison to West Germany and Japan, where the business climates are enhanced by the lack of capital gains taxes. But instead of encouraging investment and plant revitalization, we intend to increase the capital gains tax from 20 percent—50 percent applied to the net after the 60 percent exclusion—to 28 percent. Not only does this affect industry, it also impacts the elderly, many of whom rely on investments to provide for retirment. This is poor policy.

The Tax Reform Act of 1986 is promoted as helping the middle class. But if the loss of incentives results in a loss of jobs, a cut in tax rates won't mean a thing. What good is a reduced income tax when there is no income? It is a good idea gone bad. And that is a tragic loss.

Mrs. KENNELLY. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. PICKLE].

Mr. PICKLE. Mr. Speaker, I thank the gentlewoman for yielding this time to me.

Mr. Speaker, in the pending measure, a provision was added that would allow taxpayers to make deductible charitable contributions to certain schools even though those taxpayers receive certain preferred seating arrangements in an athletic stadium. That measure was put in by the other body, and a school in my district was also added to the list.

I think the inclusions was made to say to the Internal Revenue Service that it should not raise questions where charitable contributions are tied into ticket purchases.

So I would hope that everbody will understand that my intent is not to include just two schools and no others. In my opinion, it should include all schools, because the practice of charitable giving to universities is not an improper one and it should be continued and encouraged. I just wanted to make the record plain that I think this should apply to all the school involved, anywhere in the country.

Mr. DUNCAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois [Mrs. MARTIN].

Mrs. MARTIN of Illinois. Mr. Speaker, yesterday a bright and experienced Member of the House said he'd vote for the tax bill—if it were losing. He'd vote against it if it were winning. He was repeating that sage political advice: "Don't be on the prevailing side on a tough issue." But somehow, shrewdness may not be enough this time.

But what should we do? The bill has some real junk and even the gnomes of Zurich can't figure out the transition rules. I'm getting credit for one and blamed for one and I don't understand either of them.

The bill zaps the ITC; my district has machine tool industries and a steel mill. It curtails consumer interest deductions and I have a Chrysler plant; farm groups oppose the bill; I have twice as many cows as any other district in the State. It may take the working poor off the tax rolls, but common wisdom says they probably won't vote for me, a Republican, anyway.

So I think I should vote "no." I can hear myself on the speech circuit: "I can't vote for a bill that would hurt (blank); I won't vote for a bill that destroys (blank)"; I can use any town or company or individual to fill in those blanks.

But when I tried to write that speech, I couldn't do it.

I found, as worried as I am about what this bill does, I am even more worried about the current code. Those speaking against the tax bill keep talking about what should be different about it. The choice today is not between this bill and a perfect bill; the choice is between this bill, and the death of tax reform. If we do not seize this opportunity, we will insure the final and permanent victory of the special interests; the Tax Code will forever be their domain. For my district and Nation. I cannot allow that to happen.

Our system relies on voluntary compliance and too many men and women believe there is no fairness or equity in the current code. There is only fertile feeding grounds for the sharp-nosed accountant or the high-priced tax lawyer.

So we must face the uncertainties of this bill to provide an opportunity for a better and fairer tomorrow.

It means a "yes" to this imperfect bill from imperfect people in an imperfect system.

But a "yes" is the right vote.

The SPEAKER pro tempore (Mrs. LONG). The time of the gentlewoman from Illinois [Mrs. MARTIN] has expired.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. MCCAIN].

Mr. MCCAIN. Madam Speaker, I rise today in favor of the tax reform bill. However, I do believe some changes should be made before this legislation becomes law.

I think everyone would agree that our present tax structure needs an overhaul. We have heard the horror stories about profitable corporations who actually receive tax rebates from the Government and about millionaires who pay no taxes. These kinds of stories, plus the sheer complexity of the Tax Code, have seriously eroded public confidence in the system. This erosion has the potential for national disaster. Our system is based on voluntary compliance with our tax laws. If this attitude breaks down, we could increase the IRS budget IRS tenfold and still not collect the necessary revenue to run the Government. It is essential that we restore public confidence in our tax structure.

In my opinion, this tax reform legislation goes a long way toward returning the tax system to the purpose for which it exists, to raise revenues for the Government. In the last few decades we have seen the tax system employed for every conceivable purpose from punishing the rich, to expanding beef herds, to insulating homes against the cold. I am sure all of the authors of the various tax breaks had good intentions and laudable goals. However, the plethora of tax breaks slipped into the code created a patchwork revenue system and skewed our economic judgment by injecting noneconomic factors into the decisionmaking process.

When I reviewed this document, I asked myself one question. Is this system better than what we have now? My conclusion was, yes, this will result in a fairer Tax Code. It reduces the burden on those individuals struggling to escape poverty, it makes it more difficult for the rich to dodge taxes, and it would tend to make people with like incomes pay like taxes. Perhaps most importantly, it focuses economic decisions on economic factors, not tax consequences. Competitive markets will make the business decisions, and not the committees of Congress.

Let me mention a few of the aspects which I found most appealing. First is the reduction in brackets from 14 to 2, with 80 percent of all Americans in the 15-percent bracket. I have heard some criticize this change on the basis of a loss in progressivity in our tax system. I believe in a progressive tax structure, but the truth of the matter is that wealthy individuals were so successful in using the many tax breaks that the effective tax rate for those earning $200,000 or more was 22.5 percent.

Second, the bill is profamily in that it nearly doubles the personal exemption, substantially increases the standard deduction, retains the child care credit, and indexes the code for inflation to guard against tax increases via inflation. It is also an antipoverty program, as it increases the earned income credit for lower income taxpayers with children and removes 6.5 million working poor from the tax rolls. I believe this will be an incentive for many to get off welfare and into the work force.

Additionally, it retains the mortgage interest deduction for first and second homes as well as retaining the deductibility of State and local property taxes. It also excludes health insurance benefits from taxable income. I believe it entirely appropriate for the Federal Government to pay special attention to the home and health of working Americans.

On the business side, it retains the research and development tax credit, so crucial to our economic future, as a 20-percent credit, and it enacts a stiff new 20-percent minimum tax. Few corporations or wealthy individuals will be able to avoid paying taxes. Most of all, it encourages people to work, to produce, as they will know that they will be able to keep at least 72 cents of every additional dollar they make. This is a far cry from the time before President Reagan took office, when the Government took up to 70 cents of each additional dollar earned.

As with any effort of this magnitude, there are bound to be flaws; this bill is no exception. I believe it could be improved in the following ways.

I believe that 20 million Americans in the public sector who planned their

retirement on the 3-year basis recovery rule should not have this taken away from them. This Congress has already used Federal employees too often as the scapegoats for various problems and I think we have asked that they carry more than their fair share of the burden in our efforts at deficit reduction. Now we are asking them to pitch in a little extra for tax reform. This is not fair. Perhaps this system should be changed, but not for those who have acted with justified reliance on its existence. The retroactive nature of this provision is odious. Those at or near retirement should be grandfathered in any change.

Since this apparently will not happen, I intend to support legislation to reverse this outcome. It is my understanding that the gentlewoman from Ohio [Ms. OAKAR] is preparing legislation to this end and it is my intention to cosponsor and actively work for its passage.

Although the charitable contribution deduction for itemizers was retained, the deduction for nonitemizers was eliminated. This disappoints me. I have seen studies which indicate charitable giving may drop by 20 percent and this is very disturbing. Further, I do not see why the rich should receive a Government subsidy for giving while the average American does not. I would restore this deduction.

The cutbacks in deductions for retirement income, IRA's, 401(k)'s, and the like. I believe are misplaced. I think Congress made a wise choice when they opted to promote individual retirement plans as a means of easing the burden on Social Security and increasing our Nation's savings rate. This change could threaten the financial security of our senior citizens and our future retirees. As a result, I believe the IRA deduction should be retained as in current law.

As a State experiencing unprecedented growth, Arizona needs affordable housing. While the tax breaks the real estate industry presently receives may be excessive, I am concerned that we went too far. I have seen studies that predict a 15-to-20-percent increase in rents. This is not good news for the one-third of all Americans who rent.

I do not believe that those individuals who invested in the so-called limited partnerships were treated fairly. While this deduction had gotten out of hand, many Americans invested their hard earned dollars on the basis of present law. Overnight we have zapped those investments. In my opinion, we should have phased in the changes. Many housing developments, shopping centers, and apartment buildings could be placed in jeopardy, resulting in a crisis akin to the current farm problem. Many financial institutions which are heavily involved in this area could be turned into property managers and developers, tasks they probably are not equipped to handle. Congress should extend more favorable transition treatment to these investments.

The last concern I will mention is the effect this bill may have on capital formation, due to the elimination of the capital gains differential. Practically all of the net new jobs in our country come from small businesses. Most of these are formed by small groups of people who move daringly into innovative things which often have a short shelf life before they are overwhelmed by still newer innovations. So-called venture capitalists provide the majority of funds for these new companies. They are the people willing to gamble on an unknown rather than receive the safe, if not spectacular, return of an investment in IBM or Motorola. America must remain economically innovative if she is to remain competitive at home and especially abroad. I believe the capital gains differential should be retained in some fashion.

I realize that these changes will cost us. It would be easy to propose them without saying how we should pay for them. However, this would be intellectually dishonest so I will attempt to point out some areas we could tap. The first place I would look is the so-called surtax. Taxpayers, married filing jointly, with taxable income between $71,900 and $149,250, will actually be paying a top marginal rate of 32 percent. I see no reason not to extend that rate to those making in excess of $149,250. I find nothing magical about two versus three rates, and I find it much more fair to simply create a third rate.

The second place I would look is in the various special breaks contained in the law for shopping centers, sports complexes, Fortune 500 companies, and the like. The Tax Code is a national document and its benefits as well as its burdens should be national in scope. While some of these provisions are no doubt legitimate, many benefit only a select few. They should be traded in for the greater good.

In closing, Madam Speaker, I would like to extend my congratulations and express my deep appreciation to the various individuals who worked so hard on this legislation. I believe they made a good effort at effecting true reform and they accomplished their goal to a great extent. The legislation before us today would create a more fair, more simple, more respectable Tax Code than we have today.

Mr. ARCHER. Madam Speaker, I yield 10 minutes to my valued and esteemed colleague, a member of the Ways and Means Committee who has been active in efforts at understanding this bill, the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Madam Speaker, this debate focuses really on three fundamental criteria set forth by the President early on in his call for a reformation of an antiquated, Byzantine, inequitable and antigrowth oriented Tax Code, namely, simplicity, fairness, and growth.

□ 1345

We can all, as a body, Democrats, Republicans, vegetarians, agree that those are outstanding qualities in any Tax Code.

On the question of simplicity, however, we all know that that is a farce. We have seen this 2,000-page document that we are going to be asked to vote on today and the CPA's say that it will probably double the amount of time requisite for making up your tax forms, and you will lose your deduction that today you enjoy for having those forms made up.

On the fairness question, I think the one most offensive component of this bill that has not been properly addressed by those who are champions of the bill, except for our distinguished chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, is the retroactive application of changes in the code. Our distinguished chairman has publicly expressed his total disapproval of that, and I think quite properly so.

On the other hand, he felt in the process of negotiating through a conference, that there were certain concessions he had to make to the other body and in the process of making the concessions, we got these vaunted rates, but the tradeoff was preservation of fundamental unfairness in the code.

We try and impress upon our kids the importance of living up to their word. We assume, in our good faith relationships with one another, that we should be able to take a man at his word; that his word is his bond.

Now, there are good people out there who took advantage of these so-called tax loopholes in the code. I would not have put the loopholes in the code in the first place and it has resulted in overconstruction of office space, multifamily housing, what have you. But the fact of the matter is Congress, in its infinite wisdom, put those provisions in the code and people in good faith, acting on what was the law, made solemn commitments and they are in a position now to take a bath.

In addition to that, there are people who make contractual commitments based upon the investment tax credit. Yet, we have retroactively repealed that going back to January 1 of this year, just as we have betrayed a confidence that we made to people with contributory pension programs by making the changes retroactive in

terms of repeal of the existing law going back to July 1 of this year.

This in and of itself to me is enough to make the bill so reprehensible that it should be sent back to conference to address that problem along the guidelines that our distinguished chairman of the Ways and Means Committee recommended. Because he expressed his disapproval of retroactivity in the conference and even after the conference report was finished.

In addition to this, I think there are other aspects of fairness that have not been properly addressed in this debate. For example, my staff helped put together some case studies based upon actual conditions of individuals and I will keep the names anonymous, but let me give you one.

A retired couple in the State of Illinois; they have a pension of $25,000. Their dividend and interest income brings their whole pension program up to about $36,000 a year. The husband, unfortunately, is suffering from glaucoma and has gone blind. His wife last year sustained serious medical costs; in fact, her unreimbursed medical costs came to $7,500. You know what happens to that couple next year under this tax law? A 13-percent tax increase and that goes to 16 percent tax increase when the law is fully effective in 1988.

Another couple in similar circumstances down in Missouri. This couple has a more modest pension program of only $15,000, dividend income equal to about $200 and, once more, serious medical costs as seniors are prone to have. Their unreimbursed medical costs came to $7,200. You know what their tax increase will be next year under this bill? One hundred and three percent, and their tax increase in 1988 will be 138 percent. Do not tell me that this bill addresses the problems of the lower income people when this is a result.

Who rents a house? The renters in our society tend to be people of lower income, and because of the treatment of this bill, the people in the multihousing industry say there will be a halving of construction of multifamily dwellings next year. Martin Feldstein did an analysis of this and he is projecting that next year there will be a 10- to 15-percent increase in rental costs.

What does that do to the couple making $25,000 a year? They are paying, as Feldstein pointed out, probably $500 a month for their apartment. They are going to get a $20 a month reduction in their taxes but they are going to get hit with a $50 to $70 a month increase in the rental costs of their apartment. These are also the people that tend to buy on time. They are the ones that are buying the car to get to work on time; paying for their appliances on time; paying for their furniture on time. These people are going to lose the deduction they currently enjoy for buying on time.

If you are wealthy and you own a home, oh, that is easily reconciled. You just put your home up as equity and take out a second mortgage and then you can buy anything you want on time up to the value of that second mortgage on your home and you can deduct all of that consumer interest. Who is that benefiting? Lower income, middle income people? I submit to you that in these outrageous cases the people who are the beneficiaries are not the people we claim we are trying to help.

How about the young couple going to college? We have got a couple down at the University of Illinois, Champaign-Urbana. The guy has an $8,000 scholarship. His wife is making $22,000 a year. He works part-time and makes $3,000. Now we are going to tax his scholarship above the amount that goes for tuition and fees. I will tell you, I went to graduate school as a Johnson poverty case, and outside of the GI bill, I would not have made it without the scholarship. Why are we going after a poor student couple trying to go to school on a modest income?

In addition to that, why are we hammering our colleges and universities with our treatment of appreciable assets? If I bought stock at $50 a share and it is worth $1,000 a share today, I can only deduct what I initially paid for it if I make it as a contribution to my alma mater or to my local university or college. Why are we spending all this money on education and then turning around and saying, "PHIL CRANE, if you want to contribute, under this bill, you can sell your stock and take a 33-percent capital gains tax on that stock. Uncle Sugar is going to make off with a third, but you can still give the other two-thirds away to your college or university and deduct it."

I submit to you that this is counterproductive legislation to an extreme. On the question of growth, if it is so growth oriented why are we going after 401(k)'s? Why are we going after the IRA's? We start to phase them out at $40,000 for a joint return. That is $20,000 for the husband, $20,000 for a wife. That was what we said was the botton rung of the middle-class threshold, yet that's when we start phasing out IRA's. Then we raise the maximum capital gains rate, as I indicated, from 20 to 33 percent. In addition to this, we knock out the dividend exclusion.

Every study that has been made of this bill suggests that the cost of capital will increase quite considerably. That even includes a study that I got from Mr. Robert Mense who is the Assistant Secretary for Tax Policy at Treasury. The problem with this is he never gave me the final update I called for as soon as we had produced a conference report in August. This letter was dated August 19. I asked him for it; I still have not had it.

What he did provide to me was a study at Treasury that shows that the cost of capital went up under every one of these proposals. We have not seen the report the President sent the letter about, suggesting that, well, there will be a 2- to 3-percent improvement in the economy after a decade. After a decade. The short-term injury is what right now has me disturbed because we are in the process, at the present moment, of beating up on the Rust Belt States and heavy manufacturing industries. We are beating up on the oil and gas industries when they are in a state of depression. Hammering them with a $10 billion tax increase when drilling rigs are down to 653 from 4,500 just 5 years ago. We are beating up on the building and construction trade. We are beating up on farmers, taking away their income averaging, hitting them with an investment tax credit repeal and raising their capital gains.

We have such fragility in the banking institutions in this country right now that we could have a bank collapse. Chairman Gray of FSLIC projects a 250 S&L failure over the next 18 months at a cost of $26 billion. FDIC has raised the number of troubled banks from 1,150 in January to over 1,400 today. In addition to that, because of the uneven way in which this bill applies, we are going to get hit with a $28 billion revenue shortfall in 1988 at a time this Congress is supposed to cut spending, to conform to Gramm-Rudman, $46 billion beyond that. I guarantee you this is the end of Gramm-Rudman if this bill passes.

I urge all of the Members to take advantage of this one opportunity you will have. You know, of 435 Members in this House, only 35 had any input on this bill.

□ 1355

The motion to recommit gives you your only opportunity to exert any positive, constructive input into this tax legislation.

When we take it back to conference, we can address these egregious faults that need to be addressed if we are really going to meet the criteria of simplicity, fairness, and growth and provide any kind of justice to the American taxpayer.

Mrs. KENNELLY. Madam Speaker, I yield such time as he may consume to the gentleman from Louisiana [Mr. HUCKABY.]

Mr. HUCKABY. Madam Speaker, I rise in support of the legislation.

Mrs. KENNELLY. Madam Speaker, I yield 3 minutes to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Madam Speaker, I rise in very strong support of this bill.

On the last night of the conference, SPARK MATSUNAGA, one of the conferees from the other body, reminded us of the old saying that "the only things certain in life are death and taxes."

He went on to say that "the difference between death and taxes is that death does not get worse every time the Congress meets."

This is an instance where that saying is not true. This is an instance where we have a tax bill before the House today which is a vast improvement over the existing Tax Code.

The conference committee took two good bills, one passed by the House, one passed by the other body, and took the best provisions from each of those bills and melded them together.

Let me list some of the things that make this an exemplary bill. First, the bill really does deal with the fairness issue, which has driven tax reform from the very beginning.

Corporations and wealthy individuals under this bill begin to pay their fair share of taxes for the first time. Ordinary working Americans will have the satisfaction of knowing that when they pay their taxes on April 15, the corporations and high-income Americans are paying their fair share of taxes as well.

Second, regarding simplicity, this is not a perfect bill for simplicity, but simplicity will have been achieved for millions of Americans who, under this bill, will use the short form, rather than the long form, when they file their income taxes.

It will be the ultimate simplicity for 6 million Americans who will not have to pay taxes at all.

A third goal of the bill was economic growth, and that is a little harder to predict, but I believe that the dramatic reduction in corporate tax rates under this bill will set forth a wave of capital investment in this country that will be based on the ability to make a profit, not on an effort to avoid paying taxes.

We have had enough see-through office buildings in our economy. If we are going to compete with the Japanese, the South Koreans, the Germans, and the French, we need to invest the capital of this country in the most efficient and productive way. This bill encourages that.

Finally, progressivity was not one of President Reagan's goals, but it was one of mine. This bill measures up very well on the score of progressivity.

This bill makes the Tax Code more progressive than the current Tax Code. It gives the biggest tax cuts, the highest percentages, to low-income people.

This is an excellent bill. I urge your support of it.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Michigan [Mr. SILJANDER].

Mr. SILJANDER. Madam Speaker, back in May 1984 I introduced the Ten-Percent Flat Rate Tax Act. Since that time, more than a million postcards were mailed to the Congress and over 350,000 to the White House in support of the tax. More Members cosponsored this bill (54) than all of the other tax reform proposals combined in the 99th Congress.

In 1913, an amendment was added to the U.S. Constitution that allowed the Government to start taxing our personal income. The maximum rate at that time was 7 percent. Today, the Federal Government can take as much as 50 cents of every dollar we earn.

Today, the Internal Revenue Code is about 10,000 pages long. It is riddled with loopholes which enable those who are rich enough to hire experts to help them "beat the system."

Americans spent over 613 million hours completing some 260 different tax forms. The large inconvenience and loss of time caused by the completion of tax forms is in addition to the complexity and expense of the system. In 1954 18 percent of all taxpayers had their taxes prepared. In 1981, 52 percent of all 1040 forms were professionally prepared at a cost of $60 billion.

In fact, despite the professional help, tax computation errors continue. In 1979, 7.3 percent of the 90 million tax returns had errors in their tax calculations. In 1979, some 3.8 million underestimated their tax burden while 2 million overestimated their taxes.

Those who are not rich enough do one of two things. They wrestle with an octopus of forms, instruction booklets, attachments, addendums, tables, charts, updates, and advisories and wind up with eyestrain, a migraine headache, an upset stomach, and the paranoia of an audit lurking around the next mail delivery.

Then there's another group of people who have found a simpler solution. They don't pay taxes. Studies have revealed recently that the so-called underground economy created by these people amounts to nearly $1 trillion.

"The income tax has made more liars out of the Amercian people than golf has," said Will Rogers. "Even when you make a tax form out on the level, you don't know when it's through if you are a crook or a martyr."

Of course, the Will Rogers quote should be no surprise when the record of the IRS itself is considered. A 1975 IRS survey of its trained employees showed that they computed the wrong tax 72 percent of the time, even when handling relatively simple tax problems. Another IRS survey in 1971 showed an even higher error rate of 82 percent on low-income returns with itemized deductions. Finally, Ralph Nader's Tax Reform Research Group sent identical "test" tax returns to 22 different IRS offices. Each office calculated a different tax liability, ranging from a high refund of $811.96 to an underpayment of $52.14.

We set out in 1984 with several goals in mind. First, we were committed to the goal of tax reform and fairness for the individual. Second, we were committed to putting a downward pressure on the tax rates that would be agreed upon through the legislative process. Third, we sought to restore the position of the family within the Tax Code. Fourth, we were dedicated to providing a supply-side stimulus to individuals with the knowledge that economic growth, if not strangled by the Federal Reserve, will help create full employment and reduce the deficit. Fifth, we sought a simpler, easier to understand Code.

Well, upon reviewing the conference report on H.R. 3838, I am convinced that the great portion of what we sought was accomplished. Certainly we didn't greatly simplify the Code, but it will be simpler for individuals to a certain degree.

I strongly endorse the $2,000 personal exemption in H.R. 3838. In addition the retention of the mortgage interest deduction, State and local taxes and charitable contributions are the most important deductions to those pursuing opportunity for themselves and a better life for their families. In addition the Tax Code will no longer provide a nearly insurmountable barrier to lower income Americans attempting to work their way out of poverty. It is unconscionable to consider continuing a system where the Federal Government imposes double digit tax rates on the working poor. The conference report reverses this perverse incentive, and may be, as the Washington Post says the single most important anti-poverty bill in history.

The greatest accomplishment of the bill is the dramatic reduction in tax rates. By reducing the tax structure from 14 to 2 rates for individuals, and leaving only one rate for corporations, the conference committee has revolutionized tax policy in this country and in the world. If you consider that Social Security is really a tax imposed on people below the Social Security wage base—about $42,000—a second rate should be added on incomes above the FICA wage base, to make the tax truly flat. Our colleague, JACK KEMP, with his wage-earner exclusion, had the only plan that included a provision taking the Social Security tax into account. The conference report, although somewhat "lumpy" is not inconsistent with this principle.

Consider the "fairness" in reducing marginal rates. According to the Internal Revenue Service, a family earning

$14,289 in 1950 family would have needed an income of $45,000 in 1980 to have the same purchasing power. However, the 1950 family would have paid an average Federal tax of 18 percent, compared to 23 percent for the 1980 family. More importantly, each additional dollar earned by the 1950 family would have been taxed at 26 percent, while each dollar earned by the 1980 family would have been taxed at 43 percent. Thus, the 28-percent marginal rate reverses the effect of 30 years of inflation and antifamily provisions written into the Tax Code.

Many people have wondered about the revenue consequences of H.R. 3838. In my opinion, the estimators have been too conservative. The reduction in marginal rates is certain to stimulate growth, reduce expenditures and increase revenues. Jim LeMunyon, as the director of the House Republican Task Force on High-Technology Initiatives demonstrated a 99.7-percent correlation between the tax rate and productivity changes. The study showed that the higher the marginal rate the lower the rate of productivity and vice versa. For example the marginal tax rate on median family incomes is 19 percent—including FICA taxes—the rate of productivity growth is nearly 4 percent. When marginal tax rates for the median family income approach 34 percent—higher than today—then the rate of productivity will tend to be around negative 1 percent. All things being equal, a 1-percent increase in productivity equals a similar increase in the GNP. Since OMB estimates a 1-percent increase in GNP would produce an additional $33 billion in revenues, it seems safe to say that H.R. 3838 will increase revenues on a dynamic historical model, as long as the Federal Reserve doesn't induce unemployment through its tightening monetary growth.

Changes in marginal tax rates are important because they change incentives to demand and supply work effort and capital. For example, firms base their decision to employ workers in part on their total cost to the firm. Holding all else equal, the greater the cost to the firm of employing each additional worker, the fewer workers the firm will employ. Conversely, the lower the marginal cost per worker, the more workers the firm hires. For the firm, the decision to employ is based upon gross wages paid, a concept which encompasses all costs borne by the firm.

Workers, on the other hand, care little about the cost to the firm of employing them. Of concern from a worker's standpoint is how much the worker receives for providing work effort, net of all deductions and taxes. Workers concentrate on net wages received. The greater net wages received, the more willing a worker is to work. Conversely, if net wages received fall, workers will find work effort less attractive and they will do less of it.

The difference between what it costs a firm to employ a worker and what that worker receives net, is the tax wedge. From the standpoint of a single worker, a tax cut has two types of effects. Because a decrease in marginal tax rates lowers the cost to the employer in the form of lower wages paid, clearly firms will employ more workers. On the supply side, a reduction in marginal tax rates raises net wages received. Again, more work effort will be supplied. In sum, tax rate cuts increase the demand for, and the supply of productive factors. In dynamic formulations, as tax rates fall, output growth increases, and vice versa. Regulations, restrictions, and requirements, along with explicit taxes, are all parts of the wedge. One goal of H.R. 3838 is to produce a "revenue neutral" bill. However, the rewards for incremental work by labor, the employment of additional capital and the more efficient combination of the two will be higher with the flat tax. As a result, more employment output and production would be expected. Economic growth rates would accelerate until these effects are fully incorporated into the economy. Essentially, H.R. 3838 can be viewed as a jobs bill.

Also, lower marginal rates encourage the underground economy to come into the sunlight. In a March 7, 1985 report, Alan Reynolds of Polyconomics, Inc. made note of a study demonstrating that for every percentage point the marginal rate drops, between 0.5 to 3 percent of the underground economy will become legal. By adding taxpayers—we lose at least $100 billion in revenues every year due to noncompliance—we can reduce the deficit and take some of the burden off the honest, wage-earning taxpayer who is carrying the burden for the freeloaders.

Many people have pointed out various deficiencies and perceived problems in H.R. 3838. As the original sponsor of the Ten Percent Flat Rate Tax Act, there are obviously portions of the bill that I disagree with. This will, however, be the only chance this Congress will probably have for the next 10 years to enact tax reform. It does not seem likely that the next Speaker will be as supportive of the exhaustive legislative process this bill has required. Now is the time to vote for tax reform.

A vote for this bill is a vote to make a better—not a perfect—Tax Code for families, economic growth, deficit reduction, and the availability of capital. A vote for this will be an endorsement of the creative efforts of Congressmen like RICHARD GEPHARDT and JACK KEMP and the many other Members who made tax reform possible.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from California [Mr. LOWERY].

Mr. LOWERY of California. Madam Speaker, I rise in support of this legislation.

Madam Speaker, today's vote on the conference agreement accompanying H.R. 3838, the Tax Reform Act of 1985, represents the culmination of months of extensive hearings, spirited public debate and in-depth media scrutiny, not to mention countless manhours spent studying, drafting and lobbying. The result is a truly historic piece of legislation that will engender the most radical transformation of the Tax Code most Americans will witness in their lifetimes.

I extend my heartfelt congratulations to President Reagan who had the vision to recognize the need for tax reform and the determination to hold steadfastly to his goals of fairness, simplicity and growth. I congratulate Chairman ROSTENKOWSKI, Senator PACKWOOD and the other conferees who had the wisdom and the will to make the President's vision a reality.

H.R. 3838 is not a perfect bill. No bill forged by the hammer of compromise is ever without flaw. I have serious reservations about parts of this bill—rescission of the 3-year recovery rule for Federal retirees, retroactivity particularly as it affects the real estate industry, and elimination of the IRA deduction for workers covered by a company pension plan—to name a few.

However, I heartily endorse many other portions of the bill—two low individual rates, tough minimum tax standards for individuals and corporations, and elimination of many of the loopholes which riddle the Tax Code. Overall, I believe my fellow San Diegans and Americans will enjoy prosperity under a simpler, more fair Tax Code. I intend to support the conference agreement on H.R. 3838.

Why do I support it? As a result of this package, individuals and corporations will pay taxes at the lowest rates since World War I: 15 and 28 percent for individuals and 34 percent for corporations. Six million low-income individuals will be removed from the tax rolls and nearly 80 percent of all Americans will pay taxes at the 15 percent rate. This translates into an average tax cut of 6.1 percent, with the largest decreases going to those earning less than $20,000.

About 700,000 of those 6 million low-income persons are over 65 years of age. The bill raises the tax threshold for elderly taxpayers further above the poverty level, through the additional standard deduction for the elderly and blind. In fact, two-thirds of older taxpayers are nonitemizers, thus they will be largely unaffected by the bill.

H.R. 3838 provides important tax relief and assistance to all families through expansion of the personal exemption and the standard deduction. A major improvement in the earned income tax credit will offset a portion of the Social Security tax burden for millions of working poor families. A single mother working at poverty level wages to support her two children will gain over $1,000 in income in 1988 if this bill is enacted.

Middle-income Americans will also benefit from passage of H.R. 3838. The bill maintains most traditional deductions important to middle-income families, including home mortgage interest, State and local taxes (other than sales taxes) and fringe benefits. Despite the repeal of the popular two-earner deduction, the average tax cut for the middle-income ranges will be about 9 percent.

I also support the conference agreement because it restores fairness to the tax system. For the last 30 years, the relative tax burden of business has fallen far below the soaring individual tax burden. H.R. 3838 will eliminate many of the tax shelters and loopholes utilized by corporations to drastically reduce their tax liability. A new tough minimum tax on corporations [20 percent] will ensure that no corporation which makes a profit will avoid paying taxes. Consequently, this bill will increase corporate taxes about $120 billion over the next 6 years.

Yet tax reform will also benefit business. Although the bill will repeal the investment tax credit and stretch out some depreciation lives, H.R. 3838 dramatically lowers the top corporate rate to 34 percent. This is the lowest rate corporations have faced in well over 40 years and a lower rate than that imposed by most of our major economic competitors.

H.R. 3838 will also level the corporate playing field by evening out the effective tax rates which vary widely from industry to industry. Tax preference elimination means businesses will flourish because they sell worthy products, provide services the public demands, make wise economic decisions and generate a profit, not because they are supported and protected by special tax loopholes.

Despite the closure of many preferences enjoyed by business, the cost of capital will decrease an estimated 7–8 percent and the cost of equipment investment will fall by 6–7 percent. At the same time, the bill will preserve a system of highly accelerated depreciation and cost recovery.

According to the Department of the Treasury, this bill will generate long-term benefits for our economy. Lower taxes encourage work, saving and productive investment, all of which eventually lead to stronger economic growth. As a result of this package, estimates indicate that the gross national product [GNP] will increase about 3 percent over the next 5 years and tax revenues will increase by about $40 billion due to higher growth.

For years, Americans have been dismayed and disillusioned by the complexity and inequity of the Tax Code. This historic piece of legislation promises to restore integrity to the tax system because it replaces that complexity and inequity with a more simple and fair system that encourages economic growth.

Two rates will replace 15 for individuals. That is simplicity.

The top individual rates will drop dramatically, allowing the majority of Americans to keep more of their hard-earned dollars. The top corporate tax rate will fall to 34 percent, ensuring that business will remain alive and healthy. At the same time, elimination of many of the preferences which enable wealthy individuals and corporations to pay little or no tax means that everyone who is able will pay some taxes. That is fairness.

Lower taxes mean more savings and investments inspired not by tax advantages but because investments make good economic sense. Sound investments directed by the market inevitably lead to a more active, productive economy. That is growth.

Altogether, I believe that spells tax reform that is good for America.

I urge my colleagues to support the conference agreement on H.R. 3838.

Mr. DUNCAN. Madam Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MACK].

Mr. MACK. Madam Speaker, I think I am probably, like many others, really just making up our minds in the last few hours.

The issues are very complicated, and I think everyone has had the opportunity to address those issues over the past several hours of debate. But for me, the decision had to be based on the answer to this question, Will this bill produce higher levels of economic growth, and if so, why will that occur?

We have heard the concern about the transfer of $120 billion to the corporate side and what impact that will have on our economy. The real question is, Will lower marginal tax rates on the individual side offset the drag that has been created by the shifting of the burden?

I believe the answer to that question is, yes, they will, that the lower marginal rates will, in fact, stimulate investment, savings, job creation, and business formation.

The reason that I believe that is that if you go back to the 1960's when the country debated the Kennedy tax cuts, the argument was made that lower marginal tax rates will encourage savings, investment, job creation, and business formation.

In the 1960's, only 2 percent of the American taxpayers of this country paid a marginal tax rate of 30 percent or more. Today, over one-third of the taxpayers in this country are in marginal tax rates of 30 percent or above. So if you believe in the 1960's that we stimulated economic activity because of lower marginal rates, I would ask you to think, what can we do today as a result of lower marginal tax rates? The answer is, we are going to stimulate the economy and we are going to keep it moving. I urge you to vote for tax reform.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Indiana [Mr. COATS].

Mr. COATS. Madam Speaker, let me just say that while it is difficult in 1 minute to say all the things I want to about this tax bill, I would like to address one particular aspect of it.

This is a profamily tax bill. I introduced, more than a year ago in the House of Representatives, H.R. 1551, the Tax Fairness for Families Act, which doubled the personal exemption. I am most pleased that the bill before us today accomplishes the purposes of that bill. It raised the exemption to $1,900 next year and up to $2,000 by 1988 and indexes it by the year 1990.

This is the most significant, historic piece of fairness for families in this country that we have ever achieved through our tax law. I am proud of the people who have worked so hard to support this particular item. I thank them for including it in this historic tax reform measure. The families of America thank you and I urge my colleagues to support this legislation from this very standpoint alone. It brings fairness to families.

Mr. KEMP. Madam Speaker, will the gentleman yield?

Mr. COATS. I yield to the gentleman from New York.

Mr. KEMP. Madam Speaker, I want to join the gentleman in underscoring the comments about this bill being profamily. Doubling that exemption for the family and every dependent of every family is one of the most important aspects of the tax bill and deserves the support of all Members.

I congratulate the gentleman from Indiana [Mr. COATS] for his leadership in pushing this $2,000 dependent exemption forward to success for the American family.

Mr. COATS. Madam Speaker, I thank the gentleman.

In the past, families have been the one group, the one special interest, if you will, which does not have high-priced lobbyists and interest groups fighting for their welfare. At long last, the impact of the American family has been weighed and considered in terms of the Tax Code.

Over the past 35 years, real family income has increased by more than 50 percent in constant dollars for one-income families, and has nearly doubled for two-income families. But the increases in Federal income taxes for all families has far outstripped the increases in income. In 1948, the personal exemption was set by Congress at $600 for each taxpayer, spouse, and dependent. By 1979, this exemption had been raised to $1,000; a $400 increase over a three-decade period. Finally, this personal exemption has been indexed for inflation since 1985.

However, if the personal exemption had been indexed back to 1948, today it would be worth about $2,600. This devaluation of the personal exemption has caused the Federal tax burden to shift disproportionately onto the backs of families with children.

We have reliable estimates that it costs more than $4,000 per child per year to raise children at home. We have official U.S. Government statistics which say that for each additional child in a family, $2,027 is added to the poverty threshhold level that is used for official statistical purposes and welfare benefit purposes.

Madam Speaker, in the past 2 years, I have received letters from every State in the country, indicating considerable frustration, resentment and discouragement among our families

today over the burden that taxes have placed on their shoulders.

As the ranking minority member of the Select Committee on Children, Youth, and Families, I have seen the burden of taxation on our families. We need to do everything we can to strengthen the basic family unity because it is the basic building block of society. Our Tax Code should do its part in strengthening the family. However, it absolutely must not hinder efforts of the families themselves to be strong, and of parents to raise healthy children.

It is for these reasons that I introduced H.R. 1551, the Tax Fairness for Families Act, in the 99th Congress. This bill would double the personal exemption for all taxpayers, spouses, and dependents. I consider this to be the single, most important pro-family provision in tax reform, and I am gratified to note that it has been included in this bill.

Madam Speaker, I urge adoption of this conference report, and again salute the House and Senate conferees for their hard work.

Mrs. KENNELLY. Madam Speaker, I yield 1 minute to the gentleman from New York [Mr. DOWNEY].

Mr. DOWNEY of New York. Madam Speaker, nothing we ever do in this body is perfect. A good Tax Code is hard to find. The one we are about to vote on is a lot better than the one we have.

There is a lot of good news, and there is a lot of bad news in this bill, but the good news outweighs the bad. Look at the forest not the trees.

If you just want to look at the trees, the fact that this bill is not as progressive, that many have lost their IRA's, that there are elements of retroactivity which are abominable, and must be fixed you are going to lose sight of the forest, and the forest provides the oxygen that this economy needs.

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The forest exemplifies the fact that there are people now who are not paying taxes who will be. They must.

The forest demands that there are people who are poor and working poor who need a tax break. They get it here.

The forest provides the reecognition that economic decisions, not tax consequence should be the way to invest your money.

This is a good forest. It is one that deserves your support.

Mr. DUNCAN. Madam Speaker, I yield 6 minutes to the gentleman from New York [Mr. KEMP], who has worked as long as anyone I know on tax reform.

Mr. KEMP. Madam Speaker, I thank my colleague from Tennessee for yielding me this time.

Madam Speaker, I agree that we could have done better. There are many things in the bill that could have been changed for the better.

I have great sympathy and understanding of some of the points made today by my colleagues, the gentleman from Texas [Mr. ARCHER], the gentleman from Illinois [Mr. CRANE], the gentleman from Minnesota [Mr. FRENZEL] and others. But we must not pass up, in my view, this historic opportunity to make several overwhelmingly important changes to help Americans that have long neglected. There are four of them: the working poor, the family, labor and capital.

By dramatically dropping tax rates, by lowering the tax on the family, by giving a $2,000 exemption for each member of every family, by taking 6 million low income poor off the tax rolls, we are helping the American people.

America was founded on the idea that there would be people who could rise above and put the good of the country ahead of the pleas of special interests.

I think that the bill, by and large, does exactly that.

I want to praise my friend, the gentleman from Missouri, Mr. GEPHARDT; and praise the Senator from New Jersey, BILL BRADLEY, for his role as a moving force of tax reform; praise the chairman of the Ways and Means Committee, the gentleman from Illinois, Mr. ROSTENKOWSKI, for his skill and leadership without which the historic victory would not be possible, my colleague from Tennessee, Mr. DUNCAN; and my colleague from Wisconsin, Senator KASTEN, who cosponsored tax reform legislation with me on the $2,000 exemption the 28-percent top rate, and the increased tax credit for low-income working parents.

Madam Speaker, we are making history, because we are removing from the tax system the very steep progressive tax rates of the personal income tax rate system, which are a serious deterrent to working, saving, investing and producing more income, as the gentleman from Louisiana pointed out.

Make no mistake about it: every preference, every credit, every special tax loophole in the Tax Code is in there for one reason. It is in there to protect people from an excessively high tax rate. We are dropping the rates and taking out inefficient and unwarranted loophole. We are dropping the rates, that were before this President was in office at 70 percent, to no more than 28 percent.

It used to be in America that you could earn a significant amount of money and get to keep only 30 cents on the dollar. When this tax reform is complete, American families will pay no more than 30 cents to the Federal Government.

I like the fact that more than 80 percent of the American people will be in a flat 15-percent tax bracket.

I believe that increasing the personal exemption to $2,000, plus indexing, is perhaps the single most important pro-family feature in this bill. I am proud to be associated with it.

The tax rate will be lower on capital as well as labor. Many of my colleagues said that it is antigrowth to take out the investment tax credit. Well, Madam Speaker, we are taking out the ITC, but we are dropping the rate on dividends from 50 to 28 percent and we are dropping the rate on corporate income from 46 to 34. That reduces the total tax rate on capital from 73 to 52.5 percent.

After this bill is passed, the top personal rate in the United States of America 28, will be lower than the bottom rate in the United Kingdom, which is 2.9. The corporate income tax rate in the United States, at 34 percent, will be the lowest of any nation in the world. We are going to have the lowest personal income tax rate in the world.

I do not like the idea of taxing capital gains as ordinary income without indexing. I hope someday we can repair that; but do not forget, when Bill Steiger cut the capital gains rate from 49 to 28, we had an explosion of venture capital, an explosion of entrepreneurship, and an expansion of equity financing in America. I think we can withstand a 28 percent capital gains rate because we are at the same time lowering the tax on income, salaries, wages, dividends, interest and other forms of capital.

I think it is a mistake to think of capital solely in terms of the investment tax credit. Capital also comes from people who work and who save and invest and produce. We are lowering their tax rate, and that will be good for both families and businesses.

This bill helps the working poor. The highest taxes in America today are faced by low income working men and women who want to switch from a welfare system to a job opportunity. They face a tax rate at the margin of up to 130 percent, because they can lose money after taxes by giving up welfare benefits and paying taxes on their wages in an entry-level job. We are abolishing the income tax on income equal to about 130 percent of the poverty level. That is a healthy incentive to help people, especially those with dependents, onto the bottom rung of the ladder.

People talk about the middle-income group. Most middle income working folks in America who are at the margin are in the 25 to 35 percent tax brackets. They are going to face a flat 15 under this bill.

This bill is pro-capital, in my view. It is pro-labor. It is pro-family and it is pro-working poor.

I would urge my colleagues not to vote to recommit the bill. It is seductive to suggest that we can improve it in some new conference on taxes. But

does anybody really believe that is going to happen?

Please vote against the motion to recommit, as sincere as it is, and vote for this bill. In our adult lifetime we will have taken the top rate, which was 91 percent when John F. Kennedy took office, to 70, then under President Reagan to 50, and now we are going to lower it again. Whether it is to 28 or 33 percent is arguable, but nonetheless, either 28 or 33, I would say to my friend, the gentleman from Texas, is a lot better than today's 50 percent.

People say, who is going to get the credit? Frankly, I would like to see my party and my President get the credit. The gentleman from Illinois [Mr. ROSTENKOWSKI] and the gentleman from Missouri [Mr. GEPHARDT] would like to see their party get the credit. But I will tell you who I think is going to get the credit in the final analysis: the folks who vote for it. They are the ones who are going to get the credit, because history is simply going to record those who are in favor, and those who are opposed. I frankly think there is enough credit in this for everybody.

I urge you to vote for this historic tax reform bill.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the very able gentleman from Virginia [Mr. PARRIS].

Mr. PARRIS. Madam Speaker, I rise in support of the motion to recommit and I do so for a large number of reasons. Time does not permit an exhaustive review of all of those, but let me mention just one.

Most of my constituents say, "We want a simpler system. We want to pay our proper and legitimate tax burden, but why can't we do it without spending a lot of money for accountants, lawyers, and recordkeeping"? I agree with that and I believe it can be done. But it has not been done here.

This is the conference report that we are required to vote on without amendments. It is 1,800 pages long and we have had it for 48 hours. This is the bill, 4,204 pages of the bill which we just got last week. I submit to my colleagues that there will be a need for technical corrections next year which will encompass twice as many of these pages as the measure that we are now considering to close the mistakes, the errors, and the omissions contained within this bill.

I would hope that when the time comes, and it will, that the marginal rates are raised next year and we are asked to deal with a bill twice this big, that nobody in this Chamber will have the audacity to stand up and say, "Well, we didn't really know that that mistake or that loophole or that provision was in this bill today." Very frankly, Madam Speaker, I respectfully submit there is not a person alive who knows what is in this bill and if you did you certainly on balance could not support it.

Mr. ARCHER. Madam Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Madam Speaker, I thank the gentleman for yielding me this time.

As I said before, if we have had a love affair with tax reform, there are still 50 ways to leave your lover. There are a number of flaws in this bill on which you can hang your passage to get out of it. There is still time to escape.

For instance, on income tax averaging, you can get on the bus, Gus, with your farmers and get away from this, because our hard-hit farmers who already have these hundreds of burdens to bear will have the further burden of the inability any longer to deal with their nonprofits through income tax averaging.

You can slip out the back, Jack, just on tax incentives that will be lost retroactively because of this

In my judgment, Madam Speaker, there are more than 50 ways or 50 reasons to leave this tragic love affair. If you run out of basic items, then there are 300 transition rules.

Back to give us a new plan, DAN.

Mrs. KENNELLY. Madam Speaker, I yield such time as he may consume to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Madam Speaker, I rise in support of the conference report of the Tax Reform Act of 1986 and I do so joining with colleagues from both sides of the aisle, joining with colleagues from both sides of the ideological and philosophical perspective.

Every American will have a different opinion of this, the Tax Reform Act of 1985, but most Americans have a common opinion of the current Tax Code—an opinion bordering on contempt. Everyone with whom I talk believes the other fellow is getting away without paying his fair share under the current code. It is that complaint which is most properly addressed in this conference report; for under this bill, we have a greater assurance that the other fellow being across the street or across America, earning the same or similar income, will pay the same or similar tax. That assurance alone requires a vote of affirmation on this conference report. While the reasons I am supporting this tax bill are many, and while we hear good arguments opposing enactment, I believe the reasons favoring enactment of this landmark legislation are not only better, are not only more convincing, but are overwhelming.

I would like to explain. Under this sweeping reform of our Federal tax system, we are seeing a congressional promise finally and actually realized. We are witnessing a return to fairness and equity in our Tax Code, things upon which our tax system was first based. We are seeing the enactment of legislation that is supported by the people. Because of the complexity of our Tax Code, compliance has been a major problem. Tens of billions of dollars have gone underreported and unreported because many citizens believe they are paying a disproportionate percentage of their incomes, while others find ways to shelter income and avoid taxation.

Through the elimination of many loopholes, we will see greater compliance and accordingly increased revenues.

One of the major goals of revising the Tax Code involves ensuring that fairness comes about, and this bill works to ensure fairness. We all support reducing the number of special privileges and benefits that help only that person who can afford a tax accountant to help in the preparation of his tax return. We seek legislation which helps the average taxpayer. And, that is what this bill works toward.

This bill takes 6 million lower-income people from the tax rolls to ensure that the poor in America have more income to purchase the basic necessities upon which they depend. And, that is fair.

Further, for too many years our Tax Code has been mired with provisions which have encouraged people to make decisions based not upon economic considerations but upon tax relief. For too many years, our Tax Code has confused investing for economic gain with investing for reasons of tax avoidance. This is corrected in the Tax Reform Act of 1985, and we will see investments made for the purposes of growth and expansion, not for the purposes of evading taxes.

In addition, with the inclusion of a minimum tax for corporations and individuals, we can be assured that everyone will pay something. For too long now, many have unfairly gotten off scot-free, never paying any taxes year after year. With a minimum tax, everyone will pay some tax, and this, too, ensures greater fairness.

With the reduction in the number of tax brackets, down to two in 1988, we move closer to the concept of a flat tax, which my constituents support, and which assures greater fairness in our Tax Code.

Finally, the personal deduction is increased, and is indexed to inflation, which will help many families across this country.

There will be those who oppose enactment, and there will be those who will argue that individual elements in the tax bill are unwise and ill-advised. I, however, say that the tax conference report works as a total package to improve our Tax Code and increase compliance. I believe that the tax con-

ference report works to return our system to one of equity and fairness, and it is a historic bill.

I am supporting this bill because it represents an opportunity for change, it offers us a chance to reform our incredibly unfair, complex, and confusing Tax Code and replace it with one which will better work to the benefit of our people.

It is time for tax reform. If we do not act now, we will not have the option of doing so at any time in the near future.

Mrs. KENNELLY. Madam Speaker, I yield 2 minutes to the gentlewoman from California [Mrs. BOXER].

Mrs. BOXER. I thank the gentlewoman for yielding me this time.

Madam Speaker, there are three reforms in this bill that are so important, so positive, that those should be enough for every Member in this Chamber to proudly support this bill.

No. 1, 6 million people off the tax rolls. Who are these people? People who can earn barely enough for their families, people who have been paying too much of their sweat and blood to this Government because giant corporations and superwealthy individuals have not been paying.

No. 2. What about these major corporations who have billions to buy each other, but not one dime for their fair share of taxes? Is it legal on their part? Certainly. Past Congresses have made it legal, but it is immoral and we will stop it in this bill with a tough, fair, minimum tax.

No. 3. Completed contracting. We are finally tightening this loophole which has allowed every major defense contractor in America to avoid paying taxes. They have been committing tax murder.

Now, do I like everything in this bill? Of course not. Federal employees in particular; but we must look at the whole picture and make a decision based on that.

Compare this bill to current law and it is not even close.

It is a yes vote on this tax reform bill for an historic opportunity for tax reform.

Mr. ARCHER. Madam Speaker, I yield 10 minutes to my colleague, the respected and honored member of the Ways and Means Committee, the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Madam Speaker, H.R. 3838, the bill before us, soon, inevitably, to be enacted, is a real legislative miracle. Pronounced dead on several occasions, it has risen from the grave with such vigor that it will command strong vote support in this House and in the other body. The President will sign it on arrival, or even earlier if he can intercept the messenger.

Credit for the bill should be spread widely. Many people, even those who opposed the process and may vote no on final passage did their best to make it a good bill. Surely, of all promoters, the President is the most prominent. Without his designation of his No. 1 domestic priority, and the continuing work of his Treasury Secretary, there would have been no bill.

The two chairmen, one of our Ways and Means Committee, the other of the Senate Finance Committee, carried the major legislative load. I know that the chairman of the Senate Finance Committee labored mightily and deserves high praise, but it is important to note that the House had to move a bill first. The gentleman from Illinois (Mr. ROSTENKOWSKI) perhaps did not do that job singlehandedly, but he did most of the heavy lifting.

Surely the passage of this bill will be a career achievement for him. Whether one likes this particular version of tax reform or not, the achievement of Chairman ROSTENKOWSKI is one to be admired and envied by anyone familiar with the process. The legislative miracle cannot be credited to him alone, but my personal opinion is that, of all the major congressional players, his was the most significant contributions.

In fact, henceforth, I shall refer to this bill as the Rostenkowski-Bradley bill.

Having certified H.R. 3838 as a legislative miracle, and having assigned major credit to Chairman ROSTENKOWSKI, I can now move to the serious part of this business. It is, of course, to say that, despite lofty goals and noble motivations, and dedicated people, this tax reform bill, H.R. 3838, will be harmful to our economy. Therefore, it should not be passed.

In even simpler terms, the price of tax reform is too high. The advantages in the bill carry an unacceptable price tag.

Through this whole process, it has been hard to swim upstream against tax reform. I did not like the first Don Regan proposal. I did not like Treasury II, the Jim Baker version. Nor was I attracted to the first Rostenkowski version, nor the final House bill.

The Senate bill, with its 27 percent maximum individual rate and 33 percent maximum corporate rate, was a great improvement with real promise. I hoped the conference committee could make just one more last miracle by merging a turkey, the House bill, with a prince in frog's clothing, the Senate bill, to create a tax reform bill which would provide incentive without retarding the economy. Alas, that last miracle was not to be.

What is now before us in H.R. 3838 is a near miss, but a miss nevertheless. Yes, it does lower marginal corporate and individual rates, and it does eliminate the tax liability of low-income taxpayers. It removes some preferences that were long overdue for repeal, and it stiffens the minimum tax for individuals and corporations. It will cause less tax-driven decisions, and more driven by pure economics.

H.R. 3838 IS ANTIGROWTH

Where it flunks the test is in its effect on the economy. The President heralded his tax reform by saying it would provide fairness, simplicty, and growth. Unfortunately this bill is antigrowth.

The House bill was judged by most economists to cost about 1 percent growth over the first 3 years. That means our economy would grow more slowly over the next few years under tax reform than under the present Tax Code. Economists were spread all over the map in their predictions, but the solid consensus was that the bill would retard growth and lose jobs over the short and intermediate run years—years 1 through 5. After that, beyond year 5, there might be additional growth, but, the crystal ball is murky 5 years in the future.

In rough figures, 1 percent growth loss could represent as many asa 1 million jobs not created—1 million jobs less than under existing law. For an industrialized society to willingly give up that many jobs is unwise. To give up a million jobs, or 500,000 jobs, or any jobs, is not only unwise, it is also suicidal. Remember, too, that a disproportionate share of these lost jobs are the manufacturing jobs for which many Members of this body have regularly and loudly declared a special affection.

The Senate bill, primarily because it lowered marginal rates more, and transfered less individual tax liability to corporations, was judged to have only a little more than half the antigrowth effect of the House. In rough terms, it would only cost a half million jobs over the first couple of years.

The conference bill lies somewhere in between. Its antigrowth cost will perhaps be measured in only hundreds of thousands of jobs not created. That's better than the House bill, but still unacceptable industrial policy for the United States.

Yes, some economists are predicting added growth from the conference bill. Beryl Sprinkel, Chairman of the CEA is one of these rather lonely voices. Yes, most economists predict better things after 5 years. But 5 years is a long time for our people to wait for a maybe. And in 5 years, the tax reform bill will certainly have been substantially altered, perhaps by general tax increases as suggested by the chairman of the Ways and Means Committee.

If we have to wait 5 years for the comsumption stimulus of the personal tax cuts and the lowered marginal rate stimulus to deliver economic growth, we will probably have waited too long. Chairman ROSTENKOWSKI has publicly, and more than once, told us we

have to raise taxes next year. He may not achieve that undesirable goal next year, but it will probably become law before the 5-year antigrowth period is over. Clearly, that will kill any long-term potential growth in this bill.

If we raise taxes in the next few years, it will mean we have endured the slowed growth over the short run only to give away the promise—it is only a promise, not a certainty—of some extra growth for the long run.

Given the Congress' record of terminal cowardice in spending reductions, phase 2 of the Rostenkowski two-step, the tax increase, becomes less of a possibility and more of a probability. It is becoming more and more of a question of when, not if.

For the consideration of this bill, we must consider the realities, the probabilities and the possibilities. The reality is antigrowth for the first few years. The probability is raised taxes in the next few years. The possibility is increased growth 5 years in the future, but only if taxes are not raised.

Some Members may be able to look at the lineup and still vote for this bill on faith, or hope. I cannot. The persuasive, compelling fact is that our economy and our people will be burdened with an unacceptable cost to pay for the dream of tax reform.

H.R. 3838 IS ONLY MARGINALLY MORE FAIR

Another descriptive lable that hung on this bill is that of fairness. Proponents insist it is so wonderful that it will restore the confidence of the people in our Federal income tax system. Since the first tax was collected, I doubt there has been any system which has enjoyed the widespread confidence of the people.

All of us will applaud the reduction of preferences, and the elimination of tax liability for 6 million low-income taxpayers who never should have been in the system in the first place. Most of us believe the strenghtening of minimum taxes is an item of improved fairness. There is no doubt that the bill makes some fairness improvements.

But, again, there is a cost for these improvements. One of the worst costs is that of retroactivity. Usually, and every time in my memory, when we restructure the Tax Code, we allow contracts and arrangements in being to be taxed under the law in force when the arrangement was made. On matters relating to retirement we normally allow those close to retirement to proceed under the old law. Where there have been close calls we have tried to err on the side of leniency, so that the question of retroactivity might not even arise.

However, all of us have heard plenty from Federal retirees who are seeing a lifetime of financial planning disrupted by the bill. The feature is not illegal. It is merely heartless and mean-spirited.

We have also heard of the retroactivity of the repeal of ITC. Everybody knew the ITC was doomed, but many people believed our speeches about matching the effective dates of tax cuts to the dates on which preferences are reduced or repealed.

The big companies knew what was coming and had the resources to react. The smaller ones, and many small companies in my district have complained about this already, will not be so lucky. They can't adjust their prices retroactively, but they are having their taxes raised retroactively.

There is also a retroactivity problem on restrictions of ITC carryovers. It's a little more complicated, but just as dangerous.

Another example of retroactive unfairness is capital gains. My constituents who have sold all their farms, homes, or businesses under contracts originating this year, or last year, or several years ago, will see their capital gains taxes raised 40 percent from a maximum of 20 percent to a maximum of 28 percent, on all installments after January 1, 1987. That's a modest increase perhaps, unless it is a family's life savings. And the tax in the first place is to be assessed largely because of inflation.

The last retroactivity fairness citation is that of elimination and reduction of preferences regarding passive income. Those taxpayers, who invested in shelter programs in good faith in previous years, will have their tax benefits reduced notwithstanding the fact that their investments were made before this bill was even considered.

Moving on from retroactivity, I would respectfully suggest that people who believe that fairness is an important characteristic of this bill should talk to elderly, blind itemizers who lose their three deductions and, because they don't use the standard deduction, get no compensating advantage. Take a look, too, at two-earner families on whom the full marriage tax has been reimposed.

And how about States which are dependent on sales taxes? State and local income taxes, and homeowners' property taxes are still deductible. People in certain States who pay high sales tax used for the same good public purposes that income taxes are used in my State will find that my State income tax is deductible and their State sales tax is not. I doubt they will have a lot of confidence in the system.

These have been interesting examples, but I want to question the basic fairness of the new table. The drafters went to great lengths to make tax cuts relatively equal in percentages throughout the income ranges. They did the best they could, but because of the limitations of the 2-percent rate schedule, they could not make significant reductions in ranges between $50,000 and $100,000.

The percentage increases in the very high income ranges could only be partially restrained by gimmicks. One was the repeal of the capital gains tax. Others were the phasing out of the 15-percent rate and the personal exemption.

The final result is unacceptable because gimmicks don't make responsible tax law. Tax reductions in very highest income brackets are huge. A 10-percent cut for a low earner may be $10 a month. For a high wage earner the same cut may be $2,000 per month.

A worse problem is that much of the anticipated increased tax revenue from high income taxpayers will not materialize. Already income partnerships are being widely distributed so sheltered taxpayers can offset passive income losses. These taxpayers have some flexibility and will modify their affairs so that percentage tax cuts in the 6-percent figure income ranges will no doubt be much more than expected.

It is also true that the largest class of wealthy Americans who do not now pay taxes, will not pay any under tax reform. They buy tax-exempt bonds, and I expect them to keep on doing so. I also expect their affluent friends will join them in buying these bonds.

Because the bill contemplates that passive income recipients won't change their ways, I believe that after 2 or 3 years, Americans, including the sponsors of the bill, are going to be embarrassed by how well the people who make over $100,000 do compared to those who earn $25,000 to $100,000.

As a result of the phasing out of the 15-percent rate and the personal exemption, the drafters of tax reform have put $100,000 earners into higher marginal rates than million dollar earners.

As a matter of fact, the $38,000 single filer will pay at the same marginal rate as the $1 million earner.

Skipping back to the low-income taxpayer, it has been noted by Martin Feldstein, former Chairman of the CEA, that the same person who gets a $10 or $20 per month tax cut, will get a $40 per month rent increase, because of real estate incentives reduced. Because most, if not all, of the $120 billion tax burden shifted from individuals to corporations will find its way into prices for products and services, the same low-income filer may have many of his other costs increased, too.

I believe that reduced marginal rates is a great idea, and I do not insist on a steeply progressive tax table with many steps. Nevertheless I believe there will be a huge burden shift from low-income people to high-income people. That, too, will prove embarrassing in the future.

Elements of unfairness have been eliminated from the Tax Code by this reform, but they have been replaced

by new elements of unfairness. Overall, if the new code under tax reform is fairer, it is only marginally so.

H.R. 3838 IS MORE COMPLICATED

On the question of simplicity, there is less argument. The Secretary of the Treasury said when presented his bill in the summer of 1985 that it did not make corporate taxes simpler. None of the successor bills, including the version before us today, did either.

Only a few preferences, like ITC's, were eliminated. Most were reduced by modifications. Many of these changes are, as yet, imperfectly understood, particularly in areas like completed contracts and passive income whose ink is hardly dry.

And, there are new concepts, without clear definition, or like "book income," without any definition. That's the bad news. The good news is that the concept of book income expires in 3 years, and is replaced by another unexplained concept, that of an earnings and profits tax.

Tax reform hawks tell us it's wonderful to reduce from 14 brackets to 2. In the first place, taxpayers have always plucked their liability out of a table. Ho hum, they will still do that as they move from 14 to 2 brackets.

In the second place, the two brackets aren't two brackets because of two gimmicks. One is a surtax to phaseout the 15-percent rate over $71,900 of income—joint. The other is a phaseout of the personal exemption. These weird and tortured stratagems provide a bewildering variety of tax rates, the result of which is that taxpayers from $75,000 to $200,000 will pay at higher marginal rates than taxpayers who earn $1 million a year.

In the third place, there is a transition year in 1987 with five brackets. It was occasioned by the need to make the bill nearly revenue neutral in 1987.

It is often said that the bill will create more short form filers. It may. But about two-thirds of all filers use the short form now. They currently enjoy simplicity. Taxes are only complicated now for those who can afford to hire competent advisors.

No-return filing by the early 1990's was a dream of the Treasury. It will work for nonitemizers only, all short form credits are repealed. The child care credit was not repealed. Unless parents quit working, return-free filing won't do anything for them.

Meanwhile, for simplicity's sake, H.R. 3838 kills charitable deductions for itemizers and repeals the political tax credit.

Simplicity is probably not a Tax Code virtue anyway. In a complex economy, simplicity is often the enemy of fairness and the enemy of equity. As long as there is a short form for nonitemizers, there is enough simplicity.

But, insofar as simplicity was a goal of tax reform, it is a missed goal. Instead of hitting the target, the tax bill hit itself in the foot.

H.R. 3838 IS ANTISAVINGS AND ANTICAPITAL FORMATION

The United States has the lowest savings rate in the industrialized world. We have always been conspicuous consumers and poor savers. H.R. 3838 went right after the low savings rate problem by lowering or repealing all the important savings incentives in the current Tax Code. For me, the biggest mistake of all was killing the capital gains tax rate. For the most capitalistic country in the world, the one which relies most on entrepreneurial dynamism, to give up a differential capital gains rate is a kind of heresy that surpasses all understanding.

We raised the capital gains rate in 1969, recognized the folly in 1978, restored a differential, and increased the differential in 1981. In 1969 the increased rate brought in—you guessed it—less revenue. In 1978 and 1981, the lower rate—you guessed it again—brought in more revenue.

Despite this clear record, the conference committee has given us a bill which guarantees sharply reduced incentives for capital formation. The death blow to one of the most important features in the current Tax Code was administered for two reasons: First, money grubbing, the "we need the revenue" syndrome; and second, the fact that its blessings fall more heavily on higher income folks so it became a tool to reduce the inherent regressivity of the two-bracket system.

Two business incentives, the investment tax credit and depreciation will make a massive shortrun negative change in corporate capital accumulation. Everybody knew that the ITC was doomed, but it could have been phased out more gracefully.

The second worst savings feature in H.R. 3838 is the carnage wrought in the retirement savings area. In the standard section 415 pensions, the maximum deductible amount for guaranteed benefit plans is already inadequate to provide benefits for more than half of the covered employers in some plans.

The most negative impact, however, lies in the unnecessary rules changes which will cause many small company plans to be abandoned. We have had major changes in 4 out of the last 5 years. Employers are increasingly finding that legal and actuarial costs to rewrite plans have made pension overhead costs prohibitive. The plans will terminate, and pressures will increase on the Social Security System.

The story on IRA's, 401(k) and 403(b) plans is well known. They are not killed, merely reduced. That can only mean less savings for retirement, and even more pressure on Social Security.

H.R. 3838 IS ANTIMANUFACTURING AND ANTIEXPORT

The loss of ITC's and the stretching of depreciation schedules means that America's basic manufacturing industries will pay more taxes. Some of them, of course, pay no taxes, or even have been collecting refunds. That's not surprising for industries which have been losing money.

The new tax money they must pay will either cost them market share or will be added to their customers' cost. For those selling abroad, their goods will carry price increases in markets where they are barely competitive now. In our domestic market, foreign goods will be relatively cheaper. In both cases, America will be abruptly and disruptively disadvantaged.

For those companies selling their wares abroad, the current Tax Code offers four major incentives, the foreign tax credit, tax deferral, the FSC [foreign sales corporation], and the section 911 exclusion of income earned abroad by Americans. None of these is repealed but all are modified. Worse, the credit is modified in a way which practitioners do not understand.

At a time when U.S. companies are having competitiveness problems, and when our trade deficit is expected to exceed $170 billion this year, one would hardly expect the Congress would reduce every export incentive on the books.

For manufacturers, who also lose ITC, depreciation benefits, the burden in H.R. 3838 is a double one. Their goods will be more expensive and their incentives to sell them abroad will be reduced.

H.R. 3838 IS ANTIEDUCATION

The head of the Council on Education has said that this tax reform bill is the greatest catastrophe to higher education in 25 years. I can't argue with that comment because the bill is obviously catastrophic.

Public and private colleges and universities occasionally are the beneficiaries of gifts of appreciated property. Donors under the current law may deduct the appreciated value of the property. This bill makes the appreciated portion of the property taxable under the minimum tax provision.

Associations of higher education estimate that this single provision could cost them about $600 million over the next 5 years; $600 million taken out of higher education is a good deal more than it has to spare. I believe that it is absolutely absurd to inflict this kind of abuse on what should be the highest, most noble, function of our economy.

But that's not all. The bill subjects State-issued student loan bonds to limitations. That means, in my State, and maybe yours, that less money will be available for students who are willing to pay for educational privileges, but

may not be able to borrow on their own.

Another bad feature for colleges is the taxing of scholarship stipends which formerly were untaxed. That is a small change but one which will discourage more than a few potential instructors of the future.

The last body blow to higher education that I wish to discuss is the strict limit to tax-exempt building bonds issued by private institutions. Dormitory bonds are going to be in scarce supply at the same time as we are denying colleges gifts of appreciated property.

The total package spells deep trouble to public and private higher education. The damage contributes very little in revenue, and is, in my judgment, not essential to support low marginal tax rates. In other words, there was no good reason to beggar our colleges.

H.R. 3838 IS ANTIHOUSING

Housing is another problem area. The passive loss section, the ITC repeal, the stretchout of depreciation, all will combine to raise the cost of housing and lower the supply. I personally agree that all these features needed revision, but disagree strongly with the disruptive, dislocating way in which the changes were made. Two of them are retroactive, all of them are abrupt. They surely could have been phased in more gracefully.

What will happen is that investors will have to raise rents abruptly. Many renters especially low-income renters, won't be able to pay. That means pain and suffering for renters, or empty apartments, or both.

The example cited by former CEA Chairman Martin Feldstein is of the $25,000-earning family whose taxes are cut $20 per month while the rent goes up $40 per month.

Next, let's consider banking. That industry could afford the loss of the interest deduction for purchase of tax-exempt bonds. It should not have to give up the sizable portion of the foreign tax credit. Here is another instance of policy conflict. In trade negotiations we want to expand services abroad. In tax legislation, we tell our banks to stay home.

But the worst harm to banking comes in the repeal of the bad-debt-reserve deduction. This change will take $10 billion out of bank capital at the time when the Chairman of the Federal Reserve System, the Controller of Currency, and the FDIC all say the system needs more capital not less.

Ironically, the bad debt repeal also hurts agriculture. Banks, not able to set up sufficient reserves, will be forced to foreclose sooner. At this time the prime candidates for foreclosure are agricultural loans.

H.R. 3838 IS TAX REFORM, BUT THE PRICE IS TOO HIGH

Unfortunately this is not just a tax bill. It's a housing bill; it's an education bill; it's a farm bill; it's an industrial policy bill; it's a public charities bill. It touches nearly every activity in our society. I have talked here about housing and education, but the same comments apply to other functions as well.

So here's what my investigations of the bill before us have revealed to me. The bill is antigrowth, antisavings, anticapital accumulation, antimanufacturing, antiexport, anticompetitiveness, antieducation, antihousing, anticharity, and lots more.

It fails the fairness test. It is more complicated than the present law, and will cause negative growth compared with current law.

If the bill is that bad, one wonders why it is so highly praised. I suppose the answer includes the tremendous personal popularity of the President, the attractiveness of the buzzwords "tax reform," and the short-term outlook of the Congress. My suspicion, and it is a suspicion only, is that most of the praisers have not read a line of the bill.

For those who have reviewed the bill, problems, pitfalls, and dislocations jump out of the pages. Reading soon makes it obvious that the goals of fairness, simplicity and growth have not been achieved. In fact the bill falls short of current law in these respects. The problem is, as I see it, that the committees worked backward. Instead of weeding out preferences, and then applying the proceeds to marginal rates and low-income taxpayers, the committees went the other way. They picked rates they liked, and then skipped through the Tax Code nicking every preference, the good and the bad, until those rates were achieved.

That's not my kind of tax reform. My kind of tax reform evaluates preferences first. Then it tries to make graceful modifications, with no retroactivity. I believe the President's criteria could easily be met in this way.

For all these reasons, I am obliged to vote against H.R. 3838. I hope my colleagues will look at this bill carefully. If they do, I suspect they will come to a similar conclusion.

□ 1420

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from South Carolina [Mr. CAMPBELL], one of the more able Members of Congress, and also a member of the Committee on Ways and Means.

Mr. CAMPBELL. Madam Speaker, the gentleman from Arkansas [Mr. ANTHONY] and I are concerned about a technical drafting error that pertains to the 14-day rule and interest deductions for certain homes. I understand that steps are being taken to correct this error, and I just want to be sure about that.

Mr. ROSTENKOWSKI. Madam Speaker, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. The gentleman is correct.

Mr. CAMPBELL. I thank the gentleman.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Madam Speaker, I rise in strong support of the conference report.

Madam Speaker, today we consider a historic tax bill. But it is not historic for the same reasons that the budget reconciliation and the continuing resolution are historic. Reconciliation and the continuing resolution are Congress at its historic worst and most hypocritical. This measure, with some obvious exceptions, perhaps represents us at our best. The courage, particularly in evidence in the other body, gives us all a sense that perhaps we can end "business as usual" in Washington and move some mountains.

No longer will some corporations with large earnings escape paying taxes. No longer will the poorest of our citizens pay taxes on the money they rely on for subsistence. And no longer will our cities be clogged with empty office buildings built for tax avoidance rather than sound economic reasons.

The measure before us broadens our tax base and dramatically lowers statutory individual and corporate rates. It pays for these lower rates by eliminating the many deductions, credits, and exclusions, that have allowed many among us to avoid their fair share of tax liability.

Most importantly, Madam Speaker, this bill takes the tax system out of the market. The primary purpose of taxes is to raise revenues. It is not to grant incentives to specific types of investments and industries. These decisions should be based on supply and demand, not on a 1040 or 1120 tax form. This bill allows the market, not the tax system, to once again lead our economy.

Some say that this bill is meaningless because a tax increase in 1987 is inevitable. I do not believe Congress will vote one, and I'm certain President Reagan would veto it if we did. But if such an increase is forthcoming, better it be added to these new lower rates than onto our currently higher ones.

Finally, we must not forget that the greatest threat to our economy is the deficit. This bill claims to be revenue neutral. I hope it is. But if it proves otherwise, we should not go back to our Tax Code to find solutions to our own addiction to excessive spending. Next year's temporary revenue surplus in this legislation must not be used to address what is a structural deficit. Doing that would be as dishonest as the reconciliation bill we passed yesterday.

If I had separate votes on the various provisions, I would vote against raising the capital gains tax, tightening depreciation schedules, applying some provisions retroactively, and re-

stricting pension and retirement plans, including, especially, IRA's.

No, Madam Speaker, this bill is not perfect. There are those that argue that we should not pass it for that reason. Certainly, there are those who will pay more that deserve to pay less, and those that will pay less who deserve to pay more. But for once, let us look past the November elections and the short-term effects. This bill, in the long run, is more fair, and more encouraging of sound economic decisions than what we have now, and, Madam Speaker, that's progress.

Mr. DUNCAN. Madam Speaker, I yield 1 minute to the gentleman from Connecticut [Mr. ROWLAND].

Mr. ROWLAND of Connecticut. Madam Speaker, I thank the gentleman for yielding time to me.

Madam Speaker, I rise in support of tax reform, and I would like to bring to the attention of my colleagues my position on the tax reform legislation before us today. My personal preference for real tax reform, real tax simplification is a 10-percent flat tax across the board. Under that system, it would be guaranteed that everyone would pay their fair share of taxes.

Since receiving the final draft of the bill this past weekend, I have spent considerable time evaluating its effect on my constituents in the fifth district of Connecticut.

The only way to make a judicious decision on this matter is to compare the bottom line under current law with the bottom line under the tax reform bill. Therefore, I commissioned my own analysis of the legislation's impact on 15 real-life constituents, a cross section of working men and women.

Out of the 15 taxpayers, 9 pay lower taxes under the new tax bill and 6 pay more taxes. The major reason some pay more is the loss of various tax shelters.

Also, the Governor of Connecticut compiled a similar study. He found that only 5 taxpayers pay more under the new bill versus 24 taxpayers paying less.

Overall, most taxpayers will receive at least a small tax reduction and some will receive a substantial reduction. The significantly lower tax rates—15 and 28 percent—serve to lower the tax liabilities of 80 percent of American taxpayers despite the loss of a variety of deductions.

There are several other major, positive aspects of the tax bill.

First, it would at long last impose a minimum tax on corporations and wealthy individuals to ensure that all will pay their fair share of taxes. No longer would we read about 40 corporations with combined profits of $100 billion or wealthy individuals paying no taxes.

Second, it will take 6 million working poor off of the tax rolls altogether.

Third, the measure eliminates many shelters, which means that financial decisions will hinge on the economic environment, not on tax consequences.

Finally, the increased personal exemption is a victory for the family and represents about an extra $1,000 per child.

Despite these positive points, I would be remiss not to discuss my reservations about the bill, as follows:

I am opposed to a variety of retroactive provisions because they change the rules of the game midstream.

I am disturbed, in particular, by the loss of the State sales tax deduction and the loss of the IRA for certain taxpayers.

As one of four States with a sales tax, but no income tax, Connecticut has been singled out by the loss of this deduction. Despite the efforts of myself and other Congressmen to restore this item, the conference committee failed to recognize the equality of sales tax with other forms of State and local taxes.

Since the start of my term, I have been working to expand full IRA treatment to nonworking spouses and to increase the contribution level from $2,000 to $2,500. At a time when saving for the future should be greatly encouraged, I am very unhappy with the phasing out of IRA eligibility at certain income levels.

I am concerned about the effect on elderly citizens of the increased threshold necessary to qualify for the medical expenses deduction. The bill requires medical expenses to exceed 7.5 percent of a taxpayer's adjusted gross income, instead of 5 percent as at present, before such expenses may be deducted.

The loss of both the two-earner deduction and the student loan interest deduction gives me pause for concern because of their impact on the younger generation.

Finally, I support a lower capital gains tax rate than the 28-percent top rate in the bill. A taxpayer who exposes himself to the risks of investment, has his eventual income eroded by inflation, and provides the startup capital so essential to a vibrant economy deserves some consideration above and beyond what is given to investors making safer investments.

Despite these very real concerns, I believe that the bill is more fair to American taxpayers than current law. Given this overall improvement and the political reality that such a reform opportunity may not come up for many, many years, I feel that we cannot let this chance slip away. Therefore, I favor the bill's passage and a cleaning up of the weak points later.

Thank you, Madam Speaker, for this opportunity to make my views known to my colleagues in the House.

□ 1430

Mrs. KENNELLY. Madam Speaker, I yield 1 minute to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Madam Speaker, I would say to my colleagues, this bill is an all-encompassing bill. Because it is so broad, no one is going to like all of it or dislike all of it. There are going to be parts of the bill that some of us like and parts of the bill that those same people dislike.

The issue is what are the most important parts of the bill, and to me there is one. For years the American people have been crying for equity. They want to make sure that if the guy making $30,000 a year is paying $6,000, $7,000, or $9,000 in taxes that the person making $1 million a year, or the corporation making $1 billion a year pays some tax. This bill does that better than any other bill I have seen. It has one of the toughest, leanest, and smartest minimum taxes that has yet been devised.

If this bill becomes law, the No. 1 issue on taxes that is vexing the American people: Why should I pay my share when the wealthy individual or wealthy corporation is not paying his share, will be gone.

Ladies and gentlemen, we have a historic opportunity here. We have an opportunity to bring much more equity to the system, to knock out those who have paid no taxes simply because they are richer and can hire fancy accountants and fancy lawyers.

We ought to take this opportunity and vote yes on the bill.

Mr. DUNCAN. Madam Speaker, may I ask how much time remains?

The SPEAKER pro tempore (Mrs. LONG). The gentleman from Illinois [Mr. ROSTENKOWSKI] has 17 minutes remaining, the gentleman from Tennessee [Mr. DUNCAN] has 11 minutes remaining, and the gentleman from Texas [Mr. ARCHER] has 7 minutes remaining.

Mr. DUNCAN. Madam Speaker, I reserve the balance of my time.

Mr. ARCHER. Madam Speaker, I reserve the balance of my time.

Mrs. KENNELLY. Madam Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. RUSSO].

Mr. RUSSO. Madam Speaker, it has been a long 2 years. It has been a tough 2 years. The House and the Senate have struggled hard and long to try to bring this Congress a fair and equitable bill.

I referred to this measure in a previous debate as the bill that would not die. It has survived many attempts to kill it by special interests all across this country, and the American people won. The bill would not die and it would not die because the American people want fairness and equity in their Tax Code.

This bill takes 6½ million working poor people off the tax rolls. That is fair. That is equitable.

We give the bulk of the benefits to people who earn between $20,000 and $50,000. That is fair; that is equitable. They have been shouldering the burden of supporting this Tax Code for years. Now we take some of the burden off their shoulders, and we shift it to those individuals, and those wealthy and profitable corporations that pay no taxes in this country, and in fact, received rebates from the Federal Government in spite of their enormous profits.

That is what this bill does. I take particular pride when I hear my colleagues come to the well and say that this bill has the toughest minimum they have ever seen. It makes sure everybody pays a fair share.

My colleague, CHUCK SCHUMER and I introduced the toughest minimum that this Congress has ever seen and it was incorporated in the House version, and then by the other body, and now in the conference report, and now we are going to make sure that the American people get a fair Tax Code, that they will not try to avoid anymore.

We have closed loopholes and gone after abusive tax shelters. We made sure that on balance everybody pays their fair share, and that is what the American people want.

Are there some problems with this bill? Do I have some concerns? Sure I do.

Is this a compromise? Sure it is.

There are problems. The retroactivity in this bill is not fair, and it was not in the House version. We fought hard in the conference to take it out and we were not successful. That is not fair. And the retroactive repeal of the 3-year recovery basis for Federal employees and public employees, that is not fair either.

But on balance, when you look at the total impact that this bill has on American society, is it better than current law? The answer is yes. That is why the American people want us to pass this.

This is historic. We ought to pass this bill and make sure we defeat the motion to recommit.

I urge my colleagues to support this bill.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 2 minutes to the gentlewoman from Connecticut [Mrs. KENNELLY].

Mrs. KENNELLY. Madam Speaker, I rise in support of H.R. 3838 and in support of tax reform. There are many reasons to be for this bill, but here's one of the best: It goes a long way toward addressing the legitimate economic concerns of women.

One of my goals has been to ensure that the new Tax Code treats more people more fairly. Equity for women, who are more than half our population, is crucial to this kind of fairness. This tax bill is good news for women.

First, the bill is good news for working women, 90 percent of whom earn $25,000 a year or less. They will pay fewer taxes in a fairer way.

It's good news for poor working women who were the forgotten Americans in the 1981 tax bill. About three-fourths of those living in poverty in America are women and their children. Changes in the personal exemption, standard deduction, and earned income tax credit that will remove 6 million working poor people from the tax rolls will get these women the tax relief they so badly need.

The tax reform bill is good news for the growing number of women who are single heads of households. Whether divorced, widowed, or just trying to support their families on their own, these women, under current law, have the same standard deduction as single taxpayers, despite their greater family responsibilities. This bill increases the difference in the standard deduction for single heads of households by about half beginning in 1988, eliminating a major inequity.

The bill will be good news when today's working women retire. It make major reforms in the pension system: Guaranteeing 5-year vesting, a major benefit in today's mobile work force, and improving integration and coverage requirements, to ensure that those who vest in pension plans receive at least a minimum benefit.

And finally, the bill is good news to older women, who now comprise 71 percent of the Nation's elderly poor and whose poverty rate is over twice that of older men. They will benefit from the increased standard deduction with an additional allocation for elderly nonitemizers.

The Washington Post this week called this bill the greatest antipoverty legislation of the last 6 years. I agree. Those of us who purport to care about these individuals know that, in the face of deficit restraints, this bill is our only vehicle to help low income Americans, many of whom are women.

I urge my colleagues to vote for this conference report. We have a unique opportunity, and we should seize it.

Madam Speaker, I also want to recognize the efforts of the conferees to develop a targeted tax incentive to assure the continued development of low income rental housing for those most in need. Within the targeted group of low income individuals are persons with disabilities who have historically faced the fewest options in terms of adequate and accessible community-based housing.

In recent years, tax incentives have helped prompt the private development of specialized housing to meet the needs of disabled individuals. I understand this bill continues to encourage this development through the low-income housing tax credit and I am most pleased with this outcome.

Again, Madam Speaker, I support tax reform and believe it should be enacted.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 2 minutes to the gentleman from California [Mr. MATSUI].

Mr. MATSUI. Madam Speaker, we have come a long way. It has been 24 months since we have worked upon this tax reform legislation, and in about an hour we are going to find out whether the Democratic Party is going to be the party of special interests or the Republican Party the party of big business. Frankly, I think that the American people will be watching this vote very carefully, not just in the November election, but for years to come.

Let me just address a couple of issues. We have talked about the low-income people. It will take 6 million of the working poor off the rolls.

We are going to increase the earned income credit and the standard deduction. This is something we should have done in 1981, but we are going to do it now in this legislation.

Some have been concerned about this being an antigrowth piece of legislation. Let me tell my colleagues something. If a business person or an entrepreneur cannot make it without the investment tax credit or some of this preferences that have been put in the code over the years, if they cannot make it on the basis of the marketplace, they should not be making that investment in the first place.

□ 1440

What this code will do is it will bring fairness to the system, and people will be making decisions based upon sound economic policies rather than what kind of tax savings they can make from the Tax Code.

Last, I have heard a lot of people say, "Well, you've got $120 billion you are going to put on business over a 6-year period." In 1981, business paid 13.8 percent of all revenues into the Federal Treasury. After the 1981 bill was passed, business ended up paying 8 percent. This bill merely brings back equity.

Now business will pay 12.6 percent, not even what they paid prior to the 1981 bill. Let me just conclude by making one further observation: I know there has not been a lot of support in the grassroots in your home districts for tax reform; but you know we have always been accused in Congress of being a body that is a reactive body. We hear somebody talk about trade in our districts; we come back and we pass a trade bill. We hear someone talk about drugs; we come back and pass a drug bill.

This will be one opportunity that we can be a creative body, and really respond to the American public. I know

the American public is out there watching us, and they are looking to see whether or not we in fact are a credible institution in the 1980's.

I urge your support for this legislation.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from North Carolina [Mr. VALENTINE].

Mr. VALENTINE. Madam Speaker, I rise to express my support of the conference report.

Madam Speaker, the House of Representatives has reached a critical juncture in a historic process that started more than a year ago. Our vote on the conference report on H.R. 3838 will have a profound effect on the lives of virtually all Americans.

This is a long, complex, and highly technical bill, and there is certainly much room for disagreement on the relative merits of its thousands of provisions. But I hope we can all agree that Chairman DAN ROSTENKOWSKI of the Ways and Means Committee and the other committee members, particularly those who served on the conference committee, performed a remarkable feat in producing the legislation that we are considering today.

No other legislation, to my knowledge, has been written under the intense glare of public scrutiny that illuminated the tax revision process from start to finish. Every significant provision of this bill was weighed, analyzed, evaluated, and criticized, not only in the hearing rooms but on editorial pages, in news stories, in radio and television commentaries, and in innumerable position papers issued by interest groups.

Under those conditions, with the attendant pressures that they produced, it was no small accomplishment to write the most far-reaching tax revision in our history. Our colleagues on the Ways and Means Committee deserve our commendation for their persistence in working toward this legislation in a generally bipartisan, constructive manner.

Madam Speaker, this is by no means a perfect bill. Like other Members, I wish that certain provisions had not been included.

For example, it repeals or severely curtails certain tax deductions that are widely used by middle-income individuals and families. These include the deductions for individual retirement accounts, consumer interest, and the so-called marriage penalty deduction. I am also concerned about the retroactivity of certain provisions, the elimination of income averaging, changes that affect specific industries, and restrictions on tax-exempt bonds issued by State and local governments.

Madam Speaker, I am also concerned about the effects of this bill on higher education, particularly private colleges and universities. Application of the new alternative minimum tax to gifts of appreciated property, the treatment of tax-deferred annuity pension plans, restrictions on the use of tax-exempt bonds by colleges and universities, and increased taxation of scholarships, fellowships, and academic awards and prizes, all taken together, could have a devastating impact on some institutions.

During the conference deliberations on this legislation there was much talk about winners and losers in the final version of the bill. In my opinion, if private higher education is to be a loser in tax reform, then the entire Nation will be the biggest loser.

Madam Speaker, these problems are serious. But let us recognize realistically that this bill cannot represent the final act of the tax revision process. Instead, let us consider it a major step toward a fairer Tax Code that better meets the needs of Americans. The ink was not even dry on the conference report when the need for another tax bill next year began to be mentioned. If there is to be additional legislation, I hope we will use the opportunity to correct the imperfections in H.R. 3838 that I have cited. In that way, we can continue to work toward fulfilling the ultimate promise of tax reform.

Despite my reservations about certain parts of H.R. 3838, I believe it is imperative that we look closely at the major improvements it does include.

By closing gaping loopholes, eliminating certain nonproductive tax shelters, and imposing a new minimum tax, this bill makes the Tax Code fairer.

By reducing tax rates and increasing the personal exemption and standard deduction, it produces a smaller overall tax burden for most middle-income Americans.

By removing approximately 6 million of the working poor from the tax rolls, it provides needed relief for those who can least afford to lose a portion of their income to taxes yet who have faced a rapidly rising tax burden in recent years.

By reducing the opportunities for tax avoidance, curtailing incentives for certain essentially nonproductive investments, and imposing greater uniformity on the taxation of different industries, it helps to ensure that future investment decisions will be reached on the basis of economic rather than tax considerations.

Madam Speaker, these are significant improvements. The cumulative effect of lower rates, a decreased tax burden for the majority of Americans, a fairer Tax Code with fewer opportunities to avoid paying taxes, and an increased role for free market forces rather than tax gains in business investment decisions must be positive.

Moreover, we must consider the monumental importance of this bill in the long-range, continuing process of tax revision. If this bill fails, the process will be dealt a potentially fatal blow. On the other hand, making further adjustments and improvements in future years will be easier if we start from the new baseline established in H.R. 3838 than if we start all over again from the present Tax Code.

For those reasons, I intend to vote for this bill. This is not an easy vote. I am conscious of the shortcomings of H.R. 3838 for some of my constituents. I hope that those shortcomings can be addressed in subsequent legislation and pledge to work with other Members to effect additional changes.

Let us be frank. In many ways, this bill is a gamble. No one—not the House, not the Senate, not the administration, and not the interest groups whose experts have analyzed it—can predict all its consequences with great certainty. It will surely have unanticipated results for some individuals, for some industries, and perhaps for the entire economy. But all uncertainty cannot be avoided in a comprehensive revision of a Tax Code as complex as ours.

Will Rogers once said that:

> People want just taxes more than they want lower taxes. They want to know that every man is paying his proportionate share according to his wealth.

That statement may be less witty than most of Rogers' pronouncements, but it is no less true than his other observations of American society.

Rogers, of course, knew nothing of this particular bill, but he put his finger on the ultimate test of H.R. 3838 or any tax reform legislation. This law will be successful only if the American people perceive it as just. And they will perceive it as just only if we in the Congress fulfill our obligation to study the effects of this bill carefully over the long term and make additional changes where needed.

We have come a long way since the Ways and Means Committee began hearings on H.R. 3838. And we have a long way yet to go. This bill is certainly imperfect, but it is a necessary step toward our goal of a Tax Code that will meet our national needs in the 1990's and beyond.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. ROWLAND].

Mr. ROWLAND of Georgia. Madam Speaker, I rise in opposition to the measure.

Madam Speaker, the tax reform bill before us today is the product of a long and arduous process and I commend my colleagues who have worked so diligently on this legislation. However, I cannot support the Tax Reform Act of 1986 in the form in which it is being presented to us today.

I strongly support efforts to make the Tax Code less complicated and more equitable. This bill, unfortunately, does not meet these goals.

Today, the phrase "tax reform" is being held before us as if the words alone justify a positive vote. When you look more deeply into this legislation, however, its many flaws become apparent.

Most people recognize that this bill is flawed, and they are very concerned about its impact on them personally and their communities. This has become clear to me in the contacts I have had with people in Georgia's Eighth Congressional District in the past few weeks and I would be surprised if your contacts with your own constituents have been much different.

Farmers are rightfully very concerned, for instance. The bill contains some provisions which will be helpful to agriculture. However, this does not excuse the fact that the repeal of income-averaging is fundamentally unfair for groups like farmers which tend to have wildly fluctuating incomes. A farm family earning no income 1 year and $60,000 the next may pay twice the tax as a similar family earning $30,000 a year for 2 years, even though their income is the same over the 2-year period.

Federal employees will be aversely affected by a provision within the bill which will retroactively repeal the practice of receiving their own contributions to their retirement system during their early years of retirement, which relieves them of having to pay additional taxes while they are getting settled in their new lives. For many of civil service employees this will be a severe blow to their retirement plans.

It threatens to increase both the budget and trade deficits, and that will hurt everyone. These are just a few of the many questionable aspects of this bill.

Madam Speaker, some people have said that the bill should be passed now and fine-tuned later. In my view it would be much better to put this bill aside and use the base of knowledge which Congress has gained in grappling with tax reform over the past 2 years, and to come up with a less flawed proposal to offer to the American people.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from Georgia [Mr. JENKINS].

Mr. JENKINS. Madam Speaker, I rise in support of the conference report on H.R. 3838. I do so, however, with great reluctance. In fact, this is one of the most difficult votes I have had to make during my 10 years in the Congress.

Tax reform looked very promising when the House passed its version of H.R. 3838 late last year. Tax rates were substantially reduced, the personal exemption was increased, and millions of taxpayers at or near the poverty level were removed from the tax rolls.

While the House-passed bill reformed many significant abuses in the current Tax Code and provided for a tough minimum tax for individuals and corporations, it still maintained many features of the current Internal Revenue Code worth keeping. Under the House bill, individual retirement accounts [IRA's] were preserved for all taxpayers. The capital gains exclusion, perhaps the most important investment incentive, was kept in the law. All State and local taxes remained deductible as they should be, including sales taxes. There were very few retroactive provisions, and the House bill was basically fair in its redistribution of the tax burden. There were indeed problems with the House bill, but they were problems that we all hoped would be corrected in the Senate.

But something happened when the bill was considered by the Senate. Fairness and simplicity went out the window. The Senate became obsessed with one goal: lowering rates as much as possible no matter what the cost in terms of fairness or good tax policy.

Unfortunately, the House and Senate conference committee did not correct the many shortcomings of the Senate version of the tax reform bill to the extent that it should have. Under the conference report we are voting on today, sales taxes imposed by State and local governments will not be deductible. The deduction for IRA's will become a thing of the past for millions of hard-working Americans. Capital gain treatment will be eliminated, with the ironic result of increasing this tax the greatest on middle-income taxpayers. Perhaps worst of all, the Senate bill provided for $35 billion of retroactive tax increases on investments made by millions of taxpayers.

All of these Senate provisions and many others were included in the conference agreement we are voting on today. It is indeed disappointing to see the agreement before us as the only option we have for tax reform this year.

This conference report does have good features. Over 6 million taxpayers at or near the poverty level will be removed from the tax rolls. Tax rates are reduced very substantially. These benefits are indeed important and worthy of approval.

While I am voting for H.R. 3838 today, it is a close call. The good only barely outweighs the bad.

My vote today, however, does not constitute an endorsement of the many shortcomings in the bill. As a member of the House Committee on Ways and Means, I intend to work to correct many of the problems that this bill will unfortunately create. It is my hope that, in the coming years, we can keep the good parts of H.R. 3838 and repeal the bad parts.

Mr. ANDERSON. Madam Speaker, I rise in support of the conference report to accompany H.R. 3838, the Tax Reform Act of 1986.

Despite some negative features, I believe that this plan represents a victory for tax fairness and equity.

Nearly everyone agrees that the 1981 tax bill, which I opposed, was a windfall for the wealthy and for the corporations of America. Under this law, middle America continued to pay taxes without the benefit of special loopholes which, in turn, resulted in the subsidization of wealthy tax avoiders. In a nutshell, this law embodied a "Robinhood in reverse" philosophy.

The tax reform conference report we have before us today is the best chance we've had in 5 years to amend the Tax Code and plug up those loopholes that allow large numbers of profitable corporations and wealthy individuals to avoid paying their fair share of taxes—or, in many cases, to avoid paying any taxes at all.

H.R. 3838 would reverse the 5-year-old policy of ever-increasing taxes on the poor by removing some 6 million low-income families from the tax rolls. According to estimates by the Joint Committee on Taxation, the measure would provide an overall tax cut for individuals averaging 6.1 percent in 1988. Roughly $120 billion in individual taxes will be cut over the next 5 years, with business taxes being increased by an equal amount.

Although I support final passage of this comprehensive legislation, I strongly take exception to certain provisions in the report. I think it's wrong to allow certain companies and investors to be the recipient of preferential "transition rules" who will get to keep some of their tax benefits, while nearly everyone else won't. I strongly believe that we should work to close these special rules when the 100th Congress convenes in January. Because, we cannot have true tax reform unless we write tax bills that treat people uniformly.

Mr. HAWKINS. Madam Speaker, I want to state for the record that I am begrudgingly voting "yes" on H.R. 3838, the Tax Reform Act of 1986, despite some very serious concerns I have about the resulting economic and budgetary consequences, as well as procedural aspects of the measure.

I am voting yes because this is the only chance we have to obtain certain reforms that are long overdue. I am voting yes because approximately 6 million low-income families will no longer have to pay Federal income taxes, and because millions of others will receive significant tax advantages. Economic justice, however, cannot be cited as rationale to reduce rates for many individuals and businesses who deserve no relief at all, especially for those who have been reaping the benefits for the last 5 years of the Tax Act of 1981.

Why should we fix revenue levels before we determine the appropriate spending levels for badly needed domestic programs such as education, employment and training, health, transportation, and housing and community development? This is a classic case of putting the cart before the horse.

The right procedure is to first approve cost-effective programs that put people to work as productive, taxpaying citizens.

The first step is to adequately fund programs which effectively educate our young people so that they can acquire the needed skills and training the compete in today's advanced technological society.

The first step is to invest in programs which provide preventative health care to citizens who cannot afford it on their own, so that we can save millions of dollars in outlays now spent on taking care of people who have ill-

nesses or medical problems which could have been prevented had early screening, diagnosis, and care been available.

The first step is to provide support for decent and affordable housing, community development, and an all-out attack on crime and drug abuse, which destroy the basic foundations of our communities and our society.

These priorities should be addressed first and foremost, and only after accomplishing them, should we be going about the business of seeing who gets the biggest tax break.

What we really need most is a healthy, growing economy, with at least a 4.5 percent real growth rate. Right now we don't even have 1 percent growth, and upon implementation of the so-called reforms of this measure, many economists foresee a slippage into negative growth or recession. It is this lack of growth that really is at the heart of our deficit problem, not excessive spending as the administration and some Members of this body so often scapegoat.

While this measure will likely pass, our major economic problems will persist. It is my sincere hope that those who are pressing for this reform will be equally as dedicated to repairing whatever damage is done by this unwise and dangerous procedure.

Miss SCHNEIDER. Madam Speaker, I rise in strong support of the tax reform bill of 1986. I want to commend those on both sides of the aisle for their hard work on this legislation—work that has taken the time and attention of many Members and their staff for the past 2 years.

Like most legislation, this bill will not satisfy all of the concerns of all of our constituents. Unlike many attempts at tax reform, it has successfully navigated the maze of the legislative process. In that regard, it is indeed an historic legislative achievement.

One of the cornerstones of American tax policy is the concept of progressivity—those who earn more should pay a larger share of their earnings in taxes. The tax reform bill maintains progressivity. At the same time, it removes a number of tax shelters which encouraged those at the highest rates to avoid all taxes regardless of the rationality of their investments.

The tax bill removes a large number of people from the lowest income levels from the tax rolls. It also substantially reduces the tax burden for an additional 5 million low-income families.

My biggest concern in the tax bill is the failure to allow Federal retirees who were on the verge of retirement to make plans for their retirement that would allow them to take advantage of a benefit that they had anticipated.

An analysis has been done that shows that the tax package as a whole will be more beneficial to public sector employees than current law. While that is commendable, it is difficult for me to understand why this change in the treatment of retirement benefits was retroactive. I have worked hard to see to it that Federal retirees receive a fair shake and I think that the retroactive change is an unnecessary affront to those who have served their country.

When I look at the bill as a whole, however, I see legislation that is far superior to our current Tax Code—a bill that removes inequities in the current code, a bill that makes profitable corporations and wealthy individuals pay their share of taxes, and a bill that promotes investments that will increase our competitive position in the world.

Madam Speaker, the authors of this bill have done a commendable job. We could hope that Congress might come up with a better bill with an additional 2 years of work, but I doubt that this is the case. A vote against this bill is a vote that locks in the unfairness of the current tax code for the foreseeable future. I heartily agree that even with the problems in the tax reform bill, it is a vast improvement over current law. I urge my colleagues to accept the remarkable progress that this bill makes and to support passage of the tax reform bill.

Mrs. COLLINS. Madam Speaker, I would like to begin by commending my colleague, Chairman DAN ROSTENKOWSKI for his efforts in leading and managing the charge for tax reform. That we are here today debating the conference agreement is indeed an accomplishment.

Let me state at the outset that I fully support the need for fairness and equity in our tax system. For far too long, corporations and the wealthy have danced through loopholes and left tax paying to the working men and women of this Nation I am pleased to note that now, millions of poor and elderly will be exempt from paying taxes and corporations and the rich will join mainstream Americans in doing something they haven't done in decades—pay up!

On a positive note the conference report provides much in the way of relief for ordinary taxpayers. The measure increases personal exemptions, retains deductions for mortgage interest, and maintains child care credits. Overall, the tax bill benefits the majority of middle-income taxpayers by reducing the tax rate, making the whole tax process simpler and increasing standard deductions.

Unfortunately, however, there are a number of provisions which cause this so-called revenue neutral measure to slowly bury many of the pluses that were designed to provide relief to the majority of Americans. For the most part, the conference agreement does away with savings incentives, specifically, IRA's, raises the floor for medical expense deductions, repeals certain adoption expenses, and repeals the two-earner deduction.

Additonally this agreement repeals the present law exclusion for long-term capital gains for individuals and repeals the investment tax credit for property. It will mean that State and local governments will face higher borrwing costs and restrictions on their right to issue tax-exempt bonds for certain projects. I suppose the biggest problem with the conference report, is that it is so revenue neutral—we use revenue gained from closing loopholes for rate reduction—instead of using the money to reduce the deficit.

The minuses in the bill are provisions I feel need to be maintained. That so many of them are repealed gives me great cause for concern.

However, when I consider the plusses in this legislation, they outweigh these negative aspects of this bill and will support it.

Mr. SHUMWAY. Madam Speaker, I have kept an open mind during the past month as the House-Senate Conference Committee on Taxation approved a compromise tax reform bill and have closely examined the arguments of both proponents and opponents. I opposed the House version of the bill last December becuase it failed to achieve the objectives of any real effort at tax reform, namely: First, to simplify the tax system in order to reduce the time and resources spent on preparing tax returns; second, to make the system fair so that all individuals and businesss are treated equally; and third, to provide incentives for economic growth. While I recognize the many achievements contained in the bill reported out of the joint committee, the compromise bill does not adequately address these reform objectives. Therfore, I cannot support the bill.

The tax reform bill does not simplify the Tax Code. Its provisions will complicate the preparation of tax returns even for individuals with fairly uncomplicated lives. Taxpayers will only have to calculate their taxes twice—once under the regular tax system and again under the alternative minimum tax—but this dual system will serve to complicate investment decisions and to confuse calculations of tax liability. Reducing the number of tax brackets from 14 to 2 hardly qualifies the tax system created by the bill as simplified: any child with counting skills could easily take a number and find its location in any quantity of number fields. The bill clearly does not reduce the time and resources spent by taxpayers on preparing tax returns.

While the bill makes some important headway in increasing the fairness of the current Tax Code by closing some loopholes and by removing 6 million low-wage workers from the tax rolls, I cannot consider the bill completely equitable. Loopholes continue to pervade this compromise bill both through its original provisions, like the exemption from income tax for Aleut Indians who make their living by hunting and selling reindeer, and through the "transition rules," originally intended to redress implementation inequities, but transformed into pork-barrel benefits for those with special relationships to the bill's crafters.

It is the retroactivity of some provisions, like the repeal of the passive loss deduction and of the 3-year basis recovery rule for public servant's pensions, however, which concerns me most. These provisions breach the trust which should exist between taxpayers and the Government. Taxpayers shape their economic decisions according to governmental incentives and disincentives. To take away or modify these incentives is bad enough, but to do so retroactively is entirely reprehensible. Laws should not be wholly immutable, but neither should taxpayers be penalized for decisions which they made in the past under laws that allowed for those decisions.

The tax reform bill also fails to provide incentives for economic growth; in fact, the bill inhibits growth. By repealing the investment tax credit, the special treatment of capital gains and by lengthening depreciation schedules, the bill effectively increases the cost of capital, thereby slowing and ultimately reducing capital formation and economic growth. Repeal of such incentives will severely frus-

trate industrial modernization, formation of new ventures and will also seriously jeopardize the competitiveness of American businesses abroad. Given the important role in our economy of modernization, entrepreneurial business ventures and international trade, the bill compromises our current and future economic well being as well as our already precarious trade position. This bill would dismantle the very incentives which have brought about recent economic growth.

The compromise bill also has an antisavings bias. Not only does the bill do nothing to correct the lack of incentive for savings under current law, but it severely restricts several currently popular savings plans. This is incomprehensible, considering the fact that Americans are currently saving at the lowest rate in 35 years, and compare very unfavorably with other industrialized nations.

I support the fundamental concept and goals of tax reform: To simplify the Tax Code, increase fairness for all taxpayers, and to provide incentives for economic growth. These goals have not been met by the compromise bill. I am hopeful that Congress will someday enact true tax reform legislation that meets these goals without dilution or compromise.

Mr. GUNDERSON. Madam Speaker, the oft-quoted saying that "nothing in life is certain except death and taxes" is attributed to the great American patriot, Benjamin Franklin. One cannot help but believe that, had Dr. Franklin lived to observe the Congress of the United States during the 20th century, he would have added "tax reform" to that list.

Yet, the need for fundamental tax reform is genuine and unquestionable. I am frequently reminded of that fact by a story my father tells. As a small businessman, he frequently entertains his employees and their families at home. These evenings of conversation and good food not only bring employer and employee closer together, but produce some good ideas as well.

I share this point with my colleagues only to underscore the disparity of the current code. My father can deduct the cost of these evenings from his taxes as a business entertainment expense. However, if an employee were to invite my parents to his home under similar circumstances, no deduction would occur.

While the conference agreement does not totally correct this situation, it does mitigate the disparity. Nevertheless, this example has demonstrated the existing unfairness of our Tax Code to me for many years and convinced me of the need for reform.

Quite simply, as our Federal income tax code has developed over the last half-century, there has been a tendency to make changes based upon special interest without regard to consistency or the original intent of the law.

By mid-century, this process had created enough loopholes and unintended shelters to cause President Truman to comment that "the continued escape of privileged groups from taxation violates the fundamental democratic principle of fair treatment for all and undermines public confidence in the tax system."

Notwithstanding this and other calls for tax reform, the overall picture of our Internal Revenue Code which, just 18 months ago, President Reagan described as "complicated, unfair, and cluttered with gobbledygook and loopholes" has remained relatively constant.

Clearly, the time has come to deliver on the age-old political promises to make the Federal Tax Code fairer and, where possible, simpler. And it seems to me, Mr. Speaker, that the conference agreement we have before us today accomplishes that result better than any other tax legislation we've considered in the last three decades.

Now, that's not to say that this agreement is perfect. On the contrary, by continuing some "loopholes" while eliminating some very legitimate deductions, it contains some bad judgments which will result in poor public policy. However, it is doubtful that perfection or philosophical purity can ever be achieved in 945-page document produced by a democratic process which involves 535 legislators and relies on compromise and accommodation for acceptance.

Yet, any time the current administration, the League of Women Voters, the National Association of Manufacturers, the Center for Rural Affairs, the National Taxpayers Union, the Coalition on Human Needs, the Citizens for Tax Justice, the Communications Workers of America, and the American Association of Retired Persons unite behind tax legislation despite their very different political agendas, we had better give careful consideration to its contents.

FAIRNESS

On the issue of fairness, the conference agreement will remove $6 million low-income individuals from the tax rolls while instituting a new, stronger alternative minimum tax for individuals and corporations to insure that all persons pay their fair share.

Further, a distinction between middle- and upper-income taxpayers is maintained by phasing out the benefit of the 15-percent bracket as well as the higher level for the personal exemption as an individual moves into the upper income range.

As a result, progressivity is increased as the highest percentage of tax relief goes to taxpayers earning less than the median income while the smallest percentage change in income taxes goes to those with incomes above $75,000.

PROFAMILY

A higher personal exemption, an increased standard deduction, and an extension of the earned income tax credit to families earning up to $17,000 (as well as indexing this credit for inflation) will all result in working families with children paying fewer Federal income taxes.

THE ELDERLY

In addition to these general changes, the creation of an extra standard deduction for the elderly will further remove a good share of the existing income tax burden on our older Americans.

This new deduction acting in concert with the other general changes will mean that 700,000 older Americans will be removed from the Federal income tax roll. It will also result in simpler filing procedures for senior citizens as many will no longer have to itemize deductions.

AGRICULTURAL PRODUCERS

By restricting losses from passive investments from being used to offset other nonpassive income, the current Federal incentive for nonfarmers to engage in farming operations is significantly reduced. This may be the most important step we could take to preserve the family farm by ending the tax-loss farming operations which continue to contribute significantly to the surplus production problems we face in American agriculture.

Further, the maintenance of cash accounting, the doubling of the amount of investment that may be expensed annually from $5,000 to $10,000, greater tax flexibility in refinancing, and the new deduction for a portioin of premiums paid for health insurance will all benefit our agricultural producers. A special transition rule is also included to preserve capital gains treatment for payments made in 1987 under the dairy termination program.

THE GREATER GOOD

In the final analysis, most individual Americans will pay less in Federal income tax as a result of the revisions made by the conference agreement. Our Joint Committee on Taxation estimates that 78.8 percent—over three-quarters—of all Americans will have a smaller Federal income tax liability in 1988 than presently.

Extrapolations these estimates to U.S. census data for Wisconsin's Third Congressional District, one finds that an even larger number of taxpayers in western Wisconsin—a full 81.0 percent—will pay fewer Federal income taxes in 1988 if the conference agreement is approved.

A review of a random sample of returns by a large accounting firm in my district done at my request also confirms these general statistics.

A WISH LIST

As noted, not all of the changes are for the good. There are several provisions and many transition rules I certainly would not have included in the conference agreement if I were afforded the luxury of drafting the bill by myself. In fact, on each of these provisions I corresponded with the conferees asking that current law be maintained.

Among those changes are the retroactive elimination of the investment tax credit and the 3-year basis recovery rule for pensions, as well as the repeal of income averaging, capital gains, and the deductions for consumer interest and charitable contributions (for nonitemizers).

The loss of these deductions on or before January 1, 1987, is particularly troubling given the effective date for lower individual rates of March 31, 1987.

Undoubtedly, there will be cases where individuals will pay more because of these changes. Yet, when balanced against the overall good resulting from the bill, these "bad" provisions do not mandate a vote in opposition to the entire package.

ECONOMIC EFFECTS

Finally, I have been concerned about the effect of transferring $120 billion of tax liability from individuals to the corporate sector over the next 5 years.

However, given Treasury Secretary Baker's economic forecast based on the assumed passage of tax reform package, much of that

concern has subsided. The Secretary projects that, if enacted, these tax changes will result in a long-term increase in workers' real after-tax wages of more than 5 percent which will, in turn, lead to a long-term increase in employment of as much as 2 or 3 percent.

CONCLUSION

The numbers speak for themselves, Mr. Speaker—over three-quarters of all Americans will pay less Federal income tax, and 6 million low-income individuals (including 700,000 older Americans) will be completely be removed from the tax rolls. At the same time, there will be cases where some individuals will pay more because of their dependence upon a specific deduction or credit that will be repealed.

In the final analysis, then, we must ask ourselves two questions. First, is the bill better than the present Tax Code? I believe the answer is an unequivocal "Yes."

Second, should we reject tax reform because of problems with the implementation of some of its provisions, particularly the retroactive effective dates of some of the sections? The answer to that question is "No." It would be wrong in the short term for we would simply continue the uncertainty associated with the tax reform debate into next year. And it is also wrong in the long term if you believe the majority of changes in the conference agreement are better than the present code.

With these considerations, then, I must do what is best for my district and my country. I believe that demands a vote in favor of the conference report.

Mrs. SCHROEDER. Madam Speaker, I will vote no because after reading the Stockman book, his bottom line is a government is in trouble if it raises 70 cents for every dollar it spends. This bill continues the trouble. I wish it had plugged the corporate loopholes opened in 1981, period. Let me talk a little more about what revenue neutral really means.

The 1986 tax reform is designed to be revenue neutral, a startling fact in the face of record Federal deficits. We, Democrats and Republicans, liberals and conservatives, are afraid to raise revenue to pay for the level of Government we claim is necessary.

But the revenue neutrality is deceptive. Only the net result is revenue neutral.

Within the bill revenue is raised with some changes in order to offset other changes.

The most disturbing change is the elimination of certain deductions in order to raise revenue to offset the revenue lost by curtailing the progressive tax rates.

In other words, in order to lower the rates for upper income taxpayers, the bill eliminates deductions—and thus increases the rates—for many middle-income taxpayers.

Within the middle-income category, the bill is oddly skewed. The one-wage-earner family benefits at the expense of the two-earner family and the single person.

In short, the bill shifts the tax burden from upper income to middle income, and within middle income to certain taxpayers whose lifestyle the administration does not approve off.

As a result, I intend to vote against the bill.

Worst of all, the bill returns the marriage penalty tax we spent so many years trying to get rid of.

The Reagan administration claims that the bill supports the traditional family—the family with one wage earner. Unfortunately, that family is neither traditional nor numerous. The Census Bureau report that only 7 percent of all families fit that mold.

Mr. BROWN of California. Madam Speaker, we have before us the most comprehensive piece of tax legislation in decades. If enacted, as it appears that it surely will be, this legislation will affect nearly every segment of our society. The sheer volume of the changes will overwhelm Americans, many of whom have already expressed their concern and dismay.

Unlike past "reform" movements, this one was unique for its very lack of popular support. It was as if we, isolated in Washington, forged this reform, but forgot to inform the public. And what the public does know has not been encouraging. Those of us who have spent much of our time back in our districts since the conference report was agreed to in mid-August have heard nothing but complaints from our constituents.

Small businessmen don't understand they are to afford to understand the extensive changes in the Tax Code without the advice and counsel of expensive accountants and lawyers. Those people saving for retirement are bewildered by a government who, on the one hand, tells them that they should find ways to supplement their Social Security checks, and at the same time withdraws incentives to save. Parents wonder how they can afford to send their children to college without being able to deduct interest. Students on scholarships are stunned to realize that the same scholarship this year as last is worth considerably less because now it will be taxed in part. And my constituents worry about a provision which will give favorable treatment to a proposed tire-burning plant in my district—a district with some of the worst air pollution in the Nation.

While these are troublesome areas, this bill is not without its merits. In fact, such a comprehensive and extensive measure as this is bound to have both positive and negative elements. On the positive side, it will take 6 million taxpayers off the tax rolls. For these Americans it may mean the difference between just barely getting by and getting by. For millions more working poor Americans, mostly women and their children, this tax bill will substantially reduce their tax liability. For the first time since 1980, the tax threshold (when one brings paying taxes) will be above the poverty level.

For nonitemizers, nearly two-thirds of all taxpayers, the changes in the tax bill will be significant. The personal exemption will be increased from $1,130 to $2,000 by 1989. The standard deduction, also known as the zero bracket amount and calculated into the tax tables, will be significantly increased. More importantly, heads of households will be treated more like married couples with dependents than as singles, as they are now. Finally, the earned income tax credit, used to offset Social Security taxes for the poorest taxpayers, will be increased as well as have its eligibility expanded. More low-income taxpayers will benefit from the credit.

These benefits to the working poor will have a significant impact on the majority of my constituents. The average income in the 36th Congressional District is substantially below the national average. Since the vast majority of low-income individuals do not itemize, they will surely benefit from these changes.

But though they benefit in the short term, will they in the long run? This question is not easily, nor unequivocally, answered. Given the magnitude of the rate cuts at the top, maintaining the present degree of progressivity in terms of actual taxes paid is largely dependent on several key reforms, most notably the repeal of the capital gains preference and the anti-tax-shelter rules. While the lobbyists concerned with these issues seem to have more or less accepted defeat in the current round, a sustained effort to reverse some of the reforms seems almost inevitable next year. If these reforms are eroded, the main legacy of the 1986 tax reform legislation will be a massive reduction in upper income tax rates.

Even if these reforms are not eroded, progressivity—an essential philosophical component of our tax structure—may very well be. Lost somewhere in the debate on tax reform has been our concern for continued massive budget deficits. One of the primary goals during this tax reform process has been revenue neutrality. Meanwhile, our deficits continue to rise despite our efforts to reduce spending. The fact remains, however, that we simply cannot reduce spending by $200 billion without seriously damaging services to the American public and grinding our economy to a halt. Eventually, in some manner, revenues will be raised. But how?

This conference agreement has done an excellent, if not perfect, job of closing loopholes and eliminating many abusive tax shelters. Yet its mistake is refusing to use the revenue yield from this to reduce the deficit rather than reduce the tax rates. It will be extremely hard to raise revenues in future years through the income tax. Instead, our only other available options will be increases in excise taxes or the imposition of new levies such as energy taxes or a value-added tax. These options will be highly controversial and highly unpopular, particularly since they tend to place the heaviest burdens on those least able to pay.

I am not opposed to wealth. I could use a little myself, as I'm sure we all could. But I do believe that those well-off have an obligation to pay slightly more for the opportunities which have been provided in our great Nation. I would not want to see the concept of progressivity—those who earn more, pay more—be abolished in the search for rate reduction.

I am also concerned about the possibility that this tax bill could dampen the economic climate. Not only does the bill shift $120 billion of the tax burden to business, it adversely impacts educational institutions—the incubators of our economic future. Bond restrictions, charitable contribution limits, taxation of the nontuition portion of scholarships, repeal of the interest deduction for educational loans, pension reforms, and other items will all place a financial stress on our higher education institutions. This administration has nickle and dimed our education system throughout its tenure. It has yet to understand its integral importance to our Nation's well-being. I regret to

say our conferees lost touch with its importance when it fashioned these changes.

Fortunately, however, the conferees did not totally neglect the importance of research and development [R&D] to our economic well-being. The bill maintains several R&D tax credits. It includes a new 20-percent credit for 3 years for corporate contributions to (or contracts with) universities to conduct new research and development; it would expand an existing charitable deduction allowed businesses for donations of newly manufactured scientific equipment to colleges and universities for physical or biological science research; it would allow deductions for donations to charitable organizations primarily involved in research; and it would extend, through 1989, a 20-percent tax credit for new research and development expenses, although the bill will tighten the definition of R&D to focus exclusively on high technology activities.

As we look to the future, we cannot neglect our past. Senior citizens across my district have expressed their concerns. Many fear huge increases in their tax bills, and I would like to put some of their fears to rest. About two-thirds of the Nation's 15 million older taxpayers do not itemize. For this group, tax reform will mean either lower taxes or no real change. Nonitemizers, while losing their double exemption, will receive an additional deduction of $750 for singles and $600 each for married couples. With the personal exemption for all nonitemizers rising to $2,000 by 1989, this should more than offset their loss.

The tax threshold (when one begins paying taxes) for seniors will be higher under the new tax bill than under current law. As a result, 700,000 elderly citizens will be taken off the tax rolls. And that very popular one-time $125,000 exclusion on the sale of a home by persons over age 55 will be retained. Finally, pension equity changes, which will have a limited impact on present retirees, will provide major advantages for future retirees.

As I noted before, this bill has its pluses and minuses. I cannot say that I am entirely pleased with it. I am deeply concerned about certain elements of the bill, but must give credit where credit is due. Over the last year and a half, Ways and Means Chairman DAN ROSTENKOWSKI has put a lot of work and effort into this bill. He has made some unpalatable decisions in order to fashion a measure which he believes will benefit the American public. He has taken a lot of abuse from his colleagues, lobbyists, and constituents across the Nation, but he has stuck to his guns because he believes that our current system has become far too unwieldy, far too inequitable. I would like to express my appreciation for all his efforts.

I may not agree with all the provisions of the bill, and I hope that eventually we will be able to correct some of them, but in the end I will support the measure. Because, in the end, I realize that our current law is fraught with inequities and problems which cannot be addressed in a piecemeal manner; they must be addressed comprehensively. I have reluctantly concluded, after weighing all the facts, that this bill does resolve more problems than it creates. Before the end of the day, I believe that the majority of my colleagues will make the same conclusion.

Mr. GREEN. Madam Speaker, I rise in opposition to the tax reform measure now being debated by the House. Despite some very positive features, the bad outweigh the good. The bill is not fair, it is not simple, and it will hurt the American economy.

If the legislation were designed solely to remove from the income tax system those households below the poverty line and to strengthen the minimum taxes on wealthy individuals and corporations, I should support it wholeheartedly. Indeed, together with my colleagues, the gentleman from Washington, [Mr. CHANDLER], and the gentleman from Iowa, [Mr. TAUKE], I sponsored a bill (H.R. 4123) that would do just that, and appeared before the Rules Committee to urge that I be permitted to offer it as a substitute for the tax reform bill passed by the House Committee on Ways and Means. The Democratic leadership denied the House the opportunity to vote on this legislation as an alternative to the tax reform bill passed by the House last December.

It is unfortunate, however, that the two positive features of the bill before us—the elimination of the poor from the tax rolls and the requirement that people and firms that make money pay taxes—are surrounded by unfair and misbegotten rules which will make our economy more unstable and complicate our current fiscal problems. Thus, I am compelled to vote against the legislation and my points of opposition follow:

First, the bill weakens the Federal system by: Repealing the full deductibility of State and local taxes and severely limiting the use of tax exempt bonds. As I warned before the House voted on tax reform in December 1985, it was clear that the Senate would not accept the House position to keep full deductibility of State and local taxes. I wrote in the New York Times that "anyone whose highest priority is to preserve deductibility should have voted to kill the [House] bill and lay the issue to rest once and for all"—after all, the present Tax Code preserves full State and local tax deductibility. The bill's repeal of the State sales tax deduction, combined with its new restrictions on State and local government bonds, will cost New Yorkers dearly through the end of the century—Mayor Koch has estimated that the tax exempt bond provisions will cut in half New York City's ability to create new housing.

Threatening State sovereignty. I raise this issue in light of the U.S. Supreme Court's recent decision to limit the rights of State and local governments (Garcia versus San Antonio Metropolitan Transportation Authority). The Court's ruling means that the Congress, not the Supreme Court, is the chief protector of the States' traditional intergovernmental immunities. But the decision by the Senate and the conference committee to repeal the deductibililty of State sales taxes makes very clear that the States are threatened by a very serious attack on our State sovereignty.

Constitutional scholars such as Lawrence Tribe of Harvard have warned about "the prospect that Congress will nibble away at State sovereignty bit by bit," and this bill's ramifications will become even more significant in the future.

Weakening pluralism because it sharply limits charitable deduction. This bill's provisions affecting gifts of appreciated property will reduce significantly charitable gifts by the wealthy, particularly to capital fund drives such as those put on by colleges and universities and arts organizations. In addition, charities will not be able to make up that loss of charitable donations by turning to smaller, less affluent donors because the bill eliminates the charitable deduction for nonitemizers. A hallmark of American life, noted as early as the 1830's by Tocqueville, is the importance our society places on voluntarism. Yet, the bill actively discourages charitable giving.

Second, the bill will not provide immediate tax relief to many taxpayers and will not assure a major tax cut in the future. Many taxpayers will be surprised to discover when they first pay taxes under the new plan that the personal tax cut promised by supporters of this bill will turn out to be a tax increase for 1987. This increase will occur because deductions will be lost as of January 1, 1987, but the lower rates will not kick in until months later. Given the size of the Federal deficit and the fact that the Congress has passed four major tax bills since 1981, any taxpayer who counts on this bill to govern his post-1987 taxes is being misled.

Third, the bill's tax rates are not progressive. It will also surprise some members of the public that upper middle-income taxpayers (taxpayers with annual incomes between $71,900 and $149,250) will actually pay taxes at a higher marginal rate (33%) than the wealthiest taxpayers (who will pay taxes at a marginal rate of 28%). This makes no sense, and makes a mockery of the proposition that income taxation should be progressive. Why should a two-earner couple making $55,000 per year pay taxes at the same rate as a household earning $600,000 per year?

Fourth, the bill continues tax discrimination against tenants by: Limiting construction of new rental housing. Most low- and moderate-income renters will be hurt by the passage of this legislation because the bill changes the depreciation schedule for new rental housing which, in turn, will increase rents. These rent increases will most likely offset any individual tax cut renters may receive. In addition, the bill severely limits the use of tax-exempt bonds to construct low- and moderate-income rental housing. As economist Martin Feldstein has pointed out, the effect of the reduced supply of apartments—because fewer new apartment buildings will be built—will inevitably bid up rents across the board."

Denying to renters certain deductions granted to homeowners. The bill not only continues the Internal Revenue Code's preferred status for homeowners with respect to their borrowing to buy homes, but extends it for other personal borrowing. For example, homeowners can deduct the interest on loans secured against the equity in their home to pay expenses for health care and education—a deduction denied nonhomeowners who borrow directly for identical purposes. Considering that 75 percent of my constituents are ten-

ants, Madam Speaker, I find this aspect of the bill particularly galling.

Fifth, the bill severely reduces a taxpayer's incentive to save for retirement. The conference report phases out the deductibility of individual retirement accounts [IRA's] and severely limits the amount of a taxpayer's salary that he or she can elect to defer for retirement purposes during any taxable year. Limits such as these are counterproductive at best. The Federal Government should encourage taxpayers to fund their retirements as much as possible while they are working, rather than have retirees financially strapped at the age of 65 because they were discouraged from saving earlier.

Sixth, the tax reform bill will hurt our Nation's education system. Earning a college or graduate education will become frightfully more expensive under the new tax legislation. Interest payments on student loans will not be deductible unless the borrower owns a home, which is not likely on a student budget. Also, to a great extent scholarships and fellowships will be counted as taxable income. Colleges and universities will also be affected in several ways. For example, the bill would change the methods now used by educational institutions to raise money for constructing new buildings and financing student loans, and the limits on charitable giving I mentioned above will hurt colleges and universities. Also, given the new limits on retirement plans and the nondeductibility of student loans, teaching as a profession will probably become even less attractive to our brightest students.

Seventh, the tax bill will hurt New Yorkers. Any legislation which in one fell swoop hurts the insurance, banking, finance, hotel, restaurant, and theater industries is no friend to New Yorkers. For example, although I agree that there have been major abuses in the deduction of business expenses for meals, tickets to sporting events, and the like, much of New York's economic health depends on the tourist and service industries. Thousands of New Yorkers depend upon jobs in these industries. However, this legislation includes a provision in response to these abuses which sets a dangerous precedent and should be rejected. The bill invents "second class deductions"—expenses that are only 80 percent deductible. Eighty percent is an arbitrary and undistinguished feature, and is symbolic of how the bill's supporters have pushed aside fairness in favor of expediency.

Eighth, the tax bill will have a very negative impact on the economy as a whole. Although one of the goals of the 1981 tax bill was to promote individual savings and investment, the decline in the individual savings rate since then is evidence that lower personal tax rates have not led consumers to save and invest to produce funds to finance economic expansion. Indeed, the United States has the lowest rate of personal savings in the industrialized world, and this low rate has slowed our country's economic growth. On the other hand, the targeted tax cuts for business in the 1981 bill have resulted in strong business investment. According to the Congressional Research Service, "real business investment has risen (from 1981–85) at an annual rate of 5.8 percent, substantially above the 3.6 percent growth rate of the 1947–80 period." Therefore, while the 1981 tax bill spurred business to invest in its future, individuals saved less money. Given that experience, it seems foolish to do more of what did not work in 1981—the personal tax cuts—and pay for it by undoing what did work—the business tax cuts. Also, at a time when the fragility of our banking system is evident and Federal bank regulatory authorities are pressing banks to increase their reserves against failing energy, agricultural, and international development loans, it is foolish to reduce the deduction which banks receive for such services. This is truly counterproductive public policy.

In sum, Madam Speaker, the Congress has failed to meet its goal of making our Tax Code more fair and more economically sound. Although I approve wholeheartedly of the bill's alternative minimum tax provisions and its removal of the working poor from the tax rolls, on a balance the negative aspects of the legislation seriously outweigh its positive aspects. For that reason, I must vote against the conference report.

Mr. HUGHES. Madam Speaker, I rise in support of efforts by my colleagues to recommit the tax bill.

When the tax reform package developed by the House Ways and Means Committee was considered last December, I voted in favor of it. I was disappointed that the bill did nothing about the deficit, but I was convinced that, on balance, it would produce a better tax climate for both individuals and businesses. The bill cut rates, closed loopholes, and eliminated some 6 million poor people from the tax rolls. The House bill also kept many existing deductions, including those intended to encourage investment, and replaced the 15 existing brackets with just 4 brackets of 15 to 38 percent.

The Senate took the House concept a step further by establishing just two brackets of 15 and 27 percent—but in order to achieve those lower overall rates, the Senate found it necessary to restrict a number of important and popular tax breaks, such as for individual retirement accounts [IRA's], capital gains, sales taxes, and the like.

The bill before us today is essentially a modified version of the original Senate plan, which allows fewer deductions in exchange for lower rates.

I do not in anyway question the effort and sincerity of those who have labored long and hard to achieve this compromise. After 12 years in the Congress, I have come to recognize that no legislation is perfect—the process usually results in there being both good and bad in most bills, and the tax bill is no exception.

The task facing the Members today is to weigh the good against the bad, and try to make a decision as to what is best for the country. What is good public policy, and what will do the most good for the most number of people. My conclusion is that this bill should be sent back to conference to have the most objectionable sections removed. We still have time to make major improvements in this bill.

I do not deny the existence of a number of longstanding and serious inequities in our Tax Code. These inequities are akin to having a blister on your toe—it's a nuisance, but it's not a serious threat to your personal well-being.

Let's look at what this bill does: It does drop 6 million of our citizens from the tax rolls—those citizens who are most in need of relief from the tax burden. It does increase the individual deduction, it does provide for a minimum tax therefore insuring that those who are able, pay their fair share. The tax bill shifts some of the tax burden from the individual taxpayer to the business sector, hopefully ending the abuses we all heard about in recent years. Finally, the tax bill eliminates hundreds of loopholes, tax credits, and deferrals, all those "goodies" passed out over the years for which there is no justification.

Unfortunately, this bill also creates a whole new set of problems for the taxpayer. I am very concerned at the way the transition rules have been written and the special treatment once again handed out by this legislation. We eliminated one set of loopholes only to replace them with another.

That is one serious problem with the bill. The other problem is that, as a reform measure, the bill leaves a lot to be desired.

In this regard, tax reform ought to be one area where the feelings of the American public should be given great weight. The type of tax system we have, and what should be exempt and what should not, is a decision where all Americans should be heard.

I say to my colleagues I have heard deafening silence.

In the beginning, everyone supported tax reform. Now that the conference report has been filed, and people can see the final product, I have received not one letter, not one postcard, and not one telephone call from my congressional district in favor of the bill.

I have received, however, any number of constituent complaints from people who have expressed everything from discontent to rage over this bill.

Yes, the bill closes abusive loopholes and shelters. Yes, the bill gives a tax break to lower income workers. But these are things we could do in any event, without culling out a host of other provisions that have longstanding justification and public policy purposes.

The result, in my judgment, is a bill that contains a number of conceptual flaws, and, to a certain extent, is also antifamily, antimiddle class, antisenior citizen, antieducation, antisavings, and anti-investment.

Moreover, as a tax simplification measure, the bill also fails to go as far as it could. Americans doing their taxes next year and the year after will find that their tax forms are no shorter or less confusing than is now the case.

I say the bill is somewhat antisenior citizen, because it repeals the extra personal exemption allowed to over-65 individuals. In place of that, the bill furnishes all taxpayers with a larger personal exemption and lower rates, and gives the elderly an extra $750 standard deduction.

On the surface, it might seem that many seniors would benefit from these provisions, but these advantages could very well be wiped out by the bill's provision to increase the threshold for deducting medical expenses from 5 to 7.5 percent of adjusted gross income. Older people, as a group, have more health problems than the rest of the popula-

tion. There can be little question that, if we curtail the medical expense deduction, it will be the senior citizens who are most adversely affected.

To my knowledge, no one has ever come forward and argued that medical expenses have been exploited as a tax shelter. This is a revenue grab, pure and simple, that has no other purpose except bring in more tax dollars.

In the same vein, I am disappointed with the bill's treatment of Federal retirees, by forcing them to pay taxes twice on the same income: first when they put the money into the retirement system, and again when they take it out. That's not fair, nor is the bill's provision to make this change retroactive to July 1, 1986.

The bill is somewhat antieducation because it arbitrarily caps the bonds that can be issued for essential purposes by educational institutions. It taxes fellowships and scholarships. It will deny deductions for interest on educational loans, unless the taxpayer goes through the cost and redtape of mortgaging his home in order to pay for his children's educational expenses.

The bill somewhat is antifamily because it returns us to the situation that existed a few years ago when the tax penalty on two working people getting married was so great that many, instead, chose to remain single.

It is somewhat anti-middle class for the same reason, and also because of its repeal of deductions for IRA's, sales taxes, and interest on consumer loans—all of which are heavily utilized by middle-income taxpayers. That is why, under the projections we have seen, many middle class taxpayers wind up paying more, not less, under this bill.

The middle class in this country is already an endangered species. An article on the front page of the Wall Street Journal of September 22, pointed out that, in contrast to the first 25 years after World War II, growth of the middle class has now come to a virtual halt. At best, this tax bill will be a wash for middle-income people and, for many, it will result in tax increases. The article points out that the 1981 Reagan tax cuts favored the wealthy, and that this bill does not substantially alter the distribution of taxes between high-income and middle-income taxpayers.

In other words, the poor will benefit by being taken off the tax rolls, and the rich will benefit by having a maximum tax rate of not more than 28 percent. But the middle class will be squeezed and squeezed and squeezed.

Beyond the question of the bill's impact on individuals, I am concerned about the bill's impact on the economy in general. Like it or not, for decades, our Tax Code has developed in a way that has guided our economy by encouraging certain expenditures, discouraging other expenditures, channeling investment into certain areas deemed important for national policy reasons, and so on. Right or wrong, the Tax Code reflected certain underlying national policies.

The bill before us today would make the Tax Code in some respects policy-less. As was stated by one of our Senate colleagues, this approach represents "a leap into the unknown."

It eliminates the incentive that people now have to save through individual retirement arrangements. We ought to be encouraging people to save. We ought to be encouraging people to plan for their retirement years, instead of relying solely on Social Security or company pension plans that many people feel are not dependable.

The repeal of the capital gains exclusion eliminates an incentive people have to invest, and exposes them to a big tax bill if they sell appreciated assets which they have held for many years. This is especially true since the bill before us eliminates income averaging.

I am also concerned that some of the passive loss restrictions in the bill represent pushing the pendulum too far in the other direction. There have been excesses in tax benefits to real estate interests as the result of the 1981 tax bill. But this measure, which denies passive loss deductions with a few minor exceptions, represents overkill, in my judgment. Low income housing, in particular, may suffer because builders don't stand to make much money out of this type of housing without some tax advantages.

Mr. Speaker, I have outlined a number of problems with the bill, none of which—by itself—would be enough to warrant a vote against the entire package. However, taken together, I feel we should vote to recommit and work together to remove the most objectionable provisions. Madam Speaker, we still have time this session to make this tax plan fair and equitable.

However, if my colleagues do not join me in this effort to rework this comprehensive tax plan by recommitting it to the conference committee I will join them, very reluctantly, and vote for final passage. Even with all its drawbacks, there is much in the bill that is true reform—and its better than existing law.

I will vote for final passage with the promise to join my colleagues in working together in the 100th Congress to correct the many inequities which are so evident today.

Mr. PASHAYAN. Madam Speaker, I have many reservations about the compromise reached by the tax conference committee. Prominent among them are my reservations to the several provisions that will apply retroactively. Changing the rules midstream is simply unfair to the many taxpayers who relied on the Government's good faith when making their investment decisions.

On the other hand, I recognize that this compromise, the product of a long arduous effort by members of the House ways and Means and Senate Finance Committees, will achieve many benefits. It will lower the marginal tax rates of all taxpayers. In doing so, it will reduce the role of tax considerations in the economic decisions of workers and investors. Workers will be encouraged and investors to invest for economic profit rather than tax profit.

For these reasons, having been assured by members of the Ways and Means Committee that a major technical corrections act next year will correct the deficiencies in this compromise, I will vote for the conference report.

Mr. WALGREN. Madam Speaker, this is a classic tax bill. There are important overriding reasons to support it in the national interest. There are deep specific disappointments.

I rise to express my strong concern about the provision in this bill relating to the taxation of Blue Cross and Blue Shield plans. Although just one of many specific areas, this is no small item. Over 80 million Americans are Blue Cross-Blue Shield subscribers. What we do in this area will inevitably have an impact on health care in every congressional district.

During the conference, I had joined with over 100 of my colleagues in writing a letter to the chairman urging that the conference committee not tax the Blues. Although, the conference disagreed, they settled on a compromise that at least had the virtue of minimizing the adverse impact on the Blue Cross-Blue Shield system.

That compromise was outlined in the August 29 summary of conference agreement prepared by the Joint Committee on Taxation. Those of us opposed to taxing the Blues were not happy, but felt that the compromise was a reasonable middle ground.

Something happened between the conference agreement and the drafting of the final bill. We do not know why the initial understanding reflected in the summary of the conference agreement was not followed. But the final bill approved by the conference committee and which we are voting on today makes Blue Cross-Blue Shield reserve deduction a tax preference item for purposes of computing minimum taxes. It had never been listed as such in the summary outlining the compromise. How and why it was suddenly made a preference item is a mystery. The bottom line, however, is that, for most Blue Cross-Blue Shield plans, the tax paid will now be double that contemplated in the original conference agreement. Moreover, I understand that numerous technical items were included in the provision that will have an additional adverse affect upon the Blues.

At this point, we have little choice. For whatever reasons, those who drafted these provisions have managed to do serious harm to Blue Cross-Blue Shield plans and, by extension, to their subscribers. I want to call everyone's attention to this result and note that, in the period ahead, we will be on the lookout for ways to remedy what is an unnecessary drawback of this legislation.

Mr. GALLO. Madam Speaker, I rise to support this historic reform legislation which will go a long way toward restoring the faith of the American people in the Tax Code.

As you know, I have been a consistent supporter of the tax reform process. In the spring of 1985, for example, I traveled to Bloomfield with President Reagan on Air Force One to join in his call for true tax reform. Although I did not support the House version because I believed it was not fair and not conducive to economic growth, the Senate significantly improved the tax legislation. The conference report is a significant bipartisan accomplishment and I am proud to vote for it today.

Although we would all like to see certain specific tax provisions maintained, on balance the final reform package is a fair one. It will benefit most taxpayers by drastically lowering tax rates and will enhance the strength of the economy by encouraging investors to look to the profitability of the investment, rather than the tax consequences, when making invest-

ment decisions. I was also pleased that the deductibility of State and local property and income taxes, an important issue for the residents of New Jersey, was maintained.

The substantial rate reduction gives individuals an incentive to work harder for more income. In 1981, the highest marginal tax rate was 70 percent, in 1988 it will be 28 percent, the lowest top rate in over half a century. The proposed changes in the tax law will allow 80 percent of all those who pay personal income taxes to pay a flat 15 percent tax.

I strongly support the minimum tax provisions that will make individuals and corporations, who have avoided taxes in the past, pay their fair share of taxes in the future. These provisions will advance fairness and encourage productive investment for sound business reasons by reducing the attractiveness of tax shelters.

This reform will simplify our tax system, especially for those Americans who find it most difficult to cope with its complexities, in part by reducing the number of itemizers to only one out of four Americans. Over 6 million low-income Americans, for example, will be removed from the tax rolls. By eliminating so many loopholes that encouraged tax avoidance and by increasing the personal exemption and standard deduction, many taxpayers will now find that it is in their financial interest not to itemize their return.

As with any comprehensive legislative proposal, I have concerns that some of the tax proposals and provisions are misguided. It is unfair, for example, to change the rules of the game after individuals have relied on those rules. The retroactive provisions dealing with the pension recovery rules, for example, unfairly effect our Federal employees, while the changes in the investment tax credit may hinder our Nation's economic prosperity. I am also very disappointed over the transition rules and complicated phase-in provisions that were adopted by the tax conferees.

In summary, however, this reform is a good reform. It is historic legislation in that the Congress stood up to the special interests and said "no." We said "no" to the special preferences and targeted provisions that helped one type of industry or one individual over another. Today is the day that the Congress took a great step forward in restoring faith in our tax system. I cast my vote today in the hope that this reform will restore fairness and decency to our tax system.

Ms. SNOWE. Madam Speaker, I rise in support of the conference committee report on H.R. 3838, the Tax Reform Act of 1985.

On balance, we take a major step forward with this bill. We are attacking abuses of the Tax Code, dropping low-income individuals from the tax rolls, lowering and simplifying the rate structure for individuals and small businesses, and reducing the overall role the Tax Code plays in the economy of our country.

Because this bill is so comprehensive, every individual will not agree with every provision it contains. Indeed, I recognize, and share, the legitimate concerns the people of Maine have raised with me on this legislation, some of which I will refer to specifically later. I believe it is important for this House to evaluate the affect these changes produce once implemented, and stand ready to make adjustments as may be necessary in the future.

It is important for us to move ahead today, however, since this is likely to be the one chance we will have to overhaul the Tax Code in our lifetime. If we fail to do so today, the byzantine, unfair, and counterproductive Tax Code of today will remain on the books for a long time. With that as the alternative, let me address specifically some of the reasons I believe this bill is worth supporting.

First, it greatly simplifies the individual income tax bracket structure by replacing our current 14-bracket structure with a basic 2-bracket structure, along with an effective surcharge on the highest income taxpayers to enhance progressivity. Of the new brackets, 15 and 28 percent, it is estimated that almost 80 percent of all taxpayers will be taxed at the lower of the two amounts, 15 percent.

Second, many important deductions have been retained, and in some cases, improved. For example, the standard deduction will replace the zero-bracket amount. Thus, each single taxpayer will be entitled to a standard deduction amount of $3,000 with joint filers entitled to $5,000. Both of these amounts are higher for elderly and/or blind individuals. The personal exemption will be raised to $2,000 by 1989, and then indexed for inflation as well. The interest deduction on home mortgages will be retained for a homeowner's first and second home. State and local income taxes and property taxes will still be fully deductible as well.

Third, an estimated 6 million working poor, living at or below the poverty level, will no longer have to pay income taxes, thereby relieving them of this financial burden which hits hardest on those seeking to lift themselves out of poverty.

Fourth, while the individual income tax bracket structure is simplified and lowered, a much stronger minimum tax of 21 percent for individuals will ensure the fact that no taxpayer can avoid paying their fair share of taxes.

Fifth, the conference committee agreement lowers the maximum corporate tax rate from 46 to 34 percent, but at the same time, it includes a much stricter minimum corporate tax rate of 20 percent, so that we will not have instances of large corporations paying no income taxes and, in some cases, getting an income tax refund instead.

Sixth, the conference agreement eliminates many overabused tax shelters that have encouraged investment strictly to lower income tax liability. Instead, this bill will encourage personal and corporate investment for the right reason: good economic sense and a fair return on capital invested.

Seventh, it maintains basic tax incentives for American industries, including those which depend on heavy capital investment in equipment and machinery, by maintaining our current system of accelerated depreciation and cost recovery.

Eighth, the conference agreement is an improvement over the House-passed bill in its treatment of the timber and paper industries. We were able to ameliorate some of the original concerns in the final version.

As I indicated, with such a comprehensive overhaul of our entire Tax Code spread across 1,800 pages of legislation, it is to be expected that there will be misgivings over some specific provisions. I am particularly concerned, for example, with the retroactive nature of some provisions; with the change in deductibility of charitable contributions; with the elimination of sales tax deductibility; with the provisions affecting Federal retirees; and with the treatment of individual retirement accounts.

However, I would like to say to my colleagues that the bottom line on this historic legislation is that it is a significant improvement on our current Tax Code, with all of its complexities, loopholes, and weaknesses. The Tax Reform Act makes great strides in removing tax avoidance as a key component of economic decisionmaking in our Nation. And, of equal importance, this bill can help restore faith in the Tax Code by requiring all Americans, individuals and corporations, to bear their fair share of the tax burden.

An opportunity such as the one we have been given today—to dramatically improve a law that touches the lives of each and every American—does not present itself often. In fact, if we let this chance to make our tax system fairer and simpler, we may never have another opportunity to do so. Enactment of the tax reform bill today is important for the long-term health and performance of our economy, so I urge adoption of this legislation.

Mr. KOSTMAYER. Madam Speaker, I rise today in support of the Tax Reform Act of 1986, as reported by the Senate-House conference committee. Like everyone, there are provisions in the bill with which I strongly disagree. But after 2 years of active and intense debate, the issue of tax reform has come down to one question: Will the tax system established by this bill be substantially fairer than the present one?

I believe the answer is "yes," for the following reasons.

First, the conference committee's bill improves the progressivity of the income tax system as a whole. Although the average taxpayer in every income class will have their taxes reduced, the average percentage reductions are much greater for those with moderate incomes then for the wealthy. The result is that the share of the total individual income tax burden goes down for all income classes below $50,000 a year.

For example, under the bill, the average income tax burden in 1988 for families with incomes between $20,000 and $30,000 will be reduced by 9.8 percent; the tax burden for families with incomes between $30,000 and $40,000 will be reduced by 7.7 percent; and the tax burden for families with incomes between $40,000 and $50,000 will be reduced by 9.1 percent. By contrast, the average tax burden for families with incomes above $100,000 will be reduced by only about 2.3 percent.

Second, the conference committee's bill reverses the dramatic decline in the corporate share of the Nation's tax burden—increasing business taxes by $120 billion over 5 years, while reducing the individual tax share by an equal amount. This revenue is raised by closing loopholes and shelters, creating a level playing field so that economic rather than tax

decisions will once again motivate American businesses. In addition, by instituting a tough 21 percent minimum tax, the bill ensures that large profitable corporations will be unable to avoid paying taxes. Too many profitable corporations have been able to escape any tax liability under our current system.

Third, the conference committee's bill provides substantial tax relief to the working poor. By increasing and indexing for inflation the standard deduction, the personal exemption, and the earned income tax credit [EITC], Federal income taxes will be eliminated for about 6 million working poor families, and at least 5 million additional low-income families will receive significant tax reductions. Moreover, the vast majority of families with children who have incomes below the poverty line will have 50 to 100 percent of the Social Security payroll tax burden offset.

While I believe the conference committee measure will result in a fairer and more equitable Tax Code, it is not perfect. I am very disappointed that the bill contains a retroactive elimination of the Federal employees' "3-year pension recovery rule." I believe this pension change is fundamentally unfair to Federal employees. This is especially true now that it has been made retroactive to July 1, 1986. In addition, I am concerned that the depreciation schedule changes and repeal of the investment tax credit may adversely affect capital-intensive industries, such as steel and coal. But, overall, the conference committee's bill is much fairer and should generate increased economic efficiency. To some extent, these imperfections are mitigated by the lower rates for both individuals and corporations.

Madam Speaker, there are some who claim that American taxpayers do not really care how we answer today's tax reform debate question. I believe these critics are wrong and that they are missing the basis of the popular support for tax reform.

The American people have always demonstrated a willingness to pay their fair share of taxes. But they resent the dozens of loopholes and shelters that benefit mainly wealthy individuals and profitable corporations at the expense of the average taxpayer. The conference committee bill is an important step toward a tax system with far fewer special tax preferences, a system in which all taxpayers pay their fair share.

I urge my colleagues to reject a tax system that has grown increasingly unfair and vote for the conference committee's tax reform legislation.

Mr. ANTHONY. Madam Speaker, I would like to take a few moments to explain and elaborate on the provisions of the conference report that pertain to employee stock ownership plans, or ESOP's. First it is necessary to review the history of this historic tax reform legislation and ESOP's.

TAX REFORM AND ESOP'S—A LONG ROAD

TREASURY I AND ESOP'S

When Treasury I was released in late 1984, it contained very little that pertained to ESOP's, except to recommend the repeal of the PAYSOP, which was scheduled to expire in any event yearend 1987.

TREASURY II AND ESOP'S

Treasury II, or Reagan I, was a different story, however. Treasury II recommended a massive rewrite of the Tax Code provisions pertaining to ESOP's. And quite frankly, Treasury II would have resulted in no ESOP's except in large publicly traded companies with limited employee ownership.

Without going into detail, the essence of Treasury II's ESOP recommendations was that employee ownership should involve direct ownership of the employer's stock, and not indirect ownership through a trust account. Specifically, Treasury II would have mandated that employees be able to sell their employer's stock at any time after 3 years of receipt of the stock to whomever they pleased. Clearly, this would have meant private companies could not have an ESOP because the stock would end up in the hands of enough people to require registration as a publicly traded company.

Furthermore, Treasury II provided that if the employee could not sell his stock to an outsider, then he could sell it back to his or her employer at any time. This recommendation would have put a tremendous financial burden on even the richest and most profitable company. For example, I assume that even an IBM could not have afforded an ESOP under such a provision because how could it face such a repurchase liability potential each and every year?

In creating its new ESOP creature, Treasury II would have also removed ESOP's from the part of the U.S. laws.

In response to Treasury II, the ESOP world raised a great hue and cry to the administration and the Congress. In an attempt to educate Washington decisionmakers as to what leads to a successful ESOP company, where management and employees both are profiting, an ESOP statement of principles written by the executive committee of the ESOP Association on June 24, 1985, was released. I ask permission to place this statement of principles in the CONGRESSIONAL RECORD at this point, and it is as follows:

ATTACHMENT 1

4. WHAT MAKES ESOP'S WORK FOR THE CORPORATION AND EMPLOYEE

(A statement of principles, June 24, 1985, by the ESOP Association)

The ESOP Association welcomes the fact that President Reagan, the Treasury Department and the U.S. House of Representatives recognize the benefits of capital accumulation by employees through ESOPs and the use of ESOPs as a technique of corporate finance.

The Association is a professional and trade association whose members have taken steps to ensure that employees accumulate capital through an ESOP. Because of the success of ESOP companies, the Association's experience has shown that the principles set forth below are necessary for the continued and future success of tax-qualified plans which hold primarily employer securities in the form of common stock.

These principles are:

1. Capital, in the form of employer's common stock, must be required to accumulate in a trust, and the trustee should be subject to fiduciary responsibilities. Unless the trust plan permits, there should be no required payment or distribution to employees of the employer's common stock other than as provided under current law.

2. Employees should recognize no income on employer securities in the form of common stock accumulating under an ESOP. Following distribution of shares to an ESOP participant, any appreciation of the securities over the trustee's basis should be treated as long-term capital gain upon any sale of the securities.

3. Employers should be encouraged to make annual contributions to the trust, in cash or employer securities in the form of common stock. This encouragement, in the form of deductions for such contributions, should be at a level at least equal to current law;

4. Allocations of employer securities should primarily be based on employees' relative compensation with reasonable limits on allocations to certain highly-paid and/or major shareholder/employees, such as provided under current law;

5. ESOPs and ESOP transactions should continue to qualify for present exemptions under federal and state securities laws. In addition, ESOPs should be regulated under federal law rather than under the laws of the 50 states.

6. After a reasonable period of service, participants' accounts in the trust should become vested in employees on a graduated basis over a reasonable period of time.

7. The tax laws should continue to provide incentives for the establishment of leveraged and nonleveraged ESOPs. Various laws enacted over the past 13 years by Congress and signed by four Presidents have provided important incentives for ESOPs; and

8. In matters of corporate governance, the law should recognize the significant distinctions between publicly-traded corporations and closely-held corporations.

The ESOP Association does not completely agree with the concept that ESOPs are not retirement plans. They can be; they can also be better than normal retirement plans. They can provide employees more wealth, and they assist in corporate finance. Experience with ESOPs over the past 13 years documents this position.

The ESOP Association will work with the Administration and Congress to ensure that the basic principles as set forth above are embodied in the laws of the United States.

Any proposal which is not in accord with these principles will be opposed by the Association.

ROSTENKOWSKI I AND ESOP'S

The next tax reform proposal that contained provisions dealing with ESOP's was published as the Ways and Means Committee chairman's mark on September 26, 1985, and was called Rostenkowski I.

Rostenkowski I's ESOP provisions were an improvement over Treasury II, but still contained some basic flaws that would have hindered employee ownership through ESOP's. It would have kept ESOP's in ERISA, but would have maintained a major element of direct ownership by allowing the employee to force the employer to cash him out in 7 years. Rostenkowski I would have also eliminated various tax incentives for ESOP, and would change how a closely held corporation with an ESOP is governed.

THE ANTHONY ESOP AMENDMENT

On October 25, 1985, I offered an amendment in the Ways and Means Committee to change the ESOP provisions of Rostenkowski I. I ask permission to insert in the CONGRESSIONAL RECORD at this point the exact lan-

guage of the Anthony ESOP amendment, and it is as follows:

ATTACHMENT 2

ESOP PROPOSAL

I. Grandfather present law treatment for assets in ESOPs as of Decembr 31, 1985. Generally same as staff proposal. No revenue impact.

II. Repeal payroll-based tax credit for ESOPs effective December 31, 1985.

III. For post-enactment ESOPs, generally maintain current law with the following changes;

(a) Allow employees to diversify 25% of account balance when age 55 and 10 years of participation, and ⅓ of the balance when age 60 and 10 years of participation.

(b) Require vesting at 20% per year after the 5th year of participation.

(c) Impose a discrimination/concentration test ensuring that no more than ⅓ of employee contributions for a year are allocated to officers, 10% shareholders or the highly paid.

(d) Utilize top-heavy pension plan limit of $200,000 on amount of pay that may be taken into account in determining whether allocations are discriminatory.

(e) Require an independent appraiser and require that appraiser's name be included in plan documents filed with the IRS.

(f) Require full pass-through voting for ESOPs in publicly-traded corporations full pass-through voting in closely-held corporations on major corporate issues and on all issues after 10 years of participation in the plan; continue to allow unallocated shares to be voted under ERISA fiduciary standards, and ensure that the one-man-one-vote concept can be accommodated in co-op companies utilizing ESOP incentives.

IV. Maintain 1984 ESOP incentives, as follows:

(a) Deduction for dividends paid on ESOP stock if passed through as taxable income to employees.

(b) Deferral of tax on proceeds from sale of at least 30% of employer's stock to an ESOP or co-op if proceeds reinvested in other private sector securities.

(c) Commercial lender exclusion from income of 50% of interest on ESOP loans.

(d) Under limited circumstances an ESOP or co-op may assume an estate's tax liability in return for a transfer of employer stock and an employer guarantee to pay the estate tax (analogous to IRC Section 6166 permitting an installment payment of estate taxes when interest in a closely-held business exceeds 35% of the adjusted gross estate).

V. Revenue impact of overall proposal: revenue neutral.

My amendment was modified by the committee by limiting the ESOP tax incentives to 3 years. As the House committee report said, this action was not done to evidence any opposition to ESOP's, but to limit the time for special ESOP incentives "to judge their effectiveness in promoting employee ownership."

The new ESOP rules contained in the Anthony amendment were, in essence, designed to improve ESOP's without violating those basic principles necessary for the smooth operation of a successful ESOP.

I am very encouraged by the committee's actions on ESOP's. The very first time that the Ways and Means Committee members and our staff took a long, hard look at ESOP's was 1985. Prior to this tax reform bill, the House had always left ESOP issues to the other body, because the champion of ESOP's for so many years has been the senior Senator from Louisiana, RUSSELL LONG. But in this tax reform effort, every tax law provision and incentive was under the microscope in Ways and Means, and it would have been an abdication of our responsibilities not to deal with ESOP's.

And for a first effort, our committee developed a reasonable ESOP proposal that recognized the importance of the thousands of companies with employee ownership through ESOP's, and that made it clear that the House Ways and Means Committee, and in turn the House, wants more employee ownership.

Our committee, by its voice vote approval of the Anthony ESOP, laid to rest that only the other body cares about ESOP's, and that ESOP's would disappear with the retirement of the senior Senator from Louisiana.

THE SENATE'S TAX REFORM BILL AND ESOP'S

In essence, the Senate's ESOP provisions ratified its longstanding position in support of ESOP's.

Perhaps the major difference was that the House ESOP provisions, developed in a spirit of compromise between those who feel current ESOP laws are succeeding in providing a meaningful capital account to ESOP company workers, and those who feel ESOP's do not provide a good retirement policy, focused on ESOP's as retirement plans, whereas the Senate bill focused on ESOP's more as techniques of corporate finance.

An example of this different focus was that the House bill required an employer to diversify certain employees' ESOP accounts before retirement, whereas the Senate bill had no diversification proposal.

THE CONFERENCE DOCUMENT AND ESOP'S

The bill before us today is a ringing endorsement of ESOP's, and it is a true blend of the House and Senate bills.

First and foremost, the conference bill, which will become the Internal Revenue Code of 1986, continues with no sunset the ESOP tax incentives and expands those incentives in major aspects. These incentives are:

ESOP INCENTIVES

Lender Interest Exclusion—The provision allowing banks and other qualified lenders to exclude from their taxable income 50% of the interest income they earn on ESOP loans is retained and expanded. The interest exclusion is now available with respect to a loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of the loan and such contributions are allocable to participants' accounts within one year after the date of the loan. In addition, eligibility for the lender interest exclusion is expanded to allow mutual funds to make loans to ESOPs.

Tax Free Rollover—The provision allowing a deferral on taxes from proceeds of a sale of stock to an ESOP, provided that the ESOP owns a minimum of 30% of the company after the sale and the seller's proceeds are reinvested in "qualified replacement property", is retained.

Dividend Deductibility—The deductibility of dividends paid in cash to ESOP participants is retained and expanded to allow a deduction for dividends paid on ESOP stock to the extent that the dividends are used to repay the ESOP loan incurred to buy that stock. The deduction is allowed for the year the dividend is distributed to participants, not the year it is contributed to the plan. The Treasury Department will be empowered to prohibit the use of this new provision in those instances where it is determined that it is used as a tax avoidance scheme.

Estate Tax Assumption—The provision allowing an ESOP to assume an estate's tax liability in exchange for an equivalent amount of stock is retained in its current form.

Estate Tax Exclusion—Permits an exclusion from the gross estate of 50% of the proceeds from a sale of employer securities to an ESOP or eligible worker owned cooperative. This provision will apply only to sales after the date of enactment and before January 1, 1992.

Second, the Internal Revenue Code of 1986 will improve on the management of ESOP's for ESOP employees by requiring distribution of their ESOP account if they leave their employer, by setting forth clearly what votes have to be passed through to the employees in a closely held company without disturbing the corporate culture, and by spelling out how an employer is to honor an employee's desire to convert stock to cash when he or she leaves.

The new Internal Revenue Code of 1986 will contain the House's diversification requirement. This is a new provision about which many experts have had questions.

I am openminded about this provision, and if it proves to impose too harsh a burden on ESOP companies, I would be willing to reexamine how and why it works or does not work. But I want the record to show that the concept of diversifying an ESOP account for certain long-term employees, as they near retirement age, has its origins in the writings of Dr. Louis Kelso, the recognized father of ESOP. So I emphasize that the diversification provision, which was first included in the Anthony amendment, is designed to enhance ESOP's, not to hinder them.

Also, the Internal Revenue Code of 1986 will contain a provision that may be the most important change in the ESOP rules in this conference report. This is a provision which was included in the Anthony amendment. It requires that the stock in an ESOP of a closely held company be valued by an independent appraiser.

Why is this provision important? Because since 1974, our legal system has dealt with ESOP's, and occasional problems have been identified. A review of where things went wrong with an ESOP, or ESOP transaction, in the eyes of Government agencies regulating ESOP's always lead back to a dispute over valuation of the ESOP stock. The staff of the Ways and Means Committee and I became aware of this fact as we considered ESOP law reform. In fact, a common theme of earlier ESOP proposals was that allowing the employee direct ownership of the ESOP stock would solve the valuation problem because the price would be set by the marketplace. While true that direct ownership would result in a marketplace price, direct ownership would kill employee ownership, except in a few companies, and thus would have thrown the baby out with the bath. The Ways and Means pre-

ferred solution to the valuation issue, and now the Congress' position, was to require an independent appraisal of the stock value.

Finally, the conference document does not contain a statement of intent about ESOP's and their use as techniques of corporate finance. This statement, added by the Senate Finance Committee, was a reiteration of a statement in the 1976 Tax Reform Act. Like any statement of intent, the Senate provision did not change any current law pertaining to ESOP's as some argued, but instead reaffirmed that Congress wants the regulatory agencies to recognize that ESOP's are corporate finance devices as well as an employee benefit device. It is unfortunate that there was some confusion over the statement in the Senate bill; but I think that everyone can agree that the action of the conference on this provision does not affect the statement of intent in the 1976 Tax Reform Act, nor does it infer any change of congressional policy toward ESOP's.

WHAT DOES THIS LEGISLATIVE HISTORY MEAN?

In sum, the history of ESOP's and tax reform illustrates that Congress rejected the proposal that ESOP's become a direct stock ownership device.

Instead, Congress, in the Internal Revenue Code of 1986, endorses ESOP laws in basic agreement with the principles set forth in the June 25, 1985, statement that present ESOP law, with the ESOP tax incentives, should be maintained with modest fine tuning. In particular, the fine tuning included addressing the valuation issue for ESOP's by requiring an independent appraisal of ESOP stock in a closely held company.

THE INTERNAL REVENUE CODE OF 1986, ESOP'S AND THE FUTURE

The future of ESOP's under the Internal Revenue Code of 1986 is very bright. Assuming that Congress stops its bad habit of changing the laws pertaining to ERISA plans every year, or every other year, the many pluses for ESOP's in the Tax Reform Act of 1986 will only lead to more ESOP's, and more employee owners.

In the final analysis, however, the fate of ESOP law will be determined not by members of Congress, nor inside-the-beltway lobbyists, but by the performance of thousands of ESOP companies.

For example, there are several ESOP companies in my congressional district, and I am impressed with their track record. In particular, we are proud of the corporation, the Mad Butcher, a 100 percent employee-owned grocery store chain headquartered in my district in Pine Bluff, AR.

To put it bluntly, if ESOP's do not reward the workers with a measure of wealth, then I believe that the many supporters of ESOP's in Congress will be disappointed and, in turn, support for ESOP's, as evidenced by the ESOP Provisions in the conference report, will wane.

CONCLUSION

I do not believe Congress supports ESOP's for any philosophical theory about who should manage American corporations, but because we realize that there is wealth concentration problem in this country, plus a realization that wealth is earned in two ways—by labor and by capital. Thus, ESOP's, which allow workers access to capital, may be a way to address the problem without taxing one group to give to another.

In essence, ownership is a powerful idea, and I hope this review of ESOP's and the tax reform process will educate the public at large as to the decisionmaking process Congress followed in encouraging ESOP's in the Internal Revenue Code of 1986.

Mr. FAUNTROY. Madam Speaker, I rise in support of H.R. 3838, the Tax Reform Act of 1986.

The current tax reform bill represents a definitive advance in the area of progressivity and distribution. The bill would shift roughly $120 billion in taxes from individuals to corporations within 5 years. It will purportedly remove 6 million low- and moderate-income taxpayers off of the tax rolls, while substantially reducing the tax burdens of the remainder of lower- and middle-income citizens.

In addition, the bill would: Enact a minimum tax for corporations and wealthy individuals; drastically restrict tax sheltering activities; and tax capital gains as normal income. All of these measures will increase the equity of tax distribution while encouraging increased efficiency in capital allocation.

At the same time, I am concerned about retroactivity in H.R. 3838. The provision compelling Federal retirees as of July 1, 1986, to pay taxes on retirement income as soon as they retire is unacceptable both for recent retirees and for those Federal employees now considering retirement. In place of this treatment, those affected Federal employees at least deserve a retroactive date at some point in the future. In improving this bill, I urge my fellow members to support the distinguished Congresswoman, MARY ROSE OAKAR of Ohio, in her efforts to address this issue.

Mr. LUNDINE. Madam Speaker, after years of discussing and debating tax reform, our opportunity to act is finally here.

This bill is truly historic. Almost any piece of legislation can masquerade under the name of tax reform. And many have. But this measure comes closer to the idea of tax reform than any bill Congress has considered in the last 30 years.

This legislation would alter decades of American tax policy. Through the years, the President and Congress have loaded the Tax Code with special rules, deductions, exemptions, and credits. These provisions have been granted with good intentions, but they have come at a tremendous cost. In 1987, these special provisions will be worth almost $450 billion. Each time we have spent money to give a special incentive to advance one goal, we have pushed up the tax rates for everyone else.

Besides raising tax rates, these tax preferences have caused three other major problems. First, they have made our Tax Code unfair. By taking advantage of the number of existing tax breaks, some individuals and companies have paid no taxes at all, while the rest of us have had to make up the difference. Second, they have slowed down the economy. They have encouraged people to put their money toward unproductive, tax-favored uses, instead of the most efficient investments. And, third, they have complicated our Tax Code, making it hard to comply with and difficult to enforce.

I have advocated tax reform since the 1970's in order to put a halt to this misguided policy. I believe that the Tax Code should primarily be used to raise revenue for needed Government functions, and that it should only promote a few, broad, societal goals—such as homeownership, retirement savings, and charitable giving.

Genuine tax reform asks people to give up some of their own favorite tax provisions, which often benefit relatively few, in exchange for much lower tax rates, which should help everyone.

By eliminating most of the special provisions in our Tax Code, we can ensure that everyone pays a fair share of income taxes, reduce the Tax Code's interference in the economy and once again allow the free market to guide investment, and simplify matters for all taxpayers, particularly small businesses and middle-income individuals.

The tax reform bill, which we are considering today, moves us farther down the road toward fairness, economic growth, and simplicity.

Of course, this bill does not entirely conform to everyone's—or anyone's—ideal of what tax reform should mean. In exchanging a system of high tax rates and hundreds of specific tax breaks, for a system with low rates and few tax breaks, there were thousands of specific decisions and trade-off's that had to be made. Undoubtedly, each of us will think that the congressional tax writers have given up some tax benefits that should be preserved and preserved some that should be abolished. I would prefer to be voting for a tax reform bill that differed from the current proposal in several respects.

I believe that we should preserve the deduction for State and local sales taxes. For the past 72 years, the Tax Code has allowed people to deduct State and local taxes from their income, when figuring out their Federal income tax. In effect, this gives local governments the first chance to raise revenue, and the Federal Government is able to tax only what income is left. The fundamental need to protect our federal system of government, to me, justifies the full preservation of this deduction.

I am concerned about the retroactive repeal of a number of provisions. Tax reform is intended to restore people's faith in Government and to assure them that everyone will be carrying their fair share from now on. Unfortunately, the bill begins this renewal of confidence, at least in part, with a breach of faith. For example, many public employees who have retired in the last 3 months, who expected to receive a couple of years of tax-free income, will now find that they must pay taxes on their pension from day one.

The investment tax credit is also repealed retroactively. In recent years, the investment tax credit may not have fostered the kind of capital investment that would serve this country best. Nevertheless, I believe that this credit could have been restructured to provide targeted support for smaller and older businesses that invested in modern equipment; or, at the very least, it should have been phased out

in a way that would not shock manufacturers with suddenly higher tax bills.

Low-income housing is not dealt with adequately in the tax bill. Generally, the Tax Code should refrain from providing an incentive to invest in one industry over another. Different industries should compete freely and fairly for investment dollars, without interference from our tax laws. Yet housing for low-income people cannot compete in this environment. It is inherently uneconomic to provide adequate housing at low cost, so we need to provide some kind of special incentives to encourage people to invest in low-income housing.

Since direct Government assistance to housing has been cut by three fourths under this administration, and as it is unrealistic to think that this assistance will be restored, this is not the time to restrict the only mechanism we have left to make low-income housing an attractive investment. In New York State, for example, we need to build, or rehabilitate, 1 million units in order to make adequate housing available to all people in the State.

The municipal bond changes in this bill have an adverse affect on local government initiatives for economic development. These incentives, particularly for investment in new manufacturing capacity, are greatly needed to promote our industrial competitiveness.

Finally, I am concerned about the rate structure that we are imposing under the new bill. We have an opportunity here, as we trade in a system of high tax rates for one with lower rates, to create a simple, progressive system of taxation.

We have not risen to that challenge. First, there is an intervening set of rates for 1987, before we reach permanently lower rates in 1988. This interim schedule provides an additional complication and could undermine support for tax reform, since it delays for a year the expected benefits of lower rates. These rates are unnecessarily confusing and have the unwanted effect of taxing the very rich at a lower marginal rate than those who are moderately well off, thereby undermining the progressiveity of the Tax Code.

Nevertheless, the bill is a monumental achievement.

The bill curtails tax preferences that have given an advantage to rich individuals and profitable corporations. It would no longer treat income from investments more favorably than income from work. Tax shelters would be dramatically curtailed, under a new provision authored by New York Senator MOYNIHAN, which would prevent people from using passive losses to offset their professional income. People who dine on expense accounts will no longer enjoy a great tax advantage over people who carry a lunch pail, as business meals and entertainment will no longer be fully deductible. Both the corporate and individual minimum tax would be strengthened.

The bill also provides overdue relief to the working poor. It provides a dramatic incentive for people to move off welfare and into jobs. People below the poverty line are now required to pay income taxes. Taxing people at that income level does not make sense; it only makes staying on welfare more attractive. This legislation would relieve 6 million people, who are struggling to work their way out of poverty, from paying Federal income taxes.

Middle-class Americans will also benefit. While some deductions have been eliminated, those losses should be offset by dramatically lower tax rates, a higher personal exemption, and a much higher standard deduction. With a higher personal exemption, the Tax Code will adequately recognize that individuals with children have less disposable income than those without. With a higher standard deduction, more people will be relieved of the record-keeping burden of having to itemize their tax returns. Under this bill, the average American will receive a 6.1 percent tax cut in 1988.

In the long run, this tax reform package will be good for economic growth, bringing tangible benefits to all working Americans. Some people have claimed that this tax reform bill, because it removes tax payer subsidies to various businesses, will precipate a recession. To be sure, some businesses will experience difficulties as they wean themselves from their reliance on the Tax Code.

But for every tax-dependent business that will have to retrench, there is a tax-independent enterprise that will prosper. The computer, textile, and food industries, as well as the vast majority of small businesses, have traditionally paid higher effective taxes, because they have benefited from fewer tax breaks. These businesses, relieved of their extra tax burden, will be able to expand and provide more jobs to compensate for losses elsewhere.

In the long run, too, this tax bill should enhance our economy's overall efficiency and competitiveness. America has faltered in international competition, at least in part, because our tax laws have encouraged people to invest in unproductive endeavors—constructing hotels and office buildings where there is already an oversupply, or acquiring other businesses simply to take advantage of their tax benefits. By reducing those tax-motivated transactions and encouraging investment to flow to its most productive uses, this bill will strengthen economic growth.

Despite its historical magnitude, however, this tax reform bill will not be the last word in tax policy.

A tax code, no matter how well it is crafted, is not adequate unless it raises enough money to pay for the Government. The current Tax Code raises only 80 cents for every dollar we spend. If Congress decides to address this issue in the future by raising taxes, then the proposed Tax Code will be a far better vehicle for increasing revenue than our current inequitable and loophole-ridden Tax Code. In my view, if Congress decides to raise taxes, it should not tinker with the underlying tax policy which has been hammered out in this tax bill, but instead impose a temporary surtax, based on a percentage of taxable income, in order to raise enough money to pay the Government's bills.

We should give this new Tax Code a chance to work. Next year's technical corrections bill should only contain the most necessary mechanical adjustments. It would be to the lasting discredit of Congress if we began next year to retreat from the bold steps we are taking this year.

In a few years down the road, as the Treasury Department studies the effects of tax reform and as our economy and international competition will undoubtedly change, it will be time again to reexamine the Tax Code to see what adjustments, if any, may be necessary. Congress may want to advance the steps it has taken in this legislation, to bring even greater coherence to our system of retirement tax breaks, to reduce the Tax Code's bias in favor of consumption over savings, and to prevent the flight of American jobs overseas.

When Congress considers those changes, it should keep in mind the lessons from this tax reform process. First, that every tax incentive has a cost. Although a tax break may create jobs in one industry or region, it can pull resources away from other businesses and force up taxes for everyone else. Second, that no tax preference should be treated as sacrosanct, but should be studied to see whether it is serving its stated purpose, or is simply reducing the tax liability for a selected group. And, finally, that tax policy does not have to consist of smuggling tax breaks in through the backdoor, but instead can provide an arena for political courage.

That kind of courage was shown by Senator BILL BRADLEY and Congressman DICK GEPHARDT, who pioneered the cause of tax reform. And it was dramatically demonstrated by Chairman DAN ROSTENKOWSKI, who extended his hand in partnership to a President from another party, who stood his ground on tax reform, and who proved that politics can be more than the systematic organization of selfishness.

In short, the Tax Reform Act of 1986 shows that the national interest can win out over special interests. I am therefore proud to support this legislation.

Mr. RAHALL. Madam Speaker, before us today is one of the most important bills of this Congress. We have all been contacted by constituents and other groups speaking both for and against this bill and its various provisions. As with other bills of this magnitude, I am encouraged as well as concerned with the various proposals it contains. However, in light of the need for reform and the fair and responsible approach this measure takes to more evenly distribute our Nation's Federal tax liablity for individuals, I have decided with some reservation to support H.R. 3838.

One of the most appealing provisions of this measure is the reduction in tax rates. The conference agreement reduces and consolidates the present 15 tax brackets, ranging from 11 to 50 percent, into just two—15 and 28 percent. For single taxpayers, the 15 percent rate applies to taxable income up to $17,850, and 28 percent rate applies to taxable income above this level. For joint returns, the corresponding break point is $29,750. For the average taxpayer in the fourth congressional district of West Virginia, where the average per capita income is $8,500, the 15 percent tax rate would apply. For the average West Virginia taxpayer, this drastic reduction in rates would offset any loss due to the elmination or reduction in preferences, such as the repeal of the two-earner deduction and the elimination of the charitable contribution deduction for nonitemizers.

This legislation would also reduce the top corporate rate from 46 to 34 percent and consolidates the present four lower corporate tax brackets into two rates, 15 percent and 25

percent. The bill also provides for an individual and corporate minimum tax to ensure that all individuals and corporations pay their fair share of taxes. This has been a point of contention to many of my fellow West Virginians who look with outrage on past reports of corporations earning billions in profits paying little to no taxes.

To right this tax imbalance which has plagued individual taxpayers with an unfair tax burden, this legislation would reduce the taxes paid by individuals by $121.7 billion over the 6 years, 1986–91, while increasing the taxes of corporations by $120.4 billion and miscellaneous taxes by $1.5 billion. The full tax rate reduction for individuals would not go into effect until 1988, but even in 1987, it is estimated that four out of five individual taxpayers would receive tax cuts despite the curtailment or elimination of many present deductions, exclusions and credits.

In addition to the reduction in tax rates, three of the most important and beneficial provisions of this bill, with regard to individuals, are the treatment of the standard deduction, personal exemption, and earned income tax credit.

First, the bill increases the amount of income that is automatically tax exempt for all taxpayers. This amount is presently known as the zero bracket amount and is built into the rate schedules. Under this measure the amount would be known as the standard deduction—its former name—and would be subtracted from income by the taxpayer instead of being built into the rate schedules.

The increased standard deductions would take effect in 1988. For single taxpayers, the standard deduction would be increased from $2,600 to $3,000; for married couples filing jointly it would be increased from $3,850 to $5,000; and for heads of households it would rise from $2,600 to $4,400.

Second, H.R. 3838 raises the personal exemption—an additional allowance which all taxpayers are allowed to subtract when computing their taxable income, with one exemption allowed for each family member. Under the bill, the personal exemption would be $1,900 in 1987, $1,950 in 1988, and $2,000 in 1989. Under current law the exemption is estimated to be $1,100 in 1987.

Of importance to elderly and blind Americans, this bill repeals the existing additional personal exemption for persons aged 65 and over and blind persons and replaces it with an additional standard deduction. The additional standard deduction for the elderly and blind would be $750 on single returns and $600 per person on joint returns.

Third, the bill increases the earned income tax credit—a special provision designed to help offset Social Security taxes and employment-related expenses for the working poor. Eligibility for this credit is limited to taxpayers with dependent children and with income from employment. Presently, the maximum credit is $550. This amount is reduced for taxpayers with incomes above $6,500 and the credit is eliminated entirely when income reaches $11,000. Under the conference agreement, the maximum credit would be raised from $550 to $800, effective in 1988. The income level at which it begins to be reduced would be raised from $6,500 to $9,000, and the income level at which the credit is eliminated would be increased from $11,000 to $17,000. Further, for the first time, the credit would be indexed to rise with inflation. With the average per capita income of $8,500 in my congressional district, I am very pleased with the revision in the earned income tax credit. Under the new income limits, many of my constituents should qualify for this credit, and their benefit will be improved by the increase in the amount of the credit.

In light of these particular reforms, this bill is one of the most beneficial pieces of legislation in decades for low income working families. Enactment of this historic measure will provide millions of our most vulnerable working families with substantially increased income for the support of their children. It has been estimated, for example, that a family of four, struggling to maintain its independence and self-sufficiency at poverty level wages, will have over $1,000 in additional income to support its children in 1988 as a result of the changes in the tax code contained in H.R. 3838.

All types of working families with children—traditional two parent families and single parent families, large families and small families—will benefit from the critical improvements in the personal exemption, standard deduction and earned income tax credit contained in the Tax Reform Act of 1986. These reforms absolutely essential to millions of taxpayers and long overdue. The decline in the value of the personal exemption, for example, is the largest single change in our income tax system in the post-war era according to U.S. Treasury officials. The erosion in the value of the earned income tax credit has greatly harmed low income working families actually causing many to be taxed into poverty by our Federal tax system.

The importance of this legislation for families should not be ignored. Over the years, our Tax Code has been littered with tax shelters and loopholes for various interests while the tax burden on families has increased dramatically. H.R. 3838 removes what has been seen as an anti-family bias from our Federal Income Tax Code and provides the tax relief and assistance desperately needed by America's working families.

I would like to note some specific examples of how this bill would affect the average American working family to accentuate the importance of this legislation. The Center on Budget and Policy Priorities recently released an analysis comparing current law, the House and Senate passed bills, and the conference agreement.

Examining specific types of low income families, the analysis finds that a married family of four with earnings at the poverty line—$11,937 in 1988—would owe $1,302 in Federal income and payroll tax in 1988 under current law, but $245 under the tax reform bill.

For single-parent families—whose tax burdens are now higher than those of married families with the same level of income—the bill provides even greater relief. A single-parent family of four with earnings at the poverty line would owe $1,452 in income and payroll taxes in 1988 under current law, but $245 under the new bill.

A married family of four with earnings of $15,000 would receive an $826 tax reduction, while a single-parent family of four earning $15,000 would receive a $929 tax reduction.

For most of these families, the tax relief is greater under the conference bill than under either the House or Senate bills because the conference bill contains a larger earned income tax credit. The three most important provisions to these groups of taxpayers are the increased personal exemption, the increased standard deduction, and the increased earned income tax credit, along with the increased income level for eligibility for the earned income tax credit. These three provisions, along with the increase in the income threshold at which taxpayers are required to pay income tax, are responsible for removing 6 million low-income households from the Federal income tax rolls entirely.

Our Nation's elderly are also helped by this legislation. Just over one-half of the Nation's 28 million persons 65 and over have sufficient income to file tax returns each year. About two-thirds of the Nation's 15 million older taxpayers do not itemize deductions on their tax returns. For this group, tax reform will mean either lower taxes or no real change in tax liability. The nonitemizing elderly filers do well for three reasons. First, the higher standard deduction—including an additional $750 for elderly singles and $1,200 for couples—means less income subject to tax. Second, the 15% tax rate helps those at moderate income levels. And, third, nonitemizing filers have relatively simple tax situations and are not affected by the loss of deductions, shelters, and credits.

For the most part, this legislation will provide tax relief for older Americans. Of the 6 million persons removed from the tax rolls by this measure, up to 700,000 will be among the elderly. Furthermore, the bill mandates 5-year vesting and limits on pension integration with Social Security that will help future retirees. While there are, of course, provisions of this bill which concern elderly Americans—for instance, the loss of certain itemized deductions, particularly the change in the medical deduction threshold from 5 to 7.5 percent of income, and the retroactive change in the 3-year recovery rule which affects primarily Government retirees—the bill, overall, benefits most taxpayers, including the elderly.

There has, however, been controversy on how—overall—Federal retirees are affected by the bill. The bill does repeal the 3-year recovery rule that, under current law, allows retirees who have made after-tax contributions to their pensions to generally receive their pensions on a tax-free basis until all of their contributions have been recovered. This provision is indeed retroactive to those employees retired on or after July 1, 1986, and as I was opposed to this provision, I am certainly opposed to the retroactivity of this provision. But it is a part of the overall bill now, and the question has been asked, "would public retirees really be worse off under tax reform?"

Looking at five levels of public employees, income levels $20,000 to $60,000 with pension incomes of $11,250 to $45,750, by the third year of retirement, every income category of public retiree is better off under tax reform than under current law. This happens because by the third year the lower rates, en-

larged personal exemption and standard deduction, created by tax reform more than overcome the initial advantage of the 3-year recovery rule. For example, an employee with an income of $20,000 with a pension of $11,250 would owe $604 in taxes in the third year under current law and $234 under the tax agreement. This person's savings would be $370 in the third year and each year thereafter. For the median Federal retiree, who now has an annual pension of $12,084, taxes have been cut by more than half from the third year onward. While the advantage is proportionally greater for the one-half of Federal retirees with pensions below $12,084, the gains for the half above $12,084 are substantial also. On a Federal pension of $45,750, for example, the total 18-year payment would be cut from $137,783 under current law down to $99,450—28 percent lower—under tax reform. If we look at what's best for public retirees over a multiyear period and not just years one and two, the actual facts are that on their pension income they pay far less under tax reform. Over their full life expectancy, their tax gains are truly dramatic.

While we all have concerns with specific provisions of this conference report, it is a courageous and responsible bill that restores the vital element of fairness to our Federal tax system so that no longer will poverty level Americans pay more Federal taxes than large and profitable corporations pay to our Federal Government in income taxes.

Of course, as a representative from West Virignia, I do indeed have considerable concern with regard to the industry related provisions of this bill.

The reduction in permissible deductions for depreciation, coupled with the repeal of the investment tax credit and the abandonment of preferential treatment for capital gains, could depress business investment in new plants and equipment and hurt U.S. competitiveness in world markets. These revisions in the Tax Code are of grave concern to West Virignia industries, including the coal and timber industries.

Madam Speaker, one of my major concerns with this legislation, and the reason for my reluctant support of the overall package, is how many of its provisions will impact the coal and other capital intensive industries. In those regions of this country such as West Virginia dependent upon the so-called "smokestack" industries, we have not yet witnessed the economic recovery the President claims is taking place under his policies. Many sectors of the economy are still struggling to regain their competitiveness and a critical factor involved in this effort concerns the Tax Code.

Preliminary estimates on this bill indicate that it could raise the coal industry's tax liability by 38 percent by the end of a 5-year period from enactment. However, most of this increase is due to provisions of the legislation that impact all industries and are not exclusvie to coal. I am pleased to say that we have managed to retain a major tax incentive of importance to coal development—the percentage depletion allowance. Following are some of the provisions of this tax reform bill of concern to the coal industry:

Percentage depletion allowance—the 10 percent depletion allowance for coal is retained, however the deduction for coal is increased from 15 to 20 percent and as such, the effective rate would be reduced from 8.5 to 8 percent. The income cap on depletion will remain at 50 percent.

Depreciation—Most mining equipment would be moved to a 7 year, 200 percent declining balance. Current law is a 5-year write-off at 150 percent.

Exploration and development costs—Current law expensing is retained except that 30 percent is to be recovered over a 5-year straight-line period rather than the 20 percent required to be capitalized under current law.

Corporate minimum tax—Preferences to be added to the new 20 percent rate include percentage depletion at 100 percent of the statutory allowance. No provision is included to recognize the 20 percent discount. Also included is exploration and development costs.

Perhaps the most harmful provision of this bill to the coal industry is its elimination of the investment tax credit. While the ITC is important to many industries, its loss will be felt more harshly by marignal and capital intensive industries such as coal who are minimum taxpayers. In some instances, the loss of the ITC would be offset by the lower corporate tax rate but this will largely not be the case for marginal industries paying under the minimum tax. Unused ITC's may offset 25 percent of the minimum tax liability, although this benefit may be mitigated by the amount of unused credits that can be carried over.

It is my hope that we will in the very near future revisit this legislation as its effects become more apparent.

Mr. COLEMAN of Texas. Madam Speaker, I rise in opposition to the conference report on H.R. 3838, the Tax Reform Act of 1986, and support recommitting the report to the conference committee.

On its face, this is a good bill. Indeed, the first several pages constitute historical change in the Nation's Tax Code—change which if enacted would provide necessary tax relief for millions of working poor, lower marginal tax rates for most Americans, and close inefficient loopholes which distort investment. However, to reach those goals, many other changes in the code were made which will not yield similar results.

The conference committee, unfortunately, worked on accountants' ledgers and not economic assumptions. While they sought to provide a more efficient Tax Code, one in which individuals and businesses consumed, saved, and invested their income not on tax motives, but rather based on economic profits, the committee found that they could not achieve the latter. In the end, it no longer became a case of economics, but rather simple accounting—due simply to the fact that the tax writers were constrained by revenue neutrality and the massive deficits of the last 5 years. This reality led to the shifting of numbers in the latter half of the bill to achieve those in the former.

In order to lower marginal tax rates, we will have to increase effective tax rates through the repeal of some very important individual and corporate deductions. These are not necessarily tax "loopholes" or even inefficient provisions—rather they are means by which we conduct fiscal policy as a nation. The repeal of the consumer interest deduction may result in more saving, but at what cost? My constituents are not in a position to purchase such durables as automobiles outright. Without the interest deduction, they simply may not purchase one at all. This will result in a loss in consumer demand which have been pushing the economy during the past 2 years.

My constituents are unable to afford adequate medical care as it is today. With the limitation of the medical expense deduction, they will be in a lesser position to afford such care.

My constituents do not pay a State or local income tax, they pay a sales tax. This bill will repeal that deduction. They would see the two-earner "marriage penalty" deduction repealed, and increased taxation of unemployment benefits and scholarships.

Over 12,000 of my constituents who are public employees would see their pensions taxed not once, but twice. And for some, they would feel this pinch retroactively. This is an injustice to those who have worked hard, contributed to their retirement, made future plans, only to find that Congress has reversed its position at their expense.

The bill also includes provisions which would greatly affect corporate and investment decisions. While we all agree that a minimum tax is noteworthy, this bill goes beyond the "fair share" theory. In effect, because of the confines of revenue neutrality and the deficit, the bill shifts $120 billion in tax burdens from individuals to corporations. In doing so, many economically important provisions would be repealed or strictly limited.

The capital gains rate would be raised to 28 percent and the investment tax credit completely repealed. In 1978, a Democratic administration and Congress saw the need to spur investment by lowering the capital gains rate to 20 percent. In 1961, a Democratic administration and Congress saw the advantage of providing a 10-percent investment tax credit. Both of these items are necessary to provide long-term capital investment in our Nation's industries, and thus our economic future. While we may agree that many corporate provisions, even some combined with the investment tax credit, result in a tax giveaway, the outright repeal of the investment tax credit coupled with the increase in capital gains rate will severely limit our Nation's ability to raise capital to retool our basic industries, improve productivity, and compete in the world market.

The rapid changes in depreciation for buildings will have the effect of raising the cost of construction, and thereby the cost of rents for multifamily housing because an increasing demand will not be met.

The ability for our urban areas to provide economic stimulus through development and infrastructure repair and rehabilitation will be curtailed by new limitations on tax-exempt financing. At a time when the Federal Government is contributing less to States and localities, we should not be cutting off other avenues through which our cities may provide economic growth.

The repeal and limitation of these provisions by the conference report on H.R. 3838 were necessary to achieve the lower marginal rates, the effective rates for 20 million people, 77 percent of whom have incomes below

$50,000 will rise. The bill before us today would remove 6 million working poor from the tax rolls and lower marginal rates, but in the end, many in the middle will pay for this. What will be the cost in terms of the economy? In the last quarter it grew at 0.6 percent and is not estimated to do much better in the present quarter. Industrial capacity is still flat, unemployment still high, the trade deficit still rising, and yet we would place greater tax burdens on businesses, stifle consumer demand, and remove incentives to retool our industrial plants.

I commend my colleagues on the conference committee for their efforts. It was not an easy task. They achieved a lot of good things, but the costs to individuals and the stability of the economy is too high. My colleagues spent too much time with their ledgers and not enough considering the economy. And for that reason, I must reluctantly oppose the bill in its present form and vote to recommit.

Mr. McKERNAN. Madam Speaker, the historic tax legislation before the House today represents a sweeping change in our country's tax laws, and a giant stride toward true tax reform.

While there is no denying that the bill has some imperfections, a vote against the bill based on those flaws would shut the door on an unparalleled opportunity to bring tax relief to working Americans, and to right many of the wrongs in our Tax Code.

Most important, the legislation will take more than 6 million working poor off the tax rolls and lower individual tax rates to the lowest levels since the Second World War. The legislation brings greater equity by clamping down on tax shelters and by instituting a minimum tax that will ensure that wealthy individuals and corporations pay taxes.

I am certain that there is not one Member of Congress who would not like to cure the ills that he or she sees in H.R. 3838, the Tax Reform Act of 1986, but we do not have that chance. What we can do is pass a bill which cuts rates, increases fairness, and helps restore public confidence in our tax laws.

This bill is expected to provide a 7 to 9 percent average tax cut for the vast majority of individual taxpayers. In addition to reducing rates, the bill provides ordinary taxpayers with a large increase in the personal exemption. The bill boosts the standard deduction, and brings relief to low- and moderate-income working families through an expanded earned income credit.

Some of the most basic tax provisions that are widely used by average taxpayers would be retained, including the home mortgage interest deduction and the deduction for State and local income and property taxes.

In short, the new tax bill will claim a much smaller percentage of the ordinary taxpayer's hard-earned income, thus affording taxpayers more control and flexibility in making their own spending decisions.

This bill is the culmination of years of effort aimed at achieving true tax reform. The introduction of a comprehensive tax overhaul plan by the Treasury Department in November 1984 marked the beginning of an intensive debate in both Houses of Congress, and on both sides of the aisle, on how best to achieve tax reform. The House version of H.R. 3838, which I joined the majority of my colleagues in supporting last December, was flawed, but its passage kept the process moving forward to provide meaningful tax relief for working Americans. Although the tax reform effort faltered many times in the intervening months, passage of a bill by the Senate, with its drastically lowered rates, gave the effort a much-needed shot in the arm. Then, the conference committee, in agreeing to a compromise, achieved what many thought to be impossible, and passage of the tax bill at least seemed a reality.

The compromise bill has removed some of the provisions in the original bill which would have harmed the forest products industry and other heavy industries. The lowered corporate tax rates in H.R. 3838—the lowest since 1941—promise relief, particularly for small businesses.

The legislation will remove loopholes which distort the allocation of resources, and discourage wasteful and inefficient investments motivated only by tax considerations. In my view, this bill moves the Tax Code in the right direction, and affords us a better opportunity to encourage savings, investment, and economic growth.

Mr. VENTO. Madam Speaker, I rise in support of the conference agreement on the Tax Reform Act of 1986 and to urge my colleagues to pass this landmark legislation.

The single most important reason to vote for the Tax Reform Act is simply to increase the fairness of our tax system. I have advocated comprehensive tax reform since I was first elected to the House and I supported this tax reform measure when it passed the House almost a year ago. The original House tax bill was a better bill than this conference report or the Senate's bill. However, the House conferees compromised and adopted some Senate provisions in the final product before us today.

The discussion of the promise of tax reform has been wrapped in hyperbole and may have left the impression that the taxpayer could have their cake and eat it too. Clearly, that isn't possible in most instances without adding to the Federal debt. While most will receive a modest tax cut, some 76 million taxpayers, 20 million taxpayers experience slight increases in taxes under this measure. Some have criticized this measure for not substantially increasing taxes, which was an option never accepted by the administration, the Senate, and many in the House. On balance, the bill we consider today is a good bill which reduces tax rates, eliminates many special interest tax breaks, and increases the fairness of the tax system. While I believe this bill deserves to be passed, I don't think that we should be blind to some of the flaws that are the inevitable result of compromise. There are several tax changes which I do not support and which I believe detract from the fairness and equity of this bill. Certainly, this is not a perfect bill, but each of the 435 Members of this body would have a different version of their ideal tax reform bill and the only way that that landmark legislation such as this could pass is through the give and take and adoption of provisions which individually we might not favor.

There are several aspects of this bill which trouble me. The limited applicability of the IRA deduction deprives some taxpayers of an important tool they can use in planning for retirement. Public employee retirees and others are treated unfairly. The effect of the elimination of the 3-year recovery rule on a retroactive basis means that workers who contribute a portion of their wages to a pension plan will have the tax benefit spread out over an actuarial table rather than get the tax saving up front in the first 3 years. The reduced value of the medical expense deduction will be an especially difficult change for an individual or families who are likely to incur high medical costs in a specific tax year.

Certainly these adverse changes must be balanced by considering the reduced rates in the bill and the special personal exemption available to the elderly, but I fear that the bill may be shortsighted in its treatment of retirement issues. It of course is important to remember that these provisions were not contained in the version which passed the House but were included at the insistence of the other body in achieving a compromise measure.

There are other tax changes included in this bill which I feel are not desirable. The elimination of the deduction for two-income families will deny a needed tax break for many of our young families who find it necessary for both parents to be employed. The loss of the deductability of sales taxes and the interest on consumer loans will effectively make purchases of many items essential to modern life such as cars and appliances more expensive than before enactment of this bill.

While I've pointed out some drawbacks to portions of this bill, I've done so because I believe that when weighed in total, the bill provides middle-income families and individuals a modest amount of tax relief and a substantial increase in fairness.

The most important change in this tax bill is the increase in tax fairness brought about by closing special interest tax loopholes profitable corporations and wealthy individuals have used to avoid paying their fair share of taxes. This legislation strengthens the minimum tax for corporations and individuals, reduces the paper losses that can be claimed from excessive depreciation of assets, repeals the investment tax credit through which many profitable corporations have avoided paying any Federal income tax, and cracks down on defense contractors and other industries which have used special tax laws to avoid paying taxes.

By eliminating these expensive and unproductive tax breaks, the bill was able to reduce tax rates and maintain the provisions in the Tax Code which are most important for American families. The bill doubles the personal exemption from $1,080 to $2,000 per person. In addition, the standard deduction is raised to $3,000 per single taxpayer and $5,000 for married couples. The home mortgage interest deduction is fully retained for a principal and second residences. The conference report very importantly maintains the deductability of State and local income and property taxes. Considering the President's efforts to repeal this important provision, the retention of this deduction is a major victory for Minnesotans. As a result of these provisions and the reduction in tax rates, the vast majority of middle-

income taxpayers will pay less of their earnings in Federal income because of this bill than under the current Tax Code.

For low-income taxpayers, the earned income tax credit is retained for working families with children. At the same time that it puts profitable corporations on the tax rolls, it takes over 6 million very low-income individuals off the tax rolls entirely.

For the majority of working Minnesotans, small business people, senior citizens, teachers, and professionals, this legislation will benefit them individually. It will stimulate economic growth in our Nation. A major flaw in the current Tax Code is that business was making many investment decisions not on the basis of business consideration, but on the basis of tax consideration. This has led to a waste of scarce investment dollars in empty commercial office space, surplus railroad boxcars, and acres of farmland owned by absentee landlords where no corp is harvested. These tax shelters which should have created jobs in reality diverted dollars from real job-producing investments and reduced Federal tax revenues and increased the Federal deficit.

With the elimination of these shelters businesses and individuals will now make investment decisions based upon common business sense rather than seeking tax avoidance schemes. I am confident that this will increase economic growth and provide jobs for our Nation.

Madam Speaker, I want to commend the conferees. They have produced a bill that benefits the vast majority of the American public and deserves to be passed. As I have said, if I could have written this tax bill, I would not have changed the 3-year recovery rule. I would have allowed more tax-exempt bonding for economic development projects and development of rental housing would have been less constrained. I also would have retained the IRA and the two-earner deduction as in present law. But even with these flaws, it is a vast improvement over the current system and I believe a real benefit for all Americans.

For years, Democrats and Republicans have been promising tax reform. The vote today is our chance to keep these promises. I am pleased to cast my vote for this bill and to urge my colleagues to support passage of the Tax Reform Act of 1986.

Ms. MIKULSKI. Madame Speaker, today I voted for the Tax Reform Act of 1986. I voted for the bill because, on the whole, it is a historic step toward real fairness and equity in the tax system. When I voted for the bill, however, I did not forget my most serious objection to the tax bill: the retroactive repeal of the 3-year recovery rule for Federal and other public service employees.

The repeal of the 3-year recovery rule is unfair. It is one of the few retroactive provisions in the tax bill. It will affect thousands of faithful public servants who have carefully planned for their retirement. This amounts to changing the rules in the middle of the game.

I opposed this change today, just as I opposed it last December. And I pledge to continue the fight to retain the 3-year recovery rule. Today I am joining my colleague, Congresswoman OAKAR, in introducing legislation to restore the 3-year recovery rule. By restoring the 3-year recovery rule, we will be telling Federal and public service employees that they will not be left behind. And we will be taking an important step toward some of the dignity of public service, so that millions of hard-working Americans do not have to regret the decision to dedicate their lives to their country.

When the tax bill first came before the House last December, I voted to send the bill back to the committee because of the proposed repeal of the 3-year recovery rule. When the bill went to the Senate, I wrote to Senator PACKWOOD, urging him to retain the 3-year recovery rule. The Senate voted to eliminate the rule, but at least it provided for a gradual phase-out. The conference committee bill doesn't even do that. Instead, it slams the door in the face of millions of Federal and public employees, by making the repeal effective as of 3 months ago.

Madam Speaker, Federal and public employees are the people who keep this country running. Without them, America could not be the great Nation it is today. However, the Government has repeatedly failed to reward the contributions of its employees. In the past few years, the Government has asked it employees to make great sacrifices: It has cut their benefits, played with their retirement plans, replaced them with more expensive contract workers, and kept their salaries and their pay increases well below those of workers in the private sector.

The Government had done about everything possible to remove the prestige and honor which once went with serving one's country. The 3-year recovery rule was one of the few special benefits received by Federal employees, helping paritally to offset the sacrifices which these workers make in dedicating themselves to public service. Now, the retroactive repeal of the 3-year recovery rule is yet another blow against comparability, a further attack on the dignity as well as the checkbooks of Federal Workers.

In the name of fairness, the conference agreement included over $10 billion in special transition rules for a variety of projects, developments, and industries. It is outrageous that when it came to Federal employees, fairness was sacrificed in the name of revenue neutrality.

Madam Speaker, I believe that the tax bill as a whole contains too much good for me to vote against it. The tax bill will remove more than 6 million low-income individuals and families from the income tax rolls, and will significantly reduce the tax burden for millions more lower income families. I was unwilling to lose this unique opportunity to achieve true tax reform, because I believe that if we rejected the bill this time, we would not have another change. But just as I voted for the bill because of fairness, I will fight to restore the 3-year recovery rule for the same reason.

Mr. LIGHTFOOT. Madam Speaker, after long, hard consideration of the advantages and disadvantages, I have concluded that the Tax Reform Act of 1986, H.R. 3838, would be fairer to my constituents than current law. Since I do not have the luxury of amending this bill, it is a choice between this and current law.

Today we are debating the most comprehensive changes in tax law since our present system was created at the beginning of the centruy. Currently, we live under a system that few people like. Many well-to-do and large corporations are able to avoid paying taxes through a complicated system of loopholes and exemptions.

The higher the income, the more deductions which one can take advantage of. Granted, some of the deductions and credits built into our Tax Code are incentives for investment. But we face a tremendous problem in this country with a growing perception of unfairness. The more unfair the system appears, the greater incentive to avoid paying taxes.

I agree with some that this bill is not simplification. It is, however, reform in that it will reduce the tax burden on the lower to middle income taxpayer, while increasing the burden on those who traditionally have been able to greatly reduce their tax bills, such as the wealthy and corporations.

Of particular interest to me are the reforms made in the area of agricultural taxation. I've worked on reforming agricultural taxes since I first took office, and it is gratifying to me that we've achieved, at least partially, our goals in this area.

I am also relieved that many of the objections I had to the House-passed version of tax reform have been resolved in this conference agreement.

Although I remain concerned about such changes as the elimination of income-averaging, loss of the investment tax credit, curtailment of Individual retirement accounts, retroactive repeal of the 3-year recovery rule for Federal retirees, changes affecting the real estate industry, and elimination of the deduction for charitable contributions for nonitemizers, there are a number of advantages in this bill over present law. Therefore, I will support this bill, but I plan to press for repairing deficiencies in this bill after its passage.

Mr. COMBEST. Madam Speaker, the House has under consideration today the most complete overhaul of our Tax Code since World War II. Much controversy and political fanfare has surrounded this legislation which will ultimately impact each and every taxpaying citizen in the United States.

Many have portrayed this so-called tax reform legislation as the bill of the people, designed to make our tax system equitable and simple while fostering the Nation's economic health. It is my view, however, that the Tax Reform Act of 1986 has been subjected to hoards of political rhetoric with a minimum of careful review extended to its massive implications. I am compelled to share with my colleagues and with my constituents the principle reasons why I believe this tax bill falls short of satisfying the guiding precepts of fairness, simplicity, and growth set forth by President Reagan.

I have always been, and continue to be, a strong supporter of true tax reform that eliminates loopholes and special preferences. I firmly believe that all individuals should pay their fair share of taxes, and I certainly advocate a simplified Tax Code with a minimum of administrative regulations.

After studying the 2,000 new pages that we are preparing to add to the existing 13,000 pages of tax law, it did not take me long to

reach the conclusion that this bill is far from simple. For the first time in history, corporations will be required to maintain three sets of books if they are to comply with minimum tax and book income provisions of the new tax law. Such a system will, undoubtedly, be difficult to administer, particularly in light of the countless IRS regulations that are guaranteed to ensue.

In addition, the uncertainty surrounding the potential impact of this legislation is immense. According to a leading national economist, there are 10 to 20 major problems created by the bill. The difficulty is that no one is sure what they are but we will find out too late. While it is true that an estimated 6 million of the working poor will be removed from the tax rolls, an estimated 25 percent of all taxpayers will be subjected to increased taxes. These uncertain economic impacts could be devastating at a time when we are consuming more than we produce, spending more than we earn and borrowing more than we save in the United States.

Since the beginning of the year, I have been visiting my constituents in an effort to fully understand the effect that various changes in the Tax Code would have on west Texas. From Dimmitt to Denver City, farmers, oil producers, main street merchants and people of all income levels and all walks of life told me of their reservations about and opposition to the so-called tax reform legislation.

Texas is clearly penalized under the provisions of this tax bill which repeal the deductability of State and local sales taxes. The Texas government is experiencing a severe shortfall in its budget now, and this loss of revenue can only result in a loss of funding for important State programs.

On a local level, small businessmen are worried that they will not be able to comply with the burdensome new provisions that will require them to keep three sets of books. These same small businessmen will also be faced with making changes in the pension plans that they extend to their employees. As a former small businessman myself, I am well aware of the inordinate amounts of time and expense that will be involved in complying with these new, burdensome requirements.

Struggling 19th District farmers will be hit hard by the repeal of income averaging. It is through this tax tool alone that many individuals, with income subject to the whims of Mother Nature, have overcome great adversity and compensated for hard, lean years. In addition to the loss of investment tax credits and farm equipment depreciation allowances, the banking provisions of the tax reform package may exacerbate the foreclosure problem that is threatening the Southwest. Since banks will be able to charge off loans for tax purposes only at the time of foreclosure, they will not be able to afford the leniency that many bankers are currently exercising to assist those individuals experiencing economic difficulty as a result of the problems plaguing agriculture.

While proponents of tax reform have been jubilant in their discussion of the tax bill's treatment of oil and gas, the fact is that an additional $10 billion in tax burden will be placed on the oil and gas industry over the next 5 years. Combined with the limitations that the tax bill places on capital for new drilling operations, our Nation will experience a further shortage of domestic energy, higher gas and fuel oil prices and a greater vulnerability as we become more dependent on foreign sources of oil.

On a more national level, this attempt at tax reform may worsen the deficit under which our Nation currently struggles. Because the tax bill increases the cost of capital investment in the United States, our domestic manufacturing will be less competitive at home and in the world market. This is particularly ironic at a time when many in Congress are calling for protectionist trade policies.

Corporations will be faced with new costs for manufacturing, and compared to foreign goods, the price of American goods will go up. Americans will be consuming goods produced in Japan rather than those goods produced in Texas because the Japanese goods will become markedly cheaper. The effect is cyclical—with increased consumption of foreign goods, American jobs will be lost due to the decrease in demand for domestic goods. Economic growth most certainly is not achieved through displacement of the work force.

Another frightening aspect of this tax reform legislation is that there are predictions and rumblings in Congress of raising the individual rates again in an effort to meet deficit reduction targets. Increasing individual tax rates on the heels of repealing individual deductions would result in a gross distortion of the Tax Code which would cause individuals to pay more taxes than ever before.

The individual and economic fallout of overhauling our Nation's Tax Code is complex and limitless. All of the changes contained in the tax bill have a significant impact, from the measure that penalizes married, two-income couples to the changes in depreciation that will ultimately raise the rents of the elderly. There is no way that retroactive provisions which change the rules in the middle of the game can be construed as fair.

There are good and constructive changes which this bill makes. I believe, however, that we can do better. We owe the American people a better bill.

Mr. BOLAND. Madam Speaker, the time has come to make a decision on tax reform.

For more than a year, this Congress has wrestled with the concept of tax reform. We have found that everybody is for tax reform, as long as they are only supporting an abstract concept. But when it comes time to consider the specifics of a tax reform bill—when it becomes clear that some of the tax loopholes we claim to oppose are treasured by certain special interests—we discover that some of the early supporters find reasons to turn away.

No, this conference report is not perfect. No tax bill has ever been perfect. No tax bill will ever be perfect. But this legislation represents real tax reform, more than has been achieved by any prior act of Congress. Passage of this measure will ensure that future investment decisions of both individuals and businesses are driven by sound economics rather than tax advoidance. The minimum tax provision will require some taxpayers, who have in the past shirked their responsibility to assume a share of the financial burden associated with maintaining this country, to join in that effort. By removing 6 million low-income Americans from the tax rolls, this measure will encourage their continued participation in the work force and promote the kind of independence from Government assistance we all profess to favor. Finally, by providing some tax relief to middle-income taxpayers, the bill addresses one of the central complaints about the existing Tax Code; that it is a haven for the rich, or for those skillful enough to exploit its shortcomings.

Mr. Speaker, the question each of us must ask before casting our vote on the legislation is whether the Tax Code it will create will be more fair than the one under which we now operate. I believe that the answer to that question is yes. We have an opportunity to vote for fairness by voting for this conference report, to vote for the kind of sweeping reform we all said we wanted. It is an opportunity that may not come again soon, and if we allow it to pass us by, I do not believe that the American people will accept our explanation that we were for tax reform—but. All the "buts," all the "except fors," all of the "instead of's" that are raised in objection to this legislation do not, in my judgment, outweight the benefits it will provide for the people of this Nation. The time has come to decide on tax reform. Do we want it or don't we? I believe that we do, and I urge that the conference report be adopted.

Ms. MIKULSKI. Madam Speaker, though I have concerns about several of the provisions in this bill, I rise in support of the historic tax reform measure being considered by the House today. On balance, I believe this bill is good for business, good for the economy, and perhaps most importantly, good for the American family.

This bill is a giant step forward toward a fair and equitable tax system. For me, fairness always has been a preeminent concern when it came to tax reform. I believe that tax reform without fairness would be a disservice to all Americans. With this bill we get fairness, and that is why I am voting for it.

By passing this tax reform bill:

We make sure that multinational corporations finally pay more in taxes than the police officers on the street who risk their lives everyday protecting us.

We help out millions of single-parent families, by making sure they're not stuck with a big tax bill each year in addition to being stuck with big bills for shoes, clothes, and rent.

We send a strong message to our Nation's families—a message that encourages homeownership, charitable giving, and makes standard deductions and personal exemptions more generous.

Finally, we say "thank you" to American workers by improving pension protection, guaranteeing better benefits, and wider, more equitable pension coverage for workers.

But this tax bill is not just a pro-family bill, it's a pro-business bill as well. It encourages investment in productivity by closing down tax shelters that only promote investments that have no economic merit. It encourages investment in research and development. And it allows for business stability by discouraging hostile corporate takeovers.

While there are many aspects of the tax reform bill which I like very much, there are some aspects I don't like at all.

That is why earlier today I cast my vote to send this bill back to committee. I want to see tax reform done in a way that is fair. That means I wanted to see the committee eliminate the retroactive provisions which I felt are unfair and unwise. I also wanted the committee to retain the 3-year recovery rule for Federal and other public service employees.

When the effort to recommit failed, we had only one opportunity left to bring about true tax reform. I voted to take advantage of that opportunity. I will, however, continue the fight to restore the 3-year recovery rule for Federal and other public service employees.

Mr. DELLUMS. Madam Speaker, I am not happy with many provisions of the tax bill. I strongly oppose the notion of revenue neutrality in this time of massive deficits. Revenues must be increased if we are even to begin to address the present deficits.

The President's own Office of Management and Budget estimates that the revenue effects of the President's 1981 tax act will cost the U.S. Treasury more than $245 billion in the next fiscal year alone. Even taking into consideration the adjustments insisted upon by Congress in the 1982 and 1984 acts, the net revenue reductions will still be more than $150 billion.

I also strongly oppose the repeal of the progressive tax rate structure. It is wrong that taxpayers earning $30,000 pay taxes at the same percentage rate as those earning $300,000. Some of our colleagues have argued that under current law upper-income taxpayers pay little tax, despite the statutory higher tax rates, because of tax loopholes. In my view, the loopholes should be closed, but the corresponding revenues should be applied to deficit reduction, rather than to reducing the tax rates for upper-income taxpayers.

Moreover, much of the rhetoric surrounding the tax bill discussion is seriously overblown. The bill is not simpler. In particular, since most taxpayers read their taxes straight from the published tax tables, reducing the number of tax rates does nothing for increasing simplicity. Further, some of the simplicity is achieved simply by eliminating deductions presently enjoyed by many middle-income taxpayers, for example, deductions for consumer interest (for some IRA's, and for State sales taxes).

The fairness element of the bill is similarly double-edged. The bill does make it far more difficult for some upper-income taxpayers, both individuals and corporations, to evade paying their share of taxes. At the same time, the bill provides substantial tax reductions for many upper-income taxpayers, while providing lesser benefits for most middle-income families and, in some cases, added burdens for such families. In this bill, as in many other tax bills, too much of the tax burden is placed on our middle-income families. In addition, the macroeconomic consequences of much of the bill are highly uncertain.

In my view, the tax-writing committees should, and could, have drafted a much better bill. Unfortunately, their appreciation of the present political realities, in particular the threats of the President, restricted their view of what was possible. Moreover, since no amendments were permitted at any stage of the process, Members of Congress like myself who do not serve on the tax-writing committees were virtually excluded from the process.

Despite all of the above, the bill does provide significant benefits to the large majority of low- and moderate-income families. The bill reduces taxes for most of the large majority—over 65 percent—of taxpayers who do not itemize their deductions. In addition, the bill removes more than 6 million low-income taxpayers from the tax rolls and provides substantial tax benefits to other low income families, particularly those with children. Despite my serious concerns with many provisions of the bill, the fact that the bill provides substantial benefits to the large majority of Americans, persuades me that, on balance, the bill should be supported.

Mr. BRUCE. Madam Speaker, I rise in opposition to the tax reform legislation before the Congress. I do so with regret, because I was optimistic for a long time that we would come up with a tax bill I could support.

Unfortunately, this bill hits hardest on the industrial and agricultural Midwest, which is already in economic difficulty. The bill shifts $120 billion of taxes onto business. Its immediate effect is an $11 billion Federal tax increase next year. And for Illinois taxpayers—a $120 million State income tax increase. Many small businesses will see tax increases of as much as 40 percent. For heavy manufacturing, coal producers, oil and gas producers, and farmers—a large proportion of the people I represent—this bill inflicts costs that may in some cases be the final blow.

As an example, a farmer in Edgar County, IL, bought a $38,000 tractor in February of this year, expecting to get an investment tax credit to offset the cost of that purchase. How do I tell that man that he's out of luck because the Congress of the United States retroactively changed the rules he was operating under?

It may be that by 1988, when the individual tax cuts are fully in place, taxpayers will see a small reduction—6 percent on average—in their rates. But tax rates aren't important if you don't have a job, if you don't have an income to pay taxes on.

I am very concerned that this bill would dangerously weaken American competitiveness. Repealing the investment tax credit, tightening depreciation allowances, and eliminating capital gains treatment all point in the same direction: less investment and lower economic growth. We're already seeing many U.S. businesses moving their operations offshore. This bill will accelerate their flight. For the jobs of the people I represent, and for the economy, I will vote against this bill.

Mr. STARK. Madam Speaker, I am proud to vote today for the conference report of H.R. 3838, the Tax Reform Act.

Congress has reviewed and revised our entire Federal income tax system. We grappled with some very basic questions such as whether our Federal Government should freely subsidize projects desired by local governments, whether the Tax Code should continue to favor certain types of economic endeavors, whether the Tax Code is the appropriate tool to achieve social goals of our society, such as broadening health insurance to workers.

I am pleased with the final result of over 22 months of discussion and deliberation. The tax system will be, in fact, more progessive than the current Tax Code. We have removed 6 million poor people from the tax rolls and made sure the wealthy will pay a substantial portion of their income in Federal taxes. That is the essence of a progressive system.

This legislation dramatically reduces tax rates, shifts a significant portion of the tax burden from individuals back to businesses, and takes the juice out of tax shelters. This legislation assures that profitable corporations will once again pay taxes.

McDonnell Douglas will finally begin to support our Government with tax dollars as well as supplying our Government with weapons.

Property and casualty companies will no longer be the tax shelter darlings of corporate America.

Nonprofit organizations in direct competition with commercial organizations, such as Blue Cross and Blue Shield, have been put on notice that a tax-exempt status will no longer be retained without question.

Syndicated partnerships, the vehicle used to market tax avoidance, have been slowed to a halt.

Pride of authorship does not blind me to the imperfections and omissions in this conference report. Tax laws should not be structured to assist certain companies when the problems addressed occur on an industry-wide basis. One particular area that I feel needs immediate correction is the insurance industry market discount bond provision. I will introduce legislation to correct inequities in the market discount bond provisions to assure that relief is provided in a more equitable manner.

I am troubled that a perception of unfairness has been raised in the alternative minimum tax area. The minimum tax must be structured in an unbiased way. One segment of an industry should not be favored over another segment of the same industry. I plan to scrutinize the minimum tax provisions and to introduce whatever legislation may be needed to correct inequities in this area.

There are other areas where I would have preferred a different result, including the way in which a family farmer is defined, the effective date of the pension changes for Federal workers, the partial repeal of the completed contract method of accounting [CCM] instead of total repeal of CCM, the exemption of stretch limousines from the gas guzzler tax, and the working interest exception in the passive loss area.

These issues can and should be addressed in future legislation.

But these issues also pale in the light of the enormous, sweeping reforms of the bill. It is a great piece of legislation, one we can all be proud to defend in the years to come.

Mr. BORSKI. Madam Speaker, I rise in strong support of the Tax Reform Act—a landmark bill that will ensure that everyone pays their fair share of taxes.

After more than 2 years of debate and negotiation, Congress has put together legislation that provides the most far-reaching reform

of the Nation's Tax Code since the adoption of the Federal income tax in 1913.

Fairness has always been the driving force behind tax reform. Working people are willing to contribute their share, but they are justifiably angered by the fact that too many profitable corporations and wealthy individuals do not pay their fair share of taxes—or do not pay any taxes at all.

This bill will ensure that everyone—not just the working people of this country—will contribute to the Federal Treasury. At long last, middle-income working Americans will have the satisfaction of knowing that they're not the only ones paying their taxes on April 15. A tough new minimum tax bill will close the loopholes and curb the tax shelters that giant corporations and wealthy individuals have used for decades to escape their responsibilities and avoid paying taxes. Their legalized tax holiday is over.

The bill also reverses the dramatic shift in the tax burden which has occurred during the Reagan administration. Instead of placing the burden of the Tax Code on the backs of working people, more than $120 billion in taxes will be shifted from individual taxpayers to corporations over the next 5 years.

Finally, under this legislation four out of five individuals, married couples, and families will receive a reduction in their taxes, despite the elimination of many of the current deductions, exclusions, and credits.

Much has been said about the Tax Reform Act, not all of it positive. However, in considering this historic legislation, we must ask this question: Is it better than present law? I believe the answer is a resounding "Yes." This is not a perfect bill—no compromise ever is. But, it does provide a vast improvement over the current Tax Code which has elevated tax dodging by the privileged to an art form.

The Tax Reform Act is a giant step toward a fairer, more equitable tax system. It represents genuine improvement for all Americans and its time is long overdue.

Mr. GILMAN. Madam Speaker, I rise to speak on behalf of those of my constituents who are Blue Cross and Blue Shield subscribers. As my colleagues may know, the tax reform bill under consideration before this body revokes the tax exemption for these plans.

For over 50 years, Blue Cross and Blue Shield have been tax exempt. They have discharged this responsibility in many ways—all designed to benefit the communities they serve by making health care protection available to the broadest segment of the population, including many individuals and small groups who had no other place to turn for affordable coverage.

I am puzzled by the wisdom of the conferees on this bill in taking an action that will forever change the character of these plans, and certainly affect the most vulnerable that they serve. I submit that we in Congress also will face the adverse effects of this change when the availability of affordable health care protection is diminished, and the people once again turn to their Government for help with one of life's most basic needs. I sincerely hope that we can respond to their call, but I'm afraid that logic tells me the Government will be unable to take over that responsibility.

Now we learn that Blue Cross and Blue Shield plans have been dealt a double blow in the tax reform bill. During the conference, when it became clear that the pressure for revenues was overwhelming; these plans reluctantly accepted a compromise. This compromise was crafted to protect Blue Cross and Blue Shield subscribers as much as possible. Among other technical considerations, the plans agreed that they would be taxed under the alternative minimum tax as a book income preference. This would have resulted in an effective tax rate of 10 percent. Unfortunately, this agreement was not reflected in the drafting of the provision. Instead, the final version of the bill doubles the tax rate for most Blue Cross and Blue Shield plans.

This last minute change warrants careful reconsideration. The issue of the applicable tax rate for Blue Cross and Blue Shield plans must certainly be revisited in the future. If the tax rate for most of these plans is doubled, as the final version of the tax reform bill provides, there will be dire consequences for the availability of affordable health care protection for years to come. Accordingly, I rise to take a strong exception to this ill conceived policy adopted by the Ways and Means Committee.

Mr. MOORE. Madam Speaker, I am voting for this historic bill on the belief that it is good for the Nation but I am well aware it has problems.

The good does out weigh the bad. Low individual tax rates remove 6 million working poor from the tax rolls. Nearly 1 million of these are elderly taxpayer who will no longer have to pay. Four out of five taxpayers will pay no more than the 15 percent tax rate.

Louisiana taxpayers have repeatedly told me in recent months of their fears of jobs lost to overseas competition. This final tax bill puts us on sound footing when it come to how our corporate tax rates line up against nations which we trade with most often. We will keep a competitive edge in our favor in comparative tax policy. Japan, Germany, Britain, France, and Canada have top corporate tax rates ranging from a low of 35 percent for Britain to 56 percent for Germany. Our depreciation allowances for equipment are more generous than those for all but one of our five major trading competitors.

The final tax bill is solidly pro-family. It increases the personal and dependent exemption to $2,000 and makes it available to families that itemize their deductions. The House bill did not. I offered the amendment in the House Ways and Means Committee to make the full $2,000 dependent exemption available to all families. Its inclusion in the final tax bill is a centerpiece of true reform. If the $600 dependent exemption in place 40 years ago would be updated to account for inflation, it would be at least $3,500. So what we are doing now makes a long-overdue correction in how the family is taxed.

These are some of the best components of the final tax bill. These are most of the reasons why I voted for its passage.

There are also sound reasons to vote for the motion to recommit the bill because it is still imperfect. It still has many problems and we should try again to correct them.

I voted for the motion to recommit the conference report not as a tactic to scuttle tax reform, but to send it back for a few more improvement. Those improvements could be aimed at reducing the degree of retroactivity in the tax bill, recognizing the severe and undue impact generic repeal of capital gains use has on certain economic sectors such as timber, improving the equity objective of tax reform by making deductible IRA eligibility universal once again and properly understanding true oil and gas cost components by preserving current law.

I will work next year to correct those inequities.

Mr. DORNAN of California. Madam Speaker, I rise today in support of the tax reform bill, with some reservations.

In my view, the bottom line of the bill is this: It is not designed to reward or punish income classes or economic sectors, but to begin dismantling a complex system of reward and punishment. Its biggest virtue is that it gets the Government out of the business of sanctioning certain economic activities while discouraging others. This will undoubtedly lead to a more efficient economy in the long run.

Sure, there will be some losers, but everyone must have some sense by now that the intended direction is toward tax neutrality. This is clearly the right way to go.

The bill will sharply reduce taxes on the lower- and middle-income brackets, with about 80 percent of individuals being in the 15 percent tax bracket or paying no taxes at all. The bill is pro-family. Filing a 1040 form will be far simpler for the average taxpayer and the bill's lower marginal tax rates will improve economic incentives, bolstering our economy.

However, there are several portions of the tax bill that I believe should be changed, among them are the retroactive features, the tax rate reduction stagger, and the increase in taxes on business. Because tax reform is in my view a one shot deal, it may be necessary to recommit the bill back to the conference committee to work out some of the kinks.

One of the tax bill's most egregious features is the treatment of capital gains. Don't get me wrong, I have no problem with capital gains being taxed as ordinary income. However, under this bill capital gains earned on investments held over 1 year will be taxed at a higher real tax rate than ordinary income.

The reason? Ordinary income will be indexed to inflation, capital gains won't. Consider the following example.

Suppose an investor buys $1,000 worth of ABC stock in 1987 and sells it 2 years later for $1,100, a 10-percent gain. Further suppose that the cumulative inflation rate over that 2 year period was 10 percent. In this example the purchasing power of our investor's original $1,000 has not changed. However, if capital gains are not indexed for inflation, our investor will have to pay a 28-percent tax on his nominal $100 gain. In other words, he will be losing money after adjusting for inflation.

Had this been ordinary income, our investor would not have paid any tax on his gain due to indexing, and, therefore, his purchasing power would have remained the same.

I have figured out that in order for an investor to merely break even, it will become necessary to do about 39 percent—0.28 divided by 0.72—better than the cumulative rate of in-

flation just to break even after adjusting for inflation. Under current law, that figure is at worst only 25 percent.

By not indexing capital gains to inflation investors will have a definite incentive to invest in income-producing assets over those offering the potential for capital appreciation. This will put pressure on smaller growth type companies to pay stock dividends with funds that would normally be reinvested in the company.

What makes the tax bill so attractive is that it moves toward tax-neutrality. Yet when it comes to investing, the conference report still favors certain forms of investment over others. This must be changed. I am, therefore, currently working on a bill that would amend the tax bill to allow for the indexation of capital gains to inflation.

But, all in all, the tax bill represents a monumental improvement over the current system. It will be good for the economy and the taxpayer. I urge my colleagues to support it.

Mr. STALLINGS. Madam Speaker, I rise urging my colleagues to send this bill back to the conference committee to make necessary and possible improvements. I am very concerned about the short-term effect this bill could have on agriculture, a vitally important sector of the Idaho economy. I understand that current tax preferences have encouraged nonfarmers to invest in agriculture, substantially contributing to the overproduction that has so depressed commodity prices. But I wonder whether the farmers and ranchers in my district can survive until that day when the supposed benefits of this bill are realized. It is an inappropriate time to make these changes, and I would hope that if this bill is recommitted to conference, changes can be made to reflect this frustrating but real fact of life in rural America.

But if this motion should fail, I would hope that the House would go ahead and pass the bill despite my strong reservations. Overall, by almost any criteria, it is an improvement over current law. The news is not all bad—lower rates, still generous depreciation schedules, the 25 percent deduction for health insurance, the postponement of tax on debt forgiveness, the increased limit on immediate deductibility of some farm equipment, and the retrainment of expensing for fertilizer expenses should all provide needed tax relief. But loss of the investment tax credit, elimination of capital gains, changes in the tax treatment of preproductive expenses, and other harmful changes may take away just enough income to break the back of many farmers and ranchers now on the edge of profitability. In sum, Mr. Chairman, many Idaho farmers may not be around to celebrate the halcyon days when only farmers will be farmers.

Nevertheless, Madam Speaker, there are other factors that I have to consider. Since the beginning, I have supported tax reform, and I supported the original House version, primarily because the President asked me to and because I thought it could be improved along the way.

Just yesterday, I received another letter from the President asking for my support. I must admit that his request is an important reason why I intend to support this bill. Of course, there are other reasons as well. I am pleased by the lower rates, the broader base, and the increased fairness. In addition, I am especially pleased that wealthy individuals and large corporations will no longer be able to escape paying taxes. Also, we will take the working poor off the tax rolls and reduce the tax burden of the ordinary taxpayer.

So after full consideration, I will support this bill. But I do so with certain expectations. First, I expect that in the fight to reduce the deficit, Congress will work to cut spending, not raise rates. I would vehemently oppose future legislation that would raise the historically low rates included in this bill and which I find so compelling. Second, I expect the administration and this Congress to be particularly sensitive to the economic situation in rural America as it is effected by tax reform and other farm legislation. Farm State representatives take some risk in supporting this legislation. Its effect on our already depressed economies is uncertain. But for the most part, we will support this bill because it is supported by the President and by the leadership in Congress.

Next year, we will ask in return that Congress turn its attention to an equally important and deserving subject: the plight of rural America. In that event, I hope to see the same patience, diligence, and quest for fairness that has characterized the debate on tax reform. In both cases, we will have taken a giant step to benefit millions of Americans.

Mr. LAFALCE. Madam Speaker, I rise in support of H.R. 3838, the Tax Reform Act of 1986. I do so, however, with grave reservations, for there are several elements in this legislation which constitute serious, but not fatal, flaws. Nonetheless, the benefits of this legislation, especially to the poor and low-income workers, outweigh these flaws, and for this reason I support the legislation, which may represent the only opportunity in our lifetime to make significant and far-reaching reforms to the Tax Code.

Madam Speaker, this bill deserves our support for several reasons:

First, it undoes much of the damage done to the poor over the last 6 years. During this time, the poor have found their benefits and programs cut, taxes increased, and purchasing power lowered. The 1981 tax cut failed to help the poor, and our current budget situation makes it highly unlikely that relief will be forthcoming on the expenditure side of the budget. It is for these reasons that I welcome the decision to increase the personal exemption from $1,080 to $2,000, the standard deduction from $2,480 to $3,000 ($3,750 if blind or elderly; $4,500 if blind and elderly), and the earned income credit from a maximum of $550 to a maximum of $800.

These changes constitute the greatest achievements of the tax bill. They are the engine which drives this legislation and compels us to act favorably on it regardless of the other flaws which might exist. Enactment of this legislation will take 6 million poor off the tax rolls completely and considerably ease the burden for many other low-income taxpayers. But it will not be just the poor who are helped by these changes, but all Americans.

Second, the increase in the earned income credit helps mitigate the regressivity of the huge Social Security payroll tax. The regressivity of the payroll tax has long been a great concern of mine, and I am pleased that the tax bill addresses this problem, albeit indirectly.

Third, the increase in the personal exemption will especially benefit families with children, and for this reason the bill is extremely profamily.

Fourth, I welcome the repudiation of many of the lavish tax benefits given to corporate America in the 1981 tax bill. These tax shelters are wasteful and inefficient and deserve to be repealed. America cannot afford corporate welfare.

Fifth, the elimination of these wasteful tax shelters effectively eliminates America's ad hoc, wasteful, inefficient, uncoordinated and unaccountable industrial policy, which has been implemented via the Tax Code.

Sixth, the elimination of these tax shelters and the lowering of the corporate tax rate will mean that henceforth business will be making its decisions based not on tax considerations but on economic merits. Tax shelters have had a particularly insidious effect, distorting economic decisions and hampering our efforts to remain internationally competitive. Their elimination offers real promise of producing genuine economic growth in the years to come. And it is for this reason that so many of the Nation's great corporations, including General Motors, IBM, and Quaker Oats favor the tax bill, notwithstanding its elimination of corporate tax shelters.

Seventh, the reduced individual and corporate tax rates should be highly beneficial to small businesses, which account for the overwhelming bulk of new employment in the United States. Small businessmen will be paying lower rates, and will no longer have to be as greatly concerned about the competitive advantage tax expenditures, which they could not avail themselves of, conferred on larger rivals. We will have a more level playing field in the corporate arena, and this is why small business groups have enthusiastically supported the tax reform bill.

Eighth, the legislation establishes a tough, effective minimum tax. No longer will we be reading about disgaceful situations in which profitable corportions and individual millionaires escape year in and year out paying any Federal income taxes. The credibility and integrity of our tax system cannot withstand such examples, and thankfully this legislation does something to end them.

Ninth, simplification is a virtue, and with the new tax bill, millions of Americans will be able to use the short, instead of the long form, and avoid many of the headaches which make us all dread the onset of April 15.

There are, of course, other positive aspects of the tax bill, but I would be remiss if I did not indicate my grave reservations about certain provisions, which I would hope could be cured sometime in the future.

The first, and perhaps greatest flaw of the tax bill is its ostensible revenue neutrality. Since 1981 the size of the national debt has doubled, to over $2 trillion. Domestic spending has been cut tremendously, yet, largely because of the 1981 tax cuts for the affluent, revenues were reduced greatly and deficits grew correspondingly. In fact, next year several economists predict that the Federal budget

deficit could exceed $230 billion, a new record.

Our present fiscal straits make it imperative that we complement spending cuts with increased revenues. For years, we have waited to "grow" out of the deficit, but it is apparent that the economy is heading in precisely the opposite direction. We can't bury our heads in the sand forever and ignore the need for increased revenues. The tax reform bill presented us with a golden opportunity to raise money by eliminating or reducing tax expenditures without increasing individual taxes. But we have forfeited this opportunity.

Once the many corporate tax loopholes are closed we may find it impossible to raise additional revenues. The elimination of these loopholes, coupled with the dramatic reduction in rates, denied us the chance to have simultaneously raised revenue and cut personal income taxes, although more modestly than under the present reform measure. Now, however, the combination of loophole closing and excessive rate reduction will make it extremely difficult to raise the additional revenue that is needed to restore fiscal responsibility to the Federal Government.

Madam Speaker, when we finally wake up and admit that we need additional revenues, we may also find that these reduced rates have become politically sacrosanct. Consequently, some President and some future Congress may decide to go to a consumption tax to raise revenue. A consumption tax can be highly regressive, as well as inflationary. It is not, in my judgment, a good substitute for the progressive income tax.

Second, although it is bad enough that the tax bill is revenue neutral, given our current fiscal situation, it may well be a revenue loser. While a one-time gain is expected this year, the consensus is that the 2 years following, the tax bill will generate substantially less revenue than under the current system. All this while we struggle to meet the Gramm-Rudman deficit targets. Frankly, this does not make much sense at all.

Third, the reduction in the number of brackets from 14 to 2, coupled with the great decrease in the marginal rates, appears to decrease the Tax Code's progressivity. I would have favored only slight modifications in the rates, maintaining at least the appearance of progressivity. We should carefully follow the effect of the legislation on the effective tax rate to determine whether the bill does maintain progressive effective tax rates, as it sponsors claim.

Fourth, the first time the average American taxpayer will confront the effects of the tax reform legislation will be in April 1988. However, the much-touted two rates will not have gone into effect by that time. Rather, there will be five brackets for 1987, and as a result many and perhaps most Americans will face a tax increase. This could produce a serious backlash, which should concern us all.

Fifth, even when the bill goes fully into effect, not all individuals will receive tax cuts, as they have come to expect. To be sure, 80 percent of Americans will, but 20 percent will pay more. And the 20 percent that will pay more will not necessarily be from the upper brackets; nor will the 80 percent that pay less be only at the lower levels. Rather, those that pay more and those that pay less will be spread over all brackets.

Sixth, I strongly dislike the retroactive features of the legislation. For example, the bill repeals the investment tax credit and income averaging, effective January 1, 1986. While it may have been appropriate to eliminate these programs, retroactive elimination of existing benefits can cause great hardship and uncertainty, and should be avoided if at all possible.

Seventh, the legislation makes it more difficult to deduct ordinary and necessary business expenses by allowing only those deductions that exceed 2 percent of adjusted gross income. No logic can justify such a distinction, which unfairly penalizes many businessmen, especially those who are less affluent and without generous expense accounts. It would have been far preferable to have permitted all legitimate deductions, even if it meant higher rates.

Eighth, the legislation unfairly penalizes public employees. For example, under current law a retired Federal employee does not have to pay any taxes on his pension until such time as he has received benefits equal to that of his contribution, which, of course, has already been taxed. The bill repeals this provision, which disrupts the legitimate expectations of our public employees, but, in effect, subjects them to double taxation.

Ninth, the tax bill has so many transition rules designed to ease the burdens created by the new legislation that the revenue loss could run well into the billions, further exacerbating the deficit. Moreover, the transition rules do not treat all taxpayers evenhandedly, but are full of special deals and compromises, which only an expert observer could even hope to detect.

Tenth, although the bill preserves the deductibility of State and local income and property taxes, it repeals the deductibility for State and local sales taxes. Our system of federalism demands that the deductibility of the sales tax, like the income and property tax, should have been preserved.

Eleventh, the bill threatens our Nation's public power system. Under current law, public power systems may sell up to 25 percent of their power to private customers, and still preserve their tax-exempt status. However, under the bill exemption would be deeply cut, which could jeopardize public power.

Finally, the bill could adversely impact education. Not only is the charitable deduction adversely affected, but educational institutions will have reduced access to tax-exempt financing. In addition, students and their parents will feel the impact of those provisions which make scholarships partially taxable, and end the deductibility of interest on many educational loans.

I have many, many other reservations regarding the tax bill, but nonetheless, I believe that, on balance, the legislation should be approved. We have a window of opportunity open to us now to do great things for the poor, to eliminate many wasteful tax shelters, and to establish a tough minimum tax. If we do not seize this opportunity, we may never have another realistic chance. Conversely, I am confident that we will have the opportunity in the future to rectify the flaws in this legislation. For these reasons, I support the tax reform bill and urge its adoption.

Mr. FORD of Michigan. Madam Speaker, I rise in opposition to the conference report of H.R. 3838, the Tax Reform Act of 1986. I do so only after serious and careful deliberation on the merit of this bill. I fully recognize that there are many positive features of this tax bill that address serious problems in the current Tax Code. In fact, I would support many of these provisions standing alone, but I do not think that these aspects outweigh the negative provisions in this bill.

The pluses in this bill include the removal of 6 million persons in poverty from the tax rolls and the imposition of a tough minimum tax on both corporations and individuals. H.R. 3838 also goes a long way toward eliminating the use of tax shelters by the wealthy.

But it is important to remember that we do not legislate in a vacuum. The latest estimates indicate that the deficit for the current fiscal year will reach a new record of $224 billion. Every single legislative action we take is driven by a deficit. But H.R. 3838 does not raise a dime to cut the deficit.

I am well aware of the constraints of "revenue neutrality" imposed by the President upon my colleagues on Ways and Means. But I simply cannot justify voting for a tax bill of this magnitude that does not address the most important issue facing the Congress—deficit reduction. How can I go home and justify a vote to cut the taxes of millionaires while our Nation is faced with a staggering deficit of this size? The conference report also shifts $120 billion of the existing tax burden from individuals to corporations. While it is important to reverse the trend of an increasing tax burden on the individual side that has accelerated since passage of the 1981 tax bill, I think that this money would be better used in reducing the deficit. At this point in time, deficit reduction is more important than rate reduction.

I need not remind my colleagues that we live under the ominous cloud of Gramm-Rudman. Yesterday we adopted a reconciliation bill that is designed to come within $10 billion of the Gramm-Rudman target of $144 billion for the next fiscal year, thus avoiding across-the-board cuts. Next year, H.R. 3838 will result in a revenue gain of $11 billion. If adopted, this would temporarily reduce the deficit to approximately $143 billion next year. Over the following 2 years, however, the tax bill will lose over $33 billion in revenues. At the same time, Gramm-Rudman mandates a maximum deficit of $72 billion for fiscal year 1989—half the level that we struggled to reach this year.

I am fearful that enactment of this tax bill will all but ensure that the sequestration process will take effect in both fiscal year 1988 and fiscal year 1989. The results will be devastating to programs such as education, job training, health care, and drug enforcement. I think that this is too high a price to pay.

Madam Speaker, I also have serious concerns about the implications of the conference report on the international competitiveness of American industry. The bill will deter capital formation by making savings and investment less attractive. While we change the ground rules for investment in our country, our major

trading partners will benefit. Capital intensive industries such as the automobile and steel industry will be particularly hard hit. With sluggish economic growth, I am fearful that this bill may increase unemployment and push our economy into a recession.

Although proponents of this legislation claim that it is more progressive than the current tax system, they seem to forget that the progressive nature of our Tax Code has eroded over the past several years. Under the conference report, wealthy individuals who are not heavy users of tax breaks will receive a substantial tax cut. While the conference report is not identical to the bill originally approved by the other body, that bill is a useful reference point. Under that bill, taxpayers with incomes over $200,000, who would receive a tax cut under that bill, would receive a cut of $52,535. Under the conference report, an autoworker at Ford will be in the same tax bracket as the president of Ford. This is simply not fair.

I recognize that, on average, H.R. 3838 will provide minor tax cuts to most individuals. In many cases, however, the bill will result in a tax increase for other families within the same income class. For example, nearly 5 percent of the taxpayers with incomes between $20,000 and $30,000 will receive a tax increase under this bill. Without assurances that "tax reform" does not increase the taxes for these groups, I cannot support such a move.

In addition, by preventing the use of revenues from loophole closing for deficit reduction, this bill effectively forecloses the options of making changes in the income tax system to cut the deficit. As a result, the only means of providing additional revenues to the Federal Government is through regressive excise taxes and user fees.

There is one part of this bill that I find especially onerous. This is the portion that would require Federal, State and local government employees to pay tax when they withdraw their own contributions to pension funds.

This is plainly a tax on money that already has been taxed. What could be more unfair and oppressive?

This bill repeals what is known as the 3-year basis recovery rule for qualified pension plans requiring employee contributions. Employees pay tax on this money before it goes into the fund. So what we are doing here is asking them to pay tax again when they take the money out.

If we can do this, then we certainly can pass legislation requiring people to pay tax on funds they withdraw from their savings at the corner bank. I see absolutely no difference and, I submit, those who cling to the fallacious notion that there is, are doing a great disservice to the men and women who dedicated their lives to government service.

Some of my colleagues have gone so far as to characterize the basis recovery rule as a "special advantage." Nothing could be farther from the truth. What could be special about not having the Federal Government tax money it has already taxed?

There is another point on which many of my colleagues are confused. They seem to believe that what we are doing here today applies only to workers in the public sector. The fact is that the recovery rule applies to any retiree, public or private, who has made after-tax contributions to his or her own pension. The vast majority of private-sector employers pay the entire cost of their employees' pension plan. The private sector is more generous than the public sector. But where retirees in the private sector have made contributions, they, too, will feel the sting of this unfair action.

This is more than double taxation. Additionally we are making it retroactive to July 1. This is a terrible disservice to those who retired after July 1 and those who were persuaded to stay after that date because their services were needed. This is a terrible way to say "thanks" to people who put their country's needs above their own.

Madam Speaker, I am also concerned about the impact of the elimination of certain middle-income tax deductions. For example, H.R. 3838 eliminates the deductibility of State and local sales taxes. The original House-passed bill, which I supported, retained the deductibility of all State and local taxes. In addition, the conference report also eliminates the deductibility of consumer interest. Of course, the largest single item of consumer interest for an average taxpayer is the interest on a car loan. By eliminating the deductibility of this interest and of the sales tax on an automobile, I am fearful that enactment of this bill would have an unintended, deleterious impact on automobile sales.

I am particularly concerned, Madam Speaker, about the effect of H.R. 3838 on our Nation's colleges and universities as institutions and on the students they serve. In a time of reduced direct Federal funding, it seems extremely shortsighted to make it more difficult for colleges and universities to raise desperately needed funds from the private sector and to tax the scholarship and fellowship aid which enables students, particularly needy students, to improve their own lives and to contribute to our national productivity and competitiveness.

In 1984–85 Americans voluntarily donated $6.32 billion in support of higher education. Nearly 30 percent of this amount was given to public colleges and universities. A generation of economic studies shows that while Americans are a generous people, the size of the gift which they can afford to give for any charitable purpose is directly related to the Tax Code.

Instead of encouraging this flow of private wealth to public purposes, H.R. 3838 creates a situation in which it is to more advantageous to a donor to keep a gift or pass it on to his heirs than to donate it to public purposes. The purposes for which colleges and universities depend on private philanthropy—funding scholarships, building and remodeling academic and research facilities, and endowing distinguished professorships—will inevitably suffer. For many of our Nation's most distinguished private research universities, this obstacle to private fundraising is made more severe by a limitation on the use of tax-exempt bonds, a limitation which does not apply to their public counterparts which serve identical purposes. Although colleges and universities will no doubt increase their fundraising efforts, the Congress, by passing this bill, may well put itself in the position of having to make up the difference in order to prevent a decline in the quality of programs and instruction.

I am concerned as well, Madam Speaker, about the effect of this bill on two decades of legislation passed by this body designed to put a college education within the reach of every American with the ability to benefit from it and the ambition to go after it, no matter what his or her economic background. By taxing the amount of scholarship and fellowship aid in excess of tuition, the bill could have the effect of increasing taxes for needy students who finance their own educations through a combination of Federal aid, institutional aid, part-time employment, and summer jobs, thereby creating an additional obstacle to completing their educations. The bill would also appear to tax the value of the tuition which universities customarily remit for graduate student teaching and research assistants, forcing in many cases an even greater reliance on student loans, the interest on which, under the provisions of the bill, is treated as consumption, not investment, and is no longer deductible.

Madam Speaker, I and the other members of the Postsecondary Education Subcommittee which I chair have devoted countless hours this session working on a renewal of the Higher Education Act designed to improve the health of our colleges and universities and the access of students to them. Whatever other merits this bill may possess, its crafters seem to have considered the principles of tax theory as superior to the larger goals of equal and expanded opportunity for education and the economic well-being and survival to which a strong system of higher education is essential.

Mr. UDALL. Madam Speaker, attached to the President's proposal to revise the Federal tax system was a proposal to revise the local tax systems of the smaller insular areas.

These local tax systems were provided for by laws within the jurisdiction of the Committee on Interior and Insular Affairs which established our relationships with the islands. They were not established by Federal revenue laws and do not directly affect the Federal tax system.

Included are the Guam and Virgin Islands Organic Acts, and the resolutions approving the Northern Mariana Islands Covenant and the Samoan Islands Cession. What is known as the mirror tax system was established under these laws.

I had initially planned to request a sequential referral of the provisions which would revise the mirror system. However, to facilitate the desire to bring the bill to the floor, I instead simply offered an amendment on behalf of the bipartisan leadership of the Committee on Interior and Insular Affairs that reflected compromises with the leadership of the Committee on Ways and Means because the provisions were generally not objectionable.

Under the mirror system, insular tax systems are identical to—but separate from—the Internal Revenue Code. Federal Tax Code changes are automatically reflected in the local tax codes.

A number of problems have arisen with the mirror. Unintended loopholes have been created. Lower Federal rates have resulted in in-

sular deficits. Its complexities are difficult to administer.

The bill was an attempt to rectify these problems. It would revise the Virgin Islands mirror system. It would authorize Guam and the Northern Mariana Islands to replace the mirror system with local laws. It would standardize American Samoa's existing authority to write local tax laws.

The amendment was intended to accomplish insular tax revisions, protect the integrity of Federal-insular relationships, and ensure fiscal responsibility. It—and the understanding is that this bill as it has been developed—also preserves the exclusive legislative jursidiction of the Committee on Interior and Insular Affairs over all aspects of the insular tax systems which do not involve Federal revenue.

The amendment made a technical change to the bill intended to ensure that all Federal collections which are required to be rebated to insular areas continue to be rebated and are rebated as they are now. This means, for example, that Guam would be rebated all collections on the income of persons receiving Federal pensions and their survivors and of Guam residents in the military stationed abroad in addition to the other collections covered over to its treasury pursuant to its Organic Act.

The Senate amendment to this subtitle generally followed the House bill with some modifications, primarily affecting the Virgin Islands, that we considered to be improvements and some which would not have been. In particular, we were concerned about a proposed retroactive repeal of the provision of the Revised Organic Act of the Virgin Islands which establishes that the tax liability of territorial inhabitants is to the territory to the extent that the amendment would have affected bona fide inhabitants.

I raised this and other issues of concern prior to the conference. At the request of Chairman ROSTENKOWSKI I agreed, however, not to press for representation for the Committee on Interior and Insular Affairs on the conference committee because of his commitment to cooperatively collaborate on issues of concern in the conference.

The process of this conference did not fully facilitate the consultation to which we agreed. Our work together did, however, adequately resolve a number of the issues of concern.

For example, the repeals of the Virgin Islands inhabitant rule, under certain circumstances, by which certain United States companies claiming residence in the Virgin Islands have avoided tax on substantial United States source income provides credit against any additional United States tax. This is for any tax paid to the Virgin Islands before January 1, 1987 by any so-called inhabitant company, against whom the Virgin Islands Government has initiated demand prior to August 16, 1986.

With respect to companies that entered into tax settlements with the Virgin Islands Government in which tax liability on disputed income was compromised or penalties waived under the hazards of litigation principle, it is the expectation that the Internal Revenue Service will honor any reasonable arms-length settlement between such a company and the Virgin Island Government.

Other concerns were not addressed or are created by an addition to the bill made by the conference committee.

Perhaps most significant is the anticipated negative revenue impact on insular governments of the reduced income tax rates in this legislation. As is so often the case with the impact in the unique situations of the insular areas of legislation which may make sense for the Nation as a whole, the lowered rates will be far from revenue neutral.

In fact, they can be expected to significantly exacerbate serious insular budgetary deficits. This is a problem that insular governments will have to grapple with soon and we may also have to address.

The recognition of this problem was one of the reasons that the administration sought to replace the mirror system with broader local taxing authority in the insular areas. As the President's initial proposal explained "otherwise revenue neutral proposal that compensate for lowering tax rates by broadening the tax base may well not be revenue neutral in a possession where very little tax is collected from corporations or higher income individuals . . . It is important to permit each [insular area] to develop a tax system that is suited to its own revenue needs and administrative resources."

This goal would largely be accomplished in the case of the Virgin Islands by the bill as agreed to in conference thanks in large part to our colleague from the territory, RON DE LUGO, assisted by the counsel of the Government of the Virgin Islands. The territory has been granted new revenue tools even though its basic income tax system will still mirror the Federal system.

If the Virgin Islands fully uses these new opportunities, it may compensate for the reduced rates in the bill. I do not underestimate the difficulties of the task of doing so, however.

The same goal may not be as effectively accomplished as the bill was agreed to in the case of the Pacific insular areas although our colleagues from America Samoa and Guam, FOFO SUNIA and BEN BLAZ, persuasively and diligently labored on behalf of their territories. Conditions put on the new revenue tools that their territories have been granted through delinkage from the mirror tax system may hamper implementation of the new system agreed to in concept.

The conditions would transfer local revenue sources to Federal taxing authority. Certain Pacific insular residents would owe a Federal tax liability on income generated from outside the Pacific insular areas where they currently are only taxable by the territory.

The full amount of any such collections should be covered into the territory's treasury, however, since they will be derived from within the territory. Still, the dual filing requirements and the expanded Federal role may act as a disincentive to Pacific insular areas taking full advantage of the provisions of this bill.

A particular concern in this regard is created by a provision quietly added to the bill in conference which would enable the United States to tax U.S. individuals who move to a Pacific insular area for 10 years after they make such a move. By its construction, this may create unnecessary conflicts with the laws establishing the Federal relationships with the Pacific insular areas.

The only ways that conflicts with these laws and current local tax authority may be prevented is through the authorized agreements between local governments and the Secretary of the Treasury on the relationships between the new local and Federal tax systems or by such agreements not being reached. These agreements are the essential precondition we have agreed to on any and all of the changes in this subtitle concerning the Pacific insular areas taking effect. None of the provisions are effective until and unless the territory and the Treasury enter into the required agreements.

Careful exercises of the regulatory authority that the Secretary would be granted could prevent disatisfaction with the conditions imposed upon delinkage. For example, the regulations could provide that Federal tax does not have to be paid by persons moving to Pacific insular areas who would be adequately taxed on income which originates out of the islands by the insular governments. Further, the agreements themselves can specify consultation on issues such as determining bona fide residence and source of income.

It is essential that the authority we have vested in the Pacific insular governments and the basis of Federal-insular relationships be preserved just as it is critical that the integrity of the Federal tax system be protected. There is no intent to permit the tax systems authorized for the insular areas to be used by the U.S. persons to avoid fair taxation by either the Federal or insular tax systems.

Another concern that has not been addressed by this legislation are certain inconsistencies in the authority to cover over Federal collections to various insular areas. It is important that we resolve these inconsistencies which question the principle of no taxation without representation and our insular relationships.

A major inconsistency is that the authority to use collections for public services in American Samoa is more limited than in any other insular area. Little revenue is involved and I agree with Delegate SUNIA'S position that this authority ought to be conformed to the authority regarding the other islands.

Another inconsistency is that despite the original intent of the Virgin Islands Organic Act, a Senate amendment to the 1984 tax act prevents all collections on products of the territory from being rebated. Chairman ROSTENKOWSKI and I have agreed that this is a problem that should and will be addressed recognizing our longstanding fiscal commitment to the Virgin Islands. I am intent that we work with Delegate DE LUGO to correct this matter in the next Congress.

Similarly, the 1984 tax act created significant problems by not fully honoring the longstanding practice of rebating all excise taxes collected in Puerto Rico. As Resident Commissioner FUSTER has pointed out, the Puerto Rico Federal Relations Act expressly continued this practice.

Other concerns were raised by provisions of this legislation which impact the insular areas, including individiuals and businesses, but which do not involve the local tax systems. I will only address two such situations but feel

compelled to reiterate that any such impacts that are unique in the case of the insular areas raise issues in which the committee I chair has an interest.

One situation I want to briefly discuss is created by trade provisions added to this legislation. These provisions would limit the importation of ethanol into the United States.

Provisions were made to adapt the implementation of the restrictions to developing ethanol industries in the Caribbean, including the Virgin Islands. They only, however, provide a means for one of the two plants in the Virgin Islands to continue to operate.

Because provisions have been made to accommodate the special needs of less developed plants and plants in foreign islands, remedial action should be taken to enable the continued operation of this second Virgin Islands plant that is fair and consistent with Federal insular policy.

The other situation I want to mention concerns changes to the provisions of the Federal Tax Code which provide a credit to U.S. businesses for income from insular subsidiaries. Section 936 of the Internal Revenue code is essential to the economic well-being of Puerto Rico and a significant factor in American Samoa.

I am pleased with the response that we received from the Committee on Ways and Means to the efforts to preserve the essential elements of these provisions I am particularly pleased that they would accommodate the Governor of Puerto Rico's impressive plans to develop twin-plants and the economic health of both the island and its neighbors.

Because of the other provisions of this legislation which affect business, the incentives for investment in the territories and commonwealths should actually be strengthened. This is, of course, also true in the case of the Virgin Islands, because section 936 would now apply to that territory.

This is as it should be because assistance to develop the economies of the insular areas through U.S. private sector investment and other public sector means is a Federal policy objective. With the scrutiny and adjustments that section 936 has received over the past several years, it should not be revisited for some time unless necessary to accomplish its purposes and be allowed to achieve its insular economic development goals.

I want to conclude, Madam Speaker, by expressing my appreciation to the chairman of the Committee on Ways and Means for the cooperation that I have received in addressing matters within the exclusive legislative jurisdiction of the Committee on Interior and Insular Affairs that are dealt with in this legislation. Although these and other provisions may require some fine tuning in the future and although some concerns that I have identified have not been met, this bill is a major step toward much that is worthwhile for our insular areas.

Mr. OBERSTAR. Madam Speaker, today, Members of the House will cast one of those landmark votes that occur only rarely in a congressional career when we vote on the conference report on tax reform, because this bill represents the establishment of a new order, a new direction for the tax structure in this country.

From the outset of my services in the Congress, one of my fundamental commitments has been to establish fairness and equity in the Tax Code. That goal has been elusive until now. This bill offers the first strong, sure foothold on the path to a fairer and more equitable system. I would like to summarize the highlights of this bill, milestones along the path toward tax equity, some of the provisions in this bill which have been among the most significant tax reform initiatives of the past 10 years.

The bill provides long-overdue reform for the working poor; it redresses the rapidly rising tax burden imposed on low-income wage earners in recent years, removing 6 to 6.5 million from the tax rolls.

With the advent of this new code, investment decisions by both individuals and corporations will be made on the basis of what makes economic sense in the marketplace—rather than on the basis of how to beat the system and avoid taxes. It will encourage economic investment decisions, rather than tax-motivated investment decisions. Even in those categories where whole industries have grown up around certain provisions of the Tax Code, and have avoided paying taxes in the past, that preferential status will end or be sharply curtailed under this measure.

It includes an inescapable corporate and individual minimum tax which will ensure that all will pay their fair share of the tax burden. No phenomenon causes more indignation among American wage earners than the specture of 3,000 millionaires paying taxes at less than a 5-percent rate, with some paying no taxes at all. This inequity cried out for the minimum tax remedy that has been included in this bill.

The bill shifts $120 billion of taxes from individuals to corporations over the next 5 years, increasing the corporate share of income tax collected from the present 6 to 13 percent. It has been argued in the course of debate on this bill that corporations would pass on to consumers the increase in corporate taxes in the form of price increases; however, they can't pass along any more than what the market will bear. Furthermore, leading economists have testified that the enormous 1981 corporate tax windfall did not result in a corresponding drop in prices; by the same token, shifting a more proportionate share of the tax burden to corporations should not justify corresponding price increases.

The bill introduces a substantial measure of tax fairness by closing major loopholes and curbing tax shelters that have allowed profitable corporations and wealthy individuals to avoid paying their fair share. The most significant reforms include sharp restrictions on the use of passive losses to shelter other income; repeal of the preferential treatment of capital gains income; repeal of the investment tax credit; restraint of excessive depreciation allowances; and elimination of major tax incentives that have encouraged corporate mergers.

The bill provides individual taxpayers with a substantial increase in the personal exemption, offering relief to families, and expands the standard deduction and earned income credit. These improvements will be an enormous benefit to low and moderate income families, especially when coupled with the lower rate structure.

The middle class relief provided in this bill has been an object of reform efforts since the 1960's, and will substantially reduce the tax burdens of 3 out of 4 taxpaying families. Under this bill, 80 percent of individual taxpayers will be paying at the 15 percent rate, which begins at $17,580 for single persons and $29,750 for married persons filing jointly. The breadth and depth of these rate reductions for the middle class are truly historic. The centerpiece of this bill is replacement of the current 15 individual tax brackets, which range from 11 to 50 percent, with two rates of 15 and 28 percent.

More equitable tax treatment of pensions is another important reform. The time required for vesting has been shortened, extending vesting to a greater number of workers. The conference report also limits integration with Social Security benefits to ensure that more workers will receive meaningful pension benefits. Finally, the pension provisions strengthen rules that prevent discrimination in pensions and fringe benefits in favor of owners and managers.

The bill offers much desired simplification of the tax system: by eliminating or curtailing various deductions, it reduces the number of records that must be kept and calculations that must be made.

Major defense contractors have been able to defer income until completion of their contract, thereby often avoiding taxes altogether. Accounting reforms will substantially curb this method of tax avoidance, requiring these large firms to pay their fair share of taxes.

Madam Speaker, this is only a partial list of the major reforms sought for many years by those interested in establishing justice in the Tax Code, ensuring that similarly situated individuals and corporations, engaged in whatever business, from whatever region of the country, with whatever tax and spending patterns, will be taxed similarly If, at some future time, we must turn to the Tax Code to address the deficit, then this bill provides a solid and equitable base from which to start. I must emphasize, however, that any such proposal will be neither considered or voted by the Congress unless it is initiated and advocated by President Reagan.

Like most of my colleagues, there are many provisions of this bill which I dislike; but, on balance, it achieves the fair and equitable distribution of the tax burden, and the tax relief for the poor that have for decades been the goals of tax reformers. Middle and low income Americans finally win their day in Tax Court with this bill.

In this moment of decision, when we can no longer modify or eliminate one or another provision which does not conform to our image of the ideal tax structure, we must not let the perfect be the enemy of the good. This is a good bill; it is real tax reform, and, faced with an up or down, yea or nay vote on the entire package, I urge my colleagues to join me in voting aye on the conference report.

Mr. SMITH of New Jersey. Madam Speaker, I rise in support of the legislation before us. Having considered the likely effects of this tax reform bill—both good and bad—on the

health of our economy, and the fairness of the Tax Code among individual taxpayers and businesses, I believe the package is worthy of support.

In supporting this conference report on the Tax Reform Act of 1986, we continue the President's initiative made in his 1984 State of the Union Address. In the words of the President, "There is a better way (to revive economic recovery): Let us go forward with an historic reform for fairness, simplicity, and incentives for growth * * * so that all taxpayers, big and small, are treated more fairly."

With the almost doubling of the personal exemption and the increased standard deduction, it is estimated that this plan will remove over 6 million low-income Americans from the tax rolls and reduce by an average of 6.1 percent taxes paid by individuals. Not only is this especially important to many of our elderly citizens, I believe this will encourage many who are currently receiving Federal assistance to find and take jobs even though they may be low paying.

Madam Speaker, while several of my colleagues have objected that the tax reform proposal does not increase overall revenues, I would remind my colleagues that the goal of tax reform is not to increase taxes. I believe we must recall the original goals set forth by President Reagan when he began the drive to make these dramatic changes in the Tax Code. He clearly set forth the obligation to construct a broad-based income tax that would raise revenues equal to those of the existing tax system.

Before the House Committee on Ways and Means would agree to seriously consider the President's tax reform package, the proposal had to be revenue neutral. In July 1985, Chairmen PACKWOOD and ROSTENKOWSKI publicly stated their commitment to the passage of a tax reform package that raised neither more nor less than the current system. Mr. Speaker, I am pleased that the proposal before us is projected to raise revenues over the next 5 years equivalent to those raised by the current Tax Code.

I was hopeful that the conferees would have been able to construct more equitable transition rules. As a cosponsor of a resolution expressing the sense of the House that all effective dates should be delayed to January 1, 1987, I am disappointed that more progress was not accomplished in this regard.

With respect to the 3-year basis recovery rule for Federal, State, and many local employees' pension plans, I joined a number of my colleagues in requesting that, should it not be possible to retain current law, the enactment date be no earlier than the date set forth in the Senate version, January 1, 1988. Otherwise, this could place an undue hardship on those workers who trusted that Congress would not agree to this retroactive provision in the final conference report of the tax bill, and have waited to retire.

Having recognized several of my reservations about the measure before us, I have not lost sight of the important goal which this tax reform package achieves. Certainly, due to its emphasis on fairness, this package merits support. Because individuals and corporations with similar incomes would tend to owe similar taxes, faith in the tax system will be restored.

Madam Speaker, I am particularly gratified that the deductibility of State and local income taxes and local property taxes has been retained. This provision is vitally important to New Jersey taxpayers. Another aspect of this tax reform package is that the vitally important mortgage interest deduction will remain intact for first and second homes.

In preliminary estimates, my home State of New Jersey is expected to save approximately $2.3 billion per year as a result of this tax reform bill.

With the elimination of numerous tax shelters, I believe a positive effect will be noticed in the economy. It is clear that investments will be market oriented and based on sound economic realities rather than based merely on advantageous tax consequences. I believe spending and investment decisions which are governed and directed by the market will enhance long-term economic growth.

Furthermore, Madam Speaker, tax shelters in general are not as attractive under a tax system with low marginal tax rates. What incentive is there to shelter moneys when the net gain of the benefits is cut by 22 percent? At the current 50-percent tax bracket, a deduction is worth half the investment made. At the 28-percent bracket, the same investment is worth almost half that.

While large, capital intensive industries and corporations which currently pay little or no tax will have more adjustments to make under the new Tax Code, the small business community especially will enjoy the benefits of the lower marginal tax rates. I agree with the President that only through lower taxes will the entrepreneurial energies be unleashed to achieve the desired economic growth. The economic recovery which our country has experienced in the last few years clearly traces its roots to small businesses. Small businesses employ one-half of the private sector workforce, and have created 2 out of every 3 new jobs during this recovery. With the reduction in tax rates, the potential for continued and increased growth is exciting.

Many have argued that the tax reform proposal with its two tax rates is not progressive enough. On the other hand, most taxpayers in higher marginal tax brackets currently pay much lower effective rates, due to the loopholes, credits, and tax shelters. In fact, it has been estimated that the higher rate of 28 percent as established in the Tax Reform Act is approximately the rate being paid by many or most high-income taxpayers at this time. The progressivity of the old code has been deceptive and, therefore, has been a major cause of the growing lack of faith in the current tax system.

Madam Speaker, I am pleased to have this opportunity to join my colleagues in support of this bill which has justly been referred to as an historic piece of legislation.

Mr. GOODLING. Madam Speaker, although it is very difficult to assess the total impact the tax reform legislation will have on the growth of our economy, and how it will affect individuals, until all elements of the bill are phased in over the next several years, I have decided to support the passage of the legislation based primarily on the following.

First of all, it raises the personal exemption from $1,080 to $2,000 in the year 1989. I think this is a pro-family effort, especially for those in the low- and middle-income tax brackets. This exemption will also be indexed for inflation, assuring that it keeps pace with the economy.

Second, the standard deduction of $5,000 for joint returns in 1988 ($3,760 in 1987) will replace the current "zero bracket amount" [ZBA] of $3,670. Single taxpayers will receive a $3,000 standard deduction in 1988 ($2,540 in 1987) as opposed to the current ZBA of $2,480. This should certainly simplify the tax problem for millions of taxpayers since it will remove 6 million working poor from tax roles and would allow millions of other taxpayers currently itemizing to take the increased standard deduction. It will also allow many more taxpayers to take advantage of the low 15 percent tax rate.

Third, the bill is written in such a manner that it will encourage investment for economic growth purposes rather than for tax related reasons—namely, tax shelters.

Last, the bill is constructed in such a manner that a minimum tax will be paid by all individuals and businesses. So not only will money which was going into nonproductive tax shelters be redirected into productive uses, but those who avoided taxation will now be paying their fair share.

There are some provisions in the bill that I would have written differently, such as inclusion of a few retroactive changes, especially applied to the pensions of Federal retirees and the investment tax credit. Overall, however, the new legislation generally meets the four criteria President Reagan asked Congress to consider when constructing a new tax program. One, simplification of rate structures; two, fairer than the existing system; three, progrowth (which I believe will be true in the long run, although it may cause some stagnation in the short run, depending upon other economic factors); four, revenue neutral.

It appears that the bill will result in increased revenue to the Treasury of the United States the first year after its enactment. There will probably be a loss for the next 2 years, and a gain in the fourth and fifth years. It will curtail the use of tax exempt bonds for private purposes. It will require large companies, but not farmers, individuals or service corporations to use the accrual method of accounting rather than the more advantageous cash method. It will help small businesses by restructuring the graduated corporate income tax rates. Business will pay 15 percent on the first $50,000 of annual income and 25 percent on the next $25,000. Income over $75,000 will be taxed at the top corporate rate of 36 percent.

The bottom line on this bill is that the vast majority of American taxpayers win and a substantial amount of capital in our economy will be shifted to productive uses. I urge everyone who is pessimistic about this bill to take a closer look, because although it has certain flaws, I believe they will come to the conclusion that overall it will benefit American citizens, businesses, and our economy in the long run.

Mr. DORNAN of California. Madam Speaker, I rise today in support of the tax reform bill, with some reservations.

In my view, the bottom line of the bill is this: It is not designed to reward or punish income classes or economic sectors, but to begin dismantling a complex system of reward and punishment. Its biggest virtue is that it gets the Government out of the business of sanctioning certain economic activities while discouraging others. This will undoubtedly lead to a more efficient economy in the long run.

Sure, there will be some losers, but everyone must have some sense by now that the intended direction is toward tax neutrality. This is clearly the right way to go.

The bill will sharply reduce taxes on the lower and middle-income brackets, with about 80 percent of individuals being in the 15-percent tax bracket or paying no taxes at all. The bill is pro-family. Filing a 1040 form will be far simpler for the average taxpayer and the bill's lower marginal tax rates will improve economic incentives, bolstering our economy.

However, there are several portions of the tax bill that I believe should be changed, among them are the retroactive features, the tax rate reduction stagger, and the increase in taxes on business. Because tax reform is in my view a one shot deal, it may be necessary to recommit the bill back to the conference committee to work out some of the kinks.

One of the tax bill's most egregious features is the treatment of capital gains. Don't get me wrong, I have no problem with capital gains being taxed as ordinary income. However, under this bill capital gains earned on investment held over 1 year will be taxed at a higher real tax rate than ordinary income.

The reason? Ordinary income will be indexed to inflation, capital gains won't. Consider the following example.

Suppose an investor buys $1,000 worth of ABC stock in 1987 and sells it 2 years later for $1,100, a 10-percent gain. Further suppose that the cumulative inflation rate over that 2-year period was 10 percent. In this example the purchasing power of our investor's original $1,000, has not changed. However, if capital gains are not indexed for inflation, our investor will have to pay a 28-percent tax on his nominal $100 gain. In other words, he will be losing money after adjusting for inflation.

Had this been ordinary income, our investor would not have paid any tax on his gain due to indexing, and therefore his purchasing power would have remained the same.

I have figured out that in order for an investor to merely break even, it will become necessary to do about 39 percent 0.28 divided by 0.72—better than the cumulative rate of inflation just to break even after taxes! Under current law, that figure is at worst only 25 percent.

By not indexing capital gains to inflation investors will have a definite incentive to invest in income-producing assets over those offering the potential for capital appreciation. This will put pressure on smaller growth type companies to pay stock dividends with funds that would normally be reinvested in the company.

What makes the tax bill so attractive is that it moves toward tax neutrality. Yet when it comes to investing, the conference report still favors certain forms of investment over others. This must be changed. I am therefore currently working on a bill that would amend the tax bill to allow for the indexation of capital gains to inflation.

But, all in all, the tax bill represents a monumental improvement over the current system. It will be good for the economy and the taxpayer. I urge my colleagues to support it.

Mr. SCHAEFER. Madam Speaker, fairness, growth and simplicity. How promising the move for tax reform began in May of 1985, when the President issued these words as his goals for a new tax structure. Now, just 1½ years later, these motivational words are little more than a distant memory.

Ask a young family if it is fair to provide billions of dollars in special tax breaks while not allowing them to deduct interest on the purchase of their first automobile. Ask that same family if it's fair to strip them of their incentive to responsibly save for their retirement years. Ask a family if it is fair that due to passage of this bill their monthly rent rises by 20 percent. Then ask them if the promise of fairness was retained in H.R. 3838.

The tax reform bill was to encourage economic growth. Yet it repeals the investment tax credit, repeals the special exclusion for capital gains and adds a total of $120 billion to the tax liability of American Businesses. By increasing the cost of capital investment, the bill would likely render domestic manufacturers less competitive, furthering our already massive trade deficit. In fact, many economists have predicted that enactment of this bill will result in a recession in the near future. A marginal decrease in tax rates mean little to someone who has just lost his job as a result.

What about simplicity? The conference report is in excess of 4,000 pages. Accountants estimate that their work will be doubled by its passage as even the most basic of the bill's provisions change annually. The most arden supporters of this legislation find it difficult to argue that this element of the President's goals for reform was met. Americans will certainly discover the lack of simplicity come April 15, 1988.

The failure to adequately meet even one of the President's primary goals force me to reluctantly oppose this measure. Our Tax Code is in dire need of reform, but it should be done in a manner that keeps our promises to the American people. In May 1985, tax reform meant fairness, growth and simplicity. What a difference a year and a half makes.

Mr. LEVINE of California. Madam Speaker, today we will cast one of the most significant votes of the 99th Congress. The bill before us makes the most sweeping reforms of the Tax Code of any bill since the inception of the income tax in 1914. There have been few other pieces of legislation in this session that will effect the average citizen as much as this bill.

I have some deep reservations about this legislation. Many of us here today do. The economic assumptions that many people have operated under will be fundamentally altered by this bill. No one knows exactly what the economic consequences of these changes may be over the long term. Worse yet, some of these changes are made retroactively. Changing rules on which people have based their economic decisions retroactively is unfair and unwarranted.

Additionally, a number of personal deductions which I believe were positive aspects of the code, not in need of reform, are altered by this bill. The bill allows the charitable contributions deduction for nonitemizers to expire. The threshold on the medical expenses deduction is raised. Interest on a second home is allowed, but not on a first car. New restrictions are applied to IRA's.

I am also worried that this legislation harms the progressivity of the Tax Code. I have seen the charts presented by a number of members which demonstrate how the current system's loopholes make it less progressive than the stripped-down structure that this bill enacts. But the simple fact is, this bill leaves us with only two rates: 15 and 28 percent. It leaves a taxpayer with an income of $50,000 paying the same percentage on his income as someone making $500,000. No matter how unprogressive the current system may be, taxing individuals at such disparate levels of income at the same rate is just plain unfair.

My final objection to this bill is that it does nothing to address the deficit problem. We have tried any number of methods of dealing with the deficit. We have enacted user fees for government services, we have tried across-the-board cuts, and we have seen some creative bookkeeping, all of which has done very little to solve the problem we face. We had an opportunity in this bill to find equitable ways to increase federal revenues and reduce the national debt which looms over us and our children. But we did not take advantage of it. I believe that we should have.

Despite its many negative aspects, however, this bill makes some badly needed changes in the Tax Code. Many of the tax preferences which have allowed wealthy individuals and corporations to avoid paying their fair share of taxes in the past are curtailed or eliminated. The bill contains a tough new minimum tax which will end the days of corporations making multimillion dollar profits but paying no taxes. At its most fundamental level, the bill reduces the Nation's reliance on tax incentives for economic decisionmaking and channels capital toward investments that are productive, rather than ones which produces paper losses and no benefit to the economy.

Additionally, H.R. 3838 will take 6 million of the Nation's working poor off of the tax rolls by vastly increasing the standard deduction and nearly doubling the personal exemption. With both of these measures indexed to inflation, never again will we see families below the poverty level facing Federal income tax liabilities as they struggle to keep their families fed and clothed. These changes are also expected to give most middle-class taxpayers a modest tax cut.

Finally, at the bottom line, we must examine whether this bill, with all its faults, is an improvement over the current system. Flawed though it is, the positive reforms in the bill are such an improvement over the complex mess of unfair loopholes and tax shelters which currently exists in our Tax Code that I will reluctantly vote for it. I have supported the concept of tax reform from its inception, because the current system is unfair, overcomplicated, and too favorable to those who are able to use tax

shelters and loopholes. While I strongly disagree with some of the specifics in this particular bill, and I hope that we will address the worst of them when we return next session, I cannot help but applaud the real and badly needed reforms this bill contains. Because of them, I will vote for the bill.

Mr. EARLY. Madam Speaker, the House of Representatives has been called upon in recent days to consider and vote upon what is clearly the most far reaching tax revision proposal that has come to the floor in decades. The issue which came before us was surely not simple; nor was the answer to the question of how Members should vote on H.R. 3838, the conference report.

That tax reform is needed is beyond any legitimate question. The appearance of inequity in the current tax laws was everywhere. That appearance reflected the reality. Data showed that significant numbers of individual taxpayers with incomes in excess of $200,000 per year were able, under the current code, to avoid paying any taxes. Data showed that major corporations, including a significant number of major defense contractors, were earning, in aggregate, billions of dollars annually without paying any Federal income tax. This sort of data objectively documents a tax situation in which the tax laws has effectively ceased to be a fair method of raising Government revenues and had simply become the private domains of vested, special interests, which had secured over a period of many years narrow, specific tax provisions for their own benefits. It simply is wrong that an individual earning $200,000 or $500,000 in a year pays no taxes while a hardworking American citizen who earns $22,000 a year, but has neither special tax treatment nor the expert services of tax accountants and counsel, pays a significant portion of his or her annual income in Federal income tax. Likewise, it is wrong that a small business or that same individual who earns $22,000 a year pays significant Federal income tax while some of the largest corporations in the Nation earn billions of dollars annually and pay nothing in Federal income taxes. It surely was only a matter of time, if no tax reform were enacted, until the American tradition of voluntary compliance with the tax laws eroded. The Congress and the administration deserve credit for recognizing that reality and setting out to do something about it.

H.R. 3838 will remove approximately 6 million low-income individuals from the Federal income tax rolls. The overwhelming majority of those who will cease to pay income taxes under the provisions of H.R. 3838 simply cannot afford to pay taxes, and surely could not be morally called upon to pay income taxes while some of the wealthiest elements of our society went tax free. H.R. 3838 also moves in the right direction when, through more stringent minimum alternate tax provisions, it minimizes the possibility of individuals or corporations, which have large incomes, paying no taxes. One reality which should be at the foundation of our system of taxation is that we should not demand taxes of those who truly cannot afford them while allowing those who are wealthy to pay literally no tax. H.R. 3838 does deal with this basic issue of equity and apparently does so effectively.

The conferees, in dealing with this major legislation, were compelled to compromise between two desirable, but mutually contradictory goals: First, to have the lowest possible statutory tax rates; and second, to retain certain historic deductions from taxable income. While many longstanding and, in reality, cherished deductions were eliminated, the conferees did retain several very important deductions, including:

First. Deductability of home mortgage interest;

Second. Deductability of real estate taxes; and

Third. Deductability of State and local income taxes.

While the conferees worked long and hard and, I am certain, with the best interests of the Nation and its people at heart, their product—H.R. 3838—is far from perfect and, indeed, legislation which I can only vote for with very grave reservations.

At the outset it was dictum in the tax reform process that the final legislation be as close to revenue neutral as mathematically possible. That goal has apparently been accomplished. I believe that the goal, however, was poorly chosen. We face a deficit of some $200,000,000,000-plus a year. The administration now in office has never proposed to this Congress an annual budget which bore even a faint resemblance to a balanced budget. The reality is that there are three options in attacking this enormous deficit: First, reduce domestic spending; Second, reduce military spending; and Third, increase Government revenues. The administration espouses the rhetoric that options 2 and 3 can be excluded and an informed, good faith effort at eliminating the deficit still made. That simply is not true. As the Vice President once stated very succinctly, such proposals are best described as voodoo economics. It would be difficult to overstate the potential economic consequences of the current level of deficit spending. In order to deal with this deficit we must be willing to make the choices which, at least in the short term, will be politically unpopular, and attack the deficit from all sides—domestic spending, military spending, and revenues. For this Congress to have, de facto, accepted the marching orders of the administration that tax reform must be revenue neutral was, I believe, a serious mistake. We have passed what may well be the major revenue legislation of the decade, and well beyond the decade, on a basis which accepts an annual deficit level of $200,000,000,000-plus.

Another goal which should have been sought more vigorously in the tax reform process was that of simplicity. It will inherently breed continuing suspicion when a tax bill runs well over 900 pages and those who are financially able to continue to use the services of high-priced tax accountants and tax counsel to prepare their tax returns. Whether by design or happenstance, this legislation might well be subtitled "the Tax Accountants' and Tax Counsels' Annuity Act."

At the heart of the momentum which has moved tax reform forward was the perception that the current tax laws were, quite simply, unfair in significant ways. Some millionaires paid nothing in taxes, while some Americans barely above the poverty level, if that, paid taxes. H.R. 3838 does attack, in a significant way, the problems of inequity. Unfortunately, H.R. 3838, itself, codifies certain new inequities. For example:

It is apparent that, under the new tax law, a homeowner can borrow against the equity in his or her home to finance a child's education and deduct the interest payments on the mortgage loan from taxable income. An apartment dweller who takes out a consumer loan to pay for the education of his or her child apparently is not entitled to any interest deduciton on such a loan for tax purposes. It is difficult to hypothesize an ethical or moral basis on which these two borrowing arrangements, each to finance a child's education, should be treated differently.

Although there is a great deal of talk about the two tier rate structure under H.R. 3838—beginning in 1988—the reality is that the rate structure is five tiered:

First. A level of gross income which is tax exempt, that is, tax status;

Second. A level of income taxed at 15 percent.

Third. A level of income taxed at 28 percent.

Fourth. A level of income effectively taxed at 33 percent plus.

Fifth. Additional income taxed at 28 percent.

Levels 3–4–5, above, describe a tax rate structure which, looked at in isolation, no one can really rationalize or justify as morally right. Rather such levels are surely the calculations of accountants, actuaries and tax lawyers as to what was needed to achieve the elusive revenue neutral goal of this bill.

Certain provisions of the proposal are retroactive. Retroactive laws are something which this Nation should seek to avoid. When we pass a retroactive law, by definition, we create a situation in which people could not have known what the legal implications of their actions would be at the time they acted. That is a situation which a representative democracy should avoid as though it were some vile contagious disease.

One cannot logically justify the treatment of certain contributory pension plans under the provisions of H.R. 3838. These provisions hit most pointedly at public employees. Many public employees have, over their working careers, significant contributions to their own pension plans—out of their own after-tax income at the time of those contributions. It is elementary and obvious that, when such persons retire, the pension payments which they receive—until such time as they have received back, in full, but with no interest, the amount of the contributions which they previously made from their own already taxed income in prior years—should be tax free. Such payments are clearly in the nature of returning to such retirees funds held in trust for them, on which income taxes were paid years earlier when the pension contributions were made from after tax incomes.

I am deeply concerned about the final conference report which does significantly cut back on IRA deducitons. It appears clear to me that IRA's, as structured under the old Tax Code, were working. People who otherwise would not have set aside funds for retirement were actually doing so, motivated at least in

part by the IRA deduction on their Federal income taxes. IRA deductions constitute a major pool of long-term capital to help finance the future growth of our economy. The decision to cut back on these deductions may well prove to be one which is short sighted.

In summary, we have taken a major step in the direction of tax reform. With very significant reservations. I cast my vote in favor of H.R. 3838 on the basis that the content of H.R. 3838 was and is better than the current Tax Code. It seems clear to me that the opportunity which we had in 1986 was not fully seized. We could have made the unpopular and politically very difficult—but I believe right—decision to work to reduce and eliminate the deficit in this process. We lost that opportunity. We could have done a great deal more in the area of true tax simplification. The simple fact of the number of pages contained in H.R. 3838 shows that true simplification was not achieved. We did take a significant step down the road of tax reform. Time may quickly show, however, that the step was not directly down the middle of that road, but more like the meanderer who knows where home is but can't head there directly. We should not adopt the view that either tax reform or deficit control matters have been handled for the foreseeable future. Time will likely show clearly the need for additional legislation which will be guided in significant part by the knowledge which we gain in the upcoming month or year as to where the contents of H.R. 3838 simply missed the mark. I urge each of us to stand ready to make the difficult choices which likely will be needed in the next few years if the true goal of tax reform is to be achieved and the Nation is to make a real effort to eliminate the current massive Federal deficit.

Mr. HAWKINS of California. Madam Speaker, I rise to express my deep concern over certain portions of the conference agreement.

Nearly one quarter of the bill before us today consists of changes in the rules governing employee benefit plans. These are sweeping changes, affecting millions of pension, profit sharing, health insurance, and other fringe benefit plans across the country. Many of the changes I personally support; some I believe are unfair, ill-advised and poorly crafted.

As chairman of the Committee on Education and Labor, I must express my great disappointment with this conference agreement. The members of our committee are disappointed that once again the procedures of the House have been undermined by the failure to afford the Committee on Education and Labor Committee the opportunity to exercise its legitimate jurisdiction.

When the Employee Retirement Income Security Act of 1974 [ERISA] was first enacted in 1974, many of its provisions were drafted as parallel requirements in title I and in the Code. One of the major purposes of this unusual approach was to afford workers and their beneficiaries the strongest possible protections by establishing two distinct types of sanctions for employer misconduct.

By incorporating certain requirements into the Internal Revenue Code, employers who fail to meet those requirements would lose the favored tax status for their plans or be faced with tax penalties. As a result of plan disqualification, employers would be unable to make tax-deductible contributions to those plans, income on the trust would no longer be tax-exempt, and contributions to the plan on behalf on employees would result in taxable income to those employees. Because of the draconian nature of this remedy it is rarely used. There is much disagreement and considerable doubt as to its effectiveness as a deterrent for employer misconduct.

By incorporating certain requirements into title I of ERISA, employers plan administrators, or plan fiduciaries who fail to meet those requirements are subject to enforcement activities by the Secretary of Labor and individual lawsuits brought by participants and beneficiaries for equitable and legal relief in which civil damages could be assessed for the benefit of those injured parties. This is a far more meaningful protection. What good does it do an employee who has been illegally excluded from participating in a pension plan for the plan to be disqualified or for the employer to pay the U.S. Treasury an excise tax? Because the participation rules are title I requirements too, that employee could sue and a court could force the employer to include him or her in the plan.

By having both types of sanctions, participants and beneficiaries are more likely to receive the benefits to which they are entitled. It is criticially important that the precedent set in 1974 be followed: changes in the Tax Code that relate to substantive rights of workers and their beneficiaries must have parallels in title I of ERISA.

Nor is it solely for the protection of the employees, participants, and beneficiaries that the labor requirements of as expressed in title I of ERISA and the tax requirements as expressed in the internal Revenue Code relative to employee benefit plans should be identical. How can employers, corporate benefit managers, plan trustees, actuaries, lawyers and other plan fiduciaries responsible for administering employee benefit plans carry out their duties when title I requires one thing and the Internal Revenue Code another?

Employee benefit plans are subject to both title I of the ERISA and to the Internal Revenue Code. The conference agreeement amends only the Code in many critical areas. The Code requirements relating to participation and nondiscrimination, among other areas, were amended without corresponding title I changes, an all too farmiliar pattern followed in previous tax legislation. This is a formula for chaos. Where employers, unions, plan trustees, administrators, managers, lawyers, actuaries, and other plan fiduciaries need certainty, this conference report creates uncertainty.

The consequences of error on the part of employers and fiduciaries are serious, but adoption of this conference agreement will cause the law governing employee benefit plans to point in different, and sometimes unfathomable, directors. This is intolerable for those who must make the day-to-day decisions of administering employee benefit plans.

When the Senate amendment to the House bill was adopted, it became evident that many amendments to ERISA were going to be part of the tax reform legislation. We wrote to the Speaker expressing our concerns and requesting an opportunity for members of our committee to be conferees on portions of the bill affecting employee benefit plans. Since the Senate had gone so far as to make amendments to title I as well as the Internal revenue Code, we knew that there would be problems.

The Speaker replied that "* * * it would not be appropriate to name conferees not from the Committee on Ways and Means on a revenue measure of such volume and significance. * * *" The Speaker assured us, however, that our committee would be "fully consulted" as decisions were made during the tax conference, I regret to say that this has not occurred. With a few recent exceptions, our staffs' phone calls have gone unanswered and our request for information have been ignored.

In mid-July at our request the Ways and Means staff met with our staff to discuss our general concerns about the proposed changes affecting employee benefit plans. Followup meetings were held to discuss a peripheral area of the bill making technical corrections to the Retirement Equity Act. Many of these amendments were jointly reported by both our committees as separate legislation, H.R. 2110. Even in the area, however, our staff was not included in any drafting sessions, nor furnished a final draft of what eventually was contained in the conference agreement before us today.

On the major employee benefit provisions contained in this conference agreement, our input was never solicited before decisions were made. Even after decisions were made, we learned about them from lobbyists or read about them in the newspaper. Neither our colleagues nor their staff even gave us the courtesy of keeping us informed, much less consulting us.

Our committee was never part of the process, even with respect to issues clearly and unambiguously within our jurisdiction. Despite repeated attempts, we were denied both policy and technical input into the employee benefit provisions of the tax bill and, only recently, given limited access to fragments and portions of legislative drafts.

Without any role in the tax conference, the Committee on Education and Labor has been unable to exercise its legitimate legislative responsibility over title I of ERISA. The conferees agreed to provisions altering the rules regarding coverage and participation of workers under benefit plans, the vesting and integration of worker's benefits and nondiscrimination in favor of highly compensated employees—all of which are matters more directly related to labor policy than to revenue policy.

These issues have been under active consideration by the Committee on Education and Labor for several years. The committee held three hearings in 1985 on national retirement policy and the bipartisan legislation introduced by the chairman of the Labor-Management Relations Subcommittee, WILLIAM L. CLAY, and Senator JOHN HEINZ in October 1985 was the foundation for most of the reform provisions described above that were ultimately adopted by the conferees. So this committee's interest, involvement and expertise in

the areas addressed by the conference agreement were well known.

In July, we provided the chairman of the Committee on Ways and Means with a detailed discussion of our position on the various provisions within our jurisdiction contained in the Senate bill. We indicated that we were not opposed to including conforming changes in title I of ERISA at the same time as amendments to the Code were made and we pledged to work cooperatively with the conferees to achieve that result. Looking at the conference agreement before us today, we see that our main concern, that corresponding title I amendments be included, was ignored, although in some more technical areas, our positions were accepted.

Despite the course of events, we maintain our position on the need for conforming title I changes. But how could we prepare conforming amendments or even comment intelligently on statutory language that was still being drafted until moments before the conference agreement was filed? Because we were not part of the drafting process, we were not even able to determine what the conferees might have done that we would have opposed. In short, we had to wait until copies of the conference report were delivered later Saturday to see what had been finally decided, even in such relatively minor areas as technical amendments to the Retirement Equity Act.

While we understand the importance of the tax reform debate and the time constraints involved, this does not in any way justify the denial of the Committee on Education and Labor's ability to exercise its rightful jurisdiction. We were not trying to impede the process of tax reform, only to work within it.

My objections to the conference agreement before us today do not merely reflect a jurisdictional dispute between two committees. My concern, as I said before, is that this conference agreement establishes new rights for participants and beneficiaries while failing to give them all the tools necessary to enforce those rights in a meaningful way. Corresponding amendments to title I would have accomplished that goal and left the law of employee benefit plans in a much less confused state that I think they will be after this conference agreement is passed.

When the Committee on Education and Labor completes its analysis of the changes made in the rules governing employee benefit plans in the conference agreement, we intend to adopt the amendments to title I we consider necessary to conform title I to the changes made in the Tax Code and to repeal those changes to title I made over our objections in the package before you today.

I regret that such separate legislation is necessary but the unfortunate behavior of the conferees has left the Committee on Education and Labor no other choice. I hope that all of you who care about the integrity of the rules and procedures of the House and the protection of the rights of participants and beneficiaries will support our efforts to pass such legislation.

I am most pleased that the conference agreement does not tax employee benefit plans. It is important that employer contributions for medical health insurance, legal services, day care, life insurance and other fringe benefits remain untaxed to the employee. Why these exemptions should expire in 2 years, however, escapes me.

Finally, the Committee on Education and Labor is grateful that our colleagues on the Tax Committees, in this weighty revenue measure, took time out to define for all of us a "collective-bargaining agreement."

Mr. CLAY. Madam Speaker, I support the statement made by the distinguished chairman of the Committee on Education and Labor, Mr. HAWKINS, about the employee benefit provisions of H.R. 3838.

I am very pleased that the conferees have included in the conference agreement many of the provisions of H.R. 3594, the Retirement Income Policy Act of 1985, a bipartisan bill that I introduced with my distinguished colleague from Washington, Mr. CHANDLER. I applaud the hard work of Senator JOHN HEINZ, who introduced the companion measure in the Senate, that resulted in including in H.R. 3838 important pension protections in many areas, including vesting, coverage, and integration.

At the same time, however, I believe that some of the provisions in this conference agreement represent a set back for those of us who care about national retirement policy and worker protections. The only way that we can encourage the growth and development of our voluntary private pension system is by creating a climate of stability and certainty. It is important that the rules governing that system are clear and enforceable. The conference agreement before us establishes sweeping new rules affecting all employee benefit plans. Few are clear; most are unenforceable.

Had we been able to work together with our colleagues on the tax committees as promised to shape these new rules, I believe we would have had a significantly better legislative product before us today. I deeply regret that once again this opportunity has been lost.

GENERAL LEAVE

Mr. ROSTENKOWSKI. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. ROSTENKOWSKI. Madam Speaker, I yield such time as he may consume to the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Madam Speaker, I rise in support of the legislation.

Madam Speaker, today I rise in strong support of the Tax Reform Act of 1986 [H.R. 3838] as reported by the House-Senate Conference Committee.

Over a year ago, the House Select Committee on Children, Youth and Families, which I chair, conducted a hearing that focused attention on Federal tax policy from a perspective not often taken in Congress—how tax policies affect families with children.

At that hearing it became clear that the tax system, had lost touch with the reality of the American family. It was a rare moment of agreement among analysts and advocates from all viewpoints.

The committee, in a bipartisan manner, pursued a family-based tax reform by bringing together eight of the best recent papers on family tax issues in a single volume entitled "Tax Policy: How Do Families Fare?"

We then wrote and released two additional staff reports, "A Family Tax Report Card" and "A Family Tax Report Card: Round Two" both of which analyzed the major tax reform proposals before Congress solely from the perspective of how they would affect American families.

We are delighted that many of our most pro-family reform proposals have been included in H.R. 3838.

All families with children—except those with incomes over $125,000—will have the amount of their personal exemption almost doubled under the bill. For each additional family member, a greater amount of family income will be totally exempt from income taxes.

While this will help every family with children, it will be especially important for large families. There are still many large families in America—6.45 million with more than 3 children. The tax burdens for these families have increased far faster than those of small families over the past three decades, largely because of the erosion in the value of the personal exemption.

Most families with children will also benefit from a greatly increased standard deduction—again exempting from Federal income taxes an additional $1,000 or more of family income.

The conference agreement provides a far greater percentage of overall tax reduction to the middle class, and less to the very wealthy, than earlier reform proposals. An analysis by the Joint Committee on Taxation shows that, while taxes for the average tax payer in every income class will be reduced, the share of the total income tax burden of all Americans goes down for all income classes below $50,000 a year under the bill, but goes up for all income classes above that level.

Single-parent families—most of which are headed by women—will be especially helped by a major adjustment in the standard deduction contained in the Tax Reform bill. By setting the amount of the standard deduction closer to that of two-parent families, single-parent families will no longer be subject to Federal tax bills substantially greater than those of two-parent families of the same size and income.

Tax relief for single parent households is of critical importance. Twenty-two percent of all U.S. children now live in single-parent families, nearly double the number since 1970. The vast majority of single-parent families are female-headed families. Nearly half of all female-headed families with children are poor, even though in nearly half of these poor families, the mother works.

Under the old law, however, a single-parent family had a higher effective tax rate than an equal-sized one- or two-earner married-couple family with the same income.

Low income families will benefit enormously from the Tax Reform bill. Under current law, 6 million taxpayers below the poverty line pay

taxes, and millions of working poor also face very substantial Social Security payroll taxes.

By increasing the personal exemption and standard deduction, and by expanding the earned income tax credit under which low-income families receive an extra credit against their Federal income and Social Security taxes, the conference agreement permanently removes most families whose incomes fall below the poverty level from Federal income tax rolls. Moreover, the vast majority of impoverished families with children will have 50 to 100 percent of their Social Security payroll tax burdens offset.

This change was long overdue. In 1970 there were 3.5 million families with children below the poverty line. The number reached 5.85 million in 1983. Today, one out of five children, and one out of two black children, live in poverty. However, using 1986 poverty estimates, a two-parent, one-earner family with two children, earning $1,800 less than the poverty level, would pay income tax under the old law. Obviously, low-income families have the least capacity to pay taxes, and the greatest likelihood of being taxed into poverty.

The Tax Reform Act also recognizes that the American family's need for out-of-home child care continues at a level unprecedented in our history. Some reform proposals would have eliminated the current child and dependent care credit or reduced its value to middle- and low-income families by changing it to a deduction. H.R. 3838 wisely retains the credit in it present form.

This is long overdue, and this decision reflects the reality of family life today. Nearly 60 percent of mothers with children age 3–5, and 50 percent of mothers with children under 1, are now in the labor force. By 1990, there will be nearly 3 million more children under 10 in single-parent households, a 50-percent increase since 1970. The Select Committee determined, after a bipartisan nationwide investigation of child care, that "as we move towards 1990, more families will need child care * * * and, the situation will worsen unless parents are given more child care options."

Mr. Speaker, the Tax Reform Act of 1986 reflects the painstaking craftsmanship of Members of both bodies who truly have heard the plea of the American family for a fairer tax system.

This pro-family bill reflects the original proposal of the House Committee on Ways and Means, drafted under the leadership of Chairman ROSTENKOWSKI. I commend him for his work on behalf of families. On the Select Committee, Representative PAT SCHROEDER, chair of the task force on economic security and co-chair of the women's caucus, was an early and able leader in bringing to our attention the burdens the current Tax Code placed for women and families.

As a result of their efforts, and those of many other Members of the House and Senate, we have before us a bill that restores the American family to the cornerstone of our Federal tax system. I strongly urge my colleagues to join with me in voting in favor of this timely, fair, and much-needed legislation.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Madam Speaker, this afternoon I plan to vote for this tax reform legislation, but with some trepidation.

While I support the goal of tax reform, there are some items in this legislation which give me cause for concern. With legislation of this magnitude, my fear is that as it is implemented over the next few years we will be surprised and concerned by some of its unintended effects and ramifications on certain individuals and businesses. There is no doubt in my mind that as further studies and analyses of this legislation are completed over the coming months, we will see the need for legislation making major technical corrections to this act.

Among my concerns about this legislation is a belief that the conferees may have gone too far in granting an inordinate number of transition rules and special privileges. More than 340 were granted while thousands of others were denied, with no apparent uniform criteria to determine which were accepted.

Another concern is the retroactivity of many portions of this legislation. In general, I object to provisions of any legislation that become effective prior to that legislation being signed into law. Retroactive sections of this bill will have a serious negative effect on Federal, State, and local government employees planning to retire this year.

Other retroactive provisions will have a significant impact on some businesses, industry, and the real estate market.

Despite these concerns, the number of positive provisions associated with this legislation outweigh the negative. When fully implemented, this act will meet the originally stated goals of the tax reform effort, namely to provide fairness, simplicity, and economic growth.

Individuals and corporations will no longer be able to avoid paying their fair share of taxes. The elimination of many tax shelters and a stiff, unescapable minimum tax, will prevent total tax avoidance.

Older Americans, especially those living on small, fixed incomes, will do better under a system of lower tax rates. Many of those with low incomes will be taken off the tax rolls entirely.

Families will fare well under this legislation which increases the personal exemptions for family members and lowers overall tax rates. Six million more low income families will be relieved of their tax burden entirely.

Although this legislation does not go as far as I might have liked in simplifying the tax code and streamlining the income tax filing process, it does eliminate a large number of exemptions and deductions that are beneficial only to a small proportion of the American taxpayers. This enables the majority of Americans to pay less in taxes and keep more of their hard earned wages and income.

Finally, lower tax rates and a deemphasis on tax avoidance will encourage economic growth in our Nation. Consumers will have more money in their pockets to purchases goods and services or save for future needs. Businesses will be encouraged to pursue money-making rather than money-losing ventures. Economists predict that, after the initial transition period when tax reform is implemented, there will be an increase in American jobs, lower interest rates, and a period of sustained economic growth.

If tax reform is to achieve its desired goals, however, Congress must resist future attempts to reinstate many of the special breaks and shelters which are to be eliminated. We must also remain committed to maintaining the new, lower tax rates as provided for in this legislation. We cannot allow these lower rates to be raised over time as an easy, new source or revenue for the Federal Government.

And we must be sensitive to any unforseen and unintended effects of this legislation. Errors and problems associated with this legislation should be studied and corrected early in the next Congress to prevent apprehension and hardship from having an adverse impact on our economy. Technical corrections must be made but should not be the source for special favors or special interests.

Madam Speaker, this legislation is an overall good faith effort at tax reform and simplification. While there are some areas where I believe the bill could be improved, the legislation in general will benefit the great majority of American taxpayers who will realize a fairer, simpler tax system and a smaller overall tax bill.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. RITTER].

Mr. RITTER. Madam Speaker, I rise in strong support of the conference report.

Mr. ROSTENKOWSKI. Madam Speaker, I yield 3 minutes to the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Madam Speaker, Barber Conable, an honored Member of this body who now has gone to be the head of the World Bank used to say about some pieces of legislation, "There's something in this legislation that everybody can hate."

I have not seen a piece of legislation like this one where there are so many things that people have objections to; but I understand it, because it is a big piece of legislation. There are hundreds of things in this bill that you can find that you do not like. There are things in it I do not like, that I disagree with, and I have been talking about tax reform with the gentleman from New York [Mr. KEMP] and others for a long time.

As the gentleman from New York [Mr. DOWNEY] said, "I think we have got to step back from the trees that we are looking at so closely and look at the forest, and look at the good things that are done in this bill." If you will do that, I am convinced you will vote for it, because there are some very important good things that come out of this bill.

First, fairness. It has got a minimum tax, the best minimum tax we have ever had. It makes me angry, that 250 families earned over $1 million last year and paid no taxes. It makes me angry that corporations in this country that make millions of dollars get by with paying no taxes; many of

them do not even want that to be the case.

This bill makes sure that does not happen anymore. It does give a tax cut, and importantly it gives it to ordinary, average taxpayers. It does not give the lion's share to the people at the top. It helps people at the bottom; 6 million people off the tax roles, at the bottom, and an 8- or a 9-percent tax cut to people in the middle, the people that we are supposed to be worrying so much about; and much less tax cut to people at the top.

Third and most important, we would stop the trend of the last 25 or 30 years of every time we do a tax cut doing it by giving this group and this individual and that group a tax cut, a tax loophole, a tax preference, and keeping everybody's tax rate up to pay for those individual treatments.

This changes that whole trend and moves us to a fairer and simpler Tax Code.

Now we all have to make a decision; we have got to look at the good and the bad and decide which is predominate, which is the most important. I just ask you today as you make this vote to not think of all the lobbyists and all the representatives who are legitimately here who have been talking to you for the last 3 weeks, or maybe the last 3 years about this tax bill; and remember the lobbyist you have not seen here is the lobbyist for the average, ordinary taxpaying family in this country. That lobbyist is not here. You have not heard from them. You are the lobbyist for that individual, that family, and that family wants you to stand up for them today and I hope you will.

Mr. ROSTENKOWSKI. Madam Speaker, may I inquire as to how much time is remaining?

The SPEAKER pro tempore. The Chair will inform the gentleman from Illinois [Mr. ROSTENKOWSKI] that he has 7 minutes remaining, the gentleman from Tennessee [Mr. DUNCAN] has 11 minutes remaining, and the gentleman from Texas [Mr. ARCHER] has 7 minutes remaining.

CALL OF THE HOUSE

Mr. ROSTENKOWSKI. Madam Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names:

[Roll No. 411]

Abercrombie	Badham	Bevill
Ackerman	Barnard	Biaggi
Akaka	Bartlett	Bilirakis
Alexander	Barton	Bliley
Anderson	Bateman	Boehlert
Annunzio	Bates	Boggs
Anthony	Bedell	Boland
Archer	Beilenson	Boner (TN)
Armey	Bennett	Bonior (MI)
Aspin	Bentley	Borski
Atkins	Bereuter	Bosco
AuCoin	Berman	Boucher
Boulter	Gaydos	Marlenee
Boxer	Gejdenson	Martin (IL)
Breaux	Gekas	Martin (NY)
Brooks	Gephardt	Martinez
Broomfield	Gibbons	Matsui
Brown (CA)	Gilman	Mavroules
Brown (CO)	Gingrich	Mazzoli
Bruce	Glickman	McCain
Bryant	Gonzalez	McCandless
Burton (IN)	Goodling	McCloskey
Bustamante	Gordon	McCollum
Byron	Gradison	McCurdy
Callahan	Gray (IL)	McDade
Campbell	Gray (PA)	McEwen
Carper	Green	McGrath
Carr	Gregg	McHugh
Chandler	Guarini	McKernan
Chapman	Gunderson	McKinney
Chappell	Hall (OH)	McMillan
Chappie	Hall, Ralph	Meyers
Cheney	Hamilton	Mica
Clay	Hammerschmidt	Michel
Clinger	Hansen	Miller (CA)
Coats	Hartnett	Miller (OH)
Cobey	Hatcher	Miller (WA)
Coble	Hawkins	Mineta
Coelho	Hayes	Mitchell
Coleman (MO)	Hefner	Moakley
Coleman (TX)	Hendon	Molinari
Collins	Henry	Mollohan
Combest	Hertel	Monson
Conte	Hiler	Montgomery
Conyers	Hillis	Moody
Cooper	Holt	Moore
Coughlin	Hopkins	Moorhead
Courter	Horton	Morrison (CT)
Coyne	Howard	Morrison (WA)
Craig	Hoyer	Mrazek
Crane	Hubbard	Murtha
Crockett	Huckaby	Myers
Daniel	Hughes	Natcher
Dannemeyer	Hunter	Nielson
Darden	Hutto	Nowak
Daschle	Hyde	Oakar
Daub	Ireland	Oberstar
Davis	Jacobs	Obey
de la Garza	Jeffords	Olin
DeLay	Jenkins	Ortiz
Dellums	Johnson	Owens
Derrick	Jones (NC)	Oxley
DeWine	Jones (OK)	Packard
Dickinson	Jones (TN)	Panetta
Dicks	Kanjorski	Parris
Dingell	Kaptur	Pashayan
DioGuardi	Kasich	Pease
Dixon	Kastenmeier	Penny
Donnelly	Kemp	Pepper
Dorgan (ND)	Kennelly	Perkins
Dornan (CA)	Kildee	Petri
Dowdy	Kindness	Pickle
Downey	Kleczka	Porter
Dreier	Kolbe	Price
Duncan	Kolter	Pursell
Durbin	Kostmayer	Quillen
Dwyer	Kramer	Rahall
Dymally	LaFalce	Rangel
Dyson	Lagomarsino	Ray
Early	Lantos	Regula
Eckart (OH)	Latta	Reid
Eckert (NY)	Leach (IA)	Richardson
Edgar	Leath (TX)	Ritter
Edwards (CA)	Lehman (CA)	Roberts
Emerson	Lehman (FL)	Robinson
English	Leland	Roe
Erdreich	Lent	Roemer
Evans (IA)	Levin (MI)	Rogers
Evans (IL)	Levine (CA)	Rose
Fascell	Lewis (CA)	Rostenkowski
Fawell	Lewis (FL)	Roth
Fazio	Lightfoot	Roukema
Feighan	Lipinski	Rowland (CT)
Fiedler	Livingston	Rowland (GA)
Fields	Loeffler	Roybal
Fish	Long	Rudd
Flippo	Lott	Russo
Florio	Lowery (CA)	Sabo
Foglietta	Lowry (WA)	Savage
Foley	Lujan	Saxton
Ford (MI)	Luken	Schaefer
Ford (TN)	Lundine	Scheuer
Fowler	Lungren	Schneider
Franklin	Mack	Schroeder
Frenzel	MacKay	Schuette
Fuqua	Madigan	Schulze
Gallo	Manton	Schumer
Garcia	Markey	Seiberling
Sensenbrenner	Staggers	Volkmer
Sharp	Stallings	Vucanovich
Shaw	Stangeland	Walgren
Shelby	Stark	Walker
Shumway	Stenholm	Watkins
Sikorski	Strang	Weaver
Siljander	Stratton	Weber
Sisisky	Studds	Weiss
Skeen	Stump	Wheat
Skelton	Sundquist	Whitehurst
Slattery	Sweeney	Whitley
Slaughter	Swift	Whittaker
Smith (FL)	Swindall	Whitten
Smith (IA)	Synar	Wilson
Smith (NE)	Tallon	Wirth
Smith (NJ)	Tauke	Wise
Smith, Denny (OR)	Tauzin	Wolf
	Taylor	Wolpe
Smith, Robert (NH)	Thomas (CA)	Wortley
	Thomas (GA)	Wright
Smith, Robert (OR)	Torres	Wyden
	Torricelli	Wylie
Snowe	Towns	Yates
Snyder	Traficant	Yatron
Solarz	Traxler	Young (AK)
Solomon	Valentine	Young (FL)
Spence	Vander Jagt	Young (MO)
Spratt	Vento	Zschau
St Germain	Visclosky	

□ 1505

The SPEAKER pro tempore. (Mrs. LONG). On this rollcall, 407 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call were dispensed with.

CONFERENCE REPORT ON H.R. 3838, TAX REFORM ACT OF 1986

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. DUCAN] is recognized.

Mr. DUNCAN. Madam Speaker, I am pleased to yield 4 minutes to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. NIELSON of Utah. Madam Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Utah.

Mr. NIELSON of Utah. Madam Speaker, the thought of passing a major overhaul of the present Tax Code is exciting. It is exciting because there has been no significant revision of the present Tax Code since 1954. The Code is complex, archaic, and unfair. Everyone agrees that it needs drastic improvements but everyone predicted that a major reform could never be accomplished because those receiving the benefit of special loopholes in current law would be too vocal and would work against the best interests of the common good in order to protect their limited advantages.

Now we are knocking at the door of a historic achievement that will dramatically lower individual and corporate tax rates and provide some simplification. Everyone who has worked so hard and ignored the many Cassandra's along the way should be commended.

However, in our zeal to show our constitutents—just before election time—that Congress can achieve consensus on more than "commemoratives" let's not forget about one important objective of tax reform—fairness.

One of the five specific tests stated by President Reagan last December that he felt must be met in a tax reform bill was "effective

dates which erase doubt and apprehension in the minds of those who must begin now to plan for 1986 investments." In my opinion, nothing could be done to put more doubt and apprehension into the minds of those planning investments than to include retroactive dates for some of the proposed changes. Businesses and families planning for the future will be confused and unsure. Such a change would reduce confidence in the integrity of Congress to keep its promises and this could negatively affect long-term investment.

One of my constituents put it best when he wrote:

I believe retroactivity is a breach of faith. I invested in tax incentive investments that were encouraged by income tax laws existing when I made my investment. The provisions fostering those investments did not become law through caprice or inadvertence. They were adopted because Congress believed they would advance a national purpose. Retroactive dates would force a change of horses in mid-stream and unfairly penalize investors who invested in goodfaith reliance on existing tax law.

Madam Speaker, I agree that we should not break past commitments. I would hope that we can still correct the inequitable portions of this tax reform effort. It is a matter of fairness. Those corporations large enough and influential enough were taken care of in the transitional rules. Now lets help our smaller friends.

Mr. MICHEL. Madam Speaker, I will not be long, but I have a few things I ought to say as we wrap up this very historic debate. It has been a long trek to get us where we are today. Tax reform has been talked about for years. I recall President Carter raised the issue with the three-martini lunch, but then we never got around to even serving the lunch as far as doing anything significant about tax reform. President Reagan made it a centerpiece of his legislative program. And I have to compliment some of our own Members like JACK KEMP and DICK GEPHARDT and others who were very much in the forefront of this whole issue of tax reform.

Because tax bills must originate in the House of Representatives, it was up to a Democratic-controlled House and Chairman ROSTENKOWSKI to take the President's initiative then and move it through this body.

I guess it has been no secret that I have been unhappy at times with the ratio of the Ways and Means Committee where we are short changed and short circuited from time to time on our side. Maybe that is why some of the frustration boils out over here by some of our very hard-working Members and manifested itself as it did during the course of this debate.

I was opposed to the bill that originally passed this House of Representatives, as did most of the Members on this side, simply because we did not think it fit the mold of what we perceived to be tax reform. Subsequently, the other body worked its will, and then there was an improvement, I thought, in that measure passed over in the other body. Then there was the torturous task of reconciling the measures passed by both Houses. Our vote today is on the product of that conference, and we cannot all get everything we want in a conference of this kind. Heaven only knows, in a small segment on this side we would have 24 or 25 different views in this section here or there. We all have our druthers about this particular piece of legislation.

Each of us can find something to fault. And I do not want to see all the labor that has gone into this product go down the drain on a procedural motion to recommit.

I guess it is no secret to Members of this body that I have been somewhat ambivalent and flexible on where I was going to be coming down from my feet planted in midair earlier on this particular issue, but that is the leader's prerogative. If we sense and have the good sense to look ahead at what we may or may not have to do in a given situation, that is what leadership is all about.

Some of my dear friends and respected colleagues, particularly on my side of the aisle, have opposed this conference report and made very eloquent points here, one after another, why they take the position they do in opposition to the conference report. They made their cases well. They know their subject well. They have worked hard and long. I know they would have preferred to have one last effort to amend the conference report with a motion to recommit with instructions. Since that motion is reserved to the minority, I felt as the leader of the minority that we ought to have a straight motion to assure the President, the American people, and all the Members of this House that we would have a straight up or down vote today on this package. To do otherwise, in my opinion, would have really jeopardized the passage of tax reform legislation in this Congress.

We are not concerned here today with only that motion to recommit to our normal House committee. We are talking about recommittal of a conference report that not only takes us into account, but those Members over in the other body. And all that argument and debate that went on on how you put together this very delicate package, and you know how long it took with all the hemming and hawing, giving and taking, and all the views that had to be reconciled, how could we recommit this bill today and expect that to be done before October 3 or 10 or whatever? I just do not see it in the cards. And if it should go down the tube after all the work that has gone into this thing to bring us to this point, my friends, I have to tell you that I have now got my feet planted firmly on this floor today urging each and every one of you to vote against the motion to recommit and vote for the bill on final passage.

Mr. ARCHER. Madam Speaker, I yield such time as he may consume to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Madam Speaker, I rise in opposition to the bill.

Madam Speaker, as a long-time advocate of tax reform I rise in reluctant but firm opposition to this bill.

In 1981 President Reagan, flushed with electoral success, presented the Congress a large and comprehensive tax package. This was the bill which would purportedly cut the deficit by lowering taxes and sparking an unprecedented boom. This was the measure billed as the savior of all our economy's woes.

Large corporate interests and wealthy individuals, in Ronald Reagan's Budget Director's words, "fed at the trough" that summer of 1981. Billions were given away in loopholes and special privileges to just the few. Then the administration did not speak of the middle class, indeed we now know due to David Stockman's conversations with the Atlantic magazine, that in private the administration spoke of trickle down.

Things did not turn out quite as the advocates of that tax program said they would that heady summer 5 years ago. Today, largely due to the 1981 tax bill we are running annual deficits in excess of $200 billion.

When President Reagan came into office the deficit, which he villified, ran into the red to the tune of $78 billion. The tax cut combined with massive increases in defense spending have wreaked fiscal ruin upon this country. I won't dredge up those Republicans who warned us this program was fatally flawed, we all know how Senator Howard Baker and now Vice President GEORGE BUSH felt about the program during the 1980 campaign.

This massive deficit is not a temporary instrument to moderate a negative business cycle, as deficits were used in the past. No; this deficit is with us in good times as well as bad, this is a deficit that is structurally becoming part of our economy as a cancer takes over a body. It is destroying American competitiveness as the other deficit, our trade deficit, mounts month after month. These trade statistics mask the pain of industries shutting down, jobs lost, and communities dying. But the deficit numbers, both fiscal and trade mount year after year.

To finance the Reagan deficit the U.S. Government had to borrow so much money that domestic sources no longer are adequate. Thus, increasingly our debt is being held by foreign nations. Last year, for the first time since World War I, the United States became a debtor nation.

The concerns over the deficit became so widespread that Congress was willing to turn its power to unelected officials in the Gramm-Rudman-Hollings legislation. And still the deficit rises. The quick fix, the legislative mechanism is not enough to repair the damage done by that spree of hubris which this administration visited upon us in 1981.

So we stand today facing the most important issue of our time, the Federal Govern-

ment's deficit. Yet, this bill does nothing to address that issue, indeed with the Presidential demand that it be revenue neutral it deliberately ducks the crucial question. In exchange for removing the tax giveaways of 1981 which created this fiscal quagmire we are asked to further raid the Treasury by lowering the rates of the truly wealthy and provide thinly veiled payments; $10 billion in the form of "transition rules" to the few and very special interests. We in fact, imbed this deficit politically and economically at the same time.

In order to keep the bill revenue neutral and reduce rates a number of the changes in the Tax Code were made retroactive. Thus, a number of investors who relied on the present law will find they will be penalized by those decisions. One of the most egregious examples of this retroactive policy is the change in the taxation of those who contribute to their own pensions. This accounting gimmick, which will bring in $9 billion in the first 5 years will lose $9 billion in the following 5 years.

We are told that the special interests must have their time to adjust, which means they get more tax breaks while once again the working men and women of this country pay their fair share of taxes and watch the deficit grow larger. I have read many articles and editorials saying this trade off is the price to enact the bill, well, if so it's a price I cannot pay.

Let's look to the future, not the distant future, but the immediate future that looms before us next fiscal year. We have Gramm-Rudman-Hollings mandating a deficit target of $108 billion. This tax bill, in the name of revenue neutrality, will cause us a loss of $15 to $20 billion in revenues. What this means is that spending will have to be cut some $80 billion or perhaps more with a sluggish economy.

This year the Congress, alone without any assistance from the White House, met the test by freezing the budget. We took the hard choices and stopped the increases in the domestic and the defense programs, but everyone on this floor knows that we've completely run out of running room on deficit reduction without revenues.

Because of this bill's tax losses next year, those who value our domestic programs should be appalled. If we follow Gramm-Rudman-Hollings guidelines next year, 50 percent cuts will come from the domestic side and 50 percent cuts will come from the defense side. And they will be deep cuts—cuts into the bone.

On the domestic side of the ledger this will result in cuts for drug enforcement, the FBI, airline safety, education, mass transit, highway, Coast Guard, environmental protection, infrastructure development, and nutrition. And the list goes on and on.

On the defense side of the ledger this will result in cuts for all the services. More importantly personnel, readiness, and our conventional forces which bear the brunt of these cuts.

If we were to view this bill in splendid isolation there would be much to commend it. Getting the poor off the tax rolls has been long overdo. Removing the excesses of Reagan's 1981 tax bill is a fiscal necessity. A multitude of unwarranted tax shelters which have over the years have been put into the code should be removed. A decent minimum corporate tax has been enacted.

But we cannot look at this bill in isolation. We have to look at it in the context of our overall economic situation. Today we speak of tax reform, and revenue neutrality, but in the wings there are those who speak of excise taxes, value-added taxes, and import fees. All of these are inflationary and regressive measures, which when we combine them with the lower top rates produce the opposite of progressive tax reform.

We all want tax reform and this bill contains some. Yet, with the deficit hanging over us and this bill making a sizable addition—directly and indirectly—to that problem I cannot vote "aye."

Mr. ARCHER. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, we have discussed this bill now for over a week in significant detail. The document is here, all 2,000 pages of it. We still do not know all that is in it, but we must vote on it in a very short period of time.

□ 1515

It has been said by our chairman, and I agree wholeheartedly, that one of the most important things to this country is certainty in the Tax Code. Yet, the only certain thing about this bill is that it is not the end of the tax revision, massive tax revision for this country.

It can either come by making changes knowledgeably through a motion to recommit and having the conference report back a bill to us in the time remaining in this session, which is certainly doable with the momentum that is behind this program. If not, it will certainly require a tax repair bill in the next Congress.

Allan Greenspan said, when testifying before the Joint Economic Committee, that "there are 20 major problems in this bill. The difficulty is, we do not know what they are." We do know what many of them are because we have discussed them and debated them.

Some have said, "We know this is a gamble. We accept the gamble." What are the chances of gain compared to the risk of loss? Should we gamble with jobs and the competitiveness of Americans? Should we gamble with real estate values and with our financial institutions? Should we make that gamble when we do not have to? When retroactivity could be removed. When the entire rate structure could be phased in over a period of time so that we would not have this dramatic, "fruit basket turnover" of the entire Tax Code so precipitously.

Some today have said, "We are going to get a lot of growth out of this." The economists of various schools of economic persuasion that testified before the Joint Economic Committee did not say that. They said that in the short term, it would be negative. They said, "Yes, it might be OK in the long term." I submit to you, my colleagues, there will be no longer term under this bill. Any one of you who thinks this language will exist for 10 years as the tax law of this country certainly does not face the reality of what is ahead.

I do not believe anyone does. So the long term is really not in question; it is the short term that is in question. We said it has to be revenue-neutral. What about budget neutrality? What about the pressures on the spending bills that all of us are going to have to face when the tax incentives are no longer there? Oh, yes, we should get rid of many of these tax shelters, but when we reduce the incentives for low income housing, we are going to be pressured to spend more money through appropriations to HUD, no question, this bill will strain the budget of this country and magnify the deficits.

I am sorry to say that I think the process has been mesmerized by the tax tables without adequate thought to economic impact and the effect on the budget. I do not think it is special interest to talk about the principle that all State and local taxes should be treated equally as a deductable item. Maybe that is "special interest" to some of you. Perhaps you think that is the type of issue that lobbyists come to talk about. I think it is just plain fairness.

Maybe you think it is special interest to ask that the Government not violate its word which it gave in the 1981 tax bill, through the retroactive provisions that are in this bill. A constituent of mine wrote to me and said, "I teach my children to keep their word, that that is the most fundamental thing in this country." Now you, the Government, have set the precedent of violating your word for all Americans to see. The resulting uncertainty in the minds of those who have to make decisions on the law in the future is certainly going to be an unsettling one.

I do not think it is special interest to talk about savings incentives. I do not think it is special interest to talk about simplification. Not a proponent of this bill today said this is simple and it is not. We all know that now.

There is another overall consideration that I am terribly concerned about. I have studied the tax code of the country of Mexico, and this bill moves right in that direction. For 30 years Mexico has compartmentalized all of its income so that you could not charge off one thing against another kind of income. If you think it has worked well for Mexico, I encourage you to vote for this bill.

Perhaps more importantly, to me, the American dream is the ability of the individual who does not have financial resources to climb the ladder

and compete with the one who does. It troubles me that the person who has already accumulated large financial resources has the ability to rearrange his investments so that he can deduct his interest by creating interest income to deduct it against. He can deduct his passive losses by creating passive income. The man and/or woman who wants to struggle up the ladder cannot compete on a level playing field because they cannot deduct their interest and they cannot deduct your passive losses in the way the one who already has it made can.

Then look at the corporate structure. Some have said, "Gee, this is going to be wonderful because the rates are reduced." But the rate reduction, according to all of the economists that testified before the Joint Economic Committee, favors old capital investments over new capital. But you cannot get any more production out of old capital.

BILL ARCHER is not saying this; it comes from economists from across this country. The incentives are not going to be there for job creation in the future. We are taking a very, very great risk with the economy in which we all have a stake. Not special interests of one form or another, but all Americans. That jeopardy does not have to be endured because there is another way out.

The motion to recommit will not kill this bill. This process will go forward. The current code needs to be reformed. It needs it desperately, and it will be reformed. But we can do it better and we can eliminate the risk to the economy, to savings incentives, to jobs for Americans, to taxation of the elderly and blind, and we can create a good tax reform, a real tax reform bill. Vote for the motion to recommit.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. BLILEY].

Mr. BLILEY. I thank the gentleman for yielding time to me.

Madam Speaker, the conference report on H.R. 3838, the Tax Reform Act of 1985, is a complicated document which the Members have not had an opportunity to study in detail. It is also a document whose short- and long-range effects on the American taxpayer and the American economy cannot be known in advance.

Quite frankly, I do not like voting on such an important and far-reaching piece of legislation without adequate time to look at all of the details and the implications of those details. I do not feel comfortable with this situation for myself and on behalf of my constituents who will have to live with this law for the foreseeable future. After all, it has been 40 years since the last major overhaul of the Tax Code.

Of course, Madam Speaker, I should be used to this type of procedure by now because in the 6 years that I have been a Member of this body we have voted on four tax bills and the most time we have ever been given to look at the bill before voting on it was the three days provided in this instance. When I go home to my constituents and try to explain this fact to them they are aghast. In fact they chastise me and say things like "you are a Congressman. You should refuse to vote on something like this under those circumstances." Now I happen to agree with them, but I am also a Member of the House and I am familiar with the way things are done here. I do not like it—I simply have to live with it as part of being in the minority. To quote an old saying, "Laws and sausages are two things that you do not want to see being made." That goes triple for tax laws.

The mention of the four tax bills I have had to vote on in the past 6 years brings me to another point. When are we ever going to let the dust settle and allow the people and businesses of this great Nation to deal with one Tax Code for a reasonable length of time? Almost every year we are tinkering and changing things so that no one knows what the rules are or how to deal with them. We pass something like contemporaneous recordkeeping or withholding on interest-bearing accounts and within months we are back with a bill to change it again because we learn that it was a mistake in the first place. Then somehow about 500 pages of new laws get added on to a "technical corrections" bill and there we go again having to vote on a major tax bill. I do not like it. My constituents do not like it and the economc well-being of our country demands that we stop it. At least we should stop it after we try to clean up this bill next year. I say that advisedly because there are a number of provisions in this bill which trouble and worry me greatly.

Madam Speaker, I will announce to the House my intention to vote in favor of this bill on final passage. I have listened to my constituents' concerns and I have listened to the experts. I have carefully read every letter that I have received on what I should do on this bill and I can tell you that I received several hundred in all. My conclusion is that the good provisions contained in this bill outweigh the bad provisions. The long-term effects of passing the conference report will help the economy and most individuals.

I firmly believe that if we vote this bill down that the issue of tax reform will be dead. We will never see another major tax revision in the lifetime of any current Member of the House. We would lose the $2,000 personal exemption, the 15- and 28-percent brackets, the lower corporate rates and the higher standard deduction. Low-income workers would continue to pay income taxes at the same time that they are eligible to receive Government subsidies. These reforms are badly needed. I support them totally and I think that we would never approve them if H.R. 3838 were to be defeated today.

On the other hand, the troublesome parts of this bill can potentially be set right in the future if they prove to be harmful when implemented. Certainly if we defeat this bill those questionable provisions would never go into effect and so would not have to be fixed: but the price would be the loss of the beneficial provisions I mentioned above. I think that price is too high and I will not pay it. I will support this bill and I hope that it is approved and signed by the President. I also pledge to you, Mr. Speaker, and to my constituents that I will begin work immediately to repeal or change some provisions of H.R. 3838 and I will consider similar action on other provisions if and when they prove to be counterproductive.

Let me explain to you my reasons for being upset about the change in the basis recovery rule that could affect millions of Federal, State, and local government employees. By making a change that these employees have no ability to make an accommodation with by retiring before the change goes into effect we are doing nothing less than penalizing them for the fact that they have chosen to accept a career in Government service. The harmful effects wear out after a while so the people we are really hurting are those who are eligible to retire now—those who have at least 20 years of service. Do you really feel that we should "reward" these years of service by kicking them in the teeth as they leave. I do not and I am appalled at this retroactive repeal. Basis recovery is a legal and legitimate provision of current law that allows people to pay lower taxes on hard earned and long held investments and savings plans in the first years of their retirement. There is nothing wrong with this and I resent anyone saying that it is unfair. Now if we decide to change that situation then we should do so prospectively—we should say that there will no longer be a basis recovery period after 1990 or something like that.

To tell an employee who saved and invested years ago with the full legal right to expect that he or she could have a short period of time after retirement to gather that income at a lower tax rate that their plans will now have to change and that they cannot really afford to retire next year as they had planned for the past 20 years is not only irresponsible, it is criminal. A GS-7 Federal employee who bought a $1,000 savings bond in 1965 could lose up to $100 on cashing in that bond because instead of having no other taxable income right after he or she retires they suddenly have almost their whole pension to declare as well as the $1,000 cash value of the savings bond. This throws these new retirees into a much higher tax bracket than they had planned on and it hurts them. It costs them money. There are no two ways about it and there is no way to get around it. This provision, if enacted retroactively, will cost many of our Government employees who are eligible for retirement thousands and thousands of dollars.

Now the reason that I am personally so upset about this is not just that it is unfair—which it is—but also that I have never seen Congress enact such an important provision retroactively. I was certain that we would not do such a horrendous thing this time. Because of that I assured many Government employees, including my own personal secretary who has more than 32 years on the Hill, that if basis recovery were to be repealed it would be prospective and there would be time to retire honorably before the effective date. Now I find that we are costing these fine people a lot of money that they need and had planned on for their retirement.

The irony here is that I am not guilty. The conferees are guilty. They are guilty of bad faith with Government employees across this country and they have broken the promise and legal ability to recover your own pension contributions fully before beginning to be taxed on the employer provided retirement benefits. I have been betrayed for my own faith in the rules we operate under in this House and the employees have been betrayed by their ultimate employers—the Congress which funds the agencies they work for.

Getting involved in the question of effective dates leads to another important problem that I have with this bill. The repeal of the investment tax credit, as set out in the conference report, is January 1, 1986. This is almost a full year before this bill was even published and it will have a potentially devastating effect on many small businesses. Many people in my district have written to me about this provision and complained bitterly that it will or at least it could bankrupt them.

One women wrote to me that she and her husband run a one vehicle trucking company. They had just bought a new truck for $80,000 and had expected to get an investment tax credit of $8,000. That credit is the only thing that made their expansion economically feasible. Now she has learned that they will not get the $8,000 credit they were counting on and she is afraid that they will lose the new truck and may even be forced into bankruptcy. She is right to worry and if we have an economic downturn next year I am afraid that many small businesses which invested capital in new plant and equipment and then lost the money that they expected to recapture from the ITC will suddenly find that their last reserves have been used up to pay the extra taxes and they have to go out of business just when they thought that the future was bright.

These consequences are real. They are frightening. But across the whole economy they would not be devastating. We would creep along for a while and then find some way to start expanding again. This would especially be the case because most of the large corporations had expert advice and understood last year that the repeal of the ITC could become retroactive. These companies paid many thousands of dollars for these experts, they got good advice, and they planned this year's capital expenditures both with and without the ITC. Many large companies that I know only made the purchases which made sense under both sets of conditions. Now that is fine for them and the whole idea of repealing the ITC is to force economic reality back into the marketplace. OK. I can vote for that and both the big companies and the small businesses can live with that. But to impose this repeal retroactively with no notice is discrimination and unfairness of a degree matched only by the treatment of Government employees and the treatment of passive losses made in good faith in past years.

This provision sets up two classes of business in America and treats them differently. It discriminates in favor of those who hire high-powered tax counselers who advise them of the latest doings in Washington at the expense of those who are too small and too busy earning a living to worry that the Congress may come to them in September and tell them that they are to be penalized for something they did in January when it was still legal at that time. Mr. Speaker, you should not try to balance the revenues in this bill on the backs of helpless people across the Potomac who are too busy to be scared on a daily basis when Congress is in session. I pledge to Mrs. Lott in Richmond and to all of the others who have contacted me about the investment tax credit that I will spare no effort to help them when the 100th Congress convenes next January.

I briefly mentioned the passive loss limitation rules a moment ago and now I would like to discuss that matter. There have been many abuses caused by them. Billions of dollars of capital that this economy needs to grow have been wasted in uneconomic investments created solely for the tax benefits involved in passive losses. I have not had one realtor or investor say that they had any real difficulty in restricting passive losses—if it were done upon enactment of this bill. But that is not what the conferees agreed to. They decided that they disliked the current rules so much that they would declare all passive losses restricted no matter when the investment was made and no matter how the losses actually occurred. I know of many honest investments made in my district in Virginia over the past several years that are currently yielding passive losses. To tell these people, who engaged in not only a legal but also an honest investment in 1980, that they did wrong and now we are going to penalize them is absurd.

Passive losses are a snake in the grass of our Tax Code. They should be changed. Fine, change them. But the conference report provision is like taking the battleship *New Jersey* and hunting down that snake in the grass with a 16-inch gun. It just blows one heck of a hole in the ground and you never know whether you killed the snake or not.

Now many people have let me know that they fear that the change in the special treatment of capital gains will hurt them and business. I'm not certain that I agree with them on that because generally speaking people will be able to keep more of their money and use it as they see fit. In other words there will be more money in people's pockets to invest. Of course more than 80 percent of the taxpayers will be in the 15-percent bracket so the real rate on their long-term gains will be 15 percent—not 28 percent and not the 17- or 18-percent effective rate that many of them pay now. The end of treating investments differently if they are held 6 months than they are treated if held for 6 months and 1 day will take this whole area of the economy out of the realm of tax considerations and put it into a purely economic context of when is the best time to buy and sell for profit—rather than the current situation where you first ask yourself how long you have owned the asset.

Removing these artificial considerations is a good thing. In the long run it can only help our economy. In the short run it should not cause undue hardship or extra tax burdens on anyone. I do not want to hurt capital formation or to deter investment. Once you understand the full impact of all of the provisions of this bill taken together, I think that the repeal of special treatment for long-term capital gains will become a forgotten issue that proved to be a chimera rather than a calamitous hurricane.

I will say that it appears to me that an important thrust of this legislation is to shield from the American people just what their tax burden really is. Shifting taxes from individuals to corporations is largely a smokescreen. This bill balances itself over 5 years by collecting $120 billion less from inidviduals and collecting $120 billion more from corporations. But the real effect of this will be that if corporations pay these new taxes out of profits then they will have less money to expand and grow. They will have less money to research new products. They will have less money to pay to their investors in the form of dividends. If they are not so generous as to shave their research and invest less and pay their stockholders less then they will have to pay these taxes by raising more money from somewhere. We all know that corporations raise money by selling things and if they need more money then they will raise prices. So, the main effect of the shift of the tax burden from individuals to corporations may well be that you will pay less every month in withholding and less on April 15, but you will pay more every time you buy a quart of milk or a shirt or a car. This is taxation by default. It looks and feels harmless, but at the end of the year you have paid the same amount as last year on expenses and taxes together—you will just have spent it differently. I have always believed that the people of this country deserve to know exactly what their share of the tax burden is. But instead we have "user fees," excise taxes, "special assessment," and other ways of making the people pay a little at a time so it doesn't hurt so much. In the meantime we will just pile the smokescreen a little higher and make it as painless as possible to fund the bloated Federal budget that should be cut by at least $100 billion right now to clear away waste, reduce the deficit, and to get the economy rolling again.

Now that I have vented my spleen and given you my view of the bad news in this tax reform bill, I want to get to the benefits which I believe add up to making this bill worth voting for. The profamily aspects of this bill are quite strong. We have been family bashing for many years in Washington and I am pleased to find a way to reverse that trend. I have already mentioned that the effects of this bill on the investment of capital should be beneficial and economically sound in the long run. The working poor in this country have been paying more than their fair share and that will end when this legislation is passed. Perhaps most important of all this bill improves the basic fairness and equity of our tax code so that no one can escape paying their share. Both profitable corporations and the wealthy have long been able to shelter their income and avoid paying taxes. This has been especially irritating to those of us who have had to work hard for our livelihood and who have earned everything that we have.

The profamily provisions of the bill are obvious and important. Every taxpayer will be entitled to a $2,000 personal exemption of themselves and each of their dependents. This is what the exemption would have been if it had been indexed to inflation back in 1954. Now

the fact that in the last 32 years every taxpayer has lost the equivalent of half of their exemption tells you just how far we have raised their taxes without even having to pass a law to do it.

The increased standard deduction that will be indexed to inflation also works best for families. Many people who do not own a house have been cheated because their standard deduction was kept so low and they did not have the deductions to itemize their returns. Homebuyers reaped great tax savings in the late seventies as inflation and high interest rates drove up their mortgage payments and increased their deductions. Nonhomeowners did not get a similar tax benefit from inflation and high interest—they only got the bracket creep that had them paying more and more taxes. Now the tax law will be much fairer to renters by reducing the differences between their tax bill and those who are buying a house. Many families are homeowners and the retention of mortgage interest deductibility will help them to improve their standard of living and will encourage many more people to purchase houses.

There are many poor families in this country. In recent years we have seen a situation where the working poor had no reason to work harder or get better jobs because they not only would have to pay higher tax rates but they would also lose their eligibility for Government assistance programs. The social consequences of this upsidedown situation are now incalculable. I hope that they are not irreparable and this bill will help. By removing 6 million people from the tax rolls we will be encouraging them to work harder and earn more money. By having one low rate of 15 percent that will cover taxable income up to $29,750 for a married couple or $17,850 for a single parent we will be encouraging them to work harder and earn more because they will not find themselves suddenly jumping into higher and higher brackets.

At the same time as these tax changes are taking place we have finally learned that taking away all of most of a family's Government assistance benefits the instant they get a part-time, low-paying job does nothing other than encourage them to stay poor and out of work. Now that we are phasing out assistance more slowly people see the benefit of working and improving themselves and more people can now leave the welfare rolls.

Anyone who criticizes this portion of the tax bill just does not understand reality. By taking the working poor off the tax rolls we are saving money, helping them to help themselves and ending the ridiculous situation where the Government gave with one hand and took away with the other. Many of these people pay Federal taxes at the same time that they are receiving assistance payments for being poor. It would be better to let them keep their money, gradually reduce the assistance payments as their earnings go up and save all of the administrative costs of processing a tax return with a taxes owed line of $1.27 as well as the administrative costs of their extra assistance payments that they will not need any more. This is not letting these people off of any responsibility, it is helping them and saving money at the same time. And no one should overlook the fact that these working poor will still pay a fair amount of taxes. They pay Social Security and Medicare taxes. They pay sales taxes and property taxes and excise taxes just like all of the rest of us. The overall effect of this provision will be very beneficial.

The retention of the State and local tax deduction along with medical expenses keeps those who will still itemize, mostly middle income taxpayers, from being harmed by the higher standard deduction. At the same time, far fewer people will actually need to itemize with the increased standard deduction and the disparity between the two classes of filers will become narrower.

The overall effect of the retirement provisions of this bill will mean much better retirement protection for many people. This bill must be looked at as a whole and not just each part separately. There are restrictions on who may take a deduction for IRA contributions. At the same time the maximum length of employment that can be required before becoming vested in a company retirement plan is reduced from 10 years to 5 years. Hundreds of thousands of workers whose only ability to provide for their retirement was an IRA will now be eligible for their employer plan. Many of the different types of employer provided retirements plans are improved by this bill to make them more effective and universal in their coverage.

If you are self-employed or not covered by any type of retirement plan where you work then you can still deduct a full contribution to an IRA. If you earn less than $40,000 as a couple then you can still deduct a full contribution to an IRA. If you do not qualify for the deduction you can still contribute and the interest earned on that or already existing IRA accounts will be tax deferred until you retire. In point of fact these provisions taken together with the much lower tax rates will make IRA programs much less attractive than they used to be. I support IRAs and they are still needed to help people in some circumstances, but many people who are used to having them and feel uncomfortable at losing their deductibility will find that it is not really as much of a loss as they first thought.

The reduction in the top rate for individuals to 28-percent—even with the 5-percent surcharge for one income range—and 34-percent for corporations will leave people with more money to spend as they see fit. This will apply to many industries even with the shift of some of the tax burden onto business that I mentioned earlier. Companies that are now paying over 40-percent of their profits to the Government can increase dividends or expansion to create new jobs and help the economy. People with less money owed to the Government can either save the extra cash, improve their standard of living, or invest for their future. The extra cash should increase the savings rate by allowing people to pay off debts. The new investment funds available will help keep interest rates down and spur new development, especially now that money can no longer chase tax shelters and other uneconomic uses to avoid taxation.

For those people and corporations who have managed to hide their income over the years this bill has a kicker that will blow them sky-high. The new minimum tax provisions are tough and tight. There is no escape from paying taxes if you are a profitable corporation or a successful individual. We have all read the many horror stories in the press about the millionaires whose tax returns show a taxable income of $0.00. Well those stories are true. Last year there were at least 2,000 people with incomes greater than $500,000 who paid no Federal income tax. This situation was one of the driving forces behind tax reform all along. I am very glad that the minimum tax provisions are so tight.

You know, Madam Speaker, I have had some people tell me that this is a bill for the rich and that it will hurt the poor. I am flabbergasted by that attitude because of the total misunderstanding that it displays for this bill. This bill is endorsed by such groups as the AARP and the Children's Defense Fund and many other advocacy groups for the poor, the elderly, and young people. I suppose that assertion that I have heard is based on the mistaken belief that reducing the top personal tax rate to 28 percent from 50 percent will let rich people pay less taxes. The fact is that many of them are not paying any taxes now so 28 percent will be a vast increase in their payments. A person who earned $500,000 in 1985 and sheltered $400,000 of it from taxation paid a total of $50,000 in income taxes to Uncle Sam. Under this bill he would probably pay 28 percent on at least $400,000 of his income for a total payment of $112,000. To me that adds up to more than double what that person pays under the current system and doubling the taxes owed by this person hardly seems like a huge benefit for them. The Government gets more revenue from the very rich even taking into account those who now pay large amounts. For example if you have two people earning $500,000 and one of them is the person mentioned before who was sheltering $400,000 every year and the other only deducted $150,000 the average taxpayer wins. The person who shelters his income pays $50,000 today and the person who doesn't use shelters pays $175,000 for a total tax collection of $225,000. Under this bill the first person would probably pay $112,000 and the second would probably have to pay about $120,000 for a total collection of $232,000. The government still collects more money under the 28 percent top rate than it was able to do under the current 50 percent top rate. This is not a rich man's bill. It is an American fairness and equality bill.

Madam Speaker, I cannot end this statement without commenting on the coverage of this bill in the media. Describing a tax bill to the general public in a 5 minute television report or in a three column newspaper story is not easy. I know that. I still cannot escape the belief that the coverage on this bill has been particularly poor. I have had so many people approach me with misinformation and a basic misunderstanding of the way they calculate their taxes that I have been astounded that there is any support for this bill at all.

It seems that the rate structure has never been explained properly to many people. I would like to take this opportunity to explain how some of the parts of this bill work.

First of all the rate cut-offs are based on taxable income and not on gross income as

many people believe. This means that before you figure out which bracket you will be in and how much you will owe you must take your gross income—wages, interest earned, capital gains, et cetera—and subtract your personal deductions and either the standard deduction or your itemized deductions. Just as an example a family of four who do not itemize will subtract $8,000 in personal exemptions and $5,000 in standard deductions for a total subtraction of $13,000. With the tax rate being 15 percent up to a taxable income of $29,750 this means that this family could have a gross income of at least $42,749 and still be in the 15 percent bracket. That is how more than 80 percent of the American taxpayers will be in the lower bracket under this bill.

Another problem that people seem to have difficulty understanding is that the 28-percent bracket is a marginal rate for almost all taxpayers. This means that if the family I just described had a gross income of $50,000 they would subtract $13,000 for a taxable income of $37,000. They would pay taxes of 15 percent on the first $29,750 and 28 percent on the other $7,250. Obviously, this information makes a tremendous difference to someone who was confused by the media and thought that the cut-off points were based on gross income and that the higher brackets were not marginal.

I cannot tell you of the number of people who came to me and said that they would get killed by this bill and that I would be crazy to vote for it. I never try to hide from those kinds of statements so I would ask them why and I frequently found that these people thought that their salary of $35,000 for their family of four meant that they were in the 28 percent bracket and that they would have to pay 28 percent of the entire $35,000. As soon as I told them the truth most of them said, "Well, you just saved me somewhere between several hundred and several thousand dollars and I certainly want you to vote for this bill. This is real tax reform."

Madam Speaker, that is what this debate and this bill all come down to. Tax reform. For the most part this bill is tax reform. It simplifies the Tax Code and the tax form that people fill out every year. When fully phased in this bill will help families and home buyers. It will help business and the economy. This bill will promote economic growth and it will be fairer for all taxpayers.

There are problems in this bill that I will seek to correct. There may be mistakes that we have not yet recognized and I will work to correct those if we find any. But the main fact remains that the good things in this bill outweigh the bad things and I urge approval of this bill.

Madam Speaker, I had intended to vote in favor of the Archer motion to recommit this conference report with instructions to change any retroactive effective dates and make them prospective. I have now learned that the powers-that-be have precluded that option and will not allow Congressman ARCHER to offer his motion. I am very disappointed with this development because I believe that the retroactive effective dates are probably the worst things in this bill and I looked forward to the opportunity to clear up this matter today. Now that I cannot vote to take care of my concerns I will seek to join my colleagues who share my disappointment and cosponsor new legislation to impose new dates on those provisions that are applied retroactively by the conference report.

Mr. DUNCAN. Madam Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. VANDER JAGT].

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Mr. VANDER JAGT. Madam Speaker, there are probably 100 good reasons to vote no on this conference report. There may be only a handful of good reasons to vote "yes," but those affirmative reasons are so overwhelming, so historic and so dramatic that they dwarf into insignificance the legitimate criticisms that have been so ably discussed on the floor this afternoon.

There are provisions that are objectionable. There are mistakes with unintended consequences. One of them was almost too much for me to swallow. As a conferee, I am listed on that conference report as a Member of the U.S. Senate, rather than the House. But even worse than that, I am listed as a Democrat, rather than a Republican. I have to vote for that?

This bill makes political sense for a reason far beyond narrow partisan ways. There is enough glory and blame to go around for Republicans and for Democrats. This bill would not be before us without the leadership and the vision and the courage of President Reagan, but it also would not be before us without the skill, the legislative know-how, and, yes, the vision and the courage of our distinguished committee chairman. ROSTY would not have a bill without Dutch, but Dutch would not have his bill without Rosty.

When historians look back through the prism of decades, they will view the distinguished gentleman from the State of Illinois, Mr. ROSTENKOWSKI, as the legislative giant this bill proclaims him to be.

But this bill makes political sense because it reaches down and lifts a $120 billion tax burden off the backs of the poor, beleaguered individual taxpayer, and puts it on the corporate ledgers, many of whom earned enormous profits and paid not one cent in taxation.

I would not want to vote to maintain that current system. In each of our districts, on average, 242,000 individual taxpayers and voters will receive a tax cut.

I would not want to explain to those people ginned up by a skillful and demogogic challenger why I voted against that. I personally would give my right arm to run against an incumbent who voted no on this bill, and I can think of over 100 challengers who are just hoping that they get that chance.

Politically, nobody would want to vote for a tax increase. But every record has a flip side, and the flip side of a tax increase is a tax cut. Voting against a tax cut for 242,000 voters in our district may not be the twin brother, but at least it is the kissing cousin of voting for a tax increase for them. That is heavy political baggage.

But there is a far more important reason to vote for this report than the next election. It is called the next generation. The centerpiece of the Reagan revolution will be the dramatic cut in tax rates.

Think of it. When the President came riding into this city, the top rate was 70 percent. When he rides out of this city, the top rate will be 28 percent. Back then, any extra dollar that your extra effort earned for you, you kept one-fourth; the Government took three-fourths away. Now we are turning that around and you keep three-fourths of the extra dollar. That is called incentive. That is at the heart of our American free enterprise system.

Predicting the economic future is an inexact science, either under this bill or current law, but it really comes down to where do you put your faith in the future, in the decisions made in boardrooms of corporations, or the pocketbooks of the American people?

Do you put your hope in incentives to business or in increased purchasing power of people?

We have an economic lesson right in front of us if we will only look at it, the Economic Recovery Act of 1981, designed to stimulate the sagging economy that had been left behind. It was one part tax incentives for business and it was one part reduced rates for individuals. The tax incentives took effect immediately and nothing happened, not a darned thing.

A year later, in October 1982, unemployment shot through 10 percent. It was not until the next year, when the cut in rates became fully effective for individuals and the American people had $40 billion more a year to buy new cars and build new homes that the economy took off. Then, and only then, business expanded to meet that demand creating new jobs. I think business would have done that with or without the tax incentives that we provided in 1981.

If you are a drip-down economist, wanting to give incentives to the top so that the benefits trickle down to the people, then you should vote to maintain current law. If you are a percolate-up economist, believing that the economic health of people with more after-tax dollars percolates through the whole economy, benefiting all, then you will vote for tax reform.

Years ago, my fellow Michiganite then Secretary of Defense, Charlie Wilson, said: "What's good for Gener-

al Motors is good for America." Poor old Engine Charlie should not have said that. It got him into a peck of political trouble.

But every one of us would agree with the truth of the flip side of that record, what is good for the American people is good for General Motors and for all of America.

This tax bill is good for the American taxpayer. Truly, it is tax reform of the people, for the people, and certainly by the people. There is no way I am going to vote against that.

I invite my colleagues on both sides of the aisle to join with me in voting to put that precious magic word "incentive" back into our American Tax Code. If you do, politically, economically, and historically, you will be mighty glad you did.

Mr. ROSTENKOWSKI. Madam Speaker, I yield myself 2 minutes.

Madam Speaker, almost 16 months, to the day, I sat in a room off the Chamber and answered the President of the United States in his plea for tax reform. The President was looking to this Congress to right some wrongs that have been in the code for many years. I take great pride in the fact that we answered with bipartisan effort.

We asked the American people how they felt about the code, and their response was overwhelming: "Get fairness into it." As the President put it: "Let's go for it." Go for it to help the American farmer. Go for it to help the wealthy doctor. But most of all, go for it to help middle-income America and the poor.

That was not a Democratic issue and it was not a Republican issue. So we plotted and prodded and I think this afternoon we recognize that tax reform is a bipartisan issue. It was the Ronald Reagan and the TIP O'NEILLS, the Jim Bakers, and the Don Regans. It was all of them who worked for today. The BOB DOLES, the BOB PACKWOODS, and the DICK GEPHARDTS and the BILL BRADLEYS, it was the JACK KEMPS and the BOB KASTENS. It was all of us.

So here we are, trying to decide this afternoon what we are going to do about fairness and equality in the code.

We have got to answer that mandate. This afternoon we are going to let the American people know that their legislative process is working; that when they request of their leaders in Washington a change, that we respond.

Today we celebrate for that American that needs help.

I say to my colleagues, it is high time that we do it.

Madam Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. O'NEILL], the Speaker of the House of Representatives.

□ 1535

Mr. O'NEILL. Madam Speaker, I rise in support of the tax reform conference report.

This is an historic moment in the House. We are about to vote on the final passage of the most sweeping tax reform legislation in the history of this Nation. If we approve this report today, the 99th Congress will assume a special place in the history of this country. This will be the Congress that accomplished what eluded all the 20 preceding Congresses that talked about the comprehensive tax reform but failed to enact it.

For me, this is a decision of a political lifetime. I first ran for Congress in 1952. I remember my party platform. We pledged the continual effort toward the elimination of tax loopholes. To quote from that platform: "Justice requires the elimination of tax loopholes which favor special interests." That was in 1952 when the business corporations of America paid 40 percent of the taxes of America, and yet we can see how down the line, through the ingenuity of tax experts that the corporations of America now pay between 5 and 8 percent of the tax bill, and the largest employer in my district pays no tax, but his 8,000 employees pay a tax.

It is not fair. That is what the American people have said. It is not fair.

I am talking about 1952. Each party, both sides of the aisle, in our platforms have said and promised the American public that we were going to close the loopholes.

In 1960 my close personal friend, Jack Kennedy, was the President of the United States. We still talk about the Kennedy tax bill, how it stimulated the economy of America. That tax bill was meant to be tax reform and yet the Kennedy proposal for comprehensive reform was brushed aside. The people at that time said that tax reform is just too difficult, too hard. Reform will have to wait. Year after year, reform has had to wait.

Ever since, many people have spoken beautifully of building a fairer tax system. Of the overall objective, all have generally agreed, on both sids of the aisle, we should reduce the number of special loopholes so that we can reduce the taxes of the average American taxpayer, the person who does not have a whole division of accountants and tax attorneys helping either him or her.

My friend, the gentleman from Illinois, DAN ROSTENKOWSKI, said on national television 2 years ago that the average fellow, that average honest taxpayer, has begun to think of himself as a chump. The big boys have had all the tax loopholes, yet he, the average American taxpayer, is stuck with a big withholding taken out of his tax every week.

In all the years that I have been in Congress, the majority of us have agreed on the need to help this average American citizen, this middle class fellow. We have all agreed on the idea of tax reform, but after agreeing on the idea of tax reform, every Congress since 1952, has adjourned without doing anything about it.

The conference report is a historic departure from that pattern. It eliminates 6 million people from the tax rolls. Instead of adding burdens to those on the bottom, it reduces taxes for millions of low-income people. Just think of the poor person at the bottom. He pays an income tax and he pays a Social Security tax. He may pay $400 or $500 or $600, but if you eliminate that, it could be the difference in getting out of the rut that they have been in for so many years. Over 5 years it would cut the taxes of the lower income people by $40 billion. It gives them an incentive to work and to support themselves. It is a $40 billion program of economic relief and economic opportunity.

I have been around here for years and I have seen the fight on poverty. I have seen what we have done on poverty, but this is the best antipoverty bill that has been in this House, I would have to say, in at least half a dozen years.

It is a fair bill. It shifts the burden of taxation from the average individual taxpayer to those who have avoided taxes through the years.

It opens the windows of economic opportunity by plugging loopholes of inequality.

Now, this is not a partisan measure. It took a great deal of effort to overcome the giant barriers to reform. It took the BILL BRADLEYS, the DICK GEPHARDTS, and DANNY ROSTENKOWSKI, who were out there selling this gospel and all the members of the committee. It took the White House and the Treasury Department to respond of fairness, an issue raised in the arena of partisan debate, and to produce a measure that made tax reform a bipartisan matter. That is what this is, a bipartisan matter.

Most of all, it took the efforts of Members of the House. I am so proud of DAN ROSTENKOWSKI, to meet this great body's responsibility under the Constitution of the United States.

Like it or not, when you were elected to the Congress of the United States, you accepted a duty to ensure that this country has the best and the fairest Tax Code.

Now the time has come. Today, this particular Congress has devoted more time, more energy, more emotion to keeping this pledge that both parties have made for so many years. The time for debate is over, so is the time for offering refinements or modifications or amendments.

There are no multiple choice questions. The choices are down to two. You vote "aye," you set in place a new comprehensive Tax Code.

You vote "no," you add a layer of fresh cement on a tomb that will encase the foundations, and you will not talk about tax reform again for years.

My colleagues, we have come too far down the road now to waiver. We have accomplished too much to give it up. We have struggled too long to fail now.

Let us say "yes" to change. Let us say "yes" to fairness. Let us say "yes" to a brighter new day for the American taxpayers. Let us not wait another 50 years for reform. Let us move forward by voting "yes" on this bill today.

Mr. WEISS. Madam Speaker, I rise to express my admiration for the distinguished chairman, the gentleman from Illinois [Mr. ROSTENKOWSKI], for a phenomenal accomplishment.

Madam Speaker, I rise in reluctant opposition to the conference report on H.R. 3838, the Tax Reform Act of 1986.

The case for meaningful tax reform continues to be strong and undeniable. In recent years, both big business and the wealthiest individuals in our Nation have been able to avoid paying their fair share of taxes by exploiting loopholes, exemptions, and preferences. The latest figures demonstrate that 130 out of 250 profitable corporations failed to pay any Federal income tax in at least one of the past 5 years. In fact, many of these corporations received sizable tax refunds. At the same time, many rich individuals have escaped tax entirely by exploiting elaborate tax shelters.

The result has been a growing consensus that the Tax Code is unfair to average Americans and ought to be reformed. Democratic Members first seized upon this issue and introduced comprehensive reform legislation. Later, the President proposed his own plan. Finally, the House and Senate both acted to produce differing reform plans that made significant changes over the previous versions.

I have been a longtime and consistent supporter of meaningful reform efforts. Throughout my tenure in Congress, I have urged that the Tax Code be reformed to eliminate loopholes and to ensure that major corporations and wealthy individuals pay their fair share. I have also insisted that any plan for tax reform mus treat low- and middle-income Americans fairly by reducing their tax burden and by preserving the legitimate and widely used deductions that they rely upon. Though I felt that the House of Representatives tax reform plan was not perfect, I voted for the plan because its advantages outweighted its disadvantages and in the hope that many of its inequities might be corrected in the final version.

I am aware that the conference agreement contains many favorable and highly attractive provisions. The agreements provides substantial cuts tax liability for low- and moderate-income Americans. It will remove 6 million of our Nation's working poor individuals from the tax rolls entirely. It will plug many of the tax loopholes that are exploited by big money interests. And it will shift a substantial protion of the tax burden—approximately $120 billion—from individuals to corporations in the next 5 years.

Nevertheless, I feel I must vote against the conference report. The final agreement does little to correct the offending provisions of the House bill that will harm average taxpayers. In fact, it includes additional provisions that will harm the middle class and provide a windfall to some very wealthy individuals. In addition, the conference report remains revenue neutral and will significantly restrict our ability to deal with the serious and ongoing deficit crisis that faces our Nation.

While it is true that the conference agreement provides for a substantial reduction in the tax liability of many low- and moderate-income Americans, the agreement does not adequately preserve the principle of progressivity. By collapsing the rate structure from the present 15 rates to just 2 rates, the agreement will subject individuals with widely varying income levels to the same tax rate. Proponents of the tax bill insist that even under these two rates, the new Tax Code will be fairer than the tax system it replaces. However, even if the wealthy will receive a smaller percentage tax cut than other income groups under the bill, many wealthy individuals will receive a windfall tax cut. In fact, it is estimated that approximately half of the Nation's richest individuals will receive average tax cuts of about $50,000 in 1988.

There can be no doubt that reduced tax liability for low- and moderate-income Americans is an extremely desirable goal. Nevertheless, we cannot give up on the principle that individuals with different incomes should be subject to different tax rates. More important, this is simply not the time to permit massive tax giveaways to the fabulously wealthy, even if it is only a fraction of the wealthy population that will benefit.

The effect of the conference agreement on progressivity is a major point of concern. But the conference report also limits or does away with many key tax benefits that are widely used by middle class Americans. In many cases, there seems to be little or no justification for the changes, other than to provide revenue to finance rate reductions. The result will be that a significant portion of the population will see their tax liability climb—not because they deserve to pay more, but because they are heavily dependent upon legitimate and widely supported deductions.

In my view, this is not the way to accomplish tax reform. I strongly support the closing of abusive loopholes, but I do not favor the elimination of deductions for average Americans that serve a justifiable social function.

The fact is that many essential deductions will be eliminated or newly restricted. One of the most important is the deduction for State and local sales taxes. The elimination of this deduction will harm individual taxpayers and severely burden States and localities that have chosen to finance essential services through the sales tax. It will also undermine the fundamental principle that income, once taxed by the States and localities, should not then be taxed again by the Federal Government. I strenuously oppose this provision, which will be particularly burdensome for New York residents.

Further, I am opposed to many of the changes in the bill relating to retirement income. I voted for the House tax reform bill in part because it fully preserved the IRA deduction. However, the conference report will significantly restrict the availability of IRA's, thereby limiting the options of many Americans for retirement planning. In addition, the conference agreement significantly restricts the availability of section 401(k) and section 403(b) retirement plans, which have been effective tools to encourage retirement savings and investment.

The provisions of the agreement relating to State, local, and Federal retirees are extremely unfair. Under current law, all retirees who have made after-tax contributions to their pension plans—primarily government employees—receive their pensions on a tax-free basis until all of their contributions have been recovered. However, the conference report repeals this special rule, disrupting the carefully laid retirement plans of millions of workers. I joined other Members in repeatedly urging the conferees to maintain this protection for Government retirees, but our appeals on behalf of those who served their Nation as public employees were not heeded.

I am also extremely concerned about the conferees' decision to impose a new burden on our Nation's elderly population by reducing the amount of medical expenses which may be deducted. Presently, taxpayers may deduct medical expenses in excess of 5 percent of adjusted gross income. The conference report would raise the threshold to 7.5 percent. As costs continue to grow, we should not reduce the ability of our citizens to offset major health care expenses.

The conference agreement eliminates the charitable deduction for nonitemizers, while at the same time reducing the number of itemizers. This action is likely to reduce charitable giving substantially at a time when the public sector is increasingly failing to meet community needs. In my view, this is one of the measure's major shortcomings.

The conference agreement is also unfavorable toward those in our society who do not have the comfort of a regular paycheck. The agreement permits deductions for employment-related costs and miscellaneous deductions only to the extent that they exceed two percent of adjusted gross income. While this is a significant improvement over the Senate version, it will still adversely affect performing artists and others who incur large employment-related expenses that are not reimbursable by an employer.

Many of these same individuals will also be adversely affected by provisions in the conference agreement that will fully tax unemployment compensation and repeal income averaging. The taxation of unemployment benefits for taxpayers will less than $12,000 in income is overly burdensome and unfair. And the repeal of income averaging will severely harm those who experience large fluctuations in income level from year to year.

I am also very concerned by the provision of the conference agreement that will eliminate the marriage penalty deduction. While

advocates of eliminating this deduction claim that other provisions in the bill will compensate for this change, I am not convinced that this will be true in many instances.

The elimination of most deductions for consumer interest will harm families who are struggling to make ends meet and students who rely on educational loans to finance higher education. Finally, students will be adversely affected by the decision to impose new taxes on many scholarships.

There are also many changes in the taxation of businesses that will not promote equity in the Tax Code. It is true that the measure will plug corporate loopholes and shift the tax burden from individuals to corporations. But it is not enough to reverse only some of the most flagrant abuses in the Tax Code. These abuses, which begin many years ago and accelerated under Ronald Reagan, must be completely eliminated to restore fairness in the code. While the conference agreement takes major steps to eliminate corporate giveaways, it permits many tax breaks for corporate special interests to remain in existence. For instance, the agreement retains the key tax breaks for the oil and gas industries while at the same time eliminating many of the tax advantages afforded to renewable energy sources. Key tax advantages for other corporate interests are also retained.

In addition, the measure will significantly lower the top corporate tax rate from 46 to 34 percent. I do not believe that this is the proper direction to be moving when corporate taxes have been lagging behind their historic levels for some time.

Further, I am concerned about the elimination of certain business tax advantages that serve the public interest. The conference report will reduce the tax advantages available for the restoration of historic structures, which are used extensively in New York City. And new restrictions on the use of tax-exempt bonds may prevent local governments, private universities, and other nonprofit organizations from completing needed projects.

The conference agreement also aids many businesses by providing them with transition rules to protect their specific interests. In some cases, special treatment is justified to ensure that projects which have already been initiated are not destroyed by midstream tax changes. In other cases, however, special treatment is based on nothing more than political considerations. These provisions are offensive and have no place in a tax reform measure.

There can be little doubt that there are numerous provisions of the conference agreement—affecting both individuals and businesses—that are not in the best interests of our Nation. Even worse, some of these tax changes are applied retroactively, thereby disrupting the retirement and investment plans of taxpayers who are guilty only of thinking ahead.

But it is what the conference agreement does not do that is also a major concern to those of us who are concerned about our Nation's ongoing fiscal crisis. The conference report remains revenue neutral. It will not contribute even in a small way to solving our Nation's deficit crisis. And in fact, it will significantly restrict our options in seeking solutions in that crisis.

We are all aware that the Nation's budget deficits have risen astronomically under Ronald Reagan. This year, the deficit will likely top all previous records, reaching the $230 billion level. In my view, these deficits are certain to have serious and farreaching consequences for the future of our Nation. The deficit crisis threatens the future of our economy with continuing decline and eventual collapse. And it is also being used by the Reagan administration as a method of convincing Congress and the American public that we can no longer afford essential human needs programs. We have already made devastating cuts in programs that are fundamental to the growth and development of our Nation, including education, job training, health care, pollution control, and other urgent needs. Yet the President continues to urge that we cut far more, and the Gramm-Rudman balanced budget law attempts to enforce such cuts automatically.

The deficit must be brought down. The only way to succeed at this task and the only way to do it fairly is to address the roots of the crisis: massive tax giveaways and excessive military spending. In the past 2 years, Congress has voted to put a halt to the massive increases in military spending that have marked the Reagan years. But we have done nothing to stem the continuing loss of tax revenues to big-money interests that has characterized the Reagan Presidency.

An equitable, timely, and appropriate response to the deficit crisis would be to use at least some of the revenue gained from closing individual and corporate tax loopholes for the urgent task of deficit reduction. Instead, every cent that is being recaptured from the closing of loopholes will be applied to rate reductions, including large dollar reductions for some of our Nation's wealthiest individuals.

In passing a tax reform bill that is revenue neutral, we are effectively eliminating the best source of revenue available for deficit reduction. Given the President's short-sighted and obstinate refusal to consider any form of tax increase, it is unlikely that any serious efforts to deal with the deficit crisis will be forthcoming, other than continued attempts to eliminate funding for essential human needs programs that must be preserved if we plan to meet tomorrow's challenges.

In fact, pressure to make massive deficit reductions will be accelerated in the coming years because the conference report—though revenue neutral over the next 5 years—calls for major revenue losses in fiscal years 1988 and 1989. The measure will gain $11.4 billion in revenue in fiscal year 1987, the first year after enactment. However, there will be significant revenue losses of $16.7 billion in fiscal year 1988 and $15.1 billion in fiscal year 1989, according to estimates prepared by the Joint Committee on Taxation.

During this period, the Gramm-Rudman balanced budget law will remain in effect. Despite the fact that the automatic trigger has been invalidated by the Supreme Court, there will be enormous pressure to comply with the deficit targets in that law. It is almost certain that Congress will be asked to meet these targets by making tremendous and unprecedented cuts in human needs programs that are already struggling for survival. These cuts will severely harm the very population that supporters of the conference agreement hope to aid: low- and middle-income Americans.

There can be no doubt that the Tax Reform Act of 1986 accomplishes many important goals. The elimination of the working poor from the tax rolls is a major achievement. Rate cuts for middle-income individuals are welcome and fair. The closing of tax loopholes will ensure that more individuals and corporations pay their fair share. And it will also ensure that business decisions rely less on tax considerations, thereby contributing to productivity.

But some Americans will never share these benefits. They will lose ground not because they deserve to, but because Members of Congress saw fit to undercut the principle of progressivity and to eliminate fundamental deductions that serve legitimate needs.

More importantly, all Americans will suffer from the failure of Congress to seriously address the deficit crisis. The written text of the Tax Reform Act will have important and farreaching consequences for both individuals and corporations. Some of these consequences will be positive, and some will be negative. But the most enduring consequence of this measure may well lie in what was not done: Congress had an opportunity to help solve our Nation's most pressing fiscal problem, and it failed to act.

The SPEAKER pro tempore (Mrs. LONG). All time has expired.

Mr. ROSTENKOWSKI. Madam Speaker, I move the previous question on the conference report.

The previous question was ordered.

MOTION TO RECOMMIT OFFERED BY MR. ARCHER

Mr. ARCHER. Madam Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the conference report?

Mr. ARCHER. I am, Madam Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ARCHER moves to recommit the conference report on the bill H.R. 3838, to the committee of conference.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. ARCHER. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 160, nays 268, not voting 4, as follows:

[Roll No. 412]

YEAS—160

Ackerman	Anderson	Archer
Akaka	Applegate	Armey

Badham
Barnes
Bartlett
Barton
Bateman
Bentley
Bevill
Biaggi
Boggs
Boner (TN)
Boulter
Breaux
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bryant
Burton (IN)
Bustamante
Campbell
Carney
Carr
Chandler
Chapman
Chappie
Cheney
Clay
Clinger
Coble
Coleman (MO)
Coleman (TX)
Combest
Conyers
Craig
Crane
Dannemeyer
Darden
Daschle
DeLay
Dickinson
Dixon
Dornan (CA)
Dowdy
Dreier
Dyson
Edwards (OK)
Emerson
English
Erdreich
Fazio
Fiedler
Fields
Ford (MI)
Frenzel
Frost
Gekas
Gilman
Gonzalez
Goodling
Gordon
Green
Hall (OH)
Hall, Ralph
Hansen
Hartnett
Hayes
Hertel
Holt
Hopkins
Horton
Hoyer
Hubbard
Hughes
Hutto
Jacobs
Jones (OK)
Kanjorski
Kindness
Kleczka
Kolter
Kramer
Leland
Lent
Lewis (FL)
Lloyd
Loeffler
Lowry (WA)
Madigan
Marlenee
Martin (NY)
McCandless
McCurdy
Mica
Mikulski
Miller (OH)
Mitchell
Molinari
Monson
Montgomery
Moore
Moorhead
Morrison (WA)
Myers
Nichols
Nielson
Ortiz
Parris
Pashayan
Perkins
Ray
Regula
Roberts
Robinson
Rogers
Rowland (GA)
Rudd
Schaefer
Schuette
Sensenbrenner
Sharp
Shelby
Shumway
Shuster
Smith (FL)
Smith, Denny (OR)
Smith, Robert (OR)
Spence
Stallings
Stangeland
Stenholm
Strang
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Taylor
Thomas (CA)
Thomas (GA)
Traficant
Vucanovich
Waldon
Watkins
Weiss
Whitehurst
Whittaker
Williams
Wolf
Wright
Yatron
Young (AK)

NAYS—268

Abercrombie
Alexander
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Barnard
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bilirakis
Bliley
Boehlert
Boland
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Bruce
Byron
Callahan
Carper
Chappell
Coats
Cobey
Coelho
Collins
Conte
Cooper
Coughlin
Courter
Coyne
Crockett
Daniel
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dicks
Dingell
DioGuardi
Donnelly
Dorgan (ND)
Downey
Duncan
Durbin
Dwyer
Dymally
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Evans (IA)
Evans (IL)
Fascell
Fawell
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (TN)
Fowler
Frank
Franklin
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gingrich
Glickman
Gradison
Gray (IL)
Gray (PA)
Gregg
Guarini
Gunderson
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hefner
Hendon
Henry
Hiler
Hillis
Howard
Huckaby
Hunter
Hyde
Ireland
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kolbe
Kostmayer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (CA)
Lightfoot
Lipinski
Livingston
Long
Lott
Lowery (CA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCollum
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Michel
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nowak
Oakar
Oberstar
Obey
Olin
Owens
Oxley
Packard
Panetta
Pease
Penny
Pepper
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Reid
Richardson
Ridge
Ritter
Rodino
Roe
Roemer
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Shaw
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Snowe
Snyder
Solarz
Solomon
Spratt
St Germain
Staggers
Stark
Stratton
Studds
Tauzin
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Walker
Waxman
Weaver
Weber
Wheat
Whitley
Whitten
Wilson
Wirth
Wise
Wolpe
Wortley
Wyden
Yates
Young (FL)
Young (MO)
Zschau

NOT VOTING—4

Burton (CA)
Grotberg
Rinaldo
Stokes

□ 1600

Mr. FORD of Tennessee and Mr. WIRTH changed their votes from "yea" to "nay."

Mr. HAYES and Mr. BROOMFIELD changed their votes from "nay" to yea."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mrs. LONG). The question is on the conference report.

Mr. MICHEL. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 292, nays 136, not voting 4, as follows:

[Roll No. 413]

YEAS—292

Abercrombie
Alexander
Anderson
Andrews
Annunzio
Anthony
Armey
Aspin
Atkins
AuCoin
Barnard
Barton
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Borski
Boulter
Boxer
Breaux
Broomfield
Brown (CA)
Brown (CO)
Byron
Callahan
Campbell
Carper
Clinger
Coats
Cobey
Coble
Coelho
Collins
Conte
Cooper
Coughlin
Courter
Coyne
Crockett
Daub
Davis
Dellums
Derrick
DeWine
Dickinson
Dicks
DioGuardi
Donnelly
Dorgan (ND)
Dornan (CA)
Downey
Duncan
Durbin
Dwyer
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Feighan
Fiedler
Fish
Flippo
Florio
Foglietta
Foley
Ford (TN)
Fowler
Frank
Franklin
Fuqua
Gallo
Garcia
Gaydos
Gephardt
Gibbons
Gingrich
Glickman
Goodling
Gradison
Gray (IL)
Gray (PA)
Gregg
Guarini
Gunderson
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hiler
Hillis
Hopkins
Howard
Huckaby
Hughes
Hunter
Hyde
Ireland
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (TN)
Kanjorski
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolbe
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lewis (CA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lott
Lowery (CA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCollum
McDade
McEwen
McGrath
McHugh
McKernan
McMillan
Meyers
Michel
Mikulski
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Moore
Morrison (CT)
Morrison (WA)
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Owens
Oxley
Packard
Panetta
Pashayan
Pease
Penny
Pepper
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Reid
Richardson
Ridge
Ritter
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Roybal
Rudd
Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schuette
Schulze
Schumer
Seiberling
Sharp
Shaw
Shelby
Sikorski
Siljander
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Strang
Stratton
Studds
Stump
Tauke
Tauzin
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Walgren
Walker
Waxman
Weber
Wheat
Whitten
Wilson
Wirth
Wise
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)
Zschau

NAYS—136

Ackerman
Akaka
Applegate
Archer
Badham
Barnes
Bartlett
Bateman
Bentley
Bonker
Bosco
Boucher
Brooks
Bruce
Bryant
Burton (IN)
Bustamante
Carney
Carr
Chandler
Chapman

Chappell	Hartnett	Parris
Chappie	Hertel	Perkins
Cheney	Holt	Ray
Clay	Horton	Regula
Coleman (MO)	Hoyer	Roberts
Coleman (TX)	Hubbard	Robinson
Combest	Hutto	Rowland (GA)
Conyers	Jacobs	Schaefer
Craig	Jones (OK)	Schroeder
Crane	Kaptur	Sensenbrenner
Daniel	Kindness	Shumway
Dannemeyer	Kolter	Shuster
Darden	Leath (TX)	Sisisky
Daschle	Lehman (CA)	Smith, Denny (OR)
de la Garza	Leland	Spence
DeLay	Lent	Stenholm
Dingell	Lewis (FL)	Sundquist
Dixon	Loeffler	Sweeney
Dowdy	Lowry (WA)	Swift
Dreier	Madigan	Swindall
Dymally	Manton	Synar
Dyson	Marlenee	Tallon
Edwards (OK)	Martin (NY)	Taylor
English	McCandless	Thomas (CA)
Fazio	McCurdy	Thomas (GA)
Fields	McKinney	Vucanovich
Ford (MI)	Mica	Waldon
Frenzel	Miller (OH)	Watkins
Frost	Mitchell	Weaver
Gejdenson	Molinari	Weiss
Gekas	Monson	Whitehurst
Gilman	Montgomery	Whitley
Gonzalez	Moorhead	Whittaker
Gordon	Mrazek	Williams
Green	Murphy	Wolf
Hall (OH)	Myers	Wright
Hall, Ralph	Nielson	Young (AK)
Hammerschmidt	Olin	
Hansen	Ortiz	

NOT VOTING—4

Burton (CA)	Rinaldo
Grotberg	Stokes

□ 1610

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CORRECTING THE TECHNICAL ERRORS IN ENROLLMENT OF H.R. 3838, TAX REFORM ACT OF 1986

Mr. ROSTENKOWSKI. Madam Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 395) to correct technical errors in the enrollment of the bill H.R. 3838.

□ 1620

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 395

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (H.R. 3838) to reform the internal revenue laws of the United States, the Clerk of the House of Representatives shall make the following corrections:

(1) In the table of sections:

(A) Insert after the item relating to section 405 on page 3 the following new item:

Sec. 406. Retention of capital gains treatment for sales of dairy cattle under milk production termination program.

(B) Strike out the item relating to section 1302 on page 8 and insert the following:

Sec. 1302. Treatment of section 501(c)(3) bonds.

Sec. 1303. Repeal of provisions relating to general stock ownership corporations.

(C) Strike out the items relating to subtitle B on page 8 and insert in lieu thereof the following:

Subtitle B—Effective Dates and Transitional Rules

Sec. 1311. General effective dates.
Sec. 1312. Transitional rules for construction or binding agreements and certain government bonds issued after August 15, 1986.
Sec. 1313. Transitional rules relating to refundings.
Sec. 1314. Special rules which override other rules in this subtitle.
Sec. 1315. Transitional rules relating to volume cap.
Sec. 1316. Provisions relating to certain established State programs.
Sec. 1317. Transitional rules for specific facilities.
Sec. 1318. Definitions, etc., relating to effective dates and transitional rules.

(D) Insert after the item relating to section 1569 on page 9 the following new items:

Sec. 1570. Procedure at tax sale of seized property where no person offers minimum price.
Sec. 1571. Modification of tips allocation method.
Sec. 1572. Treatment of forfeitures of land sales contracts for purposes of discharge of liens.

(E) Redesignate the items relating to sections 1571 and 1572 on page 9 as sections 1581 and 1582, respectively;

(F) In the item relating to section 1841 on page 10, strike out "311" and insert "411".

(2) On page 16, in the table relating to estates and trusts in subparagraph (E), strike out "$7,500" and insert in lieu thereof "$7,550".

(3) On page 32, strike out the quotation marks at the end of subsection (e) (relating to determination of adjusted gross income in case of estates and trusts) and insert after subsection (e) the following new subsection:

"(f) COORDINATION WITH OTHER LIMITATION.—This section shall be applied before the application of the dollar limitation of the last sentence of section 162(a) (relating to trade or business expenses)."

(4) On page 34, redesignate subsection (d) of section 132 of the bill as subsection (e) and insert after subsection (c) of section 132 of the bill the following new subsection:

(d) TERMINATION OF SECTION 162(h).—Subsection (h) of section 162 is amended by adding at the end thereof the following new paragraph:

"(5) TERMINATION.—This subsection shall not apply to any taxable year beginning after December 31, 1990."

(5) On page 61, insert the following immediately before paragraph (12):

(E) Subsection (d) of section 1250 is amended by striking out paragraph (11).

(6) On page 61, in the amendment made by paragraph (14)(B) strike out "section 168(c)(2)(F)" and insert in lieu thereof "within the meaning of section 168(c)(2)(F)".

(7) On page 66, in section 204(a)(1)(B) of the bill, strike out "and" at the end of clause (ii), strike out the period at the end of clause (iii) and insert in lieu thereof ", and", and insert after clause (iii) the following new clause:

(iv) described in subparagraph (F) or (H).

(8) On page 68, in the sentence immediately preceding subparagraph (G), strike out "subsection (b)(2)" and insert in lieu thereof "section 203(b)(2)".

(9) On page 68, in subparagraph (H), strike out "July 1, 1986" and insert in lieu thereof "June 30, 1986".

(10) On page 69, in the second line, strike out "field" and insert in lieu thereof "filed" and insert a comma after "permit".

(11) On page 69, strike out paragraph (4) (relating to property treated under prior tax Acts) and insert in lieu thereof the following:

(4) PROPERTY TREATED UNDER PRIOR TAX ACTS.—The amendments made by section 201 shall not apply to property described in section 12(c)(2), 31(g)(5), or 31(g)(17)(J) of the Tax Reform Act of 1984, to property described in section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by the Tax Reform Act of 1984, and to property described in section 216(b)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

(12) On page 71, in clause (i) of subparagraph (K)—

(A) strike out "super calendar" and insert in lieu thereof "supercalendered", and

(B) strike out "were incurred" and insert in lieu thereof "was incurred".

(13) On page 74, after subparagraph (Y), insert the following new subparagraph:

(Z) A project is described in this subparagraph if—

(i) such project involves a fiber optic network of at least 475 miles, passing through Minnesota and Wisconsin; and

(ii) before January 1, 1986, at least $15,000,000 was expended or committed for electronic equipment or fiber optic cable to be used in constructing the network.

(14) On page 75, in paragraph (8) (relating to solid waste disposal facilities) strike out the period at the end of subparagraph (C) and insert in lieu thereof a comma, and add at the end thereof the following new subparagraphs:

(D) a bond volume carryforward election was made for the facility and the facility is for Chattanooga, Knoxville, or Kingsport, Tennessee, or

(E) such facility is to serve Haverhill, Massachusetts.

(15) In the paragraph (10) (relating to wastewater or sewage treatment facility) which begins on page 75—

(A) strike out "either" in the material preceding subparagraph (A),

(B) strike out "or" at the end of subparagraph (A),

(C) strike out "wastewater treatment facility" in subparagraph (C) and insert in lieu thereof "wastewater treatment facility serving Greenville, South Carolina",

(D) insert "or" at the end of subparagraph (C), and

(E) strike out "the letter of intent and service agreement described in subparagraph (A)(ii) of this paragraph" in subparagraph (D) and insert in lieu thereof "such letter of intent and service agreement".

(16) On page 76, strike out the last sentence of paragraph (11).

(17) On page 76, in paragraph (11)(C), strike out "purchase" and insert in lieu thereof "purchaser".

(18) On page 77, in paragraph (14) (relating to certain cogeneration facilities) strike out "or" at the end of subparagraph (C), strike out the period at the end of subpara-

graph (D), and insert in lieu thereof a comma, strike out the period at the end of subparagraph (E) and insert in lieu thereof a comma, and insert after subparagraph (E) the following new subparagraphs:

(F) the project has a planned scheduled capacity of approximately 38,000 kilowatts, the project property is placed in service prior to January 1, 1990, and the project is operated, established, or constructed pursuant to certain agreements, the negotiation of which began prior to 1986, with public or municipal utilities conducting business in Massachusetts, or

(G) the Board of Regents of Oklahoma State University took official action on July 25, 1986, with respect to the project.

(19) On page 77, in paragraph (15) (relating to electric generating stations), add "located in New Mexico" after "to a project".

(20) On page 78, in the sixth line, strike out "$72,000" and insert in lieu thereof "$72,000,000".

(21) On page 78, in the sentence immediately preceding paragraph (16), strike out "1986" and insert in lieu thereof "1996", and strike out "this subparagraph" and insert in lieu thereof "this paragraph".

(22) On page 78, in the heading of paragraph (19), strike out "REAL" and insert in lieu thereof "RAIL".

(23) On page 80, at the end of paragraph (24), insert the following new subparagraph:

(E) The amendments made by section 201 shall not apply to the Muskegon, Michigan, Cross-Lake Ferry project having a projected cost of approximately $720,000.

(F) The amendments made by section 201 shall not apply to a new automobile carrier vessel, the contract price for which is no greater than $28,000,000, and which will be constructed by Maritime Overseas Corporation to transport, under the United States flag and with an American crew, foreign automobiles to North America in a case where negotiations for such transportation arrangements commenced in 1985, and definitive transportation contracts were awarded before June 1986.

(24) On page 80, in paragraph (25) (relating to certain wood energy projects), strike out "wood energy products" and insert in lieu thereof "wood energy projects".

(25) On page 80, in paragraph (27)—

(A) in subparagraph (A)—

(i) strike out "$400,000,000" and insert in lieu thereof "$500,000,000", and

(ii) strike out "letter of intent" and insert in lieu thereof "memorandum of terms",

(B) in subparagraph (B), strike out "525,000" and insert in lieu thereof "540,000",

(C) in subparagraph (C)—

(i) strike out "$32,000,000" and insert in lieu thereof "$22,000,000", and

(ii) strike out "before" and insert in lieu thereof "on", and

(D) in subparagraph (D), strike out "and 7th Avenue".

(26) On page 81, immediately before paragraph (28), insert the following:

(I) A 600,000 square foot mixed use building known as Flushing Center with respect to which a letter of intent was executed on March 26, 1986.

In the case of the building described in subparagraph (I), section 203(b)(2)(A) shall be applied by substituting "January 1, 1983" for the applicable date which would otherwise apply.

(27) On page 82, in subparagraph (E), strike out "$2.2 million" and insert in lieu thereof "$5 million", strike out "on January 27, 1986" and insert "in 1986", and insert "in Masontown, Pennsylvania," after "plant".

(28) On page 82, in subparagraph (K), strike out "Sierra Pacific Power Company" and insert in lieu thereof "Sierra Power Resources".

(29) On page 83, in subparagraph (S), strike out "on December 31, 1985" and insert in lieu thereof "by December 31, 1985".

(30) On page 83, strike out subparagraph (C) of paragraph (33) and insert in lieu thereof the following:

(C)(i) a waste-to-energy project in Derry, New Hampshire, costing approximately $60 million, and

(ii) a waste-to-energy project in Manchester, New Hampshire, costing approximately $60 million,

(31) On page 83, in subparagraph (G) of paragraph (33), strike out "Diversatch" and insert in lieu thereof "Diversatech".

(32) On page 84, strike out the period at the end of subparagraph (I) and insert in lieu thereof a comma, strike out "and" at the end of subparagraph (J), strike out the period at the end of subparagraph (K) and insert in lieu thereof ", and", and by inserting after subparagraph (K) the following:

(L) A cogeneration facility to be built at a paper company in Turners Falls, Massachusetts, with respect to which a letter of intent was executed on behalf of the paper company on September 26, 1985.

(34) The amendments made by section 201 shall not apply to an approximately 240,000 square foot beverage container manufacturing plant located in Batesville, Mississippi, or plant equipment used exclusively on the plant premises if—

(A) a 2-year supply contract was signed by the taxpayer and a customer on November 1, 1985,

(B) such contract further obligated the customer to purchase beverage containers for an additional 5-year period if physical signs of construction of the plant are present before September 1986,

(C) ground clearing for such plant began before August 1986, and

(D) construction is completed, the equipment is installed, and operations are commenced before July 1, 1987.

(35) The amendments made by section 201 shall not apply to any property which is part of the multi-family housing at the Columbia Point Project in Boston, Massachusetts.

(36) The amendments made by section 201 shall not apply to any ethanol facility located in Blair, Nebraska, if—

(A) in July of 1984 an initial binding construction contract was entered into for such facility,

(B) in June of 1986, certain Department of Energy recommended contract changes required a change of contractor, and

(C) in September of 1986, a new contract to construct such facility, consistent with such recommended changes, was entered into.

(37) The amendments made by section 201 shall not apply to any property which is part of a sewage treatment facility if, prior to January 1, 1986, the City of Conyers, Georgia, selected a privatizer to construct such facility, received a guaranteed maximum price bid for the construction of such facility, signed a letter of intent and began substantial negotiations of a service agreement with respect to such facility.

(33) On page 84, in subsection (c)(1)(A), add "located in Pennsylvania" before "constructed pursuant".

(34) On page 84, in paragraph (3) of subsection (c), strike out "for the applicable date" and insert in lieu thereof "(or, in the case of a project described in subparagraph (B) or (C), by substituting 'April 1, 1992') for the applicable date.".

(35) On page 85, redesignate paragraph (7) as paragraph (4).

(36) On page 85, strike out subparagraph (B) of paragraph (4) (as so redesignated) and insert the following:

(B) Campbell Soup Company, Pennsylvania, California, North Carolina, Ohio, Maryland, Florida, Nebraska, Minnesota, Texas, New Jersey, and Delaware,

(37) On page 85, strike out subparagraph (M) and insert in lieu thereof the following:

(M) Samuel A. Hardage Enterprises (whether owned individually or in partnership form),

(38) On page 85, in subparagraph (O) of paragraph (4) (as so redesignated), strike out "Spring Cotton" and insert in lieu thereof "Spray Cotton".

(39) On page 87, in the third line from the bottom, strike out "transaction" and insert in lieu thereof "transition".

(40) On page 90, in paragraph (4)(A), strike out "Paragraphs (c) and (d) of section 49 of the Internal Revenue Code of 1954" and insert in lieu thereof "Subsections (c) and (d) of section 49 of the Internal Revenue Code of 1986".

(41) On page 90 in paragraph (4)(A), strike out "1935" and insert in lieu thereof "1985".

(42) On page 90, in paragraph (4)(B), strike out "shall be treated as transition property" and insert in lieu thereof "shall be treated as transition property and subsections (c) and (d) of section 49 of such Code shall not apply to such property".

(43) On page 90, immediately before section 212, insert the following:

(C) Any solid waste disposal facility which will process and incinerate solid waste of one or more public or private entities including Dakota County, Minnesota, and with respect to which a bond carryforward from 1985 was elected in an amount equal to $12,500,000 shall be treated as transition property within the meaning of section 49(e) of the Internal Revenue Code of 1986.

(D) For purposes of section 49 of such Code, the following property shall be treated as transition property:

(i) 2 catamarans built by a shipbuilder incorporated in the State of Washington in 1964, the contracts for which were signed on April 22, 1986 and November 12, 1985, and 1 barge built by such shipbuilder the contract for which was signed on August 7, 1985.

(ii) 2 large passenger ocean-going United States flag cruise ships with a passenger rated capacity of up to 250 which are built by the shipbuilder described in clause (i), which are the first such ships built in the United States since 1952, and which were designed at the request of a Pacific Coast cruise line pursuant to a contract entered into in October 1985. This clause shall apply only to that portion of the cost of each ship which does not exceed $40,000,000.

(iii) Property placed in service during 1986 by Satellite Industries, Inc., with headquarters in Minneapolis, Minnesota, to the extent that the cost of such property does not exceed $1,950,000.

(44) On page 91, strike out so much of subsection (f)(2) as precedes subparagraph (A) and insert in lieu thereof the following:

(2) SPECIAL RULE.—In the case of the LTV Corporation, in lieu of the requirements of paragraph (1)—

(45) On page 92, in subsection (g)(1)(A) (defining qualified corporation) strike out "uncorporated" and insert in lieu thereof "incorporated".

(46) On page 92, in the 3rd line, strike out "such involvement begins" and insert in lieu thereof "when the corporation receives the refund".

(47) On page 92, immediately before section 213, insert the following:

(3) SPECIAL RULE FOR RESTRUCTURING.—In the case of any corporation, any restructuring taking place before July 1, 1987, shall not limit, increase, or otherwise affect the benefits which would have been available under this section but for such restructuring.

(h) TENTATIVE REFUNDS.—Rules similar to the rules of section 6411(d) of the Internal Revenue Code of 1986 shall apply to any overpayment resulting from the application of this section.

(48) On page 104, redesignate subsection (d) as subsection (e) and insert after subsection (c) the following new subsection:

(d) APPLICATION OF SECTION 334(b)(2).—For purposes of subsections (a) and (b), the reference to section 334(b)(2) in section 266(c)(2)(A)(ii) of the Economic Recovery Tax Act of 1981 shall be a reference to such section as in effect before its repeal.

(49) On page 108, in paragraph (2)(B) (relating general transitional rule) strike out clause (i) and redesignate clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(50) On page 109, in subparagraph (P), strike out "San Francisco" and insert in lieu thereof "San Jose, California".

(51) Page 110, strike out "and" at the end of subparagraph (Y) of paragraph (4), and strike out subparagraph (Z) of paragraph (4) and insert in lieu thereof the following:

(Z) the Bigelow-Hartford Carpet Mill in Enfield, Connecticut,

(AA) properties abutting 125th street in New York County from 7th Avenue west to Morningside and the pier area on the Hudson River at the end of such 125th Street,

(BB) the Bristol Carpet Mill project rehabilitating 2 buildings for approximately 156 apartment units and accompanying commercial and office use,

(CC) the City of Los Angeles Central Library project pursuant to an agreement dated December 28, 1983,

(DD) the Warehouse Row project in Chattanooga, Tennessee,

(EE) any project described in section 204(a)(1)(F) of this Act,

(FF) the Wood Street Commons project in Pittsburgh, Pennsylvania,

(GG) the John Fitch Court in Windsor, Connecticut,

(HH) any project described in section 803(d)(6) of this Act,

(II) Union Station, Indianapolis, Indiana,

(JJ) the Mattress Factory project in Pennsylvania,

(KK) Union Station in Providence, Rhode Island,

(LL) Plat 141, lot 10.4, Newport, Rhode Island, and

(MM) South Pack Plaza, Asheville, North Carolina.

(52) On page 118, in subparagraph (B) of paragraph (2), strike out "Federal rental assistance" and insert in lieu thereof "rental assistance".

(53) On page 127, in the amendment made by subsection (c) (relating to recapture tax not to reduce minimum tax) strike out "section 42(j)" and insert in lieu thereof "subsection (j) or (k) of section 42".

(54) On page 128, strike out "and" at the end of clause (i) which appears at the top of the page, strike out the period at the end of the following clause (ii), and insert in lieu thereof a comma, and insert after such clause (ii) the following new clauses:

(iii) the eligible basis of such building shall be treated, for the purposes of section 42(h)(4)(A) of such Code, as if it were financed by an obligation the interest on which is exempt from tax under section 103 of such Code and which is taken into account under section 146 of such Code, and

(iv) the amendments made by section 803 shall not apply.

(55) On page 128, in subparagraph (E), strike out "maximum annual additional credit" and insert in lieu thereof "maximum present value of additional credits".

(56) On page 130, insert immediately before subtitle G the following new paragraph:

(5) TRANSITIONAL RULE.—In the case of any rehabilitation expenditures incurred with respect to units located in the neighborhood strategy area within the community development block grant program in Ft. Wayne, Indiana—

(A) the amendments made by this section shall not apply, and

(B) paragraph (1) of section 167(k) of the Internal Revenue Code of 1986, shall be applied as if it did not contain the phrase "and before January 1, 1987".

The number of units to which the preceding sentence applies shall not exceed 150.

(57) On page 139, in paragraph (6)(A) (relating to nonqualified withdrawals taxed at highest marginal rate) strike out "section 1(i)" and insert in lieu thereof "section 1(j)".

(58) On page 142, strike out subsection (c) (relating to transitional rule) immediately preceding the heading for subtitle B.

(59) On page 148, in section 406, strike out "after January 1, 1987" and insert in lieu thereof "on or after January 1, 1987".

(60) On page 166, strike out subparagraph (A) of subsection (d)(1) and insert the following:

(A) if—

(i) in the case of a project placed in service on or before August 16, 1986, such person held an interest in such project on August 16, 1986, and such person made his initial investment after December 31, 1983, or

(ii) in the case of a project placed in service after August 16, 1986, such person made his initial investment after December 31, 1983, and such person held an interest in such project on December 31, 1986, and

(61) On page 167, immediately before subsection (d) (relating to special rules) insert the following new paragraph:

(3) SPECIAL RULE FOR CERTAIN PARTNERSHIPS.—In the case of any property which is held by a partnership—

(A) which placed such property in service on or after December 31, 1985, and before August 17, 1986, and continuously held such property through the close of the taxable year for which the determination is being made, and

(B) which was not treated as a new partnership or as terminated at any time on or after December 31, 1985, and through the close of the taxable year for which the determination is being made,

paragraph (1)(A)(i) shall be applied by substituting "December 31, 1986" for "August 16, 1986" the 2nd place if appears.

(62) On page 167, redesignate subsection (d) as subsection (e).

(63) On page 169, amend subparagraph (B) of paragraph (4) to read as follows:

"(B) INVESTMENT INCOME.—The term 'investment income' means the sum of—

"(i) gross income (other than gain described in clause (ii)) from property held for investment, and

"(ii) any net gain attributable to the disposition of property held for investment.

(64) On page 170, strike out subparagraph (A) of paragraph (6) and insert in lieu thereof the following:

"(A) IN GENERAL.—The amount of interest paid or accrued during any such taxable year which is disallowed under this subsection shall not exceed the sum of—

"(i) the amount which would be disallowed under this subsection if—

"(I) paragraph (1) were applied by substituting 'the sum of the ceiling amount and the net investment income' for 'the net investment income', and

"(II) paragraphs (4)(E) and (5)(A)(ii) did not apply, and

"(ii) the applicable percentage of the excess of the amount which (without regard to this paragraph) is not allowable as a deduction under this subsection for the taxable year over the amount described in clause (i).

The preceding sentence shall not apply to any interest treated as paid or accrued during the taxable year under paragraph (2).

(65) On page 173, in clause (iii) (relating to residence not used or rented) strike out "USED OR" and strike out "or use".

(66) On page 178, in section 1059(e)(2) of such Code (as added by section 614(e) of the bill), strike out "Excpet" and insert "Except".

(67) On page 178 in the 4th line from the bottom, strike out "any dividend" and insert in lieu thereof "any fixed dividend".

(68) On page 192, strike out paragraph (1) of subsection (f) (relating to effective dates) and insert in lieu thereof the following:

(1) AMENDMENTS MADE BY SUBSECTIONS (a), (b), AND (c).—

(A) IN GENERAL.—The amendments made by subsections (a), (b), and (c) shall apply to any ownership change following—

(i) an owner shift involving a 5-percent shareholder occurring after December 31, 1986, or

(ii) an equity structure shift occurring pursuant to a plan of reorganization adopted after December 31, 1986.

(B) TERMINATION OF OLD SECTION 382.—Except in a case described in any of the following paragraphs—

(i) section 382(a) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subsection (a) and the amendments made by section 806 of the Tax Reform Act of 1976) shall not apply to any increase in percentage points occurring after December 31, 1988, and

(ii) section 382(b) of such Code (as so in effect) shall not apply to any reorganization occurring after December 31, 1988.

(69) On page 193, strike out the clause (ii) immediately preceding subparagraph (D) (relating to special rule for oil and gas well drilling business) and insert the following:

(ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

(70) On page 194, in paragraph (7)(A) (relating to ownership change of regulated air carrier) strike out "the parent corporation referred to in section 203(d)(13)(B)" and insert in lieu thereof "a parent corporation incorporated in March 1980 under the laws of Delaware".

(71) On page 197, in subparagraph (B) (relating to exception where property will be used in unrelated business) strike out "not recognized by reason of clause (i)" and insert in lieu thereof "not recognized by reason of clause (i))".

(72) On page 204 in subsection (c)(1)(B), strike out "50 percent or more" and insert in lieu thereof "more than 50 percent".

(73) On page 205, in subsection (d)(1), strike out "this section" and insert in lieu thereof "this subtitle".

(74) On page 205, in paragraph (5)(A) (defining qualified corporation) strike out "10 or fewer qualified persons" and insert in lieu thereof "10 or fewer qualified persons who have held stock in such corporation for the lesser of (i) the 5-year period ending on the date of the adoption of the plan of complete liquidation, or (ii) the period during which the corporation (or any predecessor) was in existence".

(75) On page 206, insert the following new paragraph immediately before subsection (d):

(9) APPLICATION OF NONLIQUIDATING DISTRIBUTIONS.—The provisions of this subsection shall also apply in the case of any distribution (not in complete liquidation) made by a qualified corporation before January 1, 1989.

(76) On page 206, in subsection (e)(2), strike out "May 9, 1929" and insert in lieu thereof "May 9, 1929 (or any direct or indirect subsidiary of such corporation".

(77) On page 207, in paragraph (3), strike out "decent dying on June 15, 1956, to its" and insert in lieu thereof "decedent dying on June 15, 1956, or its".

(78) On page 207, in the last sentence of paragraph (3), strike out "of such Code)" and insert in lieu thereof "of such Code".

(79) On page 207, in paragraph (4)(A)(i)(I) strike out "binding on the selling corporation to sell substantially all its assets" and insert in lieu thereof "to sell substantially all of the assets of a selling corporation organized under the laws of Massachusetts on October 20, 1976,".

(80) On page 209, in section 1060(b)(3) (as added by the amendments made by section 641(a)) strike out "the Secretary may find necessary" and insert in lieu thereof "the Secretary deems necessary".

(81) On page 211, in the heading of paragraph (2) of subsection (c), strike out "TRADITIONAL" and insert in lieu thereof "TRANSITIONAL".

(82) On page 211, strike out subparagraphs (A) and (B) of paragraph (1) of section 453(g) (as amended by section 642(b)(2) of the bill) and insert the following:

"(A) subsection (a) shall not apply,

"(B) for purposes of this title—

"(i) except as provided in clause (ii), all payments to be received shall be treated as received in the year of the disposition, and

"(ii) in the case of any payments which are contingent as to the amount but with respect to which the fair market value may not be reasonably ascertained, the basis shall be recovered ratably, and

"(C) the purchaser may not increase the basis of any property acquired in such sale by any amount before the time such amount is includible in the gross income of the seller."

(83) On page 212, in the fourth line, strike out "issued after" and insert in lieu thereof "acquired after".

(84) On page 224, in the amendment made by paragraph (3) (relating to treatment of net capital loss after October 31 of any year) strike out "regulated investment company taxable income" and insert in lieu thereof "the taxable income of the regulated investment company".

(85) On page 225, redesignate the subsection added by section 654(a) of the bill as subsection (h).

(86) On page 236, in the amendment made by paragraph (3) (relating to treatment of net capital gain after October 31 of any year) strike out "real estate investment trust taxable income" and insert "the taxable income of the real estate investment trust".

(87) On page 249, immediately before title VII insert the following new subsection:

(d) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study of the operation of the amendments made by this part and their competitive impact on savings and loan institutions and similar financial institutions. Not later than January 1, 1990, the Secretary shall submit a report of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (together with such recommendations as he may deem advisable).

(88) On page 264, in clause (iii) of paragraph (5)(C), insert "(whether a current or advance refunding)" after "any refunding bond".

(89) On page 268, in subsection (h)(1) (relating to coordination with certain limitations) strike out "section 56" and insert in lieu thereof "sections 56 and 58".

(90) On page 271, in the third line, strike out "section 631(a)" and insert in lieu thereof "section 221(a)".

(91) On page 271, strike out paragraph (3) and insert in lieu thereof the following:

"(3) REGULAR INVESTMENT TAX CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

"(A) IN GENERAL.—In the case of any C corporation, to the extent the credit under subsection (a) is attributable to the application of the regular percentage under section 46, the limitation of paragraph (1) shall be the greater of—

"(i) the lesser of—

"(I) the allowable portion of the taxpayer's net regular tax liability for the taxable year, or

"(II) the excess (if any) of the taxpayer's net regular tax liability for the taxable year over 75 percent of the tentative minimum tax for the taxable year, or

"(ii) 25 percent of the taxpayer's tentative minimum tax for the year.

"(B) LIMITATION.—In no event shall this paragraph permit the allowance of a credit which would result in a net chapter 1 tax less than an amount equal to 10 percent of the amount determined under section 55(b)(1)(A) without regard to the alternative tax net operating loss deduction. For purposes of the preceding sentence, the term 'net chapter 1 tax' means the sum of the regular tax liability for the taxable year and the tax imposed by section 55 for the taxable year reduced by the sum of the credits allowable under this part for the taxable year (other than under section 34)."

(92) On page 279, in paragraph (4) (relating to treatment of affiliated group providing engineering services) strike out "the completed contract method" and insert in lieu thereof "a long-term contract method".

(93) On page 288, in paragraph (4)(A)(i) (relating to transition property exempted from interest capitalization) strike out "203" each place it appears and insert in lieu thereof "204".

(94) On page 293, in subparagraph (B) of section 804(d)(2), strike out "section 263A(c)(5)" and insert in lieu thereof "section 460(c)(5)".

(95) On page 297, in paragraph (4) (relating to special rule for casual sales) strike out "as of the close of such taxable year in lieu" and insert in lieu thereof "as of the close of such taxable year (determined by not taking into account any indebtedness described in paragraph (3)(B)) in lieu".

(96) On page 298, strike out so much of subsection (d)(2) (relating to excess allocable installment indebtedness) as precedes subparagraph (A) thereof and insert the following:

"(2) EXCESS ALLOCABLE INSTALLMENT INDEBTEDNESS.—If the allocable installment indebtedness for any taxable year exceeds the amount which may be allocated under paragraph (1) to applicable installment obligations arising in (and outstanding as of the close of) such taxable year, such excess shall—

(97) On page 299, immediately before subparagraph (B) (relating to exception for personal use and farm property) insert the following:

Such term also includes any obligation held by any person if the basis of such obligation in the hands of such person is determined (in whole or in part) by reference to the basis of such obligation in the hands of another person and such obligation was an applicable installment obligation in the hands of such other person.

(98) On page 290, in the paragraph (3) relating to look-back method, strike out "paragraph (1)" each place it appears and insert in lieu thereof "subparagraph (A)".

(99) Beginning on page 302, strike the subparagraphs (D) and (E) immediately preceding paragraph (5) and retain paragraphs (5), (6), (7), and (8) as part of section 811(c).

(100) On page 302, in paragraph (5) (relating to special rule for qualified buyout) strike out "October 23, 1985" each place it appears and insert in lieu thereof "October 23, 1984".

(101) On page 303, redesignate the subsection added by section 812(a) as subsection (k).

(102) On page 303, in subsection (c) as added by section 812(b)(2), strike out "453(j)" and insert in lieu thereof "453(k)".

(103) On page 304, in section 812(c)(1), strike out "paragraph (2)" and insert in lieu thereof "paragraphs (2) and (3)".

(104) On page 304, redesignate paragraph (2) of section 812(c) as paragraph (3) and insert after paragraph (1) the following new paragraph:

(2) SALES OF STOCK, ETC.—Section 453(k)(2) of the Internal Revenue Code of 1986, as added by subsection (a), shall apply to sales after December 31, 1986, in taxable years ending after such date.

(105) On page 304, strike out subparagraphs (B) and (C) of section 812(c)(3) of the bill (as so redesignated) and insert in lieu thereof the following:

(B) such change shall be treated as having been made with the consent of the Secretary,

(C) the period for taking into account adjustments under section 481 of such Code by reason of such change shall not exceed 4 years, and

(D) the amount taken into account in each of such 4 years shall be the applicable percentage (determined in accordance with the following table) of the net adjustment:

In the case of the:	The applicable percentage is:
1st taxable year	15
2nd taxable year	25
3rd taxable year	30
4th taxable year	30.

(106) On page 305, insert the following paragraph at the end of section 822(b):

(6) Paragraph (2) of section 703(b) is amended by striking out "or (d)(4)".

(107) On page 306, strike out subsection (b) of section 824 of the bill and insert the following:

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 362 (relating to special rules for certain contributions to capital) is amended by striking out paragraph (3).

(2) The subsection of section 6501 which relates to cross references is amended by striking out paragraph (3).

(108) Move the paragraph (4) (relating to treatment of certain partnerships) appearing on page 307 to the end of subsection (e) of section 806, redesignate such paragraph (4) as paragraph (3), and strike out "an indemnity agreement" in such paragraph and insert in lieu thereof "an underwriting agreement".

(109) On page 315, in section 902(f)(3)(F), strike out "distribution company" and insert in lieu thereof "distribution facility".

(110) On page 315, in subparagraph (G) of paragraph (3) (relating to transitional rules) strike out "Wisconsin" and insert in lieu thereof "Ohio".

(111) On page 315, in subparagraph (M) of paragraph (3), strike out "Pontabla" and insert in lieu thereof "Pontalba".

(112) On page 316, in the second line, strike out "subparagraph" and insert "paragraph".

(113) On page 318, strike out paragraph (5) (relating to election) and insert the following new paragraphs:

"(5) ELECTION TO TREAT AS ORDINARY LOSS.—

"(A) IN GENERAL.—In lieu of any election under paragraph (1), the taxpayer may elect to treat the amount referred to in paragraph (1) for the taxable year as an ordinary loss described in subsection (c)(2) incurred during the taxable year.

"(B) LIMITATIONS.—

"(i) DEPOSIT MAY NOT BE FEDERALLY INSURED.—No election may be made under subparagraph (A) with respect to any loss on a deposit in a qualified financial institution if part or all of such deposit is insured under Federal law.

"(ii) DOLLAR LIMITATION.—With respect to each financial institution, the aggregate amount of losses attributable to deposits in such financial institution to which an election under subparagraph (A) may be made by the taxpayer for any taxable year shall not exceed $20,000 ($10,000 in the case of a separate return by a married individual). The limitation of the preceding sentence shall be reduced by the amount of any insurance proceeds under any State law which can reasonably be expected to be received with respect to losses on deposits in such institution.

"(6) ELECTION.—Any election by the taxpayer under this subsection for any taxable year may be revoked only with the consent of the Secretary and shall apply to all losses for such taxable year of the taxpayer on deposits in the institution with respect to which such election was made.

(114) On page 319, on the 1st line, redesignate paragraph (6) as paragraph (7).

(115) On page 319, strike out subsection (c)(1) and insert in lieu thereof the following:

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1981, and, except as provided in paragraph (2), the amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1982.

(116) On page 322, strike out paragraph (2) (defining qualified life insurance company) and insert the following:

(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term "qualified life insurance company" means any of the following companies: Aetna Life Insurance Company, Aetna Life Insurance and Annuity Company, Provident Life and Accident Insurance Company, Provident National Assurance Company, Massachusetts Mutual Life Insurance Company, Mutual Benefit Life Insurance Company, Connecticut Mutual Life Insurance Company, Phoenix Mutual Life Insurance Company, John Hancock Mutual Life Insurance Company, New England Mutual Life Insurance Company, The Penn Mutual Life Insurance Company, Transamerica Occidental Life Insurance Company of Illinois, Transamerica Life Insurance and Annuity Company, Transamerica Assurance Company, Transamerica Occidental Life Insurance Company, Provident Mutual Life Insurance Company of Philadelphia, Northwestern Mutual Life Insurance Company, The Prudential Insurance Company of America, United of Omaha Life Insurance Company, Metropolitan Life Insurance Company.

(117) On page 327, strike out clause (iv) of paragraph (4)(C) and insert the following:

(iv) dental benefit coverage provided by a Delta Dental Plans Association organization through contracts with independent professional service providers so long as the provision of such coverage is the principal activity of such organization.

(118) On page 328, immediately before subtitle C, insert the following new section (and amend the table of sections accordingly):

SEC. 1014. SPECIAL RULE FOR MUTUAL LIFE INSURANCE COMPANY.

(a) IN GENERAL.—Paragraph (2) of section 217(i) of the Tax Reform Act of 1984 is amended to read as follows:

"(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phaseout of small life insurance company deduction)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1992.

(119) On page 366, in paragraph (5) (relating to special rule for certain deferred compensation plans)—

(A) strike out "to employees on August 1, 1986, of",

(B) strike out "a deferred compensation plan" in subparagraph (A) and insert in lieu thereof "to employees participating on August 16, 1986, in a deferred compensation plan", and

(C) strike out "a deferred compensation plan" in subparagraph (B) and insert in lieu thereof "individuals participating on August 16, 1986, in a deferred compensation plan".

(120) On page 361, strike out the period at the end of paragraph (4) (relating to transition rule where sum of defined contribution and defined benefit plan fractions exceed 1.0) and insert in lieu thereof "(determined as if the amendments made by this section were in effect for such year)."

(121) On page 381 in subsection (e)(3)(A)(iii), strike out "a plan or merger" and insert in lieu thereof "the plan".

(122) On page 382, strike out the subparagraph (C) preceding section 1113 and insert in lieu thereof the following:

(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.

(123) On page 393 in the amendment made by subsection (e) (relating to nondiscrimination standards), strike out "401(m)(4)(A) which meets" and insert in lieu thereof "section 401(m)(4)(A)) which meet" and strike out the closing parenthesis after "(C)".

(124) On page 397 in subparagraph (C) (relating to method of distributing excess contributions) strike out "excess" in the subparagraph heading and insert in lieu thereof "excess aggregate".

(125) On page 399 at the end of subsection (d), insert the following new paragraph:

(4) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

(A) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(7) of the Internal Revenue Code of 1986.

(B) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under subparagraph (A) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

(126) On page 410 in the second line, strike out "or".

(127) On page 413 immediately before section 1124, insert the following new paragraph:

(5) CLARIFICATION OF APPLICATION OF SECTION 72(t).—Section 72(t) of the Internal Revenue Code of 1986 (as added by subsection (a) shall apply to any distribution without regard to whether such distribution is made pursuant to section 411(a)(11) or section 417(e) of the Internal Revenue Code of 1986.

(128) On page 418, in paragraph (2) (relating to exception where termination date occurred before January 1, 1986) strike out "November 19, 1978" and insert in lieu thereof "September 19, 1978".

On page 429 in the amendment made by section 1145(c), strike out "July 24, 1984" and insert in lieu thereof "July 17, 1984".

(129) On page 435, in subparagraph (D) (relating to certain individuals may not be disregarded) strike out "under such plan" and insert in lieu thereof "under such plans".

(130) On page 445, in the paragraph (8) added by subsection (f)—

(A) insert "under all plans of the employer" after "employees" the 2nd and 3rd time it appears in subparagraph (A), and

(B) strike out "415(q)(7)" in subparagraph (B) and insert in lieu thereof "414(q)(7)".

(131) On page 445 in subsection (t)(2), strike out "132," and insert in lieu thereof "132, 162(i)(2), 162(k),".

(132) On page 445 immediately before subsection (g) (relating to the definition of excludable employee) insert the following:

Paragraph (6) of section 129(e) is amended by striking out "of subsection (d)" and inserting in lieu thereof "of subsection (d) (other than paragraphs (4) and (8) thereof)".

(133) On page 447 at the end of subsection (k)(1), insert the following new sentence:

Notwithstanding the preceding sentence, the amendments made by subsections (e)(1) and (i)(3)(C) shall, to the extent they relate to section 162(i)(2) and 162(k) of the Internal Revenue Code of 1986, apply to years beginning after 1986.

(134) On page 447 in the 5th line strike out "132," and insert in lieu thereof "132, 162(i)(2), 162(k),".

(135) On page 451, in subsection (b)(1) (defining qualified military benefit) strike out "or regulation thereunder" and insert in lieu thereof ", regulation, or administrative practice".

(136) On page 459, in section 1177(b), strike out "made by this subtitle" and insert in lieu thereof "made by section 1175".

(137) On page 480 in paragraph (3)(B), strike out "issued on" and insert in lieu thereof "bearing".

(138) On page 497, in subparagraph (C) of paragraph (3)—

(1) strike out "July 9" and insert in lieu thereof "June 9", and

(2) strike out "March 31, 1982" and insert in lieu thereof "November 3, 1981".

(139) On page 498, in subparagraph (D) defining qualified and reinsurance income—

(A) strike out "tl risks (other than risk" and insert in lieu thereof "to risks (other than risks",

(B) strike out "as of August 16, 1986, under a reinsurance contract in effect on such date" and insert in lieu thereof "under a reinsurance contract",

(C) strike out "the preceding sentence" and inserting in lieu thereof "this subparagraph", and

(D) add at the end thereof the following: "For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985."

(140) On page 501, strike out subsection (b) (relating to technical amendment) and insert in lieu thereof the following:

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (d) of section 959 is amended by striking out the period at the end thereof and inserting in lieu thereof "; except that such distributions shall immediately reduce earnings and profits."

(2) Subsection (a) of section 246A(a) (as amended by section 1804) is amended by striking out the last sentence.

(141) On page 502, strike out subsection (c) of section 1228 and insert the following:

(c) ELECTION.—An election under this section may only be made with respect to 1 transfer, sale, exchange, or other disposition.

(142) On page 505, at the end of subsection (g)(2)(A), insert the following new sentence: "In the case of any transfer (or license) which is for use within the United States and is not to a foreign person, the preceding sentence shall be applied by substituting "August 16, 1986" for "November 16, 1985".

(143) On page 522 in the amendment made by subsection (b)(2)(D), strike out "884(a)(2)" and insert in lieu thereof "884(b)(2)".

(144) On page 548, in clause (i) of paragraph (3)(B), insert a comma after "private business use".

(145) On page 555, in clause (iii) of subparagraph (A), strike out "no bond which is part of such issue meets" and insert in lieu thereof "such issue does not meet".

(146) On page 555, in paragraph (4) of subsection (b), insert "is part of an issue which" after "which".

(147) On page 570, in clause (ii) of paragraph (12)(A), insert "(or series of bonds)" before "issued to refund".

(148) On page 571, strike out "eligible" and all that follows in subparagraph (B) of subsection (b)(1) and insert in lieu thereof the following: "eligible. A bond shall not be treated as a qualified student loan bond if the issue of which such bond is a part meets the private business tests of paragraphs (1) and (2) of section 141(b) (determined by treating 501(c)(3) organizations as governmental units with respect to their activities which do not constitute unrelated trades or businesses, determined by applying section 513(a))."

(149) On page 575, in subclause (I) of section 145(b)(2)(B)(ii), strike out "103(b)" and insert in lieu thereof "103(b)(2)".

(150) On page 576, in subsection (d), strike out "the issue elects" and insert in lieu thereof "the issuer elects".

(151) On page 579, strike out subparagraph (A) of paragraph (5) and insert in lieu thereof the following:

"(A) the purpose of issuing exempt facility bonds described in 1 of the paragraphs of section 142(a),".

(152) On page 583, in subparagraph (A) of paragraph (2), insert "for" after "thereon".

(153) On page 585, in subsection (e), strike out "treated as".

(154) On page 590, at the end of paragraph (3), insert the following: "To the extent provided by the Secretary, a series of issues which are redeemed during a 6-month period shall be treated as 1 issue for purposes of the preceding sentence if no bond which is part of any such issue has a maturity of more than 60 days or is a private activity bond."

(155) On page 591, in the last sentence of subparagraph (C), strike out "is redeemed" and insert in lieu thereof "is to be redeemed".

(156) On page 591, in clause (i) of subparagraph (D), insert "for a program" before "described in section 144(b)(1)(A)".

(157) On page 592, on the first line, strike out "such a program" and insert in lieu thereof "such program".

(158) On page 594, in clause (iii) of paragraph (3)(A), strike out "with respect to any bond issued before July 1, 1989".

(159) On page 595, in paragraph (4)(A), strike out "a qualified student loan bond, and a qualified redevelopment bond" and insert in lieu thereof "and a qualified student loan bond".

(160) On page 596, in clause (v) of paragraph (3)(A), strike out "as defined in section 148(f)(6)(A)" and insert in lieu thereof "(as defined in section 148(f)(6)(A))".

(161) On page 602, clause (ii) of subsection (f)(2)(C) is amended to read as follows:

(ii) Clause (ii) of section 25(c)(2)(A) is amended by striking out all that follows "an amount of" and inserting in lieu thereof "private activity bonds which it may otherwise issue during such calendar year under section 146,".

(162) On page 606, in section 1311, redesignate subsection (d) as subsection (e), and insert after subsection (c) the following new subsection:

(d) PUBLIC APPROVAL AND INFORMATION REPORTING.—Sections 147(f) and 149(e) of the 1986 Code shall apply to bonds issued after December 31, 1986.

(163) On page 608, in subparagraph (B)(i) of section 1313(a)(1), strike out "the proceeds" and insert in lieu thereof "the net proceeds".

(164) On page 609, in subparagraph (E) of paragraph (3), strike out "of such Code".

(165) On page 609, before the comma at the end of subparagraph (A) of paragraph (4), insert "and by substituting 'September 1, 1986' for 'August 16, 1986' ".

(166) On page 610, in subparagraph (F) of paragraph (3), strike out "of such Code".

(167) On page 610, in paragraph (5), strike out "are to be" and insert in lieu thereof "are or will be".

(168) On page 610, in the heading for subsection (c), strike out "CURRENT" and insert in lieu thereof "CERTAIN".

(169) On page 610, in paragraph (1) of subsection (c)—

(A) strike out "apply to any bond" and insert in lieu thereof "apply to any bond (or series of bonds)", and

(B) strike out "law do not" and insert in lieu thereof "law did not".

(170) On page 611, in paragraph (2)—

(A) strike out "apply to any bond" and insert in lieu thereof "apply to any bond (or series of bonds)",

(B) strike out "subsection does not" and insert in lieu thereof "subsection did not", and

(C) strike out "the proceeds" in subparagraph (A)(i) and insert in lieu thereof "the net proceeds".

(171) On page 613, in subsection (f), strike out "December" and insert in lieu thereof "August".

(172) On page 614, in section 1315(c)(2), insert "for calendar year 1986" after "1954 Code".

(173) On page 616, in paragraph (1) of subsection (e), insert "(and section 103(h)(2)(B)(ii) of the 1954 Code)" after "1986 Code" the first place it appears.

(174) On page 617, strike out paragraph (7), redesignate paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and insert after paragraph (4) the following new paragraph:

(5) In the case of a bond described in section 632(d) of the Tax Reform Act of 1984—

(A) section 141 of the 1986 Code shall be applied without regard to subsection (a)(2) and paragraphs (4) and (5) of subsection (b),

(B) paragraphs (1) and (2) of section 141(b) of the 1986 Code shall be applied by substituting "25 percent" for "10 percent" each place it appears, and

(C) section 149(b) of the 1986 Code shall not apply.

(175) On page 618, strike out subsection (l).

(176) On page 621, in subparagraph (J), strike out "began construction in 1980" and insert in lieu thereof ", a subsidiary of Sierra Pacific Resources, began in 1980 work to design, finance, construct, and operate".

(177) On page 622, in subparagraph (C) of paragraph (3)—

(A) in clause (i), strike out "a stadium" and insert in lieu thereof "1 or more stadiums", and

(B) in clause (ii), after "such stadium" insert "or stadiums".

(178) On page 623, at the end of paragraph (3)(C), insert the following: "For purposes of clause (ii), if the facility is located within the jurisdiction specified in such resolution, it shall be treated as located at the site specified in such resolution."

(179) On page 626, in subparagraph (P) of paragraph (3), strike out "December 9, 1985" and insert in lieu thereof "December 2, 1985".

(180) On page 627, after subparagraph (Y) of paragraph (3), insert the following new subparagraph:

(Z) A facility is described in this subparagraph if—

(i) such facility was a redevelopment project that was approved in concept by the city council in October 1984, and

(ii) $20,000,000 in funds for such facility was identified in a 5-year budget approved by the city redevelopment agency on December 13, 1984.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $80,000,000.

(181) On page 632, in subparagraph (W), strike out "paragraph" in the material preceding clause (i) and insert in lieu thereof "subparagraph".

(182) On page 632, redesignate subparagraph (X) of paragraph (6) as subparagraph (Z) of paragraph (6) and insert after subparagraph (W) the following new subparagraph:

(X) A project is described in this subparagraph if a redevelopment plan for such project was approved by the city council of Bell Gardens, California, on June 12, 1979. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(183) On page 633, strike out subparagraph (D) and insert in lieu thereof the following:

(D) A facility is described in this subparagraph if—

(i) it is a convention, trade, or spectator facility,

(ii) a regional convention, trade, and spectator facilities study committee was created before March 19, 1985, with respect to such facility, and

(iii) feasibility and preliminary design consultants were hired on May 1, 1985, and October 31, 1985, with respect to such facility.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed the excess of $175,000,000 over the amount of bonds to which paragraph (48)(B) applies.

(184) On page 634, in subparagraph (J)—

(A) strike out "civic festival" in clause (i) and insert in lieu thereof "aquafestival",

(B) strike out clause (ii) and insert in lieu thereof the following:

"(ii) a referendum was held on April 6, 1985, in which voters permitted the city council to lease 130 acres of dedicated parkland for the purpose of constructing such facility, and", and

(C) by striking out "$5,000,000" and inserting in lieu thereof "$10,000,000".

(185) On page 637, in paragraph (9)(E), strike out "March 5, 1985" and insert in lieu thereof "March 6, 1985".

(186) On page 639, in subparagraph (A) of paragraph (11), strike out "and section 142(a)" and insert in lieu thereof "in section 142(a)".

(187) On page 639, strike out subparagraph (C) of paragraph (11) and insert in lieu thereof the following:

(C) A facility is described in this subparagraph if it is described in section 1865(b)(2)(C) of this Act.

(188) On page 644, strike out the last sentence of subparagraph (X).

(189) On page 645, after subparagraph (Z) of paragraph (13), insert the following new subparagraphs:

(AA) A residential rental property project is described in this subparagraph if it is the Carriage Trace residential rental project in Clinton, Tennessee. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $10,000,000.

(BB) A residential rental property project is described in this subparagraph if—

(i) a contract to purchase such property was dated as of August 9, 1985,

(ii) there was an inducement resolution adopted on September 27, 1985, for the issuance of obligations to finance such property,

(iii) there was a State court final validation of such financing on November 15, 1985, and

(iv) the certificate of nonappeal from such validation was available on December 15, 1985.

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $27,750,000.

(190) On page 645, in paragraph (14), strike out "$90,000,000" and insert in lieu thereof "$130,000,000".

(191) On page 645, in subparagraph (B) of paragraph (15)—

(A) strike out all that follows "agreement with" in clause (i) and insert in lieu thereof "an underwriter to provide planning and financial guidance for a possible bond issue, and", and

(B) strike out "certificates" in clause (ii) and insert in lieu thereof "bond issue"

(192) On page 646, strike out the last sentence of paragraph (16).

(193) On page 648, in subparagraph (B) of paragraph (21)—

(A) strike out "(c)" and insert in lieu thereof "(c)(2)", and

(B) strike out "103A(g)(5)(C)l" and insert in lieu thereof "103A(g)(5)(C)".

(194) On page 648, strike out paragraph (22) and insert in lieu thereof the following:

(22) DOWNTOWN REDEVELOPMENT PROJECT.—Subsection (b) of section 626 of the Tax Reform Act of 1984 is amended by adding at the end thereof the following new paragraph:

"(7) EXCEPTION FOR CERTAIN DOWNTOWN REDEVELOPMENT PROJECT.—The amendments made by this section shall not apply to any obligation which is issued as part of an issue 95 percent or more of the proceeds of which are to be used to provide a project to acquire and redevelop a downtown area if—

"(A) on August 15, 1985, a downtown redevelopment authority adopted a resolution to issue obligations for such project,

"(B) before September 26, 1985, the city expended, or entered into binding contracts to expend, more than $10,000,000 in connection with such project, and

"(C) the State supreme court issued a ruling regarding the proposed financing structure for such project on December 11, 1985.

The aggregate face amount of obligations to which this paragraph applies shall not exceed $85,000,000 and such obligations must be issued before January 1, 1992."

(195) On page 650, in clause (i) of subparagraph (B), add at the end thereof the following: "For purposes of applying section 146(k) of the 1986 Code, the public utility facility described in subparagraph (A) shall be treated as described in paragraph (2) of such section and such paragraph shall be applied without regard to the requirement that the issuer establish that a State's share of a facility (or its output) will equal or exceed the State's share of the private activity bonds issued to finance the facility."

(196) On page 652, in subparagraph (D) of paragraph (29), strike out "the net proceeds" and insert in lieu thereof "the proceeds".

(197) On page 652, in clause (i) of paragraph (29)(B), strike out all that follows "1993" and insert in lieu thereof ", by the State of Connecticut, and".

(198) On page 653, in subclause (I) of paragraph (33)(A)(ii), strike out "on" and insert in lieu thereof "dated".

(199) On page 653, at the end of subparagraph (B) of paragraph (33), insert the following new sentence:

The aggregate face amount of bonds to which this subparagraph applies shall not exceed $90,000,000.

(200) On page 654, in subparagraph (G), strike out "subparagraph (H)" and insert in lieu thereof "subparagraph (F)".

(201) On page 655, in subparagraph (K), strike out "$150,000,000" and insert in lieu thereof "$112,000,000".

(202) Beginning on page 655, strike out subparagraphs (M), (N), and (O) and insert in lieu thereof the following new subparagraphs:

(M) Proceeds of an issue are described in this subparagraph if such issue is issued on behalf of the Society of the New York Hospital to finance completion of a project commenced by such hospital in 1981 for construction of a diagnostic and treatment center or to refund bonds issued on behalf of such hospital in connection with projects associated with an inpatient psychiatric care facility. The aggregate face amount of bonds to which this subparagraph applies shall not exceed $150,000,000.

(N) Any bond to which section 145(b) of the 1986 Code does not apply by reason of this paragraph (other than subparagraph (A) thereof) shall be taken into account in determining whether such section applies to any later issue.

(203) On page 655, in subparagraph (H)—

(A) strike out clause (ii) and insert in lieu thereof the following:

"(ii) the proceeds of the issue are to be used to finance projects (to be determined by such university and the issuer) which are similar to those projects intended to be financed by bonds that were the subject of a request transmitted to Congress on November 7, 1985.", and

(B) by adding at the end thereof the following new sentence: "Bonds to which this subparagraph applies shall be treated as qualified 501(c)(3) bonds if such bonds would not (if issued before August 16, 1986) be industrial development bonds (as defined in section 103(b)(2) of the 1954 Code), and section 147(f) of the 1986 Code shall not apply to the issue of which such bonds are a part."

(204) On page 657, strike out paragraphs (39) and (40) and insert in lieu thereof the following:

(39) CERTAIN BONDS TREATED AS QUALIFIED 501(C)(3) BONDS.—A bond issued as part of an issue shall be treated for purposes of part IV of subchapter B of chapter 1 of the 1986 Code as a qualified 501(c)(3) bond if—

(A) such bond would not (if issued before August 16, 1986) be an industrial development bond (as defined in section 103(b)(2) of the 1954 Code), and

(B) such issue was approved by city voters on January 19, 1985, for construction or renovation of facilities for the cultural and performing arts.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $5,000,000.

(40) CERTAIN LIBRARY BONDS.—In the case of a bond issued before January 1, 1986, by the City of Los Angeles Community Redevelopment Agency to provide the library and related structures associated with the City of Los Angeles Central Library Project, the ownership and use of the land and facilities associated with such project by persons which are not governmental units (or payments from such persons) shall not adversely affect the exclusion from gross income under section 103 of the 1954 Code of interest on such bonds.

(205) On page 657, strike out paragraph (41) and insert in lieu thereof the following:

(41) CERTAIN REFUNDING OBLIGATIONS FOR CERTAIN POWER FACILITIES.—With respect to 2 power facilities on which construction has been suspended, the requirements of section 147(b) of the 1986 Code shall be treated as satisfied with respect to refunding bonds issued before 1992 if—

(A) each refunding bond has a maturity date not later than the maturity date of the refunded bond, and

(B) the facilities have not been placed in service as of the date of issuance of the refunding bond.

The aggregate face amount of bonds to which this paragraph applies shall not exceed $2,000,000,000. Section 146 of the 1986 Code and the last paragraph of this section shall not apply to bonds to which this paragraph applies.

(206) On page 657, in paragraph (38), strike out "and sections 148 and 149".

(207) On page 658, in subparagraph (A) of paragraph (46), strike out "hydroelectric b" and insert in lieu thereof "hydroelectric".

(208) On page 658, in paragraph (44)—

(A) after "1986 Code" insert "and the temporary period limitation of section 148(c)(2) of the 1986 Code", and

(B) strike out "$100,000,000" and insert in lieu thereof "$200,000,000".

(209) On page 659, in paragraph (48), in the material preceding subparagraph (A), strike out "either" and insert in lieu thereof "any".

(210) On page 660, in subparagraph (B) of paragraph (48), strike out "subparagraph (O)" and insert in lieu thereof "paragraph (6)(U)".

(211) On page 660, after subparagraph (B) of paragraph (48), insert the following new subparagraph:

(C) A facility which is part of a project described in paragraph (6)(O). The aggregate face amount of bonds to which this subparagraph applies shall not exceed $20,000,000.

(212) On page 660, insert paragraph (51) before paragraph (50) and redesignate paragraphs (51) and (50) as paragraphs (50) and (51), respectively.

(213) On page 660, in paragraph (50), as redesignated, strike out "141(a)(3)" and insert in lieu thereof "141(b)(3)".

(214) On page 660, in paragraph (51), as redesignated, strike out "subsection" in the material preceding subparagraph (A) and insert in lieu thereof "section".

(215) On page 701, in section 1531(b), strike out "take effect on January 1, 1987".

(216) On page 713, in subsection (e)(2) of section 7609 (as amended by section 1561(a) strike out "the summons is issued other" and insert in lieu thereof "the summons is issued".

(217) On page 718, redesignate the section 1572 relating to withholding allowances to reflect new rate schedules as section 1581 and redesignate the section 1572 relating to report on return-free system as section 1582.

(218) On page 723, insert the following new subparagraphs immediately before subsection (d) (relating to effective date):

(D) TECHNOLOGY TRANSFER SERVICES.—The term "technology transfer services" means services (whether performed directly or by arranging for and supervising the performance thereof by independent contractors) which consist of reviewing technology disclosures originating from a research organization, obtaining patents or other legal protection for such technology, arranging for licensing, sale, or other exploitation of such technology, collecting income and turning over the entire amount thereof (less amounts as agreed upon with the originating research organization) to the originating research organization, and performing necessary ancillary services.

(E) RESEARCH ORGANIZATION.—The term "research organization" means any qualified organization as defined by subparagraphs (A) and (B) of section 41(e)(6) (as redesignated by section 231(d)(2)) of the Internal Revenue Code of 1986.

(219) On page 724, in the third line, strike out "1981" and insert "1881".

(220) On page 749, in paragraph (13)(A)(i), strike out "dicount" and insert "discount".

(221) On page 752, in subparagraph (D)(i), strike out "subtitle D of title VI" and insert "subtitle D of title VI of the Tax Reform Act of 1986".

(222) On page 752, in paragraph (3) of section 1804(b) of the bill, strike out "Paragraph (3) of section 54" and insert "Paragraph (3) of section 54(d)".

(223) On page 758 in the amendment made by subsection (f)(1)(A), strike out "of any property" and insert in lieu thereof "of any property (other than an obligation of such corporation).

(224) On pages 777 and 778, in paragraph (5) of section 1810(a), strike out "section 125(b)(5)" each place it appears and insert in lieu thereof "section 121(b)(5)".

(225) On page 788, in section 1811(d) of the bill, strike out "addition of tax" and insert "addition to tax".

(226) On page 811, in section 1843(c)(2)(A) of the bill, insert a closing parenthesis after "1986".

(227) On page 827, in subsection (h)(2)(B) of section 4402 of the Employee Retirement Income Security Act of 1974, strike out "an commencement" and insert "and commencement".

(228) On page 865, strike out subparagraph (B) of section 1879(b)(1) of the bill and insert in lieu thereof the following:

(B) by striking out "section 505(b) of such Act" in subclause (II) and inserting in lieu thereof "section 505(b) or 507 of such Act or, if the drug is a biological product, before the date on which a license for such drug is issued under section 351 of the Public Health Service Act".

(229) On page 871, in paragraph (2), strike out "Subsection (a)" and insert "Paragraph (1)".

(230) On page 871, in paragraphs (2) and (3), strike out "subsection (a)" each place it appears and insert "paragraph (1)".

(231) In section 1879(u) beginning on page 873—

(A) strike "206(h)" each place it appears in paragraphs (1) and (4)(B) and insert in lieu thereof "204(h)";

(B) redesignate paragraph (4) as paragraph (5); and

(C) insert after paragraph (3) the following:

(4) CORRECTION OF CROSS REFERENCE.—Section 4218(1)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1398(1)(A)) is amended by striking out "section 4062(d)" and inserting in lieu thereof "section 4069(b)".

(232) In section 1895(b) beginning on page 892, strike paragraphs (1) and (2) and redesignate the succeeding paragraphs accordingly.

(233) In section 1898(b)(12) beginning on page 912, strike all of subparagraph (B) from "(B) AMENDMENT" through "follows:" and insert the following:

(B) AMENDMENT TO ERISA.—Section 205(h) of the Employee Retirement Income Security Act of 1974 is amended—

(i) by striking out "the term" in paragraphs (1) and (3) and inserting in lieu thereof "The term";

(ii) by striking out the comma in paragraph (1) and inserting in lieu thereof a period; and

(iii) by striking out paragraph (2) and inserting in lieu thereof the following:

(234) On page 917 in section 1898(d)(1)(A)(i), strike "vested" in the subparagraph (A) as amended thereby and insert "nonforfeitable".

(235) On page 918 in section 1898(d)(1)(B)—

(A) strike "Paragraph (1)" and insert "Subsection (e)(1)"; and

(B) insert "(e)" before "(1)" in the paragraph as amended thereby, and strike "vested" in the paragraph (1) as amended thereby and insert "nonforfeitable".

(236) On page 66, in the flush matter following section 204(a)(1)(C) (relating to project where agreement on December 19, 1984), strike "subsection (b)(2)" and insert "section 203(b)(2)".

(237) On page 67, in the last sentence of the flush material following subparagraph (E) (relating to project where plan confirmed on October 4, 1984), strike "subsection (b)(2)" and insert "section 203(b)(2)".

(238) On page 67, in subparagraph (F), strike "paragraph" and insert "subparagraph".

(239) On page 69, in clause (i) of paragraph (5)(C) (relating to special rules for property included in master plans of integrated projects), strike "link" and insert "links", insert a comma after "sites", and insert a close parenthesis after "equipment".

(240) On page 70, in subparagraph (D), strike "a" and insert "A".

(241) On page 72, in clause (v) which precedes subparagraph (L), insert "the project" before "involves".

(242) On page 75, in paragraph (9) (relating to certain submersible drilling units), strike "October" the second place it appears.

(243) On page 76, in paragraph (11) (relating to certain aircraft), strike "or Texas" in subparagraph (A) and insert "Texas, or Arizona", and strike ", the date of conference committee action)" in subparagraph (B).

(244) On page 78, in the flush material following subparagraph (B) and immediately preceding paragraph (16), strike "subsection (b)(2)" and insert "section 203(b)(2)", and strike "January 1, 1986" and insert "January 1, 1996".

(245) On page 79, in paragraph (21), strike "aggregatre" and insert "aggregate".

(246) On page 79, in paragraph (22), strike "frim" and insert "firm".

(247) On page 82, in subparagraph (L), insert "in connection with" after "housing".

(248) On page 82, in subparagraph (O), strike "New Orleans, Louisiana" and insert "Pensacola, Florida".

(249) On page 83, in subparagraph (S), insert "to be" before "placed", insert "Coal" before "Company", insert "(or any subsidiary thereof)" after "Company", and strike "on" after "Commission" and insert "by".

(250) On page 83, strike subparagraph (T) and insert:

(T) a portion of a fiber optics network placed in service by Kansas City Southern Industries, but only to the extent the cost of such portion does not exceed $25,000,000,

(251) On page 84, immediately before subsection (b), insert the following new paragraph:

(38) The amendments made by section 201 shall not apply to—

(A) a $28,000,000 wood resource complex for which construction was authorized by the Board of Directors on August 9, 1985,

(B) an electrical cogeneration plant in Bethel, Maine which is to generate 2 megawatts of electricity from the burning of wood residues, with respect to which a contract was entered into on July 10, 1984, and with respect to which $200,000 of the expected $2,000,000 cost had been committed before June 15, 1986,

(C) a mixed income housing project in Portland, Maine which is known as the Back Bay Tower and which is expected to cost $17,300,000,

(D) a 150,000 square foot office building which is projected to cost $20,000,000, with respect to which an inducement resolution was adopted in December 1985, and for which a binding contract of $500,000 was entered into on April 30, 1986,

(E) the Marquis Two project in Atlanta, Georgia which has a total budget of $72,000,000 and the construction phase of which began under a contract entered into on March 26, 1986,

(F) a 166-unit continuing care retirement center in New Orleans, Louisiana, the construction contract for which was signed on February 12, 1986, and is for a maximum amount not to exceed $8,500,000,

(G) the expansion of the capacity of an oil refining facility in Rosemont, Minnesota from 137,000 to 207,000 barrels per day which is expected to be completed by December 31, 1990, and

(H) a project in Ransom, Pennsylvania which will burn coal waste (known as "culm") with an approximate cost of $64,000,000 and for which a certification from the Federal Energy Regulatory Commission was received on March 11, 1986.

(252) On page 84, in paragraph (3)(A), strike "before April 1, 1986" and insert "on or before April 1, 1986".

(253) On page 84, the last line, insert "and" after the comma.

(254) On page 85, on the 15th line, insert "a" before "submission".

(255) On page 110, in subparagraph (K) of paragraph (4), strike "Lakeland marbel Arcade" and insert "Marble Arcade office building".

(256) On pages 110 and 111, strike paragraph (6) and insert:

(6) EXPENSING OF REHABILITATION EXPENSES FOR THE FRANKFORD ARSENAL.—In the case of any expenditures paid or incurred in connection with improvements of the Frankford Arsenal pursuant to a contract and partnership agreement during the 8-year period specified in the contract or agreement, all such expenditures to be made during such 8-year period shall be treated as made during 1986 (and allocated in accordance with the partnership agreement).

(7) SPECIAL RULE.—In the case of the rehabilitation of the Willard Hotel in Washington, D.C., section 205(c)(1)(B)(ii) of the Tax Equity and Fiscal Responsibility Act of 1982 shall be applied by substituting "1987" for "1986".

(257) On page 115, in subparagraph (A)(ii) of paragraph (7), strike "has" and insert "had".

(258) On page 120, in subparagraph (B) of paragraph (5), insert a close parenthesis after "section 469(h)".

(259) On page 160, in subparagraph (A) of subsection (g)(2), strike out "paragraph (1)" and insert in lieu thereof "paragraph (1)(A)".

(260) On page 170, at the end of clause (iii) of paragraph (6)(C), insert close quotation marks.

(261) On page 173, in paragraph (6) (relating to phase-in of limitation) strike "subsection" the 3rd place it appears and insert "paragraph".

(262) On page 176, in section 613(a), strike the comma before "is amended".

(263) On page 193, in subparagraph (D) (relating to special rule for oil and gas well drilling business) strike "or reorganization".

(264) On page 208, in paragraph (7), strike "Bank" and insert "bank".

(265) On page 208, in paragraph (1) of subsection (f) (relating to treatment of certain distributions in response to hostile tender offer) insert a close parenthesis immediately after the end quotation marks.

(266) On page 279, in paragraph (3) (relating to certain contracts), strike "Amendments" and insert "amendments".

(267) On page 293, in section 805(b), insert ", as amended by section 901(d)(4)," after "Section 166".

(268) On page 293, in section 805(c)(3), strike "(D), and (e)" and insert "(D), and (E)".

(269) On page 315, in paragraph (3) (relating to transitional rules) add the following new subparagraphs:

(T) Bellows Falls, Vermont—building project.

(U) East Broadway Project, Louisville, Kentucky.

(V) O.K. Industries, Oklahoma.

(270) On page 417, in paragraph (3)(C) (relating to allocation requirements) strike "(by reason of the limitations of section 415)" and insert at the end thereof the following new flush sentence:

The amount allocated in the year of transfer shall not be less than the lesser of the maximum amount allowable under section 415 or 1/8 of the total amount transferred.

(271) On page 502, in the heading of subsection (b) of section 1227, strike "QUALITY" and insert "QUALIFIED".

(272) On page 603, in subsection (g) (relating to penalty for failure to file report on compliance with qualified residential rental project rules) strike "section 1501" and insert "section 1501(d)".

(273) On page 618, in paragraph (2) of subsection (j) (relating to extension of advance refunding exception for qualified public facility) strike "$40,000,000" and insert "$175,000,000".

(274) On page 618, in subsection (k) (relating to expansion of exception for River Place project)—

(A) strike out "and" at the end of paragraph (1),

(B) strike out "$55,000,000 must be redeemed no later than November 1, 1987" in paragraph (2) and insert "no more than $55,000,000 shall be outstanding later than November 1, 1987",

(C) strike out the period at the end of paragraph (2) and insert ", and", and

(D) insert the following new paragraph:

(3) by adding at the end of subsection (r) the following new sentence:

"Section 148(f) of the Internal Revenue Code of 1986 shall not apply to any bonds described in paragraph (1) which may be issued as a result of the amendments made by the Tax Reform Act of 1986."

(275) On page 618, in subsection (k) (relating to expansion of exception for River Place project)—

(A) strike out "and" at the end of paragraph (1),

(B) strike out "$55,000,000 must be redeemed no later than November 1, 1987" in paragraph (2) and insert "no more than $55,000,000 shall be outstanding later than November 1, 1987", and

(C) insert the following new paragraph:

(3) by adding at the end of subsection (r) the following new sentence:

"Section 148(f) of the Internal Revenue Code of 1986 shall not apply to any bonds described in paragraph (1) which may be issued as a result of the amendments made by the Tax Reform Act of 1986."

(276) On page 647, in paragraph (20), strike out "Section 148(f)" and insert "Subsections (c)(2) and (f) of section 148".

(277) On page 723, at the end of subsection (a) of section 1608, add the following new sentence: "The preceding sentence shall not apply to amounts used for the construction or renovation of a facility described in section 274(l)(2) of such Code, as added by section 142(b) of this Act."

(278) On page 726, in subparagraph (B) of paragraph (4) (relating to penalty) strike "section 6652(j)" and insert "section 6652(k)".

(279) On page 726, beginning with subsection (b) (relating to penalty), strike all through "(j) FAILURE TO GIVE WRITTEN NOTICE TO CERTAIN SELLERS OF DIESEL FUEL.—" and insert the following:

(b) PENALTY.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.), as amended by sections 1301(g) and 1501(d) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) FAILURE TO GIVE WRITTEN NOTICE TO CERTAIN SELLERS OF DIESEL FUEL.—

(280) On page 730, in subsection (h) (relating to gasoline blend stocks or additives not used for producing gasoline) strike "section 4082(b)" and insert "section 4082(a)".

(281) On page 823, immediately before paragraph (5) (relating to required distributions not eligible for rollover treatment), insert:

(C) An individual whose required beginning date would, but for the amendment made by subparagraph (A), occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.

(282) On page 827, in paragraph (1) of subsection (h) as added by section 1852(i) (relating to amendment of section 4402 of ERISA), strike "January 12, 1982" and

insert "January 16, 1982" each place it appears.

(283) On page 836, the last line, strike "avoidance" and insert "evasion".

(284) On page 840, in paragraph (3)(C), strike "section 409(o)" and insert "section 409(h)(1)(B)".

(285) On page 81, strike out "$10.2 million" in paragraph (31) and insert in lieu thereof "$10.5 million".

SEC. 2. In the enrollment of the bill (H.R. 3838) to reform the internal revenue laws of the United States, the Clerk of the House of Representatives may correct spelling, punctuation, size type, indentions, margins, paragraphing, quotation marks, numbering and lettering, cross references, and similar typographical matters.

The SPEAKER pro tempore (Mrs. LONG). Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

A TRIBUTE TO WARD HUSSEY

Mr. ROSTENKOWSKI. Madam Speaker, I ask unanimous consent that I be permitted to speak out of order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. ARCHER. Reserving the right to object, Madam Speaker, I do so for the purpose of asking our committee chairman the purpose of his speaking out of order.

Mr. ROSTENKOWSKI. This gentleman from Illinois wanted to honor one of our staff people.

Mr. ARCHER. Madam Speaker, I withdraw my reservation of objection

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. CRANE. Reserving the right to object, Madam Speaker, I do not intend to object, but based upon the action that we just took, is it safe, I would ask the committee chairman, for me to describe that as the first tax reform to pass this body since comprehensive tax reform passed?

Mr. ROSTENKOWSKI. Madam Speaker, will the gentleman yield?

Mr. CRANE. Under my reservation I yield to the gentleman from Illinois.

Mr. ROSTENKOWSKI. I thank the gentleman for yielding.

Madam Speaker, the gentleman is correct.

Mr. CRANE. Madam Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ROSTENKOWSKI] is recognized for 1 minute.

Mr. ROSTENKOWSKI. Madam Speaker, a great deal of work and effort have gone into the structure of the legislation which the House just considered.

The work product has been developed over a period of better than 18 or 19 months.

I want to identify and praise a man who has had a hand in shaping more of this country's tax laws than any other individual alive. His name is Ward Hussey.

Ward has worked in the Legislative Counsel's Office for 40 years and has been a chief counsel for 14 years.

Ward is a man who is ultimately responsible for the legislative language in every House tax bill. It is his pen that dots the last "i" and crosses the last "t."

An enormous intellect, Mr. Hussey has approached the most complicated of all Federal issues with the practicality and sensitivity of the most humble in this country. For he has never lost sight that it is the average citizen, not the corporate lawyer, who pays most of the taxes in this country.

No man who has written so much history is less arrogant or less visible. He is the very essence of public service. He is the symbol, in my opinion, of what John Kennedy asked of our Nation in his inaugural address, "Ask what you can do for your country." Few men in this institution have answered with such sincerity and such power.

Ward Hussey, this Congress, these my colleagues, this Nation thanks you. We love you.

Mr. DUNCAN. Madam Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Tennessee.

Mr. DUNCAN. I thank the chairman for yielding.

Madam Speaker, I join in and associate myself with the remarks of the chairman on Ward Hussey. He is an absolute marvel. He is a friend of every one of us. He took us, when we were young, and led us all through and taught us more about framing legislation than any person I have ever known. We appreciate the friendship of Ward Hussey.

Mr. ROSTENKOWSKI. Madam Speaker, I yield back the balance of my time.

FOREIGN ASSISTANCE ACT OF 1961 AMENDMENTS PROMOTING IMMUNIZATION AND ORAL REHYDRATION

Mr. FASCELL. Madam Speaker, I ask unanimous consent that the Committee on Foreign Affairs be discharged from further consideration of the Senate bill (S. 1917) to amend the Foreign Assistance Act of 1961 to provide assistance to promote immunization and oral rehydration, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The Clerk read the Senate bill as follows:

S. 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) The United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 2. (a) The Congress calls upon the President to direct the Agency for International Development, working through the Center for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing

vaccines to make them more appropriate for use in developing countries.

(b) In support to this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 3. Section 104(c)(2)(B) of the Foreign Assistance Act of 1961 is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987 (of which $50,000,000 shall be used to carry out paragraph (3) of this subsection)".

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] is recognized for 1 hour.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. FASCELL

Mr. FASCELL. Madam Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. FASCELL: Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Special Foreign Assistance Act of 1986".

TITLE I—PROMOTING IMMUNIZATION AND ORAL REHYDRATION IN DEVELOPING COUNTRIES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the United Nations Children's Fund (UNICEF) reports that 3.5 million children die annually because they have not been immunized against the six major childhood diseases: polio, measles, whooping cough, diphtheria, tetanus, and tuberculosis;

(2) at present less than 20 percent of children in the developing world are fully immunized against these diseases;

(3) each year more than five million additional children are permanently disabled and suffer diminished capacities to contribute to the economic, social, and political development of their countries because they have not been immunized;

(4) ten million additional childhood deaths from immunizable and potentially immunizable diseases could be averted annually by the development of techniques in biotechnology for new and cost-effective vaccines;

(5) the World Health Assembly, the Executive Board of the United Nations Children's Fund, and the United Nations General Assembly are calling upon the nations of the world to commit the resources necessary to meet the challenge of universal access to childhood immunization by 1990;

(6) at the 1984 "Bellagio Conference" it was determined that the goal of universal childhood immunization by 1990 is indeed achievable; and

(7) the Congress has expressed its expectation that the Agency for International Development will set as a goal the immunization by 1990 of at least 80 percent of all the children in those countries in which the Agency has a program.

SEC. 102. UNITED STATES PARTICIPATION IN GLOBAL EFFORT.

(a) UNITED STATES GOVERNMENT SUPPORT.—The Congress calls upon the President to direct the Agency for International Development, working through the Centers for Disease Control and other appropriate Federal agencies, to work in a global effort to provide enhanced support toward achieving the goal of universal access to childhood immunization by 1990 by—

(1) assisting in the delivery, distribution, and use of vaccines, including—

(A) the building of locally sustainable systems and technical capacities in developing countries to reach, by the appropriate age, not less than 80 percent of their annually projected target population with the full schedule of required immunizations; and

(B) the development of a sufficient network of indigenous professionals and institutions with responsibility for developing, monitoring, and assessing immunization programs and continually adapting strategies to reach the goal of preventing immunizable diseases; and

(2) performing, supporting, and encouraging research and development activities, both in the public and private sector, that will be targeted at developing new vaccines and at modifying and improving existing vaccines to make them more appropriate for use in developing countries.

(b) PRIVATE SECTOR SUPPORT.—In support of this global effort, the President should appeal to the people of the United States and the United States private sector to support public and private efforts to provide the resources necessary to achieve universal access to childhood immunization by 1990.

SEC. 103. FUNDING LEVELS.

(a) EARMARKING.—Section 104(c)(3) of the Foreign Assistance Act of 1961 is amended by adding at the end thereof the following: "Of the aggregate amounts made available for fiscal year 1987 to carry out paragraph (2) of this subsection (relating to the Child Survial Fund) and to carry out subsection (c) (relating to development assistance for health), $50,000,000 shall be used to carry out this paragraph.".

(b) AUTHORIZATION LEVEL FOR CHILD SURVIVAL FUND.—Section 104(c)(2)(B) of that Act is amended by striking out "$25,000,000 for fiscal year 1987" and inserting in lieu thereof "$75,000,000 for fiscal year 1987".

TITLE II—PROMOTING DEMOCRACY IN HAITI

SEC. 201. FINDINGS CONCERNING HAITI.

The Congress finds that—

(1) the establishment of an interim government in Haiti committed to a restoration of democracy provides Haiti with an opportunity to build the political, social, and economic institutions necessary to promote Haiti's development, to provide a better future for the people of Haiti, and to provide the framework for more effective mutual cooperation with the United States, Haiti's neighbor in the Caribbean, and the other nations of the Hemisphere;

(2) the magnitude of the political, economic, and social tasks facing the people of Haiti will make the achievement of a better future a difficult task which will require a determined and sustained effort by the Haitian people over a long period of time and will require significant external assistance from the United States and other donors; and

(3) it is in the interest of the United States to provide appropriate support for the development of Haiti, a close neighbor which is one of the world's poorest nations and which is committed to the establishment of a democratic government.

SEC. 202. ECONOMIC ASSISTANCE FOR HAITI.

(a) EARMARKING OF FUNDS.—Not less than $108,000,000 of the aggregate amounts available for fiscal year 1987 to carry out sections 103 through 106 of the Foreign Assistance Act of 1961 (relating to development assistance), chapter 4 of part II of that Act (relating to the Economic Support Fund), and titles I and II of the Agricultural Trade Development and Assistance Act of 1954 (relating to the Food for Peace Program) shall be available only for Haiti.

(b) USE OF DEVELOPMENT ASSISTANCE.—Assistance under sections 103 through 106 of the Foreign Assistance Act of 1961 which is provided for Haiti pursuant to subsection (a) shall be used to support a transition to democracy in Haiti, emphasizing job creation, rural development, health care and sanitation, small-scale irrigation, reforestation and land conservation, and literacy education. Such assistance should reflect the need to distribute development assistance resources more equitably among the various regions in Haiti in order to support sustainable development in all of Haiti.

(c) REQUIREMENT FOR SEGREGATED ACCOUNT FOR ECONOMIC SUPPORT ASSISTANCE FUNDS PAID TO GOVERNMENT OF HAITI.—Funds under chapter 4 of part II of the Foreign Assistance Act of 1961 which are made available for Haiti pursuant to subsection (a) may be paid to the Government of Haiti only if the Government of Haiti will maintain those funds in a separate account and not commingle them with other funds.

(d) CONDITIONS ON ECONOMIC SUPPORT AND DEVELOPMENT ASSISTANCE.—Funds may be obligated for assistance for Haiti under sections 103 through 106 or chapter 4 of part II of the Foreign Assistance Act of 1961 pursuant to subsection (a) only if the President determines that the interim Government of Haiti—

(1) is improving the human rights situation in Haiti;

(2) is implementing its timetable for completion of a new constitution that promotes genuine democratic reforms and guarantees the fundamental principles of democracy;

(3) is establishing a framework for free and open elections leading to a democratically-elected civilian government, which would include free and functioning political parties and associations, free labor unions, and freedom of the press;

(4) is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years);

(5) is maintaining a system of fiscal accountability to ensure that all resources allocated to the development of Haiti are used in the most effective and efficient manner;

(6) is continuing its investigation of alleged human rights abuses and corruption by the Duvalier government and is prosecuting, in accordance with due process, those responsible for human rights abuses and corruption;

(7) is maintaining a free and independent judiciary system; and

(8) is continuing to cooperate with the United States in halting illegal emigration to the United States from Haiti.

(e) INTER-AMERICAN FOUNDATION.—Section 401(s)(2) of the Foreign Assistance Act of 1969 is amended by striking out "$11,969,000 for fiscal year 1987" and inserting in lieu thereof "$12,969,000 for fiscal year 1987 (not less than $1,000,000 of which shall be for Haiti)".

(f) ADDITIONAL ASSISTANCE FOR ECONOMIC DEVELOPMENT IN HAITI.—In order to assist economic development in Haiti, a Foreign Commercial Service officer should be assigned to the United States embassy in Haiti.

SEC. 203. MILITARY TRAINING AND OTHER NONLETHAL ASSISTANCE FOR HAITI.

(a) AUTHORIZATION OF ASSISTANCE.—Up to $4,000,000 of the aggegate amounts available for fiscal year 1987 to carry out chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to grant military assistance), chapter 5 of part II of that Act (relating to international military education and training), and the Arms Export Control Act (relating to FMS assistance) may be made available for Haiti for education, training, and other nonlethal assistance (such as transportation equipment, communications equipment, and uniforms).

(b) CONDITIONS ON MILITARY ASSISTANCE.—Funds made available pursuant to subsection (a) may be obligated only if the President certifies to the Congress the following:

(1) The Government of Haiti has submitted a formal request to the United States specifying a comprehensive plan for the reform and reorganization of the mission, command, and control structures of the Haitian armed forces consistent with a transition to democracy, the rule of law, constitutional government, and an elected civilian government. Such a plan should include a publicly announced commitment by the armed forces of Haiti to abide by international human rights standards and adoption of a code of conduct to assure adherence to these standards.

(2) The Government of Haiti is making substantial efforts—

(A) to prevent the involvement of the Haitian armed forces in human rights abuses and corruption by removing from those forces and prosecuting, in accordance with due process, those military personnel responsible for the human rights abuses and corruption;

(B) to ensure that freedom of speech and assembly are respected;

(C) to conduct investigations into the killings of unarmed civilians in Gonaives, Martissant, and Fort Dimanche, to prosecute, in accordance with due process, those responsible for those killings, and to prevent any similar occurrences in the future;

(D) to provide education and training to the Haitian armed forces with respect to internationally recognized human rights and the civil and political rights essential to democracy, in order to enable those forces to function consistent with those rights; and

(E) to take steps to implement the policy of the Government of Haiti requiring former members of the Volunteers for National Security (VSN) to turn in their weapons and to take the necessary actions to enforce this requirement.

(c) REPORTS.—Not later than three months after the President submits his certification under subsection (b) and every three months thereafter, the President shall report to the Congress on the extent to which the actions of the Government of Haiti are consistent with each of objectives specified in subsection (b). Half of the assistance provided pursuant to subsection (a) shall be withheld from delivery until the President submits the first such report.

(d) NOTIFICATION TO CONGRESS.—Funds made available pursuant to subsection (a) may be obligated only if the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Appropriations and the Committee on Foreign Relations of the Senate are notified fifteen days in advance.

(e) RELATION TO EXISTING PROVISION.—Assistance under subsection (a) may be provided notwithstanding the limitations contained section 705(e) of the International Security and Development Cooperation Act of 1985 and is in addition to the assistance allowed under that section.

SEC. 204. RECOVERY BY HAITI OF ASSETS STOLEN BY DUVALIER REGIME.

(a) FINDINGS.—The Congress finds that—

(1) the Government of Haiti believes that former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime illegally diverted to their own use substantial amounts of the assets of the Government of Haiti;

(2) the Government of Haiti is attempting to locate and recover those assets through legal means;

(3) virtually every relevant jurisdiction, both in the United States and abroad, requires the posting of some form of security to secure the issuance of orders of attachment or other judicial seizures of property;

(4) the Government of Haiti is unable, without outside assistance, to post the necessary security because of its lack of assets;

(5) Haiti's economic situation could be significantly improved, and the need for external resources reduced, if the Government of Haiti is able to pursue its legal remedies against those who are in large part responsible for the economic crisis in Haiti; and

(6) the United States has a substantial foreign policy interest in helping the Government of Haiti recover any assets which were illegally diverted by those associated with the Duvalier regime.

(b) ACTIONS TO ASSIST HAITI.—The President shall exercise the authorities granted by section 203 of the International Emergency Economic Powers Act (50 U.S.C. app. 1702) to assist the Government of Haiti in its efforts to recover, through legal proceedings, assets which the Government of Haiti alleges were stolen by former president-for-life Jean Claude Duvalier and other individuals associated with the Duvalier regime. This subsection shall be deemed to satisfy the requirements of section 202 of that Act.

TITLE III—PROTECTING TROPICAL FORESTS AND BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

SEC. 301. PROTECTING TROPICAL FORESTS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subsection (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforesta-

tion, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriate governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a representative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

SEC. 302. PROTECTING BIOLOGICAL DIVERSITY.

Section 119 of the Foreign Assistance Act of 1961 is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) FUNDING LEVEL.—For fiscal year 1987, not less than $2,500,000 of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund) shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) LOCAL INVOLVEMENT.—To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) PVOs AND OTHER NONGOVERNMENTAL ORGANIZATIONS.—Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) ACTIONS BY AID.—The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological diversity for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in recipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

"(h) ANNUAL REPORTS.—Each annual report required by section 634(a) of this Act shall include, in a separate volume, a report on the implementation of this section.".

TITLE IV—MISCELLANEOUS PROVISIONS RELATING TO CERTAIN FOREIGN ASSISTANCE PROGRAMS

SEC. 401. INCREASE AUTHORIZATION FOR INTERNATIONAL NARCOTICS CONTROL PROGRAMS.

Section 482(a)(1) of the Foreign Assistance Act of 1961 is amended by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$65,445,000 for the fiscal year 1987".

SEC. 402. AUTHORIZING A SEPARATE LINE ITEM APPROPRIATION FOR THE INSPECTOR GENERAL OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT.

Section 667(a)(1) of the Foreign Assistance Act of 1961 is amended by inserting after "Act" the following: ", of which $18,189,000 for the fiscal year 1987 is authorized for the necessary operating expenses of the Office of the Inspector General of the Agency for International Development and the remaining amount for that fiscal year is authorized for other necessary operating expenses of that agency".

SEC. 403. ADDITIONAL PROVISIONS.

The provisions contained in section H.R. 5577, as introduced in the House of Repre-

sentatives on September 23, 1986, are hereby enacted.

SEC. 404. OFFSETTING REDUCTIONS IN CERTAIN FOREIGN ASSISTANCE PROGRAMS.

In order to provide the increased authorizations of appropriations contained in section 103(b), section 202(e), and section 401 without increasing the overall amount authorized to be appropriated for foreign assistance programs for fiscal year 1987—

(1) section 104(g)(1)(B) of the Foreign Assistance Act of 1961 (relating to development assistance for health programs) is amended by striking out "$205,000,000 for fiscal year 1987" and inserting in lieu thereof "$180,000,000 for fiscal year 1987"; and

(2) section 302(a)(1) of that Act (relating to international organizations and programs) is amended by striking out "$270,000,000 for fiscal year 1987" and insert in lieu thereof "$236,084,000 for fiscal year 1987".

SEC. 405. CONFORMING AMENDMENT.

Paragraph (6) of section 413(a) of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399) is repealed; and the sentence of section 209(a)(1) of the Foreign Service Act of 1980 which was repealed by that paragraph is hereby re-enacted.

Mr. FASCELL (during the reading). Madam Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FASCELL. Madam Speaker, I am asking this request essentially to get to the other body in one package several pieces of legislation on which the House has already acted. It is my hope and expectation that we gain concurrence of the other body on issues like child survival which are of great interest to many in this Chamber.

Senate bill 1917 as sent to the House is aimed at further strengthening U.S. efforts to promote child survival throughout the world. That bill would increase the authorization for the child survival fund and strengthen U.S. support for the goal of universal access to childhood immunization by 1990. These are laudable goals which have wide support in both bodies.

The amendment which I am proposing in this motion would accept the child survival language essentially as it was sent to us and would assure an authorization level sufficient to cover the appropriation levels likely to emerge in the continuing resolution. In fact the level of authorization provided in the House amendment in H.R. 5081 which passed the House on August 7.

The other provisions contained in the amendment have also been considered and approved previously by the House this year. Minor changes have been made in response to the expressed concerns of the executive branch and to encourage expeditious consideration of these important matters in the other body.

These provisions are those portions of H.R. 5081, in addition to the child survival fund, relating to Haiti; increasing the authorization for international narcotics control; providing a separate authorization for A.I.D.'s inspector general; and corresponding reductions in the international organizations and programs account to offset the increases for other provisions of the amendment.

The amendment to S. 1917 also includes two international environment bills which have passed the House, H.R. 2957 and H.R. 2958. These bills relate to safeguarding biological diversity and protecting tropical forests in developing countries.

In addition, the amendment contains the provisions of H.R. 5577, which would expand the size of the board of the Inter-American foundation by two.

I would like to stress that S. 1917, as amended, would not in any way increase the deficit. Every increase in authorization is offset with corresponding decreases in other 150 accounts. What my motion will do is to give the House one last chance to have priorities changed to assure adequate funding for child survival, narcotics control, to assist Haiti's transition to democracy and to provide added emphasis to global environmental issues with potentially great significance to the entire world.

Madam Speaker, I urge the unanimous adoption of the amendment and of the Senate bill.

Madam Speaker, I yield to the gentleman from Michigan [Mr. BROOMFIELD] the ranking member of the Committee on Foreign Affairs for the purpose of discussion.

Mr. BROOMFIELD. Madam Speaker, the gentleman from Florida [Mr. FASCELL] the chairman of the Committee on Foreign Affairs, has discussed these issues. These are bills previously passed by this House, and he is incorporating them in one bill. I support his efforts in this endeavor.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Florida [Mr. FASCELL].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. FASCELL

Mr. FASCELL. Madam Speaker, I offer an amendment to the title.

The Clerk read as follows:

Amendment to the title offered by Mr. FASCELL: Amend the title of the bill to read as follows: "An Act to promote immmunization and oral rehydration in developing countries, to promote democracy in Haiti, to protect tropical forests and biological diversity in developing countries, to authorize increased funding for the Child Survival Fund and for international narcotics control assistance, and for other purposes.".

The amendment to the title was agreed to.

A motion to reconsider was laid on the table.

FURTHER SUNDRY MESSAGES FROM THE PRESIDENT

Further sundry messages in writing from the President of the United States were communicated to the House by Mrs. Emery, one of his secretaries.

ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD FOR FISCAL YEAR 1985—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Energy and Commerce and the Committee on Ways and Means.

(For message see proceedings of the Senate of today, Thursday, September 25, 1986.)

ANNUAL REPORT OF THE NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Education and Labor.

(For message see proceedings of the Senate of today, Thursday, September 25, 1986.)

CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO SOUTH AFRICA—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 99-270)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Foreign Affairs and the Committee on Ways and Means and ordered to be printed.

(For message see proceedings of the Senate of today, Thursday, September 25, 1986.)

REPORT OF COMMODITY CREDIT CORPORATION, 1985—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, without objection, referred to the Committee on Agriculture.

(For message see proceedings of the Senate of today, Thursday, September 25, 1986.)

PERSONAL EXPLANATION

Mr. ABERCROMBIE. Madam Speaker, with respect to rollcall 402, on H.R. 4216, I believe I may have inadvertently neglected to vote on my first day here. I ask unanimous consent that my statement that I would have voted in favor of that issue be printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Hawaii?

There was no objection.

APPOINTMENT AS MEMBERS OF DELEGATION TO ATTEND CONFERENCE OF THE INTERPARLIAMENTARY UNION IN BUENOS AIRES, ARGENTINA

The SPEAKER pro tempore. Pursuant to the provisions of 22 United States Code 276a-1, the Chair, without objection, appoints as members of the delegation to attend the Conference of the Interparliamentary Union to be held in Buenos Aires, Argentina, on October 6 to October 11, 1986, the following Members on the part of the House:

Mr. PEPPER of Florida, chairman;
Mr. HAMILTON of Indiana, vice chairman;
Mr. SEIBERLING of Ohio;
Mrs. BOGGS of Louisiana;
Mr. HUBBARD of Kentucky;
Mr. GARCIA of New York;
Mr. HAYES of Illinois;
Mr. FUSTER of Puerto Rico;
Mr. HYDE of Illinois;
Mr. SHAW of Florida; and
Mr. MONSON of Utah.

There was no objection.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION ACT, 1987

The SPEAKER pro tempore. Pursuant to House Resolution 553 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 5495.

□ 1634

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, with Mr. WEISS (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on Wednesday, September 24, 1986, all time for general debate had expired. Pursuant to the rule, the bill will be considered under the 5-minute rule by titles, and each title shall be considered as having been read.

The Clerk will designate section 1.

□ 1635

Mr. FUQUA. Mr. Chairman, I ask unanimous consent that the bill be printed in the RECORD and open to amendment at any point.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The text of H.R. 5495 is as follows:

H.R. 5495

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Aeronautics and Space Administration Authorization Act, 1987".

TITLE I—NASA AUTHORIZATION

SEC. 101. There is hereby authorized to be appropriated to the National Aeronautics and Space Administration, to become available October 1, 1986:

(a) For "Research and development", for the following programs:

(1) Permanently manned space station, $410,000,000.

(2) Space transportation capability development, $450,500,000.

(3) Physics and astronomy, $539,400,000.

(4) Life sciences, $70,700,000.

(5) Planetary exploration, $323,300,000.

(6) Solid earth observations, $69,100,000.

(7) Environmental observations, $357,900,000.

(8) Materials processing in space, $40,900,000.

(9) Communications, $114,500,000.

(10) Information systems, $18,200,000.

(11) Technology utilization, $13,300,000.

(12) Commercial use of space, $27,000,000.

(13) Aeronautical research and technology, $376,000,000.

(14) Transatmospheric research and technology, $45,000,000.

(15) Space research and technology, $168,200,000.

(16) Tracking and data advanced systems, $14,100,000.

(b) For "Space flight, control and data communication", for the following programs:

(1) Space shuttle production and operational capability, $745,400,000.

(2) Space transportation operations, $1,524,700,000.

(3) Space and ground networks, communication, and data systems, $786,900,000.

(c) For "Construction of facilities", including land acquisition, as follows:

(1) Construction of Central Computing Facility, Johnson Space Center, $9,000,000.

(2) Facilities for a permanently manned space station as follows:

(A) Construction of addition to the Systems Integration and Mockup Laboratory, Johnson Space Center, $5,000,000.

(B) Construction of Power Systems Facility, Lewis Research Center, $5,800,000.

(C) Modifications to Test Stand 300 for Space Station Hydrogen/Oxygen Propulsion Systems Development, George C. Marshall Space Flight Center, $2,100,000.

(3) Construction of addition to Orbiter Processing Facility Annex, John F. Kennedy Space Center, $3,400,000.

(4) Construction of Spacecraft Systems Development and Integration Facility, Goddard Space Flight Center, $8,000,000.

(5) Construction of Engineering Support Building, Jet Propulsion Laboratory, $9,800,000.

(6) Modification of Uninterruptible Power System in Space Flight Operations Facility, Jet Propulsion Laboratory, $2,600,000.

(7) Construction of Human Performance Research Laboratory, Ames Research Center, $9,400,000.

(8) Construction of Integrated Test Facility, Dryden Flight Research Facility, $17,500,000.

(9) Modifications to 8-Foot High Temperature Tunnel, Langley Research Center, $9,700,000.

(10) Construction of addition for Non-Destructive Evaluation Research Laboratory, Langley Research Center, $2,000,000.

(11) Construction of the Second Tracking and Data Relay Satellite System Ground Terminal Facility, New Mexico, $22,000,000.

(12) Repair of facilities at various locations, not in excess of $750,000 per project, $24,000,000.

(13) Rehabilitation and modification of facilities at various locations, not in excess of $750,000 per project, $30,000,000.

(14) Minor construction of new facilities and additions to existing facilities at various locations, not in excess of $500,000 per project, $7,000,000.

(15) Facility planning and design not otherwise provided for, $14,000,000.

In no case shall the total amount appropriated under paragraphs (1) through (15) exceed $166,300,000.

(d) For "Research and program management", $1,433,000,000.

(e) Notwithstanding the provisions of subsection (h), appropriations hereby authorized for "Research and development" and "Space flight, control and data communications" may be used (1) for any items of a captial nature (other than acquisition of land) which may be required at locations other than installations of the Administration for the performance of research and development contracts, and (2) for grants to nonprofit institutions of higher education, or to nonprofit organizations whose primary purpose is the conduct of scientific research, for purchase or construction of additional research facilities; and title to such facilities shall be vested in the United States unless the Administrator of the National Aeronautics and Space Administration (hereinafter in this Act referred to as the "Administrator") determines that the national program of aeronautical and space activities will best be served by vesting title in any such grantee institution or organization. Each such grant shall be made under such conditions

as the Administrator shall determine to be required to ensure that the United States will receive therefrom benefit adequate to justify the making of that grant. None of the funds appropriated for "Research and development" and "Space flight, control and data communications" pursuant to this Act may be used in accordance with this subsection for the construction of any major facility, the estimated cost of which, including collateral equipment, exceeds $500,000, unless the Administrator or his designee has notified the Speaker of the House of Representatives and the President of the Senate and the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, of the nature, location, and estimated cost of such facility.

(f) When so specified and to the extent provided in an appropriation Act, (1) any amount appropriated for "Research and development", for "Space flight, control and data communications", or for "Construction of facilities" may remain available without fiscal year limitation, and (2) maintenance and operation of facilities and support services contracts may be entered into under the "Research and program management" appropriation for periods not in excess of twelve months beginning at any time during the fiscal year.

(g) Appropriations made pursuant to subsection (d) may be used, but not to exceed $35,000, for scientific consultations or extraordinary expenses upon the approval or authority of the Administrator, and his determination shall be final and conclusive upon the accounting officers of the Government.

(h) Of the funds appropriated pursuant to subsections (a), (b), and (d), not in excess of $100,000 for each project, including collateral equipment, may be used for construction of new facilities and additions to existing facilities, and for repair, rehabilitation, or modification of facilities: *Provided*, That, of the funds appropriated pursuant to subsection (a) or (b), not in excess of $500,000 for each project, including collateral equipment, may be used for any of the foregoing for unforeseen programmatic needs.

(i)(1) Funds authorized to be appropriated pursuant to subsection (a)(1) may not be obligated or expended for the purpose of reassigning any technical work responsibilities on a permanently manned space station until after the passage of 30 calendar days during which either House of Congress is in session following the submission of a report by the Administrator to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) A report referred to in paragraph (1) shall include a full justification in terms of—

(A) anticipated costs and benefits;

(B) management factors; and

(C) impacts on facility and personnel resources; of any such proposed reassignments.

SEC. 102. Authorization is hereby granted whereby any of the amounts prescribed in paragraphs (1) through (14), inclusive, of section 101(c)—

(1) in the discretion of the Administrator or his designee, may be varied upward 10 percent, or

(2) following a report by the Administrator or his designee to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, on the circumstances of such action, may be varied upward 25 percent, to meet unusual cost variations, but the total cost of all work authorized under such paragraphs shall not exceed $166,300,000.

SEC. 103. Not to exceed one-half of 1 percent of the funds appropriated pursuant to section 101(a) or 101(b) may be transferred to and merged with the "Construction of facilities" appropriation, and, when so transferred, together with $10,000,000 of funds appropriated pursuant to subsection (c) of section 101 (other than funds appropriated pursuant to paragraph (15) of such subsection) shall be available for expenditure to construct, expand, and modify laboratories and other installations at any location (including locations specified in section 101(c)), if (1) the Administrator determines such action to be necessary because of changes in the national program of aeronautical and space activities or new scientific or engineering developments, and (2) he determines that deferral of such action until the enactment of the next authorization Act would be inconsistent with the interest of the Nation in aeronautical and space activities. The funds so made available may be expended to acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment. No portion of such sums may be obligated for expenditure or expended to construct, expand, or modify laboratories and other installations unless a period of thirty days has passed after the Administrator or his designee has transmitted to the Speaker of the House of Representatives and to the President of the Senate and the Committee on Science and Technology of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate, a written report containing a full and complete statement concerning (A) the nature of such construction, expansion, or modification, (B) the cost thereof including the cost of any real estate action pertaining thereto, and (C) the reason why such construction, expansion, or modification is necessary in the national interest.

SEC. 104. Notwithstanding any other provision of this Act—

(1) no amount appropriated pursuant to this Act may be used for any program deleted by the Congress from requests as originally made to either the House Committee on Science and Technology or the Senate Committee on Commerce, Science, and Transportation,

(2) no amount appropriated pursuant to this Act may be used for any program in excess of the amount actually authorized for that particular program by sections 101(a), 101(b), and 101(d), and

(3) no amount appropriated pursuant to this Act may be used for any program which has not been presented to either such committee,

unless a period of thirty days has passed after the receipt by the Speaker of the House of Representatives and the President of the Senate and each such committee, of notice given by the Administrator or his designee containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action.

SEC. 105. The President shall, on the date of the submittal to the Congress of a budget for the National Aeronautics and Space Administration for fiscal year 1988, submit to the Congress budget estimates for the recommended level of program activity and subactivity funding for fiscal years 1989 and 1990 of a permanently manned space station.

SEC. 106. It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible.

SEC. 107. (a) The Government of the United States, on behalf of the American people, requests that the Working Group for Planetary System Nomenclature of the International Astronomical Union officially designate seven of the ten moons recently discovered by the Voyager-2 spacecraft near the planet Uranus in the names of the seven crew members of the space shuttle Challenger who died in an explosion of the Challenger on January 28, 1986.

(b) The names of the seven crew members are as follows:

Francis R. Scobee, Commander.
Michael J. Smith, Pilot.
Judith A. Resnik, Mission Specialist.
Ellison S. Onizuka, Mission Specialist.
Ronald E. McNair, Mission Specialist.
Gregory B. Jarvis, Payload Specialist.
S. Christa McAuliffe, Teacher Observer.

SEC. 108. (a) It is the sense of the Congress that the National Aeronautics and Space Administration should move expeditiously to conduct a competition for alternative sources of production for space shuttle solid rocket boosters. The Administrator shall report to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate every ninety days following the date of enactment of this Act for a period of one year, describing the Administration's progress in carrying out this subsection.

(b) Nothing in this section shall be construed to direct the Administrator to select and qualify a second source of production for solid rocket boosters if the result of the competition described in subsection (a) would not produce significant savings for the National Aeronautics and Space Administration.

SEC. 109. Section 201 of the National Aeronautics and Space Act of 1958 is amended to read as follows:

"SEC. 201. (a) There is hereby established, in the Executive Office of the President, the National Aeronautics and Space Council (hereinafter referred to as the 'Council') which shall be composed of the following voting members—

"(1) the Vice President, who shall be Chairman of the Council;

"(2) the Administrator of the National Aeronautics and Space Administration, who shall be Vice Chairman of the Council;

"(3) the Secretary of State;

"(4) the Secretary of Defense;

"(5) the Chairman of the Users' Advisory Group established by subsection (g).

"(b) The President may designate such other additional advisory members of the council as he may determine.

"(c) The President shall from time to time designate one of the members of the Council to preside over meetings of the Council during the absence, disability, or unavailability of the Chairman and Vice Chairman.

"(d) Each member of the Council may designate another officer of his department or agency to serve on the Council as his alternate in his unavoidable absence.

"(e) It shall be the function of the Council to advise and assist the President, as he may request, with respect to the performance of functions in the aeronautics and space field, including the following functions:

"(1) survey all significant aeronautical and space activities, including the policies, plans, programs, and accomplishments of the United States, including all departments and agencies of the United States engaged in such activities, and other nations;

"(2) develop a comprehensive program of aeronautical and space activities to be conducted by departments and agencies of the United States;

"(3) designate and fix responsibility for the direction of major aeronautical and space activities;

"(4) provide for effective cooperation among all departments and agencies of the United States engaged in aeronautical and space activities and specify, in any case in which primary responsibility for any category of aeronautical and space activities has been assigned to any department or agency, which of those activities may be carried on concurrently by other departments or agencies; and

"(5) resolve differences arising among departments and agencies of the United States with respect to aeronautical and space activities under this Act, including differences as to whether a particular project is an aeronautical and space activity.

"(f) The head of any Federal department or agency represented on the Council is authorized to transfer, on a nonreimbursable basis, positions and related funds of such agency to the Council to assist it in carrying out its duties under this Act.

"(g)(1) The Council shall establish a Users' Advisory Group composed of non-Federal representatives of industries and other persons involved in space activities.

"(2) The Vice President shall name a Chairman of the Users' Advisory Group who shall be a member of the Council.

"(3) The Council shall from time to time, but no less than once a year, meet with the Users'Advisory Group.

"(4) The function of the Users' Advisory Group is to ensure that the interests of industries and other non-Federal entities involved in space activities, including in particular commercial entities, are adequately represented in the Council.

"(5) The Users' Advisory Group may be assisted by personnel detailed to the Council.

"(h) The Council and the Users' Advisory Group shall not be subject to section 14(a)(2) of the Federal Advisory Committee Act.".

SEC. 110. The Administrator shall—

(1) review the findings and recommendations of the National Commission on Space (established pursuant to the National Aeronautics and Space Administration Authorization Act, 1985 (Public Law 98-361)); and

(2) submit recommendations to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate by December 31, 1986, regarding a long-range plan for implementation of the recommendations referred to in paragraph (1), which shall include an impact assessment of such implementation on personnel, budget and other resources.

TITLE II—OFFICE OF COMMERCIAL SPACE TRANSPORTATION

SEC. 201. Section 24 of the Commercial Space Launch Act (49 U.S.C. App. 2623) is amended by adding at the end the following: "There is authorized to be appropriated to the Secretary to carry out this Act $586,000 for fiscal year 1987.".

TITLE III—SPACE TRANSPORTATION RECOVERY

SEC. 301. RETURNING THE SPACE SHUTTLE FLEET TO FLIGHT STATUS.

(a) It is the sense of the Congress that the United States must promptly restore its space transportation capabilities and such restoration must be accomplished without deemphasizing other space programs.

(b) There are authorized to be appropriated for fiscal year 1987 such sums as are necessary to safely return the space shuttle fleet to flight status, and to achieve the next launch of a space shuttle in the first quarter of calendar year 1988.

SEC. 302. CONSTRUCTION OF A REPLACEMENT ORBITER.

(a)(1) The Administrator shall promptly take such steps as may be necessary to construct a fourth space shuttle orbiter as a replacement for the space shuttle orbiter Challenger.

(2) The construction required by paragraph (1) shall be accomplished to the maximum extent possible by use of existing structural spares previously authorized and funded.

(b)(1) There are authorized to be appropriated for fiscal year 1987 such additional sums as may be necessary to begin the construction required by subsection (a).

(2) Funds authorized to be appropriated by sections 101(a), 101(c), and 101(d) of this Act shall not be used for any construction required by subsection (a).

(c) The Administrator shall explore the availability of private funding for construction of the replacement orbiter authorized by subsection (a). The Administrator shall accept private funding for such construction—

(1) if the Administrator finds such private funding is available; and

(2) if the Administrator finds that such funding—

(A) is in the best interest of the United States; and

(B) represents an amount tantamount to the reasonable fair market value.

Private funding accepted under this subsection shall replace appropriated funding obligated or expended for such a replacement orbiter.

(d) Title II of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) is amended by adding at the end the following:

"DONATIONS FOR SPACE SHUTTLE ORBITER

"SEC. 208. (a) The Administrator may accept gifts and donations of services, money, and real, personal, tangible, and intangible property, and use such gifts and donations for the construction of a space shuttle orbiter.

"(b)(1) The authority of the Administrator to accept gifts or donations pursuant to subsection (a) shall terminate five years after the date of the enactment of this section.

"(2) All gifts and donations accepted by the Administrator pursuant to subsection (a) which are not needed for construction of a space shuttle orbiter shall be used by the Administrator for an appropriate purpose—

"(A) in tribute to the dedicated crew of the space shuttle Challenger, and

"(B) in furtherance of the exploration of space.

"(c) A space shuttle orbiter constructed in whole or in part with gifts or donations whose acceptance and use are authorized by subsection (a) shall be named 'Challenger II'.

SEC. 303. USE OF EXPENDABLE LAUNCH VEHICLES.

(a) It is the sense of the Congress that in order to ensure reliable access to space the United States should utilize the capability of expendable launch vehicles as well as the space shuttle for placing government payloads into orbit.

(b) There are authorized to be appropriated for fiscal year 1987 such additional sums as are necessary to procure launch services for government satellites by expendable launch vehicles.

(c) No funding for such procurement is authorized under title I of this Act.

SEC. 304. SPACE SHUTTLE LAUNCH PRIORITIES.

(a) The space shuttle shall be the primary United States launch system for manned missions and missions needing its unique capabilities and shall be available for other missions.

(b) The Administrator shall make best efforts to develop a space shuttle launch manifest that—

(1) ensures that existing commitments of the National Aeronautics and Space Administration to its customers are met; and

(2) reflects the following priorities (in descending order):

(A) Payloads deemed critical to the national security.

(B) Significant civil government missions, including those having limited launch windows.

(C) Government payloads other than those referred to in subparagraphs (A) and (B).

(D) Payloads other than those referred to in subparagraphs (A) through (C), including foreign and commercial payloads.

(c) The Administrator shall submit the Administrator's planned flight manifest to the Congress no later than November 1, 1986.

SEC. 305. REIMBURSEMENT POLICY.

The Administrator, before December 2, 1986, shall submit to the Congress a ten year plan setting forth—

(1) a schedule for planned reimbursements from the Department of Defense for space shuttle services; and

(2) a schedule for the provision of such services.

TITLE IV—ASSURED ACCESS TO SPACE

SEC. 401. SHORT TITLE.

This title may be cited as the "Assured Access to Space Act".

SEC. 402. FINDINGS.

Congress finds that—

(1) The assurance of reliable access to space is critical in order to meet national security, scientific, and commercial objectives of the United States space program.

(2) The United States space program (including government and industry) must provide the assurance of reliable and continued access to space.

(3) The United States should demonstrate reliability by honoring existing launch commitments.

(4) In order to ensure reliable and continued access to space, the United States should utilize the capability of expendable launch vehicles and the Space Shuttle.

(5) Provision of launch vehicles and services by the private sector is an important complement to United States launch capability, and Congress remains committed to the findings contained in the Commercial Space Launch Act (Public Law 98-575).

(6) The United States cannot concede the commercial launch vehicle business to foreign competition.

SEC. 403. PURPOSE.

The purpose of this title is to assure reliable and continued access to space by providing for the utilization of commercial expendable launch vehicle capability in order to meet national security, scientific, and commercial objectives of the United States space program.

SEC. 404. PROCUREMENT OF LAUNCH SERVICES.

(a) AUTHORITY.—The Administrator of the National Aeronautics and Space Administration shall purchase, through competitive procurement, expendable launch vehicle services for the purpose of launching government payloads, as aggregated by the Administrator. The services purchased under this subsection shall be provided on a reimbursable basis.

(b) IMPLEMENTATION.—The Administrator shall carry out this section in a manner which fosters the development of an expendable launch vehicle industry and complements the medium launch vehicle procurement planned for national security payloads.

(c) REPORT.—The Administrator shall report to Congress on how he will carry out this section no later than November 1, 1986. Such report shall include an estimate of the launch service requirements and procurement plans for the 5 years following the date of enactment of this Act.

SEC. 405. DEFINITION OF DIRECT COSTS.

Section 15(b) of the Commercial Space Launch Act is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

"(2) For purposes of paragraph (1), direct costs shall not include costs associated with meeting the space transportation needs of the United States.".

SEC. 406. RESPONSIBILITIES UNDER COMMERCIAL SPACE LAUNCH ACT.

Section 5(a) of the Commercial Space Launch Act is amended to read as follows:

"(a) The Secretary shall be responsible for carrying out this Act, and in doing so shall consult with other agencies to provide consistent application of licensing requirements under this Act and to ensure fair and equitable treatment for all license applicants.".

SEC. 407. SHUTTLE PRICING POLICY.

(a) AMENDMENTS.—

(1) Section 202(2) of the National Aeronautics and Space Administration Authorization Act of 1986 (Public Law 99-170; 42 U.S.C. 2466) is amended to read as follows:

"(2) the efficient use of the Space Transportation System;".

(2) Sections 204 and 205 of such Act are amended to read as follows:

"SEC. 204. (a) The Administrator shall establish and implement a pricing system to recover reimbursement in accordance with the pricing policy under section 202 from each commercial or foreign user of the Space Transportation System, which except as provided in subsection (c) shall include a base price of not less than $74,000,000 for each flight of the Space Transportation System in 1982 dollars, and in no case shall be less than the price for a comparable launch on a United States expendable launch vehicle.

"(b) Each year the Administrator shall submit to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science and Technology of the House of Representatives, a report, transmitted contemporaneously with the annual budget request of the President, which shall inform the Congress on the implementation of the shuttle pricing policy under this section.

"(c) The Administrator may set a price lower than the price determined under subsection (a), or provide no-cost flights, for any commercial or foreign user of the Space Transportation System who is involved in research, development, or demonstration programs with the National Aeronautics and Space Administration.

"SEC. 205. This title shall apply to flights of the Space Transportation System beginning on and after January 1, 1988.".

(b) APPLICABILITY.—The amendments made by subsection (a) shall not affect contracts entered into before the date of the enactment of this Act.

(c) REPORT.—(1) Not later than 3 years after the date of the enactment of this Act, the Administrator of the National Aeronautics and Space Administration shall determine the effectiveness of the amendments made by subsection (a) and whether or not there has been demonstrated a competitive domestic expendable launch vehicle capability, and shall report the determinations to Congress.

(2) For purposes of paragraph (1), the existence of 3 contractual commitments between commercial users and a launch service provider, made in good faith, to launch nongovernment payloads, shall create a presumption of a competitive domestic expendable launch vehicle capability.

COMMITTEE AMENDMENTS

The CHAIRMAN pro tempore. The Clerk will report the first committee amendment.

Mr. FUQUA. Mr. Chairman, I ask unanimous consent that the committee amendments be considered en bloc, considered as read, and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The text of the committee amendments is as follows:

Committee amendments:

On page 13, after line 2, insert the following:

"NATIONAL AERONAUTICS AND SPACE COUNCIL

On page 13, line 18, strike "determine." and insert the following: "determine, including representatives of Federal offices having statutory scientific, operational, or regulatory responsibilities for space activities."

On page 15, line 13, after "involved in" insert "aeronautical and".

On page 16, strike lines 12 through 19 and insert the following:

(2) submit to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate by February 1, 1987, a long-range plan for implementing the findings and recommendations referred to in paragraph (1), including a broad assessment of such implementation on personnel, budget and other resources.

On page 19, line 22, strike "A" and insert "The name of a".

On page 19, line 24, strike "named 'Challenger II'.", and insert the following: "selected by the Administration of the National Aeronautics and Space Administration from among suggestions submitted by students in elementary and secondary schools."

On page 20, line 10, strike out "government" and insert "United States Government".

On page 21, line 4, strike out "windows" and insert "opportunities".

On page 23, line 18, strike "November 1, 1986" and insert "January 15, 1987".

On page 24, strike lines 8 through 14 and insert the following:

Section 5(a)(1) of the Commercial Space Launch Act is amended to read as follows:

"(1) pursuant to authorization and subject to the availability of appropriations, encourage and facilitate commercial space launches by the private sector, in consonance with the space policies of the United States as established in public law; and".

The CHAIRMAN pro tempore. The question is on the committee amendments.

The committee amendments were agreed to.

AMENDMENT OFFERED BY MR. FUQUA

Mr. FUQUA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FUQUA: Page 26, after line 24, insert the following new title:

TITLE V—LAND REMOTE-SENSING COMMERCIALIZATION

SECTION 501. SHORT TITLE.

This title may be cited as the "Land Remote-Sensing Commercialization Act Amendments of 1986."

SEC. 502. FINDINGS.

The Congress finds and declares that—

(1) the implementation of the Land Remote-Sensing Commercialization Act of 1984 has begun and some of the major milestones contained in that Act have been met;

(2) Congress remains strongly committed to the guiding principles set forth in that Act;

(3) notwithstanding the accomplishments thus far, the relationships among the involved Federal agencies and the private sector have not yet been adequately defined; and

(4) inasmuch as the technical development and commercial applications of future land remote-sensing systems cannot now be predicted with certainty, it is in the national interest of the United States that the involved Federal agencies and the private sector remain flexible in carrying out their respective responsibilities under this title.

SEC. 503. PURPOSES.

It is therefore the purpose of this title to set forth amendments to the Land Remote-Sensing Commercialization Act of 1984 to ensure that—

(1) the original intent of that Act is carried out in the most effective manner consistent with the guiding principles expressed therein;

(2) specific mechanisms for carrying out the original intent of that Act are provided in those cases where none have materialized thus far; and

(3) the working relationships among involved Federal agencies and private sector parties for the purpose of carrying out this title are fully developed and mutually understood.

SEC. 504. CONTRACTOR EXEMPTION FROM FEDERAL FULL REIMBURSEMENT PROVISION IN THE CASE OF RESEARCH AND DEVELOPMENT AGREEMENTS.

Section 202(a)(4) of the Act is amended by inserting before the semicolon at the end thereof the following: ", except in the case of research and development activities conducted in accordance with section 504".

SEC 505. DISPOSITION OF ASSETS FOLLOWING THE TERMINATION OF THE SECRETARY'S AUTHORITY.

Title III of the Act is amended by adding at the end thereof the following new section:

"DISPOSITION OF GOVERNMENT ASSETS

"SEC. 308. Following the completion of a contract made pursuant to this title, the Secretary may, upon 30 days advance notice to the Committee on Science and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, dispose of assets (other than real property) under the control of the Secretary in a manner which best ensures the continuation of the contractor's commercial activity.".

SEC. 506. CONSULTATION WITH THE NATIONAL REMOTE-SENSING ADVISORY COMMITTEE CONCERNING THE NATIONAL RESEARCH AND DEVELOPMENT PLAN.

Section 501(e) of the Act is amended by inserting after "National Aeronautics and Space Administration" the following: ", in consultation with the National Remote-Sensing Advisory Committee established by section 501(f).".

SEC. 507. ESTABLISHMENT OF AN INDEPENDENT ADVISORY COMMITTEE FOR RESEARCH AND DEVELOPMENT.

Section 501 of the Act is amended by adding at the end thereof the following:

"(f) Not later than 60 days after the enactment of this subsection, the Secretary and the Administrator of the National Aeronautics and Space Administration shall jointly establish a National Remote-Sensing Advisory Committee made up of representatives of remote-sensing data users, data vendors, technology developers, system operators, system developers, and data processors from Government and from the private sector. Such Committee shall, until the termination of the Secretary's authority under section 307—

"(1) provide advice and policy recommendations to the Administrator of the National Aeronautics and Space Administration and the Secretary of the content of the unified national plan required in subsection (e) of this section that would be responsive to user needs, including sensor technology research and development, data processing and distribution, and data applications;

"(2) provide recommendations to Federal agencies sponsoring research programs on the commercial value of specific experimental data sets and the likelihood that such data would compete with licensees; and

"(3) provide recommendations on the conduct of cooperative test and applications demonstration projects.".

SEC. 508 CLARIFICATION OF THE USE OF EXPERIMENTAL DATA FROM FEDERAL RESEARCH AND DEVELOPMENT PROGRAMS.

Section 502 of this Act is amended to read as follows:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF FEDERAL AGENCES

"SEC. 502. (a) Each Federal agency is authorized and encouraged to provide data gathered in experimental remote-sensing space programs to related research and development programs funded by the Federal Government (including applications programs) and to cooperative research programs if the federal agency involved determines that the data will not be used—

"(1) for any commercial purpose, or

"(2) in substantial competition with data available from a licensee under this Act,

except pursuant to section 503.

"(b) In making any determination under subsection (a), Federal agencies shall consult with the National Remote-Sensing Advisory Committee.".

SEC. 509 CLARIFICATION OF THE USE OF NON-FEDERAL DATA FOR RESEARCH AND DEVELOPMENT PROGRAMS.

Title V of the Act is amended by adding at the end thereof the following new section:

"RESEARCH AND DEVELOPMENT ACTIVITIES OF SYSTEM OPERATORS

"SEC. 504. Any system operator under title II, III, or IV of this Act, or any marketing entity under section 503 of this Act, may provide data for any research and development programs without regard for the requirements of this Act relating to sales of data on a nondiscriminatory basis if—

"(1) a complete and timely disclosure of the results of such research and development is made in the open technical literature or is otherwise made publicly available;

"(2) the system operator or marketing entity provides to the Secretary an annual report of all research and development data transactions including the nature of any cooperative agreements and the prices charged for data; and

"(3) the data are not used for commercial purposes or in competition with data available from a licensee under this Act.".

SEC. 510. CLARIFICATION OF OPERATOR RIGHTS TO IMPOSE LIMITATION ON REPRODUCTION, DISSEMINATION, AND OTHER ACTIVITIES ON A NONDISCRIMINATORY BASIS.

Section 603 of the Act is amended to read as follows:

"NONREPRODUCTION

"SEC. 603. In addition to such other terms and conditions as the system operator may set forth in compliance with section 601 of this Act, the system operator may require that unenhanced data not be reproduced or disseminated by any foreign or domestic purchaser.".

Mr. FUQUA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Chairman, my amendment would add a new title V, Land Remote-Sensing Commercialization.

The new title is the text of a bill passed under suspension of rules on September 22, 1986. The new title would amend the original Land Remote-Sensing Commercialization Act of 1984, Public Law 98-365, which affects NASA's role in research and development in the remote-sensing area and will affect future year planning in NASA's Environmental Observation Program.

Mr. Chairman, the provisions contained in this title are noncontroversial and will strengthen our Nation's position in the newly emerging land remote-sensing market. The addition of this title to the bill will facilitate its consideration by the other body.

I urge its adoption.

Mr. LUJAN. Mr. Chairman, I move to strike the last word, and I rise in support of the amendment. It adds the Landsat Bill to this particular legislation. It has passed the House before and it is the right thing to do. I support the gentleman's amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Florida [Mr. FUQUA].

The amendment was agreed to.

AMENDMENT OFFERED BY MR FUQUA

Mr. FUQUA. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FUQUA: Page 26, after line 24, insert the following new title:

TITLE VI—INVENTIONS IN OUTER SPACE

SECTION 601. SPACE INVENTIONS.

(a) AMENDMENTS TO TITLE 35, UNITED STATES CODE.—(1) Chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"§ 105. Inventions in outer space

"Any invention made, used or sold in outer space on an aeronautical and space vehicle (as defined in section 103(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2452(2)) under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for purposes of this title, except with respect to any space vehicle or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party.".

(2) The table of sections of chapter 10 of title 35, United States Code, is amended by adding at the end the following:

"105. Inventions in outer space.".

(b) AMENDMENT TO NATIONAL AERONAUTICS AND SPACE ACT.—Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) is amended by adding at the end the following new subsection:

"(m) Any invention made, used or sold in outer space on an aeronautical and space vehicle (as defined in section 103(2)) under the jurisdiction or control of the United States shall be considered to be made, used or sold within the United States for purposes of this Act, except with respect to any space vehicle or component thereof that is specifically identified and otherwise provided for by an international agreement to which the United States is a party.".

SEC. 602. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsections (b), (c) and (d) of this section, the amendments made by section 601 shall apply to all United States patents granted before, on, or after the date of the enactment of this Act,

and to all applications for United States patents pending on or filed on or after such date of enactment.

(b) AMENDMENTS NOT TO AFFECT PRIOR DECISIONS.—The amendments made by section 601 shall not affect any final decision made by a court or the Patent and Trademark Office before the date of the enactment of this Act with respect to a patent or an application for a patent, if no appeal from such decision is pending and the time for filing an appeal has expired.

(c) AMENDMENTS NOT TO AFFECT CERTAIN PENDING CASES.—The amendments made by section 601 shall not affect the right of any party in any case pending in a court on the date of the enactment of this Act to have the party's rights determined on the basis of the substantive law in effect before such date of enactment.

(d) AMENDMENTS TO BE PROSPECTIVE IN APPLICATION.—Subject to subsections (b) and (c) of this section, the amendments made by section 601 shall not apply to any process, machine, article of manufacture, or composition of matter, an embodiment of which was launched prior to the date of the enactment of this Act.

Mr. FUQUA (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Chairman, my amendment would add a new title VI to the bill. The new title would add to this bill the provisions of H.R. 4316, dealing with inventions in outer space, as passed by the House under suspension of rules on September 16, 1986. This amendment would extend the applicability of U.S. patent law to activities occurring on U.S. aeronautical and space vehicles. This jurisdictional change is accomplished without changing substantive patent law, that is, an inventor will receive the same protection under patent laws whether his activities occur on Earth or in space.

This amendment is offered with the full cooperation of the Judiciary Committee, which also considered this legislation along with the Committee on Science and Technology.

I urge its adoption.

Mr. LUJAN. Mr. Chairman, I move to strike the last word, and I rise in support of this amendment.

Again, it is adding the provisions of the inventions in outer space bill to this legislation.

We have all been very interested in this. It is a way to encourage the commercialization in outer space, and we certainly on this side add our enthusiastic support to this amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Florida [Mr. FUQUA].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TORRICELLI

Mr. TORRICELLI. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TORRICELLI: Strike out section 108 (page 12, lines 10 through 25) and insert in lieu thereof the following:

SEC. 108. (a) The Administrator of the National Aeronautics and Space Administration shall prepare and submit to the Congress, no later than March 31, 1987, a comprehensive acquisition strategy and plan for the continued procurement of space shuttle solid rocket motors. The acquisition strategy and plan shall specifically address (1) the decisions made by the Administrator for upgrading the motor design, (2) alternatives for establishing and maintaining competition in future procurements, and (3) the costs and benefits of each such alternative.

(b) Upon completion of the solid rocket motor redesign effort and the determination of likely flight rates, but before signing a production contract for follow-on solid rocket motors beyond those currently under contract, the Administrator shall issue a request for proposal for a second source for future motors.

(c) The Administrator shall determine whether a request to the Congress for second source qualification funding is necessary or desirable in order to permit the second source to compete with the incumbent on a fair and effective basis, consistent with the Competition in Contracting Act.

(d) There are authorized to be appropriated (in addition to any other amounts authorized to be appropriated pursuant to this Act) such sums as may be necessary to enable the Administrator to prepare the strategy and plan under subsection (a), issue the request for proposal under subsection (b), and make the determination under subsection (c).

(e) The Administrator shall consider the competitive advantages of the nozzle and solid rocket motor separately. No determination of the advantages of the second source of either the solid rocket motor or the nozzle shall preclude a judgment of the advantages of the other. In evaluating proposals received in response to the request for proposal issued pursuant to subsection (b), the Administrator shall consider costs and cost savings in accordance with applicable law. Nothing in this section shall be construed to direct the Administrator to select and qualify a second source of production for solid rocket motors if the proposals received pursuant to subsection (b) would not produce significant long-term savings for the National Aeronautics and Space Administration, consistent with the requirements of the Competition in Contracting Act and the public opinions of the Comptroller General pertaining thereto.

(f) The comprehensive acquisition strategy and plan (subsection (a)) and proposals for a second source (subsection (b)) shall apply to all modifications of the solid rocket motors that are intended for production.

(g) Nothing herein shall preclude the National Aeronautics and Space Administration Administrator from holding a competition for production of an upgraded design of the solid rocket motor.

Mr. TORRICELLI (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. TORRICELLI. Mr. Chairman, we are facing a new beginning in a congressional relationship with NASA. It is a relationship born out of the tragedy of the loss of the space shuttle *Challenger*.

There are several aspects to that new relationship. One is a closer watch, a tighter relationship, and more oversight. The other is to call upon the best in our economy and in our country, and that is competition.

We have before us today an amendment which requires such competition, a competition in the largest of all of the contracts of NASA, and that is the construction of the solid rocket motors.

In bringing this amendment before us today, I must congratulate both the chairman of our subcommittee, Mr. NELSON of Florida, and the ranking member, Mr. WALKER.

This amendment is the product of much work and many, many weeks of diligent effort. It is, I think, an amendment which has a number of advantages.

I think it is important for the House to understand what a dramatic change it represents. Since 1973, NASA has been contracting with a single company, the Morton-Thiokol Co., to produce solid rocket motors. It has done so even though contracts of a fraction of the size within the military program have been given to two and three competitive contractors. Only NASA has relied on a single company.

The disadvantages, I think, have been clear. Even if after the Shuttle Program resumes flight we were to have an accident with one contractor, we would lose access to space again. Indeed that single contractor, Morton-Thiokol, has had several accidents within the last 2 years. So access to space is one reason why we seek today to broaden the economic base, the production base, for our solid rocket motors.

The second is quality. The only real guarantee of quality again when the space shuttle flies is multiple contracting.

Third, of course, is cost. It is instructive, I think, that in 1975 when NASA asked for cost information on the production of the solid rocket motors, the price fell by 40 percent. Indeed it is the belief of other corporations, and there may be four in the United States, that could also compete for this contract, that it may be possible to produce solid rocket motors that now cost $18 million for as little as $12 million.

Mr. Chairman, this is an important beginning. It is bringing competition to NASA. That competition will

ensure access to space, it will assure quality and, most importantly perhaps, it can ensure real savings for NASA and the American taxpayer involving millions of dollars.

I thank our chairman, Mr. FUQUA, our subcommittee chairman, Mr. NELSON of Florida, and Mr. WALKER for their help in bringing this important amendment before the floor today.

Mr. WALKER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I do believe that this amendment is a valuable contribution to the bill.

I do want to engage, however, in a colloquy with the gentleman from Florida, the chairman of the subcommittee, so we can establish in legislative history just where we are on this particular amendment.

First, let me ask about the purpose of this amendment. Is the purpose of this amendment to save the taxpayers money, or is it to establish a second source regardless of the cost?

I yield to the gentleman from Florida [Mr. NELSON].

Mr. NELSON of Florida. Mr. Chairman, I thank the gentleman from Pennsylvania for his questions.

I want to state that it is the intent of the committee in accepting the amendment to save money.

Mr. WALKER. Is it the intent of the committee that the Administrator must pay any or all of the cost of qualification of a second-source contractor?

Mr. NELSON of Florida. The Administrator will make the determination based on the best interests of the United States according to the law.

Mr. WALKER. Could the chairman tell me how many other major rocket systems we now purchase have a second source?

Mr. NELSON of Florida. There are none. All have either a prime contractor with subcontractors making single parts, or they are built by joint ventures, but there are no true second-source providers.

Mr. WALKER. So would the chairman agree that the purpose of this amendment is to give the Administrator the maximum flexibility to save money on future procurements of solid rocket motors?

Mr. NELSON of Florida. Yes; that is exactly the purpose.

Mr. WALKER. And under the amendment, the Administrator may move forward with the competition for redesigned SRM's?

Mr. NELSON of Florida. Yes; in the amendment it is provided for that.

Mr. WALKER. And in such a competition, all contractors would be eligible to bid?

Mr. NELSON of Florida. Yes; there would be no restrictions.

Mr. WALKER. Finally, is it the intention of the committee that NASA would only go to a second source if there were real long-term savings to the American taxpayer?

Mr. NELSON of Florida. Yes; that is our intention.

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Mr. WALKER. I thank the chairman. Let me ask the author of the amendment, given that colloquy, whether or not the legislative history that that colloquy represents is in fact within the intent of the gentleman from New Jersey?

I yield to the gentleman for his response.

Mr. TORRICELLI. It does represent my views and the belief that there are substantial cost savings and it is those savings that we are searching for.

One comment that I would make, is that while in fact it is accurate, that there are no second sources currently within NASA for these rockets. We are trying to follow the model that has been established in the Pentagon with military programs where all of their solid rocket motors, indeed, all of their rockets designs, do have second sources and are competitive. That is the model that we are seeking to follow.

Mr. WALKER. I thank the gentleman. I appreciate the work that he has put in to making this amendment something that the committee can work with him on.

Mr. NELSON of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise for the purpose of another clarification from the gentleman from new Jersey.

I would like to ask a question regarding subsection (d). Is it the intention of the gentleman from New Jersey that this subsection (d) is an authorization of administrative cost and not an authorization of the program?

I yield to the gentleman for his response.

Mr. TORRICELLI. It is my intention that administrative costs be incurred and that there be no impact program operations in any case.

Mr. NELSON of Florida. I thank the gentleman.

Mr. Chairman, the committee intends to accept the amendment.

Mr. LOWERY of California. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of this amendment and commend my colleague, the gentleman from New Jersey. It is a good amendment. It is in the taxpayers' interest. It should bring to bear a good deal of congressional attention on an issue that should save the American taxpayers a great deal of money. I commend the gentleman and I am happy the committee will accept the amendment.

Mr. Chairman, I have long supported encouraging NASA to seek a second source for the space shuttle's solid rocket motors. My efforts have not been an outgrowth of the space shuttle tragedy, although the accident and subsequent investigations may have heightened the awareness of the problem. Second sourcing can lead to increased technical performance, encourage improvements in quality, and reduce costs, but it also enhances our industrial base and in turn our national security.

Since 1984, Congress has encouraged the feasibility of bringing in more than one source for producing the elements of the space shuttle. In 1985, the Science and Technology authorization report suggested that NASA take a close look at dual sourcing to see if savings would be generated.

This amendment incorporates recommendations—included in a GAO report requested by the chairman of the Government Operations Committee, JACK BROOKS—which reviewed NASA's efforts to establish a second production source for the solid rocket motors used in the Space Shuttle Program. Released in August, the report cites various efforts by NASA which failed to foster competition. The GAO also suggests an acquisition strategy and plan for continued procurement of the solid rocket motors.

The amendment, following GAO's recommendation, requires NASA to report to Congress on its acquisition strategy and plan by March 31, 1987. Mr. Chairman, I may add at this point, that NASA would have to come to Congress to seek necessary authority to select a second source or maintain a sole source of supply for the solid rocket motor.

Mr. Chairman, earlier this year more than 250 of our colleagues joined in a bipartisan effort encouraging NASA to proceed with a second source for the shuttle's solid rocket motors. The strong interest and support among our colleagues for this action was undertaken because we believe the proposal for a second source is good for the Government; good for the deficit; and good for the Space Program.

The space shuttle is a magnificent investment. The next generation of space exploration, the space station, SDI, and the programs to follow can only be made possible through a practical shuttle fleet. The overall objectives of our Space Program depend upon our ability to conduct space launches. Our access to space must be assured, and at the same time we must maintain the industrial base needed to continue assured access in the long term. We can no longer be dependent on any one manufacturer for our space launch capability. Mr. Chairman, I urge my colleagues to support this amendment.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. LOWERY of California. I yield to the gentleman from California.

Mr. FAZIO. I thank the gentleman for yielding.

Mr. Chairman, I know that the gentleman has joined me in making every effort to produce additional competition in this area. I want to congratulate the gentleman from New Jersey for his efforts.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from New Jersey. The amendment builds on efforts by the House Appropriations Committee—and the HUD-Independent Agencies Subcommittee—to encourage NASA to seek a second source for the shuttle's solid rocket motor.

Obtaining a second source for the solid rocket motor [SRM] is vital for a number of reasons.

After a 2-year study of the issue, NASA declared in December of last year that "it is in the national interest . . . to develop an SRM second source capability for national security and for broadening the industrial base for large solid rocket production capability."

A second source for the SRM will also mean competition and significant opportunities for cost savings. Earlier this year, NASA officials advised Congress that the mere prospect of competition on the solid rocket motors had saved the Government over $150 million by driving down the prices of future rocket motor purchases.

And more savings can be achieved. Based on 10 shuttle flights per year, NASA could generate savings of as much as $80 million annually by moving to a second source for the SRM.

Moreover, Mr. Chairman, acquiring a second source for the solid rocket motor could mean greater quality control in SRM production and improved safety for the Shuttle Program.

In July, before a House Government Operations Subcommittee hearing, General Accounting Office [GAO] investigators testified that they had identified 2,075 possible quality control problems in the manufacture of the *Challenger*'s faulty booster rocket.

The GAO further testified that "one contributing factor to the loss of quality control—at Morton Thiokol—might well have been the exclusivity of the contract."

NASA has announced its intention to launch a new round of studies which "could lead to a second source of the SRM and/or a newly designed SRM."

But, Mr. Chairman, Congress will not be satisfied with just another study of the merits of a second source for the SRM.

We know the merits. The merits have been fully documented by GAO, NASA, and Congress. Now is the time for more than just lipservice to competition and a second source.

The amendment offered by Mr. TORRICELLI will guarantee a fair, full, and open competition on future procurements of the solid rocket motor. It will save the Government money and it will improve the quality control—and ultimately the safety—of NASA's solid rocket motor program. I strongly urge its adoption.

Mr. DIXON. Mr. Chairman, will the gentleman yield?

Mr. LOWERY of California. I yield to the gentleman from California.

Mr. DIXON. I thank the gentleman for yielding to me.

Mr. CHAIRMAN. I rise in support of the amendment offered by my colleague, Mr. ROBERT TORRICELLI, which defines the steps that NASA would be required to take concerning a second source for future booster rockets.

While NASA has announced its intention to establish a second source, this administration has shown great reluctance in establishing guidelines for a fair, second source competitive program. This amendment would require NASA to prepare and provide a comprehensive acquisition strategy and plan by March 31, 1987, for continued procurement of the motors and define steps NASA will have to take before moving forward with a second source contract.

Some have argued that NASA should wait until the shuttle is up and flying before considering other designs or a second source for solid rocket motors.

That date, however, is more than a year away—perhaps nearly 2 years away. To start a second source at that time would mean the first competitive motor delivered to NASA would be 5 years from the time the first shuttle flight resumes. I believe NASA should be committed to a full, fair and open competition, and provide a second source to upgrade the shuttle's solid rocket motors. Now is the time to begin the process for establishing and maintaining competition in future procurements.

Let's solve this problem now, and preserve the integrity of our space program. We all recognize that NASA faces the challenge of regaining an American presence in space, and we all want to ensure a safe and sound program. It will truly be a great day for our country and for all Americans when NASA's space program is once again operational. I urge you to support this amendment.

Mr. LUJAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would also like to congratulate the gentleman and tell him that on this side we certainly support it. We had recognized in committee that something should have been done about it, and we have something in the bill, as a matter of fact, which the gentleman intends to replace. It is not quite as strong as the gentleman's language. The bill says it is the sense of Congress that the administration should move towards a second source, and the gentleman has replaced that with "shall prepare and submit to the Congress by a particular date comprehensive acquisition strategy and plan for the continued procurement of space shuttle solid rocket motors." It makes it mandatory and by a date specific. I think that strengthens the legislation and, as I say, on this side we are happy to support the amendment.

Mr. BOUCHER. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New Jersey.

For the past 12 years, the possibility of a second source for the space shuttle's solid rocket booster has been discussed. Finally, in early January, NASA stated that it intended to go to a second source of supply for the motors. Mr. TORRICELLI's amendment would move that stated intention to concrete action by NASA.

This amendment requires NASA to complete a plan for competition and to issue a request for competitive bids for the boosters. It is my understanding that there are four major propulsion companies ready to give the Agency their best and final offers on solid rocket motors costs. Good business sense dictates that they be allowed to do so.

Other nations are moving ahead rapidly on new technologies and production techniques in solid rocket motors. Our Nation should not be left behind. The competition provided for in this amendment will enable us to rise to this challenge.

A recent GAO report on NASA's procurement of solid rocket booster motors eloquently expresses the need for this amendment. The report observed, "Competition is a national policy and for good reason: it can lead to increased technical performance, encourage improvements in quality, reduce acquisition costs and enhance the industrial base."

I urge your support of the Torricelli amendment.

Mr. MINETA. Mr. Chairman, I rise in support of the amendment of the gentleman from New Jersey and urge my colleagues to vote yes.

Mr. Chairman, I am a very strong believer in the principle of second sourcing. Second sourcing allows us a balanced and prudent approach to procurement policy. By introducing keen competition into the Government's purchasing process, we increase the odds that the products we get will be of the highest quality at the most reasonable prices.

Moreover, Mr. Chairman, I subscribe wholeheartedly to the intent of the amendment now before us. In effect, we would be placing NASA on a reasonable time line so that, as we proceed with a new design for solid rocket motors, NASA will be in a strong position to include other contractors in their procurement policy. NASA has already acted wisely in including experts—from the public and private sector—in the present redesign phase. We must build on that process by giving eligible companies every reasonable indication that they might also compete for a production contract.

Included in this amendment are safeguards to ensure that the second source effort is a responsible one. A comprehensive acquisition plan will have to be submitted to Congress prior to issuing an RFP and all such plans for proceeding with the actual bidding process must be in conformity with the Competition in Contracting Act.

Nothing in this amendment commits Congress to earmarking additional funds and nothing in this amendment forces the Adminis-

trator of NASA or the Congress to select a second source if such a policy proves unwise.

Therefore, Mr. Chairman, we have the opportunity today to proceed with a major procurement reform and to enhance the possibility that in that not-too-distant future we will have a safe and reliable and cost-effective solid rocket to enable us to fly shuttle missions once again.

Again, I urge a "yes" vote on the amendment of the gentleman from New Jersey.

Mr. CARPER. Mr. Chairman, I rise to support the amendment offered by the gentleman from New Jersey and to congratulate him for bringing it before the House.

On more than one occasion I have met with NASA Administrators on the second source issue.

Each time—and correctly so—the Administrator brings up the question of "qualifying" a second source. That is, the amount of money it takes to buy the tooling and to test the first few motors made by the new producer. Usually, the Government pays for these up front costs.

NASA has estimated the cost of startup to be as high as $200 million. I have some questions about that estimate since the contractors—according to a GAO report—stated the qualification program could be accomplished for as low as $52 million. I have been further informed by contractor representatives that the qualification program could be undertaken for $40 million—and that amount could be spread over 3 years.

The simple fact seems to be that NASA does not know what a qualification program would cost—and whether the cost would be a wise investment in the future of the space program.

NASA should find out and the House can speed that process along by adopting this amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New Jersey [Mr. TORRICELLI].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. TRAFICANT

Mr. TRAFICANT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TRAFICANT: At the end of title I (page 17, after line 2), add the following new section:

SEC. III. (a) The Administrator shall award to a domestic firm a contract that, under the use of competitive procedures, would be awarded to a foreign firm, if—

(1) the final product of the domestic firm will be completely assembled in the United States;

(2) when completely assembled, not less than 50 percent of the final product of the domestic firm will be domestically produced; and

(3) the difference between the bids submitted by the foreign and domestic firms is not more than 5 percent.

(b) This section shall not apply to the extent to which the Administrator determines that—

(1) such applicability will not be in the public interest; or

(2) compelling national security considerations require otherwise.

(c) For purposes of this section—

(1) the term "domestic firm" means a business entity that is incorporated in the United States and that conducts business operations in the United States; and

(2) the term "foreign firm" means a business entity not described in paragraph (1).

(d) This section shall apply only to contracts for which—

(1) amounts are made available by this Act; and

(2) solicitations for bids are issued after the date of the enactment of this Act.

Mr. TRAFICANT (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. TRAFICANT. Mr. Chairman, I rise to offer this amendment which is very similar to the amendment we passed to the Defense authorization bill which provides for a weighted advantage for American firms when bidding on contracts awarded by NASA as long as that particular item, its final assembly, is in the States with at least 50 percent domestic content.

Since the amendment was passed to the Defense authorization, contrary to what many concerns were in the House that it may in fact drive up costs, analysts and economists have called and have expressed the concern that is just the opposite reaction; that it will, in their opinion, drive down costs since many of the foreign bidders have known, basically, the threshold of the bidding limits of the American firms and come in at a slight, slightly lower level. They feel they can come in much lower and this would open up more competitive bidding within NASA.

In addition to that, the Wall Street Journal has come just recently with several reports that I think are of interest to this particular Congress. It casts doubt on recent indications that manufacturers, which have been battered by import competition, may be emerging from a slump. Just the contrary, it states. In this particular regard, I ask the committee, who has been favorably disposed in the past, to take strong consideration. I appreciate the opportunity and access afforded by Chairman FUQUA, and I lament the fact that he is leaving, and I think our committee will miss him very much.

I would also like to commend Congressman BILL NELSON, our first Congressman in space, and Mr. LUJAN, on the minority side.

Mr. Chairman, I will answer any questions that anyone may have on this. Bear in mind, that it must be made in America with at least 50 percent domestic content, and it would offer a weighted advantage.

Today's Wall Street Journal reports that orders for nondefense capital goods fell a sharp 2.8 percent last month. The report, issued by the U.S. Commerce Department, also indicated that orders for transportation equipment fell 8.4 percent last month, and machinery orders were down 3.7 percent after a 1.8-percent drop.

Most significant about these figures, notes the Wall Street Journal, is that "the report also cast doubt on recent indications that manufacturers, which have been battered by import competition, may be emerging from a prolonged slump."

In that article, a senior economist at Merril Lynch noted that, "we're still losing ground to imports and until trade improves there'll be no meaningful pickup in manufacturing."

The chairman of Chase Econometrics noted that, "the economy is not picking up significantly."

This article is a grim indication that America continues to lose manufacturing jobs to foreign imports. This amendment is a modest—but extremely important attempt to alter our procurement policies to provide some assistance to America's ailing manufacturing sector. This amendment will not close out foreign bidders—it will merely give American companies a fighting chance to be competitive when bidding on NASA contracts. It will ensure that if an American company comes in with a competitive bid that it will get the nod over a foreign bidder.

We are talking about an American firm whose product is assembled in America, with at least 50 percent of the product's parts made here in the United States.

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. TRAFICANT. I yield to the gentleman from Florida.

Mr. FUQUA. Mr. Chairman, we are prepared to accept the gentleman's amendment. We think it is constructive and we hope that it will work in the best interests of American procurement.

Mr. TRAFICANT. I thank the chairman.

Mr. LUJAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I simply rise to commend the gentleman. He has been a leader in this particular kind of language in the legislation in the past. I have been happy to support him in the past. I encourage him to continue. We certainly add our enthusiastic support from this side.

Mr. WALKER. Mr. Chairman, will the gentleman yield?

Mr. LUJAN. I yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman.

Mr. Chairman, I too, appreciate the gentleman from Ohio working with the subcommittee in developing language here that is acceptable and I think that this kind of buy America provision is certainly a useful addition to the bill.

I join with the gentleman in congratulating the gentleman from Ohio

for the language that he has brought to us.

Mr. NELSON of Florida. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just want to take the opportunity to thank the gentleman from Ohio. He has been a true friend. He has been an able assistant to our subcommittee in the drafting of this legislation. He is an ardent advocate of American supremacy in space. I appreciate his leadership and his assistance that he has offered to us.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Ohio [Mr. TRAFICANT].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SHAW

Mr. SHAW. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SHAW: Page 26, insert after line 24 the following:

TITLE V—DRUG TESTING

SEC. 501. CONTROLLED SUBSTANCE TESTING PROGRAM.

(a) IMPLEMENTATION.—The Administrator of the National Aeronautics and Space Administration shall implement a controlled substances testing program for employees of the Administration (including employees of entities under contract with the Administration) whose activities are authorized by this Act.

(b) RESULTS.—The results of any test administered under subsection (a) shall be reported—

(1) to the individual tested, and

(2) to the Administrator of the National Aeronautics and Space Administration.

Mr. SHAW (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. SHAW. Mr. Chairman, last week when we attached a controlled substance-testing amendment to the intelligence authorization bill, the distinguished gentleman from New York [Mr. MCHUGH] expressed reservations concerning the fact that we were requiring substance testing for employees of certain agencies while employees at other agencies would not face this requirement. This action was viewed as potentially unfair. I responded to Mr. MCHUGH's reservation by promising to offer the same amendment to any bill which authorized activities affecting our Nation's security. The amendment I am currently offering is a partial fulfillment of that promise.

I can think of few activities more important to our national security than our space program. I can think of none which require more attention to detail or alertness. We have only to recall the *Challenger* disaster to be reminded of the tragic consequences that can result from even the most minor misjudgment by employees of NASA.

This House set a landmark precedent when it voted to require that those entrusted with our Nation's secrets be drug free. This was not an expression of distrust of the dedicated men and women who make up our intelligence community. It was instead a recognition of the need to protect these people, and the Nation as a whole, from those individuals whose irresponsible use of narcotics presents a threat to those around them. The brave men and women who risk their lives in the exploration and utilization of space expect no less protection. The American people demand that we provide it for them.

I urge a "yes" vote on my amendment.

□ 1655

Mr. LUJAN. Mr. Chairman, will the gentleman yield.

Mr. SHAW. I yield to the gentleman from New Mexico.

Mr. LUJAN. Mr. Chairman, I want to commend the gentleman for his amendment. Certainly we have to lead the way in this area.

Drug abuse is a serious problem in this country and certainly we ought to look at people, particularly in sensitive areas, being subject to a test at some time. There is no better deterrent than that someone might ask someone who is inclined toward using drugs to submit to a program.

We are not saying that every employee must take the test; we are saying that the administrator has the discretion to set up a program and include whatever employees he feels should be in there.

We are not picking particularly on this department. I think it is just a good idea and I would encourage my friend, the gentleman from Florida [Mr. SHAW], to add it to other bills as the time comes to consider those other bills.

From my own personal standpoint, I would say to the gentleman that he should keep it up and I add my enthusiastic support to his amendment.

Mr. SHAW. Mr. Chairman, I thank the gentleman for his comments.

I would like to add that this does not leave it, however, to the discretion of the administrator to set up a program, but it does give him wide discretion as to who is to be included in the program. What the gentleman has said is correct with just that one small correction.

Mr. FUQUA. Mr. Chairman, will the gentleman yield?

Mr. SHAW. I yield to the gentleman from Florida.

Mr. FUQUA. Mr. Chairman, I want to commend the gentleman for his amendment, and particularly for his clarification that the administrator has certain discretion in which employees, and it does not apply to every employee, but those that the administrator determines in critical areas that this type of test should be administered.

That is my understanding.

Mr. SHAW. Mr. Chairman, the gentleman is absolutely correct.

Mr. FUQUA. We are very pleased to accept the amendment and commend the gentleman for his very forthright amendment.

Mr. SHAW. Mr. Chairman, I thank the gentleman for his comments, and with the few seconds that are left, I would like to express my appreciation to the gentleman and the wonderful work that he has done in his many years in Congress in seeing so much history and bringing us into the space program. We in Florida are tremendously proud of the record that you have set and the dignity that you have added to this body during your years.

I can assure you, even though I am reasonably confident that you will return to visit on many occasions, the gentleman's regular presence here in this body will be greatly missed.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore [Mr. WEISS]. The question is on the amendment offered by the gentleman from Florida [Mr. SHAW].

The amendment was agreed to.

Mr. WEISS. Mr. Chairman, as a strong supporter of a peaceful civilian space program, I regret to say that I am unable to support this bill to reauthorize NASA for fiscal year 1987.

When NASA was created by Congress almost three decades ago, Congress declared "that it is the policy of the United States that activities in space should be devoted to peaceful purposes for the benefit of all mankind."

For NASA's first decade and a half, this indeed appeared to be NASA's mission, and our Nation took great pride in the Apollo missions to the Moon, the planetary exploration program, and the Apollo-Soyuz mission.

But recently we have seen our Nation's civilian space plan replaced, piece by piece, by a program controlled largely by military and commercial goals. The grand expeditions to other planets, which captured the imagination of a strife-riddled world and gave us all a brief sense of hope, have given way to the star wars plan to extend our earthly weaponry to outer space. Space is no longer the "final frontier": soon, however, it may become the final battleground.

The bill before us could reverse this trend and take steps to once again set our Nation's space program on a peaceful course; instead, it only hastens the end of our civilian space effort by specifying that the top launch priority for space shuttle shall be "national security" launches, thus ratifying NASA's new role as an arm of the Pentagon.

The bill has other serious flaws as well. The replacement shuttle is authorized before we even know how to redesign the booster rock-

ets, and how much it will cost. The bill also subsidizes the efforts of private companies to build a competitor to the shuttle, by stipulating that shuttle launches shall not cost less than $74 million per launch, and shall in no case be less than the price for a comparable launch using a domestic rocket. In other words, the bill requires NASA to boost its own competition by keeping its launch rates unaffordable. At a time of scarce Federal resources and dwindling support for human needs programs, I cannot justify these expenditures.

In opposing this bill, I am protesting not our civilian space program, but rather, its dissolution. I support NASA's existence as an independent agency, but I am resolutely opposed to NASA's domination by the Pentagon. I can only hope that in future years this body will produce, with or without the cooperation of the administration, a national space program that once again adheres to NASA's founding charter—a space program "devoted to peaceful purposes for the benefit of all mankind."

Mr. HALL of Texas. Mr. Chairman, I rise in support of H.R. 5495, the fiscal year 1987 NASA authorization bill.

The loss of the space shuttle *Challenger,* and the termination of the shuttle-centaur have together had a major impact on the Space Science and Applications Program. What had been anticipated as a banner year for space science had instead become a year of disappointment and reassessment for the space science community.

In light of this situation, it is imperative that we maintain the health of the space science research community during the hiatus. This bill provides the support needed to keep our space science program vital during that period, and anticipate the future. It will permit NASA to take maximum advantage of already operating space craft. The bill will support enhanced data analysis and suborbital programs; development of instruments in anticipation of future flight opportunities; and the development of small payloads that can provide important scientific return to investigators. These efforts will help to keep critical flight teams together, maintain vigor in various space science disciplines, and provide the basis for a return to the outstanding record of achievement that is the hallmark of NASA's space science program.

Mr. ANDERSON. Mr. Chairman, today I rise to pay due tribute to the Honorable DON FUQUA.

DON certainly needs no introduction to those familiar with this body. He has worked long and hard toward the public service. As a Korea veteran and a product of 10 years in the Florida House of Representatives, DON proved himself a diligent worker and an asset to the Tallahassee area. He came to the U.S. House of Representatives in 1962 and since then has been active in looking after the interests of his constituents and those of the American people as a whole. His strong support from his constituents is testimony to his popularity, and his effectiveness as a Member of the House is self-evident. As the chairman of the Committee on Science and Technology and of its Subcommittee on Energy Development and Applications, DON has been diligent and conscientious in executing his duties.

While I suppose that there are some who may be at a variance with DON's political views, none can dispute his record as an excellent legislator and a fine man. His integrity, devotion, and wisdom serve as an inspiration to his colleagues. We will certainly miss him, and wish him the best on whatever endeavors he chooses to pursue in the future.

Mr. UDALL. Mr. Chairman, a friend and colleague, DON FUQUA of Florida, is retiring from this House and I'm going to miss him.

DON leaves a distinguished record of public service. He is an admirable legislator who has been a joy to work with. I know him as a fair, accessible and able legislator who was frequently able to find that illusive consensus.

DON has done a first-rate job as chairman of the Science and Technology Committee. He has served his country, his State and his congressional district with dedication.

I wish DON and his family well as they move on to a new phase of their lives. May they find the best of what they seek in the years ahead.

The CHAIRMAN pro tempore. Are there further amendments? If not, under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. DE LA GARZA] having assumed the chair, Mr. WEISS, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 5495) to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes, pursuant to House Resolution 553, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. LUJAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 407, nays 8, not voting 17, as follows:

[Roll No. 414]

YEAS—407

Abercrombie	Akaka	Anderson	Annunzio	Eckart (OH)	Lehman (CA)
Ackerman	Alexander	Andrews	Anthony	Eckert (NY)	Lehman (FL)
			Applegate	Edgar	Leland
			Archer	Edwards (CA)	Lent
			Armey	Edwards (OK)	Levin (MI)
			Aspin	Emerson	Levine (CA)
			Atkins	English	Lewis (CA)
			AuCoin	Erdreich	Lewis (FL)
			Badham	Evans (IA)	Lightfoot
			Barnard	Evans (IL)	Lipinski
			Barnes	Fascell	Livingston
			Bartlett	Fawell	Lloyd
			Barton	Fazio	Loeffler
			Bateman	Feighan	Long
			Bates	Fiedler	Lott
			Bedell	Fields	Lowery (CA)
			Bennett	Fish	Lowry (WA)
			Bentley	Flippo	Lujan
			Bereuter	Florio	Luken
			Berman	Foglietta	Lundine
			Bevill	Foley	Lungren
			Bilirakis	Ford (MI)	Mack
			Bliley	Ford (TN)	MacKay
			Boehlert	Fowler	Madigan
			Boggs	Frank	Manton
			Boland	Franklin	Markey
			Boner (TN)	Frenzel	Marlenee
			Bonior (MI)	Frost	Martin (IL)
			Bonker	Fuqua	Martin (NY)
			Borski	Gallo	Martinez
			Bosco	Garcia	Matsui
			Boucher	Gejdenson	Mavroules
			Boulter	Gekas	Mazzoli
			Boxer	Gibbons	McCain
			Brooks	Gilman	McCandless
			Broomfield	Gingrich	McCloskey
			Brown (CA)	Glickman	McCollum
			Brown (CO)	Gonzalez	McCurdy
			Bruce	Goodling	McEwen
			Bryant	Gordon	McGrath
			Burton (IN)	Gradison	McHugh
			Bustamante	Gray (IL)	McKernan
			Byron	Gray (PA)	McKinney
			Callahan	Green	McMillan
			Carney	Gregg	Meyers
			Carper	Guarini	Mica
			Carr	Gunderson	Michel
			Chandler	Hall, Ralph	Mikulski
			Chapman	Hamilton	Miller (CA)
			Chappell	Hammerschmidt	Miller (OH)
			Chappie	Hansen	Miller (WA)
			Cheney	Hartnett	Mineta
			Clay	Hatcher	Mitchell
			Clinger	Hawkins	Moakley
			Coats	Hayes	Molinari
			Cobey	Hefner	Mollohan
			Coble	Hendon	Monson
			Coelho	Hertel	Montgomery
			Coleman (MO)	Hiler	Moody
			Coleman (TX)	Hillis	Moorhead
			Collins	Holt	Morrison (CT)
			Combest	Hopkins	Morrison (WA)
			Conte	Horton	Mrazek
			Cooper	Howard	Murphy
			Coughlin	Hoyer	Murtha
			Courter	Hubbard	Myers
			Coyne	Huckaby	Natcher
			Craig	Hughes	Neal
			Crockett	Hunter	Nelson
			Daniel	Hutto	Nichols
			Dannemeyer	Hyde	Nielson
			Darden	Ireland	Nowak
			Daschle	Jeffords	Oakar
			Daub	Jenkins	Oberstar
			Davis	Johnson	Obey
			de la Garza	Jones (NC)	Olin
			DeLay	Jones (OK)	Ortiz
			Derrick	Jones (TN)	Owens
			DeWine	Kanjorski	Oxley
			Dickinson	Kaptur	Packard
			Dicks	Kasich	Panetta
			Dingell	Kastenmeier	Parris
			DioGuardi	Kemp	Pashayan
			Dixon	Kennelly	Pease
			Donnelly	Kildee	Penny
			Dorgan (ND)	Kindness	Perkins
			Dornan (CA)	Kleczka	Petri
			Dowdy	Kolbe	Pickle
			Downey	Kolter	Porter
			Dreier	Kostmayer	Price
			Duncan	Kramer	Pursell
			Durbin	Lagomarsino	Quillen
			Dwyer	Lantos	Rahall
			Dymally	Latta	Rangel
			Dyson	Leach (IA)	Ray
			Early	Leath (TX)	Regula

Reid	Skeen	Torricelli
Richardson	Skelton	Towns
Ridge	Slattery	Traficant
Ritter	Slaughter	Traxler
Roberts	Smith (IA)	Udall
Robinson	Smith (NE)	Valentine
Rodino	Smith (NJ)	Vander Jagt
Roe	Smith, Denny (OR)	Vento
Roemer	Smith, Robert (NH)	Visclosky
Rogers	Smith, Robert (OR)	Volkmer
Rose	Snowe	Vucanovich
Rostenkowski	Snyder	Waldon
Roth	Solarz	Walgren
Roukema	Solomon	Walker
Rowland (CT)	Spence	Watkins
Rowland (GA)	Spratt	Waxman
Roybal	St Germain	Weber
Rudd	Staggers	Wheat
Russo	Stallings	Whitehurst
Sabo	Stangeland	Whitley
Savage	Stenholm	Whittaker
Saxton	Strang	Whitten
Schaefer	Stratton	Williams
Scheuer	Studds	Wilson
Schneider	Stump	Wirth
Schroeder	Sundquist	Wise
Schuette	Sweeney	Wolf
Schulze	Swift	Wolpe
Schumer	Swindall	Wortley
Seiberling	Synar	Wright
Sensenbrenner	Tallon	Wyden
Sharp	Tauke	Wylie
Shaw	Tauzin	Yates
Shelby	Taylor	Yatron
Shumway	Thomas (GA)	Young (AK)
Shuster	Torres	Young (FL)
Sikorski		Young (MO)
Siljander		Zschau
Sisisky		

NAYS—8

Beilenson	Henry	Weaver
Conyers	Jacobs	Weiss
Dellums	Stark	

NOT VOTING—17

Biaggi	Gephardt	Pepper
Breaux	Grotberg	Rinaldo
Burton (CA)	Hall (OH)	Smith (FL)
Campbell	LaFalce	Stokes
Crane	McDade	Thomas (CA)
Gaydos	Moore	

□ 1720

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 5495, the bill just passed.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Florida?

There was no objection.

PERSONAL EXPLANATION

Mr. SMITH of Florida. Mr. Speaker, on rollcall No. 414 on the bill, H.R. 5495, I was unavoidably detained. Had I been present, I would have voted in the affirmative.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO HAVE UNTIL 6 P.M. SATURDAY, SEPTEMBER 27, 1986, TO FILE REPORTS ON SUNDRY BILLS

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may have until 6 p.m. on September 27, 1986, to file the reports on the following bills:

H.R. 4059, Red River Valley charter;

H.R. 5362, Supreme Court Police;

H.R. 5541, debt collection;

H.R. 5363, Declaration of Taking Act;

H.R. 5390, Arkansas-Mississippi Great River Bridge Compact;

H.R. 5560, Child Sexual Abuse and Pornography Act;

H.R. 3737, marriage fraud;

H.R. 5558, administrative naturalization bill;

H.R. 4444, consular efficiency bill;

H.R. 5559, INS efficiency bill; and

H.R. 4823, INS efficiency bill.

Mr. Speaker, these have all been cleared with the minority.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

Mr. DAUB. Mr. Speaker, reserving the right to object, it does not appear that I would have to object, but so that the Members can understand, I gather that a substantial amount of very good work has been done by the Committee on the Judiciary on this set of some 11 bills that have been reported to conclude the schedule of the House for this legislative session and perhaps the work of the Judiciary Committee, short of the immigration bill.

Mr. Speaker, would I be advised correctly that the minority—I ask my good friend from Kansas [Mr. GLICKMAN]—has agreed to each and every one of these requests?

Mr. GLICKMAN. The gentleman is correct.

Mr. DAUB. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 738, CONTINUING APPROPRIATIONS, 1987

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 560 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 560

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, and the first reading of the joint resolution shall be dispensed with. All points of order against the consideration of the joint resolution are hereby waived. After general debate, which shall be confined to the joint resolution and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations, the joint resolution shall be considered as having been read for amendment under the five-minute rule. No amendment to the joint resolution shall be in order except the amendment contained in the report of the Committee on Rules on this resolution, and if offered by the Member indicated, in said report, said amendment shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, said amendment shall be debatable for not to exceed the time indicated in the report of the Committee on Rules on this resolution, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and all points of order against said amendment are hereby waived. At the conclusion of the consideration of the joint resolution for amendment, the Committee shall rise and report the joint resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the joint resolution to final passage without intervening motion except one motion to recommit.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 560 provides for the consideration of House Joint Resolution 738, a joint resolution making continuing appropriations for fiscal year 1987. The rule provides 2 hours of general debate, equally divided and controlled by the chairman and ranking minority member of the Committee on Appropriations. All joints of order against the joint resolution and against its consideration are waived by the rule.

Mr. Speaker, the rule makes in order only one amendment, which is printed in the committee report to accompany this rule. The amendment, to be offered by the gentleman from Texas [Mr. DE LA GARZA], the distinguished chairman of the Committee on Agriculture, is debatable for 30 minutes, to be equally divided and controlled by Mr. DE LA GARZA and a Member opposed thereto. The amendment is not subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole. Finally, all points of order against the amendment are waived by this rule.

The Rules Committee heard from numerous Members who sought to

have amendments made in order to this continuing resolution. The Rules Committee did not make in order any of these amendments, however, with the exception of the de la Garza amendment I have just noted. The de la Garza amendment strikes section 108, which contains amendments to provisions of the 1985 farm bill. The committee of jurisdiction over these programs, the Agriculture Committee, raised concerns that these amendments could have unintended consequences on farm programs, and may have been improperly drafted. Therefore, a simple motion to strike has been made in order.

Mr. Speaker, with the target adjournment date 1 week and 1 day away, it is imperative that we proceed to conference on this joint resolution as soon as possible. Most of the other amendments which were requested to be made in order addressed rather narrow policy areas, most were controversial, and consideration of these issues on the House floor would have taken a considerable amount of time. Therefore, none of the additional amendments were made in order.

Mr. Speaker, with two exceptions, the joint resolution made in order by this rule, House Joint Resolution 738, is identical to the continuing appropriations bill for fiscal year 1978 introduced earlier by the Appropriations Committee, House Joint Resolution 730.

Yesterday, the chairman of the Committee on Appropriations introduced House Joint Resolution 738. This joint resolution deletes appropriations which were contained in the original continuing resolution for the General Revenue Sharing Program. The only other change made in this new continuing resolution, Mr. Speaker, is a change in the percentage across-the-board cut contained in the bill. Originally, a cut of over 1 percent was required to offset appropriations for the General Revenue Sharing Program and drug bill provisions contained in the first resolution. With general revenue sharing being removed from the resolution, therefore, a much smaller across-the-board cut is now necessary—approximately 0.34 percent.

With the exception of these changes, Mr. Speaker, the bill is identical to the bill which has been pending before the House for several days. The chairman of the Committee on Appropriations chose to remove revenue sharing from this continuing appropriations bill in order to reduce the overall level of appropriations in the bill by some $3.4 billion, and to ensure that the continuing resolution conforms to the budget resolution we adopted earlier this year. Mr. Speaker, I would like to take this opportunity to congratulate the chairman of the Appropriations Committee for this action.

Beyond the changes I've noted, Mr. Speaker, this resolution makes continuing appropriations for the next fiscal year. Eleven of the thirteen regular appropriations bills are carried in this continuing resolution at the levels at which they were passed by the House. The remaining two regular appropriations bills which have not received floor action—defense and foreign operations—are included in this continuing resolution at the levels at which they were reported from the Committee on Appropriations. And among the other important appropriations which are carried in this resolution, which will be detailed during general debate, I would note that the resolution does include appropriations to cover expenditures associated with the omnibus drug bill which we recently adopted.

Mr. Speaker, it is imperative that we get the continuing resolution through the House and to conference. This is one of the three pieces of the budget puzzle we must resolve before this Congress adjourns. The other two, reconciliation and the debt limit, are also working through the legislative process. With as few as 6 working days left, we simply must move this legislation forward.

Mr. Speaker, this rule will expedite action on this important measure. I urge adoption of the rule.

□ 1730

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this rule makes in order the consideration of House Joint Resolution 738 which claims in its title to be for the purpose of "making continuing appropriations for the fiscal year 1987." But, let's not kid ourselves: This is clearly a case of false labeling. This is not your usual, short-term, stopgap CR to tide us over until the regular appropriations bills have been enacted. No way. What this really amounts to is a full year, catchall, spending and authorization measure.

ADDITIONAL PROVISIONS IN THE CONTINUING RESOLUTION

In addition to enacting the regular 13 appropriations bills, the CR enacts the following unauthorized programs, and funds them at 1986 levels:

National Health Service Corps;

Alcohol and Drug Abuse Research Programs;

Family Planning Program;

Adolescent Family Life Program;

Refugee and entrant assistance activities;

Head Start Act Programs;

Dependent Care Activities;

Native American Program Act;

Community Services Block Grant Program Act;

Follow Through Act;

Rehabilitation Act;

Higher Education Act;

Mutual Education and Cultural Exchange Act;

General Education Provisions Act;

U.S. Institute of Peace;

Domestic Volunteer Service Act;

Low Income Home Energy Assistance Program; and

Construction industry labor law amendments.

If we believed in "Truth in Labeling" around here, this would more accurately be entitled the "Bloated, Omnibus Money Bill," or BOMB, for short. And that's just what this is going to do at the White House if we don't defuse this thing here and now.

Mr. Speaker, we have a way around here of devising these little self-destruct mechanisms that we load up with all manner of explosive goodies. And then we always seem surprised when they blow up in our faces. The last time we tried an omnibus appropriations bill was back in 1950, and it bombed then too. We had the good sense after that ill-fated experience to ban the BOMB. We should do the same today by defeating this bill and forcing the Appropriations Committee to come back with a lean and clean CR.

Oh, I know there will be those who will argue that we should be thankful for small favors. We should be thankful that the Rules Committee did not make in order 19 of the additional 20 amendments it had been petitioned to permit under the rule. Well, let me just say, "Thanks, but no thanks." It's good stuff, but it's not enough.

If we were really serious about trimming this bill down to size and excising all the extraneous baggage, we would have made in order at the least motions to strike the 60-odd amendments the Appropriations Committee stuck on this bill. But my behind the scenes efforts to promote such prudent cuts were rebuffed out-of-hand.

Mr. Speaker, Let's take a look at what we are being asked to swallow here in one big gulp. This is the biggest spending bill in the history of the Republic—about $564 billion in spending all rolled into a single bill with no opportunity to amend or debate the pieces. Oh, I know the House has already passed 11 of the 13 money bills covered in this omnibus bill. But, consider if you will the fact that the two bills we have not considered, defense and foreign assistance, account for $312 billion of the $564 billion total or 55.3 percent. And yet, under this procedure we will be considering those two bills on the floor for the first time, with no chance to amend them. Is that any way to set our priorities for defense and foreign aid? Is this any way to legislate? I think not.

You know, we're supposed to be the first branch of government with special powers of the purse. But the only

powers of the purse we are demonstrating in this omnibus exercise is the power to hang ourselves with our own purse strings. When, oh when, are we going to take those constitutional responsibilities seriously and begin exercising them like the coequal branch we are supposed to be?

Mr. Speaker, I don't want to dwell at length on how we arrived at this sorry state we're in. It's been a long time coming, but the Peter Principle has finally caught us: We have risen to our level of incompetence. And I don't say that with any disrespect for any of our individual Members or our leadership or committees. This is an institutional thing in which the whole mess is greater than the sum of the parts. And we all have our favorite scapegoats in assigning blame for it, whether it's the other body, the budget process, politics, the sprawling subcommittee system, or our leaders.

Certainly all of these things and others contribute to our seeming deadlock and disarray. But I think what it all boils down to is the simple fact that we attempt to do 12 months of work every year in just 2 months—the months of July and September. The fact is that we're late starters and sloppy finishers. And in between we just sort of muddle along waiting for the grand, chaotic finale.

Everybody around here hates continuing resolutions, and I'm sure this new breed of bloated omnibus money bills is going to charm you even more. And yet that's where we continue to put all our eggs year after year. And it's getting worse. It's getting to the point where we are cramming all the important work of a session into three or four omnibus bills, whether it's an omnibus tax, trade, reconciliation, drug, or appropriations bills. And the more omnibus the bills, the more ominous the portents for democracy: Omnibus bills get less and less scrutiny, deliberation, and involvement from Members.

Mr. Speaker, it's not too soon to think about reversing this dangerous trend before it does us all in. It's not too soon to start thinking about how we would like to see the 100th Congress run differently beginning next year. I would urge that our leaders and Members begin talking together now about putting House scheduling back on a sensible track, restoring our decaying authorization system, reforming our budget and appropriations processes, and making our committee and subcommittee system more streamlined, manageable and productive.

For starters I would suggest that we start thinking about hitting the ground running next year and start reporting authorizations early in the year. To do this, I propose we move to 5-day workweeks, with a district work period every fourth or fifth week. To assure early actions, I propose that the bipartisan leadership, in consultation with committee chairman and ranking minority members, chart when certain bills should be ready for floor consideration in a particular month.

I would suggest we take a serious look at moving to biennial authorizations and appropriations, taking up just half our appropriations bills each session. I would propose we think seriously about pruning subcommittees and staff so we can see the forest once again. And I would further suggest that we make our committees and subcommittees more representative of the House as a whole so that the bills they report will need less reworking on the floor. This means full-time committees with equitable party ratios, majority quorums and no proxy voting.

Yes, maybe it's unrealistic to hope that the House could operate in a more sensible and responsible manner. But I sense enough Members are fed up on both sides of the aisle with the way things are done now to at least begin considering the alternatives. I urge that we get started on this bipartisan, bicentennial House restoration effort today.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I will be glad to yield to the gentleman from my State of Mississippi.

□ 1740

Mr. WHITTEN. Mr. Speaker, may I say that my friend, and I know he is sincere, needs to talk to the folks on the other side of the Capitol. We have sent all these things over there.

In the supplemental 2 years ago, they had 340 amendments. Two years ago, they had 224 amendments. The last continuing resolution, we had 135 amendments.

The reason we have a continuing resolution here is that we sent the bills over there and they have not sent them back.

So with the gentleman standing over there, I wish he would talk to them a little bit. If so, perhaps we would not have this.

Mr. LOTT. Well, I think the gentleman knows that my standing over there is——

Mr. WHITTEN. If we can not get them to go along we cannot correct it.

Mr. LOTT. My standing over there is about like the gentleman's standing over there, and I am not going to defend them. Except to this point, this extent:

First, defending our own institution. I realize it is hard for the Appropriations Committee to do its job, because you have to wait on the Budget Committee, you have to wait on the authorization committees, and that makes it almost impossible for you to do your job.

One of the specific requests I would like for us to consider——

Mr. WHITTEN. Mr. Speaker, will the gentleman yield further? I do not want to worry the gentleman; I know his is as sincere as we all are; but if we were to follow what you say and, it is so easy to speak in generalities; in this bill you would strike out such programs as the National Health Service Corps, the Alcohol and Drug Abuse Research Program——

Mr. LOTT. Absolutely, because those are not relevant to an appropriations bill. Those are unauthorized programs that should not be attached to a continuing resolution to keep the Government operating. You are right.

Now, some of them I like, but not in this bill. There is a process to do these things.

Mr. WHITTEN. Well, I do not mind the gentleman, because I make such speeches, too; but let us look at the cause and the only way you can correct any bad situation is correct the cause: The cause is on the other side of the Capitol.

Mr. LOTT. Mr. Speaker, I want to address that, too. I hear that year after year. Where the House says, "Why, we passed those bills and sent them over there. Why don't they act?"

When the House does not pass appropriations bills until July or August or September, how can we immediately, then, on September 1 say, "Well, they haven't done their job"?

They honor the tradition of not acting until we act. Plus, they are also bound by more stringent rules than we are, under the Gramm-Rudman-Hollings law. I do not defend the fact that they have not moved some of them.

Mr. WHITTEN. Actually, I think they have one rule and do not know how to live with that.

Mr. LOTT. Well, Mr. Speaker, let me make this one final proposal, and yield to some other folks who want to be heard on this.

I would urge us, in a bipartisan way, to encourage our authorizations committees to move earlier next year. Get the process going. There is no reason why authorizations committees should not act in March or April, and also, I think it is high time we look at the possibility of working 5 days a week and have 4 weeks or so that we are in session and a week that we are not, for our district work periods.

Let us look at something revolutionary when we have new leadership elected on the other side of the aisle, let us work together and try to find a way to get started earlier, make sure we keep the Members here for a full work week, and that we also have time to look after our districts.

Mr. Speaker, this is a very bad way to do business, and I would urge my colleagues to vote against the continuing resolution, but let us not stop the

process; let us move it on along one way or the other, unless we can kill it.

Mr. Speaker, I yield 3 minutes to the gentleman from New York [Mr. KEMP].

Mr. KEMP. Mr. Speaker, I totally agree with the statement of the gentleman from Mississippi [Mr. LOTT]. I want to associate myself with his remarks. I am on the Appropriations Committee, I have fond regard and high respect for my chairman, as all of the Members do, as well as our ranking Republican, the gentleman from Massachusetts [Mr. CONTE].

But I think that a rule that allows just one amendment is outrageous. There are so many legislative items that need to be either subtracted or added, and many programs whose funding levels need to be adjusted. Very frankly I know the problem that the Rules Committee had, but closing off free and open debate is no answer. I wanted to amend this bill in several areas—the title X program, the U.N. environment program, and the Public Housing Program—but the Rules Committee did not allow this. And I am sure that many other Members had amendments that they wished to offer as well. But again, the Rules Committee saw fit to allow only one amendment. So I am going to have to vote against the rule. I did not want to but I am going to.

The bill terribly distorts the priorities of our country. Spending on domestic programs is simply too high, while terribly serious cuts are made in those programs of essential nature to the defense of this country and to the security of our hemisphere, and in programs that affect the relationship that we have with other countries who depend upon us for the defense of Western ideas.

So, Mr. Speaker, I think this bill represents a serious distortion of our national priorities. The rule is a mistake, and I would urge my colleages to vote not only against the continuing resolution but against the rule as well.

Mr. Speaker, for the record, I would like to express my strong objections to the priorities and policy misguidance particularly reflected in the defense and foreign assistance chapters of this bill.

DEFENSE APPROPRIATIONS

At a time when the Soviet Union is arrogantly holding an American journalist hostage, occupying Afghanistan, and destabilizing Central America and Africa, we are voting on a defense bill that would have us deal with the Soviet Union from a position of equivocation, weakness, and passivity.

If this bill becomes law, U.S. defense spending will decline by 6 percent for the second year in a row, moving us close to reversing the modest progress we made in the early 1980's in restoring our strength. This comes at a time when we are facing increasing Soviet intervention throughout the world, and a steady Soviet military buildup now showing the fruits of 25 years of sustained effort. I can think of no policy more shortsighted than this.

Additionally, by an unprecedented vote, the Appropriations Committee adopted en bloc a series of highly controversial and unwise defense amendments derived verbatim from the House DOD authorization bill. As a result, this continuing resolution essentially would legislate the Soviets' arms control agenda:

The defense section of this bill mandates unilateral compliance with SALT II. We never ratified SALT II, because it is unequal and unverifiable. The Soviets have been violating it for years. But the sponsors of this bill want us to overlook all that, and comply with SALT II unilaterally. That's like saying, we know that the Soviets have framed Daniloff, but we're going to ignore all that, and pretend as though he has been treated justly with due process of law.

This bill imposes a 1-year nuclear test ban moratorium—something Gorbachev has been lobbying for. The Soviets aren't testing just now because they're too busy fielding all the new weapons they've built. The American people awakened to the danger of the Soviet buildup and began to insist on adequate defense spending, and just as we're ready to test the new United States weapons nearing production—the sponsors of this bill want to prohibit testing.

This bill imposes a continued ban on antisatellite tests. The Soviets don't need to test—they already have the world's only operational Asat system. In any case, we wouldn't know whether or not they were testing new systems because there's no way to verify compliance with an Asat test ban.

The No. 1 Soviet goal at Geneva has been to kill SDI. The sponsors of this bill are doing great damage to the SDI Program. The House bill freezes SDI spending at last year's level. That's the equivalent of killing the program. Why? It's a little like erecting a building. So far, we've asked architects to propose building plans and draw up some blueprints. Now the time has come to begin breaking ground. We expected from the beginning to be spending more at this stage—and the sponsors of this bill know that if we don't pay for SDI, all we'll have are the drawings, we'll never get anything built. And America and our allies will never be defended.

FOREIGN ASSISTANCE APPROPRIATION

A prejudice against meeting our national security requirements is likewise reflected in the foreign assistance section of this continuing resolution.

Instead of emphasizing security assistance as our top priority and providing the funds necessary to meet our responsibilities to the base rights countries and Central America, the committee bill in effect treats the multilateral banks and Exim as more important. Such misplaced priorities would have disastrous consequences for U.S. foreign policy and our national security interests:

CENTRAL AMERICA

For the beleaguered democracies of Central America, ESF will be cut $160 million below the fiscal year 1986 level. In effect, this takes back more than half the amount the House just enacted for economic assistance for the region. This cut represents the entire ESF budget for Costa Rica and Guatemala. And this cut occurs at a time when direct Soviet weapons shipments have been resumed to Nicaragua, and as Sandinista repression of human rights in that country grows worse day by day. If we follow the committee mark, the imperative of the Jackson plan will be perilously ignored and democracy will be weakened in El Salvador.

BASE RIGHTS COUNTRIES

The United States has military bases abroad to protect our security. The security of those bases, in turn, is dependent upon the security and stability of the host nations, each of which is a formal ally of the United States.

Under the committee bill, military assistance to all base rights countries—the Philippines, Portugal, Spain, Greece, and Turkey—will be cut nearly in half. Their security assistance overall will be cut $830 million from last year's levels. These cuts are the equivalent of totally—and I mean totally—zeroing out all funding for the Philippines, Spain, and Portugal. What does this say about United States friendship and commitments to the people of the Philippines, ringingly reaffirmed in the wake of President Aquino's joint address before this Congress? How will such cuts be interpreted by the voters in Spain that just ratified their membership in NATO, or the Government of Portugal whose support was critical in times of crisis for Israel, or America's other vital allies?

AFRICA

At a time when famine and depression stalk the continent, and the nations of Africa, as evidenced in the U.N. special session, have made a commitment to policy reform, economic support funds for Africa will be cut nearly $100 million. This would virtually wipe out the bilateral economic reform program, which was designed to assist countries to undertake the necessary economic reforms to help them resume long-term economic development.

This is exactly the wrong time to be retreating from the world. The growth in Soviet military power, Soviet military aid to aggressive client states, and support for subversive and terrorist

forces throughout the world mandates more, not less, support and help from the United States. If we are to stand a chance of preserving peace and stability.

The most charitable thing that can be said about the foreign policy priorities reflected in this bill is that they are naive. A 40-percent cut in our critical security assistance programs is unconscionable.

I for one, do not believe that the United States, as leader of the free world, can afford to turn our back on those nations dependent on us for their very survival. And I believe that a majority of the Members of the House of Representatives would agree.

Unfortunately, this bill comes before the House for the first time as part of the continuing resolution. Unlike other bills funded through the continuing resolution, the chapter on foreign assistance has never been considered separately by the House of Representatives. The Members have never had a chance to review or amend the committee recommendations. Despite my efforts to seek a rule that would permit amendments, the governing rule is closed.

For the second year in a row, we are enacting foreign aid legislation that the House has never been allowed to challence or review. I regret that the House leadership has seen fit to deny Members their legislative rights. Our Nation's foreign policy is vastly too important to be conducted by procedural fiat.

CONCLUSION

Mr. Speaker, the President has said that he will veto this bill if it is not substantially modified before it reaches his desk. I will strongly support his veto. We can ill afford to play fast and loose with our national security requirements—as this bill would do—at a time when the Soviet Union is growing daily more powerful and more aggressive. And there is nothing to be gained through the policy of appeasement that emerges from the so-called arms control sections of this bill. I would hope that the President would exercise his veto unless these harmful provisions—which I have discussed above—are dropped, and defense funding brought up to the budget resolution approved level.

And I would hope that in the course of the conference we can work together to bring some balance to the foreign aid chapter of this continuing resolution. That will mean increasing security assistance—particularly for the base rights countries and Central America—trimming back Exim and the MDBS and the addbacks added in subcommittee. Only in this way can we have a balanced bill, that will make some contribution toward meeting our national security needs. Only in that way will we produce a bill that we could ask the President to support.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Massachusetts [Mr. MOAKLEY].

Mr. MOAKLEY. Mr. Speaker, although I rise in support of the rule for the continuing resolution for fiscal year 1987 I do so with some regret because of the absence of funding for the General Revenue Sharing Program. This program as you know, Mr. Speaker, provides much needed financial assistance to local governments. Certainly revenue sharing is one of the most beneficial of all Federal programs to these municipalities, who are able to utilize these funds, in the programs and services that each particular community deems most helpful and most necessary to its citizens. Distribution of these moneys is not regulated by the Federal Government, but rather by those directly involved in the running of the community and its activities.

I certainly understand the difficulty that the Appropriations Committee faced in this matter. In order to provide the $3.4 billion requested for revenue sharing and still remain within the budget levels mandated by the budget and the Gramm-Rudman law, it would have been necessary to implement deep cuts in a number of critical domestic programs, including Head Start and other education, rehabilitation, and Public Health Programs. Without these cuts, it was determined that the sequestration order under Gramm-Rudman would have taken place—thus causing severe across-the-board cuts throughout the Federal Government.

Therefore, Mr. Speaker, I support the rule and the continuing resolution, but I do regret the loss of general revenue sharing and the financial burden that will impact many of our towns and cities. Elimination of these funds will, indeed, be very difficult for these communities to absorb.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the distinguished chairman of the Committee on Rules, the gentleman from Florida [Mr. PEPPER].

Mr. PEPPER. Mr. Speaker, the members of the Rules Committee were faced with a very grave dilemma. I am in favor of revenue sharing. We have had it for 12 or 14 years, it has served a great purpose; but we were told that if we allowed revenue sharing in this rule, we had to make a mandatory provision in the rule to cut the social programs by exactly the same amount; and it therefore gave us a very great difficulty to make restitution.

So we finally decided, by vote, that we leave out the revenue sharing; but I hope there will come a time when we can support the distinguished gentleman from Mississippi and restore revenue sharing without having to cut the social programs in order to do it.

Mr. WHITTEN. Mr. Speaker, I would like to ask whether it would be possible that the committee rise after the general debate. Could we have a meeting with the gentleman's committee tomorrow and see if we cannot put it in?

Here is the ridiculous situation we are in. Out of a $561 billion bill covering foreign aid and everything under the sun, the only thing we are forced to cut is a domestic program that affects 40,000 American communities. It is ridiculous.

Mr. PEPPER. I am very sympathetic to what the gentleman says.

Mr. LOTT. Mr Speaker, I yield 4 minutes to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I rise in strong opposition to this rule, and hope my colleagues will join me in overwhelming numbers to vote it down.

This rule makes in order a "counterfeit" CR—one that was inked up, pressed fast, and cooled down for easy circulation as we go for broke during the final days of the 99th Congress.

This is not the CR that my committee reported 8 days ago, Mr. Speaker. This bill contains an across-the-board cut that was voted down in the full Appropriations Committee.

This CR makes no provision for general revenue sharing, despite the fact that our committee voted to include one.

And this rule provides for only one amendment—to strike, but not to amend or perfect, language intended by our committee to achieve some real budget savings by putting a timely end to the multimillion-dollar subsidy payments to our largest agricultural producers.

It is very unfortunate, Mr. Speaker, that no technical or perfecting amendments were made in order. I have been working very closely with the leadership on the Agriculture Committee, and we have reached agreement on some language that is better than the language amended in committee and is much better than striking this well-intentioned provision completely.

At the appropriate time, I will seek consent to offer a perfecting amendment on which the chairman of the Agriculture Committee will concur. Copies of this revised language are available at the committee table and through Chairman DE LA GARZA. I hope that my colleagues will concur in our joint effort to restore some reasonable limits in our Commodity Program payments.

The bill that is now called the CR contains an across-the-board cut of 0.34 percent—one-third of 1 percent—to fund the omnibus drug supplemental.

A similar percentage-reduction provision was discussed at great length

and discarded for good reason in our committee last week. I ought to know; I offered the amendment to knock it out. But here it is again. And this time, we can't touch it.

I've taken to this well dozens of times in the past year to oppose these percentage cuts. These blind, sweeping cuts distort the budget priorities our people back home elected us to establish.

This Gramm-Rudman-Hollings approach is a lazy way out of facing tough decisions on deficit reduction and spending needs.

We are taking money away from the very same agencies we are trying to beef up with the supplemental funds—agencies like the Coast Guard, DEA, and Customs.

We are cutting a host of programs in the area of education, health, and veterans' care where they are already working to put an end to the drug abuse epidemic in this country.

Mr. Speaker, I offered an amendment in full committee that went to the very heart of our escalating Federal deficit and the squeeze that's been put on our vital domestic programs.

It was designed to achieve some significant budget savings by eliminating the gush of Federal funds flowing into the accounts of the biggest agricultural corporations entitled to receive staggering levels of commodity payments.

My language was amended several times before it was reported out of committee, Mr. Speaker, subject to our ability to make technical and conforming changes.

Unfortunately, the rule does not provide me with the opportunity to offer any such amendments to reflect the necessary changes. Nor does it provide me with the opportunity to offer any substitute language that the chairman and the ranking minority member of the authorizing committee could find acceptable.

This is a shame, Mr. Speaker. Government outlays for farm programs are a record $25.5 billion for 1986 alone, and we have no reliable estimates of what will be needed for 1987.

USDA estimates that over 40 percent of the farm payments we are making are not subject to the $50,000 limitation.

We're scraping thousands and millions of dollars out of programs for the elderly, WIC, biomedical research and even those for the small, family farmer that our system was designed to help, while these giants are pawing deep into the Federal honeypot.

Listen to this, and tell me whether we need to reform the existing program or not.

Colusa, CA: One 16,000-acre rice farm is being leased by 56 producers, most of whom are relatives. Each one qualifies for a Federal payment.

Glen and Butte Counties, CA: Five Pakistanis are partners in a rice farm. Only one lives in the United States. We mail the others checks for over $100,000 right to Pakistan.

J.G. Boswell—that agricultural giant—with over 62,000 acres of cotton and 30,000 acres of wheat enrolled in our subsidy programs; $20 million. That's what USDA estimates his 1986 payments to total.

As I suggested to my colleagues in committee, Mr. Speaker, we ought to get those members of the President's Pornography Commission back on the street and down to the local ASCS office. Let them take a peek at some of these obscene CCC checks.

Let them take a gander at the way these corporations are subdividing the reproducing like amoebae to get around the current payment caps.

I oppose this rule, Mr. Speaker, because it does not give us the opportunity to fully address this budgetary and policy issue, and because it prevents us from considering or amending the CR reported by our committee.

I urge my colleagues to vote this one down. Let's have a rule that will let the House work its will on the hard issues some are unwilling to debate.

□ 1750

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I am for this rule. I am somewhat surprised at some of the arguments we have seen against it. We get the old familiar one when the minority does not like a rule like this, that it does not have enough time for debate.

I remember last year when Gramm-Rudman came up and I agree with the spiritual descendant of Shays' Rebellion in western Massachusetts about Gramm-Rudman. Gramm-Rudman, you know, we talked at one point in one of the committees I am in about referring it to committee, and we did not know what committee to refer it to. It has never been before a committee in either House. That horror came here without any committee hearings, without any committee meetings, not amendable, very few people on the other side with their occasional and sporadic attention span for great parliamentary procedure, minded taking Gramm-Rudman, that great distorter of rational government, and slamming it down our throats without any chance to do anything at all about it. So the notion that there has to be an open process has about as much validity as the argument that some things are done at the State level or at the national level; 99.9 percent of the people in this House are for the procedure that is going to get them the substantive result that they want; let us admit it and can the hypocrisy.

Then the question is, What are we doing with this continuing resolution? We have passed 11 of the appropriations. You cannot go into detail here as to what happened that requires us to put them in the continuing resolution. But there is an unmentionable involved in this process. Nothing has happened in the unmentionable. So therefore either we do it in a continuing resolution or we do not have them.

I want to appeal now to many of my friends on this side. I regret the demise of general revenue sharing. General revenue sharing was defeated when we passed Gramm-Rudman. I voted against that. But let us again not have the hypocrisy of people telling us how much they love Gramm-Rudman, they are for this drug bill, they are for revenue sharing and they are for everything including maybe another printing press.

The fact is that revenue sharing, which I support, became impossible when people voted for Gramm-Rudman.

What is at issue here is the best package of arms reduction measures this House has adopted in its history. We have got opposition. We have the President threatening to shut down the Government if we dare to tell him that we should not have nuclear testing, that we should have a ban. That is what is at issue here. Defeat of this rule is going to undercut our ability to deal with those arms reduction measures.

Revenue sharing, I regret to say, we already lost. Now we are fighting about arms reduction.

Mr. LOTT. Mr. Speaker, how much is remaining on both sides?

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Mississippi [Mr. LOTT] has 13 minutes remaining, and the gentleman from South Carolina [Mr. DERRICK] has 19 minutes remaining.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. I thank the gentleman from South Carolina.

Mr. Speaker, I rise in opposition to the rule adopting the continuing resolution. I do so with great reservation. I know it has been a tremendous task for the Committee on Appropriations to structure this after we have passed 11 of the 13 appropriations bills.

But one thing the Appropriations Committee did by a very substantial vote was to direct that Federal revenue sharing to our local communities would remain in the bill. They have been scuttled in that effort by the Committee on Rules and by some of the leadership in the House.

My friends, Federal revenue sharing will amount to $19 per American citizen out in our local communities. In this bill and by the action taken by this Congress last week, we are con-

tributing $19.50 to every Philippine citizen in the Philippine Islands. We will not contribute $19 per citizen in American communities who desperately need this money. I have communities in western Pennsylvania that will go bankrupt without Federal revenue sharing. We ought to have an opportunity to vote and choose our priorities here on the floor.

H.R. 1400 came out of the committee months ago. It has been languishing in the Committee on Rules with a rule. But now we cannot even get time to debate it here on the floor. We should have an opportunity to debate Federal revenue sharing to our local communities, select our priorities on the floor and designate where the dollars should go. We argued all day on a tax cut here for middle-class Americans and low-income Americans.

My friends, when we fail to pass revenue sharing to our local communities, that tax bite is going to come right back on the middle-class property-owning American citizens in higher taxation without the continuation of revenue sharing as we have known it for over 12 years in our country.

I thank the gentleman.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 1 minute to the gentleman from Illinois [Mr. HAYES].

Mr. HAYES. Mr. Speaker, it is not often that I speak against a rule. But the Appropriations Committee, after much debate and consideration, reported out a resolution that included general revenue sharing. The Rules Committee, after little debate or consideration, cut that provision out of this bill. Domestic programs have been hit the hardest by the Reagan administration's bankrupt fiscal policies. Not only have they increased the deficit and mortgaged our Nation's future, but now they are cashing in on our present. Eliminating general revenue sharing will cost my home city of Chicago $50 million. Those dollars will come out of the city's department of aging and disability which helps to service Chicago's elderly. It represents one-third of the city's, departments of human services, consumer services, and health. Just yesterday, the city of Chicago raised taxes in order to maintain police and fire service. Make no mistake, our constituents know what they want, and they are willing to pay for it. The Federal Government is not keeping it's commitment with the communities of this Nation. By spending our tax dollars to building missiles of destruction, we are destroying our cities and our towns, and we are hurting our people.

I will vote against this rule because it hurts my community, because it is not what the committee reported and because it is not fair. I ask my colleagues to join with me to oppose this rule and to support general revenue sharing.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. Mr. Speaker, I am strongly in support of this rule. I think many of us who have served at the State and local levels remember working in a rational budget process where we would bring together, at the end of the session, the results of a good deal of deliberation and we would face the reality that we had to make if fit within a number a dollar figure. We have had the luxury of avoiding that here in Congress for many years. But increasingly as the continuing resolution becomes a way in which we wrap up our business and finish our session, we are being forced to deal with reality, face the fact that we cannot have it all. We have to have a process in which we can accommodate, compromise, live with disappointment, and most of all make something add up, staying within a budget resolution, for example.

For example, I regret revenue sharing is not in this bill. I think all of us know of communities that desperately need it.

But we also know communities that do not. States like mine with a prudent surplus, communities that have plenty of tax base to draw upon. This is not a targeted program; and because it is not possible to do it all, we cannot accommodate it any longer.

The budget process concluded that. The Government Operations Committee did not bring a bill to the floor. Now we cannot gratuitously add it to this bill, tempting the fate of across-the-board cuts or, through the Gramm-Rudman process, the deep cuts through sequestration. I think it is important that we understand this is not the end, this is the beginning of the last couple of crucial weeks. Let us move this process forward. Let us make our internal compromises as we must, because the authorizing committees cannot do it for us. We have passed 12 of these bills through the appropriations process.

Some have implied that we are having the first debate on these matters here. In fact, we know what is in these bills. We cut some of them. We augmented others. Now, it is time to face the reality that we have to live within our means and we have to complete our work so that the American people have some semblance of confidence in this institution.,

I would hope that my colleagues would put behind them the partisan bickering, the bicameral bickering and stand together to vote for a resolution that we know we have to pass on so that we can begin the process of working out the details with the other body and accommodating the eventual signature of the President.

Please vote "aye" on the rule.

Mr. LOTT. Mr. Speaker, I yield such time as he may consume to the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. Mr. Speaker, I also rise in opposition to the rule for the very simple reason that it would rob this body of any chance to debate an extension of the General Revenue Sharing Program.

The program is set to expire in 5 days. This is essentially the last chance we will have to revive it. And so our consideration of the rule becomes a debate on the merits of the Revenue Sharing Program. For purposes of that debate, I would suggest to my colleagues that the actual cost of terminating this program—and it will cost us dearly—may be greater than the savings achieved by eliminating the program, and therefore we should keep it.

Consider some of the common uses of general revenue sharing funds: law enforcement, firefighting, infrastructure improvements, library maintenance, and list goes on. Now, if we eliminate revenue sharing, we will inevitably turn right around and either increase funding for categorical grants or create new grant programs to help local governments make up for the loss of revenue sharing. Remember that these grant programs carry expensive paperwork requirements. That drives up the cost of terminating the program. Revenue sharing gets around that mess thus keeping administrative costs at a minimum.

We can hardly boast that we're doing our best to cut unneeded programs to help reduce the deficit if we're going to wait until the next Congress to make up for the funding loss through other, ultimately more expensive, programs. In actuality we will be increasing our costs and wreaking havoc on the partnership we've created with local governments. The blue smoke and mirrors gimmick just won't work here. I urge my colleagues to preserve the Revenue Sharing Program and to vote against this rule.

Mr. LOTT. Mr. Speaker, I yield 3 minutes to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Speaker, I rise in opposition to this rule and to voice my support for the continued funding of the General Revenue Sharing Program.

I was shocked to come to my office this morning and find out that last night the Rules Committee approved a rule making in order a continuing resolution different than that reported out of the Appropriations Committee last Wednesday, September 17, in which we on the committee voted 29 to 15 to continue to fund the program in 1987.

I fully expected the Rules Committee to make in order an amendment to strike that funding, but I did not expect, Mr. Speaker, that the committee would move to completely deny the Members of this House the opportunity to directly and openly decide the fate of a program that is so vital

and important to our local communities.

General revenue sharing is important to localities all across the country, but I want to stress, in urging my colleagues to oppose this rule, that terminating general revenue sharing will mean a most serious blow to many rural, farm communities.

Because general revenue sharing is one of the few Federal grant programs available to smaller rural localities, its elimination will hit farming communities especially hard.

On average, while revenue sharing constitutes 21.8 percent of aid to general purpose localities, it constitutes 44.5 percent of Federal aid received by general purpose localities in farm dependent States.

This year Nebraska's share of the program will be $25.7 million; $9.2 million of that is shared by 629 localities in my district alone.

And let me tell you, those local governments have no where to turn to replace revenue sharing dollars.

The farm crisis is also a crisis for farm communities and their local governments. Particularly, farm communities suffer with the decline in agriculture land values, the mainstay of the local tax base. As land values fall, so do property tax revenues, and there is no way to replace the money because most communities are already taxing to the limit of their authority now.

Thirteen out of fifteen farm States lost over one-fifth of the value of their farm land between 1981 and 1986, including Nebraska where land values fell 55 percent.

In addition, local tax bases have been buffeted by sizable increases in property tax delinquency rates. One study found that in Nebraska communities delinquent taxes increased sevenfold between 1980 and 1985 because of the crisis in agriculture.

These declining local revenues in combination with increasing demand for local services for farmers in distress and declining assistance from State governments will make it increasingly difficult and eventually impossible for communities to fund local services at adequate levels.

And I stress, we are talking about small towns pushed to the limit to provide police officers, firefighters, road maintenance, and human service workers.

I urge my colleagues to look at these kind of figures and these kind of studies and still try to use the argument for terminating general revenue sharing that local governments are in better financial condition than the Federal Government—I am not going to deny Uncle Sam's severe financial problems, but if we can vote on a whim for $200 million in aid for the Philippines—which I opposed—we should be able to tell our struggling taxpayers back home that there is still money to help them provide vital community services.

Not only did my Appropriation Committee vote to fund the program—at 75 percent of its current level—but I point out that the Government Operations Committee has reported H.R. 1400, to reauthorize the GRS program for 3 years at its current authorized level.

There is obviously support in the House for the program, so why, Mr. Speaker, will not the leadership schedule H.R. 1400 or allow the House to vote today during consideration of the continuing resolution to support the program.

I appeal to my colleagues in behalf of rural America—the small towns in my district, throughout Nebraska, and all across the country—who need your help this afternoon. Please oppose this rule and join me in demanding the opportunity to go on record for general revenue sharing in a separate vote on amending the continuing resolution.

□ 1805

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from New York [Mr. WEISS].

Mr. WEISS. Mr. Speaker, I rise in opposition to the rule, and urge its defeat.

Let me start out by commending the chairman of the Appropriations Committee, Mr. WHITTEN, for his steadfast leadership of the fight to continue the General Revenue Sharing Program.

The fact that the Revenue Sharing Program is not included in the continuing resolution is no fault of the gentleman's. The gentleman was unceremoniously muscled to introduce a bill which went directly contrary to the bill reported out of his committee where there was a vote to sustain revenue sharing by a count of 29 to 15.

The gentleman from Massachusetts [Mr. CONTE] spoke about how the Appropriations Committee has begun to exercise all consuming power. But look at what is before us now. We have a bill which was never adopted by the Appropriations Committee, is directly opposite to what was reported out by the Appropriations Committee, and yet the Rules Committee makes that continuing resolution in order. Shame, shame on any and all of us who are willing to sit still and accept that kind of abuse and distortion and misuse of the legislative process.

The Revenue Sharing Program is as much needed today as it has ever been. There are communities, mostly the small towns across this country, that are indeed in economic distress. I am not making that up. You look at any of the business and financial and economic pages, and you know it. For the most part the large cities will get along, but rural America and small-town America, are in desperate straits. Many of those communities survive fiscally only because of the Revenue Sharing Program. Thirty-nine thousand communities across this country receive it. It is a targeted program. It is targeted by the very formula for distribution of those funds. Many of those communities, if you cut out general revenue sharing, will not have the legal power to adopt taxes to replace the loss even if they had the fiscal capacity to do so. They are depending on the commitments made by Members of this body and the other body to the local officials across this country that we would stand up for revenue sharing.

Revenue sharing is not dead. Revenue sharing is alive. If you vote down this rule and insist that the Rules Committee allow us a fair vote up and down on the General Revenue Sharing Program it will continue. It is within your hands. Do not let anyone else take that power away from you.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. WEISS. I yield to the gentleman from Illinois.

Mr. YATES. Mr. Speaker, I agree with the gentleman's views, and I intend to vote against the rule.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise to have initially a colloquy, if I can, with the chairman of the Appropriations Committee [Mr. WHITTEN].

I say to the gentleman please bear with me, if you will, but I must say that I am a bit confused by this process at this moment, for I understand that what this rule is all about is—it is coming to us in a fashion where revenue sharing will not be included; is that correct?

Mr. WHITTEN. Mr. Speaker, that is correct.

May I correct some statements that have been made by my friend, the gentleman from Massachusetts, when the gentleman referred to cutting all these health programs, it was not. It might have reduced the increase for which they asked by a little bit if they had applied it there—but that was not necessary.

In this bill before us we have $4.2 billion increase in carryover for the military. I want to call the Members' attention to that.

Mr. LEWIS of California. Mr. Speaker, one of the problems that I have with the continuing resolution process is that it is no longer a continuing resolution, but rather a means of lumping all kinds of appropriations and authorization bills together and ignoring the committees.

The Appropriations Committee, if I am not mistaken, voted, and you may correct me—did we not vote 29 to 15 to put that revenue-sharing package in this bill?

Mr. WHITTEN. That is correct. The bill is exactly the same as the bill that they had before the committee except revenue sharing is stricken and there is an across-the-board cut for the drug program. All we need to do is get the Rules Committee to report out the other bill.

Mr. LEWIS of California. It is not exactly the same bill that came out of the Appropriations Committee, is it? Did we not vote to put revenue sharing in the bill in the Appropriations Committee?

Mr. WHITTEN. They have prohibited us from doing it in this rule. But I do say that they deliberately did that.

The resolution which the committee reported is now pending before the Rules Committee with the revenue sharing in it. If we could adjourn here and get them to go back and bring a rule on that bill, a resolution, we would have it made.

Mr. DERRICK. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Wisconsin [Mr. OBEY].

Mr. OBEY. Mr. Speaker, I want to urge all of you to vote for this rule. I ask you to do that because it recognizes reality.

Gramm-Rudman killed revenue sharing the day it was passed. It is important for people to understand that. The only way that revenue sharing can survive under Gramm-Rudman would be for the House to adopt an across-the-board cut in many other programs, including programs that provide additional local aids to communities. You can do that if you want, but it means that you will be cutting UDAG, cutting assisted housing, cutting elderly and handicapped housing, cutting emergency food and shelter, cutting low-income energy aid, cutting EPA construction grants, cutting highways and mass transit and cutting a number of other items that are vital to local communities, just as vital as revenue sharing is.

The other problem if you turn down this rule is that you will do this. You can resurrect revenue sharing for about 2 weeks. But then as it works through the conference, revenue sharing is going to go down anyway. It will be killed anyway.

What will not be killed are the additional cuts in all of those domestic and local aid programs which would have been accepted in order to temporarily fund revenue sharing.

So if you vote against this rule today, you will be posing for political holy pictures on revenue sharing and you will be fooling your local officials into thinking you are saving revenue sharing, but the fact is that revenue sharing will not survive the conference. It will not survive the process before we get out of here. The only thing you will have made inevitable is an additional series of cuts, so that the effect will be that localities will accept a double cut. They will be cut on revenue sharing and also the other targeted programs which they rely on in this bill.

I urge you to stick with the Rules Committee and support the rule.

Mr. LOTT. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I rise in strong opposition to the rule. I want to remind my colleagues that since 1980 through 1985 we have reduced the Federal Government's commitment to local programs approximately 24 percent.

In Pennsylvania in 1985, almost 9 percent of the total available tax revenue for local programs for municipalities came from general revenue sharing.

It is a flexible program. It enables our communities with eroding and contracting tax bases to provide a practical social and economic safety net. It is a very efficient program. Only about 2 percent of the total revenue in revenue sharing itself is used for administration costs. It is an efficient, effective, flexible program. It is probably the best program in the entire bill and the Rules Committee has not only deleted it from the continuing resolution, but also refuses to give the Members a separate vote. My colleagues and I deserve an up or down vote on general revenue sharing. I urge my colleagues to vote no so we are given that opportunity.

□ 1815

Mr. DERRICK. Mr. Speaker, I yield such time as he may consume to the gentleman from South Dakota [Mr. DASCHLE].

Mr. DASCHLE. I thank the gentleman for yielding time to me.

Mr. Speaker, I am disappointed that the Rules Committee decided last night to reverse its initial position and delete funding for the General Revenue Sharing Program from House Joint Resolution 730, the continuing resolution for fiscal year 1987. I object to this initiative on both substantive and procedural grounds.

It is no secret that I am a strong supporter of the General Revenue Sharing Program. I am a cosponsor of H.R. 1400, which would reauthorize GRS, and I support the inclusion of continued funding for the program in the continuing resolution. General revenue sharing is very important to my State, particularly in this time of painful economic contraction in rural America.

I personally believe that deficit reduction and revenue sharing are not mutually exclusive; it is reasonable and necessary to support both. Indeed, passing the debt on to the local level through the elimination of revenue sharing is, in the long term, both unreasonable and unnecessary.

I understand that many Members do not agree and have reservations about this program. Both points of view should be aired during debate on the continuing resolution.

The budget process is an exercise in fashioning our national priorities. The House should not be denied an opportunity to indicate where it ranks general revenue on its list of our national priorities. Yet, that is precisely the result of the amended rule drafted by the Rules Committee last night.

Mr. Speaker, I urge that the House reject this rule so that the body can vote on whether or not it wishes to continue the General Revenue Sharing Program.

Mr. DERRICK. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. I thank the gentleman for yielding me this time.

Mr. Speaker, let me just say that the Members know that for 14 years now I have been against revenue sharing. This is nothing new. I always said it was born in sin and raised in iniquity. I know that you all have liked it; some people like a little sin. You all have enjoyed it; my mayors have liked it; my county judges have liked it; my Governors used to like it before they gutted the Governors. They cut them out, you know. They started the program, the Governors. They had to get the mayors in with them because they would not have the votes to pass it. Then, when things got tight, who did they throw off the back of the cart first for the wolves? The Governors. It was just kind of ironic, but that is what happened. Those of you who do not remember; I do. I thought that was kind of interesting. That saved about $3 billion a year.

Now, we have got a chance to save $3.5 billion and keep that whole $4.8 billion off of our budget deficit. We borrow this money, you know. We are not earning this money the old-fashioned way. We are borrowing this money. Every nickel of it.

We have got a $230 billion deficit now. Next year, it will be over $200 billion, and if we stay with this Gramm-Rudman foolishness, we will have to cut it to $108 billion.

This rule means that we will not have that $3.5 billion. Let us just face it. We have had revenue sharing for 14 years and you know how much money they have spent on it? Do you have any idea? $83 billion. I think that is enough.

The Government does not have any money. The U.S. Government does not have any surplus. It was the best named program that I ever saw. Revenue sharing; just think of it. It sounds good; you have got lots of money, you share it with people. It sounds good,

but it was fallacious from the beginning.

There is no reason for it. We should vote for this rule.

Mr. LOTT. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. I thank the gentleman for yielding me this time.

Mr. Speaker, it seems fairly evident that there is a lot of dissatisfaction with this rule. The absence of revenue sharing and across-the-board cuts. Well, fortunately, I and my good friend, the gentleman from Ohio [Mr. TRAFICANT] have the solution right here at hand. Mr. Speaker, when this debate is over, I am going to ask the Members of this body to vote "no" on the moving of the previous question so that I will then be able to offer an amendment that will solve all of our problems.

The amendment that I speak of would allow me to amend the rule to make in order and to protect from points of order three amendments. One that I will make and one that I approve of would extend to the President line-item veto authority with a 50-percent or majority override in the House, enabling him then to make those selective and necessary cuts that we have been unable to make here on the largest single expenditure of money in the history of the human race.

This will give our President a chance to pass the cuts after we have passed the buck. In addition to that, to provide a further solution to the problem, my amendment to the rule would make in order and protect from points of order two amendments from Mr. TRAFICANT. Since I would probably not support his amendments, I will let him describe them. But let me say, before I yield to Mr. TRAFICANT, he does not support the amendment I propose; I do not support the two amendments that he proposes, but we support the right of each other to offer the amendments and the right of the body to have an opportunity to hear the debate and vote on the amendments on behalf of the American people.

Mr. TRAFICANT. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Ohio.

Mr. TRAFICANT. I thank the gentleman for yielding to me.

Mr. Speaker, I do not support a line-item veto for the President. But I do believe that everybody's philosophy and ideology should be able to be brought forward to this floor. It should not be blocked in a rule that has excluded Members' views or given us an opportunity to have our legislative remedies brought for a vote.

My two amendments would be as follows: No. 1, it would sustain and keep revenue sharing in the bill, and No. 2, it would offer and give a buy American, 5-percent weighted advantage to this massive spending bill, if it is made and assembled in America, with 50 percent domestic content.

So now, even though philosophically we are as far apart as could be in the spectrum here, Mr. ARMEY and myself, however, we agree to disagree and I believe he has a right to be heard and I believe that the minority side has a right to have their major issues brought before this body.

In addition to that, I think Members like myself who work very hard, who represent districts that are literally fractured, have an opportunity to be heard as well.

So if we would defeat the previous question, we would have an opportunity to have a vote up or down on those three amendments. If you are for revenue sharing, you would have a chance. I do not know what other way to bring it. If you are for trying to have a weighted advantage for American firms and hold down this rape of our industry in this country, you would have a shot. If you believe in the President having a line-item veto, you would have that shot.

I stand here today with Mr. ARMEY. Although we disagree, we do agree that we should have an opportunity to bring to this body these important points that we feel are necessary to the bill.

Mr. ARMEY. Let me again mention, if you would like to see the President have a line-item veto or like to see the issue heard, vote "no" on ordering the previous question. If you would like to see a special amendment for preferential treatment of American business, vote "no" on the previous question.

If you would like to see revenue sharing be heard, vote "no" on the previous question. If we defeat the previous question and we pass this amendment, you will have to defeat the rule. We will all have a chance to have our issues heard.

I thank the body for their attention; I thank Mr. TRAFICANT for his participation; I thank the gentleman from Mississippi for his time; and I thank the body for their "no" votes on ordering the previous question.

Mr. DERRICK. Mr. Speaker, I yield 30 seconds to the gentleman from West Virginia [Mr. RAHALL].

Mr. RAHALL. I thank the gentleman for yielding me this time.

Mr. Speaker, I find that I must oppose this rule today, although the continuing resolution does contain vital funding for programs, projects and activities funded in the 13 regular appropriations bills for fiscal year 1987 which I have fully supported.

Despite the fact that the Appropriations Committee voted 29 to 15 to include moneys for general revenue sharing in the continuing resolution, the bill before us today includes no funding for this program which has proven so vital to communities not only in my home State of West Virginai, but throughout this Nation. The Rules Committee, in reporting this rule, has refused to grant Members of the House the opportunity to vote on retaining revenue sharing. We must be given that opportunity.

Mr. Speaker, many counties in the true heartland of America are facing high unemployment rates today. They are nearly bankrupt. Without revenue sharing these counties will die completely. At the same time that this rule rejects revenue sharing, it clears the way for $100 million in aid to the Nicaraguan Contras in Central America. I see this as our last opportunity to say "no" to this ill-advised policy.

Mr. Speaker, how can we in good conscience ignore the true Central America?

Mr. DERRICK. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. SABO].

Mr. SABO. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of this rule. The question before us today is whether we are going to live with the budget targets we set in our budget resolution. We are here because we passed Gramm-Rudman which set budget targets for this fiscal year. We then passed a budget resolution which set the budget authority in the outlay projections for the upcoming fiscal year.

The appropriations continuing resolution as it is before us under this rule meets those guidelines. The bill that initially came out of committee did not meet those guidelines. Any assumption that somehow if we defeat this rule we can go back and pass a continuing resolution which picks up revenue sharing and which pays no attention to the budget outlay projections of this year I think is pure nonsense.

□ 1825

To defeat the rule does not pass revenue sharing. It simply puts us into chaos. Let us move the process forward. It is a good continuing resolution. The committee has done a good job on the specific appropriations bills.

Within the defense bill, we have important arms control provisions. Let us pass that bill and pass this rule.

The SPEAKER pro tempore. The gentleman from South Carolina [Mr. DERRICK] has 5½ minutes remaining, and the gentleman from Mississippi [Mr. LOTT] has 2 minutes remaining.

Mr. LOTT. Mr. Speaker, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, I want to join my colleague, the gentleman from Minnesota [Mr. SABO], in suggesting that we should pass the previous question and the rule. With un-

characteristic responsibility, the Committee on Rules did not accept a list of about 20 amendments, 3 of which are the ones that are sought to be offered on the floor.

Despite my affection for the gentleman from Texas [Mr. ARMEY] and for his amendment, it seems to me that we simply get ourselves into very deep trouble if we do not pass this rule. The one time the Committee on Rules has made some sense, I think they ought to be sustained.

I hope you will vote for the previous question and for the rule.

Mr. LOTT. Mr. Speaker, I yield myself the balance of our time.

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. LOTT] is recognized for 1 minute.

Mr. LOTT. Mr. Speaker, I would like to also echo the remarks of the gentleman from Minnesota and make it perfectly clear what I was saying earlier today with regard to the rule.

This is not the way I would like for this rule to be written, but I want to emphasize to the body, and particularly on this side of the aisle, that I think we should vote for the previous question and we should vote for the rule. The rule is not going to get any better, from our vantage point or from this institution's vantage point. It will get worse.

Those of you over there who are thinking it will get better because you will get something you want in there, let me tell you, there are some amendments on here that the Members are not going to think is better. There are 19 of them.

Once we open this door, it is going to be a flood. I think we ought to go ahead and vote for the previous question, vote for the rule, as unattractive as it is, because it will only get worse if we defeat it here today and it has to go back to the Committee on Rules.

Then we can do our battle on the bill itself. So vote for the previous question, for the rule, and we can vote against the continuing resolution.

Mr. DERRICK. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I stand up in strong support of this rule. The Members ought to look at the alternatives before they start voting against this rule, because what is going to be brought about is chaos.

What the Members are going to be doing if they vote against this rule is voting for a substantial cut in national defense, as much as $3 billion. For those of us who are very concerned about our national defense posture, I would think long and hard before I voted against this rule.

As far as revenue sharing is concerned, the Committee on the Budget said, "Sure, we support revenue sharing provided you want to find the revenue to finance it."

We are here today because we voted in Gramm-Rudman-Hollings. We are not here today because of this particular rule. If I might very humbly, and with a great deal of respect, suggest to my colleagues here, it is time we buckle up our britches and understand that we have to live up to some of the things we have been talking about.

Mr. Speaker, I yield the balance of our time to the gentleman from Texas [Mr. WRIGHT], the distinguished majority leader.

The SPEAKER pro tempore. The gentleman from Texas [Mr. WRIGHT], is recognized for 5 minutes.

Mr. WRIGHT. Mr. Speaker, I rise in support of the rule and I plead with all my colleagues to vote for it. This is a responsible rule.

The alternative is institutional disarray. If we fail to pass this rule 5 days before the end of this fiscal year, we invite the kind of institutional disorganization that will vastly complicate our task that confronts us.

This rule is a responsible rule because it holds total spending to the level that was mandated by the House itself in our resolution on the budget. It is a responsible rule because, by its adoption in conjunction with the other matters we voted on this week, we guarantee that Gramm-Rudman sequestration will not fall across the board and reduce both military and domestic expenditures to a level far lower than that which all of us feel is necessary.

Sometimes the President has found it attractive to criticize the Congress for use of the continuing resolution. In years past, President Reagan often has castigated Congress in general on the ground that we have substituted a continuing resolution for the regular appropriation bills. What he really should have been saying was that the other body had not acted upon those bills.

This House has acted in a responsible way year after year on fiscal restraint. We have passed the appropriations bills this year, practically all of them, all in fact but 2 of them. The other body, at the Labor Day recess, had passed only 1 of the 13. As of this moment, 5 days before the end of the fiscal year, they still have seven remaining. Clearly the House is not to blame. Because of the failure of the Senate to act, however, we must pass the continuing resolution.

The total appropriations levels are something we need to talk about, too. Here also we behave responsibly. We are under constraints that we imposed upon ourselves when we adopted the Gramm-Rudman budget process. Those constraints require us to live within certain limits.

Today, we are living within those limits. Senator HATFIELD told the President just about a year ago, in my presence, after the President had pleaded with us not to reduce his request for military expenditures, that in the years of his Presidency, Congress had given to the President an 86-percent increase, after we adjust for inflation, in military expenditures, but had imposed upon the domestic economy of the United States a total 34-percent decrease in all discretionary domestic expenditures.

Within those frameworks, we have kept expenditures each year below the total level that the President had requested. So we have behaved in a fiscally responsible way.

Obviously, some of our cherished objectives have had to suffer. I sympathize with those who like revenue sharing. The mayor of my city says it is the very best thing that he could possibly have. But we cannot have that and have all of these other things, too.

It was the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL], who, in the Committee on Appropriations, made the motion to strip the revenue sharing from the bill; not because we dislike revenue sharing, but because we have no revenue to share and because we do desire to live within the framework of the budget.

Yesterday and today, we have taken two steps which may make it infinitely more difficult for us next year and the succeeding years to come up to the targets that we have set for ourselves in Gramm-Rudman. Next year, we must reach a $108 billion deficit, which means we must find some $45 billion more than this year, either in revenues or in additional cuts in expenditures, if we are to meet that target.

That is not going to be easy at all. Yesterday, we passed a reconciliation bill which consists mostly of predated checks that we can put in the bank this year, and it means that we do not get them next year, as otherwise we would, and in asset sales, which actually means that, over the long pull, we are giving away income that otherwise would be coming to the United States so that we can make the appearance of meeting our budget targets this year.

It is as though you, as a family, had sold the family business and eaten up the proceeds this year and then tried to convince yourselves that you were not going into debt.

Let us not deceive ourselves. If we are to be responsible, if we are going to meet these targets that we set for ourselves in Gramm-Rudman, we will pass this bill today. If we are to be responsible, if we are not going to go further into debt and make it harder and harder for us next year, we will face the President and the Nation squarely and we will say, "We have met our obligation. We have done that which we said we would do. We have passed this

bill. We have stayed within the limits. We have met our budgetary obligations."

It is going to be hard enough at best. It will be infinitely more difficult if we reject this rule and come in here with a Pandora's box of different claimants all asking for more and more and ever more of the money that does not exist.

This situation was created by a policy over the last 6 years of reducing the revenues that come to the Government through the 1981 tax cut, primarily, by $135 billion a year, at the same time we were increasing military spending by two times.

In the time of Harry Truman, we fought the entire Korean war without adding 1 penny to the national debt. I call for that same kind of dedication. I call on my colleagues to face the fact that next year, we are going to have to replace some of those revenues.

I voted against the tax reform today, not because I am against tax reform, but because I apprehended that it was going to make it harder in the future, that the short-term revenue windfall was going to be a long-term revenue shortfall. Maybe I am wrong. I hope I am.

I was wrong once on a tax bill in 1962 or 1963 when President Kennedy said that the investment tax credit would actually increase our revenue. I did not believe it. I could not conceive of it, but he was right and I was wrong.

Let me hope that I was wrong today in my apprenhension that this attractive so-called reform will actually reduce revenues, but it will not increase revenues.

□ 1835

There are no more revenues, and as long as the President adamantly, incessantly, implacably, intractably, tells us that no revenue measure for the purpose of reducing the deficit will receive his signature, then we have to face as best we can the hard rock responsibility of being responsible. That is what I ask you to do today.

Vote for the rule, vote for the previous question and then vote for the continuing resolution.

Mr. JEFFORDS. Mr. Speaker, I rise in objection to the rule we have before us today.

First, I would like to express my deep discouragement and concern with the continuing breakdown of the budget process. While the House worked hard to approve 11 of the 13 annual appropriations bills, floor consideration did not begin until June 25, 2 days before we were supposed to have finished all 13 bills. The Senate has only acted on a few of these bills, and just one bill has made it through conference—the legislative appropriations bill. In addition, the fiscal year 1987 budget resolution was not completed until June 26, 2½ months behind the schedule approved by Congress last year.

Now we find ourselves, just 5 days before the end of the fiscal year, attempting to dispose of all our budgetary obligations in one vote on an oversized continuing resolution. Faced with a closed rule providing for only 2 hours of general debate and making in order only one amendment, Members are effectively waving their fiscal responsibilities to their constituents. I find this process very disheartening and a disturbing sign of congressional paralysis.

Gramm-Rudman's targets for deficit reduction are bearing down upon us, attempting to scare Congress into making the tough decisions necessary to reduce the deficit. This continuing resolution, together with the reconciliation bill we passed yesterday, is supposed to put the budget within range of the $144 billion Gramm-Rudman deficit target. However, I am afraid that after these spending bills go into effect, we will find the deficit climbing higher than predicted, leaving us no closer to real reductions in Federal spending.

For the reasons stated above, I also object to attempts to rewrite the farm bill on the continuing resolution. However, I understand the concerns of the gentleman from Massachusetts [Mr. CONTE] and have supported similar moves in the Agriculture Committee. I note with approval, however, that the Dairy Program, the only major agricultural program in which Government costs are being reduced, is not included in this provision. This is noted in the committee report. The following statement from the Department of Agriculture, which has been confirmed by the Department's general counsel, Charles Hicks, also makes this clear. Let me read this statement to my colleagues:

It is the position of the Department that the amendment introduced by Congressman Conte on September 16 involving payment limitations does not apply to the amounts received under the dairy price support purchase program. The amendment relates to 1986 and 1987 crops. The dairy program does not involve a "crop" and the Conte amendment makes no specific mention of an intention to place any limitation on the dairy price support purchase program. The Commodity Credit Corporation does not make payment to, nor does it purchase dairy products from, milk producers under the dairy price support purchase program. The price of milk is supported at the statutorily established level by the purchase of dairy products from milk processors. Under this program as currently administered, a payment limitation could not be effectively applied with respect to amounts paid to individual milk producers.

I would also like to express my objection to the removal of general revenue sharing [GRS] from the continuing resolution. H.R. 1400, reauthorizing GRS for 3 years, was approved by the Government Operations Committee and has received widespread support. H.R. 1400 corrected those apsects of GRS that fed the stories of abuse that led some to call for abolishment of the program. In our rush to attack easy targets of Federal spending as a quick way to reduce the deficit, we are not eliminating waste, fraud, and abuse, but rather a foundation of local government. Local governments are already hard pressed to maintain adequate levels of funding for education and essential public services.

Realizing that Federal budgetary constraints force us to make cutbacks in all areas of spending, I have proposed that GRS be gradually reduced to about $2 billion and more closely focused on its primary original goal: quality public education. Funding should then be allocated to those communities and municipalities that have made an effort to increase their support for education.

Finally, as the ranking Republican on the Education and Labor Committee, I am concerned by inclusion of language in the continuing resolution referring to House Joint Resolution 738, the Construction Industry Labor Law Amendments of 1985. The inclusion of this legislation deprives the Congress, and, ultimately the law of the expertise which only the authorizing committees in each House are able to bring to an issue.

H.R. 281 passed the House on April 17 of this year and, thus far, no action has been taken in the other body. In an effort to circumvent the committee process in that body, we now have the continuing resolution—a funding measure—purportedly being used to enact significant changes in the National Labor Relations Act.

However, the record must show that the bill before us does not make those changes.

The language I'm discussing appears in section 101(n) of the bill. That section, as described in the committee report, provides funding for the continuation of various ongoing programs. Included in the list of programs to be funded is, to quote the bill:

Activities authorized by the "Construction Industry Labor Law Amendments of 1985" as passed by the House of Representatives on April 17, 1986.

Unlike previous situations where other bills have been incorporated by reference into the continuing resolution, this does not say that the bill "is hereby enacted." It simply says it is funded in fiscal year 1987, assuming it is otherwise enacted. Moreover, because of the way section 101(n) is worded, this funding is only provided if the activities "authorized" by the bill are also funded in the current fiscal year, fiscal year 1986—an almost impossible situation.

What we wind up with is an unnecessary, somewhat mischievous, provision. Anyone familiar with the National Labor Relations Board knows that it does not need separate funding earmarked for certain enforcement activities. If a party violates the National Labor Relations Act, the NLRB has the power to bring an unfair labor practice complaint against them. If H.R. 281 is ever enacted, there will very likely be a resulting increase in unfair labor practice cases. But the handling of those cases will be accommodated within the general NLRB appropriation amount.

The only thing that this provision could possibly accomplish would be to prompt litigation based upon a strained interpretation of the language. I have little doubt that such litigation would fail but it would involve a considerable waste of time and resources. For that reason alone, it is unfortunate that this language was included in the bill

Therefore, while I find this extraneous language in section 101(n) to be somewhat annoying, I also find it to be redundant at most. Consequently, my vote on House Joint Resolution 738 will not be influenced in the least by the inclusion of this provision.

Mr. GILMAN. Mr. Speaker, I rise in opposition to the rule allowing for consideration of House Joint Resolution 738, a resolution making continuing appropriations for fiscal year 1987. I commend my colleague from New York [Mr. WEISS] for the leadership he has provided in opposition to the rule, and wish to associate myself with his earlier remarks.

Mr. Speaker, I have heard from every mayor, county executive, and town supervisor in my congressional district, all of whom strongly support the continuation of the General Revenue Sharing Program. This program allows local governments and agencies to comply with federally mandated programs. Given the grave fiscal crises many of our municipalities are facing, the funds initially appropriated by the committee is a modest one. Unfortunately, this provision was deleted at the 11th hour, and the rule does not permit an amendment reinstating this provision to be offered. Accordingly, I believe that in the interest of fairness, the rule must be amended to permit consideration of funding for the General Revenue Sharing Program. A program as important as this one deserves to be considered by the full House. I, therefore, urge my colleagues to vote "no" on the rule and support a rule that will allow for consideration of this vital program.

Mr. BIAGGI. I rise in strong opposition to House Joint Resolution 560, the rule for the consideration of the continuing resolution. Simply put, this rule prevents any amendment from even being considered to restore funding for the General Revenue Sharing Program. As a representative of a congressional district that relies heavily on revenue sharing funds to meet vital needs, and as one who fully recognizes the importance of revenue sharing to our Nation's senior citizen community, I am deeply disturbed that the compelling case for continuing the Revenue Sharing Program will not even be heard under this rule. This is a program that benefits some 40,000 communities nationwide. It is targeted to those areas of our Nation that need it most. Its future deserves to be debated on this floor and that will only happen if we defeat the rule.

Mr. Speaker, I am a cosponsor and strong supporter of H.R. 1400, which would reauthorize the General Revenue Sharing Program for 5 years at the current funding level of $4.56 billion a year. It has 85 cosponsors. It has been approved by the House Committee on Government Operations. It has received a rule, but it has not reached the House floor. This is disappointing.

But, what is even more disappointing is that the House Appropriations Committee voted to continue funding the General Revenue Sharing Program for fiscal year 1987 at a level of $3.4 billion, and that money is not in the continuing resolution before us today. Now, we are being told that we won't even have the chance to restore that funding. This is unconscionable.

Mr. Speaker, the fight to save the General Revenue Sharing Program is the fight to save our localities from further Federal abandonment. Some 40,000 localities nationwide benefit from the Revenue Sharing Program. The National Association of Counties has conducted a survey which shows that 23 percent of all revenue-sharing dollars are spent on public safety, 19 percent of those dollars are spent on human services, and 18 percent are spent on public works projects. These are far from frivolous expenditures. In fact, they are the greatest needs of our communities.

In many cases revenue-sharing dollars comprise more than 30 percent of local budgets, and the National Association of Counties reports that for two-thirds of U.S. counties, revenue sharing is the only direct Federal aid they receive. To make matters worse, the elimination of revenue sharing will hurt the poorest counties the most since they receive most of the revenue-sharing moneys.

In my home State of New York, cities and counties receive $412 million each year under the Revenue Sharing Program. Since the program began in 1972, New York localities have received nearly $7 billion in revenue-sharing dollars. The elimination of the Revenue Sharing Program would mean the loss of more than $10 million a year to Westchester County and nearly $270 million annually for the city of New York. For New York City to lose $270 million a year would be the equivalent of them losing 5,400 police officers or 5,490 teachers. Those are services the city of New York, nor any other city, cannot afford to lose.

As chairman of the House Select Committee on Aging's Subcommitee on Human Services, I held a hearing in May on the impact of revenue sharing on the elderly. The testimony presented led to an indisputable conclusion—the elimination of general revenue sharing will have a singular and severe impact on millions of senior citizens across our Nation who have benefited from key social and human services programs supported by revenue-sharing moneys. Among the individual findings were:

First, in 41 States, general revenue-sharing funds flow directly to area agencies on aging, local units who directly administer programs under the Older Americans Act;

Second, 62 percent of more than 775 counties surveyed nationwide spend their revenue-sharing funds on health care and human services;

Third, Dade County, FL spends all of its general revenue-sharing budget of $21 million in programs operated by its Department of Human Resources—this includes more than $5 million in direct services to seniors, including nutrition, transportation, and home care services;

Fourth, in Arkansas, half of their counties use some revenue-sharing funds for aging services;

Fifth, in Chicago, elimination of revenue sharing could lead to the elimination of 55,000 patient visits by the elderly, a cutback in the 39,000 home-delivered meals provided to frail elderly, and the closing of as many as seven health centers.

Mr. Speaker, without revenue sharing, local governments are left with a single choice—either cut services or raise taxes. Either way, Americans from every region of the country end up big losers. That is not an appealing scenario and we deserve the opportunity to at least debate the future of such a vital Federal program. Ultimately, I want to see revenue sharing continued, but at the very least we should not be denied the opportunity to present the case in support of revenue sharing, no matter whether you share my support for revenue sharing or not. I urge defeat of the rule.

Mr. McKERNAN, Mr. Speaker, I intend to vote against the previous question, and against the rule on the continuing appropriations bill, because of my belief that the House should have the opportunity to vote on the General Revenue Sharing Program.

Cities and towns throughout my State of Maine and across the country have sent a message to Congress on the importance of revenue sharing to their communities. While Congress must maintain its commitment to reducing the Federal deficit, I feel that we must look at other cost-saving options, and seek other ways to make the continuing resolution a fiscally responsible bill, without sacrificing the Revenue Sharing Program.

The General Revenue Sharing Program has provided financially pressed local governments in Maine and other States with billions of dollars in grants over the past several years. These funds have been used to provide essential services, and have proven crucial as communities seek to provide these necessary services while maintaining a balanced budget.

Balancing the Federal budget is of equal importance, and cuts are needed, but the immediate elimination of revenue sharing would be a hard blow to many communities. The continuing appropriations bill as originally drafted, with an appropriation for revenue sharing at 75 percent of the 1986 level, represented a reasonable approach. I believe that it is unfair for the House not to have an opportunity to vote on this important program.

The SPEAKER pro tempore (Mr. GRAY of Illinois). All time has expired.

Mr. DERRICK. Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ARMEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

PARLIAMENTARY INQUIRY

Mr. MYERS of Indiana. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MYERS of Indiana. Mr. Speaker, I was rising to my feet to make a unanimous-consent request that in the event that a recorded vote on the previous question is ordered and in the event that the previous question is ordered up, then any subsequent vote on final passage be reduced to 5 minutes.

The SPEAKER pro tempore. The Chair does not have the authority, the Chair will state to the distinguished gentleman, to do that at this juncture.

Mr. MYERS of Indiana. We are in the full House, Mr. Speaker.

The SPEAKER pro tempore. Members would not be on adequate notice in order to have a 5-minute vote.

Mr. MYERS of Indiana. Mr. Speaker, I do not think the Chair understood. The first vote would be 15 minutes on the previous question and any subsequent vote on final passage on the rule would be reduced to 5 minutes.

The SPEAKER pro tempore. That would be after the question has been put and we were in the process of doing that.

Mr. MYERS of Indiana. I reserve my right to do that then, Mr. Speaker.

The SPEAKER pro tempore. The gentleman from Texas [Mr. ARMEY] has objected to the vote on the ground that a quorum is not present and made the point of order that a quorum is not present.

Evidently a quorum is not present.

Mr. MYERS of Indiana. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. MYERS of Indiana. Mr. Speaker, is this the proper place to ask unanimous consent that the vote now ordered—I ask unanimous consent that the vote just now ordered on the previous question and any subsequent vote that might be ordered on the final passage of the rule be reduced to 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. BRYANT. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 268, nays 150, not voting 14, as follows:

[Roll No. 415]

YEAS—268

Abercrombie	Bryant	Dowdy
Ackerman	Bustamante	Downey
Akaka	Byron	Duncan
Alexander	Carney	Durbin
Anderson	Carper	Dwyer
Andrews	Carr	Dymally
Annunzio	Chandler	Dyson
Anthony	Chapman	Early
Archer	Chappell	Eckart (OH)
Aspin	Chappie	Eckert (NY)
Atkins	Cheney	Edwards (CA)
AuCoin	Clay	Edwards (OK)
Barnard	Coats	Erdreich
Barnes	Coelho	Evans (IA)
Bateman	Coleman (TX)	Evans (IL)
Bates	Collins	Fascell
Bedell	Conte	Fawell
Beilenson	Cooper	Fazio
Bennett	Coyne	Feighan
Berman	Darden	Flippo
Bevill	Daschle	Florio
Boland	Davis	Foley
Boner (TN)	de la Garza	Ford (MI)
Bonior (MI)	Dellums	Ford (TN)
Bonker	Derrick	Frank
Borski	Dickinson	Frenzel
Boucher	Dicks	Frost
Boxer	Dingell	Fuqua
Brooks	Dixon	Gejdenson
Brown (CA)	Donnelly	Gibbons
Bruce	Dorgan (ND)	Glickman
Goodling	McCain	Schaefer
Gordon	McCandless	Scheuer
Gradison	McCloskey	Schumer
Gray (IL)	McCurdy	Seiberling
Gray (PA)	McDade	Sharp
Green	McHugh	Sikorski
Gregg	McKinney	Siljander
Guarini	McMillan	Sisisky
Hall (OH)	Meyers	Skeen
Hamilton	Mica	Skelton
Hansen	Michel	Slattery
Hatcher	Miller (CA)	Slaughter
Hawkins	Mineta	Smith (FL)
Hayes	Mitchell	Smith (IA)
Hefner	Moakley	Smith (NJ)
Hertel	Molinari	Smith, Denny (OR)
Hiler	Mollohan	Snyder
Hillis	Montgomery	Solarz
Holt	Moody	Spratt
Howard	Morrison (CT)	St Germain
Hoyer	Mrazek	Staggers
Huckaby	Murtha	Stark
Hughes	Myers	Stenholm
Hunter	Natcher	Stratton
Hutto	Neal	Studds
Jenkins	Nelson	Stump
Johnson	Nichols	Sundquist
Jones (TN)	Nowak	Swift
Kaptur	Oakar	Synar
Kennelly	Oberstar	Tallon
Kildee	Obey	Thomas (GA)
Kleczka	Olin	Torres
Kolbe	Ortiz	Torricelli
Kostmayer	Owens	Towns
Kramer	Oxley	Udall
LaFalce	Panetta	Valentine
Lantos	Pashayan	Vento
Leath (TX)	Pease	Visclosky
Lehman (CA)	Penny	Waldon
Lehman (FL)	Pepper	Watkins
Leland	Pickle	Waxman
Levin (MI)	Porter	Weaver
Levine (CA)	Price	Weiss
Loeffler	Quillen	Wheat
Long	Rahall	Whitehurst
Lott	Rangel	Whitley
Lowery (CA)	Ray	Whittaker
Lowry (WA)	Reid	Whitten
Lujan	Richardson	Williams
Luken	Rodino	Wilson
Lundine	Roe	Wirth
Mack	Roemer	Wolf
MacKay	Rose	Wolpe
Madigan	Roukema	Wright
Manton	Rowland (CT)	Wyden
Markey	Rowland (GA)	Yates
Martin (IL)	Roybal	Young (FL)
Matsui	Rudd	
Mavroules	Sabo	

NAYS—150

Applegate	Edgar	Kolter
Armey	Emerson	Lagomarsino
Badham	English	Latta
Bartlett	Fiedler	Leach (IA)
Barton	Fields	Lent
Bentley	Fish	Lewis (CA)
Bereuter	Foglietta	Lewis (FL)
Bilirakis	Fowler	Lightfoot
Bliley	Franklin	Lipinski
Boehlert	Gallo	Livingston
Boggs	Gaydos	Lloyd
Boulter	Gekas	Lungren
Broomfield	Gilman	Marlenee
Brown (CO)	Gingrich	Martin (NY)
Burton (IN)	Gonzalez	Mazzoli
Callahan	Gunderson	McCollum
Clinger	Hall, Ralph	McEwen
Cobey	Hammerschmidt	McGrath
Coble	Hendon	McKernan
Coleman (MO)	Henry	Mikulski
Combest	Hopkins	Miller (OH)
Conyers	Horton	Miller (WA)
Coughlin	Hubbard	Monson
Courter	Hyde	Moorhead
Craig	Ireland	Morrison (WA)
Crane	Jacobs	Murphy
Daniel	Jeffords	Nielson
Dannemeyer	Jones (NC)	Packard
Daub	Jones (OK)	Parris
DeLay	Kanjorski	Perkins
DeWine	Kasich	Petri
DioGuardi	Kastenmeier	Pursell
Dornan (CA)	Kemp	Regula
Dreier	Kindness	Ridge
Rinaldo	Shuster	Thomas (CA)
Ritter	Smith (NE)	Traficant
Roberts	Smith, Robert (NH)	Traxler
Robinson	Smith, Robert (OR)	Vander Jagt
Rogers	Snowe	Volkmer
Roth	Solomon	Vucanovich
Russo	Spence	Walgren
Savage	Stallings	Walker
Saxton	Stangeland	Weber
Schneider	Strang	Wise
Schroeder	Sweeney	Wortley
Schuette	Swindall	Wylie
Schulze	Tauke	Yatron
Sensenbrenner	Tauzin	Young (AK)
Shaw	Taylor	Young (MO)
Shelby		Zschau
Shumway		

NOT VOTING—14

Biaggi	Crockett	Martinez
Bosco	Garcia	Moore
Breaux	Gephardt	Rostenkowski
Burton (CA)	Grotberg	Stokes
Campbell	Hartnett	

Ms. MIKULSKI, Messrs. WALGREN, BOEHLERT, and YOUNG of Missouri, Mrs. BENTLEY, and Messrs. FOGLIETTA, COBLE, and ROBERTS changed their votes from "yea" to "nay."

Mrs. BOXER, Mr. GUARINI, and Mrs. COLLINS changed their votes from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WEISS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—yeas 216, nays 202, not voting 14, as follows:

[Roll No. 416]

YEAS—216

Ackerman	Coble	Foley
Akaka	Coelho	Ford (MI)
Andrews	Coleman (MO)	Frank
Annunzio	Coleman (TX)	Frenzel
Archer	Cooper	Frost
Aspin	Coughlin	Fuqua
Atkins	Courter	Gejdenson
AuCoin	Coyne	Gibbons
Barnard	Daniel	Glickman
Bartlett	Dannemeyer	Goodling
Bateman	Darden	Gordon
Bedell	Davis	Gradison
Beilenson	de la Garza	Gray (IL)
Bennett	DeLay	Gray (PA)
Berman	Derrick	Gregg
Bliley	DeWine	Hall (OH)
Boland	Dickinson	Hatcher
Bonior (MI)	Dicks	Hawkins
Bonker	Dingell	Hefner
Borski	Dixon	Hiler
Boucher	Donnelly	Hillis
Boulter	Dornan (CA)	Holt
Brooks	Downey	Howard
Brown (CA)	Dwyer	Hoyer
Bryant	Dymally	Hughes
Bustamante	Early	Hunter
Carper	Eckert (NY)	Jenkins
Carr	Edwards (CA)	Johnson
Chandler	Evans (IA)	Jones (TN)
Chapman	Fascell	Kaptur
Chappell	Fawell	Kennelly
Cheney	Fazio	Kleczka
Clay	Fish	Kostmayer
Coats	Florio	LaFalce

Lagomarsino	Murtha	Smith, Denny (OR)
Leath (TX)	Myers	Snyder
Lehman (CA)	Neal	Spratt
Lehman (FL)	Nelson	Stark
Leland	Oberstar	Stenholm
Levin (MI)	Obey	Strang
Levine (CA)	Olin	Stratton
Lewis (CA)	Ortiz	Studds
Loeffler	Owens	Stump
Lott	Oxley	Sweeney
Lowery (CA)	Parris	Swift
Lowry (WA)	Pashayan	Swindall
Lujan	Pease	Tauke
Luken	Penny	Taylor
Lungren	Pepper	Thomas (CA)
Mack	Pickle	Thomas (GA)
MacKay	Price	Torres
Manton	Quillen	Torricelli
Markey	Rangel	Udall
Martin (IL)	Ray	Valentine
Matsui	Richardson	Vento
Mavroules	Rodino	Volkmer
McCain	Rose	Waldon
McCandless	Roukema	Walgren
McCloskey	Rowland (CT)	Watkins
McCollum	Rowland (GA)	Waxman
McCurdy	Roybal	Wheat
McDade	Rudd	Whitehurst
McKinney	Sabo	Whitley
McMillan	Schaefer	Whittaker
Meyers	Seiberling	Williams
Mica	Sharp	Wilson
Michel	Sikorski	Wirth
Miller (CA)	Sisisky	Wolf
Moakley	Skeen	Wright
Molinari	Slattery	Wyden
Montgomery	Slaughter	
Morrison (CT)	Smith (FL)	
Mrazek	Smith (IA)	

NAYS—202

Abercrombie	Flippo	Marlenee
Alexander	Foglietta	Martin (NY)
Anderson	Ford (TN)	Mazzoli
Anthony	Fowler	McEwen
Applegate	Franklin	McGrath
Armey	Gallo	McHugh
Badham	Gaydos	McKernan
Barnes	Gekas	Mikulski
Barton	Gilman	Miller (OH)
Bates	Gingrich	Miller (WA)
Bentley	Gonzalez	Mineta
Bereuter	Green	Mitchell
Bevill	Guarini	Mollohan
Bilirakis	Gunderson	Monson
Boehlert	Hall, Ralph	Moody
Boggs	Hamilton	Moorhead
Boner (TN)	Hammerschmidt	Morrison (WA)
Boxer	Hansen	Murphy
Broomfield	Hayes	Natcher
Brown (CO)	Hendon	Nichols
Bruce	Henry	Nielson
Burton (IN)	Hertel	Nowak
Byron	Hopkins	Oakar
Callahan	Horton	Packard
Carney	Hubbard	Panetta
Chappie	Huckaby	Perkins
Clinger	Hutto	Petri
Cobey	Hyde	Porter
Collins	Ireland	Pursell
Combest	Jacobs	Rahall
Conte	Jeffords	Regula
Conyers	Jones (NC)	Reid
Craig	Jones (OK)	Ridge
Crane	Kanjorski	Rinaldo
Daschle	Kasich	Ritter
Daub	Kastenmeier	Roberts
Dellums	Kemp	Robinson
DioGuardi	Kildee	Roe
Dorgan (ND)	Kindness	Roemer
Dowdy	Kolbe	Rogers
Dreier	Kolter	Roth
Duncan	Kramer	Russo
Durbin	Lantos	Savage
Dyson	Latta	Saxton
Eckart (OH)	Leach (IA)	Scheuer
Edgar	Lent	Schneider
Edwards (OK)	Lewis (FL)	Schroeder
Emerson	Lightfoot	Schuette
English	Lipinski	Schulze
Erdreich	Livingston	Schumer
Evans (IL)	Lloyd	Sensenbrenner
Feighan	Long	Shaw
Fiedler	Lundine	Shelby
Fields	Madigan	Shumway
Shuster	Staggers	Weaver
Siljander	Stallings	Weber
Skelton	Stangeland	Weiss
Smith (NE)	Sundquist	Whitten
Smith (NJ)	Synar	Wise
Smith, Robert (NH)	Tallon	Wolpe
	Tauzin	Wortley
Smith, Robert (OR)	Towns	Wylie
	Traficant	Yates
Snowe	Traxler	Yatron
Solarz	Vander Jagt	Young (AK)
Solomon	Visclosky	Young (FL)
Spence	Vucanovich	Young (MO)
St Germain	Walker	Zschau

NOT VOTING—14

Biaggi	Crockett	Martinez
Bosco	Garcia	Moore
Breaux	Gephardt	Rostenkowski
Burton (CA)	Grotberg	Stokes
Campbell	Hartnett	

□ 1910

Messrs. McHUGH, MILLER of Ohio, and ANTHONY changed their votes from "yea" to "nay."

Messrs. FISH, GRAY of Illinois, DICKS, LEWIS of California, McCOLLUM, DANNEMEYER, STRANG, ORTIZ, DeWINE, and MANTON changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DERRICK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks made during the debate period on the resolution, House Resolution 560.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5300. An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5300) "An act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. HELMS, Mr. DOLE, Mr. LUGAR, Mr. ZORINSKY, and Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry; Mr. HATFIELD, Mr. COCHRAN, Mr. ABDNOR, Mr. DECONCINI, and Mr. BURDICK, from the Committee on Appropriations; Mr. GARN, Mr. HEINZ, Mr. ARMSTRONG, Mr. HECHT, Mr. PROXMIRE, Mr. CRANSTON, and Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs; Mr. DOMENICI, Mr. ARMSTRONG, Mrs. KASSEBAUM, Mr. BOSCHWITZ, Mr. CHILES, Mr. HOLLINGS, and Mr. JOHNSTON, from the Committee on the Budget; Mr. DANFORTH, Mr. PACKWOOD, Mrs. KASSEBAUM, Mr. HOLLINGS, and Mr. LONG, Conrail, subconference 9, Mr. DANFORTH, Mr. PACKWOOD, Mr. STEVENS, Mr. HOLLINGS, and Mr. INOUYE, maritime, subconference 10, from the Committee on Commerce, Science, and Transportation; Mr. McCLURE, Mr. WALLOP, Mr. WARNER, Mr. JOHNSTON, and Mr. FORD, from the Committee on Energy and Natural Resources; Mr. STAFFORD, Mr. CHAFEE Mr. SIMPSON, Mr. DURENBERGER, Mr. SYMMS, Mr. BENTSEN, Mr. MITCHELL, Mr. MOYNIHAN, and Mr. BURDICK, from the Committee on Environment and Public Works; Mr. PACKWOOD, Mr. DOLE, Mr. DANFORTH, Mr. CHAFEE, Mr. LONG, Mr. BENTSEN, and Mr. MATSUNAGA, general, Mr. HEINZ, Mr. DURENBERGER, Mr. MOYNIHAN, and Mr. BAUCUS, Medicare, Medicaid, and maternal and child health, subconferences 19, 20, and 21, from the Committee on Finance; Mr. ROTH, Mr. STEVENS, Mr. COHEN, Mr. DURENBERGER, Mr. EAGLETON, Mr. LEVIN, and Mr. GORE; Mr. ROTH, Mr. COHEN, Mr. DURENBERGER, Mr. EAGLETON, and Mr. LEVIN, subconference 15, from the Committee on Governmental Affairs; Mr. HATCH, Mr. NICKLES, Mr. STAFFORD, Mr. KENNEDY, and Mr. METZENBAUM, ERISA and railroad retirement; Mr. HATCH, Mr. STAFFORD, Mr. WEICKER, Mr. KENNEDY, and Mr. PELL, GSL/Education asset, from the Committee on Labor and Human Resources; Mr. WEICKER, Mr. RUDMAN, and Mr. BUMPERS, from the Committee on Small Business, to be the conferees on the part of the Senate.

PERMISSION TO OFFER AN AMENDMENT OTHER THAN THAT PROVIDED FOR IN THE RULE TO HOUSE JOINT RESOLUTION 738, CONTINUING APPROPRIATIONS, 1987

Mr. CONTE. Mr. Speaker, I ask unanimous consent that in lieu of the amendment made in order by House Resolution 560 to be offered by Mr. DE LA GARZA to House Joint Resolution 738, I be permitted to offer a different amendment under the terms of that rule.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

GENERAL LEAVE

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include tabular and extraneous matter, on House Joint Resolution 738.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

CONTINUING APPROPRIATIONS, 1987

The SPEAKER pro tempore. Pursuant to House Resolution 560 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the joint resolution, House Joint Resolution 738.

□ 1920

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, with Mr. DONNELLY in the chair.

The Clerk read the title of the joint resolution.

□ 1920

The CHAIRMAN. Under the rule, the first reading of the joint resolution is dispensed with.

Pursuant to the rule, the gentleman from Mississippi [Mr. WHITTEN] will be recognized for 1 hour and the gentleman from Massachusetts [Mr. CONTE] will be recognized for 1 hour.

The Chair recognizes the gentleman from Mississippi [Mr. WHITTEN].

Mr. WHITTEN. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, notwithstanding the outcome which was just announced, I still express the hope that our Committee on Rules will report out the bill which I introduced on behalf of the committee that provided for revenue sharing.

There has been much information kicked around here. I have the highest regard for everybody, including my friends on the Rules Committee. So I want to call your attention to why they should go ahead, notwithstanding this matter. To turn down a rule is not easy, it is not easy to vote that way. But before us now is a bill that totals $561.9 billion and to say to the American people that we cannot find a way to save the one program that affects 40,000 little villages, towns, and counties—revenue sharing—is just ridiculous.

Now, the facts are that the people were led to believe that revenue sharing would be continued.

On May 21, the committee of jurisdiction, the Government Operations Committee, reported by a vote of 28 to 10, H.R. 1400 which extended the authorization of the program through September 30, 1989, at an annual level of $4.6 billion—the present authorized level and an increase of $500 million over the amount provided in fiscal year 1986. On August 5, the Rules Committee reported a rule making consideration of H.R. 1400 in order on the House floor. It was reported in the press and every town and village throughout the country had reason to believe that this program would be carried forward.

On September 12, I introduced a House joint resolution and circulated copies of that resolution to the Committee on Appropriations. That resolution provided full year funding for the programs, projects, and activities funded in the regular appropriations bill as passed the House or reported by the committee. These bills continued many important programs that had been proposed for elimination or major reduction by the President. Programs such as soil conservation, watershed protection and flood prevention, small business, Appalachia, low-income weatherization, health services, 4-H club work, rural development and farm loans. In addition, we have retained at least the 1986 funding level for important programs such as low-income housing, veterans, medical care, medical research, vocational education, student financial assistance, and child nutrition. In addition, the resolution provided for the continuation of 20 ongoing programs which had not been included in the 13 regular appropriations bills because the authorization process had not yet been completed. That included such programs as: General Revenue Sharing, National Health Service Corps, Alcohol and Drug Abuse Research Program, Refugee and Entrant Assistance Program, Head Start, Community Services Block Grant, Higher Education Act, and Low-Income Home Energy Assistance.

These are all important programs. Because action is pending, beneficiaries of these programs are anticipating their continuation. The continuing resolution is the traditional vehicle used to continue them. In full committee, a motion was made to strike one of those unauthorized programs—general revenue sharing. The vote on that motion was yeas 15; nays 29, and the motion was not agreed to. House Joint Resolution 730 as reported by the committee is privileged; it does not need a rule but a rule is desirable to limit the number of amendments because of the scope of the resolution. Eleven of the thirteen regular appropriations bills that are included in the resolution have already been considered and amended by the House.

Yesterday, a majority of the Rules Committee did not grant a rule for consideration of House Joint Resolution 730 because it included revenue sharing; the only item which affects every community, every town, every city in the United States in these times where nearly all except those benefiting from military spending are hard put to provide local services.

Mr. Chairman, this bill for $561.9 billion covers the entire Government. It includes:

	Billions
Military spending	$279.9
Foreign aid	13.0
State Department	2.8
USIA	.9
Housing programs	13.3
NASA	7.6
Science Foundation	1.6
Interior Department	4.0
Department of Labor	5.5
Department of Health and Human Services	84.0
Department of Education	13.3

It is unfortunate that the only item, the only provision that was objected to, is that for the people of our own country.

That being the situation, the only way we would protect our Nation on those things, those other existing programs, was to introduce the pending bill which is necessary if we are to protect what is left.

In doing this, Mr. Chairman, I wish to say it is only about 3 days before the end of the fiscal year.

NEED TO CONTINUE REVENUE SHARING

I urge all Members to ask the Rules Committee at this late date to report out favorably House Joint Resolution 730 which is the same bill as that before us today except it does continue revenue sharing at a three-fourths rate. Let us look after our people first, not last. Do not cut it out when our people in our towns, villages, cities, and counties had a right to expect revenue sharing to continue.

I hope, that with the help of our people at home, this will be only a holding action we take here today, until the Rules Committee can correct what I know to be a serious mistake.

I call your attention, Mr. Chairman, that yesterday the administration delivered to our office a statement of position stating, "In particular, the administration opposes most strongly the inclusion of funds for general revenue sharing."

After the action of our friends on the Rules Committee—instead of sharing the credit for eliminating revenue sharing, today the administration sent out another statement eliminating such language. In other words, they want no blame for your actions.

Now, may I say that misinformation has been distributed here. The budget

resolution allocates to the committee an amount of discretionary budget authority. That is allocated by the committee to the 13 subcommittees.

So at the beginning, as chairman of the committee and with the agreement of the subcommittee chairman, we worked out an allocation that reserved $3.73 billion for revenue sharing, since the authorizing committee had reported H.R. 1400.

Now, I have had letters from quite a number of our colleagues, nice letters, complaining about the continuing resolution. I can add my own complaints, tenfold to what they have said because we have to do the work. May I say this happened first, as I recall it, in 1980. We sent all our appropriation bills to our colleagues on the other side, and they were busy approving the Panama Canal Treaty and did not handle any one of them. So since we sent them and could not get action, we in turn sent them in one package over them, and that was the beginning of the large-scale continuing resolution.

This year being saddled with it again, the records show that we sent to the other body the bills on Agriculture, Commerce-Justice, District of Columbia, energy and water, HUD-independent agencies, Interior, Labor-HHS-Education, military construction, Transportation, Treasury-Postal Service, and legislative. The two that we did not send were defense and foreign assistance, which have not yet been scheduled.

So when we wrote this bill, we used the latest action by the House.

We put in this bill a continuation for the year of the bills the House had already approved, including all the amendments, including all the prohibitions, just what the House had done.

Then for various reasons our legislative committees had not finished their authorizations. So we included those ongoing programs which lacked authorization.

FUNDING FOR DRUG PROGRAM

We also included funding for the House-passed Drug Program—a program which I helped the leadership to develop and about which I shall speak further at a later point.

Now when it came to revenue sharing, we did not get this out of the sky. As I say again, the authorizing committee voted, and my good friend JACK BROOKS is chairman of it, but the committee voted almost 3 to 1, 28 to 10, to continue the program.

They went before the same Committee on Rules and got a rule. That is a matter of record. So we had every reason to believe that this was in the same category as the other ongoing programs. Now, we hear complaints about revenue sharing. But listed were 19 other similar situations—programs that were operating in fiscal year 1986 but for which authorization for fiscal year 1987 had not yet been enacted into law.

Now may I say again that we did the very best we could. In the letters that I have from some of my colleagues, they did not realize that a continuing resolution is a hybrid; it is legislation and appropriation bill.

I know that one newspaper said I have had nerve to come out with an omnibus bill, and the President ought to have the right to item veto. I brought out a bill reflecting the action of the Committee on Appropriations, and House floor action. A few amendments were adopted. I opposed two or three of those amendments. I urged that amendments be held down. But I cannot afford to hold too tightly on this side, so I said earlier in the debate. Two years ago the other body added 340 amendments to our supplemental bill when we sent it to them. This year there were 224 amendments. Last year when we sent a continuing resolution, they added 135 amendments.

So, if we here in the House keep our friends and our colleagues from offering any amendments, and we go to conference, then we are helpless to protect ourselves against what is added in the other body.

RULES COMMITTEE URGED TO REPORT REVENUE SHARING

When the Rules Committee refused, and refused I guess is the proper word, though I have the highest regard for them, to grant a rulemaking House Joint Resolution 730 in order because it included revenue sharing, I spent yesterday afternoon trying to get them to see what I am telling you. They left it out while many, many things that we have to handle by continuing resolution, many of the major things in this bill, had to have protection in the rule or they would go out, too.

So, I had to see that we did not lose some of the major parts of this bill by reason of not protecting them.

So, I was called upon as chairman to introduce this bill to protect many of the things in here that had to have protection, including the Drug Program.

But I want to say right here and now I will never be one that believes it sound to cut only your own people in a bill of $561 billion. I do not want to have to answer to that. The circumstances are such I do not find any excuse for the action we have taken.

Now, I point out, and I want to say it again, that I read in the paper where they said I backed up. I have not backed up a step. But I had to do that which was necessary to keep other worthwhile programs from going down the drain.

I could say lots more. I think by all means we should not look at our own country last. Even if we look at our country last, I still do not think we should cut it out. We have foreign aid, we have military, everything under the sun, but the only one that they cut is that which goes to our towns and villages and counties in the United States.

They are satisfied; they are my friends. I do not criticize anybody.

But to me the action in regard to revenue sharing is unexplainable.

Mr. Chairman, this continuing resolution which I bring before the House today has had a difficult time. I have already discussed with you the question of revenue sharing and what was done to conform this resolution to the overall outlay target.

As I mentioned earlier, the resolution which is before the House today is House Joint Resolution 738, the fiscal year 1987 continuing resolution. The bill is identical to the resolution reported by the House Committee on Appropriations with two exceptions. The net effect of these two actions is to have a resolution before the House today that is $12.1 billion below the budget authority target and some $200 million below the outlay ceiling. When you compare this resolution to the amounts requested by the administration for the Departments which are funded through this legislative device, we are $12.4 billion under the President's budget authority request and $13.3 billion under his outlay figure for discretionary actions.

HISTORY OF THE RESOLUTION

The House Appropriations Committee met on September 16, 1986, and ordered House Joint Resolution 730 reported by voice vote. The bill and accompanying report (H. Rept. 99-831) were filed on September 17. The Committee on Rules granted a rule yesterday, September 24, on a new resolution (H.J. Res. 738) in lieu of the reported committee bill.

STATUS OF APPROPRIATIONS BILLS

The House has had a very good year with respect to appropriations bills. As everyone knows, this has been a difficult year because of the delay in agreeing with the other body on the fiscal year 1987 budget resolution. As a result, your Appropriations Committee got a late start. We were, however, able to make up lost time and report all 13 appropriations measures prior to the August recess and actually bring 11 of those bills to the House floor for consideration. I am proud to say that the House agreed with the committee and passed all 11 of those bills after open and full debate. This continuing resolution reflects the latest action of the House on these matters.

The two bills which were not considered by the House are the foreign assistance appropriations bill—reported August 5—and the Defense appropriations bill—reported August 14. Both of these bills are awaiting floor scheduling.

The House and Senate conferees have been able to meet and agree on the specifics of the legislative branch appropriations bill which was filed in the House on August 15 (H. Rept. 99-805).

FUNDING LEVELS UNDER THE RESOLUTION

The resolution covers all 13 regular Appropriations bills at the following rate of operation:

One bill at the conference rate—Legislative branch.

Ten bills at the House passed rate: Agriculture; Commerce-Justice; District of Columbia; Energy and Water; HUD-Independent Agencies; Interior; Labor-HHS-Education; Military Construction; Transportation; and Treasury-Postal Service.

Two bills at the House reported rate: Defense and Foreign Assistance.

UNAUTHORIZED PROGRAMS

The resolution provides for the continuation of programs on which authorization action is not complete and funds are not provided in one of the regular 13 bills. Included are such programs as: National Health Service Corps; Alcohol and Drug Abuse Research Program; Refugee and Entrant Assistance Program; Head Start; Community Services Block Grant; Higher Education Act; and Low Income Home Energy Assistance.

DRUG INITIATIVE

The resolution includes funding for the omnibus drug initiative which is provided in some 31 separate accounts and consistent with the House-passed authorization bill (H.R. 5484). There is an across-the-board reduction of 0.34 percent to stay within the fiscal year 1987 outlay allocation.

Let me read from the committee report which I wrote:

The Committee includes in this resolution supplemental appropriations for fiscal year 1987 to fund the recently passed "Omnibus Drug Enforcement, Education, and Control Act of 1986" (H.R. 5484). This authorization bill passed the House of Representatives on September 11, 1986 by a record vote of 392 to 16. In light of the overwhelming support for this program which addresses national needs, the Committee has provided $2,099,741,000 in new budget authority.

The widespread use of illegal drugs and the detrimental effect this is having on society was amply documented during the debate on the Omnibus Drug bill before the House on September 10 and 11, 1986. The House Appropriations Committee has taken numerous hours of testimony through the various subcommittees on this problem, and has provided over one billion dollars in ongoing programs to combat the drug problem, in addition to the new funds in this title. It is the Committee's firm belief that increased awareness and dollars alone will not be enough to fight the drug battle—we must have a coordinated effort and overall plan within the government. The Committee will consider any needed changes and rearrangements in funding that may be necessary to implement this program when a final plan is developed and agreed upon.

TERMINATION DATE

The resolution is for a full year period.

TOTALS OF REPORTED CONTINUING RESOLUTION

The continuing resolution for fiscal year 1987 is $12.1 billion in discretionary new budget authority below the fiscal year 1987 congressional budget resolution and $200 million below the discretionary outlay ceiling.

LIMITATIONS

Since this resolution includes all 13 regular appropriations bills at specified levels of funding and under the terms and conditions of each individual bill, it embraces all the limitations on funding carried in the regular bills such as those regarding abortion funding and others.

LEGISLATIVE STATUS OF COMMITTEE REPORT

When the committee reported the original resolution House Joint Resolution 730, the committee filed an accompanying report to that resolution (H. Rept. 99-831). It is the desire of the committee to clarify the legislative status of that report. Because the rule which provided for the consideration of this new resolution differs only in two aspects—that dealing with revenue sharing and the across-the-board cut to fund the drug initiative, all of the congressional direction to the various departments and agencies that are included in the original committee report apply to this legislative measure. It is the clear intention of the committee that House Report 99-831 be treated as the operative report for the continuing resolution.

Mr. Chairman, the development of this resolution has been very difficult for both myself and the committee. We have only 3 working days. after today, before the beginning of the fiscal year and we have a lot to do if we want to adjourn this Congress within the next week or so and avoid a "lame duck" session.

Mr. Chairman, under my request to include additional material, I will insert in the RECORD at this time two tables that describe the budget figures relating to this resolution.

TABLE 1.—HOUSE JOINT RESOLUTION 738—FISCAL YEAR 1987 CONTINUING RESOLUTION COMPARISON TO CONGRESSIONAL BUDGET RESOLUTION AND PRESIDENT'S REQUEST

(In billions of dollars)

	Continuing resolution		President's request		Budget resolution 302(b) subdivision		Continuing resolution over(+)/under(−) President's request		Continuing resolution over(+)/under(−) budget resolution	
	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Discretionary	$455.6	$261.0	$468.0	$274.3	$467.7	$261.2	−$12.4	−$13.3	−$12.1	−$0.2
Mandatory	106.3	297.0	102.9	294.1	109.8	301.2	+3.4	+2.9	−3.5	−4.2
Total	561.9	558.0	570.9	568.4	577.5	562.4	−9.0	−10.4	−15.6	−4.4

Source: Prepared by the Committee on Appropriations Based on the latest outlay estimates of the Congressional Budget Office.

TABLE 2.—HOUSE JOINT RESOLUTION 738 FISCAL YEAR 1987 CONTINUING RESOLUTION

[In billions of dolairs]

	Discretionary		Mandatory		Total	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Fiscal year 1986	$453.6	$256.9	$106.7	$300.0	$560.3	$556.9
Fiscal year 1987:						
President's request	468.0	274.3	102.9	294.1	570.9	568.4
Sec. 302 allocation	467.7	261.2	109.8	301.2	577.5	562.5
Continuing resolution:						
13 Regular bills (Sec. 101a-m):						
Agriculture	42.0	19.3	4.7	6.3	46.7	25.6
Commerce-Justice-State	12.0	9.4	.3	3.3	12.3	12.7
Defense	264.9	156.8	.4	103.6	265.2	260.4
District of Columbia	.5	.5			.5	.5
Energy and Water Development	15.5	9.4		6.1	15.5	15.5
Foreign Operations	12.5	4.8	.5	5.8	13.0	10.6
HUD-Independent Agencies	38.9	17.0	15.2	39.0	54.1	56.1

TABLE 2.—HOUSE JOINT RESOLUTION 738 FISCAL YEAR 1987 CONTINUING RESOLUTION—Continued

[In billions of dolalrs]

	Discretionary		Mandatory		Total	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Interior	8.1	5.6		3.4	8.2	8.9
Labor-HHS-Education	24.9	15.1	77.7	97.6	102.7	112.8
Legislative	.7	.5	1.0	1.1	1.7	1.7
Military Construction	8.0	2.1		5.7	8.0	7.8
Transportation	9.9	9.1	.4	18.0	10.3	27.1
Treasury-Postal Service	7.6	6.6	6.1	6.9	13.7	13.5
Subtotal, regular bills	(445.5)	(256.4)	(106.2)	(296.9)	(551.9)	(553.4
Unauthorized programs (Sec. 101n)	+9.6	+4.6	+0.2	+0.1	+9.8	+4.7
Drug Initiative:						
New budget authority	+2.1	+0.9			+2.1	+0.9
Across-the-board cut (−0.34 percent)	−1.6	−0.9			−1.6	−0.9
Total	455.6	261.0	106.4	297.0	562.0	558.0

The CHAIRMAN. The gentleman from Mississippi [Mr. WHITTEN] has consumed 9 minutes.

Mr. WHITTEN. Mr. Chairman, I reserve the balance of my time.

Mr. CONTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I support the joint resolution. I would like to give my colleagues a factual description of its major provisions, and the best estimates that we have of discretionary budget authority and outlays for those provisions.

The conference report appropriates for the programs, projects and activities in the 13 appropriation bills for all of fiscal 1987 at the rate, and under the terms and conditions, of the bills as reported to or passed by the House, including the conference report on the legislative bill, and continues the unauthorized Labor-HHS-Education Programs at the current rate with one exception.

The rates for the 13 appropriation bills, plus the unauthorized Labor-HHS-Education Programs, total $455.1 billion in discretionary budget authority and $261 billion in outlays, which is $236 million below the committee's outlay allocation.

The committee added about 40 individual provisions, some legislative in nature, to deal with issues ranging from military procurement reform to the reporting date for the Interagency Committee on Cigarette and Little Cigar Fire Safety.

Most of these provisions are objectionable to the administration.

The committee also added $2.1 billion in budget authority and $894 million in outlays for the programs in the House-passed drug bill. The outlays for these drug programs would make the total discretionary outlays in the conference report exceed the committee's allocation by $658 million.

In total, the conference report provides $457.2 billion in discretionary budget authority, and $261.9 billion in outlays.

The administration has taken the position that defense and international affairs should be funded at the levels provided in the House budget resolution; that we negotiate objectionable legislative provisions in the individual bills, and that discretionary spending for domestic programs not exceed the totals on the Senate 302 allocations.

It will be very difficult to reach an agreement with the Senate that can also pass the House before the election, particularly on defense and foreign aid.

However, I oppose the percentage cut in all 13 of the appropriation bills to offset the $894 million in additional outlays for the drug programs. This cut is ill-conceived and premature.

This cut was rejected by the full Appropriations Committee.

This cut is opposed by the administration.

And percentage cuts in five appropriation bills were rejected by the House this year.

We have taken 11 bills to the floor of this House, where they were subject to debate and amendment. Across-the-board cuts were offered to eight of those bills. Three passed and five were defeated. The House has spoken on this issue. Yet this resolution would cut three of those bills a second time, and would cut five of those bills where the House specifically rejected across-the-board cuts.

To get this conference report signed into law, we will have to negotiate against an OMB benchmark or some estimate based on the Gramm-Rudman baseline.

Yet this resolution would make across-the-board cuts to get below our allocation of outlays from the budget resolution, a figure that will mean absolutely nothing when push comes to shove, as it will when we confer with the Senate and negotiate with OMB.

Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Chairman, I have to say I have a little different opinion of this bill. We have done a lot of talking about drugs around here in recent weeks. Well, here you have the ultimate liberal high. Here is a bill that manages to spend a record-breaking amount and at the same time unilaterally disarms the United States. I cannot imagine anything that is a more perfect summation of what the liberals have told us is the right thing for this country in one little bill than this particular one.

I say that this bill represents record-breaking spending. Well it does.

This bill is the largest single expenditure in history.

Let me repeat that: this bill is the largest single expenditure in the recorded history of humankind.

Where did I get that figure? I went to the Library of Congress. The Library of Congress tells me that never in history has anybody spent this much money in one fell swoop. If you take the kings of France, if you take the Roman emperors, if you take the pharaohs, the rulers of Babylon, none of them spent this much money.

So here you are, you are there, ladies and gentleman, you are here on a history-making event. As the House votes tonight, you are voting for the largest single expenditure in the entire history of humankind.

I say we vote "no."

Mr. WHITTEN. Mr. Chairman, I yield myself 2 minutes.

Let us keep one thing straight here. I repeat again, this across-the-board cut was not to provide budget authority for revenue sharing. The appropriate committee had passed a bill carrying on revenue sharing. The Rules Committee gave them a rule.

So we set that money aside, in a reserve. The across-the-board cut arose in this way: Under the Budget Act our Budget Committee went along with the Senate, which tied down outlays.

□ 1935

We do not have to follow that. Outlays are not run by the Congress; they are controlled by the executive branch.

But in order to meet the outlay limits which our Budget Committee

had adopted, I asked the subcommittee chairmen if they wished to exceed the outlays and they said no but they agreed that an across-the-board cut was the easiest way to reduce the outlays. It was on that basis that I recommended that the committee consider such cuts.

I had the subcommittee chairmen there and I offered my proposition. I said that anyone who had a better idea and wants to sign it, lay it out here. No one accepted my offer. So I did the best I could.

But do not think that revenue sharing, which had been passed by the committee, had anything to do with the across-the-board cut. It had to do with all the other items in it. I just wanted to keep the record straight on that.

Mr. CONTE. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I rise in support of general revenue sharing. General revenue sharing is a program that works. It is one that embodies the notion that "local government is the best governmnet." And it is one that is clearly necessary for many rural communities to survive.

Almost all recipients to revenue sharing are small towns with less than 2,500 people. In my own district 272 government units receive some funding. Here we're not talking about big cities, but small rural villages and towns. Places like Crivitz and Wabeno and Bear Creek. Communities which have aleady been hit hard by the farm crisis.

Most of these towns receive no other Federal funding. Virtually their only source of revenue is the property tax, and many are taxing to the limit of their authority now.

My own State of Wisconsin depends on Federal aid slightly less than the average State; the State and local governments in Wisconsin received 17.2 percent of their general revenue from the Federal Government in 1984.

But local property taxes in Wisconsin are high. Wisconsin ranks seventh in the United States in terms of property tax, and third in terms of farm property tax. Taking the 1985 levels of general revenue sharing, if revenue sharing was completely eliminated, local governments in Wisconsin, not including school and other special districts, would have to raise property taxes by 12 percent to make up for the loss.

And Wisconsin is certainly not alone. Similar pictures can be painted across the Nation.

But let me localize this problem even further, because that's what this issue is—a local one. Forest County in my district is receiving about $129,000 in revenue sharing funds, equal to over a quarter of the county taxes. Of this amount, $86,000 is spent in the sheriff's department, $35,000 on highway maintenance, and $7,700 on a commission on aging. At a time when the county's tax capacity is declining and its costs increasing, the loss of GRS will necessitate reductions in basic services that could cause real hardships for the citizens of the county.

For too long the Federal Government has been in the habit of swallowing up the individual's money and offering him or her back little that is tangible or vitally necessary. General revenue sharing allows funds to be redirected so that they can be used most effectively to help those who contributed. That is why the continuation of this program is so vital to the future of small town America.

Mr. CONTE. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. PORTER].

Mr. PORTER. Mr. Chairman, here we are again for the 32d straight year—every one since 1954, when the Republicans last controlled the Congress—about to pass another continuing resolution.

We've had all year to get the job done and sent 13 separate appropriations bills to the President for his approval or veto. Not one has been sent, Mr. Chairman. Not one.

So we stuff all 13 into this one vehicle, add all the unauthorized programs that haven't been enacted either—15 in all, costing more than $10 billion—and cast one "yes" or "no" vote on the whole package.

My vote, Mr. Chairman is "no". It's not "no" on any particular part of the package. It's "no" on the procedure. It's "no" to irresponsibility. It's "no" to allowing a few senior members to control the content. It's "no" to my chairman incredibly marking up a new bill—although a better one—alone, without even calling the committee together. It's "no" to once again putting in everyone's spending priorities and sending the bill for them to our children. Somehow, somewhere, soon this madness must end. Thirty-two years of fiscal insanity is enough.

It's time for our President and our leaders to say, "America is in a crisis of red ink"—a crisis that threatens to destroy not only our economic growth, but the economic opportunities for individual growth that inhere in a free system—upward economic mobility, the foundation upon which all our freedoms, including political freedoms, rest.

America is in a crisis, and we must ask not whether we can get our particular spending priorities in ahead of the next guy's, but what each of us is willing to give up to solve this terrible problem.

We must tell our constituents to stop writing us the letters—and you've all received them—that start out by saying, "You people in Congress must balance the budget," and then go on to say, "and, incidentally, be sure to raise my retirement COLA", or "increase defense spending," or "raise the limit on my education grant."

No, our constituents are going to have to write to say "Balance the budget, and, to help do so, I'm willing to have my benefits" or "my favorite program frozen, or even somewhat reduced, if everyone else is willing to do the same with theirs."

It is time, Mr. Chairman, to stop the exploitation of our young. This bill continues the "fiscal child abuse" that is the hallmark of America in the 1960's, 1970's and 1980's, and I cannot support it.

I would hope, in all this, that our leaders will hear the message loud and clear—and that our President will start 1987 with a strong message to Congress early in the year that under no circumstances will he tolerate a continuing resolution of any type for fiscal year 1988; that if we send him one in late September next year he will veto it, and force us to act honestly and straightforwardly on each appropriation bill—separately and on time.

If he will do so, he will find amazingly strong support in the Congress and among the American people for his leadership. It's time, Mr. Chairman, it's time.

Mr. WHITTEN. Mr. Chairman, I yield 8 minutes to the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. Mr. Chairman, I think this is a good time to reflect upon how we happen to be here today on this continuing resolution as well as considering the funding levels that are covered by it.

Last year the House passed a budget resolution and allocations were made by the Appropriations Committee to the various committees pursuant to section 302 of the Budget Act. That was completed in April or May. The Appropriations Subcommittees then marked up their bills and some were passed on the House floor in plenty of time to have gone to the Senate and been conferenced and completed long before the beginning of this fiscal year.

However, the military authorization bill which was due 1 year earlier was not agreed upon until after most of the appropriations bills had been passed and in order to reach an agreement on that bill the conferees agreed to an amount for Defense appropriations that was approximately $10 billion in excess of the amount the Appropriations Committee had already allocated to that function.

Then following that a joint budget resolution was agreed to reflecting those higher military authorization levels. In the end the delaying of the budget process, the tardiness of the military authorization bill and the

changing of the allocations after most of them had already been incorporated into bills resulted in delays and the necessity for a continuing resolution, and in military appropriation being at least $7 billion more than they would have otherwise been. Since it was too late to cut others that already had been funded, the budget process and the late military authorization together increased the deficit by at least $7 billion.

It is bad enough for this to have happened 1 year, but mistakes can be forgiven if we profit from the mistakes. Apparently the House did not learn a lesson—because this year have gone down a similar road.

This year the House budget resolution was passed late, but the House Appropriations Subcommittees proceeded upon the basis of 302 allocations that were consistent with that budget resolution. We had every reason to believe that after the experience of a year earlier, we surely would be able to abide by that resolution instead of being directed to change by a joint House-Senate resolution being agreed to after our bills were marked up.

But, in late June a joint resolution was agreed to which changed not only the totals in the House budget resolution, but also agreed to accept outlay figures which anyone should have known could not be adhered to at that point and besides, outlays are really under the control of the administration. We are normally bound by budget authority which is controlled by the Congress.

The administration can shift $25 or $30 billion in outlays from one fiscal year to another by paying bills either early or late, so being bound by outlay figures means that we must use their estimates of outlays as a primary component. That joint budget resolution also used outlay figures which would likely be unattainable and using figures which were almost unattainable anyway means that severe adjustments must be made later in a reconciliation bill.

In August, the military authorization bill that was due in September 1985 passed the House and is not even going to go to conference. But this tardy bill which will not become law is being used as the basis for increasing appropriations for the military and therefore it is said appropriations for domestic programs which had already been made must be cut to accommodate the military increase. Then, yesterday in order to meet the outlay figures that we should not have agreed to in June and which neither the administration nor Congress wanted to abide by through a sequestration, the administration and Congress jointly agreed to a phony deficit reduction bill called reconciliation. It was a scam.

Meanwhile, in July the House has cut several bills across the board in order to meet illusory outlay figures which should not have been agreed to in June and which were changed in August. One of those amendments to the part of the bill that is funded by the Subcommittee on Commerce, Justice, State, and the Judiciary was a cut of $161 million from agencies which deal with drug problems. After the members voted by a vote of 213 to 125 to cut those programs in July, it passed a new drug bill by an overwhelming majority which increased the authority for drug program by $3 billion and 200 of the same members who voted to cut $161 million out of those progams in July, then voted in September to increase authorizations by $3 billion.

Lets face it, the process is not under control. Authorizations, especially military authorizations, are being passed 1 year too late which cause those bills to be irrelevent as far as providing guidelines to the agencies is concerned; but it does result in giving an argument to increase allocations after appropriations bills have been finished. Following this process of recognizing tardy authorizations bills results in adding for those programs that are increased in a late authorization, but it is too late to offset the revisions by cuts in other programs and therefore we either end up with higher deficit or a further reduction in all programs.

Also, budget resolutions not being passed by April 15 hold up the appropriations process and in the end contribute to increasing the deficit. Clearly if the budget process is used, we should: First, pass the House budget resolution on time and stay with that House budget resolution unless the Senate agrees with the House on a joint resolution by April 15; second, make sure that authorizations are passed on time, this means that no rule should be granted on an authorization bill that does not cover the next fiscal year; and third, not agree to outlay levels—which are under the administration's control—because the administration gains the ability to whipsaw Congress and in the end get more money for their priorities and thereby increase the deficit.

Those who do not like continuing resolutions should push for these reforms. To complain about continuing resolutions and to participate in the process and procedures which causes us to have them is not helpful. Unfortunately too many who complain are the same ones who cannot face the fact that hanging onto a budget process which is not working properly is causing the trouble.

This continuing resolution contains the funding levels for the Commerce, Justice, State, the Judiciary, and the independent agencies which were in that bill as it passed the House on July 17 after the Frenzel amendment was adopted which cut drug related activities by $161 million. This bill also contains a provision to fund the new drug bill but in order to do that it is necessary at this point to have an across-the-board cut in all discretionary programs in the whole government by a 0.34-percent. So, when the conference on the new drug bill brings that bill back to the House and you vote on that, you will also be voting to cut education or health and justice and other discretionary programs in order to finance it.

The new drug bill contained no money for the courts but it added demands for court services. The Frenzel amendment and the across-the-board cut to pay for the new drug bill cuts the courts more than $50 million at the same time the new bill adds demands for services. This combination is sure to result in delays in court and simply not make access to justice available. There are other examples of cuts which will cripple important agencies.

In short, the Members of the House have given so many inconsistent signals this year on the part of the bill that is funded under the subcommittee I am privileged to chair that it is impossible to know what the Members really want. Also, the money is so insufficient for this part of the bill that Members should be warned that most of you will probably not like the conference agreement when it is concluded because there is no way to fund more services with about 8 percent less money and do it adequately.

For example, numerous Members by letters and other communications and votes on authorizations bills clearly indicated that they want more people working on border problems and in the Immigration and Naturalization Service; but the Frenzel amendment by a vote of 213 to 125 reduced the Immigration and Naturalization Service funding by $30.4 million and the majority of members on the Mexican border who were so strong for increases voted for the cut.

I hope that Members will think about some of these things that I have discussed and will help to change the procedures in the next Congress so that we can avoid a continuing resolution next year; and also be more cognizant of the fact that funding levels are determined by several bills prior to the time we reach a continuing resolution; and that inconsistent votes during the year to cut and then add then cut again do not contribute to the budget obligation of priority.

I urge passage of the bill so we can go to conference and finish the process the best we can for fiscal year 1987.

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Mr. CONTE. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. I thank the gentleman for yielding me this time.

Mr. Chairman, this, I am told, is the largest spending bill that has ever been passed any time, anywhere. That alone is almost enough to disqualify it. It represents a failure of our system, our budget system, the failure of our committee system that we cannot pass the various cost bills for the Congress and for the operation of the Government in the normal manner.

It contains the overspending that we saw in each of the appropriations bills as they passed before us. In addition, there is $9 billion more which was not in Labor and HHS because programs were unauthorized. There are two conference committees apparently ready to meet. They are not meeting. Instead, we are throwing everything into this one bag.

In my judgment it is a failure of the system. I think the way to reward those who have created it is to defeat it, send them back to the drawing boards and bring us something rational.

I urge the defeat of the bill.

Mr. CONTE. Mr. Chairman, I reserve the balance of my time.

Mr. WHITTEN. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. FAZIO].

Mr. FAZIO. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of the continuing resolution.

Mr. Chairman, more and more attention is being paid these days to the continuing resolution and the reconciliation bill. This is because they must pass sooner or later, and so become the most promising vehicles for legislative provisions which get caught elsewhere in the Congressional labyrinth.

We have one of those bills before us now, the 1987 continuing resolution. As usual we face a number of colleagues who share the usual skeptical view of our efforts. They fear we trespass on the jurisdiction of authorizing committees, albeit often at the authorizing committee's own request. They fear we try to sneak through provisions which are bad policy, or insufficiently considered policy. In reality, this happens much less often than critics enjoy thinking, but we are nonetheless burdened by their general criticism.

This is a good bill; more often than you think, we do things right. I want to speak today about two examples of good provisions in this bill. They are dependent on it for speedy enactment and they are of great tangible benefit to people who need them.

Unfortunately, there is also one major example of a provision which needs to be better thought out and which will have the opposite effect from what its supporters intend. I am referring to the amendment by my good friend from Massachusetts, Mr. CONTE. He would place a $250,000 ceiling on payments to farmers participating in the Federal Crop Program.

Mr. CONTE and Chairman DE LA GARZA of the Agriculture Committee have been working out a compromise which I hope will come to completion. I then hope it can be supported by unanimous consent on the floor. If not, I strongly urge my colleagues to prepare for another time when we can bring the effect of this effort more in line with its intent.

This limit looks for all the world as though it would reduce costs to the Federal Government because it would limit payments to farmers. It also looks like it would help small farmers, because it would make minimal payments to larger ones.

In fact, by driving large farmers out of the acreage reduction programs it will flood the market with produce and cut the economic underpinnings out from under the less capitalized smaller farmers. Because these smaller farmers will then have no choice but to dump their unsellable product onto the Commodity Credit Corporation, the Federal budget will be hurt, not helped, by this amendment.

As an example: our new rice program requires farmers participating in the program to set-aside up to 35 percent of their acreage hence lowering overall production, decreasing supply and driving up the price. Thus far, the set-aside program, in combination with other provisions of the program which have increased rice exports, has been very helpful for the U.S. rice industry.

A $250,000 cap on payments would discourage larger, more efficient growers from participating in the rice program. Those growers could then plant on 100 percent of their available acreage. As production increases, the domestic supply would go up and the price go down. Smaller farmers would then have the unfortunate choice of either selling their rice on the market at depressed prices or forfeiting their crop to the Federal Government and having the taxpayer absorb the cost. This problem alone would bring enormous new debts to the farm program system. For other reasons, the President's Office of Management and Budget has further estimated that Mr. CONTE's amendment could add $400 million to next year's deficit for all program crops.

One of the good provisions in this bill would prevent the transfer of potentially hundreds of millions of dollars in irrigation drainage costs incurred by the Westlands Water District to the power customers of California's Central Valley project. This amendment has been worked out with my good friend, TONY COELHO, who represents the irrigators in question. He deserves the thanks of all the power users in the Central Valley project for the good faith he has exercised to help solve their problem while he has been wrestling with a very difficult set of his own.

The Westlands amendment's basic effect is to interfere with that mechanism in Bureau of Reclamation repayment policy which transfers certain project irrigators' costs to the power users of the project when those costs exceed the ability of the irrigators to pay for them. The amendment is made necessary by a recent opinion of the Solicitor for the Department of Interior, who argues that certain drainage and distribution system costs in the San Luis unit of the Central Valley project are repayable through the Bureau of Reclamation's main CVP irrigation water supply contract with Westlands. Thus, costs in excess of the irrigators' ability to pay would be eligible for transfer to the power users.

This amendment is neutral with respect to the merits of the solicitor's opinion. However, I offered the amendment to clarify that no matter whose interpretation of statute ultimately prevails, no distribution and drain costs in the San Luis unit, including the cleanup of the Kesterson Reservoir, will be transferred to power users under the ability to pay approach. This is consistent with repayment policy covering all other units of the Central Valley project. Existing laws should work to ensure that costs beyond the irrigators' ability to pay will not get transferred onward to the taxpayers.

The legacy of relations between the Westlands Water District, the Department of Interior, and other water and environmental groups in California is characterized by anger and confusion. These problems have been compounded by the grim implications of the selenium crisis affecting the San Joaquin Valley. Mr. COELHO's openness to the concerns of others is very much appreciated in this truly difficult context.

It should also be clear to our colleagues that this amendment would protect private utilities as well as the public utilities who are preference customers of the CVP. It protects all purchasers of CVP power from the transfer of San Luis Unit distribution system and drainage costs, directly or indirectly. The Bureau will have to account carefully for these costs, to see that they do not displace other costs and indirectly force irrigation costs for the CVP as a whole above the irrigators' ability to pay.

Universal coverage is an aspect of this compromise important to another

good friend and colleague, GEORGE MILLER, chairman of the Interior Subcommittee on Water and Power, and who has been diligent in his efforts to ensure that private utility ratepayers are protected as well as public utility ratepayers by this provision from the possible transfer of San Joaquin Valley drainage costs from the immediate beneficiaries to the power users.

The other good amendment to which I refer is one establishing a year's moratorium on the prepayment of certain rural housing loans, to avoid the eviction of up to 650,000 poor Americans when their apartment units, no longer subsidized, go to market-rate rental levels.

This problem was brought to my attention by Mr. RICK LEHMAN, a fellow Californian on the House Banking Committee. He has been concerned for a long time that the recent drop in interest rates combined with real and perceived effects of the pending tax bill will devastate the housing supply for low income rural people dependent on the Farmers' Home Administration's section 515 program.

We are both acutely aware that of the 650,000 people nationwide who live in section 515 apartments built prior to 1980, and who are therefore vulnerable to functional eviction as the result of mortgage prepayments, no fewer than 220,000 are Californians living in 63,000 units.

It is important for my colleagues to note that this is not a permament ban on prepayments. It is only a year's moratorium to give Congress time to decide what to do, if anything, once we see how the tax bill really does affect the low income housing marketplace. We also treat owners of units built prior to 1980 no differently from the way current law already treats builders of units after that point. When and if this provision becomes law, all builders who receive interest subsidy loans under the 515 program would be committed to maintaining their units in rent-subsidized status for 20 years before they may prepay.

Mr. AKAKA. Mr. Chairman, I would like to take this moment to address section 140 in the continuing resolution, which will allow construction of the Hawaii Interstate Highway H-3 to proceed. Section 140 is included in the Surface Transportation Act, which passed the House last month.

As my colleagues are aware, authorizing legislation added to the continuing resolution is unusual; but there is an urgent need to act in this circumstance. The H-3 highway faces a September 30, 1986, deadline for construction or transfer of funds to other eligible highway projects. As I said at the outset, language allowing the construction of H-3 to proceed is contained in the Surface Transportation Act. But inserting this language in the continuing resolution is essential due to the uncertainty of final action on the highway bill. This provision has been approved by the leadership of the Public Works and Transportation Committee and Appropriations Committee, as well as the administration.

Under normal circumstances, this highway would have long since been completed. Unfortunately, a recent decision of a ninth circuit court has prevented construction from proceeding without further studies and design modifications, which cannot be completed before the 1986 and 1990 deadlines for construction of the interstate highway system. In reaching its decision, the court focused on a highly technical reading of section 4(f) which related to the highway's "constructive use" of the amenities of an adjoining county park. However, no land from the park involved has been physically taken. In fact, in the spirit of cooperation which should serve as an example to transportation planners, the park boundary was expanded by the State, at the request of the city, to take advantage of the highway as a buffer against development. It was in an effort to meet the very requirements of section 4(f) that State officials expanded the boundary of the park to meet the H-3 right-of-way.

This is not an environmental issue. The design of this highway, which has been under development for over 25 years, incorporates a great deal of environmental mitigation. Many of the mitigation features were added at the insistence of the Secretary of Transportation in response to concerns expressed by the public and other government agencies. The ninth circuit determined that the State had satisfied all the requirements of Federal environmental law with the sole exception of section 4(f). All told, the State has fulfilled 71 out of 72 Federal environmental requirements. The record demonstrates that State and Federal transportation officials have done their job in protecting the environment.

Opponents of this highway have suggested that alternative transportation projects would be less damaging than H-3. Nothing could be further from the truth. The proposal to upgrade existing highways shows a violation of more than 10 section 4(f) sites. And a proposed rail transit system to serve as a substitute for H-3 would involve at least six section 4(f) acquisitions, such as the destruction of historic buildings and the taking of parklands.

My colleagues may have seen other concerns circulated by the opposition. But, I will not take this time to address each of these issues since they were disputed during consideration of the Surface Transportation Act last month.

Let me just say that we, in Hawaii, have no other alternatives than to seek congressional relief for the completion of H-3. We are caught in a peculiar predicament where a parkland was created, not taken, and are being penalized for it. Section 4(f) was enacted to protect existing parks and should not have been applied in this circumstance. Twenty-five years of coordinated planning among transportation officials have been virtually ignored. H-3 has been carefully planned interstate highway and all concerns have been taken into account in establishing the existing route.

I thank my colleagues on the Public Works and Transportation Committee and the Appropriations Committee for their support on this most pressing issue.

Mr. SKEEN. Mr. Chairman, I rise in opposition to House Joint Resolution 738, the bill making continuing appropriations for fiscal year 1987. Like every Member of this body, I have serious reservations about doing business in this manner, however, I would like to commend my colleagues on the House Appropriations Committee who have worked diligently this year in reporting the majority of our annual appropriations bills to the floor in a prompt manner. And, I am hopeful that we can resolve the numerous policy differences in conference committee which have prompted the veto threats of this administration.

Mr. Chairman, I would like to express my concern over one provision in the report which ultimately may accompany the Interior chapter of this bill which severely impacts our already troubled domestic petroleum industry. Especially distressing is the fact that the language—which mandates that oil companies will only be permitted to take adjustments on their accounts for up to 60 days after production is reported—was incorporated in the report following markup of the Interior appropriations bill without any apparent consultation with other members of the committee.

Apparently, no committee member, other than Congressman YATES or his staff, was aware of the language which was buried in the report.

Mr. Chairman, corrections of accounting errors, mechanical malfunctions, changes in factual circumstances, and the resolution of disagreements over interpretation of onerous minerals management service [MSS] regulations, account for a major percentage of the adjustments that must be made on a working oil and gas lease. These circumstances often involve delayed action by the purchaser or the MMS, over which the producer has little or no control.

Mr. Chairman, a 60-day adjustment period is totally insufficient to accommodate the wide variety of adjustments which are necessary and which are often outside the control of the lessee. In addition, penalties under the Federal Oil and Gas Royalty Management Act [FOGRMA], the imposition of interest for late payments, and the high administrative cost of making adjustments already give oil companies high incentive for accurate accounting at the earliest possible time.

Clearly Mr. Chairman, the consequences of this language are far reaching and deserve to be addressed in a more studied atmosphere.

It is my understanding that the interior appropriations subcommittee held a hearing this morning in which chairman yates and Secretary of the Interior Donald Hodel held a lively discussion about many of these complex issues. I also know that the department of the interior has been diligently reviewing the royalty adjustment issue and all of its complexities. Mr. Chairman, while I commend the chairman for holding this hearing, I frankly believe it's time to put the horse back in front of the cart and delete this onerous language when we meet in conference. Thank you, Mr. Chairman.

Mr. DORGAN of North Dakota. Mr. Chairman, Mark Twain once said that "Man is the only animal that blushes. Or needs to."

I regret to say that today's action in the Congress on a continuing resolution to run the

entire Government for 1 year is a case in point. We have just approved a $561 billion layer cake with 23 separate layers—1 for each of the appropriations bills Congress is obliged to pass each year.

Think of how irresponsible this action is. The approval came after only 3 hours of debate, or about $3 billion a minute. That hardly does justice to the notion that this is the greatest deliberative body in the world.

The approval also comes at the 11th hour of this session of Congress. Unfortunately, this is not the exception to the rule. Since I have served in Congress, passing a last minute, stop-gap, catch-all funding bill has continued a 25-year habit. And bad habit at that. I fail to see why we cannot pass appropriations bills in an orderly fashion before the August recess, so that the Federal Government, State and local governments, and local school districts can carry out responsibly such wide-ranging services as national defense, law enforcement, health care, and education.

This bill is the largest single expenditure in the history of humankind. It makes King Louis XIV of France, the Sun King, look like a piker. It makes Henry VIII of England look like a penny-pincher. Yet in one fell swoop after 180 minutes of debate and just one permitted amendment, we write out a gigantic fiscal check blushing with red ink.

I don't say that Congress bears the greatest blame for this situation. Year in and year out, Congerss has cut President Reagan's budget requests. And every year the President refuses to ask for the revenues to pay for his "American Express" financed buildup of strategic forces and foreign military aid.

I say to my colleagues, "let's send this big, fat layer cake back to the budget bakery, carve it up, and let the membership of the House and the Senate decide whether to approve each measure." And if the Senate wants to keep dragging its feet, then let the President call them into action.

Pending that, I urge my colleagues to vote "No" on this parliamentary boondoggle, House Joint Resolution 738. Otherwise, we deserve to blush.

Mr. McCAIN. Mr. Chairman, the 99th Congress has expended a tremendous amount of energy addressing international trade issues. It is important that in our budget considerations, we consider the impact our fiscal decisions will have on the adequate enforcement of U.S. trade law.

In reviewing the appropriation for the Department of Commerce, I would like to bring the attention of my colleagues to the recently signed United States-Japan semiconductor accord. Ambassador Yeutter and Secretary Baldrige and their respective staffs are to be commended for their efforts—over 1 year of intensive negotiations—which resulted in the signing of this agreement.

As part of the agreement, the Department of Commerce will be implementing a semiconductor monitoring system to ensure that United States companies obtain full access to the Japanese semiconductor market and to detect and halt any dumping activity. Although not explicitly provided for, staffing for the semiconductor monitoring system can be allocated from this continuing resolution.

It is important for Congress to support the creation of this semiconductor monitoring system. It will be equally important to provide sufficient personnel for the Commerce Department monitoring system throughout the length of the 5-year agreement.

Ms. MIKULSKI. Mr. Chairman, I will support the continuing resolution, but with great reluctance. This bill includes funds for a great number of essential, admirable programs. But it also includes funds for the Contras fighting the Nicaraguan Government. And to this I am opposed.

In the past I have fought against the Reagan administration's war by proxy in Central America. I rise to express my opposition to it again today.

Our foreign policy toward Central America should reflect the same principles of freedom and democracy we hold so dear in this Nation. Some fear that if we do not give aid to the Contras, we will not be doing all we can to support democracy. I disagree. I believe the best way to affect change in Nicaragua is not through military force, but through the peace process. That entails putting our full support behind the Contadora process, and full support behind demilitarization and stability for the entire region.

Mr. Chairman, I support this continuing resolution because it will keep the Government going. It contains many honorable provisions which I do support. But I am once again disappointed that we will be approving the administration's war by proxy if we pass this bill.

Mr. RAHALL. Mr. Chairman, among the various individual appropriation bills included in this continuing resolution for fiscal year 1987 is the House-passed version for the Department of the Interior.

This bill, H.R. 5234, was passed by the House on July 31 and the other body passed its version on September 16. As we begin the process of reconciling these bills, either within the context of the continuing resolution or separately, of particular importance from my standpoint as chairman of the Subcommittee on Mining and Natural Resources is a provision adopted by the other body in its version of the Interior bill relating to the disposition of oil shale placer claims located prior to enactment of the Mineral Lands Leasing Act of 1920. I would strongly urge my colleagues to accept this provision.

Over the last 66 years, there have been numerous and conflicting administrative and judicial actions relating to those oil shale claims located prior to the 1920 Leasing Act. The issue at hand is whether these claims have been maintained in compliance with the mining laws and are, as such, valid and qualified to be patented.

Renewed public and congressional interest in this matter arose due to a May 1985 decision by Colorado District Court Judge Finesilver in a case involving 99 claims covering 15,553 acres of land in western Colorado. The Finesilver decision is deeply troubling as it has the effect of eliminating those mechanisms in our mining laws which insure that mineral lands are used for mining purposes rather than for activities totally unrelated to mineral extraction. Despite the repeated and strongly worded recommendations by the BLM State director in Colorado as well as the regional solicitor that the Finesilver decision should be appealed, the Interior Department instead chose to settle the case.

On August 12, 1986, the Committee on Interior and Insular Affairs conducted an oversight hearing on this matter after which I, along with our colleagues JOHN SEIBERLING, MIKE SYNAR, and BRUCE VENTO introduced legislation—H.R. 5399—that seeks to clarify congressional intent as to what constitutes compliance with the maintenance requirements of the mining laws for oil shale claims. On September 11, 1986, the Subcommittee on Mining and Natural Resources held a hearing and markup of H.R. 5399. However, in light of the limited time remaining in this session of Congress and the controversial nature of this issue, it does not appear we will be able to gain enactment of the bill this year.

For this reason, the oil shale provision in the Interior appropriation bill adopted by the other body is of crucial importance as it would have the effect of putting pressure on the Interior Department to not issue patents for the oil shale claims that are part of the Finesilver decision and would explicitly prohibit the patenting of any other oil shale claim for a period of 180 days from enactment.

It is my intention to pursue this matter during the 100th Congress with legislation similar to H.R. 5399. However, this will not be possible without the breathing space provided by this provision.

Mr. YOUNG of Alaska. Mr. Chairman, the proposals to eliminate the General Revenue Sharing Program from this spending measure will create serious economic difficulties for towns and cities across the entire Nation. Funding from this program has enabled many municipalities to increase and improve community services, physical plants, business development and the overall standard of living for their citizens.

Many State and local economies are already experiencing severe financial problems arising from the crises in agriculture and the petroleum and insurance industries. These communities need time to develop alternative sources of revenue. Continuation of general revenue sharing would give them that much needed time. I urge my colleagues not to add to the economic problems of the cities and towns we represent. We should defeat this rule and encourage the committee to develop a resolution with general revenue sharing intact and included as originally provided.

Mr. STANGELAND. Mr. Chairman, I rise to express my deep concern and unalterable position to a provision in this bill which would permanently prohibit the Coast Guard from extending the winter navigation season on the Great Lakes and the St. Lawrence Seaway. I am not only opposed to this provision for fundamental policy reasons, but I am also outraged at the manner which this provision was included in the bill before us today.

Mr. Chairman, the issue of the Great Lakes winter navigation is an extremely controversial one and one that has been the subject of extensive debate. In 1970, the Congress authorized the Corps of Engineers to undertake a thorough examination of the feasibility of extending the navigation system on the Great Lakes and the seaway. After years of study

costing $7.7 million, the Corps of Engineers, in consultation with other affected Federal agencies, developed a report which found that an extended navigation season was both engineeringly and economically feasible. In addition the Federal Government has spent $13.4 million on a demonstration of the project's feasibility plus $8.6 million just this past year on an environmental impact statement on a planned 2-week extension of the winter naviation season. The corps' original feasibility report concluded that extension of the navigation season could be implemented under existing agency authorities and would not require further congressional authorization. Season extension has, however, not been implemented. It has not been implemented for a variety of reasons, including the recent downturn in the midwestern economy.

With this background, I was shocked and greatly disappointed to learn that the Appropriations Committee had included a provision in this bill which will permmanently prohibit implementation of a season extension. The provision was added without any advance warning to the authorizing committee with the responsibility for establishing policy on this issue. As the ranking minority member of the Water Resources Subcommittee of the Committee on Public Works and Transportation, the committee with legislative responsibility over this issue, I am outraged from an institutional perspective. Just as importantly, the provision was added without consultation with Members from the region who may be adversely affected by such a prohibition. As a Member representing a district heavily dependent of Great Lakes transportation, I am personally outraged.

Mr. Chairman, this provision represents a fundamentally flawed policy. It imposes a permanent, arbitrary, and unjustified restriction on an important transportation system essential to the entire Great Lakes region. Furthermore, it is a restriction that runs counter to the recommendations of the agency charged with studying this issue.

The farmers of the Midwest have been through one of the worst periods ever faced by American argiculture. The rate of foreclosure on farms and businesses which depend on agriculture has been running at an unprecedented level for years. It shows no signs of slowing. As a farmer myself, I know how essential the cost of transportation affects the ability to show any kind of profit. However, the availability of transportation is far more important.

The Great Lakes and the St. Lawrence Seaway are essential to the entire farm economy in the Midwest. The farmers in Minnesota or Wisconsin, Illinois, or Pennsylvania, depend on the Great Lakes' ships to carry our commodities to domestic and foreign markets. Each year the Midwest has to race the clock to harvest its corn and grain in time for it to be shipped out of the Great Lakes before the shipping lanes freeze over for the winter. Extending the navigation season would provide the entire Midwest economy with a measure of safety to ensure that their goods are not left sitting on a dock in Duluth or Chicago, waiting for the spring thaw. Taking into consideration all of these factors, I see a prohibition on a season extention as nothing less than a slap at the farmers who continue to face severe economic hardship.

Unfortunately, because of the rule that has been granted, I am prevented from offering an amendment striking the provision. However, I come before you today to bring this issue to the attention of this body and to pledge my untiring effort to work toward removal of this provision before this bill becomes law. It is bad policy, totally unfair to the entire Midwest, to midwestern agricultural interests, and to Members of this body representing those farming interests.

Mrs. ROUKEMA. Mr. Chairman, I am strongly opposed to the insertion of language in this continuing resolution referring to the Construction Industry Labor Law Amendments of 1985. Reference to such a controversial, nongermane amendment has no place in an appropriations bill.

In April of this year, the House passed H.R. 281, the Construction Industry Labor Law Amendments of 1985, which would prohibit "doublebreasting," or the operation of both union and nonunion shops by the same employer, and which would make prehire agreements between a union and a contractor immediately enforceable. This amendment would change the way in which the National Labor Relations Board must process and adjudicate certain cases arising in the construction industry. The continuing resolution purports to appropriate such amounts as may be necessary for "activities authorized by the Construction Industry Labor Law Amendments of 1985 as passed by the House of Representatives on April 17, 1986."

This attempt at appropriating funds for such a change in the law is not only unorthodox but totally unnecessary. There is no precedent for appropriating funds for such statutory changes because there is no need for specific additional funds to carry out such changes. Comparable changes in statutes are made all the time without a corresponding appropriation of funds.

But even assuming, as I of course do not, that it were necessary to appropriate additional funds to cover the costs of enforcing these construction amendments, this provision does not do it. Section 101(n) of the continuing resolution, which contains the references to the construction industry labor law amendments, stipulates that the activities listed are funded only if they were conducted in fiscal year 1986. There is a proviso further stipulating that "no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 * * *." Since H.R. 281 has never been enacted into law, it obviously has never had any authority, appropriations, or funds. Thus, the inclusion of language in the continuing resolution referring to activities authorized by the Construction Industry Labor Law Amendments of 1985 has no force of law whatsoever.

I repeat that I am not only strongly opposed to the inclusion of this reference to the construction industry amendments in the inappropriate vehicle of an appropriations bill, but I believe that the language used has no force of law at all.

Mr. MOODY. Mr. Chairman, I was very disturbed that general revenue sharing, a program I strongly support, is dropped for fiscal year 1987 by mere adoption of the rule for the continuing resolution.

Revenue sharing is critically important to towns, cities and counties—small and large—across the country. Eliminating revenue sharing injures local governments. Their ability to provide services would be severely curtailed.

In my judgment the original rationale behind Federal revenue sharing with local governments is just as strong today as ever: The level of government best equipped to collect revenues—the Federal Government with its growth-sensitive and inflation-sensitive income tax—is not always the best level of government to spend revenues. The Federal income tax, especially if we adopt tax reform, is also a much fairer source of tax revenues than the local property tax it relieves through revenue sharing.

In my State of Wisconsin more than 90 percent of the funds used by counties for fire protection and 20 percent for county law enforcement come from Federal revenue sharing.

Revenue sharing funds are particularly important for reducing the local tax burden in Wisconsin. In 60 of Wisconsin's 72 counties, revenue sharing exceeds 10 percent of county revenues. Eliminating it forces local governments to either cut essential services or raise essentially regressive taxes.

Revenue sharing is an important program. I hope that this matter can be reconsidered by Congress when we revisit this issue in the spring.

Mr. WEISS. Mr. Chairman, I rise in support of House Joint Resolution 738, continuing appropriations for fiscal year 1987.

I suppport this measure in large part because it is necessary to ensure that the basic functions of the Federal Government continue to operate in the coming fiscal year. However, I strenuously disagree with many aspects of the bill, including the omission of funding for the General Revenue Sharing Program, the inclusion of the omnibus drug bill, and the inclusion of funding for the Contras in Nicaragua.

House Joint Resolution 738 contains fiscal year 1987 funding for all programs normally covered by the 13 regular appropriations bills. If it is not approved, the regular functions of the Federal Government will cease to operate on October 1. It is therefore essential that the resolution be passed.

It is worth pointing out that the practice of wrapping appropriations bills that have not yet been enacted into an omnibus continuing resolution is extraordinarily irresponsible. Members of Congress are elected to represent their constituents on a wide range of issues which are crucial to the future of our Nation and the world. When the entire funding of the Federal Government is wrapped into one bill

and sent to the floor for one up or down vote at the end of the legislative session, it does not permit Members to discriminate between its various provisions, be they positive or be they negative. This denies the people their voice and offends the principle of representative government.

It is even more disturbing that the resolution we are considering today is not the one reported by the Appropriations Committee last week, which contains funding for the General Revenue Sharing Program. In violation of normal House procedures, the resolution before us now was introduced late yesterday and was made in order through the rule adopted earlier, circumventing the Appropriations Committee.

The resolution reported by the Appropriations Committee extended GRS for 1 year at a 75-percent funding level, or $3.45 billion. An amendment in the Appropriations Committee to strip revenue sharing from the continuing resolution was soundly defeated. However, because it appears that a large majority of Members would vote to continue revenue sharing, this original continuing resolution was not brought to the House floor.

Revenue sharing is vital to the health of 39,000 cities, counties, towns, and townships across America. Failure to renew the program will result in tax increases or cutbacks in services in virtually all of the localities now receiving revenue-sharing funds.

Law enforcement, firefighting, hospitals, schools, correctional systems, and assistance to the homeless and aged—these are some of the programs and institutions that will suffer if revenue sharing is lost. The loss of revenue sharing will hit farm communities disproportionately, for many of them are ineligible for categorical grants and receive only revenue sharing funds from the Federal Government.

In many cities, the first line of defense against drugs is funded by revenue sharing. A National League of Cities survey found that two-thirds of the responding cities use revenue sharing moneys in their operating budget to enforce drug laws, prosecute offenders, and to educate and rehabilitate citizens. The loss of revenue sharing will set back these efforts as well.

However, I am strongly opposed to the provision of the continuing resolution that incorporates the entire text of the flawed omnibus drug bill. I supported this legislation in its original form. But once the bill had been amended to establish a death penalty, to destroy the protections of the exclusionary rule, and to erase the separation of military and civilian forces by involving the Armed Forces in drug interdiction, I was no longer able to support it.

The inclusion of these three provisions, first in the drug bill and now in the continuing resolution, forces Members to choose between fighting the menace of drugs, and upholding the Constitution and our basic moral principles. I find it interesting that newspapers across the Nation—including the New York Times, the Washington Post, the Los Angeles Times, and the Christian Science Monitor—have recognized the pernicious nature of the House bill, and have opposed its adoption.

The continuing resolution also contains money for the Contras in Nicaragua, and funding for war elsewhere in th region as well. I have consistently opposed aid to the Contras and aid to governments which systematically violate human rights, and I will continue to do so. The events of recent weeks confirm the unwisdom of the course our Government has taken.

The administration said Contra aid would help to bring about regional negotiations. It hasn't happened. Now we know that this administration was never really interested in a peaceful settlement. These days the Reagan administration doesn't even pretent to be trying. Instead, the administration is feeding the flames of war, and the Contadora peace process is all but dead.

Now Nicaragua has disappeared from the front pages, and some will say that the issue has been decided. But for the people of the region, who continue to suffer the effects of our policy, the issue is not closed. The administration has even used its illegal embargo against Nicaragua to deny a humanitarian organization, Oxfam, permission to ship agricultural tools to that impoverished country.

The opposition parties in Nicaragua are overwhelmingly opposed to this administration's approach. Spokesmen for the Independent Liberal Party, the Popular Social Christian Party, the Democratic Conservative Party, the Social Christian Party, and other political groups have emphasized their rejection of a policy built on aid to the Contras. The same remains true of other countries of the region. After the June Contra vote in this House, the Chamber of Deputies of the Argentinian Congress passed a resolution decrying the Contra-aid package and calling for renewed support for Contadora.

The continuing resolution also contains large sums for military aid to El Salvador, and a large unrestricted package of aid to Guatemala, El Salvador, and Honduras. In each of these countries, the military remains the strongest institution, overshadowing the power of elected officials or the judiciary. In El Salvador and Guatemala, the military and allied death squads continue to commit systematic gross violations of human rights against the population. In Honduras, aid funds have been used to pressure the government into acquiescing in our policy of militarizing the region. I would therefore have opposed military aid to each of these governments had the question been presented for a vote on that issue. In all of these respects, let us hope that the next Congress charts a wiser course than we have done this session.

The continuing resolution does contain some very important provisions as well. By earmarking funds for Israel and Egypt, the resolution secures our essential strategic and moral interests in the Middle East. And in general, the balance between development aid and security aid is more favorable in this bill than in the corresponding legislation pending in the Senate.

Further, the resolution contains extremely important provisions relating to nuclear arms control that should be approved by the House and preserved in the subsequent House-Senate conference. These provisions, previously approved by the House during debate of the fiscal year 1987 Defense authorization bill, will ensure continued compliance with the SALT II Treaty, impose a 1-year ban on all nuclear tests over 1 kiloton in size, continue the current ban on the testing of antisatellite weapons, and postpone nerve gas production for 1 year.

In my view, the President's decision to abrogate the SALT II Treaty is a dangerous and irresponsible blunder that threatens to spark an entirely new spiral of wasteful weapons spending by the superpowers. I am very hopeful that the conferees will recognize the importance of this matter and preserve the provision of the bill that prohibits the use of funds to deploy nuclear weapons which violate the limits of the SALT agreement.

Moreover, the continuing resolution contains an urgently needed measure to bring the United States into conformance with the ongoing ban on nuclear testing that has now been observed by the Soviet Union for more than a year. Every President from Dwight Eisenhower through Jimmy Carter has pursued an agreement to end nuclear explosions once and for all. The American public strongly endorses this goal, and both Houses of Congress have passed resolutions calling on the President to reopen negotiations for this purpose.

Nevertheless, the President still stands in strong opposition to this essential goal. The provision approved by the House, which would mandate a 1-year ban on nuclear explosions larger than 1 kiloton, will force the President to join the Soviet pause on testing. A bilateral moratorium on nuclear testing is an important first step toward a Comprehensive Test Ban Treaty. And a Comprehensive Test Ban Treaty can be an important first step toward an eventual freeze and reductions in nuclear weapons.

I am also hopeful that the conferees will insist on maintaining the current bilateral ban on the testing of antisatellite weapons. This ban has been a complete success in that it has actually prevented the initiation of an entirely new arms race in space. If we permit continued development of antisatellite weapons, the early warning and communication satellites of th superpowers will quickly become endangered, making both sides vulnerable to a surprise attack.

Finally, I am hopeful that the conferees will endorse the House provisions that postpone for 1 year the production of heinous nerve gas weapons. The weapons, which have no place in the arsenal of any nation, are technically flawed in a manner that will potentially endanger our own troops. It is shameful that the administration has requested that we waste the taxpayers money in such an irresponsible manner.

It is extremely unfortunate that we have not been afforded the opportunity to vote separately on many of the provisions of the continuing resolution. I support the resolution because it will provide the necessary funding to maintain basic Government services and because it contains essential provisions that will further the cause of nuclear arms control. Yet my vote should in no way be interpreted as supportive of the resolution's many dangerous flaws, a number of which I have set forth earlier in this statement. I will continue to work in the future to reverse the damaging provisions contained in this bill.

Mr. CONTE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. WHITTEN. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Pursuant to House Resolution 560, the joint resolution is considered as having been read for amendment under the 5-minute rule.

The text of House Joint Resolution 738 is as follows:

H. J. RES. 738

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5177, the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 24, 1986.

(b) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5161, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 17, 1986.

(c) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986.

(d) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5175, the District of Columbia Appropriations Act, 1987, as passed by the House of Representatives on July 24, 1986.

(e) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as passed by the House of Representatives on July 23, 1986.

(f) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5339, the Foreign Assistance and Related Programs Appropriations Act, 1987, as reported to the House of Representatives on August 5, 1986.

(g) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, as passed by the House of Representatives on September 12, 1986.

(h) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5234, the Department of the Interior and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 31, 1986.

(i) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5233, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 31, 1986.

(j) Such amounts as may be necessary for programs, projects, or activities provided for in H.R. 5203, the Legislative Branch Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-805) as filed in the House of Representatives on August 15, 1986, as if enacted into law.

(k) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5052, the Military Construction Appropriations Act, 1987, as passed by the House of Representatives on June 25, 1986.

(l) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5205, the Department of Transportation and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 30, 1986.

(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as passed by the House of Representatives on August 6, 1986.

(n) Such amounts as may be necessary for continuing the following activities, not otherwise provided for in this joint resolution, which were conducted in the fiscal year 1986, under the terms and conditions provided in applicable appropriations Acts for the fiscal year 1986, at the current rate or as otherwise provided herein: *Provided,* That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 unless otherwise provided for herein:

Public health activities authorized by sections 331-338, 513, 517, 1001, and 2010 of the Public Health Service Act;

Refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act, part B of title III of the Refugee Act of 1980, and section 501 of the Refugee Education Assistance Act of 1980 except that no activity authorized by such Acts shall be funded beyond September 30, 1987;

Programs authorized by the Head Start Act, as amended;

Dependent Care activities authorized by Chapter 8-D of title VI-A of the Omnibus Budget Reconciliation Act of 1981, as amended;

Activities authorized by the Native Americans Programs Act, as amended;

Activities authorized by the Community Services Block Grant Act, as amended;

Activities authorized by the Follow Through Act;

Activities authorized by the Rehabilitation Act of 1973;

Activities authorized by the Higher Education Act;

Activities authorized by the Mutual Education and Cultural Exchange Act;

Activities authorized by title XIII, part H, subpart I of the Education Amendments of 1980;

Activities authorized by sections 405 and 406 of the General Education Provisions Act;

Economic Development Administration, "Economic development assistance programs", $7,500,000, to remain available until expended, for a grant to continue economic development facilities and related infrastructure activities of the Fort Worth Stockyards Project at full Federal expense: *Provided,* That in addition, the Secretary of the Army, acting through the Chief of Engineers, using any funds heretofore, herein, and hereafter available to the Corps of Engineers, is authorized and directed to develop at full Federal expense detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historical stockyards area along Tony's Creek and Marine Creek;

Activities authorized by the Domestic Volunteer Service Act of 1973, as amended;

United States Institute of Peace authorized by the United States Institute of Peace Act;

From existing funds the Secretary of Defense shall take additional steps for further development of planning, research, and facilities for physical acoustics and related matters;

For carrying out the Low Income Home Energy Assistance Program as authorized by title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended, $1,986,000,000; and

Activities authorized by the "Construction Industry Labor Law Amendments of 1985" as passed by the House of Representatives on April 17, 1986.

SEC. 102. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1986, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) September 30, 1987, whichever first occurs.

SEC. 103. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 104. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 105. None of the funds in this Act may be used to issue regulations before June 1, 1987, to modify the formula used during fiscal year 1986 to divide funds among State agencies under section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786) to carry out the special supplemental food program for women, infants and children (WIC), or to implement such regulations before October 1, 1987.

SEC. 106. Notwithstanding any other provision of law, including section 502(c)(2) of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), none of the funds appropriated under this or any other Act shall be used in fiscal year 1987 to accept prepayment of any loan made under section 515 of the Housing Act of 1949, unless such loan was made at least twenty years prior to the date of prepayment.

SEC. 107. The Secretary of Agriculture may transfer surplus agricultural commodities from inventory in an amount not to exceed $600,000 to the Department of Defense for use in complementing support provided by the Department of Defense to the Tenth International Pan American Games to be held in Indianapolis, Indiana.

SEC. 108. (a) Section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) For each of the 1986 and 1987 crops, the total of payments that a person shall be entitled to receive under one or more of the programs established under the Agricultural Act of 1949 and the National Wool Act of 1954 may not exceed $250,000."

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking "does not include" and inserting "includes",

(B) in subparagraph (A), by inserting "under the Agricultural Act of 1949 and the National Wool Act of 1954" before the semicolon,

(C) in subparagraph (B), by inserting "under the Agricultural Act of 1949 and the National Wool Act of 1954" after "payment",

(D) in subparagraph (G), by striking "or",

(E) in subparagraph (H), by striking the period at the end thereof and inserting "; and", and

(F) by adding at the end thereof the following new subparagraph:

"(I) any other payment received under the Agricultural Act of 1949 and the National Wool Act of 1954.",

(3) in paragraph (5)—

(A) by striking "(A)",

(B) by striking subparagraph (B), and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively, and

(4) by striking out paragraph (6).

(b) The amendments made by subsection (a) shall not apply with respect to payments under agreements and contracts made before the date of the enactment of this Act.

SEC. 109. The Food Security Act of 1985 is amended by inserting at the end thereof the following new sentence: "Effective for each of the 1987 through 1990 crops, the Secretary may not deny a person status as a separate person under paragraph (1) solely on the ground that a family member cosigns for, or makes a loan to, such person and leases, loans, or gives such person equipment, land or labor, if such family-members were organized as separate units prior to December 31, 1985.".

SEC. 110. Within the available funds of the Rural Electrification Administration loan authority made available by this Act, $3,000,000 shall be provided to the Choctaw Electric Cooperative to implement section 5 of the Rural Electrification Act.

SEC. 111. (a) NATIONAL SCHOOL LUNCH ACT.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended in the first sentence by striking "except private schools whose average yearly tuition exceeds $1,500 per child,".

(b) CHILD NUTRITION ACT OF 1966.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended in subparagraph (A) of the first sentence by striking "except private schools whose average yearly tuition exceeds $1,500 per child,".

(c) The amendments made by this section shall take effect July 1, 1987.

SEC. 112. Notwithstanding any provision of title I of the Local Public Works Capital Development and Investment Act of 1976, as amended (Public Law 94-369), or any other provision of law to the contrary, any funds authorized and appropriated under title I of such Act, as amended, in any fiscal year for projects in (1). New York, New York, but obligated as of December 19, 1985 and not disbursed, shall remain available for obligation and expenditure through March 31, 1988 for any authorized project in New York, New York under title I of such Act, as amended, or for any project in New York, New York, determined to be eligible under title I of the Public Works and Economic Development Act of 1965, as amended, if the total amount of such funds is not finally determined by October 15, 1986.

SEC. 113. Notwithstanding any other provision of law or a contract to the contrary, the SEDA-COG Joint Rail Authority, Lewisburg, Pennsylvania, may sell any portion of the real property that was acquired in part with proceeds of a grant from the Economic Development Administration (grant number 01-19-02563) and may retain all of the proceeds of any such sale so long as the proceeds are used for purposes which meet the criteria of and are approved by the Economic Development Administration.

SEC. 114. (a) DUTIES OF UNDER SECRETARY OF DEFENSE FOR ACQUISITION.—Section 133 of title 10, United States Code (as redesignated by section 101(a) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986), is amended to read as follows:

"§ 133. Under Secretary of Defense for Acquisition

"(a) There is an Under Secretary of Defense for Acquisition, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive management background in the private sector.

"(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition—

"(1) is responsible for setting overall policy for, and supervises, all acquisition activities of the Department of Defense; and

"(2) shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

"(c) The Under Secretary—

"(1) is the senior procurement executive for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

"(2) is the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive; and

"(3) to the extent directed by the Secretary, supervises all other officers in the Office of the Secretary of Defense who have acquisition responsibilities.

"(d) Supervision of the audit and oversight functions performed by the Defense Contract Audit Agency on the date of the enactment of this section shall be carried out in the same manner as in effect on such date.

"(e) The Secretary of Defense shall prescribe the precedence of the Under Secretary in the Department of Defense.".

(b) INDEPENDENCE OF DIRECTOR OF OPERATIONAL TEST AND EVALUATION.—Section 138(d) of title 10, United States Code (relating to the Director of Operational Test and Evaluation), as redesignated by section 101(a) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, is amended by inserting "personally" after "Secretary of Defense" in the first sentence.

(c) ARMED FORCES POLICY COUNCIL.—Section 171(a) of such title (relating to the Armed Forces Policy Council) is amended—

(1) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively;

(2) by inserting after paragraph (2) the following new paragraph (3):

"(3) the Under Secretary of Defense for Acquisition;"; and

(3) by striking out "Under Secretaries of Defense" in paragraph (7) (as so redesignated) and inserting in lieu thereof "Under Secretary of Defense for Policy and the Director of Defense Research and Engineering".

(d) PREVENTION OF DUPLICATION OF CERTAIN CONTRACT AUDIT AND OVERSIGHT ACTIVITIES.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies

"(a) COORDINATION.—The Secretary of Defense shall prescribe procedures to ensure that Department of Defense policies for the audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication of audit and oversight activities by different elements of the Department.

"(b) CONSULTATION.—In carrying out this section, the Secretary shall consult with the Under Secretary of Defense for Acquisition and the Inspector General of the Department of Defense.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies.".

SEC. 115. (a) SAFEGUARDING OF MILITARY WHISTLEBLOWERS.—The Congress makes the following findings:

(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

(3) Reporting such information through the chain of command does not always result in correction and may, in some cases, be futile.

(4) Members of the Armed Forces who become aware of such information should be encouraged to disclose it to an Inspector General or Member of Congress if necessary.

(5) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

(6) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have the right to a speedy Inspector General investigation and administrative review of their cases.

(b) WHISTLEBLOWER PROTECTION.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

"§ 1034. Communicating with a Member of Congress or Inspector General

"(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTORS GENERAL PROHIBITED.—

"(1) GENERAL RULE.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

"(2) EXCEPTIONS.—Paragraph (1) does not apply to a communication that—

"(A) is unlawful; or

"(B) violates a regulation necessary to the security of the United States.

"(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

"(c) INSPECTOR GENERAL INVESTIGATION.—

"(1) INVESTIGATION OF CERTAIN ALLEGATIONS.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences—

"(A) a violation of a law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) TIME FOR ALLEGATION.—The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

"(3) INVESTIGATION OF SUBJECT MATTER OF DISCLOSURE.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

"(4) REPORT.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense. The Inspector General shall provide an unclassified copy of that report to the member concerned.

"(5) TIME FOR REPORT.—If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the report will be submitted.

"(6) CONTENT OF REPORT.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information about such interview. The report shall contain no findings of disputed fact or recommendations as to the disposition of the complaint.

"(7) DELEGATION.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

"(d) CORRECTION OF RECORDS.—

"(1) BOARDS FOR CORRECTION OF MILITARY RECORDS.—In resolving an allegation made by a member of an armed force to whom the Inspector General has reported under subsection (c), a correction board acting under section 1552 of this title, on the request of the member or otherwise, may—

"(A) direct further investigation;

"(B) direct the production of evidence;

"(C) direct the examination of witness;

"(D) receive oral argument; or

"(E) direct or conduct an evidentiary hearing.

"(2) LEGAL ASSISTANCE.—A member to whom the Inspector General has reported under subsection (c) is entitled to the assistance of a judge advocate in filing a petition for correction under section 1552 of this title.

"(3) BOARD DECISIONS.—The Board shall issue a final decision with respect to the petition within 120 days after the filing of such petition. If the Board fails to issue such a final decision within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include findings of fact and a statement of reasons. The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by the Board by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determination of a prohibited retaliatory personnel action under subsection (b).

"(4) CORRECTIVE ACTION.—The Board shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

"(5) DISCIPLINARY ACTION.—If the Board determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the officer exercising general court-martial jurisdiction over the person who committed the prohibited retaliatory personnel action.

"(e) JUDICIAL REVIEW.—

"(1) RIGHT OF REVIEW.—(A) A member of an armed force aggrieved by a final order of the Board may obtain judicial review of the order by filing a petition for review before the end of the 60-day period beginning on the later of—

"(i) the date the member received notice of the order of the Board; or

"(ii) the date on which the member was deemed to have exhausted administrative remedies under subsection (d)(3).

"(B) A petition for review under subparagraph (A) shall be filed with the United States Court of Appeals—

"(i) for the circuit in which the member resides;

"(ii) for the circuit in which the member is stationed; or

"(iii) in the Court of Appeals for the District of Columbia.

"(2) REVIEW OF RECORD.—With respect to any case for which a petition for review is filed under paragraph (1)(A), the court—

"(A) shall review the record; and

"(B) in any case in which it determines that the record fails to resolve significant issues of fact, may refer the case to the appropriate United States district court for a hearing de novo.

"(3) STANDARD OF REVIEW.—The court shall set aside any order of the Board that, upon completion of a review under paragraph (2), is determined to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

"(B) not supported by substantial evidence.

"(4) ATTORNEYS FEES.—If, upon completion of a review under paragraph (2), the court finds that the claim of the member is meritorious, the court shall award such member reasonable attorneys fees and costs.

"(f) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

"1034. Communicating with a Member of Congress or Inspector General.".

(c) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this joint resolution.

SEC. 116. (a) PROTECTION OF CONTRACTOR EMPLOYEES FROM REPRISAL FOR DISCLOSURE OF CERTAIN INFORMATION.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2408. Contractor employees: protection from reprisal for disclosure of certain information

"(a) PROHIBITION OF REPRISALS.—(1) A contractor of the Department of Defense may not take a reprisal action against any officer or employee of that contractor for disclosing to an appropriate Government official information relating to a contract (or the negotiation or competition for a contract) between such contractor and the De-

partment of Defense which the officer or employee reasonably believes evidences—

"(A) a violation of law, rule, or regulation; or

"(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

"(2) In this section, the term 'appropriate Government official' includes—

"(A) an officer or employee of the Department of Defense;

"(B) a Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment;

"(C) any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to defense acquisition; and

"(D) a member or employee of any authorized commission established for purposes related to defense acquisition.

"(b) REMEDIES.—(1) An officer or employee of a defense contractor who believes that such officer or employee has been subject to a reprisal prohibited by subsection (a) may file a complaint with the Secretary of Defense.

"(2)(A) Under procedures prescribed by the Secretary of Defense by regulation, the Secretary shall investigate each complaint filed under paragraph (1).

"(B) If, after an investigation under subparagraph (A), the Secretary believes there is a reasonable likelihood that a reprisal prohibited by subsection (a) has occurred, the Secretary shall provide the contractor with an opportunity to show cause why the Secretary should not order corrective action and assess penalties under subparagraph (C).

"(C) If, after considering the presentation of the contractor under subparagraph (B), the Secretary finds that a reprisal prohibited by subsection (a) has occurred, the Secretary shall—

"(i) order the contractor to take action to eliminate the adverse effect of the reprisal on the complainant; and

"(ii) assess a monetary penalty against such contractor.

"(D) The Secretary shall impose penalties, which may include monetary fines and debarment from further contracts, against any contractor who fails to comply promptly with an order of the Secretary under subparagraph (C).

"(E) The Secretary shall issue a decision on a complaint filed under paragraph (1) within 45 days of receipt of the complaint.

"(3)(A) The decision of the Secretary under paragraph (2) shall be a final agency action for purposes of chapter 7 of title 5.

"(B) Failure of the Secretary to decide on a complaint within the period provided in paragraph (2)(E) shall be deemed to be final agency action for purposes of chapter 7 of title 5.

"(C) In any action brought under chapter 7 of title 5 related to a reprisal under subsection (a), a court may assess against the defense contractor, or against the United States, reasonable attorney fees and other litigation costs reasonably incurred by an officer or employee of the contractor who substantially prevails in such action.

"(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section (other than subsection (b)(3)). Such regulations shall provide that any firm which negotiates with the Department of Defense for a contract or competes for a Department of Defense contract thereby submits to the jurisdiction of the Secretary of Defense for purposes of this section.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2408. Contractor employees: protection from reprisal for disclosure of certain information.".

(b) INITIAL REGULATIONS.—The Secretary of Defense shall prescribe the regulations required by subsection (c) of section 2408 of title 10, United States Code, as added by subsection (a), not later than the end of the 90-day period beginning on the date of the enactment of this joint resolution.

(c) EFFECTIVE DATE.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to any reprisal action taken on or after the date of the enactment of this joint resolution.

SEC. 117. (a) CONFLICT-OF-INTEREST IN DEFENSE PROCUREMENT.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new sections:

"§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

"(a)(1) Any person—

"(A) who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(B) who, during the two-year period preceding the person's separation from service in the Department of Defense, participated personally and substantially, and in a manner involving decisionmaking responsibilities, in a procurement function with respect to a contract through contact with the contractor.

may not accept compensation from that contractor for a period of two years following the person's separation from service in the Department of Defense.

"(2) In paragraph (1), the term 'decisionmaking responsibilities' includes the following activities with respect to a contract: approval or disapproval, or making recommendations or engaging in negotiations, with regard to a procurement function.

"(3) For purposes of paragraph (1), whether or not a person is a contractor (as defined in subsection (f)(2)) is determined as of the date of the separation from service of the officer or employee of the Department of Defense or member of the armed forces involved.

"(4) Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(5) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

"(b)(1) This section applies only to—

"(A) civilian positions for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-13 of the General Schedule; and

"(B) to positions held by members of the armed forces in a pay grade of O-4 or higher.

"(2)(A) When a vacancy occurs in a sensitive civilian procurement executive position, the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, may exempt the person appointed to fill the vacancy from the provisions of subsection (a) by reason of service in such position.

"(B) For purposes of subparagraph (A), a sensitive civilian procurement executive position is a position—

"(i) which is identified under paragraph (1);

"(ii) which is a civilian position to which a person is appointed by the President, by and with the advice and consent of the Senate; and

"(iii) with respect to which the Secretary of Defense determines that the duties inherent in the position involve personal and substantial participation in procurement functions (to the extent to which subsection (a)(1) applies) with so many contractors that implementation of subsection (a) with respect to persons serving in the position would seriously hamper the ability of the Department of Defense to obtain the services of a highly qualified person to serve in the position.

"(C) An exemption granted under this paragraph shall not apply to the extent that the person granted the exemption acts as a Government representative in the negotiation or settlement of a contract with a contractor.

"(D) Whenever the Secretary of Defense grants an exemption under this paragraph, the Secretary shall promptly submit to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and the Judiciary of the House of Representatives a report describing the exemption and setting forth the specific reasons for the exemption.

"(c) The Secretary of Defense shall provide to each person separated from service in the Department of Defense in a position described in subsection (b)(1) who, within the two years preceding the date of such separation, participated in a procurement function of the Department a notice with respect to this section. Such notice shall include—

"(1) a written explanation of the provisions of this section; and

"(2) the name of each contractor from whom such person is prohibited from accepting compensation under this section.

"(d) This section does not apply—

"(1) to a contract for an amount less than $100,000;

"(2) to compensation of a person by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the person participated personally and substantially in a procurement function (to the extent to which subsection (a)(1) applies) with respect to a contract with that entity; or

"(3) to a contractor that was awarded contracts by the Department of Defense during the preceding fiscal year in a total amount less than $100,000.

"(e)(1) A person who is considering the propriety of accepting compensation that might place the person in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

"(2) An application under paragraph (1) shall contain such information as the Director requires.

"(f) In this section:

"(1) The term 'compensation' includes any payment, gift, benefit, reward, favor, or gratuity—

"(A) which is provided, directly or indirectly, for services rendered; and

"(B) which is valued in excess of $250 at the prevailing market price.

"(2) The term 'contractor' means—

"(A) a person that contracts to supply the Department of Defense with goods or services; and

"(B) a person that controls, is controlled by, or is under common control with a person described in subparagraph (A).

Such term does not include a State or local government or an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

"(3) The term 'procurement function' includes, with respect to a contract, any function relating to—

"(A) the negotiation, award, administration, or approval of the contract;

"(B) the selection of a contractor;

"(C) the approval of changes in the contract;

"(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

"(E) the management of the procurement program.

"(4) The term 'armed forces' does not include the Coast Guard.

"(g) For the purposes of this section and section 2397c of this title, a member or former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the member's discharge or release from active duty.

"§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

"(a)(1) With respect to a contractor that during a fiscal year enters into contracts with the Department of Defense for the procurement of goods and services in amounts aggregating $100,000 or more, each contract for procurement of goods or services entered into by the Department with that contractor during the next fiscal year shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

"(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

"(A) $100,000; or

"(B) three times the compensation paid by the contractor to the person in violation of such contract provision.

"(b)(1)(A) Each contractor subject during a calendar year to a contract term described in subsection (a) shall submit to the Secretary of Defense not later than April 1 of the next year a report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

"(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

"(ii) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

"(B) Each such listing shall—

"(i) show each agency in which the person was employed or served on active duty during the last two years of the person's service in the Government;

"(ii) show the person's job titles during the last two years of the person's service in the Government;

"(iii) contain a full and complete description of the duties of the person during the last two years of such service; and

"(iv) contain a description of the duties (if any) that the person is performing on behalf of the contractor.

"(2) A person who knowingly fails to file a report required by paragraph (1) shall be fined not more than $10,000.

"(3) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of paragraph (1) or section 2397b(a) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

"(c)(1) The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (b)(1) and shall conduct an annual random review of the reports for violations of section 2397b(a) of this title and subsections (a) and (b)(1).

"(2) Not later than October 1 of each year, the Director shall submit to Congress a report on the operation of this section. Each such report shall include the findings of the Director based on the examination of reports for the preceding calendar year.

"(d) This section does not apply to a contract for an amount less than $100,000.

"(e) The definition set forth in section 2397b(f) of this title apply to this section.".

(2) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by inserting after the item relating to section 2397a the following new items:

"2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors.

"2397c. Defense contractors: requirements concerning former Department of Defense officials.".

(b) REPEAL.—Effective on the effective date of this section, section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note) is repealed.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraphs (1) and (2), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this joint resolution.

(2) EFFECTIVE DATE FOR REGULATORY AUTHORITY.—Subsection (b) of section 2397b of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this joint resolution. The Secretary of Defense shall prescribe and publish in the Federal Register regulations under that subsection not later than 180 days after such date.

(3) EFFECT ON EMPLOYMENT.—(A) The amendments made by this section—

(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.

(4) EFFECTIVE DATE FOR REPORTING REQUIREMENT.—The first report under section 2397c(c)(2) of title 10, United States Code, as added by subsection (a), shall be submitted not later than October 1, 1987.

SEC. 118. (a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—

(1) LIMITATION ON USE OF FUNDS.—(A) On the last day of a fiscal quarter during a covered fiscal year, the amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the amount of funds represented by all contractual actions entered into by the Secretary during such period.

(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the end of the following quarter.

(2) QUARTERLY REPORTS TO DEFENSE COMMITTEES.—(A) During each covered fiscal year, the Secretary of Defense and the Secretaries of the military departments shall each submit to the defense committees a report at the end of each fiscal year quarter concerning—

(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were entered into during the reporting period with respect to the month for which the report is submitted; and

(ii) the amount of such funds represented by undefinitized contractual actions.

(B) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is submitted.

(C) The first reports required by subparagraph (A) shall be with respect to the fiscal year quarter ending on December 31, 1986.

(3) DETERMINATION OF AMOUNTS OF CONTRACTUAL ACTIONS.—For purposes of this section, the amount of funds represented by a contractual action shall be—

(A) the contractual price; or

(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

(4) DEFINITIONS.—For purposes of this subsection:

(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

(C) The term "reporting period" means, with respect to any month of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such month.

(D) The term "Secretary concerned" means—

(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

(ii) the Secretary of a military department, with respect to matters concerning that military department.

(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

(b) REQUIREMENTS WITH RESPECT TO UNDEFINITIZED CONTRACTUAL ACTIONS.—(1)(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2325. Undefinitized contractual actions: restrictions

"(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless—

"(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

"(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

"(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

"(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

"(b) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(2) If a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

"(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

"(1) good business practice; and

"(2) in the best interests of the United States.

"(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

"(1) the reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

"(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

"(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

"(g) DEFINITION.—In this section, the term 'undefinitized contractual action' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.".

(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2325. Undefinitized contractual actions: restrictions.".

(2) Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 30-day period beginning on the date of the enactment of this joint resolution.

SEC. 119. (a) DEFENSE ACQUISITION CORPS.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 83 the following new chapter:

"CHAPTER 84—DEFENSE ACQUISITION CORPS

"Sec.
"1611. Establishment.
"1612. Appointments.

"§ 1611. Establishment

"(a) ESTABLISHMENT.—There is in the Department of Defense a Defense Acquisition Corps consisting of acquisition-related positions in the Office of the Secretary of Defense, the military departments, and the Defense Agencies specified in regulations prescribed by the Secretary of Defense. The head of the Defense Acquisition Corps is the Under Secretary of Defense for Acquisition.

"(b) NUMBER.—The number of Defense Acquisition Corps positions in a military department shall be determined by the Secretary of Defense.

"§ 1612. Appointments

"The Secretary of Defense shall make appointments to the Defense Acquisition Corps from the best-qualified military personnel. The qualifications of such personnel shall be established based on levels of education, experience, and training and performance on examinations.".

(b) COMPENSATION AND PERSONNEL MANAGEMENT INITIATIVE.—

(1) IN GENERAL.—The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in the Defense Acquisition Corps.

(2) REPORT.—The Secretary shall submit to Congress a report describing the plan developed as required by paragraph (1) not later than April 15, 1987.

(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of such title and at the beginning of part II of such subtitle are each amended by inserting after the item relating to chapter 83 the following new item:

"84. Defense Acquisition Corps..... 1611".

SEC. 120. For the purposes of this joint resolution, section 9094 on page 80 of H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986, shall be deemed to read as follows:

"None of the funds appropriated or made available by this Act shall be available to overhaul the SSBN 642 or SSBN 624, unless a request to reprogram funds for the overhaul of SSBN 642 and SSBN 624 is submitted to and approved by the Committees on Appropriations of the Senate and House of Representatives."

TRANSFER OF FUNDS

SEC. 121. Of the funds made available in H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986, $1,500,000 for "Operation and maintenance, defense agencies" shall be transferred to the Department of Commerce, International Trade Administration, "Operations and administration", for export administration activities.

SEC. 122. (a) The Secretary of Defense shall conduct through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) a demonstration project on the treatment of alcoholism designed to compare the use of chemical aversion therapy with the use of other treatments. The Secretary shall submit to the Committees on Appropriations and Armed Services of the Senate and House of Representatives a report describing the proposed conduct of the demonstration project not later than November 1, 1986. The Secretary shall implement the demonstration project not later than February 1, 1987. At the conclusion of the demonstration project, the Secretary shall submit to such committees a report on the results of the project.

(b) Until the report required by subsection (a) on the results of the demonstration project is submitted, the Secretary of Defense shall ensure that coverage of beneficiaries under section 1079(a) or 1086(a) of title 10, United States Code, shall provide for chemical aversion treatment of beneficiaries for alcoholism to the same extent as for any other treatment of beneficiaries relating to alcoholism.

SEC. 123. In addition to the funds appropriated or made available in the Department of Defense Appropriations Act, 1987 (H.R. 5438), as reported to the House of Representatives on August 14, 1986, the following additional amounts are appropriated: $37,200,000 for "Procurement of Ammunition, Army" and $10,000,000 for "Other Procurement, Navy", to be offset by corresponding general reductions in the named appropriations.

SEC. 124. (a) GOVERNOR CONSENT FOR ACTIVE DUTY OF NATIONAL GUARD MEMBERS.—Section 501 of title 32, United States Code, is amended by adding at the end the following new subsection:

"(c) With regard to active duty outside the United States, its territories, and its possessions, the consent of the Governor described in sections 672(b) and 672(d) of title 10 may not be withheld in whole or in part because of any objection to the location, purpose, type, or schedule of such active duty.".

(b) CONFORMING AMENDMENT.—Section 672 of title 10, United States Code, is amended—

(1) by inserting "except as provided by section 501(c) of title 32" after "as the case may be" in subsection (b); and

(2) by inserting "except as provided by section 501(c) of title 32" after "whichever is concerned" in subsection (d).

SEC. 125. None of the funds provided in this Act, or any other Act, may be used by the Corps of Engineers to lease, contract or otherwise transfer to a non-government entity any parks or recreation resources, or the management or operation thereof, located at Greers Ferry Lake or Little Red River in the State of Arkansas, for which such arrangements did not exist on or before September 1, 1986, until the Corps has studied the economic, environmental and public use impact of leasing to private enterprise the parks and other recreation resources at lakes, reservoirs and reaches of river under its jurisdiction and such study has been reviewed by the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works in the Senate.

SEC. 126. None of the funds made available by this Act or any other Act for any fiscal year may be used hereafter to study, to plan, to implement, to construct, or to issue any permit for the Northfield Mountain Water Supply Project, Massachusetts or the Millers and Tully Rivers Water Supply Project, Massachusetts: *Provided*, That this section shall not apply to environmental studies undertaken by the United States Fish and Wildlife Service.

SEC. 127. Within available funds, the Secretary of the Army acting through the Chief of Engineers is authorized and directed to modify the Black Warrior and Tombigbee Rivers, Alabama, project, to provide a safe channel and general navigation facilities in the vicinity of Jackson, Alabama, at an estimated cost of $8,200,000. Necessary training works to provide a safe channel shall be constructed at full Federal expense as part of the Operation and Maintenance, General program. Development of general navigation facilities to provide a spur canal for a port facility at Jackson, at an estimated cost of $2,300,000, shall be part of the Construction, General program and shall be cost shared under terms and conditions acceptable to the Secretary of the Army as set forth in a binding agreement with a non-Federal sponsor desiring to participate in project construction.

SEC. 128. Section 8 of the Act of June 3, 1960 (74 Stat. 156; Public Law 86-488), is amended by inserting "(a)" after "Sec. 8." and by inserting at the end thereof the following new subsection:

"(b) Notwithstanding any other provision of law, none of the costs associated with, or resulting from, the following which have been or will be incurred shall be recovered by the Secretary, directly or indirectly, from power contractors of the Central Valley project:

"(1) the construction of such distribution systems and drains as are not constructed by local interests;

"(2) the construction of the San Luis interceptor drain; or

"(3) the construction or acquisition of any facilities by the United States or the Westlands Water District as partial or full alternatives to the San Luis interceptor drain.".

SEC. 129. From within the amounts made available in section 101(e) for Atomic Energy Defense Activities, not less than $664,600,000 shall be made available for defense waste and byproducts management.

SEC. 130. Notwithstanding the provisions of H.R. 5339, the United States Governor of the Inter-American Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such increase in capital stock in an amount not to exceed $1,111,561,128.

SEC. 131. Of the amount made available in section 101(g) for "DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MANAGEMENT AND ADMINISTRATION—SALARIES AND EXPENSES", $225,000 shall be available only for expenses of the Department of Housing and Urban Development in operating a field office of the Department in Springfield, in the State of Illinois. The Secretary of Housing and Urban Development shall reopen such field office upon the enactment of this joint resolution and may not terminate operations at such office before September 30, 1987.

SEC. 132. The Interagency Committee on Cigarette and Little Cigar Fire Safety, established pursuant to Public Law 98-567, shall have an additional six months to complete its final technical report and submit policy recommendations to the Congress.

SEC. 133. National Park Service, "Construction", $5,000,000, in addition to funds made available by any other provision of this joint resolution and notwithstanding section 102 of this joint resolution, to restore the Roundhouse at Steamtown U.S.A. in Scranton, Pennsylvania, to remain available until expended.

SEC. 134. The funds appropriated for fiscal year 1987 under this or any other Act to carry out part A of title IV of Public Law 92-318 (Indian Education Act) shall be distributed under the same proof of eligibility requirements as applied in fiscal year 1986.

SEC. 135. Smithsonian Institution, "Salaries and Expenses", $1,000,000, in addition to funds made available by any other provision of this joint resolution, for the acquisition, curation, care, maintenance, reproduction and dissemination, through publication and recording, of the Duke Ellington Collection.

SEC. 136. (a) Any individual who—

(1) on the day before the date on which food services operations for the House of Representatives are transferred by contract to a corporation or other person—

(A) is a congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing such food services under the administrative control of the Architect of the Capitol; and

(B) is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title;

(2) as a result of such contract, ceases to be an employee described in paragraph (1); and

(3) becomes employed to provide such food services under contract, including a successor contract;

may, for purposes of the provisions of law specified in subsection (b), elect to be treated, for so long as such individual continues to be employed (without a break in service) as described in paragraph (3), as if such individual had not ceased to be an employee described in paragraph (1). Such election shall be made on or before the day referred to in paragraph (1) and shall be available only to an individual whose transition from the employment described in paragraph (1) to the employment described in paragraph (3) takes place without a break in service.

(b) The provisions of law referred to in subsection (a) are—

(1) subchapter III of chapter 83 of title 5, United States Code (including section 8339(m) of such title (which shall be applied, when an employee retires on an immediate annuity or dies, as if the employment at the time of retirement or death were under a formal leave system), with respect to unused sick leave to the credit of an employee on the day referred to in subsection (a)(1));

(2) chapter 84 of title 5, United States Code; and

(3) title III of the Federal Employees' Retirement System Act of 1986.

(c)(1) At the earliest practicable opportunity, the Director of the Office of Personnel Management shall, in consultation with the Architect of the Capitol, prescribe regulations to carry out this section with respect to matters within the jurisdiction of the Office, including regulations under which—

(A) an individual who makes an election under subsection (a) shall pay into the Civil Service Retirement and Disability Fund any employee contributions which would be required if such individual were a Congressional employee; and

(B) the employer furnishing food services under a contract referred to in subsection (a) shall pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions which would be required if the individual were a Congressional employee.

(2) At the earliest practicable opportunity, the Executive Director of the Federal Retirement Thrift Investment Board shall, in consultation with the Architect of the Capitol, prescribe regulations to carry out this section with respect to matters within the jurisdiction of the Board.

SEC. 137. (a) The Secretary of the Air Force may use not more than $600,000 (from funds described in subsection (b)) to provide assistance, by grant or otherwise, to the Douglas School District in Box Elder, South Dakota, near Ellsworth Air Force Base, South Dakota, for purposes of mitigating any adverse impact on the schools in such district determined by the Secretary to result from deployment of the B-1 bomber or establishment of the strategic training center at such base.

(b) Assistance under subsection (a) shall be provided from funds appropriated to the Air Force for fiscal year 1987 for military construction projects at Ellsworth Air Force Base, South Dakota, or from prior-year funds available for military construction projects at such base that are no longer required for the project for which originally made available.

SEC. 138. None of the equipment, boats, or personnel of the Coast Guard may be used after the date of the enactment of this Act for purposes of extending the navigation season on any of the Great Lakes or the Saint Lawrence River beyond January 15 of any year or conducting demonstration projects for the extension of the navigation season, unless such extension is necessary because of emergency navigational or other emergency circumstances: *Provided*, That nothing in this section shall preclude the Coast Guard from performing routine search and rescue operations.

SEC. 139. Within 30 days of enactment, the Federal Aviation Administration shall initiate rulemaking action to consider the question of requiring the installation and carriage of operating transponders with automatic altitude reporting capability for all aircraft operating in terminal airspace where the Federal Aviation Administration

provides radar service, and in all controlled airspace above a minimum altitude to be determined by the Federal Aviation Administration. This regulation shall be effective on the earliest feasible date.

SEC. 140. The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

SEC. 141. Section 11321(b) of title 49, United States Code is amended by striking out in the first sentence "that is not operated through the Panama Canal and".

SEC. 142. The Administrator of the General Services Administration, under section 210(h) of the Federal Property and Administrative Services Act of 1949, as amended, shall acquire, by means of a lease of up to 30 years duration, space for the United States Courts in Tacoma, Washington at the site of Union Station, Tacoma, Washington.

SEC. 143. None of the funds appropriated by this Act or any other Act shall be used for the processing of any application for a certificate of label approval for imported distilled spirits, malt beverages, or wine under section 205(e) of the Federal Alcohol Administration Act, unless each application is accompanied by appropriate documentation.

SEC. 144. (a) CIVILIAN PAY RAISE.—(1) Notwithstanding any other provision of law, in the case of fiscal year 1987, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 3 percent.

(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1987.

(3)(A) Notwithstanding any other provision of law, determinations relating to amounts to be appropriated in order to provide for the adjustment described in paragraph (1) shall be made based on the assumption that the various departments and agencies of the Government will, in the aggregate, absorb 50 percent of the increase in total pay for fiscal year 1987.

(B) Subparagraph (A) does not apply with respect to the Department of Defense or pay for employees of the Department of Defense.

(4) For purposes of this subsection—

(A) the term "total pay" means, with respect to a fiscal year, the total amount of basic pay which will be payable to employees covered by the statutory pay systems for service performed during such fiscal year;

(B) the term "increase in total pay" means, with respect to a fiscal year, that part of total pay for such year which is attributable to the adjustment taking effect under this section during such year; and

(C) the term "statutory pay system" has the meaning given such term by section 5301(c) of title 5, United States Code.

(b) MILITARY PAY RAISE.—(1) Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1987 shall not be made.

(2) The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on January 1, 1987.

TITLE II

OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

CHAPTER I

DEPARTMENT OF JUSTICE

LEGAL ACTIVITIES

SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

For an additional amount for "Salaries and Expenses, United States Attorneys", $31,000,000.

SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

For an additional amount for "Salaries and Expenses, United States Marshals Service", $15,000,000.

SUPPORT OF UNITED STATES PRISONERS

For an additional amount for "Support of United States Prisoners", $5,000,000 of which $3,000,000, to be available until expended, is for the Cooperative Agreement Program.

DRUG ENFORCEMENT ADMINISTRATION

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $114,000,000, of which $54,000,000 shall be available for cooperative interdiction operations in the Bahamas.

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $7,000,000.

BUILDINGS AND FACILITIES

For an additional amount for "Buildings and Facilities", $140,000,000, to remain available until expended.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

For an additional amount for "Justice Assistance", $660,000,000, to remain available until expended, for grants for drug law enforcement programs authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended as passed the House on September 11, 1986.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $4,500,000, to carry out the provisions of the Drug and Alcohol Dependent Offenders Treatment Act of 1986 as passed the House on September 11, 1986.

RELATED AGENCY

UNITED STATES INFORMATION AGENCY

SALARIES AND EXPENSES

For an additional amount for "Salaries and Expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed the House on September 11, 1986.

CHAPTER II

FOREIGN ASSISTANCE

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

Education and human resources development, Development Assistance:

For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided,* That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further,* That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

DEPARTMENT OF STATE

INTERNATIONAL NARCOTICS CONTROL

For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $35,000,000: *Provided,* That funds may be available for this purpose only if the President has submitted to the Congress: (1) a budget request for the funds, (2) a plan showing how the requested funds will be used, including a description of how regional cooperation on narcotics control matters would be promoted by the use of the funds: *Provided further,* That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

CHAPTER III

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

For an additional amount for "Operation of the National Park System", $1,000,000.

BUREAU OF INDIAN AFFAIRS

OPERATION OF INDIAN PROGRAMS

For an additional amount for "Operation of Indian programs", $19,860,000, of which the funds made available to tribes and tribal organizations through contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

CONSTRUCTION

For an additional amount for "Construction", $34,000,000, to remain available until expended.

TERRITORIAL AND INTERNATIONAL AFFAIRS

ADMINISTRATION OF TERRITORIES

For an additional amount for "Administration of territories", $4,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

INDIAN HEALTH SERVICES

For an additional amount for "Indian health services", $37,500,000: *Provided,* That funds made available to tribes and tribal organizations through grants and contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

INDIAN HEALTH FACILITIES

For an additional amount for "Indian health facilities", $4,000,000, to remain available until expended.

CHAPTER IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

EMERGENCY SUBSTANCE ABUSE TREATMENT AND PREVENTION

For carrying out drug abuse prevention and treatment activities authorized by title XIX of the Public Health Service Act as amended by title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $280,000,000.

ALCOHOL, DRUG ABUSE AND MENTAL HEALTH

For an additional amount for carrying out the study on the coverage of drug abuse treatment and rehabilitation services authorized by title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $1,000,000.

RELATED AGENCIES

ADVISORY COMMISSION ON THE COMPREHENSIVE EDUCATION OF INTERCOLLEGIATE ATHLETES

SALARIES AND EXPENSES

For expenses necessary to carry out title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, with respect to the Advisory Commission on the Comprehensive Education of Intercollegiate Athletes, $650,000.

DEPARTMENT OF EDUCATION

DRUG ABUSE EDUCATION AND PREVENTION

For carrying out the Drug Abuse Education and Prevention Act of 1986, as authorized by title VIII of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $350,000,000 to remain available until September 30, 1988.

CHAPTER V

DEPARTMENT OF TRANSPORTATION

COAST GUARD

OPERATING EXPENSES

For an additional amount for "Operating expenses", $59,000,000.

ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for "Acquisition, construction, and improvements", $59,000,000, to remain available until September 30, 1991.

RESERVE TRAINING

For an additional amount for "Reserve training", $9,000,000.

CHAPTER VI

TREASURY DEPARTMENT

U.S. CUSTOMS SERVICE

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses", $52,431,000.

OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

For an additional amount for "Operation and Maintenance, Air Interdiction Program", $147,000,000.

CUSTOMS FORFEITURE FUND

For an additional amount for the "Customs Forfeiture Fund", $12,000,000, to be derived from deposits in the Fund.

PAYMENT TO THE GOVERNMENT OF PUERTO RICO

For payment of a grant to the government of Puerto Rico, $7,800,000, to remain available until expended.

EXECUTIVE OFFICE OF THE PRESIDENT

WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

SALARIES AND EXPENSES

For necessary expenses of the White House Conference on Drug Abuse and Control, $5,000,000.

GENERAL PROVISIONS

In order to meet the outlay limits established in the Congressional budget resolution for fiscal year 1987, notwithstanding any other provision of this resolution, further reductions of .34 percent (thirty-four one-hundredths of 1 per centum) shall be made in each appropriation item of new discretionary budget authority made available in this resolution, rounded to the nearest thousands of dollars: *Provided*, That such reductions shall be applied proportionally to each program, project, and activity.

The CHAIRMAN. Pursuant to House Resolution 560 and the order of the House of today, no amendments to the joint resolution are in order except the amendment to be offered by the gentleman from Massachusetts [Mr. CONTE]. The amendment is not subject to amendment or to a demand for a division of the question but the amendment is debatable for the time indicated in House Report 99-984 equally divided and controlled by the proponent and a Member opposed thereto.

AMENDMENT OFFERED BY MR. CONTE

Mr. CONTE. Mr. Chairman, pursuant to the unanimous consent obtained in the House immediately preceding the consideration of the joint resolution, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. CONTE: Beginning on page 9, strike line 10 and all that follows through line 21 on page 10, and insert the following:

SEC. 108. (a) AMENDMENTS TO FOOD SECURITY ACT OF 1985.—Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by—

(1) striking out paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

"(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv) of this section) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

"(2)(A) For each of the 1987 through 1990 crops, the total amount of payments set forth in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $250,000.

"(B) As used in subparagraph (A), the term 'payments' means—

"(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

"(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

"(iii) (I) any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), 101A(a)(5), or 201(b)(2), respectively, of the Agricultural Act of 1949, or (II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under the Agricultural Act of 1949;

"(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

"(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107(b), 105C(b), or 101A(b), respectively, of the Agricultural Act of 1949; and

"(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949.

Such term shall not include loans or purchases, except as specifically provided for in this paragraph.

"(C) The total amount of loans on a crop of honey that a person may have outstanding at any one time under the annual program established for such crop under the Agricultural Act of 1949 may not exceed $250,000 less the amount of payments, as described in paragraph (1) and subparagraphs (A) and (B) of this paragraph, received by such person for the crop year involved.

"(3) Notwithstanding the foregoing provisions of this section, if the Secretary of Agriculture determines that any of the limitations provided for in paragraph (2) will result in a substantial increase in the number or dollar amount of loan forfeitures for a crop of a commodity, will substantially reduce the acreage taken out of production under an acreage reduction program for a crop of a commodity, or will cause the market prices for a crop of a commodity to fall substantially below the effective loan rate for the crop, the Secretary shall adjust upward such limitation, under such terms and conditions as the Secretary determines appropriate, as necessary to eliminate such adverse effect on the program involved.";

(2) adding at the end of subparagraph (A) of paragraph (5) the following: "Such regulations shall provide that the term 'person' does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers."; and

(3) in paragraph (6), striking out "lands owned" and inserting in lieu thereof "lands or animals owned", and inserting after "lands are farmed" the following: "or animals are husbanded".

(b) APPLICATION OF AMENDMENTS.—The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

(c) REVISION OF REGULATIONS.—

(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

(2) Based on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier then October 1, 1987, that will meet the objectives with respect to limitations specified in paragraph (1)(A); and

(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

Mr. CONTE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The CHAIRMAN. Pursuant to the rule, the gentleman from Massachusetts [Mr. CONTE] will be recognized for 15 minutes and a Member opposed will be recognized for 15 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Chairman, as many of my colleagues are well aware, last week I offered an amendment in full committee to impose a straight $250,000 limitation on all loans, payments, purchases, and crop-related subsidies that any agricultural entity would be eligible to receive in 1987. That overall limitation was to be reduced by $50,000 per year until it reached a maximum of $50,000 in 1991.

I don't need to explain to the membership the concept behind this limitation.

Nearly 90 percent of the $25.5 billion in 1986 CCC outlays are going to producers of feedgrains, wheat, cotton, rice, and milk. Over 40 percent of these payments are not subject to the $50,000 cap that was contained in the 1985 farm bill. That's because of the myriad of special exemptions that were placed in there for wheat, feedgrains, cotton, rice, and the dairy termination program.

We've all seen the press headlines detailing the most excessive outrages.

On July 31, Associated Press reported that in Memphis, TN, the cotton industry's largest merchants such as Billy Dunavant and the Hohenberg Brothers Cotton Co. could receive payments totaling as high as $50 million each through that one-time inventory protection program.

On July 25, the Baltimore Sun reported that Salyer American, a Kings County, CA, operation will collect nearly $3.4 million on its 28,000 acres of cotton.

On August 3, the Des Moines Register reported that an estimated 100,000 farms were reorganized in the last year, many in order to avoid the $50,000 payment limitation.

On July 5, the Kansas City Times, reporting on a GAO spot check that found corporate farm reorganizations up more that 50 percent in two Arkansas rice counties and in Reno County, KS.

Who among us, Mr. Chairman, is not familiar with the outrages that continue unabated in the honey program? On August 19, 1985, the GAO reported on the true costs of this program when it recommended phase out. One migratory commercial beekeeper in North Dakota forfeited over 2.5 million pounds of honey in 1 year alone, and raked in more than $1 million.

These sweet support prices and bailouts have made subsidy addicts out of 83 percent of our corn growers, 91 percent of our rice growers, 80 percent of our wheat growers, and over 2,500 beekeepers.

Back in 1980, we appropriated $3.06 billion for reimbursements to the CCC. For 1986, we have appropriated over $25 billion—an 800 percent increase in 6 years. I don't know of any single program or activity that has skyrocketed like that.

We have forgotten that the purpose of payment limitations is to target farm income support to the smaller, family farmers.

It's time that we put an end to this madness, Mr. Chairman. We need to impose some responsible limits on these payments, and redefine those entities eligible for payments.

I have a compromise that's been worked out with my good friends on the Agriculture Committee. I am not saying that it's perfect. But I think that it's an important start. I'd like to have it apply to all of the commodities, but that's an impossible task. What I want to do is to get the ball rolling here. I think that we need to take a more careful look at each of these commodity programs to return them to what they were initially set up to do. To help the small- and middle-size family farmers that need it.

SUMMARY OF PERFECTING AMENDMENT

1. Maximizes payments of $250,000 for the 1987 through 1990 crops. Retains the existing $50,000 deficiency payment limitation.

2. Payments include disaster payments, gains from marketing loans, Findley payments, and inventory reduction payments.

3. Does not include storage payments, loans (except for marketing loans) or purchases. Does not include rice marketing certificates, or first-handler payments.

4. Does not affect 1986 contracts or agreements.

5. Affects wheat, feed grains, upland cotton, extra long stape cotton, and rice.

6. Excludes cooperative associations marketing commodities for producers from the definition of "person";

7. Excludes states and public entities from definition of "person".

8. Places a limit of $250,000 on the amount of loans for honey that can be outstanding at any given time.

9. Directs Secretary to review new limitation amendments and sumit legislation or proposals for regulatory change by March 1, 1987 if necessary or appropriate.

10. Directs Secretary to review existing definitions of the term "person" to determine ways in which they could be revised to eliminate fraud and abuse.

11. Provides the Secretary with discretionary authority to adjust any limitation that he determines would substantially increase loan forfeitures, acreage taken out of production or cause market prices to fall dramatically.

This language does set a maximum payment level of $250,000 for each of the crop and marketing years 1987 through 1990. It does not include loans or purchases, except in the case of marketing loans. These loan and purchase programs need to be addressed separately, and I intend to bird-dog that effort next year.

This amendment does not, therefore affect the dairy programs, or programs for sugar, tobacco, peanuts, or soybeans. It does not affect the conservation reserve program.

It does not affect any existing contracts or agreements for the 1986 crops or any agreement made before the date of enactment.

The limitation would be placed on payments that include disaster payments, gains from marketing loans, Findley payments, and inventory reduction payments. Rice marketing certificates and first-handler payments for cotton would not, however, be included in this definition of payment.

This amendment would put a limitation on subsidies for honey producers, an area where the taxpayers have been getting stung for many years. There would be a limit of $250,000 on the amount of loans that could be outstanding at any given time plus the net benefit on loans that have been repaid. This will permit producers to maintain liquidity as they market honey and repay their loans, but will limit the Federal Government's expo-

sure to a maximum of $250,000 for loans under the honey program. I still think we should scrap the whole program, but this will limit the most serious abuses, and make this honey of a deal just a little less sweet.

Let me say to my colleagues that these are small inroads. We will achieve some savings, most probably in the $100 million range. But that is $50 or $100 million more than we had yesterday. Since it is not by any means my intention to incur a single penny of additional Federal expense for any of these programs, as a result of these new limitations, there is a provision in the revised amendment giving the Secretary discretionary authority to adjust any limitation that would be determined to substantially increase loan forfeitures, substantially increase acreage taken out of production, or cause market prices to fall dramatically below effective loan rates for crops.

Finally, we have directed the Secretary of Agriculture to review each of these new limitations, and all existing regulations that define the term "person" and submit to the appropriate committees of Congress a report by March 1, 1987. It is intended here that the Secretary make recommendations for legislative and/or regulatory action so that the Congress may take further responsible action on eliminating what many of us consider to be abuses in these programs. I intend to work with my colleagues on the authorizing committee to ensure that these recommendations are fully considered and acted upon during 1987.

I will say for the record that it is still my intention as it was when I initially offered an amendment in full committee to place the most restrictive cap possible on the gush of funds flowing into some of these dummy corporations and these agricultural giants. I intend to fight for the tightest yet most reasonable possible limitation when or if we get to conference with the other body on this continuing resolution.

Given our time limitations and the magnitude of the problems that need our attention, I believe that this language revises many of the more blatant flaws in existing statutes. This would enable us to begin the process of true programmatic reform, and enable us to achieve some real savings. In my view, saving even a million dollars would make this whole effort worthwhile.

Mr. WHITTEN. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding to me.

Mr. Chairman, I think we all recognize the problem that we have in this field. I have not had a chance to study the amendment; it was just presented to me. But I realize that the people have worked awfully hard and I trust that the gentleman, both gentlemen, intend to cover this further in any conference that we have just to be sure that we are right about it.

I will give you the best of intentions. It is a hard subject to work with. It reads all right, but I trust you are going to review this in conference so that we can be assured.

Mr. CONTE. Let me just say briefly in summary of the amendment that it maximizes the payments of $250,000 for the 1987 through 1990 crops. It retains the existing $50,000 deficiency payment limitation. Payments include disaster payments, gains from marketing loans and the Findley payments and the inventory reduction payments.

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Mr. WHITTEN. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Chairman, those who are interested and have a different view and wish to be heard will have an opportunity between now and finalizing in the conference.

Mr. CONTE. Mr. Chairman, I thank the chairman, and I just want to take this opportunity to thank the chairman of the Committee on Agriculture, the gentleman from Texas [Mr. DE LA GARZA], for all his cooperation, his hard work, his patience over the last 3 days. I really appreciate it. Thank you very much.

Mr. DE LA GARZA. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Texas.

Mr. DE LA GARZA. Mr. Chairman, this is a very difficult situation for us because we would have rather had this issue addressed in the proper committee of jurisdiction and the Committee on Agriculture, but unfortunately, the issue was brought up in another forum.

We appreciate very much that the gentleman from Massachusetts [Mr. CONTE], who initiated the original amendment, has been agreeable and cooperative, yet insisting on the issues that the gentleman feels so strongly about.

The fortunate thing about it is that we basically agree with the concerns that he has and we have endeavored to arrive at some reasonable agreement. Not everyone is in accord. There are some who will not be happy with the agreement, but under the situation that we find ourselves in, under the parliamentary situation that we are in today, this is the best that we could do under the circumstances which confront us. I wish to thank all who have cooperated in the endeavor.

Like the distinguished chairman of the Committee on Appropriations says, of course, we would like to have further study, but I think that counsel on both sides have worked diligently and we have to curtail some, at least the perception of abuse, at least the perception of possible loopholes. I think that this will do that.

Legislation is the art of the possible. This is what is possible in this situation. I thank the gentleman for yielding to me and for his cooperation in this endeavor.

Mr. GUNDERSON. Mr. Chairman, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Wisconsin.

Mr. GUNDERSON. Mr. Chairman, I rise in support of the gentleman's effort and commend the gentleman for trying to help some of us put some integrity in what has been some bad publicity in the farm bill.

I want to commend our distinguished chairman of the Committee on Agriculture, the gentleman from Texas [Mr. DE LA GARZA], for taking that leadership role once you brought this issue forward in trying to resolve this.

I have to share the thoughts and comments of both of you that this does not resolve it over the long term. We have witnessed, as the distinguished chairman of the Commmittee on Agriculture knows, we thought we had accomplished most of this in the 1985 farm bill. Lawyers and accountants' lawyers and farmers' lawyers have apparently found ways to get around it. I have to tell both of the gentlemen that I think we are going to need the help of the GAO and others to find ways to write this legislation in the future so that simple break-up of land itself does not allow this kind of abuse which really was not the intent of the Committee on Agriculture or the farm bill.

I just want to commend both gentlemen and rise in support of the amendment.

Is it the responsibility of the Federal Government to fully support our multimillion-dollar agricultural producers, or should the Federal Government direct its income assistance programs to our small- and medium-sized family farms which need income support? I believe the latter is what Congress, the American taxpayers and the majority of farmers want as the basis of their Federal farm programs. That is why I support the restructured Conte amendment being offered today as a part of House Joint Resolution 738, continuing appropriations for fiscal year 1987.

Payment limitations on farm programs are necessary for several reasons. First, Congress never intended the Federal Government to completely subsidize our farmers with cash payments. Rather, target price and loan programs were designed to assist family farmers during times of low commodity prices and high interest rates. Clearly there is a difference between helping small- and mid-sized producers and much larger corporate farms—the latter generally have larger margins of profit because of their lower costs of production and

also have other means to offset their losses. Thus their dependence on price support programs during troubled financial times is minimized.

Second, it is important that farm programs remain credible with taxpayers. Reports of million dollar payments to large grain and fiber producers only serve to intensify the skepticism of taxpayers with regard to our farm programs and how they operate.

At a time when fewer Federal dollars have to be divided among many, many programs, it is important that our programs be streamlined so that payments are directed toward those that need them most.

Since coming to Congress 6 years ago, one of my priorities as a member of the Agriculture Committee has been to target farm program benefits to our small- and mid-sized family farms.

The restructured Conte amendment before us today is simply an extension of the payment limitations we included in the 1985 farm bill. Specifically, the amendment reiterates that deficiency payments to producers of wheat, feed grains, cotton and rice may not exceed $50,000 per producer. I have supported this $50,000 ceiling on deficiency payments ever since coming to Congress. However, there has never been a cap on payments for disasters, resource adjustment, repayment of a loan at the rate permitted, reductions in the loan level for a crop and inventory reduction. This is where all of the recent abuse of farm program payments has occurred.

Accordingly, for the first time ever we are establishing an absolute cap of $250,000 on all USDA payments to an individual producer. In other words, when all of these program benefits are added together, they cannot exceed $250,000 per producer.

What does this mean? No more multimillion-dollar payments to huge corporations. What this amendment means is a commitment by the Congress to target farm program benefits to the family farms around this country. I urge my colleagues to support the amendment before us today.

Mr. SMITH of Iowa. Mr. Chairman, will the gentleman yield.

Mr. CONTE. I yield to the gentleman from Iowa.

Mr. SMITH of Iowa. Mr. Chairman, I want to thank the gentleman from Massachuetts [Mr. CONTE] for being reasonable in trying to work this out, and also the gentleman from Texas [Mr. DE LA GARZA] for what he has done.

I also should point out that there has been a fundamental change in the farm law. Marketing loans were authorized this year. It was not known that they would be used, but they decided to use them in the case of rice and cotton. That is where these big payments have come from. It was not really anticipated at the time the farm law was passed that they would necessarily be used, but those particular marketing loan payments, the difference between the world market price and the loan rate, were not subject to a limitation, like the other payments were that was the difference between target price and the loan price.

That is what causes this. I think this, if you want to have a limitation, addresses that. I do not think it really leaves a lot to be done. You might need to do some fine tuning, but if you want a limitation, I would say this is the way to do it.

Again, I commend the gentleman from Massachusetts [Mr. CONTE] and the gentleman from Texas [Mr. DE LA GARZA] for working together to try to figure out what, I think is pretty clear that, a majority do want at this time.

Mr. DORGAN of North Dakota. Mr. Chairman, I would like to discuss today a provision inserted into the continuing resolution by my colleague from Massachusetts [Mr. CONTE], concerning limitations of payments to farmers under the current farm program.

I commend the gentleman for his concern on this issue, and I wish to assure the Chairman that the farmers whom I represent share his concern. Horror stories about payments totaling $20 million to a single agribusiness offend the family farmer who pays taxes just as much as they offend taxpayers in Massachusetts.

It is important to understand, however, that this provision will not solve the problem of the bloated payments to individual farmers. Putting a cap on the payments to any one person does not address the fundamental question of what constitutes a person eligible to receive payments. Currently, some farmers are setting up shell corporations to receive multiple payments under farm programs and, as long as they have good accountants and good attorneys, it can be perfectly legal to establish several such corporations for one farming operation.

Together with my colleagues from Kansas and California, [Mr. GLICKMAN and Mr. PANETTA], I have called for a GAO study of this problem. The results will be ready in a few months, and at that time I invite all of my concerned colleagues to join us in making sure that farm program funds go to help family farmers stay on the land, instead of putting caviar on the table of millionaire agribusinessmen.

Mr. CONTE's amendment is a start, and I support it, but we've got a lot more work to do on targeting farm payments to those who need the help.

Mr. CONTE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. CONTE].

The amendment was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore Mr. GRAY of Illinois having assumed the chair, Mr. DONNELLY, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, pursuant to House Resolution 560, he reported the joint resolution back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 201, nays 200, not voting 31, as follows:

[Roll No. 417]

YEAS—201

Abercrombie	Dwyer	Levin (MI)
Ackerman	Dymally	Levine (CA)
Akaka	Early	Lipinski
Anderson	Edgar	Long
Andrews	Edwards (CA)	Luken
Annunzio	Evans (IL)	Lundine
Anthony	Fascell	MacKay
Aspin	Fazio	Manton
Atkins	Fish	Markey
AuCoin	Flippo	Matsui
Bedell	Florio	Mavroules
Beilenson	Foglietta	McCloskey
Bennett	Foley	McCurdy
Berman	Ford (MI)	McDade
Bevill	Fowler	McHugh
Boggs	Frank	McKinney
Boland	Frost	Mica
Boner (TN)	Fuqua	Mikulski
Bonker	Gaydos	Miller (CA)
Borski	Gejdenson	Mineta
Bosco	Gibbons	Mitchell
Boucher	Gilman	Moakley
Boxer	Gonzalez	Mollohan
Brooks	Gray (IL)	Montgomery
Brown (CA)	Gray (PA)	Morrison (CT)
Bryant	Green	Morrison (WA)
Bustamante	Hall (OH)	Mrazek
Carper	Hatcher	Murtha
Carr	Hawkins	Myers
Chapman	Hayes	Natcher
Chappell	Hefner	Nelson
Clay	Howard	Nichols
Coelho	Hoyer	Nowak
Coleman (TX)	Hutto	Oakar
Collins	Jeffords	Oberstar
Conte	Jenkins	Obey
Cooper	Jones (TN)	Olin
Coyne	Kanjorski	Ortiz
Davis	Kaptur	Owens
de la Garza	Kennelly	Panetta
Dellums	Kildee	Pease
Derrick	Kleczka	Penny
Dicks	Kostmayer	Perkins
Dingell	LaFalce	Pickle
Dixon	Lantos	Price
Donnelly	Leath (TX)	Rahall
Dowdy	Lehman (CA)	Rangel
Downey	Lehman (FL)	Ray
Durbin	Leland	Richardson

Rinaldo	Smith (IA)	Vento
Rodino	Smith (NE)	Visclosky
Roe	Smith (NJ)	Waldon
Rogers	Solarz	Watkins
Rose	Spratt	Waxman
Rowland (GA)	Staggers	Weiss
Roybal	Stark	Wheat
Sabo	Stratton	Whitley
Savage	Studds	Whitten
Scheuer	Tallon	Williams
Schneider	Tauzin	Wilson
Schroeder	Thomas (GA)	Wirth
Schumer	Torres	Wise
Seiberling	Torricelli	Wolpe
Sharp	Towns	Wright
Sikorski	Traficant	Yates
Sisisky	Traxler	Yatron
Smith (FL)	Valentine	Young (MO)

NAYS—200

Archer	Gregg	Packard
Armey	Gunderson	Parris
Barnard	Hall, Ralph	Pashayan
Barnes	Hamilton	Petri
Bartlett	Hammerschmidt	Porter
Barton	Hansen	Quillen
Bateman	Hendon	Regula
Bates	Henry	Reid
Bentley	Hertel	Ridge
Bereuter	Hiler	Ritter
Bilirakis	Hillis	Roberts
Bliley	Holt	Robinson
Boehlert	Hopkins	Roemer
Bonior (MI)	Horton	Roth
Boulter	Hubbard	Roukema
Broomfield	Huckaby	Rowland (CT)
Brown (CO)	Hughes	Rudd
Bruce	Hunter	Russo
Burton (IN)	Hyde	Saxton
Byron	Ireland	Schaefer
Callahan	Johnson	Schuette
Carney	Jones (NC)	Schulze
Chandler	Jones (OK)	Sensenbrenner
Chappie	Kasich	Shaw
Cheney	Kemp	Shelby
Clinger	Kindness	Shumway
Coats	Kolbe	Shuster
Cobey	Kolter	Siljander
Coble	Kramer	Skeen
Coleman (MO)	Lagomarsino	Slattery
Combest	Latta	Slaughter
Conyers	Leach (IA)	Smith, Denny (OR)
Coughlin	Lent	
Courter	Lewis (CA)	Smith, Robert (NH)
Craig	Lewis (FL)	
Crane	Lightfoot	Smith, Robert (OR)
Daniel	Livingston	
Dannemeyer	Lloyd	Snowe
Darden	Loeffler	Snyder
Daschle	Lott	Solomon
Daub	Lowery (CA)	Spence
DeLay	Lowry (WA)	St Germain
DeWine	Lujan	Stallings
Dickinson	Lungren	Stangeland
DioGuardi	Mack	Stenholm
Dorgan (ND)	Marlenee	Strang
Dornan (CA)	Martin (IL)	Stump
Dreier	Martin (NY)	Sundquist
Duncan	Mazzoli	Sweeney
Dyson	McCain	Swindall
Eckart (OH)	McCandless	Synar
Eckert (NY)	McCollum	Tauke
Edwards (OK)	McEwen	Taylor
Emerson	McGrath	Thomas (CA)
English	McKernan	Vander Jagt
Erdreich	McMillan	Volkmer
Evans (IA)	Meyers	Vucanovich
Fawell	Michel	Walker
Fiedler	Miller (OH)	Weber
Fields	Miller (WA)	Whittaker
Franklin	Molinari	Wolf
Frenzel	Monson	Wortley
Gallo	Moody	Wyden
Gekas	Moorhead	Wylie
Gingrich	Murphy	Young (AK)
Glickman	Neal	Young (FL)
Goodling	Nielson	Zschau
Gradison	Oxley	

NOT VOTING—31

Alexander	Burton (CA)	Garcia
Applegate	Campbell	Gephardt
Badham	Crockett	Gordon
Biaggi	Feighan	Grotberg
Breaux	Ford (TN)	Guarini
Hartnett	Pepper	Udall
Jacobs	Pursell	Walgren
Kastenmeier	Rostenkowski	Weaver
Madigan	Skelton	Whitehurst
Martinez	Stokes	
Moore	Swift	

□ 2020

The Clerk announced the following pairs:

On this vote:

Mr. Stokes for, with Mr. Breaux against.

Mr. Alexander for, with Mr. Martinez against.

Mr. Guarini for, with Mr. Crockett against.

Messrs. HOPKINS, LOWRY of Washington, SPENCE, and GLICKMAN, Mrs. JOHNSON, Mr. BOEHLERT, Mrs. BENTLEY, Mr. DioGUARDI, and Mr. BOULTER changed their votes from "yea" to "nay."

Mrs. BENTLEY and Mr. DELLUMS changed their votes from "nay" to "yea."

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KASTENMEIER. Mr. Speaker, had I been present during the last vote on final passage of the continuing resolution, I would have voted in the affirmative.

PERSONAL EXPLANATION

Mr. GUARINI. Mr. Speaker, on rollcall 417, the continuing resolution, I inadvertently missed the vote and wish to state that had I been present I would have voted in the affirmative.

APPOINTMENT OF CONFEREES ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987, with a Senate amendment thereto, disagree to the Senate amendment, and agree to a conference with the Senate thereon.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Pennsylvania? The Chair hears none, and, without objection, appoints the following conferees:

From the Committee on the Budget, for consideration of the entire House bill and Senate amendment, except for revenue measures on which conferees from the Committee on Ways and Means have been appointed: Messrs. GRAY of Pennsylvania, LOWRY of Washington, DERRICK, JENKINS, ATKINS, LATTA, Mrs. MARTIN of Illinois, and Mr. LOEFFLER.

From the Committee on the Budget, solely for consideration of those portions of the House bill and Senate amendment containing revenue measures on which conferees from the Committee on Ways and Means have been appointed: Mr. JENKINS and Mr. LATTA.

From the Committee on Agriculture, solely for consideration of title II of the House bill and title I and section 501 of the Senate amendment: Messrs. DE LA GARZA, JONES of Tennessee, STENHOLM (except for consideration of section 501 of the Senate amendment), BEDELL (solely for consideration of section 501 of the Senate amendment), MORRISON of Washington, and GUNDERSON.

From the Committee on Appropriations, solely for consideration of sections 11001 and 11002 of the House bill and sections 665 and 1106 of the Senate amendment: Messrs. WHITTEN, FAZIO, and CONTE.

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the House bill, and title II of the Senate amendment: Messrs. ST GERMAIN, GONZALEZ, ANNUNZIO, NEAL, Ms. OAKAR, and Messrs. WYLIE, MCKINNEY, and LEACH of Iowa.

From the Committee on Education and Labor, solely for consideration of section 11005 of the House bill and title VIII and sections 1210–1212 of the Senate amendment: Messrs. HAWKINS, FORD of Michigan, CLAY, GAYDOS, BIAGGI, JEFFORDS, Mrs. ROUKEMA, and Mr. COLEMAN of Missouri.

From the Committee on Energy and Commerce, solely for consideration of sections 4701–4753 of the House bill and section 303 of the Senate amendment: Messrs. DINGELL, FLORIO, SHARP, ECKART of Ohio, SLATTERY, LENT, WHITTAKER, and MADIGAN.

From the Committee on Energy and Commerce, solely for consideration of section 501 of the Senate amendment: Messrs. DINGELL, WAXMAN, FLORIO, SHELBY, SLATTERY, LENT, MADIGAN, and WHITTAKER.

From the Committee on Energy and Commerce, solely for consideration of sections 4001, 4101, 4201–4206, 4301, 4302, 4401–4405, 5001, and 8101 of the House bill and sections 401–405, 411, and 502 of the Senate amendment: Messrs. DINGELL, SHARP, MARKEY, SWIFT, SLATTERY, LENT, DANNEMEYER, and MOORHEAD.

From the Committee on Energy and Commerce, solely for consideration of subtitles F and G of title IV, parts 2–4 of subtitle C of title X, section 10001(c) and (d)(3), section 10102, and that portion of section 10206 amending subsection 710(b)(2) of the Social Security Act, of the House bill, and

section 604(c), parts 2-4 of subtitle A of title VI, and subtitle B of title VI of the Senate amendment: Messrs. DINGELL, WAXMAN, SCHEUER, WALGREN, SLATTERY, LENT, MADIGAN, and WHITTAKER.

From the Committee on Government Operations, solely for consideration of section 11003 of the House bill and section 653 of the Senate amendment: Mr. BROOKS, Mrs. COLLINS, and Messrs, ENGLISH, WAXMAN, WEISS, HORTON, WALKER, and CLINGER.

From the Committee on Government Operations, solely for consideration of sections 10207 and 11004 of the House bill and sections 1103, 1104, 1203, and 1204 of the Senate amendment: Mr. BROOKS, Mr. FUQUA, Mrs. COLLINS, Mrs. BOXER, and Messrs. HORTON, WALKER, and CLINGER.

From the Committee on Interior and Insular Affairs, solely for consideration of title V and subtitle I of title VI of the House bill and section 502 of the Senate amendment: Messrs. UDALL, SEIBERLING, WEAVER, MILLER of California, SHARP, YOUNG of Alaska, LUJAN, and LAGOMARSINO.

From the Committee on the Judiciary, solely for consideration of part C of title VII of the Senate amendment: Messrs. RODINO, BROOKS, GLICKMAN, FRANK, BERMAN, FISH, BROWN of Colorado, and COBLE.

From the Committee on Merchant Marine and Fisheries, solely for consideration of title VI, except for part 5 of subtitle E thereof, subtitle C of title VII, and parts 1 through 4 of subtitle D of title VIII of the House bill, and sections 301, 302, and 501, and subtitle C of title IV of the Senate amendment: Messrs. JONES of North Carolina, BIAGGI, BREAUX, STUDDS, LOWRY of Washington, DAVIS, SNYDER (except for consideration of subtitle D of title VI of the House bill), YOUNG of Alaska (except for consideration of subtitle I of title VI of the House bill), and FIELDS (solely for consideration of subtitles D and I of title VI of the House bill).

From the Committee on Post Office and Civil Service, solely for consideration of title VII, of the House bill and sections 701, 711, and 1202 of the Senate amendment: Mr. FORD of Michigan, Ms. OAKAR, and Messrs. LELAND, TAYLOR, and HORTON.

From the Committee on Public Works and Transportation, solely for consideration of subtitles A and E of title VIII of the House bill and sections 503 and 504 of the Senate amendment: Messrs. HOWARD, ANDERSON, NOWAK, EDGAR, APPLEGATE, SNYDER, SHUSTER, and CLINGER.

From the Committee on Public Works and Transportation, solely for consideration of section 501 of the Senate amendment: Messrs. HOWARD, ROE, BOSCO, TOWNS, WISE, SNYDER, HAMMERSCHMIDT, and STANGELAND.

From the Committee on Public Works and Transportation, solely for consideration of subtitle B of title IV and subtitle B of title VIII of the House bill and section 411 of the Senate amendment: Messrs. HOWARD, ANDERSON, EDGAR, RAHALL, APPLEGATE, SNYDER, HAMMERSCHMIDT, and SHUSTER.

From the Committee on Public Works and Transportation, solely for consideration of subtitle A of title VI, parts 1-4 of subtitle E of title VI, subtitle C of title VIII, and parts 1-4 of subtitle D of title VIII of the House bill: Messrs. HOWARD, ROE, BOSCO, TOWNS, WISE, HAMMERSCHMIDT, SHUSTER, AND STANGELAND.

From the Committee on Small Business, solely for consideration of title IX of the House bill, and title IX of the Senate amendment: Messrs. MITCHELL, SMITH of Iowa, and MCDADE.

From the Committee on Ways and Means, solely for consideration of title X, subtitle F of title IV, part 5 of subtitle E of title VI, and part 5 of subtitle D of title VIII of the House bill and title VI, except for subtitle B thereof, title VI-A, except for section 665 thereof, title X. sections 1105, 1107, and 1201, subtitle B of title XII, and title XIII of the Senate amendment: Messrs. ROSTENKOWSKI, GIBBONS, PICKLE, RANGEL, STARK, JACOBS, FORD of Tennessee, DUNCAN, ARCHER, CRANE, and GRADISON.

There was no objection.

□ 2030

RELIEF OF PAULETTE MENDES-SILVA—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 99-271)

The SPEAKER pro tempore (Mr. GRAY of Illinois) laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 2316, a bill for the relief of Paulette Mendes-Silva.

This bill would give the United States District Court for the District of Columbia jurisdiction to hear Ms. Mendes-Silva's claim that the Public Health Service was negligent in inoculating her against yellow fever on March 12, 1963, despite the fact that Ms. Mendes-Silva never filed an administrative claim or filed suit in a timely manner, as required by the Federal Tort Claims Act.

While I feel sympathetic to Ms. Mendes-Silva because of her condition, I cannot sign H.R. 2316 because there is no equitable basis for relief. The bill's beneficiary failed to pursue the remedies available to her in a timely manner. Moreover, available medical evidence contradicts her assertion that the Government was responsible for her disability.

I am greatly concerned with the adverse precedential impact that my approval of H.R. 2316 would have upon litigation against the Federal Government. There must be some limit to the time during which the Government must remain prepared to defend itself against specific claims. That limit is set forth in the Federal Tort Claims Act, 28 U.S.C. at 2401(b).

I am also greatly concerned that this private relief bill would allow a claimant to circumvent the orderly administrative process for asserting claims against the United States as prescribed by the Federal Tort Claims Act, 28 U.S.C 2675. Other individuals who have also failed, for whatever reason, to file their claims within the required time, have been likewise precluded from the relief Ms. Mendes-Silva seeks in this bill.

For these reasons, I cannot approve H.R. 2316.

RONALD REAGAN.

THE WHITE HOUSE, *September 25, 1986.*

The SPEAKER pro tempore. The objections of the President will be spread at large upon the Journal and, without objection, the message and the bill will be printed as a House document.

There was no objection.

Mr. GLICKMAN. Mr. Speaker, I move to refer the bill, H.R. 2316, for the relief of Paulette Mendes-Silva, together with the message from the President, to the Committee on the Judiciary.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN].

The motion was agreed to.

□ 2040

SUPPORT FOR THE TAX REFORM BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. DIOGUARDI] is recognized for 5 minutes.

Mr. DIOGUARDI. Mr. Speaker, I rise this evening to express my support for the tax reform bill because the overall merits outweigh the overall liabilities. The key issue, as far as I am concerned, and what allows me to support this bill, is the fact that personal tax rates are reduced significantly. I believe that people know how to spend their money better than the Government does, and the long-term implications of putting more money in the pockets of taxpayers bodes well for the long-term strength of our economy.

Virtually no bill that comes to this floor is perfect—and this one is no exception. I have problems with some aspects of the bill but as far as Westchester County is concerned, we are a big winner because we retain State and local tax deductions, especially the property tax deduction that supports our school system. That alone

merits support of this historic legislation.

In closing, Mr. Speaker, I want to say that we do risk a short-term downturn in the economy, but that the future economic strength of this country and the American people's right to keep more of their hard-earned money is well served.

THE ULTRA-SUPER MASTER CARD

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. DORNAN] is recognized for 5 minutes.

Mr. DORNAN of California. Mr. Speaker, I know that you, as I, and Mr. LANTOS enjoyed as young men those great historical radio re-creations that eventually turned up on TV with Mr. Walter Cronkite as the narrator, for both radio and television.

He would begin, and I paraphrase badly:

> It was one of those rare days in history. A day in history that would illuminate our times. A day that men would remember for all times—and women, and you are there.

This is such a day, and now I must paraphrase: That that vote, a few minutes ago, every one of our Members, particularly you, Mr. GONZALEZ, a key vote; will remember for the rest of your lives; and as our children and grandchildren and great grandchildren struggle with this debt, they will say, Grandpa—if you are mercifully no longer here—they will say, "You were there."

This item that we just voted on, that as Mr. WALKER pointed out with the help of the Library of Congress, was the largest spending item in the history of all civilization. Cro-Magnon man never thought it would come to this.

We truly now have a ninth wonder of the modern world. It pales those great modern wonders, the eight of them, of the ancient world: The Mausoleum in Asia Minor, the Temple of Diana, the Colossus of Rhodes, the Lighthouse at Alexandria, the Hanging Gardens of Babylon. All of them could have been built, in aggregate, taken as a block, for less money than the $561 billion that we appropriated tonight with this bill.

To fund our Government for an entire year, the Library of Congress said nothing even comes close. Those wonders of the modern world? The Taj Mahal is nothing compared to this. We could have built 37 Taj Mahals for the amount of money that we spent on this.

Remember that Hart Building back in 1979? The Library of Congress told me that some member on the Committee on Public Works could have 17 Eiffel Towers built throughout his own district and named after him for the price of the Hart Building. The Hart Building expense is now like a lifeboat on the *Titanic*. Yea, a belaying pin in cost on the *Titanic* compared to the cost of this bill.

I want all of those who were fortunate enough to be in this Chamber, and I will not refer to the gallery, violating House rules, Mr. Speaker; but all of those lucky enough to be in the Chamber, particularly those using this master card, this ultra-super master card, think of the possibilities of what we have done tonight, voting $561 billion.

Every single Member who voted in the affirmative, because it was 201 to 200, can for the rest of his life say, "Yea, verily, I was the swing vote. I was there."

What I say, as the great one says on the Master Card commercial, I probably for the rest of my life will take more pride in this vote than any other, while those of you on the other side that see this as the platinum, ultra charge card of all times, you will go to your graves saying, "How sweet it is."

Mr. Speaker, I yield back the balance of my time.

A TRIBUTE TO DON FORTIER

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri [Mr. COLEMAN] is recognized for 60 minutes.

Mr. COLEMAN of Missouri. Mr. Speaker, I have taken this special order to pay special tribute to Don Fortier.

On August 23 Don Fortier lost his battle with cancer. Don, who was President Reagan's Deputy National Security Affairs adviser, was respected for his dedication, creativity, and sense of proportion. Among his many diverse responsibilities was briefing the President each morning on overnight international developments. Although only 39 years of age, Don had reached the level of success and influence that few attain in his profession.

Many people on the Hill knew Don from his days as a senior adviser to the House Foreign Affairs Committee. He served the House in that capacity from 1976 to 1981. He left the Hill to become Deputy Director for Policy Planning at the State Department and later served as Director of Western European and NATO Affairs on the National Security Staff at the White House.

I first met Don through his wife Alison who also worked on the Foreign Affairs Committee. Don and Alison were a young couple dedicated to serving their country. Alison continues that dedication at the Arms Control and Disarmament Agency.

I suppose it was the Capitol Hill experience that made Don so effective in forging coalitions with Congress in order to obtain passage of the President's foreign policy programs. He continually reached out to Members of Congress in order to forge a consensus—sometimes under the most difficult of circumstances and dealing with emotional and contentious issues. He understood the important, although sometimes conflicting role with the executive branch, that the Congress plays in foreign policy development under our Constitution. He helped craft what is known as the Reagan doctrine which supplies aid to Latin American anti-Communist groups. An example of his success was the compromise worked out on aid to the Nicaraguan Contras which continued United States support at a most critical time.

And yet the name Don Fortier was not widely known to the public. I suspect that's exactly how Don wanted it. He served his President and country selflessly. He was fully dedicated to doing the best job possible. There were many long days and nights. In fact, the normal workday continued late into the evening—almost every evening. He did his work behind the scenes—very willing to let others take the public credit. He, perhaps more than any other person in the White House, reflected the President's view that much could be accomplished if you didn't care who gets the credit.

I had the opportunity of traveling with Don to several foreign capitals, and while others grew weary from jet lag, endless conferences, and diplomatic social engagements, Don never stopped briefing, debriefing, and cabling back his discoveries and observations to the White House.

To know Don personally as well as professionally was a real treat. Even though he could command the undivided attention of the President of the United States and speak in behalf of the leader of the free world—both heady experiences—Don never took himself too seriously. He had a wonderful wry sense of humor which always kept me chuckling. And while he was obviously a serious student and participant of world affairs at the highest level, he could still appreciate this Member's own wacky brand of humor.

As Don's responsibilities and influence increased, he never changed as an individual in his personal relationships with friends and colleagues. In a town and a profession where egos grow and bump into each other with unrelenting frequency, Don Fortier was a breath of old fashioned fresh air.

After all is written by historians regarding the significance of the foreign policy contributions he helped craft for the President that he advised so well, and others sift through the public papers and private memoranda to determine a sense of history, as important as this is—none is more impor-

tant than the legacy Don left that challenges the old saw that "nice guys finish last." Don Fortier at a young age rose to the top of his profession. He was one of those rare individuals that we meet in life, ever so infrequently, that truly merits the descriptive title of being a nice guy. We miss him a great deal.

I wish to extend my condolences to Don's mother and father, Mr. and Mrs. Robert Fortier, and his brother, Thomas, and to Alison and their son Graham who at the age of 3 will grow up in a United States of America which is more secure, more hopeful of peace, and more dedicated to freedom because of what his father accomplished in a lifetime that ended too soon.

Mr. Speaker, there are several Members here tonight who knew Don personally, who I want to recognize.

The first gentleman I will yield to is the gentleman from Illinois [Mr. HYDE].

□ 2050

Mr. HYDE. I thank the gentleman for yielding.

I thank the gentleman for holding this special order in order to commemorate someone we knew and respected enormously.

Mr. Speaker, they say the good die young, and the accuracy of that truth is once in a while brought home and never more forcefully than with the untimely death of Don Fortier.

They say that service is the rent we pay for our room on Earth. If that is true, Don Fortier was well ahead of himself. He paid rent for a lot of lifetimes in the short 39 years that he was here because he achieved so very much.

His life was abundantly productive in so many ways in a city that is peopled with too many overbearing and self-serving power brokers; he possessed all of the qualities of the ideal public servant.

His modesty, his dedication, his loyalty, his patriotism, his analytical prowess combined to make him uniquely effective at building bridges over troubled turbulent waters.

He supplied logic and sweet reasoning many times when emotion and politics intruded. He played an indispensable role in many important issues, particularly in forging the bipartisan coalition in support of the President's Central American policy. This was a prodigious task. A lesser man would have quit a lot earlier. But Don with characteristic tenacity refused to concede defeat, and consequently this Nation, this evening, is on the verge of turning the corner on a national security question with far-reaching regional and global implications. If we can sustain what Don worked so hard to begin, history can demonstrate why we and the rest of the free world benefited immeasurably from his devoted effective service.

Don is survived by his lovely wife Aison, herself an outstanding public servant; a son Graham, as well as another child soon to be born. I do not know which is more difficult, to have known Don and loved him and enjoyed his company or never to have known him and still to be his child.

In any event, their loss is a keen one, and we in some small way share it along with his parents, his mother and father, brother Tom, and grandmother, Mrs. Robert Fortier of Dayton, OH.

But to all of them we offer our deepest sympathy and our fervent prayer that somehow these words and those of all of us participating in this memorial will in some way assuage the pain while inscribing on the public record the unique legacy of this rare and courageous man.

Finally, Mr. Speaker, I want to commend the President for allowing Don Fortier to be buried in Arlington Cemetery. Such a final resting place is fitting and appropriate for someone who literally gave his life for a nation whose destiny he strove so mightily to help shape. He was a patriot whose contributions to his country were many and enduring. He used his short time among us to accomplish so very much.

Somehow the real pain of his loss is mitigated by the pleasure and, yes, the honor of having known him. I thank the gentleman.

Mr. COLEMAN of Missouri. I thank the gentleman for a very fine statement.

Mr. Speaker, I yield to the gentleman from California [Mr. LANTOS].

Mr. LANTOS. I thank the gentleman for yielding, and I want to commend my friend from Missouri [Mr. COLEMAN] for bringing us together to pay tribute to Don Fortier.

Mr. Speaker, Don Fortier was a friend of mine, as indeed he was a friend of all of us, Republicans and Democrats, who have come to learn his passionate patriotism, his deep commitment to public service, his impeccable scholarship, and his unique qualities as a husband and as a father.

I have rarely met a person who was more serious about his work.

In my previous incarnation as a university professor, I had come to appreciate scholarship. I do not think in all the years I have spent here in Washington both as a Member of the House and as a staff member on the Senate side before I ever had the pleasure of getting to know someone who was as demanding of himself as a scholar.

President Reagan could not have chosen better than to have made this brilliant, dedicated, outstanding patriot his deputy national security adviser.

He loved his work. I have never seen a person whose mind was as constantly engaged as Don's and all of that engagement had the purpose of answering the one question: How best to promote the interests of the United States.

He sat next to me at the Kremlin one day when we met with the top Soviet negotiator on arms control, Ambassador Karpov.

Now while we had a distinguished and a strong bipartisan delegation, I believe I am accurate in saying that all of us combined did not have the depth of understanding, the appreciation of the nuances of arms control that Don did.

He incessantly worked for the benefit of our Nation and even when he was on vacation he was churning forth endless memorandums, papers, cables, telegrams, to tell his home office what is happening, with a degree of perceptivity and insight and appreciation of other cultures that was extraordinary.

Don and Alison were a team. They were one of the finest teams in this Capital. They shared the love and appreciation of what this Nation is and the skills of foreign policy experts. It was such an infinite joy to see them greet their little son when he arrived some 3 years ago.

The last time Annette and I saw Don was at Andrews Air Force Base when he had a little boy in his arms greeting Alison as he was returning from a difficult and arduous journey abroad.

The sparkle, the joy, the intelligence in that little boy's eyes give all of us hope that someday he will carry on his father's, Don's, work.

To Don's grandmother, his parents, brother, but particularly to Alison and Graham and the little baby yet to be born, my wife Annette and I are sending our love and our affection.

Mr. COLEMAN of Missouri. Mr. Speaker, I yield to our ranking Republican member of the Committee on Foreign Affairs, the gentleman from Michigan [Mr. BROOMFIELD].

Mr. BROOMFIELD. Mr. Speaker, I, too, want to join my other colleagues in thanking the gentleman from Missouri [Mr. COLEMAN] for having this special order in order to talk about a man who all of us thought a great deal about.

Mr. Speaker, it has been said that wisdom comes with age. For Don Fortier, however, wisdom came early in life. Because of his many talents and his compassionate ways, those of us who knew Don are saddened by the loss of that brilliant young man.

His gifts were recognized early in life. He distinguished himself in the academic world and in the private sector. His love of his country and interest in national security affairs brought him to Washington.

A nation, as ours, with global interests needs good thinkers and men of vision who can lay the basis of America's national security policies. While

there are many who claim expertise in national security issues, there are few, however, with the stature of Don Fortier.

Recent years have presented real challenges to American foreign policy planners. America has successfully faced those challenges in the past few years thanks to the wisdom and devotion to duty of Don Fortier. He was the architect of what has been called the Reagan doctrine. He was a key player in crafting our Government's policy for dealing with Libya and Nicaragua.

In working on those and other vital issues, Don Fortier's intellect and creativity helped America steer a steady course in our relations with those and other nations.

I am certain that history will bear witness to the mighty contributions of Don Fortier. He was a tireless and humble public servant who gave much of himself to his country. A gifted and dedicated man has been taken from his family and all of us in the prime of his life. He will live on among all of us in the warm memories tht he has left behind.

Mr. COLEMAN of Missouri. I thank the gentleman for those warm comments.

Mr. Speaker, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the gentleman from Missouri [Mr. COLEMAN] for yielding, and I thank him for arranging this special order.

Mr. Speaker, we are all deeply saddened by the tragic loss of Donald R. Fortier at the youthful age of 39. Many of us participating in this special order came to know Don best during his years on the staff of our House Committee on Foreign Affairs after graduating from Miami University and after earning a master's degree at the University of Chicago. He was especially active, in those days, on the issues of nuclear nonproliferation and nuclear disarmament, which are so essential to world peace.

When Don left our Foreign Affairs Committee to join the Department of State and the staff of the National Security Council, his responsibilities, and his areas of expertise, multiplied, as did the number of people who knew and admired him. Don Fortier is credited with working out numerous political compromises to resolve important foreign policy standoffs within the American political context, and with having focused the administration's efforts against terrorism.

Not too many of us were aware that Don had helped draft the foreign policy planks of the 1984 GOP platform and had coached the President before his second election debate with Walter Mondale. President Reagan stressed Don's tirelessness, brilliance, and creativity in paying tribute to him on his passing. His friends knew him as a self-effacing individual with a great sense of humor.

Don's loss is tragic, too, because he was so young, and had so much to give to his family and to his Nation. My family and I join our colleagues in extending our sympathies to Don's widow, our friend and former Foreign Affairs staff member, Alison Brenner Fortier, to their son, Graham, and to Don's parents, grandparents, and family survivors.

I thank the gentleman for yielding.

Mr. COLEMAN of Missouri. I thank the gentleman for his contribution.

Mr. Speaker, I yield to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Speaker, on August 23, the United States lost a very learned loyal and patriotic citizen, Donald Fortier. Many of us lost a good friend. Serving the people of the United States in various capacities including as a staff person for the House Foreign Affairs Committee, National Security Council, Don Fortier quietly, but very intelligently, helped formulate and direct America's foreign policy. His involvement in the Government was not for self-seeking goals but for the benefit of our great Nation and the interests of its people.

President Reagan said that Don was a man "who worked tirelessly and brilliantly in developing our national security policy. His creativity in the search for lasting peace throughout the world contributed significantly to our progress toward that goal." How right the President is. Don was the model citizen. Despite his intelligence and position of enormous responsibility, he did not appear on talk shows or attend fancy parties. Instead, he devoted over 12 hours a day to foreign policy management. He was very instrumental in shaping American policy toward Libya, Central America, and China. Always concerned about peace, Don helped promote lasting peace between Pakistan and India. Don's interest in nuclear proliferation and his endless efforts aimed at limiting the spread of nuclear weapons around the world is to the benefit of all mankind.

□ 2105

I know that we, the American people, will miss Don very much. Aside from his outstanding contributions to our foreign policy, Don Fortier was a devoted family man who left behind a lovely wife Alison, and son Graham, a mother and father, brother, and grandmother. It is tragic that such a loyal patriot succumbed to cancer so early in the prime of his life. Good men are rare, and it saddens all of us when we lose one like Don Fortier.

We extend our condolences to his widow, his son and his family.

Mr. COLEMAN of Missouri. Mr. Speaker, I thank the gentleman for his comments.

Mr. Speaker, we have heard from many Members here tonight, and I will be recognizing another one in just a moment, but I think it is so obvious how much Don was loved and appreciated by the people that he served as a member of the staff of this committee that all of us had had an opportunity to deal with him on.

I think also the fact that he was a hard worker has been remarked on on several occasions. I think also we ought to acknowledge that even while Don was fighting cancer and he was at home for these periods of time when he was doing that, undergoing treatment for that disease, he continued to have the tremendous input and work that he has exemplified throughout his whole public career to work on these very important issues that have been mentioned tonight from his bed in his home. Indeed, he worked until the final moments of his life on behalf of this country.

Mr. Speaker, I yield to my friend, the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. Mr. Speaker, I thank the gentleman for yielding to me.

First of all, I would like to offer my very sincere congratulations for the gentleman bringing this special order to memorialize our very dear friend, Don Fortier.

Nothing is quite so tragic and disheartening as when a young man with the extraordinary talents and the great future is cut down before realizing his full potential, and Don Fortier was such a man. He was indeed a man of uncommon ability. He enjoyed a meteoric rise in Government service based solely on that uncommon ability and his solid contributions to the development of public policy at every stop along the way.

He first gained notice, as has been mentioned, as a national security consultant to the Rand Corp. and then moved to the House Foreign Affairs Committee as a senior adviser. But it was with his service to the Reagan administration, first in the State Department and later as Deputy Assistant to the President for National Security Affairs, that Don really made his mark and earned the admiration and respect of knowledgeable people throughout the national security community.

In addition to being a consumate and highly skilled professional, Don was just a fine human being. No seeker of the limelight, he preferred to work hard and largely anonymously to make others look good. It is unusual in this town, to say the least, to find a Government official in a position of high responsibility such as Don had

who was less involved with his own ego.

Don did accompany the U.S. delegation to the European Parliament, to several of our meetings, along with his wife Alison. He was a most engaging traveling companion, as those of us who went with him on those trips know. I would also say he was a tremendous asset to our delegation during our debates with our European counterparts.

I particularly recall a luncheon that my wife Judy and I shared with Don and Alison at a small restaurant in Budapest a couple of years ago. Don talked about the future. He and Alison had many plans. They were enthusiastic and optimistic about their future, and they really had reason to be, given their soaring talent and the obvious strong loving strength of their marriage. That Don will not be here to share that future with Alison and their son Graham is a tragedy for them, for us, and I believe for the country.

We will all miss Don, and even those who never knew him will miss his contributions.

His quiet competence, his engaging personality, his inciteful suggestions will all be missed. I express my condolences and my wife Judy's condolences to Alison and to Graham.

Mr. COLEMAN of Missouri. I say to the gentleman from Pennsylvania, as we are required to talk to each other here on the floor, we all have our Don Fortier stories, and we all could have told them. I think the thread that runs through all of them is he was a man who was so down to earth and who had such great intellect, and yet had so much common sense.

The gentleman mentioned what a tragedy it is that Don will not be around for those plans that he and Alison had made. The fact is that he has fashioned the future of this world in a way that few of us will ever have the opportunity of doing. I think that that is a legacy that all of us would like to leave.

Mr. Speaker, because of the hour, there were several Members who wanted to participate in this special order tonight. I would indulge the Chair because of the special considerations that we had for Don, if I might read a few of these into the RECORD before putting them into the RECORD.

Mr. Speaker, the first one is from our whip, TRENT LOTT, who knew Don personally. His statement was that he recognizes the great commitment and dedication of Don Fortier, the former Deputy Staff Director of the National Security Council and an influential and highly respected member of the President's foreign policy team.

TRENT LOTT, along with many of his colleagues, is deeply saddened to learn of Don's death on August 23.

He writes:

I, personally, will long remember Don Fortier as a man who loved his country. It was such a pleasure for me to work in my role as chairman of the 1984 Republican Platform Committee with Don, as he assisted the committee with the foreign policy platform. In his role on the National Security Council staff, Don was a key figure in such initiatives as the administration's policy on Libya, and the Reagan doctrine in Latin America. Don Fortier lived his life in what I refer to as the style of "silently effective." Don Fortier was a quiet and thoughtful man who made a tremendous contribution to our Nation. He will long be remembered by those of us who were fortunate enough to have known and worked with him.

Mr. Speaker, I also have received a letter from the gentleman from Pennsylvania [Mr. YATRON]. Among the things that the gentleman from Pennsylvania states in a very articulate way is:

Donald Fortier's passing saddens us, not only because of his young age, but because of who he was and what he contributed. He was a leader during every phase of his short career. While he was on the Foreign Affairs Committee staff, his intellect and creativity earned the respect of his coworkers, as well as members of the Committee on both sides of the aisle. When he joined the National Security Council staff, his responsibilities escalated as did the recognition of his tremendous talent. But there was one person who remained unaffected by his accomplishments—that person was Don Fortier himself.

Striving for peace and bipartisan consensus was characteristic of Don. What he did during his short career so his country could attain these goals will not be forgotten.

□ 2115

Mr. Speaker, we have heard from people on both sides of the political aisle tonight, and I woud like to read a statement from the gentleman from Indiana.

I would like to read it, because I think it says so much, especially from the chairman of the subcommittee that Don worked on originally as a Republican staffer but who ended up serving the entire Foreign Affairs Committee on both sides of the aisle.

Mr. HAMILTON's statement is as follows:

Mr. Speaker, I am pleased to join several of my colleagues in paying tribute to Don Fortier. Don served his Nation well, and many of us are in his debt for his efforts to protect and promote U.S. interests and international understanding and reconciliation. Don's wife, Alison Brenner Fortier, their son Graham and his family can be deeply proud of his accomplishments and can join us in taking inspiration from his dedication to, and solid accomplishments for the betterment of this country.

I had known Don for a decade. He was bright, articulate, always seeking compromise and alternatives, and always with a clear sense of the national interests of the United States. His sense of humor, his sense of duty and his willingness to let others take the headlines for his ideas were invaluable assets in his all too short career in Washington. On some issues, we may have had disagreements, but Don was always willing to talk, always trying to find a mutually acceptable way through a problem. His approach and his personality gained the respect and admiration of friends and colleagues on the Committee on Foreign Affairs, in the State Department and on the National Security Council staff.

It is indeed tragic to see someone in his prime who is giving so much of himself for the good of others to be hit by a debilitating illness and early death. We all mourn his loss, but we can and must carry on his work and try to build on his many contributions. Don would want it no other way. Alison has many cherished memories. She and her children will be able to look to the future with a deep sense of pride and knowledge that they can build on Don's accomplishments.

Mr. Speaker, when several former Members of the House heard about this special order, they wanted to have their voices heard tonight. Since they do not have the opportunity of placing anything in the RECORD themselves, I do want to read their statements.

The first one is from the former Member from Illinois, Paul Findley. His statement is as follows:

As I reflect on my 22 years in the Congress, some of the most satisfying memories arise from the work of young people I had the privilege of bringing into Government service.

Ten years ago my senior position on the Committee on Foreign Affairs enabled me to employ a staff assistant for my committee work. One of those under consideration was Donald R. Fortier, then working on his doctorate at the University of Chicago under the supervision of Prof. Alfred Wohlstetter. I telephoned the professor and learned that he held Don in the highest esteem. Then I telephoned Don, who explained that he was in the final stages of doctoral preparation but would like to meet me and learn more about the position. Four days later, returning to Washington after a weekend schedule in downstate Illinois, I interviewed him between planes at O'Hare airport in Chicago and offered him the job.

Don decided that the position was sufficiently appealing to justify interrupting his doctoral pursuit. For me, it was a happy circumstance. He proved to be serious, disciplined, loyal, and unassuming in his work habits. A specialist in the problems of nuclear proliferation, he quickly led me into fascinating and productive work in the improvement of nonproliferation legislation. He also helped me in my pursuit of North Atlantic Treaty Organization goals. He accompanied me to Europe for one of the conferences of the North Atlantic Assembly.

His drafting was always meticulous in construction and carefully reasoned. He had a flair for colorful expressions, a delightful break from the bland verbiage that seems to dominate Capitol Hill. I could be sure that whatever he brought for my consideration would be done beautifully.

The high quality of his professionalism was quickly recognized by Chairman Clement Zablocki, and Don was offered—and accepted—a position on the staff of the full committee. This was a tribute to Don's qualities, as it is rare for staff members employed by Republicans to move to staff positions directed by Democrats. Although a Republican and firmly supportive of my campaigns for reelection, he never wore partisanship on his sleeve. When he moved to the full committee, I chose Alison Brenner, another talented doctoral candidate, as his

replacement. She later became Don'e bride and the mother of his son.

On the full committee staff, he quickly became recognized as the expert on all matters related to nuclear policy questions and shortly thereafter was drawn to a position on the policy planning staff at the State Deparment, then to the National Security Council. His rise to the position of deputy to the President's adviser on national security was phemomenal. It was swift but quiet. Don sped up the ladder totally on merit. It wasn't his style to cut up people, to climb over dead bodies. He did not push himself up. He was pulled up by superiors who recognized his remarkable talent.

Donald R. Fortier lived a long and productive life but compressed it into 39 short years. I take great satisfaction and pride in having had the privilege of opening the first door through which he entered public service.

He leaves behind people in sorrow, particularly his wife and their son. But he also leaves behind a standard of excellence in public service which will inspire others in years to come.

Mr. Speaker, the ranking Republican for many years on the subcommittee on which Don originally worked, and his wife, Allison, later worked, was Mr. Larry Winn, a former Member from Kansas. Congressman Winn has a statement which I would like to read into the RECORD. He makes the following statement:

I appreciate the courtesy of Mr. COLEMAN of Missouri for giving me a chance to pay tribute to a good friend and former staff member of the House Foreign Affairs Committee, Don Fortier.

I had the privilege of working with Don directly and indirectly on the House Foreign Affairs Committee. His talented wife, Allison, was assigned to me when I was ranking Republican on the Subcommittee on Europe and the Middle East. Before Don left the Foreign Affairs Committee to take an important position with the National Security Council, I had the distinct advantage of his keen knowledge and opinions on many subjects. I first found that he had a fantastic knowledge of the nuclear nonproliferation subject matter. However, he did not try to push his own ideas on members of the committee who wanted to "pick his brains." Later I found that I could count on Don Fortier to furnish me with factual, unbiased information on many subjects, whether we were discussing them on planes, buses, meeting with heads of state or diplomats.

When Allison was assigned to me, I felt I got two for the price of one. Don and Allison were a great team. I was fortunate to have the counsel, advice and wisdom of both. I have no doubt that they made me a better Member of the House Foreign Affairs Committee, a better Member of Congress and better person.

I am sure that others will put quotas, remarks and editorials from the many and admired Don Fortier in the RECORD today. All comments about Don are extremely well deserved. I will miss him.

Mr. Speaker, we do have several editorials that have been written on Don. It is very unusual for somebody who quietly worked behind the scenes to be recognized as Don has been in his passing, but there is an outstanding editorial in the Washington Post I want to put into the RECORD, and an equally flattering editorial that Don so deserved also appeared in the Wall Street Journal.

[From the Washington Post, Aug. 26, 1986]

DONALD R. FORTIER

Donald R. Fortier, the number-two man on the White House National Security staff, who died on Saturday at the age of 39, was not well known beyond a relatively small personal and professional circle. There was something modest, spare and tidy about the obituaries that appeared when Mr. Fortier died, which would no doubt have been just what he wanted and which also, in a way, reflected the style in which he chose to live his life. Mr. Fortier was uncommonly intelligent and discreet. He was the model staff person, and we mean that as a compliment. His involvement in government was the opposite of self-seeking. His commitment was to his work, to policy wisdom and success—not to his own image or reputation or acquisition of power.

That there are such people in Washington would not be immediately—or, perhaps, ever—apparent to the fabled man from Mars dropping in on us without special knowledge of our ways. For it is very much in vogue these days to disparage staff people as creeps with special agendas or runaway policy makers who subvert their bosses and are unaccountable to the public or hired guns who will do any side's bidding or merely statistical evidence of the burgeoning of the federal payroll, as people gasp and sigh about how big staff has become in all three branches.

From the grousing you would not judge that there are dedicated, invaluable, self-effacing folks like Don Fortier around, but there are. We aren't meaning to suggest that Mr. Fortier, who came to the executive branch from the Hill and before that, the Rand Corporation, achieved some kind of perfection. When we observe that he sought policy wisdom, we don't mean to imply he always found it. Who does? We mean to say merely that he was in a very serious line of work and he brought a suitable degree of seriousness to it.

And he knew what was important: Mr. Fortier was perhaps best known over the years for his interest in nuclear nonproliferation; he was one of the true experts on that subject, and worked tirelesly to try to limit the spread of nuclear weapons around the world. His death at so young an age was a cruelty, not just to his family and friends and professional colleagues, but also to people who stood to profit from his best efforts in government—people who never knew his name.

[From the Wall Street Journal, Aug. 26, 1986]

DONALD R. FORTIER

Even among the politically aware, few Americans will recognize the name Don Fortier. But for anyone who admires the rebirth of American self-confidence in foreign policy during the current administration, it is a name that should be remembered well.

Donald R. Fortier, 39, died Saturday night in Georgetown University Hospital; he had been ill with liver cancer since May. As deputy director of the National Security Council staff, he had been a key player in such initiatives as the administration's policy on Libya, the acceleration of stealth aircraft technology, the bid for Indian-Pakistani rapprochement, a nuclear non-proliferation arrangement with China and the Reagan doctrine in Latin America.

It was Mr. Fortier's talent to accomplish such things and still be known as "no ideologue." He was of course a student of Albert Wohlstetter, the consummate strategic realist: he was an alumnus of Rand Corp., a tireless Republican staff member on Capitol Hill, a drafter of the 1984 Republican platform on foreign policy and briefer for Ronald Reagan in his campaign debates. He was scarcely a man without opinions.

"Self-effacing" is though, the adjective that springs to mind with everyone who knew him. His careful avoidance of the limelight was instrumental in his success as a consensus builder, both within the administration and with Congress. In debilitating him, his illness also crippled the NSC machinery.

It is tragic to see such a talent struck down so quickly in the prime of life. But it is inspiring to remember that in an age of publicity and in a town of the self-important, a quiet and thoughtful man could make so large a contribution.

Mr. Speaker, all of us tonight spoke from the heart, as well as from notes, and I think all of us who knew Don loved him and appreciated his talents and his work. We will miss him greatly. There are many tonight who were unable to be here; there are many people tonight who cannot come to the floor of the House to make statements. But I know that all of his colleagues who he worked with in the executive branch and in the legislative branch join with all of us who had this opportunity to talk about our friend, Don Fortier.

Mr. LOTT. Mr. Speaker, I rise today to recognize the commitment and dedication of Donald R. Fortier, the former Deputy Staff Director of the National Security Council and the influential and highly respected member of President Reagan's foreign policy team.

I, along with many of my colleagues, were deeply sadded to learn of Don's death on August 23. I, personally, will long remember Don Fortier as a man who loved his country. It was such a pleasure for me to work in my role as chairman of the 1984 Republican Platform Committee with Don, as he assisted the committee with the foreign policy platform. In his role on the National Security Council staff, Don was a key figure in such initiatives as the administration's policy on Libya, and the Reagan doctrine in Latin America. Don Fortier lived his life in what I refer to as the style of "silently effective." Don Fortier was a quiet and thoughtful man who made a tremendous contribution to our Nation. He will long be remembered by those of us who were fortunate enough to have known and worked with him.

Mr. YATRON. Mr. Speaker, I would like to join my colleagues in paying tribute to a young man whose distinctive imprint was recognized, and will be remembered, by every individual he encountered.

Donald Fortier's passing saddens us, not only because of his young age, but because of who he was and what he contributed. He was a leader during every phase of his short career. While he was on the Foreign Affairs Committee staff, his intellect and creativity earned the respect of his coworkers, as well as members of the committee on both sides of the aisle. When he joined the National Se-

curity Council staff, his responsibilities escalated as did the recognition of his tremendous talent. But there was one person who remained unaffected by his accomplishments—that person was Don Fortier himself.

Striving for peace and bipartisan consensus was characteristic of Don. What he did during his short career so his country could attain these goals will not be forgotten.

Mr. FASCELL. Mr. Speaker, the untimely death of Donald R. Fortier on August 23 is a grievous loss for all of us. We on the Foreign Affairs Committee, where he served as a senior adviser from 1975 to 1981, have lost a brilliant colleague and friend. The National Security Council, where he served in recent years, has lost a highly creative and effective deputy director. The Congress has lost a valued ally in implementing a truly effective, bipartisan foreign policy. And the Nation has lost the services of a highly respected and influental public servant dedicated to achieving peace and security for his country and for the world.

His many successes in crafting foreign policy initiatives in Latin America, in the battle against international terrorism, in promoting peace between India and Pakistan, and in other areas, were unknown to the general public—because Don Fortier wanted it that way. This young man of enormous abilities preferred to work quietly, behind the scenes; he was far too busy doing his job to worry about getting any of the credit.

For those of us who knew and admired him, the credit was always there, reflected in the way he was able to achieve consensus within the administration, and with the Congress, on critical foreign policy issues in which he was involved. No ideologue, he was a thoroughgoing professional who worked tirelessly in behalf of all of us, seeking to limit the spread of nuclear weapons throughout the world.

He accomplished much in his 39 years. To have been taken from us so soon merely underscores the loss we share. Our prayers go out to Don's wife, Allison, to his son, Graham, and to all of his family. In a different but important way, their loss is ours as well.

GENERAL LEAVE

Mr. COLEMAN of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

SENATE ENROLLED JOINT RESOLUTION SIGNED

[Inadvertently omitted from the Congressional Record of Wednesday, September 24, 1986]

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Co. and Portland Terminal Co. labor-management dispute.

ENROLLED BILL SIGNED

[Inadvertently omitted from the Congressional Record of Wednesday, September 24, 1986]

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 2787. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. STOKES (at the request of Mr. WRIGHT), for September 25 and 26, on account of a death in the family.

Mr. RINALDO (at the request of Mr. MICHEL), for today from 11:30 a.m. to 5:30 p.m., on account of serious illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BOULTER) to revise and extend their remarks and include extraneous material:)

Mr. DIOGUARDI, for 5 minutes, today.

Mr. DORNAN of California, for 5 minutes, today.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mrs. COLLINS, for 60 minutes, today.

Mr. GONZALEZ, for 60 minutes, on September 26.

Mr. PENNY, for 15 minutes, on September 30.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. PASHAYAN, prior to passage of H.R. 3838, in the House, today.

Mr. WEISS, prior to the vote on H.R. 3838, in the House today.

Mr. WEISS, prior to the vote on final passage of H.R. 5495, today.

Mr. CARPER, prior to the vote on the Torricelli amendment to H.R. 5495, in the Committee of the Whole, today.

Mr. MCCAIN, during general debate on House Joint Resolution 738, in the Committee of the Whole, today.

Mr. SMITH of Florida, immediately following rollcall No. 414 on H.R. 5495.

Mr. GUARINI, following the vote on House Joint Resolution 738 in the House today.

(The following Members (at the request of Mr. BOULTER) and to include extraneous matter:)

Mr. HANSEN.
Mr. CONTE.
Mr. ROTH.
Mr. MCEWEN.
Mr. GUNDERSON.
Mr. COURTER.
Mr. ZSCHAU.
Mr. MOORE.
Mr. SNYDER.
Mr. BLAZ.
Mr. PURSELL.
Mr. HYDE.
Mr. LAGOMARSINO.
Mr. YOUNG of Florida.
Mr. SOLOMON.
Mr. JEFFORDS.
Mr. LIGHTFOOT.
Mr. COMBEST.
Mr. BEREUTER.
Mr. SKEEN.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. TORRES.
Mr. DYSON.
Mr. FOWLER.
Mr. HAWKINS.
Mr. YATRON.
Mr. DIXON.
Mr. FAUNTROY.
Mr. BARNARD.
Mr. ROE.
Mr. BORSKI.
Mr. MICA.
Mr. LAFALCE.
Mr. STOKES.
Mr. KOSTMAYER.
Mr. LEVINE of California.
Mr. DORGAN of North Dakota.
Mr. PEASE.
Mr. DELLUMS.
Mr. FASCELL.
Mr. WOLPE.

SENATE JOINT RESOLUTIONS REFERRED

Joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 339. Joint resolution to designate the week of November 30, 1986, through December 6, 1986, as "National Home Care Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 395. Joint resolution to designate the period October 1, 1986, through September 30, 1987, as "National Institute of Health Centennial Year"; to the Committee on Post Office and Civil Service.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. Res. 159. Joint resolution to designate the rose as the national floral emblem.

BILLS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee did on the following days present to the President, for his approval, bills of the House of the following titles:

On September 24, 1986:

H.R. 4260. An act to provide the Small Business Administration continuing authority to administer a program for small innovative firms, and for other purposes.

On September 25, 1986:

H.R. 2787. An act to extend through fiscal year 1988 SBA Pilot Programs under section 8 of the Small Business Act.

ADJOURNMENT

Mr. COLEMAN of Missouri. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 25 minutes p.m.) the House adjourned until tomorrow, Friday, September 26, 1986, at 10 a.m.

EXPENDITURE REPORTS CONCERNING OFFICIAL FOREIGN TRAVEL

Reports of delegations traveling under authorizations from the Speaker concerning the foreign currencies and U.S. dollars utilized by them during the second quarter of calendar year 1986 in connection with foreign travel pursuant to Public Law 95-384 are as follows:

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO BRAZIL, ARGENTINA, VENEZUELA, AND THE DOMINICAN REPUBLIC, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAR. 26 AND APR. 8, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Hon. Thomas P. O'Neill, Jr	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Dan Rostenkowski	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Edward P. Boland	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Joseph M. McDade	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Charles B. Rangel	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Norman F. Lent	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Fortney H. Stark	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,695.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Ralph Regula	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic				397.50				397.00
		4/8	Dominican Republic/United States								
Hon. John P. Murtha	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic				397.50				397.00
		4/8	Dominican Republic/United States								
Hon. Marty Russo	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Bill Lowery	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. George Miller	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Barbara B. Kennelly	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Hon. Norman Sisisky	3/26	3/28	Brazil		231.00		2,035.00		63.83		2,329.83
Kevin Peterson	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Charles Meilody	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO BRAZIL, ARGENTINA, VENEZUELA, AND THE DOMINICAN REPUBLIC, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN MAR. 26 AND APR. 8, 1986—Continued

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
		4/8	Dominican Republic/United States				925.09				925.09
William Pitts	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.00		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Eleanor Kelley	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Donnald Anderson	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Virginia Fletcher	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.00		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Dr. Freeman H. Cary	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.00		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Christopher Matthews	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
George Ingram	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.00		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
George Allen	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.00		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Gertrude Moser	3/26	3/31	Brazil		600.00		2,035.00		63.83		2,698.83
	3/31	4/2	Argentina		260.00		1,120.00		253.48		1,633.48
	4/2	4/5	Venezuela		324.00		1,696.00		329.75		2,349.75
	4/5	4/8	Dominican Republic		699.00		397.50		357.96		1,454.46
		4/8	Dominican Republic/United States				925.09				925.09
Committee total					44,025.00		149,349.98		23,468.03		216,843.01

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

THOMAS P. O'NEILL, JR., June 23, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, HON. BILL RICHARDSON, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN APR. 5 AND APR. 7, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Bill Richardson	4/5	4/7	Panama				[3] 898.00		[4] 176.90		1,074.90

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.
[3] Airfare.
[4] Hotel.

BILL RICHARDSON, May 12, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, WILLIAM R. PITTS, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JUNE 1 AND JUNE 4, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
William R. Pitts	6/1	6/2	Guatemala		80.00						
	6/2	6/2	Nicaragua								
	6/2	6/3	Costa Rica		75.00						
	6/3	6/4	Honduras								

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

WILLIAM R. PITTS, June 25, 1986.

REPORT OF EXPENDITURES FOR OFFICIAL FOREIGN TRAVEL, DELEGATION TO RUSSIA, U.S. HOUSE OF REPRESENTATIVES, EXPENDED BETWEEN JUNE 2 AND JUNE 3, 1986

Name of Member or employee	Date		Country	Per diem [1]		Transportation		Other purposes		Total	
	Arrival	Departure		Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]	Foreign currency	U.S. dollar equivalent or U.S. currency [2]
Representative Barney Frank	6/2	6/3	U.S.S.R.				2,107.00		307.75		2,414.75
Representative Dan Lungren	6/2	6/3	U.S.S.R.				2,107.00		238.56		2,345.56
Committee total							4,214.00		546.31		4,760.31

[1] Per diem constitutes lodging and meals.
[2] If foreign currency is used, enter U.S. dollar equivalent; if U.S. currency is used, enter amount expended.

BARNEY FRANK, June 17, 1986.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calender, as follows:

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 4576. A bill to designate the U.S. Attorney's Building for the Southern District of New York as the "Silvio James Mollo Federal Building" (Rept. 99-885). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5397. A bill to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building" (Rept. 99-886). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5415. A bill to designate the U.S. Courthouse in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse"; with amendments (Rept. 99-887). Referred to the House Calendar.

Mr. BROOKS: Committee on Government Operations. Report entitled "Sell It Today, Document It If Requested: USDA's Sugar Sales Operation." (Rept. 99-889). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report entitled "Sell IT Today, Document It If Requested: CUSDA's Sugar Sales Operation.

Mr. BROOKS: Committee on Government Operations. Report on implementation of the Dairy Termination Program: USDA slaughter of the cattle market (Rept. 99-890). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on impact of appraisal problems on real estate lending, mortgage insurance, and investment in the secondary market (Rept. 99-891). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on effectiveness of the Internal Revenue Service's information returns program (Rept. 99-892). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROSTENKOWSKI: Committee on Ways and Means. H.R. 5595. A bill to amend title XVI of the Social Security Act to make necessary improvements in the SSI Program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder (Rept. 99-893). Referred to the Committee of the Whole House on the State of the Union.

Mr. KASTENMEIER: Committee on the Judiciary. H.R. 5536. A bill to amend title 35 of the United States Code to extend the term of patents for agricultural and chemical products for the period during which they underwent regulatory review; with amendments (Rept. 99-895). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5488. A bill to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes; with an amendment (Rept. 99-896). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. JONES of North Carolina: Committee on Merchant Marine and Fisheries. H.R. 4712. A bill to provide for the restoration of the fish and wildlife in the Klamath and Trinity River Basins, and for other purposes; with amendment(s); referred to the Committee on Interior and Insular Affairs for a period ending not later than September 26, 1986, for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(1) of rule X (Rept. 99-894, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FORD of Tennessee (for himself, Mr. STARK, Mr. JENKINS, Mr. GEPHARDT, Mr. DOWNEY of New York, Mr. GUARINI, Mr. PEASE, Mr. MATSUI, Mr. ANTHONY, Mr. DORGAN of North Dakota, Mrs. KENNELLY, Mr. ANDREWS, Mr. GRADISON, Mr. CAMPBELL, and Mr. BARTLETT):

H.R. 5595. A bill to amend title XVI of the Social Security Act to make necessary improvements in the SSI Program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder; to the Committee on Ways and Means.

By Mr. BOULTER (for himself, Mr. MOORE, Mr. KEMP, Mr. ARCHER, Mr. FIELDS, Mr. LOEFFLER, Mr. LEWIS of California, Mr. BROWN of Colorado, Mr. KRAMER, Mr. SKEEN, Mr. GINGRICH, Mr. BARTLETT, Mr. BARTON of Texas, Mr. COMBEST, Mr. LIVINGSTON, Mr. DELAY, Mr. ARMEY, Mr. EDWARDS of Oklahoma, Mr. SWEENEY, and Mr. DANNEMEYER):

H.R. 5596. A bill to revitalize oil and gas production in the United States; jointly, to the Committees on Energy and Commerce and Ways and Means.

By Mr. DORGAN of North Dakota (for himself and Mr. KEMP):

H.R. 5597. A bill to modernize the Federal Reserve System and to provide for prompt disclosure of certain decisions of the Federal Open Market Committee; to the Committee on Banking, Finance and Urban Affairs.

By Ms. MIKULSKI:

H.R. 5598. A bill to provide for the transfer of the Coast Guard cutter *Taney* to the city of Baltimore, MD, for use as a maritime museum and display; to the Committee on Merchant Marine and Fisheries.

By Mr. MRAZEK.

H.R. 5599. A bill to allow the Internal Revenue Code of 1986 to be applied and administered as if the 3-year basis recovery rule applicable to employees' annuities had not been repealed; to the Committee on Ways and Means.

By Ms. OAKAR (for herself, Mr. MYERS of Indiana, Mr. RUSSO, Mr. HOYER, Mr. BOEHLERT, Mrs. BOXER, Mr. BATES, Mrs. BURTON of California, Mr. WISE, Ms. MIKULSKI, Mr. ROWLAND of Georgia, Mr. WORTLEY, Mr. AKAKA, Mr. SOLARZ, Mr. MCCAIN, Mr. FAZIO, Mr. PANETTA, Mr. SCHUMER, Mrs. LLOYD, Mr. STUDDS, Mr. WHITLEY, Mr. WILLIAMS, Mr. ERDREICH, Mr. MOAKLEY, Mr. KOLTER, Mr. TORRES, Mr. DYMALLY, Mr. LELAND, Mr. MITCHELL, Mr. AUCOIN, Mr. YOUNG of Alaska, Mr. WIRTH, Mr. FEIGHAN, Mrs. COLLINS, Mr. VOLKMER, Mr. BUSTAMANTE, Mr. BIAGGI, Mr. KILDEE, Mr. FAUNTROY, Mr. KLECZKA, Mr. GARCIA, Mr. GRAY of Illinois, Mr. ACKERMAN, Mr. EVANS of Illinois, Mr. MRAZEK, Mr. BLILEY, Mr. SIKORSKI, Mr. SAXTON, Mr. HOWARD, Mr. MOLLOHAN, Mr. COYNE, Mr. COLEMAN of Texas, Mr. MANTON, Mr. RAHALL, Mrs. KENNELLY, Mr. YOUNG of Missouri, Mr. CLAY, Mr. BERMAN, Mrs. ROUKEMA, Mr. PARRIS,

Mr. TRAFICANT, Mr. STOKES, Mr. ANDERSON, Mr. FORD of Tennessee, Mr. SKELTON, Mr. VENTO, Mr. CHAPMAN, Mr. BOUCHER, Mr. PENNY, Mr. TAYLOR, Mr. FORD of Michigan, Mr. EMERSON, Mr. DYSON, Ms. KAPTUR, Mr. GILMAN, Mr. PASHAYAN, Mr. YOUNG of Florida, Mr. HUNTER, Mr. ROWLAND of Connecticut, Mr. MCCLOSKEY, Mr. DICKS, Mr. KANJORSKI, Mr. NOWAK, Mr. GUNDERSON, Mrs. BENTLEY, Mr. BILIRAKIS, and Mr. HEFNER):

H.R. 5600. A bill to amend title 5, United States Code, to provide that annuities under chapter 83 or 84 of such title be treated, for Federal income tax purposes, as if the 3-year basis recovery rule had never been repealed; and to require that the Office of Personnel Management conduct a study relating to the consequences which retroactively repealing such rule would have with respect to Federal personnel management, morale within the Federal civilian work force, and individual retirement planning; jointly, to the Committees on Ways and Means and Post Office and Civil Service.

By Mr. PASHAYAN (for himself, Mr. LEWIS of Florida, and Mr. THOMAS of California):

H.R. 5601. A bill to strengthen the enforcement of plant and animal quarantine laws by authorizing the inspection of certain mail parcels, excluding letters, in order to prevent the introduction of destructive plant and animal diseases and pets and noxious weeds; jointly to the Committees on Agriculture and Post Office and Civil Service.

By Mr. SHAW (for himself and Mr. YOUNG of Missouri):

H.R. 5602. A bill to amend the Public Buildings Act of 1959 to authorize the Administrator of General Services to issue obligations to finance the acquisition and construction of public buildings; to the Committee on Public Works and Transportation.

By Mr. ROSTENKOWSKI:

H. Con. Res. 395. Concurrent resolution to correct technical errors in the enrollment of the bill H.R. 3838; considered and passed.

By Mr. CONYERS:

H. Con. Res. 396. Concurrent resolution designating jazz as an American national treasure; to the Committee on Post Office and Civil Service.

By Mr. FAUNTROY (for himself, Mr. BARNES, Mr. PARRIS, Mr. DELLUMS, Mr. DYMALLY, Mr. GRAY of Pennsylvania, and Mr. HOYER):

H. Con. Res. 397. Concurrent resolution to urge the creation of a Washington Area Metropolitan Drug Authority; to the Committee on the Judiciary.

By Mr. ROSTENKOWSKI:

H. Res. 562. Resolution returning to the Senate the bill S. 638; considered and agreed to.

By Mr. ZSCHAU:

H. Res. 563. Resolution expressing the sense of the House of Representatives that the joint-political military group should develop policies and programs which promote strategic cooperation between the United States and Israel; to the Committee on Foreign Affairs.

By Mr. LELAND (for himself, Mr. TORRES, Mr. MATSUI, Mr. MINETA, Mr. BROOMFIELD, Mr. KEMP, Mr. FIELDS, Mr. TOWNS, Mr. WHEAT, Mrs. COLLINS, Mr. HAWKINS, Mr. CONYERS, Mr. CLAY, Mr. STOKES, Mr. DELLUMS, Mr. MITCHELL, Mr. RANGEL, Mr. FAUNTROY, Mr. FORD of Tennessee, Mr. DIXON, Mr. GRAY of Pennsylvania, Mr. CROCKETT, Mr. DYMALLY, Mr. SAVAGE, Mr. OWENS, Mr. HAYES, Mr. WALDON, Mr. GUNDERSON, Mr. DELAY, Mr. CONTE, Mrs. ROUKEMA, Mr. GARCIA, Mr. BUSTAMANTE, Mr. MARTINEZ, Mr. RICHARDSON, Mr. ORTIZ, Mr. BLAZ, Mr. ROYBAL, Miss SCHNEIDER, Mr. BRYANT, Mr. DIOGUARDI, Mr. FOWLER, Mr. KILDEE, and Mr. HOPKINS):

H. Res. 564. Resolution denouncing Yasuhiro Nakasone, the Prime Minister of Japan, for certain recent statements made by the Prime Minister with respect to certain American minorities, and expressing the sense of the House of Representatives with respect to the response by the President to such statements; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1917: Mr. KLECZKA, Mr. FORD of Tennessee, Mr. BONER of Tennessee, Mr. HENDON, and Mr. DE LUGO.

H.R. 2952: Mr. WIRTH.

H.R. 3120: Mr. OWENS.

H.R. 3415: Mr. ACKERMAN, Mr. BADHAM, Mr. BEDELL, Mr. BENNETT, Mr. BOSCO, Mr. CAMPBELL, Mr. DE LUGO, Mr. EDWARDS of California, Mr. FASCELL, Mr. FOGLIETTA, Mr. GRADISON, Mr. HARTNETT, Mrs. HOLT, Mr. HUCKABY, Mr. JONES of North Carolina, Mr. LAGOMARSINO, Mr. LEHMAN of California, Mr. LEVINE of California, Mr. LIGHTFOOT, Mr. LIPINSKI, Mrs. MEYERS of Kansas, Mr. MRAZEK, Mr. RAHALL, Mr. SCHAEFER, Mr. SCHEUER, Mr. SKELTON, Mr. SMITH of New Hampshire, and Mr. STOKES.

H.R. 3894: Mr. SAXTON.

H.R. 4194: Mr. FAWELL.

H.R. 4391: Mr. TOWNS.

H.R. 4565: Mr. VOLKMER.

H.R. 4871: Mrs. KENNELLY, Mr. MAVROULES, and Mr. TAUZIN.

H.R. 4901: Mr. CLINGER, Mr. FAUNTROY, and Mr. HAWKINS.

H.R. 4902: Mr. FAUNTROY and Mr. HAWKINS.

H.R. 4903: Mr. CLINGER, Mr. FAUNTROY, and Mr. HAWKINS.

H.R. 4904: Mr. FAUNTROY and Mr. HAWKINS.

H.R. 4945: Mr. CROCKETT.

H.R. 5157: Mr. CHANDLER and Mr. PACKARD.

H.R. 5208: Mr. MRAZEK and Mr. ROWLAND of Connecticut.

H.R. 5218: Mr. BONIOR of Michigan.

H.R. 5291: Mr. ANDREWS, Mr. FRANK, Mr. MORRISON of Connecticut, Mr. OWENS, Mr. ATKINS, and Mr. WOLPE.

H.R. 5328: Mr. RANGEL.

H.R. 5412: Mr. MITCHELL, Mr. GARCIA, Mr. LIPINSKI, Mr. RANGEL, and Mrs. BURTON of California.

H.R. 5425: Mr. MARTINEZ.

H.R. 5477: Mr. PENNY, Mr. BOEHLERT, Mr. MCKERNAN, Mr. WILSON, and Mr. DE LUGO.

H.R. 5497: Mr. CRAIG, Mr. DANIEL, Mr. FAZIO, Mr. WOLPE, and Mr. CHAPPELL.

H.R. 5500: Mr. PANETTA, Mr. MATSUI, Mr. CHAPMAN, and Mr. HENRY.

H.R. 5529: Mr. SMITH of New Hampshire and Mr. BURTON of Indiana.

H.R. 5549: Mr. SHELBY and Mr. DASCHLE.

H.R. 5568: Mr. YOUNG of Missouri.

H.R. 5586: Mr. RODINO, Mr. BOUCHER, Mr. BRYANT, Mr. HYDE, Mr. SEIBERLING, Mr. SMITH of Florida, and Mr. SYNAR.

H.J. Res. 90: Mr. TOWNS, Mr. MCKERNAN, and Mr. COELHO.

H.J. Res. 133: Mr. DONNELLY.

H.J. Res. 244: Mr. BROWN of California, Mr. CHAPPELL, and Mr. TAUKE.

H.J. Res. 514: Mr. BEILENSON, Mr. BOEHLERT, Mr. FORD of Michigan, Mr. ORTIZ, Ms. OAKAR, Mr. DIOGUARDI, Mr. SNYDER, Mr. MCCAIN, Mr. MOODY, Mr. SYNAR, and Mr. JONES of North Carolina.

H.J. Res. 550: Mr. TRAXLER, Mr. STUDDS, Mr. TAUKE, Mr. ROBERT F. SMITH, Mr. HUTTO, Mr. RINALDO, Mr. PORTER, Mr. PACKARD, Mr. OWENS, Mr. MCMILLAN, Mr. MONTGOMERY, Mr. HOWARD, Mr. CARNEY, Mr. HARTNETT, Mr. MOORE, Mr. CARPER, Mr. SOLARZ, Mr. LIVINGSTON, Mr. HOYER, and Mr. WILSON.

H.J. Res. 555: Ms. KAPTUR, Mr. MCKINNEY, Mr. COATS, Mr. BONIOR of Michigan, Mr. LOWRY of Washington, Mr. BOEHLERT, Mr. WEBER, Mr. FUQUA, Mr. MACK, Mr. SCHUMER, Mr. NATCHER, Mr. YOUNG of Alaska, Mr. LEHMAN of California, Mr. MILLER of Washington, Mr. EDGAR, Mr. COUGHLIN, Mr. MCEWEN, Mr. ATKINS, Mr. WAXMAN, Mr. BERMAN, Mr. OBERSTAR, Mr. MANTON, Mr. FRANK, Mr. SISISKY, Mr. MATSUI, Mr. YATES, Mr. WIRTH, Mr. ANDREWS, Mrs. KENNELLY, Mr. MAZZOLI, Mr. RANGEL, Mr. FASCELL, Mr. DUNCAN, Mr. WYDEN, Mr. PURSELL, Mr. DELLUMS, and Mr. LUKEN.

H.J. Res. 558: Mr. WIRTH.

H.J. Res. 615: Mr. FUSTER, Mr. OBEY, Mrs. LONG, Mr. FOWLER, Mr. GRADISON, Mr. DANNEMEYER, Mr. GALLO, Mr. ROSE, and Mr. BOEHLERT.

H.J. Res. 657: Mrs. JOHNSON, Mr. BARNES, Mr. FEIGHAN, Mr. NOWAK, Mr. DE LA GARZA, Mr. HAYES, Mr. WEBER, Mr. GALLO, Mr. CRANE, Mr. COYNE, Mr. MURTHA, and Mr. LIVINGSTON.

H.J. Res. 661: Mr. BROWN of California, Mr. BURTON of Indiana, Mrs. BYRON, Mr. DANNEMEYER, Mr. EMERSON, Mr. KASICH, Mr. KINDNESS, Mr. KOSTMAYER, Mr. LEHMAN of California, Mr. LEWIS of California, Mr. LUJAN, Mr. LUNDINE, Mr. MOLLOHAN, Mr. MURTHA, Mr. NIELSON of Utah, Mr. OLIN, Mr. STUMP, Mr. TORRES, Mr. VALENTINE, Mr. WEBER, Mr. YOUNG of Alaska, Mr. YOUNG of Missouri, Mr. MINETA, and Mr. DONNELLY.

H.J. Res. 688: Mr. FORD of Tennessee, Mr. ROSE, Mr. MURPHY, Mr. HENDON, Mr. STAGGERS, Mr. LEHMAN of Florida, Mr. FUSTER, Mr. WISE, Mr. DIXON, Mr. CLAY, Mr. DONNELLY, Mr. FRANK, Mr. GREGG, Mr. MCKERNAN, Mr. MAVROULES, Mr. PETRI, and Mr. WALGREN.

H.J. Res. 706: Mr. TRAFICANT, Mr. FISH, and Mrs. BOXER.

H.J. Res. 716: Mr. PARRIS, Mrs. BOXER, Mr. WYLIE, Mr. LIPINSKI, Mr. MINETA, and Mr. FISH.

H.J. Res. 720: Mr. DANIEL, Mr. KASICH, Mr. BADHAM, Mr. LAGOMARSINO, Mr. BERMAN, Mr. WAXMAN, Mr. WORTLEY, Mr. FRENZEL, Mr. WOLF, Mr. MATSUI, Mr. GUARINI, Mr. HAYES, Mr. MINETA, Mr. BOSCO, Mr. ROE, Mr. WHITTAKER, Mr. TOWNS, Mr. LELAND, Mr. MRAZEK, Mr. FROST, Mr. SMITH of Florida, Mr. MONSON, Mr. FUQUA, Mr. HORTON, and Mr. NIELSON of Utah.

H.J. Res. 733: Mr. ERDREICH, Mr. HOYER, Mr. ABERCROMBIE, Mr. MORRISON of Connecticut, Mr. MURPHY, Mr. MURTHA, Mr. MCCLOSKEY, Mr. WEISS, Ms. OAKAR, Mr. NEAL, Mr. PERKINS, and Mr. RICHARDSON.

H.J. Res. 735: Mr. OWENS, Mr. RANGEL, Mr. SCHUMER, Mr. SCHEUER, Mr. ACKERMAN, Mr. GREEN, Mr. SOLARZ, Mr. MOLINARI, and Mr. WEISS.

H.J. Res. 737: Mr. BLAZ, Mr. GREEN, Mr. BONER of Tennessee, Mrs. BENTLEY, Mrs.

BURTON of California, Mr. CALLAHAN, Mr. BRYANT, Mr. CARPER, Mr. CARNEY, Mr. LEWIS of Florida, Mr. COURTER, Mr. COYNE, Mr. FAZIO, Mr. LOWRY of Washington, Mr. FRENZEL, Mr. FOGLIETTA, Mr. DE LUGO, Mr. GARCIA, Mr. DIOGUARDI, Mr. DWYER of New Jersey, Mr. DYMALLY, Mr. GRAY of Illinois, Mr. GUARINI, Mr. HANSEN, Mr. ORTIZ, Mr. DANIEL, Mr. RICHARDSON, Mr. WOLPE, Mr. MANTON, Mr. HEFNER, Mr. HOPKINS, Mr. HORTON, Mr. LANTOS, Mr. WALGREN, Mr. MACKAY, Mr. BERMAN, Mr. BUSTAMANTE, Mr. KOSTMAYER, Mr. TRAXLER, Mr. SABO, Mr. SILJANDER, Mr. CHAPPIE, Mr. SKELTON, Mr. COELHO, Mr. DASCHLE, Mr. KEMP, Mr. LENT, Mr. MOAKLEY, Mr. LAGOMARSINO, Mr. WIRTH, Mr. DORGAN of North Dakota, Mr. MCDADE, Mr. KOLTER, Mr. LEWIS of California, Mr. SCHUMER, and Mr. CHAPPELL.

H. Con. Res. 36: Mr. MRAZEK and Mr. ST GERMAIN.

H. Con. Res. 233: Mr. SLATTERY.

H. Con. Res. 359: Mr. ABERCROMBIE.

H. Res. 556: Mr. DIOGUARDI and Mr. HORTON.

EXTENSIONS OF REMARKS

THE STATELESS OF CYPRUS

HON. CHARLES WILSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. WILSON. Mr. Speaker, I would like my colleagues to be aware of a Wall Street Journal article, September 22, 1986:

THE STATELESS OF CYPRUS

When President Rauf Denktash of the "Turkish Republic of Northern Cyprus" arrived in the U.S. last week, he and his entourage were given visas stamped "stateless persons." That is because the U.S. recognizes only the Greek Cypriot government. The U.S. should reconsider that policy.

The problem of Cyprus can be summed up in two words, Andreas Papandreou. The last thing the socialist Greek premier wants is a resolution of the island's differences. He would lose his opportunity to accuse Turkey of devious intentions, which he does to distract Greeks from their decrepit economy. Just as important, he would lose the collusion of the U.S. Congress. Since Turkey's 1974 military intervention, U.S. aid has been held to a 10:7 ratio for Turkey and Greece. That allows Mr. Papandreou to influence military aid to Turkey by not making full use of his own.

Cyprus is not Lebanon nor Northern Ireland. The Turkish intervention effectively separated the island's two nationalities who, for 14 years, had been periodically pitted against each other by a succession of demagogues. The Turkish minority—about 20%—is not asking for equal government representation. It wants the system promised by the 1960 independence constitution that was signed by Britain with Greece and Turkey as guarantors. This would still give Greeks the presidency and the upper hand in the legislative bodies. If Turkish rights could be secured, Mr. Denktash would be willing for his government, now recognized only by Turkey, to be temporary.

It is one of the great myths of our time that Turkey is behind the troubles. Athens, not Ankara, is the enemy of Cyprus. In 1974, the Greek colonels staged a coup on the island to encourage mainland interest in unification. They replaced Archbishop Makarios with a convicted pro-unification terrorist. This led to bloodshed and the arrival of troops from Turkey. A Greek appeals court in 1979 said that, "Turkey, as one of the guarantor powers, had the right to fulfill her obligations. The real culprits are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention."

Mr. Denktash told Journal editors that his problems are not so much with current Greek Cypriot leader Spyros Kyprianou as with Mr. Papandreou, who has blocked all compromise proposals by U.N. Secretary General Perez de Cuellar. Mr. de Cuellar proposes more talks this month, but Mr. Papandreou says he wants an international conference instead. Coincidence no doubt, but the Soviets have seconded the motion for a conference. Their goal is to remove Turkish troops and two British bases that are major Middle East listening posts for the West.

The Greek Cypriots have nothing to gain from a divided economy, which has reduced trade between the two communities to smuggling. Nor is it in their interest to edge, along with Mr. Papandreou, toward the outer limits of NATO. Nicosia has bravely jailed terrorist who murdered Israeli tourists and has helped with U.S. military maneuvers in the area.

The Greek colonels should have taught Mr. Papandreou that the jingo approach to Cyprus won't save a faltering government in Athens. But so far he hasn't taken the hint.

The U.S. should recognize the Denktash government while encouraging the Greek Cypriots to separate themselves from Mr. Papandreou. This could be just the stick to prod Athens into letting Cyprus be Cyprus.

TODAY'S FARMER

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, our family farmers are experiencing serious difficulties today.

But how many of us really understand the feelings of hopelessness and despair faced by these families. Recently, I received a poem from Valeria Kibbel, of Mott, ND, which depicts the experiences of all too many family farmers today.

I hope that this poem will serve as a painful reminder to all of us that the farm problem is not getting better and that we need to act now to help our family farmers.

TODAY'S FARMER

(By Valeria M. Kibbel)

To be a serious farmer you start in childhood:
For kids, it's a fact; chores are good.
So you milk the cows and feed the pigs,
Gather the eggs—and potatoes? *Dig!*
Later, it's off to college to learn
How to manage the money you'll earn.
And when you're finished and back on the farm,
The years go by, but no money, What harm.
Next year, you say, things will improve;
You'll take a vacation and get in the groove.
More years go by * * * grain prices are down;
Hail and winds pound the wheat to the ground.
Now parts are needed to work up the land,
Two tiny pieces that fit in one hand.
Six hundred dollars? You repeat with a gasp;
There goes the money you intended for gas.
Before you get close to retirement, still
You want to be settled on the land you've tilled.
But the U.S. can take it and call it "land transfer";
And say to you, Buddy, you're a poor manager.
What can farmers say to convince politicians;
There must be a stop to foreclosure morticians?
Once our land is all owned by a few corporations;
Food prices will soar from consolidation,
And your kids and grandkids will beg for each meal;
Like starving Africans—thin as weeds in a field.

MORALS AND GOVERNMENT

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, September 24, 1986, into the CONGRESSIONAL RECORD:

MORALS AND GOVERNMENT

In almost every public meeting I hold now in Indiana, the question of the moral climate in America comes up. Hoosiers sense that the moral fabric of the nation is weakening. They are concerned about the widespread use of abortion, expanded drug use, rising divorce rates, teenage pregnancy, homosexuality, pornography, and crime. They worry about the kind of morality taught in schools and on TV, and feel that the family structure is weakening. They are tolerant of differences in lifestyle, but feel that some things have gotten out of hand. They ask what the federal government can do to help.

It is clear that traditional values are being challenged. A recent nationwide poll found, for example, that a third of young adults feel that it is sometimes justified to steal from their employer, and half say they would vote for a homosexual for President. In my recent 9th District questionnaire, morality was thought to be America's number one problem, ahead of unemployment, the federal deficit, or war.

Changing standards of morality are not just private matters, but can have a clear public dimension. For example, drug use costs America $100 billion annually in crime, medical costs, and lost productivity; drunk driving causes half of the traffic deaths in the US; teenage pregnancy perpetuates cycles of welfare dependency; sexually transmitted diseases boost public health costs; employee theft adds up to 15% to the price of consumer goods; and cheating on income taxes costs the federal government $100 billion each year.

There are, of course, obvious limits to the federal government's involvement in promoting morality. Americans have traditionaly been wary of government meddling in moral questions. One person's moral crusade is another's witch-hunt. Values may vary, as some might find the shift to greediness among Americans more troublesome

than changing patterns of sexual behavior. Moreover, many current moral issues are not primarily federal matters: examining textbooks for proper moral tone, for example, is a state matter; curbing pornography and violent crime falls largely under state and local jurisdiction; and instilling strong morals in our young is generally left to the family and church. Still, the federal role can be significant. Government efforts to impose moral values on the public have a long and illustrious history, from early anti-slavery efforts to today's anti-apartheid movement.

Several ways that the Congress can attempt to improve moral standards occur to me. First, we in Congress must set a good example. Americans are fed up with politicians and leaders telling them how to live, but who are themselves living less than exemplary lives. I have been encouraged by past improvements in our congressional standards of official conduct, such as those to broaden the scope of ethics rules and improve the public disclosure of Members' personal finances. Yet additional steps are needed, for example, to curb the corrupting power of special interest money.

Second, Congress can pass appropriate legislation to address specific areas of moral concern, even when its role is a secondary one. For example, in recent years Congress has passed legislation to: expand assistance for state and local anti-crime efforts, broaden international drug eradication and interdiction efforts, prohibit discrimination, improve the access of student-initiated high school religious groups to school facilities, curb federal funding of abortion, tighten laws against mailing obscene matter and against child pornography, and encourage states to raise the drinking age.

Third, Congress can encourage educational efforts at various levels. As our experience with Prohibition taught us, legislating morals is difficult, no matter how well-intentioned our efforts may be. Often, education programs to change attitudes will be more effective than legislation dictating how to act. For example, there is a growing recognition that various law enforcement efforts to stem the drug trade may continue to fall short as long as our young people think that drug use is acceptable, even glamorous. The federal government is thus giving more emphasis to changing attitudes about drug use, through a wide variety of educational programs stressing the dangers of drugs.

Fourth, Congress can become more alert to the way that "non-moral" public policy decisions can have wide-ranging effects on moral issues and especially on the American family. For example, the federal welfare program aiding unmarried mothers has in fact encouraged fathers to remain outside the family; tough economic times have forced many mothers with young children into the workplace; and the different tax treatment of unmarried and married two-earner couples provides a tax penalty for getting married. Even valuable programs like social security affect the family structure, as its income guarantees have reduced interaction between elderly parents and children.

Finally, Congress can give wide national attention to an issue, even when it is not primarily within federal jurisdiction, such as the fight against drunk driving. Congressional hearings and mailings can spotlight issues, and the weight of Congress behind a cause can help mobilize local efforts. For many issues of public morality, this is Congress's major weapon.

Besides government efforts, addressing moral concerns can take place on many levels—from consumer boycotts of stores selling pornography and business crackdowns on employee drug use, to broad exposure of the unethical dealings of top executives and local youth programs to instill a respect for the law. More public attention can be given to those making the ethically tough decisions or sacrificing to help others. The importance of the family in nurturing moral standards cannot be overstated.

Perhaps the most promising sign overall is the growing public concern about what can be done to reinforce standards of morality. A large reservoir of decency still exists in America. Benevolence, order, and trust are what make our society work. Reinforcing them is an effort worth undertaking.

H.R. 4300 HAS RECEIVED FULL AND FAIR LEGISLATIVE CONSIDERATION

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. CLAY. Mr. Speaker, on September 16, 1986, certain inaccurate statements were made on the House floor with respect to H.R. 4300, the Family and Medical Leave Act of 1986. As the sponsor of this bill and the chairman of the Subcommittee on Labor-Management Relations, which has jurisdiction over this issue, I feel it is important to set the record straight.

It was stated on the floor and then repeated before the Rules Committee that the hearings held on H.R. 4300 included only the testimony of the bill's supporters and that no attempt was made to gather opposing views. To set the record straight, during the consideration of the Family and Medical Leave Act we have sought and received the views of interested parties on all sides of the issue. In addition, I am aware of no one who requested time to testify at the well-publicized hearings on the bill who was denied the opportunity to do so.

Three days of hearings were held by the four subcommittees to whom family leave legislation was referred during this Congress—on October 17, 1985, and on April 10 and 22, 1986. At the joint hearing on H.R. 4300, held on April 22, 1986, by the Subcommittee on Labor-Management Relations and the Labor Standards Subcommittee, a wide range of witnesses testified, including a panel of employers some of whom favored the bill and some of whom did not. Susan Hager, president of Hager, Sharp & Abramson, Inc. testified on behalf of the U.S. Chamber of Commerce who has lead the opposition to the bill. In addition to those that appeared, dozens of companies, experts in the field of child care and family relations, and representatives of employee groups were invited to testify, many of whom submitted testimony. The record for the 3 days of hearings is more than 400 pages long.

On June 12, 1986, the Subcommittee on Labor-Management Relations favorably marked up H.R. 4300, after the consideration of several amendments. The Committee on Education and Labor favorably ordered reported H.R. 4300, as amended by a substitute which I offered, on June 24, 1986.

Throughout the committee's consideration of H.R. 4300, we have made every effort to adequately address the needs of workers and families without imposing an unreasonable burden on employers. In the great majority of families today all the adult members work. Such families need help as they struggle to find ways to carry out their traditional role of caring for family members in this new economic climate. A minimum standard for temporary unpaid leave, like other Federal standards such as the minimum wage, would provide significant help. The Family and Medical Leave Act would assure that pressing family responsibilities and medical illnesses do not jeopardize the long term job security of workers. It is in the interest of families as well as employers and employees.

UNITED STATES-JAPAN TRADE NEGOTIATIONS

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HORTON. Mr. Speaker, officials from the Governments of the United States and Japan met recently for a 2-day meeting on auto parts. As many of you know, American companies are finding it almost impossible to break into the Japanese auto parts market because of various nontariff trade barriers. As is often the case, we have virtually wide open markets for Japanese auto parts.

Negotiations between our two countries on this delicate issue will be long and difficult. We in Congress must continue to express interest in, and exert pressure on, these talks.

Mr. Speaker, this was the first of a number of meetings between Japanese and American trade officials. The lines of communication have been opened, the initial agenda before the group has been addressed. But these meetings were only a small step in the goal of free trade in the international auto parts market. We in Congress must facilitate the process by continuing public pressure on the Japanese Government to open their markets to us just as we open our markets to them.

Our auto parts industry needs a fair shake. I hope U.S. negotiators will continue their good-faith efforts toward a satisfactory conclusion on these important talks.

THE SONNENBERG GARDENS

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. KEMP. Mr. Speaker, the Sonnenberg Gardens in Canandiagua, NY, are one of the most magnificent late Victorian gardens ever created in America and a great cultural and educational asset to the Finger Lakes region. The gardens are a picturesque look into life at the turn of the century. The 50 acres of beautiful gardens, as well as the 40-room mansion and conservatory they surround are open to the public for public tours. Eight formal gar-

dens feature outstanding classical statuary, waterways, and fountains. The mansion rooms—ranging from Renaissance to 19th century—decorative arts collection, and the mansion itself present a unique view of the Victorian era architecture and lifestyle. The facilities extend themselves to summer educational workshops in everything from horticulture and landscape design to art, science, and drama. Sonnenberg Gardens are also a major tourist attraction in the Finger Lakes region.

Unfortunately, a reverter clause in their deed prevents Sonnenberg Gardens from taking advantage of beneficial long-term financing for capital improvements and more importantly from carrying the considerable value of their real estate as an asset. In addition, 1987 is Sonnenberg's centennial year and it would be wonderful to give this treasured landmark an early present by removing the reverter clause. The financial hardship caused by the clause is unnecessary, because there was never any intention but to use Sonnenberg Gardens as a nonprofit educational facility.

In this case the reverter clause is an unreasonable burden, and today, as Sonnenberg Gardens near their centennial year of 1987, I am introducing legislation to remove the reverter clause and allow the gardens to be developed to their fullest potential as an educational and cultural facility.

THE WAR ON DRUGS

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. FAUNTROY. Mr. Speaker, few areas of concern have gripped the collective mind of our Nation as has the use, abuse, and distribution of illegal drugs. Every department of the Federal Government is responding with educational programs to insure the Federal worker is aware of the dangers of using illegal drugs. This past Sunday night, President Reagan and Mrs. Reagan spoke to the American people of the need for vast and sweeping changes in this country's attitude toward the use and sale of illegal drugs. Last Thursday, this body passed an unprecedented piece of legislation that, if signed into law by the President, would provide the death penalty as part of the war on drugs.

Today, I will introduce, for the second time, a bill which would provide for the establishment of the Washington Metropolitan Drug Authority (WMADA). At present, $1.5 billion to $2 billion are being exchanged on the streets of our Nation's Capital for the sale and purchase of illegal drugs. According to testimony given at drug hearings held by the Subcommittee on Fiscal Affairs and Health, which I chair, of the Committee on the District of Columbia, the streets of the District of Columbia are being used as the point of transaction for buyers and sellers from the surrounding Maryland and Virginia counties. Local law enforcement agencies can only do so much to deal with this problem. At present, interstate compacts and limited personnel hamper the work that needs to be done to eradicate this plague from the streets of our Nation's Capital. I believe this legislation is both timely and important and deserves the support of every Member who voted for the omnibus drug bill.

Joining me are fellow Members: MIKE BARNES, STAN PARRIS, RONALD DELLUMS, MERVYN DYMALLY, BILL GRAY, and STENY HOYER.

HONORING THE BROWARD COUNTY EXPO FOR THE HANDICAPPED

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. SMITH of Florida. Mr. Speaker, I am pleased to announce that on October 9 and 10, 1986, the Paralyzed Veterans Association will once again host the Broward County Expo for the Handicapped in celebration of National Employ the Handicapped Week.

This Expo is dedicated to promoting the goal that handicapped persons must have the same opportunities in life that are available to all others. We must continue to promote the employment of the handicapped who show themselves to be very capable and productive individuals in our society.

The future holds for us many opportunities. Our Nation depends on the efforts of all our people to meet the challenges of the future. It is up to us now to recognize the potential of the productivity of the handicapped people, so that we can grasp those opportunities as a unified community, one that works together for the public good.

Mr. Speaker, I commend the efforts of the Expo Committee and all those involved in the creation of this special event. We must salute the efforts of our neighbors, and join them in their dedication to help provide the best opportunities for the handicapped people. In addition, I salute the strength and determination of handicapped individuals who overcome all physical and mental disabilities to become contributing members of our community.

OMNIBUS WATER BILL

HON. RON PACKARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. PACKARD. Mr. Speaker, as we near the end of this congressional session, I want to stress to my colleagues how crucial it is that we pass an omnibus water bill. Water is the lifeblood of our great Nation. We need a bill which will allow our water resources to be developed and maintained in the most prudent manner possible.

I commend to my colleagues an article published in the August 1986 issue of Civil Engineering magazine, entitled "Federal Water Development: Is the End Near?" The article was written by Carl R. Nelson who is the director of public works in the environmental management agency of the county of Orange, CA. I request Mr. Nelson's article be entered into the RECORD.

I believe Mr. Nelson succinctly defines the current debate over the future of Federal water development. I urge my colleagues to support passage of H.R. 6 when it emerges from the conference committee.

[From Civil Engineering magazine, August 1986]

FEDERAL WATER DEVELOPMENT: IS THE END NEAR?

(By Carl R. Nelson)

Water resources development means different things to different people. To those individuals who have experienced a life and property threatening flood, flood control is of primary importance. For those who have had to ration water to sprinkle lawns, wash dishes, and bathe, water conservation is the major concern. Others feel that preserving America's plant and animal heritage is the most important element of water resource development. For those of us responsible for developing this precious resource, we must consider all equal and compatible.

Yet, recent tight budget policies and what I feel are unjustified criticisms have made it impossible to secure congressional approval of a federal Water Resources Development "Omnibus" bill for the past decade. The most recent bills, H.R. 6 (Howard) and S. 1567 (Abdnor) have, during the past year, overcome many hurdles and achieved passage by their repective houses of Congress. Nonetheless, there are critical differences between the two which must be resolved in a conference committee before a unified bill may be passed by both houses and forwarded to the president.

The biggest difference between the two bills is in the number of projects authorized. The Senate version contains approximately $11 billion in authorizations, while the House version is about $20 billion. Assistant Secretary of the Army Robert Dawson has indicated that the president's senior advisers will recommend approval only if the final version of the bill addresses serveral issues: the final bill should not contain projects which have not received a full economic feasibility review by the administration; projects in the bill must generate adequate revenue, including fuel taxes on the inland waterway system and an ad valorem fee on cargo to support Army Corps of Engineers harbor maintenance; municipal water treatment and distribution systems and nonfederal dam repairs should receive no federal loan subsidies; the bill cannot exclude special projects and regions from cost sharing; and the bill must have some limit to annual spending. Mr. Dawson says he sees, "no reason why many worthy projects cannot be underway in the near future, producing positive benefits for the nation."

Yet there are those who might wish to debate indefinitely the differences between H.R. 6 and S. 1567, and thus further delay the water resources development program of the United States. During the years of debate since the last passage of a major water resources omnibus bill, it appears to me that proponents of water resources development have argued with each other to the detriment of their common goal: sustaining the pace of water recources development. The consequence has been a steady decline in the preparation of projects.

The benefits of a continuing federal water resources development program are great. Historically, the program has fostered a strong construction industry, has been the backbone of strong civil engineering industry, and most importantly, has resulted in

countless water resources projects with multi-purpose benefits, such as recreation and navigation. The economic fallout reaches far beyond the flood control, water conservation, supply or quality control reasons which were used to justify the projects.

In order to overcome the "pork barrel" misconception of the federal water resources development, I am advocating a nationwide groundswell by all members of the American Society of Civil Engineers through the society's "key alert" program. Rather than writing to our Congressmen about our individually favored projects (the traditional pork) ASCE's key alert system could inform members of the conference committee that ASCE members from across the nation are interested in a unified House and Senate bill that would be acceptable to the President.

Every member of ASCE has an interest in furthering the nation's water resources development program, either from direct employment in a public agency or as a member of a private firm upon which the public sector depends for many design services. Every member of ASCE has a congressman or senator who deals either directly or indirectly with the committee of Congress handling public works policy and/or financing. Most of your congressmen are not engineers, but you are. It is up to you to share your civil engineering perspective with the members of Congress.

Write to your congressman about the importance of water resources to the nation's overall economy. Tell him or her that local cost sharing is a responsible measure that is necessary to secure the president's approval. Make clear that the funding of water resources development is a recyclable investment that does not worsen the nation's deficit; rather, it is an investment that will pay dividends into the future far beyond most other forms of federal spending.

KILDEE PAYS TRIBUTE TO THE ASSUMPTION GREEK ORTHODOX CHURCH

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. KILDEE. Mr. Speaker, I rise today to bring to the attention of my distinguished colleagues in the U.S. House of Representatives the consecration of the Assumption Greek Orthodox Church in Flint, MI, on September 28, 1986.

The consecration and Chrismation of the Assumption Greek Orthodox Church is a joyous occasion for its parishioners, and it sends a powerful message of faith to the entire Flint area.

The church was founded in the late 1920's by a group of 20 immigrant families, whose commitment and courage laid the foundation for a holy place of worship that now serves 240 families in the Flint area. The Assumption Greek Orthodox Church, which received its charter in 1928, has been a constant and unwavering source of spiritual strength for its congregation. In its early days and after the church building's construction in 1961, the vibrant spiritual life of this church has been manifest through its sacred traditions of worship and its active service to the community.

In Flint, we are fortunate to have a strong Greek community, whose members have made, and continue to make, a tremendous contribution to the quality of life in the Flint area. The Assumption Greek Orthodox Church has not only been a sacred place of worship and spiritual guidance for its parishioners, it has provided them with a community of fellowship that is rich in a shared faith and heritage.

The formal dedication and baptism of the church on September 28 is an occasion for renewed faith and appreciation of a church that has met the spiritual needs of its congregation for nearly 60 years.

Mr. Speaker, under the spiritual leadership of its pastor, Rev. Athanas George, the church continues its tradition of religious commitment and community service today. I would like to ask all of my colleagues in the U.S. House of Representatives to join with me now in paying tribute to the Assumption Greek Orthodox Church, upon the occasion of its consecration and Chrismation.

THE 100TH RONALD McDONALD HOUSE OPENING IN QUEENS COUNTY, NY

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. ACKERMAN. Mr. Speaker, I rise today to mark the opening of the 100th Ronald McDonald House, which will be dedicated on Monday, September 29, 1986.

The new house, the first to be opened in Queens, Nassau, or Suffolk Counties in New York, is located on the grounds of Schneider Children's Hospital, at the Long Island Jewish Medical Center.

Mr. Speaker, 12 years ago, one family and a doctor had a small idea. When Kim Hill was stricken with leukemia, her parents and Dr. Audrey Evans realized how difficult it can be for a mother and father to stay close to a child who has been hospitalized. They conceived of a simple solution: special homes away from home where parents and families could remain near the hospital without encountering often-prohibitive hotel costs. The seed that they planted was sown generously by McDonald's, a corporation that cares about the communities in which it does business. And today, that seed has become a network of 100 Ronald McDonald Houses, providing a warm atmosphere for families to stay together when they need each other the most.

Fred, Fran, and Kim, as well as Dr. Evans, will all be present at the dedication ceremony on Monday. Their story, and the entire history of the Ronald McDonald House movement, is an impressive testiment to the American people. From the lone individuals who had a dream, to the corporate caring that brought the dream to life, to the private sharing that keeps each house in operation to this day, this is a slice of America of which we can all be proud.

The Schneider Children's Hospital is an appropriate place for the 100th Rondald McDonald House. Specializing in treating cancers that strike out at our young people, this institution of healing helps children from the entire New York metropolitan area, as well as youngsters from across the Nation and around the world. Thanks to the new facility, countless children will be able to receive the comfort and support that only a parent can bring. I would like to acknowledge Lyn Jurick, president, and Irving Klein, chairman of the board of this new Ronald McDonald House; and Dr. Robert K. Match, the president of Long Island Jewish Medical Center, for their hard work in bringing this 100th house to the New York area.

Mr. Speaker, I call now on all of my colleagues to join me in congratulating the Long Island Jewish Medical Center, Schneider Children's Hospital, and all of the people behind every Ronald McDonald House, as they prepare to dedicate this landmark site, and in wishing the families who take advantage of the facility our very best.

HONORING 35TH ANNIVERSARY OF THE KIWANIS CLUB OF PICO RIVERA

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. TORRES. Mr. Speaker, I ask my colleagues to join with me today in saluting the 35th anniversary of the Kiwanis Club of Pico Rivera, CA.

On Sunday, September 28, 1986, the club will conduct its annual installation of officers and will celebrate its charter date of August 29, 1951.

It is important to note that the Pico Rivera Kiwanis have been conducting charitable and civic projects for the residents of Pico Rivera since its charter as a Kiwanis club. Recently, this club has embarked on a special effort to help our young people by assisting them with the Key Club at El Rancho High School. These efforts, along with many other year-round projects, contribute to making Pico Rivera a special place to live and work.

Mr. Speaker, I also ask my colleagues to join me in congratulating Mr. Albert Cortez, incoming president of the Pico Rivera Kiwanis Club. Albert is an outstanding young man who has served our community witth distinction and dedication.

THE STATELESS OF CYPRUS

HON. ROD CHANDLER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. CHANDLER. Mr. Speaker, the United States should recognize the Denktash government. Here is one of the more positive pieces I've seen written on that issue. Enclosed is an article in Monday's Wall Street Journal.

THE STATELESS OF CYPRUS

When President Rauf Denktash of the "Turkish Republic of Northern Cyprus" arrived in the U.S. last week, he and his entourage were given visas stamped "stateless

persons." That is because the U.S. recognizes only the Greek Cypriot government. The U.S. should reconsider that policy.

The problem of Cyprus can be summed up in two words, Andreas Papandreou. The last thing the socialist Greek premier wants is a resolution of the island's differences. He would lose his opportunity to accuse Turkey of devious intentions, which he does to distract Greeks from their decrepit economy. Just as important, he would lose the collusion of the U.S. Congress. Since Turkey's 1974 military intervention, U.S. aid has been held to a 10:7 ratio for Turkey and Greece. That allows Mr. Papandreou to influence military aid to Turkey by not making full use of his own.

Cyprus is not Lebanon nor Northern Ireland. The Turkish intervention effectively separated the island's two nationalities who, for 14 years, had been periodically pitted against each other by a succession of demagogues. The Turkish minority—about 20%—is not asking for equal government representation. It wants the system promised by the 1960 independence constitution that was signed by Britain with Greece and Turkey as guarantors. This would still give Greeks the presidency and the upper hand in the legislative bodies. If Turkish rights could be secured, Mr. Denktash would be willing for his government, now recognized only by Turkey, to be temporary.

It is one of the great myths of our time that Turkey is behind the troubles. Athens, not Ankara, is the enemy of Cyprus. In 1974, the Greek colonels staged a coup on the island to encourage mainland interest in unification. The replaced Archbishop Makarios with a convicted pro-unification terrorist. This led to bloodshed and the arrival of troops from Turkey. A Greek appeals court in 1979 said that, "Turkey, as one of the guarantor powers, had the right to fulfil her obligations. The real culprits are the Greek officers who engineered and staged a coup and prepared the conditions for this intervention."

Mr. Denktash told Journal editors that his problems are not so much with current Greek Cypriot leader Spyros Kyprianou as with Mr. Papandreou, who has blocked all compromise proposals by U.N. Secretary General Perez de Cuellar. Mr. de Cuellar proposes more talks this month, but Mr. Papandreou says he wants an international conference instead. Coincidence no doubt, but the Soviets have seconded the motion for a conference. Their goal is to remove Turkish troops and two British bases that are major Middle East listening posts for the West.

The Greek Cypriots have nothing to gain from a divided economy, which has reduced trade between the two communities to smuggling. Nor is it in their interest to edge, along with Mr. Papandreou, toward the outer limits of NATO. Nicosia has bravely jailed terrorists who murdered Israeli tourists and has helped with U.S. military maneuvers in the area.

The Greek colonels should have taught Mr. Papandreou that the jingo approach to Cyprus won't save a faltering government in Athens. But so far he hasn't taken the hint.

The U.S. should recognize the Denktash government while encouraging the Greek Cypriots to separate themselves from Mr. Papandreou. This could be just the stick to prod Athens into letting Cyprus be Cyprus.

TRIBUTE TO IKE SKELTON

HON. LES ASPIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. ASPIN. Mr. Speaker, last Wednesday, as the House approved the Goldwater-Nichols Department of Defense Reorganization Act of 1986, general congratulations were extended to some Members involved in the enactment of this legislation. One major contributor may not have received the full measure of praise that was his due. I am referring to the Honorable IKE SKELTON of Missouri.

Former Representative Richard C. White of Texas was the first congressional proponent of JCS reform back in 1982. But Representative White did not run for reelection in 1982. IKE SKELTON took up the banner and holds the record for the incumbent Member of Congress who has consistently championed far-reaching defense organizational reform longer than anyone. In 1983, IKE introduced legislation to reorganize the national military command structure, including the Joint Chiefs of Staff, the Joint Staff, and certain aspects of the combatant commands. The bill that passed last Wednesday, in a number of respects, traces its lineage to the legislation that IKE SKELTON first proposed in 1983.

In developing that legislation, and in other work on this issue since then, IKE devoted the time necessary to qualify him to speak with authority on all aspects of the issue. He has had numerous meetings with knowledgeable military and civilian officials over the years including Gen. Maxwell Taylor, Gen. David C. Jones, Mr. John Kester, Gen. John A. Wickham, Secretary of the Army John O. March, Jr., Secretary of the Navy John F. Lehman, Jr., and Air Force Chief of Staff Gen. Charles A. Gabriel, to name just a few.

This year, during a period of time in which Chairman NICHOLS was recovering from surgery, IKE took the initiative and met with Pentagon officials to assist the committee in developing its position on several major provisions of the legislation. Though not a member of the Investigations Subcommittee, he was selected to be a member of the conference committee. In that capacity, he once again played a crucial role. He was instrumental in negotiating the language of some of the key provisions of the bill, including perhaps the most important provision of all, the command functions of the unified and specified commanders.

In closing, let me note that organizational reform is just one of a number of areas in which IKE SKELTON has moved to the forefront on vital national security issues. He is a highly respected, valued member of the Committee on Armed Services. I congratulate him on his participation in developing historic defense reorganization legislation that will shape our Nation's defense structure well into the 21st century.

HONORING ALBERT ANTONE, JR., ON HIS RETIREMENT

HON. FERNAND J. ST GERMAIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. ST GERMAIN. Mr. Speaker, it is with a great deal of pleasure that I bring due attention to the career of another person who has devoted many years of his life to public service.

In this instance I refer to Mr. Albert Antone, Jr., who retired within the past month from his position as postmaster of the U.S. Postal Service in Newport, RI.

Mr. Antone, the youngest of eight children, born to Josephine and Martin Antone who migrated to this country in 1910 from the Cape Verdi Islands, started his service to our country during enlistments in both the U.S. Army and the U.S. Air Force earning an honorable discharge as a staff sergeant in 1953 following duty during the Korean war.

He entered the U.S. Postal Service in 1958 as a temporary clerk and during his distinguished career, he received 11 Postal Service awards and two superior accomplishments awards. He participated very actively in the affairs of the postal employees unions, both on a local and a State level as he had and displayed a firm commitment to the dignity of the men and women who served in the Post Office Department and the continual need for progress on the various programs.

He rose steadily through the various levels and served with distinction throughout culminating in his promotion to the position as postmaster of the Newport facility in April of 1983, in which he succeeded a long line of very distinguished Newport postmasters.

I know that Al Antone will continue to be active in various civic and charitable endeavors in the Newport County community and it gives me great pleasure to extend to him the best wishes of this party of legislators upon his retirement.

PERSONAL EXPLANATION

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. CLINGER. Mr. Speaker, on September 23, 1986, I was absent from the floor of the House of Representatives for part of the legislative business. Had I been present, I would have voted in the following fashion:

Rollcall No. 401: H.R. 5369—asbestos information, "yea," and

Rollcall No. 402: H.R. 4216—Gila Bend Indian Reservation lands, "no."

TRIBUTE TO MR. JAMES E. BARRETT

HON. HAL DAUB

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DAUB. Mr. Speaker, I take this opportunity to share a few of the accomplishments of a great Nebraskan who was honored this week by the Nebraska Society of Washington, DC.

Mr. James E. Barrett, an Omaha native, was presented with the first ever award for service to the Nebraska Society.

Mr. Barrett, is currently the executive vice president of Mutual of Omaha's Washington, DC office and has provided continuing leadership, guidance, and support to the Nebraska Society, its officers and board members since 1957. Jim also served as president of the Nebraska Society in 1962.

In addition, Jim has served on the board of governors, as chairman of the executive committee, and as president of the United Service Organization (USO). He is a trustee of The American University and The Behrend Foundation in Washington, DC and Marymount University in Arlington, VA. Mr. Barrett also serves as trustee of the National Capital Chapter of the National Multiple Sclerosis Society.

Mr. Speaker, I know my colleagues join me in saluting this outstanding Nebraskan and American for his achievements.

THE SITUATION IN CHILE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. LAGOMARSINO. Mr. Speaker, the recent events in Chile are a cause for concern for all of us seeking a peaceful transition to democracy in that country and for full respect for human rights. In the September 19, 1986, edition of the Washington Times, syndicated columnist Cord Meyer describes the problems facing Chile as the case of the two extremes having the same goal in common: "to obliterate the democratic opposition."

I believe Mr. Meyer's analysis of the situation in Chile deserves serious consideration by all Members of Congress, and I urge my colleagues to read carefully his thought-provoking assessment.

PREPARING A SIGNAL FOR CHILE

(By Cord Meyer)

The time available for avoiding a civil war in Chile is getting shorter. There are at most two years before Chilean society becomes so irretrievably polarized that a peaceful transition to a democratically elected government is made impossible.

As the cycle of violence mounts, the danger lies in the fact that the two political extremes feed on each other at the expense of the democratic center. A State Department official has remarked that, "General Pinochet and the Communists both have the same short-term goal—to obliterate the democratic opposition."

A case in point is the way President Augusto Pinochet reacted to the recent bloody but unsuccessful attempt on his life. Although the indications are that this crime was committed by the clandestine terrorist arm of the Chilean Communist Party, the Manuel Rodriguez Patriotic Front, the general lashed out with indiscriminate arrests and with the declaration of a general state of siege that limits press freedom, postpones the legalization of political parties, and does little to improve the chances of finding the real culprits.

On the extreme left, the evidence is growing that the Communist Party leadership is increasingly committed to a violent denouement. American intelligence confirms that the large caches of arms recently discovered by the Chilean army can be traced by their serial numbers to Cuban sources. In the vulnerability of the brittle Pinochet dictatorship, the Soviets may see their chance for sweet revenge against the man who overthrew the Marxist regime of Salvador Allende in 1973.

Haunted by the memory of the Carter administration failure to act in time against the Somoza dictatorship to prevent a Sandinista takeover in Nicaragua, Reagan officials are acutely aware of the dangers of allowing Gen. Pinochet to go forward with his plan to succeed himself through a one-man plebiscite in 1989.

In the absence of any American military assistance program to Chile and given only a small amount of humanitarian aid, there are limits on what U.S. influence can accomplish. But Reagan officials see a number of practical steps that might move Chile back from the brink.

First, almost lost in the sensational publicity caused by the attempted assassination is the fact that most of Chile's democratic parties from conservative to moderate left signed on Sept. 8 a document entitled, "Bases of support for a democratic government." Its call on the military authorities to amend the constitution to permit genuine elections ahead of schedule is strengthened by the fact that firm guarantees of private property are included in the document.

Based on this broad agreement that includes the conservative National Party and excludes the Communists, Reagan officials believe a strong argument can be made to the four military commanders who make up the governing junta that they need not take the grave risk of trying to impose Gen. Pinochet on the country for another eight-year term. And under the present constitution these junta members have the power to require Gen. Pinochet to step down.

In order to drive home the lesson that the U.S. views with the gravest concern the general's attempt to perpetuate himself in office, Reagan officials are seriously considering a negative vote on Chile's World Bank loans, coming up for decision in October and November. In fact, unless the situation changes, a "no" vote is predictable and will send a sharp message to the Chilean business community that the time has come to reconsider their strong and continuing support for the aging dictator.

In view of the fact that the U.S. has only 21 percent of the votes in the World Bank and can only count on 11 percent additionally from Belgium, Italy, and the Nordic countries, the administration has to win votes from England and West Germany, and is prepared to make this extra effort to avoid being overruled.

As an additional means of effective pressure on Gen. Pinochet, some State Department offices have also proposed sending to Chile a special presidential emissary of the caliber of Sen. Paul Laxalt (R-Nev.) And a strong speech and condemnatory resolution in the U.N. General Assembly are under consideration.

The Reagan administration is clearly determined to do everything possible to avoid leaving as part of its permanent legacy in this hemisphere a Communist regime in Chile and a Soviet naval base in Santiago.

THE OMNIBUS DRUG BILL

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. WEISS. Mr. Speaker, over the last 2 weeks many observers have realized that H.R. 5484, the omnibus drug bill adopted by the House on September 11, contains some alarming provisions which will undermine the effectiveness of the basic thrust of the legislation.

I am submitting to the RECORD today editorials from the New York Times, the Christian Science Monitor, and the Los Angeles Times, which raise serious questions about the wisdom of fighting the menace of drugs by trampling on some of our Nation's most cherished principles, and I commend these important statements to the attention of my colleagues.

[From the Christian Science Monitor, Sept. 16, 1986]

THE REAGANS LEAD ON DRUGS

The speech from the White House on Sunday night is an example of the kind of moral direction the President and, in this case, the First Lady, Mrs. Reagan, can provide in the nettlesome matter of drug abuse.

Particularly heartening is Mrs. Reagan's focus on individual responsibility, on fostering development in young people—especially of the strength to say no. She rightly insists that young people have too much going for them, and are too much needed, to waste their lives on drugs. Speaking of drug criminals, she said, "It's up to us to change attitudes and simply dry up their markets."

Meanwhile, the drug issue has become such a political wildfire across the country that what is most needed at the moment is some calm consideration of what measures need to be taken to fight the drug menace. In a midterm election campaign lacking in serious partisan issues, calm consideration is unfortunately in short supply.

The omnibus antidrug bill moving through the House of Representatives includes a number of constructive tactics, notably increased funding for drug rehabilitation centers. But last week the House also approved floor amendments allowing for use of the military to interdict drugs at the borders, of illegally obtained evidence in trials of accused drug dealers, and of the death penalty for some drug-linked murders.

These suggestions are troubling. Illegal evidence in the case of an accused drug dealer is no less illegal than such evidence in the case of an accused serial killer. The tradition—and law—keeping the military out of civilian law enforcement have deep roots in the American system, along with other civil liberties provisions.

Having clear principles such as these thought through in advance often prevents one from making a foolish or wrong decision in the heat of the moment. The scene in Washington right now seems to be precisely one of those heated moments when the system needs all the principles it's got. And as for the death penalty, it can be sanctioned for drug dealers no more than it can for those found guilty of other heinous crimes.

And the reasons for opposing the death penalty—or the involvement of the military or mass urinalysis or whatever—have nothing to do with not taking the drug problem seriously.

Clearly, drugs are extracting an unacceptable toll, not only from direct victims such as basketball star Len Bias, but from society as a whole, including anyone who pays an insurance premium higher than it would be without drug-related crime.

The reports that drug use is actually on the decline are welcome news and help provide a useful perspective; those who need help, however, still need it.

Hence the continuing need for not only moral leadership from the White House, but also sensible steps like increased funding for treatment programs.

It would be unfortunate if the manufactured version of the crisis—the campaign-season furor—were allowed to get in the way of taking serious steps to deal with the actual problem.

[From the Los Angeles Times, Sept. 16, 1986]

DRUG FRENZY

Topic A on the nation's agenda these days is drug abuse, with Congress and the White House falling all over each other to get in on the act. Maybe even some good will come of it.

But when Congress acts in haste in response to a perceived emergency and with an election near, it frequently acts in error. Frenzy rarely helps sound decision-making, particularly in legislative bodies.

The latest evidence of this is the anti-drug bill that the House of Representatives approved last week by a lopsided margin. Even though many members knew that parts of the bill were seriously wrong, only 16 congressmen were willing to risk the wrath of their constituents by voting against it. More of them should have, for the measure contains provisions that are anathema to our country's respect for civil liberties and to the proper role of the military in a civilian government. Besides, there is scant evidence that the extreme measures would work.

The widespread use of narcotics and other illegal drugs is a deeply troubling problem. Citizens are calling on the government to do something, and the House responded by passing a bill to stiffen penalties for drug-related crimes, to provide more manpower and equipment for the fight against drug smuggling and to increase drug education and treatment. A good case can be made for reinforcing drug-related education and police functions. But the members of the House could not stop there. They accepted in addition panic amendments that pose more danger than they would prevent.

Among the most glaring excesses is a mandate for the Pentagon to use military forces to guard the country's borders to stop smuggling. This idea flies in the face of a long and appropriate tradition, backed by law, that the armed forces should not be involved in civilian law enforcement.

Another part of the bill would allow the use of illegally obtained evidence at drug trials as long as the police made a "good-faith" effort to follow the law—a flagrant challenge to protections of the Constitution. A "good-faith" exception to the exclusionary rule of evidence is a loophole so large that nearly everything can pass through it, jettisoning the Fourth Amendment protection against unreasonable searches and seizures.

Furthermore, the House bill would authorize the death penalty for drug smuggling that intentionally caused a death. What that means is anybody's guess. But the political expediency of intruding extreme and controversial elements into this piece of legislation could serve only to divert the police and the courts from the pursuit and punishment of drug marketers.

Meantime, the Reagans' address to the nation Sunday night will help draw attention to the dangers of drug use. The President and Mrs. Reagan were right to say that the problem can be solved only by eliminating the demand, not by police work. Yet this Administration has cut the funds for drug education and treatment. It seems to have chosen widespread testing over other programs that might work.

The causes of drug use are deep and complex, and eradication must be mounted at many levels. Voters will not confuse expedient solutions and theatrics of extreme measures with the steady, costly kinds of program that will eventually bring this problem under control.

[From the New York Times, Sept. 12, 1986]

DRUG CRAZED

What does America think it is doing about drugs? The House orders the military to halt drug traffic into the country within 45 days. Candidates challenge each other to submit to urinalysis and rush to endorse the death penalty for drug dealers. White House aides bicker over how many Federal workers should take drug tests. Congress suddenly wants to throw money at the drug problem. In bills hastily coopered together, House Democrats would commit $1.5 billion for enforcement, treatment and education; Senate Democrats would add $100 million more. No one knows what it will buy.

The new spending would be added to the $1.5 billion Washington already spends on drug enforcement and border interdiction. That's serious money for more personnel and equipment like radar planes. Yet there's no reason to think it will do much good. Trafficking profits are so huge that dealers match the cops gun for gun, plane for plane.

Such proposals are enough to stir up the ghosts of the old Law Enforcement Assistance Administration, which in 14 years doled out $8 billion to help fight local crime. Yet in those years, crime grew faster than ever. So it is now with Federal spending against narcotics. It has nearly doubled since 1982 but more cocaine flows in than ever.

The tragedy is that more useful ways to spend are obvious.

Sooner or later, most addicts seek help as the frustrations of supporting a habit grow. Yet the search for help often produces only more frustration: overcrowded programs turn them away for weeks or months. The House bill offers only $100 million for drug treatment, barely restoring cuts in Federal funding since 1982. The Senate does somewhat better with $300 million. But even that's modest, given the need and potential effect.

Both bills offer only a trivial $50 million for the most promising strategy of all: eradication of drug production at the source. It worked for a time with Turkey during the Nixon Administration and more recently, for a short time, in Mexico. Bolivian officials claim some success for recent American-aided raids to destroy jungle drug factories.

Producer countries are becoming more sympathetic to American demands for cooperation since drugs increasingly threaten their own societies. Instead of dubiously investing another billion-plus in enforcement, why not try spending on that scale to buy up coca and help Andean peasants plant rice, coffee or citrus fruit?

The haste to look good undermines hopes for initiatives that would do good. So does the rush to partisanship; these rough Democratic proposals are likely to be misshapen further in negotiations with Congressional Republicans and the White House. The need for drug spending is urgent but the need for quick and dirty legislation is not.

DISTINGUISHED NEBRASKAN AWARD

HON. HAL DAUB

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DAUB. Mr. Speaker, I take this opportunity to share the accomplishments of a great Nebraskan who was honored this week by the Nebraska Society of Washington, DC.

Mrs. Rose Blumkin of Omaha, NE, was presented with the Distinguished Nebraskan Award for 1986.

Mrs. Blumkin—known affectionately as Mrs. B. by her many satisfied customers—is the founder and chairman of Nebraska Furniture Mart which was established in Omaha, NE, in 1919 by Mrs. Blumkin and her late husband, Isadore, with an investment of $500. Today, the Nebraska Furniture Mart is the largest single furniture retailing outlet in the Nation with sales in excess of $120 million. At 92, Mrs. B. can be found 7 days a week serving customers on the sales floor in addition to her numerous philanthropic and community contributions to Omaha and Nebraska charities.

Mr. Speaker, I know my colleagues join me in saluting this outstanding Nebraskan. A woman who has proved that with dedication and hard work the American dream does come true.

SAVE THE FAMILY FARM ACT

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. GEPHARDT. Mr. Speaker, today I am joining with 25 of my colleagues in introducing the "Save the Family Farm Act." Senator HARKIN and several of his colleagues are introducing identical legislation in the Senate.

It has become increasingly clear that our farm policies have failed to achieve the most

basic goals for which they were created: the preservation of opportunity in rural America. Today we are spending five times as much on our farm program as we did 5 short years ago—but we have still lost 150,000 farmers. We are giving some farmers multimillion dollar Government payments, but we seem to be preparing to write off the family farmer.

If we lose our family farmers, the face of rural America will change forever. As consolidation occurred and large farms concentrated their activities in larger communities, small rural towns would inevitably wither.

Farming should not be dominated by a few corporate giants. Two months ago, America's wheat farmers spoke out clearly for change. America's farmers want a change. We want to give them a say in their own destiny.

Today we are proposing action on the twin problems of farm income and farm debt. First, we propose giving farmers a chance to vote for a program of shared, progressively-distributed production cutbacks needed to bring supply and demand into better balance.

By allowing farmers to limit production—rather than just acreage—our program will effectively limit supply and allow the Government to reduce its farm costs—a formula that has already worked for other argicultural commodities now grown in the United States.

The Save the Family Farm Act will increase net farm income by at least $20 billion and rejuvenate our rural economy.

It will represent a historic reversal of policies that have favored the megafarm and corporate agriculture. Rather than giving 30 percent of the benefits to top 5 percent of farmers, as the current bill does, this program helps the family-sized farmers.

And the cost savings to the taxpayer? At least $10 to $15 billion per year according to some estimates.

Our improved farm income package is a long-term solution to the problem. But in the interim, we face a second problem—farm debt.

Some estimates indicate that the default on farm debt could reach $40 to $50 billion. A default of this magnitude could drive up U.S. interest rates, cut growth and cost us a quarter million jobs. And if more land is dumped on the market and land values continue to fall, the threat to the 500,000 American farmers with high debt loads will be devastating.

Further losses will cause enormous damage to our agricultural banks. Five hundred agricultural banks—one out of eight—are on the FDIC's list of banks in danger of going under.

Before we turn the corner, the loss in Federal revenues from the farm debt crisis could easily hit $20 billion—and that is before you consider the costs of an FmHA or Farm Credit System bailout.

What will we do? In my view, we can let this debt crisis rip rural America apart—or we can take positive action to manage the restructuring of the salvageable debt. By taking steps now, we can avoid some of the $20 billion in losses we might face.

The Debt Restructuring package we propose will create a Federal-State partnership to help lenders and farmers to voluntarily restructure our farm debt.

It would target assistance to the small and medium-sized farmers who are viable in the long run but who face temporary difficulties. And it would provide for local administration of the program.

It builds on successful State experiments from Minnesota and Iowa. These States run mediation services to bring lenders and farmers together to renegotiate debts. Mediators play a neutral and constructive role to help lenders and borrowers keep the farmer on the farm. Banks write off principal but keep customers. Farmers reorganize their operations, but they stay in business.

Everyone I have talked to agrees these State mediation programs can work. But often debt restructuring fails because the farmer comes up just a few thousand dollars short. So we propose the Federal Government provide a hand—a no-interest loan—to help borrowers stay in business.

In return for this temporary help, we require borrowers to contribute what they can afford. By requiring the lender to write down 20 or 30 percent of his principal, we achieve a permanent reduction in the debt load—but because we allow the banker to amortize his losses over 10 years, he can "earn" his way out of the problem.

We also require him to charge a fair interest rate—a reasonable requirement since the Federal involvement reduces his risk. And we do not require writedowns for the most vulnerable banks.

This legislation would give an eligible borrower who has been presented with a foreclosure notice 120 days to try to work out with his lenders a debt restructuring package that will enable him to stay in business. No lender is required to accept any debt restructuring arrangement that benefits all sides.

The costs of the debt restructuring component of this legislation are comparatively modest—and dwarfed by the savings of the entire bill. Because Federal funds would be provided to the States as block loans, the Federal Government is assured of full repayment. The costs are limited to the cost of funds.

The "Save the Family Farm Act" gives us the short-term tools and the long-term policies needed to prevent the conglomerization of America's farming sector. By targetting benefits to midsized and small farms, it will help those who can best use it and stem the erosion of our rural communities.

It is time to reject the failed policies of the current administration. Let's give our farmers a chance to show that they are up to today's challenges. If we have to change a few failed policies to do it, by all means let's try. The way of life in middle America is at stake.

OUTLINE OF THE HARKIN/GEPHARDT SAVE THE FAMILY FARM ACT

I. Program for Storable Commodities (wheat, corn, grain sorghums, barley, oats, rye, upland cotton, rice, and soybeans).

A. Emergency transition program for 1987 crop of wheat, feed grains and soybeans. Cotton and rice programs are unchanged for 1987.

1. Eliminate target price payment and paid diversion programs.

2. Increase loan rates to a minimum of 70% of parity (wheat—$4.74, corn—$3.46, soybeans—$8.54) and establish an acreage reduction/marketing certificate program similar to that established in the referendum program below, with the following exceptions:

a. Producer participation will be voluntary; however, commodities produced by noncomplying producers will be restricted to export sale or on-farm use.

b. Loans to participating producers will be restricted to $250,000 per producer and that portion of the crop used for domestic consumption.

B. Referendum program for crop years 1988 through 2000.

Prior to August 1, 1987, and each 4th year thereafter, the Secretary shall conduct commodity specific referenda except in the case of wheat and feed grains which will be a joint referendum. If a majority of the producers vote in favor, a supply management/marketing certificate program will be in effect for that commodity for the subsequent four years. If a referendum fails, the current farm law will apply. Upon passage of a referendum by a majority vote:

1. Minimum loan rates would be established at 71% of parity in 1988 and would be increased by 1% annually thereafter up to a maximum of 80% of parity. Continuation of this schedule after the first five years would be contingent upon a USDA study and review by Congress. Target price payments and other subsidy payments would be suspended.

2. The Secretary will proclaim a national marketing quota for each commodity, based upon projected domestic demand, export demand, food aid requirements, carryover, and reserve requirements. The Secretary shall then proclaim a national acreage allotment on acres based upon projected national yield.

3. Each producer will submit planting intentions for each commodity to the Secretary in accordance with the farm crop acreage base. The Secretary will then determine the set-aside percentage to balance supply with demand.

4. A targeting mechanism will be established for each commodity by the Secretary to distribute the acreage set-aside on a progressive basis for each farm so that a greater set-aside percentage will be required as farm size increases. In no case would the set-aside on any one farm exceed 35%.

5. Marketing certificates will be assigned to each producer based upon each producer's acres permitted to be planted multiplied by that farm's established yield. A commodity may not be marketed without a marketing certificate. Commodities produced in excess of the marketing certificate quantity may be used on-farm, stored and marketed under a certificate issued in a subsequent year, donated or sold to the CCC at no more than 50% of the loan rate for the purpose of famine relief. The Secretary may issue marketing certificates to importers of commodities and commodity products which do not exceed limitations imposed by Section 22 of the Agricultural Adjustment Act.

6. A farmer disaster reserve is created. Each producer must contribute a portion of his production, determined on an actuarially sound basis, to the reserve. In the event of a disaster, an affected producer will receive commodities from the reserve equivalent to 90% of his marketing certificate less the amount actually produced. However, the value of commodities received under this program may not exceed $360,000 annually.

7. Storage payments made under the reserve program would be the same for on-farm and commercial storage.

II. Livestock transition program

Livestock producers would be permitted to purchase existing stocks of CCC grain for an 18 month period beginning 30 days after enactment. The benefits under this program would be targeted to not larger than family-size farms of ranchers and could not exceed $50,000 per producer. The sale price would be determined by the Secretary but could not exceed the total cost of the grain to the CCC.

III. Milk marketing base program

Within 30 days of enactment, the Secretary will conduct a referendum among commercial milk producers to determine whether such producers are in favor of a national milk marketing base program for calender year 1987 or favor continuation of current law. Subsequent referenda would be held at the same time other commodity referenda are conducted. Upon passage of a referendum by a majority vote:

A. The Secretary will increase the support level to 70% of parity ($15.02 per cwt.) to be increased by 1% of parity per year thereafter to a maximum of 80% of parity. Continuation of this schedule after the first five years would be contingent upon a USDA study and review by Congress.

B. The Secretary will establish a marketing base for each producer considering a producer's history from 1981 to 1985 and any adjustment necessary to bring supply in line with demand on a national basis.

C. A procedure is established, utilizing county ASCS committees, to adjust individual producer bases and reallocate unused bases to existing and new producers under an established priority system designed to foster new and existing family-sized farming operations.

IV. Agricultural Exports and Imports

A. Requires the President to enter into multilateral agreements with other food exporting nations to fulfill the food requirements of needy nations.

B. Requires the Secretary to exercise authority under Section 22 of the Agricultural Adjustment Act to prevent imported commodities from interfering with the operation of the price support program.

C. Requires the labeling of an agricultural product when a significant percentage of that product, either by value or volume, is imported.

D. Prohibits the importation of food items which contain the residues of chemicals prohibited from use in the United States.

E. Requires the use of the export p.i.k. to assure traditional share of export market until excess carryover stocks are eliminated.

V. Food Assistance

To offset any increase in retail food prices resulting from this bill, the Secretary is directed to increase benefits under the food stamp program, school lunch program, the school breakfast program, and WIC program.

VI. Family Farm Debt Restructuring Program

A. State Mediation Program

1. Participating states must establish mediation programs. Mediation programs provide neutral, third-party advice to borrowers and lenders to help them restructure farm debt.

2. Participation in mediation program is generally voluntary, but borrowers facing foreclosure may request a prohibition on collection action for 120 days to allow for mediation. Neither the borrower nor the lender is required to agree to any debt restructuring proposal produced during this process.

3. State may extend prohibition order by 60 days if the mediator believes more time is needed to produce an agreement or by up to a year if the lender exhibits bad faith. If mediation fails to produce an agreement, the lender may proceed with foreclosure.

B. Federal loans to states to facilitate farm debt restructuring.

1. The Federal Government provides interest-free block loans to states that implement debt restructuring programs meeting federal guidelines.

2. State government administers funds to provide interest-free loans to qualified borrowers for up to 3 years to cover debt service that the farmer cannot afford. Loans are limited to $30,000 per year.

3. Following the period over which loans are made, there is a two year grace period, which may be extended two years if conditions in agriculture do not improve. Five years is then allowed for payback.

4. Eligibility:

Family farmers with gross sales of less than $500,000 and experiencing financial stress. If not facing foreclosure, the applicant must have a debt-to-asset ratio of at least 40%. Applicant must demonstrate that farming is principal livelihood, and that assistance will provide for the continuation of a financially viable farming business.

5. Assistance loans are provided if debt restructuring agreement reduces the outstanding principal by one-half the percentage reduction in asset value and the original interest rate is reduced.

C. FmHA and the Farm Credit Administration are required to comply with state mediation and debt restructuring programs.

D. Banks may write off over 10 years losses taken under debt restructuring agreements. Banks on FDIC list of problem banks are not required to take immediate write-downs.

REPRESENTATIVE MILLER SALUTES BOCCE BALL COMPETITION

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. MILLER of California. Mr. Speaker, the World Bocce Championships will soon take place in Monaco, and I am delighted that a number of my constituents from Contra Costa County will represent the United States.

As most of my colleagues in Congress are aware, bocce is a venerable sport with its roots in the Italian culture. It's a game that is experiencing a renaissance not only in my home town of Martinez, but also throughout California, the United States, and the world. Four continents and Australia will be represented at this competition and strong interest in future participation has been expressed by several Asian countries. It may not be long before current efforts to introduce bocce into the Olympics are successful.

It comes as no surprise that bocce is experiencing this rebirth. Only a few years ago several international publications carried at different times, pictures of the game being played by former President Jimmy Carter, President Ronald Reagan, and Pope John Paul II. In fact, the State of Minnesota, has declared bocce its official state sport.

More importantly though, bocce is a sport steeped in tradition. It is a game played by everyone—men, women, and children alike. This type of competition, played in its traditional atmosphere of camraderie, strengthens the fabric of our society. I personally have been fortunate to have participated in bocce in my community over the last 10 years.

I know that all Members of the House of Representatives offer their best wishes to the team, Leo Moro, Aldo Cuneo, Gaetano Balestrieri, Juanito Cuneo, Nick DiTullio, and Jorge Moreno; their coach, John Muzio; U.S. Bocce Federation president and vice president, Mario Massa and Ken Dothee; federation director, Donna Allen; international tournament referee, Gianfranco Pedrini; and fellow American bocce enthusiasts Anthony Lo Forte, Karen, Cuneo, and Mel Nelson.

During these times in which we are experiencing some international discord, it is refreshing and encouraging to see that the sport of bocce has brought together people from throughout the world to compete in a spirit of harmony. It is particularly appropriate that this competition is being hosted by the Principality of Monaco whose long, continued, and unselfish support for bocce is well documented.

I know my colleagues join me in offering our gratitude and commend Prince Raineer III, the Federation Monegasque De Boule and its President Henri Crovetto for their dedication to the sport of bocce and for again providing this opportunity for the representatives of all the participating nations to compete and engage in this exchange of good will.

EMPLOYER SANCTIONS

HON. RONALD D. COLEMAN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. COLEMAN of Texas. Mr. Speaker, I want to take this opportunity to bring to the attention of my colleagues the stand taken yesterday by the city council of El Paso, TX, which by a 4-to-2 vote opposed employer sanctions in H.R. 3810, the pending Simpson-Rodino immigration bill. This is the second major instance of an elected city council of the United States-Mexico border opposing these provisions; on June 25, 1986, the city council of San Jose, CA, voted to oppose the sanctions, and the entire bill as well.

Predicting the effect of employer sanctions in communities with Hispanic and other minority populations, the city council noted that employer sanctions could result in employment discrimination by employers who would be unduly burdened by having to become experts in recognizing valid immigration documents. The council also observed that El Paso's position as an international trading and tourist center would be adversely affected by these sanctions.

Mr. Speaker, the city council of El Paso, TX, should be listened to and consulted on all phases of immigration reform, as they too represent the views of one of the Nation's leading border cities as we anticipate floor action on H.R. 3810.

The text of the resolution is as follows:

RESOLUTION AGAINST SIMPSON-RODINO

Whereas: There is currently pending before the United States Congress legislation commonly referred to as Simpson-Rodino Bill (S-1200 and HR 3810) to reform Federal Immigration Laws; and

Whereas: The pending legislation contains provisions known as employer sanctions which will penalize employers who knowingly hire undocumented workers as a means of curbing the entry of undocumented immigrants into the United States; and

Whereas: Employer Sanctions will place an undue burden on employers who would be required to become experts in recognizing valid immigration documents and will be subject to possible civil fines and/or criminal penalties if they mistakenly hire undocumented workers; and

Whereas: The added burden and cost to employers implicit in such sanctions will result in employment discrimination against United States Citizens and lawfully admitted immigrants of El Paso's Hispanic and other ethnic communities; and

Whereas: El Paso is an International City with a diverse and vibrant immigrant community; and

Whereas: El Paso is an International trading and tourist center that attracts many thousands of visitors annually and employer sanctions will have an adverse effect on this trade;

Therefore be it resolved, That the Mayor and City Council of the City of El Paso oppose passage of the Simpson-Rodino Immigration Legislation on the grounds that it will lead to discrimination against ethnic and immigrant residents of El Paso and that it will unduly burden the business people of El Paso.

RECOGNITION OF THOSE WHO ASSISTED IN THE ENACTMENT OF THE GOLDWATER-NICHOLS DEPARTMENT OF DEFENSE REORGANIZATION ACT OF 1986

HON. BILL NICHOLS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. NICHOLS. Mr. Speaker, when the Goldwater-Nichols Department of Defense Reorganization Act of 1986 passed the House last Wednesday, September 17, there was little time to recognize the work of numerous individuals who have contributed to the passage of this historic legislation. Consequently, I want to take this opportunity to express my appreciation to everyone who has assisted in the effort. Among those who deserve particular recognition are the following:

Gen. David C. Jones, USAF (Ret.), former Chairman of the Joint Chiefs of Staff, who first brought the need for reorganization to the attention of the Congress and who has contributed his time unselfishly for 4 years to the reorganization effort.

Gen. Edward C. Meyer, USA (Ret.), former Chief of Staff of the U.S. Army, who also had the courage to stand up and be counted in favor of reform even though it was a very unpopular position in the Pentagon.

Former Representative Richard C. White of Texas who responded to the calls for reform by General Jones and General Meyer and shepherded the first JCS reorganization bill through the House of Representatives.

Representative IKE SKELTON who has championed Department of Defense [DOD] organizational reform for years and was instrumental in the successful enactment of legislation in 1984 as well as this year.

The members of the Investigations Subcommittee of the House Committee on Armed Services, which I am privileged to chair, who have listened to more than 2,000 pages of testimony from over 100 witnesses on the subject of reform: Representative BEVERLY BYRON; Representative NICK MAVROULES; Representative DAVE MCCURDY; Representative JOHN SPRATT; Representative FRANK MCCLOSKEY; Representative LES ASPIN; Representative SAM STRATTON; Representative LARRY HOPKINS; Representative BOB STUMP; Representative JOHN KASICH; Representative LYNN MARTIN; and Representative WILLIAM CARNEY. Representative G. WILLIAM WHITEHURST and Representative BEN BLAZ, members of the Committee on Armed Services who, although not members of the Investigations Subcommittee, contributed their time and efforts to the hearings and other phases of the legislative process and encouraged the reorganization effort.

The 62 Members who cosponsored the House Department of Defense reorganization bill (H.R. 4370) and the 133 Members who cosponsored the Joint Chiefs of Staff reorganization bill (H.R. 3622).

The distinguished chairman, ranking minority member, and the entire membership of the Committee on Armed Services of the other body. Without their having spent months studying the structure of the Department of Defense and subsequently reporting a far-reaching bill there would not have been comprehensive Department of Defense reorganization legislation.

Chairman Philip A. Odeen, former Secretary of Defense Melvin Laird, Gen. Andrew J. Goodpaster, USA (Ret.), Mr. Barry Blechman, Mr. William J. Lynn (Executive Director), and the many other distinguished members of the steering committee and panels of the Georgetown Center for Strategic and International Studies [CSIS] defense reorganization study. The Defense Organization Project report, "Toward a More Effective Defense," provided a blueprint for meaningful reorganization legislation.

Dr. Theodore J. Crackel, former senior fellow and Director of the Defense Assessment Project of the Heritage Foundation.

Mr. David Packard, Gen. Paul F. Gorman, USA (Ret.), Dr. William J. Perry, Lt. Gen. Brent Scowcroft, USAF (Ret.), Mr. R. James Woolsey, other members of the President's Blue Ribbon Commission on Defense Management, Mr. Rhett B. Dawson (Director), and Ms. Robin Deck (counselor for legislative affairs).

Former Secretaries of Defense Harold Brown, Clark M. Clifford, Robert S. McNamara, Elliot L. Richardson, and James R. Schlesinger.

Representatives NORMAN D. DICKS and NEWT GINGRICH who have consistently supported the Investigations Subcommittee DOD reorganization efforts.

Numerous witnesses who have appeared before the Investigations Subcommittee, many more than once, and some at significant personal expense and sacrifice, including Maj. Gen. Theodore J. Antonelli, USA (Ret.), Hon. William K. Brehm, Mr. John M. Collins, Lt. Gen. John H. Cushman, USA, (Ret.), Gen. Russell E. Dougherty, USAF (Ret.), Vice Adm. Thor Hansen, USN (Ret.), Dr. Paul Y. Hammond, Hon. John G. Kester, Hon. Robert W. Komer, Hon. Lawernce J. Korb, Dr. Edward N. Luttwak, Hon. John L. McLucas, Adm. Thomas H. Moorer, USN (Ret.), Prof. Anthony G. Oettinger, Dr. Tom Peters, Dr. Robin B. Pirie, Dr. Donald B. Rice, Gen. Bernard Rogers, Mr. Richard C. Steadman, Hon. Stuart Symington, Adm. Harry D. Train, USN (Ret.), and Gen. John W. Vessey, USA (Ret.).

Lt. Gen. Edgar A. Chavarrie, USAF (Ret.), who advised the Investigations Subcommittee on the Joint Specialty provisions of the bill.

Mr. James R. Locher III, professional staff member of the Armed Services Committee of the other body, who was responsible for the staff effort in support of reorganization legislation and was study director for the report entitled "Defense Organization: The Need for Change."

Mr. Richard D. Finn, Jr., and Mr. Jeffrey H. Smith, professional staff members of the Armed Services Committee of the other body.

Mr. Hugh C. Evans and Mr. Robert W. Cover, gifted and dedicated Senate and House legislative counsels who are the de facto authors of the legislation.

Numerous individuals who have provided advisory and staff support to the Committee on Armed Services including Mr. Lawrence E. Adams, Maj. C. Kenneth Allard, USA, Mr. Frank A. Barnes, Ms. Barbara Brown, Mrs. Leah M. Chapla, Mr. Rudy F. de Leon, Mr. John J. Ford, Mr. Thomas P. Glakas, Mr. Isaiah Hardy, Mr. Rick Heartsill, Mr. William H. Hogan. Jr., Mr. Kim R. Holmes, Ms. Erie B. Jebeles, Mr. John F. Lally, Ms. Kathleen A. Lipovac, Mr. Mike Lofgren, Mr. William P. Mako, Dr. Franklin D. Margiotta, Hon. Russell Murray, Hon. Robert C. Moot, Mr. Warren L. Nelson, Mr. J. Benjamin Nye, Mr. Bruce D. Porter, Mr. Bill Quinn, Mr. Robert Rangel, Mr. John G. Schroeder, Mr. John V. Sullivan, Ms. Elizabeth Spina, Mr, Kenneth A. Steadman, Ms. Maureen Thibodeau, and Mr. G. Kim Wincup.

Mr. Speaker, although I have attempted to include on this list as many people as possible who deserve recognition, I am certain we have overlooked some who have contributed significantly. Consequently, I hope the list will serve as a reminder of the widespread support that we have enjoyed in bringing defense reorganization legislation to fruition.

RESOLUTION OF CHAMBER OF DEPUTIES OF NATIONAL CONGRESS OF ARGENTINA

HON. TED WEISS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. WEISS. Mr. Speaker, this administration's policies in Central America continue to earn our country the dismay and the anger of many of the peoples of the region. I commend to my colleagues' attention the following reso-

lution, which was approved by our counterparts in the Congress of Argentina:

RESOLUTION APPROVED BY THE CHAMBER OF DEPUTIES OF THE NATIONAL CONGRESS OF ARGENTINA

BUENOS AIRES, *July 31, 1986.*

Resolved, That the Chamber of Deputies:

Repudiates every form of foreign intervention in the national territories of Latin America no matter what reason may be invoked to jsutify it;

Expresses its concern to the Congress of the United States with respect to the vote to provide one hundred million dollars in aid to the "Contras";

Supports the judgment of the International Court of Justice in the Hague condemning the violation of the principles of non-intervention and national self-determination; and

Upholds the efforts of the Contadora Group and the Support Group to achieve a peaceful solution in the region.

INTERVIEW WITH PRESIDENT CEREZO

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. LAGOMARSINO. Mr. Speaker, in a recent interview, Guatemalan President Vinicio Cerezo called approval of aid to the Contras something that should remain under the historic responsibility of the United States. President Cerezo also denied that the United States had been trying to pressure his govenment into abandoning Guatemala's policy of active neutrality in Central America. The full report of the interview with President Cerezo follows:

PRENSA LATINA INTERVIEWS PRESIDENT CEREZO

(By Special Correspondent Lujis Baez)

GUATEMALA CITY, September 16 (PL).—Guatemala's President Vinicio Cerezo Arevelo today expressed the need to continue working through diplomatic channels to achieve a peaceful political solution to conflict in Central America. In Nicaragua, he said, armed confrontations continue between the counter-revolutionaries and the Sandinistas "and if we do not handle this correctly, it can turn into a generalised conflict". Cerezo, aged 43, gave Prensa Latina an exclusive interview as Central America celebrates the 165th anniversary of its independence from Spain.

In the event of an invasion of Nicaragua, the Guatemalan head of state said "we hope to maintain our active neutrality." The next move his government expects to take on the Central America conflict is "to step up diplomatic activity" to try and resolve some current differences, such as Nicaragua's charges against Costa Rica and Honduras before the International Court of Justice in The Hague. Naturally, Cerezo stressed "we should ask all countries to keep a respectful attitude and open dialogue to resolve any conflict".

The head of state was cautious on commenting on the United States' congressional approval of 100 million dollars, "for to preserve our neutrality, we do not like to comment on the internal decisions of any country". However, he added, the aid approval "is something that should remain under the historic responsibility of the United States". Cerezo also referred to the Contadora Group's role in trying to resolve the Central American conflict, but observed that ultimately those countries have felt "a certain lowering of spirit" in their attempts to continue working toward peace in the region. It is necessary that Contadora does not end its efforts to [word indistinct] an agreement mechanism in Central America to lessen the possibilities of tension, he stressed.

Cerezo denied the U.S. Government has been pressuring his country to abandon its policy of active neutrality in Central America and said that "so far, despite our position, the aid we requested has been given". Cerezo avoided discussing the motive of the recent trip U.S. special envoy Phillip Habib made to the region, although some observers believe the Ronald Reagan administration is seeking Guatemala's support for all-out aggression on Nicaragua.

TRIBUTE TO MR. REUBEN A. SNAKE, JR.

HON. HAL DAUB

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DAUB. Mr. Speaker, I take this opportunity to share some of the accomplishments of a great Nebraskan who was honored this week by the Nebraska Society of Washington, DC.

Mr. Reuben A. Snake, Jr., a native of Winnebago, NE, was presented with a Distinguished Nebraskan Award for 1986.

Mr. Snake serves as president of the Winnebago Tribe of Nebraska, chairman of the board for the Center for Indian Economic Development in California and is a member of the American Indian Economic Development Foundation in Washington, DC. In addition, Reuben has a distinguished history of educational service to American Indian youth, having served as a youth worker, a Head Start Director, and an educational director for the Sioux City American Indian Center and the Winnebago Tribe of Nebraska. Currently, he provides consulting services in the areas of tribal governance, cultural education, economic development, alcohol and drug abuse, and leadership training.

Mr. Speaker, I know my colleagues join in saluting Mr. Reuben Snake, Jr., for his accomplishments and efforts in making the future brighter, by serving Americas youth, our tomorrow, today.

FEDERAL HEALTH BENEFITS RELATING TO CLEFT LIP AND CLEFT PALATE

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HOYER. Mr. Speaker, cleft lip and/or palate is the most common form of any craniofacial anomaly. The disfigurement, which affects one white child per 800–900 births, and one black child per 1,500 births is not only emotionally draining, but also presents the family with a tremendous financial burden.

The care of the patients suffering from cleft lip requires extensive medical treatment including plastic surgery, dental/orthodonic work, and speech therapy. The rehabilitation of these patients although it sometimes lasts a lifetime, is both a remarkable medical process as well as an essential phase in the child's progression into a normal and productive adult life.

The severity of the financial responsibilities was investigated and addressed by the Maryland General Assembly. In 1982, the general assembly passed and the Governor signed H.R. 91, which mandates health coverage for cleft lip and/or palate, requiring all insurance companies in Maryland to cover the expenses related to the correction of this problem.

A similar type of coverage is necessary in the Federal Employee Health Benefit Plan. To provide insurance coverage for this long and costly reconstructive process would relieve the families of a great financial strain, and let them concentrate on the continuous emotional needs of their children. With proper medical care and attention, individuals with cleft lip and/or palate stand a better chance to confidently meet their full potential.

I have attempted to work this matter out administratively with the Office of Personnel Management with no success.

I have therefore today introduced legislation which will mandate health benefits and give Federal employees the same coverage as Marylanders currently receive.

IMPROVING RELATIONS WITH INDIA

HON. FRED J. ECKERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. ECKERT of New York. Mr. Speaker, I rise today to discuss changing opportunities for the improvement of relations between the United States and India. These opportunities are emerging as a result of policy changes since Indian Prime Minister Rajiv Gandhi assumed office after the tragic assassination of his mother, Prime Minister Indira Gandhi.

These opportunities for improving relations are discussed in an August 4 backgrounder prepared by the Asian Studies Center of the Heritage Foundation. This backgrounder makes a number of recommendations as to steps the Reagan administration could take to strengthen Indo-United States ties. I recommend this backgrounder to my colleagues which contains the following recommendations:

(1) Encourage the U.S. businesses to explore trade and investment opportunities with India and praise the economic reforms of Gandhi, urging him to further liberalize. Specifically, India should continue to lower tariff and nontariff barriers to imports and ease restrictions on foreign investment. These will spur domestic competition and improve the efficiency and productivity of Indian industries. New Delhi should consider devaluing the rupee to improve the competitiveness of Indian exports. A growing

trade deficit could create public and private sector pressures favoring renewal of market restrictions. If the U.S. were to increase economic assistance, it would help India through this transition period as it opens its markets to greater competition and aims at higher growth rates.

India also should check the growth of its huge and largely inefficient state-run industries and consider appropriate privatization measures. A good place to start is the energy industry, which currently absorbs the largest share of government expenditures.

India's tax reforms, which have already proved beneficial, should be extended. Simplifying the maze of special tax rules will increase administrative efficiency. Also, India's tax structure should be made more equitable. Agricultural incomes continue to be virtually untaxed, and salaried workers bear most of the tax burden. India should broaden its revenue base and allow for continued reduction of average tax rates.

(2) Ensure the smooth transfer of U.S. technology where appropriate. Reagan has made it clear that the U.S. will consider India's requests to buy technology that may have military applications. Those involved in the review process should expedite evaluation of India's requests.

(3) Foster improved Indo-Pakistani relations. Last year, a half dozen meetings between Prime Minister Gandhi and Pakistan President Zia ul-Haq had encouraging results. The two leaders pledged not to attack the other's nuclear facilities and agreed to participate in the new South Asia Regional Cooperative Association. The U.S. should urge the continuance of this dialogue.

(4) Emphasize to India that U.S. military assistance to Pakistan is designed to bolster that country's security in the face of a clear threat from the Soviet Union and also to form a part of U.S. efforts to aid Afghan freedom fighters and to press for the withdrawal of Soviet forces from Afghanistan. The U.S. should stress that, while the weapons conceivably could be used against India, Soviet domination of Pakistan would pose a much more serious danger to New Delhi.

(5) Continue pressing India on the Afghanistan issue. Indians admit privately that they oppose the Soviet invasion. Gandhi should endorse this view publicly. At the same time, the Indian government should use its good offices to urge Moscow to withdraw its troops from Afghanistan.

(6) Step up pressure on Pakistan to cancel its nuclear weapons development program.

(7) Continue efforts to stop Sikh terrorists from using the U.S. as a base of operations against India and Indians. New Delhi was very grateful when the FBI uncovered an assassination plot against Rajiv Gandhi during his visit to the U.S. last year.

U.S. strategic goals in South Asia are to secure the withdrawal of Soviet troops from Afghanistan, check the growth of Soviet influence in the region, prevent nuclear proliferation, and encourage the development of South Asian free market policies. Pivotal to the realization of these goals is the reductin of Indo-Pakistani tensions. Better relations between New Delhi and Islamabad would for the first time open the door to effective regional cooperation among South Asian nations and thus reduce the need for political, military, or economic dependence on the Soviet Union.

Improved Indo-U.S. relations also would serve these goals and promote the national interests of both countries. Closer cooperation between the world's two largest democracies would work to inhibit the Soviet Union's attempts to expand its influence in South Asia and elsewhere.

The mutually beneficial nature of U.S. trade relations with nations such as Singapore, Hong Kong, the Republic of China on Taiwan, and South Korea is well know. Expansion of New Delhi's economic liberalization program together with closer Indo-U.S. economic ties will bolster the efforts of India and its South Asian neighbors to achieve growth rates rivaling those of other Asian "economic miracles."

RELATIONS BETWEEN THE SIKH COMMUNITY OF INDIA AND THEIR GOVERNMENT

HON. RONALD V. DELLUMS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DELLUMS. Mr. Speaker, my district has many residents whose families came from the subcontinent of India, including Pakistan, India, and Bangladesh. Recently, I have been contacted by some of my Sikh constituents, who have discussed with me the continuing problem of the relationship between the Indian Sikh communities, and the Indian Government.

India was born in sectarian strife. When India was partitioned into Moslem Pakistan and predominately Hindu India, the Sikh homeland of Punjab was incorporated into India. Since the founding of the Indian state, the Sikh have been seeking some autonomy in Punjab.

The Sikh struggle has caused deep frictions. Over 2 years ago, the holiest Sikh shrine was attacked and the Punjab isolated from the outside world.

Charges of government brutality and religious persecution against Sikhs have surfaced across India. These claims have been substantiated by noted Indian jurists and human rights advocates.

Mr. Speaker, I have long been a person concerned with human rights and I am alarmed by the stories coming out of India concerning persecution of Sikhs.

I urge the Indian Government to ensure that human and political rights of the Sikhs are protected.

RETROACTIVE ELIMINATION OF RETIREMENT RECOVERY IS WRONG

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. BIAGGI. Mr. Speaker, I want to express my strong opposition to a particular provision of the tax reform conference agreement, which would retroactively eliminate the 3-year basis recovery rule that allows public servants to recover their contributions to a mandatory participation pension plan.

It is disturbing to me that while many of the changes in the tax reform package—like the consumer interest deduction—would be phased in over a period of time, elimination of the 3-year basis recovery rule would occur retroactively to July 1, 1986. Simply put, we are changing the rules in midgame and not allowing anyone who had developed a game-plan based on the old rules to stop playing.

For many years, some 20 million Americans have made financial plans under the fair assumption that they would be able to recover their mandatory retirement contributions during the first 3 years after retirement. After all, that was the rule when they decided to become a public servant. But now, those same people are being told to forget those plans because Congress had decided to change the rules and nobody can escape this penalty, no matter how much financial hardship it may cause.

This new law will penalize public servants in amounts ranging from $5,000 to $30,000. That is a very sizable loss. For some, it may mean not being able to pay for a child's college tuition; for others, it may mean having to extend their current employment or to find new work just to make ends meet. Either way, it's wrong.

Our Nation's public servants did not expect to get rich when they decided to become police officers, firefighters, teachers or government workers. However, neither did they expect to be treated so shabbily when they neared the end of their many years of devoted public service.

Mr. Speaker, I do not agree with the elimination of the 3-year basis recovery rule, in principle. Yet, I am especially concerned that we would apply that change on a retroactive basis. At least, let's give those who cannot afford this severe penalty the opportunity to avoid it, if they are in a position to do so. That is the fair and responsible course of action and the one I will work toward implementing.

This is no trivial matter. The inclusion of this single provision forces me to rethink my position on the entire tax reform package. I know many of my colleagues share this dilemma, largely because they, too, have heard from hundreds of their constituents who will be severely penalized as a result of the retroactive repeal of the 3-year basis recovery rule. Just last week, the Halls of this Congress were filled with countless members of the Fraternal Order of Police, our Nation's largest law enforcement organization, who were lobbying against this particular provision. Seldom do we see such a loud and animated display of public opposition to a single legislative proposal. When we do, it is usually for very good reason.

Mr. Speaker, this public outcry cannot be ignored. It deserves a suitable response and I am hopeful that separate action will be taken to correct this glaring flaw in the tax reform package.

HARVEST OF DESPAIR

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mrs. JOHNSON. Mr. Speaker, I rise to recognize the efforts of the many concerned

Connecticut organizations, like the Connecticut Friends of the Ukraine, and the Ukraine Political Action Committee for their indefatigable effort and dedication in bringing the "Harvest of Despair," the 1985 gold medal winner at the Houston Film Festival, to public television on September 24, 1986. The "Harvest of Despair" is a substantive, and eloquent film testament to a lost generation of proud Ukrainian people brutally silenced by this famine, which was coldly, calculatedly, orchestrated by the Soviet Union under the iron-fist of Josef Stalin.

As a Representative of Connecticut, it is with great pride that I applaud the efforts of these concerned individuals in my district, who, through their commitment, will make the public aware of this tragedy, whose recognition is long overdue. I appreciate their loaning me a copy of the tape and enabling me to join with them in urging its airing. The "Harvest of Despair" is a haunting, evocative plea to the conscience of all mankind. In remembering this heinous act of genocide carried out against a proud and resourceful people, we hope not only to honor those who were its victims but to prevent such organized atrocities in the future.

One very sobering aspect of this event is the extraordinary degree of success the Soviet Union enjoyed in carrying out a campaign of misinformation and deceit on Americans of standing who sought the truth about allegations regarding the Soviet role in orchestrating this famine. It is imperative that we allow our past experience with the Soviets, such as this, to serve us well in forging realistic, mutually verifiable agreements with them in the future.

I urge all my colleagues, and all concerned Americans to view this film on September 24, 1986 to appreciate a peoples' admirable struggle against a horrific state sponsored crime, to recognize the power of misinformation and be vigilant against it, to understand the depths of man's inhumanity against his brother, and to realize the importance of remaining, both symbolically and literally, a vital citadel of hope and freedom for a new generation of oppressed peoples of all nationalities across the world.

STEEL IMPORTS SHOULD BE CURBED

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. BEVILL. Mr. Speaker, I rise today in support of a bill that will impose a 70-percent limit on all steel imports from Canada, Sweden, and Taiwan if those countries fail to reach a steel voluntary restraint agreement within 90 days.

We are having serious problems with rising imports of foreign steel and with countries attempting to circumvent the steel VRA Program. Steel imports from these three countries in particular have become a problem apparently recognized by the U.S. Trade Representative. He has called for consultations with each of these countries. This bill is designed to stop to those problems.

I am deeply concerned about the rising tide of foreign steel imports because there are so many steelworkers in my district who are out of work.

We set up the Voluntary Restraint Agreement Program to give our domestic steel industry time to modernize to be more competitive. We have to make this program work.

Steel imports hit a record 31 percent in 1984. Presently steel imports are more than 23 percent of the U.S. market and in recent months, they have gradually increased to nearly 27 percent.

This bill will reduce steel imports by 1.4 million tons. It will also prevent countries from going through non-VRA countries to illegally dump steel in the United States. If, for example, Japan ships steel for finishing to a country without a VRA with the United States, that allocation of steel would be counted against Japan if it is shipped to the United States.

Our domestic steel industry is in crisis. We have seen one of our largest steel producers, LTV Corp., file for bankruptcy, steel production and employment has dropped off drastically.

Despite these problems, I believe the Voluntary Restraint Agreement Program can work effectively. But we have to enforce it. We have to be on the alert for potential problems and seek solutions for those problems. That's what we're doing here today.

We want to stop these foreign countries from ripping us off and stealing American jobs.

NATIONAL WOMEN IN SPORTS DAY

HON. OLYMPIA J. SNOWE

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Ms. SNOWE. Mr. Speaker, I am introducing a resolution today which would designate February 4, 1987, as "National Women in Sports Day."

The history of women in sports is rich and long. Over the last 15 years, the level of women's participation in sports and physical conditioning programs has dramatically increased. However, there has been little national recognition of the significance of women's athletic achievements. By drawing attention to women in sports, we can recognize women athletes who serve as examples of the avenues available through which women of America may develop physical fitness, self-discipline, initiative, confidence, and leadership skills.

National Women in Sports Day will recognize the importance of women's athletic achievements to our country. Today women represent 30 percent of all college student athletes, and over 10,000 of these women attend college on athletic scholarships. However, the athletic opportunities for male students at collegiate and high school levels still far exceeds those for female students. It is time to recognize these inequities still exist, while highlighting how far women have come in their athletic achievements.

I invite my colleagues to join me in recognizing our women athletes by cosponsoring this resolution.

A TRIBUTE TO GENE SNYDER

SPEECH OF

HON. JIM ROSS LIGHTFOOT

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 18, 1986

Mr. LIGHTFOOT. Mr. Speaker, I am honored to have this opportunity to pay a tribute to a good friend and respected colleague, the gentleman from the State of Kentucky, GENE SNYDER.

I haven't yet completed a full term in this body, but that's been long enough for me to become familiar with the value of GENE's leadership, particularly with respect to the Committee on Public Works. The Public Works Committee saw a fair amount of somewhat controversial legislation pass through this session—Superfund, the Clean Water Act, the omnibus water resources bill, to name a few. All of these are issues that normally would divide a committee on a number of issues, but hardly ever did that happen on Public Works. What made that possible was GENE SNYDER's ability to craft a compromise with the majority without sacrificing the minority position in the process. I don't know of a committee in Congress that is more consistently unified than our committee, thanks largely to GENE.

As only one junior Member on a committee of 52 members—"that's more than half the Senate!" I remember hearing GENE proclaim one time—never have I felt like I was being treated unfairly or that my concerns were not being addressed. Although he's a strong leader who sticks to his principles, GENE has always been understanding on those rare occasions when our interests conflicted.

GENE has always been available when I needed advice. He also has gone out of his way to see that I've met a number of people that are important to our committee work.

Always ready to either hear or tell a good story, GENE SNYDER is a good friend and a true Kentucky gentleman. I'll miss him personally and this body will miss him as well.

IN CELEBRATION OF MACOMB COUNTY'S BLIND AWARENESS MONTH

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. HERTEL. Mr. Speaker, it is estimated that approximately 1.4 percent of the people in every community suffer from some type of visual impairment or are unable to hold a book. At this time of year, so closely associated with fall foliage and schoolbooks, this fact is, indeed, a startling realization. There exists in our Nation today the need to further educate the public on such handicaps and help make the visually impaired aware of the resources avilable to them. I, therefore, ask my colleagues to join me in honoring the associations and the Board of Commissioners of

Macomb County, MI, for declaring the month of September "Blind Awareness Month."

Approximately 10,000 citizens of Macomb County are unable to read regular print or hold a book. Fortunately, with new technology and groups such as the National Library Service for the Blind and Handicapped, this segment of society need not forgo the immeasurable joys of literature. Macomb County has exhibited outstanding concern and assistance for the visually handicapped. Its Library Support Group for the Blind meets twice monthly, offering a range of services and support and, along with other service organziations in Macomb County, helps to disseminate information on the newest technology available to the visually impaired. However, as the Macomb County Board of Commissioners point out in their resolution, there is a constant need to broaden these services and make every effort to reach all those who could benefit, as well as educating the general public on the problems and needs of the blind.

Toward this end, a wide range of events have been scheduled during September at the Macomb County Library. Both Jim Neubacher, a columnist for the Detroit Free Press; and Margaret Smith, author of "If Blindness Strikes: Don't Strike Out" and counselor at the Detroit Receiving Hospital, Visually Handicapped Services, will speak, offering their encouragement and insights to both the seeing and the sight impaired alike. Later in the month, a special exhibition of aids and appliances for the sight impaired will be offered by many of the community's leading organizations.

Blind Awareness Month in Macomb County is an outstanding undertaking that will undoutedly reach a wide spectrum of the public in Macomb County, helping to inform and educate us all to better understand the problems of the sight impaired. I salute this fine event and the groups that have sponsored it. I encourage communities everywhere to follow this fine example.

IRISH NEUTRALITY IN THE AMERICAN INTEREST

HON. JOSEPH J. DioGUARDI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. DioGUARDI. Mr. Speaker, on February 20, 1985, I read into the CONGRESSIONAL RECORD an article entitled "On American Interests in Ireland" in which it was pointed out that the troubles in Ireland, and specifically in those six of the divided Irish Province of Ulster's nine counties known as Northern Ireland, are a matter of concern to the United States. The establishment of a just and lasting peace in all Ireland is necessary for stability on that island which lies beside the jugular vein of commerce between Europe and North America, and, properly understood, should be an American issue. The necessary prerequisite for that stable peace is the reunification of Ireland under a sovereign, independent Irish Government.

In my article the issue of Irish participation in NATO was raised among many other issues, including the potential for Soviet KGB meddling in any unstable political situation. The United States is currently on friendly terms with all of the principals of this unhappy conflict, most especially with the United Kingdom. A true friend does not encourage error, but rather appeals to the other's better nature. A change in British policy must be encouraged toward the orderly, phased return to Irish sovereignty of the entire island of Ireland, her islands and territorial seas.

As a member of the Ad Hoc Congressional Committee for Irish Affairs I have actively sought in many quarters to build a greater understanding of American interests in Ireland. Among those with whom I have worked closely is the Honorable Andrew P. O'Rourke, county executive of Westchester County, NY. Mr. O'Rourke's career of public service, in addition to his elected offices in civil government, includes over 30 years of military service—active and reserve—from infantry private in New York's "Fighting 69th" through Air Force active duty aviation to international law and emergency management as a captain in the U.S. Naval Reserve. In studying the question of Irish membership in NATO, the primary issue is not the relative merits or demerits of such a military alliance, but the fact that a partitioned Ireland is not free to make the choice.

Andrew O'Rourke has thought deeply on the subject of Irish neutrality and produced a most insightful article on the subject which I offer here for the consideration of this House and particularly for the Committee on Foreign Affairs:

IRISH NEUTRALITY IN THE AMERICA INTEREST

(By Andrew Patrick O'Rourke)

For years it has been the conventional wisdom among Irish Americans, and particularly among those of us who remember the Second World War, to lament Irish neutrality in that war and in the post-war period. At the famous 1963 meeting between Presidents John F. Kennedy and Eamon de Valera, Kennedy is reputed to have raised the question of Irish participation in NATO, to which de Valera is purported to have replied that such an alliance could not even be considered by a divided Ireland. It is true that, unlike the English attitude quintessentially expressed by Sir Winston Churchill after the war, the Irish American perception is one which laments the Partition of Ireland and the occupation of part of the Irish national territory by the British as the cause not only of the continuing "troubles" in those six of the divided Irish province of Ulster's nine counties known as "Northern Ireland" but also as the cause of that presumably lamentable Irish neutrality.

Recent scholarship and the benefit of some forty years of hindsight since V-E Day suggest that there were some very real advantages to Irish neutrality in particular during that conflict. It is obvious that there should be some neutral ground where belligerents can meet in a non-belligerent manner to seek an end to the war. In the case of Irish neutrality, historian Robert Fisk in "In Time of War" deals with the matter of some 521 seamen of all nationalities (and a good many airmen as well) who were rescued by neutral Irish vessels; many others as well found a safe haven in neutral Ireland, with Allied internees "escaping" to Britain after a respectable "rest period" and Germans enjoying week-ends in Dublin. The German war cemetery at Glencree in the Dublin mountains offers mute testimony that some of the German fighting men who reached Irish shores in two world wars were beyond any help other than a Christian burial; yet most survived on both sides.

It is also true that Irish neutrality (or the lack of conscription) did not prevent significant numbers of Irishmen and Irishwomen from joining the British and American forces in two world wars, my own regiment, the "Fighting 69th," is a premier example of that. There were more Irish volunteers than could possibly have been enlisted through conscription—as the Irish reaction to the British conscription act in 1918 demonstrated (there was no conscription even in "Northern Ireland" at any time during World War II).

There is the apocryphal story of the RAF bomber on a night-time raid over Berlin. Its crew was made up completely of Irishmen who had taken the boat from Dublin to Holyhead and then sought out the recruiting sergeant who would promise them the opportunity to fly in combat; none of them was disappointed in that respect as they flew through the flak. Being Irish, they passed the time arguing Irish politics over the intercom. At one rather heated point in the discussion, with German shells bursting all around, the tail gunner interrupted proclaiming, "I don't care what you say about de Valera, . . . at least he kept us out of the war."

What then are the Allied arguments for an end to Irish neutrality and for the integration of Ireland into NATO, concomitant with her integration into the European Economic Community? Ireland lies astride the sea lanes through which Europe, and even, Great Britain must be reinforced and resupplied in the event of a crisis. We have no less an authority for this judgment than the former Chairman of the NATO Military Committee, Admiral of the Fleet Sir Peter Hill-Norton (No Soft Options: The Politico-Military Realities of NATO, 1978). It should be obvious that Ireland would make the ideal base for anti-submarine patrolling and for air search radars to protect Britain from any backdoor attack by Backfire bombers or sea-launched missiles. Add to this the greater ease with which Irishmen might be presumed to be induced into joining a nominally Irish army rather than seek foreign military service.

The Partition of Ireland, as has been pointed out however, continues to make Irish membership in NATO a domestic political impossibility for the simple reason that part of the Irish national territory remains occupied by forces of a member of the Alliance.

IRISH INTERESTS

That it is in the Irish interest to remain neutral should be obvious. For one thing the fractured economy of a fractured Ireland could not support a military establishment of the magnitude which might be required to fully honor any Irish NATO commitments. A proposal to join NATO now would be as politically divisive to Ireland as was the question of American entry into World War II divisive to the United States before the attack upon Pearl Harbor. The potential benefits of NATO membership are further minimized in view of the potential exposure to nuclear attack in case of great-power conflict, as well as the fact that the NATO nuclear umbrella already protects Ireland in much the same manner as American military power protects Japan. Thus Ireland like Japan, remains free of the

burden of devoting a larger portion of its GNP to military purposes.

There is another aspect to Irish neutrality which is quite often completely overlooked. Ireland today, despite her relatively small population, is mounting a massive missionary effort directed primarily at the so-called "Third World". As is shown by Desmond Fennell in "Beyond Nationalism," this is a lay missionary effort as well as a religious activity. Ireland's neutrality not only enhances this missionary effort, but, as Father Sean McManus has pointed out, in some cases is what makes Irish missionaries acceptable at all.

While it may be very altruistic for the United States to recognize that Irish neutrality has intangible benefits for the whole world, when it comes to matters perceived to be of national security altruism is sometimes difficult to come by—witness ancient "democratic" Athens' attitude to the desire of Melos to preserve her neutrality outside the Delian League, or modern "democratic" England's insistance of retaining at least a part of Ireland contrary to the expressed wishes of the overwhelming majority of the people of Ireland.

A POSITIVE GOOD

One of the lessons of Irish neutrality in the Second World War is not merely that it was tolerable, but that it may very well have been a positive good, even in a war to save civilization from Nazi barbarism. Irish neutrality, even in a confrontation with atheistic Communism, may similarly be a positive good in the East-West equation, especially in so far as the United States is concerned.

There are literally thousands of American military dependents resident in Europe at any one time. Add to that other Americans living abroad and the ubiquitous American tourist and you have a problem of staggering dimensions in the event of the sudden onset of any East-West crisis. To complicate the matter even further, the normal carriers might not be available to ferry Americans safely back home, American and other NATO flag carriers having been mobilized for the military mission of the reinforcement and resupply of the American and other NATO forces in Europe. It is to the neutral carriers such as Aer Lingus that the job would fall to carry Americans to that neutral safe-haven on the periphery of Europe—Ireland—and thence, perhaps again via neutral carrier, home.

The argument that Ireland is needed as an anti-submarine warfare or early-warning base has been overtaken by technology. The technology of modern anti-submarine warfare and of the Nimrod airborne electronic warfare program which, as soon as the British contractors "can get their act together," should provide complete coverage to the west from bases in Scotland, coverage analogous to that provided elsewhere by the US Air Force AWACS aircraft. Technological considerations aside, moreover, there is realistically no more danger of the Soviet Union using Ireland as the staging base for an invasion of England than there is of a return of the Spanish Armada, Napolean Bonaparte, or any other bogeyman in the English historical consciousness.

IRONY

The irony of the whole question of Ireland's future satus is that while on the one hand a divided Ireland might never be able formally to join the North Atlantic Alliance and thereby contribute directly to our collective military security, it is also a reunited, sovereign, stable, Irish Ireland which offers the brightest prospect as a neutral to be the safe-haven which our people would need, and to be the neutral, best situated by geography on the shores of the North Atlantic, to contribute to the peace process.

The United States has a definite interest in the establishment of a just and lasting peace in Ireland and in the corolary reconciliation of the "British" and Irish peoples. American interests go beyond the fact that we have deep and abiding ties of blood and affection with all parties to the tragic conflict which has erupted from the Partition of Ireland, American interests—and, properly understood, NATO and even British interests—extend to a stable, sovereign, reunited Ireland, free to be Irish, free even to be neutral.

Note.—Andrew Patrick O'Rourke is the County Executive of Westchester County, New York. Currently a Captain in the United States Naval Reserve, he previously flew as a US Air Force navigator after graduation from the Fordham University Air Force ROTC program; his first military service was in the 69th New York Infantry. A student of military history who has served at the US Naval War College, O'Rourke is also an author of historical novels; his most recent, "The Red Banner Mutiny," has been published recently by Bantam.

THE INSPIRATION OF AVERELL HARRIMAN

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. BRYANT. Mr. Speaker, in the pantheon of great Americans, few heroic figures will ever loom as large as Averell Harriman.

I will not belabor the accomplishments of this man—Governor, Ambassador, statesman, counselor to Presidents, and to humble Members of Congress like this one.

Averell Harriman was, above all, a decent human being who devoted his life and the resources—material and intellectual—that he was blessed with putting America first and making the world secure and peaceful.

He gave inspiration, support, and encouragement to Congressmen like JOHN BRYANT.

He was a man of taste and discernment, of passionate opinion and quiet diplomacy.

We mourn Averell Harriman's passing from our lives, but we celebrate the decades he spent among us teaching and working, advising, and counseling.

Although Averell Harriman stands with Jefferson, Lincoln, Roosevelt, Truman, and a handful of others who have contributed extraordinarily to our Nation, his memorial will not be a monument of stone, but a monument of good works and the inspiration that his example will continue to breathe into those of us who choose careers in public service.

BILL TO AMEND STEEL IMPORT STABILIZATION ACT

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. SCHULZE. Mr. Speaker, I join my colleagues in rising in strong support of legislation introduced today which amends the Steel Import Stabilization Act.

In 1984, our Nation enacted into law a steel import program based on a series of voluntary restraint agreements with steel exporting nations. The major goals of the program are threefold: To stop the flood of unfair steel imports; to set reasonable limits on the level of steel imports; and to provide a stable trade environment for one of our Nation's most important manufacturing sectors.

While there has been progress in achieving these goals, it has been insufficient in the final analysis. Yes, steel imports into this country have declined, but not nearly enough. Indeed, steel imports continue to swallow up more than their fair share of the market and exceed the President's established import penetration rate by 13 percent. At the same time, foreign steel products continue to be dumped and unfairly subsidized.

Clearly, tougher action must be undertaken to make the program work.

Above all, we must conclude additional bilateral voluntary restraint agreements with the three major steel exporting nations that so far remain outside of the VRA Program—Canada; Sweden; and Taiwan. It doesn't make any sense at all to have three countries upset a complicated, elaborate series of 18 voluntary restraint agreements. Until they formally agree on limiting their steel exports to the United States, the whole steel import program will continue to be gravely undermined.

Despite a good-faith effort of the administration to conclude VRA's with Canada, Taiwan, and Sweden, none are forthcoming. Thus, it's up to Congress to tell these countries that we will no longer tolerate their refusal to negotiate on steel and that we will take the necessary action to convince them that, like other steel exporting nations, they too cannot expect an ever expanding share of our market.

Concern with the lack of formal steel arrangements with Canada, Taiwan, and Sweden is based on alarming facts.

Canada, for example, is the second largest steel exporter to the United States. I understand that we are in the midst of free trade negotiations with our northern neighbor, but we need immediate action on steel.

Sweden's specialty steel industry continues to benefit from massive subsidy programs, as well as overwhelm the United States market for these goods. Indeed, Sweden's specifalty tubing imports have increased by 45 percent during the first 6 months of 1986 since the same time last year. Such unharnessed and unfair growth is devastating our Nation's speciality steel industry.

Taiwan also shares in the blame for undermining the steel import program, with steel ex-

ports to the United States more than doubling over the last year.

The legislation which I and many of my colleagues have introduced today will impose needed discipline on these countries and will ultimately improve the effectiveness of the steel import program.

Among other provisions, it calls upon the President to Conclude VRA's with Canada, Taiwan, and Sweden. If, after 90 days, the President is unsuccessful, then mandatory quotas will be imposed. I hope that we do not have to resort to unilateral action, However, it may be the only alternative if recent events are any indication.

I urge each and every one of my colleagues to support this legislation for it addresses an area of paramount importance to the economic health of our entire Nation. We cannot under any circumstance permit the demise of our Nation's steel industry without inflicting irreparable harm on the rest of the country.

TRIBUTE TO THE HONORABLE IRVING R. KAUFMAN

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. GREEN. Mr. Speaker, I rise to pay tribute to my constituent, Hon. Irving R. Kaufman, on the 25th anniversary of his appointment as a judge in the U.S. Court of Appeals. After 37 years as a Federal judge, at the age of 76, he has the longest service of any Federal judge.

Judge Kaufman has had a long and distinguished career. He was a special assistant to the U.S. Attorney General in charge of investigating lobbying, and as a result of his efforts, there was established a permanent unit on lobbying for the Department of Justice.

Judge Kaufman has participated in and chaired numerous commissions and committees. He was a U.S. delegate to the second U.N. Congress on Prevention of Crime and Treatment of Offenders and a member of the Conference on Anglo-American Legal Exchanges. He was a member of the Executive Committee of the U.S. Judicial Conference from 1975–80, and most recently, in 1983 was appointed Chairman of the President's Commission on Organized Crime.

Fortunately, Judge Kaufman has no desire to retire and we can look forward to many more years of his dedicated public service. Please join me in honoring Judge Kaufman.

GRAMM-RUDMAN-PAPANDREOU

HON. CHARLES WILSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. WILSON. Mr. Speaker, I would like my colleagues to be aware of an article that appeared in the Wall Street Journal, September 10, 1986.

GRAMM-RUDMAN-PAPANDREOU

As we warned, Congress came back. Within a month before it recesses again to get on with reelection campaigning, some minor matters remain. There's tax reform, Supreme Court nominees and, in theory, the budget.

Theory only, because Congress has transformed the budget into a permanent continuing resolution—continuing irresolution is more like it. Those busy congressmen haven't got around to passing any of the 13 annual appropriations that make up the budget. They won't either before the recess. They will pass another omnibus resolution.

Congress pretended to solve all of this with Gramm-Rudman, trying to threaten itself into responsibility with "across-the-board" budget cuts unless its spending met certain guidelines. Naturally, it then proceeded to protect all its own excesses. Across-the-board budget cuts in the bloated Pentagon, for example, should not involve closing any bloated bases in bloated congressional districts. In other words, Congress set about using Gramm-Rudman to further erode the remnants of discipline and coherence in the budget process.

As an example of how the process works, take foreign aid. President Reagan proposed $15 billion for foreign aid, but the House Appropriations Committee approved $13 billion, 10% below last year's amount, in order to meet its Gramm-Rudman goals. Then the committee "earmarked" certain countries for big increases, using up about $6 billion. The lucky winners are Israel, Egypt, Pakistan and Northern Ireland.

The other allies expect to have their aid cut by around half. Under this plan, El Salvador will lose $76 million, Costa Rica $44 million, Honduras $28 million and the Philippines $54 million. But the chief victim will be Turkey, which had been the third largest recipient after Israel and Egypt. Turkey got $735 million for 1986 (almost all military aid). Under the Appropriations Committee plan it will be lucky to get $400 million—less than half what President Reagan proposed.

Turkey is a big aid recipient because it has NATO's second-biggest military force. No one doubts that Turkey pulls its defense weight. It borders five big troublemakers: the Soviet Union, Iran, Iraq, Syria and Bulgaria. The Soviet Union coverts the warm-water route out of the Black Sea through the Bosporus and Dardanelles, a channel Turkey controls. The raid on the Istanbul synagogue is a reminder that there are forces that resent Turkey's strong commitment to the West. In strictly military terms, aid to Turkey is among the most cost-effective spending in the Western defense effort.

In Congress, though, spending $10 in aid to Turkey costs another $7 in aid to Greece. This 7:10 formula, adopted after the war over Cyprus, is bizarre considering the Balkanization of Greece under socialist Andreas Papandreou. The former Berkeley professor refuses to hold military exercises with Turkey or upgrade nuclear weapons for NATO forces in Greece. This ratio and Mr. Papandreou's pacifism have helped Greece amass $1 billion in unspent U.S. military credits. Efforts to maintain the 7:10 ratio don't help Greece; they only hurt Turkey.

In short, the House has used the threat of Gramm-Rudman to strip out the parts of the foreign-aid bill that will do the most to advance American security interests, such as aid to Turkey, El Salvador or the Philippines. But it has protected the parts of foreign aid that purely advance domestic ethnic politics, the gifts to Greece and Northern Ireland. The whole reason Congress can't write a budget is that its members represent narrow and often entrenched constituencies, and it has organized itself to give each narrow interest a veto. The only solution is to instill some discipline, and only the executive branch represents a broad enough constituency to provide it.

Faced with the corruption of Gramm-Rudman on the foreign-aid issue, OMB Director Jim Miller III sent a nasty letter to Rep. David Obey (D., Wis.), chairman of the appropriations subcommittee on foreign operations. Mr. Miller said that this "micromanaging of outlays" was irresponsible, and threatened a veto. Rep. Obey says he opposed Gramm-Rudman's budget cuts in the first place. The proposed foreign-aid package will come up before the full House in the next few weeks, probably around midnight on a Friday. The Senate will pass its foreign-aid bill and the two will be reconciled, probably on the last day of the session around 3 a.m. President Reagan still doesn't have the line-item veto.

IMMIGRATION LEGISLATION

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, January 25, 1986

Mr. RICHARDSON. Mr. Speaker, as the 99th Congress draws to a close, we find ourselves once again facing action on a comprehensive immigration bill. The House may soon be considering legislation which will have a decisive and immediate impact on the domestic economy along the United States-Mexican border; in the Southwest; and in the urban areas of our country. This legislation will also have an impact on the bilateral relations which the United States has with our most important neighbor, Mexico.

Some of my colleagues, unfamiliar with the legacy of economic development patterns in the American Southwest, may be voting on the legislation with only a passing knowledge of the region's history and background. I would like to bring to their attention a publication recently produced by the League of United Latin American Citizens [LULAC], one of the Nation's most venerable Hispanic membership organizations.

Entitled "Immigration To The United States From Latin America: Past and Present," the 40-page booklet traces the history of immigration reform in the United States and analyzes its impact on hemispheric migration. I especially recommend the booklet's second section, "The Special Case of Mexico," which examines the peculiar symbiotic relationship between Mexican labor and American business that developed in the Southwest during the rule of Mexican President Porfirio Diaz (1876–1910).

This section explores how the United States' policy of alternately encouraging or suppressing the migratory flow in the first four decades of this century reflected the push and pull of internal politics. A large portion of this section looks at the structure and legacy of the "Bracero Program," an unprecedented bilateral agreement first signed during World War II that recruited temporary migrant laborers from Mexico to work in United States agriculture.

"The Special Case" also examines the reasons why domestic political forces in the United States are split on the value of Mexican labor in our economy and why agreement on how migration between the United States and Mexico should be controlled is so difficult. I urge my colleagues to read this paper as they formulate their stand on pending immigration legislation.

The text of "The Special Case of Mexico" follows:

II. THE SPECIAL CASE OF MEXICO

The first people of European ancestry to settle in what is now the Southwest United States were from Spain. Moving northward from the colonial capital of New Spain at Mexico City, the Spanish gradually founded a series of isolated, sparsely-populated settlements in an immense territory stretching from Texas to California. Santa Fe, in current-day New Mexico, was founded in 1610; Albuquerque in 1706. The settlements in Texas date from the same period: El Paso was founded in 1659, San Antonio in 1718. California settlements, enormous distances from the capital, were founded last: Monterey in 1769 and Los Angeles in 1781. These "mission" settlements, with administrative, religious and military functions, remained part of the colonial Spanish empire until Mexico's independence from Spain in 1821. Control of these and many other settlements then passed to the Mexican government.

Tension between Mexicans and American settlers moving west twice exploded into war in Texas and in what is now the southwest United States. In 1836, American settlers fought and won independence for Texas. Texas became the twenty-eighth state of the union in 1845.

In 1846, war broke out between the United States and Mexico. Although the initial spark of the conflict was aggression alleged by President James K. Polk to have been committed against American citizens by Mexican troops in disputed terrritory between the Nueces River and the Rio Grande in what is now south Texas, the war gave ardent American expansionists the excuse they were seeking to seize Mexican lands from Texas to California.

Racked by decades of political factionalism, competing centers of regional control and civil war after the collapse of Spanish authority, the disunited Mexicans were routed by well-armed and disciplined American troops. In the 1848 Treaty of Guadalupe Hidalgo, the government of Mexico was forced to cede all or significant parts of the current-day states of California, Nevada, Utah, Colorado, Texas, Arizona and New Mexico. Under terms of the treaty, Mexican citizens in the lands conquered by the United States became American citizens if they failed to leave the territory within a year. Only about 2,000 of the 77,000 Mexicans chose to leave.

In the 1853 Gadsden Purchase, Mexico sold land that now lies in southern New Mexico and Arizona to the United States for $10 million. The border of 1853 remains the border that divides the United States and Mexico today.

As Americans in the Southwest increased in population and power, the new border with Mexico came to denote a limit on the expansion of American culture. But the border could not erase the historic ties between the region and Mexico. For the Mexican citizens of the Southwest who passed to reside in the United States after the events of 1836, 1848 and 1853, for their Mexican-American descendants and for many other residents of the Southwest, the border with Mexico was and is, in the words of historian Theodore S. Beardsley, Jr., "a political division that artificially bisects a single cultural unit."

Migration from Mexico to the United States was little noticed in the lightly populated Southwest of the late nineteenth century. According to Manuel Garcia y Griego, author of "The Importation of Mexican Contract Laborers to the United States, 1942-1964: Antecedents, Operation, and Legacy," the roots of twentieth-century Mexican migration to the United States stem from the thirty-four year rule of Mexican President Porfirio Diaz (1876-1910). Diaz's agricultural policies favored large landowners at the expense of the Mexican peasantry; many peasants lost their land and were forced to look for work elsewhere. His industrialization policies, linked to American mining interests, ushered in an expansion of railroad lines between the United States and Mexico, facilitating transportation between the two countries. With the growth of industry and agriculture in the American Southwest, with Mexican labor readily available, and with transportation links increasing, Mexican workers began to go to the United States to look for work. Entering the United States without paying a head tax imposed in 1882 was illegal, but the law was not enforced along the border.

The passage of the literacy test for immigrants in 1917 over the veto of Woodrow Wilson added another restriction to block the free flow of laborers northward from Mexico. However, the literacy test restrictions were almost immediately rescinded for Mexicans. In 1918, with the joint approval of the Commissioner General of Immigration and the Secretary of Labor, Mexican workers were exempted from the literacy test restrictions, from earlier laws forbidding the admission of contract laborers, and from paying the head tax. According to Gilberto Cardenas, author of "United States Immigration Policy Toward Mexico: An Historical Perspective," the 1918 decision represented the "first successful attempt by growers and other industrialists, to gain governmental approval permitting the importation of Mexican labor."

The National Origins Law of 1924 placed no quota restrictions on immigrants from the Western Hemisphere. While the State Department feared that the interests of "Pan-Americanism" would be damaged were a quota imposed, agricultural business interests in the Southwest argued that because of Mexico was a source of cheap and abundant labor, the exemption of Mexico from the quota restrictions actually favored America's economic development. The power of the agricultural interests was the key to winning the exemption of Mexicans and Latin Americans from the 1924 legislation. According to Thomas Muller, author of "The Fourth Wave," a study of current immigration trends in California, growers and their Congressional supporters had a decisive influence on the legislation. Muller says that "their political strength . . . could have delayed and probably prevented passage of the immigration bills of the 1920s and Mexicans not been exempted."

Other interests, especially organized labor and "nativists"—those wanting no further alteration of the ethnic, religious and racial stock of the country—were opposed to the quota exemption for the Western Hemisphere. This opposition did not die with passage of the 1924 legislation. In 1930, Congressman John C. Box introduced legislation to impose harsh immigration quotas on immigrants from the hemisphere. The House Committee on Immigration and Naturalization's 1930 report on the proposed bill made no attempt to hide its racial bias nor its segregationist presumptions.

According to its proponents, most important consequence of the pending bill was "the belief that the white population in the great Southwest will not be under the continued pressure to move farther and farther north into non-Mexicanized areas."

Following the War with Mexico, said the report, there was a migration of fine American pioneers (into the newly acquired territory) who took possession of the country, colonizing it and setting up law and order. During the last ten years the racial problem has become acute in the Southwest. Here there have been established, as the demand for cheap labor increased, a great many Mexican immigrants who seem to be driving out the Americans.

How will this system ultimately work out? The Mexican peon, of course, as we know him, is of mixed racial descent—principally Indian and Spanish, with occasionally a little mixture of black blood. The Mexican comes in freely because there is no quota against him, and during the last few years he has come here in such increasing numbers as almost to reverse the essential consequences of the Mexican War. The recent Mexican immigrants are making a reconquest of the Southwest.

The bill never became law.

The opposition to the quota exemption for Mexico and the rest of the Western Hemisphere expressed in the 1930 Congressional report was, as indicated above, also evident in 1924. In return for the hemispheric exemption in the National Origins Law, the Administration of Calvin Coolidge pledged to enforce existing immigration laws more stringently along the border. To this end, the Border Patrol was created later that year.

According to Jorge Bustamante, a Mexican expert on border issues and migration, the creation of the Border Patrol changed the status of the Mexican worker in the United States from a migrant worker basically immune to deportation to that of "a fugitive from the law who had to constantly hide in order not to be apprehended and expelled from the country." Prior to the creation of the Border Patrol, says Bustamante, the Mexican worker in the United States needed only to stay out of trouble with the local police "in order to consider himself completely safe on U.S. roads and fairly free to choose the most convenient work. Only a judge could decree his deportation." The activities of the Border Patrol tripled the number of deportation in its first five years: from 1920-1924, 5,096 Mexicans were deported; from 1925-1929, 15,434 were deported.

The onset of the Great Depression and the resultant leap in unemployment after 1929 increased the voices demanding the deportation of Mexicans. Legislation in 1929 made illegal entry into the United States a felony.

The cries for action to stop the migration culminated in "Operation Deportation." According to Bustamante, the general procedure followed by the Border Patrol and other enforcement officials was to require all those suspected of not being a citizen to provide documentation of citizenship.

The people who could not satisfy this requirement was expelled from the country . . . Many Mexicans who had in fact left Mexico as immigrants as long as twenty years before . . . suddenly found themselves expelled from the United States.

The effort to repatriate Mexicans in the United States was effective: Garcia y Griego cites Mexican government statistics that state that 345,000 Mexicans left the United States and returned to their homeland between 1929 and 1932. The number of Mexicans legally entering the U.S. during the 1930's dropped sharply, and the Mexican-born population in the United States diminished steadily throughout the Depression. This decline in both legal and illegal immigration of Mexicans to the United States in the 1930's provides a sharp contrast to the migratory stimulus of the 1942 "Bracero Program."

THE BRACERO PERIOD

On August 4, 1942, the governments of the United States and Mexico signed an unprecedented agreement to establish a program to recruit temporary migrant laborers from Mexico to work in the U.S. As summarized by Garcia y Griego, the agreement contained the following points:

(1) U.S. employers needed to supply written contracts for permission to recruit braceros.

(2) Recruitment was based on need; Mexican workers were not to displace domestic labor nor lower their wages;

(3) Employers paid for transportation and subsistence to and from the recruitment center and the work site;

(4) Migrants were not encouraged to remain permanently; and

(5) Racial segregation and discrimination based on nationality was prohibited.

The administration of the program and the task of guaranteeing compliance with the agreement was the responsibility of both governments.

The initial phase of the Bracero Program lasted throughout World War II. The demands of sustaining the war effort caused a tremendous economic expansion in the United States; in this early period of the program, braceros were recruited for work in agriculture and the railroads. In contrast to the number of braceros recruited in later years, the number of contracted in the 1942-1946 era was relatively small: Garcia y Griego cites a total of 330,000. A study done in 1980 by the Congressional Research Service put the figure at 220,000.

At the insistence of the Mexican government, braceros were excluded from Texas. The Mexicans knew their countymen and American citizens of Mexican descent suffered grave discrimination in Texas and refused U.S. requests to allow braceros to work there. Throughout World War II, then, Texas agriculture relied on undocumented, or illegal, labor.

The extension of the bilateral labor contract after the war revived a program that would continue until 1964. In contrast to the wartime agreement, the seventeen-year post-war period saw a vastly expanded program: 4.2 million braceros were contracted for labor in agriculture between 1947 and 1964.

Mexico had three major concerns regarding the bracero agreement: that the braceros' human rights be respected by the American growers and civil authorities, that they earn a decent wage, and that the flow of workers to the United States be regulated within the terms of the agreement. This last concern about the traffic of undocumented workers to the U.S. was, of course, of great concern to Washington also.

Discrimination against Mexican workers and violations of the labor contracts by employers were cited by Mexican officials as their justification for excluding certain areas in the United States from participation in the bracero program. By the late 1940s, however, the United States was arguing that determination of barred areas should be determined jointly, not unilaterally. Because the bracero agreements had to be renewed periodically, changes in the agreement were subject to continuing negotiations. The unprecedented super-power status enjoyed by the United States after World War II considerably improved their leverage in the post-war talks. By 1949 Mexican resistance to American pressure collapsed: both countries would determine areas to be excluded from participation in the program. Texas growers were henceforth eligible to contract braceros.

Also thwarted in the same period was the attempt by the Mexican government to determine the wages paid to braceros. Originally, the Mexicans contended that the "prevailing wage" to be paid to the bracero was an issue that should be decided in negotiations between the two governments, not by individual employers in the United States. In 1951, however, the Mexican government conceded exclusive responsibility for the determination of wages to the U.S. Secretary of Labor.

The influx of undocumented (or, in the bracero period, uncontracted) Mexican labor to the United States was a vexing problem for both countries. In the 1940s, the Mexican government saw the illegal migration of its workers as a threat to the stability of the bracero program and worried that Mexican agriculture would suffer labor shortages as thousands of campesinos spurned domestic employment in agriculture and left on their own for better pay in American fields. The government was also concerned that illegal workers would not benefit from the legal protections written into the agreement. As the program continued into the 1950s, the Mexicans realized that not only was illegal migration to the United States an unintended corollary of the bracero agreement, but that they were virtually powerless to halt the exodus.

Meanwhile, in the United States, illegal immigration from Mexico became an issue of national concern in the post-war years. Many growers and their allies in Congress were willing to ignore this illegal flow of Mexicans to the U.S.: hiring illegals rather than braceros saved growers the transportation expenses they incurred in the program, saved them money by paying lower wages to illegals, and spared them the time and expense of dealing with the program's bureaucracy.

However, public pressure, stimulated by news of a rise in INS apprehensions at the border and by a 1951 Presidential Report on Migratory Labor, gradually pushed the authorities to action. Such action took two forms.

The first strategy was that of legalizing the undocumented Mexicans already in the United States. Beginning in 1947, deportable Mexicans were given bracero contracts in the United States, thus legalizing their status here. Formerly, Mexicans here illegally were returned to Mexico to undergo that government's screening process to determine an individual's eligibility in the program. According to Garcia y Griego, during fiscal year 1950 only 19,813 new braceros were admitted from Mexico as contract laborers, while 96,239 deportable Mexicans already in the United States were legalized and put under contract.

The second strategy was an aggressive policy of deporting undocumented Mexican workers. This policy reached its zenith in 1954 with "Operation Wetback."

Organized in the summer of 1954 by General Joseph May Swing, Commissioner of the INS, Operation Wetback utilized civilian and military authorities to apprehend and deport Mexicans illegally in the U.S. From California to Texas, General Swing's forces deported more than a million people to Mexico. The constitutional rights of Mexican Americans prohibiting unreasonable search and seizure and assuring due process and equal protection of the law were cruelly violated during the operation. Unable to provide the documentation that was demanded by the INS, many U.S. citizens of Mexican descent were illegally included in the mass deportation.

In its final years, the bracero program met strong opposition in the U.S. Congress, due to increased awareness that serious violations of the rights of the braceros were widespread, to the growing realization among lawmakers that the program was stimulating, not impeding illegal immigration, and to the expanding political influence of organized labor, a consistent opponent of the contract labor program. In 1962 the Kennedy Administration openly opposed renewing the bilateral agreement and on the last day of 1964, the bracero program ended.

With the termination of the bracero program, the ongoing migration of Mexicans to the United States looking for work once again became illegal. Although the bracero program differed from earlier and more recent migration by Mexicans in the sense that a formal structure was created to try to control the influx, it reinforced the previous tendency to concentrate Mexican workers in agriculture and furnished a momentum to the current migratory flow. In this respect, says Garcia y Griego, "the migration of braceros constitutes a link which establishes continuity between the first wave of Mexican migrants during the first three decades of this century and the more recent immigration of undocumented persons during the 1960s and 1970s."

In recent years, Mexican labor in the United States has expanded into various sectors of employment. According to Alejandro Portes and Robert L. Bach, authors of *Latin Journey*, both legal and illegal Mexican immigration has turned toward urban areas, especially in light industry and service-related jobs in restaurants and hotels. Portes and Bach say that legal immigrants and illegals with long-term experience in the U.S. tend to move into the more lucrative urban jobs, while undocumented newcomers stay in agriculture.

DOMESTIC POLITICS AND IMMIGRATION FROM MEXICO

In the United States there is now and has long been a distinct dichotomy between groups that place a high value on maintaining access to Mexican labor and other groups that, for a variety of reasons, disdain its value and desire a restriction of the migration.

The former group, consisting mainly of growers, industrialists and business interests concentrated in the West and Southwest, has been dominant at almost every point in

the legislative struggle to restrict immigration from Mexico to the United States.

In 1918, the literacy test restriction for immigrants was rescinded for Mexicans, one year after the restriction became law. In 1924, according to author Thomas Muller (see p. 9), the influence of growers would have been great enough to cause Congress to defeat the National Origins Law, had Mexico been included in any quota restrictions. At their behest in 1942, a unique contract labor program was instituted between Mexico and the United States to replace American labor then involved in the war effort. However, the bracero program was rejuvenated in 1947, two years after the end of World War II, and lasted until 1964. Although their influence appeared to falter in 1964, with the end of the contract labor program, and again in 1965, when Mexico and the rest of the Western Hemisphere were, for the first time, subject to an overall ceiling on legal immigration to the United States, these interests favoring access to Mexican labor remain the dominant voice in determining American policy on immigration from Mexico.

In opposition to the growers and their allies is a coalition consisting of labor organizations that claim that undocumented workers drive down wages for American workers, law enforcement officials and the Congressional supporters who decry the massive violation of immigration law at the border and demand tougher punitive measures, and nativits who fear that a sudden influx of foreigners will negatively alter society and government. This coalition has on occasion forced the government to restrict or even deport Mexican labor in the United States, but has never challenged the preeminence of the growers and their allies in determining the course of immigration reform.

The coalition favoring restriction of Mexican labor gains influence when changing economic, social and political conditions in the United States provoke a surge in public support for their ideas. During the deportations of Mexicans in the 1930s, for example, the rise in domestic unemployment resulting from the Great Depression stimulated public backing for measures to expel foreigners competing with American citizens for scarce jobs. During the period of "Operation Wetback" in 1954, Mexican workers were often blamed in press accounts for a variety of crimes and social problems in the Southwest. Two factors combined to give public sanction to the operation. The first was the undercurrent of anti-foreign sentiment whipped up by the communist hysteria of the McCarthy era. The second was the end of the Korean War in 1953; after the war, American public attention returned to domestic concerns, among them the problems along the border. Although a variety of factors mentioned earlier was responsible for the termination of the bracero program in 1964, it also coincided with a rise in the influence of organized labor in national politics. Labor has been, from its earliest days, in favor of restrictive immigration policies.

The illegal immigration to the United States of Mexican workers is a consequence of historical and cultural factors, of the power of economic interests in the American Southwest that demand continued access to cheap Mexican labor, and of Congressional legislation intended to encourage, not curtail, the migration of Mexican workers. The problem of the "illegal alien" in the United States, says Gilberto Cardenas, is one whose seed has been planted time and again by the United States when it has been in need of Mexican labor. When expediency better serves, however, immigration laws have been administered and changed in response to a problem perceived as having been created by illegal aliens, when in fact it is largely of the United States' own making.

A TRIBUTE TO FRATERNAL BENEFIT SOCIETIES

HON. TOBY ROTH

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. ROTH. Mr. Speaker, the National Fraternal Congress of America is celebrating its centennial this week in Washington (Sept. 25–27), and I believe that it is entirely appropriate to recognize the contributions that this illustrious organization has made to our country.

The National Fraternal Congress of America represents about 100 fraternal benefit societies in North America that have a combined membership of 10 million people. These not-for-profit fraternals offer their members insurance and other financial services, and the volunteer opportunities to help others in their local communities. This principal, that each individual has a responsibility for his fellow men and women, has been the dominant fraternal theme since the system originated in the 19th century.

Many fraternal benefit societies were founded to help assimilate tens of thousands of European immigrants who needed to learn job skills, a new language and an entirely new way of life. Other fraternals were founded by like-minded people who shared similar occupations or religions as a way to support members with common concerns. Since then, the fraternal system has evolved into an important part of the insurance industry—representing about 3 percent of all ordinary life insurance in force.

The fraternal system also has evolved into one of the world's largest networks of volunteers. Last year, members of fraternals volunteered more than 25 million hours of their time through 7 million projects to provide needed help and services to individuals and institutions. This volunteerism helps to maintain and support orphanages, homes for the aged, churches, and other not-for-profit institutions and agencies; provides financial support for the indigent, the dying, and others needing a helping hand; and gives volunteer and financial support to the stricken and homeless who are victims of floods, tornadoes, fires, drought, and other disasters.

In addition, fraternals maintain some of the world's largest scholarship programs and other systems for educational support, providing more than $11 million last year for students and the institutions they attend.

In total, the fraternal benefit societies which comprise the National Fraternal Congress of America spent more than $242 million last year on noninsurance, fraternal benefits.

Our country is a better place because of this volunteerism, this compassion, this attitude that it is our responsibility to take care of one another. I am proud to salute the National Fraternal Congress of America on its centennial anniversary and wish the organization continuing success during its next 100 years.

SALUTE TO EARL H. GRAY

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. STOKES. Mr. Speaker, thank you for providing me with this opportunity to salute Earl H. Gray upon his election as the imperial potentate of the Ancient Egyptian Arabic Order, Nobles of the Mystic Shrine of North and South America, Inc., Prince Hall Affiliation. For the next 2 years, Earl Gray will provide leadership to the over 60,000 members of the worldwide fraternal order.

Mr. Speaker, it was my pleasure to participate in the installation services for Earl in August at the 93d Annual Shrine Convention in Chicago, IL. This was the first public installation ever conducted by the Shriners. I cannot help but think that this event was the first in what promises to be many historic actions by the Shriner's new leader.

At this time, I ask my colleagues to join me in saluting my good friend on this significant achievement.

I am submitting for the RECORD two articles which appeared on Earl Gray's election.

[From the Richmond Afro-American, Sept. 6, 1986]

RICHMONDER NEW SHRINERS' HEAD

Earl H. Gray of Richmond was elected "Imperial Potentate of the ancient Egyptian Arabic Order, Nobles of the Mystic Shrine of North and South America, Inc.," Prince Hall Shriners on August 21, 1986 at the 93rd Annual Shrine Convention held August 17–22, in Chicago, Ill. In the top post of this organization, he will give leadership and preside over approximately 60,000 members of this worldwide fraternal order.

He is a Past Potentate of Mocha Temple No. 7, Prince Hall Shriners, in Richmond.

Gray is the recipient of many honors and awards for outstanding service including the Shriners' top award, called the "Vanguard Trophy" and was recently honored by the National Bar Association for his outstanding civic and humanitarian contributions.

He is a past master of the Capital City Lodge 107, Prince Hall Affiliate. Gray also holds membership in all branches of Prince Hall Free Masonry, including the office of Grand Inspector General of the 33rd and last degree, United Supreme Council, Southern Jurisdiction, USA, Prince Hall Affiliate.

He is an elder and a member of the First Presbyterian Church, U.S.A. at 3401 North Ave.

An Armstrong High School graduate, Gray earned a bachelor's degree in business administration and a master's degree in education administration and supervision from Virginia State College (now Virginia State University). He has done further study at the University of Illinois and the University of Wisconsin.

He has held positions as director of personnel at Virginia State College, director of the Richmond Model Cities Job Development and Training Agency and Chief of Plans and Programs of the Governor's Employment Training Division.

Gray recently retired from the Virginia Employment Commission while serving as labor market supervisor. He is married to the former Miss Jane Porter Harris of Richmond. They are the parents of a daughter, Adrienne and the family lives at 2930 Seminary Ave.

The locations of the Imperial Potentate's Office will be in the Linden Towers Professional Building, Second and Franklin Streets, Richmond.

SAVE REVENUE SHARING

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. McEWEN. Mr. Speaker, I support general revenue sharing, and I am very concerned over the actions taken by the House not to give the Members of this body an opportunity to vote on whether or not to reauthorize revenue sharing.

Revenue sharing program has been the bedrock of an historic effort to reform the Federal system. As my colleagues know, revenue sharing is the only program that goes to practically every local government in the country, including many of which receive no other form of Federal assistance. It was based on the sensible premise: Washington can raise revenue better and more equitably, but governments closer to home know better how to use it wisely.

Mr. Speaker, these moneys are often used to pay for unfunded mandates imposed by other Federal programs. In other words, the Federal Government makes demands on our cities, townships, counties, and villages which they simply do not have the capacity to fulfill. It is unfair for Washington to dictate standards, rules, requirements, restrictions, et cetera, without providing the wherewithal to meet them. Revenue sharing helps bridge that gap.

Mr. Speaker, I have been a long time supporter of general revenue sharing and a strong advocate of its confidence in local decisionmaking approach to federalism. The House of Representatives should have the opportunity to express its will on this program.

AGRICULTURAL QUARANTINE ENFORCEMENT ACT

HON. CHARLES PASHAYAN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. PASHAYAN. Mr. Speaker, today there has been introduced legislation entitled the "Agricultural Quarantine Enforcement Act of 1986."

My interest in introducing this legislative proposal at this time is prompted in part by the remarks of Mr. Clare Berryhill, Director, California Department of Food and Agriculture, who, in a letter to Secretary of Agriculture Richard E. Lyng, stated: "* * * our problem with first-class mail is rapidly worsening. In fact, it would be accurate to say that first-class mail has become the most significant pathway to bring contraband fruit and, therefore, associated past problems into California today. And not only is California affected; the agricultural economy of the entire continental United States is at stake."

This observation is shared by the U.S. Department of Agriculture and its Animal and Plant Health Inspection Service [APHIS] which reports that in excess of $146 million has been spent in the past decade to eradicate introductions of new and serious pests and diseases.

For more than a decade, APHIS officials have discussed with Postal Service representatives the growing introduction of animal and plant pests in the mails. They have not been able to reach an accord. Some of us in Congress have called for the talks to continue, and have become totally frustrated at the lack of any progress.

Because of this lack of progress, I have now introduced the legislation so that the issues might be reviewed by all who would be concerned.

Earlier this week, I joined with Senators PETE WILSON, PAULA HAWKINS, and LAWTON CHILES in submitting a letter to Attorney General Edwin Meese asking for his full cooperation in reviewing a legislative concept developed by the administration. We asked: "Given that this proposal could help to provide our Nation's multibillion-dollar agricultural industry the protection it needs from those pests and diseases which could destroy it, we would appreciate your assistance in ensuring a thorough and timely review, as well as the cooperation of the Department to work with APHIS officials toward an acceptable and effective solution."

The proposal cited above is the legislation introduced today. It authorizes the Secretary of Agriculture to inspect domestic and international first-class and air parcels only if he has reasonable cause to suspect that they contain plant and animal products or related articles. The goal we all seek is to protect American agriculture with the least intrusion on the privacy of persons who mail packages which may be subject to inspection.

This is amplified by California Food and Agriculture Department Director Berryhill's closing remarks to Secretary of Agriculture Lyng:

Legislative relief is the only way to stop the misuse and abuse of first class mail. A legislative solution is fiscally sound; it will save millions of tax dollars in the prevention of eradication projects. A legislative solution is environmentally sound; the use of hundreds of pounds of pesticides will be avoided if these eradication efforts are unnecessary. A legislative solution is agriculturally sound; both growers and consumers will benefit from the protection of our agricultural resources.

It is my hope that a higher quality of dialog will be attained by the introduction of the "Agricultural Quarantine Enforcement Act of 1986," and that through the legislative process we can address the serious and real concerns of both the postal users and this Nation's agricultural industry.

A TRIBUTE TO ARTHUR WOODMANSEE

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. HANSEN. Mr. Speaker, today I want to salute Arthur Woodmansee, a man dedicated to the service of his country.

Arthur was recently honored at Tooele Army Depot, which is located in my congressional district, for his outstanding patriotism. Although all of the work force at the depot are highly skilled and dedicated to a strong national defense, Arthur is a unique individual who combines a strong work ethic with a genuine sense of patriotism. He is a man who loves his country and is proud to let everyone know. As a display of his patriotism, Arthur, who is a tractor operator at the depot, has placed two American flags on either side of the tractor he drives as a reminder to all of the pride he has for his country.

Arthur gives freely of his time. He rarely takes a day of sick or annual leave. In fact, he has 1,160 hours of sick leave saved and has attempted on several occasions to return his annual leave. He arrives early to work; is often seen working straight through lunch; and is often seen on his tractor after hours. He truly is a generous and unselfish patriot.

Our country could use more Arthur Woodmansees. We need more people with his sensitivity and dedication; people who respond with a positive approach on life and who go the extra mile for their country.

Mr. Speaker, I am honored to be able to pay tribute to this fine American, and I congratulate him on the recognition the depot recently paid to him by presenting him with an American flag that was flown over the U.S. Capitol and Tooele Army Depot. God bless you Arthur Woodmansee.

A TRIBUTE TO THE HONORABLE ANTONIN SCALIA

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 24, 1986

Mr. FLORIO. Mr. Speaker, I am pleased to join my colleagues in this special order paying tribute to the Honorable Antonin Scalia, who was unanimously confirmed by the other body as an Associate Justice of the U.S. Supreme Court.

Judge Scalia's confirmation is meaningful to me personally as we share a common background. Hailing from my own State of New Jersey, Judge Scalia has the distinction of being the first American of Italian descent to be appointed to serve on the Supreme Court, our Nation's highest judicial body. This is a

magnificent symbol to Italian-Americans that they can truly share in all that this Nation has to offer. As an Italian-American, I am proud to pay tribute to Judge Scalia and to honor his many achievements.

In evidence of Judge Scalia's qualifications, I would like to stress that, after close scrutiny, the Senate approved his nomination without dissent. He happens to be a man of strong leadership and achievement who has distinguished himself in his career as a lawyer and as a judge. Having been graduated summa cum laude from Georgetown University and magna cum laude from Harvard Law School, Judge Scalia has practiced and taught law and has served in various capacities in our Government. Since 1982, he has exemplified outstanding intellectual and analytical capabilities as a judge on the U.S. Circuit Court of Appeals.

He will be bringing with him a reputation as one who has striven for distinction and has demonstrated personal integrity and an understanding of our judicial system.

This Friday, in New Jersey, a group of prominent Italian-Americans, including Jos. Di Pasquale, Frank J. Vecchione, Andrew Zazzali, Santo Lalomia, and P. Gerard Megaro, will be hosting a testimonial dinner in honor of Judge Scalia. I wanted to direct the attention of my colleagues to the respect and admiration with which Judge Scalia is held in the Italian-American community in my district. Although differences often remain with the philosophy of individual members of the Supreme Court, I am convinced that Judge Scalia will address the cases he considers with impartiality and that his intellectual ability and integrity will serve him well as we entrust him with interpreting the laws that govern our Nation.

CONFERENCE REPORT ON H.R. 3838, TAX REFORM ACT OF 1986

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. WOLPE. Madam Speaker, I rise in support of the tax reform bill.

Madam Speaker, today the House will consider the most comprehensive overhaul of the Tax Code in 40 years. While I view the final product a great achievement and will support it on final passage, I, like many of my colleagues, have some reservations about this bill. In particular, with respect to real estate investments, I frankly feel that the pendulum has swung too far. And 145 other Members of this body agreed with me in that regard. In a letter to the conferees, we expressed our concern that the Senate bill retroactively and unfairly penalized many non-tax-motivated real estate investments.

Madam Speaker, the text of that letter is as follows:

Hon. DAN ROSTENKOWSKI,
Chairman, Ways and Means Committee, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN ROSTENKOWSKI: One of the many major issues that the House/Senate conference committee will be addressing is the ability of taxpayers to deduct losses from investments against "earned" income, particularly in the area of real estate. Both the House and Senate bills contain provisions that limit the deductibility of losses in an effort to eliminate "tax sheltering." While we consider it important that abusive tax sheltering be eliminated, we also believe that such a goal should not be achieved at the expense of legitimate economic real estate investments. The House bill avoids the inequity in its treatment of loss deductibility, while the Senate bill's "loss limitation rule" penalizes many non-tax motivated investments.

We ask that the House/Senate conference committee recognize this difference in making its final determination regarding tax shelters. Specifically, should the committee determine that a provision similar to the Senate's loss limitation rule be adopted, we believe that some improvements to the rule are necessary. Unless improvements are made, investors in many productive and economically sound real estate investments will be unfairly penalized for the abusive conduct of a minority of real estate investors—resulting in serious, unnecessary and unwarranted disruption for the real estate industry and, from the standpoint of the general public, a likely unintended increase in rental housing costs.

We believe that the conference committee should adopt the following guidelines in its determination of what the appropriate loss limitation rule should be:

Real estate owners and investors who materially participate in the management or operation of their real estate investment should be treated the same as material participants in other businesses.

Losses that result from actual cash expenses, such as repairs, taxes, utilities, or interest should be deductible without limit. No tax sheltering results when a dollar's worth of deduction is taken for a dollar's worth of cash expended.

The loss limitation rule should not aply to existing investments. Such an application *retroactively* affects the expected return of the investments. It is unfair to change the rules on investors in the middle of the game.

We hope that you will seriously consider the above recommendations. Even with these modest changes, real estate will absorb as much as a $60 billion tax increase in the final tax reform legislation. While limiting tax abuse and building overproduction are worthwhile goals, so are fairness and evenhandedness.

HOUSE OF REPRESENTATIVES—*Friday, September 26, 1986*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. WRIGHT].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 25, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Friday, September 26, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We recognize the difficulty, O God, of seeing clearly what we ought to do and where we want to go, and yet we recognize too that others disagree with us. We pray for the gift of patience and the gift of understanding. May we not lose that which we truly believe or the essentials of our faith, but always help us to see others with respect. Remind us each day, O loving God, of the dignity You have given to each person and the gracious blessings available to us all. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 394. Concurrent resolution to correct technical errors in the enrollment of the bill S. 1965.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3129. An act to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes; and

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such Act.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 3129) "An act to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. STAFFORD, Mr. SYMMS, Mr. CHAFEE, Mr. ABDNOR, Mr. BENTSEN, Mr. BURDICK, and Mr. MITCHELL, for title I of S. 2405 and title I of H.R. 3129, and for section 204, 55-mile-per-hour speed limit; section 202(a)(1) bridge replacement and rehabilitation program authorizations, (a)(2) elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization, (a)(6) FHWA highway safety research and development authorization; section 209 use of certain reports as evidence; section 210 emergency call boxes; section 211 railroad-highway crossings authorization; section 215 railroad-highway crossing needs, from the Committee on Environment and Public Works.

Mr. PACKWOOD, Mr. DOLE, Mr. ROTH, Mr. LONG, and Mr. BENTSEN, for title III of S. 2405 and title V of H.R. 3129, extending the Highway Trust Fund, from the Committee on Finance,

Mr. GARN, Mr. HEINZ, Mr. HECHT, Mr. PROXMIRE, and Mr. DIXON, for provisions dealing with urban mass transportation (including title II of S. 2405 and title III of H.R. 3129), from the Committee on Banking, Housing, and Urban Affairs,

Mr. DANFORTH, Mr. PACKWOOD, and Mr. HOLLINGS, for provisions dealing with highway safety (including title II of H.R. 3129 except for section 202(a)(1) bridge replacement and rehabilitation program authorizations, (a)(2) elimination of hazards authorization, (a)(5) FHWA highway safety construction authorization, (a)(6) FHWA highway safety research and development authorization; section 209 use of certain reports as evidence; section 210 emergency call boxes; section 211 railroad-highway crossings authorization; section 215 railroad-highway crossing needs), from the Committee on Commerce, Science, and Transportation,

Mr. DURENBERGER, Mr. ROTH, and Mr. CHILES, for provisions dealing with the Uniform Relocation Act, from the Committee on Governmental Affairs, to be the conferees on the part of the Senate.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1965) entitled "An act to reauthorize and revise the Higher Education Act of 1965, and for other purposes."

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 1935. An act to authorize the coastwise operation of certain passenger vessels;

S. 2062. An act to designate the Federal Building and United States Courthouse to be constructed and located in Newark, NJ, as the "Martin Luther King, Jr. Federal Building and United States Courthouse";

S. 2750. An act to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes;

S. 2788. An act to designate the Federal building located in San Diego, CA, as the "Jacob Weinberger Federal Building";

S.J. Res. 396. Joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week"; and

S.J. Res. 413. Joint resolution to designate the month of October 1986 as "Learning Disabilities Awareness Month."

DESIGNATION OF HON. JIM WRIGHT TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS UNTIL SEPTEMBER 30, 1986

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
September 25, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore to sign enrolled bills and joint resolutions until Tuesday, September 30, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the designation is agreed to.

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair wishes to announce that we will take 1 minute speeches following consideration of the rule on the immigration bill.

PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 559 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 559

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3810) to amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of sections 302(f) and 303(a) of the Congressional Budget Act of 1974, as amended, are hereby waived. After general debate, which shall continue not to exceed three hours, with one hour to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and with thirty minutes to be equally divided and controlled by the chairman and ranking minority member of each of the Committees on Agriculture, Education and Labor, Energy and Commerce, and Ways and Means, the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments recommended by said committees now printed in the bill, it shall be in order to consider the amendment in the nature of a substitute printed in the committee print, Committee on Rules, September 24, 1986, entitled "Amendments to H.R. 3810, the Immigration Control and Legalization Amendments Act of 1985", as an original bill for the purpose of amendment. The substitute shall be considered as having been read, and all points of order against the substitute for failure to comply with the provisions of clause 5(a) of rule XXI, and with the provisions of sections 302(f) and 303(a) of the Congressional Budget Act of 1974, as amended are hereby waived. No amendment to the bill or to said substitute shall be in order except the amendments contained in the committee print, Committee on Rules, drafted to the page and line numbers of the substitute as contained in the committee print. Such amendments shall be considered only in the order in which they appear in the committee print and may only be offered by the sponsor designated in the committee print, or by the chairman of the appropriate committee, or his designee, where a committee is designated. Said amendments shall be considered as having been read and shall not be subject to amendment or to a demand for a division of the question in the House or in the Committee of the Whole, but shall each be debatable for the time specified in the committee print, Committee on Rules, to be equally divided and controlled by the proponent of the amendment and a Member opposed thereto, and all points of order against said amendments are hereby waived. If amendments numbered 5 and 6 are both adopted, only the latter shall be considered as having been finally adopted and reported back to the House. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Members may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text by this resolution, subject to the provisions of the preceding sentence of this resolution. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit, which may not contain instructions. After the passage of H.R. 3810, it shall be in order to take from the Speaker's table the bill S. 1200 and to consider said bill in the House, and all points of order against the consideration of said bill for failure to comply with the provisions of sections 302(f) and 303(a) of the Congressional Budget Act of 1974, as amended, are hereby waived. It shall then be in order in the House to move to strike out all after the enacting clause of the said Senate bill and to insert in lieu thereof the provisions contained in H.R. 3810 as passed by the House, and all points of order against said motion for failure to comply with the provisions of sections 302(f) and 303(a) of the Congressional Budget Act of 1974, as amended, and with the provisions of clause 5(a) of rule XXI are hereby waived. It shall then be in order to move that the House insist on its amendment to the bill S. 1200 and request a conference with the Senate thereon. It shall then be in order to consider in the House, any rule of the House to the contrary notwithstanding, a bill containing the text specified in section two of this resolution, if offered by the chairman of the Committee on Ways and Means or his designee, debate on said bill shall continue not to exceed ten minutes, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means, or their designees, and the previous question shall be considered as ordered on said bill to final passage without intervening motion except one motion to recommit, which may not contain instructions.

SEC. 2. The text of the second House bill made in order for consideration by this resolution is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, section 3306(c)(1)(B) of the Internal Revenue Code of 1954 is amended by striking out 'before January 1, 1988,' and inserting in lieu thereof 'before January 1, 1993,'.".

□ 1010

The SPEAKER pro tempore (Mr. MURTHA). The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 559 is a modified open rule providing for the consideration of H.R. 3810, the Immigration Control and Legalization Amendments of 1986.

The rule provides 3 hours of general debate, with 1 hour allocated to the Committee on the Judiciary and 30 minutes to each of the Committees on Agriculture, Education and Labor, Energy and Commerce, and Ways and Means. In each case, the committee's time will be equally divided and controlled by the chairman and ranking minority member of the committee.

Mr. Speaker, the rule references a September 24, 1986, committee print of the Committee on Rules, which is the official document governing debate of H.R. 3810. The committee print contains the text of an amendment in the nature of a substitute which incorporates many committee and individual amendments that were presented to the Rules Committee. This substitute will be considered as original text.

The rule waives sections 302(b) and 303(a) of the Budget Act against consideration of the bill and against the substitute. It also waives clause 5(a) of rule XXI against consideration of the substitute.

Rule 5(a) of rule XXI prohibits appropriations in a legislative bill. This bill provides for 100 percent reimbursement to States for costs associated with the implementation of the Systematic Alien Verification for Entitlement Program, so-called SAVE, which would become effective upon enactment. That provision constitutes an appropriation in a legislative bill.

Section 302(f) of the Budget Act prohibits consideration of legislation which provides new discretionary budget authority, new entitlement authority, or new credit authority which exceeds the allocation of budget authority allocated to the subcommittee having jurisdiction over the legislation under section 302(b) of the Budget Act.

H.R. 3810 includes a number of provisions that make budget authority available immediately upon enactment. These include compensation for the appointment of a special counsel to investigate immigration-related unfair employment practices and a requirement that the Federal Government reimburse States and localities for the costs of incarcerating illegal aliens and certain Cuban nationals.

Since no allocation of new budget authority was made to the Judiciary Committee for fiscal year 1986, no measure would be in order within the jurisdiction of the Immigration Subcommittee which provides new budget authority for the current fiscal year.

Section 303(a) of the Budget Act prohibits consideration of legislation which contains new entitlement authority for a fiscal year until the budget resolution for that year has been adopted. One provision of the bill provides new entitlement authority for education assistance, for institutional reimbursements which will first take effect in fiscal year 1988.

The bill also provides that individuals who are legalized under its provisions are to be ineligible to receive most forms of public assistance for the 5-year period starting from the date of legalization. Entitlement to benefits for such individuals will first occur in fiscal year 1991.

Since both of these provisions constitute entitlement authority which first becomes effective in a fiscal year for which no budget resolution obviously has been adopted, they violate the provisions of section 393(a) of the Budget Act; but these provisions are key elements of the bill, which has been carefully crafted over many years; and it was felt necessary and proper to waive those particular provisions of the Budget Act in these particular instances.

Mr. Speaker, the Rules Committee hesitates to grant waivers of the Congressional Budget Act. In this situation, however, the committee felt that the waivers included in the rule were justified in order to allow the House to work its will on the product of our committees who have found these entitlement programs to be necessary elements of a complete and responsible immigration reform package.

The committee print also contains the text of the amendment made in order under the rule, along with the time allocated for the debate of each amendment. The amendments are not amendable nor subject to a division of the question. Pro forma amendments are not allowed under the rule. Only those amendments printed in the committee print may be offered. The amendments must be offered in the order specified in the print and only by the designated Member, or in the case of a committee amendment, by the chairman or his designee. The rule also waives all points of order against the amendments made in order under the rule.

The rule provides that if both amendments numbered 5 and 6 are adopted, only the last amendment adopted is reported back to the House. The rule provides one motion to recommit which may not contain instructions.

Mr. Speaker, to allow the House to go to conference, the rule makes it in order to take S. 1200 from the Speaker's table and to consider the bill in the House. The rule waives sections 302(f) and 303(a) of the Budget Act against consideration of the Senate bill. The rule makes in order a motion to strike out all after the enacting clause of the Senate bill and to insert in lieu thereof the text of H.R. 3810 as passed by the House. Clause 5(a) of rule XXI and sections 302(f) and 303(l) of the Budget Act are waived against that particular motion.

The rule makes in order a motion that the House insist upon its amendment to S. 1200 and request a conference.

Mr. Speaker, the rule provides for consideration in the House of a House bill consisting of the text contained in section 2 of this resolution. This bill will extend until January 1, 1993, the exemption from the Federal unemployment tax of H-2 workers. All points of order are waived against consideration of the bill. The bill will be offered by the chairman of the Committee on Ways and Means or his designee. Debate on the bill is limited to 10 minutes, which will be equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means or their designee. Finally, the rule provides for a motion to recommit which may not contain instructions.

Mr. Speaker, Members and various committees requested 107 amendments be made in order under this rule. The rule provides, in fact, for consideration of 54 of these amendments, or just over half of them. Twenty-two of these amendments would be made in order as original text of the substitute upon adoption of the rule. These were mostly amendments offered by various committees; a handful by individual Members.

Thirty-two of these amendments are to be offered individually as provided for by the rule, each with, as you have heard, a specified time limitation.

Some of the amendments disallowed, among the 53 disallowed, were disallowed because of redundancy or nongermaneness, but some of them for neither of those reasons, and you will hear argument about that.

The Rules Committee's actions were in great part, we believe, dictated and constrained by the situation in which we again find ourselves. Trying to process several major pieces of legislation in the waning days of the session, when there simply is not adequate time to deliberate as carefully and as well as in fact we should be doing.

The rule affords complete and full debate on the two basic issues in the bill; the two basic ingredients, as the Hessberg Commission back in its 1981 report, that has served as a basis and an impetus of congressional efforts at reform, felt were necessary parts of any immigration bill.

That is, employer sanctions and legalization of some illegals who have been here for many years, have put down their roots and made sizable contributions to our society.

The rule does seek to protect an agreement reached by the committee of jurisdiction on a third issue, which is at least as politically difficult and volatile as the first two—although it is of much less real importance and substance in the whole scheme of things when you look at the broad problem of illegal immigration into the United States.

That is, of course, the question of how to resolve the specific problem of allowing into this country each year a limited number of farmworkers to harvest the perishable crops that cannot, we are told, be adequately handled without some arrangement of this sort.

The rule in effect says:

Don't let the farmworker problem, which has been solved in this legislation in a manner acceptable to the interests most intimately concerned with it. That is, the growers and the laborers and the farmworkers themselves. Don't let this limited issue destroy our chances of getting real immigration reform.

Let us set aside for the moment the question of what exactly to do about the 200,000 or 250,000 or perhaps 300,000 or 350,000 persons needed to harvest these crops each year so that we may solve the basic and much larger problem of ensuring that the 1 to 2 million other illegals will no longer be able to come over the border every year into the United States.

The solution to the farmworkers problem—and there must be some solution found—will never be completely neat or rational or acceptable to many Members of Congress or to the public. It is by its very nature a messy and a complex problem with no terribly good solution.

□ 1020

Amazingly, however, after having been a stumbling block and an obstacle to getting the rest of the bill passed in earlier years, this year, as I have said, all of the folks involved, those representing the farm interests, those representing labor interests, have negotiated a solution that they at least all agree to. We are suggesting that we fence off for the moment that tricky and difficult area, protect their agreement, and get on with solving the real immigration problem. And that is what this particular rule is designed to do.

The SPEAKER pro tempore (Mr. MURTHA). The gentleman from California [Mr. BEILENSON] has consumed 10 minutes.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the rule has been ably explained by the gentleman from California, and I would be redundant to repeat the provisions of the rule.

Let me say, first of all, however, that the Committee on Rules tried hard,

sincerely, and made every effort to work out a workable rule so that this bill could pass the House.

I feel, however, that two mistakes were made in granting the rule. One, the Committee on Rules did not allow the Lungren amendment to be considered on the floor. Second, they did not allow a motion to recommit with instructions.

I am going to ask a "no" vote on the previous question so these two amendments can be added in a subsequent rule.

I feel that the Lungren amendment should be fully debated and a decision made on the floor of the House.

I think it is tying the minority's hands without the motion to recommit with instructions.

This is beginning to be a habit of the Rules Committee to bypass the minority and make us feel like we are not really a part of the House proceedings although we sit in on caucuses in the Rules Committee and try to be helpful in every way that we can.

I think that recognition is due us. We should have it. I shall fight for it and ask the Members of this body to vote "no" on the previous question.

I remember in 1984 when the immigration bill was before this House. For 7 long days in June we hammered away at this important legislation, which is important, we all know, and we desperately need a revision of our immigration laws. It passed the House, went to conference and languished there and died. Here we are in the eve of adjournment, and this important legislation is coming before us with a rule that is going to be hotly debated. Already I have more requests for time than I can grant. Then, should it pass the House, and I hope it will if these two amendments are made in order, then I cannot predict what the outcome will be.

At the most, we have only 2 more weeks before adjournment, and for the life of me I do not see how in the world this bill could make its way to final congressional approval and then to the President of the United States.

So I would urge the Members of this body to look closely at the Lungren amendment. The argument is against the Schumer amendment. The Schumer amendment is designed to help the farmers. We all know they need help. There is no question about it, farm labor is important.

But what it brings into the picture is that an illegal alien working on a farm for 60 days is automatically granted citizenship. I know of legal aliens, legal immigrants from other countries who are here on legal passports and visas whose time is running out, and they have to wait on a list to become American citizens or else they are deported. And if they cannot reach that number on their list, they are deported. They have been battling in the United States to find people, some of whom are members of civic clubs, some of whom are a part of their communities, but they are denied citizenship because of the rules and regulations that this Congress has imposed. Then when we try, and we try hard, there is no exception to the rule.

We do have a sympathetic Subcommittee on Immigration. I congratulate the gentleman from Kentucky [Mr. MAZZOLI] who has an open heart and an open mind. I feel it is most unfair to grant an illegal alien who has worked for 60 days full citizenship and deny others the same right.

So that will be fully debated on the rule, I am sure.

I hope that the bill can be passed because we have a tremendous problem and we need a helping hand to get it corrected. These are issues that can be resolved on the House floor and let them come as they will, let the decision be as you would have it.

I understand, and I am not quoting, because I have not heard the chairman of the Judiciary Committee say that the Schumer amendment would help passage of this bill. I do not think there is any question about it because in the farm belt we need farm help. But at the same time, I feel that the rule is in jeopardy unless the Lungren amendment is made in order.

So we are at an impasse. Let the House decide and work its will.

Mr. Speaker, I have several requests for time, and I will be glad to yield at any time that the gentleman from California would ask me to.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. BADHAM].

Mr. BADHAM. I thank the gentleman for yielding.

Mr. Speaker, I would commend, of course, the people who have had a hand in trying to bring this legislation to the floor of the House of Representatives.

Ladies and gentlemen of the House, it is absolutely essential, absolutely essential that we do something in legislation to stem the flow of illegals into this country, not because simply they are illegal but we have to have a political and moral responsibility to be a friend, an ally, and a good neighbor particularly to our neighbor to the south, the Republic of Mexico.

Some years ago because of exploitation, so-called, and so forth, we ended a program that legally allowed people to come into the United States who wanted to for good purposes, and so forth, and now they are doing the same thing, only they are illegal, and they act as a screen, unfortunately, unwillingly and unknowingly in many cases, to bring in smugglers, bandits all sorts of undesirable people who use as a screen the poor agricultural worker.

This bill or any immigration bill in any form will not be the answer to this problem. It will require disincentives, it will require legalization, it will require amnesty; in addition it will require investment and cooperation on both sides of the border area to stem this flow that is damaging our economy and the Mexican economy.

Ladies and gentlemen, we have to have something, we have to have something; it is an urgent state of emergency that we face at our border. We have to have something. This rule is unfortunately a particularly onerous rule that will really deny accurate action being done, but we have to have something. I will vote against this rule, and I hope we will have a chance to perfect this rule so that we might move ahead with this absolutely essential legislation and not for whatever reason, ill-meaning or ill-wanted, put this off.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the distinguished gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. I thank the gentleman for yielding.

Mr. Speaker, let me say if I had had a hand in writing this rule, I would have written it differently. I would have allowed certain amendments made in order that are not made in order, and I would have excluded from the text material which is included in the text.

However, we are where we are today at the 11th hour of the Congress and the 11th hour for this legislation. As imperfect and as flawed as the rule is, and as difficult as it is for some of our colleagues to approve, I hope that we pass it, I hope that we do so without adopting the gentleman's effort which will be to rewrite the rule; I hope we can go to conference quickly and I hope we can receive a conference report and send something to the President for signature this year.

So much talk has been generated about the so-called Berman-Panetta-Schumer compromise that I think people and Members of the Congress might lose sight of the fact that this bill is far more than an agricultural labor bill.

The bill contains many important provisions. My friend from California, Mr. BEILENSON, has outlined them: Employer sanctions to curtail the flow of undocumented aliens into the country by denying them the jobs they are seeking; legalization to do justice to some of the people who are here who have been here the longest and have the deepest roots, who have the best character but who have entered illegally, would under our bill be legalized. Border enforcement, antismuggling efforts are enhanced; there are several other miscellaneous provisions in the bill, and there is the Schumer-

Berman-Panetta compromise on agricultrual labor which is a minor part of the bill but which has become the most vexing part, and let me address generally that issue.

I was about the only Democrat in our committee at the markup who opposed this compromise. Everyone else on my side of the aisle went along grudgingly and at times shame-facedly with this compromise. They did so because they were urged to do so by the authors by saying that if so much as a jot or a tittle of this compromise were changed, the whole bill goes down the drain. I did not believe it. I opposed it. However I opposed it unsuccessfully.

Once the compromise left our committee and was open to the light of day, its multitudinous and very serious flaws were uncovered and were addressed and, of course, to a firestorm of criticism.

I am still very much uncomfortable with the twin premises of this compromise. One is to grant immediate permanent residency to a great group of people who are here but only those who work in agriculture. The second premise is to permit the growers to have an ample almost unlimited supply of nondomestic, non-U.S. labor to harvest their crops. However, the Rules Committee at my request, and I appreciate their help, has incorporated into the text of H.R. 3810, five separate amendments which I have offered which I think correct or could be further corrected in conference, five of the most egregius flaws in this particular compromise.

Other shortcomings were identified by other committees which had sequential referral, and they are dealt with in the course of the rule. However, I still feel even if the bill was approved with my amendments, that compromise is still not acceptable, and I would urge a change in the conference. But all I can ask of my colleagues today is, rather than defeat the rule, rather than try to rewrite the rule, which is a perilous exercise, a risky business, I would ask my colleagues to approve this rule, let us have our debate, let us go to the conference with the Senate and send a bill to the President this year.

If I had written the rule, I would have written differently.

I would not have made the same amendments in order which the rule makes in order. And, I would have excluded from the text of H.R. 3810 some of the amendments which the rule includes.

However, we are where we are. As imperfect and flawed as the rule is, I hope it passes. And, I hope we pass H.R. 3810 and complete a conference and send a final product to President Reagan for signature this year.

So much talk and so much controversy have been directed to the Schumer-Berman-Panetta agricultural labor compromise, that we could lose sight of the other provisions of the bill. The bill is much more than an agricultural labor bill despite what you may have heard and been led to believe.

H.R. 3810 contains these important provisions:

Employer Sanctions: To curtail the illegal flow of aliens into our Naiton. H.R. 3810 makes it unlawful for employers to knowingly offer jobs to undocumented aliens.

Legalization: To do justice to people and to end a shadow society, the status of some of the aliens who have entered the United States illegally, who have been here the longest, have deepest roots and who are not excludable; that is of good character and habit is legitimized.

Border enforcement: To strengthen the Immigration Service's border enforcement and antismuggling efforts more money and more personnel are provided by H.R. 3810.

Miscellaneous: H.R. 3810 corrects flaws in and strengthens the Immigraiton and Nationality Act in many other ways.

Agricultural labor: Only lastly does H.R. 3810 treat agricultural labor. As I have said, this is not just an agricultural labor bill, please be assured of that.

Now, let me address for a moment the Schumer-Berman-Panetta agricultural labor compromise.

I opposed the compromise at the Judiciary Committee markup—the only Democrat to do so I am sorry to report. Everyone else on my side of the aisle went along grudgingly, and at times shamefacedly with the compromise. They were told to accept the compromise, jot and tittle, because to alter the compromise was to destroy it and the bill itself.

Once, however, the compromise left the committee and was subjected to public scrutiny and careful study, its multitudinous and serious flaws, which I tried to point out to the committee, came to light and produced a veritable firestorm of opposition and concern.

I am still uncomfortable with the dual premises of the compromise: To grant immediate permanent residence to agricultural workers—to benefit the workers—and to guarantee growers an ample supply of nondomestic agricultural workers—to benefit the growers.

However, the Rules Committee, pursuant to my request, and in response to the firestorm of concern over the agricultural labor compromise, has folded into the bill, if the rule is adopted, five separate amendments I authored which cure—or at least open to fuller cure in conference—the most egregious flaws in the Schumer-Berman-Panetta compromise.

Other shortcomings in the compromise are corrected or ameliorated by several amendments the rule makes in order or which are incorporated into H.R. 3810.

But, the Schumer-Berman-Panetta language still need further modifications which I will strive to make in conference.

Now, however, rather than defeating the rule and going back to square 1, or even trying to rewrite the rule which is risky business, I would urge my colleagues to adopt this rule, pass H.R. 3810 and move it to conference.

Let's not let our disagreements on one part of H.R. 3810 keep us from moving forward on the far broader subject of immigration reform.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Mississippi [Mr. LOTT].

Mr. JEFFORDS. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I am happy to yield to the gentleman from Vermont.

Mr. JEFFORDS. Mr. Speaker, I rise in opposition to the rule.

I do not like one bit the procedure under which this bill has been brought before us. Sure minority rights should be protected, but that does not include the right to take to conference a provision that is opposed by the majority. I think a majority of the House opposes the Schumer proposal.

This perverse protection is what we have here today. I urge my colleagues to join me in politely but firmly telling the Rules Committee to give us a vote on the Schumer proposal by defeating the previous question.

The Schumer proposal is a deft piece of politics. But it's a sweetheart deal, pure and simple. It does not represent the public interest, and it does not represent the will of the House. If it did, we could have voted on it.

Like Tantalus, we can see this deal and all its flaws, but we cannot reach it. Members in the four committees that considered this bill on referral were told that amendments to this provision were not possible. We could not attempt to amend it, because doing so would recommit the bill to the other committee with jurisdiction, delaying and effectively killing the bill.

That was in late July. So much for delay.

Now, on the floor, when delay is not the issue, we are told that amendments would upset a delicate compromise. A compromise between whom? Between two interests, neither of which represents the interests of my constituents or most Americans.

So much for compromise.

Since the public interest was not party to this compromise, we should not compromise its interest. Let's vote down the previous question, and vote for a bit of democracy.

Mr. LOTT. Mr. Speaker, I would like to commend the committees that have been involved in the House in moving this legislation forward, the Committee on the Judiciary and the Committee on Rules. Particularly I want to thank and commend the gentleman from Kentucky, Mr. MAZZOLI, for his long and diligent efforts in support of this legislation, and the gentleman from California, Mr. LUNGREN, and all the others who have worked to make this possible. I think they have done a very good job with this bill, for the most part. It should be moved forward through the House, hopefully through the conference, and we should move it on to become law.

□ 1035

My major concern with the committees is, first, that the Judiciary Committee waited so long to report it, because it may get trapped in the rush now to end this session; and, of course, the Rules Committee came close to having a totally fair rule, but gets no

cigar, because it missed it on one very vital point.

This is a very politically difficult bill to deal with. Many of us come from districts that are not directly affected, immediately at least, and my district is one of those. But it is a crisis. It is a timebomb waiting to happen. We must deal with this issue, and I think we all know that in our hearts. And if we can move this legislation forward in a fair manner, I think it will go through the House of Representatives.

But I urge my colleagues to defeat the previous question so that we can offer a fair substitute rule, one that would give a chance to the gentleman from California [Mr. LUNGREN], and one that would also preserve the traditional absolute right of the minority to have a motion to recommit with or without instructions.

The substitute rule would allow a substitute amendment by Mr. LUNGREN for the Schumer, and in case you are not familiar with the issue, I will be just very brief in describing it.

The Lungren amendment is identical to the Wilson amendment passed in the other body and comparable to the so-called Panetta-Morrison provisions passed by the House last year. Essentially, it establishes a special guest-worker program over the next 3 years, during which up to 250,000 workers can be admitted each year for up to 9 months to harvest perishable crops if sufficient domestic workers are not available.

The Schumer amendment, on the other hand, permits workers who have worked at least 60 days, and not necessarily all of those days, between May of last year and May of this year to qualify for resident alien status and to qualify for Federal benefits. I looked at this provision. I tried to find a way to support it, but, ladies and gentlemen, I cannot, because I think it will exacerbate the very problem we are trying to deal with here.

The rule left out Lungren and the motion to recommit with or without instructions, but it made in order 30 other amendments. The gentleman from California [Mr. LUNGREN] is no minor player in this issue. The gentleman has been very diligent. The gentleman has been highly involved and respectable in the way he has handled himself. The gentleman has been a major contributor to making it possible to move it forward. Yet the gentleman is cut out. Why was this 1 amendment not allowed while 30 were allowed? Very simply, I can state it this way. In fact, some of my friends on this side of the aisle would say to you honestly it is because if the Lungren amendment is made in order, the will of this body will be to pass it. Schumer will be knocked out and Lungren will pass.

Now what have we done? The Rules Committee, knowing the will of the House is to pass an amendment, says, well, we are not going to make it in order. What kind of procedure is this? It is not fair. It is the only remaining major issue that needs to be addressed. I suspect that some of those who want to see this whole immigration reform issue die have lured us into this snare, trying to kill it; not the gentleman from California [Mr. BEILENSON] of the Rules Committee, who has been very, very, I think, sincere in his efforts to craft a good rule here. But it is not fair. Defeat the previous question.

Mr. Speaker, I first want to commend the various committees involved on bringing us an immigration bill, and the Rules Committee on clearing it for floor action under this modified open rule. I think we've come a long way from the prolonged process we suffered throught in the last Congress. I would like to think this bodes well for enactment despite the short time remaining in this Congress.

I know this bill contains several politically difficult issues that we would all rather not confront in an election year. But I strongly feel that this is one of those extraordinary crises in which the national interest must take precedence over our immediate political concerns. And make no mistake about it, illegal immigration is a ticking timebomb that must be defused now or its explosive repercussions will rip through the heartland of this country in the future.

Having said that, I want to join the gentleman from Tennessee in urging defeat of the previous question so we might offer a substitute rule that does just two things: First, it would make in order the Lungren substitute for Schumer language in the bill on the issue of guest-workers; and second, it would restore the minority's traditional right under House precedents to offer a motion to recommit of its choosing, and not be confined to a straight motion to recommit without instructions.

The Lungren amendment is identical to the Wilson amendment passed in the other body, and comparable to the so-called Panetta-Morrison provisions passed by this House in the last Congress. Essentially, it establishes a special guest-worker program over the next 3 years during which up to 350,000 workers can be admitted each year for up to 9 months to harvest perishable crops if sufficient domestic workers are not available.

This would replace the existing Schumer language in this bill which permits workers who have worked at least 60-days between May of last year and May of this year to qualify for resident alien status and qualify for Federal benefits.

Mr. Speaker, I won't deny that this rule comes close to being fair, making in order as it does some 30 amendments that span the broad range of issues and alternatives involved in this complex and comprehensive bill. But, while the rule may come close, the Rules Committee gets no cigar. Instead, the minority got the cigar—only it happened to be an exploding cigar that blasted away our right to offer even one alternative to the Schumer language, and deprives us of our historical right and prerogative to offer a motion to recommit with instructions. Denying the Lungren amendment on guest-workers deprives a bipartisan majority on both sides of a vote on an amendment that carried in the last Congress. Let's rectify this denial of majority rights by defeating the previous question and adopting a new rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 1½ minutes to the distinguished gentleman from Florida [Mr. SMITH].

Mr. SMITH of Florida. Mr. Speaker, this is a very unfair rule. It does not permit the House a separate vote on the most controversial part of the bill, the Schumer-Berman-Panetta guest-worker provision. Along with a number of my colleagues, I asked that Rules Committee permit a vote to strike that provision. We are not being given that opportunity.

I am opposed to the expanded guest-worker provision.

What options do I have? Not many. If the previous question motion is defeated, we will be faced with a rule that will include an even worse guest-worker provision that the other body approved. So, I must support the motion for previous question.

Of course, the House could defeat the rule itself. Yet, that would be tantamount to defeating immigration reform. For 4 years—two of them serving on the Immigration Subcommittee—I have supported a strong immigration reform bill. The bill itself has many provisions for which I have fought. My constituents want immigration reform. All Americans want immigration reform, and this may be our last chance. I, therefore, will have to vote for the rule so that we will be able to vote on the substance, the good substance, of the legislation. I realize that, in so doing, I and my colleagues will be giving the California growers what they want and what they should not receive. You do not get an addict off drugs by feeding his habit. Illegal alien workers are the drugs of agribusiness, and this bill keeps up agriculture's supply.

I don't like it, but that is the situation. In the end, immigration reform—regaining control of our borders, reducing the ultimate influx of illegal refugees—is our primary goal. This bill will achieve that even with the unwanted provisions.

Mr. QUILLEN. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois [Mr. MICHEL] the minority leader.

Mr. MICHEL. Mr. Speaker, we are again facing the conclusion of another Congress. This is a time when the Nation needs strong legislative leadership. Unfortunately what we are getting is legislative brinkmanship.

We are beginning the great rush to judgment on so many critical pieces of legislation and leaving behind a path of destruction unequaled since the Soviets invaded Afghanistan.

The House is suffering from ineptitude. It is a $1 billion organization of immense proportion with immense responsibility run like a popcorn stand outside the county courthouse.

Look at the record. We are finally getting around to immigration and at the last minute you want to play a game of partisan brinkmanship.

The majority has stalled, delayed and sidetracked immigration reform for almost a year, just as you did omnibus crime reform, which we finally got enacted on a motion to recommit, no less.

Immigration, though is a mild symptom of the disease.

The military construction appropriation was passed by the House in June and it went to conference on August 15. Where is it? What have you done with it?

The debt limit is once again threatening to bring us to the brink this year, with all of the horrifying complications involving disinvestment of Social Security and the rest. It went through the Senate on August 9.

Superfund has been in conference almost a year. Nothing should take that long. Nothing.

And finally, there's the budget. I don't think we have complied with our own laws in the 12 years the Budget Act has been in existence. We go on road shows, and stir up a lot of political dust, but in the end what we pass could have been more skillfully done in a mock Congress in an Illinois grade school.

We just refuse to meet deadlines required by law. We delay and we stall and we procrastinate. Reconciliation should have been done prior to July 4, and we just got around to it this week.

Mr. Speaker, the House of Representatives has to some day move into the 20th century before the 20th century passes us by.

We need better management, better communication, better cooperation, new technology, and streamlined procedures. Finally, we need less partisanship, brinkmanship, and political gamesmanship in the decisionmaking process.

Mr. BEILENSON. Mr. Speaker, the gentleman from California agrees wholeheartedly with the gentleman from Illinois.

Mr. Speaker, for purposes of debate only, I yield 1 minute to the gentleman from Texas [Mr. DE LA GARZA]

Mr. DE LA GARZA. Mr. Speaker and my colleagues, this bill was referred sequentially to the Committee on Agriculture. We studied it and we have one proposed amendment which would allow equity for agriculture as far as immigration officers coming on the land without a warrant.

The so-called Schumer-Berman-Panetta compromise, we looked at it and we found out that it was adequate in an inadequate way, but yet, under the art of the possible, it was the best that we could do, and the committee decided to go along with the compromise.

So I have a difficult situation in that I have concerns about other parts of the legislation. But as far as the Committee on Agriculture and the responsibility which I have there, we are satisfied that the legislation is adequate, and I would suggest that we vote for the rule in that respect.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. MORRISON].

Mr. MORRISON of Washington. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, normally I vote against this type of rule, and it pains me to oppose my good friend and leader, the gentleman from California [Mr. LUNGREN]. But I am going to argue to support the fencing off of the agricultural worker provisions. This position is supported by most agriculture organizations, including the American Farm Bureau.

□ 1045

The two basic reasons for my support of the Schumer package: No. 1, and this is the most important, it is the only way to get to conference. The other body has already approved the Wilson amendment, an updated version of the Panetta-Morrison guest-worker program adopted overwhelmingly by this House is 1984.

Again, this approach taken by the rule is the only way to get to conference on the agricultural issue. The No. 2 reason is this: Agricultural interests have pledged to not stand in the way of meaningful immigration reform, and this is the driving force that brings us to this particular point today, and it is a difficult one.

We have accepted the political facts of life; the only road to conference is with the Schumer proposal. Otherwise, we will never get there.

Reluctantly, I ask for support for the rule and believe that support is justified under the circumstances.

Mr. BEILENSON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT. I thank the gentleman for yielding to me.

Mr. Speaker, I simply want to make this point: The minority has made a big issue out of the fact that the Lungren amendment is not made in order by this rule, but let me point something out. I asked the Rules Committee to make in order an amendment to completely strike any guest-worker provision whatsoever because I do not believe the growers of California or any other State need guest-workers. I think they ought to hire American citizens like everybody else is going to have to do.

They did not make my amendment in order because they knew if my amendment succeeded, it would kill the bill. They did not make Mr. LUNGREN's amendment in order, which would lift 350,000 people who work here for 11 months of the year because they knew if his amendment succeeded, it would kill the bill.

Instead, what they left in the bill was a very difficult, delicate and hard-to-arrive-at compromise arrived at between the growers and between those people that work in the fields. That is difficult to understand at first blush, but it is logical as you begin to examine it further.

I would like to have been able to vote against any kind of guest-worker provision, but I cannot have all that I want. Mr. LUNGREN and Mr. MICHEL, you cannot have all that you want, either. We have a rule today that will give us an immigration bill, and that is what I want.

I urge the Members to vote for the previous question and for the rule.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. I thank the gentleman for yielding me this time.

Mr. Speaker, as a California Member of the House, I can say that probably the most profound problem in our State as it reflects on our 45 Members here is immigration reform. I accept that.

When I appeared before the Rules Committee asking for permission to have an amendment made in order, which, by this rule, was denied, I heard one of the most incredible presentations by colleagues of mine relating to their Schumer proposal that I want to share with my colleagues now.

I do not know whether the gentleman from California, Mr. BERMAN, is here now or not; yes, he is here. But, I was sitting behind the gentleman and I heard him use the word "whacko." He said, "It only seems whacko." I will give the version Mr. BERMAN says he uttered, namely, "It only seems whacko."

It only seems whacko, that is, the Schumer proposal in this bill. I suspect the reason Mr. BERMAN used the words "It only seems whacko," was because of the ridiculous impact it is going to have upon the finances of the U.S. Government if this immigration bill, in the form that is now before the House, is approved.

Can you imagine that if you have worked in agriculture for 60 days, within May 1, 1985 to May 1, 1986, you have established eligibility for permanent residency in the United States. You will get a green card. What is more, you will be entitled to welfare benefits, all that exist under the law today.

If the taxpayers of America find out about this, they are going to be incensed at what in the world are we

doing. They can understand the necessity of recognizing we need guestworkers coming in for agricultural jobs in America which our citizens choose not to take, but they do not choose to pay welfare benefits to these friends that come into our society.

Mr. BERMAN. Mr. Speaker, a point of personal privilege: I believe my name was mentioned.

The SPEAKER pro tempore. (Mr. MURTHA). The gentleman from California cannot be recognized for that purpose.

The time of the gentleman from California [Mr. DANNEMEYER] has expired.

Mr. DANNEMEYER. We should support the effort of the gentleman from California [Mr. LUNGEN] to defeat the previous question and vote down this rule.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. I thank the gentleman for yielding me this time.

Mr. Speaker, I will certainly try, in 1 minute, to state my feelings on the rule. I do plan to be active in the debate on the bill.

Once upon a time, immigration reform looked like it would finally get the attention it deserved from this Congress. I was particularly hopeful of that. I spent a good deal of my professional life as an immigration lawyer. It is high time we do something.

Now we find ourselves being asked to consider a prepackaged, special-interest-laden bill which is nothing less than ridiculous. Chain migration, outyear numbers that could total 70 million, abandoned. I offered an amendment before the Rules Committee not made in order. Lungren not made in order; Hughes not in order; motion to strike Schumer not in order; motion to recommit with instructions not in order; El Salvadorian voluntary extended departure, stuck in the bill at the last minute.

Vote for Lungren.

Mr. BEILENSON. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. COOPER].

Mr. COOPER. I thank the gentleman for yielding me this time.

Mr. Speaker, I would like to urge all of my colleagues to vote "yes" on the rule and "yes" on the previous question. We all know that immigration is a complex and troubling issue. It certainly is for me as a southerner and as a conservative.

We have a chance now to get immigration reform; let us not blow this opportunity. Immigration reform, as we know, is long overdue; we should have done this a long time ago. Many of the problems we face today are compounded because we have failed to act. Now is our chance to act. This is a fair compromise.

In my short time in Congress, I cannot remember a time when the American Farm Bureau and the AFL-CIO have agreed on a measure. The Farm Bureau is one of the strongest if not the strongest single group in my State of Tennessee. They are an outstanding group. The quarter of a million farm families they represent in Tennessee I think would be pleased with this compromise.

Nobody gets their way entirely, but this is the best we can get. A third point: This is a leadership vote. This is a relatively small element that they are complaining about on the minority side out of this large, large bill. Let us not let the tail wag the dog on this measure. We are in the waning days of Congress; let us get on with genuine reform.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. PASHAYAN].

Mr. PACKARD. Mr. Speaker, will the gentleman yield?

Mr. PASHAYAN. I yield to the gentleman from California.

Mr. PACKARD. I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of the rule, recognizing its flaws, but still recognizing that if we allow this issue to be laid at the side of this aisle for defeating the immigration bill, it will come back to haunt us deeply. It is the most important issue in my district, and certainly I am anxious for a successful immigration bill.

I would have written the rule differently, but that is not possible. We need to get it to conference. Support the rule. Hopefully, the Wilson amendment will replace the Schumer amendment in conference. Certainly, we need to have the bill.

Mr. DREIER of California. Mr. Speaker, will the gentleman yield?

Mr. PASHAYAN. I yield to the gentleman from California.

Mr. DREIER of California. I thank the gentleman for yielding to me.

Mr. Speaker, we in this country are faced with a real crisis. We must bring about immigration reform. Since I have been here, we have been desperately fighting to see legislation pass this House, get to conference and get to the President's desk.

I know that my preference would be the Wilson amendment because I think that best addresses the crisis that we are facing. Nevertheless, we have only one vehicle which will get us to conference, and for that reason, I rise in support of the previous question so that we might consider the rule.

One of its more controversial provisions is the so-called Schumer-Berman-Panetta agricultural worker program. This provision will enable growers of perishable agriculture to meet their labor needs. I must admit, however, that the provision is not perfect. In all candor I would prefer the Wilson provision approved by the Senate. It is regrettable that the chairman of the Judiciary Committee foreclosed any consideration whatsoever of that option. Nevertheless, the provision represents the best alternative that could be put together to address a complex and difficult problem.

Without the Schumer amendment the largest industry in my State would be jeopardized. Unable to depend totally on domestic labor, growers would be forced to reduce production of perishable commodities. This in turn would dry up agricultural exports and increase imports of foreign grown produce. I need not remind my colleagues of the effect of such a situation on the U.S. trade imbalance.

The growers in my State are generally small family farmers for whom the existing foreign worker programs are cumbersome and costly. The provision in H.R. 3810 would set up a system based on free market principles. Workers would be able to work for whomever they liked and growers could better attract the workers they need through paying competitive wages.

The agricultural worker problem is wrought with complexity. Yet avoiding the issue could spell the demise of perishable agriculture in this country. I have grave concerns, too, about the blanket granting of amnesty which the rule grants. Mr. Speaker, this rule also allows me to join my colleague, Mr. MOORHEAD, in offering an amendment to increase the border patrol by 50 percent. While not a panacea, this provision will help to stem the flow of illegals and potential terrorists. We should move ahead with the process but I hope we can improve this rule.

I urge my colleagues to join me in resolving these troublesome issues.

Mr. PASHAYAN. Mr. Speaker, the special interests that were referred to by one of my colleagues are thousands of small farmers and their families throughout the West, especially in California. They are the ones that need permanent protection by any kind of immigration bill.

The Lungren provision does not offer permanent protection; it offers protection only for 3 years. Therefore, the only vehicle to protect these thousands of small farmers—these are small, family farmers—the only vehicle before us today to protect them in conference is the Schumer amendment. I rise in support of it.

□ 1055

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. Mr. Speaker, I rise in strong support of the rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 1 minute to the distinguished gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, the gentleman from California [Mr. DANNEMEYER], who spoke earlier not only misrepresented my comments before the Committee on Rules, but he misrepresented the bill.

As a matter of fact, and as the gentleman from Kentucky [Mr. MAZZOLI] has pointed out, as the Committee on Ways and Means and the gentleman from Nebraska [Mr. DAUB] certainly know, the welfare benefits that the people who would come under the program refer to as the Schumer-Panetta-Berman program were denied and are in the base of the bill. They are not eligible for the traditional AFDC welfare benefits.

As the gentleman from California knows, because he was there before the Committee on Rules, I said this bill, on serious examination, and this proposal make compelling substantive and political sense.

We have tried it the other way in 1981, 1982, 1983, and 1984, and there has been no immigration reform. For people who want immigration reform, let us try it a different way, a way that brings disparate parties together and works on these solutions together.

I urge an "aye" vote.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the genteman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Speaker, the Committee on Rules did a railroad job on this rule. The effect of doing a railroad job on this rule is to make a bill loaded down with contentious and divisive issues even more contentious and more divisive which will ensure that a conference will not succeed.

The gentleman from Nebraska [Mr. DAUB] ticked off a whole host of things that the Committee on Rules did, including putting Moakley-DeConcini in and sheltering it from a motion to strike.

But in another instance, on the issue of warrantless searches of fields, the Committees on Agriculture and the Judiciary have had a difference of agreement. The Committee on Agriculture supported the search warrant; the Committee on the Judiciary, for good reason, did not. Yet the committee on Agriculture's version is put in this bill and sheltered from a motion to strike.

So even when there are disagreements between 2 committees, this rule prevents a vote of the House to determine which committee's viewpoint is justified.

These kinds of issues are going to make a conference almost impossible to reach agreement in the few days left of this session. This kind of rule, I believe in effect, will kill immigration reform vitally needed for 2 more years.

Mr. BEILENSON. Mr. Speaker, for purpose of debate only, I yield 1 minute to the gentleman from California [Mr. TORRES].

Mr. TORRES. Mr. Speaker, I rise in support of the rule on H.R. 3810. Immigration reform is a complex and difficult issue. Addressing the many competing interests is not easily achieved. But I strongly believe that the rule we are voting on here today represents a fair and realistic effort to balance these interests.

Two years ago, I voted against the House immigration reform bill. I voted against the bill because I believed that employer sanctions would result in widespread discrimination. I voted against the bill because I believed that the massive guest-worker program that was adopted would lead to abuse and exploitation of both foreign and American workers. I voted against the bill 2 years ago because I did not believe it represented fair or meaningful immigration reform.

Because of our efforts to ensure that immigration reform did not result in discrimination and abuse, Hispanics like myself have been accused of being obstructionist. We have been criticized for subverting the will of the majority. When I opposed the rule on the immigration bill in the last Congress, I was told that although the rule was not perfect—the time for immigration reform had come.

I find it ironic that some of these same critics are now attempting to deny the House an opportunity to vote for legislation that has been approved by virtually every committee of jurisdiction. The rule is not perfect. But it does attempt to maintain a realistic balance of competing interests. And to borrow a line from my critics—the time for immigration reform has come.

If the rule we are considering here today is adopted, I am not certain how I will vote on final passage. I am still troubled by the discrimination that could result from employer sanctions. I am also not convinced that any foreign agricultural workers should be imported to pick our crops. I am certain, however, that if the rule is not adopted, the opportunity for approving acceptable legislation will be lost.

If the House does not adopt this rule, the delicate balance that has been crafted will be destroyed and immigration reform will once again be left for another day. I urge my colleagues to adopt the rule and provide the House an opportunity to vote for a fair and meaningful immigration bill.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. SHAW].

Mr. SHAW. Mr. Speaker, I rise in strong opposition to this most undemocratic rule.

Again, we find ourselves going through the semiannual sadistic process of trying to do something about meaningful immigration reform in this country. I am sick and tired of hearing speaker after speaker come down here and say that getting this bill out is more important than the democratic process.

The Committee on Rules has completely stopped the democratic process from going forward and I will say to the Members that democracy, the democratic process, is more important than any statute, any change or any bill coming through this Congress of the United States.

It is sadistic and anybody who believes for 1 moment that we are going to take this bill to conference and that we are going to come back with a good immigration bill before the close of this Congress next week or the following week must have come in this morning's mail.

It is not going to happen and I urge all of the Members that the only way that we can really make our feelings known and come up with a decent bill that will give us any chance of meaningful immigration reform this year is to defeat this awful rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 1 minute to the gentleman from California [Mr. PANETTA].

Mr. PANETTA. Mr. Speaker, having worked on immigration reform, I, too, regret that we take this up in the closing days of the session. But that is the case.

Yesterday we dealt with tax reform; today we deal with immigration reform. There are some similarities. Like tax reform, if we are going to do immigration reform, it has to be comprehensive and deal with a broad number of areas to do it properly.

Like tax reform, you cannot provide an open rule that allows every amendment to come in and destroy the careful compromises that have been put together. That is the reality of dealing with comprehensive legislation in this body if you want to enact it.

On the compromise itself, let me say this: Today there are in the area of 300,000 to 350,000 undocumented who work in agriculture. The choice of this institution is either to allow the continuation of having illegals work in agriculture, to bring in another 300,000 to 350,000 guest-workers in this country to solve that issue, or to try to legalize and provide green cards to those who work in agriculture.

Do the right thing. Support this compromise and support the rule.

Mr. QUILLEN. Mr. Speaker, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

Mr. MCCOLLUM. Mr. Speaker, if the Members love amnesty, they are really going to love the Schumer amendment because that is what it is. That is what the provision is, a second legalization or a second amnesty that is far worse than the regular legalization that is in this bill.

It is the one thing in the legislation that is going to cause this Member, who has always supported immigration reform, to vote against the whole package if we cannot amend at this time. I hate to say that.

The only way we can get a decent product out of this body is by voting

on and with the gentleman from California [Mr. LUNGREN], to vote down the previous question, and, if necessary, vote down the rule.

We also do not have the opportunity to get an extended voluntary departure under this rule. They are going to put this in to let Salvadorans who are in this country, some 500,000, stay. If you vote for the rule, you are voting to do that when, in fact, they can go back home and everything is jim-dandy and fine. I have been down there; I have seen it.

It is wrong not to let us debate these issues. It is wrong not to let us have the opportunity to get at the Schumer amendment and other things by this choke rule that is going to keep us from that opportunity today.

I urge the Members in the name of fairness to vote down the previous question on this rule and to vote against the rule if necessary.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 1 minute to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, I suppose the debate today is not dissimilar from the debate yesterday.

We have a real crisis in this country about immigration. Every year, 2 million people cross the borders here illegally. That is something we cannot have any longer.

What do we do about it? Mr. SIMPSON and the gentleman from Kentucky [Mr. MAZZOLI] have put together a comprehensive bill. That bill is ready to become law, ready to become law if we can put aside our petty differences and say, "I like this agricultural provision better than that agricultural provision," and say, "This does not exactly meet my needs and that one does."

We can have real immigration reform if we pass this rule, if we vote for the previous question. It is that simple.

If we do nothing, no matter how much the Members like or dislike either the Wilson-Lungren proposal or the Schumer proposal, we have no reform.

If we pass this rule and pass the previous question, we are finally doing something in a fair and humane way about immigration reform.

I urge my colleagues to vote yes on both questions.

Mr. BEILENSON. Mr. Speaker, I yield such time as he may consume to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise in support of the rule.

Mr. BEILENSON. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from New York [Mr. FISH].

□ 1105

Mr. FISH. Mr. Speaker, we have before us here a truly extraordinary rule. I can understand and I share the frustration of my colleagues over this highhanded rule. Nevertheless, I am going to ask my colleagues to support it.

I thought long and hard about the position I should take and concluded the most important element is that the process goes forward. This is painful, inasmuch as it is a position apart from most of my colleagues on the Judiciary Committee and particularly those who share my commitment to immigration reform and who have worked so hard on this issue. But this bill must go forward even at this late hour.

It is clear that we have lost any semblance of control over who may enter our country. The Immigration Service projects that we will exceed last year's record 1.2 million apprehensions by a factor of 40. Compared to 1960, the apprehensions on our Southwest border therefore have doubled. The time to act is clearly now.

In October 1984, we went to conference on this bill for some 10 days. At that time, there were three issues on which that conference floundered. One was the question of a cap, and that has been resolved in a meeting with the President. The money will be there.

The next was the Frank special antidiscrimination provisions, and they have been modified and are now satisfactory.

The third was the question of agricultural labor and that remains with us today.

With respect to the forthcoming conference, I am far more optimistic than some of the speakers that we have heard.

I promise this body that this Member, who will be a conferee, committed as I am to immigration reform, will not sign a conference report that does not make major changes in the agricultural labor provisions of the measure before us.

Mr. Speaker, the risks of not going forward are too great. An immigration bill has been pending before the Congress in some form for the past several years. The Senate in three successive Congresses has passed comprehensive immigration reform. If we fail to enact reform in this Congress, I fear that when the day comes that a later Congress considers immigration reform, it will produce a bill that is narrow and restrictive. It will be driven toward passage by what will then be the pentup frustration of the American people. This is too large a risk for me to accept.

I ask you to support the rule and go forward with this bill.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge a "no" vote on the previous question so that we can consider the Lungren amendment and a motion to recommit with instructions.

I think it is unbelievable that after only 60 days of work in agriculture, this bill would put illegal aliens on the road to citizenship.

Mr. FRENZEL. Mr. Speaker, today the House is faced with another unacceptable choice. Unless we vote for an outrageous rule, we cannot even work on the immigration bill.

Two years ago, I voted for the immigration bill, even though I thought it was terrible, because reform was needed. Then, too, the House was presented with the complex bill in the last week of the session.

We might have expected that the House would have learned something in the past 2 years. No such luck. Here we go again. In what is supposed to be the second to last of the session, the House leadership wants to take up a controversial, complex bill with hundreds of amendments pending.

The rule made 23 amendments a part of the bill with no debate or no vote. It made another several dozen in order for debate. It rejected even more. The procedure was irrational. Therefore on the procedural questions, the previous question and the rule, itself, I shall cast a vote against the procedure.

We should have worked on this bill a year and a half ago. If we must work on it now, we need a relatively open rule.

The choice is with the House leadership. It can work on, and pass, an immigration bill. Or, it can kill the bill, by attacking the burden of this unacceptable procedure.

Mr. LEHMAN of California. Mr. Speaker, I rise in support of House Resolution 559, the rule providing for the consideration of H.R. 3810, immigration reform legislation.

Many things have been said this morning regarding both the rule and H.R. 3810, and much of what has been said unfairly characterizes the rule and the immigration reform legislation.

Mr. Speaker, H.R. 3810 is a product of many months of debate and compromise in concepts and actual legislative language. The rule providing for the consideration of H.R. 3810 furthermore provides adequate opportunity for all Members of this body to offer their own amendments and revisit many of the issues which some Members might consider objectionable. I suggest that we support the rule and move on the larger issue of discussing H.R. 3810.

With regard to H.R. 3810, Members of this body have risen to speak out against the so-called Schumer-Berman-Panetta agricultural provisions which are a part of the package. The compromise worked out by our colleagues is a good one and should be supported as is.

As the product of a typical 40-acre grape vineyard in the heart of California's San Joaquin Valley, I am fully aware of the need for an adequate labor supply to meet the often unexpected labor needs of the Valley's hundreds of small specialty crop farms. I am also fully aware of the difficulties which these farm

operations face in securing that work force when harvest demands dictate. And finally, I am fully aware and appreciative of the important contributions which those who volunteer to work in the harvests make to California agriculture and the dozens of communities whose economies are so intertwined with agriculture.

The compromise reflected in the Schumer-Berman-Panetta provision meets the needs of both agriculture and those who so choose agricultural work as a vocation. There is great balance and equity in the compromise package and Members of the House should recognize the importance of the compromise provisions to H.R. 3810.

I urge my colleagues to adopt the rule and allow for the consideration of H.R. 3810.

Mr. BUSTAMANTE. Mr. Speaker, I rise in reluctant support for this rule. I support this rule for an imperfect bill because I am committed to do something about our immigration policy. The rule makes in order important amendments, such as the Garcia amendment, which will check the negative aspect of employer sanctions. It is an imperfect bill which has provisions which have no relevance to controlling our borders such as the special interest provisions for agricultural growers. Not many of my colleagues have focused during this debate on controlling the borders but rather on the agricultural guest-worker provision. My vote for the rule today is to give enlightened immigration reform a chance; however, I fear that the effort is threatened by special interests who would turn this bill into a foreign worker jobs bill. I urge my colleagues to give true immigration reform a chance and vote for this rule.

Mr. MOODY. Mr. Speaker, I urge my colleagues to support the rule for H.R. 3810, the immigration reform bill. Many Members have legitimate concerns about many provisions in this bill, but without approval of this rule, we may not be able to pass an immigration bill at all. We may repeat the tragedy of 1984, when, after having worked so hard for so long, we failed in the 11th hour to pass much needed immigration reform legislation. Let's not go down that path again.

The Schumer-Berman-Panetta compromise provision on agricultural workers is fragile in the extreme. It has taken 10 months to reach, and I believe it does a better job of balancing the need for a sufficient agricultural work force and our desire to protect those workers from exploitation than any other alternative before us. As with any compromise, no party achieved everything they sought. But the fact that growers' associations, labor unions, and civil liberties groups have joined in support of the provision is evidence to me that our colleagues have done a miraculously good job. We should not cut them off at the knees now.

Those of you concerned about the employer sanctions and amnesty provisions of this bill will have the opportunity to modify and vote on those sections. The rule before us does not prohibit your concerns from being heard. But there can be little doubt that amending the agricultural workers provision will be the bill's undoing, and may lead us back to the stalemate we experienced during the last Congress.

Those of you who support efforts to adopt the Senate's agricultural workers provision bill have a strong voice in the conference committee on this bill. But if you express your views by voting against this rule, there may not be a conference committee. We will all lose if no immigration bill is approved at all.

Support the rule on H.R. 3810, the immigration reform bill of 1986.

Mr. QUILLEN. Mr. Speaker, I yield the balance of my time to the gentleman from California [Mr. LUNGREN].

CALL OF THE HOUSE

Mr. LUNGREN. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members responded to their names.

[Roll No. 418]

Abercrombie	Crane	Hamilton
Ackerman	Daniel	Hammerschmidt
Akaka	Dannemeyer	Hansen
Alexander	Darden	Hatcher
Anderson	Daschle	Hawkins
Andrews	Daub	Hayes
Anthony	Davis	Hefner
Applegate	de la Garza	Hendon
Archer	DeLay	Henry
Armey	Dellums	Hertel
Aspin	DeWine	Hiler
Atkins	Dickinson	Hillis
AuCoin	Dicks	Holt
Badham	DioGuardi	Hopkins
Barnard	Dixon	Horton
Bartlett	Donnelly	Howard
Barton	Dorgan (ND)	Hoyer
Bateman	Dornan (CA)	Hubbard
Bates	Dowdy	Hughes
Bedell	Downey	Hunter
Beilenson	Dreier	Hutto
Bennett	Duncan	Hyde
Bentley	Durbin	Jacobs
Bereuter	Dwyer	Jeffords
Berman	Dymally	Jenkins
Bevill	Dyson	Johnson
Billirakis	Early	Jones (NC)
Bliley	Eckart (OH)	Jones (TN)
Boehlert	Eckert (NY)	Kanjorski
Boland	Emerson	Kaptur
Boner (TN)	English	Kasich
Bonior (MI)	Erdreich	Kastenmeier
Bonker	Evans (IA)	Kemp
Borski	Evans (IL)	Kennelly
Bosco	Fascell	Kildee
Boucher	Fawell	Kleczka
Boulter	Fazio	Kolbe
Boxer	Feighan	Kolter
Brooks	Fiedler	Kostmayer
Broomfield	Fields	LaFalce
Brown (CA)	Fish	Lagomarsino
Brown (CO)	Flippo	Latta
Bruce	Florio	Leach (IA)
Bryant	Foglietta	Leath (TX)
Burton (IN)	Foley	Lehman (CA)
Bustamante	Ford (MI)	Lehman (FL)
Byron	Ford (TN)	Leland
Callahan	Franklin	Lent
Carney	Frenzel	Levin (MI)
Carper	Frost	Levine (CA)
Carr	Fuqua	Lewis (CA)
Chandler	Gallo	Lewis (FL)
Chapman	Garcia	Lightfoot
Cheney	Gaydos	Lipinski
Clay	Gejdenson	Livingston
Clinger	Gekas	Lloyd
Coats	Gilman	Loeffler
Cobey	Glickman	Long
Coble	Gonzalez	Lott
Coelho	Goodling	Lowery (CA)
Coleman (MO)	Gordon	Lowry (WA)
Coleman (TX)	Gradison	Lujan
Collins	Gray (IL)	Luken
Combest	Gray (PA)	Lungren
Conte	Green	Mack
Conyers	Guarini	MacKay
Cooper	Gunderson	Madigan
Courter	Hall (OH)	Manton
Coyne	Hall, Ralph	Markey
Marlenee	Quillen	Spence
Martin (IL)	Rahall	Spratt
Martin (NY)	Rangel	St Germain
Matsui	Ray	Staggers
Mavroules	Reid	Stallings
Mazzoli	Richardson	Stangeland
McCain	Rinaldo	Stark
McCandless	Ritter	Stenholm
McCloskey	Roberts	Strang
McCollum	Robinson	Stratton
McCurdy	Rodino	Studds
McEwen	Roe	Stump
McGrath	Roemer	Sundquist
McHugh	Rogers	Sweeney
McKernan	Rose	Swift
McMillan	Rostenkowski	Swindall
Meyers	Roth	Synar
Mica	Rowland (CT)	Tallon
Michel	Rowland (GA)	Tauke
Miller (CA)	Roybal	Tauzin
Miller (OH)	Rudd	Taylor
Miller (WA)	Russo	Thomas (CA)
Mineta	Sabo	Thomas (GA)
Moakley	Savage	Torres
Molinari	Saxton	Torricelli
Mollohan	Schaefer	Towns
Monson	Scheuer	Traficant
Montgomery	Schroeder	Valentine
Moody	Schuette	Vander Jagt
Moorhead	Schulze	Vento
Morrison (CT)	Schumer	Visclosky
Morrison (WA)	Seiberling	Volkmer
Mrazek	Sensenbrenner	Vucanovich
Murphy	Sharp	Waldon
Murtha	Shaw	Walgren
Myers	Shelby	Walker
Natcher	Shumway	Watkins
Nichols	Sikorski	Weaver
Nielson	Siljander	Weber
Nowak	Sisisky	Weiss
Oakar	Skeen	Wheat
Oberstar	Skelton	Whitehurst
Obey	Slattery	Whittaker
Olin	Slaughter	Whitten
Ortiz	Smith (FL)	Wilson
Owens	Smith (IA)	Wirth
Packard	Smith (NE)	Wise
Panetta	Smith (NJ)	Wolf
Pashayan	Smith, Denny (OR)	Wright
Pease	Smith, Robert (NH)	Wyden
Penny	Smith, Robert (OR)	Wylie
Pepper	Snowe	Yates
Perkins	Snyder	Yatron
Petri	Solarz	Young (AK)
Pickle	Solomon	Young (FL)
Porter		Young (MO)
Price		
Pursell		

The SPEAKER pro tempore. On this rollcall, 376 Members have recorded their presence by electronic device, a quorum.

Under the rule, further proceedings under the call were dispensed with.

□ 1130

PROVIDING FOR CONSIDERATION OF H.R. 3810, IMMIGRATION CONTROL AND LEGALIZATION AMENDMENTS ACT OF 1985

The SPEAKER pro tempore (Mr. MURTHA). The gentleman from California [Mr. LUNGREN] is recognized for 4½ minutes.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, this rule, and this bill, is seriously flawed. We have one of the most important issues facing the country today, immigration reform, and it is brought to the floor with less than a week left before our scheduled adjournment date, under

a rule that automatically adapts 23 amendments, without debate, that have not even been made publically available to the general membership of the Congress. Many of these 23 amendments are very controversial. One for instance, apparently prohibits us from deporting Salvadorans and Nicaraguans who have come into the United States illegally. Another addresses the subject of Medicaid benefits for illegal aliens. Many U.S. citizens, myself included, happen to believe that only U.S. citizens should be eligible for such benefits, except in the most serious life-threatening emergency situations.

Mr. Speaker, I could go on indefinitely about the shortcomings of the rule, the legislation itself, and the procedure by which it has been brought to the floor. In the interests of time, I will not. Suffice it to say, the shortcomings of this package are so great that I plan to vote no on the rule, and urge my colleagues to do the same.

Mr. FAWELL. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Illinois.

Mr. FAWELL. Mr. Speaker, on September 9, I joined several of my distinguished colleagues in a letter to the chairman of the Rules Committee requesting that he allow our esteemed colleague from California, DAN LUNGREN, an opportunity to amend the seasonal agricultural worker program provision in H.R. 3810. My colleague even testified before the Rules Committee seeking the opportunity to amend this program on the House floor. Unfortunately, the Rules Committee denied this request. We must now deny them their rule.

What is it about this so-called Schumer agricultural proposal that affords it such protection from deliberation by the full House? In my Education and Labor Committee, H.R. 3810 was considered without thorough review. We were told that any effort to alter the Schumer proposal would essentially gut any effort by the House to consider H.R. 3810 this session. Accordingly, the bill sailed through committee.

I can only conclude that this program is being protected by the Rules Committee because it could not survive an up or down vote or any other alteration here on the House floor. If this is the case, I would rather have no immigration bill this Congress than to see us pass one ladened with this ill-conceived, give-away program. Thus, I urge my colleagues to vote "no" on the previous question so that we may have the opportunity to amend the Schumer proposal.

There are many bad provisions in H.R. 3810, and we will later get the opportunity to vote on them, but none is more offensive then this seasonal agricultural worker program. This provision gives permanent resident status to illegal aliens who worked in agriculture for at least 60 days between May 1, 1985, and May 1, 1986. These workers would be eligible immediately for entitlement benefits, such as food stamps, AFDC, Medicaid, SSI, and unemployment compensation.

This program should be stripped from H.R. 3810 for two reasons. First, it provides a separate legalization track for a selected group of illegal aliens. Whereas aliens not in agriculture must prove their presence in the United States since 1982 to obtain temporary resident status, these agricultural workers only have to have worked in agriculture for 60 days to obtain permanent resident status. Thus, agricultural workers will be eligible for Federal benefits immediately; all others will have to wait 5 years.

Second, the Schumer proposal undercuts the implementation of an effective and sound immigration policy. Because aliens working in agriculture can qualify immediately for permanent resident status, they may bring their immediate family into the country and all qualify for Federal benefits.

The bill further lures illegal aliens to this country with its replenishment worker program. These agricultural workers, allowed entry to meet unforeseen shortages, could become permanent residents after 1 year. Although such workers would not be eligible for 5 years for most Federal benefits, other program benefits would remain available to them, such as food stamps, Legal Services Corporation assistance, and some types of housing aid. Upon attaining permanent resident status, these replenishment workers could now bring their immediate families to the United States and qualify for Federal benefits.

If we defeat the previous question, Mr. LUNGREN will be permitted to offer a substitute amendment to the Schumer proposal. Essentially, the Lungren amendment would strike the Schumer proposal and insert the Senate-passed immigration bill's seasonal worker program.

Although I have some problems with this so-called Wilson proposal, it has many lucrative features. It does not allow more than 350,000 foreign workers into the country at any one time, does not allow workers to stay in the United States more than 9 months out of the year, provides a monetary incentive for workers to return to their native countries, denies Federal welfare benefits to foreign workers, and expires at the end of 3 years unless Congress votes to extend the program.

The Schumer proposal is not the solution to the agricultural industry's concerns or the solution to our immigration problems. It is only the beginning of bigger immigration problems for our Nation. I urge my colleagues to support the motion to defeat the previous question.

Mr. THOMAS of California. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from California.

Mr. THOMAS of California. Mr. Speaker, I thank the gentleman for yielding and just want to indicate how sad I believe this day is.

I have heard Member after Member take the well and talk about how reluctantly they were going to have to support a rule that they really did not believe in. It seems to me that what we ought to do is allow the majority of this House to express its will. I believe we ought to go with the majority.

If you have the belief in your convictions you will also let the majority decide. Vote no on the previous question.

Mr. LUNGREN. Mr. Speaker, some Members probably wonder why I would be asking them to vote no on the previous question and vote against the rule since they know for the last 8 years I have been on this floor on a weekly, daily, monthly basis urging us to get on with the responsibility of dealing with immigration reform.

I think Members ought to know what they are voting on today on this rule before they vote. You ought to know that there are 23 substantive amendments to the bill that are adopted automatically when you adopt the rule. You ought to know that extended voluntary departure, that is granting permanent residence status, that is what it amounts to, to every Salvadoran and every Nicaraguan who came into this country illegally before November of last year is what you adopt by adopting the rule.

No debate is allowed, no amendments are allowed. If you want to talk about super, super, super amnesty, that is it.

If you really want to talk about super, super amnesty, talk about the Schumer amendment. The Schumer amendment says if you work for 60 days in agriculture between May 1, 1985 and May 1, 1986, you have got a green card, May 1 of 1985 to May 1 of 1986, just work 60 days in agriculture and you have a green card.

What is a green card? That allows you to be here permanently in the United States. In 5 years, you are a citizen. You have a right to apply for citizenship, and immediately you can petition to bring your family in.

How many people? We have heard 250,000, maybe 350,000. Multiply that by the number of family members that are going to be brought in, and you are voting for a super, super amnesty.

I have worked on my side of the aisle for the acceptance of the idea that we need some legalization. But I have always said that legalization has to be one time only, it ought to be based on long time commitment of people to the United States. That is, it is humane for those people who have long time commitments to the United States, who lived here to become members of our community. It ought to require them additional obligations so that there is some recognition that what we have done in the past is wrong, and it ought not to give the signal in the future that we are going to have another legalization or amnesty program.

The Schumer amendment fails all of those things. Do you think 60 days in this country is sufficient reason to give citizenship? Do you think that the fact that you can replenish the group for 12 years suggests that somehow we are not going to have a repeat of this in the future? Do you think that the fact that the replenishment group is given preference to those who have been here illegally after the

group originally comes in, so in other words, don't go home, stay here illegally because you have another chance to get here.

I ask you: Is that what we are talking about in terms of legalization? We could debate it on the floor.

Two years ago we adopted the Panetta-Morrison amendment which was the approach the House thought by a 53-vote margin ought to be the way to help agriculture. That is what I have tried to do with the Lungren amendment. I was told in the Rules Committee I would not be allowed the amendment because they knew I would prevail on the floor, because they knew a majority of the House Members would support that. Instead, by voting this rule, you are not allowed to do that.

People arguing for the rule have said we fenced off the question of agriculture. We have not fenced it off. We have given citizenship rights to anybody who is here for 60 days and worked one man day each of those.

What kind of nonsense are we talking about? Do you not think you have a right to go home to your constituents and say no, I did not think we ought to grant citizenship rights to people who have only been here 60 days? What are you going to say when someone walks in the door and says, I have been here from the Philippines illegally for 2 years, or I have been here from Mexico for 2 years, but I cannot become a citizen.

I ask you please, please give yourself a chance to vote on these serious questions. Vote down the previous question so we can be allowed to do that.

Mr. BEILENSON. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LEHMAN].

Mr. LEHMAN of California. Mr. Speaker, I rise in support of the rule.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes, for purposes of debate only, to the distinguished gentleman from New Jersey [Mr. RODINO], chairman of the Committee on the Judiciary.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. Mr. Speaker, I thank the gentleman for yielding. I will just take a few seconds of the time.

It grieves me very much not to be on the same side of this issue as my friend from California, with whom I have worked 6 years very closely on this issue. I do hope that the House votes up the previous question and votes up the rule.

I was the only Democrat in our panel to oppose the Schumer amendment, and if it had come to us today in the form in which it was passed by the Judiciary Committee I would have joined my friend in his opposition.

The Rules Committee has made in this bill five amendments which I placed to the Schumer bill correcting five of its most egregious flaws. Further correction will occur because of the Ways and Means Committee amendments in this bill, and I hope further correction will occur in the conference.

I ask the House to let the committee work its will, vote up the previous question, and vote up the rule.

Mr. RODINO. Mr. Speaker, let me point out to the House that 15 years ago when the undocumented alien problem first came to the scene I, as then chairman of the Subcommittee on Immigration, stressed the need for remedial legislation and I came up with the concept of employer sanctions to remove the magnet-jobs drawing aliens to this country.

At that time, there were some 300,000 aliens apprehended attempting to illegally enter this country to find a job. Today there are 2 million illegals being apprehended yearly. If we intend to do anything to bring about reform, we must enact sanctions. We must adopt a legalization program which will bring undocumented aliens with equities and family here out of the shadows and thereby remove their vulnerable and exploitable status.

□ 1140

The Rules Committee fashioned a fair and balanced rule that will allow this to happen. There were so many amendments sought to be offered, that all could not be made in order. Some amendments I would have liked to debate were not made in order. Others were made in order that I would have preferred not to debate.

The gentleman from California [Mr. LUNGREN] has three amendments that have been made in order which were offered in committee and defeated soundly. I would like to point out that the very amendment that he wants to offer now, which he complains about not having been made in order is one that would provide for a guest-worker program. Such an amendment, I assure you, will kill the bill.

I, for one, will withdraw my support and do everything possible to ensure that we do not have any bill with a guest-worker program. The reason why we failed in the last session to reach a conference compromise was for the reason that we were unable to resolve the impasse that had developed on the agricultural question even though it involves only 10 percent to 15 percent of the total undocumented alien problem. The Schumer-Berman-Panetta compromise has apparently accomplished this and satisfied both the growers and farm labor.

Mr. Speaker, for these reasons I urge my colleagues to support the rule. A vote against it is a vote against immigration reform. A vote against it is a vote to preserve the status quo of open borders and of massive exploitation of millions of undocumented aliens in this country.

To defeat the rule is to bring about the demise of immigration reform legislation for this Congress. We cannot let that happen. To defeat the rule is to simply put our heads in the sand and allow a pressing problem to become an overwhelming problem.

The American public is demanding action now and I hope this Congress does not let them down.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the questions that were raised by the gentleman from California [Mr. LUNGREN] have been debated back and forth for the past hour almost. I am sorry that more Members were not here to hear the debate.

The rule in effect does say,

Don't let the farmworker problem, which has been solved in this legislation in a manner acceptable by all of the interests intimately concerned with it: The growers, the laborers, the farmworkers themselves; don't let this limited issue destroy our chances of getting real immigration reform. Let's fence off and protect for the moment the agreement that has been reached about what to do exactly about the 200,000 to 300,000 persons who are needed each year to harvest these crops, so that we may solve the basic and much larger problem of ensuring that the between 1 and 2 million illegals who come in each year will no longer be able to do so.

As every speaker has mentioned, this is a most important bill. We should move ahead and consider it. We have the right and we should have the duty to control our borders, our continuing failure to do so breeds an immense amount of disrespect for the law. The current law is inconsistent and indefensible. It is unlawful for someone who is here illegally to work, but it is not unlawful for an employer to hire someone whom he knows is here illegally for work.

Perhaps most importantly the large-scale illegal immigration of people into the United States has led to the development and rapid growth in this country of a subculture, of a second class of persons who are without rights or protection under our laws, and are preyed upon by landlords, employers, and criminals.

Finally, it is unfair to those who are waiting patiently to come into this country legally, for us to continue to turn our backs on the huge number of persons who are pouring over our borders illegally.

Let us pass this rule and get on with the business of confronting in a serious and determined way this most serious and pressing domestic issue.

Mr. Speaker, I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BEILENSON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 196, noes 189, not voting 47, as follows:

[Roll No. 419]

AYES—196

Abercrombie	Frank	Oberstar
Ackerman	Frost	Obey
Akaka	Fuqua	Olin
Alexander	Garcia	Ortiz
Annunzio	Gaydos	Owens
Anthony	Gejdenson	Packard
Aspin	Gilman	Panetta
Atkins	Glickman	Pashayan
AuCoin	Gordon	Pease
Barnard	Gray (IL)	Penny
Barnes	Gray (PA)	Pepper
Bates	Green	Perkins
Bedell	Guarini	Price
Beilenson	Hall (OH)	Rahall
Bennett	Hamilton	Rangel
Berman	Hatcher	Reid
Boland	Hawkins	Richardson
Boner (TN)	Hayes	Rodino
Bonior (MI)	Hefner	Roemer
Bonker	Hertel	Rose
Borski	Howard	Rostenkowski
Bosco	Hoyer	Rowland (GA)
Boucher	Jenkins	Roybal
Boxer	Jones (NC)	Russo
Brown (CA)	Jones (TN)	Sabo
Bruce	Kanjorski	Schumer
Bryant	Kaptur	Seiberling
Bustamante	Kastenmeier	Sharp
Carper	Kennelly	Sikorski
Carr	Kildee	Sisisky
Clay	Kostmayer	Skelton
Coelho	LaFalce	Slattery
Coleman (TX)	Leath (TX)	Smith (FL)
Collins	Lehman (CA)	Smith (IA)
Conyers	Lehman (FL)	Smith, Robert (OR)
Cooper	Leland	Solarz
Coyne	Levin (MI)	Spratt
Daniel	Levine (CA)	St Germain
Darden	Lipinski	Stallings
Daschle	Long	Stark
de la Garza	Lowry (WA)	Stratton
Dellums	Luken	Studds
Dicks	MacKay	Swift
Dixon	Manton	Synar
Donnelly	Markey	Tallon
Dorgan (ND)	Matsui	Thomas (GA)
Downey	Mavroules	Torres
Dreier	Mazzoli	Towns
Durbin	McCloskey	Traficant
Dwyer	McCurdy	Udall
Dymally	McHugh	Valentine
Dyson	McKinney	Vento
Early	Mica	Visclosky
Eckart (OH)	Miller (CA)	Waldon
Edwards (CA)	Mineta	Walgren
Evans (IA)	Moakley	Weaver
Evans (IL)	Mollohan	Weiss
Fascell	Moody	Wheat
Fazio	Morrison (CT)	Whitten
Feighan	Morrison (WA)	Wise
Fish	Mrazek	Wright
Florio	Murtha	Wyden
Foglietta	Natcher	Yates
Foley	Nelson	Young (MO)
Ford (MI)	Nowak	
Ford (TN)	Oakar	

NOES—189

Anderson	Barton	Boehlert
Andrews	Bateman	Boggs
Applegate	Bentley	Boulter
Archer	Bereuter	Brooks
Armey	Bevill	Broomfield
Badham	Bilirakis	Brown (CO)
Bartlett	Bliley	Burton (IN)
Byron	Johnson	Roth
Callahan	Kasich	Roukema
Carney	Kemp	Rowland (CT)
Chandler	Kleczka	Rudd
Chapman	Kolbe	Saxton
Cheney	Kolter	Schaefer
Clinger	Lagomarsino	Scheuer
Coats	Leach (IA)	Schroeder
Cobey	Lent	Schuette
Coble	Lewis (CA)	Schulze
Coleman (MO)	Lewis (FL)	Sensenbrenner
Combest	Lightfoot	Shaw
Conte	Livingston	Shelby
Coughlin	Lloyd	Shumway
Courter	Loeffler	Shuster
Crane	Lott	Siljander
Dannemeyer	Lowery (CA)	Skeen
Daub	Lujan	Slaughter
Davis	Lungren	Smith (NE)
DeLay	Mack	Smith (NJ)
DeWine	Madigan	Smith, Denny (OR)
Dickinson	Marlenee	Smith, Robert (NH)
DioGuardi	Martin (IL)	Snowe
Dornan (CA)	Martin (NY)	Snyder
Dowdy	McCain	Solomon
Duncan	McCandless	Spence
Eckert (NY)	McCollum	Staggers
Emerson	McEwen	Stangeland
English	McGrath	Stenholm
Erdreich	McKernan	Strang
Fawell	McMillan	Stump
Fiedler	Meyers	Sundquist
Fields	Michel	Sweeney
Flippo	Miller (OH)	Swindall
Franklin	Miller (WA)	Tauke
Frenzel	Molinari	Tauzin
Gallo	Montgomery	Taylor
Gekas	Moorhead	Thomas (CA)
Gingrich	Murphy	Torricelli
Gonzalez	Myers	Vander Jagt
Goodling	Neal	Volkmer
Gradison	Nichols	Vucanovich
Gunderson	Nielson	Walker
Hall, Ralph	Oxley	Watkins
Hendon	Petri	Weber
Henry	Pickle	Whitehurst
Hiler	Porter	Whittaker
Holt	Pursell	Wilson
Hopkins	Quillen	Wirth
Horton	Ray	Wolf
Hubbard	Ridge	Wylie
Hunter	Rinaldo	Yatron
Hutto	Ritter	Young (AK)
Hyde	Roberts	Young (FL)
Ireland	Robinson	
Jacobs	Roe	
Jeffords	Rogers	

NOT VOTING—47

Biaggi	Grotberg	Mitchell
Breaux	Hammerschmidt	Monson
Burton (CA)	Hansen	Moore
Campbell	Hartnett	Parris
Chappell	Hillis	Regula
Chappie	Huckaby	Savage
Craig	Hughes	Schneider
Crockett	Jones (OK)	Stokes
Derrick	Kindness	Traxler
Dingell	Kramer	Waxman
Edgar	Lantos	Whitley
Edwards (OK)	Latta	Williams
Fowler	Lundine	Wolpe
Gephardt	Martinez	Wortley
Gibbons	McDade	Zschau
Gregg	Mikulski	

□ 1150

Mr. TRAFICANT changed his vote from "no" to "aye."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MURTHA). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. BEILENSON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 180, noes 202, not voting 50, as follows:

[Roll No. 420]

AYES—180

Abercrombie	Frank	Oberstar
Ackerman	Fuqua	Obey
Akaka	Garcia	Olin
Annunzio	Gejdenson	Ortiz
Anthony	Gilman	Owens
Aspin	Glickman	Packard
Atkins	Gordon	Panetta
AuCoin	Gray (IL)	Pashayan
Barnes	Gray (PA)	Penny
Bates	Green	Pepper
Bedell	Guarini	Perkins
Beilenson	Hall (OH)	Price
Bennett	Hamilton	Quillen
Berman	Hatcher	Rahall
Boggs	Hawkins	Rangel
Boland	Hayes	Reid
Bonior (MI)	Hertel	Richardson
Bonker	Howard	Rodino
Borski	Hoyer	Roemer
Bosco	Hutto	Rose
Boucher	Jones (NC)	Rostenkowski
Boxer	Jones (TN)	Sabo
Brown (CA)	Kaptur	Schroeder
Bruce	Kastenmeier	Schumer
Bryant	Kennelly	Seiberling
Bustamante	Kildee	Sharp
Carper	Kostmayer	Sikorski
Chandler	LaFalce	Sisisky
Clay	Leath (TX)	Skelton
Coelho	Lehman (CA)	Slattery
Coleman (TX)	Lehman (FL)	Smith (FL)
Collins	Leland	Smith, Robert (OR)
Conte	Levin (MI)	Solarz
Conyers	Levine (CA)	Spratt
Cooper	Long	St Germain
Coyne	Lowry (WA)	Staggers
Daniel	Luken	Stallings
Daschle	MacKay	Stark
Dellums	Manton	Stratton
Dicks	Markey	Studds
Dingell	Matsui	Swift
DioGuardi	Mavroules	Synar
Dixon	Mazzoli	Thomas (GA)
Donnelly	McCloskey	Torres
Downey	McCurdy	Towns
Durbin	McHugh	Udall
Dwyer	McKinney	Vento
Dymally	Miller (CA)	Visclosky
Dyson	Mineta	Volkmer
Early	Moakley	Waldon
Eckart (OH)	Mollohan	Weaver
Edwards (CA)	Moody	Weiss
Evans (IL)	Morrison (CT)	Wheat
Fascell	Morrison (WA)	Wise
Fazio	Mrazek	Wright
Feighan	Murtha	Wyden
Fish	Natcher	Yates
Florio	Nelson	Young (MO)
Foglietta	Nielson	
Foley	Nowak	
Ford (MI)	Oakar	

NOES—202

Anderson	Brown (CO)	Davis
Andrews	Burton (IN)	DeLay
Applegate	Byron	DeWine
Archer	Callahan	Dickinson
Armey	Carney	Dornan (CA)
Badham	Carr	Dowdy
Barnard	Chapman	Dreier
Bartlett	Cheney	Duncan
Barton	Clinger	Eckert (NY)
Bateman	Coats	Emerson
Bentley	Cobey	English
Bereuter	Coble	Erdreich
Bevill	Coleman (MO)	Evans (IA)
Bilirakis	Combest	Fawell
Bliley	Coughlin	Fiedler
Boehlert	Courter	Fields
Boner (TN)	Crane	Flippo
Boulter	Dannemeyer	Ford (TN)
Brooks	Darden	Franklin
Broomfield	Daub	Frenzel

Frost	Marlenee	Shelby
Gallo	Martin (IL)	Shumway
Gaydos	Martin (NY)	Shuster
Gekas	McCain	Siljander
Gingrich	McCandless	Skeen
Gonzalez	McCollum	Slaughter
Goodling	McEwen	Smith (IA)
Gradison	McGrath	Smith (NE)
Gunderson	McKernan	Smith (NJ)
Hall, Ralph	McMillan	Smith, Denny (OR)
Hefner	Meyers	Smith, Robert (NH)
Hendon	Mica	Snowe
Henry	Michel	Snyder
Hiler	Miller (OH)	Solomon
Holt	Miller (WA)	Spence
Hopkins	Molinari	Stangeland
Horton	Montgomery	Stenholm
Hubbard	Moorhead	Strang
Hughes	Murphy	Stump
Hunter	Myers	Sundquist
Hyde	Neal	Sweeney
Ireland	Nichols	Swindall
Jacobs	Oxley	Tallon
Jeffords	Pease	Tauke
Jenkins	Petri	Tauzin
Johnson	Pickle	Taylor
Kanjorski	Porter	Thomas (CA)
Kasich	Pursell	Torricelli
Kemp	Ray	Traficant
Kleczka	Ridge	Valentine
Kolbe	Rinaldo	Vander Jagt
Kolter	Ritter	Vucanovich
Lagomarsino	Robinson	Walgren
Leach (IA)	Roe	Walker
Lent	Rogers	Watkins
Lewis (CA)	Roth	Weber
Lewis (FL)	Roukema	Whitehurst
Lightfoot	Rowland (CT)	Whittaker
Lipinski	Rowland (GA)	Whitten
Livingston	Roybal	Wilson
Lloyd	Rudd	Wirth
Loeffler	Saxton	Wolf
Lott	Schaefer	Wylie
Lowery (CA)	Scheuer	Yatron
Lujan	Schuette	Young (AK)
Lungren	Schulze	Young (FL)
Mack	Sensenbrenner	
Madigan	Shaw	

NOT VOTING—50

Alexander	Gregg	Monson
Biaggi	Grotberg	Moore
Breaux	Hammerschmidt	Parris
Burton (CA)	Hansen	Regula
Campbell	Hartnett	Roberts
Chappell	Hillis	Russo
Chappie	Huckaby	Savage
Craig	Jones (OK)	Schneider
Crockett	Kindness	Stokes
de la Garza	Kramer	Traxler
Derrick	Lantos	Waxman
Dorgan (ND)	Latta	Whitley
Edgar	Lundine	Williams
Edwards (OK)	Martinez	Wolpe
Fowler	McDade	Wortley
Gephardt	Mikulski	Zschau
Gibbons	Mitchell	

□ 1215

The Clerk announced the following pairs:

On this vote:

Mr. Stokes for, with Mr. Kramer against.

Mr. Martinez for, with Mr. Wortley against.

Mr. Mitchell for, with Mr. Parris against.

Mr. Wolpe for, with Mr. Kindness against.

Mr. Waxman for, with Mr. Craig against.

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

RESIGNATION AS MEMBER OF COMMITTEE ON ARMED SERVICES

The SPEAKER pro tempore laid before the House the following resignation from the Committee on Armed Services:

HOUSE OF REPRESENTATIVES,
Washington, DC, September 24, 1986.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I hereby submit my resignation as a member of House Armed Services Committee, and ask that my resignation become effective as of the close of business September 26, 1986.

Sincerely,

ELWOOD H. "BUD" HILLIS,
Member of Congress.

ELECTION AS MEMBER OF COMMITTEE ON ARMED SERVICES

Mr. MICHEL. Mr. Speaker, by direction of the Republican Conference, I offer a privileged resolution (H. Res. 565) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 565

Resolved, That Representative James V. Hansen, of Utah, be and is hereby elected to the Committee on Armed Services.

The resolution was agreed to.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mr. LOTT asked and was given permission to address the House for 1 minute.)

Mr. LOTT. Mr. Speaker, I am pleased to yield to the distinguished majority leader for the purpose of inquiring about the schedule for next week.

Mr. WRIGHT. I thank the gentleman for yielding to me.

Mr. Speaker, the program for today has been somewhat subsumed. We will have 1-minute speeches. Then, there is no further business scheduled for today.

We expect on Monday to meet at 12 noon and to take up approximately 16 bills under suspension of the rules. The 16 suspensions are as follows:

H.R. 5490, retiree benefits under labor contracts;

H.R. 5558, administrative naturalization bill;

H.R. 5541, private debt collection;

H.R. 5362, Supreme Court police;

H.R. 5390, Arkansas-Mississippi Great River Bridge Compact;

H.R. 4823, INS (Immigration-Naturalization Service) efficiency bill;

H.R. 4444, consular efficiency bill;

H.R. 5559, Immigration and Naturalization Service bill;

H.R. 4059, Red River Valley Fighter Pilots Charter;

H.R. 5363, Declaration of Taking Act amendments;

H.R. 3737, Immigration-Naturalization Act amendments re marriage fraud;

H.R. 5560, child pornography;

H.R. 5576, domestic banking stability and housing bill;

H.R. 5564, Housing Act amendments;

H.R. 5554, Community Development Credit Union Loan Fund; and

H.R. 4917, Depository Institution Examination Improvement Act of 1986.

On Tuesday, we have an additional number of suspensions, and there may be as many as 25 on that day. Those suspensions are as follows:

H.R. 5595, SSI improvement amendments of 1986;

H. Res. 556, chocolate tariff bill;

H. Con. Res. 332, concerning Soviet Union's persecution of Helsinki monitoring;

S. Con. Res. 143, sense of Congress re resumption of U.N. Commissioner for Vietnam Refugees' Orderly Departure;

H. Res. 437, Presidential Summit Against International Terrorism;

H. Con. Res. 384, sense of Congress re Soviet Union interference with postal communications;

H. Con. Res. 391, calling on Soviet Union to cease interference with Voice of America;

H.R. 4712, Klamath River Basin;

H.J. Res. 626, Palau Compact;

H.R. 5508, Sipsey Scenic River and Wilderness in Alabama;

H.R. 5496, Georgia Wilderness;

H.R. 5332, Haida land exchange in Alaska;

H.R. 5459, Secretary of the Interior's authority re Utah land;

H.R. 5389, Alaska public lands;

H.J. Res. 699, uranium enrichment bill;

H.R. 5192, NRC Emergency Response Program;

H.R. 3352, Property transfer to Mesquites in Nevada;

S. 565, Arizona land conveyance;

H.R. 2868, land claims of Wampanoag Indians of Gay Head, MA;

H.R. 5390, Arkansas-Mississippi Great River Bridge Compact;

H.R. 4961, National Transportation Safety Board amendments;

H.R. 5488, amend FEMA (Federal Emergency Management Agency);

H.R. 5020, additional White House protection;

H.R. 5568, Truck Safety Program; and

S. 1124, deregulate freight forwarding industry.

Members really need to expect some further action on the continuing resolution, on the Omnibus Budget Reconciliation Act, and on the Debt Limit Extension. Those are the three remaining necessary actions which the Congress must complete prior to being able to adjourn sine die.

We hope those will come and be resolved next week. In addition to that, there may be other conference reports that would arise.

Mr. LOTT. I thank the gentleman for that information. Let me ask a couple of questions to make sure the membership understands.

The business for the day then is completed, in view of the vote, except for the 1-minute speeches; is that correct? And, of course, special orders?

Mr. WRIGHT. That is correct. We have no business scheduled at this time, save for the 1-minute speeches and special orders.

Mr. LOTT. On Monday, the House will come in at 12 and will take up this list of suspensions. Does the gentleman anticipate votes on Monday?

Mr. WRIGHT. Yes. Undoubtedly, there will be some votes on Monday. These suspensions will be debated and then, at the conclusion of the debate, votes will be taken Monday on any suspensions on which votes have been requested.

Then it is possible, as the gentleman knows, that we might have a further vote on a matter of some importance, which I would not want to anticipate, nor prejudge the action of the Chief Executive of the Nation.

Mr. LOTT. Yes, sir. I think the information we have received in communicating with the leadership on your side of the aisle is that the votes probably would not occur before around 3 o'clock or thereafter on Monday; is that correct?

Mr. WRIGHT. The gentleman is absolutely right. It seems plausible that debates on this many suspensions would take us from noon until at least 3 o'clock so that Members be advised that they reasonably could expect votes not to occur prior to that time. Also, they should be advised that there will be some votes on Monday.

Mr. LOTT. All right, sir. Now, the gentleman says that there are a number of suspensions anticipated on Tuesday?

Mr. WRIGHT. Yes, sir.

Mr. LOTT. Some 25 are listed on the tentative schedule.

Mr. WRIGHT. There is a tentative schedule list of 25 for Tuesday in addition to the 16 scheduled for Monday.

Mr. LOTT. Would the majority leader anticipate a request for additional suspensions on Wednesday?

Mr. WRIGHT. It is altogether possible. I do not know that it will be requisite if we complete these. This may clean it up, but as the gentleman knows, there always are possibilities that a committee may bring up additional bills and demand their consideration.

Mr. LOTT. Is it anticipated that there will be an emergency meeting of the Rules Committee either later on today or possibly Monday with further reference to the rule for the immigration reform and legalization amendments?

Mr. WRIGHT. There is no plan to ask the Rules Committee to do anything further today. As for Monday, I think the evil of the day will be sufficient to the day thereof—or whatever that famous quote is. Let us wait until Monday and discover what problems we have then.

Mr. LOTT. I thank the gentleman.

One final request: We are in what we hope will be the last hours of the session.

□ 1225

We will have a long list of suspensions, both on Monday and on Tuesday, and perhaps others, but we would like to ask that your leadership be sure to communicate with us and we understand what you are trying to bring up so that we can hopefully work together and support you in that effort.

I think if you would give us the benefit of that communication information, it would save us some time and maybe some difficulty.

Mr. WRIGHT. Mr. Speaker, as usual, the gentleman makes a good point and as always, we will try as best we can to work together and share what information we have to avoid any surprises.

Mr. LOTT. Mr. Speaker, one final question: Does the gentleman anticipate any possibility that the Congress could finish this session sine die, as originally hoped, on Friday, October 3?

Mr. WRIGHT. There is always that possibility. Hope springs eternal. It may be more possible than likely, but it is possible. That remains our goal.

Mr. LOTT. Thank you for that clarification. That is about what we thought.

Mr. WRIGHT. I am glad I was able to give the gentleman that definitive answer.

Mr. LOTT. On Friday afternoon, we would be out of session, regardless, at sundown; is that correct?

Mr. WRIGHT. We will be out of session at sundown for the observance of the holy days of the Jewish faith. That does not anticipate a sine die adjournment if we have not completed our business. We would expect to be in session the following week.

Mr. LOTT. Whether it is sine die or just stopping in view of that observance, we will stop by sundown.

Mr. WRIGHT. The gentleman is exactly right. There is no expectation of our staying in session at a time that would conflict with the observance of the Jewish holiday. We would like to finish all of our work, if we can, by that time.

If we cannot, if it is not possible, then we would expect to be in session the following week.

Mr. LOTT. Mr. Speaker, I thank the distinguished majority leader and yield back the balance of my time.

FURTHER LEGISLATIVE BUSINESS

(Mr. WRIGHT asked and was given permission to address the House for 1 minute.)

Mr. WRIGHT. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. FOGLIETTA].

Mr. FOGLIETTA. Mr. Speaker, I know, as you stated, that we should not anticipate any action by the Chief Executive. However, a possibility does exist that some action might be taken on the part of the Chief Executive which would give us some additional considerations to take care of on Monday or immediately thereafter.

If that action does take place and this body is then called upon to take any further action, would that action take place certainly on Monday, or could that possibly be happening on Tuesday or Wednesday?

Mr. WRIGHT. If the President should veto the bill providing sanctions against South Africa, for example, and if that veto should be rendered this weekend, then we would expect to vote upon a motion to override the veto, not prior to, but following our action on the suspensions on Monday.

Mr. FOGLIETTA. Mr. Speaker, I thank the gentleman from Texas [Mr. WRIGHT].

ADJOURNMENT TO MONDAY, SEPTEMBER 29, 1986

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 12 noon on Monday next.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Texas?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will now entertain 1-minute speeches.

NAKASONE COMMENT

(Mr. FORD of Tennessee asked and was given permission to address the

House for 1 minute and to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker, last Tuesday, in a lecture to members of Japan's Liberal Democratic Party, Prime Minister Nakasone was quoted by several newspaper sources as saying that the intelligence level in the United States was low due to the numbers of blacks, Puerto Ricans, and Mexicans residing here.

I am totally amazed that this arrogant type of comment could emanate from a Japanese head of state.

As a Member of the U.S. Congress, I am insulted by such a statement.

Yet, as an Afro-American, Mr. Speaker, I feel outraged.

Mr. Nakasone is not smart enough to comprehend that our country is a melting pot, made great by the intelligence and hard work of the very people he ridicules.

If the Prime Minister really wanted to explain why the Japanese economy operates with such a trade surplus, he might properly point out that foreign products in Japan are not afforded the same open markets that Japanese products are here.

Instead of honorably apologizing, the Prime Minister continues to claim he was misquoted. Mr. Nakasone, perhaps the expression "quota restriction" might help to clear up your alleged misquote.

I'm sure the Japanese leader might take this matter more seriously if the Ways and Means Committee initiated market restrictions against Japanese products entering this country. Perhaps then an appropriate apology might be forthcoming.

FREE THE AMERICAN DRIVER

(Mr. BARTON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. BARTON of Texas. Mr. Speaker, every day, countless numbers of Americans break the law. Again and again they drive over 55 miles per hour on our Nation's roads. Sure, some surveys indicate people support keeping the 55-miles-per-hour speed limit but the truth of the matter is people are voting with their right foot. They press their gas pedals to speeds appropriate for the roads they drive.

The initial drop in fatality rates which occurred after the mandatory 55-miles per hour law of 1973 is misleading. Mr. Speaker, I remember not driving much in 1973 because the availability of gasoline was questionable. With the decline of drivers on the roads across our Nation during a period of gasoline shortages, it's obvious to me what the number of fatal accidents declined.

Texas has numerous rural roads designed for safe driving at 60- to 70-miles-per-hour speeds. On these roads, Texans are more prone to face driving fatalities induced by dangerous driving fatigue rather than fatalities from driving 65 miles per hour. More serious, they face fatality from the alarming number of drunken drivers on our roads. Patrol officers should be freed to enforce drunk driving laws rather than enforcing low speed limits.

An amendment which I recently cosponsored would have allowed States to increase their speed limits to 65 miles per hour on certain interstate routes in noncongested or rural areas. Although this amendment failed, I am encouraged that the narrow margin of defeat indicates a growing and widespread support for this approach. I submit a recent Dallas Morning News editorial on this issue for my colleagues review.

[From the Dallas Morning News, Aug. 26, 1986]

SPEED LIMITS: U.S. MAY END BLACKMAIL OF STATES FOR 55 MPH

The federal government a dozen years ago forced highway speed limits down from 70 to 55 by threatening to withhold federal highway aid from states that didn't go along.

President Reagan is said by two Western Senators, Steve Symms of Idaho and Chic Hecht of Nevada, to favor restoring the states' former privilege of determining the speeds that shall prevail on their highways.

Let's hope so. The 55-mile-an-hour speed limit is a relic of the early energy crisis, when the federal government, to address a problem caused largely by misguided economic policies, ordered the lowering of thermostats and the allocation of gasoline. The White House cut back Christmas tree lighting by 80 percent, and the governor of Delaware swapped his chauffeur-driven limousine for a chauffeur-driven Pinto.

The energy shortage is widely rumored to have ended three or four years ago, thanks to the laws of supply and demand, and to a more rational federal policy regarding same, but the 55-mile-an-hour limit endures, flouted and disregarded by an apparent majority of drivers. To the extent it is observed, Symms contends that it wastes a billion hours a year.

Safety advocates point out in rebuttal that the "double nickel" limit saves as many as 2,000 lives a year—no ignoble consideration. But the White House isn't talking of forcing the speed limit back to 70, where it stood prior to 1973.

Reagan's position, in a letter Symms and Hecht say was written Aug. 15, is that "governors will exercise with the greatest of care whatever level of control is ultimately returned to them." Interstate highways are engineered for driving at 70; smaller state roads may or may not be. Sixty (the speed limit that prevailed until the early 1960s) might be the most reasonable limit on such highways.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO FILE REPORT ON H.R. 5568, COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

Mr. GRAY of Illinois. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation may have until 5 p.m. today, September 26, 1986, to file a report on the bill, H.R. 5568, the Commercial Vehicle Safety Act of 1986.

Mr. Speaker, I further state that this matter has been cleared by the minority.

The SPEAKER pro tempore (Mr. BEILENSON). Is there objection to the request of the gentleman from Illinois?

Mr. DAUB. Mr. Speaker, reserving the right to object, I appreciate the gentleman's request and his statement that it has been cleared by the minority. Could the gentleman tell us who cleared that?

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield?

Mr. DAUB. I yield to the gentleman from Illinois.

Mr. GRAY of Illinois. Mr. Speaker, this has been cleared by the gentleman from Kentucky [Mr. SNYDER] and also the other members on the subcommittee. I also just cleared it with the gentleman's counsel on the minority side.

Mr. DAUB. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

THE BIG LIE IN ACTION

(Mr. BONIOR of Michigan asked and was given permission to address the House for 1 minute.)

Mr. BONIOR of Michigan. Mr. Speaker, today the President will veto sanctions against South Africa, whose violent policy of apartheid enslaves the majority of South Africa.

Yet at the same time, the President argues that the United States must overthrow the Government of Nicaragua in the name of human rights.

Black South Africans urge the United States to impose sanctions against apartheid, yet today the President will argue that sanctions are wrong because they hurt innocent blacks.

Yet at the same time, the President funds the Contra campaign of rape, torture, and murder against innocent civilians throughout Nicaragua.

Today, all Americans can see the big lie in action.

By years end, United States advisers will be in Honduras, and the Vietnam cycle of credibility gap and death will move one step further.

WHO DID YOU HURT BY SHOOTING YOURSELF IN THE FOOT, GOLIATH?

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute.)

Mr. DANNEMEYER. Mr. Speaker, the dollar is making new lows against the Japanese yen, right according to schedule, as set by the U.S. Treasury. Yet our trade imbalance is getting worse, not better. What went wrong?

The American Goliath shot himself in the foot at the start of the race against the Japanese David. The lame giant added insult to injury by bragging that he can win, in spite of his self-inflicted handicap, against his nimble opponent.

The bragging is misplaced. American exporters are not helped by the unstable and depreciating dollar, as promised by the false prophets of currency debasement; they are gravely injured by it. Conversely, Japanese exporters in defending their market share are not hindered by the stronger and more stable yen: They actually find it a source of strength. Any exporter, worthy of his salt, knows how to take advantage of his stronger domestic currency against the weaker currency of his competitor in order to cut his relative costs—an advantage denied to the American exporters by the U.S. Treasury.

The American export industry could make a comeback and compete successfully only if the value of the dollar was stabilized: only if Congress fixed the gold content of the dollar.

THE SCHUMER PROGRAM—A SECOND AMNESTY PROVISION

(Mr. McCOLLUM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, a few minutes ago, we voted the right way to defeat an outrageous rule on the immigration reform bill. We voted down that rule because that was a gag rule that would have prevented us from addressing the really critical and controversial portion of that bill, which was a second amnesty provision called the Schumer program on agriculture.

□ 1235

We made a mistake, though, in not having the same majority Members vote down the previous question just prior to that vote. Had that occurred, we would have been able to get a rule right back out here with the opportunity to vote on that issue.

We need to control our borders. We need immigration reform.

This Member and many others have supported this in the past. We came that close in the last Congress.

I strongly urge my colleagues on the Rules Committee to go back into session now, either this afternoon or the first thing on Monday, and prepare a rule that is appropriate, that does not put up 23 amendments that we cannot vote on in the rule itself and allow an opportunity for other alternative proposals in the agricultural area to be offered, coming closer to what we had in the last Congress.

At the very least, let us have the opportunity to vote on the same agricultural provisions that we did in the last Congress.

Let us be fair about it. Let us not have gag rules out here. Let us proceed with immigration reform that is vitally needed by this Nation and let nobody be mistaken who is for it and who is against it. Those who would craft gag rules are against getting to immigration reform.

Let us get on with it and have a proper rule.

IMMIGRATION REFORM

(Mr. DAUB asked and was given permission to address the House for 1 minute.)

Mr. DAUB. Mr. Speaker, I want to wholeheartedly concur with my colleague, the gentleman form Florida [Mr. McCOLLUM], a member of the Judiciary Committee, who preceded me in this well.

I want to indicate to my colleagues that while I have major differences with the content of the reported bill from the committee, my most emotionally difficult choice on the floor today was to support a motion to defeat the previous question and a motion to defeat the rule, because we do need to get our borders better under control. We do need to try to stem the tide of the chain migration that will affect us if amnesty is granted; but employer sanctions and how we deal with the question of identifying those who come here illegally are serious issues and they ought to be allowed full debate on the floor of this body.

The rule, had it passed, would have denied the most basic of the demerits of the content of the bill. They could not have been debated.

The vote was 167 Democrats and 13 Republicans for the rule, but 57 Democrats joining 145 Republicans voted to defeat this rule.

The Rules Committee should convene, should adopt a broader rule, a fairer rule, and bring this bill back to the floor of the House while we await action in the other body on the business we have already concluded. There will be at least 1 week or 2 to get the job done on imigration reform.

PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO FILE REPORT ON H.R. 5546, NATIONAL VACCINE INJURY COMPENSATION ACT

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce may have until midnight tonight to file the report on H.R. 5546, the National Vaccine Injury Compensation Act.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from New York?

There was no objection.

VETERANS FASTING FOR LIFE

(Mr. DYMALLY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DYMALLY. Mr. Speaker, in the midst of our rush to complete critical legislation, we seem to have ignored one very serious issue. There are four American war veterans who have committed their lives to open-ended fasts expressing their hope for an end of the war in Nicaragua.

Duncan Murphy, Brian Wilson, Charlie Liteky, and George Mizo are starving for peace right here in the Capitol.

During the debate on the additional $100 million to the Contras, the polls indicated that the American public did not understand this Nicaraguan policy. Communist hysteria however, overrode this argument. Who are we representing, anti-Sandinistas or Americans?

It is unfortunate that very few of us have taken the time to visit these decorated veterans. It is a shame, for we have not shown compassion for these dying Americans.

Their commitment, however, should be a warning to us for many of our constituents have written them letters of support and comfort. If they do not escape their fate, I submit to you that there will be genuine public interest on this issue that all of us will have to answer.

It would be wise for us to pay a little more attention to this cause.

RESOLUTION URGING THE PRESIDENT TO MEET WITH BLACK LEADERS IN SOUTHERN AFRICA

(Mr. WALDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALDON. Mr. Speaker, today, I am proud to introduce my first piece of legislation, a resolution urging President Reagan to meet with the leaders of the six "front-line states" that border South Africa. Zambian

President Kenneth Kuanda has invited Mr. Reagan to a summit meeting with these leaders, but an official White House spokesman said the President could not attend because he "just didn't have the time for this trip."

Well, President Reagan had better make time for the people of southern Africa. This is an unparalleled opportunity for him to improve relations between the United States and the independent black leadership in the region. Relations have been strained by the administration's opposition to necessary sanctions against South Africa and by the President's support for their pawns, the UNITA rebels. A southern African leadership summit would certainly help improve these relations and it would help widen his perspective.

A visit to Africa would enable the President to personally experience the unique political and social climate of southern Africa and to witness the grim realities of apartheid. I am convinced that this trip would open his eyes to the error of so-called "constructive engagement." This trip would help the President develop a southern African foreign policy based on firsthand experience and it could improve our relations with southern Africa for years to come.

PERMISSION FOR COMMITTEE ON ENERGY AND COMMERCE TO FILE REPORT ON H.R. 5540, HEALTH CARE QUALITY IMPROVEMENT ACT

Mr. WYDEN. Mr. Speaker, I ask unanimous consent that the Committee on Energy and Commerce may have until midnight tonight to file a report on H.R. 5540, the Health Care Quality Improvement Act.

This has been cleared with the minority. We have worked very closely with the gentleman from Illinois [Mr. MADIGAN] and with the gentleman from Iowa [Mr. TAUKE].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

GENERAL LEAVE

Mr. FRANK. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks, and to include therein extraneous material, on the resolution, House Resolution 559, which was considered earlier today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. PEPPER] is recognized for 5 minutes.

Mr. PEPPER. Mr. Speaker, regrettably, I was unavoidably absent for rollcalls 414 and 417 Thursday, September 25, 1986. Had I been present, I would have voted "aye" for these votes, that passed H.R. 5495, authorizing appropriations for the National Aeronautics and Space Administration and House Joint Resolution 738, making continuing appropriations for fiscal year 1987.

QUESTIONABLE COURT DECISION AGAINST DEMONSTRATIONS NEAR EMBASSIES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. FRANK] is recognized for 5 minutes.

(Mr. FRANK asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. FRANK. Mr. Speaker, I previously addressed the House in a special order commenting on an outrageous decision by the Circuit Court of Appeals for the District of Columbia in which they upheld an outdated statute, the validity of which has been called into question by Congress, which prevents anyone, even a lone demonstrator, from expressing political opinions within 500 feet of an embassy that might embarrass an embassy.

Judge Bork in upholding that made the extraordinary argument that we must show respect for the law of nations and he said that the law of nations allows us to arrest and criminally convict an individual who stood with a single sign outside the Nicaraguan Embassy, because he said under the law of nations we owe respect to the dignity of the Nicaraguan Embassy.

Apparently the law of nations does not protect the Government of Nicaragua from being assaulted by armed men with our money, but it does prevent a single individual from standing in front of them with a sign. I think if the Nicaraguan Government were given a choice of which protection to take, they probably would prefer to let the man stand there with a sign and not have their harbors mined; but Judge Bork did not resolve that conflict.

I noted at the time that I was uncertain of the exact legal status, because we are dealing now with a provision which is wholly within the jurisdiction of the District of Columbia.

What happens in this case is this. Congress did pass this statute saying no one could stand within 500 feet of an embassy with any kind of political expression that that embassy found unpleasant. That was many years ago.

When the District of Columbia got home rule, this statute, which I believe was passed in 1937, since it deals only with the District of Columbia, became part of the District of Columbia law.

Now, it could theoretically be repealed by an act of Congress. I would oppose that.

I think it is a stupid and offensive law which offends the constitutional rights of Americans. I think people who have embassies here would be well-educated to learn that in this free country people can stand in front of their embassies with signs, as long as they are not disruptive, as long as they are no security threat, and can voice political opinions.

But I think the principle of home rule is an important one, so I have written to the District of Columbia Mayor and City Council and urged them to take action to repeal this.

I would note, I think it casts further disrepute on an option of Judge Bork's that is very worthy of disrepute, that in the report on the Terrorism Act which was passed last year by Congress, in one branch that law was actually repealed. In conference because of the respect that Members of this body have for home rule, the repeal was dropped and language was inserted in the report urging the government of the District of Columbia to take the necessary repeal or action.

I say that because in fact where Congress now has legislative jurisdiction dealing with diplomatic places of business and residents outside the District of Columbia, we have a far more constitutionally legitimate statute. We have a statute which in fact allows for some political opinion.

So we have this unfortunate law that is on the books because Congress passed it and the District of Columbia inherited it and Judge Bork, without due regard for the Constitution, in my judgment, upheld it.

I wanted to clarify that situation because I was unclear previously.

It is a law which we could technically repeal, but which we should not in deference to home rule, but which the District of Columbia should, and it is a law which one House of Congress already voted to repeal and the other House said, "You are right, it is a good law, but let us not violate home rule," and in the report cast doubt on it.

There will be an appeal for those people who were convicted. I hope the Supreme Court will show more respect for the Constitution than Judge Bork, but I hope our friends in the District of Columbia City Council and the Mayor will act to vindicate the constitutional rights, they have generally been very supportive of constitutional rights, and I hope they will take the appropriate action.

Mr. Speaker, I wish to insert into the RECORD here two documents: First, the relevant sections of the D.C. Code; second, the language from the confer-

ence report accompanying H.R. 4151 whereby the conferees express their conviction that this provision of the D.C. Code ought to be reviewed and probably amended by the District government to better reflect the constitutional values which received such short shrift from Judge Bork.

22-1115. INTERFERENCE WITH FOREIGN DIPLOMATIC AND CONSULAR OFFICES, OFFICERS, AND PROPERTY—PROHIBITED

It shall be unlawful to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or any officer of officers thereof, or to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization, or to intimidate, coerce, harass, or bring into public disrepute any officer or officers or diplomatic or consular representatives of any foreign government, or to interfere with the free and safe pursuit of the duties of any diplomatic or consular representatives of any foreign government, within 500 feet of any building or premises within the District of Columbia used or occupied by any foreign government or its representative or representatives as an embassy, legation, consulate, or for other official purposes, except by, and in accordance with, a permit issued by the Chief of Police of the said District; or to congregate within 500 feet of any such building or premises, and refuse to disperse after having been ordered so to do by the police authorities of the said District. (Feb. 15. 1938, 52 Stat. 30, ch. 29, § 1; 1973 Ed., § 22-1115.)

22-1116. SAME—PENALTIES; EXCEPTION

The Superior Court of the District of Columbia shall have jurisdiction of offenses committed in violation of § 22-1115, and any person convicted of violating any of the provisions of said section shall be punished by a fine not exceeding $100 or by imprisonment not exceeding 60 days, or both: Provided, however, that nothing contained in said section shall be construed to prohibit picketing, as a result of bona fide labor disputes regarding the alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 2; Apr. 1, 1952, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60; § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 22-1116.)

DEMONSTRATIONS AT EMBASSIES IN THE DISTRICT OF COLUMBIA

The Senate amendment (sec. 702) amends section 112 of title 18, United States Code, to repeal the authority of the District of Columbia to set limits on the proximity of demonstrations at foreign diplomatic buildings.

The House bill contains no comparable provision.

Current District of Columbia law makes it a crime to congregate within 500 feet of a foreign mission and to refuse to disperse when ordered to do so by the police. The conference substitute (sec. 1302) expresses the sense of Congress that: the District law may be inconsistent with the rights of free speech and assembly, and that there may have been selected enforcement of the law resulting in the unfair arrest of peaceful demonstrators; the obligation of the United States and the District to provide adequate security for the diplomatic missions of foreign governments must be balanced with the reasonable exercise of the rights of free speech and assembly; and therefore, the District of Columbia law should be reviewed by the District of Columbia Council and revised, if appropriate, to make it less intrusive on freedom of speech and assembly, while carrying out the legitimate purposes of providing adequate security for foreign diplomatic missions.

MILITARY SPENDING AS A CAUSE OF AMERICA'S INDUSTRIAL DECLINE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. SEIBERLING] is recognized for 30 minutes.

Mr. SEIBERLING. Mr. Speaker, the last 5 years have demonstrated the fallacy of so-called supply side economics, one of the big selling points used to gain enactment of the 1981 Reagan tax cut. That idea was that drastic cuts in individual income taxes, along with special tax breaks for businesses, would so stimulate the economy that total Federal revenues would soar, and there would be no long-term increase in the Federal deficit. Under this theory, it was not necessary to reduce expenditures, but only to cut taxes. Of course we now know the result—a doubling of the national debt in 5 years.

Yesterday, with the continuing resolution, the House again went through a tremendous exercise to try to meet essential needs of the Nation and at the same time to move toward a reduction in the colossal Federal deficit. Regardless of differences over how best to achieve this purpose, the abstract goal of deficit reduction is both fiscally essential and politically popular.

Paradoxically, however, despite people's well-founded concern about the Federal deficit, it is one source of President Reagan's popularity. And why wouldn't it be? Not only are their taxes lower, but in the last 5 years the American people have gotten over $1 trillion more in Government service than they have paid for. And the result of this inadvertent Keynesianism has been an artifically fueled prosperity for many people. Unfortunately, at some point, living on credit has to end and the bills have to be paid.

There are already ominous signs, as Wall Street is beginning to recognize. Economic growth is at a virtual standstill. The trade deficit continues to skyrocket. Agriculture is already in a depression. Factory production is well below capacity. Unemployment throughout America's heartland is unacceptably high, and workers by the thousands are being laid off in basic industries. Worse yet, with such huge deficits, the ability of the Federal Government to "pump prime" the economy in the event of a major recession is seriously weakened, if not crippled.

President Reagan continues to insist that the reason for our predicament is that the Congress failed to cut enough domestic spending. Well, we now have a 5-year record against which to test the validity of this charge. Let's take a look at it:

The Congressional Budget Office on May 30, 1986, released an analysis comparing current tax and spending levels with what they would have been if the policies in effect before the adoption of Reagan's programs in 1981 had remained in effect through fiscal year 1986.

According to the CBO, the 1981 tax cuts caused a net loss of $468 billion in Federal revenue from fiscal year 1982 through fiscal year 1986, even taking into account action the Congress has taken since 1981 to restore some of the lost revenue. A higher rate of defense spending has increased the budget deficit by a net of $108 billion over the same period. Interest on the resulting additions to the deficit added another $58 billion.

During the same period, Congress reduced nondefense discretionary spending by nearly $300 billion. But this reduction has been more than offset by the $468 billion revenue loss from the 1981 tax cuts alone, not to mention the increase in interest on the debt and the increase in defense spending—which added another $166 billion of deficit.

According to CBO, if pre-1981 tax and spending policies had remained in effect, the Federal deficit in fiscal year 1986 would be $92 billion. This would still be too high for a nonrecession year, but contrast this with the record $230 billion budget deficit now projected for the fiscal year ending 4 days from now.

If there had been no change in Federal tax policy, but Congress had made the spending cuts it has made since 1981, the CBO deficit projection for 1986 would be a mere $69 billion. And, if there had been no defense spending increases beyond the 3 percent per year of the fiscal year 1981 budget, the 1986 deficit projection would be only $38 billion. A deficit of this level in a $2 trillion economy would be considered by many economists as practically the equivalent of a balanced budget.

But we must deal with things as they are, not as they might have been. In June of this year, the House and Senate approved a compromise budget for fiscal year 1987 which would cut the deficit below the Gramm-Rudman mandatory target of $144 billion, and which would cut defense spending $28 billion below the President's request, while generally freezing domestic programs. But the upward revision of the anticipated deficit for fiscal year 1986, and expected increases in the deficit for fiscal year 1987 above the levels forecast when the budget resolution

was adopted indicate that we have to pare Federal spending further. This may prove to be impossible if the economy continues to slow down. It will certainly be impossible if we do not take steps to further slow and, eventually, reverse the militarization of the Federal budget.

We are currently in the middle of the largest peacetime defense buildup in the history of the Nation. From fiscal year 1982 to fiscal year 1986, Congress has approved $1.3 trillion in budget authority for national defense. Over the next 5 years, the President wants to spend nearly $2 trillion more.

In addition to vast increases in general defense spending, the major defense policy initiative under the administration—star wars, or SDI—threatens to push defense spending—and with it the deficit—beyond the stratosphere. Star wars research alone is budgeted at $30 billion over 5 years. A fully deployed SDI system could cost upward of $1 trillion.

About 98 percent of the defense budget produces nothing of use to the civilian economy. On the other hand, the job of 1 of every 10 Americans depends directly or indirectly on defense spending. The Pentagon is the Nation's single largest purchaser of goods and services.

Defense work involves: 11 percent of our computer programmers; 25 percent of our scientists and engineers; and 50 percent of our aerospace technicians. Obviously, military spending creates jobs. But the jobs it creates are highly specialized and expensive. The Council on Economic Priorities estimates that $1 billion spent on military defense creates 28,000 jobs. The same amount spent on public transit would create 32,000 jobs. On consumer goods and services, 57,000 jobs. And on education, 71,000 jobs.

From an economic standpoint, the question is not whether military defense spending creates new jobs, but what does it do to the economic strength of the Nation, from which our military defense is derived?

In a remarkable column published in the August 25 Akron Beacon Journal, noted economic columnist Hobart Rowen makes a compelling case that our desperate slide in the international trade market can be directly linked to Congress and the President's failures to discipline the Pentagon's appetite. As Rowen notes:

> It's no exaggeration to say that we have borrowed to the hilt to finance a bloated military budget, and that this overcommitment—to military spending—is a root cause of current economic distress.

We cannot blithely dismiss the debt problem, as we could in the 1930's, by saying "We owe it to ourselves." Today, much of the budget deficit is being financed by the savings of people living abroad. Between 1982 and 1986, we borrowed more than $400 billion overseas. The United States has become the world's largest debtor.

In short, we are borrowing from abroad to finance the defense buildup. In the long run, those bills will cause, and even now are causing, a catastrophic decline in American competitiveness, productivity, and capital investment, and a shifting away from the United States as the chief financial and industrial power in the world.

In her 1985 edition of "World Military and Social Expenditures" the distinguished scholar Ruth Leger Sivard documents the strong correlation between high rates of military spending and low gains in productivity. Among developed countries, Japan, with the lowest military expenditures as a percent of gross national product—1 percent—is at the top in productivity growth—9 percent per year. The U.S.S.R. is at the top in military expenditures as a percent of GNP—12 percent—and next to the bottom productivity growth—3 percent. The United States holds the bottom position in productivity growth—2.5 percent—and next to the top in military expenditures—7 percent of GNP in the period 1966-82.

The Congressional Research Service reports the United States had shown a steady decline in spending on civilian science. At the same time, countries like Japan and West Germany, which are our biggest high technology rivals, have relatively small defense budgets and have thus been able to promote dramatic increases in spending on civilain science. They are exploiting that advantage every day in the international trade market.

As Akio Morita, chairman of Sony Corp. said:

> American companies have either shifted output to low-wage countries, or come to buy parts from countries like Japan that can make quality products at low prices. The result is a hollowing of American industry. The U.S. is abandoning its status as an industrial power.

The budget deficits which have resulted from the combination of revenue losses and defense spending increases have helped keep the dollar overvalued. That, coupled with lax enforcement of our trade laws and declining productivity in American industry, produced last year's record $148 billion trade deficit. We're headed for an even bigger trade deficit this year.

Certainly, we must be prepared to take strong action to discourage our trading partners from engaging in unfair trade practices. The House, in May, approved a major overahaul of the Nation's trade laws which would streamline the operation of our unfair trade laws and remove some of the President's discretion to ignore case of unfair trade. The House-passed trade bill would also put pressure on countries to bring their wages, working conditions, collective bargaining laws, and occupational safety and health laws up to internationally recognized standards. American workers should not have to compete against sweatshop labor.

But even with fair trade, our region, and the United States as a whole, has no choice but to increase the competitiveness of our current industries if we are to preserve the standard of living of our people and continue as a major economic power.

The United States now ranks 18th among countries graduating engineers with postgraduate degrees. Our high school completion rate is 73 percent compared to Japan's 90 percent. Less that 7 percent of U.S. education is financed by the Federal Government, and that figure is declining at all levels. In contrast, nearly 50 percent of education in Japan is financed by the National Government. It is ironic that excessive military spending is depriving our children of the educational edge on which the future security of the Nation, as well as its individual citizens, depends.

Excessive military spending is hurting the American people in still another serious way—one all too often overlooked. The United States does not exist in isolation. For example, every day, we are becoming more aware of our environmental interdependence. The accelerating destruction of tropical rain forests, for example, will wipe out the winter habitat of many species of our own native birds, probably rendering them extinct. It will also substantially reduce the global conversion of carbon dioxide back to oxygen, thereby accelerating the "greenhouse effect," which, if not reversed, could within 100 years turn much of the United States into a permanent dust bowl. Acid rain, fluorcarbons, DDT, nuclear fallout, and other forms of airborne pollutants are carried by air currents around the world, with potentially devastating effects on forests, crops, wildlife, and eventually on people.

Overpopulation, extreme poverty, and political backwardness in the countries where most of the world's people live make it extremely difficult to deal with these environmental problems, not to mention the economic, social, and political ones. Failure to deal effectively with the problems of poverty which affect two-thirds of the human race, leads to increased social and political instability and opens the way for Communist, Maoist, fascist, or religious extremists to take power. Neither democracy not civilization itself can long exist in the world if most of the people sink into mass starvation, as is already happening in much of Africa.

Military power cannot deal effectively with these types of problems. In

fact, excessive reliance on military power, as presently pursued by both the Soviets and the Reagan administration, often makes the problems worse. This is especially true insofar as the arms race diverts money and other resources away from productive uses.

How serious this diversion is, both in a moral and political sense, is dramatically brought out in Ruth Sivard's study of "World Military and Social Expenditures." She summarizes this way:

Militarization also has many links to today's troubled social conditions. Before any weapons are used, they have already taken a human toll. The economic burden is felt most directly through the diversion of resources from urgent present needs of society, but it also promises an unconscionable legacy for future generations: Built-in inflation; the burden of long-term debt; an environment and infrastructure deteriorating through neglect; alienation and unrest growing out of economic inequities.

At the same time the foreign aid, which could have meant new hope for millions living in desperate poverty, was also curtailed by military factors. While developed countries engaged in a massive arms race, their annual military expenditures—in current prices—rose by $459 billion between 1960 and 1983, their economic aid by a mere $25 billion. After allowance for inflation, military expenditures of the developed countries were up 80 percent. But for the recipients of their development aid there was no increase in real terms over the 24 years.

The record of the two military superpowers was especially poor. The United States ranked among the lowest of the contributors in relation to its GNP, providing under 0.3 percent for economic aid. The U.S.S.R. . . . lagged even further behind, only occasionally reaching as high as 0.15 percent of its GNP.

Estimates of the extent of hunger in the world range widely but there is general agreement that more than 1 billion people are chronically undernourished. Deaths related to starvation average 50,000 a day. In Africa alone, 5 million children died from hunger related causes in 1984. Millions more have died since.

Beyond the mismatch between food supplies and population, there is the fundamental problem of poverty. The fact is that the people who are malnourished in much of the Third World simply cannot afford to buy the food that is available, or even to grow it for themselves. More than half the poeple in the rural areas are landless. Hunger persists, therefore, as one apparently fixed piece in the tragedy of underdevelopment. If it is to be eliminated, there will have to be a commitment of resources and political will, by rich and poor countries together, that is not yet evident in the militarized world of 1986.

The situation with respect to education, which could help break the vicious cycle of poverty, malnutrition, and poor health, has gotten worse, not better, over the last two decades. In 1983, there were at least 100 million more children out of school worldwide than there were in 1960. With world military expenditures reaching $800 billion in 1983, public expenditures for educating the world's 1.5 billion school age children were 8 percent less than military expenditures. In developing countries, there are, on the average, only 2 teachers per 1,000 school age children. We worry, and rightly so, when the teacher-pupil ratio in our classrooms is more than 1 to 25.

The picture on health care is even worse. In developing countries, there is, on the average, less than 1 physician per 10,000 people. Government budgets for health average $14 per capita, and drop to $1 or less in some countries.

The other day, I heard on public radio a doctor from an African country report that 10 percent of the children in his country are being born with AIDS virus in their bloodstreams! There lie the makings of a worldwide plague comparable to the black death. Yet there are insufficient funds even to sterilize the syringes used over and over to administer injections to these and other children, so the disease spreads.

Whether looked at from the standpoint of our own economic salvation or the preservation of a viable world, it all comes down to the same thing. Hobart Rowen sums it up this way:

We must cut back the huge Federal deficit and stop pouring the Nation's wealth down a military drain. We must find ways of achieving arms control and détente with the Soviet Union, and thus regain the means to finance a revitalization of our own economy and that of the Third World.

The preliminary budget passed by the Congress for fiscal year 1987, though it reduces only the rate of increase in defense spending is at least a small step in the direction of defense cuts. The next Congress will have to make some major steps in that direction. Meanwhile, the President should explore whether the Soviets are really serious about arms control and arms reduction, as they appear to be. To do that, he must get serious about it himself, and let his subordinates know it. Congress cannot negotiate treaties. Only the President can do that. Whether he does may depend on what he hears from the American people in the next few months, particularly in the kind of Congress they elect this November.

I do not underestimate the difficulty of dealing with the Soviet Government. The recent arrest and detention of American journalist Nicholas Daniloff in Moscow on trumped-up charges is but one more indication of the profound gap in values between the two superpowers—a gap that breeds further mistrust and makes negotiations affecting national security extremely difficult. Nevertheless, there is no alternative to such negotiations if either country is to have much of a future.

It may be that one of the reasons we have failed in the past is because the leaders of the superpowers have focused too much on the threat each country poses to the other, and not enough on the benefits each can achieve by a reduction of the threat, not by adding weapons but by getting rid of them, together. In a postscript entitled "Bringing Star Wars Down to Earth," Ms. Sivard lays out an interesting scenario. She says:

Imagine if, instead of chasing the chimeras of star wars and evanescent military gaps, the political leadership of the two greatest powers agreed to focus on the real gaps, the universal needs of humanity on planet Earth . . .

The dream scenario goes as follows:

Each superpower independently cleverly decides that the only sane objective is to lower the opponent's military threat, rather than racing endlessly to keep ahead of him. Each grasps the opportunity in negotiations to make substantial cuts in the opponent's nuclear forces and to put an end to all nuclear and antisatellite testing. Budgetary savings for the two countries are conservatively estimated at two trillion dollars over the next 10 years.

In the euphoria of success, the superpowers decide to invite the whole world to share in half the savings. (The other half is to be used to reduce the budget deficit in the United States and to improve the lot of consumers in the U.S.S.R.) Together, the United States and U.S.S.R. announce that $100 billion a year will be made available for an unprecedented human development program, to which other nations are asked to contribute in proportion to their military expenditures. Global response is immediate and wildly enthusiastic.

To those who say it sounds like an impossible dream, I say: If a leader of the stature of a Franklin Roosevelt offered such a proposition as part of an arms control package, it would be almost irresistible. Ronald Reagan, who claims to hold Roosevelt as his hero, has a historic opportunity. If he grasps it, he will find that he has the support of the overwhelming majority of the American people, and, indeed, of the whole world. But if he does not act soon, the opportunity may be lost, perhaps forever.

□ 1310

Mr. BEDELL. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I am happy to yield to my distinguished colleague from Iowa, one of the finest Members in the House of Representatives [Mr. BEDELL].

Mr. BEDELL. Mr. Speaker, I want to commend the gentleman for his statement, and as we both leave the Congress, I think frequently we are unaware of the esteem with which one is held by his peers.

I want the gentleman in the well to know that since I first came to Congress, he has set an example that I have treasured very much. I have

looked to the way he has served, as I have tried to serve here in the Congress, and I know I am not alone in those people who appreciate the tremendous service he has given to the country, and the great example he has set for the rest of us.

Mr. SEIBERLING. I thank the gentleman.

Mr. Speaker, without doubt, we could all say exactly the same thing about my dear friend, who has also set an outstanding example and who, like me, is leaving the Congress at the end of the year, but not leaving the cause of freedom and the cause of humanity.

IMMIGRATION REFORM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. LUNGREN] is recognized for 60 minutes.

Mr. LUNGREN. Mr. Speaker, I just must say that today was probably the most bittersweet victory that I have had in the House of Representatives. Bittersweet because I in fact have been working for 8 years, the 8 years I have been in the Congress, for immigration reform. I have been on this floor many, many times. I sustained an effort to put pressure on the leadership two Congresses ago, so that we might have immigration reform. We were finally successful in having that immigration reform package on the floor in the waning days of that year; in fact in the lameduck session.

A rule was granted that time which gave a totally open rule, which allowed every amendment under the Sun in order, and some who were opposed to that particular bill made 200 to 300 amendments in order; that is, filed them, and were ready to go with them, and that and the combination of time killed the bill.

Then in the last Congress, working with others, we put pressure on the House to finally bring the immigration bill up. Unfortunately it was delayed, and delayed, and delayed, and delayed for a combination of reasons, some political; we were promised it in January of that year, then February, then March, then April, then May. Then had what we thought was an ironclad commitment to bring it to the floor of the House in June 1984, the first week; but at that time a phone call from a Presidential candidate Mr. Mondale to the leadership here indicating that if Members had to take positions on immigration reform prior to the Democrat and Republican primaries in California, that that would affect the outcome of that primary. As a result, that was put off again until after the California primary.

That put it right in the Presidential season between the, or right at the time of the two Presidential conventions; it made it more partisan than before. By the time we finally got back here and dealt with it and went to conference, we had a month left. We spent a month in conference and were unsuccessful.

In this Congress, I have been working as hard as I could to have immigration reform. I introduced the first comprehensive immigration reform bill in this Congress; taking much of what was done in the conference from last Congress, trying to take those areas where we had reached agreement, and then in some areas where there was not agreement, going with what I thought was the proper course.

I have been a sponsor of legislation on the guest-worker question for 8 years in the Congress. Yet today I led the fight to first of all vote down the previous question and allow us to have a different rule presented; and then when we were just short on that vote, led the fight to defeat the rule.

Some might ask why. In fact, I guess I ask myself why at times. I suppose it comes out of the fact that many of us believe that immigration reform is important, and along with immigration reform, we have to do something to settle the question about the need for foreign workers in agriculture, a need that has been manifest for well over 100 years, a need that we could control, could identify, a need that we could channel into a legal form.

And yet the rule presented to us today denied us an opportunity to vote on that fundamental question. When I asked members of the Rules Committee why I was denied that opportunity, I was told, because they knew I would be successful. What does that mean? Not that I would be successful because of rhetoric or oratory or anything like that; but rather that the amendment I would present would prevail in the House because it would be the majority will.

In other words, we were to understand that because the Rules Committee had figured out that that particular approach to the guest-worker question would prevail on the floor of the House, and because the chairman of the Judiciary Committee disagreed with the sentiment of the House, we would therefore not allow the House to vote on that.

□ 1320

Not only would we have had a guest-worker approach, but it would have been in lieu of what is in the present bill.

Let me just say this: that which is in the present bill, the so-called Schumer amendment, was described as an abomination, as an outrage and as whacko.

Mr. Speaker, those three things were said about that proposal by its proponents. I do not have time to tell you what was said about it by its opponents.

Why would even its proponents say it was an abomination, it was outrageous, it was whacko? Because they could not justify saying to everybody in America we are going to set up a rule in which anybody who worked in agriculture in the United States from May 1, 1985 to May 1, 1986 and was here illegally while he or she did it, can waltz right in and get a green card, permanent resident status in America, qualify for citizenship in 5 years, immediately be able to petition for every member of his or her family to come into the United States and be eligible for most forms of welfare.

Now, there was a change made that denied them AFDC, but other forms of welfare would be allowed and there was no restriction or no authority granted to the States to have any further restriction on welfare eligibility for these individuals.

Mr. Speaker, I yield to the gentleman from Florida, [Mr. SHAW].

Mr. SHAW. I would like to congratulate not only the gentleman in the well, Mr. LUNGREN, but I thank the majority of the House of Representatives for what took place in this Chamber today. I think the message is true, and I think it certainly will be read this way and it certainly should, and that is that, the democratic process, given all of those whether they be in the majority or the minority of the Members in this House, give them an opportunity to be heard, give them an opportunity to make their case and then let the Members vote on it so that the democratic process can go forward. The democratic process is of far greater importance than any partricular bill that has ever gone through this House. I think we must not lose sight of that. Today the gentleman in the well and some other members of the Committee on the Judiciary—and I was pleased to join in this effort—took on the leadership of that committee. The leadership of that committee was saying, "Play my way or we don't play. We don't conference unless the conference comes out the way I want it to."

Never can Members of this House be cowed to that process. I think that is what the message is that is going out today, that we are not going to cow down to a blatantly unfair process that is arbitrarily set up by some in high positions in this House that would stop the democratic process from going forward.

I say this is a tremendous bright day in the history of this House. I would predict that if immigration does not come back to us this year, and I think that the chances are very good that it will come back this year, but if it does not, it is going to come back with the enthusiasm that we are seeing now that is being shared by the Members

of the House trying to turn out some meaningful drug legislation.

The American people know there is a problem out there, and they are going to insist on their body, the people's body here in the House of Representatives, turning out some meaningful and good legislation in this area.

I know the gentleman from California has been in the leadership of this fight, as has the gentleman from Kentucky [Mr. MAZZOLI], and I am sure that, even though you are split today on this rule, that you are going to work together and you are going to come out and that the Rules Committee, after they get over the loss they have suffered today, or the vote of no confidence that they have received today, that they would come forward and if not in this Congress, in a future Congress, craft a rule that will give this House an opportunity to vote on good meaningful immigration reform.

Other than the question of drugs, there is no domestic legislation that I feel is any more important than immigration reform.

I hope the gentleman will continue the fine work and the fine fight that he has been putting up. It is nice to see David beat Goliath once in a while in this House, and that is exactly what happened here today.

Mr. LUNGREN. I thank the gentleman from Florida for his remarks. He is, of course, a member of that Committee on the Judiciary and, being from Florida, is extremely interested in the immigration issue and has worked hard on it.

I know he, too, was torn about what we had to do here. But I think in the long run we were correct in what we did.

Beyond what I have said about the Schumer amendment, I ought to indicate to my colleagues that it has a replenishment aspect to it. That is, in addition to that original group, unknown numbers, by the way; some have said maybe only 250,000, others have said maybe 350,000, maybe 500,000; after those people have come in for a year there is a replenishment program that continues on for 12 years. In that replenishment program they bring in new workers from foreign countries but not as temporary workers. Rather, we grant them a temporary status for a year in which time they have to work 60 days in agriculture, but as long as they do that for a period of time, they then get permanent resident status and get citizenship 5 years after they get their permanent resident status.

Again, a preference is given to those individuals who have been here illegally since before 1986. In other words, what is going to happen is if the rule had prevailed, it would have put us in a position of accepting as a bill, because we could not amend it, a bill which had a legalization provision upon which I think we could get a consensus. It was based on the fact that people had been here for a long period of time, they had roots in our community, they were willing to accept additional obligations, that is to know English or to learn English, to know American history and government or be involved in a course of study for American history and government. It would have been a one-time-only thing. It would have required, to show that people had substantial roots in the community, that it would be folks who had been living here continuously for some period of time. We had not settled on a particular date. Probably the conference would have ended with 1982. And what would occur then would be that we would send a pure and simple message out, "Don't expect another legalization. We were doing this extraordinary thing, we were granting this extraordinary relief giving the people a right to citizenship in the United States on a one-time-only basis. It will not be repeated."

But then we would have another section in the bill which would say, "Well, if you happen to have worked in agriculture for 60 days during this 1-year period of time, you go to the head of the line of everybody. We don't care if you're a Mexican national who has been living in Mexico after making an application to come to the United States and waiting for a number to come up for the last 10 years, this individual, your next door neighbor who came and worked 60 days in agriculture illegally in the United States last year will go to the head of the line. We don't care if you're from the Philippines and because the numbers are used up, you have to wait for 12 years to come here. You continue to wait while someone who got in here illegally and worked 60 days in agriculture goes to the head of the line." In fact, we say to those people in the regular program, "Only if you have been here a substantial period of time are you going to qualify for legalization. But if you worked for 60 days, have no other connection to the United States, never been here before, never been here after, had no intent of having a long-term commitment to the United States, no intent of trying to study American history and government, no intent of studying English, no intent of becoming a part of America, you go to the head of the line, you become a permanent resident of the United States, and in 5 years you have the opportunity for citizenship." How much is that worth in the world today? If you could offer American citizenship on the open market, if that is how crass we want to be about it, how much would it be worth? I would suggest in any event it is worth more than 60 days work in agriculture. Yet, had the rule been adopted, we would have had no attempt to amend that, we would have had to accept it as it was presented to us, and it had to be part of the bill.

It was one of many features of that rule that was voted down.

Another feature of the rule, which I mentioned earlier, was that 23 separate amendments were adopted and incorporated in the bill itself; that is, became parts of the bill when the rule was adopted. They change the bill. Twenty-three amendments that never would have any opportunity of debate, once they got in the bill you could not change it.

One of those was granting EVD. That happens to be a technical term for extended voluntary departure. It means you permatize, you legalize people who are here illegally until such time as another event takes place.

What has happened is every single EVD that has been granted in the past has been every single person granted extended voluntary departure in the United States. EVD was something that use to be given as blanket authority to the Attorney General to take care of refugee problems.

EVD was how the people from Hungary came here after the Hungarian revolution. EVD was the way Cubans came here. In 1980 this Congress decided that we were not going to do that anymore. There was an ad hoc approach to it, oftentimes subject to political influence, depending on whatever administration was in office. We were going to establish a criterion to govern the admission of refugees into this country. We would adopt the United Nations protocol, expanding our definition of refugees, basically saying a refugee is someone who has a well-founded fear of persecution based on five different criteria such as persecution for religious belief, for political belief, because of belonging to a particular ethnic group, et cetera. We said that is the way we want it to happen in the future. We are not going to use EVD anymore.

We are going to set up a procedure that is not subject to political manipulation. Everyone will be viewed the same and individually. That is what happened with countless refugees around the world. Yet in this bill if we had adopted the rule, an amendment would have been thrown into it on which we could not do anything, we could not vote on it up or down by itself, in which every single Salvadoran and every single Nicaraguan in this country before November of this past year would be able to stay here forever.

Now, some people say well, look, they are having problems down in El Salvador and we should allow every Salvadoran to be here. That was a cry we had in this Congress over the last couple of years. As a result, the rank-

ing Republican of the Committee on the Judiciary, HAMILTON FISH, and others came up with a plan where we would follow every single Salvadoran who was deported from the United States back to his home country. For the last 2 years that has been done, not by the U.S. State Department, not by the U.S. Justice Department, not by any agency of the U.S. Government, but by ICEM, which is an international organization that helps with migration of people. It started in the aftermath of World War II to put displaced people into homelands following World War II. Then it extended worldwide. ICEM meets every single deportee from the United States to El Salvador, sees if they can help them, gives them postcards to send back to them so that they can check on them, and then goes out and checks on them. And in 2 years how many people have they found were killed when they went back to El Salvador after being deported by the United States? Because that was the argument heard as to why we must grant extended voluntary departure to all Salvadorans. Two people, two people have died in that entire period of time. One was killed trying to perform an armed robbery, and the other died in a barroom brawl in a dispute over a soccer match.

No other death has been shown. And that is not by the United States, that is by an international organization.

The other fact, that people do not like to talk about, is that Salvadoran nationals are the second largest group of illegal aliens apprehended in the United States now, but have been for 24 straight years. They were coming al norte before Duarte, before D'Aubuisson, before the Communists, before everything. For 24 years Salvadorans have been the second largest group of illegal aliens in the United States. They are coming because, basically, for economic reasons, and I do not blame them. The point is we cannot determine our immigration problems because of the problems of another country's economics. Yet, we would have been required under the rule that was up upon its adoption to allow every single Salvadoran and Nicaraguan in this country illegally to be granted extended voluntary departure no matter when they came in before November.

Now, that is a subject that needs to be debated, a subject that needs to be voted on. It is a subject that probably should not be in this bill but even let us grant them the right to have it in this bill, which was not from any of the committees, we ought to have the right to vote that up or down because I think the American people would like us to do that.

What it is is an extension of the sanctuary movement. It is permatizing and giving Government direction and recognition to a sanctuary movement, something which has been rejected by INS, which has been rejected by the Justice Department, which has been rejected by the Government and which has never gotten anyplace on the floor of the House when independently voted.

□ 1335

Yet we would have been required if we adopted the rule today on the immigration bill to accept that into the bill and have no opportunity to vote on it.

In other words, we were told this: If you want immigration reform, we are going to hold you up on the floor. You have got to accept what we want you to accept, even though we know we could not pass it on the floor if it were required to be voted on. Ladies and gentleman and my colleagues, it just seems to me that is not the way we ought to do business here.

Mr. Speaker, what I am trying to say is this. There are many of us who are genuinely concerned about immigration reform. We have been working on it on a bipartisan fashion. I truly regret that partisanship erupted, as least as reflected in the Rules Committee on the rule that was passed out here. To deny a Member an opportunity to offer an amendment on the most controversial issue within the immigration bill for the reason that that Member would be successful and, therefore, suggesting that Member's amendment was what the majority wanted is not the way we ought to do business here.

Now some are saying that those of us who opposed the rule today have killed immigration reform. I hope that is not true. It does not have to be true. But let us not have any finger pointing. Let us talk about where we are right now.

Many of us have suggested for a long period of time that we ought not to let immigration go to the end of the year. I said that weekly, monthly, even daily at times for the last 2 years.

We have commemorated more days, we have commemorated more anniversaries, we have commemorated more quarter-century anniversaries, we have commemorated more diseases than perhaps any other Congress. But while doing all those things, and all of those things are certainly valuable, we pushed immigration reform again to the back of the calendar. And now since we are at the back of the calendar, we are told to accept the rule that we give you that denies the will of the House or you kill immigration reform. I do not accept that, Mr. Speaker. There is time today. There is time this weekend. There is time Monday. There is time Tuesday for the Rules Committee to reconvene and send back the rule they know they can pass in this House.

If the leadership truly wants to give the Members of the House of Representatives an opportunity to work its will on the immigration bill, the Rules Committee can reconstitute itself and can vote out a bill that they know we can pass on the floor. We told them what it was they could pass on the floor. And we could be involved with immigration reform next week. To say it is too late is to beg the question. Those who make it very late ought not to be able to use the excuse that now it is too late to do anything about it.

The Speaker has told us in the past that he alone controls the schedule. The Speaker has said on the floor that no one else does, he does. Mr. Speaker, you control the schedule, you can get it back up.

We have been told time and again that the Speaker's party controls the Rules Committee. It controls by a 2-to-1-plus-1 majority in the Rules Committee. What does that mean? That means they can pass out any rule they wish to with a 2-to-1-plus-1 margin, Democrat over Republican. If they want to pass out a rule, they can schedule it right now. In the last couple of weeks we have had meetings of the Rules Committee scheduled as soon as a rule was defeated on the floor or as soon as they made a decision. In some cases it was even a little late telling the Republican Members that the Rules Committee was meeting. They were nice enough to let us know just before the rule was voted out.

But the point is they can convene it anytime, and that rule can come out. If they truly want immigration reform, we can still act.

Some said that those of us on our side who voted against the rule because we did not get our way are no better or worse than they are because all they wanted to do was to get their way.

But there is an essential difference. We said, just give us a vote. We will accept the will of the House.

I was asked in the Rules Committee by a Democratic Member, MARTIN FROST of Texas, if you have the opportunity to offer your alternative to the Schumer amendment, the so-called Wilson amendment, which basically parrots the Panetta-Morrison amendment which passed on this floor by about a 56-vote margin 2 years ago, and you are not successful, would you support the overall immigration bill?

I said that if I had my fair shot on the floor and we had an up or down vote on it and I lost, even though I thought I should have prevailed, I would still go forward and vote for the bill because I believe in immigration reform. That is all we are asking.

It just seems awfully strange that in the people's House, the place that we bring children to, the place that high

school classes come for their senior trip to see what democracy is all about, that we say Members are wrong or Members are obstructionists if they ask for a simple vote on an issue that has already proven itself to be crucial to the overall issue being then considered. How can you say that Members are truly Members of the House of Representatives if they are denied the right to represent their constituents? How can you say this is the House of the people if the people's representatives are denied the chance to have a vote on the question of whether you are going to legalize 250,000 to 300,000 people whose only claim of a connection to the United States is they worked 60 days last year in agriculture?

Thank God we do not extend it to ice hockey, because most fellows from Canada who come down here to play ice hockey play more than 60 games. Thank God we do not give it to every Italian singer who comes over here, or every international actor who comes over or every businessman who comes over here or every student. We grant student visas and students are in the United States longer than 60 days. Should we not give them citizenship rights because they have been in this country 60 days?

Look at it the other way. Does anybody think any other country would say to any American, "Yes, you have been in our country 60 days, so we are going to grant you full permanent residency rights. We are going to grant you citizenship rights in 5 years. And, oh, yes, by the way, with the exception of one welfare program, you will immediately be eligible for any and all welfare programs that we have. Oh, and yes, you can petition to have all of your family come in as permanent residents and citizens because you have worked here for 60 days."

The country of Mexico does not allow you to work in that country unless you have a work permit, unless your work permit has been renewed and is up to date. And you have to go to their governmental agencies to get that permit on a regular basis. That is just to work there. Yet we are going to give citizenship away that much.

I have worked on this floor for the agricultural interests. I have taken a lot of political hits for working for the agricultural interests. But I happen to think they have a legitimate concern. I am not willing to work for the agricultural interests by selling out the rest of the country.

If the agricultural section that had been supposedly agreed to by this mysterious group that worked, if it did not affect the other parts of the bill, if it did not affect the idea of citizenship rights, if it did not affect the idea of legalization, if it did not affect the whole idea what it takes to be a citizen in this country and what it is worth to be a citizen in this country, I would say let them work their deal and, if we can all sign off on it, OK.

But they did not do that. They went in to the area of citizenship, who is able to get citizenship rights and who is not able to get citizenship rights, who goes to the front of the line and who stays behind. It seems to me we cannot stand by and accept that. We still have time.

Let me just end with the three words that were used to describe this provision with which I have great objection: "abomination, outrageous, whacko." That is the description given for that particular provision by three of the people who voted for it.

I could tell you what I think about it but I would not be as mild.

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. LUNGREN. I yield to the gentleman from Minnesota.

Mr. FRENZEL. Would the gentleman tell me, did we not go through this same procedure last session?

Mr. LUNGREN. We did in terms of the lateness of the hour, but they gave us a fair rule last session, surprisingly.

Mr. FRENZEL. But they brought the bill up within the last 2 weeks of the session. The bill was filibustered to death by threat of amendment, as I recall.

Mr. LUNGREN. They did that two Congresses ago.

Mr. FRENZEL. And then they had 2 years, they being the House leadership in this case, to bring another bill back so that we could work on it with a reasonable procedure and a chance for the House to work its will.

Can the gentleman tell me why we waited until 2 weeks or 1 week before we are to adjourn before that bill came to the floor of the House?

Mr. LUNGREN. I can only surmise, but I would suggest this to the gentleman. I have been told time and again that if we had an opportunity to vote on the package on agriculture that we had dealt with on the floor before, that we would be successful and, therefore, they were going to do everything they could to deny us that opportunity. If they brought it up too early in the session, it would be easier to defeat a rule. If you bring it up late in the session, they blame you for killing the bill.

I suggest that is the position they put us in. The rule was killed, but we did not kill the rule and the rules prospects. They did by placing it where it was with the rule they had.

Mr. FRENZEL. So the House leadership was nervous about having a vote in the House. Anything as undemocratic as letting the Members express their preference was not acceptable?

□ 1345

Mr. LUNGREN. I was told specifically by members of the Rules Committee on the other side of the aisle that is precisely why they denied the rule that we asked for because they knew that we would prevail.

Mr. FRENZEL. So, in effect, the leadership of this House does not want a bill if it is the bill the House wants.

Mr. LUNGREN. Not only that, but the distinguished chairman of the Judiciary Committee mentioned on the floor, and then afterward in a press conference at which I was attending just outside these doors, that if the bill contained the will of the House on that question, he would not bring it to conference; he would do everything he could to kill it.

In other words, he is saying that if the will of the House prevails, he will kill the bill, and he was not going to allow that to happen; he wanted it to die aborning.

Mr. FRENZEL. If the gentleman will yield further, it is pretty clear that the House leadership and the House majority does not want an immigration bill, and if, as a majority they can do whatever they want, I think it is a shame. I think the House needed the bill.

I supported the bill 2 years ago even though there were many features of it to which I objected, particularly giving the prize of citizenship to people who have successfully broken our laws for a long period of time.

I object to that feature of the bill, yet I think we need a bill. I share the gentleman's regret that we do not have one. I must say that this was one of the House's more shabby hours this afternoon when we were given such an unacceptable set of choices instead of an opportunity for the House to work its will.

I thank the gentleman for his discussion. It has been helpful to me. I am not on the committee. I am glad to know how things work around here. I am glad for the information. I am disappointed to know how things work.

Mr. LUNGREN. I thank the gentleman for his remarks. I want to congratulate the gentleman as one of the people from a State which is not most affected by the illegal alien problem and who is not on the committee, who stuck with us last time and did work for the bill and did vote for passage of the bill when many did not.

Yet, at times when you are presented with an outrageous circumstance, you just cannot accept it. The point I want to stress, in concluding, is that we still have time. If they are truly interested in getting a bill through, the Speaker can schedule it, the Rules Committee, which we have been told they control, can get another rule out. We can get rid of the bad features of the rule that caused its defeat today. We can allow the House to work its will.

I do not think we have to accept threats that that will kill the bill. That is that the majority will not allow it to go to conference. I do not think they will do that; I have got more faith that they want an immigration bill too.

I think we ought to have a chance to vote on what the people want. We will decide what they want by the vote of their Representatives and go with that. I do not understand why the big "D" in democrat and the small "d" in democrat have to chance the notion of democracy. It ought to be same. Give us a chance to vote is all we are asking.

A MEMBER'S 12-YEAR MICROCOSM OF AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. BEDELL] is recognized for 60 minutes.

Mr. BEDELL. Mr. Speaker, as I come to the end of my 12 years of service here in the Congress, I have asked for this special time in order to talk about my appreciation for what my colleagues here have meant to me; to talk a little bit about my beliefs, my dreams for this Congress, my dreams for our country, to talk a little bit about how it is that I come to be in this great body.

Let me start by saying that I truly love it here. It is very difficult for me to leave. For those that do not know, I have suffered from a disease for over a year in that I was bitten by a wood tick and came down with a disease called Lyme's disease in which the symptoms have been very similar to mononucleosis for about a year. Under those circumstances, I felt that in spite of my love for this life and this body, it would not be right to my constituents to continue to serve here.

I am pleased to report that due to a series of shots some 2 months ago, it now appears that that disease is finally whipped and I have regained my normal health.

It is great to have been here because of the great people that serve in this body and it breaks my heart that so many, many times people talk about how terrible the Members of Congress may be. Let me say that I have never been in all my life with a finer group of people than I find here in the Congress.

I am thankful to my constituents for the fact that they have permitted me to serve these 12 years even though I am a Democrat in a very Republican district. I tell everything it really appears that I was born under a lucky star. All through my life, it has just seemed as if the Lord has smiled upon me.

The first time he smiled upon me was when he gave me the parents that he gave me and the grandparents and the brother that I had. From them I believe I learned family values. I had parents that, whatever I wanted to do, said, "Well, Berk, why don't you go ahead and try?" Many times there were things that normal parents would have said do not do, that is foolish, but my parents said, "If you wish to try, go ahead."

My grandmother told me that you can do almost anything within reason if you will only set your mind to it. How right my grandmother was. My parents taught me to enjoy the great outdoors. I remember when my father and mother left me on the shores of one of our lakes as they went on down the lake with their fly rods, and, as I sat there with my cane pole and worm and pulled in my first fish, my father was so proud that the next day he had to take me downtown and get my picture taken and parade me around to his friends.

Some of the great joys I have had are camping in the wilderness, represented so well by my friend from Minnesota, fishing and hunting with my brother in the outdoors. Because of those experiences to some extent I was fortunate enough that, at the age of 15, I took $50 I had saved from my newspaper route and started a business of making and selling fishing tackle.

It is a very interesting story of how that business grew and developed. I will not go into all of the details at this time, except to say that if it had not been for parents who said, "Go ahead, take our car and take the back off the front seat and build a bed and go out to sell your fishing leaders that you do not know how to make," at that time, if they had not said, "Go ahead and use your bedroom and use our living room and use the rest of the house as your factory, we will get by," that would not have happened.

As that business grew and developed, I finally came to the point where I realized that I had a sizable business on my hands and all I knew about management was what I had learned about my newspaper route. So I packed my bags and I went off to a management course for presidents that was put on by the American Management Association in Hamilton, NY.

There were 18 presidents at that course. In our area, there was the president of General Mills, the president of Minneapolis Honeywell and BERK BEDELL. I figured it out, and the average annual sales for the 18 that were in attendance was more than $100 million per company. Let me tell you, it would have been much larger if I had not been there to bring the average down for all the others.

But I decided I should listen to what they had to say because if it was sufficiently important for people of that stature to take time from their lives to come to try to learn how to manage that I had better listen. Thank God I did because it started to change my life.

At management course, they told us that the first thing you have to do if you are going to manage any operation of any kind is to determine what it is you are trying to accomplish with what you may be managing and to write it out. You would be surprised how few people can tell you just what it is they are trying to accomplish with what they are managing. It is not just to make a profit. Profits are of no value unless they serve some particular purpose.

So I went home and it took nearly 1 year to write out the goals and objectives of what we were trying to accomplish with this fishing tackle company that I had started. Then I said to myself, "BERK, if it is important for you to try to determine what you are trying to accomplish with your business and to write it out, surely it must be important for you to do that with your life, because surely your life is as important as your business."

I proceeded to write out my goals and objectives for the rest of the life that God has given me on this Earth and how I wanted to live the rest of that life. For a long time, I went around the country making speeches to people just urging them to get out a pencil and paper and start to write out what they wanted to do with the rest of the life they had here and how they wanted to live it.

□ 1355

Largely because of that, about 15 years ago, as my wife and I looked at our lives, we decided we wanted to try to do something about some of the concerns we had, so I hired a manager to manage my business and I spent 1 year just going around the country looking at what we might want to do in order to try to help with some of the problems that concern us.

Finally, I decided I wanted to run for Congress. I had a poll. The pollster said, "Don't run, you don't have a chance." But I remembered what my grandmother had told me, and I did. Here I am. What a wonderful experience this has been.

I came in with the wonderful class, the Watergate class, of the 94th Congress, along with my colleague, the gentleman from Minnesota [Mr. OBERSTAR].

It was one of the great experiences of my life as we first met in that class. I have always sort of been out of step at home. I was a Democrat among a whole group of Republicans. I was one of the first to feel that the Vietnam war was wrong, and spoke out in regard to it at a time when that was not a very popular thing to do.

I came in with those Members of this class, and here we were; we all agreed; we all wanted to do the same

thing. We all had the same values. If there ever was a fearless group, in my opinion, that was it.

They were articulate and unified and intelligent. They all wanted a clean environment and a peaceful world and an effective Government and concern for the underprivileged.

When I was looking around that year at what I wanted to do, one of the things I did was to stay at the home of a friend up in Connecticut along the seashore. At the time I was staying there, another guest in that same home was one of the astronauts.

The next morning, out in front of his home, they were shooting a movie with the astronaut. I will never forget what he had to say. He had a globe there and he said, "As we were traveling on that spaceship toward the Moon, we realized that the three of us had to work together with our limited space and limited resources and limited waste disposal system." He said, then, "As I was traveling, I looked out that little window and I saw that beautiful blue and white ball that we call Earth. I realized that was something special that God had put in this universe."

He said, then,

All of a sudden, a strange thing happened. All of sudden, I realized that that beautiful blue and white ball that we call Earth was a spaceship, just as surely was the one of which we were traveling. It had limited space and limited resources and limited waste disposal system, just as surely as did ours. But whereas we, the three of us, were working together to do everything we could to bring that journey through safely, recognizing those limitations, the crew of 3 billion people back on Earth were not doing the same.

How true he was.

One of the activities that I have participated in here in the Congress has been a prayer breakfast group that meets every Thursday morning at 8 o'clock. As we meet in that prayer breakfast group, each morning one of the Members talks to us about his faith and his belief and his life and his experiences. Only a few weeks ago, we were privileged to have our friend, the gentleman from Florida [Mr. NELSON], a Member of this body, talk to us about his experiences as he was on the last crew that went up in the space shuttle before the *Challenger* disaster.

He pointed out the same thing about his realization as he was up and looked back at our planet and how he realized how small this planet has become and how fragile it is. We realize at this time that we now have a sufficient nuclear weapons capability to, for the first time in the history of mankind, make this planet uninhabitable for human life.

It is not a cinch, but there are many scientists who would tell you that if we get into a major nuclear exchange with the Soviet Union, there is a substantial chance that we will destroy the ability of this spaceship on which we live to sustain life here on our planet.

As we look at this planet, Earth, I would hope we would realize that we have to either learn to live together or die together. I hope we would recognize the problems of pollution and realize that we have a limited waste disposal system, just as did that spaceship.

I am pleased to say that in this area, I believe we are making progress in regard to pollution. It is no secret that I love to fish. Now I can fish in the Potomac River right in Washington, DC, and I can eat the fish that I catch from that river.

One of the great things that my family has enjoyed here in Washington is the great out-of-doors that is here and the great opportunity we have to enjoy that so close at hand.

Some people came in wanting to film me fishing here in Washington and have an interview with me. They wanted to set it up so that we would be able to tell that it was in Washington. So I took them down to a pond on the mall right near the Vietnam Memorial. Not only could they interview me fishing on that pond right on the mall, but as I was talking and fishing, they could see me catching a number of fish right here in the city limits.

I have friends who take me trout fishing and we can walk along a stream no more than 30 minutes from the city limits of Washington and fish for all morning, never seeing another person. So I would hope that as I leave Congress, those who are here would continue to appreciate the importance of continuing to preserve this great outdoors in which we live.

It is one of the great advantages that we have in living in this country that we are fortunate enough to live in.

I am thankful for not only the outdoor opportunity that exists here, but the many other opportunities that come with life in this Congress. I am thankful for the opportunities we have to learn. I know of no place where there are equivalent opportunities for us, for anyone, to learn as we have all the various briefings that are available, and where we can call almost anyone and they come and meet us and try to give us information on any issue that may be of concern to us.

I am thankful for the opportunity I have had to influence what happens in regard to small business, particularly with the background I had as I started in as a schoolboy with that $50.

I am thankful for having been able to serve under our great chairman, the gentleman from Maryland [Mr. MITCHELL]. I am thankful for the opportunity I have had to serve under the chairman of the Committee on Agriculture, the gentleman from Texas [Mr. DE LA GARZA]. I feel kind of bad about that. When the gentleman was up for chairmanship of that committee, I did not think he should be chairman. I opposed him as chairman.

It was a mistake. I want to tell everyone that I have made a mistake. The gentleman has turned out to be a great chairman of that committee. He listens to all of us and he leads us well.

The great thing about the Committee on Agriculture is that it is not a partisan committee. The members on that committee are there to try to do what they can to help farmers.

I happen to believe that we have serious problems in agriculture, not only now, but into the future. I am fortunate enough to be chairman of the subcommittee that has to do with department operations, research, and foreign agriculture. On that committee, I have many colleagues, but there are two in particular that I wish to thank. That is the gentleman from Kansas [Mr. ROBERTS], the leading minority member of the committee, and my colleague, the gentleman from Iowa [Mr. EVANS].

I happen to believe that our agriculture problem is not just a domestic problem. I think we have a world agriculture problem and I hope we can learn to come to work together to help to solve it, just as I hope we can do that with the other problems that we face on this spaceship planet on which we live.

□ 1405

I was very pleased that the work that has been done by our staff over many, many months on a bill that we passed here just in the last couple weeks that has to do with the regulation of pesticides, I think we broke some new ground in those negotiations, because normally what we do is, we each have our opinions of what should be done and we come and fight it out to see who wins; but in that particular legislation wherein we had the chemical companies, the farmers, the environmentalists, the big chemical companies and the small chemical companies, and all the other competing interests in disagreement, we simply got them together in a room and said, "Now, try to work out your differences, and if you don't do it today, come back tomorrow."

And as we came to the floor, there was only one item left of disagreement, whereas we had had any number of disagreements as we started. I wish we would do that in our society and in our world as we try to settle our differences.

It was my privilege to serve for a short time on the Foreign Affairs Committee while I was here. I was very active in the negotiations for a Law of the Sea Treaty. It broke my heart that one of the things that

killed that treaty was the attitude of the Government of this country and the sad thing was that it gave us an opportunity, in my opinion, to start to move toward a more peaceful world where we would agree upon how to use our different resources.

I may be prejudiced, but I think the reason that fell apart was because of the influence of the major mining companies in their believing that they should have the right to go out into the middle of the ocean and claim any minerals that are there unto themselves, and the other countries saying no, those are out in the middle of the ocean. They really should be shared by the world.

I believe that indeed we are going to have to come to where the world does share if we are going to preserve this great spaceship.

It has also been my privilege to work on many of the defense issues. I was pleased to be able to participate in doing something about the procurement practices that took place in the military.

I am very pleased to have been the author of the resolution that said that if the Soviet Union will continue not to test nuclear weapons, we call upon the President to try to negotiate a treaty to end the testing of nuclear weapons. This is the first President since Eisenhower that has not tried to negotiate such a treaty.

Now the Soviets have said, "We will stop, if you will just stop. We really don't have to negotiate. We have a treaty."

It breaks my heart that we have that opportunity and now it is passing by.

I am pleased that I have been able to work on some of the environmental issues that have taken place here in the Congress. It is no secret that I have not been very popular for opposing some of water projects that have been offered here in the Congress. My argument particularly is that we should not have taxpayers subsidizing water to enable farmers to grow crops that are in surplus. My argument is that it does not make sense if we have too much of a crop to pay a subsidy to farmers to get water to grow more crops so we can then turn around and pay those same farmers not to grow those crops.

I have been pleased that instead of the fact that most or many of the Members do not agree with me on that, that at least we live in a body where we can make those arguments and make them in whatever manner we wish to.

I have mentioned previously the opportunity to learn that I value so highly here. There are many special caucuses here and great opportunities. One of them I would like to mention in particular is the Congressional Clearinghouse on the Future, which was led for a long time by our now Senator AL GORE, and our colleague, BOB EDGAR, is now the head of it. This is where Members meet once a month and bring somebody in to tell us what sort of problems they see coming at us in the future. If there is one thing I think we need to do in Government, it is to try to look at the future and plan for the future more so that just until the time of the next election.

So as I leave this body, I want to thank my colleagues. I want to thank my constituents. I want to thank God.

I took a trip to New Zealand some time ago and as I talked to those people that were legislators in New Zealand, I realized that even though they had these same concerns, that they are not on the stage. They do not have an opportunity to determine whether or not we are going to have a nuclear test ban. We are the ones, the United States and the Soviet Union, that determine that.

They are concerned about nuclear war and they can scream about it and they can do different things, but we are the ones here, our people in this country and the people in this body that are on stage and make that decision.

I thank God that I was born where I could do that; so as I said earlier, where I was born, in my opinion, under a lucky star, it started with being born in this great land of ours. It came from the wonderful opportunities we have from the outdoor world around us, from great parents and grandparents and the brother that I had, for the great family that I have been privileged to have myself. Some of my fondest memories are family trips, family picnics, the family life that we have had. My children are now grown and they have children who are now our grandchildren. Within the last couple weeks, it was great as we drifted down the Shenandoah River with our daughter and her husband and grandparents. It was great this week to go to a baseball game in Baltimore with my daughter and her husband, my wife and our grandchildren.

I have to say, I could not be more proud than I am of my family. I certainly appreciate tremendously the help that my wife, Eleanor, has given me over this whole period. Many times the life of a Congressman is not the greatest life for a wife, but she never ever has complained.

I am thankful to my friends back in the district. I am thankful for the school friends back there, the ones that played basketball and football with me. I was on the varsity of our local football team. I weighed 120 pounds. Football is a crazy game, you know. You get knocked down so you can get up, so you can get knocked down again, so you can get up, so you can get knocked down again.

I always tell people that our forefathers who said all men were created equal were never 120-pound ends trying to push a 200-pound tackle out of the way.

Then I got impetigo and I had to sit on the sidelines and watch my friend out there getting knocked around on the football field, and I realized how much more fun it was to be out there getting knocked down and getting up and getting knocked down again than it was in watching.

I am so thankful that my people have given me that opportunity here in this body to be a part of that game and to be in here. There are lots of heartaches to this job, but it is an opportunity for us really to be in the ballgame, so I am thankful to those friends in the Congress.

I am thankful to you, Chaplain. I remember coming to your office when I had problems. I remember crying in your office and I remember the help that you gave me and I thank you very, very much for what you have done.

So now as I leave the Congress, I have two choices. I could feel sorry for myself. I could feel sorry for myself because due to an illness I am having to leave a job that I do not want to leave and that I have enjoyed all my life, or I can rejoice for myself for the fact that I am now well again and have my health back, and that is an easy choice for me. Certainly the last one is the one I want.

As I do so, I think about my past life. I think about the times when I have been disappointed in what has happened and wished things would be different and how almost always it has turned out that what came about was in my own interest and indeed the Lord knew what was best for me than I knew myself.

So that as I leave this great body, I go forth not knowing what the challenges may be that He has in store for me, but I pray and hope that indeed that challenge is there. I am confident it is, because it always has been in the past.

I go with great memories. I go with great hopes and I go most of all with great thankfulness for the wonderful things that have happened to me in this body and all through my life so far.

Mr. OBERSTAR. Mr. Speaker, will the gentleman yield?

Mr. BEDELL. I am glad to yield to my friend, the gentleman from Minnesota.

Mr. OBERSTAR. Mr. Speaker, this is in a way an intrusion into the gentleman's special order. I happened upon the scene quite by accident to make remarks of my own, but I was compelled from the gentleman's remarks to hear and to listen intently to what is without a doubt one of the

most beautiful perorations ever delivered in this body.

I have heard so many parting remarks by my colleagues that have been discordant notes, sour tones, on leaving the burdens of office.

This is one of those rare up-beat moments in a Member's final hours in the session. It makes me feel good about America.

If I could add one comment about the service of BERKLEY BEDELL in the U.S. House of Representatives, having come here together with him in that 94th class, the quality that has stood out above all others, my friend, has been your uncompromising integrity that compelled you to say what you have said this afternoon so beautifully, so warmly, and with such deep and powerful meaning and feeling.

I join all our colleagues in that class and in this House in wishing you all the very best, continued good health, service to God and country, that you have given so beautifully in these 12 years in the House.

Mr. BEDELL. Mr. Speaker, I thank my colleague.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore (Mr. BEDELL). Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, first at the very outset let me say that presiding over the House at the moment that the Speaker pro tempore now was reporting to us upon his eve of departure from membership in the House of Representatives, the most noble expression of sentiments that I have heard from anybody. I wanted to be the first to join in making it clear on the record that I am a Member who has admired and respected your talents, your ability, your scrupulous integrity and honesty, since the day that you were sworn in as a Member of this House.

I had the privilege of serving with you as a colleague on the Small Business Committee and there you clearly exemplified the tremendous assets that you brought to this House and the fact that you have in effect worked in such a way that you have a lasting heritage of your own handiwork in the corpus of legislation that has been enacted that you helped to forge, were instrumental in forging, and which now is part of this vast corpus of law in our country. I wanted to express my profound and sincere regrets that you are leaving this House. I know that not only the House, but the Nation, loses a very, very valuable American, who has contributed so richly and so creatively to the common good.

□ 1420

Mr. Speaker, today, in having rejected the rule that was presented to us with respect to bringing up the amendments to the Immigration and Nationality Act, the House I believe acted wisely. I was one of those who voted against moving the previous question and against the rule.

I was denied even a half-minute opportunity to speak, by both sides, to whom I went and solicited as much as just half a minute. On top of that, during the deliberation of the Committee on Rules—and I know that it is a difficult task, a challenge—I also had made a longstanding request that I be heard, since it was obvious that the Rules Committee was going to follow a modified or qualified rule and that it would also provide for a select or preselected number of amendments that would be entertained if the rule were adopted.

Since I first came to the House, I have been very much opposed to what we call a closed rule. I remember that my first year here I antagonized the then-powerful chairman of the Committee on Ways and Means by voting "no," even though seldom did we have a vote on adopting the rule. But when we did, I always voted "no." Than later, when we had the electronic system of voting, I decided that the only way that I could vote on those measures that it was impossible to know exactly what it was we were voting for—and I was the one that I believe initiated the practice—was "present."

For a while I was kind of ridiculed, called Mr. Present, and I had some Members say, "How in the world can you go back home and face your voters if you vote 'present' "?

I said, "It's the easiest thing in the world. It's a lot easier than going back if I had voted either 'aye' or 'no' and a constituent had said, 'Why did you vote "aye," ' or 'Why did you vote "no," ' and saying, 'Well, I really don't know. The leadership said that this was OK, but I really did not know what it contained, and I just followed the herd.' "

I said, "It's a lot easier to say, 'Well, the reason I voted "present" was because I did not know what I was voting on.' "

I think that those who have followed it—and I do not know who would, other than some detractors that have always been around who have been waiting now for about 33 years for me to fall on my face—will note that on the Suspension Calendar in many instances I have voted "present," and essentially for the same reason.

Today, however, was a little bit different, in that I felt that the rule that we were asked to either vote for or against was of such a nature that it would ensure no opportunity for the membership of this body to participate in the full flow of discussion, in the full give-and-take of debate, and that under those circumstances I would be constrained to vote "no."

On top of that it has been obvious ever since I have been here and have had to consider my vote on immigration matters, and in studying the history, going back to the first codification of 1924, that the Congresses then and the Congresses since I have had the honor of being a Member have always acted out of some fear.

At the turn of the century, of course, the last century, it was the fear of the Middle European, the laboring groups that were allowed to come into our mining sectors in Pennsylvania, and the potato famine brought forth the Irish, who for years and decades faced very severe prejudice and discrimination in the eastern shore of our country. These Middle Europeans from Bohemia, as it was called then, and those from some of the Mediterranean countries, and the prejudices that they in turn faced, always faced the fear that these aliens were going to just absolutely take over the country.

Before and after that it was the Chinese, it was the Oriental.

Then, of course—I consider it a blot, but then I was living through that period of time—I remember and I recall the environment of fear when we placed in concentration camps native-born Americans who happened to be of Japanese descent.

I remember in my backyard the fear of some long-time, sixth-, seventh-generation Americans who happened to live there and still wanted to preserve the language that they had inherited from their forebears, the German language, and who were still printing in San Antonio and in some of the environments where the area had been first colonized about 130 years ago by the first settlers or colonizers that were brought in from Germany. Under the pressure and the psychosis of war that the First World War and the Second World War generated, anybody having anything to do with things Germanic, whether it was his last name or anything else, was looked upon with great fear and suspicion.

Even names were changed. For instance we have a very, very historical—and now very attractive—place in the middle of the city of San Antonio known as the King William's area. But actually, up until about 1917, the name of that area or that street or that avenue was the Wilhelmstrasse—that is, King William's Street. The architecture, mostly good old Texas limestone Gothic architecture, clearly proclaimed the German influence, and even though these groups were the first, that brought the first scientists, such as the first botanist, to Texas,

and the like, all of that is forgotten. We have these orgies of fear and xenophobia which it is easy to generate in our country. It is very easy to arouse fear and hatred for things foreign, as we consider it.

This is true in the case of those coming and proceeding into our country from south of the border. It always has seemed so. Here in this environment always the number of Representatives from that border area of any descent have been an extremely small number until relatively lately.

For example, I was the first of Mexican descent elected from Texas to the Congress. I was the first of Mexican descent elected to the Texas State Senate since the State was created, right about the time of the Mexican War, about 1847. So, therefore, the history and the conditioning factors and the historical evolvement of these areas are completely unperceived, either during committee deliberations or during what we call debate, or on any basis that I have seen on an intellectual basis here in the North. As I put it, we are facing here—and I remember the early sixties—I compare the environment here to what we faced in Texas and in San Antonio 50 or 60 years ago. Little by little, though, perhaps there will be an awareness.

When the immigration amendments are considered, even if all of these bills were accepted as written, and with all of the amendments that have been proposed, it would have not one whit of an impact on the problem, because the amendments do not address the cause at all. As some of us have been saying for more than 30 years, unless and until the two countries—in this case the Republic of Mexico and the United States—actually get together on a binational basis, as difficult as it may be, it will really not be substantially resolved. Yet these amendments, and the thrust of the bills that have been approved in the Senate and in the committees in the House, have absolutely no reference to anything like that.

□ 1430

Some of us have advanced for 30 years specific proposals at some period. At some period we have the favorable response on the part of the national leaders in Mexico, as I did in 1984, when the President of Mexico was here and endorsed what I call the United States-Mexico Economic Development Bank, patterned on the institutions that we have formed for some years that we call regional financial institutions. This would be instead of multinational, it would be binational.

However, this administration would not even look at the proposition. As a matter of fact, when the serious financial crisis first reared its ugly head in September 1982, exactly 4 years ago, this administration, neither the Secretary of the Treasury, nor, for that matter the Chairman of the Federal Reserve Board, wanted to take cognizance at all. Instead, they have done things, as we have seen history reveal we have done.

But my point today is to point out a little bit of history and show how if we want to know what our antecedents are we do not look to our dealings, even historically, with what we call generally Latin America, but over in China. At the turn of the century, the United States, its financiers, the Morgan Bank, the Kuhn Loeb investment bankers, the then First National City Bank of New York, the First National Bank of New York, now they are one entity and at that time they were two separate entities, decided that they were going to make a direct thrust into China.

At that time, the Manchu dynasty was on its last legs. The Boxer Rebellion, which took place at the turn of the century or thereabouts, was the first manifestation on the part of the Chinese that they were revolting against the continuing colonial influence and control, mostly of the European entities, but to which the United States was coming in.

So along about 1910, finally, and 5 years or so after the disastrous Japanese-Russian War, the United States bankers had finally penetrated the Manchu dynasty. The Emperor was kind of old, feeble. The dynasty was in serious financial trouble. Its currency needed some stabilization.

So the bankers from the United States figured this was a good time to move in, particularly after that Asian war between Russian and Japan. You will remember Japan has always looked to the Chinese Mainland as its natural sphere of influence, so that to make a long story short, around 1910 they finally put a package toegether from which would come the building of a railroad line from Chinchou to another point in the Continent which would in effect compete with the old Manchurian line, which had been and was under the control of the Europeans, and for a while also the Russians, and their ally at that time, the French.

So the United States did reach the point where they finally extracted an agreement and the Manchu dynasty agreed to it, and it was going to be on the basis of a loan, and it was going to be mostly American bankers loan.

But at that point, Russia and Japan were brought together by our penetration of that area of the world, just as years later in Indochina, when we went to war both in Korea and in French what used to be called French-Indochina, which we call Vietnam, we again bought the Russians and the Chinese together, even though they had been at war with each other for over 200 years.

But our perception, and the perception of our leaders of that world and other parts of the world was just as misguided and misperceived as the present leaders in our country misperceive Latin America and even Europe, not to throw in Asia to begin with.

Has we had the correct perception based on an historical, historical knowledge, and some understanding of the culture and the language—we must always remember that all during the Vietnam conflict we did not have one American diplomat, one American intelligence agent, one American Government employee in or out of the State Department who could speak Vietnamese. We must also remember that all our Presidents have been monolingual, which is something that has aroused a very, very tense situation even with the European countries. Even such German leaders as Helmut Schmidt, for instance, could get on TV and radio and speak as well in English as President Carter.

But the day of the monolingual President, my contention is, is gone if America is going to really acquire the leadership that it is entitled to have. Whether the American people abstain from the polls or not, I think we will discover that this is the crying need.

But if we had had and our leaders had had a correct perception of the reality of that world, I do not think we would have lost 58,000 Americans and untold treasury in what we call Vietnam. I am convinced of that.

But I rise today because the immigration bill also as proposed thus far takes no cognizance of what is happening over here. Some factors of which this bill ought to take notice of, caused by what I consider to be the mistaken and misguided actions, I will not even dignify it with the word "policy," but actions of the Reagan administration under the insistence of President Reagan, which in effect have created for the first time in our part of the Southwest United States an influx of as many fleeing from Salvador, for instance, where we have sponsored such things as what we used to call in Vietnam hamlet pacification, where we have with our attack Huey helicopters killed and continue to kill, even as I am speaking today, innocent old women, old men, children, and peasants. It is our ships. Nobody yet has proven that Communist source of armanent has even gotten there, even though this was a pretext for the quarantine or embargo and for President Reagan deploying the heaviest massive military presence in the Isthmus, on both sides of the Isthmus in the history of that part of the world.

□ 1440

Remember the reason given? The first 3 years, 4 years? That was to interdict the villainous transportation of weaponry from Nicaragua to El Salvador.

Not one time did anyone ever interdict any such transportation. You know that, had such a thing happened, it would have been a headline in our newspapers for 3 weeks in a row.

What I am saying is that these mistaken perceptions as to what has happened; what is boiling, churning, just south of the border. You do not even have to go beyond our very next country: Are such things that ought to have our attention or at least reflected in the legislation we are trying to perfect here on a unilateral basis; at least we ought to provide for some effort to move along the creation of a binational commission on the part of the United States and Mexico.

Even though we now are seeing temporarily receding from the front pages the question of Nicaragua, the question of El Salvador, let me assure you in a matter of a few weeks they will be in the headlines. They will be. Those circumstances, those events that will bring about what I believe President Reagan will not change his course on, and that is a direct intervention in Nicaragua.

The reason for that is, as in the case of the so-called Bay of Pigs attempted invasion of Cuba that nobody wants to sit down and ask the hard questions. Those hard questions are: What is going to happen even if you do succeed in knocking out these regimes?

In the case of the Bay of Pigs, suppose that group, which was really a very motley group put together, sailing in ships that belonged to United Fruit that were armed for the occasion. Let us suppose for a moment they had succeeded in physically knocking out the Castro forces.

Who would have governed Cuba? Not that group. They cannot even get together among themselves in Miami; and they were not willing to stay in Cuba and fight against communism in their own homeland.

It is the same thing with those at yesterday's continuing resolution on appropriation provides $100 million. Well, we are being told by the President that there is just no way he can find $60 million for the homeless in our country, that there is no way he can find $50 million for grants in aid for rural communities to have below market interest loans, not grants, but the grants as a help to finance loans for the construction of sewage lines, water systems, while the infrastructure of our country is collapsing around our ears.

Who is the $100 million going to? It is going to a group that is not in rebellion in Nicaragua against whose present regime they are fighting; they are hiding out in the neighboring country of Honduras that we are occupying and compelling them to give protection to and be host the rebellious group.

At no time has the assembly of Honduras ever invited the United States—we have taken over because for years and years and years it was United Fruit, now known as Standard Brands, that has run that country, owned that country.

It is the chief owner of that conglomerate that now owns Standard Brands who is the biggest adviser shaping those policies that surround Mr. Reagan.

Now these are things that are now well known. It was the same thing with China at the turn of the century. Who knows now that in 1910 this pact was put together, but the French and the British, who were allied respectively with Japan and France with Russia said, "Hey, wait. Unless you let us in on the act, you're not going to get anything."

So that by 1912 they put a package together. In the meanwhile, Woodrow Wilson was elected our President. They put a package together that involved the Deutschbank of Aziotisch, and they put together with the help of the English bank, the trading company and English bank of Hong Kong and Singapore and Coon and Lobe of the United States; the Morgan, First City, and National Bank of New York, and the French Banc de Indochin.

The terms were that they would, in exchange for the loan, in order to enable the Manchu dynasty in power to stabilize its currency would be that these bankers would have a stranglehold on all of the economy of China. They would have the right to all of the proceeds as a matter of mortgage derived from the tax on tobacco, on production, and consumption.

The American financiers, Morgan, and others, wanted the U.S. Government to kind of come in and give its blessings. So they went to President Wilson, and Wilson wrote a most notable reply to them. He said, "No, because you in effect are violating the sovereignty of China, and I cannot tolerate that. This is an infamous arrangement, and I will not give the approval of our Government."

However, in 1914, World War I broke out. Russia was soon out because of its revolution. Germany, which had literally taken possession of one of the provinces in China, Shantung, withdrew. So the Japanese, with Vicount Ishi, coming to the United States, had a secret agreement made with Secretary of State Lansing in which Japan and the United States agreed that they would share the Chinese fear of influence.

Who would have thought that later when we were at war with Japan that this secret treaty or secret agreement—it was not a treaty because it did not come to the Senate, but it was a secret treaty, just as secret as the ones that President Nixon, via Henry Kissinger, entered into in the Middle East, half of which have yet to be divulged.

One of which was the Kissinger deal made in Paris in 1973 that was supposed to have put a stop or a truce in Indochina, but which only brought the Northern Vietnamese or the Communist regime, because they received a letter from President Nixon saying, "If the Congress goes along, I will pledge, in exchange for your cease-fire, not less than $3 billion in reconstruction aid" for the damages presumably we had caused.

Well, reconstruction is a fancy word for reparation. All of the European press called it reparation. I was the only one in this Congress that reported it as reparation. I asked the chairman of the Committee on Appropriations then, a fellow Texan. He said: "I don't have any knowledge of any such thing."

No published American report referred to any such deal. It was not until years later, when a colleague of mine from New York then, who was chairing the ad hoc committee on drugs, international drug traffic, had reason to find that, in discussing with the South Vietnamese countries and trying to reason with them to try to stop the flow of the drugs, that he discovered and heard a rumor.

□ 1450

He called me down to Texas and said, "I heard that you had spoken on this." I said, "Yes indeed." I said, however, when the ad hoc committee on the missing-in-action and POW's was formed and I was named vice chairman by the then Speaker, we had a meeting with Secretary Kissinger, who would never come over here to the Congress, we had to go to his Secretary of State office to have breakfast one morning and I asked him point blank to his face if in the agreement in Paris of 1973 there had not been a side memorandum, a codicil, an agreement that we would compensate the North Communist Vietnamese Government. He said, "No, absolutely not." Well, he was telling the truth because he did not do it. Nixon did it. Nixon was the one. He wrote a letter to the Chinese Government leaders who then acceded to the same, the same agreement that Averell Harriman as envoy for President Johnson in 1968 had reached except they would not go that far. So the Vietnamese would not at that time agree, nor would Lyndon Johnson just capitulate.

So that all of this is history but it all bears up to the present. It bears up to the present in Latin America. Where?

In Nicaragua, for instance, not once but nine times within 100 years we have invaded that country. The same Secretary of State that was in power, Secretary Knox, with the Republican regime preceding Wilson's, who was the one who sanctioned these arrangements in China, was the same one that, with the moral influence of a battleship, removed President Estrada of Nicaragua who was forsworn to support the constitution they had just adopted that would free them from foreign control. They deposed him and imposed President Dias, with the help of a warship in the harbor. And he then signed under compulsion—well, we could say it was moral suasion, but it was compulsion—the financial agreement with the Brown Bro. financier group out of New York which continued the complete control and domination of that country's not only monetary but fiscal destinies.

With all of this background, it would seem to me that we would realize that there have been vast changes in this part of the world that, as I have said, was a different world when President Kennedy conceived of the Alliance for Progress in 1961. It is not the same world. It is all vastly different, and each year is a greater responsibility on us and our leadership, to make sure that we appreciate the dimensions of this change because President Reagan, unbelievably to me, without even trying the diplomatic approach has recurred to the Calvin Coolidge bankrupt policies of 1929, which I thought Franklin Delano Roosevelt in the 1930's, with his Good Neighbor Policy, has put to rest. It took Ronald Reagan to revise Calvin Coolidge except that Calvin Coolidge lived and acted in a very different world. We could send our marines, keep them there for 9 years or so, impose the national guard, impose the Somoza regime and keep them in power for 40 years. But sooner or later out of its own corruption it was going to collapse. On what side do we want to be? Do we want to be on the side of the aspiring millions now, over 80 million more than our population, which was not true 20 years ago; do we want to be on the side of that irrepressible—because nothing is going to hold them down, they are not going to take the despotism of 300 years, they know the world is different, they know that it can be different—what side do we want to be on? Do we want to be on the side of the despots, the oppressors—which is where we have been—instead of a revolutionary nation, true to its revolutionary founding principles? We have turned out to be the status quo Nation of the world. We have let Russia become the revolutionary of the world. I do not think that is being true to the basic principles of America, which I believe had been watered down quite a bit during our expansion period of time in which first in 1912–13 President Wilson said, "No. I will do everything in my power to stimulate trade and commerce." But what he was saying was, "I am not going to give the power of our Government to the bankers." What has happened since Reagan is that instead of going to our men of commerce, to our traders, to our men of business, he has turned it over to the bankers like the Republican regimes did at the turn of the century. That to me is simply unbelievable, but one which I have denounced here time after time because it is also applying the same type of plantation economics on our country and on Americans.

It is these interests that once they reach the multinational, megacorporate level, made the decision to sell out the farmer, to sell out the laborer, to put American laborers on a footing with every slave-laboring country in this world today. It is this regime, and by their fruits you shall know them, for the first time since 1914, in the last 2 years we are a debtor nation. For the first time in our history, during the last 1½ years we are importing more food into our country than we are exporting. In the meanwhile we have created the rust belt out of what used to be the belching furnaces of the steel mills, what used to be the production lines of our automobiles. That is gone, it is gone. The monstrous, unbelievable $175 billion trade deficit, that was not Jimmy Carter's, that was not Lyndon Johnson's, that was not Gerald Ford's, it was not even Richard Nixon's; it is Ronald W. Reagan's and nowhere else, try as he will to blame somebody else.

What do we get? Do we get leadership to confront that? Absolutely not. Let us bury it. Let us have this smokescreen of an antidrug war; let us keep the American people over here until the election anyway, but let us not face these basic, impelling issues that the American people are entitled to have leadership on, not only in the White House but in the Congress. But our Government is of such a nature, it is supposed to be a Government of three fundamental basic organs of Government, each independent, separate and coequal. But you would not think so today.

I think the average American thinks the President is supreme. And the way we have had Mr. Reagan treated in the press, you would think that he had royal infallibility, could make no mistake. And if he does, he is not accountable; somebody else somewhere ought to take the fault but not he.

We have entered an era in which I consider the basic issues confronting any nation in the 20th century, demand and impel a confrontation with those issues, some attempt to try to resolve them for the sake of the destiny and continued involvement of this Nation.

I do not think that the American people have intended that their Representatives abdicate their constitutional authority, responsibility, privileges, and immunities to the executive branch. I do not believe that the American people ever intended, and since the adoption of the 1913 Federal Reserve Board Act, that we create such a monstrous giant that is not accountable to anybody.

Even in our taxwriting, yesterday we had the unbelievable scene of the chairman of the taxwriting committee getting up and giving credit to an unelected, little-known clerk hire in the committee for having been the one that really had written the bill. It is incredible. It never was conceived that this is what the American people would bargain for. At least I do not think that was the understanding I had when I sought and the people went along and elected me to this job, which they have since 1961. I feel very keenly about that.

But there is no awareness of it here, there was no discussion whatsoever about what we, the Representatives of the people, have been abdicating.

The other example followed less than 24 hours after yesterday's vote on the tax bill, and that was the rule today on the immigration and naturalization bill, which I started out discussing this afternoon.

I believe that, if the American people had a chance, they would say, "Mr. Reagan, we don't want war, yet we have provided $100 million for that purpose." There is no question in my mind that in less than a matter of weeks you will see headlines in which every American, including us, will be saying, "Oh, yes, Mr. President, you have no alternative, you had better go in there with soldiers."

You will see headlines: Mig's in Nicaragua, American soldiers attacked in Honduras. That is all it is going to take. And Mr. Reagan believes that time is on him. He has until 1988 to prove like he has proven, according to him, in Grenada and in Tripoli, that Americans still know how to make war and win war.

But unfortunately, all history reveals these ironies. In fact, books have been written about the follies of mankind and its leaders all through the centuries. As I see it, the President has been embarked on a catastrophic course in Central America. Do not even mention Mexico, which sooner or later will be on the front pages. There is so much we can do, there is so much we ought to do which, left undone, will leave us no recourse as to what will be possible for us to do in later dates.

My position has been this, and I have been saying it for not 3, but 4 years: The President has chosen to embark on a unilateral military interventionist course in Central America,

that that will lead us into something that up to now we have been spared, and that is the Europeanization, the sowing of intractable hatreds in this New World.

We will be dooming our children, our grandchildren, our great-grandchildren to hatred, animosity and war for decades to come.

All of this is unnecessary.

Do we have the leadership now that President Roosevelt had in his Deputy Assistant Secretary of State for Latin American Affairs, Sumner Welles? There was a man. He was the architect of such things as the Good Neighbor Policy.

He also wrote the definitive history of Santo Domingo. He had knowledge. He knew what he was talking about. Fortunately, the leader was great enough to know that his chore at this stage in American development as President was to seek first-class minds, surround himself with them, orchestrate them and, in his words, lead this vast army of the American people in a common assault on those problems commonly facing us all.

Mr. Speaker, I yield back the balance of my time.

□ 1505

A NEGOTIATED SOLUTION TO TIMBER PRICING IS POSSIBLE

The SPEAKER pro tempore (Mr. BEDELL). Under a previous order of the House, the gentleman from Oregon [Mr. WYDEN] is recognized for 5 minutes.

Mr. WYDEN. Mr. Speaker, I will be very brief this afternoon.

Mr. Speaker, I rise today to discuss some potentially very exciting developments as far as possible solutions, to working out some of the problems relating to timber pricing between this country and Canada.

Mr. Speaker, several weeks ago when Secretary of Commerce Baldrige was before the Subcommittee on Oversight and Investigations of the House Energy and Commerce Committee, I encouraged the United States and Canada to avoid an impending trade war by resolving their pricing discrepancies before the countervailing duty decision comes down on October 9 of this year.

It seems that the Canadian Government is getting the message, based on some of the news reports we received very recently. As reported, for example, in the September 24 Prince George Citizen of British Columbia, a news outlet, there is an indication the Canadians are considering a new approach to resolving the longstanding timber pricing problems that we have had between our country and the Canadians. The new approach that is being discussed now would include a combination of cut-level reductions, increased minimum pricing and also using more current data in pricing formulas. The result could be a possible 30-percent increase in the Canadian Government's stumpage receipts, which is about, Mr. Speaker, the amount of the present discrepancy.

Obviously, a negotiated solution would be preferable to a tariff trade war. But, at the same time, the United States cannot sit by and quietly tolerate unfair trade practices.

Some have suggested that the countervailing duty case that is currently before the International Trade Administration should be withdrawn if the Canadians were willing to negotiate. I am not convinced that a step like that would be wise at this time, because it seems to me that giving up any of our negotiating tools could be a mistake.

Now in our hearing today in the Oversight and Investigations Subcommittee, the U.S. Trade Representative, Ambassador Yeutter, in responding to questions that I asked, indicated that he had met again yesterday with the Canadians as far as trying to resolve the timber-pricing issue, and that it was the position of the United States Government that indeed between now and October 9 there really was a possibility, if there was an effort on all sides to push hard and to work for a negotiated agreement. I certainly found that encouraging. Now, Mr. Speaker, I learned that the Canadians are expected to give a timber proposal to the Department of Commerce and the United States Trade Representative next week.

It is my view, Mr. Speaker, that should this proposal be a good-faith proposal, a substantive proposal that provides real solution, certainly real short-term solutions, it might be appropriate at that time for Secretary Baldrige to consider a suspension agreement with the Canadians. Such a suspension agreement would just suspend any applicable tariff until the final ruling were to come down on this matter on December 31, 1986, and it could be revoked at any time. Such a suspension agreement could provide valuable time for the United States and the Canadian negotiators to work through the short-term approaches and focus on the long-term.

I will say again that there has been some discussion on the part of some that perhaps this countervailing duty case, now before the International Trade Administration, would be withdrawn perhaps if something like that, the suspension agreement, were to go forward. I could not support something like that. I think small timber operators and others in the Northwest who are so concerned about this issue would also have great reservations.

It would seem to me that if the proposal that comes forward next week from the Canadians is a good-faith proposal, we could meet it with good faith on our part by looking at a suspension agreement, and indeed a good-faith proposal by the Canadians should be met with good faith on our side, even though I do not think we should go so far as to take away a major additional tool of having the countervailing duty case withdrawn as some, particularly in Canada, seem to be interested in.

Of course, Mr. Speaker, in conclusion, I think we still ought to look at the major long-term approach that could be constructed and resolve this once and for all, and that would be a question of common stumpage pricing. While the Canadian plan that has been discussed at least in the Canadian price at this point might provide some short-run parity, there really is not enough, in my view, to encourage equality over the long run. It would seem to me that if we could look at a common stumpage pricing arrangement, and particularly do it now at a time when exchange rates between the United States and Canada are relatively stable, that if such an approach could be developed, then the United States and Canada, natural allies, could team up and go out and try to tap the Pacific Rim and worldwide markets in timber.

Mr. Speaker, I would just say that I think on the basis of some of these late developments that a negotiated solution to our trade disagreements in the timber area with the Canadians is a possibility. I very much hope that our official trade representatives will act and act quickly to try to make that kind of negotiated solution in the timber area a reality.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. WYDEN for 5 minutes, today.

(The following Members (at the request of Mr. LUNGREN) to revise and extend their remarks and include extraneous material:)

Mr. PARRIS, for 5 minutes, on September 29 and 30.

Mr. LUNGREN, for 60 minutes, today.

Mr. GINGRICH, for 60 minutes, today.

Mr. GINGRICH, for 60 minutes, on September 29.

(The following Members (at the request of Mr. FRANK) to revise and extend their remarks and include extraneous material:)

Mr. PEPPER, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. FRANK, for 5 minutes, today.

Mr. RAY, for 30 minutes, today.

Mr. GAYDOS, for 60 minutes, on October 1.

Mr. GAYDOS, for 60 minutes, on October 2.

(The following Members (at the request of Mr. WYDEN) to revise and extend their remarks and include extraneous material:)

Mr. RAY, for 30 minutes, on September 29.

Mr. RAY, for 30 minutes, on October 1.

Mr. RAY, for 30 minutes, on October 2.

Mr. ALEXANDER, for 60 minutes, on September 30.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. BONIOR of Michigan, on House Joint Resolution 738, continuing appropriations, 1987.

(The following Members (at the request of Mr. LUNGREN) and to include extraneous matter:)

Mr. MCGRATH.
Mr. BARTON of Texas.
Mr. CHAPPIE.
Mr. THOMAS of California.
Mr. CRANE.
Mr. GOODLING.
Mr. COBEY.
Mr. SCHAEFER.
Mr. CARNEY.
Mr. SAXTON.

(The following Members (at the request of Mr. FRANK) and to include extraneous matter:)

Mr. STOKES in two instances.
Mr. ATKINS.
Mr. FLORIO.
Mr. MILLER of California.
Mr. KANJORSKI in two instances.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED

Bills and joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 1935. An act to authorize the coastwise operation of certain passenger vessels; to the Committee on Merchant Marine and Fisheries.

S. 2750. An act to establish a property tax fund for the Houlton Band of Maliseet Indians in furtherance of the Maine Indian Claims Settlement Act of 1980, and for other purposes; to the Committee on Interior and Insular Affairs.

S.J. Res. 396. Joint resolution to designate the week of October 26, 1986, through November 1, 1986, as "National Adult Immunization Awareness Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 413. Joint resolution to designate the month of October 1986 as "Learning Disabilities Awareness Month"; to the Committee on Post Office and Civil Service.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2294. An act to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that act, to authorize an early intervention program under that act for handicapped infants and toddlers and their families, and for other purposes.

ADJOURNMENT

Mr. WYDEN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 12 minutes p.m.) under its previous order, the House adjourned until Monday, September 29, 1986, at 12 noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4264. A letter from the President, National Safety Council, transmitting a report and financial audit for 1985 and 1986, pursuant to Public Law 88-504, section 3, (36 U.S.C. 1103); to the Committee on the Judiciary.

4265. A letter from the Comptroller General of the United States, transmitting a review of the independent certified public accountant's audit of the Postal Service's accounts and operations (GAO/AFMD-86-72), pursuant to 39 U.S.C. 2008(a); jointly to the Committees on Government Operations and Post Office and Civil Service.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 3352. A bill to transfer certain real property to the City of Mesquite, NV; with an amendment (Rept. 99-897). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5496. A bill to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; with an amendment (Rept. 99-898, Pt. 1). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5508. A bill to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes; with an amendment (Rept. 99-899, Pt. 1). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. S. 565. An act to direct the Secretary of Agriculture to convey, without consideration, to the Town of Payson, AZ, approximately 30.96 acres of Forest Service lands; with amendments (Rept. 99-900). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5568. A bill to establish uniform standards for testing and licensing of operators of commercial motor vehicles; with an amendment (Rept. 99-901). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAZZOLI: Committee on the Judiciary. H.R. 5559. A bill to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes; with an amendment (Rept. 99-904). Referred to the Committee of the Whole House on the State of the Union.

Mr. RODINO: Committee on the Judiciary. H.R. 5558. A bill to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes (Rept. 99-905). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAZZOLI: Committee on the Judiciary. H.R. 3737. A bill to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud; with an amendment (Rept. 99-906). Referred to the Committee of the Whole House on the State of the Union.

Mr. MAZZOLI: Committee on the Judiciary. H.R. 4823. A bill to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes; with an amendment (Rept. 99-907). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce: H.R. 5546. A bill to amend the Public Health Service Act to establish a National Vaccine Program for the development of new vaccines and the improvement of existing vaccines and a program to compensate the victims of vaccine-related injuries and deaths, and for other purposes; with amendments (Rept. 99-908, Pt. 1). Ordered to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5192. A bill to establish an emergency response program within the Nuclear Regulatory Commission; with amendments; referred to the Committee on Energy and Commerce for a period ending not later than October 3, 1986 for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(m), rule X (Rept. 99-902, Pt. 1). Ordered to be printed.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5540. A bill to encourage good faith professional review activities of health care entities, to require collection and dissemination to hospitals and other health care providers of information concerning certain payments in medical malpractice claims and certain adverse decisions, and for other purposes; referred to the Committee on Judiciary for a period ending not later than October 3, 1986 for consideration of such provisions of the bill and amendments as fall within the jurisdiction of that committee pursuant to clause 1(m) of rule X (Rept. 99-903, Pt. 1). Ordered to be printed.

SUBSEQUENT ACTION ON REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X the following action was taken by the Speaker:

The Committee on Interior and Insular Affairs discharged from further consideration of H.R. 4712; H.R. 4712 referred to the Committee of the Whole House on the State of the Union.

The Committee on Banking, Finance and Urban Affairs discharged from further consideration of H.R. 5217; H.R. 5217 referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. BARNARD:

H.R. 5603. A bill to provide relief to State and local governments from Federal mandates; jointly to the Committees on Government Operations, the Judiciary, and Rules.

By Mr. BATEMAN (for himself, Mr. WHITEHURST, Mr. WOLF, Mrs. BENTLEY, Mr. SLAUGHTER, and Mr. PARRIS):

H.R. 5604. A bill to allow the Internal Revenue Code of 1986 to be applied and administered as if the 3-year basis recovery rule applicable to employees' annuities had not been repealed; to the Committee on Ways and Means.

By Mr. CHAPPIE:

H.R. 5605. A bill to amend the Federal Crop Insurance Act; to the Committee on Agriculture.

By Mr. WHITEHURST:

H.R. 5606. A bill to amend the Immigration and Nationality Act to provide for the naturalization of alien service members who enlist outside the United States and who have not been admitted for lawful permanent residence; to the Committee on the Judiciary.

By Mr. HANSEN:

H.J. Res. 741. Joint resolution to designate March, 1987, as "Developmental Disabilities Awareness Month"; to the Committee on Post Office and Civil Service.

By Mr. MICHEL:

H. Res. 565. Resolution electing Representative HANSEN of Utah to the Committee on Armed Services; considered and agreed to.

By Mr. WALDON:

H. Res. 566. Resolution expressing the sense of the House of Representatives that the President should accept the invitation of Zambian President Kenneth Kaunda to meet with the black leaders of the six frontline states that border South Africa; to the Committee on Foreign Affairs.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 693: Mr. STENHOLM.

H.R. 4439: Mr. BEVILL, Mr. MOORE, and Mrs. LLOYD.

H.R. 4450: Mr. ATKINS.

H.R. 4783: Mr. ANDREWS, Mr. WORTLEY, Mr. NIELSON of Utah, and Mr. KLECZKA.

H.R. 4792: Mr. MCCAIN.

H.R. 5099: Mr. AUCOIN and Mr. HENRY.

H.R. 5196: Mr. COATS, Mr. CRANE, and Mr. PENNY.

H.R. 5257: Mr. EMERSON.

H.R. 5413: Mr. MORRISON of Washington.

H.R. 5432: Mr. KILDEE, Mr. WHITEHURST, Mr. GARCIA, and Mr. VISCLOSKY.

H.R. 5477: Mr. KEMP, Mr. DIOGUARDI, Mr. YOUNG of Florida, and Mr. FAWELL.

H.R. 5490: Ms. OAKAR and Mr. ANNUNZIO.

H.R. 5509: Mr. TOWNS, Mr. SILJANDER, Mr. MORRISON of Connecticut, Mr. WALDON, Mr. LAGOMARSINO, Mr. MITCHELL, Mr. ATKINS, Mr. YOUNG of Missouri, Mr. DAUB, Mr. LIPINSKI, Mr. FEIGHAN, Mr. LAFALCE, Mr. KOLTER, Ms. MIKULSKI, Mrs. BOXER, Mrs. MARTIN of Illinois, Mr. ABERCROMBIE, and Mr. DORNAN of California.

H.R. 5532: Mr. SNYDER, Mr. KLECZKA, Mr. WALDON, Mr. MORRISON of Connecticut, Mr. ACKERMAN, Mr. LOWRY of Washington, and Mr. MRAZEK.

H.R. 5537: Mr. DAUB.

H.R. 5538: Mr. MRAZEK and Mr. SEIBERLING.

H.J. Res. 10: Mr. BADHAM, Mr. BARTON of Texas, Mr. BEREUTER, Mr. BOEHLERT, Mr. BROOKS, Mr. BURTON of Indiana, Mr. BUSTAMANTE, Mr. COELHO, Mr. COLEMAN of Missouri, Mr. COUGHLIN, Mr. DORGAN of North Dakota, Mr. DREIER of California, Mr. DUNCAN, Mr. FASCELL, Mr. GALLO, Mr. GEJDENSON, Mr. GEKAS, Mr. GILMAN, Mr. HENRY, Mr. HYDE, Mr. IRELAND, Mr. KASICH, Mr. LAFALCE, Mr. LEACH of Iowa, Mr. LEVIN of Michigan, Mr. LEVINE of California, Mr. LIGHTFOOT, Mr. LOTT, Mr. LUNGREN, Mr. MCGRATH, Mr. MCKERNAN, Mr. MACK, Mr. MARLENEE, Mrs. MARTIN of Illinois, Mr. MICHEL, Mr. MILLER of Ohio, Mr. MOODY, Mr. MURTHA, Mr. NATCHER, Mr. PACKARD, Mr. PANETTA, Mr. PASHAYAN, Mr. QUILLEN, Mr. RINALDO, Mr. RITTER, Mr. ROGERS, Mr. ROWLAND of Connecticut, Mr. ROYBAL, Mr. SCHEUER, Mr. SCHUETTE, Mr. SHAW, Ms. SNOWE, Mr. SNYDER, Mr. SOLOMON, Mr. SPENCE, Mr. SUNDQUIST, Mr. SWEENEY, Mr. TAYLOR, Mr. THOMAS of California, Mr. WEISS, Mr. WHITEHURST, Mr. YOUNG of Alaska, and Mr. PURSELL.

H.J. Res. 524: Mr. BARNARD, Mr. BOEHLERT, Mr. BONER of Tennessee, Mr. BORSKI, Mr. BOULTER, Mr. VANDER JAGT, Mr. BILIRAKIS, Mr. BLAZ, and Mr. HUGHES.

H.J. Res. 550: Mr. KINDNESS, Mr. ABERCROMBIE, Mr. MOORHEAD, Mr. WEISS, Mr. ROWLAND of Georgia, Mr. UDALL, Mr. SUNIA, Mr. STOKES, Ms. OAKAR, Mr. LUNDINE, Mr. WAXMAN, Mr. COUGHLIN, Mr. CARR, Mr. JONES of Tennessee, and Mr. BARNES.

H.J. Res. 602: Mr. YOUNG of Florida.

H.J. Res. 615: Mr. SHARP, Mr. HYDE, Mr. HARTNETT, Mr. RUDD, Mr. GUNDERSON, Mr. PICKLE, Mr. CRAIG, Mr. DE LUGO, Mr. WOLPE, Ms. SNOWE, Mr. MICHEL, Mr. REGULA, Mrs. LLOYD, Mr. VISCLOSKY, Mr. RITTER, and Mr. DREIER of California.

H.J. Res. 643: Mr. ANDERSON, Mr. WILSON, Mr. HORTON, and Mr. LENT.

H.J. Res. 677: Mr. LANTOS, Mr. WHEAT, Mr. GUARINI, Mr. FEIGHAN, Mr. EMERSON, Mr. FISH, Mr. SABO, Mr. MARKEY, Mr. GREEN, Mr. FRANK, Mr. HERTEL of Michigan, and Mr. VENTO.

H.J. Res. 735: Mr. TOWNS.

H. Con. Res. 129: Mr. WOLF, Mr. SISISKY, Mr. COLEMAN of Missouri, Mr. CHENEY, Mr. HOPKINS, Mr. MANTON, Mr. GAYDOS, Mr. FAWELL, Mr. ROE, Mr. RIDGE, and Mr. TAUZIN.

H. Con. Res. 336: Mr. ATKINS, Mrs. BOXER, Mr. BRUCE, Mrs. BURTON of California, Mr. EARLY, Mr. HAYES, Mr. HOWARD, Mr. JONES of North Carolina, Ms. KAPTUR, Mr. KLECZKA, Mr. LEHMAN of California, Mr. MAVROULES, Mr. MCKINNEY, Mr. OBERSTAR, Mr. SABO, Miss SCHNEIDER, Mrs. SCHROEDER, Mr. WHEAT, Mr. WOLPE, and Mr. WYDEN.

H. Res. 556: Mr. WYLIE.

SENATE—*Friday, September 26, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

O Lord, thou hast searched me, and known me. Thou knowest my downsitting and mine uprising, thou understandest my thought afar off. Thou compassest my path and my lying down, and art acquainted with all my ways. For there is not a word in my tongue, but, lo, O Lord, thou knowest it altogether.— Psalm 139:1-4

Omniscient God, it is obvious in the words of the psalmist that there is nothing about us You do not know. We have no secrets from You. We cannot deceive You—in attempting to, we only deceive ourselves. You know the hearts and minds of Your servants, the Senators and their staffs, who struggle in these closing moments of the 99th Congress. You know where there is fear, frustration, discouragement, ambivalence, selfishness, pride, uncertainty. Make each Senator experience the presence, the love, the wisdom, the power of God in these days as they work against time and all of the other pressures endemic in legislation. In His name Whose love is unconditional, relevant, always available. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished minority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. I thank the distinguished President pro tempore, the senior Senator from South Carolina, Senator THURMOND.

SCHEDULE

Mr. DOLE. I ask unanimous consent that the leader time of the distinguished minority leader be reserved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. Mr. President, following recognition of the two leaders, there will be routine morning business, not to extend beyond 10 a.m.

At 10 a.m., we will resume consideration of S. 2878, the drug bill.

I might say at this point that I wish I could be specific about the schedule, but I cannot be. I do not know what the program is going to be for today and tomorrow, but there will be a program. We will be in session today and tomorrow. We are accommodating as many of our colleagues as we can. I do not believe any of our colleagues, whether they plan to vote for or against the tax bill, want to miss the vote, and I appreciate that. It is a very significant piece of legislation.

We are in this last-minute rush, as the Chaplain just indicated, and we need a lot of patience and understanding. What I would hope to do is to have statements on the drug bill and some debate on the drug bill until 1 or 2 o'clock. Then at 2 o'clock, we would turn to the conference report on tax reform.

I know that some are still awaiting answers from the Joint Tax Committee. If I can have the questions, I will try to get the answers, if they can be answered. You can ask impossible questions and not get an answer. Other Members would like to discuss transition rules. Other Members want to be on the floor but they are somewhere else.

What I am saying, in effect, is that we understand all those real concerns. I do not quarrel with any of the concerns expressed, but we have to make a judgment: Do we want to complete action in the Senate by next Friday: In my view, it can be done.

So I hope that Senators will understand that we are not trying to inconvenience any colleague. We are just trying to do our business, and we hope we can move to the tax bill. I hope we can have a vote on it today sometime. We are exploring that. I know that the distinguished chairman of the Finance Committee, Senator PACKWOOD, is raring to go.

They had a great vote in the House yesterday. It is time for us to follow suit with an overwhelming vote in the Senate. There comes a time when we have to make choices, and this is one of those times.

This is not a perfect tax bill. Not everyone is going to be satisfied. The easiest vote is probably "no" and then Members can say, "I didn't vote for it." However, I believe that when we are looking at tax policy and changes in the future, then the only vote should be "yes" on the tax reform package.

It may have imperfections, and it undoubtedly has. It has retroactive tax policy in some cases, which is not good. Maybe we can correct some of those things, but we do make a giant step forward.

I watched last night interviews of working men and women on the street in America. They were for this tax bill. They thought it was about time some of the people who had not paid taxes were getting the opportunity. They were not bitter or hostile. They felt that this might be pretty good for the working people in America, and it is.

So I hope we can do as well as the House and have the same or better margin of support.

Mr. President, we are going to do what we can today to accommodate everyone—probably end up displeasing everyone. But we will start off in a positive way, and I hope Senators can adjust their schedules to suit the overwhelming majority in this body who want to move on with this business, finish the tax bill today, go back on drug reform tomorrow, maybe finish that tomorrow. On Monday and Tuesday, we will have the continuing resolution and Wednesday, if needed. I have a feeling we may be here most of the night on Tuesday to finish the bill. It passed the House by one vote yesterday. They loaded it up. Everything but the kitchen sink is in the House continuing resolution, and it will probably be there on a second look. So we have a lot of work to do to get it back to reason on the Senate side.

Following that, we have the impeachment, which we would like to begin next Thursday.

We hope we can do all that. Some would say it is not possible.

I also hope to visit with the Speaker today to see if he is still aiming toward October 3.

Mr. President, the majority leader is not here, and I have reserved his time. I yield 5 minutes of my leader's time to the distinguished Senator from Florida [Mrs. HAWKINS].

The PRESIDENT pro tempore. The distinguished Senator from Florida is recognized.

□ 0940

THE IMPACT OF DRUG ABUSE

Mrs. HAWKINS. Mr. President, the impact of drug abuse is eating away at our society. Everything these deadly substances touch turns to death and despair. It is especially heartbreaking to see the devastating affect of illegal drugs on our children. To think of a

single child falling under the seductive spell of illegal drugs is almost too much to take.

To realize that a child who should be enjoying his or her innocence and the carefree years of youth has already become a slave to a chemical master is a tragedy. It is more a tragedy to realize that many of the kids hooked on drugs are disadvantaged having been raised in poverty. These are kids with two strikes already against them—and drugs—that's strike three. That is why I would like to bring the Senate's attention to a new drug abuse program that'll be implemented by the Job Corps Program this January.

The Job Corps Program provides severely disadvantaged youth aged 16 to 21 with basic education, vocational training, and job placement. This highly intensive education and training program has proved very successful in assisting severely disadvantaged youth out of poverty. Job Corps programs try where possible to take disadvantaged youths out of their poverty environment and place them into an intensive program of one-on-one counseling, education, and job training. A noble purpose that has run into the brick wall of illegal drugs.

The Job Corps staff estimates that 70 percent of Job Corps enrollees are currently using marijuana, 15 percent PCP, and 5 percent cocaine. The residential focus of the Job Corps Program affords us a unique opportunity to take the disadvantaged youth out of their environment—hopefully away from their drug dealer and the frustrations and temptations that have lead to drug use. But if the Job Corps Program is to succeed, if we are to succeed in our goal of providing the student with an education or skill that will enable them to break the cycle of poverty, we must first free them from the shackles of drug use.

To free them from these deadly shackles, the Job Corps Program has instituted a drug abuse program called SUAAP [Substance Use and Abuse Program]. This program involves counseling of participants. But the Job Corps has determined that if they are to effectively counsel and address the Job Corps participants drug usage, estimates about how many and guesses about which students are using drugs, and voluntary drug prevention education are not sufficient.

As a result, in January they will implement a program of intervention. Nine Job Corps centers will continue with existing SUAAP Program and nine others will participate in a pilot project in which identification and intervention are stressed. These nine Job Corps programs will utilize urine tests on new enrollees to determine current drug usage and what types of drugs the participants are using.

I want to stress that the drug test is not intended to screen participants. No one will be denied access to a Job Corps Program on the basis of the test results. Nor do I think they should be. We want disadvantaged and troubled youth to enroll in these programs. The urine tests are intended to identify which students are misusing drugs and which drugs they are using.

This information is essential to teachers and counselors who are attempting to teach these disadvantaged youth some basic educational and employment skills. The pilot project will also utilize additional substance abuse counselors who will have special training in the intervention of youth with drug abuse programs.

Mr. President, I have been a longtime supporter of the Job Corps Program. The centers in Jacksonville, Gainesville, and Miami, FL, have been very successful in assisting disadvantaged youth. But they will be so much more successful if they can identify and intervene in that student's drug problem so that these children can be helped. That's the least we owe them.

I yield the floor.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The distinguished acting Democratic leader is recognized.

WHAT SHOULD BE THE FUTURE AGENDA FOR ARMS CONTROL?

Mr. PROXMIRE. Mr. President, what is the purpose of arms control? That's easy. It's to prevent a nuclear war. What most seriously threatens nuclear war? Answer: the nuclear arms race. Why? First, because the immense buildup of ever more devastating, complex and hairtrigger weapons on both sides steadily moves the world ever closer to accidental war. Second, the arms race with its constant breakthroughs, producing cheaper and lighter weapons also increases the likelihood of nuclear weapon spread or proliferation. The spread of nuclear weapons to additional nations obviously increases the prospect that local wars may at any time become nuclear.

What arms control action is most likely to stop the arms race and the proliferation of nuclear weapons? President Reagan has proposed a mutual superpower reduction of 50 percent of the offensive nuclear arsenal of each superpower. Would that stop the arms race? Would it reduce the prospect of nuclear proliferation? The answer to both questions is an emphatic: "No." Here's why: A 50-percent reduction of nuclear weapons would not diminish the certainty that a superpower nuclear war would probably destroy civilization on Earth as we know it. It might possibly destroy mankind as a species. It would not stop or even slow the research and testing that develop ever more devastating nuclear weapons. The 50 percent reduction of nuclear weapons over a period of 5 years might be accompanied by a 100 percent increase in the destructive capacity of each nuclear weapon in the superpower arsenals and therefore no net reduction in lethal power at all. Meanwhile, the smaller, cheaper, more devastating new nuclear weapons would be made to order for scores of smaller states that now can't afford to get into the nuclear club. So the reduction of the superpower nuclear arsenals, President Reagan's principle announced arms control initiative would not advance the prime purpose of arms control. It would not slow or stop the arms race.

If the two greatest threats to nuclear peace are the superpower race to develop ever more destructive and cheaper nuclear weapons on the one hand and the proliferation of nuclear weapons on the other, what arms control initiatives would most clearly slow and eventually stop these prime threats to nuclear peace? Answer: A test ban treaty and a greatly strengthened nonproliferation treaty. Why? Here is why: The test ban treaty would go to the heart of the nuclear threat by greatly slowing the technological nuclear arms race. Why have the superpowers insisted on continuing these expensive nuclear weapons tests that have been so roundly and universally condemned? They have continued because as any first year student in high school science can tell you, tests are essential to prove and establish any scientific theoretical breakthrough. Will this new weapon work in practice? That's the critical question that only tests can answer. Stop testing and you put a strangle hold on research. Without testing would there have been an atomic bomb? No way. Without testing would there have been a hydrogen bomb? Absolutely not. Without testing would there have been any of the immensely destructive nuclear arsenal on either side of the Iron Curtain? No. So will continued nuclear testing develop nuclear weapons even more devastating than either superpower has today? Yes, indeed. Will continued testing develop smaller nuclear weapons but with even greater power? Of course. That's the whole purpose of the research.

Will testing produce cheaper nuclear weapons that many more countries will soon be able to afford? You betcha. So what would a mutual, verifiable superpower treaty to stop nuclear testing accomplish? It would greatly slow the technological nuclear arms race between the two superpowers. It would do more. It would diminish the

spread of nuclear weapons throughout the world. It would do this by sharply slowing the research necessary to prove and develop smaller and cheaper nuclear weapons, tailor made for the many countries that don't have the wherewithal today to buy their way into the nuclear club.

The test ban treaty is vital. But it isn't enough. By itself it will not bring future nuclear weapons proliferation under control. As the economies of many nations progress, the number of countries with the economic and technological capacity to build their own nuclear arsenals will certainly expand. The nonproliferation treaty has already done a remarkable job of stemming this spread of nuclear weapons. I recall vividly how sure Members of this body—including this Senator—were back in the early 1960's that by the mid-1980's scores of nations would have nuclear weapons and the likelihood of a fullfledged nuclear war breaking out somewhere in the world by 1986 seemed very high. What happened? By design, not by accident the nuclear nonproliferation treaty has played the leading role in stopping such a disaster. That treaty has won the membership and allegiance of the overwhelming majority of potential nuclear powers. It has established international safeguards to stop the transfer of processed weapons grade plutonium or uranium. In the last few years it has even succeeded in persuading most of its members to accept international inspection to verify compliance and unannounced inspection at that. But there is still a long way to go. At least eight nations that are potential nuclear powers remain outside the treaty. Of the five established nuclear weapons powers only the United States and the United Kingdom have fully cooperated with the nonproliferation authorities. France has supplied nuclear weapons facilities to other nations. Neither the Soviet Union nor China have agreed to international inspection. Germany has been accused of playing at least a role in the nuclear arms market. Our country should use its great international influence to vigorously support and enforce the Nonproliferation Treaty objectives.

(Mrs. HAWKINS assumed the Chair.)

THE MYTH OF THE DAY

Mr. PROXMIRE. Madam President, the myth of the day is that we dare not tamper with the campaign finance laws because of the law of unintended consequences. The poet, Robert Burns, best expressed this law when he wrote, "The best laid schemes of mice and men, gang aft a-gley."

If we legislated according to this standard, no major legislation would ever pass the Senate. Every major bill has unintended consequences. We pass a budget which projects a deficit of $172 billion. The deficit turns out to be $230 billion. We pass a tax bill and the next year pass a technical corrections bill to deal with the unintended consequences.

What are the real reasons why Congress refuses to reform campaign financing? I believe there are two: Political advantage and incumbency.

Every attempt to change campaign financing laws raises questions about which party will gain an advantage. No matter how innocent the proposed change, a number of keen-eyed and partisan people will examine it to see if either party would gain something. The question of what is good public policy goes out the window. The attitude becomes: Better no change at all than to see the other party gain an edge.

Every change must pass Congress which is, by definition, composed of incumbents. And incumbents are leery of any change which might benefit a challenger. So any proposed change is subject to another prolonged and searching examination. This time the attitude is: Better no change at all than to see a challenger gain an edge.

What can be done to overcome these hurdles? Congress has held a number of hearings on campaign finance. We have listened to the experts. A number of Members have introduced legislation. The senior Senator from Oklahoma [Mr. BOREN] has singlehandedly pushed the Senate into approving a bill limiting contributions from political action committees.

Yet the chances of reforms being enacted into law are slim. We might get a commission to study the issue, which will delay action for another year or so.

Madam President, this record leads this Senator to believe that the people are ahead of the politicians. The people believe that the present system is little better than legalized influence peddling. They are right. We should be representing the people and not a political party or an incumbent.

I yield the floor.

The PRESIDING OFFICER. Is there further morning business?

Mr. PROXMIRE. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1010

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. D'AMATO). Without objection, it is so ordered.

TRIBUTE TO ELSA AND STEPHEN SOLENDER

Mr. SARBANES. Mr. President, on Tuesday, September 30, the Baltimore Associated Jewish Charities and Welfare Fund will honor Stephen and Elsa Solender as they prepare to leave Baltimore, after many years' devoted service, for New York. Steve was selected following an exhaustive nationwide search to be the executive vice president of the United Jewish Appeal—Federation of Jewish Philanthropies of New York, Inc. For more than a decade, Steve and Elsa have been strong and effective leaders in the Baltimore Jewish community. They have been active citizens of the city of Baltimore. Always they have been wise counselors and good friends whom I admire and respect and will sorely miss.

In this case, Baltimore's loss is most certainly New York's gain. The Solenders came to Baltimore in 1975, when Steve became director of social planning and budgeting of AJCWF; 4 years later, in 1979, Steve became AJCWF president. While carrying out with great distinction his demanding responsibilities at the AJCWF, Steve has also found time to serve as coinstructor at the Council of Jewish Federations; as field work supervisor at the University of Maryland School of Social Work and Community Planning; and member of the school's advisory board. In March 1985, he directed the first Baltimore AJCWF Mission to the Soviet Union. In light of his devoted and effective service, it comes as no surprise that in 1985 Steve was a national finalist in the search undertaken by the National Assembly of Voluntary Health and Social Welfare Organizations for the year's outstanding manager in the voluntary sector.

At every step, Elsa Solender's commitment has matched Steve's. Together they have raised their two sons, Michael, a 1986 graduate of Columbia College and a student at the Yale Law School, and Daniel, a member of the Columbia College class of 1987. As a contributing editor of the respected Baltimore Jewish Times, whose readership extends far beyond the Baltimore area, she has made an important contribution to the intellectual, cultural, and social life of Jewish Americans by writing about everything from major issues to new restaurants. In 1985 she won the Smolar Award for Excellence in Jewish Journalism for her articles on Ethiopian Jewry, a testimony to the excellence of her work and the high regard in which she is held by her peers.

Prior to coming to Baltimore, Steve and Elsa lived for 6 years in Geneva, Switzerland, where Steve directed the departments of Community Organization, Community Centers and Fund-Raising of the American Jewish Joint

Distribution Committee and also coordinated the committee's programs in Muslim countries. Earlier he had worked part time with the Young Men's and Young Women's Hebrew Association and then with Jewish community centers in Chicago. But Steve is first of all, it must be said, a New Yorker. He was born and raised in New York. He is a graduate of Columbia College and of Columbia University's very distinguished School of Social Work. A loyal alumnus of Columbia, he has served as president of the Columbia University Club of Baltimore and is currently chairman of the Secondary Schools Committee of Columbia College; and he has not been displeased, it must be said, by his sons' decision to carry on the Solender tradition at Columbia. Elsa is a graduate of Barnard College, the women's college of Columbia University. In a sense, therefore, the Solenders' departure for New York is a joyful voyage home, especially as Steve is the third generation in his family to devote himself to Jewish community service.

As a friend and admirer of the Solenders, I want to wish them well as they assume new responsibilities and congratulate the UJA—Federation of Jewish Philanthropies of New York, Inc. for its wisdom in calling Steve home. Above all, however, I want to pay tribute to their years of service in the Baltimore community; to their steadfast commitment to the highest ideals of the Jewish community; and to the standards of intelligence, integrity, and professionalism which distinguish their work. It is surely appropriate that the Associated Jewish Charities and Welfare Fund of Baltimore should honor Steve and Elsa Solender for their years of service in Baltimore, and I want to add my expression of gratitude as well.

REPORT ON THE CONTINUING RESOLUTION

Mr. HATFIELD. Mr. President, I am pleased to report to the Senate that the Committee on Appropriations met today and reported a simple, straightforward continuing resolution that markedly improves our chances of securing Presidential approval and adjourning sine die within a reasonable time. House Joint Resolution 738, as reported from the committee, simply incorporates by reference the six bills that have passed the Senate and the seven that have been reported and are on the calendar, substituting those funding levels for the ones contained in the House bills. The committee has also recommended the deletion of numerous extraneous provisions added by the other body.

We have all heard the rumors about dozens of amendments to be offered here in the Senate, most of them legislative in nature and involving complicated policy issues. The Committee on Appropriations resisted those amendments today. I believe we must continue to resist them when we begin floor debate next Monday, so that we can have some chance to successfully complete our work.

In order to avoid potential delays in consideration of the continuing resolution on Monday due to some possible objection to a waiver of the 2-day rule, and at the request of the leadership, the committee will not file a report on this measure today. However, so that Senators will have a description of the vehicle reported today, I ask unanimous consent that a summary report be printed in the RECORD at this point.

I also ask that a table comparing our committee-reported resolution to fiscal year 1986 levels and the House-passed resolution be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.J. RES. 738—CONTINUING APPROPRIATIONS, 1987

The Committee on Appropriations has reported all 13 regular appropriations bills to provide funding for the fiscal year beginning on October 1, 1986. The Senate has considered and passed six of these bills: the fiscal year 1987 Military Construction, Legislative Branch, Labor-HHS-Education, Interior, District of Columbia, and Transportation appropriations bills. Conference action has been completed on the Legislative Branch appropriations bill. The remaining seven regular appropriations bills have been reported by the Committee. These include the fiscal year 1987 Treasury-Postal Service, Commerce-Justice-State, Agriculture, Energy-Water Development, Defense, Foreign Assistance, and HUD-Independent Agencies appropriations bills. The House has passed all regular appropriations bills for fiscal year 1987, with the exception of the Defense and Foreign Assistance bills.

The continuing resolution provides full-year funding through September 30, 1987—for all 13 regular appropriations bills. Upon enactment into law of any of these bills, the relevant provisions of this continuing resolution will cease to apply, and the regular bill will become the funding device.

The most recent action of the Senate with respect to each appropriations bill is reflected in the spending levels recommended by the Committee in this resolution. The Committee points out that each of these bills, either as reported by the Committee or passed by the Senate, is within its section 302(b) allocation pursuant to the Budget Act, as amended, under the concurrent resolution on the budget for fiscal year 1987 (S. Con. Res. 120). Likewise, the funding levels recommended by the Committee in this continuing resolution are consistent with those same 302(b) subcommittee allocations under the fiscal year 1987 budget resolution.

LEVELS OF FUNDING UNDER THE RESOLUTION

Sections 101 (a) through (m) set forth the levels of funding recommended for each of the appropriations bills covered by this continuing resolution. The level of funding recommended for each bill is as follows:

Agriculture, Rural Development, and Related Agencies

Section 101(a) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5177) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5177) as reported to the Senate on September 11, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-438) accompanying H.R. 5177.

Commerce, Justice, and State, the Judiciary, and Related Agencies

Section 101(b) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5161) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5161) as reported to the Senate on September 3, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-425) accompanying H.R. 5161.

Defense

Section 101(c) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5438) as reported to the House, and instead inserts the rate for operations provided in the bill (S. 2827) as reported to the Senate on September 17, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-446) accompanying S. 2827.

District of Columbia

Section 101(d) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5175) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5175) as passed by the Senate on September 16, 1986. The Committee includes in its entirety, by reference, the Senate (S. Rept. 99-367) accompanying H.R. 5175.

Energy and Water Development

Section 101(e) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5162) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5162) as reported to the Senate on September 15, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-441) accompanying H.R. 5162.

Foreign Assistance and Related Programs

Section 101(f) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5339) as reported to the House, and instead inserts the rate for operations provided in the bill (S. 2824) as reported to the Senate on September 16, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-443) accompanying S. 2824.

Housing and Urban Development—Independent Agencies

Section 101(g) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5313) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5313) as reported to the Senate on September 25, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-487) accompanying H.R. 5313.

Interior and Related Agencies

Section 101(h) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 ap-

propriations bill (H.R. 5234) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5234) as passed by the Senate on September 16, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-397) accompanying H.R. 5234.

Labor, Health and Human Services, and Education, and Related Agencies

Section 101(i) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5233) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5233) as passed by the Senate on September 10, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-408) accompanying H.R. 5233.

Legislative Branch

Section 101(j) retains House language establishing the rate for operations as that provided in the conference agreement (H. Rept. 99-805) on the regular fiscal year 1987 appropriations bill (H.R. 5203) filed in the House on August 15, 1986.

Military Construction

Section 101(k) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5052) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5052) as passed by the Senate on August 13, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-368) accompanying H.R. 5052.

Transportation and Related Agencies

Section 101(i) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5205) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5205) as passed by the Senate on September 17, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-423) accompanying H.R. 5205.

Treasury, Postal Service, and General Government

Section 101(m) deletes House language establishing the rate for operations as that provided in the regular fiscal year 1987 appropriations bill (H.R. 5294) as passed by the House, and instead inserts the rate for operations provided in the bill (H.R. 5294) as reported to the Senate on August 14, 1986. The Committee includes in its entirety, by reference, the Senate report (S. Rept. 99-406) accompanying H.R. 5294.

Continuation of Ongoing Programs

Section 101(n) of the House bill provides funding to continue various ongoing programs not included in the regular fiscal year 1987 appropriations bills due to lack of authorization. With the exception of the Office of Refugee Resettlement, the Senate has addressed funding for these programs and activities in the regular fiscal year 1987 appropriations bills included under sections 101 (a) through (m) of this continuing resolution.

OFFICE OF REFUGEE RESETTLEMENT

The Committee is distressed that inaction on necessary authorizing legislation has left it in the position of funding the Office of Refugee Resettlement in this manner for the past 4 fiscal years. The Committee recommends continuation of the following ongoing programs of the Office of Refugee Resettlement at current fiscal year 1986 levels: cash and medical assistance, State administration, social services, voluntary agency program, education assistance for children, preventive health, targeted assistance, and Federal administration.

The Committee continues to support the voluntary agency matching grant program. In view of the success of the matching grant program, it is the intent of the Committee that the size of the caseload participation in the program not be reduced and that the Federal match remain at its existing level of a $1,000 maximum per refugee matched on an equal basis by the private sector.

OTHER PROVISIONS OF THE RESOLUTION

The Committee recommends the deletion of numerous general provisions added by the House to this continuing resolution, many of which are legislative in nature. In addition, the Committee has deleted, without prejudice, title II of the House bill providing additional appropriations for drug enforcement, education, and control.

The committee does not concur with language contained in House Report 99-831 to accompany House Joint Resolution 730, now considered to be the House report to accompany House Joint Resolution 738, which is not already agreed to in the Senate reports accompanying the 13 regular fiscal year 1987 appropriations bills.

APPROPRIATIONS BILLS RECAPITULATION: NEW BUDGET AUTHORITY

[Continuing appropriations (H.J. Res. 738) (as of 5 p.m. September 26, 1986)]

	Fiscal year—									
	1986 adjusted	1987 estimates	1987 House	1987 Senate	1987 conference	1987 House-passed continuing resolution	1987 Senate reported continuing resolution	Senate continuing resolution versus fiscal year 1986	Senate continuing resolution versus estimates	Senate continuing resolution versus House continuing resolution
Agriculture, Rural Dev. and Rel. Agencies:										
(Including section 32 permanent)	28,066,637,000	29,172,013,000	29,889,935,000	30,927,657,000		29,889,935,000	30,927,657,000	2,861,020,00	1,755,644,000	1,037,722,000
Commodity Credit Corporation	24,908,926,000		16,808,806,000			16,808,806,000		(24,908,926,000)		(16,808,806,000)
Commerce-Justice-State-Judiciary	12,244,572,747	15,958,615,000	12,311,620,000	11,933,320,000		12,311,620,000	11,933,320,000	(311,252,747)	(4,025,295,000)	(378,300,000)
General provisions						7,500,000				(7,500,000)
Drug supplemental						978,500,000				(978,500,000)
Defense	270,484,499,000	302,282,138,000	265,151,616,000	277,071,397,000		265,151,616,000	277,071,397,000	6,586,898,000	(25,210,741,000)	11,919,781,000
District of Columbia	530,027,000	580,380,000	550,027,000	580,380,000		550,027,000	580,380,000	50,353,000		30,353,000
Energy and water development	14,755,917,000	15,870,143,000	15,548,000,000	14,523,255,000		15,548,000,000	14,523,255,000	(232,662,000)	(1,346,888,000)	(1,024,745,000)
Foreign assistance and related programs	14,535,881,215	15,474,534,125	12,985,171,284	13,049,963,960		12,985,171,284	13,049,963,960	(1,485,917,255)	(2,424,570,165)	64,792,676
Drug supplemental						38,000,000				(38,000,000)
HUD-Independent Agencies	58,147,383,984	46,488,047,000	54,006,168,700	53,678,039,800		54,006,168,700	53,678,039,800	(4,469,344,184)	7,189,992,000	(328,128,900)
Interior (Including advance appropriations for USGS Fossil Fuel, and WPS transfer)	8,210,987,000	6,616,925,000	8,190,296,000	8,041,631,000		8,190,296,000	8,041,631,000	(169,356,000)	1,424,706,000	(148,665,000)
General provisions						6,000,000				(6,000,000)
Drug supplemental						100,360,000				(100,360,000)
Labor, Health and Human Services and Education (Includes advance appropriations)	105,952,647,000	104,079,746,000	102,582,705,000	112,527,597,000		102,582,705,000	112,527,597,000	6,574,950,000	8,447,851,000	9,944,892,000
General provisions	409,363,000	373,988,000				9,737,896,000	409,363,000		35,375,000	(9,328,533,000)
Drug supplemental						631,650,000				(631,650,000)
Legislative (Includes compensation of members)	1,603,794,800	1,868,824,800	1,351,873,100	1,694,811,214	1,681,799,214	1,681,799,214	1,681,799,214	78,004,414	(187,025,586)	
Military construction	8,081,465,000	10,137,200,000	7,955,801,000	8,222,981,000		7,955,801,000	8,222,981,000	141,516,000	(1,914,219,000)	267,180,000
Transportation	10,146,976,569	7,014,514,569	10,284,900,569	10,197,746,569		10,284,900,569	10,197,746,569	50,770,000	3,183,232,000	(87,154,000)
Drug supplemental						127,000,000				(127,000,000)
Treasury-Postal Service	13,041,300,000	12,864,595,000	13,660,122,000	13,293,227,800		13,660,122,000	13,293,227,800	251,927,800	428,632,800	(366,894,200)
Drug supplemental						224,231,000				(224,231,000)
Across-the-board cut						(1,562,866,000)				1,562,866,000
Total, continuing appropriations	571,120,377,315	568,781,663,494	551,277,041,653	555,742,007,343	1,681,799,214	561,895,238,767	556,138,358,343	(14,982,018,972)	(12,643,305,151)	(5,756,880,424)

Source: Senate Committee on Appropriations.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

ANTIDRUG ABUSE ACT OF 1986

Mr. DOLE. Mr. President, what is the pending business?

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 2878) to strengthen the laws against illegal drugs, and for other purposes.

The Senate resumed consideration of the bill.

(The text of the bill is printed in the RECORD of yesterday at page S13648.)

Mr. DOLE. Mr. President, let me indicate to my colleagues and those on the floor, we did last night introduce the bill. There were no opening statements. There were no amendments. That was the agreement we had. Senator WEICKER has raised a constitutional point of order. He will make the point of order, but has agreed to withhold that until 1 p.m. Whether or not there will be a rollcall vote I guess will depend upon what may transpire in the next few hours. I would assume that could be about the first vote. Additionally I know there are a number of Senators on each side who want to make rather comprehensive statements.

I would hope that what we could do today is to lay the groundwork. I have been reading editorials saying we are rushing a judgment on the drug bill and I think to some extent they are probably correct. We ought to be certain we are going in the right direction.

There has been a bipartisan effort in the Senate to be very careful about what we were introducing. We have a number of controversial areas that we decided not to include in the bill. It may be that over today and tomorrow we can work out some of these very sticky points and we can avoid a big clash, focusing our attention on what we believe should be done in the areas that we can accomplish. That makes a lot of sense and at the same time keeps our priorities where they belong.

I am encouraged by the start we have had. It has been bipartisan. We have accommodated requests from each side. We have left things out at the request of Republicans; we have left things out at the request of the Democrats. We have included things at the request of Republicans; we have included things at the request of Democrats. I believe there is a spirit around here that will permit us to hammer out a pretty good bill in the next couple of days. I commend not only our colleagues on each side but members of our staffs. The staffs have really been doing nitty-gritty work for the past several days.

I believe we have a package before us that is probably not perfect. We will have a section-by-section analysis of that package available for each Member some time early this morning. We thought we had it last night but we discovered some errors. That will be passed out to each Member. It will be an overview of what the 250 pages contain.

There is on each Member's desk a xerox copy of the bill itself. Members will have the precise language. It is about 250 pages.

I hope we can have some very good discussions this morning. I appreciate the Senator from Connecticut being willing to hold his point of order until later.

Mr. BIDEN. Will the Senator yield?

Mr. DOLE. I yield.

Mr. BIDEN. I would like to compliment the majority leader. This is obviously a very controversial area. Quite frankly, I think our Republican and Democratic friends on the House side were a little overzealous, in this Senator's opinion, in terms of the bill they passed.

The Republicans and the Democrats on the Senate side have put in a package. In the case of the majority leader, as usual, he wants to get something done. We have worked very hard, the staffs of Senator CHILES, Senator BYRD, and myself, on this side and many of the colleagues of the Senator from Kansas on the other side. I think the package we brought forward is a basic package which a vast majority of our colleagues can agree with, which addresses specifically "the drug problem."

There will be, as the leader indicated, some controversial amendments on both sides. I realize my drug czar amendment will be controversial, and we all realize that the death penalty proposal is controversial.

As is usual in the way this body works and as the majority leader has directed it in the past, we will work out an accommodation so that we do in fact do leave, whenever we adjourn, hopefully October 3, with a sound antidrug bill intact that speaks to the issue of drugs in this country.

I guess the main thing I want to say is that I want to sincerely congratulate and thank the majority leader for what is obviously a sincere effort to reach a bipartisan consensus on dealing with a genuine problem. Hopefully his stewardship will be able to lead us through what will obviously be some bumpy waters in the next couple of days. I wish him luck. As they say where I come from "I will be glad to hold your coat, Boss."

Mr. DOLE. I thank the Senator from Delaware. We appreciate his efforts.

We are really starting to debate something today which is very important. A lot of things we do in this Senate are rather obscure. We talk about billions of dollars and a lot of things which are very important to the American family, but we are talking about something today that the American family understands. It is serious business.

I would guess that people who may be listening or watching television, wherever they may be, in Kansas, Florida, Delaware, New York, or California, know of someone, or maybe sadder yet someone in their family, who has had a drug or alcohol problem. So this is serious business.

We are setting about it in a very serious way.

I have never felt the American people cared much whether Democrats or Republicans dealt with this problem. They wanted Congress to deal with the problem, their State legislatures, their city officials, their families, their churches, their synagogues, the local service clubs, the private sector. If we are going to wage an all-out war in this country against the problem, it is going to take the cooperation of everyone.

This is not a partisan effort. We have had outstanding leadership in this effort on both sides. On our side I am proud to say it has been the relentless work of the distinguished Senator from Florida, Senator HAWKINS, who every day has been pounding away on the drug issue, pounding away, as the Senator from Wisconsin did for 30-some years on the genocide convention. Now we are getting down to action.

If we just keep going in this bipartisan way and work out some of these knotty problems, we can pass a bill by midnight tomorrow night.

Mr. THURMOND. Will the distinguished Senator yield?

Mr. DOLE. I yield the floor.

Mr. THURMOND. Mr. President, I support the mandate of the able majority leader and the Democratic leader, Senator BYRD, for working together on this vital problem. I do not know of any problem of more concern to the people in the United States today than controlling drugs. It is destroying the lives of many people. There are too many drugs in the schools today; there are too many drugs on the streets today; there are too many drugs everywhere.

We ought to take charge of this thing and pass a bill in this session if at all possible.

Again, I commend both sides for their working together to accomplish a drug bill.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. CHILES. Would the Senator yield me just a couple of minutes?

Mr. WEICKER. I will be glad to yield.

Mr. CHILES. It is just to make a brief opening statement on this subject, if I may.

Mr. WEICKER. I yield.

Mr. CHILES. I thought the Senator from Connecticut would be quite lengthy.

Mr. WEICKER. I will be rather brief.

Mr. CHILES. I will wait until the Senator completes his remarks.

Mr. WEICKER. Mr. President, last night I raised a point of order, a constitutional point of order, on this bill.

I want to reiterate exactly what is at issue.

During the course of debate, depending on what amendments are offered, there may be subsequent constitutional points of order raised. I suspect that might happen if the exclusionary rule or if the death penalty come up.

These matters are considerably more subjective than the point of order which I raised last night.

I do not think there can be any debate on the constitutional point of order I have raised.

The point of order that I raised relates to article I, section 7 of the Constitution of the United States. That says:

All bills for raising revenue shall originate in the House of Representatives.

This bill, specifically title V, states:

Antidrug trust fund. Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part: Designation of Tax Overpayments and Contributions to an Antidrug Trust fund.

That is revenue raising. There can be absolutely no dispute at all as to the fact that my point of order is valid.

□ 1020

It is not a matter of interpretation. The Constitution is clear on the point and a revenue-raising provision is included in this—and I underline it because it is important—this Senate bill. We do not have a House bill before us. If we did, my point of order would not lie.

Mr. President, this is a minor point, but I think it is terribly important to raise at the outset that whatever the Senate does do—and I think we should do something with respect to the drug crisis—It must be constitutional. I hope that, at least on this point, my colleagues join me overwhelmingly to state that indeed, until this is rectified, the point of order should stand. There are several ways that can be rectified: Delete the section of the bill; bring over a House bill and amend it; or use a House bill on the calendar and amend it with our own language. All of that will then make it constitutional as it relates to the point of order I have raised.

Two hundred and fifty pages is quite a bit of material to assimilate. I think we should do it and I think we should have a drug bill. But there are two things that should not happen. What we pass should not be blatantly unconstitutional. We can always slip around here unknowingly; nobody expects us to be perfect. But on a point as clear as the one I have raised, if we roll over that, it makes the entire bill suspect constitutionally.

So, on that point, I hope it would be rectified, even prior to any vote at 1 o'clock.

I am not seeking in any way to prolong debate, or block consideration of the bill. Indeed, I will have my own suggestions as to how to make it a better bill as we move along. But the point I make is clear. Article I—I repeat this for the purpose of those listening in on the debate in various offices. Article I, section 7 of the Constitution requires that all bills for raising revenues should originate in the House. Juxtaposed against it is title V of the bill before us which creates an antidrug fund by amending subchapter A of chapter 61 of the Internal Revenue Code of 1954.

I shall yield in a moment to my good friend from Florida after I say the matter of what we spend on drugs and where we get the money to do it. I hope that I shall not have to talk any more as to constitutional issues relating to this bill. But I expect to dog the money matters throughout the dabate on this measure.

The drug problem in this country is severe.

As the chairman of the Appropriations Committee that handles drug education and treatment funding, I am grateful that we have finally riveted the Nation's attention on the problem. But because the addiction problem splits down 85 percent alcohol, 25 percent smoking, 4 percent drugs, the only way I know to like this problem is to allocate more resources to science—specifically NIH—ADAMHA, the National Institutes of Mental Health, and to appropriate more money to the Department of Education in terms of drug education efforts.

Despite all the euphoria I heard on the television set, the assurance of no new taxes and talk about doing everything we have to do in this Nation on exactly what we have, I can assure you, Mr. President, if we are going to mount a serious effort on addiction—alcohol, drugs, smoking—a serious effort as it relates to mental health, schizophrenia, et cetera, we need new money. We cannot redirect it and we cannot leave it up in the air, hoping that somebody will come along with a painless idea as to how we are going to resolve all these problems.

The last point, as I say, is what I intend to emphasize at a later date. The constitutional point I think stands rather clearly on its own two feet. I expect we will have the first vote at around 1 o'clock this afternoon. I know everybody is going to feel pressured to pass a drug package, but at least where the issue is so clear-cut, let us not override the Constitution of the United States. However pressing our needs, however pressing the problems, the one thing that has withstood the problems and the partisanship and the philosophy is this document. This is not the time to abandon it.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, I think this is a very important day that we are starting here. I am delighted to see that we take up today a bipartisan bill. While I shall have a more lengthy opening statement to make in a little while, I do compliment the majority leader, the minority leader, and the people on both sides of the aisle who have worked on this and the staffs who have worked a long time to put together this bill.

I know there are a number of amendments that Members have. I have some myself that I think are tremendously important and I am disappointed that they are not in this bill. I feel they should be. But having said that, I think if you will look at this bill, you will see that if we could pass this bill and if it could become law, we will have taken a major, major step in combating the tremendous epidemic that we now find ourselves facing in regard to drugs.

This bill deals basically with the gamut of the problems that most of us have been so terribly concerned with. We have interdiction, tremendous enhancement for interdiction. We are attempting to touch the problem of eradication in the bill. We have enhanced the penalties for drugs, but especially for crack cocaine. But in the drug area, we have enhancement.

We are offering assistance to State and local law enforcement personnel who have found themselves overwhelmed, unable to cope.

We are also addressing the need for additional prison space where we know we now have a situation where they go in one door—if you put someone in a jail, you have to let someone out the back door because we have this terrible, terrible overcrowding.

For the first time, we are making some major effort in addressing education and recognizing the tremendous need that we have of trying to inform young people of the dangers of trying to experiment or participate at all with drugs, and rehabilitation to start dealing with some of the carnage and the victims that we have out there.

I hope that, as we go through this debate, Members of the Senate will focus on what is good in this package because I think what is good is very, very major. I hope that we will not, because we all have something that we would like to add to the package, allow this opportunity to slip by us and miss putting together this major package.

We will still have to go to conference with the House. That is not going to be an easy conference. But recognizing that time is short, I hope we will not let this opportunity escape us, with the tremendously good points that are in this package, points which all of us can share in the credit, if there is any

credit, and the feeling that we have taken a major step toward addressing this problem. I hope as we go through the debate we can get all Senators to focus on what is in this package and that this is a major step forward in attempting to deal with this problem.

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Mr. President, this is no sudden move, bipartisan move on behalf of this body. In December 1981, the Senate Drug Enforcement Caucus was formed by Senator DECONCINI and myself, which is a bipartisan caucus to address the threat of illegal narcotics.

The public has always known that no threat strikes America more frequently nor savagely than that of illegal drugs. For too long we have been outmanned, outspent, and outgunned by drug traffickers. The tragic impact has been felt in the field of education, impaired national defense, lowered productivity, violent crime, addiction, and death.

Mr. President, today we have before us the chance of a lifetime, to finally take some tough action, working together, against that elusive and deadly enemy of our society, illegal drugs. Because of the urgency and the speed with which the Congress has considered this antidrug package, many of the proposals, long in popular demand, such as the death penalty, full use of our military resources, drug testing, a commonsense approach to the exclusionary rule, and others will finally make the light of day in some form or another. In ordinary times real drug control measures were effectively bottled up and kept away from a floor vote by special interest folks who were long able to thwart the popular will. Now we are about to have a little honesty and light of day injected into the process. We will be able to see how democracy in its purest form as opposed to committee and subcommittee wheeling and dealing works against our drug problem.

The people are watching our record votes on each key issue on this bill today, and tomorrow, as long at it takes, and well they might watch. It is our people who know best what illegal drug use has done and is doing to our children, our schools, our streets, our workplaces, our military forces, our sports programs—yes, our very civilization.

The people are the ones who still put flowers on the graves and weep at the fading photographs of what we call drug mortality statistics. Parents remember bitterly what happened to their bright and innocent children before the pied pipers of the drug culture lured them away into a hostile and totally self-destructing life. The statistics of deaths from drug use are chilling, and the families of America do not feel that we are rushing into any action to help them. The people of America wonder where we have been all these years, why we have not acted, why they are blamed for the problems, and why we debate for months a budget, months a tax bill, and can bring them as families, the smallest unit of civilization and government, no assistance when it comes to life and death and survival. Drugs pose a clear and present danger to America's national security. If for no other reason we should be addressing this on an emergency bais.

I know this firsthand. I have flown to Guantanamo Bay, Cuba, with the Commandant of the Coast Guard to inspect seized drug ships. What appeared to be beat-up old, crummy boats were actually sophisticated drug warships. They were equipped with satellite navigation systems, state of the art combat communications gear, frequency-hopping radios, and navigation charts which indicated that Cuban waters are safe for sanctuary. Traffickers buy and use military hardware that law enforcement officials in this country can only dream about. Drugs are a military threat which require a military response. I intend to work with my colleagues who feel that way, to assure that drug traffickers get the military welcome they deserve.

It is about time we did something serious about the drug problem for our people—people who lost their jobs becuase the rain on labor productivity from drug use and the added overhead costs made their companies noncompetitive; those who have not lost their jobs and must pay exorbitant taxes and health insurance premiums for benefits eaten up largely by drug abusers and alcohol abusers. It is about time we did something for the people who must lock their windows and their doors, afraid of the streets, because of robbery and the violence spawned by drug use.

Over 50 percent of all criminals arrested in Washington, DC, last year tested positive for recent heroin use, LSD or PCP use, and in Washington, DC, they do not even test for marijuana use. A NIDA study—that is the National Institute of Drug Abuse—by Dr. John Ball of Temple University and Dr. David Nurco of Maryland University concluded that 237 heroin addicts in Baltimore committed over 500,000 crimes during an 11 year period.

Drug addiction turns people into walking crime machines. It is about time we did something for the parents who hope and pray that their little children will be able to resist the powerful lure of illegal drugs during their vulnerable adolescent period. Why should we tolerate 26 percent of our high school seniors using marijuana monthly, as our schools continue to deteriorate in quality? It is about time we did something for whole communities threatened by the corruption that drug trafficking can bring to local government, to the courts, and in Latin America to the entire National Government. We have heard estimates that drug trafficking generates an illegal income as high as $110 billion. How can we continue to let this cancer go unchecked? Already we are hearing the voices of permissiveness which have thwarted action against drugs in the past. They are all coming out of the woodwork again. We hear them singing their same old tired tune about civil liberties, about the hopelessness of really stopping the drug traffic, about spending too much money, about hurting our foreign policy interests, or our defense posture. We have heard it all before and now we should recognize it for what it is—excuses, excuses to do nothing.

Where there is a will there is a way to stop the ravages of illegal drugs. Do not let anyone convince you otherwise. There is a will in the Senate today. There is a way. Where there is no will, there are many excuses. I know the people are going to be listening hard for the excuses today and will be remembering from whom they came.

I urge my colleagues to pay close attention. This is a bill which has farreaching impact on the future of civilization as we know it as Americans and as we mature into the next century. I thank the Chair.

Mr. BIDEN. Mr. President, I think it is appropriate that I be addressing my comments to the Chair when it is being occupied by a man who has worked a great deal on this subject, my friend from the State of New York [Mr. D'AMATO]. I say to the Chair and to my colleagues who may be listening and anyone else who may pay attention, I share the sentiments expressed by the Senator from Florida, but as the Presiding Officer and all of my colleagues and the Senator from Florida know, the tendency of this body when we have a serious problem is in fact not to focus on the graves of the deceased, the grave sites of grieving parents looking at what happened to their children and their families but to engage in political opportunism. This is usually the tendency of politics, Democrats and Republicans, and I hope we are not going to let that happen today. I hope we focus on what we can do and not engage in the hyperbole that so often rattles around this Chamber.

□ 1040

We have declared a number of times war on drugs. We have declared wars on crime. We stand up here and we give to the American people the notion that if we just pass the death penalty, everything will change in America. If we only had an exclusionary rule change, there would be no

drug problem. If we were only willing to get tough and hang these people, we would do all these things.

We stand and beat our breasts and we wonder why the American people have become skeptical of us. The press look down at us and say, "Wait a minute. There they go again, another war on drugs." I wish the cameras could look at the press. They are smiling. They know what I say is true.

The vehicle that is now before us will be the perfect vehicle for demagoguery. This is tailor-made for demagoguery. So I hope that, first of all, those who speak to the issue—and many are knowledgeable, like the Senator from New York—come and speak to the issue in ways that reflect the depth of the problem. The depth of the problem, in fact, is immense. We do have an epidemic in this country with regard to all kinds of controlled substances.

I suggest that we reflect, as we debate, this same intellectual depth ourselves with regard to what we can do about the problem.

For example, we can pass the most stringent laws in the world. Unless somehow we impact upon the desire on the part of the American people to consume drugs, we are not going to make a great deal of progress. We can, in fact, pass the most stringent laws in the world with regard to prosecution and punishment. But unless we impact upon the foreign policy of this country so that we change this country's attitude about its conduct of foreign policy in putting drugs at the top of the list in terms of international agreements, international concern, we are not going to have much of an impact. We, as a country, must face up to what we have been unwilling to face up to, the need to spend money to rehabilitate and treat the victims—not only the physical victims who have been mugged and shot and beaten, who are so often forgotten, mugged and shot and beaten by drug addicts in order to get money to sustain their habits, but also those who have inflicted the wounds upon themselves. For, if we continue to have a society which has not addressed its attention to dealing with how we cure these people, we are going to be left, even if we do everything properly from this moment forward, even if we go out there, pass legislation today, that from this moment on there will be no new drug addict added to the rolls with no new consumer, we will be left with millions and millions of people in this country at this point still addicted.

So I say to my colleagues that the bill we bring before the Senate reflects a compromise—not a compromise of our willingness to deal with the issue, but a compromise, in my view, on the political necessities that various Members in this body feel require them to propose specific amendments, many of which, in my humble opinion, have little or no impact upon whether or not our children are going to continue to smoke marijuana, whether or not our children are going to continue to be exposed to that horrible new concoction called crack, whether our children are going to continue to be delivered to grave sites with mourning parents standing over their graves.

The bill before the Senate today, and as introduced, provides many needed revisions and, most important, resources in our effort to reduce drug abuse in America.

Please note: I do not refer to this effort and this initiative as a war on drugs. The American people, I believe, have grown very weary of the political rhetoric and grandiose statements about wars that they realize we in Congress cannot win. The American people want us to respond to a clear national cry for help and not with hollow promises.

I note parenthetically that I think one of the reasons we have gotten ourselves into this spot, one of the reasons why people have lost confidence in this institution and other institutions on this issue, is that they have heard us before, many times, tell how we are going to do all these things.

To politicize or divert the direction of this legislation by extraneous proposals can only lead to skepticism and I think eventually to failure by the Members of this body.

It is in the hope of producing a useful and sorely needed initiative that I join with the leadership of the U.S. Senate in introducing this bill. I think it provides many needed improvements in our effort to reduce drug abuse in America. I enthusiastically support the efforts of the majority and minority leaders, who have dedicated a great deal of their time to the fashioning of this bipartisan bill that could come to the floor before the end of this session.

I also compliment Senator CHILES, with whom I serve as coauthor of the Democratic working group on narcotics which undertook the task force this summer, on the Democratic side, to craft an all-encompassing response to this narcotics problem.

I say to my colleague from Florida and my colleague from New York and my colleague from Washington, Senator EVANS, and others who have worked hard on various or all aspects of this drug problem, that I am sincerely hopeful that reason will reign in this Chamber the next 3 or 4 days. I am sincerely hopeful that we will, in fact, check our political six-guns at the door and deal with the genuine issues that face us.

With the help of all the members of the working group on the Democratic side and many of the members on the Republican side, 3 weeks ago we introduced—and that includes every one of the 47 Democrats—a bill we are proud of; and we are pleased to announce that it contains what most of us thought would be the necessary outlines for attacking the drug problem.

Now we have a bipartisan proposal which I believe is even better. It is better, although it does not include everything I wanted in the original proposal that Senator CHILES and I drafted. It is better in that I think we will be able to garner a significant consensus. A consensus is an essential element to doing anything about this problem.

I do not want to be part of a body that, with all due respect—I guess it would be characterized as criticism, as a comment, of my colleagues on the House side. They have not been dealing with this issue as a body as long as we have. We have worked on this issue, Democrat and Republican alike, in committee for 3 years. It started with the crime bill, a bipartisan crime bill that passed this body. The way it passed, I remind my colleagues—and it was greeted with diminished skepticism by the press and some enthusiasm by the American public and viewed as reasonable by others—the way we did that is the way we have approached this bill, I say to my friend from Washington, who is on the floor.

□ 1050

Senator THURMOND and I, representing different points of view on reform of the omnibus crime bill which was the most significant reshaping of criminal legislation in the last 30 years, sat down like we have on this bill and said, "Look there are provisions in the Criminal Code that are highly, highly controversial and which even if they were resolved would not fundamentally alter our ability to begin to do something about the crime problem in this country." We lined them up. We said, "Let us look at everything we can agree upon and put it on this side of the table and let us take everything we disagree upon and put it on this side of the table."

And we added up all that we agreed upon and we agreed upon 90 percent of the changes that had to take place, probably 95 percent, and they were striking changes, striking changes in the sentencing law, striking changes in parole, striking changes in terms of how we define certain crimes, striking changes in terms of penalty, and changes we have been attempting to bring to fruition for the past 20 years.

But the key was we said, "Let us take these 5 percent that we disagree on and let us put them on the shelf over here and let us not do what has been done over the past 20 years. Let us not get up to the waterhole and fail to be able to drink because in fact we cannot decide who is going to be first. Let us put egos aside and let us put

aside political opportunity and put it on a shelf and let us go at the business of doing what no one has been able to do before."

As a consequence of approaching that way, I say to my friend and colleague who is presiding today—he knows because he participated in it—we passed a significant crime bill, a crime bill, I might add, that is aiding significantly in the prosecutions of major organized crime family members today, a bill that is aiding significantly in our ability to do things in the past 3 years that we had been unable to do.

What we have attempted to do here today on one aspect of the crime problem but a more pernicious crime than any we have to deal with, the drug problem, is to do the same thing.

So I plead with my colleagues as they look at this bill, notwithstanding the fact that the bill before them will be only before them for a short time. It is the first time they will have seen it. There are hundreds and hundreds and hundreds of hours of work that have gone into this long before they were put in this compendium of pieces of legislation. They involve a number of areas from dealing with penalties, to dealing with definitions, to dealing with education of our children on the avoidance of drugs, to dealing with treatment, interdiction, et cetera.

There is hardly a single thing in this bill that at one time or another we have not held an extensive hearing on it. It is not new in that sense. What is new today, and I know we will succeed, is that we have agreed to agree on what we can move and thus far we have agreed to disagree and put aside those more colorful and flamboyant aspects of the law at this moment.

Another thing I would suggest to my colleague——

Mr. MELCHER. Mr. President, will the Senator from Delaware yield at that point?

Mr. BIDEN. I will yield for a question. I will not yield the floor, though. I have not finished my statement. I have much more to say.

Mr. MELCHER. I thank my friend from Delaware for yielding.

He just stated that there is not anything in here that has not had extensive hearings.

Mr. BIDEN. To be more precise, if the Senator will yield, I said there is little in here that has not had extensive hearings.

Mr. MELCHER. Little.

On page 6, the first page 6, the sentence bothers me and it begins on the fourth line starting with the word "if" and extends for 15 lines from there on the same page, and it refers to a person committing such violations, which would refer to the above sentence, I believe violations involving narcotics or drugs listed in the code under——

Mr. BIDEN. One hundred kilograms more of a mixture containing detectable amounts of marijuana—is that what the Senator is referring to?

Mr. MELCHER. Under schedule 1 and 2.

Mr. BIDEN. Correct.

Mr. MELCHER. Then in this sentence it seems to broaden it, perhaps I am incorret, but in reading this sentence we get down to violations under this title or title III, or any other law of a State, going on, or a foreign country relating to narcotic drugs, marijuana, or depressant or stimulant substances.

I wonder at that point, if I might ask my learned friend from Delaware, does it not broaden beyond 1 and 2?

Mr. BIDEN. If the Senator will let me finish my statement, if I could say to my colleague, and I am anxious to discuss this and other items with him, the way we hopefully—because I see my colleagues want to make opening statements themselves—hopefully what we will be able to do is make our opening statements and then get into the discussion of this. If the Senator would like to persist on this a little bit longer, I am happy to do so.

In light of the initial ground rule where we said everyone can make his statement. I do not want to dominate the floor this morning at the expense of my colleagues making statements.

I will be happy to go on a few more minutes.

Mr. MELCHER. I thank my friend for doing that because it is hard to understand the opening statements unless we know how broad this is.

On the question of identifying just the depressant or stimulant substance, I do not know how far ranging that is.

Mr. BIDEN. It would expand to include any State felony which would include in most of those felonies the trafficking in these substances. There is an expansion. We have had hearings on the question of whether or not it makes sense to expand the coverage to include State felonies which is not now in the law, but that has been a subject of discussion before a number of our committees and including the Judiciary Committee.

I would, as I said, be delighted to discuss the details of this if the Senator would let me finish my opening statement, and we are going to have plenty of time today, tomorrow, and probably into I do not know when.

Mr. MELCHER. That could be a long time. But one final question on this point.

Mr. BIDEN. Sure.

Mr. MELCHER. It has to be a felony under State law. I understand that. But what about under foreign governments, because it says "a foreign country relating to narcotic drugs, marijuana, or depressant or stimulant substances," and have we identified in a foreign country how they treat a stimulant or depressant substance?

Mr. BIDEN. We have. We have not placed it in the bill. What we are attempting to do here is deal with repeat offenders, repeat offenders who have been repeat offenders of the drug laws, repeat felony offenders under State court systems and under other systems.

Mr. MELCHER. Under foreign government systems also?

Mr. BIDEN. That is correct. No; that is not correct.

Mr. MELCHER. All right.

Mr. BIDEN. I say to my colleague that is not correct.

We were talking about domestic repeat offenders. It says in the part the Senator is referring to "* * * or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marijuana, or depressant or stimulant substances, have become final."

Mr. MELCHER. Does that not mean the final action in the court system of a foreign government?

Mr. BIDEN. It does.

Mr. MELCHER. As to their depressants and stimulants, which is a very broad term, are they identified similar to ours?

Mr. BIDEN. The provision is presently in current law and the judgment, even though you will find I am sure in the schedule of such drugs in France is different than the schedule in this country.

□ 1100

If you have a repeat offender of the drug laws of the country of France or Switzerland or Afghanistan, we have made the conclusion, and it is already in the law, that in fact those folks do not warrant any other treatment than that which we are suggesting here. We are not suggesting that in all the laws of the State.

Mr. MELCHER. I would just ask, then, one final question, and I thank my colleague from Delaware for his indulgence.

But does not the term "depressant or stimulant substances" carry the drugs that would be listed much further than schedule 1 and schedule 2?

Mr. BIDEN. The answer is "Yes."

Mr. MELCHER. I thank my friend.

Mr. BIDEN. I hope that the caliber of the debate and the detailed questioning follows that which has occurred here by my friend from Montana, because there is much to discuss in this bill.

Let me conclude in the next few minutes my statement here if I may.

Mr. President, it is imperative that we pass this legislation aimed at reducing drug abuse in America this session. The price that this Nation pays for its

drug habit is staggering. Let me just talk about that for a moment.

Drug traffickers reap an estimated $110 billion each year, peddling drugs and narcotics to our children, our families and our friends. The sheer dollar figures, however, do not even begin to tell the story. The price that this Nation pays for its seemingly insatiable demand for drugs must also be measured in terms of the lives lost, the families shattered and the dreams forsaken from drug abuse. According to the President's Commission on Organized Crime, there are an estimated half million heroin addicts in this country. Four to five million Americans regularly use cocaine. And over 20 million Americans regularly use marijuana.

Despite these staggering statistics, I think what scares us the most, and why we must pass responsible drug legislation this session, is the threat that drug abuse poses to our most precious resource: our young people. According to the most recent sample of high school seniors, over 61 percent, let me repeat—61 percent, almost two-thirds—of the graduating high school seniors in 1985 had used an illicit drug. Some 17 percent of the graduating seniors had tried cocaine—17 percent had tried cocaine—the highest rate ever in the 11 years the sample has been taken. And according to the same study, one-third of college students used cocaine in the previous 12 months.

Two weeks ago in this Chamber, several of my distinguished colleagues debated the importance of educating our children in math and science so that our children will be capable of learning the most technologically advanced requirements that they must have in order for this society to move in a competitive sense in the next century. I would like to note that if we do not do something about this country's drug addiction, the issue of educating our children in math and science may be a moot point.

The drug problem is a complex problem, and any effective strategy to reduce drug abuse in America must involve a comprehensive approach, involving efforts in this country and abroad. And while we must rigorously enforce the law, it is abundantly clear that we must mount an aggressive and consistent campaign to reduce the demand—the demand for drugs—so that the drug peddlers will have no one to whom they can sell their wares. This legislation addresses each of these areas.

First, this bill addresses the need to stop the production of illicit drugs in foreign countries. For too long, our foreign policy has all but ignored the importance of international narcotics control in our overall foreign policy strategy.

It has been a pet peeve of some of us on the Foreign Relations Committee and the Judiciary Committee for the last 6 years.

The first question I asked the first Secretary of State in this administration was whether or not, if he were confirmed, would he be willing to move drug trafficking up on the agenda as high as any other matter of state when he, in fact, took the State Department helm; and would he, in fact, deal with our NATO allies and our other allies around the world with the need to move it higher on the agenda?

He looked at me somewhat perplexed and finally agreed that he would. And I could see him turn to his staff person and say, "What does this have to do with foreign policy?"

I can recall the last speech I made as chairman of NATO's Committee on Nuclear Planning to our NATO allies, the 45 or 50 who were here from every nation. And the topic of my speech perplexed them some. I said NATO is a defense organization and, in order to deal with the common defense, we should begin to deal with drugs. And I think they thought I was on drugs, the fact that I would bother to raise that question with them. There was a bit of a tittering going on.

You know, State Department types and foreign policy types carry expensive leather briefcases and love to carry in those briefcases treaties on arms control and treaties on fisheries and their lunch, but they do not want to get down to the business of dealing with something that they feel should be beyond their purview.

As a result of these consistent efforts, not merely on my part, but on the part of many Democrats and Republicans, many countries that had been very complacent about drug production within their borders are beginning to see the need to deal with it.

This bill would provide effective incentives for cooperating in international efforts to stem the production of, and trafficking in, illicit narcotics. This bill would provide almost $60 million in additional funds for foreign assistance programs to help countries eradicate drugs within their borders. This would nearly double the amount of money now provided for foreign eradication and crop control programs.

However, this bill does not stop at merely providing new money to countries interested in combating narcotics production. For those countries that are major illicit drug producing countries and that have not responded, either through their own efforts or with our assistance, in reducing production or transshipment of narcotics, all foreign aid—all foreign aid—assistance would be cut off. This new law will require the President to certify to Congress that any such country has taken adequate steps to cooperate with the United States in stemming the cultivation and production of narcotics within their countries, before foreign aid can be reinstated. These provisions take a major step toward raising the priority that international narcotics control should have in our overall foreign policy strategy, as well as other elements. The international provisions of this bill include both the "carrot" and the "stick" necessary to encourage narcotics control throughout the international community.

Second, we must stem the flow of drugs into our borders and across our borders. This bill increases by one-third the current level of funding for interdiction at the border including increased funding for Coast Guard and Customs Service personnel, which, I might add, over the last 6 years has been cut. We have talked about a war on drugs and we have cut, not increased, cut the number of people we, in fact, say are supposed to be the ones at the bridge blocking the enemy from crossing the river into our territory. This bill assigns Coast Guard law enforcement teams to Navy ships to bring the Department of Defense more actively into the fight against drug trafficking.

Third, we must rigorously enforce domestic drug control laws. This legislation, under the leadership of Senator CHILES increases penalties for most drug-related offenses, including a mandatory minimum penalty of 10 years imprisonment, and up to life, for the highest level of drug kingpins, which reflects the responsibility of the Federal Government to pursue and prosecute major narcotics syndicates.

□ 1110

This bill also creates new offenses and increases penalties for drug offenses involving children, and fines are increased to strike at the financial underpinning of organized crime. This bill also recognizes the need for more law enforcement personnel at both the Federal level and at the State level, I say to the President.

Increased funding is provided for more DEA agents, drug enforcement agents, more prosecutors and more prison construction to ensure that drug traffickers are caught, sentenced and stay in jail for their full sentence.

Finally, the bill provides $115 million in grant money to State and local agencies to assist them in their drug enforcement efforts.

You know, Mr. President, as well as anyone in this Chamber, the drug problem is a little bit like the environmental problem. No one State can decide it is going to have clean air and clean water. It can do everything correctly in the State of Delaware, but if there are not refineries in Marcus Hook which are on the Delaware border which are meeting environmen-

tal standards, Delaware air will be polluted. It is the same way with the drug problem. Every State could in fact pass just the right drug legislation, but drugs are in fact the ultimate fungible item. They in fact cross borders and seep across borders in ways that lend themselves only to the Federal Government being able to provide an umbrella of help. Part of that help is direct assistance to those local agencies.

Finally, we must reduce the demand for drugs by educating our youth about the perils of drug use. Through the President's efforts and Mrs. Reagan's efforts, although they have stressed the need to reduce the demand for drugs which has in my view been helpful, the Federal Government spends only $3 million a year out of a trillion-dollar budget—$3 million a year nationwide for drug education.

That much expenditure of money indirectly goes into the production of one movie which glorifies the use of drugs. One movie, one setting, can, in fact, have more impact upon the attitudes of our children about drug use than the minimum of $3 million we spend nationwide.

This bill we are about to vote on in the next couple of days provides $150 million in grant money to State and local school districts for drug abuse education.

The purpose of this section is to ensure that every child in this Nation in both public and private schools receives objective and credible information about the consequences and the dangers of drug use.

Senator ROCKEFELLER from West Virginia has worked on this for some time. This is not just one of the typical Government programs we are going to send out money on. In order for a State to qualify for this money, the State must have in fact at the statewide level a drug education program involving schools and committing their own money to it before they can get help under this program.

We must also treat those persons who have already fallen prey to the lure of drug abuse. As I said at the outset of this statement, even if we did everything that possibly could be done, even if we prevented from this moment on an single new drug addict being added to the roll, we are still faced with the problem of those millions and millions of people out there, many of whom are addicted to drugs at this moment.

While we as a society must begin to recognize that drug users like drug traffickers are coconspirators in drug crimes we must realize that drug addicts prey upon innocent victims to finance their habits. We must find an appropriate mix between condemnation and compassion in our approach.

Despite this administration's rhetoric about treating drug abusers, they have actually decreased the funding for drug abuse treatment in the last 4 years. These cuts have resulted in waiting lines and waiting lists up to 6 months longer for for drug users who recognize that they have a problem and who seek help to solve their problem. They, in fact, in the meantime are left standing in line.

This bill provides $175 million to State and local treatment programs, both public and private, to help provide essential services to drug abusers who want help, and the restrictions are significant as to how this money is spent so it is not wasted.

Though I have outlines the four essential components that are addressed in this bill, I believe we must also include a more effective framework from which to pursue these initiatives. A framework is not a part of this package. It is something I intend to offer as an amendment later in these proceedings. I intend to offer a provision that was passed by the way on two other occasions in this body overwhelmingly, the last time with 63 votes. It is called by the press a drug czar, but simply means we should have one person in a position that in fact is in control of the Federal drug effort.

We now have 11 different Cabinet Secretaries responsible for some piece of the drug program, 36 different Federal agencies involved in administering the drug program, and no single game plan as to what our priorities are and who can in fact call the shots as to how we deal with them.

If I said to my colleagues that was going to be the way in which we are going to run education in this country, or if I said that is how we are going to deal which health care in this country at the Federal level, or if I suggested that is how we are going to deal with transportation in this country, we would all say, my lord, you cannot do it that way. It makes no sense. Yet we have a problem that we all acknowledge is equally, if not more, critical for a solution that calls out for the solution to the drug problem. And we still lack that coordination.

What this package lacks is a framework of leadership right now. The Attorney General, the Vice President and the White House drug abuse advisers are all leading the Federal effort often in different and conflicting efforts. The question remains who is in charge of the Nation's drug control strategy.

There is no clear answer to that question. That, I believe, illustrates the problem. The lack of leadership in the Federal drug control effort has been recognized in this body. As I said in the last several years in fact on two separate occasions Members of this body, Democrats and Republicans alike, have passed this legislation. But in the spirit of comity and of the necessity of moving forward with what are significant advantages and significant help in this bill that we have before us today, I have refrained from insisting that be in this package, and I must tell my colleagues I am prepared to refrain from introducing that legislation, or introducing that as an amendment if in fact it would be sufficient to keep this legislation from going forward.

It is something I have worked on for 6 years, and something I feel very deeply about. But I believe this bill is so important now that if it will in any way slow down the progress of this bill I will not insist upon its passage again in this body.

The administration has made it clear they are overwhelmingly opposed to the drug czar concept because it in fact narrows responsibility very rapidly. And in fairness to this administration, the last administration, the Democratic administration, was not crazy about the idea either because I say to my friend from Washington who was a chief executive and a Governor I suspect he knows better than any of us on this floor at this moment it is not easy to bang heads together, take power from one, and give it to another, and consolidate it. But that is what leadership is about.

I understand why they are reluctant to do it. I suspect the next administration will be reluctant to do it. But the fact of the matter is the time has come to move on drug legislation.

There is ample need for such an initiative as I have outlined previously. But moreover, I believe the major outline of this bill is one in fact that we should move on.

In 1984 we moved as I said at the outset on a bipartisan bill that eventually enacted the most significant Federal Criminal Code reform in this Nation's history. A similar opportunity has been presented to us today.

However, as was required then, and I predict will be required on this legislation, we must be willing to compromise if we are to get a bill on the President's desk this year. This bill as introduced reflects that compromise.

Last week the President called for the leadership of both Houses of Congress to come down to the White House to emphasize the need to transcend political concern in the battle against drug abuse in America.

I wholeheartedly endorse that plea on the part of the President. And I urge my colleagues on legislation they feel, or on amendments they feel are not in this bill and if they feel as strongly about as I do about the drug czar, in the interest of not merely compromising the body, the comity on the floor, but in the interest of doing something about the drug problem so that the President will have a bill to

sign, on increased interdiction efforts, increased sanctions against foreign countries, increased education, and increased treatment in order that we can get underway.

□ 1120

If my colleagues this time tomorrow look down the road and see that with only a week left their amendment, if added, would keep this bill from coming to fruition, I urge them and I plead with them to put their own political instincts, ambitions, and initiatives behind the greater need to do something, something significant, which is already, in my view, contained in this bill.

I have much more to say about this. I will do a section-by-section analysis, I am sure, as we go on. Each of my colleagues on the floor has a significant opening statement to make. I thank them for their indulgence and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. I thank the Chair.

Mr. President, we have heard two eloquent and detailed opening statements. I commend the Senator from Florida, Senator HAWKINS, and the Senator from Delaware, Senator BIDEN, for their extraordinary leadership in this effort.

Mr. President, I still have some deep concerns. I am gratified with what the joint bipartisan group here in the Senate has produced. I agree with the Senator from Delaware that it is a careful amalgamation and cannot be subjected to a wide variety of amendments. That is in sharp contrast, Mr. President, to the sanctimonious election stampede of the House of Representatives, a stampede that trampled on the Constitution. In fact, at times the action over there resembled a congressional lynch mob more than it did careful legislation.

I am pleased now that the Senate has chosen, as it so often does, to cool the passions which sometimes have guided the other House.

But we must still recognize that no matter what we pass in this body we are still subjected to a conference, a conference between the two Houses that may represent or result in compromise that would bring in a bill brought back to the floor of each House as a conference report that could contain some dangerous legislation, legislation that I think could be as dangerous as the drug problem itself.

There has been a lot of focus recently on the drug problem. This is an election year. The national news magazines have recently headlined the drug problem with cover stories. Crack dominates the conversations throughout the country. We have had two tragic deaths of young athletes from cocaine.

But nonetheless, Mr. President, recent statistics from the Department of Health and Human Services point out that abuse of all drugs in America peaked in 1978 and 1979, and declined slowly but steadily through 1984. Although the use of heroin leveled off in 1985, there is no compelling evidence that the overall problem is significantly worse now than it has been for the last decade.

Mr. CHILES. Will the Senator yield?

Mr. EVANS. I yield.

Mr. CHILES. I apologize for interrupting the Senator, but when I read that statement, and I think I read the same one, about drugs declining, it was kind of a shock to me, coming from my State and knowing what is happening with crack and seeing how that is hitting not every place, but hitting a number of other places across the country. I do see a tremendous increase in the amount of cocaine and a declining price.

When I asked the people from the National Institute of Drug Abuse at a hearing of the Permanent Subcommittee on Investigations that was held on the subject matter where the statistics came from and how in the world that could come out at a time that it looked like to me things were running differently, they told me that the way they do their studies they are looking at 4 years ago. So those statistics are based on information and cuts that are years old.

I just say to the Senator from Washington I think we need to review those and make sure how current they are because I think those are reflecting what they thought were trends or statistics that are 3 and 4 years old and that are not current. In fact, they were 1980 statistics and 1984 statistics that they were using as a basis for their study.

I again apologize to the Senator.

(Mr. ROTH assumed the chair.)

Mr. EVANS. I appreciate the comments of the Senator from Florida who has been deeply involved in this effort. I in no way wish to belittle or in any way take away from our focus on the drug problem or belittle its importance.

I would point out, in addition, that a recent article, I believe yesterday, in the Washington Post, quoting the 3-month survey by the Federal Drug Enforcement Administration has found that crack, in their view, is not the drug of choice for most users and that its prevalence has been exaggerated by heavy media new attention.

Again, not to belittle in any respect what is an evil form of an evil broad drug system, but, nonetheless, I am only attempting to point out that it is important for us to keep all of these efforts in context, to recognize that we do indeed have a very big problem.

But I do not want us to focus so much on this problem that we ignore or forget that there are a couple of other addictive drug problems in this Nation which continue, which are at least as large if not larger in deaths and costs and human heartbreak. During the course of this discussion on illicit drugs, we ought to at least speak up and remind people that there are a couple of legal drugs which are of equal importance and concern to us.

Alcohol abuse, according to statistics collected by Students Against Drunk Driving, is implicated in virtually every conceivable socially abhorrent activity of our society. Two-thirds of fatal driving accidents, 70 percent of all murders, 50 percent of all rapes, and 60 percent of sex crimes against children are affected by alcohol abuse.

The costs of smoking perhaps are not quite as antisocial but are equally staggering. The New England Journal of Medicine estimates that smoking is responsible for one-quarter of all fire-related deaths, a quarter of a million deaths from heart diseases and more than 100,000 deaths from lung cancer each year. Overall it has been estimated that the combined total cost to society of alcohol and tobacco abuse exceeds the current Federal deficit.

So I think it is important for us to focus on illicit drugs and certainly enforce the passage of comprehensive and appropriate legislation. But in that process, let us not forget that there are other problems, perhaps still larger, which we cannot ignore and which we should not doubt.

In our efforts, however, to focus on drug activity, the House of Representatives, I believe, has engaged in precisely what Edmund Burke warned against when he said, "Bad laws are the worst form of tyranny." The House bill certainly qualifies.

I do not intend to detail each of the provisions which I find abhorrent, but in combination they could lead to some rather bizarre interpretation of our Constitution.

The ability of military forces to engage in hot pursuit coupled with changes in the exclusionary rule could very easily result in military forces kicking down the door of some private residence on the belief, the good faith belief, that there were drugs about.

□ 1130

We would end up with precisely what our forefathers, 200 years ago, sought to eliminate in the fourth amendment to our Constitution.

I think we have to be very careful in what we do, careful that in our zeal to correct the problems, in our zeal to capture those and imprison those who are dealing harshly with our fellow citizens and with our children, we do not go so far that, for instance, in massive drug testing, which may well be 99 44/100ths percent accurate, we ignore the potential danger of harassment of

the other fifty-six one-hundreths of 1 percent. If, for instance, we choose to have massive drug testing of Federal employees for each million employees tested and if that were the level of accuracy, which I believe is probably higher than the accuracy we now have, almost 6,000 Americans would be trashed, harassed on their jobs, the innocent accused. We have to be very careful what we do in this act, careful that we focus more precisely at the targets which deserve to be hit.

In a veto message on the drug czar bill, President Reagan, I think, said it very well. We ought to keep his words in mind as we debate and amend this proposal. He said:

> The seriousness of this threat is underscored by the overwhelming opposition to this provision by the Federal law enforcement community, as well as such groups as the International Association of Chiefs of Police and the National Association of Attorneys General. The so-called drug czar provision was enacted—

And here is what is important—

> hastily without thoughtful debate and without the benefit of any hearings.

Let me repeat:

> . . . was enacted hastily without throughtful debate and without the benefit of any hearings.

Mr. President, I am not speaking in relation to the drug czar bill at all, but to the President's words, which warned against our adopting important legislation without thoughtful debate and without adequate hearings. I believe the Senate bill has gone a long way toward meeting those criteria. The House bill failed miserably on both counts.

If we act now, we ought to be caring that we act in a way that will integrate our current efforts with what we call the war against drugs. If we really believe in a war against drugs, then I think it requires the same attitude as a military commander or a commander in chief would have toward a real war. Real war requires that there be well-thought-out plans and strategies. Real war requires that you do not send inadequately prepared troops into battle. Real war requires that you attempt to coordinate your activities to get the best results from your investment. And, Mr. President, I believe that whether it is a war against drugs or a shooting war, the best strategy takes into account, strong account, the view of the field commanders, the ones who will be out on the front lines fighting that war.

We should not send those troops into battle unprepared and uncoordinated and, parenthetically, underfunded.

I think the fastest way to win a war, a shooting war or war against drugs, is to begin by developing the kind of comprehensive plan and coordinated efforts, bringing into account those field commanders so that we can get the war over with or reach some victories at the soonest possible date. Therefore, Mr. President, I shall suggest an amendment later in the debate on this bill. I believe an amendment can be drafted that will not fall prey to the concern of the administration over a drug czar.

Mr. President, my colleague from Delaware [Mr. BIDEN] is not at the moment in the Chamber, but I should say to him that, as a former chief executive, I know it is difficult indeed to coordinate and bring together many disparate elements within your own administration. But I am not sure a czar is really as necessary as strong leadership from the top. It is the Commander in Chief, it is the political chief executive, whether President or Governor, who ultimately fulfills that responsibility of ensuring that there is coordination, ensuring that there is maximum effort. In the case, it has to be more than just maximum effort within an administration. We are talking about a national war. The amendment I shall propose will call for a comprehensive national meeting, with the appropriate followup, to occur as rapidly as we can prepare it, and to present as a result of that meeting further proposals that may be called for at the national level.

I think any such group or meeting must bring into account these field commanders I have mentioned. They are the State Governors and the attorneys general, local school leaders, the State and local police and other law enforcement agencies, the elements of our criminal justice system, various responsible Federal agencies and, of course, Congress, the President, and the legislatures and Governors of our various States.

Mr. BIDEN. Mr. President, will the Senator yield for just a moment?

Mr. EVANS. Indeed I will, Mr. President.

Mr. BIDEN. I think the Senator's idea is a good one, but I would like to ask the Senator a question not relating to the amendment he plans to offer, if he will go back to his capacity as chief executive.

Mr. EVANS. Yes, Mr. President.

Mr. BIDEN. My concern over the years, as we have debated this subject of a drug czar, has been that until and unless you have one person who has budgetary authority, one person who can, in fact, make an estimate of the assets that are available to conduct the war, one person to make that judgment, we find ourselves with conflicting, very conflicting policies coming from above—theoreticaly, the President—a strong chief executive, who in fact would be able to coordinate all that.

But I ask my friend from Washington, and I ask this sincerely of the former Governor of the State of Washington, is it possible for a chief executive to do that without having a person to whom he or she can turn and say "Now implement that. You have the authority to cross these lines?" Can that be done? That is really my concern.

Mr. EVANS. I say to my friend from Delaware that I think it can. I had a fascinating experience in the interlude between being Governor and becoming a Senator. That was to be president of a rather unusual college, the Evergreen State College. The way in which we operated included what I think is an extremely appropriate concept, one which we ought to use more frequently in our own public activities and, I suggest, one which can and probably is being used pretty frequently in private activities. That is what they call a disappearing task force.

We do not have to be so bound by the boxes on an organizational chart that we cannot put together, when needed to focus on a particular problem, the kind of particular group that is required. And when they finish their task or when it becomes apparent that we are now at a point where individual agencies can carry on their responsibilities, that task force can disappear.

As Governor, I did pretty much the same kind of thing. On a particular issue that was of importance at a particular time, I brought together the various department heads but, from the gubernatorial level, said, "Here is what we will do." I may have appointed from that group one who would be a leader. We did not have any additional legislation, did not have any other framework necessary for that person to act. It accomplishes perhaps some of the same goals that I think the Senator from Delaware seeks. But I do not really think it takes a detailed legislative proposal to accomplish that kind of effort.

Mr. BIDEN. Will the Senator yield for one more moment?

Mr. EVANS. Yes, Mr. President.

□ 1140

Mr. BIDEN. I say to my friend that I was prepared to accept that 2 years ago. That is what we did. The administration said, "We don't like this drug czar, so let's work it out whereby you make the Attorney General that person," and we did that. We still end up with the confusion and chaos that exists. And I say that not in a pejorative way with regard to the Attorney General. I think it is awfully difficult for the Attorney General of the United States and the Secretary of Treasury to say these Customs agents should be assigned to do such and such.

I have been around this town long enough to understand that the size and strength and the insatiateness of the bureaucracies in this town make it

very difficult. Although some of it legitimate in my view, we see what is happening in the overwhelming reluctance of Caspar Weinberger to be a part of any posse comitatus. Senator CHILES had to beat him up beside the head for 4 years, figuratively speaking, before we got changes in that law. It made it very difficult. I have had, privately, Under Secretaries of various departments tell me, "Look, we can't go in and spend capital on that issue because we have to spend capital in order to get the Secretary of such and such an agency to assign x number of Customs agents or the Secretary of Defense to assign x number of et cetera. We can't do that. We are going to use up all our capital."

I think what everybody is looking for, and maybe the Senator has a way—and I am prepared to work with him on that way—what we are looking for is somebody someplace within the administration that, in fact, when they speak every one of those Cabinet Secretaries know they better listen. They have no option but to listen—one person has the authority, if it is a disappearing drug czar, if it is a disappearing task force. But at some point, at some place, somebody has to say, "This is the plan, and you, Madam Secretary, will participate, and you, Mr. Secretary, will participate, and this is the amount of your contribution to participate."

Absent that, I say to my friend from Washington, I do not know how we ever get a handle on it. I do not suggest it is easy, and I do not mean this, as it may sound, as a gratuitious criticism of this administration. This administration has done more on this issue than the last administrations have, so I am not making a partisan comment. I am making from what I have observed in my 14 years as a U.S. Senator, an institutional observation. It seems as though the only way you move a bureaucracy around here is you plant about 20 pounds of political TNT under it and explode it. Otherwise, they do not move.

As has been said to me by two essentially permanent Under Secretaries in one department, in a heated exchange that occurred in my office, "Well, Senator, some day you will go; we will still be here." They are probably right.

Mr. EVANS. The Senator speaks with great knowledge and much longer experience in this Washington than I have had, and I would agree with him on one thing, that the bureaucracy is more intransigent and more entrenched and more difficult to deal with here certainly than the comparative bureaucracy in the Washington State government and I would suggest probably in almost any State government throughout this Nation.

There was a greater sense of teamwork, willingness to work together and perhaps even a closer association or relationship between a Governor and cabinet secretaries than there usually is between a President and his Cabinet Secretaries.

But as the Senator described this opportunity to tell each Cabinet Secretary that here is who you respond to and here is who is going to provide the leadership, I believe, if I were President—and we can all fantasize about that—first I have to put together the plan, what it is I want to do.

Now, some of that—in fact a good deal of it—may come from legislation we pass. I believe there is another element of equal or perhaps greater importance, and that is what comes out of a national meeting or task force that puts that other added element into it—the local and State and educational and even parental and citizen groups that are going to be necessary, critical, to getting this job done.

Obviously, no czar, not even a President, has direct authority to tell all of these elements of our society what to do. We can encourage, we can work together, and most of all I believe we ought to listen to what they can contribute to this program. But once the plan is done, once we are ready to move in an even more comprehensive way than this bill would call for, then I think it is possible for a President to call his Cabinet together and for the President to be that person who says, "Here is what we are going to do, here is the responsibility of each Cabinet Secretary's Department and here is who I am asking to carry on this responsibility."

Mr. BIDEN. Will the Senator yield for a moment?

Mr. EVANS. Maybe it will work. Maybe it will not work.

Mr. BIDEN. I think it will work. I think the Senator is correct. I think the added dimension he is suggesting would be a wise and useful dimension. But as the Senator knows, the President already has that authority.

One of the things that disturbs me is that it has not been exercised to do this, first. Second, he has been encouraged to do similar things not to the legislative process, but I am encouraging the Senator to push the legislative process as a means by which he is to do it. Third, in the bill right now there is a requirement that the President do what the Senator is suggesting, although not the same way; we leave more latitude for him. We say, "Mr. President, you must come back within 6 months with a plan for us."

I believe the proposal of the Senator from Washington—which at some point he will offer—I believe it gives the President more guidance, more direction, more help, that I think is very positive.

But I just want to make sure the Senator understands that the Senator from Delaware over these past 6 years did not start off with the notion there had to be a single person who was the ramrod. But every other attempt we have made—right now there is a provision in the law, the last drug czar proposal that we passed, when we passed the omnibus crime bill, that the Attorney General come forward with a comprehensive report on a due date and do it yearly. We are not there yet. We have not had that yet. So I encourage the Senator to pursue his interest.

I just suggest that the objectives of the Senator from Delaware are obviously no different. Quite frankly, maybe his frustration is somewhat greater, but the objective is no different.

Mr. EVANS. I thank the Senator. I think we are working down the same track. If there is a difference between now and 1 year ago or 2 or 5 years ago, it is with the added focus on the problem which has come just recently, and which is typified by this debate going on right now in the Senate, and by the fact that we are very likely to have a comprehensive drug package even during this Congress. That is really step 1 of a new and intensified war.

I would be delighted to work with the Senator from Delaware in crafting an appropriate kind of amendment to ensure that we do encourage this much broader involvement of not only the Federal Government but others as well in what we are doing.

Mr. President, I am almost finished, but let me say that I also suggest I am very likely to come forward with a second amendment, not on this bill but on the continuing resolution, because I believe in this bill we are doing what it is too easy for us to do during the course of a congressional session after we have come forward with our budget allocations and limits, and that is to say we want to help this group or this country or that problem and it costs money, and we blithely put money into this new interest or this new priority and say, "Take it from somewhere else; take it from an existing program." Take it from something that may well be also of high priority.

Frankly, Mr. President, this is so important that I believe we ought to honestly face up to the costs and we ought to set forward a method of finding revenue. I will suggest that I cannot think of a better place and more appropriate way to raise the revenue necessary to fund an all-out war against drugs than to put on not a tax, because obvioulsy the administration is violently opposed to new taxation, but I would consider this a user fee. Certainly the administration has suggested enough user fees.

□ 1150

I can think of no better user fee than to put an extra, small amendment or an addition onto the taxes already in existence—or the user fees, if

you will—on those who use other legal addictive drugs.

I would suggest that we should add something to those fees on alcohol and tobacco, and I can think of no better and more appropriate place to ensure that we have honestly and straightforwardly met the requirements of funding than to accomplish this through an amendment to the continuing resolution. I will make that suggestion at the appropriate time.

As I close, let me commend again those who have done so much to bring this problem to focus, to make it a priority in this Nation.

I commend the First Lady particularly and her constant efforts to get at the problem and its solution precisely where it has to occur, and that is within the families and the educational systems and among the young of this country.

Finally, I commend the wisdom of the bipartisan group in the Senate which has crafted a bill which I believe has thoroughly cooled the sometimes overheated passions of the other House and has brought us a proposal that has a chance of becoming law, of making a difference, and of doing so without trampling the Constitution which we love so much. It would be an awful thing, on the eve of our bicentennial celebration of that Constitution, to pass a drug bill as was passed through the House of Representatives.

Mr. DECONCINI. Mr. President, let me say, while the Senator from Washington is still here, that I appreciate the caution and concern with which he approaches many things, and certainly in dealing with the rights of individuals, as we approach what I think is a comprehensive legislative action in the area of the drug effort in this country. I thank him for bringing that squarely before us.

I do not think anybody here is anxious to violate any constitutional rights or even to tread on them in any way. I think it is important, as we move in the waning days of this Congress, that we take heed of the Senator from Washington and do be careful.

In that vein, I also want to thank a number of Senators who have been involved in this matter. I will not mention all of them.

I thank the Senator from California [Mr. WILSON], the Senator from New York [Mr. D'AMATO], the two Senators from Florida [Mrs. HAWKINS and Mr. CHILES], who have worked tirelessly—Senator CHILES on behalf of the working group on the Democratic side, along with Senator BIDEN of Delaware.

The two leaders, Senator DOLE and Senator BYRD, have been able to fashion this together. Also, the Senator from West Virginia [Mr. ROCKEFELLER].

I just mention a few who have been involved in the attempt to bring this into the realm of possibility and without doing violence to what the Senator from Washington has eloquently spoken of.

Mr. President, I think it is important, as we face this legislation, to quickly look at why we are here today. What brought us to this point, where the President and Mrs. Reagan go on television and present a very good image and awareness that there is a big problem? Why we are seeing the House of Representatives, toward the waning days, pass a mammoth drug bill that deals with education, the death penalty, the exclusionary rule, education and rehabilitation, and military participation. Why? The same reason that some of us in this body, for several years, have been trying to get the past administration, more than 6 years ago, and this administration to zero in on the problem.

The problem is that we have an epidemic. We have an enemy. We talk about a war. I love to use that term, because it sounds tough; it makes good talk, good speeches. The President and the Attorney General are eloquent in using "the war on drugs."

We have, in fact, a war on drugs in this country. The best example was demonstrated to me when I was with the Senator from California in Los Angeles at hearings on what needed to be done to stem the flow of narcotics from Mexico.

The chief of police, Mr. Gates, who has been there about 20 years—I used to work with his office when I was a prosecuting attorney in southern Arizona—said there has never been a war on drugs, and he is right. He said that if you have a war, you mobilize your military assets and your civilians. You get the morale and the feeling behind the people of the country that you have to achieve. You have to conquer and control and win something. You go after that objective.

Unfortunately, too many of us have talked a big line, and yet we never really declared war or mobilized the troops.

We have before us today the bipartisan omnibus drug bill, which is a beginning. Let us not kid the public and let us not kid ourselves that this is a war. This is not an invasion. This is the beginning of putting some of the blocks together that could do something about this problem.

One of the stumbling blocks we continually face—and I appreciate and respect those in the military as to what they consider their No. 1 mission, and that is to protect us from foreign enemies. But, indeed, even President Reagan about 2 months ago, if I am correct, said that the No. 1 national security issue was drugs. He was right in that statement. It has been that way for years. Yet, we have difficulty adopting amendments on this floor allocating some resources from the Defense Department, often surplus equipment, without replacing it with new money.

How many airplanes and helicopters do we need all the time on alert to defend our shores from foreign enemies? We need a lot of them. Nobody here is suggesting that we dissipate or reduce our capabilities so far as defending ourselves is concerned.

What many of us have asked and tried to do over several years is to move some of these assets, to make available to the law enforcement agencies in the States as well as the Federal agencies some of these military assets. This bill starts that process.

The total funding authorized in title 3, which is the interdiction, is $678 million—at least a beginning. The Department of Defense gets $362 million. The Coast Guard would acquire $153 million. For Customs, the front-line civilian law enforcement agency to stop drugs coming into this country, $115 million. The command control and communication and intelligence gathering, something that our law-enforcement agencies have lacked always, is $25 million.

The country of the Bahamas has been willing to work in a most coordinated way with the United States, permitting hot pursuit into that country by our law-enforcement airplanes when they have somebody tracked. They have worked with us to lift up above their skies radar that can see 360 degrees. They need more assistance, and there is $15 million in this legislation for that.

The DEA will receive $7 million, and they dearly need it.

In the Defense Agency for interdiction, we have $138 million to refurbish and upgrade four existing E-2-C Hawkeye surveillance aircraft. That is for 360-degree radar. It is a magnificent piece of equipment and it is time we used some of this magnificent equipment to stop the flow of drugs into this country. There is $49.5 million for procurement by the Air Force of three radar systems to be used by Customs where they feel it is necessary.

There is $12,650,000 to allow the Air Force to transfer six helicopters to Customs for interdiction purposes. There is $12 million for increased intelligence gathering by the Department of Defense. There is $45 million for the retrofitting of two 360-degree radar systems on existing Coast Guard airplanes, mainly the C-31 aircraft.

And the list goes on.

□ 1200

So it is a good thing in the Coast Guard area. In the Coast Guard area we have $20 million for voice privacy.

It is hard to believe, but today our law enforcement officials cannot talk between each other without being

intercepted by many people, including drug dealers.

There is $25 million for additional law enforcement personnel in the Coast Guard staffing. There is $38 million for purchase of two new C-130's and $70 million for purchase of eight additional 110-foot cutters for the Southeastern part of the United States.

And Customs, rightfully so, gets 320 new additional interdiction personnel.

We have to realize what we have done in this country. We barely maintained the dike in the Customs area.

The budgets over the last 2 years have cut Customs severely. The 1986 budget that we are in now had we adopted the budget that was sent here by the President would have been cut by 2,200 personnel in Customs. Congress took the lead and we restored those cuts. In 1985 1,600 were requested to be cut. Congress responded, took it upon themselves and restored those positions. Now we are talking about adding a few more so we can continue this battle. I use "battle" not war as I outlined in the beginning.

Later in the debate here, Mr. President, because I know others are anxious to speak in this opening statement period, I may offer some amendments to add additional military personnal, and I am working with some of the Members here. It is not my intent to disrupt a bipartisan effort. My amendments will not be of such a nature that I believe will cause anybody to have caniptions that we are dealing in constitutional problems here. But it will insist that the military get heavily involved.

Title III of this bipartisan drug bill also has several critical changes in the the law that close existing loopholes in the law that allow certain types of trafficking activities to take place uninterrupted. Specifically, the bill contains the Customs Enforcement Act of 1986.

Mr. President, I ask unanimous consent that a summary of that be printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUBTITLE B. CUSTOMS ENFORCEMENT ACT OF 1986

This section:

Clarifies some of the definitions in the Tariff Act.

Increases vessel arrival reporting requirements and provides substantial criminal and civil penalties for violating the arrival reporting requirements.

Clarifies existng law to require that persons arriving in the U.S. as pedestrians immediately report their arrival to the U.S. Customs Service.

Establishes forfeiture and fines as the penalties for failure to declare items which are imported and increases the penalties for filing false manifests and for unlawfully unloading merchandise,

Makes it unlawful to possess merchandise knowing or intending that it be unlawfully introduced into the U.S. or to transfer merchandise between an aircraft and a vessel on the high seas if the plane or boat is of U.S. nationality or if the circumstances indicate that the purpose is to introduce the merchandise into the U.S. in violation of U.S. law. Violators are subject to civil and criminal penalties and civil forfeiture.

Streamlines the procedure for forfeiture of conveyances for payment of penalties. It also provides for the forfeiture of conveyances used to transport controlled substances, but provides for the return of the conveyance if it is determined that neither the owner nor the operator of the conveyance knew nor should have known about the presence of the contraband.

Expands the Customs civil search and seizure warrant to cover any article subject to seizure, such as conveyances and monetary instruments, rather that just imported merchandise.

Amends the Tariff Act to treat amounts tendered in lieu of merchandise subject to forfeiture in the same manner as the proceeds of sale, so that they may be deposited in the Forefeiture Fund, and to allow agency expenditures to be paid before liens.

Allows Secretary of the Treasury to exercise some discretion in determining the amount of rewards for informants.

Permits the Secretary of the Treasury to require landing certificates to comply with international obligations, such as bilateral or multilateral agreements to reduce or prevent smuggling.

Clarifies the Secretary's authority to exchange information with foreign customs and law enforcement agents.

Grants the Secretary authority to operate customs facilities in foreign countries and to extend U.S. Customs laws to foreign locations (with the consent of the country concerned).

Authorizes the Secretary to utilize commercial "cover" corporations and bank accounts and to lease property and pay for services without complying with the normal requirements which would reveal government involvement when such activities are needed in authorized investigative operations. It also makes clear that the usual laws governing banking deposits and space rentals do not apply in such undercover operations.

Establishes that, while documented yachts do not have to make formal entry, they must report their arrival to Customs and declare any goods on board.

Eliminates restrictions on the ability of Customs officers to enlist the aid of other law enforcement officers or civilians in apprehending violators, raises the penalties for failure to render assistance, and provides protection for civilians who render such aid.

Raises the amount which must be reported by a person who exports or imports monetary instruments to $10,000.

Makes it unlawful for a U.S. citizen or a person aboard a U.S. aircraft to possess controlled substances with an intent to manufacture or distribute or for any person aboard an aircraft to possess with an intent to manufacture or distribute a controlled substance knowing or intending that it be unlawfully introduced into the U.S.

Provides criminal penalties for wilfully operating aircraft at night without lights in conjunction with drug trafficking and for the wilfull use and/or installation of unlawful fuel systems in aircraft. It also subjects unlawful fuel systems and the aircraft in which they are installed to seizure and civil forfeiture.

SUBTITLE C. MARITIME DRUG LAW ENFORCEMENT PROSECUTION ACT OF 1986

This section resolves prosecutorial problems which arise during criminal trials as a result of the execution of existing authority, which allows the Coast Guard to stop and board certain vessels at sea and make arrests and seizures for violations of U.S. laws.

In addition, this section creates a new offense to make it unlawful under U.S. law to possess with intent to distribute a controlled substance aboard a vessel located within the territorial sea of another country where that country affirmatively consents to enforcement action by the U.S.

SUBTITLE D. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES

This section requires the National Drug Enforcement Policy Board to report to Congress on the manner and extent to which the Department of Defense should be involved in drug law enforcement activities.

It also mandates a joint National Drug Enforcement Policy Board/Department of Education report to Congress on drug education efforts in schools operated by the Department of Defense.

SUBTITLE E. DRIVING WHILE IMPAIRED BY DRUG INTOXICATION AS AN UNDER THE UNIFORM CODE OF MILITARY JUSTICE

This section makes it an offense under the U.S. Code of Military Justice to drive while under the influence of drugs.

SUBTITLE F. DRUG INTERDICTION ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS

This section permits the Department of Defense to loan personnel to civilian law enforcement agencies to operate and maintain equipment used by those agencies to assist foreign governments in drug interdiction activities.

SUBTITLE G. AIR SAFETY

This section establishes a Federal violation for the use of an unregistered aircraft in conjunction with transporting controlled substances and provides for the seizure of such aircraft. It also allows States to impose criminal penalties for the use or attempted use of forged or altered aircraft registrations.

SUBTITLE H. COMMUNICATIONS

This section would authorize the Federal Communications Commission to revoke the licenses of individuals who use their licenses for drug-related activities and to seize communications equipment used in such activities.

SUBTITLE I. DRUG LAW ENFORCEMENT COOPERATION STUDY

The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations. The Board shall report to Congress within 180 days of enactment of this section on its findings and conclusions.

SUBTITLE J. EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL

The first subsection, by slightly amending existing statutes, provides for limited use of the military in drug interdiction. Current law allows the use of military personnel and equipment outside of the land area of the U.S. to enforce the Controlled Substances Act or to transport civilian law enforcement officers seeking to enforce the Controlled Substances Act upon the declaration of an

"emergency circumstance" by the Attorney General and the Secretary of Defense. The bill clarifies the term "emergency circumstance" by declaring that an emergency circumstance exists when: (1) the size and scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and (2) enforcement of the law would be seriously impaired if assistance were not provided. It also mandates that the Secretary of State shall be consulted prior the declaration of an emergency circumstance.

The second subsection allows military personnel to intercept vessels and aircraft for the purpose of identifying, monitoring, and communicating the location and movement of the vessel or aircraft until such time as Federal, State, and local law enforcement officials can assume responsibility. Current law provides that the military may not be used to interdict or to interrupt the passage of vessels or aircraft.

Mr. DECONCINI. Mr. President, the bill also contains the Maritime Drug Law Enforcement Prosecution Act of 1986; the air safety provisions that address controlled substances being flown into the United States on unregistered aircraft and other problems relating thereto; tough penalties against those with FCC licenses who use their licenses for drug-related purposes; and several studies that call for anlaysis of expanded use of the military in the drug "war" and coordination of Federal antidrug efforts.

The bill also clarifies existing law with regard to the direct involvement of the military in drug-interdiction activities and operations.

Frankly, Mr. President, it does not go far enough. The Senator from Delaware, the Senator from Florida, and the Senator from New York for a long time have been talking about a national drug coordinator, and this country needs it. It has not worked under the Attorney General. That is no fault of his particularly, but it has not worked.

Finally, Mr. President, let me say this is a good bill. It is the beginning. It could have gone a lot further, of course. It could have brought in the military further, of course, and maybe it will. It could have done greater penalties for traffickers, of course, and maybe that will be offered too.

We could have bent the rules on the Posse Comitatus Act but we do not do that.

We are going to offer amendments I believe to involve the military in a responsible way even more, and, yes, I would probably support some adjustments in many of these areas if they are offered.

But, on balance, this is a bill that should have broad bipartisan support. It is a move in the right direction, but let us not kid ourselves. This is not going to end the flow of drugs into this country. It has to be a three-pronged effort with education, rehabilitation, going to the source countries that develop these drugs and transhipment toward this country and other user countries and, of course, interdiction to stop it at our borders. I am proud to be a cosponsor of this bill.

I yield the floor.

The PRESIDING OFFICER (Mr. HEINZ). Who seeks recognition?

The Senator from New York.

Mr. D'AMATO. Mr. President, I rise today in support of S. 2878, the bipartisan Senate drug bill, of which I am a cosponsor. This is a strong and comprehensive antidrug package that wisely recognizes the need to reduce both the supply of, and the demand for, drugs.

Mr. President, we have heard some express the concern that there is a rush to legislate. I wish to emphasize how many of the provisions of this bill have either passed the Senate or have been subject of extensive hearings.

I am pleased that many of the legislative initiatives that are in this bill are included because the Senator from Florida, Senator HAWKINS, the Senator from Arizona, Senator DECONCINI, Senator CHILES, many others and I have worked on them for several years.

We have passed, for example, the money laundering bill unanimously in this body. We acted on that bill to give us the ability to go after the major money sources and combat the money laundering that passes from $20 billion to $40 billion a year through financial institutions, and to make money laundering a crime for the first time.

There are other areas that we could talk about that have passed before:

Increased military support for drug interdiction, as approved by the Senate unanimously last August as part of the Defense Department reauthorization bill; and

The requirement that the Department of Defense help locate facilities that are suitable for additional prison space, also included in the Defense reauthorization bill.

There is a mandatory prison term for crack and other dealers.

Mr. President, let me say I will be supporting amendments that some might think are controversial, but that are long overdue. We have had no war on drugs. We have had a lot of rhetoric. The people are tired of the so-called war that is declared from time to time whenever we hit a crisis period, but that results in little action.

I will be supporting an amendment similar to the one passed in the House of Representatives that calls for the death penalty for drug kingpins.

I intend to support an amendment as provided for in the House bill mandating that the military participate in our battle against the scourge and epidemic of drugs.

The American people are complaining, but what they are complaining about is not a rush to legislation, but about the rhetoric without action.

Several of my colleagues have indicated that we must mobilize our resources. They are absolutely correct. I will support the effort to allocate additional resources, so that we can really undertake this battle without just shifting funds from other necessary programs to this program.

It is also time that we established meaningful education programs. It is a national disgrace to see how many of our schools have failed to provide an effective drug and alcohol education programs. It is a tragedy to have a situation where those who wish to break the dependencies of drug addiction have no rehabilitation facilities to turn to.

So it is a comprehensive effort that is long overdue. We simply cannot afford to throw up our hands and say that the drug and alcohol culture is here to stay and we cannot do anything about it. There are those who would have us surrender.

I agree with Senator DECONCINI when he said, make no mistake about it, we are not going to be instantaneously successful, no matter how comprehensive the legislative we pass might be. But it is a necessary beginning. So I intend to support this bill and support those amendments that I believe will make it an even better bill.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, more than 200 years ago, a very great American took a good look at our people, and told them a painful truth.

He said American people were "more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed."

Those words, Mr. President, were Thomas Jefferson's. And he put them in the Declaration of Independence.

They were true then. They have certainly been true in recent years. We have suffered the evils of drugs, and we have done so for a long time. But finally—throughout the Nation—we have decided once again to abolish those forms to which we have become accustomed.

As the Senate takes up this drug bill today, we are reviving the spirit of our founding declaration.

We have put up with drugs long enough. We are determined to break the drug connection.

But even with all our determination, let us be clear from the very onset about the scope of our effort.

Some people will say we cannot win the drug war by throwing money at it, and, I agree.

We cannot win the war with larger police forces, though they will surely help.

We cannot win the war with interdiction in the host countries alone, even though we have got to press foreign governments to clamp down on the drug traffic.

The fact is, you can list all the things governments can do from the local, to the State to the Federal level, and you come up with the same reality: we cannot win this war by formulas, rhetoric or decree.

But there is an ultimate weapon that can win the war on drugs when matched with all the things I have mentioned.

The ultimate weapon is a double-barreled attack of public outrage and community involvement.

We have this bill on the floor today because as a nation of hometowns, neighborhoods and families we have stood up and said, "enough. No more poison."

To the dealers who peddle illicit chemistry to people of any age, we have said, "our streets will not become toxic waste dumps of the drug trade."

□ 1210

We will not allow you to shanghai our schoolchildren into the deadly slavery of drug users.

The measures we propose today are not the sole result of what the President says, or what the Congress thinks, although, as institutions, both feel the same disgust over drugs.

This bill reflects the collective resentment of Miami, FL; of Dover, DE; New York City; Aberdeen, SD; and Arizona.

People in every State, all our countries, each school, civic club, church and subdivision understand they could be the next ground zero for a drug assault.

In the past few years, we have discovered the terror of designer drugs that can be made at home in the basement. These drugs—thousands of times more potent than heroin—produce horrible symtoms and even death. These drugs like fentanyl are addressed in the bill.

The whole Nation now knows about crack cocaine. They know it can be brought for the price of a cassette tape, and make people into slaves. It can turn promising young people into robbers and thieves, stealing anything they can to get the money to feed their habit.

When you see things like that, it troubles me to hear some people say the war on drugs is an election-year phenomenon. I have heard it said politicians just want to be heard in opposition to drugs.

Well, Mr. President, what the politicians are hearing are the same things Time magazine and Newsweek have heard. It is the same thing Nightline, NBC and CBS have heard. It is the same thing teachers, preachers, and police have heard in Pensacola, Orlando, Jacksonville, Wildwood, and communities throughout my State.

And what they are hearing is that people are fed up with drugs. So, Mr. President, Let us remember that drugs have no respect for party lines, State lines, or economic differences, or races. It does not matter whether you were born rich, raised poor, work in a factory or sit behind a desk. The drug threat pervades any category you can invent.

This Nation is angry. It is sick of the pushers, dealers and hoods who have made their living off the lives of our young.

What people want is nothing less than a national drug bust. And they are ready and willing to do it one community and one person at a time.

And this the time.

The bill before the Senate is tough. But it is not the keystone of the solution to drugs. The keystone is public indignation. The public is telling Congress they want drugs off the street, and they want us to help.

This will help our law enforcement officials by strengthening criminal penalties for drugs like crack cocaine. This is an absolutely essential first first step. Current law makes it very difficult to arrest and convict crack dealers and traffickers. The stiffest penalties for possession of cocaine, for instance, apply for possession of 1 kilo of cocaine. A kilo is enough to produce as much as 25,000 rocks, or doses, of crack. The kilo limit imposes no difficulties on the traffickers and dealers. Police also have difficulty arresting the operators of crack houses, the places where users congregate to purchase and use crack. When police raid these crack houses, the dealers and users can easily dispose of the drugs, thus avoiding arrest. This bill makes it a felony to operate such a house, to be present at the house.

This legislation will provide enhanced penalties for drug offenses. It will decrease the amount necessary for the stiffest penalties to apply. Those who possess 5 or more grams or cocaine freebase will be treated as serious offenders. Those apprehended with 50 or more grams of cocaine freebase will be treated as major offenders. Such treatment is absolutely essential because of the especially lethal characteristics of this form of cocaine. Five grams can produce 100 hits of crack. Those who possess such an amount should have the book thrown at them. The damage 100 hits can inflict upon users more than warrants this treatment.

The legislation will also create an offense for employing, hiring, or using children to distribute drugs. It increases fines and includes minimum mandatory penalties for all serious drug offenses. These bills will help police put behind bars the dealers and traffickers in drugs. Those who lead our young down the path to addiction will have to think twice about their actions or pay the price.

The measure also recognizes the importance of education in efforts to stop the abuse of dangerous drugs. The bill proposes a Federal program of assistance for States and local education agencies to train teachers and develop curriculum. Support is provided for regional centers to train school teams—principals, teachers, counselors—in prevention strategies.

Other provisions provide for essential assistance to treatment and rehabilitation facilities. This would include funding for a model program which is specifically targeted to at-risk youths. These youths—latchkey children, dropouts, pregnant teens, abused and neglected children—are most susceptible to the allure of drugs.

Students will be faced with the temptations of crack and other drugs during their school years. It is essential that we provide them with the knowledge and the support systems which will allow them to resist these temptations.

Other provisions focus upon interdiction, attempting to increase our abilities to control international trafficking in narcotics. Our borders, quite frankly, are not secure, and if we are to win this drug war, we must attack the supply of illicit drugs as well as reduce their demand through education and rehabilitation programs.

Mr. President, title IV of the bill includes $678 million to be used primarily to improve the drug interdiction capabilities of our civilian law enforcement agencies. Included in that total is $362 million for the Department of Defense primarily for assets to be transferred to the Customs Service. Also included is $153 million for the Coast Guard; $116 million for the Customs Service; $25 million for communications, command, control and intelligence centers; $15 million for a joint United States-Bahamian task force and $7 million for the Department of Justice.

Mr. President, because an effort has been made in this legislation to provide funds for general purposes as opposed to providing in specific detail what they would be used for, I believe it is important for us to have some legislative history to back up the numbers, particularly in terms of the kinds of assets, we believe, should be procured with the funding provided.

For the Department of Defense, the bill includes $212 million of funding that was previously passed by the Senate and included in the defense authorization bill. This funding includes $138 million to refurbish four E2CS for the use by the Customs Service on the Southwest border; $49.5 million for three land-based aerostats: $12.6 million for the transfer of six air force

helicopters to Davis Monthan Air Force Base; and $12 million for the Department of Defense intelligence collection activities. With the exception of $12 million included for the improvements of DOD intelligence collection activities, the funds procure equipment to be used by the Customs Service. An additional $60 million of the Department of Defense funds are authorized for the use by the Coast Guard; $45 million of this is for the retrofitting of two existing Coast Guard long-range surveillance aircraft with 360-degree radars and $15 million to fund 500 active duty Coast Guard personnel to be deployed on Navy platforms. An additional $90 million is included for DOD funding for the procurement of twin-engine pursuit helicopters and four aerostat radar systems to be located at the highest drug threat sites, the actual sites are to be agreed to by the Commissioner of Customs and the Commandant of the Coast Guard.

Appropriated to the Coast Guard is an additional $114 million for the acquisition, construction and improvement account; $20 million of this is for secure communications; $38 million is intended for the procurement of two C-130 aircraft; and $56 million is included for the procurement of eight new 110-foot patrol boats. In the operations account, $25 million is included to permit an increase in Coast Guard personnel by 584 positions and $14 million is included for the operation of the eight new 110-foot patrol boats.

Mr. President, title IV of the legislation establishes a joint United States-Bahamian task force with a total of $15 million in funding; $5 million of this is for the initial cost of a joint Coast Guard-Bahamian docking facility which is projected to cost a total of $20 million when completed.

For the Customs Service, we provided funding for both equipment and additional personnel. For equipment, we have included $21 million for voice privacy and electronic equipment; $2.6 million for marine interdiction intercepter vessels; $50 million for 10 intercepter and high endurance tracker aircraft; $41.3 million is provided for additional personnel and training expenses.

Finally, Mr. President, $7 million is provided for the Department of Justice for a twin-engine helicopter equipped with appropriate radar devices for drug interdiction activities in Hawaii.

Title IV also includes several new authorizations:

It expands and clarifies the authority of the Coast Guard to stop and board certain vessels at sea and to make arrests and seizures for violations of U.S. laws;

It expands Customs Service enforcement powers over vessels and aircraft and increases criminal and civil penalties for violations of U.S. law.

It slightly expands the Department of Defense's authority to intercept vessels or aircraft for the purpose of identifying, monitoring and communicating the location and movement of such vessels or aircraft until such times as nonmilitary law enforcement personnel can assume responsibility.

Mr. President, if we are to successfully battle crack and the drug problem in this country, all of these measures must be passed. We must attack the drug war on all fronts—or risk losing. I can think of no other legislation which should merit the universal approval of all of us here in the Congress. Too many people are painfully affected by drugs in this country for us not to take action. I urge my colleagues to give this bill immediate and serious attention. It certainly will prevent crime, and it certainly will save lives.

□ 1220

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I am going to be fairly short in my comments on this amendment because there really is not much that needs to be said.

In my years in the Senate, I have seen and heard a lot of things that made no sense. But I have to say that in all those years, I have never seen anything that makes less sense or that is more shortsighted than an amendment that was placed in the House on this bill, and which I hope does not appear on the Senate floor.

Mr. President, for more than 200 years, the United States has prided itself on the fact that our uniformed military have remained subservient to civilian governmental control, contrary to the case of many of the governments which have appeared and then disappeared during that time right here in our own hemisphere. No small measure of that 200 years of tradition has been the conscious and intentional efforts to avoid and even prohibit the direct involvement of uniformed military personnel in the enforcement of civilian laws—or stated more blunty—the imposition of martial law.

Following the Civil War, when some of the Nation's leaders lost sight of this American heritage in their, perhaps understandable, attempts to ensure that civil war would not reignite, martial law was imposed in the South. In order to return the country to its long and successful tradition of separation of military and civil functions, the Congress enacted a statute, commonly known as Posse Comitatus, which prohibits use of the Armed Forces to enforce civilian laws.

Mr. President, for more than 100 years, during two World Wars and many other armed conflicts when the dominance of military power was essential for the survival of our way of life, there has been no need to amend that statute, because the concept embodied in that statute is the essential American ideal that the Armed Forces are maintained to prevent foreign aggressors from imposing their system of government upon us, and not to impose upon our own people the domestic laws of this Nation. We have civilian forces, known as police, to enforce our domestic laws.

Mr. President, I urge my colleagues not to blunder into a shortsighted but long-term change in the essential balance of power that has served this country well for 200 years.

The young men and women who are volunteering to serve in our Armed Forces do not volunteer to be policemen. Their fathers and mothers do not encourage them to join the Armed Forces to become narcotics agents. The Armed Forces have not, and should not be, trained and equipped to be customs agents. Ground troops have not studied how to pick out the drug smuggler coming across a border hidden among a group of law-abiding American citizens. Combat personnel have not been trained to conduct searches of people and belongings in accordance with constitutional safeguards because, in a war zone, those safeguards do not exist on foreign soil.

To seal a border from drugs means every person and thing crossing that border, be it the Mexican border, the Canadian border, by land, by water, and by air must be stopped, searched, and, if necessary, detained. I ask if all passengers, including American citizens arriving at international airports in the United States, such as Dulles Airport right out here in Virginia, should be subjected to military searches and questioning.

That is what would need to be done if the military is to be deployed to seal the borders from drugs.

I personally do not believe that Americans should be subjected to that treatment, and I do not believe military personnel should be required to subject American citizens to that treatment. Yet, that is what would be required by the amendment before the Senate.

Mr. President, in closing, let me say I do not question the motives of the sponsors of this amendment. These Senators have long been leaders in this war against drugs. But, in this case, I believe that this effort is misguided and dangerous and could constitute not only a threat to our ability to maintain a strong defense against our foreign enemies, but could also present a clear danger to our own tra-

ditional separation of civilian and military functions.

Mr. President, in closing, I am right now in the middle of trying to get sufficient funds to keep our Armed Forces armed. Our Armed Forces face a cut of $30 billion this year, and yet it is being suggested that our Armed Forces patrol the border. I happen to live on a portion of the border we are talking about. It is 1,384 miles long. I can tell you it would take almost half of the Armed Forces of the United States just to patrol that very desolate section of our border. If we go through with these cuts on the military, we are not going to have enough soldiers left around here to patrol anything.

Mr. President, I thank the Chair for listening. I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Chair.

Mr. President, the legislation before us is the result of many hours and months—in some cases, years—of effort on the part of a number of my distinguished colleagues. On my side of the aisle, our distinguished minority leader, and Senator CHILES, and Senator BIDEN deserve special praise for their leadership and hard work. Through my particular focus on education, treatment, and rehabilitation, I am especially appreciative of Senator HATCH's help in arriving at this important point, and of the majority leader's willingness to take up the drug package in these last days of the Congress.

I know it seems to some that we are moving too fast and frenetically to pass drug legislation. But we should recognize that far too much time has gone by in which little has been done to respond to the rise in drug abuse and far too many good ideas have languished without any attention given to them from Congress or the White House. Clearly, public pressure was needed to convince national leaders—including the President—to act on the drug problem.

Since this has now happened, and since we know there is an extraordinary drug problem out there, then I think we must act now. We must not pass up an extraordinary opportunity in these last days of Congress to enact a sound, comprehensive, and most importantly, bipartisan bill to help rid our country of drugs.

I believe that we should take advantage of the fact that the drug crisis is a top priority of the American people. This should make it our top priority as well. It is not just a matter of human misery, human waste, substantial community danger, but it gets, in fact, at some point, to the very competitiveness of our American industries to compete across the world because of drug use on the part of some of the work force and management.

I agree, however, with some of my colleagues that there are some questions that deserve more time and more consideration. It would be, in my judgment, Mr. President, unwise and unnecessary to adopt, with little thought, major changes in our judicial system. The bill before us now consists of very tough measures to stop drug traffickers, to punish them and others involved in the drug business, and to push ahead in eradicating drug crops in other countries.

By passing this legislation, we will wage the battle against drugs on all fronts: interdiction, eradication, law enforcement, education, and treatment. Let us not be trapped into accepting proposals affecting our Constitution and our civil liberties which could in fact derail this inportant legislation or perhaps in fact will derail this important legislation if we allow them to get in our way.

The American people have made it very clear that they want Federal help, Mr. President, in educating our children so that they stay away from drugs. We not only know that the public views drugs as one of the most important problems in the country, but also that they think education must receive far more attention in our efforts to curb drug abuse.

Some of my colleagues have told me that their experiences are the same as mine when I go back home to West Virginia. People tell me that their schools and their communities need encouragement, help, and money in steering their kids away from drugs. It is not just parents and teachers that tell us that. It is the chiefs of police, and the law-enforcement officers that tell us the same thing.

As a member of the Senate Democratic Task Force on Drugs, Mr. President, I have focused on drug education. The bill that I presented some time before, the Student Drug Abuse and Prevention Act, was incorporated in two different legislative packages introduced by that task force in previous weeks.

I am very pleased that the thrust and the substance of my bill have been included in the bipartisan legislation before us today. With the strong bipartisan support which exists for this legislation, we are finally at the point when a national drug education program will be put in place by the Department of Education, and schools throughout this country will receive resources to tackle drugs more effectively than they are now.

A key part of this bill—that is, the Drug-Free Schools and Communities Act—proposes a major nationwide initiative to prevent and curb student drug abuse.

□ 1230

We know all too well the trend of drug abuse among our young people is a disaster. Surveys conducted by the National Institutes of Drug Abuse have determined disturbing levels of cocaine abuse among high school seniors. Last year almost 7 percent of seniors used cocaine regularly and 17 percent tried it. Sixty-one percent, that is roughly 2 million adolescents, tried illegal drugs at least once last year. About the only area, Mr. President, where we see a decline is in the age of young Americans tempted to or trying to use drugs. About 50 percent of seventh graders surveyed recently reported that they had experienced pressure to try illegal drugs, marijuana specifically.

It is time to defend our children and to convince them to emphatically say no to drugs.

The Federal Government must assume responsibility for combating the nationwide problem of the student drug abuse and provide some guidance and some financial support to States and our schools in order to get the job done.

In this legislation, Mr. President, we propose a national drug education program. We provide $20 million to the Department of Education to develop model curricula and to assist schools directly with training and advice. And we distribute $80 million to the States with most of that money allocated directly to elementary and secondary schools.

We do not know at this point, Mr. President, which are the best programs, which are the best programs for the inner cities, for rural areas, for my part of the country, Appalachia, and before we implement a program in totality, we have to know what we are doing and what programs are most effective. Then we can move on with more specificity and more accuracy.

This all should provide the resources and the practical help the schools and communities need right now to persuade kids to stay away from drugs. We see programs which will create partnerships between schools and other key parts of the community, especially, Mr. President, parents; especially, Mr. President, law enforcement officials and health officials, to educate children about the dangers of drugs and to equip them with motivations and the skills to reject or get off drugs.

The funds proposed in this bill should create model approaches for schools of all types, for urban schools, rural schools, different kinds of schools in different parts of the country to adopt, to fit their own student body and drug problems.

Over time, Mr. President, we want this bill to serve every single child in the Nation by helping their schools

and parents to create an atmosphere of intollerance for drugs and convincing them to ignore peer pressure, to turn down every temptation to take illegal drugs.

Mr. President, there will be opportunities later in this day and on tomorrow to discuss this legislation in more detail. The bill is comprehensive. It covers many critical areas and proposes steps that I believe will make a significant difference in combating our epidemic of drugs.

This is an important time in history, finally, as we have the momentum and the interest to truly deal with our country's drug problem.

Mr. President, I urge my colleagues to lend their full support to this legislative package.

I yield the floor.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, my friend from Arizona, Senator DECONCINI, recently on the floor described this legislation as a good beginning. I think he is right.

It may seem to some that legislation as comprehensive as this deserves somewhat more glowing praise. Perhaps because Senator DECONCINI, along with Senator HAWKINS, has been a pioneer and a rather lonely one, he can be excused for some skepticism. He has heard about the war on drugs for years. But it has been a rather lonely fight for the Senator from Florida, the Senator from Arizona, and a few others on this floor. With the exception of them, there has been blame aplenty to go around and there is no point in wasting time pointing fingers. It is simply a sad fact that we are late in coming to grips with this problem. I celebrate the fact that it has now achieved, in the hard way, the kind of attention that it must have not just from a few attempting gallantly with inadequate resources to arouse the Nation to the kind of awareness to do the job properly.

But I agree that it is a good beginning. In fact, it is more than that. It is a very good beginning. It does a number of good things.

This war on drugs, to be worthy of that name, requires that there be resources, and the resources heretofore have been inadequate. We as a society have simply not provided what was necessary. it is a very expensive thing to conduct any kind of a war, including this one. We are, unfortunately, trying to match the resources of those whose illegal profits, literally running into the millions, have permitted them to equip and to staff their war to bring drugs to the United States and to our young in what has been to this time an unfair fight.

They have been able to use very sophisticated aircraft, sophisticated avionics, and radar-equipped aircraft. It has been more than difficult—it has been in many cases virtually impossible—for those who have been attempting to man our borders to deal with the challenge of intercepting and turning back, not to say arresting, those engaged in the smuggling of these illegal substances into this country.

This legislation will assist those who are engaged in that struggle. It will do so by removing caps that have existed on forfeiture funds, funds generated from assets seized in drug-related prosecutions, and it will remove that money from the budget allocations process.

It also permits asset forfeitures to provide for the forfeiture of a convicted person's substitute assets when the proceeds from the specific crime are not reachable by the court.

It is necessary, Mr. President, as well as altogether fitting, that there is a certain poetic justice to using the ill-gotten gain of those traffickers in order to combat their illegal traffic.

In addition, it is necessary because of the kind of comments that you have heard today from both Senators from Arizona. Senator DECONCINI has been a pioneer in the effort to try to use some small portion of defense assets, those whose primary mission is the security of the United States, to deal with this menace to our health and to our security.

This is not the first effort that he has made. Indeed, he, Senator HAWKINS, Senator D'AMATO, and others, and I have been involved in an effort to bring some modest portion of our defense assets into the fight against the smuggling of these dangerous and enormously profitable drugs into the United States.

I will not repeat what he said. It is an unfortunate necessity, one that causes the senior Senator from Arizona grave concern, lest we undermine the good health of the Nation's military in diverting assets from the primary mission which the armed services have, the defense of the United States.

But it is true, the President has been correct in identifying the drug threat as the primary threat to our security. There is no greater, no more important, challenge that we face than to try to stem, to the extent that we possibly can, this illegal traffic into the country.

It goes under the name of interdiction.

□ 1240

There are a lot of ways that we can be involed in interdiction. One of those has to do with the efforts that are made by drug enforcement agents, the kind whose names have made the headlines in the past year in tragic ways because they have been the victims themselves of the violence that is so awesome, so often associated with this traffic.

What has been especially shocking, Mr. President, has been that in two cases, U.S. drug enforcement agents were abducted, tortured, and one of them murdered—not by those who are outside the law but, indeed, those who are law enforcement officials. It was only because of the timely arrival of three Drug Enforcement Administration agents demanding his release that we avoided seeing a complete repetition, in the case of Victor Cortez, of the torture-murder of his brother agent, Enrique Camarena, approximately a year earlier. Those agents who demanded his release did so at the headquarters of the Jalisco State police.

Mr. President, that is not the kind of conduct the United States can afford to ignore or to tolerate. And that is why, included in the section that has to do with restrictions on assistance to foreign nations it is required that when any member of an agency of the United States engaged in drug enforcement activities has suffered or been threatened with violence by members or agents of law enforcement agencies of a country or political subdivision of that country receiving U.S. assistance, it will be denied if there is insufficient investigation or cooperation and prosecution of those identified as guilty of those crimes.

Mr. President, we can ask nothing less if we are going to ask young men and women to enter the Drug Enforcement Administration and serve in foreign lands in an effort to interdict this supply of drugs before it reaches our own borders. At the very least, they should be guaranteed that they will be safe from the law enforcement officials of those nations.

In addition, the same section requires that the President must, on a regular basis, report to Congress, listing in his report any nation which, as a matter of governmental policy, encourages or facilitates the production or distribution of illegal drugs or in which any senior official of that government engages in or encourages the production or distribution of illegal drugs. It also requires that any nation which, having been requested by the U.S. Government to do so, then fails to provide reasonable cooperation to lawful activities of U.S. drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling, with permission to pursue such aerial smugglers for a reasonable distance within that country—then that nation is also a candidate and shall have its U.S. assistance cutoff.

Mr. President, this is not bashing. This is insisting on what it is our right and indeed our obligation to insist upon. That is, the kind of cooperation

in this war which is, in fact, an international war afflicting the youth of many nations.

To the extent that we are unsuccessful in interdicting the supply of drugs, we have to make the distribution and the sale of them as difficult as possible and one of the gaping holes in existing law is that, ironically, as local ordinances have succeeded in shutting down "head shops"—that is, those stores in which drug paraphernalia is sold—it has remained possible for those who wish to maintain their profit in the sale of these items to do so by shipping their products interstate, even using the mails to do so. This legislation contains as one of its important points the fact that it was very closely adapted to the model act adopted by the Drug Enforcement Administration, a mail order drug paraphernalia control act, which will outlaw the sale and shipment of drug paraphernalia, those items which will enhance or aid in the use of dangerous controlled substances.

This legislation will prohibit the mail order and catalog sales of drug paraphernalia, which have grown dramatically as a result of these successful local government crackdowns on "head shops" and other entities selling drug paraphernalia. Catalogs and other publications now promote drug use. One such publication has circulation of some 4 million people, most of whom are high school age or younger. They seek to make a great adventure of drug abuse. These publications glamorize drugs, glorify its use and pander to the drug fantasies of America's youth.

How successful have they been? Sales of drug paraphernalia have reached billions of dollars. By 1977, the drug paraphernalia industry had even started a trade organization and trade journal and published the first periodical devoted to drug paraphernalia. The drug culture is now expounded by several drug-oriented magazines which are the primary advertisers of drug paraphernalia. Again, readers of these magazines, these publications, are children.

Mr. President, I shall not take more time. I will say that this good beginning is late in coming. Those who have said that we need to take the action required to enact these provisions before we leave and close down the 99th session of Congress are absolutely right. There is no greater imperative. If late, let us not be a dollar short. Let use make clear the commitment, now that we have begun this war, to prosecute it to a vigorous and successful conclusion.

Mr. ABDNOR. Mr. President, I rise today in support of this bipartisan antidrug abuse package.

Mr. President, I am pleased to have had the opportunity to participate in the development of this package. As a member of the Education/Treatment Task Force, I believe we have reached agreement on a well-targeted, responsible approach to our Nation's education for prevention and treatment and rehabilitation needs. The Demand Reduction Act includes the establishment of an education for prevention block grant—the Drug-Free Schools and Communities Act of 1986—which provides $150 million for drug and alcohol abuse education efforts. Of that amount, the Secretary of Education retains $20 million of which $10 million is to be used for regional training centers, $2 million is set-aside for Indian tribes, and $8 million is for national programs.

The other $130 million is to be utilized for school and community-based programs, with a minimum of $80 million allocated to State and local educational agencies—$10 million to SEA's and $70 million to LEA's—both public and private. Senator HATCH feels strongly—and I agree—that we need to emphasize the importance of community and parental involvement in education for prevention efforts. Thus, we have agreed to provide $50 million of the $130 million in State grants for community-based programs. We do, however, give State Governors the flexibility to provide a greater share of this State grant money to schools. I am especially pleased to note that each State is guaranteed a minimum grant equal to one-half of 1 percent of the total available for State grant, $650,000.

The Demand Reduction Act also includes the Alcohol and Drug Abuse Amendments of 1986, reauthorizing the Alcohol, Drug Abuse and Mental Health Service Block Grant at $675 million—$125 million more than is provided in the Senate-passed fiscal year 1987 Labor-HHS, Education and Related Agencies Appropriations measure. Of these funds, $125 million is earmarked for State alcohol and drug abuse treatment programs to be allocated on the basis of population and need. Additionally, this title eliminates the current 20 percent set-aside for prevention efforts under the block grant, while ensuring that 80 percent of the funds be used for alcohol and drug treatment and rehabilitation.

Also, the existing block grant set-asides of 35 percent for alcohol treatment and 35 percent for drug treatment and reduced to 25 percent each. This change in current law is intended to give States more flexibility in addressing their particular substance abuse treatment needs. In South Dakota, where the greater share of the problem is alcohol abuse as opposed to drug abuse, the existing set-aside for drug abuse treatment has presented a problem. Thus, I believe this provision is both necessary and appropriate.

Another vital component of this package is the Indian Juvenile Alcohol and Drug Abuse Prevention Act. Senator ANDREWS, the distinguished chairman of the Senate Select Committee on Indian Affairs, and I sponsored S. 1298, which was approved last year by the Senate. This title provides for a much-needed, comprehensive program to address the tragic problems associated with alcohol and drug abuse among Native American youth.

As a member of the Select Committee on Inidian Affairs, and a Senator representing nearly 50,000 Native Americans, I am acutely aware of the serious need for education for prevention and treatment programs targeted toward Indian youth. The incidence to teenage suicide, accidental death, and fetal alcohol syndrome are in greater evidence among Native Americans than any other segment of our population. Thus, inclusion of this title in the antidrug package is absolutely essential.

Mr. President, we have included in the Demand Reduction Act a sense of the Senate resolution urging the Motion Picture Association of America, MPAA, to add a drug-alcohol abuse component to its voluntary rating system. The motion picture industry currently rates its products in terms of sex and language content. The National Association of Secondary School Principals and the National PTA believe that adding a "D" to the rating for films which glamorize drug and alcohol use, will serve to assist parents in making decisions concerning what films are appropriate viewing material for their children.

Mr. President, we do not seek to limit freedom of expression through motion pictures. We simply ask the MPAA to work with us in combating the serous problem of youth substance abuse. My colleague from South Dakota, Senator PRESSLER, deserves our appreciation for his efforts to include this language in the antidrug package. I also wish to thank Ms. Janet Varejcka, the secondary principal of the Bennett County Schools in South Dakota, for bringing this matter to my attention. I certainly share her desire to ensure parents are advised of the content of films which may have an influence on their children and I am hopeful this message will be well-received by the motion picture industry.

Mr. President, all of us know that the battle against the terrible tragedy of drug abuse in this country is one that must be fought on several fronts. If there is any hope of success in this struggle then we must mobilize our resources and energies as part of a comprehensive and multi-faceted assault on drug smuggling and drug abuse. One of the necessary elements to any effective effort in the war on drugs

must be a well-financed and well-coordinated interdiction campaign.

As the chairman of the Appropriations Subcommittee on Treasury, Postal Service and General Government, I have had the responsibility of overseeing the many activities of the U.S. Customs Service, an agency whose primary mission is drug interdiction. I am privileged to work closely with Senator DECONCINI, wo serves as ranking minority member of the subcommittee—he is a true leader in the fight against drugs.

Drug interdiction is an enormously difficult task and I am pleased that in recent years our committee has been able to increase the effectiveness of the U.S. Customs Service by helping to add the resources, both in personnel and equipment, that it has needed to get the job done.

We have made significant progress in the recent past by helping to provide modern aircraft, vessels, communications equipment and funding for trained personnel for Customs. Our progress so far has allowed us to take many steps forward in our efforts to halt the flow of dangerous drugs into our country. However, today I believe we are poised to take the most effective step forward—a truly giant step—in our struggle against drug smuggling.

The American people are demanding with just cause that the steps now taken be without delay and to make the legislation we now consider a reality. In the area of drug interdiction, this legislation helps the dedicated law enforcement officers who are risking their lives on the front line by providing them with new resources, new laws, new and tougher penalties, which they can employ against the drug smugglers who would corrupt the very fabric of our society and poison the veins of our youth and those so unfortunate as to have become ensnared in their deadly web of drugs and death.

Mr. President, let me outline briefly for my colleagues the few but positive and meaningful provisions of this legislation which would improve the interdiction capabilities of our Federal law enforcement agencies.

We have increased the funding of the U.S. Customs Service to allow Customs to add several hundred trained and badly needed personnel at our major points of entry and in high threat areas along our borders. We have provided funding for a greatly expanded air interdiction program which in the case of the Southwest border will provide for an effective detection and apprehension capability. New assets in the form of tethered aerostat balloons combined with many AWACS-type aircraft, which will, for the first time, be made solely available to our interdiction agencies to catch drug smugglers. We have added funding for the procurement of improved communications equipment, particularly in the area of voice privacy radios that will help us forge a more effective communications link between Federal, State and local agencies working together in multiagency special operations against drug smugglers.

We have armed our Customs officers with new, legal authority in order that they can bring the full weight of these expanded enforcement powers to bear against drug traffickers. We have improved and added to the enforcement powers of the U.S. Customs Service in the following way: we have strengthened reporting requirements for those entering this country by land, sea and air. We have increased civil and criminal penalties for failing to comply with U.S. Customs reporting requirements. We have created new criminal provisions with which to attack those who facilitate the smuggling of drugs by air or by sea. We have expanded the authority of our Customs officers to deal with the flow of "Narco-dollars." We have closed the loopholes on vessel, vehicle and aircraft reporting.

All of this has been done through the cooperation and support of members on both sides of the aisle who are concerned about the grave threat narcotic smuggling poses to our society. No one effort will completely solve the problems we face in this area but this legislation goes that extra step and takes a truly giant step forward for all Americans.

Mr. President, many individuals have already been engaged in the battle against drugs. Were it not for their efforts, I doubt we would have the opportunity to consider this comprehensive new anti-drug package today. For the past 5 years, our First Lady, Nancy Reagn, has devoted her time and attention to convincing our youth to "Just Say No" to drugs. Our Nation owes Mrs. Reagan a debt of gratitude for her dedication to this effort. I look forward to her leadership and guidance as we all work together to escalate the war on drugs.

Another woman has demonstrated great leadership in fighting substance abuse since coming to the U.S. Senate: Senator PAULA HAWKINS has been building her militia against drugs for nearly 6 years. As the chairman of the Senate Labor and Human Resources Subcommittee on Children, Family, Drugs and Alcoholism, I know we can count on her continued vigilance in our efforts to combat substance abuse.

Mr. President, all the efforts I have described—interdiction, education for prevention, and intervention/treatment are essential components in the war on drugs. No matter how effective our interdiction efforts, we will never succeed in stopping the flow of illegal drugs as long as the tremendous demand for drugs persists. Thus, education for prevention is a key element in our war on drugs. It offers the most effective, yet least expensive, means for fighting substance abuse.

We must do all we can to provide help to the victims of substance abuse. Effective treatment programs must be coupled with appropriate intervention efforts and rehabilitation must also go hand in hand with treatment. While I support stiffer penalties for those who process, traffic and sell illegal substances, I believe we must facilitiate an environment in which those who suffer from substance abuse are encouraged to seek help.

Finally, we must continue to improve our interdiction efforts, not only through enhancement of our enforcement capabilities, but also by working with the countries whose economies have come to depend on the illegal drug trade.

Mr. President, this bipartisan legislation calls for a 3-pronged attack in our war on drugs. I wish to commend our majority leader and our colleagues from both sides of the aisle who have led the effort to bring this legislation before the Senate. I also wish to express my special thanks to Senator HATCH, the distinguished chairman of the Senate Labor and Human Resources Committee, who chaired the Education/Prevention Task Force, and his very able staffer, Nancy Taylor, who has worked long and hard to put together the Demand Reduction Act portion of this antidrug package.

In conclusion, Mr. President, I believe the following statements from two high school students, who testified at my substance abuse hearing in Rapid City, SD, in August 1985, best illustrate the seriousness of the substance abuse threat to our Nation's youth:

MICHELLE: Well, a girl told us . . . she tried angel dust when she was 8 years old.

KIM: Michelle said earlier that it needs to start in kindergarten, the education. I think we did it with smoking and we have . . . far fewer people smoking. I think it has to start in kindergarten and it has to be emphasized all the way through. It's too late really in junior high.

Let us not wait until it is too late. Let us devote the time, the attention and the resources necessary to wage a successful war on drugs now. I urge my colleagues to lend their support to this balanced, bipartisan antisubstance abuse legislation.

Mr. MATTINGLY. Mr. President, in my view the issue which we have before us today is one of the most significant matters which the Senate has dealt with during my years in this body. I am pleased that we can come together on a bipartisan basis to address the issue which the American people have identified as a priority—protecting our children, families, communities, and ridding this Nation of the scourge of illegal drugs.

In recent months, we have heard the drug problem in America referred to in such terms as a "crisis" and a plague." We have often talked about our "war on drugs." While we have made progress in raising public awareness and had success in passing some legislation in the Senate, our actions have not matched our rhetoric or adequately addressed the magnitude of the problem. Today, I hope we will bring these aspects more closely together.

The bill before us is a good starting point and I support the bill. But I am disappointed that some of the provisions contained in the Drug Control Act, S. 2850, and the House-passed drug package have been removed from the bill. Some will be offered as amendments, and I hope they will be adopted. Nevertheless, the measure before us is a good starting point. It is a comprehensive bipartisan approach, with provisions on education, prevention and treatment, interdiction, law enforcement, and international policy, among others. I believe the changes made in this bill are improvements over those in current law.

The bill seeks to solve the drug crisis by attacking both the supply and the demand end. For a long time I have stated that I believed education was a critical factor if we were to prevail in this struggle. I continue to believe that most of the American people, and particularly America's children, will make the right decision to reject drugs. In our First Lady's now familiar words they will "just say no", if they are provided accurate information. The past several months have proved this to be so. The death of Len Bias, for example, and the fact, widely broadcast by the media, that drugs can kill even the strong has resulted in a national outcry. I am convinced that the American people are thirsty for credible and accurate information about drugs. I observe that all over Georgia. In every group with which I meet, there is an intense interest each time the issue comes up. And not only interest, but appeals for help.

My wife, Carolyn, in her travels and meetings in connection with congressional families for drug-free youth—the organization of congressional spouses which she founded and of which she is president—has shared similar experiences.

The American public desires to learn about the drug issue; they have a right to have access to sound information about drugs, and we have a responsibility to assist them in attaining it. For this reason, the education provisions of this measure are important. There are those for whom this education may come too late. For those individuals, opportunities for rehabilitation and treatment must continue to be provided.

Hand in hand with our efforts to reduce and ultimately eliminate demand, we must work to eradicate supply. The interdiction and law enforcement provisions of this measure significantly strengthen our ability to do so. By increasing penalties for those who employ children in the trade and who peddle drugs to children, we take steps toward ensuring the safety of this Nation's valuable asset—its youth. The addition of new and increased penalties, such as a maximum penalty for "crack," the virulent and highly addictive substance, are judicial improvements that I strongly support. I believe we need stricter penalties even than these in some cases. In particular, I believe the option of the death penalty should be available for certain kingpins. I will discuss this in further detail at a later time.

Another focus of the legislation is improved interdiction and border control. This is as it should be. Concern over the need to beef up our interdiction has been expressed to me again and again by local law enforcement officials and ordinary citizens. My home State of Georgia, regrettably, has become a major point of entry. Interstate 95, which passes through my native Glynn County, has become known as "cocaine lane," running as it does from the coast north to New York.

It is a Federal responsibility to protect our borders. I hope and believe this bill will contribute to our effectiveness in that area. Other steps need to be taken as well. As amendments are offered, and they will be, I will consider them carefully. I urge my colleagues to do the same.

Mr. President, I will have additional remarks as the Senate considers individual provisions. In closing, I would like to reiterate what I have said before, and what President and Mrs. Reagan have stressed. If we are going to win the war on drugs, we must be committed to victory. This means dedicating sufficient resources—money, manpower, effort, and energy—to defeating the vicious enemy which disrupts domestic tranquility and violates the common good.

It is our responsibility to lead the American people in the war on drugs. If we fail to act—firmly and resolutely—the consequences are dire indeed. We will have betrayed our children and abandoned our ideals. We will not and must not fail. Let us move forward from this bipartisan beginning, united to defeat the enemy—illegal drugs.

Mr. MOYNIHAN. Mr. President, I rise, as will many colleagues today, in support of the bipartisan drug abuse bill before us, S. 2878, and I take the occasion of the debate to offer just a few observations on this general subject.

First, I express appreciation. On the first day of this Congress, almost 2 years ago, I introduced S. 15, the State and Local Narcotics Control Assistance Act, which, while receiving very little attention at that time—and indeed, no specific consideration since—is largely included in the bill before us. In particular, the measures for law enforcement and drug abuse prevention, treatment, and rehabilitation which we are going to adopt in the near future, are essentially what was proposed in S. 15. As the distinguished Presiding Officer knows, the majority leader has the first 10 numbers in our calendar. Therefore, S. 15 was, in a sense, the fifth bill introduced by another Senator in the 99th Congress. While thinking about the present intense concern over narcotic abuse, I go back in my own mind to the period of the late 1960's, when we had a very comparable situation with heroin.

In 1969, I was serving as assistant to President Nixon for urban affairs. I recall that there were more bank robberies that took place in the city of Washington than the entire previous century, and we were in the midst of a heroin epidemic, not all that different from earlier episodes in the long history of drug abuse in our country.

The question was how to respond to this crisis—not with any expectation of putting an end to a large and continuing aspect of modern society—but, rather, in order to interrupt and to break the epidemic in a manner that had at least some hope of success in at least the near term.

It fell to me to devise a strategy for the Nation in this regard. My first view—which the President, Mr. Nixon, completely endorsed—was that we should interrupt the flow of heroin supplies into the country.

At that time, on overwhelming amount of heroin was produced first as poppy, in a provinces of Turkey, then the heroin was transported by ship across the Mediterranean to Marseille, where it was processed into morphine and then into heroin, and from Marseille, the heroin was smuggled into the United States.

□ 1310

It seemed to me that we had to put the issue of heroin on the agenda of American foreign policy. We also had to encourage our allies—France and Turkey, countries with which we have close relations and military relations—to help us in this matter of great concern to us, and, obviously, of marginal concern to them, if at all.

In August 1969, I flew west from California to Istanbul where I met with the Turkish foreign minister. I represented myself as speaking for the President of the United States and described the situation in our country with respect to heroin use, and the

number of deaths from heroin use, and found a very open reception.

The Turkish foreign minister said, "Well, yes, but you know we do not have anything to do with this matter. We grow poppy as part of our food supply."

Poppy seeds are part of the national diet of the Turks, and the use of opium is very limited as in most ancient medicines.

The problem was how to persuade the farmers of Turkey to stop cultivation of a crop which had been going on for centuries. The Turks fully cooperated with our recommendations for crop substitution and cooperation. At the time, a new Ambassador to Turkey, William Handley, was sent from the United States. The United States provided some funds to Turkey, not large, to substitute the growth of opium poppies with other legitimate crops.

I then made my way to Paris, Mr. President, and after a series of visits, met finally with the Director General de la Sûreté in France, a man, shall we say, whose name was known but whose picture was not taken. He is in charge of the internal police forces of the country and a man of great importance—and has been since Fouchet, under Napoleon. Our luncheon meeting had been arranged by or host, Sargent Shriver, the American Ambassador to France. Let me preface this by saying that that year, 1969, there had been a handful of deaths from heroin overdose on the Mediterranean—the de sur as the French say. This appearance of drug use among youth had occasioned serious debate in the French National Assembly on the subject of drug abuse and what was happening to morals and family life and behavior in France.

During the lunch, I explained that the number of deaths from heroin overdose in New York City was approaching 1,000 per year, as contrasted with a handful of deaths in France that year.

The head of the Sûreté listened and listened and said nothing. Finally, as we were leaving and I helped him with his coat, he did say something. After not speaking a word of English throughout the conversation at the luncheon, and having heard what we were doing to ourselves with heroin brought in from France, he finally turned, looked straight at me and said in perfect English: "What kind of people are you?"

It was a telling remark. I will not forget it. The Director General could not believe that we had let other countries behave in ways that were contributing to these incredible injuries, societal and community injuries, and had only now come to speak to them about the subject.

Well, Paris is generally not enthusiastic about getting involved with Marseille since these cities have had an "on-and-off" relationship for many centuries. However, it was clear to the French Sureté that they had to do something and they did. They just closed down the heroin laboratories in Marseille. And the Turks eradicated their poppy fields. And by 1972, as the President's Commission on Organized Crime has written just recently, the French connection collapsed.

Mr. President, I recall returning from that last trip to Paris, after obtaining an agreement from the French to take action, and flying up to Camp David in a helicopter to recount the event. The then Director of the Office of Management and Budget, Mr. George Shultz, was with me in the helicopter. I said to him that it looked like we were going to break the "French Connection." (We did not use that word yet. The movie gave us that image.) Then I said to him, and if I am being for a moment reminiscent I also mean to make a real point, "I suppose, however, that as long as there is demand for drugs, somewhere else a supply will spring up." And Secretary Shultz, an economist looked across and said to me, "You know there is hope for you yet."

Indeed, we had no sooner broke the French connection than the United States began to see supplies of heroin coming in from Mexico. For a while, the Mexican heroin had to be doctored to give it the pure white look of the heroin from Marseille. But in general, before long, the disruption of the drug traffic and other factors brought a gradual stabilization—not an end, but a stabilization—to heroin use. Of course, a decade later, we are in the midst of an epidemic of cocaine use.

There is something striking about this, Mr. President, in that something very similar to this occurred in the late 19th century. It is useful for us to keep in mind that today we are still dealing with basically the pharmacology which existed in that century. In the course of the 19th century, chemists learned to take opium, a natural product, and refine it to a higher level of morphine. This happened in the 1850's about the same time the hypodermic needle was invented. In the subsequent decade, there was a tremendous amount of morphine used in the Civil War. After the Civil War, morphine addiction became known as the "solider's disease."

By the late 19th century, the Bayer Co., in Germany refined morphine to a higher level and called it heroin. The company tested it on their employees and it made them feel "heroisch," which is German for heroic, hence the trade name "heroin." It is a name like aspirin, a trade name for a chemical product.

It was originally thought that heroin could be used as a substitute, as a suppression of morphine addiction. In reality, it was nothing of the kind. And, the heroin epidemic at the turn of the century was very real. It was openly advertised, "Buy Heroin; Good for You."

In the meantime, cocaine had emerged as a derivative of the natural coca leaf—which itself has stimulant qualities. Chemistry refined it to a higher, more intense level. Recently, we have seen cocaine brought to yet a higher level, to what is called "crack" because of the sound that is made when it is cooked.

During the first decade of this century, cocaine epidemic succeeded the eariler opium epidemic, until the 1930's, when drug abuse went into a long dormant state until heroin use broke out again in general use in the 1950's. This time the drug traffic was making its way from the Mediterranean to the United States.

We will not probably change this most recent of drug abuse pattern for a very long time. A century is not long enough for society to get used to something that the human race has no experience of. But we can continue to work at resolving this problem and we can use what we know in the way of devices to disrupt and to block the effects of drugs.

I am happy to see that we are going to be working overseas more than we have been. We had been cutting our capacity in that regard. And certainly increased assistance for domestic law enforcement is a clear and necessary aspect of our effort to fight alleged drug abuse.

□ 1320

The fact that drug sales and use are taking place more frequently in public, on our streets, is the most appalling single thing of the present crisis. A public act of an illegal nature is in effect a condoned act. And the children, and most early users of drugs are no more than children, see this going on in public and assume there is public approbation for these illegal acts. And, indeed, toleration is a form of approbation.

Treatment is another critical component of any effort to combat illegal drug use. We must treat people who come and ask for it. And we learn things. The more we learn, who knows, the day may come when we learn something of some vital consequence.

I am particularly pleased that one of the provisions of the bill we have before us is something that I had called for earlier, which is a directive to the National Institute on Drug Abuse to work much more than it has on developing narcotic antagonists. This is all pharmacology in the first instance, and it can be combated by pharmacology. We do have a drug that is available and which successfully

blocks the effect of heroin use. A similar drug with respect to cocaine is clearly feasible.

In this kind of chemistry, you can accomplish what you set out to do, if sufficient effort is put into it. We have an obligation to do just that. We need to continue looking for newer, more powerful and more effective devises for blocking drug experiences, thereby reducing demand for illicit drugs.

On the other hand, Mr. President, it seems to me that we cannot ignore the fact that when we talk about drug abuse in our country, in the main, we are talking about the consequences it has for young males in inner cities, for whom drug use is an aspect of a generally abused, wasted and ruined life, and indeed, ruinous to those in the community around them. Any society that is really serious about drug abuse will be serious about that class of young males. It has been growing. It has reached proportions that threaten to bring about the destruction of whole communities and cities across this Nation.

I was pleased that a number of very thoughtful commentators, such as Mr. Adam Walinsky--and Mr. Walinsky was formerly an aide to Robert Kennedy, my distinguished predecessor and friend—and Ed Yoder, the most perceptive and thoughtful of columnists, have made exactly this point; that if we care about drugs, we would care about the young males in inner cities whose abuse of drugs has made it the focus of national attention once again, as it had been 15, 16 years ago.

In concluding these remarks, Mr. President, I ask unanimous consent that the article by Mr. Walinsky and a column by Mr. Yoder be printed in the RECORD at this point, along with some prepared remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 16, 1986]

CRACK AS A SCAPEGOAT

(By Adam Walinsky)

The crack wars are far from over. The New York City police have seized some 30 cars belonging to alleged buyers. Mayors and governors have held conferences on the subject, and on Sunday the Reagans joined the fray, denouncing drug abuse on national television. Yet the reality in the streets remains the same: the crime rates continue their steady increase.

Overall crime rates are not increasing because of crack or any other drug. Reported crime is up 5.5 percent from last year all over the country. Yet so far, crack is available in only a few cities. Heroin use is steady, consumption of cocaine is up only marginally and marijuana use may even be declining slightly. Besides, most drugs—certainly cocaine—are consumed by citizens whose only other offense is liable to be insider trading, tax evasion or driving over the speed limit.

The true cause of increasing crime rates is elsewhere. Most street crimes are committed by young men and boys, predominantly from minority groups; the most dangerous years are from the early teens to the early 20's. These young men come increasingly from disintegrating families and neighborhoods.

Young men of 20 are just beginning to pass out of their most crime-prone years; those of 13 to enter them. Today's 20-year-old was born in 1966; today's 13-year-old in 1973. In 1966, of all black children born in New York City, 75 percent were still being born into families with fathers present, married to the mothers. Of all Hispanic births in New York City in 1966, 89 percent were born to such married couples. But by 1973, less than 60 percent of black children in New York were being born to married couples, and less than 70 percent of Hispanics were.

The watershed was 1976, when today's 10-year-olds were born. In that year, more than half of all black children and 45 percent of all Hispanic children born in New York were born to single mothers. The causes of this radical shift are complex and less than clear, but the consequences are stark: by 1980, more than 55 percent of all the black children born nationwide were born to single mothers. In 1965, about 77,000 male children of single mothers reached their 13th birthday; in 1975, 120,000. This year, it will be more than 200,000.

This rising proportion of illegitimate births is both effect and cause of wider patterns of community unravelling. Educated blacks particularly have moved up and away from the old neighborhoods. As Harlem was abandoned, life there became ever more disorganized and dangerous, and still more people fled. In 15 years, it has lost at least a third of its population. Social services, which may at least have been palliatives, almost vanished during the fiscal crises of the 1970's, and have not been rebuilt in the Reagan 1980's. Schools beset by violence and disorder largely abandoned the effort to deal with problem children; indeed, many educators must have sighed with relief as each disruptive youth dropped out. Meanwhile, new immigrant populations, legal and illegal, have arrived, bringing many teenagers whose violence and crime is a response to rootlessness and disorientation.

Poverty does not excuse crime: indeed, there is plenty of evidence on Wall Street that poverty does not even explain crime. But we are preparing a disaster: the steady growth in our midst of an unacculturated, unsocialized and indigestible lump of young men, uneducated for any useful work, without any organic connection to the United States or to the world we live in. Every young man will seek somehow to assert his personality and his self, will look for a possibility of acting in the world. And for an increasing proportion of these young men, crime is the definition of self.

Of course, none of this is new. As long ago as 1965, Daniel Patrick Moynihan, Lyndon B. Johnson and Robert F. Kennedy called urgent attention to these problems. Today's politicians, however, prefer to ignore such matters; Blacks are more politically fashionable when they are in Johannesburg. Yet it is difficult to ignore the results, with New York City alone the scene of 100,000 robberies a year and constitutents of all races constantly complaining.

For our politicians, crack is a deus ex machina—a solution from the sky. After all, our officials can hardly be blamed for the Colombian peasant who stubbornly goes on growing coca leaves or for the evil "narcotrafficker" who imports the refined product. Thus, if we can blame crime on crack, our politicians are off the hook. Forgotten are the failed schools, the malign welfare programs, the desolate neighborhoods, the wasted years. Only crack is to blame. One is tempted to think that if crack did not exist, someone somewhere would have received a Federal grant to develop it.

There are useful and necessary measures we can take. One would be a real effort at law enforcement to reestablish basic order and security. Another would be welfare reform: social programs should no longer encourage single parentage, and should require work as a condition of all welfare. Still other steps would include extensive efforts to reach the more than 400,000 new children of single mothers who will have their 13th birthday this year. At the root, we must decide that we will not live with a black illegitimacy rate in excess of 60 percent, with all that entails. We must commit ourselves to providing minority youth with a future that is not built solely on crime or the making of babies.

All these things are difficult but possible. It is long past time that our leaders stop their hysterical grandstanding about new drugs and get to work on the old, persistent problems of crime, race, and poverty.

[From the Washington Post, Sept. 18, 1986]

WE KNOW WHO WILL LOSE THE DRUG WAR

(Edwin M. Yoder, Jr.)

Prime-time network television, our great window on pseudo-reality, is the perfect place to summon us to the pursuit of a chimera: the "drug-free America" for which President and Mrs. Reagan have called.

In the misdirection of valuable official energies, there's been nothing since the great Red Scare of the early 1950s to match the current drug-bashing hysteria.

A few days before the Reagans spoke on Sept. 14, the House of Representatives, which is suspected of election-year fever, passed a great bipartisan antidrug bill. Unembarrassed that it hasn't two dimes to rub together, the House boldly authorized the expenditure of $3 billion to fight drug traffic. It is asserted, despite every appearance to the contrary, that Americans are eager to pay.

It is far likelier that (as in the demand for "tough" criminal sentences to nonexistent prisons) we want the result without the cost. Just as unrealistically, the House tossed in the hangman, the U.S. Army, and illegal searches—none of them likely to be much used in chasing down drug dealers.

Empty legislation is bad enough. The purple prose of the White House speechwriters is worse because it is so fantastically wide of any recognizable mark.

President Reagan was made to say, for instance, that drugs "are menacing our society"; that they constitute "a repudiation of everything America is"; that they mock our heritage and are "threatening our values and undercutting our institutions." That was the understated part.

Such rhetoric trifles with the dignity and credibility of public advocacy. Describing a serious but not terminal problem, nuisance really, as if it were an invasion by maneating intergalactic aliens is rhetorical hypochondria, like treating a sprained ankle as life-threatening.

A repudiation of what "heritage," precisely? Before the First World War—that is, before Americans began tolerating federal nosing into their private lives and habits—drug addiction, usually to morphine or some

other opiate, was as common per capita as it is today, if not more so.

As for wear and tear on the social order, the Prohibition era and its associated gangsterism find no real parallel today. President Reagan is irresistibly attracted to the golden-age myth, but, as usual, it is unhistorical. There is no idyllic "heritage" against which to play off today's drug threat.

Two far more material items of social history, though not obscure, made no appearance in the Reagans' remarks.

The first is that there has, in fact, been a decline in social discipline and control, in which illicit drugs are implicated. But that is because the means of social control that obtained in rural or small-town America a generation or two ago (and which were not invariably pleasant or just) were left behind with the horse and buggy.

The onetime controllees have jumped the restraints of rural life and economic dependency. Many of them now constitute a forlorn urban underclass, huddled in impersonal cities; and drugs and crime have become an expression of social defiance and alienation. A discussion of the drug problem that omits this context is evasive and vacuous.

And where social values are concerned, the same television that brings us magnified images of this disturbing reality also brings us a fantasy world of pill-popping, beer-swilling hedonism and crime-centered entertainment that sometimes seems morally indistinguishable from reality. So who's kidding whom?

As for "wars" and "crusades" against complex social disorders, you would suppose that presidents, by now, would be warier. We have had a war on poverty (which, Reagan himself has remarked, not quite accurately, "poverty won"), on street crime (by Richard Nixon & Co.) and the "moral equivalent of war" on oil dependency (by Jimmy Carter). At last notice, poverty and street crime were undefeated, and oil dependency seems to be making a rapid comeback.

Yet invoking the spirit of World War II, Ronald Reagan says "we're in another war for our freedom." All that is predictable about such "wars" is that they will end in "defeat" and further feed the public conviction that government, unlike the Mounties, never gets its man.

Mr. MURKOWSKI. Mr. President, I rise in strong support of this legislation of critical importance in the war against drug abuse. Over the past several years, I have been focusing on the drug problems in Alaska. I have held two hearings to determine just how extensive drug abuse was in my State. What I learned from those hearings was that Alaska has the highest drug usage in the United States. This translates into increased crime, lost productivity, wrecked lives, domestic violence, high dropout rates, suicide, and death.

Let me share with you some particularly poignant testimony which reinforces the absolute necessity for this legislation. A representative of the Alaska Federation of Natives testified on legislation designed to expand prevention services and treatment of alcohol and drug abuse among Indian and Alaska Native youth—and I quote "alcohol and drug abuse is the major health care problem faced by Alaska Natives. It stands out clearly as the most threatening to our health, our lives, and our culture. It affects every aspect of rural community life, as well as urban, and threatens the very survival of Alaska Native people and the traditional way of life."

And its not just Alaska's Native population in my State that is losing because illicit narcotics are rampant in Alaska's streets. A university of Alaska study indicates that 72 percent of Alaska's high school seniors have used marijuana. Nationwide, that figure is only 59 percent. Cocaine usage among Alaska's high school seniors is three times that of their lower 48 counterparts.

I meant it when I told Alaskans that I was going to do something about this problem and we were going to get involved. I know that with the prompt enactment of this bipartisan bill we can achieve President and Mrs. Reagan's goal of a drug-free America. The bill before us aggressively attacks the drug menace on five fronts. The eradication of illicit drug crops in producer countries; interdiction of drug shipments bound to the United States; the strengthening of penalties against drug peddlers, education of our children on the dangerous effects of illegal drugs; and the rehabilitation of those who have already fallen victim to drugs.

State and local police chiefs, educators, counselors, and health care providers have all told me they needed more resources to aggressively combat drug abuse. This Senate bill responds to this need by strengthening the Federal Government's commitment. I am particularly pleased with the provisions of the bill that increase Federal funding to States to ensure drug-free schools—$150 million in new money in grants to States—and provide greater Federal assistance to State and local law enforcement officers—$237.5 million in budget authority for Department of Justice and Federal judiciary programs, including a drug law enforcement grant program. Those provisions that target education efforts for youth that are particularly vulnerable to becoming alcohol or drug abusers are also critically important.

I thank Senator ANDREWS, the chairman of the Select Committee on Indian Affairs, and his staff for their efforts on behalf of the needs of American Indians and Alaska Natives. Included in this omnibus bill are provisions of legislation which has already passed the Senate, and which I worked hard for, designed to squarely address the prevention and treatment needs of American Indian and Alaska Native youth. Juvenile alcohol and drug abuse has not been a high priority with either the Bureau of Indian Affairs or the Indian Health Service. From testimony I received from the Alaska State coordinator for the Office of Alcoholism and Drug Abuse I learned that the Alaska Area Indian Health Service Office allocates less than 1 percent of its resources for alcohol and drug abuse prevention. In fact, the Indian Health Service does not operate a single juvenile drug treatment center in Alaska. That is why I, and other Senators on the Indian Affairs Committee, strongly support the provisions of this bill that require the Indian Health Service and the Bureau of Indian Affairs to implement needed programs to treat and prevent alcohol and drug abuse. This legislation authorizes approximately $40 for prevention programs for American Indian and Alaska Natives.

I also wish to thank Senator LUGAR, the chairman of the Foreign Relations Committee, and his staff for their leadership in drafting the provisions of this bill strengthening the tools of our foreign policy against major drug producer and transit countries. My amendment strengthening the authority of our law enforcement personnel abroad will result in more frequent and larger seizures of drugs, illicit laboratories, and more arrests and prosecutions of major drug traffickers.

Mr. President, we are going to need a continued effort to maintain, I think, a communication direct to the communities that are screaming in agony for support. Local law enforcement agencies that are frustrated, educators that are wondering what the Federal Government is going to do to provide assistance, and those involved in the rehabilitation all are watching this legislation as it moves through the Congress of our Nation.

Mr. President, I think this is one of the most important pieces of legislation the Senate will consider this year. It is a bill which deserves the wholehearted support of all of us.

It is, I think, a representation of the degree of frustration that exists within our country and the fact that people all over the United States are looking for the leadership provided by the Congress and this body.

I would like to commend my colleague, the junior Senator from Florida, who has led initially in this effort. I think the time has come, Mr. President, when Americans are absolutely fed up and they demand Congress respond with meaningful legislation that will help them address the problems in this area in a responsible and timely way.

□ 1330

Mr. THURMOND. Mr. President, I rise today in support of the bipartisan comprehensive antidrug package introduced by the Senate Republicans and Democrats.

Drugs are menacing our Nation. The drug problem is undoubtedly one of the most serious facing this country.

The facts about drug abuse are brutal. There are about 500,000 hard-core heroin users in the United States. There are between 4 million and 5 million Americans who use cocaine. From 1975 to 1984, the amount of cocaine smuggled into the United States quadrupled. In 1984, the drug empire brought into the United States 10 tons of heroin, 85 tons of cocaine, and about 15,000 tons of marijuana. This does not include the substantial domestic production of narcotics.

The cost of drugs on our society is tremendous: In 1983 the estimated total cost was almost $60 billion, based on the cost of treatment and support, mortality, reduced productivity, lost employment, and related costs. Drugs on the job and in the school are quite pervasive and of most concern. Drug dependent workers are 38 percent less productive than their peers, according to a National Institute on Drug Abuse study. In 1985, 61 percent of all high school seniors had tried at least one or more illicit drugs.

We are beginning to see a fundamental change in the attitude of the American people toward the use of illegal drugs. Across the country individual citizens, private organizations, community groups, public agencies are all working to reestablish a moral climate in which drug use is not just illegal, but socially and ethically unacceptable. One highly visible example is the work of First Lady Nancy Reagan. With her help, 10,000 "Just Say No" clubs have been established across the country. The campaign against drugs has made front page news and has been the hot topic on talk shows lately.

Today we in the Senate are introducing a bipartisan comprehensive drug bill. This is not a new initiative for the Senate, but rather a continuation of our long-term efforts to deal with this national crisis. We are proud of our record in this regard.

Since the elections of 1980, when the Republicans won a majority in the Senate, the Congress has:

Passed the Comprehensive Crime Control Act of 1984, making it a Federal crime to distribute a controlled substance—an illegal drug—within 1,000 feet of a school;

Enacted the International Narcotics Control Act of 1985;

Dramatically strengthened interdiction and enforcement;

Established the National Drug Enforcement Policy Board to focus the national campaign against illegal drugs;

Barred money for any country certified by the President as failing to take adequate measure to prevent cultivation or transfer of narcotics;

Passed the Military Justice Act of 1983, which made drug dealing in the Armed Forces punishable by court martial.

Directed the Attorney General to draft a model law for States to act against cocaine "freebase" houses as centers of the drug trade;

Made illegal the investment of income from a felony drug offense; and

Reformed the lenient Federal bail system, so that drug abuse by a convicted person will be considered in bail decisions—Ball Reform Act of 1984.

The Senate has continued its aggressive campaign against drug abuse in this Congress. Unfortunately, the House has failed to act on many of these important Senate-passed bills:

In March 1985, the Senate passed the Federal Drug Law Enforcement Agent Protection Act, to provide rewards to anyone who helps in the arrest and conviction of persons guilty of killing or kidnaping a Federal drug agent.

In November 1985, the Senate passed a bill making it a Federal criminal offense to operate or direct the operation of a common carrier while intoxicated or under drug influence.

Last April, the Senate passed S. 1236, tightening up on penalties for certain drug-related crimes.

Last December, the Senate passed the Indian Juvenile Alcohol and Drug Abuse Prevention Act.

Last December, the Senate passed S. 1437, a bill to fight the spread of "designer drugs."

Last July, the Senate adopted a D'Amato amendment to House Joint Resolution 668, that cracks down on the money laundering essential to the operations of the drug empire.

The legislation being introduced today incorporates these bills as well as:

Enhanced penalties for large-scale drug trafficking;

Enhanced penalties for possession of drugs; and

Authorization of money for construction of one new prison.

I believe the bill can be further improved by adding a few key elements such as:

A constitutional procedure for the imposition of the death penalty;

Limitation on the exclusionary rule; and

Habeas corpus reform.

I understand it is impossible to get all of this in this bipartisan bill that is being introduced, but, Mr. President, these ought to be incorporated.

We hope to see quick action on this bill in the Senate and I urge my colleagues in both the Senate and the House to join us in sending the most powerful bill we can to the President's desk.

Mr. President, I yield the floor.

● Mr. DENTON. Mr. President, I am proud to be an original cosponsor of the bipartisan Senate drug bill. This comprehensive legislation is the result of a truly cooperative effort by Senators on both sides of the aisle who have come together to help fight—and win—the war against illegal drugs.

The bill maintains the necessary multidimensional approach to the illegal drug problem, recognizing that the battle must be fought on many fronts, both at home and abroad. It is intended to help cut off the supply of drugs while, at the same time, drying up the demand for them in this country.

The bill strikes at the sources of the illicit drug traffic by providing much stronger punishment for drug dealers and by making it much more difficult for them to hide their tracks through the laundering of drug money. The legislation thus seeks to deprive drug dealers of the expectation of profit which motivates their activities.

For trafficking in large amounts of drugs the bill increases the maximum penalty to life imprisonment, without possibility of parole or suspension of sentence. Life imprisonment would be mandatory for a subsequent large-scale trafficking offense which results in the death of a person. Prison terms are also significantly increased, with no possibility for parole, for dealing in smaller amount of illegal drugs.

In an important revision of existing law, the bill would provide for the mandatory life imprisonment of so-called drug kingpins, who are the principal organizers or leaders of large, continuing drug enterprises. This is a provision which was first proposed by Senator TRIBLE in S. 2801, of which I was an original cosponsor.

I am extremely pleased that the bill contains strong measures to help interdict the flow of illegal drugs into the United States. People in our State of Alabama, as in other States along the gulf coast and southwest border, are greatly concerned about the smuggling of drugs into our part of the country by land, sea, and air. The bill authorizes increased appropriations to the Customs Service and the Coast Guard and will enhance their abilities to detect and prevent the entry of illegal drugs. It also provides the Immigration and Naturalization Service with the general arrest authority they need to assist in drug interdiction, as well as curbing the flow of illegal aliens. These provisions are indispensable if we are to take control of our own borders against the influx of narcotics.

Such control is especially necessary in light of increasing evidence of the interrelationships between drug traffickers and the international terrorist network, especially in the Western Hemisphere. As chairman of the Judiciary Subcommittee on Security and Terrorism, I have launched investigations and hearings which have documented this alarming phenomenon. They have shown that drug traffickers depend on terrorists for protection,

which terrorists provide in return for drug money to finance their heinous activities.

Hearings held by my subcommittee have also proven that the Cuban and Nicaraguan Governments have close ties to Latin American drug smuggling operations and facilitate the transportation of drugs into the United States.

These developments heighten the deadly nature of the threat posed by drug trafficking and underscore the need for the bipartisan drug bill. The bill addresses the need for better interdiction along our borders and also recognizes the necessity of cooperation between the United States and foreign governments and law enforcement agencies in combating illegal drug production and trafficking. The bill contains provisions which will promote such cooperation and involve many other countries in the war on drugs, recognizing the illegal traffic to be a major threat to all the countries it affects, just as terrorism is. If a country refuses to cooperate with our antidrug programs, the bill provides for the curtailment of U.S. aid to that country.

The bill authorizes additional appropriations for the Drug Enforcement administration, which will enable it to increase its investigative and intelligence gathering capacities, as well as its presence in areas of the country where more agents are desperately needed. Having chaired my Judiciary Subcommittee's DEA oversight hearings over the last 6 years, I am well aware of the DEA's capabilities and believe that these expenditures will greatly benefit drug law enforcement.

Recognizing that the individual States and municipalities are on the front lines of dealing with the day-to-day problems of illegal drug use, the bill authorizes the Attorney General to make grants to the States to assist them in enforcing State and local drug enforcement laws. The bill also eliminates various restrictions on the States' use of Federal block grant funds for alcohol, drug abuse, and mental health service, thus giving the States the flexibility they need in combating alcohol and drug abuse.

Mr. President, the use of illegal drugs has had a debilitating effect on a whole generation. Billions of untaxed dollars are diverted to the coffers of organized crime. Theft, burglary, robbery, and even murder increase as drug users turn to crime to support their addictions. Law enforcement agencies are forced to spend more of their precious resources fighting drug trafficking and drug related crime at a time in our Nation's history when unprecedented budget deficits have strained those resources to their absolute limits.

The legislation before us today is the last opportunity the 99th Congress has to deal comprehensively with this massive national problem. We must not fail to act in the face of this clear and present danger of our national welfare.

I urge my colleagues to support the bipartisan Senate drug bill.●

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

THERE IS A DRUG WAR AND IT MUST BE WON

Mr. HEFLIN. Mr. President, there is a violent war being fought in America. For many years this war was fought for us by special agents in dark, stinking alleys—through garbage strewn streets, and in the burned out, abandoned buildings of our large metropolitan areas.

But now, the battleground has moved into middle-class neighborhoods, into glass skyscrapers, and even into school playgrounds. This war was once fought only in urban America, but, increasingly, there are daily skirmishes on country roads, on remote rural routes, and in the tree-lined streets of small towns and villages. All must now lend their efforts and their resolve if we are to win this war.

Every day the death tolls and casualty counts rise. This war knows no particular class, race, age, or economic group. It damages all segments of society—leaving in its path only waste and sorrow.

In this war, the enemy is shrewd and insidious. He often feigns friendship, concern, or even sympathy to lure men, women, and children into his trap. He preys on ignorance, on loneliness, on uncertainty and even curiosity. Yet his motives do not deviate. He seeks the ruin and demise of our system.

Mr. President, the enemy of whom I speak is the supplier, pusher, and peddler of illegal drugs—the lowest form of subhumans found on this Earth, peddlers of human misery, greed-soaked mutants who wage this war without a passing thought given to the tragedy they bring to their fellow man.

Although this country has declared war on drugs, it is the drug pushers and smugglers who declared war on humanity. For so many years the family has been standing as the lone bulwark against the spread of drug abuse. It has endured a long siege. I am now overjoyed to see so many come to its aid. It is, indeed, time to mount the counteroffensive.

Yet, there are those now calling for action who have for some time been celebrating at the rear. There are many now calling for action who have at some past time proposed and voted to cut drug enforcement budgets. There are those who now cry the loudest who at some past time vetoed drug enforcement legislation. I hope and pray that their conversion is sincere, and not just another public relations ploy or electioneering stunt. The families and individuals in this Nation who had been under siege for so long do not need false friends.

□ 1340

Since I was elected to the U.S. Senate, I have worked to strengthen and to bolster the fight against drug abuse. The comprehensive crime package as passed by Congress in 1984, and signed into law, contained legislation designed to thwart and to frustrate the relentless damage caused by drug pushers and peddlers. However, some of the toughest, most effective provisions of that package as passed by the Senate Judiciary Committee, were stripped from the bill before it was passed.

We cannot return to the past to correct our mistakes. Although some may try through rhetoric and empty words. But talk can neither change the past nor will it solve the problems we face today. The legislation now before this body is a step in the right direction—a larger step than we have taken before. Yet it is a step that has been urgently needed by individuals, by families, and by drug enforcement agents who have been standing alone now for so long.

This legislation contains many different provisions which will help in our war against drugs by providing necessary coordination between local, State, and Federal drug enforcement officials. It changes the law to allow for stiffer penalties with which to punish offenders, and finally it will provide for greater funding of programs to eliminate the abuse of drugs.

One of the primary things that this bill does is to strengthen the laws defining contraband drugs and the amounts which would constitute possession and sale. This section provides vital support for the trench warfare. It facilitates the ability of personnel to arrest, prosecute, and incarcerate the drug pushers and traffickers and to remove them from the field of battle—our streets, homes, schools, and playgrounds.

Additionally, the bill provides $115 million directly to State and local agencies in drug grants. These funds are to be distributed through the Department of Justice, and will greatly aid local and State efforts to stem the tide of drug availability or abuse.

This legislation also increases the penalties for drug violations. One of the most important aspects of the bill is the creation of an offense for employing, hiring, or using children to distribute drugs. One of the most cowardly practices of drug pushers today is the use of children in the drug trade. They are used to deliver drugs and to deliver the money obtained from drug sales. Often they are beaten and abused if they fail to meet their drug sales quota.

Another critical aspect of this legislation is the assault it makes on the

drug pusher's most important arsenal—money. The bill creates a new criminal offense of money-laundering and includes stiff penalties for violations of this offense. In addition, authority is given to the Department of Justice and the Customs Service which allows them to seize money, equipment and other assets used in the drug trade. Appropriately, the moneys from the confiscation of this property shall be used for State, local, and Federal drug law enforcement, education, prevention, and rehabilitation programs.

Mr. President, Alabama stands on the front lines of an invasion of drugs bound for all parts of the United States. My State faces the onslaught of illegal drugs arriving in this country from the Caribbean and South America. A large amount of this drug traffic comes along a route known as the Mobile corridor using all types of aircraft.

Alabama has been the target of waves of ships and aircraft carrying literally tons of illegal drugs, cocaine, and marijuana into the State. Beefed-up detection in the Florida peninsula and a lack of radar coverage has pushed the drug traffic into the Mobile corridor. This area is centered over Mobile, AL. Much of this drug cargo is destined for the small rural airports and abandoned military air strips located all over central and north Alabama.

Last year I cosponsored bipartisan legislation which will create an Air Force Special Operations Squadron of 16 P-3 aircraft equipped with sophisticated F-15 combat radars. This squadron would provide a detection support unit to complement an existing special operations wing stationed at Eglin Air Force Base in northwest Florida. I urge that some of the elements of this bill be incorporated into the legislation now before the Senate.

This bill provides a solid plan of attack against the airborne and marine drug smuggler. Harsh penalties are instituted for individuals who transport drugs in planes, or vehicles across State lines. Foreign citizens who have residency status in America could be deported or excluded from this Nation for dealing in drugs or for being convicted of a drug-related crime. It does not call for troops along the border, but extends a much-needed and long-overdue helping hand to our law enforcement officials. The plan incorporated in this bill will finally give our underequipped civilian drug enforcement agencies the drug detection capability, and the legal means they need to halt the narcotics trafficker from penetrating our borders.

Alabama's night skies have been filled with aircraft ranging from sleek corporate jets to tired airliners to World War II surplus bombers carrying their deadly cargo into rural airfields in the Southeast.

In March 1985 I secured an agreement from then newly appointed Attorney General Edwin Meese that the closing of the Mobile drug corridor would be a high priority in the Justice Department's efforts to stop the flow of illegal drugs into the United States. This was during Meese's testimony before the Senate Judiciary Committee.

At that time I discussed with Meese a plan to use pilots from Fort Rucker, AL, to relay information from their daily flights about suspect aircraft. Helicopter pilots based at Fort Rucker fly throughout southeast Alabama and crisscross the Mobile drug corridor daily. We should take advantage of the information their trained alert eyes and ears can gather.

A month earlier I had met with Maj. Gen. Don Parker, commander of Fort Rucker, about the Mobile corridor problem. He told me at the time that:

> We need to look into perhaps providing some instruction to our people who are flying on what they should do when they observe this sort of activity. I know that we have had some cases where we were able to be of assistance in the past. I think this is something we should look into and see if a procedure can be developed.

I have been less impressed with the resources, priority, and followthrough the Justice Department has dedicated to this idea. While we may not be able to completely halt the flow of illegal drugs through the Mobile corridor in the next few years, we must make a real effort to try.

Because the drug pusher preys on ignorance, I am particularly encouraged by provisions of this bill which will stress the education of citizens of all ages regarding the damage and harm of drug abuse. It provides crucial funding for education programs throughout the nation. At least $80 million will be available for State and local education agencies. Only through a working, factual knowledge of the permanent damage caused by drug abuse will people of all ages be warned that drugs do not solve problems, or make friends, they do not provide an edge or an advantage. Above all, they are not an entertainment. Drugs lead to a hellish existence in which the user is unable to function in a productive manner and is incapable of making decisions even for himself. Education will be a first step in establishing a beachhead from which to launch our attack on drug pushers and peddlers.

Finally, this bill provides help for the many casualties who have already fallen to drug abuse. Funds are provided for the prevention, treatment, and rehabilitation of those already affected by the blight which abuse necessarily brings. Assistance will be available to those who truly wish to turn their wasted lives around. Perhaps many of those reformed drug users will become devoted, loyal warriors in this battle—for they know first hand the deceptive tricks and ploys of the enemy—the pusher.

There is a pioneer program in Birmingham, AL, called TASC, treatment alternatives to street crime. This program identifies abusers of illegal substances who have been put behind bars for some other crime. Drug users must often resort to burglary or theft in order to support their expensive habit. It then treats them in an effort to rehabilitate their lives. Not only does TASC provide new hope and life to the drug user, but it also helps to eliminate the crime which the drug supplier brings when he pushes his product. I would like to see this program established as a model program for the entire Nation. In that way, the TASC force could provide a coordinated network through which to help people on a greater scale.

Though much-needed funding is being provided, we must be careful lest these funds and this great momentum is squandered on publicity stunts designed to enhance the personal esteem of one individual, or to obtain political gain. We must devote our efforts to the fight against pushers, not to the fight against political opponents.

For years I have sought to establish an antidrug czar at the highest level in the Federal Government. I believe that we should add this provision to the package which is now before us. We must place an official in charge of our drug control program who will have the clout and authority to get the job done. I feel that this office should be given level authority. I feel that the creation of an office at a level lower than the Cabinet would be hindered by the infighting and backbiting that have frustrated our efforts up until now, and particularly in the last 5 years. The authority of the position would be analogous to that exercised by the Director of the Central Intelligence over U.S. intelligence policy. It is crucial that we create this office and that he answers directly to the President of the United States.

In our zeal to make war on the drug pusher and supplier, however, we must guard against the passage of overly-hasty, ill-conceived legislation. In the long run, such a bill could possibly work to the favor of those we wish to stop by allowing possible legal recourse. We must, rather, spend the required time to formulate lasting legislation that will effectively block the supply and abuse of drugs.

The threat facing our society, our families, and our way of life is very real and very dangerous. Yet we must never lose our resolve. The enemy will try any tactic, use any device, any weapon, but we must forever carry on the battle. We must all join together

to fight the drug pusher in the streets, in the hills, in the wilderness, and in the cities. Our freedom, our futures, and our families are at stake. We will win this battle—because we are Americans. But the fight may not be easy.

I appeal to my Senate colleagues to join me in supporting this bill. The commitment we make is a commitment to the future—a future, I pray, which will be free of the temptation, the waste, and the damage of drug abuse.

Mr. President, I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I join my colleagues in urging this body to act promptly and forcefully on the problems of drugs in this country. I say this having been acquainted with the problems of drug enforcement going back to 1959 in my work in the district attorney's office in Philadelphia, and continuing with my work in the Judiciary Committee of the U.S. Senate, including the introduction of a number of bills which relate to this problem.

Some say that the Senate is acting in response to a public outcry, and that we may be acting with undue haste.

Mr. President, I believe that we have ample time to give due deliberate consideration to the issue before us. Some we can accept, others we may have to reject, but the time for action is present.

These are not issues which are new to this body. We are familiar with them from having studied them in the past. The experience has been that it does take a public demand and a public outcry for matters to advance on the legislative agenda of the Congress, to receive such attention and such action.

I have sponsored legislation, Mr. President, which is almost 4 years old, which would allocate 1 percent of our Federal budget, or approximately $10 billion a year, to law enforcement. These legislative initiatives were introduced in the 98th Congress and reintroduced in the 99th Congress, calling for improved investigation, improved court administration, improved and expanded prison facilities, including the construction of some 200,000 jail cells.

But now, in the wake of an enormous problem which is confronting the country, and in the wake of public recognition in some polls boosting this issue to the No. 1 spot in public concern, this body and the House of Representatives are looking at the drug problem. Indeed, it is time for action.

Mr. President, I commend the leadership of the Senate for bringing this matter to the floor, and I commend my distinguished colleague, Senator PAULA HAWKINS from Florida, for focusing the attention of the Senate, the attention of the Congress, and, in part, the attention of the country on this issue.

During the course of the past 6 years while Senator HAWKINS and I have worked together, many of us have deliberated on these issues. Senator HAWKINS has an extra special concern. We all have a special concern. I have been worried about the problems of drugs in the big cities and small towns of Pennsylvania. Senator HAWKINS has a unique concern because of the expansive coastline of Florida, which is the point of entry for so many drugs. She is to be commended for what she has done.

Mr. President, this proposal will attack the drug problem at all levels, which is urgently needed.

The first line of attack is interdiction, to stop drugs from coming into this country from foreign sources. To do that, we need the assistance of aircraft, we need the assistance of boats, we need the assistance of more personnel. That is provided for in this bill.

We perhaps ought to back up one step and try to take further action to stop the growth of drugs at their source. In my work on the Foreign Operations Subcommittee for the past 2 years, I have pressed officials of the Department of State, including the Secretary of State, in hearings before the Foreign Operations Subcommittee to get tougher with foreign countries which have not reduced the production of drugs. I have given notice in the Foreign Operations markup of my intention to offer an amendment to reduce our foreign aid to some of those countries which are producing the drugs. That is even an ancillary step toward interdiction, to take stronger measures to stop the growth of drugs on foreign soils which then come into this country.

Beyond that, we need more resources for strike forces, more U.S. attorneys, more assistance for the DEA agents.

Then the next step is more prison space, a subject which long has had the attention of the distinguished majority leader [Mr. DOLE], who has worked on expanding prisons, as has this Senator. These ingredients, most of them, are present in this bill.

□ 1350

Also, this bill provides for important rehabilitation and education programs. It is not enough to work on the supply side with interdiction and enforcement of drug pushers, but it is important also to work on the demand side with education and rehabilitation programs.

Recently, I visited a series of drug rehabilitation and treatment centers—Saint Francis Hospital in Pittsburgh, the drug treatment facility in Wilkes Barre, the TASC group in Greensburg, and the Butler alternative to street crime program. Across the country, there is an urgent need for more resources on rehabilitation of those who are addicted to drugs.

Mr. President, there are two other provisions of the bill which I should like to note especially, bills which I had pending in the Judiciary Committee and which have been incorporated in this bill. One is legislation which would make it a violation of Federal law to sell illegal drugs in the proximity of schools. We find that the drug merchants are going into the vicinity of schools with impunity and poisoning children in the grade schools. There ought to be enhanced penalties on that particular kind of offense.

Another provision which is incorporated in this bill is an amendment to the Armed Career Criminal Act, which classifies drug pushers as career criminals, and calls for mandatory sentences of 15 years to life.

For the first time, in legislation passed in 1984, which this Senator had introduced in 1981, the Federal Government has taken a firm hand in street crime by making it a Federal offense for anyone who is a career criminal, defined as someone who has committed three or more robberies or burglaries, to be found in possession of a gun. This is a Federal crime, prosecutable in Federal court, with the individual judge calendar provision so the speedy trial law applies, with mandatory sentences of 15 years to life.

Earlier this Congress, in response to the success which the Career Criminal Act has had, I introduced legislation to expand this statute to make drug sales and other crimes of violence a predicate for application of the mandatory sentences of 15 years to life and utililzation of the career criminal provisions. That bill has been reported out of the Judiciary Committee and now is ready for independent floor action but has been incorporated in the general bill now before the Senate.

Mr. President, I think the time has come to act on drugs in a very forceful way. The incidence of drug abuse has grown enormously since I first saw it when I joined the district attorney's office 27 years ago in Philadelphia. It is time that we acted in a concerted way and I think this bill, although there are some parts that I disagree with and some amendments that I will vote for on modification of the bill, is timely. I think it is high time we took a strong stand. I thank the Chair and I yield the floor.

Mrs. HAWKINS. Mr. President, the Senator from North Carolina [Mr. BROYHILL] wishes to make a statement.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BROYHILL. Mr. President, I rise in support of this legislation. I

think it is overdue and the American people are very much concerned about what is going on. I know legislation has been introduced not only in this body but also in the other body. The other body has already passed a bill. Recommendations coming out of the White House express the concern of the American people over drug abuse occurring in our schools and in the workplace, tearing apart families, ripping apart our schools and costing us in the workplace.

I know the surveys we have been reading with respect to the statistics on drug abuse and we want to make sure we address this problem.

I think the reason we find this body reacting the way it is has to do with the stories that we hear when we go home. We hear stories about drugs tearing apart families and our schools.

The legislation that is before us is the product of a bipartisan effort to come up with some meaningful additions to help us deal with this problem. No. 1, of course, is to deal with the flow of drugs across our borders and the need to have stronger means of stopping that flow.

More than that, we need help in our States; we need to help them with their efforts to educate and prevent drug abuse through our schools and also through community-based programs.

This is a responsible bill. I am sure there will be amendments adopted that we will need to consider carefully but will help strengthen the bill. But we are not going to solve this problem with the passage of this legislation. The problem is going to be solved when the American people, starting at the community level, begin taking the necessary steps to ensure that this kind of behavior is brought to an end. Our citizens working together are the key to ending this problem.

Mr. President, nearly two-thirds of all American high school seniors have used an illicit drug, at least once, by the time they finish high school. Approximately 92 percent of all high school seniors have used alcohol. The tragic consequences of drug use and alcohol abuse by students and citizens across this country have reached epidemic proportions. The effects are felt not only by these individuals and their families. They are evident in communities across our Nation. As a nation, we cannot afford to lose the skills, talents, and vitality of these individuals.

The legislation before us today is the bipartisan product of months of negotiations. While local and State law enforcement officials and other concerned groups are trying to rid our schools and streets of drugs, the Federal Government must keep doing its part to stem the flow of illegal drugs.

The grave threat to the American people posed by this influx of drugs makes necessary strong action.

We must assist the States in their efforts to educate and prevent drug abuse and alcohol abuse through our schools and community-based programs.

The legislation raises the current alcohol, drug abuse, and Mental Health Administration block grant authorization for fiscal year 1987 to $675 million. This is an increase of $375 million. This block grant, first established in 1981, gives States on a population per capita basis an allocation which allows them the flexibility to provide those programs that they determine will serve the greatest need. These additional funds will enable my State, North Carolina, to enhance its current drug abuse program. Furthermore, it will provide additional services and treatment for those individuals who need it most.

The legislation also directs the Attorney General to work with the States to enforce State and local laws established to combat this growing problem. It provides for additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons, who violate State laws relating to the production, possession, and transfer of controlled substances.

It also makes sure that those responsible for supplying our citizens with these illegal products pay for their crime.

Mr. President, parents can make sure their children are aware of the dangers of illegal drugs. Workers can protect themselves against accidents by requesting employers to take steps to ensure that their work environment is drug free. Members of business and civic groups can sponsor antidrug educational campaigns. And citizens who witness drug-related crimes can provide tips to police by calling hotline switchboards that many communities have set up.

Working together, I am sure that we can win this war.

I thank the majority leader for permitting me to have a few minutes to express my views.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, let me thank everyone on each side. In a few minutes, we shall be taking up the tax reform conference report. What we are attempting to do now is follow the suggestion outlined earlier by the distinguished Senator from Connecticut [Mr. WEICKER] to make certain we are not subject to a point of order. I think we have cleared one of those away on each side. I am prepared to do it either way. I am hoping he will let us try to work that out, as he indicated earlier he would. We are in the clearing process now, and can satisfy the Senator's objections either late today or when we come back.

Mr. WEICKER. Mr. President, I suggest to the majority leader again that I am satisfied, as long as the point was raised and recognized as being a valid point. It can be worked out now, worked out tonight, worked out at the end of the bill, as long as there is a recognition that the point that was made is valid.

Mr. DOLE. I have discussed it with the distinguished Senator from Florida [Mr. CHILES]. We have indicated two options—two revenue bills. We are not in the process of seeing which way we are going to go.

Mr. CHILES. I think that is going to take a little longer on our side and with the indulgence which the Senator from Connecticut has offered, I think we will be able to do that.

Mr. WEICKER. As long as I have assurance that the problem is going to be worked out, the word of the distinguished Senator from Florida and the distinguished Senator from Kansas is OK with me.

Mr. DOLE. We have given notice that we will attempt to do that.

□ 1400

I think the Senator from Illinois wanted to speak.

Mr. CHILES. I think we have about one more statement on our side that I know of right now and then I think if the distinguished majority leader wishes to go off the bill for a while we could then go to tax reform.

The PRESIDING OFFICER (Mr. BROYHILL). The Senator from Illinois is recognized.

Mr. DIXON. I thank the Chair very much. I thank the majority leader.

Mr. President, today the Senate considers sweeping legislation designed to meet this Nation's drug problem. The terrible effects of drug abuse in our schools and on our streets have forced the Congress to act. As a cosponsor of the legislative package before the Senate, I am the first to admit that the bill is not a perfect one.

It is not ideal, Mr. President, but it is a start. It represents a great deal of negotiation within the State, and today it enjoys broad bipartisan support. This legislation strikes at drug-related crimes in the area of law enforcement and sentencing reform. Penalties for drug offenses will be increased.

In the area of narcotics interdiction, this package devotes substantial resources to stem and eventually halt the flow of illegal drugs into this country from abroad. This legislation will give our Government and enforcement authorities the tools needed to seize and prosecute those who transport drugs into America from abroad. These tools include surveillance aircraft to track ships and planes, radar systems to detect illegal narcotics deliveries and high-speed pursuit heli-

copters to carry out drug interdiction missions. The number of Coast Guard and Customs Service personnel, the people who actually carry out interdiction missions, will be increased, and their resources improved.

Internationally, Mr. President, I support the carrot-and-stick approach toward drug-producing foreign nations that receive American assistance. The Senate will likely increase the amount of funds available to narcotics "source countries" in an effort to aid in crop eradication and crop substitution. However, this legislation will also invoke serious penalties upon nations which do not pursue a vigorous anti-narcotics campaign.

Finally, Mr. President, other major provisions of S. 2878 will expand and improve current networks of alcohol and drug abuse services in education, treatment, and rehabilitation. These cannot be "quick fix" services but rather a mix of services requiring a long-term investment.

It is my desire that in this legislation, we enhance a true partnership between States and the Federal Government to eradicate this devastating problem of drug and alcohol abuse.

Throughout my own State of Illinois, a network of local programs exist in treatment, prevention, education, and intervention. These community-based programs were designed not only to provide quality services, but have grown to become a source of expertise in substance abuse issues, involve significant community interests, and have often been cited as leadership models for other programs throughout the Nation.

Mr. President, this has not been good enough. Signficant gaps still exist in available alcohol and drug abuse services in Illinois.

Current treatment programs are severely overcrowded. According to information supplied to my office, in some instances, drug abusers must wait as long as 8 to 10 weeks for admission to a treatment program. The demand for prevention services at the local level far exceeds the available resources to respond to the demand. Certain population groups remain underserved, including juvenile offenders, school dropouts, and many others. I feel certain this is not unique to the State of Illinois.

In conclusion, Mr. President, I believe S. 2878 represents a remarkable compromise. This bill does not, in my view, contain everything this country needs, especially in the areas of interdiction or education and prevention. It is, however, a first step in a time when the Congress is faced with serious budgetary restraints.

I am delighted, Mr. President, to enthusiastically support this legislation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1410

Mr. MATHIAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS. Mr. President, very few Americans, and certainly very few Members of the Senate, doubt the need to deal forcefully with the drug problem which is besetting the people of the United States. The effect of drugs on our safety, on our economy, and, most importantly, on our children, threatens the welfare of our entire society.

The President of the United States, our colleagues in the other body, and those who helped to put together the so-called bipartisan package in the Senate should be commended for their efforts to confront this very serious problem and to move it in the direction of some successful solution.

It sometimes happens, however, that in our haste to do something about a serious problem, we create a whole new array of problems.

□ 1420

And I fear that in our haste to do something about drugs before the end of this session of Congress, in other words almost immediately, we are in danger of doing what Alexis deTocqueville warned us against 150 years ago: "flattering the passions." Because when we flatter the passions, we are in danger of forgetting fundamental principles. The threat is not impotence, because there is power in Congress. Rather it is the precipitous use of legislative power that poses the greatest threat to our individual liberties and social institutions.

Very candidly, none of us has had an adequate opportunity to study this enormous package. It did not emerge from the crucible of the committee process, tempered by the heat of debate. The committees are important because, like them or not, they do provide a means by which legislation can be carefully considered, can be put through a filter, can be exposed to public view and public discussion by calling witnesses before the committee. That has not been the origin of this bill. Many of the provisions of the bill have never been subjected to committee review. The bill before us, with all due respect to those who drafted it, is a rough draft. It is the one that needs refining.

I have to say, further, that this drug bill is a moving target. I have considered what I might say here in the Senate when the drug bill came to the floor, and I have to scrap several previous drafts of remarks that I might have made because the bill has changed so radically. You cannot quite get a hold on what is going to be in the bill at any given moment. We have had drafts of different portions of the bill circulating around the Senate corridors within the last 24 hours.

Really, the only thing that we can be sure of is that the ink on the bill that finally comes before the Senate is not going to be dry. So I would warn Senators when they pick this bill up not to smudge their fingers with the wet ink because that is the kind of process we are engaged in.

The original text of S. 2850, the bill introduced by the majority leader on Tuesday, raised a great many serious questions. Some of these questions are no doubt answered by the refined version of the legislation, Senate bill 2878, that was introduced last night. But the questions remain relevant because of the likelihood that many provisions deleted from the original bill, or presented in a revised form, will undoubtedly resurface in the guise of amendments to the latest draft.

We can also be confident that the text that we will ultimately debate will contain the ambiguities and obscurities that inevitably mar complex legislation that is written and considered in haste, without the benefit of the normal process of legislative deliberation, without going through the committee filter, without having the input of the public through the calling of witnesses.

We may soon be voting on major revisions in a number of important areas of the law, creating rules which will apply far beyond the drug situation because they will be precedential. They will be important issues such as establishing a Federal death penalty, vitiating the exclusionary rule, and robbing mental health programs of their already meager funding.

In a spasm of effort to deal with a pressing problem, and no one here doubts that this is truly a pressing problem, we are trampling on subjects that, although controversial, have heretofore always been taken very, very seriously.

We simply must not be slaves to the moment or instruments of our passions. It would be the ultimate folly to sacrifice our liberties and imperil vital health programs, only to discover that the drug crisis has not abated.

If we are contemplating changes to important individual freedoms, if we are about to alter major social commitments, then those modifications simply must be discussed fully. They must be understood totally. The consequences must be anticipated.

We have to ask ourselves, what does the provision achieve? What are we really going to get with the high price we are going to pay? How effective is it

going to be? Is there any better alternative? Is there another way to do it?

Finally, I think we cannot avoid the nagging question of how the Nation is going to pay the bill for a drug program. There is no question that we should pay it. But exactly how are we going to pay it?

In a few days, perhaps even before the end of today, we will vote on a monumental tax bill, but it is a tax bill which we are assured by its authors is revenue neutral. So we are not going to raise any revenue out of that bill to pay for a drug program. There is no money in it for a drug program.

The other body has been very aboveboard and quite direct about its drug bill. They added $2.1 billion to the continuing appropriations resolution and they financed it by an across-the-board cut of all other programs. They said, "This is going to cost us over $2 billion. It is money we need to spend, and we will just take a little bit off the top of every other program and find that $2 billion."

It is a very direct approach, and it raises a little cash. But I do not think it reflects very much considered judgment about budget priorities.

The President was equally up front about how to pay for the proposal. he knew that there was a bill that was going to be presented and had to be paid and he suggested a way to pay it. He said take a billion dollars from funds now allocated to other domestic programs.

The Senator from Connecticut [Mr. WEICKER] has declared this type of proposal to be not a war on drugs but a war on the mentally ill, a war on the sick and the poor.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the Chicago Tribune which reports Senator WEICKER's speech.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WEICKER SEES CREATIVE BOOKKEEPING, NOT NEW CASH

WASHINGTON—Sen. Lowell Weicker charged Thursday that President Reagan's antidrug program will be financed by "stealing" funds from other programs, not by new dollars.

Weicker, chairman of the Senate appropriations subcommittee that handles health and education programs, said that the $900 million in "increased resources" planned by Reagan will come from money now allocated to other domestic programs.

"The President does not propose spending new money on the war on drugs," Weicker said in a Senate speech. "Rather, he proposes stealing the money from one program to spend it on another."

Weicker said it was his understanding that $100 million will be taken from student aid programs and given to local school districts for drug education and law enforcement coordination. He said $233 million will be shifted from current drug programs and allocated to the National Institute of Drug Abuse for drug treatment, prevention and research.

Among the cuts, Weicker said, will be $75 million in block grants for community and migrant health centers; $2 million from the block grants for preventive activities to reduce morbidity and mortality; $88 million from the National Institutes of Health earmarked for research $6 million from the National Institute of Mental Health for prevention of mental illness; $1.3 million from the National Institute of Alcohol and Alcoholism; and $60 million from the low-income home energy program.

Weicker said states will be able to shift alcohol, drug abuse and mental health block grants to increase drug abuse activities, if they do so without additional money.

□ 1430

Mr. MATHIAS. Before the Senate passes the bill, every Senator and all of the Nation's taxpayers ought to know how these programs are going to be paid for.

Is it going to be new money? Is it going to be money taken from other programs? Is it going to be shifted around in some way which is good? Or is it going to be paid for by robbing programs that are already far too small?

In sum, there are a number of unanswered questions, and there is very little evidence to answer them, at least on the present record. Perhaps the biggest question of all is, even with all of the recommended changes, will this bill be effective, or are we spinning our wheels? Is all of this concern going to be squandered on a wasted effort?

Only careful and thoughtful deliberation can answer that question, and I urge every Senator to bring that kind of deliberation to this process, because the American people, our families and our children, deserve nothing less.

Mr. HECHT. Mr. President, I rise today to speak in opposition to something which seems to have become a veritable American tradition; the tolerance of widespread drug abuse in our Nation's schools. Concurrently, Mr. President, I wish to express my steadfast support for S. 2878, the Antidrug Abuse Act of 1986, of which I am a cosponsor.

Mr. President, statistics show that nearly two-thirds of our American teenagers have used an illicit drug at some time before their senior year of high school. A particularly unfortunate aspect of this fact becomes more apparent when one considers that drug use impairs the memory, alertness, and achievement of our teenagers; with frequent users of marijuana earning below average and failing grades twice as frequently as their classmates. How will we be able to educate our young—the inheritors of our Nation—in an environment so clouded with the ill effects of drug abuse?

Moreover, Mr. President, not only have many of our Nation's schools witnessed an increase in drug abusing students, but in some cases these educational institutions have inadvertently come to furnish a veritable free market in which drug dealers may merchandise their goods. Drug transactions occurring on high school campuses, in fact, have come to represent a significant percentage of all drug sales to American teenagers. Even more frightening is that statistics show a number of illegal drugs—particularly marijuana—are used on school grounds. Students provide the demand, drug dealers provide the supply, and in too many cases, our schools provide a marketplace for this deadly exchange.

Mr. President, in current attempts to curtail the use of drugs, education programs have been implemented to reach young children before they are exposed to drugs. These programs, however, are not being taught in our junior high schools, as some might imagine—no, the proliferation of drugs is too widespread for preexposure programs to be successful at that late level—rather, these programs are targeted at fourth and fifth graders. In other words, Mr. President, the problem has become so great that we must now fill the days of our 9- and 10-year-olds with the harsh reality that they may face a near-term drug confrontation.

I wish to point out to my colleagues that the escalation of drug abuse is shown not only by the number of this scourge's victims, but may also be measured in the potency and availability of today's illicit drugs. The purified form of cocaine known as "crack," for example, has lead to a number of drug-related deaths.

In closing, Mr. President, I would simply like to remind my colleagues of the responsibility we all share to protect and nurture our young people. Today, in America, the most serious threat to our children is drug abuse. The continuing tolerance and misconception of this Nation's drug problem stand as obstructions to the corrective action which must be undertaken if we are to rescue our young people, our future, from this terrible epidemic. Congress has an obligation to remove these obstructions. To this end, I wholeheartedly support the omnibus antidrug measure introduced in the Senate, and urge my colleagues to do the same.

Mr. COCHRAN. Mr. President, the bipartisan measure now before the Senate represents more than just a few weeks' work on directing our national attention and resources to combat the drug problem.

This package draws on measures which have been introduced and debated in both Houses of Congress, some of which have already been approved by this body. Also included are proposals sent to us by the President

and Mrs. Reagan as part of the national crusade they are leading against the war on drugs.

I am pleased to be a cosponsor of this comprehensive package, which attempts to coordinate activities and resources to arrest both the supply and demand for illegal drugs.

My State of Mississippi, along with other Gulf Coast States, is a prime entry point for much of the drug-smuggling activity in our country. The people of Mississippi don't want that distinction, and I believe this bill will help us do something about it.

Title III of this bill will do much to strengthen drug interdiction efforts. It contains language, already passed by the Senate, to provide $212.1 million to the Customs Service and Coast Guard for better intelligence and interdiction. It also allows at least 500 Coast Guard personnel to be assigned to naval vessels to assist in drug interdiction.

The bill tightens customs procedures and requirements, increases penalties, and expands the authority of the Secretary of the Treasury in various customs matters.

The bill also directs the Department of Defense to be an integral part of the comprehensive, national drug interdiction program. It permits the Department of Defense to loan personnel to civilian law enforcement agencies to operate and maintain equipment used in foreign interdiction activities.

It is necessary that we secure greater international cooperation with U.S. efforts to combat drug trafficking. This package increases international narcotics control assistance by $55 million for fiscal year 1987, including at least $10 million for procurement of aircraft to interdict drug traffic primarily from Latin America.

In addition to interdiction efforts, the bill would enhance law enforcement efforts at the State and local levels against drug trafficking. It also provides additional resources for eliminating drug use in the schools and work place, and for enhancing drug abuse treatment capacity.

The elements of this legislation which increase public awareness and prevention of drug abuse are necessary components of this comprehensive effort to achieve a drug-free society. We can best help our citizens understand the high stakes involved in drug abuse by providing support to those community-based education and prevention programs which have already proven themselves effective.

I am pleased to be a part of this effort in the Senate to develop legislation that will translate our Nation's commitment to arrest drug abuse into action.

Mr. MOYNIHAN. Mr. President, I rise today to join my colleagues in introducing this comprehensive, bipartisan narcotic control bill which provides desperately needed funds and programs to combat the drug abuse crisis in this country.

That the issue of drug abuse is one of great concern to the people in this country is no surprise. A New York Times survey conducted last month revealed that 13 percent of those interviewed named drugs as the Nation's most important problem, more than those who cited unemployment, fear of war, or other economic difficulties. To illustrate the degree to which this issue has intensified in the minds of the American public, in an April survey, only 2 percent selected drugs as the country's most important problem.

Irving Kaufman, Chairman of the President's Commission on Organized Crime, has called for "persistent and unyielding assaults on both supply and demand." I agree—we can only make progress by addressing both parts of the drug equation. And we must make such "assaults" effective by providing adequate assistance to those Federal, State, and local authorities who face the difficult task of stamping out drug use in this country.

That is exactly what this bill seeks to do: Provide additional resources to reduce demand for illegal drugs and to limit their supply.

Just yesterday, the Washington Post reported that 80 percent of all the lethal derivative of cocaine, crack, available in the United States, originates in New York City. It is all too apparent that New York City is badly in need of additional funding to disrupt the production and distribution of crack and other illicit drugs; it is not alone. Stopping cocaine and crack addiction must become a priority for all of us. A civilized society cannot ignore these cries for help.

We have an obligation to take active measures in the war against drugs, before it is too late. Drug, related injuries, including crime-related deaths, have become all too commonplace. Just in my own State, I am acutely aware of a marked surge in crime in the last 6 months directly attributable to drugs. In July, the New York City Police Department reported that the number of major crimes rose to 249,090, and that was just for the first 5 months of this year. Of the 653 murders which occurred during this year, 35 percent were drug related. In addition, reported injuries due to cocaine smoking rose from 600 to 1,100 between 1984 and 1985; and 83-percent increase.

Our total package offers a multipronged attack against illegal drugs and the threat it poses to our society. To address this problem, this proposal includes $115 million for State and local assistance law enforcement programs. I had provided for this same assistance in S. 15, the State and Local Narcotics Control Assistance Act, which I introduced on the first day of the 99th Congress, the same time crack hit the streets of New York—and other urban areas—but before it hit the papers.

In fact, the provisions of S. 15 comprise the majority of the law enforcement provisions in this bill. These provisions assist local authorities in the apprehension, prosecution, and adjudication of criminal defendants, building correctional facilities, and implementing illicit crop eradication programs in States.

The most disturbing aspect of this problem deals with the young people of this country. In 1985, the New York State Division of Substance Abuse Service released the results of a survey on drug use among secondary school students in New York. The survey estimated that an astounding 60 percent of our secondary school children, more than 900,000 students, reported having tried illegal drugs. Even more distrubing was the estimate that 31 percent of all seventh grade students had tried illegal drugs while in elementary school. Children all, some of whom were only 12 years old. And they are likely to continue to use drugs, with increasing frequency and dependence.

Equally as tragic is the phenomenon of crack babies. During a recent visit to Harlem Hospital, I saw 1-pound babies writhing with horrible withdrawal pains. They are called crack babies and they began their lives addicted to crack because their mothers were hooked on the drug.

To combat the demand for drugs, this bill provides funds for education and prevention aimed at our Nation's youth. Treatment and rehabilitation are also essential elements of any effort to keep people off drugs. S. 15 called for $125 million for grants to States for education, prevention, treatment, and rehabilitation programs aimed at keeping people off drugs, or rehabilitation drug users for productive employment and drug free lives. I am pleased to report that the bipartisan measure we introduce today also provides $125 million for this purpose.

My provisions of this bill dictate that 75 percent of the State and local grants for alcohol and drug abuse prevention, education, and treatment shall be distributed relative to the needs of each State. It is my intent that these grants will provide direct aid to those States, such as New York, which are totally besieged by a drug and alcohol epidemic. At my request, this bill also directs the National Institute on Drug Abuse to research narcotic antagonists for treatment of cocaine and heroin addiction. Perhaps if these efforts are successful, we will be able to still the cries of the babies I held in Harlem.

Drug problems throughout the country all stem, in part, from the huge supply of illegal drugs into this country. In order to decrease the supply of drugs into this country, this bill increases enforcement funding for Federal agencies, including Customs and the Drug Enforcement Administration, provides funds for the purchase of aircraft for drug interdiction, calls for tariff penalties against uncooperative source countries, and increases international narcotics control, including new research for chemical herbicides for eradication of coca plants, and loans through the Multilateral Development Banks for eradication and crop substitution.

This is not the first flood of drugs into our Nation which I have witnessed in my years of public service. I faced a similar crisis in 1969, when I was a special assistant for urban affairs for President Nixon. While today the crisis involves "crack," then it involved heroin, a narcotic derived from the poppy plant just as cocaine is derived from the coca plant. At that time, poppy plants were grown primarily in Turkey, processed into heroin in Marseilles, and then smuggled into New York.

In order to cut off the supply of heroin, I persuaded the President to provide financial assistance to help Turkish farmers make the transition from a poppy-based agriculture to a more general agricultural economy. With our help, the program to eradicate illicit poppy production succeeded and the French connection "collapsed," creating a severe shortage of heroin in every major drug center in the country.

It comes as no surprise to me, then, that our focus has now turned to countries like Bolivia, Peru, and Columbia as they provide the raw materials for some of the world's most powerful drug traffickers. I support the efforts of our government and the Bolivian authorities in trying to reduce the supply of cocaine from those countries through programs of crop eradication and substitution. Our bill calls for loans to such countries through Multilateral Development Banks for crop eradication and substitution.

Some might say that we can't afford to allocate more money to the fight against illegal drugs. But I say we can't afford not to. The cost of drug abuse to our society are enormous. According to a study commissioned by the Alcohol, Drug and Mental Health Administration, in 1984, drug abuse costs society a total of $60 billion every year. This includes $20 billion spent to prosecute and imprison criminals convicted of drug dealing and related crimes. It also includes the $2 billion we spent each year to treat and rehabilitate drug abusers. Clearly, there is too great a disparity between the cost of drug abuse and the amount of money we spend to prevent it.

The time has come to provide sufficient ammunition to the Federal, State, and local officials who are on the front lines of the fight against drug abuse. This bipartisan measure is that ammunition, and I urge each of my colleagues to support this important initiative.

Mr. ANDREWS. Mr. President, I want to support S. 2878, the Anti-Drug Abuse Act. This bipartisan effort represents a comprehensive strategy to stop drug abuse. Two weeks ago, in a nationally televised address, President Reagan stated that "drug abuse is a repudiation of everything America is. The destructiveness, and human wreckage mock our heritage."

We must not and cannot fund this legislative initiative at the expense of other essential federally funded programs. This past year, we have worked long and hard to guarantee that this Nation's budget sufficiently funds education, health, agriculture, transportation, and defense programs, while reducing our national deficit.

I note that this bill provides for increased authorizations for the Coast Guard. Bill language also calls for the Department of Defense and its resources to be an integral part of a comprehensive national drug interdiction program. Department of Defense cooperation is crucial to the success of our antidrug effort. I believe that the capital assets and personnel levels of the Coast Guard need to be augmented to effectively wage the war on the illegal smuggling of drugs into the United States.

As chairman of the Appropriations Subcommittee on Transportation, I have advocated for years that the Coast Guard use Navy assets, in particular the E-2C aircraft in the drug fight. Right now the Navy flies E-2C's in training missions over the Caribbean and gulf coasts. What better use of this flight time could there be than to permit Coast Guard personnel to be on-board to target maritime smuggling suspects. That intelligence, gathered with the use of Navy equipment, could then lead to an actual inspection and arrest by the Coast Guard vessels.

I have pushed this approach for years, but we've met with continued resistance from the Defense Department. Today, we have an eager and ready Coast Guard which desires joint use of these assets, and a Defense Department which has finally listened to Congress' message to help out in the drug war.

However, when we assign law enforcement duties to the Armed Forces, we must be careful to insure civilian control over this effort. The Posse Comitatus Act was enacted following the war between the States to preclude the use of Federal troops in enforcing public law. We found in the past, both in our own history and in the history of other nations, that the use of military forces to keep law and order has resulted in the decline of liberty.

Despite some reservations, the need is clear that this legislation is a much needed first step in the continuing war against substance abuse.

During the next few days, we will will have an opportunity to consider these initiatives in more detail as the Senate deals with the appropriations to implement this legislation.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, we hope to turn to the tax conference report momentarily. The principals are here, Senator LONG, Senator PACKWOOD. As far as I know, there is no objection turning to the conference report, but I want to wait until the distinguished minority leader is available.

Let me indicate while we are waiting that it is still my hope to complete business by the third of October, and it can be done. But there is not much room for slippage. That would mean completing drugs and the tax bill by the weekend. On Monday and Tuesday of next week, the continuing resolution. On Wednesday of next week, I think there will be a veto override which I understand will be debated at some length. On Thursday and Friday, until sundown on Friday, probably the impeachment trial. And then other little assorted things that come in and out.

That is the best-case scenario. I get encouraging sounds from the House side that they now believe that they are within striking distance, depending largely upon the continuing resolution. which only passed the House by one vote.

I know a lot of my colleagues are concerned about whether they should schedule any activity between, I guess, the sixth of October and the 11th of October. I would hope you can, but I do not know. We could still be here that week.

□ 1450

Mr. President, while we are waiting, let me dispose of three legislative matters.

EXPRESSING THE SENSE OF CONGRESS IN OPPOSITION TO EMPLOYMENT DISCRIMINATION AGAINST CERTAIN INDIVIDUALS

Mr. DOLE. Mr. President, I send a concurrent resolution to the desk and ask for its immediate consideration. This concurrent resolution is offered on behalf of Senators HEINZ, GORE, DOLE, BURDICK, MELCHER, LAUTENBERG, HAWKINS, SPECTER, EXON, DIXON, MATSUNAGA, GLENN, SIMON, CHAFEE,

DURENBERGER, INOUYE, CRANSTON, HECHT, HART, KERRY, HUMPHREY, WARNER, WILSON, COHEN, MCCONNELL, BUMPERS, STAFFORD, ABDNOR, TRIBLE, GORTON, RIEGLE, and PRYOR.

The PRESIDING OFFICER. The clerk will state the concurrent resolution.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 166) expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history.

The PRESIDING OFFICER. Is there an objection to the immediate consideration of the concurrent resolution?

Mr. BYRD. No objection.

Mr. CRANSTON. Mr. President, I am pleased to join the distinguished Senator from Pennsylvania [Mr. HEINZ] in introducing Senate Concurrent Resolution 166, expressing the sense of Congress in opposition to discrimination against individuals who have or have had cancer.

Mr. President, biomedical science has made remarkable progress in the fight against cancer. Many cancers, particularly those afflicting young people, are treatable—even curable. We applaud our scientists for helping transform more and more cancer victims into cancer survivors.

Recovered cancer patients are able and desire to enter or reenter the workforce to become productive Americans.

That's what makes it especially tragic that, after winning the fight for their lives, many cancer patients are then faced with another uphill battle against discrimination.

Mr. President, according to the American Cancer Society, 1 out of every 5 persons with a cancer history—more than 1 million persons—has encountered employment discrimination.

Mr. President, section 504 of the Rehabilitation Act of 1973, of which I was a principal coauthor, prohibits discrimination against handicapped individuals under any program or activity receiving Federal financial assistance or conducted by a Federal agency. Taken together with sections 501 and 503 of this act—requiring Federal agencies and Federal contractors, respectively, to take affirmative action to employ and advance disabled persons—this legislation has been and continues to be instrumental in opening doors previously used to shut out disabled Americans. For the purposes of these provisions, section 7(7)(B) of the Rehabilitation Act of 1973, defines the term "handicapped individual" explicitly to include any person "who first, has a physical or mental impairment which substantially limits one or more of such person's activities, second, has a record of such an impairment, or third, is regarded as having such an impairment." Without question, persons with cancer or a history of cancer are covered by this definition and are thus entitled to every effort of the Federal Government available under this law to protect them from discrimination.

Although great strides have been made under sections 501, 503, and 504 in helping ensure that persons with disabilities are not denied full participation in our society, it is tragically evident from the figures I have earlier cited regarding the number of individuals with a history of cancer who have been the victims of employment discrimination that we still have much to accomplish if disabled persons are to be provided the rights and opportunities that are each American's due.

Mr. President, if is my hope that this resolution will help promote a greater awareness and understanding of individuals who have or have had cancer. I urge all of my colleagues to review and support this resolution.

Mr. HATCH. Mr. President, I would like to commend Senator HEINZ for the work he has done on Senate Concurrent Resolution 166, expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history. I would also like to express my general support for the concept of educating the public about the progress we have made in treating cancer.

Today, 1 of every 2 persons diagnosed as having cancer is cured. That means that there are more than 5 million people alive today who have had cancer. And there is no doubt that many of them are discriminated against when it comes to employment or insurance.

The solution to this problem is public awareness. People who have had cancer historically had a much shorter life expectancy. Insurance companies base their rate on historical data. Today, because more people are living with cancer, insurance companies will adjust their rates for cancer patients downward.

Likewise, employers have been reluctant to hire and train persons with a history of cancer, who might have a shortened life expectancy. In addition, employers were concerned about frequent hospitalization and its effect on employees' productivity and their health care costs. But today, many cancer patients can be cured and return to many years of productive employment.

As I and other Senators have pointed out, it is important that the public learns about the progress we have made. Attitudes toward cancer patients should and are changing. Most of us now personally know someone who has been cured of cancer.

But let me express a word of caution. I am cautious about trying to change these attitudes through legislation. Among employee benefits, for example, is insurance. Insurance rates are generally determined by one's risk of injury or illness. People who smoke, are overweight, have high blood pressure, or have been exposed to AIDS are charged higher rates because they present a greater risk. Those presenting a lower risk should and do pay less. Thus I am not willing to mandate equality in the marketplace which would amount to a forced cross-subsidy, but I am willing to endorse a broad policy statement opposing unfounded disparate treatment.

Mr. President, having said that, I would like to again commend Senator HEINZ for his work and leadership in this area. I hope that I can work with him to increase the public awareness of the progress we have made in this area.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 166) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 166

Expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history.

Whereas there are more than five million Americans in our Nation with a cancer history and an estimated one million of them face the terrible injustice of employment discrimination;

Whereas one out of every two individuals now diagnosed as having cancer is cured, and as a result, the number of survivors will continue to dramatically increase;

Whereas employment discrimination against cancer survivors ranges from job denial to wage reduction, exclusion from and reduction in benefits, promotion denial, and in some cases outright dismissal; and

Whereas we must permit, and encourage, cancer survivors to remain fully integrated and productive members of society: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the Congress—

(1) opposes employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history, and

(2) urge that such individuals receive fair and equal treatment in the workplace.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

EXPORT IMPORT BANK ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of calendar 975.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5548) to amend the Export Import Bank Act of 1945.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3033

(Purpose: To achieve various foreign and domestic economic policy and trade objectives)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator HEINZ and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. HEINZ, proposes an amendment numbered 3033.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill add the following:

"POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA

"SEC. . (a) The Congress finds that—

"(1) the Marxist Popular Movement for the Liberation of Angola (hereafter in this resolution referred to as the "MPLA") has failed to hold fair and free elections since assuming power in Angola in 1975:

"(2) Angola currently harbors more than 35,000 Soviet and Cuban troops and advisers;

"(3) the Cubans and Soviets have channeled more than $4,000,000,000 in assistance and military aid in furtherance of this intervention in Africa;

"(4) the MPLA government of Angola obtains more than 90 percent of its foreign exchange from the extraction and production of oil;

"(5) most of Angola's oil is extracted in Cabinda Province, where 75 percent of it is extracted by the Chevron-Gulf Oil company;

"(6) the MPLA has refused to take meaningful steps to end its dependency on Soviet and Cuban forces, engage in national reconciliation efforts within Angola, or encourage the independence of Namibia;

"(7) United States business interests are in direct conflict with United States foreign policy objectives in aiding the MPLA government of Angola, which directly opposes Jonas Savimbi and UNITA, recipients of United States support; and

"(8) imposition of severe economic sanctions will encourage the MPLA to promote a fair political solution and negotiate with the United States toward a peaceful settlement.

"(b)(1) It is the sense of the Congress that the interests of the United States are best served when United States business transactions conducted in Angola do not directly or indirectly support Cuban troops and Soviet advisers.

"(2) The Congress hereby requests that the President use his special authorities under the International Emergency Economic Powers Act to block United States business transactions which conflict with United States security interests in Angola.

"GROUP ELIGIBILITY REQUIREMENTS

"SEC. . (a) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

" "SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

" "(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

" "(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated,

" "(2) sales or production, or both, of such firm or subdivision have ceased absolutely, and

" "(3) increases of imports of articles like or directly competitive with articles—

" "(A) which are produced by such workers' firm or appropriate subdivision thereof, or

" "(B) in the case of workers of a firm in the oil or natural gas industry, for which such workers' firm, or appropriate subdivision thereof, provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

" "(b) For purposes of subsection (a)(3)—

" "(1) The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

" "(2) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

" "(3) Any firm, or subdivision of a firm, which—

" "(A) engages in the exploration for oil or natural gas,

" "(B) produces or extracts oil or natural gas, or

" "(C) processes or refines oil or natural gas, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

" "(4) Any firm which provides essential parts, or essential services, to another firm that conducts activities described in paragraph (3) with respect to oil or natural gas, as its principal trade or business, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.".

" "(b) Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

" "(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

" "(A) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

" "(B) sales or production, or both, of such firm have decreased absolutely, and

" "(C) increases of imports of articles like or directly competitive with articles—

" "(i) which are produced by such firm, or

" "(ii) in the case of a firm in the oil or natural gas industry, for which such firm provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

" "(2) For purposes of paragraph (1)(C)—

" "(A) The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

" "(B) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

" "(C) Any firm which—

" "(i) engages in the exploration for oil or natural gas,

" "(ii) produces or extracts oil or natural gas, or

" "(iii) processes or refines oil or natural gas, or

" "(iv) provides essential parts, or essential services, to another firm that conducts activities described in any of the preceding clauses as its principal trade or business,

shall be considered to be in the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.".

"(c)(1) the amendments made by this section shall apply with respect to petitions for certification which are filed or pending—

"(A) on or after September 30, 1986, and

"(B) before October 1, 1987.

"(2) Notwithstanding any other provision of law, no worker shall be eligible for assistance under subchapter B of chapter 2 of title II of the Trade Act of 1974 if—

"(A) such worker is covered by a certification made under subchapter A of such chapter only by reason of the amendment made by subsection (a) of this section, and

"(B) the total or partial separation of such worker from adversely affected employment occurs after September 30, 1987.

"OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS

"SEC. . (a) The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

"(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

"(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States produc-

ers of the same, similar, or competing commodity or mineral.

"(b)(1) The amount of payments which the United States may make to the paid-in capital of an international financial institution described in subsection (a) during any capital expansion or replenishment of such institution may not exceed the amount of funds which such expansion or replenishment minus an amount which bears the same proportion to the aggregate amount of assistance described in paragraph (2) furnished by such institution as the United States share of the expansion or replenishment bears to the total amount of the expansion or replenishment.

"(2)(A) The aggregate amount of assistance referred to in paragraph (1) is the amount of assistance furnished by an international financial institution to all countries during the period described in subparagraph (B)—

"(i) to support the production or extraction of any commodity or mineral for export, if—

"(I) such commodity or mineral as the case may be, is in surplus on world markets; and

"(II) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral; and

"(ii) to subsidize (other than under clause (1)) the exports of commodities and minerals from such countries.

"(B) The period referred to in subparagraph (A) is the same number of years as the capital expansion or replenishment period which immediately preceded the first year of the expansion or replenishment period.

"(3) For purposes of paragraph (2)(A)(ii), the term "subsidize" is used within the meaning of the Agreement on Interpretation and Application of Articles V, XVI, and XXIII of the General Agreement on Tariffs and Trade and the annex relating thereto, done at Geneva on April 12, 1979.

"(4) Any funds witheld from payments to an international financial institution pursuant to this section shall be used to reduce the public debt in the manner specified in section 3113 of title 31, United States Code.".

Mr. METZENBAUM. Mr. President, reserving the right to object, would the Senator explain what the amendment is all about?

Mr. President, I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3033) was agreed to.

Mr. HEINZ. Mr. President, today the Senate is considering for the second time in 2 months legislation to extend the charter of the Export-Import Bank and to create a mixed credit warchest to combat use of predatory financing by other trading nations. This bill represents a compromise worked out by the Senate and House Banking Committees between the language passed by the Senate in July and the House-passed Eximbank bill. The committees met informally rather than going through a formal conference procedure because of the approaching expiration of the Bank's charter on September 30, and because the substantive differences between House and Senate bills on Eximbank and warchest authorities were few and relatively minor.

There is no need for me to elaborate on the need for quick action on this legislation. U.S. trade performance continues to be dismal, and a strong Export-Import Bank is essential to reversing our record trade deficits. Without this legislation the Bank's authority will lapse in a week's time, leaving U.S. exporters to try to compete singlehandedly against government-subsidized competition. In addition, the U.S. Government is locked in negotiations to reduce use of predatory mixed credits in export financing. The negotiations resume on October 6, and passage of the warchest legislation will provide U.S. negotiators with an important tool for working out an agreement.

I would like to go through the provisions of H.R. 5548 to review briefly the minor differences between this compromise bill and the Senate-passed version of H.R. 4510 and to explain the reasons for changes made to the original Senate language.

As in the Senate bill, the Bank would be permitted to charge reasonable fees to cover the cost of its seminars and publications. While the marginal cost wording of the Senate bill has been dropped, the intent of this provision is to permit the Bank to recoup only those additional costs associated with holding a seminar or producing a publication, not to charge fees covering salaries, rent, or other components of the Bank's normal administrative expense budget.

Similar to the Senate language, the bill calls upon the Bank to take steps to improve the competitiveness of and access to its medium-term programs. H.R. 5548 does not include the Senate specification that medium-term financing should be made available in the form of direct credits and for deals below the current Bank threshold of $10 million. However, it would be expected that one of the options the Bank would consider for improving its medium-term program would be to provide direct credit for smaller and shorter term deals as intended in the Senate language.

Section 5 of H.R. 5548 addresses the Bank's competitiveness mandate. Current law requires the Bank to be fully competitive, but stipulates that—

rates, terms and conditions need not be equivalent to those offered by foreign countries, * * *.

This would be changed to read:

Rates, terms and conditions need not be identical in all respects to those offered by foreign countries, * * *

The substitution of "identical in all respects" for "equivalent" is meant to strengthen the Bank's competitiveness mandate by removing any possible ambiguity in the current language that all of the Bank's programs are to be fully competitive. "Need not be equivalent" might be read as a relaxation of the competitiveness requirement; the new language requires that the Bank be fully competitive without qualification, but with the understanding that each individual rate, term, and condition of an offer need not be identical to that of a foreign financing offer, as long as the financing package as a whole is fully competitive.

Section 6 directs the Bank to offer multiple-exporter risk protection coverage through creditworthy trade associations, cooperatives, and the like. The Senate language has been modified by addition of language stating:

Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage.

This addition is intended to make clear that the multiple-exporter coverage is not an entitlement program and that the Bank would continue to make its normal determinations about the credit risk of individual transactions or issuance of insurance policies.

Section 7 is a slight variation on the Senate's program access language. It is intended to broaden access to the Bank's programs by ensuring that an entity is not denied access solely because that entity is not a bank or is not a U.S. person. At the same time, it is not intended to limit the Bank's flexibility in determining access to its programs based on other criteria or to restructure them in any way. Thus, the Bank would still be able to establish rules for access to its programs as part of the process of implementing the mandates contained in its statutory charter, such as finding reasonable assurance of repayment and avoiding competition with private capital. The Bank would also be able to establish guidelines for access that permit it to administer its programs in an effective and efficient manner.

Section 8 relates to Bank credits for Marxist-Leninist countries; it retains the language affecting Eximbank financing for Marxist-Leninist countries contained in Senate-passed H.R. 4510. This provision does not affect the portion of current law providing a national interest waiver where the President determines that extension of credit to a proscribed country is in the national interest. Since the existing waiver authority is retained, for any country for which a general national interest determination has already been made prior to enactment of this bill, the legislation would not require the making of a new general national interest determination.

Section 9 places an explicit prohibition on financing for Angola as in the Senate bill but with two small

changes. Drawing from the House language, the prohibition would not apply to food or agricultural commodities; and the certification required of the President would focus not on Cuban military personnel or military personnel from any other controlled country but on combatant forces or military advisers of the Republic of Cuba or of any other Marxist-Leninist country. This clarification would ensure that military attachés, guards, or other military personnel normally assigned to embassies and not involved directly or indirectly in combat or combat preparations would not be covered by the certification. This provision would not apply to past credit approvals by the Bank.

As in both Senate- and House-passed versions of H.R. 4510, transferability of Eximbank guarantees is included in section 10 of the compromise. The language improves on the Senate formulation by providing for unrestricted transfer of medium-term and long-term obligations insured or guaranteed by the Bank. This change in the Bank charter represents a significant step in attracting new and cost-effective capital in support of U.S. exports by making these obligations highly liquid assets and encouraging the development of a secondary market in such assets. Section 10 also makes clear that transferability would apply only to guarantee and insurance transactions receiving final approval from the Bank after the date of enactment of the bill.

In combination with the language of section 7, section 10 directs the Bank to permit transfers by and to the widest range of potential capital sources without affecting or limiting in any way the Bank's guarantee or insurance. There should be no confusion that the language permitting transfer from the originating lenders or their transferees to other lenders is intended to limit transferability in any way. In this formulation, the term "other lenders" is not to be narrowly construed to mean simply another bank or a financial institution that normally makes export loans. Since the asset in question is a loan—a loan made by the original lender and guaranteed or insured by the Bank—any person or entity acquiring ownership of that asset should be deemed to be a "lender" under the language of this provision. This could include, but would not be limited to, non-commercial-bank lenders such as pension funds, savings and loan associations, insurance companies, and commercial credit or finance corporations, both foreign and domestic. The purpose of this provision is to permit the original lender to sell or transfer the loan to the widest possible range of potential capital sources.

Transferability is important to investors for several reasons. Some investors require liquidity to meet potential withdrawals. Other investors face regulatory or internal requirements stipulating that any asset they purchase can be resold. All institutional investors require the flexibility to adjust their portfolios based on their perceptions of interest rate or other market developments. Broad transferability is already available for loans which are guaranteed by other U.S. Government agencies.

By requiring unrestricted transfer rights and thereby creating a market for Bank guaranteed loans, the bill would open up new avenues of capital support for U.S. exports. For purchasers of U.S. exports, participation of the broadest range of private capital sources will translate into more accessible funding on more attractive terms and at lower interest rates. This provision, threfore, meets the requirements of both sound export policy and sound fiscal policy. The urgent need for improved American trade competitiveness can be satisfied without adverse impact on the federal budget deficit.

Section 14 of H.R. 5548 extends the charter of the Bank for 6 years to September 30, 1992, rather than 10 years as in the Senate bill. While this shorter term would provide less of the stability and continuity we had hoped to provide the Bank and U.S. exporters, it is nevertheless an improvement over the average 5-year extension provided in past charter extensions and the 3-years of the last extension.

Section 15 provides guidance on matching foreign official export credits in the United States. Under section 1912 of the Export-Import Bank Amendments of 1978, Eximbank is permitted to offer financing support to U.S. suppliers who would otherwise lose sales in the U.S. market as a result of credit subsidies from other governments to support sales by foreign producers. The intent of Congress in this provision was to provide a strong and effective deterrent to foreign producers seeking to penetrate the U.S. market through predatory export financing. Since this use of Bank authority involved broad issues of U.S. economic and export policy, the Secretary of the Treasury was granted a role in considering these deals.

The amendments to section 1912 in the Senate bill arose from concern that the provision was not being implemented as intended by the Congress. The experience of several U.S. producers seeking assistance under its provisions indicated that Treasury was unwilling to authorize financing, denying credit where the competing offer came from a country not a signatory to OECD export credit agreements or failing to certify that financing was a significant factor in the sale.

To correct these deficiencies, the language of H.R. 5548 would make clear that this provision extends to credits "irrespective of whether these credits are being offered by governments which are signatories" to OECD financing agreements. In addition, the breadth of Treasury discretion would be further limited by requiring Treasury approval unless the Secretary determines that financing is not a significant factor. This change places the burden of proof on the Treasury and requires that a denial of credit be based on clear demonstration that financing is not likely to be a significant factor in the sale.

Section 19 of H.R. 5548 establishes within the Export-Import Bank the tied aid credit warchest which was the subject of title II of the Senate's bill. This warchest is intended to provide the U.S. Government with the tools necessary to eliminate the trade-distorting practice of mixing foreign aid with export credit, and appropriation of $300 million is authorized for this purpose. The administration is anxious to have this provision enacted to support its negotiating efforts in the OECD.

The structure and purpose of the warchest have been carefully designed. It could be used for both offensive and defensive purposes; that is, it could be used aggressively to take markets away from other countries, and defensively to protect American exports facing unfair mixed credits financing. Its overriding purpose is to strengthen the hand of the Secretary of the Treasury in negotiating a comprehensive agreement to limit the use of mixed credits.

To serve that purpose, it is essential that the Secretary, who is in charge of these negotiations for the United States, be able to play a role in the use of the funds from the warchest. Thus, though it is lodged administratively in the Bank, the actual use of funds would be done with the participation of the Secretary. This involvement in the use of these funds is assured by the language in this section which requires the Bank to administer this tied aid credit program in accordance with the Secretary's recommendation on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes.

While the formulation of the warchest in H.R. 5548 differs in a number of particulars from the Senate-passed bill, it incorporates all of the elements of the Senate bill and enjoys the support of the administration and exporters.

Section 20 of the bill authorizes the Bank to make interest subsidy payments, the so-called I-Match Program, on a trial basis. Under this section, the Bank would be permitted to make in-

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terest subsidy payments to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which would be granted for 2 years, would become effective only if three conditions were met: first, the funds for the interest subsidy payments must be appropriated; second, loan guarantees accompanying these payments must not be scored as budget authority; and third, the Bank must have been authorized a direct loan budget of at least $700 million. This last condition does not mean that the Bank must actually have loaned $700 million before I-Match becomes available, but that I-Match authority can become effective in any fiscal year only if the Bank has been provided sufficient authority in the budget to make at least $700 million of direct loans. This last requirement also reflects congressional concern that even with a functioning I-Match, the subsidy mechanism may not be appropriate or workable for many of the credits the Bank extends.

I-Match has been included in the bill on a trial basis despite some misgivings by the Senate. Both the administration and the House are convinced that the concept can work and are anxious to test it. The conditions attached to I-Match in this section are intended to ensure that, for the 2 years of its operation, the program will remain an experimental or pilot program. At the end of 2 years and based on the Bank's reort on the success of the program, the Congress can decide whether or not it should be expanded.

Finally, I would like to discuss those elements of the Senate bill that are not part of H.R. 5548. The only provision dropped that related to Eximbank operations added a review procedure by the National Advisory Council on International Monetary and Financial Policies [NAC] where the Bank rejected a sovereign guarantee based on the lack of reasonable assurance of repayment. The provision was intended to underscore the congressional intent in the Bank charter that the Bank should assume risks that private lenders will not. It would require the Bank to look not only at the financial assessment of a particular loan but to rely on the advice of the State and Treasury Departments in the NAC for a strategic, long-term assessment of the creditworthiness of a country or project.

While the House and the administration argued that NAC review was too cumbersome to work in these cases, the charter clearly expresses congressional intent that the Bank must operate in risky situations and consider the impact of a credit on long-term U.S. export market share or a country's long-term economic strength and ongoing economic adjustment efforts. In meeting congressional intent in this area, the Bank would be expected to look at the extent to which OECD or other export financing agencies are remaining on cover in a country and would be expected to consult with the Departments of Treasury or State on the impact of its credit decision on bilateral economic relations. The Bank should also be prepared to provide information to the Congress on cases in which credit was denied based on the absence of a reasonable assurance of repayment, including the extent to which there were competing offers for the sale.

The other Senate provisions that are not part of H.R. 5548 are those amendments added to the Eximbank bill on the Senate floor that are unrelated to the Bank's operations. Because of the procedure followed in developing this compromise proposal, the nongermane amendments have not been included. I agree with the sponsors of these provisions that if the Senate wishes to have them considered by the House, the only way to do so is to add them back to H.R. 5548 and go to conference. In saying this I do not wish to imply that House conferees will be likely to accept controversial, nongermane amendments. However, by adding them back we will at least provide an opportunity for consideration of these issues. Therefore, I am proposing an amendment to H.R. 5548 adding back provisions, exactly as passed previously by the Senate except for Dole amendment, originally introduced by Senators NICKLES, SYMMS, and DECONCINI, that will have to be addressed in conference.

Rapid Senate action is needed on this measure if we are to complete a conference and pass final legislation in time to prevent expiration of the Bank's charter on September 30. H.R. 5548 is an excellent compromise on the Exim and warchest issues and incorporates those elements of both Senate and House bills essential to the smooth operation of the Bank over the next 6 years. The bill enjoys widespread support among exporters and the institutions that finance exports. I urge your support for the bill as amended.

Mr. BYRD. Mr. President, I am pleased to see that this reauthorization of the Export-Import Bank includes the amendment which I offered to that legislation.

Exim has supported more than $12 million in West Virginia coal exports since October 1, 1985. I am gratified that the Bank is supporting one of our most competitive exports, because coal is vital to many jobs in my State, and in several other States.

But I have been deeply concerned about the direction of some of Exim Bank's lending. In particular, I have called to my colleagues' attention the case of the El Cerrejon—pronounced El Sarahone—mine in Colombia, South America. The Export-Import Bank provided a loan of $200 million to support development of that mine, even though the coal it produces will compete directly with U.S. coal.

The amendment I introduced on July 21, 1986, and which is included in this legislation will go a long way toward putting an end to Exim financing for production of foreign commodities—including coal, steel, chemicals, fertilizer, and others—that would compete with U.S. products and which cause lost jobs in this country. This amendment will prohibit loans which would result in a surplus of a commodity or would compete with U.S. commodity production unless Exim weighs the short- and long-term benefits to employment and industries in this country and determines that the benefits of the loan outweigh the harm to U.S. firms and workers. This is a tough standard, but a realistic one. Congress will closely watch its operation.

Now more than ever, we must expand our exports. We are losing our lead as the world's greatest exporting nation. In the most recent month for which trade figures are available—July—we imported twice the dollar value of our exports. This is totally unacceptable, and it is cheapening the quality of life for our people.

I commend the members of the Banking Committee, and Senators PROXMIRE, GARN, and HEINZ in particular, for their work on this legislation and their help in assuring the success of my amendment. I am grateful for the support of Senators FORD and ARMSTRONG and my many other colleagues who supported this important amendment. I believe it will give the Bank a very clear signal of the intent of Congress. The Fertilizer Institute has indicated that the pendancy of this legislation caused Exim Bank to reconsider a loan that would have resulted in competition with U.S. commodities. I trust the passage of this legislation will guarantee continued vigilence by the Bank.

Mr. PROXMIRE. Mr. President, I rise to support the enactment of H.R. 5548, a bill to amend and renew the charter of the Export-Import Bank. That charter will expire on September 30, next Tuesday. This bill will, among other things, renew the Bank's charter for 6 additional years.

On July 21 and 22 of this year we spent 2 days on this floor debating and amending Senate bill 2247 which renewed the charter of the Bank. Just 1 week earlier the House had passed its own bill, H.R. 4510, to do the same. On July 22 we struck all but the enacting clause of H.R. 4510 and inserted the text of our own bill. Since there were some major differences between the two bills it was expected a formal conference would follow to iron them out.

However, becaue of some jurisdictional problems in the other body, we did not convene a formal conference. Instead we decided to work with the House in preparing an entirely new bill embodying the compromises we would have reached in a conference. The bill before us, H.R. 5548, is the result of those intensive negotiations between the Banking Committees of the House and Senate. The House took the bill agreed to just last week, and passed it on September 22, 1986. It does not contain everything that I would like and it contains some things that I don't like. But overall it's a fair compromise and I hope my colleagues will support it.

As you know I have never been a supporter of the Export-Import Bank and I continue to have severe reservations about the wisdom of giving foreign consumers subsidies to purchase goods from American corporations. I realize that Congress is not going to discontinue this program this year so I have endeavored to make sure the cost of operating the Bank is made as explicit as possible, and to ensure that the Bank does not fund foreign projects that result in harm to our workers, farmers and companies. I have also worked to prevent the Bank from lending new money to Communist countries and in particular to prohibit it from making new loans to Angola until combat personnel and military advisers from Cuba and other Marxist-Leninist countries leave that Communist dominated land. H.R. 5548 has provisions reflection my efforts to achieve each of these goals.

Section 5 of H.R. 5548 addresses the Bank's competitiveness mandate and substitutes "need not be identical" for "need not be equivalent" in section 2(B)(1)(b) of the Bank's charter. I want to make absolutely clear that this amended competitiveness mandate does not require the Bank to match every element of an official export credit package being offered by a foreign export credit agency for a given transaction. It only means that the financing package a whole should be competitive with the foreign offer. So the Bank can continue to operate to neutralize the effect of foreign credits on international sales competition without trying to match foreign offers term for term.

Section 8 of H.R. 5548 specifically forbids the Eximbank to make any new loans or loan guarantees in connection with the purchase or lease of any product by a Marxist-Leninist country and then defines the term "Marxist-Leninist" to mean any country which "(I) maintains a centrally planned economy based on the principles of Marxist-Leninism, or (II) is economically and militarily dependent on the Union of Soviet Socialist Republics or on any other Marxist-Leninist country." The section then establishes a list of countries presently deemed to be Marxist-Leninist but provides authority for the President to add or delete countries from the list. The section further provides that the loan or loan guarantee prohibition can be lifted in situations where the President determines a waiver is in the "national interest."

Section 9 of H.R. 5548, however, adds a special provision dealing with loans, loan guarantees and insurance to the Marxist-Leninist government of Angola. There the prohibition cannot be waived "until the President certifies to the Congress that no combatant forces or military advisers of the Republic of Cuba or of any other Marxist-Leninist country remain in Angola." That section incorporates the substance of the amendment I offered to the Export-Import Bank's charter during our consideration of its renewal on the Senate floor in July. I cannot for the life of me understand why the Reagan administration makes Eximbank loans worth hundreds of millions of dollars to the Communist Government of Angola while at the same time providing millions of dollars to Dr. Jonas Savimbi and UNITA to topple that same government. This provision is designed to stop that kind of nonsensical behavior by this administration.

Section 10 of H.R. 5548 requires all Eximbank loan guarantees to be fully transferable. I do not think this is a wise provision and note that the Treasury Deparment opposed its inclusion in the compromise bill. Since both Houses had a similar provision in the bills they originally adopted it was not possible to delete it. But I do want to state my concern about the provision. It will remove lenders from having interest in the credit worthiness of the loans they generate since they will be backed by a U.S. Government guarantee and will be sold by lenders to the financial markets. This type of provisions could ultimately cost our taxpayers plenty. The better course, if we were to have such a provision at all, would be to limit it only to situtations needed to conclude an export sale.

Section 11 of H.R. 5548 is a provision I heartily endorse. Senator BYRD originally offered this provision on the floor and I worked to ensure that it is in this compromise bill because it is such a good provision. It prohibits the Bank from making any loans or guarantees that will result in the production abroad of any commodities that will compete with U.S. production of the same or similar commodity if such production will cause substantial injury to the U.S. producer of that commodity. The prohibition does not apply where, in the judgment of the board of directors of the bank, the short- and long-term benefits to industry and employment in the United States are likely to outweigh the injury to U.S. producers of the same, similar, or competing commodity.

That section should be read in conjunction with section 12 of H.R. 5548 which contains a provision I authored and which was in the bill passed by the Senate in July. Section 12 requires the Bank to consider and address in writing the views of parties or persons who may be substantially adversely affected by the loan or guarantee prior to taking final action on it. We expect that this section will ensure that the cost-benefit analysis done in section 11 is in writing and incorporates the views of those domestic workers, or farmers, or companies, who might be adversely impacted by the Eximbank's loans or guarantees. As I said prior to the Senate's passage of section 12 in July "I hope the administration will take this position very seriously and will positively seek out and give a day in court to those adversely affected * * *." It is important that Americans not be injured by the actions of their own Government and this provision is intended to protect them from inadvertent actions by the Export-Import Bank.

Section 13 of H.R. 5548 authorizes the appropriation of $145,259,000 for fiscal year 1987 to cover the subsidy cost of new direct loans obligated by the Bank in that fiscal year. This provision is based on a similar provision that was in the bill the Senate passed in July. At that time I said the appropriation of $145,259,000 to the Bank for fiscal year 1987 was to cover the net subsidy cost of new direct loans under a program limitation of $1.8 billion * * * this new procurement will result in much better budgeting practices as the true subsidy cost of the Bank will be highlighted in the budget. In July I explained that the subsidy cost mentioned in the provision was to be measured by the difference between the interest rate charged by the Bank on its loans, and the rate that would be charged by a private sector lender on loans of comparable risk and maturity. Although section 13 will not have an immediate effect because of complications involved with other aspects of the congressional budgeting process, we have kept it in the bill as an indication of our intention to continue efforts to identify the subsidy element in the Eximbank's program and to have that subsidy appropriated each year by Congress. This is the only way to end the myth, perpetuated by some beneficiaries of the Bank's programs, that there is no cost to the taxpayer involved in the Bank's operations.

Section 19 of H.R. 5548 establishes within the Export-Import Bank the so-called tied aid or mixed credits warchest that the administration has requested. I am not in favor of this so-called warchest legislation, as it will

authorize spending $300 million of our taxpayers' money over the next 2 years in order to subsidize the sale of $1 billion of American goods to developing countries.

The announced purpose of this new spending program is to combat the use of mixed credits by other nations and thus to help eliminate this pernicious practice. A more likely outcome, in my view, is that foreign companies damaged by our warchest will prevail on their governments to increase their own subsidies. The warchest provision, however, was in the bills passed by both the House and Senate and therefore it is in this compromise bill as well.

The stated purpose of establishing the warchest is to strengthen the hand of the Secretary of the Treasury in negotiating the comprehensive agreement to limit the use and abuse of mixed credits. To serve that purpose, it is essential that the Secretary, who is in charge of these negotiations for the United States, be able to direct the use of the funds from this warchest. Thus, though the warchest is lodged administratively in the Bank, the actual use of the funds in the warchest will be under the absolute control of the Secretary of the Treasury. We made this clear by putting language into section 19 which requires the Bank to administer this tied aid credit program "in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of the comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commerical purposes." As noted this language is meant to make absolutely clear that the Secretary of the Treasury will decide exactly when and how that fund is to be used.

I want to also draw the attention of my colleagues to the fact that the bill authorizes funds for the warchest only for fiscal years 1987 and 1988. Before any decision to authorize new funds I will insist on hearings in the Banking Committee. As section 19 of H.R. 5548 states this warchest is to be "temporary." We will have to be vigilant to ensure that beneficiaries of the program are not successful in lobbying to make it "permanent."

Finally section 20 of H.R. 5548 for the first time gives the Bank authority to establish its so-called I-Match Program, under which it would make interest subsidy payments to private lenders when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is granted for just 2 years, will be effective only if three conditions are met: First, the funds for the interest subsidy payments are appropriated; second, loan guarantees accompanying these payments are scored "off-budget"; and third, the Bank has a direct loan budget of at least $700 million. This last condition does not mean the Bank must actually lend $700 million. It means that I-Match authority is effective in any fiscal year only if the Bank has at least a $700 million direct loan budget in place for that year; that is, that the Bank is empowered to lend that much. This condition is intended to ensure that, for the 2 years of its operation, I-Match will remain an experimental or pilot program. Then, on the basis of this experience, we can decide whether or not it should be extended or expanded. In my view, the best provision in this section is that making any funds expended on the I-Match Program subject to congressional appropriation. That is a precedent I hope the Congress will soon adopt with regard to all of the Bank's programs. Finally I note the bill specifically provides that this new I-Match sunsets on October 1, 1988. I only wish it included a similar sunset provision in the section of the bill establishing the tied aid credit warchest.

For the reasons already stated I hope my colleagues will pass H.R. 5548.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendments, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read the third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5548), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR H-3

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 2880.

The PRESIDING OFFICER. Is there an objection? Without objection, so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2880) to provide a temporary extension of the interstate transfer deadline for H-3.

The Senate proceeded to consider the bill.

Mr. INOUYE. Mr. President, this matter was discussed fully the other night. The legislation has been covered on both sides of the aisle. It is ready for passage.

Mr. STAFFORD. Mr. President, I support the legislation offered by my distinguished colleagues from Hawaii, Mr. INOUYE and Mr. MATSUNAGA.

During consideration of the Federal-Aid Highway Act of 1986, S. 2405, the Senate agreed to an amendment offered by my distinguished colleagues from Hawaii which would grant H-3 an exemption from 4(f). I opposed the waiver from 4(f) for H-3 and I continue to believe that granting such a waiver is the wrong course of action. It is still my hope that the State of Hawaii and the city and county of Honolulu will agree that the withdrawal of H-3 and the substitution of other highway and transit projects will better meet the transportation needs of the island of Oahu.

During the additional period of time this legislation will provide for the withdrawal of H-3, I hope State and local officials will work together to reexamine the concerns raised by various groups and individuals about the construction of H-3, and to review the transportation needs of the island.

Mr. President, I believe the withdrawal of H-3 and the substitution of other highway and transit projects is the best way to meet the island's transportation needs, and, therefore, I support this legislation.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2880) was ordered to be engrossed for a third reading, was read the third time and passed as follows:

S. 2880

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Subsection 103(e) of title 23, United States Code, is amended by inserting the following new sentence after the third sentence: "With respect to any route which on the date of enactment of the Federal-Aid Highway Act of 1978 was under judicial injunction prohibiting its construction, the Secretary may approve the withdrawal of such route only until ten days after the final legislative day of the 99th Congress of the United States."

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MATSUNAGA. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I suggest the absence of a quorum for just about one minute.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar 979, H.R. 5484, the House drug bill, and that it be in order to send to the desk on behalf of Senators DOLE, BYRD, and others, a complete substitute, which is the text of S. 2878.

The PRESIDING OFFICER. Is there objection? Without objection, the request is agreed to. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation effors, and for other purposes.

AMENDMENT NO. 3034

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. BYRD, Mr. THURMOND, Mr. BIDEN, Mrs. HAWKINS, Mr. CHILES, Mr. WILSON, Mr. DECONCINI, Mr. HATCH, Mr. CRANSTON, Mr. GRAMM, Mr. MOYNIHAN, Mr. SPECTER, Mr. DODD, Mr. TRIBLE, Mr. LEAHY, Mr. DENTON, Mr. MITCHELL, Mr. ABDNOR, Mr. NUNN, Mr. ROCKEFELLER, Mr. SASSER, and Mr. DIXON, proposes an amendment numbered 3034, to strike all after the enacting clause and insert the text of S. 2878.

(The text of the amendment is the text of S. 2878, as printed in the RECORD yesterday at page S13648.)

Mr. DOLE. Mr. President, I ask unanimous consent that a section-by-section analysis of the substitute be printed in the RECORD.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

JUDICIARY

TITLE I: ANTI-DRUG ENFORCEMENT

A. Drug Penalties Enhancement Act of 1986

This section sets forth a series of amendments to stiffen penalties for large-scale domestic drug trafficking. This penalty section incorporates penalty provisions from both the Democrat and Republican drug packages. Provides for increased, stiff penalties for most drug related offenses. The most serious drug traffickers, so-called "drug kingpins", would face a mandatory minimum of ten years, and up to life imprisonment. This bill also increases fines, to reflect the enormous profits generated by drug dealing. Prohibits suspension of sentences and prohibits probation and parole.

Also included, S. 1236—Technical amendments to the Comprehensive Crime Control Act of 1983, as modified.

B. Drug Possession Penalty Act

This section rewrites the penalty provisions for simple possession of controlled substances. These stiff new penalties include increased fines, mandatory imprisonment for second time offenders, and repeal of pre-trial diversion for first offenders.

C. Juvenile Drug Trafficking Act of 1986

This section provides for additional penalties for persons who make use of juveniles in drug trafficking. Doubles penalties for employing or using children to distribute drugs, and also doubles penalties for manufacturing drugs near schools.

D. Asset Forfeiture Amendments Act of 1986

This section provides for the forfeiture of substitute assets where the proceeds of a specified crime are lost, beyond judicial reach, substantially diminished, or commingled.

Cap Removal From Forfeiture Funds

The Department of Justice has a forfeiture fund generated from seizures of assets in drug related prosecutions. The assets consist of cash and proceeds of sales of these assets. By law, these funds can be used for certain law enforcement purposes. However, there is a cap, administered by the Appropriations Committee, on how much of the funds can be used each year. This cap undercuts the basic purpose of the funds which is to have the seized proceeds of criminal activities help finance the war on crime. The Senate compromise bill would remove the cap on the fund and would remove it from the budget allocation process. The bill would not prevent the funds from being sequestered, if there were a sequester.

E. Controlled Substances Analogs Enforcement Act of 1986 (Designer Drugs)

This section makes it unlawful to manufacture with the intent to distribute, or to possess "designer drugs" intended for human consumption.

The compromise provision is identical to S. 1437 as it passed the Senate last December, with the exception of the addition of conforming amendments and stiffer penalties. These conforming amendments incorporate the prohibition of controlled substances analogs elsewhere in the criminal code where reference is made to controlled substances.

F. Continuing Drug Enterprise Act of 1986

Increases fines for the most serious drug kingpins and includes *mandatory* life imprisonment for the absolute top drug traffickers under certain conditions.

G. Controlled Substances Imports and Export Penalties Enhancement Act of 1986

This section imposes stiffer penalties for import and export violations similar to those established elsewhere in the Senate compromise proposal.

H. Money Laundering Crimes Act of 1986

This section of the compromise package provides an offense for laundering the proceeds of certain specified crimes. This section closely tracks the language of S. 2683, which has passed the Senate.

I. Armed Career Criminals

The compromise bill includes the language of S. 2312. Present law defines an armed career criminal as an individual who has three or more convictions for "robbery or burglary". Under current law, if a career criminal is convicted of possession of a firearm, he must be sentenced to 15 years. S. 2312, which was reported by the Senate Judiciary Committee, redefines an armed career criminal as an individual who has three or more convictions "for a crime of violence" or "a serious drug offense, or both".

J. Authorization of Appropriations for Drug Law Enforcement

K. Deleted

L. State and Local Narcotics Control Assistance

Provides $115 million to state and local law enforcement agencies for drug law enforcement. The Federal share would be 75%, the state share 25%.

M. Study on the Use of Existing Federal Buildings as Prisons

The Secretary of Defense shall conduct a study to identify any building owned or operated by the United States which could be used, or modified for use, as a prison by the Federal Bureau of Prisons.

N. Drug Law Enforcement Cooperation Study

The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and state and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations. The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

O. Deleted

P. Narcotic Traffickers Deportation Act of 1986

This section simplifies the current provision of the Immigration and Nationality Act authorizing the exclusion and deportation of individuals convicted of drug related crimes, and specifies the violation of foreign drug laws as grounds for deportation or exclusion.

Q. Federal Drug Law Enforcement Agent Protection Act

This provision provides rewards to those assisting with the arrest and conviction of persons guilty of killing or kidnaping a Federal drug agent. (formerly S. 630)

R. Common Carrier Operation Under the Influence of Alcohol or Drugs

This provision makes it a Federal criminal offense to operate or direct the operation of a common carrier while intoxicated as a result of using alcohol or drugs. (formerly S. 850)

S. Freedom of Information Act

This section will prohibit public disclosure of law enforcement investigative information that could reasonably be expected to alert drug dealers and organized crime of law enforcement activity related to them. A Drug Enforcement Administration study found that 14% of all drug enforcement investigations were significantly compromised or cancelled due to public disclosure of information related to these investigations and informants involved in them. The Director of the FBI and the Department of Justice support this legislation. As well, this language was unanimously approved by the Senate in the 98th Congress.

T. Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

The Mail Order Drug Paraphernalia Control Act, prohibits the sale and transporta-

tion of drug paraphernalia through the services of the Postal Service or in interstate commerce. It also provides for the seizure, forfeiture, and destruction of drug paraphernalia.

U. Manufacturing Operations

Outlaws operation of houses or buildings, so-called "crack houses", where "crack", cocaine and other drugs are manufactured and used.

V. Study Related to Drug Crime Reporting

This section requires that the Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, state and local statistics groups, gather, compile, and publish comprehensive data on drug trafficking and abuse.

W. Study Related to Precursor and Essential Chemical Review

This section requires that the Attorney General conduct a study concerning the need for legislative, regulation, or other alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse.

X. Controlled Substances Technical Amendments Act of 1986

This section makes technical corrections to the Controlled Substances Act. The provisions of this subtitle were passed by the Senate when it passed S. 1236 on April 17, 1986. The provisions of this subtitle were included in the House Drug Bill, the Senate Democrat Drug Bill, the Senate Republican Bill and the Administration package.

TITLE II. INTERNATIONAL NARCOTICS CONTROL

Strengthening U.S. narcotics control efforts abroad

1. Authorization of Funds

Authorizes $63 million in additional narcotics assistance for FY 1987, provided that the President submit a plan on how $45 million of those additional funds are to be used. $10 million of the funds are to be used for interdiction and eradication aircraft, primarily in Latin America.

2. Restrictions on Aid to Foreign Countries

Revamps present law governing foreign aid, favorable U.S. votes in multilateral development banks, and Generalized System of Preferences tariff benefits to narcotics producing and narcotics transit countries. Under bipartisan provision, these benefits will be denied all major illicit drug producing countries or major drug-transit countries unless the President annually certifies that the country is cooperating fully with the United States in combatting narcotics production, trafficking, and narcotics money laundering, or is taking adequate steps on its own. The President may give a positive certification to an otherwise uncertifiable country for "vital national interest reasons", but reasons must be fully explained in the certification. All certifications are subject to Congressional resolutions of disapproval under expedited procedures.

3. Retention of Title on Aircraft

U.S. Government will retain title to interdiction/eradication aircraft provided under foreign assistance to the maximum extent practicable. Contains finding that Mexico has used U.S. provided aircraft inefficiently.

4. Records of Aircraft Use

Secretary of State required to keep detailed records of aircraft provided to Mexico, and make them available to Congress upon request of the Chairmen.

8. Mansfield Amendment

Amends present "Mansfield amendment" which prohibits U.S. participation in arrests overseas. U.S. personnel may "assist" in arrests, but not make arrests directly. They may take reasonable self-defense actions in such actions. Applies to all countries unless the President certifies for an individual country that it is against the national interest.

11. Conditions on Assistance for Bolivia

In light of Bolivian cooperation in Operation Blast Furnace, 1987 conditions on assistance are changed. First half of assistance is conditioned on continued cooperation in interdiction operations, second half assistance on development of plan to eradicate coca and demonstrated progress in meeting plan's objectives.

15. Intelligence Support to Combatting the Drug Problem

Makes collection of data on narcotics production and trafficking a priority one task for the intelligence community in the yearly intelligence strategy report. Specific mandate is given to collect sufficient data so that highly reliable estimates may be made of narcotic crop production and yields for major producing countries.

16. Reports on Certain Countries; Restrictions on Assistance

President must list countries which as a matter of policy promote narcotics trafficking, have senior officials involved, in which U.S. drug enforcement personnel have suffered violence at the hands of officials of that country, or have failed to provide reasonable requests for law enforcement cooperation, including aerial pursuit of smugglers. No foreign aid may be provided, and MDB aid must be opposed for any listed country unless President certifies overriding national interest, assistance would improve prospects for cooperation with country in halting flow of illegal drugs, and the government of such country has made bona fide efforts to investigate crimes against U.S. drug enforcement personnel.

Other Provisions:

5. $1 million earmark for research on aerial herbicide for coca.

6. GAO study on narcotics assistance programs.

7. Report on extradition cooperation.

9. Report on U.S. system to prevent visas being provided to drug trafficking.

10. Mandates a threat assessment of drug trafficking in Africa.

12. Report by President on steps taken to combat narco-terrorism.

13. Call the Secretary of State and Coast Guard to negotiate new interdiction procedures with foreign countries for vessels of foreign registry.

14. Adds Secretary of State to decisions on posse comitatus.

17. U.S. Executive Directors to MDBs directed to support programs of drug eradication.

18. Deleted.

19. Deleted.

20. Deleted.

21. Declares drugs a national security problem and President urged to engage NATO allies in cooperative programs.

22, 23. Supports UN Conference on Drug Abuse and Illicit Trafficking.

24. Mandates study of effectiveness of UN drug programs.

25. Calls for more effective implementation of international drug conventions.

26. Call for a Mexico-United States Intergovernmental Commission.

27, 28. Reports on opium production in Pakistan, Iran, Afghanistan and Laos.

29. $2 million for USIA drug education programs.

30. $3 million AID authorization for drug education programs.

31. Report on international drug education programs.

TITLE III. INTERDICTION

A. National Drug Interdiction Improvement Act of 1986

This section includes the authorization contained in the FY 1987 DoD Authorization bill providing $212.1 million for enhanced intelligence collection activities and for drug interdiction aircraft and aerostat radar to be used by the U.S. Customs Service and the U.S. Coast Guard.

It authorizes an additional $90 million for DoD aircraft and aerostat radar to be used by civilian agencies in drug interdiction efforts.

It provides $45 million for DoD to purchase radar systems for Coast Guard surveillance aircraft and $15 million for the Tactical Law Enforcement Team.

It provides additional authorizations in the amount of $153 million for the Coast Guard and $115.90 million for the Customs Service. It also authorizes $25 million for the establishment of command, control, communications, and intelligence (C-31) centers and $7 million for drug interdiction helicopters for Hawaii.

This section allows Coast Guard personnel to be assigned to naval vessels to assist in drug interdiction and mandates that at least 500 Coast Guard members be so assigned each year.

It establishes a joint United States-Bahamas Drug Interdiction Task Force and authorizes $15 million to implement the task force.

B. Customs Enforcement Act of 1986

This section:

Clarifies definitions in the Tariff Act.

Increases vessel arrival reporting requirements and provides substantial criminal and civil penalties for violating the arrival reporting requirements.

Clarifies existing law to require that persons arriving in the U.S. as pedestrians immediately report their arrival to the U.S. Customs Service.

Establishes forfeiture and fines as the penalties for failure to declare items which are imported and increases the penalties for filing false manifests and for unlawfully unloading merchandise.

Makes it unlawful to possess merchandise while knowing or intending that it be unlawfully introduced into the U.S. or to transfer merchandise between an aircraft and a vessel on the high seas if the plane or boat is of U.S. nationality or if the circumstances indicate that the purpose is to introduce the merchandise into the U.S. in violation of U.S. law. Violators are subject to civil and criminal penalties and civil forfeiture.

Streamlines the procedure for forfeiture of conveyances for payment of penalties. It also provides for the forfeiture of conveyances used to transport controlled substances, but provides for the return of the conveyance if it is determined that neither the owner nor the operator of the conveyance knew nor should have known about the presence of the contraband.

Expands the Customs civil search and seizure warrant to cover any article subject to seizure, such as conveyances and monetary instruments, rather than just imported merchandise.

Amends the Tariff Act to treat amounts tendered in lieu of merchandise subject to forfeiture in the same manner as the proceeds of sale, so that they may be deposited in the Forfeiture Fund, and to allow agency expenditures to be paid before liens.

Allows Secretary of the Treasury to exercise some discretion in determining the amount of rewards for informants.

Permits the Secretary of the Treasury to require landing certificates to comply with international obligations, such as bilateral or multilateral agreements to reduce or prevent smuggling.

Clarifies the Secretary's authority to exchange information with foreign customs and law enforcement agents.

Grants the Secretary authority to operate customs facilities in foreign countries and to extend U.S. Customs laws to foreign locations (with the consent of the country concerned).

Authorizes the Secretary to utilize commercial "cover" corporations and bank accounts and to lease property and pay for services without complying with the normal requirements which would reveal government involvement when such activities are needed in authorized investigative operations. It also makes clear that the usual laws governing banking deposits and space rentals do not apply in such undercover operations.

Establishes that, while documented yachts do not have to make formal entry, they must report their arrival to customs and declare any goods on board.

Eliminates restrictions on the ability of Customs officers to enlist the aid of other law enforcement officers or civilians in apprehending violators, raises the penalties for failure to render assistance, and provides protection for civilians who render such aid.

Raises the amount which must be reported by a person who exports or imports monetary instruments to $10,000.

Makes it unlawful for a U.S. citizen or a person aboard a U.S. aircraft to possess controlled substances with an intent to manufacture or distribute or for any person aboard an aircraft to possess with an intent to manufacture or distribute a controlled substance knowing or intending that it be unlawfully introduced in the U.S.

Provides criminal penalties for willfully operating aircraft at night without lights in conjunction with drug trafficking and for the willful use and/or installation of unlawful fuel systems in aircraft. It also subjects unlawful fuel systems and the aircraft in which they are installed to seizure and civil forfeiture.

C. Maritime Drug Law Enforcement Prosecution Act of 1986

This section resolves prosecutorial problems which arise during criminal trials as a result of the execution of existing authority, which allows the Coast Guard to stop and board certain vessels at sea and make arrests and seizures for violations of U.S. law.

In addition, this section creates a new offense to make it unlawful under U.S. law to possess with intent to distribute a controlled substance aboard a vessel located within the territorial sea of another country where that country affirmatively consents to enforcement action by the U.S.

D. Reports on Department of Defense Drug Control Activities

This section requires the National Drug Enforcement Policy Board to report to Congress on the manner and extent to which the Department of Defense should be involved in drug law enforcement activities.

It also mandates a joint National Drug Enforcement Policy Board/Department of Education report to Congress on drug education efforts in schools operated by the Department of Defense.

E. Driving While Impaired by Drug Intoxication to be Punishable Under the Uniform Code of Military Justice

This section makes it an offense under the U.S. Code of Military Justice to drive while under the influence of drugs.

F. Drug Interdiction Assistance to Civilian Law Enforcement Officials

This section permits the Department of Defense to loan personnel to civilian law enforcement agencies to operate and maintain equipment used by those agencies to assist foreign governments in drug interdiction activities.

G. Air Safety

This section establishes a Federal violation for the use of an unregistered or fraudulently aircraft in conjunction with transporting controlled substances and provides for the seizure of such aircraft. It also allows States to impose criminal penalties for the use or attempted use of forged or altered aircraft registrations.

H. Communications

This section would authorize the Federal Communications Commission to revoke the licenses of individuals who use their licenses for drug-related activities and to seize communications equipment used in such activities.

I. Drug Law Enforcement Cooperation Study

The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations. The Board shall report to Congress within 180 days of enactment of this section on its findings and conclusions.

J. Emergency Assistance by Department of Defense Personnel

The first subsection, by slightly amending existing statutes, provides for limited use of the military in drug interdiction. Current law allows the use of military personnel and equipment outside of the land area of the U.S. to enforce the Controlled Substances Act or to transport civilian law enforcement officers seeking to enforce the Controlled Substance Act upon the declaration of an "emergency circumstance" by the Attorney General and the Secretary of Defense. The bill clarifies the term "emergency circumstance" by declaring that an emergency circumstance exists when: (1) the size and scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and (2) enforcement of the law would be seriously impaired if assistance were not provided. It also mandates that the Secretary of State shall be consulted prior to declaration of any emergency circumstance.

The second subsection allows military personnel to intercept vessels and aircraft for the purpose of identifying, monitoring, and communicating the location and movement of the vessel or aircraft until such time as Federal, State, and local law enforcement officials can assume responsibility. Current law provides that the military may not be used to interdict or to interrupt the passage of vessels or aircraft.

TITLE IV. DEMAND REDUCTION

A. Treatment and Rehabilitation

This title reauthorizes the Alcohol, Drug Abuse and Mental Health Services Block Grant at higher funding levels of $675 million. Five percent is set aside for model community programs aimed at high risk. Of these funds, the Secretary, acting through the Alcohol, Drug Abuse and Mental Health Administration, shall reserve $125 million for state alcohol and drug abuse treatment programs to be distributed on the basis of population and need.

This title also eliminates various restrictions now imposed on states on the uses of funds under the alcohol and drug abuse provisions under the block grant except that at least 80 percent shall be used for alcohol and drug treatment and rehabilitation services.

Another provision tracks previously reported legislation from the Senate Committee on Labor and Human Resources, S. 2595, "The Alcohol, Drug Abuse and Mental Health Amendments of 1985" with certain modifications. The modifications which include the following:

One year reauthorization at $129 million for the National Institute of Drug Abuse and $69 million for the National Institute on Alcohol Abuse and Alcoholism; deletion of sections 10 and 11; addition of the following provisions:

The title further requires that the Secretary of Health and Human Services shall prepare a National Plan to Combat Drug Abuse.

The title establishes an Alcohol and Drug Abuse Clearinghouse for the dissemination of materials concerning education and prevention of drug abuse.

Additionally, we require the Secretary of Health and Human Services, through the FDA, to conduct a study of alkyl and butyl nitrates and report to the appropriate congressional committees as to whether this substance should be treated as a drug under the Food, Drug and Cosmetic Act.

The section also provides $11 million in new treatment funds for veterans programs.

B. Drug-Free Schools and Communities Act of 1986

This title contains a provision which authorizes a new $150 million state-administered grant program to establish drug free schools and communities. Of this amount, at least $80 million will be available for state (10%) and local (90%) education agencies. The remaining $50 million shall be made available to community prevention and education programs.

The Secretary of Education shall retain $20 million for national programs of which $10 million is used for regional training centers. In addition, the Secretary of Education and the Secretary of Health and Human Services shall provide assistance to communities and schools where appropriate.

C. Action

Current law authorizes approximately $2 million under the direction of ACTION for volunteer demonstration projects, of which about $500,000 is currently allocated to drug abuse prevention, education and treatment through the use of volunteers. This provision would increase the current authoriza-

tion by $3 million, which would be earmarked for expansion of the drug program.

D. The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986

The primary purpose of this title is to authorize the development and implementation of a coordinated, comprehensive program for the prevention and treatment of alcohol and substance abuse among Indian tribes and their members. In order to better focus some of the existing programs of alcohol and substance abuse, this title directs the two Departments, Interior and Health and Human Services, having primary responsibility for Federal programs of assistance to American Indians, to enter into a Memorandum of Agreement.

Recognizing the vested interest and the authority of the tribes over their members, this title provides for the tribes to develop and implement their own coordinated approach, tailored to the local needs, through Tribal Action Plans.

The programs authorized in this title include a number of programs targeting Indian youth, including authority for the construction of emergency shelters, juvenile detention centers, and regional treatment centers.

Finally, to ensure that the current and new programs will be effective, this title provides for the training of key tribal, Indian Health Service and Bureau of Indian Affairs personnel in the areas of alcohol and substance abuse.

TITLE V. TAX CHECKOFF

When taxpayers file their income tax returns, they would be allowed to designate that all or part of any refund due be contributed to a Drug Addiction Prevention Trust Fund. Taxpayers may also make additional contributions to the Trust Fund at the time they file their tax returns.

Mr. DOLE. Mr. President, I want to make one comment on a discussion we had earlier with the Senator from Connecticut [Mr. WEICKER].

What we did in effect was satisfy the concern, the just concern, that the distinguished Senator from Connecticut had with reference to revenue matters and the constitutional question that was involved. I thank the distinguished Senator for raising this question last evening. I believe we have now corrected that to his satisfaction.

I again thank the distinguished minority leader for his cooperation.

Mr. WEICKER. Mr. President, I thank the distinguished majority leader and the distinguished minority leader. I think my only comment would be that most importantly, more importantly than satisfying my objections, they have satisfied the Constitution of the United States and the bill is now in its proper perspective.

TAX REFORM ACT OF 1986—CONFERENCE REPORT

Mr. DOLE. Mr. President, I ask that the Senate turn to the consideration of the conference report to accompany H.R. 3838, the tax reform bill.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, and I do not intend to object, as I previously discussed with the majority leader we have not had a sufficient amount of time to apprise ourselves as to the contents of the conference report.

□ 1500

I just found on my desk this afternoon two books, consisting of 1,811 pages. That would be bad enough, but then, we have been attempting to obtain the transition rules. Those were not made available to us until 6 o'clock or quarter to 6 last evening. There are 400 items that were not in either the House bill or the Senate bill. We are attempting to determine what those are all about, what they cost, what their impact is, whether they should or should not be.

I do not wish to delay the progress of the Senate in considering this measure, but I do want to say to the leader that we have not had a chance at this point even to find out what we are talking about.

In fairness, I should point out that the House passed the bill without having even a list before it. They knew nothing at all about what was in the transition rules as far as I can find out. And we are not talking about an insignificant amount of money. We are talking about $10.6 billion.

I will say that the chairman of the Committee on Finance has made the list available to me as of last night and I understand that he probably was under some constraint as to making them available prior to the final vote in the House last night. I have not had any discussion with him on that subject but I just have to read between the lines.

Under the circumstances, I see no reason why we should not turn to consideration of the conference report provided the leadership understands that I have no intention of delaying consideration, but I do not believe we can have an expedited procedure.

On the other hand, I want to say I have no intention to delay the bill just for delaying purposes alone. I believe those who have statements at this point might want to proceed. I would have no objection to that. But I want to have plenty of time to do such research as we think necessary and make such comments as we think appropriate. Under those circumstances, I have no objection.

Mr. DANFORTH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, in somewhat the same vein as the comments of the Senator from Ohio, 2 or 3 days ago, Senator WALLOP and I wrote a letter to David Brockway, who is the staff director of the Joint Committee on Taxation, asking him to furnish us with a list of those provisions that are in the conference report that is now before us which were neither in the Senate bill nor in the House bill nor known or approved by the conferees prior to the signing of the conference report. That letter has not been responded to as yet by the Joint Committee on Taxation.

I think it is important to have at least some knowledge of those provisions which have been inserted in the bill which are entirely new matter before we proceed to vote on the conference report. My belief is that the joint committee could furnish us a pretty good list of such provisions in a period of about 5 or 6 hours.

I also do not want to slow down progress in debating this conference report. That is not my intention. But I do believe that it is reasonable for us to have identified for us those sections and provisions of the conference report which were never heard of or discussed by anybody prior to the signing of the conference report. Therefore, it is my hope that that information will be made available prior to the time that we vote.

I hope that the chairman of the Finance Committee or the majority leader or anyone else who has input with the Joint Committee on Taxation could communicate with the staff of the joint committee and make that information available.

The PRESIDING OFFICER. Is there further discussion? Hearing none, the request of the majority leader is agreed to. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3838) to reform the internal revenue laws of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 18, 1986.)

Mr. DOLE. Mr. President, let the RECORD reflect that that is about a 12- or 14-inch document there. It indicates that there is some justification for what the two Senators were saying.

We certainly have no intention to try to steamroll this through the Senate and as long as nobody has any objection to delay or to rush it, it is all right. Everybody will have an opportunity to speak, to ask questions. The distinguished chairman is here and the distinguished ranking member [Mr. LONG], who, I might say, will be participating in his last action in the Senate on a major tax matter. I am certain we all have great respect and

will continue to have for the outstanding work Senator LONG has done.

I am pleased we are on the conference report.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, we are now going to start the debate on the conference report on the tax reform bill. It is the conference report that the House passed overwhelmingly yesterday. I want to make a procedural suggestion first. That is that those who want to speak might talk either to Senator LONG or to me so we can get some idea of how long Senators wish to speak and in what order. I know Senator DANFORTH wants to speak, and I suggest we alternate between Republicans and Democrats.

I assume Senator LONG will want to speak after I finish, then we shall go to Senator DANFORTH, and then to whomever wants to speak on the Democratic side.

I want to refer to the new matter that has appeared in the bill. Senators METZENBAUM and DANFORTH both referred to additional provisions added to the bill after the conferees finished their work last August.

Most of the matters added were so-called transition rules. Chairman ROSTENKOWSKI, and I were given authority by our conferees to allocate a specific sum of money to these rules. The reason we were given this authority is that many, many cities, counties, States, businesses, universities, convention centers, had to wait until the final outcome was known to determine whether they would need a transition rule. A transition rule is simply a bridge from the old law to the new, easing passage from one to the other. Until the conferees made their decision on the substantive portions of the bill, the need for transition relief could not be known. Therefore, this delegation of authority was necessary.

At Senator DANFORTH'S request, we added the Chrysler St. Louis, Illinois and Missouri facilities for about $78 million; bonds for Gannon costing about $4 million; St. Louis Sewer District, $5 million; St. Charles Riverfront, $4 million; Monsanto Chemical, $2 million; Tobacco Row for $8 million.

I could go on. These are all new requests.

Mr. DANFORTH. Mr. President, will the Senator yield?

Mr. PACKWOOD. Yes.

Mr. DANFORTH. All those specified transition rules were known by the Members of Congress before the bill was passed.

Mr. PACKWOOD. No, these are new ones.

Mr. DANFORTH. I think Members all knew them before the bill was passed.

□ 1510

Furthermore, my letter to the staff of the Joint Committee on Taxation asks for new matters other than transition rules. I understand that some transition rules were added, but in addition to the transition rules which are new matter, there were substantive provisions in the bill which were unknown by the conferees at the time the bill was passed.

What I asked the staff of the joint committee for was a list of those nontransition, substantive matters that were added subsequent to the time of the signing of the conference report by the conferees.

Mr. PACKWOOD. I apologize. The Senator is correct. However, my point was, that when the conference was completed, I had requests from 94 Senators for over 1,000 new transition rules. The conferees had allocated about a billion dollars to pay for the Senate transition rules the total of which would have cost, as best we could tell, in excess of $10 or $15 billion. We quit attempting to estimate their cost after a while. We simply could not do them at all.

So there are many, many transition rules. The Senator from Missouri is also correct in saying that there are some new provisions. Not many but some.

Having said that, let me go back and explain to the Senate, if I might, how we got to where we are, what process the Senate went through, what process we went through in conference, and why some of the things that the Senate wanted very dearly were not obtained and why some of the things that the House wanted very dearly were not obtained. Then, I want to explain what the bill finally does and what I believe the bill means for this country.

First, remember the process. Shortly after the 1984 Presidential election, the Treasury Department put forth a study called Treasury I. It was the first proposal for tax reform to come forth in this process. Now, any of you who listened to the House proceedings yesterday could not help but be moved by Speaker O'NEILL'S comments, especially his reference to the 1952 Democratic platform imploring Congress to move forward on tax reform. I do not mean to suggest that Treasury I, which came out after 1984, was the first tax reform proposal we have ever had. Senator BRADLEY from New Jersey has been advocating tax reform for at least 4 to 5 years in a plan called the Bradley-Gephardt plan. Many of his suggestions are incorporated in this bill.

But for purposes of my comments now, let us start with Treasury I. It was issued shortly after the election in 1984. It had some immediate supporters. It had some immediate detractors. Several month later, the President introduced his bill. Some people dubbed it Treasury II. It was somewhat changed from Treasury I but it bore many of the hallmarks of the reforms that were in Treasury I.

The President's bill was first taken up by the House. Under the Constitution, tax bills must initiate in the House of Representatives; they cannot initiate in the Senate. We in the Senate do not have to pass a tax bill if the House sends us one, but we cannot pass a tax bill unless they first pass it.

The House started its hearings in the spring of 1985. In the summer of 1985, the Senate started its hearings. We did not yet have a bill because the House was not to act until November of last year. But between Treasury I, the President's proposal, and the hearings that the House was having, we had a reasonable idea as to what a tax reform bill might accomplish. We certainly had an idea of what it could encompass.

So last summer we had, as I recall, a total of 35 or 36 hearings in the Finance Committee. Sometimes they would last 2 or 3 hours a day, sometime they would last 7, 8, 9 hours a day. And those hearings were a revelation to me.

One of the privileges of my life has been to be the chairman of the Finance Committee. But one of the responsibilities that comes with that privilege, quite often, is to preside at hearings when none of the other members are there. And consequently, with the exception of perhaps 5 or 6 total hours, I was present at all 35 or 36 days of hearings and all of the hours of those hearings.

The reason the hearings were a most revealing experience was because of the range and depth of the witnesses who appeared. At the end of the hearings I asked one of my staff to get me a list of the witnesses and the groups that they represented. I did not reread their testimony. I was interested to discover if there was any group in America that had not been represented at the hearings.

We could not necessarily have every insurance company, but we could have the trade association that represented insurance companies; we could not have every auto manufacturer, but we could have the trade association that represented the auto manufacturers.

When I finished going through the list, I fully realized that there was not a social or economic decision made in this country that was not in one way or another influenced by the Tax Code, whether it is giving to the church or your college, whether it was investing in real estate or grocery stores, or whether it is a decision to invest in equipment for your factory. All these decisions in one way or another are influenced by the Tax Code.

I came to the conclusion that we were attempting desperately to overregulate the country through the Tax Code. I came to be a believer in the theories that Senator BRADLEY had put forth and thought that we should try to move in the direction he proposed. Fortunately, during the hearings, I had asked many of the witnesses how low they thought the maximum individual rate would have to be before they would not care too much whether or not they lost their particular deductions. To put it another way, when would the rate be low enough so that whether they gave to charity or whether they invested in equipment would not be influenced by the Tax Code.

Now, most people said, as far as the individual rates were concerned, in the range of 20 to 30 percent. I began to wonder whether we could lower individual rates in a package that the Finance Committee, followed by the Senate and Conference Committee, could support.

In the fall I began to talk with the members of the Finance Committee one at a time, asking them what they wanted in a tax bill. This is where I made my mistake. I underestimated their response. In almost every case the first thing that Senators would say was something like this: "Wouldn't it be nice, wouldn't it really be nice if we could have a tax reform bill that we could be proud of, a real tax reform bill, one that closed the loopholes, one that took some of the poor off the tax rolls, a real tax reform bill. I guess this isn't the time for it, maybe the next Congress; we don't seem to be able to move fast enough. However, I would like to have in the next bill"—and he would list A, B, C. Most of the A, B, C's were needed for their States—parochial interests. There is nothing wrong with that. If a Senator does not watch out for his State, nobody will. Nobody need be ashamed that we attempt to defend the interests of our States.

After having talked with all 20 members, over a period of 70 hours, I attempted to draft a tax bill that accommodated all of their interests. It was not a bad bill. It had some good things in it. It had a good minimum tax in it. And that minimum tax would subsequently be carried forward to be part of this conference report now. It was not a bad tax reform bill, but it was not a great one, either.

□ 1520

We began our markup in March. By this time, the House had passed its bill. The bill had been reported out of committee on a close, controversial vote. Most Republicans did not support it.

The bill could possibly have died in the House had the President not intervened. He sent a letter to all Republican Members indicating that he thought the bill then before the House was a bad bill, and if he got the bill to the White House in that form, he would veto. However, he urged passage of the bill to let the Senate work on it, to see if the process will produce a better bill.

The President deserves credit, because the bill could have died then. The House passed the bill, and it came to the Senate.

The Finance Committee markup did not proceed well. The committee progressively made the bill worse and worse by voting to add loophole after loophole, until finally the bill was so out of whack in terms of revenue neutrality, that, as best I can estimate, it was $100 billion negative over the 5 years.

Finally, on a day when it was obvious that we were going to vote another $20 billion or $30 billion in exemptions that day, I exercised the prerogative of the chairman and took the bill down. At that stage, I sat down with my staff and said, "Since we are not making any progress on the bill before us, let's go back to square 1 and draft a brand new bill and, for better or for worse, let's make it a real tax reform bill." I remembered that 6 months ago, the Members had said they want a real tax reform bill, and we would see if they would accept it.

In relatively short order, not more than 3 or 4 days of work, the outline of the bill was ready. It had a top rate of 27 percent for individuals, 15- percent minimum, and only two rates; 80 percent of Americans would have been within the 15-percent rate. A family of four people would have to earn about $40,000 before they would go above the 15-percent rate.

The bill closed most loopholes that allowed people to escape paying taxes. The bill guaranteed that all profitmaking corporations would have to pay taxes, no matter what their exemptions, deductions, privileges, and loopholes were.

On a Thursday, that bill was put before the Finance Committee, and immediately six Members came to me and said they liked the concept and they wanted to work on it. Those colleagues on the Democratic side were the Senator from New Jersey [Mr. BRADLEY], the Senator from Maine [Mr. MITCHELL], and the Senator from New York [Mr. MOYNIHAN]; on the Republican side, the Senator from Missouri [Mr. DANFORTH], the Senator from Rhode Island [Mr. CHAFEE], and the Senator from Wyoming [Mr. WALLOP].

Between that Thursday and a week from Tuesday, 12 days later, the seven of us would sit and hone the bill, change it slightly, and then meet with the other committee members. Lo and behold, 12 days later the bill passed out of the committee by a vote of 20 to zero, and subsequently was passed on this floor by a vote of 97 to 3.

That is the background of the Senate bill. That bill took about 6 million working people off the tax rolls. I emphasize "working people." These are not people on welfare. People on welfare do not pay taxes. These were people making $9, $10, $11, or $12,000 a year. There are people in this country who work full time and make no more than that. These people are now on the tax rolls. They had not been on the tax rolls at one time, but they had been gradually inched their way back on. This bill takes them off again.

Most of these taxpayers, are women, many of them divorced, with children. They are trying to get by on $10 or $11,000, while paying $3, $4, or $500 a year in Federal income tax. It is simply not fair.

Second, we dramatically lowered the rates. For individuals, the top rate had been 50 percent. We lowered it to 27. For corporations, the top rate had been 46 percent. We lowered it to 33 percent.

We added a $2,000-personal exemption. Again, this is a tremendous help for families, a tremendous help for the poor a family of four—a man, a woman, and two children—the bill provides $8,000 in exemptions. If you do not itemize, you have a $5,000-standard reduction. So there is $13,000 in exemptions before you pay any tax at all.

We put in very stiff corporate and individual minimum taxes. To put it in perspective, so that you can understand how dramatic this was, the current minimum tax that is in the present law—corporate—over 5 years raises about $2.5 billion. The one in the Finance Committee bill raises about $35.5 billion over 2 years. So it was an extraordinary minimum tax, both in terms of the quantity of money it raised and the fact that it was impossible to avoid.

On the individual tax, the principal thing we did was severely limit the benefit of so-called tax shelters. We did this through our passive loss provision. Without unduly boring the Senate, let me call them paper losses. That is not really an accurate term. But what very wealthy individuals would do is invest in properties, usually real estate but not always, that generated paper losses. They would offset the paper losses against their regular income. This would reduce their regular income, their taxable income, down to zero. They paid no taxes.

Everyone in this Chamber has gone home and had this question put to them. These are people making $15 or $16,000 a year. "Senator, I don't mind paying my fair share, but why don't they pay something?"

The "they" are the corporations making hundreds of millions of dollars

profit and paying nothing, and individuals of great wealth who pay nothing.

Every year, the story is printed in the papers—and I paraphrase—844 Americans last year made over $1 million and paid no taxes. That, justifiably, galls the average taxpayer who is making $15,000 a year and paying $1,000 in taxes. This bill closes those loopholes.

Then, Mr. President, we tried to equalize the taxes among different kinds of business. We did not totally succeed, but it was an immense step forward from the present law. We wanted people to invest in a duplex or a grocery store because the investor thought that he or she was a good property manager or a grocer, not because the Tax Code tilted toward the duplex or the grocery store.

□ 1530

We did not achieve perfect equality among all kinds of businesses, but we came a lot closer than where we are now.

We tried to equalize the taxation among different kinds of income, whether that income is capital gains or income from dividends or interest, or income earned from the sweat of your brow as a wage earner working in the factory. We, by and large, achieved that.

However, in order to do that and in order to get the rates down very low, we did not just close what most people would think of as loopholes. "Loopholes" is a very pejorative term. You think of loopholes as favoring a special interest group, normally characterized in editorial cartoons as a rather fat fellow wearing a vest with dollar signs and cash coming out of his pocket who represents evil big business. Those are loopholes in the public's mind.

Every single witness that we had before the committee represented a "special interest group." However, many, many, many of those were groups that the public would not think of as evil. How about the National Council of Catholic Charities? How about the National Collegiate Athletic Association? How about the Independent Sector, which is the umbrella group that represents most of the charities? How about the American Association of University Women?

Most people do not think of these groups as evil or trying to do in the good of the country. They are perfectly legitimate, decent groups. They all had an interest in the bill.

In order to get the rates down to the level we sought, 27 percent for individuals, 33 percent for corporations, we could not collect enough revenue merely by closing what most people think of as "loopholes." The loopholes are investments in lamas, the cattlefeeding operations, and the buildings that have no tenants. However, we had to eliminate a lot of other deductions. These were the toughest votes that we had to make in committee and the toughest votes that had to be made on the floor.

The elimination of the deduction of the sales tax, the elimination of the deduction of what we call above the line charitable contributions—charitable contributions made by people who do not itemize but who are allowed to deduct a charitable contribution. The elimination of the IRA, which has been substantially restored in our negotiations with the House. The elimination of consumer interest, the interest you pay when you finance a car or borrow on your insurance policy. Those are all eliminated and most people would not think of those as loopholes.

Every time we looked at one of those, whether it was the sales tax or consumer interest, or IRA's or charitable contributions above the line, we gulped twice and thought to ourselves, will the public accept this bill if we get rid of something they regard not as a loophole but as a cherished deduction in exchange for the lower rates?

But we went ahead, voted it out of the committee, eliminating many of those deductions that most people would regard as legitimate, brought the bill to the floor, and it passed. It passed 97 to 3.

The conference report is not going to pass 97 to 3. Many of the agreements made with the House in the conference have upset some of our Members.

Bear in mind, I have never been to a conference where either the House or the Senate wins everything. This is a bicameral legislature, and the two Houses are equal, No bill ever gets to the President unless the House and the Senate agree.

I have been here close to 18 years and never once have I seen a genuinely controverted conference where either the House or Senate won everything after passing dramatically different bills.

It became very obvious that if we were going to get a bill, the House would have to give and the Senate would have to give.

Some of the things that the Senate conceded in conference have caused pain to some Members in the Senate, enough to cause them to vote against the bill.

So again I want to reflect upon what it is we wanted, what it was the House wanted, and why in some cases we won some and the House won some.

First, bear in mind that the House made some very tough votes when they passed their bill. I discovered that, as a rule of thumb.

If the particular tough vote had been made in the House, then the House was very concerned about protecting that decision. The House had already taken the heat, the special interest groups had already hit them, and they had already stood up to them and said, "No." They did not want to give up to the Senate because they would have taken all the heat already. The Senate would be seen as saving the special interest groups. The House would get no thanks. All they had done is irritate a bunch of people whom they voted against.

So on both the House side and the Senate side it was my experience in the conference, the Members defended most vehemently the provisions they had been criticized most for.

The Senate had many of those provisions as well. One was the so-called passive loss rule. The House had no comparable provision. This provision was the one that irritated more individual wealthy people in the country than any other single provision in the bill. This provision limits the paper losses that the very wealthy use to offset their other real income, and thus reduce their taxable income to zero. We knew what we were doing when we put that in the bill. We understood it would make some of the very wealthiest people in the country pay taxes and understandably they were not going to like it.

The people affected by the passive loss rule are disproportionately influential in their communities. These are the people we, as Members of Congress hear most from. When we closed that loophole, we took a lot of flack in the Finance Committee. Once we took that flack, we did not want to give up the provision in conference.

The same is true for the very tough corporate minimum tax. This minimum tax, Mr. President, is, I think inescapable once it is in full effect. There will not be a profit-making corporation in the country that can escape taxation, and believe me, there are lots of corporations that wanted out from under this provision.

So after we had taken the flack here, we did not want to give up to the House.

The House, as I say, had made some tough decisions. One of the tough decisions involved changing the method used to compute the tax on pensions of retired Federal employees. Henceforth, it was going to be computed from the day of retirement. The Federal employees did not like this.

In the Senate, our provision was prospective. However, the House having taken the heat for it, did not want to concede when it got to conference. They would not budge a day. I can understand why they were so adamant.

Long-term contracts was another controversial issue. This involves a method of accounting used by defense and other contractors that have projects that run a long time. When you are building a dam, you do not

build a dam in a week. When you are building a B-1 bomber, you do not build a B-1 bomber in a week, and if you are building a number of B-1 bombers the process goes on over a long period of time.

The House dramatically changed the completed method of accounting. Most contractors did not like this change. The House took unmitigated grief when they passed the provision. Understandably they did not want to loosen it very much when it came to conference, although they did loosen from where their position had been.

The same is true for banks. The House hit the banks much harder initially than did the Senate.

□ 1540

As a matter of fact, they had a very controversial vote where the banks won one day and the next day they lost. Again those House members who took the grief did not want to move from their provision.

When it came to charitable contributions, the issue of donation of appreciated property became an interesting point of dispute between us. Here the administration was on the side of the House.

Appreciated property, to use an example, property which bought for $100,000, and 20 years later is worth $1 million. You give it to your college. Under current law, you can deduct the entire $1 million as a charitable contribution. You can arrange your affairs in such a way that you can reduce your taxable income to zero.

The House included charitable contributions of appreciated property as a preference for the minimum tax. For mimimum tax purposes, your deduction would only be $100,000. For purposes of the regular income tax, you could still take the $1 million deduction.

The House would not give up on this provision either.

So, as we began to negotiate with the House, they gave a lot. They agreed to start with the Senate's low rates. The House conferees did not believe that the conference would stick with the low rates. They thought, when we were really faced with the tough decisions, that the pressure would be so great that we would raise the rates.

However, the Senate had already fought that battle. We knew we had gone through it, we had taken the heat, and we thought we had to take it again.

We started, by and large, with the Senate's position on the minimum tax, and stayed there throughout. The closing of tax shelters through the passive loss rule, we started with our position and pretty much stayed there throughout.

The House did not have the $2,000 personal exemption for everyone. The Senate did, and we stayed with the Senate position throughout.

With only a few exceptions, we stuck throughout the conference with decisions to eliminate the things that people would not call loopholes—consumer interest, sales tax, capital gains. The House, to their credit, stuck with us.

On the issues the House had taken the grief for—the retired Federal employees, completed contracts, the donation of appreciated property, the banks, property and casualty—by and large the bill reflects those tough decisions made by the House. It was a genuine compromise in the best sense of the word.

Now, we come to the so-called transition rules. I know the press loves to make great fun of these. As I said at the start of my comments, transition rules are designed to ease the passage from the present law to the new law. These are necessary because people had relied upon the law as it was. In those cases, they deserved a transition.

First, the chairman of the Ways and Means Committee and I set down some specific guidelines that transition rules could not violate. They could not be exceptions to the book income provisions of the corporate minimum tax. None of them are. They could not violate the passive loss provisions that the Senate had in its bill. None of them do. Had we started to make exceptions to the corporate minimum tax or started to make exceptions to the so-called passive loss rules—there would have been no end to the exceptions.

On the very last night, when the chairman of the Ways and Means Committee and I were negotiating the last settlement, we made the only exception to the passive loss rules. It was not a so-called rifle shot. It was not one project. It was in the area of low-income housing.

The reason we made an exception for low-income housing was that investment in low-income housing is different than investment in most other kinds of real estate. Under the law today, when most people invest in commercial real estate, expect the buildings to generate cash flow, and to appreciate in value. Investors get tax deferral and capital gains on sale.

The problem with low-income housing is that projects usually do not appreciate in value. In addition, many projects do not generate positive cash flow. So that the principal reason for investing in low-income housing is solely the tax losses.

What we were afraid of, if we did not make an exception—the only one in the passive loss rules—for low-income housing is that investors would simply walk away from the property, banks would have to take them back, and eventually we might have to take them back. We would then have hundreds of thousands of low-income tenants on our hands, and we would be faced with either appropriating a great amount of money so they could continue to live there or, worse, throwing them out, converting the projects to middle- or upper-income projects. That is the reason that exception was made.

There were four or five other basic principles that the chairman of the Ways and Means Committee and I agreed the transition rules must not violate. By and large, the transition rules adhere to these principles.

There are, however, about 380 transitions, what I call rifle shot transitions, that are in the conference agreement that were not in the Senate bill and were not in the House bill.

There will be criticism, I know. Who is to say which project deserves a transition. Those are subjective judgments.

It would be foolish of me to say that, on occasion, politics did not enter those judgments. If the Speaker of the House requested from the chairman of the Ways and Means Committee a transition rule, my hunch is that the chairman of the Ways and Means Committee would give it a reasonably high priority in his thinking.

If Senator DOLE requested one of me, I would give it a resonably high priority in my thinking.

But, Mr. President, as honestly as we could, we tried to be fair in the transitions and we tried to make sure that they did not violate the basic tenets of the bill.

□ 1550

To put that in perspective, over the next 5 years the Federal Government will collect revenue of about $5 trillion; trillion dollars. This tax bill is the most dramatic change in the history of the Tax Code.

Mr. President, 1 percent of $5 trillion is $50 billion. One-tenth of 1 percent is $5 billion. The transition rules cost approximately $10 billion. Put in the perspective of the overall bill, the transition rules mean so very little.

After the conference concluded, Chairman ROSTENKOWSKI and I allocated approximately $3 billion in transition rules.

I am sure we made mistakes. I am sure we made some technical errors that we will have to correct. We found one—literally—where the city of New Orleans had been typed in instead of Pensacola. We meant Pensacola. It came out New Orleans.

There is another one where both the House and the Senate conferees had agreed to drop out a particular transition. We were both agreed. When the bill came out it was in there. It had not been dropped out. Those are technical errors.

Then there will be a few where some Members of this body, and the press,

will want to focus on as being venal or corrupt. Mr. President, they are not. Whether or not Chairman ROSTENKOWSKI and I in every case exercised our discretion in the way a particular Member would want is, I think, based pretty much upon the preferences of the Member. If that Member got his or her transitions—or the bulk of them—they would think we exercised our discretion appropriately. If they did not, we were venal and corrupt.

Now we are done. The House has passed their bill. The Senate passed its bill. The conference met. We agreed upon one bill in conference. The House passed it yesterday. It is a bill that we cannot exactly foretell the economic consequences of. There is no one who can tell you for sure. If we had not passed this bill at all, there is no one in this country that could tell whether the present Tax Code would have helped or hurt business. We could have had 20 days of hearings with 50 economists, and we would not have known from the economists whether the bill would help or hurt.

Mr. Feldstein says it hurt. Mr. Macon says it helps. The argument is sort of "My dad can beat up your dad." For every economist who says it will help, there is one who says it will hurt. I believe it will help. It seems to me, Mr. President, that if henceforth, people are going to make investments solely for the purpose of a return on their investment, or to put it more crassly, solely for the purpose of making money, that is going to be better for the economy than making investments in the hope that you receive tax benefits. There will be no more investments made, if this bill passes, for the sake of generating paper losses; no more cattle feeding operations where you can buy a $10,000 share which is designed to lose money. No more investing in llamas, kangaroos, or syndicated shares of a greyhound.

I do not know if you know, Mr. President. You can buy part of a greyhound. You do not have to buy the whole hound. This is for people who have never seen a dog track in their lives.

This bill will encourage people to invest in things that they know about, things they think they will make money. I think at last the person is going to invest in the grocery store or duplex because they think they are a good grocer or property manager. That ought to be good for America.

Mr. President, that was not the sole reason for this bill. If there was any single motivating factor that was the key to this bill passing the Senate, it is that this is a fairer Tax Code than we have now. Henceforth, we can go back to our constituents, and with pride say that those people who previously paid no tax will now pay something. They are going to pay a lot. They have not paid before. But they are going to pay now. The Jane or Joe pulling green chain in an Oregon mill making $16,000 or $17,000 and paying $800 or $900 in taxes, will no longer have to hear the stories of unfairness. Those will be gone.

Will the bill work? Will it make the economy grow more than if we change the Tax Code, No one knows. But as the old saying goes, Mr. President, no guts, no glory.

The way we were going was wrong. It was unfair. And we were unjustifiably intruding ourselves in every decision, economic, philosophical, personal, and charitable that people were making.

So for better or for worse, we are going to try a new road. I think it is worth it. I hope the Senate will support the conference report.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, does the Senator from Louisiana desire to talk at this time, the ranking member? I would be happy to proceed.

Mr. LONG. Mr. President, it does not make much difference to the Senator from Louisiana. Let us debate it for awhile. I invite the Senator to go ahead and make his speech.

Mr. DANFORTH. I thank the Senator from Louisiana.

Mr. President, a number of Senators have asked me what my intention is with respect to debating this bill. People have asked me whether I am going to debate it at length, whether I want to filibuster the bill, and the answer to that question is no. I am not going to filibuster. I do not have any desire to prolong the consideration of the Senate. I did have a preference that we wait until next week to take the bill up because of the other matters that I have to deal with. But I was perfectly willing to cooperate with the majority leader in considering the bill today.

I am not going to filibuster the bill but on the other hand I do believe that the bill deserves reasonable consideration by the Senate. The bill, as is commonly known, was agreed to by the conference committee in a very summary fashion. We did not have any text before us. We had broad outlines of an agreement before us, and a majority of the conferees signed the papers.

□ 1600

Subsequent to signing the papers, the two chairmen negotiated the details of the bill, and not only the details but some very important elements of the bill, and not just the transition rules, either.

(Mr. McCLURE assumed the chair.)

Mr. DANFORTH. The conference report was first made available to staff last Friday, and it is quite a weighty document, literally, some 900-plus pages of text, plus several hundred pages of report language. It is obvious that this conference report has not been gone over with a fine-tooth comb.

I do not think we are going to go over it with a fine-tooth comb, but I do not think we should have the bum's rush either.

Senators ask me, "What is your intention?" My intention is to attempt to describe some of the fundamentals of the bill that I think are wrong. I think this is a bad piece of legislation, and I want the Senate to know why I think it is a bad piece of legislation. Not because I think that I am going to win this vote. I do not. But I do not think that we should make decisions with blinders on. I do not think we should make important decisions in a cavalier fashion. As everybody understands, this is an important bill. It is a revolutionary tax bill. At the very least, it deserves our consideration and reasonable discussion on the floor of the Senate.

So it is not my intention to filibuster; it is my intention to describe it and discuss it. I do not intend to be popping up over and over again, or slowing down Senators. A lot of people have said they want to go, that they have a speech to make, this, that, or the other thing, and I do not want to get into people's hair.

On the other hand, I do not intend to be given the bum's rush.

So, Mr. President, I do ask unanimous consent that the remarks I have been giving and am continuing to give not be considered a speech within the two-speech rule.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, let me first say something very personal.

Some people have asked me, press people, mainly, "What does your opposition to this bill do with relationship with the chairman, Senator PACKWOOD? What does your strong feeling, your vocal opposition to this tax bill, do to your working relationship and your personal relationship with Chairman PACKWOOD?"

I am going to answer that right now from my standpoint.

BOB PACKWOOD has been a personal friend of mine since well before I was elected to the U.S. Senate. Who else but Senator PACKWOOD would have gone to Ashland, MO, to dedicate a new America, no less, during my ill-fated campaign of 1970?

During the past almost 2 years I have watched BOB PACKWOOD operate as chairman of the Senate Finance Committee. He had very big shoes to fill. When I first went to the Finance Committee, Senator LONG was our chairman, a legend who is soon to be leaving the Senate. One of the great

experiences of serving here has been to serve with RUSSELL LONG on the Finance Committee and also on the Commerce Committee. A great chairman of our committee.

He was succeeded by BOB DOLE, also an excellent chairman who had to move through the Finance Committee on the floor of this Senate and conference a series of very complicated tax bills. He did an outstanding job in his stewardship of our committee.

So BOB PACKWOOD had very large shoes to fill when he became chairman of the Senate Finance Committee.

The first thing of real consequence he was faced with was a demand on the part of the administration that we address tax reform. Senator PACKWOOD has gone through the chronology of tax reform legislation, what led up to the moment we are at today.

There were many times when it was the commonly held belief that there could be no tax bill, that it was dead.

I never thought it was dead. One of the reasons I never thought it was dead is because of my respect for the ability of Senator PACKWOOD.

Last winter, the Finance Committee went on a retreat to West Virginia. It was snowing. We sat around a big table and we talked about what we were going to do in tax legislation. At that time a lot of people thought there was no chance to pass the bill. BOB PACKWOOD persevered.

Then, as our chairman pointed out, the bill went through markup in the Finance Committee and it fell on hard times. It became the usual tax Christmas tree. It was the opposite of reform. People thought, "Well, this is dead. This is going nowhere. This is a travesty."

Senator PACKWOOD did the boldest thing I have ever seen done in the Senate: he took that bill away from the Finance Committee and then several days later he came back to us and said, "What do you think about a proposal with two individual rates, 15 percent and 27 percent, and a 33-percent corporate rate?"

That bold stroke captured the imagination of committee members.

We were electrified by it. With all the diverse opinion that is present in our committee, we went to work on that bill and we reported out of the Finance Committee, by a unanimous vote, this revolutionary tax bill.

Then we went to the floor of the Senate and amendment after amendment was offered, and amendment after amendment was beaten back by Senator PACKWOOD.

We passed the bill with three dissenting votes.

Then, in conference, he was faced with an extraordinarily difficult situation, which I will describe in short order, and despite this extraordinarily difficult situation, he managed to get a majority of the conferees in the Senate to go along with the bill.

So I have a great respect for our chairman, and I want to make that clear at the outset.

Mr. President, I have to say that all along, my view of tax reform has been mixed. I have recognized the down side, the difficulties, and at the same time I have aspired with our chairman to accomplish true tax reform.

When the House passed its bill the latter part of 1985, I examined the House bill and I could not have been more critical.

I issued a statement at that time which said:

> The House bill penalizes savings and investment and stimulates immediate consumption. It hinders economic growth and risks triggering a recession. It is the legislative equivalent of reckless driving.

That is how I felt about the tax bill. All along it has been my own belief that the closer we were forced to come to the House bill, the less palatable the product became, as far as this Senator was concerned.

I thought the House bill was bad for America.

But I wanted to be part of the process. I wanted to participate in true tax reform. I was impressed by the bold stroke of our chairman—excited by it—and so I joined in the process. As Chairman PACKWOOD pointed out, there was a core group, and we met day after day. We met, I remember, one Saturday all day in the Finance Committee room. There were six Senators who were in that core group, and I was one of them. MALCOLM WALLOP was another. We were two of the strongest supporters of the chairman's tax reform initiative. Gung ho.

We supported him in committee. We cast tough votes in committee. And we came out on the floor and we spoke for his tax reform initiative. We helped to beat back amendments. We cast the tough votes, and we spoke out against the amendments that were offered.

Now, Senator WALLOP and I, both members of the core group, find ourselves among the very strong opponents to the product of the conference.

□ 1610

Because as the conference proceeded, the bill became increasingly objectionable, increasingly difficult as far as we were concerned.

Some people say, well, is this just a matter of pique on your part? Is this just because some of your Missouri concerns were not taken care of? My answer to that is, in all honesty, no. I went into this whole process realizing that particularly the completed contract method of accounting was something that was going to be very, very difficult to win with. I have had this sort of mental picture in my mind that when I pass on to my reward, whatever it is, I am greeted, hopefully at the pearly gates by St. Peter, and he says "What did you do with your life?" My answer is, "Well, I spent about 6 months of it trying to save something called the completed contract method of accounting."

That was always difficult and I realize that.

I think that at the end of the conference, I was clinging to the process despite reservations about the economic consequences because I thought that when I jumped ship, all of my baggage would be tossed overboard with me. So I was grabbing on to the railing, but not jumping. But I have to say that even at a time when it looked very rosy for some of my pet projects, I was calling up economists. I was asking them their views and I was voicing concern about where we were heading. I was voicing it during meetings of conferees—meetings of Senate conferees in our chairman's office, meetings between the Senate and the House conferees in closed session here, in the Capitol Building. So it was not really a matter of just pique on my part, or spite on my part.

Well before some of my concerns went down the tube, I was really concerned about the course of the bill. I can remember at a meeting with the House conferees saying that if this bill went much further in the direction that it was heading, I was going to have to oppose it and oppose it very, very strongly.

Mr. President, as was pointed out in the morning paper, one of the House Members yesterday, during consideration of the bill on the House floor, said that this is a matter of relative degrees of gray, and I agree.

No tax bill is entirely good and no tax bill is entirely bad. At no point in this process did we have a bill which I believed was entirely good or entirely bad. The conference report that we have before us has some very good things in it. All along, this bill has had some very good things in it. This bill takes 6 million low-income people off the tax rolls. That is good. That was an objective worth pursuing and the bill will do it.

It could have been done, incidentally, for about $2 billion. Senator MITCHELL and I for some time had been working on a bill to remove low-income people from the tax rolls. It could be done for about $2 billion. But it is done in this bill and that is good.

The bill reduces rates, both individual rates and corporate rates, and who can object to that? Obviously, if we can do it and do it responsibly, everybody wants rates reduced. That is good. And that is something that was done in this bill: We reduced rates.

We expanded the earned income tax credit. The earned income tax credit is

our way in the Internal Revenue Code of offsetting Social Security tax payments for low-income wage earners. We expanded the earned income tax credit. That is good. That is something we did in this bill. This bill is not all that dear. It has good aspects in it as well as bad.

We ended a lot of tax shelters. Senator PACKWOOD, in his description of the bill, has gone into this in at some length. It is absolutely true that the current state of the Internal Revenue Code is a mess. It is perfectly ridiculous that in our Tax Code we are providing incentives for people to get into things that they really should not be in. Why, for example, when our famers are producing half again more than the American people can consume, do we want to have tax incentives to put dentists and doctors into the business of farming? It does not make any sense and the bill does deal with the problem of shelters. I think that it deals with them effectively and that is good.

The bill provides for pension reforms, new pension rules with respect to vesting and integration and nondiscrimination. Most people who are students of pension law, tax law relating to pensions, believe that these are significant reforms that are found in this bill. That is good that we reformed the pension system.

We have a new concept of minimum taxes. As our chairman pointed out, all the time we are hearing from our constituents, how can it be that somebody with $1 million income does not pay any taxes? All of us believed all along that there should be some attempt to fashion a meaningful minimum tax so that wealthy people cannot exploit loopholes and escape taxes altogether, so you no longer see people who wear buttons that say, "I paid more taxes than General Electric." Our code cries out right now for reform by way of both corporate and individual minimum taxes and we do it in this bill. And that is good. So there are good things that are accomplished in this tax bill and they were always in the tax bill.

The question in this Senator's mind has always been, what would I be willing to pay for these reforms? What should we as a country pay to accomplish the tax reforms that are good? What things should we do to the bill, to the tax law, as tradeoffs for the reforms that are not too dear a price to pay for what we are attempting to accomplish?

Above all what risks to the economy are we willing to incur in the process of providing America with tax reforms?

I was willing to pay a lot to accomplish tax reform. When I signed on to the chairman's process and when I became a member of the core group and when I supported the Senate bill on the floor last summer, I was willing to pay a lot for tax reform. I was willing to agree to things that were truly obnoxious to me that were in the Senate bill because I thought that these were prices that, while tough and stiff and expensive, could be paid.

□ 1620

I was willing to raise taxes on corporations, not in some trivial amount but by by $100 billion, which is what we thought we were doing when we were on the floor of the Senate. I was willing to agree to that as part of a comprehensive tax reform bill. I was willing to repeal the investment tax credit. I really do not want to repeal the investment tax credit to be perfectly honest, but I was willing to ante that up, to chip it in as part of a total process of accomplishing tax reform.

I was willing to do something which to me—and I am going to be speaking about this in a little bit—has always been most unfair, but we had to do it, I thought, in order to provide enough revenue to pay for the bill, and that is to make the tax shelter reform, the ending of tax shelters, retroactive. I was willing to hold my nose and do that as part of a tax reform bill.

But the question in my own mind has always been how much am I willing to divvy up, how much should we ante in, how high should the price be for the kind of low rates that our chairman conceived of last spring.

What happened, Mr. President, as we proceeded in the conference, was that the price became higher and higher and higher, and we had to keep ponying up more and more and more to meet the demands of the bill. We had two problems. One probably was the House of Representatives. That was not so bad because it is always true that in any tax conference there are compromises, and you have to meet them somewhere halfway. And the House did have a different philosophical position in its bill, especially with respect to what it was prepared to do to business, than we have in the Senate. But we all understand that you go to conference and you cannot get your way.

But there was another wrinkle in this, and this is where really, in my opinion, came the cropper in the conference. We found that we had to keep throwing more and more revenue into the bill to attain the principle of revenue neutrality. We agreed in the Senate, the House agreed, everybody agreed that the bill had to be revenue neutral. There was no question about revenue neutrality. But what we found out when we went into conference was that we had to keep dumping more and more revenue into the bill to get to revenue neutrality. We thought we had accomplished revenue neutrality in the Senate. We had not even come close. No sooner had the bill left the Senate floor than the Joint Committee on Taxation began redoing their revenue estimates and finding us more and more short in the revenue that we thought we were producing in the Senate, so that in addition to attempting to catch up with the House in its demands on a philosophical basis to change what we did, we had to pour in revenue. And this became, Mr. President, an almost frantic effort on the part of the Senate conferees.

It was not that we could find it in one big pocket or another big pocket. Mostly what we did was to go through long lists of things that produced a few hundred million here and a few hundred million there. The biggest thing we did in the aggregate was to increase taxes on corporations. A lot of people will say, "Well, that is all right; corporations do not vote."

But it is also said that corporations do not pay taxes, that people pay taxes, and that what we do in increasing the burden on corporations is to hurt people by either increasing their prices or throwing them out of work. Mainly what we did in the process of the conference was to find money, large amounts of money, by increasingly upping the tax bill on corporations.

By my reckoning, a minimum of $37 billion in additional corporate tax burden was added during the conference over the 5-year period of the bill. It was, indeed, a frantic process by those of us who were conferees. We raised an additional $13 billion from depreciation by lengthening useful lives. We moved depreciation on research and development equipment for a 3-year life to a 5-year life. We made the R&D tax credit 20 percent instead of 25 percent, which it is under current law. We agreed to eliminate in full the deductibly of State and local taxes. We added endlessly to accounting changes, nickeling and diming them over and over again, changing accounting rules. We eliminated corporate capital gains. We raised to unconscionable levels the tax burden on Americans doing business abroad. We enacted a whole series of provisions to nail our colleges and universities. We went through an almost inexhaustible list of other changes, and finally at the very end, we were forced to do something that we, in the Senate promised we would never do, and that is to increase the rates from 27 to 28 percent for individuals and from 33 percent to 34 percent for corporations.

That was grudging, because, Mr. President, the whole nature of this bill right from the outset has been that we, in the Congress, have become—and myself included—intoxicated by low rates. We have been willing to do anything to accomplish low rates. We were willing to dump more and more taxes on our industrial sector, on re-

search and development, on education in order to placate this god that we had formed of low rates.

And so as we proceeded through this process of coming up with more and more revenue in the bill, some Senators in the core group defected. I was one of them.

Now, Mr. President, I suppose everybody in the Senate has his or her basic standard of what makes for a good tax bill. Some people say that the basic criterion should be fairness. Some people say that the basic criterion should be low rates. My test of a good tax bill has always been the same. My test has always been, what would the bill do for the economy of our country? How will the bill affect the American economy?

□ 1630

It is of little value to our constituents to tell them that we have cut their rates but that the economy in which they have to live is going to be worse, because no reduction in tax rates compensates for the loss of a job.

It has always been my view that the test to be applied to tax legislation should not be what the rates are or even fairness, as important as that is, but, rather, that the basic test, the most important test, should be what the bill does to or for the economy.

It is my belief that the bill that is now before us, the conference report that is now before us, is a serious blow to the economy of the United States, that it will have profound repercussions, that it will exacerbate other flaws that we have in the economy, and that it will lead America not in the direction of greater strength but of greater weakness.

Let me spell out what I mean.

Mr. President, this Senator—and I think most Senators—has always believed that the No. 1 economic issue that is before our Government right now is not tax reform. The No. 1 economic issue before us is the deficit in the Federal budget. There is a difference of opinion on that.

Our President has said many times that he believes that there should be two priorities, there should be two items on the front burner. The budget deficit is one thing, and tax reform is another thing. Our President has said that both priorities can exist equally. I have never believed that, and I do not think most Senators believe that. My view has been that the meaning of the word "priority" is "one," and that there can be only one priority; and that tax reform, even perfect tax reform, does not even come close to the budget deficit, which is the real priority before America.

Mr. President, the very best that can be said for this tax bill with respect to the budget deficit is that for about 6 months or so, it has succeeded in pushing the budget to the back burner.

I remember sometime this summer, right when we, in Congress, were in the midst of fighting the battle of the tax bill, reading in a newspaper that our leader, Senator DOLE, had said that from what he saw of the public attitude, the budget deficit had been pushed onto the back burner, that it had been receding in the public attention, that it had gone beyond the other side of the horizon. I think that was an accurate perception on the part of our leader.

The budget deficit has played second fiddle to tax reform. Frankly, we already have been distracted even from doing the job that we promised when we passed Gramm-Rudman-Hollings. Remember, when we passed Gramm-Rudman-Hollings, we promised to put the country on a path toward a balanced budget by 1991 and we promised that we would have a $144 billion deficit in 1987. Well, we have changed our mind on that. The target now is not $144 billion. We have enlarged the target to $154 billion. We have used the cushion that was created to meet the exigencies of changing economic forecasts. We have used the outer rim to become the bull's-eye itself.

The process we are going through right now in reconciliation is hardly a reform of our budget policy. We are selling assets, and we are calling that meeting Gramm-Rudman. In any event, I do not think we have done a very good job on Gramm-Rudman, and I do not think we have done a very good job on the budget. I think it was a mistake to view tax reform something of equal significance to the budget deficit.

That is the best that can be said about the bill with respect to the deficit—that it distracted us from the bigger question of the deficit. But I think it did worse than that. I believe that this bill, in and of itself, is going to make the deficit much larger than it would be if we did not pass the bill.

For one thing, Mr. President, we really do not know the revenue consequences of this tax legislation. We have no idea. Revenue estimates are such an inexact art that we really do not know what we are doing. We say that we guess this is going to be revenue neutral, but we really do not know whether this bill is revenue neutral or not.

During about 2 or 3 weeks, as we are proceeding in conference, revenue estimates shifted by $20 billion.

I can remember that poignant moment just before the conference was completed, 1 day before the conference was completed, when Chairman PACKWOOD went out and saw the press and said that he could have cried at the changing revenue estimates from the Joint Committee on Taxation. He was very candid and very open, as he always is, when he said on the "Today Show" a week or so ago:

> I hope the bill is revenue neutral. We have done everything we can to write it so that it will be revenue neutral. But, very frankly, when you are talking about a bill that goes over 5 years, and we're going to be collecting roughly $4.7 trillion over that time, you could hope it is neutral. Nobody can be absolutely sure.

That is a very candid comment, and it is true. We cannot be sure. We do not know what this is going to do to our budget deficit as contrasted with current law. It is a guess; it is a gamble with the deficit. We are guessing that the figures are right, but they may not be.

□ 1640

Mr. President, let us assume for the moment that they are right; let us assume that the Joint Committee on Taxation is accurate and that they were going to hit our revenue projections on the button. What would that mean for our battle to move the Federal deficit toward balance? What would it mean for the future of Gramm-Rudman-Hollings? Already next year we will have a $154 billion deficit and already we have said that we are going to go from $154 billion to $108 billion deficit in 1988.

And we have further said that not only are we going to do that, not only are we going to get down to the $108 billion, but in the process we are also going to come up with $17 billion somewhere that is going to fill in the gap created by the revenue shortfall that our estimators tell us will exist in 1988.

Mr. President, how are we going to hit the target of $108 billion when hitting that target means that in addition to getting to $108 billion we are going to have to come up with $17 billion because of the programmed revenue shortfall in this tax bill?

My answer to that is we cannot make it, and my answer is that if we pass this bill—and we will pass this bill, let us face it—Gramm-Rudman-Hollings will have a life of 1 year. It was partially successful for 1 year. It did not get us to $144 billion. At least it got us to $154 billion, but, Mr. President, there is not the slightest chance in the world that if we pass this bill we can get anywhere within shouting distance of $108 billion deficit in 1988. There is zero chance of that.

The Gramm-Rudman-Hollings process lasted 1 year and that is it, and somehow we are going to have to find some way to wiggle out of it. Maybe we will wiggle out of it. In any event, if we did not pass the bill, surely the extra load of $17 billion in revenue shortfall will make it absolutely impossible to follow through with Gramm-Rudman-Hollings in 1988. Let us say that now and realize that in the vote that we will take on this confer-

ence report we are voting to kill Gramm-Rudman-Hollings.

Now, I have said there is a $17-billion shortfall if the revenue projections are correct. They are not going to be correct. They are not going to be correct and I want to tell the Senate a few reasons why they are not going to be correct.

First, this is something that we have gone round and round on in the Finance Committee forever. Should revenue estimates be static or should they be dynamic? The figures that we always get from revenue estimators are static figures. They assume no change in economic behavior as a result of changes in tax legislation.

The projections of revenue neutrality that we are working under are static projections. They do not anticipate any downturn in the economy. If there is a downturn in the economy, particularly one created by, for example, repealing the investment tax credit, we are going to be losing revenues because our economy is going to be doing worse.

So, Mr. President, Roger Brinner of Data Resources, Inc., tells us that he estimates that in 1987 our Federal Treasury will be bringing in $21 billion less revenue than that projected by the Joint Committee on Taxation because of the economic consequences of this tax bill.

Then Roger Brinner tells us that in 1988 the tax bill will create a revenue shortfall from current law of $25 billion and in 1989 the figure is $16 billion. Who knows if that is right? But the fact of the matter is that he is at least working into his calculations an anticipation of some readjustment of the economy. You cannot pass this revolutionary tax bill without economic fallout and that kind of fallout is what is being predicted by Roger Brinner of Data Resources.

So the static versus dynamic estimates are one reason why this bill is not going to be revenue neutral. Another reason is that the revenue assumptions in the bill are hopelessly unrealistic and let me give a couple of examples of why I think they are hopelessly unrealistic.

We are estimating that in this bill we are going to pick up tax revenues by increasing the tax on capital gains. That is what we are doing in the bill. We are increasing the tax on capital gains from 20 percent to 28 percent and we are saying that when we increase capital gains taxes, we are going to pick up revenues of roughly, I think this is what the Joint Committee is telling us, of roughly $20 billion.

Now, Mr. President, in 1981 we did just the reverse of this bill. We reduced capital gains taxes from 28 percent to 20 percent. At that time it was argued that when you reduce capital gains taxes you pick up revenue because the number of transactions increases.

And I think Senator LONG will remember those agruments in committee and on the floor.

Mr. LONG. Mr. President, will the Senator yield?

Mr. DANFORTH. I yield.

Mr. LONG. We used to make those arguments both in the committee and on the floor. Those of us contending that succeeded and then we definitely contended, and I believe the fact will prove it worked out, and we argued that a reduced capital gains tax rate will bring about more capital gains, and I believe the record will show it did. I believe the Senator is getting to that.

Mr. DANFORTH. I think that is exactly right. We made the argument in 1981 that when you reduce capital gains taxes, you increase revenue and I believe the facts point that out and I do not think anyone contests that. I am not sure what the number is. But I do not think any one contests that when we reduced capital gains from 28 to 20 percent we picked up revenue.

Now, in this bill we are saying that when you increase capital gains taxes back from 20 to where it was, 28 percent, we are going to pick up $20 billion in revenue.

Mr. President, you cannot have it both ways. You cannot have it both ways. Either we pick up revenues by reducing capital gains rates or we pick up revenues by increasing capital gains rates. It cannot go both ways.

Someone said to me a few days ago: "I know what we are going to do to close the deficit next year. After we pass this bill we are going to reduce the capital gains taxes to 20 percent and argue that that will pick up revenue again.

You cannot have it both ways.

I make this point simply to argue that the estimates that we are working on are totally unrealistic. I will give the Senate another example of how these revenue estimates are unrealistic. The Joint Committee on Taxation says that we will increase revenues by $20 billion by limiting what employees can deduct for employee expenses. Under the current law if there is a business expense incurred by an employer or an employee, in either case they are deductible. Well, they are not deductible in full under this bill.

We put limitations on the deductibility of employee expenses. We claim we are going to raise $20 billion in revenue by limiting the deduction that an employee can take. This $20 billion figure assumes that people are stupid because what employees are going to do is to go to their employers and say, "Look, don't give me the money in the first place. You take a deduction, use it in full, reduce my salary an appropriate amount but do not make me take the cash in and pay taxes on it." That is what is going to happen.

So, Mr. President, we are not going to pick up any $20 billion by limiting the deductions that employees can take. The reasoning is fallacious.

Here is something else we did to try to accomplish revenue neutrality in this bill. In a whole host of areas what we did was sunset preferences in the tax bill. What we did was to say we will provide that, say, the research and development tax credit or the low-income housing tax credit will only last 3 more years so we will count that revenue lost from that credit for 3 years and then we will sunset it so we do not have to worry about its cost after 3 years.

Mr. President, do we seriously believe in the Senate that these various things are truly going to fade out of existence at the end of the sunset 3 years hence?

Do we really believe that when it comes down to it the tax credit for low-income housing has a 3-year life and that that is the end of it?

□ 1650

Of course not. Of course that is not going to be the case. It is, to use the phrase frequently used in connection with our budget computations, it is smoke and mirrors to believe that we create revenue neutrality by this artificial sunsetting of highly popular aspects of the Internal Revenue Code.

What is another way we doctor the numbers on revenues and create real problems for this country in the future? We do it by accounting changes. We raise in this bill $65 billion over 5 years in accounting changes.

Now, Mr. President, what are these accounting changes? They do not change the amount that Uncle Sam is going to bring in. They change when Uncle Sam brings the money in. We have artificially contrived changes in accounting methods to load tax revenues into the 5-year period for which we are projecting revenues for this bill.

We are taking $65 billion of revenue that we would be receiving in 1992 and thereafter and artificially dumping it into the 5 years immediately ahead to try to meet revenue neutrality in this bill. It is phony. It is worse than phony. It is going to come back and haunt us in the future.

The revenue estimates do not take into account the fact that when corporations pay more taxes, as they will under this bill, they will pay lower dividends. It has been estimated that that change is going to cost the Treasury about $10 billion during the 5-year period of the bill.

So, Mr. President, over and over again we have failed to take into account economic reality and we have, in

effect, doctored numbers in order to create the illusion of revenue neutrality when this bill is not going to be revenue neutral at all.

So the first effect on the economy is that this bill is going to increase our problems with the budget deficit and make the budget deficit larger than it would otherwise be. The test is the effect on the economy. The first way in which we fail the test is to ensure our chances for dealing effectively with the budget deficit.

There are other effects as well. The bill probably is going to reduce our gross national product. Now I know, as Senator PACKWOOD said, that there are economists all over the place on everything. But surely we are doing no better than flipping a coin if we believe that one batch of economists is right and the other is wrong. And there is a very reputable group of economists who feel that this bill is going to reduce our gross national product.

Murray Weidenbaum, who was the first Chairman of President Reagan's Council of Economic Advisers, now a professor at Washington University, Murray Weidenbaum has projected that this bill will reduce the gross national product by 2 percent for the rest of this decade.

Lawrence Summers, professor of economics at Harvard University, estimates that the conference committee bill will reduce real GNP by 5 percent in 1996.

Wharton Econometrics estimates that the bill will reduce real GNP growth by 6.7 percent in 1987.

These are not fly-by-night economists. These are reputable people who believe that this tax bill is going to reduce our national wealth; that it is going to reduce our gross national product.

Some economists believe that it is going to lead to a recession. Lawrence Chimerine, chairman of Chase Econometrics, has stated that this bill clearly increases the risk of recession. Murray Weidenbaum, again, has said that this bill could be the straw that breaks the camel's back. The international accounting firm of Pannell Kerr and Forster says of the bill that it is a "prescription for recession, an increased budget deficit, and inflation. It is a return to the stagflation which we finally wrung out of the economy."

Mr. President, when we talk about the performance of the economy, of course what we are really talking about in human terms is jobs. I am not sure about the effect of this bill on jobs. I know that again there are several opinions on it.

Professor Weidenbaum thinks that this will cost 1 million American jobs by the end of this decade.

But I do not think that there is any reasonable difference of opinion that this bill is going to seriously hurt the manufacturing sector of our country.

So I think that in addition to the budget problem and in addition to the possibility of reducing our gross national product, another clear result of this bill is that it will increase the cost of capital. It will increase the cost of business plant and equipment. It will do this by repealing the investment tax credit. It will do it by tightening up depreciation benefits. It will do it by repealing the capital gains differential.

Lawrence Meyer and Associates has estimated that repeal of the investment tax credit alone will increase the cost of capital by 12.2 percent.

Professor Summers of Harvard has estimated that the bill would increase the cost of capital by at least 10 percent.

Lawrence Chimerine has predicted, again, a 10-percent increase in the cost of capital.

Mr. President, against what background are we about to vote to increase the cost of capital in the United States? A couple of weeks ago, the U.S. Department of Commerce came out with the projections, revised projections, and stated that this year, in 1986, there will be a 2½-percent reduction in business spending for plant and equipment.

Against the background of a decline in business spending for plant and equipment, we are deciding to increase the cost of capital by 10 or 12 percentage points.

The United States cost of capital already is twice that of Japan. And our industrial base, our manufacturing sector, is by far the most fragile element of our economy.

Now, I know all the talk about the service industries. People say, "Well, we are moving in the direction of services," and that is true, Mr. President. But how much more should we shove the industrial sector into a recession? Are we to have no concern at all about a balanced economy? Do we not care any more whether Americans can make things? Do we not care if we are competitive with the Japanese or the West Germans or the Koreans? Are we intentionally going to increase the cost of capital and let our factories rust out?

Do we really want to say to the people of this country, well, if you are worried about that, you can vote with your feet. I do not think that is what we should do. I think we should strive for a balanced economy, and for a country that can make things and for an industrial sector which can compete with the rest of the world. I do not think we should shove them over the cliff. I believe that is what this bill does.

(Mr. BOSCHWITZ assumed the chair.)

The bill is going to reduce our standard of living. Mr. President, it is widely held that the standard of living in the United States is closely connected to our productivity, and that our productivity in turn is closely connected to our national investment. Productivity is related to investment. In recent years France and Germany have invested about twice as heavily as the United States. And during that time, the productivity growth rate in France and Germany was twice the growth rate of the United States. Japan invested three times as heavily as we did during the same period of time and Japan experienced a productivity growth three times that of the United States.

Mr. President, in the name of lower tax rates we are creating an economy which is less productive, an industrial plant which is aging, and we are creating a lower standard of living for the American people.

Another effect on the economy: This bill will hurt the trade position of the United States. Mr. President, a lot of Senators—and I am one of them—want to pass a trade bill. I spend a tremendous amount of my time worrying about trade matters. How can we improve our trade position? How can we tighten our trade legislation to give Americans a better opportunity in international markets? But, Mr. President, trade legislation in and of itself is nothing in dealing with the trade deficit compared to overall economic policy. It is not possible to pass a responsible trade bill that will deal with the trade problems of the United States if we follow economic policies which hurt our trade position.

And this bill does everything that we can to hurt our position in international trade. First of all, it is a proconsumption bill. The theory of the bill is to reduce personal rates. Let people have more money so that they can consume more. What are they going to consume? Japanese TV's? Japanese automobiles? The bill creates a surge of consumer spending at the expense of savings and investment.

How are we going to be competitive in international trade if we let our industrial plant rust out? And to the extent that funds are provided for investment in America's future, if we do not provide them through our own savings, where are they going to come from? They are going to come from abroad. We are already a net debtor nation. We are the largest debtor in the world. And to the extent that this bill increases the deficit in the Federal budget, and to the extent that this bill provides fewer incentives for personal savings through changes in the Individual Retirement Account, in 401(k) plans, and the like, to that extent we are going to become more dependent on foreign sources of investment

which in turn will bid the dollar value right up again.

Finally, with respect to international trade, Mr. President, this bill in bizarre fashion—bizarre fashion—raises the taxes on Americans doing business abroad by $9.5 billion over the term of the bill; $9.5 billion in increase in taxes on Americans doing business abroad. Why? Why do that? Forty percent of U.S. exports are made to overseas by operations of American businesses. If 40 percent of U.S. exports are by U.S. businesses and their operations abroad, why do we want to increase by $9.5 billion the tax on Americans doing business abroad?

Another economic effect of the bill is its effect on research and development. Mr. President, back in 1978 our country was in the doldrums in spending for research and development. We were spending approximately 2.2 percent of our gross national product on R&D. The level of spending had been flat for a decade or more. Now by 1985, we are beginning to turn the corner. R&D spending has increased to 2.7 percent of GNP, which is a 22-percent increase as a percent of gross national product.

This increase in R&E spending has come about in conjunction with Congress enactment of a special tax credit for increases in R&D spending. Time and time again business people who are involved in high technology industries have come to us, testified in the Finance Committee, come to us individually, and said the R&D tax credit is the most important thing that we can do for them.

We must be competitive in research and development. In civilian R&D spending, Germany's ratio of R&D to GNP is 29 percent higher than the United States. Japan's ratio is 34 percent higher than the United States.

So what we do in this bill? Just as our response to a fragile industrial economy is to increase the cost of capital, so in this bill we increase the cost of research and development. In fact the bill targets research and development for special hits. It reduces the credit on R&D from 25 to 20 percent. It sunsets the credit in 1988. It increases the depreciation period for R&D equipment from 3 years to 5 years and it allocates R&D expenses to foreign source income which will provide an incentive for U.S. companies to do research offshore.

In so many areas, Mr. President, our country can absorb one change or another. We can absorb perhaps the repeal of the investment credit. We can absorb some change in the R&D credit but what we have done in this bill is everything at once. Every way we can find to target research and development for hits, we have done it in this bill. The most promising aspect of America's future, our research edge, our technology edge, the know-how that has always led the way for America is being targeted in this bill for tax hits.

Venture capital—another example of what we are doing to this country's future. That really is the issue I think, Mr. President. What are we doing to the future of America? Venture capital where somebody is willing to take a risk, somebody is willing to take a risk and put off instant payoff for the possibility of long-term reward—so we repeal the capital gains differention.

□ 1710

We tax everything the same.

We say, in effect, to our business people. "Get something safe, get something that returns money now. There is no special reason for you to make a long-term investment or take a long-term risk."

Instant money now. The quick buck. That is the policy of this bill.

The effect of the repeal of the capital gains differential on stock options will mean that it is much more difficult for a new company, a company that is starting up, to go out and hire first-rate, experienced people. What do they have to offer the people? A risk for nothing? Stock options that do not take advantage of the capital gains differential?

Why would anybody want to come to a new company? Why would anybody want to be an entrepreneur? Stay with the old company that just keeps the salary payments going out.

The R&D tax credit reduction, changes in depreciation, all of these impact against our entrepreneurs. All of these impact against those who are investing in something new, who want to invest in something new.

A venture capitalist in New Jersey named James Swartz has said, "It is quite possible we could return to a 1974 environment where there was only one startup during the entire year."

Now, Mr. President, we come to the field of education.

If America has a future, clearly our future is found in our young people, and clearly a top concern of America must be to provide well-educated, competent, young people to lead our country in the future.

Here is what we have done to America's colleges and universities.

The first thing we did was to simply lower rates. I do not object to that. I am for lowering rates. But it should be realized that when rates are lowered people are going to give less to charities, people are going to be giving less money to colleges and universities simply because the tax rates are lower. Fair enough. That is understood. That is what we are doing.

Prof. Lawrence Lindsay, of Harvard University has said that charitable contributions to colleges and universities will decline by 16.5 percent as a result of this tax bill.

Mr. President, we were not content just to lower rates. We actually had a meeting during the consideration of this conference to go through a list of ways that we could hurt our colleges and universities and it ended up we picked everything off the list. So we lower rates. Fair enough. Everybody wants to do that.

But then we start piling it on. Gifts of appreciated property are brought within the minimum tax. That is going to cost. Something like 40 percent, I believe, of all the charitable contributions made to our universities of appreciated property. Now we are taxing those gifts of appreciated property, the appreciated value, under the minimum tax.

We are imposing a new institutional cap on bond issues by private universities. This is going to hurt our No. 1 research universities in America, our top research universities, the Harvards and the Stanfords. They are going to be hurt by this institutional cap. We are saying to them, "Your use of tax-exempt bond funding is going to be arbitrarily limited. Your charitable contributions are going to go down. Your contributions from your alumni are going to go down. And we are going to impose a cap on what you can borrow interest free or tax free."

We have said in the bill, for the first time, I believe, in the history of taxation in the United States, that we are going to start taxing scholarships and fellowships.

Mr. President, it is an indication of the desperation that we were under in that conference to come up with revenue to meet the principle of revenue neutrality that we began looking at scholarships and fellowships as a new area where we could impose taxes. We are going to be taxing students not on the educational tuition part of their scholarships but on their room and board. It is going to particularly hit our graduate students. It is going to particularly hit, say, a graduate student in physics who is married, who maybe has a couple of kids. The scholarship and the fellowship are not worth all that much. We say, "To the extent that your room and your board and your incidental costs are paid, we are going to start taxing you."

Why do that? In desperation to raise revenue.

Then we are deciding also in this bill that interest payments on student loans are no longer going to be deductible.

Mr. President, again, it is one thing to just find an area where we are going to hurt our universities, just as it is one thing to find an area where we are going to hurt research and development, or an area where we are going to increase the cost of capital.

We did not find just one area; we found them all. It was as though we used computers to comb through the Internal Revenue Code to answer the question, "What can we do to universities? What can we do to higher education? What can we do to research? What can we do to technology? What can we do to modern plant and equipment?"

We did everything, and we did everything at once.

With respect to what we are doing to our colleges and universities, Mr. President, listen to a few quotes.

Here is what Sheldon Steinbach has said. Mr. Steinbach is counsel for the American Council of Education. The American Council of Education represents 1,500 colleges and universities.

Mr. Steinbach said:

The bill is the greatest catastrophe for higher education in 25 years.

Is that really what we want to do in the name of tax reform? Is that tax reform, to have a representative of 1,500 colleges and universities say to us, "This is the greatest catastrophe for higher education in 25 years?"

That is what we are doing and we call it reform.

The director of government relations for Stanford University, Larry Horton, said:

We took a bath on the tax bill that was even dirtier and uglier than we had feared. We lost on every major issue. It may be that no other institutions are as adversely affected by the tax bill as are universities.

Finally, Michael Sovern, the president of Columbia University, said, "I do not think they fully understand the damage that they've done."

Why, Mr. President, do damage to our universities? Why do damage to our research community? Why do damage to those who want to invest in new plant and equipment?

Why reward those who already have made their investment, who are willing to bleed their existing plant? Why do it?

Well, we have heard several reasons for what we are doing. I want to run through them.

The first I will not spend any time on at all. Simplicity.

Well, let us make a simpler Tax Code.

I am not going to spend any more time on it because, Mr. President, I do not think anybody believes that this bill simplifies the Internal Revenue Code.

Business Week ran a column on September 15 by Howard Gleckman.

Mr. President, I ask unanimous consent that this article be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Business Week, Sept. 15, 1986]

TAX REFORM: IF THIS IS SIMPLICITY, SAVE US FROM COMPLEXITY

(By Howard Gleckman)

Simple it ain't. The legislation that began life as "Tax Reform for Fairness, Simplicity, and Economic Growth" will create dizzying new complexities for taxpayers, at least for the next three years. The bill's phase-outs, phase-ins, floors, and ceilings will make tax planning and preparation a mind-numbing experience for corporations and individuals.

The biggest surprises for taxpayers who have not paid close attention to the process will come early next year, and again in early 1988. For all the hoopla about tax reform, 1986 tax returns, due Apr. 15, 1987, will look a great deal like the 1985 forms, because only a handful of provisions take effect before next year. And 1987 returns will be based on a set of rules that apply only to that year. The full effect of the new law will not be seen until individuals fill out their 1988 forms.

NARROW PATH

But even when the new law is fully in effect, taxpayers will face new and unexpected complexities. The House and Senate negotiators who drew up the final bill were forced to tread a narrow path of political acceptability while making sure the final measure would neither gain nor lose revenues. To pay for dramatic reductions in tax rates in the measure that should get final approval this month, the conferees cut back scores of deductions and other tax benefits.

To satisfy political objections, the negotiators killed few write-offs outright. Instead, they limited some deductions so that they would gradually phase out over a period of years. Other tax benefits were restricted or denied to individuals whose incomes are above arbitrary limits. Still other write-offs are available only if they exceed a certain percentage of income.

The conferees also imposed a tough new minimum tax that will require millions of taxpayers to calculate their liability to the Treasury two different ways. Taxpayers who claim certain deductions will have to figure their tax liability with those deductions. Then, under the minimum tax provision, they must recalculate without using the write-offs. They would then pay at whichever rate is higher. For corporations, the minimum levy will mean keeping a second set of books, while trying to fit the square peg of financial accounting standards into the round hole of tax law.

The top tax rate for many individuals will be 28%, only slightly higher than the 21% minimum tax levy. Because the top rate is so close to the level where the minimum tax kicks in, taxpayers cannot cut their taxable income by using very many "preferences," such as tax-exempt bond interest or depreciation, before they become subject to the minimum tax.

Many people will have to calculate the tax, even if they don't have to pay it, just to make sure. Even worse from a planning perspective, they will have to do the calculations throughout the year to make sure their next investment won't force them to pay the minimum tax. "It will be an added complication in planning, because you never know what your next dollar is going to be taxed at," says Gilliam M. Spooner, a partner at Touche Ross & Co.

Some municipal bonds will remain tax-exempt for the "regular" tax but could be hit by the minimum tax. State and local income and property taxes are deductible for the regular tax but not for the minimum. "This minimum tax has got a life of its own," says David A. Berenson, director of tax policy at Ernst & Whinney. "You cannot wait until the year is over to make your computation. You almost have to make it as you go along. Almost anybody has got to go through it."

A handful of the bill's major provisions are unresolved. But the measure hammered out by House and Senate negotiators on Aug. 16—intricate as it is—will become law virtually intact.

Even the tax rates are not simple. The new bill is being advertised as having two individual rates—15% and 28%. In 1987, however, individuals will face a five-bracket system, with a top marginal rate of 38.5% as promised, in 1988 and beyond there will be two statutory rates. But wealthy individuals will pay a marginal rate of 33% on taxable income between $71,900 and $149,250.

LOOPHOLE

Taxpayers and corporations have long had to deal with the concepts of "good" and "bad" income—money that does or does not meet Internal Revenue Service tests for deductibility. Under the new law, those arcane concepts will become even more so. Interest on home mortgages, among the most common tax deduction, is about to become one of the most complex. The law will prohibit deductions for all consumer interest. But it will allow full deductibility of interest payments for first and second home mortgages. The obvious loophole would be for homeowners to borrow against the appreciated value of their houses and spend the money on a car or a vacation.

But the bill shuts that door by limiting the amount of deductible interest to loans against the original purchase price plus any improvements, unless the loan is used to finance an education or pay medical bills. If an owner borrows against the full appreciated value of a home, he will have to calculate how much of the interest payment is deductible. And, to take full advantage of the new rules, a homeowner would have to have kept records of all improvements since he bought the house. "Do you know the cost of the shrubbery you bought four years ago?" asks Ernst & Whinney's Berenson.

Fortunately, taxpayers have at least 15 months to figure all this out. But by then, Congress may have changed the whole thing—in what may be called the Technical Corrections Act of 1987.

Mr. DANFORTH. I will just read the first paragraph of the Business Week column.

Simple it ain't. The legislation that began life as "Tax Reform for Fairness, Simplicity and Economic Growth" will create dizzying new complexities for taxpayers, at least for the next 3 years. The bill's phase outs, phase-ins, floors, and ceilings will make tax planning and preparation a mind-numbing experience for corporations and individuals.

□ 1720

By far the most frequent reason given for the bill is that it is fair. Chairman ROSTENKOWSKI said in his speech a few weeks ago, in Washington, that some people said that the main test should be economic growth but for him, the test is fairness—fairness conquers all.

I am all for fairness. Everybody is for fairness. And I think that a lot of

Senators are going to come to the floor when the time comes to vote and say, "I am for this bill because it is fair."

Mr. President, I would like to examine the argument that this bill is fair. My view is that it is not fair. I think that this bill is jampacked with unfairness, with obvious unfairness. I think when people catch on to the unfairness in this bill, they are going to be as mad at this bill as they are at the present law. Let us examine the question of fairness.

This bill establishes a maximum effective tax rate for individuals of 28 percent. That means that if your income is a little over $70,000 a year, your tax rate is 28 percent. If your income is $700,000 a year, your income tax rate is—guess what? 28 percent. And if your income is $7 million a year, your tax rate is 28 percent. That is your effective tax rate.

Your marginal tax rate actually goes down as your income goes up. What does your marginal tax rate mean? That means the amount that you make on an additional dollar you earn. Say you sell 100 shares of stock and realize a gain of $1,000 or so. What would your tax be on that sale of stock or if you worked another hour? What would your tax rate be on that marginal, incremental hour of work?

What we are saying in this bill is that your marginal tax rate can go down. A person whose income is a little over $70,000 has a marginal tax rate in this bill of 33 percent. A person whose income is a couple of hundred thousand dollars has a marginal tax rate of 28 percent. That means that if somebody has an income of, say, $75,000 and he sells some stock, that gain will be taxed at a rate of 33 percent. On the other hand, if the person has a half-million-dollar income and sells the same stock for the same gain, that gain will be taxed at 28 percent.

This is supposed to be a fair bill. Mr. President, what is fair about that? What is fair about taxing rich people at a lower rate than people in a much lower income bracket? Why is that fair? I do not think it is.

Retroactivity. I was taught when I was growing up that you do not change rules in the middle of the game. Well, we have in this bill. We have changed rules in the middle of the game. We have changed rules in the middle of the game for Government retirees. We have said to people who have retired, "You planned your life; you have made all your retirement plans for years counting on a certain tax treatment of the pensions you receive. And guess what? We had our fingers crossed. Adjust as best you can."

Why is that fair? What principle of fairness says that the Government of the United States of America should change rules in the middle of the game?

The passive loss rules. I am for changing the passive loss rules.

I was one who was willing to go along with retroactivity, I admit it. But I did not like it. But if we are going to do it, if we are going to change retroactively the tax treatment for investments in, say, real estate, why and by what right do we grab this change in the cloth of fairness? Maybe it is necessary to produce revenue, to change the rules in the middle of the game. But, Mr. President, it is not fair and it is not right.

Then we say the bill is fair, but if you live in a State which has a State government that imposes a lot of sales taxes, you will not be able to deduct them. You can deduct your property taxes and your State income taxes but not your sales taxes. So, take a family of four living in Portland, OR, which is not a sales tax State. The family of four has an income of $29,500. They will pay $165 less in Federal income tax than a family that lives across the river in the State of Washington. Why is that fair?

Why is it fair to say that a family of four with $29,500 income in Washington pays $165 more to Uncle Sam than a comparable family right across the river? If we are going to raise revenue, let us at least not be hypocritical enough to say that somehow, this fairness. It is not fair.

We repeal income averaging. In the Senate, we decided we were not going to do it to farmers. Now we are. Why is that fair? Why is it fair to repeal income averaging?

Take a farmer, married, with two children. He earns $15,000 the first year, $15,000 the second year, he is limping along. The third year, he has a good crop and he earns $60,000. Then take a factory worker, also married with two children. The factory worker's family, instead of 15, 15, and 60, earns 30, 30, and 30, the same income each year.

□ 1730

In this case the farmer is going to pay 29 percent more in taxes than the factory worker. Why is that fair? How dare we call that fairness? That is a change in the law, Mr. President. We do not do that today. It is a change in the law. Why is this bill a move toward fairness?

Now, exhibit A in the issue of fairness, the nondeductibility of certain interest. All borrowing is not the same. Under this bill, some interest is deductible, some interest is not deductible. You want to find out what is deductible? Call your lawyer. Call your accountant.

If you own a home, you can deduct your interest payments on a mortgage up to the purchase price of the home plus improvements on the home, and you can use that money for anything you want. If you own a home, you can borrow even over the purchase price and improvements and deduct the interest if the loan is used for education and for medical expenses. So the trick, ladies and gentleman, is to own your own home and the more expensive the home, the better. And if you own two homes, that is great, we say. So we have discriminated in this bill between homeowners and nonhomeowners. We have said that somebody who does not own a home and goes out and borrows against a credit card or buys a car cannot deduct the interest on that consumer loan any more. But we have said that if you own a house and the purchase money mortgage on that house is less than what you paid for the house and less than the improvements on the house, then you can get a second mortgage and use the money to buy your car or use for your credit card. Banks are doing this now. They are setting up plans so that you just go out and get a mortgage on your home and it covers everything if you own a home.

Why is that fair? Why is it fair if two people want to buy a car and one person owns a home he can borrow against the home to buy the car and deduct the interest, if the other person, the one lives in an apartment can't deduct the interest on his car loan? Why let the homeowner get a deduction for the car loan but not the person who lives in an apartment? Why is that fair?

Second homes. You can borrow against your second home and you can deduct the interest on your second home. In other words, let us suppose that you want to put your child through college and you do not have a home. You have an apartment. You live in an apartment. You want to put your child through college. You go out and take a loan. Then you ask your lawyer, "Can I deduct this interest? No, because you are not borrowing against your home." But if somebody else in town, someone on the other side of the tracks, has two homes, has a vacation home in Palm Springs, he can borrow against his Palm Springs vacation home and deduct it. He can use the money to go to Las Vegas. But the person who has medical expenses and is strapped for cash and borrows to pay for his wife in the hospital, he cannot deduct it. But the guy going to Las Vegas with a home in Palm Springs can. Why is that fair? Why is it fair?

Now, get this. Get this. Did the Senator from Louisiana realize, when we were working on this conference report—I am sure he did not—did he realize that in this bill the definition of second home includes yachts? Now, please understand where we are in this bill. Joe Doke's wife is in the hospital.

He goes out and borrows money to pay for his wife's hospital bill. He cannot deduct it. Mr. Gotrocks has a 60-foot yacht. He can borrow against that yacht and he can deduct the interest payments against the yacht and use the proceeds to do anything he wants.

Why is that fair? We say there is fairness in this bill. Why is it fair to count a yacht as a second home and deduct against the yacht? Let us not call the bill fair.

How about student loans? Now, most students borrow money themselves. Most students take out the loans themselves and then when they get out in the world, after they have finished college and they start earning money, they repay their loans. But those loans are outstanding sometimes 10 years after they have gotten out of college and they are still repaying them. Under this bill, those people who borrowed for the purpose of going to school will not be able to deduct the interest.

On the other hand, if daddy has a home in the suburbs and the home has appreciated in value, he can borrow against his home, pay for the student's educational expenses and deduct the interest. Why is it fair to let the father who has the appreciated home borrow and deduct and not allow the student who is out there trying to make his way in the world? What is the fairness? Why is this bill so widely acclaimed as being fair?

Then take the question of employee business expenses. Here is an example to ponder. A doctor makes $150,000. He is self-employed. He pays dues to the American Medical Association, he takes classes, increases his skills and pays for the classes. He is the employer. He is self-employed and he gets to deduct everything. His nurse, however, pays for classes to improve her skills and pay dues to the American Nursing Association. If she is a nonitemizer, she does not get to deduct anything. And if she itemizes, she only gets to deduct to the extent that the expenses exceed 2 percent of adjusted gross income. Why is it fair that the doctor deducts his dues to the American Medical Association and the nurse does not get to deduct her dues to the American Nursing Association? Why do we call that fair?

And then take the repeal of the so-called General Utilities doctrine. Take the example of mom and pop. They have gone into business. They have set up a little neighborhood business. Maybe it is a grocery store; maybe it is a dry cleaning establishment. They have gone into business. They have counted on their business for their retirement. Their plan is to wait until they are 65 years old and just before they are 65 liquidate the business, get out, and retire on the proceeds. So we have repealed the General Utilities doctrine in this bill, and the result is that mom and pop will have their tax liability increased threefold by this legislation. And we say, "Oh, that is fair. That is fair to the little guy who has planned all his life on liquidating this business and going somewhere and retiring" Guess what? Your tax liability will be increased threefold.

□ 1740

Finally, on the question of fairness, there is the whole issue of how renters are doing. I have pretty well spelled that out, I think, on the question of borrowing against the home you own. But another thing they are doing in this bill because of the passive loss rule is to increase the cost of renting. We are going to reduce the supply of rental property.

Martin Feldstein and his wife, Kathleen—he is another former chairman of the President's Council of Economic Advisers—have projected that because of this bill, rents will increase from 10 to 15 percent.

I wonder how many Senators are anxious to go home and brag about the fairness of this tax bill and say to their constituents: "Guess what? We're reducing your tax burden by $4 or $5 a week, and we're increasing your rents by 10 to 15 percent." How many of our constituents would think that is a good bill? I do not think very many of them would. I think the unfairness that permeates this tax bill would come back to haunt those who vote for it.

Another reason that people give for passing the bill: They say, "Look we need certainty in our tax laws. We have been worrying this thing to death for over a year now. Let's get on with it. Let's pass the bill. We need some certainty. We need to know what the rules are. Let's not agonize over this any longer."

Does anybody really believe that adopting this conference report is going to create any certainty at all?

We did not even have the conference report when the chairman of the Ways and Means Committee was telling us that we should start increasing rates. Does anybody really believe that for very long we are going to maintain a 28-percent maximum individual rate when we have $200 billion deficits in the Federal budget? Is that credible?

Then, suppose our economy does take a nose-dive. Suppose we do have a recession? Senator LONG has said this several times. I think he even made a speech on this subject. What is the first thing we are going to do if we have a recession? We have already done it twice. It is as predictable as night following day that when there is a recession, we reinstate the investment tax credit. Always. Where are we going to get the dough? How are we going to pay for reinstating the investment tax credit if we have a recession? Are we going to raise individual rates or blow the deficit? Clearly, we will have to undo this bill, if not next year, the year after. There is no certainty in this bill.

Mr. LONG. Mr. President, I think I can answer that, if the Senator will yield.

Where to get the money at that point? At that point, no one is going to ask any question because there is a recession. No one will ask any question about the deficit because we are in a recession—even to increase the deficit.

Mr. DANFORTH. We are selling assets, so maybe we can have a sale and a lease-back on all these buildings in Washington.

Mr. President, I assure my colleagues that this speech will not go on forever, but I do have a few more things to say.

On the question of certainty, Senators will remember a few years ago when we passed the great withholding on interest and dividends rules. I think it was within a year that public outcry was so great that we were coming back and fixing it. How many more deals like that exist in this bill?

The inventory accounting provisions alone in this bill are going to create an outcry for change.

So I submit that this bill does not lock us in forever. This is going to be changed. Passing the bill does not create certainty. So I suggest that we do it right the first time.

Mr. President, we had hoped, as politicians, that when we were working on this bill we would do something the public would applaud. We would hope that we would pass a bill which the public really liked, which they would acclaim. I am not getting that much acclaim from my constituents. I am not hearing too much from my constituents who support this bill.

A Gallup-Newsweek poll found that only a slight plurality favored the bill. It also found that a plurality of taxpayers though they would pay more taxes, not less. A majority of those polled thought the bill was put together too hastily. And how! Only 1 out of every 4 taxpayers thought the tax bill would help the economy.

A U.S. News & World Report-Cable News Network poll found that 50 percent of Americans preferred the current Tax Code and 38 percent preferred the tax bill that is now before us.

Consumer pollster Albert Sindlinger described the tax bill as a dud with respect to how the public feels about it. I think I know why it is a dud. I think I know why the public has not reacted that favorably to this bill.

First, I think that a lot of people believe they are being had by it. And they are. Renters, for example, are being had. Students, for example, are being had by this bill. I think the public realizes that, and they are very,

very skeptical about it. But there is another and I think more profound reason for the skepticism. I think the American people are wiser about economics and wiser about their Government than we give them credit for being. I think they see this as a good news/bad news story.

We go the the American people and we say: "We've got bad news for you. We've got a $2 trillion national debt. We have $200 billion deficits in the Federal budget. It's terrible. It's wrecking the country. It's a legacy of bankruptcy for our children. That's the bad news. Now the good news: Your personal responsibility for this mess is going to be taken off your shoulders. It's going to be lightened by a tax cut."

Mr. President, people do not believe it. They think it is a politician talking. They think that you cannot have it that way: "You can't tell us that the deficit is a problem and then tell us our responsibility is going to be less than it was before." People do not believe that. They think it is phony. And it is.

How can we get the American people to face up to the practical economic problem before our country, which is the deficit in the Federal budget, if we are always spreading the good news of tax cuts and checks going out: "Don't worry. It's all going out. Don't worry about Gramm-Rudman. We'll sell some more assets."

How can we get people to believe in the seriousness of this budget deficit if all we do is tell them, "You're going to get a tax cut of $4 or $5 a week"?

The final point after all this, Mr. President:

□ 1750

I have heard so many Senators say, "You know, I really don't like the bill, but I am going to vote for it."

I cannot count the number of people who have said to me, "I don't like the bill but I am going to vote for it."

Why? Why vote for something you do not like? Why vote for something that is bad?

Part of the reason, I guess, is inertia. It is not exactly momentum. It is inertia. We get into these big tax bills and get into the mode of one step after another. Eventually, the last thing we do is to pass the conference report. And so we all trudge over to the floor and we vote "aye."

I guess another reason is we can envision the 30-second commercial in the next campaign against us, "Senator Bloke voted against tax reform," and nobody wants to be in the position of opposing tax reform.

And then a number of Senators have told me, "I've got my transition rule."

What difference does it make if we get our transition rule if we are hurting the future of the country?

Then people say, "Well, you know I am in the President's party," or, "I do not want to cross the chairman of the Finance Committee." I am sure the chairman of the Finance Committee would rather I had a different view of the bill. But I do not think it is going to hit me or anything.

Mr. President, I guess the real question for each one of us is what is our duty? Is our duty to go along, to just accept the process as sort of an unstoppable rolling ball that goes on and on and we cannot do anything about it?

Is our duty to get transition rules? Is that the sum total of our duty here in the Senate? Or is our duty to set the course of our country and for its future?

I believe, Mr. President, that we are setting the course for our country here in Congress. And what we are doing on the budget and what we are doing on the tax bill, we are setting the course for our country. I think it is the wrong course. I think we are doing the wrong thing. I think we are running up the deficit. I think we are not showing the courage in getting the deficit under control. I think we are telling people what we think they want to hear. I think in this tax bill we are stimulating consumption at the expense of savings and investment in our industrial base in international trade. I think we are spending now at the expense of tomorrow. I think we are doing that in our budget policies and in our tax policies. I think we are living for today and only for today and not for our children and not for our grandchildren and not for generations to come.

I think that we are allowing our industries to rust out. I think we are allowing our technological resource to dry up. I think we are doing it with our inability to face the budget and I think we are doing it with this proconsumption-antisavings-anti-investment tax bill. I think the vote that we are about to cast is about the future of America and our children.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, the Senator from Louisiana does not seek the floor at this time.

Mr. LONG. Mr. President, it is all right with this Senator for the Senator to go ahead and make his speech. I will make mine later.

Mr. ROTH. Mr. President, I rise in opposition to the tax reform legislation, and I do so reluctantly. I do so reluctantly because I think it was back in 1976 that JACK KEMP and myself began tax reform. At that time, we proposed that it was important that the marginal rates of taxation be lowered on the American people and that became the centerpiece of President Reagan's economic package when he became President back in 1981.

I have continued to favor tax reform because I think there has been an erosion of confidence in the current system. Frankly, the current legislation does contain a number of reforms that I strongly support.

I strongly support the lowering of the marginal rates to 33 percent.

Few of us would have believed 10 years ago when JACK KEMP and I started out on this path that today we would be talking about reducing the rates to 15 and 28 percent.

I also strongly support the elimination from the tax rolls of 6 million poor people. I support the fact that we are reducing the rate of taxation on business to 34 percent.

Mr. President, I think this legislation is good in establishing a minimum tax, although I am concerned about its contents, but I think it is important if we are going to build confidence into the system again that those who have earnings, that those who are making a profit pay taxes and that is what the minimum tax assures.

I am also pleased that the legislation does reduce in a very substantial way the number of tax shelters.

But, Mr. President, where we got into difficulty was in the problem of how we were going to pay for these cuts.

I strongly agreed and supported both in the Finance Committee and in conference that the legislation should be revenue neutral. Certainly our deficits are so serious that we could not afford a reduction of net revenue to the Federal Government.

But where the mistake was made was in the fact that we could consider no new source of revenue. That was not a decision of the House or the Senate but essentially of the administration. If we had been able to seek new sources of revenue we could have made these reforms, these essential reforms without getting into the kind of difficulty already outlined with such specificity by the Senator from Missouri.

Let me say when I am talking about new sources of revenue I am not talking about a tax increase because I strongly support the President in his desire that there be no tax increase. We have to address the problem of deficit on the spending side. But at the same time it seemed to me desirable to seek new sources of taxes, of revenue to pay for the tax cuts that were being incorporated in the tax reform package.

Mr. President, there are many goals in tax reform. I have mentioned the problem of reducing the marginal rates of taxes which happens in this particular bill.

We eagerly seek to make the tax laws more fair so that the American

public will support it and, like Senator DANFORTH, I question in many ways this legislation's fairness. Presumably when we started out we were going to seek simplicity, but I think all you have to do is to look at those two volumes to know that once again simplicity has been replaced with complexity.

But, Mr. President, the reason I am coming out in opposition to the tax reform is because I do not feel it meets the crying need of the country, not only in this year, but the years to come.

□ 1800

I firmly believe that the greatest challenge this country faces is becoming competitive in the emerging world economy. We have seen time and again American men and women losing jobs, losing jobs because American industrial facilities are not as modern as that to be found abroad, especially in Japan, the Pacific basin and Western Europe.

So I am not satisfied with this bill, because it is giving the wrong signal, the wrong signal with respect to savings which is essential if this country is to become competitive. I am not satisfied with the legislation because it is increasing the cost of capital which directly impacts on the capability of this country's competitive position.

Mr. President, during the consideration of this legislation in the Finance Committee and on the Senate floor, I urged, supported and tried to bring about a continuation of savings incentives.

Back in 1981, as part of our legislation, tax legislation, Congress voted to promote an individual retirement program for the American people. The idea was that each working individual could save up to $2,000 a year tax free and that money would help our citizens meet their needs in retirement.

Let me say, although there is some debate about the effectiveness of this program, I personally think it was a smashing success. Something like 28 million families made a commitment, made a commitment to create an individual retirement account—an IRA—for their future. And that was a commitment not only for 1 year, but for the long term. Today, in this legislation, we are backing off of this program.

Now, let me point out that, this program, in 5 years, has resulted in savings of $250 billion, a tremendous amount of new capital, of new income. And while some of that admittedly would have been saved otherwise, I agree with Martin Feldstein that there were significant new savings resulting from this program.

Now, on the Senate floor, we passed a sense-of-the-Senate resolution that we should make every effort to save IRA's. And I can tell the Members of the Senate, I made that my key interest during the conference. I was pleased that we made some progress, but, unfortunately, not enough.

Under the bill before us, an individual who has earnings of $25,000 or less continues to enjoy a tax deduction for his IRA. A married couple up to $40,000 can have the same. But, unfortunately, from that point on the tax deduction is phased out.

It makes little sense to me that we say to a young man or a young woman:

We want you to start saving now for the future, and as long as you are under $25,000, you can continue to enjoy a tax deduction. But once you get to $26,000 or $30,000, we are going to phase it out.

But, a person who makes $30,000 or $35,000 is not wealthy and the same is true of the two wage earners who make $40,000 or more.

Again, as long as you are under $40,000, one can have an IRA with a tax deduction, but if your joint earnings are in excess of that, the deduction is phased out and at $50,000 there is no deduction whatsoever.

Now, here again we are penalizing those who are ambitious, who are working hard and succeeding.

Just let me point out that many families with two wage-earners earn in excess of $40,000. You can take a young blue collar worker at an automobile plant, say a Chrysler plant as we have in my State. They make as much as $30,000 to $33,000 with overtime. The spouse can be working, let us say as a schoolteacher, and it is not too long before they are over $50,000 which means that the IRA tax deduction is no longer available to them.

Mr. President, I think this is unfair, I think it is inequitable, and I do not think it is in the Nation's interest. Because if this country is to compete in world markets, I think it is critically important that we have individual savings as a continuing source of new funds, new capital.

The United States for the last many years has not saved as much as her competitors. In the case of Japan, it is estimated that the individual saved between 20 and 24 percent. Japanese leaders will tell you that it is these individual savings that have enabled them to buy the newest, the best technology produced in the world—many times American—and incorporate it into their plants. By their having the most modern industrial facilities in the world, they have been able to produce quality merchandise at prices that are attractive, not only abroad, but here at home. The net effect of that, of course, has been the loss of jobs.

So it seems to me that we are giving the wrong signal when we back off of a program that was for the first time beginning to provide some incentives for savings. As I pointed out, the program had succeeded. It had succeeded with 29 million American families establishing an IRA for their future.

□ 1810

On this question of fairness, as I said, I do not think it is fair to phase out the IRA's, but I would also like to point out that this tax package is very unfair in other ways to the middle- and upper-middle-income people. If your income is roughly $40,000 to $50,000 one can on average expect a 9.1 tax cut. On the other hand, if one's income is $50,000 to $75,000, his tax cut would only be 1.7 percent. So that if a family earnings rise from $49,000 to $50,000 their tax reduction drops from 9 percent to a little more than 1 percent.

I would also point out that the amount of tax cut enjoyed by those over $200,000 exceeds those in the category of $50,000 to $75,000. If your income is in excess of $200,000, one will secure a tax cut of 2.3 percent, which is far in excess of the 1.7 for those in the $50,000 to $75,000 or the 1 percent in the category of $75,000 to $100,000. More important, those with earnings from $75,000 to $100,000 will pay a marginal rate of taxation of 33 percent compared with 28 percent for those over $200,000.

But, in any event, there is a basic unfairness in the picture because not only as you move up and beyond $40,000 do you lose the IRA's, but you also lose the personal exemption of $2,000. You also lose when in excess of $70,000 the 15 percent rate on your first $30,000 of income. So that the net effect of these rules and regulations mean that there is an unfairness for those who are dual wage earners, the achievers, the people who have enjoyed upward mobility.

Mr. President, a second reason that I have been concerned about this legislation is that there is no question but the end result is to increase the cost of capital. I mentioned earlier that the most critical problem this country faces is becoming competitive in world markets. The new technologies, the new information age is restructuring our world economy. While everybody says they understand and recognize it, the fact is that few really appreciate its significance. Whole industries are being transformed or changed in production techniques. Unfortunately, those that do not maintain modern facilities will be in deep trouble. Many of us know the problems that have arisen in the past.

For example, the automobile industry became noncompetitive with its antiquated, obsolete industrial facilities.

The Chrysler plant in my home State was threatened with a closedown, and the loss of jobs because the Japanese in particular and others as well had more modern facilities.

This kind of situation is going to continue and not end. It is going to continue because of this technological revolution. Those countries that maintain the most modern industrial facilities are going to lead the world economy. Frankly, today, there are many economists who think Japan, the Pacific basin, including Taiwan, South Korea, and the other countries around the rim of Asia are in the best position to be the industrial leaders of tomorrow.

This country cannot afford this to happen. We not only want jobs for the young, jobs for the underemployed, and jobs for minorities, but we want to make certain that they are well-paid jobs. American workers are the best paid people in the world. And the only way we are going to be able to continue that, the only way we are going to be able to provide the jobs is to make certain that our industrial facilities are the best, that we rather than somebody else incorporate the latest technology on a continuing basis because one of the facts of this tehnological revolution is that change is the only constraint. And those countries which have the savings, which have the funds, and the capital to incorporate them first are going to be the industrial leaders.

This is important not only from the standpoint of jobs, of growth, of prosperity, but it is important from the standpoint of security as well. I do not believe the United States can continue to be the shield of a free world if we permit our basic industries to deteriorate, to rust, and to become obsolete. Yet that is what has been happening not only in the automobile industry as I have just mentioned, but in the steel industry and many other of the basic industries that are essential to the national security of this country.

So it is a matter of great concern to me when I see that we are adopting legislation that creates a higher cost for capital. It is my understanding that the Policy Economic Group has made an analysis of this tax reform package and found that the estimated cost of equipment increases 40 percent. In other words, increased cost of capital necessary to modernize these basic industries to keep this country ahead will cost an additional 40 percent over the current cost of capital.

I might say that the Policy Economic Group used the same calculations that are used by the Treasury. As a matter of fact, the Policy Economic Group runs these same kind of models for the Federal Treasury.

One of the reasons the cost of capital is going up is because we are turning our back on savings. Instead of reducing or minimizing the tax incentives for savings, we should be expanding them. But, as I pointed out, we backed off of the IRA with respect to many people, and that in turn will have a negative impact on the net savings.

But the other area that particularly concerns me is the problem of depreciation. From the very beginning we agreed that the investment tax credit should be eliminated. I was successful as a member of the Finance Committee to get the committee to adopt a depreciation schedule that would enable business to modernize its facilities.

□ 1820

Initially, I wanted to permit a company to expense half the cost of new equipment. The idea of expensing half the cost of new equipment is that it provided a powerful incentive to people making the business decisions to keep their facilities modern.

The Senate Finance Committee did not adopt that amendment but a proposal which was substantially the equivalent. I say that in all humility since it was my amendment. It provided that we call a 200-percent declining balance for equipment with lives of 5 years.

What happened, going back to the problem that I mentioned earlier, was it became essential that we find new sources of revenue to make the tax package revenue neutral. So as the legislation proceeded through the conference, time and again we saw a watering down of the depreciation schedule provided by my amendment. This was done by a number of means such as moving equipment into categories where the depreciation could only be taken over a long period of time.

The net result of these and other changes means that the increased cost of capital is something like 40 percent at the very time we are being challenged internationally as to our competitiveness. The implications of this are indeed serious, because, as I said earlier, we shall not be able to provide meaningful jobs, meaningful jobs that pay well, unless our industrial facilities are the very best to be found anywhere.

Mr. President, there are other areas that concern me about this legislation. Like Senator DANFORTH, I am bothered by matters like retroactivity. I am concerned that Federal employees, all those who have retired since July, find that their pension is subject to taxation even though they have already paid taxes on their contributions to their pension program.

Under current law, these employees get tax free over a 3-year period what they have contributed to the pension on the grounds that that much money has already been taxed once and it is not fair to have double taxation. With that I agree. I would not have changed it.

But if we are going to change it, when you are involving people in retirement, it seems unfair to make it retroactive. Instead, the humane way, the compassionate way, if we were to choose that course, is to phase it in over a number of years.

There is one other matter that I would like to briefly mention because, again, it goes to our competitiveness. That is research and development. I, too, regret that we reduce the amount of credit in this area because we are already losing our technological lead over other countries. I think it is critically important that we do all we can to provide incentives both in the private sector as well as in Government itself to expand and enhance our research effort.

Mr. President, in saying these things, I do want to, in closing, say that I appreciate the strong leadership that Chairman PACKWOOD has given in this drafting of legislation. As I said earlier, I think the difference in this legislation could have been corrected if we had been able to introduce new sources of revenue. But, unfortunately—and this was not the fault of Senator PACKWOOD—but that of the administration—we could not do so, and, consequently, to keep the goal of making the tax reform revenue neutral some very tough and, I think, in many cases, unfortunate decisions had to be made.

I suspect that next year—because there is no doubt in my mind that this legislation will become law—we will revisit many of these problems in what will be a major technical correction.

Again, Mr. President, I regret that I cannot support this tax reform as one who has been a leader in the tax reform movement from the beginning. But I cannot as I think the most important problem this country faces is to create the kind of policies that will create an environment of growth in the world of tomorrow.

I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, for almost 2 years Congress has been working on legislation to reform our Federal system of taxation. It has been a long and difficult process that has taken many turns.

Several times during the process, tax reform appeared dead. Yet the bill has survived because, regardless of its many shortcomings, the basic objective of a fairer tax system endured. The conference agreement before us today has been changed in many respects from the bill that was approved by the Senate in June.

In many instances, I do not agree with those changes, just as I did not agree with many provisions in the bill as it passed the Senate.

But, clearly, in any legislation as complex and comprehensive as tax reform, every Member will find provisions that are unacceptable. That is

certainly true of this bill. Even the chairman of the respective taxwriting committees and other leaders, like Senator BRADLEY, all of whom played such an extraordinary role in drafting this legislation, have made it clear that they do not support every single provision.

I find much in this bill that is troubling, but, on balance, I believe the Tax Reform Act of 1986 is a good bill that will make the tax system fairer. For that reason, I intend to vote for this act.

Perhaps no aspect of Federal policy has as much impact on the daily lives of the American people as the Federal income tax system. For many Americans, the tax system is the only direct contact they have with their Federal Government. It is, thus, an important factor that helps form their attitude toward Government.

Yet, annual surveys of public attitudes toward Government and taxes have found that the Federal income tax has in recent years become the least liked tax.

According to the Advisory Commission on Intergovernmental Relations, 1986 marks the eighth year in a row the public has selected the Federal income tax as the worst tax. The American people believe it is less fair than State and local income, property, and sales taxes.

This increasing disrespect for the Federal tax system results from the pervasive attitude that marginal tax rates are too high and tax avoidance too common.

What the American people must object to is their paying taxes while others are not paying their fair share.

Tax reform attempts to address these problems by eliminating a number of special tax breaks and restricting others, in return for lower marginal tax rates for everyone. The result will be a tax system which ensures that all individuals and corporations pay a level of tax that corresponds to their income.

I am pleased that the tax reform bill before us today removes over 6 million low-income families from the income tax rolls through increases in the standard deduction, the personal exemption, and the earned income tax credit.

I am also pleased that tax reform will ensure that taxpayers with similar amounts of income will pay similar amounts of tax. No longer will we hear distresssing stories of very wealthy individuals investing in tax shelters to avoid income tax. With a much tougher minimum tax and new restrictions on tax shelters, this bill will ensure that those who have the means to pay do in fact pay taxes.

The 30,000 people with income in excess of $250,000 a year who paid virtually no taxes in 1983 will now have to pay some portion of their share.

Finally, the more rational cost recovery system and tax accounting rules that are part of tax reform will reduce the distorting role tax considerations play in business decision making.

Under the current system of investment tax incentives, the Federal Government has injected itself into private sector investment decisions. Through a crazy quilt of tax incentives, the Federal Government has attempted to direct investment into areas that the free market would otherwise not support. The result has been a steady decline in corporate income tax collections, widespread corporate income tax avoidance, and less than optimum aggregate investment in the economy.

Tax reform will increase the role of the free market in business decisions, providing for a more efficient allocation of investment resources into those areas that produce a greater return.

While I am strongly supportive of these changes in investment incentives and limitations on tax shelters, I nevertheless regret the way we have gone about some of these decisions. I am also deeply concerned about the effect tax reform could have on investment in low-income housing.

Perhaps no aspect of the current tax system is as unseemly as the incentives that encourage otherwise rational people to invest in order to lose money. This is particularly the case with real estate, where overly generous depreciation and improper accounting rules encourage the formation of limited partnerships designed to produce large tax losses for investors. Nowhere is this more true than investment in low-income housing, an area where Congress has by design encouraged wealthy people to invest for the tax losses that are generated.

I support the changes in tax reform that will make the system of real estate depreciation less generous and restrict losses from tax shelter activities. But I cannot support the means by which we have changed current law. It is simply not fair for the Federal Government to entice investors into these deals and then change the rules in the middle of the game.

It is particularly wrong to deny tax losses for investments previously made in low-income housing where investors are limited in the rents that may be charged and where appreciation in the value of the property is unlikely. The Federal Government promised these investors tax losses in lieu of rental income. It is wrong to suddenly deny these losses as part of tax reform.

While I am pleased this bill includes a general transition rule for all passive losses and another transition rule for low-income housing, I do not believe either rule is fair or efficient.

By making changes which have a retroactive effect on past investment decisions, Congress will undermine the effort to increase taxpayers respect for the tax laws.

This problem also occurs in another area of the tax bill dealing with the tax treatment of retirement benefits for Government employees. Under current law, the 3-year basis recovery rule determines the taxation of workers who receive retirement benefits funded both by their own contributions and contributions from their employers.

The 3-year basis recovery rule treats up to the first 3 years of pension benefits as a nontaxable return of the employee's pension contribution. For the most part, this rule only applies to Federal, State, and local government employees because few private-sector workers are required to contribute to their pension system.

The tax bill repeals the 3-year basis recovery rule on a retroactive basis back to July 1. That is simply wrong and unfair. Regardless of what one thinks is the proper rule for taxing these retirement benefits, the change should be made on a prospective basis to give workers an opportunity to plan for the change in tax treatment.

In the Senate bill, we delayed the full application of the new rule until 1989.

Thousands of Federal, State, and local government employees nearing retirement relied on the Senate bill to delay their retirement, with the understanding that Congress would not change the rule retroactively. Unfortunately, their confidence in the appropriateness of our decisionmaking has been shaken by the decision of the conference committee to make the new rule retroactive to July 1, 1986.

It is my hope that we can take another look at this issue next year and correct the problem by at least instituting a phase-in of the new tax treatment.

A recent Joint Economic Committee report revealed that .5 percent of American families—440,000 out of 88 million families—control 25 percent of the net worth in the country, with a minimum net worth in that category of $2.5 million an average net worth per family of $8.35 million.

It is these families who can rearrange their investment assets in order to create passive income, such as from rental real estate, to offset passive losses. As an example, a wealthy family will be able to create, through appropriate investments, $1 million of passive income enabling them to use $1 million of passive loss, thus sheltering the $1 million of passive income entirely. The family would only pay tax at 28 percent on earned income, portfolio income or excess passive income.

The tax bill severely restricts the ability of those who (one analyst described as) the "working rich," that is

executives and professionals who earn $70,000 to $200,000 per year, and there those in the middle class, from using passive losses in the same way. They do not have the capital to create passive income, and their use of leverage to make such investments, in order to create passive income, it limited by the deductibility limitations on interest. As an example, following the phase-in period, a professional with $200,000 earned income will pay taxes at the rate of 28 percent on his full income, and if he has $200,000 of passive losses and no passive income, he cannot use those losses at all.

I am concerned that this bill could create a situation where it will be more worthwhile to have passive income—tax-free due to passive losses—than to have primary business income from an active trade or business, the opposite result of the stated goals of the bill.

PROGRESSIVITY OF THE FEDERAL TAX SYSTEM

While I shall vote for the conference agreement on tax reform, I believe it is fundamentally flawed in one major respect. I am deeply disappointed that this legislation abandons our historic commitment to a progressive system of Federal income taxation. The essentially flat rate structure of this bill, with a marginal tax rate that actually declines with income, is inconsistent with basic American concepts of fairness.

I hoped that the conferees would correct this problem and provide more tax relief to the middle class rather than to those with higher incomes. But they did not. This legislation preserves the approach in the Senate bill and continues to give a windfall to the wealthy. This is a problem that can be, must be and, I believe ultimately will be corrected. Unfortunately this is our only chance to enact the many other tax law changes that are true reform.

Although I am mindful of the difficulty of changing tax rates so soon after enacting tax reform, I believe the next Congress will come to appreciate the basic flaw of the tax rate structure in this bill.

Tax reform offers a promise to the American people of a fairer tax system that relates tax liability to the ability to pay. But regardless of the restrictions this bill imposes on tax avoidance, the American people will not support an essentially flat rate tax system.

I regret that the American people will not see this bill as tax reform when they realize that it puts factory workers, nurses, and secretaries with taxable income of $18,000 in the same tax bracket as those earning $200,000 a year, or even $2 million a year.

When the American people discover that the new tax system will cut the taxes of the wealthiest individuals by 20 and 30 percent, they will be sorely disappointed with this legislation.

The proponents of tax reform hail this bill as a tribute to progressive taxation. In my judgment, they are simply wrong. Admittedly, the progressivity of a tax system is an elusive concept that can be measured in different ways. But by virtually any standard, this bill reduces progressivity in our tax system.

Proponents also like to point to figures which measure the distribution of the percentage change in income tax liability. Over and over again we heard during the debate that a bill which gives the lowest income group a 66-percent reduction in taxes compared to the 2.3 percent reduction going to the highest income group must be progressive.

By giving all taxpayers an average tax cut of 6 percent compared to the 2 percent going to the highest income taxpayers, this legislation, they say, will result in the highest income paying a greater share of overall tax liability. From that narrow perspective, and that narrow perspective only, this bill may be described as progressive.

But too much attention is focused on measuring this aspect of the bill. The percentage reduction in taxes received by each income group does not tell the entire story. Indeed, it presents a misleading assessment of the impact of tax reform.

While it is true that the wealthiest Americans will be paying a higher share of the total amount of income taxes, it is a higher share of a very much reduced base. We have decided to cut what is the most progressive tax in the Federal revenue system by $120 billion. The richest may pay a larger share of taxes, but it will be a larger share of a much smaller base.

Congress has decided to take tough action to restrict the amount of losses from tax shelters. That action will increase the tax liabilities of the less than one-half of all high income taxpayers who now shelter a substantial proportion of their income. That is appropriate; it is what we would expect from tax reform.

But the other one-half of high income taxpayers who do not shelter their income will receive enormous tax cuts. According to figures prepared by the Joint Committee on Taxation, under this bill 390,000 taxpayers with incomes over $200,000 a year will receive a tax cut which will average $50,000 in the first year in which this bill goes into effect.

I asked the Joint Committee on Taxation to prepare tables on the distributional effects of tax reform which distinguish between those taxpayers with passive losses and those without passive losses. These tables show that for taxpayers who do not shelter their income, the highest income group receives a larger percentage tax cut than any other income group over $20,000. The highest income group gets the largest percentage tax cut.

These same taxpayers also receive a greater increase in after tax income than any other group. In fact, those taxpayers in the above $200,000 income group who do not have passive losses will experience an increase in after tax income that is five times as much as the increase going to all middle-income groups.

This is the essential problem, one major flaw with the bill. The wealthiest Americans will receive an enormous tax windfall, a windfall that is neither justified nor necessary.

The U.S. Government will incur a deficit this year of almost $230 billion. In our struggle to deal with this deficit over the past few years, Congress has been raising excise taxes, selling government assets, and slashing health and welfare programs. At the same time we are about to enact a tax reform bill that will give the 390,000 wealthiest Americans an average tax cut of $50,000. That simply does not make sense, and I defy anyone to stand up and tell us why it makes sense.

The reason for this excessive tax cut is the 28 percent top rate. That rate is simply too low for those with the highest incomes.

Let me make it clear that I favor lower tax rates.

As a long time proponent of tax reform who worked hard to get a bill through the Senate Finance Committee, I strongly support a reduction in tax rates which I believe will establish a fairer tax system and benefit the economy.

But too much of anything is not good. And a 28-percent top tax rate is simply too much of a rate cut for those in the very highest brackets. There is nothing magic about this tax rate. it will not serve to stem the tide of special interests looking for tax relief. And it will not serve to restore the confidence of the American people in the tax system.

I am particularly disappointed in the decision of the conferees to retain the myth that the top rate in tax reform is 28 percent for all Americans. That is not true. We know that not to be the case. Middle-income taxpayers will have a 28-percent rate. But those with incomes between $72,000 and $192,000 will have a 33-percent tax rate because of the phaseouts of the lower bracket and personal exemptions. Above $192,000 the rate drops back to 28 percent. Thus for the first time in American history, tax rates will decline as income rises.

I cannot understand what interest is served by adopting a tax rate structure where marginal rates decline as income rises. Certainly the less than one-half of 1 percent of the population who will benefit from this rate decline

are not asking for special protection. We did not have before our committee representatives of the one-half of 1 percent of the wealthiest Americans who asked for this. No one suggests that a 28 percent top rate for millionaires and a 33-top rate for someone who makes $150,000 is the fair thing to do. I have not heard any argument advanced that this will promote economic growth or achieve some other laudable objective. There has never been an explanation for it.

Instead, it will simply serve to undermine our efforts to restore confidence in the federal system of taxation.

AFTER TAX INCOME

Although much attention has been focused on the percentage cut in income taxes this bill would give each income class, a better measure of the progressivity of tax reform is what effect it will have on after-tax income. How will tax reform affect the take home pay of each taxpayer after Federal taxes have been deducted?

This is probably the single-most realistic and effective measure of this or any other tax legislation.

Tax reform can result in the highest income groups paying a greater share of the tax burden when measured from the percentage change in tax liability. Yet, the legislation would still be regressive if such a tax reduction results in the wealthy receiving a larger increase in after-tax income. The concentration in after-tax income would actually increase even as the wealthest Americans pay a greater share of the income tax burden.

And that is precisely what this bill does. The figures I just cited from the Joint Tax Committee show that the highest income group without passive losses will receive a far larger increase in after-tax income than any other income group of Americans regardless of their incomes.

Looking at all taxpayers—those with and those without losses from tax shelter activities—the tables prepared by the Joint Tax Committee show that the highest income group continues to receive an increase in after-tax income similar to that received by all other income groups.

The largest increase in after-tax income goes to the highest income earners. It is they who will reap the greatest benefit from tax reform. I realize this is a difficult concept to understand but it is the most accurate measure of who benefits the most from this legislation with its top tax rate of 28 percent.

Let me give an example of this using a taxpayer with $10,000 of income who now pays $100 of tax and a taxpayer with $1 million of income who now pays $200,000 of tax.

A 20-percent tax cut for the former will yield $20 of tax savings and increase his after-tax income by less than two-tenths of 1 percent. In contrast, providing only one-half the tax cut to the wealthier taxpayer will cut his taxes by $20,000 and increase his after-tax income by more than 2 percent.

In this example, what appears to be a progressive tax cut that gives the $10,000 taxpayer twice as much a percentage tax reduction as the $1 million taxpayer is actually a regressive tax cut that gives the wealthier taxpayer more than 10 times the increase in after-tax income than the lower income taxpayers.

Although, the magnitude of the numbers is different, much the same effect is occurring with this tax reform bill. The greatest benefit is going to the wealthiest individuals who have not engaged in extensive tax sheltering in the past.

Mr. President, as I said earlier, I am pleased this bill removes over 6 million lower-income Americans from the tax rolls. But we should not overestimate the value of this change, which essentially puts these taxpayers back to where they were in 1977.

The 66 percent average tax reduction going to the under $10,000 income group is worth on average only about $45. At the same time, the average 2.3 percent reduction in taxes going to the above $200,000 taxpayer is worth on average almost $3,000. That is all taxpayers above $200,000.

□ 1850

Finally, I would like to point out that regardless of the figures I have just cited, a tax system which establishes an essentially flat rate bracket system is manifestly not progressive.

Regardless of the valuable changes we are making in this bill to limit tax avoidance by individuals and corporations—changes which lead me to conclude that I should vote for it despite my strong reservations as just described—a tax system that requires individuals with $18,000 of taxable income to pay the same marginal tax rate as another individual who is earning a million dollars is neither fair nor progressive.

CONCLUSION

In spite of the serious reservations I have expressed with regard to the progressivity of this legislation, I intend to vote for it because it includes much that is good.

In my judgment, this will be our only opportunity to enact tax reform. We will not be given another chance to restrict the hundreds of special tax breaks included in this bill in return for lower marginal tax rates. If we defeat the bill today, after these many months of difficult work, tax reform will be dead. We will not soon return to the process.

However, we will have an opportunity next year to turn to the fundamental question of what is a proper rate structure in our tax system. For the last several years, Congress has responded to the serious fiscal problem of large budget deficits by increasing excise, payroll, and use taxes, none of which are related to ability to pay. These regressive levies will be considered again in future Congresses, as will a broad-based consumption tax.

If Congress decides to increase revenues as a means of addressing the deficit problem, I intend to make sure it has an opportunity to consider a progressive revision in the income tax structure that is established in this bill.

Mr. President, I conclude by commending all those who played an important part in this bill: The distinguished chairman of the committee, Senator PACKWOOD; the ranking minority member, Senator LONG; Senator MOYNIHAN, and Senator BRADLEY.

I ask unanimous consent to have tables prepared by the Joint Committee on Taxation printed in the RECORD.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

TABLE 1.—*Distributional effects of the conference agreement, 1988*

Income class (thousands of 1986 dollars).	Percentage change in income tax liability
0 to $10	−65.1
$10 to $20	−22.3
$20 to $30	−9.8
$30 to $40	−7.7
$40 to $50	−9.1
$50 to $75	−1.8
$75 to $100	−1.2
$100 to $200	−2.2
$200 plus	−2.4
Total	−6.1

Joint Committee on Taxation, Sept. 26, 1986.

TABLE 2.—PERCENTAGE OF INCOME TAX LIABILITY FOR PRESENT LAW AND THE CONFERENCE AGREEMENT, BY INCOME CLASS, 1988

Income class (thousands of 1986 dollars)	Percentage of income tax liability	
	Present law	Conference agreement
Less than $10	0.6	0.2
$10 to $20	6.4	5.3
$20 to $30	11.8	11.3
$30 to $40	12.0	11.8
$40 to $50	10.9	10.6
$50 to $75	16.2	16.9
$75 to $100	6.7	7.1
$100 to $200	11.9	12.4
$200 and above	23.4	24.3
Total	100.0	100.0

Joint Committee on Taxation, Sept. 26, 1986.

TABLE 3.—*Percentage change in Federal income and Social Security tax liability, 1988*

Income class (thousands of 1986 dollars).	Percentage change in combined taxes
0 to $10	−16.2
$10 to $20	−11.9
$20 to $30	−5.9
$30 to $40	−4.8
$40 to $50	−5.9
$50 to $75	−1.3
$75 to $100	−1.0
$100 to $200	−1.9

$200 plus	−2.4
Total	−4.4

Joint Committee on Taxation, Sept. 26, 1986.

TABLE 4.—*Percentage change in after-tax income, 1988*

Income class (thousands of 1986 dollars).	Percentage change in after-tax income
0 to $10	1.0
$10 to $20	1.5
$20 to $30	1.0
$30 to $40	.9
$40 to $50	1.3
$50 to $75	.3
$75 to $100	.2
$100 to $200	.6
$200 plus	.8
Total	.9

Joint Committee on Taxation, Sept. 26, 1986.

TABLE 5.—DISTRIBUTIONAL EFFECTS OF THE CONFERENCE AGREEMENT, 1988

Income class (thousands of 1986 dollars)	Percentage change in income tax liability for taxpayers	
	With passive losses	Without passive losses
0 to $10	1,004.4	−66.5
$10 to $20	−12.4	−22.5
$20 to $30	4.7	−10.4
$30 to $40	8.1	−8.9
$40 to $50	4.2	−10.2
$50 to $75	12.8	−4.1
$75 to $100	16.3	−6.4
$100 to $200	18.6	−10.1
$200 plus	13.3	−14.0
Total	13.5	−10.8

Joint Committee on Taxation; Sept. 26, 1986.

TABLE 6.—DISTRIBUTIONAL EFFECTS OF THE CONFERENCE AGREEMENT, 1988

Income class (thousands of 1986 dollars)	Percentage change in after-tax income for taxpayers	
	With passive losses	Without passive losses
0 to $10	0.7	1.0
$10 to $20	.4	1.5
$20 to $30	−.3	1.1
$30 to $40	−.6	1.1
$40 to $50	−.4	1.5
$50 to $75	−1.6	.7
$75 to $100	−2.4	1.5
$100 to $200	−3.4	3.1
$200 plus	−3.3	5.4
Total	−2.2	1.5

Joint Committee on Taxation, Sept. 25, 1986.

Mr. LONG. Mr. President, I rise to support the conference report. It was the privilege of this Senator to hear the statement of the Senator from Missouri [Mr. DANFORTH], whom I admire very much. I enjoyed what he had to say, and I agreed with some of it. Much of the Senator's argument had to do with economic growth.

I would point out that this was never envisioned as a bill to stimulate economic growth. The President tells us that the bill will stimulate economic growth. The present Secretary of the Treasury and the former Secretary of the Treasury, Mr. Baker and Mr. Donald Regan—both of whom were outstanding businessmen, leaders of American business and industry and outstanding servants of Government—assure us that this bill will stimulate growth rather than reach those ends feared by the Senator from Missouri.

Mr. President, if that should be a disappointment, if we find that the investment tax credit does stimulate economic growth far more than the sponsors of this bill seem to feel it does, then I would think that in due course it would be restored.

The Senator from Louisiana has voted to pass the investment tax credit three times. He has voted to repeal the investment tax credit three times. On two of those occasions, the same President who asked me to vote to repeal it, asked me to vote to restore it. So I am thoroughly familiar with the arguments on both sides.

I am satisfied that it did stimulate economic growth when we passed it, and I am satisfied that it slowed growth down when we repealed it.

When we repealed the credit, we did it because we thought it was overheating the economy. It may be that Congress will want to do that again. I would not be surprised.

This is a great, moving country. It does not stay the same; it does not stand still. Nothing in this bill is going to prove to be perfect, but the bill will be a very long stride forward that will be approved by the overwhelming majority of the American people.

Mr. President, the conference report represents a dramatic improvement in the Federal income tax system. It deserves the support of the Senate.

The conference preserved almost all of the dramatic rate cuts in the Senate bill.

The top corporate rate will be cut from 46 percent to 34 percent, and the top individual rate will be cut from 50 percent to 28 percent.

As in the Senate bill, over 80 percent of taxpayers will pay no higher than a 15-percent rate.

The conference report also preserves the tough Senate measures attacking tax shelters and requiring minimum taxes on individuals and corporations. I am concerned that some of these new measures may have to be amended in the future to reduce some overly harsh impacts in particular cases.

However, I strongly support the general idea that everyone who makes money should pay some tax. We have to assure the honest, middle-class worker that he is not being a sucker for paying taxes on his wages, and that he is not paying a great deal more in taxes than those who are far better off than he. This bill does that.

The tax shelter and minimum tax rules in the bill are designed to deliver that kind of assurance. For that reason, I believe that they will strengthen the tax system.

The tax conference itself was a difficult one. We were confronted with circumstances that could have dragged the conference out until January.

As a result, the conference made very little apparent progress for weeks and weeks.

I must say that I was not surprised by these developments.

From early on, even before the Senate passed its bill, I sensed that special procedures would be required to resolve the tax reform conference. The issues were too important and too numerous.

Most conferees were willing to give on significant things in order to get something in return. However, no one wanted to give on 1 important thing without knowing what they were getting back on 10 or 20 other important things.

In fact, the whole situation put me in mind of an earlier conference between the two committees.

At the time, I was serving as chairman on our side, and Congressman Al Ullman was the chairman from the House side.

Like this conference, there were many difficult issues to resolve. As a result, the Senate conferees decided early on that they should not agree to anything until the two sides had agreed on everything.

That conference seemed to go very badly at first.

As we went through the document comparing the two bills, Mr. Ullman would occasionally suggest that the Senate recede to the House on a particular matter. We would have a show of hands on our sides, and on each issue, every Senate conferee would vote to retain the Senate position.

On that occasion, Senator Abraham Ribicoff of Connecticut suggested that the two chairman work together to develop a comprehensive package that each could recommend to their respective caucuses.

That procedure was followed, and an early agreement resulted. Both sides felt that they had gotten a good bill, even though each side had given up some things.

When we reached a similar difficult stage in the tax bill conference, it was my turn to suggest that Chairman PACKWOOD and Chairman ROSTENKOWSKI work together the same way. That suggestion was followed, and it led to a comprehensive agreement.

The agreement reached was a fair one. Each chairman vigorously advocated the views of his conferees, his committee, and of the House and Senate respectively. I would like to thank the Senator from Oregon [Mr. PACKWOOD] for all of his hard work in these negotiations, and congratulate him on the results of his efforts.

Mr. President, I am not totally happy with every detail of the tax reform bill. However, I think the same could be said of every conferee who

signed the conference report, including the Senator from Oregon [Mr. PACKWOOD]. All sacrificed something to the greater good.

The chairman of our committee, the Senator from Oregon, paid his share of the dues. The State of Oregon makes its share of the sacrifice along with the State of Louisiana and other States, to achieve a tax reform bill that the country will approve.

The bill is certainly not perfection. However, it is a long stride toward some things that will be good for the country in the long run.

Taxpayers will pay on a more uniform basis.

Rates will be the lowest that I have seen since coming to the U.S. Senate. On that point, the bill accomplishes something I have supported for a long time.

When I came here, the top rate was 90 percent. I wanted to vote to reduce it. We had the Korean war on our hands, and the Senate voted to increase the rates from 90 percent to 92 percent. This Senator felt that rather than have so many different tax advantages, such as qualified stock options and things of that sort, we should try to cut the rates. At that time, not many people thought that was the thing to do.

Over a period of time, as I have continued to advocate that, others have joined forces with me. I was pleased to have played a part in reducing the top rate from 92 to 90, and then to 70 and 50. Now I am exceedingly happy to join in reducing the top rate to 28 percent.

Mr. President, I want to say a word about the discussion with respect to the rate being more than 28 percent in some cases.

□ 1900

Mr. President, you might look at this tax bill as a flat tax insofar as the very high income payers are concerned. After all, that is what the rich wanted. If you are a rich person and thinking only about yourself, and you are not worried too much about the little fellow in the middle brackets and the little fellow at the bottom, what you like to have most of all is a flat tax, where everyone would be taxed at the same rate, and not the rich man would not pay tax at a higher rate than the poor man. On that basis the rich would make out best. They would like to have a flat tax. I can certainly understand that.

Mr. President, to a very large degree we give the rich their flat tax in this bill. They get a flat tax of 28 percent.

How do we arrive at that and still do justice to others? Charts were made to see how you could reduce the rates and at the same time have a fair adjustment so that the rich as a class were not getting a larger tax cut than the middle-income people. In order to do that, it was finally concluded that you would have to ask the wealthy to give back their $2,000 personal exemption, and to give back the benefit of the 15 percent rate up to the point that they came to the 28 percent rate, in order to prevent this group of taxpayers from having a much bigger tax cut than the middle income people, who were certainly more deserving of a tax cut, we thought.

So that is what the bill has done.

We ask those who have passed a certain point to give up the benefit of the 15-percent rate, and so we phased it out, which means that at that point they are paying a higher rate.

Then, at a subsequent point, we ask them to give back the benefit of the personal exemption, so it works out at the highest point to a 28-percent flat tax for those wealthy individuals who are doing very well indeed.

I heard the Senator from Missouri talk about fairness. He said that it is not fair that the man who is making $1 million a year would appear to be paying at a lesser rate than the person making, let us say, $150,000 a year.

Mr. President, it is all according to how one looks at it. From the point of view of the Senator from Louisiana, you cannot very well justify a $2,000 personal exemption for one who is making $1 million a year and paying a flat tax of 28 percent. What does he need with a $2,000 personal exemption? So we ask him to give it back. A a result, it does not appear that this million-dollar-a-year person is getting a much bigger tax cut in percentage terms than some little fellow working for $30,000 a year, or working for even $75,000 or $80,000 a year.

Mr. President, also we asked that high income individuals give back the benefit of the 15-percent rate in which they first found themselves.

Now, the fellow who is making $150,000 is giving part of it back. The fellow who is making $1 million has given all of his back, and having given it back, we do not ask him to give it back a second time.

But those who have given back the benefit of the lower rate have in effect paid a flat tax of 28 percent, and that is what they are asking for, a flat tax. For those who were not doing a great deal of sheltering and who were paying what Congress intended in the first instance, they are going to get a very substantial tax cut. Obviously, someone who has done enough sheltering and maneuvering, paying little or no taxes, is going to pay a very substantial tax increase because everyone in the country, including every Senator, so far as this Senator knows, feels that when those very wealthy people make a lot of money they ought to pay us a reasonable amount of taxes, and we think 28 percent would be a reasonable amount.

The temptation to invest in tax shelters will be greatly reduced by this bill.

Investment decisions will be guided more by the economics of the investment rather than by the Tax Code.

For those reasons, I will vote in favor of the conference report. While the American taxpayer may be somewhat confused by the changes at first, I believe that the bill will prove to be popular with the public.

In the short run, the bill will be popular because most individuals will have less taxes withheld from their paycheck.

In the long run, the bill be popular because it is fair and because low rates are the right way to go in our income tax system.

Mr. President, I urge our colleagues to vote in favor of low tax rates and a fairer income tax system by supporting the conference report.

Mr. President, in conclusion, let me say, even though I have already made reference to it, that all of us are indebted to our chairman Mr. PACKWOOD, the Senator from Oregon, for the diligent, tireless, indefatigable work he did to bring this bill to this point in the Senate. He and I were not all that excited about his concept in the beginning, but as his enthusiasm grew, it was contagious and it infected all of us. He provided outstanding and inspiring leadership to us to bring us this remarkable change for bettering the Tax Code.

All of us, I know all of us on the conference, should be grateful to him, and I think all Senators should be grateful for the diligent work he made.

He was elsewhere and did not hear me when I said previously that the Senator paid his dues to bring this about.

Several tax advantages that were repealed were things for which the Senator worked for many years in years gone by. He repealed a considerable amount of his own handiwork. He repealed many of his own achievements from prior years in order to make this bill a reality.

I know, as one who has worked on things like that the one very much dislikes to see repealed something he always believed in, has thought was a good idea, and has personally every right to claim credit for being a part of the Tax Code.

The Senator did that, and he also included some provisions in the bill that are not going to be popular in his own State. He paid his dues, just as I think all of us should be willing to do, to make a sacrifice in one respect or the other to help make all of this reality.

On the whole the taxpayers will gain a lot. The country will gain. Some will be called upon to sacrifice somewhat more than others.

The chairman of our committee, the very able Senator from Oregon, has earned a place in history with the achievement he has made on this bill. I salute him and admire him for what he has done here. I think we all do.

In addition to that, Mr. President, I congratulate the Senator from New Jersey on the very fine job he did. He was advocating the concept that is embodied in this bill many, many years ago. He authored it and sponsored it and fought for it and worked for it, and I was proud to nominate him as one of the conferees on the bill.

I think it created some problems in some respects because it did not necessarily accord with seniority. But it is my view, Mr. President—and I hope the Senate will pursue that pattern in the future—that when one has been the prime mover of an idea, a concept, a bill for many years and has moved it to the point that others join forces and see merit and pass it, the Senator who does that is entitled to be one of those who work out the differences between the two Houses in conference. The Senator was a very valuable member of the conference and he will speak for himself, but I hope he approves of the bill that we brought here because he has done such a great amount to make this possible.

The Senator from New Jersey [Mr. BRADLEY] has made a great mark already in this Congress and he will do more. He will do a great deal more as time goes by for the country.

I am pleased to see my friend from New York here. He has fought the good fight and he has made a great contribution to the final settlement. I just wish he had been a little more successful in his efforts with regard to the deduction of the sales tax, but again the Senator has to pay some dues, like the Senator from Louisiana had to pay some dues, in order to make this bill a reality.

I thank the Senator.

□ 1910

(Mr. HUMPHREY assumed the chair.)

Mr. LEVIN addressed the Chair.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, if the Senator from Oregon, the floor manager, was seeking recognition, I would be happy to yield to him.

Mr. PACKWOOD. Mr. President, just for a few seconds, I would like to thank the Senator from Louisiana for his very generous remarks. But I think every one of us who ever served on the Finance Committee realizes that this bill would not have been possible without the groundwork he has laid year after year. And if I am in the Senate as long as he has been in the Senate—which is 38 years—there will never be another "Mr. Chairman" to equal him. I thank him very much for his kind remarks, but most of all for his leadership.

Mr. LONG. Mr. President, I thank the Senator. I know I do not deserve all of that, but that makes me appreciate it all the more.

Mr. LEVIN. Mr. President, I ask unanimous consent that I may yield to my friend from New York for a speech without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. I thank my friend from Michigan.

Mr. President, this is a triumphant moment for the Committee on Finance, which brings to the floor at this point the most important revision of the Tax Code in half a century.

It is also a poignant moment, because we have just heard what will, of necessity, be the last speech which RUSSELL LONG will give on a tax measure in this body after 38 years of extraordinary service, a career that has but few equals in time or in achievement. So much indeed that I want to have him hear me say that to have heard the last speech on a tax matter of RUSSELL LONG is to have been part of the history of this body. It was characteristic of him to be generous to others in a way that he has always been.

It was he precisely who, in the critical moments of the tax conference, made the suggestion that the two chairmen negotiate on behalf of their respective caucuses, which brought—at the very last moment, in a sequence in which the bill had all but failed a half dozen times—this extraordinary—we think—result.

As I remarked, Mr. President, there has been an extensive discussion of the principal features of the bill. I would like to confine myself to only a few, but doing so with some detail, in recognition of their importance.

The first and perhaps most important elemental fact is that we have taken some 6 to 7 million Americans out of poverty by the simple expedient of ceasing to tax them into it. It is almost a matter of incredulity that now, nearly a quarter of century after an American President, Lyndon B. Johnson, inspired the country and got the Congress to declare a war on poverty in this Nation, we find that we so neglected the Tax Code that we ended up taxing people into the condition.

This bill stops that, and not a moment too soon, with a potent set of provisions that will ensure that it does not happen again. By the simple process of indexing for inflation the basic determinants of when tax liability is first incurred—the personal and dependent exemptions and the standard deduction—we ensure for the future that taxes, at least, will not cause poverty. This is a fundamental change, long overdue and now done.

There is another matter, Mr. President, which needs to be stated with great specificity. The Congress did not accept the administration's proposal, as it first appeared in Treasury I and then was repeated in Treasury II, to repeal the deductibility of State and local income and property taxes.

As the Senator from Louisiana observed, this was not the case with respect to sales taxes. And yet over 80 percent of the value of the deduction for State and local taxes has been preserved, and we have avoided what would have been a horrendous blow to the principles of federalism.

It was disappointing in May of last year, after the administration had released its revised tax reform proposal, to have the President address the Nation and speak of the deductibility of State and local taxes as a subsidy to certain States, a subsidy to any State. I quote the President when he said most Americans are "being forced to subsidize the high tax policies of a handful of States."

Mr. President, this notion of subsidy was so clearly at odds with the most elemental principles of federalism, that it is something of an achievement at the level of concept and of appreciation of what was at issue that we did not do this.

The history of this matter is a long one and it goes back to the very first hours of the American Constitution, in the Federalist Papers making the case for adopting the Constitution.

Hamilton wrote therein that any effort to impose Federal taxes on resources taxed by the States would be an attempt on the part of the National Government to abridge the States' taxing power, and would be "a violent assumption of power unwarranted by any article or clause of the Constitution."

Hamilton, urging the people of New York to vote to ratify the Constitution, said it was inconceivable that the Federal Government could ever do what last year was proposed that we do, and seemed that we might.

With respect to higher education, Mr. President, the present legislation, while not the calamity that the administration's proposals would have been, nevertheless does not succeed in retaining the immunities and the necessary privileges of the great institutions of higher education in our country that we would have hoped and, indeed which the Senate, urgently sought.

There is a measure in the bill which repeals, for purposes of the minimum tax, the right to take a charitable deduction for the appreciated value of gifts to nonprofit institutions of all kinds. To keep the status quo was a hard case to make in principle, but in

practice an extraordinarily important one.

The capital which is raised by our great hospitals and universities and research institutions comes in such large amount from the gifts by successful persons at the end of their careers of property that has appreciated significantly over time.

To have denied this source of funds to our research institutions, to our hospitals, to our universities seems to me—and indeed most of the Senate—to have been a mistake. But in the end we had, in the interest of any legislation, to concede to the House on this point.

We also commenced the taxation of that portion of scholarships and fellowships which are used for the living expenses of the students and young scholars who receive them—again, a matter which imposes only an additional cost on our universities at very little return to the Treasury. And some costs unanticipated, I think, at the time. I was discussing the matter with the president of Columbia University, Michael Sovern, a few weeks ago when it was clear that we could not bring the House to our view on this matter. And he noted that something had not occurred to many, that the decision to treat some scholarship money as income would add $1 million to Columbia University's required payments of Social Security taxes.

So also with a number of such provisions. We did, however, preserve the charitable deduction for those who are itemizers. This will continue to benefit educational institutions and other nonproft enterprises. Such institutions are a unique feature in our society—special in their independence, neither public nor private, but serving public purposes through private organizations.

We have also preserved the tax-exempt financing privileges of universities in the main and as a matter of principle, although we do subject them to a limit of $150 million in financing per institution.

Something that has no immediate consequence but could have large long-run consequences is the decision made by the drafters at the insistence of the House to reclassify the tax-exempt bonds of private colleges and universities as private activity bonds. I want to say that throughout this matter no one has been more clear on seeing the importance of this issue than the chairman, Mr. PACKWOOD. We have taken from our universities, our colleges, the private colleges as against the public ones, the status of exempt persons under the Tax Code for purposes of tax-exempt bonds.

The States of the Union are exempt persons. The subdivisions of State governments are exempt persons. And up until now for purposes of tax-exempt financing, the great chartered universities and colleges that make up the singular structure of higher education in America have always been exempt persons. We are the only Nation in the world where something like half the greater research institutions of the country are run as private foundations, private chartered corporations, and have been treated for all extents and practical purposes as having immunities of public institutions as in the case of a government.

They are now to be treated—their debt, their bonds, their borrowing—is to be listed under the category of private activities. I cannot help but think that we will want to see this changed. We do make special provision in the bill that any future changes with respect to bonds classified as private activity bonds will not be taken to affect the 501(c)(3) bonds of universities and other nonprofit institutions unless affirmatively and specifically so stated. Even so, to take away this status, this circumstance that is associated with the immunities that we come to think of as essential to the life of the great university, to take it away from them in the Tax Code is a grave mistake. It was never debated. It was never agreed to. The Senate firmly resisted it. In the end, we did not prevail. We will come to the matter again next year, and I am sure we will have the same support that we had this year.

It is a simple thing. It might not seem an important thing, and yet in the end it has to do with the whole status in our society of these institutions.

Could I speak, Mr. President, briefly but with some detail, with respect to the treatment of passive losses in this legislation. Surely one of the most important changes the legislation makes among many today is the introduction into the Tax Code of the distinction between positive income and passive losses. In a summary of the legislation which appeared in the Wall Street Journal immediately following the tax conferees reaching an agreement, the able reporters of the Journal wrote:

> In many ways the heart of the new tax bill is a tough provision that would prevent taxpayers from using paper losses generated by tax shelters to reduce tax liabilities. Investments in real estate shelters, jojoba bean tax shelters, cattle feeding tax shelters and a wide arrangement of array of other arrangements have boomed in the past few years. The tax bill makes it a certainty that the bust is on its way.

The change is fundamental, and its importance to the long-term health of the Tax Code is hard to overstate. It is the greatest assault on tax shelters ever tried. It is the key to the bill's ability to lower the top rates of taxation dramatically without producing an conscionable windfall for the wealthy. The real rates of tax paid by these individuals will actually increase in many cases, and their total share of the income tax burden increases.

The tax shelter provisions turn on the distribution between positive income and passive losses. Positive income, Mr. President, is what it sounds like, what most of us understand is income, which is salary or professional fees or compensation for personal services, as well as interest. dividends, and gains from investments for those who have them. Passive losses are something altogether different. They are losses from business activities in which an individual puts up some money, but does not participate in or manage in any material way. They are designed, these arrangements, to produce nominal losses. These are always or almost always paper losses, mere accounting entries resulting from Tax Code provisions that, as an incentive, allow a business enterprise to recognize its losses before it must account for all of its income.

When a business activity is packaged up and sold in pieces—typically limited partnership shares—to a group of investors, you have a tax shelter. Passive losses are the lifeblood of tax sheltering in this country because every shelter sooner or later turns upon the ability of an outside nonparticipating investor to use the tax losses generated by the sheltering activity to reduce his positive income, and thereby the tax on that positive income.

The legislation we pass today introduces a fundamental and disarmingly simple provision into the Tax Code. Passive losses cannot be used to reduce positive income. It thereby drives a stake into the heart of tax sheltering in this country, which was beginning to jeopardize the legitimacy of our tax system. The Senator from Maine spoke earlier of the studies and surveys by the Advisory Committee on Intergovernmental Relations. These studies show that in recent years, Americans increasingly feel that among the taxes in our system, it's the income tax which is least just—precisely the tax designed to be the most just based on ability to pay.

It was a great social movement in our country to bring about a graduated income tax. The Constitution did not provide for it. It provides for a per capita tax in effect. It was generally thought necessary to amend the Constitution to impose a graduated income tax and a generation of Americans put their efforts into amending the Constitution so that we might bring about the principle of a graduated tax: those who earn more should pay a higher proportion of their income in tax.

Over the last half-century, we have seen the principle, or at least its realization, slowly, slowly erode until our present state of a affairs where more and more persons of very large income are paying little or no taxes.

□ 1930

This came to be celebrated. Just a year ago in February 1985, the magazine Money had on its cover a special report, "The Best Ways to Cut Your Taxes." Here on the cover is a happy threesome, two gentlemen in dinner jackets and an elegantly gowned young lady, all drinking champagne and smiling. We are told that "These three people have made fortunes but paid no taxes last year—here's how you can slash yours."

You no longer need an expensive lawyer or accountant. For $2.50, Money magazine can teach you. What a happy life it was, flowers, champagne, all manner of activities.

Speaking of a gentleman with an income of $175,000, who describes himself as a "tax-shelter junkie," the magazine writer, "Depreciation gives him a paper loss to offset income from other sources." His income in 1984 was $175,000; his taxes—zero.

I can now report that Money magazine, with this legislation a virtual certainty, has revisited the happy threesome in its October 1986 issue, just out. The new story reads, "With Tax Reform, The Party's Nearly Over For the No-Tax Trio."

There are our friends, previously in dinner jackets and evening dress, in shirtsleeves, the balloons are on the ground, the confetti has sort of given out. And it says, "The days of wine and roses and heady write-offs are gone in real estate."

Alas, they have to go back to work and earn their money in the old way, which is simply to try to do things from which they get income, and to pay taxes on it.

I feel sorry about the boxcars, jojoba beans, and real estate, but the party is over.

And well it ought to be.

In this morning's New York Daily News, Lars-Erik Nelson, always an interesting and intelligent commentator, says in an article called "Sharing The Tax Burden:"

> The tax reform is not perfect. It may raise your taxes. Far worse, it may raise mine. But no longer will you or I, just the two of us, pay more in taxes each year than AT&T, Texaco, Gulf, GE, du Pont, W.R. Grace and my dentist put together.

It really does come down to that, Mr. President.

Roscoe Egger, the Commissioner of the Internal Revenue Service until just recently, saw the bulging of this phenomenon in the 1980's. We saw a near doubling in the number of tax shelters under IRS audit from 1979 to 1983 from 183,000 to one-third of a million. In an interview in Time magazine in March 1984, Commissioner Egger was asked what was the one thing he would like to change in the tax system. He said, "I would go back and look at the whole question of the ability to offset losses from one type of business activity against income that is wholly unrelated."

In 1965, individuals reported almost nine times as much income from partnerships as they did losses. By 1982, the losses reported by partnerships—the favored investment for generating passive losses—were greater than the gains reported by partnerships, and 20 times their level of 1965.

Between 1980 and 1983 alone, total investment tax shelters had increased by more than 100 percent.

This had become not just a burden on the efficiency of the Tax Code, but a threat to its very legitimacy. Clearly, it worked to the greatest disadvantage of the economy. Investment driven by tax advantage is not optimal investment. We have seen our productivity figures drop 4 percent a year in the 1960's, to 3 percent in the 1970's, to 2 percent in the 1980's, and this drop was accompanied step by step by the increase in investments that are designed not to produce a profitable return but to produce a tax loss.

In the end it was undermining the legitimacy of the system.

I might make note that as we approach the 200th anniversary of the Constitution, it would be well, perhaps, to recall that it was over the question of the legitimacy of the tax system in the American colonies that the American revolution first took shape.

A very distinguished scholar of this subject, Aaron Wildavsky, a Brooklyn boy who now teaches at Berkeley and who just became president of the American Science Association, has just published a history of taxation in the Western world.

In the last days of the conference proceedings during a pause, I phoned him, perhaps the most knowledgeable person in the larger political and historical aspects of taxation. I said to him, "Aaron, are we doing the right thing?"

He said, 'You are doing the right thing."

Then he had a wonderful phrase. He said, "When things that are perfectly legal are regarded as morally tainted, you've got to stop."

I remember running into our distinguished chairman BOB PACKWOOD, of Oregon, as he was heading across the Capitol to another meeting with Mr. ROSTENKOWSKI just after the Senate has been sworn as a court of impeachment in the case of Judge Claiborne. I stopped him and I said, "BOB, let me tell you what Aaron Wildavsky just said. He said 'When things that are perfectly legal are regarded as morally tainted, you've got to stop.' "

Senator PACKWOOD said, "That is all I have been about since the beginning."

That is what he did. He did it with extraordinary assistance from the distinguished Senator from New Jersey [Mr. BRADLEY] who has brought us the concept of a few number of sharply reduced rates, paid for in large measure by bringing into the taxable income base several items that have previously been excluded. This is base broadening, as it has been phrased, a base broadening which was greatly enhanced by the decision to preclude the use of passive losses to reduce the income base.

But in the end, it was the determination of our chairman to make it happen that did it. He went into the depths, Mr. President, No man had ever been more thoroughly defeated than was Senator PACKWOOD in the course of April of this year. And defeated, indeed, by his own committee, by the dynamics which had brought the Tax Code to the condition it was in, and a point where others would have chosen to think that that which had seemed impossible had in fact proved to be impossible. He said, "We will try once again."

Earlier on the floor, I heard him make the simple statement that "With no guts, there is no glory."

□ 1940

Mr. President, there is some glory here and it derives from the guts of one BOB PACKWOOD of Oregon. I, a Member of the opposite party, wish to stand here and so state. What he did could not have been done without Senator LONG and Senator BRADLEY, without his extraordinary chief of staff, Bill Diefenderfer, and his chief tax counsel, John Colvin. On our side, the minority chief of staff, Bill Wilkins, was an exemplar of public service at every stage, providing insightful, direct and accurate analysis always.

For my part, I had the incomparable assistance of Joe Gale, a young attorney with a great future, a man of the most extraordinary integrity and persistence. He would listen when I would say, "Stop, Joe, don't try anymore, we have lost," and say, "I will try just one more time, Senator." Not invariably did he succeed, but his successes continue to astound me. He has in him some of the stuff of BOB PACKWOOD. I cannot at this moment say more about any young man.

Mr. President, I have taken perhaps more time than I ought to have taken, but this moment will not come again in my lifetime and it might never have come at all without the leadership about which I have spoken and for which I would like to add a personal note: It is one thing to be in the presence of great political courage, but to see it done with grace as well is an experience that is to be treasured beyond anything I have known in a decade in the U.S. Senate.

Mr. President, my distinguished friend from Michigan [Mr. LEVIN] very generously yielded me the floor in

order that I might speak. I now, with an expression of appreciation to him, yield back the floor.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, first, let me say that although a number of us disagree whether this tax bill is a plus for the taxpayers of the country or for the fairness of the tax system let me say the chairman of the Finance Committee [Mr. PACKWOOD], the ranking member of the Finance Committee [Mr. BRADLEY], Senator MOYNIHAN, and others who put so much time on the bill deserve the commendation of everybody in this Chamber.

Whatever side we end up on, I could not agree more with Senator MOYNIHAN in his praise of Senator PACKWOOD for his leadership on this bill. We all agree on that. We all have a positive feeling for Senator PACKWOOD, Senator LONG, and others who labored so long and mightily on this bill for their herculean effort and for other reasons as well.

Some might ask why, after the House of Representatives passed this conference report on the tax reform bill by a substantial margin, should the Senate spend any time considering it? Have not all the issues been explored? Have not all the decisions been made? "Why won't the opponents of this bill just acknowledge defeat and go away?"

Mr. President, if this tax reform bill is as monumentally important as its sponsors claim—and I believe it is—then we in this Senate owe an obligation to the country to consider it, to explore it—yes, to question it.

If this conference report is agreed to, there will be much celebration and many congratulations among those who helped forge it. There is no question of that. The very real question that remains is whether the American people will join in that sense of achievement. My meetings with constituents in Michigan, the mail into my office, the sentiments I hear expressed nationwide tell me no. My own mind and my own analysis tell me no.

For when you get beyond this city, when you get beyond the hundreds of groups which are supporting this bill, but groups which would have been castigated as special interests if they were opposing it, when you get out into the heartland of American, there is not the high pressured enthusiasm for this bill we feel here, inside the Beltway, in the Nation's Capital.

What there is out there is a yearning for fairness in taxation. There is a desire to end abuse. No doubt about that. But to translate or to transform that into support for this particular bill is in error. What the American people want out of tax reform is not what they get out of this bill.

They want a law to give middle-income Americans a break. They are getting a law forcing 1 out of every 5 middle-income taxpayers to pay more in taxes, and a law which sets in motion a whole range of hidden costs for the rest.

They want a law to help reduce the deficit. They are getting a law making deficit reduction harder and more unfair.

They want a law to encourage economic growth. They are getting a law which encourages consumption instead of savings and which threatens to push the economy over the edge and pull a lot of us over along with it.

They want a law to make the tax system fair. They would get a law creating a whole host of new inequities.

Notwithstanding what the people want, the push is on in Washington to pass this tax reform conference report. It is said that this has to be the case because everyone supports reforming the Tax Code. Well, I support reforming the Tax Code, too. I support an effective minimum tax on profitable corporations and on wealthy individuals to make sure that they do not shelter all their income. I agree with the aide to Chairman ROSTENKOWSKI of the Ways and Means Committee who described that drive as "the fire in the belly behind this issue."

I commend the committee for making sure that people who sheltered all their income finally will pay some taxes. It is long overdue. I have been fighting that battle, as the chairman knows, for years, trying to get an effective minimum tax in the country to make sure that profitable corporations and wealthy individuals, who should pay some taxes, finally pay some taxes. This bill finally does it. That is one of the pluses in this bill. But it does a lot more. It is the "lot more" that is wrong with this bill. It is those other things that it does beyond getting to those folks, finally, who have ducked paying taxes, who have used the loopholes in the Tax Code to avoid paying their fair share. It does far, far more than that.

I would like to start out describing my reasons for opposing this bill by first looking at perhaps the most common myth about this bill—the myth that this bill is unambiguously good news for the average taxpayer. The day after the conference committee reported agreement, one of the television economics reporters said simply:

> If you make under $50,000, you get a tax cut; if you make over $75,000, you get a tax increase.

One of the chief proponents of the conference report has added:

> What the government is saying to middle-income Americans with this bill is: If you work hard, if you earn more money, you'll keep more of the money you earn.

That is the myth. The reality is a lot more clouded. It is essential to keep in mind that lower tax rates do not always mean lower tax bills. Surely, according to the best information available from the Joint Committee on Taxation, most average Americans would get a small tax cut under this legislation. But millions of average Americans would get a tax increase under this bill. In 1988, when fully phased in, this bill would increase taxes on 10 million taxpayers with incomes between $20,000 and $50,000. So much for the myth that this bill is good news for all middle-income people.

Some may respond by saying that although some average Americans would get tax increases under this bill, most of the people who would get tax increases are wealthy individuals who abuse tax shelters. That is another myth. Based on the best information available from the Joint Committee, of the 20 million taxpayers who would get tax increases in 1988, 77 percent are making $50,000 or less. That 20 million includes not only the 10 million I mentioned a moment ago who make between $20,000 and $50,000, but also, incredibly enough includes 5.8 million Americans who are making less than $20,000.

So we should not be fooled by the argument that the wealthy people are coming here complaining about these tax increases that this bill will foist on them; 16 of the 20 million people who will get tax increases in this bill are making less than $50,000. For each rich person that we are finally socking with a tax increase, the person who is wealthy and sheltering their income, we are hitting four wrong people who are making less than $50,000. That is not a very good batting average. Four wrong ones for every right one.

□ 2050

Most of the people who will get tax increases under this bill come from the ranks of middle- and low-income taxpayers.

These are not the taxpayers who are investing in vacant office buildings to shelter their income. These are taxpayers who have to work hard just to afford shelter for themselves and their families. They do not engage in exotic tax schemes, but rather are among the 31 million taxpayers with incomes under $50,000 who deduct State sales taxes, or the 26 million with incomes under $50,000 who deduct consumer interest. They are also among the 21 million taxpayers making under $50,000 who take the deduction for two-earner couples, which is designed to at least partially compensate for the fact that married couples with both spouses working would otherwise pay more in taxes than would two single individuals making the same cumulative income—what is known as the marriage penalty tax.

Simply put, most of the taxpayers who would be asked to pay more in taxes under this bill are not among the privileged and the powerful but, rather, are among the average and the struggling.

One particular group that appears likely to have more than its share of people getting tax increases under this bill are two-wage earner couples. There is a tendency among proponents of this bill to say flatly that it is profamily because of the increase in the size of the dependency exemption for children. What this characterization ignores is that the bill is skewed to a particular definition of "family." It is not a valid generalization if both spouses work, as do over 50 percent of married couples. There are many two-earner couples for whom the increase in the dependency exemption and the lower tax rates would not compensate for the loss of the two-earner deduction and for deductions such as the ones for consumer interest and sales taxes. In many of these families, both spouses work because that is what is necessary to make ends meet. How are these families going to feel when, if this bill passes, they find out they will get a tax increase because their definition of "family" does not match that of the people who supported the bill?

The second aspect of this tax bill that I would like to explore is its impact on deficit reduction. Simply put, it is a myth that tax reform cannot help us reduce the deficit in a meaningful way. The bill is called revenue neutral, which means that we will not use the revenues generated by loophole closing, and the revenues, generated by a minimum tax on profitable corporations and wealthy individuals who are sheltering all their income—revenue, that is, from tax reform—to reduce the deficit. That approach in this bill is neither prudent nor may I say, is it popular. It means more than forgoing an opportunity for deficit reduction. It would make deficit reduction more difficult to achieve in the future, and more unfair and harsher whenever it is achieved.

Many speeches have been given in this Chamber on the dangers of huge Federal budget deficits continuing year after year. The problem is well known. Suffice it to say now that the deficits present a clear and present danger to our economic health. They contribute to the trade deficit, the effects of which are seen most strikingly in our agricultural and manufacturing sectors. The huge budget deficits are also an economic time bomb, because so much of our budget deficits are financed out of foreign borrowing. If the political or economic winds changed, we could find ourselves with a continuing huge budget deficit but without the foreign inflow of cash being used to sustain it. The result would be higher interest rates, as the demand for deficit financing stayed the same while the available supply of borrowable funds shrank. Finally, the continuing huge budget deficits and the interest payments on them use up funds which could be more produtively used to protect and improve our quality of life.

With the huge budget deficits at the core of the economic problems facing us, it is more than ironic that the tax reform bill which the conference committee has agreed to does nothing to help with that situation. Knowing this—that so vast an effort as tax reform has as its affirmative goal to do nothing to improve our deficit problem over the next few years—makes the words of the chairman of the Budget Committee, Senator DOMENICI, during the debate on the Senate bill ring in my ears: "What a pity. What a pity."

We must, and we can, do otherwise.

But to make the case that tax reform should be used to raise revenues for meaningful and lasting deficit reduction, we must deal with the impression conveyed by some proponents of this legislation that we must have a revenue-neutral tax reform bill because otherwise we will be raising revenues. In fact, this bill already raises tens of billions of dollars in revenues from some individuals and corporations. For many of them, it will result in a net tax increase. So, again, this bill does include revenue increases for tens of millions of individuals and corporations. The fact that it also includes tax cuts for others, and balances out to no net gain in revenue, should not mask the fact that it includes tax increases for tens of millions of individuals and corporations. The argument that there must be a revenue-neutral tax reform bill because we are against "tax increases" can only be made by someone who has not read the bill. In a very real sense, the issue in tax reform is not whether to make changes in the tax code which would increase revenues. The issue is what to do with the tens of billions of dollars in revenues that tax reform will raise from some. Do we cut taxes for others or do we cut the deficit?

If tax reform is going to be part of our battle against the deficit, we must deal with the contention that, by definition, tax reform must be revenue neutral. Reality—and history—are to the contrary. In 1982, the House and the Senate passed and the President signed the Tax Equity and Fiscal Responsibility Act. It was a tax reform bill and it was not revenue neutral.

Insisting upon a revenue-neutral tax reform bill ignores the reality that if we are going to deal with the budget deficit in a meaningful and lasting way, then there will have to be a combination package of further spending cuts and increased revenues. We need increased revenues to reduce the deficit if we are to avoid reducing it by spending cuts alone involving unacceptably large reductions in domestic and defense programs, or by the kind of asset sales which are in this year's reconciliation bill and which result in only temporary and often illusory deficit reduction.

The only way to increase revenues without imposing new tax burdens on middle- and low-income people is through a version of tax reform which has as its cornerstone an effective minimum tax on profitable corporations and wealthy individuals who have been sheltering all of their income and paying nothing in taxes. The new revenues from those sources, affecting not more than 5 percent of the American taxpayers, can then be used to reduce the deficit. Put another way, a tax reform bill should have as its goal raising revenues to reduce the deficit in a way that eliminates the need for imposing new tax burdens on average Americans. Unfortunately, the reality of the tax reform bill reported out by the conference committee is that it not only would impose increased taxes on more than 10 million middle-income Americans, and 6 million lower-middle-income Americans, it also would set the stage for imposing new taxes on them, and on the rest of our people as well. Why? Because if all the revenue from tax loophole closing is going to be soaked up by the uneven tax cuts proposed by the bill, then in looking for additional revenue for deficit reduction, we will be forced to turn to regressive ways to generate revenue: perhaps a national sales tax or increased excise taxes, or possibly increased user fees. Although generating new revenue through excise taxes and the like might make deficit reduction possible, it would impose taxes on many of the very people who are supposed to benefit from this tax reform bill and who are among the least able to shoulder additional revenue burdens and additional tax burdens.

Furthermore, if we were to have the goal of using tax reform for meaningful and lasting deficit reduction, then we have to recognize that this conference report not only does not meet that standard, it may also turn out to be a giant step in the wrong direction. The conference report is represented as being revenue neutral over 5 years. The reality is that from 1988 through 1991, this bill would add to the deficit by $11 billion. This is because the language adopted by the Senate in the Domenici-Gramm amendment was dropped in conference. That amendment basically said that the $11 billion revenue windfall in 1987 could not be used for reducing the deficit in 1987, but, rather, should be counted against the bill's shortfall of $11 billion from 1988 to 1991. Senator PACKWOOD, himself, in speaking in favor of the Do-

menici-Gramm amendment during the debate on the Senate bill, said:

> We do not want to attempt some phony deficit reduction with phony figures. The fact that this bill raises some money in the early years, drops in the middle years, and comes back in the end years may encourage Congress to use it in an attempt to meet our deficit projections of last year and in essence say that we shall worry about 1988 in 1988—let's just take the money now and worry about the devil next year. * * * I very much support this amendment * * * this bill should not be used as an artificial vehicle to attempt to get us over a hurdle next year.

Unfortunately, by dropping the Domenici-Gramm amendment in conference, it is exactly this kind of artificial deficit reduction for which we are setting ourselves up.

Now, it has been said that the reconciliation bill which the Senate passed does not rely on the $11 billion windfall for fiscal year 1987. What is unnerving, however, are the rumors already surfacing that if, by chance, we end up missing the Gramm-Rudman targets when all the numbers are in, then there is still nothing to really worry about because we still have the $11 billion that we can dip into. However, if we fall prey to that temptation made possible as a result of the dropping of the Domenici-Gramm amendment in conference, then there would be deficit reduction for year 1 and a deficit increase in years 2 through 5. It would be using a windfall in a way that would create a shortfall. The goal of using tax reform revenues to reduce the deficit is to help clean up, in a lasting way, the budgetary mess we are in. Using the first year windfall against the deficit reduction targets in Gramm-Rudman would dig us into a deeper hole later on. The dropping of the Domenici-Gramm amendment leaves open that possibility.

Finally, if tax reform is to be part of a meaningful solution to our deficit problem, then we must deal with the contention that this bill must be revenue neutral because the people want it that way. In reality there is strong evidence to the contrary. Early this year, a nationwide poll indicated that by a 3-to-1 margin the public supported using revenues from loophole closing and a minimum tax for deficit reduction instead of for tax cuts. The public knows that common sense lies in making the Tax Code fairer and reducing the deficit in one stroke.

Mr. President, our economy is living on borrowed time just as much as our deficit is being financed out of borrowed money. Everyone knows that action taken sooner will be less painful than action taken later. Tax reform should be used as vehicle for meaningful and lasting deficit reduction. The conference report foregoes that opportunity and, even worse, would make deficit reduction more difficult. The Senate should not add its stamp of approval.

The third aspect of this tax reform bill which I would like to discuss revolves around the issue of fairness.

Shortly after the conference concluded, one of the bill's supporters said, "I go away not completely happy, but I believe the results are good. Most of all we sought improved fairness." Mr. President, if that was the goal, then there are too many instances in which the conference report falls far short of the mark. All of the claims that this bill has achieved new fairness cannot wash away the stains of its new inequities. Let me give a few examples.

First, are the repeated instances of retroactivity in this bill, where changes in the tax law are applied to actions which people have already taken in reliance on the current law. This was also a problem with the Senate version of the bill, and many, many, Senators made speeches on how it should be remedied—at least in part—in conference. Unfortunately, after the conference was finished, the problem of retroactivity remained.

The investment tax credit is still repealed, retroactive to January 1986. The deductions of the losses on certain investments which were made years ago are still eliminated. The deduction of the interest on education and car loans which have already been taken out is still ended. This tax reform bill, which its sponsors hope will form a new bond of trust between the public and the Government is, thus, instead, rooted in this instance in a breach of faith. It may claim to seek fairness, but for millions of taxpayers it will be seen as an arbitrary changing of the rules in the middle of the game.

The retroactivity of certain provisions of this bill has given rise to another unfairness. Tens of millions of Americans will be affected by these retroactive changes. But hundreds of corporations and projects will not, because they had access to the conference committee which enabled them to obtain a so-called transition rule so that their activity could continue to be taxed under the old law. Let me make clear that as a matter of substance I am willing to acknowledge that many of these transition rules are justified in that they prevent the rules from being changed in the middle of the game for certain specific businesses and projects.

The problem is that for every one of the 650 from whom there is a special rule, there could be thousands of similarly situated for whom there is only the cold glare of retroactivity. According to the matter response which I just received from the Finance Committee, "It is impossible to quantify the number of businesses or individuals who do not have transition rules but are in situations similar to those businesses or individuals covered by rules in the conference report. However, it is fair to say that we tried to provide equal treatment wherever possible for meritorious cases, within our budget constraints, based on the submissions we received from Members of the Senate and House of Representatives." But I ask, what about those who could not come to Washington and make their case? What about those who could not hire the lobbyists to present their appeal? Where is the fairness for them?

Mr. President, this bill dispenses favors to individuals the way royalty might do, instead of legislating for everybody meeting identifiable standards, as a representative democracy must do.

It is the highly selective process behind the remedy and not the remedy itself which is unfair and which makes a mockery of the simple characterization of this bill as a battle between the special interests and the general interest. The President has said that the special interests were involved in a last-ditch effort to defeat this bill. But if he thumbed through the bill he would find that, to paraphrase Commodore Perry, "he has met the special interests, and they are in the bill."

How much more special interest can you get than the transition rule on page 80, one of the hundreds and hundreds of these kinds of rules? This one states that the changes in the depreciation rules shall not apply to:

> A 356-room hotel, banquet, and conference (facility including 525,000 square feet of office space) the approximate cost of which is $158,000,000 with respect to which a letter of intent was executed on June 1, 1984 and with respect to which an inducement resolution and bond resolution was adopted on August 20, 1985.

□ 2010

How much more special interest can you get than that?

One more word about the special interest rhetoric. There are hundreds and hundreds of national associations and groups that have endorsed this tax bill. I believe this list has been made part of the RECORD, hundreds of special interests that I know by anybody's definition of special interest that endorse this tax bill. I can count the special interests who opposed this tax bill on one hand, at least the ones that I know about on one hand.

So I think we ought to drop the special interest-general interest rhetoric. If we want to count the special interests who support and oppose this bill, you have to weigh pages and pages and pages of transition rules and identifiable national associations who support this bill against the very few special interests that I know of who oppose this bill.

In addition to retroactivity and in addition to the special privileges that I

have mentioned that a few obtained in this bill, this bill is unfair because it gives huge tax cuts to some very wealthy individuals and tax increases to others of very modest means.

How is it fair to be giving a $30,000 tax cut to a taxpayer who happens to be the President of the United States who makes $400,000, including outside income, at the same time we are increasing taxes on an elderly couple with high medical expenses whose income is $15,000 a year?

How does it improve the confidence that the people have in the fairness of their Government if that Government passes a tax bill which increases taxes on about 6 million taxpayers making less than $20,000 a year at the same time that it is giving tax cuts averaging $50,000 a year to more than half of the taxpayers who are the wealthiest among us, those making over $200,000? It is not fair and it does not make good sense and I must add that this $50,000 figure that I have just given is based upon the best available evidence and the best available information which we have just received from the Joint Committee on Taxation, and I ask unanimous consent, Mr. President, that that chart and that letter from the Joint Committee on Taxation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT COMMITTEE ON TAXATION,
Washington, DC, September 25, 1986.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: This is in response to your letter of August 19, 1986, asking for statistical information relating to the individual income tax provisions of H.R. 3838 as reported by the House and Senate Conference Committee.

Table 1 shows the results of our computer analysis concerning the number of taxpayers by income class and the average tax liability under the Conference Agreement for those with tax increases and those with tax decreases relative to present law for tax year 1988. We have communicated to you in our previous correspondence our concerns about the statistical significance of figures derived in this type of analysis.

Table 2 shows the number of returns by income class projected to claim various deductions under present law. Also supplied are the average size of these deductions by income class. Information on non-itemizing charitable deductions and the political contribution credit are not available.

Table 3 provides detailed data of the number of taxpayers by income class who will no longer be able to deduct their medical expenses by comparing the effect of the Conference Agreement to the projection of present law.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

DAVID H. BROCKWAY.

TABLE 1.—TAXPAYERS WITH INCREASES AND DECREASES IN TAX LIABILITY UNDER H.R. 3838[1] 1988

Income class (thousands of dollars)	Number of Taxpayers (thousands)[2]	Percent of total	Number with tax increase (thousands)	Percent of total	Average increase	Number with tax decease (thousands)	Percent of total	Average decrease
0–$10	44,443	33.8	1,692	1.3	$214	12,315	9.4	–$170
$10–$20	29,965	22.8	4,199	3.2	$235	22,463	17.1	–310
$20–$30	21,924	16.7	4,677	3.6	$346	16,547	12.6	–390
$30–$40	14,261	10.8	3,519	2.7	$554	10,537	8.0	–554
$40–$50	8,530	6.5	1,697	1.3	$926	6,797	5.2	–841
$50–$75	7,906	6.0	2,947	2.2	1,378	4,927	3.7	–1,066
$75–$100	1,936	1.5	722	0.5	$3,120	1,186	0.9	–2,187
$100–$200	1,783	1.4	655	0.5	$8,312	1,126	0.9	–5,803
$200 plus	706	0.5	311	0.2	$55.700	393	0.3	–50,122
Total	131,454	100.0	20,419	15.5	1,742	76,291	58.0	–801

[1] See text for substantial shortcomings of these data.
[2] Filers and Nonfilers. Includes tax returns with no change in liability.
Source: Joint Committee on Taxation, Sept. 24, 1986.

TABLE 2.—RETURNS AND AVERAGE DEDUCTIONS UNDER PRESENT LAW FOR SEVERAL MAJOR DEDUCTIONS REPEALED BY THE TAX REFORM BILL 1988

[Amounts in millions]

Income class	Nonmortgage and noninvestment interest expense		Two-earner deduction		Sales tax deduction	
	Returns (thousands)	Average amount	Returns (thousands)	Average amount	Returns (thousands)	Average amount
$0 to $10,000	519	$1,617	356	$301	729	$184
$10,000 to $20,000	4,207	1,121	3,006	358	4,992	238
$20,000 to $30,000	8,092	1,185	6,490	611	8,914	302
$30,000 to $40,000	8,471	1,421	7,246	877	9,370	360
$40,000 to $50,000	6,166	1,501	5,256	1,134	6,592	443
$50,000 to $75,000	6,447	2,059	4,431	1,376	7,090	527
$75,000 to $100,000	1,535	2,625	1,039	1,676	1,805	740
$100,000 to $200,000	1,287	3,472	845	2,095	1,662	842
$200,000 +	526	11,789	326	2,417	664	1,312
Total	37,252	1,729	28,994	961	41,918	422

Note.—Averages take account only of those returns claiming deductions.
Source: Joint Committee on Taxation, September 24, 1986.

TABLE 3.—DISTRIBUTION OF RETURNS AND AVERAGE MEDICAL DEDUCTIONS FOR ITEMIZERS UNDER THE TAX REFORM BILL AND UNDER PRESENT LAW 1988

Income class (Thousands of dollars)	Present law medical deduction subject to 5 percent floor		Tax reform bill medical deduction subject to 7.5 percent floor		Decrease in returns taking medical deductions returns
	Returns	Average amount	Returns	Average amount	
$0 to $10	624	$2,082	410	$2,424	214
10 to 20	3,219	2,558	1,422	3,946	1,797
20 to 30	2,970	2,011	1,598	2,827	2,372
30 to 40	3,515	1,830	1,212	2,738	2,303
40 to 50	1,758	1,885	646	2,707	1,112
50 to 75	1,315	2,034	402	2,983	913
75 to 100	310	3,497	121	5,174	189
100 to 200	214	6,463	69	12,552	145

TABLE 3.—DISTRIBUTION OF RETURNS AND AVERAGE MEDICAL DEDUCTIONS FOR ITEMIZERS UNDER THE TAX REFORM BILL AND UNDER PRESENT LAW 1988—Continued

Income class (Thousands of dollars)	Present law medical deduction subject to 5 percent floor		Tax reform bill medical deduction subject to 7.5 percent floor		Decrease in returns taking medical deductions returns
	Returns	Average amount	Returns	Average amount	
200+	53	17,943	19	32,632	34
Total	14,978	2,227	5,898	3,308	9,080

Source: Joint Committee on Taxation, September 24, 1986.

Mr. LEVIN. Mr. President, how is it fair to the 10 million middle-income taxpayers, those earning between $20,000 and $50,000, to get tax increases? How is it fair to those 10 million middle-income taxpayers with over half of the wealthiest among us, those earning over $200,000 get an average tax cut of $50,000?

The only answer that I have heard to the argument that we should not be raising taxes on 10 million middle-income Americans, those between $20,000 and $50,000 is that more middle-income Americans will get a tax cut. That is not much answer for the 10 million. Those are not numbers; those are people. Those are struggling middle-income Americans, 10 million of them, and indeed there are 6 million lower-middle-income Americans who also get a tax increase whose struggle is just as great. And it is no answer to say, "Well, there are more of you who are getting a tax cut." It is no answer to say that when we have half of the wealthiest among us getting an average tax cut of $50,000.

Third, Mr. President, this bill makes an unfair and illogical distinction between those taxpayers with significant equity in their home and those taxpayers who have little or no equity in their homes or who are renters.

This bill would allow homeowners seeking a way around the repeal of the consumer interest deduction to sign a second, third, or fourth mortgage on the equity of their home. Those with enough equity in their home could use that money to pay for consumer items and deduct the interest on the second mortgage. But renters and those with little or no equity could not deduct that interest even if they were trying to meet major expenses such as medical bills and tuition costs. So, under this bill you could have a taxpayer making $30,000 a year with a home in which he or she has built up a lot of equity and a taxpayer with the same income with a new home or no equity or who rents. The first taxpayer can, in effect, deduct some consumer interest; the second cannot. So much for achieving the goal of fairness by taxing equal incomes equally.

Mr. President, I shall ask unanimous consent to have printed in the RECORD a newspaper ad which is already appearing, typical of a lot of other newspaper ads that reads, "Tax reform and how it might affect you. What should I do if my credit card and loan interest isn't tax deductible?" And the sponsor of this ad says, "Not to worry. You can open a home equity line of credit."

Mr. President. the only people who will be able to open up that line of credit will be people who have built up equity in their homes. The people with low equity or renters cannot. I again ask unanimous consent that this be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Tax Reform and How It Might Affect You]

"WHAT SHOULD I DO IF MY CREDIT CARD AND LOAN INTEREST ISN'T TAX DEDUCTIBLE?"

NOT TO WORRY!

[You Can Open A Home Equity Line of Credit]

Mr. LEVIN. I thank the Chair.

Let me close the comments that I have on the fairness aspects of this bill by describing the following situation which could occur after the passage of this bill. There is a middle income couple sitting around their kitchen table filling out their taxes. They both work hard and sort of resent having to pay as much in taxes as they do. But they hear that this new tax law has provided tax relief for middle-income America. They figure out their taxes. Just out of curiosity, they take their old tax forms out and figure their taxes out under the old law. Much to their surprise, they find they got a tax increase of a few hundred dollars. They are disgusted. They turn on the TV in order to forget their troubles for a while. The news is on. They see an interview with a business executive who is asked how he feels about the fact that his company's taxes this year are a few million dollars less than they would otherwise be because he was covered by 1 of the 650 transition rules in the tax bill. They shut off the TV in anger. They call their Senator's office for a explanation.

What is our answer? "Don't feel bad. More people got tax cuts than got tax increases" is the best we are going to be able to do I am afraid if this tax bill passes.

I would briefly like to focus on the hidden costs of this tax bill. As I have said, based on the best information available to us, 20 percent of all middle-income Americans get a tax increase in this bill.

And the rest of us—as individuals and as a society—will pay more because of this bill.

In computing the net tax reform impact we must subtract more than the cost to individuals of eliminating specific tax breaks; we must also subtract any cost increases which will be passed on to us as a direct result of the tax plan. And there are a lot of those cost increases.

First, we should remember that the individual tax cuts are financed largely by business tax increases—roughly $124 billion worth. Now, it was just a few years ago that the President confessed that he was tempted to try to eliminate business taxes altogether because, as he explained, businesses don't pay taxes, people do. The President overstated the case, but it is clear that businesses do not automatically swallow the increased costs by increased taxes; they try to pass those costs through to consumers in the form of higher prices. Of course, not all the costs can be passed through. Competitive pressures, among other factors, prevent that. But a substantial percentage can be. And that percentage should be subtracted from any individual after-tax savings created by this tax bill.

That subtraction, however, will not be equally distributed throughout the economy. For those lower- and middle-income Americans who get tax cuts in the $200 to $400 range, the increased consumer costs will take a larger bite out of their newfound wealth than they will for the richest among us—those making over $200,000—more than half of whom will get a tax cut averaging $50,000.

Second, if someone wants to send their children to college, their costs may increase because of this bill. Tuition costs may go up as a result of the way this bill treats certain charitable contributions. Gifts of appreciated property—which help many colleges and universities keep tuition down—will not be treated in the new Tax Code the way they are now. As a result, colleges expect a decrease in those contributions of appreciated property. Nonitemizers—and remember, this new so-called simplified tax code is supposed to increase the number of nonitemizers from perhaps 70 to 80 percent—are also expected to decrease their level of giving since

their contributions are no longer deductible. The net result will be higher tuition as higher education scrambles to cover its costs.

Third, consider the position of the renter. We have all heard about how the bill hits the real estate industry, and to the degree that is true it also gets to renters. Construction of rental units is expected to decline, and many analysts expect rents to increase. And that increase will have to be subtracted from the tax cut some get in this bill.

□ 2020

Finally, State, and local taxes may increase. To begin with, if State income taxes are linked to the Federal tax base—as most are—this bill has the effect of increasing the amount of money States collect unless State income tax rates are reduced to avoid a windfall. Beyond that, a revenue neutral tax bill does nothing to reduce the Federal deficit.

Since we are legally obligated by Gramm-Rudman to reduce the deficit, we may end up slashing programs—including programs which provide assistance to State and local governments. Those governments will either reduce their service levels or try to raise more revenue. Either way, individual taxpayers will suffer—and ultimately they will pay.

In those and a number of other ways, this bill has hidden costs for us as individuals. But it also affects us as a society. Let me give you an example.

We have spent a lot of time bemoaning the trade deficit that we face. Well, one of the reasons we face it is because other countries give direct subsidies to their industries.

In the face of a growing trade deficit, it does not make sense to take away the limited support we do give to our companies through the Tax Code. Why cut back on the investment tax credit when we so desperately need new investment? Why reduce the research and development credit when we are starting to lag behind our competitors in innovative technology?

I fear that we are placing American industry at a competitive disadvantage. Of course, economists differ on the likely impact of this bill. But most admit that we are taking a risk with economic growth and jobs. I found the testimony of the chief economist of the National Association of Manufacturers before the Joint Economic Committee particularly disturbing. He stated:

> In sum, the evidence is overwhelming that accelerated depreciation and the ITC (investment tax credit) exerted a large and statistically significant impact on capital formation. The conclusion, also corroborated in extensive empirical testing using state-of-the-art econometric procedures, is that the loss of these provisions would sharply raise the cost of capital.

Although the precise effects of the trade deficit are difficult to measure, common sense leads to the conclusion that the overall effects would be adverse. An increase in the cost of capital would prevent or hamper new investment in new technologies that could provide American corporations with comparative advantages in world trade.

He went on to state that:

> It is doubtful whether the efficiency gains (resulting from tax reform) could be sufficient to counterbalance efficiency losses due to declining capital spending.

Murray Weidenbaum, former Chairman of President Reagan's Council of Economic Advisers has written:

> Although we can debate the precise economic effects of these changes, the direction is clear: less investment, lower economic growth, fewer jobs.

Lawrence Chimerine, chairman and chief economist of Chase Econometics, testified before the Joint Economic Committee, as follows:

> Some argue that the incentive and efficiency effects of tax reform will lead to significantly higher long-term growth. In my judgment, currently available evidence does not support this conclusion. In fact, the increase in the cost of capital which will occur creates a significant downside risk.

Consider a final brief illustration of the social costs involved in the bill. I have already mentioned the expected reduction in charitable giving in connection with college costs. But obviously the same problem impacts on other nonprofit charitable institutions ranging from hospitals to art museums.

The expectation is that the charitable contributions which all of them depend on will decline. As one observer indicated:

> I don't think people give because of tax breaks, [but] I think they give more because of tax breaks.

If those tax breaks are reduced and the giving declines, then those institutions will either cut back on their operations or increase their fees. When that happens, society suffers—we become less healthy, less culturally enriched, less able to care for each other and less capable of taking care of our heritage as human beings. That is not a cost I can quantify in economic terms, but it is a social cost we should not be asked to pay.

Those are just some of the hidden costs of this bill. Taxpayers—our constituents—will find them in the months and years ahead. And when they do, they are going to ask just why we did it.

Why did we engage in this exercise? The American people are smart. They are skeptical about this bill and they are right. Too many middle-class people get a tax increase. It substitutes too much new unfairness for the old unfairness. It does nothing about deficit reduction.

Mr. President, I, as I believe every Member of this body, again want to commend the chairman and the other members of the committee for the effort that they have put into this tax bill. The fact that I and some others will not be able to vote for it, despite its good aspects—and there obviously are good aspects—in no way diminishes our great fondness and feelings that we have for the people who have carried this banner and who have put together this tax legislation.

I wish I could vote for this legislation. I wish we were not socking it to so many middle-income people. I wish we were doing something on the deficit. I wish we were not creating a whole new category of unfairness. I wish we did not have the retroactivity. I wish that charities would not be suffering. I wish that retirees on fixed income and high medical bills would not be getting tax increases. There are a lot of wishes that I have.

Principally, I wished, and I still wish, that somehow we could take the long-overdue revenue from loophole closing, the minimum tax, revenue which this bill is finally achieving for the government, and apply it to deficit reduction. That is our No. 1 goal. That is what 69 percent of the American people say we should do with that revenue. We ought to listen to the American people. They are a lot smarter than a lot of us give them credit for.

I thank the Chair and I yield the floor.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Thank you, Mr. President.

Mr. President, at the outset, let me say that I do intend to vote for this bill. I do intend to vote for it, although I have many reservations. On balance, I have concluded that it is important to take the first faltering, perhaps stumbling, step toward true tax reform.

To some degree, I feel a little like a person about to make his first parachute jump, but I am a little unsure whether I learned to pack the chute correctly. It is a risky venture. And so will tax reform be a risky venture.

The conference report is significantly different from the bill the Senate passed. I was an enthusiastic supporter then. I believed, as 97 out of 100 of our colleagues believed, that we had come to a point where we had an enthusiastic body ready to buy off on a true tax reform.

Unfortunately, the Senate bill, as all bills do, had to go to conference. And that conference with the House gradually, perceptively, day by day in the conference, eroded away the enthusiasm, the genius, the clarity of the Senate bill, and left us with a much more muddied picture today.

The most attractive feature of the proposal we have before us is that it drastically reduces marginal rates on

individuals and businesses. The original Senate bill, however, provided horizontal equity between taxpayers. There was a reduced number of loopholes and even a reduced value of loopholes for those which still remained. Also there was a semblance of balance between service industries and those which are capital intensive.

And so we sent the bill to conference, Mr. President, knowing that there were some problems but expecting them to be largely resolved in the meeting with the other body. Instead, there are more problems, not fewer. The package we got back looks remarkably similar. There are the attractive wrappings of the same low rate, but the contents are decidedly different.

□ 2030

The conferees, Mr. President, engaged in bracketeering—knowing that they had to keep close to those original rates, the low rates on individuals and on businesses, but the package which undergrids those low rates is decidedly different than the Senate bill which we sent them.

I think there are two principal problems with the conference committee report. It is more discriminatory by far than the Senate bill. And there is increased economic risks over the Senate bill. Discriminatory in many ways, and my colleagues particularly and most eloquently, Senator DANFORTH, has expressed in detail many of those discriminatory features. Let me only discuss a few.

We sent to the conference, Mr. President, a proposal that would allow citizens who itemize their tax deductions to take 60 percent of their deductions on State and local sales taxes. They can take 100 percent on State income taxes, and 100 percent on State and local property taxes. And the other body proposed that all sales taxes could be deductible, 100 percent of deductiblily. I always thought that conferences when they had a single item on which the two bodies disagreed attempted to reach some kind of compromise.

I do not know, Mr. President, how anybody in a conference could have remotely suggested that a compromise between 60-percent deductibility on the other hand and 100-percent deductibility on the other hand was zero. But zero is what it was. And zero is what we now face. It is gross discrimination from one State to another. And my State and several others will lose for each itemizing taxpayer—something like $100 million in my State of Washington and that simply is unfair.

Some will say that on the other hand there were deficiencies that applies to taxpayers in States who have heavy income taxes, and that probably is true. There is a windfall in those States. With the different treatment of capital gains we now give to State tax systems that have income taxes, most of them at least, will receive a windfall. The end result: Taxpayers in many of those States will have to pay more, certainly more to the degree they have capital gains.

So perhaps in spite of the unfairness of the State sales tax, we may have ended up lucky compared to the taxpayers in those other States who will find that while they gain on the one hand in lowered taxes from the Federal Government, it will be taken back on the other hand at the State level by their State income tax system.

The conference bill gangs up on certain industries, especially those who make heavy capital investments. These are the industries terribly important for the future of our country, and our international competitiveness. There are also industries we depend upon in Washington State.

The loss of the investment tax credit, the loss of corporate capital gains, the lengthening of equipment depreciation schedules, partial repeal of the completed contract method of accounting all strike hard at the forest products industry, the aerospace industry, and the agricultural industry. These are the fundamental businesses of my State. Washington State is also the largest per capita State in foreign trade and has probably done better and been more competitive than virtually any other in foreign trade activities. We will be faced with simply one additional burden in our effort to be competitive internationally. And I fear that the same applies to too many other States and too many other industries.

Mr. President, I also have concerns about the federalism effects. I think Members of this body know that I have long had an interest in an appropriate division of responsibilities and benefits between the various levels of government in our country. Most States in this Nation have a fiscal year which begins on July 1. Since July 1 of this year, nine have cut their State budgets. Eighteen have cut their fiscal year 1986 budgets, after they first enacted that budget. Real spending will be lower in 1987 than in 1986 in 22 States.

The end result of this bill is a further economic showdown that could bring economic difficulties to many of these States who are already hurting, who are already reducing their budgets, and who are already finding it difficult to reach the balance they are required to reach.

Higher education, perhaps more than any other facet of our society, suffers from this tax bill. It is a potential catastrophe for those who represent the very future of our Nation. The most cost-effective investment in our future is higher education. This bill simply bashes universities and colleges. And many of them are already on the financial ropes. Taxation of fellowships and scholarships to the extent they are not used for tuition, the large stock or real estate gifts to colleges and universities which are now subject to a minimum tax, the $150 million cap on the value of tax-exempt bonds held by colleges and universities at any one time—all of these represent serious problems for our higher education system.

I believe that as a result our children and those who seek the value of higher education will pay for it. They will pay for it in higher tuition rates and higher costs for their college education, which could well take back from those families who, on one hand, thought they were getting a tax reduction but who, on the other hand, find that the tax bill requires additional spending for their children to stay in college.

We are entering into an uncertain period. I said at the beginning it is very much like that first parachute jump where you are uncertain as to how well you have packed the chute.

Let me quote from a few of those who have major economic responsibilities in this Nation. Don Regan: "They"—speaking of his friends on Wall Street—"are as confused as I am. They don't know the effect."

There have been no really responsible econometric models to predict the effects of this tax bill. We are taking a great leap of faith in hoping that most analysts are probably wrong.

Jane Seaberry, in an article entitled "More Imports, Less Investment Predicted At End of Tax Trail" said:

> Economists cite two reasons why the tax proposal could make the trade deficit worse. Generally, when consumers spend more, they tend to buy more imported products. Additionally, shifting the tax burden to business would raise the cost of U.S. firms' goods, making them more costly overseas.

Murray Weidenbaum says:

> Impending changes will depress the economy. Although we can debate the precise economic effects of these changes, the direction of the impact is clear—less investment, lower economic growth, fewer new jobs.

Alan Greenspan said that under tax reform the "odds of a recession is a 'close call':"

Continued uncertainty about the tax laws contributes to the potential for economic slowdown. The retroactivity which, in spite of protestations, is still in the tax bill, penalizes good-faith investment—behavior of the past—and ensures a rush to the well next year to again tinker with our tax laws. Continual flux in the tax system is at least as great a problem as overregulation and excessive red tape.

Of course, rounding out my concerns is the fear that the bill will dash hopes to achieve deficit reduction. I do not share the totally negative predictions of some of my colleagues with respect

to the budget and budget deficits of fiscal year 1987. But I think we do face at best a horrendously large problem to meet the goals we have set for ourselves in fiscal 1988. I hope, Mr. President, that this bill, when it passes—as I am certain it will—takes a long, slow trail to the White House, and I hope the President will think long and hard about the date on which he signs this bill.

□ 2040

We should ensure that this tax bill is not signed by the President until after October 1, to hold us to the tough test of the current Tax Code because if it is signed before October 1, it will be too easy then, an open opportunity, to use the calculated $11 billion increase in revenue from the new Tax Code next year to balance our budget this year.

If we do that, we have absolutely destroyed any opportunity to continue on the path toward budget sanity in this Nation.

So if I have one, single message, it would be that we act with deliberate speed; that we take all of the time that is appropriate and necessary to get the bill out of Congress and use a slow boat to send it to the White House. Then I hope the President will take the extra few days necessary to get us past October 1 and help us save us from ourselves.

Mr. President, we are faced with a difficult choice. Are the benefits of the bill, and they are many, worth the risks I have mentioned; of economic decline, and international trade problems and, ultimately, a potential lower standard of living for all Americans?

On balance, Mr. President, I have decided that we must take the risk. We must take the risk because people are quickly losing faith in our current tax system. That, I think, is what led to the efforts for tax reform in the first place—the fact that fewer and fewer were voluntarily complying with our Tax Code.

There is a larger and larger amount of unpaid tax money out there, citizens refusing to pay. The special preferences in our system, targeted tax expenditures and targeted loopholes, have caused us to move in recent years toward a fully customized tax system, almost a separate code for each person, each industry and each interest.

Voluntary compliance, which has been the strongest element of this country's Tax Code, will continue only if faith is restored that the system is not unfair and not uncontrolled.

Mr. President, I guess on balance this system does begin the process of moving toward putting all taxpayers on a more equal footing. And that is necessary if we hope to get our economic house in order.

To control deficits, we must look at both the spending and the revenue side of the equation. We have made a mediocre, but I think a marginally, successful move toward the control of spending and it is appropriate now to make what is probably a marginally successful move toward success on the tax side.

Mr. President, some will dance in the streets when this bill is signed into law and claim a great victory. But, in reality, the great promise and the genius of the Senate bill has faded into a dull, gray compromise.

I believe the expectations of our citizens have been raised too high. There may be a rude awakening in 1987 and in 1988, but still, by a narrow margin, it is worth trying.

Therefore, Mr. President, I shall vote a quiet, unenthusiastic yes.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, first, let me say to the distinguished chairman of the committee, Senator PACKWOOD, that my remarks will make clear as we proceed that I think this bill is a testament to his leadership and to his courage and to his willingness to think things through and to follow his impulses at very critical moments.

I think he has demonstrated really unparalleled leadership on this issue.

He also has the very rare personal quality that I always say characterizes those among us who are leaders. That is a personal generosity. It is really quite unusual in politics and in life.

Let me first of all compliment him for his leadership on this bill and the monument he will leave if we pass this in the next 24 hours.

Let me also say about the distinguished Senator from Louisiana that he is regarded with awe by many young legislators, including myself, but he is also regarded with a great deal of affection for he manages to move things through in his way while at the same time keeping everyone on board and committed to the institution that we revere, the Senate.

Mr. President, this has been a long journey for me. In the opening debate of this bill, I recalled back in 1967 when I signed my first contract as a professional basketball player. I negotiated the amount of compensation and turned to an attorney who said to me, "Tell me, do you want to take this as salary, as deferred compensation, as fringe benefits, or whatever?"

I said, "I do not know. I just want to be paid well for doing something I love."

He said "It is not that simple."

That was my first contact with the complexity of the Federal Income Tax Code.

Then I remembered in the mid-1970's reading some articles by Stanley Surrey, a professor at Harvard, who had earlier been at the Treasury Department in the early 1960's when President Kennedy proposed dropping the tax rate and broadening the tax base.

I was absolutely shocked that the tax rate could go as low as he and a few other economists said it could go if you were willing to close some loopholes.

Mr. President, I think I saw that same recognition and surprise in the face of members of the Finance Committee when the distinguished Senator from Oregon unveiled his low rate income tax system. All the members in the committee said, "Bob, if you can get the rate down that low, it is worth it."

So, Mr. President, my odyssey was begun back in 1967 with the signing of that contract, and then in the mid-1970's with my readings of economists and tax experts about how low the tax rate could go if we were willing to close loopholes; then, through the current debate with the introduction of the Bradley-Gephardt fair tax back in 1982 that was then followed in the House of Representatives by the introduction of the so-called Kemp-Kasten bill; then Treasury I, with the President's strong commitment to tax reform in very clear evidence; then Treasury II; and now, Mr. President, this tax reform measure that we are on the brink of passing.

□ 2050

There are some basic rationales for what we are about to do. There is an economic rationale, there is a cultural rationale, and there is a political rationale.

The economic rationale is very simple. It is that if you want this country to have long-term stable, noninflationary economic growth, you need two things. The first thing you need to do is look out for the world trading and financial system. The second thing you have to do is have the most efficient allocation of resources domestically that you can possibly obtain.

The question is then posed: Which is the more efficient allocator of resources? Is it members of the Ways and Means Committee and the Finance Committee, or is it the market? I believe it is the market. What tax reform says is let us remove the Tax Code from between investor and ultimate investment so that capital will flow to those areas of our economy that have real value in the marketplace, which, when that investment is made, will not only generate jobs and wealth but enhance our comparative advantage internationally.

Mr. President, that is the economic rationale for tax reform. Succinctly put, it is to invest money to make

money, not to lose it for tax purposes. But there is another rationale that I call the cultural rationale.

I think that any taxpayer in this country could express to you the cultural rationale for tax reform. It is a frustration and an anger with the present Code. I remember a couple of years ago I was on a call-in-show in New Jersey. The caller phoned in and said, "You know, I really like that tax proposal you have made." I say, "Why?"

He said. "I pay an effective tax rate of 38 percent and my next-door neighbor, who makes the same income I do, pays an effective tax rate of 6 percent. Yet he thinks I am stupid because I don't spend all my time trying to figure out how I can lose money in order to pay less taxes."

"But," he said, "I am a chemist. I like doing what I do best in the laboratory. And with this tax reform, I will be able to do that and my neighbor, who makes about the same income I do, will have to pay his fair share."

The rationale culturally for tax reform is that equal income should pay equal tax. Just a few facts convey that meaning. In recent years, the effective tax rate paid by many people who made more than $1 million in this country has been about 17 percent. That is what they actually paid. Many middle-income families pay more than that.

The second fact. I 1969, there were 10,000 tax shelter cases in some stage of audit or litigation. The Commissioner of the Internal Revenue Service told us that in 1985, there were 263,000 tax shelter cases in some stage of audit or litigation and that was with a 1 percent audit policy.

The third fact: In 1967, the value of all loopholes was about $37 billion. This year, the value of all loopholes will be over $400 billion.

Mr. President, I was on a dais in New Jersey not so long ago—actually, 2 years ago. I told this story during the Senate debate on the bill. It bears repeating. I was seated next to a major executive in New Jersey, who said to me during the salad, "You know, Senator, I have a problem with my son."

For a politician, that is what I call a threshold question: Do you followup on it or do you leave it? Well, I was up for reelection so I followed up on it.

He said, "You know, my son is 27 years old and he works for a corporation, but all he can think about is how to avoid paying taxes." I tell him, "Look, go to work, learn your profession, move up in the company, pay your taxes; don't try to avoid it. But all he thinks about is trying to avoid paying taxes."

Then he said, "Senator, you know my concern? I am afraid there is a whole generation of young people out there who will grow up believing they have no responsibility to pay for the functions of Government and I am worried."

Mr. President, he should be worried. We should all be worried because voluntary compliance is what has characterized the income tax system from the beginning and it is eroding. That might be why the seventh largest economy in the world is the underground economy of the United States. That might also be why when, in 1981, a pollster named Dan Yankelovich did a poll and he asked the American people, "Do you think you will get ahead if you abide by the rules?" 81 percent of the people asked said "no."

Mr. President, I think the set of rules that they were referring to in part were the tax rules that produce a result in which equal incomes do not pay equal tax. With this tax reform bill, there will be a restoration of trust in the rules, in the tax rules. So that is the cultural rationale.

But you might have an economic rationale—let the market allocate the resources—and a cultural rational that equal incomes should pay equal tax, but this is Washington and we have to have a political rationale as well.

There is a slogan. The slogan is, in the political rationale, the Democrats argue for tax reform because it allows you to be for growth and equity simultaneously. The Republicans argue that they are for tax reform because this is a realignment issue.

But those are just slogans, Mr. President. If we really want to find the political rationale for tax reform, we have to look at who the taxpayers are, and we have to remember that in 1984, more people paid taxes than voted for President.

There are just a couple of facts we have to remember about who the taxpayers are. The median income in America is $23,450. About half the taxpayers earn more, about half the taxpayers earn less.

Second fact: 85 percent of all taxpayers earn under $40,000 in income.

Mr. President, sometimes around here, we talk as if people making $75- or $80- or $90- or $100,000 were middle income people. Well, I do not deny that people have a tendency to spend up to the level of income they have and therefore, everybody feels pinched. But fully 97 percent of all the taxpayers earn under $75,000. Another way to put it is only 3 percent of all taxpayers earn more than $75,000.

So, Mr. President, let us keep in mind who these taxpayers are as we think about tax reform.

□ 2100

(Mr. TRIBLE assumed the chair.)

Mr. BRADLEY. The key to understanding the political rationale in addition to knowing who the taxpayers are is to be found in the figures that I earlier referred to on the value of loopholes. The loopholes in 1967 were worth $37 billion; the loopholes today are worth over $400 billion. In that period from 1967 to 1984, as a result of economic growth and inflation, the Federal Government had a surplus of revenues, and the Federal Government had to decide what it was going to do with that surplus of revenues. One of the things it did, Mr. President, was spent some more in certain program areas. But by and large what it did most was increase the number and value of loopholes from $37 billion in 1967 to over $400 billion today.

Mr. President, there is one thing that we did not do. The one thing the Congress did not do with those surplus revenues is recycle them to middle income taxpayers in the form of lower tax rates, or recycle them to low income taxpayers in the form of increased exemptions and increased standard deductions. As a result, you found more and more low and middle income taxpayers paying a greater and greater proportion of their family budget in taxes.

So, Mr. President, when Members of the Senate argue against this bill because they have not heard from anybody out there who is clamoring to support it, and they have heard from a number of special groups who are opposed to it, that does not surprise me. When a politician mentions the word "taxes" these days, people do not want to hear it because they figure, "Woops, there it comes, another grab into my pocket for my hard-earned money."

This is one bill that I believe is different for middle and low income taxpayers in particular.

Every speaker who has taken the floor today and talked about tax reform has said, "Well, there are some things I like, some things I don't like," either of which are reasons to vote for or against the bill.

The one thing that everyone said they liked is that this bill takes 6 million low income people off the tax rolls. But then they dismiss it as something that is as sure or unsurprising as the fact that the sun will rise tomorrow morning.

If it is so unexceptional, if it is something that is so taken for granted, Mr. President, why has it not happened before? This is a major accomplishment. For example, take a single parent with three kids making $12,000. What will this tax bill mean to them? It will mean they pay $1,200 less in income tax. It will mean they get an 83-percent tax cut. It will mean they have an increase of 10 percent in after-tax income.

What about a couple with two kids making $15,000? They will have a tax cut of $826, Mr. President. And what does this say when we pass a bill that takes 6 million people off the rolls, that gives this size tax cut to low

income working families? What it underlines and emphasizes are values with which I think everyone in this body would agree—values that say work instead of welfare, dignity instead of despair, that effort pays off, that you should not be penalized if you try to improve the quality of life for your family.

Mr. President, I think it is one of the major accomplishments of this bill that in fact low-income families are going to get such a sizable tax break.

What about the middle class, Mr. President? We have heard a lot of talk about that. Just a few facts and definitions. Let us define middle class as a household with an income of $19,000 to $47,000. Ninety percent almost of all taxpayers in this country fall under that figure. Middle class, $19,000 to $47,000.

Now, what has happened to that group of Americans? Well, in 1978, Mr. President, the middle class, defined as $19,000 to $47,000, represented 52 percent of the American taxpayers. But in 1984, Mr. President, that group of Americans represented only 44 percent of the American taxpayers. So what happened to those Americans who were middle class but now are not?

What happened to over two-thirds of them, or 70 percent of them, was that they dropped down under the middle class level of $19,000; their economic circumstance deteriorated; that in America between 1978 and 1984 a sizable proportion of Americans became poorer. Frankly, I think we have an obligation to reverse that trend. I would argue that this bill does reverse that trend.

What does it do for these middle income taxpayers? First of all, four out of five taxpayers in this country they will pay no more than a 15-percent tax rate. Before bracket creep took those taxpayers up in the higher and higher tax rates, there was a time in the early sixties when four out of five taxpayers paid no more than the bottom tax rate. This bill returns us to the time when four out of five taxpayers will pay no more than the bottom rate, in this case 15 percent.

What else happens to these middle-income taxpayers? They keep their biggest deductions. They keep mortgage interest deductions, property tax deductions. They are allowed a $2,000 IRA. They keep charitable contributions. They are allowed to deduct their child care expenses.

These middle-class persons, who represent the vast majority in this country, not only get a 15-percent tax rate but they also get to keep the deductions that they most use.

What does this bill specifically mean to them in dollars and cents? Well, for 69 million Americans earning under $50,000 in income, in the first year after passage of the bill they will get a tax cut—12 million will have a tax increase, 69 million will have a tax cut. But as I have tried to argue throughout this debate, the value of this reform to the middle-income taxpayer is not what happens in that snapshot. It is not what happens in that 1 year because this is not a 1-year tax cut. This is a reform of the system, and for that middle-income family what it means is if they are making $30,000 and the other spouse takes a job and they earn another $10,000, they are going to pay less of that additional income in taxes because they will still be in a 15-percent bracket. In fact, under the current law, some people who are in a 33-percent bracket will under this bill be in a 15-percent bracket. This means if you earn more you are not going to be bumped into a higher bracket. A family of four will be able to earn over $40,000 before they are bumped into the higher tax bracket. And even then, they will still pay no more than 28 percent.

So, Mr. President, as a result of this bill no longer will people in poverty pay more in tax than some millionaires. As a result of this bill, no longer will some middle-income taxpayers pay a higher tax rate than some multimillion-dollar corporations.

Mr. President, what about simplicity? The argument has been made, "Gee, it does not do much for simplicity." For about 13 to 14 million Americans, it does a lot for simplicity, because those are Americans who are now itemizing their returns, and who, as a result of the increase in the standard deduction and the exemption, will be using a short form and will not have to itemize their returns.

□ 2110

Mr. President, I believe this bill has an economic rationale, it has a cultural rationale, and it has a political rationale. When I go back to New Jersey from time to time, people say to me: "When are you Democrats and Republicans going to get together and do something positive for America instead of this partisan bickering?"

Mr. President, I say that we have done something positive for America. And I would say that what we have done in passing this tax reform bill should give the American people a greater sense of confidence about our ability as an institution to deal with the other complex issues that confront us in the economic area.

No one is arguing that all one need do is tax reform. It is a necessary component, but it is not a complete agenda for economic growth. We have to move on exchange rates. We have to remove the debt timebomb out there that has taken a million jobs from this country in the last 4 years. We have to reduce the deficit. We have to toughen up our trade laws. But because we have demonstrated our capacity and our will to act on something as complicated as tax reform, with the many powerful forces on all sides, it should give the American people confidence that we will be able to deal effectively with these other problems as well.

Mr. President, ultimately what tax reform is about is a debate in this country as old as the Nation. If you go back and read the Federalist Papers, you find that debate raging there. It can be boiled down, in part, to one simple question, and that is: Do you believe a legislator's job is to represent this group and that group, this interest and that interest, or do you believe that he or she should strive to represent the general interest? I believe the latter, and I believe tax reform is the issue, and I believe the Senate and the House, in passing this legislation, will have acted in the general interest.

Mr. President, in addition to the distinguished Senator from Louisiana (Mr. LONG), whom I praised earlier and told of my affection and respect for his ability and his amazing wit and his sensitivity to everyone, and in addition to offering a generous and what I thought a heartfelt compliment to the distinguished chairman of the committee, Senator PACKWOOD, I would like to thank a number of other people.

I thank Livia Bardin, of the Fair Tax Foundation, who has worked tirelessly to ensure that the general interest was as well represented as the special interests.

I thank the staffs of the Finance, Ways and Means, and Joint Tax Committees, who have all put in endless hours to translate tax reform into law.

In particular, I want to thank Dave Brockway and Randy Weiss, who have worked with me since 1981, when I began designing the first fair tax.

I thank Mary Frances Pearson, Bruce Davey, Ben Hartley, and Karen Phillips for their valuable assistance in drafting several provisions in the bill.

I thank Bill Wilkins, Randy Hardock, and Barbara Groves for their expert advice and courteous cooperation.

I thank Joe Minarik for all the rabbits he pulled out of the hat, for his expertise, hard work, and generous commitment to tax reform.

I thank Marsha Aronoff, my chief of staff, who was the captain of strategy and was tireless in her work and commitment. Also, Gina Despres, who helped shape the idea from the beginning, who worked hard and long to further the bill, and who interpreted, argued, reasoned, and fought for the idea relentlessy.

Now it appears that all of us—Senator PACKWOOD and Senator LONG and the staff and me—all who have worked on this, have won. I am proud of what I hope we are about to do, because in approving this conference report, we will be ignoring the screams of the

special interests, we will be ignoring the party labels, and we will be doing what is right for America.

Mr. President, if there is one lesson that I personally take away from this, it is that if you work hard, if you try to think a problem through, if you think about how to communicate it and how it affects people's lives, if you recognize that it takes more than just one person, that it takes many people to succeed, then you are able to overcome even the most entrenched interests and the most difficult obstacles.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

□ 2120

Mr. MATSUNAGA. Mr. President, as a member of the conference committee, I rise in support of the conference report on the Tax Reform Act of 1986 (H.R. 3838).

Mr. President, I do not believe that any Member of this body will disagree with the observation that our present Tax Code has turned this great society of ours into would-be tax avoiders and evaders. There was a time in our country's past when American workers would invest their savings in business in order to share in the profits of our great free enterprise system. Today, however, there is a tendency to make investments in tax shelters in order to avoid the payment of Federal taxes. Voluntary compliance, which is the very essence of our Federal income tax system, has decreased markedly over recent years.

One important accomplishment of the tax reform bill which we are considering today will be to increase public confidence in our income tax system. This in turn will serve to increase public confidence in our Federal Government because the income tax return may be the most frequent source of contact between citizens and their Government. It is highly essential that the American public support the income tax, because basically it is a fair way to allocate the burden of payment for Government services. Because we rely so heavily on the income tax to defray the cost of Government, we need to be sure that it works primarily as a self-enforcing system. A self-enforcing system, of course, requires voluntary compliance, and voluntary compliance in turn, requires public confidence.

Mr. President, the pending tax reform bill will increase public confidence because it proposes a fairer, more efficient, and more rational system than our current Tax Code. The pending conference report meets the test of fairness by removing from the tax rolls 6 million low-income taxpayers who are struggling to earn a living wage. The liberalization of the earned income credit will help to assure that low-income citizens are no longer taxed into poverty. The bill also meets the test of fairness because it provides that any corporation which reports a profit must pay a minimum Federal income tax. Individual high income earners must also pay a minimum Federal income tax under the new tax measure. This will end the situation under the present code, where working men and women earning low- and middle-incomes find themselves paying thousands of dollars of taxes, while corporations or individuals earning millions of dollars, pay no taxes at all. Those taxpayers justifiably conclude that something is very wrong with our state of affairs.

Mr. President, the legislation before us meets the test of economic efficiency by restoring the market to its rightful position as the allocator of resources in our economy. This is accomplished through the dramatic lowering of the individual tax rate by eliminating deductions, credits, and other preferences. The 14 individual income tax brackets with its 50-percent maximum rate are replaced by two brackets of 15 and 28 percent. The maximum corporate tax rate is reduced from 46 to 34 percent with lower graduated rates for small business. In my judgment, the reduction in rates, coupled by the expansion of the income tax base, will result in a more economically based system because it will lessen the incentive to invest in tax shelters and increase the incentive to invest in economically viable enterprises.

Mr. President, a number of commentators have expressed concern that the reduction in the top individual rate is far too dramatic in this bill and will diminish the progressive nature of the individual income tax system. I am inclined to agree. Our recent experience has shown us, however, that a higher maximum individual rate of 90, 70, or 50 percent will not guarantee a progressive system, since tax shelters have been allowed to lower dramatically the real effective tax rates. I would far prefer a system of lower rates built upon a broad base rather than a system of high marginal rates built on a base riddled with loopholes.

Mr. President, the conference report meets the test of rationality by rewarding the kind of person that the current system unjustly penalizes. The person who is frugal, who does not borrow to finance current consumption, and who invests his funds to maximize income gets a fair shake in the pending measure.

Under our current tax system, favoritism is shown toward persons who borrow to live beyond their means and invest for tax advantages. The bill before us corrects that situation by limiting the use of tax shelter losses and by phasing out the tax subsidy for consumer debt. Instead, such persons will be encouraged to save by the low marginal tax rates in the bill. In addition, the bill dramatically lowers the marginal rate of tax on increases in income that can result from prudent savings, such as compounding interest on savings accounts and certificates.

Mr. President, in a bill of this magnitude, there will often be provisions which we find to be unpalatable. There is one particular area of the tax reform conference agreement which troubles me. I refer specifically to the retroactive effective date of July 1, 1986, for the repeal of the 3-year basis recovery rule for pension benefits. As a member of the conference committee I opposed the retroactive nature of the provision. I worked with other conferees in an effort to obtain a prospective effective date for this change, and argued that Congress should provide for a reasonable transition period so that those who have relied on the current law are not adversely affected by a sudden, dramatic, and retroactive change in policy. A transition to a new tax system is always difficult, but in this instance we are unfairly penalizing taxpayers who retired after July 1, 1986 with the full expectation that they would be able to recover their full basis within the 3-year period. I am, therefore, very much disappointed that this provision is contained in the reform bill now under consideration.

Mr. President, although this bill is not perfect, I believe it provides for a significant improvement over our current system. In deciding whether or not to support the bill, we should ask ourselves whether or not the conference agreement will result in a fairer, more efficient, and more rational system than our present code. I believe the answer is in the affirmative.

All in all, Mr. President, passage of the tax reform bill as reported by the conference committee will mean that individual and business decisions will once again be made on an economic basis, not to avoid the payment of taxes. I believe this bill will help this free enterprise society of ours to reach its full potential. For that reason alone, Mr. President, I believe the tax measure before us deserves the support of this body. I, therefore, urge my colleagues to approve the conference report.

In closing, Mr. President, I take this opportunity to commend the chairman of the Finance Committee, the distinguished Senator from Oregon [Mr. PACKWOOD] and the distinguished ranking minority member of the Finance Committee, the distinguished Senator from Louisiana [Mr. LONG], who unfortunately is leaving us after this session. We will miss him very much, and thank him for the excellent counsel that he has given us over the years.

Finally, I wish to commend one BILL BRADLEY, who swished the hoop and scored from long distance by providing

much of the basis upon which this bill is structured.

□ 2130

I yield the floor.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Michigan, Mr. RIEGLE.

Mr. RIEGLE. I thank the Chair.

Mr. President, I, too, rise tonight to express my thoughts on this tax reform bill. Let me just say at the outset I want to congratulate the people who have worked on this in large measure over the last year. There is talk by some that this is a tax bill that is being hurried through here that there has not been sufficient deliberation about. But my observation is to the contrary. There have been literally thousands upon thousands of hours of work to go into this, certainly by the Finance Committee here in the Senate, by the Ways and Means Committee in the House, by staff people on both sides, as well as the Members of the Senate and the House.

I think, when all is said and done, that enormous thought has gone in trying to devise a fair and yet comprehensive and sweeping tax reform bill. I think all of those that have been the principals in that work deserve praise and recognition for the effort that they have made and for the result that they have produced.

Having said that, as others have said, I would also say that this tax bill is not perfect. I am not sure that there has ever been a piece of tax legislation that in every respect is perfect. It is the nature of the legislative process that we tend to produce the best we can, but it is essentially always an imperfect product, if you will.

In this bill there are aspects that I do not like and wish were different, but, on balance, I think this bill is much better than the existing Tax Code. I think it is right to say that it is time that we start making our investment decisions in America based on real economics and not on tax-loss economics.

I also think it is time that everyone paid their fair share of the cost of Government. Today those that pay their taxes and do not use tax avoidance methods or tax loopholes, as we talk about them, are ending up not only paying their share of the cost of Government, but they end up, in addition, paying an extra cost for those high income individuals and high income companies that under the present laws are not paying any taxes at all. Or if they are, it is a very nominal amount.

So the share of the tax bill that those high income people and companies should be paying has to get dumped over on everybody else. And that is how, over the years, the tax burden on the individual citizen has risen and is now higher than it should be, because they are being asked to carry not only their fair share but somebody else's share. And that is wrong and that is something that this bill changes.

In fact, that may be the single most important part of this bill, with the fact of the strong minimum tax provisions, that everybody is being asked now to pay their fair share of Government and the vast majority of taxpayers who have been paying too much—their share, plus someone else's share—are going to see their taxes go down. They are going to have more after-tax income available to them from their work to spend and use or invest however they wish, and I think that is a very constructive step.

Now, there is a very strong, positive bottom line to this tax bill. And it is important to touch on some of the positive aspects, because there is great public confusion today about the tax bill. I think a lot of misinformation has been generated that has tended to cause people to think that they are going to be harmed by this tax bill when, in fact, the overwhelming number of taxpayers will be helped by it. The overwhelming number of taxpayers will pay less in taxes in the future than they are paying at the present time.

For individuals, 80 percent of all taxpayers will be taxed at a 15-percent rate, and that is much lower rate than applies for most of those taxpayers today. The personal exemption is being increased substantially. It is going up from $1,080 to $1,900, and then, in two more steps over 2 years, up to $2,000. The standard deduction is also being increased substantially. It is going up from $3,540 to $5,000. A very substantial increase.

At the same time, the critically important deductible items have been maintained and protected and will be there in the new Tax Code. Certainly, mortgage interest has been mentioned, and mortgage interest on a home will continue to be deductible. Income taxes paid to State and local units of government and property taxes paid also will be tax deductible, as they are today. They will be deductible under the new bill.

Fringe benefits will not be taxed. There was a proposal that they would. That has been defeated, so there will be no taxes on fringe benefits.

I led the fight on the Senate floor when we passed the tax bill initially, to preserve the IRA accounts, the individual retirement accounts, as they are in the present law. We have in very substantial measure done that in this bill, although not completely. And I am frank to say I wish we had exactly the provision in the new law that is in the present law.

But, having said that, most of the taxpayers in this country will retain their full front-end tax deduction for IRA's. And for those that do not, I think that we will find that 401(k) programs, which are maintained in the Tax Code, will arise in those firms, companies across the country, that have a large number of employees who presently will not qualify for a continuation of an IRA with the front-end tax deduction. And when those 401(k) plans are formed, that will provide an alternative way for a person to make the same kind of long-term savings, tax free, with the front-end tax deduction that they may be able to now do with respect to the IRA.

So I see a way, even for that relatively small number of people that will not qualify for the front-end tax deduction on IRA's, to have an alternative way to accomplish that in the future. And I intend to be active to see to it that that knowledge is spread widely so that 401(k) programs can be developed and so that avenue is made available to people. So there are a number of very positive aspects of this for individual citizens.

But there is confusion about that. I maintain seven offices around my State of Michigan, and I have issued a public invitation to any citizen of my State to bring in their tax return from last year and let us go through that with them to see how the new tax laws will apply, to see if they will come out with a tax cut or if they would come out with their taxes the same or if they would have an increase.

□ 2140

We have not had a rather substantial number of people come to us and ask us to go through their tax return and provide that answer. We have found that in 95 percent of the cases of the people that have come in random that their taxes will be going down, in most cases going down by substantial amounts. I will just cite one that happened today.

A gentleman called from Lansing, MI. He and his wife had a taxable income of $58,000. He was calling to say that he did not like the tax bill because he felt that they were going to end up paying higher taxes. He estimated that to be about $2,000 more in taxes. He was talking with a person who was the tax expert who works for me on my staff. My person said, "Look, why don't you get your tax return and let's go through it." The fellow said, "Well, fine, I will do that

and I will call you back." So he called back in about 15 minutes. We went through that man's tax return and when we made all the adjustments we found out that his taxes, in fact, were not going up. This was a joint return with two wage earners. His taxes would not be going up. They would actually go down by $1,200. After that had been figured out in terms of these discussions, the final comment of the man from Lansing who called on the phone was, "Tell Senator RIEGLE to vote for the tax bill." That has been the response that we have found in case after case after case.

I am not saying there are not going to be some people who will pay higher taxes because some will. Those who have not been paying any taxes with high incomes are going to start paying, as they should. Because they are going to have to start paying, others who have been paying and paying too much are going to be able to pay less. As I say, that, to me, is the great virtue of the bill.

Over on the corporate side, in terms of business tax changes, the corporate tax rate is going to drop from 46 percent to 34 percent. That is a very substantial change. There are parts of the business tax changes with respect to the loss of the investment tax credit, and the changes in some depreciation rules, and doing away with the capital gains tax rate differential, that are very troubling to me.

I have real reservations and qualms about that. We may find that in the future if there is an impairment in the capital formation, in the capital investment, we are going to have to take the step to make tax changes in that area. I will be prepared to do so if we find that is needed.

I think as an offset to that, however, dropping the corporate tax rate is going to generate more after-tax profit, more return of capital, more money for investment into businesses, for productivity improvement, to create new jobs, new products, and improve processes. I think that offers a very substantial gain in that respect.

I hope, myself, to be able to serve on the Finance Committee in the next session of Congress. There are vacancies that will be occurring, and I hope to fill one of those vacancies. If I am fortunate enough to do that, then I would hope to be at the table when future discusisons are made about any changes that may be required later on down the line.

But we will have to see how it works. There is an enormous amount of change going on in this tax bill. There will be consequences that cannot be fully foreseen, some unintended consequences. But where there are problems that arise, whether it is with respect to the amount of rental housing in the country or other things that have been raised, we will have to move to fix those problems.

I want to say one other thing with respect to the State of Michigan. Over the last year after President Reagan proposed this effort to change the tax laws to have tax reform which I salute him for doing, I think it was right of him to say that, and I congratulate him for staying with it all the way through the process. But I went around the State of Michigan. I conducted 19 public meetings in locations across the State, and had over 4,000 people come out and sit with me in meetings that would last 2, 3, 4, 5 hours in some cases, in large group sessions as we talked through what the people of my State said they wanted in the way of tax reform.

In every single major item that I heard them talk about, and I asked for votes by show of hands in those 19 meetings across the State of Michigan, every single item that was raised in those meetings by the majority of people there saying that they felt it was important, has been incorporated in this tax reform bill.

The mortgage interest deduction has been retained, charitable deductions for itemizers have been retained, the property and State income tax and local tax deductions have also been maintained.

People said no taxation on fringe benefits. We have kept that out. They said no taxation on the inside buildup of insurance policies. We have kept that out.

So we accomplished the things that people said they really wanted. They also said they wanted a stiff minimum tax on people with high incomes who were not paying anything, and high income corporations that were not paying anything. They said they wanted them to pay a fair share in the future. That has been accomplished. That is the way we are able to lower tax rates for everybody else.

So I can say tonight to my colleagues here, and if I were able in turn to speak to those in my State who had attended all of those tax forums around the State of Michigan, this bill meets the critical items that in each of those meetings citizens from my State said they felt were most important. I am pleased to be able to report that now.

I want to say one other thing with respect to the IRA's. Then I will in short order conclude here.

I think the individual retirement accounts have been vitally important to our country in two respects: One, it has encouraged people to establish a supplementary savings program, and to put money aside for their own retirement years, and increasing numbers of people have taken advantage of that intelligent option to do exactly that. I think that has been one very substantial benefit to the country. The other is it has created an enlarging pool of savings and capital investment money that is invested for the long term that in turn can be recycled and invested in the economy for economic growth.

So it is very important that we maintain the individual retirement accounts. The front-end deduction on IRA's is retained for most taxpayers.

So I think we have largely succeeded in this area. As I said earlier, the 401(k) provides an alternative route for those that would no longer qualify either because of income level or because of the fact that a spouse would otherwise be in a retirement program. So I think we have had a substantial victory there.

Let me say again, a 15-percent tax rate will apply to 80 percent of all the taxpayers in this country. In my view, in my own State of Michigan, and I think stretching across the country, the overwhelming majority of taxpayers are going to be receiving a tax cut and a tax cut of some significant amount.

As we have gone through those individual tax calculations based on people's tax returns for last year, that is exactly what we have found.

So I am convinced after spending a very substantial part of the last year working on this problem directly with my constituents and as well here in the Senate that we are going to see an overwhelming number of people receiving a tax cut.

So I am going to vote for this tax bill because I think on balance, despite some defects it has, that it is substantially better than the existing law. I think it is time to overhaul our tax system to make it fairer. I think this is the best that we can hope to do at this time.

I want to particularly praise Senator PACKWOOD and Senator LONG for their leadership on this in the Senate. Certainly the Senator from Louisiana, who is going to be retiring, is a tax expert of reknown and someone who will be greatly missed when he leaves us.

I also want to particularly acknowledge the work of Senator BRADLEY, and Chairman ROSTENKOWSKI in the House. I think this tax reform bill is one that we should vote for. I think we can do so with some sense of pride and accomplishment. I would hope my colleague would join in voting for this bill.

I yield the floor.

Mr. BRADLEY. Mr. President, some Senators have said that the major private universities in this country are opposed to tax reform because they lost several tax benefits.

To counter those arguments I quote from a letter written by William G. Bowen, president of Princeton University, Princeton, NJ. He writes:

Is tax reform, and more particularly the present conference bill, worth supporting in spite of the provisions of concern to colleges and universities? My personal answer is emphatically Yes, and if I were a member of Congress, faced with an up or down vote on the package, I would vote for it with enthusiasm. In my view, it is major step forward.

Mr. President, I ask unanimous consent that his entire letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

[From the Chronicle of Higher Education, Sept. 17, 1986]

HIGHER EDUCATION AND INCOME-TAX REFORM: UNIVERSITY OFFICIALS REBUT RECENT EDITORIALS

(Following is a letter that William G. Bowen, president of Princeton University, sent to the New York Times in response to an editorial on the effects of tax reform on higher education. The Times editorial was reprinted in last week's issue of The Chronicle.)

Your August 24 editorial "No More Hiding Behind Taxes" responds to higher education's concerns about the tax bill with two propositions: (1) these concerns are a small price to pay for overall reform; and (2) some of the proposed changes are desirable because they would increase "efficiency" and shift greater responsibility for determining educational priorities to the federal government.

The first proposition is reminiscent of the position of the Secretary of Education, who argues that since colleges and universities have shared in the general prosperity of recent years, they ought to be willing to accept these damaging new provisions as a necessary trade-off for continuing national prosperity. But there is nothing about prosperity, or about tax reform, that mandates adoption of these particular provisions. None of them was in the bill that passed the Senate. Each of them, we are told, was opposed by a significant fraction of House conferees. None of them will have more than negligible impact on federal revenues—although each could have a sizable impact on the future of higher education in this country.

Let me focus on two of these provisions—not in an effort to undercut support for a tax bill which I favor strongly, but to describe certain consequences that, in time, need to be addressed.

One provision would subject certain donors of assets that have appreciated in value (usually stocks) to a 21-per-cent tax on their gifts. Appreciated assets account for some 40 per cent of all gifts to higher education, and a much higher percentage of the very large gifts that are essential to any major fund-raising campaign. Current law already limits the percentage of income that can be deducted for appreciated gifts, so no one can escape taxation ("zero-out") through such gifts. We should also recognize that those who choose to give less generously because of this new provision are most likely simply to hold on to their assets, thereby depriving the government of any tax revenues from them while also precluding their use to support charitable purposes.

A second provision would exclude, by means of a dollar limit, nearly 20 of the nation's leading private institutions from further tax-exempt borrowing for facilities, even though the bill retains access to this important form of financing for all other private—and all public—colleges and universities. (I should note that my own institution is one that is still eligible, though it too, in time, could run afoul of this provision.) Tax-exempt funds typically are used for the kind of expenditures for which private gifts and federal grants simply are not available or are not adequate, including the very expensive renovation and rehabilitation that are essential to bring research facilities up to modern scientific and safety standards.

Each of these provisions either reduces revenues or adds to costs at a time when direct federal support has failed to keep pace with educational needs. And this happens in a bill that already will reduce charitable contributions by increasing the number of non-itemizers; by removing the charitable deduction for non-itemizers; and by lowering rates and thereby reducing the tax incentive to give. While the initial decision to make a gift may be made in the heart (as is almost always the case, I believe), decisions about what, when, and how much to give generally are made in the head, with tax implications often determining the ultimate size of the gift. Unlike other sectors of society, charities suffer a double whammy; they lose under the provisions expressly addressed to them and they lose as a result of lower rates. (There is general agreement that any increases in giving attributable to greater disposable income will be more than offset by the losses from lower rates.)

But what about the Time's appeal to "efficiency" and responsibility? Ironically, one of the most attractive features of the present tax deduction for gifts of appreciated assets is its demonstrated efficiency in encouraging the conversion of private resources to public purposes; in other words, in this particular case the gain to charities far exceeds the loss to the Treasury.

The Times's final argument is that the federal government should be allocating resources directly, rather than using the tax code to encourage private donations. This is the argument that deserves the most critical scrutiny, and not just because of the obvious contradiction with a budgetary climate in Washington which plainly presses for less direct support rather than for more. What is proposed is really a new set of relationships in our country. With only a few exceptions, it is not the federal government that historically has taken direct responsibility for our colleges and universities. Our great institutions of teaching and research have been created and nurtured by private donations and by the states, and increasingly state institutions are looking to private donors for the dollars that can spell the difference between adequacy and excellence.

The federal government has encouraged private and local initiatives for two primary reasons: first, because the existence of multiple patrons—private and public—takes pressure off the federal budget; second, because the existence of multiple patrons also contributes to the independence, diversity, and creativity characteristic of our unique system of higher education.

To return to the language of your editorial, it is just not true that direct government expenditures are necessarily "more efficient" in any relevant sense than mechanisms for stimulating indirect support by the private sector. The sad plight of the British universities today is dramatic evidence of what can follow from greater national dependence on central government grants. Moreover, the possibilities of both infringements of academic freedom and logrolling of the most inefficient kind are clearly greater in this country than in Britain.

Thus, what the Times sees as a benefit, others see as a great risk: that under the cover of tax reform, major changes in national educational philosophy as well as financing may occur without explicit discussion and with insufficient consideration of the potential consequences.

Is tax reform, and more particularly the present conference bill, worth supporting in spite of the provisions of concern to colleges and universities? My personal answer is emphatically Yes, and if I were a member of Congress, faced with an up or down vote on the package, I would vote for it with enthusiams. In my view, it is a major step forward. It promises greater fairness and (in most respects) more efficiency over the long run. It is an outstanding achievement. But that does not mean that it is wise in all respects, and those of us who most admire the overall result have a continuing obligation, I believe, to speak candidly about the bill's shortcomings and to find ways to correct them.

WILLIAM G. BOWEN,
President, Princeton University.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate first, I hope those who want to speak will certainly feel free to come on over, come on in, wherever you may be because the distinguished chairman said he would be here as long as Members wished to speak tonight. It is our hope that all of those who would like to speak this evening, maybe with one or two exceptions, will do so and we can have a vote on this bill no later than 2 p.m. tomorrow.

PRESIDENTIAL VETO OF SOUTH AFRICA BILL

Mr. DOLE. Mr. President, as I believe most of us by now have heard, the President has decided to veto the South Africa sanctions bill. His veto message has probably already arrived at the House or will shortly, and I expect the Senate will be taking it up next week.

I have spoken to the President on this issue in recent days. I know how strongly he feels about it. I know how strongly he opposes apartheid. And I know how sincerely he wants to work with the Congress to see apartheid come to an end.

But, I also know that this President is not going to do something which he fundamentally believes to be wrong, even if that might be the politically expedient thing to do. And he believes

that some elements of the bill he had before him are wrong; so wrong that he could not sign the bill.

I voted for the bill, even though I knew it was far from a perfect piece of legislation. Almost all of us did. And perhaps for me, and for others, it might have made things a bit easier politically if the President had just swallowed hard and signed it. But he could not do that in good conscience.

From my discussions with the President and his senior advisers and from what I know about his veto message, I know that he does not intend the veto as a challenge to the Congress. Rather, he intends it to be, and sincerely hopes it will be seen as, an invitation to work together with the Congress to advance the causes all of us share.

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It has not been easy for me to decide on my own course. To me, the absolute top priority has been to send a strong message to South Africa and to the world that the United States is fed up with apartheid and demands its immediate end. The Senate bill did send that message.

But I have always believed—and said so many times on the Senate floor and elsewhere—that an even stronger message could be sent if the President and Congress could speak together—and let me say again, strongly and together—on this issue.

The President's veto message and my discussions with him make clear that he is not only willing but anxious to join with the Congress in sending a strong message. A message in the form of a strong set of actions—targeted against apartheid; sparing, to the extent possible, the black victims of that system; and taking into account our other vital national interests in southern Africa.

It seems to me the President has indicated his willingness to go the extra mile, so that we can act together—just as we feel together—on the need to end apartheid.

I will vote to sustain the President's veto. I encourage all of my colleagues to join with me.

Because I want to end apartheid. And because I am convinced that the best way to that end is for all Americans to join in a single, clear call to Pretoria—apartheid must go, now.

TAX REFORM ACT OF 1986—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, it has been a little more than 3 months since the Members of this body voted nearly unanimously to approve the tax reform bill reported from the Senate Finance Committee, of which I am a member. I recall having reservations about some of the provisions of the Senate bill.

And I spoke to those concerns here on the floor and some of them were ameliorated by our amendment process. So, in the end, I voted for the bill because I believed that the whole of the bill was greater than the sum of those parts.

In conference with the House of Representatives, a good, but not perfect bill met a bill which was so short of good tax policy that it could not pass the House on its merits. It passed by a slim margin only because President Reagan promised a Senate Fix. Well, he got it.

But some of what he—and we—did not like in the House bill, comes back to us in this conference report.

Because, Mr. President, that is the nature of legislative compromise. Despite what some might characterize as the degradation from blending the two bills, this conference report was approved by the House 292-136. That is a most significant endorsement of the contribution this Senate made to improving the quality of tax reform.

In reaching a decision on casting my vote today, I have tried to balance that which today I know about this bill against the unknowns and uncertainties that this measure holds for our economic future, many of which have been alluded to. On balance, I am convinced that the compromise achieved between the House and Senate bills will, in the long term, provide a better foundation for economic growth in America and inject a greater sense of fairness and equity in our Nation's tax laws.

There are many features of the conference compromise that I unhesitatingly applaud.

Forty-four million people—one in four adult Americans—will not pay a single dime in Federal income taxes. This measure removes more than 6 million of the working poor from the tax rolls.

One hundred and forty million of our citizens—80 percent of America's citizens—will pay no more than 15 cents of every dollar earned in Federal income taxes.

Most of the remaining 20 percent of Americans will pay no more than 28 percent of their annual income to support a Federal Government whose annual budget is nearly $1 trillion. It is a remarkable achievement that Federal income tax reform since 1981 has reduced the top marginal rate of Federal taxation from 70 percent to 28 percent.

This measure reduces the number of income tax brackets from 14 to 2. Coupled with the indexing provisions we implemented in 1985, we have substantially reduced the insidious bracket creep that has continuously pushed middle-income taxpayers into higher and higher tax brackets. For the vast majority of Americans, most of their income will now be taxed at the 15-percent rate and only a small portion of their income will be subject to the 28-percent rate.

I find, Mr. President, that the biggest surprise of this tax bill to my constituents is the fact that when you reach the level at which your next earned dollar qualifies for the 28 percent, all of your dollars are not taxed at that 28 percent. We have been so used to being pushed from one bracket to the other on the totality of our income that a lot of us out there cannot believe that all of our income does not go to the 28-percent bracket the minute the first dollar reaches that level.

The fact is most people will be in the 15-percent bracket for practically all of their income.

More than two-thirds of all Americans will soon find that when it comes time to fill out their tax returns, they will only have to file a simple one-page 1040A or 1040EZ return. The higher standard deduction included in this measure will free another 13 million Americans from the annual chore of having to sort through shoe boxes full of receipts to justify their itemized deductions.

Young Americans struggling to raise a family will find a significant benefit in the new $2,000 personal and dependent exemption. The size of the personal exemption just has not kept up with inflation over the past 30 years. The new $2,000 exemption is sure to ease the financial burden that families face today and is long overdue.

This bill represents a giant step in what I would call industrial equity. It will end the current egregious disparities between effective tax rates paid by different industries. There is just no reason that utilities pay an effective U.S. tax rate of less than 11 percent while the pharmaceutical industry pays nearly 33 percent. The effective tax rate of the chemical industry is less than 4 percent. By contrast, the trucking industry pays more than a 38-percent rate. These disparities will significantly narrow as a result of this legislation.

Economic equity is an important element that has been retained in this compromise. Many of the concepts embodied in the Economic Equity Act which I have authored each year since 1981 have been incorporated in this measure. Although the bill does not address all of the inequities that women still endure, it is a milestone in the annual battles we are winning in the war to eliminate legislated eco-

nomic discrimination against women in America.

The retirement plan coverage rules have been significantly broadened and the retirement plan vesting rules have been cut in half. As a result of these changes, more younger workers and working women will have greater economic security in their retirement years. And by preserving the child care tax credit, we have recognized the vital economic contribution that women make to our society.

The conference compromise retains many of the tax changes I fought for in the Senate Finance Committee to preserve the tradition of the family farm. Financially troubled farmers will be able to renegotiate their bank loans without having to pay taxes on the loan write down. For those troubled farmers who lost their land through foreclosure, we have extended tax-exempt bond financing, so they can buy a new farm and some equipment and start their lives over again.

Farmers and other self-employed people will also be able to share in some of the tax-free fringe benefits that up until now have only been available to corporate employees. For the first time, self-employed workers will be able to take a tax deduction for a portion of their health insurance costs. Although this provision was scaled back in the House-Senate conference, it still represents an important first step in equalizing the availability of tax-free fringe benefits.

By drastically cutting tax rates, closing loopholes and limiting the ability to deduct paper losses, this measure closes the door on the tax shelter merchants who have distorted economic decisionmaking, especially in agriculture and real estate. Small Minnesota farmers trying to eke out a living will no longer have to compete with big city doctors, dentists, and lawyers whose only interest in farming is to generate tax losses.

At the same time, the compromise ensures that hard-working Americans will no longer read stories in the press about how companies earning billions of dollars pay no taxes, and how millionaires wind up paying less in taxes than a middle-class family earning $25,000. Thanks to the alternative minimum tax provisions in the compromise, every profitable corporation and every wealthy American will have to pay their fair share of taxes.

Yet, Mr. President, the benefits achieved in this bill do not come without a price. In the process of lowering tax rates for individuals and corporations, the conferees have boosted total taxes paid by the business community by more than $120 billion.

Much of this increase will be borne by our Nation's manufacturing sector which has been especially hard hit in recent years by tough competition from abroad. And ultimately, these higher taxes may be passed through to consumers in the form of higher prices and may hasten the decline of some of our oldest industries.

That is in its heartland and it is a part of the industrial sector that employs a lot of our constituents.

We tried, in anticipation of this kind of tax reform, to help State and local governments rebuild their infrastructure and their job security programs. We tried to help them provide public services by improving the utilization and the definition of tax-exempt bond financing. The Senate did what the Assistant Secretary of the Treasury for Tax Policy indicated was one of the best jobs of public policy in this bill when it passed the tax-exempt bond provisions. When they reached the House conference, they were literally gutted. These restrictions are especially difficult to justify at this time when the Federal Government has both abandoned its general revenue sharing program while imposing more and more mandated responsibilities onto the States.

This bill unfairly interferes with the policy choices each State makes in determining how to finance the basic needs of their citizens. Is it fair to say to a resident of Washington that although you pay sales and property taxes, you can only deduct your property taxes; whereas your neighbor in Oregon can deduct both his income and property taxes?

The answer is clearly "no." By repealing the deduction for sales taxes, I hope we are not establishing a precedent that will put the deductibility of income and property taxes at risk in future years.

Home rental costs in many parts of the Nation may have to rise to take into account the new rules for depreciation and the new loss limitation rules.

I am deeply concerned, as others in this body are, that the changes wrought by this bill will make it extremely difficult to find investors willing to risk their money in new housing projects, especially for low- and moderate-income families. Moreover, the retroactive application of the passive loss rules raises the possibility that some low-income housing projects will just be abandoned.

Yet the issue of how housing costs will be affected by this bill reflects the anachronism that the Internal Revenue Code has evolved into in recent years. Is a Tax Code which allows wealthy Americans to invest in housing tax shelters the only mechanism we have available to ensure that the poorest members of our society are properly housed?

If our natioal housing policy relies on the ability of wealthy investors to pay no taxes, then there is something wrong with both the Tax Code and our national policy priorities.

Our Nation's important philanthropic and educational organizations may have a harder time raising money because the new minimum tax will take a great deal of the tax benefit out of charitable contributions.

If our great institutions of higher learning find that donations decline, they will have but two choices—raising tuition costs or reducing the costs of an institutional system which has given Americans more educational buildings and educational ancillaries than any other nation. At a time when tuition and board at some private universities exceeds $15,000 a year, it may well be that we are in for some surprising changes in the field of higher education in America because of the changes in this bill.

My problem with the elimination of the nonitemizer charitable contribution and subjecting gifts of appreciated property to the alternative minimum tax is not with the predicted adversity to public service delivery. I do not believe that will happen. My concern is that we break faith with a uniquely American tradition of public service financing. That is the bad news.

The good news may well be that the reduction in marginal rates from 70 to 28 percent will reduce the prevalence of tax-motivated contributions and increase the "value" the contributor places on his or her "investment" in specific charitable purposes. My hope is that, in much the same way tax-motivated investment in business tax shelters is being ended by this bill, so we may find the end of contributed investments in public services for tax or name-promotion purposes replaced by investments which demand distinctions in health, education, science, or religion from the benefiting institutions. My hope is that in much that way, because of the way this bill has been changed, we may see opportunity rather than adversity in the delivery of public services.

One of the most popular tax deductions ever adopted was the universal individual retirement account, IRA, deduction. It was popular because the American taxpayer was being forced to live with excessively high-marginal tax rates, automatic inflation-driven tax bracket creep, and a tax system that rewarded consumption and penalized saving.

It was popular because it gave Americans their first real opportunity for Tax Code endorsed savings since they were driven to believe that only their homes would ever qualify as a savings account.

I voted for the universal IRA in 1981 because I believe that young Americans should have a broad and flexible array of retirement options available to them, especially because of the long-term problems that will inevita-

bly confront the Social Security System.

Today I will vote for this bill which changes the universal IRA into a retirement plan alternative. The bill allows deductible IRA's to those individuals not covered by a retirement plan, and for some middle class families. I would certainly prefer that we retain the current universal IRA rules. I am gambling on much lower marginal rates, low inflation, and a predictably healthier economy to provide us with the incentives to save.

But, as I suggested earlier, I believe we should not dwell on any single politically popular provision, but should weigh the entire package as a whole. And in that spirit, I must vote for his compromise.

It has taken the entire 2 years of the 99th Congress to produce this tax reform compromise. And this will certainly not be the last tax reform bill that I expect to vote on during my tenure in the U.S. Senate.

In fact, I believe that the changes made in the tax-exempt bond provisions in the conference agreement cannot, and will not, in any way, be justified. That is why I plan on introducing legislation next year that will remedy the changes made by the conference report and the Senate version of tax exempt bond financing.

The fundamental principle of the tax-exempt bond proposal I will offer next year is that public purposes should be defined according to who receives the benefit rather than who provides the service. Therefore, it is imperative that we preserve bonds which stimulate local spending for projects which are important to both the Nation and the States, but which could not be financed without some type of public-private partnership.

These include pollution control facilities, urban development programs, sewage, and waste treatment, and hazardous waste treatment.

And I expect that many of my colleagues on the Finance Committee will not be reluctant to make further changes in the tax code next year if we find that this bill has unintendedly damaged the economy.

But for today, it is worth dwelling on how far we have come in the tax reform process in this Congress. Top individual rates of 28 and 34 percent for corporations are truly revolutionary concepts. In no other major industrialized nation are income tax rates so low! If we can sustain the rate structure incorporated in this bill, I think the future shape of the American economy will become more dynamic, flexible and competitive.

By cutting rates so drastically, we have markedly diminished the role that taxes play in investment decisions. And, implicitly, we have reduced the role of Washington in shaping the future course of the economy and shifted that responsibility to our Nation's citizens and business.

But the Tax Reform Act of 1986 is not the beginning of the end of the tax reform process. Instead, it is the end of the beginning of tax reform.

Over the past 5 years, our focus has been exclusively on lowering marginal rates. And we have succeeded beyond our wildest dreams.

There are many further steps we can take to improve our income tax system to bring about greater inter-taxpayer equity. We must overcome our reluctance to look at the hidden tax subsidies of employee fringe benefits.

Where is the equity, the fairness, and the justification for allowing million dollar executives of large corporations to receive tax free health benefits while a Minnesota farmer, who can barely survive, has to pay for health insurance out of his hard-earned after-tax income. And it's more than likely that the individual who does not have access to overly generous company provided health benefits will bear the brunt of the increased floor on deductible health costs that was included in this bill.

Now that we are headed for a two-bracket income tax, it will become more obvious to the small businessmen and the self-employed person that they are subsidizing too much of the excessive consumption of health and welfare benefits by the highest income Americans and the employees of the Fortune 500 companies.

Until we place a limit on the tax-free natue of employer-provided health insurance premiums in amounts necessary to adequately insure all persons against medical emergencies, and allow all citizens to get a tax deduction for their health insurance, it will be difficult to claim true fairness in the taxation of income.

In the next 5 years, we are going to face an inevitable confrontation between our desire to keep tax rates low and our need to eliminate our budget deficit and begin to reduce our national debt. Although this compromise bill makes the tax laws fairer for today's taxpayers, it does nothing to eliminate the pyramid of debt we are accumulating at unheard of levels for future generations.

Mr. President, next week we will again face the annual September ritual of raising the ceiling on this Nation's debt. The debt ceiling will rise to an extraordinary $2.3 trillion dollars. And if we don't do something about the deficit, we will face a $3 trillion deficit by the time Ronald Reagan leaves office.

Interest on the debt next year will consume nearly $1 in every $5 dollars the Government spends. We are in such a continuing cycle of debt that we have to borrow money to cover the deficit to just pay interest on the debt. Our fiscal irresponsibility reminds me of the Banana Republic spending patterns that we have witnessed in this hemisphere throughout this century.

We are soon going to have to again look at broadening the tax base to address the deficit. But I think the lesson of tax reform in 1986 is that the political will to further broaden the base of taxable income will take a political miracle. That's why I believe that it is inevitable that we will have to look to another form of taxation—namely a consumption tax or a value-added tax to offset the budget deficit.

Before we can tell our constituents that we in Washington made the tax system fairer, we will have to take a long and hard look at the most onerous, regressive, discriminatory, and unfair tax that the Federal Government levies—the payroll tax.

Workers and business now must contribute more than $6,000 per worker per year to fund a Social Security system that will provide little, if any, retirement security for today's generation of young workers.

Under the current laws, payroll taxes are going in only one direction—up; while the chances that young workers today will see any Social Security benefits are going, down, down, down.

The payroll taxes we levy on employees and employers are designed to afford income security to all Americans. Through payroll taxes we seek to provide retirement security through Social Security; health insurance for the elderly through Medicare; and unemployment compensation for workers in transition. At the State level, we add further tax burdens to pay for unemployment and workers compensation and for disability insurance.

I believe a needed next phase of the tax reform movement must be a total overhaul of the payroll tax. I hope that we will integrate the payroll taxes for these social insurance programs and substitute for our dependence on payroll taxes a tax on consumption.

A consumption tax will not only replace the payroll tax but can also be used to diminish the burden of income taxes and ultimately end the taxation of savings. And a consumption tax may well be necessary to find a way out of the deficit crisis that endangers our future economic independence and security.

Mr. President, I would have hoped that the measure that emerged from the House-Senate conference shared more of the features of the Senate bill than the House bill. But I know that the chairman of the Finance Committee did his best in the long and hard negotiations with his House counterpart. The measure before us today is a major step forward in improving the fairness of the income tax system. But it is only a step.

I hope that in the next few years we are able to take similar bold steps in the process of adapting our tax laws to the changing needs and demands of our citizens. If we have gone too far in some areas of this bill, there is ample opportunity to fine tune and adjust our tax policy. We have come too far along the path of tax reform to reject this remakable reform initiative.

Mrs. KASSEBAUM. Mr. President, to supporters the tax reform legislation represents fairness, growth and simplicity. To opponents the legislation is antigrowth, antijobs, and antisavings. In reality, it falls somewhere in the middle.

Unlike diamonds, political ideals are more appealing before they have been cut and polished. Tax reform is no exception. The final, comprehensive tax reform plan represents the culmination of a long and intense bipartisan effort to implement the lofty proposal President Reagan introduced over a year ago as his No. 1 domestic priority. The goal of the President's initial proposal was that the Tax Code should no longer be used to manipulate our economy and distort our investment decisions. This principle has remained intact in the final bill.

The bill has taken a direct and comprehensive approach to addressing the tax reform problem. It attempts to lower the individual and corporate rates to such an extent that many of the current deductions, exemptions and credits can be eliminated without causing a major disruption in our economy or dramatically increasing the tax liability of the taxpaying majority.

Despite its wide acclaim, the bill will not make the Tax Code simpler nor will it mean a substantial tax cut for most families. When all is said and done, most taxpayers will find that the numbers on their tax return have merely been rearranged with the amount owed being roughly the same. Those expecting a big cut will be surprised by the extent that they have relied on various credits, deductions and exemption. Those who have criticized a particular change will find that the lower rates substantially alleviate the detrimental effects.

I have several concerns about the comprehensive bill and the way it has been drafted. I do not think that changes should be made on a retroactive basis, that transition rules should be given to exempt privileged taxpayers with political access, or that $120 billion can be shifted from individuals to corporations without affecting consumer prices, employment, or growth. Further, I do not think we should pretend that a time of $200 billion deficits we will not be forced to raise taxes in the near future.

Despite my misgivings about the bill I do recognize that it represents real reform. It will end the proliferation of abusive tax shelters, it will take a substantial number of low-income workers off the tax rolls, it will encourage domestic corporations to manufacture their goods in the United States, it will insure that corporate taxes are distributed in a uniform manner, and perhaps most important of all, it will have that investment decisions are made on the basis of sound economic principles.

Although I am tempted to say that this bill should be sent back to the conference committee to correct its various flaws, that option is not realistically available. Moreover, it is evident that if this bill is defeated, reform of the present code will not be attainable in even the distant future. We cannot afford to turn our back on tax reform. Our current Tax Code is riddled with inherent inequities. It makes no sense to have a corporate tax that requires some corporations to pay an effective tax rate of 46 percent and allows others to escape liability altogether. Likewise, it makes no sense to have a progressive individual income tax that allows wealthy members of our society to use deductions and credits to such an extent that their effective rate is lower than that of the average working man or woman.

Common sense dictates that for our economy to remain productive and efficient on a global scale, our investment decisions must be made on the basis of economic return rather than tax avoidance. Our current Tax Code frequently encourages unprofitable business ventures at the expense of profitable ones. The net effect is a misallocation of resources that places additional and artificial demands on our capital, goods and services. The tax reform bill corrects this problem. In the short term, our economy will undergo a reshuffling of capital assets. In the long run, capital goods and services will be allocated to their most efficient use. Profit rather than loss will be the primary investment motivation.

Mr. EAGLETON. Mr President, at the outset let me say that my colleague, Senator DANFORTH spoke earlier this afternoon in opposition to this tax bill. His speech was masterful and I predict, will be considered the definitive critique of this ill-timed bill.

Certainly no bill is all good or all bad. The bill before us has many redeeming qualities that have survived the legislative process. In fact, at different points in the process, I have enthusiastically supported this bill.

There is much that is commendable about the tax reform bill. Six million low-income individuals will be removed from the tax rolls. At the other end of the spectrum, the minimum tax provision will put an end to the spectacle of wealthy individuals and corporations paying no taxes. This bill eliminates scores of tax loopholes and shelters which have distorted investment patterns, especially in real estate. Finally, by broadening the tax base, the bill makes room for substantial rate cuts which, it is felt, will propel consumer spending and lift the sagging economy.

On the "macro" economics of the bill, we know that there is much that is troubling about the bill. The bill would raise the cost of capital by an estimated 10 to 15 percent at a time when capital spending is already declining. Industry-by-industry analyses show that for most, the bill is a mixed bag. But for heavy manufacturing which is most in need of new investment to meet foreign competition, the repeal of the investment tax credit and the lowering of depreciation will hit particularly hard.

Elimination of the tax credit for bad debt reserves could strain many already shaky financial institutions and certainly will accelerate foreclosures on troubled energy, real estate, and farm loans. The ailing farm sector is also a net loser in the bill. By repealing income averaging, the investment tax credit, and liberal depreciation rules, the bill is very tough on struggling family farmers.

The renewal of downtown St. Louis and other older cities will be seriously hindered. Limitations on historic rehabilitation credits, coupled with repeals of tax benefits for other real estate investments, could be devastating.

On the revenue side, the bill's $11 billion "windfall" in 1987 turns into a $17 billion revenue shortfall in 1988 and a $15 billion deficit in 1989. As damaging as that would be for our deficit situation, most economists believe the bill's revenue estimates are substantially overstated, some say by as much as $50 billion over the 5-year life. It has been noted by members of the Finance Committee that the Joint Tax Committee had in many instances used "untrustworthy information." All indications are, however, that this bill is an overall revenue loser.

Finally, tax rate cuts in the bill may turn out to be a Trojan Horse. General ageement among economists is that Chairman ROSTENKOWSKI is right and there will be a new tax bill in 1987 with, perhaps, even across-the-board rate increases.

Having weighed both the good and the bad in the bill, it is critical, I think, to take into account our starting point and the timing of this sweeping tax change. Edward Yardeni, vice president and chief economist of Prudential-Bache said:

> I am in the minority amongst economists, but I believe we are already in a recession. Part of the reason for that is Tax Reform which has been on the horizon since May.
>
> Tax Reform is a great idea at exactly the wrong time. Tax reform is like leveling the playing field without telling the players to get off.

We know the economy's in trouble. GNP in this quarter slowed to 0.6 per-

cent. Our trade deficit is well on the way to a record $170 plus billion. The budget deficit also will set a record of $230 billion. U.S. productivity continues to decline. Capital spending is shrinking. Our savings rate is one of the lowest in the industrial world.

Timing can be everything and I am persuaded that this is not the time to legislate this major tax bill. As I hear the concerns expressed by noted economists, I grow increasingly worried.

Alan Greenspan, former White House Economic Adviser:

Additional tax reform negatives clearly raise the risks to economic growth * * *. The time for tax reform is probably now or never, but we should understand that we are moving into unexplored, and probably risky territory.

Edward Yardeni of Prudential-Bache:

The last thing we need is to rewrite the tax code from top to bottom.

Murray L. Weidenbaum, President Reagan's first chairman of the Counsel of Economic Advisers and now of Washington University:

It is evident that the impending changes in the Internal Revenue Code will depress the economy. Although we can debate the precise economic effects of these changes, the direction of impact is clear: less investment, lower economic growth, fewer new jobs.

Martin Mauro, senior economist for Merrill Lynch:

The tax bill raises revenue by about $11 billion next year. That's exactly the wrong thing to do for an economy in the shape that it's in.

Robert Brinner of Data Resources Inc.

Tax reform will depress economic growth next year and into the long term: lower investment will lead to lower capital stock and therefore to lower worker productivity. Greater efficiency in the use of capital can offset part, but not most, of this loss.

Laurence Summers of Harvard University:

The major defect of the conference committee bill is that it raises the tax burden on new investment * * *. The adverse effects of reduced investment on economic growth are likely to dwarf any gains for neutrality.

Jerry Jasinowski of the National Association of Manufacturers:

* * * the burden of taxes will be shifted primarily onto capital intensive manufacturing firms that are heavily exposed to international competition.

Jasinowski goes on to say tax reform will:

* * * raise the user cost of capital by large magnitudes.

* * * lower productivity growth thereby raising unit labor costs

* * * reduce profitability and cash flow

* * * encourage off-sourcing of production to foreign countries.

Of course, there is absolutely no doubt this bill is going to pass and pass by a wide margin. Nothing that is said on this floor, no warnings by economists, no skepticism on the part of the taxpaying public is going to change that.

There are some here who will vote for the bill because they genuinely believe it is the right thing to do and the right time to do it. I disagree, but I respect their view. There are a great many more who will vote for this bill despite serious reservations about its impact on the economy. I disagree, but I understand their position.

I don't know many officeholders who want to be charged in a campaign that they opposed a tax cut. After all, this is an election year and this is an election year tax bill.

Besides, there is the easy notion around here that if we make a mistake today and the dire predictions of some economists turn out to be right, we can always come back next year with a new tax bill and repair the damage.

I'll make this prediction. Just as certain as it is that this tax bill will pass, this body will be back here next year with a new tax bill. And it won't be just technical corrections. I think it will be another major revision of the tax laws to restore incentives for investment and to raise revenues both to pay for those incentives and to apply against our worsening deficit situation.

My concern is that the damage done to the economy will not be that easily undone. The measure we are considering is the fourth major tax bill we have acted on since 1980. Someday, we are going to have to get it right. We can't keep turning the tax faucet on and off without seriously shaking the confidence of the investment community and the public at large. I think we are seeing some of that already in the widespread skepticism and suspicion that people have about this bill.

The measure before us has many good features, but I think its timing in relation to our weak economic situation is a gross miscalculation.

I agree, as I quoted before, with economist Yardeni of Prudential-Bache:

Tax reform is a great idea at exactly the wrong time. Tax reform is like leveling the playing field without telling the players to get off.

Mr. President, I will vote against this bill.

□ 2230

I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Mr. President, I thank the Chair.

Mr. President, it is difficult to follow my colleagues who are so eloquent in their statements as it relates to the tax reform bill.

Like many of my colleagues I have mixed feelings about the tax reform conference report before us today. It is comprehensive legislation, and represents major reform. The original goals of tax reform were fairness and simplification. Removing 6 million working poor from the tax rolls and broadening the tax base approaches the goal of fairness. Once fully implemented, this reform will also simplify the tax filing process for the majority of the taxpayers who will no longer need to itemize deductions. There are some unknowns in this bill. We cannot be sure of its specific impact until fully implemented. But on balance, the positive aspects of this bill outweigh the unknowns. Like any other legislation, once we know the full ramifications of this bill, we will be able to fine-tune it and make it better.

I will vote for this bill because I believe that the majority of taxpayers in Kentucky will see their taxes reduced under it. I will vote for this bill because it is the first break in a long while for the working men and women of this Nation. This bill will remove more than 200,000 Kentucky families from the Federal tax rolls. These are Kentuckians who are proud to be working to support themselves and their families. The tax reform bill recognizes the efforts of the working poor and gives them a well-deserved break.

This measure has come a long way since the Treasury Department first released its tax reform proposal. The conference report before us is a better bill than either the House or the Senate bill. It is a good faith effort to bring sanity and common sense to our tax laws. People in my State have grown tired of paying their taxes every April 15, while the wealthiest individuals and large corporations pay nothing, and even get refunds. This bill ensures that there are no more free rides—that the low- and middle-income taxpayer in this Nation no longer has to carry those who pay little or no taxes.

This bill encourages consumption based on economic considerations instead of tax savings. Although it eliminates many favored deductions and credits, the significantly lowered rates are designed to more than offset the loss of those deductions. While I have always supported the charitable contribution for nonitemizers, the loss of this deduction will hopefully be balanced by the increased take-home pay provided by the tax cuts. Additionally, while I would have preferred to retain the full deduction for contributions to an individual retirement account for all taxpayers, I believe that the majority of Kentuckians will continue to be able to contribute to an IRA. Most importantly, all taxpayers will continue to be able to receive tax-free interest on their IRA until withdrawal.

This is not a perfect bill—no legislation ever is. I am concerned about the long-term effects this bill will have on the real estate industry. I would have

preferred that the provisions eliminating the 3-year recovery rule for Government workers not be retroactive to July 1 of this year. I am concerned that the retroactive elimination of the investment tax credit not discourage development of our capital-intensive industries not disadvantage our position in world markets. The Congress will be watching these and other changes closely, and if necessary, adjustments can be made in the years ahead. Overall, the positive effects of this bill outweigh these concerns.

I will vote for this compromise despite the fact that it denied Kentucky the same courtesy extended to other States with newly announced auto manufacturing facilities. In conference—behind closed doors—Kentucky's Toyota plant was singled out to be dropped from the special tax treatment given to other auto manufacturers. This was unfair to Kentucky, and it was wrong.

Down in Kentucky we have a saying that a mule will live a lifetime to kick you, and I will have this particular item in my craw for a long, long time.

The Senate conferees took a position that I thought was fair: No automobile manufacturing companies would receive a transition rule. Nevertheless, the House made the judgment that all of the auto manufacturing plants would receive the transition rule save Kentucky.

So it was behind closed doors, Mr. President. We have found a new way to eliminate sunshine in our committees. It is a system where legislation is being written by staff. We go behind closed doors. We are able to stay out of the sunshine.

Only Kentucky was refused special transition treatment for its auto manufacturing plant. But I will support the bill, because on balance, the majority of Kentuckians come out ahead.

I am especially pleased that this bill contains a special provision which I sought for cities and counties in Kentucky which are hard hit by the rapid phaseout of general revenue sharing. This provision allows local governments in my State to continue to take advantage of the low-cost option of meeting their financing needs through bond pools. Without the ability to participate in these pools, cities and counties across Kentucky would be unable to fund capital projects and federally mandated sewer and water improvements. With this special transition rule, these local governments have an affordable alternative to offset the loss of Federal funds.

If we took a poll today, our Nation's economists would probably be evenly divided as far as whether this bill will be good or bad for our economy. However, I see this as a good-faith effort by Congress to follow the mandate of the American people to return fairness to the Tax Code. It says to those who work hard, and try to improve their situation, you will be able to keep a larger portion of your efforts. It says to those who abuse our tax laws to avoid paying their fair share of taxes, no more free rides. It says to those corporations who based decisions to expand and grow on economic considerations and not tax avoidance schemes, you may keep a larger portion of your earnings to put back into capital expansion and improvements. It says to those wealthy individuals and corporations who pay no taxes, you must contribute your fair share. This bill broadens the tax base; removes the working poor from the tax rolls; closes abusive loopholes; and ensures that all taxpayers pay a fairer share of taxes.

The tax reform debate has been a productive exercise. It has forced us to question the maze of giveaways and loopholes which have been added to the Tax Code over the years. This debate has focused our attention on the growing inequities in our current tax law and brought to light both the effective and ineffective incentives built into the current law. It has been a long process, and one that many taxpayers in Kentucky and across this Nation have participated in. The debate has produced many answers and still further questions. By passing this legislation we will not be closing the book on tax reform. Instead, we will be taking the first step toward producing a Tax Code that is fair to all and simple to use. I hope, as we adjust this Tax Code in years to come, that we will not lose sight of the goals which carried this legislation to passage.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, the Tax Reform Act presented for approval of the Senate tomorrow poses a difficult choice.

There is no question that our existing tax system is imperfect—and, indeed, badly flawed. In my view, however, it is equally clear that the tax reform proposal before us also is flawed and there is reason for real concern about its impact on our economy.

I know that I will vote for approval of the tax reform bill, but I will do so without enthusiasm and with reservations and misgivings.

There is much in this tax bill that is good. However, there are other provisions of the tax reform bill that are cause for concern, and there are provisions that I believe are simply unjust and unfair.

First and foremost, I am concerned that when taxpayers sit down to file their tax returns in April of 1988, for the 1987 calendar year, there will be millions of middle-income families who will be shocked and angered to find that their Federal taxes have increased, not decreased. Middle-income America is not generously treated in this tax reform bill. They have been led to believe they can expect at least a modest reduction in their tax payments, but a significant percentage of them will find that the lower tax rates do not offset the loss of deductions and credits. They will be angry, and justly so.

I am also concerned at the impact this new tax system may have on our economic growth during the next several critical years. Many economists who support the principles of tax reform nevertheless predict it will be a drag on economic growth in its early years. And this will come at a critical time when our economy is hesitating after a sustained period of growth, a time when our economy may need a stimulus instead of restraint.

I believe the increase in the capital-gains tax and the reduction in the investment credit will have a negative effect on creating new investment capital resources and on the development of industrial enterprises.

In addition, I believe it is a mistake to undertake a wholesale revision of our tax laws without providing any increased revenues to help meet our Nation's highest economic priority—reducing the huge Federal budget deficits.

And, while this tax reform bill eliminates some inequities, it creates new ones. Let me mention just a few that have been pointed out to me by taxpayers in Rhode Island:

Is it fair—as this bill provides—to permit interest deductions on a second home, while denying interest deductions on a worker's first car?

Is it fair—as this bill provides—to tax a portion of a needy student's scholarship or fellowship meant to pay for his food and room?

Is it far—as this bill provides—to eliminate deductions for State and local sales taxes, while permitting deductions for income and property taxes?

Is it fair—as this bill provides—to deny individuals without health insurance any deductions for health care costs unless they exceed 7.5 percent of income, while workers with employer-paid health insurance receive that benefit tax free?

□ 2240

There are other inequities. There are provisions that are retroactive, unfairly penalizing taxpayers who have acted in full compliance with existing law and are given no adequate chance to adjust to the abrupt changes in this bill.

Federal workers at retirement age will lose their longstanding 3-year rule on taxing of their pensions, effective not now or next year, but effective ret-

roactively to last July. That is unfair. And it is of particular concern to many of my retired constituents in my State.

Individuals who invested in real estate syndications, in full compliance with the law, will face a rapid phaseout of their loss deductions over the next 3 years, very likely turning paper losses into very real losses.

I am concerned also at the impact that this tax revision will have on the nonprofit institutions—universities, colleges, museums, cultural and performing arts organizations—who may face severe losses in contributions and donations as the result of loss of deductions for persons who do not otherwise itemize, and the provision subjecting appreciated gifts to the minimum tax.

Weighed against these flaws, inequities, and uncertainties, however, must be the very real improvements the bill will make in our tax system. On the positive side, the bill will:

Provide overdue tax justice to millions of low-income persons and families who have been paying far more than their share of the tax burden.

Provide a fairer distribution of the tax burden by shifting part of the burden from individuals to corporations.

Assure, through a minimum tax, that profitable corporations and well-off individuals cannot totally escape the responsibility of sharing in the costs of Government.

By reducing marginal tax rates, drastically reduce the influence of taxes on the spending, saving, and investing decisions of business and individuals.

Reduce distortions in our economy caused by tax credits and artificial depreciation allowances that favored some industries over others.

These are broad and very major improvements in our tax system. Indeed they constitute the most far-reaching reform of our tax system in decades. And it is not likely that we shall have an opportunity again soon to make such sweeping changes.

However, we must recognize that imposing such broad changes on our tax system—even though most of the changes are for the good—poses serious uncertainties about how individuals, corporations, investors, contributors, retired persons, consumers, and others will respond, and what the cumulative impact of those responses will be on our economy. There are no certain answers to those questions.

With enactment of this tax reform bill, we will be embarking on uncharted seas. There are known inequities and unknowable risks. On balance, I have concluded that the potential gains from this tax reform bill outweigh the disadvantages and risks, and I will, vote in favor of its adoption.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, as I view all of this, I cannot help viewing it with the overpowering sense of lost opportunity. I think my chairman would agree with me that I was at least one of the compelling forces of tax reform in the committee; that from time to time when things looked worst, I was standing there, ready to push and argue and try to achieve radical tax reform. And by radical tax reform, I mean not something that would jar the American public. But radical enough to attract the American public, to attract the business community, to attract the individual taxpaying community. I believed they could be attracted with the concept of fairness, the concept of simplicity, the concept of economic opportunity that once delivered not through the Tax Code, but through the economics of America. Good economic opportunity ought to attract instant economic support without tax incentives.

We have in our tax bill, over the course of time, developed a very efficient way for momentarily delivering economic stimulus or economic resistance to certain ways of capital flow. We did it knowing that the Tax Code was the quickest way to the economy, certainly more efficient than appropriations. Because through the tax system you can influence certain economic decisions without delivery of a large bureaucratic structure, as well.

The only problem that we had was that portions of the Tax Code developed a constituency of their own, and the constituencies became dependencies and the dependencies became irresistible forces for the status quo.

So tax reform, in order to be radical, had to overcome the resistance of established constituencies.

And we almost did it. We damn near did it. We had it on the tips of our fingers and we let it flow out.

You may recall that the first and rather exciting time was when the chairman delivered a concept that had a top rate of 25 percent. And guess why we left it? We left it because of politics. We really did not leave it because of tax policy. But it was an exciting time because that was the threshold moment when we could have attracted the real broad support of American people for a Tax Code that was: One, simple; two, fair; and, three, efficient.

And the sad part of where we have come is that we lost simplicity. And when we lost simplicity, we lost fairness. Because I will guarantee anybody who views what we have done, that while we added complexity in the name of fairness, we have created inherent unfairness because the least powerful of Americans cannot cope with complexity as can the powerful.

In the conference committee, I cannot tell you how many times I was disappointed as we met not in public but in private—and that was necessary; it is not a criticism—when we would have Members on both sides, the chairman of the Senate committee and the chairman of the House Ways and Means Committee say, "You are right to object to this as a matter of tax policy, but as a matter of politics we can't do it."

□ 2234

And by golly, day by day, and hour by hour, and minute by minute, we lost reform on the threshold of politics, on the threshold of practicality, and on the threshold of symbols over substance. The statistics got lost in the smoke and the methodology got lost in the mirrors. That is not to say in this bill there are not good parts. I would be the first to admit it.

I rejoice as do most Americans the fact that 6 million people will come off the bottom. Those at or near the poverty level will no longer pay taxes. That is good. We will eliminate some of the most abusive tax shelters, at the same time eliminating some of the most creative tax policies. But the sad part is that, in my opinion—and I feel sad because I worked very hard to achieve real tax reform—and the bad outweighs the good. It is abysmally antifamily. When it left the Senate, it was more profamily. As it returned to the Senate, it is antifamily.

The IRA limitations discriminate against the two-worker family. If a spouse is working and a participant in a pension, neither spouse's investment retirement account is deductible; if a husband is working or if a wife is working and the other spouse wishes to earn a little income, by managing rental properties which happen to be "passive" under the conference bill, he or she becomes an impediment to his or her spouse's after-tax earning capacity.

It seems wrong to me that a spouse who decides to go to work eliminates the other spouse's opportunity to deduct IRA investments. It seems wrong to me that abandoned or separated spouses are badly discriminated against in the rate structure. It seems wrong to me that married people filing separately, and they must from time to time—and it is not a matter of choice but a matter of reality—are penalized drastically over couples who are able to file together.

It seems wrong to me that we say this bill promises to stimulate economic growth. It would have when it left here. But we took away on one side savings incentives virtually across the board. And on the other side we took away risk incentives. So now there is no incentive to save. And there is no incentive to risk your capital and the

tax incentive designed to encourage risk taking. What becomes of that? Without it proponents of the legislation say that you will chase economic opportunity. But what economic opportunity will you chase?

You will chase the safest of investments. This acts as a stimulus to consumption. Some say that "new consumption will do good things for our economy." Others looking at it will say "to consume what?—Japanese stereos?—and who will produce that which we consume?" So you can look at the bill and you find that we have provided this big consumption stimulus to the individual taxpayer by increasing dramatically the productive sector's cost of capital.

When we argued this bill in the Senate, we said that we had increased the cost of capital by $90 billion over 5 years. That was deemed not too much. Now we say we have increased it by only $126 billion, an additional $36 billion. But the problem is that the assumptions that we use for $90 billion shift, when the bill left the Senate, are not the same assumptions that we use to arrive at the conference bill's figure of $126 billion. So using today's economic assumptions the original Senate bill only increased the cost of America's capital by $60 billion, or under the economic assumptions on which we based the Senate bill. The conference bill shifts $150 billion to $160 billion to the productive sector. But in point of fact, we are using two different sets of figures to sell this to the Senate and to sell it to America.

The problem, however one defines it, still is that the only cost of capital that has not been increased is that of those who compete with us in the international marketplace. The only cost of capital that has not been increased is that of the Japanese, that of the Europeans, that of the Koreans, that of the people of Hong Kong, the people of Singapore, and others who compete in our market. We have damaged our ability to conduct American business overseas.

But when the bill left the Senate we had done some good things for agriculture, we had done some good things for small business, we had held to a minimum the tax increase on the sick and dying oil and gas industry, and we had held to a minimum the tax increase on the heavy capital industries of mining and mineral production.

Now as it comes back we find an attack on agriculture, not a support of them. You will see, and I promise this, a level of outrage that will surpass what we have had with the funny automobile recordkeeping requirements. My ranchers are now going to have to have an accountant with them all day, every day, and each of every season to account for preproductive and prepaid expenses.

□ 2300

And in the name of simplicity and reform, we have provided them with this new joy.

How are they going to keep these records minutely on feed, fertilizer, seed, and water costs? Why should I go back home to Wyoming and say, "This is a benefit to you," and if I did, how could I say it with a straight face?

We repealed their investment tax credit. They knew it was coming and they accepted that. But when the bill left the Senate, it had a depreciation treatment that was better; it was a good trade in the name of tax reform. We had done something that worked. We had taken away what people called an abuse.

I did not like the repeal of the investment credit. I liked the investment tax credit. I felt it was an effective and efficient way to encourage investment and production. When the bill left the Senate, we had replaced it with something that was completely acceptable. Now, it comes back with depreciation that is worse than current law and the investment tax credit is gone.

For farmers, when it left here, it had income averaging and now it has that gone.

Capital gains, which is the major portion of breeding herds and other forms of agriculture, it is gone.

So what do I tell them that they have here? I cannot tell them that it is simpler, because it is a damn sight more difficult. I cannot tell them that it is more efficient, because it is a damn sight less efficient. I cannot tell them they have been reformed. I can only tell them they have been done.

The next sector of my economy is oil and gas. We fought, and the chairman was generous and the majority leader was generous and the Senate was generous, and we fought and we fought and we limited the tax on the oil and gas industry to $10 billion over the next 5 years.

We come back and find that worse. What is more, we find their future prospect even more drastically limited when it comes to this crazy concept than when we voted on it. What is called "earnings and profits," undefined in the House-passed bill and undefined to the conferees, was embraced. And after 3 years' time, we will find capitalization of exploration costs in the oil and gas industry. That is really and truly a very heavy burden to bear.

How can I tell them that they have been reformed? We persuaded them to understand the $10 billion tax increase of the Senate bill. How can I persuade them to understand an extra perhaps $16 billion on top of that in an industry that is sick and dying.

How can I explain this conference bill to the next segment of Wyoming economy, that of mineral production, coal, gravel, bentonite, trona?

When it left here, we had traded the new capital costs by virtue of the loss of the investment tax credit for a very good and a very efficient accelerated depreciation system and a retention of percentage depletion.

Now both depreciation and depletion are worse than current law and the industry has lost the investmant tax credit. Like all other commodities, minerals are in trouble—deep, serious, and abiding trouble around the world, but ours more so than the others because the miners are paid more, our capital costs are higher, we have severance taxes, we have environmental requirements, all of those things which are things that I have supported. But now on top of it we have told them not to invest in new equipment because they cannot get a sufficient return on it to make it worth modernizing.

Then I have to look at the next segment of the Wyoming economy. That is travel and tourism. How can I tell them that I have helped them or that this bill will? A major segment of Wyoming's travel and tourism is conventions. So the travel and entertainment portions of the bill come down right square in the middle of their backs. This bill makes those expenses 80 percent deductible, not 100 percent. I was able to swallow that when the bill left the Senate. But the scales have changed as the bill returns to the Senate.

I look at the next segment of the Wyoming economy, small business, Wyoming, per capita, is the largest small business State in America. I see them with added complexity, in accounting and compliance rules and with a loss of capital incentives and capital gains, and I see them with a corporate rate reduction that helps large corporations more than it helps small businesses. I see them with a loss of the general utilities doctrine that permits family entrepreneurs to get out without double taxation, two levels of tax on the same profit.

I see them with a reduction of the ITC carryover and the reduction of general business credit limits.

How can I go to my small businessman and say that this is simpler, this is fairer, this is more efficient? The answer is that I cannot.

So we travel over the rest of the economy of my State and find there is not much left.

I rejoice, and I would have to rejoice, in the fact that there are a number of the people in the State of Wyoming who are at or near the poverty level and they will benefit, and I rejoice for them.

The problem that I have is that I would add to their numbers should I vote for this bill.

The problem that I have is that this bill will put more Wyoming people down in the poverty category.

Of what benefit is it to people to have a 15-percent rate if they do not have an income against which to apply it? If I hit small business, if I hit agriculture, if I hit oil and gas, and if I hit minerals and mining production, timber production and tourism, I do not have a hell of a lot left in Wyoming to rejoice over.

So, Mr. President, I guess I have a problem because we set out to sell tax reform to the American people, not thinking it was good enough to restore fairness and create simplicity and do those things. We decided the only way we could get America's approval of tax reform was to give them tax relief. But in point of fact, that was a premise that was not necessary. The original Bradley-Gephardt and the original Kemp-Kasten did not make this transfer from the corporate sector to the individual sector. We did not have to do it. But we got lost in that thesis and we got lost primarily in a thing called revenue neutrality.

I remember when we got going before this thing ever was under consideration in the Senate, the Treasury Department discovered that they had $11 billion that somehow or another, in the process of estimating, they were going to be short, $11 billion over 5 years in a $300 trillion economy being like trying to find a specific glass of water in the middle of the Mississippi at flood stage. You cannot do it.

But we kept binding ourselves and the worse thing is when we got into the conference—and this brings me to the principal point I want to make—every time we got somewhere with a reasonable compromise, the Joint Tax Committee, which was operating on its own agenda and not as professionals, came in with a new revenue estimate. Overnight they would come in with a new estimate.

□ 2310

And we had no way to confront it. We had only to pay for it; causing agreements to break down. So, we started again this ridiculous process of picking up nickles and dimes and running them about. And what did we do? We created a bill against which a significant number of points of order would lie under the rules of the Senate because of new matters which were not decided by the conferees. I am not going to raise them, except I am going to describe them. Because they are not the problems that I have with the bill and it seems irrelevant to raise a point of order over something that is not a problem that you have with the bill. But that existence proves my point. When the conferees, in their rush to get home—and I was one—I was not there on the last day of the conference—I was entertaining the Japanese Ambassador in the State of Wyoming, trying to get that wretched country to buy a product that we have, that we can produce and supply to their country cheaper than they can in greater quantities of inventory and in greater quantities of quality.

I thought it might be important to try to supply that extra 600 jobs. So I was not there, I willingly admit that. But the conference bought off on concepts that they did not and could not understand—it is not a criticism of them. Then they licensed the committee staff to proceed and to produce things that were never even discussed amongst the two committees of the House and Senate.

For example, on page 818, we did something about Federal tax liens. What we did was fix two cases that the Treasury Department had lost. And it bothers the Treasury Department to lose, so in the dark of night, when no conferees are around, in slips the reversal of these cases. These cases were two protaxpayer court decisions in which the nineth circuit held that cancellation of land sales contracts will extinguish Federal tax liens even if there is no notice to the Federal Government.

These cases are explicitly overturned in the bill without any discussion in the committee or having been mentioned in either bill. Well, the American taxpayer is entitled to have those who make the laws that he is going to be subject to have been elected and not hired. And here we are.

There is a beauty in here on alimony. It completely changes the tax consequences of American divorce law. Never mentioned in the conference committee, never mentioned in our musings on the bill, in the Senate, during our retreat up in West Virginia, or anytime during the course of the consideration of the bill, or anything on the floor of the Senate, or at any moment in the conference. Never mentioned. And along it comes and modifies the statutory distinction between property settlements and alimony payments and is so arrogant as to say, "This new provision will generally apply." It just admits that we never even considered it.

Customs user fees, also a neat little deal about moving expenses. Neither issue was ever considered, not in either bill, neither were a question that any of us was presented with in the conference, but moving expenses are changed from a deduction from adjusted gross income rather than a deduction for adjusted gross income. Basically what it says you lose your moving expenses unless you itemize.

There are a bunch of major changes that were made without knowledge or consent of the conferees.

A reduction in the standard deduction of $30. We were not asked about that. Nobody voted on that.

Taxation of income of gifts from grandparents, taxed at the parent's rate. We were not asked about that. Nobody ever mentioned it. These, and other changes are totally outside the scope of the conference: That which is conceptualized by those that signed the conference report before it was reduced to writing.

For my part, for whatever reasons, and I do not know, I was not even asked to sign the conference report. I do not know whether that was because I made the requirement or stipulation that before I did, I would like to see the report. When I asked to see it, I was told there was not enough time, that it had to go to the printers. I do not know why I was not asked, but the fact is that this conferee was not asked. I guess I am a little disappointed in that because I frankly was flattered by, and energetically applied myself to the fact that I was a conferee and they had stepped over the traditional seniority to put me on the conference. I was flattered by that and I worked hard and I wanted a tax conference that provided real reform and I did not see it.

I think the point that I am trying to make is that the system stinks. The system is in trouble when this body of elected people turns over its responsibility to staff, however competent, and says "You write it. We will sign off on it without ever seeing it." And has it arrive in the House and gets a vote without anybody being able to claim that they know what is in it.

Now it is presenting itself to us, a couple of thousand pages, on the same basis.

The system stinks when conferees will not take the time to try to find out at least what is in it that is new, at least what belongs, the part of it that was never talked about or discussed amongst the conferees. It would not have made any difference had I been there on the last day. These things were not talked about, they were not raised, they were not presented, they were never asked of anybody. They were just put in, in a desperate search for fine-tuning $1 billion or $2 billion in this ultra-trillion-dollar period of time. It is impossible.

So, I guess I say again tonight that I am sorry, I am disappointed. We had an opportunity and we lost. We let it go on politics. We became more interested in the symbol of tax reform. The President's people, the majority party in the House, and the majority party in the Senate has been more interested in the symbol of the tax reform than its substance. We want the campaign ribbon and we do not really care that we have not achieved the goal. The President, when he asked us to do this, gave us three legs on which this stool was to stand: Fairness; we gave it away when we had it in our hands. Simplicity; we gave it away when we had it in our hands.

□ 2320

Economic stimulus. Take the chairman's argument that some say it will create that stimulus. My own belief is that it will not. But with two of the three legs gone, who the hell cares what the third leg does. You cannot sit on it anyway; it will fall over.

And that is where I leave it tonight, really disappointed, really viewing it as though we had an opportunity in our hands that we let go on the altar of politics and symbolism. And this opportunity is not going to return, not while I am here and sure as heck I am not going to be one of the ones who stands up and says, "Let us do tax reform again," I promise you that. I have seen that we do not have the courage or the willingness. I have heard it said in the conference committee that "It may be good policy, but it is not good politics." I have seen us fritter away an opportunity of a lifetime on the altar of convenience and the purchase of campaign ribbons.

Mr. President, I yield the floor.

Mr. BROYHILL addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. BROYHILL. Mr. President, I have listened attentively to the various remarks and speeches that have been made tonight, especially to the Senator from Wyoming and others. I think back to the reason we are here tonight and why we are discussing this bill.

We are here because the American people were speaking on behalf of tax reform. They were speaking out on behalf of tax reform because the tax system had become too complicated and too burdensome. They were expressing to those of us who are supposed to be representing their views that the tax system had become unfair.

I have listened with interest to my colleagues as they have discussed the history of this bill. The Senator from Wyoming expressed his involvement in this legislation. I also listened with great interest to the chairman of the committee as he gave us the history behind this bill, not only in the Senate committee but also in the House-Senate conference. But the fact is we are here because the conference has agreed to the most comprehensive tax reform package since World War II.

Now, this bill is not perfect. I do not think its sponsors have said it is perfect, and it may even fall short of the goal of simplification. It does represent a very significant improvement over the present Tax Code, for that is what our goal was. I am sure that every Senator, if he had his druthers, as we say down home, would probably write a bill that is different than this one. Perhaps it would be a bill that the rest of the Senate could not support. In my judgment, the document before us will restore fairness to our tax system and will significantly lower personal tax rates as well as business tax rates. I am convinced that it will stimulate greater economic growth. As I pointed out, this bill, in my judgment, is in response to the American people, who have asked us to put tax reform, the rewriting of the Tax Code, high on our legislative agenda. This is what we have done.

I look at some of the advances that have been made. The current Tax Code has 14 individual tax brackets. In this bill we have only two brackets with a maximum top rate of 28 percent. Under this bill, 80 percent of the American taxpayers will fall within the lowest tax rate.

An item in this bill which I consider significant is that an estimated 6 million Americans who live at or below the poverty level will no longer have to pay taxes.

Another factor in this bill is the maintenance of the traditional deductions that are important to middle-income families. These include mortgage interest, State and local taxes other than sales taxes. Also the personal exemption will be increased to $2,000 by 1989. I think this is a significant improvement in the Tax Code. Since 1948, the personal tax exemption, which was set at that time at $600, has not kept pace with the rate of inflation, it has, in effect, been devalued. The increase in the personal exemption to $2,000, in my opinion, is a significant profamily provision.

I also feel that many small businesses will benefit from this legislation. The top tax rate on business is reduced from 46 percent to 34 percent. This is a significant reduction.

This legislation also lowers the tax burden on small businesses. What this means is that if a person has an idea, forms a business, works hard, and produces a profit, he is going to be able to keep more of that profit. He can, therefore, do whatever he wants with it—reinvest it or keep it, spend it or dispose of it in any way he chooses.

I am aware of the concerns expressed by the previous speaker. I certainly understand and share the concerns that other Senators have expressed in respect to certain portions of this legislation. This legislation eliminates the investment tax credit. The investment tax credit proposal was made a number of years ago when I was serving in the House. I supported it. I would also point out that this bill preserves accelerated depreciation and cost recovery.

I also wish to make an observation about investment tax credits. If memory serves me right, not only the original Treasury bill and the President's proposal but the Bradley-Gephardt plan and the Kemp-Kasten plan called for the elimination of the investment tax credit.

I also think we should take a look at why people make investment decisions. Investment tax credits may be a significant factor, but I really think one of the things entrepreneurs' consider when they are about to invest or reinvest is the soundness of the investment itself. In other words, they look at the market demand for that particular product or service. The decision to invest is a response, it seems to me, to the marketplace—what will be the inflation factor in future years? What will happen to interest rates? These factors are very much in the forefront of investment decisionmaking.

So it seems to me this tax reform will encourage these investment decisions to be made in response to the marketplace and not necessarily based on what taxes a person might pay.

This bill has been under consideration for some time. It is not perfect. As I have stated in my judgment it does put us much closer to our target, that of a fairer tax system, a simpler tax system, one that is equitable for all Americans. The President has called for tax reform. I know that the people of North Carolina have called for tax reform. I know the American people have been calling for it. This is a chance for us to act, and I urge my colleagues to join me in supporting the Tax Reform Act of 1986.

I yield the floor.

□ 2330

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 2400

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

RECESS UNTIL 12:11 A.M.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that there be a 5-minute recess.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, at 12:06 a.m., the Senate recessed until 12:11 a.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. TRIBLE].

Mr. DODD. Mr. President, in 1981 the Congress at the direction of President Reagan embarked on a series of economic policies which I believed then and continue to believe threaten the well-being of our Nation and severely limit the options available to future generations. Because I feel that the pending tax reform legislation represents a continuation of these misguided policies and because this legislation is not in the best interests of the citizens of my State and, in my opinion, is an affront to my constitu-

ents, I will cast my vote against adoption of the conference report.

I find little comfort in the fact that I was one of a small handful of those in this Chamber 6 years ago who refused to climb on board the bandwagon of fiscal irresponsibility. By drastically cutting taxes and not overall spending, we laid the foundation for the problems which we as a nation confront today—a doubling of the national debt in 5 years, a shift from a positive trade account to the position as the worlds largest debtor Nation over the same period and a current level of economic growth teetering on the brink of recession. While the political fervor of the so-called Reagan recovery afforded a brief delay in the full impact of these policies, in reality, that recovery began to stagnate 2 years ago and was itself an inevitable result from the depths of the 1981-82 Reagan recession.

Now Mr. President, we find ourselves on precarious economic ground with a vote on a tax reform bill designed to fundamentally alter the economic, social and political framework of this country. The problem with all of this is that no one—not the economists, not the sponsors of this bill, and not the President—can tell us where we're headed. All we hear is that the train is roaring down the track and it's time to get on board or be run over. Yet, the day after the final tax bill was agreed to by the conference, the President's Chief of Staff, a former Secretary of the Treasury and the former head of one of the worlds largest investment banking concerns, was quoted in the Washington Post to the effect that the administration could not assess the economic consequences of the bill. More recently, we have a former chairman of President Reagan's council of economic advisors predicting a full 1 percent drop in GNP next year and a loss of 1 million jobs by 1991 as a result of this bill.

Mr. President, once again simple math will show us that this bill has the real potential to push this Nation into a recession. After 6 years, it's time to stop telling the American people anything and everything they want to hear and start telling the truth. Who are we fooling by adopting lower tax rates today in an election year, when it is obvious that the deficit situation makes it a foregone conclusion that revenues will have to be increased next year.

The most regrettable aspect of all of this is that we are not only about to perpetrate a hoax on the American people, but it was avoidable. We could have tax reform, without either the economic uncertainty or the unfortunate dislocations which I fear will occur in our society as a result of this legislation. The fundamental flaw of the Tax Reform Act of 1986 is that it appears to have been written with blinders on. In reality the Internal Revenue Code is a reflection of American life. As long as there exists a need to collect revenues, our tax laws will guide economic decisions in this country regardless of how low the rates get or how many preferences are eliminated. Coming at a time of budgetary strain and limited options, this bill is less tax reform and more a continuation of the philosophy of Ronald Reagan that with the exception of national defense, Government has no role to play in meeting the needs of the American people.

Mr. President, I believe that we must strive for equity in our tax laws and that it is proper for government to either encourage or discourage certain behavior through the Tax Code. On balance, I do not think the pending tax bill enhances the equity of our tax system. I challenge anyone in or outside of this body to show me a piece of legislation that goes beyond this tax bill in applying substantive changes of law in a retroactive manner. If I were a Federal retiree, I would feel justified in opposing this bill and regardless of ones views with respect to real estate shelters, is it fair to base taxation on anything other than a reliance on the laws and regulations which existed at the time in which transactions were consummated? Is it equitable to provide transition rules which convey tax benefits on particular concerns that will be competing with other businesses that have not been accorded the same status? Should homeowners be allowed to borrow money for their children's education and deduct the interest while renters who are probably more in need cannot? Under the guise of reform and equity, why is it necessary to increase the taxes of almost 16 million taxpayers with annual incomes below $50,000.

When we attempt to assess the total impact of this legislation, I suspect that we will find that while the tax returns of lower and middle income families have been either eliminated or simplified, life will be more costly and complicated. I wonder if 2 years from now we will be boasting about all those of low income we took off the rolls in 1986, when these very same people are paying more for rent in a tighter housing market than they formerly paid in taxes. While we bemoan the escalating costs of higher education, let there be no doubt that this bill raises the costs of capital to our public and private universities. When we subject the interest on municipal bonds to taxation, we drive up the costs associated with the revitalization of this Nation's crumbling infrastructure.

As to the impact of this legislation on my constituents, I must raise a special objection to the elimination of the deductibility of State and local sales taxes. This provision goes beyond the scope of the conference and is an improper intrusion on the part of the Federal Government into the prerogatives of the citizens of my State which generates significant revenues from sales taxes and does not impose a State income tax. This loss of deductibility will be felt by not only itemizers in my State but all of our residents who will continue to expect and demand the same or more by way of Government services against an eroding tax base. I led the effort in the Senate to restore universal deductibility under individual retirement accounts both because I believe in tax incentives for retirement security and because over one-half of the households in my State had availed themselves of this savings options. As with the sales tax issue, I thought we had sent the conference some fairly positive signals on the IRA issue during Senate debate, yet for the middle-income people in a high cost, high per capita earning State such as Connecticut, the dollar cutoffs in the conference bill for maintaining this deduction are unacceptably too low. I also am offended by the provision in the IRA section which would deny the benefits of full deductibility to a working woman soley on the basis that her husband is an active participant in a private retirement plan.

Mr. President, once the flood tide of tax reform has subsided, I believe that we will be back on the floor of this Chamber adopting major alterations to the Tax Reform Act of 1986. I don't know of anyone who seriously believes that the deficit reduction task which will confront the 100th Congress can be addressed without some revenue component. Further, I predict we will be back here in fairly short order bemoaning our lack of competitiveness abroad as a rational for increased incentives for expanded savings and investment. The result I fear, Mr. President, will be a further erosion of our citizens confidence in the Congress and the Tax Code. When the potential, negative implications for our economy are added to this equation, I can reach no conclusion other than that the adoption of this legislation is not in the best interests of the citizens of Connecticut or the Nation.

Mr. SIMON. Mr. President, I rise to speak in opposition to the tax bill conference report now under consideration.

I do that fully recognizing there are some good features in the proposal, and recognizing that a great deal of hard work has been put in by many of my colleagues here in the Senate and in the House. Particularly playing a key role of leadership has been our House colleague Representative DAN ROSTENKOWSKI, who has shown courage and great ability in bringing this measure to this point. Here in the Senate, our colleagues Senator PACK-

WOOD and Senator BILL BRADLEY deserve special commendation, as do Senators RUSSELL LONG and LLOYD BENTSEN.

They labored long and hard. I respect that effort, but now we must face the question, "Is that effort one that we should impose on the Nation?" Despite my great respect for them, I do not believe we should.

DEALING WITH THE DEFICIT

I know of no one in this body who does not readily recognize that the deficit is the No. 1 problem facing our Nation's economy. Yet, we are on the verge of passing a massive overhaul of our tax system without addressing the deficit. We have studiously avoided the basic problem. We are making a serious mistake. And everybody knows it.

It is a mistake to collect an additional $120 billion from industry and not apply 1 penny of it to the deficit. It is foolish to increase the taxes of one-third of middle-class Americans and not spend a penny of it to reduce the deficit. It is wrong to take away the additional personal exemption given to those over 65 and to increase the threshold for deductibility of medical expenses for those same senior citizens without applying 1 penny toward the deficit.

Where is the fiscal integrity to which both political parties have long adhered? Where are those who claim to be pay-as-you-go Democrats or Republicans and have given lip service to their concern over the gigantic deficit we face?

This proposal decreases the deficit by $11 billion this next fiscal year, but after that it increases the deficit somewhere between $17 and $22 billion a year. And that is just a starter.

By eliminating many of the sources for increased revenue in years to come—because it eliminates many exemptions—we will make it much more difficult to achieve the revenue needed to reduce the deficit in future years.

We all know the deficit is our No. 1 problem, and when we pass this proposal, and I understand that we will, we are choosing to ignore our most pressing problem. History will not judge us kindly for that massive error, for our lack of good sense.

Beyond the obvious and comprehensive mistake of ignoring our obligation to deal with the deficit, there are other things wrong with the bill we are about to pass into law.

RETROACTIVITY IS WRONG

We all take great pride in our country. We have all said you could trust the word of Uncle Sam. But can we? Thousands of people made investments trusting that what the law said the law meant. But apparently this bill is an exception to that rule. In the section dealing with real property and the passive loss provision we break faith by applying a law retroactively. This is tantamount to saying that a Government bond is worth $1,000, selling it and then declaring that its worth is really only $700.

The special tax breaks for commercial real estate construction were not wise. But is it right to tell people one day that if you make such an investment we will give you special tax breaks and then a short time later say, "Sorry, we were only fooling. We take this tax break back."

Foolish as it was, when we make a commitment we should stick to it, but take away the exemption for all future investments of that type.

Yes, this change will bring us dollars, but it also brings a lowering of confidence in any future incentives our Government may provide. And that will be costly in the long run.

PROGRESSIVITY REPEALED

For decades the fundamental principle of the American system of taxation held that those who make more pay more, not only in amount but rate. The concept of taxation based on ability to pay was battered by lots of loopholes over the years. Until today we have at least adhered to the philosophical principle of a progressive tax system. Now we are reversing that and the person who makes $300,000 per year is taxed at essentially the same marginal rate as the person who makes $30,000 per year. One of this Nation's top executives told me that if this measure passes he will receive a tax break of about $250,000 a year—but he told me that to give it to him does not make sense when the country has a $200 billion deficit. He is right. It also does not make sense to give it to him when we will be at the same time raising the taxes on millions of middle-income Americans. Is that fair? Since I have been in Congress I have seen the top rate drop from 70 percent to 28 percent. Have we such huge surpluses in our Treasury that we can afford that? And is it fair? I am still old-fashioned enough to believe in balanced budgets and progressive tax structures and this proposal attacks both. Make no mistake about it, far too large a portion of the benefits of this bill pile up at the very top of our income structure. One-half of one percent of the people—the very wealthy—get 16 percent of all the benefits of this bill, as it emerged from the Senate, and while in conference, it apparently was improved slightly. But, the deferential treatment of this Nation's wealthiest citizens is not wise economically and not wise from the viewpoint of achieving a healthy society. The disparity between the wealthy and the poor is growing and anyone who does not recognize that as a portent of problems to come has not read history. The difference between the top 10 percent of our population and the bottom 10 is now roughly 14 to 1, higher than any western industrialized democracy other than France. In West Germany it is 5 to 1. In Japan, less than that. Does anyone seriously believe that a tax bill that increases this disparity in our society is good for us in the long run?

INVESTMENTS AND JOBS

Taken as a whole, this bill constitutes a mighty impetus away from manufacturing toward services and information. Mark Twain commented with great insight when he expressed his doubts about any society which tried to make its living by taking in each other's wash. We must maintain and improve our industrial and manufacturing base. It is important for jobs and indispensable to our national security. Mark Bloomfield, president of the American Council for Capital Formation, in describing this bill said it creates "one of the most anti-investment tax systems in the world." At a time when the world is getting more and more competitive economically and the competition for trade and jobs is getting tougher, why is the United States embarking on a course of taxation which will make American industry less competitive, less modernized, and more starved for capital investment to improve itself?

Let's not delude ourselves. A decline in manufacturing results in increased unemployment. More jobs are lost as we become less competitive in the world market. Richard Rahn, vice president and chief economist of the U.S. Chamber of Commerce, said of this bill "It clearly discriminates against manufacturing." I agree, and I say that as one who has been highly critical of the failure to have a sensible minimum tax for corporations. I want corporations to pay their fair share, but I do not want to discourage the manufacturing base of this country.

Perhaps the most incisive critique comes from Robert Nathan, one of the most respected economists in this country and the world. I cited his opposition when we debated the Senate version of tax reform. His statement in a letter to our colleague, CARL LEVIN, is so direct and to the point, it bears repeating. He said, "The huge shift from individual to corporate income tax incidence occurs at a time when we desperately need much more investment in modern and efficient capital facilities. In my judgment higher rates on corporate profits, along with carefully targeted and strictly monitored incentives, would be more stimulative to private productive investment than lower rates with no incentives."

I will not defend all the investment tax credit breaks which were put into the code in 1981. I voted against that tax bill because it swung too far in one direction. The drastic remedy we have before us today swings equally too far

in the other direction. And it will cost us jobs, lots of them.

The reduction on tax credit for research and development for businesses from 25 percent to 20 percent moves in exactly the wrong direction. We are already slipping compared to Japan and West Germany and some other countries. Does anyone really believe that we can become more competitive in tomorrow's world and preserve American jobs by spending less money on research?

DAMAGE TO FARMERS

It is hardly surprising that the already hard-pressed agricultural sector is rising up in opposition to this proposal that hits farming as it does other manufacturers of concrete goods. Crocodile tears of sadness over the plight of the farmers, while we cut away at their opportunity to earn through greater investment, should fool no one. Farmers are among the people hurt.

DAMAGE TO HIGHER EDUCATION

We are hearing the united voice of higher education. One institution president after another is speaking out against provisions of this bill. Contributions to institutions of higher education, especially private universities but public institutions also, are predicted to plummet. This is no time to add to the burdens of our colleges and universities. We have reduced some services to our academic community, and our student assistance programs have not kept pace with the growth in student fees. The net result is that hundreds of thousands of young people cannot go to college, or feel they cannot. And now, through this tax bill, we compound the problem. We deny university officials the opportunity to make up for inadequate Federal support through increased private contributions. This bill will significantly reduce the donor incentive to give, and probably substantially reduce contributions.

The result of this tax bill will increase the ranks of nonitemizers substantially and reduce that category of donor. The person who wishes to donate property which has appreciated value, such as stocks and bonds, can no longer claim current market value of those gifts as a tax deduction.

Compounding this problem is the reality that this Nation is already doing too little to encourage those of limited income to go to college and particularly—with great long-run damage to the country—we have too few really able Americans going on to graduate school in many fields. This tax bill will make that even worse. Scholarships and fellowships are now to be taxable. Federal grants to low income students, which often cover more than tuition and books, will be taxed for any amount above the tuition and book expenses. Limits on authority for private institutions to issue tax-exempt bonds will certainly impact the bricks and mortar side of higher education. These are among the multi-faceted assaults this bill makes on higher education.

At a time when there are already pressures on colleges and universities to lower standards, to provide less quality in education rather than more quality, this tax measure will add to the pressures to have less quality. Reduce the resources of these institutions and you will find fewer new books in the library, fewer pay raises for faculty. And that course in Japanese that will help trade relations with Japan in the long term, but only attracts six students, will be quietly dropped.

In the name of "tax reform" we are buying lower quality in higher education. It will not be visible. The library will look the same. There will be no headlines because a course in Japanese is not taught. And the faculty member who quietly leaves the campus for another field will be replaced by someone slightly less talented, but the alumni association or board of trustees will have a hard time measuring the loss.

We have heard the voices of the universities. Every Senator's office has undoubtedly heard from the American Council on Education, the National Association of Independent Colleges and Universities, the Association of American Universities, and the American Association of University Professors. The next voices we will hear will be the parents of college students lamenting the rise in tuition and costs associated with getting a college education for their children. And we will hear the voices of the men and women who will be denied an education because they aren't wealthy enough to pay for it. When we make it harder for people to get the education they want because they haven't the personal means to pay for it, when we cause a decline in the quality of higher education, we are only hurting ourselves and the future of this Nation.

I am also concerned about this bill's effect on cultural institutions such as museums, symphony orchestras, theaters, and opera companies. The nonitemizer deduction and the deduction for gifts of appreciated property are important to these organizations that enrich our lives. When I served in the House, I chaired the subcommittee with authorizing jurisdiction over the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum Services, and I now serve on the Senate authorizing committee. I know firsthand how dependent museums and other arts and humanities organizations are on support from the private sector. This bill may jeopardize the ability of the Endowment's grantees to meet the matching requirements of such grants. Certain kinds of gifts of appreciated property, for instance, may be used to match *Challenge* grants. Cultural institutions which do not receive grants from NEA, NEH, and IMS are even more dependent on private giving and may be hurt even more by the reduction in tax incentives for charitable giving.

ASSAULT ON RENTERS

This bill makes such a pronounced attack on financing the construction of rental housing that there can be only one result. Over the next 5 years there will be a dwindling supply of new rental units available. Rents will go up. And they will go up dramatically. The former chairman of the President's Council of Economic Advisers, Murray Weidenbaum, has written that the passage of this measure will increase rents at least 10 to 15 percent over the next 3 years—far more for most renters than any breaks they will receive in the tax bill.

REDUCTION IN THE RATE OF SAVINGS

The United States has for some years lagged seriously behind our international competitors in our rate of savings. A few years ago we recognized this and some small steps were taken to fashion a remedy. One of the means used was to create an Individual Retirement Account. We gave people a tax break to encourage savings. The IRA's were getting into full stride. They were starting to work and we were saving more. Despite the need for greater savings in order to have the capital to invest in the future of this country, we turn our backs on a large portion of this incentive and dramatically reduce the number of prospective users of the IRA.

Many of the letters I receive are from people who have inadequate pension plans. They had started a systematic savings through IRA's so they could face a more secure retirement. Now we are discouraging their efforts to help themselves.

A BASIC UNFAIRNESS

Much ado has been made about the supposed fairness of the bill before us. But our Federal employee who is near retirement can tell you how fair this bill is. Not only does it reverse the long-standing "three year basis recovery rule" but it makes the effective date retroactive. Not fair by any standard.

I urge the supporters of the bill to try the fairness argument on the senior citizen who can no longer deduct significant medical expenses if they are less than 7.5 percent of income. The threshold for deduction has been increased to that percentage. Add to that the elimination of the second personal exemption—another blow to those senior citizens who are already struggling to get by.

For years we penalized married couples by an anomaly in the Tax Code which levied a heavier tax on a work-

ing married couple than on two single people with the same income. Then we eliminated the so-called "marriage penalty." This bill reverts to the old ways and the "marriage penalty" now returns. Another example of just how "fair" this bill is.

Most of us in this chamber will get a break from this bill. President Reagan gets a break from this bill. The Los Angeles Times reports that according to the Washington office of Touche, Ross & Co., the President will save an estimated $14,700 next year. Once the bill takes full effect, the President stands to gain even more, saving an estimated $30,671 or 25.2 percent of his 1985 tax payment, assuming that his income and expenses remain the same through 1988. By contrast, according to one major news magazine, one-third of those with incomes between $30,000 and $40,000 will receive tax increases and one-sixth of those with income below $10,000 a year will receive tax increases. Senior citizens aren't getting a break when it comes to medical deductions. Federal employees who have been loyal workers for years aren't getting a break when they retroactively lose the benefits of the 3-year recovery rule. Low income students aren't getting a break. Unemployed workers who will now have to pay taxes on their unemployment compensation aren't getting a break. Married, two income, couples aren't getting a break. And one third of middle income Americans will end up paying more. Ask them how fair this bill is.

LOWER RATES VERSUS LOOPHOLES

A few years ago I listened carefully to the arguments of those who wanted to reduce rates from 70 percent to 50 percent. They were convinced that if the rates were reduced more loopholes could be closed and we would have a better Tax Code. I did not agree. I voted against the proposal. But the bill was passed and the rates were cut. The loopholes remained and multiplied. The assumption that the pressure for exemptions in the Tax Code will diminish as the tax rate goes down is not borne out by history. The pressures for these tax exemptions is as great today when the rates are 50 percent as they were when the top rate was 70 percent or when top rate was 90 percent. And those pressures will continue unabated at 28 percent.

Now we are doing a rerun. We have different numbers but the same principles are involved. The same arguments. The same folly. The grand tradeoff in this bill is a lowering of the rates in exchange for closing loopholes. I predict that within 5 years most of the loopholes will return. One group after another has already announced that they will come to Congress next year to make their case for change. We will hear some powerful arguments and they will be believed. The loopholes will return, if not next year then the following year or the one after that. When they do, how will we pay the bills? If we can't balance the budget at the present rates of taxation, how are we going to do it with lower rates?

As a pay-as-you-go Senator, I have no illusions about this bill. We will collect less revenue. We will run up more debt. And we will pass that debt burden on to our children and our grandchildren. That is irresponsible.

What will be the impact of this measure over the long haul, over a 10-year period? Those who support it say it will help, that service jobs will be created where manufacturing jobs fade, that our economy will beocme more efficient. But the reality is they cannot be sure, just as I cannot be absolutely sure they are wrong. But the unanswered question: Why take this huge gamble with our economy?

We know some modest changes will help. Why not make those instead of playing high stakes poker with the future of this nation's economy by passing a measure that is not carefully planned and considered?

As this measure has moved ahead, the stock market has dropped.

When we were first tackling the deficit with the Gramm-Rudman-Hollings bill the stock market increased dramatically.

Is there no connection between these realities? Can we learn something from the stock market?

We can, but apparently we will not.

As I look at our sluggish economy I marvel at the number of my colleagues who are willing to gamble on slowing it down further. The net effect of this bill will be to reduce economic activity and growth at a time when we should be doing the opposite.

Mr. President, the rush to what I believe is a rash judgment will not be be slowed by anything I say here. but when we see, as I believe we will, the product of our folly I want the record to show that I did not vote for it. There is, there must be, a better way than the path we are about to choose.

Mr. ABDNOR. Mr. President, I wish to compliment the distinguished chairman of the Finance Committee, Senator PACKWOOD, and the Senate conferees for their efforts toward shaping a tax bill which is consistent with the goals which have driven this effort since its inception months ago. Ever since the President first introduced his blueprint for tax reform, I've been skeptical of its future. So I commend my colleagues Senators PACKWOOD and LONG for their hard fight and tenacity in guiding a broad-based measure such as this through the institutional and political channels necessary to get where we are today.

For years, I've been fighting for a solution to the abuses which exist in the Tax Code as it affects agriculture. As many of my colleagues know, I've introduced legislation in the last two sessions of Congress which would correct these abuses and have even had the Senate support my concept in the form of a nonbinding resolution. Notwithstanding that resolution, my pleas for a binding solution had gone unheeded. The buck finally stopped when this bill hit the Senate Finance Committee.

It's for this reason that I commend my distinguished colleague, Chairman PACKWOOD, for his keen insight in addressing this issue in his bill and for retaining the Senate language in conference. A solution to this problem was long overdue, a solution I believe is provided for in the conference report to H.R. 3838.

For far too long, tax loss farmers have harvested the Tax Code, plowed up fragile lands and added to the farm sector's overproduction problems. My goal has been to return farming to those who are interested in farming for a profit rather than for a loss. By that, I mean bonafide, full-time, commercial-sized farms will be treated fairly and not put at a disadvantage by non-farmer tax sheltering. The conference bill helps me realize that goal.

Critics have argued that including this concept in the Tax Code will eliminate investment in agriculture. I won't argue that it will eliminate destructive investment. But it will not wipe out legitimate investment in agriculture. Anyone can still invest in farming and take full deductions, so long as they are in farming to make a profit, not a loss. Those who have dirt under their fingernails will be allowed full deductions, those who don't won't. It's as simple as that.

Mr. President, in addition to doing away with agricultural tax shelters, there are other reasons to reform the Tax Code, many of which have been addressed in H.R. 3838. For far too long, our Tax Code has been riddled with loopholes allowing a select few to avoid tax liability at the expense of the many. I believe lowered rates in exchange for eliminated deductions is a tradeoff every one of these hard-working Americans would choose to accept. For that reason, I'm very happy with the drastic rate reductions adopted by the conference committee.

The second observation, I would like to make is that there is something fundamentally wrong with a Tax Code which encourages investors to make investments in order to lose money rather than make it. Restoring investment decisions to a plane where they're based on economic substance rather than tax-motivated legalese has been a long time coming. In my opinion, this bill goes a long way toward addressing this inconsistency.

Despite my support for certain of the conference committee provisions, I

regret that my support for the bill overall has waned as it has progressed through the legislative process. I was happy to support the Senate-passed bill. Regrettably, that legislation has been substitutively altered by the conference committee. In my opinion, this legislation has markedly regressed from the Senate-passed version.

For example, Senators GRAMM, GORTON, and EVANS and I worked diligently on the Senate floor to restore at least a portion of the deduction for State sales taxes, with the assurance that full deductibility would be sought for in conference. I'm sorry to say that the conference committee struck even partial deductibility from their bill.

The average sales tax deduction for South Dakota's itemizing taxpayers in 1985 amounted to $505. Mr. President, I believe it is patently unfair to deprive taxpayers in States with no State income tax of the deduction for State sales taxes. Aside from the economic impact of this change, there is a principle involved here. Disallowing a deduction for State sales taxes while continuing to allow the deduction for State income taxes amounts to Uncle Sam instructing the State to change the manner in which it raises revenue. In the interest of protecting my Governor, State legislature, and people, I cannot support such a provision.

In addition, on the Senate floor, we were successful in restoring income averaging for farmers, a very popular provision for many South Dakota farm operators whose incomes fluctuate wildly from year to year. This amendment was also lost in conference.

Moreover, one of the fundamental principles of tax revision is that individuals should not be retroactively harmed by future changes in the Tax Code. That principle has been violated in this bill.

In the weeks since Senate passage of the bill, I have been literally overwhelmed by the number of disgruntled farmers and small businessmen. They are disgruntled not because Congress has chosen to repeal the investment tax credit, but because we have chosen to do so retroactively. I believe this body grossly underestimated the number of individuals who would be caught in the window between January 1, 1986 and passage of the Senate bill. This bill changes the rules in the middle of the game. This is unfair.

Mr. President, I recognize the diverse interests the managers of this bill had to accommodate in formulating the product that is before us today. Moreover, I respect the artful manner in which the chairman and ranking member have delicately balanced the various points of view with regard to this bill. I have the utmost respect for the managers of this bill. They have persevered against great odds and breathed new life into this initiative on more than occasion. They deserve tremendous credit for their efforts.

Despite my great respect for the work that has gone into this effort, I must oppose the legislation. The chairman himself has stated that we all have to carry the water for our respective States. Along with members of my staff, I spent almost a month traveling in South Dakota during the August recess. During that time, I received a great deal of feedback concerning tax reform. The overwhelming consensus perception was that the conference bill would adversely impact the South Dakota taxpayer.

I thank the Chair.

Mr. HELMS. Mr. President, the record is clear that the distinguished chairman of the Finance Committee, Mr. PACKWOOD, has done extraordinarily effective work in producing a tax reform bill. In June, he brought to the Senate floor a bill that contained the lowest tax rates in 50 years. It wasn't perfect—there were numerous provisions with which I disagreed—but it was a remarkable effort, and I was convinced that it would have been good for our economy.

But today we are faced with an up-or-down vote on a conference report significantly different from the tax bill approved by the Senate. I regret that it has been transformed into a version which for several reasons I simply cannot support.

Mr. President, I agree substantially with the direction in which this tax bill moves. It dramatically lowers individual and corporate tax rates while eliminating special tax breaks across the board. Those are much needed reforms. However, I'm concerned that most of the changes made by the conference committee were not made in the name of wise tax policy; rather, they were made because of the need to raise revenue in order to keep the bill revenue neutral. These changes shifted $120 billion of the tax burden to the country's business sector over the next 5 years. After studying the various analyses of the bill, I'm convinced that such drastic shift of the tax burden to the business sector will have a negative effect on our economy, an inflationary impact on our trade deficit, and eliminate any chance of our meeting the deficit targets under Gramm-Rudman-Hollings.

Last week the Senate proved once again how difficult it is for this body to make any real reductions in Federal spending. We passed a reconciliation bill which purportedly will save $13.3 billion next year. But that bill contained very few, if any, of the real spending reductions that must ultimately be made if Congress is serious about meeting the Gramm-Rudman targets in future years. Even if this tax bill is not given final approval, and even if the economy picks up, it will nevertheless be a tremendously difficult task to reach the deficit target of $108 billion in 1988. If, as projected, this bill loses $17 billion in 1988 and $15 billion in 1989, and we have no exceptionally strong offsetting stimulus to the economy, all realistic hope of complying with the Gramm-Rudman targets will be lost.

UNCERTAINTY OVER REVENUE ESTIMATES

Mr. President, the Joint Tax Committee probably has as fine a staff as any committee on Capitol Hill. But even our top economists differ on the direction our economy will turn in the short haul. Given that uncertainty, plus the inherent problems with estimating how massive tax changes will affect the economy, scant hope exists that this bill is, in fact, revenue neutral.

In addition, there are particular aspects of the estimate which concern me. For example, the committee projects that the bill will pick up $25 to $30 billion over 5 years through the elimination of the capital gains differential. Martin Feldstein, former White House economist, projects that the change will actually lose revenue. One does not need to be an economist to perceive that Mr. Feldstein is closer to the mark.

In 1981, when we reduced the capital gains rate from 28 percent to 20 percent, we actually gained revenue because of the increased number of transactions. It is not logical to accept the notion that we can now jack the rate back up and expect to increase revenue again.

Mr. President, if we do begin losing revenue over the next several years, it is already clear what some in Congress will attempt to do: Begin raising the rates. While I welcome the significantly lower rates contained in the bill, I fear that they may be short lived—perhaps not while President Reagan is in office, but I'm not so sure under a subsequent administration.

EFFECT ON ECONOMY

Mr. President, in addition to the very real possibility that the bill itself will lose revenue, I am gravely concerned about the negative effect it will have on our economy. The analyses I have read agree on one point—that the repeal of the investment tax credit, the elimination of the accelerated depreciation system and the removal of the capital gains differential will reduce the incentive for companies to invest. These changes will also retard the economic recovery in the agricultural sector and make it more difficult for many farmers to survive.

At a time when economists can't even agree on which way our economy will turn in the near future, it seems unwise to eliminate these important investment stimuli at once. This is bound to have a negative effect on

economic growth, which will, in turn, further reduce Federal revenue.

EFFECT ON TRADE DEFICIT

Mr. President, to pay for their added tax burden, businesses, large and small, will be forced to raise prices. This will obviously make our markets even more receptive to imported goods and make our manufacturers and farmers less competitive in international markets. I've seen estimates that the trade deficit could reach $170 billion this year, despite the recent decrease in the value of the dollar. If you think a protectionist sentiment is growing in Congress now, just wait until the trade deficit continues to soar next year.

SPECIFIC PROVISIONS OF BILL

There are a host of provisions in the bill which give me pause, such as some of the preference items contained in the alternate minimum tax for financial institutions, insurance companies, educational institutions and other businesses. One particular provision, elimination of the loan loss reserve for large banks, has been identified by some of my constituents, as well as the Federal Deposit Insurance Corporation, as the most troubling provision in the whole bill. Ironically, the elimination of this method comes at a time when regulators are encouraging banks to provide more adequately for potential losses.

I'll be the first to agree that we need to remove the incentives to invest in tax shelters. But I also agree with the point that has been made repeatedly on and off this floor: it is fundamentally unfair for Congress to create an investment incentive and later remove that incentive retroactively. I refer both to the application of the passive-loss rules to existing investments and to the retroactive repeal of the investment tax credit. How can we expect the American people to have faith in Congress?

I've listened to the supporters of the conference report acknowledge the serious defects in it, but then say that we can "fix" these problems. The retroactive provisions are most often mentioned in this regard. Such statements border on being disingenuous. Provisions are repealed retroactively in order to raise revenue. To "fix" those provisions will lose revenue. Where, pray tell, will we find the revenue in the next several years to make up for the revenue lost when we "fix" the bill. It won't happen, and we all know it.

In summary, Mr. President, this bill has many positive features. Obviously its most important virtue is the lower tax rates. There are already indications, though, that there will be efforts immediately to raise the rates once the bill is enacted. Furthermore, it doesn't take an economist to understand that if consumer prices increase, any money that individuals may save on their tax bill won't go very far.

Considering the state of our economy, and the size of our budget and trade deficits, I'm convinced that it would be unwise to enact tax legislation which is almost certain to slow economic growth in the near term, aggravate the growing trade deficit, and reduce, if not eliminate, our chances of reducing the budget deficit. Therefore, Mr. President, I cannot support this conference report.

Mr. THURMOND. Mr. President, I rise today in support of the Tax Reform Act of 1986. This historic piece of legislation is the culmination of a major effort by Members of Congress to improve the tax laws of this Nation. It seeks to achieve a fundamentally fair tax system in which taxpayers of equal income will pay equal taxes. I believe that the willingness of our citizens to pay their taxes is based on a recognition that this is the price of good government. However, Americans are perfectly justified in expecting that those similarly situated will share equally in the cost of government. I believe this bill is a needed step in that direction.

It is clear that no tax reform bill can please all affected. Furthermore, there are certain areas in this bill which I cannot totally support. For example, I am concerned about the impact that changes in the tax-exempt bond area will have on State and local financing. I am concerned that the repeal of the capital gains deduction will negatively impact the timber industry. This legislation will cause the real estate industry to undergo major restructuring in the next few years. The banking industry will also have to make major adjustments. Despite these concerns, it is necessary to balance all the various positive and negative aspects of this legislation and view it in its entirety. As a whole, in my judgment, this bill merits my support.

In the provisions affecting the individual taxpayer, 80 percent of Americans will pay taxes in the 15 percent bracket. A number of important deductions have been retained including the deduction for mortgage interest on first and second homes, State and local property taxes, State and local income taxes, charitable contributions for those who itemize, and medical expenses exceeding a certain amount.

I also believe that the provisions which apply to the corporate sector will benefit the economy. First, the maximum tax rate will be reduced from 46 percent to 34 percent. A recent article in the Wall Street Journal points out that a reduction in corporate tax rates will attract new foreign investments, and will also reduce American direct investment abroad. Studies cited estimated that the 1981-82 tax changes may have increased foreign direct investment in the United States by as much as 20 percent a year, while reducing American investments abroad by as much as 4 percent a year. I believe American companies should be encouraged to invest in the future of America, and I am optimistic that these provisions will accomplish such a result.

I have previously expressed concerns about the repeal of the 20-percent capital gains rate. However, it is important to put the new 28-percent rate into historical perspective. It is worth noting that the top rate on long-term capital gains was 25 percent in the United States until 1968—only slightly below the new proposed top rate. This rate did not appear to slow national economic growth during the 1950's and 1960's.

Mr. President, this bill is not perfect. Nevertheless, when viewed in its entirety, the advantages outweigh the disadvantages. Long-term positive benefits will emerge as a more productive economy is established, and financial decisions are made on the basis of economic merit rather than tax avoidance. For these reasons, I will vote in favor of this bill.

Mr. COHEN. Mr. President, I rise to express my support for the conference report on H.R. 3838, the Tax Reform Act of 1986. Since the conferees reached their final decisions on tax reform last month, we have all heard conflicting characterizations of what this bill will mean to our Nation. Some have hailed this tax bill as one of the most historic legislative achievements in recent memory. Others have condemned the bill as being a major threat to our economy. In deciding whether to support this conference report, it has been necessary to cut through the hyperbole and to ask the essential question of whether this bill is a positive step toward meaningful tax reform. In my opinion, the answer is an unequivocal "yes."

This bill contains major provisions that will make our tax laws fairer. It provides relief to 6 million low-income persons by removing them from the Federal income tax rolls. It benefits many low- and middle-income persons by expanding the personal exemption and standard deduction and by retaining indexing of the tax rates. It targets much of its tax relief to persons who do not itemize on their Federal income tax returns, which now constitutes over two-thirds of all taxpayers.

This bill places over 80 percent of all American taxpayers in the 15-percent marginal tax bracket and distributes the tax burden more equitably by broadening the tax base. It retains the tax benefits that are widely used by most taxpayers, such as the mortgage interest deduction, the charitable contribution deduction for itemizers, and the deduction for State and local income and property taxes. It gives

three out of four taxpayers a tax reduction, while making our tax system even more progressive than under current law.

In addition to these benefits to individuals, the bill revamps the entire structure of our tax laws. By shifting approximately $120 billion of the overall Federal income tax liability from individual taxpayers to corporations, this bill restores a balance in the Tax Code that has been upset over the years by the addition of countless tax loopholes and special interest provisions. By lowering corporate tax rates and removing tax shelters, this bill encourages more productive investments by businesses. By imposing a tougher minimum tax on corporations, the bill will put an end to the scandalous stories of companies which make millions in profits, yet pay little or no Federal income taxes. All of these factors will go far in restoring faith in our tax system, especially for the average taxpayer who now thinks that everyone except himself or herself is getting a tax break.

Undoubtedly, any tax reform bill of this magnitude presents many difficult choices. In many areas, I disagree with the decisions made by the conferees. I am, for example, particularly concerned over the retroactivity of some provisions, especially with regard to the passive loss limitations, repeal of the 3-year basis recovery rule that affects the pension benefits of Federal retirees, and retroactive repeal of the investment tax credit. As I expressed during the Senate's debate on this tax bill earlier this year, it is unfair to change the rules in the middle of the game on taxpayers who made investment or retirement decisions in good faith on the basis of existing tax laws. I also have concerns over the effects of certain provisions of this bill on charitable giving and local economic development, and believe that additional tax relief may be appropriate for small businesses. I strongly suspect that we will be revisiting the issue of tax reform in the coming Congresses to address these and other issues raised by this bill.

Despite my reservations over certain provisions and effects of this bill, I believe that this legislation presents a momentous opportunity for the Congress to say "yes" to improving our tax system and to turn us in the right direction of fundamental, meaningful tax reform. Enactment of this legislation is necessary to bring long-term health to our economy and to restore public confidence in the fairness of our tax laws, and I look forward to its immediate adoption.

Mr. HECHT. Mr. President, I rise today to voice my support for the Tax Reform Act of 1982. I believe this legislation provides many benefits for the American people. It is a bill that will take 6 million low-income taxpayers, including 700,000 elderly taxpayers, off the tax rolls. It is a bill that offers significant rate reductions for individuals. And furthermore, it is a bill which provides a more equitable distribution of tax burdens across all economic sectors. However, Mr. President, my support is tempered by my concerns over several provisions in the conference agreement.

Mr. President, I am opposed to the restrictions placed upon individual retirement accounts. IRA's have helped and encouraged millions of Americans, including many with moderate incomes, to save for their retirement. IRA's have also benefited the economy by generating new savings, by providing capital for business growth, and by enlarging the stable pool of savings available for long-term investment. Mr. President, when all of the facts are considered, it is clear to me that IRA's are working effectively, and to restrict this program is a mistake.

Mr. President, I also have great concern over the new tax rules applied to investors in limited partnerships. While I most certainly agree that it is necessary to change our tax policy to help curb abusive use of tax shelters, I am opposed to retroactively imposing restrictions on the millions of investors who have undertaken investments and committed future funds, in good faith, based upon existing tax laws. Over the past several years millions of investors have, through the formation of limited partnerships, bought land, built buildings and shopping centers, and created rental housing for low-and middle-income Americans. Now, to take away the incentives that were a critical part of the investment decision, in the middle of the game, is outright unfair.

Mr. President, there are many other provision which are cause for concern, the treatment of capital gain as ordinary income, the retroactive restrictions placed upon Federal employee pensions and the limitation of the business meals and entertainment deductions to 80 percent of actual expenses are just a few.

Despite these concerns Mr. President, the many positive aspects of tax reform cannot be denied. I believe that the positives of this legislation far outweigh the negatives, and I urge my colleagues to join me in voting for this bill.

Mr. BOREN. Mr. President, deciding how to vote on this tax bill has not been an easy decision. I commend my colleagues in the Senate Finance Committee, including Chairman PACKWOOD and Senator LONG, the ranking minority member, for their many long hours of work on this bill. I sincerely appreciate the fair reception which they and my colleagues in the committee and on the Senate floor gave to several amendments which I offered to the bill. I do believe that this bill is much improved from the one which first passed the House of Representatives.

While the bill has several good features, I cannot in conscience vote for it, because I honestly believe that, on balance, it will further weaken our economy by making it harder for us to compete in world markets.

The President and we in the Congress must not indulge ourselves in any false illusions that this tax bill will do anything to help solve our basic economic problems. Reducing the twin budget and trade deficits should be at the top of the agenda and Congress appears headed for adjournment without really addressing them.

From my mail from Oklahomans, which has run 40 to 1 against this tax bill, it is clear that our people want the real problems addressed so that we can turn around the terrible economic situation in our region and the underlying trouble which lurks barely beneath the surface of the entire national economy.

The tax bill will indirectly encourage more consumption while at the same time discourage saving, investment, and research which we so badly need to save American jobs by restoring our ability to compete with the rest of the world. We are already living beyond our means and if we destroy the ability of Americans to produce, we could well just end up consuming more goods produced by foreign countries while sending the bill to the next generation.

The bill has several good features including the closing of some loopholes, reduction of some rates, and provisions to make sure that companies which make millions of dollars cannot completely escape paying at least a minimum tax.

I regret that there are so many other negative features in the bill that I cannot vote for it.

Even with several positive amendments which were adopted, it will still place an additional $10 billion burden on the domestic energy industry when it is already in a depression.

It denies hard-pressed farmers the right to average their incomes from good and bad crop years.

It will curtail the incentives for millions of Americans to set up their own savings accounts for their retirement.

It provides an indirect surtax on upper middle income taxpayers to force them into a higher marginal rate than those who are very wealthy.

The effective marginal rate for a couple making a combined income of $80,000 per year will be higher than the rate for a couple making $10 million per year. The actual marginal rate in the first year of the bill for middle income taxpayers will be 38 per cent and not 28 per cent as advertised by the sponsors of the bill.

While some changes in the taxation of real estate investments were in order, the swiftness and severity of the changes could well cause severe economic dislocations in this sector and for financial institutions which are already hard-pressed by the devaluation of assets.

Many other individual defects in the bill could be listed in addition to the ones which I have outlined. Several provisions are retroactive and change the rules in the middle of long-term investment programs.

Above all, however, I am most concerned that the bill will tend to raise the cost of investments in the United States and further discourage saving. This will mean less research on new products and less modernization of our plants and equipment. Ultimately, lower investment means less productivity for American workers, higher trade imbalances, and fewer jobs.

When will we ever wake up to the fact that we will never get our economy on a solid footing until we deal with the budget and trade deficits? We can't keep living off the shelf while not replenishing the inventory.

We must do something to reduce capital costs and increase our savings rates. I hope that I am proven wrong, but I fear that this bill will do just the opposite.

FARMERS AND INCOME AVERAGING

Mr. President, income averaging is extremely important to the family farmers of our Nation. Regretfully, the conference deleted the Senate provision retaining income averaging for farmers.

Unlike the overwhelming majority of taxpayers, farmers' incomes are extremely volatile due to circumstances beyond their control. If the weather is good, a farmer might have a record harvest one year only to turn around the next year and have his entire crop wiped out by drought or flood. Until April of this year, Oklahoma wheat farmers faced the prospect of a relatively good crop. However, lack of rain in April resulted in premature ripening of the crop which reduced the yields and then, at harvest time there was an excessive amount of rain. As a result, yields were substantially reduced and some producers lost their entire crop.

Precisely because of situations such as the one we experienced in Oklahoma this year, income averaging is critically important to our farmers. Further, it is much more important than many would have you believe.

The Department of Agriculture circulated earlier this year a paper analyzing the Senate Finance Committee tax reform bill and the House bill. The document states:

Under current law, about 11 percent of individuals with farm business receipts utilize income averaging, resulting in an average savings of $800 per return in 1982. Most of these individuals would fall in the new 15-percent bracket under both the House and Senate bills, and thus would not be affected by the repeal of income averaging.

There are two aspects of the Department's statement which require scrutiny. First of all, individuals with farm business receipts include all the hobby farmers and all the taxpayers who do not rely on farming as their primary source of income but might have $100 worth of income a year from an agricultural investment. Of the 2.4 million "farmers" in the United States, only 604,000 "farmers" are family farmers. That's roughly about 25 percent of all taxpayers that report some farm income. It is quite possible that the 11 percent of the "farmers" utilizing income averaging in 1982 was comprised completely of family farmers, those who depend upon agriculture for a living. In other words, it is quite possible that almost 50 percent of all family farmers utilized income averaging in 1982. The statement used by the Department would have you think that only 11 percent of all family farmers used income averaging when the reality might be that 50 percent took advantage of income averaging that year.

Second, the Department says that most of those utilizing income averaging would fall in the 15-percent bracket and would not be affected by the repeal of income averaging. It may be true, Mr. President, that the hobby farmers may not be affected, since they are not dependent upon farming for a living and will not see their income drop dramatically when their entire crop is wiped out. By the Department's own numbers, hobby farmers rely on agriculture for only 3 percent of their total income. It stands to reason that they will not lose much if income averaging is repealed.

However, if officials at the Department believe that family farmers in Oklahoma or elsewhere in the United States will not be affected, they need to learn a little more about agriculture. Perhaps, the Department is guilty of examining the tax bill from the standpoint of what it would do "on average" to all individuals that have some farm receipts. "On average" a river could be only 2 feet deep, but that doesn't mean that people can't drown in the river. "On average" most individuals with farm receipts might not be affected, but 50 percent or more of the family farmers might be devastated by the repeal of income averaging.

The Department has argued that farmers no longer need income averaging because they will be in the 15 percent tax bracket. Income averaging won't make any difference, according to the Department. This is far from the reality when one looks at farm income over the past 10 or 15 years.

Between 1982 and 1983, net farm income in Oklahoma dropped by more than 50 percent. In 1977, net farm income was 85 percent lower than in 1976. From a careful examination of net income figures, it becomes apparent that there are volatile swings in farm income. Without income averaging, farmers will pay much more in taxes if their income rises and falls. For example, if a farmer makes $5,000 one year and $40,000 the next year, he pays over 40 percent more in taxes during the 2-year period than the taxpayer reporting $22,500 each of the 2 years.

Surely there is no one in this Chamber who believes this is equitable. Yet, this is the reality under the tax reform bill, unless, of course, we could find some way to control the weather.

Mr. President, I am deeply disappointed that the Senate provision on income averaging was not retained in the tax reform bill. There are many negative aspects of this legislation as far as farmers are concerned, but the loss of income averaging will have a serious effect on many agricultural producers, particularly those producers in the Southeastern part of the United States who suffered severe losses from the drought this summer.

If the tax reform bill is adopted, it is my hope that we can reexamine this issue in the next Congress.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

DEFERRAL OF CERTAIN BUDGET AUTHORITY—MESSAGE FROM THE PRESIDENT—PM 177

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Labor and

Human Resources, the Committee on the Judiciary, the Committee on Foreign Relations, the Committee on Commerce, Science, and Transportation, the Committee on Finance, and the Committee on Environment and Public Works:

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 21 new deferrals of budget authority totaling $1,835,613,015.

The deferrals affect accounts in Funds Appropriated to the President, the Departments of Agriculture, Defense-Military, Defense-Civil, Energy, Health and Human Services, Justice, State, Transportation, and Treasury, the Commission on the Ukraine Famine, the Office of the Federal Inspector for the Alaska Gas Pipeline, and the Pennsylvania Avenue Development Corporation.

The details of these deferrals are contained in the attached report.

RONALD REAGAN.

THE WHITE HOUSE, *September 26, 1986.*

MESSAGES FROM THE HOUSE

At 11:23 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that in accordance with the provisions of House Resolution 562, the bill of the Senate (S. 638) entitled "An act to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation to the private sector, and for other purposes," is hereby returned to the Senate.

The message also announced that pursuant to the provisions of section 276a-1 of title 22, United States Code, the Speaker appoints as members of the delegation to attend the conference of the Interparliamentary Union, to be held in Buenos Aires, Argentina, on October 6, to October 11, 1986, the following Members on the part of the House: Mr. PEPPER, chairman, Mr. HAMILTON, vice chairman, Mr. SEIBERLING, Mrs. BOGGS, Mr. HUBBARD, Mr. GARCIA, Mr. HAYES, Mr. FUSTER, Mr. HYDE, Mr. SHAW, and Mr. MONSON.

The message further announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 5379. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes; and

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House.

From the Committee on the Budget, for consideration of the entire House bill and Senate amendment, except for revenue measures on which conferees from the Committee on Ways and Means have been appointed: Mr. GRAY of Pennsylvania, Mr. LOWRY of Washington, Mr. DERRICK, Mr. JENKINS, Mr. ATKINS, Mr. LATTA, Mrs. MARTIN of Illinois, and Mr. LOEFFLER.

From the Committee on the Budget, solely for consideration of those portions of the House bill and Senate amendment containing revenue measures on which conferees from the Committee on Ways and Means have been appointed: Mr. JENKINS and Mr. LATTA.

From the Committee on Agriculture, solely for consideration of title II of the House bill and title I and section 501 of the Senate amendment: Mr. DE LA GARZA, Mr. JONES of Tennessee, Mr. STENHOLM (except for consideration of section 501 of the Senate amendment), Mr. BEDELL (solely for consideration of section 501 of the Senate amendment), Mr. MORRISON of Washington, and Mr. GUNDERSON.

From the Committee on Appropriations, solely for consideration of sections 11001 and 11002 of the House bill and sections 665 and 1106 of the Senate amendment: Mr. WHITTEN, Mr. FAZIO, and Mr. CONTE.

From the Committee on Banking, Finance and Urban Affairs, solely for the consideration of title III of the House bill, and title II of the Senate amendment: Mr. ST GERMAIN, Mr. GONZALEZ, Mr. ANNUNZIO, Mr. NEAL, Ms. OAKAR, Mr. WYLIE, Mr. MCKINNEY, and Mr. LEACH of Iowa.

From the Committee on Education and Labor, solely for consideration of section 11005 of the House bill and title VIII and sections 1210-1212 of the Senate amendment: Mr. HAWKINS, Mr. FORD of Michigan, Mr. CLAY, Mr. GAYDOS, Mr. BIAGGI, Mr. JEFFORDS, Mrs. ROUKEMA, and Mr. COLEMAN of Missouri.

From the Committee on Energy and Commerce, solely for consideration of sections 4701-4753 of the House bill and section 303 of the Senate amendment: Mr. DINGELL, Mr. FLORIO, Mr. SHARP, Mr. ECKART of Ohio, Mr. SLATTERY, Mr. LENT, Mr. WHITTAKER, and Mr. MADIGAN.

From the Committee on Energy and Commerce, solely for consideration of section 501 of the Senate amendment: Mr. DINGELL, Mr. WAXMAN, Mr. FLORIO, Mr. SHELBY, Mr. SLATTERY, Mr. LENT, Mr. MADIGAN, and Mr. WHITTAKER.

From the Committee on Energy and Commerce, solely for consideration of sections 4001, 4101, 4201-4206, 4301, 4302, 4401-4405, 5001, and 8101 of the House bill and sections 401-405, 411, and 502 of the Senate amendment: Mr. DINGELL, Mr. SHARP, Mr. MARKEY, Mr. SWIFT, Mr. SLATTERY, Mr. LENT, Mr. DANNEMEYER, and Mr. MOORHEAD.

From the Committee on Energy and Commerce, solely for consideration of subtitles F and G of title IV, parts 2-4 of subtitle C of title X, section 10001(c) and (d)(3), section 10102, and that portion of section 10206 amending subsection 710(b)(2) of the Social Security Act, of the House bill, and section 604(c), parts 2-4 of subtitle A of title VI, and subtitle B of title VI of the Senate amendment: Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. WALGREN, Mr. SLATTERY, Mr. LENT, Mr. MADIGAN, and Mr. WHITTAKER.

From the Committee on Government Operations, solely for consideration of section 11003 of the House bill and section 653 of the Senate amendment: Mr. BROOKS, Mrs. COLLINS, Mr. ENGLISH, Mr. WAXMAN, Mr. WEISS, Mr. HORTON, Mr. WALKER, and Mr. CLINGER.

From the Committee on Government Operations, solely for consideration of sections 10207 and 11004 of the House bill and sections 1103, 1104, 1203, and 1204 of the Senate amendment: Mr. BROOKS, Mr. FUQUA, Mrs. COLLINS, Mr. ENGLISH, Mrs. BOXER, Mr. HORTON, Mr. WALKER, and Mr. CLINGER.

From the Committee on Interior and Insular Affairs, solely for consideration of title V and subtitle I of title VI of the House bill and section 502 of the Senate amendment: Mr. UDALL, Mr. SEIBERLING, Mr. WEAVER, Mr. MILLER of California, Mr. SHARP, Mr. YOUNG of Alaska, Mr. LUJAN, and Mr. LAGOMARSINO.

From the Committee on the Judiciary, solely for consideration of part C of title VII of the Senate amendment: Mr. RODINO, Mr. BROOKS, Mr. GLICKMAN, Mr. FRANK, Mr. BERMAN, Mr. FISH, Mr. BROWN of Colorado, and Mr. COBLE.

From the Committee on Merchant Marine and Fisheries, solely for consideration of title VI, except for part 5 of subtitle E thereof, subtitle C of title VII, and parts 1 through 4 of subtitle D of title VIII of the House bill, and sections 301, 302, and 501, and subtitle C of title IV of the Senate amendment: Mr. JONES of North Carolina, Mr. BIAGGI, Mr. BREAUX, Mr. STUDDS, Mr. LOWRY of Washington, Mr. DAVIS, Mr. SNYDER (except for consideration of subtitle D of title VI of the House bill), Mr. YOUNG of Alaska (except for consideration of subtitle I of title VI of the House bill), and Mr. FIELDS, (solely for consideration of subtitles D and I of title VI of the House bill).

From the Committee on Post Office and Civil Service, solely for consider-

ation of title VII of the House bill and sections 701, 711, and 1202 of the Senate amendment: Mr. FORD of Michigan, Ms. OAKAR, Mr. LELAND, Mr. TAYLOR, and Mr. HORTON.

From the Committee on Public Works and Transportation, solely for consideration of subtitles A and E of title VIII of the House bill and sections 503 and 504 of the Senate amendment: Mr. HOWARD, Mr. ANDERSON, Mr. NOWAK, Mr. EDGAR, Mr. APPLEGATE, Mr. SNYDER, Mr. SHUSTER, and Mr. CLINGER.

From the Committee on Public Works and Transportation, solely for consideration of section 501 of the Senate amendment: Mr. HOWARD, Mr. ROE, Mr. BOSCO, Mr. TOWNS, Mr. WISE, Mr. SNYDER, Mr. HAMMERSCHMIDT, and Mr. STANGELAND.

From the Committee on Public Works and Transportation, solely for consideration of subtitle B of title IV and subtitle B of title VIII of the House bill and section 411 of the Senate amendment: Mr. HOWARD, Mr. ANDERSON, Mr. EDGAR, Mr. RAHALL, Mr. APPLEGATE, Mr. SNYDER, Mr. HAMMERSCHMIDT, and Mr. SHUSTER.

From the Committee on Public Works and Transportation, solely for consideration of subtitle A of title VI, parts 1–4 of subtitle E of title VI, subtitle C of title VIII, and parts 1–4 of subtitle D of title VIII of the House bill: Mr. HOWARD, Mr. ROE, Mr. BOSCO, Mr. TOWNS, Mr. WISE, Mr. HAMMERSCHMIDT, Mr. SHUSTER, and Mr. STANGELAND.

From the Committee on Small Business, solely for consideration of title IX of the House bill, and title IX of the Senate amendment: Mr. MITCHELL, Mr. SMITH of Iowa, and Mr. MCDADE.

From the Committee on Ways and Means, solely for consideration of title X, subtitle F of title IV, part 5 of subtitle E of title VI, and part 5 of subtitle D of title VIII of the House bill and title VI, except for subtitle B thereof, title VI–A, except for section 665 thereof, title X, sections 1105, 1107, and 1201, subtitle B of title XII, and title XIII of the Senate amendment: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. RANGEL, Mr. STARK, Mr. JACOBS, Mr. FORD of Tennessee, Mr. DUNCAN, Mr. ARCHER, Mr. CRANE, and Mr. GRADISON.

ENROLLED BILL SIGNED

At 1:06 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker pro tempore [Mr. WRIGHT] has signed the following enrolled bill:

S. 2294. An act to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that act, to authorize an early intervention program under that act for handicapped infants and toddlers and their families, and for other purposes.

MEASURES REFERRED

The following joint resolution was read the first and second times by unanimous consent, and referred as indicated:

H.J. Res. 738. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5379. An act to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes.

ENROLLED BILL AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, September 26, 1986, she had presented to the President of the United States the following enrolled joint resolution:

S. 2294. An act to amend the Education of the Handicapped Act to reauthorize the discretionary programs under that act, to authorize an early intervention program under that act for handicapped infants and toddlers and their families, and for other purposes; and

S.J. Res. 159. Joint resolution to designate the rose as the national floral emblem.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HEINZ (for Mr. GARN), from the Committee on Banking, Housing, and Urban Affairs:

Special report entitled "Second Monetary Policy Report for 1986" (with additional views) (Rept. No. 99-490).

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2270: A bill to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud (Rept. No. 99-491).

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment:

S. 1145: A bill to increase the accountability of, policy coordination by, and management of priorities by agencies through an improved mechanism for congressional oversight of the rules of agencies (Rept. No. 99-492).

By Mr. ANDREWS, from the Select Committee on Indian Affairs, with an amendment in the nature of a substitute:

H.R. 1920: A bill to establish Federal standards and regulations for the conduct of gaming activities on Indian reservations and lands and for other purposes (Rept. No. 99-493).

By Mr. HATFIELD, from the Committee on Appropriations, with amendments:

H.J. Res. 738: A joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2852: A bill to authorize the Secretary of Transportation to release restrictions on the use of certain property conveyed to the Peninsula Airport Commission, Virginia, for airport purposes.

● Mr. DANFORTH. Mr. President, on September 24, 1986, the Committee on Commerce, Science, and Transportation ordered reported S. 2852, releasing certain restrictions on the use of property conveyed to the Peninsula Airport Commission in Virginia for Patrick Henry Airport. I am filing this bill today on behalf of the Commerce Committee without written report, and so I take this opportunity to describe the background of this bill and its provisions for the information of the Senate.

In 1947 the United States conveyed certain property in Newport News and York County, VA, to the Peninsula Airport Commission. The statute which provided for the transfer—the Federal Airport Act—did not authorize the Secretary to grant releases from a restriction in the deed of conveyance that the property be used for airport purposes.

The airport commission now would like to obtain a release to permit construction of a public road over a portion of the airport tract. Technically, the road would constitute a nonairport use; however, construction of the road is desirable because it would improve access to a portion of the airport property. The statute which permitted the conveyance of the property to the airport commission did not allow the Secretary the discretion to remove the restriction from the deed. S. 2852 would give the Secretary discretion similar to that permitted for removal of deed restrictions for other airports on former federally owned land. Similar legislation has been enacted to cure identical problems affecting other airports.

The bill was introduced by Senator TRIBLE on September 23, 1986, is a companion bill to H.R. 5379, introduced on August 11, 1986, by Congressman BATEMAN and passed by the House of Representatives on September 24, 1986.

SECTION-BY-SECTION ANALYSIS

Section (a)—*Authorization for Restriction Removal.* This section states that notwithstanding section 16 of the Federal Airport Act (as in effect in 1947), the Secretary is authorized to grant releases from any terms, conditions, reservations and restrictions contained in the deed of conveyance of federally-owned property to the Peninsula Airport Commission.

Section (b)—*Terms of Release.* Any release granted under section (a) shall be subject to the conditions that (1) the Peninsula Airport Commission shall lease or convey the property for fair lease value or fair market value, as determined by the Secretary; and (2) any amount so received by the Peninsula Airport Commission shall be used for the

development, improvement, operation or maintenance of a public airport.●

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mrs. HAWKINS (for herself and Mr. D'AMATO):

S. 2881. A bill to terminate United States assistance to any country importing goods, services, or products from Cuba unless certain conditions are met; to the Committee on Foreign Relations.

By Mr. D'AMATO:

S. 2882. A bill to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. EXON (for himself, Mr. ZORINSKY, and Mr. EAGLETON):

S. 2883. A bill to eliminate a certain Federal Energy Regulatory Commission rule; to the Committee on Energy and Natural Resources.

By Mr. GOLDWATER (for himself, Mr. DOLE, Mr. PACKWOOD, Mr. LAXALT, Mr. ABDNOR, Mr. STEVENS, Mr. KASTEN, Mr. HATCH, Mr. GARN, Mr. WILSON, Mrs. KASSEBAUM, Mr. TRIBLE, Mr. WARNER, Mr. ZORINSKY, Mr. NUNN, Mr. STENNIS, Mr. INOUYE, Mr. BOREN, Mr. SIMON, Mr. MOYNIHAN, Mr. FORD, Mr. EXON, Mr. DECONCINI, Mr. QUAYLE, Mr. THURMOND, and Mr. HELMS):

S.J. Res. 420. Relating to the commemoration of January 28, 1987, as a "National Day of Excellence;" to the Committee on the Judiciary.

By Mr. GLENN:

S.J. Res. 421. Joint resolution expressing the sense of Congress relative to bringing the Department of Energy defense facilities into compliance with applicable environmental laws, and for other purposes; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HEINZ (for himself, Mr. GORE, Mr. DOLE, Mr. BURDICK, Mr. MELCHER, Mr. LAUTENBERG, Mrs. HAWKINS, Mr. SPECTER, Mr. EXON, Mr. DIXON, Mr. MATSUNAGA, Mr. GLENN, Mr. SIMON, Mr. CHAFEE, Mr. DURENBERGER, Mr. INOUYE, Mr. CRANSTON, Mr. HECHT, Mr. HART, Mr. KERRY, Mr. HUMPHREY, Mr. WARNER, Mr. WILSON, Mr. COHEN, Mr. MCCONNELL, Mr. BUMPERS, Mr. STAFFORD, Mr. ABDNOR, Mr. TRIBLE, Mr. GORTON, Mr. RIEGLE, and Mr. PRYOR):

S. Con. Res. 165. Current resolution expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history; to the Committee on Labor and Human Resources.

By Mr. DOLE (for Mr. HEINZ) (for himself, Mr. GORE, Mr. DOLE, Mr. BURDICK, Mr. MELCHER, Mr. LAUTENBERG, Mrs. HAWKINS, Mr. SPECTER, Mr. EXON, Mr. DIXON, Mr. MATSUNAGA, Mr. GLENN, Mr. SIMON, Mr. CHAFEE, Mr. DURENBERGER, Mr. INOUYE, Mr. CRANSTON, Mr. HECHT, Mr. HART, Mr. KERRY, Mr. HUMPHREY, Mr. WARNER, Mr. WILSON, Mr. COHEN, Mr. MCCONNELL, Mr. BUMPERS, Mr. STAFFORD, Mr. ABDNOR, Mr. TRIBLE, Mr. GORTON, Mr. RIEGLE, and Mr. PRYOR):

S. Con. Res. 166. Concurrent resolution expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based in such individual's cancer history; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HAWKINS (for herself and Mr. D'AMATO):

S. 2881. A bill to terminate United States assistance to any country importing goods, services, or products from Cuba unless certain conditions are met: to the Committee on Foreign Relations.

RESTRICTION OF UNITED STATES AID TO COUNTRIES THAT IMPORT CUBAN PRODUCTS

● Mrs. HAWKINS. Mr. President, I am introducing legislation today that will make it clear that the United States has reached the end of its rope concerning the Cuban Government's refusal to take back the criminals it thrust upon this country during the Mariel boatlift. The Immigration and Naturalization Service reports that there are over 6,000 Cubans in this country who are excludable under our immigration laws. These criminals are not petty criminals. They are, for the most part, hardened, violent criminals who have perpetrated some of the most heinous crimes imaginable. They are a threat to the safety and well-being of our local communities and they should be returned to Cuba.

My colleagues may recall that the Government of Cuba agreed to take back these criminals in December 1984. It quickly became clear, however, that the Cubans intended to use this agreement as leverage against us to stop the Radio Marti Program. The Cubans unilaterally broke off the agreement in May of 1985. Mr. President, it is the Cuban Government's responsibility to take back these criminals unconditionally. We should never submit to the blackmail represented by the Cuban attempt to kill Radio Marti. This Senator was not prepared to forsake the Cuban people by silencing the voice of freedom to that country; fortunately, neither was the administration. The Cuban Government's decision still leaves this country to handle the threat these criminals represent to our society. The legislation I am introducing represents an attempt to address this threat.

Mr. President, the time has come to make it clear to the other countries of the world that we believe that Cuba's refusal to take back its criminals is an affront to normal standards of international conduct. The legislation I am introducing will require the discontinuation of foreign aid to any country that imports Cuban goods. This legislation should broaden our embargo against Cuba because of its refusal to take back the criminals it dumped here. The provisions of this legislation will terminate upon the return of the excludable Cubans. Maybe the Cubans will start to understand how seriously we take this issue if other countries start discontinuing their imports of Cuban goods. Also, this approach should make it clear to other countries that the United States feels we should stand together in confronting the violation of the standards of international behavior represented by the Cuban action. These countries have a responsibility to uphold the standards of international behavior in that they benefit from the protection these standards uphold. I am sure that the legislation I am introducing will encourage these countries to move in the direction of taking a stand against the refusal of the Cuban Government to take back the Mariel criminals.

Mr. President, I should point out that two foreign aid programs are not included among those that would be withheld from a country if it imports Cuban goods. These two programs are international narcotics control assistance and disaster relief assistance. Thus, the ongoing effort to control illegal narcotics at the source and the effort to bring emergency humanitarian relief to those afflicted by unforseen disasters will not be interrupted.

Mr. President, I believe that this proposal will force the Cuban Government to redress the wrong they committed during the Mariel boatlift. The American people are tired of being made the victims of Fidel Castro's manipulations. The time has come to remove the Mariel criminals from our streets, communities, and prisons.

Finally, I want to thank Senator D'AMATO, who is a cosponsor of this measure, for his unwavering support in the effort to resolve this problem. His efforts have been tireless. With this proposal, I hope that we can put this problem behind us.●

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of legislation offered by my good friend and colleague, the junior Senator from Florida. This legislation will terminate U.S. assistance, under certain circumstances, to any nation importing goods, services, or products from Cuba. We propose this, not because we have any particular quarrel with these nations, but because we need this third-party leverage to force Cuba to live up to its international agreements. One of the most important aspects of this legislation, therefore, is that it will expire as

soon as Cuba keeps its word and takes back those Cubans who entered the United States during the 1980 Mariel boatlift and are excludable or deportable under United States immigration laws.

Mr. President, I commend the distinguished Senator from Florida for providing this body with an opportunity to act against Cuban intransigence in this area by applying this increased economic pressure. Fidel Castro's Cuba, as a surrogate for the Soviet Union, has been the single most destabilizing factor in Central and South America. As Castro seeks to spread Soviet influence form its bastion in the Caribbean, democratic nations of Latin America and around the world are indirectly assisting his efforts. By importing goods and services from Cuba, many Western nations are helping to keep Castro afloat. This legislation will discourage such assistance by denying U.S. aid to those nations.

It makes no sense for the United States to provide aid to nations that economically support Cuba, a nation with which we have broken all economic and diplomatic ties. We are basically undermining our own foreign policy.

Passage of this legislation, however, will not necessarily mean that we will end up cutting off vital economic aid to those friendly nations who trade with Cuba. Instead, Castro has every opportunity to preclude the necessity for this legislation by simply accepting back those undersirable Cubans which were boatlifted to United States shores in 1980. He had agreed to accept the very same Cubans in the past, but he reneged. This legislation provides further incentive to accept those undocumented Cubans.

Mr. President, it is time that our allies understand the nature of our relations with Cuba. Cuba represents both a long and short-term threat to United States security interests in this Hemisphere, as well as in Africa. Let us not forget that there are 35,000 Cuban troops and advisers in Angola. Cuba also is involved in illegal arms and drug trafficking in the region. The United States must do more to limit Castro's adventurism. I believe this legislation is a solid step in this direction.

Mr. President, I urge my colleagues to join me as a cosponsor of this bill, and I ask for expeditious review of this bill before the 99th Congress recesses.●

By Mr. D'AMATO:

S. 2882. A bill to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance; to the Committee on Banking, Housing, and Urban Affairs.

ELIGIBILITY OF CERTAIN PROPERTY FOR SINGLE FAMILY MORTGAGE INSURANCE

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation to correct a severe mortgage insurance problem that a small city in upstate New York is experiencing. This legislation would enable the Federal Housing Administration, under provisions of the National Housing Act, to insure residential mortgages secured by property located on land that is within the Allegany Reservation of the Seneca Indian Nation.

The location of the city of Salamanca is the cause of its crisis. Approximately 85 percent of the city is located within the Allegany Reservation of the Seneca Nation on land which is subject to 99-year leases due to expire in 1991. Under special acts of Congress, these leases were ratified in 1892.

Although negotiations have been in progress for the last 10 years, a viable resolution of the impending termination of the leases has not yet been reached. As a result of the uncertain renewal, renegotiation, or other reasonable solutions, the city has experienced extreme economic hardships, including the flight of existing businesses, the inability to attract new economic development, and a diminished tax base. As of January 1, 1985, local lending institutions have refused to make any loans to Salamanca beyond a 5-year period. The inability to obtain residential mortgages has created a stagnant real estate market halting the buying and selling of residential properties.

The legislation I am offering today would be a much needed boost for this city. FHA insurance would get the real estate market moving. It would provide hope for the residents of the city of Salamanca.

Mr. President, this is not a controversial bill, but it is an important one. Passage of this legislation would send a strong message to the city of Salamanca demonstrating the U.S. Congress' concern and its willingness to assist this small city. I urge my colleagues to adopt this legislation expeditiously, and I ask unanimous consent that the full text of this legislation, which is identical to H.R. 5564 which will soon pass in the House, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2882

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(q)(1) Notwithstanding any other provision of this section or any other section of this title, the Secretary may insure and commit to insure, under subsection (b) as modified by this subsection, any mortgage secured by property located on land that—

"(A) is within the Allegany Reservation of the Seneca Nation of New York Indians; and

"(B) is subject to a lease entered into for a term of 99 years pursuant to the Act of February 19, 1875 (Chapter 90; 18 Stat. 330) and the Act of September 30, 1890 (Chapter 1132; 26 Stat. 558).

"(2) A mortgage shall be eligible for insurance under subsection (b) as modified by this subsection without regard to limitations in this title relating to marketability of title or any other statutory restriction that the Secretary determines is contrary to the purpose of this subsection.

"(3) The Secretary, in connection with any mortgage insured under subsection (b) as modified by this subsection, shall have all statutory powers, authority, and responsibilities that the Secretary has with respect to other mortgages insured under subsection (b), except that the Secretary may modify such powers, authority, or responsibilities if the Secretary determines such action to be necessary because of the special nature of the mortgage involved.

"(4) Notwithstanding section 202, the insurance of a mortgage under subsection (b) as modified by this subsection shall be the obligation of the Special Risk Insurance Fund created in section 238.".●

By Mr. EXON (for himself, Mr. ZORINSKY, and Mr. EAGLETON):

S. 2883. A bill to eliminate a certain Federal Energy Regulatory Commission rule; to the Committee on Energy and Natural Resources.

OVERTURNING FERC RULE 451

Mr. EXON. Mr. President, earlier this year the Federal Energy Regulatory Commission approved what is known as FERC order 451. This order raises the just-and-reasonable price which producers of natural gas can charge for old gas. Today I am introducing legislation to overturn that order.

FERC order 451 troubles me both because the policy embodied in the rule is questionable and because the Commission has sought to accomplish through the regulatory process what Congress has refused to do legislatively.

In 1978, Congress explicitly decided not to decontrol old natural gas. Since then, there have been repeated efforts to reverse this policy. On each occasion, Congress has reaffirmed its original decision against decontrol. As recently as 1983, the Senate voted 67 to 28 against a bill decontrolling old natural gas. Seen in this light, adoption or order 451 represents a flagrant abuse of regulatory discretion.

The arrogance of the administration and the Commission in this area was highlighted in a February 6, 1986, Associated Press article. According to the article, one FERC Commissioner warned industry lobbyists to pay attention to administration efforts to bypass Congress and administratively raise Federal price ceilings on some supplies.

Incredibly, the rule which the Commission approved could permit old gas prices to soar as high as $2.57 per thousand cubic feet, while the current spot market price for new gas ranges anywhere from $1.40 to $2 per thousand cubic feet. In short, the proposal would raise the ceiling price of old gas to a level in excess of those prevailing in the market today.

The rule will likely transfer billions of dollars from consumers, including farmers, small businessmen, and homeowners to the major producing companies who own the vast majority of old gas reserves. This backdoor approach to old gas decontrol could easily amount to an increase of $85 per year for many natural gas users. That may not sound like a large increase to some, but to a majority of those who must live with higher priced gas, the burden could be quite heavy.

I repeat, Mr. President. If this FERC order is implemented and allowed to stand, there will be a large-scale transfer of money from consumers to the big oil companies and other energy companies. Nebraska farmers and ranchers cannot afford to pay it and neither can millions of households and businesses across America. Furthermore, they should not have to pay for it.

Although it is late in this session of Congress, there is still time to overturn this FERC order which is a blatant abuse of regulatory power and a snub of Congress and the American people.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Natural Gas Consumer Protection Act of 1986."

SEC. 2. The Federal Energy Regulatory Commission shall not implement provisions of FERC order 451.

[From the Omaha World Herald, Feb. 6, 1986]

COMMISSIONER: EFFORTS TO RAISE NATURAL-GAS PRICE CEILING CONTINUE

WASHINGTON.—A government regulator responsible for controlling natural gas prices told industry lobbyists to pay attention to Reagan administration efforts to bypass Congress and administratively raise federal price ceilings on some supplies.

Charles Trabandt, one of four members of the Federal Energy Regulatory Commission, said the congressional climate for totally decontrolling gas prices is not favorable.

But Trabandt told gas industry representatives they should take seriously the administration's efforts to accomplish much the same results by allowing the prices of all "old" supplies to rise to the ceiling price for the most expensive categories.

The administration's legislative and administrative decontrol strategies are not mutually exclusive, Trabandt said in a speech before the Natural Gas Roundtable, an organization composed primarily of gas industry lobbyists.

Energy Secretary John Herrington filed a formal rulemaking proposal in November that would require the commission to consider "de-vintaging" the 40 percent of the nation's "old" gas drilled prior to 1978 and still under price controls. This would put all "old" gas in the most expensive category.

At the same time, Herrington said the administration again this year would ask Congress to remove those controls entirely. A similar legislative effort was overwhelmingly defeated in 1983.

Under the current partial controls, gas drilled since 1978 has no federal price ceilings. The "old" gas is divided into several categories, with ceilings ramping from about 78 cents to $1.60 per 1,000 cubic feet.

Spot-market prices for uncontrolled gas have fallen in recent years and in some parts of the country are now below $2.

By Mr. GOLDWATER:

S.J. Res. 420. A joint resolution to commemorate January 28, 1987, as "National Day of Excellence"; to the Committee on the Judiciary.

"NATIONAL DAY OF EXCELLENCE"

● Mr. GOLDWATER. Mr. President, I am very pleased to introduce a Senate joint resolution to authorize the President to issue a proclamation designating January 28, 1987, as a "National Day of Excellence" to honor the crew of the space shuttle *Challenger*. Last week, the House passed by unanimous consent House Joint Resolution 588 by Representative JIM KOLBE.

This joint resolution challenges Americans to rededicate themselves to strive for the highest standard possible, no matter the endeavor. By dedicating ourselves to a day of excellence at work, home, school, and in leisure activities, we will honor their memory in a tangible and a meaningful manner. Let us remember the dedicated lives of the *Challenger* crew by striving to attain levels of excellence previously felt unattainable. In this regard, it is very fitting that a schoolteacher of the handicapped in Tucson, AZ, Ed McDonald, initiated this proposal. Certainly, Mr. McDonald must see every day the striving to overcome handicaps which make simple tasks overwhelming challenges for his students.

Now, I am certain we have all wrestled over the past months on how we can honor these brave Americans. It is my firm belief this resolution is a fitting testimony to their dedication and memory. This day will not be a holiday, but a day devoted to achieving the best possible results in each and every endeavor undertaken. The pursuit of excellence is what has made America great and will allow future generations to lead full and free lives.

Let us remember the crew of the *Challenger* by making a silent pledge to settle for nothing less than the very best from ourselves on the "National Day of Excellence," January 28, 1987.●

By Mr. GLENN:

S.J. Res. 421. Joint resolution expressing the sense of Congress relative to bringing the Department of Energy defense facilities into compliance with applicable environmental laws, and for other purposes; to the Committee on Environment and Public Works.

DEPARTMENT OF ENERGY DEFENSE FACILITY COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS

● Mr. GLENN. Mr. President, on April 15, 1985, following my own preliminary investigation of the situation at the Feed Materials Production Center at Fernald, OH, I asked the General Accounting Office [GAO]—the investigative arm of Congress—to review the Department of Energy's management of its responsibilities in the areas of environment, safety, and health at DOE nuclear plants around the Nation.

My request has resulted in four recent reports by GAO. Two of them focused on the problems at Ohio facilities; one dealt with the status of DOE's initiatives to strengthen environment, safety, and health activities; and the most recent one documented deficiencies in the process and substance of DOE's Safety Analysis Reviews of its nuclear facilities.

Yesterday, I released the latest report in this series. It surveys the extent of soil and ground water contamination at nine DOE defense facilities located at seven sites around the Nation. And the facts revealed in this report are both shocking and frightening.

Specifically, eight out of the nine facilities surveyed have contaminated ground water with hazardous and/or radioactive materials. At the fuel fabrication plant in South Carolina, solvents in ground water have been found at levels over 30,000 times the proposed drinking water standards. Strontium 90 has been detected in ground water at the N-reactor site in Washington State at levels over 400 times higher than the drinking water standards.

At the Y-12 plant in Tennessee, solvents and nitrates in ground water have each been detected at levels over 1,000 times more than the proposed drinking water standards, mercury has been detected at levels 500 times the drinking water standard; arsenic levels are 60 times the drinking water standards; and chromium levels are over 30 times the standards.

And that's not all. Six of the nine DOE facilities have produced soil contamination in unexpected areas, including offsite locations. This includes the Y-12 plant at Oak Ridge where mercury contamination of an offsite creekbed and its floodplain is, in some locations, greater than 2,000 times the background levels and more than 150 times greater than guidelines estab-

lished by the State of Tennessee to protect public health.

At the Fernald plant in Ohio, uranium contamination of the soil is in some places more than 10 times background levels. And at Ohio's Mound Laboratory facility, plutonium levels are as much as 100 times the background levels.

What these figures show is that the Department of Energy and its predecessors have been carrying out their mission to produce nuclear weapons with an attitude of neglect bordering on contempt for environmental protection. What they've said, in effect, is "we're going to build bombs—and the environment be damned."

In so doing, they have created a situation that potentially threatens the health of large numbers of Americans. And their actions are going to force the United States to spend hundreds of millions of dollars—perhaps even billions of dollars—to clean up their mess.

Although DOE has recently initiated a number of actions to improve its performance on environmental, safety, and health matters, I believe it is too little, too late. In my judgment, we simply can no longer tolerate the self-regulation that the agency has practiced since the beginning of the nuclear age.

And that's exactly why I introduced a bill last year to give the Environmental Protection Agency complete jurisdiction over the regulation of all mixed waste at DOE facilities—except for mixed waste containing negligible quantities of nonradioactive hazardous materials.

Unfortunately, my bill has gone nowhere. It's still bottled up in committee, while these DOE facilities continue to poison our soil and ground water. Frankly, I don't know what the problem is.

But there's one thing I do know. I know we better wake up in this country; we better wake up before its too late and we find ourselves with an environmental disaster that makes the Chernobyl accident look tame.

So today I am again calling on my colleagues in the Congress to pass my legislation. Now I realize that Congress is unlikely to do so before we adjourn early next month. But in my judgment, the problem is serious enough that we cannot afford to sit around and do nothing until a new Congress is sworn in next January.

Accordingly, I rise to introduce a Senate joint resolution urging the Secretary of Energy to do five things.

First, to give environmental protection equal priority with weapons production at all DOE facilities.

Second, to provide for independent inspections of these facilities, focusing on the storage, treatment, and disposal of any mixed wastes at DOE sites. These inspections should be carried out by agencies of the States in which the plants are located.

Third, my joint resolution will urge the Secretary to provide for independent examination by the Nuclear Regulatory Commission of his Department's "Safety Analysis Reviews" of its nuclear plants.

And fourth, my joint resolution will ask the Secretary to provide Congress with a report detailing his Department's plans, milestones, and cost estimates for bringing these facilities into compliance with all applicable environmental laws.

Finally, and this is by far the most important point of all, my joint resolution will urge the President to include adequate funds for the cleanup of these sites in his 1988 budget. That budget is now in preparation—and the money necessary for cleanup should be included now—instead of forcing us to try and add it to the budget later.

There is no doubt that the cost of cleaning up these plants will be high. But the cost of doing nothing will be even higher. After all, what good does it do to protect ourselves from the Soviets by building nuclear weapons if we poison our own people in the process?

This is no time for tradeoffs. We must produce the nuclear weapons we need—but we must also protect the health of our people. And to protect their health, we must clean up these sites; not clean them up "if," not clean them up "but," and not clean them up "maybe" or "somebody." We must clean them up—period. And we should start today.●

ADDITIONAL COSPONSORS

S. 519

At the request of Mr. EVANS, the names of the Senator from Massachusetts [Mr. KENNEDY], and the Senator from New York [Mr. MOYNIHAN] were added as cosponsors of S. 519, a bill to require a study of the compensation and related systems in executive agencies, and for other purposes.

S. 1026

At the request of Mr. PRESSLER, the names of the Senator from New Mexico [Mr. BINGAMAN], and the Senator from South Dakota [Mr. ABDNOR] were added as cosponsors of S. 1026, a bill to direct the cooperation of certain Federal entities in the implementation of the Continental Scientific Drilling Program.

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Connecticut [Mr. DODD], the Senator from South Dakota [Mr. PRESSLER], and the Senator from Rhode Island [Mr. CHAFEE] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2734

At the request of Mr. MATHIAS, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2734, a bill to amend chapter 83 of title 5, United States Code, to provide civil service retirement credit for service performed under the Railroad Retirement Act, and for other purposes.

S. 2770

At the request of Mr. EXON, his name was withdrawn as a cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

S. 2781

At the request of Mr. EVANS, the names of the Senator from California [Mr. WILSON], the Senator from Michigan [Mr. LEVIN], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2835

At the request of Mr. BINGAMAN, the name of the Senator from Texas [Mr. BENTSEN] was added as a cosponsor of S. 2835, a bill to establish literacy programs for individuals of limited English proficiency.

S. 2840

At the request of Mr. STAFFORD, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2840, a bill entitled the "Superfund Amendments and Reauthorization Act of 1986."

S. 2878

At the request of Mr. HEINZ, his name was added as a cosponsor of S. 2878, a bill to strengthen the laws against illegal drugs, and for other purposes.

At the request of Mr. ZORINSKY, his name was added as a cosponsor of S. 2878, supra.

At the request of Mr. MATTINGLY, his name was added as a cosponsor of S. 2878, supra.

At the request of Mrs. HAWKINS, the names of the Senator from Nevada [Mr. LAXALT], and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 2878, supra.

At the request of Mr. BENTSEN, his name was added as a cosponsor of S. 2878, supra.

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-

Burma-India Veterans Association Day."

SENATE JOINT RESOLUTION 418

At the request of Mr. BRADLEY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of Senate Joint Resolution 418, a joint resolution to designate February 4, 1987, as "National Women in Sports Day."

At the request of Mr. PACKWOOD, the names of the Senator from Maine [Mr. COHEN], the Senator from Tennessee [Mr. GORE], the Senator from Arkansas [Mr. PRYOR], the Senator from Alaska [Mr. STEVENS], the Senator from Nebraska [Mr. ZORINSKY], the Senator from Nevada [Mr. LAXALT], and the Senator from Montana [Mr. MELCHER] were added as cosponsors of Senate Joint Resolution 418, supra.

SENATE JOINT RESOLUTION 419

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day."

SENATE CONCURENT RESOLUTION 121

At the request of Mr. KENNEDY, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of Senate Concurrent Resolution 121, a concurrent resolution expressing the sense of the Congress concerning representative government, political parties, and freedom of expression on Taiwan.

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. HOLLINGS, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from New Jersey [Mr. BRADLEY], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from South Dakota [Mr. PRESSLER], the Senator from Maryland [Mr. SARBANES], and the Senator from Louisiana [Mr. JOHNSTON] were added as cosponsors of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, South Carolina, to Neufchatel, Switzerland, in October of 1986 as an international gesture of goodwill.

SENATE CONCUkRENT RESOLUTION 154

At the request of Mr. D'AMATO, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE RESOLUTION 464

At the request of Mr. ROTH, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of Senate Resolution 464, a resolution to designate October 1986 as "Crack/Cocaine Awareness Month."

SENATE CONCURRENT RESOLUTION 165—RELATING TO EMPLOYMENT DISCRIMINATION BASED ON AN INDIVIDUAL'S CANCER HISTORY

Mr. HEINZ (for himself, Mr. GORE, Mr. DOLE, Mr. BURDICK, Mr. MELCHER, Mr. LAUTENBERG, Mrs. HAWKINS, Mr. SPECTER, Mr. EXON, Mr. DIXON, Mr. MATSUNAGA, Mr. GLENN, Mr. SIMON, Mr. CHAFEE, Mr. DURENBERGER, Mr. INOUYE, Mr. CRANSTON, Mr. HECHT, Mr. HART, Mr. KERRY, Mr. HUMPHREY, Mr. WARNER, Mr. WILSON, Mr. COHEN, Mr. MCCONNELL, Mr. BUMPERS, Mr. STAFFORD, Mr. ABDNOR, Mr. TRIBLE, Mr. GORTON, Mr. RIEGLE, and Mr. PRYOR) submitted the following concurrent resolution; which was referred to the Committee on Labor and Human Resources:

S. CON. RES. 165

Whereas there are more than five million Americans in our Nation with a cancer history and an estimated one million of them face the terrible injustice of employment discrimination;

Whereas one out of every two individuals now diagnosed as having cancer is cured, and as a result, the number of survivors will continue to dramatically increase;

Whereas employment discrimination against cancer survivors ranges from job denial to wage reduction, exclusion from and reduction in benefits, promotion denial, and in some cases outright dismissal; and

Whereas we must permit, and encourage, cancer survivors to remain fully integrated and productive members of society: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the Congress—

(1) opposes employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history, and

(2) urges that such individuals receive fair and equal treatment in the workplace.

Mr. HEINZ. Mr. President, I rise today to bring to the attention of this body what I consider to be a very important health and human rights issue in this country. It has to do with cancer. We all know that cancer still ranks as this Nation's number two killer but great strides in medical science have evened the race for cancer survival.

Today there are over some 5 million Americans who fought the battle for life and they have won and they are in the process of reclaiming their places in communities and work places. But, Mr. President, at the same time, fully one in five of these survivors will find it easier to bet the odds against cancer than bet the prejudice they are going to find back at work.

Recently, I have been shocked to learn of men and women in my own State of Pennsylvania whose very cure became a curse in the hands of their employers.

Let me give you two examples and they are real ones. The first is the case of Jim Coopman, who rose through the ranks of a steel company to become president. But when he returned to work after recovering from pancreatic cancer, instead of a warm welcome, he was told his physical condition made him "unable to perform his essential functions as President."

Despite three doctors' statements to the contrary, he was given the choice: be demoted or be discharged. The rewards of his previous successes were laid waste for the sole reason that he had survived cancer.

Take a second example:

When Chester County resident Alma Steinmetz discovered she needed breast cancer surgery, at that time her employer reassured her she would always have a job with us.

After only a month away, the receptionist—that was her job—returned to work only to be told that the schedule was booked. There was no place for her. Alma only got her job back 2 months later when her employer found out that she had filed a complaint against him with the State Human Relations Commission in Pennsylvania.

Once back at work, however, she suffered constant harassment that promised to continue unless she dropped her complaint. Alma, now unemployed, awaits a decision on her case. She did not decide to drop it.

The cases of Jim and Alma are not unique. Workers are shunned, shuffled, demoted, demoralized, denied raises and respect, even forced to use disposable writing instruments such as pencils instead of pens—all because they are cancer survivors.

A recent study completed at the University of Southern California found that more than half of cancer patients in white-collar jobs, and 84 percent of those in blue-collar occupations, suffered some kind of employment discrimination when they returned to work.

Mr. President, such cases shame this Nation. They tarnish the pride we should have in our progress toward defeating cancer. Ability—ability to do the job, and only that—should be the sole measure by which we are judged and by which people are judged for employment. It should not be their medical history.

Today, I ask that we join our colleagues in the House and pass a resolution that I hope we will call up later today which clearly places Congress on record against employment discrimination based on an individual's cancer history. Let us apply the same determination we have applied to eradicating cancer cells in the healthy body to eradicating such painful prejudice and malignant discrimination against cancer survivors.

I am pleased to say, Mr. President, that 31 Members of the Senate have joined me as original cosponsors of

this resolution. I do hope the Senate will call it up today. I think we will.

SENATE CONCURRENT RESOLUTION 166—RELATING TO EMPLOYMENT DISCRIMINATION BASED ON AN INDIVIDUAL'S CANCER HISTORY

Mr. DOLE (for Mr. HEINZ, for himself, Mr. GORE, Mr. BURDICK, Mr. MELCHER, Mr. LAUTENBERG, Mrs. HAWKINS, Mr. SPECTER, Mr. EXON, Mr. DIXON, Mr. MATSUNAGA, Mr. GLENN, Mr. SIMON, Mr. CHAFEE, Mr. DURENBERGER, Mr. INOUYE, Mr. CRANSTON, Mr. HECHT, Mr. HART, Mr. KERRY, Mr. HUMPHREY, Mr. WARNER, Mr. WILSON, Mr. COHEN, Mr. MCCONNELL, Mr. BUMPERS, Mr. STAFFORD, Mr. ABDNOR, Mr. TRIBLE, Mr. GORTON, Mr. RIEGLE, and Mr. PRYOR) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 166

Whereas there are more than five million Americans in our Nation with a cancer history and an estimated one million of them face the terrible injustice of employment discrimination;

Whereas one out of every two individuals now diagnosed as having cancer is cured, and as a result, the number of survivors will continue to dramatically increase;

Whereas employment discrimination against cancer survivors ranges from job denial to wage reduction, exclusion from and reduction in benefits, promotion denial, and in some cases outright dismissal; and

Whereas we must permit, and encourage, cancer survivors to remain fully integrated and productive members of society: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that the Congress—

(1) opposes employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history, and

(2) urges that such individuals receive fair and equal treatment in the workplace.

AMENDMENTS SUBMITTED

ANTIDRUG ABUSE ACT OF 1986

GORTON AMENDMENT NO. 3032

(Ordered to lie on the table.)

Mr. GORTON submitted an amendment intended to be proposed by him to the bill (S. 2878) to strengthen the laws against illegal drugs, and for other purposes; as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of interstate versus intrastate transportation utilized in connection with the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

EXPORT-IMPORT BANK AMENDMENTS ACT OF 1986

HEINZ AMENDMENT NO. 3033

Mr. DOLE (for Mr. HEINZ) proposed an amendment to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945; as follows:

At the end of the bill add the following:

"POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA

"SEC. . (a) The Congress finds that—

"(1) the Marxist Popular Movement for the Liberation of Angola (hereafter in this resolution referred to as the "MPLA") has failed to hold fair and free elections since assuming power in Angola in 1975;

"(2) Angola currently harbors more than 35,000 Soviet and Cuban troops and advisers;

"(3) the Cubans and Soviets have channeled more than $4,000,000,000 in assistance and military aid in furtherance of this intervention in Africa;

"(4) the MPLA government of Angola obtains more than 90 percent of its foreign exchange from the extraction and production of oil;

"(5) most of Angola's oil is extracted in Cabinda Province, where 75 percent of it is extracted by the Chevron-Gulf Oil company;

"(6) the MPLA has refused to take meaningful steps to end its dependency on Soviet and Cuban forces, engage in national reconciliation efforts within Angola, or encourage the independence of Namibia;

"(7) United States business interests are in direct conflict with United States foreign policy objectives in aiding the MPLA government of Angola, which directly opposes Jonas Savimbi and UNITA, recipients of United States support; and

"(8) imposition of severe economic sanctions will encourage the MPLA to promote a fair political solution and negotiate with the United States toward a peaceful settlement.

"(b)(1) It is the sense of the Congress that the interests of the United States are best served when United States business transactions conducted in Angola do not directly or indirectly support Cuban troops and Soviet advisers.

"(2) The Congress hereby requests that the President use his special authorities under the International Emergency Economic Powers Act to block United States business transactions which conflict with United States security interests in Angola.

"GROUP ELIGIBILITY REQUIREMENTS

"SEC. (a) Section 222 of the Trade Act of 1974 (19 U.S.C. 2272) is amended to read as follows:

""SEC. 222. GROUP ELIGIBILITY REQUIREMENTS.

"'(a) The Secretary shall certify a group of workers (including workers in any agricultural firm or subdivision of an agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

"'(1) a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated.

"'(2) sales or production, or both, of such firm or subdivision have ceased absolutely, and

"'(3) increases of imports of articles like or directly competitive with articles—

"'(A) which are produced by such workers' firm or appropriate subdivision thereof, or

"'(B) in the case of workers of a firm in the oil or natural gas industry, for which such workers' firm, or appropriate subdivision thereof, provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"'(b) For purposes of subsection (a)(3)—

"'(1) The term 'contributed importantly' means a cause which is important but not

necessarily more important than any other cause.

"'(2) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

"'(3) Any firm, or subdivision of a firm, which—

"'(A) engages in the exploration for oil or natural gas,

" '(B) produces or extracts oil or natural gas, or

" '(C) processes or refines oil or natural gas, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.

" '(4) Any firm which provides essential parts, or essential services, to another firm that conducts activities described in paragraph (3) with respect to oil or natural gas, as its principal trade or business, shall be considered to be a part of the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.".

"(b) Subsection (c) of section 251 of the Trade Act of 1974 (19 U.S.C. 2341(c)) is amended to read as follows:

" '(c)(1) The Secretary shall certify a firm (including any agricultural firm) as eligible to apply for adjustment assistance under this chapter if the Secretary determines that—

" '(A) a significant number or proportion of the workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated,

" '(B) sales or production, or both, of such firm have decreased absolutely, and

" '(C) increases of imports of articles like or directly competitive with articles—

" '(i) which are produced by such firm, or

" '(ii) in the case of a firm in the oil or natural gas industry, for which such firm provides essential parts or essential services,

contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

" '(2) For purposes of paragraph (1)(C)—

" '(A) The term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause.

" '(B) Natural gas shall be considered to be competitive with crude oil and refined petroleum products.

" '(C) Any firm which—

" '(i) engages in the exploration for oil or natural gas,

" '(ii) produces or extracts oil or natural gas,

" '(iii) processes or refines oil or natural gas, or,

" '(iv) provides essential parts, or essential services, to another firm that conducts activities described in any of the preceding clauses as its principal trade or business,

shall be considered to be in the oil or natural gas industry and to be a firm providing essential services for such oil or natural gas and for the processed or refined products of such oil or natural gas.".

"(c)(1) the amendments made by this section shall apply with respect to petitions for certification which are filed or pending—

"(A) on or after September 30, 1986, and

"(B) before October 1, 1987.

"(2) Notwithstanding any other provision of law, no worker shall be eligible for assistance under subchapter B of chapter 2 of title II of the Trade Act of 1974 if—

"(A) such worker is covered by a certification made under subchapter A of such chapter only by reason of the amendment made by subsection (a) of this section, and

"(B) the total or partial separation of such worker from adversely affected employment occurs after September 30, 1987.

"OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS

"SEC. . (a) The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

"(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

"(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral.

"(b)(1) The amount of payments which the United States may make to the paid-in capital of an international financial institution described in subsection (a) during any capital expansion or replenishment of such institution may not exceed the amount of funds which such expansion or replenishment minus an amount which bears the same proportion to the aggregate amount of assistance described in paragraph (2) furnished by such institution as the United States share of the expansion or replenishment bears to the total amount of the expansion or replenishment.

"(2)(A) The aggregate amount of assistance referred to in paragraph (1) is the amount of assistance furnished by an international financial institution to all countries during the period described in subparagraph (B)—

"(i) to support the production or extraction of any commodity or mineral for export, if—

"(I) such commodity or mineral as the case may be, is in surplus on world markets; and

"(II) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral; and

"(ii) to subsidize (other than under clause (1)) the exports of commodities and minerals from such countries.

"(B) The period referred to in subparagraph (A) is the same number of years as the capital expansion or replenishment period which immediately preceded the first year of the expansion or replenishment period.

"(3) For purposes of paragraph (2)(A)(ii), the term "subsidize" is used within the meaning of the Agreement on Interpretation and Application of Articles V, XVI, and XXIII of the General Agreement on Tariffs and Trade and the annex relating thereto, done at Geneva on April 12, 1979.

"(4) Any funds witheld from payments to an international financial institution pursuant to this section shall be used to reduce the public debt in the manner specified in section 3113 of title 31, United States Code.".

ANTI-DRUG ABUSE ACT

DOLE (AND OTHERS) AMENDMENT NO. 3034

Mr. DOLE (for himself, Mr. BYRD, Mr. THURMOND, Mr. BIDEN, Mrs. HAWKINS, Mr. CHILES, Mr. WILSON, Mr. DECONCINI, Mr. HATCH, Mr. CRANSTON, Mr. GRAMM, Mr. MOYNIHAN, Mr. SPECTER, Mr. DODD, Mr. TRIBLE, Mr. LEAHY, Mr. DENTON, Mr. MITCHELL, Mr. ABDNOR, Mr. NUNN, Mr. ROCKEFELLER, Mr. SASSER, Mr. DIXON, Mr. HEINZ, Mr. ZORINSKY, Mr. MATTINGLY, Mr. LAXALT, and Mr. MURKOWSKI) proposed an amendment to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation on eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

(The text of amendment No. 3034 is indentical to the text of the Senate drug legislation S. 2878 introduced on September 25, 1986. The text of the legislation appears in the RECORD of September 25, 1986, beginning on page S13648.)

GORTON (AND OTHERS) AMENDMENT NO. 3035

(Ordered to lie on the table.)

Mr. GORTON (for himself, Mr. NICKLES, Mr. BOREN, and Mr. LAUTENBERG) submitted an amendment intended to be proposed by them to the bill H.R. 5484, supra; as follows:

SEC. . (a) The Congress finds and declares that—

(1) drug investigation and enforcement depend on timely acquisition of reliable information;

(2) the Federal Government's land remote sensing satellite, known as Landsat, generates worldwide data revealing characteristics of the Earth's surface and changes thereto;

(3) Landsat data, in conjunction with other sources, can contribute to drug investigation and enforcement efforts in many ways, as follows—

(A) Landsat data are valuable in support of both airborne and field drug investigation operations because Landsat data are more accurate than most maps, especially maps of remote, undeveloped areas;

(B) Landsat's frequent repeat coverage of given areas provides information about developments and changes in terrain, including indicators of drug production and trafficking, such as construction of small airstrips and development of road networks;

(C) mapping of areas and monitoring changes is more cost-effective with Landsat data than by aerial photography;

(D) changes detected over time by Landsat data can improve airborne surveillance by highlighting specific areas as targets for surveillance;

(E) Landsat data are unclassified and can be given openly to foreign governments to help their drug enforcement efforts, because many countries lack adequate maps for drug enforcement raids;

(F) Landsat's Thematic Mapper instrument provides data unavailable from other sources, including vegetation indexes which estimate crop yield over large areas and moisture measurements which can determine the navigability of remote terrain;

(4) Public Law 98-365 expresses the desire of the Congress for continued U.S. involvement and leadership in land remote sensing and continuous availability of land remote sensing data to the federal government;

(5) Public Law 99-62 authorizes the appropriation of $295 million in fiscal years 1985 through 1989, of which $170 million remains unobligated, for the development of a land remote sensing system pursuant to the aforementioned requirements of Public Law 98-365;

(6) the land remote sensing system authorized by these Public Laws is intended to follow the current Landsat system, the last satellite (Landsat-5) of which was launched on March 1, 1984 and has an expected failure date of March 1, 1987;

(7) failure of the Congress to provide fiscal year 1987 appropriations for a land remote sensing system effectively will end the Landsat program upon the demise of Landsat-5; and

(8) the House of Representatives has passed legislation (H.R. 5161) providing $75 million for Landsat development in fiscal year 1987 and the Senate has not yet considered legislation to fund Landsat development in fiscal year 1987.

(b) It is therefore the sense of the Senate that $55 million should be provided in fiscal year 1987 to continue development of the follow-on land remote sensing system authorized by Public Laws 98-365 and 99-62.

(c) The unobligated funds authorized by Public Law 99-62 may be made available through appropriations for the Departments of Commerce, Defense, Justice, Agriculture, Treasury, Interior, or the National Aeronautics and Space Administration.

DENTON AMENDMENT NO. 3036

(Ordered to lie on the table.)

Mr. DENTON submitted an amendment intended to be proposed by him to the bill H.R. 5484, supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . ADMINISTRATION OF CLASSIFICATION, PAY, AND LABOR RELATIONS FOR DRUG ENFORCEMENT ADMINISTRATION EMPLOYEES.

(a) CLASSIFICATION OF POSITIONS.—Section 5102(a)(1) of title 5, United States Code, is amended—

(1) by striking out "or" at the end of clause (viii);

(2) by inserting "or" after the semicolon at the end of clause (ix); and

(3) by inserting after clause (ix) the following new clause:

"(x) the Drug Enforcement Administration;".

(b) Prevailing Rate Systems.—Section 5342(a)(1) of such title is amended—

(1) by striking out "or" at the end of clause (I);

(2) by inserting "or" at the end of clause (J); and

(3) by inserting after clause (J) the following new clause:

"(K) the Drug Enforcement Administration;".

(c) LABOR-MANAGEMENT AND EMPLOYEE RELATIONS.—Section 7103(a)(3) of such title is amended—

(1) by striking out "or" at the end of clause (F);

(2) by inserting "or" at the end of clause (G); and

(3) by inserting after clause (G) the following new clause:

"(H) the Drug Enforcement Administration;".

(d) AUTHORITY WITH RESPECT TO PAY.—(1) The Administrator shall fix the rates of pay of the employees of the Drug Enforcement Administration consistent with the principles of section 5301(a), of title 5, United States Code.

(2) The Administrator may not fix any rate of pay under paragraph (1) in an amount exceeding the maximum rate of pay for grade GS-15 under section 5332 of title 5, United States Code.

(3) The Administrator shall—

(A) publish a schedule of rates of pay applicable to employees of the Drug Enforcement Administration;

(B) adjust the rates of pay of the employees of the Drug Enforcement Administration at the same time and to the same extent as rates of basic pay under the General Schedule are adjusted pursuant to subchapter I of chapter 53 of title 5, United States Code;

(C) provide for grade and pay retention for employees of the Drug Enforcement Administration consistent with the objectives of the provisions of subchapter VI of chapter 53 of title 5, United States Code;

(D) pay performance awards to employees of the Drug Enforcement Administration consistent with the objectives of section 5384 of title 5, United States Code; and

(E) administer the pay of such employees consistent with the provisions of chapter 55 of title 5, United States Code.

(e) PERFORMANCE MANAGEMENT AND RECOGNITION.—The Administrator may develop, implement, and administer a performance management and recognition system for employees of the Drug Enforcement Administration consistent with the provisions of chapter 54 of title 5, United States Code.

(f) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the first day of the first applicable pay period beginning not less than 30 days after the date of the enactment of this Act.

DENTON AMENDMENT NO. 3037

(Ordered to lie on the table.)

Mr. DENTON submitted an amendment intended to be proposed by him to the bill H.R. 5484, supra; as follows:

At the end of title II, add the following new section:

SEC. . The first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a) is amended by adding at the end thereof the following:

"The Secretary of State may prescribe such regulations as may be necessary to establish procedures for indicating on passports issued by the United States the fact that the holder of such passport has been convicted of an offense under a Federal or State law relating to controlled substances or has been assessed a fine or civil penalty or has incurred a forfeiture under any Federal or State law relating to controlled substances.".

EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

GARN AMENDMENT NO. 3038

Mr. PACKWOOD (for Mr. GARN) proposed an amendment to the joint resolution (S.J. Res. 353) to provide for the extension of certain programs relating to housing and community development, and for other purposes; as follows:

On page 1, line 3, strike out "99-289" and insert in lieu thereof "99-345".

On page 1, line 4, strike out "June 6" and insert in lieu thereof "September 30".

NOTICES OF HEARINGS

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. HELMS. Mr. President, I wish to announce that the Subcommittee on Agricultural Research, Conservation, and Forestry, and General Legislation, of the Committee on Agriculture, Nutrition, and Forestry, has scheduled a hearing to address three pieces of forestry legislation: S. 1767 (H.R. 148), the Michigan Wilderness Act of 1985; S. 2838, the Georgia Wilderness Act of 1985; and H.R. 4685, the Texas Wilderness Act Amendments of 1986.

The hearing will begin at 9:30 a.m. on Thursday, October 2, 1986, in SR 332.

For further information, please contact the committee staff at 224-2035.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. MATHIAS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Friday, September 26, in closed session, to receive a briefing on intelligence matters.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. MATHIAS. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Friday, September 26, to hold a hearing on S. 2203, acid rain.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. MATHIAS. Mr. President, I ask unanimous consent that the Subcommittee on Intergovernmental Relations, of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Friday, September 26, in order to conduct a hearing on comprehensive federalism reform.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ADDRESS BY EZRA TAFT BENSON ON THE CONSTITUTION

● Mr. SYMMS. Mr. President, every so often a gifted individual will shed new light on, or give a fresh insight to a topic we thought we knew intimately. Such an event happened Tuesday, September 16 at Brigham Young University when The Church of Jesus Christ of Latter-day Saints President Ezra Taft Benson spoke on the U.S. Constitution.

His address was in commemoration of the 200th birthday of the Constitutional Convention. We are indeed fortunate to have had a group of the most uniquely talented men ever to be assembled at the birth of any nation, a gathering which produced the greatest document ever to govern a nation. Those Founding Fathers possessed wisdom and inspiration far beyond their generation as they authored a document which would endure unknown future assaults.

Ezra Taft Benson is of the same timber as the Founding Fathers and has devoted a lifetime to profound study of those great men and their product.

Mr. President, as we commence our celebration of the Bicentennial of the Constitution, I strongly urge every Member of this body to take a few minutes and ponder this great address on the Constitution:

THE CONSTITUTION—A HEAVENLY BANNER

(By Ezra Taft Benson)

My fellow Americans, on the 17th day of September, 1987, we commemorate the two-hundredth birthday of the Constitutional Convention, which gave birth to the document that Gladstone said is "the most wonderful work ever struck off at a given time by the brain and purpose of man."

I heartily endorse this assessment. It would be erroneous for us, however, to conclude that the document was the sole genius of the Founding Fathers. Theirs was a combined wisdom derived from heavenly inspiration, knowledge of political government from ages past, and the crucible of their own experience.

We pay honor—honor to the document itself, honor to the men who framed it, and honor to the God who inspired it and made possible its coming forth.

SOME BASIC PRINCIPLES

To understand the significance of the Constitution, we must first understand some basic, eternal principles. These principles have their beginning in the premortal councils of heaven.

The Principle of Agency

The first basic principle is agency. We understand that the purpose of the council in heaven was to announce and present the plan of redemption for the salvation of all of God's children. The council was called so that every man and woman could sustain the provisions of the Father's plan, which required that all people obtain mortal bodies, be tried and proven in all things, and have opportunity to choose of their own free will to obey the laws and ordinances essential to their exaltation.

Because a fallen condition was an essential part of this plan, an infinite, eternal sacrifice was also required to redeem us from this state. We are all familiar with the facts: how Lucifer—a personage of prominence—sought to amend the plan, while Jehovah sustained the plan. The Prophet Joseph Smith explained how this difference led to the war in heaven: "The contention in heaven was—Jesus said there would be certain souls that would not be saved; and the devil said he could save them all, and laid his plans before the grand council, who gave their vote in favor of Jesus Christ. So the devil rose up in rebellion against God, and was cast down."

The central issue in that council, then, was: Shall the children of God have untrammeled agency to choose the course they should follow, whether good or evil, or shall they be coerced and forced to be obedient? Christ and all who followed Him stood for the former proposition—freedom of choice; Satan stood for the latter—coercion and force. Because Satan and those who stood with him would not accept the vote of the council, but rose up in rebellion, they were cast down to the earth, where they have continued to foster the same plan. The war that began in heaven is not yet over. The conflict continues on the battlefield of mortality. And one of Lucifer's primary strategies has been to restrict our agency through the power of earthly governments. Proof of this is found in the long history of humanity.

When the first worldly government began as a theocracy, Adam's descendants soon departed from this perfect order and degenerated into various political systems. The result has been human misery and, for most of humankind, subjugation to some despotic government.

Look back in retrospect on almost six thousand years of human history! Freedom's moments have been infrequent and exceptional. From Nimrod to Napoleon, the conventional political ideology has been that the rights of life, liberty, and property were subject to a sovereign's will, rather than God-given. We must appreciate that we live in one of history's most exceptional moments—in a nation and a time of unprecedented freedom. Freedom as we know it has been experienced by perhaps less than one percent of the human family.

The Proper Role of Government

The second basic principle concerns the function and proper role of government. I should like to outline in clear, concise, and straightforward terms the guidelines that determine, now and in the future, my attitudes and actions toward all domestic proposals and projects of government. These are the principles that, in my opinion, proclaim the proper role of government in the domestic affairs of the nation:

[I] believe that governments were instituted of God for the benefit of man; and that he holds men accountable for their acts in relation to them.

[I] believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right of control of property, and the protection of life. . . .

[I] believe that all men are bound to sustain and uphold the respective governments in which they reside, while protected in their inherent and inalienable rights by the laws of such governments. (D&C 134:1-2,5.)

In other words, the most important single function of government is to secure the rights and freedoms of individual citizens.

The Source of Human Rights

The third important principle pertains to the source of basic human rights. Thomas Paine, back in the days of the American Revolution, explained: "Rights are not gifts from one man to another, nor from one class of men to another. . . . It is impossible to discover any origin of rights otherwise than in the origin of man; it consequently follows that rights appertain to man in right of his existence, and must therefore be equal to every man."

The great Thomas Jefferson asked: "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath?"

The feelings of these great men are in keeping with the revelations of God through His prophet, who said:' "Men are free according to the flesh . . . and they are free to choose liberty and eternal life . . . or to choose captivity and death." (2 Nephi 2:27.)

Rights are either *God-given* as part of the divine plan, or they are *granted by government* as part of the political plan. Reason, necessity, tradition, and religious conviction all lead me to accept the divine origin of these rights. If we accept the premise that human rights are granted by government, then we must be willing to accept the corollary that they can be denied by government. I, for one, shall never accept that premise. As the French political economist Frederic Bastiat phrased it so succinctly, "Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place."

We must ever keep in mind the inspired words of Thomas Jefferson, as found in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

People Are Superior to Governments

The fourth basic principle we must understand is that people are superior to the governments they form. Since God created people with certain inalienable rights, and they, in turn, created government to help secure and safeguard those rights, it follows that the people are superior to the creature

they created. We are superior to government and should remain master over it, not the other way around. Government is nothing more nor less than a relatively small group of citizens who have been hired, in a sense, by the rest of us to perform certain functions and discharge certain responsibilities we have authorized. It stands to reason that the government itself has no innate power nor privilege to do anything. Its only source of authority and power is from the people who have created it. This is made clear in the Preamble of the Constitution of the United States, which reads: "We the people . . . do ordain and establish this Constitution for the United States of America."

Governments Should Have Limited Powers

The final principle that is basic to our understanding of the Constitution is that governments should have only limited powers. The important thing to keep in mind is that the people who have created their government can give to that government only such powers as they, themselves, have in the first place. Obviously, they cannot give that which they do not possess. So the question boils down to this: What powers properly belong to each and very person in the absence of and prior to the establishment of any organized form of government?

In a primitive state, there is no doubt that every individual would be justified in using force, if necessary, for defense against physical harm, against theft of the fruits of his labor, and against enslavement by another.

Indeed, the early pioneers found that a great deal of their time and energy was spent defending all three—defending themselves, their property, and their liberty—in what properly was called the "lawless West." In order for people to prosper, they cannot afford to spend their time constantly guarding family, fields, and property against attack and theft, so they join together with their neighbors and hire a sheriff. At this precise moment, government is born. The individual citizens delegate to the sheriff their unquestionable right to protect themselves. The sheriff now does for them only what they had a right to do for themselves—nothing more. Quoting from Bastiat: "If every person has the right to defend—even by force—his person, his liberty, and his property, then if follows that a group of men have the right to organize and support a common force to protect these rights constantly. Thus the principle of collective right—its reason for existing, its lawfulness—is based on individual right."

The proper function of government, then, is limited to those spheres of activity within which the individual citizen has the right to act. By deriving its just powers from the governed, government becomes primarily a mechanism for defense against bodily harm, theft, and involuntary servitude. It cannot claim the power to redistribute money or property nor to force reluctant citizens to perform acts of charity against their will. Government is created by the people. No individual possesses the power to take another's wealth or to force others to do good, so no government has the right to do such things either. The creature cannot exceed the creator.

My attitude toward government is succinctly expressed by the following provision taken from the Alabama Constitution: "The sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression." (Article 1, Section 35.)

THE CONSTITUTION AND ITS COMING FORTH

With these basic principles firmly in mind, let us now turn to a discussion of the inspired document we call the Constitution. My purpose is not to recite the events that led to the American Revolution—we are all familiar with these. But I would say this: History is not an accident. Events are foreknown to God. His superintending influence is behind the actions of his righteous children. Long before America was even discovered, the Lord was moving and shaping events that would lead to the coming forth of the remarkable form of government established by the Constitution. America had to be free and independent to fulfill this destiny. I commend to you as excellent reading on this subject Elder Mark E. Petersen's book *The Great Prologue* (Salt Lake City: Deseret Book Co., 1975). As expressed so eloquently by John Adams before the signing of the Declaration, "There's a divinity that shapes our ends." Though mortal eyes and minds cannot fathom the end from the beginning, God does.

Every true American and true friend of liberty should love our inspired Constitution. Its creation was a miracle. In a letter to Marquis de LaFayette, on February 7, 1788, George Washington stated: "It appears to me . . . little short of a miracle, that the Delegates from so many different states (which States you know are also different from each other, in their manners, circumstances, and prejudices) should unite in forming a system of national Government, so little liable to well founded objections."

GOD RAISED UP WISE MEN TO CREATE THE CONSTITUTION

George Washington referred to this document as a miracle. This miracle could only have been performed by exceptional men. In a revelation to the Prophet Joseph Smith, the Savior declared, "I established the Constitution of this land, by the hands of wise men whom I raised up unto this very purpose." (D&C 101:80.) These were not ordinary men, but men chosen and held in reserve by the Lord for this very purpose.

Shortly after President Spencer W. Kimball became president of the Church, we met together in one of our weekly meetings. We spoke of the sacred records that are in the vaults of the various temples in the Church. As I was to fill a conference assignment of St. George, President Kimball asked me to go into the vault and check the early records. As I did so, I realized the fulfillment of a dream I had had ever since learning of the visit of the Founding Fathers to the St. George Temple. I saw with my own eyes the records of the work that was done for the Founding Fathers of this great nation, beginning with George Washington. Think of it, the Founding Fathers of this nation, those great men, appeared within those sacred walls and had their vicarious work done for them.

Wilford Woodruff's Testimony

President Wilford Woodruff spoke of this experience in these words: "Before I left St. George, the spirits of the dead gathered around me, wanting to know why we did not redeem them. Said they, 'You have had the use of the Endowment House for a number of years, and yet nothing has been done for us. We laid the foundation of the government you now enjoy, and we never apostatized from it, but we remained true to it and were faithful to God.' These were the signers of the Declaration of Independence, and they waited on me for two days and two nights. . . . I straightway went into the baptismal font and called upon Brother McCallister to baptize me for the signers of the Declaration of Independence, and fifty other eminent men, making one hundred in all, including John Wesley, Columbus, and others."

President Woodruff was an apostle and the president of the St. George Temple at the time of the appearing of these great men. These noble spirits came there with divine permission—evidence that this work of salvation goes forward on both sides of the veil.

At a later conference, in April 1898, after he became president of the Church, President Woodruff declared that "those men who laid the foundation of this American government had signed the Declaration of Independence were the best spirits the God of Heaven could find on the face of the earth. They were choice spirits . . . [and] were inspired of the Lord." We honor those men today. We are the grateful beneficiaries of their noble work.

The Constitution, an Inspired Document

During an address before members of the Church in 1855, President Brigham Young said: "The . . . Constitution of our country . . . was dictated by the invisible operations of the Almighty. . . . God's purpose, in raising up these men and inspiring them with daring sufficient to surmount every opposing power, was to prepare the way for the formation of a true republican government. . . .

"It was the voice of the Lord inspiring all those worthy men who bore influence in those trying times, not only to go forth in battle, but to exercise wisdom in council, fortitude, courage, and endurance in the tested field, as well as subsequently to form and adopt those wise and efficient measures which secured to themselves and succeeding generations, the blessing of a free and independent government."

Pure Motives of the Founding Fathers

James Madison, referred to as the Father of the Constitution, wrote a fitting tribute about his renowned colleagues: "Whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous trust, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them, than were the members of the Federal Convention of 1787."

THE LORD APPROVED THE CONSTITUTION

But we honor more than those who brought forth the Constitution. We honor the Lord who revealed it. God himself has borne witness to the fact that He is pleased with the final product of the work of these great patriots.

In a revelation to the Prophet Joseph Smith on August 6, 1833, the Savior admonished: "I, the Lord, justify you, and your brethren of my church, in befriending that law which is the constitutional law of the land." (D&C 98:6.)

In the Kirtland Temple dedicatory prayer, given on March 27, 1836, the Lord directed the Prophet Joseph to say: "May those principles, which were so honorably and nobly

defended, namely, the Constitution of our land, by our fathers, be established forever." (D&C 109:54.)

A few years later, Joseph Smith, while unjustly incarcerated in a cold and depressing cell of Liberty Jail at Clay County, Missouri, frequently bore his testimony of the document's divinity: "The Constitution of the United States is a glorious standard; and is founded in the wisdom of God. It is a heavenly banner."

The coming forth of the Constitution is of such transcendent importance in the Lord's plan that ancient prophets foresaw this event and prophesied of it. In the dedicatory prayer for the Idaho Falls Temple, President George Albert Smith indicated that the Constitution fulfilled the ancient prophecy of Isaiah that "out of Zion shall go forth the law." (Isaiah 2:3.)

He said: "We thank thee that thou hast revealed to us that those who gave us our constitutional form of government were wise men in thy sight and that thou didst raise them up for the very purpose of putting forth that sacred document [the Constitution of the United States]. . . .

"We pray that kings and rulers and the people of all nations under heaven may be persuaded of the blessings enjoyed by the people of this land by reason of their freedom and under thy guidance and be constrained to adopt similar governmental systems, thus to fulfill the ancient prophecy of Isaiah and Micah that 'out of Zion shall go forth the law, and the word of the Lord from Jerusalem.' " (*Improvement Era*, October 1945, p. 564.)

In the final analysis, what the framers did, under the inspiration of God, was to draft a document that merited the approval of God Himself, who declared that it should "be maintained for the rights and protection of all flesh." (D&C 101:77.) How this was accomplished merits our further consideration.

THE DOCUMENT ITSELF

The Constitution consists of seven separate articles. The first three establish the three branches of our government—the legislative, the executive, and the judicial. The fourth article describes matters pertaining to states, most significantly the guarantee of a republican form of government to every state of the Union. Article 5 defines the amendment procedure of the document, a deliberately difficult process that should be clearly understood by every citizen. Article 6 covers several miscellaneous items, including a definition of the supreme law of the land, namely, the Constitution itself, the laws of the United States, and all treaties made. Article 7, the last, explains how the Constitution is to be ratified.

After ratification of the document, ten amendments were added and designated as our Bill of Rights. To date, the Constitution has been amended twenty-six times, the most recent amendment giving young people the right to vote at age eighteen.

Now to look at some of the major provisions of the document itself. Many principles could be examined, but I mention five as being crucial to the preservation of our freedom. If we understand the workability of these, we have taken the first step in defending our freedoms.

MAJOR PROVISIONS OF THE DOCUMENT

Sovereignty of the People

First: Sovereignty lies in the people themselves. Every governmental system has a sovereign, one or several who possess all the executive, legislative, and judicial powers. That sovereign may be an individual, a group, or the people themselves. Broadly speaking, there are only two governmental systems in the world today. One system recognizes that the sovereign power is vested in one person or a group of people who serve as head of state. This kind of government rests on the premise that the ruler grants to the people the rights and powers the ruler thinks they should have. This system is wrong, regardless of how benevolent the dictator may be, because it denies that which belongs to all people inalienably— the right to life, liberty, and property.

The Founding Fathers believed in common law, which holds that true sovereignty rests with the people. Believing this to be in accord with truth, they inserted this imperative in the Declaration of Independence: "To secure these rights [life, liberty, and the pursuit of happiness], governments are instituted among men, deriving their just powers from the consent of the governed."

Separation of Powers

Second: To safeguard these rights, the Founding Fathers provided for the separation of power among the three branches of government—the legislative, the executive, and the judicial. Each was to be independent of the other, yet each was to work in a unified relationship. As the great constitutionalist President J. Reuben Clark noted: "It is the union of independence and dependence of these branches—legislative, executive, and judicial—and of the governmental functions possessed by each of them, that constitutes the marvelous genius of this unrivaled document. . . . It was here that the divine inspiration came. It was truly a miracle." (*Church News*, November 29, 1952, p. 12.)

In order to avoid a concentration of power in any one branch, the Founding Fathers created a system of government that provided checks and balances. Congress could pass laws, but the president could check these laws with a veto. Congress, however, could override the veto and, by its means of initiative in taxation, could further restrain the executive department, the Supreme Court could nullify laws passed by the Congress and signed by the president, but Congress could limit the court's appellate jurisdiction. The president could appoint judges for their lifetime with the consent of the Senate.

The use of checks and balances was deliberately designed, first, to make it difficult for a minority of the people to control the government, and second, to place restraint on the government itself.

Limited Powers of Government

Third: The powers the people granted to the three branches of government were specifically limited. Originally, the Constitution permitted few powers to the federal government, these chiefly being, as Thomas Jefferson said, the powers concerning "war, peace, negotiation and distributing to every one exactly the functions he is competent to. Let the national government be entrusted with the defence of the nation, and its foreign and federal relations; the State governments with the *civil rights*, law, police, and administration of what concerns the State generally, the counties with the local concerns of the counties, and each ward direct the interest within itself. It is by dividing and subdividing these republics from the great national one down through all its subordinations . . . that all will be done for the best. *What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body.*"

The Founding Fathers well understood human nature and its tendency to exercise unrighteous dominion when given authority. A Constitution was therefore designed to limit government to certain enumerated functions, beyond which was tyranny.

The Principle of Representation

Fourth: Our Constitutional government is based on the principle of representation. The principle of representation means that we have delegated to an elected official the power to represent us. The Constitution provides for both direct representation and indirect representation. Both forms of representation provide a tempering influence on pure democracy.

The House of Representatives was elected for only two years by direct vote of the people on a population basis. This concession to democracy was balanced by the establishment of a Senate, originally elected for six years, by state legislatures. This was an ingenious system whereby the Senate, not directly responsible to the people, could act as a restraining influence on any demagoguery by the House. No law could be passed without the majority approval of the House, whose members were directly elected by the populace; but also, a law had to have the majority concurrence of the Senate, who at that time were not elected by the people. In this way, the passions and impulses of the majority vote were checked.

The intent was to protect the individual's and the minority's rights to life, liberty, and the fruits of their labors—property. These rights were not to be subject to majority vote.

We all know, of course, that this system was altered by amendment so that today both House and Senate are elected by direct popular vote.

A Moral and Righteous People

Fifth: The Constitution was designed to work only with a moral and righteous people. "Our Constitution," said John Adams (first vice-president and second president of the United States), "was made only for a moral and religious people. It is wholly inadequate to the government of any other."

In recognizing God as the source of their rights, the Founding Fathers declared Him to be the ultimate authority for their basis of law. This led them to the conviction that people do not make law but merely acknowledge preexisting law, giving it specific application. The Constitution was conceived to be such an expression of higher law. And when their work was done, Madison wrote: "It is impossible for the man of pious reflection not to perceive in it a finger of that Almighty hand which has been so frequently and signally extended to our relief in the critical stage of the revolution." (*The Federalist*, no. 37.)

THE CRISIS OF OUR CONSTITUTION

This, then, is the ingenious and inspired document created by these good and wise men for the benefit and blessing of future generations. We are the beneficiaries of their work, and we owe a great debt of gratitude to them and to our God who led them in their task.

In a talk to the youth of the Church concerning America and the Constitution, President J. Reuben Clark said: "May I tell you a few of the elemental principles? It

[the Constitution] gave us, for perhaps the first time in all history, a republic with the three basic divisions of government—the Legislative, Executive, and Judicial—mutually and completely independent, the one from the other, under which it is not possible for any branch of the government legally to set up a system by which that branch can first conceive what it wants to do, then make the law ordering its doing and then, itself, judge its own enforcement of its own law, a system that has always brought extortion, oppression, intimidation, tyranny, despotism—a system that every dictator has employed and must employ." (*Improvement Era*, July 1940, p. 443.)

It is now two hundred years since the Constitution was written. Have we been wise beneficiaries of the gift entrusted to us? Have we valued and protected the principles laid down by this great document?

At this bicentennial celebration we must, with sadness, say that we have not been wise in keeping the trust of our Founding Fathers. For the past two centuries, those who do not prize freedom have chipped away at every major clause of our Constitution until today we face a crisis of great dimensions.

Erosion of Our Freedoms

Let me cite, just briefly, two examples of the erosion of our constitutional freedoms. Both have come about because we, the people, have allowed the government to ignore one of the most fundamental stipulations of the Constitution—namely, the separation of powers.

In recent years, we have allowed Congress to fund numerous federal agencies. While these agencies may provide some needed services and protection of rights, they also encroach significantly on our constitutional rights. The number of agencies seems to grow continually to regulate and control the lives of millions of citizens.

What many fail to realize is that most of these federal agencies are unconstitutional. Why are they unconstitutional? They are unconstitutional because they concentrate the functions of the legislative, executive, and judicial branches under one head. They have, in other words, power to make rulings, enforce rulings, and adjudicate penalties when rulings are violated. They are unconstitutional because they represent an assumption of power not delegated to the executive branch by the people. They are also unconstitutional because the people have no power to recall administrative agency personnel by their vote.

A second example of this abandonment of fundamental principles can be found in recent trends in the U.S. Supreme Court. Note what Lino A. Graglia, a professor of law at the University of Texas, has to say about this: "Purporting merely to enforce the Constitution, the Supreme Court has for some thirty years usurped and exercised legislative powers that its predecessors could not have dreamed of, making itself the most powerful and important institution of government in regard to the nature and quality of life in our society. . . .

"It has literally decided issues of life and death, removing from the states the power to prevent or significantly restrain the practice of abortion, and, after effectively prohibiting capital punishment for two decades, now imposing such costly and time-consuming restrictions on its use as almost to amount to prohibition.

"In the area of morality and religion, the Court has removed from both the federal and state government nearly all power to prohibit the distribution and sale or exhibition of pornographic materials. . . . It has prohibited the states from providing for prayer or Bible-reading in the public schools.

"The Court has created for criminal defendants rights that do not exist under any other system of law—for example, the possibility of almost endless appeals with all costs paid by the state—and which have made the prosecution and conviction of criminals so complex and difficult as to make the attempt frequently seem not worthwhile. It has severely restricted the power of the states and cities to limit marches and other public demonstrations and otherwise maintain order in the streets and other public places."

To all who have discerning eyes, it is apparent that the republican form of government established by our noble forefathers cannot long endure once fundamental principles are abandoned. Momentum is gathering for another conflict—a repetition of the crisis of two hundred years ago. This collision of ideas is worldwide. Another monumental moment is soon to be born. The issue is the same that precipitated the great premortal conflict—will men be free to determine their own course of action or must they be coerced?

The Prophecy of Joseph Smith

We are fast approaching that moment prophesied by Joseph Smith when he said: "Even this nation will be on the very verge of crumbling to pieces and tumbling to the ground, and when the Constitution is upon the brink of ruin, this people will be the staff upon which the nation shall lean, and they shall bear the Constitution away from the very verge of destruction." (July 19, 1840, Church Historian's Office, Salt Lake City.)

The Need to Prepare

Will we be prepared? Will we be among those who will "bear the Constitution away from the very verge of destruction?" If we desire to be numbered among those who will, here are some things we must do:

1. *We must be righteous and moral.* We must live the gospel principles—all of them. We have no right to expect a higher degree of morality from those who represent us than what we ourselves are. In the final analysis, people generally get the kind of government they deserve. To live a higher law means we will not seek to receive what we have not earned by our own labor. It means we will remember that government owes us nothing. It means we will keep the laws of the land. It means we will look to God as our Lawgiver and the Source of our liberty.

2. *We must learn the principles of the Constitution and then abide by its precepts.* We have been instructed again and again to reflect more intently on the meaning and importance of the Constitution and to adhere to its principles. What have we done about this instruction? Have we read the Constitution and pondered it? Are we aware of its principles? Could we defend it? Can we recognize when a law is constitutionally unsound? The Church will not tell us how to do this, but we are admonished to do it. I quote Abraham Lincoln: "Let [the Constitution] be taught in schools, in seminaries, and in colleges, let it be written in primers, in spelling books and in almanacs, let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation."

3. *We must become involved in civic affairs.* As citizens of this republic, we cannot do our duty and be idle spectators. It is vital that we follow this counsel from the Lord: "I, the Lord God, make you free, therefore ye are free indeed; and the law also maketh you free. Nevertheless, when the wicked rule the people mourn. Wherefore, honest men and wise men should be sought for diligently, and good men and wise men ye should observe to uphold; otherwise whatsoever is less than these cometh of evil. And I give unto you a commandment, that ye shall forsake all evil and cleave unto all good, that ye shall live by every word which proceedeth forth out of the mouth of God." (D&C 98:8-11.)

Note the qualities that the Lord demands in those who are to represent us. They must be good, wise, and honest. Some leaders may be honest and good but unwise in legislation they choose to support. Others may possess wisdom but be dishonest and unvirtuous. We must be concerted in our desires and efforts to see men and women represent us who possess all three of these qualities.

4. *We must make our influence felt by our vote, our letters, and our advice.* We must be wisely informed and let others know how we feel. We must take part in local precinct meetings and select delegates who will truly represent our feelings.

I have faith that the Constitution will be saved as prophesied by Joseph Smith. But it will not be saved in Washington. It will be saved by the citizens of the nation who love and cherish freedom. It will be saved by enlightened members of this Church—men and women who will subscribe to and abide the principles of the Constitution.

THE CONSTITUTION REQUIRES OUR LOYALTY AND SUPPORT

I reverence the Constitution of the United States as a sacred document. To me its words are akin to the revelations of God, for God has placed His stamp of approval on the Constitution of this land. I testify that the God of heaven sent some of His choicest spirits to lay the foundation of this government, and He has sent other choice spirits—even you who read my words—to preserve it.

Our feelings for this marvelous document should be the same as those attributed to John Adams by Daniel Webster. When others were vacillating on whether to adopt the Declaration of Independence, the sentiments of John Adams were these: "Sink or swim, live or die, survive or perish, I give my hand and my heart to this vote. It is true, indeed, that in the beginning we aimed not at independence. But there's a Divinity that shapes our ends . . . . Why, then, should we defer the Declaration? . . . You and I, indeed, may rue it. We may not live to see the time when this Declaration shall be made good. We may die; die Colonists, die slaves, die, it may be, ignominiously and on the scaffold.

"Be it so. Be it so.

"If it be the pleasure of Heaven that my country shall require the poor offering of my life, the victim shall be ready. . . . But while I do live, let me have a country, or at least the hope of a country, and that a free country.

"But whatever may be our fate, be assured . . . that this Declaration will stand. It may cost treasure, and it may cost blood, but it will stand and it will richly compensate for both.

"Through the thick gloom of the present, I see the brightness of the future as the sun in heaven. We shall make this a glorious, an

immortal day. When we are in our graves, our children will honor it. They will celebrate it with thanksgiving, with festivity, with bonfires, and illuminations. . . .

"Before God, I believe the hour is come. My judgment approves this measure, and my whole heart is in it. All that I have, and all that I am, and all that I hope, in this life, I am now ready here to stake upon it; and I leave off as I began, that live or die, survive or perish, I am for the Declaration. It is my living sentiment, and by the blessing of God it shall be my dying sentiment. Independence now, and Independence forever."

We, the blessed beneficiaries, likewise face difficult days in this beloved land, "a land which is choice above all other lands." (Ether 2:10.)

It may also cost us blood before we are through. It is my conviction, however, that when the Lord comes, the Stars and Stripes will be floating on the breeze over this people. May it be so, and may God give us the faith and the courage exhibited by those patriots who pledged their lives and fortunes that we might be free.

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THE RETIREMENT OF JUDGE EDWARD B. TOLES

● Mr. DIXON. Mr. President, I would like to take this opportunity to advise my colleagues of the retirement of a very distinguished judge and lawyer after 50 years of conscientious service to his community, State and Nation.

After 18 years of service as bankruptcy judge for the northern district of Illinois, Judge Edward B. Toles will take his retirement when his term expires on October 1, 1986.

Recently, Judge Toles was honored with the "Senior Counselor Award" by the Illinois State Bar, the Chicago Bar Association and the Judicial Council of the National Bar.

The career of Judge Toles stands as an outstanding example of the success that can be attained in our country with determination and talent and I think it would be very instructive to include some history of his extraordinary career.

I ask that articles from the Chicago Daily Defender and the Chicago Daily Law Bulletin regarding Judge Edward B. Toles be printed in the RECORD.

The articles follow:

[From The Chicago Defender, June 25, 1986]

BAR RECOGNIZES JUDGE TOLES

Judge Edward B. Toles, 76, will receive the "Senior Counselor Award" at the annual meetings of both the Illinois State Bar Association at the Marriott Hotel, Lincolnshire, Ill., and the Chicago Bar Association Thursday at the Bar Association Luncheon.

Judge Toles, a graduate of the University of Illinois (A.B. 1932) and Chicago's Loyola University School of Law (J.D. 1936) was admitted to the bar on February 13, 1936. On that date he entered the offices of the late Edward H. Morris, the fifth Black lawyer admitted to the Illinois Bar—on June 12, 1879.

Toles, former Assistant General Counsel for The Chicago Defender, was honored by the U.S. War Department for his services as Defender War Correspondent during World War II by Secretary of War Robert E. Patterson.

Toles was appointed the first Black Chicago U.S. Bankruptcy Judge in December 1968 and has served 18 years on the bench. He will retire October 1, 1986.

Married to the former Evelyn Echols for 42 years, they have one son, Edward B. Toles Jr.

The Chicago Bar Association will also honor 16 Chicago Black lawyers who were admitted to the Illinois Bar more than 50 years ago.

Included in the group is Earl B. Dickerson, age 95, admitted in 1920 and the first Black lawyer admitted to the Chicago Bar Association in 1945.

The remaining 15 lawyers and the year each was admitted are: Earl B. Dickerson, 1920; Houston H. Hall, 1925; Oscar C. Brown Sr., 1925; Aaron H. Payne, 1926; Edward M. Byrd, 1927; Alvin H. Moss, 1929; John T. Jones, 1930; Hon. Sidney A. Jones Jr., 1931; Fred H. Elliott, 1931; James A. McLendon, 1933, Harry H. Gibson, 1935; Truman K. Gibson Jr., 1935; Joseph Attell, 1935; Archie Mills, 1935; and George B. Nesbitt, 1935.

[From the Chicago Daily Law Bulletin, June 19, 1986]

TOLES: A MANDATE FROM DARROW

Even though he's been on the bench only 18 years, Edward B. Toles has had a passion for judicial matters for almost five decades.

Ever since his career was spiritually launched by Clarence Darrow, whom he heard speak when he was a student at Englewood High School, Toles has fought long and hard to get black lawyers appointed to the bench.

The 76-year-old jurist still recalls how Darrow's deeds and words, especially the latter, motivated him to pursue a career in law. After Darrow's speech, he approached the famous lawyer and told him of his plans.

Toles recalled that Darrow responded, "Well, I think this is what you should do." So the young black man turned those words into a mandate by combining them with some other motivations and goals.

"I knew that professionalization was the only way we could get ahead," said Toles. "We had to have some representatives in the courts."

His efforts to get blacks on the bench really picked up steam when Toles was on the judiciary committees of the National Bar Association and the Cook County Bar Association in the late 1950s. In 1961, when Toles became president of the CCBA, his campaign to increase blacks in the judiciary was even more active. He met with then-mayor Richard J. Daley and the late president John F. Kennedy to discuss the issue.

In May 1961, at the request of the Chicago Tribune editorial board, he published an op-ed piece called "A Legitimate Aim of Negro Lawyers," which put forth an argument as to why blacks should be appointed to judgeships. Three months later, Judge James B. Parsons, the first black man to join the federal bench in Chicago, was appointed to the U.S. District Court.

By the end of Toles' two-year term, the number of black judges in Chicago had jumped from four to eight. Then, when he completed his CCBA presidency, Toles himself was sponsored for a judgeship and in December of 1968 he became the first back to be appointed to the bankruptcy bench in Chicago.

But there were other pivotal events involving black lawyers that left their mark on the jurist.

One of the early ones occurred when he was a student at the University of Illinois in Champaign, where he received his B.A. in 1932 and attended law school for two years before graduating from Loyola Universty School of Law in 1936.

He and another black law student, George B. Nesbitt, were denied service at a downstate snack shop. They were irate. "We decided to sue the bastards," recalled Toles. "We did. We lost the case but the next year they opened up the barbershop and restaurant so we won something."

Indeed, while the Urbana jury had reached a verdict against the three students Toles and Nesbitt represented after a three-day trial in 1938, blacks in the area were soon free to patronize all restaurants, movie houses and barbershops.

That case was argued while Toles was at his first post-law-school job as an associate with the law offices of Edward H. Morris, the fifth black lawyer admitted to the Illinois bar. It was a general and varied practice and one that gave him his first taste of bankruptcy law. While there, Toles represented a 400-employee black insurance company that was having financial difficulties. He supervised their finances.

Morris' firm was also one of the only options for a young black lawyer at the time. "Black lawyers had no firms as the white lawyers did," Toles recalled, adding that

Chicago's black bar numbered only about 200 when he graduated from law school.

That situation, which the judge said hasn't improved much, provided another imetus in his lifelong judicial mission. "Blacks could not and still can not be admitted to big white firms, so the only place for you to make a competitive living is in the public arena," Toles explained. "They can't deny you that."

He got a brief taste of the same when he was appointed assistant attorney with the U.S. Housing Authority in Washington, D.C. in 1939, a post he held until 1941, when he served as assistant general counsel for the publishing company that published the Defender, Chicago's only black daily newspaper. When the war intervened in 1943, Toles became the Defender's correspondent, the first black to cover black troops in Europe.

Toles' major concentration in recent years has focused on the area's bankruptcy docket. As a judge, he's presided over some of the Northern District's largest cases. They include reorganizations from the Executive House hotel to the Warshawsky & Co. auto parts company, from the Gaslight Clubs case to Chicago's last brewery, Meister Brau.

But he's also continued to contribute the black bar. As the official historian for the National Bar association, the judge has proved to be an invaluable source of statistical and historical information on black lawyers and judges, much of which has figured its way into publications and congressional records.

The walls of Toles's chambers and courtroom offer a less formal version of black legal history. They are covered with pictures of the judge at various stages in his crusade to increase the number of blacks on the bench. Photos of most of Illinois black judges and of Toles with Kennedy, Daley, U.S. Supreme Court Chief Justice Warren Burger and countless others crowd alongside the many awards and recognitions Toles had received.

As he looks at the wall and ponders his pending retirement this fall, a characteristic gentle but toothy smile spreads across Toles' face and he softly says, "I have had 50 years of good fortune."●

WHAT EVER HAPPENED TO THE ENERGY CRISIS

● Mr. HEINZ. Mr. President, "What Ever Happened to the Energy Crisis," an op-ed by Mr. Gus. S. Nicholas, appeared in the Monday, September 22 Wall Street Journal, and I urge all of my colleagues to read it.

Mr. Nicholas argues, and I agree, that the energy crisis of the 1970's is still with us. I am concerned that the drop in oil prices has lulled us into a false sense of security. Just as oil prices plummeted almost overnight, so can they skyrocket in an equally short time, just as they did in the 1970's.

The fact remains that fossil fuels are a finite resource. There is less oil in the ground now than there was in the 1970's, and that amount diminishes every day.

Conservation is a vital component of our energy policy, and to the extent that we allow our conservation efforts to lapse we do so at the peril of America's security.

Mr. President, I ask that Mr. Nicholas' excellent and thoughtful article be printed in full at this point in the RECORD.

The article follows:

WHAT EVER HAPPENED TO THE ENERGY CRISIS?

(By Gus S. Nicholas)

With oil prices having plunged 50% and gasoline 40% since the last quarter of 1985, one could conclude—the recent OPEC accord not withstanding—that there never was an energy crisis. Does anyone even remember President Carter on TV with his sweater? The arguments for conservation, however, remain as powerful as ever.

Today's prices for fossil fuels and their derivatives are more a function of demand than any long-term energy supply solution. In 1984, the last year for which data are available, the U.S. used less energy than in 1973. World energy output meanwhile, in the third year of the first Reagan term, was down 2.6% from what was produced in President Carter's last year in office. Additionally, the flat U.S. consumption curve over the 12 years through 1984 was achieved in the face of a 30.7% increase in constant dollar gross national product. This is glowing testimony to the efficacy of conservation legislation and incentives. It was not a signal to relax auto mileage rules or phase out the energy investment tax credits, nor does it warrant raising the highway speed limit back to 70 mph.

In 1975, the Energy Policy and Energy Conservation Act became law. It mandated that in the nation's 10 largest industries, manufacturers consuming more than one trillion BTUs per year report their energy use per unit of output against 1972 as base. A goal was also set for these firms to reduce by 1980 their energy use per unit of output by an industry-specific percentage, e.g., 12% for food, 22% for textiles and 20% for paper. The food industry, for one, surpassed its 1980 goal and in 1985 operated with 28% less energy per unit of output than it did in 1972. From 1973 to 1983, the auto industry similarly improved the gasoline economy of its product by 27%, from 13.1 to 16.7 miles per gallon.

If we consumed energy today at the 1972 per dollar of GNP rate, and the incremental 23.4 quadrillion BTUs were supplied by imported oil at $15 a barrel, the U.S. trade deficit would balloon by $60 billion. Conversely, if the U.S. used energy as efficiently as Western Europe, our energy bill would be nearly halved. But only a more achievable 12% improvement would be necessary to eliminate imported fuel. At $15 a barrel this would reduce the trade deficit by $23 billion.

ECONOMIC GROWTH AND THE ENERGY MARKET

	U.S. GNP (in billions of 1972 dollars)	U.S. Energy consumption (Quadrillion Btus)	World energy production (Quadrillion Btus)
1973	1254.3	74.3	244.8
1974	1246.3	72.6	248.8
1975	1231.6	70.6	246.0
1976	1298.2	74.4	260.4
1977	1369.7	76.3	269.1
1978	1438.6	78.1	274.4
1979	1479.4	78.9	288.8
1980	1475.0	76.0	287.6
1981	1512.2	74.0	281.8
1982	1480.0	70.8	280.2
1983	1534.7	70.5	280.1
1984	1639.9	73.7	NA

Source: Energy Information Administration.

The U.S., with less than 5% of the world's population, uses more than 25% of its energy produced. Each American uses 312 million BTUs a year, 6.5 times the global average. Pulling the U.S. from the comparision does not yield a world with egalitarian per capita energy consumption rates but the disparity cannot be simply dismissed with the argument that the Third World drags down the world average. Per-capita U.S. energy usage is 1.8 times West Germany's, 1.9 times Switzerland's, 2.3 times Denmark's and 2.4 times Japan's, though by some yardsticks, these countries' living standards top America's.

At the present rate of world consumption the earth's estimated fossil fuel reserves would last 109 years. If the U.S. rates were extrapolated to the rest of the globe, world annual energy consumption would increase 5.28 times and the world fossil fuel cupboard would go bare in 20 years. But reducing U.S. consumption rates to West German levels would stretch fossil fuel reserves for the entire world by 13 years, and Japan's rates would keep the lights burning for 19 additional years.

Energy resources will be extended by a variety of means, not a single technology such as nuclear. Co-generation can as much as double the efficiency of the inherently inefficient power plant cycle from .35 to .75 BTU of electricity produced per BTU fuel consumed; there are enough potential hydroelectric sites in the U.S. to totally meet our electric requirements; solid waste could generate from 5% to 10% of U.S. electrical requirements; altered building codes could reduce residential energy use as much as 29%, and U.S. energy consumption 18%; recycled paper requires 36% as much energy and recycled aluminum 4% as much as the virgin materials, yet only about a fourth of those high energy using products is recycled.

To date, energy conservation projects have not been given economic credits for environmental clean-up they made unnecessary. Replacing systems only when justified by the cost of fuel saved suppresses conservation investments. It is not that there is a lack of acid rain caused environmental damage estimates, both in the U.S. and abroad. European Community estimates for forest damage are $200 million a year. One-third of Swiss and German forests are classified as dying. U.S. estimates for building damages range from $2 billion to $5 billion a year. In Europe corresponding numbers are $500 million to $2.7 billion. Experiments have shown that rain with acidity equal to that falling on the eastern U.S. cuts soybean yields 11%.

Per capita energy consumption

(Tons of oil equivalent, annual)

Country:	*Tons oil*
United States	7.59
Sweden	5.91
West Germany	4.31
Switzerland	3.89
Denmark	3.37
Japan	3.14
Italy	2.39
Spain	1.91
Turkey	.78

Source: OECD Observer.

The EPA has determined that the environmental benefits of air clean-up alone are equal to the cost of emission controls before even considering damage from acid fallout in the form of rain. Five to 10 years are necessary before significant reductions in emis-

sions can be made, so there is cause for clamor. But while a frontal attack on acid rain is in order, a strategically meritorious flanking action is the reduction of pollution via conservation initiatives incited by appropriate financial credits. Certainly scientists in both camps can respect a law that postulates: What does not go up, cannot come down.

The specter of $2-per-gallon gasoline was never the only argument for an energy policy. The marketplace is not a particularly noted long-range visionary. Why not launch programs dealing with the inevitable today, instead of crash, price sponsored programs in the future when depletion is on the horizon? It is incumbent on the leadership of the world's largest energy consumer to bring the energy issue to the fore and strengthen, not roll back, programs to address it.●

NRC IGNORES ITS OWN SAFETY REVIEW PROCEDURES

● Mr. BIDEN. Mr. President, the Nuclear Regulatory Commission [NRC] is considering approval of a full-power operating license for the Perry-1 nuclear powerplant in Ohio. Unfortunately, the NRC appears willing to take this final step toward commercial operation even though its own licensing appeal board believes there may be serious questions about the ability of the plant to operate safely.

The safety question was raised by the Ohio Citizens for Responsible Energy [OCRE], in relation to an earthquake on January 31 centered near the Perry reactor. Seismic equipment at the facility measured ground motion which exceeded the plant's design standards. Soon after the earthquake, OCRE, as an intervenor in the licensing case, filed a request for the atomic safety and licensing appeal board to reopen the licensing hearing based on this new information.

The Perry plant is close to qualifying for a full-power license. It would be very unusual for an appeals board to reopen a hearing at such a late date. However, the NRC's own regulations allow for just such an event, as long as certain criteria are met. The three-part test for reopening the hearing are:

First. Is the motion timely?

Second. Does it address significant safety or environmental issues?

Third. Might a different result have been reached had the newly proffered material been considered initially?

The appeal board reviewed the information on the earthquake in the intervenors' request, and the response to those charges by the plant operator and the NRC staff. The decision of the appeals board was that:

> Our examination of the documentary submissions of the applicants and staff have given rise to several questions that, in our view, require further exploration before we can decide with any degree of confidence whether a reopening of the record is justified.

The appeal board decided that it wanted to hold a 1-day hearing with a very limited purpose:

> To aid our determination on whether there is warrant to reopen the record for the admission and full litigation of OCRE's newly proposed seismic contention.

The appeal board proposal balanced questions about the impact of the earthquake on the plant structure with its desire to avoid a full scale reopening of the hearing on sketchy evidence.

Unfortunately, this apparently reasonable approach did not suit the NRC Commissioners. In an even more unusual procedure than the one contemplated by the appeal board, a majority of the Commissioners ordered the board to cancel its hearing. No review of the concerns raised by the earthquake would be made under the Commission's actions. The appeal board may believe that there was a potentially serious problem indicated by the earthquake, but a majority of the Commissioners clearly did not want a preliminary review.

To add to the list of unusual actions related to this case, the Sixth Circuit Court issued an injunction blocking the NRC from voting on a full-power license for Perry-1 until questions about the plant's ability to withstand an earthquake have been cleared up. This is the first time the NRC has been blocked from voting on a license because of a procedural issue.

This matter may be settled soon, because the Sixth Circuit Court has received written briefs on the issues and yesterday heard oral arguments. However, the actions of the NRC are cause for concern even after the court renders its decision in the case.

The Commission appears willing to disregard at least the spirit of its own regulations designed to ensure that all reasonable safety concerns are addressed before a full-power license is granted to a commercial plant. The indisputable fact that the seismic equipment in the foundation of the plant took measurements in excess of those the plant is designed to withstand would appear to raise a legitimate safety concern.

I am also concerned that the NRC, in its initial rejection of the appeal board's effort stated "simply put, the burden of satisfying reopening requirements is on the movant and boards must base their decisions on what is before them." In this case, the appeal board stated that the surface facts of the case were in favor of the OCRE request, but that the utility and NRC staff raised complex, technical arguments that the higher numbers did not pose a significant safety threat. After reviewing their comments on the decision to hold an informal hearing, it appears the appeal board wanted a further explanation of the technical information, not the OCRE information.

The signal the Commission's actions send to the staff is a poor one. The appeal board was handed a tricky case, and tried to find a way to resolve it in a way that would not require the resources of a more formal hearing. The Commission's response tells the appeal board that either it must become an instant expert in geology, seismology, and engineering mechanics, or it cannot reopen a hearing. The Commission cannot send this kind of message to its staff and expect them to be the advocates of safety that the public demands.

I am concerned that this action by the NRC is another example of the drift away from a commitment to safety at the Commission. It has not been a sudden shift, but rather one that has developed over the years. We need to reform the NRC to bring it into line with the changing responsibilities and conditions in the nuclear industry. The safety board proposal I have put forward is a step that should be taken to increase the visibility and effectiveness of safety considerations at the NRC.●

NATIONAL SEEK AND COLLEGE DISCOVERY DAY

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of a joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day."

A generation ago, the City University of New York instituted two revolutionary programs for minorities, the economically disadvantaged, and the educationally underprepared who otherwise would not have considered attending college or would not have met the traditional admissions requirements. One program, instituted at the community college level, is called College Discovery; the other, SEEK [Search for Elevation, Education and Knowledge], was instituted at the senior college level. These programs were used on a pilot basis at two community colleges and three of the system's senior colleges. The first groups of 650 were offered a unique program of counseling, remedial instruction, tutorial services, and financial aid.

SEEK and College Discovery became the first large-scale efforts to identify and nurture the talents of an underprivileged, underprepared population in the setting of a major university. These programs became a monumental success and, within no time, were expanded throughout the city university system. As a direct result of the programs' success, the university began its open admissions policy in 1970.

Entirely funded by the university, these programs now boast an enroll-

ment of over 14,000 students per year. They proudly serve as models for college remedial programs that have been established across our Nation, as well as for the Federal Trio Program. More than 100,000 students are the beneficiaries of SEEK and College Discovery as offered through city university. It is for this reason that I call upon my colleagues to recognize this remarkable achievement by designating December 11, 1986, as "National SEEK and College Discovery Day."

NATIONAL FORUM

● Mr. KERRY. Mr. President, I recently had the privilege of visiting Milton Academy in Milton, MA, where an exciting national movement is taking shape.

This past May, students at Milton Academy started a project known as the National Forum. The National Forum is a grassroots, educational effort on the issue of nuclear arms, designed to bring all the high school students of America together in a cooperative movement. The project currently consists of a petition drive to get the Nation's 15.6 million high school students to request a nationally televised forum on this issue.

The idea for the National Forum arose out of a speech last April presented by Dr. Helen Caldicott, founder of Physicians for Social Responsibility. Her clear and dramatic depiction of the consequences of nuclear war provoked a passionate and active response among students. For several days after her speech, classrooms and assembly halls were filled with discussions about the controversial subject. Although the students may have differed in their views about the nuclear arms race, they all agreed that they were insufficiently informed about the complexities of the issue, and wanted to learn more.

Their desire to learn led to open meetings which brought together more than 120 students and 30 faculty members. Interest remained at a high level, and the project began to take shape. By early June, the National Forum was established, and a summer group was formed to begin the process of putting together the petition drive and televised forum.

Five months after its inception, the National Forum is now a thriving organization with a staff of teachers and students busy printing literature, raising funds, "networking," and collecting endorsements. The first part of the project involves stuffing petitions into 67,000 envelopes bound for America's 20,000 high schools. An enclosure asks the country's 15.6 million high school students to sign the petition. The petition requests a televised forum on the nuclear arms issue and invites President Reagan to participate in this forum.

On September 18, students met with Massachusetts Governor Michael Dukakis in his office, where the Governor signed the petition and stuffed the first envelope. On Saturday, September 20, I had the privilege of talking with student supporters of the National Forum at Milton Academy. I had the opportunity to speak with students at the academy about this worthy project, and about some of the complex questions surrounding the nuclear arms race.

The National Forum hopes to complete its education project by the end of the school year. At that time, the organization will broadcast a 2-hour program, with four noted experts of differing views. The forum certainly has set forth ambitious goals for itself, but I believe it can achieve these goals. In any case, the National Forum fulfills a number of important functions for students. As the organization has stated:

It emphasizes the value of impartiality, of free and open discussion, a hallmark of American democracy;

It demonstrates that students of vastly differing views can come together over a common issue;

It involves future voters in a process of public discussion and decisionmaking, preparing them for the difficult tasks of citizenship;

It educates students about a crucial issue of our times;

It helps develop in students a consciousness beyond their own individual circumstances; and

It shows students that they can make a difference.

I believe that it does all this while it also serves to focus national attention in a new way on what is perhaps the most critical issue facing us today—the nuclear arms race. I commend the students who are participating in this project for their leadership and citizenship. Let me wish the National Forum the best of success in all its endeavors.●

TRIBUTE TO JACK FISH

● Mr. WALLOP. Mr. President, the beauty of Washington, DC, has not been created by accident. Certainly the magnificent design of this city has contributed greatly to its attractiveness. However, much of the beauty of our Nation's Capital may be attributed to the efforts of the National Park Service, and particularly, to the Director of the National Capital Region, Jack Fish. For 13 years, Jack has painstakingly overseen the care of our gardens, our parks, our memorials, and all other facilities managed by the Park Service in our Nation's Capital.

It was with great concern that I learned that Jack suffered a heart attack on September 9. I am, however, pleased to know that after bypass surgery, Jack is now home and making great progress.

I know that all of my colleagues join me in wishing Jack Fish a speedy recovery.●

NAUM AND INNA MEIMAN: A SPECIAL PLEA

● Mr. SIMON. Mr. President, as the Senate surges through its busiest time of the year, I would like to remind everyone of the importance of human rights. There are thousands of Soviet citizens being denied emigration rights and family reunification rights who are forced to live as outcasts in a society which does not want them, but will not allow them to leave.

I would like to make a special plea for my two very close friends, Naum and Inna Meiman. They are an elderly couple cut off from society in the Soviet Union. Their emigration requests have consistently been rejected.

Inna is dying of cancer. After removing four malignant tumors from Inna's neck, the Soviet doctors insist that there is nothing more they can do for the fifth tumor. The Soviets are aware of experimental treatment available in the West, but they refuse to permit the Meimans to emigrate.

I strongly urge the Soviet Union to allow the Meimans to emigrate to Israel.●

ABORTION AND INFORMED CONSENT: IDAHO

● Mr. HUMPHREY Mr. President, Rickie Sue in Idaho has written clearly about her abortion and the sort of counseling she received. It is obvious that she rightfully feels betrayed by the lack of information she was given.

Scores of letters to my office have indicated that this is the sort of informed consent many young women in this country are given every day. I earnestly urge my colleagues to join me in righting this glaring injustice. I encourage my colleagues, especially those from the State of Idaho, to cosponsor S. 2971 to ensure that women are given enough information to make an informed decision about abortion.

The letter follows:

MAY 29, 1986.

DEAR SENATOR HUMPHREY. I'm writing to express my complete support and deep desire to see the federal bill for "Informed Consent" passed.

Through my own experience with an abortion, I know that, had the abortion clinic and the Planned Parenthood clinic given me the "complete" and "true" information concerning the procedure of abortion (exactly how and what it was aborting), I never and I repeat never would have gone through with the abortion.

I feel also, had they shown me what my baby looked like at that stage and told me they were going to cut the baby in pieces and/or vacuum the baby apart and then out, I would have opted for life through adoption of raising the child myself.

I felt horribly "tricked" when I found out what really happened.

I come in contact with many women whose cry is this—"If I had only known what I did and that it was truly a baby, and not "just a blob," I never would have done it."

I know that if this federal bill for "Informed Consent" is passed, all women and girls will be able to make real decisions concerning their pregnancies and abortions.

Please strive hard in whatever ways necessary to pass this bill!

For the sake of the uninformed and their children.

Mrs. RICKIE SUE KENDALL,

HOPE, ID.,●

25TH ANNIVERSARY OF THE DEFENSE INTELLIGENCE AGENCY

● Mr. DURENBERGER. Mr. President, I want to take this opportunity to honor one of the preeminent agencies in the U.S. Government, the Defense Intelligence Agency [DIA] which is celebrating its silver anniversary today. Accurate, timely intelligence is essential to the formulation and implementation of national security policy and the conduct of foreign affairs. An integral part of the U.S. Intelligence Community, the DIA is the primary U.S. producer of foreign military intelligence. Its creation was the most significant organizational development in military intelligence in the post-World War II era. DIA serves as the manager of most defense intelligence production, and provides the Secretary of Defense and the Joint Chiefs of Staff [JCS], other policymakers, and the military departments with intelligence support.

As you can well appreciate, the U.S. foreign intelligence effort is critically important to the Nation in that it provides vital information to policymakers and military forces concerning the capabilities and intentions of other nations. DIA's beginnings can be traced to events of the late 1940's; discontent was evident as each service produced its own intelligence often resulting in duplication of effort and disparity in product. As the 1950's ended, the need for reliable coordinated intelligence was underscored with the launch of sputnik, mushrooming technological advances—particularly in communications and information availability, missile gap theories, and increasing world tensions. Moreover, accurate intelligence was required to meet the increased intelligence requirements of the Unified and Specified [U&S] Commands, the JCS, and the Office of the Secretary of Defense. A joint study group, appointed by President Eisenhower in May 1960 to examine military intelligence shortcomings, convinced then newly-appointed Secretary of Defense McNamara that the DIA concept had merit. The DIA became operational on October 1, 1961; calling personnel from existing resources in defense intelligence. The DIA was charged with improving the effectiveness and responsiveness of defense intelligence and bringing about efficiencies and economies in utilization of intelligence resources. Some 3 years were required before DIA became fully operational, but events on the international scene tested its mettle. Two of the great issues of our times—a superpower confrontation leading to the prospect of nuclear war over placement of Soviet nuclear missiles in Cuba, and the increasing commitment of United States forces in support of South Vietnam quickly forged DIA's role in intelligence support to decisionmakers. The DIA has continued to provide this critical support in every crisis confronting the Nation.

With internal consolidation accomplished, the early 1970's were transitional years for the DIA, it began establishing the DIA as a major voice and credible producer of national intelligence. As the Agency entered the current decade, new emphasis on automated data processing and new sources of information to keep stride with the worldwide explosion in information and technology elevated DIA's stake in the formulation of national security policy. The Agency has come of age—a fact signaled by its greater role in tactical as well as national intelligence, emerging concern for looking beyond the near term, and the Agency's products I would like to extend the congratulations of this body to the Defense Intelligence Agency on 25 years of outstanding service to the Nation and to extend our best wishes to its current director, Lt. Gen. Leonard H. Perroots, U.S. Air Force, as he leads the DIA into the next quarter century of service, "Committed to excellence in support of the Nation."

ALBUQUERQUE HISPANO CHAMBER OF COMMERCE

● Mr. BINGAMAN. Mr. President, I am pleased to take the floor today to invite my colleagues' attention to the recent accomplishment of the Albuquerque Hispano Chamber of Commerce. During the 7th Annual National Convention and International Business Exchange held in Denver, CO last week, the U.S. Hispanic Chamber of Commerce announced that the Albuquerque Chamber is the recipient of the U.S. Hispanic Chamber of the year award.

The Albuquerque Hispano Chamber was selected from among 200 Hispanic chambers in the Nation, and I am extremely proud that the accomplishments and achievements of this fine organization have been recognized.

The Albuquerque Hispano Chamber of Commerce is a relative newcomer, established only a decade ago. However, during these 10 years, it has successfully performed a leading role in preserving and encouraging the competitive enterprise system among Hispanic business through stable development and growth.

Over the years, the chamber has fostered a rapport with the entire Albuquerque and New Mexico business community and contributed to the entire region. Not only has it helped develop and expand small business membership with its Desarollo 1986 program, but as an adjunct to this program it has established a pilot training program to assist 17-28 year-old Bernalillo County residents who are interested in starting and operating their own businesses.

It has promoted and sponsored such events of interest and concern to the Hispanic business community as the Fiestas de Albuquerque, the Feria Artesana, a parade to commemorate the NCAA basketball final, and the Hispanic Culture Foundation. The Albuquerque Hispano Chamber of Commerce has, through these and many other programs, demonstrated its commitment and dedication to the New Mexico business community.

The Chamber whose motto is "Progress in the Embrace of Tradition" evokes the pioneer heritage in which we in New Mexico take great pride. Our forefathers were cowboys, ranchers, farmers, and businessmen. And it is in that pioneer spirit that the Albuquerque Hispano Chamber of Commerce has worked to promote economic development.

The Albuquerque Chamber has not only been a major source of information and influence, but is has been instrumental in promoting tourism in our State, and it has encouraged our young people to excel academically.

Under the efficient and effective leadership of its president, Mr. Ron Tafoya, and its executive director, Mr. John Garcia, the Albuquerque Hispano Chamber has grown from an original membership of 150 to nearly 900 members.

Its reputation has been firmly established. The group dedicated business and community leaders who are its members deserve the national recognition they have now won. Their tenacity, commitment, and promotion of the Hispanic community, the city of Albuquerque, and the Land of Enchantment are beyond question. I applaud this outstanding organization and the much deserved recognition.●

NATIONAL HUNGARIAN FREEDOM FIGHTERS DAY

● Mr. SIMON. Mr. President, I am pleased to cosponsor Senate Joint Resolution 385, which designates October 23, 1986, as "National Hungarian Freedom Fighters Day." This day is very special, because it commemorates the

30th anniversary of the Hungarian Resistance Movement's heroic revolt against Soviet occupation.

The Hungarian economy has turned out to be one of the most successful among planned economies, in large part because of the many market incentives. But Hungary is still a member of the Warsaw Pact and still has Soviet occupation troops on its soil. It still suffers from a controlled press and a denial of basic freedoms. Things are better there then in some other places in Eastern Europe, but there is still a long way to go.

Hungarian Americans have contributed richly to our country in every field of human endeavor. Let us hope that one day true freedom will come to Hungary, making all of Europe a safer and more vital place to live.●

CFTC REAUTHORIZATION AND FIFRA

● Mr. BOREN. Mr. President, it is with great interest that I have listened to the comments made by many individuals which indicate that I am the Senator who torpedoed S. 2045, the Commodity Futures Trading Commission [CFTC] reauthorization bill and S. 2792, Federal Insecticide, Fungicide, and Rodenticide Act amendments [FIFRA].

I understand I accomplished this by desiring to offer an amendment to either one of these bills. It apparently doesn't matter what is in my amendment, as I have shared that with no one. It has been said that I have stopped two bills. In fact, I have not tried to stop these bills, I simply want to have a chance to help distressed farmers before time runs out since the Senate has not yet been given a chance to act. Frankly, Mr. President, I had no idea I had sufficient influence in the Senate that I could kill bills. In all humility, I must confess that I don't possess such unlimited power.

I am quite willing to bring either one of these bills to the floor and offer my amendment on whichever one comes first and allow a vote on the proposal after a short debate. Those who oppose my proposal can simply vote against it. It isn't necessary to hold up these bills as a means of registering their opposition to my amendment. The Senate did begin debate on the CFTC bill and Senators were told there would be a couple of amendments. Senator ABDNOR was given the opportunity to offer an amendment on a subject about which he was very concerned. His amendment was offered, debated, and defeated. That is all I desire to do. I am quite willing to enter into a time agreement to limit debate on my amendment. I am quite willing to offer it and immediately vote on it without taking very much of the Senate's time.

All year, Mr. President, I have done everything I could to be accommodating on agricultural issues. In January and early February when the Senate considered S. 2036, a bill making technical corrections in the 1985 farm bill, I expressed an interest to the majority leader in offering a couple of amendments. Several of my colleagues had the same desire. Yet, we wanted to be accommodating and allowed the measure to go through the Senate without substantive farm bill amendments. On January 30 of this year, the majority leader stated:

> Several of my colleagues may have an interest in making other changes in the farm bill. But I ask all my colleagues to defer further amendments until a comprehensive corrections bill can be drafted. We need to get this change in cross-compliance in place immediately. Adding amendments will only invite efforts to broaden the legislation, reducing chances of its passage in both Houses and enactment into law.

Mr. President, the comprehensive corrections bill has not surfaced at all. It has become obvious that there will not be such a bill.

I know the majority leader desires to consider credit legislation for farmers, because he indicated this on the floor of this Chamber on March 11. He stated at that time:

> If there is nothing forthcoming from the administration on the credit side, there is no doubt in my mind we are going to have to spend some time on the Senate floor on credit legislation. In fact, many of us have already testified on possible provisions of legislation before the Banking Committee, which is looking at how we can help not only farmers but some of our small rural banks.

The administration has done nothing to provide credit relief to farmers and ranchers, nor have they done anything to keep our agricultural banks in operation during this time of stress. Senator DOLE testified on legislation which was supposed to provide some assistance to our banks, but S. 2752, as passed by the Senate Banking Committee, does nothing to help our agricultural banks. S. 2752 is on the Senate Calendar, but it's been there a long time.

I indicated to the majority leader when he made these remarks that I definitely wanted the Senate to consider credit legislation. The majority leader urged me not to put credit legislation on the Food Security Act improvements bill that was under consideration at that time. It was thought at that time that the Banking Committee would be reporting out a bill which would provide help to agricultural banks and to farmers and I would have the opportunity to offer an amendment at that time. In order to be accommodating, I did not offer credit legislation.

Since these remarks were made on the floor, however, we have had nine bank failures in Oklahoma, one of which was the second largest bank failure in the history of the United States. In addition, the FDIC had to give another bank an infusion of $130 million in order to prevent it from becoming the third largest bank failure in history.

So, I ask, Mr. President, where is all this help? When are we going to have an opportunity to provide relief to our Nation's farmers and ranchers and our agricultural banks? The Senate is still expected to adjourn on October 3 and the only chance we have to provide any help is now.

All I want is an opportunity to offer my amendment. The Senate will work its will on it. All I am requesting is an opportunity to have the Senate consider helping our farmers and ranchers who are in such desperate shape.

Mr. President, it is my hope that we will bring up either the CFTC bill or FIFRA so that we can have an opportunity to indicate our support or lack of support for our Nation's farmers and ranchers.●

□ 0010

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0020

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. PACKWOOD. Mr. President, I am about to propound a unanimous-consent request. Before I do, let me indicate that it is going to depend upon the willing and good-faith efforts of both Senator DOLE and Senator BYRD tomorrow because we may have actually allocated a bit more time than we have but we are going to vote at 4 o'clock under this unanimous-consent order even if all the time that is allocated has not been used up. We are simply going to hope that speakers who are going to speak for 15 minutes can be convinced to speak for 10 or 5 or not at all.

It is also dependent upon Senator METZENBAUM's being ready to start at 9 o'clock, or the time can be charged to him starting at 9.

Is that all right with the leader?

Mr. BYRD. Mr. President, the distinguished Senator from Ohio [Mr. METZENBAUM] has indicated that he will be here and will be prepared to speak at 9, so I suggest that the acting Republican leader get consent that Mr. METZENBAUM be recognized at 9 o'clock.

UNANIMOUS-CONSENT AGREEMENT

ORDER FOR RECESS UNTIL 8 A.M. ON SATURDAY, SEPTEMBER 27, 1986

Mr. PACKWOOD. I ask unanimous consent for the following: that when the Senate completes its business today, it stand in recess until the hour of 8 a.m.—8 a.m.—on Saturday, September 27.

I ask unanimous consent that all time between the hours of 8 o'clock and 4 o'clock be divided in the following way for debate on the conference report: 3 hours under the control of Senator METZENBAUM, and Senator METZENBAUM is to be recognized at 9 o'clock for the start of his time; 90 minutes under the control of Senator PACKWOOD; 2½ hours under the control of Senator LONG or his designee; 30 minutes under the control of Senator DECONCINI; 30 minutes under the control of Senator MELCHER.

I further ask unanimous consent that at 3:30 p.m., 15 minutes of the time already under the control of Senator LONG be available for Senator LONG at 3:30 and 15 minutes of the 90 minutes of time under my control be available at 3:45 p.m.

I further ask unanimous consent that a vote occur on adoption of the conference report at no later than 4 o'clock p.m. tomorrow.

CONSIDERATION OF H.R. 5484

I ask unanimous consent that, following disposition of the conference report, the Senate will resume the drug bill.

Therefore, votes will occur during tomorrow's session of the Senate.

Mr. BYRD. Mr. President, reserving the right to object, the distinguished acting Republican leader does not mean, I am sure he does not mean that last sentence in the unanimous-consent request. He states that for advisory purposes.

Mr. PACKWOOD. There is not a unanimous-consent order that votes will occur during the day, that is correct.

Mr. BYRD. Second, the distinguished acting Republican leader has made no allowance for the prayer. As I understand his request, beginning at 8 o'clock, the 8 hours are to begin running.

ORDER FOR PRAYER

Mr. PACKWOOD. I ask unanimous consent that the prayer take place at 8 o'clock and not be counted against the 8 hours.

The PRESIDING OFFICER. Is there objection to the entire unanimous-consent request?

Mr. BYRD. Mr. President, reserving the right to object, I will not object. May I say that the hour is 12:27 a.m. I say that for the purpose of the RECORD. We have not been able to contact all Senators but we have made diligent efforts to do so.

With the time that has been stated and the identification of those Senators who are in control of the time as propounded in the request by the distinguished Senator from Oregon [Mr. PACKWOOD], it is going to be impossible, almost impossible, for all Senators who are even now listening for time, with the amounts of time that have been listed in the order, to have that time. So, really, what we are doing is trusting to a little luck here. We are trusting that Senators will be prepared to speak. We are trusting that, hopefully, Senators will not use——

Mr. PACKWOOD. And we are trusting that they will be here to speak, as today, almost back to back, so we will not have 5 or 6 minutes of quorum call waiting for someone to come. And we are hoping that Senator METZENBAUM will not need all his 3 hours. We do not know. These are all ifs and possibilities but no matter what we will vote at 4 o'clock.

□ 0030

Mr. BYRD. Well, I do not want to just single out Senator METZENBAUM, but I am simply saying I am hoping that Senators will be willing to be here and ready to speak back to back and that they will be willing hopefully to reduce their time, if possible.

Now, as for myself, I am willing to be here at 8 o'clock in the morning, and I will be the first to speak. I am going to cut back my time in an effort to cooperate because I realize that the distinguished acting Republican leader and the distinguished majority leader have problems on their side. I have problems on my side. So we do have a 4 o'clock final time, and it is going to take some cooperation among all Senators to reach that goal. I think we are all going to have to give and take a little, hopefully, and I enter into this in that spirit. I am sure the Senator from Oregon does. So I have no objection, Mr. President.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. PACKWOOD. I want to ask one further clarification that we talked about earlier.

Mr. BYRD. Yes.

Mr. PACKWOOD. If by chance neither one of us can fill the time after the minority leader's speech until 9 o'clock when Senator METZENBAUM's time starts to run, that time was not to be charged against the 90 minutes that was under my control.

Mr. BYRD. That time cannot be charged against any particular Senator, as I see it. It just makes the time all that more binding in order to finish our work at 4, and that is why each Senator is going to have to be constrained even more and more.

Mr. PACKWOOD. Here is the agreement. It is 8:15. I put in a quorum call because the Senator has not arrived yet.

Mr. BYRD. Yes.

Mr. PACKWOOD. In the unanimous consent up until 9 o'clock that kind of quorum call will not be charged against my time even if I place the quorum call.

Mr. BYRD. No; that time is not going to be charged against the Senator's time.

Mr. PACKWOOD. I thank the minority leader.

The PRESIDING OFFICER. Is that in the form of a unanimous-consent request?

Mr. PACKWOOD. That is also part of the unanimous-consent.

Mr. BYRD. Well, that is perfectly all right with me. Yes, let us include that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Was that for the entire unanimous-consent request?

The PRESIDING OFFICER. All of the unanimous consent request has now been granted.

Mr. PACKWOOD. My staff has said clearly when we have been referring to tomorrow we mean today.

Mr. BYRD. Well, it is 12:33 in the morning. We mean Saturday.

Mr. PACKWOOD. Saturday, that is right.

Mr. BYRD. In this time agreement, we do not even have time for quorum calls.

Mr. PACKWOOD. Quorum calls will count against your time or my time, except prior to 9 o'clock. It is hoped that Senators will be here.

Mr. BYRD. I should point out that under this agreement, the time for quorum calls eats into the 8 hours, so Senators are urged to be on the floor and speak back-to-back. They are also urged to keep in mind that in order for Senators who want to speak to have the opportunity to do so, all Senators should try to reduce their time.

Mr. President, I thank the Chair. I have nothing further.

ROUTINE MORNING BUSINESS

Mr. PACKWOOD. I ask unanimous consent there now be a period for the transaction of routine morning business not to exceed 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF CERTAIN PROGRAMS RELATING TO HOUSING AND COMMUNITY DEVELOPMENT

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate turn to Calendar No. 661, Senate Joint Resolution 353, housing extension.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 353) to provide for the extension of certain programs relating to housing and community development, and for other purposes.

The Senate proceeded to consider the joint resolution.

AMENDMENT NO. 3038

(Purpose: To make technical amendments to conform to the last temporary extension)

Mr. PACKWOOD. Mr. President, I send an amendment to the desk on behalf of Senator GARN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. PACKWOOD], for Mr. GARN, proposes an amendment numbered 3038:

On page 1, line 3, strike out "99-289" and insert in lieu thereof "99-345".

On page 1, line 4, strike out "June 6" and insert in lieu thereof "September 30".

Mr. PACKWOOD. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3038) was agreed to.

Mr. PACKWOOD. Mr. President, I move adoption of the joint resolution, as amended.

The PRESIDING OFFICER. If there are no further amendments to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and to be read a third time.

The joint resolution was read the third time and passed.

The joint resolution (S.J. Res. 353), is as follows:

S.J. RES. 353

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That each provision of law amended by Public Law 99-345 is amended by striking out "September 30, 1986" wherever it appears and inserting in lieu thereof "September 30, 1987".

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF CERTAIN PROVISIONS OF THE GARN-ST GERMAIN DEPOSITORY INSTITUTIONS ACT

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5521.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5521) to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982.

The bill was considered, ordered to a third reading, read the third time and passed.

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS TO FAIR LABOR STANDARDS ACT OF 1938

Mr. PACKWOOD. Mr. President, I send a bill to the desk on behalf of Senator METZENBAUM and others, and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 2884) to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor.

Mr. METZENBAUM. Mr. President, on behalf of myself and Senator Nickles, and Senator Hatch, I offer the following Statement setting forth the intent of the sponsor of S. 2884.

This bill, S. 2884, will help improve employment opportunities for handicapped persons, especially those employed in sheltered work programs.

Section 14(c) of the Fair Labor Standards Act provides for special minimum wage requirements for persons whose productivity is impaired by a physical or mental handicap. In 1966, this provision was amended to require multiple certificates for different programs and different workers.

The current law and regulations seem to place undue emphasis on meeting voluminous paper requirements related to certification. In addition, while the current requirement of a minimum or floor rate—50 percent of the minimum wage—for each certificated worker is intended to protect employees, it has in fact become largely an administrative burden because 87 percent of the workers are exempted. The significant increase in number of exemptions since 1966 reflects a shift in the population employed in sheltered work programs from the physically disabled to persons with more severe mental disabilities.

The current law also has been applied by the Department of Labor to require physical separation of the more severely disabled in work activities centers. This requirement may lead to unfair segregation of severely handicapped employees, denying them the opportunity to work with more productive employees who may serve as positive role models.

Senator NICKLES introduced S. 2148, a bill to amend section 14(c) of the Fair Labor Standards Act, on March 6 of this year. The bill simplifies the certification process by providing for a single certificate based on the productivity of the individual handicapped worker. The bill also removes the requirement that persons employed in work activities centers be separated from other employees.

This new bill, S. 2884, is offered by Senators METZENBAUM, NICKLES, and HATCH as a substitute for S. 2148. It includes all the provisions contained in S. 2148, but adds provisions assuring that handicapped workers with impaired productivity are protected against the possibility of exploitation or abuse.

The Metzenbaum-Nickles-Hatch bill requires employers to conduct regular reviews of the special minimum wage rates paid to their own employees, and of prevailing rates for comparable work performed by experienced nonhandicapped employees in the same locality. The bill also requires that current employees being paid a special minimum wage not have that wage rate reduced prior to June 1, 1988 without prior authorization from the Secretary of Labor.

The provisions of new paragraph 5 of section 14(c) are designed to provide procedural due process safeguards for handicapped employees who are paid under special minimum wage rate certificates. Employees who wish to challenge their special minimum wage rate have a right to a hearing and a right to a prompt decision from an impartial decisionmaker. The burden of proof is on the employer to justify the wage rate being paid.

The standard applied by the hearing examiner when determining what special minimum wage rate, if any, is justified, is set forth at subparagraph 5(d) of the bill. This standard is the same standard that is to be applied by the Secretary when providing for the issuance of special minimum wage certificates, as set forth at subparagraphs 1(b) and (1)(c) of the bill.

The due process protection provided in the bill is an important benefit for this vulnerable sector of our work force. We expect that it will be exercised responsibly. We intend that it not be used as a means of harrassment against employers.

The bill also provides that an employer operating a sheltered work program may still maintain or establish a separate work activities center. Nothing in this bill requires such employers to unify their operations unless they so choose.

The intent of S. 2884 is to provide a more rational, fair and objective basis for determining wages to be paid to handicapped employees with impaired productivity while fully protecting the rights of individual workers. Streamlining the wage determination process is beneficial both to sheltered work programs that employ the handicapped and to the handicapped employees of such workshops. Wage determinations must still be based on each individual worker's productivity, which must be measured at regular periodic intervals. By removing several categories of certificates that employers must obtain from the Department of Labor, the Department will have additional resources available to assure the fairest possible administration of section 14(c) for all concerned.

The bill has received letters of support or endorsement from the Association for Retarded Citizens of the United States, the National Association of Rehabilitation Facilities, Goodwill Industries of America, the National Federation of the Blind, the United Cerebral Palsy Associations, the National Easter Seal Society, and the Association for Persons With Severe Handicaps. I ask unanimous consent that these letters be printed in the RECORD as part of our joint statement.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

ASSOCIATION FOR RETARDED CITIZENS OF THE UNITED STATES,
Arlington, TX, September 23, 1986.

Hon. HOWARD METZENBAUM,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR METZENBAUM: On behalf of the 160,000 members of the Association for Retarded Citizens of the United States, I wish to convey our strong support for the substitute amendment you and Senator Nickles plan to offer to S. 2148. As you know, the ARC-U.S. advocates on behalf of all persons with mental retardation to enable them to lead productive lives. Our Association is particularly aware of the difficulties adults with moderate and severe mental retardation have in attaining employment which maximizes their earning potential.

Your substitute amendment to S. 2148 will improve the guarantees afforded to workers with disabilities employed by sheltered workshops and work activities centers and enable such facilities to operate more efficiently. The combined effect of these amendments is expected to assist workers with disabilities to receive remuneration based on their actual productivity and establishes an important due process mechanism to safeguard their earnings.

The legislation will also free facilities which operate sheltered workshops and work activities centers from much unwarranted "red-tape," thus allowing staff to devote more time and energy to improving the work skills of the employees.

We commend you for offering this amendment and encourage you to do all you can to foster its becoming law in this Congress.

Sincerely,
V. K. "WARREN" TASHJIAN,
President.

NATIONAL ASSOCIATION OF REHABILITATION FACILITIES,
Washington, DC, September 23, 1986.

Senator HOWARD METZENBUAM,
Russell Senate Office Building,
U.S. Senate,
Washington, DC.

DEAR SENATOR METZENBAUM: We understand that the Senate Labor and Human Resources Committee will mark-up an amendment in the nature of a substitute of S. 2148 on Wednesday, September 24. It is our understanding that the amendment would, in addition to the original provisions of S. 2148, provide for:

(1) a review at least every six months of the wages paid disabled workers under this provision.

(2) wage adjustments at least once a year to reflect changes in prevailing rates.

(3) a two-year transition period providing that wages currently guaranteed by a certificate shall not be reduced without prior authorization of the Secretary of Labor.

(4) provide that employees (or parents and guardians when appropriate) may petition the Department of Labor for a review by an Administrative Law Judge to determine whether a special minimum wage is justified. The ALJ shall consider only the productivity of the employee, the conditions under which the productivity was measured, and the productivity of other employees doing essentially the same work in reaching a determination.

With the above provisions, the National Association of Rehabilitation Facilities would endorse S. 2148. NARF believes that this bill will expand employment opportunities for severely disabled persons while providing safeguards that special wages paid to disabled workers will be fair.

You and your staff are to be commended in bringing this important legislative action by the Senate.

Sincerely,
CHARLES W. HARLES,
Associate Director for Vocational Rehabilitation.

GOODWILL INDUSTRIES OF AMERICA, INC.,
Bethesda, MD, September 23, 1986.

Hon. HOWARD METZENBAUM,
Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR METZENBAUM: The substitute amendment to S. 2148 to be offered jointly by you and Senator Nickles at the Committee mark up session on September 24 has the support of Goodwill Industries of America, Inc.

As the nation's largest network of privately-operated vocational rehabilitation facilities, we believe that this compromise legislation amending the Fair Labor Standards Act will produce multiple benefits. Individuals with severe disabilities in "work activity centers" will benefit from the elimination of the requirement that they be physically separated from more productive workers. Nonprofit sheltered workshops employing and providing training to individuals with disabilities will be relieved of burdensome paperwork requirements caused by current Department of Labor regulations, and the Department of Labor will be able to concentrate its investigative resources on substantive wage and hour compliance. Finally, individuals with disabilities employed by sheltered workshops will be provided with sufficient protections to guarantee that their wages are based on productivity and are commensurate with wages paid to workers who are not disabled.

Again, Goodwill Industries supports this substitute amendment and we urge expeditious action by the Committee on Labor and Human Resources and the full Senate.

Sincerely,
MIRIAM B. GOULDING,
General Counsel and Director of Governmental Affairs.

NATIONAL FEDERATION OF THE BLIND,
Baltimore, MD, September 23, 1986.

Hon. HOWARD METZENBAUM,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR METZENBAUM: I am writing to advise you of the support of the National Federation of the Blind for your amendment to S. 2148. If enacted as part of section 14(c) of the Fair Labor Standards Act (FLSA), your amendment would provide much needed procedural due process safeguards for individuals or groups subject to the section 14(c) subminimum wage. For blind persons whose subminimum wages more often result from employer inefficiency and exploitation than from lack of worker productivity, the appeal rights provided by an amendment would be a distinct improvement over current law.

The position we are taking on your amendment does not alter our opposition to subminimum wages for all blind workers. Modern production techniques, coupled with technological advancements, allow blind people to work as productively as other industrial employees covered by the FLSA. The employer controlled wage setting practices now used under current law are patently unfair and encourage employers (especially sheltered workshops) to exploit the blind by obtaining cheap labor. Moreover, the abuses permitted under the law are compounded by the lack of effective monitoring by the Department of Labor (DOL) and the automatic approval by DOL of workshop requests for minimum wage exemptions.

Nothing short of the termination of authority to pay blind workers less than the minimum wage will remove the substantial exploitation that now occurs. Nevertheless, we believe that your amendment can be a significant step toward combatting unfair and illegal low wages. For this reason we support and applaud your effort.

Sincerely yours,
JAMES GASHEL,
Director of Governmental Affairs.

UNITED CEREBRAL PALSY ASSOCIATION,
Washington, DC, September 23, 1986.

Hon. HOWARD M. METZENBAUM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR METZENBAUM: On behalf of United Cerebral Palsy Associations, Inc., I am writing in support of your substitute amendment of S. 2148. UCPA is a national network of 220 private nonprofit agencies in 45 states who provide a variety of services to disabled individuals and their families. UCPA is committed to the idea that all individuals with cerebral palsy, with appropriate supportive services, can work in an integrated work environment.

UCPA is supportive of these amendments and believes they will protect disabled individuals who are employed in work activities centers and sheltered workshops, while giving them the opportunity to be more productive. UCPA is also pleased to see a review

process for all disabled individuals included in the amendment.

We thank you for your concern for individuals with cerebral palsy and other severe disabilities. We hope that through your efforts, disabled individuals will be given more opportunities to be more independent members of society.

Sincerely,

KAREN S. FRANKLIN,
Policy Associate.

NATIONAL EASTER SEAL SOCIETY,
Washington, DC, September 23, 1986.

Hon. HOWARD M. METZENBAUM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR METENBAUM: I am writing on behalf of the National Easter Seal Society to express support for the substitute amendment to S. 2148 to be offered jointly by you and Senator Don Nickles at the full Committee mark-up on September 24, 1986. The substitute amendment effectively addresses the issue of clients' rights and the need for improved efficiency under Fair Labor Standards Act requirements for vocational rehabilitation programs.

The National Easter Seal Society serves people of all ages with all types of disabilities. Last year, more than one million persons were served by Easter Seal Societies nationwide. At present, 47 Easter Seal centers provide vocational rehabilitation services to persons with disabilities, including development disabilities, multiple impairments, and mental illness. Each of these centers serves between 25 and 200 individuals, many of whom will directly benefit from the revisions proposed under S. 2148.

As an advocate for people with disabilities, the National Society strongly supports the strengthening of client protections under the Fair Labor Standards Act. We encourage you to develop report language which coordinates client protection and appeals procedures under S. 2148 with existing standards set by the Commission on Accreditation of Rehabilitation Facilities (CARF). CARF currently accredits a substantial share of vocational rehabilitation programs, totalling more than 1,100 work service programs and over 650 work activity programs.

All Easter Seal vocational rehabilitation programs are CARF-accredited. We believe that coordination of client protection appeals procedures would enhance efficiency and minimize costly duplication of effort.

As a provider of vocational rehabilitation services, the National Society welcomes provisions contained in S. 2148 which simplify work center requirements under section 14(c) of the Fair Labor Standards Act. Simplification of the multiple certificate system, implementation of wages based on individual productivity, and the integration of work activities center employees with workers with less severe disabilities, will significantly improve the ability of Easter Seals and others to serve people with disabilities.

On behalf of the National Easter Seal Society, thank you for your diligent and valuable efforts.

Sincerely,

JOSEPH D. ROMER,
Director of Governmental Affairs.

THE ASSOCIATION FOR PERSONS WITH SEVERE HANDICAPS,
Washington, DC, September 23, 1986.

Hon. HOWARD M. METZENBAUM,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR METZENBAUM: On behalf of The Association for Persons with Severe Handicaps (TASH), I write in support of your substitute amendment to S. 2148. TASH is a growing national and international organization of over 6,000 professionals and parents with an interest in the lives of persons who experience severe disabilities from birth through adulthood. Certainly, key among those interests are employment opportunities.

Having carefully studied your proposed amendment, we feel we can endorse and support it.

We certainly have no objection to legislation designed to protect from exploitation people who are now in work activity centers and sheltered workshops. However, TASH's main concern is for people who have been excluded from employment opportunities in integrated settings. As an organization, we support and work towards the development of such work opportunities by private and non-profit employers outside the work activity centers and sheltered workshops. We would support any measure compatible with this goal and ask that in the final drafting of your proposal that you guard carefully against inadvertently developing requirements that would serve as a disincentive for private employers to hire persons with severe handicaps.

We thank you for your obvious concern for persons with mental retardation and your hard work in developing legislation that will ease regulatory barriers to their employment.

Sincerely,

CELANE MCWHORTER,
Director, TASH Government Relations.

Mr. NICKLES. Mr. President, I rise in support of S. 2884. Earlier this Congress I introduced a predecessor bill, S. 2148, along with 11 cosponsors. In the 97th Congress, the Labor Subcommittee held hearings on a slightly different version. These hearings convinced me that current law was a detriment to the primary employers of the severely handicapped; sheltered workshops and work activities centers. Those operators holding both certificates were barred from comingling their clientele. Consequently, both the business side of the operation and the therapeutic side were often hindered. Precious resources were also wasted. I became a firm believer that section 14(c) of the Fair Labor Standards Act needed to be amended.

This year, Senator METZENBAUM and I negotiated out several changes to S. 2148. I am pleased to say that this cooperative effort now appears on the verge of becoming law. The interest groups that represent the handicapped support this bill and I am told that it is acceptable to the proper Members of the House as well. Once again the members of this committee have cooperated on legislation. I appreciate the efforts of Senator METZENBAUM and Senator HATCH as well as the support of all the cosponsors. It is fair to say that we would not be here today without their support and leadership.

Mr. METZENBAUM. I thank the subcommittee chairman for his kind words. Like the Garcia bill, this effort does indeed demonstrate that it is possible for the members of the Labor and Human Resources Committee to generate productive legislation. I, too, am pleased that our efforts appear to be paying off. I have discussed this issue with our counterparts in the House of Representatives and I believe that they will accept this negotiated compromise and clear the bill for the President.

Mr. HATCH. It is a pleasure to be a part of this team effort. I congratulate both Senator NICKLES and Senator METZENBAUM. Their persistence on this issue has paid off: Handicapped workers and the operators of sheltered workshops and work activities centers will benefit. I suspect that many of these shops—particularly the small shops in rural areas—will realize a substantial cost savings once this bill is enacted. Again, I congratulate Senator NICKLES and Senator METZENBAUM.

Mr. HATCH. Mr. President, I am pleased to join Senators NICKLES and METZENBAUM as a sponsor of this amendment to the Fair Labor Standards Act which will help expand employment opportunities for handicapped workers. As our colleagues can appreciate, if the three of us can get together and sponsor the same legislation, it must be a pretty good bill. I commend the Senators from Oklahoma and Ohio for their hard work on this legislation.

I am also pleased to note that the bill has the support of major organizations concerned with protecting the rights of and creating meaningful employment opportunities for handicapped workers, including the Easter Seal Society and the National Association of Rehabilitation Facilities. They have encouraged us to push forward with this legislation even at this late hour in the session. This is an indication, I believe, of the importance with which this measure is viewed.

This bill will reduce the redtap required for employers to operate sheltered workshops under the Fair Labor Standards Act without compromising the rights of individual workers. That is a goal worthy of unanimous support.

Mr. METZENBAUM. Mr. President, I am pleased that through a substitute amendment which I proposed and negotiated with Senator NICKLES, we have been able to work out a bill that has the support of the major groups representing both sheltered workshop operators and employees of those workshops.

The impetus for this legislation was to enable sheltered workshops to

achieve more efficient operation. That is a laudable objective. But at the same time that we eliminate burdensome paperwork requirements, we must be sure that handicapped workers with impaired productive capacities are protected against the possibility of exploitation or abuse. This bill secures workers their full protection. For this reason, as well as for its improvements in efficiency, it deserves the unanimous support of the Senate.

The bill was considered, ordered to a third reading, read the third time, and passed as follows:

S. 2884

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended to read as follows:

"(c)(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

"(A) lower than the minimum wage applicable under section 6,

"(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

"(C) related to the individual's productivity.

"(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

"(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every 6 months, and

"(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

"(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

"(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

"(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

"(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within 10 days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within 30 days after assignment.

"(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

"(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

"(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

"(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

"(E) The administrative law judge shall issue a decision within 30 days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within 30 days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within 15 days of the date of issuance of the decision by the administrative law judge.

"(F) The Secretary, within 30 days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

"(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within 30 days of a final agency action described in subparagraph (F).

Mr. PACKWOOD. Mr. President, I move to reconsider the vote by which the bill has passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECESS UNTIL 8 A.M. TODAY

Mr. PACKWOOD. Mr. President, I move we stand in recess in accordance with the previous order.

The motion was agreed to, and, at 12:39 a.m., the Senate recessed until today, Saturday, September 27, 1986, at 8 a.m.

NOMINATIONS

Executive nominations received by the Senate September 26, 1986:

THE JUDICIARY

Joseph F. Anderson, Jr., of South Carolina, to be U.S. district judge for the district of South Carolina, vice Charles E. Simons, Jr., retired.

William L. Dwyer, of Washington, to be U.S. district judge for the western district of Washington, vice Donald S. Voorhees, retiring.

DEPARTMENT OF JUSTICE

Robert L. Barr, Jr., of Georgia, to be U.S. attorney for the Northern District of Georgia for the term of 4 years, vice Larry D. Thompson, resigned.

COMMUNICATIONS SATELLITE CORPORATION

E. Pendleton James, of Connecticut, to be a member of the Board of Directors of the Communications Satellite Corporation until the date of the annual meeting of the Corporation in 1989, reappointment.

CORPORATION FOR PUBLIC BROADCASTING

Daniel L. Brenner, of the District of Columbia, to be a member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring March 26, 1991, vice Howard A. White, term expired.

FEDERAL ELECTION COMMISSION

Scott E. Thomas, of the District of Columbia, to be a member of the Federal Election Commission for a term expiring April 30, 1991, vice Thomas Everett Harris, term expired.

IN THE AIR FORCE

The following officer under the provisions of section 8019, title 10, United States Code, for appointment as chief, Air Force Reserve:

Maj. Gen. Roger P. Scheer, xxx-xx-x... xxx-... FV, Air Force Reserve.

DEPARTMENT OF STATE

Frank Shakespeare, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Holy See.

THE JUDICIARY

Bruce M. Selya, of Rhode Island, to be U.S. circuit judge for the first circuit vice a new position created by Public Law 98-353, approved July 10, 1984.

EXTENSIONS OF REMARKS

CHIANG KAI-SHEK REMEMBERED

HON. GUS YATRON
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. YATRON. Mr. Speaker, Dr. Nathan K. Mao, a respected academic, and noted authority on Taiwan has written an excellent statement on the centennial birthday of the late President of the Republic of China, Generalissimo Chiang Kai-shek. The statement covers Chiang Kai-shek's rule over several decades until his death in April 1975. I commend this piece to the attention of my colleagues.

A GRATEFUL NATION REMEMBERS CHIANG KAI-SHEK

(By Nathan K. Mao)

Time magazine featured Generalissimo and Mme. Chiang Kai-shek as "Man and Wife of the Year" in 1937, highlighting America's admiration and support for China's war against Japan. At that time, China fought Japan without any foreign assistance. Japan had 4,480,000 ground troops, 2700 first-line war planes and 1,900,000 tons of warships in active service. China, on the other hand, had a poorly equipped army of 1,700,000 men, 350 planes and 59,000 tons of various vessels.

Chinese losses were high but China, under the command of CKS, refused to surrender. Invoking Churchillian eloquence, CKS proclaimed to the world: "We shall fight to the last dying man; this is a war of national survival. We shall win the ultimate struggle. It's a war between right and wrong."

CKS was right. After eight years and 2 million casualties on the Chinese side, Japan surrendered to China on August 10, 1945. That evening, CKS wrote in his diary of his appreciation of Psalms 9: "I will praise thee, O Lord, with my whole heart . . . when mine enemies are turned back, they shall fall and perish at thy presence. For thou has maintained my right and my cause."

Filled with God's love, CKS was grateful that the war was over and that peace would come to Asia. He sought no vengeance and he asked of no reparations from Japan. Instead he accorded the Japanese magnanimity.

Magnanimity was manifested in CKS's efforts to repatriate to Japan the 2.8 million Japanese soldiers and civilians in China and in CKS's insistence to Roosevelt that Japan be allowed to keep its status for the emperor, knowing as he did of Japan's reverence for the emperor. Thus CKS allowed Japan to quickly recover from the wounds of the war and emerged as the post-war power that it is today.

CKS's Christian spirit of forgiveness and love, so evident in his treatment of the Japanese after the war, guided him for the rest of his life until his passing on April 5, 1975.

Dr. Fredrick Chien, a personal interpreter to CKS, remembers the late president and Mme. Chiang Kai-shek as devout Christians. CKS built a small chapel near his residence where he prayed alone and often with the Mme. CKS, studied the Bible every morning, worshipped regularly, and gave his assistance to all Christian causes, the result being the phenomenal growth of Christian churches in Taiwan today.

Besides Christianity, another factor that dominated CKS's life was his total dedication to establishing a strong China. At the time of his birth in Fenghua, Chekiang province on October 31, 1887, China was one of the weakest countries in the world, with foreign powers enjoying enormous economic privileges and concessions in China. To put a quick end to the Manchu government was the aspiration of every Chinese man and woman.

CKS joined Dr. Sun Yat-sen in overthrowing the Manchus in the 1911 revolution, after having been taught Confucian classics and conduct by his widowed mother. She told him many a time that he must put the interests of China well above any personal considerations.

As a filial son, CKS never forgot his mother's instruction. After Dr. Sun's death in 1925, CKS began the first step of national unification by setting out to eliminate all the warlords that were scavenging China. In 1928 he united China for the first time in the century.

Meanwhile CKS realized that the threat to the welfare of China lay in Chinese communism, "the disease of the heart." He led several anti-Communist eradication campaigns in the 1920's and 1930's. His efforts were less than fruitful due to Japan's invasion of China starting with its occupation of Manchuria in 1931 and ending with its defeat in 1945.

CKS, however, was successful in expelling foreign powers which had dominated China since the Opium War of the 1840's. CKS persuaded the United States, Great Britain and other Western powers to give up their unequal treaties with China in the 1940's. And at the Cairo Conference in 1943, CKS obtained pledges from the Allies for the return of Taiwan and Pescadores to China after the war.

In fact, CKS achieved international acclaim for China. He himself was asked to be the Supreme Commander of the China Theatre by Roosevelt, while his country, The Republic of China, was one of the Five Great Powers after the war.

After Japan's surrender in 1945, CKS looked forward to implementing Dr. Sun Yat-sen's Three Principles of Nationalism, Democracy and Social Welfare. But CKS was denied that opportunity with the Communists' occupation of the mainland in 1949.

It was in Taiwan that CKS got the opportunity to architect the modern nation that he and Dr. Sun had envisioned. By introducing land reform, capital formation, industrial development, universalization of education, and direct democratic processes, CKS gave birth to modern Taiwan, which had been ravished by Japanese colonial rule. By 1975 Taiwan enjoyed the second highest living standard in Asia and was a model of economic success for developing countries in the world.

When CKS passed away in April 1975, a million ordinary men and women mourned him, lining the funeral route from downtown Taipei to Tzuhu, his temporary resting place in the suburbs. One weeping soldier, kneeling along the funeral route, refused to get up. "I followed the late president from Canton to Nanking, to Chungking, to Nanking and then to Taiwan. He was my father, my whole family. Now he's gone, what's left of life?" Others remembered him as modern China itself, his life mirroring all the traumatic changes of twentieth century China. President Chiang Ching-kuo remembered him best: "Father was a great time in his time and decisive force in the modern development of the country and the people."

Indeed, eleven years after CKS's passing, CKS has been proven as the decisive force. Today Taiwan is an economic giant, being the sixth largest trading partner of the United States; it enjoys a per capita income of more than US $3,100.00, the highest ever in Chinese history. Its private enterprise system is the envy of the world and has worked so well that Mainland China is anxious to imitate.

To Chiang Kai-shek, a Christian and Confucian nationalist, the Chinese people are indebted. He freed them from the Manchus, the warlords, the Japanese and foreign imperialists. By transforming an impoverished island into a beacon of freedom and an economic giant, all within the time of a generation, he showed the world and especially Mainland China the right way of establishing a strong nation.

A nation of the people, by the people, and for the people—the dream of man—is now in existence in Chiang's Republic of China of Taiwan.

JAZZ—AN AMERICAN NATIONAL TREASURE

HON. JOHN CONYERS, JR.
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. CONYERS. Mr. Speaker, today I introduced House Concurrent Resolution 396 which proclaims jazz an American national treasure.

Since its birth, jazz has evolved into a sophisticated and multifaceted musical art form that is studied, performed, and respected throughout the world. Though indigenous to America and developed out of the African-American experience, jazz has not been properly recognized by this Government's highest official bodies. Notwithstanding the eminent artistic achievement of American jazz musicians and the undisputed influence of the music over a period of more than eight decades, jazz remains underdeveloped institutionally and underfunded by both the public and private sectors.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

The major challenge facing jazz today is how do we support the artists that create the music and the organizations which support and present jazz when it is not commercially viable. We believe a congressional resolution proclaiming jazz as an American national treasure will begin to encourage a greater level of public and private economic support for nonprofit jazz organizations.

This resolution proposes we celebrate the achievements of jazz artists and acknowledge the significance of jazz in this country and indeed throughout the world.

I invite all of my colleagues in the Congress to join me as cosponsors of this resolution whose support will inspire musicians and listeners across the country to redouble their efforts to elevate the status of jazz artists, promote the development of jazz institutions, and encourage the ever widening performance of jazz music.

H. CON. RES. 396

Whereas, jazz has achieved preeminence throughout the world as an indigenous American music and art form, bringing to this country and the world a uniquely American musical synthesis and culture through the African-American experience; and

Makes evident to the world an outstanding artistic model of individual expression and democratic cooperation within the creative process, thus fulfilling the highest ideals and aspirations of our republic; and

Is a unifying force, bridging cultural, religious ethnic and age differences in our diverse society; and

Is a true music of the people, finding its inspiration in the cultures and most personal experiences of the diverse peoples that constitute our nation; and

Has evolved into a multi-faceted art form which continues to birth and nurture new stylistic idioms and cultural fusion; and

Has had a historic, pervasive, and continuing influence on other genres of music both here and abroad; and

Has become a true international language adopted by musicians around the world as a music best able to express contemporary realities from a personal perspective; and

Whereas, this great American musical art form has not yet been properly recognized nor accorded the institutional status commensurate with its value and importance; and

Whereas, it is important for the youth of America to recognize and understand jazz as a significant part of their cultural and intellectual heritage; and

Whereas, in as much as there exists no effective national infrastructure to support and preserve jazz; and

Whereas, documentation and archival support required by such a great art form has yet to be systematically applied to the jazz field; and

Whereas, it is in the best interest of the national welfare and all of our citizens to preserve and celebrate this unique art form: Now therefore be it

Resolved by the House of Representatives (the Senate Concurring), that it is the sense of the Congress that—

Jazz is hereby designated as a rare and valuable national American treasure to which we should devote our attention, support and resources to make certain it is preserved, understood and promulgated.

A FIFTEEN-YEAR NIGHTMARE IN SOUTH GEORGIA

HON. WYCHE FOWLER, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. FOWLER. Mr. Speaker, I would like to submit the following excerpt from a July 20 New York Times article by way of introduction to a situation in south Georgia I seek to rectify through a private relief bill.

A FIFTEEN-YEAR NIGHTMARE IN SOUTH GEORGIA

The disintegration of the space shuttle Challenger last January 28 was not the first catastrophic accident for Morton Thiokol Inc. On a cold, damp morning 15 years earlier, another disaster, this one caused by negligence on the part of both Thiokol and the U.S. Government, left 29 people dead and more than 50 injured in this isolated corner of southeastern Georgia.

While the official story of the Challenger is just unfolding, the last chapter on the earlier disaster is being written this summer in the Federal district courthouse in Brunswick, GA, 35 miles north of here. After 15 years of investigation and litigation, the last of the victims of the 1971 tragedy and their families are expected to receive judgments against the Government within a few weeks.

Even without the odd parallels between the two explosions, the story of the 1971 tragedy would be worthy of a place in industrial history. It is a tale of the vulnerability and carelessness of ill-educated, untrained workers; it is a story of callousness in the military-industrial partnership. Wrapped in its layers of suffering are the hopes of escape from the remnants of a 19th century plantation economy—and warnings of the frustrations awaiting those who are unprepared for the litigious, impersonal society that often replaces it.

The morning of the disaster, February 3, 1971, a concussion rolled through the country towns and pine woods of Camden County from a Thiokol munitions factory. A fire had broken out in a small building where 60 people were assembling magnesium flares—for monitoring troop movements at night in Vietnam. When the fire reached the storeroom where 4 tons of magnesium and sodium nitrate were spread on racks and 56,322 flares were stacked, it touched off a process known as deflagration, an extremely rapid burning that, in the enclosed environment of the storeroom, erupted as an explosion.

Not all the victims of the 1971 explosion received judgments. Late this summer the plight of a group of victims who were misinformed about or simply unaware of the possibility of filing for damages against the Government was brought to my attention. I would like to introduce a measure to waive the statute of limitations for the remaining victims and relatives of the deceased who are now without legal recourse. Some will never be able to work again because of permanent injuries sustained in the explosion, some were forced to go on welfare, most are still struggling with physical, mental and financial hardships caused by the accident.

The liability of the U.S. Government, which failed to notify the plant of a decision to reclassify the materials handled by workers as "hazardous," has been established. My bill would simply allow these individuals to file a claim; the rest would be determined by the courts. I know it is late in the session, but I felt I must respond to the call for assistance by the individuals named in my bill.

H.R. —

A bill for the relief of certain individuals

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF LIMITATIONS TO CLAIM AGAINST UNITED STATES.

(a) IN GENERAL.—The time limitations in section 2401 of title 28, United States Code, shall not apply to any claim by any individual described in subsection (b) against the United States arising out of the fire and explosion that occurred on February 3, 1971, at a facility located in the vicinity of Woodbine, Georgia, and owned by Thiokol Chemical Corporation.

(b) DESCRIPTION OF INDIVIDUALS.—The individuals referred to in subsection (a) are as follows: Ethel Davis, Leroy Davis, Larry Davis, William H. Connelly, Dorothy Monak, Lillie Clark Kennedy, David E. Williams, Richard Spells, Nellie Clark, Nolan King, Teresa Brown, Ida Celeste Mack, Inez Clark, Guy Foreman, Ernest Stevens, and Bernice Walker.

SEC. 2. TIME FOR COMMENCING ACTION.

A claim described in section 1 may not be commenced pursuant to this Act after the expiration of the 1-year period beginning on the date of the enactment of this Act.

STUDY FURTHER DEFENSE COOPERATION WITH ISRAEL

HON. ED ZSCHAU

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. ZSCHAU. Mr. Speaker, I am introducing House Resolution 563 today. It would urge the Joint Political-Military Group established by the United States and Israel to examine ways in which the two countries can expand their strategic ties. This group has been a major factor in the strengthened ties between our two countries, and the House should express its support for further study into ways in which even greater cooperation can be achieved.

The strategic relationship that exists between the United States and Israel has been of mutual benefit to both countries. The United States has solidified a relationship with a valuable ally in a very volatile region. Israel enjoys the public support of the world's most powerful champion of liberty in its own fight against terrorism and oppression. The Joint Political-Military Group has been a significant factor in the growth of this alliance.

This bill would express congressional support for the Joint Political Military Group. It would also encourage the group to explore ways in which the benefits that are enjoyed by the United States and its other strategic allies, such as the NATO countries, Japan, and Australia, could be extended to the United States-Israeli relationship.

Mr. Speaker, this resolution calls for studying new initiatives in United States-Israeli cooperation. Nobody really knows what changes in legislation or executive authority will be re-

quired to solidify further the existing relationship. It is important, however, that such a study begin without any further delay. I submit for the RECORD a copy of the bill.

H. RES. —

Resolution expressing the sense of the House of Representatives that the Joint Political-Military Group should develop policies and programs which promote strategic cooperation between the United States and Israel

Whereas President Reagan has declared that a strong relationship with Israel is a strategic asset of the foreign policy of the United States;

Whereas the United States and Israel have established a Joint Political-Military Group to facilitate and promote cooperation between our two countries;

Whereas the Joint Political-Military Group has contributed to strategic cooperation between, and promoted the mutual interests of, the United States and Israel; and

Whereas the United States and other nations with which we share a strategic interest benefit from consultation in defense research programs, cooperation in the production of defense material, competition in defense acquisition policies, and access to mutual defense industries and manufacturers: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the Joint Political-Military Group should develop and recommend additional policies and programs which would promote further defense cooperation between the United States and Israel and establish a relationship between the United States and Israel similar to the relationship that exists between the United States and its other strategic allies; and

(2) the Secretary of State and the Secretary of Defense should report to the Chairman of the House Committee on Foreign Affairs and the Chairman of the House Committee on Armed Services on what actions have been taken to implement the recommendations of the Joint Political-Military Group and what additional legislation might be required to implement those recommendations.

A PLEA FOR HISTORY

HON. JIM COURTER

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. COURTER. Mr. Speaker, the following excerpt from Secretary William Bennett's recent speech at the University of Kansas is unique not only for its eloquence, but also for its charge to educators that they emphasize the beliefs on which this Nation was founded. The principles of liberty and equality which run throughout our history should be a source of pride and patriotism for our youths. I agree wholeheartedly with the Secretary that a concentration on the values and ideals of their forefathers should be as important a part of any curriculumn as historic names and dates.

KEEPING LEARNING ALIVE

Excerpt from "Once More, a Plea for History," the Alf Landon address by William J. Bennett, Secretary of Education, at the University of Kansas, Sept. 9:

A few questions, ladies and gentlemen: Do students realize that they are the heirs of the Greeks, the Hebrews, the Romans, and the early Christians who invented Western civilization? Does today's social studies curriculum bring them into contact with that "great cloud of witness," as St. Paul called them, who encourage us "to run with patience this race that is set before us?" Are we confident that the principles of the Founders, the traditions embodied in our institutions, the memories of our forefathers' sacrifices, the examples of our statesmen, will be alive in the next generation's minds and hearts? I do not think we can be as confident as we should be. But it is not our students' fault.

Do not misunderstand. I am not saying that American history is all sweetness and light—far from it. I am saying, however, that running through our nation's history like a golden thread are certain ideals and aspirations. What are they? Well, we the people, all of us, believe in liberty and equality. We believe in limited government and in the betterment of the human condition. These truths underlie both our history and our society; they define us as a people; and while they may be self-evident, they are not spontaneously apprehended by the young. The young must be taught these things, and at the same time they should learn that a large part of the world thinks and acts according to other principles.

CONGRATULATIONS, JACK BRICKHOUSE

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. HYDE. Mr. Speaker, It gives me great pleasure to report that my friend Jack Brickhouse, who has spent 40 years broadcasting the Cubs' games until he gave up that assignment in 1981, was recently named Chicago Press Veteran of the Year by the Chicago Press Veterans Association.

I know Jack feels very honored to receive this distinction from his colleagues, and it is truly well-deserved. I'm sure my colleagues join me in congratulating him on this award which will be officially bestowed on November 9. I am very pleased to include in the RECORD, the following article from the Chicago Sun-Times of September 7 about Jack and his colorful career in broadcasting.

[From the Chicago Sun Times, Sept. 7, 1986]

HEY! HEY! A HIT FOR BRICKHOUSE

(By Laurie Abraham)

Jack Brickhouse, who has broadcast more losing baseball games than any other man in history, has been named Chicago Press Veteran of Year by the Chicago Press Veterans Association.

"I've made it into nine halls of fame. I must be doing something right," said Brickhouse, who during his career announced Cubs, White Sox and Bears games.

While Brickhouse has, in his words, "done it all," interviewing Presidents Richard M. Nixon, Gerald Ford and Ronald Reagan, announcing dance bands and covering spot news from parades to political conventions, he is best known for his 40-year tenure with the Cubs.

His secret for surviving the Cubs penchant (never pennant) for losing: "I always give plenty of credit to the opposition when they do well. That way if you beat them, your victory is sweeter. If you lose, it's no dishonor to lose to a great team."

The 70-year-old Brickhouse, who covered the White Sox in 1945, the year the Cubs won their last pennant, began his career at 18 at a Peoria radio station. He found the road north to Chicago as announcer for the Bradley University basketball team.

At one point, he almost missed the chance to announce a Bradley game because his station had made a commitment to air another show. Brickhouse refused to be deterred and asked to do a then-rare delayed broadcast. His station was not convinced the public wanted to hear a game when they already knew the outcome and told him to conduct a poll to test his idea.

"They made one mistake," Brickhouse told the Chicago Sun-Times last year. "They let me conduct the poll. The first 10 people I talked to said, no, they wouldn't be interested in that. I threw their cards in the sewer, went to my favorite pool hall and filled out 100 ballots myself."

Fortunately for Brickhouse, the delayed broadcasts caught on. He was recruited by WGN soon after, and came to Chicago in 1940. The rest is history.

Brickhouse gave up his Cubs assignment in 1981, but he still works steadily. He hosts "The Chicago Cubs Scrapbook," as well as a pregame Bears show and an occasional Channel 9 program, "Once a Star." But his retirement isn't all work and no play. He and his wife will leave later this fall for their yearly three-month stay on the French Riviera.

As for his press veteran's award, the ever-gracious Brickhouse said it ranks right up there with his induction into the Baseball Hall of Fame in Cooperstown, N.Y.

"These are your colleagues," he said. "You can't fool them. If they give you a stamp of approval, you ought to be pretty flattered."

Brickhouse will receive his award on Nov. 9.

LAW ENFORCEMENT CORRUPTION MUST BE STOPPED

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. OWENS. Mr. Speaker, on March 23, 13 police officers in the 77th precinct in Brooklyn were suspended based on charges that they extorted money from narcotics dealers. The 77th is in my district and I have received numerous reports from members of the community reflecting a lack of confidence in the police. Now our worst suspicions and fears have proved to be true. There is an abundant supply of crack and drugs in this community and the police are not doing all that they could do.

The effective and honest efforts of the police are necessary if we are to have a functioning society where people are protected from criminals. People should be able to go to their local law enforcement authorities and know that their complaints will be taken seriously and that they will not be threatened. People must know that the police are not only on their side but out front when it comes to

fighting those who would disrupt our communities by criminal activity.

Sadly, communities in my district have been harmed by the perception and the reality that the police were not their allies. The situation is beginning to be addressed by the police department itself as well as the Office of the Special Prosecutor of the New York State Attorney General. These efforts are to be applauded and supported.

On a wider scale, we must address the issue of corruption of law enforcement personnel. This is simply not a situation where we can afford to be tolerant. There is nothing lower than a policeman who sells drugs. This is a situation where we must make it clear that to those to whom we entrust our safety, we expect much and we will not tolerate a light tap on the wrist by the courts. It is too late in the session to address this issue legislatively, but I will introduce legislation in the next session which addresses the issue of corruption in law enforcement agencies. Specifically, our Federal system relies on State and local law enforcement personnel to provide information and resources to other States as well as to the Federal law enforcement agencies. Corruption related to narcotics at any point in this network is a national problem and it must be addressed on a national level. I will introduce legislation providing for life sentences without parole to any law enforcement officer at the local, State, or Federal level who is convicted of participating in any situations which further criminal activity related to the sale of narcotics.

The case in Brooklyn involves narcotics. It is clear that there would be far fewer drugs on the streets if there was no protection for this activity by the police. It is also clear that drugs are a cash-and-carry business. That cash comes from burglaries and muggings which have become endemic in New York City and other areas where drugs are endemic. It is also clear that the importation, processing, distribution, and ultimate sale of drugs on our streets involves a complex network which has been able to function despite the best efforts of the decent law enforcement personnel who have worked to control the problem. These people have risked much to try to control a problem and they deserve our support and recognition of their honesty and integrity. They deserve our support to rid their ranks of the "bad apples" which make their job more dangerous and frustrating.

There are those who may think that this is just one more New York, or big city, problem. I urge all of my colleagues to recognize that heroin and cocaine do not grow in Iowa or North Dakota any more than they grow in New York. This plague is imported and distributed throughout the country and it is everyone's problem. We must work together to make sure that every link in our law enforcement chain is as dedicated as every link in the drug importation and distribution chain. When we get to that point, we will find that the criminal system can be broken. That is not an abstract dream, but a reality which we should be committed to as a basic obligation to the people that we represent.

CONGRESSIONAL SALUTE TO THE HONORABLE VICTOR JACALONE II OF PASSAIC, NJ, RECIPIENT, 1986 COLUMBUS DAY MAN OF THE YEAR AWARD, NEW JERSEY DISTRICT IV, UNICO NATIONAL

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. ROE. Mr. Speaker. On Friday, October 3, residents of my congressional district and State of New Jersey will gather together in testimony to an esteemed police chief, community leader and good friend, the Honorable Victor Jacalone II of Passaic, NJ, whose standards of excellence throughout his lifetime have earned him the highly coveted citizen's award of one of our most prestigious Italian-American organizations—the 1986 Columbus Day Man of the Year Award of New Jersey District IV of UNICO National. I know that you and our colleagues here in the Congress will want to join with me in extending our warmest greetings and felicitations to Victor, his good wife Violet, their son Victor III, daughter Valerie Ann, and daughter Karen Lynn and her husband Robert Fulleman, as we celebrate this milestone of achievement in their family endeavors.

Mr. Speaker. Our honoree is the son of Rose and the late Victor Jacalone. He was born and raised in the city of Passaic, NJ, and educated in the local school system. New Jersey District IV of UNICO National is comprised of UNICO chapters of the Municipalities of Passaic, Clifton, Wayne, Passaic Valley, North Haledon and Cedar Grove. The Columbus Day Man of the Year Award named after a man of vision whose achievements, dreams and adventures helped to shape the future of what was to be first the discovery, charting and later colonization of a new continent, America, is an honor of special significance not only to UNICO National and our people of Italian heritage but to all peoples of the free world.

Victor Jacalone II has been a staunch supporter and active participant in many civic and community improvement programs and we applaud the quality of his leadership endeavors for over a quarter of a century in the vanguard of our public safety officers.

He served our people and our country with distinction in the U.S. Army during the period 1952 to 1954. His military assignments included active service in Kobe, Japan and we are all proud of his having attained the National Defense, Korean Service and United Nations medals for his meritorious service with the U.S. Armed Forces.

Police Chief Jacalone has indeed earned the highest respect and esteem of all of us for the quality of his leadership and sincerity of purpose in seeking to achieve optimum public safety for all of our people. In 1959 he was appointed to the Passaic Police Department. He served in all official ranks of the department—promoted to sergeant in 1966, lieutenant in 1969, captain in 1973, deputy chief in February 1985—and in June 1985 attained his present high office of public trust as chief of police for the city of Passaic.

Throughout his lifetime he has forged ahead with dedication and devotion in combatting crime and protecting the life of our people. We applaud his knowledge, training, hard work, and personal commitment that has enabled him to achieve the fullest confidence and strongest support of the people of our community. He has always applied the most sophisticated and advanced techniques of his profession.

Over the years Victor has earned and received many commendations and awards of valor for his service to people. In 1967 he was the choice of the Junior Chamber of Commerce for its annual "Cop of the Year" award. We particularly applaud his citation in 1985 by the Drug Enforcement Agency for his "outstanding contributions in the field of drug enforcement."

During the period 1976 to 1979 Victor Jacalone II served as a member of the Passaic Board of Education and in 1979 received the distinguished service award of the Education Association of Passaic for his "devotion to Passaic schools."

Mr. Speaker, it is indeed appropriate that we reflect on the deeds and achievements of our people who have contributed to the quality of life here in America and I am pleased to call your attention to Victor Jacalone's lifetime of outstanding service to people and seek this national recognition of all of his good works. I appreciate the opportunity to call your attention to this year's recipient of an award of excellence that expresses appreciation for the untiring, unselfish, herculean efforts of a highly compassionate individual. We do indeed salute a distinguished citizen, good friend and great American—the 1986 Columbus Day Man of the Year of New Jersey District IV of UNICO National—the Honorable Victor Jacalone II of Passaic, NJ.

HIGHER EDUCATION ACT AMENDMENTS

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. DIXON. Mr. Speaker, with yesterday's passage of the Higher Education Act Amendments of 1986, the House of Representatives has reaffirmed its commitment to postsecondary education. This legislation is a sound and balanced response to the current needs of higher education and I am pleased to have supported it wholeheartedly.

I strongly concur with the overall policy of this legislation, that of allowing room for increases in program funding and simultaneously targeting money more effectively to those who need it. In the Guaranteed Student Loan Program, a program engineered to assist the middle class, students will be able to take out larger loans and all recipients will have to demonstrate financial need. In the Pell Grant Program, the Nation's largest source of Federal aid for low-income students, the reauthorization bill allows students to receive larger grants. In response to the increasing number

of students who go to college on a part-time basis, the bill will make some forms of aid—grants, loans, and college work/study—available to them for the first time. With the new streamlined application procedure, all students applying for aid will find the process easier.

The legislation also reaffirms the commitment of this Nation to the idea that education is one of the best ways for the disadvantaged to help themselves. By revamping Federal aid to historically black colleges through the new Black Colleges Act, the legislation recognizes the special role these institutions play in the education of black Americans. By allowing increases in the TRIO programs that identify and give extra help to students from disadvantaged backgrounds, the legislation will make it possible for more young people to attend college. By developing a new grant program to help colleges establish day care centers, the legislation will allow more low-income parents to attend college. All these provisions promote one of the most important goals of the Higher Education Act, that of increasing access for all students to postsecondary education.

The bill is guided by both a commitment and a vision: A commitment to meet today's needs in a fiscally responsible manner, and a vision that will allow us to meet growing needs with expanded and improved services in the future. I commend my colleagues, especially the distinguished chairman of the House Education and Labor Committee, Mr. HAWKINS, on their fine work in putting together this legislation. It is legislation that will take higher education into the 1990's, and I am pleased to have supported it.

IT'S NEVER TOO LATE TO LEARN TO READ

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. JEFFORDS. Mr. Speaker, I would like to share with this body an article appearing in the New York Times on September 17, 1986, about the fine work of a few dedicated people in the Adult Basic Education Program in my home State of Vermont. These home tutors have given hope to many Vermonters who had come to believe that they would never learn to read. One unique aspect of this program is that the struggle of learning to read is done in the privacy of their own homes. According to Jonathan Kozol, this program is one of the more successful adult illiteracy programs in the Nation. The article follows:

[From the New York Times, Sept. 16, 1986]

READING CAN BE LEARNED LATE IN LIFE

MIDDLEBURY, VT.—John was out of work for three years, but the trouble was not lack of job skills. In his life he had been a farmer, a quarryman, a machine operator. The problem was that he could not read or write.

Gloria Garrow had a good job as a cook at a state institution for the mentally retarded. She earned more than $7 a hour, which she considered a good wage. Her motivation to learn to read was more personal than economic. Abused as a child by her alcoholic parents, she had been too emotionally distraught to learn to read in school, where teachers told her she was stupid.

"I knew inside I wasn't dumb," said Ms. Garrow, now 41, "if somebody would just take the time."

Now, three years after she enrolled as a student in Vermont's Adult Basic Education program, Ms. Garrow can read.

At a time when adult illiteracy is the subject of increased national attention and Presidential proclamations, Vermont has a program for dealing with the problem that seems to work. It is, in fact, one of the most successful adult-illiteracy programs in the nation, according to such observers as Jonathan Kozol, who cited it in his book, "Illiterate America." But its methods are neither inexpensive nor easy to carry out.

For the first time, Ms. Garrow can balance her checkbook and select movies in the video rental store by name. She buys the Sunday newspaper every week and reads it front to back.

"I get a high off of being able to know something I couldn't know before," she said.

John, who asked that his last name not be used, has learned to read instruction manuals and blueprints and fill out job applications. He's leaning to write sentences. He finally got a job as a high school custodian. In his spare time, he reads science fiction.

Signing up for the Adult Basic Education program, said John, "was the biggest step in my life."

The program, under the auspices of the Department of Education, operates a dozen learning centers around Vermont, employs the equivalent of 80 full-time tutors and makes use of the services of 50 volunteers.

Its budget of state and Federal funds is a little less than $2 million a year; 75 percent of it comes from the state. The program is free and it is available to anyone over 16 who is not in school. Its current enrollment is 5,000 students.

The centers offer group instruction from reading classes and workshops on career decision-making to life-skill seminars, designed in response to the needs and interests of students. There is also a correspondence course for the most advanced students.

But the key to success of Adult Basic Education, the administrators say, is the emphasis on a combination of home-tutoring and individually tailored instruction.

The home-tutoring model was borrowed from a literacy project conducted in Appalachia in the early 1970's. The Vermont experiment began on a small scale in 1974 and expanded over the next decade.

"This is the only statewide program that uses home tutoring widely," said Sandra Robinson, head of the adult education at the Vermont Department of Education. "People argue that it's expensive. That's true, but it's also the only way to reach these people."

The kind of people Adult Basic Education is trying to reach, functionally illiterate adults, number in the millions nationwide. In Vermont, experts estimate there may be as many as 58,000 adults who cannot read a newspaper, take a driver's test or fill out a job application.

For most such people, the first and most difficult step is a admit the problem. When they finally do, they are often desperate.

"The job market is a powerful motivating factor," said Diana Carmenati, director of a learning center in New Haven, Vt. "In other cases, it's personal reason. One man came in when his children got old enough to realize that the words he was reading to them were not the words that appeared in the book."

The appeal of the Vermont program, said Ms. Carmenati, is that the struggle to learn to read can be carried out in privacy.

"I felt bad enough as it was about learning," said Ms. Garrow. "Having a tutor come to the house helped a lot, somebody who would take the time to go over and over it. Nobody was ever willing to take the time with me before."

Now that she feels comfortable with reading, she is completing a series of competency tests that are required to take the next step into the adult diploma program.

Unlike the more academic graduate equivalency degree program, the adult diploma program is a practical course that emphasizes accomplishments such as learning about state government and the local economy.

In addition, each student is required to see both a play and movie. Ms. Garrow took her two grandchildren to see "Annie" this summer, her first experience of live theater. Her next goal is to learn about the state government and then register to vote.

Ms. Garrow's tutor, Ruth Barenbaum, said her job is made easier because she is encouraged to use educational materials that are relevant to the lives of her students, who range from high-school dropouts and young mothers on welfare to senior citizens. Mrs. Barenbaum left public-school teaching to become a home tutor a year ago.

"Children nonreaders are more playful and open," she said, "while adult nonreaders have become closed and afraid. But adults have survival skills and knowledge that children don't have. We have to translate academics into terms they know.

"I like to use experience stories. A student will tell me the story of his life and I'll write it down. Then, we'll use it the next week as a reading exercise."

A successful part of the program has been the Green Mountain Eagle, a monthly newspaper published by Adult Basic Education and written by the students. The paper prints articles on practically anything, from raising goats to coping with loneliness. In the June issue, a pregnant teen-ager wrote about her hopes for her unborn child, and a Mexican woman described how to make a pinata.

Ms. Garrow has written two stories about the skunks that moved in under her house in East Middlebury, prompting a lively correspondence with Eagle readers from all over the state. For her, writing newspaper stories is another step along a path that once seem closed to her.

John, too, has found this new success an enormous pleasure. When he signed up for the program, he said, "I doubted I could learn. I spent most of my life not reading." Now, he said, "I'm about 75 percent better. I tell the teacher, if there's somebody who needs this kind of education and they don't think they can do it, tell them to come see me."

MISS ELOISE PICKRELL

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. DYSON. Mr. Speaker, I rise today with great regret to note the passing of Miss Eloise Pickrell, a good friend who devoted her entire

life to her country, her community, and her love of education and knowledge.

Miss Pickrell came to Maryland in 1950 after working in Allentown, PA, as a children's librarian. She became the first librarian in St. Mary's County, a position she held for 6 years. As a pioneer in library administration, she was naturally involved in the education of our children.

She carried her interest in education into action. Miss Pickrell served as president of the St. Mary's County Parent-Teacher Association, on the Maryland Congress of Parent Teacher Associations, and the National PTA. She also became president of the Citizens Scholarship Foundation, served on St. Mary's County Youth Commission, The Tri-County Regional Education Advisory Board and the Governor's Committee on the Employment of the Handicapped.

In 1956 she joined the Patuxent River Naval Air Station. After over 20 years, she retired as the head librarian for the naval air station. In addition, she was active in the Society of Engineers and Scientists on the base.

These accomplishments would be lauded by any of us as a full and productive life. Yet, this is just a portion of her contributions to society. She served as president of the local Soroptimist Club and the Toastmistresses Club of St. Mary's County. Miss Pickrell served as local president of the Maryland Association for Mental Health, curator of the St. Mary's County Historical Society, blood bank chairman for the St. Mary's County of the American Red Cross, vice president of the State organization of the American Association of University Women as well as charter member and past president of the St. Mary's County branch. She was active in the Business and Professional Women's Club of St. Mary's County, the American Association of Retired Persons, The National Association of Retired Federal Employees, and she was a charter member of the Social Workers of America.

In addition, she was active in her church, St. Andrews Parish. She served on the vestry, headed a youth group, directed the choir, and served as organist.

At age 74 she succumbed to a long and difficult illness. The citizens of St. Mary's County will forever be indebted to Miss Eloise Pickrell for her endless commitment to the quality of life. Although she had no close relatives as survivors, she left many who loved her and will miss her.

COMMENDING THE GLOBAL ECONOMIC ACTION INSTITUTE

HON. BEN GARRIDO BLAZ

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. BLAZ. Mr. Speaker, it is with great pride and hope that I bring to the attention of my distinguished colleagues in this body an organization, the Global Economic Action Institute, whose lofty goals and achievements will keep it at the forefront in fighting to assist in the prosperity of the free world, and seeking to alleviate the human suffering and misery so prevalent in the Third World today.

I recently returned from a most impressive conference organized by the Global Economic Action Institute in Jakarta, Indonesia, on September 10–12, 1986. At this historic gathering, members of the five GEAI Standing Committees and the chairmen of their numerous divisions worldwide, along with distinguished experts in banking, finance, and development from a myriad of social, ethnic, and religious backgrounds, came together to develop a consensus for a global policy framework, based upon the sound principles of free enterprise and individual initiative in which we all believe, as well as a GEAI action plan to be implemented regionally in Africa, Asia, Latin America, Europe, and North America. Sixty-four participants from twenty-one nations were in attendance. They met for long hours in working groups and plenary sessions over an intensive, 3-day conference, carefully reviewing and redrafting the proposals developed during nearly a year's preparation. They emerged with a consensus on an extremely broad spectrum of objectives and strategies. It now remains to further develop, region by region, the specific initiatives to implement the programs identified in Jakarta. Through regional discussions and planning meetings, and within each national division, action plans will be crystalized, and the implemention phase can begin, nation by nation.

Mr. Speaker, not only did I attend these meetings and work side-by-side with committed individuals from all walks of life, but a special delegation from the conference, in which I participated, visisted the nation of Singapore. This island nation is a modern miracle. To its south is Indonesia, still relatively poor. To its north, the struggling Philippines. But Singapore sparkles like a diamond, and its bustling economic development is the envy of the region. This economic miracle of Singapore is no accident; for over 21 years the government and private sector have worked creatively and agressively to cut back on government bureaucracy, and enhance at every possible level entrepeneurial initiatives. The GEAI delegation witnessed its marvelous achievements in the area of public housing. Its streets and sidewalks are free from any trash or garbage. In meetings with top officials, we expressed the desire of the GEAI to bring the Singapore model to the attention of interested leaders in other regions of the world searching for alternatives to the stagnant statist economic model still so prevalent throughout the Third World.

GLOBAL ECONOMIC ACTION INSTITUTE

STATEMENT OF PURPOSE

In recent years much of the world has enjoyed a level of development and prosperity unprecedented in history. Increasingly, however, this development is being threatened by severe strains and tensions within the international economic system upon which we all depend. Too little attention has been given to the protection and improvement of the system itself which has brought us this far.

Decision makers in governments, financial institutions, and in the private sector must be encouraged to pursue sound policies which will contribute to economic growth and development, to harmony between nations which share a common commitment to freedom, and to the strengthening of the system itself. Furthermore, the international trading mechanisms, legal structures, and financial institutions which help make up our global economic system all must be responsibly managed, especially in today's environment of rapid change. Emphasis must be given to polices which will enhance freedom of the individual, freedom of the market place, and the promotion of economic justice such that opportunities for ownership and active participation in the economic system can be extended to all.

The Global Economic Action Institute was established both to encourage the above and to confront the problems which threaten the well-being of our economic system. Through its unique, international action-oriented framework, private individuals cooperate to promote responsible solutions to these problems. The Institute then seeks to mobilize business and banking leaders, as well as political and economic experts, to educate decision makers about the ramifications of the various policy options they face, and to present appropriate new ones where necessary.

The Global Economic Action Institute welcomes the involvement of thoughtful interested individuals throughout the world.

HISTORY OF THE GEAI

In 1982, Former Secretary of the Treasury Robert B. Anderson became increasingly concerned about the lack of attention being given to the rapidly changing global economic system and raised his concerns with a number of close friends.

In disucussions with Dr. Mose Durst, with whom he received an award at the United Nations, Secretary Anderson finalized plans for a fact-finding tour to consult with leading economic and financial experts. In the fall of 1982, Mr. Anderson, Dr. Durst and an advisor, Mr. Jeremiah Schnee, traveled throughout the Americas, Europe, and Asia and discovered, somewhat to their dismay, that colleagues around the world shared their concerns.

A conference seemed necessary, global in scope, involving knowledgeable private individuals dedicated to the consideration of major problems facing the world's economic system.

On the foundation of nearly a year of thoughtful preparation, the World Conference of Economic and Social Order was convened on August 21, 1983 for six days in Geneva, Switzerland. In attendance were experts from each of the major financial centers of the world. All in all, more than sixty economic experts from twenty-four nations sought solutions to pressing problems affecting the global business, trading, monetary and banking systems, which balanced national concerns with the well-being of the larger community of nations.

At the conclusion of the unique gathering, it was the considered view of the participants that an ongoing organizational framework should be established to identify and promote responsible solutions for the problems threatening the health of our economic system. Thus the Global Economic Action Institute was created.

STRUCTURE OF THE GEAI

The Global Economic Action Institute is an association of private individuals who share a common concern and commitment to work and act together to contribute to the stability and strength of the free world's economic system.

NATIONAL DIVISIONS

The Institute, whose members number over 1,000 worldwide, is organized into 20

national divisions, each guided by a chairman of world level distinction, who has gathered around him some of the most knowledgeable people in areas relating to the business, trading, banking and monetary sectors. National divisions are financially and operationally autonomous, organizing themselves and their activities as they deem appropriate.

National divisions critique proposals generated in the Standing Committees and, in conjunction with both the committees and interested membership, identify and promote those proposals which seem to be particularly timely and constructive.

STANDING COMMITTEES

To lead in the development of Institute policies, five standing committees have been formed and convened from all regions of the world. They are The Trade, Development and Debt Committee; The Monetary Affairs Committee; The Government and Security Committee; The Committee on Religion and Society; and the Technical Committee. Proposals for action, emerging from these meetings and subsequent studies, have been circulated to the national divisions and to interested institute members worldwide for response.

HEADQUARTERS AND SECRETARIAT

The Chairman and Board of Directors of the Institute are responsible for the policy direction of Institute activities, and are supported by an Executive Committee appointed regionally from among the membership to advise and assist in planning and implementation, and staff in offices in New York and Washington, D.C. To facilitate this effort, the Global Economic Action Institute Headquarters serves as a secretariat, communications hub, and the coordinator of meetings to pursue the work at the Institute.

LADY VETERANS IN TOWN

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. SOLOMON. Mr. Speaker, a number of very unique lady veterans have been in town this week to receive special honor. They are unique in that each of them was a prisoner-of-war during World War II.

These ladies are representative of a gallant group of 105 Army and Navy nurses. During World War II, they were captured by our enemies. They suffered the harshest kind of treatment and deprivation. Through it all, they each continually rose above themselves and cared for and assisted the men around them who had also been captured. Often they were the only source of medical treatment. Surely they deserve our everlasting tribute.

Mr. Speaker, back in April 1983, 32 of these ladies came to Washington, DC, to also receive signal honor. One of the events was held at a special ceremony at the national headquarters of the Disabled American Veterans. At that time our distinguished colleague, JOHN PAUL HAMMERSCHMIDT, of Arkansas, who is the ranking member of the minority on the House Veterans' Affairs Committee, spoke to them in a very moving way. His eloquent words apply equally to those now visiting the Capital of our Nation. I submit his brief remarks of that evening to be placed in the CONGRESSIONAL RECORD today to remind each of us of the high esteem in which all of us hold those truly dedicated "Sisters of Mercy."

REMARKS OF THE HONORABLE JOHN PAUL HAMMERSCHMIDT TO THE P.O.W. NURSES, APRIL 3, 1983

Thank you, Commander Galian.

Good evening ladies and gentleman and especially our honored guests.

It is a rare privilege for me to be asked to take part in paying tribute to a very select group of individuals who have served this Nation far beyond the call of duty. They and the more than 90,000 other former prisoners of war who are alive today cannot really be given enough recognition for the hardship and suffering they once endured. But we hope that these special days, set aside in their honor, can, at least, serve as reminders that a greateful nation has a debt to them that can never actually be repaid.

More than 142,000 Americans have been prisoners of war in this century; 132,201 from World War II alone. Within that very distinctive population were 81 service women—32 of which are here today—who were taken prisoners following the Japanese invasion of the Philippine Islands. I want to address myself specifically to those 32 ladies who honor us so much by their presence here tonight.

With little concern for your own safety and comfort during that most difficult hour you never lost sight of your mission to care for the sick and injured. Under fire on Battan, and later during the siege of Corregidor you stayed with the troops and performed your duty.

That all 81 of you later survived the rigors and deprivation of the Santo Tomas Prison Camp for 2½ years and at the same time continued to attend to the health and welfare of others is a tribute to the human will to persist when all seems lost. Truly you were the very essence of sisters of mercy.

William Faulkner, in accepting the Nobel Prize for Literature in 1950, spoke of humanity's unflagging struggle to exist in the face of adversity. He said man ". . . is immortal, not because he alone among creatures has an inexhaustible voice, but because he has a soul, a spirit capable of compassion and sacrifice and endurance."

Today we are honoring that spirit you so elegantly upheld.

For each one of you I have had an American Flag flown over the U.S. Capitol as a token of appreciation and admiration from the Congress of the United States. A mighty emblem of strength under fire, it is a fitting symbol for all that you endured and for that precious faith that never once wavered in a terrible and perilous time and that even today defies description. That these flags may kindle again and again your love of the American Nation is my earnest hope.

All of us are most pleased to have been a part of this reunion. It has stirred our hearts and our memories and reminded each of us of the debt we owe to each of you. Again, thank you for all you have done for this great country.

CRITIQUE OF GEPHARDT-HARKIN FARM BILL

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. BEREUTER. Mr. Speaker, in light of the recent spate of news releases and news conferences regarding farm legislation introduced this week I think my colleagues may find it informative to read the following editorial from the September 24, 1986, issue of the St. Louis Globe Democrat:

From the St. Louis Globe Democrat, Sept. 24, 1986)

GEPHARDT'S FARM-MANAGEMENT BILL

Rep. Richard A. Gephardt's "Save the Family Farm Act" might be more appropriately called the "Farm Community Destruction Bill" or the "Farm Export Liquidation Bill."

Under the bill introduced in the House Tuesday by Gephardt (D-St. Louis), farmers would be allowed to decide as a group if they would limit production as provided in his legislation. Currently, individual farmers decide how much acreage they will plant with certain crops, but there is no collective decision.

"By allowing farmers to limit production, rather than acreage, our program will effectively limit supply and allow the government to reduce (some support) payments to zero, a formula that has already worked for many agricultural commodities."

Gephardt contends this supply management would save the government $10 billion to $15 billion a year. He estimates the cost of his program would be $600 million a year if every eligible farmer participated because his bill would provide federal money as repayable block loans.

It sounds too good to be true, doesn't it? That is because it is too good to be true.

If Congress should be so unwise as to enact the Gephardt-Harkin bill (it's sponsored in the Senate by Sen. Tom Harkin, D-Iowa) over President Reagan's certain veto, it would:

Require participating farmers to get government permission to market their domestic production, and put the government into the day-to-day management of farms to make sure that production targets were not exceeded. In the Soviet Union, they call this "central planning."

Cause progressively greater economic hardship in rural farm communities as production of wheat and feed grain was cut back. If the cutbacks reached the limit set by the bill (reductions up to 35 percent), they would wipe out jobs by the tens of thousands in farm implement companies, in firms producing feritlizer, seed and feed, and in companies providing transportation and processing services for farm products. In other words it could be a disaster for these farm communities.

It would make these crops noncompetitive in world markets, thereby virtually destroying the export market for this controlled production. How disastrous this would be can be seen in the fact that today one out of every three acres of farm production is sold overseas.

Farmers desperately need to increase exports, not further decrease them. U.S. farm exports actually have fallen 38 percent since 1981. This has occurred to a large degree

due to government policies that guaranteed farmers high prices, which in turn brought overproduction and enormous surpluses.

Pass along these higher farm prices to consumers in higher grocery bills.

Require the passage of protectional legislation to keep much lower-priced foreign crops from taking away the domestic market. These protectionist actions, in turn, would violate many General Agreement on Tariffs and Trade (GATT) provisions that prohibit protectionist trade barriers.

Clearly, the Gephardt-Harkin bill is more-of-the-same government intervention that has put so many farmers on poverty row and increased the cost of U.S. taxpayer subsidies to farmers to more than $30 billion a year. It has been demonstrated over and over again that Washington cannot manage production or prices to the long-term benefit of farmers.

The urgent need is to find ways to increase farm exports and move toward a market where supply and demand determine production. As this is being done, government price supports will be necessary to help many farmers make the transition. Rather then comtemplate piling excess wheat on the ground as storage space is exhausted this fall, the government should find ways to greatly increase shipments of grain to nations where hunger is rampant.

It is estimated that the wheat surplus now is more than 50 million tons. An estimated 5 million to 7 million tons of surplus wheat is now being shipped overseas in the Food-for-Peace program. This would be an opportune time to greatly step up these Food-for-Peace shipments. It would be callous to allow surplus wheat to lie on the ground in mountainous piles across the nation, much of it to be made inedible from weather damage, when it could be used to feed millions of starving people in nations that can't afford to buy our grain.

COMMEMORATING THE 15TH ANNIVERSARY OF CORA SERVICES

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. BORSKI. Mr. Speaker, I wish to call attention to the 15th anniversary of CORA Services; counseling or referral assistance services. CORA Services, the comprehensive child and family resource center located at Susquehanna and Verree Roads in Fox Chase, is celebrating 15 years of meeting the various needs of the residents in Northeast Philadelphia. Begun in 1971 as a small counseling center for teenagers and their families, CORA has since grown into a multifaceted human services system which offered assistance to over 25,000 people during the most recent service year.

Among the services provided at the agency presently are: Parent education training sessions, early years: nursery, readiness and day care, counseling: individual, family and group, business youth cooperative-job development and placement program, assessment and consultation; educational, psychological, psychiatric, adolescent pregnancy support service and prevention outreach, vocational and career assessment and counseling, prevention and treatment programs for drug and alcohol abuse, tutorial sessions and G.E.D. preparation; individual and group, speech and language evaluation and therapy, summer educational and recreational enrichment programs for children and youth, truancy intervention program for youth and families, remedial programs in reading and math, and connection to various services via the resource and referral unit.

The mission of CORA is to support and enhance the growth potential of children and youth, individually, and through the interaction with the significant adults and systems in their environments.

The commitment to personalism and the valuing of the uniqueness of the individual has remained constant through a history of accelerated expansion, and validates the authenticity of the CORA mission. The agency's underlying motivation and service philosophy is "Love in Action".

The agency is supported by various sources including Government contracts, foundations, corporations, United Way Donor Option, United Way City Campaign, Combined Federal Campaign, fee for service, and individual donations. The agency is committed to the ongoing venture of trying to improve the quality of life for children and families in the area.

Mr. Speaker, as CORA celebrates 15 years of outstanding service to the Northeast Philadelphia community, I want to commend their efforts and wish them much success in future years.

IN MEMORY OF DELBERT LANNIER

HON. DOUG BARNARD, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. BARNARD. Mr. Speaker, it is with great sadness that I share with my colleagues the passing of Officer Delbert Lannier. Delbert was an officer with the Capitol Hill Police force for 13 years and was a friend to everyone who came in contact with him. More than anyone I have ever known, Delbert embraced the Will Rogers' philosophy "I never met a man I didn't like."

Delbert was a constant ray of sunshine though he spent many hours in the cold, the heat, the traffic and the rain at his post at 1st and Independence Avenue. I never saw him without a smile on his face, a joke on his lips, and friendly advice to anyone who asked for it.

Many people will be surprised to learn that Delbert suffered many setbacks in his personal life that would have permanently wiped the smile off most of our faces. Several years ago he lost both his wife and his only child in less than a year's time. Delbert just remarried this year, and our heartfelt sympathy goes out to his widow, Helen. And, yet despite his own pain, he continued to maintain his joy of life and his contagious good humor. In fact, his friendliness and helpfulness were so widely known and so farreaching that the Washington Post even published an article in praise of him.

I think it would be a mistake, however, to simply mourn his death here. The greatest tribute we can pay to Delbert is to learn from his example and to adopt his happy manner. The only way to keep someone alive is for each of us to internalize a little bit of that person so that he continues to live through all of us. If we would all smile a little more, put our own concerns behind us more often, and care about one another more than ourselves then we will be keeping Delbert's spirit alive on Capitol Hill, and we will be honoring him in a way that I know would bring one of those famous grins to his face.

H.R. 5300, THE OMNIBUS BUDGET RECONCILIATION ACT OF 1986

HON. JIM ROSS LIGHTFOOT

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. LIGHTFOOT. Mr. Speaker, the Federal budget deficit is this Nation's No. 1 problem, yet you could not tell this yesterday when the House approved H.R. 5300, the so-called deficit reduction bill. This bill makes no attempt to reduce the deficit and to provide long-term budget savings. Instead, this bill relies upon one-time loan asset sales, tax increases, and false savings to meet the fiscal year 1987 targets of the Gramm-Rudman-Hollings Balanced Budget Act.

This is a smoke and mirrors budget reduction bill. It claims to reduce the deficit by $15.1 billion for fiscal year 1987. The savings achieved under this bill rely upon $8.4 billion from the sale of Federal Government assets, $7.9 billion from increased new fees, taxes, and receipts; $1.9 billion from additional cuts; and $680 million from early payment of the fourth quarter general revenue sharing installment. On top of this, the bill includes spending provisions totaling $3.1 billion. Now, how can you call this a deficit reduction bill?

Unfortunately, many of the bill's provisions fail to provide concrete budget savings. First, sale of Federal Government assets are false savings. While they provide the Federal Government with money this year, in the long run they will provide no budget savings, and in fact, in many cases they will cost the Government money.

For example, the bill claims savings of $850 million in 1987 from selling the Small Business Administration loans, yet the Government would lose almost $1.4 billion from 1988 to 1996 from "forgone revenues." This results from the Government's inability to collect the principle and interest it has counted on.

Second, Congress can reduce the deficit and meet the targets of Gramm-Rudman without imposing hidden tax increases, such as those contained in this bill. For instance, this bill extends the 3 percent telephone excise tax; accelerates the collection of excise taxes on beer, wine, and cigarettes; and maintains the Federal unemployment tax at 0.8 percent, rather than letting it drop as scheduled to 0.6 percent in 1988.

Finally, the bill produces so-called budget savings by moving the fourth quarter 1986 general revenue sharing payment from Octo-

ber to September so that the expenditure will be included in the fiscal year 1986 deficit rather than the 1987 deficit. This tactic makes a mockery of Congress' efforts to reduce the budget deficit. It is just a paper move to make the numbers look better than they actually are.

I am dismayed that the House shirked its duty to approve a true deficit reduction package. I understand that pressure is great to avoid sequestration under Gramm-Rudman-Hollings, but under this bill, we are just postponing "D-day." Sooner or later, Congress is going to have to come to grips on Federal spending. And the longer we wait, the tougher it will be to achieve the necessary budget savings.

It is my hope that the House will someday soon accept its responsibility to solve the budget deficit problem. Budget cuts are tough decisions to make, but the longer we postpone these decisions, the more difficult they will be to make and the more they will hurt. Acting now on deficits will make the choices easier next year.

In conclusion, Mr. Speaker, I was forced to vote against this bill because it failed to provide true deficit savings. However, this bill contained some provisions that I supported, such as eliminating the 3 percent Social Security cost-of-living adjustment trigger and limiting the Medicare Part A hospital deductible to $500. These provisions are necessary in order to help older Americans pay for increasing health care, food, and shelter costs.

TRIBUTE TO STEVE MORRISSEY AND NARFE

HON. PETER H. KOSTMAYER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. KOSTMAYER. Mr. Speaker, it is with great pleasure that I rise to congratulate Steve Morrissey, a constituent and good friend who was elected national president of the National Association of Retired Federal Employees [NARFE] last week.

Mr. Morrissey, of Bensalem, Bucks County, PA, has served this country with distinction for a great many years. During World War II he was a decorated member of the U.S. Combat Engineers stationed in the Pacific. Subsequently, he acted as Chief Enforcement Officer with the Bureau of Alcoho!, Tobacco and Firearms of the Department of the Treasury.

Even after retiring, Steve Morrissey continued to work diligently for his fellow Americans as a volunteer member of NARFE. He quickly made his mark on that fine organization and soon became president of the Pennsylvania Federation before being elected national president this month.

As many of my colleagues know, NARFE is the only association dedicated solely to the interests of civilian retirees of the national Government. For the past 65 years this organization has represented the men and women who have devoted themselves to every aspect of civil service. Today, with a membership of approximately a half-million people, NARFE continues to serve those who have so faithfully served our country.

I ask all of my colleagues to join me in congratulating Steve Morrissey who will assume the presidency of NARFE in January 1987. I commend his and all of our retired Federal employees for their years of service.

TAX REFORM AND THE ECONOMY

HON. WALTER E. FAUNTROY

OF THE DISTRICT OF COLUMBIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. FAUNTROY. Mr. Speaker, the net effects of the tax reform bill on the economy are indeterminate according to many of the experts. I am concerned about the net affects of the bill on the savings rate, particularly in light of the reduction in individual rates and the treatment of IRA's.

The concern with the savings rate is particularly acute in light of the burgeoning growth in private and public debt in recent years. This debt represents a potential mortgage on the future and we need to encourage citizens and businesses to increase savings. We can no longer afford to consume more than we produce, buy more than we sell, at the expense of this increased debt.

An additional concern centers around deficit reduction, particularly in light of the tax cut engineered by the Reagan administration in 1981. If and when tax reform passes and is signed by the President, I believe we must act swiftly and judiciously to raise taxes and thus continue to reduce the deficit while meeting the domestic needs of the people.

The bill proposes to maintain revenue neutrality. To do so under these circumstances appears to be questionable in light of the growing need for housing, medical care, education, income, and Social Security of low- and moderate-income people, needs which have in recent years been neglected as the United States has instead pursued budgets based upon welfare for the defense industries and the wealthy.

In spite of many concerns, I support H.R. 3838, the "Tax Reform Act of 1986." At the same time, I request that upon passage, we examine the revenue needs of the economy and work both to restore and increase the effectiveness of domestic spending which has been so sharply reduced relative to human needs over the past 5 years.

THREE-YEAR BASIS RECOVERY RULE

HON. BILL LOWERY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. LOWERY of California. Mr. Speaker, today, the House of Representatives passed, with my support, a sweeping tax reform measure. As I indicated during the course of the debate on the bill, I had several reservations over provisions included in this omnibus tax package. At this time, I would like to discuss my opposition to a particular proposal affecting many Federal retirees in my district. Specifically, I am referring to the retroactive provisions in H.R. 3838 which repeal the 3-year basis recovery rule on the already taxed portion of a retirees pension.

Under current law, public servants may recover their contributions to a mandatory pension plan for up to 3 years without being taxed. This has been a longstanding policy because employees paid taxes on this money when it was contributed.

Repeal of the 3-year recovery rule will affect thousands of employees in my district and does so unfairly. These individuals based their retirement plans on current tax policy. To change the rules this late in the game will likely have a deleterious effect on retirees who will get hit an estimated $10,000 in additional taxes the first 3 years of retirement. This provision is particularly onerous in that it is retroactive until July 1, 1986.

I had hoped that a clean motion to recommit this bill to conference would be offered with instructions to at least remove the retroactive aspects of this change in the 3-year recovery rule. I would have supported such a motion. I do not believe that this dramatic change in policy should apply to individuals retiring before the date of enactment of this bill. Unfortunately, no such "clean" motion was offered, and I was forced to weigh this negative aspect of H.R. 3838 with all the other pluses and minuses in the bill and cast my vote accordingly. I would have felt more at ease supporting H.R. 3838 had this retroactive provision affecting federal retirees not been included in the final draft.

A DIFFICULT VOTE

HON. TOM LEWIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. LEWIS of Florida. Mr. Speaker, today I cast a very difficult vote—in opposition to the conference agreement on tax reform.

Too many changes in this tax legislation were made simply to achieve revenue neutrality. Many present deductions which are intended to ensure fairness to ordinary taxpayers fell prey to that goal. The people who were to be the primary beneficiaries of this legislation may very well suffer, either directly or indirectly, through outright changes in law or economic repercussions.

The inclusion of retroactive provisions in the bill is unconscionable. Some of the retroactivity is outright, in the case of the 3-year recovery rule and the investment tax credit. Some is hidden, like the loss of capital gains treatment in pending installment sales. In both instances, Americans are being penalized unfairly.

The provisions of the bill are so far reaching that a positive impact is impossible to predict, especially in an economy which is juggling both budget and trade deficits. In fact, the tax bill is likely to reduce overall level of investment, job creation, economic growth, and international competitiveness. Any gain for lower income people will be immediately sacrificed in a strained economy.

The sheer volume of changes will create havoc for corporations and individuals. This exercise in tax reform has demonstrated that the wisest approach to tax reform is not to shatter all that is familiar, but to examine the code provision-by-provision and evaluate where changes are desirable.

For the sake of the people of America, I hope that my vote was wrong. However, from the conversations I have had with my constituents and numerous economists, I believe that the passage of this conference report will have serious negative repercussions.

KAREN GERDES HONORED AS PEACE CORPS VOLUNTEER OF THE YEAR

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. YOUNG of Florida. Mr. Speaker, during ceremonies this month marking the 25th anniversary of the Peace Corps, Karen Gerdes of St. Petersburg, FL, will be honored as one of the organization's three Volunteers of the Year.

Karen, a 1976 graduate of St. Petersburg Catholic High School, is completing her second year as a Peace Corps volunteer in the Philippines. She is being recognized for her mastery of the Philippine language and culture, and for her ability to utilize local resources to establish self-sustaining programs in a variety of much-needed areas.

As a volunteer living in an urban squatters' settlement in Orani, 100 kilimeters outside of Manila, her major responsibility is teaching basic health techniques to community workers, who can in turn pass them on to other residents of the community. She has learned to provide assistance in starting-up programs, such as child day care centers, which ultimately are taken over and run by community members. She has also found local sponsors to pay for surgery needed by poor children and established a program to find living arrangements for abandoned children.

Following my remarks I am submitting a story from the September 21, 1986, St. Petersburg Times in which Karen more fully discusses her experiences as a Peace Corps volunteer and the personal sense of satisfaction she has received from her service.

Through her work, Karen shares with the disadvantaged people of this Philippine community the caring and compassion that is symbolic of our Nation which reaches out to help other countries in need. And her work is representative of the outstanding service and sacrifices of the 6,000 current Peace Corps volunteers, and the 120,000 volunteers who have represented our Nation in more than 60 countries this past quarter century.

[From the St. Petersburg Times, Sept. 21, 1986]

PEACE CORPS HONORING ST. PETERSBURG

(By Mary Ann French)

WASHINGTON.—Home for Karen Gerdes is usually the comfortable Holiday Park section of St. Petersburg. But for the last two years, home has been a squatters' camp on the main island of Luzon, in the Philippines.

She lives there with about 2,600 people on a narrow strip of land that was filled in alongside Manila Bay the last time the channel was dredged.

It's a bamboo-hut and thatched-roofed existence where families are lucky to make $1 a day. The men fish while the woman sell their catch at market. Except during the rainy season, that is.

A lot of people go hungry during the rainy season, when the seas are too rough for the fishermen to go out, Gerdes said. To make things worse, the land floods at high tide, spreading raw sewage and disease.

As a Peace Corps volunteer specializing in primary health care and education, Gerdes, 28, teaches families basic first aid and sanitation procedures. She instructs core groups in the community how to avoid diarrhea and tuberculosis. She befriends abandoned children and is helping to build a health center.

She was chosen above 1,445 others in her region to be one of three Volunteers of the Year worldwide, and is in Washington this weekend for the 25th anniversary celebration of the Peace Corps.

"It's a great honor," Gerdes said. "Being in the Peace Corps is something I've always wanted to do. As a kid, it was a romantic fantasy I had."

Sen. Hubert Humphrey first introduced legislation in 1957 to create a worldwide force fighting for peace. But for many of the Peace Corps veterans knocking around festivities on The Mall and attending class reunions at the embassies of their former host countries this weekend, it was presidential candidate John F. Kennedy who gave the call to action during an impromptu speech on the 1960 campaign trail. At 2 a.m. in an autumn chill, he challenged 10,000 students at the University of Michigan to give a few years of their lives to help the poor in the developing world. If elected, Kennedy said, he would recruit a Peace Corps.

More than 120,000 volunteers have served in 94 countries in the generation that has passed since. About 3,500 ex-volunteers are attending the festivities this weekend. Among them is expected to be Ruth Whitney, a St. Petersburg resident who shipped out for Ghana in 1961 with the first wave of volunteers. Florida has provided 2,188 more volunteers to the Peace Corps since then, ranking 14th in the pool of states.

Today's volunteers teach subjects like bookkeeping, build housing and bring modern agricultural techniques to their posts around the world. They are waging peace, which means "more than simply the absence of war," Peace Corps director Loret Miller Ruppe said. "It's the absence of conditions that bring on war—the conditions of hunger, disease, poverty, illiteracy, despair."

This afternoon Karen Gerdes will carry the Peace Corps flag at the head of a procession from the Lincoln Memorial, across the Potomac River to Arlington National Cemetery. There, at John F. Kennedy's gravesite, a memorial service is to be held for the 199 Peace Corps volunteers who died (mostly from disease or accident) in service overseas.

At a gala celebration of the Kennedy Center this evening, Caroline Kennedy will present Volunteer of the Year awards to Gerdes; Donald Beckley of Bellevue, Iowa, who is serving in Niger; and Maria Mojica of Ponce, Puerto Rico, who is serving in Paraguay.

"Inside of me has always been the need to be in a helping profession," Gerdes said. She got some of her instincts from her mother, Lisa Gerdes, who volunteers at the Alpha House, a home for unwed mothers in St. Petersburg. Her interest in other worlds was sparked by her father, Charles Gerdes, who travels widely as an international marketer.

The second of six children, Karen went to St. Petersburg Catholic High School and Florida State University. While in Tallahassee, she converted from Catholicism to the Mormon faith, which led her to get a master's degree in social work at Brigham Young University.

"It's a little embarrassing for me to be singled out for this honor," Gerdes said. "In a general sense, my religious views have a lot to do with my work. But I'm for not so much talking about what I believe in as I am trying to live it."

Because Peace Corps volunteers are supposed to remain neutral, another thing Gerdes is reluctant to talk about are the politics and events that forced former Philippine president Ferdinand Marcos to flee the country in February and relinquish the reins to Corazon Aquino.

Giving more than a hint of where her sentiments lie, however, Gerdes said, "I felt very privileged to be in the country and see people take control of their destiny in such a peaceful way . . . I was so proud, I almost wished I were Filipino."

Ironically, Gerdes came the closest she's ever been to Aquino not in the Philippines, but in Washington on Friday when the president said a few words at the opening ceremony of the Peace Corps celebration. Aquino, who is in the United States seeking funds and trade to offset her country's deficit, was whisked off to a meeting in New York with Wall Street bankers before Gerdes was able to meet her.

Gerdes plans to spend a week visiting her family in St. Petersburg before returning to the Philippines for the two months left in her tour. When she returns to the States, she will look for work in a refugee settlement or a hospital that will bring in more than the $90 a month she makes in the Peace Corps. Having paid off a larger debt she felt she owed to society, Gerdes said it's now time to settle her student loans.

TRIBUTE TO MICHAEL H. ERNE

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. LAGOMARSINO. Mr. Speaker, I would like to take this opportunity to pay tribute to Michael Erne who has served as Administrator of Ventura County Medical Center for the past 13 years. Michael is resigning effective October 15, 1986, to assume the post of chief executive officer of the Grossmont District Hospital in San Diego.

Erne was graduated with honors from the University of California, Santa Barbara in 1967 and 2 years later earned his Master's degree in Public Administration from San Diego State University, graduating with highest honors.

When Michael Erne took over as administrator of Ventura County Medical Center in 1973 he was only 27 years old. The health care facility was 87 years old and known as

County Hospital. Both have come a long way in the past 13 years.

Erne is a proven and seasoned administrator with a solid record of accomplishment with the Medical Center and recognized statewide as a creative go-getter in the advancement of health care. One of the most visible products of Erne's tenure is the new, $12 million Dr. David Fainer Wing of the Medical Center, a four story structure now housing several care departments, including VCMC's Emergency Services Department, the most active in the county. Funding for this project was secured through State grant and Federal revenue sharing moneys. Erne has also completed first phase planning of an additional $5 million renovation project with funding secured through a long-term borrowing program with the Medical Center assuming total responsibility for the debt service.

This creative approach to fiscal responsibility has characterized Erne's entire tenure. During his administration, the Medical Center has required the least tax support of any public hospital in California with only about 2 percent of its budget coming from county taxpayers.

To meet growing health care needs throughout the County, Erne directed the expansion of VCMC's local clinics and family care programs such as he developed and/or expanded an array of specialty programs such as emergency-trauma; rapid care for convenient treatment of minor medical emergencies; a high risk pregnancy program and VCMC's newborn intensive care nursery, the only facility of its kind between the San Fernando Valley and San Jose, treating critically ill newborns and tiny premature infants. Also under Erne's stewardship, the Medical Center's Family Practice Residency Program associated with the UCLA School of Medicine has gained nationwide prominence.

Erne's first position out of college was as a systems programmer for the city of Sandiego and went from there to a post as research analyst at the NASA Manned Spacecraft Center in Houston. He subsequently took a 3-year assignment as a U.S. Air Force health care administrator at the USAF Hospital in Zweibrucken, Germany. He began that tour as a financial resources manager and spent his last part of the tour as Hospital administrator. In December of 1972 Erne came to Ventura County Medical Center as assistant administrator and 10 months later became administrator.

Ventura County Medical Center is looking forward to the celebration of its centennial next year and is now a state-of-the-art acute care hospital and countywide network of family care centers and clinics offering an array of specialized services to citizens of Ventura County and beyond. Much of this progress has been due to Michael Erne's administration.

Erne has been active in many capacities with professional associations throughout the state. He has served as president of the board of directors of the California Association of Public Hospitals, served in several offices with the California Hospital Association, been a member of the board of directors of the hospital council of Southern California served on the public hospital/private hospital task force. Legislative Affairs Committee and Chairman of the Health Planning Committee, Santa Barbara/Ventura area. He has been a member of the board of directors of the Livingston Visiting Nurses Association, Ventura as well.

I extend my best wishes to Michael H. Erne in his move to Grossmont District Hospital and wish him continuing success in his professional life. Additionally, I commend him for his exemplary service to the Medical Center and to the citizens of Ventura County.

COGENERATION FERC MODIFICATIONS

HON. DAN MICA

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. MICA. Mr. Speaker, the chairman of the Ways and Means Committee and I engaged in a colloquy in December regarding the effective date of title II. Section 204(a)(2) makes an exception for property that is part of a project that the Federal Energy Regulatory Commission certified before March 1, 1986, as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 [PURPA]. The statement of managers to the bill explains that this rule will not apply if a FERC certification is "substantially amended" after March 1, 1986.

We discussed the distinction between substantial and minor modifications in the context of a cogeneration project that was originally certified by FERC on April 24, 1985 as a facility that would burn culm to generate steam and electricity. I described several amendments to that project's FERC order and the chairman stated that they seemed to fit into the category of minor modifications. These included circumstances wherein the introduction of efficiencies results in a reduction of the project cost and an increase in net electricity output and wherein three separate facilities are combined into a single powerhouse.

Another cogeneration project, which was originally certified by FERC on June 27, 1985 as a "qualifying facility" for purposes of PURPA, has undergone similar changes and is also in need of a clarification as to what are "minor modifications."

The project has the same size cogeneration plant. It has the same plant design. It has the same use of process steam—that is, enhanced oil recovery. It is the same general location—in the same oilfield—although the exact site has been moved approximately 3 miles. It has the same power sale agreement with the same utility, which will interconnect with the same substation. It will use the same type and source of fuel.

There are, however, a few differences with the original project. The new project includes ownership of the oilfield by the partnership, instead of selling the steam to an oil company. The exact plant site has been moved about 3 miles, although it is in the same field. There is a possibility that one of the general partners will be replaced. And somewhat less steam than originally envisioned will be provided to the oilfield.

So this is a case wherein a project that was originally certified for one site and user on a geological oilfield is subsequently relocated within the same geological oilfield to another user and the FERC certification is amended to reflect that change. Further, this case involves a certification for a project that was originally obtained by a partnership, but one or more of the partners has changed and the FERC certification is amended to reflect the same.

The case I have described seems to me to also fit into the category of minor modifications. These minor changes seem to be the type of routine modifications a project often must undergo as it moves toward financing and construction. If the projects had become significantly more expensive or were no longer physically the projects originally contemplated, the property would not remain transition property under this section of the bill. However, both projects are essentially the same physically, and both have, in fact, become less expensive. I believe that the amendments to the FERC order that are described above fit into the category of minor modifications.

A BREATH OF FRESH AIR AT THE FED

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, I am introducing today, along with Mr. JACK KEMP, a bill designed to begin the reform of the process by which monetary policy is made in our country. The Federal Reserve Disclosure Act of 1986 is needed today to make monetary policy more responsive to the interest of the American people.

The Federal Reserve Board develops this country's monetary policies. Decisions made by the Fed have an impact on every farmhouse, business, and home in America. Interest rates rise and fall with the Fed's decisions; inflation, productivity, and economic growth are all heavily influenced by actions of the Federal Reserve Board.

While the Fed's influence is immense, its responsiveness to the public is minimal. The architects of our Government's fiscal policy—the administration and the Congress—have no direct impact on, or even knowledge of, the decisions made by the Fed. As a result, coordination of our fiscal and monetary policies is rarely attained.

The lawmakers who wrote the original Federal Reserve Act in 1913 labored to ensure that the Fed would never become what, in fact, it has become—a powerful central bank accountable to no one. While the act was under consideration, President Wilson emphasized,

> The control of the system of banking and of (issuing money) must be public, not private * * * it must be vested in the government itself so that the banks may be the instruments, not the masters, of individual initiative and enterprise.

It is time that we followed President Wilson's advice.

The Federal Reserve Disclosure Act of 1986 takes the following steps:

The Federal Reserve Open Market Committee would be required to disclose changes in the intermediate targets for monetary policy on the date on which the committee adopts the change,

The Secretary of Treasury would become a voting member of the Federal Open Market Committee,

The term of the Fed's Chairman would parallel that of the President,

Fed Governors would have terms of 7 years, rather than 14.

These are modest steps, but we need to take these steps to put the Federal Reserve Board on the road to being a full participant in our economic program.

A TRIBUTE TO MRS. JENNIE CHILDRESS BUCKNER

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. DIXON. Mr. Speaker, it is a distinct pleasure to bring to the attention of my colleagues the accomplishments of Mrs. Jennie Childress Buckner of Los Angeles, CA as she celebrates her 100th birthday on October 16 of this year.

Mrs. Buckner is a magna cum laude graduate of Fisk University, class of 1909. Upon graduation, her career and academic pursuits took her across the Nation. She has served as an English teacher in Nashville, TN and later as supervisor of the home economics department of the Nashville school system, a position she held for 15 years. She later studied sociology and statistics at Hampton University, and taught and worked at several institutions of higher learning, including Fisk University, Talladega College in Alabama, Tougaloo College in Mississippi, and Lincoln University in Missouri. She eventually moved to Los Angeles, CA, where she resides today.

Mrs. Buckner is the widow of George Walker Buckner of Virginia, and the mother of two children, Louise Buckner Woodard of Los Angeles, and the late George Buckner, Jr. I join her family and friends in wishing her well on this occasion.

BRADLEY FIGHTING VEHICLE

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. LEVINE of California. Mr. Speaker, this past Sunday's New York Times carried an article by John Cushman which described in detail problems with testing of the Bradley fighting vehicle. Specifically, the article examined whether the Bradley was—as the Army and FMC—the Bradley's prime contractor—have said—capable of crossing deep water. This was to be one of the Bradley's major assets, and was a military requirement for the vehicle.

That the Army and FMC's enthusiasm for the Bradley might have made them less than forthcoming on the Bradley's swimming capability should come as no surprise; the Army still has not conducted realistic, live-fire tests on the Bradley, even though I, along with many of my colleagues, have long pressed for such testing.

I call this article to the attention of my colleagues and urge them to read it. It demonstrates yet again that many unanswered questions remain about the Bradley, questions which could ultimately cause unnecessary casualties to the troops who must ride the Bradley in combat.

EXPERTS SEE RISK IN TROOP CARRIER

(By John H. Cushman, Jr.)

WASHINGTON, September 20.—The Army's Bradley troop carrier would risk sinking if it tried to cross deep rivers and streams in combat, according to weapon experts. The flaw, which is suggested by newly uncovered documents, could halt infantry attacks at the banks of rivers in Europe, where the vehicle is deployed.

Despite the risk to infantrymen riding in the Bradley, the Army and its prime contractor have pressed ahead with the $12.2 billion project.

Maj. Gen. Charles D. Bussey, chief of Army public affairs, said that the Pentagon is "naturally concerned" about any problem with the vehicle but that "the Bradley has proved itself in the field and is vital to the Army's modernization."

MANUFACTURER CALLS IT SAFE

While warning soldiers about the hazards, the Army has continued to accept certifications by the FMC Corporation, which manufactures the vehicle, that the Bradley is capable of crossing deep water.

The company has been sued by a recently dismissed test engineer for making those certifications. The suit is focusing renewed attention on doubts by some experts in the military about the Bradley's capabilities.

Granting interviews on 'condition that they not be identified, the weapon experts agreed to discuss the newly uncovered internal documents from the Army and FMC and other papers filed last week in Federal District Court in San Jose, Calif., in connection with the engineer's suit. The experts included current and retired military officers, Congressional staff members, Government consultants and former Pentagon officials.

The documents indicate that the Army and the contractor adopted extraordinary measures to prevent troops from drowning during river crossings in the 22-ton vehicle, which moves about on tracks like a tank. In training, the troops wear life preservers and rescue boats are kept close at hand.

Patrick J. Head, general counsel of FMC, said that "the basic issue" in the California lawsuit "is whether we misled the Army, and our position is no, we have not."

"Like any other piece of litigation," he said, "we treat it very seriously, and want to dissect it completely before we come up with an absolute position on it."

General Bussey said it was too early to form an opinion about the merits of the California lawsuit.

VIEW OF THE CRITICS

Critics say the reluctance by the Army and FMC to try realistic river crossings seem to contradict assertions before Congress that the vehicle's abilities meet the military's requirements and contribute to the Army's doctrine of aggressive, mobile combat.

On occasion, the Army acknowledges, Bradleys have sunk while swimming across streams, a procedure that entails attaching a rubberized skirt around the vehicle to prevent water from cascading through its hatches as it paddles through water too deep to ford.

One former Defense Department official who is fully familiar with the Bradley program ridiculed the swimming capability of the vehicle. Asked how important it is that the Bradley be able to swim, this expert asserted: "On the defensive, it might not be important. If attacking, if you want to win, if you're going forward, you've got to have it. If you're going to the rear, it may not be important." Bridges to the rear are more likely to remain intact, he explained.

The concern about the vehicle's performance in water is also justified by the fact that soldiers have died trying river crossings in the Bradley's predecessor, the M-113, which is also made by FMC.

To this day, the Army asserts that the Bradley, which carries as many as nine riders into combat, can pass its tests in water, even though it can be risky. That will be the case, the Army says, even after more armor is added to the vehicle, a planned improvement that could add three or four tons to its weight.

But the Bradley's critics say that the vehicle performed poorly in the original operational tests conducted by the Army in 1979, and that the problems have never been fixed.

The problems center on the protective rubberized skirt, which can be damaged during operations and cannot be erected swiftly, the critics say. They add that the Bradley rides too low in the water for the skirt, held in place by poles, to perform during turns, in choppy waters or strong currents, or in certain other conditions.

PRAISE AND DOUBTS

Even those who praised the Bradley, which is armed with a cannon and antitank missiles, doubted its worth in water deeper than three and a half feet, the depth at which its tracks touch bottom.

"The vehicle is a tremendous improvement over the M-113," said one well informed retired officer. "If you asked me to fight in a Bradley versus a 113, 100 percent of the time I'll take the Bradley. That gun and TOW missile are magnificent and the speed and everything else. But I don't want to swim in it."

FMC has tried to meet the Army's requirement that the immense vehicle swim safely since work on the project began in the late 1970's. But recent company documents say that "swim risks could be eliminated and a very significant cost saving achieved if the Bradley fighting vehicle swim requirement were deleted."

Henry Boisvert, the engineer who sued FMC last week, says he thinks the Bradley will never prove capable of safely swimming. In the lawsuit, he asserted that the company inadequately tested the Bradley, falsified the results of some tests, and withheld from the Army information developed at Government expense.

Mr. Boisvert, according to his attorney, was discharged a month ago when he refused to sign a report that had been rewritten to expunge details of flaws. The company said the engineer, who tested the Bradley in water over the past year, was laid off

as part of a general reduction in employment.

Mr. Boisvert sued the company under a little-used law that allows a private individual to collect damages from a Government contractor by exposing its false claims. The suit does not specify the amount of the damages being sought.

DECISION FOR THE ARMY

The suit, filed Sept. 9, puts the Army in a delicate position. The service has been defending the Bradley against a sustained assault by Congressional critics. Now the Army must decide whether it wants to join the legal action against FMC.

A member of the House Armed Services Committee's staff said the new allegations of flaws in the Bradley will be discussed by Congressional conferees on Tuesday when they meet to write a compromise military programs bill for 1987. The House version of the bill envisions spending less for Bradleys than the Senate version, and the House seeks tight restrictions and contractors' tests of their own products.

Hundreds of Bradleys have been purchased in the past five years under FMC's certifications that they met precise specifications for entering and crossing streams with water too deep to ford, waves a foot high, modest currents, and fairly steep banks sloping at a rate of 40 to 50 percent.

After a Bradley vehicle sank during a field training exercise in Germany in 1984, the Army and FMC worked out elaborate arrangements governing training in river crossings according to Army documents.

Infantrymen were told to don life jackets and stand with their heads in the vehicle's open hatches. A tow line was attached to the vehicles. Two power boats with lifeguards and medics with resuscitation gear were to be on hand. And before the operation started, the vehicle was to be dipped in the water and all evident leaks were to be sealed. In an effort to keep the weight down, fuel tanks were to be kept half empty.

MORE SAFEGUARDS SOUGHT

Even after those safety measures were suggested, FMC was not satisfied. The company recommended that the passengers ride on top of the Bradley's hull. And engineers still worried that a shift in the vehicle's center of gravity could sink it.

A fully loaded Bradley's skirt rises only six inches above the water, sometimes less, despite the requirement that it handle 12-inch waves, documents show.

On at least two occasions in 1985, Bradleys sank during training in the United States. But Army officials have put the blame on faulty operations rather than deficiencies in the vehicle.

In telephone interviews, however, Mr. Boisvert's attorney, Phillip G. Svalya, said Mr. Boisvert had found in tests over the past year that under controlled conditions he could not make the Bradley live up to its specifications.

Mr. Svalya described videotapes showing a Bradley entering the company's testing pool at the specified speed of 5 miles an hour. The metal plate that holds the rubberized skirt in place and acts like a prow on the vehicle was bent back, and water poured into the vehicle's skirt, nearly swamping it, the lawyer said.

Company records indicated that the test may have taken place at 7 to 8 miles and hour, but recommended that "changes be made to require water entry at creep speed only."

NOT COMBAT CONDITIONS

The test was performed in a far more benign setting than might be expected in combat. The ramp leading into the pool was on an even slope, with no sudden dropoff, and was inclined less sharply than the Bradley's specifications require. There were no waves or current in the pool. The vehicle had been painstakingly prepared for the tests.

Mr. Boisvert's assigned task at FMC was fairly simple: to test a patch kit that could repair wear and tear in the Bradley's swim skirt.

Despite problems swimming the Bradley, Mr. Boisvert eventually completed his tests, finding the patch inadequate, his attorney said.

But his report came back heavily edited.

"We may need to remove the word failure," said one notation by Mr. Boisvert's superiors. "We could substitute delamination."

FMC officials said this week that the company had assembled a team to investigate Mr. Boisvert's charges.

The Army's leaders discussed the matter on Wednesday, an official said, and Gen. Maxwell Thurman, the vice chief of staff, pledged to investigate it fully. The Justice Department, after consulting with the Army, will decide within 60 days whether the Government will join the lawsuit.

CENTENNIAL ANNIVERSARY OF SACRED HEART PARISH

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. CONTE. Mr. Speaker, next Sunday, I will be visiting Sacred Heart Church in Northampton, MA. The parish is celebrating its 100th anniversary, and I rise today to call my colleagues' attention to this notable occasion: the centennial of Sacred Heart parish.

Mr. Speaker, the parish was founded on January 1, 1886, by Father Noel Rainville. Father Rainville, ordained in 1874, was the curate of Our Lady of Perpetual Help Church in Holyoke, MA, until he was asked by Bishop O'Reilly of Springfield to start a parish in Northampton. On January 1, 1886, Sacred Heart Parish was founded.

Between 1886 and 1891, Father Reinville worked on raising funds for a chapel—which still exists today, behind the church building—and a school. By 1899, the school had 180 students.

In 1911, the parish celebrated its 25th anniversary, and Father Rainville was able to celebrate it. After Father Rainville passed on in 1912, Father Philias Trottier became pastor in 1913. He raised funds to build a new school and church; in 1915, the new church was built and is still standing today. Father Trottier died in 1927.

The third pastor, Father Stanislas Guillette, served until 1935. Father Guillette, before coming to Sacred Heart, was credited with founding the Shrine of Saint Anne's in Fiskdale, MA. He served as pastor of Sacred Heart Parish during a very difficult period—during the Great Depression, when times were tough and funds were short. Nevertheless, he maintained the parish during these terrible times.

The fourth pastor of Sacred Heart was Father Hermengilde Boutin, who served from 1935 to 1949. Father Boutin presided during the 50th anniversary of the church in 1936. His tenure was also marked by major renovations of the church.

Continuing the renovations and beautification of Sacred Heart was the fifth pastor, Father Ray Leroux, who served from 1949 to 1955. Father Leroux also reestablished the League of Sacred Heart. The sixth pastor, Father Henry Auger, served until 1958 and continued the restoration efforts of the parish by modernizing the rectory. Father Auger was said to be very helpful with children and was much beloved.

Father George Brunelle, who served as pastor from 1958 to 1961, worked on renovation of the parish school. And Father Adrien T. Remy, who served as the eighth pastor, was responsible for beginning the steps toward implementation of the Vatican II guidelines at Sacred Heart Parish. Father Remy also worked during his 5-year tenure to alleviate the parish debt, and worked to restore the church's dome in 25-carat gold leaf. Father Remy will also be in attendance at the centennial celebration.

Father Anthony Menard served as pastor from 1966 to 1985. Just last week, Father Menard celebrated the 50th anniversary of his ordination to the priesthood. Father Menard also furthered the Vatican II guidelines of the parish. For the parish community, he established the parish bowling league. Father Menard is the pastor emeritus of the church.

The most recent pastor, Father J. Donald R. LaPointe, has served for the past year. Father LaPointe has a license in clinical social work and does tremendous work in the parish community. It is he who is coordinating this centennial celebration.

Mr. Speaker, I am honored to have been asked to attend this celebration. The Sacred Heart community should be proud of the 100th anniversary of the parish, as I am proud to be able to represent them in the Congress. I wish them—and I am sure that my colleagues join me—the best of luck at the celebration and in the next 100 years.

SPACE PROGRAMS—HOW WILL THEY BE PAID FOR?

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. PEASE. Mr. Speaker, in this bill we would authorize $410 million for research and development of a permanently manned space station while at the same time we would attempt to build a replacement space shuttle out of spare parts and private sector contributions. Together these two facts speak volumes about the continuing confusion over the appropriate role of NASA and of the administration's unwillingness to face up to the costs involved in space exploration. In short, the administration wants an ambitious space program, but does not want to pay for it.

The administration wants to build a fourth space shuttle but wants to do so in a budget

smaller than last year's and to do so without impacting on other NASA programs. The committee has admirably attempted to reconcile these irreconcilable goals, but we are still left with the question of the ultimate cost.

The committee is also to be commended for its caution regarding the manned space station. The requirement for a report to the Congress on anticipated costs and benefits, management factors, and the impact on available resources is certainly the least we should ask for. There are still too many unanswered questions about what we will get for the $20 billion or so we are looking to spend on this project. Simple predictions of a trillion dollar economy are not sufficient justification.

At a time of increasing budget restraints, such costly projects as the manned space station cannot be accommodated without a large and adverse impact on other NASA programs. Our space program is in seeming disarray. I have every confidence that it will recover and we will again press forward the frontiers of space. But that will not happen if we blithely ignore fiscal reality and budgetary limitations. We need the means to match our goals.

If the administration wants a replacement shuttle, a manned space station, a hypersonic aircraft, and SDI, it simply is going to have to explain to the Congress and the American people how it proposes to pay for them.

HONORING DIONICIO MORALES, PRESIDENT OF THE MEXICAN AMERICAN OPPORTUNITY FOUNDATION

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. TORRES. Mr. Speaker, I am pleased to bring to the attention of my colleagues the outstanding contributions of a community leader. Dionicio Morales leads a major effort to secure equality of employment and economic opportunity for persons of Mexican descent.

On October 10, 1986, the Mexican American Opportunity Foundation will celebrate Mr. Morales' 25th anniversary as president and chief executive officer.

As founder and president of the Mexican American Opportunity Foundation, an East Los Angeles based United Way organization, Morales has developed skill training programs; child care centers; a handyman program to repair low-income homes; a senior aides program to furnish part-time employment to elders; a nutrition program for elders; a professional recruitment program in computer science and management; an employment services program; and an information and referral service to facilitate the appropriate placement of children in public and private child care agencies. MAOF has outreach offices in Bakersfield, San Diego, Oxnard, and Salinas.

Morales served 4 years as a State apprenticeship commissioner, heading the State committee to insure minority involvement in building and construction apprenticeships. He has served as advisor to the California Employment Development Department and on the Los Angeles County Manpower Council [LACMAC], and has held a seat on the National Advisory Committee for the U.S. Department of Labor.

Morales currently uses his expertise as a board member on the Century Freeway Commission, and as a board member to the National Council of Senior Citizens in Washington, DC. He also continues to organize annual Mexico-United States conferences for cultural interchange and dialog on issues of bilateral concern.

Born in Arizona, and raised in Moorpark, CA, by migrant farmworker parents, Morales went on to acquire his education at California State Teacher's College at Santa Barbara and continued his studies at the University of Southern California. He now lives in Pico Rivera with his wife and the youngest of their four children.

In Morales' earlier career his emphasis was on creating employment opportunities at the entry level. It is both a testimony to the accomplishments of the Mexican-American community, and evidence of the work still left to do, that he is now able to focus his efforts on getting Mexican-Americans into policymaking positions.

TRIBUTE TO NICK IANNI

HON. CARL D. PURSELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. PURSELL. Mr. Speaker, I would like to take this opportunity to recognize the work and career of a gentleman from my district, Nick A. Ianni.

Mr Ianni has announced his intentions of retiring as superintendent of the Washtenaw Intermediate School District in my home State of Michigan. This marks the end of nearly 30 years of service in public school administration and 36 years in public school work.

During Mr. Ianni's tenure, the Washtenaw Intermediate School District has grown from an operation of 26 employees in 1966 to a current status of more than 170 employees. In terms of fiscal responsibility, he has brought the district from a budget of less than $500,000 to more than $15 million, with assets topping $7 million.

Along the way, Mr. Ianni has earned the respect and admiration of his employees and colleagues. In tribute to his efforts, the school district is bestowing upon him the honor of superintendent emeritus.

Mr. Speaker, as a former teacher myself, I believe the role of our educators in this Nation cannot be understated. A strong educational program provides our citizens with the key to prosperity and success.

Mr. Ianni's work in that regard speaks for itself—he has built and maintained a school district in a manner of which he can be proud. I salute Nick Ianni and ask my colleagues to join with me in wishing him the very best as he takes this important step in his life.

ADVOCATE FOR HANDICAPPED

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. FLORIO. Mr. Speaker, I would like to bring to the attention of my colleagues Frank Rodio, Jr. Frank is a resident of Hammonton, NJ, and although I do not have the privilege of representing him in the House he serves as a valued source of information on issues related to the handicapped.

Frank Rodio is himself handicapped and through his experience in overcoming his disability he has proven that no obstacle cannot be overcome. He is a successful example of what strength and perseverance can do when coupled with a strong determination to help others.

Frank has written an article, "Changes I Have Seen," which has been published in Disabled USA magazine. I ask my colleagues to read this thoughtful review of the progress which we have made in this country toward establishing full freedom for the handicapped. We still have a long way to go with this issue, Mr. Speaker, but with people like Frank Rodio, Jr., I am sure that we will persevere.

The article follows:

CHANGES I HAVE SEEN

Eleven years ago President Gerald Ford called for the first ever national conference on handicapped individuals. I participated in that conference, I attended it, and before and since the conference I have been active in helping my community become more accessible to all people with disabilities. From my viewpoint, there has been a lot of positive change in the last 10 years.

Back in 1975 President Ford's call for a national conference and the promise of White House sponsorship precipitated a loosely coordinated national effort among disabled people—practically for the first time ever. Remember when this was: before the International Year of Disabled Persons; before the signing of the Section 504 regulations, before the organization of the American Coalition of Citizens with Disabilities.

Following Ford's announcement on November 22, 1975, many people in all 50 states and the territories put in much hard work to arrange state conferences that were held throughout 1976. As did several other states, my home state of New Jersey held regional conferences at barrier-free facilities and then convened a statewide meeting. I was a delegate to the July 10, 1976 New Jersey Conference on Handicapped individuals, held at Gloucester County College in Sewell, New Jersey. At the all-day conference the featured speaker was a U.S. Congressman, James Joseph Florio of New Jersey's First District. While having congressmen speak at disability conferences is perhaps common nowadays, in 1975 it was an unusual recognition of the importance of the disabled community.

The New Jersey conferences occurred within a few days of the July Fourth Bicentennial Celebration, and many of us felt that the timing underscored the need to secure independence for America's thirty million disabled persons.

Prior to this time I had worked actively to help to achieve greater independence for disabled people in my community. In 1974,

for example, I became employed by the Camden County government (population near half a million, located next door to Philadelphia, Pennsylvania). By 1977 I had completed research for and published "A Census of Handicapped Persons and Directory of Facilities for the Handicapped" for Camden County.

Over 23,000 handicapped people, I found, resided in the county's 37 municipalities and rural areas. Many towns already had some barrier-free municipal buildings or were beginning to construct them. Such a development, to me, is an essential element to the independence of handicapped people. Some of the municipalities were also designating public parking spaces as reserved for persons with disabilities.

One recommendation I have for American cities and counties is for government officials to appoint qualified handicapped people to housing authorities, transportation and planning boards, and other responsible committees that advise and review municipal services and development planning.

The conference that President Ford had called for in 1975 occurred in 1977 in Washington, D.C. from May 23 through 27. There were many workshops, seminars, and panel presentations at the White House Conference on Handicapped Individuals; President Jimmy Carter was the featured speaker—and continues to be the only American President to speak to a mass gathering of disabled persons.

How large was it? Attending as a delegate from New Jersey, I was one of over 3,000 people at the conference. Among the participants, a great range of disabilities was represented; there were mobility impaired people, deaf people, blind people, people with visible disabilities, and parents of disabled children and of disabled adults. The conference site was the Sheraton Park Hotel, a huge rambing building on a steep hillside. Within the hotel, access routes were sometimes round-about and uncertain. At some moments during the conference, there was much confusion, but it was exciting and enlightening.

LOCAL-LEVEL INITIATIVES

After the White House Conference on Handicapped Individuals ended. I returned to New Jersey and worked to implement recommendations voted on by the state and national conferences in which I had participated. During the next few years, too many developments occurred for me to try to name but a few of the most outstanding.

Access to transportation in New Jersey improved with the advent of half-fare policies for handicapped bus riders and special fare tickets being available at most banks and county offices on aging. The Delaware River Port Authority also inaugurated a half-fare policy on its high-speed river crossing.

The state Environmental Protection Department commenced a policy of discount rates for handicapped people using state parks.

An access guide to Camden County was published. This was a joint project of the county's Employment and Training Center, a local newspaper, and the Gannett Foundation.

The County created a Disabled Citizen Advisory Board, on which I served in 1977, 1978, and 1979. In 1979 the county went a step further and opened an Office on the Handicapped. (Sadly, this agency no longer exists due to federal budget cuts.)

Neighboring Altantic County also set up an Office on the Handicapped. This agency continues to operate today, as do similar offices in ten other New Jersey counties. (Regarding the famous casinos in Altantic City, yes, they are accessible to handicapped patrons, and they have begun to hire workers with disabilities.)

The positive developments that occurred in New Jersey throughout the 1970s indicate that our society was willing to begin a drastic change in attitudes toward people with disabilities. Implicity, both the government and the public it represents began to see that handicapped people are capable of taking care of themselves and participating in life's activities. Furthermore, it began to be appreciated that a responsible government had a duty to understand the actual needs of disabled people and to support their efforts to achieve greater independence.

The governmental initiatives and their implicit change in attitude at the local and state level were matched, during the 1970s, by new initiatives at the federal level. Again, I believe that what I have seen shows a drastic change in attitudes toward people with disabilities.

RISING TIDE OF FEDERAL INVOLVEMENT

In 1972 two federal District Court cases helped to establish the right of a handicapped child to a publicly supported education suited to his or her needs. By the end of the 1970s, the number of states with special education laws had risen from 10 to 50.

In 1973 Congress passed the Rehabilitation Act (which as amended and reauthorized in 1978, 1983, and—quite likely—the fall of 1986). The legislation contained Section 504, which provides that an agency, institution, or other entity receiving federal assistance must not discriminate on the basis of a handicap. Regulations for this far-reaching section of the Act were soon drafted—but not signed until three years later, after the disabled community mounted protests around the country at the delay. President Carter's Secretary of Health Education and Welfare (Joseph Califano) signed the basic implementing regulations the month before the White House Conference in May 1977. The signing was a major victory for the disabled population.

Since the White House Conference other developments at the federal level on behalf of disabled persons included the creation (in 1978) of the Architectural and Transportation Barriers Compliance Board, which is concerned with accessibility of federal buildings and transportation systems and buildings benefiting from federal assistance. Also in 1978 came the National Council on the Handicapped and the National Institute on Handicapped Research.

There are many other landmarks in federal legislation. Again, there are too many to even begin to name them in this short article. Still, whether it be an education act, or a developmental disabilities law, federal aid to highways, or job training and placement programs, a new attitude toward persons with disabilities was evident, and the mainstreaming of disabled persons was supported in many ways.

WORLD GOVERNMENTS BEGIN TO ACT

This past decade has witnessed another unique development on behalf of handicapped people. New attitudes to disability and concern for the rights of disabled people have become a worldwide interest. The United Nations declared 1981 as The Year of Disabled Persons and urged the governments of all nations to undertake projects on behalf of their disabled citizens.

For the first time, national and world leaders were discussing disability alongside topics as important as peace, disarmament, economic development, and world trade. For the first time, world leaders were becoming alert to a simple fact—the population of disabled people is huge—500 million persons—and that, while prevention of disability is important, so too is integration of people with disabilities into national life. In many countries of the world, handicapped people have had no rights, no role, and no voice. The United Nations' Year of Disabled Persons was a strong move in the opposite direction. As a result of the Year, many countries—where previously disability was only a minor health concern—undertook, and have maintained since then, programs focused on the independence of disabled persons.

The United States is definitely more advanced than many countries in attitudes toward programs for citizens with disabilities. We can feel pride, but we shouldn't be smug. There continues to be a need to fight against losing what we have gained, and there is still much that needs to be accomplished.

GAINS TO PRESERVE AND NEW ONES TO WIN

Only three years ago, for example, great energy was expended to preserve Section 504 regulations from crippling changes proposed by the Reagan administration. And don't forget the thousands of disabled people who were suddenly terminated from disability benefits in the early 1980s because of new, controversial Social Security regulations for case review. By 1984 the new regulations were themselves terminated, and many former recipients of benefits have been restored to the program—but all of them had to endure a terrible period in their lives, and a few committed suicide out of desperation, or maybe anger. It should never be forgotten, while disabled people continue to make gains in independence, that for many the hold on independence is fragile and subject to catastrophic problems if critical support programs are denied.

One area of life as a disabled person that has as yet received little attention by the government and the general public is public policy for families with disabled members. This was an important topic at the 1977 White House Conference on Handicapped Individuals, and we delegates made several recommendations which, to my knowledge, have not been taken up by either local, state, or federal government.

I should like to close this article with a personal observation. In July the Statue of Liberty was 100 years old, and the event received massive coverage in the media and was of interest to almost every American. The coming year, 1987, will be the 200th anniversary of the United States Constitution, and celebratory events are being planned throughout the nation. We are living at a time when great symbols of America's unique interest in individual rights and liberties are major topics in the public eye.

Thus, all of us interested in disabled people have a unique opportunity to advance the fight for independence for persons with disabilities by underscoring a linkage to concerns which are basic to this nation's character. It is time that not one of America's over thirty million disabled persons feels that he or she is a forgotten citizen. When that is finally achieved, the 1977 White House Conference on Handicapped Individuals, held a decade ago, will be an important part of America's legacy.

A CONGRESSIONAL SALUTE TO STEVE BUBALO

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ANDERSON. Mr. Speaker, I rise today to pay tribute to a civic leader in my district, Steve Bubalo. Steve has been named Croatian Man of the Year for 1986 by the cultural committee of the Man and Woman of the Year Award. He will be honored on October 11 at an awards dinner. Steve's receipt of this distinction gives me an opportunity to express my appreciation for his many contributions to the advancement of the Croatian-American community of San Pedro.

The Croatian Man of the Year Award is in recognition of Steve's generosity and unflagging commitment to the betterment of the Croatian-American community. His enthusiasm for, and constructive contributions to, the activities of Croatian communities throughout our State have supplied ample testament to the considerable energy, creativity, and selflessness which he brings to this cause. Unquestionably, Steve has been a catalyst for growth and achievement in the Croatian-American community and provided the impetus behind worthwhile initiatives over many years of active engagement in Croatian affairs.

Steve arrived in America in 1955. Over many years, with large investments of time and energy, he built the Steve Bubalo Construction Co. of Los Angeles into a profitable enterprise. In the 31 years since he arrived on our shores, Steve has shared his success in the world with many others in the Croatian community. He has employed substantial numbers of Croatian immigrants in his construction firm, and has established and sponsored numerous athletic clubs and other activities for young people. Clearly, Steve's active engagement and involvement in a host of civic-minded pursuits highlight the valuable contribution he has made toward the enhancement of the Croatian community.

My wife, Lee, joins me in extending our warmest congratulations to Steve Bubalo on this special occasion. His persistent willingness to assist others in every way possible serves as an inspiration to us all. I commend the cultural committee for rewarding the Croatian Man of the Year Award to someone so deserving and wish Steve, his wife, Louise, and their children, Stephanie and Nikola, all the best in the years to come.

A SALUTE TO DR. THOMAS E. MALONE

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. STOKES. Mr. Speaker, it is my privilege and pleasure to rise today to pay tribute to Dr. Thomas E. Malone, Deputy Director of the National Institutes of Health since 1977, who last month retired after 23 years of Federal service with NIH. He leaves a legacy of accomplishments, achievements, and contributions to those in the health care field.

Dr. Malone received his B.S. and M.S. degrees from North Carolina College in Durham, NC and a Ph.D. from Harvard University. He joined NIH in 1962 as a grants associate in the Division of Research Grants. He was trained in all aspects of peer review, Institute functions, manpower support, fiscal and program management of grants and contracts, and the appropriations process at all levels of Government.

As NIH Deputy Director, Dr. Malone provided day-to-day direction for the senior staff at NIH. He reviewed planning, budgetary and legislative documents, and selected priorities and guided the allocation of resources at NIH. Dr. Malone served as acting NIH Director from July 1981 to April 30, 1982, an assignment he particularly enjoyed.

In Dr. Malone's opinion, the more rewarding and interesting activities of his career, besides being NIH Director, were his participation in international health and chairing the Health and Human Services Secretary's task force on black and minority health.

Mr. Speaker, Dr. Malone served as a member of the U.S. delegation to the World Health Assembly seven times including the recent 1986 World Health Assembly. He was a member of numerous Public Health Service and U.S. delegations to develop bilateral agreements in international health with Cuba, Kuwait, Nigeria, Japan, and with China, for development and signing of the United States-China protocol for cooperation in the areas of cancer, cardiovascular disease, virology, immunology, genetics, public health, and health services research and medical information.

Mr. Speaker, in January 1984, Dr. Malone was appointed as chairman of the Secretary's task force and black and minority health by former Health and Human Services Secretary, Margaret Heckler. Under his insightful direction and leadership, the task force compiled an eight-volume report that represents a landmark effort in analyzing and synthesizing what is currently known about the factors contributing to the health status of blacks, Hispanics, Native Americans, and Asian/Pacific islanders. The report summarizes data and information compiled on specific minority health programs, makes recommendations for a coordinated effort by the Department of Health and Human Services to address the disparity in health status between the majority and minority populations studied, reports on the six leading causes of death for blacks and other minorities, and provides an inventory of all HHS program efforts in minority health and other non-Federal organizations.

This exhaustive report has provided a foundation from which health care professionals can initiate efforts to improve the health care status of America's poor and minority populations and has served to inspire innovative programs and solutions to problems that affect all segments of our Nation's population.

Mr. Speaker, despite the long hours worked by Dr. Malone in achieving a rare standard of professional excellence, he has managed to excell in his private life as well. He is a holder of a second degree black belt in Judo (Nidan); serves as the Sensei (chief instructor) for the NIH Judo Club, which he plans to continue after his retirement and is the holder of a gold belt in Karate. In addition, he is a certified FAA private pilot and is currently studying for instrument certification. He plans to obtain a commercial license which would qualify him to be a pilot for a small airline. Clearly, "retirement" for Dr. Malone only represents moving into a new phase of life. He has commented: "I've always had the philosophy that when one is eligible to retire, one ought to move on to other challenges. You've got to allow others to bring new vigor to the Institution."

Dr. Malone has received numerous awards and honors including: The Department of Health, Education and Welfare [DHEW] Superior Service Award; the DHEW Distinguished Service Award; the Scroll of Merit Award from the National Medical Association; the Gold Medallion Award from the Carver Research Foundation of Tuskegee Institute; the Senior Executive Service [SES] Presidential Merit Award and the SES Presidential Distinguished Service Award.

Mr. Speaker, Dr. Malone takes great pride in his work and in the Institution to which he provided dedicated service. He says, "NIH is, in my judgment, one of the great institutions of our time and perhaps of all time. It has an unusual assemblage of people who work for the noble purpose of removing human disease from this world. It's been a privilege to work here and to have seen in my time the spectacular movement of science over several decades. The benefits to mankind have already been phenomenal, but I believe what's to come is undreamed of today."

On Thursday, October 1, the Black Congress on Health, Law Economics will present, "An Evening Dedicated to the Improvement of Minority Health." Dr. Malone will be the special honoree for the occasion.

Mr. Speaker, although Dr. Malone may be retiring from NIH, he has not retired from life nor any of the challenges of his personal endeavors. I am confident that he will continue to contribute both to the effort to improve health care for the previously ignored segments of our society and will serve as an inspiration to all who aspire to do the same. He truly deserves the best life has to offer and I ask my colleagues to join me in offering congratulations to a fine American and wish him the best of luck in the future.

LUZERNE COUNTY BICENTENNIAL

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. KANJORSKI. Mr. Speaker, I am always eager to share good news about the corner of northeastern Pennsylvania which makes up my congressional district, and today I have an especially celebratory message to share with my colleagues. This year Luzerne County Commemorates 200 years of existence as a separate county of Pennsylvania, and I am proud and pleased to join in celebrating the occasion.

A land of mountains and valleys, clear streams and rolling hills, the area which is

now Luzerne County was once home to many small bands of Indians; the Shawanese, Nanticokes, Mohicans, and Lenni-Lenapes all lived peacefully in the beautiful countryside. The first European to see this magnificent land was Stephen Bruehle who descended the Susquehanna River in 1616. By 1742, Moravian missionaries came to the area and spoke with the Indian tribes.

Drawn by the fertile land and the promise of a lucrative fur trade, a large army of Connecticut men arrived in the Wyoming Valley in 1762 and began a settlement called Mill Creek, where the city of Wilkes-Barre now stands. Indians destroyed the settlement a year later, and the few remaining survivors abandoned the area and returned to Connecticut. A fresh group of Connecticut Yankees known as the "First Forty" arrived in the beginning of 1769 to find that a group of the advocates of William Penn, the Pennamites, had preceded them by 3 weeks. From the conflict over ownership of the land arose a series of Yankee-Pennamite wars. From 1771 to the Revolution the Wyoming Valley was relatively tranquil, and families began to settle in the area. The town of Forty Fort was established, a grist mill was erected on the east side between Wilkes-Barre and Pittston, and a saw mill was built near Mill Creek. Lumber was the Wyoming Valley's first industry, later overshadowed by the mining of anthracite coal.

On September 25, 1786, the Pennsylvania Assembly passed a bill incorporating the Wyoming district into a separate county, named in honor of Caesar de la Luzerne, who served as the minister to the United States from France. Wilkes-Barre was designated as the county seat. The original county land mass was 3,700 square miles and was later subdivided into Bradford, Wyoming, Susquehanna, and Lackawanna Counties.

Mr. Speaker, Luzerne County, PA, is beautiful and rich in history. I am proud to share this very special anniversary with my colleagues in the House of Representatives.

THE 70TH ANNIVERSARY OF TROOP 1, BOY SCOUTS OF AMERICA

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. MATSUI. Mr. Speaker, I rise today to call attention to the 70th anniversary of troop 1, of the Boy Scouts of America. Troop 1 is the third oldest Boy Scout troop and they are commemorating this milestone on September 7, 1986.

Troop 1 has provided many young men with an opportunity to grow morally, physically, and mentally. The dedication and commitment of young men to troop 1 is illustrated by their roster of nearly 250 Eagle Scouts, the highest rank in scouting. I cannot think of a more impressive testament of the high quality of performance for a Boy Scout troop.

A tribute must be paid not only to the dedicated young men involved in scouting, but also to the unselfish parents and community members who have donated their time and energy to ensure troop 1 continues as a quality program. It is the dedication of these volunteers who make the scouting program work in this community and every community across the Nation.

Mr. Speaker, on behalf of the people of Sacramento, I would like to congratulate troop 1 for its 70 years of outstanding work and offer them best wishes in their future years.

NATIONAL ASSOCIATION OF NEGRO BUSINESS AND PROFESSIONAL WOMEN'S CLUBS—31ST ANNUAL FOUNDERS' DAY BRUNCH

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. RODINO. Mr. Speaker, next month I will have the great privilege to be the dais guest at the 31st Annual Founders' Day Brunch, sponsored by the National Association of Negro Business and Professional Women's Clubs, north Jersey unit. The brunch will be held at the Meadowlands Hilton In Secaucus, NJ.

The recipients of the 31st Annual Founders' Day Awards are:

Sojourner Truth Award: Clara E. Dasher.

1986 Man of the Year Award: Charles Knox.

1986 Professional Woman of the Year: Delores Tyson.

1986 Businesswoman of the Year: Rebecca D. Andrade.

Community Service Awards: Maria Epps and Eunice Flanders.

Special Achievement in Fine Arts: Don Miller.

Special Tribute—Charter Member Appreciation Award 1940–86: Grace Malone Eubanks, Garnett Henderson, and Le Etta Brown LaBega.

Scholarship Awardees: Boyyinah Curl, Valerie Steele, Marla Rice.

Book Scholarships: Christy Campbell, Kelly Duhart, Natalynn Dunson, Debbie Edwards, Kimberly Jenkins, Yolanda Traylor.

31st Annual Founders' Day Brunch Committee: Chairperson, Goldie T. Burbage; Cochairperson, Ada Banks; Chairperson, Awards Committee, Beverly L. Ballard; Chairperson, Ticket Committee, Bessie H. White; Chairperson, Souvenir Journal, Diane L. Lanier; Chairperson, Hostess Committee, Cheryl M. Hawk; Chairperson, Reception Committee, Callie M. Eason; Chairperson, Flower Committee, Sarah A. Cody.

Mr. Speaker, the National Association of Negro Business and Professional Women's Clubs was founded in 1940. Its network includes many chapters throughout the Nation and a sister organization in Gambia. For over 40 years the NANBPWC has provided vital services and assistance to students, immigrants and the elderly in our community. Members of the north Jersey unit have worked hard to provide funds for Essex County College, scholarships for high school students, health fairs for neighborhood residents, activities for senior citizens, and food and clothing for Haitian immigrants.

Mr. Speaker, the NANBPWC has played a vital role in New Jersey. NANBPWC members are there, in many different capacities, letting the people who live in New Jersey know that they care about opportunities for students, they care about senior citizens, they care about sick and handicapped children, they care about immigrants striving for a sense of belonging in a new, strange land.

Mr. Speaker, I applaud the many great contributions the members of the New Jersey National Association of Negro Business and Professional Women's Clubs make to our community year after year. Thanks to their commitment and hard work, the world is a brighter place. I am indeed honored to join them in celebrating the 31st Annual Founders' Day.

A CONGRESSIONAL SALUTE TO THE CITY OF DOWNEY ON ITS 30TH ANNIVERSARY

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ANDERSON. Mr. Speaker, it truly is an honor for me to rise today and pay tribute to the city of Downey, CA, which marks its 30th anniversary of incorporation this year.

To commemorate this special occasion, the Downey City Council has scheduled a community celebration during Civic Center Open House Day on October 18.

Nestled between the San Gabriel Mountains and the Pacific Ocean, Downey was named for John Gately Downey, who governed the State of California during the Civil War.

Many years ago, Downey was primarily farmland and home to only a handful of residents. Today, it is primarily a residential community and known for its many aerospace-related industries. In fact, it is affectionately referred to as the "Home of Apollo."

With a council-manager government, Downey is considered one of Los Angeles County's most progressive cities. And, I'm confident its 85,000 residents will agree that the city of Downey is a great place to live and work.

Mr. Speaker, I know you join me in congratulating Downey Mayor James S. Santangelo, Mayor Pro Tem Diane P. Boggs, Councilman Randall R. Barb, Councilman Robert G. Cormack, and Councilman Roy L. Paul on this important occasion.

I am confident that the city of Downey will continue to be one of California's finest communities for many years to come.

A RESPONSE TO PRIME MINISTER NAKASONE OF JAPAN

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. STOKES. Mr. Speaker, this past Monday Prime Minister Yasuhiro Nakasone of Japan, in a speech before his ruling Liberal Democratic Party, remarked that the United

States has fallen behind Japan in education and intelligence and suggested that the reason for America's decline in these areas was this Nation's large population of blacks, Puerto Ricans, and Mexicans.

I was outraged upon learning of the Prime Minister's statements and believe that his words are not only an insult to minorities, but to all Americans. His remarks clearly demonstrate a total misunderstanding of American history and show a disregard for the numerous contributions minorities have made to virtually every aspect of society, both in the United States and throughout the world. In fact, I am sure that with a little investigation, the Prime Minister would find that many technological and marketing techniques utilized today by the Japanese were developed by minority Americans.

Mr. Speaker, Prime Minister Nakasone, as a product of a largely homogeneous nation, has demonstrated his lack of understanding of the value of our multiracial and ethnic society. While I understand his desire to tout the accomplishments of his country, I am offended that he chose to explain the alleged shortcomings of the United States in terms that are insensitive, racist and untrue.

Prime Minister Nakasone owes the people of the United States an apology for his remarks and perhaps is in need of a history lesson so that the next time he decides to comment on American society, he will be correct in his assumptions.

CONGRESSIONAL SALUTE TO MARY T. MORITA

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. MATSUI. Mr. Speaker, it is with great pleasure that I pay tribute to Miss Mary T. Morita, an outstanding American who struggled against adversity in her youth, worked 39 dedicated years for the State of California, and is now retiring.

Mary T. Morita is a truly remarkable woman. She was raised in the Sacramento area, attended local schools and participated actively in her community. She had every intention of participating in the American dream. However, the relocation of Japanese-Americans to desolate camps during World War II darkened the hopes that Mary, her family, and many Japanese Americans held. She was evacuated to Tule Lake, CA, in June 1942 and spent nearly 22 months behind barbed wire and fences. However, Mary never gave up her dignity. After the war, she returned to Sacramento, CA, with her family.

Mary T. Morita's courage in the face of adversity showed that she is an American with dignity and honor. She served nearly four decades with the California State Department of Rehabilitation. In addition to her service of distinction under seven directors and six Governors, she continually set the highest standards of performance for State career secretaries.

Mary is going to retire, but she will continue to leave her imprint on American society. Mary is a good person and represents what America is all about.

Mr. Speaker, on behalf of the State of California and my colleagues in the U.S. Congress, I extend my heartfelt gratitude and best wishes to Miss Mary T. Morita for a job well done and wish her every happiness in her retirement.

THE IMPORTANCE OF MAINTAINING A STRONG U.S. COMMITMENT TO THE INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

HON. DON BONKER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. BONKER. Mr. Speaker, the International Fund for Agricultural Development [IFAD], while one of several multilateral development institutions, is unique in its emphasis on subsistence food production among traditional small farmers. This microeconomic approach is highly successful and often overlooked in the larger foreign assistance debate. As part of the 1984 foreign assistance authorization, Congress approved continued U.S. participation in IFAD and included support for a special account for sub-Saharan Africa. In February of this year, the IFAD member nations agreed upon the replenishment amounts: The United States will provide some $30 million to the fund in each of the next 3 years. An additional $10 million has been set aside for the special African account by the House Appropriations Committee.

I urge my colleagues to take a close look at the impressive achievements the Fund has made over the last decade and to consider its commendable record when voting on the foreign assistance appropriations conference report in the coming weeks. I would also like to call the attention of the House to an article, written by a constituent of mine, on IFAD. The author, Kristin Blalack, is a member of the Olympia, WA, chapter of RESULTS, which has been highly successful in keeping issues of development and food policy in the public eye.

The article follows:

[From the Olympian, Aug. 17, 1986]

AGRICULTURAL DEVELOPMENT DOES MORE THAN EASE HUNGER

(By Kristin Blalack)

The horror of famine in Africa has receded over the past year. The crisis of such immense need sparked unprecedented giving of food and assistance from individuals and governments around the world. From September 1984 to September 1985, the United States alone contributed more than $1 billion in food aid to Sub-Saharan Africa. Although such generous aid has saved countless lives, some 20 million people remain seriously affected by famine.

The work of ending the cycle of hunger, malnutrion and famine in Africa has only just begun, however, and will require a long-term commitment of global cooperation and assistance. One way the United States can continue to express our country's support for ending hunger is by contributing to the Special Fund for Sub-Saharan Africa established by the International Fund for Agricultural Development (IFAD).

IFAD grew out of the 1974 World Food Conference held in Rome. The conferees asserted that the problems of food availability, nutrition and hunger are deeply rooted in the issue of development and poverty. IFAD's mission is to increase food production and self-sufficiency among the poorest populations in the developing countries. Although one of seven development aid institutions, IFAD is in many ways unique. First is its membership of 139 countries arranged in three contribution categories: developed countries (including the United States); oil-exporting developing countries of OPEC, and other developing countries. All participate in the decision-making for the Fund, and all contribute to IFAD's funding at varying by specific ratios.

Secondly, IFAD has an exclusive focus on the rural poor due to its mandate "to finance agricultural development projects primarily for food production in the developing countries."

Thirdly, the Fund has come to serve as a principal coordinator of development aid through the cooperative financing of its projects by member states, other UN agencies, and nongovernmental organizations.

The beauty of the agency's work lies, however, in the flexibility and particularity of its projects, and in its commitment to the "participation of beneficiaries as fundamental to the evolution and development of schemes for the rural poor." Every project is based on thorough research and analysis of existing conditions, which will most often be unique to a given area. From the initial stages of project formulation through all aspects of implementation, national, regional and local governments, institutions and individuals are involved.

The effectiveness of this approach can be measured by the successes that are emerging as projects mature and reach completion. In Bangladesh the Grameen Bank, a credit institution providing loans to landless men and women, has enabled 100,000 impoverished people to establish cottage industries and begin accumulating some savings. Repayment on these loans is an impressive 99 percent!

The rural people of Bolivia, descendants of the Incas, live marginally in mountainous, arid country. An IFAD project there set out to reverse the loss of topsoil, improve use of water for irrigation, and develop roads and marketing potential. As a result, agricultural production has increased 350 percent, the annual net income per capita has risen from $74 to $173, and the nutrition level of the people has improved.

It is in Africa that the greatest challenge lies for IFAD's mission to increase food production and self-sufficiency. As part of the current drought recovery effort, the Fund set forth this February the Special Program for Sub-Saharan Africa mentioned earlier.

This program aims to provide seed, tools and fertilizer to small farmers; promote water conservation and supply; develop soil conservation and reforestation programs; encourage the production of drought-resistant crops, and support policies that promote production by small farmers.

On-going IFAD projects in Africa already demonstrate the positive results the Fund can achieve. Through supplying seed, fertilizer and extension services in the Kasai region of Zaire, corn production had doubled, ultimately benefiting 80,000 farm families. In Somalia, water and soil conservation efforts have helped 5,000 farms, increasing crop yields 64 percent. Women in Gambia, who traditionally till and harvest rice in

tidal swamps, have gained title to their land and have increased rice production sixfold, aiding 15,000 people in 40 villages.

In February the United States agreed to join in the second replenishment of IFAD's funding base, pledging almost $80 million over the next three years. The total amount of the second replenishment, $500 million, is less than half that of the first replenishment, begun in 1980.

In order to develop lasting solutions to Africa's chronic food production crisis IFAD's Special Program for Sub-Saharan Africa requires funding above and beyond what is available through second replenishment. The United States voted for the Special Program; Congress now needs to authorize appropriations commensurate with our government's verbal commitment. Unfortunately, the Reagan Administration has said it intends to take the $28 million annual contribution out of existing bilateral fund programs, rather than seek a separate appropriation.

IFAD's president, Idris Jazairy, has said, "IFAD is in the business of assisting the rural poor to liberate themselves from the age-old bonds of poverty through the promotion of private initiative." Is this not indeed a most appropriate goal for the United States to support?

A CONGRESSIONAL SALUTE TO JOHN H. INGRAM

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ANDERSON. Mr. Speaker, recently, my administrative assistant, John H. Ingram, left Capitol Hill to enter the private sector. Though I, of course, wish John all the best in his future endeavors, his knowledge of my district, the State of California and the congressional process will be missed.

As my colleagues know, the position of administrative assistant [AA] is a very important one in our Government. Very few individuals have the opportunity to become so aware, involved and totally knowledgeable of the actual process under which our Federal Government operates than our AA's.

From 1976 to 1979, John served as my legislative assistant for those matters coming before my assignment on the Committee on Public Works and Transportation. The jurisdiction of this committee is very broad: rivers and harbors, roads and mass transit, oil and other pollution of navigable waters, bridges and dams, water power, airports and civil aviation, and the transportation regulatory agencies. He rejoined my staff this year as AA and has developed an excellent background and understanding in these areas and such other diverse matters as defense issues, public/private shipbuilding, port development, household goods/freight forwarding, and trade development.

In addition to his tenure with the Congress, John has held positions as assistant press secretary to the Governor of Massachusetts, Federal representative for the Governor of California and chief lobbyist for a Washington trade association. Complementing John's professional development is his strong educational background. After graduating from West Virginia University's School of Journalism, he continued his studies at Boston University and Massachusetts Institute of Technology [MIT].

Given his past record of achievement, Mr. Speaker, I am confident that John will continue to enjoy success in all his future endeavors. My wife, Lee, joins me in commending John Ingram for a job well done.

A LEADER FOR YOUTH—REV. LOUIS FALCONE

HON. PAUL E. KANJORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. KANJORSKI. Mr. Speaker, today I am pleased to rise to honor a man who has become a legend in my area for his more than 30 years of leadership in promoting sports among youth. Rev. Louis Falcone, director of recreation in Kingston, PA, has extended his role of ministry far beyond his work with his church to practical service in establishing sports programs for young people. Tonight I will be joining members of the community who are sponsoring a testimonial dinner for Reverend Falcone, in honor of his many years of service to the Wyoming Valley.

Reverend Falcone was instrumental in founding the Luzerne-Courtdale-Pringle Little League organization and has served as coach since 1956. He has served two terms as league president, as well as umpire in chief, treasurer, and all-star manager for many of those years. He was largely responsible for the construction of the first field for the Little League as well as its present field, constructed in 1976. As Little League manager, he produced a number of championship teams. Since 1971, Reverend Falcone has coached a team in the Fort Swoyer Teeners League and guided the team to two consecutive titles. Two years ago he coached the league all-star team to the Wyoming Valley Teeners League crown and has produced numerous other title winners.

Baseball is just one of the many sports Reverend Falcone has helped to develop for area youths. For the past 10 years he has coached in the Luzerne-Courtdale-Pringle Junior Football League, served as president of the Wyoming Valley Junior Football Conference. After borrowing money to start a mini-football team, he organized a parents club to take over.

Knowing of Reverend Falcone's talents in other sports, a group of young people from St. John's School in Luzerne recruited him to coach their basketball team in 1966. In the early days of the St. John's program, the team had no gym and used the Marine Corps Training Center gym whenever possible. During his 27 years of running the program for St. John's, he initiated a girls' basketball program and founded cheerleading squads. Reverend Falcone again produced many championship teams, one of which dedicated their undefeated season to the members of the University of Evansville, Indiana basketball team which perished in a plane crash in 1978. University officials were so moved by the tribute that they invited the St. John's team to graduation services, where the team presented a duplicate of the league championship trophy they had won in memory of their departed collegiate counterparts.

Reverend Falcone's work with youth earned him a special award in 1976 for outstanding work in combating juvenile delinquency from the Pennsylvania Chiefs of Police Association. Mr. Speaker, how many times have we thrown our hands up in despair, contemplating the many temptations adolescents face in these troubled times? Drug abuse, alcohol abuse, self-destructive behavior sometimes seem to be insurmountable obstacles to our children who we hope to grow into mature, responsible adults capable of leading our Nation in the future. Working with today's youth is a gift to tomorrow, and I would like to take this opportunity to thank Reverend Falcone for his most generous gift to the Wyoming Valley for years to come.

TRIBUTE PAID TO "MAMA" MARKS OF SACRAMENTO, CA

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. MATSUI. Mr. Speaker, I would like to take this opportunity to recognize and pay tribute to Margaret "Mama" Marks, one of Sacramento's outstanding humanitarians. She was recognized at a ceremony at the State capitol by the Older Women's League for her unselfish efforts in aiding the poor and hungry in the Sacramento area.

"Mama" Marks' gallant efforts have included starting a noon lunchtime program for the poor. It was through her calling and dedication she persuaded the Asbury Methodist Church to provide the location for the lunch program. Furthermore, it was due to "Mama's" reputation as a hard worker that bakeries, food manufacturers, private organizations, and individuals have gladly contributed food for the meals. The program has been in operation since 1970.

Remarkably, at age 72, "Mama" still cooks all the meals herself and on any given day she will feed as many as 50 people. Margaret "Mama" Marks is truly a courageous woman, as she even donates her time and energy on holidays to feed the poor. She makes the holidays a time of celebration for those who normally would not have much to be thankful.

Mr. Speaker, on behalf of the people of Sacramento, I would like to congratulate and thank Margaret for her many years of dedicated service to the community and offer her best wishes in the future.

FEDERAL CROP INSURANCE CORPORATION AMENDMENTS

HON. GENE CHAPPIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. CHAPPIE. Mr. Speaker, today I am introducing legislation proposed by the Presi-

dent to implement his 1987 budget initiatives for the Federal Crop Insurance Corporation. This legislation would phase-out the Government's role as a direct writer of crop insurance over a period of 5 years, beginning in fiscal year 1988. The proposal I am introducing today will provide for continued Government support for the crop insurance program as we phase-in the use of the regular insurance system for crop insurance protection.

In addition, following the transfer of direct insurance operations, the Federal Government will retain its role as the provider of last resort for disaster situations by remaining as the reinsurance source for extraordinary crop insurance losses. The retention of this role, on a premium sustained basis, will assure that affordable reinsurance is available to the crop insurance industry and contribute substantially to industry stability.

In the formulation of the Crop Insurance Act amendments of 1980, Congress clearly moved in the direction of recognizing that the provision of insurance was a function of the private sector. The act specifically instructed the FCIC to utilize the private sector to the maximum extent practicable and it encouraged the involvement of private insurance companies.

The implementation of these provisions of the 1980 act permitted a competition to develop between Government supported sales and service system and the private sector sales and service system represented by traditional insurance companies reinsured by the FCIC. In the beginning, the Government supported system was the source of insurance for most farmers who relied on their previous experience for crop insurance needs. Almost immediately, however, business began to shift to private companies under the reinsurance program. While recent years have seen the publicly supported system match the quality of the private sector, the shift in business continues. In the past 2 years alone, the volume of business written by the private insurance companies under a reinsurance agreement has doubled, while sales of Government supported policies has fallen by nearly 50 percent.

Producers clearly are relying on the individuals who normally provide other insurance services for their crop insurance as well. This is demonstrated most effectively by noting that in areas where Government supported policies are sold by full-line insurance companies utilizing a sales and service agreement rather than reinsurance, volume has increased (the best example would be New England where sales are almost exclusively held by a full-line insurance company).

One of the FCIC's goals is that crop insurance be available to a maximum number of producers both to encourage farmer awareness of the responsibility for risk management, and to reduce the haphazard and costly disaster payment approach Government has historically been forced to assume. In this regard, it must be noted that one cannot simply reduce staff proportionate to reductions in business because of the personnel intensive nature of the insurance business. The fact is that a significant level of Federal fiscal resources are devoted to sustaining a diminishing share of the crop insurance business.

Major involvement of the Government in the agricultural economy goes back to the days of the Depression. There is no question that, at various times, this involvement has been a necessary and appropriate expression of the concern for both adequate and affordable food. In the late 1930's Government involvement took many forms, direct and indirect. At this time we see the first use of Government sponsored crop insurance to provide protection for producers. It is a good example of the Government seizing on a private sector vehicle in pursuit legitimate governmental goals. Like many creations of the Depression and since, however, when programs have established their value it is appropriate that the Government shift the burden of providing such services to the private sector where they properly belong.

The gradual reduction of premium subsidies contemplated in the President's 1986 budget, repeated in the 1987 submission, and proposed in the legislation I am introducting today, along with the phased withdrawal of the Government from paying the costs of sales and service by the private sector, recognizes that the time has come for the crop insurance business to stand on its own.

We are not proposing the abrupt dismissal of the Government's appropriate concern for the economic vitality of the farmer. We are, however, raising the legitimate question of the extent to which the limited resources of the Government can be directed to a task which in other cases is found to be economically viable in the private sector. The issue of participation levels and actuarial adequacy are being resolved and the phase-in period contemplates that the program will be on much more solid ground when Government involvement is terminated.

Mr. Speaker, I do not propose here that the schedules and subsidies contained in this proposal be accepted blindly. I do suggest that the time has come for Congress to reconsider the Government's role in the providing of crop insurance. The schedule and declining subsidy amounts included in this bill are, however, a place to start. Congress has an obligation to reconsider the nature of our participation in providing a service available through the private sector. As we are all aware, limited budget resources demand that we maximize the return on the taxpayers' investment in Government. I propose in this legislation that, perhaps, the time has come to see risk management as a normal and necessary business expense for the agricultural producer. Further, and most importantly, I propose that the Government has a legitimate ongoing interest in disaster protection by assuring that affordable reinsurance is available to insulate the crop insurance industry from the volitity that we have seen in reinsurance markets.

The position of this administration, outlined in the legislation I am presenting, recognizes that it is the role of Government to assist farmers to secure the availability of needed risk management capability. As with every other business segment of our free enterprise system, however, agriculture must eventually assume the responsibility for risk management as a part of the normal and necessary task of doing business.

Where the private sector failed to meet a need the Government had a proper role in encouraging the development of the mechanisms to respond to that need. When it is clear that crop insurance is widely available, it is appropriate that Government withdraw and permit the market to operate. This is the correct course both for the farmer, who must see Government as a booster rather than a participant, and for the taxpayer who needs to be assured that scarce resources are being directed to tasks which are properly governmental and otherwise unavailable.

A section-by-section analysis follows this statement.

THE CROP INSURANCE ACT OF 1986—SECTION BY SECTION ANALYSIS

SECTION 3

Section 504 of the Federal Crop Insurance Act (the Act) as amended in 1980, established the Federal Crop Insurance Corporation (FCIC) as a capital stock company of the United States with an authorized subscription of $500 million in Treasury funds. As of the date of the submission of this legislation the entire subscription has been received. Due to catastrophic losses to crops in several areas of the country during 1983, 1984, and 1985, the Corporation was required to request additional borrowing for Fiscal Year 1985. Further borrowing has been necessary during Fiscal Year 1986 to meet indemnification requirements.

Section 3 of the legislation proposed would revise Section 504 of the Act to retain the Corporate structure for FCIC, create a subscription base of one dollar, and would, in subsection (b), cancel the $500 million obligation without consideration. The effect of this language would be to maintain the FCIC's semi-autonomous operating posture, but prepare the way for altering the method used to fund its operations. The Corporation has exhausted its capital authority and is utilizing a roundabout vehicle (borrowing through the Commodity Credit Corporation /CCC/) for additional indemnification revenue as needed.

SECTION 4

Section 4 of this legislation would revise Section 506 of the Act to authorize the FCIC to provide appropriate services to the insurance industry, specifically including reinsurance services, on a user fee basis as the shift to private sector direct insurance resources is made.

To remedy the economic situation which the Corporation faces currently, and which it may face in the future, Section 4 also would authorize the Corporation to borrow money and require the Corporation to utilize receipts from premium payments and all other assets and funds of the Corporation, except funds borrowed from the Treasury to pay unanticipated indemnities, to pay or reimburse administrative and operating expenses of the Corporation. As the Corporation makes adjustments to meet the phase-out requirements established in section 6 of this legislation, it is necessary that authority exist for the utilization of funds collected through premiums, in addition to the user fees established in this proposal, to reflect the increasing need that such funds meet operational costs in addition to indemnification requirements.

SECTION 5

By revising Section 507(c) as provided in this section, the Corporation would be clearly directed to encourage the shift of crop in-

surance business to the private sector. In requiring the use of licensed private agents and brokers, it is the intent of the legislation to simplify the process of transferring the direct insurance business upon the termination of Corporation involvement in such operations by fiscal year 1991 in that delivery systems will already meet a key provision of state and local insurance business licensing requirements. In addition this langauge continues to provide, until fiscal year 1993 indemnification for its private sector partners against errors and omissions for which the Corporation is held at fault. For the reinsurance activities contemplated after the transfer of direct writing operations, the legislation would further limit the Corporation to minimal staffing.

SECTION 6

Section 508 of the Act authorizes and regulates the provision of insurance on crops by the Corporation. A major element of the 1980 amendments to the Act was contained in subsection (e) of Section 508 where the Corporation was "directed to provide reinsurance . . . to the maximum extent practicable . . . to insurers including private insurance companies . . ." This effort to include the insurance industry in the crop insurance program was designed to broaden the utilization of insurance by producers and to make it a part of sound economic planning by America's farmers. The increase in premium base since 1980, in crops and areas protected, and in the use of private insurance market for the delivery of such protection convinces the Corporation that this effort is succeeding. For crop year 1985, more than 70 percent of policies sold were sold by private companies reinsured by FCIC.

Today fully 40 percent of America's agricultural producers participate in some form of insurance program—multiple peril of fire and hail depending on their individual need for protection. The trend in agricultural economics is toward using insurance as a planning tool, and such insurance is more and more required by credit grantors in the agricultural community. With the elimination of most of the disaster grant and low-interest loan programs previously available to farmers, the prudent producer protects his crop investment with insurance in the same manner as his home and his car.

It is anticipated that this growth will continue and permit amortizing administrative costs over a greater base thus limiting increases in individual producer costs (premiums), and that greater experience in actuarial analysis will further refine premium rate setting.

Thus Section 6 of this Bill would provide for the termination of direct writing operations by the Corporation on September 30, 1991, and would, in subsection (b), amend Section 508 to establish a schedule of percentage reductions of producer premium subsidy support over a period ending in Fiscal Year 1991. The language would also require the Corporation to adjust premium to include all expenses of the insurance program and require FCIC's private sector partners to gradually assume their own operational costs. This action will permit an orderly transfer of direct insurance provider functions. In addition, the language will more accurately reflect that the current subsidy to the producer substantially exceeds the nominal percentage contained in the 1980 Act and require accounting procedures more consistent with normal insurance provider requirements.

Technical corrections to several subsections of Section 508 clarify that the role of the Corporation will increasingly be to encourage and facilitate private sector program development. Subsection (d) of Section 6 directs the Board of the FCIC to impose fees for the services provided to the private sector beginning with fiscal year 1988.

Section 6 of the Bill would also mandate the withdrawal of the FCIC from all direct insurance operations by September 30, 1991, and clarify that the authority for reinsurance which remains is to be exercised as necessary and at no cost to the government.

SECTION 7

Section 7 of this proposal would amend Section 516 to address the question of funding for the Corporation as it proceeds toward the termination of direct government involvement in the crop insurance business. The Corporation would be authorized to retain net realized gain and would be required to use such funds to meet outstanding debt and to reduce regular funding needs prior to establishing its reserve for excess loss.

Section 7 would also eliminate the current authority of the Corporation to borrow funds of the Commodity Credit Corporation to meet indemnification needs and would direct the cancellation of obligations of the FCIC to the CCC, and of CCC to the Treasury, for funds extended to FCIC previously under Section 516(c). The language would also cancel, as of the date of enactment, all other outstanding FCIC obligations for borrowing.

Finally, the language in Section 7 would complement Section 4 in permitting reimbursement of borrowings from any available funds. Also, such borrowings could be reimbursed from appropriations until the transfer of direct insurance operations and support is accomplished in fiscal year 1991. After that time, this borrowing authority would provide a source of funds for uncapitalized reinsurance operations on a limited, premium reimbursed, basis. In addition to clarifying the general borrowing authority provided in Section 4 of this legislation, Section 7(d)(4) would amend Section 516 to limit the outstanding borrowings of the Corporation to $500,000,000.

TAX REFORM BILL

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ACKERMAN. Mr. Speaker, it was with deep disappointment that I found it necessary to vote against H.R. 3838, the conference agreement on the tax reform bill.

Like the majority of my colleagues in the House of Representatives and the other citizens of our great Nation, I had long awaited the opportunity for passage of legislation that would overhaul our current Tax Code and provide true fairness and tax relief to the American people. Unfortunately, the measure adopted by the House today will provide neither.

Although I strongly supported certain features of the measure, in particular, the removal of the working poor from the tax rolls, and provisions to ensure that profitable corporations pay taxes, many other provisions of the bill would cause undue hardship for many middle-income Americans and are anything but conducive to a fairer Tax Code. I would like to mention just a few examples of "reforms" that will hurt rather than help our ability to meet our citizens' needs.

In contrast to the progressive tax structure we currently have, in which the rate of tax individuals pay increases with their level of income, the so-called tax reform bill consolidates the present 15 tax brackets into just two—15 percent and 28 percent. Under the measure, a single taxpayer with a taxable income of just $17,851 per year will pay the same rate of tax—28 percent—as a millionaire. That doesn't sound fair to me.

One of my major objections to the bill is that it discriminates against renters, who constitute a majority of New York City's residents. The bill's restrictions on municipal bonds could have a devastating effect on the city's subsidized housing program. The curtailment of various tax shelters for real estate owners will inevitably reduce apartment construction and increase rents, making the real losers the people who need affordable rental housing. As if that isn't enough, the bill denies renters many of the tax benefits it provides homeowners, such as the right to deduct mortgage interest and property taxes from Federal income taxation, and to borrow on their property to pay for medical and educational expenses.

The measure also repeals the present itemized deduction for State and local sales taxes. Mr. Speaker, a sales tax assessed on consumers by a State cannot be dismissed merely as an item of personal consumption. The taxes paid are committed to the general purposes of government. They are no longer a part of the taxpayer's resources. Every local tax reduce ability to pay the Federal tax burden. Denial of the sales tax deduction is a clear case of double taxation. I view this as a grievous inequity, rather than a move toward fairness.

Presently, taxpayers may take an itemized deduction for unreimbursed medical expenses in excess of 5 percent of adjusted gross income. The tax bill raises this threshold by 50 percent, to 7.5 percent. As anyone well knows, decreasing the medical deduction will disproportionately affect older Americans, since they are the segment of our society who requires the greatest amount of health-care services, and who are often constrained by the limits of a fixed income. They are also among those least able to pay today's skyrocketing health costs. Does this seem fair?

Charitable contributions by taxpayers who do not itemize their deductions would no longer be deductible under the bill. I am very concerned that the repeal of this deduction will result in an overall decline in charitable giving. Unlike most other tax deductions, the charitable contribution does not serve any special interest. However, its repeal will hurt and possibly have a devastating impact on the poor, the infirm, and the disadvantaged.

The tax bill will impose new limits on who is eligible to deduct an individual retirement account [IRA] contribution from their taxes. I support continuation of the IRA deductions for all taxpayers. For many, IRA's will provide the sole source of retirement income other than Social Security. Many employees have partici-

pated in a variety of qualified pension plans, but have never remained long enough with one company to become vested in them. In addition, the quality of pension benefits varies with the employer. The IRA is one of the tax law's best features and should be retained for everyone.

A final example of how this bill undermines the basic goal of fairness in tax reform is the retroactive repeal of the 3-year recovery rule which applies to certain retirees. Under current law, certain employees, such as postal, Federal, civil service and some private sector workers, contribute to their annuity plan, and that contribution is taxed. These retirees then have 3 years to recover their already-taxed personal contribution, which they receive as a tax-exempt monthly annuity. Elimination of this rule is double taxation for the approximately 20 million retiring employees participating in such plans and the only retroactive tax increase in the bill. My constituents are counting on me to support fairness in the Tax Code, and this is not fair treatment.

These are just a few of the reasons that I voted against passage of the so-called tax reform measure. Americans want a fair and equitable Tax Code. H.R. 3838 is neither fair nor equitable.

WINTER NAVIGATION

HON. DAVID E. BONIOR

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. BONIOR of Michigan. Mr. Speaker, I rise in strong support of the Carr amendment to the continuing resolution to prohibit the Coast Guard from implementing any program of navigation extension beyond the current season of January 8 plus or minus 1 week.

I want to commend the distinguished gentleman from Michigan, Mr. CARR, for successfully offering this amendment, and also to commend the gentleman from Michigan, Mr. TRAXLER and Mr. PURSELL, all members of the committee, who supported this amendment.

Mr. Speaker, the Carr amendment is a bipartisan proposal. Important support for this proposal has been given by the gentleman from Michigan, Mr. DAVIS, and the gentlemen from New York, Mr. NOWAK and Mr. MARTIN, who have helped lead the coalition opposed to navigation extension.

LEGISLATION BACKGROUND

Mr. Speaker, during 1984, the House of Representatives exhaustively considered a proposal advanced by the corps for full year navigation on the upper Great Lakes.

The proposal, one of the largest water projects in American history, was estimated at that time to cost some $600 million, and to require continuing high operating expenses, in large part because of the huge icebreaking needs associated with the project.

These costs were balanced by few economic gains and were compounded by major environmental problems, including, but not limited to the danger of oil spills being trapped under the ice, the danger of shoreline erosion and damage to shoreline structures, and the churning of the floor of the connecting channels.

Not surprisingly, the project was opposed by the Great Lakes Governors and by every single environmental group in the Great Lakes area. The corps' own Board of Engineers refused to recommend the project to Congress for authorization, choosing instead to transmit the project for "informational purposes" only.

The House of Representatives overwhelmingly rejected the proposal. When it was included in the omnibus water resources bill, 222 Members of the House signed a letter to the chairman of the Rules Committee supporting efforts to delete winter navigation from the bill.

In a rare decision, the Committee on Public Works chose to delete the project from the committee substitute that was brought to the floor. Winter navigation had been rejected overwhelmingly.

Mr. Speaker, the decision to reject navigation extension in 1984 was not the first time Congress had chosen not to authorize the project. The winter navigation project has been pending ever since I came to Congress in 1977, and Congress has refused to authorize the project every time it has been considered.

THE CORPS PROPOSED ADMINISTRATIVE EXTENSION

Accordingly, Mr. Speaker, I was surprised to learn in June of this year that the Corps of Engineers was proceeding administratively to extend the navigation season, a proposal that had been clearly rejected by Congress.

The present navigation season through the Soo locks ends January 8 plus or minus 1 week, or no later than January 15. The corps is proposing to extend the navigation season to January 31 plus or minus 2 weeks, or until the middle of February.

Under the corps' timetable, a draft supplemental environmental impact statement [EIS] will be completed December of this year. It will then be subject to public comment. The corps has written to me stating that it will be prepared to implement the extension in just 1 year, or January 1988.

Mr. Speaker, during the 1984 discussion of winter navigation careful attention was given to several midterm proposals that would have allowed for some navigation extension, but a less than full year extension on the upper Great Lakes.

All of these proposals, including a proposal for January 31 plus or minus 2 weeks—the very proposal the corps now advances—were rejected in favor of the current navigation season.

In fact, Mr. Speaker, the decision to reject partial navigation extension proposals—and the January 31 plus or minus 2 weeks proposal in particular—was specifically discussed during passage of the omnibus water resources bill and can be found on page H7514 of the CONGRESSIONAL RECORD for June 29, 1984.

Partial extension proposals were also carefully discussed in Michigan. I call my colleagues' attention to the comments of the Detroit Free Press in an October 14, 1983 editorial:

> The second "compromise" would authorize a shipping season to January 31, plus or minus two weeks * * * At the moment, that is tantamount to year-round shipping, since the Soo locks have to be closed a month every winter for maintenance anyway. * * * An 11-month season would still require several hundred million dollars worth of bubblers, icebooms and icebreakers—everything except the dams and gates at the head of the Detroit and St. Clair Rivers.

THE LEGAL STATUS OF THE CORPS PROPOSAL

Let me be clear. The corps decision to implement unilaterally, without seeking authority from Congress, and over the clear objections of Congress, the navigation extension proposal is not only arrogant. It raises serious legal issues.

The corps cannot seek from Congress for more than a decade authority to impelement a project, and then, when Congress denies them that authority, switch legal theories and suddenly maintain that they did not need the authority at all.

Congress has carefully protected its constitutional control over authorization. This control is enshrined in the rules of the House, which prohibit appropriation without authorization, and the basic laws of our Nation, including the Anti-Deficiency Act.

THE CARR AMENDMENT

Mr. Speaker, the Carr amendment is a focused response to the Corps of Engineers decision to proceed without authority, and over the objections of Congress, to implement navigation extension.

The amendment prohibits the Coast Guard from taking any actions whatsoever—from using their equipment boats, or personnel—to implement a program of navigation extension beyond the current practice which closes navigation through the Soo locks no later than January 15.

The amendment address only a program to extend the navigation season beyond the current practices. It does not address, nor does it prohibit, any activities presently undertaken by the Coast Guard, even when these normal activities occur after January 15.

To make this clear, the amendment itself, and the committee report, specifically discuss some of these present activities which are not covered by the amendment and accordingly are not prohibited.

For example, search and rescue operations undertaken by the Coast Guard are not covered, and are not prohibited, even when those operations occur after January 15.

Occasionally, navigational problems or other emergencies have occurred which have blocked shipping during the normal season. To address the shipping backlog created by these emergencies, the Coast Guard has assisted in one-time, temporary season extensions. Such activities are not covered by the amendment, and are not prohibited.

Under current practice, the Coast Guard does not break channels on the upper Great Lakes after the Soo locks are closed. However, some shipping which does not go through the Soo locks can proceed even though the Coast Guard is not breaking channels.

The Coast Guard presently provides some navigational assistance to this shipping. This amendment does not address, and does not prohibit the assistance that the Coast Guard provides to such shipping.

AFRICAN TRAGEDY

HON. PHILIP M. CRANE
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. CRANE. Mr. Speaker, one of the greatest tragedies of this decade, indeed of this century, has been the ongoing famine and deprivation in Africa. Month after month, year after year, the suffering continues and we in the West continue to be tormented by all too vivid images of innocent people slowly starving to death. Certainly no compassionate human being can observe this tragedy without asking himself: "What can I do to help?" Since 1960, the response of the West has largely been to pour money into Africa. Some $80 billion has been sent to Africa in these 25 years. Perhaps this massive aid program has helped to assuage our troubled consciences, but it has been demonstrably ineffective at solving Africa's economic problems. Africans have a declining rather than an improving standard of living, and the main reason is not, as we are often led to believe, because of drought or the lingering effects of colonialism, but because of the widespread adoption of Socialist economic policies.

The great majority of black African States have unquestioningly imposed Soviet-style economic policies on their people. The results, as the Chinese and the Poles and the Czechs and so many others could have told them, have been disastrous. Rather than improve the standard of living of all, or even distribute the wealth more equitably among the population, the effect has been to leave most of the people in abject poverty while allowing an elite few to live in opulence. And as time goes by, the economic situation gets progressively worse, not better. And yet the slavish adherence to these incredibly inappropriate policies continues.

At the same time, we in the West continue to pour massive amounts of aid into the continent. In effect, we attempt to cure a festering wound which recrudesces virtually every year with a bandaid, rather than demanding that the infection which causes the recrudescence be expunged. Until we base further aid on the condition that these wrongheaded, deleterious policies be abandoned in favor of capitalism and free markets, we are aiding and abetting in the continued suffering of the people of Africa.

In this same light, I highly recommend the following article by Allan C. Brownfeld regarding the need for African States to reform dramatically their economies.

The article follows:

A BITTER HARVEST: AFRICAN STATES BEGINNING TO RECOGNIZE THE FAILURE OF SOCIALIST ECONOMIES

(By Allan C. Brownfeld)

The nations of Africa are, by any standard, an economic disaster area.

Wherever one looks, the picture is one of declining agricultural production, widespread ecological destruction, soaring debt and an uncontrolled expansion of population. As a whole, Africa is growing less food per capita than it did two decades ago. Robert S. McNamara, former president of the World Bank, notes that "the average African, who depends critically on agriculture for a living, is poorer today than he was in 1970. If the problems of agriculture are not addressed more effectively, he will be poorer in 1990 than he was at the time his country became independent. Famine, currently restricted to years of drought and to only a few countries, will become everyday occurrence affecting a majority of the sub-Saharan nations."

For years it has been clear that the reason for Africa's economic decline has been the socialist philosophy of centralization and politicization of the market that has dominated most countries on the continent.

Massive foreign aid from the United States and other Western countries was misused. In Tanzania, for example, the government, at a cost of $130 million, built a modern paper mill in Mufindi designed to produce up to 70,000 metric tons of paper goods annually, thereby saving the country $20 million in foreign currency each year. In April, after six months of production, the plant was shut down because of prohibitive power costs and few orders. The paper produced by the mill cost $1,500 a ton, more than two and a half times the cost to import the same paper.

Tanzania, when it achieved independence, had a sisal industry that was the pride of Africa and a major foreign exchange earner. The sisal (a plant that yields a strong fiber used for rope and sacking) industry was nationalized. Almost immediately, sisal plantations deteriorated under inept and corrupt management.

Tanzania's official market for food and consumer products at controlled prices has all but disappeared, supplanted by a black market where necessities like rice, vegetables, cooking oil and shoes are available but at very high prices. Small coffee growers who have not been paid for their crop by the government have uprooted coffee plants to grow tomatoes, which at least can be sold on the unofficial market.

Finally, African leaders are coming to the realization that if they persist in their state-managed economies only disaster lies ahead.

Early in June, delegates to the United Nations from African and industrialized countries agreed to a "spirit of genuine and equal partnership" to revive Africa's devastated economies. The document approved after a week of negotiations is considered unusual for its critical tone. The document states that, "The role of the private sector is . . . to be encouraged through well-defined and consistent policies."

Bolaji Akinyemi, Nigerian Minister of Foreign Relations, said: "We in Africa are fully aware that the task of structural transformation will require, on our part, a radical change in development priority. It is obvious that the widespread low level of productivity of the African economies is the fundamental cause of their continued underdevelopment and persistent economic crisis."

Economist George Ayitteh, a Ghanaian, declares that, "Until economic and political freedoms are restored, no amount of aid can rescue Africa, and the next drought will produce a holocaust the world has never seen before. . . . The 1984-85 tragedy was not due so much to the drought. Nor was it due so much to the failure of foreign governments. . . . More than $80 billion has been pumped into Africa since 1960. Furthermore, according to the U.N. Food and Agricultural Organization's 1981 report, Africa can feed itself without aid or reliance on modern farming techniques."

The basic cause of the current dilemma, Ayitteh argues, is that, "Virtually all the African nations are sliding backward economically. Real income per capita has dropped by 14.6 percent for all of black Africa. Food production per person fell 7 percent in the 1960s, 15 percent in the 1970s, and will deteriorate in this decade. Close to 45 percent of black Africa's food is now imported, despite the FAO's assertion that the Congo, alone, can . . . feed all of black Africa. . . . The African continent has the largest untapped natural resources in the world. . . . Four times the size of the U.S., but with only twice the population, Africa does not suffer from the maleffects of overpopulation."

The reason for the current economic disaster, he declares, involves two basic problems: "The first was the orthodox development models (based on socialist, central government-managed economies) were seriously flawed . . . Second was the nature of political leadership in Africa . . . a failure of our indigenous African standards . . . characterized by megalomania, one-man rule, and kleptocracy (government by looters)."

Professor Peter Berger of Boston University points out that, "Among the socialist regimes of the Third World there is not a single success story . . . The typical record of Third World socialism is one of economic stagnation, often perpetuating an abject poverty if not outright starvation; the species of egalitarianism that prevails among the 'masses' is one of an equality among serfs, lorded over by a privileged elite of party bueaucrats or managers."

Not only is socialist economic organization a failure in economic terms, Berger charges, it is immoral as well: "The moral aspect of this ought to be stressed. A heavy moral responsibility rests on those who impose unproductive and inefficient economic arrangements on developing societies, doubly so when these arrangements are adhered to in the face of hunger, disease, and degrading poverty. It is obscenely inappropriate when the very people who propagate this criminal waste of human and material resources claim to be or to represent the 'party of compassion.'"

At about the same time African nations were meeting at the United Nations, a former commissioner of relief for the Marxist government of Ethiopia, who has asked for and received political asylum in the Unites States, stated that Ethiopia's Marxist regime—not drought—was responsible for the tragedy of that country. Dawit Wolde Giorgis remarked:

"We called it a drought problem, but it was more of a policy problem. Drought only complicated the situation. If there is no change in our policies, there will always be millions of hungry people in Ethiopia . . . The Marxist leadership lives in a fantasy world created by our own politics and imaginations. We don't realize how much our people are suffering."

The Soviet model of agriculture and economic organization—slavishly imitated in Ethiopia and elsewhere—has led Africa to the precipice of disaster. Hopefully, the willingness to turn away from statist economic policies is real—and will be rapidly implemented.

HON. ROBERT E. WOODWARD LAUDED FOR OUTSTANDING PUBLIC SERVICE

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. MATSUI. Mr. Speaker, I rise today to bring to the attention of the House of Representatives the retirement of the Honorable Robert E. Woodward. Robert Woodward has not only given 22 years of exemplary service to California citizens as a highly respected bankruptcy judge, but has been dedicated to serving the public for more than 45 years.

After receiving his juris doctorate degree from Hastings School of Law in 1941, Judge Woodward forewent the financial rewards of private practice and entered the California judicial system as a deputy clerk of the U.S. district court in San Francisco, CA. Thereafter, Judge Woodward continued his public service career holding the titles of deputy district attorney, law clerk for U.S. District Judge Del M. Lemmon, and being appointed as bankruptcy judge for the Eastern District of California on July 1, 1964.

Aside from his outstanding service on the bench, Robert Woodward is also a distinguished member of the State Bar of California, Sacramento County Bar Association, Federal Bar Association, American Bar Association, and Phi Alpha Delta.

Mr. Speaker, on behalf of the people of Sacramento, I would like to commend Judge Woodward on his extraordinary public service career spanning over four decades and offer my sincere best wishes to him, his wife Elizabeth, and their family as they enter a well-deserved time of rest and relaxation in retirement.

TRIBUTE TO DONALD R. FORTIER

SPEECH OF

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 25, 1986

Mr. MICHEL. Mr. Speaker, I wanted to join in the special order by the gentleman from Missouri [Mr. COLEMAN], about the untimely death of Donald R. Fortier, the former director of the National Security Council.

Much has been said about how hard he worked and his self-effacing attitude over who should get the credit over what was actually accomplished.

What should also be said about Don was that he truly understood the legislative process. Yes, he was quite able to get consensus within the administration as major foreign policy questions were developed, but he was also able to understand how we here on the Hill would respond to such foreign policy initiatives. He knew what was "doable" both within the administration and in the legislative branch.

This is an ability not often experienced by legislators. Don was a product of both the legislative branch and the executive branch and he was able to blend the responsibilities of both with the result that much was accomplished with very little confrontation.

That was the type of man Don was—brilliant yet kind; hard-working and compassionate; a man of the executive yet with a strong legislative understanding.

He dealt with those to whom the practice of politics demanded public recognition yet he asked for none.

It is these qualities of the man that make the tragedy of his death even more difficult to understand. Only 39, he was a man of extraordinary ability which his death has denied us. In such a relatively short life he taught all of us who knew him what selfless patriotism really means.

FAIR TRADE FOR STEEL

HON. CARDISS COLLINS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mrs. COLLINS. Mr. Speaker, it is indeed a pleasure to stand in support of H.R. 5591, this important bill which will amend the Steel Import Stabilization Act. I am proud to be a cosponsor of the effort to halt America's growing trade deficit.

The steel industry—once the pride of this Nation—is dying. It is dying, not from old age, but from evil wounds inflicted by the unfair trading practices of other countries. And those inflicting these wounds profess to be our friends and allies.

America's steel industry produces a world-class quality product, yet it is rusting away. Mills are closing, laying off thousands and thousands of employees. Highly trained workers are being forced onto the unemployment rolls. Families are disrupted and many proud individuals are forced to seek Government assistance—all because of imports.

The effect of unfair foreign competition can clearly be seen in the area of specialty steel. In an effort to remain highly competitive, American specialty mills updated their factories, restructured their internal organization, and renegotiated labor contracts. In spite of these efforts, European producers undercut the Americans by dumping 247,000 tons of subsidized stainless sheet and strip steel products onto the U.S. market in the first quarter of 1986. In doing so, these nations usurped 23.8 percent of our domestic market. They did this in a concerted effort to undercut American manufacturers and in direct violation of negotiated trade agreements.

Our steel companies have repeatedly stated that they can compete on a fair international market. They only ask that all steel-producing nations competing in the U.S. market negotiate Voluntary Restraint Agreements, or VRA's. These agreements, which limit imports to responsible levels, will ensure fair competition. This amendment is designed to encourage VRA compliance.

Many nations are avoiding VRA limits by shipping steel products to other nations for finishing. The steel is then imported into the United States as if it were a product of the second nation. In this manner, the producing nation escapes detection. The measure now being introduced will end this practice by mandating that all steel imports be accounted to the producing nation.

Several nations, obviously afraid of fair competition with American workers, have refused to negotiate equitable VRA quotas. This legislation is designed to prod them into compliance. Nations that refuse to reach a negotiated solution would have their current import levels reduced to 70 percent.

America's economic future depends on a reduction of the trade deficit. The steel industry, crucially important to the health of the Nation, is not asking for handouts. It can compete in a fair market. This amendment supports fair trade and gives U.S. industry a fighting chance.

AGE DISCRIMINATION—AN UNJUST SLAP AT OUR MOST PRECIOUS CITIZENS

HON. RAYMOND J. McGRATH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. McGRATH. Mr. Speaker, I want to again express my support of H.R. 4154, a bill designed to end an unfair situation that is plaguing citizens who are over the age of 70. Currently, the Age Discrimination in Employment Act prohibits discrimination in employment only for those seeking work who are less than 70 years of age. However, as many people can attest, life does not end at 70. And in addition, the ability to work with effectiveness and pride does not have an age cap.

This bill, which is championed by the 86-year-old chairman of the House Rules Committee, is a commitment of the Congress to protect the jobs, and more important the livelihood, of our older Americans. It not only has the wide support of the House, but of the Governor of the State of New York, the AFL-CIO, the National Council of Senior Citizens, the American Federation of Teachers, National Council on Aging, and the American Association of Retired Persons. This support is proof of a large contingent of Americans who believe that as long as a person is willing and able to work, a 70th birthday is not an occasion to declare a citizen "unfit" to work in this country.

There is no better beacon for the need of this legislation than the person who currently resides at 1600 Pennsylvania Avenue. The President of the United States, 75 years young, is the governmental leader of this Nation. Moreover, he is a spiritual leader, a shining illustration of all older Americans. Some unfairly believe that these Americans should "pack their bags" and retire to pasture just because they have reached a chronological pinnacle. This theory is not only unfair, it is outright absurd.

As a proud cosponsor of this legislation, I want to thank all of my colleagues who voted for its passage. I also want to applaud the real sponsors of this bill—our older Americans who want to continue working and set an example for all of us to follow.

THE REAGAN ADMINISTRATION'S DISASTROUS TRADE POLICY AND ITS SENATE ACCOMPLICES

HON. DONALD J. PEASE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. PEASE. Mr. Speaker, let us not overestimate the agreement reached last week in Punta del Este. What has happened is that GATT member nations have agreed to negotiate for the next 5 to 10 years to explore solutions to the many problems besetting the international trading system.

Meanwhile, the U.S. trade deficit is soaring toward the $200 billion level for 1986—exacting a staggering toll in American jobs and businesses. Yet, the Senate refuses to take action on the comprehensive trade bill (H.R. 4800) that was passed by an overwhelming bipartisan majority last May.

The following article by Lane Kirkland, president of the AFL-CIO that appeared in today's New York Times underscores the need for prompt action by the Congress and the President to reverse the alarming decline in America's industrial base and the living standards of many American families.

[From the New York Times, Sept. 26, 1986]

THE FREE-TRADE MYTH IS RUINING US

(By Lane Kirkland)

WASHINGTON.—America faces an economic crisis caused by the Administration's infatuation with the long dead theory of "free trade." To deal with that crisis, the Senate must act quickly on trade reform legislation passed last May by the House.

Scores of industries, thousands of companies and millions of workers are drowning under a flood of imports generated by foreign government initiatives and Washington's neglect. The effects are felt in every sector of the economy through plant closings, farm foreclosures, bankruptcies and recession-level unemployment.

Yet, President Reagan insists that "free trade and open markets . . . generate more jobs, a more productive use of a nation's resources, more rapid innovation and high standards of living both for this nation and its trading partners." But free trade doesn't exist except as an empty slogan. Not a product, commodity or service, including money, moves across any border except ours under free trade conditions.

Much of the world disavows a market economy and practices the most brutal form of protectionism: the protection of mercantile power and profit. Most trade is not open but directed—directed by governments in support of national policies and multinational corporations that move labor-intensive production to countries with the most exploitable workforce.

There are no open markets among our trade partners in the European Community, nor in Japan, Brazil, Taiwan, South Korea and Mexico—not unless "free and open markets" means import quotas, discriminatory performance and inspection requirements, export subsidies and incentives, industrial targeting programs, controlled currency exchange rates, and barter agreements.

There is no sign of the jobs that "free trade" supposedly generates. The Labor Department reports that from 1979 through 1984, 11.5 million workers lost jobs because of plant closings or layoffs due to slack work.

Living standards have not risen. Real average weekly earnings for production workers fell by 9 percent from 1977 through 1985. Nearly half the workers displaced from manufacturing who were lucky to find jobs were forced to accept lower pay and reduced living standards.

Their loss of jobs has not brought gains to workers overseas. Too many less developed nations enjoy booms because workers are paid rock bottom subsistence wages, are forbidden to organize and bargain collectively and have no health and safety protection, no pension, no security.

If "free trade" benefits anyone, it is manipulators who depress wages in order to inflate profits. They are absolved of guilt by the "free trade" evangelists who say that our "over-paid" workers have "priced themselves out of the market."

What is going overseas are not only jobs that sustain millions of families but the industrial capacity that sustains America. Company after company is no longer a producer but a mere relabeler and distributor of imports. And foreign label goods sold across the nation cost no less than products once made here. The only difference is that none of the money is returned as wages and payroll taxes to communities where it is spent.

It is wrong to label the Senate trade bill as "protectionist." It is a response to virulent protectionism, and its goal is to expand trade by making it a two-way street conducted on even terms. President Reagan promises to veto it. His supporters fear "retaliation." They argue that America has no moral right to require trading partners to adopt humane labor standards. If other nations treat workers like dirt, they say, we must accept "cultural differences." And if our corporations make fat profits because of those cultural differences, well, that's what "free trade" is about.

Accept that and you must accept the proposition that it is fair to allow other countries, aided by business and government, to slash American standards of living and human decency to the level that exploiters growing rich off the free trade myth praise as "competitive." Such thinking must be resisted. The labor movement's historic mission is not to lower American standards but to raise them—and, as well, to raise the world's standards to our level.

H.R. 5225: A SOLUTION FOR THE INSURANCE CRISIS

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. MILLER of California. Mr. Speaker, I supported passage of H.R. 5225, the Liability Risk Retention Act of 1986, which amends the Product Liability Act to allow businesses and individuals to form groups in order to facilitate purchase of liability insurance.

This is a necessary and timely bill.

Last year, the Select Committee on Children, Youth, and Families, which I am privileged to chair, held hearings to investigate the crisis in availability and affordability of insurance for child care providers. Since it began last summer, this crisis has grown, extending to foster care, schools, Head Start programs, and well-established young-serving agencies.

The burdens placed on these agencies have been unacceptable.

In June, at a California hearing, chaired by the State insurance commissioner, it was learned that until recently, 32 YMCA's in Orange County paid, altogether, $2,800 for liability coverage. Now, with lower claims limits, they must pay more than $80,000. What could justify such an outrageous increase?

According to the California Insurance for Child Care Project, 374,000 California youngsters are in child care facilities, including family day care homes. The mayor of Los Angeles, Tom Bradley, estimated in June that 70 percent of these were going without insurance because rates are so high.

We need a better approach.

The voluntary market assistance plan in California, Cal Care, clearly isn't working. The Los Angeles Times reported that of 473 applicants, out of the thousands without insurance, only 84 policies had actually been written under the plan as of June 1986, because many child care providers still cannot afford the rates being offered.

As alarming is the loss of liability insurance for foster care parents, who are often the last resort for children abused, neglected, or thrown away. The situation became so severe in California, that foster care parents statewide went on strike, refusing to accept any more children until the State provided assistance with liability insurance.

In my own district of Contra Costa County, there are currently only 450 foster homes for 850 children. The county is concerned about the effect that the rising cost of liability insurance is having on the supply of foster care homes. According to the director of the county social services department, more foster parents are being lost by the county each year than are being gained. The county was able to pay for coverage for foster parents before the cost became so prohibitive.

In addition, it has been estimated that half of the 2,000 family day care providers in Contra Costa County are operating without insurance, and forcing parents to sign waivers of provider liability.

According to the Diablo Valley Day Care Providers Association, 35 family day care providers have shut down strictly because they couldn't afford the insurance.

During the past year, the Children's Foundation and the National Association for the Education of Young Children released their own surveys of child care centers and family day care homes nationwide. Similar to the findings of the select committee, they concluded that there is no actuarial basis for the cancellations or increases in premiums.

H.R. 5225 is a responsible, important action that Congress can take to alleviate some of the crisis, and I urge my colleagues to support it.

But we will need to continue our efforts on all fronts. We look to the States, which have the authority to regulate the insurance industry, for a responsible solution to this growing problem. We also await a responsible, voluntary response from the insurance industry itself. But time is running out.

There have been a few noteworthy attempts to solve the availability problem, but when it comes to cost, we've been told to wait and see.

American families, who depend on child care to go to work, to finish school, or to relieve daily stress, cannot wait another 2 or 3 years for the historical cycle in the insurance industry to correct itself. They need dependable and safe child care now. Foster care children should be guaranteed a safe and secure place to live.

The bill will address this crisis by enabling child care centers, family day care homes, foster parents, and other agencies which provide services to children and families to join together to purchase liability insurance on a group basis. Without this legislation, many States will continue to preclude these essential children-serving organizations from forming self-insurance cooperatives at all, and the insurance they need to protect the families they serve will remain out of their reach.

RULE ON H.R. 2248, TO AUTHORIZE APPROPRIATIONS FOR THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, AND FOR OTHER PURPOSES

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ROSTENKOWSKI. Mr. Speaker, I take this opportunity to inform my colleagues that the Committee on Ways and Means today favorably ordered reported to the House of Representatives H.R. 2248, to authorize appropriations for the National Highway Traffic Safety Administration, and for other purposes.

I wish to serve notice, pursuant to the rules of the Democratic Caucus, that I have been instructed by the Committee on Ways and Means to seek less than an open rule for the consideration of those provisions of this legislation under its jurisdiction by the House of Representatives.

STEEL IMPORTS

HON. DOUG WALGREN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. WALGREN. Mr. Speaker, in support of H.R. 5591, bill introduced by Congressman MURTHA on steel imports and voluntary restraint agreements.

Mr. Speaker, this week I joined with Congressman JACK MURTHA as an original cosponsor of legislation to plug the loopholes of the President's Voluntary Restraint Agreements [VRA's] Program.

The President's VRA Program promised import target levels of 18.5 percent for finished steel products and 20.2 percent for all steel products. But in 1985 and 1986 steel imports have averaged between 23 and 25 percent.

In the first quarter of this year imports of stainless steel rod were at 38.5 percent; alloy tool steel imports, 42 percent; stainless steel round and flat wire, 44 percent.

But looking at specialty steel imports by product and by country reveals a sinister sobering picture. From 1985, for example, stainless wire imports from Canada jumped 92 percent. Stainless plate from Sweden climbed 136 percent. Stainless pipe and tube from Taiwan grew a whopping 1,267 percent.

Some analysts say that overall steel imports would be as high as 38 percent without the VRA Program. VRA's have had some positive effect, but it is clear that they have not worked well, for several reasons. The agreements are complicated to enforce. Foreign countries have found ways around the agreements—both blatant and subtle circumvention. And some countries—like Canada, Sweden, and Taiwan—have not negotiated agreements.

I participated in hearings in Pittsburgh on April 4 of this year where witness after witness described how VRA's are avoided. Some exporters disguise the country of origin or the final form of the steel products. Some steel is passed from a VRA country through a non-VRA country before arriving in the United States, in an effort to elude U.S. Customs officials. Some products undergo substantial transformation in nonparticipating countries and then the altered products come in uncredited against the quotas for the real country of origin.

The bill we are introducting takes two essential steps: First, it would require that all steel entering the United States from non-VRA countries be allocated to the real country of origin, where the steel is melted and poured, regardless of where the steel is finished. And second, the bill would give the United States Trade Representative 90 days to conclude VRA agreements with Canada, Taiwan, and Sweden—major holdouts at this point. If no agreement is reached after 90 days, their imports would be subject to a limitation of 70 percent of their level in 1984 when the VRA Program began. This would lower imports from these three countries from 4 million tons now coming in to 2.6 million tons and would cut Taiwan's level in half.

The difficulties with the VRA Program vertifies the need for tougher trade laws, like H.R. 4800. That has been passed by the House. But, absent the comprehensive reform of trade laws like those provided in H.R. 4800, voluntary agreements are just that—voluntary. Clearly, tougher actions are needed. I hope this bill helps put some teeth into what was meant to be a program of restraint, not voluntary action.

SENTINELS OF SAFETY AWARD

HON. WILLIAM M. THOMAS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. THOMAS of California. Mr. Speaker, those of us of who represent the States of California are particularly aware of the strategic and critical importance of minerals to the United States and the prominent role to California as the Nation's leading producer of nonfuel minerals.

We are also particularly aware that mining is widely considered to be a high accident-risk industry.

Therefore, it is with great pride that I announce to you today that the U.S. Borax & Chemical Corp.'s open pit mine at Boron, CA, in my congressional district, received the 1985 Sentinels of Safety Award for completing 386,319 employee-hours without a single lost-workday injury.

The Sentinels of Safety Award is the Nation's most prestigious mine safety award and is cosponsored by the Mine Safety and Health Administration of the U.S. Department of Labor and the American Mining Congress, a trade association serving the U.S. mining industry.

I would also like to make note of the outstanding safety record of 2,000,000 employee-hours without a lost-workday injury for U.S. Borax's total operations at Boron during 1985.

The efforts of U.S. Borax to supply our Nation's mineral needs while protection the safety of those who produce the minerals are worthy of our gratitude and admiration. I would like all of you to join me in commending the U.S. Borax employees at Boron for a job well done.

BORIS GHINIS AND FAMILY ALLOWED TO LEAVE THE SOVIET UNION

HON. CHESTER G. ATKINS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. ATKINS. Mr. Speaker, although tensions between the United States and the Soviet Union continue to mount in the midst of the Nicholas Daniloff affair, inspiring and optimistic news came from the Soviet Union this past week. After waiting 8 years to gain permission to emigrate from the Soviet Union, Boris and Irene Ghinis and their children learned Wednesday, September 24, that they had been granted visas to leave the Soviet Union and be reunited with their family. The Ghinises are currently in Vienna, Austria, and will soon be coming to the United States to live.

Since 1978, Mr. and Mrs. Ghinis had applied to emigrate from the Soviet Union on seven occasions. However, each time they were denied because Soviet officials alleged that Mr. Ghinis, a former employee at the Research Institute of the Ministry of the Radio Industry, possessed state secrets. After their first attempt to emigrate, Mr. Ghinis was fired from his job and since then had to support his family by working odd jobs.

The Ghinises' release is a just and long overdue reward for their undying spirit and dedication to human rights. In the eyes of the Soviet Government, the members of the Ghinis family were seen as outlaws, not because they had committed a serious crime against the state, but because they wished to practice their religion openly and exercise their right to emigrate. Despite facing economic and personal hardship over the past 8

years, the Ghinises never lost their will to live nor their will to be free.

However, in our joy over the release of the Ghinis family, we must not turn our backs to the thousands of Jewish prisoners of conscience who remain detained in the Soviet Union, the victims of anti-Semitic persecution. In an attempt to stifle their religious beliefs and public expressions of their human rights, Soviets Officials continue to harass and intimidate these individuals. Many of these people, like Boris Ghinis, are dismissed from their jobs and forced to work as manual laborers for low wages, while others have been arrested and sent to labor camps.

Over the past year, the Soviet Union has increased the number of families it has allowed to emigrate from the Soviet Union. Yet, we must not become complacent about the Soviet human rights record. There are still prisoners of conscience in the Soviet Union. We must steadfastly continue our efforts on the behalf of Soviet refuseniks until each and every one of them who wants to emigrate is allowed to do so.

So, Mr. Speaker, let us rise and congratulate Boris and Irene Ghinis and their children on their new found freedom. We welcome them to a new world—one where they can openly practice their religion and live with dignity. Yet, as we do, let us not forget the other Jewish families who suffer silently in the Soviet Union, awaiting to enjoy the same freedom.

A TRIBUTE TO TOM KAISER

HON. WILLIAM CARNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. CARNEY. Mr. Speaker, the people of the United States owe a deep and lasting debt to the men and women who took up arms in times of trouble to defend this great Nation and the others across the globe that share our love of freedom. It is also incumbent upon us to recognize the hard work and dedication of those special people who speak for our veterans and endeavor to keep fresh the memory of their sacrifices and honorable service.

I consider myself fortunate to know such a man, one who tirelessly champions veteran's causes and believes strongly that we as a nation must not rest until before gaining a full accounting of those who have not returned from the battlefield.

A fellow Long Islander, Tom Kaiser served with honor and distinction as American Legion Vice Commander in Suffolk County. He previously held the position of commander in our home county's chapter of the Veterans of Foreign Wars.

Tom Kaiser also headed the American Legion's statewide effort to learn the fate of our soldiers missing in action in Southeast Asia, a cause to which he has been dedicated for more than 13 years.

In addition to leading the efforts to build six veteran's monuments, including three overseas, Tom is currently working to establish memorials to honor the women veterans who served this country over the past 210 years, and the soldiers who fought the Korean war.

Mr. Speaker, I ask my colleagues in the House to join me in paying tribute to Tom Kaiser, a great American and loyal friend of the U.S. serviceman.

MASTER RACE BOOSTING IS DANGEROUS AND OBSOLETE

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. OWENS. Mr. Speaker, genius and leadership abilities are found all over the globe wherever there are human beings. In all racial, ethnic, and religious groups, and at all income levels, talent and intelligence exist in great abundance. The challenge of the 20th century is the challenge of providing adequate opportunities for the full development of human potential wherever it is found. In our times, during this century, we have soundly defeated one advocate of the master race theory. Unfortunately, on the other side of the world, we are now hearing the same dangerous and obsolete boasting. Prime Minister Nakasone of Japan has misread the meaning of his nation's present economic success. In a tone not too different from that of Hitler's tone, the Prime Minister of Japan tells his citizens that they are superior to Americans because of their racial purity. The racial and ethnic diversity of America which is part of what makes this Nation great is viewed by Nakasone as an unfortunate weakness.

Despite the so-called clarifying statements, blacks, Puerto Ricans, and Mexicans have ample reason to protest and demand an apology. Prime Ministers and public officials in high places are well-trained enough to know the impact of such statements. There has been enough confusion, hardship, and suffering caused in this century for any world leader to realize the implications of such racist remarks. We demand immediate action by the Japanese Government to rectify this insult. More than good relations with its major trading partner is at stake. A clearing of the moral atmosphere of the entire world is the objective. World leaders must always be the major advocates of peace and brotherhood. World leaders must always reinforce the truth that every human being is sacred.

USE OF FORCED DUES FOR POLITICAL PURPOSES

HON. WILLIAM W. COBEY JR.

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. COBEY. Mr. Speaker, during the last 2 years, I have tried unsuccessfully to offer an amendment to the Treasury postal appropriations bill that would limit the Federal Elections Commission's ability to implement any future regulations or advisory opinions that support the use of compulsory union dues for political purposes.

This amendment would support four U.S. Supreme Court decisions that have ruled as unconstitutional the use of forced dues from workers used for political purposes. The horrendous aspect here is that workers give a good share of their paycheck to unions for collective bargaining. The unions in turn use the money to support political candidates of their choice, not necessarily those of the worker who paid that money. In many States that do not have right-to-work laws, workers who do not desire to belong to a union are forced to pay union dues which are in turn used for political purposes.

Mr. Speaker this practice by unions is wrong and must be addressed by Congress. Four Supreme Court decisions support this action that has been suffocated in this House. I have personally testified before the House Subcommittee on Elections on this very issue. There is some disagreement on how to remedy this unfair practice. I can understand that there can be differences of opinion, but I have yet to hear from one Member that it is right to force workers to pay dues that are used against their will to support political causes that they disagree with. So why doesn't the Subcommittee on Elections actively work on the legislation introduced by the gentleman from Alabama that will stop this practice? If there isn't a misuse of funds by the unions on behalf of political parties and candidates, then why is it almost impossible to get the House to act on legislation that is validated by the four Supreme Court decisions?

I will continue to work for legislation that will stop the misuse of compulsory dues dollars to finance an array of "in-kind" campaign services that are used wrongfully. I am disappointed that the leadership in this House did not attempt to address this situation and I can assure you of my determination to not let this issue die and go away.

A TRIBUTE TO REV. ALBERT ELLIOTT FREEMAN

HON. H. JAMES SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. SAXTON. Mr. Speaker, I rise to pay tribute to Rev. Albert Elliott Freeman of Mt. Holly, NJ, whose active involvement in business, civic, and community affairs marks him as one of the outstanding citizens of New Jersey's 13th Congressional District.

Reverend Freeman's personal background includes a lengthy career as owner, editor, and publisher of the Burlington County Times Herald newspaper; as president of the Greater Mt. Holly Chamber of Commerce; as a member of the Memorial Hospital of Burlington County Foundation; and, most recently, as an ordained priest of the Episcopal Church. These are but a few of his many accomplishments.

The date of October 23, 1986, will signify yet another important occasion for Reverend Freeman. This dedicated citizen will be honored for his service as chairman of the Mt. Holly Military Liaison Committee, an organiza-

tion which promotes harmony between the military community and the civilian community.

As chairman, he has been charged for the past 30 years with organizing the Annual Greater Mount Holly Chamber of Commerce Military Reception—an occasion when military personnel from Fort Dix and McGuire Air Force Base meet with civilian leaders as part of an effort to promote better understanding and cooperation. And it is this year's reception and dinner, on October 23d, when Reverend Freeman will be recognized for his unselfish involvement and dedication to duty.

Mr. Speaker, Reverend Freeman's involvement in local government, business, and professional organizations, philanthropic activities, the military community, and religious community, make it most fitting and proper that he be honored for his active and unrelenting pursuit of good citizenship.

I thank and commend the liaison committee for according Reverend Freeman this recognition, and I'm sure all my colleagues in the House will want to join with me in congratulating Reverend Freeman on his many years of accomplishments and dedication to those things which bolster our Nation's strength and democratic principles.

PERSONAL EXPLANATION

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. DANNEMEYER. Mr. Speaker, due to previous commitments, I was unable to attend the session on Friday, September 19, 1986, and subsequently missed three rollcall votes. Had I been present, I would have voted:

"No" on rollcall No. 398, the Panetta amendment to the Roberts amendment, that sought to give the Environmental Protection Agency discretionary authority to set uniform pesticide residue standards, rather than requiring EPA to issue such standards;

"Aye" on rollcall No. 399, the Roberts amendment as amended by the Stenholm substitute, that amends the Food and Drug Act, rather than FIFRA, to establish national standards for residues of pesticides on food products; and

"Aye" on rollcall No. 400, final passage of H.R. 2482, to amend the Federal Insecticide, Fungicide and Rodenticide Act.

INTRODUCTION OF BILL TO REINSTATE THE 3-YEAR RECOVERY RULE

HON. HERBERT H. BATEMAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 26, 1986

Mr. BATEMAN. Mr. Speaker, yesterday the House of Representatives passed H.R. 3838, the tax reform bill. Included in that bill is a provision which will abruptly and unfairly impact our Federal employees and many others who devote their working lives to serving the public. That provision is the repeal of the 3-year basis recovery rule.

As you probably know, the 3-year recovery rule allows workers who retire to pay no taxes on their retirement benefits until they get back an amount equal to the amount of their contributions to their retirement plan. This is only fair, since those funds were taxed when the employee first earned them.

Under the tax-reform plan, the retiree will pay taxes on his retirement benefits from the beginning. Although his contributions are still tax-free, that tax-free amount will now be spread out over many years.

What makes this change especially disagreeable is the fact that it is retroactive, affecting all Government workers who retired after July 1, 1986. This means that many new retirees will face immediate tax burdens much greater than they could possibly have planned for.

Ironically, this change which so hurts Federal employees actually does little to benefit the Government's finances. It is an accounting gimmick, a "quick-fix" designed to increase tax receipts in the immediate future, but, in the long run, providing no substantial increase in revenue.

Mr. Speaker, today I am introducing a bill to correct the injustice to public employees which will occur with the passage of the tax reform plan. My bill directs the IRS to apply the Internal Revenue Code as if the 3-year recovery rule were still in effect. This means that, even if the tax reform bill becomes law, the method of taxation of Government retirement benefits will not change.

I urge my distinguished colleagues to support my bill to preserve the three-year recovery rule, and join me in a bi-partisan effort to keep the government's promise to our public employees.